

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON PUBLIC SAFETY
JOINTLY WITH COMMITTEE ON
JUSTICE SYSTEM

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February 25, 2020
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HELD AT: Committee Room - City Hall

B E F O R E: Donovan Richards
Chairperson, Public Safety

Rory I. Lancman
Chairperson, Justice System

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Adrienne E. Adams
Justin L. Brannan
Fernando Cabrera
Andrew Cohen
Chaim M. Deutsch
Vanessa L. Gibson
Rory I. Lancman
Carlos Menchaca
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Keith Powers
Ydanis Rodriguez
Paul Vallone
Mark Levine

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

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Chief of Detectives
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3 CHAIRPERSON RICHARDS: [gavel] Once again,
4 I am Donovan Richards, chair of the Public Safety
5 Committee, and we now joined by Chair Rory Lancman
6 and the Committee on the Justice System, also joined
7 by members Paul Vallone, Fernando Cabrera, Chaim
8 Deutsch, Adrienne Adams, and Mark Levine. Let's
9 start with what should be a very basic premise. The
10 government shouldn't be stealing its citizens' DNA.
11 Cops can't search your home without asking a judge
12 first. Cops can't go into your pockets without
13 probable cause. The government can't force you to
14 give up personal medical information. But here in
15 New York City the cops can put you in a room in order
16 to steal your genetic code, without a warrant and
17 without probable cause. We're told that DNA is only
18 being taken to compare it to crime scene is evidence,
19 but if we allow an unregulated government database
20 who knows what today's complicity will be used to
21 justify tomorrow. I don't think any of us want to
22 live in a society where the government can just
23 decide to take something like your DNA without even
24 telling you what it's doing. Let me clarify what I'm
25 talking about. The NYPD engages in the practice of

2 bringing in a suspect, putting them in an interview
3 room, and offering them water or cigarettes. Whether
4 or not the suspect is placed under arrest, the
5 detective will wait until the person throws away the
6 cigarette butt or water bottle and test it for DNA.
7 Which is then stored in a database indefinitely with
8 no judge or laws to regulate it. I understand that
9 the NYPD wants to do this to solve crimes. I don't
10 blame you for that. And I am mindful of the crime
11 victims who seek justice and sometimes can only get
12 it when a perpetrator is identified by forensic
13 evidence. But there are a lot of things that cops
14 might want to do in order to solve a case that was as
15 don't let them do it again. Like searching a home
16 without a warrant. The state legislature has passed
17 laws allowing police to search homes then they get a
18 warrant signed by a judge. The New York State
19 Legislature could have passed such a law for
20 obtaining DNA samples. Many other states have laws
21 that allow for the collection of DNA from people who
22 haven't been convicted of a crime. We haven't. The
23 cops have just decided that this OK because nobody
24 has not told them not to. I'm here today to say that
25 it's clear that we have to set the rules. Now that

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2 we have seen what their idea of reforming their
3 policy is, we know that this can't just be something
4 that we let the NYPD decide for us. Before we get to
5 the new policy announced last week, I want to read
6 from testimony received by the committee from two
7 sources who particularly work, are worth noting. The
8 first is the Downstate Coalition for Crime Victims, a
9 collective of service providers, victim advocates,
10 survivors, community-based organizations, and elected
11 officials in and around New York City. They wrote, I
12 quote, "We are concerned that the city's current
13 structure of DNA collection and storage is corroding
14 public trust in law enforcement and therefore has a
15 chilling effect in the communities in which we work.
16 The DNA database may serve as a deterrent for
17 survivors and victims to step forward, particularly
18 for those who have either had NYPD collect their
19 genetic material or fear the ramifications of
20 possible DNA collection for themselves or their kin."
21 The second source of testimony that I want to read
22 here is from Howard Baum, formerly the assistant lab
23 director at OCME and who says that he created the
24 local data bank in order to speed up processing
25 times, not to create a vast network of

2 ~~surrup~~surreptitious samples and samples taken
3 from children. He wrote, "Just because I built the
4 technology for OCME to have such a large data bank
5 doesn't mean it should have one. It shouldn't. The
6 City Council now needs to make clear that an
7 unregulated local DNA index cannot continue unabated.
8 Otherwise the OCME and NYPD will continue to take my
9 idea for faster testing and transform into a sweeping
10 index of New Yorkers who are now vulnerable to
11 wrongful arrest or convictions. I know that the NYPD
12 has worked hard to reform its policies, but as I've
13 said before the new policy is half-baked. It doesn't
14 address the main problems with what the NYPD does.
15 It doesn't require a warrant to steal people's DNA
16 without their knowledge. It doesn't even require
17 probable cause. It doesn't limit this practice to
18 only the most serious cases. It doesn't regulate
19 when stolen DNA will be stored in the local database.
20 It doesn't do anything to prevent the NYPD from
21 collecting the DNA of over 300 black men in
22 connection with a single investigation, as they did
23 in Howard Beach. It doesn't prevent the OCME from
24 storing that DNA, even though there is no reason to
25 believe that any of those people had done anything

2 wrong. It still leaves the decision as to whether to
3 take someone's DNA and store it indefinitely,
4 entirely up to the NYPD. This might be the worst
5 part about all of this. Even if they don't arrest
6 you, even if you don't match the evidence in the case
7 they suspect you of, you will still go into a
8 database. No arrest, no conviction, but the
9 government is keeping your DNA. What possible
10 justification is there for that? There are even
11 bigger problems with the changes the NYPD says it's
12 making. I'm sorry, I gotta keep going. They made
13 changes to the consent form they gave to people, they
14 give to people. But even with the changes it still
15 doesn't clearly say what they want the DNA for. It
16 doesn't say your DNA will be compared against every
17 historical and future piece of crime scene evidence,
18 and so they decide to take you out of the database.
19 It actually seems like the words in this consent form
20 were deliberately chosen to say as little as possible
21 to the person who is consenting. If you really want
22 to provide Informed consent, why aren't you say
23 exactly what you are doing with it. There's more.
24 The new policy still allows the NYPD to steal the DNA
25 of children whose parents refuse to give consent.

2 That's right. I'm talking about children as young as
3 11, 12, and 13 years old. They are claiming to
4 change the rules about asking a parent when they ask
5 a juvenile for consent to obtain DNA. But ultimately
6 if the kid already had some water but the parent
7 refuses consent, the NYPD might still test the water
8 bottle anyway. So what is the value of being able to
9 consent when they're just going to take it anyway?
10 Why don't you just put this in the consent form? You
11 might as well sign this thing because we'll just take
12 your DNA anyway. These changes are not good enough
13 because they don't address the problem of why legally
14 innocent people are in the database, and they do
15 nothing to foster the sense of trust that
16 Commissioner Shea says he is trying to establish.
17 Unless we get some really good answers today and
18 unless the state does something first, I believe we
19 need to take up legislation to regulate and the
20 collection and storage of DNA, and until then I'm
21 left with only one option as a public official with a
22 microphone to say to all the members of the public
23 who may find themselves in a police station,
24 voluntarily or involuntarily, if you don't want to
25 end up in a government database don't drink the water

2 and don't smoke the cigarette. I'll now turn it over
3 Chair Lancman.

4 CHAIRPERSON LANCMAN: Good morning. I'm
5 Council Member, chair of the Committee on the Justice
6 System, and thank you, Chair Richards, for inviting
7 us to join this important hearing on DNA collection
8 and storage. The DNA index system maintained by the
9 FBI is expressly authorized by the DNA Identification
10 Act of 1994, which can be found at Title 34 in the US
11 Code. Regulations governing its operations are laid
12 out in Title 28 of the Code of Federal Regulations.
13 The DNA index system maintained by the State of New
14 York was expressly authorized by the state
15 legislature and the governor, also in 1994, and is
16 codified in Article 49-B of the executive law.
17 Regulations governing its operations can be found in
18 Title 9 of New York's Codes Rules and Regulations.
19 New York City's DNA index system, maintained by the
20 Office of the Chief Medical Examiner, however, owes
21 its existence to no such express authorization,
22 either in state law, the city charter, the city
23 administrative code, or city regulations. It just
24 is. The New York State DNA database, databank
25 regulations, enumerate important safeguards

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2 concerning notification, access, and review of
3 resources, expungement, and familial DNA testing, and
4 it is overseen by a commission of forensic experts,
5 including a specific DNA subcommittee to ensure best
6 practices are adhered to. No external regulations
7 constrain New York City's DNA database. No committee
8 of experts oversees its work. The FBI's DNA
9 database, DNA index, is limited to persons convicted
10 or charged with crimes, and arrestees, if authorized
11 by state law. The New York State DNA databank is
12 limited to persons who have been convicted of a
13 felony or a penal law misdemeanor. Indeed, many of
14 those states that allow arrestees into their DNA
15 database require a separate probable cause hearing
16 before doing so. Some states prohibit entering DNA
17 data from juveniles. New York City's DNA index,
18 however, has no limits whatsoever on who gets put
19 into the database, including kids, mere suspects who
20 are never charged with a crime, completely innocent
21 individuals whose DNA is collected merely to
22 eliminate their DNA from the mix in a given case, and
23 as we saw in the recent Karina Vetrano murder
24 investigation, hundreds of completely innocent black
25 men caught in a dragnet that to this day hasn't been

2 properly explained. As the New York City Bar
3 Association put it in its written testimony for
4 today's hearing, New York City's unregulated index is
5 less protective than that of any other state,
6 including New York State itself. New York City holds
7 the unfortunate distinction of having the least
8 restricted and most expansive DNA identification
9 index in the country. And how is this most personal
10 of data, our individual genetic code, collected?
11 Rarely with a warrant, frequently without even the
12 façade of ~~en~~consent. Instead, individuals are
13 duped into drinking from a water bottle or smoking a
14 cigarette in a station house, which is then tested
15 even after someone has evoked their right to
16 ~~counseil~~counsel, and before you know it over 30,000
17 people have their DNA in a government database, where
18 technology is stretched to the limit and even, ever-
19 more tenuous connections are made, linking them to
20 criminality. Who is ~~wate~~ingwatching? The council
21 must. And we must regulate the city's DNA database,
22 just our counterparts in the state legislature
23 regulate the state' databank. That's why we're hear
24 this morning. It is my hope and expectation that
25

2 today's hearing will finally result in the council
3 regulating New York City's DNA database. Thank you.

4 CHAIRPERSON RICHARDS: Thank you, Chair
5 ~~Laneeman~~Lancman. All righty. We'll hear now from,
6 ah, Chief of Detectives Rodney Harrison, Assistant
7 Deputy Commissioner Oleg Chernyavsky, Director Bob
8 Barrows, and Deputy Chief Emanuel Katranakis. Thank
9 you.

10 COMMITTEE COUNSEL: And do you swear to
11 tell the truth, the whole truth, and nothing but the
12 truth, and answer all questions to the committee to
13 the best of your ability?

14 CHIEF RODNEY HARRISON: I do. Good
15 morning Chair Richards, Chair ~~Laneeman~~Lancman, and
16 members of the council. I am Chief Rodney Harrison,
17 chief of ~~detectives~~detectives of the New York City
18 Police Department. I am joined today by Oleg
19 Chernyavsky, assistant deputy commissioner of legal
20 matters. To my right is Deputy Chief Emanuel
21 Katranakis, the commanding officer of the NYPD's
22 forensic investigation division, and Bob Barros,
23 director of the legal operations and projects. On
24 behalf the police commissioner, Dermot Shea, I want
25 to thank the council for this opportunity to testify

2 on the city's DNA collection and storage policies.

3 During the transition phase Commissioner Shea asked
4 me to look at several NYPD databases, such as the DNA
5 database as well as the gang database for
6 transparency and efficiency. Every day the NYPD's
7 dual philosophies of neighboring policing and
8 precision policing builds trust and solidifies
9 relationships between the police and the communities
10 that we're here to serve. This collaborative efforts
11 because the NYPD and those that live, work, and visit
12 New York City make the city a better and safer place.
13 However, we must never forget that first and foremost
14 the mission of the NYPD is to fight crime.

15 Neighborhood policing has transformed how we fight
16 crime by partnering with those we serve, allowing us
17 to share information and more effectively solve cases
18 and precisely deploy our resources. We have driven
19 crime to historic lows while simultaneously reducing
20 enforcement to levels not seen amongst big cities.

21 Yet we all know that a small fraction of our
22 population commit a large portion of the crime within
23 the city. This is why precision policing focuses on
24 finding and arresting the few who weaken the fabric
25 of our neighborhoods through violence and

2 intimidation. As a law enforcement agency we have a
3 responsibility to use available technology and
4 scientific advancements in a constitutional and legal
5 way in order to protect the communities that we
6 serve. Those victimized by crime unequivocally
7 deserve the employe of every legal resource and
8 investigative tool available. The use of DNA to
9 solve and prosecute crimes is one vital way we
10 advance justice. It is a tool that protects the
11 communities we serve. What is used to identify
12 suspects, it also has the distinct crucial and
13 indisposable ability to exclude and exonerate persons
14 suspected of committing crimes. DNA is a principal
15 means of achieving fair policing, not a barrier to
16 it. The use of DNA technology is one of the most
17 significant scientific developments in our modern
18 era. While the full potential of genetic markers in
19 medicine and science continues to be explored, the
20 utility of DNA identification in the criminal justice
21 system is irrefutable. Law enforcement, the defense
22 bar, and courts have acknowledged DNA testing
23 unparalleled ability to both exonerate the wrongly
24 accused and identify the guilty. Its use has
25 significantly improved both the criminal justice

2 system and police investigative practices. Much
3 attention has been paid to the process of how the
4 NYPD obtains DNA samples. The NYPD's investigations
5 and tactics are guided by what is required by law, by
6 the courts, and is aligned with best practices in the
7 law enforcement community. DNA samples are collected
8 in criminal investigations by the NYPD, either from
9 crime scene evidence or from suspect individuals
10 having a [inaudible] relationship to an actual crime
11 being investigated. DNA is collected primarily from
12 suspects in two forms, either from Informed consent
13 or from abandonment of discarded property. For both
14 of these methods there is a long-standing
15 jurisprudence stating that there is no reasonable
16 expectation of privacy in a object that is either
17 provided upon informed consent or purposefully
18 abandoned. This doctrine has expanded to DNA samples
19 left on abandonment items even when obtained by
20 indirect means from the police. The driving
21 motivation for the NYPD to collect DNA is to legally
22 identify the correct perpetrator, build the strongest
23 case possible for investigators and our partners in
24 the district attorney's offices and bring justice to
25 victims and their families. When the DNA is obtained

2 by the NYPD the evidence is submitted to our forensic
3 investigation division. There the sample is vetted
4 for DNA testing and if probative the collected
5 evidence is submitted to the Office of Chief Medical
6 Examiners unit. The evidence unit then transfers the
7 sample to the OCME's forensic biology department. If
8 the sample meets OCME's standard for testing, OCME
9 will generate a DNA profile for inclusion in its
10 local DNA index system, known as LDIS. I want to
11 spend the remainder of my remarks today on this very
12 subject, the city's local DNA index system, with
13 specific attention on the city's suspect database and
14 reforms that have been announced by the city. A
15 robust debate has been centered on this database,
16 with some, with some inaccuracies. For example, I
17 want to be clear, the local DNA index system is not
18 an NYPD database. It is not operated nor maintained
19 by the NYPD. The database is maintained by the
20 Office of the Chief Medical Examiner. The immense
21 value of a DNA database lies in its ability to assist
22 in identifying the correct perpetrator of violence.
23 Last year the database generated over 1500 matches or
24 hits between ~~between~~ the suspect DNA profiles and DNA
25 profiles developed from crime scene evidence. Law

2 enforcement agencies have routinely scientific
3 advancements in their ability to identify those who
4 have committed violence in our communities. The use
5 of DNA is markedly effective. Rather than casting a
6 wide investigative net, it enables law enforcement to
7 narrow its investigation and ensure that charges are
8 brought against the correct wrong-doers. As many
9 criminal justice reformers have noted, one of the
10 leading reasons for false arrests and wrongful
11 convictions stems from inaccurate eyewitness
12 identifications. DNA evidence is objective. It
13 reduces human error that can accompany witness
14 identification procedures and, more importantly, the
15 use of the databases with appropriate safeguards to
16 extract, retain, and remove samples should be
17 embraced. The local DNA index system is composed of
18 several indices, or more commonly, databases, such as
19 a missing person index, a crime scene evidence index,
20 and the suspect profile index. In total, the entire
21 system contains over 82,000 DNA profiles. While some
22 have characterized the system as carelessly expanding
23 the number of samples on files, the vast majority of
24 samples are derived from crime scene evidence taken
25 from victims, firearms used in shootings, and other

2 crime scenes. Approximately 32,000 other profiles,
3 or 38% within the entire system, are suspect
4 profiles. The suspect database is used to compare
5 suspect DNA to crime scene DNA and DNA from one crime
6 to DNA from other crime scenes in order to match or
7 to exclude suspects. The identities of individuals
8 in the local database are not disclosed to law
9 enforcement unless there is a match found between the
10 crime scene evidence and a suspect. Much of the
11 ~~debate~~debate surrounding the local database relates
12 to the database containing the DNA of those who may
13 have not have been connected of a crime. State and
14 federal databases contain only DNA convicted, from
15 convicted persons. For example, pursuant to the
16 state law, New York's DNA database only accepts
17 profiles of individuals convicted of a felony or
18 penal law misdemeanor. Nonetheless, 75% of the
19 suspect profiles in the local database also have a
20 corresponding profile with the state's DNA databank,
21 meaning the person associated with the profile and
22 the local database has been convicted of a crime.
23 Many of these convictions are violence felony and sex
24 offender convictions. Additionally, a significant
25 portion of the profile in the local suspect database

2 assessed with individuals who are suspects in
3 multiple complex, intricate, and ongoing law
4 enforcement investigations. Some have argued against
5 the necessity of the local suspect database since
6 nearly three-quarters of it overlaps with the state
7 DNA databank. However, the average, there is a 21-
8 day lag between the NYPD receives DNA results from
9 OCME and receives results from the state DNA
10 databank. Time is of the essence in an
11 investigation. Time makes all the difference to an
12 investigator seeking to identify a violence
13 perpetrator or to a victim of a heinous crime seeking
14 and closure. The expediency of the local database
15 allows the NYPD to take dangerous criminals off our
16 streets sooner and to keep our community safe.
17 Despite false claims or reckless growth or that NYPD
18 engaged in fishing or dragnet expeditions to collect
19 DNA, the number of profiles developed from arrestees
20 and other suspects remains at about 32,000, compared
21 with 700,000 in the state convicted offender
22 database. When considering since the inception of
23 the local database in 1997, the millions of
24 investigations and arrests by the NYPD that have
25 taken place, the number of profiles would

2 substantially be higher if the department was engaged
3 in broad-based collection practices. Critics of the
4 database also claim that it is teeming with
5 juveniles. Each year nearly 95% of the DNA samples
6 taken by the NYPD come from adults. The remainder
7 mostly come from juveniles in their late teens
8 accused of very serious crimes. Approximately 5% of
9 the profiles in the local database came from
10 individuals~~vide~~ who were juveniles at the time of
11 collection. Our responsibility is to ensure that
12 every profile in the database actually deserves not
13 just initial inclusion, but continued inclusion as
14 well. In this era of precision policing a database
15 that is over-saturated and provides few matches is of
16 little use to law enforcement and prosecution,
17 prosecutors. The department acknowledges the public
18 debate surrounding the database and that forms are
19 necessary to continue support a criminal justice
20 system that is fair, equitable, and does not
21 compromise our ability to objectively identify
22 perpetrators of violence, help our prosecutors build
23 strong cases, and bring justice to victims. Over the
24 course of this past summer and fall the NYPD and the
25 OCME engaged in collaborative efforts to review the

2 city's policies regarding DNA collection and
3 ~~storgage~~storage, and to develop additional avenues to
4 remove suspect profiles from the local database. The
5 results of this collaborative effort includes the
6 creation of a revised NYPD consent to submit DNA
7 sample form, amendments to the patrol guide and the
8 detective guide, the developments of new guidelines
9 for the collection of DNA from juveniles, and the
10 creation of an exit procedure for suspect profiles in
11 the local database without a court order. As the
12 centerpiece of this significant policy change, the
13 department will conduct regular reviews of suspect
14 profiles that have been collected and notify the OCME
15 of approval to remove where warranted. Our first
16 focus will be a comprehensive audit of every suspect
17 profile in the database that is at least two years
18 old or older. The entire database will also be
19 reviewed every four years for profiles that are at
20 least four years old and older. Lastly, going
21 forward all new profiles that are developed will
22 receive an automatic review upon reaching their
23 second year of existence in the suspect database.
24 This process creates multiple off-ramps and exits
25 from the local database. The presumption is to

2 recommend removal unless the profile is a person who,
3 at the time of review, has been convicted of a felony
4 or penal law misdemeanor, meaning the person already
5 has a profile in the New York State DNA databank, or
6 continues to be a suspect of a crime, in a police
7 investigation, or ongoing prosecution, or, in limited
8 circumstances, was a subject of an arrest or
9 prosecution where no judicial conclusion was reached
10 on the person's innocence. In a continued effort to
11 increase transparency and enhance trust, the
12 department will publicly report data regarding these
13 suspect profile reviews on its public website. In
14 collaboration with the OCME the NYPD will report the
15 number of DNA profiles in the database. The number
16 removed as a result of the review, as well as the
17 frequency of how often each exception to removal has
18 been employed. In developing an exit process from
19 the database, the department strongly believes this
20 is the ultimate route to pursue. The policy
21 inclusively addresses both samples that have been
22 collected by consent or through
23 ~~abandoment~~abandonment. It does not rely on an
24 individual sending correspondence to city agencies or
25 hiring costly legal representation to seek a court

2 order, and it is equitable. Every profile will get
3 multiple reviews, creating fair results. In
4 addition, reforms to our DNA collection and storage
5 process will also include the creation of a revised
6 NYPD consent to submit DNA sample form. While
7 already in existence, this admitted form will clearly
8 explain that consenting and providing a sample result
9 and a DNA profile being developed and stored in the
10 local DNA database. The form states that the subject
11 may refuse to provide consent. In limited
12 circumstances when a suspect refuses consent an
13 ~~abandoment~~abandonment sample will still be taken for
14 violent felonies and misdemeanor sexual assaults,
15 which amount to 98% of ~~abandoment~~abandonment samples.
16 Impose strict guidelines for the collection of DNA
17 samples from juveniles. Collection of DNA samples
18 from juveniles will be limited to investigations
19 involving felonies, firearm crimes, sex crimes, and
20 hate crimes. Investigations for other crimes may be
21 included with prior explicit approval from the chief
22 of detectives, and this applies to both
23 ~~abandoment~~abandonment and consent samples. Updates
24 to the patrol guide and the detective guide to ensure
25 parent guardian conferrals, and notifications prior

2 to obtain a juvenile consent sample. Prior to the
3 change in this policy the guidance for taking consent
4 sample from a juvenile was that it was best practice
5 to have a parent guardian present when making such a
6 request. While this occurred in most cases, the
7 department believes this should be standard practice,
8 just as it is when conducting an interrogation of a
9 juvenile. It will be required that the parent
10 guardian be notified, that the parent guardian can
11 object, and that the juvenile and the parent guardian
12 can confer before providing consent. Streamlined the
13 process for removing acquitted individuals. The
14 OCME, the OCME will accept a certificate of
15 disposition from individuals who have been acquitted
16 in a case from which DNA was taken for the purpose of
17 removal from the local database. This does not
18 require the hiring of counsel, a court order, or
19 judicial hearing. OCME will consult with the NYPD to
20 ensure the individual is not a suspect in a multiple
21 investigation prior to removal. And demographic
22 transparency - the NYPD will begin to document in
23 ECMS the age, gender, and ethnicity of individuals
24 who are entered and those removed from the database,
25 to monitor and review disparities amongst those

2 arrested and those placed in our database. Thank you
3 for the opportunity to speak about this important
4 issue, and we look forward to answering any questions
5 that you may have.

6 CHAIRPERSON RICHARDS: Thank you, ah,
7 Chief Harrison, for your testimony, and I think this
8 is your first hearing as chief?

9 CHIEF HARRISON: Ah, first hearing in
10 this position.

11 CHAIRPERSON RICHARDS: Yes,
12 congratulations.

13 CHIEF HARRISON: Thank you.

14 CHAIRPERSON RICHARDS: Doesn't mean you
15 get a pass today.

16 CHIEF HARRISON: I know I don't.

17 CHAIRPERSON RICHARDS: All right.

18 CHIEF HARRISON: I know I don't.

19 CHAIRPERSON RICHARDS: Um, so just want
20 to clarify up front what I'm interested in today and
21 that, that certainly isn't the local, is the local
22 suspect database, not the witness elimination
23 database or the crime scene evidence database. How
24 many people are currently in the suspect portion of
25 the local database?

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2 DIRECTOR BARROWS: So, to, so, Bob
3 Barrows, director of legal operations in the PD. Um,
4 the, the number is approximately about 32,000
5 profiles...

6 CHAIRPERSON RICHARDS: 32,000.

7 DIRECTOR BARROWS: ...in the entire
8 system.

9 CHAIRPERSON RICHARDS: And the main
10 difference between the local suspect database and the
11 state database is that the local database has people
12 who have not been convicted of a crime, correct?

13 DIRECTOR BARROWS: The state database has
14 a criteria of you have to be convicted of a felony or
15 a penal law misdemeanor to...

16 CHAIRPERSON RICHARDS: Just pull your mic
17 a little closer.

18 DIRECTOR BARROWS: I'm sorry.

19 CHAIRPERSON RICHARDS: No problem.

20 DIRECTOR BARROWS: The state's criteria
21 is that in order to be include in the state DNA
22 database that the, ah, individual has to be convicted
23 of a felony or a penal law misdemeanor.

24 CHAIRPERSON RICHARDS: So of those people
25 who are in it because you say you got consent and

2 others are in there because you took their DNA
3 without telling them, how many people of the people
4 in the local suspect database are in there without
5 their consent?

6 DIRECTOR KATRANAKIS: So I'm Manny
7 Katranakis, the commanding officer of forensics.
8 Thanks for ah, for that question. It's difficult to
9 say. When you look over the, ah, the years of the
10 data, um, we see some changes in the trends. Um, we
11 saw years ago that it was about half, ah...

12 CHAIRPERSON RICHARDS: Half were in there
13 without, so half of...

14 DIRECTOR KATRANAKIS: 50% were informed
15 consent and the other half were abandonment
16 ~~abandoment~~ samples. And then we saw that trend
17 change, where now we see more ~~abandoment~~abandonment
18 samples being collected and less informed consent.

19 CHAIRPERSON RICHARDS: And I just want to
20 go back to something, and so have...

21 DIRECTOR BARROWS: Sorry, Councilman, I
22 would also just add I think the premise of the
23 question, how many people are in based on consent,
24 um, I think as the Chief has outlined, ah, entry into
25 the databases is based off of both informed consent

3 and ~~abandoment~~abandonment samples, so ultimately it
4 comes down to whether the collection is lawful.

5 CHAIRPERSON RICHARDS: Can you give me a
6 breakdown on that? I wanted to hear specific
7 numbers.

8 DIRECTOR BARROWS: Well, I think, I think
9 Chief Katranakis has just mentioned, I think if you
10 look at the trend over the course of years it's about
11 50% are taken from consent samples and 50% are taken
12 from ~~abandoment~~abandonment samples.

13 CHAIRPERSON RICHARDS: So half of the
14 32,000, which would be 16,000.

15 DIRECTOR KATRANAKIS: One other point,
16 Council Member. I think, I just want to make sure
17 that we're clear on what the numbers are. While
18 32,000, ah, are suspect samples, of that 32,000 there
19 is significant overlap with the state database in
20 terms of who's been actually convicted of a
21 misdemeanor or felony and based on our estimation
22 we're looking at 75% of that 32,000 are convicted of
23 misdemeanors or felonies, which means by law, by
24 state law, they are obligated to be in the state
25 database. So this is duplicative of that. So the
universe that I think you're really speaking about

2 are approximately 7000 samples, if I'm doing my math
3 right.

4 CHAIRPERSON RICHARDS: OK, and out of
5 those 7000 samples, assuming this is factual
6 information, how many are in there with consent?

7 DIRECTOR KATRANAKIS: Well, I think
8 that's been answered a couple of times. I think
9 we're, when we look at the five-year...

10 CHAIRPERSON RICHARDS: So are you
11 gonna...

12 DIRECTOR KATRANAKIS: When we're looking
13 at the five-year trend, right, we're looking at
14 approximately it's half and half. But, again, that
15 ~~flueuates~~fluctuates because this is a, the manner in
16 which you collect the sample is really dictated by a
17 particular case. So sometimes it's done through
18 consent, other times it's done, ah, through
19 ~~abandement~~abandonment without consent. But it's the
20 facts of an individual case that's gonna dictate the
21 method of collection, what is best, ah, in that
22 particular case to solve that case.

23 CHAIRPERSON RICHARDS: So I keep hearing
24 the words trends over five years. I'm looking for
25 factual information. So do we have the exact data?

2 And, and if you don't have it I would rather you say
3 that.

4 DIRECTOR KATRANAKIS: So we don't have
5 and that's something that we're gonna to look to put
6 in place regarding documentation to ECMS, so the next
7 time there is a review of this database we'll be able
8 to give you more concise numbers.

9 CHAIRPERSON RICHARDS: And does the OCME,
10 they're, they're present?

11 CHIEF MEDICAL EXAMINER SAMPSON: Yes.

12 CHAIRPERSON RICHARDS: OK. Come on down.
13 Yes, you'll swear in.

14 CHIEF MEDICAL EXAMINER SAMPSON: Hi. I'm
15 Barbara Sampson, chief medical examiner.

16 COMMITTEE COUNSEL: And do you swear to
17 tell the truth, the whole truth, and nothing but the
18 truth to the committee and answer all questions to
19 the best of your ability?

20 CHIEF MEDICAL EXAMINER SAMPSON: I do.

21 CHAIRPERSON RICHARDS: Do you keep
22 information who consents and who doesn't consent?

23 CHIEF MEDICAL EXAMINER SAMPSON: No, we
24 do not have that information.

2 CHAIRPERSON RICHARDS: OK, you could stay
3 there.

4 CHIEF MEDICAL EXAMINER SAMPSON: I will.

5 CHAIRPERSON RICHARDS: We're gonna get
6 back to you. So you spoke of cases and, and I want
7 to point to Howard Beach and, and Mr. Chief, ah, you
8 mentioned in your testimony DNA samples are collected
9 and criminal investigation by the NYPD, either from
10 crime scene evidence or from suspects. Individuals
11 having an articulable relationship to an actual crime
12 being investigated. Can you speak to, ah, what the
13 relationships were between those 300 black men in
14 Howard Beach and the collection of DNA samples? Was
15 there an articulable relationship between those 300
16 men?

17 CHIEF HARRISON: So, and I'm gonna, ah,
18 ask Chief Katranakis to go a little bit more in
19 detail. Um, but there were, there was investigative
20 information that came in our direction that somewhat
21 led us in the direction of a, a certain population to
22 caused us to try to get this amount of, ah, DNA
23 profiles, um, that amounted to that, ah, that number.

24 CHAIRPERSON RICHARDS: And are those 300,
25 go ahead, because you have more to add.

2 DIRECTOR KATRANAKIS: Um, sorry sir, you
3 want to?

4 CHAIRPERSON RICHARDS: You were gonna say
5 something?

6 DIRECTOR KATRANAKIS: So just to add to,
7 ah, to Chief Harrison's point. Each, each of the
8 individuals, to answer your question, um, was
9 developed through the course of the investigation,
10 um, where the NYPD felt that it was necessary to
11 collect their DNA sample. Um, bearing in mind, um,
12 without, um, getting into the granular detail of the
13 case, the, ah, the DNA evidence that was collected
14 and that we were aware of and the spatial
15 relationship of that, of that evidence, based on
16 where we collected it and where we obtained from, um,
17 led us to the conclusion that we definitively felt
18 that we had the putative perpetrator's DNA profile,
19 and order for that case to move forward that we had
20 to match that foreign male DNA profile that was
21 developed off multiple services and substrates based
22 on the crime scene and based on the evidence that we
23 collected. So there wasn't other evidence that you'd
24 routinely see. In each investigation we look at
25 video evidence, we look at fingerprint evidence, we

2 look a ~~wholehost~~whole host of elements that can be
3 brought to a criminal investigation that weigh into
4 the facts and circumstances and dictate what the
5 appropriate next steps are to advance the
6 investigation. In that particular investigation I
7 was out there for two weeks at the crime scene day in
8 and day out. Um, I can tell you that the most
9 important and the critical piece of element, the
10 critical piece of evidence that we needed in order to
11 solve that case and identify the individual
12 responsible for committing that homicide was matching
13 that foreign male DNA profile. So the investigation
14 was driven by coming across suspects as they were
15 developed through the investigation, which took us in
16 many, many different directions as the investigation
17 developed over a dynamic period of time, as you are
18 aware, and those individuals were, um, brought to the
19 attention of a host of investigators and their DNA
20 samples...

21 CHAIRPERSON RICHARDS: Three hundred of
22 them, you're saying.

23 DIRECTOR KATRANAKIS: So, so all of the
24 suspects that DNA was collected from, each of them
25 was exculpated via the database. So all of those

2 that did not match were not arrested and were not
3 brought into a precinct station house. And when one
4 was matched then we advanced the criminal
5 investigation and moved forward with an arrest.

6 CHAIRPERSON RICHARDS: And out of the
7 300, how many consented?

8 COMMISSIONER ~~CHERNAYVSKY~~CHERNYAVSKY:
9 Council Member, I think we're answering these
10 questions about this particular case broadly for a
11 reason, because the case is still subject to appeal.
12 So we're not gonna go into specifics. But I think
13 what~~what~~ both chiefs have made clear is that there
14 were no random stops or dragnets of individuals.
15 There was, ah, there were leads that were phoned in.
16 There were tips that were phoned in. Everybody whose
17 sample was collected, however it was collected, was
18 done because a lead was provided that drew our
19 attention to that individual. It was not done
20 randomly. We weren't asking for people to stop in
21 the street and collecting their samples. Ah, with
22 the process as we rolled out now, which is the review
23 process and auditing process, what will happen moving
24 forward in all cases is that there is gonna be a
25 systemic review of samples and those individuals that

2 are no longer suspects of a crime, that are not, ah,
3 mandated to be in the database based on a misdemeanor
4 or felony conviction, will be up for a, ah, review to
5 be eliminated or recommended to the OCME on our end
6 to be removed from the database.

7 CHAIRPERSON RICHARDS: And I want to
8 [inaudible] for a second because obviously this case
9 is what really stoked our interest in this, this
10 specific area. Um, are the 299 black men that you
11 took DNA from still in the database?

12 COMMISSIONER ~~CHERNAYVSKY~~CHERNYAVSKY:
13 Council Member, again, I mean, I appreciate the
14 strategy of throwing numbers out and having us to
15 agree...

16 CHAIRPERSON RICHARDS: It's not, it's not
17 a...

18 COMMISSIONER ~~CHERNAYVSKY~~CHERNYAVSKY:
19 ...to certain numbers. I, but, again...

20 CHAIRPERSON RICHARDS: But, but they
21 weren't convicted. As, as I said, ah, the process
22 as, as created now, this new protocol for reviewing
23 DNA samples will take into account individuals and
24 that case and other cases that are, were once a
25 suspect based on reliable evidence or tips that were

2 phoned in that resulted in the collection of a
3 sample, that are no longer suspects in the case, that
4 don't have any convictions. Ah, they will be, we
5 will recommend their removal from the database.

6 DIRECTOR BARROWS: Right, I would just
7 add...

8 CHAIRPERSON RICHARDS: So, will it take,
9 what I'm getting at is will it take two years for
10 these mens' DNA profiles to be removed.

11 DIRECTOR BARROWS: So as part of this
12 policy change that we announced yesterday, not
13 yesterday, last week, excuse me. Um, one of the
14 first things that we're gonna be doing is reviewing
15 the entire database of every, the entire suspect
16 database of everyone...

17 CHAIRPERSON RICHARDS: No, no, no.

18 DIRECTOR BARROWS: ...that's on file
19 that's at least two years.

20 CHAIRPERSON RICHARDS: We passed the
21 suspect portion of this.

22 DIRECTOR BARROWS: Right.

23 CHAIRPERSON RICHARDS: We, NYPD did their
24 job, you believe you got the right person. You went
25 to people's door and collected their DNAs. Which we

2 can argue as real, whether~~is~~ that consent in the
3 first place. That's called pressure in the
4 neighborhood I come from.

5 DIRECTOR BARROWS: But I, I would just...

6 CHAIRPERSON RICHARDS: But what I, but
7 what I would say is why should it take two years to
8 have these men's DNA removed from the database...

9 DIRECTOR BARROWS: So, so if I could...

10 CHAIRPERSON RICHARDS: ...when they're,
11 when we know today that none of them are, are guilty
12 of this crime.

13 DIRECTOR BARROWS: So, so if I could just
14 add, what I was, what I was trying to get to is that
15 this first level of review we're doing, we're doing
16 out the gate of every profile that's at least two
17 years old or older. Right now in the database...

18 CHAIRPERSON RICHARDS: But I once, I,
19 let's forget everybody else for, for a minute.

20 DIRECTOR BARROWS: Um-hmm.

21 CHAIRPERSON RICHARDS: In this situation
22 you went to over 300 men's doors and we know right
23 now [laughs] as we sit here, you built your case that
24 they're innocent. So why should their DNA be in this
25 database for another two years? Is there not a

1 process to expedite, to get these men out? Do they
2 get a apology, did they get a letter, did they get
3 anything? So what I'm getting at, and I don't, you
4 know, I don't want to harp on this case for the
5 entire committee hearing. But what I'm getting at is
6 there's a clear pattern here. It shows that there
7 needs to be a lot more oversight and last I checked
8 when you ran 300 men for DNA, or whether you're stop
9 and frisking them, all in a week, that's called a
10 dragnet. I don't, I don't know how to explain it
11 anything differently. If you go into a community or
12 communities, and you go into black men's homes and
13 knock on their doors with their babies in their arms
14 and you ask them for DNA, that's a, that's a dragnet.
15 So...

17 COMMISSIONER CHERNAYVSKYCHERNYAVSKY: I
18 mean, Council Member...

19 CHAIRPERSON RICHARDS: So...

20 COMMISSIONER CHERNAYVSKYCHERNYAVSKY:
21 I'm, I'm gonna, look, I'm not gonna let you keep
22 repeating that because it's false. It is not a...

23 CHAIRPERSON RICHARDS: You did not knock
24 on three...

25

2 COMMISSIONER ~~CHERNAYVSKY~~CHERNYAVSKY:

3 It is...

4 CHAIRPERSON RICHARDS: You didn't go to
5 300 men...

6 COMMISSIONER ~~CHERNAYVSKY~~CHERNYAVSKY:

7 It's not a dragnet when you have viable leads in a
8 case...

9 CHAIRPERSON RICHARDS: So you had a
10 lead...

11 COMMISSIONER ~~CHERNAYVSKY~~CHERNYAVSKY:

12 ...and you're following up on the leads called in.

13 CHAIRPERSON RICHARDS: OK.

14 COMMISSIONER ~~CHERNAYVSKY~~CHERNYAVSKY:

15 You would expect nothing less of us. We sat before
16 your committee at an SVD hearing where you promoted
17 us following every lead to bring justice to victims.
18 The victim expects nothing less. You expected
19 nothing less at other hearings. You expect us to
20 follow every lead. You don't want us to shut our
21 eyes and ignore leads coming in an unsolved...

22 CHAIRPERSON RICHARDS: But, but...

23 COMMISSIONER ~~CHERNAYVSKY~~CHERNYAVSKY:

24 ...horrific crime. Mind you, it happened in the
25 borough of Queens but this happened in an area that

2 did not have video evidence. It was unsolved for a
3 period of time, and we needed to follow every lead
4 coming in.

5 CHAIRPERSON RICHARDS: [inaudible].

6 COMMISSIONER ~~CHERNAYVSKY~~CHERNYAVSKY:

7 Now, to your point about removal protocols. We heard
8 you. We heard the criticism. We worked with the
9 council. We, we worked with OCME, and we developed
10 protocols not only in one particular case, but across
11 the board for individuals that are similarly situated
12 to come out of the database without requiring a court
13 order. That's what we did here.

14 CHAIRPERSON RICHARDS: What is the makeup
15 of the local suspect database?

16 UNIDENTIFIED: Mr. Chair, if I could just
17 go back for one second, I...

18 CHAIRPERSON RICHARDS: No. I, I don't
19 want to go back for a second. I want to hear what
20 [inaudible]. I heard what you said. What is the
21 racial breakdown of the people in the database?

22 CHIEF HARRISON: So, unfortunately we
23 don't have that information, and that's why...

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2 CHAIRPERSON RICHARDS: Does the NYPD
3 collect race and age information for the people they
4 arrest?

5 CHIEF HARRISON: Ah, we do.

6 CHAIRPERSON RICHARDS: Say that again?

7 CHIEF HARRISON: We do.

8 CHAIRPERSON RICHARDS: You do. And you
9 don't have information of who's in this database?

10 CHIEF HARRISON: No.

11 CHAIRPERSON RICHARDS: Does the NYPD
12 submit, and does the NYPD submit all of the suspects
13 to the local database as well?

14 UNIDENTIFIED: I'm sorry, repeat that
15 question?

16 CHAIRPERSON RICHARDS: NYPD collects race
17 and age information for the people it arrests,
18 correct?

19 CHIEF HARRISON: Yes, yes.

20 CHAIRPERSON RICHARDS: And does the NYPD
21 also submit all of the suspects to the local
22 database?

23 CHIEF HARRISON: All of the local
24 suspects to the database?

25

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2 CHAIRPERSON RICHARDS: All of the
3 suspects.

4 DIRECTOR KATRANAKIS: So suspects of...

5 CHAIRPERSON RICHARDS: So in the case
6 of...

7 DIRECTOR KATRANAKIS: So 93...

8 CHAIRPERSON RICHARDS: ...the case on
9 Howard Beach, would you have submitted all of, you
10 submitted all of those individuals into the local
11 database.

12 COMMISSIONER ~~CHERNAYVSKY~~CHERNYAVSKY:

13 No. Suspects are submitted based on if, if we
14 believe DNA is relevant in a particular case or for a
15 particular suspect, it's submitted. It's not
16 submitted for every arrest that's made. I mean, I
17 think one of the numbers that seems to be overlooked
18 routinely when we talk about DNA evidence is that
19 there are 32 suspects sampled, 75% of which are
20 supposed to be in the state database by law because
21 they're convicted of a misdemeanor or felony. The
22 database has been around since 1997. During that
23 period there have been millions of arrests. What
24 we're talking about is fraction of individuals. That
25 shows that we're being selective, diligent, and

2 careful about in what cases are we collecting DNA
3 evidence. I mean, those numbers bear that out.

4 CHAIRPERSON RICHARDS: OCME, do you
5 collect demographical information.

6 CHIEF MEDICAL EXAMINER SAMPSON: We, we
7 do not.

8 CHAIRPERSON RICHARDS: You do not.

9 CHIEF HARRISON: Mr. Chair, if you
10 [inaudible] in my opening remarks I identified this
11 concern. Um, now that I'm in this new position and
12 Commissioner Shea asked me to take a look at it, um,
13 working with the, ah, executives that oversee our,
14 um, ECMS process, that's gonna be rectified. We're
15 gonna make sure that, once again, it's the
16 demographics of people that we're taking sample from
17 is submitted. So, once again, if we need to get it
18 out to the public, we're able to distribute those,
19 that information a lot more cohesive in the future.

20 CHAIRPERSON RICHARDS: So you mean to
21 tell me that NYPD collects no demographical
22 information here. So in the gang database you got
23 demographical information. I'm sure the face, I
24 can't even say the facial recognition, but all these
25

2 databases, this is the only one you have no
3 demographical information on?

4 UNIDENTIFIED: We don't have it now, but
5 we will have it and we're putting something in place
6 in, in the very, very near future.

7 CHAIRPERSON RICHARDS: Let me just go
8 back to the OCME for a quick second. Then I'm gonna
9 hand it over to Chair Lancman. Um, so the OCME is
10 supposed to be an independent agency from the NYPD,
11 correct?

12 CHIEF MEDICAL EXAMINER SAMPSON: It is an
13 independent agency from, from NYPD.

14 CHAIRPERSON RICHARDS: Why is your policy
15 to maintain a database of whoever the NYPD says you
16 should unless a judge tells you otherwise.

17 CHIEF MEDICAL EXAMINER SAMPSON: The, ah,
18 role of the OCME is to maintain the scientific
19 integrity of the database, and we do that to the
20 utmost. We, ah, are adherent to all, ah, of our
21 oversight requirements. Now that includes the
22 CODIS, the, ah, FBI requirements, and we use that,
23 ah, those, um, regulatory measures over the local
24 database as they apply, as well as state and, ah,
25 federal guidelines as well, national guidelines. All

2 of our policies are on, we provided to you before
3 this hearing at your request, and they are also
4 available on our, ah, our website.

5 CHAIRPERSON RICHARDS: Can you comment on
6 the testimony of Howard Baum, who says that this was
7 never what the local database was supposed to be and
8 has been expanded beyond what it should be?

9 CHIEF MEDICAL EXAMINER SAMPSON: Ah,
10 Howard Baum was a, ah, scientist who left the agency
11 in the middle 2000s. He was one of the team of
12 scientists that, ah, built the, ah, local database.
13 He is, of course, entitled to his opinion as an
14 American, ah, and but I sit here today as the voice
15 of OCME and I want to, ah, just reiterate that the,
16 the importance of the scientific integrity of the
17 database, that is our role. Ah, we are independent,
18 as you pointed out, from law enforcement. So
19 decisions that are influenced by, ah, law enforcement
20 needs need to be made with law enforcement and with
21 balancing civil ~~liberities~~liberties, and that is why
22 I am so happy to have this opportunity today to have
23 this conversation.

24 CHAIRPERSON RICHARDS: So you agree civil
25 liberties are important here.

2 CHIEF MEDICAL EXAMINER SAMPSON: I do.

3 CHAIRPERSON RICHARDS: OK. Chief

4 Sampson, what is...

5 COMMISSIONER ~~CHERNAYVSKY~~CHERNYAVSKY:

6 And the police department agrees that civil liberties
7 are important as well.

8 CHAIRPERSON RICHARDS: Well, you're a
9 little behind the eight ball on this one.

10 COMMISSIONER ~~CHERNAYVSKY~~CHERNYAVSKY:

11 Well, I'm not sure about that.

12 CHAIRPERSON RICHARDS: But, Chief
13 Sampson, what is your understand of what OCME
14 analysts think about their role in the storage of
15 ~~susurreptitious~~susurreptitious samples and samples of
16 children who haven't been convicted?

17 CHIEF MEDICAL EXAMINER SAMPSON: The, um,
18 I'm not aware of the details of the, ah, opinions of
19 all my staff on this topic. Like I said, we are
20 responsible for the scientific integrity of the
21 database and that I do firmly believe we maintain to
22 the highest design of scientific standards.

23 CHAIRPERSON RICHARDS: Ah, but I want to
24 just point to my understanding is that analysts have
25 raised their concerns to management about these

2 practices and that issues around a local suspect
3 database are impacting morale in the agency. Is that
4 true?

5 CHIEF MEDICAL EXAMINER SAMPSON: The, ah,
6 we, I, I have often conversations with scientists
7 addressing many of their concerns and I take them all
8 very seriously, and like I said, I, I need to balance
9 the needs of law enforcement and criminal, ah, I'm
10 sorry, and civil liberties in this area, ah, and I'm
11 glad to be able to do that on behalf OCME today,
12 reminding you that we are the scientific entity here
13 and we must remain independent from all outside, ah,
14 influences. So our, our concern is maintaining the
15 science behind this database to the highest design.

16 CHAIRPERSON RICHARDS: And I understand
17 science, but unfortunately black men are being
18 experimented on in this city and in our communities.
19 And you bear some responsibility here as well. No
20 one is getting a free pass. So I would really, um,
21 implore you to look at this more than scientifically.
22 Because there are communities we're trying to build
23 trust with who will never build that trust, um,
24 because of the wild, wild west. I also have learnt
25 that the DNA criminalists have been even campaigning

2 for state law changes to match the rules of the state
3 database, pushing OCME management to change the
4 policy of processing ~~surriptiteoussurreptitious~~
5 samples. Can you comment on that?

6 CHIEF MEDICAL EXAMINER SAMPSON: I am not
7 aware of any effort by our employees to, ah, look to
8 the state to regulate this.

9 CHAIRPERSON RICHARDS: Last question I
10 have for you. I've also been told that there have
11 been high-level discussions with the first deputy
12 mayor's office about changing these policies about
13 DNA storage. Is that true?

14 CHIEF MEDICAL EXAMINER SAMPSON: Oh, NYPD
15 and OCME have been in conversations about the
16 proposals that we talked about today. So, yes.

17 CHAIRPERSON RICHARDS: OK. I'm going to
18 turn it over to Chair Lancman. Thank you.

19 CHAIRPERSON LANCMAN: Thank you. So
20 number courts have, um, had to consider the status of
21 OCME's, um, database. And they've concluded that the
22 database is subject to state law. As recently as
23 last year an important court in New York, the
24 appellate division, first department, in the
25 ~~F~~fabrizio case, which I'm sure you are familiar with,

2 um, expressly held that the New York City database is
3 subject to the state law, which established the
4 database, as I said in my opening statement, in 1994,
5 which established a state database. So I, I want to
6 ask a series of questions related to the city's
7 database and its compliance and consistency with
8 state law and regulation. So, for example, Executive
9 Law 9957 limits inclusion in the state database to
10 felonies and penal law misdemeanors. Are there any
11 regulations in your view that similarly limit which
12 underlying offenses can go into OCME's DNA database?

13 DIRECTOR KATRANAKIS: We're not aware of
14 regulation, but I can, sorry, I'm not aware of a
15 regulation but I can tell you that felonies and
16 misdemeanors would be the only instances that we
17 would collect DNA from a person. And misdemeanors,
18 being the small number that they are, would be sex
19 offenses.

20 CHAIRPERSON LANCMAN: Right, but those...

21 DIRECTOR KATRANAKIS: So, so, to answer
22 your question it's consistent with state law in a
23 sense where it would be a crime, a felony or a
24 misdemeanor.

2 CHAIRPERSON LANCMAN: But you're people
3 into the database, whereas the state database is
4 limited to people who have been convicted of felonies
5 or misdemeanors. You're not bound by that same
6 constraint in your view, because if I'm not mistaken
7 the, ah, OCME database, the New York City database,
8 has people who have been arrested for, suspected of,
9 charged with, but not necessarily convicted, which is
10 a limitation that the state imposes on the state
11 database. Is that correct?

12 DIRECTOR KATRANAKIS: I think as, as
13 Commissioner Chernyavsky pointed out, 75% of those
14 individuals are convicted offenders, convicted of a
15 penal law misdemeanor...

16 CHAIRPERSON LANCMAN: Right. So...

17 DIRECTOR KATRANAKIS: ...or felony.

18 CHAIRPERSON LANCMAN: ...not to belabor
19 the point because this is a very straightforward
20 question. One hundred percent of the state database
21 are people who have been convicted of either a felony
22 or a penal law misdemeanor, whereas within the city
23 database there are a percentage of people, maybe it's
24 25%, maybe it's some other number, who have not been
25 convicted, who merely have been suspects or have some

2 other circumstance, have been arrested, or, um, were
3 investigated, but have not been convicted. And in
4 that sense the city database is less, is less
5 restrictive and is inconsistent in terms of
6 requirements of who goes into the database and the
7 state database. That's a really straightforward
8 question.

9 DIRECTOR KATRANAKIS: Was that a question
10 or a statement?

11 CHAIRPERSON LANCMAN: Well, I'll rephrase
12 it just so there's a inflection at the end and
13 there's no misunderstanding. Does the city database
14 include people who have not been convicted of
15 felonies or penal law misdemeanors?

16 DIRECTOR BARROWS: So, Council Member, I
17 think your question is about the different standards,
18 right, of the database, and this has been, this is
19 not an issue that has flown under the radar. There,
20 this is not an issue that has flown under the radar
21 since 1997. There are court decisions that...

22 CHAIRPERSON LANCMAN: Listen, I, I don't,
23 I don't mind your giving an explanation. I want this
24 to be a free, free-floating conversation. But your

2 response really needs to start with either a yes or a
3 no.

4 DIRECTOR BARROWS: So, yes, we maintain
5 profiles of, of not only convicted, ah, offenders of
6 people that are suspects in cases, yes, that is.

7 CHAIRPERSON LANCMAN: OK. So the same
8 section of the executive law effectively excludes
9 juveniles and youthful offenders from the state
10 database. But if I'm not mistaken you've testified
11 to this, I believe, OCME's DNA database does include
12 juveniles, youthful offenders, and children.

13 Correct?

14 DIRECTOR BARROWS: So I think this is a
15 more dynamic, again [inaudible] ...

16 CHAIRPERSON LANCMAN: [inaudible]

17 DIRECTOR BARROWS: It's not a yes or no
18 question, so I, I want...

19 CHAIRPERSON LANCMAN: Well, let me
20 rephrase it. Does the city database include DNA
21 profiles from juveniles?

22 DIRECTOR BARROWS: It does include
23 profiles from juveniles, yes.

24 CHAIRPERSON LANCMAN: OK.

2 DIRECTOR BARROWS: We think that, and we
3 think that's lawful.

4 CHAIRPERSON LANCMAN: Well, I understand
5 you may think it's lawful. I just wanted to
6 establish what you have and what you don't have, OK?

7 DIRECTOR BARROWS: Well, I, I think the
8 chief's testimony out, you know, pretty in depthly
9 outlines where we collect and who we're collecting
10 from. Ah, what I, what I want to say is like this is
11 not a new issue when it comes to, that we have a
12 state database with one set of criteria and a local
13 database with others. First, there are a number of
14 cases, there are a number of courts that have held
15 that the local database, ah, does maintain different
16 profiles, that's not subject to the executive law. I
17 think the decision that you're talking about, the
18 recent one, in the Sammy F case in 2019 focused on a
19 narrow issue of whether the Supreme Court could
20 expunge youthful offender adjudication, a profile
21 related to a youthful adjudication...

22 CHAIRPERSON LANCMAN: But, but in order
23 for the courts...

24 DIRECTOR BARROWS: ...youthful offender
25 adjudication in Elvis.

2 CHAIRPERSON LANCMAN: But for an order, in
3 order for the court to reach that conclusion the
4 court, not me, I wasn't sitting on the court, I
5 didn't write the opinion. In order for the court to
6 reach that conclusion did it not have to first
7 conclude that the city database is subject to the
8 state law?

9 DIRECTOR BARROWS: I think with respect
10 to the issue being youthful offender convictions and
11 whether the Supreme Court can expunge a profile in
12 the local database, I don't think it's just that the
13 local database has to match everything with the state
14 database. That issue has been decided in numerous
15 courts.

16 CHAIRPERSON LANCMAN: But you're, your
17 entitled to that opinion.

18 DIRECTOR BARROWS: But it's not an
19 opinion. There's a number of, there's, there's a
20 number of cases that have held that the local
21 database...

22 CHAIRPERSON LANCMAN: But, you know...

23 DIRECTOR BARROWS: ...can maintain
24 profiles...

25 CHAIRPERSON LANCMAN: Listen...

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2 DIRECTOR BARROWS: ...aside from what is
3 required...

4 CHAIRPERSON LANCMAN: This, this isn't
5 even about that.

6 DIRECTOR BARROWS: ...under the executive
7 law.

8 CHAIRPERSON LANCMAN: This isn't about
9 that, that's not even where I'm going, so don't worry
10 about that.

11 DIRECTOR BARROWS: OK.

12 CHAIRPERSON LANCMAN: Thanks.

13 DIRECTOR BARROWS: I appreciate that,
14 thanks.

15 CHAIRPERSON LANCMAN: Good. Executive
16 law 995-A and 995-B establishes a commissioner of
17 forensic science and a DNA subcommittee to advise on
18 any matter related to the implementation of
19 scientific controls and quality assurance procedures
20 for the performance of forensic DNA analysis. Does
21 OCME have any similar, um, outside commission of
22 experts of its own?

23 CHIEF MEDICAL EXAMINER SAMPSON: The
24 forensic science commission oversees OCME as well and
25

2 we attend their meetings, ah, quarterly, and
3 including the DNA subcommittee as well.

4 CHAIRPERSON LANCMAN: Look at that. The
5 state law, which created the forensic, um, science,
6 ah, commission and it subcommittee oversees the
7 city's DNA database.

8 CHIEF MEDICAL EXAMINER SAMPSON: It's the
9 whole lab, yeah.

10 CHAIRPERSON LANCMAN: OK. Let's look at
11 the state regulation comparisons. 9NYCRR6191.3
12 requires notification to offenders concerning the
13 collection of their DNA. OCME doesn't have any
14 similar regulation requiring notification to
15 offenders, does it?

16 CHIEF MEDICAL EXAMINER SAMPSON:
17 [inaudible].

18 CHAIRPERSON LANCMAN: Sure. There's a
19 state regulation concerning the state database which
20 requires notification to offenders concerning the
21 collection of their DNA.

22 CHIEF MEDICAL EXAMINER SAMPSON: That
23 would be a question for NYPD. OCME doesn't collect
24 the DNA, so we wouldn't know that.

25 CHAIRPERSON LANCMAN: Really?

2 DIRECTOR KATRANAKIS: So the
3 notification, we have a signed consent form for those
4 that provide informed consent and voluntarily provide
5 their exemplar.

6 CHAIRPERSON LANCMAN: But if someone, if
7 someone has been, if someone's DNA has been collected
8 via what you describe as ~~abandement~~abandonment,
9 they're not subsequently notified that their DNA has
10 been collected.

11 DIRECTOR KATRANAKIS: Oh, they are in
12 fact not informed and I understand that that is fully
13 constitutional and acceptable by the law throughout
14 the United States.

15 DIRECTOR BARROWS: And I think there's
16 also public safety concerns that we do not want to
17 tip off necessarily...

18 CHAIRPERSON LANCMAN: That, that, that
19 all, that all may be...

20 DIRECTOR BARROWS: ...that individual who
21 is a suspect of an investigation.

22 CHAIRPERSON LANCMAN: That all may be.
23 But that's not my question. My questions go to the,
24 how, whether or not the operation, the collection,
25 the operation and maintenance of the city's DNA

2 database is different from the rules that are in
3 place for the state DNA database. And when I, I can
4 go on and on, but it is obvious that the city's DNA
5 database is not following, is not consistent with the
6 legislation that established and governs the state
7 DNA database. Let's look at other states. Thirteen
8 other states require a probable cause hearing even
9 after someone is arrested before their DNA can be
10 uploaded. Does the city DNA, ah, database, have any
11 kind of, any similar procedure in place? I'm gonna
12 take that as a no.

13 DIRECTOR KATRANAKIS: I'd like to say one
14 thing about the...

15 CHAIRPERSON LANCMAN: Does it start with
16 the word yes or no? That's the convention. I ask a
17 question, you answer that question.

18 DIRECTOR KATRANAKIS: Can you repeat the
19 question?

20 CHAIRPERSON LANCMAN: Sure. Thirteen
21 other states in the country require some kind of
22 probable cause hearing before someone's DNA is
23 uploaded into their respective database. Does the
24 NYPD or OCME require any kind of similar procedure or
25 process before DNA is uploaded to the database?

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2 DIRECTOR KATRANAKIS: Mr. Chair, the
3 local database is not a state database. So the
4 answer is...

5 CHAIRPERSON LANCMAN: I, I can't, there
6 were two of you. Say it again?

7 CHIEF HARRISON: Mr. Chair, the answer is
8 no.

9 CHAIRPERSON LANCMAN: The answer is no.
10 OK. It wasn't hard. Um, going back to Fabrizio the
11 court said after an, an arrest but pre-conviction a
12 DNA sample may only be obtained from a suspect on
13 consent or by warrant or court order. So do we know
14 how many DNA samples were collected in 2019? I know
15 there are about \$32,000, ah, 32,000 people in the
16 local database. But do we know how many were
17 collected in 2019? Or, or the last year that's
18 available?

19 DIRECTOR KATRANAKIS: Specifically about
20 suspect exemplars?

21 CHAIRPERSON LANCMAN: Yeah.

22 DIRECTOR KATRANAKIS: About 6500.

23 CHAIRPERSON LANCMAN: About 6500?

24 DIRECTOR KATRANAKIS: Approximately.

25 CHAIRPERSON LANCMAN: OK.

2 DIRECTOR KATRANAKIS: Combined consent
3 and ~~abandonment~~abandonment.

4 CHAIRPERSON LANCMAN: I know there was
5 some dialogue about this before. I just want to nail
6 it down. Um, how many of them were obtained by a
7 warrant?

8 DIRECTOR KATRANAKIS: I don't know.

9 CHAIRPERSON LANCMAN: Would the answer be
10 zero?

11 DIRECTOR KATRANAKIS: Hypothetically it
12 could be zero. It may not be zero. I, I...

13 CHAIRPERSON LANCMAN: It sounds like it's
14 a de minimis number.

15 CHIEF HARRISON: I don't, I don't, I'm
16 almost positive the answer is not zero, and, once
17 again is this, if I could just make this clear for
18 everybody here. There's some room for improvement,
19 um, especially being able to memorialize a lot of the
20 entries that are being put in. That's why my opening
21 statements, I, I made it very important that, um,
22 during my transition we're gonna do a better job of
23 memorializing how we got somebody's DNA, whether they
24 look like, how old they are, what's their gender, and
25 a host of other things. So...

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2 CHAIRPERSON LANCMAN: I, I appreciate
3 that.

4 CHIEF HARRISON: So we, so we could be a
5 lot more transparent going forward.

6 CHAIRPERSON LANCMAN: I appreciate that
7 and I'm sure that you mean that and intend to do that
8 and, and, and, and will do that.

9 DIRECTOR KATRANAKIS: OK, Council Member,
10 to answer your question...

11 CHAIRPERSON LANCMAN: That's not the
12 question.

13 DIRECTOR KATRANAKIS: Some of, a
14 percentage of the 6500 are court ordered.

15 CHAIRPERSON LANCMAN: OK, what percentage
16 is that? Approximately?

17 DIRECTOR KATRANAKIS: I, I don't, I don't
18 have that readily available.

19 CHAIRPERSON LANCMAN: OK. I mean,
20 warrants aren't very difficult to obtain. The PD
21 obtains them regularly, to draw blood samples, um,
22 tap phones, search homes, search cars.

23 DIRECTOR BARROWS: But, Council Member...

24 CHAIRPERSON LANCMAN: Yes?
25

2 DIRECTOR BARROWS: I want to point out
3 that, as you know, and I'm sure all of the lawyers
4 in, in the room know that there are exceptions to the
5 warrant requirement as well. And what motivates our,
6 our taking of DNA, right, it is what is consistent
7 with what the law, what statutes requires, what court
8 decisions require, and also what are best practices
9 within the law enforcement community. So the issue
10 about when we take DNA, it's whether the collection
11 is lawful. It's not necessarily required that we
12 need to get a warrant. If something that, that is
13 provided upon informed consent or something that is
14 truly abandoned property, doesn't have an expectation
15 of privacy. So, ah, the idea that we need to obtain
16 warrants in every case, there are exceptions to the
17 warrant requirement [inaudible] are used.

18 CHAIRPERSON LANCMAN: No, I, I do
19 understand as, as a lawyer, and I don't think one
20 needs to be a lawyer to understand in some cases you
21 need a warrant and in some cases you don't, and even
22 if you can't necessarily delineate always one or the
23 other. But I think a warrant, a warrant is not a
24 difficult thing to get. The NYPD gets them all the
25 time. Could someone just tell me what, what would be

2 ~~be~~, what would be the hardship, what would be the
3 impediment to a real meaningful investigation to have
4 to get a warrant before you take someone's genetic
5 code and store them in the database?

6 DIRECTOR BARROWS: I think as a law
7 enforcement community, as a law enforcement agency,
8 we are committed to providing justice to victims.
9 Um, behind that DNA collection is there, there is a
10 victim who is, who has suffered a heinous crime, and
11 we are going to use...

12 CHAIRPERSON LANCMAN: Well, obviously,
13 there's, there's also...

14 DIRECTOR BARROWS: ...every, if we're
15 going...

16 CHAIRPERSON LANCMAN: ...there's also a
17 victim of...

18 DIRECTOR BARROWS: ...if I, if I could
19 just finish.

20 CHAIRPERSON LANCMAN: ...there's also a
21 victim, ah, in, in a DWI crash, there's also a victim
22 at the root of whatever crime you're tapping
23 someone's phone over.

24 DIRECTOR BARROWS: Right. But if I could
25 finish, I think it's ~~eneumbent~~incumbent on a law

2 enforcement agency to use every legal tool that's
3 available to bring justice to those victims. So in
4 some cases, yes, maybe a warrant may be appropriate.
5 In other cases there is a legal permissible exception
6 to the warrant requirement and we can obtain that DNA
7 through informed consent or ~~abandonment~~abandonment.

8 DIRECTOR KATRANAKIS: If I, if I could
9 just add to Bob's, so in my 23rd year working
10 forensic and, and the simple answer to your question
11 is sometimes we don't have the luxury. Criminal
12 investigations, suspects are not always available and
13 the courts aren't always available to obtain a
14 warrant. It's just not feasible, it's just not
15 practical in the real world.

16 CHAIRPERSON LANCMAN: In, in the real
17 world how often is it the case that you're not able
18 to go through the same process that enables you to
19 get warrant to draw blood from a DWI suspect, to tap
20 a phone, to search a home...

21 DIRECTOR KATRANAKIS: All the time.

22 CHAIRPERSON LANCMAN: ...to search a car.

23 DIRECTOR KATRANAKIS: In the real world
24 the answer to your question is all the time. I
25 review every homicide that occurs in the city for the

2 last decade. I looked in every investigation. All
3 the time that occurs. Suspects come across
4 investigators, they're physically present, we don't
5 have probable cause to make an arrest, we can't get a
6 warrant, we don't know where they're gonna be
7 tomorrow. The minute we interact with them they're
8 alerted, they flee the state. It's not an easy as it
9 sounds. Maybe on principleprinciple, maybe in a
10 textbook it could be read that way, but I could tell
11 you in reality it's not as an easy as you're
12 portraying it.

13 CHAIRPERSON LANCMAN: OK. Let's, lets
14 talk about the category of, um, procurement, ah, and
15 you describe as, as abandonmentabandonment, all right?
16 Now most people's understanding of
17 abandonmentabandonment would probably be comport with,
18 with what is the seminal Supreme Court case on this,
19 this issue. You're walking in the street. You throw
20 something in the garbage, or, you're, you're at home,
21 you put you garbage out for collection, um, that's
22 not what abandonmentabandonment, that's not how
23 abandonmentabandonment works in the NYPD's processes
24 as I understand it. The, Legal Aid is gonna testify
25 later, but I want to read for you a couple of

2 paragraphs what I understand their testimony will be,
3 describes the experience of how ~~abandoment~~abandonment
4 really works. And I want to ask if this is a fair
5 characterization. I'm paraphrasing. A person is
6 taken into custody. The reason could be anything
7 from a turnstile jump to alleged weapons possession
8 or even gang activity questioning, questioning. He
9 is detained in different parts of the precinct for
10 hours. The booking area, the holding cell, or other
11 waiting areas. While he is waiting a different room
12 is prepared for him. This room has a table and chair
13 and locks from the outside. An officer wipes down
14 with bleach all of the open surfaces in this room in
15 order to sterilize it before the person enters
16 because the police intend to try to extract his DNA.
17 The young man, handcuffed and escorted by officers,
18 finally enters this sterilized room. There he meets
19 a detective who asks him right away if he wants a
20 cigarette or a bottle of water. The detective then
21 reads him his Miranda warnings. If he is just taken
22 in for questioning the detective might even skip this
23 step. Perhaps the suspect or the individual doesn't
24 want to talk. He wants a lawyer. OK, the detective
25 says. Just finish up and you can leave. The

2 detective leaves him in the room until he drinks the
3 water or smokes the cigarette. The detective then
4 comes back and leads him out in handcuffs. The young
5 man asks, asks if he can take his water bottle with
6 him, but the officer says don't worry. I'll give you
7 another one later. If it is the cigarette, he's told
8 to put it out because there's no smoking allowed in
9 the rest of the precinct. Once the young man is out
10 of the room another officer comes in and using gloves
11 and a secure envelope collects the water bottle or
12 the cigarette. The officer then sends the item to
13 OCME for DNA typing and inclusion in the local DNA
14 index. He is never told his DNA was taken. He is
15 never told that his DNA is now in the local DNA
16 index. Is that a fair characterization of how the
17 ~~abandonment~~abandonment process works or how the
18 ~~abandonment~~abandonment method of collecting DNA, um,
19 is employed?

20 CHIEF HARRISON: So if, if I could just
21 take that, that inquiry. Um, you know, you started
22 out the, the paraphrase saying somebody jumped a
23 turnstile. One thing we will not do is do
24 ~~abandonment~~abandonment for somebody to jump the
25 turnstile.

2 CHAIRPERSON LANCMAN: OK.

3 CHIEF HARRISON: It's for, it's for
4 people that we believe who may be a suspect in, in a
5 crime that could help close an investigation. That's
6 the first thing.

7 CHAIRPERSON LANCMAN: OK. So, so
8 underlying it is the belief that this person did
9 something that's, that's serious and, and their DNA
10 can help solve that case.

11 CHIEF HARRISON: Correct. In regards to
12 the second part of your, of your, of your paraphrase
13 inquiry, you know, in NYPD we take a lot of pride in,
14 um, making this one of the safest cities in the
15 country. Just take a look at our numbers compared
16 to, um, a lot of the other municipalities, ah, across
17 this great country. We're, we're doing something
18 right. Um, one thing, if you don't mind, I prefer
19 not to talk about some of the investigative steps we
20 utilize to close out some of these violent
21 investigations that are occurring. So I understand
22 that, ah, we're in a hearing right now, but, um, this
23 is bigger than a hearing right now. We, we do
24 certain things to make sure we protect all New
25 Yorkers.

2 CHAIRPERSON LANCMAN: I, I understand
3 that, and I, and I respect that. And I want you to
4 solve crimes. Um, but I think earlier someone had
5 testified that about half of the DNA that is
6 collected is collected using the
7 ~~abandonment~~abandonment technique. And so I think it's
8 important for there to be some public discussion of
9 what that technique is. Now, I'm gonna say, now I'm
10 not testifying, you're the ones testifying, but I'm
11 gonna say that from my experience, my interactions
12 with, um, ah, with people and, and, and, and both
13 prosecutors and defense lawyers and police that that
14 description that I read to you is fairly
15 characteristic of how ~~abandonment~~abandonment works.
16 I, I will say, you know, we did ask the PD to produce
17 the detective guide section on ~~abandonment~~abandonment,
18 collecting DNA exemplar ~~abandonment~~abandonment suspect
19 samples in a controlled environment. And, and this
20 is what we got in response. Almost completely
21 redacted patrol guide section. And the justification
22 for that was that there's a law that we passed that
23 allows you to withhold certain if it's going to be
24 published, um, on a website. Would you, would the
25 NYPD be willing to share this detective guide

2 section, outlining the, the techniques and
3 procedures for collecting DNA via
4 ~~abandement~~abandonment with the council, or council
5 leadership, on a confidential basis so we as the
6 public representatives, the public's representatives,
7 can make informed decisions on how best to oversee
8 the department, how best to fund department, and how
9 best to, ah, ah, pass legislation regulating the
10 department.

11 COMMISSIONER CHERNYAVSKY: I think, as
12 we've done with a series of issues to include you and
13 you took part of them, we'll certainly sit down and
14 have a briefing with you. We can talk much deeper
15 about issues that, I guess, fall under that black
16 box, the redaction box, that we can't talk about
17 publicly, but, again, as the chief mentioned and as
18 you have acknowledged, there are certain
19 investigative techniques that we are not looking to
20 advertise. In this particular case, on this subject.
21 The things that are under the redact, the redact, are
22 methods that we use to ensure that samples that we
23 collect don't get contaminated. So we have an
24 accurate test by the OCME.

2 CHAIRPERSON LANCMAN: OK. Three more
3 questions. Um, I understand, right, this is, the,
4 the detective guide is redacted and there are limits
5 on what you want to tell us in terms of how they go
6 about getting this ~~abandoment~~abandonment, supposedly
7 abandoned material. I want to ask about the judgment
8 that's made and the process that's made, which, which
9 you referred to in the beginning of your response to
10 my question, about how you decide from whom you're
11 gonna seek this DNA material. I'm going to go back
12 to our old friend, Fabrizio, where the court said,
13 just reiterating long-standing, um, rules, as limited
14 by constitutional concerns a court will issue an
15 order to collect a DNA sample only when there is one
16 probable cause to believe the defendant has committed
17 a crime to a clear indication that relevant evidence
18 will be found, and three, the method used to secure
19 it is safe, the method use to secure it is safe and
20 reliable. Three factors that a court would use
21 before it ordered, um, the collection of a DNA
22 sample. Can you tell me what analysis you apply to
23 your decision, your internal decision-making, to
24 decide from which person you're going to attempt to
25 collect DNA analysis, DNA material? Do, do, do you

2 make some kind of internal evaluation whether there's
3 probable cause, whether there's a clear indication
4 that the relevant evidence will be found, etcetera?

5 DIRECTOR KATRANAKIS: I don't know if
6 it's analogous to talk about an individual that is in
7 the prosecutory phase and the steps that the courts
8 take and judges take, in contrast to those where
9 they're suspects of an investigation and they've come
10 to the attention of a detective that's looking at a
11 very violent crime, homicide, sexual assault, and
12 we're making strategic decisions without probable
13 cause to make an arrest on obtaining that person's
14 DNA. So I think, I think you're comparing apples and
15 oranges, as they say locally [inaudible].

16 CHAIRPERSON LANCMAN: Well, they're both
17 fruit and you are making a decision to attempt to get
18 either through consent, and we can debate how much
19 consent, how consensual consent is, or through
20 abandonment, which is really a form of trickery, but
21 even it's just, even if weren't, you're making a
22 decision I want this guy's DNA, not necessarily that
23 guy's DNA.

24 DIRECTOR KATRANAKIS: Well...

2 CHAIRPERSON LANCMAN: So I, I want to
3 know what analysis you're applying, if it's not this
4 one what analysis are you ~~appying~~applying to decide
5 that I want these 300 guys' DNA and not those 300
6 guy's DNA.

7 CHIEF HARRISON: So, if you don't mind,
8 ah, I gotta go back to, um, the key word here. If
9 somebody is a suspect of a crime, our job as public
10 safety is protect the victims. And if we have to use
11 a, ah, technology strategy to lead us in the right
12 direction, to bring justice to the victims, then,
13 sir, that's something that we're going to do.

14 CHAIRPERSON LANCMAN: That's all ya got?

15 DIRECTOR KATRANAKIS: Well, I think
16 that's, frankly that's enough.

17 COMMISSIONER CHERNYAVSKY: I think that's
18 enough. I think, are we not...

19 CHAIRPERSON LANCMAN: Well, ah...

20 COMMISSIONER CHERNYAVSKY: Are we
21 arguing...

22 CHAIRPERSON LANCMAN: I, I don't think...

23 COMMISSIONER CHERNYAVSKY: Are we arguing
24 against, I mean, I, I find it interesting. Well, I
25 mean, I testified before, you know, before the

2 council oftentimes and it's very hard to follow the
3 pendulum. I mean, on one hearing we're very pro-
4 victim and then another hearing we're questioning the
5 techniques the NYPD uses, the lawful uses techniques
6 NYPD uses to bring victims justice and closure. I
7 mean, these are legal techniques...

8 CHAIRPERSON LANCMAN: You know, I, I,
9 I...

10 COMMISSIONER CHERNYAVSKY: Now I
11 understand it's everybody's job to question how we do
12 it and provide oversight and that's why we're always
13 happy to come and testify before the committee and
14 give insight, because some of the numbers about the
15 database and some of the facts and some of the
16 opening statements are misleading, and, and they
17 certainly paint a picture that aren't based in
18 reality.

19 CHAIRPERSON LANCMAN: I, I've never been
20 at the City Council hearing where any member of the
21 council has urged to police to arrest someone or DAs
22 to convict someone irrespective of that person's
23 constitutional rights.

24 COMMISSIONER CHERNYAVSKY: And we...
25

2 CHAIRPERSON LANCMAN: And, and that is a
3 running, that is a running theme and for this
4 council.

5 COMMISSIONER CHERNYAVSKY: But I think
6 we're, then, if, if that is the theme that we're
7 putting in place here then I think we actually agree,
8 although the question and answer phase seems like
9 we're on opposite ends of the spectrum.

10 CHAIRPERSON LANCMAN: Well, I, I...

11 COMMISSIONER CHERNYAVSKY: Everything
12 that we're doing...

13 CHAIRPERSON LANCMAN: I think...

14 COMMISSIONER CHERNYAVSKY: Everything
15 that we're doing is upheld by case law, by statutory
16 law. The database has been around since, I think,
17 1997. Ah, there have been plenty, I would assume
18 that there are more than one prosecutions that have
19 taken place since 1997 until today, where DNA was a
20 vital piece of evidence and that evidence was
21 admitted in a court and wasn't precluded.

22 CHAIRPERSON LANCMAN: There, there, there
23 were, there are also many cases where the courts have
24 issued a protective order prohibiting the PD or OCME,
25 as the case may be, from uploading someone's data

2 into the database. So there are standards for when
3 someone's DNA can be collected. There are standards
4 for when someone's DNA can be uploaded to the
5 database. And what I want to know with this
6 question, and, and I'm not getting an answer, is what
7 analysis do you apply before you make a decision that
8 you want this guy's DNA. So if it's, if it's not the
9 court's analysis post prosecution, ah, post charge,
10 probable cause to believe a defendant has committed a
11 crime, clear induction that relevant evidence will be
12 found, what are you using?

13 DIRECTOR KATRANAKIS: The facts and
14 circumstances available to the investigator at the
15 time that the opportunity to presents itself. So
16 beginning with some of the common-sense facts, right?
17 What type of crime was committed? A stranger sexual
18 assault where the victim was brutally beaten, is
19 hospitalized, and information is provided through
20 Crime Stoppers or another means to a detective that
21 works with the Special Victims Division, and this
22 individual comes across their investigation as a
23 suspect for a series of facts and circumstances
24 presented to them, right? So you asked for an
25 analysis. Here's your analysis.

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2 CHAIRPERSON LANCMAN: OK.

3 DIRECTOR KATRANAKIS: So the opportunity
4 presents itself and in certain instances we
5 respectfully ask for informed consent and we provided
6 it. Why do we collect data sample? To advance the
7 criminal investigation. What is never said, what I
8 never read about, is how often, and I've seen this in
9 the last two decades, how we exculpate thousands of
10 people that we collect samples from. How many
11 individuals have been brought to my personal
12 attention that would develop the suspects by chiefs
13 and detective bureaus and the chief of detectives as
14 somebody that we looked at that we felt may have
15 committed this crime, but didn't have probable cause
16 and we excluded that individual as a contributor
17 through either a rape kitchen, a blood sample left at
18 a scene, a hat, etcetera. We every week are
19 excluding New Yorkers...

20 CHAIRPERSON LANCMAN: OK.

21 DIRECTOR KATRANAKIS: ...from committing
22 crimes.

23 CHAIRPERSON LANCMAN: I, I get it.

24 DIRECTOR KATRANAKIS: I think that's very
25 important to be said, so...

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2 CHAIRPERSON LANCMAN: I get it. I get
3 it.

4 DIRECTOR KATRANAKIS: ...it's about, it's
5 about...

6 CHAIRPERSON LANCMAN: I get it...

7 DIRECTOR KATRANAKIS: ...obtain the truth.

8 CHAIRPERSON LANCMAN: And it is
9 important, but...

10 DIRECTOR KATRANAKIS: The truth, and
11 advancing the investigation.

12 CHAIRPERSON LANCMAN: ...it doesn't speak
13 to the analysis that you apply before you seek
14 someone's DNA, including through
15 ~~abandonment~~abandonment. I, I've heard, is, is this
16 correct, that the corporation counsel won't rely on
17 these, um, ah, DNA samples that are procured through
18 ~~abandonment~~abandonment, um, in family court and will
19 instead always obtain a court order for additional
20 DNA testing? That's my understanding.

21 DIRECTOR KATRANAKIS: Fundamentally, I
22 understand that to be the truth.

23 CHAIRPERSON LANCMAN: OK, I mean, the
24 corporation counsel isn't even comfortable on relying
25

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2 on the way the NYPD is conducting, is, is, is
3 obtaining, ah, DNA through ~~abandement~~abandonment.

4 DIRECTOR KATRANAKIS: I think it's the
5 courts in general. I'm not certain if the, the
6 corporation counsel exclusively.

7 COMMISSIONER CHERNYAVSKY: I remind you
8 that the corporation counsel, again, is focused on a
9 small subset of crimes, those committed by juveniles,
10 prosecuting, and family court.

11 CHAIRPERSON LANCMAN: Well, let...

12 DIRECTOR BARROWS: I would also offer
13 that...

14 CHAIRPERSON LANCMAN: Yes.

15 DIRECTOR BARROWS: ...an
16 ~~abandement~~abandonment sample as well as other
17 material in the case would service as the basis to
18 get probable cause for that court-ordered sample that
19 will be introduced in the case in chief.

20 CHAIRPERSON LANCMAN: OK. I, I just want
21 to get to the, um, the juvenile question and then one
22 last question on cold hits. Um, so there are 32,000
23 people, about 32,000 people in, in the database, um,
24 correct?

25 UNIDENTIFIED: Yep.

2 CHAIRPERSON LANCMAN: And I understand
3 that about 75% of those have overlap with the state
4 database. So that means those 75% cannot be
5 juveniles. Like juveniles are not in the state
6 database, so if 75% of the local database is
7 overlapping with the state those 75% are, are, cannot
8 be juveniles. That's just, that's just facts. So
9 that leaves a universe of the local database of about
10 25% that are, that are unique to the local database.
11 So that's about 8000 people. There are 8000 people
12 in the local database, approximately, 25%, who do not
13 overlap with the state. So it's only from that pool
14 of approximately 8000 people that the number of
15 juveniles, where the could be juveniles. Now, my
16 understanding from your, from your testimony, is
17 about 5% of the 32,000 are juveniles. Right? So
18 that's 5% of 32,000, about 1600. But in reality the
19 universe of individuals is not that 32, who might be
20 juveniles, is not that 32,000. It's the 8000 who
21 couldn't be in the state database. So now you're
22 talking 1600, so in that, about 8000, 1600 are
23 juveniles. That's about 20%. And, so, in conclusion
24 it sounds like about 20% of the people who are in the
25 unique local database are juveniles. That sounds

2 like an extraordinary high number. Now if I'm making
3 a mistake in my math or my analysis, please let me
4 know, because I don't want to be running around
5 saying 20% of the people in the database are
6 juveniles and I, and I, in the, in the unique New
7 York City local database that doesn't overlap with
8 the state or juveniles and then be wrong about it.

9 CHIEF HARRISON: So I don't want to
10 correct your math and, you know, you probably, um,
11 did better than me in math growing up.

12 CHAIRPERSON LANCMAN: I spent a lot of
13 time scribbling. [laughter]

14 CHIEF HARRISON: I got it, I got it. The
15 one number that, ah, I can say with confidence is 5%
16 of the people in the LDIS is juveniles. Whatever
17 that number may be, I, I apologize. I had to pull
18 out a calculator, take off my shoes and use my toes,
19 but right now that's, it's 5% that's inside that
20 database.

21 CHAIRPERSON LANCMAN: Good. Last
22 question.

23 COMMISSIONER CHERNYAVSKY: But, ah...

24 CHAIRPERSON LANCMAN: Yes.
25

2 COMMISSIONER CHERNYAVSKY: ...just,
3 let's, let's not move of this for a second, and I
4 think Bob could help me out on this. Two important
5 factors. One, for what do we collect these juvenile
6 samples, and two, what is the new policy with respect
7 to juveniles on the limited number of circumstances
8 where we will collect?

9 DIRECTOR BARROWS: So we have shortened
10 the universe, or we should say has really
11 memorialized the universe of where we're gonna
12 collect juvenile, ah, DNA. We're restricting to
13 felonies. Ah, for 11- and 12-year-olds that's A and
14 B felonies, and 13 and above it's all felonies.
15 We're talking about sex crimes, firearm crimes, and
16 other sexually motivated crimes and hate crimes.
17 That's the universe that we're restricting it to. I
18 would also say that we're also creating a exit
19 procedure and off-ramp. All of the profiles will be
20 subject to review at some point and they may be
21 candidates down the road.

22 CHAIRPERSON LANCMAN: OK. Um, last
23 topic. Cold hits. Um, just so we're, we're using
24 the same terminology, could you just tell me what,
25

2 what your understanding of a cold hit is, and then I
3 want to ask you a question about?

4 DIRECTOR KATRANAKIS: So a cold hit, this
5 is based on our understanding. Um, other agencies
6 and other entities may have a slightly different, ah,
7 fundamental definition. But a cold hit is when an
8 individual, a nexus is established via DNA, I'm
9 assuming you're talking about a DNA cold hit, um, and
10 that individual is not an individual that is part of
11 the investigation, nor are the investigators aware
12 that that individual was a contributor of DNA to the
13 crime scene.

14 CHAIRPERSON LANCMAN: So if I understand
15 it, a cold hit is someone's DNA is in a database.
16 There's DNA material found at a crime scene. That
17 DNA material is, is run through the database, and
18 ding, ding, it matches Lancman's DNA. It matches the
19 DNA of the guy who's in the database. Is, is that
20 what a cold hit is?

21 UNIDENTIFIED: Yes.

22 DIRECTOR KATRANAKIS: That's a cold hit.

23 CHAIRPERSON LANCMAN: OK. So I know that
24 the former Commissioner O'Neill, um, and, and others
25 who, ah, ah, are, are strong advocates for the system

2 as it is tout the number of cold hits that have, have
3 occurred where but for the database you'd never been
4 able to connect this person who's in the database
5 with this crime scene. Do you have data on how many
6 cold hits there are in a given year, how many there
7 were last year, how many there have been, any, any
8 data about cold hits?

9 DIRECTOR KATRANAKIS: I'm gonna say in
10 the last five years there were upwards of over 500,
11 600 cold hits. All, all associated, um, or the vast
12 majority with, again, violent felonies.

13 CHAIRPERSON LANCMAN: Do you know how...

14 DIRECTOR KATRANAKIS: Rapes, sexual
15 assaults, homicides, home invasions, I mean, the list
16 goes on and on.

17 CHIEF HARRISON: But, Mr. Chair, it
18 doesn't give us probable cause to charge this person.
19 It just gives us an investigative step.

20 CHAIRPERSON LANCMAN: I, I get it.
21 That's not where I'm going.

22 CHIEF HARRISON: OK, OK.

23 CHAIRPERSON LANCMAN: I try to keep
24 things a little close to the vest. You can't always
25 know where, where I'm going.

2 COMMISSIONER CHERNYAVSKY: You can't
3 blame us for trying to figure it out.

4 CHAIRPERSON LANCMAN: Of those 500 or so,
5 whatever the number is, cold hits, how many were cold
6 hits from the local DNA database of individuals who
7 have not been convicted of a felony or penal law
8 misdemeanor and who are not overlapping with the
9 state DNA database, and here I'll you why I'm asking
10 that question. If the number is a lot, it suggests
11 that the local DNA database that is not duplicative
12 of what exists at the state is, is, is really
13 valuable and useful. If on the other hand almost all
14 of these cold hits or most of these cold hits come
15 from people who are already in the state DNA database
16 how valuable is it? So do you know the percentage of
17 cold hits that are from the local DNA database only?

18 DIRECTOR KATRANAKIS: That's the number I
19 provided you a moment ago. Those are all local cold
20 hits...

21 CHAIRPERSON LANCMAN: But, but...

22 DIRECTOR KATRANAKIS: Hundreds and
23 hundreds over the last few years.

24 CHAIRPERSON LANCMAN: I understand.

25 DIRECTOR KATRANAKIS: About 200 a year.

2 CHAIRPERSON LANCMAN: I may have, I may
3 not be phrasing it properly, so I'll try again. Of
4 the number of cold hits, the 200 a year or the 500 I
5 X number of years, how many of those people already
6 existed in the state database?

7 DIRECTOR KATRANAKIS: Ah, I'm sorry, I
8 don't have that exact number. But if I look to the
9 75% overlap it may be reasonable and fair to assume,
10 75%.

11 CHAIRPERSON LANCMAN: It may be. I think
12 that Dr. Sampson might not want to employ that
13 methodology. Um, but it's reasonable for you and I
14 who our math skills are not, probably not what hers
15 are, OK? Um, but without knowing that number in
16 fairness it's impossible for the NYPD, OCME, or
17 anyone to say that this local database adds real
18 value to, to cold hits. And that number may be high,
19 it may be low, but until you know it you really can't
20 say hey, but for this local DNA database we wouldn't
21 be getting these cold hits, we wouldn't be solving
22 these crimes.

23 DIRECTOR KATRANAKIS: So that particular
24 question that you asked, ah, I had asked yesterday in
25 the conference at headquarters, and we do have that

2 number. It is lower than 75%, and my recollection is
3 62%.

4 CHAIRPERSON LANCMAN: OK.

5 DIRECTOR KATRANAKIS: 62%, that's
6 [inaudible].

7 CHAIRPERSON LANCMAN: All right. Well,
8 there's gonna be a lot of follow-up requests for
9 information from this hearing. That will be, ah,
10 that will be one of them.

11 CHIEF HARRISON: You know, Mr. Chair...

12 CHAIRPERSON LANCMAN: Yes?

13 CHIEF HARRISON: You're, you're a
14 thousand percent correct. Um, you know, taking over
15 this new position I think it's very important that we
16 document our numbers better going into the future.
17 That's why these, ah, these council hearings are very
18 important to us because we want to take advantage of
19 this dialogue and make sure we take a closer look at
20 ourselves and see what we could do better to make
21 sure we're a lot more transparent going into the
22 future.

23 CHAIRPERSON LANCMAN: All right. Well,
24 thank you very much.

2 CHAIRPERSON RICHARDS: Thank you. And
3 we're going to go to questions, and I just want to,
4 um, do a friendly correction. Um, because we, of
5 course, want victims to receive justice but we also
6 don't want our communities being victimized as well.
7 You know, think of the trauma associated with showing
8 up to someone's door and asking them for the DNA. I
9 mean, there's trauma associated with that. You know,
10 so, yes, we want victim for justice, but we don't
11 want people unnecessarily being victimized as well on
12 the other side as well. That does nothing to do with
13 what we're trying to achieve in building true trust
14 with communities and the police department. Do you
15 think for one second that if someone shows up to your
16 door with or without consent and asks for DNA that
17 there's going to be a trust between the department
18 and communities? There's not gonna be a trust there.

19 COMMISSIONER CHERNYAVSKY: So, I, I
20 mean...

21 CHAIRPERSON RICHARDS: So I, I just
22 wanted...

23 COMMISSIONER CHERNYAVSKY: I cannot...

24 CHAIRPERSON RICHARDS: ...to put that out
25 there because we of course will always stand with

2 survivors. That's why we pushed you to make sure the
3 SVD unit was better. But that has nothing to do with
4 what we're here talking about today. We're hear
5 talking about innocent people who are in a database
6 and if we didn't have this hearing who would be in a
7 database for life, not found guilty of anything.

8 COMMISSIONER CHERNYAVSKY: Well, I, I'm
9 gonna...

10 CHAIRPERSON RICHARDS: So, so I just
11 wanted to make that correction.

12 COMMISSIONER CHERNYAVSKY: I'm gonna
13 disagree, I'm gonna disagree and disagree. I agree
14 that we are not looking to traumatize anyone as the
15 police department. We are only looking to employ
16 legal methods that are accepted legal methods, found
17 by the courts to be accepted.

18 CHAIRPERSON RICHARDS: Let's get past the
19 legal and courts.

20 COMMISSIONER CHERNYAVSKY: No, no, but,
21 but [inaudible]...

22 CHAIRPERSON RICHARDS: I'm talking about
23 what's happening in the community.

24 COMMISSIONER CHERNYAVSKY: ...that is, but
25 I, I think that goes part and parcel with delivering

2 justice to victims. We need to employ whatever legal
3 methods are available to us to bring justice to
4 victims and close these cases out. That's what we're
5 called upon to do. Those are our responsibilities,
6 both as the legislature and the police department, to
7 make sure that we don't have victims that are
8 abandoned and we don't use tools that have been
9 established by the courts, by the legislature and the
10 state, we have tools on the table that we're choosing
11 not to use, a path that we're choosing not to go, and
12 now we have a victim that doesn't closure, that
13 doesn't have justice.

14 CHAIRPERSON RICHARDS: Right, and...

15 COMMISSIONER CHERNYAVSKY: Now if we can
16 deliver that, if we can deliver that in a manner
17 which we always strive for, that doesn't result in
18 trauma for the accused or a suspected, of course
19 we're gonna do that. And that's our goal. And when
20 you're talking about showing up at somebody's door, I
21 don't think that's the by and large approach that's
22 utilized. However, in the event that that approach
23 is utilized the standard for consent remains the
24 same, whether it's in the precinct or it's at your
25 door. The standard is knowing, voluntary, and

2 intelligent consent. If you feel

3 ~~intimidated~~intimidated or coerced, whether you're in
4 a precinct house or you're at your door, that is not
5 admissible evidence. That is not valid consent. So
6 it behooves us to, to do it right, to do it
7 consistent with the law, to ensure when that case
8 goes to trial the end result is justice for the
9 victim.

10 CHAIRPERSON RICHARDS: All right, and we
11 could debate this all day. But the, but the point is
12 is even after you found the suspect is guilty the
13 individuals who are collateral damage to that process
14 are still in a database as we sit here today.

15 COMMISSIONER CHERNYAVSKY: And that's why
16 we...

17 CHAIRPERSON RICHARDS: So that's the...

18 COMMISSIONER CHERNYAVSKY: ...instituted
19 this process. I think you're right.

20 CHAIRPERSON RICHARDS: Right.

21 COMMISSIONER CHERNYAVSKY: That's why
22 this process is not instituted as a result of this
23 hearing. This hearing is done to do oversight on us.
24 We've established this new protocol because we heard
25 you. We don't only hear you when you call us to a

2 hearing. We hear you when you call us to a meeting,
3 when you reach out to us, when we hear from the
4 Speaker or yourself or members of your committee or
5 members of the council. When you bring things to our
6 attention that you, that you say ~~are't~~aren't fair and
7 we reflect on them, and we say, you know what, they
8 could be more fair. That's when we get together, we
9 collaborate with you all, we collaborate with
10 advocates, with, ah, with OCME, affected agencies,
11 and we come up with a fairer process. Now, to your
12 point in this fairer process we have now a regimented
13 review of all samples on a regular basis to determine
14 recommendations for excluding those samples. So the
15 scenario you talk about won't happen.

16 DIRECTOR BARROWS: And I would just add
17 with, with the procedure, right, that there, there
18 are areas of agreement here, right? If we take a
19 sample from someone they don't hit into the database
20 and there subsequently aren't any other, any other
21 hits, we don't think that that profile should state
22 in, in the database in perpetuity ever, ah, either.
23 I mean, that's, that's why we've come up with the
24 process that we have [inaudible].

2 CHAIRPERSON RICHARDS: The question is
3 why, why does it go into the database in the first
4 place?

5 DIRECTOR BARROWS: Well, I mean...

6 CHAIRPERSON RICHARDS: If there's not a
7 hit, there's no match, why does it go into the
8 database?

9 DIRECTOR BARROWS: I think that question
10 assumed, ah, assumes quite a bit. I mean, the first
11 is the issue is whether we've lawfully collected.
12 And we're guided, our practices are guided by what
13 the law and what the courts and what the best
14 practices provide, right? So in terms of, I think it
15 also assumes that at the time we develop a suspect
16 profile that all of the crime scene evidence in that
17 case has either been located or developed, or is in
18 the database, into the becomes a much more pronounced
19 issue when we have a suspect in multiple
20 investigations. And I think we also just cannot
21 ignore the other part of it, is that, as has been
22 mentioned, we have about 200 cases every year where
23 we have a profile that was lawfully obtained, that
24 was taken, is uploaded into the local database. It
25 may not hit on the crime that we, ah, are

2 investigating but it does hit on another crime
3 further down the road. I think the approach you're
4 talking about, it's often called like a one and done.
5 It's a one-time check and then if there's no hit, ah,
6 the profile is not uploaded. But unfortunately crime
7 isn't committed in a one and done fashion, and, um,
8 that's why I think the approach that we're doing here
9 is the right approach. It is our job to make sure
10 that we are using the legal tools available to
11 acquire that DNA in, in the constitutional and legal
12 way. And profiles will go into the database. But
13 what we have, what we have built here is now off-
14 ramps and exits from it as well. And I think this is
15 the, this is really the optimal route to pursue. I
16 think it's fair and equitable. Every, every profile
17 is going to get reviewed. It doesn't require the
18 public to hire a lawyer. It doesn't require
19 correspondence between agencies. Every profile gets
20 reviewed.

21 CHAIRPERSON RICHARDS: So you're
22 assuming, and I'm assuming there's some fortune-
23 telling going on where you put something into a
24 database and it doesn't have a match, but you're
25

2 predicting down the line innocent people who have
3 gone into a database may commit crimes later one.

4 DIRECTOR BARROWS: That, that's not what
5 I'm saying. What I'm saying is that in some cases
6 when we take a suspect profile, you know, some
7 investigations are straightforward, right? Some of
8 them can be resolved in weeks. Some of them can be
9 resolved in months. Other cases, some investigations
10 are much more complex and dynamic. So to think that
11 in some cases we may have already obtained a suspect
12 profile, we have zeroed in on a suspect for this
13 case, but perhaps we haven't located all of the crime
14 scene evidence, or we may find more crime scene
15 evidence. So if we do a, if we do what you're
16 proposing, which is to take one-time check and it
17 doesn't hit, that may not be full scope of the
18 investigation. And, like I said, I think that
19 becomes much more pronounced when we have multiple
20 investigations and we're competing with multiple
21 crime scene evidence and getting that into the
22 database as well. So that's why I think the route
23 that's being pursued here, you know, that's been
24 proposed, I think comprehensively addresses many of
25 the criticisms with the database. I think it shows

2 some broad agreements between the council and the,
3 and the police department when it comes to, um,
4 maintaining profiles in the database and, like I
5 said, I think it's going to achieve fair and
6 equitable results.

7 CHAIRPERSON RICHARDS: All right. We're
8 gonna go to Council Member Adams, followed by Adams
9 if [inaudible] comes back, Gibson, then Miller, then
10 Powers. Adams.

11 COUNCIL MEMBER ADAMS: Thank you, ah,
12 Chair Richards, Chair Lancman, for this hearing
13 today. Thank you all for being here today. Chief
14 Harrison, welcome to your first, ah, hearing in your
15 new capacity and congratulations, by the way.

16 CHIEF HARRISON: Thank you very much,
17 Council Member.

18 COUNCIL MEMBER ADAMS: So we've
19 established, ah, I think, quite a bit so far the
20 difference between the state convicted offender
21 database and the local suspect database. I'm still
22 having a hard time wrapping my mind around the
23 rationale for storing DNA from individuals who've
24 never been convicted of a crime at all. So while
25 we've established the difference between state and

2 local, I'm still having an issue with local and our
3 stand, your stand, on the non-convicted individuals
4 maintaining DNA storage. So can someone just give me
5 a clear rationale?

6 COMMISSIONER CHERNYAVSKY: Sure, so there
7 is, I think there's two parts to your question. So
8 I'll dispose of the easier part first. For the
9 individuals that are convicted, the overlap
10 population, I think, we, we called it the 75% of the
11 32,000. The significance of having them in the local
12 DNA database is the turnaround time on
13 investigations. So if we as the NYPD are doing an
14 investigation and we don't have the local, we send
15 that sample up to the state, the turnaround time is
16 probably around 21 days, three weeks to get the
17 results back, whereas locally the OCME operates at a
18 much, ah, better efficiency and a much quicker
19 turnaround time. Now, what is the result of that?
20 That results in closing a case quicker, justice for a
21 victim quicker, and the potential of taking a
22 perpetrator off of the street before they strike
23 again. So that's the benefit of the, having the
24 overlap and having, ah, having that overlap. With
25 respect to the individuals that are not the suspect

2 pool, which is the 25%, roughly, or the 8000, as
3 Council Member Lancman mentioned, the significance of
4 there is, and I think one of the misconceptions is
5 that if we collect, um, ah, DNA evidence, if we
6 collect evidence from a crime scene, not DNA
7 evidence, a hat, a glove, ah, whatever it may be,
8 that it all of sudden the evidence gets uploaded
9 somehow into the DNA databases as crime scene
10 evidence. That's not the case. What happens is each
11 piece of evidence needs to be tested. The DNA, if
12 there is any DNA, has to be pulled from it, and
13 that's what gets hit against people that are in the
14 database. So in a situation where we have a suspect
15 that committed a crime, and then we have a lot of,
16 ah, ah, crime scene evidence, what we're doing is
17 we'll collect the suspect's evidence. They're put
18 into the database and as the crime scene is getting
19 processed item by item those items are hitting
20 against the suspect population. Now, also what it
21 entails in that suspect population are your long-term
22 investigations, investigations where we have a
23 suspect, ah, and, but it's a longer-term
24 investigation. It's not, ah, here's one crime and
25 we're picking that person up. But it's a, it's, it's

2 a pattern of crime and it's a longer-term
3 investigation. So what we've done now with this
4 process as, whereas in the past, as you're rightfully
5 critical of, the individual would be put in and they
6 would stay, and now all of the crime scene evidence
7 is processed, that individual is no longer a suspect,
8 and the method for them to get out would be to get a
9 court order to get out. What we're looking at now
10 is, ah, we will review these suspect samples on a
11 regular basis and we will make recommendations to the
12 OCME for individuals that fall into that pool, that
13 they're no longer a suspect, the crime scene has been
14 processed, there is no viable case available to
15 ~~proseeeute~~prosecute the individual on, and therefore
16 we're making a recommendation to OCME to remove those
17 individuals. I hope that answers the question.

18 COUNCIL MEMBER ADAMS: It does. It also,
19 um, propels me to, ah, another line of questioning
20 before the other line of question that I had. So
21 I'll go there. You just mentioned, ah, the review,
22 the new review, and by the work of this council
23 certainly, ah, we have, ah, thank goodness, reviewed
24 the, the process, so to speak, and are now looking at
25 some other ways of doing, ah, the database. What

2 are, or can you give us specifics of the constructs
3 of the new protocol or review?

4 DIRECTOR BARROWS: So do you, you want me
5 to go through the criteria of, of how these reviews?

6 COUNCIL MEMBER ADAMS: Yes, please.

7 DIRECTOR BARROWS: So essentially how it
8 will work is OCME is going to provide us a list of
9 all of the profiles that qualify for the review. So,
10 as I've mentioned, we've committed to, ah, several
11 layers of review, the first being that we're going to
12 review every profile that is at least two years or
13 older in the suspect database, um, initially we're
14 going to do that review. We're also committed that
15 every four years we're gonna do a audit of the entire
16 database for everything that is four years old and
17 older, four years old or older, excuse me. Um, and
18 then also going forward any new profiles that have
19 been developed we will trigger one of these reviews
20 upon their second year of existence in the database.
21 So it does require some level of, ah, communication
22 between OCME, OCME will give us the list, and then we
23 have to go back into our investigative files and look
24 at the case and review the circumstances. We have
25 developed criteria, um, for, the presumption

2 essentially is that a profile will be removed unless
3 it falls into one of three buckets, the first being
4 that it is, ah, eligible for entrance into the state
5 database. The person's been convicted of a felony
6 or, or a penal law misdemeanor. Um, so that would,
7 that would warrant further inclusion in the database.
8 If the person is a, is a suspect in a law enforcement
9 investigation at the time of review, ah, that would
10 also warrant further inclusion. Um, but that's also
11 limited a well. I mean, if we take a sample and
12 there's been no hit and perhaps the investigation
13 hasn't wrapped up, but there's been no hit in, in, at
14 this point at two years of review, the, the
15 presumption is to remove in that case. We haven't
16 received any kind of informative value off of that
17 profile. And then lastly in some very limited
18 circumstances, ah, where a case either there was an
19 arrest or a prosecution, but the case was, ah, there
20 was no finding of, ah, the person's innocence,
21 essentially a case was dismissed, we do want to look
22 at a few of those cases. Like what were the
23 circumstances for the dismissal? And those are some,
24 and there are some good reasons. It's not always
25 about whether, a case isn't dismissed simply because,

2 you know, there's a wrongful arrest or something like
3 that. There are also cases where, um, the victim,
4 ah, no longer wants to cooperate and, and, and we
5 have a victim-centric approach, ah, with victims.
6 Sometimes they don't want to go further in the case.
7 But we may have had someone that hit in the database.
8 We may have a defendant that hit in the database and
9 the case is dismissed because of lack of cooperation.
10 We want to look at those circumstances. There are
11 cases sometimes that are diminished because of victim
12 or witness intimidation. We want to look at those
13 circumstances. So that's a very limited criteria.
14 So we're going to review those profiles, assess the,
15 ah, filter them through that criteria, and then once
16 we have done our review we are going to put together
17 profiles that we would recommend for removal to the
18 OCME and give that to the OCME.

19 COUNCIL MEMBER ADAMS: So, so all this...

20 DIRECTOR BARROWS: Oh, and, I'm sorry,
21 Councilwoman.

22 COUNCIL MEMBER ADAMS: Yes.

23 DIRECTOR BARROWS: The other part of it
24 is is we're also going to be transparent about that
25 process. We want to publicly report the results of

2 all of these reviews. So we're going to talk, we're,
3 we're going to report how many profiles are in the
4 database, how many have been recommended for removal.
5 The exceptions that I talked about, that criteria,
6 how often that's used in these cases. So that, you
7 know, we have the data in front of us so we can
8 assess whether this process is, is working, and also
9 so that the public can see this as well.

10 COUNCIL MEMBER ADAMS: Is this a process
11 that's begun? Are you in process with the process,
12 or is this on a specific timeline during the year?

13 DIRECTOR BARROWS: So we made, so we made
14 the announcement last week. It's, obviously the
15 announcement wasn't something that was put together
16 in the last week. We've been working on this, ah,
17 with OCME since pretty much the summer and fall of
18 last year. Um, in terms of the reviews we look to
19 be, um, conducting them fairly soon. We're gonna be
20 conducting them in earnest. I think we just need to
21 get a better idea of like the footing. It is a
22 major, ah, commitment of resources by the PD to sit
23 down and review, you know, all of the investigative
24 case files, ah, um, where we took DNA profiles. So
25 that's one thing that we just need to, you know,

2 figure out a little bit more the mechanics. But
3 we'll, we'll absolutely report to you when we've
4 started and, and the, you know, the, the results of
5 that review.

6 COUNCIL MEMBER ADAMS: OK. And something
7 that struck me in you speaking of the criteria and
8 speaking with the, ah, with the victims and the
9 victims pretty much wanting to dismiss, but NYPD
10 feeling that there is, ah, no cause or little cause
11 for dismissal. Um, would that, that would be
12 totally your call to keep that person in the
13 database, would you ever go back to speak to the
14 victim again, revisit with the victim the items of
15 why a victim may or may not want to keep their, their
16 disposition?

17 DIRECTOR BARROWS: Well, we, we would
18 have taken DNA in that case from the perpetrator of
19 the crime. It wouldn't have been the victim. So are
20 you asking would we consult the victim?

21 COUNCIL MEMBER ADAMS: Correct. Correct,
22 if you're, if, well, what you just said was if a
23 victim, you would take all things into consideration.

24 DIRECTOR BARROWS: Yes.

2 COUNCIL MEMBER ADAMS: If a victim felt
3 intimidated or if a victim said I no longer want this
4 process to continue...

5 DIRECTOR BARROWS: Go forward, right?

6 COUNCIL MEMBER ADAMS: ...but your take on
7 it, as the supposed expert here would say, no, no,
8 this person should absolutely still remain in the
9 database, would the victim have any more...

10 CHIEF HARRISON: Councilwoman, if you
11 don't mind I'll, I'll take that question.

12 COUNCIL MEMBER ADAMS: Yes.

13 CHIEF HARRISON: So, ah, everything is
14 going to be under my umbrella, ah, the chief of
15 detectives, either myself or down the road will, um,
16 make the final determination regarding how they're
17 going to, ah, come up with a conclusion regarding
18 that person being left in or taken out. So I wish I
19 had an overall answer for you, but it's on a case by
20 case basis and determining what we, ah, received then
21 we may have to go back to the ~~complaintant~~complainant
22 and ask them regarding have they been intimated or
23 maybe not, but once again it's each, each situation
24 is going to be a case by case basis.

2 DIRECTOR BARROWS: And, Councilwoman, I
3 would just add, you know, this isn't a, a one and
4 done type of scenario, right? With the process that
5 we've built there are going to be re-reviews. So
6 just because we make one decision at one point of
7 review there'll be a subsequent review of that
8 profile at some point because of the process that
9 we've built.

10 COUNCIL MEMBER ADAMS: OK. Thank you for
11 the clarification. Thank you very much. I'm going
12 to go along one more, ah, one more line here. And I
13 really would like to revisit Howard Beach, um, if you
14 don't mind, ah, because several, ah, disturbing, um,
15 questions came up during the initial questioning by
16 Council Member Richards. Now, we're talking about at
17 least 300 DNA samples. All, were all of the DNA
18 samples of ~~minorities~~minorities?

19 DIRECTOR KATRANAKIS: No.

20 COUNCIL MEMBER ADAMS: Can you give us a
21 breakdown of that?

22 COMMISSIONER CHERNYAVSKY: I mean,
23 Council Member, as, as I said to, to the chairs this
24 is an investigation, this is a case that's currently
25 being appealed. We really can't speak about the

2 specifics, other than to really try to debunk these,
3 some of the baseless accusations that have been put
4 out, that we were randomly stopping people in the
5 street with no basis in fact to ask them for their
6 DNA or collect their DNA. That is a falsehood. That
7 did not happen. Ah, the work that we did on this
8 case and the leads that we followed were based on
9 tips and a variety of leads. As you recall, you
10 know, that case was unsolved for quite some time,
11 given the area, the geography of where the crime
12 scene was and the lack of video evidence and
13 technology evidence. So, ah, it remained open for a
14 while and unsolved for a while. And there were a lot
15 of leads because of the publicity around that case
16 that were coming in, and we followed those leads.

17 COUNCIL MEMBER ADAMS: OK, I understand.
18 Thank you. Now, coming back to catching your
19 suspect. He's been caught. Ah, he's been behind
20 bars for quite a while now. We're still looking at
21 these individuals who have not been convicted in this
22 crime and as your expression, justice to victims, in
23 this case that has already taken place. So who
24 exactly have we been protecting all these, all this
25 time, ah, from these individuals who have been left

2 in this database, had it not been for this council,
3 um, and things changing would continue to lavish in
4 this database? So, again, I'll go back to my initial
5 premise as far as the rationale behind keeping
6 individuals who have not been convicted, um, of a
7 crime in this database ad infinitum, who are we
8 protecting or what is the mindset behind keeping
9 these individuals in this database thus far?

10 DIRECTOR KATRANAKIS: So we're protecting
11 New Yorkers. So among the individuals that we
12 collected suspect exemplars from in the Howard Beach
13 case that are not the individual that has been
14 convicted we see dozens of subsequent hits, DNA hits,
15 cold hits, to those individuals in serious violent
16 felonies. I don't have the exact number, ah, but
17 when I last looked at it I think it was about 22 or
18 even higher. So a good percentage of those
19 individuals that we collected DNA from
20 ~~serendipitiously~~serendipitously, ah, produced a DNA
21 hit to another violent crime, like a homicide, a
22 rape, a shooting, or some kind of gun violence, ah,
23 criminal investigation. So the answer, the answer is
24 New Yorkers, and those individuals that were
25 identified via the investigative lead from these two

2 dozen or so, I'm sure there's more now, investigative
3 leads from these DNA hits, um, may have been arrested
4 and prevented from ~~from~~ committing other crimes and
5 terrorizing and committing violent crimes against
6 individuals.

7 COMMISSIONER CHERNYAVSKY: I think,
8 Council Member, and if, I'll try not to predict as
9 Council Member Lancman admonished me on doing just,
10 just a little while ago. But I, I think what you're
11 really aimed at is not those 22 individuals that
12 subsequently got cold case hits on, but what you're
13 concerned about, what about those others that they
14 were collected, they're, they're not suspects in any
15 case...

16 COUNCIL MEMBER ADAMS: Correct.

17 COMMISSIONER CHERNYAVSKY: ...and, right,
18 and to your point that is what this new process is
19 built to correct, that individuals that are collected
20 because they were suspects at one time and entered in
21 and they're no longer suspects, and there is no more
22 viable case, those individuals will be removed, and I
23 think that was the point of your question.

24 COUNCIL MEMBER ADAMS: Thank you, it was.

25 And, and, one final, I'm going to go back to timeline

2 again. In dealing with these individuals from, from
3 this Howard Beach, ah, situation, is there a timeline
4 for them to, you know the end of my question.

5 DIRECTOR KATRANAKIS: So if, if they are
6 innocent and according to the proposed, um, policy
7 that we talked about for removal, um, are eligible
8 for removal, we, we'd like them out as soon as
9 possible. Um, I, I, I'd prefer and I know that the
10 chief of detectives, nobody in the NYPD, um, wants an
11 innocent person in that database. I don't know if we
12 emphatically said that today, but I'm telling you
13 that from my personal opinion, um, my professional
14 opinion, we don't want innocent people in the
15 database. Ah, if any of those individuals, based on
16 our policy, shouldn't be in that database and they're
17 innocent, we want them removed. Um, and I've had
18 many conversations with Chief Harrison and others.
19 They'll be removed. I anticipate by the latest the
20 end of the year.

21 COUNCIL MEMBER ADAMS: Did you want to
22 add something else, Chief?

23 CHIEF HARRISON: Yeah, if you don't mind,
24 and, and once again as, ah, during the transition of
25 being the new chief of detectives there are databases

2 that, I'm gonna be honest with you, I took at a close
3 look and I, I said to myself, you know, we could do
4 better. Um, these are people from my community that
5 I need to make sure that we protect and, ah, this
6 database, the DNA database and any other databases
7 that we, that we put in place, I'm gonna make sure
8 that it's ah, it's done legally and done correctly
9 going into the future. That's all I could provide
10 for you. Thank you.

11 COUNCIL MEMBER ADAMS: And, and finally,
12 I'm sorry, Council Member Richards, finally, God
13 forbid there is another situation like this, another
14 scenario like this in any part of this city, how
15 would the NYPD do things differently? We're talking
16 about 300 individuals right now being placed in a
17 database that we're all questioning. What is the
18 difference, God forbid, if this happens tomorrow?

19 DIRECTOR KATRANAKIS: Listening to you
20 today, um, listening to the concerns, which, which I
21 find very important, valuable, takeaways to take
22 back, ah, the sensitivity is, is there. Um, we're
23 always sensitive to what we do. Um, I know we talked
24 a lot of today about many of your concerns and some
25 of them criticisms, which are healthy criticisms for

2 us. Um, but there's a hell of a lot of good that's
3 done every day and there's a hell of a lot of good in
4 our policies and procedures of the men and the women
5 in the NYPD, which, which we didn't talk about today.
6 Um, so we're always sensitized to this. Um, we're
7 very, very ~~conscientious~~conscientious of those
8 constitutional rights of all New Yorkers. Um, we
9 want to use DNA evidence, we want to use the database
10 to advance criminal investigations to find the true.
11 Um, in my division I have 600 individuals that are
12 forensic professionals, and we're in the business of
13 finding the truth, not arresting people. They know
14 that. Every given day. But it's not just about DNA.
15 It's about fingerprints, it's about other type of
16 forensic evidence collected from a crime scene, and
17 the holistic perspective of these criminal
18 investigations, which are very serious. It's about
19 finding the truth. It's not about arresting people,
20 and that's the mantra, that's our doctrine, and it's
21 been like that for two decades. And, and I hope and
22 I know moving forward with Chief Harrison and the
23 current NYPD administration that's there we will be
24 moving forward, staying very focused on a very fair,

2 um, impartial, and truthful approach towards criminal
3 investigations.

4 COUNCIL MEMBER ADAMS: I think we, we can
5 all agree on that fair and impartial. It's just a
6 way, ah, for us to get there, how we're gonna get
7 there, and, ah, we are gonna do our best to partner
8 with you to ensure that, ah, NYPD, City Council, and
9 the, um, residents of the City of New York are all
10 protected. Thank you very much.

11 CHAIRPERSON RICHARDS: Thank you,
12 Councilwoman Adams. Gibson, Miller, then Powers.

13 COUNCIL MEMBER GIBSON: OK, I'll be
14 quick. Good afternoon. Thank you, Chair Lancman,
15 Chair Richards, and good afternoon. Um, I appreciate
16 you being here and a lot of the testimony that's been
17 shared. Um, although I recognize that, ah, there is
18 a fine balance in what we're talking about, Chair
19 Richards, um, shared that as well, that it's not
20 mutually exclusive to talk about protecting New
21 Yorkers and giving victims justice by, by also making
22 sure that we protect individuals' constitutional
23 rights. Um, I think there is a fine balance and how
24 we get there is the question as, ah, Chair, ah, Adams
25 has said and I think although there's a lot that's

2 been done, and I appreciate the recommendations of a
3 lot of revisions that are happening around the
4 database, but there remains a lot of, of gaps in the
5 system. And so I'm sitting here listening to a lot
6 of your testimony and a lot of the questions that are
7 being asked. You guys don't have all the full
8 answers and so that's troubling. So first and
9 foremost I want to understand the state database
10 versus the Local database. It's been mentioned 75%
11 of an overlap. Um, what's the logic and the
12 rationale that the OCME and the department has around
13 only looking at the database as it relates to the
14 people who are not convicted, so that 32,000
15 individuals who remain in the database, what is the
16 logic that we say to our constituents on why
17 individuals remain in a database when they're not
18 convicted?

19 COMMISSIONER CHERNYAVSKY: I think that
20 that was the answer to, ah, Council Member Adams. So
21 we're, when we're talking about, I just want to be
22 clear that we're talking about the same, the same
23 thing. You're talking about the roughly 25%, not the
24 75?

25 COUNCIL MEMBER GIBSON: Correct, right.

2 COMMISSIONER CHERNYAVSKY: Right, so as I
3 mentioned to, the council member, you know, what you
4 have is, ah, the processing of crime scenes, right?
5 So, again, you collect a lot of evidence from a crime
6 scene. You have your suspect. I think Bob is my
7 suspect. I collect his DNA. We put it into the
8 database, but the crime scene today I'm testing the
9 hat, tomorrow I'm testing the glove, and when I
10 extract, if I extract DNA that gets, that DNA
11 evidence from this various items connected from,
12 collected from a crime scene gets hit against the
13 database. So when you're in it as a suspect, you're
14 not convicted yet, or, ah, possibly even arrested
15 yet, it gets hit against that. There could be long-
16 term investigations that, ah, we collect a sample
17 from an individual that's a suspect in a long-term
18 investigation, so they're put in but the case is
19 being developed and ultimately that case is gonna be
20 the subject of an indictment. So there are a variety
21 of reasons. Now, again, we're here acknowledging the
22 fact that there needed to be an off-ramp. So when
23 all of the things that I just mentioned to you have
24 come to fruition and the crime scene has been
25 completely processed, and this individual turned out

2 not to be a suspect in this crime and in any other
3 open case, and the long-term investigation has come
4 to an end, and the individual who we collected from
5 is not a suspect, there needs to be an off-ramp, and
6 there was, the off-ramp as existed was a court order.
7 What we, what we're trying to put together in
8 conjunction with the OCME is to create a much easier
9 off-ramp for individuals, some sort of a systemic
10 review that's put in place, where every sample is
11 reviewed and we determine whether or not it should
12 stay in based on these criteria that Bob explained...

13 COUNCIL MEMBER GIBSON: Got it.

14 COMMISSIONER CHERNYAVSKY: ...or were
15 removed.

16 COUNCIL MEMBER GIBSON: OK. I'm sorry,
17 let me just, I just want through get to my questions.
18 When a DNA sample is collected what does that profile
19 look like? Ah, walk us through the process. When
20 DNA is collected, because the question was asked for
21 one of our chairs, the racial breakdown, and you guys
22 didn't have those numbers. So what does the DNA
23 database look like today in terms of age, racial
24 ethnic breakdown, geographics, what does the DNA
25 profile look like?

2 CHIEF HARRISON: Councilwoman, ah,
3 unfortunately I don't have that answer for you?

4 COUNCIL MEMBER GIBSON: Does the OCME
5 know?

6 CHIEF HARRISON: No, they don't, and, ah,
7 I don't want to speak on her behalf, but I'm.

8 CHIEF MEDICAL EXAMINER SAMPSON: We do
9 not have demographic information [inaudible].

10 COUNCIL MEMBER GIBSON: Do you have race
11 and ethnicity, age?

12 CHIEF HARRISON: Council, Councilwoman,
13 no, but, once again is this. Once, um, I was given
14 the blessing to be in the position. I've taken a
15 look at a couple things. That was kind of like my
16 first question, well, what's the demographics. Um, I
17 was a little disappointed that we didn't have that,
18 and that's something that we're putting place as we
19 speak right now regarding making sure that that's
20 documented by the investigator that's taking these
21 samples. So now if we have to share that information
22 with the public, um, we're able to do that going into
23 the future. So it's, it's a work in progress. I
24 apologize that we don't have for you at this time,
25

2 but I can reassure you going into the future we will
3 have better answers ~~spring~~ going for you.

4 COUNCIL MEMBER GIBSON: Do you guys know
5 the length of time that someone's DNA remains in the
6 database? Someone talked about, you know, review of
7 two and four years. So is it possible someone's DNA
8 could languish in the database for years? All right.
9 I guess this is just disturbing that we've had this
10 DNA database since '97 and we're asking questions on
11 racial and ethnic breakdown and we don't have it, so
12 it's just troubling that we're now starting to look
13 at, you know, revisions to the process.

14 DIRECTOR KATRANAKIS: If, if I can just
15 say one thing. It's not a direct answer to your
16 question, but there's an important distinction
17 between the local DNA index system and the DNA
18 database, and the other databases...

19 COUNCIL MEMBER GIBSON: Right,
20 understand.

21 DIRECTOR KATRANAKIS: ...that you guys
22 talk about, right? And the difference is it's
23 science and it speaks the truth. So it's not
24 incriminating for your DNA sample to be in the
25 database and never hit. I'm in the database also,

2 among hundreds of other employees in the NYPD as
3 elimination samples, and also OCME personnel. So, so
4 we are a part of the forensic investigation, but we
5 want to get to the truth. And if a crime scene
6 detective or someone else ~~inadvertently~~inadvertently
7 leaves their DNA at a scene or contaminates evidence
8 deliberately, intentionally or unintentionally, we
9 want to know about it. And, and it does occur in
10 certain instances. So if I leave my DNA at a scene
11 while I'm there conducting an investigation and I
12 hit, we want to know about that. We want to tell the
13 criminal justice system about that. I have no fear
14 of being in that database. I'm not afraid, because
15 it speaks the truth. And when I'm negative and it
16 doesn't hit it means I didn't deposit my DNA and that
17 is not my sample. So there's a distinction between
18 gang databases and the other databases that we talk
19 about, right? Which are people that are listed and
20 there's a certain perspective and lens that we look
21 at them. In contrast to science, it's different.
22 There's a fine demarcation between science and the
23 truth, which is used throughout the criminal justice
24 system, the defense bar, the Innocence Project, and
25 the Legal Aid Society exonerating, generating

3 exculpatory evidence. We are all for it. We're for
4 the truth. We don't use the database for arrests.
5 We don't use the database to incriminate. We use
6 it for the truth. So I, I just wanted to make
7 that...

8 COUNCIL MEMBER GIBSON: Understand.

9 DIRECTOR KATRANAKIS: I don't know if
10 that's helpful or not. And that's probably one of
11 the reasons why we never looked at the demographics,
12 because it's not important. It speaks the truth.
13 You're a match or you're not.

14 COUNCIL MEMBER GIBSON: Who has access to
15 the database? Is it share with other law
16 enforcement, immigration officials, defense
17 attorneys, district attorneys? Who has access to the
18 local database?

19 CHIEF MEDICAL EXAMINER SAMPSON: Only a
20 subset of OCME employees have access to the database
21 and those approximately 100 employees, ah, have been
22 vetted by the FBI for this particular purpose.

23 COUNCIL MEMBER GIBSON: So in the course
24 of an investigation with the new discovery laws in
25 place, with the 15-day window to provide defense

2 attorneys and others information of evidence, ah, on
3 their client does that include DNA?

4 CHIEF MEDICAL EXAMINER SAMPSON: The
5 discovery law does apply to, to DNA, yes.

6 COUNCIL MEMBER GIBSON: So in the course
7 of an investigation if you guys, um, had to comply
8 with that law, you would also provide that to defense
9 attorneys in terms of whatever DNA is collected, ah,
10 on that client?

11 CHIEF MEDICAL EXAMINER SAMPSON: It's my
12 understanding that as of January 1 with the discovery
13 laws we are giving everything to the prosecution and
14 they are sharing it then with the defense, in, in
15 that timely manner that you just described.

16 COUNCIL MEMBER GIBSON: In the time, OK,
17 OK. Um, I just had two questions on the, oh, in
18 terms of immigration officials what was the answer on
19 that being shared? The immigration officials?

20 CHIEF MEDICAL EXAMINER SAMPSON:
21 Absolutely not.

22 COUNCIL MEMBER GIBSON: Even if there's a
23 court order?

24 CHIEF MEDICAL EXAMINER SAMPSON: We've
25 never been in that situation.

2 COUNCIL MEMBER GIBSON: OK. So to date
3 we've not received any inquiries from Immigration,
4 law enforcement, federal law enforcement officials,
5 on the collection of DNA database through the local
6 database?

7 CHIEF MEDICAL EXAMINER SAMPSON: Is that
8 correct?

9 UNIDENTIFIED: Not Immigration ever.

10 CHIEF MEDICAL EXAMINER SAMPSON: Not
11 Immigration ever.

12 COUNCIL MEMBER GIBSON: OK. Um, the
13 consent form that we are talking about in terms of
14 our revision, who's coming up with the criteria and
15 what will be included on the consent form? So would
16 it explicitly describe what the DNA database is used
17 for, if that person consents to their DNA is
18 collected and used for the database and who, um,
19 gives the final approval? Is it OCME, is it NYPD,
20 and how is, does that consent form, ah, apply to? Is
21 there a timeframe of expiration?

22 DIRECTOR BARROWS: So there isn't an
23 expiration. It's provided at the time that the, that
24 the sample is taken. In terms of the language that's
25 been added. We, the form has existed. It existed

2 prior to, prior to this policy change. But what
3 we've done is add more language to make it a little
4 bit more straightforward. First, that the person has
5 a right to refuse to provide consent. And then also
6 we have added language that the profile will be
7 developed and uploaded into the local database and
8 can be run against, ah, other crime scene, against
9 crime scene evidence.

10 COUNCIL MEMBER GIBSON: So by that
11 individual consenting to their DNA be included in the
12 database does that only apply to that individual
13 investigation or would their DNA be compared to all
14 of the other open outstanding cases for a potential
15 match? Is that delineated in the consent form? Is
16 that explained to the individual, or will it be
17 explained to the individual?

18 DIRECTOR BARROWS: So we provide the form
19 at the time that we collect...

20 COUNCIL MEMBER GIBSON: Right.

21 DIRECTOR BARROWS: ...the sample. And
22 that's, that's when the form is provided.

23 COUNCIL MEMBER GIBSON: No, no, so you're
24 not, does the individual, will the individual be
25 explained to that their DNA will only be used for the

2 purpose of that individual investigation or will it
3 be used in a ~~comparision~~comparison of all the
4 outstanding cases? So essentially if you have two,
5 three cases, is that going to be compared in all
6 those cases or just the individual? That's my
7 question.

8 DIRECTOR BARROWS: I'd have to look at
9 the, I don't have the form in front of me. I'd have
10 to look at the explicit language. But I think by
11 putting it in the database and it being run, it's
12 gonna be run across all of crime scene evidence, so
13 if you have multiple, if you're a suspect in multiple
14 cases it could hit on not necessarily what we may
15 have you in custody for now, but we may have other
16 investigations. So, so the language says that it
17 will be run against the crime scene evidence
18 [inaudible].

19 COUNCIL MEMBER GIBSON: OK, that's a very
20 important distinction because it means that the
21 individual should be told that they're DNA will be
22 compared to all of the outstanding cases that they
23 could be linked to and not just the individual case
24 in which their DNA would be collected in the first
25 place. Correct?

2 DIRECTOR KATRANAKIS: So can I take a
3 second just to read it to you? I think, I think, I
4 think the answer to your question is that yes,
5 everything that you...

6 COUNCIL MEMBER GIBSON: Yes, everything,
7 OK, I just want to make the distinction.

8 DIRECTOR KATRANAKIS: So, yeah, you've,
9 they have a right to refuse, and consequently a DNA
10 profile will be produced, it will be stored in the
11 local database, known as the local DNA in the system,
12 and may be compared against other DNA profiles and
13 may be used for investigative purposes.

14 COUNCIL MEMBER GIBSON: OK.

15 DIRECTOR KATRANAKIS: So, so we are
16 informing them.

17 COUNCIL MEMBER GIBSON: OK. Um, how
18 would someone be able to check to see if their DNA is
19 in the system in the first place? Is there a process
20 by which they can do that today? And if, if not, is
21 that a part of the revision?

22 CHIEF MEDICAL EXAMINER SAMPSON: Ah, yes.
23 You can, ah, call the OCME and we let you know if you
24 are in the database or not.

2 COUNCIL MEMBER GIBSON: OK, does it have
3 to be written consent? They can do that over the
4 phone?

5 CHIEF MEDICAL EXAMINER SAMPSON: They can
6 call us and, ah, ask.

7 COUNCIL MEMBER GIBSON: OK, and if is in
8 the database would you give them more details on the
9 particulars of the case? How would that work? So
10 they, what if they want more information on why their
11 DNA was even in the database to begin with?

12 CHIEF MEDICAL EXAMINER SAMPSON: I think
13 then we would refer them to, ah, NYPD for further
14 information. But the yes or no of whether they're in
15 there we would tell them.

16 COUNCIL MEMBER GIBSON: OK, and I guess
17 my final question is the streamlining of the process
18 to remove, ah, acquitted individuals. Um, we've seen
19 a number of individuals that have recently been
20 exonerated, um, particularly from Kings County, there
21 were a few cases out of Bronx County, um, and I know
22 that's an ongoing. Almost every district attorney in
23 New York City I believe, Staten Island will be new,
24 to forming a conviction integrity review unit, um,
25 and a lot of that exoneration really revolves around

2 the collection of DNA in an ongoing case where
3 someone was convicted and now new DNA evidence has
4 exonerated that person. Um, what is the, the revised
5 process that you are offering that will prevent these
6 types of cases from occurring again and how is there
7 a reassurance to New Yorkers that they're process,
8 the process that you have in place will really remove
9 their DNA from the system? So is there an assurance?
10 Is there, once you, you provide this form is there
11 something else as a follow-up where an individual is
12 guard that their DNA has officially been removed from
13 the database? Does that make sense?

14 COMMISSIONER CHERNYAVSKY: Yeah, one
15 point, just to clarify, I think when you're talking
16 about these exonerated cases, and correct me if I, if
17 I misunderstood you, it's not that bad DNA was the
18 result of the conviction.

19 COUNCIL MEMBER GIBSON: Correct.

20 COMMISSIONER CHERNYAVSKY: It's that's
21 new DNA...

22 COUNCIL MEMBER GIBSON: Correct.

23 COMMISSIONER CHERNYAVSKY: ...is resulting
24 in the overturn.

2 COUNCIL MEMBER GIBSON: Correct. Most of
3 the cases, um, of conviction, individuals' DNA was
4 not collected at the time of conviction.

5 COMMISSIONER CHERNYAVSKY: Correct.

6 COUNCIL MEMBER GIBSON: Correct.

7 COMMISSIONER CHERNYAVSKY: So I, and...

8 COUNCIL MEMBER GIBSON: Yes.

9 COMMISSIONER CHERNYAVSKY: ...again,
10 highlights the importance of DNA, but to the extent
11 of an individual being exonerated of a crime, um, I
12 guess that's the equivalent of, ah, an acquittal and,
13 ah, you know, without the, without the, um, without
14 the incarceration and those are the types of cases
15 that, that would be recommended to fall off, assuming
16 the individual isn't a suspect in an ongoing crime.

17 COUNCIL MEMBER GIBSON: So the
18 certificate of disposition, just walk me through what
19 that looks like, and again what is the guarantee for
20 an individual to be assured that their DNA is removed
21 from the database? That's my question.

22 DIRECTOR BARROWS: So the certificate of
23 disposition, I believe you can, you can request one
24 online from the Office of Court Administration and
25 it's provided by the clerk's office.

2 COUNCIL MEMBER GIBSON: From OCA?

3 DIRECTOR BARROWS: From OCA, that's
4 correct. There, there, it's their certificate, you
5 know, demonstrating that the case has been disposed
6 of. Um, that will be, um, accepted, ah, for purposes
7 of, if a person has been acquitted and DNA was taken
8 in that case, um, they don't have to wait for the,
9 the two-year mark for review. We'll do a review of,
10 of the case at that time, you know, upon showing the
11 certificate, ah, of disposition. And then in terms
12 of, I'm sorry, in terms of notifying, ah, individuals
13 of, of removal.

14 COUNCIL MEMBER GIBSON: Right.

15 DIRECTOR BARROWS: So there's a couple
16 things that we're doing. The first is, um, with the
17 consent form, ah, we do also, we are committed to
18 putting on, putting on our website, um, process for
19 removal from the database to give people information,
20 in terms of obtaining a court order, what this review
21 process looks like, and then also another layer to
22 this is the public reporting that we're gonna do.
23 We're demonstrating that we have done these reviews,
24 profiles, ah, have been recommended for removal and
25 that they've been removed by, by the OCME. I think

2 in every case whether we could notify someone that
3 they've been removed that can be challenging. Some
4 of the case files that we have, some of these cases
5 are 20-plus years old. We don't necessarily
6 practicality-wise have contact information for that,
7 for those individuals. But, um, you know, it's also
8 something that, that, um, to take a look at as well.

9 COUNCIL MEMBER GIBSON: OK. Thank you,
10 Chairs. Ah, I appreciate your time. Ah, we
11 definitely have a lot more work to do. Um, this is
12 just one hearing. There's a lot more to talk about.
13 But I think the fundamental understanding from the
14 City Council's perspective is we want to do more to
15 make sure that this database is as accurate as
16 possible and, you know, the honest truth of why this
17 is getting so much attention is because we know that
18 a majority of the individuals whose DNA is collected
19 in the should be are constituents that live in our
20 district and we have to reassure them that there is a
21 process where there's accountability and where there
22 is a real trust. Um, I think, you know, it's
23 traumatizing when you talk about someone being
24 accused of a crime and their DNA is collected, or
25 even there are some tricks that, you know, we're

2 using to resort to collecting DNA. That's not what
3 we want. And if you look at a lot of the high-
4 profile cases that are getting a lot of attention, I
5 mean, there's a clear distinction when you talk about
6 racial and ethnic gender background um, and, and
7 that's a real reality. Not just the Howard Beach
8 case. There have been other high-profile cases. We
9 want everyone to be given the same attention, the
10 same level of importance and priority, and not just
11 when you know, the victim doesn't look like the
12 suspect. Right? That's what we've seen in the past
13 and that has to change. And until that changes we're
14 gonna to continue to have these challenges because
15 the reality is is we want to make sure that
16 constituents understand the work we're doing is about
17 protecting victims and New Yorkers, but it's also a
18 fair process that's fair and balanced, and so I look
19 forward to the ~~wor~~work ahead, and I want to thank
20 Chair Richards and Chair Lancman for holding today's
21 hearing. Thank you.

22 CHAIRPERSON RICHARDS: Thank you.

23 CHIEF HARRISON: Council Member, if I
24 could just real quickly, um, if you just heard a lot
25 of the things that we, we've doing, a lot of

2 transparency, ah, a lot of information that's going
3 to be provided to those suspects. I truthfully
4 believe we're heading in the right direction to make
5 sure we take care of all the, all the New Yorkers
6 that may have to go through this process and make
7 sure they're aware of exactly what they're getting
8 themselves into.

9 CHAIRPERSON RICHARDS: Thank you.
10 Council Member Miller.

11 COUNCIL MEMBER MILLER: Ah, thank you,
12 Chair Richards, and let me first begin by, um,
13 thanking my colleagues for their thoughtful and
14 intelligent questions on this matter because as I sat
15 here for the past few hours and listened to NYPD I, I
16 was not, ah, convinced that the, the transparency
17 that we look for and the question or the answers to
18 the questions that were necessary for us to take back
19 to our constituencies were being addressed. Further,
20 um, I would be remiss if I did not say in, in all my
21 years as being a member of this committee, um, I have
22 not witnessed the defense, the vigorous defense of a
23 policy, um, like I did today. Vigorous and sometimes
24 contentious and adversarial defense of a policy which
25 is questionable, which certainly has, ah, community

2 impact which we have not discussed. Quite frankly it
3 was a rather cavalier attitude about the communities
4 that have been impacted by such, as my colleague just
5 mentioned. Um, and, and questionable legal scrutiny
6 as well. Ah, obviously there's been some cases been
7 cited back and forth and, um, sometimes it just comes
8 down to just can because you can do doesn't mean that
9 you should do. And, and, and, and that we expect
10 from leadership to know the difference. Um,
11 particularly on, on, on, on the test itself and what
12 we have seen in terms of ancillary impacts, um, to
13 those who have to community of those who have been
14 tested, meaning, um, Chair Richards talked about ah,
15 ah, the, the, the trauma associated with it. But as
16 we collect this database how accurate is it in that
17 if you collected Council Member Miller's DNA is that
18 specific to Council Member Miller? Is Council
19 Member' brother, first cousin, sister? Are there
20 anybody in the, in the database?

21 COMMISSIONER CHERNYAVSKY: So identical
22 twins will have the same nuclear DNA profile. Um,
23 outside of that our DNA, our nuclear DNA, is unique.

24 COUNCIL MEMBER MILLER: I'm sorry, I, I
25 ~~did't~~didn't hear that. Could you repeat that? Sure.

2 So identical twins will have the same nuclear DNA
3 profile, which the database that we're talking about
4 consists of nuclear DNA profiles. So identical twins
5 will have the same. Outside of that, their
6 individual profiles, they are not profiles which are
7 establishing a nexus outside of a direct match. So
8 if your line of inquiry is going towards relatedness
9 between individuals, routinely we do not know what or
10 not a certain suspect is related, biological related,
11 first order, second order, to a crime scene profile.

12 COUNCIL MEMBER MILLER: So, um, OCME,
13 could you answer that same question?

14 CHIEF MEDICAL EXAMINER SAMPSON: Yeah, I
15 agree. Identical twins would have identical DNA, ah,
16 and other that no one will match identically your
17 DNA.

18 COUNCIL MEMBER MILLER: So all of your
19 suspects have a 100% match?

20 CHIEF MEDICAL EXAMINER SAMPSON: All our
21 suspects have a unique DNA profile.

22 COUNCIL MEMBER MILLER: What does that
23 mean?

24 CHIEF MEDICAL EXAMINER SAMPSON: Unique
25 to them, a special one.

2 COUNCIL MEMBER MILLER: So there is not
3 cases that someone has been a suspect and not have
4 been a 100% or have been a suspect and then it turned
5 out that it wasn't them, based on DNA?

6 CHIEF MEDICAL EXAMINER SAMPSON: Based,
7 if, if we have crime scene evidence with a particular
8 DNA profile and it matches a suspect in the, ah,
9 database, then that means that DNA must have come
10 from that person. We look at a number of loci.
11 There's statistics that go behind all of this, um, so
12 that we can say that with confidence.

13 COUNCIL MEMBER MILLER: So there, there,
14 so, um, my, my brother has no worries or concerns if,
15 if I'm to be swabbed, and vice versa?

16 CHIEF MEDICAL EXAMINER SAMPSON: As New
17 York City uses this database, no. There is no
18 familial DNA being performed in New York City.

19 COUNCIL MEMBER MILLER: So, um, I, while
20 I don't want to harp on the, on the Howard Beach
21 case. Obviously it, it, it was the probably the most
22 high-profile as, as such. Um, did that create
23 precedent for how DNA sampling was collected and, and
24 what that universe looked like? Or had something
25 like that been done in the past?

2 DIRECTOR KATRANAKIS: So we have had
3 instances in the past where, um, the case, the
4 pattern, um, of a violent sexual assault and other
5 cases, ah, resulted in the collection of may suspect
6 DNA exemplars.

7 COUNCIL MEMBER MILLER: Did they meet the
8 magnitude of, of, of this one, 300?

9 DIRECTOR KATRANAKIS: I don't have the
10 exact number. I don't believe it was that high, in
11 the few cases that I've seen over my years. But it
12 was, it was...

13 COUNCIL MEMBER MILLER: Close?

14 DIRECTOR KATRANAKIS: ...extremely...

15 COUNCIL MEMBER MILLER: 200?

16 DIRECTOR KATRANAKIS: I, ah, forgive me,
17 I don't...

18 COUNCIL MEMBER MILLER: How random
19 [inaudible] what, what did the universe look like?
20 This was a very unique...

21 DIRECTOR KATRANAKIS: No, my recollection
22 is I could remember a specific sexual assault
23 pattern, um, where there was at least 60 or 70
24 suspect DNA exemplars collected, where you had an
25 individual that was committing rape after rape after

2 rape, ah, and brutally assaulting the victims, ah,
3 relentless, and it was a public safety threat.

4 COUNCIL MEMBER MILLER: And, and, and
5 even that did not reach the magnitude of the
6 investigation utilizing DNA that we've seen in Howard
7 Beach.

8 COMMISSIONER CHERNYAVSKY: Well, I think,
9 Council Member, I think the, the issue and I
10 understand that this case has gotten a lot of
11 attention, and the point is, is, and I'll go back
12 this, these were not random collections of random
13 individuals walking down the street. Any collection
14 that was done in the context of that case or any of
15 the other cases the chief just mentioned, we had
16 leads that led us to a particular individual to
17 suspect that that individual was involved in the
18 crime. And what we're doing with the new policy is
19 creating an off-ramp for those individuals whose DNA
20 was collected that later turned out not to be a
21 suspect in the case for them to get out of the
22 database.

23 COUNCIL MEMBER MILLER: That, that, ah,
24 that I understand. But I, I'm not, first of all, um,
25 I, I think it's been 23 years since the program's

2 inception and to come to this revelation now that,
3 that, innocent folks might be impacted, um, and, and
4 certainly just by virtue of being there that that
5 possibility exists, ah, so there's clearly, you know,
6 how we got here is questionable.

7 COMMISSIONER CHERNYAVSKY: Councilman, if
8 you don't mind, ah, I know there's a lot of inquiries
9 about the Vetrano case. I, I just have to, we have
10 just share something with the room to make sure that
11 everybody understands. It wasn't a target after a
12 certain group of individuals. We've had, ah,
13 investigative leads that led us in a certain
14 direction and then it traveled a different direction.
15 I'm just gonna pass it over to, ah, to, ah, Chief
16 Katranakis to kind of explain and, and maybe clear up
17 the picture.

18 COUNCIL MEMBER MILLER: Chief, with all
19 due respect I got that, right? This happened in the
20 community. The suspect was identified as coming from
21 a particular group.

22 CHIEF CHERNYAVSKY: Negative, sir.

23 COUNCIL MEMBER MILLER: It was a pass...

24 CHIEF CHERNYAVSKY: Negative, sir,
25 negative.

2 COUNCIL MEMBER MILLER: OK.

3 CHIEF CHERNYAVSKY: That's why I need for
4 him to just take the mic for a few seconds, please,
5 if you don't mind.

6 COUNCIL MEMBER MILLER: OK.

7 DIRECTOR KATRANAKIS: So when you, when
8 you go back of August 2 of the year when this crime
9 occurred, um, when you look at the specific location,
10 unlike any other location that we normally experience
11 in the City of New York, right? So this is a federal
12 park which, ah, has very, very high weeds and a road,
13 um, which is, is clearly a place that's desolate,
14 where you have some runners and dog walkers. So
15 there are no witnesses, there are no video cameras,
16 there are no fingerprint evidence, substraces,
17 nothing left behind. So this was a very complicated
18 homicide investigation. It's unlike our routine
19 investigations. And at that time when you look at
20 the specific area, clearly this park separates an
21 area in Brooklyn and Howard Beach, and the
22 ~~demograpies~~demographics of those two areas are very,
23 very different. And when we first started this
24 investigation, ah, we had suspects that we collected
25 DNA samples form in both areas, looking at flight

2 paths. So we're looking at information that we know
3 from this investigation on where a perspective could
4 have fled if they committed this crime. So we see
5 two specific areas, and we do have a very, very large
6 number of Caucasian individuals that we collected
7 suspected exemplars from in the beginning stages of
8 this investigation. Consequently, we acquired
9 investigative information, which led us down a flight
10 path from the ~~homicide~~homicide into Brooklyn North,
11 based on information which I prefer not to disclose
12 given what the legal bureau recommends as far as
13 talking about appeals, but the bottom line is that
14 the investigation led us into Brooklyn North at some
15 point in the interim states of the investigation.
16 So, it's, it's very important to understand that this
17 is not a dragnet either. I heard that word used
18 constantly, and a dragnet, um, from my understanding
19 is used in the United Kingdom frequently, where
20 you're literally taking a net and putting addresses
21 on a list and knocking on everybody's door and
22 address. That was not done in this case. Because I
23 was involved in almost every meeting and every step
24 and I was out there every day for weeks on end until
25 the case was solved. So it's important to know

2 treated was not a dragnet. These individuals were
3 suspects which were brought to our attention and many
4 facets and veins of an investigation, Crime Stoppers,
5 others reaching, information from possible witnesses,
6 etcetera, etcetera, etcetera. So this is a unique
7 investigation. It has its own set of facts of
8 circumstances and did lead us down a flight path into
9 Brooklyn North and East New York. So it's important
10 that you, you understand that. The area wasn't
11 targeted, we didn't just look at that area and
12 randomly select. There's rationale. There's
13 reasonable steps that we took based on facts. So I,
14 I just want to lay that out and [inaudible].

15 COUNCIL MEMBER MILLER: Yeah, and I, I
16 did that flight path and, and, and quite frankly I
17 rode my bike and, and ran that trail quite often and
18 I could see. But I also know the flight patterns
19 could you a plethora of different locations. And,
20 and I don't even debate and I, I just was, ah, um,
21 the question again was, was, um, how we, how we got
22 to that and how comfortable we are as we move forward
23 and whether or not that was a pattern and had we done
24 something like that in the past. Ah, for OCME, um,
25 in, in terms agency coordination how often, if ever,

2 is there a request from the police department that is
3 not complied with, and if so why?

4 CHIEF MEDICAL EXAMINER SAMPSON: Ah, I
5 can't give you specific numbers. Ah, you know, we
6 work with NYPD, they are one of customers. But as I
7 said earlier we are entirely independent of them.
8 They have no say about our internal flow of our
9 scientific, ah, processes. If the NYPD, for example,
10 gives us a specimen that we feel is unfit for
11 scientific testing we will tell them that. A good
12 example of that might be a, a swab that they get for
13 DNA from a, ah, doorknob, for example. A doorknob
14 obviously has DNA from many different individuals.
15 So if we do do DNA testing we're gonna get, ah,
16 results that show many, many, many individuals' DNA.
17 So we would reject that kind of specimen for them.

18 COUNCIL MEMBER MILLER: Is that the only
19 circumstance that you think might be questionable
20 enough for you to deny a request, or in the past?

21 CHIEF MEDICAL EXAMINER SAMPSON: Oh, no,
22 I'm sorry. No, I was just giving that as an example.
23 Ah, anything that doesn't meet our scientific, ah,
24 standards or our internal lab policies, ah, we would
25 reject.

2 COUNCIL MEMBER MILLER: And how readily
3 available are those standards and requirements?
4 Could the council somewhere find them and, and see
5 are they aligned?

6 CHIEF MEDICAL EXAMINER SAMPSON: The, the
7 council actually, right, we provided them to Council
8 before this and they're on our website.

9 COUNCIL MEMBER MILLER: OK. And, um, so
10 we've been long. I just want to, I want to conclude
11 with, with my displeasure about the cavaliness and,
12 and the vigor in which very questionable policy is,
13 is being defended. Because the last time we saw this
14 we now have a federal monitor that had to come in and
15 stop it, and that was stop and frisk. And we thought
16 by any means necessary that we were gonna make this
17 the safest city, that we were gonna put victims first
18 and we were gonna do all these things regardless of
19 the consequences and the impacts on communities
20 throughout the city. And this looks like a
21 perpetuation of that, and I don't want to go down
22 that road again. But if we, it, it appears that
23 we're in denial. And, and, I know that this council
24 and this leadership is, is committed to public
25 safety. But we're committed to equity and we're

2 committed to respect. And we want communities to be
3 respected and this is questionable. So I want to
4 thank you for, for, and, and I would love for
5 ~~some~~someone to comment if that's the case, but you
6 guys have been aggressive in defending something that
7 is, is questionable, if not disingenuous at best.

8 CHIEF HARRISON: Councilman, once again,
9 I, I understand your concern about, um, equity and,
10 and making sure, um, we're not, ah, putting people in
11 this database disproportionately, um, that's
12 something that I will be taking a closer look. I'll
13 be making sure that, ah, it's done under the
14 appropriate manner. The one thing is where you may
15 see a little bit of a pushback so I'm gonna apologize
16 in advance is we're passionate. Um, we're passionate
17 about doing the best we can to keep the city safe.

18 Um, I'm a strong believer that databases can be
19 instrumental as long as it's done legally and
20 correctly, um, but I, I do have a concern about not
21 having another Aamir Griffin incident. I am
22 concerned about, um, not having another Maria Fuentes
23 incident. I, I want to make sure that everybody here
24 in New York understands that we take pride in keeping
25 the city safe and using an instrument like this I

2 think helps us go forward into 2020 and keeping us
3 the safest city in the country.

4 COUNCIL MEMBER MILLER: I, I can
5 appreciate that, but, again, we, we question some of
6 the, some of the techniques and the technology that
7 we are, are not familiar with and what that the NYPD
8 maybe employing where there's DNA, um, whether
9 there's the electronic surveillances or the facial
10 recognitions and what impacts those have. This is,
11 this is new technology and, and we just can't give
12 ~~autonomy~~autonomy to anyone to just step out and, and
13 say hey, this works because we've done that in the
14 past and we're paying the price for it now.

15 CHAIRPERSON RICHARDS: Thank you, Council
16 Member Miller, well said. Ah, let me just
17 [inaudible] at this time can someone, well, we know
18 they can check to see if their DNA, I think that you
19 said they can check to see if there DNA is on file,
20 and could they request to have it removed by the
21 OCME?

22 CHIEF MEDICAL EXAMINER SAMPSON: Ah, the
23 process for removal is as was described earlier, ah,
24 either by a court order or by providing a certificate
25 of disposition that is approved by both the, ah, NYPD

2 and the, ah, DA's office, ah, or through this process
3 that we have gone through several times now with
4 this, ah, during this hearing of the, um, reviews
5 that NYPD is going to do based on list that we
6 provide them of who's on the database.

7 CHAIRPERSON RICHARDS: And on your
8 consent form will this information, um, be
9 accessible? So, for instance, ah, very similar, if
10 you want to have your DNA, is there a form, is there
11 something you can give individuals, um, whose DNA you
12 take that says, you know, you can have your DNA
13 removed by this process with the OCME, that's what
14 I'm getting at. Will there be something attached to
15 the consent form?

16 DIRECTOR BARROWS: So in addition to the
17 consent form the PD will place on its website the
18 process for removal, whether it's court order or...

19 CHAIRPERSON RICHARDS: But, but most
20 people, New York City resident's don't go into the
21 NYPD's website, so.

22 COMMISSIONER CHERNYAVSKY: Well, we're
23 trying encourage more visits.

24 CHAIRPERSON RICHARDS: [laughs]

2 DIRECTOR BARROWS: We're encouraging
3 [inaudible] to try it.

4 CHAIRPERSON RICHARDS: But is there some
5 sort of, and, the Right to Know act obviously has,
6 wouldn't have an impact on this, right? So there is
7 like some sort of card that can be attached to give
8 to individuals, um, at the time at the time that
9 they're filling out a consent form? Is that
10 something we could think of if we haven't thought
11 about it?

12 CHIEF HARRISON: Well, we're open to
13 review. Ah, we're open to suggestions. This is why
14 these council meetings are, ah, so helpful to this
15 organization. Um, I'm willing to hear, ah, any
16 suggestions you may have that can, ah, help with
17 transparency and be informative to the community that
18 we're here to protect, all right?

19 CHAIRPERSON RICHARDS: OK. Chair
20 Lancman.

21 CHAIRPERSON LANCMAN: Um, just for OCME,
22 I, I want to clarify. I had a back and forth earlier
23 on cold hits and, and how many were, ah, uniquely in,
24 in the local database versus the overlap. I should
25

2 have also asked you, do you have any additional
3 information on that as you sit here today?

4 CHIEF MEDICAL EXAMINER SAMPSON: Do we
5 have any, I'm sorry, the last part [inaudible]?

6 CHAIRPERSON LANCMAN: How many of the
7 cold hits come from, ah, are, were, were people in
8 the local database that do not overlap with the state
9 databank?

10 CHIEF MEDICAL EXAMINER SAMPSON: We have
11 no way of knowing it.

12 CHAIRPERSON LANCMAN: You don't know.
13 OK, I just wanted to make sure because that was back
14 and forth between me and the PD. Um, earlier you
15 indicated that that you, ah, your DNA is in, in the
16 database in order to, to eliminate it. Are all
17 police officers' DNA put into the, the database in
18 order to eliminate their potential contamination of,
19 of crime scenes where, where they do their work?

20 DIRECTOR KATRANAKIS: So not all, but,
21 um, I'm completely with your sentiment on, ah,
22 expanding. Um, so currently the, the member of the
23 crime scene unit, which are actively engaging in
24 processing crime scenes, mostly violent crime scenes,
25 homicides, and, ah, sexual assaults, ah, shooting so

2 assaults where the victim is likely to die, where we
3 expect to find a good deal of blood and transfer of
4 DNA. They are all in there. So there's, there's
5 several hundred that are in there, ah, from either
6 forensic investigations division, the crime scene
7 units, um, members of the bomb squad are, ah, also in
8 the personal employee database and we provide those
9 samples to the OCME. They have a separate sub index
10 of the NYPD and in those instances when we do match
11 that information comes back to us and we investigate,
12 ah, to determine the root cause, um, and then wen
13 necessary we take corrective actions.

14 CHAIRPERSON LANCMAN: Could you estimate
15 how many police officers have their DNA in the, in
16 the database?

17 DIRECTOR KATRANAKIS: So I can tell you
18 the last time that, um, I asked for that data point
19 the number was 233. But I can't tell you that today
20 at this moment that it's completely accurate. There
21 may be a few more and a few less, because when
22 individuals are transferred out, so basically on, on
23 the dynamics of the personnel being assigned, um,
24 retiring, transferring out, getting promoted.

2 CHAIRPERSON LANCMAN: Would it, would it
3 not make sense to have everyone's DNA in the, the
4 database, and even your random patrol office would
5 come across a crime scene and might leave DNA traces
6 unwittingly?

7 DIRECTOR KATRANAKIS: You're asking, are
8 you asking if it makes sense?

9 CHAIRPERSON LANCMAN: Yes, yes.

10 DIRECTOR KATRANAKIS: It makes perfect
11 sense.

12 CHAIRPERSON LANCMAN: OK. Um, lastly,
13 just, just the juvenile, the new juvenile policy. Am
14 I correct that in circumstances where you, where you
15 ask consent from a parent or guardian that consent is
16 denied, that you may still use the
17 ~~abandoment~~abandonment technique to procure that
18 child's DNA?

19 DIRECTOR BARROWS: So in those
20 situations, which can be pretty dynamic, I think
21 there's two things that we have to be cognizant
22 about. I ~~wouldn't~~wouldn't just view as, you know, if
23 we don't get consent that means we're gonna pick up
24 an ~~abandoment~~abandonment. But I think what we need
25 to be cognizant of is I think it's always our best

2 showing, particularly in, in a case that, that, that,
3 um, where there's gonna be an arrest made and
4 prosecution that, you know, we went through a process
5 of notifying parents, getting parents there, parents
6 having an opportunity to object. But at the same
7 time we may have some investigations where obviously
8 the crimes are very serious, there's a, there's a
9 victim behind that crime and the investigator may not
10 see another opportunity where we can take DNA again
11 in those cases and I think in those kind of limited
12 circumstances, ah, an ~~abandoment~~abandonment sample
13 may be on the table, yes.

14 CHAIRPERSON LANCMAN: Well, first of all,
15 that strikes me and I think most people as very
16 strange that you would seek consent, be denied
17 consent, and then do it anyway, even if it's a small
18 number of circumstances. That seem to defeat the
19 purpose of consent. But I would also wonder if, if
20 you have the, the child, if you're able to get the
21 parents or guardian to come and consent or not
22 consent the child, where are they going to go that
23 you wouldn't be able in those circumstances to go, to
24 get a court order, a warrant, to, to, to take that
25 sample even where the parent or guardian objects.

2 Those, those don't seem like people who are likely
3 to, to flee the country.

4 DIRECTOR BARROWS: So I think, I think
5 what we have to do is look at really the discretion
6 of the investigator. Um, you know, in a lot of cases
7 I think we have to lean on their ability to build
8 rapport with the subjects and to, ah, be able to
9 obtain a consent sample in those cases. But, like I
10 said, there may be opportunities where we don't have,
11 you know, any other chance to get the DNA. In that
12 case, if we can get it through ~~abandoment~~abandonment
13 we will. There may be opportunities, too, where it's
14 possible we could get a court-ordered sample in those
15 cases, but, um, I think we're gonna look at whatever
16 legal tool we have available to, to get that DNA.

17 CHAIRPERSON LANCMAN: Well, let me
18 conclude by saying insofar as the juvenile consent
19 policy is aimed at establishing trust and building
20 rapport with communities, ah, a policy that still
21 allows you to procure a child's DNA after being
22 expressly denied the consent of the parent or
23 guarding after having asked for that parent or
24 guardian's consent is not the way to do it.

2 COMMISSIONER CHERNYAVSKY: I understand
3 the point, but, again, I, I think what it ultimately
4 boils down to, and I think we've, it's sort of been a
5 recurring theme today is we can't forget about the
6 victim of the crime and in those particular cases the
7 may be a situation where collecting that DNA is the
8 only method available. It's a legal method. It's a
9 method upheld by the courts, and ultimately we need
10 to exercise every legally available tool to solve
11 that crime to bring justice to the victim. Now, to
12 the extent that you explain if a court order is
13 available, if consent with the parents is available,
14 that's great, and I think what you'll see is a lot, a
15 lot of those cases, that's how it ultimately plays
16 out. But there are there gonna be cases where we
17 will use other legally available tools because the
18 end goal is the right goal. The end goal is not to
19 randomly take a juvenile's sample. The end goal is to
20 solve a serious crime because, as, as we've testified
21 here under the policy the types of crimes that we're
22 collecting juvenile samples from are a very
23 ~~limited~~limited number of crimes that are all pretty
24 severe crimes. A lot of them are sex crimes and
25 ultimately we need to bring justice to a sex crime

2 victim and we have a legally available tool to
3 connect, to collect viable real evidence we need to
4 exercise that avenue.

5 CHAIRPERSON LANCMAN: Yep. I, I want to
6 just...

7 CHIEF CHERNYAVSKY: And your point is
8 taken.

9 CHAIRPERSON LANCMAN: I want to just
10 remind you, because you seem to forget, that every
11 victim of a crime in New York City is some council
12 member's constituent. We care about them deeply.
13 That's why we provide the funding and the resources
14 to the NYPD to do it's job. Um, we also care about
15 the kids who are brought into a police station who
16 are scared and are at risk of having their most
17 intimate personal details stored in a database
18 forever. Ah, we are, represent parents and
19 guardians, uncles, aunts, grandparents who have an
20 ~~expectation~~expectation if the consent is being
21 ~~solicited~~solicited and that if it is withheld that
22 they weren't part of sham process, that their
23 participation or withholding of consent is, is
24 meaningful. So you and I have, in many hearings to,
25 we have our differences. Um, I never would question

2 your commitment to justice or seeking, ah, justice
3 for, for victims. Ah, I think you should not
4 question ours.

5 CHIEF CHERNYAVSKY: I absolutely don't.
6 You know, I often highlight that you do represent the
7 victims of those crimes as well and the approach that
8 we're putting forward is balance. I mean, I think
9 through the years that at least I've done this job,
10 through all of the dozens, if not hundreds, of bills
11 that we've negotiated that were public safety bill,
12 we always aim to strike a balance. We, I don't
13 think, I can't think of many bills that we said
14 categorically no to. We always overlay what are the
15 operational consequences, what are the consequences
16 of victims of crime, and we recognize the need for
17 certain reforms and to create the balance, you know,
18 a fair, equitable process while at the same time
19 providing justice for victims, and I think we are all
20 on the same side of that.

21 CHAIRPERSON LANCMAN: In the circumstance
22 where, um, consent is sought and it's denied, the,
23 the decision to still procure that DNA, does that
24 have to be approved by, by, by, some particular
25

2 supervisory level at the NYPD or that's gonna be the
3 call of the, the, the detective on scene?

4 DIRECTOR KATRANAKIS: It does not require
5 supervisory approval, ah, at this time. It's, it's
6 based on investigative discretion, um, you know,
7 weighing in who this individual is. Some of it is,
8 is on the moment, ~~impromptu~~impromptu. So when
9 you're interacting with an individual, if they become
10 very defensive, um, if they, if they, if they seem to
11 be an individual that you would calculate that may
12 not cooperate, um, then you can make the decision
13 which strategic approach you would take.

14 CHAIRPERSON LANCMAN: No, I mean, I mean,
15 specifically in the circumstance when you ask a
16 parent for consent to get...

17 DIRECTOR KATRANAKIS: Right.

18 CHAIRPERSON LANCMAN: ...DNA from a
19 juvenile and the parent says no. And then you're
20 going to still, in some circumstances, try to get
21 that DNA.

22 DIRECTOR KATRANAKIS: So, so
23 [inaudible]...

24 CHAIRPERSON LANCMAN: [inaudible] call of
25 the, the, the, is that just gonna be the call of the,

2 the detective on the scene or does she/he have to go
3 up the ladder to get approval for that?

4 CHIEF HARRISON: So just real quickly and
5 then we'll pass it back over to Manny. Um, we, we
6 have to do a stronger evaluation and I, I agree. Um,
7 we have to take a look at um, what's the process. Is
8 there supervisor approval is one question. Um, how
9 often is it done? Should we get a court order or do
10 we have, do we have time to, ah, time to work for
11 that, for that court order? Should we get it done
12 right away through ~~abandement~~abandonment? So this,
13 once again, this is a, this is a great job of us
14 taking a look at ourselves and doing a better review.
15 Once again, we'll do a better job of documentating
16 regarding why we do certain things going into the
17 future. But I just want to pass it over to Chief
18 Katranakis, because I think it's important that he
19 talks about an individual case where we had to do
20 what we do with an ~~abandement~~abandonment and we had
21 to get something in an expeditious manner, and we
22 couldn't wait for the court order. So if, if you
23 don't mind, just, I just two minutes of your time, if
24 that's OK.

2 DIRECTOR KATRANAKIS: So, so, I hear the,
3 you know, the line of inquiry and it's very generic,
4 um, the way that you're describing, which I
5 appreciate very much, by the way, and you open up
6 doors in, in my perspective and the way I look at
7 things and thinking these things through, um, which I
8 haven't walked through before. So I want to thank
9 you for that. Um, the whole context of using
10 children, um, these are, these, the juveniles that we
11 look at, um, um, children, specifically cases that
12 were cited, which it seems like you're, you're
13 referring to a specific case that you may have read
14 about involving a 13-year-old.

15 CHAIRPERSON LANCMAN: I'm not.

16 DIRECTOR KATRANAKIS: Oh, you're not, OK,
17 I'm sorry, OK.

18 CHAIRPERSON LANCMAN: [inaudible].

19 DIRECTOR KATRANAKIS: OK, so this,
20 this...

21 CHAIRPERSON LANCMAN: I'm, I'm not.

22 DIRECTOR KATRANAKIS: ...so this was a
23 case that appeared, um, ah, in, in several of, ah,
24 ~~newspaper~~newspaper publishing where, um, without
25 getting into of the detail, um, I, I think it was

2 extremely, um, biased and mischaracterized the facts
3 and circumstances in the investigation. It involved
4 a 13-year-old, um, where an ~~abandonment~~abandonment
5 sample was collected from that 13-year-old. Um, and
6 it stated several things. The first thing is that,
7 um, that the, ah, the parent wasn't aware of it. Of
8 course the parent wasn't aware of it because that is
9 the process when we collect ~~abandonment~~abandonment
10 samples, right? Um, we, we don't broadcast that
11 we're collecting the ~~abandonment~~abandonment sample.
12 That's a part of the technique, right? Ah, the
13 second element, um, is, is, is the very fact that
14 the, the 13-year-old's parent was very concerned
15 about the stigma since he was cleared of wrongdoing.
16 So let me get past the cleared of wrongdoing. Um, we
17 don't, we don't believe that, ah, this individual,
18 ah, it was cleared of wrongdoing, the 13-year-old.
19 Um, he anally sodomized a 5-year-old boy and we have
20 a lot of evidence to suggest that that in fact
21 occurred. That didn't appear in the paper. And we
22 had our duty to the 5-year-old and we're concerned
23 about the 5-year-old's parents and how do they feel,
24 and how are they gonna deal with their child, for
25 that child's life, that remains dealing with this

2 emotional trauma of being sodomized and being
3 sexually assaulted. That wasn't described. So I
4 think we acted diligently, the parent was present
5 during the interview. We took the opportunity to
6 collect an ~~abandoment~~abandonment sample, which was a
7 straw. There was a sexual assault kitchen acquired a
8 hospital for the 5-year-old boy, and then was DNA
9 developed which was compared from that exemplar. All
10 of that is untold in the median and in the newspaper.
11 Here I think we acted not only appropriately but in a
12 commendable way as far as investigations are
13 concerned. So when you talk about children,
14 children, children we're talking about a 13-year-old
15 that anally solodized, sodomized, another 5-year-old
16 boy. And it's, it's very important that, that you
17 take that away as far as the truth and the law
18 enforcement perspective.

19 CHAIRPERSON LANCMAN: I'm, I'm not
20 familiar with that case or the back and forth,
21 etcetera. Um, but I think you, you do, what you're
22 saying illustrates something and that is, from my
23 perspective, that was a 13-year-old. There are so
24 many examples where a 13-year-old, 11-year-old, a 15-
25 year-old commits horrendous acts of, of violence.

2 The violence level, the, the harm that they've done,
3 is not what dictates how that 13-year-old or how that
4 kid should be, should treated, the rights that they
5 have, um, the processes that they should be subjected
6 to. That's the essence of believing, as I do and as
7 the law requires in most circumstances that kids be
8 treated differently than adults. So I don't, I don't
9 know the circumstances there. But if, if that 13-
10 year-old's rights were violated in some way, and I
11 don't know that they are, but if they were it doesn't
12 matter that what he's accused of doing is monstrous.
13 What, what drives how we treat young people is, is
14 that they're a young person. And I think that might
15 just be a divide between us.

16 COMMISSIONER CHERNYAVSKY: I think, I
17 think to your point, I, I don't think what the
18 chief's, the point of the chief's story was to
19 advocate for violation of a 13-year-old accused's
20 rights. I think the point was that...

21 CHAIRPERSON LANCMAN: Oh, OK.

22 COMMISSIONER CHERNYAVSKY: ...we are
23 obligated to follow every lead and use every legally
24 available tool to bring justice to the 5-year-old. I
25 think that's the point. We're, we're not advocating

2 for violating an accused's rights. We're advocating
3 for comprehensively using every available tool to
4 bring justice to the victim.

5 CHAIRPERSON LANCMAN: Not to belabor the
6 point or beat the horse completely to death, but that
7 sentence needs to conclude while preserving the
8 rights of the accused.

9 CHIEF CHERNYAVSKY: And I actually
10 started off by saying that, but I'm will to repeat it
11 at the end as well.

12 CHAIRPERSON LANCMAN: OK. Thank you.
13 That's all I've got.

14 CHAIRPERSON RICHARDS: It's called
15 innocent till proven guilty. I want to thank you,
16 Chief Harrison, and I don't question your commitment,
17 um, to making it department better, and, I want to
18 you to notice it was your first hearing, um, we want
19 to work very closely with you, um, because you're an
20 individual I've worked with for a number of years and
21 I know where your heart is at. Um, so, system
22 unfortunately that you've, that your now in charge of
23 has been in place for decades and, you know, we want
24 to work with you. I mean, we trust, but we verify.
25 Um, and unfortunately as much as we like you we've

2 got to hold you accountable now that you are there as
3 well. So I appreciate your statements today, um, I
4 appreciate you holding their arms back a little bit
5 and saying, you know what, I'm in charge of this and
6 I'm going take more ownership of it. Um, so we look
7 forward to working with you on this. We want to
8 avoid genetic stop and frisk. That's just the bottom
9 line. That's why we're here today. And if we don't
10 get a hold on these things, um, unfortunately before
11 your time, you know, we see things get out of
12 control. And that's what, and they technically are
13 here, it's the wild, wild west with this database as
14 we've seen with all of the different databases. So
15 we're looking for fairness. Of course we want
16 justice for victims and you can't question this
17 committee because we're the ones who pushed the NYPD
18 on the improvements for the SVD unit. It wasn't done
19 voluntarily. If it was done voluntarily we wouldn't
20 have been here having a hearing two years ago on it.
21 Um, so, it's no different here where we think things
22 can be better. We're gonna not be shy about speaking
23 about it and I think at the end of the day this
24 conversation, all we're trying to do is get to the
25 same place the NYPD is trying to get to. We're

2 trying to build real trust with the community. You
3 can't reduce crime. We could have all these debates
4 on bail reform and all of these things all we want.
5 But the bottom line is as long as the communities
6 that you serve can't trust you because you showed up
7 at their door, the same people you would need to turn
8 to for information, will never give you information
9 once you knocked on their door and took their DNA.
10 You've cut that line of communication off and do you
11 not think that just because they live in a poor
12 community that they didn't sit around a table with
13 their kids or their wives or their girlfriends and
14 talk about this. So this, it transcends just
15 swabbing DNA. It breaks down the trust that
16 Commissioner Shea and everybody speaks about trying
17 to achieve, and then, yes, in certain precincts where
18 these things occur we wonder why we can't reduce the
19 crime rate system. So let's continue to work
20 together, um, but I appreciate you taking some steps
21 forward, and I don't want to negate that. I don't
22 want take you away from that. I will always say that
23 you can do more, and we will continue to say that,
24 um, because I think we can, too. I think we can all

2 do better. So thank you, thank you for coming out,
3 look forward to working together. Thank you.

4 CHIEF HARRISON: Thank you, Mr. Chair.

5 CHAIRPERSON RICHARDS: OK, the next
6 panel, Terry Rosenblatt, DNA Unit, Legal Aid Society,
7 Shamari Ward, the Legal Aid Society, Ann Oradeko,
8 Legal Aid Society, Racial Justice Unit, Sarah Chu,
9 Innocence Project, Lee Roland, New York Civil
10 Liberties unit. I'll say that again. Terry
11 Rosenblatt, DNA Unit, Legal Aid Society, Shamari
12 Word, the Legal Aid Society, Anna Oradeko, the Legal
13 Aid Society, Racial Justice Unit, Sarah Chu,
14 Innocence Project, Lee Roland, New York Civil
15 Liberties Union. You may begin. Ah, press your
16 button.

17 TERRY ROSENBLATT: Here we good. Good
18 afternoon. My name is Terry Rosenblatt and I'm the
19 supervising attorney of the DNA unit at the Legal Aid
20 Society. So I want to thank you, Chair Richards,
21 Chair Lancman, and the members of the Committee on
22 Public Safety and Justice System for holding this
23 hearing on the NYPD and OCME's vast unregulated and
24 racially biased DNA collection and storage methods.
25 And so there's been a lot of testimony today, um,

2 about the legal intricacies of DNA indexing and
3 collection, and that's important, to be sure. But
4 let's not forget what we're really talking about
5 here, whether it is acceptable for the police to
6 coerce or steal genetic samples from the bodies of
7 thousands of mostly black and brown men and boys and
8 store those samples in an unregulated databank
9 forever. And what we're really talking about whether
10 it's acceptable to do this while at the same time
11 almost every single police officer taking those
12 samples refuses to provide their own DNA to the city.
13 Even though they're collecting DNA from people and
14 regularly handling evidence. And so none of that is
15 acceptable. And what's happened today is that the
16 NYPD and the OCME have come here and they have
17 suggested that instead of real regulation and real
18 oversight they should set for themselves some weak
19 self-imposed limits on power that they don't possess
20 in the first place. To the written testimony that I
21 submitted with my colleagues from Legal Aid, juvenile
22 rights and racial justice unit, um, who are here and
23 they'll give comments, also describe in depth what is
24 wrong with the NYPD and OCME's cynical plan. I want
25 to touch here on a few issues. Surreptitious

2 collection, the dangers of an unregulated DNA
3 identification index. And some of the false and
4 fear-mongering claims that the police have made that
5 this index is somehow a crime-solving tool so
6 necessary that it can exist wholly outside the law.
7 And you know, I want to start by just sort of
8 pointing out that there were a lot of really
9 excellent question that the council had for the
10 police and for OCME that you think they would have
11 come prepared with today. You would think that
12 knowing what this hearing was about they would have
13 been able to tell you how many local-only DNA hits
14 there were. You would think that knowing the
15 concerns that council has they would have been able
16 to tell you the racial, ethnic, age, gender
17 composition of that databank. And you would think
18 that they would be able to tell with specificity how
19 many people are in there who have never been charged
20 or convicted of a crime and I think the fact that we
21 didn't get any of that real data today is telling and
22 disturbing. And so particularly troubling is that
23 the NYPD came in and talked about how they want a new
24 and progressive and community-minded plan, but
25 suggest no limitations at all on surreptitious DNA

2 collection. And that word is important, right? It's
3 not ~~abandoned~~abandoned DNA. This is police-
4 orchestrated, precinct-based, surreptitious
5 collection that the police want to continue without
6 any limitation at all. Their contention that this
7 practice is lawful is frightening. And if it's true
8 that means that they can collect DNA from any one of
9 us at any time for any reason. And from our
10 children. And I know like everyone in this room,
11 right, like everyone who walks into One Police Plaza
12 has this little like chill or it's a joke or it's
13 something, it's like we better not leave our water
14 around. How crazy is it that we feel that way about
15 the police? How crazy is it that we feel like we
16 can't drink a glass of water in front of a police
17 officer. So, you know, I was going to go into a
18 little more detail about how the procedure of
19 surreptitious collection actually plays out, but,
20 but, Council Member Lancman I think you nailed it.
21 Um, that is what we see. Taking someone in to a
22 room in handcuffs and putting a bottle of water in
23 front of them, often when they have been in custody
24 for hours and are thirsty, and then leading them out
25 in handcuffs and not allowing them to take that water

2 bottle with them, we see that on video every single
3 day in all five boroughs in New York City. That is
4 not abandoned DNA. That is police-orchestrated,
5 precinct-based, surreptitious collection. And...

6 CHAIRPERSON RICHARDS: Keep going.

7 TERRY ROSENBLATT: Could I keep going?

8 All right, 'cause I'm gonna.

9 CHAIRPERSON RICHARDS: Till you want to
10 stop.

11 TERRY ROSENBLATT: So, so look. Why is
12 this happening, right? It's happening because there
13 is a DNA index to fill. Surreptitious collection is
14 not what the police describe as some limited police
15 tactic that is only used when it's really needed. We
16 see regularly samples collected from clients, and
17 yes, minor misdemeanors, like turnstile jumps, and in
18 fact cases where there has been no charge at all in
19 the quote unquote gang investigations or housing
20 project sweeps. And we see DNA taken from people
21 whose cases are dismissed by the prosecutor before
22 arraignment, um, and who are, who ultimately resolve
23 their cases with acquittals or with their cases
24 dismissed entirely. And so what's happening is not
25 that these are real leads, except to the extent that

2 what we know from stop and frisk is that what the
3 NYPD considers leads or suspects are people who are
4 young, black, and male. Because if that's what
5 they're considering suspects then yes, that's who
6 they're collecting DNA from. Then it makes sense.
7 But what they're doing is filling a DNA index and
8 this DNA index is completely unauthorized by any law.
9 Um, my colleague, who is going to speak on the next
10 panel from Bronx Defenders I think will describe more
11 how this violates state law, but I will point out
12 that even the man who created the technology for this
13 databank is disturbed by it, right? Dr. Baum and his
14 testimony before council, um, his written testimony
15 and in an interview with the *Daily News* said that the
16 OCME DNA databank was never intended to capture such
17 huge numbers of people and that in fact this local
18 index is isn't even necessary. And so what's
19 happening now is that there is a broad, secrete,
20 unregulated DNA collection problem in New York. And
21 the police say, look, there's only 32,000 samples,
22 but let's think about how that's growing each year.
23 We know that they are adding hundreds of samples each
24 month. We know that collection has risen
25 exponentially in the last five years. And

2 so to say oh, we only have 32,000 now. Well,
3 remember when we were here in 2017? There were 30%
4 fewer than that. And in 2017 the police said, wait,
5 we're only doing this for suspects. We're not
6 collecting from everyone. And what's happened
7 between now and then? Between now and then we had
8 the Howard Beach dragnet and I don't think that
9 anyone thinks that was not a dragnet. It was. We
10 have juvenile surreptitious collection that the NYPD
11 says that they will do whenever they want. Even if
12 mom and dad say no. And so we are growing this
13 database. We're growing it exponentially. And what
14 is suggested as a so-called limitation on it is this
15 off-ramp. When I hear this described as an off-ramp
16 it reminds me of, um, when you get off the FDR and
17 you get on the service road. But like that's like
18 long and it's full of traffic and you're never
19 actually getting off. It's the same as being on the
20 highway. And that's what's happening here. There is
21 no actual off-ramp. A two-year review is a
22 meaningless review. How is that done? Who audits
23 that? What accountability is there? Because
24 remember this is the same police department that for
25 years kept an illegal database of juvenile

2 fingerprints even though the law clearly told them to
3 stop. And what does it mean to have a self-set
4 policy? What it means is that they're avoiding any
5 real oversight. They're avoiding any regulation from
6 the council. They're avoiding any legislation. And
7 they can change their minds whenever they want. So
8 in 2017 when we were here, Dr. Sampson from the OCME
9 said that if any attorney for a suspect who is the
10 database comes to us and says that we should expunge
11 a DNA profile we will. That not only never happened,
12 but now there's a different written policy, which is
13 that you need a court order and now apparently you
14 need a court order plus permission from the NYPD.
15 This is a moving target and to say that it's
16 acceptable for the police to create their own
17 regulations that don't even really seem to go into
18 effect for another two years doesn't do the people
19 who have been subject to genetic stop and frisk any
20 justice at all. The other point that I want to make
21 and, and I think some of my colleagues are going to
22 make this as well. The idea that you have nothing to
23 worry about in an unregulated DNA index is simply
24 wrong. I'd like the police to ask Terrell Gills if
25 there's any problem with being in a DNA index. Mr.

2 Gills was arrested and prosecuted for a robbery of a
3 Dunkin' Donuts that he did not commit, because a
4 couple of his skin cells were found in that Dunkin'
5 Donuts. It happens that Mr. Gills was a regular
6 patron there, so it was completely innocent for his
7 DNA to be present. But because he was in a database
8 and that matched, that train left the station and he
9 couldn't get out, even though there was a different
10 person on video committing the crime. Even though
11 that different person had actually been, ah, had
12 pleaded guilty to two of the exact same pattern of
13 Dunkin' Donuts robberies weeks before. But Mr. Gills
14 had to go all the way to trial and thank God he was
15 acquitted because that DNA matched. And the same
16 thing for Lucas Anderson, who was wrongly accused of
17 a murder and would have been subject to the death
18 penalty in California because of DNA left at a crime,
19 even though he was innocent. And Darrell Harris, who
20 was wrongly accused by our own lab, by OCME's DNA
21 index because the lab had contaminated a sample. So
22 to say there is no risk is wrong. And to say that
23 there is no risk for the future where DNA technology
24 is getting more and more sophisticated, and as Dr.
25 Baum even said, has the ability to look people's

2 physical traits, psychological traits, and
3 potentially racial and ethnic backgrounds through
4 their DNA. If we have children of 12 and 13 in an
5 unregulated database we don't know what can happen to
6 those samples in the future and we can't trust self-
7 regulation to guide that. And so I guess the last
8 thing that I want to say and I thank you for your
9 attention, the, the last thing that I want to say is
10 that the NYPD came in here and did today a lot of
11 what they do every time our community members and
12 people affected rise up and demand basic fairness and
13 human rights, right? They, they result to fear-
14 mongering and weird numbers. And that's what we
15 heard today. The OCME DNA index chills cooperation
16 with law enforcement. Surreptitious collection makes
17 people unlikely to come as victims or witnesses, and
18 that's why the Downstate Coalition says that they are
19 concerned about what's happening here. And the
20 numbers that they suggest, like the fact that there
21 have been 1550 hits, are completely misleading. That
22 is not the number of cold hits to the local index.
23 They admitted that. We don't know what number that
24 is. But that's what they do when people rise up and
25 when there's a risk of real transparency,

2 accountability, and oversight, which is what we ask
3 this council to do. We ask this council to ban
4 surreptitious DNA collection. We ask this council to
5 ban the city's unregulated local DNA index. We ask
6 this council to require real reporting on who is
7 being collected from, how they're being collected
8 from, what they look like, where they live, and
9 whether they're even charged with anything. And we
10 ask this council to continue to hold the police and
11 OCME accountable for what they do in the future and
12 what they've done in the past, and I ask that we not
13 be here again in two years asking for the same thing
14 because we know what's right now and we know that
15 council can do it. Thank you.

16 CHAIRPERSON RICHARDS: Thank you, thank
17 you for your testimony.

18 SHAMARI WARD: Good afternoon. My name
19 is Shamari Ward. I am an attorney at the Legal Aid
20 Society, Legal Aid Society's juvenile rights
21 practice. We represent the majority of children who
22 are arrested and prosecuted in family court with
23 juvenile ~~delinquency~~delinquency, ah, with
24 approximately 1500 children each year. We thank
25 Chair Richards as well as the Committee on Public

2 Safety for organizing today's hearing. Um, I will
3 not read our full testimony, but encourage the
4 council to read it, and I thank, ah, Councilman
5 Lancman for reading portions of it. We are extremely
6 concerned about the NYPD's DNA collection and the
7 OCME's indexing of New York City's most vulnerable
8 youth. I will first discuss OCME's index and then
9 the NYPD's collection practices. First off, it's
10 worth nothing that children charged as juvenile
11 delinquents can never be included in the lawful state
12 DNA index, as was discussed earlier, ah, because they
13 statutorily they cannot be convicted of crimes. They
14 can only be adjudicated of a crime in family court,
15 which does not constitute a criminal conviction.
16 Since children lawfully are unable to be in the state
17 databank how could the OCME have authority to keep an
18 index of children's DNA in its own databank? It does
19 not have that authority and it must be stopped.
20 NYPD's DNA collection practices from children are
21 similarly unlawful. Under New York State law, as was
22 mentioned earlier, law enforcement must obtain a
23 warrant or a court order before obtaining a DNA
24 sample from any individual. However, the NYPD
25 routinely takes DNA samples from New York City's

2 children as young as 12 years old without a warrant
3 or a court order. Instead, the NYPD coerces consent,
4 ah, to the taking from a parent or guardian or
5 directly from the child his or her self. Not
6 surprisingly, it is relatively easy for a trained
7 NYPD officer to coerce a child to consent. As we all
8 know, and even as the US Supreme Court has
9 acknowledged, children are easily influenced by their
10 environments, they're impulsive, and they have a poor
11 ability to recognize long-term, ah, the long-term
12 consequences of their decisions. As a result,
13 children are most susceptible, as a result children
14 are most susceptible to this invasive NYPD practice.
15 No parents are able to protect the rights of a
16 children when the police are seeking the children's
17 DNA. Parents often have implicit and explicit
18 conflicts of interest with their child. Rather than
19 devising a policy that allows for parental consent
20 before police can take DNA from a child, the NYPD
21 should be required to either seek permission from the
22 testing, from, from the testing, from a court or
23 provide the child with access to and consultation
24 with an attorney before allowing the child to
25 consent, as they did in the Tessa Majors

2 interrogation. Even if a parent or child refuses to
3 give consent the NYPD surreptitiously takes the
4 child's DNA by deliberating giving them a water
5 bottle, for example, as discussed earlier, and then
6 forcing them to dispose of it inside the precinct, an
7 environment that the child obviously does not
8 control. And they do this taking and testing
9 without even alerting the child, parent, or guardian.
10 We have seen this exact practice on video, a video of
11 our clients. One example is when the NYPD
12 interrogated a 15-year-old client of the Legal Aid
13 Society's juvenile rights practice at a local
14 precinct. They were investigating an alleged firearm
15 possession. The officers questioned the client and
16 he is seen on video continually asserting his
17 innocence. The officers asked the young person
18 directly for a DNA sample. The young person
19 declined. The young person's mother is in the room,
20 but the officers never ask for her consent. The
21 officers give the young person a bottle of water.
22 The young person is seen on the video opening the
23 bottle of water and leaving the interrogation room
24 with the bottle of water shortly thereafter. For
25 context, we later learned through discovery in the

2 case that the NYPD catalogued the 15-year-old's water
3 bottle seen in the video, likely to sample the
4 clients, our client's DNA for future comparison with
5 the crime scene evidence, ah, unrelated to the crime
6 they were investigating. And this happens far more
7 routinely than the NYPD, ah, sat up here and
8 testified to. The NYPD, in fact confuses a, a purely
9 abandoned sample with a sample taken as a result of
10 NYPD orchestration, as my colleague, Ms. Rosenblatt,
11 says. As you know, the NYPD has announced new
12 policies to voluntarily reform its practices.
13 However these policies must be rejected because they
14 will provide no additional protection for children.
15 And as Council Member Richards aptly pointed out, it
16 is a half-baked policy, or they are half-baked
17 policies. The NYPD says they will only collect DNA
18 from children when investigating felonies, sex
19 crimes, firearms, ah, firearm crimes, and hate crimes
20 unless they get permission from a supervisor, but
21 this simply is not a restriction on the NYPD's
22 collecting practices. It also still allows the NYPD
23 to ask a children to consent, not a parent to
24 consent, and not get a court order. The NYPD says
25 they will expunge from the database most of those who

2 are not convicted after two years, but no one should
3 have to wait two years to have their DNA removed when
4 it shouldn't be in there in the first place. Again,
5 this is a rogue database. And certainly when, and
6 certainly children who cannot ever be convicted
7 should be excluded. Finally, no one will ever know
8 if in fact NYPD even complies with this new policy,
9 because it is, again, a self-regulating policy.
10 Further, the NYPD's proposal, ah, to make expungement
11 easier because no court order would be required,
12 fails to address all youth whose cases are adjusted
13 or diverted before being sent to court. These youth
14 never know their DNA has been taken, are never
15 assigned a lawyer, and would certainly have no way of
16 knowing how to get their DNA removed from the index.
17 And it should be noted, as, ah, my colleague, Ms.
18 Rosenblatt said, that this is the same situation that
19 happened with the fingerprinting, that, that after
20 years of investigation and advocacy by the Legal Aid
21 Society we learned that the NYPD had retained
22 juvenile delinquency fingerprints for decades, in
23 violation of state law. They initially denied this
24 practice, until confronted with evidence they could
25 no longer deny it. Ultimately the purge, ah, sorry,

2 ultimately they purged thousands of juvenile prints.

3 This is the same practice that they conducted with

4 stop and frisk. It wasn't until they were confronted

5 with evidence and went through an entire litigation

6 battle did they even start to address the issue, and

7 this, on this issue and the DNA collection issue

8 they've had enough, that the council has had enough

9 evidence to find ways to stop the NYPD from

10 conducting this practice. In fact, we call on City

11 Council to rid the city of the OCME's rogue DNA index

12 of black and brown youth of color and to properly

13 regulate the NYPD's collection of DNA from children.

14 We thank you for working to address these important

15 issues and we're happy to answer any questions

16 regarding this testimony.

17 CHAIRPERSON RICHARDS: Thank you.

18 ANN ORDACO: Thank you. Good afternoon.

19 My name is Ann Ordaco. I'm the supervising attorney

20 of the racial justice unit at the Legal Aid Society.

21 The work that I do at the racial justice unit. The

22 work that I do at the racial justice unit, um, with

23 the Legal Aid Society is to focus and frame our work

24 as we support communities, essentially mostly

25 communities of color in New York City, um, to have a

2 racial justice frame and to center that lens as we
3 practice law and as we advocate on behalf of
4 communities, um, in New York. I would like to thank,
5 um, Council Member Richards for giving us this
6 opportunity to further investigate the NYPD's
7 practice of essentially stealing DNA information from
8 communities of color, and the reason why I say
9 communities of color, although the NYPD made it very
10 clear that they had no intent of sharing the
11 demographic, ah, data as to who was in the index in
12 the city. We know the NYPD. The NYPD is a habitual,
13 um, a habitual organization that consistently goes
14 after communities of color. We've seen this in
15 Floyd, we've seen this in, um, the gang database that
16 we are yet to get any official from them on and we
17 see this in the way that they practice in the
18 communities we serve. The NYPD came in today and
19 made it a point to not answer any questions that the
20 council had regarding who is in their DNA index with
21 the OCME. They made it a point to essentially skirt
22 the issue because they know that if we were able to
23 see the hard numbers of who's represented in that
24 index it would be appalling to vast majority of
25 people in New York City, although they're trying to

2 avoid accountability in this, what we do know are the
3 facts on the ground. We know that the NYPD committed
4 a dragnet where they took over 300 black men's DNA
5 sampled and put it in their index. We know that the
6 NYPD on average every year arrest upwards of 82% of,
7 the NYPD arrests, all of their arrest are mostly of
8 black and Latinx people. 82% of all arrests in this
9 city is of black and Latinx people. Those are the
10 numbers. Those numbers will be reflected in the DNA
11 data index. They refuse to share that information.
12 However, we are able to make an educated guess as to
13 who is represented in that. And the reason why it's
14 important to name which communities are most likely
15 to have their DNA information stolen is not just
16 because it's unfair, it's unjust. It's because it's
17 immoral that we allow genetic information to be taken
18 from communities of color. Communities that have
19 historically been stripped of their abilities to have
20 familial bonds maintained in this nation. The NYPD
21 now has the technology, although they're saying their
22 not using it as of yet to be able to make familial
23 bond, um, genetic linkage, to be able to solve
24 crimes. So in this nation where we have a history of
25 sending indigenous children into boarding schools and

2 stripping them of their culture, um, enslaving black
3 Americans and ensuring that their families cannot
4 have the ability to stay connected and selling them
5 as chattel. We have the history that's currently
6 being written in the border, where families are being
7 separated and our nation is saying that we cannot
8 consistently find the children to match them to their
9 parents and their family. We are now allowing for
10 this city, for the NYPD to be using genetic
11 information of people who consistently have been
12 stripped of the ability to maintain their own
13 familial ties, to be able to quote unquote solve
14 crimes with that information. We should all be
15 appalled by that. It is a perverse use of technology
16 and it is a disgusting way to treat our communities
17 of color 'cause we know that this is not happening on
18 the Upper East Side. We know that this is not
19 happening in communities that are affluent and are
20 white. This is happening in predominantly black and
21 Latinx poor communities. I also want to address the
22 way that I believe it was Mr. Barrows stated on, as
23 he was testifying here that the reason why they don't
24 discard, um, DNA samples from people who might not
25 have committed any crimes or been convicted of a

2 crime and were a no-hit is because criminality is not
3 a no-hit thing. Essentially he was stating to the
4 council that these communities, these members of this
5 communities are criminals. They should be in
6 expectation that some point, even if an individual
7 did not commit a crime and has not been convicted of
8 a crime has a no-hit on the case that they're trying
9 to solve probably will eventually commit a crime and
10 they need that DNA in their index to be able to go
11 back and be able to trace it and link it in the
12 future. They're saying my community, I'm a black
13 woman in this country is a criminal community. We
14 should all be concerned and disgusted by that. I ask
15 the council to not only rear in this rogue DNA data
16 index. I ask the council to strongly consider
17 abolishing it. There is no reason for the city to
18 have an index that has 75% already matching linkage
19 with the state index. There is no reason even if
20 they state 25% of people are pre-conviction. There
21 is no reason for those people who are pre-conviction
22 who have no reason to be in any DNA database should
23 be kept in there. Thank you for your time.

24 CHAIRPERSON RICHARDS: Thank you.

2 UNIDENTIFIED: Afraid to drink the water
3 here. Um, hi, Chair Richards, Chair Lancman, and
4 honorable members of Committees on Public Safety and
5 the Justice System. Thank you so much for holding
6 this hearing today on this very urgent. Twenty-years
7 from the creation of the, ah, of the unregulated
8 municipal DNA database we're finally seeing some
9 traction on oversight. So imagine you're a witness
10 to a crime. An innocent person, a victim of crime,
11 police have taken your cell phone and downloaded its
12 contents. Each time a crime occurs your cell phone
13 life is recalled for comparison. Um, consider all
14 the pieces of information that could be taken out of
15 context, the text, the pictures that you would rather
16 keep private, completely out of your control. Now
17 instead of your cell phone, imagine that the police
18 have your DNA, which holds the key to your identity,
19 your health information, and your ancestry. It can
20 be used to mine your relationship with your children,
21 your parents, and your relatives. It can be used to
22 screen for the latest gene that someone hypothesize,
23 ah, codes for criminal behavior or some outcome that
24 is out of your control. Imagine all that information
25 in the hands of investigators without any limits for

2 what they can do, so you, the witness, the innocent,
3 or the victim, can you imagine having to, how you can
4 fight to have your DNA taken out of this database
5 when there isn't a method to do that. This scenario
6 isn't some far-off hypothetical. This is present-day
7 reality in New York City. The Innocence Project
8 exonerates the wrongly convicted and our innocent
9 clients have everything to gain from DNA databases.
10 But because unregulated DNA databases jeopardize the
11 innocent, unfairly subject communities of color and
12 the poor to uncontrolled genetic surveillance, we
13 call for New York City to, one, dismantle the
14 unregulated database; two, expunge any DNA resources
15 that are ineligible for the state regulated database,
16 and three, urge the council to take action to ensure
17 that future use of all forensic DNA profiles adheres
18 to the state law. While we appreciate NYPD's efforts
19 to improve DNA policies, it obfuscates the fact that
20 everything they proposed today is still conditioned
21 on keeping their unregulated DNA database. The newly
22 introduced consent form holds little value if it's
23 offered under coerced conditions or without the
24 presence of council. The collection of DNA from
25 children, and yes, they are children, limits the

2 practice to a defined set of crimes and requires
3 consent of a child and parental notification. The
4 American Academy of Child and Adolescent Psychiatry
5 issued a 2013 policy recommending that children not
6 make decisions without counsel and states that
7 parents are not the same lawyers and do not have the
8 capacity to protect their children. And lastly NYPD
9 proposes an expungement process for innocent people.
10 Expungements should be automatic. The innocent
11 person should not be placed, should not have any
12 further burden placed on them and certainly if we can
13 have gang databases we can have, we must have the
14 technology to be able to automatically expunge
15 innocent people. But neither the NYPD nor the DA
16 office is free of conflict and they can hold up
17 expungement even if a person hasn't been charged in a
18 crime, if a crime is, if a case is part of an ongoing
19 investigation or is in ligation. NYPD has touted how
20 its unregulated database is so essential to solving
21 crime, but we've learned from an internal OCME report
22 that forensic biologists estimate that 90% of cases
23 are processed through warm hits. Now, today they sad
24 that about 50% of their internal database, um, was,
25 ah, were cold hits, but the internal OCME report says

2 that 90% of the time cases are solved with a suspect.

3 Only 10% of cases are cold hits, the kind of cases

4 that require a database. The other issue today that

5 I've been trying to wrestle with is why there is that

6 75% overlap, that the council members have raised

7 over and over again, and a line of questioning that

8 you may be able to help us understand is what the

9 defined criteria are for searches in the internal

10 database. These one potential reason for keeping

11 those, um, those 75% in the internal database or the

12 unregulated database, is because the city may, NYPD

13 and OCME may use less stringent search criteria and

14 so imagine searching instead of 13 or 20 loci you're

15 looking for matches of four or five. Has that

16 happened? We don't know. And that's something that

17 you can help us with. Unregulated databases rupture

18 the social contract that we've established in New

19 York State. In New York State we've said that only

20 conviction of a crime is so egregious that we will

21 take someone's DNA for the reason of public safety

22 without their consent. And we've experienced this

23 collective forgetting of the, the very real, very

24 heavy weight and importance of DNA information. DNA

25 databases are proliferating, and as a result DNA

2 databases may be proliferating in our city.

3 Currently we are aware of only one unregulated
4 municipal DNA database. But the NYPD has declared
5 that it will implement a rapid DNA program that will
6 allow it to create its own internal database that's
7 unregulated and outside of OCME and that is something
8 that I hope that the council continues to
9 investigate. Forensic DNA is a powerful tool and the
10 line between its legitimate and ethical application
11 and its weaponization was once bright and universally
12 visible. But now it's been blurred. People who
13 commit crimes can still be identified. Innocent
14 people can still be freed and public safety can still
15 be achieved through the use of a sanctioned,
16 regulated state DNA database. The Innocence Project
17 urges you to protect the lawful and legitimate use of
18 the people's genetic information and to help us
19 restore our collective memory of the weight and power
20 of this tool. Thank you.

21 CHAIRPERSON RICHARDS: Thank you.

22 LEE ROLAND: Thanks for the shuffle.

23 Good afternoon, I think, yes, very much so. Ah, I'm
24 Lee Roland, policy director at the New York Civil
25 Liberties Union. Um, thank you very much to the

2 committee and to both chairs for holding this
3 hearing. Um, it is unfortunately, ah, more
4 information than we've had about this database
5 functions and it remains nonetheless wildly
6 inadequate. I want to second every word that the
7 four panelists sitting next to me have said and with
8 that said I'll do my best not to repeat anything, ah,
9 that they've already testified to. The City Council
10 theoretically oversees and ensures independent
11 oversight of the NYPD. Ah, but I, I'm grateful for
12 the chairs for beginning this hearing by recognizing
13 that the independent database operated by the OCME is
14 completely outside of a thoughtful state law that was
15 designed precisely to prevent this kind of rogue
16 database from operating. Ah, it's not a secret, it's
17 not new. It's been here for over 20 years and it's
18 been plagued throughout it's entire history. Not
19 only did the architect forswear, you know, of this
20 database forswear how it's now being used. There
21 have been several staffers over the years that have
22 either been forced out or quit in ignominy after, um,
23 tainting samples. Um, in 2017 an in-depth report
24 questioned the source code in the DNA analysis tool,
25 specifically used just by the city medical examiner

2 for artificially inflating DNA matches. Um, and of
3 course we have, I think really shameful incidents
4 likes the Howard Beach dragnet, um, and the
5 surreptitious trickery, particularly on juveniles,
6 which I don't think anyone can listen to and think
7 that's legally, morally, ah, proper in any way. Um,
8 and the city, frankly, has been delinquent, right?
9 This database has existed for 20 years. These
10 questions have plagued it pretty much the entire
11 time. Ah, defenders and civil liberties advocates
12 have told, ah, the council, the public, dogged
13 reporters have unearthed that it is being used
14 outside of the regulated, ah, regimen, that the state
15 database is subject to. It is well past time to
16 eliminate the opportunity for NYPD to use this
17 database. Ah, they, they came here today, gentlemen
18 from the NYPD, and they were unable to answer almost
19 any thoughtful question that would have potentially
20 justified, I don't think it's justifiable, but in a
21 world where it could be justified the actual use of
22 the rogue portion of the database, right? Every
23 question you guys asked, which I really commend you
24 for, went to questions about what is the value of
25 that data, in particular, that doesn't re-duplicate

2 the state database. They were unable to tell you
3 demographic information. The cold hits out of that
4 group, um, you know, the fact that the racial makeup
5 is not there is astounding and it's hard to imagine
6 it's anything but intentional because of how
7 devastating those numbers would be if said out loud.
8 Ah, you know, we heard, ah, the detectives repeatedly
9 say, um, we, we resent talking about Howard Beach as
10 a dragnet, right, and all of us know it's a dragnet.
11 But their definition was well, we didn't just
12 question every single New Yorker, so it wasn't a
13 dragnet. Well, that's correct. It was a racist
14 dragnet. That does not make it not a dragnet, it
15 just means one that was only available to black men
16 in a certain community. I just want to mention a law
17 that, that you in, in your wisdom passed, the Right
18 to Know Act, and a law you should pass, the POST Act,
19 and how they interplay with this DNA database. The
20 council recognized, um, as you did, ah, Mr. Chairman,
21 that the invasive and hostile presence of police in
22 communities impedes good police work. It impedes
23 public safety when that trust is broken down and
24 people do not call the police. And after a shameful
25 era of stop and frisk, for which the city must and

2 should still be atoning, um, the Right to Know Act is
3 a small, ah, effort to recognize that coercive
4 searches, right, that, that even the power of police
5 to ask someone for a search where they have no lawful
6 to obtain whatever they seize absent consent, um,
7 must be documented, must be knowing and voluntary,
8 and because of the NYPD's unique history they
9 actually had to turn on their copious cams, right,
10 body cams, and record, ah, the interaction to make
11 sure that that consent was voluntary and freely
12 given. To the extent that is not happening with
13 every single request for DNA, it is a violation of
14 that act. And to the extent DNA is being collected
15 surreptitiously, which we know it is, it violates
16 that act, um, in the spirit and the text, um, and by
17 the way the NYPD's I think distressing reliance on
18 the abandonment theory speaks volumes. It undermines
19 every other supposed, ah, protection that they now
20 claim they're going to install, and completely
21 undermines this council's, ah, recognition in the
22 Right to Know Act that police should only be seeking
23 consent from people when they mean to honor it and
24 when that consent is voluntary and informed. Um, if
25 I could take 30 more seconds I would just like to add

2 that the POST Act, um, this is the Public Oversight
3 of Surveillance Technology Act, I'm looking at the
4 introduction number for you, I apologize for not
5 having it on hand, um.

6 CHAIRPERSON RICHARDS: [inaudible].

7 LEE ROLAND: Intro 47, for the record,
8 um, is before this body. That, that law would
9 require that surveillance and search policies comply
10 with the law and our constitutional values, right?
11 Which is something worth noting. Um, and when you
12 are taking people's most sensitive private genetic
13 material and warehousing them in an unregulated rogue
14 database it's certainly, at the very least, requires
15 that this body had the basic information to make sure
16 that constitutional rights are not being rampantly
17 violated, and the POST Act is a modest but essential
18 step to ensure that the police give you very basic
19 facts about use policies, and I'll tell why that's
20 important with regard to DNA. We keep throwing
21 around the number 300 when we're talking about, um,
22 the Howard Beach, ah, dragnet. It was 384, um,
23 actual cheek swabs that were taken, and I say that
24 number because that number should matter, right?
25 These guys got an indicator of some genetic material

2 and they made the decision, they made a decision to
3 go ask 384 black men in New York for their most
4 private material. You as the council frankly are in
5 derelection of duty if you don't know whether or not
6 that's proper and whether you haven't said if it's
7 proper. The POST Act would require the police to
8 tell you this is a use protocol. This is when we
9 decide to go search 384 men. Would they have done if
10 it was 3084? Or 38,000? We don't know because there
11 are no limits and the council has provided none. So
12 it's well past time not just to pass the modest, ah,
13 POST Act, but to ban this rogue database, to ban all
14 juvenile collection, and to ban all surreptitious
15 collection because those things actually undermine
16 our public safety and trust in the NYPD. Thank you
17 so much for your time.

18 CHAIRPERSON RICHARDS: Thank you all for
19 your testimony. Thank you. All righty, next panel.
20 Albert Fox Kahn, Clinton Hughes, Brooklyn Defender
21 Services, Emily Prakesh, forensic practice director,
22 Brooklyn Defenders, Brad Mora, New York County
23 Defenders Services.

24 ALBERT FOX KAHN: Should I begin?

2 CHAIRPERSON RICHARDS: You know, you
3 gotta try to check these emails and everything else,
4 and [inaudible]. Ah, yes, you may begin.

5 ALBERT FOX KAHN: Thank you so much for
6 the opportunity to testify. My name is Albert Fox
7 Kahn. I'm the executive director of the Surveillance
8 Technology Oversight Project of the Urban Justice
9 Center. I have submitted extensive written remarks
10 for the record, but I wanted to address some of the
11 topics that have been raised at today's hearing. You
12 know, I was quite alarmed to see the NYPD continue to
13 use the legal fiction that those of who discard a
14 cigarette butt or a can of soda are really giving up
15 the entirety of our genetic privacy. You know, I, I
16 have a water board here today. It's not mine. It
17 was left by one of the prior NYPD speakers. And I do
18 not believe for an instant...

19 CHAIRPERSON RICHARDS: Can you hand that
20 over? [laughter]

21 ALBERT FOX KAHN: I do not believe for an
22 instant that they would feel comfortable...

23 CHAIRPERSON RICHARDS: You shouldn't
24 touch it. [laughter]

2 ALBERT FOX KAHN: ...if I were to take
3 this, take a swab of it and to place that on 23 and
4 Me and to publicize their genetic information on the
5 internet. They know that there is a unique
6 invasiveness to this style of testing, to this sort
7 of surveillance and that is something that they have
8 fundamentally failed to address in relying on the
9 idea that tossing an object means tossing away our
10 genetic privacy. But we kept hearing the idea that
11 this wasn't about another surveillance tool. This
12 was about truth. It was about truth. It, it was
13 somehow different. But we heard a lot of fictions,
14 and one of them was that we could call up the Office
15 of the Chief Medical Examiner and find out if we're
16 in the DNA database. I did just that between one of
17 the panels. I called them up. I told them my name.
18 I asked them if I was in the DNA index and I was told
19 no, we don't get that information to individuals.
20 No, we can't provide you that. You have to speak to
21 the NYPD. We will only provide that information to
22 them. Again, we see this deception about how this
23 index is put together, whose data it's capturing, how
24 it is being retained, all built on this, you know,
25 this deception that somehow it is not an invasion of

2 our most fundamental privacy to keep this
3 information. Innocent people should not have their
4 DNA data retained for two hours, for two days, for
5 two weeks, and certainly not for two years. It is
6 far too little to go through this after, ah, an
7 action process to try to claw back some of the
8 invasion that these dragnets accomplish. But I also
9 want to make sure to address the POST Act, which we
10 heard a bit about already and part of why the POST
11 Act is so key is this is a department that barely
12 begs for forgiveness, let alone asking for
13 permission. So while we may know about this one
14 database today, while we may know about some of the
15 tools they're using, there's nothing in our laws that
16 requires them to give comprehensive disclosures of
17 all the genetic testing tools that they're using in
18 the future. And the only way for this council to
19 know how our genetic privacy is being invaded is by
20 passing the POST Act. It was so gratifying to see,
21 ah, Intro 1847 pass by this committee today. It was
22 introduced two months ago. A hearing was held on it
23 two weeks ago. The POST Act has been waiting for
24 nearly three years for enactment by this council. It
25 was heard by this committee two months ago and so

2 today and so today we are once again calling on the
3 council to have a vote. Nearly two-thirds of the
4 council members already co-sponsored this bill,
5 nearly a veto-proof majority. The speaker would
6 bring us one vote if he were to sign on as well, just
7 one vote away from a veto-proof majority, a bill that
8 he already co-sponsored when it was first introduced
9 in 2017. So we are once again saying that time is of
10 the essence. We must pass the POST Act and gain an
11 understanding of all the ways that the NYPD is
12 turning our own information against us. Because we
13 may know not to toss away water bottles today, but we
14 have no idea what they'll be collecting tomorrow.
15 Thank you.

16 CHAIRPERSON RICHARDS: Thank you.

17 CLINTON HUGHES: Good afternoon,
18 Chairperson Richards. My name is Clinton Hughes.
19 I'm with the Brooklyn Defender Services. I've been a
20 public defender for 23 years and for the last seven
21 years I've been a forensic DNA attorney, assisting
22 other lawyers, ah, in DNA litigation, mainly criminal
23 cases. Ah, BDS, of course, joins our sister
24 organizations, the other defenders, in calling for an
25 abolition of the local rogue database, ah, and for an

2 abolition of surreptitious DNA gathering by the, by
3 the police. Um, I, I just want to mention a couple
4 of things that haven't been mentioned already. It's
5 always Newport cigarettes. The NYPD anticipates that
6 the, ah, the nervous detainee or arrestee would
7 prefer that. So that's part of the design of, ah,
8 surreptitiously gathering DNA, or one, one part of
9 it. Um, I have looked at hundreds and hundreds of
10 OCME files, ah, and in the suspect files, not the
11 evidence files with the gun swabs or the crime scene
12 swabs or, other stuff, but in the suspect files
13 you're gonna see a suffix that says cig, bottle, cup,
14 straw, and anecdotally my experience in the last few
15 years when you're looking at these, 'cause they do it
16 in bulk, so you're gonna look down, it's gonna be
17 cig, cig, cig, bottle, cig, bottle, bottle, cig, cig,
18 cigarette. There has been an in increase in
19 surreptitious. So they're talking about half and
20 half. My anecdotal, ah, experience and my belief is
21 it's ballooning. And when, ah, Council Member
22 Lancman asked Detective, um, I'm sorry, Deputy Chief,
23 ah, Katranakis how many suspect, ah, profiles had
24 been gathered in 2019 he said 6500. So it seems that
25 they're putting their foot on the gas on as well.

2 This database started in 1997 and a fifth of 32,000
3 were gathered in 2019 alone. So it seems that they
4 have really concentrated on warehousing as many
5 profiles as possible. I don't know why, maybe in
6 anticipation of a day like today when they're being
7 called to account. So I ask the council to take that
8 into account as well. Um, I also ask the council to,
9 to, to take note that it's not just the numerical
10 profiles that they developed at the lab. For each of
11 these profiles they have a little plastic vial, a
12 tiny little vial that contains the DNA of every
13 individual that is tested. Now that scares me.
14 Because when executive law 995 was passed back in
15 1994 it was a different technology. We have emerging
16 technologies right now that are not just dealing with
17 a so-called junk DNA, which we know is not as junky
18 as it's, as it's supposed to be because it's
19 connected to other parts of the genome. There are
20 emerging technologies that will cause deeper
21 surveillance into the genetic privacy of each
22 individual and their families, so it's those vials as
23 well, the actual extract that has to be dealt with.
24 It's not just going forward, they've got these
25 warehoused as well. So I ask the council to take

2 into account in terms of expunging those, those, the
3 actual DNA itself so that it's not gone back and,
4 and, ah, and interrogated more by further testing.
5 Um, and that's about it. I don't know why they
6 didn't bring statistics to you. I know the folks at
7 the lab are like baseball stat freaks. They, they
8 keep stats on everything. So I don't know why they
9 didn't bring it to you. But I ask this council to
10 thoroughly investigate this. Hold their feet to the
11 fire. Get the, get the information you need to make
12 the right choice. Thank you very much.

13 CHAIRPERSON RICHARDS: Thank you.

14 EMILY PROKESH: My name is Emily Prokesh
15 and I'm the forensic practice director at the Bronx
16 Defenders. A little bit shorter. Um, the Bronx
17 Defenders applauds the City Council and this
18 committee for holding this timely hearing to bring
19 attention to NYPD's rampant collection of DNA in
20 building out the city's sprawling and unregulated
21 database of New Yorkers' DNA. In particular, this
22 routine collection and storage of DNA samples from
23 people who have been merely arrested and not
24 convicted of any crime, not only skirts existing
25 state law, but also violates people's constitutional

2 and privacy rights and exacerbates racial bias in our
3 criminal legal system. The state legislation
4 carefully constructed a DNA regulatory scheme,
5 governing the circumstances under which DNA may be
6 collected and stored. Through the NYPD and OCME New
7 York City is currently preempting those laws and
8 collecting, storing, and comparing DNA profiles in
9 unauthorized and illegal ways. This is in direct
10 contravention to both the letter and the spirit of
11 the executive law governing DNA collection and
12 storage. New York State lawmakers made a considered
13 choice not to allow DNA to be taken from a person
14 upon arrest, meaning the police cannot simply collect
15 a DNA sample because they have probable cause to
16 arrest someone for a designated crime. And the
17 criminal procedure law expressly authorizes how the
18 prosecution can move to compel a DNA sample from a
19 suspect for direct comparison of that person's DNA to
20 a piece of evidence in a specific case. So absent a
21 warrant there is no authority for collecting and
22 storing someone's DNA merely because they've been
23 arrested for a crime. Despite the fact that the
24 state law prohibits the collection and storage of DNA
25 from people who have not been convicted of a crime

2 without a prior court order, warrant, or consent, it
3 is happening in New York City all the time. The NYPD
4 collects DNA samples from individuals without a
5 warrant, consent, or court order and then through the
6 OCME operates an unauthorized DNA index and rogue
7 database outside the regulatory scheme. In doing so
8 New York City is skirting the very state regulation
9 enacted to authorize and regulate the collection and
10 storage of DNA. New York City cannot preempt this
11 clearly established state law. The state regulatory
12 scheme for DNA collection and storage is binding on
13 the city. This means that the local interest,
14 including those of NYPD and the OCME, must yield to
15 that of the state in regulating DNA collection and
16 storage. The court of appeals has made this very
17 clear, that when the state has created a
18 comprehensive and detailed regulatory scheme with
19 regard to the subject matter, that the local law
20 attempts to regulate, the local interest must yield
21 to that of the state in regulating that field. Yet
22 by continuing to collect and store DNA in
23 contravention of the state law the NYPD and OCME are
24 refusing to yield to the state in regulating this
25 field. So in anticipation of this hearing the NYPD

2 issued a new quote unquote policy on the storage and
3 collection of DNA in a seeming effort to prevent the
4 council from taking action. But this new policy is
5 nothing more than a nonbinding, unenforceable promise
6 that NYPD will contravene the state regulatory scheme
7 in a slightly less egregious way. It does not
8 address the fact that the DNA profiles are being
9 illegally collected in the first place and can still
10 be used in illegal and harmful ways in the two years
11 before NYPD considers removing them. And, of course,
12 there is nothing to ensure that any profiles are
13 actually removed from the local DNA index. The
14 council cannot leave the job of regulating this
15 critical matter of individual privacy, one that has
16 lifelong consequences to the very institution that is
17 disregarding the law. The NYPD and OCME cannot be
18 entrusted with this task because it is at odds with
19 their institutional interests. Their roles in DNA
20 collection and storage is not to safeguard the
21 privacy interests of individuals the way lawmakers
22 are tasked to do. Moreover, the institutional
23 function of both the NYPD and OCME is at odds with
24 the interests that state lawmakers balanced against
25 crime solving when they enacted the regulatory scheme

2 for DNA collection and storage. It is inappropriate
3 to ask the very institutions that are operating
4 outside the bounds of the law to self-regulate how
5 they will conduct their illegal practices. Laws are
6 enacted to circumscribe police behavior when it comes
7 to protecting people's constitutional rights and
8 privy, not the other way around. This is akin to
9 asking the fox to guard the henhouse. And just to
10 conclude, state law does not permit the collection
11 and perpetual comparison of DNA from individuals who
12 have not been convicted of designated crimes. Nor
13 does it permit the perpetual comparison of these
14 profiles to evidence collected from crime scenes.
15 This was a considered policy choice by the state
16 legislature to protect civil liberties and privacy,
17 and to circumscribe the level of government
18 intrusion. The city's current practices are at best
19 a blatant disregard of clearly established state law
20 and at worst an end run around the very laws enacted
21 to regulate and protect individuals from the over-
22 collection and use of their genetic material and it
23 must be stopped. Thank you.

24 CHAIRPERSON RICHARDS: Thank you.

2 BRAD MAUER: Thank you. My name is Brad
3 Mauer and I am an attorney with the DNA and Forensics
4 Unit at New York County Defenders Services. Um, I'll
5 be focusing specifically on expungement and why the
6 NYPD's new proposals are woefully inadequate to
7 address the serious problems at the heart of this
8 hearing. And I think an illustration obviously of
9 this problem is the Howard Beach dragnet and we heard
10 a question asked by, I believe it was Council Member
11 Adams, asked the NYPD if this Vetrano case, this
12 Howard Beach case happened tomorrow what would you do
13 differently and I think the NYPD's failure to answer
14 this question really spoke volumes. So, but, but I
15 think the answer was actually clear in the rest of
16 their testimony, um, because NYPD is saying today
17 that the victims of that particular dragnet are gonna
18 get an immediate review. But obviously if the case
19 happened, ah, tomorrow or some time in the future,
20 ah, they would have to wait to two years. They would
21 go into the database just like they do now, just like
22 they did, ah, in the actual Howard Beach dragnet.
23 And they would have to wait two years at least for
24 their review. Ah, but that's not all, because we
25 also know that those specific individuals were

2 targeted, number one, because they were black men,
3 and number two, because they had been arrested
4 recently in the vicinity of the scene of the crime.
5 So it's very likely that these myriad of exceptions
6 that the NYPD has constructed around this new
7 expungement policy would catch most, if not all, of
8 these people because perhaps they have some kind of
9 prior record that has nothing to do with the
10 investigation that took place, but it's gonna keep
11 them in database anyway under the new policy. So,
12 again, we see, ah, the over policing of young black
13 men rearing its ugly head yet again. Um, I don't
14 want to belabor too many of the points of expungement
15 that we've already discussed at great length, but
16 obviously the first threshold you've got to cross if
17 you're in the database and you want to get out is you
18 have to be aware of that fact. And, ah, it sounds
19 like the, the, ah, there are still some kinks to be
20 worked with the OCME's announcement that they are
21 going to start telling people, but that, as, as we
22 know that, that is no substitute for notification
23 that you're actually in this database, ah, so that
24 you can available yourself of the opportunity to get
25 removed if there is a way to do so. Um, and even if

2 you're aware that you're in the local database the
3 process to get yourself removed is arduous at best
4 and practically impossible at worst, ah, because
5 obviously OCME has decided on their own to require a
6 court order in order for you to be expunged. Ah,
7 they've made clear, ah, in prior testimony and today
8 that that court order is in their mind, at least, not
9 a legal requirement, it's just an internal policy
10 that they could revoke at any time, but they choose
11 to adhere to it, um, and this creates another
12 significant hurdle for people who want to get
13 themselves out of the local database, and an
14 important thing here when we're talking about this
15 court order policy is this process places the burden
16 on the affected person to reclaim their genetic
17 privacy and their constitutional rights from agencies
18 that are supposed to be protecting them in the first
19 place. It's backwards. Um, and obviously assuming
20 that you can get through those hurdles, if you come
21 in front of the wrong judge to make your request to
22 be expunged, tough luck for you. Some judges don't
23 believe they have the authority to order expungements
24 and some judges just don't care about this issue.
25 They don't think it's a big deal, ah, though much

2 like the NYPD rank and file I don't see judges lining
3 up to volunteer themselves for the local database.
4 Um, having a good lawyer goes a long way, too, and in
5 many cases that can be luck of the draw. If you
6 happen to be one of the lucky few who, ah, gets
7 assigned to one of fabulous lawyers from the Legal
8 Aid Society DNA's unit, for example, then you've got
9 a fierce advocate who's gonna help you navigate that
10 process and give you the best chance of succeeding,
11 though obviously it's no guarantee. Constitutional
12 rights and genetic privacy should not depend on the
13 luck of the draw when you're assigned an attorney.
14 And as the final problem of actually feeling secure
15 that OCME has followed through and that they have not
16 only expunged your profile from the computer
17 database, but as my colleague, Mr. Hughes, ah,
18 emphasized very important that they have actually
19 expunged the physical sample as well. They've gotten
20 rid of that so that it can't be used in the future,
21 particularly with respect to these, um, up and coming
22 technologies that are being used in other
23 jurisdictions, um, currently not in use in New York,
24 but efforts are currently underway to bring those
25 technologies to bear here. So that, that is not just

2 some far-off scientific fantasy land. That is very
3 potentially the near future here in New York. So
4 it's very important that all of that be, ah,
5 discarded and destroyed. Now, days before this
6 hearing NYPD told some news outlets that it would be
7 instituting these policy changes aimed at mitigating
8 some of the concerns that have been raised. There's
9 no unified policy statement or press release on their
10 website or their Twitter feed. Ah, there's these
11 news articles that are sort of laying out these
12 floating of proposals that are sort of light on
13 details. Ah, what we do know about their proposals
14 paints a clear picture of more of the same. Ah, for
15 example, these proposed two- and four-year audits
16 that are flagging profiles for expungement, a
17 flagging mechanism that's riddled with exceptions at
18 total NYPD discretion is not an expungement policy,
19 it's a fortification policy. It's an attempt to
20 formally justify keeping people in the database for
21 longer than the NYPD wants us to believe. And the
22 specific exception for those who case led to no
23 judicial conclusion regarding guilt or innocence, Mr.
24 Barrows pretty clearly stated that yes, you could
25 remain in the database under an exception even if

2 your case was dismissed outright. I think that's
3 incredibly troubling to hear. Ah, the NYPD also told
4 reporters that they would not require a court order,
5 ah, to expunge if you could show that you were
6 acquitted. But a strict reading of the term
7 acquitted, and I think it's fair to assume, that the
8 NYPD and the OCME are going to use a strict reading
9 of that term, ah, it means that almost no one would
10 actually get to avoid the court order requirement
11 because so few cases actually go to trial. Um, so in
12 essence we're right back where we started. Pretty
13 much everyone needs a court order. Um, so all of
14 this talk of back-end expungement as a solution to
15 all the ills of this database and this, it ignores
16 the very significant harms on the front end, the, the
17 trampling of constitutional rights and genetic
18 privacy that are the hallmark of NYPD's clandestine
19 and coercive collection methods, as well as the fact
20 that this unregulated rogue database exists at all.
21 I'm encouraged to hear today that our lawmakers are
22 focused on protecting the rights of all New Yorkers
23 against these corrosive practices. We see their
24 harmful effects on our clients and their communities
25 every single day. Thank you very much.

2 CHAIRPERSON RICHARDS: Thank you. And I
3 had one question for Mr. Hughes. Um, OCME said
4 earlier, um, she wouldn't know how to determine how
5 many cold hits there were, um, strictly from the
6 local, um, database. What has been your experience?
7 Would you?

8 CLINTON HUGHES: Ah, so, yeah, I heard
9 Dr. Sampson testify to that. So in, in the files
10 themselves there are, ah, hit letters from the state
11 and then there are, um, hit notifications from the
12 local database. So there is documentation every time
13 there is a hit. Sometimes the, the, the hit will
14 come from this, the case itself, when, when, after a
15 court ordered DNA swab, for example. So the
16 documentation exists. It exists for when they get a,
17 a hit from the state database and a, an internal hit
18 from their local database.

19 CHAIRPERSON RICHARDS: Thank you, thank
20 you again for your testimony. OK, last panel. Ah,
21 Jeffrey Oshing, Local 3005 DC37, ah, Emily Galvin
22 Almonza, Partners for Justice, Ross O'Neill Morgan,
23 Community Love Unity.

24 CHAIRPERSON RICHARDS: DC37 still here?
25 Jeffrey? No? You may begin.

2 EMILY GALVIN ALMONZA: Good afternoon.

3 My name is Emily Galvin Almonza. I am the executive
4 director of Partners for Justice, which is a
5 nonprofit designed to support low-income people who
6 are interfacing with the justice system. It's my
7 pleasure to testify today. It's my first time here
8 and I'm very excited to speak on this issue. My
9 experience in designing and leading Partners for
10 Justice has given me some insight into the things
11 that have most harmed the functionality of our public
12 safety infrastructure. And I'm hoping that by
13 sharing what I've learned in my work I may assist the
14 committee. Partners for Justice trains non-lawyers,
15 mostly young people, to work inside public defender
16 spaces, directly with public defender clients, on all
17 the wide-ranging and complicated things that can
18 destroy a person's stability after arrest. We help
19 train people to get access to housing or retain
20 housing or employment. We find addiction and mental
21 health treatment programs and support our clients as
22 they participate in those programs. We connect
23 people with benefits, retrieve seized property, and
24 even works on taxes or child support modification,
25 essentially anything that stands between our clients

2 and successful, positive participation in their
3 community. Our work is about connection. It's about
4 entering into a relationship of trust with very
5 vulnerable people and coming through for those
6 people, and finding ways to move forward towards a
7 better future. It's also about understanding how our
8 institutions let people down. One of our greatest
9 challenges is helping public defender agencies
10 redefine themselves from the public [clears throat],
11 excuse me, I can't even say the phrase, the public
12 pretender stereotype and into a space the community
13 views as offering reliable, strong, wrap-around
14 services. We help agencies regain public trust and
15 grow deeper roots in their community, which is why I
16 feel so compelled to speak today on the way the NYPD
17 has approached DNA collection. Last week our police
18 commissioner announced, perhaps feeling the pressure
19 of this very committee, that the NYPD would begin a
20 purge of tens of thousands of people whose DNA has
21 been databased and stored by police in spite of their
22 never having been convicted of a crime. This
23 includes children tricked by adults into giving up
24 their genetic material entirely without parental
25 knowledge or consent. That step seems necessary and

2 long overdue. But the greater issue here is
3 community trust, as the committee mentioned earlier
4 today. Police can't do their best work without some
5 measure of support from the people they serve. They
6 need witnesses to trust them enough to give them
7 information. They need people to call them when
8 something goes wrong. To solve crimes and reduce
9 harm they have to be working with the community and
10 not against them, which is why it is so vital that
11 the committee direct the NYPD to stop surreptitious
12 collection and shut down this DNA index. Public
13 leaders must stand up for ordinary New Yorkers,
14 visibly, loudly, in order to ensure that community
15 members see that this committee is looking out for
16 them and protecting their interest standing up for
17 fair and transparent practices. Surreptitious
18 collection and dragnet databasing and the culture and
19 mindset that it reveals are so damaging to public
20 safety. Any officer on the street can tell how
21 frequently violent crimes go unsolved or unaddressed
22 because community members don't want to come forward
23 and are reluctant to work with or even invite contact
24 from police. They're watching a stream of news that
25 all seems to indicate a fixation on low-level

2 harassment of black and brown people, starting with a
3 concentration of police presence in the subways,
4 handing out tickets, leading up to a 14-year-old boy
5 being tricked into giving his DNA sample to the NYPD
6 to hold indefinitely. This juxtaposition breaks
7 people's hearts. It stirs up anger. And it destroys
8 any remaining trust between the communities
9 experiencing the highest rates of crime and the
10 police on whom they are supposed to rely. So I'm
11 sure you've heard the argument today that police need
12 this information. In fact, I sat here myself and
13 heard it, um, and this massive database saying to
14 serve the community by solving crimes through
15 technology. But others here today will remind you
16 that though TV tells us DNA offers magic, irrefutable
17 answers, the truth is that the system is far from
18 perfect. In fact, we heard today about, um, cells of
19 a Dunkin' Donuts regular customer being found and
20 used in his prosecution in spite of someone else
21 being on video committing the offense. I will, I
22 will not go into the depth of, um, potential flaws in
23 this technology, as I'm here to speak about community
24 trust, and it's not my area of expertise. But I did
25 want to say that my work has taught me how, how

2 deeply interwoven the fallout from every arrest can
3 be with the stability of a person's life. When we
4 open up massive dragnetting we open more people to
5 the possibility of wrongful arrest. We open up those
6 people to the possibility of losing their employment,
7 their job, their housing, family unity, their
8 property, a medical regimen, psychiatric medication,
9 and more. So you today are experiencing a moment of
10 enormous power. And you hold the power to, to rein
11 in this overreach very publicly and tell the
12 community who is experiencing the harm that you are
13 there for them. If I could have just actually 30
14 more seconds I wanted to add more point, um, as a
15 parent in this community. Um, I've spoken with a lot
16 of the other parents in this community and, and
17 essentially received consistent reactions from
18 everyone I spoke to, which was outrage, fear,
19 mistrust, betrayal, threats of ligation, total lack
20 of understanding of qualified immunity. Um, but as
21 the wife of an immigrant raising a child of color in
22 this city, um, the fact that my child is already more
23 likely to be contacted by police and possibly harmed
24 because of her race keeps me awake at night. I don't
25 even put her image or her name on social media to

2 protect her safety. And the idea of having her
3 tagged and tracked by surreptitious DNA collection,
4 after going through a school system that teaches her
5 that police are there to protect her and keep her
6 safe, all because I live in a city where leadership
7 could allow that to happen is almost unthinkable.
8 Thank you for your time today.

9 CHAIRPERSON RICHARDS: Thank you for your
10 testimony. You may begin, sir.

11 ROSS O'NEILL NEVADA MORGAN: Yes,
12 greetings, council members. I am Ross O'Neill Nevada
13 Morgan. I am here to testify on the DNA banner that
14 I became aware of. Um, I have a, a document, it is a
15 part of my civil suit. I'm not an attorney. I'm a
16 pro se litigant in the Eastern Federal District Court
17 of New York, 17CV6454, is challenging the DNA banner
18 that was done to me on 11/3/2014 at 8:30 a.m. I did
19 not know my DNA was taken. I did not know my iris
20 was taken. This was done vis a vis the top charge
21 VTL1511-01. I sat and I heard the NYPD discuss the
22 DNA capture and [inaudible] and it brought me to an
23 American hero. His name is Hugo Princz, and he was
24 tattooed with 36707. He's a survivor of the
25 Holocaust. My number in New York State is K14698156,

2 and that number is now a tag to a DNA of an
3 individual Morgan Omeil, all cap, it says male,
4 black, 36, when it happened to me. So my DNA was
5 taken by the City of New York, which we are forever
6 tied because the City of New York as an entity in
7 2024 is gonna commemorate four hundred years since
8 its founding. It's gonna be one decade since my
9 arrest on November 2, 2014. I was arrested a month
10 after settling my first lawsuit against the City of
11 New York after, after the previous false arrest. And
12 my second arrest spoke to me, a billion souls told me
13 what the City of New York was. These souls endured
14 what I am experience as to the City of New York
15 continuing its legacy in regards to chattel slavery
16 and entity needing reforming itself. I of the record
17 that is being challenged by the City of New York Law
18 Department in the federal motion to dismiss the suit
19 from me to use the judicial branch of the United
20 States government to expunge, to destroy the record
21 that the City of New York has as it relates to my DNA
22 and as it relates to my iris being captured for this
23 false arrest. I went through the City of New York
24 criminal court proceeding as a pro se litigant and I
25 won. So for my DNA to have been captured without my

2 permission, without my consent, for my iris to be
3 captured without my permission and also to be
4 verified though my iris was discussed at previous
5 hearing the fact that I cannot my remove my eyes in
6 being identified, likewise my DNA as, as it's been
7 stated, is peculiar to me. So knowing what the City
8 of New York is, the danger in for the City of New
9 York to place someone's DNA wherever a crime may be
10 committed is troubling that the City of New York has
11 that authority, to have someone who has not commit a
12 crime DNA along with their iris. So as the Council
13 Member Honorable stated that this is genetic stop and
14 frisk. And from my DNA to be has, to be stolen, I
15 need the City of New York to address the fact that
16 its motion should be dismissed and to, to correct the
17 abuse that was done from my iris being captured and
18 for my DNA to be stolen by the City of New York
19 Police Department.

20 CHAIRPERSON RICHARDS: Thank you all for
21 your testimony. Thank you, thank you for coming out.
22 Got more work to do. Look forward to, ah, continuing
23 the dialogue, but more importantly exploring all the
24 tools at our disposal with Chairman Lancman, ah, to
25 make sure that we move forward in a way that's just

1 COMMITTEE ON PUBLIC SAFETY
JOINTLY WITH COMMITTEE ON JUSTICE SYSTEM

225

2 for all New Yorkers. Thank you. This hearing is now
3 closed. [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 31²⁹, 2020