

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON PUBLIC SAFETY

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October 10, 2012  
Start: 10:25 a.m.  
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HELD AT: Council Chambers  
City Hall

B E F O R E:  
PETER F. VALLONE, JR.  
Chairperson

COUNCIL MEMBERS:  
Peter F. Vallone, Jr.  
Helen D. Foster  
Daniel R. Garodnick  
James F. Gennaro  
Vincent J. Gentile  
Daniel J. Halloran III  
Eric A. Ulrich  
David G. Greenfield  
Brad Lander  
Robert Jackson  
Jumaane D. Williams  
Deborah Rose  
Rosie Mendez  
Letitia James  
Christine C. Quinn  
Diane Reyna

## A P P E A R A N C E S

## COUNCIL MEMBERS:

Daniel Dromm  
Melissa Mark-Viverito  
Mark Weprin  
Jessica S. Lappin  
Gale A. Brewer  
Sara M. Gonzalez  
Domenic M. Recchia, Jr.  
Leroy G. Comrie, Jr.  
Albert Vann  
Stephen Levin  
Ydanis Rodriguez

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

Michael Best  
Counselor to the Mayor

Kevin Finnegan  
Director of Politics and Legislation  
1199 SEIU Healthcare Workers East

Djibril Toure  
Malcolm X Grassroots Movement

Nicholas Peart  
Brotherhood/Sister Sol

Bianey Garcia  
Make the Road NY

Daniel Puerto  
Interpreter

Naz Ali  
Desis Rising Up & Moving

Kirsten Foy

Donna Lieberman  
Executive Director  
NYCLU

Uti Ofer  
Advocacy Director  
NYCLU

Kate Rubin  
Director of Policy  
Bronx Defenders

Faiza Patel  
Brennan Center for Justice

Dr. Delores Jones-Brown  
John Jay College of Criminal Justice

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

Darius Charney  
Senior Staff Attorney  
Owen Center for Constitutional Rights

Brittney Saunders  
Senior Staff Attorney  
Center for Popular Democracy

Steve Kohut  
Justice Committee

Raul Rodriguez  
Picture the Homeless

William Gibney  
Director of Criminal Practice  
Special Litigation Unit  
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Sienna Fontaine  
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Linda Sarsour  
Executive Director  
Arab American Association of New York

Cyrus McGoldrick  
Advocacy Director  
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Ramzi Kassem  
Associate Professor of Law  
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## A P P E A R A N C E S (CONTINUED)

Ejeris Dixon  
Deputy Director in Charge of Community Organizing and  
Public Advocacy  
NYC Gay and Lesbian Anti-Violence Project

Chris Bilal  
Peer Educator  
Streetwise and Safe

Catherine Togers  
Lawyer  
Human Rights Watch

Lavelle Pointer  
Volunteer  
New York Harm Reduction Educators

Rahima Wachuku  
Stop Stop-And-Frisk New York City

Jose LaSalle  
Co-founder  
Stop Stop-And-Frisk New York City

Carlton Berkley  
Retired NYC detective

Beau Samatopoulos

Fred Newton

Allen Feinblum

Mitchyll Mora  
Youth Leader  
Streetwise and Safe

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

Pastor Michael Vincent Crea  
One World Life Systems

Roxanne Delgado

Gene Reiss  
Picture the Homeless

Evan Goldstein  
Drug Policy Alliance

Brian Ellicott

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2 CHAIRPERSON VALLONE: Welcome  
3 everyone to this hearing of the Public Safety  
4 Committee. We're hearing a legislative package  
5 today, which relate to police practices and  
6 procedures. The underlying topics here have been  
7 the subject of numerous City Council hearings  
8 already conducted by this committee. I've  
9 probably had more hearings on these topics than  
10 any other topic, other than anti-terror topics.

11 Just by way of housekeeping, the  
12 sergeant-at-arms has informed me--not that we  
13 expect any of this--but outbursts are prohibited.  
14 You will be removed if that happens. Everyone who  
15 wants to testify will get a chance.

16 After the city testifies, we're  
17 going to have three panels and each one of those  
18 panels will have five minutes. Then we'll have  
19 panels of the public for almost as long as it  
20 takes and each of those people will have two  
21 minutes, so that we get to everybody.

22 So if you disagree with something  
23 that's said, most likely by me, or the city, you  
24 will get your chance to talk. Don't worry about  
25 it. You don't want to get removed before that or

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2 you won't get your chance.

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We've been joined today by many Council Members, let's have the list. Council Members Greenfield, Foster, Gentile, Lander, Jackson, Williams, Rose, Mendez, James, Garodnick, and of course Speaker Quinn has joined us, and Diana Reyna, who just walked in.

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Again, on this issue, on the issue of stop-and-frisk, the Council has been leading the way when it comes to reform. In fact, it was this Council, it was actually myself and the late great Phil Reed who wrote the racial profiling law that exists right now, that was in 2004, which bans racial profiling. It is against the law because of the bill that we wrote, right here in this committee and this Council.

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It was this committee and myself, actually, that first asked Ray Kelly to stop holding information obtained during stop-and-frisks for an indefinite period of time, and the Speaker was a big help with that. We know that that practice has now changed.

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It was, again, this committee and this Council during a hearing right here that

1  
2 asked Ray Kelly to start a policy of informing  
3 people of the reasons that they've been stopped.  
4 That is the policy now. Does it happen all the  
5 time? Of course not, but that's the policy that  
6 the police commissioner instituted at my urging.

7 In fact, the Speaker and I have  
8 constantly asked the police department for more  
9 information. If necessary, we've amended the law  
10 to require more information, whether it comes to  
11 crime in parks or crime in schools. In fact, the  
12 School Safety Act, with Robert Jackson, is one of  
13 the bills that we've constantly been amending to  
14 require more information from the police  
15 department so that we can do oversight and so that  
16 the public can have this information.

17 So we've been working a lot on this  
18 issue and we'll continue to, because, as I've said  
19 often, in my opinion stop-and-frisk has to be  
20 monitored closely. It has to be done civilly, it  
21 has to be done with respect to civil rights, but  
22 it has to be done.

23 Now, with the bills that we're  
24 hearing today, there are four bills. I haven't  
25 taken a position on the merits of three of them.

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2 In fact, the inspector general bill I think is  
3 something very interesting and I'm looking forward  
4 to a discussion on that. I have, as you are well  
5 aware, spoken out against Intro 800. I've called  
6 that the bill not the Community Safety Act but the  
7 Criminal Safety Act. I've called it the most  
8 irresponsible and dangerous bill to ever be  
9 considered by the City Council.

10 For those of you who don't know  
11 what it does, let me explain what it does,  
12 quickly. It provides a cause of action to  
13 virtually every individual stopped by the NYPD,  
14 based on the legal claim of desperate impact.  
15 That would mean every male stopped, right off the  
16 bat, and that's 95 percent of our stops, would  
17 have this right automatically just based on the  
18 fact only that they're a male, because women  
19 aren't stopped 50 percent of the time.

20 It also gives a right to sue to  
21 groups on behalf of those individuals. The city  
22 would be forced to defend in court over 500,000  
23 stops, because as I said, virtually everyone would  
24 have the right to sue. The NYPD would have to  
25 testify at each individual hearing, because these

1  
2 aren't class action lawsuits, these are individual  
3 lawsuits.

4           The bill as written, after  
5 extensive drafting and as signed by a majority of  
6 the Council Members, and as right before us today,  
7 provides for compensatory and punitive damages.  
8 Now, I'm told that that will be removed, and  
9 there's an agreement to do that and an amendment  
10 submitted in the future. Even without the  
11 compensatory and punitive damages, it provides for  
12 court costs, expert fees, attorney fees, and  
13 declarative and injunctive relief.

14           That's the key, and here's why,  
15 because this is what this bill will actually--what  
16 either version of this bill will do. It will blow  
17 a massive hole in the city budget and end NYPD  
18 policing as we know it, by taking control of the  
19 NYPD from Ray Kelly and giving it to judges. The  
20 city will have to find the money to defend against  
21 500,000 lawsuits, paying attorneys, creating  
22 courts. Police overtime alone would cost hundreds  
23 of millions of dollars. To find that money,  
24 social services like daycare, senior centers,  
25 homeless services, would all have to be

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2 eliminated. As officers are taken off the streets  
3 daily to testify, crime will skyrocket.

4 Then it'll get worse as the judges  
5 start issuing injunctions. That's the goal here.  
6 Injunctions like the police can stop people here  
7 but they can't stop people there. The police have  
8 to stop a lot more women than they're stopping  
9 now, to be fair. The police can do this or they  
10 can't do that or they will be in contempt of court  
11 injunctions. That's the ultimate goal here, to  
12 put the courts in charge of policing New York  
13 City.

14 That's not a fairytale, that's what  
15 will happen. Everything I detailed is  
16 specifically in this bill. The law-abiding  
17 citizens of New York City should be very afraid.

18 That being said, I will turn it  
19 over to the sponsor of that bill and some of the  
20 other bills, Jumaane Williams. I was very nice in  
21 my opening statement to Jumaane, because his mom  
22 is here and I do not want to get anybody that  
23 upset. Jumaane has been doing a lot of work on  
24 this and other topics. We've worked together and  
25 he's--what are you laughing at? I'll just go

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2 straight to Jumaane Williams at this point.

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COUNCIL MEMBER WILLIAMS: Thank you, Mr. Chair, my dear colleague, who I have a great respect for and enjoy working with.

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Good morning, my name is Jumaane Williams, and I serve as chair of the New York City Committee on Oversight Investigation. I'm also the co-chair of the Task Force to Combat Gun Violence. I believe that both of these issues, violence and better policing, go hand in hand and should be discussed at the same time.

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Thank you for attending this important hearing. I want to give a special shout out to my mom, Patricia Williams, who's there.

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[Applause]

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COUNCIL MEMBER WILLIAMS: She doesn't want to wave. Peter says that's the only clapping we're going to allow. This is her first hearing since I've been elected to the City Council, so I'm glad she's here.

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This morning, the Committee on Public Safety will hear testimony on the Community Safety Act, which is a landmark legislation package that currently consists of four bills

1  
2 aimed at ending discriminatory policing, be it the  
3 misuse of stop, question and frisk or the  
4 surveillance of Muslim communities, and bringing  
5 real accountability to the NYPD.

6 I would like to thank Speaker Quinn  
7 for her partnership on bringing these bills to a  
8 hearing today, as well as Chairman Vallone for  
9 chairing today's proceedings.

10 I do have to express my dismay that  
11 there will be no representation from the NYPD at  
12 today's hearing. New Yorkers want us to work  
13 together on these issues, and being absent is the  
14 opposite of leadership. Commissioner Kelly  
15 challenged this Council back in March to provide  
16 solutions that would make our communities safer.  
17 We believe today's hearing addresses part of that  
18 solution and it's shame that neither he nor his  
19 department are here to discuss it.

20 The administration, unfortunately,  
21 has a tendency to not engage in these discussions,  
22 the administration that apparently can do no  
23 wrong, whether it's CityTime, the 9/11 reports or  
24 the problems with the FDNY, do a lot of wrong and  
25 cost the city a lot of money. We would hope that

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2 they would engage in this discussion instead of  
3 the 5-year-old kind of temper tantrums of "I don't  
4 want to do it; I don't want to do it; well, you  
5 actually can't make me do it."

6 We all want better policing and  
7 safer streets for every New Yorker. Everyone in  
8 this room shares that goal. That is why it is  
9 long past time to address the disparate ways that  
10 this city is being policed and how it has not only  
11 negatively impacted hundreds of thousands of lives  
12 but it has failed to make us safer as a result.

13 There is no reason, none, that a  
14 resident of the Upper East Side should be treated  
15 differently or feel differently towards the NYPD  
16 than a resident of East New York, yet that is the  
17 New York we live in today. Whether it came out  
18 accidentally, incidentally, or purposefully, the  
19 result has truly been a tale of two cities.

20 I do not believe, nor does the  
21 majority of this Council, which sponsors one or  
22 more of these bills, that we have to choose  
23 between public safety and civil rights. They work  
24 together and we must prioritize both. Stop,  
25 question and frisk is not the only thing we're

1  
2 trying to address, however it is the most palpable  
3 policy that displays the problems within the NYPD.  
4 We do not want to stop policing; we just want to  
5 do better policing. As mentioned in the press  
6 conferences, there has been no correlation at all  
7 between stop, question and reduce shootings. Even  
8 the Mayor has admitted that.

9           That is what the Community Safety  
10 Act begins to achieve for this city. It includes  
11 four bills of which I am proud to be the lead  
12 sponsor. Intro 799 would protect New Yorkers'  
13 constitutional rights when being asked to consent  
14 to a search. It would create the functional  
15 equivalent of a Miranda warning for searches by  
16 requiring officers to advise people of their right  
17 not to consent when there is no other legal basis  
18 for the search and to obtain proof from the person  
19 that the consent given is real, voluntarily or  
20 informed.

21           Intro 800, which would prohibit the  
22 NYPD from biased-based profiling based on age,  
23 sex, gender identity, sexual orientation,  
24 immigration status, housing status, language or  
25 disability in addition to race, religion or

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2 ethnicity. It would also create a presumption in  
3 the law that policing practices that have  
4 disproportionate impact on protected communities  
5 are suspicious, allowing New Yorkers to hold NYPD  
6 accountable and pursue injunctive relief.

7           There is already an amendment that  
8 will be put in--it is already drafted--that will  
9 take away the compensatory damages out of it. So  
10 it would not bankrupt the city. We are all about  
11 injunctive relief. It will not impede the police  
12 department from doing the job that we want them to  
13 do. Indeed, it gets to the root of the first bill  
14 that was passed, which was to prevent racial and  
15 other kinds of profiling. This says even if you  
16 do it accidentally, it should have the same  
17 effect. We want to get to the root of the  
18 problem. That's what this bill does.

19           While I love working with my  
20 colleague, Council Member Vallone, I think it is  
21 overstated, the claims of funding and the fact  
22 that police would not be able to do what they need  
23 to do. In fact, it does not say that they cannot  
24 use race at all, so that is erroneous.

25           If there is reasonable suspicion,

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2 if someone says a crime was committed and that  
3 person was white or black and a description of  
4 what they're wearing, that can still be. If there  
5 is illegal negative gang activity in a certain  
6 area and they are primarily black, primarily  
7 Mexican, primarily white, and that is something  
8 that is using part of the police work in a local  
9 area, that also can still be continued.

10 What you cannot do now is use that  
11 information to stop every single black and Latino  
12 person who lives in the City of New York. Those  
13 are two different things. We want to continue and  
14 encourage good police work. We want our police  
15 officers to do great work that they want to do and  
16 not be pressured and forced to do lazy policing  
17 that is based on quotas.

18 Intro 801 would require NYPD  
19 officers to provide subjects of law enforcement  
20 activity their name, rank and explanation for the  
21 stop and written record of the encounter,  
22 including information on how to file a complaint  
23 or a compliment.

24 Intro 881, sponsored by 30 Council  
25 Members and co-sponsored, prime sponsored by my

1  
2 colleague Council Member Lander, would create an  
3 Office of the Inspector General to examine  
4 systemic issues within the NYPD and provide  
5 effective oversight with subpoena power to protect  
6 New Yorkers from abuse and misconduct.

7 Today's proceedings will hopefully  
8 explain the need for each of these bills, as well  
9 as show the broad based citywide support for  
10 achieving the meaningful reform that the Community  
11 Safety act will begin to deliver. I hope the  
12 administration will engage in discussions of the  
13 merits and the problems that are here. I'm hoping  
14 to look forward to that.

15 I encourage all New Yorkers to take  
16 part in the field hearings that I'm co-chairing  
17 with my colleague and chair of the Committee on  
18 Civil Rights, Council Member Rose, later this  
19 month to address the impact of stop, question and  
20 frisk, one of the police issues that are at  
21 question today, just one of the issues that are at  
22 question today, not the only issue.

23 I, again, thank Speaker Quinn for  
24 working with me to make this a reality. This is  
25 an opportunity to get everyone's voice on the

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2 record. The first hearing will be held on  
3 Tuesday, October 23rd at the Brooklyn College  
4 Student Center, beginning at 6 p.m., while the  
5 second will take place on Wednesday, October 24th  
6 at the York College Performing Arts Center,  
7 beginning at 6 p.m. No matter where you stand on  
8 this issue, I hope you will take advantage of this  
9 opportunity.

10 Finally, I must recognize the  
11 incredible work and dedication of thousands of  
12 advocates and everyday New Yorkers who have played  
13 a part in the construction of the Community Safety  
14 Act, especially Communities United for Police  
15 Reform, the New York Civil Liberties Union,  
16 1199SEIU United Healthcare Workers East, SIEU  
17 Local 32BJ, the NAACP and the National Action  
18 Network. They are but a handful of the groups  
19 that have showed true leadership and a true  
20 commitment to safety and justice.

21 Again, thank you all for attending  
22 today and let's move forward on better policing  
23 and safer streets. Thank you.

24 [Applause]

25 CHAIRPERSON VALLONE: As I said,

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2 Tish James has instructed us at one point that  
3 this is the way to show approval, because again,  
4 the sergeant-at-arms will not allow outbursts and  
5 I don't want anyone to have to be removed. So  
6 this is the way to show approval.

7 As I've said before, the Speaker  
8 and I have worked shoulder to shoulder, literally  
9 today, to reform stop-and-frisk and to continue to  
10 keep that discussion going, so we are proud to  
11 have her with us today. Speaker Quinn?

12 SPEAKER QUINN: Thank you very  
13 much. I want to thank you, Chair Vallone, for  
14 pulling this hearing together. I want to thank  
15 you, Council Member Williams, for sponsoring this  
16 legislation. I also want to thank Chair Vallone  
17 and all the other members of the Council who, as  
18 Peter outlined, have been part of a long-term  
19 reform and oversight effort as it relates to the  
20 police department.

21 We're here today to consider four  
22 bills on how the NYPD interacts with citizens on  
23 the street and how the police department is itself  
24 policed. As we all know, these are not issues to  
25 be taken lightly, as they involve a very careful

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balancing of the rights of citizens and the need to provide officers with enough discretion to do their jobs and keep those same citizens safe on the street.

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As Peter has said, there's been a tremendous amount of work done already by the Council and by community organizations and advocates to address these issues. I want to thank everyone who has been part of this work for their work and for their ongoing dedication.

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I hope today's hearing sends a message, that the Council's call for reform to stop, question and frisk continues and that it will continue to examine ways to address the problems with this practice.

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I've long said that although I believe stop, question and frisk should remain a tool in the toolbox of police officers, that when you have almost 800,000 stops at the peak, targeting almost exclusively African American and Latino men in neighborhoods, which are of lower income, that is a problem. That is not 800,000 stops out of 8.4 million; it is 800,000 stops out of a much smaller number, clearly a disparate and

1  
2 unfair impact on parts of New York City's  
3 communities. That type of an impact creates a  
4 divide between communities and police. That type  
5 of a divide is a danger to good policing and a  
6 danger to keeping our city safe.

7           The focus should not be on the  
8 quantity of stop, question and frisk, but the  
9 quality of the frisk. Was it done correctly? Did  
10 it yield a weapon? Did it get a gun off of the  
11 street? Did it get contraband or a knife? When  
12 you look at the 700,000-800,000 stop, questions  
13 and frisks conducted in 2011, there is an  
14 extremely low percentage of those stops that  
15 yielded a gun being taken off of our streets.

16           That is one of the reasons why, as  
17 Chair Vallone said, we last year urged  
18 Commissioner Kelly to put reforms in place and to  
19 implement a better infrastructure around stop,  
20 question and frisk. We thank the commissioner for  
21 taking initial steps in that direction and thank  
22 him for then implementing further reforms.

23           The four pieces of legislation we  
24 are going to consider today are other suggestions  
25 that must be reviewed and given thoughtful

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2 consideration, because although we have made  
3 progress in the area of reforms, clearly our work  
4 is not done and more reform from a legislative  
5 framework is need. I'm very appreciative of  
6 everyone who is starting that legislative  
7 conversation with us in this formal hearing today.  
8 Thank you.

9 CHAIRPERSON VALLONE: Thank you,  
10 Madame Speaker. We were joined by Council Member  
11 Dromm in the interim. Now, we're going to go to  
12 the administration. We have Mr. Michael Best, who  
13 is counselor to the Mayor. We do thank you for  
14 being here, although I agree with Council Member  
15 Williams, I would love to have the NYPD here, for  
16 a different reason though, just to show the  
17 effects of this bill in the department. We  
18 appreciate you coming down on short notice. Mr.  
19 Best, the floor is yours.

20 MICHAEL BEST: Thank you. Good  
21 morning, Speaker Quinn, Chairman Vallone, members  
22 of the committee. My name is Michael Best and I  
23 am the counselor to Mayor Bloomberg. Thank you  
24 for allowing me to testify this morning on  
25 Introductory 799, 800 and 801, which concern

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2 police officers' daily interaction with residents  
3 of this city in their work to make the city safer  
4 for all of us, and also Introductory 881, which  
5 would establish an inspector general for the New  
6 York City Police Department.

7           The NYPD works tirelessly to ensure  
8 the safety of our city, protecting the lives of  
9 New Yorkers and also seeking to reduce the  
10 incidence of criminal activity. Thanks to their  
11 efforts, New York City remains the safest big city  
12 in the country. During this administration,  
13 thanks to proactive, data-driven policing, major  
14 crime is down 31.3 percent and murder is down 32.1  
15 percent. This year, the number of shootings has  
16 decreased and we are on track for a record low  
17 number of murders.

18           Three of the bills before the  
19 committee today, number 799, 800 and 801 relate to  
20 the use of the tactic known as stop, question and  
21 frisk. This tactic, which is statutorily  
22 authorized in New York State Criminal Procedure  
23 Law and was specifically authorized by the United  
24 States Supreme Court in Terry versus Ohio in 1968,  
25 and in countless New York State and federal court

1  
2 cases since then, is a critical element in the  
3 NYPD's broader crime fighting strategies.

4           The NYPD is committed to providing  
5 training to its officers to make certain that when  
6 officers engage in stop, question and frisk, they  
7 do so consistent with and only to the extent  
8 authorized by the federal constitution and the New  
9 York State Criminal Procedure Law.

10           Moreover, the administration,  
11 including the NYPD shares the Council's interest  
12 in ensuring that police officers' interactions  
13 with residents of this city be marked by respect  
14 and courtesy.

15           Introductory 799, 800 and 801 are  
16 all efforts to regulate the manner in which police  
17 officers question people and in some cases search  
18 their persons and property. In other words, the  
19 proposed bills would attempt to regulate the  
20 powers and duties of police officers when they are  
21 engaged in law enforcement activity. But as a  
22 statutory matter, these issues are governed  
23 entirely by state law, specifically the Criminal  
24 Procedure Law, which sets for the powers of police  
25 officers in these areas.

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2           The Criminal Procedure Law sets  
3 forth when police officers are authorized to stop  
4 a person, search a person or their property for a  
5 weapon or other contraband and arrest a person  
6 with or without a warrant. It's a comprehensive  
7 set of laws that governs the administration of the  
8 Criminal Law throughout the state, and it leaves  
9 no room for local legislation in this area.

10           Indeed, the State Legislature made  
11 clear its intention to regulate all aspects of  
12 criminal procedure in Section 1.10 of the Criminal  
13 Procedure Law, which provides that--and I quote--  
14 "the provisions of this chapter apply exclusively  
15 to all criminal actions and proceedings commenced  
16 upon or after the effective date." Intro 799  
17 would add a new section to the--excuse me--these  
18 proposed bills, therefore, are preempted by state  
19 law and would be invalid if enacted.

20           Intro 799 would add a new section  
21 to the Administrative Code, which would mandate  
22 that a law enforcement officer follows certain  
23 procedures when he or she conducts a search of a  
24 person or of a vehicle, home or belongings and  
25 that search is not undertaken pursuant to a

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warrant or supported by probable cause.

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Intro 799 would require that prior to conducting a search that is not pursuant to a warrant, incident to arrest or supported by probable cause, an officer advise the person that he or she is being asked to consent to the search and that he or she has the right to refuse consent.

The bill would also require the officer to record the provision of such consent, either in an audio recording or a written form, and obtain the signature of the person providing consent. Under this proposed local law, police would not be authorized to conduct a search until after this advisement and recording took place. Police would need to provide a copy of the recorded consent to any individual searched.

The bill would provide that an officer's failure to comply with the requirements of this section may be considered as a factor in determining the voluntariness of the consent in a hearing to suppress any evidence recovered during such a search.

The bill conflicts with state law

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2 that authorizes officers to conduct searches and  
3 recover evidence in situations like those when  
4 they have reason to believe an individual is  
5 carrying a weapon or the contraband or evidence is  
6 in plain view.

7           Introductory 800 would amend  
8 Section 14151 of the Administrative Code, which  
9 prohibits members of the police department or  
10 other law enforcement officers from engaging in  
11 racial or ethnic profiling. This bill would  
12 expand the current prohibition on the use of race,  
13 ethnicity, religion or national origin as the  
14 determinative factor for law enforcement action to  
15 imply relying on factors such as age, sex, gender  
16 identity, sexual orientation, immigration or  
17 citizenship status, language, disability housing  
18 status, occupation, or socioeconomic status.

19           As drafted, the bill would prohibit  
20 the use of these characters, quote, to any degree,  
21 unquote, even when coupled with other known  
22 identifying factors about a suspect, such as a  
23 description of a perpetrator provided by a victim.

24           In addition to expanding the  
25 current prohibition on racial or ethnic profiling

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2 to bias based profiling, the bill would create a  
3 cause of action for an individual subject to bias  
4 based profiling or for an organization, quote,  
5 whose interests are germane to the purpose of this  
6 section, unquote. The remedies sought could  
7 include compensatory and punitive damages and  
8 injunctive and declaratory relief against the City  
9 of New York, the law enforcement officer who  
10 engaged in such profiling and any supervisor of  
11 such officer.

12 Intro 800 would also establish a  
13 cause of action for an unlawful discriminatory  
14 practice, which could be, established when an  
15 individual or organization demonstrates that a law  
16 enforcement officer has engaged in bias based  
17 profiling and fails to prove such profiling was  
18 necessary or narrowly tailored to achieve a  
19 compelling governmental interest. The bill would  
20 also establish a cause of action alleging that  
21 police activity had a disparate impact on  
22 individuals in any of the protected categories.  
23 Finally, the bill would authorize the payment of  
24 attorney's fees and expert fees to the prevailing  
25 plaintiff in any action or proceeding used to

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2 enforce this section.

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The last bill in this series, Intro 801 would require police officers to identify themselves to individuals who are the subject of any stops, frisks, searches, traffic stops or other law enforcement activity, provide the reason for the activity and provide a business card with their names as well as contact information for the Civilian Complaint Review Board. This would apply to any police/civilian interaction, including those with victims or witnesses.

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My testimony today is focused on the legal problems raised by these bills, so I'm not going to explore the impracticality of, for instance, requiring a police officer, doing a vertical patrol by himself or herself in a Housing Authority stairwell at 3 in the morning, to fumble for business cards and recording devices whenever the officer speaks to a witness.

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All three of these bills are preempted by the State Criminal Procedure Law. Where the state has enacted a comprehensive and detailed statutory scheme in an area or has otherwise indicated that it has occupied an entire

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2 field, local legislation is preempted and  
3 impermissible. Here the Criminal Procedure Law is  
4 an elaborate and comprehensive set of laws  
5 governing the entire field of criminal procedure.  
6 The Criminal Procedure Law was enacted in 1970,  
7 following a nine-year process undertaken by a  
8 state commission created at the behest of the  
9 State Legislature, which was engaged in a  
10 wholesale effort to unify, modernize and make  
11 uniform the criminal court system and criminal  
12 procedure law.

13           The governor approved the  
14 legislation, heralding it as the state's first  
15 comprehensive modernization of procedures for the  
16 administration of criminal justice and a complete  
17 system of criminal laws carefully designed as an  
18 integrated framework for the effective  
19 administration of criminal justice. It has been  
20 held that the intent of the legislature was to  
21 enact a criminal procedure law that would govern  
22 all criminal actions in this state, thereby  
23 occupying the field of criminal procedure in its  
24 entirety.

25           In the particular area addressed by

1  
2 these proposed bills, Section 140.50 of the  
3 Criminal Procedure Law, which is entitled  
4 "Temporary Questioning of Persons in Public  
5 Places, Search for Weapons," governs the stopping  
6 and questioning of persons by police officers. It  
7 specifics the conditions under which a stop may  
8 lawfully be made and the conditions when an  
9 officer may lawfully search a person.

10 This section, based on a statute  
11 enacted in 1964, was intended, according to the  
12 legislative history, to clarify the power of  
13 police to stop, question and search criminal  
14 suspects. This purpose would be wholly undermined  
15 by local legislation that imposed new strictures  
16 on stop, question and frisk.

17 Indeed, to take one example Intro  
18 799 could effectively prevent police officers from  
19 conducting some searches expressly authorized by  
20 Section 140.50 of the Criminal Procedure Law, such  
21 as those where officers have reason to fear for  
22 their own safety or the safety of the public.

23 In the area of criminal procedure,  
24 it's understandable why the state decided to  
25 create one body of law that would be exclusively

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2 applicable statewide. When it comes to the  
3 exercise of police and prosecutorial authority and  
4 the procedures that can result in prosecution for  
5 crimes, the determination of guilt or innocence  
6 and the sentencing and incarceration of offenders,  
7 it's important for our state's citizens to know  
8 that there is one standard and one set of  
9 procedures that governs throughout the state.

10 Criminal procedure, moreover, is an  
11 area that must take into account constitutional  
12 rights as determined by the courts, and setting  
13 forth procedures for the entire state that comport  
14 with the constitution makes eminent sense. A set  
15 of criminal procedures that varied from city to  
16 city or county to county, however, would make no  
17 sense and would endanger the fair administration  
18 of justice.

19 In any event, as a legal matter,  
20 when a field is preempted by state law, like the  
21 Criminal Procedure Law there is no authority for  
22 local governments to legislate. Intro 799 would  
23 prescribe how police search individuals, their  
24 vehicles, homes or belongings. Intro 800 would  
25 micromanage the basis for thousands of contacts

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2 police officers commence every single day with  
3 individuals in the city. Intro 801 would dictate  
4 how police initiated and concluded interactions  
5 with the public.

6 All three of these bills then are  
7 attempts to regulate criminal procedure and the  
8 authority for and limits on police activity in  
9 stopping, questioning and searching individuals.  
10 This is an area where the state has established  
11 the law. Where the state's intent of the Criminal  
12 Procedure Law shall be the exclusive law in this  
13 area is expressly set forth in the statute, and  
14 where the detailed comprehensive nature of the  
15 Criminal Procedure Law makes clear that the state  
16 intended to preempt the field. These bills are  
17 preempted.

18 Furthermore, the bills would create  
19 confusion in an area of law that is already the  
20 subject of extensive jurisprudence in the courts.  
21 The Fourth, Fifth and Fourteenth Amendment of the  
22 United States Constitution impose limits on the  
23 activities of police officers, limits that protect  
24 individuals' rights and ensure that the laws are  
25 applied on an equal basis to all persons.

1  
2 State and federal courts regularly  
3 navigate the intersection between the Criminal  
4 Procedure Law and the protections guaranteed by  
5 the federal constitution and there are thousands  
6 of court decisions analyzing the daily encounters  
7 police have with the public in determining whether  
8 the police properly exercised the powers granted  
9 them by state law.

10 Indeed, where members of the public  
11 believe that the police have violated those  
12 rights, they can and do bring suit challenging  
13 those police actions. For instance, as the  
14 members of the committee undoubtedly know, there  
15 is now a class action pending in federal court  
16 challenging the nature of the NYPD stop, question  
17 and frisk tactics.

18 Given the role of the judiciary in  
19 adjudicating challenges and interpreting the  
20 applicable law, there is no role for local  
21 legislation in this field. This series of bills,  
22 by creating standards and procedures only  
23 applicable to New York City, standards that are  
24 not based on either the Criminal Procedure Law or  
25 established constitutional protections would

1  
2 create confusion and limit police officers'  
3 ability to lawfully protect the public and  
4 themselves.

5           Moreover, in attempting to  
6 legislate in areas of criminal and civil procedure  
7 already governed by a well established body of  
8 federal and state law, and federal and state court  
9 jurisprudence, and by proposing standards that  
10 confuse and conflict with established precedent,  
11 the bills would have the effect of creating  
12 unwieldy litigation, of undermining important  
13 jurisprudential principles, such as judicial and  
14 constitutional principles regarding who has  
15 standing to sue, and of creating unnecessary  
16 questions as to applicable law.

17           For example, the provisions in  
18 Introductory 800, establishing two new causes of  
19 action, ignore important principles of standing  
20 and would give a wide variety of organizations the  
21 right to sue over virtually any type of police  
22 activity. The breadth of exposure that would be  
23 created is unprecedented.

24           I have also been asked to comment  
25 on Intro 881, which would amend the New York City

1  
2 Charter to establish and Office of the Inspector  
3 General for the New York Police Department. The  
4 NYPD is already subject to a large amount of  
5 oversight by a number of different entities at the  
6 city, state and federal levels, and there is no  
7 need for the addition of an inspector general.

8           While most city agencies have an  
9 inspector general, which is part of the Department  
10 of Investigation, the NYPD has an internal affairs  
11 bureau to investigate allegations of corruption  
12 and misconduct within the department. IAB is far  
13 larger than any of the city's inspector generals,  
14 with a staff of approximately 700, and a budget of  
15 nearly \$70 million. In fact, under this  
16 administration, IAB's budget has increased roughly  
17 60 percent.

18           There are also multiple levels of  
19 oversight outside the NYPD. The Civilian  
20 Complaint Review Board, which investigates  
21 complaints by members of the public against police  
22 officers, and pursuant to an agreement earlier  
23 this year between the NYPD, the CCRB, the Mayor  
24 and the Speaker--and we want to acknowledge the  
25 Speaker's leadership on this issue--brings

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2 disciplinary actions where warranted. The  
3 Commission to Combat Police Corruption, which  
4 investigates police policies and procedures that  
5 implicate issues of possible corruption, and it  
6 should be noted that the commission received  
7 additional resources to hire four new attorneys  
8 this year as well. There are also the five  
9 district attorneys in New York City, the state  
10 attorney general, and the two federal prosecutors  
11 in the Southern and Eastern Districts of New York.

12 Besides being unnecessary, Intro  
13 881's attempt to add an inspector general would  
14 violate the prohibition on curtailing the mayor's  
15 authority. Whenever local legislation would  
16 abolish, transfer or curtail the powers of an  
17 elected official, both the state and municipal  
18 Home Rule Law and the City Charter mandate that  
19 such legislation cannot be enacted without a voter  
20 referendum. Twice before, the Council has passed  
21 bills to create entities akin to an inspector  
22 general for the NYPD and both times the court  
23 struck down those bills on curtailment grounds.

24 Introductory 881 contains several  
25 of the kinds of structural flaws that absent a

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2 referendum would inevitably be deemed to violate  
3 state law and the Charter, such as limitations on  
4 who can serve as inspector general and on the  
5 direction of investigations. It is therefore  
6 legally infirm.

7 I thank you for the opportunity to  
8 testify today and look forward to a continued  
9 dialogue with the Council about these issues so  
10 that our dedicated hardworking police officers can  
11 do their job to make every neighborhood in this  
12 city a safe one and our residents have respectful  
13 interactions with the officers who patrol their  
14 streets every day.

15 I am, of course, available to  
16 answer any questions the committee may have.  
17 Thank you very much.

18 CHAIRPERSON VALLONE: Thank you,  
19 Mr. Best. You speak very quickly, but I think  
20 what you said was that every one of these bills is  
21 either preempted by a state law or a federal law  
22 or the charter or the constitution, correct?

23 MICHAEL BEST: Yes.

24 [Background noise]

25 CHAIRPERSON VALLONE: We may need a

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2 new mike.

3 [Pause]

4 CHAIRPERSON VALLONE: Now, when it  
5 comes to the first three bills, not the inspector  
6 general bill, I don't disagree with you. For  
7 example, the bill requiring a police officer to  
8 give out a card or something similar to that, if  
9 we were able to mandate what a police officer did  
10 during a stop, then we would be able to mandate  
11 what a teacher did in her classroom or how a  
12 firefighter fought fires. It's not something that  
13 a legislature is allowed to do. So I don't  
14 disagree with you on that.

15 I have a lot of questions about the  
16 effect of these bills, if they weren't  
17 constitutionally banned, but you're not prepared  
18 to talk about that, so I'll hold off until after  
19 my colleagues go.

20 I did want to talk about the  
21 inspector general bill for a moment. As you know,  
22 it was my father back in the late 90s that tried  
23 to put in an independent police review board. It  
24 was a great idea. Council supported it. We  
25 passed it. Well, I wasn't there, but the Council

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2 passed it. It was vetoed by the Mayor and then we  
3 overrode it and it went to court and the Council  
4 lost, saying that it was a curtailment of the  
5 mayoral powers.

6 Now, the main reason the court used  
7 was that we provided in that bill that the Council  
8 would recommend some of the board members and the  
9 Mayor could choose from those recommendations.  
10 This bill is well crafted when it comes to that  
11 because it says the Council can recommend who the  
12 inspector general will be but the mayor does not  
13 have to choose one of those recommendations.

14 So based on that, I'd like your  
15 legal opinion as to why this bill would be ruled a  
16 curtailment in the courts.

17 MICHAEL BEST: Well, I'd say a  
18 couple of things about that. Number one, it is  
19 true that when the Appellate Division ruled in  
20 both cases, the specific thing they ruled on was  
21 the appointment issue, and how it had curtailed  
22 the mayor's power to appoint. If you look at the  
23 lower court decision in the first case, in 1995,  
24 there was a lot of analysis in that by the trial  
25 court judge, not only of that issue but of a

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2 number of issues related to the powers and  
3 requirements for what the commission would  
4 investigate, et cetera, and the makeup of the  
5 board that curtailed the mayor's powers in all  
6 sorts of different ways, not just on the  
7 appointment issue.

8           This bill, in my view, has a lot of  
9 the same sort of infirmities and in fact has some  
10 appointment infirmities. To stick to that issue,  
11 I'd point out that the bill, for instance, as  
12 drafted, requires that the mayor consider certain  
13 qualifications, appoint solely based upon certain  
14 qualifications a person would have and certain  
15 backgrounds that a person would have and thereby  
16 curtails the mayor's power to select the person of  
17 his choice. It limits his appointment authority.  
18 So I think even simply based on that ground, this  
19 bill has a curtailment problem.

20           CHAIRPERSON VALLONE: Again, don't  
21 disagree. I don't think you can tell the mayor  
22 you can't hire this person, but we're not  
23 curtailing your power, but that could very easily  
24 come out. So I'd like to continue the analysis,  
25 if that were not in there.

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2           MICHAEL BEST: Well, if that were  
3 not in there, I believe the bill also has--I'm  
4 trying to find the bill itself, if I could just  
5 have one moment.

6           CHAIRPERSON VALLONE: While you're  
7 looking, I'll just repeat the fact that since we  
8 tried the independent police review board, we were  
9 successful in getting a much more independent  
10 CCRB. The reason that exists is because it's with  
11 the consent of the mayors. There are some legal  
12 issues there too, but the mayors have all  
13 consented to that and seen the necessity for that.  
14 We have been as a Council, united in trying to  
15 make sure that the CCRB has been funded and that  
16 it becomes as independent as possible, even with  
17 its own prosecutors this year. Speaker Quinn has  
18 been at the forefront of that. Did you find it?

19           MICHAEL BEST: Yes. So there are a  
20 number of issues. I'll just go through a few of  
21 them. It sets a seven-year renewable term that's  
22 only renewable once, thereby curtailing the  
23 mayor's appointment power.

24                           It sets forth basis and  
25 qualifications for the appointment, thereby

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curtailing the mayor's appointment power.

It sets forth that no one who has worked in the police department in the last ten years or is currently at the police department can be a member, thereby curtailing the mayor's appointment power.

It talks about assignment of responsibilities among the inspector general and the Internal Affairs Bureau of the Police Department, thereby curtailing the mayor's power to manage these issues.

It talks about if the mayor--it orders the mayor, if he decides to remove the inspector general to communicate his reasons in writing, which again curtails his decision about how he should do things.

It has various reporting requirements that curtail the mayor's power to manage his agencies.

It requires certain coordination with other agencies of the city that curtail the mayor's management authorities.

There are a few other things, but that's basically the gist of it. Most of the

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2 powers in here, and I understand. In fact, if you  
3 look at the court cases, I see the issue here in  
4 the same terms that the courts talked about it.  
5 In fact, it's the reason why the Appellate  
6 Division, in both cases, would not sever the  
7 portions of the bills in the 90s that curtailed  
8 the mayor's powers, and leave the rest of it  
9 standing.

10           It's apparent from the bill that  
11 the intent of the Council is to create an  
12 independent entity that has a certain independence  
13 from the mayor and the police department and would  
14 have to perform certain functions independently of  
15 the mayor's powers to manage the city. In so  
16 doing, it's inevitable that the bill is going to  
17 have a curtailment problem. In all the tries that  
18 the Council has made, both in the 90s and now to  
19 try to set up something like this--the problem has  
20 been that in order to set up an independent body  
21 like this it curtails the mayor's power and  
22 therefore you'd have to go through a referendum  
23 process in order to do something like that to add  
24 it to the charter. I think so long as that's the  
25 goal here, it's going to be virtually impossible

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2 to avoid a curtailment problem.

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CHAIRPERSON VALLONE: Okay. Well, you did have a lot of reasons there. I think some of them are surmountable. Some of them would be interesting in court. I'm going to leave those questions to Council Member Lander and the rest of our Council Members. We have been joined by Council Members Mark-Viverito, Ulrich and Weprin. I'm going to save my questions for later and go to Speaker Quinn.

SPEAKER QUINN: Thank you. As Chair Vallone referenced in his opening statement, we have a racial profiling law on the books, correct?

MICHAEL BEST: That's correct.

SPEAKER QUINN: Which then Mayor Giuliani, as I understand it, signed into law.

MICHAEL BEST: Was it Mayor Giuliani? What year was that passed?

SPEAKER QUINN: It was Mayor Bloomberg who signed it into law.

MICHAEL BEST: Yes, I believe it was.

SPEAKER QUINN: Better for my

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2 argument, okay. So doesn't that occupy the field?  
3 I mean isn't that an area where the state already  
4 occupies the field? I mean, how could the mayor  
5 have signed that racial profiling law, whichever  
6 mayor it was--I honestly thought it was Giuliani  
7 but Bloomberg is better for the argument. How  
8 could we have signed that and not signed this?

9 Now, if your answer is some nuances  
10 specifically to this racial profiling law, as  
11 proposed, I appreciate that, except your statement  
12 and your testimony was board and that the state  
13 had occupied the entirety of the field and left no  
14 room for wiggle or no loopholes. So, how is it  
15 that one was able to be signed in the exact same  
16 area? This is--not to minimize it, and I think  
17 even Council Member Williams would yield--an  
18 extension of that. If it was sound, how is the  
19 extension in the broadest of all statements,  
20 unsound and undoable?

21 MICHAEL BEST: Well, I'll say this-

22 SPEAKER QUINN: [interposing] Can  
23 you move the mike a little closer? I'm just  
24 having trouble hearing you.

25 MICHAEL BEST: Sure. Can you hear

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2 me now?

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SPEAKER QUINN: That's much better,  
thank you.

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MICHAEL BEST: First off, I'll say  
that I was not here and therefore not part of the  
discussions on that bill when it came through. I  
wasn't in this job; I was in a different job.  
That said, I think that one could make preemption  
arguments about that bill.

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SPEAKER QUINN: But it was signed  
by the mayor.

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MICHAEL BEST: It was signed. It  
was, in fact, signed by the mayor. I think that  
there is a very different situation from that. If  
you look at that bill, under the Equal Protection  
Clause of the Constitution, under the  
individualized suspicion requirements of state and  
federal law, racial profiling was already without  
that law, something that was already illegal, in  
my view, under the law, under both federal and  
state law. That bill, in saying that racial  
profiling was prohibited, simply codified  
something that was entirely consistent with what  
the Criminal Procedure Law, what the state court

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2 decisions, what federal law already was. These  
3 bills--

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SPEAKER QUINN: [interposing] But

can I just ask you a question?

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MICHAEL BEST: Yeah.

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SPEAKER QUINN: As a non-lawyer.

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What does that matter, if you are applying what is  
or isn't legal, right, which to some degree is the  
large part of your job? To say to the mayor, and  
kind of base one, this is or isn't legal and then  
talk about the policy. If it's illegal, even if  
it's chicken soup, which is kind of what you were  
implying, it shouldn't be done because it's not  
legal and you don't pass laws that are not within  
the legal power of the City of New York's  
legislative body.

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So I recognize you're saying it was  
basically codifying what was already illegal on  
other levels, but how could we have done that as  
the City of New York if we didn't have the power  
to do it as the City of New York? I guess I just  
don't get that argument as it relates to creating  
a confirmation that this would be illegal.

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MICHAEL BEST: I suppose I would

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2 say that to the extent there are preemption issues  
3 on that, even regarding that bill, they are far  
4 more serious in the case of these bills. These  
5 bills actually seek to change the law, to change  
6 the Criminal Procedure Law of this state as  
7 regards the City of New York. Therefore, you have  
8 not just sort of the general preemption problem  
9 that I've talked about but also as I alluded to  
10 somewhat in my testimony, there are a lot of  
11 specific problems with this because it is  
12 different than what the Criminal Procedure Law  
13 does. That previous law, one does not know what  
14 would happen if somebody had challenged it in  
15 court because--

16 SPEAKER QUINN: [interposing] But  
17 that's kind of a different question than what the  
18 mayor's perspective on it. People are always free  
19 to challenge laws in court and things happen that  
20 even the best lawyers don't expect. Do you know  
21 what I mean, things that seem like a slam dunk?

22 MICHAEL BEST: I do, yeah.

23 SPEAKER QUINN: That was not in any  
24 way intended a dig on any particular case. So but  
25 that's altogether different than whether the chief

1  
2 lawyers of the City of New York say it's outside  
3 of the realm of the power of the City Council.

4 MICHAEL BEST: Well, I understand  
5 your point, Speaker Quinn. As I said, there is an  
6 argument on that bill that it may be preempted by  
7 state law. The fact of the matter is that the  
8 harm from that and any issues related to that are  
9 really nonexistent because the fact of the matter  
10 is, as I've said, it codifies what was already the  
11 law. The--

12 SPEAKER QUINN: [interposing] But  
13 the... I'm sorry; go ahead.

14 MICHAEL BEST: But these bills are  
15 very different. The preemption issue is a very  
16 significant one, both generally and specifically  
17 as related to these bills because these are  
18 attempts to change the Criminal Procedure Law as  
19 regards New York City and the Council doesn't have  
20 the ability to make that change.

21 SPEAKER QUINN: I don't want to  
22 belabor these points too much. I think, though,  
23 you're kind of opening points where largely that  
24 we didn't have the power to do this, right.

25 MICHAEL BEST: Yes.

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2                   SPEAKER QUINN:  And I just think  
3 that is called into question by the fact that the  
4 racial profiling law was passed and signed into  
5 law by Mayor Bloomberg.  In questions of what the  
6 Council does and doesn't have power to do, which I  
7 take very seriously, I don't think the question is  
8 ultimately answered by whether what we seek to do  
9 is perceived to be as right or wrong by a mayor or  
10 good or bad or creating harm or not, it's a  
11 question of whether we have the legal authority to  
12 do it.

13                   I would argue that this  
14 administration has yielded us that authority in  
15 some significant degree by signing the '03 law.  I  
16 think that act calls the perspective that you put  
17 about our limitation of authority into question  
18 and something we should have much further ongoing  
19 conversations about in a more back and forth  
20 setting because I just think that really erodes  
21 the argument.

22                   As it relates to the state  
23 occupying the field, clearly we understand that  
24 sometimes a challenge in what we want to do here  
25 in the Council in all areas, and I would even

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2 yield it's particularly challenging sometimes in  
3 the areas of policing. As it relates, as I  
4 understand it, to occupying the field, it's  
5 whether or not what the jurisdiction wants to do  
6 is in conflict with the state law, not exclusively  
7 just the occupying of the field. I don't see  
8 clearly from what you're saying where what we are  
9 considering is in conflict.

10 Let me just also add to that  
11 argument, there are parts of the Penal Law that is  
12 clearly a state law that we do have authority  
13 over. We have power over misdemeanors and we use  
14 that power frequently--and we should thank Chair  
15 Vallone for that--in many cases where the mayor is  
16 almost always supportive of us. So there are  
17 places where we have the power and I don't see  
18 this as being in conflict which I think is a  
19 critical point in the occupying argument, so to  
20 speak, the occupying field argument.

21 MICHAEL BEST: I'll simply say that  
22 I think there are both, as I said, both general  
23 and conflict problems with all of the three bills:  
24 799, 800 and 801. I do think that there are  
25 conflicts between the Criminal Procedure Law and

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2 what it authorizes and what these bills would do.  
3 So even if you simply limited the analysis to  
4 whether it conflicts with the Criminal Procedure  
5 Law, I think all three of these bills have a  
6 preemption problem. I don't--

7 SPEAKER QUINN: [interposing] Can I  
8 ask a question?

9 MICHAEL BEST: Yeah.

10 SPEAKER QUINN: If you said that  
11 you believed the prior racial profiling law--Eric  
12 Ulrich, move your head, thank you--was doable  
13 because it was basically codifying what the states  
14 and feds did. So we can't be in conflict then if  
15 we're continuing in an area that you already yield  
16 the state stands as one that is illegal. Just one  
17 that law, I know there are three other laws or  
18 bills.

19 MICHAEL BEST: I have to  
20 respectfully disagree with that, Speaker. I think  
21 that the bills are clearly in conflict with what  
22 the Criminal Procedure Law authorizes police  
23 officers to do in a number of ways. For instance,  
24 the idea in Intro 799, you know the way that  
25 consent searches have to work is not consistent

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2 with the way that state law sets it forth. There  
3 is a provision that sets forth that any time--it  
4 says that this consent has to be done any time  
5 it's not incident to arrest or supported by  
6 probably cause for a warrant. It's in direct  
7 conflict with Section 140.50 of the Criminal  
8 Procedure Law, which allows reasonable suspicion  
9 stop and questioning and where this a reasonable--  
10 suspect that there's a danger, it allows a search.  
11 That wouldn't be permitted under Intro 799, so  
12 it's in direct conflict.

13 SPEAKER QUINN: Excuse me.

14 Clearly, I think we have a difference of opinion  
15 and we should do follow-up conversations about  
16 whether this is in our authority, about whether it  
17 is in conflict. On the verbal consent law, we  
18 should also have ongoing conversations because I  
19 do not believe--and I've not drafted the bill, so  
20 I yield to the sponsor, I don't want to speak for  
21 him. I don't believe the intent there is to  
22 require verbal consent in stops that are clearly  
23 ones that a police officer has to do for his or  
24 her own safety, when there clearly is a crime  
25 being committed. So could there have been better

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2 drafting language--no disrespect--perhaps so, but  
3 I don't think some of the things you just outlined  
4 that you believe as prohibited in the text are the  
5 intent, and we should have those ongoing  
6 conversations as well.

7 I just want to say thank you for  
8 offering me the time for questions. I just want  
9 to say, Michael, to you and your staff, I very  
10 much want to thank you for the work we did earlier  
11 in the year around prosecutorial authority at the  
12 CCRB. I think that was an important part of our  
13 ongoing reform efforts and an indication of all of  
14 us trying to work towards the same ends.

15 Although there is clearly  
16 disagreement about the legislation, I want to  
17 thank you and the staff at the Police Department  
18 and at the Mayor's Office of Legislative Affairs  
19 for having engaged in a lot of conversations with  
20 the Council about the bills and being very  
21 respectful in that process. Notwithstanding we  
22 clearly have ongoing disagreements, but it's been  
23 a very participatory process and I thank you for  
24 that. Thank you, Chair Vallone.

25 CHAIRPERSON VALLONE: Thank you,

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2 Madame Speaker. I do have to sort of disagree  
3 because I was one of the people that wrote that  
4 law. One of the reasons it exists is because we  
5 worked with the administration. We brought in the  
6 Mayor. We brought in the NYPD. We brought in the  
7 NY CLU, the civil rights groups, worked with our  
8 Council staff and worked to codify the law that we  
9 thought existed already.

10 The Mayor supported the final--of  
11 course, the Council wanted more than we got at  
12 that point. The reason we agreed to what exists  
13 is because the Mayor agreed with the bill also and  
14 then gave up his right, the administration's right  
15 to challenge that bill at the time, because he  
16 agreed that this was the present law.

17 If that law is going to be changed  
18 now, it makes sense that your right to challenge  
19 it would be back again, but that's my legal  
20 analysis and it differs from other people but it's  
21 going to be interesting.

22 We've been joined by Council  
23 Members Halloran, Lappin and Brewer and also by  
24 Assembly Member Nick Perry from Brooklyn, who's  
25 here in the front row. Welcome. We're going to

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2 go now to Council Member Jackson.

3 COUNCIL MEMBER JACKSON: Thank you,  
4 Mr. Chair. To Mr. Best, welcome again. I  
5 formerly was with you when you were the counsel to  
6 the Department of Education. Congratulations on  
7 your appointment as the counselor to the Mayor.

8 Let me ask you, what do you know  
9 about the Patrol Guide for NYPD? I ask that  
10 question because supposedly all of the stop,  
11 question and frisk were governed by the Patrol  
12 Guide, the section that deals with that. Am I  
13 correct or am I wrong?

14 MICHAEL BEST: Well, yeah, I  
15 believe that there are provisions of the Patrol  
16 Guide that deal with stop, question and frisk.  
17 Yes.

18 COUNCIL MEMBER JACKSON: As you  
19 know, you had indicated in your testimony there is  
20 a pending lawsuit at the federal level and I'm  
21 sure you're aware that the Black, Latino and Asian  
22 Caucus of the City Council, which I co-chair,  
23 filed an amicus brief in that particular lawsuit.

24 My question is that I'm reading  
25 this and it appears as though, that it says that

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to stop, question and frisk someone to protect members of the service from injury while conducting an investigation. Basically, the stop, question and frisk is to detain a person for questioning who is a suspect of a crime or some other type of situation, not just to stop people because they're black or Latino or because they have their pants hanging down. Am I right or wrong in that assessment?

MICHAEL BEST: You are right that stop, question and frisk is not meant and would not appropriately be used simply to stop somebody on the basis of their race.

COUNCIL MEMBER JACKSON: Okay. But also is it right to stop someone because they're hanging out on a corner and doing nothing?

MICHAEL BEST: Well, I would answer that, Council Member, by saying that it's set forth in Criminal Procedure Law 140.50 when a police officer can do this. It says that where a police officer has reasonable suspicion that a person is committing, has committed or is about to commit a crime, they can stop them and question them. When they're stopping a person in those

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2 circumstances and they reasonably suspect that  
3 they're in danger of physical injury, they can  
4 search a person for a weapon. That's the basic  
5 situation. So it all, of course, depends upon a  
6 particular fact that a police officer has at the  
7 time.

8 COUNCIL MEMBER JACKSON: Now, and I  
9 read it to say also that a uniformed member of the  
10 service stop person and request identification and  
11 explain the conduct. But it also says that if not  
12 in uniform, identify yourself as a police officer,  
13 frisk if you reasonably suspect you or others are  
14 in danger of physical injury. You search if frisk  
15 reveals objects, which may be a weapon. In  
16 essence, it says if you go like this and there's a  
17 big bulge in someone's pants pocket, which they  
18 may think may be a gun or something that they have  
19 a right in order to go in that particular pocket  
20 to determine if that's a weapon.

21 That's what it says. Not to then  
22 frisk everything and tell everybody take  
23 everything you have out of your pockets. That's  
24 one of the reasons why before Police Commissioner  
25 Kelly put an order or directive that if someone in

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2 this process, when a police officer asks someone  
3 to take everything out of your pocket and you have  
4 a personal amount of marijuana, not to make an  
5 arrest.

6

Basically, what I'm saying to you,  
7 Mr. Best, and I know you're not the commissioner.  
8 I know that you're the counsel to the mayor. I  
9 truly understand that. What I'm saying to you is  
10 this: it's not working and it needs to be totally  
11 reformed. That's what I'm saying to you.

12

[Applause]

13

COUNCIL MEMBER JACKSON: I think  
14 that's the message that Jumaane and Brad and all  
15 the other members of the City Council that have  
16 signed onto that, it's trying to say legally, by  
17 lawsuits, by oversight hearings, by the  
18 demonstration that you have here, and the Speaker  
19 has said it, it needs to be overhauled and it  
20 needs to be overhauled now, not five years from  
21 now. People are suffering. I'm going to stop,  
22 Mr. Chair.

23

Let me ask you a question, Mr.  
24 Best. Did you happen to read the article--I  
25 forgot what paper it is--about the individual that

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was stopped--*The Nation*--and he audiotaped the interchange between the officers and him? Did you hear that, Mr. Best?

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MICHAEL BEST: I heard that there was such an article and a tape, right before I came in here, so I have not had a chance to.

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COUNCIL MEMBER JACKSON: Okay, all right. I appreciate your response. I heard part of it. It's despicable, totally unacceptable, and should not be tolerated in our NYPD. Where allegedly, based on what I heard, this sergeant or officer threatened to break the individual's arms and call him all kind of names, which you would not want to be called, which no one would want to be called, totally unacceptable. I say to you, as the counsel to the mayor, that specific incident needs to be investigated immediately. It needs to be investigated.

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Finally, Mr. Chair--

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CHAIRPERSON VALLONE: [interposing] Council Member, we do need to stick to the topic of the hearing. We have four bills in front of us. This isn't a forum for people to make speeches. We have four bills in front of us--

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COUNCIL MEMBER JACKSON:

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[interposing] No--

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CHAIRPERSON VALLONE: --that we're  
discussing today.

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COUNCIL MEMBER JACKSON: --Mr.  
Chair, I beg to differ.

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CHAIRPERSON VALLONE: Well then  
you're wrong.

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COUNCIL MEMBER JACKSON: Because I  
am focusing on the topic of the hearing, what has  
to do with stop, question and frisk. It's very  
specific--

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CHAIRPERSON VALLONE: [interposing]  
Right, these four bills.

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COUNCIL MEMBER JACKSON: --and  
detailed.

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CHAIRPERSON VALLONE: These four  
bills.

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COUNCIL MEMBER JACKSON: I  
understand that. I'm not talking about four  
bills. I'm talking about one, which is the  
primary objective. People being subjected to  
stop, question and frisk in the discriminatory  
manner, which is the foundation of all these

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2 particular hearings. We cannot, as the City  
3 Council, as the Speaker said, it needs to be  
4 rehabbed and totally revamped and it needs to be  
5 done now. Thank you, Mr. Chair.

6 CHAIRPERSON VALLONE: Thank you. I  
7 assume you're not going to respond to any of that.  
8 The next question will be from Council Member  
9 Foster.

10 COUNCIL MEMBER FOSTER: Thank you.  
11 Before I get started, Speaker, I would ask you as  
12 the Speaker of the body when we are, as  
13 colleagues, told to stick to the topic and not  
14 make speeches, that should also apply to the  
15 chair, who has made his speeches and made it clear  
16 how he feels. So, if we all have to not make  
17 speeches and stick to the topic--Peter, don't  
18 respond--then you need to stick to the topic.

19 CHAIRPERSON VALLONE: I'm sorry.  
20 I'm the chair, I'll respond when I want. You  
21 heard my opening statement, right?

22 COUNCIL MEMBER FOSTER: Anyway.

23 CHAIRPERSON VALLONE: You heard my  
24 opening statement. My opening statement was on  
25 this bill. That's what it was on. Maybe you

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missed that. I don't know if you were here.

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SPEAKER QUINN: Hey, hey, hey--

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COUNCIL MEMBER FOSTER:

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[interposing] Peter, I don't work for you.

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SPEAKER QUINN: --can I--

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COUNCIL MEMBER FOSTER:

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[interposing] I am not one of your boys. You will

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not talk to me like that.

10

[Applause]

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SPEAKER QUINN: Okay. So let's--

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CHAIRPERSON VALLONE: [interposing]

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I thought you were a professional.

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SPEAKER QUINN: Peter. Everybody.

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COUNCIL MEMBER FOSTER: I thought

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you were too.

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SPEAKER QUINN: Everybody.

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COUNCIL MEMBER FOSTER: Don't do

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tit for tat because I'll win this. Don't do it.

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SPEAKER QUINN: I think it is

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important to not laugh, one. Two, I think it's

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important to understand how emotional this topic

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is to people, how personal it is. That is

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important and never a bad thing, in looking at

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legislative issues, that we bring our personal

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experiences to legislation, whatever they are, will make legislation better. Now, Peter is right, we have to stay to the greatest degree we can on to the legislation, but this legislation is legislation related to a much bigger topic. So it is also appropriate for people to add in their personal feelings, experiences and what they see related to the issue. And it is fair for the Chair to sometimes say hey, we have a time thing here.

So let's all recognize that this issue is not one that is just solely within four legislative blocks and just give each other a little more room and latitude than we might if we were hearing legislation on something less significant and less personally impactful to particular communities in the City of New York. Okay?

CHAIRPERSON VALLONE: Thank you, Madame Speaker. As my colleagues are aware, I always allow leeway in the questioning, especially as you saw with Robert Jackson. I do that all the time. I would rely on the professionalism of my colleagues to try to minimize their speeches and

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2 asking questions. I always allow some leeway. We  
3 want to get to everybody, every Council Member,  
4 and we want to get to everybody in the audience.

5 SPEAKER QUINN: And I think  
6 everyone--I go to not every hearing but a lot of  
7 hearings--everyone is conducting themselves  
8 professionally. I do not think that's an issue.

9 COUNCIL MEMBER FOSTER: Thank you,  
10 Speaker. It is not an issue. It does run  
11 personal. I think that if a situation where the  
12 chair, if his father were an 88-year-old man who's  
13 being pulled over and being called "boy" and  
14 fitting a description, then it would be different.

15 So my question is, given everything  
16 that you're saying, even if I agreed and said  
17 okay, what do you think is the reason for the high  
18 numbers of black and Latinos being stopped,  
19 questioned and frisked without reasonable or what  
20 is the reasonable suspicion if it's not just being  
21 black and Latino?

22 MICHAEL BEST: Well, Council  
23 Member, I guess I would say that the police  
24 department's policy and what it trains its  
25 officers to do is to do stops based upon

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2 reasonable suspicion on an individualized basis.  
3 If someone is being stopped without suspicion,  
4 that's not what they're trained to do, it's not  
5 what they're supposed to do and it's not--we don't  
6 agree with it. That's not the policy of the New  
7 York City Police Department.

8           That said, you know, it sounds like  
9 what you're asking--you know, if you're asking me  
10 whether the city agrees that people are stopped  
11 simply on the basis of their race, no, the city  
12 does not agree with that. The city doesn't  
13 believe that's what's going on. The city believes  
14 that the stop, questioning and frisking is being  
15 done on an individualized basis in these  
16 situations based upon the facts. That's not to  
17 say that every single one of every stop that ever  
18 happens is correctly done and that there aren't  
19 mistakes made but simply that the police  
20 department's policy is not to do what it sounded  
21 to me like you might have been asking me about.

22           COUNCIL MEMBER FOSTER: So the city  
23 believes that these stop, question and frisk  
24 numbers are in fact accurate and reflect the  
25 majority of the police officers following

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procedure?

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MICHAEL BEST: The NYPD's police--

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COUNCIL MEMBER FOSTER:

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[interposing] No, I understand the policy. It's a

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yes or no. The city stands behinds these numbers

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and feels that yes, these numbers reflect NYPD

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following their policies.

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MICHAEL BEST: The city believes

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that the vast majority of police officers do their

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jobs professionally and appropriately and

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according to the facts as they know them and stop,

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question and frisk is not an exception to that.

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COUNCIL MEMBER FOSTER: Okay. My

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next question goes to the call for an inspector

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general. Given these numbers and given the

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concern from the communities that are targeted, is

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it also the city's feeling that IAB can police

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themselves? It's kind of the like the saying that

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I know I'm going to get wrong, the fox watching

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the hen house. Did I get that right? We believe

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that IAB can do, is doing a sufficient job in

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monitoring potential misconduct by police officers

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as it pertains to stop, question and frisk?

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MICHAEL BEST: We do believe that

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IAB does an excellent job. This administration has increased its resources substantially, as I pointed out in my testimony, so that it could do still more. I'd also point out that IAB, as I said in my testimony, is not the only entity that investigates allegations of misconduct by police officers. There are a number of them at various different levels, local, state and federal. So we believe that there is already sufficient oversight of the police department.

COUNCIL MEMBER FOSTER: Thank you for reiterating the levels. I know that, and I read your testimony. My question was specifically to the stop, question and frisk. That IAB, as mentioned in your testimony, is sufficient to do that and an outside entity isn't required?

MICHAEL BEST: I think IAB and all the other oversight that the police department has, all of it is sufficient to oversee the police department, not just on this but on all the other matters that the Council would be concerned about.

COUNCIL MEMBER FOSTER: Thank you.

CHAIRPERSON VALLONE: Speaker Quinn has a follow-up.

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2                   SPEAKER QUINN: Thank you. I just  
3 want to go back to what we were talking about  
4 before, about the state occupying the field, et  
5 cetera. The state has a human rights law, right?

6                   MICHAEL BEST: The state does have  
7 a human rights law, yes.

8                   SPEAKER QUINN: And the city has a  
9 human rights law.

10                  MICHAEL BEST: Yes, it does.

11                  SPEAKER QUINN: So, one could argue  
12 that the state has occupied the field as it  
13 relates to human rights.

14                  MICHAEL BEST: I don't know if one  
15 could argue that. I have not analyzed the state's  
16 human rights law, nor have I read any court  
17 decisions about it. I have looked at the Criminal  
18 Procedure Law, and I have looked at the  
19 legislative history of the Criminal Procedure Law,  
20 and I have looked at court cases involving the  
21 Criminal Procedure Law and it seems quite clear to  
22 me that the state has occupied the field there.

23                  SPEAKER QUINN: But I raise this  
24 because we have--the state clearly is in the field  
25 of human rights laws, as are we, and we have a

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2 much broader human rights law than the State of  
3 New York does, thank goodness. I just think  
4 that's important to note on the record as we're  
5 talking about these issues because there are other  
6 examples out there of places where the state and  
7 the city both have taken action, is all, I just  
8 want to put onto the record. Thank you.

9 CHAIRPERSON VALLONE: Thank you,  
10 Speaker. Council Member Lander?

11 COUNCIL MEMBER LANDER: Thank you  
12 very much, Chair Vallone. Thank you, Madame  
13 Speaker. Thank you, Counsel Best for being here.  
14 Mr. Best, are you familiar with the Rensselaer  
15 City Code Section 4312?

16 MICHAEL BEST: I am not.

17 COUNCIL MEMBER LANDER: It creates  
18 a long list of conduct for police officers in  
19 Rensselaer under which officers, for example, must  
20 identify themselves by name, rank and shield. How  
21 about Westchester County Administrative Code  
22 Section 273.02?

23 MICHAEL BEST: Councilman, I will  
24 just sort of tell you that I'm not familiar with  
25 the laws of other localities.

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2 COUNCIL MEMBER LANDER: So let me  
3 list for you the laws of a few other New York  
4 State localities. Westchester County  
5 Administrative Code Section 273.02 defines and  
6 prohibits racial profiling by members of the  
7 Westchester County Department of Public Safety.  
8 Buffalo City Code Section 154.11 prohibits  
9 discrimination based on race, creed, color and a  
10 number of other factors. The Jamestown City Code  
11 Section 65.2 states that the city council has a  
12 set of powers with regard to the chief of police.  
13 The Norridge City Council, the Jervis City  
14 Council. How is it that all these municipalities  
15 in New York State have legislated on the terrain  
16 that you say is entirely--that the field is  
17 covered by the New York State Criminal Procedure  
18 Law?

19 MICHAEL BEST: I am not familiar  
20 with those laws and therefore cannot comment on  
21 them. I don't know what they say. I don't know--

22 COUNCIL MEMBER LANDER:  
23 [interposing] Have you checked to see whether the  
24 judicial history includes any challenges to those?

25 MICHAEL BEST: I've checked to see.

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2 I can tell you that there is a case, reported at  
3 504 NY 991 People against Bell in which it was  
4 held by the court that Criminal Procedure Law  
5 entirely covers the field and preempts all local  
6 law in regard to criminal procedure.

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COUNCIL MEMBER LANDER: Preempts  
all local laws?

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MICHAEL BEST: Yes.

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COUNCIL MEMBER LANDER: So isn't it  
remarkable that all the laws I just said exist if  
every one of them is preempted by the state's  
occupation of the field?

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MICHAEL BEST: I don't know what  
they say, Councilman, so I don't--

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COUNCIL MEMBER LANDER:  
[interposing] I agree that you don't know what  
they say, but I really think you're making an  
argument that is preposterous here. I mean I  
think the Speaker got it exactly right which is  
where the laws conflict with the State Criminal  
Procedure Law they are preempted. But have you  
given us any specific examples of where Intro 799,  
800 or 801 specifically conflict with the New York  
State Criminal Procedure Law?

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2 MICHAEL BEST: In fact, I have,  
3 yes. If you'd like me to do that again, I'd be  
4 happy to do it.

5 COUNCIL MEMBER LANDER: Yeah, I  
6 guess it would be great if you would articulate  
7 the specific areas of conflict, because I think  
8 you are correct that where there are conflicts  
9 between the bills that are being proposed here,  
10 under New York State Criminal Procedure Law, the  
11 state law may preempt them. But the blanket  
12 preemption, I just have to say I believe is an  
13 absurd argument.

14 MICHAEL BEST: Well, I respectfully  
15 disagree with you on that, Councilman, but I'll go  
16 to some of the specifics.

17 COUNCIL MEMBER LANDER: That'd be  
18 great.

19 MICHAEL BEST: For instance, I  
20 mentioned earlier, I believe in response to one of  
21 the Speaker's questions, some of the problems with  
22 799. In particular, that it appears to make some  
23 searches that are specifically authorized under  
24 Section 140.50 of the Criminal Procedure Law  
25 illegal. It says that there's consent required

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2 for any search not incident to an arrest or  
3 supported by probable cause or a warrant. That's  
4 a very clear conflict with the Criminal Procedure  
5 Law. Intro--

6 COUNCIL MEMBER LANDER:

7 [interposing] I'm sorry. Could you read that one  
8 more time, just the thing you're quoting from, the  
9 Criminal Procedure Law?

10 MICHAEL BEST: Section 140.50,  
11 which I had mentioned in response to Councilman  
12 Jackson's question, which authorizes stop and  
13 question and potentially a search based upon  
14 reasonable suspicion, which is a lesser standard  
15 than probable cause, would be illegal under  
16 section 799. It is a very clear conflict.

17 COUNCIL MEMBER LANDER: Isn't the  
18 state law there really addressing stop and frisks  
19 and not consensual searches?

20 MICHAEL BEST: The point is that  
21 Intro 799 says that police need to get consent for  
22 any search that is not incident to an arrest or  
23 supported by probable cause or a warrant. A  
24 reasonable suspicion search, which is what leads  
25 to stop-and-frisk is not supported by probable

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2 cause; it is supported by reasonable suspicion.

3 Therefore--

4 COUNCIL MEMBER LANDER:

5 [interposing] But 799 addresses consensual  
6 searches.

7 MICHAEL BEST: As drafted, the bill  
8 says police officers need to request consent for  
9 any search that is not incident to an arrest or  
10 supported by probable cause or a warrant. That's  
11 a higher standard than reasonable suspicion. It  
12 is a direct conflict with the Criminal Procedure  
13 Law. It is as clear as day, Councilman.

14 COUNCIL MEMBER LANDER: So let me  
15 ask on more detailed on consensual searches,  
16 because I don't think the Criminal Procedure Law  
17 addresses consensual searches. Are you saying  
18 that 799 in regard to consensual searches wouldn't  
19 be preempted because there's not a conflict with  
20 the New York State Criminal Procedure Law?

21 MICHAEL BEST: No. I believe that  
22 since the Criminal Procedure Law sets forth all of  
23 the ways in which police officers can go about  
24 their business in terms of searches that it would  
25 be directly preempted. I also disagree with you,

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2 as I said, about the general preemption point.

3 Let me move on, if I might, to 800  
4 and 801 since you also asked about them and I'd  
5 like to--

6 COUNCIL MEMBER LANDER:

7 [interposing] Thank you.

8 MICHAEL BEST: --I'd like to  
9 respond to your question. Intro 800 conflicts by  
10 saying, as drafted it goes well beyond what the  
11 current Administrative Code provision says, not  
12 just on the lawsuits but also by saying that  
13 police officers cannot rely to any degree on any  
14 of the protected categories, to any degree. This  
15 goes well beyond the Criminal Procedure Law and,  
16 in fact, would eviscerate the standards set in the  
17 Criminal Procedure Law both for probable cause and  
18 for reasonable suspicion. So there's a direct  
19 conflict in the way that this is drafted.

20 COUNCIL MEMBER LANDER: Isn't there  
21 a difference between goes well beyond and  
22 conflicts with? Cities are often allowed to  
23 further elaborate. So if the rules that the state  
24 set a floor--

25 MICHAEL BEST: [interposing] Not in

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2 this case, sir.

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COUNCIL MEMBER LANDER: --we can set more detailed laws as long as they don't directly conflict with state provisions.

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MICHAEL BEST: Not here. This is a direct conflict in my view, Councilman, and I'll tell you why. The reason is that right now the Criminal Procedure Law sets forth that if a police officer has reasonable suspicion, which the courts have held means on a totality of the facts basis, which would include being able to consider in descriptions all of the things that are set forth in the bill right now, the police officer can take action based upon that. Or if they have probable cause based upon that information, make an arrest. This bill prohibits relying to any degree on that information. If you cannot rely to any degree on a piece of information that the state law would otherwise allow you to rely on, there is a direct confliction. That is the problem that we have here. That's one of the problems with this bill.

COUNCIL MEMBER LANDER: I guess what I would be glad to do afterwards is I'll send you these references from Rensselaer, Westchester,

1  
2 Buffalo, Jamestown, Norridge and Jervis, all of  
3 which I believe do exactly what the legislation  
4 that we're putting in place in general tries to  
5 do, which isn't to conflict with state law but to  
6 provide additional policy guidance or generalized  
7 standards and that in general they have been found  
8 to be perfectly legally permissible. I would like  
9 to turn to Intro 881.

10 MICHAEL BEST: Yeah, 881? All  
11 right.

12 COUNCIL MEMBER LANDER: Yes, 881,  
13 the questions are different there. I'm the prime  
14 co-sponsor with Council Member Williams on this  
15 one. You referenced the lawsuit Mayor of the City  
16 of New York versus the Council around the old  
17 Local Law 13 and its successor Local Law 91. What  
18 I will say is that this current Office of the  
19 Inspector General bill has been very carefully  
20 crafted to distinguish it substantially from the  
21 rejected legislation of the past. I think, as you  
22 noted, it's quite clear that the mayor solely  
23 appoints the inspector general and solely has the  
24 power to fire the inspector general.

25 I want to understand, though, you

1  
2 said that it would be curtailment to require that  
3 if the mayor chooses to fire the inspector general  
4 for any reason, it doesn't even say for cause.  
5 The mayor can fire the inspector general for any  
6 reason. The bill's requirement that the mayor  
7 send us a little note letting us know that he had  
8 done it, that is curtailment of his ability to  
9 fire, in your opinion.

10 MICHAEL BEST: I think that there  
11 are basically two problems with this bill that are  
12 interrelated. I'll call them both curtailment.  
13 I've been referring to them as curtailment.  
14 There's curtailment. There is also a section of  
15 the Charter regarding management of the city and  
16 its agencies, which is implicated and they often  
17 overlap. We have both problems here. You know,  
18 you might look at it in one or the other way,  
19 either as a management issue under the Charter or  
20 as a curtailment issue, but I do think that it is  
21 impinging on the mayor's discretion for--

22 COUNCIL MEMBER LANDER:

23 [interposing] How does it impinge on the mayor's  
24 discretion if he can fire for cause--

25 MICHAEL BEST: [interposing] But in

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any--

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COUNCIL MEMBER LANDER: --but is required just to send us a note letting us know that he has fired? You gave that as an example in your testimony.

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MICHAEL BEST: It's one example of what I think a court would have concerns about in terms of how this works overall. I also noted about five or six other things in the bill that are serious curtailment problems in my view and--

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COUNCIL MEMBER LANDER:  
[interposing] One of them was that the inspector general would have to be appointed, and I quote, "on the basis of integrity, a demonstrated ability in law, public administration or investigations, and a demonstrated commitment to the protection of civil liberties and civil rights." You really believe that that description of the kind of criteria that New Yorkers would want in an inspector general, that a court would find that an example of curtailment of the mayor's authority someone to do a job that obviously has a set of goals and criteria?

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MICHAEL BEST: I do. I don't

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believe that the--the question here I should point out because I understand the tenor of what you're asking me, Councilman. The issue of whether a person with those characteristics would be good in an oversight job is not the issue. The issue is the determination of what characteristics should be in that job. My point simply is this that if the Council sets limits on who the mayor can appoint based upon qualifications and characteristics that the person must have, then it is impinging upon the mayor's power to appoint and that is a curtailment problem. I think, frankly--

COUNCIL MEMBER LANDER:

[interposing] You know, with that definition of curtailment, honestly, every single law we ever pass would be curtailed.

MICHAEL BEST: I don't believe that's correct.

COUNCIL MEMBER LANDER: This bill

is very different from those other local laws, which sought to constrain who could be appointed. This one says you have to have integrity and know the law. No court is going to find that that is curtailment. Under this bill, the mayor has sole

1  
2 ability to hire the IG, sole ability to fire the  
3 IG, can fire the IG without cause.

4 Now, isn't it true also that in the  
5 lower court in those cases really specifically was  
6 concerned about the fact that the Independent  
7 Police Review and Audit Board would have the power  
8 to investigate individual acts of corruption and  
9 be therefore involved or implicated in the  
10 disciplining of police officers?

11 MICHAEL BEST: I seem to recall  
12 that that was one of the concerns in that case,  
13 yes. Again, I'm not sure that--this is not  
14 exactly the same legislation. I agree with you  
15 about that--

16 COUNCIL MEMBER LANDER:

17 [interposing] It's legislation that was drafted  
18 precisely to address the flaws in the earlier  
19 legislation. There's a lot of court history here  
20 that we spent a lot of time with, making sure to  
21 change the fundamentals. I think there may be  
22 areas that we can explore in more detail. If it's  
23 going to be that it has to be a person of  
24 integrity or that the mayor's got to send us a  
25 little note letting us know once he's fired that

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2 person, that's a definition of curtailment, again,  
3 that I just believe would--you know, we should  
4 pack up and go home and not have a City Council.  
5 I mean, perhaps the mayor feels curtailed by the  
6 City Council. Anyway, I guess that's another area  
7 where we'll have to disagree on the legal  
8 definition.

9                   What I just want to end with--and I  
10 appreciate, Mr. Chairman, you giving me a little  
11 time here and I'll wrap up shortly--is you talked  
12 about all of the other types of entities that  
13 perform investigations and have oversight of the  
14 police department. So, can you let me know, is  
15 there an entity that you believe has investigated  
16 allegations of the illegal use of quotas in the  
17 police department, alleged frequently by police  
18 officers anonymously and for example, in that very  
19 chilling Nation video? Are you familiar with any  
20 investigation into those allegations?

21                   MICHAEL BEST: I am not familiar  
22 with individual investigations on that or other  
23 topics. I can tell you that certainly, if there  
24 were civil rights allegations, as noted, you know  
25 this bill talks about civil rights. If there were

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2 civil rights allegations that needed to be  
3 investigated, IAB can look into them, the federal  
4 government can look into them, both federal  
5 prosecutors could look into them, the state  
6 attorney general could look into them. If there  
7 were something to investigate there, they  
8 certainly have the power to do that.

9 COUNCIL MEMBER LANDER: So there is  
10 no doubt that there are prosecutors--you think the  
11 best way for the police department to, for  
12 example, investigate whether there's an illegal  
13 use of quotas going on that undermines New York  
14 City effective policing, is to wait for a federal  
15 prosecutor to do it?

16 MICHAEL BEST: I'd point out two  
17 things. Number one that's not what I said. When  
18 I mentioned the Internal Affairs Bureau, which I  
19 think should investigate anything that is  
20 inappropriate in the police department. Secondly,  
21 characterizing federal and state, the attorney  
22 general and the United States Department of  
23 Justice simply as prosecutors, I think it misses  
24 one of the things they do which is also civil  
25 investigations. So they have both civil and

1  
2 criminal powers to investigate any topic that  
3 falls within a civil rights law.

4 COUNCIL MEMBER LANDER: So if what  
5 we were concerned with was an individual officer  
6 who for some reason was trying to impose quotas, I  
7 agree IAB would be a great way to go. But if  
8 we're concerned that there's systemic pressure as  
9 part of the way the NYPD is currently being  
10 operated, policy essentially, IAB can't  
11 investigate that. I don't think there has been an  
12 investigation of the alleged use of quotas. I  
13 would think it was something we want.

14 Similarly, are you aware of an  
15 investigation into the allegations of systemic  
16 crime statistics downgraded?

17 MICHAEL BEST: I believe there have  
18 been investigations of that, although I'm not  
19 really familiar with, again with the individual  
20 investigations on those. I can't say that my  
21 focus on this bill, as with the other bills, has  
22 been on what I believe to be the legal infirmities  
23 of them. That said--

24 COUNCIL MEMBER LANDER:  
25 [interposing] Your testimony included quite a lot

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2 of information that we don't need it because we've  
3 got all these other levels of--

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MICHAEL BEST: [interposing] That

said--

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COUNCIL MEMBER LANDER: --

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oversight. So I'm asking you questions about  
important areas of oversight that I believe are  
9 not addressed by those.

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MICHAEL BEST: I understand that,

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Councilman. That said, I believe that the, again,

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all of the areas you're talking about, there is in

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fact, in the entities that I mentioned, the

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ability to investigate any of those issues at

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multiple different levels. So, no, I do not

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believe there's a need for an additional entity to

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do what those entities already can do.

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COUNCIL MEMBER LANDER: So I'll

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just conclude with this. There hasn't been a

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meaningful investigation into the allegation of

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the systemic illegal use of quotas, as has been

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alleged by a range of police officers. There

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hasn't been a meaningful investigation into

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allegations of systemic crime statistics

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downgrading. The Mayor's Office of Police

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2 Corruption a few years ago started to do that but  
3 was unable to get the documents they wanted and  
4 the director resigned, essentially out of  
5 frustration.

6           There hasn't been a meaningful  
7 investigation of allegations from the AP, that the  
8 intelligence unit has been systemically violating  
9 the Handschu Consent Decree. There hasn't been a  
10 meaningful investigation of whether the trespass  
11 summons that the NYPD has been putting forward is  
12 sufficient to sustain allegations. There's a  
13 dispute between the Bronx DA and an internal  
14 revenue by the police department. There really  
15 hasn't been a meaningful investigation since the  
16 Rand study, now five year ago, of whether the  
17 basis of this hearing, stops and frisks, are in  
18 fact being done in a way that has racially  
19 disparate impact.

20           All that that says to me, we  
21 significantly need something that isn't out there  
22 now and that's why I hope the administration will  
23 take another look at Intro 881 and help us move  
24 forward to establish an inspector general that the  
25 mayor appoints, that the mayor appoints someone

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2 with great integrity, with real knowledge and  
3 ability of the law to help us not fight, not  
4 challenge, not debate, but improve New York City  
5 policing, which is what we all really desperately  
6 want. Thank you very much for your time here  
7 today.

8 CHAIRPERSON VALLONE: Thank you,  
9 Council Member. I appreciate your thoughtful  
10 questioning on the topic. Of course, I did give a  
11 little leeway as to time because you are the  
12 author of that bill. Again, I'm just trying to  
13 move it along so that everybody gets an  
14 opportunity to be heard.

15 Council Member, I completely agree  
16 that agencies or entities like the IAB do not do  
17 any systemic investigations. In fact, you bring  
18 up the potential fudging of crime statistics,  
19 which I've been in the forefront of questioning  
20 for a long time now. They did establish a  
21 commission, which is supposedly investigating  
22 right now. The problem is that commission was  
23 established over a year and a half ago and it was  
24 supposed to come back with its findings in three  
25 months. I've been writing letter after letter and

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2 requesting that information. I'd love to have it  
3 before all of our terms were over. But it's not  
4 there and it's a problem that you highlight and  
5 exists.

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We've been joined by a few more  
Council Members: Recchia, Comrie, Gonzalez, and  
also State Senator Montgomery is here. Welcome.

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We're going to go Gentile, Williams  
and Rose are the next three. So, Council Member  
Gentile?

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COUNCIL MEMBER GENTILE: Thank you,  
Mr. Chairman. Mr. Best, I have a few questions.  
First of all, I'm curious, how are consent  
searches done now with an officer who has someone  
who is non-English speaking? How are consent  
searches now conducted with those types of  
individuals?

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MICHAEL BEST: Well, I suppose,  
Councilman that your question, you know your  
question is getting very much into the day-to-day  
interactions that the police officers have. I am,  
mainly on the bill you're talking about,  
testifying about the legal problems involved with  
it. So I'm not ready to get into the details on

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2 that, but I'd be happy to get back to you on how  
3 that works under the Patrol Guide and what  
4 officers--

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COUNCIL MEMBER GENTILE:

6 [interposing] Well, it relates to Intro 799 here  
7 on--

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MICHAEL BEST: [interposing] Yes.

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COUNCIL MEMBER GENTILE: --the  
10 consent to search. I'm asking you how is it done  
11 now and how would it be different under this  
12 proposed intro?

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MICHAEL BEST: Well, the way a  
14 consent search would be different--there are two  
15 things that would be different under this bill, as  
16 far as consent searches go. First, as I indicated  
17 earlier, it would greatly expand when consent is  
18 required under the law, compared to what state law  
19 requires right now. So it would effectively say  
20 that even on a reasonable suspicion search,  
21 anything less than probable cause, a police  
22 officer would have to ask for consent.

23

Secondly, it requires a whole host  
24 of things--well, actually it's more than two.  
25 There are a number of things that the bill would

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2 require that go well beyond what is currently  
3 required. An officer would have to provide a  
4 business card with his or her information, plus  
5 the CCRB's contact information. They'd have to  
6 have some kind of written recording of the consent  
7 or oral recording of the consent that is then  
8 given to the person and then put into some kind of  
9 database, which arguably might cause issues  
10 related to what the state legislature did in  
11 preventing the police department from keeping a  
12 database of people who are stopped and frisked.  
13 So it would do a number of things that are  
14 different under this bill than what's currently  
15 required of the police.

16 COUNCIL MEMBER GENTILE: Wouldn't  
17 this also assure that consent is being understood  
18 by the individual who's being searched, or request  
19 to search?

20 MICHAEL BEST: I don't know that  
21 the requirements that are in this bill would  
22 actually be more effective than--in a situation  
23 that's purely about consent and not a reasonable  
24 suspicion search, but purely about consent--

25 COUNCIL MEMBER GENTILE:

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2 [interposing] Right.

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4 MICHAEL BEST: --that it really  
5 would add very much to a police officer simply  
6 asking for consent. I do think that it will place  
7 a number of burdens on police officers that are in  
8 many cases unrealistic and impractical. I did  
9 mention during my testimony, for instance, the  
10 situation where a police officer might be, say, in  
11 a housing project, doing a vertical patrol. This  
12 bill would require not just--you know, the bills  
13 here would require not just consent for searches  
14 for consent any time a police officer is talking  
15 to anybody. They'd have to explain to them why  
16 they're doing it.

16

17 So if you came up to a witness and  
18 you're investigating wrongdoings, say a shooting  
19 or a robbery that happened in an area and you want  
20 to talk to a witness, the bills would require that  
21 the police start going for business cards,  
22 recording consent to talk, et cetera, and explain  
23 themselves. It would really be quite impractical  
24 in terms of what it is we expect our police  
25 officers to do to investigate crime and keep  
people safe in what are very fluid and difficult

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2 situations.

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COUNCIL MEMBER GENTILE: I

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understand the concerns you have on the

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legislation, and I appreciate what you've said.

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But you can't tell us now how a consent is

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achieved with someone who does not speak the

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language?

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MICHAEL BEST: Well, I think they

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would have to find--you know, in order to actually

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ask--

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COUNCIL MEMBER GENTILE:

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[interposing] Even if it's 3 in the morning in a

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housing project.

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MICHAEL BEST: They would have to

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find a way to communicate with the person, either

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through someone else in the family, let's say, who

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spoke the language or another officer who spoke

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the language or something along those lines. If

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it's truly just a consent search we're talking

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about, then I think that, you know, you have to

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get consent.

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That said, the thing that I think

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seems to be getting somewhat lost here is that

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stop, question and frisk, which is what many of

1  
2 the members of this committee have been talking  
3 about today and which these bills appear to be  
4 aimed at, are not consent searches. That is, they  
5 are searches based on reasonable suspicion where  
6 consent is not required under state law.

7 So when members of the committee  
8 are asking about consent searches, they're asking  
9 about something different than a stop, question  
10 and frisk--

11 COUNCIL MEMBER GENTILE:

12 [interposing] But 799 applies to consent searches.

13 MICHAEL BEST: Intro 799 also  
14 applies to any reasonable suspicion search, which  
15 under state law right now is not a consent search.  
16 The point I've been trying to make about the  
17 conflict that exists is that under 799, as  
18 drafted, a search based on reasonable suspicion  
19 and that there's a dangerous situation for the  
20 officer or the public, would now require consent  
21 under this bill. That's not the situation under  
22 current law.

23 COUNCIL MEMBER GENTILE: That's the  
24 conflict you see--

25 MICHAEL BEST: [interposing] That's

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2 one of the conflicts.

3 COUNCIL MEMBER GENTILE: --with the  
4 CPO.

5 MICHAEL BEST: Yes.

6 COUNCIL MEMBER GENTILE: Just  
7 another issue that I wanted to bring up in  
8 general, our information shows that there were  
9 over 600,000 stop, question and frisks in 2010.  
10 What are the more current numbers? Have those  
11 numbers gone down?

12 MICHAEL BEST: I believe that they  
13 have gone down. I can get the numbers to the  
14 committee after the hearing. I don't have them at  
15 my fingertips right now.

16 COUNCIL MEMBER GENTILE: Okay. But  
17 it's your opinion or your information based on the  
18 best information you have that numbers have gone  
19 down, and that's the information that I have,  
20 talking to members of the department. Is there a  
21 policy now to decrease those numbers? What can  
22 you say about those numbers going down?

23 MICHAEL BEST: I would say what I  
24 said in response to an earlier question, which is  
25 simply that the police department--the stop,

1  
2 question and frisk, it's an important part of the  
3 proactive policing strategies that the New York  
4 City Police Department has used to drive crime to  
5 historic lows and that has lowered the murder rate  
6 to a point where we're now on track to having the  
7 lowest murders in recorded history, this year.

8 That when stop, question and frisks are done, the  
9 numbers will vary, based upon the information the  
10 police have. That the policy is simply that when  
11 police officers have individualized information  
12 about a situation that would require them to stop  
13 and question a person and search them, based upon  
14 reasonable suspicion, they'll do it.

15 COUNCIL MEMBER GENTILE: But the  
16 600,000 in 2010, the argument was made that that  
17 was contributing to the lower crime rate. But now  
18 you're saying that you don't necessarily need the  
19 stop, question and frisk to contribute to the  
20 lower crime rate.

21 MICHAEL BEST: I did not say that.  
22 What I said is that stop, question and frisk as a  
23 tactic is one element--it's an important element--  
24 but it's one element in the city's proactive crime  
25 strategies that the police department has used for

1  
2 years now to drive crime down substantially and to  
3 make this the safest big city in America. It's  
4 still an important part of it. The numbers are  
5 going to vary, but it is still an important part  
6 of the strategy, one part but an important part.

7 COUNCIL MEMBER GENTILE: Now, you  
8 don't have the exact numbers of the current stop,  
9 question and frisks, but in talking to people in  
10 the department, they're telling me that they're  
11 just not doing it in the same number as they were  
12 previously, even as recently as 2010. So is there  
13 a new policy that has been sort of disseminated  
14 among the precincts in the City of New York?

15 MICHAEL BEST: stop, question and  
16 frisk, as I said, it remains an important part of  
17 the city's proactive policing policies. The  
18 policy is that the police department will use all  
19 of the legal tools at their disposal and all of  
20 the information that they have in order to  
21 proactively drive crime down. Those strategies  
22 will be used in the combinations that the police  
23 commissioner and the police department believe are  
24 appropriate. So the numbers are going to vary,  
25 depending on what information they have for the

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2 situation.

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[Pause]

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COUNCIL MEMBER GENTILE: Well, I

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2 hope you do get back to us on that. I will check  
3 with the Chairman, and I'd be interested in  
4 hearing that response. Thank you, Mr. Chair.

5 SPEAKER QUINN: Thank you. The  
6 next questions are from Council Member Rose. Oh,  
7 I'm sorry, Council Member Williams.

8 CHAIRPERSON VALLONE: Sorry.

9 SPEAKER QUINN: Peter said Council  
10 Member Rose, but he's been overruled in his  
11 absence.

12 COUNCIL MEMBER WILLIAMS: Thank  
13 you, Madame Speaker. Thank you, Mr. Best. How  
14 many people from the administration are here with  
15 you?

16 MICHAEL BEST: I'm the only one  
17 testifying, Council Member, if that's your  
18 question.

19 COUNCIL MEMBER WILLIAMS: I'd also  
20 just like to know who's present. It's an  
21 important issue. Is there anyone else from the--

22 MICHAEL BEST: [interposing] There  
23 are other people from the administration in the  
24 audience. I haven't counted how many.

25 COUNCIL MEMBER WILLIAMS: I see.

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One, I just think it's disrespectful that there isn't a deputy mayor or someone here as well to respond to some of the merit issues of this. As I was looking at this, and I thank you also for the work you done at CCRB and the other good work. My comments are solely on this. This is about nine pages of testimony. I tried to find the most legal word that I can find, and about seven of them are just crap pretty much and they don't discuss the merits of it. I thought I was at the debate. Mitt Romney had a great showing but it was full of misinformation and crazy, inaccurate deflections, and that's what I felt like here.

So, one, I have to ask, do you think there's any merit for us trying to do this? Is there a problem that needs to be corrected?

MICHAEL BEST: I'll say a couple of things in response to that. First off, I disagree with your characterization of my testimony. I think that the main problem with these bills and the reason that I'm here testifying about them is that they are preempted by state law. I tried to make that as clear in my testimony for the Council as possible. I understand that there are members

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of the committee who may disagree with that.

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That's all right, people can disagree, but the

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fact of the matter is I believe quite strongly

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that those are the primary problems with these

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bills.

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In terms of whether there is an

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issue about the merits of the bills and whether

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the Council should legislate here, I think first

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off that since they're preempted, the Council

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should not legislate on these matters. I think

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secondly that the police department in general

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does a very professional job on all of its crime

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fighting strategies, including stop, question and

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frisk.

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I believe that a number of the

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things that are proposed in this legislation would

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cause enormous problems for the city. Some of

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them have been alluded to by some members of the

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committee, some of them I have alluded to. I

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think that it would make police officers--there

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are a lot of very impractical things in these

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bills, some of which I have discussed.

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I also think that the provisions

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relating to lawsuits would cause--whether there

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2 are compensatory damages or not in the bill--  
3 tremendous problems for the city. We could  
4 anticipate based on, I believe it's Intro 800 has  
5 the litigation--we could anticipate based on the  
6 way that it's written and the standing expansion  
7 that it includes--which go way beyond any notion  
8 of standing in current law--that there would be  
9 immediate lawsuits by potentially everybody in the  
10 city, based upon the categories that are in the  
11 bill and every advocacy organization that is  
12 interested in this, who normally would not have  
13 standing for such a thing.

14 So putting aside even compensatory  
15 damages, the amount of money that that bill would  
16 cost the city just in defending it would be  
17 tremendous. I also think that the possibility of  
18 litigation over an area that has been very  
19 carefully crafted by the state to navigate the  
20 constitutional protections and the need for the  
21 police department to do its job protecting the  
22 public, to add the requirements that are in these  
23 bills--

24 COUNCIL MEMBER WILLIAMS:

25 [interposing] My question was--

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2 MICHAEL BEST: --which will simply-  
3 COUNCIL MEMBER WILLIAMS:

4 [interposing] No, no, you said some of this  
5 before. My question was do you think these bills  
6 get at a problem that exists in the NYPD and  
7 particular communities in the City of New York?

8 MICHAEL BEST: We believe that the  
9 police department, the vast majority of police  
10 officers do their jobs appropriately, including  
11 when they do stop, question and frisk and that  
12 it's an important part of our strategy. So we do  
13 not believe that--you know, the Mayor has been  
14 clear about how he feels about this issue. I'd  
15 defer to his comments. On the inspector general  
16 issue, I believe he was quoted the other day.

17 COUNCIL MEMBER WILLIAMS: I only  
18 speak English, so I can't say it any other way, so  
19 I'll just say it one last time. Is there a  
20 problem with the NYPD in particular communities in  
21 New York City that needs to be corrected somehow?

22 MICHAEL BEST: In general, the  
23 police department is doing its job very well. The  
24 vast majority of police officers--

25 COUNCIL MEMBER WILLIAMS:

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2 [interposing] All right, I'll change the question.  
3 I'll change the question. Thank you. The reason  
4 I characterize it--

5 MICHAEL BEST: [interposing] But  
6 Councilman, I will say we do not believe these  
7 bills are necessary.

8 COUNCIL MEMBER WILLIAMS: Okay.  
9 The reason I characterized it as crap was for  
10 several reasons. One, my mom is here. She hasn't  
11 been to any other hearings; she's been to this  
12 one. Growing up, we've had conversations about  
13 what to do about gang activity and negative  
14 activity. However, when it comes to her worrying,  
15 the biggest concern she had is what happens when  
16 I'm stopped by the police department.

17 We had tremendous amount of  
18 conversations about that. She bought me "The  
19 Little Black Book" by Carol Taylor that describes  
20 exactly what to do when stopped by a police  
21 officer, so you can survive the setting. These  
22 are conversations that I would guess--I may be  
23 wrong--that your mom has not had with you. The  
24 primary reason is the color of our skin. If that  
25 is happening across the city from different

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2 communities, not just mine, there is a problem.

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The commissioner did great with the cameras in making it seem as if we had no solutions. We have proposed some solutions. He is not here to address the solutions. Someone higher up in the administration is not here to address the solutions. All we hear is that it is illegal.

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Stop, question and frisk has not lowered the shootings. That is what it was supposed to be about. We have the numbers here. They basically stayed the same as the stop, question and frisk exponentially went up. That is the facts. Please explain--this is the only question I'm going to ask on stop, question and frisk--the correlation between stop, question and frisk and the lower homicides that you have been touting.

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MICHAEL BEST: I think you have to look at all of the things the police department does, including stop, question and frisk, the entire proactive policing strategy that police use, the data that they use, the deployment of resources, the hot spot policing and stop,

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2 question and frisk is one part of it. You have to  
3 look at the entire package. What is very clear,  
4 Councilman, what is very clear about the way the  
5 police department has done its job during this  
6 administration is that crime is down and murders  
7 are way down and we're on--

8 COUNCIL MEMBER WILLIAMS:

9 [interposing] Yes, murders are down.

10 MICHAEL BEST: --we are on--

11 COUNCIL MEMBER WILLIAMS:

12 [interposing] You can explain how the hot spots  
13 have done it. My question was how do the stops  
14 prevent the murders? That's my direct question.

15 MICHAEL BEST: It is one--

16 COUNCIL MEMBER WILLIAMS:

17 [interposing] No, no, no, no, how do the stops  
18 prevents the murders?

19 MICHAEL BEST: I think, frankly,  
20 that to isolate one tactic from the entire  
21 strategy is not the way to analyze this. The fact  
22 of the matter is there are a host of things,  
23 including stop, question and frisk that are used  
24 by the police department to deter crime, to  
25 investigate crime and to prevent crime, and that

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all of these things together have succeeded.

COUNCIL MEMBER WILLIAMS: So the police strategy is a hodgepodge of tactics, some of which may be working and some of which may not.

MICHAEL BEST: That is not--

COUNCIL MEMBER WILLIAMS:  
[interposing] That's exactly what you said.

MICHAEL BEST: That is not what I said, Councilman. What I said is that it is one component of an overall strategy and that you have to evaluate the police department's performance based on the overall strategy and what results it has gotten. The results for New Yorkers are that this is the safest big city in the United States.

COUNCIL MEMBER WILLIAMS: If you'd indulge me, I actually want to go through some of the bills and ask some questions. I would say that I'm happy that more people are surviving being shot. I would like them not to be shot to begin with.

Legislation 799, which has to do with--it's actually more aimed at marijuana and not stop, question and frisk. You said, I believe on page three, the bill conflicts with state law

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2 that authorizes officers to conduct searches and  
3 recover evidence even in situations like those  
4 where they have reason to believe an individual is  
5 carrying a weapon or other contraband or evidence  
6 is in plain view.

7 That is completely false. That is  
8 not true. It does not interfere with an officer's  
9 ability actually to conduct a frisk and it gives  
10 reasonable suspicion to do a search if necessary.  
11 So, if for say that part is not true, would it be  
12 something that you can support?

13 MICHAEL BEST: Well, as I said in  
14 general, I believe that this is entirely preempted  
15 by state law. So, no, it's not something we could  
16 support.

17 COUNCIL MEMBER WILLIAMS: So even--

18 MICHAEL BEST: [interposing] But  
19 I'd also point out that I don't agree with the way  
20 the bill has just been characterized because the  
21 bill says that any time--I'm looking at it right  
22 now--relates to any search of a person or a  
23 person's vehicle, et cetera, that's not pursuant  
24 to a warrant, incident to arrest or supported by  
25 probable cause. That's not simply consent

1  
2 searches. That's a lot more than just consent  
3 searches that would be covered by this bill.

4 COUNCIL MEMBER WILLIAMS: These are  
5 some of the amendments that are going to be there.  
6 This is not all of them. Explicitly state that  
7 the requirement of obtaining objective proof  
8 consent to search does not apply to frisks,  
9 eliminate provision specifying how objective proof  
10 of consent is to be obtained. That goes to your  
11 legal argument. We're just putting policy. The  
12 commissioner will decide how the express consent  
13 is gained. And add to the legislative intent  
14 section a reference to how this legislation will  
15 help resolve the problem of individuals being  
16 wrongly arrested for private and possession of  
17 marijuana, small amounts of marijuana.

18 What I'm saying to you, perhaps we  
19 worded it wrong. If we reword it to make sure  
20 that we're clear in what our intent is and that if  
21 you have reasonable suspicion, you can do these  
22 searches. Our objective is to do better police  
23 work, not to stop police work. So if we can  
24 correct that and we can take away the provision  
25 that says exactly how you have to do the consent

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searches, would it be something that you can support?

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MICHAEL BEST: Well, I'm not going to negotiate a bill in the middle of the hearing. I'm here to testify about four bills that have been introduced, which I've been doing. I will tell you that obviously, we'll always talk to the Council about any legislation the Council is considering, but, as I mentioned in my testimony, we believe that there are very serious preemption issues in general that relate to these bills and that therefore these are not appropriate places for the Council to be legislating.

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COUNCIL MEMBER WILLIAMS: The frustrating part for me also about this is came here and didn't even provide examples that could work. You couldn't even say well we could change the bills to make it work. You didn't even talk about the problem that exists or why we're doing this bill to begin with.

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With the IG bill, you said that there is oversight. I beg to differ, but, however, you said DAs, judges, things of that nature. Is that what you said?

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2                   MICHAEL BEST: I mentioned a number  
3 of levels of oversight at the city, state and  
4 federal level.

5                   COUNCIL MEMBER WILLIAMS: The Bronx  
6 DA has now said that he can't continue to  
7 prosecute on the vertical searches, which are  
8 similar to the stop, question and frisk because he  
9 can't sustain them. Is that part of the oversight  
10 that's saying there's something wrong with the  
11 NYPD?

12                   MICHAEL BEST: I would say that,  
13 you know, every individual case by a prosecutor  
14 has to be decided in the discretion of that  
15 prosecutor, whether they believe that there is  
16 probable cause to go forward with a case. So it's  
17 a slightly different situation than what we're  
18 talking about on the overall issue. What I'm  
19 saying that where there are--you know, there are  
20 problems where individual police officers are  
21 violating the law, certainly a DA can take action.

22                   COUNCIL MEMBER WILLIAMS: He was  
23 summarily saying that he can't do it, not  
24 individually. He can't do it.

25                   MICHAEL BEST: Well--

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COUNCIL MEMBER WILLIAMS:

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[interposing] In addition, there are a few judges that have released people because there have been problems with stop, question and frisk. This is another layer that you're saying is oversight that's saying there are problems.

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MICHAEL BEST: Well, I would say

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that they are, as I mentioned in my testimony,

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court cases going on right now where the systemic

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issue is being litigated. So I suppose one could

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look at that also as a protection about the police

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policy and we'll litigate--I'm not going to get

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into the specifics of litigation here, but, you

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know, we'll litigate those cases in court.

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COUNCIL MEMBER WILLIAMS:

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Primarily, there is no proactive oversight of the

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police department. All of this, we have to have

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great resources to bring these to court, just to

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mention.

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Intro 801, let me see what you said

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about that. This would apply to civilian

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interaction, including those victims or witnesses.

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This is the one that says we have to get express

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consent. So your big thing is legal. As Council

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2 Member Lander was saying then the City Council  
3 can't pass any laws. As a matter of fact, the  
4 courts have said that many of these are not  
5 operations of city government, they're simply--and  
6 any limitation to act is merely a consequence of  
7 us doing legislative policymaking.

8 So what you're saying, any policy  
9 making that we do is all out of the window because  
10 they direct something. We can set policy. It's  
11 up to the commissioner to direct that policy. So  
12 here we have--

13 MICHAEL BEST: [interposing] That's  
14 not my point.

15 COUNCIL MEMBER WILLIAMS: What's  
16 the point?

17 MICHAEL BEST: My point is that  
18 where the state has either filled the entire field  
19 of a body of law, as they have with the Criminal  
20 Procedure Law, or has passed a law that would  
21 conflict with the local legislation, which is also  
22 the case as regards the three first bills that we  
23 talked about, 799, 800 and 801, then the City  
24 Council can't act. It is not a general  
25 prescription on City Council action in every area

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2 of law; it depends upon the specifics of what the  
3 state has done already. Here, the point I was  
4 making was that the state has, in fact, taken  
5 action here that both as a general matter and  
6 specifically in regard to the areas that the  
7 Council is proposing to legislate on here, would  
8 preempt anything the Council would do.

9 COUNCIL MEMBER WILLIAMS: Let me  
10 sum up what you actually did hear. What you said  
11 was originally the administration is saying I  
12 don't want to do it, I don't want to do it, I  
13 don't want to do it, and now you said you can't  
14 make me do it, which is a 5-year-old tantrum about  
15 an issue that is very, very pressing in different  
16 communities. We should be able to have an  
17 intelligent conversation about how to solve these  
18 problems instead of the administration summarily  
19 and continually with a hubris that is palpable,  
20 continuing to say that it does no wrong. An  
21 administration that has done wrong in the past,  
22 where there was CityTime, where there was the 9/11  
23 reports, where it was the FDNY that had some of  
24 the similar problems here, fight it, make the city  
25 cost more money. It turns out we were right, we

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2 won and now you had to make changes. Whereas if  
3 we can have this discussion now, all we want is a  
4 discussion and you're throwing temper tantrums or  
5 the administration is instead of really discussing  
6 these bills.

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8 Now, the last one is 800, and I'm  
9 holding some of the amendments that we have here.  
10 Some of the amendments include eliminate  
11 compensatory and punitive damages from relief  
12 available for a violation of the profiling  
13 provisions; clarify that the private right of  
14 action created by the state statute is both  
15 intentionally discriminatory policy; policing  
16 practice in discriminating; policing practices  
17 that disproportionately impact individuals or  
18 communities on prohibitive grounds; clarify that  
19 the courts will have authority to award injunctive  
20 relief. Are any of these amendments make it  
21 palpable for the administration?

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MICHAEL BEST: Well, as I mentioned  
earlier, I don't think that the change of what  
kind of damages are available or not really--  
although, obviously, it means that damages won't  
be available, it doesn't mean that there won't be

1  
2 an explosion of litigation. I believe this, for  
3 the reasons I stated a few minutes ago, would  
4 cause an explosion of litigation both because of  
5 the nature of the bill and because of the standing  
6 expansion, which is really unprecedented and  
7 completely inconsistent with notion of standing in  
8 lawsuits, which generally are based upon injury  
9 and fact.

10 I would also say thought that also  
11 in that bill, and I had mentioned this previously,  
12 this would--you know, and I believe in the  
13 amendment that is being contemplated right now,  
14 the language of not being able to use this  
15 descriptive status to any degree remains in that  
16 amendment as well. That would in fact completely  
17 conflict with the totality of the circumstances  
18 test that the courts and the state have set forth  
19 for how police officers do their jobs. So I think  
20 it would make, even as amended would make--even if  
21 that amendment were adopted and introduced, it  
22 would still be very problematic.

23 COUNCIL MEMBER WILLIAMS: So the  
24 way to prevent cost overruns is not to stop the  
25 bad stops, it's to do nothing at all.

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2                   MICHAEL BEST: I don't think it's  
3 fair to characterize what this administration has  
4 done in these areas as nothing at all. In fact,  
5 as was discussed earlier, we've worked very  
6 closely with the Council on issues such as the  
7 Civilian Complaint Review Board and giving them  
8 independent prosecutorial authority and resources  
9 to do it, which was--

10                   COUNCIL MEMBER WILLIAMS:

11 [interposing] But still, even though you have  
12 prosecutorial authority--

13                   MICHAEL BEST: --which was an  
14 agreement between the Mayor and the Speaker.

15                   COUNCIL MEMBER WILLIAMS: I'm happy  
16 about the prosecutorial ability but it still lies  
17 with the commissioner. It still lies with the  
18 commissioner. Even if they have prosecutorial  
19 authority, it still lies, the final answer lies  
20 with the commissioner. That's not independent  
21 oversight.

22                   MICHAEL BEST: Well, the CCRB does,  
23 under the Charter, have a certain amount of  
24 independence and they bring charges. Yes, the  
25 final penalty under the law is up to the police

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2 commissioner. But the fact of the matter is the  
3 CCRB has a tremendous amount of independence and  
4 we've cooperated with the Council to make that--to  
5 go still further with that. You know, we have  
6 discussed these issues with the Council on many,  
7 many occasions and I think it's unfair to  
8 characterize what we want to do either as a temper  
9 tantrum, which is wholly inaccurate and I think an  
10 unfair characterization of what we're doing here.

11 I'd point out to you, Councilman  
12 that the issues I'm raising about preemption and  
13 the legal authority to pass these bills are very  
14 serious ones under the law. It's also very  
15 important as a substantive matter, because the  
16 fact of the matter is that the state, you know  
17 there was a nine-year study before the Criminal  
18 Procedure Law was done. It was enacted as a  
19 comprehensive set of laws for a very good reason,  
20 which is that the balance between the  
21 constitutional rights people enjoy and the need  
22 for our police officers to be able to do their job  
23 so that they can drive crime down, and as I have  
24 pointed out, we have had tremendous success in  
25 this administration doing exactly that. Those are

1  
2 very important balances to strike. They need to  
3 be struck statewide. They have been struck  
4 statewide. To the extent these bills would alter  
5 that balance and make it more difficult for the  
6 police to do their jobs, they're not good bills.  
7 That's what we believe these bills are.

8 COUNCIL MEMBER WILLIAMS: It is a  
9 temper tantrum. Just so you know, we're not going  
10 away until changes have occurred. So they can not  
11 show up as much as they want. Somebody somewhere  
12 is going to move forward to make the reforms that  
13 are needed.

14 Just about two questions, on 800,  
15 if we pass a law that says you can't do something,  
16 do you believe it is okay to do that thing  
17 accidentally?

18 MICHAEL BEST: I'm not sure I  
19 understand the question.

20 COUNCIL MEMBER WILLIAMS: If you  
21 cannot violate a law, if you steal, you can't  
22 steal, but you steal it accidentally, should that  
23 be allowed?

24 MICHAEL BEST: I'm not sure--I mean  
25 I--

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COUNCIL MEMBER WILLIAMS:

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[interposing] You have no idea where I'm going  
with this?

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MICHAEL BEST: Well, under the  
Penal Law, theft is an intent crime, which means  
that you have to intend to steal.

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COUNCIL MEMBER WILLIAMS: Okay.

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MICHAEL BEST: So you couldn't do  
it accidentally.

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COUNCIL MEMBER WILLIAMS: So let's  
just go to stop, question and frisk. If you  
cannot violate someone's civil rights, can you do  
it accidentally? Should you be allowed to do it  
accidentally?

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MICHAEL BEST: Look, we have a  
35,000 person police force, if I understand where  
you're going with this.

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COUNCIL MEMBER WILLIAMS: Yes.

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MICHAEL BEST: We have a 35,000  
person police force. Will sometimes some police  
officers make mistakes? Of course they will.  
That doesn't mean, however, that there is a policy  
on the part of the police to do things  
incorrectly.

1  
2 COUNCIL MEMBER WILLIAMS: That  
3 wasn't my question.

4 MICHAEL BEST: Or that nothing  
5 should be done when a mistake gets made. The  
6 police department trains police officers at the  
7 academy. They have ongoing training that goes on.  
8 They have training at Rodman's Neck on stop,  
9 question and frisk. There's a tremendous amount  
10 of training the police department does to make  
11 sure that officers know what they're supposed to  
12 do. Does that mean in every single circumstance  
13 no officer will do it wrong or there will never be  
14 a mistake? Of course it doesn't mean that. But  
15 the fact of the matter is that the vast majority  
16 of officers do their jobs well, including on stop,  
17 question and frisk.

18 COUNCIL MEMBER WILLIAMS: Yes, and  
19 we want them to continue to do that, that's why  
20 we're trying to make corrective action. I want to  
21 clarify something, but you didn't answer my  
22 question. Then question was should you be able to  
23 do it accidentally. So this is curing something  
24 that we tried to fix the first time but wasn't  
25 able to.

1  
2 This bill does not say you can't  
3 use race at all. In fact, if race is a part of  
4 reasonable suspicion, if race is something someone  
5 called in and said that a white male with a red  
6 tie did something, you can look for a white male  
7 with a red tie. If race is involved in negative  
8 criminal behavior in a certain location, like City  
9 Hall, there's a gang of white males with ties and  
10 briefcases and they're stealing stuff all over the  
11 place, perhaps from people's banks and mortgages  
12 and things like that, you then can use the  
13 policing laws that exist to use race in that  
14 manner to continue to do that. So to characterize  
15 it and say that you can't use race at all is not  
16 correct. You just can't do what you've been doing  
17 now, which is stopping people just because of  
18 race. That is what it is. So I want to clarify  
19 that before you continue saying that.

20 What frustrates me is there is  
21 absolutely, what you're saying, no provision that  
22 you can think of that would make these bills good  
23 bills, there is no corrective action that you can  
24 think of that can be taken to heal some of the  
25 problems that are going on. I was also given the

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2 standards of the profiling bill is actually from  
3 the Department of Justice. So if it doesn't  
4 violate the Department of Justice, I'm not sure  
5 how it violates the state. State criminal law  
6 does not cover frisks.

7           When it comes to IAB, if IAB is  
8 such a great tool, what I would suggest is if I  
9 have to pay my city taxes in my household, I'm  
10 going to create an internal agency to make sure  
11 that I paid my taxes and I don't want you to check  
12 up on it. Similarly, with agencies, when you ask  
13 them for the PEGs, let those agencies have an  
14 internal audit system that tells you whether  
15 they've paid those PEGs or not, and do not check  
16 up on them. Then we'll have a similar and equal  
17 system when it comes to the NYPD.

18           It's unfortunate that we can't have  
19 constructive discussion and that the  
20 administration does the ostrich with their head in  
21 the sand, won't even admit there's a problem so  
22 that we can continue the discussion.

23           I'm very proud of these bills. I'm  
24 thankful for all of the Council Members who have  
25 signed on. I'm thankful for the Speaker for

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2 pushing these hearings forward.

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There is a problem here, sir.

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Unless the administration deals with it, it's just

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going to grow. Thank you.

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CHAIRPERSON VALLONE: Thank you,

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Council Member. I feel compelled to point out,

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again as I said in the opening statement, there is

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a law right now that bans stopping people just

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because of race.

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We've got seven or eight more

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Council Members on the list, at least one Assembly

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Member. Thirty people have signed up, at least.

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So I do appreciate people keeping their comments

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on topic and as brief as possible so we can get to

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everyone. We'll go now to Council Member Rose.

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COUNCIL MEMBER ROSE: Thank you.

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Thank you, Chair. I want to thank Jumaane

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Williams for being, you know, so steadfast in

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pursing this issue because it is a gross violation

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of people's civil rights. With that in mind, I'd

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like to know what office monitors whether the

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police department adequately protects the civil

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rights and civil liberties of New York City

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residents.

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2                   MICHAEL BEST: Well, as I pointed  
3 out, there are a number of different entities  
4 outside the police department that have civil  
5 rights jurisdiction over the NYPD, if there are  
6 complaints about them violating the civil rights  
7 of New Yorkers, including at the federal and state  
8 level. So all of those offices can, if they want,  
9 initiate a civil rights investigation to oversee  
10 and investigate what it is that the police  
11 department is doing.

12                   COUNCIL MEMBER ROSE: So when you  
13 have numbers like 800,000, 600,000 people who are  
14 stopped, questioned and frisked, there is no  
15 internal monitoring organization that looks at  
16 these violations of civil rights?

17                   MICHAEL BEST: If there are  
18 allegations of misconduct by an officer, which  
19 would include the possibility that they violated  
20 someone's rights in contravention of the standards  
21 and procedures they're supposed to follow, because  
22 again police--

23                   COUNCIL MEMBER ROSE: [interposing]  
24 Do these numbers indicate a violation by 800,000  
25 police officers? You know what I'm saying is that

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2 who is monitoring and who has oversight over this  
3 unconscionable number of stops that have been  
4 where people are being racially profiled?

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MICHAEL BEST: There is litigation  
6 right now, as I mentioned in my testimony, in  
7 court regarding stop, question and frisk, which I  
8 think is part of what you're alluding to. I'm not  
9 going to get into the details of that litigation  
10 in this forum. That's going to be handled in  
11 court. You know, there's a premise to your  
12 question that the New York City Police Department  
13 is racially profiling the citizens of New York  
14 City and we don't agree with that.

15

COUNCIL MEMBER ROSE: Do you know  
16 how much money we're spending in lawsuits for  
17 cases that are being brought about racial  
18 profiling?

19

MICHAEL BEST: I don't have those  
20 numbers. We can look to see what numbers there  
21 are regarding lawsuits against the police  
22 department if that would be helpful to you.

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COUNCIL MEMBER ROSE: What agency  
24 would you be getting that number from?

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MICHAEL BEST: Well, I would talk

1  
2 to the City Corporation Counsel's office about  
3 lawsuits generally. I mean one could do that for  
4 any agency and the police department would be no  
5 different.

6 COUNCIL MEMBER ROSE: That would  
7 cover all of these agencies that have oversight of  
8 such cases?

9 MICHAEL BEST: No. I'm not quite  
10 sure if I understand myself whether we have one or  
11 two questions here. My point about the oversight  
12 is say the attorney general's office or the  
13 Southern District of New York for the Department  
14 of Justice or the Eastern District of New York,  
15 those are independent of us and we wouldn't have  
16 information about what they're doing and what  
17 they're spending and what the cost of that is on  
18 any kind of cases. They're independent of New  
19 York City and the New York City Police Department.  
20 If you're asking--

21 COUNCIL MEMBER ROSE: [interposing]  
22 So then my question is how do you know how many  
23 lawsuits are being brought about racial profiling?

24 MICHAEL BEST: Well, I know how  
25 many lawsuits the city has against it. That's why

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I think, perhaps, there are two things we're talking about here. We can find out how many lawsuits against the police department there are and what the subjects of those lawsuits are and that kind of thing, but that doesn't cover what the federal or state government might be doing. So if you're asking me to look into that, you know, on the lawsuits against the city, I can do that. I will tell you that the lawsuit I mentioned in my testimony, I believe, regards the issue that you are asking about and that's the primary case that's going on right now.

COUNCIL MEMBER ROSE: So you have no numbers that you can share with us of how many lawsuits have been brought to the NYPD in regard to racial profiling?

MICHAEL BEST: Particular numbers, I'd have to get back to the committee on that.

COUNCIL MEMBER ROSE: Is there a cost equated with the establishment of an IG's office?

MICHAEL BEST: I don't believe we have at this point done an analysis of what it would cost, and our opposition to the bill is on

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2 the basis that I've discussed. We haven't really  
3 looked at it from a budget perspective at this  
4 point.

5 COUNCIL MEMBER ROSE: So that's not  
6 a reason why you're not considering establishing  
7 an IG's office? Cost is not an issue?

8 MICHAEL BEST: The objections we  
9 have to the bill are the ones that I've stated and  
10 the ones that the Mayor has stated publicly.

11 COUNCIL MEMBER ROSE: So, with the  
12 cost of the lawsuits, do you think that it would  
13 pay for an IG's office?

14 MICHAEL BEST: I don't--

15 COUNCIL MEMBER ROSE: [interposing]  
16 What we're paying out?

17 MICHAEL BEST: As I said in my  
18 testimony, we don't believe that an inspector  
19 general's office is necessary and therefore, I  
20 don't really see the correlation between the  
21 subjects you're asking me about.

22 COUNCIL MEMBER ROSE: Okay. So  
23 what is the correlation between the productivity  
24 quota and the stop, question and frisk numbers?

25 MICHAEL BEST: I'm not sure

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2 precisely what you're asking me, Council Member.

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COUNCIL MEMBER ROSE: I'm asking

you what is the correlation between the

productivity quotas and the stop, question and

frisk numbers. Have not police officers been

given a number that they're supposed to bring

back? Does this have a correlation in stop,

question and frisk? Every morning the precinct

commander gives out directions on what quotas,

productivity numbers they need to bring back.

MICHAEL BEST: The police

department does not set quotas, Council Member.

So that's--

COUNCIL MEMBER ROSE: [interposing]

There are quotas, counsel--

MICHAEL BEST: [interposing] Well,

I think we disagree on that, Council Member.

COUNCIL MEMBER ROSE: They call it

productivity, but it's a quota. I was told that

they--the commissioner even admitted that how do

they know if officers are doing their jobs if

they're not bringing back a certain number of

arrests, of stop, question and frisk numbers.

MICHAEL BEST: I think there's a

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2 different between, in any agency there is a  
3 difference between looking at the numbers and  
4 productivity of a person in terms of things they  
5 are doing and setting a quota. So asking about  
6 quotas I think is not the correct way of viewing  
7 this.

8

COUNCIL MEMBER ROSE: So you're  
9 saying that the fact that they have quotas to fill  
10 does not have any impact on them randomly stopping  
11 just everybody because they fit--

12

MICHAEL BEST: [interposing] I'm  
13 saying that there are not--

14

COUNCIL MEMBER ROSE: --a  
15 description.

16

MICHAEL BEST: I'm saying that  
17 there are not quotas. You've used the word quotas  
18 and I'm saying that there are not quotas.

19

COUNCIL MEMBER ROSE: Okay. Thank  
20 you. I'm finished.

21

CHAIRPERSON VALLONE: Thank you,  
22 Council Member. We have the next three would be  
23 James, Greenfield and Lappin. Council Member  
24 James?

25

COUNCIL MEMBER JAMES: Thank you.

1  
2 External oversight and accountability are critical  
3 to any democracy. The legality and effectiveness  
4 of law enforcement practices should be subject to  
5 the sunshine of public review. It is therefore  
6 unfortunate that the chief law enforcement officer  
7 for the City of New York is not here to engage in  
8 an open and instructive debate relative to  
9 practices that affect individual liberties.

10           Though, Mr. Best, I am happy that  
11 you are here, I just think it is the  
12 responsibility of the Mayor of the City of New  
13 York to instruct the police commissioner, the top  
14 law enforcement officer to be before this  
15 committee to ask questions relative to civil  
16 liberties which have been violated in this city  
17 and some prescriptions that have been put on the  
18 table.

19           Mr. Best, I appreciate your opening  
20 remarks and I specifically want to make comment  
21 with respect to your CrimeStat report, which quite  
22 frankly is really irrelevant to the issue at hand.  
23 The probative issue before this body today is what  
24 measures can be enacted by the City Council to  
25 ensure the civil and constitutional rights of all

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New Yorkers are protected. That's the issue. Any attempt to distract the public and blind them with data--and I guess the mantra is if you say it enough they ultimately will believe it--into thinking that there is a correlation between the effectiveness of New York's stop-and-frisk policy and the small--let me reiterate--the small minimal number of arrests and summonses recovered somehow lead to a reduction in crime is really a distraction. There is no objective research that has ever proven the effectiveness of New York's stop-and-frisk program and the reduction in crime.

Since I heard it today and I've heard it yesterday, I heard it over the weekend, let me state it again. There is no objective research that has ever proven the effectiveness of New York's stop-and-frisk program and the reduction in crime.

Let me just argue that I am not a proponent of stopping the stopping and frisk program because I recognize that it is sanctioned by the Supreme Court of these United States. What I am suggesting is that the abuse of the stop-and-frisk program is outrageous. The fact is that

1  
2 approximately--it's not a question of the program  
3 but the question of who is being stopped and what  
4 the results of the stop are and how can we do it  
5 in an unbiased fashion.

6 In fact, let me just say for the  
7 record that even Police Commissioner Kelly agreed  
8 with me. In fact, in 2000, these are the words of  
9 then Police Commissioner Ray Kelly. "A large  
10 reservoir of good will was under construction when  
11 I left the police department in 1994. It was  
12 called Community Policing. But it was quickly  
13 abandoned for tough sounding rhetoric and dubious  
14 stop-and-frisk tactics that sewed new seeds of  
15 community mistrust." Those are not my words.  
16 Those are words of Police Commissioner Kelly.

17 So that notwithstanding, let me get  
18 to the issues at hand, and that is the  
19 administration's objections to the bills,  
20 specifically, 799, 800 and 801. The argument of  
21 the administration is the City Council is  
22 preempted. You stated that when a field is  
23 preempted by statute, like the CPL, there is no  
24 authority for local government to legislate. So  
25 the argument would be even in the case where there

1  
2 is cooperation, as was mentioned by the Chair,  
3 there is no authority for a local government to  
4 pass law. So the question is: was Mayor Bloomberg  
5 wrong in 2004 when he passed the racial profiling  
6 bill?

7                   MICHAEL BEST: I would say that the  
8 Mayor agrees with the Council that racial  
9 profiling is and should be against the law and his  
10 signing of the bill was a demonstration of that.  
11 As I said earlier, that bill is very different  
12 than the ones that are before the Council right  
13 now. Whatever preemption issues may arise in  
14 regard to that bill, it simply codified what was,  
15 in fact, already the protection that existed under  
16 the equal protection laws of the constitution and  
17 also state law. So there is no conflict there  
18 between--

19                   COUNCIL MEMBER JAMES:  
20 [interposing] But codification of state and  
21 federal law is one thing, but what you are saying  
22 and what you stated--

23                   MICHAEL BEST: [interposing] Yes.

24                   COUNCIL MEMBER JAMES: --in your  
25 testimony is that we have no authority to act,

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even in the case of codification of existing law.

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That's what you said.

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MICHAEL BEST: Well, yes--

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COUNCIL MEMBER JAMES:

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[interposing] And if that's what you said, then in

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2004 when Mayor Bloomberg signed the racial

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profiling law, even if it was a codification of

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the law, he had no authority to do that and then

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in fact he was wrong. And so if he was wrong

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then, then your position is he was wrong then,

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then he should not have done it and therefore he

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was preempted and he should not have passed that

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law. Is your testimony, is your position that the

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Mayor of the City of New York should not have

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passed any legislation because he was preempted,

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notwithstanding of the fact that it was a

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codification of existing law?

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MICHAEL BEST: My position is, and

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as I said earlier, no one really knows what would

21

happen if it got to court.

22

COUNCIL MEMBER JAMES: Thank you.

23

MICHAEL BEST: That said--

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COUNCIL MEMBER JAMES:

25

[interposing] Thank you.

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MICHAEL BEST: That said--

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COUNCIL MEMBER JAMES:

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[interposing] That's it. No one knows--

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MICHAEL BEST: [interposing] That

5

said--

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COUNCIL MEMBER JAMES:

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[interposing] You've said it. You've said enough.

8

[Crosstalk]

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CHAIRPERSON VALLONE: --the

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question please.

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COUNCIL MEMBER JAMES: Let's move

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on. So let's go on to your testimony with regards

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to all of these organizations that exist, all of

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these entities that exist that are responsible for

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systematic--for engaging in any investigations

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regarding the systematic oversight of NYPD. As

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you know, the U.S. attorney and the district

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attorney have no broad oversight authority. In

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fact, they focus on the criminal justice system.

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So to say that the U.S. attorney and the district

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attorney have authority to engage in

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investigations of NYPD, that is somewhat beyond

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their scope, because they deal primarily with

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criminal activity.

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2 The Department of Investigation, as  
3 you know, based upon information from the Brennan  
4 Center, they have not recovered any instances  
5 where the Department of Investigation has  
6 investigated any agency's policy or practices  
7 related to the violation of one's constitutional  
8 rights.

9 So U.S. attorney, though has  
10 oversight has not done it. District attorney,  
11 related to crime, individual cases. DOI, no  
12 research, there has not been one instance. By the  
13 way, CCRB, the Civilian Complaint Review Board,  
14 are you aware that it was enacted into law by the  
15 then City Council? Are you arguing that they too  
16 did not have any power to enact the CCRB? Were  
17 they preempted?

18 MICHAEL BEST: I am not familiar  
19 with the history of the CCRB in regards to what  
20 you're talking about. I believe it was part of  
21 the Charter adopted by the voters at some point,  
22 but that I can't comment on.

23 COUNCIL MEMBER JAMES: The City  
24 Council played a role in the creation of the  
25 Civilian Complaint Review Board. Based upon your

1  
2 testimony here today, the City Council then should  
3 have been preempted--

4 MICHAEL BEST: [interposing] I do  
5 not--

6 COUNCIL MEMBER JAMES: --and did  
7 not have the authority to create the CCRB.

8 MICHAEL BEST: Council Member  
9 James, I simply don't know the history of the CCRB  
10 well enough to respond to that.

11 COUNCIL MEMBER JAMES: Okay.

12 MICHAEL BEST: I will say, however,  
13 and I'd like a chance to finish my response to  
14 your previous question.

15 COUNCIL MEMBER JAMES: Okay.

16 MICHAEL BEST: Which is that the  
17 situation we have here with these bills on a  
18 preemption ground is far more serious than  
19 anything that was done when the racial profiling--

20 COUNCIL MEMBER JAMES:  
21 [interposing] The rights of individuals, the civil  
22 rights of individuals is far more important to  
23 this body.

24 CHAIRPERSON VALLONE: Would you  
25 please let him finish his answer?

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COUNCIL MEMBER JAMES: As opposed to this unfettered and unchecked authority that we currently find ourselves in.

CHAIRPERSON VALLONE: Can you please respect our witness and let him finish his answer?

COUNCIL MEMBER JAMES: I am respecting the witness--

CHAIRPERSON VALLONE: [interposing] No, you're not.

COUNCIL MEMBER JAMES: --Mr. Chair.

CHAIRPERSON VALLONE: You're not respecting him at all. He's--

COUNCIL MEMBER JAMES: [interposing] Thank you, Mr. Chair.

CHAIRPERSON VALLONE: --sent here by the administration and you should allow him to finish his answer.

COUNCIL MEMBER JAMES: You've made your point. Allow me to move on.

CHAIRPERSON VALLONE: Well, if I don't finish up soon, fellow Council Members will not be allowed to ask questions--

COUNCIL MEMBER JAMES:

1  
2 [interposing] Mr. Chair, just as you interrupted  
3 someone else, and just as Council Member Foster  
4 indicated that this is critically important to all  
5 of us here today and as someone whose nephew,  
6 whose neighbors, whose minister, her doctor, her  
7 dentist have all been stopped and frisked, I have  
8 an obligation and a duty to ask these questions  
9 and I will not be interrupted by you or anyone  
10 else.

11 [Applause]

12 CHAIRPERSON VALLONE: And you are  
13 almost done.

14 COUNCIL MEMBER JAMES: You may  
15 answer the question.

16 MICHAEL BEST: I was saying that  
17 the bills that are currently before this committee  
18 are bills that would change and conflict with  
19 existing state law. Now, we disagree about the  
20 general preemption issue and people can disagree.  
21 On the specific preemption issue, though, and I've  
22 gone through this with a number of members of the  
23 committee now, there are clear conflicts and  
24 differences between these bills and state law.  
25 That is in preemption law specifically disallowed.

1  
2 I agree with all the members of  
3 this committee that these are very serious  
4 matters. I think that the administration of  
5 criminal justice both in terms of protecting  
6 people's rights and in terms of how the police  
7 officers are able to do their jobs in order to  
8 keep citizens safe are both critical and important  
9 matters to the city.

10 When I talk about preemption, it is  
11 not meant in any way to diminish either side of  
12 that equation but simply to say that this is a  
13 very difficult area that has been balanced by the  
14 state is the Criminal Procedure Law and they've  
15 made clear that that's what the law should be. To  
16 the extent these bills would change that, we have  
17 a very serious preemption problem and I don't  
18 believe that they would survive court challenge.

19 COUNCIL MEMBER JAMES: Well,  
20 obviously, I disagree and a number of my  
21 colleagues disagree. I think your reference to  
22 CPL talks about the Criminal Procedure Law. All  
23 of these bills have nothing to do with criminal  
24 procedure. All these bills attempt to do is get  
25 at the violation of civil rights and ensure that

1  
2 there are some checks and balances on NYPD in the  
3 City of New York. I totally disagree with you. I  
4 would hope that we would go forward and pass these  
5 bills.

6 I thank you for your testimony  
7 today. If in fact, if there was any attempt or if  
8 you interpreted my emotion as being disrespectful,  
9 it was not my intent. It's just the emotion that  
10 I feel when I walk into my community, when I walk  
11 throughout the City of New York and individuals  
12 come up to me who are law-abiding citizens who  
13 respect the law, uphold the law, believe in the  
14 law, believe in the city, and their rights have  
15 been violated. It cannot continue. Thank you.

16 CHAIRPERSON VALLONE: Mr. Best, I  
17 know that you had agreed to give the Council two  
18 hours of testimony. It is now well beyond that,  
19 so I appreciate the fact that you've stayed. I'm  
20 asking you to stay as long as you can, but I know  
21 that you only agreed to two hours. Unfortunately,  
22 there are many Council Members that won't be able  
23 to ask questions, despite how important this is to  
24 them, because of time limits that people have not  
25 constrained themselves to. So, again, I ask you

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2 to stay as long as you can. I know you've only  
3 committed to two hours.

4

MICHAEL BEST: I can stay a little  
5 bit longer. I don't know how many more--I'm sorry  
6 that I haven't counted how many Council Members  
7 there are that want to ask questions, but I can  
8 stay a little bit longer.

9

CHAIRPERSON VALLONE: There are  
10 seven more Council Members. I'd ask you to stay  
11 as long as you can, but I know that we made a  
12 commitment for two hours.

13

MICHAEL BEST: Can I have one  
14 moment, Councilman, before--

15

CHAIRPERSON VALLONE: [interposing]  
16 Yes, I guess you do need the same break that the  
17 rest of us have taken.

18

[Pause]

19

MICHAEL BEST: I can stay a little  
20 bit longer.

21

CHAIRPERSON VALLONE: Okay, I'd ask  
22 you to stay as long as you can, but I don't want  
23 to impose too much. The next three Council  
24 Members are Greenfield, Lapping and Comrie. So,  
25 Council Member Greenfield? Please, in respect to

1  
2 your colleagues, please try to limit to five  
3 minutes. Thank you.

4 COUNCIL MEMBER GREENFIELD: I'll be  
5 brief. Thank you, Mr. Chairman. Counselor, do  
6 you feel safe with the work that the FBI and the  
7 CIA are doing?

8 MICHAEL BEST: I'm not quite sure  
9 how to answer that question, Councilman.

10 COUNCIL MEMBER GREENFIELD: It's a  
11 yes or no question. Do you think the FBI and CIA  
12 are doing good work?

13 MICHAEL BEST: I'm not that  
14 familiar with how the CIA does its job. To the  
15 extent that I've ever had contacts with the FBI,  
16 it's been perfectly professional.

17 COUNCIL MEMBER GREENFIELD: Okay.  
18 I mean the reason I ask is because, yesterday, the  
19 Mayor said that if an inspector general came to  
20 the NYPD, NYPD would no longer be safe. It just  
21 struck me considering that I think we all agree  
22 that the FBI and the CIA do outstanding work, both  
23 organizations of which have inspector generals.  
24 The idea that somehow New Yorkers would be less  
25 safe, or in the Mayor's case, unsafe--quote, "You

1  
2 won't be safe anymore," end quote--is a little bit  
3 surprising, because if the FBI and the CIA can  
4 keep us safe, having an inspector general, I'm  
5 wondering why would New York City not be safe if  
6 the NYPD had an inspector general. Can you  
7 explain that to me, counselor?

8 MICHAEL BEST: Well, I'm hesitant  
9 to make a comparison to anything that's happening  
10 at the FBI and the CIA in terms of oversight or  
11 internal investigations. I don't know how they're  
12 structured. I don't know how they work. I'm  
13 simply not familiar with it. So I'd rather not  
14 comment on that.

15 COUNCIL MEMBER GREENFIELD: Okay.  
16 I actually do want to speak about the inspector,  
17 and I'll tell you why, because I'm also sorely  
18 disappointed that we haven't had folks here from  
19 the NYPD to talk about the actual policies and the  
20 actual legislation. I think that the  
21 administration has done itself a disservice in not  
22 allowing for an honest conversation about the  
23 legislation by simply by trying to stonewall by  
24 claiming that these would not stand up to legal  
25 scrutiny.

1  
2           So I specifically want to speak to  
3 the inspector general because I actually believe  
4 that's the weakest of legal arguments that you  
5 make. So can you tell me specifically why are you  
6 opposed to the NYPD having an inspector general?

7           MICHAEL BEST: Well, I think, you  
8 know you mentioned the Mayor's comments and on the  
9 substance of it, I think that Council can simply  
10 refer to what the Mayor has said publicly about  
11 this on the merits of having an inspector general.  
12 I have also said that I believe it's unnecessary,  
13 in my testimony. I adhere to that view. I've  
14 also said that I believe that it is an illegal  
15 curtailment, based on state law, both state law  
16 and the City Charter. I believe that as well.

17           COUNCIL MEMBER GREENFIELD: I want  
18 to talk about the policy. You say it's  
19 unnecessary. Why is it unnecessary? So let's  
20 just run through some of the things that you've  
21 said. So I think we've had some conversation.  
22 Council Member James has already mentioned the  
23 U.S. attorney generally does not oversee police  
24 activities. If anything, I think the Department  
25 of Justice on occasion would. Is that correct?

1

2 It's not a general practice of the U.S. attorney,  
3 in your experience, to oversee police activities.

4

5 MICHAEL BEST: Well, I think that  
6 general U.S. attorneys around the country have at  
7 times looked into policing. I believe that--

8

COUNCIL MEMBER GREENFIELD:

9 [interposing] I'm referring to the Southern and  
10 Eastern Districts, Counselor.

11

12 MICHAEL BEST: Well, I think that  
13 you can't simply say, well they have not done an  
14 investigation of the police department in some  
15 period of time and say that therefore they do not  
16 have any oversight powers. I think you have to  
17 look at it generally. Across the country, a  
18 number of U.S. attorneys, I believe, have done  
19 various investigations related to police  
20 departments.

21

22 I think, frankly, that those police  
23 departments have had problems that merited  
24 investigation and sometimes merited, you know,  
25 settlements or whatever with the Justice  
Department. I think New York has the best police  
department in the country and that may be one  
reason why it hasn't happened here.

1  
2 COUNCIL MEMBER GREENFIELD: If  
3 you're convinced you have the best police  
4 department in the country, I don't see why you'd  
5 be afraid to have an inspector general. I will--

6 MICHAEL BEST: [interposing] I  
7 didn't say we were afraid. No one said we were  
8 afraid, Councilman. What we said is we don't  
9 agree that it's necessary. It's not exactly the  
10 same thing.

11 COUNCIL MEMBER GREENFIELD: Okay.  
12 So you concede that the U.S. attorney in the  
13 Southern and Eastern District have not  
14 investigated the police department.

15 MICHAEL BEST: Well, I don't know  
16 specifically whether they have or not. It's  
17 entirely--

18 COUNCIL MEMBER GREENFIELD:  
19 [interposing] As far as we know from public  
20 information.

21 MICHAEL BEST: I am not personally  
22 aware of investigations done by them of the nature  
23 we're talking about. It may be that they have  
24 don't it. I really don't know.

25 COUNCIL MEMBER GREENFIELD: The

1  
2 district attorneys obviously for them it's a  
3 little bit complicated, right, they work with the  
4 NYPD on a daily basis. It's kind of--

5 MICHAEL BEST: [interposing] They  
6 all--

7 COUNCIL MEMBER GREENFIELD:

8 [interposing] In fact, the last time we had a  
9 situation in the Bronx where a district attorney  
10 actually investigated some NYPD officers, it was  
11 actually reported in *The New York Times* that those  
12 officers actually made threats against district  
13 attorney's office. So, one could see how the DAs,  
14 although you mentioned that there are five of  
15 them, one could see how they could be in a tough  
16 spot in terms of investigating the NYPD. Is that  
17 fair?

18 MICHAEL BEST: No. I think that if  
19 you ask any of the district attorneys, and I've  
20 heard them all say this publicly at various  
21 points, they are fiercely independent. They will  
22 investigate anyone, including police officers, who  
23 they believe has broken the law. They will  
24 prosecute as appropriate. I know that every one  
25 of them has investigated and brought cases to

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2 grand juries against police officers, indicated  
3 police officers and prosecuted cases against  
4 police officers. So I would not agree.

5 COUNCIL MEMBER GREENFIELD:

6 Individual officers, but generally it's not their  
7 practice to go after the entire department. Let's  
8 talk about the CCRB. I mean they seem to be  
9 overwhelmed as it is. I mean the cases are backed  
10 up, and they also deal with individual cases. You  
11 believe the CCRB is the appropriate agency that is  
12 providing oversight?

13 MICHAEL BEST: I listed a host of  
14 agencies that are providing oversight--

15 COUNCIL MEMBER GREENFIELD:

16 [interposing] I know and I'm running through them  
17 one by one because--

18 MICHAEL BEST: [interposing] And I  
19 believe--

20 COUNCIL MEMBER GREENFIELD: --the  
21 purpose of a Council hearing, counselor, is to  
22 actually review legislation, not to have  
23 stonewalling by the administration where you  
24 refuse to discuss legislation at hand simply by  
25 saying well, we think it's illegal or

1  
2 unconstitutional. So I'm trying to do my job as a  
3 member of the City Council that you refuse to help  
4 me do, which is to evaluate at least one piece of  
5 legislation which is an important piece of  
6 legislation that deals with an inspector general.  
7 That's why I'm asking you about the CCRB. So I  
8 think that's a fair question.

9                   MICHAEL BEST: Well, first off, I  
10 disagree with your characterization of what the  
11 discussion has been. I think we have been  
12 discussing the specific legislation since the  
13 minute I sat down here. Secondly, I would say  
14 that the CCRB has a particular role to play. It  
15 does it well. In fact, in cooperation with the  
16 Council, we have expanded what it does so that it  
17 can bring cases on its own for disciplinary  
18 charges against police officers. So, yes, I do  
19 believe it's an important part of the oversight of  
20 the police department.

21                   COUNCIL MEMBER GREENFIELD: All  
22 right, I see we're going to agree to disagree. I  
23 do want to give my colleagues a chance to respond.  
24 I'm just curious about just something I noticed on  
25 your resume. You were counsel to the New York

1

2 City Host Committee for the RNC. Is that correct?

3 MICHAEL BEST: Yes, I was.

4 COUNCIL MEMBER GREENFIELD: Were  
5 you involved in any of the legal decision making  
6 that dealt with the policies and procedures of the  
7 arrests of the NYPD that were later found to be  
8 unconstitutional just a few weeks ago by federal  
9 court?

10 MICHAEL BEST: Just so it's clear,  
11 my job as counsel to the Host Committee was the  
12 Host Committee--any city that hosts a political  
13 convention for either party has to set up a not-  
14 for-profit corporation whose job it is to raise  
15 funds on behalf of the city and also to coordinate  
16 the city side of any political convention. I  
17 worked for that. I didn't work for either party.  
18 I worked for the city's not-for-profit. My job  
19 was to do legal advice on that, not to do legal  
20 advice on arrests or anything like that. So the  
21 answer is no.

22 COUNCIL MEMBER GREENFIELD: Okay.  
23 I merely want to point out that I think at the  
24 time I'm certain the NYPD felt that they were  
25 correct when they went around indiscriminately

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2       arresting New Yorkers who were trying to entertain  
3       themselves in their freedom of speech rights.  
4       Those rights were found to have been violated  
5       eight years later. So my point that I'm making is  
6       that just because you believe something is illegal  
7       or unconstitutional or undoable does not mean that  
8       the courts will disagree with you. That's why I  
9       believe it's a disservice to not engage in the  
10       fundamental discussion over the actual pieces of  
11       legislation rather than to simply stonewall by  
12       saying we don't believe that this is in fact  
13       constitutional or allowable. Because I think that  
14       there's a very good chance that the courts, which  
15       have a history of disagreeing with the NYPD on  
16       these issues, will disagree with you on these  
17       pieces of legislation as well. Thank you.

18                   MICHAEL BEST: Mr. Chairman, I'm  
19       afraid I'm going to have to excuse myself from the  
20       hearing.

21                   CHAIRPERSON VALLONE: That's  
22       unfortunate. Please, every witness who testifies  
23       usually gives us two hours from the  
24       administration. It's been well beyond that. I  
25       was worried about this and I was trying to move

1  
2 people along so that everyone would get a chance.  
3 It's unfortunate that you have to leave. I'm  
4 asking you to stay. I know that you've got other  
5 things to do. We've got six more Council Members  
6 on the list. Would you be able to take one more  
7 Council Member?

8 MICHAEL BEST: All right, we're  
9 past the time that--

10 CHAIRPERSON VALLONE: [interposing]  
11 Jessica Lappin has--

12 MICHAEL BEST: --I really have to--

13 CHAIRPERSON VALLONE: --assured me  
14 she'll be very quick.

15 MICHAEL BEST: All right.

16 CHAIRPERSON VALLONE: So we're  
17 going to go to her and then Jumaane wants to say  
18 one last thing.

19 MICHAEL BEST: All right, I can  
20 stay for those. I will stay for those, at your  
21 request, Chairman.

22 CHAIRPERSON VALLONE: Okay, thank  
23 you.

24 COUNCIL MEMBER LAPPIN: Thank you  
25 very much. I appreciate that. So I'll really

1  
2 just make one brief statement then and ask you one  
3 question, in the interest of time. My comment is  
4 there was a lot of discussion today about the  
5 consent to search bill, and how it would apply to  
6 searches involving reasonable suspicion. The  
7 comment I would make is when 90 percent of the  
8 individuals who are stopped are neither arrested  
9 nor issued summonses, how is that reasonable?  
10 Obviously, to me that's very clear that there's a  
11 problem. That it's unacceptable, which is why  
12 we're all here today.

13 My question really relates to the  
14 response that the police department issued to the  
15 Speaker's letter in May, describing the steps that  
16 the police department would be taking to address  
17 some of the concerns regarding stop, question and  
18 frisk. A couple of things that Commissioner Kelly  
19 said the police department was in the process of  
20 doing were: one, developing a system to identify  
21 officers who have received multiple complaints  
22 regarding stop activity; and two, develop a  
23 course, a new course that would provide additional  
24 teaching on how to conduct lawful stops.

25 So I would like to have some sort

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2 of update. How many officers have been retrained?  
3 What does the course look like? Is there a  
4 curriculum that can be shared with the public?  
5 What's this new system? How many police officers  
6 have been identified who have received multiple  
7 complaints for this activity?

8

MICHAEL BEST: Well, our  
9 legislative office will get back to you, Council  
10 Member. Those are not things that are in the  
11 bills, so I'm not prepared to give you that data  
12 because I don't have it. I'm happy to ask the  
13 police department or our legislative office to get  
14 back to you.

15

COUNCIL MEMBER LAPPIN: Well, I see  
16 other people here from the Mayor's Legislative  
17 Office who could address this?

18

MICHAEL BEST: We will get back to  
19 the Council on your question. We'll get back  
20 specifically to your office.

21

COUNCIL MEMBER LAPPIN: But see the  
22 thing is, is people don't get back to us and we  
23 don't get information. So that's sort of the  
24 whole problem is we have this opportunity to have  
25 this back and forth discussion with you, and I

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2 know you're not from the police department. I  
3 understand that. I think that--

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MICHAEL BEST: [interposing]

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Frankly, Council Member, if I might, we were told,

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and I believe the Chairman said at the beginning

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that this is an oversight hearing on four bills.

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The question you've asked is not something that's

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in these bills. The bills are not about training

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and--

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COUNCIL MEMBER LAPPIN:

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[interposing] Do you think they're relevant to the

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bills?

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MICHAEL BEST: Do I think that

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they're relevant to the bills? I believe that

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they're relevant to the general issue of police

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practices. But the specific hearing was--

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COUNCIL MEMBER LAPPIN:

19

[interposing] Well, more specifically stop-and-

20

frisk practice--

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MICHAEL BEST: --this is not--

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COUNCIL MEMBER LAPPIN:

23

[interposing] It's not just police practice.

24

MICHAEL BEST: Council Member, this

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was not--we were not informed that this is an

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2 oversight hearing on the general practices of the  
3 police department. We were told that this is a  
4 hearing on four bills and so that's what I came  
5 prepared to discuss.

6 COUNCIL MEMBER LAPPIN: When the  
7 commissioner of the police department--

8 MICHAEL BEST: [interposing] We're  
9 happy to--

10 COUNCIL MEMBER LAPPIN: --writes a  
11 letter about stop-and-frisk, very specifically  
12 addressing some of the concerns that we are  
13 dealing with in this legislation, I think that's  
14 incredibly relevant. So what I'd like to know  
15 before you leave here today and then I don't get  
16 any response, when exactly I'm going to get an  
17 answer.

18 I will be very clear on what my  
19 request is so it is on the record so I do not have  
20 to reiterate it. I would like to know what system  
21 has been developed, how many officers have been  
22 trained, how many officers have been identified as  
23 those who have received multiple complaints  
24 against them regarding their stop activity, what  
25 new course has been developed, is there a

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2 curriculum that can be shared with the public, and  
3 how many officers have been trained under that new  
4 course? Those are my questions. I would like a  
5 response. I would like a response in an expedient  
6 manner.

7 CHAIRPERSON VALLONE: Mr. Best,  
8 please provide that information to the police  
9 commissioner so that he can get that information  
10 to Council Member Lappin.

11 MICHAEL BEST: We shall do that.

12 CHAIRPERSON VALLONE: Council  
13 Member Williams has asked for 30 seconds to just  
14 finish up and then you're going to be on your way.

15 MICHAEL BEST: Sure, that's fine.

16 CHAIRPERSON VALLONE: Thank you for  
17 staying extra time. I apologize that you had to  
18 stay longer. While I agree with some of what you  
19 said and I don't, I do respect you being here and  
20 taking the questions you took. I also would have  
21 rather the police department be here, as my  
22 colleagues would have. But you were sent from the  
23 administration and we respect you being here.  
24 Council Member Williams?

25 COUNCIL MEMBER WILLIAMS: Thank you

1  
2 very much, Chair. Thank you for being here. It's  
3 unfortunate that they only sent you to take the  
4 brunt of ire, so I apologize for that. The only  
5 statement I wanted to make is whenever something  
6 goes bad in the NYPD, we are always told to not  
7 judge the NYPD by a few bad apples. What we're  
8 trying to do is make sure that that same stance is  
9 held in our communities, that the communities that  
10 we live in are not judged by a few bad apples.

11 Thank you.

12 [Applause]

13 CHAIRPERSON VALLONE: Thank you.

14 We are going to take a five-minute break now and  
15 then we're going to come back with, I believe  
16 Kevin Finnegan from 1199, if Velma Montgomery is  
17 still here, she'll be testifying and then we'll be  
18 doing panels. See you back in five minutes.

19 [Pause]

20 CHAIRPERSON VALLONE: Thank you all  
21 for returning and for getting quiet so quickly so  
22 we can start this up. I know we have a lot of  
23 people who have already signed up to testify. So  
24 if you wanted to and you haven't, please do that  
25 right away because at some point we're going to

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2 close the--whatever it's called, whatever you guys  
3 do over there to sign people up--registration, I  
4 guess.

5

6 So, we're back and we're going to  
7 hear now from Kevin Finnegan from 1199, who will  
8 be testifying on behalf of George Gresham, I  
9 believe. You have to press that button.

10

11 KEVIN FINNEGAN: Chair Vallone,  
12 thank you and members of the Council that are  
13 still here. Thank you for having this hearing on  
14 this important package of bills, the Community  
15 Safety Act. I very much appreciate the  
16 opportunity to testify in this important matter.

17

18 My name is Kevin Finnegan. I'm the  
19 director of politics and legislation for 1199 SEIU  
20 Healthcare Workers East. We represent 375,000  
21 workers in five states and about 125,000 of those  
22 are in New York City. It is a union that is  
23 majority people of color, and our members have  
24 essentially demanded the union to take positions  
25 on these bills and on the practice of stop,  
question and frisk in New York City, because it  
affects so many of our members. It's on their  
behalf that I urge you to pass this important

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2 package of bills.

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I submitted testimony from George Gresham. I'm not going to read from it, but I just want to make a couple of the points that are in there.

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Intro 800 is similar to bills in Illinois, West Virginia and Arkansas as well as the Federal Racial Profiling Act. This bill would ban profiling and discrimination by the NYPD. Nobody should be stopped simply because of the way they look. This bill would make that very clear.

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Intro 799 is similar to laws in Colorado and West Virginia. It simply requires officers to tell people that they have the right to refuse a search if there is no warrant or probable cause. I do want to emphasize that it's about a search, not a stop-and-frisk. There are just too many young people that think that simply because a police officer asks them to empty their pockets they have to. This ends up in enormous numbers of what should be minor arrests and people with records that just really never should happen.

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Intro 801 simply requires officers to explain who and why they are stopping someone.

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2 It seems pretty basic to me.

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Intro 881 would create an inspector general for the NYPD and ensure that the NYPD has the same oversight that the FBI, CIA, LAPD and every major New York City agency, except the NYPD, already has. New Yorkers ought to be sure that the police department is being monitored by other professionals.

These commonsense reforms will ensure that our communities can continue to depend on the police without fear that they will discriminatorily stopped, questioned or frisked.

This past summer, tens of thousands of New Yorkers from all walks of life marched in silence and solidarity for justice in our communities at the stop-and-frisk silent march on Father's Day. It was one of the most moving marches that I've ever attended.

The Community Safety Act would enact much needed reforms that will improve public accountability and trust with the NYPD. We urge swift passage of these important bills. Thank you.

CHAIRPERSON VALLONE: Thank you,

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2 Kevin. Do you have any questions? One second,  
3 we've got a question.

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COUNCIL MEMBER WILLIAMS: I just want to thank you, Kevin, for coming and testifying and please send the same to George. I just had one question. I wasn't here and maybe you said at the beginning. Do you get complaints by your members of this affecting them and kind of what are they saying?

KEVIN FINNEGAN: Yeah, we get complaints from our members about themselves, mostly young men of color. We had a meeting about this six months ago, just about this topic. A lot of mothers came in to talk about their sons, fathers their kids, and other relatives.

The most moving and sort of telling piece of the night were these young men, you know, who are some professionals, all work in the healthcare field in some form, mostly in hospitals. Quite a number of them now wear their scrubs on the streets because then it looks like they're going to work and they're less likely to get stopped and frisked. They all talked about being late for work because of this or missing,

1  
2 you know, a bus, you know on and on and on. It  
3 was quite amazing. So we have heard from them.  
4 We heard from them a lot. They're very interested  
5 in the subject. Tens of thousands of our members  
6 were on the streets on Father's Day.

7 CHAIRPERSON VALLONE: Thank you,  
8 again, for waiting to testify. Jess, did you have  
9 a question? I'm sorry.

10 COUNCIL MEMBER LAPPIN:  
11 Councilwoman Lappin. I just wanted to thank you  
12 for taking the lead in organizing the march. I  
13 also thought it was very moving, and my husband  
14 insisted on coming on Father's Day and bringing  
15 our two little boys with us. Actually, my 18-  
16 month-old marched down Fifth Avenue. I thought it  
17 was wonderful that it was people from all over the  
18 city, coming together to say in one voice that  
19 this is a policy that needs to be changed.

20 KEVIN FINNEGAN: Thank you.

21 CHAIRPERSON VALLONE: This time I'm  
22 pretty sure there are no more questions since  
23 there are no more Council Members. Sergeant-at-  
24 arms, do you have any questions before I let Kevin  
25 go? No? Okay, Kevin, thanks. The next panel

1  
2 will be of people who have been directly affected  
3 by this policy. I may mangle some names here.  
4 Djibril Toure from the Malcolm X Grassroots  
5 Movement; Nicholas Peart from the  
6 Brotherhood/Sister Sol; Bianey Garcia, Make the  
7 Road; Naz Ali from DRUM; and Kirsten Foy. I  
8 believe I said that the arrangement was that this  
9 panel would have five minutes each, as well as the  
10 next panel and then two minutes after that, so we  
11 can try to get to everybody.

12 [Pause]

13 CHAIRPERSON VALLONE: Kirsten,  
14 would you like to start while everyone else is  
15 arranging? Thanks.

16 KIRSTEN FOY: I'd like to say good  
17 afternoon, Mr. Chairman, to the distinguished  
18 members of the City Council, to the citizens of  
19 the City of New York. New York City is ill. The  
20 illness is pervasive, corrosive, corruptive and  
21 destructive. This illness is a cancer and this  
22 cancer affects all of us.

23 It started out as a small tumor,  
24 but like all cancers, this one has grown  
25 exponentially and now threatens to tear apart the

1  
2 very fabric of our city. A little more than a  
3 decade ago, when stop, question and frisk made its  
4 initial transition from a defensive tactic by  
5 officers in potentially dangerous situations to an  
6 offensive policy that would eventually stain the  
7 very Constitution of the United States we were not  
8 prepared to appropriately treat our illness.

9 Today, we must pursue an aggressive treatment. I  
10 believe this package of legislation is the  
11 necessary initial prescription.

12 Today, many are here to provide the  
13 quantitative realities and impact, but as a  
14 Christian minister, as a father, a son, a brother,  
15 a cousin and a friend to proud black law-abiding  
16 men, I must speak to the qualitative impact of the  
17 lives that are affected. You see, I was a civil  
18 rights activist, a political operative, a social  
19 change agent and a high-ranking official in a part  
20 of our government that is designed to oversee the  
21 government and advocate for the people.

22 Yet, a bad policy that creates and  
23 perpetuates bad pathology and that bad pathology  
24 led to my victimization by the NYPD. Along with  
25 Council Member Williams, on September 5th, 2011,

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2 we were affected by the pathology that was  
3 directly created by the stop-and-frisk policy.  
4 That policy, that bad policy takes good people and  
5 instills in them a value system that results in  
6 bad judgment. That bad judgment permeates the  
7 entire officer's dossier of action. That bad  
8 judgment results in mental, physical and social  
9 injury to all, even death to some. The countless  
10 victims of unjustified aggression is an  
11 unacceptably large baseline that keeps broadening  
12 and deepening and mounting.

13 Names like Sean Bell, Ramarley  
14 Graham, Shantel Davis, Noel Polanco and the scores  
15 of others, named and unnamed, have paid the  
16 highest price for the bad policy, bad judgment,  
17 bad consequence pipeline. This pipeline  
18 encourages and instills fear and torment in the  
19 otherwise courageous, heroic and brave people who  
20 protect our city, turning the Spartan and intrepid  
21 among them into the anxious and agoraphobic.

22 We as New Yorkers, instead of  
23 living in fear, instead of succumbing to the  
24 lowest of our images and perceptions of ourselves  
25 and our neighbors, are meant and designed,

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constructed and built to be leaders, not to succumb to fear. The policy that this New York City Police Department has placed forward as it relates to stop, question and frisk has turned New York City into a city of the frightened, the afraid, and the fearful. When terrorists could not do it, our own bad policies did. Now we have an entire city engrossed in either the fear of the bad guys or the fear of those who protect us from the bad guys.

These bills go a long way in retransforming us to who we are: political social leaders and the bravest among us. Thank you.

CHAIRPERSON VALLONE: Thank you, Kirsten. I'm going to make it my policy now to not respond, just so we can get as many people as quickly as possible. Why don't we start all the way on my right with this young man. Introduce yourself and then we'll go down that way.

NICHOLAS PEART: Hello, my name is Nicholas Peart. I'm 24-years-old and I live in Harlem. I remember, you know, at the age of 14-years-old, my mother having these talks with me, you know preparing me for what I would face in my

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2 community, dealing with the police. I was  
3 shocked, you know like this is an inevitable  
4 process that I will eventually go through. When I  
5 went through it, it was even more of a shock. She  
6 was right, you know, she had to prepare me  
7 mentally for this rite of passage. You know, that  
8 some mothers don't even get. You know, they are  
9 just faced with it and they react and it doesn't  
10 go in their favor. So I'm definitely grateful for  
11 it, but I think this legislation is definitely a  
12 step forward to making the community feel  
13 comfortable about the police in our community.  
14 That hostility needs to go. It should not be  
15 there. It's not there in other places. I think  
16 this bill will definitely serve its purpose.

17 CHAIRPERSON VALLONE: Thank you.

18 DJIBRIL TOURE: Thank you. My name  
19 is Djibril Toure. I'm here representing the  
20 Malcolm X Grassroots Movement. I'm also a  
21 lifelong resident of Bedford-Stuyvesant. I'm a  
22 college graduate. I went to Cornell University.  
23 I returned to Bedford-Stuyvesant in the mid 90s.  
24 Prior to that in growing up in New York, I had  
25 never experienced stop-and-frisk. I never had an

1  
2 experience where I was stopped, and told to stand  
3 against a wall, by officers.

4 In the mid 90s, it happened to me  
5 the first time, on Nostrand Avenue on the corner  
6 of Pacific Street, right where I lived. I was  
7 approached by four officers who basically rode by  
8 me in a vehicle and then proceeded to put the  
9 vehicle in reverse, which was kind of alarming to  
10 me. I had these officers come up to me, order me  
11 to stand against the wall, for no reason. I was  
12 walking home. I didn't have anything in my hands.  
13 I wasn't doing anything furtive. Basically, these  
14 officers demanded that I show them some ID or I  
15 would have to go to jail that weekend. That was  
16 the first time when I realized that there was a  
17 huge problem with the NYPD.

18 I also have another story I would  
19 like to share with you of a friend of mine, who  
20 was picking up his daughter. My friend was  
21 picking up his daughter at 3:00 in the afternoon,  
22 in Bedford-Stuyvesant, was approached by officers  
23 who were in a vehicle that said they wanted to  
24 talk to him.

25 He basically stated that he knew

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his rights and that he had no reason to stop because if officers don't have a reason to stop you--you know, if they do have a reason they're supposed to articulate it. They never articulated any reason to stop him. Proceeded to jump out of the vehicle and physically restrain him. My friend had four dreadlocks ripped out of his head. This is about 3:00 in the afternoon, on Fulton Street, in a busy area of our community, while he was on his way to pick up his daughter.

He was subsequently taken to the 79th Precinct and held for five hours until they realized that they had nothing to charge him with. They had nothing to charge him with. There was no incident for them to actually record. What they did is they violated his rights by taking a Polaroid picture of him and then releasing him. He later on had to take his own legal recourse with the city.

It's clear that this should not be happening. This is just one example of the type of things that we see all the time. I've heard from homeowners who've had their hands smashed because they were trying to enter their own home.

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2 When they tried to show the officer, look, these  
3 are my keys. I'm going into my house. I've heard  
4 of people receiving injuries and having their  
5 hands smashed, ending up in the hospital because  
6 they're trying to enter their own home. This is  
7 actually what's acceptable in the city.

8 I would just like to comment that  
9 previously we heard some comments that the city  
10 views stop-and-frisk as a success. I think that's  
11 the problem that we're faced with is that, you  
12 know, you have large communities, large tracts of  
13 this city that have basically said that their  
14 children, their brothers, their sisters even have  
15 been violated and we have an administration that  
16 refuses to actually listen, to recognize that  
17 there's a problem.

18 In the last couple of weeks, we've  
19 seen about four police murders of unarmed  
20 civilians. There was a man shot on Grand Central  
21 Parkway, the bodega owner, Mohammad Bah, there  
22 have been several, if we count back from the  
23 beginning of this year, we've seen numerous police  
24 murders. There is a lot of evidence, basically,  
25 showing that when stop-and-frisk is allowed to run

1  
2 rampant in communities that a lot of these  
3 incidents turn negative and you have a lot of  
4 these police murders that have resulted from what  
5 could have been a basic encounter such as a stop-  
6 and-frisk.

7           The Community Safety Act, Intro  
8 801, would require that NYPD officers provide  
9 their name and rank to subjects of law enforcement  
10 activity, such as New Yorkers being stopped and  
11 frisked. That officer would have to provide the  
12 specific reason for the stop and a business card  
13 to the person being stopped that must include  
14 information on how to file a complaint.

15           In my experience, this is one of  
16 the key issues, because officers often don't  
17 identify themselves. We have undercover officers  
18 that ride around in some of our communities who  
19 feel that they are above the law. They feel that  
20 they don't have to identify themselves. I've seen  
21 personally officers tape over their badges. I've  
22 seen police vehicles riding around with the  
23 license plate bent in half, in my neighborhood.  
24 So this is a reality.

25           If you haven't experienced it, you

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wouldn't understand it. I understand that there are members of our Council here who have not experienced it. I would only suggest that you try to open up your ears and listen to the members of your community who have, because all of these people here are not here to make up a situation that is not real. This is absolutely one of the worst problems in the city that needs to be dealt with.

When people are stopped in my community, a lot of times they're not aware of what their legal rights are. They don't know that they have the right to not consent. So the provision in this bill that actually speaks regarding consent is huge and it's very important. It's something of critical importance to my community.

I'm going to wrap up just by saying that independent oversight is absolutely necessary. It's never been in place in this city. The Civilian Complaint Review Board is not effective in dealing with these problems. Thank you.

CHAIRPERSON VALLONE: Thank you.

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2 Sir, in the white, you're going to get a lot of  
3 sleep tonight, a lot of exercise today. I like  
4 all the hand movement. Thank you for being quiet  
5 and doing it the right way.

6 [Crosstalk]

7 CHAIRPERSON VALLONE: We'll have to  
8 talk later, but thank you. I was saying thank you  
9 for being quiet.

10 INTERPRETER: Good evening, City  
11 Council members. Naz Ali will be testifying. She  
12 will present her testimony in Hindi and I will  
13 translate for her.

14 NAZ ALI: [Through Interpreter] My  
15 name is Naz Ali. I am a leader in DRUM, Desis  
16 Rising Up and Moving, and we're an organization of  
17 1,500 low-income South Asians fighting for their  
18 rights as immigrants, youth workers and  
19 communities of color. We are here today to ask  
20 you to support the Community Safety Act.

21 I got involved in DRUM because I'm  
22 a low-wage worker and wanted to fight for workers'  
23 rights, but I also care about issues such as  
24 unfair policing of our communities.

25 In November of last year, when news

1  
2 reports started confirming suspicions about the  
3 NYPD's spying program, we organized a rally to  
4 demand for NYPD accountability. At this rally, I  
5 met a community member who joined our group. He  
6 was very energetic, very, very angry and chanting  
7 really loudly. I thought to myself that so many  
8 people in our community are too afraid to even  
9 come out and here this guy came out to the rally  
10 by himself. He really cares about this issue. I  
11 thanked him for coming out and told him to stay in  
12 touch.

13 In March of this year, we learned  
14 from another one of the leaked documents that the  
15 NYPD was spying on our organization, DRUM, and  
16 many of our allies who are present in this room,  
17 because we helped organization rallies in support  
18 of the Sean Bell family. So we held a press  
19 conference at One Police Plaza.

20 Two days later, as I left my work  
21 as a seamstress in Jamaica Queens, I was followed  
22 as I walked home. Nothing was said to me, no one  
23 actually came up to me, they just followed me from  
24 a reasonable distance to make sure that I knew I  
25 was being followed.

1  
2 Two days after this event where I  
3 was followed, the same guy who came to the rally  
4 called me and said he wanted to meet. So I met  
5 him in a restaurant in the neighborhood. I am  
6 working with DRUM to collect surveys and stories  
7 about how New York City Muslims have been affected  
8 by their experiences with police. So I wanted to  
9 do a survey with him.

10 In my survey, he told me that he'd  
11 been profiled by the FBI, by the NYPD, that he's  
12 really upset about these issues. So I thought it  
13 would be great for him to join DRUM and come to  
14 places like this and present his stories. But  
15 when I got to the end of the survey and asked him  
16 about his occupation, he told me that he did  
17 security for the NYPD. I got scared and I left  
18 soon. Before I left, he asked me if he was now a  
19 member of DRUM and could come and participate.

20 Later, we heard similar things  
21 about him from other members in the community. I  
22 became so scared that for several weeks I stopped  
23 talking to people that I did not know. I also  
24 stopped collecting surveys and stopped collecting  
25 stories.

1  
2 Why is the NYPD sending informants  
3 and undercovers to rallies about the NYPD? Why  
4 are they sending informants to spy on community  
5 organizations like DRUM and many others here for  
6 speaking out against the NYPD? Is this the kind  
7 of work the NYPD should be doing? Should we be  
8 afraid of our own police departments? We are  
9 treated as guilty until proven innocent. That is  
10 why they stop-and-frisk black and Latino  
11 communities, target low-wage workers, harass LGBTQ  
12 communities, surveil Muslim communities and  
13 criminalize our youth in schools. We are here to  
14 stand in solidarity today.

15 CHAIRPERSON VALLONE: Please finish  
16 up soon. Thank you. You're over your five  
17 minutes.

18 NAZ ALI: [Through Interpreter] So  
19 questions were raised about the IG bill and the  
20 possibilities of it. The FBI has one, the CIA has  
21 one, the LAPD has one to provide systematic  
22 independent oversight. Why cannot the NYPD have  
23 such? We need an inspector general to oversee the  
24 police, NYPD, systemically. Good policing  
25 requires transparency and accountability and we

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2 need the Community Safety Act as a whole. Thank  
3 you.

4

CHAIRPERSON VALLONE: Thank you.

5

Who's left?

6

DANIEL PUERTO: Good afternoon. My

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name is Daniel Puerto and I'm a community

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organizer with Make the Road New York. I'll be

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doing translation for Ms. Garcia.

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BIANEY GARCIA: [Through

11

Interpreter] Hello and thank you for letting me

12

testify today. My name is Bianey Garcia. I'm a

13

22-year-old transgender woman from Mexico and

14

currently live in Jackson Heights Queens. I came

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to this country at the age of 15 because I wanted

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to be safe from the harassment and discrimination

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that people like me face in my country.

18

I became a member of Make the Road

19

New York's LGBTQ Justice Project about a year ago

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because I realized that this discrimination still

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happens to us transgender women in the United

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States and oftentimes it's carried out by the same

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people that are supposed to be protecting us, the

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NYPD. Today, I am here with members of Make the

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Road New York to denounce that stop-and-frisk is

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2 hurting and not helping our communities.

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Being a transgender woman in Queens is difficult for me because I do not feel safe. I feel harassed, discriminated and forced to be home because the police assume that all transgender women are sex workers when that is not the case. When talking to other transgender women in my community, I realize that they go through the same discrimination that I face. We all feel that the NYPD is not doing their job, and instead of making us feel safe, we feel fear when we are around them.

About two years ago, I went out with my boyfriend. He invited me to go to a club in Jackson Heights Queens. At around 4 a.m., we left the club together and started to walk home. We were walking hand in hand, and at one point a car stopped next to us. Eight undercover cops got out of the car, threw me against the wall, and started frisking my boyfriend. After they frisked him, they frisked me, took my bag, emptied it out on the sidewalk and found three condoms. They then proceeded to handcuff me and told me I was being arrested for sex work. I told them that I

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2 was with my boyfriend and they said I was lying.

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My boyfriend came to the 110th Precinct where I was held and spoke to the captain. He tried to explain that I was his girlfriend and that I was with him, but the captain said he couldn't do anything. I was taken to court and was charged unjustly with prostitution charges.

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CHAIRPERSON VALLONE: Just so you know, we do have the testimony, so please try to finish up. Thank you.

13

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BIANEY GARCIA: [Foreign language].

BIANEY GARCIA: [Through Interpreter] Thank you very much.

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CHAIRPERSON VALLONE: Thank you very much. Is there anyone left on that panel that has not testified? Okay. Wait, we do have a comment. I'm sorry. I apologize. My fault.

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COUNCIL MEMBER WILLIAMS: I just wanted to thank all of you for coming and testifying and putting some human faces to what's going on. I appreciate that very much. Mr. Foy, if you're every considering running for office that would be a great thing.

1  
2 CHAIRPERSON VALLONE: Yes, there's  
3 another comment.

4 COUNCIL MEMBER LANDER: I just want  
5 to echo thanks to all of you for your leadership  
6 and for having the courage to stand up. I  
7 especially want to speak to the point that one of  
8 the things that I like about the racial profiling  
9 bill is not only that it would end profiling-based  
10 stop-and-frisk that's been much of the discussion  
11 today, but profiling-based surveillance which  
12 similarly is based solely on religion or  
13 ethnicity, not on following leads on suspicion of  
14 crime, which is what the standard is supposed to  
15 be but there's real reason to be concerned that  
16 it's happening. As Pro Publica has shown, there's  
17 real evidence that it just doesn't work and it  
18 frays the bonds of trust that we need. So thank  
19 you for adding that to the mix.

20 Obviously, the issues are also very  
21 important in the LGBT community. So it think the  
22 fact that this panel was put together in a way  
23 that links these issues really shows what's more  
24 broadly important about the Community Safety Act  
25 specifically, including stop-and-frisk but also

1  
2 the broader range of issues. So thank you very  
3 much. Thank you, Mr. Chair.

4 CHAIRPERSON VALLONE: Thank you,  
5 Brad. The next panel and again these two panels  
6 were five minutes each, so please make sure you  
7 stay within that. Then after that it's two  
8 minutes, so if you have testimony, make sure it's  
9 two minutes. Maybe take out some of the stuff  
10 that you're repeating from other people, just so  
11 you can be heard. New York Civil Liberties Union,  
12 Donna and Uti; Bronx Defenders, Kate Rubin;  
13 Brennan Center, Faiza Patel; John Jay College of  
14 Criminal Justice, Dr. Delores Jones-Brown; Owen  
15 Center for Constitutional Rights, Darius Charney.

16 [Pause]

17 CHAIRPERSON VALLONE: Why don't we  
18 start on my left, only because the microphones are  
19 down that way with the young lady there. I'm  
20 sorry. You have your own order? Do what you got  
21 to do. You got it. As long as no sock puppets  
22 come out or anything, you're in charge.

23 [Laughter]

24 DONNA LIEBERMAN: Thank you. I  
25 want to thank the Council for conducting this

1  
2 hearing and for the attention they're giving to  
3 this issue, which is of great importance to all  
4 New Yorkers. I'm Donna Lieberman, executive  
5 director of the NYCLU, and with me is our advocacy  
6 director Uti Ofer, who's available to answer  
7 questions.

8           The NYCLU has nearly 50,000 members  
9 and supporters statewide. We're here in support  
10 of the Community Safety Act.

11           In July of this year, the Bronx  
12 District Attorney made a decision that symbolizes  
13 the public's lack of faith in the NYPD's  
14 willingness to treat all New Yorkers fairly.  
15 After discovering that many public housing  
16 residents, mostly blacks and Latinos, were being  
17 wrongfully arrested for criminal trespass, the DA  
18 decided to stop prosecuting people on these  
19 charges unless an interview with the arresting  
20 officer confirmed their legality. The DA's action  
21 underscores what many New Yorkers already believe,  
22 the NYPD is engaged in a pattern of discriminatory  
23 and abusive policing. We can no longer tolerate  
24 police practices that target innocent people for  
25 the places they live, their religious beliefs,

1

2 their gender or their skin color.

3

4 Stop-and-frisk is a valuable and  
5 lawful police tool, but it is being widely abused  
6 by the NYPD. The use of stop-and-frisk has  
7 skyrocketed more than 600 percent since Mayor  
8 Bloomberg took office. Year after year, 80  
9 percent of the stops result in no arrest or  
10 summons, meaning that NYPD stops and frisks  
11 hundreds of thousands of innocent people every  
12 year.

12

13 These unconstitutional practices  
14 harm many communities, but communities of color  
15 bear the brunt. In 2011 alone, the number of  
16 stops of young black men aged 14 to 24 exceeded  
17 the entire city population of young black men,  
18 that's 168,000 stops as compared to 158,000 in the  
19 population. Indeed, instead of a crime-fighting  
20 tool, stop-and-frisk has become a vehicle for  
21 intimidation, relying on racial profiling and  
22 resulting in degradation, humiliation of thousands  
23 of New Yorkers and eroding the essential trust  
24 between communities and police.

24

25

25 Moreover, stop-and-frisk NYPD style  
simply does not work. While stop and frisks have

1  
2 jumped six-fold under Mayor Bloomberg, the number  
3 of shooting victims has remained largely constant.  
4 This should come as no surprise, as 99.9 percent  
5 of all stops fail to recover a gun.

6           This brings us to today. The City  
7 Council has before a legislative package that will  
8 reform abusive police practices and create a  
9 better NYPD, one that's more transparent and more  
10 accountable, and one that gets sued less. These  
11 bills, Intro 799, 800, 801 and 881, known  
12 collectively as the Community Safety Act  
13 accomplish four goals. First, they'll strengthen  
14 the current prohibition on discrimination by the  
15 NYPD. Second, they'll protect New Yorkers against  
16 unlawful searches, including during a stop-and-  
17 frisk. Third, they'll increase transparency when  
18 police stop New Yorkers. Fourth, they will create  
19 an inspector general's office to monitor NYPD  
20 policies, whether those policies relate to  
21 surveillance of the Muslim community, use of  
22 quotas or marijuana arrests.

23           My comments today will focus on  
24 Intro 800, the ban on discrimination by the NYPD.  
25 Intro 800 would protect New Yorkers from being

1  
2 profiled due to their actual or perceived race,  
3 ethnicity, religion, sex, gender identity or  
4 expression, or immigration status, in addition to  
5 numerous other categories. It does so in three  
6 ways: strengthening the current definition of  
7 bias, broadening the list of protected  
8 communities, and allowing New Yorkers to hold the  
9 NYPD accountable for practices that have a  
10 disparate impact.

11 I'll address the first and third  
12 components. Intro 800 improves the definition of  
13 racial profiling by banning the NYPD from relying  
14 to any degree on protected categories when  
15 engaging in law enforcement activities with an  
16 important exception for situations when the  
17 department has trustworthy information relevant to  
18 a specific time and location that links a person  
19 to suspected unlawful activity. This change will  
20 require police officers to follow specific leads  
21 instead of wasting time and squandering the good  
22 will of the community by targeting innocent  
23 people.

24 It is why the Justice Department  
25 has since and during the Bush administration used

1  
2 a similar standard in its anti-racial profiling  
3 policy. To be clear, it would permit the NYPD to  
4 use race, ethnicity and other protected categories  
5 in its law enforcement activities but only in  
6 situations that involved illegal activity or  
7 allegations of illegal activity. I'll skip an  
8 example.

9 CHAIRPERSON VALLONE: Donna, you're  
10 past the five minutes.

11 DONNA LIEBERMAN: That's why I  
12 skipped the example. I have like 30 seconds.

13 CHAIRPERSON VALLONE: Could you  
14 skip the rest?

15 DONNA LIEBERMAN: Finally, this  
16 bill would allow communities to hold the police  
17 department accountable for practices that have a  
18 disparate impact. While it creates a legal  
19 presumption of suspicion regarding practices that  
20 have a disparate impact, it's important to note  
21 that proving a disparate impact does not end the  
22 case. Rather, the government then has the  
23 opportunity to provide a justification for the  
24 disparate impact and plaintiffs have the  
25 opportunity to provide adequate alternatives that

1  
2 don't have a discriminatory effect. Indeed,  
3 disparate impact theories of liability are already  
4 codified in numerous federal and city laws,  
5 including the Fair Housing Act, the ADA, and New  
6 York City's own Human Rights Law. So we urge you  
7 to pass this legislation.

8 KATE RUBIN: Good afternoon.

9 Thanks to the Council. Thanks for staying into  
10 the afternoon for the opportunity to testify. My  
11 name is Kate Rubin. I'm the director of policy at  
12 the Bronx Defenders. We represent 28,000 people  
13 every year who are charged with crimes in the  
14 Bronx.

15 Police in this city are vested with  
16 an enormous amount of power in order to do the  
17 critical job of keeping New Yorkers safe. But I  
18 talk to people, unfortunately, nearly every day  
19 who have experienced abuse of that power from  
20 unlawful stops to false arrests. Even though I  
21 talk to people every day, I think as Djibril  
22 noted, it's difficult for me to really understand  
23 the feeling described to me recently by one of our  
24 clients of being bullied by the very people who  
25 are supposed to protect us from bullying.

1  
2           The four bills in the Community  
3 Safety Act have been thoroughly described, so I  
4 won't do that again. Working with the bill  
5 sponsors, we've looked at case law, other  
6 legislation the Council has passed, legislation  
7 passed in other cities that Council Member Lander  
8 enumerated, and we, like the sponsors, want to see  
9 the laws get even better, even stronger and  
10 completely resistant to legal challenge, which we  
11 think they are and they can be.

12           There are already amendments before  
13 the Council. Council Member Williams enumerated  
14 those. They address the issues that were raised  
15 by the administration earlier. So, for instance,  
16 there's an amendment to Intro 799 that clarifies  
17 that that bill would have no impact on an  
18 officer's ability to frisk somebody for her own  
19 safety in the course of a lawful stop.

20           Even as written now, Intro 799  
21 refers to searches, not frisks. That was the  
22 intent and that can be clarified. As written,  
23 Intro 799 also does not change the constitutional  
24 standard or the standard set forth in the Criminal  
25 Procedure Law for a search.

1  
2           It's true that Intro 799 only  
3 applies to a narrow band of street encounters  
4 where law enforcement has grounds to question  
5 somebody but lacks probable cause for a search.  
6 They may even have reasonable suspicion for a pat-  
7 down, which would be allowed, but they lack  
8 probable cause for a full search. In these cases,  
9 federal law already requires officers to obtain  
10 consent. Intro 799 simply requires a Miranda  
11 style warning that ensures that the consent if  
12 properly obtained, voluntary and informed.

13           I want to briefly talk about Intro  
14 801 because the administration raised the concern  
15 about practicality, especially with regard to  
16 vertical patrols. We meet people in arraignments  
17 every week who are falsely arrested for trespass  
18 by police officers on vertical patrols. Part of  
19 the problem is that that style of policing doesn't  
20 allow officers to stop and ensure that the person  
21 who's being arrested is actually trespassing, let  
22 alone to provide their name, information and the  
23 reason for the search. So changing that practice  
24 and changing the nature of those stops isn't just  
25 practical, it's utterly necessary.

1  
2 Even more people are falsely  
3 arrested as a result of unlawful searches. I talk  
4 a lot about marijuana searches in my written  
5 comments, so I won't do that here, but just to  
6 note that those are only the most common and not  
7 by far the only types of unconstitutional searches  
8 that lead--or sort of arrests that stem from  
9 unconstitutional searches and stops. People in  
10 hard reduction programs are arrested for carrying  
11 clean syringes, which is legal under the Public  
12 Health Law. Grocery store workers are arrested  
13 for possession of a weapon when illegal searches  
14 turn up box cutters and small pocket knives that  
15 they use at work. Those are just a few examples.

16 The consequences of those arrests  
17 are well documented: job loss, eviction, court  
18 fees and fines, even deportation.

19 The Community Safety Act will not  
20 solve all these problems, but it will reduce the  
21 number of people who are wrongfully put through  
22 the criminal justice system and exposed to its  
23 devastating consequences. It will change the very  
24 nature of police encounters from biased,  
25 alienating and terrifying to courteous,

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professional and respectful.

So finally, I just want to quickly address Intro 800 and specifically Chairman Vallone's concerns about the private right of action. I think we as public defenders are more aware than most that you can't create a law without an enforcement mechanism. You would never write a felony, a misdemeanor or even a law against bicycling on the sidewalk without creating a mechanism for enforcement.

In February, we settled a lawsuit on behalf of more than 20,000 people who had been arrested under voided statutes, unconstitutional statutes since 1983. Those statutes had been struck down by federal courts, on First Amendment and other grounds and the NY continued to arrest people for them for decades, 20,000 people, even after we filed litigation. It was only after a contempt order by a federal judge that the NYPD put in place a program to stop those unlawful charges.

The Community Safety Act, including enforcement mechanisms has the potential to repair some of the trust that eroded between police and

1  
2 communities of color over the past decade. The  
3 four bills function together to create bottom line  
4 standards of transparency and accountability.  
5 These are standards that every agency should be  
6 held to, but none more so than the NYPD. So we  
7 urge you to move the bills.

8 CHAIRPERSON VALLONE: Thank you. I  
9 said I wasn't to engage. I'm not going to engage.  
10 Who's left?

11 FAIZA PATEL: Thank you. My name  
12 is Faiza Patel. I'm from the Brennan Center for  
13 Justice, which is a nonpartisan policy and  
14 advocacy group here in New York. I'm really  
15 pleased to have this opportunity to present my  
16 views to this committee.

17 I will be focusing today on the  
18 need to establish an inspector general for the  
19 NYPD. Now I think we can all agree that the NYPD  
20 has a really important task of keeping us all safe  
21 and that they have been given enormous powers in  
22 order to do so. At the same time, very serious  
23 questions have been raised about their policies  
24 and practices. I want to distinguish here between  
25 individual actions, individual acts of misconduct

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2 or corruption by police officers and a department  
3 wide policy.

4 I'll just mention two policies that  
5 have been at the center of many debates in the  
6 city. The first is obviously stop-and-frisk,  
7 which we've talked about a lot today. The second  
8 is the department surveillance of Muslim New  
9 Yorkers, which was expensively documented in the  
10 press over the last year.

11 Now, lawsuits are one way to  
12 address these kinds of issues, and certainly the  
13 police are facing a number of these. A more  
14 proactive and cost efficient path is to establish  
15 independent oversight of police policies and  
16 practices. Oversight by democratically elected  
17 officials such as this Council, informed by an  
18 inspector general has worked for federal agencies  
19 and it has worked for major police departments.

20 Like the FBI, the NYPD runs its own  
21 counterterrorism and intelligence operation. It  
22 has 1,000 officers in 12 countries and a budget of  
23 at least \$100 million. But the FBI is overseen by  
24 an inspector general who reports regularly to both  
25 the Attorney General of the United States and to

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2 Congress.

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Inspectors general have also proved their worth in police departments. The LAPD inspector general, for example, covers both police misconduct issues and intelligence operations. In the last decade, LA has seen improvements in police/community relations and a steady drop in crime. In New York, however, systemic oversight is sorely lacking. What oversight there is focuses on corruption and individual cases of police misconduct.

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The NYPD Internal Affairs Bureau's mission is, and I quote, effective corruption control. It is also, obviously, not independent. The Mayor's Commission to Combat Police Corruption, as its name implies, studies the NYPD systems for combating corruption. It does not look at other policies or practices. When it has tried to take a broader view of what corruption means, it has been shut down by the police department. The Civilian Complaint Review Board examines complaints against individual officers, not police department policies and practices.

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The Department of Investigation

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simply does not cover the police. New York's U.S. attorneys and district attorneys do not proactively oversee the NYPD's policies and procedures. They get involved when they become an issue in a particular case. I think this was mentioned already this morning, but the idea that a civil rights action commenced by the DOJ is how we want to have the NYPD overseen is frankly going a little bit beyond where we should be.

Now, I want to sum up by noting also that what an IG does not do. An IG does not make policy. An IG's job is to identify problems and to propose solutions. It is to make recommendations. Implementation is the job of the police commissioner and in some instances it will be the job of this Council to consider how to implement important recommendations.

The City Council has a duty to oversee the police. An inspector general can help you in doing so by providing you with reliable and regular information and expertise. An inspector general can work with the police to address problems and I think it can also help to rebuild trust with communities in the city.

1  
2 For all of these reasons, I believe  
3 that oversight by an independent inspector general  
4 can only strengthen the NYPD, and I encourage you  
5 to move forward with 881. Thank you very much.

6 DR. DELORES JONES-BROWN: Good  
7 afternoon. I'm Dr. Delores Jones-Brown from John  
8 Jay College of Criminal Justice, the Department of  
9 Law, Police Science and Criminal Justice  
10 Administration. I am the founding director of the  
11 Center on Race Crime Injustice John Jay College,  
12 and for the past nine years, I've taught in the  
13 NYPD Leadership Program, a program that is  
14 exclusively for the education for the education of  
15 in-service sworn police officers.

16 The words courtesy, professionalism  
17 and respect appear on the side of each marked New  
18 York City patrol car. The passage and enforcement  
19 of the Community Safety Act will make it clear to  
20 police officers, both old and new that these words  
21 have real meaning and are not simply a  
22 departmental motto or slogan. All New Yorkers who  
23 are in the police department that fights crime and  
24 provides other services with integrity and  
25 accountability.

1  
2 Current police practices raise  
3 serious questions about the integrity of policing  
4 within the city and especially within those  
5 neighborhoods often described as high crime.  
6 While those neighborhoods are heavily populated by  
7 racial and ethnic minorities, the department must  
8 not continue to send a message that constitutional  
9 rights are somehow suspended there or that they  
10 are suspended for certain people who live in such  
11 communities, the young, the male, the homeless or  
12 people who identify as LGBT, among others.

13 A long line of academic research  
14 has confirmed that in many communities--excuse me--  
15 -that in any community, a small number of repeat  
16 offenders are responsible for the majority of  
17 serious violent crime.

18 By having policies in place that  
19 encourage or command officers to treat all members  
20 of a community as criminal or potentially  
21 criminal, the NYPD has created a perverse  
22 incentive for officers to act without integrity by  
23 repeatedly engaging in activity without product.  
24 That is according to the department's own  
25 statistics, roughly 90 percent of all documented

1  
2 tarry stops do not result in sustainable criminal  
3 charges of any kind, but produce completed UF250s  
4 as the measure of good policing.

5           Such policies also result in the  
6 use of police discretion in ways that are  
7 constitutionally invalid, produce great harm in  
8 the lives of certain community residents and  
9 backlog the criminal courts with frivolous and  
10 often legally insufficient claims.

11           Current policy and practice also  
12 implicitly encourage overt police corruption, such  
13 as fabricating consent when it does not exist and  
14 police brutality, misconduct or discourteousness  
15 when a civilian has the nerve to ask for ID for an  
16 officer or if he or she simply asks a question  
17 about the reason for being stopped. About one-  
18 third of all CCRB complaints involve a stop  
19 incident.

20           The Community Safety Act can  
21 address these important police integrity issues y  
22 making it clear that policing in New York is a  
23 public service profession for which each officer  
24 will be held individually accountable. A primary  
25 way that this can be achieved is by removing the

1  
2 anonymity of officers during police/civilian  
3 encounters. Research has shown that by removing  
4 officer anonymity, officers are more courteous and  
5 professional and are less likely to be brutal  
6 during community encounters. Those who are not  
7 can be individually identified and brought in for  
8 retraining.

9           The retraining can include learning  
10 how to obtain valid consent, how to effectively  
11 distinguish between the potentially criminal and  
12 the totally innocent, even in high crime areas,  
13 how to accept the fact that their job comes with a  
14 mandate to enforce the law within constitutional  
15 and humane limits and that their role is to work  
16 for the people of New York, not to control them.

17           Police work is hard, but there is  
18 evidence in other cities, in earlier periods in  
19 this city that makes it clear that the police can  
20 perform their work with integrity and still be  
21 effective law enforces. The current NYPD can  
22 revisit the best aspects of its own CPOP program  
23 from the early 90s. It can look to methods  
24 currently being used in Detroit, Houston,  
25 Philadelphia, Baltimore and San Francisco, cities

1  
2 that are experiencing declines in crime without  
3 relying on aggressive use of stop-and-frisk.

4           It can talk to Chief Ron Davis of  
5 East Palo Alto, California, who because of racial  
6 disparities, made an administrative decision to  
7 ban his officers from using consent searches  
8 without that decision resulting in spikes in  
9 violent crime. To design an effective and humane  
10 approach to policing in housing projects, an  
11 approach that results in reduced crime, reduced  
12 fear and that does not criminalize all housing  
13 project residents, the NYPD can talk to Val  
14 Demings [phonetic], the former chief in Orlando.

15           Each of these police leaders made  
16 decisions to change policing practices in their  
17 agency in order to increase police integrity,  
18 transparency and accountability. That is to make  
19 the department more accountable to the various  
20 needs of its various communities. When they saw a  
21 racial and economic discriminatory impact--

22           CHAIRPERSON VALLONE: [interposing]  
23 Can you finish up please?

24           DR. DELORES JONES-BROWN: I am  
25 finishing up. Impact flowing from police

1  
2 practices they didn't deny it, attempt to justify  
3 it, they made the decision to address it. Their  
4 decisions also led to more effective policing by  
5 working with community members rather than against  
6 them. Unless the NYPD is willing to admit that it  
7 hires many bad officers, the Community Safety Act  
8 can reduce the number and payout for civil suits  
9 related to police behavior by giving officers  
10 clear minimum standards for courtesy,  
11 professionalism and respect rather than leaving  
12 those standards to the discretion of individual  
13 officers or the department. The inspector general  
14 provision ensures that the act will not be--

15 CHAIRPERSON VALLONE: [interposing]

16 You really have to finish up.

17 DR. DELORES JONES-BROWN: I am

18 finishing up.

19 CHAIRPERSON VALLONE: It's not fair

20 to everyone else.

21 DR. DELORES JONES-BROWN: --a dog

22 without teeth and provides an additional level of

23 oversight to drive home the fact that the NYPD

24 mandates and rewards only fair and just policing.

25 Thank you.

1

2

CHAIRPERSON VALLONE: Thank you.

3

The buzzer means we're done. The buzzer is not a

4

yellow light; it doesn't mean finish up. Please

5

finish up before the buzzer. Thank you. You have

6

a clock, everyone, right there.

7

DARIUS CHARNEY: Good afternoon to

8

the chairman and the other committee members. My

9

name is Darius Charney. I am a senior staff

10

attorney with the Center for Constitutional

11

Rights.

12

CCR is a national legal and

13

educational organization dedicated to upholding

14

rights guaranteed by the United States

15

Constitution and the Universal Declaration of

16

Human Rights.

17

For more than a decade, through

18

litigation, public education and advocacy, CCR has

19

worked to end the abuses and increase the

20

accountability and transparency of the New York

21

Police Department. What we have learned from this

22

work is that if left to its own devices, the NYPD

23

will not and cannot police itself.

24

In 1999, in the wake of the tragic

25

killing of Amadou Diallo by members of the NYPD's

1  
2 Street Crimes Unit, CCR filed Daniels versus City  
3 of New York, a federal class action challenging  
4 the constitutionality of the stop-and-frisk  
5 practices of the SCU, whose officers were among  
6 the most aggressive and abusive practitioners of  
7 stop-and-frisk.

8 Under a settlement reached in 2003,  
9 the NYPD was supposed to, among other things,  
10 adopt and implement a department wide policy  
11 against racial profiling, and two, develop a  
12 system of internal audits to assess whether NYPD  
13 officers' stop-and-frisks complied with the  
14 constitution.

15 Yet, as we all know, over the  
16 preceding eight years, stop-and-frisk has exploded  
17 across the city, increasing by over 600 percent,  
18 while enormous racial disparities in who gets  
19 stopped have persisted. As demonstrated in a 2010  
20 study by Professor Jeffrey Fagan [phonetic] of  
21 Columbia University, the most comprehensive  
22 statistical study ever done on the NYPD's stop-  
23 and-frisk data, these disparities cannot be  
24 explained away by crime patterns, officer  
25 deployment or other non-racial factors.

1  
2           So in 2008, we went back to court  
3 to file a new class action lawsuit, Floyd versus  
4 the City of New York, which after four years of  
5 contentious litigation, is finally scheduled to go  
6 to trial in March of 2013.

7           What about the department's promise  
8 to implement an anti-racial profiling policy, and  
9 monitor its officers' stop-and-frisk activity?

10 Well, through discovery in the Floyd case, we have  
11 learned, one, that many NYPD supervisors, precinct  
12 commanders and even members of the Central  
13 Administration have never even read much less  
14 attempted to enforce the department's anti-racial  
15 profiling policy. Two: that the NYPD's internal  
16 stop-and-frisk audits do nothing more than check  
17 whether officers' stop-and-frisk forms are filled  
18 out correctly, without assessing whether the  
19 underlying stops themselves are based on  
20 reasonable suspicion, as required by the Fourth  
21 Amendment of the U.S. Constitution.

22           So what these last eight years have  
23 taught us is that the NYPD cannot be trusted to  
24 make the needed changes to its stop-and-frisk  
25 policies and practices, which is why we will be

1  
2 seeking through the Floyd lawsuit a court-  
3 appointed monitor to oversee the NYPD's  
4 implementation of whatever changes the federal  
5 court orders it to make.

6           However, time limit federal court  
7 oversight, while necessary in the short term is  
8 not enough to ensure the accountability of the  
9 NYPD in the long term. Real and lasting  
10 accountability requires permanent independent  
11 oversight of NYPD policies and practices. Yet, as  
12 has been discussed widely today, there is  
13 currently no agency external to the NYPD with the  
14 power to examine its policies and practices to  
15 ensure that they will not lead to constitutional  
16 violations.

17           This is why we need an inspector  
18 general of the NYPD, to monitor and shine a light  
19 on the policies coming out of One Police Plaza and  
20 their impact on New Yorkers' civil rights and  
21 liberties. The IG is a standard of government  
22 agencies throughout the city, as has been  
23 discussed earlier, including the Departments of  
24 Public Housing, Education and even the FDNY. Of  
25 course, it's common amongst municipal law

1  
2 enforcement agencies throughout the United States,  
3 including the second largest police department in  
4 this country, the LAPD. I therefore urge the  
5 passage of Intro 881 by this committee, as well as  
6 the Council as a whole. Thank you.

7 COUNCIL MEMBER WILLIAMS: I just  
8 want to say thank you for your testimony and for  
9 clarifying some of the things. Thank you guys so  
10 much for the support on the bills, helping make  
11 sure the bills cut muster and all the support  
12 you've done in bringing us to this point. Thank  
13 you so much.

14 CHAIRPERSON VALLONE: I also want  
15 to thank you for staying on topic and giving us  
16 some legal advice. I know, Uti, you didn't get to  
17 speak, but I've been working with you on ways to  
18 improve, especially the inspector general bill,  
19 with Brad and Jumaane, so that it can, at the end  
20 of the day, survive court scrutiny. So I know  
21 you've been doing a lot of work on that. So thank  
22 you.

23 UTI OFER: Thank you.

24 CHAIRPERSON VALLONE: Oh, I'm  
25 sorry, Brad.

1  
2 COUNCIL MEMBER LANDER: I just want  
3 to continue that point that because we took so  
4 long with the administration, even though we  
5 didn't make a lot of progress and because there's  
6 a lot of people, the opportunity to really get  
7 into detail, as it's clear you guys have, as you  
8 did in written testimony. I just want to let  
9 folks know, both who are watching on TV and who  
10 are in the audience that the Council is grateful  
11 for the opportunity to work really closely with  
12 you, to have all the dialogue that's taken place  
13 between you and our legal staff and our counsel  
14 and to make sure that we come up with bills that  
15 not only more than survive legal scrutiny and any  
16 court challenge but are really as good as they can  
17 possibly be. So thank you and to everyone who's  
18 working on this.

19 CHAIRPERSON VALLONE: Thank you.  
20 The next panel will be Brittny Saunders, Center  
21 for Popular Democracy; Steve Kohut, Justice  
22 Commission; Raul Rodriguez [phonetic], Picture the  
23 Homeless; William Kibrey [phonetic], Legal Aid;  
24 Sienna Fontaine, Legal Services. I also want to  
25 say that Council Member Vincent Gentile, a member

1  
2 of the Public Safety Committee, has graciously  
3 agreed to chair from this point on. If I can get  
4 back I will, but if not he is in charge. Vinny,  
5 this is a great group. They listen. You don't  
6 have to worry. Where are you? It is two minutes  
7 for everyone, so everyone can be heard without it  
8 going too late in the evening. Council Member  
9 Jumaane, thank you and Brad, thank you for being  
10 here until almost the end.

11 [Pause]

12 CHAIRPERSON GENTILE: As the chair  
13 just reminded everyone, we are limiting each  
14 person to two minutes on the clock. Can you reset  
15 the clock? Let's see, why don't we start--I'm  
16 sorry, I don't know your name--just start with  
17 you. Introduce yourself and we'll start the  
18 clock.

19 SIENNA FONTAINE: Sure, good  
20 morning. My name is Sienna Fontaine and I'm a  
21 staff attorney at Legal Services NYC Bronx. Legal  
22 Services is the nation's largest provider of free  
23 legal services for the poor. For more than 40  
24 years, Legal Services has provided expert legal  
25 assistance and advocacy to low-income residents of

1  
2 New York City. Each year, our 19 neighborhood  
3 offices serve tens of thousands of New Yorkers  
4 including homeowners, tenants, the disabled,  
5 immigrants, the elderly and children.

6 We thank the New York City  
7 Council's Committee on Public Safety for this  
8 opportunity to submit written and oral testimony  
9 on the introduced legislation, especially 800.  
10 High concentrations of arrests, driven in large  
11 part by stop-and-frisk tactics are devastating the  
12 low-income communities of color that we serve.  
13 The consequences of these arrests, including  
14 unemployment, homelessness, poor education and  
15 unstable family structures create and perpetuate a  
16 cycle of poverty in these neighborhoods.

17 You've heard some of the statistics  
18 about the numbers of stops and the high numbers of  
19 arrests and summons that result from those stops.  
20 People of color are more likely to be arrested  
21 rather than issued a summons appear to because  
22 they're less likely to have ID. If a person is  
23 arrested rather than being issued a summons, it's  
24 more likely that he'll be forced to miss work  
25 unexpectedly and might end up being fired or

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disciplined for his last minute absence.

Arrest and conviction records make it extraordinarily difficult to find work and maintain affordable stable housing. High debt obligations, including child support fines, consumer debt increase these financial pressures. This destabilizing combination of unemployment, high debt and the lack of housing pushes individuals into repeated contact with the criminal justice system.

I want to share just an example from one of our clients. Someone earlier had actually touched on something very similar to what happened to this client. Mr. M, we'll call him, a client of Legal Services. He had a job that included opening boxes. I'll just finish this client's story.

One day, on his way to work, he picked up tools, which did include a box cutter and a small knife, at the local hardware store. He was walking down the street, nothing suspicious about that, but he was stopped and frisked. He was then arrested because the tools were characterized as weapons. He was held overnight,

1  
2 and at the advice of his lawyer took a plea and  
3 was released.

4 His job offered no paid vacation  
5 and limited unpaid vacation and sick time. Within  
6 a week of the arrest, he was fired because of his  
7 absences from work. He applied for unemployment  
8 benefits was ultimately denied because his guilty  
9 plea as a matter of law resulted in a finding that  
10 the job had cause to fire him.

11 When he came to our office, he had  
12 been unable to find a job, was on public  
13 assistance and was facing eviction because of the  
14 loss of that income. So this is just one story.  
15 We have many others like it that show how  
16 destabilizing even a single unjustified arrest can  
17 be for individuals trying to make better lives for  
18 themselves and their families. So thank you very  
19 much.

20 CHAIRPERSON GENTILE: Classic  
21 ripple effect I guess. Yes. Thank you.

22 STEVE KOHUT: How you doing? My  
23 name is Steve Kohut. I'm with the Justice  
24 Committee. I'm born and raised and still living  
25 in the Lower East Side of New York.

1  
2 As a lifelong Latino member of the  
3 Lower East Side, I've been victimized by the NYPD  
4 more times than I can remember, starting at the  
5 age of 12. I've had my head slammed against a  
6 car. I've been choked. I've had property taken  
7 from my pockets and not returned. I've had my  
8 property intentionally broken without  
9 reimbursement. I've even had my life threatened  
10 by the NYPD.

11 One instance in particular, I'm  
12 walking down the street. It's a one-way street  
13 headed that way. Here comes a van going down the  
14 wrong way of a one-way street, hops the curb.  
15 Three gentlemen walk out of the car, all with guns  
16 in their hand, pointed at me. They walk up to me,  
17 put one gun against my temple, one gun against my  
18 neck and one gun dead square in my chest. All are  
19 point in blank range.

20 They start searching me. They tell  
21 me if I move I'll be shot. Starting searching me,  
22 don't find anything, go underneath my clothing,  
23 into my pockets, never asked me for my consent.  
24 Never told me why I was stopped. They didn't  
25 find, I guess what they were looking for. I

1  
2 didn't have anything on me. They start searching  
3 my boots, remove my boots, undo my belt, search  
4 inside my pants, my genitals, everything, remove  
5 my pants, dropped them by my leg. Long story  
6 short, they ended up leaving me there standing  
7 wearing my boxers and my socks, in broad daylight  
8 on the street in February. Then just walked away,  
9 looked at me and said you got lucky this time.

10 CHAIRPERSON GENTILE: Were they  
11 uniformed officers?

12 STEVE KOHUT: No.

13 CHAIRPERSON GENTILE: No.

14 STEVE KOHUT: The only reason I  
15 even knew they were cops was because while I had--  
16 you know, the gun's like this, I looked down and I  
17 see sticking just slightly like this out of his  
18 jacket, I see a little corner of a badge. That's  
19 the only way I even knew they were cops and I  
20 wasn't being robbed.

21 As I think back on that particular  
22 as well as many others, all I could think of is  
23 that if the Community Safety Act had been active  
24 at that point, that would have never happened to  
25 me.

1

CHAIRPERSON GENTILE: Right.

2

3

STEVE KOHUT: As well as many other things. I mean, you have Intro 800 that's going to protect against discriminatory profiling, which is what happened to me. I got stopped because I'm a Latino walking down the street in Lower East Side.

4

5

6

7

8

9

CHAIRPERSON GENTILE: Right.

10

STEVE KOHUT: There was no other reason. That wouldn't have happened if that was in effect. Intro 801 would have made it necessary for them to identify themselves and let me know they're cops, let me know how to better prepare myself for what's about to take place, other than being, you know, scared my life, you know not knowing what's going on.

11

12

13

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CHAIRPERSON GENTILE: We've got to wrap it up quickly.

19

20

STEVE KOHUT: The last one, I mean that I'm going to mention is 799, which would have required them to ask me for permission rather than just strip me in the street.

21

22

23

24

CHAIRPERSON GENTILE: Right.

25

STEVE KOHUT: You know, these

1

2 things that I mean, providing someone with an ID,  
3 I mean what's so hard about that.

4

CHAIRPERSON GENTILE: Understood.

5

6 meet somebody every day; you give them your card.  
7 What's so hard about that? I wasn't given a card.  
8 I was given three guns to my head.

9

CHAIRPERSON GENTILE: Thank you for  
10 that testimony.

11

STEVE KOHUT: In cases like mine,  
12 it's something that's definitely necessary.

13

CHAIRPERSON GENTILE: Understood,  
14 yeah. Thank you for coming in and thank you for  
15 that testimony. Yes, go ahead.

16

RAUL RODRIGUEZ: Hi, my name is  
17 Raul Rodriguez. I'm a member of the grassroots  
18 organization called Picture the Homeless and also  
19 a member for the Communities United for Police  
20 Reform.

21

Being homeless has made me a prime  
22 target for the officers to stop me and harass me  
23 in every sense of being. Whenever it's in the  
24 train, in the street or even in a hospital  
25 emergency room, police officers always use the

1  
2 excuse that I match the description of someone who  
3 did something wrong. I ask you should this be the  
4 fact of me being Latino and me being homeless be  
5 enough to warrant any type of constant targeting  
6 from the NYPD?

7           They always demand me to empty my  
8 pockets and they check everything that I have on  
9 me, without asking for my consent. On a good day,  
10 on their legal stop and search, because that's how  
11 we call it, I will be allowed to leave, not only  
12 but for it to happen like in about a day or two.  
13 But if I assert my legal and constitutional rights  
14 and question why I was stopped, I know that the  
15 officers will become more aggressive and the  
16 experience will only get worse for me, often  
17 leading for me being handcuffed and even slammed  
18 in the floor.

19           In one incident, I was stopped in  
20 front of my residence after coming home from work  
21 late one night. I worked as a maintenance manager  
22 in a gym late at night. In retaliation of my  
23 question I was stopped, I was unlawfully charged  
24 with menacing. The consequences of that charge  
25 extended far way beyond that incident that night,

1  
2 for months. The unwarranted menacing charge  
3 costed me my job, including my place of residence.

4 These encounters have me going  
5 through a judicial revolving door, having me  
6 subject to a risk of paying fines that I can't  
7 afford to jail time to justify the reasons of why  
8 they're stopping me. This is due to that it is  
9 very difficult for me to find employment since  
10 nobody wants to hire a person that has a record.  
11 It also has prevented me from opportunities to be  
12 housed because who could afford a place to live  
13 without a job?

14 The damage of these encounters have  
15 done to me are irreplaceable. How can I ever  
16 enjoy the American dream with a criminal record  
17 that has been forced upon me just because I'm  
18 homeless? It is hard enough for anybody to deal  
19 with life's challenges being a homeless person in  
20 the City of New York. But to have the very same  
21 people that are supposed to protect me harass me  
22 because I'm homeless is ridiculous. In all  
23 encounters have made in my life much more  
24 difficult to bear. I support the Community Safety  
25 Act because I believe that reforms will prevent

1  
2 similar experiences from happening again to myself  
3 and others and bring in transparency and  
4 accountability to the police officers who  
5 sometimes act above the law. The passage of the  
6 Community Safety Act will bring me closure and  
7 actually the Community Safety Act will restore the  
8 courtesy, professionalism and respect that we  
9 expect and deserve from the NYPD.

10 CHAIRPERSON GENTILE: Thank you for  
11 your testimony. Sorry to hear the experiences,  
12 but thank you for your testimony.

13 RAUL RODRIGUEZ: Thank you, sir.

14 BRITTNY SAUNDERS: Good afternoon.  
15 My name is Brittney Saunders and I'm senior staff  
16 attorney for immigrant and civil rights at the  
17 Center for Popular Democracy. CPD is a proud  
18 member of the Communities United for Police  
19 Reform. We'd like to thank you for having us here  
20 today.

21 I'd like to take this opportunity  
22 to place the Community Safety Act in the national  
23 context by discussing efforts that have been made  
24 in other parts of the country to deal with the  
25 problem of discriminatory policing. In recent

1  
2 years, some 13 states have enacted measures like  
3 Intro 800 that bar profiling on the basis of race,  
4 national origin and in some cases religion or  
5 gender. Of course, Intro 800 would expand the  
6 universe of protections, covering characteristics  
7 like immigration status, age, housing status and  
8 gender identity or expression, which as we've  
9 already today are already the basis for a lot of  
10 unjust stops.

11 Two states, West Virginia and  
12 Colorado, have provisions like Intro 799 that  
13 require police officers to secure proof of  
14 consent. Importantly, data collected in West  
15 Virginia after the provision was put into place  
16 shows that having a proof of consent law did not  
17 eliminate consensual searches as a category. It  
18 did not appear to impose any undue burdens on  
19 police officers.

20 However, the data that was  
21 collected also underscore the ineffectiveness of  
22 racial profiling, as it showed that African  
23 Americans and Latinos were far more likely than  
24 whites to be stopped but far less likely to  
25 actually be carrying contraband.

1  
2 As you've heard earlier and  
3 actually just on this panel, unlawful stops are  
4 often made even more traumatic by the fact that  
5 police officers do not identify themselves. Intro  
6 801 would change this, establishing a tone of  
7 respect and increasing transparency and  
8 accountability. Similar measures are already in  
9 place in Minnesota and Arkansas.

10 States have taken a number of steps  
11 in order to ensure ongoing oversight and  
12 transparency and accountability to make sure that  
13 such profiling measures actually result in real  
14 change on the ground. These have ranged from the  
15 IG structure that is already in place in Los  
16 Angeles to a number of other forms.

17 But basically, what all of this  
18 taken together shows is that the NYPD can in fact  
19 reject discrimination in favor of approaches that  
20 are more equitable, more effective and more likely  
21 to foster healthy relationships between police  
22 officers and the communities that they serve.  
23 Thank you.

24 CHAIRPERSON GENTILE: Great.  
25 Interesting.

1

2

WILLIAM GIBNEY: Good afternoon.

3

My name is William Gibney. I'm the director of

4

the criminal practice special litigation unit of

5

the Legal Aid Society.

6

You've heard the statistic earlier

7

in the hearings about 90 percent of the people who

8

were stopped last year did absolutely nothing

9

wrong, were not charged with anything, were just

10

often very aggressively stopped and frisked,

11

targeted and let go for doing absolutely nothing.

12

As the largest public defender in

13

the City of New York, I'm here to testify about

14

the 10 percent that were accused of something. I

15

think the bottom line of our testimony is that if

16

you only focus on the 90 percent, then you're

17

vastly understating the really destructive nature

18

of this program, because many of those other 10

19

percent that justify this program are absolutely

20

bad arrests.

21

Two developments in cases that we

22

have filed have occurred in the last two weeks.

23

Last week, a federal district court in the class

24

action case of Davis against the City of New York

25

ruled that the false arrest, unlawful detention

1  
2 and other claims of nine residents and visitors to  
3 New York City Public Housing may proceed to trial.  
4 The judge, Judge Scheindlin, found that the claims  
5 raise a constitutional question of whether they  
6 NYPD is violating the very rights of the residents  
7 and guests whom they seek to protect. Her  
8 question that she asked is "are defendants acting  
9 within constitutional limits of the presumably  
10 sincere efforts to provide a safe environment for  
11 the residents of public housing or in their zeal  
12 to provide that protection are they violating the  
13 very rights of the residents and guests they seek  
14 to protect?"

15 She ruled further that there is  
16 nothing suspicious about a person walking down the  
17 stairs of a NYCHA building in a high crime area.  
18 There is nothing suspicious about a person stating  
19 that he was visiting a friend in a NYCHA building.

20 Our testimony goes on to talk about  
21 other problematic patterns of arrests. We file  
22 litigation also this summer also about marijuana  
23 in public view, another situation where thousands  
24 of arrests are occurring improperly each year.

25 Those are not the only problematic

1  
2 patterns. The NYCLU has another trespass case  
3 pending in the private buildings. We have heard  
4 testimony today about other problematic patterns  
5 of arrest. Thank you.

6 CHAIRPERSON GENTILE: Thank you.  
7 If you have the testimony, you can submit it to us  
8 and we'll see the rest of it. I just have a  
9 question for Ms. Saunders. Is it fair to say then  
10 that New York City is behind the curve with the  
11 rest of the country in not only legislating but  
12 experiencing the benefits of legislation that we  
13 have before us?

14 BRITTNY SAUNDERS: I think what I  
15 would say is that there have been a number of  
16 steps taken in other parts of the country. What  
17 the Community Safety Act really does is it takes  
18 the best and the strongest of that thinking and  
19 pulls it together. So I think it really creates  
20 an opportunity for New York to take a huge leap  
21 forward and really to expand some protections that  
22 are really much needed in the city.

23 CHAIRPERSON GENTILE: Council  
24 Member Lander?

25 COUNCIL MEMBER LANDER: No

1  
2       disparagement meant to West Virginia but we've got  
3       a problem when New York is behind West Virginia in  
4       protecting our civil rights. Thanks all of you  
5       very much on this panel.

6                       CHAIRPERSON GENTILE: Thank you.  
7       Our next panel: Linda Sarsour, Cyrus McGoldrick,  
8       and Ramzi Kassem.

9                       [Pause]

10                      CHAIRPERSON GENTILE: Again, we'll  
11       set the clock at two minutes and we'll begin. Ms.  
12       Sarsour, if you'd like to start.

13                      LINDA SARSOUR: Could we start with  
14       Professor Ramzi because he needs to run?

15                      CHAIRPERSON GENTILE: Okay, sure,  
16       absolutely. Professor Ramzi?

17                      RAMZI KASSEM: Thank you. I'll  
18       repeat that. My name is Ramzi Kassem. I'm an  
19       associate professor of law at the City University  
20       of New York, where I also direct the Clear  
21       Project. Chair Vallone and members of the  
22       Committee on Public Safety, thank you for offering  
23       me the opportunity to address some of the failure  
24       of the NYPD and hopefully highlight the need for  
25       reform. I do so in my own name, on behalf of the

1  
2 Clear Project, and in the name of the Muslim  
3 American Civil Liberties Coalition, which Clear  
4 advises.

5           As the Associated Press confirmed  
6 in a Pulitzer Prize winning series of exposés, the  
7 NYPD has been engaged in perhaps the largest  
8 spying program by a local law enforcement agency  
9 on record. It is a sprawling effort, targeting  
10 entire Muslim communities for surveillance,  
11 mapping and infiltration and it stretches from the  
12 heart of our city to the border of Canada and  
13 beyond. In the name of total security, the NYPD  
14 has treated basic acts of daily living as  
15 potential crimes, disregarding privacy and the  
16 freedoms of speech and religion.

17           The program's founders found the  
18 ideological underpinnings and the guiding  
19 principles they needed in so-called radicalization  
20 theory, a deeply flawed doctrine positing the  
21 existence of a conveyor belt relationship between  
22 religiosity and violent action. According to that  
23 theory, New Yorkers from, quote, "all walks of  
24 life" are potential radicals and that includes,  
25 quote, "university students, engineers, business

1  
2 owners, teachers, lawyers, cab drivers and  
3 construction workers," end of quote. No suspicion  
4 of actual criminal activity is needed.

5 For all, the novelty of  
6 radicalization theory, the NYPD was in many ways  
7 primed for it. Long before the war of terror,  
8 there was the war on crime and with it came stop-  
9 and-frisk, which is a profiling model that was  
10 applied almost exclusively to communities of  
11 color.

12 Similarities abound between covert  
13 NYPD spying on Muslims and stop-and-frisk. Just  
14 as Muslim mapping stems from roots in  
15 radicalization theory, the stop-and-frisk program  
16 grew out of the broken windows theory: the idea  
17 that constant policing of low-level disorder  
18 deters serious criminal activities. As applied,  
19 both theories result in the discriminatory over  
20 policing of minority communities.

21 The excesses of the NYPD must be  
22 checked. A broad coalition of organizations that  
23 transcends ethnic or religious differences,  
24 including the Communities United for Police Reform  
25 Campaign is present today to demand the

1  
2 prohibition of racial and religious profiling and  
3 the appointment of an inspector general to oversee  
4 NYPD policies. Together, these New Yorkers cannot  
5 only make stop-and-frisk, Muslim mapping and other  
6 expressions of bias-based policing unlawful  
7 through the Community Safety Act, they are  
8 hopefully making them politically untenable as  
9 well. Thank you.

10 CHAIRPERSON GENTILE: Thank you,  
11 Professor Ramzi. We do have your testimony and  
12 your attachment. We will take a look.

13 RAMZI KASSEM: Thank you.

14 CHAIRPERSON GENTILE: Thank you so  
15 much.

16 RAMZI KASSEM: My apologies--

17 CHAIRPERSON GENTILE: [interposing]  
18 You have to leave? Yes, you can leave. Okay, who  
19 wants to go next?

20 CYRUS MCGOLDRICK: I think it's me.  
21 To the members of the City Council and to members  
22 of the audience, thank you for your time and for  
23 the opportunity to discuss our support for the  
24 Community Safety Act. You know, these bills are  
25 the fruit of tremendous collaboration and

1  
2 coalition. I really think that it takes  
3 tremendous leadership to see this vision and to  
4 make it a reality, and so we appreciate the City  
5 Council and especially the work of Communities  
6 United for Police Reform in this effort. My name  
7 is Cyrus McGoldrick. I'm the advocacy director at  
8 the New York Chapter of CARE the Council on  
9 American Islamic Relations.

10           Primarily we deal with cases of  
11 religious, racial, and ethnic discrimination.  
12 When we discuss these bills it's very important  
13 to, of course, see this within the framework of  
14 constitutional rights and human rights more  
15 broadly. I think many of the panelists today have  
16 made that point very clearly.

17           I'd like to take just a slightly  
18 different way. As an issue of cost, whether we're  
19 talking about surveillance or we're talking about  
20 stop-and-frisk or police shootings and the effects  
21 in communities, it's a waste, both in the  
22 political capital that NYPD built 11 years ago, or  
23 in terms of budget. Especially when you have NYPD  
24 and Chief Gallati admitting in a deposition that  
25 the surveillance produced absolutely no leads, no

1

2 leads whatsoever in the Muslim community. This is  
3 absurd.

4

5 It's not just the fact that they're  
6 going after people based on race or religion or  
7 ethnicity, but they're going after the best.  
8 They're going after mosque leaders. They're going  
9 after the politically active, people involved in  
10 social justice causes. There was a blog headline  
11 about the NYPD treating liberal protest groups  
12 like Muslims. It was a perfectly ironic headline  
13 that I think deserves some attention. So I  
14 encourage you to read the AP documents yourselves  
15 if you haven't seen them yet. It's really  
16 chilling. There really is no defense of the NYPD,  
17 except if you ignore them.

18

19 You see that also, especially in  
20 relation to the oversight issue. This is a top-  
21 down policy. This is beyond the Internal Affairs  
22 Bureau. This is beyond the CCRB. We know very  
23 well that writing letters to the CCRB is like  
24 writing a letter to Santa Claus. So it's very  
25 important that we really have a higher top-down  
oversight.

26

Finally, my last point is that--I

1  
2 missed the shot clock--but the last point is that  
3 the inspector general, we just see that this bill  
4 and the other standards set by the Community  
5 Safety Act is important, it's obvious and it's  
6 very necessary. So we thank you for your time and  
7 for your interest and for your care on this issue.

8 CHAIRPERSON GENTILE: Great. Thank  
9 you for your testimony, appreciate it. Now,  
10 someone from my neck of the woods, Linda Sarsour.

11 LINDA SARSOUR: My whole testimony  
12 is directed straight at you, Council Member  
13 Gentile.

14 CHAIRPERSON GENTILE: Okay.

15 LINDA SARSOUR: So again, my name  
16 is Linda Sarsour. I'm the executive director at  
17 the Arab American Association of New York and the  
18 advocacy director for the National Network for  
19 Arab American Communities.

20 Bay Ridge Brooklyn, where I live  
21 and work, is home to the largest Arab American  
22 community in the state of New York, an area  
23 heavily targeted by NYPD intelligence and other  
24 federal law enforcement agencies. Our businesses,  
25 mosques, coffee shops, civic associations all

1  
2 monitored by the demographics unit of the NYPD and  
3 mentioned in secret documents revealed through  
4 reports by the Associated Press.

5 Young college students who  
6 recognize their individual names, emails they sent  
7 and events they organized. Our previous Imam  
8 Sheikh Redda Shata, in our mosque, Islamic Society  
9 of Bay Ridge were listed among those monitored. A  
10 mosque, a sacred haven, a place where community  
11 members escape to find serenity and deepen their  
12 relationship with God.

13 This is the same mosque that has  
14 invited and hosted NYPD officials on dozens of  
15 occasions, opened our doors to them, broke bread  
16 with them and extended our hand in partnership and  
17 cooperation. It is the same NYPD officials that  
18 have been authorizing the surveillance and  
19 monitoring of our entire community, not based on  
20 evidence or probable cause but based on ethnicity  
21 and religion.

22 It is not just about statistics or  
23 the number of mosques or cafes or number of  
24 informants, it's about the wounded psyche of an  
25 entire community: trauma, mistrust, alienation.

1  
2           The targeting and profiling of any  
3 group based on race, ethnicity and national  
4 origin, not only reflects bias but also is a  
5 completely ineffective means for law enforcement  
6 to prevent crime. The Arab and Muslim communities  
7 in New York are guilty until proven innocent,  
8 which goes against everything our constitution and  
9 our country stands for. NYPD officials, including  
10 Commissioner Kelly, who oversaw these initiatives  
11 that clearly violate the civil rights of New  
12 Yorkers must be investigated and held accountable  
13 for their actions, and a process must be  
14 expediently implemented to safeguard that such  
15 abuses will never be justified by NYPD policy.

16           This process is the passage of the  
17 Community Safety Act that I hope my City Council  
18 Member signs onto and more specifically the NYPD  
19 inspector general act. An inspector general will  
20 provide transparency, thus allowing the mayor and  
21 the City Council to better exercise their  
22 oversight responsibilities and increase public  
23 confidence in policing. The inspector general  
24 would have the mandate, expertise and perspective  
25 to make sure that as NYPD works to keep our

1  
2 communities safe, they do so consistent with our  
3 constitutionally granted liberties.

4           Quote, "I could tell you that I  
5 have never made a lead from rhetoric that came  
6 from a demographics report and I'm here since  
7 2006. I don't recall other ones prior to my  
8 arrival." End quote. These words are not my  
9 words; they are said by Assistant Chief of NYPD  
10 Thomas Gallati, in a June 28th deposition. No  
11 leads translate to an ineffective program.

12           In light of a weak economy, we  
13 should ensure that our tax dollars are spent  
14 efficiently. This includes education, health  
15 care, infrastructure, transportation. We owe it  
16 to New Yorkers to do the right thing. The right  
17 thing is to pass the Community Safety Act and for  
18 Council Member Gentile to sign onto it. Thank  
19 you.

20           CHAIRPERSON GENTILE: I'm here  
21 learning also, so that's good to hear. I had a  
22 question that came to mind as you were speaking.  
23 We've talked a lot about this issue in the past.  
24 If the NYPD went back to more of a community  
25 policing policy rather than a stop, question and

1  
2 frisk policy, whereby there were more police  
3 officers who would engage in the community and  
4 know the people in the community, would that be  
5 something as a step in the right direction that  
6 would negate or have less necessity in their mind  
7 to do a stop-and-frisk if in fact this community  
8 policing were in place?

9 LINDA SARSOUR: So the NYPD boasts  
10 a diverse police force and they also boast a  
11 community affairs department. While you know in  
12 Bay Ridge we love our community affairs officers  
13 and we think they do a good job, but that is  
14 negated by the interaction that our young people  
15 have with law enforcement, also in Bay Ridge,  
16 including by Fort Hamilton High School. There  
17 have been many occasions of stories that we've  
18 shared with NYPD and us having to pick up our own  
19 kids from a local police department.

20 But I think for the Muslim  
21 community specifically on the surveillance issue,  
22 there's a distinction between the work that we're  
23 doing with our local precincts and the  
24 intelligence division and the counterterrorism  
25 efforts of the New York Police Department. It is

1  
2 not our community affairs director who is coming  
3 into our mosque to surveil and monitor us. It's  
4 not their NYPD security cameras who are monitoring  
5 our area.

6 I think what our community wants is  
7 accountability from Mayor Bloomberg and from  
8 Commissioner Kelly to say that yes, something is  
9 wrong here and we want to fix it. There has been  
10 no response from the Mayor or Commissioner Kelly  
11 to our, the people that they consider the people  
12 of dissent. So, we've been criminalized for  
13 dissenting against the policies of the New York  
14 Police Department. Mayor Bloomberg and  
15 Commissioner Kelly continue to meet with only  
16 those who agree with them and not those who stand  
17 up against them. That's the problem that we have  
18 in our community.

19 CHAIRPERSON GENTILE: Well said.

20 COUNCIL MEMBER LANDER: So I do  
21 think, Council Member that the point is sort in  
22 some ways similar in stop, question and frisk and  
23 in surveillance is that what has happened as a  
24 result of profile-based discriminatory policing is  
25 that there's less trust and that people, whether

1  
2 they're kids on the street or whether they're  
3 respected Imams are a lot less likely to be able  
4 to reach out their hand to the PD. That's the  
5 kind of trust that you need to identify a suspect  
6 or to follow a real lead.

7 I appreciate your pointing to the  
8 AP stores, which I hope people look at and to  
9 Chief Gallati's testimonies which I hope people  
10 will look at. I would urge people also to look at  
11 the Pro Publica, look at the NYPD intelligence  
12 unit, which really demonstrates that profile-based  
13 surveillance has not yielded anything. We've  
14 spent a lot of money. We've harmed a lot of  
15 relationships of trust.

16 Two things I would just say about  
17 the relationship between this package of bills and  
18 this issue. First, the commissioner has said in  
19 the past that that in surveillance they don't  
20 engage in racial profiling but that they follow  
21 leads. So he shouldn't have any trouble making  
22 that the law and passing Intro 800 to include  
23 preventing profile-based surveillance if that's  
24 already the PD's practice.

25 This really gets to the need for an

1  
2 inspector general because none of us can look at  
3 those files. It wouldn't be appropriate. We need  
4 somebody with a security clearance and that's the  
5 idea of the inspector general, who can look at  
6 those files and then come out with a report that  
7 doesn't identify individual cases but that says  
8 here is a case where they had consent decree, or,  
9 after Intro 800 is passed, the end of racial  
10 profiling, the profiling act, that will help make  
11 sure those roles are being followed. So thank you  
12 very much for your leadership and for being here.

13 CHAIRPERSON GENTILE: Council  
14 Member Williams?

15 COUNCIL MEMBER WILLIAMS: I just  
16 wanted to say thank you so much because you guys  
17 have been doing such great work on these fronts  
18 and I appreciate working with you.

19 CHAIRPERSON GENTILE: Thank you so  
20 much. Thank you for coming in and for your  
21 testimony. Our next panel will be Ejeris Dixon,  
22 Chris Bilal and Catherine Totes [phonetic].

23 [Pause]

24 CHAIRPERSON GENTILE: We've reset  
25 the clock. We'll begin, I guess, with Ejeris

1  
2 Dixon. Turn on your mike. The light should be  
3 on.

4 EJERIS DIXON: There we go. Thank  
5 you. Good afternoon. My name is Ejeris Dixon and  
6 I'm the deputy director in charge of community  
7 organizing and public advocacy at the New York  
8 City Gay and Lesbian Anti-Violence Project.

9 I testify in support of the  
10 Community Safety Act. AVP empowers lesbian, gay,  
11 bisexual, transgender, queer and HIV affected  
12 communities to end all forms of violence, through  
13 organizing, education, counseling and advocacy.

14 For the past 30 years, AVP has  
15 provided services to New York City's LGBTQ  
16 communities and our programs reach over 25,000  
17 people each year. We're a member of the LGBT  
18 Advisory Committee to the NYPD, police  
19 commissioner and we've worked to revise the patrol  
20 guidelines. We also regularly conduct trainings  
21 to the NYPD's lieutenants, sergeants, and captains  
22 on the needs of LGBTQ survivors of violence as  
23 well as we do outreach and education to LGBT  
24 communities.

25 We know that there are numerous

1  
2 barriers that prevent our community from engaging  
3 safely with the police, including institutional  
4 homophobia, biphobia and transphobia. These  
5 barriers mean that survivors of violence do not  
6 always report to the police. In our 2011 hate  
7 violence report, less than half of survivors did  
8 not report their instances of violence to the  
9 police.

10 Of those who did report, 62 percent  
11 experienced indifferent or hostile attitudes and  
12 at times this hostility turns violent. Fifty-two  
13 percent of LGBTQ survivors reported experiences of  
14 unjustified arrest, 27 percent reported excessive  
15 force, 17 percent entrapment, and 5 percent  
16 experienced raids. Transgender people, LGBTQ  
17 people of color, LGBTQ youth were almost twice as  
18 likely to be impacted by police misconduct and  
19 police violence.

20 In our communities, we know that  
21 LGBTQ people are profiled based upon their gender  
22 identity and sexual orientation, in addition to  
23 their race or ethnicity, housing status,  
24 immigration status, under the NYPD stop-and-frisk  
25 policy. We regularly receive reports that

1  
2 officers stop, frisk and arrest transgender and  
3 gender nonconforming people as sex workers with  
4 little to no explanation as to why they're  
5 stopped. We've even collected reports of stop-  
6 and-frisk leading to sexual assault of LGBTQ  
7 people.

8 We joined Communities United for  
9 Police Reform because we knew that the Community  
10 Safety Act would dramatically increase safety for  
11 LGBTQ survivors of violence. It's our position  
12 that the Community Safety Act will significantly  
13 reduce the violence that our communities  
14 experience at the hand of the police and increase  
15 options for survivors of all forms of violence.

16 I thank the City Council for the  
17 opportunity to speak with you today and offer this  
18 testimony. We strongly support the Community  
19 Safety Act and we urge the City Council to pass  
20 it.

21 CHAIRPERSON GENTILE: Thank you,  
22 Ms. Dixon. Thank you. Mr. Bilal?

23 CHRIS BILAL: Good afternoon. My  
24 name is Chris Bilal and I'm a peer educator at  
25 Streetwise and Safe, an organization that fights

1  
2 to end the criminalization of our LGBT youth of  
3 color. We are here today to testify in support of  
4 the historic Community Safety Act because LGBTQ  
5 youth of color are among the people subjected to  
6 over 700,000 stop and frisks in 2011 and who  
7 experienced profiling and discriminatory policing  
8 based on race, ethnicity, age, sexual orientation,  
9 gender identity expression, occupation and the  
10 fact that we are disproportionately homeless.

11 A recent CUNY study found that  
12 LGBTQ youth are much more likely to have negative  
13 experiences with police than their heterosexual  
14 peers, including baseless stops, ticketing and  
15 arrests for minor offenses, verbal harassment, and  
16 physical abuse. That recently released audio is  
17 an everyday experience for us and sometimes it's  
18 worse because we are LGBT. We are here to testify  
19 in support of the Community Safety Act because the  
20 constant threat of being subjected to unlawful  
21 searches haunts us every day.

22 Due the ubiquity of this  
23 discriminatory practice, many of the youth that we  
24 work with at Streetwise and Safe don't even carry  
25 condoms anymore because condoms found on consent

1  
2 searches are repeatedly used against them by the  
3 NYPD as evidence of involvement in criminal  
4 activity. Condoms are not contraband.

5           Despite the fact that as a peer  
6 educator, I teach alienated and distrustful young  
7 people of color across the city about their rights  
8 during police encounters, I know firsthand, based  
9 on the three traumatic times that I was stopped  
10 and frisked, how hard it is to exercise our right  
11 not to consent to an unlawful search.

12           In all too many instances, and I  
13 hear this repeatedly like a broken record during  
14 the trainings, LGBT youth of color who attempt to  
15 exercise their right not to consent to a search  
16 are ignored or retaliated against by NYPD  
17 officers, with the search becoming more terrifying  
18 and intrusive. Young people who have attended  
19 Streetwise and Safe workshops describe being  
20 slammed against cars after school, having officers  
21 grab or order them to expose their genitalia  
22 during searches to assign them gender and even  
23 being strip searched in front of their friends as  
24 a fact of life, not because they have a gun but  
25 because they are young and homeless or they're

1  
2 young and living in the Bronx or simply because  
3 they're young and lesbian, gay or trans.

4           So it is paramount that we pass the  
5 Community Safety Act now so that we can protect  
6 the rights of our people and protect New Yorkers  
7 from unlawful searches where there is no  
8 reasonable suspicion that the person is armed and  
9 no probable cause to believe that they have  
10 committed a crime. That that search is based  
11 solely on consent and that that consent is real,  
12 voluntary and informed. Thank you so much.

13           CHAIRPERSON GENTILE: Thank you,  
14 Mr. Bilal. Thank you for your testimony. Ms.  
15 Togers [phonetic]?

16           CATHERINE TOGERS: Thank you to the  
17 members of the committee for your time. It's an  
18 honor to be speaking with you today. My name is  
19 Catherine Togers. I'm a lawyer and a researcher  
20 with the Health and Human Rights Division of the  
21 international research and advocacy organization  
22 Human Rights Watch. We submit this testimony in  
23 support of the Community Safety Act.

24           We believe that these bills are  
25 essential to protecting the rights, among others,

1  
2 of lesbian, gay, bisexual and transgender persons  
3 who are profiled as sex workers and subjected to  
4 abusive practices, such as police confiscating  
5 their condoms as evidence of supposed criminal  
6 activity.

7 Over the past year, Human Rights  
8 Watch has been conducting research in New York  
9 City on the existence and effects of police  
10 seizing condoms as evidence of prostitution  
11 related offenses. In July 2012, Human Rights  
12 Watch released a report documenting the use of  
13 condoms as evidence of prostitution in New York  
14 and three other major U.S. cities, based on over  
15 125 interviews in New York City.

16 Among sex workers, the practice of  
17 condoms being seized as evidence has caused some  
18 to fear carrying condoms to the point where they  
19 carry only a few or none at all. The health  
20 consequences of failure to use condoms for sex  
21 workers can be dire. New York City is the  
22 epicenter of the AIDS epidemic in the United  
23 States with an AIDS case rate three times the  
24 national average.

25 A recent study in New York among

1  
2 people who exchange sex for money or other goods  
3 found that 14 percent of the men and 10 percent of  
4 the women were HIV positive. New York State and  
5 City have devoted enormous resources to curbing  
6 the HIV epidemic, including through condom  
7 distribution. But these efforts will continue to  
8 be frustrated if vulnerable populations are  
9 discouraged from protecting themselves because  
10 their condoms may be used against them by the  
11 police.

12 Our research indicated that police  
13 stop and search practices directed towards  
14 prostitution enforcement often failed to comply  
15 with civil and human rights standards. Sex  
16 workers, transgender women and LGBT youth  
17 described being subjected to profiling practices,  
18 and stopped and searched while walking home from  
19 school, going to the grocery store and waiting for  
20 the bus. It is in the course of these searches  
21 that police recover condoms from sex workers and  
22 catalog those condoms as evidence.

23 Most of these searches are not  
24 reflected in the NYPD records of tarry stops based  
25 on reasonable suspicion of criminal activity, and

1  
2 would be deemed consent searches. However, these  
3 are populations whose experiences deserve  
4 attention and redress from the New York City  
5 Council as it considers the Community Safety Act.  
6 If the Community Safety Act is passed, it would  
7 help to ensure that stops are not based on  
8 profiling but on criminal activity and would also  
9 permit New Yorkers to decline searches not based  
10 on probable cause that do not advance public  
11 safety or health such as those that target condoms  
12 as indications of criminal acts. Thank you very  
13 much for your time.

14 CHAIRPERSON GENTILE: Great. We  
15 have your Human Rights Watch booklet.

16 CATHERINE TOGERS: Yeah.

17 CHAIRPERSON GENTILE: Thank you for  
18 that.

19 CATHERINE TOGERS: Thank you very  
20 much.

21 CHAIRPERSON GENTILE: Any  
22 questions? Council Members, any questions?

23 COUNCIL MEMBER LANDER: Just one  
24 small point again. Thank you for being here and  
25 helping make these connections amongst the bills

1  
2 the different ways they affect the LGBTQ  
3 community. I would have mentioned actually that  
4 even the surveillance issue, right, that the  
5 Handschu Consent Decree which governs the rules by  
6 which you can place undercover and surveillance  
7 partly stem from unwarranted surveillance of the  
8 gay rights community back in the stonewall days.  
9 So even there, there's important connections to  
10 make. I want to thank you again for being here.

11 CHAIRPERSON GENTILE: Thank you for  
12 coming in and thank you for your testimony.

13 CATHERINE TOGERS: Thank you very  
14 much.

15 CHAIRPERSON GENTILE: Our next  
16 panel will be Jose LaSalle [phonetic], Carlton  
17 Berkley [phonetic], Lavelle Pointer [phonetic] and  
18 Rahima Wachuku, I guess.

19 [Pause]

20 CHAIRPERSON GENTILE: Okay, we're  
21 going to set the clock back at two minutes, and  
22 who would like to go first? Turn on your mike.

23 LAVELLE POINTER: Good afternoon.  
24 My name is Lavelle Pointer.

25 CHAIRPERSON GENTILE: Speak into

1

2 the mike.

3

4

5

6

LAVELLE POINTER: I'm a volunteer at NYHRE, that's New York Harm Reduction Educators. I'm going to get right into my testimony to save time.

7

8

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I was living in Staten Island and at around 11:30, I had some friends over and we were coming out to go to the store to get some cigarettes. A car pulled up just as we left the driveway and it was the New York City Police. They was undercovers. They pressed us up against the wall and they searched us.

14

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23

There was no drugs found, there were no weapons found. They made us empty our pockets on the hood of the car. Another car pulled up and because the officer recognized me from a previous stop and search, he got out of the car and he searched the items that were on the hood of the car. One of those was a prescription bag from a pharmacy. He opened it and found that the prescription didn't have my name on it, but it belonged to my neighbor.

24

25

I asked him to go and check with my neighbor about it and he didn't do this. So I was

1  
2 arrested. I spent four months on Rikers Island,  
3 waiting for tests to come back on the supposed  
4 drugs. After the four months, I had to cop a  
5 plea, because I needed to get back home. When I  
6 returned home, I found that my apartment was  
7 closed out because I was accused of abandoning it.  
8 So I was homeless and I was without my property.

9 This kind of thing shouldn't be  
10 happening. Basically what it is, is this, I feel  
11 like I was robbed by the police department and the  
12 city. Basically no one should have to go through  
13 this kind of thing and not be reimbursed in some  
14 form or fashion or treated with some kind of  
15 respect because they never actually went and asked  
16 my neighbor if it was legal for me to have that  
17 property.

18 CHAIRPERSON GENTILE: Well said.  
19 Well said. Thank you. Thank you.

20 [Background noise]

21 CHAIRPERSON GENTILE: Are they too  
22 close together?

23 LAVELLE POINTER: No, you can't  
24 bring them close together I think.

25 RAHIMA WACHUKU: Hello?

1

2

CHAIRPERSON GENTILE: Is it

3

working?

4

RAHIMA WACHUKU: Yes. My name is

5

Rahima Wachuku. I created a meet up group on

6

meetup.com called Stop Stop-And-Frisk New York

7

City. I did so because I felt like it's just that

8

commonsense. You know, you meet up to go bike

9

riding, you meet up to go skydiving, or what have

10

you. You would meet up to support New Yorkers

11

violating other New Yorkers.

12

Things I didn't know when I came to

13

this meeting. I didn't know I had the right to

14

wear a political button to City Hall because on a

15

prior occasion I went to a trail for Noche Edward

16

Diaz [phonetic] and my buttons were confiscated by

17

the--is the Supreme Court in the Bronx?

18

JOSE LASALLE: Bronx, Hall of

19

Justice.

20

RAHIMA WACHUKU: Hall of Justice.

21

I was told to fill out a form for their return. I

22

refused because I was afraid to give them my

23

information because I'm afraid of being targeted.

24

These fears are founded. I came home one evening

25

from a rehearsal. I'm an actor. I found four

1  
2 police officers on the ramp of my building,  
3 pantomiming beating up someone.

4 Stop-and-frisk is segregating our  
5 city. I take the subway every day and it has  
6 always been a microcosm of New York City. People  
7 are no longer choosing their seats on the basis of  
8 availability, rather by who is sitting around  
9 them. Fear and anger fester and erupt in  
10 violence. African Americans and Latinos, gay,  
11 lesbian and transgender New Yorkers are afraid of  
12 being attacked and Caucasian Americans are afraid  
13 of irrational retaliation. A crowded subway car  
14 is as volatile. The tension is as palpable as an  
15 active volcano.

16 I don't know when any of you last  
17 rode the subway, but \$2.25 is all you need to find  
18 out that stop-and-frisk is tearing our city apart.  
19 Thank you.

20 CHAIRPERSON GENTILE: Thank you.

21 JOSE LASALLE: Hello? My name is  
22 Jose LaSalle. I'm one of the co-founders of Stop  
23 Stop-And-Frisk movement that started with Cornell  
24 West, Carl Dichts [phonetic], Debra Street  
25 [phonetic], Reverend Fell [phonetic] and October

1  
2 21st. We started putting our body in the line  
3 because we started realizing that it was a problem  
4 in the community with the stop, question and frisk  
5 policy.

6 So every since then we've been also  
7 targeted because of, you know what I'm saying, of  
8 the stop-and-frisk policy because we are against  
9 it.

10 Now, real quick, if it's okay with  
11 you, I would like to play a little bit of an  
12 audio, just so you could hear what kind of led me,  
13 you know what I'm saying, to bring about this Stop  
14 Stop-And-Frisk movement.

15 [Audio playing]

16 JOSE LASALLE: Now, this is my  
17 stepson who was stopped in 2011 and was treated  
18 like he was some kind of criminal. The funny  
19 thing is he was also an explorer in the 25th  
20 Precinct, which they also recognized it. They  
21 called him a "mutt" which for a Puerto Rican,  
22 that's a mixed breed, like a mixed breed dog.  
23 They also took his arm and pushed it to the back.  
24 I mean, if you all see it, it's going to be all  
25 over the news. It's been on--we released it out,

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2 so it's all over the place now.

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So basically that's what pushed me to start fighting against Stop Stop-And-Frisk. You know, the community reform is something very important because these officers need to be accountable for these things that they do. By making sure that this Community Safety Act is passed, we ensure these youth out there that they will not be treated, all right, like animals. They'll not be treated less than a human being. Thank you.

13

CHAIRPERSON GENTILE: Thank you.

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CARLTON BERKLEY: Hello, my name is Carlton Berkley. I'm a retired New York City detective. I did 20 years. I also worked with Eric Adams, who's a senator in the 20th Senatorial District and I was a member of the 100 Blacks in Law Enforcement who Care.

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I'm here to speak on the stop-and-frisk. Now there is a legal stop-and-frisk is what I used to do when I was on the job and it never resulted in what's happening today. That legal stop-and-frisk protects the police officer and helps the police officers do the job

1  
2 efficiently. However, the illegal stop-and-frisk,  
3 that's what I'm here to speak about today.

4           The illegal stop-and-frisk what  
5 happens is nine times out of ten, the officer  
6 doesn't have any suspicion of the person, that the  
7 person did anything wrong. It's a quota system.  
8 Officer Polanco [phonetic] has stated it in the  
9 42nd Precinct and he has taped it.

10           Also, with this stop-and-frisk,  
11 most of the victims are the homeless because they  
12 figure that they have no one to speak up for them  
13 and in the minority communities. The number one  
14 reason why officers are also doing this, other  
15 than the quota, is because that stop-and-frisk  
16 nine times out of ten results in an arrest and  
17 that arrest generates overtime for the officer.  
18 Then the supervisors at times tells the officers  
19 if they need someone to watch for their kid--if an  
20 officer needs a tour of duty, they have to go out  
21 and affect these arrests, which are illegal.

22           For 30 seconds, I want to tell you  
23 that--Tourin [phonetic] get up here. I want to  
24 demonstrate to you what is a real stop-and-frisk,  
25 because most people don't know what a frisk is and

1  
2 what a search is. If I can just demonstrate it  
3 really quickly, hopefully one of you are a lawyer,  
4 I can demonstrate to you what a frisk is and what  
5 a search is. Most people don't know, and that's  
6 why I wrote a book and I'm trying to educate the  
7 community on what's a search, a frisk and a pat  
8 frisk. So if you would allow me just 30 seconds.

9 CHAIRPERSON GENTILE: Quickly.

10 CARLTON BERKLEY: Okay. This  
11 gentleman is walking down the street, if you can  
12 hear me. I'm a cop. I stop him, right, for  
13 nothing at all. And I ask him, do you live here?  
14 He said no. Do you got any ID? Well hold on, put  
15 your hands on the wall. Now, to just degrade him  
16 a little bit, they'll take the hat off because the  
17 way he's wearing his hat. An officer will take  
18 the hat off and throw it on the ground just to  
19 degrade him. Then this is what the officer will  
20 do.

21 I want to ask you and everyone  
22 here, tell me, is this a frisk, a pat frisk or a  
23 search? You tell me.

24 [Pause]

25 CARLTON BERKLEY: Now, does anyone

1

2 here know what did I just do?

3 FEMALE VOICE: Pat down.

4 CARLTON BERKLEY: It's a pat down.

5 CHAIRPERSON GENTILE: Pat down,  
6 okay.7 CARLTON BERKLEY: Pat down. All  
8 right, someone said search. Who said search? How  
9 did I search the person?10 CHAIRPERSON GENTILE: Okay, no, no,  
11 no, we can't do this in the audience.12 CARLTON BERKLEY: Okay, well let me  
13 tell you. She's the only one that's right. You  
14 said pat frisk. Councilman, you said pat frisk.  
15 It's not a pat frisk. The cops are psyching  
16 people out. What I really did was I searched him.  
17 I searched him twice. When I took his hat off, I  
18 looked inside his hat and then I lifted his shirt  
19 up to see that he was wearing a belt. You know,  
20 and that is against the Fourth Amendment right,  
21 which protects all citizens against unreasonable  
22 searches and seizures. This is what the cops are  
23 out there doing. They're violating people's  
24 rights and they're saying they're frisking them  
25 but they're really searching them. That's what

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2

I'm trying to do to educate people so that they will be able to come into court and articulate a difference between a pat frisk, a frisk and a search.

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CHAIRPERSON GENTILE: Very

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interesting.

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CARLTON BERKLEY: Thank you.

9

CHAIRPERSON GENTILE: Do you have

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copies--

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CARLTON BERKLEY: [interposing]

12

And I support--

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CHAIRPERSON GENTILE: [interposing]

14

Do you have copies of that book?

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CARLTON BERKLEY: I have one which

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is a sample. If you want it, I'll--

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CHAIRPERSON GENTILE: [interposing]

18

No, no, I'm just saying if you had some you could

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leave it with us, but that's fine.

20

CARLTON BERKLEY: I'm come and see

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Councilman Jumaane Williams.

22

CHAIRPERSON GENTILE: Sure, that'd

23

be great.

24

CARLTON BERKLEY: And I'll leave a

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few with him.

1  
2 CHAIRPERSON GENTILE: That'd be  
3 great. Absolutely.

4 CARLTON BERKLEY: Free of charge.

5 CHAIRPERSON GENTILE: Okay, great.  
6 Thank you all. Any questions?

7 COUNCIL MEMBER WILLIAMS: No, I  
8 just want to say thank you guys. One, I've been  
9 wearing your button since you gave it to me.  
10 Thank you to the former police for coming out.  
11 Thank you guys for your personal testimony,  
12 because not many people understand how some  
13 people--they don't experience it, don't understand  
14 what's the problem with a simple stop. They don't  
15 understand how it can really damage not just your  
16 psyche but also actually your life after that. We  
17 really can be damaged by something that made no  
18 sense to begin with. So I'm glad that we can get  
19 some personal testimonies so people can truly  
20 understand the effect it's having in many  
21 communities. Thank you.

22 CHAIRPERSON GENTILE: Thank you  
23 again for your testimonies. Thank you so much.  
24 Thank you for waiting this long to testify. Our  
25 next panel will be Beau Samatopolous [phonetic],

1  
2 Allen Feinblum [phonetic], Fred Newton [phonetic]  
3 and Mitchyll Mora.

4 [Pause]

5 CHAIRPERSON GENTILE: So let's try  
6 to keep it as close to two minutes as we can.  
7 We'll start down here.

8 BEAU SAMATOPOULOS: Hello?

9 CHAIRPERSON GENTILE: Yes, you're  
10 on.

11 BEAU SAMATOPOULOS: Over three ago,  
12 nine shots from a .40 caliber semiautomatic--

13 CHAIRPERSON GENTILE: [interposing]  
14 Just identify yourself also.

15 BEAU SAMATOPOULOS: Beau  
16 Samatopoulos.

17 CHAIRPERSON GENTILE: Okay.

18 BEAU SAMATOPOULOS: Nine shots from  
19 a .40 caliber semiautomatic were fired in front of  
20 my house. One of them went into my daughter's  
21 bedroom, not by mistake. To this day, not one  
22 detective or investigator has come to my house to  
23 ask what I know about the shooting or the people  
24 involved. Instead, I was told by the commanding  
25 officer of the precinct that "as far as I'm

1  
2 concerned there was no crime committed." I guess  
3 that's what they mean when they say crime is down.

4 His remarks and lack of proper  
5 policing have led to further threats and abuse of  
6 me and my property. The police have effectively  
7 put a bull's eye on my back. Those with any  
8 knowledge of the shooting know that the police  
9 don't care to do anything that might expose their  
10 own incompetence.

11 A year after the shooting, I filed  
12 a complaint against the precinct and its  
13 commanding officer. The complaint went to  
14 Internal Affairs. I made the complaint  
15 specifically against the local precinct and the  
16 commanding officer.

17 A few months later, I got a call  
18 from a man claiming to be investigating my  
19 complaint. After a few questions, it occurred to  
20 me that he hadn't identified himself. I asked who  
21 he was and where he was from. He said I'm  
22 Sergeant X and continued making suspiciously  
23 pointed questions, questions designed to cast  
24 doubt on my complaint. I asked again "where are  
25 you from?" He ignored me and kept asking

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questions.

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After the third time, he admitted that he worked out of the very precinct that I had lodged the complaint against. I asked who his commanding officer was. He said the very same person that I had complained about. Then I asked if he expected me to believe that the precinct that I filed a complaint against would do a proper investigation of itself. He said, and I quote, "if you want an investigation, this is the only one you'll get." Needless to say, I got nowhere with that complaint.

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Later, I called Internal Affairs to find out what had happened. After being led on a three-day long wild goose chase from one section to another unit to another, I finally got someone who said to me "this seems strange. Why did they refer your complaint to the same precinct to the same precinct that you complained about? I don't know what to tell you but I suggest you file another complaint and be specific that you want it not to go to the same people."

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CHAIRPERSON GENTILE: Can you summarize the rest? Summarize the rest?

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2           BEAU SAMATOPOULOS: The second  
3 complaint, they did exactly the same thing.  
4 Nothing was done. In a nutshell, this is how our  
5 police department polices itself, both itself and  
6 the criminals of the city. Everything they do is  
7 designed to protect and serve a select few and  
8 themselves.

9           CHAIRPERSON GENTILE: So you're  
10 advocating for the inspector general?

11           BEAU SAMATOPOULOS: Absolutely.

12           CHAIRPERSON GENTILE: Okay.

13           BEAU SAMATOPOULOS: Absolutely.

14           CHAIRPERSON GENTILE: Okay, great.  
15 Thanks. Next please?

16           FRED NEWTON: Good afternoon. I  
17 thank the Council and the sergeant-at-arms and  
18 everybody in the audience for being here and  
19 making this possible. My name is Fred Newton.  
20 Since retiring, I'm spending my golden years  
21 networking with and going to a lot of campaign in  
22 the New Jim Crow Police Reform Organizing Project  
23 meetings and New York Vocal meetings.

24                           Late at night when I get bloodshot  
25 eyes, you know going through the blogosphere, I

1  
2 read of numerous feminist advocacy groups  
3 complaining that the police and law enforcement  
4 aren't doing enough to go after rape and deal with  
5 battered women. I saw a long TV show about  
6 missing children. They bitterly complained that  
7 law enforcement is not doing enough to, you know,  
8 find, research and deal with missing children.  
9 Newspaper columnist in my neighborhood complains  
10 about illegal bike riding and bike lanes. These  
11 are all productive things that the police could do  
12 more of to enhance public safety and reduce crime  
13 instead of these unconstitutional egregious civil  
14 rights violations.

15                   The police department doesn't like  
16 to use the word "quotas." They call it  
17 productivity goals or productivity expectations.  
18 So I'm particularly curious, I wish it would have  
19 come out in the wash if there were research, but  
20 what are the quotas, say for the 13th, the 17th  
21 and the 19th Precinct, which is Murray Hill,  
22 Midtown East, Upper East Side, compared to the  
23 26th, 30th and 32nd Precincts, all of which are in  
24 Harlem? What are the difference--are there  
25 different quotas expectations, either total

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2 numbers or percentage wise for these precincts?

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One of the mayor's favorite arguments for stop-and-frisk is it stops people who would have been carrying guns from carrying guns. Well maybe he's right. But putting yourself in the shoes of someone who's been stopped and frisked dozens of times, who's been traumatized--if I were such a person and I knew somebody had a gun, my policy would be if I see something, say nothing. The reason being is--

CHAIRPERSON GENTILE: [interposing]  
You've got to sum up.

FRED NEWTON: --the gangs are the lesser of two evils. The cops are the greater of two evils.

CHAIRPERSON GENTILE: Okay, thank you, Mr. Newton.

ALLEN FEINBLUM: Hello, my name is Allen Feinblum. It's been mentioned today that the mayor and the police commissioner isn't present today, but one person that should be present today is Mr. Lynch of the Police Benevolent Association. No one is here to defend the officers. He is not here to explain why his

1  
2 officers stop people illegally, even though there  
3 is a law and it is protected by the Supreme Court,  
4 but certain guidelines have to exist and in most  
5 cases, out of 685,000 arrests, those situations  
6 don't exist.

7 Out of these 685,000 people last  
8 year, 87 percent was Afro American and Puerto  
9 Ricans. If 685,000 people and 87 percent were  
10 Jewish like I am, there would be an uproar. This  
11 wouldn't be accepted.

12 The mayor and the police  
13 commissioner feel that since it's 87 percent Afro  
14 Americans, including people that are homeless,  
15 people that are mentally ill like myself, we're  
16 not going to be able to speak up, nobody is going  
17 to protect us. Just like in Nazi Germany, no one  
18 protected the Jews. Over here we have a similar  
19 situation. I feel that something is very wrong.

20 Last Friday was my birthday. I'm  
21 73-years-old. I could be now at the senior  
22 citizen getting a meal for one dollar, but I'm  
23 disturbed. The amount of time I have left is  
24 going to protect Afro Americans, Puerto Ricans,  
25 mentally ill people, homosexuals and every other

1  
2 group that's being exploited and don't have a  
3 voice. I want to give my voice and that's why I'm  
4 here today. Thank you very much.

5 CHAIRPERSON GENTILE: Great. Thank  
6 you, Mr. Feinblum. Thank you for being here. Mr.  
7 Mora?

8 MITCHYLL MORA: My name is Mitchyll  
9 Mora and I'm a youth leader with Streetwise and  
10 Safe. The policing of brown and black people  
11 begins with the color of our skin, our race, our  
12 ethnicity, our speech, our dress and our youth but  
13 it does not end there. It includes experiences  
14 such as the one I had earlier this year.

15 I was walking alone on the Lower  
16 East Side and a police car pulled up and three  
17 police officers jumped out, yelling at me, "Stop,  
18 get against the wall, open your bag." I put my  
19 hands on the wall. One officer took my bag while  
20 another began to aggressively frisk me. I asked  
21 them why I was being searched. I said I didn't  
22 consent to the search, like the other four times I  
23 had been stopped and frisked. I have been stopped  
24 and frisked in the last two years. I  
25 unsuccessfully attempted to exercise my rights to

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2 not consent to the search, but this time I was  
3 wearing tights and high heeled boots and this time  
4 the police officer frisked, responded by calling  
5 me a faggot and sexually assaulting me. They  
6 drove away after telling me that they had been  
7 looking not for a gun but an open container. They  
8 found nothing on me, so there was nothing to  
9 suppress and the violation of my rights went  
10 unaddressed.

11           These bills will counteract many  
12 ways in which LGBTQ youth of color are policed by  
13 protecting us from being profiled based on our  
14 race, and also based on our age, our sexual  
15 orientation or gender identity, our HIV status or  
16 disability or the fact that we are  
17 disproportionately homeless and by ensuring that  
18 our right to not consent to a search is respected.  
19 Whether we are being told to empty our pockets,  
20 open up our bag or purse or submit to a gender  
21 check without any legal basis.

22           It will help ensure in moments that  
23 I have described here today that our rights will  
24 become a reality. So this is why we need the  
25 Community Safety Act.

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CHAIRPERSON GENTILE: Well said.

2

So you're in support of all of the pieces of  
legislation?

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MITCHYLL MORA: Yeah, absolutely,  
all four.

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CHAIRPERSON GENTILE: Okay.

8

Council Member Williams?

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COUNCIL MEMBER WILLIAMS: I just  
want to say that I thank you for the testimony. I  
did want to put on record, the PBA was mentioned,  
is also on record against the way the stop,  
question and frisk is being done and the quota  
system. So they are opposing as well and they're  
on the record. We want to encourage patrol people  
to be able to do good police work. We want our  
PBA union members to be able to do the police work  
that helps lower crimes, not be forced to do lazy  
police work that violates civil rights and civil  
liberties. Thank you.

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CHAIRPERSON GENTILE: Thank you for  
your testimony. Before I call the next panel, I  
just want to mention for the record that we have  
testimony, written testimony that was submitted by  
Harry Levine, Professor of Sociology at Queens

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1  
2 College and the Graduate Center, City University;  
3 and from Vocal New York, Brian Pearson [phonetic].  
4 Those are for the record that have been submitted  
5 to us and we'll put them in the record.

6 We may have to add an extra chair  
7 there because we're going to ask five people to  
8 come up. On the next panel, we have Pastor  
9 Michael Crea; Roxanne Delgado [phonetic]; Gene  
10 Reiss [phonetic]; Evan Goldstein; and Brian  
11 Ellicott [phonetic].

12 [Pause]

13 CHAIRPERSON GENTILE: So you may  
14 have to share, you will have to share the mike and  
15 move a little closer to it when you speak. We'll  
16 set the clock again at two minutes each. Who  
17 would like to start? Anyone in particular want to  
18 start?

19 EVAN GOLDSTEIN: I guess I'll  
20 start.

21 CHAIRPERSON GENTILE: Okay, very  
22 good.

23 EVAN GOLDSTEIN: Good afternoon.  
24 My name is Evan Goldstein. I'm with the Drug  
25 Policy Alliance. I'll be speaking in favor of

1  
2 Intro 799. I want to thank the Public Safety  
3 Committee and specifically the leadership of  
4 Council Member Williams and Lander for really  
5 talking and exposing issues that, although we're  
6 having discussion today about, you know, biased  
7 police practices, this really is an issue that  
8 affects all New Yorkers. So thank you so much for  
9 holding this hearing today.

10 Earlier this year, the Council  
11 passed Resolution 986-A which was a resolution in  
12 support of legislative policy introduced by  
13 Governor Cuomo, supported by the Mayor, Police  
14 Commissioner, all five district attorneys and the  
15 Policeman Benevolent Association that discussed  
16 reforming the marijuana arrest practices of New  
17 York City. I'm going to use that sort of lens to  
18 discuss why 799 is an important issue and should  
19 be passed by the City Council.

20 There was an acknowledgement by the  
21 mayor and the police commissioner and the governor  
22 that there was something wrong with the way that  
23 the police were exposing and arresting people for  
24 small amounts of marijuana. Namely, the police  
25 would approach someone, usually a young man of

1  
2 color, through an initial stop and then demand  
3 that they empty their pockets. Now that in itself  
4 is potentially an illegal search. Many of the  
5 people that we've talked to found that they were  
6 arrested that way, it's when the police would come  
7 up to them and they would comply with an officer's  
8 request for them to empty their pockets, not  
9 wanting to escalate a situation into something  
10 much more serious.

11           The other way is just quite frankly  
12 and flagrantly an illegal search where a stop  
13 turns into a frisk turns into a search then the  
14 police finding small amounts of marijuana and then  
15 arresting them for marijuana in public view, when  
16 it in fact was an illegal search and the marijuana  
17 was in their pocket.

18           Interestingly enough, so this  
19 legislation would mandate that the police would  
20 get informed consent to people, that people don't  
21 know their own constitutional rights. This would  
22 be, of course, for things where the police don't  
23 have probable cause to search them but get through  
24 a variety of ways, do illegal searches anyway.

25           I think the most telling thing is

1  
2 that when we talk to young people, they don't know  
3 that they have the right not to consent to a  
4 search and in fact think that denying--if they do  
5 refuse to consent to a search is actually probable  
6 cause for a search by the police. So that is  
7 ultimately a catch-22 that young people don't know  
8 they have the rights to deny a search and to  
9 enforce their constitutional rights. So we hope  
10 that this legislation will help reduce the amount  
11 of illegal searches and arrests due to improper  
12 police conduct. Thank you.

13 CHAIRPERSON GENTILE: Just a quick  
14 question. You're saying then that if this  
15 legislation passes, they would not be able to ask  
16 someone to tell someone to empty their pocket  
17 without going through the process?

18 EVAN GOLDSTEIN: Yeah, without  
19 informing them that they have the right not to  
20 consent to a search, because many people don't  
21 know that they do have the right not to consent to  
22 a search when there isn't probable cause for the  
23 police to search their pockets or their bag, their  
24 purse or their backpack.

25 CHAIRPERSON GENTILE: Right.

1

2 Great, thank you.

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BRIAN ELLICOTT: Hi, my name is Brian Ellicott. I'm speaking on behalf of myself. I'm going to give a personal testimony of a situation that happened to me after leaving an event that at which I was--while still interning for Speaker Quinn.

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I am nine months into a female to male transition. NYPD officers stopped me. They didn't ask me for ID. They didn't ask me anything. They put me up against the wall and they searched me on the basis of they felt like it. They pretty much said they felt like it because they didn't agree with how I identify.

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I identified myself as a male. I have had a legal name change. Upon leaving, they asked me for ID. They saw that my name and my gender marker said I was male. They're like "we'd like to make sure that you are what you say you are" and decided to just go search for it.

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Upon not finding it, they decided that they were going to lock me up for no reason. I did get out, on the basis of I know my rights and I was not able to tell them that I did not

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2 want to be searched. I knew my rights and they  
3 didn't do that.

4

5 Upon leaving, I found out that  
6 these officers in general have done this to many  
7 trans men, specifically white, short trans men.  
8 Upon that, I decided that I am for the Community--  
9 support the Community Safety Act. That's all I'd  
like to say.

10

CHAIRPERSON GENTILE: Okay. How  
11 long were you in prison?

12

EVAN GOLDSTEIN: Oh I wasn't in  
13 prison. I was just in holding for--

14

CHAIRPERSON GENTILE: [interposing]  
15 Just a holding cell.

16

EVAN GOLDSTEIN: --48 hours.

17

CHAIRPERSON GENTILE: Okay.  
18 PASTOR MICHAEL VINCENT CREA: Good  
19 afternoon. I'd like to thank the Council for  
20 having these hearings, especially Councilman

21

Williams, who perhaps with the other Council  
22 person who's left, who was stopped down at Occupy  
23 Wall Street are prime examples of your own

24

colleagues being targeted because of their color,  
25 not given the proper respect.

1  
2 My name is Pastor Michael Vincent  
3 Crea. I've pastured One World Life Systems. I  
4 work with all people. It's amazing what we're  
5 trying to do today is putting new coffee grinds  
6 into old wine skins, or old coffee grinds--I mean  
7 new coffee grinds into old filters or old coffee  
8 grinds into new filters. We need a change. This  
9 is important.

10 I wrote this after having a gun put  
11 to my head on Staten Island after a pastoral visit  
12 in February 2000, two weeks after Patrick  
13 Dorismond was killed on his birthday for refusing  
14 undercover cops who were trying to sell him drugs.  
15 I stood up to Michel Brennan in which I spoke  
16 about being stopped and searched.

17 This is what I asked for back then.  
18 To protect immigrants and the poor, people of  
19 color and I'm asking for the following changes  
20 affecting arrests by police and adjudication  
21 thereof by the courts. Immediate statement of  
22 probable cause and determination of detainees'  
23 native language. Miranda rights read in native  
24 language. On-call interpreters and pro bono  
25 attorneys within three hours of arrest.

1  
2 Computerized summonses, giving names of officers,  
3 shield numbers, precinct numbers, commander's name  
4 and direct phone number. Public defender at all  
5 summons cases and cameras in the court. And for  
6 police brutality and hate crimes, a human rights  
7 court to adjudicate complaints as swiftly as we do  
8 landlord/tenant, parking/driving or small claims  
9 in two weeks time.

10 I've had police officers say yes,  
11 if there's a bad apple, if a bad landlord or a bad  
12 tenant can be brought in, in two weeks time, why  
13 should we have to wait for a bad cop.

14 CHAIRPERSON GENTILE: Okay, sum up.

15 PASTOR MICHAEL VINCENT CREA: I  
16 would like to sum up with the other requests.  
17 Have immediate moratorium on evicting seniors and  
18 the disabled. I'm disabled. Michael Bloomberg is  
19 costing the city now because he didn't answer a  
20 judge's demand or decision in order of last  
21 October 31st. Unless you house and keep people  
22 housed, they will be kicked like me by the police,  
23 they will be awakened by me by the police, other  
24 homeless will be discriminated against without  
25 having reasonable accommodation, and with no

1  
2 housing policy, money bags morally bankrupt  
3 Michael Bloomberg is spending \$3,030 a month for  
4 one individual in a shelter where the average  
5 subsidy that he's been denying me is about \$750.

6 CHAIRPERSON GENTILE: Okay, thanks.

7 PASTOR MICHAEL VINCENT CREA: you  
8 have to take positive action and it's not just the  
9 police, it's judges, it's the courts, but it's the  
10 council people being Serpico and not the Godfather  
11 if you want to play the part of Al Pacino.

12 CHAIRPERSON GENTILE: Thank you,  
13 Pastor. Next?

14 ROXANNE DELGADO: Hello, my name is  
15 Roxanne. I'm a female Hispanic who lives in the  
16 Bronx. I'd like to mention another group that's  
17 exploited and exposed to police misconduct, it's  
18 activists. In my case, animal rights activist.

19 I don't believe in reforming stop-  
20 and-frisk, it should be eliminated because the  
21 police, it's against the nature of the beast to  
22 follow the rules. It's just they can't do it.  
23 You're just going to expose taxpayers to more  
24 liability and more lawsuits, which comes out of  
25 their pockets not out of the NYPD's pensions.

1  
2 This is not us, a free person. We  
3 are in a free city, why can we not be permitted to  
4 walk freely? I have been abused by police  
5 verbally and mentally. I have been doing protests  
6 from the horse carriage demos and have carriage  
7 drivers calling me dike, making racist remarks and  
8 police actually participate in those remarks  
9 because they say that I'm not--I should not be at  
10 the presence of a workplace. I'm protesting their  
11 place of business.

12 The police choose what they want to  
13 enforce. They choose who they want to enforce. I  
14 have drivers spit at me, push me, but the police  
15 doesn't make any arrests. But then they harass me  
16 and they surround me with police squads, asking me  
17 for my ID. When I refuse to, they arrest me. I  
18 mean, really. I've made complaints against  
19 Sergeant Rendezo [phonetic] from Midtown North,  
20 and IAB forwarded my email to him, and he calls me  
21 and talks to me over the phone, saying that he  
22 wants to be famous, for me to continue putting him  
23 on YouTube because he wants to be famous.

24 I mean it's unbelievable. I'm  
25 fighting for compassion for horses and I'm being

1  
2 abused by the carriage drivers and the NYPD. They  
3 don't protect me. In fact, they arrest me. This  
4 is like outrageous. Like I can't believe this is  
5 New York City. This is my experience; it's why  
6 I'm here because I don't think the police can  
7 behave well. They can't speak properly to people,  
8 not to a woman. I mean, it's like forget it,  
9 we're like--it's a shame. It can bring you to  
10 tears, but you can't cry, you just have to  
11 continue fighting. Thank you.

12 CHAIRPERSON GENTILE: Thank you.  
13 Thank you for coming in. Sir?

14 GENE REISS: Good late afternoon,  
15 ladies and gentlemen. I never thought that I  
16 would have anything in common with the mayor's  
17 representative but I confess right now that I'm  
18 not prepared for this. My name is Gene Reiss.  
19 I'm from Picture the Homeless but I'm here to  
20 deliver a message from the chairperson's  
21 constituents Occupy Astoria and they've delegated  
22 my organization, who we mobilize with, to deliver  
23 this message.

24 It goes as follows: we are members  
25 of Occupy Astoria and Council Member Vallone's

1  
2 constituents in City Council District 22, Astoria.  
3 We express our enthusiastic support for the  
4 Community Safety Act now before the council. We  
5 regret not being able to attend today's hearing,  
6 but we look forward to meeting with Council Member  
7 Vallone to discuss this legislation soon.

8 We call on the City Council to pass  
9 all four intros that make up the Community Safety  
10 Act. All of these proposed reforms are  
11 reasonable, fair and absolutely necessary. The  
12 New York City Police Department's stop-and-frisk  
13 policy and practice is discriminatory and racist.  
14 The overwhelming majority of those detained and  
15 forced to submit to a personal search are Latino  
16 and African American. This fact, from a  
17 commonsense perspective makes it clear that the  
18 policy is discriminatory and a case of selective  
19 use of police powers against certain communities.

20 Stop-and-frisk is not employed  
21 equally and across the board. For example, those  
22 in the NYPD who wish to combat drug crime do not  
23 conduct large numbers of stop and frisks on New  
24 York City college campuses where drug use is  
25 rampant and in some cases--bear with me a second.

1  
2 CHAIRPERSON GENTILE: Okay, you've  
3 got to sum up.

4 GENE REISS: Okay. But anyway,  
5 they're going to submit this to you in print and  
6 in then you'll put it there. I'll close with one  
7 message from my organization, Picture the  
8 Homeless, hands off our youth; the constitution is  
9 bulletproof. Thank you.

10 CHAIRPERSON GENTILE: Excellent,  
11 okay. Council Member Williams?

12 COUNCIL MEMBER WILLIAMS: I just  
13 want to say thank you guys and everybody who  
14 stayed to the end. It's quite a number of hours,  
15 which just shows how passionate everyone is about  
16 this. So thank you guys for your personal  
17 testimony.

18 I did have one question to the  
19 person who wanted to end stop, question and frisk.  
20 I wanted to be clearer in what you wanted. Are  
21 you saying that you don't believe police officers  
22 should even stop someone if they had reasonable  
23 suspicion to do so, such as if someone calls in to  
24 say that they were robbed by a white male with  
25 blue jeans and an orange shirt?

1  
2 ROXANNE DELGADO: But that's not  
3 reasonable, that's probable cause. That's  
4 actually adhered by the constitution.

5 COUNCIL MEMBER WILLIAMS: All  
6 right.

7 ROXANNE DELGADO: But reasonable  
8 cause, I mean I know Supreme Court has sided on  
9 that side, but just because you're walking down  
10 the street, unless there's a report of you, a  
11 similar description, at least with gender and  
12 color--

13 COUNCIL MEMBER WILLIAMS:  
14 [interposing] I said that because I always want to  
15 make sure we're clear. They keep trying to divide  
16 the argument in enders and menders and I believe  
17 everybody is really saying the same thing. We  
18 want to end the policy that currently exists while  
19 keeping police--having police have the ability to  
20 do the job that they need to do. So I want to  
21 make sure we're all saying the same thing because  
22 they're trying to pretend as if we're saying two  
23 different things. I believe the enders and the  
24 menders all have one message.

25 ROXANNE DELGADO: Well our Founding

1

2

Fathers already written it, I just wish they would follow it.

3

4

COUNCIL MEMBER WILLIAMS: Thank

5

you, again.

6

ROXANNE DELGADO: It's the law of

7

the land.

8

CHAIRPERSON GENTILE: Great. I

9

join Councilman Williams and the rest of the panel

10

that was here in thanking you all, thanking you

11

for coming and thanking everyone for staying.

12

This ends the hearing and the hearing is now

13

closed.

C E R T I F I C A T E

I, Donna Hintze certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature 

Date October 29, 2012