

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON PUBLIC SAFETY

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NOVEMBER 18, 2019  
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HELD AT: Committee Room - City Hall

B E F O R E: DONOVAN RICHARDS  
Chairperson

COUNCIL MEMBERS: Adrienne E. Adams  
Justin L. Brannan  
Fernando Cabrera  
Andrew Cohen  
Chaim M. Deutsch  
Vanessa L. Gibson  
Rory L. Lancman  
Carlos Menchaca  
I. Daneek Miller  
Keith Powers  
Ydanis A. Rodriguez  
Paul A. Vallone

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

Oleg Chernyavsky, Assistant Deputy Commissioner of  
Legal Matters, New York City Police Department,  
NYPD

Matthew Pontillo, Assistant Chief, New York City  
Police Department, NYPD

Steven Wasserman, Legal Aid Society

Laura Heck Wella, Legal fellow, Liberty and  
National Security Program at the Brenna Center

Jacqueline Caruana, Senior Attorney, Brooklyn  
Defender Services

Lenore Easter, Staff attorney/Team Leader, Early  
Defense Team, Criminal Defense Practice, Bronx  
Defenders

Michael Sisitzky, Lead Policy Counsel, New York  
Civil Liberties Union

Ian Head, Senior Legal Worker, Center for  
Constitutional Rights

Towaki Komatsu



2 (Sound check) (pause) (gavel)

3 CHAIRPERSON RICHARDS: Alrighty, good  
4 morning, good morning. I'm Donovan Richards, Chair  
5 of the 31<sup>st</sup> District in Queens, and I am the Chair of  
6 the on the Public Safety Committee, and before I  
7 begin, I just want to acknowledge we've been joined  
8 by Council Members Cabrera, Adams, Lancman, Deutsch,  
9 and Cohen, and we're also joined by Public Advocate  
10 Jumaane Williams. Alrighty. Body-worn cameras  
11 originated as a way for the Federal Court in the  
12 Floyd case to potentially reduce the number of  
13 unconstitutional stop and stop-and-frisk initiated by  
14 police officers. Isn't this hearing timely in light  
15 of certain individuals at least the former mayor  
16 apologizing, um, for these unconstitutional stops  
17 and, um, let me just say while our community is a  
18 very forgiving community, we're not a forgetful  
19 community, and we will remember where he stood on  
20 that side of history. To its credit, the NYPD  
21 quickly realized the tremendous potential for the  
22 additional benefits to the public as well as its  
23 officers. I want to quote some of the language of  
24 the remedial order in the Floyd cases because it  
25 really summarizes the issue well. The recordings

2 will diminish the sense on the part of those file  
3 complaints that it is their word against the police,  
4 and that the authorities are more likely to believe  
5 the police. The recordings should also alleviate  
6 some of the mistrust that has developed between the  
7 police and the Black and Hispanic communities based  
8 on the belief that stops-and-frisk are overwhelmingly  
9 and unjustifiably directed at members of these  
10 communities. The potential of body cameras can only  
11 be realized if we get this right. If the policies  
12 that are put in place truly inspire the confidence  
13 that this technology will be a tool to be used on  
14 behalf of New Yorkers not against us. Based on what  
15 I know now, I do have confidence that the NYPD worked  
16 very hard to try to get this right. They ran pilot of  
17 their initial procedures and commissioned outside  
18 groups to conduct surveys with members of the public  
19 as well as NYPD officers to figure out how they could  
20 improve their policies. I think a lot of these  
21 decisions they made about—a lot—I think a lot of the  
22 decisions they made about this when recording is  
23 mandatory and when recording is prohibited to make a  
24 lot of sense, but I still have concerns. I'm not  
25 thrilled about the reports I'm hearing about how long

2 it takes for them to get body cam footage to the  
3 CCRB, which provides an essential oversight function  
4 for New Yorkers, but cannot do without fast  
5 unfettered access to footage. I don't agree with the  
6 process that exists today. The reasons that have  
7 been given for this process, and even the basic  
8 notion that the CCRB can't decide for themselves with  
9 footage is relevant to their cases. Basic  
10 transparency requires someone other than the NYPD to  
11 be the gatekeeper of this footage when a member of  
12 the public makes a complaint when an oversight agency  
13 is dependent on the discretion of the very agency it  
14 is overseeing what you end up with is the wolf  
15 guarding the hen house. We need to do better. I also  
16 have concerns about how much discretion is baked into  
17 this policy surrounding so-called critical incidents.  
18 The policy reads as a series of vague considerations  
19 not a standard for the Commissioner to follow. The  
20 result is that many people are rightly concerned that  
21 the Department can decide to releases footage only  
22 when it looks good for them, and that body cameras  
23 are, in fact, in use as another surveillance tool  
24 rather than for the purpose they were intended for  
25 accountability, transparency and to encourage civil

2 interactions between officers and members of the  
3 public. To be clear, I don't dispute that there are  
4 valid law enforcement benefits to body-worn cameras,  
5 and I'm not arguing that the NYPD is trying to pull a  
6 fast one on us. I think they have worked hard to try  
7 to get this right, but there is always a role for  
8 those outside the Department to say how they want to  
9 be policed, and the promise of body-worn cameras  
10 would be wasted if these doubts linger and if the  
11 communities who are most impacted by stop-and-frisk  
12 came to view these cameras as tools of oppression and  
13 surveillance rather than oversight, reform and trust  
14 building. I know there are valid considerations that  
15 support this policy, but there needs to be more  
16 clarity about how these decisions will be made, and  
17 there needs to be better language clarifying that  
18 transparency will be the norm, not the exception.  
19 So, today, I'm looking forward to hearing how the  
20 NYPD ended up with policy choices it has made, how  
21 they are using these cameras to guarantee that  
22 police/civilian interactions are lawful and  
23 respectful, and how we can work together to get this  
24 right. With that being said, I am going to turn it

2 over to our Public Jumaane Williams for a brief  
3 statement.

4 PUBLIC ADVOCATE WILLIAMS: Thank you very  
5 much. Mr. Chair. My name is Jumaane Williams, the  
6 Public Advocate for the City of New York. I thank you  
7 again, and the members of the committee for holding  
8 an oversight hearing on the NYPD's use of body  
9 cameras. Thank you NYPD for being here. In 2013, the  
10 City Council passed the Community Safety Act, which  
11 established an Inspector General for the Police  
12 Department and ease the path of those with claims for  
13 by-space policing to file claims in court. When my  
14 colleagues and I pushed for these reforms, critics  
15 and detractors from the legislation and claimed our  
16 proposal would reverse the drop in our crime in the  
17 city—would reverse the drop in crime our city has seen  
18 through the '90s and 2000s we were told the sky was  
19 falling and the by-space policing was the best even  
20 though—even the only reason—even the only way we  
21 could keep crime down, and that the police needed to  
22 continue the abuses of the tactic known as stop,  
23 question and frisk. We were told that adherence to  
24 the Broken Windows mentality and the method of  
25 quality of life enforcement was necessary to make our



2 streets safer. As the chair mentioned, it's a pretty  
3 appropos day to be having this given the apology. I  
4 even wore my retro button from the time. We knew  
5 then that this—although the assumptions were not  
6 true, we knew that we were—we could have better  
7 policing and safer streets at the same time and we  
8 were right. For the past six years, since passing  
9 the Community Safety Act New Yorkers have experienced  
10 the lowest crime numbers in the seven major index  
11 crime categories such as murder, assault and robbery  
12 at any other time since the 1950s. I also want to  
13 acknowledge that the victims of crimes and their  
14 families, those statistics mean absolutely nothing.  
15 I also want to acknowledge the recent uptick of  
16 shootings in certain areas in our city that needs to  
17 be addressed. This, of course, means we must  
18 continue to do more. We must also avoid knee-jerk  
19 reactions in favor of advancing the strategies we  
20 know work. The bill being heard today Intro 1136  
21 furthers the discussion. The bill requires the  
22 Police Department to submit quarterly public reports  
23 on information regarding the use of body-worn  
24 cameras. The Department would also be mandated to  
25 annually published information on each and every

2 incident requiring an officer to engage body-worn  
3 cameras in accordance with the department policy.  
4 This piece of legislation is essential to ensuring  
5 that we will have full transparency in the  
6 information we get from NYPD. Since the Inspector  
7 General's Office kicked off in 2014, it has had the  
8 chance to look for other inter-policing matters than  
9 any other office before it, and it has received a  
10 tremendous amount of raw data in the form of body-  
11 worn camera video, but the millions of body camera  
12 videos that the city now has are not public, and  
13 there has not been a discussion on to make those  
14 videos available to the public let alone to the  
15 victims and their family members. Intro 1136 would  
16 give New Yorkers access to information about these  
17 body camera videos. The need for greater  
18 transparency is evident now more than ever. [coughs]  
19 In April of this year two police officers were  
20 responding to a 911 harassment call at Hill House in  
21 the Bronx in which one of them fatally shot a man  
22 named Kawaski Trawick. According to NYPD, Trawick  
23 charged at them with a knife in one hand and a stick  
24 in another. The entire situation was captured on  
25 body-cam video, and yet, up until now, Kawaski's

1 family has not been able to see the footage. Just  
2 two months ago in the Bronx a police chase [coughs]  
3 resulted in 15 police bullets killing Brian Mulkeen a  
4 plain clothes police officer, and Antonio Williams a  
5 civilian whom the police have stopped doing the  
6 patrol. Officer Mulkeen did not have his body camera  
7 on, but the other five officers on the scene had  
8 their cameras on. Although Commissioner O'Neill said  
9 I October that the NYPD will be up-will end up  
10 releasing the footage from the body cameras that show  
11 the moments leading up to the shooting, no footage  
12 has been released to the public as of yet. The  
13 information reported into-from Intro 1136 would not  
14 only give families like Kawaski's and Williams and  
15 Officer Mulkeen answers to the questions that remain,  
16 but also provides them with a small amount of  
17 closure, and right now, they have neither. I also  
18 recommend the following department to worn policy-  
19 department to worn camera policy changes, share  
20 footage with CCRB and district attorneys in the same  
21 time frame as federal and state authorities 24 hours,  
22 reduce the timeframe that is used to disseminate  
23 footage to the public, allow for the release,  
24 unedited footage to the family and all the public,  
25

2 provide equal access of the footage to the family  
3 members and members of service. Accountability and  
4 transparency are at the heart of Intro 1136. It is  
5 important that we respect our men and women in blue  
6 and provide the tools they need to do their job. We  
7 must ask the respect—we respect the civilians whom  
8 they police. Our communities and the police will be  
9 better off if we hold our officers to that standard.  
10 I want to thank the Chair again for holding this  
11 hearing, the Speaker as well, Council Member Lancman  
12 for co-sponsoring this legislation, and I'd like to  
13 thank a few staff members for helping prepare for  
14 today's hearing including Nick Smith, my First Deputy  
15 Public Advocate of Policy; Michelle Kim, Director of  
16 Legislation; Crystal Hudson, First Deputy Advocate—  
17 Public Advocate for Public engagement; Ramik Abraham,  
18 Deputy Public Advocate for Justice, Health, Equity  
19 and Safety; and Darren Harley, Community Organizer  
20 for Justice, Health and Equity. Again, I thank the  
21 Council for hosting this hearing today and I look  
22 forward to testimony and questions, and as of  
23 yesterday's happenings with our Mayor, I think—I  
24 always say it's a hallmark of everyone to apologize  
25 for good leadership, apologize for things that are

2 wrong. My major concerns are the timing of this  
3 Mayor's apology, and also it comes without any basic  
4 framework of how to provide restorative justice to  
5 those communities that were harmed for so many years  
6 in addition to officers who have seen harm in their  
7 careers for speaking out publicly on this, and so I'm  
8 hoping in the time we have until the Mayor—the  
9 President's race that we'll see more discussion about  
10 restorative justice as well as just for the record  
11 there are policies around housing and education and  
12 others during the Bloomberg tenure that I think  
13 harmed the same communities. With that, I thank you.

14 CHAIRPERSON RICHARDS: Thank you.

15 Alrighty, we are joined by Assistant Chief Matthew  
16 Pantalay—Pantelo—Pontillo and Assistant Deputy  
17 Commissioner Oleg Chernyavsky, and we're joined by  
18 Council Member Ydanis Rodriguez. So, I'm going to  
19 have Daniel swear you in.

20 LEGAL COUNSEL: Do you swear to tell the  
21 truth, the whole truth, and nothing but the truth  
22 before this committee and answer all questions to the  
23 best of your ability?

24 DEPUTY COMMISSIONER CHERNYAVSKY: I do.

25 CHAIRPERSON RICHARDS: You may begin.

2 DEPUTY COMMISSIONER CHERNYAVSKY: Good  
3 morning, Public Advocate, Chair Richards and members  
4 of the Council. I am Oleg Chernyavsky, Assistant  
5 Deputy Commissioner of Legal Matters for the New York  
6 City Police Department. I am joined today by  
7 Assistant Chief Matthew Pontillo and on behalf of  
8 Commissioner James O'Neill, we appreciate the  
9 opportunity to speak with you today about the  
10 Department's use of body-worn cameras. In the last  
11 decade the use of body-worn cameras by police  
12 officers has grown exponentially with cameras  
13 increasingly becoming standard equipment for modern  
14 law enforcement. The benefits of cameras are clear:  
15 Transparency into police activity, de-escalation of  
16 police encounters and accountability for police  
17 officers through an independent account of  
18 interactions between the police and the citizens they  
19 serve. While the—while they are not a panacea for  
20 police accountability, body-worn cameras can serve as  
21 a vital part of ongoing efforts to increase trust  
22 between the Police Department and the citizens our  
23 brave men and women serve. Body-worn cameras are  
24 only one part of our effort to improve trust with the  
25 communities we serve. The Department has implemented

2 Neighborhood Policing as a foundational principle to  
3 achieve this end and the overarching goal of  
4 partnering with our citizenry to fight crime and keep  
5 New York City safe. The Neighborhood Policing  
6 philosophy relies on transparency and accountability  
7 in order to achieve a lasting trust with the people  
8 of this city. There are countless examples of how  
9 Neighborhood Policing has solved and prevented crime  
10 from our NCOs collaborating with community leaders to  
11 clean up drug infested lots, to partnering with  
12 building residents to take down violent criminal  
13 organizations to getting the word out about the work  
14 our Crime Prevention Division and precinct crime  
15 prevention officers do in providing no cost security  
16 surveys for small businesses, which include making  
17 recommendations to harden their physical security in  
18 order to prevent robberies and other violent crimes.  
19 body-worn cameras have the ability to provide an  
20 objective view of both officers and civilians during  
21 everyday interactions. Our officers are crime  
22 fighters, problem solvers, de-escalators, liaisons  
23 and community leaders and body-worn cameras allow  
24 more New Yorkers to witness our officers deploying  
25 these skills in the most stressful and complicated

2 situations from the officers' perspective. I would  
3 like to now take—take you through the evolution of  
4 the NYPD's Body-Worn Camera Program body, and where  
5 it stands today. In 2013, the NYPD was ordered by A  
6 Federal Court to conduct a body-worn camera pilot in  
7 five precincts. At that time, Commission Bratton had  
8 already on several occasions expressed support for  
9 the use of body-worn cameras based on his experience  
10 in other jurisdictions. As a result, given the unique  
11 needs of this city and the size of this Department we  
12 began to study the technology behind body-worn  
13 cameras with an eye towards a significantly larger  
14 roll-out than the one mandated by the court. In  
15 anticipation of the larger roll-out, the NYPD  
16 initiated a pilot—a pilot deploying 54 cameras in six  
17 commands from December 2014 through March 2016. This  
18 pilot helped shape the Department's relationship with  
19 the technology, and the policy considerations going  
20 forward. We did not, however, rely solely on this  
21 experience when creating our body-worn camera policy.  
22 We reached out to the Police Departments to—we  
23 reached out to the Police Departments that had  
24 already successfully rolled out body-worn cameras  
25 including Seattle, Washington, D.C., Las Vegas, Los



2 Angeles and London's Metropolitan Police. We sought  
3 input from a variety of stakeholders including each  
4 district attorney's office, each of the institutional  
5 defense providers and the Administrators of the 18-B  
6 Panel, CCRB, the Office of Court Administration, the  
7 Public Advocate's Office, the City Council, the New  
8 York Civil Liberties Union, the Center for  
9 Constitutional Rights, the NAACP Legal Defense Fund,  
10 Communities United for Police Reform, the Inspector  
11 General's Office, Latino Justice, Demos and the  
12 Citizens Crime Commission. In addition, with  
13 assistance from the NYU Policing Project and with  
14 input from the Federal Monitor and the plaintiffs in  
15 the *Floyd Davis Lugano* litigation, we conducted a  
16 public survey seeking input from everyday New  
17 Yorkers. In April of 2017, we released a 53 page  
18 report, which explained each decision that we made.  
19 Obviously, with such a broad and diverse group of  
20 stakeholders providing input who at times advocated  
21 for diametrically opposed policies, we could not  
22 adopt every recommendation provided or every  
23 preference expressed by the public, but this  
24 experience undoubtedly influenced the creation of  
25 the final policy. We also learned how important

2 training is to a successful roll-out of a body-worn  
3 camera program. We instituted a full day training,  
4 which to my knowledge is the most comprehensive in  
5 the country. The training consists of half day of  
6 classroom lectures followed by a half day of live  
7 scenarios that allow officers to get a feel for how  
8 to use body-worn cameras while performing their  
9 duties. After releasing our report and policy, in  
10 April 2017, the Department commenced the first phase  
11 of the full body-worn camera roll-out. Phase 1  
12 equipped roughly 1,200 officers on the 3:00 to 11:00  
13 tour in 20 commands. At the same time, experts on  
14 the federal monitor's team identified 20 controlled  
15 Precincts of similar size, demographics and crime  
16 rates in order to compare a variety of factors in-  
17 simultaneously-in similarly situated commands. The  
18 federal monitor is currently working on this report  
19 and once complete, it will be one of the largest  
20 studies ever produced on the effectiveness of body-  
21 worn cameras. The Department remained committed to  
22 the use of body-worn cameras, and after equipping the  
23 pilot commands, we began aggressively expanding our  
24 program. In December 2017, Phase 2 commenced and upon  
25 completion of this past-and upon completion this past

2 February, all uniformed patrol officers are now  
3 equipped with cameras as well as detectives  
4 performing patrol duties and sergeants and  
5 lieutenants assigned to pre-assigned to precincts,  
6 transit districts, and police service areas numbering  
7 over 20,000 in total. Phase 3, which provided an  
8 additional 4,000 cameras--4,000 or so cameras to  
9 specialty units such as the Emergency Service Unit,  
10 the Strategic Response Group and the Critical  
11 Response Command was completed recently bringing the  
12 initial roll-out to a close. Additionally, we have  
13 nearly completed the ongoing process of issuing body-  
14 worn cameras to executives. Captains through  
15 inspectors are assigned to commands, which employ  
16 body cameras. Our Body-Worn Camera program is  
17 continuously being studied, scrutinized and updated.  
18 As a result, body-worn cameras are now an important  
19 aspect of the NYPD's training and disciplinary  
20 framework, and each officer undergoes a full day of  
21 live training on their use. The Training Bureau is  
22 also continually integrating body-worn camera footage  
23 into all aspects of training at all levels. For  
24 recruits in the Academy, the in-person continuing  
25 subject matter trainings for uniformed and civilian

2 members of the service and in our various online  
3 trainings, which are used—used by all members of the  
4 service. Footage is also used to ensure our officers  
5 are in compliance with the strict Patrol Guide  
6 Procedures governing the use of body cameras.  
7 Officers must activate their cameras during all  
8 investigative and enforcement actions with some  
9 obvious exceptions such as undercover operations,  
10 interviewing victims of sex crimes and when inside of  
11 a medical facility. At the end of each officer's  
12 tour, they are required to place the camera into a  
13 recharging station, which automatically uploads the  
14 captured footage into a Cloud storage system  
15 rendering it impossible for anyone to alter or tamper  
16 with the saved footage. All footage is retained for a  
17 minimum of 18 months, but longer when needed as  
18 evidence in a criminal or civil proceeding. Though  
19 it is important to view every video, the NYPD has  
20 instituted procedures to ensure compliance with the  
21 Patrol Guide's requirements. The Department randomly  
22 selects videos that each sergeant must review and  
23 assess. The sergeant is required to evaluate an  
24 officer on a variety of factors including whether  
25 they were professional and courteous, whether the

2 officer conducted a stop in a constitutional manner,  
3 and the officer's tactics. In addition, the  
4 Department audits a sample of arrests, stops,  
5 summonses, uses of force in aided cases to ensure  
6 that the body-worn camera was turned on during  
7 mandatory active-activation events. In the-in the  
8 last 28-day period we had a 92% compliance rate  
9 during our audits. In this respect, the NYPD is  
10 ahead of the curve as until recently we were the only  
11 large Police Department conducting audits of this  
12 kind. Last month in the NYPD's ongoing effort to  
13 foster a culture of greater transparency, the  
14 Department issued-issued a presumptive release  
15 policy, which is committed to publicly released  
16 footage of critical incidents captured by our body-  
17 worn camera-cameras within 30 days with limited  
18 exceptions while also balancing privacy concerns  
19 protecting against compromising criminal  
20 investigations and the need to comply with federal,  
21 state and local disclosure laws. I want to highlight  
22 that the 30-day timeframe is a maximum. Footage may  
23 be released-released sooner, but 30 days may be  
24 necessary in cases to allow depart-the Department to  
25 adequately assess legal and privacy concerns and to

2 undertake a labor intensive redaction process so that  
3 uninvolved individuals and juveniles are not easily  
4 identifiable. Any person may obtain body-worn camera  
5 footage of themselves through the FOIL process, and  
6 any footage capturing evidence related to a criminal  
7 case is turned over the district attorneys' offices  
8 and will be provided to defendants through the  
9 criminal discovery process. So, far this year, there  
10 have been approximately 870 FOIL requests seeing body  
11 camera footage with over 3,000 responsive videos  
12 provided. Each officer has the ability to share  
13 their body-worn camera footage with the appropriate  
14 district attorney's office prosecuting their arrest  
15 immediately through a video sharing portal that was  
16 created for just this purpose. Additionally, the  
17 Department provides footage to the CCRB that is  
18 relevant to the disciplinary cases they investigate.  
19 So far this year the CCRB has made approximately  
20 3,700 requests, which generated almost 14,500  
21 responsive videos. This is up from 2080 such requests  
22 in 2018, which saw 6,134 responsive videos. It is  
23 important to stress that any single request by-by and  
24 large does not amount to only one responsive video.  
25 In fact, with the ever-expanding distribution of

2 cameras by this Department there are generally  
3 multiple responsive videos to any one request, and at  
4 times there are dozens of responsive videos for each  
5 request. Although the planned roll-out has only  
6 recently been completed, and the largest portion only  
7 completed in February, the Department has accumulated  
8 approximately 8 million videos. These videos have an  
9 average duration of over eight minutes and  
10 approximately 130,000 new videos are uploaded to the  
11 Cloud each week. I would like—I would now like to  
12 take a moment to comment on the bill being heard  
13 today. Intro 1136 would require the NYPD to report  
14 on various data points related to the Department's  
15 use of body-worn cameras. While the Department  
16 supports the goal of transparency, we cannot support  
17 this legislation as currently written. The bill  
18 would require us to report on data, which could not  
19 be captured without a trained analyst watching and  
20 listening to every recording in its entirety. Then  
21 conducting an investigation to gather additional  
22 data points. Data points such as whether images were  
23 reported and the reason if not, whether a camera  
24 failed at any time to record audio or video. Whether  
25 the audio is at any time unintelligible, whether the

2 visual clarity was compromised in any way at any time  
3 during the recording. Whether an officer informed  
4 the subject that they were being recorded. Whether an  
5 individual stopped the recording prior to when they  
6 should have. Whether on purpose or by accident and  
7 the race, gender and age of the individual recorded.  
8 As I mentioned before, we have recorded approximately  
9 eight million videos and are adding roughly 130,000  
10 more videos each week. The average length of the  
11 videos is over eight minutes. Performing a rough  
12 calculation we would have to watch just 130,000 videos each week we  
13 would have to hire and train approximately 800 new  
14 analysts/investigators, and that is not even  
15 accounting for the millions of videos on hand or  
16 future expansion of the program. This would be a  
17 significant undertaking to say the least. Lastly, as  
18 for whether a video was used as part of a CCRB  
19 investigation, the CCRB is best left to  
20 answer whether this is feasible. However, this  
21 department should not be placed in a position where  
22 we are left questioning the CCRB about the evidence  
23 they determine is relevant in connection with  
24 their investigation. I would just like to highlight  
25 to the Public Advocate that what we are not saying is



2 that we are opposed to a reporting bill about our  
3 body-worn camera program. It is just the way this  
4 particular bill is structured, but we would  
5 absolutely be willing to sit down with you and work  
6 through a reporting bill that gives greater  
7 transparency into our program taking into account how  
8 the program runs and what the data points are that it  
9 currently captures. With that said, I would be happy  
10 to answer any questions you may have.

11 CHAIRPERSON RICHARDS: Alrighty. Thank  
12 you so much Oleg. So, originally the judge in the  
13 Floyd litigation ordered you to do a pilot to see if  
14 body-worn cameras would reduce the number of  
15 unconstitutional stops, right?

16 DEPUTY COMMISSIONER CHERNYAVSKY: Yes,  
17 that is correct.

18 CHAIRPERSON RICHARDS: And at some point  
19 during that pilot the Department decided to go ahead  
20 and just expand the pilot to all officers. Can you  
21 talk about the reasons why the Department decided to  
22 go ahead with the expansion before the results of the  
23 pilot came out?

24 DEPUTY COMMISSIONER CHERNYAVSKY: So, the  
25 court order was released in 2013 ordering this pilot

2 to examine whether or not, as you indicated, [coughs]  
3 body cameras were effective in reducing the number  
4 unconstitutional stops. In January of 2014, the  
5 administration changed. Police Commissioner Bratton  
6 came in. Police Commissioner Bratton explained to us  
7 that he had had considerable experience with body  
8 cameras through his prior work, and was a believer in  
9 the efficacy of body cameras, and, um, irrespective  
10 of the court's ultimate finding, which was limited to  
11 just Stop and Frisk. Um, he knew that body cameras  
12 had great potential in many, many other areas beyond  
13 just Stop and Frisk, and he wanted to move ahead, and  
14 beginning by about March of 2014, he commissioned  
15 several of us to begin looking other police  
16 departments, their body camera programs begin  
17 researching the technology, um, begin looing at model  
18 policies, and to begin to, um, prepare the way for an  
19 eventual citywide deployment of body cameras, and  
20 then along those same lines working with the federal  
21 monitor so if you look at the federal monitor's  
22 research model, um, what they're currently looking  
23 at, it goes well beyond Stop and Frisk, and, um, se  
24 agreed to that, and encourage that working with him  
25 and his team and the plaintiffs because we wanted to

2 do a much more comprehensive research than was  
3 originally contemplated by the court order.

4 CHAIRPERSON RICHARDS: And can you just  
5 expand a little bit on Bratton's reasoning a little  
6 bit more? You mentioned it a little bit outside of--

7 DEPUTY COMMISSIONER CHERNYAVSKY: Well,  
8 I, you know, I can't speak for Commissioner Bratton.  
9 I—I just know what he expressed to me and some others  
10 when we talked about body cameras, um, that he  
11 believed in their, um, the importance of-of de-  
12 escalation and their ability to help de-escalate  
13 situations, um, and also like Judge Scheindlin  
14 pointed out in her order, provide a contemporaneous  
15 record of what transpired, which could have many,  
16 many uses going forward.

17 CHAIRPERSON RICHARDS: Alright, and I  
18 remember officer safety also being a part of that  
19 conversation as well. Um, so in addition to holding  
20 officers accountable, you found that cameras would  
21 also enforce the more traditional law enforcement  
22 goals?

23 DEPUTY COMMISSIONER CHERNYAVSKY: Well, I  
24 think like any other point of information, a body  
25 camera video is a piece of evidence. It is a record

2 just like cell phone video from bystanders or  
3 security camera video, um, from storefronts, witness  
4 statements, you know, other forensic or extrinsic  
5 evidence that may examined during the course of any  
6 investigation or any inquiry there are many, many  
7 data points that people can look at whether it's  
8 CCRB, whether it's internal in the NYPD, whether it's  
9 a DA, defense counsel, um, it's—it's another data  
10 point, um, that provides a piece of the overall  
11 picture that can help somebody who is reviewing  
12 something determine what occurred.

13 CHAIRPERSON RICHARDS: Right and I know  
14 you spend a lot of time crafting your policies and  
15 soliciting feedback for these policies and your—and  
16 your process is commendable. I think you named a lot  
17 of organizations that you certainly work with, and  
18 that is to be commended, but the main issue I want to  
19 focus on is whether the policies you ended up with  
20 are sufficiently geared toward accountability and  
21 transparency rather than what's good for the  
22 department. So, can you talk about some of the  
23 policies you have in place that help the public feel  
24 confident that officers are following the law, and  
25 treating people with respect?

2 DEPUTY COMMISSIONER CHERNYAVSKY: Sure.

3 So, I'll touch on—on a couple of things and I'm glad  
4 you mentioned Judge Scheindlin's court order, and—and  
5 some of what she described as the purpose and the  
6 scope of the Body Camera Pilot, you know, she also  
7 pointed out that the monitor would establish the  
8 policy for the pilot and that the policy had to  
9 balance the competing interests of transparency and  
10 personal privacy of the people who were recorded on  
11 video. Um, when we looked back, you know, during our  
12 research the American Civil Liberties Union published  
13 a policy paper back in 2004 talking about body  
14 cameras, and they talked about the great potential  
15 that body cameras offered. You know, having this  
16 contemporaneous record, objective record of what  
17 occurred between people at the time it occurred  
18 available for later review, but they also cautioned  
19 that body cameras unlike many other forms of evidence  
20 or even cell phone video or security camera video had  
21 the potential to be very, very intrusive. Police  
22 officers are routinely called into people's homes for  
23 a whole variety of things. So, you know, imagine the  
24 average police officers response to a call. They turn  
25 on their body camera. They're capturing information

2 inside of people's homes. They're recording family  
3 members present. They're recording very intimate  
4 details of what's going on with that family and that  
5 situation. So, the information captured can be  
6 extremely, extremely sensitive. You know, fast  
7 forward, the Inspector General for the New York City  
8 Police Department they did a report on body cameras  
9 around the time we were getting ready to launch Phase  
10 1 of our citywide rollout, and—and they made a series  
11 of recommendations based upon the policy we had in  
12 place for the earlier, you know, 2014 mini-pilot,  
13 and, you know, they talked about the concerns around  
14 transparency and the attention with personal privacy,  
15 and their recommendation was that, you know, we  
16 stick—we adhere to the requirements of FOIL, state  
17 law that governs that how public records are analyzed  
18 and released to make sure that we're protecting  
19 vulnerable populations and protecting these certain  
20 classes that are protected by state statute like  
21 juveniles, like the victims of sex offenses. So,  
22 that's being a very effective working model for us.  
23 In terms of the operational policy, when we began  
24 with our mini-pilot, which ran from December of 2014  
25 through March of 2016, it was a small number. It was

2 54 cameras in—in six commands using all volunteers,  
3 and the policy was based upon our preliminary  
4 research. We made significant changes to the policy  
5 based upon lessons learned. We also made significant  
6 changes to the training based upon lessons learned  
7 from that that mini pilot. So, when we rolled out  
8 Phase 1, which is part of our citywide deployment in  
9 April of 2017, we had a new policy. Now, because  
10 that Phase 1 satisfied the court order in the *Floyd*  
11 case. That policy had to be approved by the Monitor,  
12 and it was. Um, we worked with him and his staff, and  
13 the plaintiffs very, very closely to create that  
14 policy, and we landed on a policy that requires  
15 recording of all investigative and enforcement type  
16 activities or activities that are likely to result  
17 and/or—or may result in some investigative or  
18 enforcement action. So, certainly arrests,  
19 summonses, vehicle stops, Terry stops, um, interior  
20 patrols in NYCHA buildings, um, any situation that  
21 becomes adversarial or confrontational, um any  
22 requests to search. Um, so these are all the things  
23 that, you know, fell within that area where there is  
24 some interaction with a member of the public, um,  
25 that—that could be, um, adversarial or enforcement

2 related. We excluded things like routine ambulance  
3 cases, you know, a sick call in somebody's residence.  
4 Responding to past crimes, responding to non-  
5 emergency calls or pickups with not emergencies as  
6 well as just kind of routine conversations. Again,  
7 we try to balance, um, the need for having that  
8 contemporaneous record of an interaction between the  
9 police officer and a member of the public that could  
10 be contentious, um, versus the more—I hate to say  
11 routine or traditional calls for service um, where,  
12 you know, some very, very--in many cases very, very  
13 private matters are being discussed, and not  
14 necessarily appropriate for recording on video, um,  
15 especially if there's a possibility of later public  
16 release of some of this, um, information. So, that  
17 was the framework with which we designed the original  
18 operational policy back 2017 or why we made the  
19 choices that we did. Um, like any policy, it's been  
20 under review ever since. Um, we've made some  
21 adjustments to the training along the way. We  
22 anticipate in the near future we will revise the  
23 policy again. We'll probably add a couple of more  
24 categories, um, of events that police officers get  
25 involved in like responding to disputes. Um, you



2 know, those can escalate. Um, currently disputes,  
3 domestic disputes it's not covered unless it's a  
4 crime in progress. Um, so that's one area we're  
5 looking at as well as some others. So, we expect  
6 like any policy, department policies are always under  
7 review. No policy is ever written with the idea that  
8 it will exist in perpetuity, but rather it's an  
9 evolution, and this whole thing has been an evolution  
10 since early 2014 when we began the research. .

11 CHAIRPERSON RICHARDS: Right and, I'm  
12 glad you're—you're open to re-evaluating the  
13 categories that are currently excluded, um,  
14 especially ambulance calls, non-emergency calls. In  
15 some cases we are obviously going through a really,  
16 um, tough time when it—when it relates to mental  
17 health challenges, and—and I would hope that that  
18 category would also, um, be included being that we're  
19 seeing a lot more things escalate--

20 DEPUTY COMMISSIONER CHERNYAVSKY:

21 [interposing] So we—we--

22 CHAIRPERSON RICHARDS: --that are  
23 attached (sic) to other situations. I just wanted to  
24 throw out there that.

2 DEPUTY COMMISSIONER CHERNYAVSKY:

3 Absolutely. So, we do make a distinction in the  
4 current policy. Anything that, um, comes of over is  
5 assigned as an emotionally disturbed person. Um,  
6 that is must record situation. Um, you know, again  
7 recognizing the potential volatility of--of those  
8 cases. Um, there are other ambulance cases, you  
9 know, like cardiac, injuries, um, things like that,  
10 which on their face may not appear, um, to rise to  
11 that level. Um, but we also direct--our office is in  
12 training that irrespective of how something comes  
13 over, how something is assigned to what you  
14 originally think it is, if upon arrival you determine  
15 it's something else, and it's one of the must record  
16 scenarios when a situation evolves, then you need to  
17 immediately, safety permitting, turn your camera on  
18 and begin recording once you realize the nature of  
19 the event is other than what you originally expected.

20 CHAIRPERSON RICHARDS: I'm going to come  
21 back for more questions because I know my colleagues  
22 have some, and I want to hop quickly into, just  
23 logistics and activation of the cameras. So, can you  
24 just go through how do officers actually activate the  
25 camera, and can you explain how the 30-second

2 buffering period works in terms of starting the  
3 record?

4 DEPUTY COMMISSIONER CHERNYAVSKY:

5 Absolutely. Great--great questions. So, right now  
6 we're using two different models of body cameras.  
7 Currently in service we have the VIEVU LE4 Camera,  
8 and we also have the Axon Body 2 model camera. We  
9 have about 15,000 or 16,000 VIEVU-LE4s, and, um, the  
10 balance another six or seven thousand Axon Body 2s.  
11 Um, beginning next month, we're going to begin  
12 deploying the Axon Body 3 camera, which is the AB3,  
13 which is their newest model of camera. Um, the  
14 cameras are fundamentally the same or similar. Um,  
15 they are devices that record audio and video. They  
16 Axon or the VIEVU body camera they all have--let me  
17 back up. Excuse me. They--they all have a power  
18 switch, and a record switch. So, in the policy and in  
19 the training we direct that immediately prior to roll  
20 call a police officer goes to the docking station,  
21 retrieves their camera. Every camera is individually  
22 assigned to a specific police officer. Turns the  
23 power on, and affixes the camera to their outermost  
24 garment, um, approximately chest high between the  
25 pockets. We want to get the optimal point of view,

2 and depending upon the time of year it is and what  
3 garment they're wearing may affect the exact  
4 placement, and we've been working with the  
5 manufacturers over the last two years to further  
6 refine the different mounting clips that are  
7 available to give us the best options for our  
8 uniforms. Um, similarly, the Axon AB2 camera, um,  
9 retrieved from the docking station, has a power  
10 button. The power button is to be depressed so that  
11 the camera boots up and turns on. To begin  
12 recording, the cameras operate a little bit  
13 differently. The VIEVU has a slide switch on the  
14 surface of the camera. So, just below the lens  
15 there's a switch. With your thumb you can depress  
16 that switch and slide it down. The camera will begin  
17 recording. To stop recording, you slide the switch  
18 back up. Axon functions differently. Um, it has--in  
19 the center of the camera there is a slightly recessed  
20 push button. You push the button twice to begin  
21 recording, push the button once and hold for 3 to 5  
22 seconds to end the recording. Um, but other than that  
23 in terms of video being captured on the camera, the  
24 only way to get it off the camera is to dock it in a  
25 docking station. Then it uploads to the Storage

2 Solution where it then becomes available through the  
3 NYPD network.

4 CHAIRPERSON RICHARDS: Okay.

5 DEPUTY COMMISSIONER CHERNYAVSKY: Um, in  
6 terms of the buffer, the VIEVU cameras have a 30-  
7 second buffer, the Axon cameras have a one-minute  
8 buffer, and what the buffer is, a great way to think  
9 about, um, it's-it's a virtual time machine. So, as  
10 long as the camera-as long as the power on the camera  
11 is turned on, the camera is constantly recording  
12 video. It's just not saving it. So, in the case of  
13 the VIEVU camera, it's on a 30-second loop, and every  
14 30 seconds the video is being overwritten. In the  
15 case of the Axon camera, it's recording one minute's  
16 worth of video, and it's constantly overriding that  
17 video as more video is being captured except when you  
18 press the record switch either on the VIEVU cameras  
19 by sliding the button down, or on the Axon EV2  
20 cameras by pressing the record button twice. What  
21 that does is from that moment going forward the  
22 camera is recording both audio and video, but it's  
23 also going backwards and preserving the preceding  
24 either 30 second in the case of VIEVU or the  
25 preceding one-minute in the case of Axon. Um, so

2 essentially, it is a 30-second or a one-minute time  
3 machine, which can be very, very effective and very,  
4 very important especially when something happens  
5 spontaneously you don't expect. So, you have that  
6 ability to go back, and you won't have—you don't have  
7 audio for the buffer period, but you do have video,  
8 which can be helpful in seeing what led up to a  
9 situation especially when something occurs  
10 spontaneously.

11 CHAIRPERSON RICHARDS: Right and, one of  
12 the reasons I asked that question is because you  
13 spoke of cities you consulted with, and I wanted to  
14 know did you consult with Atlanta, Houston and D.C.  
15 on their buffering times. So, in—in those—in those  
16 particular cities, um, the time is two minutes, um,  
17 to really make sure everything is captured. So, why  
18 didn't the NYPD look at a two-minute buffer there?

19 DEPUTY COMMISSIONER CHERNYAVSKY: So, we—  
20 we looked at that. Currently so with the VIEVU LE4  
21 camera they are not programmable. It's only 30  
22 seconds. Um, there—there is no other option with the  
23 LE4 camera. Um, with the Axon Camera, it is  
24 configurable. Um, we're still at one minute. Um, we—  
25 we have looked at and thought about extending it, but

2 presently we're still at one minute. We—we haven't  
3 seen a situation or enough situations where we think  
4 it would be helpful to go back further.

5 CHAIRPERSON RICHARDS: Well, we haven't  
6 seen any situations yet. So, so you're open to  
7 extending the time from one minute to==

8 DEPUTY COMMISSIONER CHERNYAVSKY:  
9 [interposing] It's something we're constantly looking  
10 at that, and we're always looking for technology. So,  
11 for example, um, just looking at the systems and how  
12 they function, um, the functionality on the dashboard  
13 for managing the video, uh, the features of the  
14 cameras. These are things we're always looking at and  
15 we're always working with the vendor to make  
16 improvements.

17 CHAIRPERSON RICHARDS: And is there any  
18 reason not to go with the longer buffering period?

19 DEPUTY COMMISSIONER CHERNYAVSKY: Um, it  
20 primarily concerns about privacy, um, but just the  
21 longer you go back now you're capturing information  
22 maybe bringing you back into the locker room, into  
23 the bathroom, um, into, um, time spent in the car  
24 driving to a location. Um, you know we have had  
25 situations where even with a shorter buffer, um,

2 we've captured some personal information like that,  
3 and we've had to take action to lock that down or  
4 redact it, um, so that's--that's the, you know, kind  
5 of veiling concern or the competing interests or the  
6 individual privacy concerns of individual police  
7 officers.

8 CHAIRPERSON RICHARDS: I love hearing  
9 NYPD is concerned about privacy.

10 DEPUTY COMMISSIONER CHERNYAVSKY:  
11 Absolutely.

12 CHAIRPERSON RICHARDS: Um, so that means  
13 you're going to support the Post Act and, um, support  
14 more reforms around the DNA database and the gang  
15 database?

16 DEPUTY COMMISSIONER CHERNYAVSKY: Uh-hm.

17 CHAIRPERSON RICHARDS: Is that a yes?

18 DEPUTY COMMISSIONER CHERNYAVSKY: I'll  
19 defer to my lawyer.

20 CHAIRPERSON RICHARDS: [laughs] Alrighty,  
21 I look forward to passing those bills. Oleg, are you  
22 going to give me a yes on all the bills?

23 DEPUTY COMMISSIONER CHERNYAVSKY: Yeah.  
24 We'll stich to the [laughter] legislation on the table  
25 today, and we'll do the bills at a later date.



2 CHAIRPERSON RICHARDS: Alright, let's--  
3 let's just lastly go into just--so obviously you know  
4 I have not been shy about my concerns around the CCRB  
5 not getting immediate access to, um, body cam  
6 footage, but district attorneys are given direct  
7 access, correct?

8 DEPUTY COMMISSIONER CHERNYAVSKY: So,  
9 it's, um, I--I need to explain I think the word *direct*  
10 *access* is actually misused, and the--nobody has direct  
11 access.

12 CHAIRPERSON RICHARDS: I'm sorry. It's  
13 downloaded and the issue is--

14 DEPUTY COMMISSIONER CHERNYAVSKY:  
15 [interposing] Yeah, well what, yeah what happened--No,  
16 but that's important. I don't mean--I don't mean that  
17 you're misusing it. It's--the term regard (sic) Um has  
18 been used a lot of times both in the papers and by  
19 various stakeholders to argue the point that somehow  
20 the DAs are surfing PD database looking at videos,  
21 and that's not the way the system works. There's a  
22 sharing portal that's been developed. So, if there  
23 is a video that's relevant to a district attorney's  
24 case, the police officer is able to share that video  
25 through the portal. It's not a matter of direct

2 access where the DAs are actually going into the PD  
3 database, and looking up stuff on their own. It's  
4 they're actually accessing video through a shared  
5 portal.

6 CHAIRPERSON RICHARDS: Um, so just go  
7 through--so the DAs, um, log into software or  
8 something? Can you just speak a little bit on that?

9 DEPUTY COMMISSIONER CHERNYAVSKY: Yeah  
10 so--

11 ASSISTANT CHIEF PONTILLO: [off mic] I'll

12 -

13 DEPUTY COMMISSIONER CHERNYAVSKY:

14 [interposing] Oh, go ahead.

15 ASSISTANT CHIEF PONTILLO: Yeah, so the--  
16 the DAs, um, and we've had to set up two systems  
17 because we're currently operating with two camera  
18 systems, VIEVU and Axon. So, yes, they were through  
19 their networks, uh, portals were created where they  
20 could log into a dashboard essentially where they  
21 would have access to body camera video, and they way  
22 they get access it's not all, you know, almost eight  
23 million videos, but rather when a police officer  
24 makes an arrest or a detective is investigating a  
25 case and then makes an arrest, they have the ability

2 to go into the Video Management System and it's very  
3 simple really. With a couple of clicks, um, there  
4 is—once they have identified their video, they can  
5 click on this function to share, and then there is  
6 essentially a Rolodex that they can find each—the  
7 appropriate DA's office in, click on that DA's office  
8 and then click share, and then it goes to that shared  
9 portal, um, where it is then available to the DAs and  
10 then on the DA's side each of them manages the video  
11 differently in terms of how they download it, and how  
12 they process it.

13 CHAIRPERSON RICHARDS: And the CCRB has  
14 this same ability?

15 DEPUTY COMMISSIONER CHERNYAVSKY: They do  
16 not.

17 CHAIRPERSON RICHARDS: And can you  
18 explain why not?

19 DEPUTY COMMISSIONER CHERNYAVSKY: Yeah,  
20 so, the—with respect to CCRB, as I said, you know,  
21 the—they're probably our largest customer by far in  
22 terms of the number of videos they request, um, but  
23 unlike the District Attorney's Office, which is a  
24 state prosecutorial entity, CCRB is still subject to  
25 certain state laws with respect to sealed records,

2 juvenile records. 50=B sex crime victim identifying  
3 information, and the like. So there are certain  
4 redactions that generally need to be made. With that  
5 said, we've—we've worked very hard at streamlining  
6 and reducing the turnaround time. When it comes to  
7 CCRB, as I said. So far this year 3,700 requests  
8 produced 14,500 videos, and, um, and we're still  
9 working towards more. So, this misnomer that one  
10 request equals one video that's just not true. Now,  
11 with more and more officers wearing body cam videos  
12 and at a minimum you're going to have two officers  
13 responding to the scene of a crime. So, you'll have  
14 two videos. Generally speaking, you have multiple  
15 videos for every incident, and in some cases on  
16 request equates to 100 videos or more depending on  
17 what the situation. So, what happens—so what we've  
18 been doing with CCRB is we overlay those state laws  
19 and we're turning around the videos as quickly as  
20 possible, and we've been working collaboratively with  
21 them to streamline the process even further and to  
22 reduce the turnaround times even more, and we're  
23 anticipating that we'll be able to do that especially  
24 in the near future to hopefully almost eliminate any  
25 kind of delay in turn around time.

2 CHAIRPERSON RICHARDS: And let me just  
3 say, um, so you've cited 50-B, and the DAs as you've  
4 said do get direct access without any redactions,  
5 Correct?

6 DEPUTY COMMISSIONER CHERNYAVSKY: Well  
7 the DAs are the prosecutorial entity. So, if you  
8 have for example 50-B they would not be subject to  
9 that because they're prosecuting the case. So  
10 obviously they'd—they' have access to that  
11 information.

12 CHAIRPERSON RICHARDS: And it's been  
13 reported that you have withheld footage while the  
14 investigations are pending. Why can't you give them  
15 the footage so that they can do their jobs while the  
16 IAB investigates as well?

17 DEPUTY COMMISSIONER CHERNYAVSKY: Well, I  
18 mean that's not completely true. There are certain  
19 cases that are being investigated, um, internally by  
20 IAB. Not all cases are investigated by IAB. So,  
21 there's a lot—a significant number of cases where  
22 there are concurrent investigations going on by CCRB  
23 and IAB, and there are some investigations that IAB  
24 is conducting where those videos are not provided  
25 pending the completion of the IAB investigation.

2 CHAIRPERSON RICHARDS: And, um, I'm going  
3 to before I pass it over to my colleagues I want to  
4 read a quote to you from a letter sent by the Chair  
5 of the Civilian Complaint Review Board Fred Davie to  
6 the U.S. House of Representatives' Judiciary  
7 Committee. Acquiring body-worn camera footage in New  
8 York City requires the CCRB to first request if from  
9 the NYPD whose representatives serve as a gatekeeper  
10 unilaterally determining who may access footage of  
11 its officers. He goes on in the letter to say he  
12 wants direct access to the footage. Um, why do you  
13 have to be the gatekeeper? Can't you just give  
14 access to the CCRB so they can look for the footage  
15 they need to investigate their cases.

16 DEPUTY COMMISSIONER CHERNYAVSKY: So, I-I  
17 mean again it's in--I think, you know, the Chief  
18 eloquently explained what the process is that we  
19 have--there are state law issues. So, there is a  
20 difference between the entities, but again, I don't  
21 want to really, you know, get-get down into--into  
22 these sort of disagreements because I think what we  
23 are doing is working collaboratively with CCRB, and I  
24 think we are in a good place now in terms of  
25 turnaround and we anticipate being in a far better

2 place with respect to providing them access to  
3 videos.

4 CHAIRPERSON RICHARDS: Alrighty. I am  
5 going to come back for more comments and questions  
6 later, but just wanted to state that it's taken far  
7 too long in my opinion and I'm sure the CCRB's is not  
8 here, but at least based on what we've heard for them  
9 to get direct access to footage. So, I'm hoping that  
10 we're going to see a lot more improvements in that  
11 area. I know you stated 50-B it certainly prevents  
12 access in some scenarios, um, but we find it  
13 unacceptable at this point that, um, we have not  
14 moved, um, in the name of transparency, which leads  
15 to accountability in a quicker fashion to make sure  
16 that they are gaining access. So, I've heard that  
17 you're making some progress there, but, you know, if  
18 we're serious about achieving the goals of the body  
19 camera program the agency that has direct oversight  
20 over the NYPD needs unfettered access, and so I'm  
21 hoping that, um, as we make progress in that area  
22 that you're going to come back with a more robust and  
23 strategic plan to make sure that we achieve that  
24 goal. Um, I want to recognize Council Members  
25 Rodriguez. I think I did that already, Powers,

2 Menchaca, Gibson and we're going to go to Council  
3 Member Lancman followed by Lancman, Adams and then  
4 Cohen for questions.

5 CHAIRPERSON LANCMAN: Good morning.

6 DEPUTY COMMISSIONER CHERNYAVSKY: Good  
7 morning.

8 CHAIRPERSON LANCMAN: I want to--some of  
9 the ground I'm going to cover may have been covered  
10 by the Chair over the course of his questioning, but  
11 I want to root my questions in the language of the  
12 Operations Order. Operations Order No. 46, and it  
13 say: In the event that a federal and/or state  
14 prosecuting authority opens an official investigation  
15 into a critical incident, the department will share  
16 all relevant BWC footage with the prosecuting  
17 authority within 24 hours of the Department being  
18 notified of the investigation. Now, I think you've  
19 testified the CCRB is not considered a prosecuting  
20 authority?

21 DEPUTY COMMISSIONER CHERNYAVSKY: No, I--  
22 what I'm--what I testified to is that there are  
23 certain laws that CCRB is subject to, but again, as I  
24 said to--to the chair that we're working thorough, um--

25 -



2 CHAIRPERSON LANCMAN: [interposing]

3 Aren't there--aren't there laws that the DA's Offices  
4 are subject to?

5 DEPUTY COMMISSIONER CHERNYAVSKY: Well,  
6 as a prosecuting authority, they are getting 50-B  
7 cases certainly. With respect to sealed records, we  
8 would--they're getting the case at the time of arrest  
9 so at that point that record would not be a sealed  
10 record.

11 CHAIRPERSON LANCMAN: Is there anywhere  
12 in this order where the NYPD specifically describes  
13 the process for the CCRB getting access to these--  
14 these--these records? Well, that--that--that  
15 distinguishes the CCRB from the general public?

16 DEPUTY COMMISSIONER CHERNYAVSKY: No, I  
17 mean this order is a--I mean if you notice at the top  
18 under operations order it says the subject is public  
19 release of body-worn camera footage. We don't  
20 consider CCRB to be the public.

21 CHAIRPERSON LANCMAN: Is all the DAs the  
22 public?

23 DEPUTY COMMISSIONER CHERNYAVSKY: The DAs  
24 are not the public.

2 CHAIRPERSON LANCMAN: Is the U.S.  
3 Attorney's Office the public?

4 DEPUTY COMMISSIONER CHERNYAVSKY: They  
5 are not the public.

6 CHAIRPERSON LANCMAN: No, but  
7 nonetheless, they are referenced I assume by being a  
8 federal and/or state--

9 DEPUTY COMMISSIONER CHERNYAVSKY: Right.

10 CHAIRPERSON LANCMAN: --prosecutorial--  
11 prosecuting authority.

12 DEPUTY COMMISSIONER CHERNYAVSKY: Correct,  
13 and as I said, you know, and I'll say it again that  
14 we are working with the CCRB. There are issues with  
15 certain laws that they are subject to, which delays  
16 the turnaround time unlike the other agencies, but  
17 again, we're working with them, we're working through  
18 it. The turnaround time has been significantly  
19 reduced, and it's going to be significantly--it's  
20 going to be hopefully eliminated. With that said, as  
21 I said in my testimony, we have so far this year  
22 3,700 requests. We've provide 14 and a half thousand  
23 videos. This is just the CCRB.

24 CHAIRPERSON LANCMAN: [interposing] But  
25 none--none--nonetheless, nonetheless from the CCRB more

2 than half of all footage requests made by the CCRB  
3 are pending for more than 30 days, and that is a  
4 significant impediment to their conducting their  
5 investigations both because they want to get into the  
6 investigations as soon as possible where  
7 recollections are freshest, evidence is still  
8 available, but also they're operating under a fairly  
9 strict statute of limitations. So, everything that  
10 I've heard and seen is that the CCRB has a different,  
11 um perception on whether or not the NYPD is turning  
12 over this body camera footage in a timely and  
13 efficient manner, and the fact that there is no  
14 specific process for turning over body-worn camera  
15 footage to the CCRRB in this Operations Order that  
16 distinguishes the CCRB from the general public that  
17 recognizes that the CCRB okay perhaps they're not a  
18 state or federal prosecutor-prosecuting authority.  
19 They have different rules and obligations and powers.  
20 They're still quite a bit more than the public , and  
21 so it's very disturbing to me that this order lacks a  
22 clear mechanism for getting BWC footage to the CCRB  
23 in a timely manner. Let's go to the next sentence in  
24 the order: In addition, the Department will decide  
25 when to publicly release BWC footage of critical

2 incident with 30 calendar days excluding any non-  
3 disclosure periods provided that that force  
4 investigation review is complete. So, this, the  
5 Department is not committing to releasing the footage  
6 to the public within 30 days, merely making a  
7 decision about releasing the footage to the public as  
8 I read it. Is there any further obligation that once  
9 that decision is made within the 30 days within X  
10 number of days from that, the footage that is going  
11 to be released has to be released?

12 DEPUTY COMMISSIONER CHERNYAVSKY: Well, I  
13 think, um, unless I'm misunderstanding that--

14 CHAIRPERSON LANCMAN: [interposing] Well,  
15 am I reading this too narrowly?

16 DEPUTY COMMISSIONER CHERNYAVSKY: It is  
17 within 30 days. That's right.

18 ASSISTANT CHIEF PONTILLO: It's right.  
19 So, that--that procedure as--as Oleg indicated, that  
20 procedure just addresses public release of body  
21 camera video. The--the workflow for dealing with CCRB  
22 there is a process for that. It's just not codified--

23 CHAIRPERSON LANCMAN: I get it. We've  
24 moved on from the CCRB. This is a sentence that  
25 relates to the public.

2 ASSISTANT CHIEF PONTILLO: So, this--this  
3 procedure and this goes back to the publication of  
4 the original operational procedure back in 2017. So,  
5 if you look at that procedure there's a small  
6 paragraph at the end that says, you know, release of  
7 video is, um, the prerogative of the Police  
8 Commissioner, and he will decide as appropriate when  
9 to release. Beginning in late 2017, um, we were  
10 releasing body camera video related to critical  
11 incidents, and what this procedure does as a  
12 continuation of that and actually outlines the  
13 deliberative process that the Police Commissioner  
14 needs to go through and the Department needs to go  
15 through.

16 CHAIRPERSON LANCMAN: I'm--I'm sorry. I--I  
17 just have to ask because maybe I didn't ask the  
18 question properly. Am I reading this sentence too  
19 narrowly?

20 ASSISTANT CHIEF PONTILLO: Yes.

21 CHAIRPERSON LANCMAN: So, so does this--  
22 sentence mean that--?

23 ASSISTANT CHIEF PONTILLO: [interposing]  
24 This procedure creates a presumption of release.

25 CHAIRPERSON LANCMAN: Within 30 days?

2 ASSISTANT CHIEF PONTILLO: Yes.

3 CHAIRPERSON LANCMAN: Alright, not merely  
4 the decision release this within 30 days, but the  
5 actual release will be in 30 days?

6 ASSISTANT CHIEF PONTILLO: Yes, absent  
7 some--

8 CHAIRPERSON LANCMAN: Subject to the  
9 carve-outs, the qualifications, et cetera? I'm just  
10 talking about the time. Okay. Next. The Department  
11 will release representative samples of the BWC Videos  
12 depicting the critical incident as well as any  
13 salient events leading up to the event. Extraneous  
14 and/or redundant material may be omitted. I don't  
15 think it's news to you that there is sense among a  
16 large number of the public that these body-worn  
17 camera videos are being released, edited with  
18 selected information that produce a narrative that is  
19 most favorable to the Police Department and to the  
20 officers involved. So, can you tell me what  
21 safeguards are in place to ensure that the discretion  
22 to limit footage to that which is salient or which is  
23 representative is not going to be used to tell a--a  
24 story of what happened that is favorable to the  
25 officers involved rather than just putting it out to

2 the public and letting the public make its own  
3 judgment.

4 ASSISTANT CHIEF PONTILLO: Well, I think  
5 one, there needs to be context to videos, right.  
6 So, if what you have is a video of a police officer  
7 walking up to somebody without knowledge of why  
8 they're walking up to somebody without having  
9 relevant information, the video is—is taken out of  
10 context. Now, that is not say that there will be  
11 this, you know, this salient events leading up to the  
12 video that is relevant information for the public to  
13 see to get the video in full context. Also, there  
14 is, as the Chief explained the video—the video is  
15 sent to--

16 CHAIRPERSON LANCMAN: [interposing] But  
17 it's usually—it's usually the case that when you're  
18 removing--

19 ASSISTANT CHIEF PONTILLO: the video in  
20 its entirety is sent to--

21 CHAIRPERSON LANCMAN: [interposing] But  
22 it's usually the case that when you're—when you're—  
23 when you're editing video, when you're cutting  
24 something out, right you're removing context.

2 ASSISTANT CHIEF PONTILLO: [interposing]

3 The video in its entirety is preserved. So, there is  
4 a full record of that body cam footage, right. So  
5 there would be a video with salient events giving  
6 context to the encounter, but there is also the full  
7 video that is available upon--

8 CHAIRPERSON LANCMAN: [interposing] But,  
9 wo why not release the full video? Subject to--  
10 listen, I-I get that there are caveats regarding  
11 privacy et cetera. Well, we'll get to that, right?

12 ASSISTANT CHIEF PONTILLO: Uh-hm.

13 CHAIRPERSON LANCMAN: But once you have  
14 decided that this amount of footage is not subject to  
15 any of those qualifications or caveats, why should  
16 the Department then be making an additional judgment  
17 about what's salient, what's representative? Just  
18 release the footage to the public.

19 ASSISTANT CHIEF PONTILLO: Footage would  
20 be released, but there's other information that's  
21 important to give context to the video. I don't think  
22 it's--I mean unless we're arguing against greater  
23 transparency here, I mean I think the video will be  
24 provided, and unless we're arguing that we should  
25 limit the disclosure to not--



2 CHAIRPERSON LANCMAN: No.

3 ASSISTANT CHIEF PONTILLO: --to not give  
4 them salient information--

5 CHAIRPERSON LANCMAN: There literal--the  
6 literal meaning of the term 'representative sample--

7 ASSISTANT CHIEF PONTILLO: Uh-hm.

8 CHAIRPERSON LANCMAN: --a sample is a  
9 subset of the whole.

10 ASSISTANT CHIEF PONTILLO: But that's  
11 not--it is not saying that the video in its entirety  
12 is not going to be provided. We're talking about the  
13 release of critical information on a--on a timeframe  
14 that is more likely than not more expedited than any  
15 type of FOIL process or FOIL request.

16 CHAIRPERSON LANCMAN: But that's--well  
17 that's, but that's a problem, right? Because if  
18 you're releasing video with--let's say within 30 days,  
19 a judgement is made that this video includes the  
20 critical incident, and this amount of footage is not  
21 subject to any of the exclusions. The public and I  
22 would want the NYPD to release the entirety of that  
23 footage.

24

25

2 ASSISTANT CHIEF PONTILLO: And that's  
3 precise—and that's precisely what we're striving to  
4 do.

5 CHAIRPERSON LANCMAN: But—but this says  
6 something different. This says that you're going to  
7 represent that you're going to release, that you may  
8 release a representative sample--

9 ASSISTANT CHIEF PONTILLO: Uh-hm.

10 CHAIRPERSON LANCMAN: --which means a  
11 subset of the footage that is available, that  
12 extraneous and/or redundant material may be omitted.  
13 So, what these two sentences say quite literally is  
14 that from the footage that is available to be  
15 released that isn't subject to these other carve-  
16 outs, we are not going to release the entirety of  
17 that footage. We are only going to release subsets  
18 of it. We're going to release that which is a  
19 representative sample in our judgment. We're going  
20 to exclude extraneous and redundant material in our  
21 judgment. [background comments/pause] So, my  
22 question is: Why not release all of the footage that  
23 is not subject to some of the privacy and  
24 investigative carve-outs that are enumerated  
25 elsewhere in the order?

2 ASSISTANT CHIEF PONTILLO: I'm sorry.

3 Can you--?

4 CHAIRPERSON LANCMAN: Why not release all  
5 of the footage that is not subject to some of the  
6 carve-outs related to privacy and the investigative  
7 process that is enumerated elsewhere in the order?  
8 Why only--

9 ASSISTANT CHIEF PONTILLO: But that's  
10 precisely what we're striving to do. If it is  
11 possible, I mean, again, like I said, there could be  
12 video, hundreds of pieces of footage depending on the  
13 incident, depending on the number of responding  
14 officers. If what we're looking to do is wait until  
15 we're able to look at all hundreds of pieces of  
16 footage, put them through the process that you  
17 correctly are saying some of these exemptions, some  
18 of these redactions are valid redactions. If that's  
19 what we're waiting to do, then okay. I mean that may  
20 certainly delay the process. What we are striving to  
21 do is to give this type of sample where possible to  
22 attach a more comprehensive video to it. When you  
23 have a situation where there is just so much video  
24 footage that it's not feasible to turn it around that  
25 quickly, you may have a situation where we're putting

2 out something of great public interest rather than  
3 simply being silent for an extended amount of time.

4 CHAIRPERSON LANCMAN: Well-

5 ASSISTANT CHIEF PONTILLO: So, I think  
6 again look there needs to be a common sense policy.  
7 Um, as the Chief said, there is no policy that we  
8 ever write that we take the approach this is written  
9 in stone. We'll never go back, review it or change  
10 it, but this is the policy that we put out. Now it's  
11 only about a couple of weeks old. Let's see how it  
12 works. If there are problems with it, if there are  
13 issues, we'll certainly-we're open to addressing  
14 them. We've done that with our current body cam  
15 policy. Since the inception of the policy, it's like  
16 the Chief said the trainings have been changed, the  
17 policy has been updated. It's a work in progress.  
18 We're always learning. I mean the idea here is to be  
19 transparent, and to give the public this vital  
20 information with as little delay as possible. If, um,  
21 if there's ways to do it better, we're certainly open  
22 to that.

23 CHAIRPERSON LANCMAN: Here's a way to do  
24 it better. Okay? Whatever footage is available and  
25 not subject to any of the carve-outs that are

2 enumerated in this order that relate to privacy and  
3 interfering with the investigative process, that  
4 footage should be released. It should not be edited  
5 subject to any subjective editing on the part of the  
6 Department in terms of what kind of sample is  
7 representative or what kind of information the  
8 Department deems to be extraneous. At some point in  
9 the future something is going to happen in this city.  
10 The Department is going to put out footage. If that  
11 footage is not a complete representation of  
12 everything—a complete account of everything captured  
13 on the body camera—by the body cameras, you have not  
14 succeeded in earning the trust of the public where  
15 people can say I see with my own eyes everything that  
16 happened. People will wonder well what's missing?  
17 This is a representative sample. What did they  
18 withhold? This is—this excludes extraneous. Well,  
19 what' extraneous? And I think that you should really  
20 change this policy so that everything is produced  
21 except those things which are subject to those, um,  
22 those caveats, which you—which you enumerate. One  
23 last thing, Mr. Chair, if I may. Um, I don't see  
24 anything in here about providing video footage to a  
25 defendant's defense counsel. Um, is it the

2 Department's position that access to that information  
3 has got to be obtained through the district  
4 attorneys, through the criminal procedure discovery  
5 process?

6 DEPUTY COMMISSIONER CHERNYAVSKY: Sure.

7 So I addressed that in my testimony that will--the  
8 arresting officer will share the relevant video with  
9 the DA. The DA will transfer that information to the  
10 defense counsel or self-represented defendant  
11 directly as part of their criminal discovery process.  
12 Now, that's not to say that there is no mechanism for  
13 an individual to get it directly from the Department.  
14 There's a FOIL process. There's the subpoena  
15 process. There are mechanisms to get it directly from  
16 the Department. It's just I would imagine  
17 significantly quicker to get it from a district  
18 attorney if you're at arraignment especially now with  
19 the new discovery laws where the turnaround time is  
20 going to be within 15 days, I-I just think that's a  
21 much faster process, but there are certainly other  
22 processes that would take longer that these  
23 individuals can use.

24 CHAIRPERSON LANCMAN: That may be so.

25 Let's see what happens with the new discovery laws

2 kicking in. Um, I definitely do, though—I definitely  
3 want to express my disappointment with this policy,  
4 in so far as it still gives the NYPD too much  
5 discretion on what kind of footage to release, and  
6 this document secondarily reflects the NYPD's ongoing  
7 unwillingness to fully cooperate with the CCRB so  
8 that it could do its job, and I would like to see a  
9 change to this order where there is a mechanism in  
10 place to promptly and efficiently give the CCRB the  
11 information it needs so it can do the task that the  
12 public has—has charged it with. Thank you.

13 CHAIRPERSON RICHARDS: Thank you. We're  
14 going to go to Council Member Adams followed by  
15 Adams, Cohen, Menchaca and Gibson.

16 COUNCIL MEMBER ADAMS: Thank you, Mr.  
17 Chair. Good morning Assistant Deputy Commissioner and  
18 Assistant Chief. Thank you for being here today and  
19 for your testimony thus far. Um, just agreeing with  
20 my colleague Council Member Lancman, I am in full-  
21 full agreement that the public has to have faith in  
22 this policy. The public has to believe that what the  
23 NYPD is putting forth is something that they could  
24 believe in, something that they can trust, and so  
25 far, what I've heard this morning gives a lot of

2 concern for me. I'm just going to paraphrase a little  
3 bit of what the, um, what the Public Advocate Jumaane  
4 Williams testified to just a little while ago, and  
5 I'm paraphrasing. In April of this year two police  
6 officers were responding to a 911 harassment call at  
7 Hill House in the Bronx in which one of them fatally  
8 shot a man name Kawaski Trawick. The entire situation  
9 was as captured on police body camera video, and yet,  
10 up until now Kawaski's family has not been able to  
11 see the footage. Additionally, just two months ago  
12 in the Bronx a police chase resulted in 15 police  
13 bullets killing Brian Mulkeen, a plain clothes  
14 officer, and Antonio Williams a civilian whom the  
15 police had stopped during a patrol. Officer—Officer  
16 Mulkeen did not have his body camera on, but the  
17 other five officers on the scene had their cameras  
18 on. Now, my question is we are deep into the process  
19 right now with all of these incidents at this point.  
20 So, can you give us any insight as to why the  
21 footage—no pieces of the footage on any of these  
22 incidents has been released to the public yet?

23 ASSISTANT CHIEF PONTILLO: So, um, thank  
24 you for the question, Council Member. Um, the—the  
25 policy, the Release Policy has just come out a couple



2 of weeks ago. We are anticipating a release, the  
3 initial release imminately and moving forward we will  
4 be releasing along the lines of what the first  
5 release is going to be. So that will be a good sample  
6 to-to, you know, for everyone to see how we're going  
7 to be releasing these videos. As you know, there was  
8 a court injunction for a time. So there were videos.  
9 I think there were a handful of videos that were  
10 released originally. Then there was an injunction in  
11 place for I think almost a year and a half, about a  
12 year and a half. Um, so we weren't releasing at that  
13 point because of the injunction. Once the injunction  
14 was lifted, we began working on the policy that-that  
15 you see before you, and we're going to start  
16 releasing based on this policy very shortly. So, um,  
17 with respect to the case that you brought up and-and  
18 the family, um, what has happened traditionally  
19 because of the sensitivities involved in those cases  
20 is the district attorneys are the ones that  
21 coordinate letting the families view the video, and  
22 it's generally done through them. We provide  
23 obviously the video to them and then they had shared  
24 those videos with the family. So, I'm not-I'm just  
25 not informed about whether that family or members of

2 that family actually coordinated or-or coordinated  
3 with the District Attorney to watch the video. I was  
4 under the impression that at least part of the family  
5 may have, but I-I don't want to-I don't want to be  
6 under oath and-and put that forward.

7 COUNCIL MEMBER ADAMS: Okay, thank you  
8 and-and-I-I don't know if you can answer this  
9 question, but Council Member Lancman's point, do you  
10 have any idea whether or not a sample would have been  
11 provided to the family or would they have been  
12 provided the entire footage? Do you have any idea?

13 ASSISTANT CHIEF PONTILLO: I-I would  
14 imagine that it would be the family of-of the  
15 individual would get to see the entire footage  
16 because this isn't the-the public release. It's done  
17 for them and that actually is engrained in-in the  
18 policy in the Public Release Policy that before we  
19 release a video publicly, we will contact either the  
20 individual depicted or the family involved, and let  
21 them see it or at least offer for them to, um, to  
22 view it as well as the officers involved and the  
23 relevant stakeholders before the public release.

24 COUNCIL MEMBER ADAMS: Okay, and I guess  
25 my final question, um, is going to be again I guess

2 the concern still is, um, you know, what—what is  
3 actually going to go out there, who determines?  
4 Well, I guess NYPD determines the context and content  
5 of the footage that is being released, the context  
6 and content of the subset or the sample that is going  
7 to be released and to whom that information is going  
8 to. So, with the release of that footage, in the  
9 policy there are 30 days I believe upon release. Why  
10 do you need 30 days to release footage of incidents  
11 that are of concern to the public?

12 DEPUTY COMMISSIONER CHERNYAVSKY: So, I  
13 think maybe I should start with saying this, and I  
14 maybe should have answered this in response to  
15 Council Member Lancman's questions, but I'll  
16 certainly say now it does not benefit the NYPD to  
17 have a—to release footage that somehow inaccurately  
18 depicts a situation of great public concern only to  
19 have additional relevant footage come out a little  
20 while later and the road to trust that we're working  
21 so hard to rebuild with the community. So, we are a  
22 very interested stakeholder and having an accurate  
23 representative sample, and ultimately the full video  
24 released to the public and—but certainly, if we're  
25 putting out a representative sample for whatever that

2 reason is, maybe just the sheer volume or whatever  
3 that reason is, it does not benefit us to leave out  
4 vital information only to have that information  
5 become public at a later time. I mean it's just—just  
6 wouldn't make sense. So, um, I hope that answered  
7 that question. I think you may have had another  
8 question that I'm forgetting.

9 COUNCIL MEMBER ADAMS: You got it in  
10 there in the end, and I'm glad to hear you say that,  
11 um, because I think that there really—there should be  
12 transparency and really clarity on the whole matter,  
13 and again, I'm just going to end the way I started,  
14 it. It is imperative that the public has faith in  
15 this policy, and I—and I definitely share Council  
16 Member Lancman's concerns with the way that the  
17 policy is currently drafted. So, thank you for your  
18 testimony.

19 DEPUTY COMMISSIONER CHERNYAVSKY: Thank  
20 you.

21 CHAIRPERSON RICHARDS: Council Member  
22 Cohen followed by, um, Cohen, it will be Gibson.

23 COUNCIL MEMBER COHEN: Thank you, Chair  
24 Richards. You know, before I ask questions, you  
25 know, I—I obviously I support my colleagues in—in

2 pushing the Department. I think that there is more  
3 to do but I—I do also want to say that in the time  
4 that I've been in the Council I mean I think that  
5 we've made tremendous progress with this program  
6 started. You know, I've had the opportunity to view  
7 the—live footage on occasion , and I feel like that  
8 we are making tremendous strides. Um, in your  
9 testimony, Oleg—am I getting terrible feedback, or I  
10 it just me? Are you getting feedback? (background  
11 comments) Change? Excuse me. [pause] Take 2.  
12 That's better. Thank you. Um, you talked about, um,  
13 continuous being studied. When you say—is that a  
14 formal process or a police process, or other volumes  
15 of we studied this, the questions that you're asking,  
16 could you elaborate on that?

17 DEPUTY COMMISSIONER CHERNYAVSKY: In—in n  
18 terms of the current policy?

19 COUNCIL MEMBER COHEN: It—you're  
20 studying—you testified that you were studying the  
21 footage. Um, are you studying it in a systematic  
22 way? What are we studying for? Are there reports  
23 generated from these studies? [background comments]

24 DEPUTY COMMISSIONER CHERNYAVSKY: So, we,  
25 oh, um, we have a number of review processes that are

2 in place. Some are very structured and formalized,  
3 some are not. So, what was mentioned in the testimony  
4 earlier was part of our process, and that is-is what  
5 we call a self-in section. It's an inspection done  
6 at the command level by individual sergeants, and  
7 what occurs is on a monthly basis every sergeant who  
8 has cops who have body cameras are assigned to review  
9 five random-randomly selected videos.

10 COUNCIL MEMBER COHEN: I'm sorry. The  
11 sergeants are studying from their own command,  
12 though?

13 DEPUTY COMMISSIONER CHERNYAVSKY: Yes,  
14 and there is a worksheet that we have created that  
15 they have to use, and they have to answer very  
16 specific questions about whether or not the policy  
17 was complied with, the quality of the police surveys,  
18 whether or not there were any training or tactical  
19 issues observed and then what, if any, follow-up was  
20 necessary. Um, then when the sergeant completes that  
21 inspection, it goes to their lieutenant. The  
22 lieutenant is then required to look at a sample of  
23 the reviews the sergeant did to make sure the  
24 sergeant got it right, and then quarterly our Risk  
25 Management Bureau takes those and looks at a sample

2 of those to make sure they were done correctly. In  
3 addition to that, we have a number of other  
4 structured mechanisms in place to review body camera  
5 usage and the—and the quality and the content of the—  
6 the videos. So, first there is a weekly roster that  
7 goes out to every command that we review and this is  
8 a way to make sure we have every member of the  
9 service accounted for, and make sure they have a  
10 camera. Um, people are transferred, people come back  
11 from military service, people are promoted. So there  
12 are always a lot of changes and a lot of movement in  
13 the Police Department. So, we have to make sure that  
14 when people show up in a command they have a body  
15 camera, they have the right body camera, and they're  
16 properly equipped. We've also expanded who has the  
17 cameras. So, currently, it's all the patrol. Every  
18 precinct, transit district and housing PSA, but in  
19 our final phase of the roll-out that began this  
20 March, we have expand—expanded that to the Emergency  
21 Services Unit, Highway Patrol, the Strategic Response  
22 Group, other specialized units that support patrol  
23 from patrol function, about 23,000 cameras in total,  
24 and in terms of the who, we've expanded from  
25 originally just police officers to then detectives on

2 patrol, sergeants, lieutenants and—and now we're  
3 almost finished equipping all captains and above who  
4 command those units so that they have cameras as  
5 well. So, we're making sure everybody who is supposed  
6 to have a camera, has a camera. We also look at  
7 usage. So, we track by borough, by command citywide  
8 the number of videos per week, the number per tour,  
9 the average number of videos per police officer, um,  
10 the correlation of the number of videos recorded in a  
11 precinct to the 911 call volume in that precinct.  
12 Um, not that you can prove or demonstrate causation,  
13 but there is a correlation, and—and all of these are  
14 done, you know, by in and of themselves. They don't  
15 really prove anything, but over time you develop a  
16 baseline so that you can identify anomalies--

17 COUNCIL MEMBER COHEN: [interposing] I'm  
18 sorry. Is that a big part of what we're trying to do  
19 now, sort of establish a baseline?

20 DEPUTY COMMISSIONER CHERNYAVSKY: Yep.  
21 Well, I think—I think we have a pretty good baseline  
22 right now. If we change the policy then we'll look  
23 to how changes occur. We also look at anybody who has  
24 no videos in a certain time period. Often times,  
25 there are legitimate reasons for that. The person



2 was on vacation. The person was out sick, but as  
3 just a safeguard to make sure that if somebody is in  
4 a situation where they should be recording, they are,  
5 in fact, recording. So, that's an added layer. We  
6 also look at aggregate data. As was mentioned  
7 earlier in the testimony, we're approaching almost  
8 eight million videos. We're adding on average  
9 130,000 videos each week. That's a lot of data, um,  
10 and you know, we look at other indicators that we  
11 have in the aggregate like arrests like summonses,  
12 um, to--

13 COUNCIL MEMBER COHEN: [interposing] I'm  
14 sorry. Can I add--what are some of the reasons you  
15 found that some people are recording a lot and some  
16 people aren't other than, you know, not for vacation.

17 DEPUTY COMMISSIONER CHERNYAVSKY: Yeah.  
18 No. You know what? The averages hold up for most  
19 people, and it depends upon the command depending  
20 upon the volume in a particular command, a 911 volume  
21 and crime and other activity. Um the busier commands  
22 we see it's an average of four videos per officer per  
23 day. Um, in--in the less busy commands it's an average  
24 of three videos per officer per day. They all average  
25 around 8.5 minutes each. That's pretty consistent

2 across the city. Um, when we look at, we—we have  
3 developed basically scripts to analyze certain data.  
4 It's not an exact match. We have to make certain  
5 assumptions in terms of the time window to try to  
6 match up an arrest to a video, but we take a big data  
7 analytical approach. We do get some false positives,  
8 some false negatives, but over time again we have a  
9 baseline. We have indicators and where we see  
10 deficiencies, we will investigate and address it. We  
11 also incorporate body camera video into COMPSTAT  
12 every week. So, as part of the preparation for  
13 COMPSTAT, the borough that's coming in we look at  
14 their body camera compliance. We look at their  
15 usage. We audit in every command the supervisors in  
16 that command to see how many videos they're viewing,  
17 um, to make sure that in particular the training  
18 sergeants and the integrity control officers are  
19 reviewing video. Also, if we see deficiencies in the  
20 sample the we pull, we will address it at COMPSTAT.  
21 You know if something was not handled properly. So  
22 there's that layer of review. We have other forms as  
23 well. We have a risk review meeting, which  
24 identifies and looks at areas other than crime, but  
25 it's a COMPSTAT like format. We also have a force

2 review meeting which is COMPSTAT like where we look  
3 at use of force and investigations into use of force,  
4 and body cameras are a big part of that. So, we do a  
5 robust sampling of body cameras. We look at to make  
6 sure the supervisors are reviewing the videos. So we  
7 have this kind of multi-layered approach to reviewing  
8 video, to ensure compliance and also assess the  
9 quality.

10 COUNCIL MEMBER COHEN: I just have a  
11 couple more, but I'll be—two of them are quick. Um,  
12 one of the things I was concerned about initially in  
13 the roll-out was I guess we're using S-D, which I'm  
14 not sure what the difference is—what that stands for  
15 verses H-D. Do you think that we have any hope of  
16 getting H-D? Do you think that S-D has been a  
17 negative in the program in terms of the quality of  
18 video?

19 ASSISTANT CHIEF PONTILLO: I have not  
20 seen it. Um, we've—in fact, recently, um, well maybe  
21 nine months or a year ago, we did another round of  
22 testing where we compared, you know, the standard  
23 definition is—is 480. We've looked at 720 and as  
24 well as 1080 full high def. The differences are  
25 negligible. Um, you—with the high def, you get better

2 resolution of details in the background, but because  
3 most interactions are very, very upclose, um,  
4 visually no significant difference. Um, the--the  
5 difference would come on the other end in terms of  
6 cost because now we're doubling the amount of data  
7 that we have to store, and also moving that data  
8 across our network, um, could--could be a real  
9 problem, you know, in terms of uploading a video  
10 through our network, and into the storage solution.  
11 Um, that would be an exponential increase in the  
12 amount of data.

13 COUNCIL MEMBER COHEN: Could--could you  
14 just also talk about the occurrence of the camera  
15 falling off of--how often that happens?

16 ASSISTANT CHIEF PONTILLO: It--it happens,  
17 um, it--it, um, you know, there are a lot of  
18 variables. Um, we've seen it during a physical  
19 struggle where the camera breaks free. Um, we don't  
20 want them to be permanently attached. Um, we want  
21 things to break free so that it can't be used as  
22 leverage and a weapon against an officer.

23 COUNCIL MEMBER COHEN: I understand that  
24 concern, but it's, of course, you know, maybe in  
25 those instances where the footage is of the most

2 value, and we are potentially not getting it because-  
3 -

4 ASSISTANT CHIEF PONTILLO: There is that  
5 concern and I think Oleg even mentioned this early  
6 on, a body camera is not a panacea. Um, and there  
7 are a lot of factors to be considered. You know, one  
8 body camera video sometimes is not enough. You've got  
9 to look at everybody who was on the scene in multiple  
10 angles. Um, it's, um, you know watching body camera  
11 video can be a little tough because sometimes, you  
12 know, unlike a movie where you've got a director and  
13 a cinematographer, you're not always getting the best  
14 angle and the most salient point. Um, you've got to  
15 go through a lot to-to put it all together and line  
16 it all up. Um, there is breakage. We do track that.  
17 um, it's-It's not a lot, but it's consistent with,  
18 you know, clipping an electronic device onto your-  
19 your shirt.

20 COUNCIL MEMBER COHEN: And just lastly,  
21 I'm just going back to the, um, to the participation.  
22 I mean are there instances of where individual  
23 officers have shown great resistance to-to using the  
24 camera appropriately?

2 ASSISTANT CHIEF PONTILLO: Just speaking  
3 anecdotally, um, early on when we first began the  
4 rollout, for a while I was attending every training  
5 session at the Academy and talking to the cops, and  
6 there was some resistance. Um, you know, keep in mind  
7 that this is a huge paradigm shift, um, for some  
8 people especially, you know, people of my age. It's  
9 very unnatural to record or want to record myself.  
10 Um, you know I think what we've seen up at the  
11 Academy is that younger people who are very  
12 accustomed to Intagramming, and very adept at social  
13 media, um, more comfortable. So there's a bit of a  
14 learning curve. I think we're—we're well beyond that  
15 now, though. I mean that was early on. Our training  
16 program was unlike any other that we had seen around  
17 the country. Most police departments, 90 minutes of  
18 training. Um, basically, here's the camera, here's  
19 the video management dashboard. Here's how you use  
20 it. Here's a copy of our policy. Policies in most  
21 cases were rather limited. We spent a full day, a  
22 lot of time talking about the policy, the must  
23 records, but also the benefits of recording, how it  
24 can be useful in practicing, you know, actually doing  
25 roll plays to give cops that experience, that—that

2 tactile feel of here's the camera. Here's how it  
3 feels on you uniform. Here's how it feels and, you  
4 know, get used to motioning to-to hit the switch.  
5 Um, so we invested a lot of time upfront, and then  
6 that was buttressed by 90 days of field training back  
7 at their command. So, we said: Listen, we understand  
8 you're going to make mistakes. It's okay. when you  
9 go back to your command the next 90 days you'll be  
10 under the supervision of tutelage of your command  
11 training sergeant who is going to be looking at video  
12 and talking to you, and helping you to get it right  
13 and to troubleshoot, and that was a good way to kind  
14 of build up trust in the process, and get people used  
15 to it. Um, we have brought all the training  
16 sergeants in, you know, prior to that, um, to-to give  
17 them a briefing on what was expected of them, and I  
18 think it worked overall very, very well.

19 COUNCIL MEMBER COHEN: Thank you, Chair.

20 CHAIRPERSON RICHARDS: Thank you.

21 COUNCIL MEMBER COHEN: Thank you.

22 CHAIRPERSON RICHARDS: Alright, we're  
23 going to go to Council Member Gibson followed by  
24 Gibson, Lander.

25

2 COUNCIL MEMBER GIBSON: Thank you, Chair  
3 Richards. Good afternoon, gentlemen.

4 CHAIRPERSON RICHARDS: Hold on, and we  
5 also joined by Council Member I. Daneek Miller.

6 COUNCIL MEMBER GIBSON: Okay, good old  
7 Daneek.

8 CHAIRPERSON RICHARDS: Sorry

9 COUNCIL MEMBER GIBSON: Thank you,  
10 Council Member Miller. Good afternoon, and thank  
11 you for being here, and thank you to our Chair and  
12 the Public Advocate and Council Member Lancman for  
13 introducing legislation related to body-worn cameras.  
14 Simply for the committee and for the broader Council  
15 to have more of an understanding of where we are in  
16 terms of BWCs, the roll-out, some of the challenges  
17 that we face, and how we can continue to make the  
18 system better. Um, so I remember the pilot. They  
19 started with 54 cameras in five commands. I remember  
20 when we started putting together an actual defined  
21 policy of how we roll out body-worn cameras. So, I  
22 wanted to ask a few questions, and first I start with  
23 the Policy Guidelines that that Department came up  
24 with in April of 2017. In your testimony you  
25 described a number of different organizations,



2 advocacy groups, civil rights organizations that were  
3 a part of the conversation in terms of body-worn  
4 camera working groups, so to speak. So, I guess my  
5 question is now that that report has been released,  
6 and we do have a framework of what the policies and  
7 guidelines are in using body-worn cameras, is this  
8 task force working group still meeting, and are you  
9 still engaging actively with many of our community  
10 partners?

11 DEPUTY COMMISSIONER CHERNYAVSKY: So,  
12 now, you know, in a formalized process. Um, and we've  
13 had the policy in place now since April of 2017.  
14 Like any policy especially something as important as  
15 this, we're looking at usage. We're learning lessons  
16 from situations that have occurred. Um, and—and we  
17 expect we'll—we will, um, you know, make updates to  
18 the policy periodically. Um, I expect that prior to  
19 publishing anything we will do a round of outreach,  
20 but we haven't gotten that far yet.

21 COUNCIL MEMBER GIBSON: Okay. So, with  
22 the recent release of the policy guidelines on the  
23 actual release of body-worn camera footage was there  
24 a dialogue or an engagement process with these same  
25 stakeholders before that policy was released?

2 DEPUTY COMMISSIONER CHERNYAVSKY: So not  
3 immediately prior to the publication of this policy  
4 in October, but this policy actually goes back to all  
5 the discussions around the original April 2017  
6 policy. So, in that policy there is a general  
7 provision in there that body camera video can be  
8 released at the discretion and direction of the  
9 Police Commissioner, and when we go back before that,  
10 whether it was the stakeholder outreach or the  
11 general public outreach we did working with NYU back  
12 in 2016, we did online surveys for the public, and  
13 for police officers working with the NYU Law Policing  
14 Project and the NYU Marron Institute, um, and we had  
15 over 30,000 responses from the public and over 5,000  
16 responses from members of the Department. That also  
17 helped frame how we think about this, and one of the  
18 things that we saw overwhelmingly, you know, this  
19 interest in transparency, yes, but then there is also  
20 concern about personal privacy and how we protect  
21 that as well. Um, so that's what we've tried to  
22 balance, and at the time when the April 2017 policy  
23 went out the-the thought process that the-the  
24 Department goes through when considering when to  
25 release something, um, was not fully spelled out.

2 So, this October policy, um, looks to describe the  
3 process that the Department and the Police  
4 Commissioner go through when thinking about one of  
5 these situations. Um, when contemplating and  
6 preparing for public release. Now, early on, even  
7 though the 2017 policy did not lay out this thought  
8 process, beginning in the fall of 2017 through May of  
9 2018, we had four officer involved shootings that  
10 were captured on body camera video. Not every  
11 command had body cameras at the time. We were in the  
12 middle of the rollout, but we had four officer  
13 involved shootings where the officers were equipped  
14 with body cameras and did record the incidents. In  
15 all four of those cases we released the body camera  
16 video from those incidents, and then in May of 2018  
17 the PBA went to court, brought an action against us.  
18 The court issued an injunction. That injunction was  
19 in place until February of 2019 when ultimately the  
20 Appellate Division decided that body camera video was  
21 not a personal record under 50-A and, therefore, the  
22 Department could release it. So, for that, you know,  
23 almost a year time period we had a big backlog of  
24 incidents and cases. So, um, this current policy was  
25 the first step in—in describing the process that we

2 think is appropriate to go through conferring with  
3 stakeholders, conferring with the DA who may be  
4 contemplating a criminal prosecution in some cases  
5 making sure we let the officers involved know, and  
6 the civilians and/or their families who are depicted  
7 in the video and know about the release, give them an  
8 opportunity to view video before the actual release  
9 occurred. So that was the genesis as really  
10 continuation of a very, very long process.

11 COUNCIL MEMBER GIBSON: Okay. Um, it's—  
12 it's been quite some time, um, this has passed from  
13 February of 2017 to releasing, um, this policy on the  
14 releasing of BWC. So, I was just wondering what  
15 we've been doing in all of that time to make sure  
16 that all of the stakeholders are really engaged. So,  
17 one of the examples is that the Public Advocate and  
18 Council Member Adams have described was the police  
19 involved shooting at Hill House in the Bronx. Um, I  
20 know Hill House. It is in my former Assembly  
21 District, and this is a building that is a supportive  
22 housing, permanent housing building where there is a  
23 Social Services provider on site. So, how does that  
24 play into the releasing of body camera footage when  
25 you have a Social Service organization that's on site

2 with their own security cameras because that was our-  
3 it was a controversial issue that happened, and this  
4 family to this point had not really been engaged by  
5 law enforcement in terms of what happened to their  
6 loved one, but the Social Service provider on site  
7 has been working with the Department and the DA's  
8 office. So, I wonder in cases involving a police-  
9 involved shooting in a residential unit that is a  
10 supportive housing program, how do you work with that  
11 particular provider in getting information released  
12 not just to the Department but also to the family  
13 that's involved as well.

14 DEPUTY COMMISSIONER CHERNYAVSKY: So, the  
15 way it's been done in the past when we have released  
16 the videos, we've always worked through the District  
17 Attorney's office because the District Attorney will  
18 have their own investigation into any police use of  
19 deadly force, and we defer to them on this and they  
20 take the lead, but just generally they will be  
21 working with the family and/or the family's attorney.  
22 So, in the prior cases that has been handled by the  
23 D.A. in this particular case. I can't speak to who  
24 exactly was conferred with, but I think your other  
25 point about Social Service providers is another

2 factor to be considered when we talk about vulnerable  
3 populations in terms of what we release and when and  
4 and who's involved, and that's one of those  
5 stakeholders that we would want to confer with prior  
6 to releasing any video.

7 COUNCIL MEMBER GIBSON: Okay, and then my  
8 final question. I know time is of the essence. In  
9 terms of capacity in the precincts of the storage of  
10 cameras, what happens when officers finish their  
11 tour, and they place the camera in the docking  
12 station, who has access to that, and how are we  
13 working within the precinct to make sure that we have  
14 appropriate capacity as more officers are coming into  
15 commands, and what's happening with the civilian  
16 staff that the Department was going to hire that  
17 would oversee the management of cameras in our  
18 precincts?

19 DEPUTY COMMISSIONER CHERNYAVSKY: So, um,  
20 yes, a good question. Thank you. At the end of the  
21 tour when police officers come in, they merely take  
22 their camera and just plug it into one of the  
23 receptacles in the docking stations that have been  
24 set up there. Everything else happens automatically.  
25 They don't have to do anything. All of the video

2 will immediately begin to upload into the Cloud based  
3 storage system so it does not impact upon precinct  
4 operations. It's not competing with service space  
5 for the—the precinct's functioning. So other than  
6 all this data trafficking across our network, and we  
7 have a very, very large capable fiberoptic networking  
8 in NYPD. So, we're able to move that video from every  
9 precinct and PSA and transit district pretty much  
10 simultaneously up into the Cloud. There are  
11 mechanisms in place where that flow can be controlled  
12 if there is like peak volume across the network, but  
13 our IT folks have done a great job working with the  
14 vendor to manage that process. So, we have not seen  
15 any problems whatsoever with videos, you know, not  
16 being uploaded or long delays. It does upload pretty  
17 quickly, and then in every command we've also  
18 established a priority docking station. So, if, um  
19 a platoon comes in, you could have a large number of  
20 cameras being docked. If for some reason for example  
21 involves an arrest, and we have to get the video  
22 uploaded quickly so we can get it to the DA quickly,  
23 um that officer can dock that camera in the priority  
24 dock, and—and that video will be uploaded first. And  
25 then in terms of the civilian headcount, so the

2 increase in the head count was authorized for 97  
3 additional civilian staff titles like Media Service  
4 Technicians, Statisticians, Analysts. Most of those  
5 are—and some IT folks primarily split up between the  
6 Information Technology Bureau, the Legal Bureau, and  
7 the Risk Management Bureau who were the folks  
8 primarily dealing with the day-to-day management of  
9 body camera video. Um, I think we're currently  
10 somewhere around 60 or so people. There is some  
11 turnover, but we're constantly soliciting  
12 applications and hiring folks especially the Media  
13 Service Technicians.

14 COUNCIL MEMBER GIBSON: Okay, thank you  
15 and I hope you'll work with us as it relates to the  
16 legislation that was introduced. I know you have a  
17 position, but, you know, it's always subject to  
18 change. Thank you.

19 DEPUTY COMMISSIONER CHERNYAVSKY: No and  
20 I—I—I had mentioned that to the Public Advocate at  
21 the end of my testimony that we're not opposed to  
22 reporting on body camera footage. It's just the  
23 structure of the bill. It doesn't take into account  
24 how the system currently functions. So, the, I guess  
25 the cost and the resources to go into complying with



2 the bill as written would be so great, but again, I  
3 offered to the Public Advocate and to Council Member  
4 Lancman that I will sit down and work with you all on  
5 developing some sort of a reporting bill that gives  
6 meaningful transparency into the process and to the  
7 data that we capture within the confines of the  
8 abilities of—of the system as it exists.

9 COUNCIL MEMBER GIBSON: Thank you. Thank  
10 you, Chair.

11 DEPUTY COMMISSIONER CHERNYAVSKY: Thank  
12 you.

13 CHAIRPERSON RICHARDS: Before we go to  
14 Council Member Lander, can you just—so would the  
15 Department also be with that—because I know that, um,  
16 Council Member Adams and Gibson mentioned, and talk a  
17 lot about these families and I know our Public  
18 Advocate mentioned that in his—in his testimony.  
19 Would you be open to creating a liaison that will  
20 work directly with families impacted when they need  
21 to see body cam footage?

22 DEPUTY COMMISSIONER CHERNYAVSKY: I  
23 think, um, as part of, um, the Blue Ribbon Panel on  
24 Discipline, um, we—one of the recommendations was to  
25 appoint a liaison with individuals in connection, of

2 course, with disciplinary cases, but that's certainly  
3 something we could consider to leverage that  
4 individual, and again this needs to be done in  
5 consultation with the district attorneys because  
6 sometimes the sensitivities involved with them but

7 CHAIRPERSON RICHARDS: [interposing] I'll  
8 get that but--

9 DEPUTY COMMISSIONER CHERNYAVSKY: Yeah,  
10 but I think that's certainly something we can be open  
11 to looking at to see what we could do. Yeah.

12 CHAIRPERSON RICHARDS: So, yes you're  
13 open to doing that?

14 DEPUTY COMMISSIONER CHERNYAVSKY: Well,  
15 we're always open to new ideas. Yes.

16 CHAIRPERSON RICHARDS: Okay. Alrighty.  
17 Council Member Lander.

18 COUNCIL MEMBER LANDER: Thank you, Mr.  
19 Chair. Thank you guys for being here. I want to  
20 pick up a little on the questions that Council Member  
21 Adams asked about the policy for family members in a  
22 situation where a loved one has been killed, and  
23 they're working with an attorney or with advocates to  
24 be able to see the footage, um, and I-I came in as  
25 those questions were being asked and answered. So, I

2 just want to make sure I understand it. It sounds  
3 like you were sort of deferring to the district  
4 attorney there rather than just having a direct NYPD  
5 policy of making footage available to family members  
6 to see within 24 hours or a reasonable period of  
7 time. Did I misunderstand that? I mean will you  
8 commit to allow families to see the footage wit their  
9 advocates if they—if they want to?

10 DEPUTY COMMISSIONER CHERNYAVSKY: I mean  
11 I think that's what this policy assumes that whether  
12 it's done with the DAs or through the DAs or whether  
13 it's done through us, that prior to a release of body  
14 cam footage, that the relevant individuals are made  
15 aware given—given some level of access--

16 COUNCIL MEMBER LANDER: [interposing] It  
17 says they'll be made aware, but if it assumes that  
18 they can view it, then shouldn't it say that they can  
19 view it?

20 DEPUTY COMMISSIONER CHERNYAVSKY: I mean  
21 again that's—I—I mean that's something we could  
22 definitely talk about. I—I—think--

23 COUNCIL MEMBER LANDER: [interposing] I  
24 mean we are talking about it. I want to come down to  
25 do it, not to have a conversation about it.

2 DEPUTY COMMISSIONER CHERNYAVSKY: I think  
3 that was, um, something that we have contemplated  
4 with respect to families. I—I mean I know we're  
5 parsing words, and that's fine. I mean we did put out  
6 the policy. So, the words should be parsed, but I—in  
7 terms of what our assumption was and—and what we were  
8 going to do is I think that was the assumption that  
9 whether it be through DAs or through us directly,  
10 that this would be made available.

11 COUNCIL MEMBER LANDER: Respectfully, I  
12 mean if we were going to work on assumptions we don't  
13 need a policy at all. The policy spells out--

14 DEPUTY COMMISSIONER CHERNYAVSKY:  
15 [interposing] But I was answering the question and  
16 you were waiting to say if we're going to work on  
17 assumptions. They point that I'm trying to make to  
18 you is I—I am agreeing with you. I mean I don't know  
19 if that came across that, um, whether it's done  
20 through the DAs or whether it's done through us  
21 directly, the intent is prior to a public release  
22 that whether it is the individual themselves depicted  
23 or a family member, in certain cases of—of an  
24 individual that's no longer with us to, um, have them  
25 see the video.

2 COUNCIL MEMBER LANDER: Okay, and—but I  
3 mean but you guys hold—I mean I appreciate that. I  
4 appreciate that you're saying that family members  
5 and—and their advocates should be able to see if a  
6 report is released. So, I appreciate that. I'd like  
7 to just make sure we get that into policy so it's  
8 clear and family members know—and—and that can—and  
9 so, I'm not—you keep saying and the DA, and I'm just  
10 trying to understand it right now. Like the policy  
11 should spell it out. As I understand it, this stuff  
12 is yours. You hold it, it belongs to you. You're  
13 keeping it so it seems like the easiest thing is that  
14 you would have a policy that if a family member  
15 wanted to see it, that they and their advocates could  
16 see it. So, what's—what's the barrier that—I mean  
17 can't we do that? We could say—

18 DEPUTY COMMISSIONER CHERNYAVSKY:  
19 [interposing] We seem to be—I think we see to be in

20 COUNCIL MEMBER LANDER: [interposing]  
21 We're saying, yes, wonderful.

22 DEPUTY COMMISSIONER CHERNYAVSKY: We seem  
23 to be agreeing, but we seem to be finding ways to try  
24 to make it sound like we're disagreeing, and what I'm  
25 saying is that the intent is to allow individuals,

2 relevant individual stakeholders to be able to see it  
3 prior to release. Now, whether it is through us or  
4 whether it is through the district attorneys--

5 COUNCIL MEMBER LANDER: [interposing] But  
6 that does matter because there are five different  
7 district attorneys, and a family--there shouldn't be  
8 five different policies and so a family in the Bronx  
9 has different rights than a family in Brooklyn, and  
10 so, the easiest thing would be if the NYPD would  
11 just--I mean I agree with you. It's great you're  
12 saying we should do it. So let's just do it. We  
13 can't be, you know, will the NYPD establish a policy  
14 or adopt a policy that families can see--

15 DEPUTY COMMISSIONER CHERNYAVSKY:  
16 [interposing] I think the policy before you doses  
17 that. I mean we seem to be asking and saying the same  
18 thing.

19 COUNCIL MEMBER LANDER: It does in asking  
20 and saying families are for it.

21 DEPUTY COMMISSIONER CHERNYAVSKY:  
22 [interposing] well, it does at least from our  
23 interpretation of it, but alright.

24 COUNCIL MEMBER LANDER: Well, how about--  
25 how about the two families that I think the Council

2 Member asked specifically about. I mean for Kawaski  
3 Trawick and Antonio Williams' families, can-can they  
4 just see the footage?

5 DEPUTY COMMISSIONER CHERNYAVSKY: It's  
6 on-I think and I answered this question. Maybe it was  
7 before you-you came in that, um, I was under the  
8 impression that at least part of one of the families,  
9 I don't know if the entire family, but had  
10 coordinated with the district attorney to watch to  
11 see the video, but I'll look into it.

12 COUNCIL MEMBER LANDER: [interposing]  
13 And It's my understanding that district attorneys are  
14 like putting restrictions and conditions. I mean I  
15 join and--

16 DEPUTY COMMISSIONER CHERNYAVSKY: And  
17 again, I will look into it, and get back to you on  
18 it. I-I don't-I'm under oath. So I don't want to  
19 guess at coming up with an answer, but I'll look into  
20 it and try to get back to you.

21 COUNCIL MEMBER LANDER: Okay, and I-and  
22 I-I-I do appreciate that we're agreeing in spirit,  
23 but I think here the details matter. So, I just-I  
24 just-I appreciate that you're going to get back to  
25 us, but I guess I-what I want to be clear is what-

2 what—what I think should be the case. I want speak  
3 for anybody else is that rather than leaving it in  
4 the hands of five different district attorneys the  
5 NYPD was keeping this footage should make it a  
6 policy, and not an assumption but an explicit written  
7 policy that families and their advocates can see the  
8 footage, you know, at least before release, but, you  
9 know, preferably within—within a given timeframe of  
10 it, and—and there's every reason to do that. I don't  
11 really understand. Anyway, so the—I hope you'll come  
12 back and say we'll make that part of our policy and  
13 that you'll let these two families see the footage  
14 because it's—it's hard to feel like the assumptions  
15 are working if what we're hearing from family members  
16 is that they're not—they're not getting to. Um, and  
17 just did I get right, I mean you guys continue to own  
18 and control and hold the—hold the footage. You know,  
19 just kind of permanently. Once it's with you, it's  
20 with you and you guys are its—are its holders.

21 DEPUTY COMMISSIONER CHERNYAVSKY: Sure.  
22 It's a police record. I guess it—it would just stand  
23 to reason that we hold the footage but there is a  
24 presumptive destruction policy. I mean obviously with  
25 carve-outs so that if it's needed in a criminal case,



2 a civil case it would be preserved beyond the, um, 18  
3 months, but generally speaking, footage that doesn't  
4 fall into those categories gets over-overwritten  
5 after an 18-month period.

6 COUNCIL MEMBER LANDER: And I mean it's  
7 just my understanding like I've-I've met with some  
8 folks from DORIS the Department of Records and  
9 Information Storage. You know, they were trying to  
10 balance the challenges. Like how do we make sure it  
11 gets preserved? How do we make sure the full range  
12 of independent people have access to it? Um, and I  
13 wonder if there was some consideration, and look,  
14 there's—here it is police records 100% and it's  
15 needed in police work. So, I want you guys to have  
16 full unfettered access to it to be able to use it to  
17 address issues and solve crimes and figure out what  
18 happened. Um, you know, but in—in some instances  
19 there winds up being a kind of a conflict of interest  
20 in various points of view whose that is, and so we  
21 want on the one hand for the NYPD to have full  
22 unfettered appropriate, you know, confidential  
23 access, and on the other for it to be available for  
24 full transparency and I, you know, I think that's  
25 part of the challenge we're exploring here is kind of

2 what has it said? Who has it? How do we make sure  
3 everybody's got the right kind of unfettered and  
4 transparent access to it over time, but you—you think  
5 that—so did you consider other alternatives for I  
6 mean--

7 DEPUTY COMMISSIONER CHERNYAVSKY:

8 [interposing] Right so I mean I think it's—it's—I  
9 dedicated a paragraph of my testimony to list  
10 literally every agency that we consulted with in  
11 developing the policy, and as you could imagine, as a  
12 Council Member, elected official that deals with  
13 various stakeholders throughout you time—

14 COUNCIL MEMBER LANER: Oh, it's hard.

15 DEPUTY COMMISSIONER CHERNYAVSKY: --you  
16 sometimes have positions that are just diametrically  
17 apposed.

18 COUNCIL MEMBER LANDER: Of course.

19 DEPUTY COMMISSIONER CHERNYAVSKY: I mean  
20 we have Civil Liberties Union, um, organizations that  
21 didn't want us to hold—they wanted a—didn't want us  
22 to hold it more than 30 days or sometimes even less.  
23 So, we had it deleted automatically unless there's an  
24 arrest that versus people saying let's hold it for 75  
25 years because it's a record. So, look, it's--

2 COUNCIL MEMBER LANDER: So, that's what  
3 I'm asking.

4 DEPUTY COMMISSIONER CHERNYAVSKY: Right.  
5 so I mean that's some of the considerations.

6 COUNCIL MEMBER LANDER: Right.

7 DEPUTY COMMISSIONER CHERNYAVSKY: Those  
8 are the considerations that we needed to take into  
9 account. That's why we had an open door. That's why  
10 we had a very diverse group of stakeholders come in  
11 and speak to us. That's why we looked at other  
12 departments throughout the country that are and  
13 really internationally as well that had rolled out  
14 this process before, and we came up with a retention  
15 period that balanced all of these interests, and it's  
16 again it's not written in stone because there could  
17 be preservational requests in the context of a civil  
18 matter, a criminal matter, other matters that becomes  
19 relevant and needs to be retained, then it's  
20 retained. Um, but when there are none of these  
21 interests involved, then the retention period is 18  
22 months.

23 COUNCIL MEMBER LANDER: I understand. So,  
24 let me just ask in terms of who you consulted, and I  
25 totally appreciate these are very difficult and

2 perhaps irresolvable conflicts, and a lot of these  
3 situations are super challenging. We've got  
4 different parties on different sides, and like that's  
5 why we're trying to make sure. So, in terms of you--

6 DEPUTY COMMISSIONER CHERNYAVSKY:

7 [interposing] Well, in terms of who we believe--

8 COUNCIL MEMBER LANDER: Yeah, super  
9 consultants (sic) and police reform advocates,  
10 specifically on kind of the retention in the policy  
11 question?

12 DEPUTY COMMISSIONER CHERNYAVSKY: So.  
13 with respect to who we consulted in developing the  
14 initial policy from 2017, which guides us today, we  
15 have police departments in Seattle, Washington D.C.  
16 Las Vegas, Los Angeles and London's Metropolitan  
17 Police. Then we also sought input from, um, the DA's  
18 offices, each of the institutional defense providers  
19 and the Administrators of the ATNB (sic) Panel, CCRB  
20 the Office of Court Administration, the Public  
21 Advocate, the City Council, the New York Civil  
22 Liberties Union, the Center for Constitutional  
23 Rights, the MAACP Legal Defense Fund, Communities  
24 United for Police Reform, Inspector General's Office,  
25 Latino Justice, Demos and the Citizens Crime

2 Commission. I think that's a pretty comprehensive  
3 list.

4 COUNCIL MEMBER LANDER: Okay. that's a  
5 good list. Um, I guess I'm not there where, you  
6 know, there may be some place where there was a  
7 mismatch between some piece of it, but we'll get back  
8 to you with that. So, I've gone on a while. I'm going  
9 to wrap up my question, but I guess what I'm going to  
10 say is this: On this issue of-of the families it  
11 does seem like in addition to getting back to us with  
12 an answer just letting these two families and the  
13 advocates see the footage would go a long way to  
14 building confidence that the policies that you're  
15 putting forward will work together with communities  
16 who are dealing with it, and yes, absolutely on the  
17 hardest of these cases, but like that's where we all  
18 get looked at for how these things work. I wish we  
19 could get judged by the easiest ones, but we'll  
20 judged on the hardest ones. So, it would be a big  
21 step forward if you could just-if you could arrange  
22 for that as soon as possible. Thank you. Thank you,  
23 Mr. Chair.

24 CHAIRPERSON RICHARDS: Thank you.

25 Alright, we're going to go to Public Advocate Jumaane

2 Williams followed by Jumaane we will hear from  
3 Council Member Miller.

4 PUBLIC ADVOCATE WILLIAMS: Thank you so  
5 much. Thank you again for the testimony and I start  
6 out by saying I would appreciate these conversations  
7 with this Administration even though there's some  
8 disagreements. It's a lot easier than it was with  
9 the prior administration. I note in the testimony you  
10 mentioned how difficult it might be as is. I assume  
11 there's going to be some negotiations, but I do want  
12 to note if you have a cost associated with the person  
13 that you said was needed just to do, um, the job if  
14 the bill passed as is.

15 DEPUTY COMMISSIONER CHERNYAVSKY: I mean,  
16 you know, and please—I'm under oath so don't quote me  
17 to the penny on this, but I believe the cost of an  
18 analyst with fringe is somewhere in the \$70,000 range  
19 annually in terms of a salary. So, you multiply it  
20 out. When I did the rough math here, what I basically  
21 did is I took the 136,000 videos, multiplied it by 8  
22 minutes per video. That's the average per video. I  
23 got a total of minutes. I divided that by 60, which  
24 is 60 minutes in an hour, and then I had the total  
25 number of hours. Then I divided that number by 35,

2 which is the work week and—and, you know, and, um,  
3 for city employees, and I wound up getting somewhere  
4 around \$497, right so that's—the assumption is that  
5 we would need to review assuming the number stayed at  
6 136,000 a week we would have to review 136,000 videos  
7 a week. Otherwise the backlog would result in us  
8 being late for the reporting. So, if we get just  
9 purely watching videos and extrapolating the relevant  
10 data points just from watching, we get close to 500  
11 employees. Then there are certain data points that  
12 require further research, further investigation, um,  
13 and that—that is where the additional headcount would  
14 come up, and, um, again, this is a rough estimate ,  
15 and I am assuming that we're using analysts and not  
16 police officers, but it's very costly and the reality  
17 of it is is that as you've heard we have a pretty  
18 comprehensive audit process that I think if we sit  
19 together, or we sit together with your staff—I know  
20 you're probably a little busy, um, we can—we can take  
21 a look at what is the current audit process, and  
22 extrapolate data from that process. That is going to  
23 give you some meaningful insight. Like I said in the  
24 testimony, we did a review of the last 28-day period  
25 I terms of compliance for turning the cameras on.

2 We're roughly about a 93% compliance with respect of  
3 officers activating their camera. Now, we can't  
4 watch every video. It's just-it's impossible unless  
5 you hire an army of analysts, but what we could do is  
6 and what we do do is these spot checks, these random  
7 audits, and we designate various people in the  
8 system. We have Risk Management Bureau but that's  
9 more of a citywide, but then we have sergeants in  
10 the-in the command that are-that have to review a  
11 certain amount of videos. Then their lieutenants  
12 have to review what they reviewed. Then their Patrol  
13 Bureau has to review what the lieutenants reviewed.

14 PUBLIC ADVOCATE WILLIAMS: So, and I  
15 appreciate that. I just-the quick math I did was  
16 about-well let me say it was about \$34 million for-  
17 for those analysts, which sounded like--

18 DEPUTY COMMISSIONER CHERNYAVSKY:  
19 [interposing] They put it in dollars.

20 PUBLIC ADVOCATE WILLIAMS: Yeah.

21 DEPUTY COMMISSIONER CHERNYAVSKY: --but  
22 it's a lot of money.

23 PUBLIC ADVOCATE WILLIAMS: The budget is  
24 about \$5.6 billion just to say.



2 DEPUTY COMMISSIONER CHERNYAVSKY: Well,  
3 interestingly enough, you know, I—I know that number  
4 gets thrown around a lot, but about 90% of our budget  
5 is—is salaries. I mean it's not—there is very--

6 PUBLIC ADVOCATE WILLIAMS: Most of budget  
7 is. (sic)

8 DEPUTY COMMISSIONER CHERNYAVSKY: Right.  
9 There's very, very little discretionary money in that  
10 budget.

11 PUBLIC ADVOCATE WILLIAMS: Also  
12 foundation funding that we don't—we don't actually  
13 have too much oversight over, but I know that's an  
14 additional amount on top of the \$5.6, but I agree. I  
15 don't know if it's going to go, you know, I do want  
16 to sit down and figure it out, but I just want to  
17 make sure of the context of what we're—what we're  
18 speaking about.

19 DEPUTY COMMISSIONER CHERNYAVSKY: I think  
20 the spirit of what you're trying to get at, right, I—  
21 I think we can get there. We can take a look at the  
22 existing system. We could work together and we can  
23 get there. You can—I mean we—we see it now. We do  
24 the audits now. I think working together we can—we  
25 can certainly give them more transparency into a

2 process that I mean we think is pretty transparent.  
3 That's the nature of body cameras is transparency.

4 COUNCIL MEMBER WILLIAMS: And just for  
5 clarity and I know some of these questions might have  
6 been asked already. When does—how long does it take  
7 the CCRB to get it after an incident the DA, and  
8 Inspector General?

9 DEPUTY COMMISSIONER CHERNYAVSKY: So, we  
10 have, um, with the district attorneys a little  
11 different because there's the sharing portal. So,  
12 once an arresting officer makes an arrest, they're  
13 able to upload their video into the portal, and share  
14 with the DA that's prosecuting the case because  
15 they're generally doing arraignments within 24 hours.  
16 So they have this—they have this information. Um,  
17 with respect to CCRB, again, we had a backlog that we  
18 needed to work through because of the injunction on  
19 the relates of body cam video. That injunction  
20 lasted for about a year and a half. So, we worked  
21 through that backlog, that collection of, um, of, um  
22 video and we—we also just the sheer volume as-as you  
23 noticed in my testimony, last year there were about  
24 2,080 requests for video. We produced about just  
25 over 6,100 videos for their request. In 2019, we have

2 so far this year not a complete year, 3,700 about  
3 requests for video from CCRB, and so far w've  
4 produced 14.5 thousand videos to CCRB. So, as we  
5 expand the program and give more officers the body  
6 cameras, and as you know, multiple officers respond  
7 to the scene, you have multiple videos. So the  
8 turnaround time, um, the turnaround time is-is we're  
9 getting a lot better. I think by and large we have a  
10 turnaround time of-with-of about 30 days or within-  
11 sometimes even shorter than that. In exceptional  
12 cases it's a little longer than that. I mean we have  
13 cases where there is 100 videos for one request. You  
14 know, just because of the event, but with that said,  
15 I-we're-we're continuously working with them, and  
16 we're-I think we are working through how to  
17 streamline the process in order to get them these  
18 videos even faster than we've been able to streamline  
19 the process to do, and I think we're in a very good  
20 place and we expect the process to get significantly  
21 better, and I think we-we will wind up eliminating  
22 the turnaround time or reducing it hopefully to a  
23 week to ten days if possible.

24 COUNCIL MEMBER WILLIAMS: And what about  
25 the Inspector General?

2 DEPUTY COMMISSIONER CHERNYAVSKY:

3 [background commtns/pause] Yeah, we haven't, um—I'm  
4 being told that we haven't gotten any requests from  
5 them, but I'm again, it would be, um, I'm sure the  
6 turnaround would be significant. It would not be  
7 long.

8 COUNCIL MEMBER WILLIAMS: I did want to-  
9 there's something before my next question, and I  
10 don't want to go back and forth, but I just want to  
11 make sure that I state. I know you said you, um, got  
12 input from and gave a list. I'm not sure how you  
13 define input and some of the other groups define  
14 input. I know that some of them feel that what you  
15 listed would not—the input was not significant in  
16 terms of the policy that was put out for the body-  
17 worn cameras. So, I just want to make sure I put that  
18 on the record and you have that in your mind as-

19 DEPUTY COMMISSIONER CHERNYAVSKY:

20 [interposing] Well, I-I appreciate it, and I said and  
21 I think I was being pretty forthright about it right  
22 in the testimony as I listed everybody that we sought  
23 input from. My very next sentence did say that, you  
24 know, a lot of the input that we received was  
25 sometimes diametrically opposed, and ultimately the

2 idea was to heal all of the sides and to shape a  
3 policy that balanced all of the interests.

4 COUNCIL MEMBER WILLIAMS: So, I mean I'm  
5 not sure how you got the input or how it went. I  
6 don't--there might be a disconnect there. That's all  
7 I'm saying that we have to kind of close that loop,  
8 um, as--as we move forward.

9 DEPUTY COMMISSIONER CHERNYAVSKY:  
10 [interposing] Just in--in terms of the process--

11 COUNCIL MEMBER WILLIAMS: Yes.

12 ASSISTANT CHIEF PONTILLO: So, when we  
13 went through this process. In 2015-2016 with all of  
14 the groups that Oleg mentioned, we shared with them a  
15 copy of our then draft procedure for body cameras,  
16 and then met with them in person and solicited their  
17 input. Also, following up on that in 2016 from June  
18 thorough August working with the NYU Law Policing  
19 Project, and the NYU Marron Institute, we or they  
20 with our support conducted online surveys, and they,  
21 um, they put the proposed policy online, and then  
22 they asked a series of questions. We have over  
23 30,000 public responses to the survey. NYC  
24 consolidated all of that and issued a report. We  
25 also did a survey for police officers. Again, same

2 thing. NYU put the proposed policy online, invited  
3 police officers that we provided the emails to, to  
4 participate. We had 5,000 responses to that as well.  
5 The NYU Report and then, um, we wrote a final report  
6 describing that process, describing the policy and  
7 describing the decisions that we made where we  
8 agreed, where we disagreed and why we made the  
9 decisions that we made, and—and that was posted and  
10 it's still posted on the NYPD website.

11 COUNCIL MEMBER WILLIAMS: Thank you. Um,  
12 can I get the—the logic of why we can't share the  
13 footage to the families unless we go through the DA.  
14 I just can't understand the logic that the NYPD has.

15 ASSISTANT CHIEF PONTILLO: I mean I—I  
16 don't think it's unless. I don't think that—that was  
17 the idea. I think it's just often times given the—the  
18 sensitivities of—of the event that that's just the  
19 way—the way it plays out, but it's—it's not saying  
20 just. We're not saying just, and we will certainly—  
21 we're looking at ways of sharing. I mean whether it's  
22 through us directly or through the DAs, it's just  
23 that given the sensitivities of certain of these  
24 events, when you're sharing video with families, um,  
25 it's been done through them in—in cases.

2 COUNCIL MEMBER WILLIAMS: Well, I'm  
3 saying this because I just want to just to augment it  
4 why NYPD can't just share. So, why can't NYPD just  
5 share it with the families?

6 ASSISTANT CHIEF PONTILLO: I mean all-  
7 again, like I said, it's-it's-it-I think it's more  
8 about the sensitivities involved. If you have a  
9 police involved shooting and you're showing the video  
10 of that shooting to a family, it sometimes may be  
11 better to do it through a district attorney's office,  
12 but we're not necessarily saying it can't be done  
13 through us.

14 COUNCIL MEMBER WILLIAMS: Are-are police  
15 officers who are-

16 ASSISTANT CHIEF PONTILLO: And again, as  
17 the Chief mentioned to me, sometimes it's the  
18 family's preference to have it done through a third  
19 party and not directly through us. So, like I'm  
20 saying, I think it's-it's more about the  
21 sensitivities involved in-in such an incident than-  
22 than saying that it's-we're precluded from doing it.  
23 We're not precluded from doing it. We're just trying  
24 to do it in the most sensitive way.

2 COUNCIL MEMBER WILLIAMS: Are police who  
3 are involved or any of the agents allowed to see the  
4 footage?

5 ASSISTANT CHIEF PONTILLO: Yeah, prior to  
6 release. Is that right?

7 DEPUTY COMMISSIONER CHERNYAVSKY: Yes, in  
8 the past and, you know, again, I think it's important  
9 to keep in mind for about a year there was an  
10 injunction against the Police Department. So, for  
11 that whole time period we could not release anything  
12 until the court decision ruled in our favor, but when  
13 we did release prior to the injunction, we made the  
14 video available to the civilians involved and/or  
15 their families and attorneys. We also made viewing  
16 available to the police officers involved just prior  
17 to release. You know, we—if they're going to see it  
18 on the 6:00 news, um, better that they see it, you  
19 know before hand before it actually goes public  
20 around the same time the family had access to it.

21 COUNCIL MEMBER WILLIAMS: So, what I'm  
22 saying, generally speaking police officer—police  
23 officers have access. I'm not talking about the ones  
24 that—in the past, the ones moving forward, police  
25 officers and/or their agents would have access to the



2 footage, but I'm trying to understand the logic of  
3 it's sensitive, why do they have access, but the  
4 families would not?

5 DEPUTY COMMISSIONER CHERNYAVSKY: So,  
6 they—they do not. In general terms police officers  
7 and their supervisors have access to body camera  
8 footage. It's just a necessity of day-to-day  
9 operations. We need police officers to be able to  
10 share the footage to a DA. We looked at--

11 COUNCIL MEMBER WILLIAMS: [interposing]  
12 Well, I just want it clear. You said they don't, but  
13 now you said they do.

14 DEPUTY COMMISSIONER CHERNYAVSKY: Right.  
15 So for in general they do for routine situations.  
16 When there is a critical incident like a police  
17 involved shooting, immediately we have a supervisor  
18 collect all the body cameras. All of the cameras are  
19 turned over to our Force Investigation Division.  
20 They will upload the video and lock out the video so  
21 that nobody can see the video except for a handful of  
22 people in the Department, Internal Affairs, Force  
23 Investigation, a few people in Legal who have access  
24 to locked out videos. So, during the course of an  
25 investigation over a critical matter, we have the

2 ability and we do immediately secure that video, lock  
3 down the video so that nobody can view it until we  
4 deem it appropriate.

5 COUNCIL MEMBER WILLIAMS: Alright and I—I  
6 have a—I have to leave. Unfortunately, I do have a  
7 bunch of other questions. I'm hoping we can talk as  
8 we move forward. They do center around this. I do  
9 think just families should have access sooner than  
10 everybody, and that seems to make sense to me. We  
11 seem to be behind in other municipalities in how we  
12 release the footage. I'm hoping we can speed that  
13 up. I know in terms of what was released I know we're  
14 going to try to work it out, but I know there's a  
15 feeling that the procedures now seem to err toward  
16 helping the Department, and not necessarily the  
17 transparency of the, um, public. That's just the  
18 feeling now. So, we're trying to figure out ways how  
19 to make that feeling be less. One of them I think  
20 will be getting a better understanding of critical  
21 incident, if there's things like gender-based  
22 violence and other—other incidents that may not fall  
23 under that category now. In addition, if we can come  
24 up with another party that is also involved in the  
25 auditing—in the auditing process, and reviewing it

2 whether it's the Inspector General or someone else  
3 that will keep the-

4 DEPUTY COMMISSIONER CHERNYAVSKY: The  
5 Federal-Federal Monitor does.

6 COUNCIL MEMBER WILLIAMS: Okay.

7 DEPUTY COMMISSIONER CHERNYAVSKY: So,  
8 there-there is-there is that as well, yes.

9 COUNCIL MEMBER WILLIAMS: So, those are  
10 just the-the areas that I want to have some more  
11 discussions as we move forward, but I appreciate  
12 this, and I think you, Mr. Chair.

13 DEPUTY COMMISSIONER CHERNYAVSKY: Thank  
14 you.

15 CHAIRPERSON RICHARDS: Thank you. Council  
16 Member Miller.

17 COUNCIL MEMBER MILLER: Thank you, Chair  
18 Richards. Good afternoon.

19 DEPUTY COMMISSIONER CHERNYAVSKY: Good  
20 afternoon.

21 COUNCIL MEMBER MILLER: Good afternoon,  
22 um, so, obviously just-just about everything that  
23 could be asked on this subject matter has been asked,  
24 but I would just like to get a little clarification  
25 on-on kind of just the intricacies and particularly

2 what the Public Advocate had just asked and—and—and  
3 the members before is just about whether or not the  
4 access to—to the footage is—is equitable and that  
5 means in terms of timing, in terms of when, where,  
6 how, and—and—and things of that nature, and—and who  
7 that is whether it is—it is family, it is the  
8 district attorney, it is defense, it is the Police  
9 Department. Um, those—does everybody have equal  
10 access and if not, what are we doing to work towards,  
11 um, that, um, equity?

12 DEPUTY COMMISSIONER CHERNYAVSKY: So, I—I  
13 think, um, I think the access is equal. So, in terms  
14 of for example in the policy prior to release, prior  
15 to public release, um, it lists in that section who  
16 will be notified of the release, which includes both  
17 the officers involved, the families. There's going to  
18 be—there would an opportunity to see those videos.  
19 Um, they—they all fall under one—one section. Now the  
20 district attorneys I don't know if we want to call it  
21 inequitable, but as the prosecutors they would have  
22 access to that footage because they're they  
23 prosecutors. So they almost immediately have access  
24 to that footage, and in the—in terms of I think of  
25 police involved shooting of—of an unarmed civilian,

2 the Attorney General would have almost immediate  
3 footage because—because they're—they're the  
4 prosecutor. So, I wouldn't necessarily call it  
5 inequitable. I think it's just a function of—of what  
6 their function is. So, but police officers, family  
7 members, individuals depicted, um, they're put into  
8 that same category if you look at the policy. So  
9 there is equity there.

10 COUNCIL MEMBER MILLER: So, what happens  
11 if it's not a police involved shooting and the  
12 district attorney has it, does they—do they have a  
13 responsibility base on policy to turn it over  
14 immediately to defense attorneys and--

15 DEPUTY COMMISSIONER CHERNYAVSKY:  
16 Absolutely. So, you know, I can talk—currently under  
17 the discovery laws as they stand today I really—I  
18 don't know if we want to waste time on that because  
19 in about a month and a half the discovery laws  
20 changed. So, I'll just talk about what's going to be  
21 the case in six weeks. So, in six weeks the body-worn  
22 camera footage that we provide to the district  
23 attorneys, will be provided by the district attorneys  
24 to the defense—

2 COUNCIL MEMBER MILLER: As a matter of  
3 discovery.

4 DEPUTY COMMISSIONER CHERNYAVSKY: --as a  
5 matter of discovery.

6 COUNCIL MEMBER MILLER: [interposing]  
7 What does it look like today?

8 DEPUTY COMMISSIONER CHERNYAVSKY: Um,  
9 the--the prosecutors turn over discovery. There isn't  
10 a set deadline. It has to be done before trial, which  
11 I think was part of the catalyst to why many  
12 advocates advocated for reform that they didn't think  
13 the turnover of that information to the defense  
14 happen expeditiously enough. So, um, timeframes were  
15 put in place. So, with that said, um, currently and  
16 the law that's about to sunset and be overridden is  
17 that the DAs have it and need to provide it to the  
18 defense prior to trial. As of January 1<sup>st</sup> the DAs  
19 would have to provide it to the defense--

20 COUNCIL MEMBER MILLER: Right.

21 DEPUTY COMMISSIONER CHERNYAVSKY: --  
22 within 15, um, with 15 days from arraignment, which  
23 an arraignments happens, you know, within 24 hours.

24 COUNCIL MEMBER MILLER: So, setting--  
25 setting aside new state law addressing the issue of

2 discovery, um, we're talking about families and still  
3 talking about district attorneys, CCRBs, um, is there  
4 a process in place to make sure that it is more  
5 equitable in how this—how this information is  
6 distributed?

7 DEPUTY COMMISSIONER CHERNYAVSKY: Meaning  
8 to families?

9 COUNCIL MEMBER MILLER: Because obviously  
10 discovery is going to take care of the other piece on  
11 the defense side, but it's still families, it's still  
12 CCRB and maybe others, um, that are involved.

13 DEPUTY COMMISSIONER CHERNYAVSKY: Sure.

14 COUNCIL MEMBER MILLER: How do we make  
15 sure that is--

16 DEPUTY COMMISSIONER CHERNYAVSKY:  
17 [interposing] So, with—I—I mean since we started  
18 talking about discovery, so let's—I'll—I'll talk  
19 about that first. I think that many times that  
20 because of the shortened timeframe of 15 days, that  
21 a, um, individual that's the subject of arrest will  
22 likely have that footage fairly quickly under the new  
23 system. Now, in the case of a family if you have a  
24 deceased individual and you have a family, in that  
25 case again the DAs would have that assuming there's—

2 there is no prosecution there. Whether--there have  
3 been families, as I've mentioned, that have shown a  
4 preference because of the sensitivities involved to  
5 have, um, to not have us show them the video, to have  
6 it done through a third party. In that case is the  
7 DA's Office--

8 COUNCIL MEMBER MILLER: Uh-hm.

9 DEPUTY COMMISSIONER CHERNYAVSKY: --but  
10 one way or the other the idea is and the intent is,  
11 is prior to any public release to allow the families  
12 or the individual depicted to--to see the footage.  
13 With respect to CCRB, we have already significantly  
14 reduced the turnaround time. There are cases where  
15 it's under 30 days. Thirty days, generally is kind  
16 of the rule of thumb. With that said, we're actively  
17 working with CCRB to even shorten the timeframes that  
18 we've been able to reduce it to now, and I think  
19 we're in a good place and we're making significant  
20 progress.

21 COUNCIL MEMBER MILLER: Let's talk a  
22 little bit about the audit process. How likely is it  
23 that each officer that is charged with a body-worn  
24 camera or supervisor will be touched in some shape,  
25 form of fashion whether by the audit or outside of



2 the audit process that—that, um, the information that  
3 is captured would be reviewed in some semblance  
4 during the course of a year?

5 ASSISTANT CHIEF PONTILLO: I—the—the  
6 Chief will go into I think with a lot more detail.  
7 He's more knowledgeable about the—the process, but we  
8 did put in audit processes in place so, I'll—I'll  
9 wink. I'll—I'll do my best here, and you correct me  
10 if I'm leaving something out that every precinct  
11 obviously has police officers and has a number of  
12 sergeants that can directly supervise those officers.  
13 Sergeants are required, each sergeant in a precinct  
14 is required to view a certain amount of videos, and  
15 then the lieutenant that oversees the sergeant and  
16 the cops will then view to see what the sergeant is  
17 doing to make sure they're doing it.

18 COUNCIL MEMBER MILLER: And at the end of  
19 that process how many people are actually touched is—  
20 was the question?

21 ASSISTANT CHIEF PONTILLO: What's the--?

22 COUNCIL MEMBER MILLER: What was the  
23 percentage?

24 ASSISTANT CHIEF PONTILLO: What's the--?

2 COUNCIL MEMBER MILLER: Is it like random  
3 drug testing?

4 ASSISTANT CHIEF PONTILLO: Um, no.

5 COUNCIL MEMBER MILLER: [interposing] How  
6 do we do that? How do we come with that?

7 ASSISTANT CHIEF PONTILLO: This is more  
8 systematic. It's with the selection, you know, each  
9 sergeant supervises on average 8 to 10 people.  
10 They're being—they have to look at five videos per  
11 month. Compound that over 12 months, their lieutenant  
12 is then looking at a sample of the videos they looked  
13 out to make sure they did an adequate review. Have a  
14 number of other processes in place that look at data,  
15 and—and use data to compare, um, to look at—so for  
16 example volume, the number of videos recorded, the  
17 average number of videos per police officer, the  
18 average length of video. So that if we have outliers  
19 that would enter the review as the person an outlier.  
20 We look every month for a 28-day period for any  
21 police officer with zero videos during that 28-day  
22 period. Then we investigate each one: Why doesn't  
23 this person have a video? And almost every time  
24 there are legitimate reasons. The person was on  
25 vacation, they were out sick. They have an

2 administrative assignment. They don't go on patrol.  
3 Um, but that is looked at. So, in addition to usage,  
4 um, we compare. We have designed algorithms to look  
5 at data, and we look at data from body camera videos  
6 and we compare it to other data sets that we have to  
7 make matches for arrests and summonses and things  
8 like that. It's not a perfect system. We do get some  
9 false positives, and some false negatives because it  
10 is a quantitative approach, um, but when we do see  
11 red flags and anomalies we will then look further,  
12 um, to identify why those anomalies exist. Um, we  
13 also as part of COMPSTAT Force Review and our Risks  
14 Review, which is COMPSTAT for other things in the  
15 Police Department, but in crime we're looking at body  
16 camera usage and compliance. Every week we look at  
17 one borough, and we look at—we do an audit of the  
18 supervisors in each command to look at how many  
19 videos they're looking at. We then look at a sample  
20 of their videos. We do then a weekly conference call  
21 with each borough. Um, we go over the results of the  
22 review with body camera video and the reviewing by  
23 supervisors. So, it's a multi-layered approach both  
24 quantitative and qualitative, but it's a long way of

2 saying that through the course of the year on some  
3 level we're touching almost everybody.

4 DEPUTY COMMISSIONER CHERNYAVSKY: And  
5 then I just--just add to that then we have the-the  
6 Federal Monitor also does a review as well, which is  
7 outside of the Department as part of the-the-the, um,  
8 the Federal Courts.

9 COUNCIL MEMBER MILLER: So, because you  
10 kind of began the statement by giving a--a really  
11 low number, which--which would suggest that everybody  
12 is not going to be touched, but then when we talk  
13 about the difference processes, um, the possibility  
14 becomes that, and that's exactly what we're talking  
15 about. What are we looking for? What--what--what--what  
16 is--what is being asked? What are the algorithms  
17 that--that kind of set off, um, these audits and--and,  
18 um, at the end of the day are they going to be  
19 assessed and evaluated so that, um, we're--we're  
20 capturing not just capturing the target audience, but  
21 in cases of discipline that--that we always want to be  
22 better--

23 ASSISTANT CHIEF PONTILLO: Absolutely and  
24 out discipline--

2 COUNCIL MEMBER MILER: --and are we-are  
3 we evaluating that, and-and what have we seen thus  
4 far, um, that has either removed something from the  
5 process or added additional algorithms or questions  
6 to the process, um, that would make it more efficient  
7 as we move forward?

8 ASSISTANT CHIEF PONTILLO: You know, we  
9 have continued to expand this process. Um, you know,  
10 it began with a simple sampling, and then over time  
11 we've developed like I said this big data approach.  
12 We've added layers of review, we've added-we've  
13 incorporated the COMPSTAT now to make sure we're  
14 looking at the-I believe looking at body camera video  
15 for the people coming into COMPSTAT, and if we see  
16 deficiencies, we're raising it at COMPSTAT. Um, so  
17 it's being addressed, um, through multiple forms.  
18 Also, quite frankly throughout the investigation. If  
19 there's an allegation, if Internal Affairs or  
20 somebody else is looking at something, um, the first  
21 thing we look for is body camera video.

22 COUNCIL MEMBER MILLER: So, and-and then-  
23 and then and then finally, I know there was a  
24 question about how this was being perceived, um, and  
25 the-and-and what was the response in rank and file?

2 Obviously PDA felt a way about it, but as we've moved  
3 beyond that, has it become a tool? Do they see it as  
4 a tool, a resources, and has the Department, um, how  
5 much are we--how much as a Department are--are you  
6 viewing it as a tool, a resource for training, re-  
7 instruction and if-if in--if in fact, what you learned  
8 that now is providing the instruction for--for  
9 whatever the--the initial instruction on rollout was?  
10 What are we doing differently, and is there something  
11 that--that you've learned that is now being taught or  
12 instructed to the--the entire, um, workforce over  
13 there?

14 DEPUTY COMMISSIONER CHERNYAVSKY: Well, I  
15 think one of the trajectory this follows is kind of  
16 what we expected, and what was still in the police  
17 departments that initially when we rolled it out  
18 there was some skepticism. It was a significant  
19 paradigm shift from what policing had been. For many  
20 of us kind of unnatural to wear a recording device,  
21 and record ourselves all the time. Also saw  
22 something of a generational divide. You know, people  
23 of my generation are a little more reluctant based  
24 upon some of the feedback we had early on in  
25 training, but many of the younger cops coming on who

2 were very adept at and accustomed to social media,  
3 and, you know, various streaming forms. Very adept at  
4 it and embraced it rather quickly. You know, now the  
5 feedback we get and what we see even just  
6 anecdotally, um, cops for the most part fully  
7 embraced it, appreciate it, um, like having the  
8 camera. Um, I know we value it institutionally  
9 because of the value conducting an investigation,  
10 conducting--looking at an allegation. The training  
11 value is incredible. You know, we can talk about and  
12 idea, a concept in a classroom, um, or we can show  
13 some real life videos, and it's very, very impactful.  
14 So, we have incorporated body camera training into  
15 recruit training, in-service training, um, and--and  
16 now we're putting out a series of tactical training  
17 videos that uses body camera video. So, very, very  
18 powerful.

19 COUNCIL MEMBER MILLER: Thank you, um,  
20 and thank you, Mr. Chair.

21 CHAIRPERSON RICHARDS: Thank you. I know  
22 we're going to--the public is anxious to testify. I  
23 just had a few, um, last questions just staying on  
24 the topic of auditing. Would the NYPD support a bill  
25

2 requiring you to report on your auditing process, and  
3 the results of those audits?

4 DEPUTY COMMISSIONER CHERNYAVSKY: As I—as  
5 I said, you know, we—I think the right approach is  
6 that we sit down together, and figure out what the  
7 common sense approach is to report on body camera  
8 footage. I'm not going to say no to you. I mean I  
9 think that, you know, the bill—this particular bill  
10 is written. It just—it simply can't be complied with  
11 unless you're willing to fund hundreds of employees  
12 for the sole purpose of watching videos to provide  
13 these data points. With that said, I think the  
14 spirit of the bill is very clear, and I think what we  
15 can do is sit around the table and take a look at how  
16 the system works, what data we capture, how we do our  
17 auditing, then build a reporting mechanism around  
18 that that first it's not going to cost a lot of money  
19 at all and second it's going to actually give the  
20 public and your—and yourselves much greater  
21 transparency.

22 COUNCIL MEMBER MILLER: Thank you, Oleg  
23 and then, um, if you can go into you said you might—  
24 just through the monitoring sergeants obviously  
25 monitor the system in each precinct, correct. Um, you



2 audit body camera footage right, randomly. Um, so if  
3 it there are particular officers who whether through  
4 informal or formal complaints, um, seem to be  
5 increasing, would the sergeant then monitor their  
6 body camera footage a little closer or--?

7 DEPUTY COMMISSIONER CHERNYAVSKY:

8 Absolutely. So that's something we've incorporated  
9 into our Monitoring Program. So we have a  
10 Performance Monitoring Unit that looks at and tracks  
11 at-risk employees. We have a whole monitoring  
12 program with different levels of monitoring requiring  
13 different levels of supervision that also impose  
14 different types of restrictions and conditions upon  
15 an individual member of the service. That now  
16 incorporates review of body camera video, and it's  
17 also something we do when we, um, at the Force Review  
18 process. When we look at civilian complaints that  
19 are force related, um, we also look at some of the  
20 body camera videos, but we also look to see if the  
21 supervisors in that command are looking at that  
22 individual's body camera video on a regular basis,  
23 and if not-

24

25

2 COUNCIL MEMBER MILLER: It's not over the  
3 local supervisors. Is that information translated up  
4 to 1-PP or is it--?

5 DEPUTY COMMISSIONER CHERNYAVSKY:  
6 [interposing] Well, that--that's where when we do  
7 force review, it's--it's, uh, shared by myself--

8 COUNCIL MEMBER MILLER: [interposing] Not  
9 just use of force, any incidents where there seems to  
10 be--?

11 DEPUTY COMMISSIONER CHERNYAVSKY: Right.  
12 Performance monitoring is part of the Risk Management  
13 Bureau that sits above all the operational commands  
14 that's not being delegated solely to the local level  
15 although we do want supervisors on the local level to  
16 be engaged, look at these videos, and--and be plugged  
17 into that process.

18 COUNCIL MEMBER MILLER: Okay.

19 DEPUTY COMMISSIONER CHERNYAVSKY: So,  
20 we're looking to make sure they do it, but we're  
21 doing it at other levels also.

22 COUNCIL MEMBER MILLER: Okay. And then  
23 you mentioned the particular officers who could have  
24 zero, um, video footage for--for a month or so. How

2 many cases of that have we ever seen? Have we seen  
3 so far?

4 DEPUTY COMMISSIONER CHERNYAVSKY: Well,  
5 every month we have officers with no videos, but--

6 COUNCIL MEMBER MILLER: [interposing] On  
7 average how many?

8 DEPUTY COMMISSIONER CHERNYAVSKY: It  
9 depends upon the command. So, in some of the smaller  
10 commands it could be a very small number. In some of  
11 the very, very large commands, it could be as many as  
12 40 in some cases we've seen, but it doesn't mean they  
13 did anything wrong. When we look at it, we find out  
14 that they're assigned to a Community Affairs function  
15 or they are--they work in crime analysis, or they are  
16 exclusively administrative or they've been out sick  
17 or on vacation.

18 COUNCIL MEMBER MILLER: Okay.

19 DEPUTY COMMISSIONER CHERNYAVSKY: What  
20 we're looking for is to identify a subset to make  
21 sure that, um, if there's anybody who's on patrol  
22 engaging in enforcement activity that they are, in  
23 fact, recording.

24 COUNCIL MEMBER MILLER: Okay.

2 DEPUTY COMMISSIONER CHERNYAVSKY: And-  
3 and, you know we do that, and once we started doing  
4 that, we put the word out that we were doing it. So,  
5 we haven't seen problems, but it's because we do this  
6 audit.

7 COUNCIL MEMBER MILLER: And what is the,  
8 um, what are the consequences for an officer not  
9 turning on their body camera?

10 DEPUTY COMMISSIONER CHERNYAVSKY: It  
11 depends upon the facts and circumstances of the  
12 situation. Um, you know, there are situations where,  
13 um, something could happen spontaneously. You know,  
14 you turn a corner and something is going on in front  
15 of you. You jump out to intervene. In our training  
16 and in our policy we say activate your camera as soon  
17 as practicable. Um, you know, that will be fact  
18 depending. Um, sometimes there--there could be a good  
19 natured mistake, a good faith mistake. Um, so we  
20 have to evaluate those, but, you know, we have--and  
21 then there's also the field training period the first  
22 90 days. After and officer receives that camera,  
23 it's expected they're going to make mistakes because  
24 they're not used to it. So, initially, they're in  
25 that field training period. We expect that there be

2 direct supervision and instruction from a supervisor,  
3 um, and verbal admonishment. Um, beyond that, then  
4 we get into more formal discipline where either it's  
5 a supervisor's assessment entry, um, into the app  
6 that we have for documenting, you know, some failure  
7 to—to do something you're supposed to to a more  
8 formal command discipline with some penalty of time  
9 and then we've seen more extreme cases where we've  
10 had some serious misconduct that has resulted in—in  
11 much more significant penalties.

12 COUNCIL MEMBER MILLER: And then this,  
13 and in those severe cases, what would happen?

14 DEPUTY COMMISSIONER CHERNYAVSKY: It  
15 depends upon the facts and circumstances what the  
16 misconduct was.

17 COUNCIL MEMBER MILLER: [interposing] Can  
18 you describe the severe instances?

19 DEPUTY COMMISSIONER CHERNYAVSKY: Um, not  
20 without revealing, um, anything that's too  
21 identifying. Um, we've had prohibitive recordings  
22 that have resulted in—in formal discipline. We've  
23 had, um, inappropriate actions that have resulted in  
24 formal discipline, discourtesy that has resulted in  
25 more serious formal discipline.

2 COUNCIL MEMBER MILLER: Okay. Alright,  
3 you know my history and sort of why I think, the NYPD  
4 has not necessarily done as much as they can ensuring  
5 that discipline is really, um, delved out in  
6 appropriate ways, and I know we're—we're working  
7 through that. That's why we want a discipline matrix  
8 as well so that there's a standard, and everybody  
9 certainly is following one standard. Um, so I'm  
10 hoping that those who, you know, and we all are  
11 human, um, may make mistakes or certainly sent back  
12 to be re-trained, um, so that they are not making  
13 that mistake too often, but at all. Um, and then I'm  
14 assuming technologies will God willing get better. I  
15 mean we all have Siri on our phone, right? Everybody  
16 know Siri or Alexa? So, I'm hoping that the  
17 technologies will evolve and we certainly won't have  
18 to necessarily have to physically turn it on, but God  
19 willing technologies will evolve there. The last  
20 question is just on Level 1 stops. Um, so I know  
21 that there's currently a judge whose having you pilot  
22 a Level 1 stop, correct?

23 DEPUTY COMMISSIONER CHERNYAVSKY: So,  
24 this is part of the monitorship. Judge Torres has  
25 issued on an order to conduct a pilot. The question

2 is and-and just, you know, a Level 1 encounter it,  
3 um, that's a term that goes back to a 1976 New York  
4 State Court of Appeals case. *People v. DeVore*, and  
5 what the court was trying to get at was police/  
6 civilian encounters that were not an arrest or a  
7 stop, but some lower level of intrusion and, um, the  
8 plaintiffs have expressed some concern that people  
9 could misinterpret something as a Level 1 that's  
10 really a stop, and should be treated as a stop, and  
11 doesn't meet the legal threshold. So, the purpose of  
12 this pilot is to get a sense of are there other  
13 interactions out there that really rise to the level  
14 of a stop or maybe even an arrest, but just aren't  
15 being treated that way. And just to put it in  
16 context, a Level 1 encounter is any time a police  
17 officer talks to a civilian and is seeking  
18 information from that person. So, if-if I approach-  
19 if I respond to a 911 call, and I'm approaching, you  
20 know, your building and you're-you're sitting outside  
21 and as I-I come in, I ask you if you called the  
22 police. I'm speaking to you, and I'm requesting  
23 information from you. That's a Level 1 encounter as  
24 the New York State Court of Appeals has defined it.  
25 It's the lowest level of police intrusion with a

2 civilian. Um, there are a lot of public safety type  
3 Level 1's. You know, for example if we're searching  
4 for a lost child and I have a photograph of the child  
5 and I walk up to people in a park asking, Have you  
6 see this child. Those are all Level 1 encounters,  
7 right. I'm a police officer. I'm acting in my  
8 official capacity. I approach you and I ask you a  
9 question and I'm seeking information from you. Um,  
10 you know, that's more than, Hello, how are you today?  
11 So, it's-it's, you know, we have some concerns around  
12 the Level 1 documenting Level 1s because, you know,  
13 many of these are public service functions and—and  
14 this can be, you know, very invasive and very  
15 intrusive. Um, sick people. Somebody is laying  
16 unconscious in the street. I come over, Hey, are you  
17 okay? What happened? Do you need help? That's a  
18 Level 1. So, um, the goal here is for the Monitor to  
19 conduct a pilot. We're hoping to begin it in spring  
20 to look at different ways of documenting or capturing  
21 Level 1 encounters to see whether or not, um, more  
22 work in that area needs to be done, whether or not  
23 some of these are, in fact, being treated at stops  
24 even though the legal requisite for a stop isn't  
25 there, and then to make recommendations and go form



2 there. So, we're currently exploring with the  
3 monitor different ways to do that whether it's paper  
4 documentation or just expanding what we record.  
5 However, as we started out today, we talked about  
6 and—and, you know thinking back to the ACLU 2004  
7 Report that talked about just the intrusive nature of  
8 body cameras in the first place, and—and once that  
9 video was there, if it is accessible, if it is  
10 FOILable, uh, we're revealing a lot of very private  
11 information about people's lives and their homes. So  
12 there is that tension and that's what we need to work  
13 out, and the policy is designed to consider all of  
14 those things, and then ultimately Judge Torres will  
15 make a decision on what she wants to do next after  
16 the results are in from that experimenting.

17 CHAIRPERSON RICHARDS: And I'll just add  
18 on—on, um, you know those Level 1s that that low  
19 level intrusion also has built mistrust with  
20 communities as well through certain interactions. So,  
21 I'm hoping that after this pilot is done that we're  
22 certainly going to re-evaluate it. One, um, example  
23 of that is the DWB. Everybody knows at that is?  
24 Driving While Black, and, um, and this is why I  
25 didn't support second half of the Community—I forgot

2 the bill, the Community Safety Act for that specific  
3 reason as, you know, someone whose constituents have  
4 certainly experienced that, you know, it's certainly  
5 something that we're interested in having a lot more  
6 conversations around as well. Um, with that being  
7 said, thank you both for coming today. Look forward  
8 to continuing to work with you to build on the  
9 foundation. We do commend you for taking some big  
10 steps. So, I don't want you to leave here feeling  
11 it's as we're, um, you know, not happy at—with the  
12 direction we're headed in, but there's still a whole  
13 lot more work that needs to be done to make sure that  
14 this body camera program is working the way it's  
15 intended to and that's to ensure that the public has  
16 the ultimate trust and interactions between the  
17 Police Department, um, and the public. So thank you  
18 for coming today.

19 DEPUTY COMMISSIONER CHERNYAVSKY: Thank  
20 you. Thank you.

21 CHAIRPERSON RICHARDS: Alright, next  
22 panel. Michael Sisitzky New York City Civil  
23 Liberties Union; Laura Heck Wella Brennan Center of  
24 Justice for Justice. I'm chopping your names up;  
25 Jacqueline Caruana, Brooklyn Defender Services;

2 Steven Wasserman, Legal Aid Society; Lenora Easter,  
3 the Bronx Defenders. [pause] Alrighty, Michael  
4 Sisitzky, New York Civil Liberties Union; Laura Heck  
5 Wella, Brennan Center for Justice; Jacqueline  
6 Caruana, Brooklyn Defender Services; Steven  
7 Wasserman, Legal Aid Society; Lenora Easter, Bronx  
8 Defenders, (background comments/pause) Alrighty, you  
9 may begin. Ladies first. (background comments/pause)  
10 Wait. Hold on.

11 STEVEN WASSERMAN: Good afternoon. I'm  
12 Steven Wasserman with the Legal Aid Society. I  
13 represent the Legal Aid Society and our class action  
14 plaintiffs in the Federal Monitoring process. I am  
15 also reviewing the body-worn camera footage the we  
16 received in conjunction with pre-trial discovery. I  
17 mean you've already had I think a very exhaustive  
18 description of the program. I would like to call  
19 attention to three concerns that we have already  
20 witnessed. One having to do with the quality of the  
21 body-worn camera footage that we're receiving in  
22 discovery and secondly, the problems that we  
23 anticipate with—with the timing of discovery once the  
24 new discovery statute comes into effect about six  
25 weeks from now. You know, first of all, um, we have a

2 large body of tangible evidence of under-recording.  
3 Um, we have dozens of useless body cam recordings  
4 provided by the NYPD in connection with pre-trial  
5 discovery, recordings, which typically begin with an  
6 image of a suspect who was already under arrest and  
7 in handcuffs. If the camera had been properly  
8 activated, um, which would give you that one-minute  
9 buffer on the Axon cameras, um, these recordings,  
10 which include both pedestrian and automobile stops  
11 should have contained the observations that led the  
12 police to stop, approach and question the defendants.  
13 The truncated recordings, which we are getting in  
14 very large numbers they are no evidentiary value, um,  
15 and they result from a willful failure by some patrol  
16 officers to activate their cameras or to press the  
17 record button in time to show what they saw, and-and  
18 how they responded. Um, this is a very costly  
19 program, and I-I think it is going to be very  
20 important to-to, um, to encourage the patrol officers  
21 to-to activate their cameras in time to-to obtain  
22 recordings, which are of any value in showing  
23 compliance with the Fourth Amendment. That said, we  
24 anticipate some major problem with pre-trial  
25 discovery. The routine time for disclosure of the

2 body-worn camera footage would be within 15 days of  
3 arraignment, but that is extendable at the behest of  
4 the district attorney [bell]

5 CHAIRPERSON RICHARDS: Go. Keep going.

6 STEVEN WASSERMAN: Is that? Oh.

7 CHAIRPERSON RICHARDS: Keep going.

8 STEVEN WASSERMAN: I'm sorry. Oh, um that  
9 is extendable at the behest of the district attorney.  
10 On the other hand, there is also a deadline, and this  
11 is not an extendable deadline, um, that—that every  
12 accused who has been offered a negotiated plea, um,  
13 is supposed to receive the body cam recordings three  
14 days in advance of—of entering that plea, and—and  
15 being sentenced. This is a particularly important  
16 feature of the new discovery law. It will mean that  
17 Fourth Amendment violations are not going to be  
18 masked or not going to be, um, overlooked as a result  
19 of—of pleas. I mean very often we—we are offered, you  
20 know, very generous and lenient pleas. Um, and of  
21 course we're giving up our Fourth Amendment rights in  
22 connection with that, but at least under the new  
23 discovery statute, we're entitled to see the  
24 encounter. We're entitled to know what we're giving  
25 up. We think, um, there is a very low probability

2 that the police and/or the DA is going to be able to  
3 comply with the new discovery statute. The—the  
4 police are going to give the DA the body-worn camera  
5 footage in an un-redacted form. We are not going to  
6 get it in an unredacted form. It is not altogether  
7 clear who's going to be responsible for doing those  
8 redactions. Um, I—I, um, I think at the very least  
9 they're—they're going to need a lot more resources in  
10 order to comply with state law. Thank.

11 CHAIRPERSON RICHARDS: Thank you.

12 JACAUELINE CARUANA:

13 JACAUELINE CARUANA: Hi, good afternoon.

14 My name is Jacqueline Caruana. I'm a senior attorney  
15 with Brooklyn Defender Services. I want to thank  
16 Chairperson Donovan Richards and other members of the  
17 Committee for allowing us to speak today. Um, I want  
18 to start by addressing some of the testimony from  
19 representatives of NYPD that we just heard about in  
20 regards to extending the buffering period to mirror  
21 cities like Washington D.C. where it's two minutes. I  
22 know Council Member Richards did ask about that. I  
23 believe that NYPD's position was that they haven't  
24 seen situations where it would be helpful to extend  
25 it back. Um, the majority of the footage that we see

2 in Brooklyn has a 30-second buffering period. So  
3 this other camera that has the one-minute, we're not  
4 seeing very many of those. Um, the majority of them  
5 has this 30-second buffering period and the officers  
6 are trained on this 30-second buffering period, which  
7 means that they're aware that this 30-second period  
8 exists prior to them pushing the button, and it's not  
9 that difficult for them to count back 30 seconds  
10 before pushing the button. Um, and the reason why it  
11 would be helpful to extend that buffering period, um,  
12 to at least two minutes is because it reveals police  
13 misconduct, and I want to give you an example of a  
14 case that, um, of a client that we had in our office  
15 where this is extremely on point this buffering  
16 period. Um, the client that we represented was on  
17 his way home from picking up dinner for his family  
18 when his car was stopped by an NYPD officer. The  
19 officer had recently been outfitted with the new  
20 body-worn camera meaning that's the one that has the  
21 one-minute, um, buffering period as opposed to the  
22 30-second one. He had been recently outfitted with  
23 that one, and he was unaware that he had been  
24 outfitted with a different camera that had a longer  
25 buffering period, and he began recording—so his body

2 camera began recording one minute prior to the manual  
3 activation rather than the previous 30-second period.  
4 When that footage started, the first that we received  
5 it was clear that the officer is seen placing a  
6 weapon in the glove compartment of our client's car.  
7 He's then seen waiting before activating the camera  
8 so actually meant to recount in the 30-second  
9 buffering period, and he then goes back into—he then  
10 turns on the camera, goes back into the glove  
11 compartment of our client's car, and pretends to  
12 discover the weapon that he had placed there. Our  
13 client was arrested, charged with possession of that  
14 weapon, which he adamantly denied during the several  
15 months of the—during the entire pendency of his case.  
16 The body camera footage was turned over, but not for  
17 several months after his initial arraignment and the  
18 case was then dismissed after the defense attorney  
19 pointed out that the obvious planting of the evidence  
20 to the district attorney on the case. That officer  
21 is still employed by NYPD. I believe that the  
22 representative from NYPD said that they were  
23 concerned primarily about protecting the privacy of  
24 the public [bell] in regards to this rollback or this  
25 buffering period, and it—to me it's clear that



2 they're concerned about protecting officers who were  
3 committing misconduct. That two-minute period that  
4 they have in Washington, D.C. would certainly capture  
5 more police officer misconduct than the 30-second  
6 time period that they're utilizing today. Um,  
7 additionally, I also want to point out that the  
8 representatives from NYPD testified that they did an  
9 audit of a sample of body camera footage, um, to  
10 determine whether or not the cameras were turned on  
11 when mandated by Patrol Guide. Um, which for the  
12 most part is at the beginning of the police/citizen  
13 encounter, not at the time of arrest, and just as you  
14 heard from my colleague, um, what we are seeing, the  
15 majority of what we are seeing in the body camera  
16 footages that we get, the body cameras are actually  
17 activated at the time of arrest, and the, um, the  
18 statistic that was given by the NYPD representative  
19 was that 92% of what—of the footage they're auditing  
20 is in compliance with the Patrol Guide. [coughing]  
21 So either that audit is captured in a very  
22 significantly skewed data sample, or that calculation  
23 is just simply inaccurate, and I do want to just give  
24 one more example of how this comes into play when  
25 we're dealing with the body camera footage not being

2 turned on until the time of arrest. Um, and this is  
3 an individual that I represented for almost two  
4 years. Um, in his particular situation he was  
5 walking home at night from a local deli with his  
6 sister, and further up the block there were two other  
7 individuals who were in a fight in the middle of the  
8 street. Um, the police officer in this case had  
9 observed this fight. He then, um, also said that he  
10 observed someone throwing a firearm on the ground and  
11 the police officer gets out of his car with his gun  
12 drawn. The two people in the fight take off running,  
13 and my client and his sister remained standing where  
14 they are on the sidewalk. The police officer points  
15 his gun at my client, tells him to put his hands up,  
16 which he did. The police officer then physically  
17 walks my client over to a nearby fence and handcuffs  
18 him. It's at that point that body camera footage is  
19 turned on. The only reason why we know about any of  
20 what happened prior was this 30-second buffering  
21 period, but nothing was captured about this fight.  
22 Um, it's clear that he didn't even turn on the body  
23 camera at the time that he drew his service weapon  
24 when he exited the vehicle. At the very least the  
25 Patrol Guide would mandate that. Um, and so what

2 ends up happening is that my client is arrested and  
3 charged with possession of this firearm that's found  
4 in the middle of the street, and the officer claims  
5 that prior to this body cam footage being recorded  
6 that he observed my client throw it on the ground.

7 My client voluntarily submits a DNA sample. His DNA  
8 is excluded from an almost full profile that was  
9 actually recovered from the firearm on the ground.

10 Um, so clearly his DNA is not on the firearm, and  
11 through almost two years of defending him and  
12 litigating this case, the District Attorney's Office  
13 refused to dismiss the case. They did come down

14 significantly in their offer, but I—and the reason  
15 why they didn't dismiss the case is because they

16 believed and they said to me directly that they  
17 believed this officer was credible even though his  
18 body camera footage didn't capture because he said

19 well, it happened before the body camera footage  
20 turned on, and so this is the situation that we're  
21 dealing with. We're back to the police officer's

22 word versus the word of a member of the public, and  
23 that's what we're trying to avoid by using body

24 camera footage, and having that available. Um, so, I  
25 just want to point out that there is just not much in

2 the current NYPD policy that even references a plan  
3 to improve transparency or accountability, and again,  
4 based on NYPD's recent staunch and vocal opposition  
5 to State and Senator Jamaal Bailey's plan for the  
6 repeal of Civil Rights Act 50-A, which again is  
7 imperative for achieving transparency and  
8 accountability, it does not appear that the  
9 Department intends to you body-worn cameras to  
10 enhance transparency, but instead intends to expand  
11 police power and surveillance. Thank you very much.

12 CHAIRPERSON RICHARDS: Thank you for your  
13 test—that you for your testimony, and, um, just a  
14 quick question. Can you physically see when the  
15 police turn on the body camera? Do you see footage?

16 JACAUELINE CARUANA: Some, yes. Sometimes  
17 you can. You can see them lift their hand to push the  
18 button on because the 30-second period has already  
19 started, but it's vey clear when—you right. It's very  
20 clear when you can distinguish between the buffering  
21 period and when they turn it on because there's no  
22 sound during the buffering period.

23 STEVEN WASSERMAN: There is no sound  
24 during the buffering period. The audio only kicks in  
25 30 seconds later.

2 CHAIRPERSON RICHARDS: Yeah, we—we've  
3 heard stories of dead silence.[laughs] in 30 seconds  
4 sometimes. Alright.

5 Good afternoon. Thank you Council Member  
6 Richards for holding this hearing and inviting, um,  
7 the Brennan Center to testify. My name is Laura Heck  
8 Wella. I'm a legal fellow with the Liberty and  
9 National Security Program at the Brennan Center.  
10 We're a non-partisan law and policy institute that  
11 seeks to improve our systems of democracy and  
12 justice. As part of this work we have documented the  
13 body camera policies of Police Departments throughout  
14 the United States and in addition body cameras were  
15 one of several tools that we analyzed in a chart  
16 published month no the NYPD's surveillance  
17 technologies. As this bill contemplates, it's  
18 important that the NYPD's use of body cameras is  
19 overseen closely by the City Council. Although body  
20 cameras are often heralded as a straight forward tool  
21 to improve law enforcement accountability, in fact,  
22 they raise significant concerns related to privacy,  
23 data retention and disclosure particularly when used  
24 in conjunction with other technologies like facial  
25 recognition. Body cameras can conceivably function

2 as mass surveillance devices of ordinary New Yorkers.  
3 Given the history of body cameras in New York city  
4 originating out of a lawsuit challenging the NYPD's  
5 unconstitutional Stop and Frisk Program, it's  
6 important to ensure that surveillance of marginalized  
7 communities is not a byproduct of a program that was  
8 intended to improve accountability and repair public  
9 trust. The Brennan Center is concerned that the  
10 proposed bill does not go far enough in ensuring body  
11 cameras do not improperly invade New Yorkers' civil  
12 rights and civil liberties. For example, retention  
13 of body camera footage for a year or more under NYPD  
14 policy generates a large database. We heard today  
15 that they already have 8 million videos in their  
16 database, and NYPD should be required to make  
17 generalized reports on whose accessing the body  
18 camera footage and for what stated purpose whether  
19 it's for a particular case or just for generalized  
20 investigations. The City Council should also require  
21 the NYPD to report on whether and how often it shares  
22 body camera footage with federal, state or other law  
23 enforcement agencies. It's imperative the City  
24 Council requires the NYPD to report on its use of  
25 biometric tools to analyze body camera recordings.

2 When the NYPD was testifying earlier, they mentioned  
3 using algorithms to analyze their body camera footage  
4 and if they are also using facial recognition. This  
5 raises concerns about Fourth Amendment and First  
6 Amendment free speech. We cannot continue to address  
7 surveillance technologies like body cameras and  
8 isolation. When these tools are used in combination  
9 with one another, they create layers of surveillance  
10 that's incompatible with a democratic society. It's  
11 worth noting that body cameras will be covered by the  
12 Post Act, a proposed bill that would require the NYPD  
13 to disclose basic information and issue privacy  
14 impact reports about its surveillance tools. Because  
15 the Post Act would require high level details about  
16 body-worn cameras, it would be a valuable companion  
17 to today's proposed bill, which mandates more  
18 detailed reporting on specific incidents. Thank you  
19 for the opportunity to testify, and I'm happy to  
20 answer any questions.

21 CHAIRPERSON RICHARDS: Thank you. [bell]  
22 body cameras.

23 LENORE EASTER: Hello. Okay. Chairman  
24 Richards and fellow Council Members. My name is  
25 Lenore Easter, and I am a staff attorney and the Team

2 Leader of the Early Defense Team for the Criminal  
3 Defense Practice at the Bronx Defenders. I want to  
4 thank you for this opportunity to testify today, and  
5 for your interest in this important matter. As a  
6 public defender for over 10 years, a recurring  
7 concern I often hear from my clients is the  
8 expression of dismay that their voice will be unheard  
9 and disregarded when it comes to encounters with the  
10 police that the officer's word would hold a greater  
11 weight than their own. As you know, and as we've  
12 spoken here today, NYPD's Body Cam Program arose out  
13 of the Stop and Frisk litigation in the case of *Floyd*  
14 *v. City of New York*. After declaring the practice  
15 unconstitutional, the Federal District Court directed  
16 the NYPD institute a pilot project with the body  
17 cameras, noting that the cameras would and I quote:  
18 "Provide a contemporaneous objective record stop and  
19 frisk allowing for the review of officers' conduct by  
20 supervisors and the ports. (sic) While we were  
21 initially hopeful that the body camera program would  
22 help our clients to finally have a voice, this has  
23 not happened. While we now see body footage camera  
24 in many of our cases, our colleagues at BDS stated it  
25 really captures the full story, and that's because



2 NYPD's policy, Body Worn Camera policy is poorly  
3 formulated, and rarely followed by the individual  
4 officers. As we all know, the Patrol Guide states  
5 that an officer must activate his body-worn camera  
6 prior to engaging in or assisting another  
7 uniformed member in police action. This is mandatory  
8 for all uniformed members of service as well as  
9 specialized units. However, while we are seen in the  
10 Bronx as a majority of the officers are failing to  
11 follow their own protocols, or exploiting the large  
12 loophole in the protocol in order to avoid capturing  
13 street encounters, and the loophole that I—that I  
14 refer to states: "In the event of an unanticipated or  
15 exigent occurrence, activate the body-worn camera as  
16 soon as it is feasible and space to do so after  
17 taking necessary police action to preserve human  
18 health and safety. Now, while this success seems  
19 reasonable on its face, we have found that officers  
20 have exploited it in order to avoid recording stops  
21 and searches of individuals suspect of criminal  
22 activity altogether. I want to discuss two examples  
23 briefly. Take the case of our young son. We're going  
24 to call him Nicholas who was charged with possession  
25 of ammunition as the police approached him on the

2 street. At a suppression hearing in the case, the  
3 officer testified the while sitting in the car he and  
4 two other officers noticed that Nicholas was walking  
5 down the street in a suspicious way. Based on these  
6 observations, the officer made the decision to get  
7 out of the car, and approach Nicholas and say,  
8 quote/unquote "hello to him." This approach  
9 initiated a series of events, which ended with  
10 Nicholas being tackled and arrested. Now, although  
11 the officer was wearing his body-worn camera, the  
12 entire time, he failed to [bell] press record until  
13 after Nicholas had been tackled and placed into  
14 handcuffs. When asked by the court why he didn't  
15 activate the body-worn camera before getting out of  
16 the car and approaching the client, the officer  
17 responded "I don't have an answer to that." He later  
18 testified in the same hearing "I didn't have to turn  
19 it on until I thought it was okay to turn it on, and  
20 I didn't have to turn it on before I exited the  
21 vehicle." Now, as a result of the-of this, the  
22 entire initial stop, the entire search was all not  
23 captured. So, basically what was happening here was  
24 the officer was able to completely control the  
25 narrative in this particular case. Not giving the

2 court the opportunity to make an objective decision  
3 as to whether this stop was legal or not. Another  
4 case that was handled by our office we'll name her  
5 Susan, a 59-year-old woman with no prior contact with  
6 the criminal legal system whatsoever was in her house  
7 cleaning when her oven sounded the smoke alarm.  
8 Police and Fire Department arrived, banged on her  
9 front gate. When she told them she was fine, and  
10 didn't need assistance, they broke the gate, stormed  
11 into the apartment and they tackled her. She was  
12 arrested and charged with resisting arrest and  
13 obstructing government administration. Now, in the  
14 process she sustained serious injuries to her knees  
15 and back, which later required surgery. Now, though  
16 the police officers who participated in this arrest  
17 were wearing body cameras, the cameras were never  
18 turned on, and only one was turned on once Susan was  
19 actually put into arrest. After they had forced their  
20 way into the home and they assaulted her, once again,  
21 the body cameras were not recording when they should  
22 have been. These are just two stories of many  
23 instances that we're seeing in the Bronx where  
24 officers are failing to following their own stated  
25 policies and have relied on the loophole of in that

2 policy to avoid recording interactions with their  
3 clients—with our clients. In both instances, these  
4 officers used their discretion in deciding when they  
5 were going to report. The Bronx Defenders applaud  
6 the City Council for introducing legislation that  
7 demands more transparency and requires the NYPD to  
8 report important information about the use of body  
9 cameras. The public would certainly glean insight  
10 into information that has been held solely by the  
11 Department. However, we believe that the City  
12 Council, can go further in their roll in overseeing  
13 the Body Camera Program. So, the Bronx Defenders  
14 respectfully offers the following recommendations to  
15 the Council in order to work into its oversight  
16 capacity. (1) As has been stated here, we suggest  
17 increasing the pre-event buffering period to two  
18 minutes. As Council Member Richards and as our  
19 colleague from BDS stated, there are several big  
20 cities and that's DC as well as Houston that have the  
21 same technology and they are able to capture the—  
22 have—extend their pre-event buffering period to two  
23 minutes where NYPD still has it in 30 second. NYPD  
24 must do the same. This will increase—this increase  
25 will reduce the likelihood of incomplete footage and

2 problems that are associated when officers fail to  
3 activate the recordings when they are supposed to.  
4 Our second recommendation is to close the exigency  
5 loophole and provide clear guidance to officers and  
6 the public. The current policy, which gives police  
7 officers complete discretion in determining when to  
8 start recording on the basis of unanticipated or  
9 exigent occurrences leads to too many critical  
10 encounters that will not be recorded or partially  
11 recorded. Turning on the body camera should be as  
12 second nature as calling into the radio at the  
13 station house. This loophole will presume—presumably  
14 present to ensure—was presumably put in place to  
15 ensure safety. However, it raises more questions  
16 than the problem it seeks to address, and out paying  
17 (sic) should be eliminated. Lastly, but most  
18 importantly, we believe meaningful sanctions should  
19 be imposed to officers who fail to comply with the  
20 NYPD policy. Now, NYPD spoke a little bit earlier  
21 about certain steps that they take when the officers  
22 don't follow, um, the directives, but we currently—to  
23 us there is currently no disciplinary policy in place  
24 for violations or failure to comply with the proper  
25 protocol, and the only way to ensure that the body

2 cameras serve the intended purpose of enhancing  
3 police accountability is by— is by specifying clear  
4 consequences for failing to report critical  
5 encounters in violation of departmental policy. The  
6 Department must make clear to its officers and to the  
7 public that these measures are in place to ensure  
8 compliance. In conclusion, we believe that it's  
9 imperative that New York evaluate and adopt the  
10 policies for the use of the body camera program that  
11 are consistent with the law and public expectations  
12 of privacy and accountability. Thank you.

13 CHAIRPERSON RICHARDS: Thank you.

14 MICHAEL SISITZKY: Good afternoon. Thank  
15 you, Chair Richards. My name is Michael Sisitzky.  
16 I'm lead Policy Counsel with the New York Civil  
17 Liberties Union. The NYCLU has long believed that  
18 with the right policies to govern their use, the body  
19 cameras can be a powerful tool for transparency and  
20 accountability, but without clear commitments to  
21 those principles, they become just another tool for  
22 surveillance, another shield for the departments to  
23 use to protect abusive officers from public scrutiny,  
24 and the NYPD has yet to demonstrate a truly sincere  
25 commitment to using body cameras as a tool for

2 increasing transparency and for repairing  
3 relationships with communities. We must continue to  
4 demand greater transparency from the Department  
5 regarding its use of body cameras including through  
6 the legislation before the committee today, but this  
7 must be part of an ongoing and broader examination as  
8 to whether the public is actually receiving the  
9 promised benefits from the thousands of cameras now  
10 deployed in our communities. The single biggest  
11 threat to the effectiveness of body cameras is the  
12 enormous level of control officers and departments  
13 have on the devices and on the information they  
14 capture. Troublingly the NYPD's policy expressly  
15 permits officers to view their own recordings prior  
16 to providing any official statement regarding an  
17 incident. Earlier the NYPD testified about its  
18 process for, um, certain use of force incidents,  
19 critical incidents where the footage will be seized  
20 and not accessible to anyone I think as I said until  
21 the department deems it permissible, deems it  
22 appropriate. What they left out of that conversation  
23 was the fact that NYPD policy views it as appropriate  
24 for officers to view their own footage even in  
25 critical incidents, even in uses of deadly force

2 prior to giving an official statement to  
3 investigators on that matter. Um at best, this type  
4 of provision risks scenarios in which an officer's  
5 recollection of events is inadvertently colored by  
6 what they see on the footage and at worst, this  
7 provision provides officers who are under  
8 investigation with the opportunity to deliberately  
9 tailor their statements based upon what the footage  
10 reveals. This provision and the lack of any clear  
11 commitment in the policy to hold officers accountable  
12 for failing to adhere to the policy, suggests a  
13 refusal by the NYPD to accept that body cameras are  
14 primarily meant to be tools for enhancing police  
15 accountability. The CCRB has reported that it's been  
16 encountering significant delays in obtaining body  
17 camera footage. We heard a lot about that earlier.  
18 Um, the NYPD testified that there are some requests  
19 that get processed within 30 days. Those requests  
20 were the exception and in the CCRB's November  
21 Statistics Report the agency reported that 57.5% of  
22 their requests for body camera footage from the NYPD  
23 had been pending for at least 30 days and 16.4% of  
24 their requests had been pending for 90 or more days,  
25 and it's worth emphasizing that CCRB operates within



2 180 days statute of limitations to bring charges  
3 against officers. The NYPD attributes these delays to  
4 their need to review, and some cases to apply  
5 redactions to recordings, which is unlike their  
6 process as they described for sharing footage with  
7 DAs in which the officer can share [bell]  
8 automatically the full unedited recordings with  
9 prosecutorial agencies. Unlike the agency tasked with  
10 civilian oversight, which is forced to endure these  
11 excessive delays. As a government investigative and  
12 oversight agency, the CCRB should generally be  
13 afforded direct access to unredacted footage from the  
14 department, as in the case—as is the case in places  
15 like San Francisco, New Orleans and Washington, D.C.  
16 To do otherwise would be to suggest the NYPD use this  
17 technology primarily as just another gadget to like  
18 evidence for use in criminal prosecution, and last  
19 month the department released a policy to govern the  
20 release of footage related to critical incidents,  
21 which we've heard a great deal about earlier. The  
22 policy says that the NYPD will decide within 30 days  
23 when to release footage constituting representative  
24 samples of critical incidents, and of salient events  
25 leading up to them, but this policy does little to

2 relay concerns about excessive delays and unchecked  
3 discretion. A policy that frames the release of  
4 footage in terms of representative samples and  
5 salient events is not enough to inspire public  
6 confidence especially when it's the NYPD deciding  
7 which samples are representative and which events  
8 salient. At worst, it's just more of the concern  
9 about controlling the narrative around these types of  
10 events than it does express a commitment to a full  
11 public accounting of officer actions. And lastly,  
12 there was some discussion about whether or not  
13 officers should be activating cameras at Level 1  
14 encounters. I just want to be very clear that the  
15 example that's often used, and that was used earlier  
16 is the officer searching for a missing child as the  
17 classic example of a Level 1, but a Level 1  
18 encounters do not have to be focused on kind of the-  
19 the feel good stories about policing. They have  
20 included and courts have found Level 1 encounters to  
21 include requests for ID from people standing outside  
22 public housing buildings. They've included scenarios  
23 where officers approached someone and they're resting  
24 their hand on the butt of their gun, which creates a  
25 climate of intimidation, one that can quickly

2 escalate, and perhaps escalate more quickly than an  
3 officer can turn on a camera. So we have always  
4 believed that cameras should be turned on for all  
5 investigatory encounters including Level 1. Thank  
6 you for the opportunity to testify. The NYCLU  
7 remains hopeful that we can get these policies right,  
8 an that body cameras can be a tool for transparency  
9 and accountability, but again, this needs to be an  
10 ongoing conversation, and if it becomes apparent that  
11 these cameras are not being used to enhance  
12 transparency to give public defenders, um, the access  
13 that they need the footage for their cases, and that  
14 instead these cameras are primarily being used for  
15 surveillance and tools for prosecution, then we have  
16 to be open to reconsidering what are substantial sums  
17 that we're currently spending on this NYPD program  
18 could be better invested directly in our communities.  
19 Thank you.

20 CHAIRPERSON RICHARDS: Thank you all for  
21 your testimony. Thank you. Do you want to add  
22 anything else? Anybody have anything? Okay, thank  
23 you. We got a—

24 STEVEN WASSERMAN: It seems like you're  
25 going to have that sit-down with the Police

2 Department about what sort of reporting requirements  
3 there should be. If there is one thing that you  
4 really should require of them it's, um, it's that  
5 they should give you a--a very complete report on non-  
6 recorded and under-recording.

7 CHAIRPERSON RICHARDS: Got it. Thank  
8 you. Alright, the last panel. Towaki Kamasu, Ian  
9 Head from the Center for Constitutional Rights,  
10 Albert Fox Cahn, Surveillance Tech Oversight Project'  
11 Naoki Fujita, Take Root Justice. Mr. Towaki, I heard  
12 that we--we messed up a little bit, Mr. Towaki. Mr.  
13 Towaki, I heard we messed up. We didn't get your--  
14 your email or I didn't get your email. I'm not sure.  
15 I heard we messed up on getting you your opportunity  
16 to--yeah. So I apologize for that in advance.  
17 Alrighty, no problem. I want to make sure I have  
18 everybody else. Towaki, I got you Naoki Fujita, Take  
19 Root Justice. No. Ian Head, Center for  
20 Constitutional Rights. You're here. Albert Fox  
21 Cahn. Oh, he left. Okay, anybody else wish to  
22 testify now is your moment. Alrighty, seeing none you  
23 may begin. [pause] [laughter] like how the camera is  
24 supposed to work, right. [laughter] Right?

2 IAN HEAD: Right. Thank you. Um, thank  
3 you. My name is Ian Head. I'm a Senior Legal Worker  
4 at the Center for Constitutional Rights. Thank you  
5 for inviting us to testify. I'm here today and I'm  
6 part of the legal team on the *Floyd* litigation that  
7 has been talked about throughout, um, this morning.  
8 I think I'm just going to read part of my written  
9 testimony, and then maybe address a couple of things  
10 that were said by the NYPD earlier. The Center for  
11 Constitutional Rights has been involved as has been,  
12 um, talked about with New York City Body Camera  
13 Program and policies since 2013. We feel strongly  
14 that body-worn cameras by themselves will not bring  
15 about more accountability in policing, but instead  
16 the cameras must be paired with robust systems of  
17 oversight, transparency and discipline with the NYPD.  
18 The need for police accountability and civilian  
19 oversight continues to be incredibly high in the six  
20 years since the *Floyd* decision. While the reported  
21 numbers of stops and frisks may have declined, the  
22 NYPD struggles with accurate-accurately documenting  
23 the true number of stops, and more importantly,  
24 severe racial disparities and discriminatory  
25 practices remain. Furthermore, recent and ongoing

2 incidents of police violence and other misconduct  
3 show that there is yet to be a real and necessary  
4 culture shift in NYPD rank and file in regards to the  
5 policing of communities of color and real  
6 accountability for officers who endanger and violate  
7 the rights of New Yorkers. The communities of color  
8 that were at the center of NYPD's illegal practice of  
9 Stop and Frisk that continue to be the most impacted  
10 by police violence and misconduct should have a  
11 central role in determining how body-worn cameras and  
12 footage are used. As part of the same remedial  
13 decision ordering the body camera worn pilot, the  
14 *Floyd* court correctly stated that no amount of legal  
15 or policing expertise can replace a community's  
16 understanding of the likely practical consequences of  
17 reforms in terms of both liberty and safety. This  
18 continues to hold true in 2019, and the Center for  
19 Constitutional Rights believes that the voices and  
20 leadership of these communities must be given the  
21 same if not more weight than any other decision  
22 making body including the NYPD when it comes to body  
23 worn camera policies, and I'll just stop there, and  
24 address a couple of things. It felt like throughout  
25 the NYPD's testimony, um, there was talk of lots of

2 confrontation with community stakeholders, um, and I  
3 think just to—from CCR's perspective and experience  
4 in the monitoring process in the *Floyd* litigation,  
5 um, while there may have been some consultation  
6 leading up to the body-worn camera policy, I'm not—  
7 I'm not sure whether it was quite as robust as they  
8 testified to, and to my—to my knowledge and our  
9 knowledge, the, um, the new policy around critical  
10 incidents, um, release we hadn't talked about [bell]  
11 we were unaware. Um, a couple other things really  
12 briefly, there, um, I think just—just in regards to  
13 kind of how community input, which has been talked  
14 about in regards to Level 1 stops, I believe it was  
15 stated that this was something that came from the  
16 plaintiffs. It ignores again that there was a, um,  
17 almost two-year process of—of community input, um,  
18 and a 300 plus page report that was ordered by the  
19 court and that came out in 2018 where, um, a Level 1—  
20 recording of Level 1 and Level 2 stops, um, in the  
21 regards to the—the *DeVore* case, um, was a really  
22 important, um, really important to the communities  
23 being impacted, some in the communities represented  
24 in the *Floyd* litigation, and so I think this wasn't  
25 just something that plaintiffs' attorneys came up

2 with. We thought Level 1—recording Level ones would  
3 be a good idea. um, again we—we believe that—that  
4 the, the ideas from community input and from the  
5 impacted communities are the ideas that need to shape  
6 how these policies and these tools are used. Um, I  
7 think, uh, I think I'd stop there. We support a lot  
8 of the things that have been said in regards to  
9 making sure family members have access to video, um,  
10 in regards to the problems with the massive logs and  
11 backlog with CCRB, getting CCRB footage, um, and we  
12 include in our testimony some suggestions in regards  
13 to maybe capturing even more data in the Public  
14 Advocate's Intro Bill 1136 and, um, kind of making it  
15 more specific to making sure it does capture those  
16 Level 1 and Level—and report on Level 1 and Level 2  
17 encounters. Thank you.

18 CHAIRPERSON RICHARDS: Thank you, Mr.  
19 Head.

20 TOWAKI KOMATSU: I am Towaki Komatsu. Um,  
21 two years ago on December 26, 2017, I was in this  
22 room testifying to Corey as well as Vanessa Gibson  
23 about the NYPD, against the NYPD. I sent an email to  
24 you on November 8<sup>th</sup> about having arrangements made  
25 for today's hearing such that I could prevent video.



2 I had gotten response to whoever I talked to on  
3 November 13<sup>th</sup> at the Mayor's Public Town Hall  
4 meeting, the same request, no response. So, as a  
5 result I want to have today's hearing cancelled  
6 personally to New York's Open Meetings Law. Before I  
7 do that, though, let me play some pertinent audio and  
8 video recording. The first one is of the C Service  
9 Interview. It's a court officer. Sorry NYPD Officer  
10 Corey Harris after he illegally stopped, assaulted,  
11 seized, harassed, injured and arrested me. Here's  
12 the [inaudible]

13 COURT OFFICER: Yes I matched and, um,  
14 did you take any of your photos on your cell phone?

15 POLICE OFFICER: Yes from a department  
16 issued body camera. The whole encounter is recorded.

17 EXCERPT OF RECORDING FROM BODY CAMERA:

18 COURT OFFICER: Okay great.

19 TOWAKI KOMATSU: Okay, that's it. Um, so  
20 the reason why that remark is pertinent is because  
21 I'm still—I still don't have 75% of the NYPD body  
22 camera video from that incident. Only like 25%, the  
23 last about 10 minutes. It's two years after the  
24 incident. So, the point is you heard a lot lies today  
25 while Oleg was in the chair under oath. The question

2 is, um, if you're a leader, what exactly are you  
3 going to do to get me all the body camera's video  
4 before my December 11<sup>th</sup> court hearing for trial in  
5 front of a jury. Um, next video that I'm going to  
6 play for your benefit is the actual NYPD body camera  
7 video that I got, a very small fragment. Here we go.

8 TOWAKI KOMATSU: It was a public  
9 sidewalk. The question is if I'm walking on a public  
10 sidewalk conducting myself lawfully, why in the hell  
11 did I have the NYPD officer put his hands on me, and  
12 guess what? I'm not Black. The kicker is why have  
13 they exonerated me because substantially my  
14 complaints are against NYPD officers.

15 EXCERPT OF RECORDING FROM NYPD BODY

16 CAMERA (AUDIO UNCLEAR)

17 FEMALE SPEAKER: We do, too.

18 TOWAKI KOMATSU: So, you can figure that  
19 out.

20 FEMALE SPEAKER: Oh, Lord.

21 TOWAKI KOMATSU: Like a federal judge  
22 having a fucking case, that's a lot to be asking,  
23 right.

24

25

2 MALE SPEAKER: In particular EDP, this is  
3 East 456 and Clinton in front of a bus, and one  
4 additional 90. Say it now.

5 MALE SPEAKER: Did you receive something  
6 there? People are walking around where they--

7 POLICE OFFICER: 10-4. Hold on. Well  
8 it's not this.

9 TOWAKI KOMATSU: Is there a sign saying  
10 you can't do so?

11 POLICE OFFICER: They're a range. That's  
12 supposed to go. I mean I thought that's what  
13 everyone else was going to do.

14 RADIO: At 11.

15 TOWAKI KOMATSU: Is there something  
16 (inaudible)

17 POLICE OFFICER: Exactly.

18 RADIO: And where are you all?

19 POLICE OFFICER: And it was once up--

20 TOWAKI KOMATSU: Let me cut to the chase.

21 Four months after that incident he was involved in  
22 another stop. People in an Uber. Guess what, he  
23 didn't have his body camera on. So, the question is I  
24 met him on December 26, 2017 12 days after I was in  
25 this room [bell] testifying. I didn't—I still

2 haven't gotten in sent some of the NYPD body camera  
3 video. Four months thereafter, CCRB reports confirmed  
4 he didn't have his body camera on either. So, I guess  
5 the question is who in the hell next is he going to  
6 victimize by not having his body camera on, and is he  
7 going to use his gun when he doesn't have his body  
8 camera on, and what are going to be I guess the  
9 repercussions when people like me sit in this room  
10 are telling you face-to-face truthfully, lawfully  
11 that recourse, appropriate justice be taken so that,  
12 you know there won't be a next victim. The last  
13 question is can you get me that body camera video  
14 before December 11<sup>th</sup>?

15 CHAIRPERSON RICHARDS: I will have Jordan  
16 from my staff follow up and we will do our best.

17 TOWAKI KOMATSU: And I guess the other  
18 thing is with regards to preparations for today's  
19 meeting is there any reason why arrangements were not  
20 made?

21 CHAIRPERSON RICHARDS: I didn't get the  
22 direct email so I apologize, but I want to thank you  
23 for coming out and certainly testifying, sir.

24 TOWAKI KOMATSU: Thank you Chair  
25 Richards.

2 CHAIRPERSON RICHARDS: Alright, thank you.  
3 Thank you all for coming out and we look forward to  
4 continuing to follow up. This is a great hearing, and  
5 start of where we need to go to make sure that  
6 there's more transparency and accountability on body  
7 cameras. Thank you all for coming out. Thank you for  
8 my Southeast Queens colleagues for hanging in there  
9 with me, and they didn't have coffee. Oh, she has  
10 coffee. Oh, yeah, I do have coffee. Alright, we all  
11 had coffee. Thank you all. [gavel]

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C E R T I F I C A T E

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



Date DECEMBER 9, 2019