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NEW YORK ADVISORY COMMITTEE

TO THE U.S. COMMISSION ON CIVIL RIGHTS

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2 Court Square
Long Island City

March 21, 2017
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REPORTED BY: Olga Raptis, a reporter and Notary Public within and for the State of New York.

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2 A p p e a r a n c e s:
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5 Bryanne A. Hamill
6 Christine Trent Parker
7 Alex S. Vitale
8 Gertrud Lenzer
9 Vivian S. Louie
10 Barbara De Laviez
11 Johnny Perez
12 Roy Cosme
13 Kevin Thomas
14 Earl S. Ward
15 Tom R. Wahl
16 Iris Y. Chen
17 Seven B. Raga
18 Shoshanna Brown
19 Peter wood
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2 **Panel One: Police Accountability**
3 Hassan Aden, Senior Advisor, Vera institute of
4 Justice
5
6 Darius Charney, Senior Staff Attorney, Center
7 of Constitutional Rights
8
9 Norma Siegel, Civil Rights Attorney, Siegel
10 Teitelbaum & Evans, LLP
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13 **Panel Two: Police Accountability.**
14 Jeffrey Fagan, Isidor and Seville Sulzbacher
15 Professor of Law, Columbia Law School
16 Delores Jones-Brown, Professor, John Jay
17 College of Criminal Justice, CUNY (not
18 present)
19 Mina Malik, Lecturer on Law, Senior Advisor to
20 Fair Punishment Project, Harvard Law School
21 Maria Ponomarenko, Deputy Director of the
22 Policing Project, NYU School of Law
23 Irena Vidulovic Special Assistant to
24 Commissioner Debo Adegbile
25

2 **Panel Three: Police Accountability_**
3
4 Jonathan Darche, New York City Civilian
5 Complaint Review Board Hon. Jumaane Williams,
6 Council Member, District 45, City of
7 New York (not present)
8
9 **Panel Four: Drug Enforcement/ Use of Force**
10 Darian Agostini, Agostini Police Accountability
11 Youth Organizer, Make the Road NY
12
13 Christopher Dunn, Associate Legal Director, New
14 York Civil Liberties Union
15
16 Kassandra Frederique, New York State Director,
17 Drug Policy Alliance
18
19 Jonathan Moore, Civil Rights Attorney, Beldock
20 Levine & Hoffman, LLP
21
22 Taylonn Murphy Sr., Parent and Advocate
23
24
25

Panel Five: Drug Enforcement/Use of Force

David Brotherton, Professor of Sociology, John Jay College of Criminal Justice/CUNY

Harry Levine, Professor of Sociology at Queens College/Graduate Center, CUNY

MS. HAMILL: Good morning, everybody, and let me welcome back my colleagues on the State Advisory Committee and others returning for the second day of our briefing on police practices.

My name is Bryanne Hamill and I am a member of the New York State Advisory Committee to the Commission on Civil Rights.

Yesterday we created an important record and we will continue our fact-finding today with another full day of presentations.

We are also joined today by U.S. Commissioner Debo Adegbile and his assistant, Irena Vildulovic. Thank you so much for joining us here today.

Once again, I would like to ask my colleagues to also introduce themselves. And for the sake of time, just provide your name, please. If we can start down on my far left.

MR. RAGA: Steven Raga.

MS. CHEN: Iris Chen.

MR. WAHL: Tom Wahl.

MR. WARD: Earl Ward.

MR. THOMAS: Kevin Thomas.

MS. LOUIE: Vivian Louie.

MR. VITALE: Alex Vitale.

MR. WOOD: Peter Wood.

MS. BROWN: Shoshana Brown.

MS. PARKER: Christine Parker.

MS. HAMILL: As an introduction for those joining us for the first time today, the United States Commission on Civil Rights is an independent, bipartisan, fact-finding agency established by congress to collect information relating to discrimination or the denial of equal protections of the laws under the Constitution based on race, color, religion, sex, age, disability, national origin, or in the administration of justice and to inform the development of national civil rights policy, and to enhance the enforcement of federal civil right laws.

The Commission has established State

Advisory Committees to advise about civil rights matters in the fifty states and the District of Columbia.

The purpose of our briefing today is to gather information on the policies and practices of the New York Police Department that may have a racially disparate impact. We are looking particularly at school policing, low-level enforcement or Broken Windows, drug enforcement, gang intervention, and use of force. We are gathering information about the current structure and effectiveness of the internal and external oversight of members of the New York Police Department, including the role of the Civilian Complaint Review Board, body cameras, and officer training. We are particularly interested in best practices and proposed solutions to any problems identified.

To help us better understand the issue, we invited knowledgeable persons with a wide variety of experiences and viewpoints to share information with us.

2 We'll have an open session at the
3 conclusion of the panels today for anyone
4 who would like to speak to us for two to
5 three minutes from the public on these
6 topics.
7 At the outset, I want to remind
8 everyone present of the ground rules for
9 this briefing. This meeting is open to
10 the general public and to the media. In
11 addition, we do have a court reporter who
12 is recording these proceedings and the
13 proceedings are being live streamed.
14 Once again, we have a full schedule
15 today. There are three panels this
16 morning, after which the committee will
17 break for lunch. And when we return, we
18 will have two panels.
19 After all the presenters on a
20 specific panel have made their openings
21 statements, I will recognize advisory
22 committee members during our question and
23 answer session.
24 We understand that the viewpoints
25 presented today are neither exhaustive nor

2 all-inclusive, and that some of the
3 statements made today may be
4 controversial. We want to ensure that no
5 person or organization is defamed or
6 degraded in this process. We expect that
7 all opinions will be welcomed and the
8 presenters treated with dignity and
9 respect.
10 Anyone present who feels defamed or
11 degraded by statements made during the
12 proceeding should inform our commission
13 staff so that there is an opportunity for
14 a public response. Alternately, such
15 persons or organizations may file written
16 statements for inclusion in the
17 proceedings.
18 We are very grateful to our
19 presenters for their willingness to share
20 their views, experience, and expertise
21 with the committee. On behalf of the
22 advisory committee members, I thank the
23 panelists and the members of the public
24 for your engagement in this review. Your
25 willingness to participate in this

2 briefing speaks to the importance of the
3 observance of civil rights in our society.
4 The record of this meeting will
5 remain open until April 21st of this year
6 for anyone who wishes to submit a written
7 statement.
8 And with that, I welcome our first
9 panel for today on police accountability.
10 And we're going to start with our first
11 panelist, Mr. Aden.
12 MR. ADEN: Good morning. Thank you
13 for having me.
14 I am more broadly going to talk
15 about police reform nationally and the
16 efforts that are ongoing. And I'm also
17 going to sort of begin to highlight where
18 we are today and the mood sort of going
19 forward.
20 I'll start with consent decrees. I
21 manage a major city consent decree
22 monitoring team, and I also oversee
23 another major city's consent decree, but a
24 portion that deals with internal police
25 accountability, the way that the police

2 investigate their use of force and citizen
3 complaints.
4 The two cities are in completely
5 different places right now. One is just
6 beginning, it's about a year in, and the
7 other is about -- we're in the fifth year
8 of monitoring. And we have seen
9 demonstrable success, both in the policy
10 development, the technology areas, but
11 also through assessments that we've
12 conducted in how the community feels that
13 the police department now treats them,
14 based on everything that we've assessed,
15 and I'll give you some examples.
16 One is assessment of stops and the
17 quality of stops, and the rate in terms of
18 the demographics of people that are being
19 stopped. We did a pre, we are now in the
20 middle of doing a post. So we will know
21 that very soon. So those are the kinds of
22 things we that we look at and the impact
23 on communities.
24 In the other city, again we are
25 about a year in, it was a consent decree

-- the settlement agreement was a result of a highly publicized shooting of a teen, a teenager with a toy gun. And in that one, you know, sort of the mechanics are all still being worked out. But there is a willingness by all the parties to move it forward and to begin to engage in the benefits of reform.

In terms of where we move, where we go from here with other cities, that's sort of an unknown. Obviously we know that anytime there's an administration change, there are changes at the highest levels of the United States Department of Justice, and that includes everything including civil rights, the Civil Rights Special Lit Division.

And we have yet to see sort of what the direction is going to be on future consent decrees and other investigative initiatives in the field.

So we remain optimistic that, you know, in the most serious cases they will be addressed through legal action and made

to participate in these reform efforts with the support of the federal court.

I want to switch now to local reforms because I think that is the true sweet spot. That is the spot where community, if engaged properly and if given a voice and true inclusion on how they are policed, that is the ultimate result, the ultimate endgame that we want to get in police reform.

Just for background, I am a career police officer, served nearly thirty years in two departments. The first one was the City of Alexandria, Virginia, right outside of DC. And upon my retirement from the APD, I was appointed to be the chief of police in Greenville, North Carolina. And Greenville, North Carolina and Alexandria, Virginia, two completely different cities and two completely different police departments.

Greenville was a department that, at the time, needed some reforms in their policies, their systems, their training,

their hiring, all of those things. And notice the first four categories that I highlighted here, in terms of reform, that's no accident. Those are things that need to happen first, and preferably with community inclusion.

So in Greenville I was fortunate to have elected political leadership support, and they were extremely supportive, even if some of the things that I did they were not accustomed to.

We began to criminally charge our own officers for criminal misconduct, that had never been done and it was actually a shock to the system. But for me, that had been a normal practice. If an officer commits a crime, they not only deal with the administrative side of things, but they are charged criminally, at least the cases presented for prosecution, just like anybody else.

So there were things like that I initially got a little pushback of, do we really want to go there and the answer was

absolutely, yes, and if you don't, here's my resignation. And we did. And ultimately we ended up with what is now considered one of the most legitimate police departments in North Carolina.

Shootings have gone way down, shootings of civilians, use of forces have gone way down and that is directly attributable to policies that we put in place.

For instance, most people are familiar with crisis intervention team training. And I will just give a quick overview of what that is. That is where you train officers to deescalate and de-conflict situations where you have someone that is clearly in or potentially in a mental health crisis or a crisis that is drug or alcohol induced and they begin to recognize things. They are also given alternatives to arrests, like you can take them to different places.

One of the things that I did was I created a policy that within six months,

anyone who carried a taser had to also have CIT training, that you were ineligible to carry a taser unless you had CIT training. And just something that simple reduced tasings by 50 percent the next year in our department. And reduced shootings, we had the year before, I believe it was 2013 to then 2014, we had around fourteen, thirteen or fourteen shootings, police shootings -- which in a city of 100,000, that is off the charts. In the next year, we had one police shooting. And the only thing that changed was training and policy. It was -- the same officers were out there, I mean barring a few that we freed up their future to do other things.

So let me go a little further, and I don't want to take too much time on this, but community inclusion is something that a lot of police departments will tell you, yes, we include the community, we go out to the community, we tell them, we give them a snapshot about crime in their

neighborhoods. To me, if that's all you're doing, that is a red flag, that is a red flag. You have to do those activities and you have to be out there. But community inclusion is different. Our communities expect different things today. They expect to have a voice in how they are policed. And I'll give you an example.

Asheville, North Carolina, in July of 2016, Asheville had a police shooting. The shooting was deemed justified. It was a gentleman that led the police in a pursuit, based on a traffic stop, turns out that he had been involved in a domestic, had a rifle, exited his car and pointed it at the officer. The officer really had no opportunity to deescalate and the gentleman was shot and he was killed.

The police chief there called me. She is a former colleague of mine in Alexandria, Virginia, who was then appointed chief of police in Asheville,

North Carolina. Called me and asked me, starting to lose a little bit of my community support, can we work through some things that maybe I can do?

I asked her a series of questions about her use-of-force policy and whether her deescalation policy was formed even and had been developed and how it had been developed. They did not have a deescalation policy. They had a well formed use-of-force policy.

So we decided to bring together community stakeholders. And they were fortunate, they had a very organized community. If you have ever been to Asheville, North Caroline, it is a well put together and a well managed community. So I had a ready group that could come in and represented all of the different neighborhoods, was diverse in every sense.

And we brought them in with police officers and police trainers. I had a professional facilitator and then I worked with these groups. In short, we developed

a deescalation policy together. We developed an accountability structure for that deescalation policy. And we decided what kind of training the Asheville Police Department should get.

Those are the three prongs. There's the policy development piece, that if you stop there, while that's good, not enough. The second piece is the training. The officers need to completely be retrained and they need to understand that it's okay to do a tactical retreat. You don't have to -- because academies don't teach you that. They are starting to, including NYPDs. But a tactical retreat is okay. Give yourself time to get more resources there. Even if you're faced with a situation that could go either way. If you can, give it more time, give it more space.

So at the end of the day, those two things were done.

The last piece is the accountability. The accountability piece,

every use of force has to be reviewed up the chain of command in police departments. What we inserted into their policy was a piece that says, as the use of a force is being reviewed, not only are you looking for it to be lawful and within policy, but you're looking for, did the officer have an opportunity to deescalate in accordance with our policy and did he or she do that? If they did not, then you'd articulate why. And there are many reasons why, like the one that I just described in that shooting where you may not have an opportunity to deescalate. But where you do, it's critical to be -- that point has to be reviewed. And that point has to be driven home to the officers that they need to be thinking about this.

If you talk to Seattle police officers, they have been doing this for a long time. They have one of the gold standards in terms of these deescalation policies. And it's not only in policy,

it's also in practice now. And it's clearly observable.

So I'll end there. I know that the other panelists have a lot to say. But I will say that right now, I think most communities in the United States need to have local efforts in reform, that aren't necessarily supported or directed by the court. But we also need to have the U.S. Department of Justice's support in the most acute cases that need federal intervention. Federal intervention is necessary and it is the responsible thing to do.

Thank you. MS. HAMILL: Thank you very much. Mr. Charney.

MR. CHARNEY: Good morning. My name is Darius Charney. I am a senior staff attorney with the Center for Constitutional Rights. And I would like to thank the New York Advisory Committee for affording me the opportunity this morning to offer my, my organization's perspective on one of the most critical,

but confounding pieces of the police reform puzzle here in New York City and nationally which is how to hold police departments and their officers accountable for practicing fair, unbiased and constitutional policing.

For the past two decades, CCR has worked together with our many partners in the New York City police accountability community to challenge the abusive and discriminatory practices of the New York City Police Department. For the past nine years, I have been lead plaintiff's counsel in Floyd v. City of New York, the federal class action that challenged the constitutionality of the New York Police Department's stop, question and frisk practices.

In 2013, in a landmark ruling, the United States District Court in Manhattan found the NYPD liable for a widespread practice of unconstitutional and racially discriminatory stops, ordered broad changes to the NYPD's stop-and-frisk

policies, training and accountability systems, and appointed a federal monitor to oversee the development and implementation of these reforms. We are now two-and-a-half years into this monitorship, and while real progress has definitely been made, there is much, much more work to do, particularly in the area of accountability.

Through this work, the remedial work in Floyd, as well as more than five years of research on police reform efforts around the country, and in-depth discussions with leading police accountability experts nationwide, CCR has developed a body of institutional knowledge about the necessary elements of an effective internal accountability system for the NYPD. And it is on these elements that I would like to focus my remarks today.

In doing so, I do not mean to in any way discount the important role that external accountability mechanisms play,

2 particularly the CCRB, the NYPD Inspector
3 General, the courts and of course police
4 reform advocates and activists that I work
5 closely with. But you will hear and have
6 heard testimony about those accountability
7 components. So I will focus, instead, on
8 the changes that the NYPD itself can and
9 must make to increase it and its officers'
10 accountability to the residents of New
11 York City.
12 The goal of an effective internal
13 accountability system is to create an
14 organizational culture, extending through
15 all levels of the law enforcement agency,
16 from the senior management to the line
17 officers, which values and incentivizes
18 fair, impartial and constitutional
19 policing. Now, no single isolated reform
20 measure can accomplish this goal.
21 Instead, what is required is a
22 comprehensive reform package that includes
23 at least the following five elements, each
24 of which supports and depends upon the
25 other four.

2 First is effective frontline
3 supervision of the legality and fairness
4 of officer conduct on the street. Second
5 is a performance evaluation system that
6 measures and prioritizes legality and
7 fairness of officer conduct over quantity.
8 Third is a comprehensive early warning
9 system that is used to identify those
10 officers most at risk in engaging in
11 unconstitutional and biased policing.
12 Fourth is an effective system for
13 disciplining officers who have committed
14 misconduct. And five is robust and
15 comprehensive data collection and
16 analysis.
17 I am going to skip over the last
18 one, the data, because I think there are
19 some panelists much more qualified than I
20 to talk about that later today. So I'm
21 going to focus on the first four.
22 And with respect to each, the NYPD
23 has taken some initial positive steps in
24 the last few years. But there is much
25 more the department can and must do to

2 ensure that each of these elements
3 contributes to an effective accountability
4 system.
5 So starting with supervision, there
6 is wide consensus among police executives,
7 researchers, and experts that frontline
8 supervision, and when I talk about
9 frontline supervision I talk about
10 sergeants, lieutenants, precinct
11 commanders, are the key to
12 institutionalizing unbiased and
13 constitutional policing in a police
14 department.
15 Former NYPD Chief of Department
16 Joseph Esposito testified during the Floyd
17 trial in 2013 that he relied on his
18 supervisor as the "main way of
19 determining," and I'm using that in
20 quotes, whether NYPD officers were
21 conducting stops and frisks in accordance
22 with the Constitution. In addition, the
23 Floyd Federal Monitor has emphasized in
24 his recent public reports to the court
25 that successful department-wide

2 implementation of stop-and-frisk reform is
3 ultimately again, in quotes, "a challenge
4 of leadership, particularly for those who
5 supervise officers, engage in day-to-day
6 enforcement activities, sergeants, their
7 immediate supervisors, and the precinct
8 and unit commanders who set the tone for
9 those under them."
10 As the only department personnel who
11 have daily contact with line officers, it
12 is these supervisors who are best
13 positioned to communicate and reinforce
14 the principles of constitutional and
15 unbiased policing. To assess whether line
16 officers are applying those principles in
17 practice, and to take action when they are
18 not. Yet, as the Floyd court found, NYPD
19 supervisors largely failed for decades to
20 perform these duties, which was a primary
21 cause of the department's widespread
22 practice of unconstitutional
23 stop-and-frisk.
24 As part of the court-ordered reforms
25 in Floyd, the NYPD has now written into

its patrol guide an explicit requirement that supervisors assess the constitutionality of their subordinates' stop-and-frisk activity.

Yet, more than two years into this process, it still does not appear that they are actually doing so. A recent internal audit by the police department, which was reported to the court by the federal monitor, found that in a review of 500 recorded stops in 2015, that in more than one in four of those stops lacked reasonable suspicion. But that in every one of those instances, the supervisor had nevertheless signed off and approved that officer's stop report without noting any problems with the stops themselves.

Now, there are many possible explanations for these continued supervisory failures, which I am happy to discuss in maybe the Q&A portion, but one thing is certain, unless and until the NYPD's first-line supervisors are willing and able to do their jobs properly,

constitutional and unbiased policing will not be the norm on the streets of New York City. Thus, the NYPD must make this a priority in the months and years to come.

The second accountability measure is performance evaluations. Now, here the NYPD must reform its evaluation systems to reward and incentivize legal enforcement activity. And as the Floyd court found, the NYPD's prior evaluation system, which was known as the Quest for Excellence ironically, focused largely on the quantity of officer stop, arrest and summons activity, while giving no attention to legality which was part of, as the court described it, a predictable formula for producing unjustified stops.

In addition, Professor Phil Goff of John Jay College, who I'm sure everyone knows is one of the nation's leading experts on racial bias in policing, when speaking to The New York Times in 2013 noted that whenever officers are encouraged to meet numerical arrest or

summons or enforcement goals, it will likely result in stereotype-based policing.

The NYPD, to its credit, has started to recognize this and earlier this year, it launched the first component of a revamped officer evaluation system, which no longer tracks the number of stop-and-frisks that officers conduct, but does examine whether and how often those stops have reasonable suspicion.

While this is an important step in the right direction, the officer evaluation system does still track the quantity of an officer's arrest and summons activity and compares that quantity to the number and quantity of arrests and summonses conducted by other officers in the same unit, and explicitly rewards officer for, again in quotes, "above-average" activity while making no mention of the legality of arrests and summonses.

Thus, NYPD officers are still being

pushed to prioritize arrest and summons numbers in order to advance in the department, which is further illustrated by a recent class action lawsuit filed by NYPD officers of color alleging the continued existence of summons and arrest quotas throughout the department.

Now, such quotas, if they do exist, is very concerning, not only because of the well documented racial disparities in NYPD quality-of-life enforcement, which I know many panelists spoke about yesterday, but because, like stop-and-frisk, the constitutionality of the NYPD's summons practices has also been challenged recently in federal court.

Thus, the NYPD should eliminate all numerical measures of enforcement activity from its officer performance evaluation system. To the extent there is still some utility in maintaining such numerical measures, they must be coupled with assessments of the legality of enforcement activity.

In addition, the NYPD Inspector General or another independent agency should investigation whether any commands, units, or individual NYPD supervisors are, in fact, using numerical arrest, summons, or stop quotas on their subordinate officers.

Now, with respect to early warning systems, again there is an emerging consensus nationally that this is a very effective way of identifying and intervening with officers most at risk at committing misconduct before they actually do so. Here again, while the NYPD has made some improvements recently, there are still major shortcomings in their system that prevent it from effectively identifying such officers.

Currently, the NYPD system, which is known as RAILS, integrates data from six different indicators into one system that allows supervisors as well as managers to identify officers at risk of poor performance. But these six indicators are

woefully under-inclusive. They include civilian complaints, lawsuits against an officer, use of force, firearms discharge, bad performance evaluations and prior disciplinary action penalties; all of which, of course, are good, but what they're leaving out is a huge body of information about officers that a successful early warning system needs to have.

Some of those sources of information are, for example, stop-and-frisk activity, arrest and summons activity, particularly for what are sometimes called the, I guess the trio, the contemptive cop trio of arrests and summons charges which is resisting-arrest arrests, obstruction of governmental administration, and disorderly conduct. In other words, looking at officers who make high numbers of those kinds of arrests.

Additionally, information about officers who have had adverse suppression and credibility rulings against them in

court. Obviously officers whose honesty is in question, whose ability to comply with the Constitution is relevant and that should be part of this system.

Lastly and certainly not least, I would like to speak about officer discipline in the NYPD, or should I say, the failure to discipline.

As we all know, while the CCRB has authority to investigate all civilian complaints of officer misconduct involving force, abuse of authority, discourtesy and offensive language, we'll use the acronym FADO, that's what CCRB uses, New York law gives the NYPD commissioner exclusive authority to discipline officers who are found by the NYPD to have committed one of these types of misconduct.

The CCRB itself can do no more than recommend disciplinary penalties and, in cases where the CCRB has recommended formal disciplinary charges, it can prosecute those charges in administrative hearings in the NYPD. However, the final

decision on whether to discipline and what disciplinary penalties should be imposed on an officer always lies with the commissioner.

Thus, it is critical, both in terms of officer accountability and the public's faith in the CCRB, that the NYPD meaningfully discipline those officers who are the subject of substantiated civilian complaints for misconduct.

Unfortunately, however, as has been widely reported in the media, by the NYPD Inspector General, and by CCRB itself, the NYPD often either fails to discipline at all or departs downward from the penalty recommendations of the CCRB.

Moreover, in Floyd the federal court found that these types of disciplinary failures on the part of the NYPD were a significant contributor to the NYPD's widespread practice of unconstitutional and racially discriminatory stops. And it ordered several changes to the NYPD's procedure for imposing discipline in

2 substantiated CCRB cases, including giving
3 increased deference to the CCRB's
4 credibility determinations, using an
5 evidentiary standard that does not
6 automatically favor the subject officer's
7 testimony over the complainant's, and
8 three, eliminating any automatic
9 requirement that a complainant supply
10 corroborating physical evidence.
11 However, two-and-a-half years later,
12 actually now three-and-a-half years later,
13 it is not yet clear that the NYPD has, in
14 fact, implemented any of these changes.
15 Instead, in December 2014, the NYPD and
16 the CCRB agreed to establish what is known
17 as a reconsideration process under which
18 the NYPD can, for the first time, formally
19 request that the CCRB reconsider and
20 change a substantiated misconduct finding
21 or penalty recommendation which the NYPD
22 disagrees with.
23 Thus far, neither the NYPD nor the
24 CCRB has published any rules or formal
25 standards governing when such

2 reconsideration may be requested or
3 granted, but the CCRB has indicated in its
4 most recent annual report that
5 reconsideration may be granted when quote,
6 "there are matters of fact or law which
7 are found to have been overlooked or
8 misapprehended by the CCRB," which is
9 obviously a very broad and vague standard.
10 And the CCRB has interpreted this standard
11 to include cases where quote, "differing
12 views between the CCRB and NYPD with
13 respect to witness credibility." Which
14 again, is exactly what the federal court
15 in Floyd said the NYPD should not be
16 doing. They should not be objecting to
17 credibility determinations of the CCRB.
18 Thus, rather than giving deference
19 to the CCRB's misconduct findings, the
20 reconsideration process makes it easier
21 for the NYPD to question and contest those
22 findings, which not only decreases the
23 likelihood that officers will be held
24 accountable for misconduct, but severely
25 undermines the CCRB's independence from

2 the NYPD and its legitimacy in the eyes of
3 the public. Accordingly, CCR calls for
4 the immediate repeal of this
5 reconsideration process.
6 Finally, compounding all of these
7 problems with the NYPD's disciplinary
8 system is the complete lack of
9 transparency of that system. At present,
10 the NYPD does not release its
11 disciplinary, final disciplinary
12 determinations for officers who are found
13 to have committed misconduct by the CCRB
14 to the public or even to the complainant
15 his or herself.
16 Thus, as has been recently reported
17 in the media, for example, the mother of
18 Ramarley Graham, the unarmed black
19 teenager who was shot and killed in his
20 home by an NYPD officer in 2012, has yet
21 to learn the outcome of the internal
22 disciplinary trial for that officer who
23 killed her son. It goes without saying
24 that this situation severely undermines
25 the public's trust and faith in the NYPD

2 and the civilian complaint process
3 generally, and makes it difficult, if not
4 impossible, to know if the NYPD is, in
5 fact, holding officers who have committed
6 misconduct accountable.
7 This problem is caused in large part
8 by New York State law and the City's
9 overly broad interpretation of that law.
10 And the law I'm talking about today is
11 Section 50-A of the New York State Civil
12 Rights Law, which prohibits public
13 disclosure without a court order of all
14 police officer personnel records, which
15 the New York courts have ruled includes an
16 officer's disciplinary records. This is
17 among the most restrictive laws of its
18 kind in the nation, and it is long overdue
19 for either repeal or at least significant
20 amendment.
21 However, the New York City Law
22 Department, under the currently mayoral
23 administration, has interpreted this
24 statute so broadly as to even prohibit
25 public disclosure of what are known as

2 NYPD personnel orders, which simply
3 summarize the outcomes of departmental
4 disciplinary trials, even though the
5 trials themselves are open to the public.
6 And this is a, this interpretation
7 reverses a four-decade practice of
8 publicly releasing such orders prior to
9 the current administration. And in fact,
10 this particular issue is being argued this
11 afternoon in a legal proceeding in the
12 Manhattan Supreme Court by the Legal Aid
13 Society.
14 Without this information, it is
15 impossible for the public or any external
16 accountability forces to evaluate whether
17 the NYPD is imposing meaningful discipline
18 in substantiated cases of officer
19 misconduct. Accordingly, we recommend
20 that the New York City Law Department, at
21 a minimum, return to its more reasonable
22 interpretation of Section 50-A prior to, I
23 guess, 2013.
24 With that, I would like to thank the
25 Committee again for affording me the

2 opportunity to speak. And I am happy to
3 answer any questions after Mr. Siegel has
4 completed his remarks.
5 MS. HAMILL: Thank you so much.
6 Mr. Siegel.
7 MR. SIEGEL: Good morning.
8 MS. HAMILL: Good morning.
9 MR. SIEGEL: All of you have a huge
10 challenge. Since January 20th of this
11 year it's become apparent, at least in my
12 opinion, that we have a clear and present
13 danger to fundamental constitutional
14 rights in this country, including the area
15 of police-community relations and police
16 accountability.
17 Do we have police accountability?
18 Unfortunately, no. But this is nothing
19 new. When I was fortunate to be the head
20 of the New York Civil Liberties Union, I
21 looked at the minutes of the very first
22 meeting of the Civil Liberties Union in
23 1951. And about two-thirds or
24 three-quarters of the minutes were
25 addressed to one topic, police-community

2 relations and the struggle to achieve
3 police accountability.
4 We had just completed a campaign to
5 create a real Civilian Complaint Review
6 Board, groups like the Center, All Deaf,
7 Pearl Deaf, you name them, ninety-two
8 groups came together for a
9 year-and-a-half. I went to over 100
10 community board meetings and we got
11 resolutions. And on December 1991, excuse
12 me '92, by vote of forty-one to nine, we
13 created a Civilian Complaint Review Board,
14 all civilian. All of us went home, we
15 celebrated, eureka. After three decades
16 of many people in the black and brown and
17 white community in the city we thought we
18 achieved something real.
19 Used to be much more optimistic
20 about this topic. Let me go back to the
21 record. I want to start off on a January
22 7, 1994 letter that I wrote to the chair
23 of the new CCRB and its executive
24 director. The 1993 Civilian Complaint
25 Review Board legislation represented

2 historical accomplishment for the people
3 of New York. For three decades, many New
4 Yorkers fought to achieve and create a
5 real Civilian Complaint Review Board. On
6 July 5th, after the Fourth of July, the
7 new CCRB became a reality. Of course the
8 enactment of the CCRB legislation was
9 merely the first step. Creation of an
10 independent, all civilian complaint board
11 involved significant institutional change.
12 Whenever such change has been attempted,
13 it has been resisted. We cannot fall
14 asleep on civilianization and the mistaken
15 belief the passage of the bill completely
16 achieves our objective. We must now make
17 sure the new law works. We need to
18 implement and maintain an efficient and
19 fair CCRB, one in which citizens and
20 police officers alike can place their
21 confidence and trust.
22 In several important respects, the
23 board's performance raises concerns about
24 its commitment, the vigorous civilian
25 oversight of policing.

2 The end of the four-page letter, New
3 Yorkers believe that a new independent
4 CCRB has been created and hold high
5 expectations that they will finally get a
6 fair shake, fair shake when they complain
7 of police misconduct. If the City does
8 not effectively implement this law, and as
9 a result creates a mediocre agency, not
10 when Earl was there, people throughout the
11 city will be disappointed and justifiably
12 so. That's 1994.
13 And I bring up the Abner Louima
14 incident. Mayor Giuliani set up a task
15 force to look into police-community
16 relations. I, Michael Meyers from the
17 Civil Rights Coalition and Margaret Fung,
18 don't ask me why he put us on the
19 commission, but he did, probably regretted
20 it, we wrote a dissenting report which is
21 based on race, 1998, that we move four
22 years later.
23 CCRB, inherent in the concept of
24 democracy is the -- I like this language,
25 is either the civilian should have

2 oversight and controls over those we pay
3 and empower to use deadly physical force.
4 Unfortunately, this principle has not been
5 achieved satisfactorily in New York City.
6 An essential and much needed reform
7 is the strengthening of the CCRB. The
8 CCRB has largely failed in its admission.
9 The CCR's failings is not attributed to a
10 flaw in the concept of civilian oversight,
11 the City charter gives the CCRB sufficient
12 authority to perform its mission. The
13 present failings of the CCRB are
14 symptomatic of an abdication of
15 responsibility and failure of leadership
16 by the mayor, City Council, the CCRB's
17 board and the agency's executive and
18 supervisory staff.
19 This CCRB is not yet a mayoral
20 agency where complainants generally
21 receive a fair expeditious hearing on
22 their complaints. We still have not
23 achieved a CCRB in which citizens and
24 police officers alike place their
25 confidence and trust. We recommended a

2 dozen recommendations, I'm not going to
3 read them all, but just to give you an
4 example, CCRB must act on complaints
5 within four months of receiving them. The
6 police commissioner must act on CCRB
7 complaints within thirty days when he
8 receives them. The police commissioner
9 must act on the administrative law judge's
10 decision within thirty days. The CCRB
11 must hold public town meetings at least
12 once a month. At these meetings, the
13 community would be invited and police
14 would be required to attend.
15 I used to do this, and there was, in
16 the summer, I forgot which year, in
17 Bed-Stuy, 200 people came out. You would
18 want that, right? You want 200 people
19 here at your hearings. People got up,
20 they were very angry, they expressed their
21 criticism. What was the result? CCRB
22 decided to cancel the meetings because of
23 that kind of democratic input. They
24 couldn't deal with it. They couldn't take
25 the criticism. That would be a great

2 sign, people care. But they stopped doing
3 that.
4 CCRB must issue its six-month report
5 within thirty days of the closing period.
6 CCRB should hold, this is important,
7 hearings and investigations and issue
8 reports on patterns and practices of
9 police abuse. Beyond making
10 recommendations about disciplinary --
11 disciplining individual officers, the CCRB
12 should track systemic patterns of abuse
13 and hold departments and commissioners
14 accountable for their actions and
15 non-actions.
16 Every year, every six months if
17 you see a precinct where the spike is
18 going up on whatever issue, tasers, choke
19 holds, whatever, go focus in on that
20 commanding officer, find out why that's
21 happening. So that's 1998.
22 Then we got Michael Brown and Eric
23 Garner. I'm really worried now, still
24 optimistic. I go to Borough President
25 Eric Adams, he used to be a captain in the

NYPD, good person, and Manhattan Borough President Gale Brewer. And so we held a series of town hall meetings on the topic, improving police-community relations. This was 2015. We held seven of them in Manhattan and Brooklyn.

Here's the report. Reform the Civilian Complaint Review Board to increase the respect and trust in which it is held by the public and whose complaints of police misconduct investigates by enabling it to have enough budget for staff and resources, track systemic patterns and misconduct, hold precinct commanders accountable, at least put one proven victim of police misconduct to the board, try to put Ms. Bias on the board. All kinds of complaints, she won't be fair, she won't be objective. On the other hand, there is three people who used to be employees on the board. Can't have a victim who could, you know, think of the Supreme Court on those Fridays when the Supreme Court would come in and talk about

cases. All this during -- let's talk about Ferguson and explain to people and make them understand and empathize with victims. But we can't do that, right?

Publish at least two annual reports on investigations, systemic issues. Hold an annual town hall meeting in each borough to report them to the public on its mandate and current investigations.

So this record shows you that we don't have that kind of accountability. And what has happened, I usually say now that when people say to me, what about that dream for a real CCRB, a real accountability, I answer, at best, the dream has been. And at worst, the dream has now become a nightmare.

Does it have to be this way? Of course not. And hopefully, your advisory role, especially you better advise the new Justice Department -- with due respect when you talk about the Department of Justice, we ain't got a Department of Justice anymore, in my opinion. And

that's going to become clearer and clearer when we see the statements. You talk about police investigations, well, Holder and Loretta Lynch and Obama -- they really did a good job finally at using that office to try to get those kinds of investigations and get settlements. Are we going to see that in the next few years? I doubt it.

Your role becomes even more important. I remember when we were doing stuff in the south in the late '60s and early '70s. I used to go to the U.S. Commission on Civil Rights for their reports and put them into our briefs in the Fifth Circuit. And in Alabama and Mississippi and in the south, when I worked there for the ACLU, it was an important resource. And it was very important. You disappeared. Nobody even knows who you are anymore. Nobody knows what you do.

Look at this, what do we got -- how many of you are law students here, decide

to cut a class to come here today.

MS. HAMILL: They're on spring break.

MR. SIEGEL: You're on spring break. Thank you for coming.

The reality is that you should be visible. You should be vocal. You shouldn't be sitting here. You should be out in the communities. In New York, go to Bed-Stuy, go to Harlem, go to Lower East Side, go to Staten Island, hear what people have to say. You really impress the anger, the articulation, and what it's about. It's about fairness. They're not anti-cop. They're anti-bad cop. And when people continue to say they're anti-cop, it's not accurate. What people want, especially in those communities, they want effective law enforcement. They are victims very often of crime. This is a very easy solution, and yet it's elusive, it's elusive.

Let me bring you up to the last point and then I'll end. We recently

2 learned from Darius, and I want it on the
3 record to thank the Center for
4 Constitutional Rights, and Darius in
5 particular, for that historic decision on
6 the Floyd case. We thank you very much
7 for that. Most people didn't think it was
8 possible. They had the dream, they made
9 it real.
10 We learned that a report on systemic
11 patterns, it was about tasers, it was
12 coming out of the Civilian Complaint
13 Review Board, and this is un -- if we were
14 somewhere else I'd put another adjective,
15 unbelievable. This is the antithesis of
16 what an independent agency is supposed to
17 be. They take their draft report and they
18 send it to the Mayor's Office and they
19 send it to the police department for
20 edits, for comment. How can you be
21 independent if that's what you're doing?
22 It raises serious questions about the
23 independence. So myself and a guy named
24 Michael Meyers, long history of civil
25 rights, go to the CCRB board meeting, we

2 make our presentation raising the
3 question, how can you be independent if
4 you're doing this? When did this happen?
5 Who decided this? Nothing happened. You
6 would think at a minimum there might be
7 some follow-up, no follow-up.
8 So what is the answer? Although I'm
9 not as optimistic as I was five, ten,
10 twenty-five years ago, the answer is we
11 have to keep fighting, keep fighting for a
12 real, effective independent Civilian
13 Complaint Review Board here as well as
14 around the country, and fight for police
15 accountability.
16 It's simply unacceptable, even
17 ironically in a city now that supposedly
18 has a progressive mayor, a progressive
19 city hall administration and a progressive
20 City Council. I jokingly tell people, I
21 used to think I was a progressive, but if
22 all these folks are progressives, I guess
23 I ain't a progressive any longer.
24 As previous generations of civil
25 rights activists, lawyers and some elected

2 officials fought for a mechanism to
3 achieve greater police accountability, so
4 too must we continue this journey for
5 accountability and justice. I think you
6 need to be an integral part of that
7 journey. Is it easy? Hell no. But I'm
8 convinced, in looking at this group, I
9 know the personalities of Earl Ward and
10 Alex Vitale, and no disrespect to all of
11 you, the rest, I don't know you all, but
12 if you are like them, I'll walk out here
13 confident because they care. I'm sure you
14 care for being here, but these are dark
15 days. We have a new administration in
16 Washington. They don't believe in the
17 natural and constitutional rights that
18 most of you believe in and it's real. And
19 we need to step up. We can't give up. We
20 got to speak up, and we need to remember
21 who we are, not just individually, but who
22 we are in this country, about freedom,
23 about justice and about equality and
24 fairness for all.
25 And with that, I wish you the best

2 of luck. Thank you very much.
3 MS. HAMILL: Thank you all very
4 much.
5 I know we're going to have a number
6 of questions at this time. So if I can
7 see by a show of hands of all the members
8 who are going to want to ask questions.
9 Let's start with Tom.
10 MR. WAHL: Thank you so much,
11 gentlemen, for your passionate and
12 interesting comments. I felt like we
13 started positively with Hassan, with the
14 deescalation. We got into the murkiness
15 of not knowing quite how things are going.
16 And then Norman, you totally took me down.
17 So I'm not quite sure who I should ask the
18 question of first, but I did want to ask
19 of Darius, tell me a little bit about why
20 we don't know how effective the policies
21 are being made in terms of changes. You
22 talked about the different areas that
23 you're sensitive to. And again, what
24 Norman said of course, I keep coming back
25 to this -- by the way, I'm from upstate

New York, Rochester, so this is the New York State Civil Rights, not New York City, just to clarify that.

MR. SIEGEL: Don't get me going on Rochester, sir.

MR. WAHL: Yes, we have our own problems. So Darius, my question really is quite simple. If the taxpayers pay for the police, and if you have a democratic administration, progressive supposedly, why is it so complicated to get some accountability in terms of police when they do something wrong? Bad cops, as Mr. Siegel said, why is it so hard to have it work properly? It sort of boggles the mind.

MR. CHARNEY: I think one reason is that, and this is not just true of New York City Police Department, this is -- New York is in no way unique in this way, but police departments I think remain the least transparent and least accountable government agencies in this country. I mean if you think about all the other

public agencies in pretty much every city that, you know, do really important stuff and affect people's life day to day, how much more open they are, whether it's a school district, you have a school board, they hold hearings, they talk about policies, they make decisions about policies. Police department, all that stuff gets worked out internally. Most of it never gets released to the public. And no mayor, democratic, republican, in almost any city has ever really done anything about that. And I think the narrative we are always faced with as reform advocates, as people who care about civil rights is safety, right? Don't question what the police do, you know, we're the experts on public safety, what you're asking us to do is going to -- I mean literally, we've heard them say people will die. That's what we heard when --

MR. WAHL: But if there's a best practices police force, starting with

Hassan's in Asheville, I mean if there's certain things that different forces are doing and New York City should be, you know, should be the Cadillac or whatever of all the different police forces, why can't you take what Hassan does in Asheville, in Oakland, in Chicago, I mean wherever they're doing best practices that would work well?

MR. CHARNEY: My short attention to that would be, you know, you need to ask the police commissioner that. But, you know again, I try to be fair. Everyone accuses me, as Norman referred to earlier, as a cop hater, but I feel like I try to reckon, I give NYPD credit where credit is due.

I will say that, you know, since 2014, since the new administration came in, there has definitely been much more willingness to look at what other departments are doing. Prior to that, it was like we're New York, we're different, you know, don't tell us what LA is doing,

don't tell us what Kansas City is doing or Cleveland, we don't want to know.

So they are willing to look at things now. But I think this again, going back to how decisions get made, how new policies get developed and implemented, it's all completely opaque. And I think that's a problem when you're talking about policing in a democracy. You really have to -- you know, democracy is not only about giving people a say in their government, it's about letting people understand what the government is doing. Because that is how they get informed about what kinds of changes need to be made. And the police department, again, this is not just in New York, nationally, and I think there are exceptions, but most police departments are incredibly opaque and unwilling to allow the public to have a say in policies.

You know, they will hold community meetings and, you know, they want to know what the crime problems are, they want to

hear complaints. But when it comes to actually now talking about actual policies and practices, how, you know, how should officers be trained, how should they behave on the street, how should they be held accountable, when those decisions get made internally, there is no input from the public and I think that's a problem.

MS. HAMILL: Next question. Earl.

MR. WARD: Mr. Aden, how are you?

MR. ADEN: Great, thank you.

MR. WARD: Yesterday we had an advocate talk about accountability and she cautioned that we shouldn't focus on training or focus on training at the expense of accountability. In your reform efforts, I know you mentioned that you are in two cities. I think one of them is Cleveland. I know a little a bit about the case in Cleveland.

MR. ADEN: I actually didn't say Cleveland.

MR. WARD: I know you didn't say -- but it's in your bio. So you didn't say

it, but you wrote it in your bio.

MR. ADEN: Got it.

MR. WARD: So I know that there are complaints there about the lack of accountability for the offices who were involved in the shooting of the young man with the toy gun. So the question I have for you is when federal monitors come in, come in pursuant to consent decree, what type of jurisdiction or what type of efforts do you engage in with respect to accountability or is it simply about training? Because I know there are folks who have been victimized by the police who, yeah, they're interested in training, but they are also interested in accountability, holding police officers who have committed misconduct accountable for their actions. And I'm curious to know in what way the consent decrees take that into account and what efforts are done with regard to holding cops accountable?

MR. ADEN: Regarding accountability,

that's a huge part of most settlement agreements. I mean if you get to that level, it's likely a situation around force or extreme misconduct and criminal activity, potentially criminal activity.

In the area of police accountability in most cities, and in my work, we focus on system and processes. We are in those cities, some were beyond it, but we have rebuilt those systems, that is a function of the monitor and of the monitoring team. And that work, you can find it online once the assessments are done, and you can find the new policies online. So in essence, we just sort of, we restructure the way that these departments hold themselves accountable.

I think you are absolutely right in your assertion that even in that city, the public is outraged at how officers were held accountable for that particular case, and we're talking about the Tamir Rice case. Once the team came in and the monitor established a monitoring plan,

after the first year - the first year, the policies really, that we focused on were use-of-force policies. Now we are reconstructing, we're in the middle of it, reconstructing all of the systems of accountability, from the civilian review to their own investigations, how they investigate themselves and to how the entire disciplinary process and how that discipline is administered and adjudicated at the end. So it is a key focus.

MS. HAMILL: I just want to ask a question following up, and this is for any of the panelists. We know that there's a number of consent judgments around the country with respect to our police departments, and in light of the fact that the new attorney general has made statements that he intends to be doing much less policing of police, is there any concern that the current consent judgments and federal monitors are at risk of the work that's being done right now?

MR. SIEGEL: Absolutely. And also

what's at stake is the U.S. Commission on Civil Rights when you look at the budget. I look at those things. How do we know that that's going to be funded? So everything that we have taken for granted, at least for the last thirty or forty years, I think it's up for grabs. So the answer to your question is absolutely, yes.

MR. CHARNEY: And I would say I have had several off-the-record conversations with some of the recent exiles from the Civil Rights Division who have said, you know, in no uncertain terms, the answer to your question is yes. And I think we should be particularly concerned about Chicago and Baltimore. Those would be the two cities that I would be very worried about the Department of Justice retreating from the excellent work that they were doing there.

MR. THOMAS: Good morning, everyone. I commend you for all the work that you've done for the City and for this country. I

have two questions, one for general panelists here and one for Hassan.

Hassan, I read an article recently about an interaction that you had with Customs and Border Patrol. Would you like to talk about that a little bit?

MR. ADEN: An interaction? That's a great choice of words.

Yes. The story has gone viral. It started with The New York Times and then it went on to numerous local papers and online publications, CNN, lots of different venues.

But essentially what occurred, I'm naturalized American. I was born and raised in Italy, and became an American citizen forty-two years ago when I came to the United States. My father is of Somali descent. He is a U.S. citizen, probably fifty years or more. And my mother is an Italian national.

But my mother turned eighty, so this was all good. I decide that, you know, on her eightieth birthday, she lives in

France, I would host her in Paris and just have a great weekend with my mom. And my brother lives in Liverpool, so he came over from England. So my mom, her two boys, we just had this great weekend.

On Monday, I was returning, due to a lot of work commitments, I was returning to the United States and going back to D.C. where I live. My flight took me through JFK, so that was my initial port of entry, something I've done many, many times. My family and I travel, that is sort of what we do on our vacations, most of it is international. And we've never had problems and I've never had problems, even from returning from countries that I've done reform work internationally, that you know, maybe weren't so friendly to the United States. Never had an issue.

This was the first time that I returned to the United States since, in 2017, since the inauguration. I mean I'll just say it. I went through the passport control, the automated passport control,

got my slip and took it up to the booth, the CBP, Custom and Border and Protection booth and I was greet with -- let me backtrack.

Generally when I travel and I come back into the U.S., I'm greeted with welcome home, sir, even sometimes, but just more of a jovial, you know, like a compatriot. And this time the CBP officer barely looked up, took my passport, put it up, then looked at me and said, are you traveling alone?

And I was standing there by myself, so I thought, you know -- that was a red flag for me, are you traveling alone? I said yes, and he stood up and he looks at me and he has my passport in hand and he said, let's take a walk. Something that you probably don't want to hear ever in a police action. I mean, tell me what you're doing, don't say, let's take a walk. So at this point I am hypervigilant to what is happening and taking note of everything, including the time.

I'm taken back to a room just beyond passport control, and it is this room that was sort of a repurposed storage facility. That's what it looked like. It had about twenty-five chairs in the room and there were three or four CBP workstations with one at the front that sort of took everyone's passport that was going to be vetted further.

I'm told that there's an issue and that I need, they need further inspection on me. So I go into this room and immediately I see two signs. One says remain seated at all times and the other says, use of telephones and mobile devices restricted. So that's my second clue that this is not a voluntary situation and I'm actually being detained. And, for the record, I have no issue with a lawful, investigatory detention by the CBP. I think that that is absolutely a function of their mission and the reason why they exist.

But what I do take issue with, and

I'll sort of explain is the time, so the reasonableness of that detention. So time passes, time passes and I'm sitting in a place where I can see everyone that is being brought in. And a little alarm goes off back there when a new flight has come in. And with each new flight they were bringing people in accompanied by CBP officers. And I could see their passports, they were not U.S. passports for most of these folks, other than an American Airlines flight attendant, in uniform, that just came off of a flight. He was a U.S. citizen. And his passport went in, they checked it, he was in and out in about five minutes and then he said, I've got a flight out of here next week, I will see you guys next week. So for him, it was this sort of repetitive detention and further vetting all the time. He kind of took it as a joke. But his wasn't a detention that was, in my opinion, unreasonable.

But all of the others were foreign

nationals. And I could tell from the passports, they would put the passports in these transparent envelopes, and I could see that they were red, they were green -- they were not U.S. passports, and I could hear the languages around me. I heard Italian, I heard French, I heard Spanish, German. And these folks, while my passport was being held and no one was actually explaining to me the circumstance that caused that detention, these folks are in and out. So I just found it ironic that the only U.S. citizen in there is the one with the longest detention, and everyone else is in and out.

Finally, the original officer that took me in came back in and I asked him, I said, what do you consider an unreasonable detention in this circumstance? And he looked at me and said, oh, you're not detained. And I said, I'm not free to leave, you have my passport and I'm forced to remain seated. And he just kind of looked at me and said, you're not being

detained and walked away.

So we are about an hour in -- if I had gotten up I think that would have been a bad decision.

MR. SIEGEL: You wouldn't be here today.

MR. ADEN: Instead, I just chose to continue to sort of document this to report it out whenever I got out of there. So ultimately, about an hour and ten minutes in is an estimate because I couldn't use my mobile device to tell what time it was, CBP had a shift change. And a CBP officer came in, she was coming on to her shift. They had some conversation. She took an interest in my case. And within about twenty minutes, twenty-five minutes, she had my situation resolved. She took my passport, she made calls to whatever this third agency was that was vetting me, I was not told what that agency was. I suspect it was a terrorist watch list, fusion center, and she was very cordial. And in fairly short order,

1 got me out of there. I think she
2 recognized what was happening and the
3 irony of it all.
4 They knew at this point that I was a
5 retired chief of police and career police
6 officer. I made a point to tell them, not
7 to get out of the situation, but to make
8 them understand that I understand what's
9 happening here, I know my rights and this
10 isn't it. We're going to come back around
11 to this at some point.
12 But again, she was helpful. I got
13 out of there.
14 Another irony is that I have TSA
15 pre-check. So I actually made my flight,
16 because I had to go back through security
17 and I got through there in like twenty
18 seconds and TSA was absolutely cordial and
19 pleasant and I actually made my flight
20 back to D.C.
21 So I reflected on it for about four
22 days and decided to, instead of contacting
23 CBP and lodging a complaint at that point,
24 I thought about the fact that this happens
25

1 in much worse way to a lot of people that
2 may not necessarily have a voice or a
3 platform. And it was the perfect storm
4 for CBP in detaining me. And in many ways
5 I am glad that it was me, I'm glad that I
6 put it out and put attention squarely onto
7 this issue. I don't know if that's going
8 to make a difference.
9 Just this morning I was contacted by
10 a senior CBP official that knows me. We
11 worked together when I was the director of
12 the International Association of Chiefs of
13 Police, which she was a member of, and I
14 believe that that was -- I appreciate it,
15 but at this point it's beyond that type of
16 conversation. I'm considering my further
17 actions. And that's kind of where I am.
18 But, you know, it leaves you with a
19 feeling of this is my country, I am a U.S.
20 citizen. I have been, you know,
21 personally involved in deadly force
22 situations for my country, for my cities.
23 I've been hospitalized. I've been
24 severely injured in gun fights. I don't
25

1 know how else you can prove that you are
2 an American.
3 But take all that out. It just
4 shouldn't be happening in the way that it
5 happens to anyone, even foreign nationals.
6 MR. SIEGEL: Did they explain why?
7 MR. ADEN: No, no. What they
8 explained was that my name -- here's what
9 they said. The only explanation was my
10 name was used as an alias and there was an
11 event caused. And an event means that
12 there was something put into some database
13 with that name. But keep in mind, Hassan
14 Aden is like Bob Smith in the rest of the
15 world. I apologize if there's any Bob
16 Smiths here. But if you ever end up on,
17 you know -- but it is just like that.
18 So I fear that my travel options
19 have been restricted. I'm due to go to
20 Mexico and I'm going through Miami. So
21 I'll see what happens at that CBP. I hope
22 that they put me on a different kind of
23 list. But I don't know. I don't know.
24 But they also said, you know, you
25

1 should get global entry. To me, that's
2 not an explanation, that's not like a
3 resolution, get global entry and you'll
4 avoid this. And the reason why I don't
5 have global entry is because I usually
6 travel out of the country with my kids and
7 my wife and they're not going to get
8 global entry. And I don't want to go
9 through a separate line. I want us all to
10 be together as a family unit, particularly
11 now.
12 So that's the short of it. It
13 leaves me a little disappointed.
14 MS. HAMILL: I want to thank you so
15 much for sharing that story with us. And
16 I'm so sorry that it happened, and
17 hopefully something can be done to
18 preclude this from happening in the
19 future.
20 I did just want to say that this
21 panel was due to end at 10:30. We are
22 going to go a little bit longer if the
23 panelists are available for two reasons.
24 One, we started late. We saw we were
25

taking some pictures here today. We have the pleasure of having one of our U.S. Commissioners with us. So we were taking some photographs. And also, one of the panelists that was scheduled to be here today has to be in Ferguson on the Ferguson matter, Delores Jones-Brown. So she will not be able to be with us. So we can take a few more questions.

Alex.

Oh, I'm sorry. I believe Kevin still had one more question. Yes, we will get to everyone. I'm supposed to be limiting you to one each, but I'll go ahead and give you two.

MR. THOMAS: Hassan, you're a patriot and thank you for your service to this country.

MR. ADEN: Thank you.

MR. THOMAS: Now, my general question to the panel is, the 2016 claim stat put together by Scott Stringer found that the NYPD topped all agencies when it came to settlement costs. While the

majority of the precincts showed a decline in claims, precincts in the South Bronx and Central Brooklyn continue to have more claims filed against their officers than precincts in other parts of the city. Do these civil lawsuits actually promote better practices?

MR. SIEGEL: The answer is no. What it does, it gives some justice to the people whose rights have been violated. But what Controller Stringer said last year, if we went back twenty years, you would see similar kind of stats, maybe not as pronounced in those two locales that you mention, but I recognized twenty years ago that the City of New York was spending an inordinate amount of money, of our taxpayers' money to settle the lawsuits. And it's also interesting, it doesn't come out of the police department's budget.

There's been some advocacy around that issue, but sort of evaporated now that perhaps if, in fact, the police department would be affected by the

settlements, maybe that would be a deterrent. I'm not even sure anymore of that because the individual police officers, it's not coming out of their pocket.

I remember in Alabama we had in 1968, '69 the probate judge did not put people from the National Democratic Party Alabama basically civil rights, black and some white, on the ballot, the Supreme Court. Then said they were supposed to be on the ballot. We went to court and he was held in contempt and the federal court there had that probate judge pay part of the damages out of his pocket. Man, that changed the dynamic in the south. When the probate judges found out it was coming out of their pocket, we got at least more enforcement.

So the Corporation Counsel now in a case they recently settled was trying to get some nominal amount out of that individual police officer. So that might be something that they should consider in

the future.

But the lawsuits basically, they bring a validation and vindication to the individual and gets them some money. Also the attorneys who do it, under 1988, get attorney's fees. But the dynamic that we're talking about, in my experience, it just goes on and on and on.

MR. CHARNEY: I agree with what Norman said but with one caveat which is, I think the bigger, kind of the class action cases that look at injunctive relief are still very important obviously, you know, the Floyd case. But the reason I think it's important to note that today is because currently working its way through congress, in fact, I believe it just passed the House, is a piece of legislation which I think could have disastrous consequences for civil rights class action lawsuits and civil rights generally which is the Fairness in Clas Action Litigation Act of 2017. It passed congress in a pretty close vote. Even

2 some republicans voted against it. But it
3 would make it really, really, really,
4 really difficult to bring, you know,
5 Floyd-type lawsuits in the federal courts.
6 And I think that would be a tremendous
7 blow to civil rights enforcement,
8 particularly since we, you know, as we
9 mentioned earlier, at least for the next
10 few years, I don't know if we can really
11 count on the Department of Justice to
12 enforce civil rights.
13 MR. VITALE: Darius, I really
14 appreciate what you laid out in terms of
15 trying to strengthen the complaint process
16 and create the transparencies so that the
17 inputs into the ultimate decision-making
18 are better. But is leaving the ultimate
19 decision in the hands of the commissioner
20 ultimately a weak point in that chain?
21 And should we be thinking about somehow
22 addressing that part of the equation?
23 MR. CHARNEY: I think you're
24 absolutely right. I mean that would
25 unfortunately require a legislative fix,

2 but that doesn't mean it shouldn't be
3 examined.
4 The reason I focused on transparency
5 first is I think we want to get a better
6 sense of how is the commissioner or his
7 designee making these disciplinary
8 decisions because we just have no
9 information. It's just a literal black
10 box -- well, not literal, but it's a black
11 box. The recommendation goes to the
12 police department, the officer may or may
13 not be disciplined, that decision is not
14 shared anywhere with the public so we
15 don't know the reasons behind it, we don't
16 know what evidence or information the
17 police commissioner looked at. And so we
18 really have no sense of how these
19 decisions are made. And I think that's an
20 important first step. But I agree with
21 you that ultimately, particularly if we're
22 talking about independent oversight, you
23 know, in the CCRB, at least in theory,
24 although as we know in practice is maybe
25 not the case, is supposed to be an

2 independent oversight body, yet it doesn't
3 have the authority to actually discipline
4 those officers who it has found have
5 committed misconduct. And so discipline
6 still lies with the police department. In
7 that, I think there's a lot of distress in
8 that process.
9 MR. SIEGEL: But we recommended a
10 while ago and I just, I think we're going
11 to reach a settlement on another City
12 agency, that when there's a
13 recommendation, let's say from the CCRB to
14 the police department and the police
15 commissioner is going to reject it, that
16 the police commissioner is obligated to
17 put in writing his reasoning for why he's
18 rejecting it. On the other hand, I still
19 believe, as I did years ago, that the
20 discipline should remain with the police
21 commissioner, because if you want to
22 achieve accountability, you got to hold
23 the police commissioner accountable. And
24 ultimately in New York, you hold the mayor
25 accountable for the lack of

2 accountability. Once you dilute that, you
3 dilute the focus on whether or not people
4 are doing what they're supposed to be
5 doing.
6 MS. HAMILL: If I could just follow
7 up on this before you turn to Vivian. In
8 terms of the CCRB being effective and
9 independent, if the New York Police
10 Department were to embed Internal Affairs
11 employees and the Department of Advocate's
12 Office employees in CCRB to strengthen
13 investigatory functions, would that, in
14 your opinion, make them more or less
15 effective and more or less independent?
16 MR. SIEGEL: Absolutely no. The
17 reason why we began that Civilian
18 Complaint Review Board was on the premise
19 that you can't have the police investigate
20 the police. There's an inherent conflict
21 of interest. The focus has to be on
22 hiring people who do the job, according to
23 the way it has to be.
24 And second, I remember when we wrote
25 the legislation, I wanted diversity. This

was in 1992, '91 that we drafted the legislation. So we put in racial and gender, you know, what's the right word these days, goals. And then I realized, oh, my God, they could appoint African-Americans and Latinos and women who just didn't have the commitment to civilization and accountability.

The example when they put -- what's her first name, I forgot, Ms. Baez -- Iris. I mean what a debate. Iris Baez, it's ideal to be on a panel dealing with victims of police misconduct because of what the police did to her son, and yet they wouldn't put her on.

So we still don't have -- the best we had was Earl -- I don't want to embarrass you, but -- and even there when we recommended him some people said, well, he's a civil rights lawyer. How can he be fair and objective? The point is you can and he was. But I don't think we have any current visible civil rights lawyers on the Civilian Complaint Review Board. And

so even with diversity I discovered there is a way for them to water down what we want, which is people that are fair and will go where the facts lead. If you put the police department into the CCRB it will poison the CCRB. It will continue the ultra deference to the police department.

In regard to one of the questions you asked before, when we did that campaign, people in certain communities told us they could not sign on to the resolution to create a Civilian Complaint Review Board. And when I said why, more than once people said, if we go against the cops we'll be retaliatory. We won't get our services. They won't help us and we can't sign this petition.

So the idea -- that's what you're dealing with. And any time there's institutional change I'm generally in favor of labor advocacy. But, you know, when you're dealing with the BPA, it's a very formidable opponent and these are

realities that you have to take into account. So the idea of going back in time to do what you said, maybe it would improve some of the effectiveness. I'm not even sure that premise is correct, we can find people who know how to investigate, who do not have, at least appearance or in reality, a conflict of interest in prosecuting police officers.

MR. SIEGEL: And finally, one other thing, one institutional change, I think, has to be made is permanent special statewide prosecutors, including places like Buffalo and Rochester. So it's a State system. And for the record right now, the fact in New York, the Governor Cuomo set up something. It has not worked. I've had personal experience with that. We really need an independent agency with investigators, with social workers, former police officers so that they could be there, people like yourself which would be great. And for the record, I'm sorry. I'm sorry what happened to

you. That shouldn't have happened to anyone, especially you.

And in the context of that, those are the kind of systemic changes, and any watered down system, even with due respect to Governor Cuomo's current thing of putting the Attorney General with a five-person unit to look into these situations, it's all window dressing. It doesn't work.

We have to face the issue. Dr. King always told us, you have to face the issue, confront it, and if you don't do that, you're never going to overcome it. And there's a lot of people out there who don't want to face this issue for a lot of reasons, political as well as institutional. But unless we face it, we're never going to overcome it.

MS. HAMILL: Thank you. Vivian, last question.

MS. LOUIE: Thank you so much for your service and the really insightful thinking that you've shared. So my

2 question has to do about changing
3 organizational culture. Because that seems
4 to be key thing that's been expressed on
5 the panel today. And that can be, of
6 course, extremely challenging. But
7 without it, you can't have effective
8 change. You can institute different
9 bodies and mechanisms, but they'll just
10 sit there, right? You won't have the
11 organizational change and buy-in.
12 So I was wondering if you could
13 speak to that. And I understand that's a
14 broad question. So maybe one way of
15 getting into it is to think about what
16 Hassan mentioned about, it was the crisis
17 intervention training. That's a small,
18 not small, but it's one component that
19 could be looked at. Or you could choose
20 whatever you choose to look at.
21 MR. ADEN: I'll take a quick crack
22 at that. That is a very broad question.
23 But I think in some ways it ties back to
24 Mr. Vitale's question of the commissioner
25 or chiefs retaining the authority to

2 discipline and to promote and reward,
3 right? I mean I think that is how you
4 begin to shift culture.
5 Right now, if you ask a police
6 officer in most police departments to
7 describe what is good policing, describe a
8 police officer that you think is a great
9 officer. Tell me what he or she does.
10 Almost inevitably you are going to get,
11 oh, he or she, they always -- they are
12 super high on arrests. They get in
13 pursuits. They are always in foot chases,
14 they're arresting people. That's the
15 definition currently of good cop, good
16 performer. And as a reformist, and fairly
17 successful in a culture change, you have
18 to change the rewards systems, the
19 performance measures, because if you are
20 constantly checking up and essentially
21 promotions and raises are around your
22 proactive activity, which is currently
23 defined as how many tickets you write, how
24 many arrests you make, that has to change
25 to problem solving. And your area of

2 responsibility. Is crime going up or
3 down? Accountability to crime, not
4 necessarily to enforcement action, so
5 making you think about it you do that.
6 An example, I had a brilliant
7 officer in an area that was experiencing
8 super high volume of burglaries that was
9 off the charts. And it was a student
10 area. It was a large University in
11 Greenville, North Carolina. And what she
12 did on her beat, instead of getting a
13 bunch more officers in there asking for
14 overtime money and just putting more cops
15 in there, she went around and did a huge,
16 she did a prevention campaign, even
17 providing signs that said, this is home is
18 alarmed, even though it wasn't. You know,
19 just target hardening, lights. She went
20 around and there were lots of streetlights
21 that were out. She had our public
22 services get those streetlights back on.
23 She then, you know, did some research and
24 found some evidence-based proactive
25 activities. There's a bunch of them out

2 there and she began to institute them like
3 giving citizens an understanding that if a
4 neighborhood is burglarized within
5 forty-eight hours and within a very tight
6 perimeter of that, they are like 200
7 percent more likely to be burglarized,
8 other homes.
9 So she did all of these things,
10 including CPTD, which is Crime Prevention
11 Through Environment Design, which target
12 hardened every burglary that she went to,
13 she would then offer to do a home survey
14 and make sure that they had the right
15 locks. And we found some money for that.
16 And so she was so proactive. We redefined
17 good performance as that. And we
18 de-emphasized arrests.
19 That begins to change the culture.
20 Now, to sustain it, beyond current
21 leadership, that is difficult. And that
22 is a whole different problem. But it's
23 all around what you expect and what you
24 re-board and promote.
25 MR. SIEGEL: My answer to that is in

order to get police accountability you need political accountability. That means the mayor, the governor, the City Council, whatever legislative body. They have to be buying in to the commitment. You're absolutely correct, institutional change, every time we've tried, at least in New York City, there is huge resistance. So we sometimes get fooled and we get people who are elected who we think are going to be committed and then they adopt the Broken Windows policy and defend it. So we get fooled. But until you get those people in power who are committed to the kind of things we are talking about, I don't think it's going to happen. As I said, I was much more optimistic in younger years. And right now, I'm not as optimistic to see the change that is needed. And with the period that we are now in, there will be a trickle-down effect. It's not just what's going to happen nationally, D.C., it's going to trickle down, maybe not so much in New

York.

I have one other question. Is there an advisory committee in every state.

MS. HAMILL: Yes. Every state has an advisory committee and Washington D.C.

MR. SIEGEL: So I would suggest that there be a single representative from each of the state advisory committees to the U.S. Advisory Committee to then have fifty people who then put out the reports that we used to rely and become a force, at least over the next year, if I'm optimistic, if not in the next four years, in order to -- I hope that doesn't count as a defamation of anything, but we do have free speech rights, at least of today, March 21st. So in the context of that, try to centralize and become more visual as opposed to fifty independent agencies so that if there is one voice on a national level to counter some of the stuff that is going to come out not only of Washington, but the Department of Justice, or even be somewhat of a catalyst

to get the U.S. Commission on Civil Rights. Nobody even knows -- I don't even know who is on the U.S. Commission for Civil Rights anymore.

MS. HAMILL: We've got one of our Commissioners right here.

MR. SIEGEL: We need you. We need you to speak out and it's important because there are people out there really in pain now because of all the things that they are hearing, some of which is real but some of which is fake information. And we need people like you to just step up. This is the moment.

MS. HAMILL: On that note, we will have to conclude this panel. Thank you very much for excellent presentations, your insight and information.

(Panel 2).

MS. HAMILL: Good morning, everyone. We're going to get started. I see a lot of the panelists know the other panelists. So it's an opportunity to catch up. But we're going to start with our second panel

now on police accountability.

Thank you so much all for coming. I'm sorry we're a little bit delayed. I know one panelist was running late, two others weren't able to come today, another one for this panel. So we took advantage of having extra time with our first panel.

At this time I'll call on you, Professor Fagan, to give an opening statement and then we'll have questions when everyone's been able to speak to us.

MR. FAGAN: Thank you for having me. I prepared a talk that is probably more like college professor's talk than it is to a testimony, to a commission like this. So, you'll have to bear with me. It's probably at this point irreparably in my DNA to do this. So I actually made some slides and sent them to the commission except you guys are all going to have to turn around. So don't bother turning around. You'll have copies of the slides. I'll try to be as narrative as possible when we talk about this.

I can't say it's a pleasure, it's an honor and a responsibility to work twice on two different consent decrees or two different litigation actions that have attempted to hold police departments accountable for a series of civil rights violations.

The first one being in New York. I was the expert for Darius and John Moore, and for two other parties, the NYCLU in the Langone case and also LDF on the Davis case in public housing. That was a long process that took place and unfolded over roughly a six-year period. It's still unfolding. I'm sitting here actually buried in my -- my backpack is a copy of the latest monitor's report. We can't really talk about that publicly, but there's going to be an interesting conversation with the monitor. Let's leave it at that.

So the second one was the Ferguson Report. I was consulted to DOJ. I was their expert. Whatever numbers you see in

that report were produced by myself and my research team, including one of my students, Elliot Ash, who is now my co-author and is a professor at Warwick University in England.

So we had pretty interesting perspective on the way the policing operates to produce a series of civil rights revelations violations. The remedy questions are a separate set of questions, I know you approached them this morning. But we can talk a little bit about that later on when we get through this.

I wanted to talk about the fact that these two policing regimes, despite being in places as just -- simply as unalike as you could possibly imagine. Ferguson, Missouri, a city with roughly 24,000 people with a very small footprint on the back, and New York City which is the largest city in the country and one of the largest in the world.

New York is -- both of them typify what I call a development in policing that

-- I call it the new policing or maybe the new, new policing. The blue term, the new policing, was coined roughly around 2000 by Professor Bill Hyman at Harvard. And Phil talked about the advent of a policing style that included fairly aggressive policing tactics, meaning stop-and-frisk, proactive policing, engaging people either at the moment of crime or just anticipating when crime might occur, detaining in a stop-and-frisk manner, possibly questioning them. The other prong of the new policing was aggressive enforcement of misdemeanor codes and also code violations, things like open containers as we know, and also in a place like Ferguson, just having high weeds in your front lawn in addition to traffic violations.

The new policing also is accompanied by the development of metrics, statistical analyses, analytics, as we now call them, to guide police and allocate resources and hold commanders accountable for their

actions.

And the third was that last part, which is simply an organizational reform to try and make commanders accountable for producing the results that would benefit both the public, in terms of public safety, but also to benefit the police department itself in terms of its efficiencies.

Now, the way that this is practiced is odd. It's disconnected from crime. I think that's the most important thing to understand. The policing regime, I think as we heard from Darius and others, crime is down in New York, it continues to be down at historically low levels. In Ferguson actually they experienced quite a similar crime decline. And we even have some maps in these slides that you can see the extent of the crime decline there.

But misdemeanor activity, both in terms of vehicle enforcement, code enforcement, stop-and-frisk activity, stop-and-frisk is already down here, but

2 misdemeanor arrests and other forms of the
3 new policing still continue somewhat
4 unabated.
5 The unfortunate part about the new
6 policing is that is has been coupled now
7 closely with what I would call the new
8 punishment. And the new punishment is a
9 serious, sort of grinding interactions
10 with the courts. People are stopped,
11 they're detained, maybe they're let go,
12 maybe their cases are processed, they're
13 taken into custody, they may spend a night
14 in jail, they may spend a night in, what
15 one person reported in the wonderful piece
16 on the South Bronx in The New York Times,
17 spending a night in what they called a
18 fetid holding cell. If they graduate and
19 go to court, they'll make repeated court
20 appearances for the most minor offenses,
21 misdemeanor marijuana possession,
22 trespass, trespass enforcement is way
23 down, but trespass, whatever code
24 violations exist that would get them to a
25 criminal part, they appear and they have

2 to appear multiple times. One of the
3 issues that's come up, both in New York
4 and Ferguson is the idea of a speedy trial
5 being somewhat of a sham at the moment.
6 So this is the new regime. In
7 Ferguson, the regime is a little bit
8 different. Essentially it's about money.
9 And it's about money to sustain the
10 functioning of the police department
11 there. In the Ferguson report we actually
12 have smoking guns where mayors, in a
13 moment of, I'm not quite sure what they
14 were thinking when they did it, would
15 write memos to the police commanders
16 saying we really do need you to step up
17 your activity because you're running short
18 on money. And one mayor actually made the
19 statement that if you really want to have
20 bonuses this year and pay for salary
21 increases, you need to step up your
22 enforcement activity. So that's a little
23 disturbing.
24 The common ground in the two places,
25 apart from the fact that both share

2 high-profile killings by police, Michael
3 Brown incident in Ferguson, Ramarley
4 Graham, Akai Gurley, other fatal shootings
5 in New York City. That's one thing that's
6 grabbed the public's attention and made
7 tensions between citizens and police
8 fairly high. In both places, grand jury
9 outcomes have further made, created some
10 distance both between police and citizens,
11 but between police and government
12 generally. There's a much broader problem
13 of, I suppose it's distrusting government
14 and illegitimacy and perceived injustices
15 that seems to permeate.
16 The tactics are pretty much the
17 same. It's misdemeanor enforcement in New
18 York. Broken Windows still continues at a
19 fairly robust pace. And it's the traffic
20 enforcement regime that became the
21 highlight of the Ferguson report that is
22 in place there.
23 One thing that is important to
24 understand, I want to circle back to this
25 by the time we end, is that in both

2 places, the context of policing is in
3 extremely segregated neighborhoods. These
4 are places that are more or less walled
5 off economically where people have a hard
6 time escaping from segregation and from
7 poverty and inequality. And it's our
8 conclusion at the end of the day that
9 these regimes of policing, whether in
10 Ferguson in a small town which is highly
11 segregated or in New York City which is a
12 big town which is highly segregated, these
13 policing regimes tend to put people at a
14 disadvantage economically and socially.
15 There is stigma that attaches to these.
16 There are economic deprivations that
17 attach to these regimes. And it
18 reinforces their segregation and basically
19 deepens what sociologists and economists
20 call a poverty trap.
21 So policing is, in fact, in a sense
22 to use a metaphor, a fairly effective
23 shovel deepening the poverty trap that
24 people are stuck in.
25 The other part of the regime that

1 makes this possible, particularly in
2 Ferguson and in many small towns, is the
3 use of legal financial obligations as a
4 punishment regime. And this is what we
5 mean by the, I suppose, the new
6 punishment.
7 Across the country, one coming into
8 contact with the criminal justice system
9 has to face the following litany of what I
10 call a tax, and in effect, because it's
11 disproportionately racialized, a racial
12 tax.
13 One has to, and just simply
14 something that's astonishingly ironic and
15 cynical, one has to pay an application fee
16 to file for a defense representation. You
17 can think about the irony behind that.
18 There are booking fees. You pay a fee
19 when you're booked into jail. If you're
20 screened for drug testing or diversion,
21 any kind of monitoring supervision, you
22 have to pay a fee to apply to be eligible
23 for that. Once you're in those programs,
24 you have to pay for the services that you
25

1
2 consume. Often, if you get some kind of
3 deferred prosecution agreement or any kind
4 of deferral from the prosecutor, in many
5 places you pay a fine in lieu of
6 prosecution to avoid conviction. Some
7 places require you to pay detention fees.
8 You have to pay for your own jailing.
9 Other places make you file court fees,
10 prosecution fees, pre-trial investigation
11 fees. We all have heard much about asset
12 forfeiture, but part of the routine of the
13 misdemeanor enforcement regime is
14 forfeiture of whatever exists, whatever
15 you have on you at the moment.
16 There are supervision fees for
17 probation, for drug testing, for
18 electronic monitoring, for supervision.
19 Often there are fines and sentences. The
20 fines pile up. There are fines in lieu of
21 probation for violations. In delinquency
22 cases, there are family penalties. NPR
23 just did a piece on this. There are
24 issues, if you have a warrant issue, you
25 have to pay a fee for issuance of the

1
2 warrants. And if the warrant is recalled
3 because you clear it, then you have to pay
4 a fee to get it cleared. You have to pay
5 a fee for expungement and sealing of your
6 records.
7 So if you're a poor person, you've
8 been arrested, your case has been dropped,
9 you want to get the record expunged,
10 depending on where you are, costs you
11 roughly about 50 bucks to get your record
12 expunged. And then if you want to go into
13 drug treatment in drug court, you have to
14 pay for that as well.
15 So this is the regime in a place
16 like Ferguson. New York doesn't have a
17 regime quite like that, but there are,
18 when you think about processing through
19 Broken Windows policing, people wind up
20 spending time in jail. They have to make
21 repeated court appearances which requires
22 them to miss time at work, making child
23 care arrangements, et cetera.
24 If there's a misdemeanor conviction,
25 and often and this is an interesting study

1
2 which was done in part by Eric
3 Schneiderman, we worked with Attorney
4 General Schneiderman to study what happens
5 to arrest cases in New York, people will
6 plead out to the case just simply to avoid
7 the repeated court appearances or to get
8 out of detention. If that's the case,
9 then they have a misdemeanor conviction.
10 If it's not expunged, because they don't
11 have access to an attorney, maybe because
12 they don't pay the fee or Legal Aid is
13 overwhelmed, then that conviction actually
14 stays with them and it doesn't have the
15 same bearing on employment as a felony
16 conviction, but it makes you ineligible
17 for voting, it can carry stigma with
18 respect to eligibility for public housing
19 and a variety of other services. So there
20 are very severe consequences that sort of
21 fly a little bit under the radar compared
22 to some of the felony disenfranchisement
23 and work deficits that accrue as a result
24 of other forms of policing.
25 We have lots of stuff about this.

It's in the testimony that you'll get. There's some pictures and lots of data and some graphs. The things that I think are interesting to take into account, in a place like Ferguson where you actually can see through our data what happens in terms of racial disparities, the point of much of this is that it is highly racialized, in Ferguson, the ratio or the percent difference between blacks relatives to whites on, for example, the balance due of a fine at the moment of courts or the fine imposition is roughly 18 percent. It's about 9 percent for warrant issue rates or 10 percent for the warrant issuance rate. Cases are dismissed at a higher rate, much lower rate for blacks relative to whites. Whites get their cases thrown out.

Similar regime in New York, summonses per person are very high in New York, much higher for blacks compared to whites, much higher for Latinos compared to whites. The acquittal and dismissal rate is much greater for Latinos compared

to whites. So you have people brought into the system, going through the transactions of repeated appearances and then having their cases dismissed, and so on.

I want to cut to the end and talk about some of the things that we think about as possible reform mechanisms. If I actually read off the list of things that got people into court, you'd be quite amazed at what these were.

But we've been thinking more about what constitutes a positive set of reforms that would mitigate the harm of these kind of policing regimes.

One would be simply to return to the principal of the adjudication of guilt. Everybody's pleading out. And we understand that -- the principle of adjudication of guilt is lost. If you actually spent some time and do the court watch and sit in court and watch the cases grind through the court, this is really not about adjudication of guilt. They're

really there for a valid reason. It's really about moving the case along and processing.

There's a couple of wonderful papers written about this, but we think this about the management of people, not so much about the management of crime. And I think this is definitely true in Ferguson where the regime is completely selective and where we see incredible disparities at the moment of enforcement that produces the disparities in court.

Second, Darius highlighted the problem with class action lawsuits and oversight by DOJ that's coming, that's imminent and on our horizon. We think litigation is a very important place. One thing that never happens --somebody brought up the question of claim stat and I'm sitting in the back and listening and thinking that nobody's really taken the claim stat data and connected the dots to see how claim stat data connects, for example, to the CCRB complaints, that

connects to policing data and so on. This would be a terribly important project to do to understand what's generating that kind of revenue.

We think litigation is extremely important, whether it's 1983 or the dying days of 14141 where this litigation should be pursued.

We think transparency in reporting is fairly important. The NYPD has made great strides towards transparency. The State of Missouri, oddly enough, if you pick up the phone and say, can I have some data about what happens to police actions in various municipalities in St. Louis County, they'll have the data to you probably within three hours in the form of a spreadsheet. It's really quite remarkable.

So we have very great detail in the fine and fee structures. It's astonishing. Just simply one fact about that place is in a two-year period there were -- in a one-year period, 2014, there

were more warrants issued for arrest than there were people who live in the city. So if we discount the kids, then there's probably two or three warrants for every adult. But it turns out that it's not just the residents of Ferguson. It's anybody entering Ferguson who's not white is subject to these kinds of regimes.

So we think that kind of transparency in reporting is really quite critical as a step towards reform.

The State of Missouri has taken steps to cap revenues that would derive from this. It's contested. It's now in federal court in the eastern district of Missouri where I'm not optimistic about the fate of that litigation, at least for purposes of the people of Ferguson. But the revenue caps for fines is proceeding along and it's been passed by three different acts in the Missouri State Legislature. And there are special caps for St. Louis County recognizing what's going on there.

We think there should be means tests for fine. Fines are imposed without regard to the means test for the ability of the person to pay them. We think there ought to be means tests.

In a separate analysis, we've done a -- I've done with another colleague, a student on police shootings. And we did this across the country in 100 large cities. And one of the things that we find in police shootings and police deaths is that the greater the degree of diversity in the report, that the lower the rate of police -- diversity in police, the lower the rate of police shootings. It's not a direct relationship. It works through other kinds of -- it's a mediated path with several other factors. But the important thing to recognize is the value of diversification of the police force.

The NYPD had made strides in this. Ferguson is not. I think on balance policing regime around New York State and probably around the rest of the country

have not made the same kind of strides here.

Performance audits, bail caps, there's no counsel for people who come in on violations, whether it's high weeds in the front lawn or whether it's an open container in New York. We think there should be some kind of advisory council available in those court parts where those summonses are heard.

Taking speedy trial seriously, it's important. The Bill Laverson's, piece, series in The Times two years ago, three years ago, highlighted the importance of speedy trial and the fact that speedy trial problems pile up for people and produce some of the regimes that we've heard here.

We talk about mitigating harm in the form of undertaking these kinds of measures. And maybe the most important as we think about reform of the police, and I want to go back to one of my experiences working with the Cincinnati Police

Department and reviewing their work, and now we're doing like a ten-year audit on what happened with the Cincinnati police reform.

Theirs is a really interesting internal organization reform. They call it collaborative process. It was undertaken internally by the police, at the motivation of the police, there's some community input, but this is really something coming internally and what they've done is remarkably reduce exactly the kind of policing problems that I highlighted in this testimony. So I'll leave it at that.

MS. HAMILL: Ms. Malik.

MS. MALIK: Good morning. I would like to thank the New York Advisory Committee to the U.S. Commission on Civil Rights for inviting me to speak here today on this very important topic. It is truly an honor and a privilege to be here with you.

By way of background, I'm with

2 Harvard Law School as lecturer on law and
3 senior advisor to one of Harvard's
4 Criminal Justice Initiatives, The Fair
5 Punishment Project. I have also spent
6 much of my career in public service,
7 particularly serving New York City in
8 several capacities. As executive director
9 for the Civilian Complaint Review Board
10 under Mayor Bill De Blasio, as special
11 counsel to the late Brooklyn District
12 Attorney Ken Thompson and as Senior
13 Assistant District Attorney to the
14 Honorable Richard Brown who was the Queens
15 County District Attorney.
16 I have served on the defense side as
17 well. And as such, I've worked on both
18 sides and with members of the public as
19 well as members of law enforcement for the
20 entirety of my career.
21 Having worked with many of New
22 York's finest, from patrol officers to
23 detectives to the highest ranking members
24 of the NYPD, I want to start by
25 recognizing and stating that the majority

2 of NYPD law enforcement officers with whom
3 I have had the privilege to work, have
4 been hardworking, dedicated, effective and
5 truly care about members of the public and
6 proper policing.
7 I also recognize that police
8 misconduct has been at the forefront of
9 the national conversation once again.
10 About two decades ago I wrote a paper on
11 policing in New York City and police
12 misconduct. I know that seems, you know,
13 very hard to believe since I'm only
14 twenty-one, but it seems that some of the
15 same issues that I wrote about back twenty
16 years ago are still prevalent today. And
17 one of those things is police misconduct
18 which is problematic when it involves
19 juvenile victims because of the increased
20 risk of trauma and other long-lasting
21 negative effects that such encounters may
22 leave.
23 Indeed it is important for officers
24 to be cognizant of the impact that their
25 actions could have on our youth. Two

2 police practices that have had a
3 disproportionate impact on youth in New
4 York City are, of course, Broken Windows
5 policing and stop-and-frisk.
6 In 2015, the Vera Institute of
7 Justice surveyed 516 people between the
8 ages of fifteen to twenty-five in six New
9 York City neighborhoods that were analyzed
10 as stop-and-frisk hot spots about their
11 insights and experiences of being stopped
12 by police.
13 The majority indicated that they had
14 already had negative encounters with law
15 enforcement. In fact, 70 percent said
16 that they had been stopped and frisked at
17 least one time. About a quarter reported
18 the display of a police weapon. And
19 approximately half said that officers
20 threatened and/or used physical force
21 against them. Less than a third reported
22 ever being informed by police of the
23 reason that they were stopped. And 85
24 percent of them said that illegal items,
25 such as weapons, drugs or open containers

2 of alcohol were not recovered during the
3 stop in which they had been involved. In
4 fact, the vast majority believed that the
5 stops they experienced were actually
6 unwarranted.
7 Furthermore, as you've already
8 heard, black and Latino youth are
9 disproportionately affected by Broken
10 Windows policing as well as
11 stop-and-frisk. Between 2006 and 2015,
12 CCRB consistently received more complaints
13 from younger individuals that contained at
14 least one stop-and-frisk allegation.
15 During my tenure as executive director of
16 the CCRB, the 2015 annual report included
17 an examination of fully investigated and
18 closed CCRB cases involving juvenile
19 victims from January 1st, 2014 to
20 October 1st, 2015.
21 In those case files, there were
22 incidents where teens or preteens were
23 handcuffed, arrested or had a gun pointed
24 at them for engaging in an innocuous
25 youthful behavior such as playing tag,

2 sitting on a stoop or doing common
3 household chores such as just taking out
4 the trash. This is unacceptable.
5 A policing policy that encourages
6 positive interactions with our young
7 people can improve long-lasting community
8 police tensions and improve youth people's
9 cooperation with law enforcement. In
10 fact, some of these cases demonstrated
11 that there likely would have been a better
12 outcome had the officers acted differently
13 during the police-youth encounter. In
14 this juvenile study, forty-one out of 155
15 cases had at least one unsubstantiated
16 allegation. The ages of the juveniles
17 ranged from nine to seventeen years old.
18 The circumstances under which the youth in
19 these cases were approached by police fell
20 into six categories; one, while the youth
21 were in transit, while the youth were
22 sitting or standing outside with a group,
23 while youth were inside a home, while the
24 youth were involved in a dispute, while
25 the youth were on the street or while the

2 youth was in a miscellaneous location such
3 as a barbershop or a high school lobby.
4 The majority of these cases occurred
5 in Brooklyn, followed by the Bronx,
6 Queens, Manhattan and Staten Island. And
7 the majority of the substantiated
8 allegations were for abuse of authority,
9 followed by force, discourtesy and
10 offensive language. Not surprisingly, the
11 majority of the victims were male as well
12 as black and Latino. In many of the
13 cases, the street encounters between
14 officers and youth escalated to the point
15 of misconduct even though the initial
16 contact appropriate.
17 Deescalation tactics are
18 particularly key when dealing with young
19 people. If the officers had used
20 deescalation tactics, combined with
21 patience and understanding, the resulting
22 misconduct may have been preventable.
23 While the cases may not be representative
24 of the majority of police encounters with
25 youth, they occurred with enough frequency

2 to merit scrutiny.
3 In several of the cases of the
4 juvenile study, had there been more
5 patient, respectful and appropriate
6 actions that the officers could have taken
7 to deescalate the situation, they may have
8 avoided committing misconduct against the
9 youths involved. One must remember that
10 young people may fear or mistrust the
11 police, particularly youth of color, and
12 no different from some adults that they
13 may be anxious or confused with encounters
14 with police.
15 To exacerbate the situation,
16 adolescents cannot always predict or
17 understand the consequences of their
18 actions, especially in highly emotional or
19 highly stressful situations. Because as
20 research shows, the human brain does not
21 fully develop until the mid-twenties.
22 The youth in the study may have been
23 more likely to understand and respect the
24 officers' actions and orders if the
25 officers had shown patience and respect

2 towards them at the outset in order to
3 reduce the stressfulness of the situation
4 at hand.
5 While dealing with teenagers and
6 children can be quite challenging for a
7 variety of reasons, and I speak from
8 personal knowledge, highlighting these
9 incidents hopefully encourages officers to
10 approach future interactions differently
11 and thus refrain from improper conduct.
12 This, in turn, has the potential to
13 achieve the collective and important goal
14 of strengthening relations between police
15 and the New York City youth.
16 With respect to accountability and
17 transparency, while New York City has
18 taken steps to improve transparency and
19 accountability in the area of policing,
20 there is still much more to accomplish. I
21 cannot emphasize enough that true reform
22 can occur where there is honest, genuine
23 political will.
24 With respect to NYPD internal
25 oversight, in the wake of the

2 police-involved shooting death of
3 sixty-six-year-old Deborah Danner last
4 October, Police Commissioner Jimmy O'Neill
5 said that it was clear that the department
6 had quote/unquote "failed" and that it
7 appeared that the policies and procedures
8 for handling emotionally disturbed persons
9 were not followed. Such a confession is
10 an anomaly and not the norm. However, it
11 is precisely this type of upfront honesty,
12 transparency and acceptance of
13 responsibility that builds public
14 confidence in our City and trust in the
15 NYPD instead of eroding it.
16 Other improvement over the last
17 two-and-a-half years has been the
18 coordinating rate between CCRB recommended
19 penalties and the NYPD's actual imposed
20 penalties which have improved
21 dramatically. While the NYPD has taken
22 measures to improve transparency and
23 accountability, there are still policies
24 and practices that can be improved on both
25 fronts.

2 The first that I would like to talk
3 about is the timeliness of disciplinary
4 process. Timeliness of the disciplinary
5 process is imperative to building
6 credibility and trust with the members of
7 the public as well as members of service.
8 Cases that languish over time do nothing
9 but frustrate victims and witnesses who
10 may lose interest in cooperating with the
11 process. Quite frankly, those officers
12 who should be exonerated, should be
13 exonerated as quickly as possible. And
14 those officers who have committed
15 misconduct should be held accountable as
16 quickly as possible. Therefore, faster
17 reconciliation of substantiated cases by
18 an independent entity and a quick
19 rendering of a final resolution to cases,
20 including those that have been processed
21 through a disciplinary hearing, are
22 critical in establishing public trust and
23 building confidence in the NYPD.
24 Another aspect that can be improved
25 is providing exact details of any final

2 disciplinary action taken against an
3 officer. While publicizing the details of
4 any final disciplinary action is governed
5 by and confidential under Civil Rights Law
6 Section 50-A, those disciplinary details
7 should be known to the CCRB and to the
8 Inspector General's Office so that the
9 NYPD, the CCRB and the Inspector General
10 can keep proper records regarding
11 officers' disciplinary histories.
12 For example, currently the final
13 penalty imposed is a Command Discipline B
14 that could range from instructions to a
15 loss of up to ten vacation days. The
16 original recommendation by a member of the
17 CCRB might be eight days vacation. The
18 final imposed penalty might simply be
19 instructions. It's very important to
20 track the exact penalties that an officer
21 receives to maintain accurate records and
22 to consider in potential future
23 disciplinary cases.
24 Another improvement that can be made
25 is to the patrol guide itself. With

2 respect to juveniles, expanding the patrol
3 guide to specify the appropriate use of
4 force on juveniles. Juveniles are
5 obviously more physically, emotionally and
6 psychologically vulnerable to aggressive
7 or violent actions by police officers.
8 And detailing an outline specifically on
9 what the appropriate use of force on
10 juveniles would be in the patrol guide
11 would be beneficial for NYPD members.
12 Emphasizing that patrol guide,
13 section 202-25 when interacting with
14 juveniles. That patrol guide section
15 specifies that anti-crime officers should
16 identify themselves when possible. This
17 should be the policy for all officers who
18 are in plain clothes. Clear
19 identification can help reduce the chance
20 that innocent youth will flee from police,
21 which results at times when youth do not
22 realize they were being approached by an
23 officer.
24 There are two entities that deal
25 with external oversight in the New York

2 City, the CCRB and the Office of the
3 Inspector General for the NYPD. Generally
4 speaking, I cannot stress enough how
5 important and imperative it is that a
6 truly independent oversight agency exists
7 to addresses police misconduct, a truly
8 independent one.
9 As an improvement transparency in
10 2016, the CCRB created its Data
11 Transparency Initiative in which visitors
12 can view and interact with CCRB data.
13 That DTI was born out of discussions with
14 progressive thought leaders across the
15 country, and was in response to an
16 overwhelming request for more data and
17 greater transparency. This initiative
18 represents an unprecedented level of
19 transparency for this agency that has
20 existed for twenty-three years.
21 External oversight can also achieve
22 greater transparency of Section 50A of the
23 Civil Rights Law as amended or outright
24 repealed. Currently in New York,
25 identities of officers and their

2 disciplinary records are governed by and
3 kept confidential under Section 50A. New
4 York should move towards greater
5 transparency as the City of Chicago has
6 done. While officer disciplinary
7 histories were originally confidential in
8 Chicago, an appeals court ruled that
9 disciplinary records of CPD officers
10 dating back to 1967 had to be released
11 under the Freedom of Information Act. As
12 such, the Invisible Institute released a
13 database of 56,000 misconduct complaint
14 records for more than 8,500 Chicago police
15 officers and disproved the argument that
16 the release of such information places
17 officers in jeopardy.
18 In fact, this database serves as a
19 national model for transparency and
20 accountability and serves to gain public
21 trust and confidence. Another area of
22 concern and ripe for improved
23 accountability would be to establish a
24 special victims unit within an external
25 oversight agency which could investigate

2 and handle civilian complaints regarding
3 sexual assault.
4 Andrea Ritchie, a renounced civil
5 rights attorney and advocate, presented
6 during a CCRB board meeting last year and
7 discussed the dual stigmatization of
8 civilians being a victim of sexual assault
9 at the hands of law enforcement, and then
10 having to report such assaults to the very
11 entity employing the assaulter.
12 As a former sex crimes prosecutor
13 myself, there is a distinct need to
14 provide specialized services for victims
15 of sexual assault, particularly those at
16 the hands of law enforcement. From
17 interviewing techniques to counseling and
18 proactive investigations and prosecutions,
19 sexual assaults ostensibly would fall
20 within the parameters of abusive authority
21 or use of force and an independent entity
22 investigating such cases, would hopefully
23 improve accountability in this regard.
24 External oversight agencies should
25 also continue to release issue-specific

2 reports, such as the CCRB's upcoming
3 bystander report and the Inspector
4 General's report on addressing
5 inefficiency in NYPD's handling of
6 complaints. Such reports identify issues
7 that may not be apparent to the public or
8 the NYPD, address the areas of concern of
9 such issues and provide sound
10 recommendations to remedy the problems.
11 Improving accountability can also be
12 achieved through the publicized early
13 warning system that the CCRB has been
14 working on and developing in conjunction
15 with the University of Michigan for the
16 past year. This system should assist in
17 identifying officers who are likely to be
18 the subject of a future misconduct
19 complaint based on past misconduct. Using
20 regression analysis, this system would be
21 instrumental in identifying those officers
22 who may be in need of training,
23 reassignment or other remedies before a
24 future complaint may be filed.
25 Finally, with respect to external

2 oversight agencies, I cannot stress enough
3 the importance of the Administrative
4 Prosecution Unit of the CCRB. That unit
5 consists of lawyers who prosecute and
6 litigate case involving use of force,
7 abusive authority, discourtesy, offensive
8 language on an independent basis,
9 independent of the police department. I
10 think this entity, this unit, was created
11 in 2012. It was a very novel idea, it is
12 a very important idea. The issue with it
13 is that it exists under a memorandum of
14 understanding with the New York City
15 Police Department and it should be
16 codified into law so that it exists
17 independently.
18 Generally speaking with respect to
19 transparency and accountability, the
20 demand for body worn cameras has
21 increased, as you know, has increased.
22 Michael Brown was shot and killed in
23 Ferguson, Missouri in 2014. Considering
24 this increased demand in the interests of
25 officers and civilians alike, it is

2 imperative that the officers wear body
3 cameras. Properly used body cameras
4 undoubtedly display and play a role in
5 improving police accountability, improving
6 the public trust and protecting those on
7 both sides of the camera lens in several
8 ways.
9 It provides objective evidence for
10 investigation and trials which would
11 ostensibly result in more accurate
12 findings and efficient investigations for
13 officers and civilians alike.
14 The body worn cameras also reduce
15 rates for police misconduct and citizen
16 complaints. They improve the resolution
17 of civilian complaints and they improve
18 police training and practice. It is
19 important to have body worn cameras, but
20 it is equally important to have a
21 mechanism to compel law enforcement to
22 release body worn camera footage to the
23 public upon request in a timely manner and
24 not be allowed to retain it over time in
25 order to create a potentially false

2 narrative.
3 For example, in a 2012 case in which
4 a deli worker was fatally shot by police
5 here in New York City, officers claim that
6 they gave the worker immediate first aid.
7 However, surveillance video, released four
8 years later, showed that officers did not
9 render first aid and instead merely
10 dragged the worker's body.
11 Similarly, in one of the CCRB
12 juvenile cases, an officer stated in his
13 CCRB interview that he observed the boy
14 reaching into his pockets. But
15 surveillance video, again, showed that
16 version of events to be untrue.
17 Accountability is improved when
18 video is released in a timely manner
19 without alteration to satisfy the public's
20 right to know. Thankfully I understand
21 that officers will be equipped with body
22 worn cameras by the end of 2019.
23 Finally, changes to NYPD policies,
24 such as use of force guidelines. Last
25 year NYPD changed their use of force

2 guidelines. Because these guidelines
3 involve policy, the way police interact
4 with civilians in certain situations, and
5 because they ultimately affect civilians,
6 the public should know in advance of the
7 changes instead of learning about them
8 after the policies are in effect.
9 For example, the use of force
10 guidelines with respect to choke holds was
11 changed such that the absolute prohibition
12 banning choke holds was removed and the
13 new guidelines allowed certain use of
14 force prohibitions to be reviewed on a
15 case-by-case basis by the NYPD Use of
16 Force Review Board to determine whether
17 the actions were reasonable and justified
18 and ultimately within the guidelines.
19 While there may be justifiable
20 circumstances to change such a policy on
21 the longstanding choke hold ban, such as
22 in a life or death situation, such drastic
23 policy considerations should be brought to
24 the public's attention before such changes
25 take place and be a subject of public

2 debate and comment.
3 I cannot stress enough that it is
4 incumbent upon local government to have an
5 effective, independent watchdog agency --
6 MS. HAMILL: I'm sorry to interrupt,
7 but I really need you to wrap up because
8 we've got another panelist and we have
9 questions. And I know Professor Fagan has
10 to get back to Columbia Law to teach. So
11 I want to make sure we have plenty of
12 time.
13 MS. MALIK: Yes. That was my last
14 sentence -- to identify and curb police
15 abuse.
16 Thank you for your time.
17 MS. HAMILL: Ms. Ponomarenko.
18 Thankyou so much for being here.
19 MS. PONOMARENKO: Thank you for
20 having me here.
21 So I'm the deputy director at the
22 Policing Project at NYU Law where I also
23 am an adjunct professor of law.
24 We were asked today to give
25 testimony on the general subject of police

2 accountability as well as police
3 accountability with respect to body worn
4 cameras. And that's the focus of my
5 remarks today.
6 To put my remarks in context, I want
7 to start by distinguishing between two
8 forms of accountability in policing that
9 often get blended together. So often when
10 we talk about accountability in policing,
11 what we talk about is back-end
12 accountability. So something has
13 happened, there are concerns that
14 misconduct may have been involved and the
15 goal of accountability is to figure out
16 what went wrong, and if something went
17 wrong, who we hold responsible.
18 Now, as people have pointed out,
19 back-end accountability can also, at
20 times, prompt more systemic change if the
21 department adjusts its policies and
22 response to keep that bad thing from
23 happening again.
24 Examples of back-end accountability,
25 with which everyone here I'm sure is quite

2 familiar, include Inspectors General,
3 civilian review boards, judicial review
4 and court-appointed monitors.
5 Indeed, if one thinks about it, body
6 worn cameras are also yet another tool of
7 back-end accountability, the goal being to
8 figure out, after the fact, how the
9 officers handled themselves and whether
10 they acted appropriately.
11 Now the NYPD is subject to each of
12 these forms of back-end accountability,
13 including the upcoming thousand camera
14 body worn camera pilot. In the rest of
15 government, however, most accountability
16 is not at the back end, but rather at the
17 front end. So there's a familiar
18 structure to American governance, so
19 familiar that we often take it for
20 granted. Whether at the national, State
21 or local level, executive officials are
22 governed by rules which are put in place
23 before officials can act. These rules are
24 transparent to the public, which means you
25 can go and figure out what those rules

2 are. And perhaps most importantly,
3 there's an opportunity for some form of
4 public comment before the rules go into
5 effect. Sometimes it's formal through
6 legislation or notice and comment
7 rulemaking, sometimes it's a hearing at
8 your local school board. But, whatever
9 the case may be, there's some opportunity
10 for the public to weigh in before
11 government acts.
12 Now, there's also back-end
13 accountability in the rest of government
14 usually through judicial review, and these
15 two act in tandem. Back-end
16 accountability assures that the front-end
17 rules are followed. Front-end
18 accountability sets the rules that makes
19 back-end accountability more effective.
20 Now, what distinguishes policing,
21 however, is that we have very little
22 front-end accountability. There are rules
23 for policing to be sure. The NYPD has a
24 very expansive patrol guide, but there is
25 very little in the way of transparent

rules that are formulated with public input.

We tend to think that this is a mistake and that moving policing towards a model of front-end accountability would be to the benefit, not only of policing but to the public as well.

Now, to give just one example, take the issue of use of force. So there's been a lot of concern expressed here today about the lack of accountability at the back end for use of force, and I do not want to downplay the many failures in back-end accountability systems, but in a lot of departments, the only guidance that's given to officers at the front end is that use of force must be objectively reasonable at the time that it's used.

Now, I think anyone who's a lawyer can understand precisely why it's really hard to hold somebody accountable at the back end when the only rule is just reasonableness. That doesn't tell officers what to do, it doesn't provide

guidance and it doesn't enable back-end agencies to hold officers accountable for not deescalating, not backing up, not taking a moment.

And one thing that we've started to see across the country is that when the public is involved in formulating use-of-force policies, whether through collaborative reform processes or other mechanisms of public input, you do end up with much more detailed policies that talk about minimization, that talk about deescalation techniques, that provide guidance for when you can use force against juveniles or not and so on and so forth.

Now, the NYPD is hardly an exception to this pattern in the United States. Until recently, for example, the only way to get a copy of the NYPD patrol guide was to file a Freedom of Information Law request. That is no longer the case because the City Council, back in October, passed a law that actually required the

NYPD put its patrol guide online. And as many folks know, many of the NYPD's most controversial policies and practices, whether it be around surveillance or street enforcement, were adopted without input from affected communities.

Now, that having been said, I do want to take a moment today to highlight what I think is an important step that the NYPD has taken toward front-end engagement around policies and priorities.

So one of the requirements of the Floyd order was the NYPD conduct a 1,000-camera pilot of body worn cameras. As more and more departments have learned in turning to body worn cameras, cameras only work if there are well-formulated policies to govern their use. Body cameras raise many difficult questions, including when a camera must be turned on and off, whether officers should be allowed to review the footage before filing a report, and whether the public should be given access to the footage, and

if so, under what circumstances.

Before putting cameras out on the street, the NYPD asked the Policing Project, where I work, to gather public input on its body worn camera policy. This was a remarkable, and in many ways, a commendable step by the NYPD.

With input from a variety of stakeholders, including the Floyd plaintiffs, we developed an online questionnaire that asked community members about some of the key questions around body worn cameras. In the tradition of notice and comment rulemaking, we also put the NYPD's draft policy online and invited organizations to submit more detailed written comments.

Over the course of five weeks, in the summer of 2016, we then conducted a massive outreach effort to hear from as many people as we could. We worked closely with elected officials, interest groups, with community and civic leaders, with the department itself, to get as many

2 people as we could to participate. We
3 ended up getting over 25,000 responses to
4 the questionnaire. We also received
5 comments from fifty organizations,
6 including the Leadership Conference on
7 Civil and Human Rights, Communities United
8 for Police Reform, the Brennan Center for
9 Justice and the Police Executive Research
10 Forum. At the end of the comment period,
11 we prepared an extensive report to the
12 NYPD that summarized the feedback that we
13 received.
14 I wish I could tell you today what
15 the report said or what the NYPD has done
16 in response, and I hope that I can do so
17 soon as I think it bears directly on the
18 questions that you have been asking today.
19 The reason I cannot is because when we
20 began this project with the NYPD, we had
21 agreed that our report would not become
22 public until the department had an
23 opportunity to revise its policy in
24 response and to prepare its own response
25 to the public explaining what changes it

2 made in response to public feedback and
3 which changes it didn't, and why. This
4 is, of course, a common practice
5 throughout administrative government. But
6 at the time that we entered into this
7 agreement, we were all under the
8 assumption that the policy would be ready
9 sometime this fall.
10 Unfortunately, it has taken the
11 department an uncommonly long time to
12 finalize its policies since receiving our
13 report on September 14th. Now, in
14 fairness, all of this is complicated by
15 the fact that NYPD's policy must be
16 approved by the court and the
17 court-appointed monitor. The issues also
18 are not easy and the NYPD is a large
19 organization, and adopting a policy in an
20 organization of that size is never an easy
21 matter. That said, in retrospect, I do
22 wish we had done things a little
23 differently and look forward to sending
24 you our report as soon as it is, in fact,
25 public.

2 I can say that in our view this
3 effort nevertheless shows that front-end
4 accountability is possible and desirable
5 around policing. And as I said, we'd be
6 happy to say more once the NYPD's report
7 is public. We hope at that time that the
8 people of New York will be supportive of
9 what was done here and that broad-based
10 public input in the department's policies
11 can become a matter of routine.
12 I would like to add just one final
13 and important thing about front-end
14 accountability around policing because
15 it's a subject that deserves careful
16 attention and has been of public focus of
17 late.
18 Policing is distinctive from other
19 areas of government. There are times when
20 the needs of confidentiality are
21 particularly acute making public
22 participation somewhat complex. We
23 understand that and we think allowances
24 should be made for it. Having said that,
25 we caution that the need for

2 confidentiality is not nearly as broad as
3 to justify the lack of transparency that
4 we see around policing today. And to
5 underscore that, we as a city and a
6 society must find ways to reconcile the
7 need for secrecy which at times is
8 essential to our public safety with the
9 need for democratic governance which is
10 paramount in our society. We're grateful
11 to our many friends at the NYPD for
12 welcoming this experiment in the ways that
13 they did. It was and is a big deal, and
14 we hope it paves the way for addressing
15 some of the concerns that motivate the
16 advisory committee.
17 Thank you.
18 MS. HAMILL: Thank you all so much.
19 We have a few minutes. I have to limit
20 each member to one question. And that
21 means one question with one part, not one
22 question with four or five parts as I've
23 been hearing the last day-and-a-half.
24 I want to call on any members that I
25 haven't been able to call on yet today.

Anybody else who's going to want to ask questions so I have an idea how many?

Iris.

MS. CHEN: Thank you all so much. It's really helpful and inspiring to hear about your incredible efforts.

As you all know, our focus for this particular set of hearings is on youth and disproportionate impact on youth of color. So I wanted to get your thoughts specifically on interaction with law enforcement that our kids experience every single day in school, which is with our school safety officers.

Our understanding is that as limited as the front-end accountability might be with typical, you know, precinct cops, there's even fewer, both back-end and front-end accountability structures in place for our school safety officers. So I would love to get your thoughts on the state of accountability as related to school safety officers, what more needs to be done and any recommendations you have

in terms of really trying to bolster accountability and oversight in that realm.

MR. FAGAN: My first reaction is that many of the measures of accountability that were discussed in this panel would apply to school safety officers. I'm not quite sure why they wouldn't. Their internal records, their disciplinary records and so on would certainly be relevant to understand how they police young children.

The second would be, there are different models of how the NYPD conducts, implements school safety and how the school safety officers work. So for example, there are a small number of places where there actually are precincts within the schools, sort of little mini precincts. And there are a variety of different measures that go on.

It would be very interesting to undertake some fairly specific survey work asking what the perception of policing is

on the part of these kids. So I've done research in a couple of different ways. One was on stop-and-frisk where we actually surveyed 1250 young adults in New York, people between eighteen and twenty-six. We would have asked them younger, but our university would have asked us to get parental consent which would have been quite problematic for reasons as you can imagine.

But we learned quite a bit about their contacts with police officers, these were young adults, the nature of those contacts, how often they took place and what the consequences were along two main fronts. One is the way that they perceive police in their future actions with respect to law, including whether they would be willing to serve on a jury, whether they would be able to cooperate with the police and assist them in investigations to identify suspects and so on.

And the second was a very

straightforward clinical, not clinical, but a psychiatric epidemiology study about mental health. And we asked them about their symptoms and we used a variety of different scales.

One thing we know is, for example, that the rates of PTSD, we use the same measures of PTSD for kids, for young adults that others have done in Vietnam vets, in first responders, in earthquakes and floods and fires and so on. And we find that the rates of PTSD among kids stopped.

First of all, they increase with the frequency of stops. Secondly, they increase with the intrusiveness of the stop, meaning whether or not there's a physical force but also language, abusive, profane language, and with the outcome of the stops. We find the more that they are just stopped and let go, the more cynical they become. And these are perceived injustices. There's no reason why New York City's Department of Education,

2 considering its commitment to numbers and
3 statistics, can't undertake a similar
4 effort.
5 And so I'd strongly recommend that
6 there's an impact, there's a domain of
7 impacts of policing on the lives of young
8 children, how they perceive the law,
9 forecasting what those impacts might be in
10 their future conduct, whether or not they
11 remain in school. Those would be
12 important things to understand.
13 One last thing, we're in the middle
14 of an analysis that actually links school
15 test scores to stop-and-frisk data. And
16 we've been able to do this going back from
17 roughly 2004 up through 2012 or '14. So
18 the era of stops has come down quite a
19 bit, but during that era we find that
20 actually school test scores of kids in
21 schools relative to the stop rates in and
22 around those schools, we draw perimeters
23 using mapping technology, the impact is
24 extremely large and extremely negative.
25 And it is also correlated with obviously

2 the places where stops are the most
3 common.
4 So I think we can, for example, use
5 data about what the school safety officers
6 do internally within the schools and
7 correlate that with school outcomes. And
8 that would be a very powerful, potent
9 measure of what the impacts of that
10 policing involve.
11 MS. HAMILL: Alex.
12 MR. VITALE: Professor Fagan, I know
13 you not only worked on some of these
14 decrees, but have reviewed a number of
15 them. We've been very interested in the
16 implementation of the Floyd process.
17 Are there things that you've learned
18 that could help guide us in making
19 recommendations to ensure that that
20 process really results in sustained
21 meaningful outcomes and what the
22 limitations of that process are in doing
23 that?
24 MR. FAGAN: It's an interesting
25 question. So monitors can do their jobs

2 in a variety of different ways. They can
3 hue very, very closely to the contours of
4 the consent decree. They can be fairly
5 creative and range far and wide and bring
6 some intellectual capital to the process.
7 I'm a little reluctant to comment on
8 the monitoring process in New York since
9 I'm involved in it as still Darius's
10 expert and also the expert for the Davis
11 and Lagone complaints.
12 But in other places it's been an
13 interesting process. So for example, I've
14 been involved in the Cincinnati process.
15 And we are now just about -- the
16 Cincinnati monitor, Saul Green, who is an
17 amazing, wonderful attorney who also is a
18 monitor there, has been invited by the
19 City to undertake a ten-year review of the
20 process there. The collaborative
21 agreement was singed in 2002. It was
22 updated in 2008. It's a very different
23 collaborative process now than it was back
24 then.
25 But the point is the City basically

2 says to the monitor, come back, we are now
3 at the moment of expiration, come back and
4 tell us how it is working.
5 The litigators there, Al
6 Gerhardstein brought the monitor and so
7 on, both agreed that this is like a
8 ten-year process and that's a small
9 department, to turn around a department
10 that size. You can imagine the level of
11 effort for responding to New York. What
12 they did there is focus their monitoring
13 very specifically on the incidents that
14 got the Cincinnati Police Department into
15 trouble in the court in the first place.
16 In Los Angeles, which is quite a
17 different matter, that consent decree
18 never asked that question. And the data
19 that was being put forward by the
20 plaintiffs in the case or one of the
21 plaintiffs, Southern California ACLU, they
22 had basically the same stop data that we
23 would get in New York and the outcome of
24 those stops and so on. They didn't really
25 ask the question about whether there was

2 continuation of those problems. And they
3 instead issued a report and the report
4 basically said everybody's happy and they
5 all love the police now. But the fact is
6 that they were still profiling throughout
7 the term of the consent degree.
8 We did some analysis for New Jersey
9 under Governor Corzine. Asked us, through
10 his police commission, his State Advisory
11 Commission on Practices, asked us to help
12 them analyze data to ask whether or not
13 they were in compliance. And the answer
14 was, despite having built new computers
15 and lots of really interesting systems and
16 some training and so on, that the problems
17 persisted throughout the course of the
18 consent decree.
19 So one of the issues about
20 monitoring is to ask whether or not
21 actually -- actually the problems that got
22 them into trouble in the first place have
23 abated. And in some cases, yes; in some
24 cases, no.
25 The monitor in New York is asking

2 that question, at least with the question
3 to the question of racial disparity. They
4 haven't really dug in yet on the question
5 of Fourth Amendment violations, which is a
6 much harder nut to crack, as you can
7 imagine.
8 So they've gone about it in ways
9 that are very, very independent. On thing
10 that's interesting in Cincinnati is the
11 engaging of the community and also a wide
12 variety of experts in the process of
13 developing the metrics. That hasn't gone
14 on here. It is very much in the grasp of
15 the monitor and it will be interesting to
16 see what happened if that process was
17 opened up.
18 There are other situations but I
19 don't want to dominate the panel's
20 comment. But I'm happy to answer those
21 questions later on.
22 MS. HAMILL: Kevin.
23 MR. THOMAS: Hi everyone. Thank you
24 again for everything that you do for this
25 city.

2 My question goes to Maria about the
3 body camera policy. I read the proposed
4 policy online. I know you cannot comment
5 on the detail and the specific origin.
6 Did it change, by any chance?
7 MS. PONOMARENKO: So that,
8 unfortunately, is exactly what I can't
9 comment on. Also for the fact that the
10 policy -- I mean they haven't made it
11 public and there have been multiple drafts
12 of it and they're, I think, still
13 struggling with it, but it should be soon.
14 MS. HAMILL: Earl.
15 MR. WARD: Thank you for your
16 thoughtful and helpful recommendation with
17 regard to reform.
18 You mentioned a juvenile study. Was
19 there an actual study or did you just call
20 data from the various CCRB reports over
21 the years or was there a juvenile study?
22 Because, as you know, our focus is
23 juveniles and race.
24 MS. MALIK: It was part of our 2015
25 annual report and it was called from the

2 data from the CCRB files.
3 MR. WARD: Thank you.
4 MS. HAMILL: Let me follow up on
5 that. I was very interested to hear about
6 this report, and obviously we will want to
7 get a copy of it. With that information
8 that you learned, what, if anything, did
9 CCRB do about that or try to do in terms
10 of addressing it, in terms of policy with
11 the NYPD or any other agency?
12 MS. MALIK: So we had periodic
13 meetings while I was there with the Risk
14 Management Bureau and higher level
15 officials within the NYPD and certainly
16 they were made aware of our annual report.
17 They receive a copy of it and they are
18 very thorough in reading it. Whether they
19 agree with accommodations or not, you
20 know, that's their prerogative as to
21 whether they agree with them or not.
22 However, while I was there we tried
23 to have an open dialogue with the
24 executive staff at the NYPD, as well as
25 with the Risk Management Bureau who were

2 really interested in learning about what
3 our recommendations were and what our
4 calling of the data and our studies
5 revealed.
6 MS. LOUIE: Thank you again for your
7 service.
8 So my question has to do with body
9 cameras. Based on what you know, what are
10 the pros and cons of body cameras as a
11 tool of accountability? And what might we
12 expect to be unintended consequences of
13 the use of body cameras?
14 MS. PONOMARENKO: Just to jump in
15 briefly, I mean I think one of the
16 problems with body worn cameras is that
17 everybody rushed to adopt them before we
18 ever really learned how well they're going
19 to work. There were early studies, but I
20 think the big criticisms of those studies
21 is they were of departments that had a lot
22 of trouble. And so it's actually not that
23 surprising that in a very mismanaged
24 department you're going to see dramatic
25 improvements.

2 I think the biggest cons are the
3 cost and the kind of data retention and
4 the possibility that this turns into
5 surveillance. That said, I mean every
6 department, you know, we've talked to a
7 lot of police officials and anecdotally at
8 least it does seem like officers report
9 that people tend to behave better when
10 they're on cameras. Officers themselves
11 tend to behave better. And I think that's
12 the hope. I think the big question, and
13 there are a number of studies being
14 undertaken now that will tell us how much
15 this actually works in practice.
16 But I think the open question is
17 just whether the costs are kind of worth
18 it or whether there's other ways, whether
19 it be through training or other programs
20 that we can achieve similar benefits.
21 MS. MALIK: That's accurate, as well
22 as improving police training and practice
23 by using actual footage from body worn
24 cameras. You can improve the training for
25 new cadets, you can improve in-service

2 training by using the actual footage from
3 actual events and showing them to the
4 police officers. Also improving the
5 resolution of civilian complaints in a
6 much timelier matter. Video was
7 instrumental at the CCRB when we started
8 doing cases in a much timelier manner and
9 investigating them a lot faster because
10 you would get the evidence necessary to
11 evaluate a case and that evidence did not
12 disappear, in terms of surveillance video
13 or cell phone video or what have you.
14 So I think the body worn cameras are
15 important for those issues as well as
16 providing objective evidence for
17 investigation and any trials or
18 administrative hearings that may ensue.
19 One of the biggest concerns with
20 body worn cameras is, of course, privacy
21 issues. If you have a body worn camera
22 and whether you're an officer that's
23 required to have it on twenty-four/seven
24 while you're on duty, if you're going into
25 somebody's house or executing a warrant or

2 something like that, there could be
3 civilians in the house in various states
4 of disarray or various states of undress,
5 I should say. And that could be a concern
6 for the body worn cameras. Or if somebody
7 simply wants to ask an officer on the
8 street a question or disclose something to
9 an officer on the street, those were the
10 primary concerns in terms of body worn
11 cameras.
12 MR. FAGAN: I'd add one thing. I
13 don't think there's widespread agreement
14 about what the right metrics are to
15 evaluate the impact of a camera program.
16 It's one thing to say that there would be
17 fewer complaints, there may well be a
18 decrease in the number of suppression
19 hearings or successful suppression hearing
20 or an increase in the number of
21 suppression hearings.
22 What we don't know, and I think this
23 is something that comes out of the Floyd
24 litigation and litigation in just about
25 every other consent decree, they won't

2 tell us, depending on when the camera's
3 turned on, and that's a policy matter,
4 what the basis of the stop was, whether or
5 not there actually was reasonable
6 suspicion or probable cause and so on.
7 And I think that's something that I think
8 needs some attention in the formulation of
9 policies.
10 One of the things that Maria
11 mentioned is also something that's quite
12 important in how we developed this policy
13 which is when do you actually take a
14 statement from an officer when there is --
15 when we do proceed to some kind of a court
16 involvement? And I think this is
17 something right for an experimentation
18 psychologist, should be lining up to do
19 this, which is basically showing the video
20 to somebody. When do you take the report?
21 Do you get the report before the video is
22 shown or after the video is shown? And my
23 guess is that that would matter quite a
24 bit.
25 MS. HAMILL: I have a final question

2 for you, Professor Fagan. You made a
3 number of recommendations here, including
4 a return to principle of adjudication of
5 guilt. As a former judge, I am completely
6 in agreement with you. So my question to
7 you, and this really goes to all of your
8 recommendations, what are the roles for
9 the other players in the criminal justice
10 system, the judges, the prosecutors, City
11 Council in terms of any type of
12 legislation and holding them all
13 accountable?
14 MR. FAGAN: Judges are independent,
15 as well they should be. So I'm not quite
16 sure what accountability for a judge
17 means. And accountability for a judge is
18 a process that could go really off the
19 rails. And the New York Post could be the
20 agency that would be holding the judges
21 accountable as they did for the horrible
22 case that happened with the EMT in the
23 Bronx.
24 Let me rephrase the question to say
25 systemically, are there other things that

2 could be going on? One would be simply to
3 begin to develop the same kind of metrics
4 in the courts. And I know that there's
5 been some efforts to do that. I'm
6 blocking on his name, perhaps Candice
7 remembers, former NYPD person under Howard
8 Safer, was taking the lead, he became a
9 judge, and is taking the lead in
10 developing a court stat.
11 To the extent that you can sort of
12 lead the judges to water or to wine,
13 courts that present an opportunity to
14 develop some metrics about what their
15 cases look like, where they can become
16 influential with other places.
17 So if you simply look at the
18 misdemeanor conviction rates, they're
19 roughly 50 percent. Most of those are by
20 plea. Now, whether the pleas are real or
21 whether the pleas are just simply
22 conveniences for people to get out of
23 court and walk away, there's obviously a
24 problem with the nature of the arrest.
25 There should be some feedback with the

2 cuts across what sociologists would call a
3 loosely coupled system between the courts
4 and the police. The declination rates are
5 extremely high. There should be some
6 feedback -- relatively high, running maybe
7 in the twenties, low twenties, fifteen to
8 twenty, twenty-five, depending on the type
9 of crime. There should be some feedback
10 which would take the burden off the
11 courts, et cetera.
12 You can imagine the opportunities
13 for systems development and analytics.
14 And then the leadership has to come from
15 within the judiciary for how you actually
16 apply the lessons of the analytics.
17 MS. HAMILL: Is there a role for the
18 City Council with respect to some of your
19 recommendations?
20 MR. FAGAN: They could fund some
21 development of some analytics and they
22 could probably do some dissemination of
23 court stat and maybe link up the data
24 between court stat and claim stat and comp
25 stat and citizen surveys and complaints to

the CCRB. This is a data rich city and we ought to be making better use of that.

One thing I didn't talk about -- I mean I would like to see -- one of the things that happened in the Seattle consent decree is the creation of something called the Citizens Police Commission which answers to the mayor. And it's a really terrific model. They're having their struggles. And the struggles are mainly with the monitor as it turns out, but that's a whole other conversation about monitoring. But that's the kind of entity that could be created that would have broad-based participation from communities, from the police, from experts, litigators, whoever. But that could become a leadership organization that creates some kind of a space in which these analyses take place or the IG could do it.

MS. HAMILL: On that note, we'll have to conclude this panel. Thank you so much all of you for your presentations,

participation.

And we welcome any written summations, testimony, I'm sorry I did have to cut you off so I hope you'll submit something to us in writing.

We're going to take a quick break and we'll resume with panel three on police accountability with the CCRB at 12:15.

Thank you.

(Panel 3).

MS. HAMILL: Good afternoon, everyone. We're going to call the briefing back to order, please. We're proceeding with our third panel on police accountability. I know one of our speakers today was unable to come after all, City Council Member Williams. But we have Jonathan Darche with CCRB here today.

So at this point, I'm going to turn it over to you. Thank you so much for coming.

MR. DARCHE: Thank you, ma'am.

I'd like to thank all the members of

the committee for giving me the privilege of addressing them on behalf of the New York City Civilian Complaint Review Board. I have been the acting executive director for the CCRB since the end of November of last year.

I am going to tell you a little about the agency and its process, and then discuss what the agency's data can tell us about how police treat youth of color.

As the largest civilian police oversight agency in the country and one of the oldest, the CCRB is a model for other jurisdictions. The City Charter charges the board with fair and independent investigation of civilian complaints against sworn members of the New York City Police Department. Our jurisdiction includes allegations involving the use of force, abuse of authority, discourtesy and the use of offensive language.

I handed out copies of the slides because I know it's behind you. So you should have that in front of you as well.

MS. HAMILL: There's a PowerPoint, but he's also handed out hardcopies. Thank you so much.

MR. DARCHE: The board consists of thirteen members, five designated by the mayor, five by the City Council, and three by the police commissioner. The board makes findings and, where the evidence supports disciplinary action, the board recommends discipline to the police commissioner. In cases where the board recommends an officer receive charges and specifications, which is the most serious type of discipline, the agency's Administrative Prosecution Unit, the APU, prosecutes the cases in the department's trial room at One Police Plaza. The agency also offers mediation in all suitable cases in which both the complainant and officer agree to participate. This provides an important opportunity for education and restorative justice.

The CCRB also writes reports and

makes recommendations based on the trends we see in allegations of police misconduct. This is a function that is more important than ever as we seek to build on our capacity to do more public outreach, education and to share more of what we see and hear to support better police and community relations.

A person can file a complaint with the CCRB in a variety of ways. The first is in person at the CCRB's office at 100 Church Street in downtown Manhattan. The second is by calling 311. The third is by calling the CCRB's hotline at 1-800-341-2272. You can also file a complaint online at our website or by mail.

We also have the Community Partners Initiative, in which certain City Council members allow the CCRB to conduct office hours in the members' offices. This allows people to file a complaint in their own neighborhood.

Once a complaint has been received,

two things occur. First, the complaint is assigned to an investigator. And second, the agency's Evidence Collection Unit responds to the scene to collect video evidence and identify potential witnesses to the incident.

The investigator then tries to interview the civilian witnesses to the incident. The investigation cannot proceed to the next phase of the investigation relying solely on unsworn statements. While most interviews take place at the CCRB, they can also take place in offices that participate in the Community Partners Initiative. Also in certain cases, investigators can interview civilians at their homes or places of employment.

The board possesses subpoena power and also has statutory authority to request police paperwork from the department.

The next phase of the investigation is to interview the police witnesses to

the incident. Sometimes this is easy, as civilian witnesses know the officers involved with or are witnesses to an incident. Sometimes this is more difficult, as when incidents did not result in an arrest or issuance of a summons, or the incident involved plainclothes officers or unmarked vehicles.

Our investigators are trained to identify officers through police paperwork and the agency now has access to a database of members of the NYPD with photographs and identifying information it uses to create photographic arrays to aid in the identification of officers.

Once all of the evidence has been gathered, the investigator submits a closing report to the board. The board sits in panels of three members when it decides cases. Each panel consists of mayoral designee, a City Council designee, and a police commissioner designee. The panel then determines whether to

substantiate, exonerate, or unfound an allegation. If an allegation is substantiated, it means that the panel determined that the alleged misconduct occurred. If an allegation is exonerated, it means that the panel determined that the alleged conduct occurred, but that it was not misconduct. Finally, if an allegation is unfounded, it means that the panel determined that the alleged conduct did not occur.

If a panel cannot determine by a preponderance of the evidence whether to substantiate, exonerate, or unfound an allegation, the allegation will be unsubstantiated.

If a panel determines that misconduct occurred, it then recommends that the police commissioner take disciplinary action against the officer. The types of discipline that the board can recommend are instructions, formalized training, Schedule A Command Discipline, Schedule B Command Discipline, and charges

and specifications. Instructions are when the subject officer is counseled by his commanding officer or other supervisor about the proper way to conduct him or herself in the situation. Formalized training is retraining that occurs in a traditional classroom setting, most often at the police academy.

There are two types of command disciplines. Schedule A Command Disciplines can result in the penalty that ranges from reprimand to forfeiture of five vacation days. A Schedule A Command Discipline is automatically removed from an officer's history after one year.

A Schedule B Command Discipline will result in penalties that range from a reprimand to forfeiture of ten vacation days. They are eligible for removal from an officer's history after three years, but it is not an automatic process.

The most serious type of discipline that a panel may recommend is charges and specifications. An officer found guilty

of charges and specifications may receive a reprimand, forfeit vacation days, serve days on suspension, be placed on probation, or terminated from the department.

In a case where the panel recommends an officer receive charges and specifications, the case is prosecuted by the CCRB's Administrative Prosecution Unit. The APU was established pursuant to a 2012 memorandum of understanding between the department and the CCRB. In these serious cases, experienced attorneys represent the CCRB in the NYPD's trial room at One Police Plaza. The proceedings in the trial room are open to the public and the APU's trial schedule is published on our website.

The police commissioner is the final arbiter in all police disciplinary matters. When the department deviates from the recommendations of the agency, however, it must provide a written explanation for that deviation.

In addition to investigating and prosecuting cases, the agency has a robust mediation program, successfully mediating 208 cases in 2016. The mediation program is an important tool in the CCRB's belt with which it seeks to improve police-community relations. Mediation sessions focus on fostering discussion and mutual understanding. After a successful mediation, the complaint is closed as mediated, meaning that there will be no further investigation and the officer will not be disciplined. Mediations are only closed as mediated if the complainant is satisfied with the outcome of the mediation. At any time, either party can end the mediation process. If the mediation is not successful, the case returns to the Investigations Division for a full investigation. Successful mediations can benefit communities because a measure of trust and respect often develops between the parties. That, in turn, should lead to better

police-community relations.

As you heard from the panel before, the CCRB's cases are a valuable source of data for examining how the policies and practices of the NYPD impact on youth of color.

While complaints have dropped from over 6,200 in 2011 to just over 5,000 in 2016, the ethnic breakdown of victims and alleged victims has remained consistent. And I just want to point out that the CCRB determines the ethnicity of victims and alleged victims by allowing them to self-identify. While the ethnic makeup of victims and alleged victims of police misconduct has been mostly steady, there has been a change to the numbers of complaints in the ages of victims and alleged victims over time. While the percentage of victims or alleged victims between the ages of twenty-two and twenty-six has held steady, the percentage of victims or alleged victims between the ages of seventeen and twenty-one has

2 declined from 17 percent in 2011 to 11
3 percent in 2016.
4 Please note that many of the
5 youngest victims or alleged victims from
6 incidents occur when the incidents
7 happened inside a home or vehicle that was
8 searched by the police.
9 While there has been some variation
10 in how often younger victims and alleged
11 victims allege the use of excessive force,
12 abuse of authority, discourtesy, or use of
13 offensive language, these numbers, as can
14 be seen from the chart that's projected or
15 in the slides that you have, have stayed
16 mostly steady for the period between 2011
17 and 2016.
18 The charts below examine -- so there
19 are two slides that you can look at now
20 that show the breakdown of victims or
21 alleged victims based on their
22 self-reported ethnicity broken down by age
23 and year. The agency's statistics
24 indicate that in 2016, 37 percent of
25 Hispanic victims or alleged victims were

2 under the age of twenty-seven, 32 percent
3 of black victims or alleged victims were
4 under the age of twenty-seven, 27 percent
5 of Asian victims or alleged victims were
6 under the age of twenty-seven, and 17
7 percent of white victims or alleged
8 victims were under the age of
9 twenty-seven.
10 Mayor De Blasio appointed the
11 board's chair, Maya Wiley, in July of
12 2016. One of the chair's main initiatives
13 has been to change the structure of the
14 board's public meetings to allow for
15 greater participation from members of the
16 public. Our January meeting at Lincoln
17 Hospital in the Bronx was notable for the
18 participation of some young men and women
19 who gave very powerful testimony about how
20 they are treated by the police in their
21 communities and how they in turn perceive
22 the police.
23 One young man spoke about how while
24 he knows there are good police officers,
25 and how his interactions with good police

2 officers at the youth center where he
3 works have informed how he interacts with
4 the police, he genuinely fears being
5 killed by the police when he is out at
6 night after dark. He described how he has
7 learned not to question why he is being
8 stopped because that will lead to him
9 getting arrested.
10 A second young man spoke about how
11 he had been arrested, but wasn't upset at
12 first, because he knew he was innocent and
13 that he would be okay. When he asked to
14 use the toilet at the precinct, he was
15 ordered to strip down to his boxer shorts.
16 This young man is in school, he is a
17 criminal justice major, who wanted to be
18 in law enforcement. In tears, he spoke
19 about how he is looking to leave New York
20 City in order for his son to grow up in an
21 environment where his son won't have to
22 live in fear.
23 This kind of humiliating and
24 inhumane treatment of our young people has
25 consequences far beyond the initial

2 encounter.
3 The final anecdote I will tell you
4 about from that night involved a third
5 young person, who described one police
6 officer who had been called to his family
7 home as a result of a domestic dispute.
8 This police officer now made it a point to
9 check in on the young man whenever they
10 encountered each other at the youth center
11 where they sometimes saw each other.
12 This kind of positive interaction
13 was in stark contrast to the testimony
14 offered by other young men and may
15 illustrate the effectiveness of the City's
16 new NCO program.
17 This is not the only way in which
18 the agency increased its involvement with
19 at-risk populations. In 2016, the
20 Outreach Unit held 977 outreach
21 presentations, compared to just 801 in
22 2016, which is a 22 percent increase.
23 Many of these presentations occurred at
24 schools and after-school centers. The
25 agency has also been meeting with

2 community advocates on a more regular
3 basis. It has become clear that
4 intersectionality is a major issue facing
5 the city's most vulnerable citizens in
6 police interactions.
7 For example, in November 2015, the
8 agency met with leaders of the LGBTQ
9 community to hear their concerns about
10 policing. This led to the agency hosting
11 a one-day symposium entitled, The Rainbow
12 Crossing, Police Accountability and the
13 LGBTQ Community at the Lesbian, Gay,
14 Bisexual, Transgender Community Center in
15 New York City in June of 2016. These
16 meetings revealed that issues of sexuality
17 often cannot be separated from race and
18 age when trying to understand and improve
19 police-community relations. They also
20 resulted in changing how the CCRB tracks
21 gender, expression and gender orientation.
22 The CCRB, under the leadership of
23 the chair and the entire board, has made
24 great strides in establishing
25 relationships with at-risk communities,

2 making sure that members of these
3 communities, including young people of
4 color, know that they can count on the
5 CCRB for a fair and impartial
6 determination of their case.
7 Thank you for your time, and I'm
8 happy to answer any questions that you
9 might have.
10 MS. HAMILL: Thank you so much. I
11 also just wanted to note that U.S.
12 Commissioner David Kolodny (phonetic) has
13 joined us.
14 Thanks again for joining us today.
15 Let's open it up for questions. Let
16 me just see who all has questions.
17 Let's start all the way down with
18 Roy.
19 MR. COSME: Thank you so much for
20 being here and thank you also for the
21 report that you issued on the LGBTQ
22 community that I sort of read through
23 before today's meeting. I just want to
24 thank you for the work you've done in that
25 community.

2 I have several questions. I know
3 several of us do have questions. We've
4 spent a lot of time here.
5 MS. HAMILL: I'm sorry to interrupt
6 but I'm going to limit everybody to one
7 question the first round.
8 MR. COSME: Yes. I was going to
9 self-limit.
10 We've spent a lot of time here
11 talking about school security agents
12 yesterday and I was just wondering if the
13 CCRB had purview over misconduct
14 complaints of misconduct of school
15 security officers or agents.
16 MR. DARCHE: No, we do not.
17 MR. COSME: You do not. Can you
18 tell me who does?
19 MR. DARCHE: I actually went to do
20 research on that and I was not able to
21 find it out. But I will get that
22 submitted to the committee after the
23 meeting.
24 Is that allowed.
25 MS. HAMILL: Yes.

2 MR. PEREZ: Thank you for coming in.
3 Thank you for your service.
4 I have a question in light of one of
5 the recommendations that was made in the
6 last panel about the timeliness of the
7 disciplinary process. I'd like to ask
8 you, do you track the amount of time a --
9 the percentage of recommendations that are
10 actually made to the NYPD, to the
11 commissioner versus how many
12 recommendations are actually accepted by
13 the Commissioner?
14 MR. DARCHE: Yes, we do track that.
15 I may have brought that with me if you can
16 hold on a moment. So I did not bring that
17 with me. But again, I'll submit that to
18 the panel afterwards.
19 MS. HAMILL: Thank you so much.
20 And you're welcome to submit any
21 written testimony up to thirty days
22 answering these questions and anything
23 else that you'd like to provide us.
24 MR. DARCHE: Understood.
25 MS. HAMILL: Thank you so much. So

I believe next was Earl?
Tom, go ahead.
MR. WAHL: I'm just curious. There's four different outcomes of the investigation; what is the breakdown? Substantiation, unfound exoneration, un-substantiation.
MR. DARCHE: In 2016 we closed 345 complaints as substantiated, 139 as unfounded, 256 as exonerated, and 676 as unsubstantiated.
My math is not the quickest. I should be able to get the percentages for you though. I apologize.
MS. HAMILL: Let me go down to Iris.
MS. CHEN: On the school safety officers, do you know if there's anything like a patrol guide equivalent or anything like that to at least have some parameters?
MR. DARCHE: I truly don't know.
MR. WARD: With regard to the mediation program, are all the allegations or all the FADO allegations subject to

mediation or some outside of the mediation? And because this is about youth, do you find that where the complainants are youth, that they are interested in mediation or the most part -- any sense as to whether or not the mediation program is there for the younger complainants?
MR. DARCHE: Mediation is an option for younger complainants. And I will submit, at a later time, the statistics on the age of complainants in mediation. It's something that I should have had and we'll get it done -- with regard to whether all complaints are eligible for mediation, at this point, all complaints are eligible for mediation, but they're not all deemed suitable. So for example, if there is a lawsuit, civil lawsuit, or if there was an arrest and there's a criminal case, those cases will not be mediated.
MR. WARD: But absent arrest?
MR. DARCHE: Under general rule.

MR. WARD: In a use-of-force case, a pretty significant use-of-force case, is that subject to mediation?
MR. DARCHE: Again, it depends on the individual case because some of them -- we have a very skilled mediation team and they look at the cases and determine whether or not they are suitable for mediation.
MR. THOMAS: Would you agree that comp stats should include the CCRB complaints when they meet during their monthly comp stat meetings for a first specific precinct?
MR. DARCHE: So I'm not really, I'm not going to comment on what they do or don't discuss at com stat, but I do think complaint information is a valuable metric for what misconduct is happening in the city. It is one of the things the CCRB feels strongly that we need to do more outreach and make sure people know that we are here and available as a resource for them to resolve their complaints about

police misconduct.
So the number of complaints is not the sole metric for whether or not police are properly behaving in a precinct or another command.
MS. HAMILL: So on first round, Alex.
MR. VITALE: Does your office have a sense of what the underlying enforcement purpose was of the police encounters with young people that generate complaints? So why were the police engaging these young people in the first place in situations where a complaints results.
MR. DARCHE: Yes. The investigative process interviews not only the civilian victim, alleged victim or other witnesses, but it also interviews the police officers and we routinely discover the motivation for what police action was thinking that resulted in the complaint.
MR. VITALE: Do you have a sense of what the kinds of enforcement actions are that are most commonly leading to

complaints? Is it in relationship to a robbery investigation, the stop-and-frisk interaction, something that happened in the school, et cetera.

MR. DARCHE: I think that would be an interesting area of focus for our Policy Unit because I don't know that we break that out in an easily trackable way. But it certainly, we have that information. So it's something we can work more on.

MS. HAMILL: Vivian.

MS. LOUIE: Thank you for your service and for coming here today to speak with us.

My question has to do with community outreach, which you've just presented to us and of course which we've heard quite a lot about in our panels in the last two days.

Could you say a little bit more about the kinds of community outreach that the CCRB has done and what you have found to be effective, not effective?

MR. DARCHE: There are numerous ways in which our Outreach Unit goes into the community and meets with people to teach them not just about the CCRB and how it is available for their complaints, but also teach them about their rights as citizens and ways to deescalate encounters with the police. And our Outreach Unit does a great deal of work in schools and in after-school groups in order to make sure we reach youth who are particularly at risk from encounters with the police. We know from going into the community at our board meetings and speaking to who don't -- haven't heard about us until we directly encounter and speak to them and explain what we do, that they are not aware of what we do.

So it is urgent for the CCRB to raise its profile in the city, especially among populations that are at risk, so that we can do our job and be the place where they go to bring their complaints about police misconduct.

MS. LOUIE: Quick follow-up. Thank you so much for that.

I was just curious, what are the particular challenges that you face with those community outreach efforts and how do you to try to resolve them?

MR. DARCHE: I think the largest challenge we have is that New York City is extremely large and our Outreach Unit is extremely small. We have five full-time people doing outreach. And there is only so much you can do going group by group around the city and kind of hands-on explaining to people how the system works. It's something that the chair and all the members of the board are passionate about, raising the profile of the agency so that we can be more effective.

MS. HAMILL: I have one question before we go back.

Do you currently or have you had employees of the New York Police Department, either Internal Affairs and/or the Department Advocate Office working

inside CCRB.

MR. DARCHE: There is one former member of service who is working at the agency. He is not an investigator. But generally speaking, no.

MS. HAMILL: You don't have any investigators from Internal Affairs or the Advocate's Office working in CCRB right now?

MR. DARCHE: There are units from the Department Advocate Office and Internal Affairs, but they're liaison units so that we can get police paperwork and other documentary and video evidence from the department in a more effective manner. They are not CCRB employees and they do not conduct investigations.

MS. HAMILL: Anyone who hasn't asked a first round yet?

So we can go on to second round. Who else would like to ask questions?

Roy, go ahead.

MR. COSME: So I think my colleague here, Tom, might've asked a little bit of

this question, but as you know, we're looking for whether or not police practices have disparate impact on youth of color in particular. And I was just wondering that in order for us to follow that through this process, I think that some of the numbers that you have here in terms of the number of complaints kind of point to that. But in terms of outcomes, do you have the data so that we can follow those complaints all the way through the outcomes? Is there a disparate number of black youth complainants that wind up getting severe, you know, all the way through substantiation or otherwise? Is there a disparate impact in terms of the outcome on the groups of complainants.

MR. DARCHE: I think that is something that I will have to submit later. We tried to do an analysis in anticipation of that question, but it proved a little more complicated than we were able to put together.

MR. COSME: That would be great. I

think that would be really useful to have.

MS. HAMILL: Johnny.

MR. PEREZ: What's the turnaround time from complaint to the end of the investigation where recommendations are actually made as far as, I don't know, like days, months, years.

MR. DARCHE: Currently, our benchmark is to have our investigations finished in an average of ninety days. That is the investigation before it goes to be considered by the board. And then we try and resolve, have the cases considered by the board in thirty days once it goes to, we call it our Case Management Unit or CMU. They assign the case to the panel for review.

MS. HAMILL: Iris, Tom.

MR. DARCHE: Can I.

MS. HAMILL: Sure, of course.

MR. DARCHE: One of the things that the agency has done as a result of the reorganization that occurred in late 2014 has drastically reduced the time it takes

to investigate a case. Under the old regime sometimes it would take 200 days or more to fully investigate a case. Now our average is less than ninety days.

MR. PEREZ: Is there anything that can be done to even lessen it even further.

MR. DARCHE: We are always looking for ways to expedite the process. We've got a huge amount of cooperation from the department in getting police paperwork which used to cause a lot of the delays that we had and the department has greatly improved the manner in which officers respond for interviews. But at some level in order to ensure quality investigations, you don't want to cut the time too much. So I make clear to the staff that the agency wants quality investigations. We want them done quickly, but we don't want them rushed. So if there's a complicated case that you have to interview more than ten civilians and more than ten police officers, which is not a typical

occurrence, but it happens, that case might not get closed in ninety days. If you're going to do the job right, it's important to take the time.

MR. CHEN: So question about the composition of the board. There have been suggestions from prior panelists that perhaps we might want to revisit the composition of the board to make sure that it's going to be as comprehensive a perspective and, you know, as evenhanded a perspective as possible.

I would like to get your thoughts on whether or not you feel the current composition as appointed is the right one, and if you have any suggestions to make it an even more balanced board.

MR. DARCHE: I don't know that I'm exactly an unbiased person, but I have to in the time that I have been at the agency, I think the board, number one, represents -- I guess I didn't bring the photos of the board members, but it truly is a picture of the City of New York which

is a truly diverse city. And from knowing the board members and how hard they work and the amount of time that they put into adjudicating these cases, and this is not their full-time job, this is work that they do there, they're compensated, but it's in addition to what they normally do. These are very complicated cases, sometimes, and they take the time to learn the materials and sometimes they go back and listen to the interviews if they feel they need to. It's a hard job and they do a very good job.

MS. HAMILL: I just want to follow up on that for a moment.

I'll disclose, I'm a member of the Board of Corrections. We're the independent regulators and oversight for the New York City Department of Correction. Three of us are appointed by the mayor, three by the judiciary and three by City Council so that all branches of government are equally represented.

It sounds like in yours it's the

mayor and the police commissioner, which is obviously the executive branch and then the City Council.

Do you know why seats are not available for appointment by the judiciary.

MR. DARCHE: I don't know.

MS. HAMILL: And one follow-up, in terms of your budget, do you know what your budget is?

MR. DARCHE: It's roughly $16 million.

MS. HAMILL: How many employees do you have?

MR. DARCHE: Our authorized head count is 184. We are lower than that right now.

MS. HAMILL: Do you think that that's one of the reason it's difficult to do all the outreach that you need to do because you need additional budget and more slots, more employees to help you do that.

MR. DARCHE: We are working with the

Office of Management and Budget and with the City Council, but we understand we have a tough job and the staff is committed to making sure our message gets out there. Sometimes people of the Investigations Division and other units help out with the outreach process.

MS. HAMILL: I have to ask this question. We get to make findings of fact and recommendations here. What is your wish list for the CCRB to try to help you completely fulfill your mission?

MR. DARCHE: We are in budget process right now and we are working with the Office of Management and Budget and with the City Council on the needs that we have submitted. This is a tough budget situation right now. So I believe the City Hall and Office of Management Budget and City Council are trying to help us accomplish our goals.

MR. WAHL: I figured the math. You did 1416 last year complaints. 48 percent were unsubstantiated, 24 percent were

substantiated. Now, the 1416 complaints, I'm curious, that's over how many arrests? So in terms of complaints versus arrests, I'd just be curious how you compare on a relative basis to other cities, and additionally, the fact that only one quarter of the complaints actually went to the next step in terms of with the cop potentially being suspended, and so on and forth, I'm curious how that would rate with the Los Angeles or Chicago or D.C. or Baltimore or whatever.

MR. DARCHE: That's a very good question about how we would compare to the other cities. I just don't know. And it's something that we might be able to --

MR. WAHL: And then again, I'd be curious, number of 1461 versus how many arrests? What's that percent in terms of complaints? And then additionally is one quarter of it typical.

MR. DARCHE: Am I allowed to address both questions.

MS. HAMILL: Yes.

MR. DARCHE: Inside the agency we refer to it as our truncation rate, when we are unable to fully investigate a case. It is something that the agency struggles with, and we are taking steps to reduce the truncation. There are some people who think that at some level you're never going to be able to eliminate the truncation. But the fact of the matter is, the people of the City of New York are better served by fully investigating as many of these complaints as possible. One of the issues that's raised when we meet with community groups and advocates is that the process is too difficult. Also that people are scared of retribution if they bring a complaint. One thing that people should know is that you can file a complaint anonymously. But at some level, if we are to do a complete investigation, we're going to need to interview witnesses on the record and identify them. So it may be that that is part of the work we have to do with outreach, is to convince

people that it is important and useful and their civic duty to follow through with a complaint process, not to just make the complaint and have it just be as an unresolved complaint.

But that is something that we struggle with. We have taken steps to review all of the cases that are being truncated and make sure that all of the steps that were supposed to have been followed were taken by the investigators. Recently, we've done more than that. We've started looking to say, okay, they did everything that they were supposed to do. Nothing wrong happened when this case was closed. But is there something about this case that we could have done something extra? And if we had done the extra step, maybe we could have gotten a full investigation.

And we've sent bunch of cases back to the investigators and sometimes it comes back as we did what you thought and it did not result in a full investigation.

But if we can do that enough times and get even small improvements, it's going to have an effect on the truncation rate and that will give the City better data to evaluate police misconduct.

One of the reasons why video is so important and why we now have a field evidence collections unit that responds as soon as possible to scenes of incidents after a complaint is because video is such a useful tool when it comes to resolving -- being able to make a determination in a case. Our rate of being able to resolve a case, which is either substantiate it, exonerate the conduct or unfound the conduct, goes way up when we have video. It's not perfect, but it goes way up when we have video.

And one of the complaints that we have recently started to take very seriously, recently over the last couple of years, is when officers are alleged to have interfered with an individual who is trying to record a police encounter.

Because that's not just the person's right to record that police encounter, that's denying us the evidence we need to successfully investigate a case. And we take that extremely seriously.

MS. HAMILL: Thank you.

MR. WARD: This is a follow-up to Alex's question.

In any police-citizen encounter, there has to be a reason why that encounter happened in the first place. What we're interested in knowing, was the encounter the result of a stop-and-frisk, was the encounter the result of some Broken Windows policy or was the encounter the result of someone saying that's the person who did X, Y or Z? Is there any documentation of the initial reason for the stop? Is it broken down, is it classified, you know, riding a bike on a sidewalk or whatever it may be?

In some cases it is, but not in all cases. And I'm going to have to get back to you with the answers that you're

1 looking for. Okay. And that's really
2 important, especially for the purposes of
3 what we're engaged in here.
4 MR. DARCHE: Yes, Mr. Ward.
5 MR. WARD: Thank you.
6 MS. HAMILL: Kevin.
7 MR. THOMAS: What kind of training
8 does a CCRB investigator get?
9 MR. DARCHE: Within the last couple
10 of years we've established a training
11 unit. It now has three full-time people,
12 a director and two deputy directors.
13 I think the director and deputy
14 director -- actually, the entire staff is
15 here today. They should probably be
16 training someone. I actually think this
17 is a very useful experience for not just
18 them, but for our investigators to see how
19 important the work they do is.
20 When we get new investigators they
21 go through an intensive early training
22 process. Right now, that process
23 involves, not just classroom but they are
24 also assigned to the squad that they're
25

1 eventually going to join. They do the
2 work while they're being trained. New
3 investigators are given mentors who work
4 with them closely to make sure they are
5 getting all the support they need early on
6 in the process. As I referenced earlier,
7 in late 2014 we shifted our organizational
8 structure from a large team-based
9 structure to smaller squads. And we feel
10 that that enables people to get more
11 hands-on support from their supervisors.
12 We don't just give training to
13 people when they're new investigators
14 though. We now have a more systematic way
15 of ensuring continual training so that --
16 as their capacity grows, they're given
17 more training on how to do better
18 interviews, on how to do better legal
19 analysis. Also we have speakers come in
20 and talk to them about important issues
21 that they're facing, what they're dealing
22 with in their individual cases even if
23 they are not dealing with that individual
24 issue on the macro level.
25

1 So the training unit has been doing
2 really great, and I think it has enhanced
3 the quality of the investigations that are
4 being conducted by the CCRB.
5 MR. THOMAS: Who's training them,
6 like NYPD, FBI?
7 MR. DARCHE: The CCRB has its own
8 internal training unit. The director of
9 the training unit is Mercer Gabon, Monty.
10 Monty, can you stand up?
11 And the deputy directors are Jed
12 Jarrett, who used to be an investigator
13 with CCRB and then became a squad leader
14 as well, and Andre Applewhite, who was an
15 AP prosecutor and had a background in
16 education before he came to the CCRB, he's
17 the other director of training. He's
18 here. He doesn't need to stand up because
19 he's tall. And they do an amazing job,
20 not just making sure that our
21 investigators are getting trained, but
22 also that the prosecutors are getting
23 their continuing training and keeping
24 their skills sharp.
25

1 MS. HAMILL: Okay, thank you.
2 So I've got -- I'd be remiss if I
3 didn't ask this question since this is our
4 last panel on police accountability.
5 It's very important for us to
6 understand the different agencies and how
7 you relate to them. So we have the New
8 York Police Department, the Internal
9 Affairs Bureau, we have the New York
10 Police Department, the Department of
11 Advocate's Office, have the Inspector
12 General. Where does CCRB fit in there and
13 how do you relate to those different
14 agencies.
15 MR. DARCHE: The NYPD structure is
16 in a way similar to the military
17 structure, in that in the military there's
18 a Judge Advocate General that provides
19 prosecutors, defense attorneys and judges.
20 The department is slightly different. So
21 the Department Advocate's Office are the
22 prosecutors for the department. The
23 Deputy Commissioner of Trials and the
24 trial commissioners who work for the
25

Deputy Commissioner of Trials Office are the judges for the department. And the defense attorneys are generally provided by the unions, although sometimes members of the service can hire their own defense attorneys.

IAB are the police for the police. There are numerous investigative units that are in the NYPD that -- there are borough investigative units that also do oversight on members of the NYPD.

The way the CCRB kind of fits into that equation is we have concurrent jurisdiction over many, many cases. If we get a complaint about use of force, sometimes it is referred to us by the department itself. Sometimes they refer and keep investigating it. Our investigations are independent of the NYPD's investigations, and sometimes we come up with different conclusions. But we come up with our conclusion, we send it to the department, and if the board has recommended charges even though IAB did

not find misconduct, we have still, in some cases, brought charges and gotten guilty verdicts in some of those cases.

MS. HAMILL: What about if the District Attorney's Office is involved?

MR. DARCHE: When the CCRB has a case, it is an administrative case. So at worst, someone is going to lose their job. Whereas, if a district attorney has a case, that is going to result in criminal sanction, possible imprisonment.

So generally what happens, if the District Attorney's Office is investigating a case of police misconduct, they will ask our investigation to be put on hold. And because the agency respects that process, we will abide by those holds. They are binding on us, it is a matter of respecting the process.

MS. HAMILL: Thank you very much.

Any final question down here?

MR. VITALE: A lot of cases end up in mediation. Are you doing evaluation, satisfaction survey-type research about

how complainants view their participation in the mediation process? And if so, what kind of results are you finding.

MR. DARCHE: We do surveys of people after their mediations and we generally find when people have a successful mediation, they are very happy with the process. It's over 90 percent. And when people are not happy with the mediation process, and there was an unsuccessful mediation, we then fully investigate the case.

MR. HAMILL: So we will conclude on that note.

Thank you so much, Mr. Darche. I apologize for mispronouncing your name. It's definitely not one of my strengths.

MR. DARCHE: I wouldn't have said anything, but my dad is here. He might have come after you.

MS. HAMILL: Thank you so much for being with us. Excellent presentation. And we'll look forward to getting the follow-up, you'll present some additional

information to answer the questions and anything else you'd like to present to us.

So this concludes our morning/early afternoon session. We're going to break until 1:45, and we'll pick up with panel four with drug enforcement and use of force. Thank you all so much.

MS. HAMILL: Good afternoon, everyone. I want to call the briefing back to order.

I do apologize to the public and the panelists that we're running a little bit late but I assure you, we will have plenty of time for your panel.

Thank you all so much for being here. We're going to start by each of you giving opening statements and then we will open it up for members of the advisory committee. Let me call on Darian Agostini to start. Welcome.

MR. AGOSTINI: Awesome. Thank You. Peace.

Can you all hear me.

MS. HAMILL: Yes.

MR. AGOSTINI: Cool.

Thank you for inviting me here to testify today. My name is Darian Agostini, I am the police accountability youth organizer at Make the Road New York, MRNY, as well as a member of Communities United for Police Reform and a youth researcher/advocate with Researchers for Fair Policing. We've now changed our name to Youth Researchers for Radical Alternatives to Policing as you heard from Brett Stoudt, yesterday, I believe, a YPAR project with professors from CUNY Grad Center.

So to begin, I would like to say these massive mobilizations that we have seen in New York City and across the country should come as no surprise. For the last three years, young people from around the city, researchers, and organizers like myself have participated in documenting the decrease of what little legitimacy and trust there is between communities of color and the New York

Police Department. Our youth research is a comprehensive study with the purpose of understanding experiences with and attitudes of police with a specific focus on youth of color.

We collectively designed a survey that was distributed in New York City schools as well as online. 1,084 surveys were collected from youth ages fourteen to twenty-five. And basically these communities of color express mistrust and fear and anger towards the NYPD. In New York City we know aggressive policing is disproportionately practiced in communities of color and commonly understood within these communities as discriminatory and abusive.

The police are occupying forces in the hallways of our apartment buildings, in schools, subway stations, and on the street. Youth of color report fearing involvement with the criminal justice system every time they set foot outside of their apartment door, whether it's to go

to work, spend time with loved ones, or run an errand to a store or bank.

Markeys Gonzalez, an Afro-Latinx queer gender nonconforming young person who was a part of our project and a part of our study said, it makes me feel like I shouldn't even come outside anymore if I'm just gonna get harassed by a policeman that's supposed to be protecting me. And it is the very violent targeting of their identity by the police that makes them feel this way, not because of some "perceived" discrimination or influence by various new media.

This is similarly reflected in the testimonies of other participants who are directly impacted from the police force. I would like to share another story with you all from my elder brother who also participated in our survey as well saying, giving an anecdote, basically saying, I'm standing on my front stoop. I just went from picking up my sister and little brother at school. I came in the house, I

cleaned up. One of my friends came, he knocked on the door. He tells me he just came to see if I was home, and that he was going to go to the supermarket with his mother and going to come back to my house. And then I begin to hear honking, so I look over and there are two plainclothes officers in a car. I was on a really small block so they are basically blocking traffic just stopping to watch us. I went to go back into my house and they jumped out and stopped me. They ended up just cuffing me to my banister, actually, cuffing me to my friend but both of us under the banister so we couldn't move. They didn't find anything but they looked outside of my yard and find a crusty marijuana clip and literally puts it next to me and says, this is you, you're going down. I just came home with my sister and little brother so they're in the house by themselves, looking out the window at me get humiliated. I ended up getting arrested. The charges were dropped and

that was the end of it.

This is my brother who is twenty-five years old. Stories like these are all too common in neighborhoods that are populated with black and brown bodies. Participants who participated in our research show further than 65 percent of them feel that the police abuse their power, 66 percent feel that the police discriminate, 57 percent are dissatisfied with NYPD's overall performance and 55 percent of the folks who took our survey feel they are dishonest.

Unfavorable attitudes like these were commonly reported in our studies, revealing delicate and at times altogether abusive community and police relationships.

Across our research youths and adults describe the toll of aggressive policing on individuals and communities. Throughout this we have learned that there is a beckoning call for true systemic change, the beginning of which would look

like the following: First in the investing in community development and divesting from policing institutions as a strategy, a defining strategy for police reform. Which means that public safety is more than developing our police department and criminal justice system, that public safety involves vibrant schools, living-wage jobs, affordable housing, and an overall socioeconomic investment in low-income areas and communities of color. Increased police surveillance and control does little to address the deeper roots of community safety. Using an assets-based approach is the only way to strengthen communities. In the last thirty years New York has spent over $232 billion on police, prisons, courts and immigration enforcement. Again, I'll repeat, in the last thirty years New York State has spent over $232 billion on police, prisons, courts and immigration enforcement. This money could have been used to create 50,000, living-wage jobs, it could have

been used to increase spending for k through twelve public schools by 20 percent or made SUNY and CUNY schools completely tuition free. All of which we know address the roots of crime in a positive and humanizing way. Secondly would be transparency. The lack of transparency in policing is a major factor that contributes to the broken trust between police and communities. It manifests itself in several ways, but there are two major components.

First, there are very few requirements for police departments to publicly report data or explain police policies and how they impact communities. Reporting requirements on use of force, including deadly or excessive force, or deaths while in police custody are too rare, and disciplinary procedures and records are too often shielded from public view. Legislations like the Unnecessary Arrest Bill and Police STAT Act would allow for the State and communities

directly impacted to more clearly address this problem.

Second, there is too often a general lack of transparency in the daily interactions between civilians and police. Police often don't feel obligated to explain, or sometimes even identify, themselves when interacting with civilians despite the fact that they are public servants. The lack of this basic transparency during daily interactions, especially when those daily interactions are perceived as unjustified and disrespectful, only deepens the divide between police and the public. Research suggests that in the absence of anonymity, officers are less likely to engage in abusive or discourteous behavior.

CPR is currently advocating for a legislative package known as the Right to Know Act. One of the bills would require officers to identify themselves and explain their reason for engaging someone in law enforcement activity. The other

bill would require officers to convey a person's existing right to refuse a search in which there is no legal basis. In the absence of this, many civilians have been and continue to be unconstitutionally searched.

To further exemplify why this important I would like to share another story from our research from a seventeen-year-old participant, an alumni member of our organization. He says, I was coming home with some friends and the cops came and stopped us. They jumped out of the car and told us to put our hands against the wall. We were like, what did we do? And the police said, shut up. They started patting us down and I didn't really know my rights well so I basically let them, did whatever they told me to do.

And it is for instances like these which we know make up the majority of stops under the era of stop, question and frisk and continue to happen with the hyper-enforcement of Broken Windows

policing in our communities, that this legislation is dire for folks in our communities, especially with young people who may not be well-versed in their rights.

And lastly, as I watch closely to all that is happening across the country, it's hard to avoid thinking about my own interactions with the NYPD in my neighborhood of Bedford-Stuyvesant, Brooklyn and how they could have been fatal for no justifiable reason. The sheer number of these unnecessary interactions, more than 100 since the age of thirteen, increased that probability.

The killings of Akai Gurley, Eric Garner and Ramarley Graham in New York, Mike Brown in Ferguson, Tamir Rice, Tanisha Anderson and John Crawford in Ohio, Jessie Hernandez in Denver, and so many others on the expanding list at the hands of police departments demonstrate the tragic consequences of systemic problems with police accountability and

the disregard for black and brown lives. The history of incidents like these occurring is long and painful. Some debate the role that the inadequate training and education of police officers play in many of these cases. But what is certain is that the systemic lack of timely and meaningful accountability in so many of these instances sends a message. Unfortunately, the message too often sent to officers from these incidents is that their departments and the criminal justice system will treat them as above the law and reproach.

In New York City, time and again and again, it seems the message sent has been that there will not be timely and meaningful consequences when the lives of unarmed black and Latinx New Yorkers are taken in police incidents. Formal police training and education sessions are close to useless if there is no accountability for noncompliance or their inadequacy.

Recently a special prosecutor bill

was passed in the NYSA. This piece of legislation we feel is a good response to this recurring problem. We have seen how historically DAs have collaborated with the NYPD to destabilize justice for our communities and thus we feel it is imperative to have a third-party source intervene immediately when a person is killed by the police.

With this said, I would like to end with a quote from James Baldwin. James Baldwin says, "The only way to police a ghetto is to be oppressive. None of Commissioner Kennedy's policemen, even with the best will in the world, have any way of understanding the lives led by the people they swagger about in twos and threes controlling. Their very presence is an insult, and it would be, even if they spent their entire day feeding gumdrops to children. They represent the force of the white world, and that world's real intentions are, simply, for that world's criminal profit and ease, to keep

the black folk corralled up here, in their place."

And to end, I would just like to say our communities don't need police. We need resources that have been historically stolen from us. Our communities don't need surveillance. Quite the opposite is, in fact, true. The police need to be monitored and surveilled and reported on and documented. Representing a history of violence both past and present, the police should never be the go-to answer.

Thank you.

MS. HAMILL: Before I call on Mr. Dunn, I just want to thank you so much for coming. You're a very compelling speaker and I really appreciate you sharing the stories and bringing the voices of the young people right into here and the insights and the information that we can only learn from speaking and listening to you, so thank you very much.

We'll have some questions for you, I'm sure, afterwards but at this point

we'll turn to Mr. Dunn.

MR. DUNN: Good afternoon. I'm Chris Dunn. I'm the associate legal director of the New York Civil Liberties Union. I have been a CLU lawyer for thirty years, I've been at the NYCLU for more than twenty years and I've spent a lot of my time dealing with police issues, particularly with the NYPD.

I was asked specifically to talk about use-of-force issues with the department, particularly as it affects communities of color. That is a topic that runs immediately into two conflicting sensibilities, I think, or two conflicting facts. One is, if you ask most people in the City I think they would say there is a significant problem with NYPD's use of force, incidents like Eric Garner, one, cementing in people's minds the belief that there are widespread problems with the department and when it comes to use of force. On the other hand, there is a shocking lack of information, actual

information, about NYPD use of force. The department, of course, is the largest police department in the country and it has no comprehensive system for collecting data about its officers' use of force. This is a department that flies blind when it comes to monitoring use of force. Indeed, as a result of policies that the department issued last year for the very first time requiring officers to complete forms when they use force on a civilian. This is the very first time this has happened. And as part of those policies, they are supposed to compile that information into a database. That has not been done. And I can tell you I have been having conversations with the department as of last week about getting the current data about use of force, it does not exist. What they have so far are simply a bunch of forms, and we don't know how many forms. So you as a committee and the Civil Rights Commission need to understand that the biggest police department in the

country -- we are talking about the pressing issue of the day, namely, use of force -- there is no comprehensive data whatsoever that tells us how much force is being used, what type of force is being used, and particularly for purposes of this hearing, upon whom the force is being used.

That's not to say that we do not have some insights, we do. And there are two places that the department does report data, albeit only as a result of litigation. The first is around the so-called firearms discharge reports. As many of you may know, every time an NYPD officer discharges his or her weapon, the department completes a report. That gets rolled into, ultimately, an annual report that provides a profile of sorts about the department's discharges for that year.

I will be the first to say that the NYPD is actually very good when it comes to firearms discharges. It's a very restrained department. That is one area

where they have significant restraint. But their discharge reports give you an insight into the role of race and age when it comes to department force, particularly the most lethal force, obviously, the use of firearms.

The most recent report the department has published is for 2014. They are in compliance with the City Council mandate that they produce an annual report. That report shows thirty-five civilian shootings in that year. 90 percent of the people who were hit by police officers were black or Latino. 50 percent of them were twenty-six or younger. So what we know from that -- and I know these reports well, they are out in the public because of litigation brought by NYCLU that when it comes to use of deadly physical force there is every reason to believe that young people of color are widely disproportionate targets of that form of force.

The second area where there is actually very little data is in the stop-and-frisk realm. Even though the department was never requiring until this past year police officers to complete force forms, whenever they completed a stop-and-frisk form, they did have to indicate whether or not force was used. This provides actually the richest source of data about NYPD use of force. As I'm sure all of you know, we've just come out of a decade-long controversy about an enormous increase of police stop-and-frisks here in New York City. 2011 was, I suppose, the high-water mark for stop-and-frisk activity. That year there were approximately 700,000 stops of civilians in New York. And the analysis that NYCLU did of that year's stops, I think is quite telling about department use of force.

And I offer these numbers understanding that stops have dropped dramatically since 2011. Last year we

were down to 14,000 stops and we're lower this year. But what we have seen year in and year out, and we do the analysis year in and year out, is a very similar pattern of what happened during whatever the number of stops is. So I think it is helpful to look at 2011 since that gives us statistically the best sample of stops.

In 2011 blacks and Latinos accounted for 42 percent of stops. Blacks and Latinos ages fourteen to twenty-four. Fourteen to twenty-four accounted for 42 percent of stops. You may wonder to yourself, what percentage of the City population might black and Latinos ages fourteen to twenty-four represent? And this isn't actually the forum in which to entertain guesses so I would just tell you the number is 5 percent.

42 percent of stops were black and Latinos ages fourteen to twenty-four and they represent 5 percent of the population. In fact, there were more people, because of multiple stops, blacks

and Latinos that got stopped in the entire City population. 168,000 stops of blacks and Latinos ages fourteen to twenty-four, and there are only 158,000 people in that population cohort in 2011. With respect to force, which is what we're talking, stop-and-frisk -- remember stop-and-frisk, most people who participate -- participate, wrong word. Most people who are the victims of a stop-and-frisk -- cops are participating -- walk away. 90 percent of the people who were subjected to stop-and-frisk walked away as innocent people. 22 percent of the stops in 2011 involved a recorded act of force by a police officer. So again, let's remember, this is a low-level interaction, we're talking about 90 percent of the people are completely innocent and walking away, and in 22 percent of stops there is at least one act of force being recorded by the police officers. That's the best case scenario because you can rest assured that there's many instances where force is not

being recorded and many instances where stops are not getting recorded. But between the hugely disproportionate number of young people of color who are being stopped and the large percentage of people who are experiencing force and stop-and-frisk, that tells us almost certainly that it is young people of color in the stop context which is the single most common police/civilian interaction in New York City are the victims of the use of force by the department.

So those are the two data sets that we have, the firearms discharge reports and the stop-and-frisk reports. They are not comprehensive by any stretch of the imagination but they tell us very clearly that NYPD use of force against people of color is a significant and serious issue.

And one thing I will say to all of you is that it is certainly my hope that whatever efforts come out of this committee, that it focuses its attention on forcing out into public view a complete

set of data about use of force by the department. And I can tell you as someone who is in the middle of this because I've been asked to talk about recommendations, getting that information out is the single most important recommendation, it's the single most important reform that needs to happen. The stop-and-frisk controversy is Exhibit A in that respect. For years and years and years there was no information that came out about stop-and-frisk activity and then in 2006 as a result of advocacy, and I think we can take a fair amount of credit for it, from pushing and getting the information out, the numbers started coming out, we then sued the department to get the database, and I can tell you starting around 2012 when the big numbers were coming out and there was a lot of public information about stop-and-frisk activity, that debate turned from being a debate between the police department and the advocacy community, which important as we all think

we are is a small community, it became a public debate, it became a debate in the mayoral race.

Mayor De Blasio ran on a police reform platform largely geared towards stop-and-frisk, largely capitalizing on information that came out. And I will tell you, I think there's a scandal in the NYPD when it comes to use of force, I think it is an unseen scandal because that information is not out and I think that it's essential that information come out and, who knows, maybe the good news will be it turns out they don't have a force problem -- that's not what I'm expecting and they do not know themselves that they have a force problem. If Commissioner O'Neill were sitting here in my seat he could not tell you the extent to which force is being used by his officers and that is a huge problem.

Finally, two other things I will just say in terms of recommendations. When a force lacks lot of other aspects of

police practice is a reflection of and a product of the culture of the agency. Stop-and-frisk was a product of that, quotas is a product of that, force is a product of that. And I think that we are starting to see some meaningful changes of the culture of the NYPD.

But that is a huge exercise. And I think the next step in that exercise -- Commissioner Bratton used to like to talk about the peace dividend by which he was referring to improved community/police relations, reduction in civilian interaction; stops, arrests, summonses. Well, the other big dividend has got to be reduction in use of force, there's got to be a change in the department's culture about the use of force.

The other part that has got to happen, and this is, in part, why you're here, is a notion of external oversight and corrective actions including officer discipline. And right now the department has a huge problem in terms of responding

to and disciplining officers engaging in excessive force. The problem is really in the fact that they don't know who those officers are, and they already have a problem in disciplining officers who engage in misconduct.

So when I think about things that have to happen, we have to have a complete and public airing of the use of force by the NYPD, we have to have a change in the department's culture when it comes to the role of force and policing, and we have got to have corrective measures including officer discipline to ensure that officers who engage in excessive force are retrained, are disciplined or are dismissed.

Thank you.

MS. HAMILL: Thank you very much. So let's turn to Ms. Frederique.

MS. FREDERIQUE: Thank you to the members of the New York Advisory Committee to the U.S. Commission on Civil Rights for inviting the testimony of Drug Policy

Alliance.

My name is Kassandra Frederique, and I'm the New York State director. Drug Policy Alliance's New York office is also a member of Communities United for Police Reform. The Drug Policy Alliance is the nation's leading organization working to end the war on drugs, halt mass incarceration and repair the harms that there were on families and communities as a byproduct of failed drug policies.

Our organization is over twenty years old and has always had a presence in New York, whether working on ending state-based mandatory minimums for drug-based possession, creating medical amnesty programs to encourage people to call for help in an overdose crisis without fear of arrest, or educate the public about health interventions that can build stronger and safer communities. Our organization has been on the front lines of moving the ball down the field towards a healthier and safer New York.

Unfortunately, at every turn there has always been one steadfast opponent to the life-saving campaigns we run, the New York Police Department. It is now a widely held belief that the war on drugs has been a massive utter failure. In fact, New York has been on the forefront of the war on drugs. You know, they started the Rockefeller Drug Laws which created the mandatory minimums for small drug possession which was exported around the country.

But let's take, for example, marijuana. Darian gave a great example of how marijuana arrests have impacted on the lives of New Yorkers of color, especially young people. New York was partially part of the first jurisdictions in the nation to remove criminal penalties for simple possession of marijuana. We decriminalized, which means removed criminal penalties, in 1977. Yet in the mid-1900s, New York launched a marijuana crusade that would to date smear up to

800,000 New Yorkers, with most in New York City. Despite data that shows that white people use marijuana at similar rates, black and Latinos are often the ones that have been arrested. Over 85 percent of the arrests have been blacks and Latinos. Now, that hasn't always been the case. The Marijuana Arrest Research Project has shown that the average marijuana arrests have grown dramatically and it has been based on different mayors. And on the next panel one of my mentors and people that I look up to, Dr. Harry Levine, will speak on that, so I'm not going to go into too much credit but I wanted to set it up a little bit with the marijuana prohibition.

So remember I said marijuana was decriminalized in 1977. So between 1978 and 1989 under Former Mayor Ed Koch there was an average of 2,259 marijuana arrests during that time period. Between the years of 1990 and 1993 under Mayor David Dinkins, the yearly average was 982. It

wasn't until the trend of concentrated policing in poor neighborhoods and sanctioned racial profiling that with Mayor Rudy Giuliani we see yearly averages of marijuana arrests jump to 24,487.

I'm gonna run those numbers back for you. Under Mayor Koch right after marijuana was decriminalized, it was a little under 2,300 arrests. Under Mayor Dinkins it was 982. Under Mayor Rudy Giuliani, the average went, just by a little, to 25,000 a year. And under Mayor Mike Bloomberg, it skyrocketed and the average hit nearly 40,000 arrests a year. With 2010 and 2011 being years of distinction, being years of 50,000-plus arrests. The only year to top that was in 2001 and that was over 51,000.

So I think it's really important to recognize that the rise of marijuana arrests has nothing to do with the rise and usage of marijuana. It wasn't as if in the mid-'90s to right now that people were literally outside smoking every day,

that did not happen. In fact, if you look at usage rates, it's been pretty steady. However, the thing that changed was the dynamic change in policing strategies in New York with the focus on stop-and-frisk and the focus on Broken Windows policing. This is what changed the way that marijuana was enforced in New York. And as I said, Dr. Harry Levine will probably go into greater detail on the next panel about the mechanics of the marijuana arrest crusade and the ways that it reified the ways that black and brown bodies are the property of law enforcement.

Instead, I will talk about the ways that drugs are used as a pretext for abusive policing and controlling communities. This year marks the five-year anniversary of the killing of Ramarley Graham. Ramarley Graham was killed on February 2nd and I think it's really important to know because people continue to forget that Ramarley was

killed two weeks before Trayvon Martin. The death of Trayvon Martin changed the conversation nationwide. People were having different conversations about why policing was important, people were buying hoodies, nonprofits around the country were doing pictures of solidarity, but there was something different about the Ramarley Graham killing, something that made it very different for people to touch it, for people to fight for him. And the differnce was because Ramarley Graham was killed by NYPD special narcotics enforcement unit. The thing about drugs is, it makes people untouchable because drugs as a pretext is used as a reason to abuse people, to not like people, to not hold people accountable.

Ramarley Graham was killed in front of his grandmother and little brother in his bathroom. We're not even sure if he ever had marijuana, but that was one of the first things that came out in the media as a way to smear his name and to

create pretext for why the police officers forcibly entered into his home. This is one of the many stories that I could go into about how drugs are used as a pretext to harm people. But I want to let this story sit in this room for a minute because I believe it is important to repeat again. Graham was shot in the chest in front of his grandmother and his little brother after allegedly flushing marijuana down his toilet. Ironically, in the same year Colorado and Washington legalized marijuana nine months and four days later.

I was asked to testify here to address whether NYPD's policies and practices pertaining to low-level drug enforcement as well as the use of force disproportionately affect youth of color. I don't think there's any story that reifies that more than the case of Ramarley Graham. Even in the instance that there is no proof that drugs were even in the picture.

I also want to talk about the way that we think about drugs and the way that drug prohibition has created the infrastructure, the way that we deal with people and the idea that prohibition is an effective tool to control communities. Darian also brought in the name of Eric Garner, who, everyone knows the story, where an extreme use of force was used, a choke hold, to kill Eric Garner. And the reasoning that was given, or, his history that was continuously highlighted, was that he was selling untaxed cigarettes. This is really important because most people wouldn't think that I would mention cigarettes in a conversation about drugs but it, essentially, is the same thing. Because Eric Garner could have easily been selling untaxed marijuana in a state like Colorado or in a state like Washington or in Washington, D.C. It is that same kind of thinking and strategy that police use for young people of color, people of color, to go into neighborhoods, use

extreme uses of force and to hurt people with no accountability.

Eric Garner, his death, is a product of the war on drugs. It's an extrapolation of NYPD's enforcement of practices around low-level drug possession even though it is a regulated substance. It is the same thing. This past summer, as New York and the rest of the country are dealing with psychoactive substances, new psychoactive substances, substances like K2 and spice.

We're seeing NYPD commit raids on homeless encampments and also bodegas again under the same moniker that we have to get drugs out of our communities, that we have to deal with the problem of drugs, that we have to figure out a way to get these drugs out of our communities, that this can't be our new crack. But the same strategies that they're using are the ones that are stopping young people at disproportionate rates, are also the same strategies that continue to provide

pretext for police officers to violate people's civil rights, none of which give people access to the treatment or resources that they need to deal with a potential drug problem.

However, there is something very special happening in the United States, something extremely special that is happening around drugs that has to do with civil rights. The United States is having a master class on how whiteness shows up and how whiteness is put into practice, because we are in the middle of a heroin opioid crisis and there is a lot of sympathy for people who are struggling with opioid addictions or heroin. But the people there is a lot of sympathy for do not look like me or Darian. The strategies for policing in the state are different. We have conversations happening about diversion. Police officers all over New York are having conversations, asking people to come to their precincts, to give their drugs so

that they can connect them with treatment. This sounds very different, yes? It sounds very different than the history of how law enforcement has plagued relationships with people that have struggled with drug use.

But the thing that is really important to see here is that not much is really changing, because when people are having conversations about people who use drugs it is very different than the conversations around people who sell drugs because the conversations of user and seller have been racially coded. And so the conversation about the way that police officers are dealing with low-level drug possession versus low-level drug sales is codified by the racial dog whistlers. And so NYPD has launched along with Healing in NYC, which is about increasing treatment and resources, has also launched an opioid squad task force to go find sellers. However, we already know how this story ends. The arrests will focus in

2 communities that are already over-policed
3 and that does not make anyone healthier.
4 Even conversations about diversion in New
5 York City are remarkably different in
6 Staten Island versus the way that they are
7 in the Bronx. Even though, despite what
8 the public may think, the Bronx has the
9 highest number of heroin overdose deaths,
10 not Staten Island. The arbitrary line
11 between dealer and seller is also the
12 pretext for the amount of force that will
13 be used against people. And unless we
14 have a conversation about how the media is
15 structuring the conversation, then we will
16 continue to put young people of color and
17 risk, especially since NYPD continues to
18 go unchecked.
19 I think it's really important for us
20 to really think about the master class
21 that is happening in New York especially
22 as we think of marijuana arrests,
23 especially as we think about new
24 substances like K2 and spice, especially
25 as the City puts more and more resources

2 in the hands of NYPD to deal with the
3 opioid crisis. It will always end up in
4 the same place.
5 Moving on to solution, I will
6 support what Mr. Dunn said in tracking
7 data collection. In addition to the data
8 that he requested, one of the main reasons
9 that we were able to cut marijuana arrests
10 in New York in half was because we have
11 the data associated with it. There is no
12 data that is spread out based on drugs
13 besides marijuana. Marijuana is the only
14 category that is tracked by itself, all
15 other drugs are contained together. So
16 it's very difficult for us as advocates to
17 see how the opioid task force is going to
18 go down with the arrests because all the
19 drugs are put together.
20 In addition, we need to legalize
21 marijuana. Marijuana has been used as a
22 pretext for all kind of terrible abusive
23 policing practices and we just need to
24 take it out of the equation. It cannot be
25 a clearer civil rights issue. Marijuana

2 was made illegal not because it's a drug
3 but because of the people associated with
4 it, and that actually extends to all
5 drugs. Marijuana was associated with
6 Mexicans, opioids with Chinese people,
7 blacks with cocaine. All these drugs have
8 nothing to do with the science and
9 everything to do with the communities we
10 don't like and want to control.
11 We also need to have a conversation
12 about police, in general, dealing with
13 drugs or having drugs be a part of the
14 jurisdiction of the things that police
15 deal with. In some cases, the most
16 dangerous thing about someone who uses or
17 possesses drugs is not their relationship
18 to the substance but their relationship to
19 their skin color which predicates their
20 relationship to law enforcement. We need
21 to have a serious conversation about
22 decriminalizing all drugs, removing all
23 criminal penalties, taking police and law
24 enforcement out of the situation because
25 oftentimes when we talk about people who

2 are under the influence when law
3 enforcement deals with them the easiest
4 thing they can say is that this person was
5 on some new drug and that they had the
6 strength of 10,000 people, that they were
7 zombies, that they had brute strength.
8 This is not 1937, this is in newspapers in
9 2012 when they were talking about people
10 on PCP or when Commissioner Bratton was
11 talking about someone on K2, he was using
12 the same language that we were using in
13 1937 as a pretext for the kind of
14 inexcusable force that police officers use
15 against people.
16 We need to have conversation about
17 what diversion looks like. Diversion
18 should not always be settled in the hands
19 of law enforcement or to their discretion.
20 Law enforcement has already had enough
21 discretion and it hasn't landed us
22 anywhere safe. So what does
23 community-based diversion look like? One,
24 that police officers and law enforcement
25 are not making all the decisions. We also

need to talk to people who use drugs and in some instances to people who sell drugs because people closest to the problem -- you know, Glenn Martin's quote.

The other two things that I would say is that we need to expand the kind of resources that people need. So in addition to programs like Law Enforcement Assisted Diversion, in addition to community-based diversion, we need to have a real conversation about supervised injection facilities. And that is a medical place where people can come to an area and use drugs under medical supervision. This would dramatically impact the opioid crisis we are in right now. And in addition to the health intervention, it is, as I said before, sometimes the most dangerous thing that someone that uses drugs deals with is law enforcement. And giving people a place to go so that they're not using in the street, that they're not getting run up on, is creating a decriminalized zone.

This is just as important for our health as it is for our safety. Thank you.

MS. HAMILL: Thank you very much. Mr. Moore?

MR. MOORE: Thank you for the opportunity to address this committee.

I offer these remarks as a civil rights lawyer who's involved in hundreds of police misconduct cases over the years. I'm also a member of the National Lawyers Guild and as a founding member and advisory board member of the National Police Accountability Project, which is a nationwide organization of legal workers who are involved in police misconduct and government accountability litigation.

I would also be remiss, given the location of this hearing, if I didn't acknowledge the great work that is being done every year by the faculty staff and students of the City University of New York Law School. I am proud to be a member of the adjunct faculty of CUNY Law.

By way of background, I should also

note that I was one of the trial counsel in the stop-and-frisk litigation, known as the Floyd litigation, that resulted in a finding by a federal court that for a number of years the NYPD had engaged in a policy and practice of racial profiling in the course of conducting stops and frisks. I was also was lead counsel in the wrongful conviction case brought by the five young men wrongfully accused of the crimes against the so-called Central Park jogger, a case that was resolved in 2014 with a payment of $41 million to those five young men.

There has been and continues to be an endemic, systemic problem of the excessive use of force within the New York City Police Department. I offer this opinion having represented hundreds if not thousands of victims of police abuse in this city and around the country. These include Michael Stewart, a graffiti artist who was killed by Transit Authority police officers in 1983 and fast forward

thirty-four years most recently -- maybe not so fast forward -- but more recently the Estate of Eric Garner, an individual who was killed by police for the heinous crime of suspicion of selling untaxed or loose cigarettes.

In between, as I've said, I've represented hundreds of unheralded victims of police abuse. The tragic death of Eric Garner highlights many of the systemic problems regarding the use of force in the NYPD, and I want to talk a little bit about that case because I think it's important not to miss the significance of some of the details.

On July 17th, Mr. Garner was approached by several plainclothes officers on Bay Street in Staten Island. Reportedly, the officers had been advised that Mr. Garner was selling loose cigarettes, an administrative violation in the City of New York, not a crime under the New York Penal Code. We have all seen the video of this encounter too many

2 times, perhaps. Mr. Garner is approached
3 in a very aggressive way by several
4 officers who surround him, indicating to
5 any reasonable person that he is being
6 stopped and is not free to leave. Right
7 there, before you go any further in this
8 matter, you have a violation of Mr.
9 Garner's rights to be free from
10 unreasonable search and seizure. The law
11 was clear at the time that police officers
12 could not stop and question someone unless
13 they had committed or were committing a
14 felony or a criminal law misdemeanor,
15 penal law misdemeanor. It did not permit
16 you to stop someone for an administrative
17 code violation. An anonymous report that
18 someone is selling loose cigarettes does
19 not justify stopping, questioning or
20 frisking anyone. So from the first
21 moments of this encounter, these officers
22 were violating the Fourth Amendment rights
23 of Mr. Garner.
24 As we know, this was just the
25 beginning of the constitutional violations

2 suffered by Mr. Garner on that day. The
3 event quickly escalated with officers
4 attempting to take Mr. Garner into
5 custody. The video shows Mr. Garner being
6 taken to the ground and being subjected to
7 a choke hold. You also see other officers
8 on top of Mr. Garner, a large man with a
9 history of respiratory problems. And then
10 we all witness the horrible end of Mr.
11 Garner's life as he calls out eleven
12 times, "I can't breathe," with his voice
13 growing more faint after each time until
14 he can no longer talk and he becomes
15 motionless. Remarkably, if you recall the
16 video, you then witness the officers
17 simply ignore Mr. Garner, refusing to
18 provide any medical or emergency
19 treatment. And this includes even the
20 paramedics who came to the scene from the
21 Richmond University Medical Center.
22 What resulted understandably
23 generated intense public criticism of the
24 NYPD. The death of Eric Garner was
25 reminiscent of the manner in which Michael

2 Stewart had been killed thirty-four years
3 earlier. What has ensued as a result
4 following the Garner death has been an
5 abject failure of leadership within the
6 law enforcement community. The killers of
7 Eric Garner, just like the killers of
8 Michael Stewart, just like the killers of
9 Sean Bell, just like the killers of
10 Ramarley Graham, never served a day in
11 jail for having taken someone's life. To
12 this day, those responsible for Mr.
13 Garner's death continue to draw salaries
14 from the NYPD.
15 When you examine the investigations
16 that followed the death of Mr. Garner, you
17 understand how much work has to be done
18 still to address the issue of excessive
19 force. There were no arrests, as I said,
20 of the killers of Mr. Garner. The
21 Richmond County DA, Dan Donovan, now a
22 U.S. congressman, convened a grand jury
23 that was clearly designed to exonerate the
24 officers involved.
25 Let me give two examples to

2 illustrate this point. First, unlike 99.9
3 percent of all other prosecutions in
4 Richmond County -- and I dare to say any
5 other county in the State of New York or
6 around the country -- this grand jury was
7 permitted to hear a plethora of evidence,
8 most of which had nothing to do with the
9 objective of obtaining an indictment. As
10 a result, the grand jury refused to indict
11 and to this day the DA opposes any efforts
12 to release the minutes of that grand jury.
13 Whenever you hear a district attorney say,
14 we just wanted the grand jury to hear all
15 the evidence, you know that means we
16 wanted to sow enough doubt so that the
17 grand jury would not indict.
18 Second, the DA's office decided to
19 present to the grand jury only against
20 Officer Pantaleo, who is pictured in the
21 video with his arm around Mr. Garner's
22 neck. All the other officers who were in
23 part responsible for the death of Mr.
24 Garner were given immunity from
25 prosecution, so that they could go into

the grand jury, testify in a way that they hoped would exonerate their brother officer, and do so free of any threat of future prosecution.

This decision is even more suspect when you consider that the medical examiner of the City of New York ruled that Mr. Garner's death was caused by a combination of neck and chest compression. So they presented only against the officer who compressed Mr. Garner's neck but not against the officers who compressed his chest. The fix was in. The outcome of that grand jury was never in doubt.

So what is to be done? Before we can deal with this issue we must first acknowledge that there is a problem. I think the testimony you've heard so far demonstrates most vividly that there is a problem. In fact, if you look at the actual numbers, one indication of the size of the problem, in fiscal year 2016, the City spent $228.5 million settling and paying out for settlements and judgments

in police misconduct lawsuits alone. By way of perspective, that is almost as much as the $257 million budget for the entire Department of Aging. For even more perspective, that comes to $27 per year for every New Yorker.

There is a bit of good news, I think the good news that exists in this city now is a climate for some positive change within the NYPD. We have seen this through the stop-and-frisk litigation that we were involved in, going back really to 1999 with the Diallo case. As a result of the unprecedented judgment we obtained in Floyd in August of 2013, the department has begun to change, and we speak about this within the culture of the police department concerning stop-and-frisk. It will not change overnight, of course, but I do believe that there have been positive changes in this regard. These changes have occurred not because of the Floyd lawsuit, but because that lawsuit played a part in an overall community mobilization

against the abuses that were rampant in the stop-and-frisk policies of the Giuliani/Bloomberg administrations.

We really need to acknowledge the work of groups like Communities United for Police Reform, Make the Road, and other organizations as the true catalyst for forcing the issue of stop-and-frisk onto the front pages of the newspapers, and injecting it into the 2013 campaign for mayor. As much as he has been criticized for no shortage of failings as the mayor of this city in his three years as mayor, I would be remiss if I didn't credit Mayor De Blasio and his current police commissioner, James O'Neill, for supporting and standing behind, in the face of some vicious criticism from the police unions, the changes that were brought about by the Floyd litigation and the overall campaign to redress abuses in stop-and-frisk. I believe though that there are several more changes that must take place before we begin to see a change

in culture with regard to the use of force by the NYPD.

First, there must be a truly independent Civilian Complaint Review Board. So long as its decisions are reviewed by the police department, it will remain an ineffective way to address excessive use of force in the city.

Second, we need a truly independent special prosecutor to investigate and, if necessary, prosecute, police misconduct. As the Garner case so clearly demonstrated, relying on our current DAs to prosecute police offices for excessive force, has not and will not work. Even Executive Order No. 147, issued by Governor Cuomo in July of 2015 does not go far enough. It appointed the New York State Attorney General as a special prosecutor in matters relating to the deaths of unarmed civilians caused by law enforcement officers. The order also allows the special prosecutor to review the cases where there is a question

2 whether the civilian was armed and
3 dangerous at the time of his or her death.
4 However, police misconduct that results in
5 the death of a civilian is, thankfully,
6 the exception rather than the rule. So
7 this legislation omits the overwhelming
8 majority of police misconduct cases from
9 independent prosecutorial review.
10 Third, as we have seen in Floyd with
11 regard to stop-and-frisk, the NYPD needs
12 to change how it trains, supervises and
13 monitors officers with regard to the
14 issues of use of force. As have been
15 noted, there have been some recent changes
16 in NYPD's use of force as well as in their
17 documenting of uses of force. I would
18 note that one of the ways in which we were
19 able to prove that the NYPD had a policy
20 of engaging in racial profiling violating
21 the Fourteenth Amendment and also
22 violating the Fourth Amendment is that as
23 a result of an earlier litigation, they
24 were forced to start documenting stops.
25 That's why. Unfortunately, after our

2 first litigation the stops increased to
3 such a large extent that we then brought a
4 second litigation to the point where in
5 2011, as it's been noted, stops were in
6 the neighborhood of 700,000.
7 Now we know that the stops are down,
8 we don't know how much though. We know
9 that the documented stops are down. We
10 think that there's a huge problem now in
11 the police department with regard to
12 whether they even document the stops now.
13 So I wouldn't necessarily accept the
14 numbers, that the number of stops have
15 been reduced to under 20,000. I talk to
16 people on the street and they tell me it's
17 still going on as bad as ever so I don't
18 believe that there's only 20,000 stops
19 going on. I know that they're only
20 reporting 20,000 but I think the amount is
21 much more and we have to figure out a way
22 to deal with that. Fourth, let me suggest
23 we need transparency in all investigations
24 of officers in use of force. This is
25 particularly true with regard to grand

2 jury proceedings that result in a
3 non-indictment of police officers, like in
4 the Garner case. They are public
5 servants, after all, who are paid by the
6 public, and are the subject of serious
7 allegations of police misconduct and the
8 public has an important interest in
9 knowing the facts of the case,
10 particularly where the public has been
11 denied, as they were in the Garner case, a
12 public trial to determine whether those
13 officers had, in fact, engaged in police
14 misconduct.
15 Again, I want to thank the Committee
16 for the opportunity to present these
17 remarks, and I am of course happy to
18 answer any questions that you may have.
19 Thank you so much.
20 MS. HAMILL: Thank you so much but
21 before we take questions, I would like to
22 hear from Mr. Murphy. Thank you for being
23 here today.
24 MR. MURPHY: Thank you.
25 I want to thank the Committee for

2 having me here today and for allowing me
3 to testify.
4 I have heard a lot of names and I'm
5 definitely familiar with Eric Garner being
6 one. I grew up with his wife, backed up
7 with his wife, Esaw Garner. Ramarley
8 Graham being another one. I just got off
9 the phone with Frank Graham, he's out of
10 town, I talked to Constance during the
11 week. I've been with them since
12 Ramarley's death.
13 I'm here to talk about solutions.
14 I'm here to talk about solutions to the
15 current onslaught of police violence
16 against some civilians. I'm here to also
17 talk about solutions to the Broken Windows
18 policy.
19 I happen to be a violence
20 interrupting supervisor for Cure Violence.
21 There's eighteen sites in the city. Our
22 site is called 696 Build Queensbridge.
23 It's not too far from here. We just got
24 finished having 360-plus days of no
25 shootings in the largest housing

2 development in the northern hemisphere.
3 And the way we went about doing that --
4 first let me express that it was six of us
5 that actually came together to create this
6 program, you know, and actually put a new
7 recipe to this program. We actually
8 patrol and empower our youth through the
9 confines of Queensbridge, and we're doing
10 that with little to no budget. When you
11 think about some of these numbers, I'm
12 just amazed by some of the numbers that
13 have been thrown out especially by my
14 friend here, Darian, who says that the
15 police department gave some $200 million
16 for justice which I think is kind of
17 ludicrous for six people to be the control
18 a housing development and to get people to
19 buy into a program that is uplifting young
20 people and empowering the community off a
21 budget that was just like a quarter of a
22 million dollars. So, you know, I look at
23 that as being like we're fighting with
24 shoelaces and bubble gum to actually do
25 the work that the NYPD is doing.

2 I want to also express the fact that
3 we do not have any bulletproof vests, we
4 don't carry firearms, we don't have
5 bulletproof glass in our office. We're
6 just doing it through compassion and
7 credible messengers which I'm one of those
8 credible messengers and I'm there in that
9 community. I look at it, as the young
10 lady said earlier, if we put more emphasis
11 on education, mental health services and
12 parenting classes and different things of
13 that nature, I think that we would find
14 greater results.
15 What we're fighting her is
16 oppression and exploitation of the poor
17 and the most marginalized in the city, and
18 we are looked at as commodities because I
19 was also here to discuss how the Broken
20 Windows policy affects the people in these
21 communities, but my friend Darian did a
22 good job, an eloquent job of expressing
23 that.
24 I really believe that we are
25 fighting this thing in a way where it

2 really doesn't make any sense, it really
3 doesn't make any sense when you spend all
4 these resources and all this money to
5 actually oppress a community -- because
6 that's what's being done. Our communities
7 are being oppressed in many ways. Our
8 communities are being oppressed through
9 generational poverty, and when I say
10 generational poverty, I'm talking about
11 poverty on a mass scale, poor outreach,
12 poor initiatives, poor education, poor
13 health services, you know, I can go on and
14 on. But like I said, I'm here to just say
15 that if we can come together and start
16 understanding that there are people out
17 there that do understand what is going on
18 in these neighborhoods and support them,
19 we can do -- we can make a greater change.
20 I know on Thursday we have a
21 representative of Ohio coming to our
22 office to try to replicate our program, we
23 also have a representative from London,
24 across seas, coming on Thursday to help
25 try to replicate our program, we have many

2 calls from the Lower East Side, Red Hook,
3 other parts of Queens to replicate our
4 program.
5 Now, I said that there were eighteen
6 sites in the city, our site is one of the
7 newest sites but we have a nuance to what
8 we do and we do it by including the
9 community and also empowering the
10 community. We are giving them a fresh
11 breath of hope to see that they are a part
12 of the process. We also empower our youth
13 by showing them they're also part of the
14 process.
15 Tonight I will be taking thirty
16 individuals, young people, ages of sixteen
17 to twenty-four to the community board
18 meeting which we're a part of Community
19 Board 1, and we have expressed an interest
20 in having one of the young men on that
21 community board so he can actually explain
22 and be the face of the youth to explain
23 why things are happening, why the youth
24 feels a certain way, why the community
25 feels a certain way. And we're striving

to build a bridge, you know, actually between us and the politicians, because we feel that the people that we put in these positions should be fighting for us, which is not all the time necessarily the case.

Like I said, I'm just here, sitting here, as part of the solution and I'm happy to be here and thank you.

MS. HAMILL: Thank you all very much for a very, very powerful presentation with really terrific insight and recommendations.

We do have a few minutes for questions so I see a hand down there, Johnny?

MR. PEREZ: My question is for Darian -- how do you pronounce your last name?

MR. AGOSTINI: Agostini.

MR. PEREZ: For Mr. Agostini and Mr. Murphy. I must tell you that I have a deep appreciation for the work that you do and I firmly believe in the credible messenger model.

My question is around community policing, you know, placing police officers inside the community to build relationships and, therefore, you know, reduce the incidents of crime. So my question is, what does community policing look like from the perspective of the community?

MR. AGOSTINI: That's a very interesting question because I think from an organizational standpoint, when we think about community policing especially with this model of community policing that's been implemented in black and brown neighborhoods the mass of the community policing agency makes up of school safety agents. There's more than 5.000 school safety agents inside of New York City public schools which is the size of some cities' police force itself. Like I said earlier, the police act like an occupying force.

When you say community policing, it's not a real thing, it's an oxymoron in

a really big way, because our communities don't need police, our communities need safe spaces which we create, not spaces that are forced upon us. And I think just to refrain a lot of this conversation about policing or abusive policing is taken in a way, oh, we just need better police. There's no such thing. There's never been such thing as better police. It's like saying, oh, I'm not against the slave patrol, I'm against slave patrol brutality and that's the essence of what community policing means.

So when you say community policing, to me I hear community resources, because that is what our community needs. Our community doesn't need some other form of diet sweet policing, you know, because those things don't exist. Those are not real tangible solutions and when that happens we get these false ideas of policing or this forced narrative policing that somehow can never be -- something that's positive for our communities, and

it's not.

Like what my brother Taylonn here said, what they're doing they're my province a lot says what they're doing without surveilling the community and tracking people's phone calls or setting up cameras on every other corner or having police stand like cynicals [sic] in every corner, they're not doing that, you know, they're actually building with the community.

And I think this model is the best model if we're going to talk about, like, safety in our community, it's like the people are given their own agency to design a program that they feel directly impacts their community in a positive way and that program is backed up with the resources that the community needs, which is access to health care, access to housing, access to viable living wages, to green and healthy food, to safe and green spaces. I think those things are equally important, you know.

MR. MURPHY: Just to add on a little bit to what Darian said, we are doing community policing on our own. We don't actually talk to the police, we don't actually deal with the police. We have a program manager and he is designated to go to those meetings and talk to the higher echelon in the police department. We're just striving to uplift, empower, educate, build up hope in our young people that has been taken away by watching TV, the TV and the news and watching our brothers being shot down, killed, harassed.

I must say, though, the 114th, they didn't believe that we can do it. And when they saw that it was going to work, they started giving us our space and we started kind of like demanding our space. So there's been a mutual respect between ourselves and the police department but it hasn't been -- we've been doing the community policing.

MS. HAMILL: I understand that our last two panelists are here but we're

going to stay with this panel for another fifteen minutes, to about 3:30, so we should have plenty of time for any questions if I can see a show of hands.

Earl, you're next.

MR. WARD: Chris, you talked about -- and I think the word you used was a scandal in the NYPD based on the failure to either document or report use of force, right? Is there an inherent problem with trying to get this information from the police, because what police officer is really going to say or write down on a document that I just punched so and so in the face or I just kicked this person, right? So it's not stop-and-frisk where, you know, it's okay to say I stopped someone and I frisked that person, that's not as egregious as something as saying you've committed a violent act against a person.

So I'm just wondering whether or not we'll ever get to a point where use of force reports can be generated given, you

know, the ways in which police, you know, typically fill out reports which is not accurate?

MR. DUNN: Well, I'm not going to disagree with your scepticism on police officers self-reporting misconduct and not all force is misconduct but that's a huge issue. I mean, as Jonathan points out, there are a lot of concerns about officers actually completing stop-and-frisk forms and whether or not the number of reported stops is a fair number. I agree, I don't have any confidence even if you thought the department itself is going to be transparent and freely report what it collects, are the police officers going to fairly report what is happening? And that has been a conundrum for a long time.

The one thing that is happening that may have a real impact on that is body worn cameras. And as I think probably all of you know, the department's in the process of rolling out a substantial body worn camera program, you know, there will

be 1,000 cameras certainly in use within a year from now and ultimately they will have about 5,000 cameras.

We have lots of concerns about police officers being able to turn on or turn off the cameras and under the proposed department policy right now police officers will control when the cameras go on or go off. However, I think that is an example where technology is providing, at least, a partial solution to the very problem you're identifying, Earl, is if police officers are going to selectively report things. But I think that's one thing we all have to be thinking about when you think about police reform is trying to have as accurate a picture as possible as to what is actually happening, and there's a well-established pattern -- and it's an understood pattern. The police officers do not accurately report what they do. Police officers sometimes affirmatively misrepresent what they do, they frequently omit things that

they do, and I think that when one thinks about reform, assuming the police officers will continue to exist in this world, and it's hard to envision a world now where that is not the case, I do think it's incumbent upon all of us, including police leaders, to think about ways to fix that problem.

Can I just add a brief comment to that?

To be clear, when the officers were filling out stop reports, they weren't reporting that they were violating the law, they thought they were in compliance with the law, similarly with regard to use of force. What it gave us was an indication of how often that procedure is taking place. And I think there is some value in being able to look back at an incident where an officer says they engaged in the use of force, they probably thought it was absolutely fine, but it gives you a way to go back and to audit it, and to look at it, and to track it

down and to determine whether or not they're telling the truth about whether it was a justified use of force, so.

I think it's a huge step if you can force the NYPD to start documenting uses of force because that allows you to look back and we don't have that ability right now.

MS. HAMILL: Alex?

MR. VITALE: Even the patterns of appropriate use of force can be very telling potentially in terms of racial distribution, et cetera.

Kassandra, you raised very important issues about decriminalization, legalization of drugs. I wonder if you can say a little bit about Portugal and how the public safety has been affected by the widespread decriminalization there, and what the early indications are in Colorado and the two Washingtons. But as a segue into saying that even if we get police out of the drug business, you also suggested that there will still be a

racialized element to policing and that the war on drugs is an expression of that rather than the creation of that. So ultimately how do we start to get at that; is it, you know, training and accountability, is it further reducing their role in society? What are your thoughts about that?

MS. FREDERIQUE: So first to your point about Portugal. Portugal decriminalized drugs well over a decade ago and by all the measures of public health and safety it has been a success, so. People's usage has not gone up, people are more connected to treatment and resources. Young people are not using drugs at a higher rate than before, it was pretty steady and it has gone down.

Just in general, Portugal as a country has ended the drug war and still exists. And they're having different conversations about what resources could look like and what it means to centering health versus centering criminal justice.

It's also important to recognize that multiple international heads of state have called for not only the decriminalization but the regulation of drugs as well. So everyone from Dreyfus, to Kofi Annan, to former presidents of Mexico and Colombia which is the Global Commission on Drugs has said that they do not think the drug war works. That they, people who have been in power, who have talked about law enforcement, and put in money and resources for this, have said that that was a mistake. And tomorrow there is an event that I can send to you, Alex, that you might send to the other commissioners to have that international perspective about why this is a problem.

I think that the war on drugs is an expression of social control in the ways that law enforcement agencies have used to control and harm communities. And I do not think ending the drug war will end that kind of policing. I do believe it is a tool we can take away from law

2 enforcement. Just like legalizing
3 marijuana will not legalize black people;
4 ending the war on drugs will not end the
5 war on black people. And that is very
6 important to state. It would be
7 irresponsible of me as a black drug policy
8 reformer to paint that picture.
9 However, what I do know is that the
10 drug war plays a large role in the way we
11 criminalize communities, especially women,
12 especially LGBTQ/GNC people, especially
13 poor people, and communities of color.
14 And if we decriminalize drugs and have
15 conversations about regulation, then we
16 give ourselves the space to create
17 different structures of accountability,
18 which goes back to what Darian and Mr.
19 Murphy talked about, which is how do we
20 create and center communities as a way to
21 illustrate the kinds of communities we
22 want to live in and build the structures
23 of accountability that we think are
24 important? How do we invest in community
25 members?

2 Oftentimes when we talk about drug
3 policy we often say we need to move from
4 the criminal justice framework to a public
5 health and safety framework. What that
6 means for me is how do we invest in
7 community members to have a conversation
8 about how they want to deal with each
9 other? I think when we talk about -- you
10 know, some of the most stigmatized and
11 marginalized people in our society are
12 people who use drugs and in some instances
13 are people that sell drugs. So we need to
14 have a conversation that de-stigmatizes
15 these communities and have conversation
16 about what is it that we're really upset
17 about, what is our definition of safety,
18 what is our definition of health and what
19 are the things that we can do, because if
20 we started from that place, then the way
21 that we responded to drugs would be very
22 different.
23 The way that we've centered drugs
24 has been about the marginalization and the
25 capture and the control of communities we

2 don't like, poor people and the
3 communities of color and in a lot of
4 instances women. And that is why the drug
5 war and law enforcement is built-in this
6 way. But if we centered it around health
7 and safety then we would see that law
8 enforcement is not an establishment that
9 needs to be involved in our dealings with
10 drugs but we would also be able for us to
11 think of different ways to extrapolate all
12 the other issues that we might not need
13 law enforcement to deal with.
14 And that's in schools, that's in
15 dealing with transit, dealing with
16 housing. What are the different ways that
17 we can build accountability structures
18 that do not center law enforcement? And
19 honestly at this table it's very clear
20 that Mr. Murphy is a shining example of
21 what that looks like.
22 MR. THOMAS: So, I have a question
23 about data. A number of us here had a
24 really good briefing with the NYPD on the
25 data on stop-and-frisk. One deputy

2 commissioner, I'm not going to name him,
3 but he basically said the numbers may look
4 big but they be exaggerated by the police
5 officers filing those forms at the end of
6 the day based on the quota system. So the
7 data that is coming in now it looks low
8 because this might have been what it
9 really was. And I'm hearing testimony
10 here from a number of advocates basically
11 saying that although the Floyd decision
12 came down, there's policy change, but
13 we're still seeing the same number of
14 stops and frisks.
15 Are you worried that now they are
16 underreporting or that they're not
17 reporting accurately at all?
18 MR. MOORE: It's really a difficult
19 question to try to figure this out because
20 it's clear, the numbers are down, the
21 reporting numbers are down. I don't think
22 the department really knows what that
23 means. We really don't know what it means
24 other than that the numbers are down, and
25 by the way, crime continues to go down so

the whole rationale for years and years and years of excessive stop-and-frisk has proven to be just an illusion. So we really don't know what it means.

We do know that even with the numbers being down, the proportion of people of color being stopped is way in excess, from their representation in the community. They are still stopping -- from the latest analysis at least from 2013 to 2015 -- they are stopping black and Hispanics at a rate of 82 percent when their portion in the population is under 50 percent, I think. And that's the numbers they were doing all along during the case, so. I just don't think we know how to get to that issue.

I think there's certainly better training and commitment to better training. We have been present at new versions of the training and offer our comments about it and that's something that would never have happened under twenty years of Giuliani and Bloomberg.

It's a new day at the police department. I don't know if it's a better day but it's a new day. It's still to be determined whether it's really a better day, so.

MS. HAMILL: Mr. Dunn?

MR. DUNN: This goes to Earl's point. We're never gonna know with certainty about police officer behavior because officers don't record everything and what they record oftentimes is not accurate. There is no question though that the magnitude of police activity is knowable, and we know a lot about it and it has changed in important, significant ways. But it also points to the necessity of having as many different insights in police behavior as possible. Any system that relies entirely upon police filling out a particular form is going to be flawed. One that relies entirely upon body camera footage is going to be flawed. Look, there are people -- and Alex has done this -- there are people all around the country who spend time figuring it

out. If you really want to figure out what's happening in an organization, you look at it from various different perspectives. It is the essence of transparency and accountability. It's something the department has not been good on, but as Jonathan was suggesting, we now are in a situation politically where City Hall, I think, is more supportive, greater police accountability in important ways and I think the one thing that you folks can contribute is to really emphasize the importance of getting the right and complete pictures through as many ways as possible and you having people come in and talk to you is one of those ways.

MS. HAMILL: Last quick question before we close this panel.

MS. CHEN: So Darian, and I think it was Mr. Murphy, yes, you all presented a compelling and very different view on community-based policing. I think you mentioned how other jurisdictions have come to you all as an exemplar to learn

from.

Have you gotten the same response from the City of New York? I know you all are coexisting with mutual respect, but any conversation about how to replicate beyond the sixteen or eighteen sites that you mentioned with this model and/or import some of what you developed to impact the way that the NYPD is operating?

MR. MURPHY: Well, at the current time we have a database that's directly hooked up to the DOH, the Department of Health, but at the current time the Department of Health is trying to understand, like I said, the nuance, the new way that we're doing things. They're trying to understand how we are actually doing it. We're actually the last site to kind of get on board on these eighteen sites and we came out the gate with having like 365-plus days with no shooting because of the way we implement the program.

And with that being said, you can

have the greatest program in the world but if you don't have the outreach to match it, it doesn't make a difference. So right now they're trying to figure out how we're actually doing it, how we're actually getting it done and we're trying to explain it to them because a lot of it's just by, I guess, just by instinct that we're doing it.

MS. HAMILL: Thank you all so much. Really excellent presentations. Thank you.

Okay, if I can please call the committee members back and if I can call our last two panelists up, please. Let's get started please, we're starting this panel late.

At this time we're going to be welcoming our fifth panel for the day and the final panel for this two-day briefing so I thank you all so much. I know you came a little bit early. We're running a little bit late, a few of our panelists weren't able to come so we tried to give a

little bit of extra time to the panels that we had.

So welcome, thank you so much for coming and why don't we get started with Professor Brotherton.

MR. BROTHERTON: Thanks for inviting me to share some of my experiences on policing and policing of gangs in the city and with particular reference to some of the recent mass gang raids which have been occurring in Manhattan, in Harlem and in the Bronx.

So I'm a sociologist and criminologist at John Jay and as a background I've spent the last part of two decades studying street gangs, street gang formations, on both coasts of the United States. I started in San Francisco and then I moved here to New York in '94. I started in 1991 and my work now incorporates a lot of Western Europe; I'm in Spain, Italy and the UK as well as in Ecuador and soon in Central America. So I have a very extensive understanding of

gangs and reactions to gangs so it's in that context that I'll be speaking.

So the police gang raids in New York City, which I've been asked to talk about, testify on to some extent today, have evidently been an enduring practice for the past two decades but the tactic has seemingly become an expanding practice since judicial constraints were placed on the program of "stop-and-frisk." According to the research of my colleague, Professor Babe Howell from this very institution, such gang raids seem to be related to the reappearance of "the gang" as a major social threat to public security and, in particular, to residents of some of the most vulnerable communities in New York City.

Although we are living through one of the steepest drops in violent crime in this city since the Second World War, and there is very little evidence of New York City becoming an area where street gangs have been designated a chronic problem,

unlike large cities such as Chicago, for example. Both the NYPD and certain media outlets such as the Daily News, continue to claim that a continuing threat to public order arises from a new wave of violent young gang members, often referred to as crews or posses. As such, these groups have to be responded to forcefully and strategically through para-militarized sweeps, for example, Operation Crew Cut.

As a sociologist and criminologist who has studied the social problem, I have become very skeptical of, one, the episodic discovery of these gangs as crime problems; two, our certainty that such problems meet the criteria of the social category we have concluded exists to be eradicated; three, the effectiveness of the increasingly repressive reactions we have chosen to address these problems.

Due to shortage of time, I'm really going to address the first and the third of these aspects.

So the first one is what I call the

discovery of street gangs. New York City holds a very special place in the history of street gang discovery, since it was one of the first cities where gangs were publicly written about in the United States. The work of Herbert Asbury and his chronicle of urban life in the nether regions of society, first appeared in 1927 and subtitled "An Informal History of the New York Underworld."

In this discovery, Asbury discusses the wide range of gangs in the city dating from the mid-1800s, their relationships to Tammany Hall, the colorful characters that made up these groups of mainly poor, working-class residents around the Bowery, and the violent conflicts that they would often engage in.

Much later in the 1950s, the gang is revisited and this time from a more academic perspective as we encounter the work of people like Richard Cloward and Lloyd Ohlin at Columbia who discussed the gang in terms of youth from poor

backgrounds as ways to adapt to their life chances. Much of this work was focused on the Lower East Side and became the blueprint for a large antipoverty program called the Mobilization for Youth and later as one of the most successful social policy interventions of the twentieth century in the United States called the war on poverty.

I should mention that a lot of the theorizing around the gang as a symptom of profound social and class oppression came from the earlier work of the famed sociologist Robert Merton during the years of the Depression in 1938.

All of these early discussions of the gang, therefore, try to understand the emergence in a certain social context, emphasizing the kinds of impoverished neighborhoods that gave rise to this phenomenon in the different human beings, especially youth, express themselves as people in the margins of life.

In fact, it was Merton who

poignantly asked, how do people who grow up in these areas where the means to get ahead and rise in the social class system are simply not there, how do they make sense of their marginality? This question, he said, is particularly important in a nation that has a major plinth of its ideology contained in the notion of the American Dream. A notion, by the way, that is still very much installed in all our children's school textbooks, U.S. government policy rationales and many of the narratives espoused by the corporate media. Thus, most of the dominant perspectives on the discovery of New York City gangs came from a relatively humanistic perspective, as society debated how to integrate such youth into more mainstream pathways leading to successful working and middle-class lives that resulted in the mutual reinforcement of the communities from whence they came.

At no time during this discovery

period do we encounter the idea that the major response to such youth should be the police. In fact, most criminologists and sociologists writing on gangs up until the 1970s eschewed the possibility that gangs were principally a crime problem and argued forcefully that unless we addressed the roots of the gang phenomenon and looked at the structural issues that such groups symbolized we would never come to any successful policy solution.

During the 1970s, however, we saw the sea change in the ways gangs were discovered. Following the 1960s era of political and cultural rebellion and civil rights advocacy, it is interesting to note how the gang started to be seen as a crime problem sui generis. And we started to hear social scientists talk about gangs as intrinsically linked to delinquency and criminality with the result that the definition of a gang starts to shift. Prior to the 1970s nearly all definitions of the gang came from social science and

2 did not include the commission of crimes
3 as one of its major defining attributes.
4 As the definitional aspect of the
5 gang changes, so does the way the media
6 constructs the gang. And we encounter
7 such constructions, for example, as the
8 front page of New York Magazine in March
9 1972 that leads with a front cover of four
10 gang jackets displayed from the Young
11 Sinners, the Javelins, the Black
12 Assassins, and the "Bronx Reapers" and the
13 headline "Are You Ready for the New Ultra
14 Violence?" This is in March 1972. I
15 would argue that around this time an
16 extraordinary other shift is taking place
17 during the Nixon administration and his
18 vindictive policies of social control and
19 quite explicit attacks on the rights of
20 minorities and poor communities.
21 New York was one of the first areas
22 in the country to witness a moral panic
23 around the discovery of the gang that, in
24 effect, was a cover or a shift in
25 resources away from the poor to the

2 wealthy. In fact, if we look at this
3 concentration of recourses by the wealthy
4 it has almost been a constant fact of life
5 for the past fifty years and it has
6 happened as the poor have been
7 increasingly demonized and criminalized
8 through campaigns against an assortment of
9 pathological behaviors much of which are
10 associated with this omnipresent social
11 group called the gang.
12 Is it any coincidence that in New
13 York at the moment we have one of the
14 poorest congressional districts in the
15 South Bronx, and in central Manhattan one
16 of the hyper-concentrations of wealth, not
17 only in the country, but almost on the
18 globe? And, in fact, the gang has been
19 used systematically as the everyman's
20 other. And just as New York City was the
21 experimental ground for the introduction
22 of the neo-liberal project around the
23 world, in the late 1970s when New York
24 City went bankrupt, it was similarly the
25 testing ground for the symbolic

2 construction of the gang and its supposed
3 para-militaristic destruction.
4 The moral of the story here,
5 therefore, is never take the discovery of
6 the gang at its face value. But always to
7 look for those institutions in society and
8 its constituencies who would most benefit
9 from its widely acclaimed appearance.
10 I don't have time to document the
11 years following but we can see quite
12 clearly that since the 1970s there has
13 emerged a gang control industry of immense
14 proportions that institutionally is now
15 firmly embedded in every police
16 department, correctional facility,
17 criminal justice court, immigration
18 control apparatus and journalistic news
19 desks not just throughout the city, but
20 throughout the country and increasingly
21 exported to the rest of the world.
22 Further, the amount of tax dollars
23 spent in the phenomenon and efforts
24 supposedly at eradication is almost
25 impossible to calculate. So immense is

2 the sum. We can say that almost fifty
3 years hence, the gang is alive and well,
4 and although its public appearance varies
5 widely from city to city, when we take
6 into consideration the exponential rise of
7 the prison population and the high number
8 of gang members among them, I would
9 conclude that the criminalizing shift that
10 occurred back then should give us cause to
11 think seriously before pursuing more
12 punishing and repressive policies of
13 gangs, social control as embodied in the
14 predilection for gang raids, as mentioned
15 in the first paragraph and has now become
16 a part and parcel of the NYPD gang tactics
17 in New York City.
18 The second thing I want to talk
19 about is the effectiveness of repression.
20 As one might already glean, I do not see
21 much good coming from endless rounds of
22 repression in addressing the gang
23 phenomenon and the issues that its
24 presence might entail.
25 In criminology we have a theory that

2 explains why such repression often
3 backfires which we call deviancy
4 amplification. During my many years of
5 research around the gang, I have witnessed
6 this process playing itself out repeatedly
7 and yet it is difficult to convince
8 policymakers along with various
9 institutional actors who enact these
10 policies why their actions could often
11 have the opposite effect to that intended.
12 Part of the problem arises with the
13 original definition of the problem and its
14 nature. As I stated earlier, the gang
15 problem has been around for many, many
16 years. However, in its earlier social
17 construction it was never viewed simply as
18 a crime problem that required surgical
19 removal but rather as a symptom of
20 something else; be it a social reaction to
21 sustained poverty, sometimes called
22 blocked opportunities, the search for
23 youthful identity among marginalized young
24 people, issues related to assimilation
25 from rapidly growing immigrant communities

2 and so forth.
3 Previously, the answer to these
4 issues was social and involved producing
5 better opportunities to be educated,
6 better housing and less overcrowding, more
7 access to the labor market and high paying
8 jobs, especially union jobs, and the need
9 to end discrimination in all these spheres
10 of daily life. As a result we see that
11 the race and ethnicity of many of these
12 earlier gangs changed dramatically over
13 the years, and the street gangs of mainly
14 Eastern European, Jewish-American or
15 Italian-Americans or Irish-Americans all
16 but disappeared with a few exceptions. It
17 is no coincidence today, however, just
18 like the U.S. prison population that so
19 many of the street gangs consist of
20 primarily "minority" populations, which in
21 my view reflect the massive barriers that
22 certain young people of a certain race and
23 ethnicity continue to face.
24 Consequently, the disappearance of
25 street gangs from certain communities

2 historically has a great deal to do with
3 the removal of seen and unseen borders and
4 boundaries that ensure a young person
5 experiences marginality. You see, it's
6 not given by nature that somebody
7 experiences marginality. Marginality is a
8 social creation with great political
9 intentions behind it. Society in the past
10 decided wisely that it should put its
11 resources in policies that provided
12 sustained pathways of social advancement,
13 not in policies that criminalized and
14 labeled young people which has most
15 assuredly produced intergenerational
16 gangs, vast populations of fatherless
17 and/or motherless children, and levels of
18 surveillance and intelligence gathering
19 that speak more to an Orwellian future
20 than anything resembling the land of
21 openness and the American Dream.
22 Thus, the problem with increased
23 repression to address the gang problem is
24 not only that it does not work, since as a
25 policy it does not attack the social roots

2 of the phenomenon, but it also has large
3 collateral consequences which are hard to
4 control and even more difficult to remedy.
5 Social control is best achieved through
6 people buying into a shared set of
7 behaviors and norms that heighten
8 community bonds and produce high levels of
9 social solidarity and social reciprocity.
10 The introduction of high levels of
11 coercion based on the notion that a
12 problem population can be eradicated, only
13 leads to increased fear and suspicion
14 among the targeted community while
15 completely overlooking the structural
16 conditions that will continue to exist and
17 be the fertile ground from which the gang
18 will simply reproduce itself. Further,
19 these institutions of repression also
20 reproduce themselves and the culture of
21 punishment which rationalizes their
22 emergence and development becomes
23 increasingly embedded in daily life in
24 part as what we call common sense.
25 As a consequence, the gang as a

2 social problem can only now be viewed as a
3 crime problem, particularly as this
4 problem becomes almost solely defined by
5 the institution that wishes to eradicate
6 it.
7 In conclusion, in my humble opinion
8 and based on my multiple years of research
9 in New York City and beyond, we need
10 desperately to return to some very
11 important lessons of the past. The
12 present penchant for gang repression as
13 reflected in the wave of mass gang raids
14 will not address the gang problem but only
15 lead to further intolerable consequences
16 for a community already under enormous
17 stresses. If there is a time to rethink
18 the discovery of the gang and its remedy
19 it is now. I am hopeful that this
20 important intervention in public policy
21 can lead to a broader discussion of
22 policing vis-a-vis the various expressions
23 of youth and community development and the
24 need for a conception of public security
25 that is holistic, progressive, and

2 remembers our history.
3 Thank you very much.
4 MS. HAMILL: Thank you, Professor.
5 Professor Levine.
6 MR. LEVINE: I'm the last guy.
7 MS. HAMILL: Yes. Earlier we had a
8 panelist who referred to what we'd be
9 hearing from you so we've been eager to
10 hear from you both.
11 MR. LEVINE: Don't believe the
12 advertisement.
13 It's a pleasure and an honor to be
14 here. I think of myself as a child of the
15 Civil Rights Movement and the Civil Rights
16 Commission.
17 The U.S. Civil Rights Commission was
18 founded sixty years ago and so happy
19 birthday Civil Rights Commission. I'm not
20 sure if anyone has wished you happy
21 birthday yet, but.
22 I've come to talk today of something
23 called truth, data, race and routine
24 policing focusing on low-level enforcement
25 and low-level offenses in New York City.

2 I brought the data, I think you've been
3 supplied a copy of it and I have some
4 pretty graphs and charts at the end.
5 I am a professor of sociology at
6 Queens College and the Graduate Center and
7 for ten years I've been researching
8 marijuana arrests in New York City and
9 possession arrests. We've issued a series
10 of reports, we have a website
11 marijuana-arrests.com where all of our
12 reports and much data about
13 stop-and-frisk, about race and policing is
14 available.
15 I'm rather proud of the fact that in
16 June of 2014 we released a report, Race,
17 Class, and Marijuana Arrests in Mayor De
18 Blasio's Two New Yorks, and that
19 contributed to the announcement of
20 November 10th, 2014 of the mayor and the
21 police commissioner that they would direct
22 NYPD to stop making most of the large
23 number of lowest level of marijuana
24 arrest.
25 What's happened is another story.

2 We will release another report in the
3 coming months about what has been
4 happening in about forty years of
5 marijuana arrests in New York and
6 especially focusing on the last twenty.
7 At the front of the U.S. Civil
8 Rights Commission, then Senate Majority
9 Lyndon B. Johnson said that the
10 commission's task is to "gather facts,
11 sift out the truth from the fancies, and
12 return with recommendations." This is
13 what I have come to do, especially to
14 emphasize the importance of making public
15 the often hidden data collected by many
16 law enforcement agencies and courts,
17 including in my beloved New York City.
18 Long-time students of policing in the U.S.
19 know that sometimes police officials
20 nearly everywhere deny what is factual and
21 true, that there are ticket quotas, for
22 example, and withhold much routine data
23 and information. But in New York City
24 during the twenty years under Mayors
25 Giuliani and Bloomberg, 1994 to 2013,

2 falsehoods and hidden data became a way of
3 life.
4 Of the two problems, the most
5 important was the real data and
6 information that the NYPD hid, denied, and
7 prevented others from seeing, especially
8 about civil rights and policing policies.
9 In 2012 the Associated Press won a
10 Pulitzer Prize for its very long
11 investigations of the surveillance of
12 Muslims and other minorities by the NYPD,
13 which it vigorously denied it was doing
14 until the documents and so on were
15 produced.
16 Law enforcement is a large, powerful
17 institution. Police and prosecutors have
18 released and publicized information that
19 helped them but they also withheld,
20 refused to make public, or denied the
21 existence of data that could potentially
22 document their unfair, discriminatory,
23 abusive, excessive and even professionally
24 questionable practices.
25 I have come today to focus on

2 one horrific fact about routine policing
3 and law enforcement in New York City and
4 we'll talk at the end about marijuana
5 arrests, but really what I want to do is
6 tell you about this one thing. In the
7 spring of 2017 right now, today, there are
8 more than 1.5 million, 1,500,000 open
9 criminal arrest warrants for noncriminal
10 offenses in New York City. That works out
11 to one open arrest warrant for every six
12 New Yorkers.
13 These are issued for violations, the
14 lowest level of offenses in New York,
15 things like public drinking, riding bikes
16 on the sidewalks, talking back to the cops
17 otherwise known as disorderly conduct.
18 The violations are issued as mandatory
19 court appearance summonses, tickets,
20 requiring people to show up at a
21 particular time and a particular day, wow,
22 to those who forget the date, wrote
23 Staples, or have work, school or childcare
24 responsibilities or those who show up,
25 wait for hours on line but cannot afford

2 the fine and the court fees.
3 When people don't show up or can't
4 show up the summons court issues a
5 criminal warrant, a criminal arrest
6 warrant, which police officers can
7 retrieve phones, tablets, and computers
8 when police stop people for any reason; a
9 routine traffic stop, an ID check, to
10 check about some other kind of question,
11 they run the person's ID through the
12 system, the warrants pop up and the people
13 with a violation warrant get arrested,
14 they're handcuffed, taken to the police
15 station, fingerprinted, photographed, eye
16 scanned and held for up to twenty-four or
17 more hours in the dungeons of the New York
18 City criminal court, they're spit out
19 generally a day later in arraignment
20 court. How many people a year does the
21 NYPD arrest from warrants? How many of
22 these warrants are executed?
23 A reasonable guess is 100,000 to
24 150,000 arrests on summons warrants. To
25 be clear, that is in addition to the

2 200,000 misdemeanors a year the NYPD has
3 averaged for the last twenty years from
4 1997 to 2016. That's a reasonable guess,
5 but unfortunately other than the police,
6 prosecutors and perhaps the courts, nobody
7 actually knows how many people are
8 arrested each year on summons warrants.
9 Or to put it more precisely, the number of
10 arrests on warrants for violations is not
11 and has not been available to the public,
12 not by any City agency whatsoever. It is
13 also absolutely not available from the
14 State agency that routinely provides data
15 to journalists, researchers and officials
16 about arrests for misdemeanors and
17 felonies, the New York State Division of
18 Criminal Justice Services in Albany, DCJS,
19 which collects and makes available all
20 criminal offense data in New York State
21 but it does not collect the violations
22 data because violations are technically or
23 officially not crimes, even though they
24 have produced more than a million criminal
25 arrest warrants.

What is the race and ethnic makeup of the people charged on the 1.5 million warrants? How do the warrants divide up by age and gender? Again, that anonymous aggregate data about the arrests on summons warrants is not public, not available, not posted or downloadable on any of the many public information web pages of New York City, and not by any of its bureaus, agencies, and departments including the NYPD.

Are you a journalist, researcher, advocate or even a U.S. Civil Rights Commissioner looking for aggregate or summary race, gender and age data on the people issued the 1.5 million arrest warrants for violations? On the open public record there is no data to be found.

A reasonable guess is that 85 percent of the people targeted in New York City's million-plus summons warrants are blacks and Latinos. About 85 percent of the tens of millions of people that the

NYPD stopped and frisked were blacks and Latinos. And as charts in this testimony show, about 85 percent of the many hundreds of thousands of people that the NYPD arrested for lowest-level marijuana possession offenses, have also been blacks and Latinos. And anybody who spends any time in the summons part of the New York City criminal court is overwhelmed by the racial profile of the people in the court. It is all blacks, Latinos, some Middle-Easterners and an occasional unlucky white person.

For years in talking about the marijuana arrests I have said that New York was extreme but not unusual. But about the issue of warrants for summonses, New York City may not even be that extreme. And the nation learned about it, first of all, it became headline news across the country, because of the United States Justice Department Civil Rights Division report on Ferguson. The testimony includes a little bit from that

but I just wanted to point out one fact from that.

In Ferguson they had discovered that there were so many open arrest warrants that the City was paying from its budget with money and fines and fees, exorbitant and excessive amounts from the warrants. We do that in New York to some extent but not on the scale of Ferguson. In Ferguson there was one arrest warrant for every two residents. In New York we have one arrest warrant for every six residents.

With complete tongue in cheek, I would like to suggest a new motto for the Big Apple: New York City, not nearly as awful as Ferguson. I'm not an attorney, I'm an academic and researcher who grew up in New York and lived here most of my life. It is an honor for me to testify, as I said, and I would like to be of help. But I also seek to reach a wider audience with my work, including this testimony. I would like to offer what might be called accommodations but which also could be

called encouragement for the commission and others to push beyond the boundaries of what has previously seemed possible for policing policy.

The U.S. Civil Rights Commission and all groups and organizations that share its concerns and mission, should encourage and help State, County and City officials throughout the U.S. to make easily available to the public, ideally online, their aggregate, non-individualized data about summonses for noncriminal offenses -- and that's throughout the United States -- about the arrest warrants generated, and about the arrests of people on summons including race, ethnicity, age, gender and other data.

This should be a completely nonpartisan issue.

How can there be informed public discussion about government policy and practices of law enforcement if the essential data about those practices is hidden, secret, inaccessible and

2 unavailable? How can there be informed
3 discussion about law enforcement's
4 progress and problems in civil rights if
5 basic racial, ethnic, gender and age data
6 about the routine enforcement practices of
7 police, prosecutors and courts is likewise
8 hidden?
9 Making this public data actually
10 available is important for a democratic
11 society and something that prominent civic
12 organizations and nonprofit foundations
13 should and could support. And yet police
14 and prosecutors in many places, including
15 New York City, will oppose, obstruct, and
16 resist making such data available. In
17 addition, the powerful but often hidden
18 police unions will also resist efforts to
19 make public the racial and other
20 demographic breakdowns of the people
21 charged in summonses and warrants, and of
22 the many unfortunate people arrested and
23 jailed on those warrants for noncriminal
24 offenses. But the U.S. Civil Rights
25 Commission has encountered such resistance

2 before and triumphed here as it has
3 previously.
4 My second suggestion: Every New
5 York City arrest warrant for a summons
6 issued before 2014 should be revoked,
7 canceled, withdrawn, annulled, nullified,
8 expunged and permanently removed.
9 In New City, stop-and-frisk policing
10 was so widespread, so pernicious, and so
11 clearly unconstitutional that the
12 summonses and arrest warrants that they
13 generated should be nullified. They are
14 the poisoned fruit of the unfair, racially
15 biased, and unconstitutional
16 stop-and-frisks. They need to be
17 eliminated and the arrests stopped.
18 I have just a few things to say
19 about the marijuana arrests in New York.
20 And I think one of the most important ones
21 to understand is that many years of U.S.
22 federal government research has found that
23 whites use marijuana as much or more than
24 blacks and Latinos, especially true for
25 young people.

2 My testimony includes four charts
3 about the NYPD's lowest-level arrests,
4 marijuana possession arrests, and a few
5 significant patterns emerge. Forty years
6 -- I have this very cool blue graph for
7 you to show what's happened with this
8 astonishing period here which is the
9 period of stop-and-frisks and Broken
10 Windows policing. But the last twenty
11 years are the really crucial ones. In
12 1994, '95 and '96 during the first years
13 of the Giuliani administration -- I'm
14 sorry, I jumped a bit. In the last twenty
15 years the NYPD made 51,000 arrests from
16 1977 to 1996. In the last twenty years
17 from '97 to 2016, the NYPD made 710,000
18 marijuana possession arrests. From 1997
19 to 2016 the last twenty years they
20 arrested 374,000 African-Americans 237,000
21 Latinos and 79,000 white people. The
22 percentages are in the data you have with
23 you.
24 If one compares the arrests right
25 now to the high years of Bloomberg and

2 Giuliani, then it looks like the arrests
3 have reached a kind of sensible level.
4 But those years were so extreme that we
5 need another base, we need a saner base.
6 I want to suggest that a saner base might
7 be, first of all, the first three years
8 that Rudolph Giuliani was mayor of New
9 York. In 1994, '95 and '96 under the
10 Giuliani administration the NYPD made a
11 total of 18,300 marijuana possession
12 arrests.
13 In 2014, '15 and '16 the last three
14 years, the first three years of the De
15 Blasio administration, the NYPD made
16 60,900 of those arrests, averaging 20,000
17 a year. In 1994 they arrested 10,000
18 blacks, 5,000 Latinos, 2,000 whites. In
19 the last three years they've arrested
20 nearly 30,000 blacks, 23,000 Latinos and
21 5,000 whites.
22 One final comparison, as noted above
23 from 1997 through '96 [sic] New York made
24 a total of 51,900 of the lowest-level
25 marijuana arrests. For the first twenty

2 years after the Marijuana Reform Act was
3 passed in 1977, they made 51,000 arrests.
4 For that entire twenty-year period, the
5 NYPD averaged 2,600 marijuana arrests a
6 year.
7 I suggest that is an appropriate
8 baseline and a reasonable target for what
9 marijuana arrests in New York should look
10 like, particularly in this day and age.
11 Thank you.
12 MS. HAMILL: Thank you so much.
13 We certainly have time for some
14 questions. Let me make sure I take
15 everybody down.
16 Tom, is there anyone else who's
17 going to have questions? Johnny, Kevin,
18 Alex.
19 Tom, let's start with you.
20 MR. WAHL: Thank you very much,
21 gentlemen. Great presentation by both.
22 Just a question. You mentioned that
23 it's very difficult to get the information
24 specific to arrests. Is there a State
25 statute that exists? In other words, if

2 the State provides funding for policing, I
3 assume they need to work off of some data
4 or is the data specific to the population
5 and then they receive funding for that or
6 do they actually look at the efficiency, I
7 guess, of the police based on arrests or
8 however money is awarded to the police
9 departments?
10 MR. LEVINE: Some substantial part
11 of the New York City Police Department
12 budget comes out of the taxpayers of New
13 York City.
14 MR. WAHL: I understand, but I
15 didn't know if the State had a statute
16 that was more difficult that might require
17 more information so that might help you
18 get the information you're looking for
19 because the State says, hey, we'll provide
20 you with the information you need.
21 MR. LEVINE: There are lots of times
22 private communications, confidential
23 communication, secret information is
24 passed between officials, but that data is
25 not made public. So are there members of

2 the New York State Legislature in the
3 Governor's Office who know things that you
4 and I don't know? Absolutely.
5 MR. WAHL: What is the reason that
6 they refuse to release the information?
7 I'm just curious, what's the reasoning
8 behind them not letting us know how many
9 violations there are versus --
10 MR. LEVINE: Until about three years
11 ago one could not get the New York Police
12 Department. Professor Brotherton and I,
13 if we called the police department, you
14 don't get a human being, you don't get an
15 answer, there would be absolutely no way
16 to even ask somebody the question about
17 the data whatsoever. The universal
18 response will be to file a Freedom of
19 Information, but there is very good
20 capacity to enforce the police department
21 to that.
22 My favorite example about this is
23 that I think it was 2002, the New York
24 City Council passed a law saying that the
25 NYPD had to report quarterly on its

2 stop-and-frisks. It did not do so until
3 2007 when it was threatened with a lawsuit
4 that was signed on by most of the major
5 newspapers in New York and The New York
6 Times said if you do not produce this data
7 we're going to put this on the front page
8 of The New York Times tomorrow and
9 apparently -- this is the story that I've
10 been told -- trucks pulled up in front of
11 City Hall and unloaded crates of documents
12 about stop-and-frisk.
13 And the reason we know anything at
14 all about these stop-and-frisks is because
15 it's all since that time. I think the
16 answer is we don't have the manpower, we
17 don't want to.
18 MR. WAHL: What is the reasoning
19 behind denying the information?
20 MR. LEVINE: It depends upon what
21 you're talking about. If you're talking
22 about the murder rate, homicide rate and
23 it's down, they want to talk about it. If
24 the homicide rate is up, they don't want
25 to talk about it.

2 One of the interesting things is
3 that you can get information about
4 homicides but you cannot get information
5 about shootings, meaning, people shows up
6 in hospitals with bullet wounds in them
7 but you couldn't for the longest time and
8 even now you could not get data about the
9 number of shootings in New York City. If
10 it does not reflect well then they do not
11 want to release it. Around this low-level
12 stuff, however, there is a substantial
13 constituency within the huge New York
14 Police Department that does not let these
15 things available, to show low-level
16 offenses which constitute the majority of
17 police activity. The Daily News reported
18 that writing summonses is the single most
19 common activity in New York City.
20 Marijuana arrests, for many years, were
21 the single most charged offense in New
22 York. More people were charged under
23 marijuana possession than any other event
24 whatsoever and nobody knew about that.
25 And they really, really, really do

2 not want the racial and demographic
3 information of the people who are given
4 the tickets and who are stopped and who
5 are, obviously, wanted on the warrants
6 because it would look bad.
7 And then there's one other thing.
8 They do not want to stop doing this, they
9 don't want to stop making the low-level
10 arrests. There's a phrase that a police
11 officer told me when I first -- a
12 fantastic fellow, really, a civil rights
13 warrior. I told him that I wanted to get
14 the NYPD to stop making marijuana arrests
15 and he almost fell over with laughter and
16 he said, you can't do that, there's too
17 much money involved. And I said, what do
18 you mean? And he said, collars for
19 dollars.
20 Collars for dollars is a phrase that
21 every New York police officer knows,
22 rookies know it when they first join up or
23 even before and it refers to making
24 overtime pay for making arrests. Collars
25 for dollars. It's a New York City

2 expression that has become national. The
3 single largest source of overtime pay is
4 making arrests and the 1.5 million
5 warrants produce arrests. So the ticket
6 for an open beer can or a bike on the
7 sidewalk that a police officer writes
8 today turns into somebody else's arrest in
9 a few months, a year, or ten years from
10 now because there's no statute of
11 limitations on these things.
12 MS. HAMILL: Johnny?
13 MR. PEREZ: Thank you. Thank you
14 for your testimony today.
15 Professor Brotherton, maybe you can
16 speak to today's question. I'm interested
17 in the degree in which social media is
18 used to categorize young kids as gang
19 members or label kids who are not gang
20 members as gang members and also, if you
21 could talk a little bit about how that
22 information is then in turn used for these
23 raids or to further criminalize these
24 kids. Thank you.
25 MR. BROTHERTON: In New York and

2 across the country the police gang task
3 forces plan on increased attention to
4 claims on social media by various gang
5 members who claim they are gang members,
6 whether they're gang members or not, you
7 know, you can start a whole gang clique
8 just on social media. The police nowadays
9 take these very seriously and use it now
10 as incriminating evidence.
11 And certainly, you know, the gang
12 raids that, you know, have become more
13 familiar with the universal kinds of
14 expressions of gang membership as part of
15 a conspiracy proceeding under the RICO Act
16 against many young people.
17 It's extraordinary, and I talked a
18 little bit about how we used to think
19 about youth as opposed to, you know, how
20 we think about youth now. The point about
21 juvenile justice reform originally was all
22 about the young people don't really
23 understand a lot of times the things that
24 they're saying and doing because they're
25 not adults, the brain is not developed

enough and all the rest of it. But it was this whole idea that young people have, you know, a pass to a certain extent as they grow up, you know, particularly in difficult circumstances. By now it's purely, you know, everything is -- especially young people of color, it's pathologically understood. And any kind of behavior on social media, posted by this or by that is what people do being white, black or, you know, all kinds of age groups and social classes, all talk about all kinds of stuff on social medial.

So if you want to go for the gang kid, that's it. That's it. It's over. You say something on social media, like I'm gonna kick you, or, you know, I'm gonna come after you. That's it. Intent to harm, threaten, this is a murderous kind of intent, you know, whatever.

So, you know, this is very, very dangerous. It's very, very dangerous. And young kids won't stop doing it, that's the other thing. Even when you tell young

kids, don't put yourself on there, don't put your photographs, don't do this, the world can see. You think they're gonna stop? Of course not, because it's simply a natural part nowadays of this highly computer literate generation. It's like breathing air. Will you stop talking to your homeboy, will you stop talking to your mother? Of course not. This is very dangerous and very Orwellian. Very, very Orwellian.

And enormous resources are placed into this investigation and prosecution and plus, of course, all the computer software that they have, you know, as soon as they go on there, they stick them in some database and they use, you know, this kind of word and that kind of word that triggers it, boom, boom, boom, boom, boom. It's like domestic spy operations and it has enormous antidemocratic consequences. That's really what's so terrifying about this period of time. It's not just this justice jug-in-all. It's an

anti-democratic jug-in-all and the youth are basically raw material of these new justice security operators.

MS. HAMILL: We have time for a few more questions.

Kevin.

MR. THOMAS: Thank you for coming today and testifying.

My question is about the Ferguson report, the one that the DOJ had released and how they looked at the City practices of Ferguson and how it was shaped by revenue. Somewhere in the report they talked about it being institutionalized racism. New York City has recently decriminalized certain offenses. Now we are in the C summons and the fines and penalties phase. You talked about open warrants. I know you already said, hey, we are not Ferguson.

Are we going to be Ferguson?

MR. LEVINE: I think I'll stand by what I said: New York City only one-third as bad as Ferguson. We do not have the

revenue means at the level that Ferguson does. The NYPD is a large and relatively well-funded organization that has a budget of $6 billion and there's things on top of that. This is federal money that it has. The courts get money from the fees and fines and that is an issue there. And the courts are sort of starved by the State.

But I think the core personnel do not think that any of this stuff is good, by and large. I think the power of constituencies which like the accountability and recordkeeping at the office or precinct and borough level of writing summonses and making arrests. There is a monitoring, an immense monitoring task when you have an army the size of the NYPD. And having officers -- the question, as one police lieutenant said to me -- and I learned a lot from police officers and former police officers -- said to me, the number one problem facing a police supervisor in every level is where the hell are my cops right now

and what are they doing? And if they are writing summonses and they're filling out summonses forms -- which they're not doing so much anymore -- and they're making misdemeanor arrests then you know that at 3:15 they were at this corner, and at 3:30 they were on that corner, and at 4 o'clock they made an arrest and went back to the stationhouse. And so it provides productivity data from the officers, and that matters for promotions, it matters for good assignments, it matters for vacations. It matters to the supervisors.

The police get overtime -- the supervisors get overtime when the officers under them get overtime. It goes all the way up the food chain. The value of these numbers for the system itself. They don't talk about it outside the system, it's very much inside of the system and I think that the focus is that these are tools that the -- lots of police departments use this but the NYPD does this fairly well. It is extreme but not unusual in its use

of this stuff and it will fight hard to change.

MS. HAMILL: Alex, did you have a question?

MR. VITALE: Harry, the City is saying that the marijuana arrest numbers are where they're at because they are primarily focused on public burning at this point. They say they've quit trying to trick people into like pulling it out of their pocket and charging them with open possession.

My first question is, do you think that's true, that the enforcement now primarily is open burning? And second, in your mind, does that matter?

Earlier we had Kassandra Frederique say that, in fact, we just need to get police out of this business entirely and you said maybe there's a reasonable level but ideally, is that reasonable level closer to zero or do you think there's some crucial function that only the police can play in managing some specific

problem.

MS. HAMILL: Actually, I wanted to add to that. We were given incredible access by the New York Police Department and a lot of us had an opportunity to meet with very high ranking officials; the chiefs, deputy commissioners, and some of the information they provided to us is that they are actually only responding to 311 and 911 calls and that is the reason for making the marijuana arrests that they're making.

So I would add to that, do you have any reason to believe that is either true or not true, that that's really what they're responding to, which is obviously in addition to open burning?

MR. LEVINE: Forever, for as long as there has been 311, police precincts, commands and central have said, the reason why we do X is because we got a call for it. It is the ubiquitous all-purpose un-documentable explanation for anything.

No, I do not think -- just to answer

your question directly and first. No. I do not think that the marijuana arrests are responses to 311 calls; they occur in parks, they occur when teenagers are hiding behind bushes and trees, in alleys, in all kinds of places. Public smoking of marijuana, of course, goes on as it goes on throughout the United States and much of the world nowadays, but particular younger black and Latino kids know that the cops are going to nail them for it. People who are more likely to get arrested, I have long believed but you can't get -- there's no evidence of who gets arrested for smoking versus who gets arrested for having marijuana in their pocket and they show it to the police or whatever. But I had long suspected that it was white kids from the suburbs, Westchester, Long Island who come to New York and say woo-we, we can smoke marijuana here and they get busted especially in midtown and in the tourist areas. And tourists will sometimes too.

Alex's question. It is important to note that in the beginning of 1996 when the marijuana arrests rose, they were not in response to public smoking but they were a byproduct of the stop-and-frisks, which were under-recorded in the Giuliani administration, by the way. Not a surprise but a fact. The police would stop people, ask them to empty their pockets and when the marijuana was removed from the pocket that constituted a misdemeanor revealing it in public and they were arrested for it. That was legal and hundreds of thousands of arrests were made.

The public defenders in Bronx, in Manhattan and in Brooklyn that I have talked to, say that mostly nowadays they think they are seeing people who were arrested for smoking marijuana. I ask, were they smoking it openly, like were they walking down Broadway? No, the answer is mostly not. They were off someplace else and trying to hide it as

much as possible. But teenagers in particular, young people, and the majority of these arrested are people age twenty-four and under and 79 percent of them are thirty-four and under. There's no doubt about the fact that there's some smoking going on.

Now, Alex's question is, does this really matter? And I have always put that question aside because the other stuff, the abuse, was so extreme. But with California, and Oregon, and Washington, and Alaska, and Massachusetts, and Maine having legalized marijuana, with marijuana essentially legalized for white middle class and upper-middle class people. The number of marijuana arrests in the Upper East Side and Upper West Side in Manhattan is low, it's almost negligible. Forest Hills, Rego Park have almost none of these things. But in the South Bronx, in Washington Heights, in Bedford-Stuyvesant, they're off the charts. So the policing is focused on certain areas and certain

populations and certain people and so if you want to smoke marijuana I think the better place to do it is on East 86th Street.

MS. HAMILL: Vivian, you have the last question of the day.

MS. CHEN: Thank you for your service. Since I have the last question of the day, I wanted to ask you -- and this is for Professor Levine. Are there any instances of successful efforts in other locales to correct these kinds of data or similar kinds of data or is it just as bleak as all that?

MR. LEVINE: It's worth noting that New York State has a thing called the Division of Criminal Justice Services, which is really a kind of stellar organization, which has, I don't know for how long, but for decades, made available criminal justice data to researchers, journalists, academics, nonprofits, U.S. Commission on Civil Rights people and can do it within a few days, arrest data and a

whole range of other stuff, broken down by some basic demographic variables.

So yes, it is absolutely possible and done routinely. The United States government has the FBI Criminal Justice, the FBI Uniform Crime Reports. Everything that we know about crime data in the United States comes through states from police departments and counties, sheriff's departments to the state, the state then composites that data and sends it to the FBI and then the FBI puts out these reports. So we do that for felonies, of course, and misdemeanors, and the marijuana arrests are misdemeanors so they get to be part of that.

And I can talk about that because that data is available. It's the vast world of the summonses, the violations, the C sentences. There isn't even a term for these things. In New York they're called violations, in California they're called infractions, in some places, even in New York sometimes they're called C

2 summonses. I have suggested a term to be
3 used for these things. I call them
4 sub-misdemeanors. New York City, for
5 example, has been writing about 100,000
6 felony arrests a year, about 200,000
7 misdemeanor arrests a year and 500,000
8 summonses. Almost as bad as Ferguson.
9 There is no data on those.
10 Now, I pushed and pushed, I have
11 sort of made an issue out of this. And
12 the De Blasio administration has pushed
13 the NYPD, embarrassed them in testimony to
14 the New York City Council which I should
15 provide to you, and the NYPD has put
16 online the numbers of summonses broken
17 down, not in a kind of easily digestible
18 way but in its body some places and not
19 others it needs to be done, but no
20 demographic data whatsoever. So yes, this
21 stuff is available.
22 For 1.5 million warrants you have to
23 have demographic data. So it's there,
24 it's on computers, it's easily
25 generatable. This is not a problem of the

2 availability of the data or the
3 accessibility of it or the computerization
4 of it, it has to do with the political
5 willingness to do it.
6 MS. CHEN: That was really my
7 question and I thank you for your answer.
8 For Professor Brotherton, I was just
9 wondering, is there a place for police in
10 the community, community policing?
11 MR. BROTHERTON: Sure. I mean are
12 you talking about in terms of gangs or in
13 general?
14 MS. CHEN: We can stick to your
15 expertise.
16 MR. BROTHERTON: Yes, but I think
17 that the larger issue is not just the
18 policing but it's what power the police
19 have in society or emphasis, you know, we
20 have on the police solving or responding
21 to social problems.
22 In other societies -- and America
23 never likes to compare itself to anywhere
24 else. It can compare itself between LA
25 and New York or LA and Chicago but it

2 never likes to compare itself to France
3 or, you know, Sweden or England or God
4 forbid somewhere in South America. And if
5 it did, you know, you'd see that other
6 countries police their populations very
7 differently than us. They don't have, you
8 know, when you have a demonstration of a
9 few thousand people you don't have like
10 200 police officers there; you'll have one
11 or two. You don't have barriers there,
12 you don't have constant surveillance and
13 invasive kind of things.
14 So the whole thing about community
15 policing -- I work in Ecuador for the
16 moment and 90 percent of the police in --
17 Ecuador has the sharpest drop of homicide
18 rate in the world, right, of course, we'll
19 never learn anything from Ecuador -- God
20 forbid. But 80 percent of its police are
21 communitarian police and about 40 percent
22 are actually female, and they're trained
23 in nonviolence and conflict resolution,
24 and with extraordinary impact because the
25 general policy of that country is social

2 inclusion.
3 Our policy, not just for policing
4 but in general, education, it's social
5 exclusion. And we can't get away from
6 that, and we've built in so many agencies
7 that ran on this kind of ideological work
8 that is very, very difficult to, you know,
9 break the mold. So, you know, if we
10 really want to fight crime, we need to
11 sort of fight poverty and everything
12 associated with it.
13 But it's not about fighting crime,
14 it's primarily about managing populations,
15 certain populations who are still
16 basically called the dangerous classes.
17 That's what it is.
18 And community policing is great but
19 it's simply a token, a little game we play
20 over there, we throw the liberals, you
21 know, a few olive branches then, of
22 course, it's rubbish. And then most of
23 the resources would go into God knows what
24 else. I mean, it's quite extraordinary.
25 I heard you talking about -- I've

always wondered about the budget. It's very difficult to understand, even the budget of the NYPD is difficult to get to terms with. Look at the budget of the CIA, it's very difficult. It's basically a parallel state parallel state. That's how I see it. $6 billion, that's twice -- just on a formal level of the budget of what he's talking about has twice the budget of the largest urban education system in America, CUNY. Their budget is 3 billion. That's apart from what they get from the feds, that's apart from what they get from all the drug busts that go to snitches to pay off, you know, the spying on the community. So it's an extraordinary level of unaccountability.

So they're in the service of what exactly? That is the issue. The gang, once you start peeling away the layers of the onion, of what is a gang and how is a gang constructed, then you start to understand the politics of crime prevention and social control and that

becomes, for me anyway as a sociologist/criminologist, should be really, the discussion that we should be having with the widest level of society because it goes to the heart of our democratic society, do we want the expansion of civil society or are we prepared for something quite different.

MR. LEVINE: Can I add one brief thing?

MS. HAMILL: One brief thing.

MR. LEVINE: All that money also buys lobbying in the City, in the State and in federal government and it's very influential. Not just the NYPD but police departments throughout the United States. The uniform crime reports that I talked about earlier which are essential documents for trying to make any sense out of this stuff including race and policing, do not distinguish between misdemeanors and felonies.

Now, twenty-five years ago that didn't matter. More arrests were felonies

than misdemeanors but there has been a revolution in policing and 60 percent of policing is now misdemeanors and you cannot track using federal data anymore what is going on with low-level arrests. They're confused and that is because police departments do not want us to know the difference and to see that and to be able to sort that out. And that is yet another frontier of change, reform and openness that needs to happen.

MS. HAMILL: In addition to thanking the panelists as we conclude our two-day policing practices and accountability briefing, I'd like to say a couple of things. One to Alexandra Korry, our chair who wasn't able to be here with us today, and all of my colleagues for your collective efforts preparing for and during this briefing. I would also like to thank the U.S. Commission on Civil Rights, all of the staff who had put this briefing together, the commissioners who support us and who have been present here

with us, the CUNY School of Law for letting us use their beautiful, efficient space. I do have to say it's the premier national public interest law school of which I am proud to have graduated. And so we're very, very grateful to them for the two days here. Mary Lu Bilek, who's the dean, Shoshana Brown who is the 3L law student who has been interning with us, the administrative staff who have set this up.

Also I want to thank Christine Parker who has provided enormous support to this committee's work.

Our court reporter, who has been here with us for two days reporting these proceedings and it's also been live streamed. And I wish to thank all of the panelists including you all and the public engagement in this review that we have been undergoing.

Thank you very much.

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(Time noted: 4:53 p.m.)

C E R T I F I C A T E

I, Olga Raptis, a reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness(es) whose testimony is hereinbefore set forth was duly sworn by me, and the foregoing transcript is a true record of the testimony given by such witness(es).

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

OLGA RAPTIS

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