

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON COURTS AND LEGAL SERVICES JOINTLY
WITH THE COMMITTEE ON PUBLIC SAFETY

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September 23, 2016
Start: 10:10 a.m.
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HELD AT: Council Chambers - City Hall

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

COUNCIL MEMBERS: Andrew Cohen
Ben Kallos
Carlos Menchaca
Paul A. Vallone
Barry S. Grodenchik

VANESSA L. GIBSON
Chairperson

COUNCIL MEMBERS: Vincent J. Gentile
Julissa Ferreras-Copeland
Jumaane D. Williams
Robert E Cornegy, Jr.
Chaim M. Deutsch
Rafael Espinal, Jr.
Ritchie J. Torres
Steven Matteo

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

Elizabeth Glazer, Director
NYC Mayor's Office of Criminal Justice, MOCJ

Nicole Torres, Director
Intergovernmental Affairs
NYC Mayor's Office of Criminal Justice, MOCJ

Alex Stern, General Counsel
NYC Mayor's Office of Criminal Justice, MOCJ

Mark Dwyer, Judge
Supreme Court, Kings County, Criminal
Member, Justice Task Force

Mark Hale, Assistant District Attorney
Chief of the Conviction Review Unit
Brooklyn District Attorney's Office

Julian Bond O'Connor, Deputy Counsel
Bronx County District Attorney
Bronx County Conviction Integrity Unit

John Tankleff (sic)

John Copier (sp?)

Saul Kassin, Professor of Psychology
John Jay College of Criminal Justice

Dr. Jennifer Dysart
Associate Professor of Psychology
John Jay College

Bill Brooks, Chief of Police
Norwood, Massachusetts
President, Massachusetts Chiefs of Police Assoc.
International Assoc. Chiefs of Police

Barry Scheck
The Innocence Project

Judge Daniel Conviser

Allen Newton, Exoneree

Barry Gibbs, Exoneree

Sharonne Salaam Mother of Yusaf Salaam
Re: Central Park Five Case

Mariga Meese, (sic) Legal Director
Preventive Practices
Bronx Defenders

Yung Mi Lee, Supervising Attorney
Criminal Defense Practice
Brooklyn Defender Services

David Loft (sic), Attorney
Legal Aid Society,
Post-Convictions and Forensic Litigation

2 [sound check, pause]

3 [gavel]

4 SERGEANT-AT-ARMS: [off mic] Quiet,
5 please. Can we have it quiet, please?

6 CHAIRPERSON LANCMAN: Good morning,
7 everyone, and welcome to this joint hearing of the
8 Committees on Courts and Legal Services and Public
9 Safety. I'm Council Member Rory Lancman, Chair of
10 the Committee on Courts and Legal Services. We are
11 joined by Council Member Vanessa Gibson who is Chair
12 of the Committee on Public Safety, and Council
13 Members Jimmy Vacca, Barry Grodenchik, and Steve
14 Matteo and Carlos Menchaca. Wrongful convictions,
15 the incarceration of innocent men and women for
16 crimes they didn't commit is a serious problem in
17 America. According to the National Registry of
18 Exonerees, more than 1,700 people have been
19 exonerated since 1989, a record breaking 149
20 wrongfully imprisoned people were exonerated in the
21 United States last year after having served an
22 average of more than 14 years in prison for crimes
23 they did not commit. Here in New York, last year 17
24 people were exonerated including eight wrongful
25 convictions uncovered in Brooklyn alone. To combat

3 wrongful convictions, in 2010 then Chief Judge
4 Jonathan Lippman established a task force of
5 preeminent judges, prosecutors, defense attorneys,
6 police leaders and other criminal justice experts
7 charged with identifying causes and proposing
8 solutions. New York's eye witness identification and
9 interrogation procedures drew particular attention.
10 Eyewitness misidentification for a witness to a crime
11 incorrectly identified a defendant as the perpetrator
12 is often cited as the leading cause of wrongful
13 convictions. Some—some studies have found that
14 eyewitness misidentifications occur in as many as 75%
15 of all wrongful conviction. Similarly, nearly 40% of
16 all homicide exonerees last year have confessed to
17 crimes they didn't actually commit whether they were
18 coerced, didn't full understand the situation or the
19 charges, lacked the mental capacity to understand
20 what they were confessing to or for other reasons.

21 In 2011, the task force recommended the
22 adoption of standardized practices concerning the
23 administration of eyewitness identifications founded
24 on evidence-based practices. Specifically, favored
25 double blind administration of identifications use of
non-leading preliminary instructions for witnesses,

3 the preservation of photo arrays and other procedures
4 aimed at guaranteeing more reliable identification.

5 The following year in 2012, the task force
6 recommended mandating video recording of custodial
7 interrogations for certain serious crimes so that
8 courts, jurors, defense attorneys and prosecutors
9 have a full understanding of the circumstances
10 leading to a defendant's confession without which is
11 extremely difficult to accurately pass judgment on
12 whether the confession was voluntary and truthful.

13 The human and societal toll of wrongful convictions
14 is immense. Not only are wrongfully convicted
15 individuals unjustly incarcerated, often for years,
16 an unimaginable horror, but each wrongful conviction
17 means an actual perpetrator escapes justice and
18 remains at large to commit more crimes. New York
19 City does not need to wait for the State Legislature
20 to act. I'm going to say that again. New York City
21 does not need to wait for the State Legislatures to
22 act. The Police Department is a city agency, and its
23 practices are controlled by the Mayor and to a lesser
24 extent, the Council. The district attorneys and
25 public defenders are funded by the City, and we have
collaborated time and again with our court system to

3 improve the operations of our justice system here in
4 the five boroughs. The time to act is now, and this
5 hearing begins that process in earnest. Let me also
6 add it's now 10:15 and it seems quite certain that
7 the NYPD is not going to be joining us for this
8 hearing. I have to say on the record that I am
9 absolutely appalled at the Mayor's unwillingness to
10 produce any witnesses from the Police Department to
11 testify at today's hearing to discuss what progress,
12 if any, the department has made in implementing the
13 reforms called by the task force including the status
14 of the mysterious video interrogation pilot project
15 supposedly launched several years ago. The NYPD's
16 refusal to engage the Council on this critical
17 criminal justice reform issue substantially obstruct
18 the Council's oversight responsibilities. And once
19 again, in my view, calls into question this
20 administration's commitment to working with the
21 Council to achieve real criminal justice reform, and
22 I add it bodes ill for the greater spirit of
23 engagement, which we are led to expect would be
24 coming from our new commissioner. With that said, we
25 look forward to hearing valuable testimony today from
those individuals and families directly impacted by

3 wrongful convictions from the Mayor's Office of
4 Criminal Justice and experts speaking to the science
5 behind wrongful convictions and from the bench and
6 bar. With that, Council Member Gibson

7 SERGEANT-AT-ARMS: [off mic] Quiet on the
8 floor please.

9 CHAIRPERSON GIBSON: Thank you very much
10 Chair Rory Lancman and good morning to each and every
11 one of you. Good morning to all of my colleagues.
12 Welcome to the City Council to our joint hearing of
13 the Committees on Public Safety and Courts, and Legal
14 Services. It's a pleasure to be here. I am Council
15 Member Vanessa Gibson of the 16th of the Bronx, and I
16 am proud to chair the Committee on Public Safety, and
17 I thank my colleagues for being here, and it's a
18 pleasure to join with Co-Chair Rory Lancman in
19 putting this very important hearing together. Simply
20 put, no one should ever have to spend a day in prison
21 for a crime that they did not commit. Sending a
22 person to prison for a crime they did not commit
23 represents the ultimate miscarriage of justice. Not
24 only does it take an innocent person's freedom, it
25 allows the person who actually committed the offense
to evade justice and potentially harm others. The

1 impact it has on the individual and his or her family
2 is also profound. We must do all that we can to
3 ensure that our systems are in place to prevent
4 people from being wrongfully convicted and to ensure
5 that when they are, they have a way to rectify the
6 wrong that was done to them in an expedited fashion.
7 The number of people wrongfully convicted of a crime
8 and later exonerated has risen exponentially in
9 recent years. According to the National Registry of
10 Exonerations, 2015 was a record breaking year as 149
11 individuals were exonerated in the United States, an
12 increase from 139 in 2014. Of the exonerations that
13 occurred in 2015, 18% involved a false confessions'
14 44% involved misconduct committed by government
15 officials; 44% involved misconduct committed by
16 government officials; 44% involved defendants who
17 pled guilty and 50% of those cases are categorized as
18 no crime cases. New York State identified 17
19 wrongful convictions in 2015, the second highest
20 number of wrongful convictions identified by a state
21 in that year alone. Eight of these wrongful
22 convictions were uncovered by the Conviction Review
23 Unit in Kings County in Brooklyn. On average, those
24 who were exonerated in 2015 served more than 14-1/2
25

3 years in prison. Nothing that we can do will give
4 those individuals and their families those years of
5 their life that they lost, but what we can do is use
6 it as a lesson to make sure that innocent people are
7 not convicted, and that systems are in place, that
8 they are solidly in place to identify those have been
9 wrongfully convicted as quickly as possible. While
10 the statistics surrounding wrongful convictions are
11 truly alarming, they do not give a clear picture of
12 the frequency with which wrongful convictions occur.
13 They only identify those cases that have been
14 discovered. A report that was recently published in
15 2014 estimated that nearly 1 in 25 or 4.1% of
16 defendants that are sentenced to death in the United
17 States are later determined to be innocent. In
18 contrast to capital cases, it is much more
19 challenging to estimate the proportion of wrongful
20 convictions in lower level criminal cases because
21 they often are not the subject or post-conviction
22 litigation. Although wrongful convictions cannot be
23 attributed to a single factor, the cause or potential
24 causes can be distilled a few problematic areas. The
25 concerns most often isolated and discussed include
false confessions, eyewitness identification and non-

3 validated or improper forensic science. Even
4 individuals with the very best of intentions may
5 inadvertently create a situation that causes the
6 wrong person to become a suspect. For example, an
7 administrator of the lineup may unknowingly inject
8 verbal or non-verbal cues to influence the eyewitness
9 to pick a particular participant of that lineup.
10 Prosecutorial misconduct may also contribute or lead
11 to inaccurate conclusions and wrongful convictions.
12 While each area standing alone may potentially lead
13 to a wrongful conviction, this risk is compounded
14 when these factors occur in conjunction with one
15 another in any particular case. At this morning's
16 hearing I want to discuss the reasons people are
17 wrongfully convicted; the frequency in which it is
18 occurring; what is being done to make sure that the
19 frequency is being reduced; preventative measures
20 that we are taking in accounts and that efforts are
21 undertaken to discover and overturn any wrongful
22 convictions. This is a very, very important topic
23 and I thank all of you for being here, many of the
24 advocates, our civil legal service providers. We
25 have the Administration who is here, and many of
those from the impacted communities, those that feel

2 the brunt of a system that has wronged them. Their
3 families are here and we know their stories have been
4 told, and they will continue to be told because there
5 are many stories that are similar that may not be
6 told, that we don't read about in the paper or hear
7 about on the news. And so, first and foremost, I
8 want to thank those who have been exonerated for
9 their strength coming forward telling their story,
10 and not only that, but turning the pain that they
11 have endured into a plan of action with a purpose
12 because they recognize that through their story,
13 through their testimony, they can serve a strength
14 for someone else. And so this is very personal to
15 many of us because any of these individuals could be
16 one of my relatives, my uncle or brother or father.
17 And so I want to do everything possible as a member
18 of this body to ensure that those numbers do not
19 rise, that we work with every stakeholder from the
20 NYPD, our city's prosecutors, Office of Court
21 Administration to identify ways in which we can do
22 better. It is unacceptable that any number greater
23 than zero is here to tell a story. These families'
24 lives have been changed forever, and we can do
25 nothing to give them their life back, but what we can

2 do is use their story, as a catalyst for change and
3 that is what we are committed to doing. I thank
4 Chair Lancman and all the members of the Council who
5 are here. I want to recognize the Committee on
6 Public Safety, our Committee Counsel Deep Ambekar;
7 Legislative Counsel, Beth Golub; Legislative Counsel
8 Vay Immanuel Halu (sp?); Ellen Eng from our Financial
9 Division as well as my staff Kaitlyn O'Hagan, Dana
10 Wax and Margaret Asamoah (sp?) and thank all of you
11 for being here and I, too, want to echo the
12 sentiments of my Co-Chair Rory Lancman in expressing
13 my disappointment that the NYPD is not here. At
14 times, your absence can sometimes speak much louder
15 than your presence, and I think that we must do
16 better, and we must make sure that everyone is a part
17 of this conversation. No one is excluded when you
18 talk about wrongful convictions. From beginning when
19 evidence is gathered, when it goes to the prosecutor
20 and that individual is convicted in a courtroom.
21 Everyone has a role to play, and I cannot emphasize
22 that enough. And so, we will move forward. We will
23 not let any door be closed when it comes to further
24 conversation on this issue. This is something we
25 care very deeply about, and we will make sure that as

2 a Council we are doing our part to be a major
3 component of this conversation on wrongful
4 convictions. Too many lives have been devastated,
5 and we are at a cross roads where we don't have time.
6 Individuals that may be sitting in prison right now
7 praying for a lifeline that someone hears them, and
8 sees what they're going through, and I want them to
9 know that justice is coming and we have got to do
10 better to make sure that we can bring those
11 individuals out of prison if they simply do not
12 belong there. That is the fair thing to do, and that
13 is the right thing to do, and so I thank all of my
14 colleagues for being here, and I thank the staff, and
15 I will turn this back over to my co-chair, Chair
16 Lancman.

17 CHAIRPERSON LANCMAN: Thank you Council
18 Member Gibson. Just a matter of decorum and—and
19 order. We would appreciate it if you do not clap or
20 boo, as the case may be. There are non-verbal ways
21 to express your pleasure or displeasure. I've seen
22 people like kind of wave their hands. That—that
23 seems to be a thing, and it strikes me as a little
24 odd, but you're welcome to that if you feel the urge.
25 I guess you can also do thumbs down, although that's

2 not so nice. So I'd rather you—you not do that as
3 well [coughs] but please don't interrupt the hearing.
4 It just makes things go longer and—and gives us less
5 of an opportunity to hear from our witnesses. With
6 that, we'd like to invite—Oh, excuse me. Let me also
7 acknowledge that Council Member Vincent Gentile from
8 Brooklyn has joined us. With that, we'd like to hear
9 from the Mayor's Office of Criminal Justice.
10 Everyone who is testifying today, if we could just
11 swear you in.

12 I do.

13 CHAIRPERSON LANCMAN: Terrific. Director
14 Glazer. Thank you for joining us.

15 DIRECTOR GLAZER: Great. Thanks so much
16 and good morning Chairs Lancman and Gibson and
17 members of the Committees on Public Safety and Courts
18 and Legal Services. My name is Elizabeth Glazer. I'm
19 the Director of the Mayor's Office of Criminal
20 Justice, and I'm joined today by my colleagues Alex
21 Stern, General Counsel of my office and Nicole Torres
22 who's the Director of Intergovernmental Affairs.
23 Thanks very much for the opportunity to testify.
24 Wrongful convictions as both Chairs have noted, are a
25 critical matter of fairness, and something that's

3 important to every New Yorker. Wrongful convictions
4 not only irrevocably damage the lives of those who
5 are convicted, but also permit perpetrators of the
6 crime to go unpunished, and this compromise—
7 compromises public safety and it erodes trust in the
8 justice system. New York City has worked to ensure
9 the policies related to custodial interrogations and
10 eyewitness identification are development with the
11 key emphasis on ensuring fairness and maximizing
12 reliability, and I want to discuss one example of
13 this work today. New—the New York City Police
14 Department videotapes the interviews of every
15 defendant arrested for indexed felony offenses, and
16 attempts. These are commonly referred to as the
17 seven major felonies. The offenses include murder,
18 rape, robbery, burglary, assault, grand larceny and
19 grand larceny auto. There are some exceptions. For
20 example when a defendant requests a lawyer or refuses
21 to be videotaped. In addition, detective zone
22 captains ,these are the captains in the Detective
23 Bureau who oversee clusters of precincts, are also
24 give latitude to record certain misdemeanor arrests
25 based on the circumstances, and this most often
occurs with misdemeanor sex crimes. In addition,

3 arrests by uniform patrol for gun offenses that are
4 being enhanced by local detective squads, are also
5 recorded. Currently, the Police Department has 82
6 rooms equipped with video recording software. Each
7 detective squad assigned to a precinct has a room
8 equipped with the software, and all the special
9 victim units or squads are equipped that way as well.
10 As the Chair noted, there was a pilot project that
11 started in 2011, and then it expanded as I've noted,
12 and since then the department has recorded over 5,000
13 custodial interrogation. It's been mainly through
14 these experiences that recording not only aids those
15 who are innocent, but also helps the work performed
16 by officers in preventing disputes later about how an
17 officer conducted himself or herself, and it also
18 increases the transparency as to what was said and
19 done during an interrogation. While we're confident
20 in our current policies and procedures, we understand
21 that just one conviction of an innocent person is one
22 too many, and we are always willing to work with our
23 partners in the Council as well as with concerned
24 stakeholders to ensure the fair administration of
25 justice. So thank you for the opportunity to testify
here today, and I'd be happy to answer any questions.

2 CHAIRPERSON LANCMAN: Thank you very
3 much. It is always valuable to hear your testimony.
4 We appreciate the good work that you do. All of us
5 here have worked collaboratively with you, and it's
6 no disrespect directed at you personally or your
7 office when I again reiterate that really the
8 appropriate witness for this hearing would have been
9 the NYPD. Let me try to get an understanding of the
10 scope of the videotaping of--of interrogations. I was
11 handed a patrol guide, a Detective Guide Procedure
12 No. 502-20. I think it might have come from your
13 office, and maybe the NYPD dropped it off, but it
14 seems legit, and it says under Scope--and this was
15 issued and effective February 4, 2015 that-- I'm
16 reading now. The 748th, 67th, 107th and 122nd
17 Detective Squads are currently participating in the
18 video/audio recording of Custodial Interrogation
19 Pilot Project. I understand your testimony to be
20 that--to be different in that there are 82 recording
21 rooms.

22 DIRECTOR GLAZER: Uh-huh.

23 CHAIRPERSON LANCMAN: So, could just tell
24 us definitively how many precincts or detective
25 squads there are in the city, and how many of those

2 have—are—are engaged in the videotaping of
3 interrogations?

4 DIRECTOR GLAZER: So there are, I
5 believe, 76 detective squads and 76 precincts. So
6 there's 75 precincts plus Central Park. Each of them
7 have a detective squad. Each of them are equipped
8 with rooms, a interview room that's equipped with the
9 software that permits them to videotape and in
10 addition there are special victim squads that also
11 have rooms that are equipped with that software.

12 CHAIRPERSON LANCMAN: So is it the case
13 that every detective squad in the city now has at
14 least the—the technical and space capacity to conduct
15 their interrogations—to—to videotape their
16 interrogations?

17 DIRECTOR GLAZER: Correct.

18 CHAIRPERSON LANCMAN: Okay. Do you know
19 why the—the Patrol Guide as of just last year 2015,
20 limits—it only identifies five detective squads?

21 DIRECTOR GLAZER: No.

22 CHAIRPERSON LANCMAN: Okay. Oh, let me
23 also mention that we've been joined by Council Member
24 Andy Cohen from the Bronx, and Paul Vallone from
25 Queens. Let's take a look at the Task Force's

3 recommendations, and what you can tell me about the
4 extent to which they—the NYPD now conforms to those—
5 those recommendations? So the Task Force it
6 recommended that unless there was an exception, which
7 was enunciate—enumerated in the Task Force, by the
8 Task Force, all custodial interrogations of suspects
9 of qualifying offenses occurring at a place of
10 detention must be recorded. Can you tell us here
11 today that that is the case? Do you have knowledge
12 of that?

13 DIRECTOR GLAZER: So what I understand is
14 that right now the detective squads videotape
15 interviews with people have been arrested in the
16 seven majors. So murder, robbery, rape, grand
17 larceny auto, burglary, a couple of others. They
18 also have the latitude--as a discretionary matter the
19 zone captain can authorize videotaping and interview
20 for particular misdemeanors. More often than not
21 those are sex offense misdemeanors, and that's the
22 direction now. You're—you're absolutely right that
23 there are exceptions. Those videotaped interviews
24 are not going to happen when the defendant asks for
25 lawyer, when—when the defendant refuses, when
equipment is broken. These are all exceptions that

2 were recognized by the Justice Task Force and are
3 sort of relatively common sense, but that's the
4 process now, and that's been the process since I
5 think around mid-2015.

6 CHAIRPERSON LANCMAN: So the qualifying
7 crimes identified by the Task Force include all A-1
8 non-drug felonies, all violent B felonies, codified
9 in Section 125 of the—the penal law, homicide and
10 related offenses and all violent B felonies codified
11 in Section 130 of the Penal Law such a s sex
12 offenses.

13 DIRECTOR GLAZER: Uh-huh.

14 CHAIRPERSON LANCMAN: Is that—or is the
15 NYPD conducting videotaped interrogation in that same
16 spectrum of offenses or is it different in any way?

17 DIRECTOR GLAZER: So, I—I will have to
18 get back to you with exactly what the concordance is.
19 So for example one of the things that Justice Task
20 Force did not require were property crimes. NYPD has
21 given the seven majors, which include some property
22 crimes. But I'd prefer to get back to you with what
23 the actual exact answer is than to try and guess
24 here.

2 CHAIRPERSON LANCMAN: Okay, and in terms
3 of the exceptions that were allowed under the Task
4 Force, equipment malfunction, unavailability of
5 equipment, if a suspect has asked not to be recorded.
6 Obviously when an error occurs inadvertently. Are
7 those the same exceptions that the NYPD follows?

8 DIRECTOR GLAZER: Right.

9 CHAIRPERSON LANCMAN: Are there more or
10 different exceptions?

11 DIRECTOR GLAZER: My understanding is
12 that those are the exceptions that they follow. It's
13 pretty, you know straight forward common sense
14 exceptions.

15 CHAIRPERSON LANCMAN: Okay. Let me ask
16 you about the other issue, which is the lineups and-
17 and photo arrays. I do not have any Patrol Guide. I
18 don't believe I was given the Patrol Guide section
19 on-on that. No, right? I don't have anything from
20 the NYPD at all on that. To your knowledge, and I
21 can go through, and I will go through a little bit,
22 what the Task Force has recommended in terms of
23 combatting witness misidentification, but just let's
24 start with what your general understanding of the
25 extent to which NYPD practice conforms to the Task

2 Force's recommendations when it comes to photos
3 arrays, and live lineup.

4 DIRECTOR GLAZER: Uh-huh. So I think
5 that it is consistent with those recommendations, and
6 with what some broad kind of national practices are
7 or best practices are regarding instructions to the
8 witness, such as things like the defendant may not be
9 present, and—and a few other things. I think the
10 sort of—the crux of where the difference is, is that
11 there is a recommendation by the Justice Task Force—
12 they have double-blinded procedures and NYPD does not
13 do that.

14 CHAIRPERSON LANCMAN: Okay, and that is,
15 you know, almost the whole enchilada. That's—that's
16 the biggest recommendation from the task force, and I
17 think if you stay later, you'll hear and know because
18 you're very well versed in these issues that that is
19 probably the most significant problem with lineups
20 and photo arrays. But why does the NYPD not conform
21 to the recommendations of the Task Force in that
22 respect, and conduct lineups and—and photo arrays
23 double-blind.

24 DIRECTOR GLAZER: So I think there are a
25 couple of reasons that they follow the procedure that

3 they have so far. One, I think that they believe
4 that it's important in cases that there be—that for
5 the witness to feel confident to identify and to
6 carry through with the case, and to participate in
7 the proceedings. The detective does form a
8 relationship with that person, and that's an
9 important relationship. There are instructions in
10 the manual to ensure that there aren't inadvertent or
11 intentional cues given by the detective to the
12 witness. The detectives could stand behind the
13 witness, but that's one reason. I think the other
14 reason—well, I can't give you sort of the dimensions
15 of this is there a concern about the resource issue
16 of being able to—to ensure that you have a detective
17 from another squad or from another borough that knows
18 nothing about the case. So I think I think that's
19 what they would—you know what their main approach is.

20 CHAIRPERSON LANCMAN: Well, you probably
21 don't need a detective to run a lineup. I mean once
22 you get to that point, it's just an administrative
23 function. Let me ask you, do you know whether or not
24 as the Task Force suggests that the administrator of
25 the—the lineup of the photo array asks the witness
the degree of confidence that the witness has in the

2 choice that they're making? You know, in your own
3 words, how sure are you? Is the language that's
4 recommended.

5 DIRECTOR GLAZER: My understanding is
6 that the Police Department does not ask that
7 question.

8 CHAIRPERSON LANCMAN: Okay. Do you know--
9 well, you've answered the question about double
10 blind. Do you know what the NYPD's procedures are
11 when it comes to documenting the identification
12 procedures--

13 DIRECTOR GLAZER: [interposing] Uh-huh.

14 CHAIRPERSON LANCMAN: --and--and--and the
15 identifications that are made?

16 DIRECTOR GLAZER: Yeah. So when the
17 identification is made through a photo array, there
18 are two different things that happen. One, the photo
19 array, the pictures are identified through thins PIN
20 system, Photo Imaging something--don't test me on the
21 letters, and the computer itself will keep a record
22 of what the photographs are, how long the witness
23 looked at each photograph and the detective who's in
24 the room will take notes and that is often
25 subsequently translated to a Police Department report

2 DD5. Similarly, when a lineup is done, the detective
3 is there taking notes on whatever it is the witness
4 says, and that is also often translates to again,
5 it's a Police Department form that detectives use
6 called the DD5, and those documents and that
7 documentation has been given to the district attorney
8 because those are documents that are important in
9 discovery in the case.

10 CHAIRPERSON LANCMAN: Before I move on
11 because I certainly want to give everyone an
12 opportunity to ask their questions. The--the number
13 of interrogations during the life of the pilot
14 program, I think you put it about 5,000?

15 DIRECTOR GLAZER: Yep.

16 CHAIRPERSON LANCMAN: That seems like far
17 fewer interrogations than are being conducted in New
18 York City. Does that strike you as--as--as the math
19 not adding up there?

20 DIRECTOR GLAZER: Yeah, so its--

21 CHAIRPERSON LANCMAN: [interposing] If,
22 in fact, each interrogation--

23 DIRECTOR GLAZER: Yep.

24 CHAIRPERSON LANCMAN: --is being
25 videotaped.

2 DIRECTOR GLAZER: So it's certainly a
3 much lower number than the actual number of arrests
4 for the seven majors, if that's what you're asking.
5 And my understanding is, is that when an arrest is
6 made by a patrol officer, the nature of a patrol
7 arrest is that the officer sees the incident in front
8 of them. And so, we don't have that same issue of
9 videotaped interrogation. So the 5,000 relates to
10 interviews that detectives themselves are conducting.

11 CHAIRPERSON LANCMAN: Are there
12 interviews that conducted by someone other than the
13 detective once a suspect has been brought to the
14 station?

15 DIRECTOR GLAZER: That I don't know the
16 full answer to. There are many times in which a
17 defendant is interviewed by a district attorney, and
18 many of the offices of the DA is also have videotape
19 equipment.

20 CHAIRPERSON LANCMAN: Good and lastly for
21 me one of the bills that we're putting in since your
22 office, the Mayor's Office of Criminal Justice
23 oversees the criminal justice system on behalf of the
24 Mayor, is requiring a new office to review and report
25 on the status of the NYPD and the other stakeholders

2 and operators in our criminal justice system. Their
3 compliance with, their adherence to the
4 recommendations of the Task Force on—on two issues as
5 well, you know, the Task Force's other
6 recommendations. While I have you here, could you
7 think of any reason why it wouldn't make sense for
8 MOCJ to conduct that review and—and give a report to
9 the Council in, you know, a reasonable amount of
10 time?

11 DIRECTOR GLAZER: Well, the
12 recommendations are just that, they're
13 recommendations. So it's not a requirement of law
14 for the departments to adhere to them. So it's
15 certainly something I'd be very happy to discuss with
16 the Council and to figure out a path forward.

17 CHAIRPERSON LANCMAN: Uh-huh. Let me
18 also mention that we have—we've been joined by
19 Council Member Espinal, Rafael Espinal from Brooklyn
20 and Jumaane Williams also for—for Brooklyn, and I—as
21 I hand you off to my co-chair here, I assume you'll
22 be able to get us copies of the NYPD's—the
23 Interrogation procedures, the same way that we were
24 given the Patrol Guide on videotaping interrogations?

25 DIRECTOR GLAZER: Sure.

2 CHAIRPERSON LANCMAN: Okay. Council
3 Member Gibson.

4 CHAIRPERSON GIBSON: Thank you, Chair
5 Lancman, and good morning, Ms. Glazer--

6 DIRECTOR GLAZER: [interposing] Good
7 morning Chair.

8 CHAIRPERSON GIBSON: --and members of the
9 MOCJ team. So you can imagine the awkwardness we
10 feel with having you at the table and not the NYPD.
11 So I appreciate your efforts to always come through
12 and be here even when MOCJ, you know, is a part of
13 the conversation definitely know that you've studied
14 this quite a bit, and I do know that, you know for
15 the record you are willing and committed to working
16 with us as we continue to have conversations about
17 wrongful convictions, interrogations, eye witness
18 identification and other measures, right?

19 DIRECTOR GLAZER: Absolutely.

20 CHAIRPERSON GIBSON: Okay, great. So in
21 your testimony you talked about the 82 cameras that
22 we have, the 82 rooms that are equipped with the
23 video recording devices. Out of 77 precincts, do you
24 know if there will be an increase in that? Is-is
25 every detective bureau sufficiently covered with

2 cameras, or is that a conversation we need to have
3 moving forward?

4 DIRECTOR GLAZER: So every interview room
5 now is equipped with this software and with the
6 videotape equipment as well as the Special Victims
7 Units so that is complete coverage.

8 CHAIRPERSON GIBSON: Okay, all the
9 special victims and each of their commands?

10 DIRECTOR GLAZER: Uh, right.

11 CHAIRPERSON GIBSON: Okay. Wanted to ask
12 a quick question about the general procedure. You
13 talked a little bit about it in your testimony. With
14 respect to eye witness identification procedures,
15 what is the NYPD's policy?

16 DIRECTOR GLAZER: With respect to photo
17 arrays and lineup?

18 CHAIRPERSON GIBSON: Eye witness
19 identification.

20 DIRECTOR GLAZER: Yep. So there—they
21 follow to a large degree what the national practices
22 are. So, with the photo array to ensure that you
23 have pictures that are not suggested, but are as
24 similar as possible to the—the targets picture. The—
25 the detective is instructed not to make suggestive

2 comments. There's an instruction both for the photo
3 array and the lineup to instruct the witness that--
4 that the--the suspect may not be in either the photo
5 array or the lineup, and then as I noted, there are
6 sort of an array of things almost like an audit trail
7 on the photo array that records information
8 automatically on how--how much time a witness spends
9 on each picture and a number of other things. Those
10 are then ultimately turned over to the DA. That's
11 part of the discovery to the defender, and in a
12 lineup those same policies are applied. The only
13 difference--obviously it's a live procedure--is that
14 the detective who's in the room is instructed to
15 stand behind the witness so that there can't be any
16 inadvertent or intentional signaling.

17 CHAIRPERSON GIBSON: Okay, so that goes
18 to the point that I was going to raise. Since the
19 NYPD uses multiple types of procedures like double
20 blind, do you know what types of circumstances they
21 would use a particular procedure? So is there some
22 sort of a policy that says in this circumstance you
23 use a double blind, or is that left up to the
24 individual detective bureau? Do you know?

3 DIRECTOR GLAZER: I'm afraid I can't
4 answer that question.

5 CHAIRPERSON GIBSON: Okay, and so, you
6 know, many of these questions obviously Chief Robert
7 Boyce, Chief of Detectives and Legal Affairs Deputy
8 Commissioner Larry Burn I know have been doing a lot
9 of this work. And so, you know, having their voice
10 at this hearing is—is very critical because we know
11 that while measures are taking place in terms of
12 conversations, interrogations are happening each and
13 every day and, you know, that's simply why we're
14 trying to derive some information so that we can
15 simply understand what's happening across our city as
16 it relates to evidence gathering and bringing
17 suspects before the Police Department. Just had
18 another question, are you aware that between photo
19 arrays and live lineups which method is more likely
20 to protect against any type of false conviction? Do
21 you know the disposition. (sic)

22 DIRECTOR GLAZER: [interposing] So
23 there's been—there's been some study on this by the
24 National Academy of Sciences and some others, and my
25 understanding is that inconclusive which one is more
accurate.

3 CHAIRPERSON GIBSON: Any other studies
4 that we're aware of?

5 DIRECTOR GLAZER: I can certainly get
6 back to you on what that is. That's the most common
7 one that I know.

8 CHAIRPERSON GIBSON: Okay. There have
9 been some other jurisdictions that have talked about
10 mandating double blind lineups and recording of
11 statements will individuals are in police custody.
12 Are you aware of any of those jurisdictions that have
13 already implemented these types of measures?

14 DIRECTOR GLAZER: There are some
15 jurisdictions [off mic] and if you want to speak, we
16 can—we can give you a list now or we can provide it
17 to you afterwards, but there are a few cities and I
18 think stats that have implemented some of these
19 recommendations.

20 CHAIRPERSON GIBSON: Okay, and Chair
21 Lancman talked about the Justice Task Force that was
22 established several years ago by Jonathan Lippman.
23 Some of those recommendations, obviously all of them
24 are very, very important, and what I wanted to
25 understand from the city's perspective since we are
one of the largest municipalities when you look at

3 law enforcement in this state. Is there any
4 conversation or any efforts that we have as a city to
5 implement those recommendations or even at a local
6 level work with many of the experts that have already
7 been working together and forming their own task
8 forces. Are we going to do something as a city to
9 develop our own working group including the NYPD?

10 DIRECTOR GLAZER: Uh-huh. So we sit on
11 the Justice Task Force, which is now co-chaired by
12 Chief Judge DiFiore.

13 CHAIRPERSON GIBSON: Judge DiFiore,
14 right.

15 DIRECTOR GLAZER: The Police Commissioner
16 sits on it. We also have the DAs sit on it or
17 defenders sit on it. So we have very robust and
18 broad representation there. We do not have
19 separately a task force of those same city players
20 related to implementation.

21 CHAIRPERSON GIBSON: So thinking about
22 the total picture of eye witness identification,
23 misidentification, double lineups, what is it that we
24 believe are the most important efforts that we have
25 identified as an administration for preventing
wrongful convictions? So what are the measures that

2 we have identified that we need to change so that we
3 can prevent individuals from being wrongfully
4 convicted?

5 DIRECTOR GLAZER: So I think we can
6 always do better. I think we're always open to what
7 we should be doing better. I think right now there's
8 a big effort around the videotaped interrogations,
9 having that citywide coverage, and I think there is
10 always openness for thinking through whether or not
11 there are other things that we can change.

12 CHAIRPERSON GIBSON: And just another
13 question. Do you have any thoughts on our
14 prosecutors and their own offices establishing
15 convictions integrity units?

16 DIRECTOR GLAZER: So I think it's a very
17 necessary part of--of the administration of justice.
18 I think we all should be open to not just taking a
19 first look, but a second look to always examining
20 what we've done, and where things may have gone
21 wrong, and ensuring that that drives us forward in
22 making our points.

23 CHAIRPERSON GIBSON: Okay, I agree. I
24 think it's important the fact that we have testimony
25 and live stories of individuals that have been

3 exonerated. I think it propels us to absolutely make
4 sure that within our own offices we do everything
5 possible to make sure that we can prevent individuals
6 from being wrongfully convicted. And I know some are
7 looking at it from—you know, are looking at other
8 measures, and we will hear. All of our district
9 attorneys have been invited and, you know, staff
10 members are present here today. So I do look forward
11 to hearing from them as well. I think it's really
12 important that when you look at this topic I have to
13 emphasize how everyone has to play a role. And so,
14 you know, the absence of the NYPD not being here is a
15 very critical voice that's missing and so, you know,
16 the evidence that's gathered by law enforcement it
17 gets to the prosecutor's office to prosecute the
18 case. It ultimately leads to the courtroom. It's a
19 process, you know, where there are deficiencies. I
20 think we all acknowledge that we can all do better.
21 There are always improvements we can make, and we're
22 all talking about human beings. I mean we all make
23 mistakes at some point. I think it's an
24 acknowledgement that we have to work together and
25 that all of the pieces—I call them ingredients. All
of these ingredients have to work together because if

2 there's one that falters, I think it, you know, is a
3 blemish on the entire system. And so, you know,
4 through this hearing I certainly look to get more
5 information especially from the impact of community.
6 But I am absolutely going on record making my voice
7 heard that this is a conversation that we will
8 continue, and the NYPD will be here. Because
9 interrogations are taking place, we have some of the
10 Patrol Guide procedures, but we need much more. I
11 think, you know, many of the advocates have had
12 conversations many, many times with the NYPD about
13 their procedures, but we don't have anything tangible
14 to see. And do I think it's important, you know,
15 with your work with the NYPD and your role that, you
16 know, that message is coming across from our
17 perspective that it's important that we make sure
18 that they're here and that they are part of the
19 conversation. One last question I have before I turn
20 it back over to my chair and other members of the
21 committee is do you think there's anything that we as
22 a City Council can do? We've got some pieces of
23 legislation proposed. My chair and myself are former
24 legislators in the State. So we work very closely
25 with the State Legislature. But is there anything

2 else that we as a Council can do to support the
3 efforts of the administration in preventing wrongful
4 convictions? You love my little questions, right?
5 [laughter] I know.

6 DIRECTOR GLAZER: That's an important
7 question and that's something that I want to give a
8 thoughtful answer to, and so I'd like a chance to
9 think that out and to get back to you.

10 CHAIRPERSON GIBSON: Okay. Thank you
11 very much. Thank you, Liz, and the Chair Lancman.

12 CHAIRPERSON LANCMAN: [coughs] Thank
13 you. Let me also recognized that we've been joined
14 by Council Member Ritchie Torres from the Bronx. Our
15 first question is from Council Member—a series of
16 questions from Council Member Jimma Vacca, and we'll
17 put—put seven minutes up on there.

18 COUNCIL MEMBER VACCA: How many minutes?

19 DIRECTOR GLAZER: Seven.

20 COUNCIL MEMBER VACCA: Oh, seven, I
21 thought—I can't believe it.

22 CHAIRPERSON LANCMAN: You're not required
23 to use all seven.

24 COUNCIL MEMBER VACA: Oh, no, no, no,
25 I'll do my best to use a little less. Let me ask you

2 something. We're talking about this issue of
3 wrongful conviction, and I'm concerned, too. I'm
4 concerned about tracking, not only wrongful
5 convictions, I'd like to see someone in our city
6 track the recidivism. Who tracks recidivism because
7 I'm--

8 DIRECTOR GLAZER: [interposing] Well, I
9 have good news for you.

10 COUNCIL MEMBER VACCA: Yeah, give-give me
11 news.

12 DIRECTOR GLAZER: So if you go to our
13 website there's something called DART. It's a very
14 cool program.

15 COUNCIL MEMBER VACCA: D-A-R-T?

16 DIRECTOR GLAZER: D-A-R-T.

17 COUNCIL MEMBER VACCA: Yes.

18 DIRECTOR GLAZER: And you can yourself
19 check for all kinds of different groups. You can do
20 it by age. You can do it by offense. You can do it
21 by arrest, by conviction to determine what the
22 recidivism rates are depending what group you're
23 interested in, what period of time you're interested
24 in. What people are recidivating with, et cetera.

2 COUNCIL MEMBER VACCA: So that would give
3 me an idea of categories of recidivism, and frequency
4 of recidivism generically.

5 DIRECTOR GLAZER: Correct.

6 COUNCIL MEMBER VACCA: What are we doing
7 in the city about recidivism. There is not a day
8 that goes by that I read the newspaper and I see
9 people committing major crimes who have rap sheets
10 longer than this desk, and there is something falling
11 apart be it in the DA's offices or with our judges
12 that is endangering people in this city, and I'
13 thinking of crime victims who don't see a perpetrator
14 go to jail until he ultimately commits the most
15 heinous or crimes, and that's not right, and we have
16 to speak to this in this Council. Fourteen
17 offenses, 25 offenses. You read about it and it's
18 matter of fact, next day next story. Move on. I
19 don't accept it.

20 DIRECTOR GLAZER: So there are a couple
21 of things that I would say to that. One is that we
22 have what I believe is a deficient bail law, and
23 under the New York State's Bail Law, judges are only
24 allowed to consider risk of flight, not danger to the
25 community. This is different from 44 other states

2 and from the federal system in which both of those
3 problems, both risk of flight and danger to the
4 community is considered. So that's something that
5 Judge Lippman put a bill before the Legislature and
6 before he stepped down as Chief Judge. The Mayor
7 worked with the Legislature last year to introduce
8 another bill, but that's--that's an important
9 deficiency. The second thing is--

10 COUNCIL MEMBER VACCA: [interposing] I'm
11 sorry to interrupt you.

12 DIRECTOR GLAZER: Yep.

13 COUNCIL MEMBER VACCA: Can you please get
14 me those bill numbers? Are they pending in Albany
15 now or must they be reintroduced in the new session?

16 DIRECTOR GLAZER: I'd be happy to get you
17 the bill numbers.

18 COUNCIL MEMBER VACCA: Get me the bill
19 number because I'm sure the Council will want to
20 consider a resolution supporting something like that.
21 I'm sure some will buy, but I think most would.

22 DIRECTOR GLAZER: I think the second
23 thing that people don't talk about very much is the
24 issue around sealed cases. So that often times--and
25 sealing is an incredibly important piece to predict--

2 to protect people who are young when they committed
3 crimes, and deserve a second chance to ensure that
4 people aren't unfairly tagged with offenses that
5 they've been acquitted of, but there is a very high
6 use of sealing in a whole array of cases. That means
7 that often when a judge had a defendant in front of
8 them, they will not actually have the full picture of
9 the conduct of that defendants, but only what appears
10 on their rap sheet. So there is an information gap
11 as well.

12 COUNCIL MEMBER VACCA: How could a judge
13 decide a case of a violent person not knowing the
14 previous history? How could that history not be made
15 available to a judge? You mean we have judges
16 sitting here in this city in a vacuum? They only
17 have one case, the case that's brought before them,
18 and they don't know the history?

19 DIRECTOR GLAZER: They know the history,
20 but they may not know the full history.

21 COUNCIL MEMBER VACCA: How? How is that
22 possible? What is your office going to do about
23 that? What are we going to do about that?

24

25

2 DIRECTOR GLAZER: There are laws that-
3 that govern the sealing issues, and there's also
4 local practice.

5 COUNCIL MEMBER VACCA: Well, local
6 practice is something I think we can change, and if
7 there are laws, I think the Mayor and the Council
8 have to come together with a crime package to protect
9 the victims of crimes and law-and law abiding people.
10 How could a judge sit there in a vacuum, and not know
11 the full magnitude of the case that's before him, and
12 the possible danger that the individual poses to
13 society?

14 DIRECTOR GLAZER: Is that a question
15 seeing information from me or--?

16 COUNCIL MEMBER VACCA: I'm seeking-no,
17 I'm seeking-I'm-I'm seeking-every year we go to
18 Albany. We have a legislative package in the
19 Council. The Mayor has a legislative package. I'm
20 saying that your office as a mayoral agency needs to
21 bring this to the attention of the Mayor and he needs
22 to include this in a legislative package to Albany if
23 indeed it's a state issue, which it appears to me to
24 be. If it's a City Council issue that we can
25 resolve-resolve legislatively here, I'm willing to

2 sponsor whatever legislation is needed because that's
3 a major problem.

4 DIRECTOR GLAZER: I'd be happy to talk to
5 you about this.

6 COUNCIL MEMBER VACCA: I want to talk to
7 you further. I'm trying to raise a voice for people
8 who are voiceless namely people are victims of crime,
9 and I'm trying to say to you that have many victims
10 of crime--as you know, I'm sure--who have their lives
11 changed forever based on someone who goes to a judge
12 who says the only thing I can give you is a sentence
13 based on whether or not you're going to fly--have
14 flight or not, or I gave the guy a sentence and
15 didn't know that he had history of--of this and of
16 that. I didn't know. This is not what most people
17 think about when they--I--I think it's an eye--it's--
18 it's an eye opener that we have these gaps. So I'd
19 like to work with your office. I'd like those bill
20 numbers. I'd like to know how I can help. I want to
21 have conversations with you and I'm--I'm very
22 interested in this recidivism issues--issue, and I'm
23 glad I raised it. I learned a lot today myself.
24 Thank you.

2 CHAIRPERSON LANCMAN: [coughs] Thank
3 you. Next, we'll hear questions from Council Member
4 Andy Cohen from the Bronx.

5 COUNCIL MEMBER COHEN: Thank you, Chair
6 Lancman. I'll be brie. One, I just wanted to let
7 Council Member Vacca know that I apparently have a
8 bill that would track recidivism in relation to a
9 diversion program. So I'm hoping that we'll get a
10 hearing on that some time soon. Two, I-I really do.
11 I-I don't know what the background is of how or why
12 the NYPD is not here, but I have to admit I am
13 baffled by their absence, and it seems that they're-
14 in the size of the force that we have that somebody
15 could come in and shed some light on the procedures.
16 And I-and I really just have a question in relation
17 to the double blind identification project. (sic) Is-
18 is it-do you have a position? Do you believe that
19 that is a best practice to use double blinds?

20 DIRECTOR GLAZER: I think in a perfect
21 world of infinite resources there are a lot of
22 things-a lot of advantages, and a lot of reasons to
23 use double blinds. I also think that there are a lot
24 there safeguards that are in the system right now,
25

3 but I think it's something that's worthy of
4 discussion.

5 COUNCIL MEMBER COHEN: I mean it seems to
6 me that the resources should not be such an
7 overwhelming barrier that we cannot come up with a
8 way to conduct double blind lineups and photo arrays
9 in way that is not, you know, that—that we have the
10 resources at the moment, and—and what's at stake. I
11 really think that we should try to commit the time
12 and a way to do that. So thank you very much.

13 CHAIRPERSON LANCMAN: Thank you. Council
14 Member Jumaane Williams.

15 COUNCIL MEMBER WILLIAMS: Thank you very
16 much, Mr. Chair, Madam Chair, Panel. I first want to
17 add onto my colleagues that kind of pushed slightly
18 in a—in a different way what my colleague Council
19 Member Vacca was talking about. Of course, you have
20 to have—we want to make sure that people who should
21 be in jail, they need a time out, they absolutely get
22 it. But often times we speak for victims without
23 really having their voice heard. So I just wanted to
24 refer the panel and my colleagues to the first ever
25 national survey on victims and how they view their
safety—how they view the criminal justice system by

3 the Alliance and Safety and Justice. They did have
4 these national surveys, some very interesting
5 findings. One of the most interesting one was two
6 out of three victims do not receive help following an
7 incident, and those who do are far more likely to
8 receive it from family or friends than the criminal
9 just system. So they actually didn't believe that
10 there was any follow up that was then pushed to them.
11 A lot of the other findings and I'm glad I have seven
12 minutes, and I have used some of it. A lot of the
13 findings push back on the inherent knee-jerk reaction
14 force of their punishment. So by 2 to 1 margins,
15 victims prefer that the victims, that the criminal
16 justice system focus more on rehabilitation for
17 people who commit crimes than punishing them. By a
18 15 to 1 margin, victims prefer to increase
19 investments in schools and education over more
20 investments in prisons and jails. By a ten to one
21 victims prefer to increase investments in job
22 creation. By seven to One victims increase
23 investment in mental health over more investments in
24 prisons and jail. Six in ten victims prefer shorter
25 prison sentences and more spending on prevention and
rehabilitation to prison sentences that keep people

3 incarcerated for as long as possible. Three in one
4 victims prefer holding people accountable from
5 options beyond prison such as rehabilitation mental
6 health treatment, drug treatment and community
7 supervision or community service. Three to one
8 victims believe that a prison makes people more
9 likely to commit crimes than rehabilitation. Seven
10 to one victims prefer increased investments in crime
11 prevention, and programs for outreach use over more
12 investments in prisons and jails, and by four to one
13 victims preferred increased investments in drug
14 treatment. By two to one victims preferred increased
15 investment in substance use supervision such as
16 probation over investments in prisons and jails. I
17 think that is key because we often speak to victims
18 without allowing them to speak for themselves. And
19 so what this survey actually pointed out was that
20 they don't want necessarily prison. They want the
21 crime not to happen any more, and they want it not to
22 happen to someone else or to themselves. Often times
23 our knee-jerk reaction is a longer prison sentence, a
24 mandatory prison sentence. They don't necessarily
25 change behavior, and they don't necessarily help the
victim. What they really want is for this not to

2 happen again. So I just want to make sure I put that
3 on record, and hopefully this will--

4 DIRECTOR GLAZER: [interposing] That is
5 exactly right. We have to start way, way before
6 anybody touches the criminal justice system. We have
7 to thank very hard about what the actual use is of
8 mandatory sentences, about the criminogenic effect of
9 jail in many instances. About whether or not the
10 length of our prison sentences are really justified
11 for any purpose at all, and we have to think about
12 jail and prison as the last resort. And that's very
13 much the focus of what this administration is doing
14 in this city in trying to reduce the Riker's
15 population, and trying to lighten the touch as much
16 as possible for that and how we use enforcement.

17 COUNCIL MEMBER WILLIAMS: Thank you.
18 Also, thank you for being here. I know you do good
19 work on this. I just want to lend my voice to--as a
20 council member and part of the body, I'm insulted
21 that the NYPD is not here. I understand that there
22 are staff from the DA, and a number of DAs will be
23 here. I'm not sure how we had this conversation
24 without them. I think that they absolutely should
25 have been here and had this conversation. I think it

2 is disrespectful to the body, to this committee and
3 to the chair. I hope we have a hearing on this
4 again, and if they refuse to, we should exercise our
5 right to subpoena them there because this is too
6 important for them to be able to elected not to be
7 part of this conversation, and on the record. I do
8 have one question, and in my county Dave Thompson I
9 think had done a very good job particularly on
10 getting innocent people out of prison. Has anything
11 that he has done led to any changes system wide?

12 DIRECTOR GLAZER: So I think one of the
13 things that he has done is that both and DA Vance who
14 have the Conviction Integrity Units that that has
15 become an important part of everyday business for a
16 DA's office to sort of take a second look rather than
17 a first look. So DA Clark has now started a
18 Conviction Integrity Unit as well. So I think that
19 kind of systemic change has been important. I'm not
20 aware, but I could be wrong as to whether or not
21 there are particular procedures or recommendations
22 that have come out of his series of cases that—that
23 he's advocating be applied system wide.

24 COUNCIL MEMBER WILLIAMS: Well, that was
25 my question. System wide, is it—is the NYPD, I don't

2 know if you know, or just in general changing,
3 viewing what's happening in the wrongful convictions
4 that we have identified have they translated that
5 into changing anything recently?

6 DIRECTOR GLAZER: I think that each of
7 these cases has a post-action review, for lack of a
8 better term, to try and really go through molecularly
9 as to what happened in each case, and to try and fix
10 in the system where—how we interview witnesses, how
11 we collect evidence, but I can't give you all the
12 detail on that.

13 COUNCIL MEMBER WILLIAMS: Okay, and
14 that's probably NYPD and the DA should be here as
15 well. Just the last question. Is someone keeping
16 statistics on these wrongful convictions demographics
17 breakdown? Are we keeping this so we can see if—if
18 there is some kind of pattern, and do we have a
19 statistical analysis of how many wrongful convictions
20 are kind of—wrongful convictions are occurring?

21 DIRECTOR GLAZER: So I think the
22 Innocence Project does give that. We as a city do
23 not.

24 COUNCIL MEMBER WILLIAMS: I think
25 personally we probably should so that we can review

2 it. So hopefully, we will move forward. I'm running
3 out of time so thank you very much again for the work
4 that you're doing, and to you Madam Chair and Mr.
5 Chair.

6 CHAIRPERSON LANCMAN: Thank you very
7 much. Let me also recognize we've been joined by
8 Council Member Robert Cornegy from Brooklyn. Anyone
9 else on the panel have questions for Director Glazer?
10 No. Well, thank you very much for your testimony this
11 morning, and as they say in the business we look
12 forward to continuing this conversation, and this
13 time we really mean it.

14 DIRECTOR GLAZER: As do I.

15 CHAIRPERSON LANCMAN: Thank you.

16 DIRECTOR GLAZER: Thank you.

17 CHAIRPERSON LANCMAN: Thank you very
18 much. [pause] Alright, alright, good morning, so
19 next we're going to invite Judge Mark Dwyer to come
20 and give testimony as I'm sure he will inform us. He
21 is a member of the Justice Task Force. Yes, please.
22 [background comments, pause] Alright, good morning,
23 Judge. If you don't mind, we can swear the witness.
24 Do you swear or affirm the testimony you're about to
25

2 give is the truth, the whole truth and nothing but
3 the truth.

4 JUDGE DWYER: [off mic] I do.

5 CHAIRPERSON LANCMAN: Thank you very
6 much.

7 JUDGE DWYER: [off mic]

8 CHAIRPERSON LANCMAN: I know the tables
9 have turned. Just hit the button, sir.

10 JUDGE DWYER: Okay. Let me thank you
11 first for inviting the Task Force to make comments.
12 My introduction to the Task Force can be much shorter
13 than it would have been given the kind comments that
14 the council members have made so far about our work
15 and our reports. As you know, Chief Judge Lippman
16 set us up because of his concern about wrongful
17 convictions and Judge—Judge DiFiore who, of course,
18 is now the Chief Judge, shares this enthusiasm for
19 checking into the reasons for wrongful convictions.
20 She, in fact, was co-chair of the Task Force before
21 she became a judge. Let me first say that we are
22 interested in your notion that New York City can do
23 things if Albany won't. There any number of our
24 recommendations that could be implemented city wide
25 even if there my be a log jamb on the issues in

2 Albany. In particular as to statements, of course,
3 the need for video recording seems apparent to almost
4 everybody, and even beyond the seven serious areas of
5 crime that Ms. Glazer talked about, I see no reason
6 why other felonies should not also have statements
7 recorded. Our recommendations, of course, focused on
8 the most serious felonies, the violence and A
9 felonies as a good starting point. But once you've
10 got the equipment there if a detective isn't in with
11 a—the violent felon, there's no reason why he
12 shouldn't be under the C violent felon because the
13 room is there. It also has always startled me that
14 law enforcement is reluctant to video tape these
15 statements. I was doing a suppression hearing
16 yesterday in which the police did not record the
17 statement. This was from 2013, and it was on a C
18 violent felon. The district attorney then got the
19 defendant to continue talking in ECAB down here on
20 Center Street, and the video of the confession is
21 extremely enlightening to me for the issues I have to
22 decide at the suppression hearing, and if the case
23 goes to trial, it will have the defendant convicted
24 in ten seconds. And why that does no appeal to law
25 enforcement as a very worthwhile investment I don't

2 know. Once can speculate that some old fashioned
3 detectives may not want to have their methods on
4 video as it might embarrass them, but that's what the
5 video idea is all about. It's the make sure that
6 confessions are taken fairly in ways that won't
7 embarrass anybody. So that there won't be wrongful
8 convictions because of our closed (sic) statements.
9 As to identification, whereas you know, we've also
10 made recommendations. The Police Department and law
11 enforcement in general do acknowledge that double
12 blind is the best way to go. I don't understand the
13 resource objection. Double blinding a lineup is
14 totally in expensive. It doesn't have to involve a
15 detective, although a different detective from the
16 squad could certainly be found who doesn't know which
17 person arrested is the suspect. Or, you could have a
18 law student intern trained to do what has to be done,
19 a volunteer law student intern for that matter. All
20 you do is walk in and read the same questions and
21 make the same comments that the detective on the
22 case would make, and--

23 CHAIRPERSON LANCMAN: [interposing] Is
24 there--is there a detective still involved whether
25 it's just--?

3 JUDGE DWYER: That's correct. You just
4 read the form, and you have to be trained so that if
5 the witness says can they all stand up, you know what
6 to do, or could they all stand or come forward, you
7 know what you have to do, but this is all very
8 simple. And just to have the detective standing
9 behind the witness doesn't take care of the problem
10 in its entirety because even a comment the detective
11 makes like good job or thank you so much, can give
12 away that the detective thinks that the correct
13 identification has been made, which can dramatically
14 affect the witnesses' testimony in a subsequent
15 proceeding. I also not that the question about
16 confidence level seems important. For a long time,
17 identification experts said that the information
18 about confidence level is totally irrelevant. There
19 is no correspondence they thought between level of
20 confidence and accuracy of identification. But more
21 recently it's been discovered that if you break it
22 down, it can have great significance. People who are
23 nine out of ten sure, might be 90% correct to make up
24 the numbers, since I don't remember them exactly.
25 People who are three out of ten sure might be 30%
correct. As long as you're getting confidence at the

2 first identification. Everybody agrees still that
3 confidence at later identifications is influenced by,
4 among other things, the first identification and
5 doesn't have value. But that first identification be
6 it photo or in person, the confidence level is very
7 important, and it would be a definite help at trials
8 both for the innocent and for the prosecutors of the
9 guilty to have that first ID confidence level known
10 about. And do it would be helpful if the Police
11 Department would do something about that. I also
12 don't know why identification proceedings can't be
13 recorded to make especially if they're not double
14 blind to make sure that whatever hints are given are
15 available for everybody to take a look at and even,
16 of course, to have the line up photographed on video
17 would give you a much better idea about whether it's
18 suggested than the simple photographs that we get
19 now. So there are a number of things that can be
20 done to ensure that these important law enforcement
21 tools are not misused so that the innocent are
22 convicted. I also would like to say that we've made
23 recommendations about DNA, which would help not
24 exonerate the innocent, but once again convict the
25 guilty. We've advocated expanding the DNA database.

2 We've advocated better checks on DNA labs, and we've
3 advocated more rights to post-conviction review even
4 after some guilty pleas of those who have been
5 convicted. Some of those things are doubtless state
6 responsibilities more than city responsibilities.
7 But even as an OCME is a ward of the city basically.
8 An OCME could be subjected to more oversight than it
9 is. I would finally like to say that Assembly Bill
10 07029 was not passed. That incorporated a task force
11 recommendations as to identifications and statements,
12 and I would hope that if the Council was thinking
13 about sending a message to Albany it might send a
14 message that 07029 should be resuscitated. Thank
15 you.

16 CHAIRPERSON LANCMAN: Thank you very
17 much. So the million dollar question that I have to
18 ask because you're a sitting judge--

19 JUDGE DWYER: [interposing] Yes, sir.

20 CHAIRPERSON LANCMAN: --for trying cases.
21 You're hearing [coughs] motions to suppress
22 confessions and other evidence. In--in your direct
23 day-to-day observation, do you see that the City of
24 New York that the Police Department is video taping
25

2 the confessions and—and the interrogations? Are you—
3 are you seeing that?

4 JUDGE DWYER: It's hard for me to give
5 you an answer that's up to date because by the time
6 the case comes to trial, especially in a serious
7 case, any confessions were taken two years before.
8 The case that I was talking about I may have
9 mentioned was a 2013 arrest where the police did not
10 videotape the confessions with the DA's office,
11 videotape the second version of the confession. By
12 the way, the attack at trial is certain to be on the
13 behavior of the detectives at the first confession
14 supposedly softening up the defendants for the second
15 confession. That may be true or false, but if the
16 first one had videoed, the jury would know one way or
17 the other. But I can't tell you what's happening in
18 2016.

19 CHAIRPERSON LANCMAN: Right. [coughs] But
20 in the time frame the cases that you're seeing these
21 would be what, 2013, 2014 and 2012?

22 JUDGE DWYER: Yes, and it would be 2015
23 especially from the first half of the year, and I
24 have to say I haven't seen too many recorded police
25

2 interrogations, but again that's kind of dated
3 information.

4 CHAIRPERSON LANCMAN: Right, and just
5 the—the challenge for you as a judge [coughs] in
6 trying to adjudicate claims of the false confession.
7 There's a movie of the confession, et cetera. In
8 the absence of videotaped testimony, is it anything
9 by the he said/she said?

10 JUDGE DWYER: Obviously, there will be
11 other evidence in the case and some persuasive, some
12 circumstantial and not necessarily persuasive. So
13 the absence of the video only leads to he said/she
14 said as to the video—sorry—as to the confession
15 itself. But needless to say, a confession can be
16 incredibly important, and yes in large part it's he
17 said/she said as to how the confession was taken, and
18 some judges may presume the confessions are fine if
19 the police officer gets up and says so. And if a
20 defendant gets on the stand and says I was under
21 pressure, the defendant comes with the baggage of
22 being accused of a serious crime and perhaps having a
23 record, and judges tend to credit the cops, hopefully
24 correctly, but there tends to be a presumption that
25

2 way. It would be much better if they were
3 videotaped.

4 CHAIRPERSON LANCMAN: And just I asked
5 about videotaping—videotaped confession and
6 interrogations. What are you seeing in terms of the
7 Task Force's recommendation—recommendations regarding
8 lineups, photo arrays? Are—are any of those—are you
9 seeing any of those recommendations, you know,
10 playing out in—in cases before you?

11 JUDGE DWYER: The Police Department I
12 think does double blinds some lineups now. I've been
13 at meetings where law enforcement officials have told
14 us about how they've issued these best—best practice
15 guidelines and they're training officers, and that's
16 going to have some effect. I again can't tell you in
17 2016 how much effect it's had. I've certainly seen
18 lots of lineups for photo arrays that were not double
19 blind, but the cases are a little old now.

20 CHAIRPERSON LANCMAN: Uh-huh. Okay.
21 Council Member Gibson, do you have any questions?

22 CHAIRPERSON GIBSON: Thank you, Judge. I
23 think you said everything that we thought you would
24 say, and you made it sound so simple, but yet so
25 difficult to implement. The fact that you are part

2 of the Justice Task Force, a sitting judge and I'm
3 assuming you're New York County?

4 JUDGE DWYER: Yes, I am at the moment.

5 CHAIRPERSON GIBSON: Okay, and you see a
6 subset of cases in New York County. I'm just
7 wondering like have you had any conversations within
8 the Task Force or in general with your fellow
9 colleagues and some of the other counties in the city
10 in relation to this topic?

11 JUDGE DWYER: Well, I've spent most of my
12 time in Brooklyn, actually--

13 CHAIRPERSON GIBSON: [interposing] Okay

14 JUDGE DWYER: --over four years of my six
15 and a half, and I didn't notice any particular
16 different in Brooklyn except that given that that was
17 past, it was even less likely that these procedures
18 would have been implemented when I saw Brooklyn
19 cases. But I certainly haven't seen any dramatic
20 difference on these fronts between Brooklyn and
21 Manhattan, and other individuals I talk from
22 throughout the city don't suggest to me that there's
23 any difference, and we have one police department.
24 And while I'm sure every precinct is difference, the
25 overall conduct I think is pretty consistent.

2 CHAIRPERSON GIBSON: I agree and I think
3 yes we—while we have one police department, I think
4 many in some cases it's dependent upon that
5 individual and how they interpret the procedure, and
6 a lot of it can be an individual's judgement and
7 decision in terms of how a lot of the procedures are
8 actually implement as it relates to interrogations
9 and eyewitness procedures.

10 JUDGE DWYER: Which is why cameras are so
11 helpful.

12 CHAIRPERSON GIBSON: Absolutely. They
13 are mediators. They're good mediators that capture
14 everything from no one's perspective. I call them
15 neutral observers and a very big fan of cameras
16 because I think you know, many instances every
17 individual's behavior usually changes when they're
18 being videotapes, and that's on all sides. Just one
19 question moving forward, and I appreciate your
20 remarks about the city of New York and what we can do
21 as an agency as an administration absent of any
22 stalemate. I'll be light with my words. Any
23 stalemate in Albany, which tends to happen at times
24 when you talk about, you know, police reform and
25 other measures reforming our court. Very challenging

3 to get a lot of those measures passed in Albany, but
4 we certainly never give up. Of the Task Force's
5 recommendations, you've outline many of the items
6 that we can implement as a City Council as a s city.
7 Is there anything else that's not on the Task Force
8 in terms of recommendations that you would like us to
9 consider as a Council?

10 JUDGE DWYER: Well, I don't know to what
11 extent you could impact on the discovery practices of
12 the local DAs. They vary dramatically from county to
13 county. Some counties play it very close to the
14 vest, and will turn over what they have to turn over
15 even if it's thousands of pages about a day and a
16 half before jury selection begins. Some counties
17 will start dealing out at arraignment and continue
18 dealing it out liberally throughout the proceedings.
19 So that the defense has a chance to accommodate to
20 the information. Perhaps plead guilty quickly,
21 investigate defenses that might be revealed by it,
22 talk to witnesses and basically even the scaled a bit
23 if they do go to trial. So anything we could do to
24 promote discovery reform, which Albany so far will
25 not do, would be a very positive thing.

2 CHAIRPERSON GIBSON: Yeah, I thought
3 about the Discovery of—for Justice, the group that
4 has been working with the Legislature. Many of them
5 come out of my county in the Bronx in terms of
6 discovery and what we can do. I appreciate that, and
7 certainly, you know, talk to my colleagues and find
8 out what we can do, but I appreciate your
9 thoughtfulness and certainly your continued
10 recommendations will be helpful for us moving
11 forward.

12 JUDGE DWYER: And we will continue to
13 make recommendations.

14 CHAIRPERSON GIBSON: Thank you very much.
15 We expect that. Thank you very much.

16 JUDGE DWYER: Thank you.

17 CHAIRPERSON LANCMAN: Thank you, Judge.
18 I know that Council Member Andy Cohen has questions.

19 COUNCIL MEMBER COHEN: Thank you, Chair.
20 I—I just wanted to clarify your testimony so I
21 understood exactly. Did you say that it is your
22 experience that NYPD is using double blind lineups in
23 consideration of this reform?

24 JUDGE DWYER: Well, I know that the
25 people who tell the NYPD what the best practices are

2 have endorsed double blind lineups. What they are
3 actually doing at the precinct in 2016 about what
4 they've been told to do, is a little bit, of course,
5 beyond my knowledge.

6 COUNCIL MEMBER COHEN: Oh, okay. I
7 understand that. Thank you very much for your
8 testimony, judge.

9 JUDGE DWYER: Sure.

10 CHAIRPERSON LANCMAN: Well, thank you
11 very much for coming here. We always value our
12 collaboration with the Office of Court Administration
13 and your testimony has been very, very helpful.

14 JUDGE DWYER: Well, thank you very much
15 for having us.

16 CHAIRPERSON LANCMAN: Thank you.

17 JUDGE DWYER: Uh-huh.

18 CHAIRPERSON LANCMAN: Next, we'll hear
19 from representatives of the Brooklyn District
20 Attorney Office and the Bronx District Attorney's
21 Office. This is two days in a row for Vaessa and me
22 with the Bronx District Attorney's Office. Yesterday
23 we had the pleasure of attending the opening of the
24 Special Unit at--at Rikers Island where DA Clark is
25 going to have a permanent presence, which is

2 something we—we advocated for, and—and helped fund.

3 So it's very, very nice. [pause]

4 [coughs] Good morning.

5 CHAIRPERSON LANCMAN: Good morning. If
6 you would raise your right hand, I can swear you in
7 and get down to business. Do you—are you testifying,
8 sir?

9 MALE SPEAKER: [off mic] yes.

10 CHAIRPERSON LANCMAN: Do you swear or
11 affirm that the testimony you're about to give is the
12 truth, the whole truth and nothing but the truth?

13 Yes.

14 CHAIRPERSON LANCMAN: Thank you.
15 Welcome. Please identify yourselves, and if we can—if
16 the sergeant-at-arms could put seven minutes on the
17 clock for—for them, that would be terrific.

18 MARK HALE: Yes, my name is Mark Hale.
19 I'm Assistant District Attorney in Brooklyn at the
20 Brooklyn District Attorney's Office and I currently
21 serve as the Chief of the Conviction Review Unit
22 within the office.

23 JULIAN BOND O'CONNOR: [off mic] Julian
24 O'Connor—[on mic] There we go. Julian Bond
25 O'Connor, Deputy Counsel to the District Attorney of

3 Bronx County, and I am the Executive member that
4 oversees the Conviction Integrity Unit in the Bronx.

5 CHAIRPERSON LANCMAN: Okay, well one of
6 you go first and then we'll just trade off.

7 MARK HALE: Sure. First of all, I want
8 to thank the—the Committee on Courts and Legal
9 Services and the Committee on Public Safety for
10 giving the Brooklyn District Attorney's Office the
11 opportunity to submit this testimony regarding
12 wrongful convictions, and the function of the
13 Brooklyn Conviction Review Unit. I thank you on
14 behalf of myself and of the District Attorney, Mr.
15 Thompson. Brooklyn's Conviction Review Unit [coughs]
16 has since 2014 emerged as a model for the country,
17 and has been recognized by the National Registry of
18 Exonerations as one of three similar internal units
19 responsible for three-quarters of the exonerations
20 nationwide. Last year the Brooklyn District
21 Attorney's Office posted an unprecedented wrongful
22 conviction summit in which the district attorneys and
23 criminal justice organizations from all over the
24 country including the states of Georgia, Illinois,
25 Texas, California, Arizona and I might add the
federal representatives from the District of Columbia

3 came to discuss best practices regarding the
4 implementation of review units and ways to prevent
5 wrongful convictions in the future. Since 2014,
6 reinvestigations have led Brooklyn's criminal or
7 excuse me Conviction Review Unit to join in support
8 of the defendant's motion to vacate a conviction
9 judgment or support in the interest of justice with
10 dismissal charges in 21 cases of wrongful
11 convictions. The unit conducts fair and thorough
12 investigations of possible wrongful convictions and
13 homicides, non-homicide felony cases including
14 robbery, arson, burglary and other felonies. Cases
15 involving actual innocence are our priority.
16 However, we do recognize that in certain cases there
17 are due process violations, which can lead to the
18 corruption of the jury's verdict and mandate vacating
19 of the case. Therefore the unit examines cases of
20 serious due process violations as well where not to
21 complying to actual innocence, factual innocence. At
22 presenting the unit has accepted over 150 cases for
23 full review, and has made a determination in 72 case.
24 Out of those 72, of course, came the 21 exonerations.
25 Now, previously, this was a small unit of only two
assistant district attorneys, but now the Conviction

2 Review Unit is now—and my testimony here says one of
3 the largest. I can say from—from my own experience
4 the largest dedicated prosecutor led unit in the
5 country, a staff of nine veteran--

6 CHAIRPERSON LANCMAN: [interposing] In-
7 in fairness Ken's predecessor gave him a lot of
8 material to work with.

9 MARK HALE: He gave us a start.

10 CHAIRPERSON LANCMAN: He gave us a lot of
11 material to work with.

12 MARK HALE: A fair enough comment, sir.
13 So we have the largest staff in the country in terms
14 of looking at this, and—and that staff does labor
15 intensive work of reviewing those cases. They're
16 often decades old. They take a lot of gathering of-
17 of information that is scattered hither and yon, and
18 often difficult to locate ,and it takes us out of
19 state on many occasions to locate witnesses from
20 cases that again are many, many years old. The
21 success of Brooklyn's Conviction Review Unit has been
22 driven I believe by a change in what we call the
23 ethos. It's changed in the prosecutorial culture
24 that is not purposed on preserving a guilty verdict,
25 but rather on doing justice in all cases. This

3 requires a commitment of significant resources to
4 ensure that the Conviction Review Unit is not just a
5 passing fancy or a novelty, but is a permanent
6 component of our office as this and similar units
7 help to restore confidence in the criminal justice
8 system, and advance the goal of public safety.

9 Brooklyn's Conviction Review Unit I believe stands
10 out for its level of cooperation between reviewing
11 prosecutors and defense attorneys whether they are
12 involved as--as private defense attorneys or involved
13 in one of the units and its organizations as well as
14 its hybrid model of review. In reviewing cases of
15 possible wrongful convictions, we have replaced the
16 traditional adversarial relationship between
17 prosecution and defense with a joint search for the
18 truth. Both parties enter into a mutual cooperation
19 agreement that allows both sides to share information
20 and without fear that the information will be
21 exploited by either. Further, our unit uses both an
22 internal and external review process whereby an
23 Independent Review Panel comprised of three seasoned
24 attorneys with no fiduciary relationship to the
25 district attorney's office, does an independent
review of each case following a recommendation report

3 by the Conviction Review Unit. Independent Review
4 Panel reviews the investigation findings of the unit
5 and often does further fact finding before making an
6 independent recommendation to the district attorney.
7 The district attorney makes the final decision based
8 upon both the recommendations of the Conviction
9 Review Unit, and the Independent Review Panel. Now
10 our investigations have revealed that many varying
11 factors have contributed to the wrongful convictions
12 cleared by the unit including ineffective assistance
13 of defense counsel, false confessions, unreliable
14 witnesses, faulty scientific evidence and failures
15 of police investigations, and prosecution
16 disclosures. With the top-down commitment to
17 ensuring that wrongful convictions did not occur, the
18 Brooklyn District Attorney's Office is committed to
19 training all of our prosecutors regarding lessons
20 learned from past miscarriages of justice, and
21 ensuring that a thorough review of each case is done
22 by a supervisor before proceeding to trial. Our
23 prosecutors are reminded of the immense level of
24 responsibility. They have to do justice at all times
25 as well as the discretionary power that each and
every one of them hold, and understand that the

3 wrongful conviction of an innocent person not only
4 does damage to that individual, but also severely
5 undermines the integrity of our entire criminal
6 justice system. Conviction review units play an
7 essential role in the prosecutor's office and
8 furthers our duty to do justice. I might add to that
9 end we have tried to be of assistance to other units
10 around the country in terms of—of offices around the
11 country in terms of forming such units, and offering
12 any assistance we can, and we continue to cooperate
13 wit those units. I know that my friend here that
14 when they were making the transition, that they
15 sought our help, and—and I hope that what—what we
16 gave them was—was helpful in terms of—of their
17 efforts. You know with Council's support we will
18 continue to build a—a robust unit. We will continue
19 it as a permanent features that works in the pursuit
20 of justice for all of the individuals in Brooklyn.

21 JULIAN BOND O'CONNOR: On behalf of the
22 Bronx DA's Office, I would like to thank the New York
23 City Council for this opportunity to provide
24 information concerning the mission, staffing, sources
25 of cases, standard review, and transparency in

3 reporting for the Bronx DA's Conviction Integrity
4 Unit. In the first few months of taking office,
5 District Attorney Clark created the—the Conviction
6 Integrity Unit, the unit which is dedicated to
7 improving the quality and integrity of prosecutions
8 throughout the Bronx has two important functions.
9 First, the reviews post-judgment claims of actual
10 innocence and wrongful conviction in our most serious
11 cases. The review is generally fact based and
12 extrajudicial. When appropriate the unit thoroughly
13 re-investigates a case, and in select cases where
14 there's been a comprehensive reinvestigation the unit
15 in conjunction with some of the most experienced and
16 skilled assistants throughout the office will make a
17 recommendation to the DA as to where the conviction
18 should stand. Second, the purview of the Conviction
19 Integrity Unit extends forward to policy and best
20 practices. The Conviction Integrity Unit reviews
21 cases in which the office has identified an error,
22 even those under the legal standard or harmless
23 error, and attempts to determine what caused the
24 error in the particular case. Further, the unit
25 assesses whether there are discernible patterns in
errors or types of errors. In this regard, the unit

3 endeavors to understand the environmental, procedural
4 supervisory, systemic or other circumstances
5 contributed to the outcome. Additionally, the unit
6 works closely with executive staff, the file counsel,
7 supervisors, the Legal Training Unit and the Best
8 Practices Committee of the Professional
9 Responsibility Bureau to help implement and follow
10 best practices in current investigations and
11 prosecution of cases. And to ensure compliance with
12 all legal and ethical obligations. The unit also
13 participates in a variety of training programs within
14 the office, and meets with representatives of-of the
15 prosecuting offices as noted by the Brooklyn DA's
16 office, along with innocence organizations and
17 members of the Defense Bar to discuss ways that we
18 can improve the accuracy and quality of convictions.
19 The Conviction Integrity Unit has a potent full-time
20 staff including three seasoned attorneys. The Chief
21 of the unit is a career prosecutor with more than 28
22 years of litigation experience in the Manhattan DA's
23 Office. The other two lawyers have a combined total
24 of 40 years of experience representing indigent
25 clients as criminal defense attorneys through
organizations like the Legal Aid Society, the Office

3 of the Appellate Defenders and the Neighborhood
4 Defender Service of Harlem. Both have worked
5 extensively on exoneration and actual innocence
6 cases. The unit has available to it, detective
7 investigators, and detectives from the NYPD DA Squad
8 and is in the process of hiring a full-time detective
9 investigator who will work exclusively for the
10 Conviction Integrity Unit. The unit reports to me
11 as deputy counsel, and in this regard, it operates
12 independently from other investigations and
13 litigation bureaus in the office. In addition,
14 because all three lawyers come to the unit from
15 outside the Bronx DA's Office, they're able to
16 conduct their investigations and reviews without any
17 pre-existing royalties or bias. The unit accepts
18 cases for review from a wide variety of sources.
19 These include individual defendants and pro se
20 applications, innocence organizations, the Defense
21 Bar, state and federal prosecutors and internal audit
22 where we may find misconduct from law enforcement or
23 counsel under the directive of General Counsel, the
24 police, the courts or the press. The unit strives to
25 be inclusive and will consider reviewing a case so
long as the following criteria are met: The

3 conviction was secured in the Bronx by the Bronx DA's
4 Office. The conviction was for a serious violent
5 felony crime. The defendant is alive. The defendant
6 claims that either (a) he's actually or she is
7 actually innocent of a crime, or any related offense;
8 or (b) there was a serious error that significantly
9 undermines the confidence in the correctness of the
10 conviction. The defendant also identified concrete
11 evidence supporting his or her claim that can be
12 investigated and verified. Furthermore, to ensure
13 that the unit is able to review the greatest number
14 of cases, the following factors will not
15 automatically disqualify a case from consideration.
16 The fact that a defendant pleaded guilty, the
17 defendant did not maintain his innocence from the
18 start. The fact that supporting the defendant's
19 claims are—were either known to him or could have
20 been known or discovered by him or by his attorney
21 with due diligence at the time of the—the trial or
22 the plea. Defendant is no longer incarcerated
23 although cases involving incarcerated defendants will
24 be given priority. The defendant is not willing to
25 be interviewed by the unit, or waive attorney-client

3 privilege. The defendant has previously applied for
4 review within the unit.

5 So while these factors will preclude
6 review--they will not preclude review. They will
7 have to be taken in consideration and weighed against
8 the strength of the evidence supporting the
9 defendant's claim. The Conviction Integrity Unit
10 will recommend to the DA to vacate a conviction when
11 the totality of the evidence established is clearly
12 and convincingly that the defendant is actually
13 innocent or (b) one or more serious significant
14 errors undermines the confidence in the correction of
15 the conviction, or if the totality of the
16 circumstances lead to the conclusion that the
17 conviction was wrongful, and the interest of justice
18 are best served by vacating the judgment. As for
19 transparency, a defendant applies for--to the
20 Conviction Integrity Unit, the unit will notify him
21 or his lawyer in a timely fashion when the case has
22 been--when a decision in a case has been reached and
23 action taken, the defendant will be notified. In
24 addition, the unit will produce a yearly report
25 outlining the number of applications that were
submitted, the number of cases which resulted in a

2 formal re-investigation and the number of cases in
3 which the DA either agreed to vacate, dismiss charges
4 or try a case or stand by a conviction. Sine the
5 inception of the unit in April of this year, the
6 Conviction Integrity Unit has handle a total of 43
7 cases. In one case, the unit conducted a
8 reinvestigation and recommended that the DA agree to
9 vacate the murder conviction. Additionally, the unit
10 has reviewed and declined to conduct reinvestigations
11 in 20 cases. Currently, the unit is comprehensively
12 [bell] reinvestigating at least five cases, and as to
13 the remaining cases, we are still gathering materials
14 and assessing whether a full-scale investigation is
15 warranted. Thank you.

16 CHAIRPERSON LANCMAN: [coughs] Terrific.
17 Thank you very much. I'll just mention that we've
18 been joined by Council Member Chaim Deutsch of
19 Brooklyn. So, I want to focus on the issue of
20 videotaped interrogations and witness identification.
21 I understand from testimony from Brooklyn that false
22 confessions and unreliable witnesses are two of the
23 factors that have popped up quite a bit in your
24 review of-of potential wrongful convictions. What is
25 your experience today with the practice of the NYPD

2 when it comes to videotaping of interrogations of-of
3 cases that you're seeing that are being prosecuted in
4 Brooklyn?

5 MARK HALE: Well, in-in terms of the
6 cases that we in terms of the Conviction Review Unit
7 we're looking at.

8 CHAIRPERSON LANCMAN: No, I understand
9 those are older cases.

10 MARK HALE: They're old cases, but in
11 they're in the portal. (sic)

12 CHAIRPERSON LANCMAN: [interposing] But
13 what can you testify about the current status of-
14 because we've heard different things about the
15 current state of videotaping of interrogations.

16 MARK HALE: Well, understandably since
17 I'm not in that group, I-I don't-I don't have an
18 answer for you in terms of Brooklyn's current
19 experience with the-the number of frequency of video
20 taped confessions. I can tell you that since it is a
21 major issue among many of the cases that we are
22 looking at and reviewing, and exonerating, it-it is
23 often times a point of contention about [coughs] what
24 to believe in terms of the testimony concerning the
25 circumstances of a con-of confession that-that

2 obviously would be alleviated were, in fact, it-it
3 was completely videotaped. That is you wouldn't have
4 to be taking out one party or the other's word for
5 what happened. It wouldn't be a swearing contest to
6 say I-I read him Miranda. No, you didn't him
7 Miranda. It wouldn't be a swearing contest to he
8 beat it out of me. No I didn't beat it out of you.
9 It wouldn't be a swearing contest as he promised me
10 the sun and the moon and the stars, and the other
11 that no, you know, he just came out with it.
12 Obviously it would be a-a lot easier in my job in
13 terms of-of reviewing cases were that-there was that
14 kind of videotaped record.

15 CHAIRPERSON LANCMAN: On the issue of
16 witness identification, the kind of reforms that the
17 Task Force, which at least according to MOCJ, the
18 NYPD is not even today adhering to double blind-the
19 double blind process for example.

20 MARK HALE: Well, the-the-the eyewitness
21 when you're-when you're looking at-at eyewitness
22 testimony, you're trying to determine the reliability
23 of it, and--and frankly a lot of these cases that-
24 that we're talking about that-that I'm reviewing,
25 we're looking at the general reliability of the

2 witnesses. You know we talk about the parameters of-
3 of looking at our cases. We're not talking about
4 just looking at newly discovered evidence, we're
5 talking about reviewing the evidence that was in
6 there, and it is not always the case that you will be
7 able to tell concerning the accuracy of a lineup and
8 the way a lineup was conducted. You won't be able to
9 tell the-the-the accuracy of-of the identification.
10 Very much so you would have to look at this-the
11 circumstances of the actual observation, the actual
12 observation of the incident that is more critical in
13 determining the accuracy or whatever lineup
14 identification came afterwards than the actual pro-
15 procedure of the lineup.

16 CHAIRPERSON LANCMAN: And from the
17 perspective of-of the Bronx I mean what role do you
18 see the-the-the false confessions and
19 misidentification playing in convictions that you are
20 seeing they're wrongly-wrongly obtained?

21 JULIAN BOND O'CONNOR: Well, when I look
22 at the current caseload that we had, and again it's
23 only been 42 cases under our review so far, I would
24 say that we have not had applications that were based
25 on false confessions in that group of 42. And again,

2 as the cases that we're looking at are often 20 years
3 or more old, their practices in regards to videotaped
4 confessions are not in step with whatever is going in
5 NYPD today. When you talk about eye witness
6 identification or the, you know, double blind
7 lineups, I-I can tell you that one of the issues that
8 play in many of the cases that we're evaluating has
9 to do with, you know, stranger identification. So,
10 that is something that has come to play a large part
11 of the reviews within the Conviction Integrity Unit.

12 CHAIRPERSON LANCMAN: Let-let me just say
13 this and then I want to give the other folks an
14 opportunity to ask questions. The work that both of
15 you are doing I-I would assume that the observations
16 that you're making about the causes of the-the
17 wrongful convictions in the cases you're-you're
18 investigating and making decisions on, are-are you-
19 are you sharing this with the rest of your respective
20 offices, and are the assistant district attorneys in-
21 in your offices demanding from the police and from
22 their own investigations [coughs] certain standards
23 and certain practices that would assure them that the
24 convictions they're obtaining today, are not 15, 20
25

2 years from now going to be overturned in some future
3 wrongful conviction unit?

4 JULIAN BOND O'CONNOR: I think in the
5 limited timeframe that we've had in the Bronx we
6 vacated one conviction and, you know, in doing so we
7 performed a root cause analysis and we vacated that
8 conviction on the basis of ineffective assistance of
9 trial counsel. So it wasn't an error that largely
10 fell upon the office itself, but even in evaluating
11 what the office could have done better, there could
12 have been efforts by our office to make an internal
13 decision as to when a case comes in we would look at
14 it and say, hey, every allegation of the alibi, the
15 best practice here even though the case seemingly
16 seemed as if the alibi defense wasn't strong, should
17 be investigated with a level of vigor that wasn't
18 done at the time of that initial—that initial case
19 came in. So there was a lesson that came out of it,
20 and that was something that was shared throughout the
21 office, and it's something that's built into the
22 training for young assistants going forward.

23 CHAIRPERSON LANCMAN: Okay, Mr. Hale.

24 MARK HALE: Yeah, in terms—in terms of
25 Brooklyn, you know, in identifying what some of the

2 factors were that led to to wrongful convictions in
3 terms of like I said generally speaking false
4 confessions are erroneous identification, and a poor
5 and worthy witness or bad scientific evidence, the
6 real actual cause is that the the in the evaluation
7 of the cases that there was not rigorous evaluation
8 of all those factors in the case, and so the
9 discretion to bring charges to maintain charges to
10 continue to defend the the convictions after the
11 chargers were sustained by a trial jury was, in fact,
12 faulty. So what we are really looking at in terms of
13 our training is is making our our prosecutors much
14 more rigorous about their evaluation of these cases
15 and trying to determine what exactly do they have
16 confidence in the evidence that they are presenting
17 to a jury and asking the jury to rely upon it beyond
18 a reasonable doubt to convict. And that is where
19 we're trying to and this is in addition to just, you
20 know, general training about the ethics of of
21 prosecution. We're talking about the nuts and bolts
22 of the practicality. Not just gathering evidence
23 that makes you win, but gathering evidence, which you
24 have confidence will be justice.

3 CHAIRPERSON LANCMAN: Well, let me ask
4 you. You in particular from your approach as the-
5 the-the Conviction Integrity Unit, see the importance
6 of videotaped confessions, and where you assign that
7 important relative to other people I don't know, but
8 there is some importance to it. You know the Task
9 Force recommendations that-that confessions or
10 interrogations be videotaped. Would you agree that
11 if a case is brought to the district attorney's
12 office, and there is a confession and it is not
13 videotaped or-at all or it's not videotaped in
14 conformance with the Task Force's recommendations,
15 that that this a red flag that at least merits
16 further inquiry from your office as to whether or not
17 this confession or this lineup or this, you know,
18 photo identification is legit?

19 MARK HALE: It should definitely enter
20 into the-the totality of the circumstances when you
21 are evaluating the strength of the case, and-and
22 deciding whether to-to bring or maintain the charges,
23 that there's-there's no question about that. Is it a
24 disqualifying factor? Not necessarily, and I think
25 you have to look at again the totality of the
circumstances and the thoroughness of the

2 investigation. And—and, you know, it—it is easy to—
3 to pinpoint these things and say well, it's—it's
4 somebody's fault, and ultimately if you're talking
5 about the fault, you can't necessarily ascribe to the
6 police because the police can—can conduct
7 investigations and they can make arrests. But the
8 only way that that—that whatever they do equals a
9 convictions is by the actions of the prosecutor. So
10 it's really—I'll be honest—it's on the prosecutors to
11 which evidence that they will accept as the basis
12 for—for their prosecution and—and perhaps the
13 conviction, and whether they have confidence in that,
14 and—and certainly you would look at the circumstances
15 of—of—of a—a—a confession, and the—there's no doubt
16 that you would want to have any evidence, which—which
17 removes doubt, as it were, in—in pursuing your—your—
18 your case and if, in fact, it showed the perhaps you
19 should not pursue the case, then you want to have
20 that information, too.

21 CHAIRPERSON LANCMAN: Okay, Council
22 Member Gibson.

23 CHAIRPERSON GIBSON: Good afternoon,
24 gentlemen.

25 MARK HALE: Than you.

3 CHAIRPERSON GIBSON: Thank you so much
4 for being here. I certainly want to thank your
5 respective district attorneys, DA Ken Thompson and DA
6 Darcel Clark, and I appreciate your presence here,
7 and certainly your testimony and, you know, being
8 that DA Clark is one of our freshman DAs, I want to
9 thank DA Thompson and his staff for helping with her
10 transition, and even with establishing the Conviction
11 Integrity Unit, just several months old, she's
12 already vacated one of her first cases of an
13 individual exonerated for a murder conviction. So, I
14 want to thank both of you, and thank your principal
15 for helping the Bronx District Attorney with a smooth
16 transition. I just had a couple of questions, and a
17 lot of it you really outlined in both of your
18 testimonies. I wanted to find out with both of your
19 units in reviewing any cases that come, you know,
20 that you're looking at, what is the look back? ADA
21 O'Connor, you talked about 20 years. So do you guy
22 look at every single case that's been prosecuted in
23 the office, or is there a timeframe that you
24 identify?

25 JULIAN BOND O'CONNOR: Well, our current
procedure is that anyone that had a case within the

3 office that wants to apply for review can apply for
4 review. So when we came in, there was an application
5 that was made by various pro se defendants, and we
6 had innocence organizations, and also members of the
7 private bar who came to us almost in the postures of
8 a-a 440, which is a post-conviction motion, but with
9 papers detailing all of the evidence that they have
10 accumulated that they believe establishes either
11 actual innocence or a wrongful conviction. So we
12 took those cases and we just went through them one by
13 one, and as we have, as I said before, a staff. In
14 the beginning it was two attorneys, but now it's
15 three going through those applications, and looking
16 at it as a tiered process. There are some that
17 screened initially, and they didn't lay grounds where
18 you could actually investigate or verify the facts
19 that they have articulated. There was another pool
20 where we were able to get the files, look at the
21 transcript from top to bottom and start a lower level
22 investigation, and then decide if they were going
23 onto a further investigation where we're actually
24 sending out officers on the ground level to
25 reinvestigate the case in full. So I think that's
what the process looks like, and as I said, our cases

2 came from—they came from the—the defendant's
3 themselves and either through organizations or
4 members of the private bar.

5 CHAIRPERSON GIBSON: So you mentioned
6 that they would have to apply for a review. So are
7 there any instances like that. Is there an approval
8 process to get to that? Is there like a burden that
9 has to be met in order for the review to happen or
10 begin?

11 JULIAN BOND O'CONNOR: And when they make
12 their application, you know, we've laid out kind of
13 the fact or not the facts that we want, but the
14 requirements for review.

15 CHAIRPERSON GIBSON: Factors, right.

16 JULIAN BOND O'CONNOR: And generally, if
17 it's a pro se litigant, you know, we will in writing
18 correspond with them to lay out the things that we
19 would need to further review their case. But when
20 it's us—when there's counsel assigned, the process is
21 a little bit smoother because generally they provide
22 the materials almost in the form of the 440 motion
23 materials that we could then review to get a—a fresh
24 start at a looking at person's conviction.

2 CHAIRPERSON GIBSON: Okay, and you also
3 talked about an internal audit. So is that a
4 separate process from those individuals that actually
5 put forth the application for review, or you also
6 have an internal audit process as well?

7 JULIAN BOND O'CONNOR: Yes. So, the
8 post-conviction is reviewed as they, you know, kind
9 of like the back end of the conviction integrity
10 work, but on the—you know, on the front end looking
11 at things prospectively, we started a Professional
12 Responsibility Bureau, and that person in conjunction
13 with our Conviction Integrity Unit is going—will go
14 through the cases that have either gone through
15 appeals or cases where there have been allegations of
16 wrongful convictions, and start to look for patterns
17 internally. And then from that review, part of the
18 process for us to pull out what lessons there are to
19 improve the practice within our office.

20 CHAIRPERSON GIBSON: Okay, you mentioned
21 professional responsibility review. Is that a unit
22 or a subunit under the--?

23 JULIAN BOND O'CONNOR: It's a—it's a
24 separate bureau that's newly formed, and it's really,
25 to deal with matters of, you know, ethics and best

1 practices, and training for the entire office,
2 because often times, you know, you'll hear that there
3 have been allegations that a--let's say a prosecutor
4 didn't turn over discovery in a timely manner, and
5 it--and it resulted in a disastrous outcome for an
6 individual. We're building into our office a
7 mechanism to deal with those claims. So that we can
8 either, if necessary, institute an internal
9 discipline reported outside of the organization to
10 the Disciplinary Committee or use it as a training
11 opportunity for the entire office.
12

13 CHAIRPERSON GIBSON: Okay, and also in
14 your testimony, you described five different factors
15 and criteria that needs to be met in order for the
16 unit to be inclusive and consider reviewing a case.

17 JULIAN BOND O'CONNOR: Yes.

18 CHAIRPERSON GIBSON: In each case does
19 all five criteria have to be met in order for that
20 review to happen?

21 JULIAN BOND O'CONNOR: No, we're--we're--
22 we're flexible--

23 CHAIRPERSON GIBSON: [interposing] Okay.

24 JULIAN BOND O'CONNOR: --in what we will
25 need in order to review a case, but I think just

2 outlining those five factors gives us a good starting
3 point.

4 CHAIRPERSON GIBSON: Okay, that makes
5 sense.

6 JULIAN BOND O'CONNOR: And I wanted to
7 ask and in—in particular I mean DA Thompson has been
8 hiring a lot of staff and DA Clark is now hiring,
9 with all of the incoming ADAs to their staff, is
10 there any part of the training—I think you talked a
11 little bit about it, ADA Hale, is there any part of
12 the component of orientation or training for new ADAs
13 that focuses on preventing wrongful convictions? Any
14 curriculum?

15 MARK HALE: Yes, there is [coughs].

16 CHAIRPERSON GIBSON: Okay.

17 MARK HALE: In fact, I—I—I address the
18 incoming ADAs and—and—and speak to them very strongly
19 about the factors that—that—that end up in wrongful
20 convictions and, of course, they're just starting
21 out. They don't necessarily understand all the ins
22 and outs of trial work as—as it progresses, but
23 there's a strong emphasis that—that, you know, about
24 this—this change in attitude, this change in ethos
25 that—that, you know, our job is now—and—and this is

1 sometimes difficult because people that—that get
2 attracted to—to our line of work are highly
3 competitive people. Trial work is a highly
4 competitive environment, and competitive people if—if
5 that's their background, if that's what they want to
6 do, the desire often is to—to win more times than you
7 lose, but that's why you get into this sort of thing.
8 But the idea that—that it is—it is engrained from the
9 very beginning that the—that the prosecutor's job is—
10 is not just to secure convictions. It's not just to
11 win. It's not just to count wins and losses, but
12 it's to do justice, and that sometimes justice is
13 dismissing the case. Sometimes justice is not
14 bringing the case. Sometimes justice is losing the
15 case in front of the jury because that's the way it
16 should be. So, you know, it—the idea, what we're
17 trying to engrain is not just the idea that you—you
18 ethically practice it as a—a prosecutor. Whether you
19 prosecute with the right goal in mind, and that's to
20 do justice always, and justice does not often equate
21 to just wins and losses. Now to that end, you know,
22 prosecutor's offices generally are, and you hear this
23 every time the election cycle comes up because, you
24 know, what's your conviction rate? What's your
25

2 conviction rate? You know, your conviction rate is
3 not a rate at which you're doing justice. It's—it's
4 sort of an artificial thing. It—it doesn't tell you
5 how good a job you're doing in terms of justice. So,
6 I—I think the emphasis that we try to—to support
7 among other things, the evaluation of cases, the fair
8 evaluation of cases, the—the enforcement of ethical
9 obligations is—is the very idea that there are goals
10 through all of those things is to do justice, and
11 justice does not always equate to just winning.

12 CHAIRPERSON GIBSON: Uh-huh. I just have
13 one final question before we get to other colleagues.
14 Wanted to find out with both of your units the
15 relationship that your staff and team have with the
16 defense team. So the defense attorneys that are
17 coming forth doing the application for review of
18 their clients' cases what is that relationship like
19 and do you have any best practices or any
20 recommendations that you could share that have been
21 helpful, or even some, you know, deficiency that you
22 may identify where we could improve that process?

23 MARK HALE: Well, we—we invite obviously
24 the defense counsel, if—if there is one to—to meet
25 with us directly. We at that time lay out what—what

3 we intend to do in terms of our investigation. We
4 invite them to enter into a cooperative-cooperative
5 agreement in terms of that investigation. Now, that
6 includes give and take on both sides in which we will
7 share with them everything that we generate during
8 the course of our investigation. In return, they
9 will share with us everything they have generated
10 during the course of their investigation, and the
11 investigation going forward in some situations we
12 will have both my prosecutor and the defense
13 attorneys sitting down and interviewing a witness.
14 If-if that is at all practical, we will be doing it
15 jointly. Now, the idea behind that is-is that-that
16 rather than the traditional adversarial process and-
17 and listen the traditional adversarial process has-
18 has built up years and years and years of adversarial
19 distrust. You know, we're trying to break down that
20 wall by doing this. The idea that two cooperative
21 investigations. There are-one cooperative
22 investigation is better than-than two parallel
23 investigations that may be working in different
24 directions. It's all part of the idea I think that
25 when-when we do this is-is to-to try to install among
the-the petitioners and-and the-the defense bar that

3 we can, in fact, be trusted that we are serious about
4 this self-examination that we are interested in doing
5 justice, and not just maintaining our convictions.
6 You know, there—and that flies in the face of a lot
7 of history in terms of when these cases were—were
8 appealed and when they were—went through various
9 post-conviction motions that it was an adversarial
10 process in—in which, you know, we were going to
11 uphold the conviction. No matter what, they were
12 going to try and overturn the conviction no matter
13 what. This is again outside of that area. This is
14 actually judicial. So we'd like there to be an
15 atmosphere that we're all on the same page, and that
16 we want to get to the same place even though we might
17 ultimately not agree one with another, so that at
18 least we've—we've done a thorough and open
19 investigation that—that leads our ultimate decision
20 to be one that—that does justice.

21 CHAIRPERSON GIBSON: Right. Well, thank
22 you so much, and I appreciate both of your district
23 attorneys and their efforts to really continue the
24 conversations. Your offices have the ability to
25 really give many individuals and their families hope
for a new life, and really for a better opportunity,

2 a system that may have wronged them, and they now
3 have a chance of restoration, and so I can't
4 emphasize that enough that, you know, you play a
5 major role in this conversation, and I really hope
6 that, you know, moving forward we continue to have a
7 dialogue and conversation especially around the
8 investigations of law enforcement, technology,
9 science training, interrogations, eye witness. I
10 mean everything. This is the information that's
11 gathered for your offices to prosecute. So I
12 appreciate the presence and the leadership of both DA
13 Thompson and DA Clark. It's not easy to have some of
14 these very delicate conversations, but they have to
15 happen, and the fact that we exonerees here with us
16 today we know that conversation must continue. So I
17 appreciate your work. I applaud both of your
18 offices, and look forward to working with you moving
19 forward ,and please as we get to budget, let us know
20 what we can do to further support your effort.
21 That's always an ongoing conversation. Your
22 principals know that I will always be supportive of
23 any effort to make sure that we can reduce any
24 likelihood of wrongful convictions in this city. So
25 thank you so much.

2 MARK HALE: Well, just-just to that end,
3 I-I would say that the-the-the major-the major way,
4 and which you talked in-in the opening about this
5 about the number of exonerations having increase.
6 And that doesn't mean that suddenly there's more
7 wrongful convictions. That just means that there's
8 more people looking for them, and in order to look
9 for them and-and really do a complete job on this,
10 and-and one of the things that I think makes what
11 we're doing in Brooklyn special and what-what Mr.
12 Thompson was committed to is throwing the-the-the
13 resources at it. The-the number of people and-and
14 the-the number of-of-the expenditures that we can
15 make to get to the bottom of all these things, and-
16 and I think that is probably, you know, the most
17 important thing is not that you can possibly
18 eliminate or correct all the past wrongful
19 convictions, but if you're not looking for them and
20 you're not looking for them with the-with the-the-the
21 proper resources, you never will find them and you
22 never will correct them.

23 CHAIRPERSON LANCMAN: Council member Andy
24 Cohen.

2 COUNCIL MEMBER COHEN: Thank you, Chair.

3 I—I do want to echo the comments of Chair Gibson. I
4 think both of your offices are really to be commended
5 for coming here today, and testifying. I think that
6 that really speaks to the commitment of—of both of
7 your offices in this area. So I'm—I'm very
8 appreciate of that. I thought the testimony was very
9 candid, and I found that to be very helpful. I—I
10 know DA Clark and I'm a big fan already, and—and I
11 followed DA Thompson's commitment in this area in the
12 media. So again, I think both of your offices are
13 really to be commended on—on this. But I—I am
14 curious, and again about this—about this double blind
15 identification. Is it—it is the opinion of your
16 offices. I mean I don't know if there's a stated
17 policy, but is it—is it your opinion that—that it is
18 the best practice to use double blind lineups and
19 photo arrays?

20 MARK HALE: I don't know that we have an
21 opinion on that—on that yet. It's—it's one of these
22 thing I—I think that the—I was going to say the jury
23 is still out. That's probably the wrong thing to
24 say, but it is still something that is under
25 examination as to whether it—it is most effective

2 not-not just in terms of-of-of police procedure, but
3 whether it-it, in fact, is-is functional. I-I am
4 concerned about, you know, how we balance the
5 confidence level with the burden or proof. In other
6 words, if somebody says I'm 95% certain this is
7 person, okay that-that's great, and most groups will
8 say that means they're pretty certain. But where
9 does fall into-to admittedly our-our-our amorphous
10 sort of standard of beyond a reasonable doubt. I-I
11 mean where-where does it fit in with that, and-and I
12 think that in consideration of these sort of things
13 that there has to be a lot more thought given to
14 exactly how it comports with the burden of proof, and
15 what you have to prove or not prove before a jury.
16 Because you can sit there and say that any level of-
17 of-of indecision be it one percent, be it five
18 percent is something that's--

19 COUNCIL MEMBER COHEN: [interposing]

20 Yeah, but I think you're referring to the level of
21 confidence of whereas--

22 MARK HALE: [interposing] Sure.

23 COUNCIL MEMBER COHEN: --and there's-
24 there's really no-there's no risk of contamination if
25 the person conducting the--

2 MARK HALE: [interposing] No, understand-
3 understandably, understandably, and like I said,
4 these are all things that are still being looked at,
5 and I don't know that-that-that Brooklyn has a
6 position on that yet, and I-I think that-that this is
7 still something that's being looked on-looked at.

8 JULIAN BOND O'CONNOR: In the Bronx, I
9 can tell you that we have not, you know, crafted a
10 position on double blind lineups, and I can't comment
11 on the resources available to NYPD to-to make that
12 happen, but just in a practical consideration, you
13 know, one could look at it and say well, would it
14 hurt. And so from that perspective, I don't know
15 that it would hurt cases, and I don't know the
16 practical realities of making it happen, but the
17 office has not taken a position on it.

18 COUNCIL MEMBER COHEN: I would encourage
19 both of your offices to maybe consider taking a
20 position on it because I think that, you know, your-
21 both offices are leaders on this in the city, and I
22 think that really there's an opportunity to be heard
23 there, and I think that it would have a lot of
24 credibility. Ms. Shockley, (sic) I'm going to ask
25 questions about your units. I don't know if it's

2 critical or not, but I don't know how widespread
3 conviction review units are across, you know, across
4 the city, across the state and across the country,
5 and that's my first question, and the—what about the
6 use of—of third parties to review convictions. I
7 mean ultimately it's still the DA reviewing their own
8 convictions and, in fact, I was not really sure I
9 understood the testimony from the Bronx DA's Office
10 about in addition because all three lawyers come from
11 units outside of the district attorney's office.
12 Where—where do they come from.

13 JULIAN BOND O'CONNOR: So to—to make that
14 point a little bit more clear, normally when you've
15 seen Conviction Integrity Units they've been senior
16 trial assistants or appellate lawyers within a
17 district attorney office who worked inside of that
18 office in a unit dedicated to reviewing cases of
19 wrongful conviction or actual innocence. What we've
20 done that's been a little bit different is our unit
21 has been formed by attorneys. One attorney came from
22 the Manhattan DA's office. Another attorney came
23 from the Office of the Appellate Defender, and
24 another attorney who has done post-conviction work
25 who I think was Deputy Chief at OAD for awhile as

2 well, came to our office to work on those conviction
3 review matters. So this is one of the few times
4 where you have defense attorneys actually reviewing
5 conviction integrity cases within the office of the
6 DA, and you have someone who is a lifetime prosecutor
7 who's not from that office. So it really preserves
8 the sense of independence where they're not worried
9 about what the colleagues or the culture inside the
10 office would view of them because there is the idea
11 that anybody who is working on conviction integrity
12 matters is kind of like, you know, an IAB in the
13 Police Department.

14 COUNCIL MEMBER COHEN: So I-it's your-
15 your-your testimony that because they don't-the
16 people in this unit don't have a relationship with
17 the other ADAs because they-they didn't come from
18 there, but they're not going to feel bad about
19 overturning the convictions of one of their
20 colleagues?

21 JULIAN BOND O'CONNOR: Well, I think
22 it's-it's not only-it doesn't speak to the culture of
23 within the office, but if-if I was a defendant, if I
24 was someone who's making an application to this
25 office, and I knew someone was a defense attorney

2 like Barry Scheck was now reviewing my claim of
3 actual innocence, that means something to me. Thank
4 you.

5 COUNCIL MEMBER COHEN: Thank you, Chair.

6 CHAIRPERSON LANCMAN: Yeah, Council
7 Member Chaim Deutsch.

8 COUNCIL MEMBER DEUTSCH: Thank you.

9 Yeah, so my question is is there a—are there—is there
10 a re-examination process to review a case after a
11 person was—is arrested, and if it was a lawful
12 arrest? So before it gets to any type of conviction
13 or not, is there a process that someone can come to
14 the district attorney's office to re-examine and
15 review a case that where she feels like that it was
16 unlawful arrest?

17 MARK HALE: Are you talking about a
18 wrongful arrest or an arrest that resulted in a
19 conviction or a pending case.

20 COUNCIL MEMBER DEUTSCH: Well, okay, so I
21 have a constituent that came into my office about a
22 week ago, and he feels like—he—he feels--he was
23 arrested, and it wasn't—it was an arrest that needed—
24 needed to be reviewed because he feels like it's—it
25 was an unlawful—unlawful arrest, not by an officer.

2 Not by saying that the officer did it unlawfully, but
3 their evidence, there wasn't enough evidence he feels
4 that--that he could be innocent because there were no
5 cameras, there was--there was no cameras there, and it
6 was the complainant's word against his word.

7 MARK HALE: Uh-huh.

8 COUNCIL MEMBER DEUTSCH: So in that case
9 there was an arrest made, but he feels like that he
10 shouldn't-- He went to court six times already, and
11 it was postponed six times, and he feels that he's
12 innocent. So, he did go through the district
13 attorney's office--

14 MARK HALE: [interposing] Yes.

15 COUNCIL MEMBER DEUTSCH: --and usually, a
16 person like that that they would go back to the--to
17 the police precinct or the district attorney ore
18 anyone else, people would tell him go--go speak to the
19 judge. So is there a process that's someone--a review
20 process that someone can go back to the district
21 attorney and say listen I feel I'm really innocent.
22 This case was--was postponed already six times, and I
23 have been here six times, and--and had this case
24 reviewed, and if you do have that process, who--and
25

2 this distract attorney--this is in Brooklyn--can he or
3 she contact?

4 MARK HALE: And--and this person is
5 represented by counsel?

6 COUNCIL MEMBER DEUTSCH: Yes.

7 MARK HALE: That's what the attorney is
8 there for. The attorney should approach the district
9 attorney's office if they feel the group (sic) was
10 insufficient, and that the--the assistant who is
11 handling the case will discuss it, and they will run
12 it by a supervisor, and they'll whether it's a case
13 that they should maintain or not maintain. I just
14 caution you because we get petitions all the time
15 from people that are claiming that they are innocent
16 or that the evidence is deficient. That is not
17 always necessarily the case and, in fact, the--the
18 whole process of trying the case is to determine the
19 reliability of the evidence, and to see whether it's--
20 it's sufficient to prove guilt or it's insufficient
21 to prove guilt. Now, as a threshold--as a threshold,
22 prosecutors look at any case, and they should either
23 be evaluating it saying is this a case that I believe
24 in? Is this a case that I believe proves guilt
25 beyond a reasonable doubt? Is this a case that I

2 should keep an maintain? Even if the police have
3 faded with it, should I keep on going with it?
4 Should I keep ongoing with these charges? In that
5 regard, once the case has started, the defendant, the
6 person that's been arrested, they—they get an
7 attorney. It becomes that attorney's job at that
8 point to be mouthpiece. The—the litigant should
9 never, never, never go directly to the district
10 attorney.

11 JULIAN BOND O'CONNOR: And the district
12 attorney cannot talk to that defendant while that
13 person is represented without the lawyer present
14 because that would run afoul of that person's
15 Constitutional rights. So if—if that individual is
16 interested in talking to the district attorney, or
17 the assigned ADA in that office, he or she would have
18 to come with their attorney, and that attorney would
19 have to advise them or walk them through the process
20 of sitting down and having that conversation with the
21 district attorney's office about their case.

22 MARK HALE: But the person—the person the
23 attorney would go to would be the assistant that was
24 handling the case.

2 COUNCIL MEMBER DEUTSCH: So he request,
3 the Legal Aid? He has the Legal Aid?

4 MARK HALE: Who's Legal Aid lawyer? The
5 Legal Aid lawyer can go to the prosecutor and say,
6 hey, I need you to talk about this. Do you think
7 this, that and the other thing?

8 COUNCIL MEMBER DEUTSCH: They would have
9 access to go to the—to the district attorney and to
10 sit down and review the case with them?

11 MARK HALE: Right, which—which—which may
12 or may or not happen, but, you know, that—that's—
13 that's why the—that's why the attorney is there.

14 COUNCIL MEMBER DEUTSCH: So, so that's my
15 question. So, it may or may not happen. So is there
16 any part in the district attorney's office that if a
17 counsel would like to meet with someone at the
18 district attorney's office to review a case, that
19 that should happen before it may go to a conviction,
20 and then be going to go back to the hearing today,
21 and say that this conviction was—needed to be
22 reviewed. It was an unlawful conviction or whatever
23 the case is. So is there anyone in the district
24 attorney's office that if counsel requests to meet
25 someone in the district attorney's office to review a

2 case, that someone has already gone down six times
3 before and it was postponed.

4 JULIAN BOND O'CONNOR: I think—I think
5 the heart of your matter requires that the defense
6 attorney, whether it's Legal Aid or—or a private
7 person she needs to make a meeting with the assigned
8 assistant on that constituent's case. Those two have
9 to have a conversation that's not important on the
10 record in order for that person to really flesh out
11 what his client is articulating that could be the
12 grounds to establish the innocence of that person,
13 and then that [bell] assistant can make a
14 determination about the case going forward.

15 COUNCIL MEMBER DEUTSCH: Okay, if that
16 doesn't happen, is there an oversight within the
17 district attorney's office that he could call or she
18 could call and say listen I want—

19 JULIAN BOND O'CONNOR: [interposing] It
20 would be the supervisor of that individual assistant.
21 That would be the oversight.

22 COUNCIL MEMBER DEUTSCH: Alright.

23 JULIAN BOND O'CONNOR: Okay.

24 COUNCIL MEMBER DEUTSCH: Alright, thank
25 you.

2 COUNCIL MEMBER COHEN: Thank you very
3 much. Thank you for sharing your testimony with us,
4 and for taking the time to be here. Thank you.

5 MARK HALE: Thank you.

6 COUNCIL MEMBER COHEN: Alright, next we
7 will have the Innocence Project including two
8 individuals who were wrongfully convicted. So,
9 Barry, you and your folks are up. I have Dr.
10 Jennifer Barashek, Dr. Jennifer Dysart? Come up.
11 Chief William Brooks of the Norwood Police
12 Department; Dr. Saul Kassin of John College Criminal
13 Justice; John Tankleff (sic) and Johnny Copier.
14 [pause] And can you just make sure everybody has got
15 a chair? Can you just make sure everybody's got a
16 chair. Thank you very much. Plenty room. Everyone
17 gets a seat at the table. We've just got to squish
18 you there. Sir, just give them one of these real
19 chairs. We're getting a real chair. [pause]
20 Alright, let's get sworn and get down to business. Do
21 you swear or affirm that the testimony you're about
22 to give is the truth, the whole truth, and nothing
23 but the truth.

24 PANEL MEMBERS: I do.
25

2 CHAIRPERSON LANCMAN: Terrific. I know
3 that two-[pause] Sorry. I know that two of our
4 exonerees have--have got to run. So if that's
5 alright, they'll do their thing, and then Barry,
6 we'll--we'll go to you. How is that?

7 [off mic]

8 CHAIRPERSON LANCMAN: Hit the button.

9 MALE SPEAKER: I'm the least important.
10 I thin that the experts that we've brought in here,
11 the leading experts in the country in the area of
12 false confessions and eyewitness. You should hear
13 from them. So I'll be the last. Terrific. Okay.
14 So Mr. John Copier (sp?) Good. Thank you, and let's
15 do five minutes on the clock.

16 JOHN COPIER: Thank you very much for
17 allowing me to speak today. When I was 18 years old,
18 I was arrested, taken to a police precinct and
19 basically physically beaten by detectives to make a
20 false confession. I did 25 years out of that when I
21 was 18 due to failure of investigation. Back then,
22 if anyone would have investigated my case, this
23 probably would have never happened. But more so,
24 more importantly why I'm here today is because if
25 there as any cameras available back then to see the

1 behavior of what was taking place with this
2 detective, I would have never made that false
3 confession especially when he was threatening to kill
4 me. Now, the reason why I feel this is so important
5 is because it's just not about having a camera
6 filming during the interrogation. For me, I believe
7 it—it all started throughout the behavior process or
8 the training process of how police officers come to
9 think about it. Because if you change their mindset,
10 you change their behavior, and if you change their
11 behavior, you change the result of what took place
12 for me 25 years ago. So that needs to change, but
13 more importantly, I'm requesting, that I truly
14 believe that one camera in an interrogation is not
15 going to stop this because it's easy for a detective
16 to just take an individual to another room, beat him
17 up over there, and bring him back to the
18 interrogation and put him front of a camera, and then
19 still him say what he wants to say. For me, I
20 believe it's more important that you place cameras
21 all over the police precincts in every precinct in
22 New York City because that's going to change every
23 police officer and detective behavior on how they're
24 going to conduct themselves. So out of public
25

2 safety, out of fairness, when we had Mayor Giuliani
3 in office he constituted to give police officer 72
4 hours before they can make a statement. All I'm
5 saying out of fairness is that either you give
6 everyone in New York City the same availability and
7 given them 72 hours to have an attorney before they
8 can give a statement, or you take that completely
9 away and make it fair between officers and citizens
10 or you put cameras in every single room. Because I
11 think that speaks volumes to society where you're
12 saying that police officers are gods. They can do
13 whatever they want, and they can get away with
14 whatever they want. I'm not saying that all police
15 officers are bad because I have friends that are
16 police officers, but the—the ones that indulge in
17 this type of behavior is not right, and that's why
18 I'm here today. I'm just beseeching and imploring
19 for anyone of you that you're seriously going to
20 consider this, and take this seriously out of
21 fairness. This is something that needs to be
22 constituted. Thank you very much.

23 CHAIRPERSON LANCMAN: Thank you. Mr.
24 Tanco.

2 JUAN TANKLEFF: Thank you Council Members
3 for having me here today, and giving me the
4 opportunity to testify. I served 6,338 days for a
5 crime that I did not commit. My case was through
6 Suffolk County and in 1988 Suffolk County actually
7 had a policy and procedure in place where they could
8 have electronically recorded the interview and the
9 interrogation. They chose not to. In 2008, I was
10 exonerated ,and 2008 was the first time I had an
11 opportunity to testify about mandatory electronic
12 recording of interviews and interrogations, which was
13 before then Senator Eric Schneiderman when he held
14 wrongful conviction hearings up in Harlem.
15 Unfortunately, that was not the first time, but I'm
16 hoping today will be the last time I ever have to
17 testify about the need for electronic recording of
18 interview interrogations. Quite often throughout the
19 day, I've heard the NYPD isn't here. I can answer
20 that question pretty simply. They're afraid of your
21 questions. They don't want to be put under oath.
22 They don't want the truth to come out, and they don't
23 want a policy or recording interviews and
24 interrogations put in place, and it's pretty simple.
25 A few years ago I was at the New York City Bar

1 Association where a detective union representative
2 said, We don't want the interrogations videotaped
3 because we don't want suspects to know what's going
4 on in that room. I think the more important question
5 is if you're not doing anything wrong, what are you
6 afraid of? You know, as the chief can I think verify
7 because I've heard him speak before, law enforcement
8 agencies around the country when they implement this
9 program, initially disfavored ,but in the end there's
10 probably a 99% favorable rating. It protects
11 everyone involved. I've also heard that it costs too
12 much. Is almost 17-1/2 years of my life not worth a
13 simple recording? It could have been audio
14 recording. It could have been a videotape recording
15 and a report. What frustrates me is that a few years
16 ago the Queens County DA's Office implemented- I
17 think it's called the QCBA Program where they started
18 conducting interviews pre-indictments where they were
19 getting statements from suspects. And I find it very
20 interesting that they were able to come up wit the
21 resources, and implement a policy to record these
22 pre-indictment questioning, but they couldn't
23 implement it for interviews and interrogations. Why
24 is it today that in 2016 in the State of New York, in
25

2 the City of New York we still don't have mandatory
3 reporting of interviews and interrogations. We know
4 it's effective. We know it protects innocent people.
5 We know it also saves money, and for those
6 politicians who say it costs money, no it actually
7 saves money in the end, and it's about time that
8 everyone including the NYPD, the DA's offices takes a
9 step back and says this is the right thing to do.
10 And just as a side note since we are on the record
11 here, Judge Dwyer was an assistant DA about six or
12 seven years ago, and Touro Law School held an event
13 on wrongful convictions where my case was discussed,
14 and he was talking about wrongful convictions back
15 then. So I do give him a lot of credit for
16 implementing, and trying to make some changes for the
17 system, and I thank you again for the opportunity to
18 testify, and I look forward to this being the last
19 time I testify before any hearing, the New York State
20 Assembly, the New York State Senate with counsel, and
21 we make significant changes.

22 CHAIRPERSON LANCMAN: Amen. So, among
23 the—the four experts, the experts whoever wishes to
24 go first. Thank you both very much.

3 SAUL KASSIN: Hi. My name is Saul Kassin.
4 I'm distinguished professor of Psychology at John Jay
5 College of Criminal Justice. Thank you for the
6 opportunity to be here and speak. I'd like to say
7 that-and-and I think this is important. I don't
8 think we've even scratched the surface to the problem
9 of false confessions of what it entails. Every story
10 of a false confession is not just a story that gets
11 at the question of why in God's name did an innocent
12 person confess to a crime he or she didn't commit?
13 It's a second story, and the second storyline is how
14 come the prosecutor, the judge, the jury the Appeals
15 Court all missed it? And that's an important part of
16 really a single story. I'd like to say first that
17 there is an extensive now scientific literature on
18 the psychology of confessions. That literature
19 tells us that confessions, false confessions occur on
20 a regular basis that there are actually three types
21 of false confessions. This is not one complicated
22 story, but three sets of complicated stories . That
23 there are discernible risk factor that we know are
24 associated with an increased likelihood of false
25 confession, and finally that once a false confession
is taken, the case is closed and nobody really can

2 tell the difference between a good confession and one
3 that isn't. And it's with that that I want to say
4 first of all that it's important to recognize false
5 confessions are a problem throughout human history.
6 Everywhere in the world where criminal justice
7 records are kept throughout human history false
8 confessions have been a problem, and New York City is
9 not exception. If you look at the Innocence Project
10 database, false confessions now account for 30% of
11 the wrongful convictions in the DNA database. If you
12 look within that database at homicide cases alone,
13 that number jumps to over 60%, and you see that same
14 pattern in the National Registry of Exonerations.
15 That is not a coincidence. Homicide detectives are
16 trained differently from everybody else. Those were
17 a different level of interrogation. Those in
18 particular need to get recorded. New York City is no
19 exception. There is an historic and continuing
20 problem of false confessions in this city. Always
21 has been, and just to give a sense of the continuity
22 of this problem, let me point first to a case, a very
23 well known case in 1964 about a guy by the name of
24 George Whitmore who was picked up in Brooklyn for a
25 high profile set of murders known as the Career Girl

3 Murders. He was interrogated for 26 hours. That
4 interrogation resulted in a detailed, exquisitely
5 detailed spot on accurate detail 61-page account of
6 those crimes. He turned out to be innocent. He was
7 in Wildwood, New Jersey that day watching Martin
8 Luther King's I Have a Dream speech, ironically. He
9 was innocent, but that confession that was taken
10 turned out to be so important both because of how it
11 was taken and the fact that it produced a litany of
12 details spot on about the case. But the U.S. Supreme
13 Court in Miranda, it's a landmark rule and in 1966
14 cited that case as a shining example of coercive
15 police interrogation. That case come out of
16 Brooklyn. Skip ahead 25 years later and we run into
17 the Central Park—literally 25 years—and we run into
18 the Central Park Jogger case. What is shocking about
19 that case is not that the five kids were interrogated
20 for 14 to 30 hours, but if you look at the
21 confessions that were produced, and by the way, this
22 case illustrates something very important about New
23 York City confessions. The confessions ever since
24 the 1980s are on tape. The interrogations that
25 preceded and produced those confessions are not.
That should be troubling in and of itself. If you

1 look at those joggers tapes, what you would see of
2 these innocent boys is you would see Corey Wise, not
3 just making an admission of guilt, but you would see
4 him apologizing and expressing remorse and saying
5 this was my first rape and it's going to be my last.
6 You would see Kevin Richardson literally getting out
7 of his chair, standing up and physically re-enacting
8 how he participated in a crime he had nothing to do
9 with. That is the problem with false confessions.
10 So now, let's fast forward from the jogger case 1989
11 another 25 years. A young—a young man from Denmark,
12 a smart student, interning as a—as a—as a teacher at
13 a preschool. His name Malty (sic) Thompson, is
14 brought in for questioning based on a tip that turned
15 out not to be critical—credible. He's brought in for
16 questioning and he ends up confessing to a sex
17 offense, a serious sex offense and sent to Rikers
18 Island as a result. The hours of interrogation in
19 which that statement was produced were not on camera.
20 The confession that was taken subsequent to those
21 hours was on camera. In the end there was no
22 credible evidence that any of this happened. The
23 chargers were dropped. He's currently suing the
24 city. Again, 25 years later. The problem with all

2 of this, and what they tell us is not just their—are
3 those—is that my time?

4 CHAIRPERSON LANCMAN: No.

5 SAUL KASSIN: Okay—is—is not just that
6 there is the problem that there are tactics that can
7 be used to get innocent people, and I don't just mean
8 vulnerable innocent people. I mean people who are
9 sitting around in this room to confess to crimes they
10 didn't commit. But the statements ultimately taken,
11 those false statements ultimately taken contain often
12 exquisite details about the crime that only the—on
13 the perpetrator could have known. Ninety—here's a
14 statistic—and again I refer to a lot of research—95%
15 of known proven false confessions of innocent people
16 who have no involvement, contains facts about the
17 crime that were absolutely accurate and that were not
18 in the public domain. When a jury looks to evaluate
19 a confession, they're not just looking to look at the
20 amount of pressure brought to bear on a suspect.
21 They're also looking to answer the question, If he
22 didn't do it, how did he know those things? Well, if
23 you watch the tape, you'd know how he knew those
24 things, and that is the—I think an even more
25 important reason for the video taping requirement.

1
2 Finally, I think it's important to state that every
3 false confession is not just an admission of guilt,
4 but a story. This is what I did. This is how I did
5 it. This is why I did it. I'm so sorry I did it. I
6 won't ever do it again. That is s the, you know,
7 physical re-enactments. There are often physical or
8 hand drawn maps of the crime scene. That is the
9 sight and the sound of a false confession, and that
10 is why when researchers go to see whether or not
11 judges, juries, lay people in general can tell the
12 difference between a true confession or false, the
13 answer is they can't. I've done those studies. The
14 not that that you—that you walk around thinking I'd
15 know a false confession if I saw one. No you
16 wouldn't, and we've got the data to prove it.
17 Finally, I just want to say there has been a wave of
18 reform. What we're talking about today is not new.
19 It's not theory. It's not speculation. There are
20 now 22 states plus the District of Columbia that
21 mandates the recording of interrogations. Mandates.
22 There are hundreds of local jurisdictions that do it
23 voluntarily. In 2014, after years and years of
24 resistance, the federal government requires now that
25 the FBI do the same. I don't—I won't even talk about

2 China in 2015 as a matter of national policy deciding
3 they're going to record interrogations, but we are
4 laggards to China. This wave of reform is important.
5 I appeared before that Justice Task Force, and let me
6 read specifically what that Task Force recommended.
7 In 2012, the New York State Justice Task Force was
8 emphatic, "Task Force ultimately determined that
9 electronic recording of interrogations was simply too
10 critical to identify false confessions and preventing
11 wrongful convictions to recommend as a voluntary
12 rather than mandatory reform." The Task Force
13 recommended making it mandatory. Now, I heard today
14 that NYPD is fully on board. Well, if they're fully
15 on board then mandate it, and nobody gets—nobody gets
16 short changed. The research shows there are no
17 drawbacks to taping, only advantages. Interviews,
18 thousands of interviews across the country in police
19 departments where they have gone to a video recording
20 requirement, sometimes kicking and screaming, and
21 this is published research, published surveys,
22 published interviews. It shows that they unanimously
23 adopt and embrace the process once they go there.
24 There are no losers. This is a win, win, win and
25 again if what I heard correctly earlier in the

3 morning that NYPD is on board, then by all means I
4 hear no reason not to mandate it. And I say that
5 because over the last two or three years since the
6 task force nothing has changed. There are high
7 profile cases, one in particular that is back in
8 trial on a recharge, the most important cold case in
9 New York history involving the abduction of Etan
10 Patz. There was a case where detectives picked up an
11 individuals with a 70 IQ and a history of mental
12 health problems, interrogated him for hours to
13 confession. The confessions are on tape. The
14 interrogations are not. That was post-Task Force,
15 the biggest case in New York City history with a
16 vulnerable suspect. That is post-Task Force.

17 CHAIRPERSON LANCMAN: Alright. Sorry, I
18 just want to give other folks an opportunity-

19 SAUL KASSIN: [interposing] Yes.

20 CHAIRPERSON LANCMAN: --to testify and
21 then we want to definitely ask you some questions.

22 SAUL KASSIN: I will close.

23 CHAIRPERSON LANCMAN: Terrific.

24 SAUL KASSIN: I'd be happy to and open
25 for it. I-I think it's time to get past the lip
service. I think it's time to get past the so-called

2 pilot studies. I think it's time to get past the
3 excuses. There's no evidence what-whatsoever that
4 there are drawbacks, limitations, handicaps. Police
5 departments that go to it love it. All of our
6 neighboring states, New Jersey, Connecticut, Vermont
7 already have mandated the practice. There are only
8 advantages. I think it is time to do that justice
9 once and for all. Thank you.

10 DR. JENNIFER DYSART: Thank you for your
11 time and attention to this-these very matters that
12 affect your constituents very deeply. My name is Dr.
13 Jennifer Dysart. I'm an Associate Professor of
14 Psychology at John Jay College where I have been for
15 the last ten years, and I've also been studying
16 eyewitness identification research for nearly 20
17 years. I'm here today to speak with you about the
18 importance of eyewitness mistaken identification and
19 its role in wrongful conviction, and how the
20 implementation of simple-and you will hear this from
21 Chief Wilson in a few moments-simple procedural
22 changes can significantly reduce the likelihood of a
23 mistaken identification and the subsequent wrongful
24 convictions that often follow those. As we've heard
25 today, eyewitness mistaken identification is the

2 leading contributing factor to wrongful conviction in
3 the United States with nearly three-quarters of the
4 DNA exoneration cases involving at least one mistaken
5 identification. In fact, some of those cases have
6 five eyewitnesses all of whom felt were mistaken. I
7 the last—over the last 40 years scientists, which I
8 think is critical, and a missing component quite
9 frankly to much of what we've heard today, scientists
10 have done the work and investigated the many causes
11 of wrongful conviction and mistake identification.
12 I'm going to talk about two of those today. I did
13 limit my comments to just a few minutes, and so I'll—
14 I'll focus on two that I think are most important,
15 and that have been the subject of most of the
16 testimony here today and that is, of course, double
17 blind administration and the recording of witness
18 confidence. The most critical—the most critical—I
19 cannot emphasize that too much—practice, the best
20 practice is double blind administration for the
21 prevention of wrongful identification, and this is,
22 of course, just to clarify. This is when the
23 individuals who are conducting the identification
24 procedure do not know who the suspect is, or they
25 cannot see which images or which people the witness

2 is looking at a particular time, and we refer to that
3 as a blinded identification procedure. This best
4 practice eliminates any possibility whatsoever that
5 the law enforcement officer or person administering
6 the procedure could have influenced the witness in
7 any way. This is a great procedure for law
8 enforcement, a great procedure for prosecutors as it
9 completely eliminates the defense strategy and—and
10 trial strategy and tactic that oh, how do we know why
11 the witness picked my client? Maybe it's because
12 they made a suggestions, but this really is an
13 identification change that is good for law
14 enforcement and prosecutors. Double blind
15 administration is standard practice in other fields
16 such as medicine and pharmaceutical research, and it
17 is not because not because we don't trust doctors and
18 nurses to collect that kind of research. It's because
19 we need to ensure the integrity of the results, and
20 the integrity of the outcome in very important
21 research and—and outcomes that can affect our health
22 and life. If we eliminate any of this expectation,
23 essentially the lineup administrator has by keeping
24 them blind, we can also ensure the integrity of the
25 identification outcome, which is critical. In this

3 field, it's very important to also keep in mind that
4 doctors and nurses are human, and humans come to
5 decision making tasks with biases, confirmation bias
6 I was expecting Dr. Kassin to speak about. And law
7 enforcement officers also being human bring to the
8 identification process their biases and preconceived
9 release as well. But we know that double blind
10 administration actually increases the probative value
11 of the evidence. So not only does it maintain the
12 integrity, it makes the actual evidence that is
13 viewed by judges and jurors more likely to be
14 accurate. It is more a precedent. The second
15 critical best practice is the recording of a witness'
16 level of confidence immediately after they have made
17 the identification decision, and the reason why this
18 is so critically important is that decades of
19 scientific research have show that a witness' level
20 of confidence can easily be influenced after their
21 identification decision. But by the time they
22 testify at trial, nearly all witnesses are absolutely
23 certain that the person sitting at defense counsel is
24 the person who they saw commit the crime. This is
25 critical because triers of fact rely heavily on
eyewitness confidence to help them determine if the

2 witness was accurate. But if all witnesses at trial
3 are absolutely certain, how can triers of fact use
4 certainty in order to help them make their decision?
5 If all witnesses are confident does that mean all
6 witnesses who testify are accurate? Certainly, that
7 cannot be the case. So at this juncture we have to
8 learn from DNA exonerations, and we know from those
9 cases that many of the witnesses [bell] in DNA
10 exoneration cases were initially not certain about
11 their identification decision. And if that
12 uncertainty had been paid more attention to perhaps
13 those individuals would not be wrongfully convicted.
14 There are many other—many other best practices
15 reforms, some that are specific to New York City that
16 really the committee should also address. There are
17 unique issues with live identification procedures.
18 The mentally ill suspect might behave differently
19 than the off duty police officer or the person
20 arriving for their shift who acts as lineup for them.
21 Recording of identification procedures are absolutely
22 critical. Picking of fillers that match the
23 witnesses' description, not what the suspect looks
24 like. Decades of research have told us this, and yet
25 that's not followed here in New York. Post--

2 CHAIRPERSON LANCMAN: [interposing] Just
3 say that last one again.

4 DR. JENNIFER DYSART: Sure. If the
5 picking-picking of fillers that match the witness'
6 description. So if I give a particular description
7 of someone that I viewed, law enforcement should use
8 that description to go find fillers to fill out the
9 photo array or the live identification procedure.
10 That is the best practice recommended by scientists.

11 CHAIRPERSON LANCMAN: As opposed to what?

12 DR. JENNIFER DYSART: Taking a photograph
13 or the person, going to a homeless shelter and
14 looking for four of five people who look like the
15 guy.

16 CHAIRPERSON LANCMAN: Okay, I don't
17 understand why there's a difference to that. I'll-
18 I'll ask that we get the question.

19 DR. JENNIFER DYSART: Absolutely. I-I
20 want to have you consider that. I'm almost finished.
21 In particular in New York City two problematic areas
22 are mug shot searching. When I travel the country
23 and lecture and educate judges and-and law
24 enforcement [coughs] that are shocked, shocked,
25 shocked that New York City still uses this system.

2 They have a catch unit here in New York that specific
3 for this, and that's essentially the witness comes in
4 and looks through thousands of photographs until they
5 finally find someone who looks close enough, and says
6 I think that's the person. It's—it's the equivalent
7 of an all suspect identification procedure, which
8 clearly would be prohibitive based on best practices.
9 And finally show-ups and drive-arounds. Show up is
10 the apprehension of a potential suspect where the
11 witness is then usually brought to that individual
12 who is usually presented in handcuffs, or the drive-
13 around where the witness is put in the back seat of a
14 police car and driven around a neighborhood until
15 they finally see someone who they think might be the
16 perpetrator. These are two procedures that are used
17 rarely in other jurisdictions around the country, and
18 although the Justice Task Force mentioned training on
19 show-ups, they mentioned no best practices on show-up
20 identification procedures. There are no less than
21 five eyewitness experts right up the road at John Jay
22 College of Criminal Justice who study this, and we
23 avail ourselves to this committee, to New York City
24 to educate and train on these factors. We are—we are
25 here and ready to help.

2 CHAIRPERSON LANCMAN: Thank you very
3 much. Sir.

4 CHIEF BILL BROOKS: God afternoon. Thank
5 you for having me. My name is Bill Brooks. I'm the
6 Chief of Police in Norwood, Massachusetts. I've been
7 a policeman for 39 years. I'm the President of the
8 Massachusetts Chiefs of Police Association and I
9 serve on the Executive Committee at the International
10 Association of Chiefs of Police. I'm here to talk a
11 little about the experiences in Massachusetts. We
12 have been [coughs] excuse me—both reforms have been
13 in place in Massachusetts [coughs] since 2004. When
14 Professor Kassin talks about people kicking and
15 screaming, I was one of the kickers and screamers. I
16 have been trained not to record interviews, but only
17 to record the confessions, and when I first heard
18 about the eyewitness identification reforms, I didn't
19 like the sound it. [coghs] But I thin the key was
20 that I was I was able to attend training, and now
21 looking back I would not do it any other way. Let me
22 just talk just briefly about recordings, and then
23 I'll get to eyewitness identification. As I said,
24 they have been widespread and more or less mandated
25 by a jury instruction in Massachusetts for the last

1 12 years. They're in place at—they're in department
2 like the Boston PD and small departments of only 10
3 or 12 officers. We record interrogations on all
4 offenses, and I know that the—that the risk of
5 lengthy incarceration for wrongful conviction is
6 greatest in—in serious crimes particularly violent
7 crimes, but we record interrogations on all offense,
8 shoplifting, domestic assault and battery, really
9 everything. Once you've got the rooms set up, why
10 not flip a switch and say you're being recorded, read
11 the person their rights and attempt to take a
12 statement. It's also very good training for police
13 officers of all ranks to do that. They get in the
14 habit of it, and we just record everything. We found
15 that the recording removes any doubt about exactly
16 what was said. It obviates the need for extensive
17 note taking by detectives. You really don't have to
18 take notes. You have a video recording. Detectives
19 can go back later and review the video, and analyze
20 it for exactly what was said, and supervisors can
21 review it for training and policy issues as well. It
22 protects officers from allegations that they were
23 abusive towards prisoners or that they used unlawful
24 techniques. And quite frankly, one of the benefits is
25

2 that our detectives spend less time on the stand they
3 used to in confession cases. Now, motions to
4 suppress are all about the points of law. Judges
5 literally begin the hearing by saying has everybody
6 seen the video? Counselor, what's your point, and
7 the detectives don't end up on the stand. They used
8 to spend hours on the stand looking at notes and
9 trying to remember what was said in the room, and now
10 that's all gone away. In short, again, we've been
11 doing that for 12 years, and I would not do it any
12 other way. In 2004, I attended a training on
13 eyewitness identification reform, and again I didn't
14 like the idea of it. I particularly didn't like the
15 idea of blind administration. I had been a detective
16 sergeant for 14 years. I worked hard to develop a
17 good rapport with crime victims and witnesses, and I
18 thought that asking somebody who didn't know anything
19 about the case to show my photo array would be a bad
20 idea, but we came up with a procedure that--I'll talk
21 about in just a minute--that's made it work
22 flawlessly. Now, I think it makes great sense, and
23 again I'd never go back. I'm the academy instructor.
24 So when the reforms came around, I began to teach it
25 in Massachusetts. I spoke at a couple of national

3 police conferences, and the Innocence Project since
4 then has asked me to teach it around the country, and
5 present it in 23 states. Two years ago, I actually
6 did a presentation at the NYPD Academy. I've also
7 presented to the second largest municipal Police
8 Department in the country, the Chicago PD. They
9 might be second to you in size, but they're ahead of
10 you in crime rates, but they have-they have adopted
11 these procedures as well. In 2014, I was asked to
12 sit on a committee at the National Academy of
13 Sciences. They produced a report called *Identifying*
14 *the Culprit*, and it's available to you online or I
15 can-I can get it to you. Despite its length, it
16 really narrows down for me to basically five
17 practices that the-that our committee recommended.
18 Number one that all police officers be trained in
19 eyewitness identification. In Massachusetts now,
20 every single police recruit going through the academy
21 receives a half a day block on eyewitness
22 identification reform, and not just the practices
23 that have been discussed today, but the problems with
24 eyewitness memory, the task of recognizing stranger
25 you met only once is a difficult task anyway, and all
recruits receive a half a day of training in that-

3 that instructions be given to every witness. Most
4 importantly that the offender may or may or may not
5 be in the photo array lineup. The third
6 recommendation is blind or double blind procedures.
7 The fourth is confidence statements, which Dr. Dysart
8 just talked about. I shuffle back to it in a minute,
9 and redo audio and video and record the showing all
10 photo arrays, and it became a seamless process. We
11 just used the interview rooms that are already set up
12 for interrogations. Again, we flip the switch, tell
13 the person that they're being recorded, and we show
14 the photo array in an interview room. The way we do
15 blind administration is we—we only use patrol
16 officers. Our detectives almost never show photo
17 arrays any more. [bell] We've designed a system
18 whereby, and when I mentioned before—before and the
19 previous speaker did as well, the detective is
20 actually in the room and reads the instructions to
21 the witness, introduces the patrol officer who is
22 going to show the photos, but he leaves the room when
23 the photos are in play. So the detective reads the
24 instructions. Like I said, introduces the—the
25 officer and then says I'll be right outside, and when
the detective has left does the patrol officer show

1 the array. The officer has no idea which photograph
2 is the suspect. He simply administers the array. If
3 an identification is made, he immediately asks the
4 question that Dr. Dysart just spoke of right at the
5 point of identification how certain are you? Tell me
6 how confident you are. They do write it on the form,
7 although now that we video record it, we actually
8 have this—didn't see that process. When we're all
9 done we send the witness home. The detective and
10 officer don't even discuss what occurred in the
11 presence of the witness. They send the witness home.
12 So, I—I just think that as Dr. Dysart mentioned the
13 blind administration is—is important. It is not a
14 resource issue. Departments in Massachusetts they
15 only have ten officers do it. In my department
16 there's 60 that does it. The Boston PD does it in—in
17 all of their cases. When I was at the NYPD Academy,
18 a major case detective came up to me at the—at the
19 end and introduced himself and said, you know, we can
20 do all this, and there's no reason we shouldn't. He
21 has since passed away. I never got a chance to
22 follow up with him but, you know, eyewitness
23 identification reform I don't think we'll eliminate
24 all wrongful convictions or all mistakes by
25

2 witnesses, but it will ensure that if those errors
3 occur that there's nothing the police could have done
4 to avoid them.

5 CHAIRPERSON LANCMAN: Okay, I—could—do
6 you want to wrap up [coughs] because I want to hear
7 from Barry and we want to do questions.

8 CHIEF BILL BROOKS: Okay.

9 CHAIRPERSON LANCMAN: You good?

10 BARRY SCHECK: Yeah, I mean—

11 CHAIRPERSON LANCMAN: Chief, you're good?

12 CHIEF BILL BROOKS: I'm good. I was just
13 going to say that I'm available to the NYPD to—to
14 assist further whether it's policy or training, I've
15 already been through the Academy once, and I'll be
16 happy to assist if there is anything you requested of
17 me.

18 CHAIRPERSON LANCMAN: With only the last
19 chief with a Boston accent who sat in that chair had
20 such an open view, we might [laughter] we might have
21 a different experience. Mr. Sheck.

22 BARRY SCHECK: Well, very briefly because
23 these are really the experts, and I'd love for you to
24 ask them questions, but thank you for holding this
25 hearing. It's really critical and important. We

2 have been involved in all efforts in this state to
3 bring about this reform for close to 15, 16 years,
4 and what you've done today and what you can do very
5 simply you can change the entire complexion of what's
6 going on in Albany and certainly in this city.

7 Number one, as you heard, unfortunately from
8 Elizabeth Glazer and not from the New York City
9 Police Department, but I read their statement. They
10 say they're videotaping interrogations. I quite
11 agree with you, Councilman, that the number of 5,000
12 since 2011 doesn't make any sense if they're really
13 doing it, but the point is they say they have all
14 these rooms outfitted. They day they're doing it.
15 Why don't we just get them in there to give us the
16 numbers, number one. Number two, the simplest and
17 best way to make sure that they're doing it, and—and
18 to get it done is simply to pass a bill saying this
19 is required. It's certainly within your control.

20 Nobody is saying that you can make the courts do
21 anything if they don't do the video taping, but
22 believe me if you just issue that requirement, right,
23 the people that can do it up in Albany are going to
24 follow suit, right? And so that would be the number
25 one best thing to do, and as soon as you introduce

2 that bill, you bet they'll be in here testifying, and
3 we'll find out if they can really do it. And in
4 fairness if they can't do it, right, and they really
5 don't have the resources, then they should come to
6 you and say here's what we need. We can do X number
7 of felonies. You know, we can do seven now. We can
8 do nine later because of what Dwyer said is certainly
9 the case, why not do more? And I think even
10 Elizabeth indicated that. So, get them in here, pass
11 that bill number one. Number two, on eyewitness
12 identification reform, it is really important. Judge
13 Dwyer said it, Dr. Dysart just said it. You want to
14 get the confident state of the witness at the time of
15 the identification. Now, maybe reasonable people can
16 differ as to whether you say tell me your level of
17 certainty in your own words, but everybody believe me
18 and even the district attorneys everybody in this
19 debate believes that a confident statement after a
20 double blind procedure or a blinded procedures as
21 it's sometimes called is the—is—is a very important
22 measure, and it would change the way all
23 identification cases in the State of—the City of New
24 York and the State of New York are done. But what
25 you can do make this happen and eliminate all the

1 arguments is audiotape or videotape the photo array
2 procedure and/or the lineup. That is what was
3 suggested by the National Academy of Science, and
4 that's what you've heard is done in the all these
5 jurisdictions and by the way, the MPTC and New York
6 State recommends that as a best practice for every
7 law enforcement entity in the state, and the one
8 that's been holding it up is the New York City Police
9 Department because they say we can't do that. Well,
10 I may judge why they think they can't do it, but a
11 lot of us think they can do it, but let's work with
12 them. If you pass legislation saying that they ought
13 to do a blind or double blind, and by the way,
14 blinded means that it would be a procedure that Chief
15 Brooks I think pioneered where you would show them an
16 array, and the officer even wouldn't know who the
17 suspect was or shuffling it. (sic) And-but certainly
18 audio taping I really stress this. Audiotaping or
19 videotaping that identification procedure requiring
20 that could also help brake the log jamb in Albany on
21 this issues. And then finally, what is very
22 important because all the learning from the
23 scientists they will tell you that what we do in New
24 York City with the so-called PIM system or the CATCH
25

1 Unit where we're just trolling for identifications,
2 is a really bad idea. Talking about that Police
3 Commissioner who had that Boston accent, right, who
4 I've known for a long time. So at least I could walk
5 into the offices and say, you know, this doesn't make
6 any sense, and he actually understood the science of
7 that, and so one of the very simple things to do is
8 if you're talking about numbers, the New York City
9 Police Department should come forward in terms [bell]
10 of the PIM system, and actually keep track of how
11 many times witnesses are identifying fillers, or
12 identifying people I should say. They're not
13 fillers, but identifying people all of who have, you
14 know, prior arrests. They all appear on the screen.
15 How many times the witnesses came in and identified
16 somebody and it didn't lead to an arrest, right, and
17 how many times they found that out. Because I think
18 if they start keeping track of those numbers, all the
19 learning all the science on this will indicate to
20 them that it's not a brilliant idea, and what would
21 be much better frankly is to develop some evidence
22 before you put somebody in a photo array or a lineup
23 because then you're more likely to get correct
24 identifications as opposed to incorrect
25

2 identifications. And that's not just what the
3 scientists say as Chief Brooks I'm sure will tell you
4 and we all know from our work across the country
5 that's what everyone in this field believes except in
6 this city, and it's amazing [laughs] that this is
7 going on here. So thank you again, and I want to
8 just put in a word from my friends from the Bronx and
9 from Brooklyn about the Conviction Integrity Units.
10 They're just--they're following really good practices,
11 and yes I have a conflict because I work with them,
12 but the truth is I want to be on the record saying
13 that those best practices they described, they're
14 really good and good leadership for the country.

15 CHAIRPERSON LANCMAN: Terrific. I'm--I'm
16 not going to get in the weeds with you on that
17 different--someone smarter than me will just explain
18 it to me and we'll do it off line. Honestly, the
19 only question I have because your--your testimony is
20 so cogent and powerful and--and--and clear to me. Is--
21 do any of you have direct knowledge of--of what New
22 York City is--is really doing or not doing
23 particularly when it comes to the videotaping because
24 Director Glazer testified that they're doing it. I'm
25 not sure that--she said herself she knew direct

2 knowledge. The numbers don't really add up at least
3 the two of you in the Center there are New York City
4 based and, you know, you will—I don't know how many,
5 you know, run of the mill New York cases you take in,
6 the more the merrier, but like are—are—is New York
7 City doing these videotaping of interrogations or—or
8 you're not seeing it?

9 BARRY SCHECK: I don't—I don't know.
10 The—the answers I don't know, but I do know that
11 since the Task Force made its very strong
12 recommendation, I have not discerned a change. When
13 that case of the-of the man from Denmark came up, he
14 was picked up very, very early in the morning and
15 interrogated for seven or eight hours. He was then
16 taken in form a confession. The confession, of
17 course, was propped up on camera. The preceding
18 hours during which time he was lied to about evidence
19 and other tactics use. That was not on camera, and I
20 do know that—and what is arguably the most important
21 cold case in New York City history came along 30 some
22 years later, and NYPD went out to New Jersey to pick
23 up their—their suspect who had a history of mental
24 illness and a very low IQ in a state, New Jersey that
25 requires the recording of interrogations, and they

3 took him into a station that was equipped for the
4 recording of interrogations. They did not and that,
5 too, is post-Task Force. So all I have are a couple
6 of anecdotes in instances, more recently instances
7 where I would have expected a tape, and it wasn't
8 forthcoming. I-I can tell you that--that I've taken
9 tours of the precincts where they initially set these
10 up and I've seen it so I know that they can do it.
11 They should be doing it, but as Saul mentioned, it's
12 not just those two cases. There have been other high
13 profile cases where even district attorneys were
14 involve where they knew the rules, and yet they did
15 not do the videotaping of the initial interrogation
16 as to Miranda Warrants. So the real answer to this
17 is that you should pass a bill in New York City just
18 saying this is required. Give them exception that
19 they think they need that sound even remotely
20 reasonable. This is our experience in other states
21 across the country. What's going to happen, as Chief
22 Brooks will tell you, is that soon they're going to
23 want to do it everywhere in more cases, and what
24 Judge Dwyer-I think it was Judge Dwyer said well
25 maybe it's because there's some old time detectives.
They'll want to see their methods. You know, like

1 Superwitz and NYPD Blue or something tuning up the
2 witness or whatever, but it's—it's wrong headed
3 because as Saul will tell you, and Bill as well, you
4 know, we need these videotapes to train people on how
5 to do the interviewing correctly. So, the mandate,
6 you passing the mandate is critical. I can tell you
7 that when the City Council passed a mandate through
8 the New York City Crime Lab, the OCME, to do a root
9 cause analysis every time there was a non-conformity,
10 and to get assistance from medical institutions in
11 the city on how to do it. That had a huge because,
12 you know, until recently I was sitting on the New
13 York, you know, Forensic Science Commission, and we
14 looked at everything, right, that came in. So that
15 made a big difference. Alright, so this haring and
16 your action sooner rather than later in order to
17 affect the Albany legislation to mandate the
18 videotaping of interrogation in those classes of
19 cases where they say they're doing it and believe me
20 I think you'll hear from them as soon as you
21 introduce that bill, and to provide resources and
22 mandate that they do double blind ID procedures and
23 photo arrays and/or lineups, or at the very least
24 they audio tape the—these procedures, and certainly
25

2 videotape live lineups. If you just started
3 requiring that, and introduce legislation to require
4 that, then you'll--then people will actually come here
5 and talk to you about what they're doing.

6 DR. JENNIFER DYSART: Can I answer on
7 eyewitness. I'll be very quick on eyewitness
8 identification. So photo arrays sometimes are done
9 at the--the precincts and sometimes they're done out
10 in the field at a person's place of employment or
11 home. I--my colleagues and I have never seen a--a
12 videotaped photo array process with the NYPD. Live
13 identification procedures, which are because of the
14 strange New York rule that hopefully will go away
15 sometime, that in essence they're all conducted
16 obviously at a police precinct. So they have the
17 capability of doing a video, and so what I'm saying
18 that there are unique problems associated with
19 putting a person standing there with other
20 individuals. If that person has any drug addiction,
21 mental health issues, et cetera, they've been, you
22 know, held for two days and they're going through
23 withdrawal, you going to see a difference in that
24 person's behavior other than the other fillers in--in
25 the room. I've yet to see or hear of any of those

2 procedures being videotaped. What happens is a
3 photo—a photograph is taking of the live lineup, but
4 then how years later can anyone decide whether or not
5 that was a fair live identification procedure if the
6 person started sweating, if the person started
7 shaking, if some other issue has—arose in those
8 procedures? I've never seen it, and the hair went up
9 on the back of my neck a little bit earlier when Ms.
10 Glazer testified and said that well, you know, these
11 are just guidelines. You know, they're just
12 recommendations. That's disturbing.

13 CHAIRPERSON LANCMAN: Council Member
14 Gibson.

15 CHAIRPERSON GIBSON: Thank you. I'm just
16 going through your testimony and you explain a lot
17 and I appreciate all of the work that you all have
18 done on this issue, and I think, you know, sometimes
19 we have to continue the work, recognizing that
20 there's always light at the end of the tunnel, and we
21 have the greatest law enforcement agency in the
22 country, and yet when you look at technology and
23 science, we're still far behind the time, and it's
24 not acceptable. And, you know, I applaud the work
25 you're doing, and I encourage you to continue to work

2 with us because we will continue to gain ground and,
3 you know, make much more progress. Twenty-two other
4 states in this nation, and yet New York, you know,
5 falls far behind, and that just simply is not right.
6 I think, you know, I've said this earlier today that,
7 you know, this is a topic that's very sensitive and,
8 you know, I see the faces of the individuals that
9 have been impacted, and, you know, they propel me.
10 They give me strength to keep fighting the good fight
11 because I know that there are many others that come
12 from our community that could easily be in their
13 situation as well. And so I think it's important
14 that we never lose sight of the goal, and sometimes
15 politics has to play its role especially in Albany as
16 many of you know. But that shouldn't stop us from
17 the city to do the work that is necessary when it
18 comes to mandating. And then I think we just simply
19 don't have data. We know that the Police Department
20 has said that they're videotaping interrogations, but
21 we haven't seen evidence to support that. And so in
22 light of that I think, you know, if you don't see
23 something you're just going by someone's verbal
24 statements, then you really, you know, have to take
25 them at their word, and that isn't good enough in

2 this case. It's just not sufficient, and so I just
3 want to commit to all of you that we will be working
4 together on legislation and all the conversation
5 about this procedure because it's really, really
6 important to make sure that we can implement as many
7 best practices as we can. Barry, you talked a little
8 bit about the Conviction Integrity Units and, you
9 know, that's something obviously that we talked about
10 some times. The DA's, some are implementing that and
11 you feel very confident that that is a good part of
12 this conversation when you're talking about reform,
13 right?

14 BARRY SCHECK: Oh, absolutely. It really
15 began in 2007 in Dallas, Texas was the first major
16 one, and then we had a lot of--

17 CHAIRPERSON GIBSON: [interposing] Texas
18 of all places.

19 BARRY SCHECK: Well, there are more
20 exonerations in Dallas than most states--

21 CHAIRPERSON GIBSON: I know.

22 BARRY SCHECK: --and it spread. There
23 are very--it--it remains in very good hands in Dallas,
24 and I've got a good one in Harris County, San Antonio
25 and Tarrant County and Fort Worth. The new district

1 attorney coming in in Chicago I believe is going to
2 follow the best practices that you heard that Darcel
3 Clark is implementing in the Bronx, and that
4 certainly Ken Thompson is taking to a new level in
5 Brooklyn. And so I think that this is something that
6 hopefully can be done well across the country. There
7 are also some Conviction Integrity Units that are
8 conviction integrity or conviction review in name
9 only that--that have not done a very good job at all,
10 and the problem there is that when you promise that
11 you're really going to make review and you're really
12 going to look at old convictions, and make them
13 right, and then you're-- It's really just a fashion
14 accessory or a piece of propaganda. That hurts
15 everything enormously, and we had that problem in
16 Chicago, and there's going to be an election where I
17 hope--I can't election year. I'm a non-profit, but I
18 think that there's a good chance that we'll have one
19 there, and Cleveland as well. So, there have been
20 some problematic places that are not really doing it,
21 but you did hear today from two places that are, I
22 think that Judge Clark, as you heard from Julian,
23 it's very--it's really important to have a defense
24 person because of the cognitive bias problems
25

3 involved in the conviction integrity review. And
4 Mark Hale would be the first to tell that Ron
5 Sullivan, who helped him start the unit, who was—ran
6 a public defender office and was a public defender in
7 the District of Columbia, and teachers at Harvard
8 now, was of tremendous value at the beginning. Some
9 of the people in the Independent Review Board are
10 defense people, and I think it's very important that
11 Judge Clark picked two individuals that were defense
12 lawyers to help do that review. Because if you're
13 going to get to the point where you're having this
14 non-adversarial joint search for the truth that Mark
15 describer, and I can tell you that we've done that.
16 You really need to make this a cooperative process,
17 and I—I think the City should take advantage of these
18 people at John Bay—John Jay. You're looking at two
19 people that everyone in the country would acknowledge
20 as the leading scientists in the field of
21 interrogation and eye witness reform and experimental
22 psychology. I mean why—why—why won't they work with
23 them and do studies with them. They should.

24 CHAIRPERSON GIBSON: Right and I know
25 Chief you talked a little bit about the training that
the Innocence Project held a few years ago that

2 relates to eyewitness identification reform. The DAs
3 talked about the curriculum for new incoming ADAs and
4 how that is incorporated in, you know, the curriculum
5 itself. How important is training the officers, the
6 recruits for prosecutors? I mean at this point I
7 mean I think everyone should have a general
8 understanding of what reforms. We're talking about
9 and that really be incorporated in the basic training
10 for all public servants. Wouldn't you agree?

11 CHIEF BROOKS: I couldn't agree more.

12 CHAIRPERSON GIBSON: Okay.

13 CHIEF BROOKS: And I recommended that the
14 state take that mandate that all recruits receive
15 their training, and—and last actually every single
16 police officer in the whole Commonwealth of
17 Massachusetts of received a half a day of training.
18 You can—you can teach somebody how to show a photo
19 array in 15 or 20 minutes, but only when you get the
20 background of how difficult it is to remember—to
21 remember faces, and all of the—the factors that go
22 into whether that identification is going to be
23 reliable or not. You get—you get better judgement
24 and you get better decision making by the officers.
25 You get more education better decision making by

2 prosecutors. Everybody understands a little bit more
3 about the concept and that. I—I think our training—
4 you can't just do policy. You have to do policy and
5 training.

6 CHAIRPERSON GIBSON: And then how often
7 are officers during annual training, let's say
8 there's new technology, new scientific data that we
9 discover. Are any of those nuances incorporated in
10 the curriculum for annual training for officers that
11 are already in the department and then also for the
12 incoming recruits as well? How does that work?

13 CHIEF BROOKS: Massachusetts has a system
14 whereby a state agency mandates that every police
15 officer gets 40 hours of in-service training every
16 year. So it kind of depends on what's happened in
17 the previous year, but any time there's a change
18 whether it's case law or the development of science
19 or our new procedures.

20 CHAIRPERSON GIBSON: New legislation,
21 right.

22 CHIEF BROOKS: It's—it's added to the
23 training from the upcoming year.

24 CHAIRPERSON GIBSON: Okay, thank you.

25 CHAIRPERSON LANCMAN: Councilman Cohen.

2 COUNCIL MEMBER COHEN: Thank you, Chair.

3 I really do have to say that this hearing has been
4 fascinating. I mean one of the—it's eye opening.

5 I'm a—I was a civil practitioner before I came to the
6 Council. So I'm not particularly familiar with
7 criminal practice but--

8 CHIEF BROOKS: [interposing] But you had—
9 you went to Bergen Law School.

10 COUNCIL MEMBER COHEN: I did go to a very
11 good law school. Thank you very much. [laughs]

12 CHIEF BROOKS: I'll get them later.

13 COUNCIL MEMBER COHEN: But I am really—
14 it's very eye opening to me to find that but somehow
15 it seems that New York City maybe because I'm a—a
16 cocky New Yorker that it would be at the—at the
17 forefront of some of these things, and it is very
18 disheartening to hear how—how behind we are in some
19 in some of these practices, and I think the testimony
20 of this panel in particular put it—in—in stark
21 belief. I had a question that I think that maybe the
22 professor from John Jay sort of answer it I that I
23 was wondering what—what was the benefit of recording
24 the double blind IDs if there's—if—it as the other
25 testimony if there's no risk of condemnation, why do

2 we need to record? But it—I think in your testimony
3 it sort of said that there are other factors. Could
4 you just expand on that a little bit?

5 DR. JENNIFER DYSART: Sure, other factors
6 that you might want to consider. Sure. So in
7 particular post-identification feedback is one of the
8 most critical elements that you want to make sure
9 that this is—statements are not made to the witness
10 after they've made their identification. We know
11 from wrongful conviction cases where sometimes a
12 witness, you know, what did they say to you after you
13 made the identification? And the witness said well
14 all the officers clapped in the room. So we call
15 that post-identification feedback and what we—what we
16 know now that—that it does some of the most rigorous
17 science in this field is that not only does it—

18 COUNCIL MEMBER COHEN: [interposing]
19 That—that wouldn't be a risk in a double blind.

20 DR. JENNIFER DYSART: In double blind it
21 still could be if the witness didn't know that it was
22 double blind, and you said to the witness like good
23 job, excellent, you know, thank you so much for
24 coming down. If the witness believed that I had
25 knowledge--

2 COUNCIL MEMBER COHEN: [interposing] Oh,
3 alright.

4 DR. JENNIFER DYSART: --about who the
5 suspect was, then obviously that could still
6 influence things.

7 COUNCIL MEMBER COHEN: [interposing] So
8 even-even though it wasn't an attempt to--

9 DR. JENNIFER DYSART: Absolutely. It was
10 just-you're being friendly but how-how would the
11 witness have known. So any policy has to also state
12 the witness must be informed like they do in
13 Massachusetts, but this is a double blind procedure,
14 so the witness isn't looking for cues from the
15 detective during the procedure. But not only does
16 it-this-this kind of pat on the back as I give my-my
17 other-my colleague. Not only does it make witnesses
18 more confident, it actually makes them believe that
19 they had a better opportunity to view the criminal
20 perpetrator to begin with. So when-unfortunately,
21 we're stuck with *Manson v. Braithwaite* from 1977,
22 which the United States Supreme Court tells in order
23 to-tells-tells judges and-and jurors in order to
24 evaluate the likely reliability of eyewitness
25 testimony, which should you rely on? And this-and

2 the court in 1977 said, well, you should use witness
3 confidence. Were they paying attention? Did they
4 get a good view and a couple of other things. And
5 unfortunately, what we know now is when I pat, you
6 know, my colleague on the back and say good job, he
7 thinks he got a better view. He thinks he was paying
8 more attention. So, in fact, the more suggestion
9 that law enforcement used in getting an
10 identification the greater the witness will rock.
11 (sic) So it's the complete opposite, the complete
12 opposite. There's no way that a witness would ever
13 fail an independent source hearing at, you know, pre-
14 trial. The witness will look like the most fabulous
15 witness ever, and this gets us to the discussion
16 about what about the in court identification? In
17 other states, Connecticut and Massachusetts are
18 dealing very specifically. If double blind
19 administration wasn't used, if the witness was
20 presented with an identification procedure where the
21 suspect stood out, what and—and the court throws it
22 out. What happens then to the in-court ID and two
23 recent decisions basically say no in-court ID. It's
24 revolutionary, and so it's going to force law
25 enforcement to follow the rules because it's

2 essentially an exclusionary rule. There really are
3 amazing things happening other states.

4 CHIEF BROOKS: There's--there's a lot of
5 benefits to law enforcement to recording the
6 identification procedures with either video or
7 certain--certainly audio. When you ask for a level of
8 confidence, right or even if the witness says I think
9 it's number two, right, that's one thing, but if a
10 witness says, I think it's number 2, right. There's
11 a big difference. Now, you--you don't reflect that
12 unless you have a recording, and you hear it. One of
13 the things again when law enforcement starts to
14 record these things, the eyewitness experts will tell
15 you that ordinarily the witness is usually making the
16 right identification. It's what they call a pop-out,
17 right, and they just take a look and go oh, my God,
18 it's--you know, and they point an that's extremely
19 effective evidence for the prosecution's case. On
20 the other hand if you see somebody the experts will
21 tell you , and there's data on this, that is looking
22 and looking and looking for two, three, four minutes,
23 you, you know, a jury will have and experts have real
24 warning signs go up. You know, warning bells go off
25 that maybe this person didn't get such a good

2 opportunity to look or maybe is not making a reliable
3 identification. So there's a lot to video and
4 audiotaping that. It's important reform.

5 COUNCIL MEMBER COHEN: Thank you, Chair.

6 CHAIRPERSON LANCMAN: Thank you very,
7 very much.

8 CHIEF BROOKS: Thank you. Thanks so much
9 for this hearing.

10 CHAIRPERSON LANCMAN: Is Judge Conviser
11 here?

12 JUDGE CONVISER: Here.

13 CHAIRPERSON LANCMAN: Come on down.
14 [background comments, pause] Judge, good afternoon.
15 Thank you for coming down. If we could just swear
16 you in. Do you swear or affirm that the testimony
17 you're about to give today is the truth, the whole
18 truth and nothing but the truth?

19 JUDGE CONVISER: I do.

20 CHAIRPERSON LANCMAN: Thank you very
21 much. [pause]

22 JUDGE CONVISER: Up, oh, okay. I'm also
23 the Chair of the Office Court Administration's
24 Criminal Law Advisory Committee, but I'm not
25 appearing here today on behalf of OCA or the

2 committee but just offer some personal thoughts about
3 custodial interrogations. I strongly support
4 requiring that all custodial interrogations of
5 criminal defendants be recorded, and I'll take a few
6 minute today not as academic expert like the ones you
7 just heard, but just to give you my perspective as a
8 trial judge as to why I think this is so important.
9 We confront custodial interrogations in trials, but
10 also in pre-trial hearings, and I'm going to focus my
11 remarks today about the hearings. Whenever a
12 defendant is subject to a custodial interrogation by
13 the police or by a prosecutor, he or she has the
14 right to have the legality of that procedure assessed
15 by the court in a pre-trial hearing at which the
16 defendant moves to have any statement that he or she
17 has made determined inadmissible because it was
18 unlawfully obtained, and then we have to decide
19 whether or not that confession or that statement was
20 lawfully obtained. Custodial interrogations
21 generally occur in two settings. First, there are
22 interviews by detectives at police precincts
23 following an arrest, and second there are videotaped
24 interviews by assistant district attorneys after the
25 initial police interrogation. In my anecdotal

3 experience in Manhattan interviews by police
4 detectives are not generally recorded either by audio
5 or videotape, although I have to say I'm probably six
6 months or a year or year and a half behind because
7 those interrogations don't get to me for an
8 assessment for some time after they're made. The
9 interviews by the assistant district attorneys when
10 they are conducted are generally recorded. Now when
11 the interrogations are not recorded, we as the judges
12 must decide whether those interrogations were lawful
13 primarily by listening to the testimony off police
14 officers. Usually one police officer. The police
15 officer will testify under oath and be subject to
16 cross-examination, but there will usually be a little
17 corroboration evidence of the details of what
18 occurred. There will usually be a form, which the
19 defendant has initialed and signed waiving his
20 Miranda Rights. Sometimes the defendant will make a
21 written statement, which is available to the court to
22 show what he said or she said, and sometimes the
23 police officer will have notes memorializing what
24 occurred. In almost all cases, however, there's no
25 corroborating evidence of the vast majority of what
happened of the precise give and take of the

3 questions and answers of the facial expressions, the
4 arm movements, the tone or the level of voices of the
5 specific promises or factual statements the detective
6 has made. We as judges are left to determine
7 precisely what questions were asked, what the
8 conditions were in the interview room, how long the
9 interview took place. Were there any threats or
10 improper promises were made, and any other
11 information based on the testimony usually of one
12 police officer. And the problem is that that
13 testimony is not necessarily reliable. I think that
14 most police officers who testify in suppression
15 hearings attempt to do so truthfully, but memory is
16 fallible obviously, and it's often selective.

17 Suppression hearings often occur immediately before a
18 trial. A police officer testifying in a suppression
19 hearing usually does so six months, a year or longer
20 after the interrogation has taken place. And while
21 being arrested and interrogated might be a very
22 memorable experience for a criminal defendant, for
23 police detectives, the interviews are a routine part
24 of their daily lives. Police officers often don't
25 remember the details of what occurred during these
interviews. They must resort to descriptions of what

1 they usually do rather than offering a firm
2 recollection of what actually happened. Thus, for
3 example in response to a question about whether a
4 defendant was handcuffed to a bar in the room during
5 an interview, a detective might say his normal
6 practice is not to do so. It's also natural in the
7 counseling and extended conversation, which is not
8 being recorded, for a detective to recount that
9 conversation in the most positive light even if the
10 detective is not attempting to be deceptive. Thus, I
11 suspect interrogations often become less
12 confrontational or threatening when they're focused
13 to memory a year later. The problem for as judges is
14 that each of these details matter. To the extent
15 we're not getting accurate information about what
16 happened, our suppression rulings are suffering. A
17 different problem arises when the initial police
18 interrogation is not recorded, but the subsequent
19 interrogation by the assistant district attorney is
20 recorded. I work with the Manhattan District
21 Attorney's Office, and it's a well-run professional
22 organization. Videotaped interviews by assistant
23 district attorneys invariably feature articulate
24 careful non-threatening assistance or scrupulous in
25

1
2 ensuring that interrogations are not only conducted
3 lawfully, but in a manner which is unlikely to offend
4 the jury. The problem is that the jury and the judge
5 don't see the questioning, which preceded the
6 district attorney's interview. We don't see the
7 station house interrogation, and that's not to say
8 that the station house interrogation featured
9 improper conduct necessarily, but it might feature
10 conduct that was more objectionable to juries than
11 the district attorney's interview. For example,
12 police officers might use deception into
13 interrogations in a wide variety of ways. In my
14 experience recorded interviews by district attorneys
15 don't feature such methods, but they don't have to.
16 By the time the defendant is interviewed on videotape
17 by the prosecutor, he will have often already
18 provided inculpatory information to the police. I-I
19 heard that bell going off. Do you want me to just
20 stop or no? Okay. The videotaped interrogations
21 that are conducted by the district attorney's office
22 in my experience also don't show the interrogators.
23 They only show the defendants. Thus, even with
24 respect to these interviews, the jury does not get
25 the full picture. I'll make two final points about

2 suppression hearings. Although the use of—although
3 the relative burdens of the people in the defense and
4 suppression hearings is a complicated issue, the
5 people must prove a defendant's statement was
6 voluntary in a suppression hearing beyond a
7 reasonable doubt. That's a high standard obviously.
8 Judges, however, have a natural reluctance I think to
9 suppress evidence. It's our duty to protect the
10 defendant's constitutional and statutory rights, but
11 we also want to further the truth seeking process.
12 And so when a police officer testifies that a
13 defendant has admitted to the commission of a
14 horrific crime, a judge might be reluctant to
15 suppress that evidence even if the police officer
16 can't remember every salient detail about the
17 interrogation or appears to be filling in the blanks
18 in some parts of his or her testimony. And the
19 police officers and the assistant district attorneys
20 also know that, of course. They know that those
21 incentives operate on us. The final point is that
22 the legality of the vast majority of custodial
23 interrogations are never tested even in the four
24 (sic) hearings I've described, and that's because
25 most cases are resolved by plea bargains, and plea

3 bargains usually occur before the hearing takes
4 place. Thus in most cases where interviews are not
5 recorded, the police and the prosecutor will never
6 have to testify under oath about the inter—about how
7 the interrogation took place. The legality of the
8 interview will never be tested by a judge. The
9 ultimate point, of course, is that the bulk of these
10 problems be remedied by recording every custodial
11 interrogation from beginning to end, and I commend
12 your efforts to try to see if we can accomplish that
13 more thoroughly and—and widely than we do now. Thank
14 you. I'm happy to answer questions if you'd like.

15 CHAIRPERSON LANCMAN: Yes, thank you very
16 much for—for being here and for your patience and
17 particularly for your insight into how difficult it
18 is for judges to evaluate the validity of these
19 confessions without—without videotaped evidence.
20 Now, I just would like to get your—your observation
21 as you [coughs] you handle these cases. How often do
22 you see where there is a confession that has been
23 videotaped, and I know that your window—I think I
24 understand it is—is—by the time you're hearing cases
25 today, the confession—reported confession is six
months old, three years old?

2 JUDGE CONVISER: Six months, a year, a
3 year and a half. It takes a long time for these
4 cases to get to the hearing and process.

5 CHAIRPERSON LANCMAN: So tell us what
6 you're seeing--

7 JUDGE CONVISER: [interposing] Right.

8 CHAIRPERSON LANCMAN: --out there in the
9 real world. Can you see evidence--

10 JUDGE CONVISER: [interposing] Yes.

11 CHAIRPERSON LANCMAN: --of the NYPD
12 routinely, let alone uni-universally recording these
13 interrogations or confessions?

14 JUDGE CONVISER: I'm seeing it rarely by
15 the NYPD. I'm seeing it routinely by the District
16 Attorney's Office, but that's the problem. I mean I
17 would say that that's a different problem that no
18 recording, which is you get the station house
19 interrogation. You don't have a recording of that.
20 Then you get the district attorney's interview after
21 which the de-where the defendant has already made the
22 inculpatory statements to the police and when you
23 watch these district attorneys interviews there are--
24 these are very capable assistants. They have a
25 conversation that lasts about 45 minutes with the-

3 with the defendant, and it's a very rational,
4 reasonable give and take. You don't see pressure.
5 You don't see deception. You don't see anything
6 that's offensive, and the problem is you don't see
7 what happened before, and by the time they get to the
8 DA's office and are interviewed by this assistant
9 district attorney who is normally scrupulous, and-and
10 these are very good assistants usually, about doing
11 this lawfully, and not only lawfully, but in a way
12 that really makes a good presentation. The defendant
13 has already made the inculpatory statements to the
14 police. Now, we don't—we don't see what goes on in
15 the station house. That's the problem I think.

16 CHAIRPERSON LANCMAN: How often do you
17 see issues with lineups, photo arrays that sort of
18 thing and what's your comfort level as a policy
19 matter with the way that you see they're being
20 conduct?

21 JUDGE CONVISER: Well, I—I think you
22 know, listening to these experts testify what's so
23 striking about it is that if you compare the science
24 on eyewitness identifications, I mean you compare the
25 legal standards that we use and the methods that we
use they're very out of date with the science. You

3 know, we—we don't see these identifications
4 procedures recorded. They're not usually done
5 through a double blind—double blind process. We
6 don't really have authority to require them to be
7 done through a double blind process. The—the
8 scientific knowledge that these experts are aware of
9 are not necessarily reflected in the—in the case law
10 from the federal and the state courts. So we're sort
11 of lagging behind the science and the methods that we
12 could be using to ensure that eyewitness
13 identifications are done more accurately. And
14 obviously, as you know, they are the most common
15 source of conviction of innocent people is mistaken
16 eyewitness identification, and I think we're making
17 advances in that respect particularly through the
18 increasing use of expert witnesses on—on
19 identification, which is more and more being used in
20 our courts. But I think we're still lagging behind
21 in terms of using the science and the bet methods
22 when we make these assessments of eyewitness
23 identifications.

24 CHAIRPERSON LANCMAN: Thank you very much
25 for your testimony . Very helpful.

JUDGE CONVISER: Thank you.

2 CHAIRPERSON LANCMAN: Next, we're going
3 to hear from some folks who were victims of being
4 wrongfully convicted. Judge, if you could just—I want
5 to—Judge.

6 JUDGE CONVISER: Yes.

7 CHAIRPERSON LANCMAN: I just want to grab
8 you for a second. So don't—don't run out. We want
9 to hear their personal testimony and their—their
10 personal experiences. Shabakah Shaku, Howard Newton,
11 Lonnie Soury, Sharonne Salaam. I know her son was a
12 victim, and Barry Gibbs. If you could come on up and
13 find a seat, we'll swear you in, and hear what you
14 have to say. [background comments] I think
15 Margarite testified or spoke very eloquently at the
16 press conference earlier. We're going to do three
17 minutes on the—on the clock, and it looks like we're
18 a little short. It might be that—that some folks
19 have to leave. I'm sorry for that. [background
20 comments, pause] You're good? Okay, good. We're
21 going to raise our right hand. Do you swear—your
22 right hand. You don't. Okay, fine, but you'll
23 answer my questions. Do you swear or affirm the
24 testimony you're about to give is the truth, the
25 whole truth and nothing but the truth?

2 ALLEN NEWTON: Yes.

3 CHAIRPERSON LANCMAN: Thank you very
4 much. Who would like to get us started.

5 ALLEN NEWTON: good afternoon. My name
6 is Allen Newton. In 1985, I was wrongfully convicted
7 of rape, robbery and assault in the Bronx. I spent
8 21 years in prison for a crime that I did not commit
9 based on the victims' misidentifying me as the
10 perpetrator. There were many things that was wrong
11 with my case and the way the police conducted the
12 eyewitness identification procedure. First,
13 investigators went to the hospital while the victim
14 was still recovering from surgery, and showed her
15 nearly 200 photographs for the two days until she
16 selected my photo. Then police picked up the victim
17 from the hospital, brought her to the precinct to
18 view a live lineup where she picked me out again.
19 Finally, at my trial, there was another in-court
20 identification of myself. It sounds very convincing
21 to a jury when a defendant picks a defendant out in
22 court. They say this is the person who committed the
23 crime. I was convicted despite my fiancé and her
24 daughter corroborating my alibi of being in a
25 different county in 1984 watching Ghost Busters. I-I

1 first requested testing in 1988, three years after I
2 was convicted. A Bronx Supreme Court Judge granted
3 the testing. What happened? The evidence
4 disappeared after that. Six years later when the DNA
5 Bill was passed in New York State, I was the first
6 one to put in for testing. The police claimed they
7 couldn't find the evidence now. Finally, in 2005,
8 five weeks after the Innocence Project with my family
9 the rape kit was located, tested and proved my
10 innocence. Exoneration was the first step of
11 rebuilding my life. I had to readjust to a world. I
12 had been away for—for two decades. This meant
13 rebuilding relationships with family and friends,
14 getting a job to support myself, and just learning
15 how to recover from the trauma that was two—two
16 decades in the making. I tried to make a lot of
17 positive experiences from this. Nevertheless, since
18 my release, I started on a non-profit called AFCER
19 (sic), Advocates for Change and Exoneree Rights with
20 another—another exoneree. I went back to school. I
21 got my bachelor's degree, and I'm still working to
22 support the network of exonerees. I was working with
23 CUNY's Black Male Initiative, a program to raise
24 retention in graduation rates for underserved
25

3 communities. Finally, when it comes to speaking
4 about wrongful convictions, there's a lot of science
5 behind this testimony, and like one of the witnesses
6 testified, Jennifer from CUNY was talking about how
7 the police are so reluctant to implement a lot of
8 these changes, and what Barry Scheck said is even
9 more profound. We need to just pass the law, and
10 then let the Police Department [bell] deal with the
11 repercussions after the fact because one of the
12 things I know and understand they are not—they are
13 not conducting double blind lineups, and they are not
14 interrogating people the way they're supposed to be
15 because all the testimony will show only the
16 confession is on tape, nothing else. Thank your for
17 this opportunity, and hopefully a law can be passed
18 because I've been home ten years. Barry has been
19 home ten years. So we still got many of them that's
20 still coming home, and we're the lucky ones. We're
21 the lucky ones whose evidence was able to be found
22 because I believe I can really say my DNA evidence
23 was found ten years ago. And I don't believe New
24 York City has produced any more DNA evidence since my
25 case, and part of the problem is I went to trial. I
was awarded \$18 million in a civil judgment. Now

2 think about this. I was awarded \$18 million in a
3 civil judgment. I had more rights extended to me in
4 my civil trial than in my criminal trial. Thank you.

5 CHAIRPERSON LANCMAN: Thank you. Mr.
6 Salaam, you're up. Okay.

7 BARRY GIBBS: Good afternoon, Council.
8 I want to thank you for listening, and my name is
9 Barry Gibbs. I did 19 years for a crime I didn't
10 commit for murder, and had there been cameras during
11 the investigation and, you know, there were—there
12 were around. The officer tried to beat a confession
13 out of me. I'm a Vietnam veteran. I know what it is
14 to feel pain. I know that it is to suffer, but I
15 never thought that the criminal justice system would
16 let me down. I worked in the Post Office for 19
17 years, and I got picked out of a lineup, and I had
18 asked the officer because I never had any problems
19 with officers, I says, do you believe that the
20 eyewitness you have is reputable. Now, I was feeding
21 off of how the officer was to me before he beat me,
22 and then afterwards, I was told there's an eyewitness
23 and I said how reputable is he? He says he's very
24 reputable, but you might stand in a—in a lineup, and
25 I says well, if you think he's reputable. He tells

1 me he's an ex MP Marine. I says well if you think
2 he's reputable, then I think he's reputable, and I
3 stood in that lineup, and I wasn't in that lineup for
4 more than a minute, and I got picked out of the
5 lineup. I got sentenced to 20 to life, and I did 19
6 years. Had there—had there been cameras in the
7 vicinity of I believe the whole precinct, and when
8 the man was speaking earlier, he said they should
9 have cameras all around the precinct. That's what
10 they should have because they could take you from one
11 room and put you into another room, and interrogate
12 you in the other room, and then bring it back to the
13 original room that they started from. So I just want
14 to bring it out that there—there is need for changes,
15 and people have suffered. I lost my mother, my
16 father. I lost my son. I lost my whole family over
17 this, and right now I celebrate my 11th anniversary
18 this month the 29th in a few days, and it's good to
19 be free. It's good to be alive, and I want to thank
20 you for listening.

21
22 CHAIRPERSON LANCMAN: Thank you for
23 sharing your experience. Ms. Salaam.

24 SHARONNE SALAAM: Well, I'm here. I'm
25 Sharonne Salaam, and I'm the mother of Yusaf Salaam,

3 one of the kids that was robbed in the Central Park
4 Five case. This started for me in 1989. Before
5 that, I was just like every other person with a great
6 deal of respect for law enforcement, and the judicial
7 system. I never thought that there were people who
8 were actually in jail who were innocent. I was one
9 of those people that was walking around obviously in
10 a daze. When my son, who was 15 at the time, was
11 arrested, it was total shock. In living through it,
12 as a parent I went through all kinds of stuff.
13 People were spitting at me at the street, calling me
14 all kind of names, telling me what they was going to
15 do for me if they caught me somewhere, and it was going
16 to be worse than what had happened to the white woman
17 that my son had raped. We went through a living
18 hell. My children, the ones who had not been
19 convicted were also going through a process where
20 they were being threatened in the schools, threatened
21 in homes, threatened at the street. There were
22 people who crossed the streets when they saw us
23 coming not wanting to be contaminated. This was
24 happening to us in a spectrum that was similar to
25 what they talked about in terms of wanting this
justice, and wanting these things videotaped from

2 beginning to end, but it was also in a race hate
3 environment that stoke the fire. And when you look
4 at these issues in regard to videotaped confession
5 and justice for people who have been wrongfully
6 incarcerated and justice for people who have not been
7 incarcerated yet. You have to also look at well how
8 are you going to train these policemen to be color
9 blind? Because the majority of the police—people who
10 you're looking at are people that look like me who
11 might be darker than me. Who might have braided
12 hair, hair that's not combed, the people who we feel
13 are less than, or should I say deserving of what they
14 get because that's what people told me. My son was
15 too good to be at a place called Harlem Valley
16 getting three square meals a day for what he did.
17 Even after the conviction was overturned, it
18 continued: They must have did something, and it's
19 continuing on until this day. When I think of my son
20 and my family and—and I have to say well, gee, a lot
21 of people who go through this process acceptance of
22 innocence after you've been exonerated is one of
23 those things that people accept and they move on.
24 Here, I am years later, 20 some odd years later going
25 on 30 years later, and they're still talking about

1
2 how they did something. When I went into that DA
3 precinct, and Elizabeth Lettera (sp?) and Linda
4 Fasteen (sp?) hustled me off to a back room. They
5 knew my child was 15 because I told them. I told
6 them I did not give them permission to talk to him.
7 I told them I wanted him to have a lawyer. They set
8 me in a back room in that police precinct. I didn't
9 know where my child was. I didn't know if he was
10 alive or dead. I wondered while I was in that back
11 room had they hung him yet. This was what was going
12 through my mind as a mother, and every mother who
13 goes through these things she might not necessarily
14 be thinking have they hung him yet, but she's
15 thinking something similar. If they had had video
16 cameras going when I walked into the precinct, all of
17 this stuff wouldn't have happened. If they had
18 videotapes where my child was, this stuff wouldn't
19 happen because they knew how old my child was. They
20 knew they did not have permission, and they knew they
21 didn't have the right. But one other thing they knew
22 more than anything else was that the law was on their
23 side, and the law was on their side because they
24 could do this type of stuff to people in a closed
25 room. And when they go and they sit before a judge,

2 and in my case they picked the judge, but it wouldn't
3 have mattered even if they hadn't picked the judge.
4 But when they go and they sit before the judge, and
5 they—they come in, and the law professionals in their
6 suits with their badges and all that kind of stuff
7 on, who are they going to believe? Me? No, they're
8 going to believe the law professional because why
9 would they lie? Why would they not uphold the truth?
10 Why? It's for the same reason these police are not
11 here today. They don't want to change in their modus
12 operandi. They want business to go on as usual.
13 They want to continue doing whatever it is they're
14 doing with this cloak so that they can say wow, we
15 arrested so many people today. We did it. We did
16 it, and they were all guilty because very few people
17 want to believe that we are living in the United
18 States of America, and there are innocent people in
19 jail.

20 CHAIRPERSON LANCMAN: Thank you all. The
21 three of you I really couldn't even imagine what
22 you've been through, and I'm sure it's not easy to
23 talk about it, and you've been here all day.

24 SHARONNE SALAAM: It's not. It's not
25 easy.

2 CHAIRPERSON LANCMAN: From this morning
3 the actual pain, it's—you could point—you can see it
4 and you can feel it, and you've been here all day.
5 Speaking for myself and I know for the rest of the
6 people who have been here, we come in and out because
7 there are other hearings going on, and people have
8 other responsibilities. We are here to try to make a
9 change to the way business is done in New York City
10 [coughs] and you have our commitment that we're going
11 to continue to keep trying to achieve that. It may
12 not be the last time. You know, I—I noted Mr.
13 Tankleff earlier said he hopes that this is the last
14 time he has to come out and testify to it.

15 SHARONNE SALAAM: I know.

16 CHAIRPERSON LANCMAN: It may not be, but
17 we're going to keep fighting, and—and Barry, I think
18 left, but Barry had mentioned legislation, which
19 would mandate the videotaping of interrogations and
20 confessions, and that is being—that is being drafted,
21 but this—this is helping us move forward very much.

22 SHARONNE SALAAM: And I really hope that
23 it makes some type—type of a substantial change
24 because I was here back in what, 2002, when Council
25 Member at that time, Perkins--

2 CHAIRPERSON LANCMAN: [interposing] Uh-
3 huh.

4 SHARONNE SALAAM: --was talking about the
5 same issue.

6 CHAIRPERSON LANCMAN: So, it's
7 interesting that--

8 SHARONNE SALAAM: [interposing] on civil.

9 CHAIRPERSON LANCMAN: --that you mentioned
10 it. You have an excellent memory. It's actually his
11 legislation--

12 SHARONNE SALAAM: [interposing] Yes.

13 CHAIRPERSON LANCMAN: --which had expired
14 when he left the City Council--

15 SHARONNE SALAAM: [interposing] Uh-huh.

16 CHAIRPERSON LANCMAN: --which is being
17 revised.

18 SHARONNE SALAAM: Yes, and I believe it's
19 up in the Assembly, and it's still waiting after all
20 of these years, but one thing that I do want to say
21 and the only thing that's going to make his
22 legislation or anyone else's legislation work in my
23 opinion is that there is some sort of accountability
24 that the law enforcement personnel take for not
25 uphold the law. As long as they can just get away

2 with a slap on the wrist, it's never going to end n o
3 matter how many videotapes you get, but it can be a
4 beginning, but who wants to be in the beginning of a
5 10, 15, 20, 30, 40-year battle to get out of jail?

6 CHAIRPERSON LANCMAN: Thank you all for--

7 ALLEN NEWTON: [interposing] Can I make
8 one--?

9 CHAIRPERSON LANCMAN: Oh, yes.

10 ALLEN NEWTON: Can I make one statement?

11 Unlike Mary, I wish I could be here again because I
12 understand one thing: So as the time change, the law
13 must change. We cannot live with laws for 60 or 70
14 years ago. So times dictate what must happen, and
15 times will dictate the law needs changing sometimes,
16 and hopefully, you know, the legislative bodies
17 around the country, they'll, you know, take advantage
18 of that and, you know, like we had some experts here
19 from John Jay. Believe you me, if it was about
20 prosecuting, the Police Department would be here.
21 They know they're experts, but because it's about
22 wrongful convictions and about mistakes that made
23 sometime by law enforcement, they choose not to be
24 here. Instead of, you know, best practices help
25 everybody up because if you have the whole confession

2 and the whole interrogation being videotaped, they
3 don't have to be questioned about the things they may
4 have done, but thank you, and hopefully things will
5 change.

6 CHAIRPERSON LANCMAN: Thank you.

7 ALLEN NEWTON: Good.

8 CHAIRPERSON LANCMAN: Okay, thank you
9 very, very much. Our last panel, our last very
10 patient panel is the folks from the legal services
11 providers, Brooklyn Defender Services, Bronx
12 Defenders, and Legal Aid with Trifecta.

13 [background comment, pause]

14 CHAIRPERSON LANCMAN: Okay. Good
15 afternoon. Let's swear everyone in. Do you swear or
16 affirm that the testimony you're about to give is the
17 truth, the whole truth and nothing but the truth?

18 Yes.

19 CHAIRPERSON LANCMAN: Welcome. From left
20 to right. Go.

21 MARIKA MEIS: Marika Meis (sp?). I am the
22 Legal Director. I'm the Director of the Preventive
23 Practices at the Bronx Defenders. So I think you've
24 heard a lot about the need for recording. I just
25 wanted to give you a little bit of the picture of

2 what we've got now, and what it's like to actually
3 experience that.

4 CHAIRPERSON LANCMAN: Yeah, that-that
5 would be helpful[coughs] because you all on the
6 ground.

7 MARIKA MEIS: Okay.

8 CHAIRPERSON LANCMAN: So if you could tell
9 us what's real out there, we-it's important that we
10 videotape--

11 MARIKA MEIS: [interposing] Right, so--

12 CHAIRPERSON LANCMAN: --interrogations.
13 We get it.

14 MARIKA MEIS: So, despite all these
15 recommendations, what the practice is for us in terms
16 of interrogations is that right now my office has 800
17 felony cases that have been pending for over a year.
18 So those are all post-indictment cases mostly. We
19 have 15 cases in which the interrogation was
20 recorded, and those are largely in homicide and sex
21 cases, and couple other violent felonies. And in the
22 years preceding the recent past three or four years,
23 we had a total of I think six or seven. So even
24 though you have these pilot projects that NYPD
25 implemented in 2010 and expanded in 2013, that's a

2 very small number of cases where the interrogation is
3 recorded.

4 CHAIRPERSON LANCMAN: And--and in the
5 remaining 785 cases there--there were interro--they
6 were, in fact, interrogations but they just weren't
7 recorded?

8 MARIKA MEIS: There aren't statements in
9 each and every one of those cases, but in cases where
10 there are statements, we may--we only get the end
11 product. We get the results, the confession without
12 the process of what might have been--

13 CHAIRPERSON LANCMAN: [interposing] And--
14 and by statement you mean they're in the precinct
15 being questioned by detectives?

16 MARIKA MEIS: Right.

17 CHAIRPERSON LANCMAN: That is--that is not
18 a--not a statement they made on the street when they
19 got picked up. You mean--

20 MARIKA MEIS: [interposing] Right.

21 CHAIRPERSON LANCMAN: --like the product
22 of some interview?

23 MARIKA MEIS: Right, they're--what we know
24 from the interrogations we received is that they look
25 so different from what police testify to when they

2 take the stand at a suppression hearing. So they'll
3 say something like I had a brief conversation with
4 your client at the end of which the statement was
5 memorialized into this confession, and then here it
6 is or play the recorded interview back.

7 CHAIRPERSON LANCMAN: Let-let me just ask
8 you directly.

9 MARIKA MEIS: Yes.

10 CHAIRPERSON LANCMAN: So you have about
11 800 felony cases that are-that are pending?

12 MARIKA MEIS: Right.

13 CHAIRPERSON LANCMAN: Okay. Could you,
14 you know, go back to your office and-and-and quantify
15 for us of the 800 cases, X are the-in-in X number of
16 these cases, there is the kind of
17 statement/confession which ought to have been
18 videotaped if the NYPD was following the-the
19 procedures that they-Ms. Glazer today claimed that
20 they follow. Can-can you do that for us?

21 MARIKA MEIS: I could try. I don't know
22 how accurate it would be because of the way we track
23 our cases internally, but I certainly try. So that's
24 that--

2 CHAIRPERSON LANCMAN: [interposing]
3 that's the smoking gun, though.

4 MARIKA MEIS: Yes, right.

5 CHAIRPERSON LANCMAN: I need that.

6 MARIKA MEIS: Right, and--

7 CHAIRPERSON LANCMAN: We need that.

8 MARIKA MEIS: And the--the seven offenses
9 that they've identified are not the ones in which
10 we're always seeing these interrogations either.

11 CHAIRPERSON LANCMAN: We--we--we need each
12 of you to go back to your offices, and--and--and do
13 that. That's the smoking gun. [bell] Because--
14 because, you know, Ms. Glazer can come here and say
15 whatever she says. You're the ones who tell us no
16 that's--that's not the case, and here's the--there's
17 200 cases where we've got to statement that our
18 clients supposedly made after questioning, and
19 there's no videotape. So I'm sorry to interrupt you
20 but--

21 MARIKA MEIS: Yeah, that's okay. So I
22 mean you got the idea that this is a very small
23 portion, and the contrast between just--even if
24 there's no bad faith, the function of human memory we
25 have this-- Police officers aren't able to remember

2 the details of what happened, and the details are
3 what matter. So for us to be effective
4 representatives on behalf of our clients, for us to
5 be able to hire the experts that call to ask us to
6 say is this a false confession? Can you testify?
7 We need the actual process, the interrogation, the
8 hours long event that leads to the actual videotaped
9 confession for us to have any ability to do that.
10 So, it's absolutely necessary. Recording is the only
11 real answer. I submitted in-in-in addition to my
12 testimony some examples of what a cop's testimony
13 looks at a suppression hearing versus what an expert
14 from a recorded interrogation looks like. So when
15 officers say things like it was just a brief
16 conversation, I didn't use any coercive techniques,
17 well, that's just not borne out by the videos we
18 have. Which show extensive processes that are long
19 and involved instead of this sort of sanitized
20 statement that is ultimately shown to a judge or a
21 jury.

22 CHAIRPERSON LANCMAN: When do you get the
23 video?

24 MARIKA MEIS: We get the video from the
25 Office or the District Attorney.

2 CHAIRPERSON LANCMAN: So when?

3 MARIKA MEIS: All the time

4 CHAIRPERSON LANCMAN: When in the case?

5 MARIKA MEIS: It varies. To be honest,
6 we've had one case in which it was precluded for
7 failure to timely turn it over. For the most part,
8 it's post-indictment, but sometime into the case. So
9 for us aside from wrongful convictions, for us to
10 also take pleas, advise our clients, prepare a
11 defense, the whole system would work better if we got
12 this promptly.

13 CHAIRPERSON LANCMAN: I don't want to
14 turn this into a hearing at this point no less on
15 open file, discovery, et cetera, but do the discovery
16 rules govern when you're supposed to get these
17 statements? No?

18 MARIKA MEIS: I mean to the extent that
19 it's covered by 240-20 which is a statement made by
20 our client conceivably, but no, not-not really.

21 CHAIRPERSON LANCMAN: Okay.

22 MARIKA MEIS: And then just briefly on
23 the ID stuff. Even though we have to do some reform
24 now where they're starting to turn over and/or
25 preserve the photo manager system. You've heard some

1 testimony about that. You know that is the PIM
2 system. So that records not only the description a
3 law enforcement officer puts in, and the ultimate
4 number of photos that are generated, but also the
5 length of time a witness spends looking at it. So
6 we're now starting to see that be turned over, which
7 is an improvement. But I agree with all the other
8 people who have spoken today that the entire
9 proceeding itself needs to be recorded because there
10 are little nuances and things that are lost.
11 Officers aren't taking notes. They will bring those
12 notes over if they are taking notes. So they're able
13 to sort of insulate and—and protect the process still
14 absent recording, and the best practices are not
15 being implemented at all. We've never seen a
16 recorded identification proceeding, and officers
17 routinely say they are—are not aware or have not been
18 trained in any of those best practices. So the
19 continued reluctance on the part of NYPD to follow
20 these practices that all the expects and everyone
21 across the nation agrees are necessary is just
22 ongoing.
23

24 CHAIRPERSON LANCMAN: Got it. Thank you.

25 Ma'am.

3 YUNG MI LEE My name is Yung Mi Lee. I'm
4 a Supervising Attorney in the Criminal Defense
5 Practice of Brooklyn Defender Services. I just want
6 to touch upon a couple of things that were said by
7 ADA Hale as well as Judge Dwyer. So ADA Hale had
8 mentioned that one of the main reasons why there are
9 wrongful convictions is because of ineffective
10 counsel. Well, the way to address that is to provide
11 us with discovery because while BDS agrees that we
12 need better practices, evidence-based procedures,
13 it's all useless unless the defense attorney gets
14 that discovery, and Judge Dwyer in his earlier
15 testimony also I think emphasized the importance of
16 that. And, I want to give you an example of a case
17 that we had very recently, which we've been the
18 effective counsel beneath their effective
19 investigations. There was an ID procedure, and the
20 lack of discovery in this case. So our client was
21 charged with attempted murder of two different
22 individual, and in this particular case the DA's
23 office chose not to give us discovery. So, our
24 client as incarcerated for 1-1/2 years. On the eve
25 of trial we got what our lawyers call the discovery
dump. So the Friday before trial, we received the

2 discovery package. In that huge discovery package,
3 the lawyer saw that the two shooting victims were
4 shown a photo array, and the first shooting victim
5 could not identify our client. The second one said I
6 think it's him. It looks like him. To make matters
7 worse, our client in that photo array was not even a
8 suspect. He was just a filler. This is a one-
9 witness ID case with no confession, no other
10 witnesses. The very next day a lineup was conducted,
11 and sure enough there was a positive identification.
12 Now, even with a double blind lineup, without—clearly
13 the taint from the photo array, and if we had not
14 received—received that discovery, it wouldn't have
15 matter even if—even if we had the double blind
16 lineup. What makes—what the case even worse is that
17 within that discovery the ballistics showed that the
18 bullet had been dis—had been discharged from a gun
19 that was involved in another shooting close to—close
20 enough in time where the—the lawyers would have
21 wanted to investigate that other shooting because in
22 that [bell] other shooting, our client was not a
23 suspect. Again, other people were involved in that
24 shooting. So this is a case where a client has spent
25 a year 1-1/2 in jail waiting for trial. Our lawyers

2 really had nothing to prepare for. There was no way
3 they could have conducted an effective investigation
4 until they received that discovery. Fortunately, for
5 us, the judge agreed that we needed to conduct a
6 further investigation, which then again delayed the
7 trial. But this is just an example of why discovery-
8 discovery reform has to go hand-in-hand with any
9 reforms, and identification procedures, and
10 interrogation recording. Without discovery reform it
11 is useless to have evidence-based practices go into
12 effect.

13 CHAIRPERSON LANCMAN: Thank you. Sir.

14 DAVID LOFT[off mic} I'm David Loft.

15 CHAIRPERSON LANCMAN: You are literally
16 the Marianna Rivera of this hearing.

17 DAVID LOFT: So I'll try my best to be as
18 brief as she usually was. So David Loft, Legal Aid
19 Society, Attorney charged with Post-Convictions and
20 Forensic Litigation. Just to piggyback on what Yun
21 Lee said, the discovery rights in New York are
22 essentially trial-based rights, and so you have this
23 whole idea of a trial dump where you don't get police
24 reports, or witness statements until trial. We're in
25 a plea based system, and 95% of the cases plead out,

2 and so what that means is in the 95% of the cases the
3 attorneys are flying blind. We don't have police
4 reports. You don't know where—where to begin
5 investigations. You don't know where to subpoena
6 witnesses. For cases where you have stranger where
7 the—the name isn't even disclosed in this county and
8 Manhattan. If there—and if we are a trial based
9 system, also the wrongful convictions are going to
10 come—a—a plea based system, most of the wrongful
11 convictions are going to come from people who pled
12 guilty to crimes they hadn't committed. It's very
13 similar I guess to a lot of talk about, you know, why
14 people confess to crimes they didn't do. I can—I can
15 assure you—I've practiced 26 years—people plead
16 guilty to things they don't do. Without more robust
17 discovery practice, we're not going to help them meet
18 that. I also believe with everything that was said
19 about the need to record interrogations, I can't
20 remember, but it's a very long-winded story about a
21 client that was recently exonerated by Legal Aid
22 Society, Vanessa Gathers with the help of the
23 Brooklyn Conviction Integrity Unit it had all the all
24 the hallmarks there. You know, she was lied to and
25 so they had forensic evidence against her. She was

1
2 promised she would be able to go home. She was
3 threatened with the perils of women's prison, et
4 cetera, et cetera. The point being that she would
5 have never been convicted that recording been done,
6 and right now the facts of recording throughout the
7 borough is a mess. I've talked to borough heads in
8 Brooklyn, in Queens and in Manhattan. I've gotten
9 different answers each place. One place they record
10 interrogations for sex offenses. One places it's
11 some murder case. Another borough has never seen a
12 statement recorded in their entirety. It's great
13 that they—they claim that in 5,000 cases they record
14 interrogations. We have about 23—230,000 cases a
15 year. So, it, you know, you need to mandate it.
16 Otherwise we're just not going to have information
17 about what goes on in the interrogation room, and why
18 people like Vanessa—Vanessa Gathers, who's a 29-year-
19 old woman who's never—who was 39 at the time and
20 never been involved with the law before, and
21 wrongfully confessed to something and spending the
22 next 20 years of her life in prison. This is
23 critical. The final thing I will say, and it hasn't
24 been covered today, but I saw Dysart here talking
25 about [bell] eyewitness identification, and she was

2 very informative to you about what the issues are in
3 eyewitness identification. She knows more than I'll
4 be able—I'd be able to explain to you in the zero
5 seconds I have left. But New York courts have this
6 corroboration requirement where it allows judges not
7 to allow defense counsel to produce eyewitness
8 experts at trials where eyewitness identification is
9 a critical part of the testimony. And so what
10 happens is you may have this shaky eyewitness
11 testimony with some other evidence corroborating it,
12 and you have that, you know, big moment at trial.
13 And that scene I'll never forget their faces. We
14 will have an expert to contextualize that, and
15 evidence that is saying that every brick is—every
16 brick is not a wall. Identification testimony is one
17 brick. It needs to be litigated fully without regard
18 to whether there is any corroborating evidence.
19 Otherwise, you can still no matter whether you have
20 the best practices, if you don't have an expert at
21 the table come in and contextualize it, you're going
22 to wind up with faulty--

23 CHAIRPERSON LANCMAN: [interposing] And
24 what's some--

25 DAVID LOFT: --evidence.

3 CHAIRPERSON LANCMAN: How-how does the
4 judiciary view that kind of expert testimony? Is
5 that now accepted?

6 DAVID LOFT: It's-it's accepted as a-an
7 area where you can bring in an eyewitness, but it's
8 discretionary as to whether the defense can bring him
9 in if there's other corroborating evidence. So if
10 you have someone who has falsely confessed to
11 something that would be corroborating evidence. And
12 so you wouldn't be able to bring in the items to
13 identify-you might not be able to bring in the
14 experts to identify items, and so then--

15 CHAIRPERSON LANCMAN: [interposing] And
16 are-are courts letting you bring in experts to talk
17 about why someone might confess falsely?

18 DAVID LOFT: That's a little more
19 tenuous, but again that's also an abuse of discretion
20 standard, and the courts can deny it. So I think the
21 language needs to be firmed up about, you know, if-if
22 it's important enough where we-we can-we need to
23 record the interrogation, if it's important enough
24 where we need to bring-bring in-where we need to have
25 best practices for eyewitness identification, and if
experts are the ones who are informing us why, they

2 should be--there should be--there should do--defense
3 counsel should be allowed to bring in those witness,
4 and it should be an abuse of discretion not to allow
5 them to bring them rather than, you know, sort of
6 going the other way.

7 CHAIRPERSON LANCMAN: Got it. Thank you
8 very much. We really appreciate it. [gavel] That
9 concludes our hearing.

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C E R T I F I C A T E

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



Date September 26, 2016