

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON HEALTH

Jointly with

COMMITTEE ON PUBLIC SAFETY

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December 14, 2017  
Start: 1:22 p.m.  
Recess: 4:57 p.m.

HELD AT: Committee Room - City Hall

B E F O R E: Corey D. Johnson  
Chairperson

Vanessa L. Gibson  
Chairperson

COUNCIL MEMBERS:

Rosie Mendez  
Mathieu Eugene  
Peter A. Koo  
James Vacca  
James G. Van Bramer  
Inez D. Barron  
Robert E. Cornegy, Jr.  
Rafael Espinal, Jr.  
Vincent J. Gentile  
Julissa Ferreras-Copeland  
Jumaane D. Williams

## COUNCIL MEMBERS:

Chaim M. Deutsch  
Rory I. Lancman  
Ritchie J. Torres  
Steven Matteo

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

Barbara Sampson  
Chief Medical Examiner

Emanuel Katranakis  
Commanding Officer of the NYPD Forensic  
Investigations Division

Oleg Chernyavsky  
NYPD Director of Legal Affairs

Florence Hutner  
OCME General Counsel

Craig O'Connor  
Assistant Director in Forensic Biology at NYPD

Sarah Chu  
Innocence Project

Joshua Norkin  
Legal Aid Society

Julie Fry  
Legal Aid Society

Marika Meis  
Bronx Defenders

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

Guy Raimondi  
Brooklyn Defenders

Michael Sisitzky  
NYCLU

Sergio De La Pava  
New York County Defender Services

Yul-San Liem  
Justice Committee



2 CHAIRPERSON JOHNSON: Sergeant, we ready?

3 Okay. [gavel] Good afternoon. I'm Council Member

4 Corey Johnson, Chair of the New York City Council's

5 Committee on Health. The Committees on Health and

6 Public Safety are holding a joint hearing today

7 examining forensic practices in the NYPD Crime Lab

8 and the Office of the Chief Medical Examiner. Jimmy

9 Vacca? I want to thank Council Member Vanessa

10 Gibson, Chair of the-- We're going to need some

11 public safety for Jimmy Vacca-- Chair of the Public

12 Safety Committee for co-chairing this important

13 hearing with me today. In September of 2016, the

14 President's Council of Advisors on Science and

15 Technology, or PCAST for short, released a report

16 which evaluated the scientific validity of seven

17 forensic techniques, some of which are used by the

18 NYPD Crime Lab and OCME. The report concluded that

19 several of these techniques required more research to

20 establish that they were scientifically valid, and

21 that some techniques such as bite mark analysis and

22 shoe print analysis are unlikely to ever be developed

23 into scientifically valid methods. High-sensitivity

24 DNA analysis, also called low-copy number or LCN, is

25 a technique pioneered and used by OCME for several

2 years to generate DNA profiles from very small  
3 quantities of DNA. Contamination and other  
4 complications associated with DNA analysis are  
5 magnified when dealing with very small samples of DNA  
6 and are of greater concern in high-sensitivity  
7 testing than in traditional analysis. This has led  
8 some prominent scientist to oppose high-sensitivity  
9 testing as too unreliable for something as important  
10 as forensic casework. While others believe that it  
11 could be conducted reliably if done with extreme  
12 care. While several jurisdictions may use high-  
13 sensitivity testing to assist with investigations,  
14 OCME was the only public DNA lab in the country that  
15 used this technique for criminal cases. The  
16 complications associated with high-sensitivity  
17 testing are amplified when the DNA sample being  
18 analyzed is a mixture of two or more individuals.  
19 The PCAST report examined among other things the  
20 analysis of complex DNA mixtures and the use of  
21 statistical software to examine those results. At  
22 OCME, the forensics statistical tool, or FST, was  
23 developed in-house as statistical software program  
24 used to estimate the likelihood that A suspect's  
25 genetic material is present in a complicated mixture

2 of several people's DNA. PCAST concluded that the  
3 foundational validity of DNA testing in the case of  
4 complex mixtures must be established with respect to  
5 a specified method applied to a specified range. It  
6 appears that OCME never specifically validated the  
7 use of high-sensitivity testing for mixture samples  
8 of less than 25 picograms. High-sensitivity testing  
9 has been used on mixture samples and amounts this  
10 small in hundreds of cases in New York City. In  
11 September of this year, a coalition of defense  
12 lawyers wrote a letter to the State Inspector  
13 General's Office asking the office to investigate  
14 high-sensitivity testing and FST, again, the Forensic  
15 Statistical Tool. Only a small proportion of cases  
16 using FST have gone to trial. As the prospect of  
17 unfavorable DNA evidence going in front of a jury  
18 leads most defendants to plead guilty. A recent New  
19 York Times article quotes numerous former OCME lab  
20 employees and high-profile scientists saying that  
21 these techniques were not scientifically credible.  
22 FST was criticized for under-estimating many real-  
23 time factors influencing DNA evidence within a crime  
24 scene, and for or to no oversight in transparency in  
25 the programming of software code. One federal court

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2 has refused to admit evidence obtained using both  
3 high-sensitivity training and FST, and another court  
4 mandated the release of FST source code so that its  
5 accuracy could be reviewed by the defense, council  
6 and the public. An expert witness allowed to review  
7 the source code of FST stated that its accuracy  
8 should be seriously questioned. In October of 2017,  
9 a federal judge lifted a protective order on the FST  
10 source code. The code was subsequently made publicly  
11 available and published online. In September of 2016,  
12 OCME announced it would discontinue the use of FST  
13 and high-sensitivity testing in favor of DNA mixture  
14 analysis of a DNA mixture analysis program called STR  
15 Mix or STRmix, which is also used by the FBI.  
16 Finally, the Committees hope to learn more about the  
17 local DNA database maintained by OCME which contains  
18 DNA profiles collected from crime scenes and  
19 suspects. According to news reports, as of July of  
20 2017, this database included about 64,000  
21 individuals' profiles. While this database provides  
22 police with many investigative leads each year, some  
23 advocates have expressed concerns that there are  
24 people in the database who have never been convicted  
25 of a crime and who have no idea that their genetic



2 profiles are routinely checked against evidence  
3 collected in criminal investigations. Moreover, it I  
4 not clear what if any mechanisms are in place to  
5 scrub the database of DNA profiles from people who  
6 have voluntarily provided exclusionary samples or  
7 whose DNA is collected without their knowledge. The  
8 Committees hope to learn more about OCME's guidelines  
9 regarding which genetic profiles can be entered into  
10 the database, how long they are kept and when they're  
11 expunged. I'd like to thank Legal Aid, the Innocence  
12 Project, and other advocates for their work on this  
13 important issue, and I will now turn it over to my  
14 good friend and colleague, Chair of the Public Safety  
15 Committee. I will now turn it over to my good friend  
16 and colleague, Chair of the Public Safety Committee,  
17 Vanessa Gibson. I want to just say before she  
18 starts, this committee hearing is going to look at  
19 all the things I just mentioned in my opening  
20 statement. Chair Gibson is going to talk about a  
21 piece of legislation that is being heard today in the  
22 latter part of this hearing after we finish up with  
23 the oversight with the folks that are before us  
24 today. The Health Committee members can leave and it  
25 will just become a Public Safety Committee hearing,

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2 but if you're here from Public Safety and you check  
3 in now, you're counted for the whole hearing. With  
4 that, I want to turn it over to my good friend and  
5 colleague, Chair Vanessa Gibson.

6 CHAIRPERSON GIBSON: Thank you so much,  
7 Chair Johnson. That was great housekeeping. Good  
8 afternoon ladies and gentlemen. Welcome to City  
9 Hall. I am Council Member Vanesa Gibson of the 16<sup>th</sup>  
10 District of the Bronx. I am proud to serve as Chair  
11 of the Committee on Public Safety. I welcome each  
12 and every one of you here today to our joint  
13 oversight hearing, the Committee on Public Safety and  
14 the Committee on Health. Today's hearing is to  
15 examine the forensic science practices of the NYPD's  
16 crime lab and the Office of the Chief Medical  
17 Examiner. DNA and forensic testing in general is an  
18 invaluable tool in both police investigations as well  
19 as case prosecutions. These methods are both a sword  
20 and a shield. It has not only convicted people of  
21 wrong-doing, but also set them free. According to  
22 the Innocence Project, as of this date, there were  
23 351 people in the United States who have been  
24 exonerated by DNA testing, including 20 individuals  
25 who served time on death row. In nearly half of the

2 DNA exoneration cases, misapplication of forensic  
3 science is the second most-common contributing factor  
4 to wrongful convictions. Given that these forensic  
5 tools are so powerful, we truly need to make sure  
6 that they are based on valid and accurate methods and  
7 procedures. As Chair Johnson indicated in 2016, the  
8 President's Council of Advisors on Science and  
9 Technology under the leadership of our former  
10 President Barack Obama issued a report highlighting  
11 the need for clarity about scientific validity  
12 standards, evaluation and subjective methods.  
13 Specifically, PCAST identified several feature-  
14 comparison analysis such as DNA samples, bite mark,  
15 fingerprint, firearm marks, footwear and hair whose  
16 methods have been assumed valid rather than  
17 established by empirical evidence. In this  
18 afternoon's hearing I hope to gather more information  
19 on the methods, the procedures and the training both  
20 the NYPD's Crime Lab and OCME and the use when  
21 conducting forensic examinations. We must ensure  
22 that this testing is accurate, and when it's used in  
23 the context of arrest and prosecutions, we need to be  
24 confident that we've identified the correct person  
25 with the highest level of certainty. While the use

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2 of DNA testing in other forensic science analysis  
3 have been a vital tool in the investigation of  
4 crimes, as a city we have a responsibility to  
5 acknowledge the challenges and limitations we face as  
6 well as making strides to adopt the most  
7 scientifically valid and reliable methods, procedures  
8 and guidelines. I am particularly interested in  
9 OCME's guidelines for the City's local DNA database,  
10 specifically in relation to the sharing of DNA  
11 profiles or samples with other jurisdictions such as  
12 the Federal Government. I'd also like to learn about  
13 the coordination between the NYPD's Crime Lab and how  
14 their work informs many of our City's initiatives,  
15 such as Heal NYC. The NYPD's Crime Lab and OCME are  
16 both integral agencies that aid investigators,  
17 detectives and prosecutors in solving crimes, holding  
18 people accountable, and potentially setting  
19 individuals free. This is the first time this  
20 committee has explored this topic, and I welcome the  
21 start of this dialogue as well as our future  
22 partnership to address these issues, both this month  
23 as well as in the New Year when we all begin our new  
24 term. In addition, I'd like to also state that in  
25 addition to this oversight topic, the Committee on

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2 Public Safety will also hear proposed legislation,  
3 Intro. 1235, which is sponsored by Council Member  
4 Jumaane Williams in relation to respecting the right  
5 to record police activities. This bill would  
6 prohibit the NYPD officers and peace officers from  
7 taking any steps to prevent the recording of their  
8 activities unless such recording would constitute the  
9 crime of obstructing governmental administration in  
10 the second degree. I'd like to thank Council Member  
11 Williams for introducing this legislation and  
12 certainly for today's hearing today. I look forward  
13 to hearing testimony from the Administration, our  
14 advocates, as well as members of the public. I'd  
15 like to thank the staff of the Committee on Public  
16 Safety for all of their work, our Senior Legislative  
17 Counsel, Deepa Ambekar, Senior Legislative Counsel,  
18 Brian Crow [sp?], our Policy Analyst, Casey Addison,  
19 Senior Financial Analyst, Steve Riester [sp?], and my  
20 Chief of Staff, Dana Wax, and I'd also like to  
21 recognize the members of the Public Safety Committee  
22 who are here, our Minority Leader, Steve Matteo,  
23 Council Member James Vacca, and we also have Council  
24 Member Jumaane Williams, and I'd also like to  
25 acknowledge from the Health Committee Council Member

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2 Peter Koo, and as I close, I certainly want to  
3 acknowledge that members of the Public Safety,  
4 although we will have another meeting to vote on  
5 legislation before the Committee as we end this year,  
6 but this is essentially our last oversight hearing of  
7 2017, and with four years of serving as the Chair of  
8 this Committee, the first woman, the first person of  
9 color, it has been my honor and privilege to lead  
10 this committee to work with my colleagues under the  
11 leadership of our Speaker, Melissa Mark-Viverito, to  
12 really look at so many issues and topics under  
13 criminal justice, the emergency 911 system, Vision  
14 Zero, the Office of Training, School Safety-- we have  
15 looked at almost every issue, and if we have not,  
16 we'll look at it in the new term. But I am truly  
17 honored and privileged, and I want to thank all of my  
18 colleagues for their understanding, for their  
19 cooperation, for all of the late night texts that  
20 I've sent to many of them letting them know about  
21 future hearings that are coming up, I really  
22 appreciate your partnership, and certainly I look  
23 forward to working with all of you in the new term.  
24 And to those that are leaving, Council Member Julissa  
25 Ferreras-Copeland is a member of Public Safety, I

2 wish her well in her new chapter, and certainly our  
3 Speaker. And with that, I thank you all for being  
4 here. I also want to acknowledge the presence of  
5 Council Member Mathieu Eugene, as well as our  
6 Majority Leader, Council Member Jimmy Van Bramer, and  
7 with that after all I've said, I turn this back over  
8 to my fellow colleague and Co-Chair, Chair Corey  
9 Johnson. Thank you.

10 CHAIRPERSON JOHNSON: I love Vanessa  
11 Gibson. She's been a great, great, great Chair. So,  
12 I want to swear in the panel. If you could all raise  
13 your right hands? Do you affirm to tell the truth,  
14 the whole truth and nothing but the truth in your  
15 testimony before this committee and respond honestly  
16 to Council Member questions? Thank you very much.  
17 So, whoever wants to begin may begin. I would just  
18 ask in reading my opening statement and in hearing  
19 the Chair's opening statement, these are complicated  
20 issues. We're using all sorts of acronyms and we're  
21 talking about DNA samples and mixtures of DNA and  
22 source code and things that for the average layperson  
23 like myself who's not an expert in this field, it's  
24 not entirely-- and if you're not a defense attorney  
25 who deals with these issues on a regular basis, or a

2 scientist who deals with them, these are not the  
3 easiest issues to comprehend. So, I would just ask  
4 that-- I haven't read the testimony yet. I'm going  
5 to read it along when you're testifying, but if you  
6 could try to of course make this make sense to the  
7 public and to the folks that are in the room that may  
8 not be experts in this area, and with that, I want to  
9 turn it over to Doctor Barbara Sampson, the Chief  
10 Medical Examiner for the City of New York.

11 BARBARA SAMPSON: Thank you. Good  
12 afternoon. I want to thank the Chairs of the  
13 Committees that are holding today's hearing, Council  
14 Member Johnson and Council Member Gibson. I also want  
15 to thank the members of the Committee on Health and  
16 the Committee on Public Safety for the opportunity to  
17 testify today. We are proud to set the highest  
18 standards for independent science and to share our  
19 expertise. We are proud to set the highest standards  
20 for independent science and to share our expertise  
21 with other jurisdictions in the neutral service of  
22 justice without favor to prosecution or to defense,  
23 with independence and without any other outside  
24 influence. I am Doctor Barbara Sampson, the Chief  
25 Medical Examiner of the City of New York. My office



2 has two mission-critical roles, to protect the  
3 public's health and to practice forensic science in  
4 the service of justice. You have heard me repeat over  
5 the last four years that my goal is to establish the  
6 model of an ideal Medical Examiner's Office,  
7 independent, unbiased, immune from undue influence,  
8 and as accurate as humanly possible. Far from being  
9 mere words, the requirements I list are at the core  
10 of why we exist. The integrity of the forensic  
11 science we perform rests upon our independence, both  
12 actual and perceived. In 2007, at the opening  
13 ceremony of our DNA laboratory, my predecessor,  
14 Doctor Hirsch, reminded New York City about the  
15 truth. His words continued to resonate with all who  
16 value science as well as justice. He said the motto  
17 of our DNA building attempts to capture the  
18 impartiality and independence of science. It is  
19 inscribed on the wall of our lobby, "Science serving  
20 justice," unambiguous and direct. Science serving  
21 justice. It does not say, "Science serving the  
22 police." It does not say, "Science serving the  
23 District Attorney," and it does not say, "Science  
24 serving the defense." Right down the middle of the  
25 road, it simply says, "Science serving justice." One

2 hundred years ago, the idea of an independent medical  
3 examiner was conceived to repair a system of elected  
4 coroners that was was thought by all to be corrupt  
5 and partisan, and that system exists in most of the  
6 United States today. The medical examiner serves as  
7 a vital check and balance role in the criminal  
8 justice system, and our findings must be independent  
9 of influence from any and all competing interests,  
10 including those of private entities, government  
11 agencies, political parties, and the general public.  
12 We demonstrate our independence at a practical level  
13 by adhering to a rigorous philosophy of meeting with  
14 both prosecution and defense upon request to discuss  
15 our findings. As the Chief Medical Examiner of all  
16 New Yorkers, I took an oath to serve the best  
17 interest of our citizens, and I will continue to meet  
18 that obligation by protecting and nurturing the  
19 independence of this office so that we may always  
20 serve justice without bias. OCME processes all  
21 biological evidence for the City that requires DNA or  
22 toxicological testing through our three forensic  
23 laboratories, the forensic biology lab, the forensic  
24 toxicology lab, and a molecular genetics lab. We are  
25 distinct and separate from the forensic laboratories

2 operated under the auspices of the NYPD. The NYPD  
3 laboratories process all non-biologic evidence,  
4 including firearms, illicit drugs, latent  
5 fingerprints, and trace evidence. The New York City  
6 Office of Chief Medical Examiner operates the largest  
7 and most advanced public DNA laboratory in North  
8 America. Our Department of Forensic Biology is a  
9 national leader in DNA technology and research, and  
10 our forensic DNA laboratory is fully accredited as  
11 mandated under New York State Executive Law. Our  
12 accreditation is granted by ANAB, a national  
13 accreditation board of the American National  
14 Standards Institute and the American Society for  
15 Quality under the specific scope of ISO-- ISO stands  
16 for International Organization of Standardization--  
17 17025 standards. In addition, the Department  
18 operates under the FBI's Quality Assurance Standards  
19 for Forensic DNA testing laboratories. Just this  
20 past October, the Department of Forensic Biology  
21 underwent an external audit that consisted of 13 FBI  
22 QA auditors and one ANAB assessor performing an on-  
23 site assessment to determine if the DNA lab satisfies  
24 the standards under which it is accredited. I am  
25 happy to report that the DNA laboratory received only

2 one non-conformance out of over 600 standards that  
3 they were audited against. Among the cutting-edge  
4 work ongoing in our Forensic Biology Department is  
5 its processing of environmentally challenging and  
6 degraded skeletal remains, utilizing optimized bone  
7 extraction technique. We are continuing to work on  
8 the unidentified remains of the 9/11 terrorist  
9 attacks. This August, we scientifically identified  
10 remains from the 1,641<sup>st</sup> person from the attack on  
11 September 11<sup>th</sup>. The identification of this victim  
12 whose name was withheld at the family's request was  
13 reformed by our laboratory using new technologies  
14 developed in-house and launched in 2017. We have  
15 also re-associated many remains to previously  
16 identified victims this year. We are continuing our  
17 work on the identification of the 2,753 victims of  
18 that disaster. The Department of Forensic Biology  
19 also possesses biologic samples for criminal matters.  
20 It has experienced a record increase in its case  
21 submission, all while maintaining an excellent  
22 turnaround time of four to six weeks for cases  
23 associated with crimes against persons. In calendar  
24 year 2016, the laboratory experienced a significant  
25 43 percent increase in cases received over the

2 previous year. 2017 is projected to have a 30  
3 percent increase over the record numbers of 2016.

4 The majority of these increases are due to the  
5 processing of DNA samples associated with gun crimes.

6 In 2016, our Department of Forensic Biology grew by  
7 nearly 1.8 million dollars to hire 21 new

8 criminalists and evidence property control

9 specialists to test evidence from all guns seized

10 from a person by the NYPD. In the Adopted 2018 Plan,

11 we are expanding by an additional 4.5 million dollars

12 for an additional 53 staff of whom 34 are forensic

13 biologists to address these case submission

14 increases. In both years we were able to recruit on-

15 board and are training these new staff members. Our

16 forensic biology laboratory provides services that

17 are critical both to victims and law enforcement and

18 to wrongly convicted defendants. For example, just a

19 few years ago, OCME's lab was able to perform DNA

20 analysis that was vital to solving a vicious assault

21 and rape that occurred in 1998. OCME developed a DNA

22 profile from the sexual assault kit and uploaded it

23 into the CODIS DNA database. In 2013, that profile

24 hit to a defendant whose DNA was entered in the

25 database as a result of a federal money laundering

2 conviction. That defendant was subsequently  
3 convicted of the 1998 rape, and in June of this year  
4 he was sentenced to 20 years in prison. As I  
5 mentioned, DNA analysis can also be crucial in  
6 exonerating wrongly convicted defendants. For  
7 example, in 2011, a 1985 conviction was reviewed in  
8 Brooklyn. Subsequent DNA tests were performed on the  
9 cigarette butts and the marijuana roach that had been  
10 found in the car used to abduct the victim. The  
11 convicted defendant's DNA was not found on those  
12 items. Rather, the DNA testing revealed DNA material  
13 that hit to an unidentified man with a criminal  
14 record. In 2013, the Brooklyn DA's office reopened  
15 the case and moved for the conviction to be vacated  
16 leading to the exoneration of that defendant. I will  
17 now turn to our Forensic Toxicology Laboratory, which  
18 is responsible for testing biological samples from  
19 both illicit and therapeutic drugs. Over the past 18  
20 months, the lab has eliminated a back-log of more  
21 than 800 cases and has drastically reduced turnaround  
22 times for completing of casework from an average of  
23 120 days to less than 20 days. This month it was 16  
24 days, a world-class turnaround time. Over 98 percent  
25 of all cases are now completed within 30 days or

2 less, twice as fast as the national standard. In  
3 2017, the toxicology laboratory achieved both New  
4 York State and the American Board of Forensic  
5 Toxicology Accreditation and continues to expand both  
6 the scope of its testing through research  
7 collaborations and its investment in staff training.  
8 Development of new testing methodologies using state  
9 of the art instrumentation purchased in 2016 has  
10 further expanded the testing capability of the  
11 laboratory. Further, in September 2017 with support  
12 from both the New York City District Attorney's  
13 Offices and the NYPD, the OCME Forensic Toxicology  
14 Lab was approved to test all drunk-driving and  
15 driving while intoxicated cases collected in New York  
16 City and has none-the-less continued to maintain  
17 turnaround times of less than 20 days. Our  
18 toxicology laboratory is on the leading edge of  
19 combatting the City's opioid epidemic. As part of  
20 investments made through Healing NYC in November last  
21 month, the laboratory introduced a method capable of  
22 screening for 30 different synthetic opioids, an  
23 essential tool to meet the challenge of the opioid  
24 epidemic fueled by illicit fentanyl and affecting not  
25 only the City of New York, but the entire nation.

2 OCME is sharing its findings with our partner  
3 agencies in real-time at an unprecedented level,  
4 helping inform decisions made by DOHMH and law  
5 enforcement. Finally, through genetic testing, our  
6 preeminent molecular genetic laboratory significantly  
7 enhances the ability of the agency in its direct  
8 support of OCME's mandate to investigate sudden,  
9 unexpected and unexplained deaths in apparently  
10 healthy New Yorkers. Advances in molecular medicine  
11 have increased the ability to identify diseases at  
12 the molecular level that escape discovery during  
13 autopsy, microscopic examination, or toxicology  
14 testing. Currently, the laboratory performs molecular  
15 analysis on 95 cardiomyopathy genes--those are genes  
16 responsible for heart diseases, thrombophilia  
17 molecular analysis, which is responsible for blood  
18 clots, and sickle cell disease molecular analysis.  
19 In May 2017, the molecular genetics laboratory  
20 received its third consecutive finding of zero  
21 deficiencies during its biennial, unannounced, on-  
22 site inspection by the College of American  
23 Pathologists. Since 2016, we have been providing  
24 professional genetic counselling services to deliver  
25 genetic education, counseling, and support to the



2 families of decedents who tested positive by our  
3 laboratory. Finally, two articles from this  
4 laboratory on molecular diagnostics in idiopathic  
5 pulmonary embolism and sudden unexplained death have  
6 been accepted for publication in high impact peer  
7 review journals, highlight the role that OCME has in  
8 advancing science in the United States. The people  
9 who dedicate their lives to forensic science at OCME  
10 not only serve criminal justice, they can also have  
11 profound impact on the lives of everyday Americans  
12 across the country. In 2015, a young woman suffered  
13 a sudden cardiac death in our jurisdiction. We  
14 diagnosed a genetic condition as the cause. A while  
15 later, the decedent's sister was hospitalized in  
16 another state with a suspected cardiac condition.  
17 Her physicians wanted to discharge her home, but her  
18 mother pleaded with the doctors to let her stay  
19 because OCME had previously found a genetic cause of  
20 her sister's death. They agreed. That evening the  
21 hospitalized sister had a cardiac arrhythmia, cardiac  
22 arrest, and was able to be resuscitated because she  
23 was still in the hospital. She likely would have  
24 died otherwise. I will end by saying there's no  
25 better illustration of the OCME than the Latin

2 inscription on our wall which loosely translates,  
3 "This is the place where the dead help the living."  
4 I'm happy to answer your questions.

5 CHAIRPERSON JOHNSON: Thank you, Doctor  
6 Sampson. You know, the testimony that you provided  
7 today is always, of course, very illuminating, and I  
8 want to congratulate you on, I think, the work that  
9 you've done in charting a course and trying to fix  
10 some previous problems that existed at OCME. I have  
11 deep respect for you, and I really have enjoyed our  
12 professional working relationship with each other.  
13 So, what I'm about to tell you is in no way me trying  
14 to be overly critical; it's just me being honest.  
15 And I know we're going to, of course, hear from the  
16 NYPD, but I want to say this because after they  
17 testify I want to come back, and hopefully you could  
18 think about this before we get to our questions. My  
19 opening statement and the Chair's opening statement  
20 talked about a lot of things we want to discuss  
21 today. None of those things were discussed in your  
22 opening statement, I mean, to my knowledge. I mean,  
23 the FST, low-copy, the concerns around the FBI's  
24 tool, federal judges jumping in, a mixture of DNA  
25 samples, all of those things which were a big concern

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2 and which is what we want to delve into today, that's  
3 what we really want to get answers on.

4 BARBARA SAMPSON: I understand that,  
5 however, I did not receive any information that that  
6 was what you were interested in speaking today, so  
7 that's why I didn't include it in my testimony, but  
8 OCME is fully prepared to address every one of those  
9 questions.

10 CHAIRPERSON JOHNSON: Thank you very  
11 much.

12 CHAIRPERSON GIBSON: Thank you. Before  
13 we get to the NYPD's testimony, I want to acknowledge  
14 the presence of additional colleagues on the  
15 committee, Council Member Rafael Espinal, Council  
16 Member Rory Lancman, as well as Council Member Bill  
17 Perkins, and certainly also want to acknowledge from  
18 the Public Safety Committee, one of our outgoing  
19 members from our county of the Bronx, Council Member  
20 James Vacca. Thank you so much for all the work  
21 you've done. You've been a great asset to the Public  
22 Safety team and we appreciate it. Certainly, we  
23 represent a great borough that's been doing  
24 phenomenal work and we look forward to all that you  
25 will still give to the Bronx and the City of New

2 York. So, thank you so much for your service, and  
3 congratulations and God bless you. Thank you so  
4 much.

5 CHAIRPERSON JOHNSON: His name is James?  
6 I always called him Jimmy.

7 CHAIRPERSON GIBSON: Jimmy, sorry.  
8 Jimmy, James.

9 CHAIRPERSON JOHNSON: I'm joking. I'm  
10 joking. The NYPD, you may go ahead.

11 CHIEF KATRANAKIS: Good afternoon, Chair  
12 Gibson, Chair Johnson and members of the Council. I  
13 am Deputy Chief Emanuel Katranakis, Commanding  
14 Officer of the New York City Police Department's  
15 Forensic Investigations Division. I'm joined here  
16 today by my colleague, Oleg Chernyavsky, the NYPD's  
17 Director of Legislative Affairs. On behalf of the  
18 Police Commissioner, James P. O'Neill, I wish to  
19 thank the City Council for the opportunity to speak  
20 to you today about the NYPD Forensic Investigations  
21 Division's Police Laboratory. The NYPD Forensic  
22 Investigation Division consists of the police  
23 laboratory, Crime Scene Unit, Latent Print section,  
24 and the DNA Liaison Unit, and the mission of the  
25 NYPD's Forensic Investigations Division is to provide

2 the highest quality of forensic services to the  
3 criminal justice system with objectivity,  
4 impartiality and integrity to wit the forensic  
5 investigators support the criminal justice system and  
6 the pursuit of truth through science. The focus of  
7 today's hearing, the NYPD's Police Laboratory is  
8 charged with performing forensic examinations on an  
9 immense volume of physical evidence and to do so in a  
10 manner that ensures the integrity, quality and  
11 accuracy of the scientific findings. The laboratory  
12 receives approximately 155,000 cases each year and  
13 performs examinations on one-third of those cases.  
14 The New York City Police Department operates an  
15 accredited forensic laboratory. The laboratory is  
16 accredited by ANAB, a national accreditation board of  
17 the American National Standards Institute and the  
18 American Society for Quality under the specific scope  
19 of ISO, the International Organization of  
20 Standardization 17025 standards. Accreditation is  
21 based on an assessment of the agency's technical  
22 qualifications and competence for conducting specific  
23 testing and examination activities. Our  
24 accreditation is mandated under New York State  
25 Executive Law. Last month, the laboratory underwent

2 a full ANAB accreditation assessment that consists of  
3 17 assessors performing a week-long on-site  
4 inspection to determine if the laboratory satisfies  
5 approximately 400 individuals' requirements or  
6 standards. These requirements pertain to the  
7 laboratory's operations, specifically the  
8 laboratory's policies, procedures, documentation of  
9 casework, physical plan space, equipment and  
10 materials. I'm very happy to report that the NYPD  
11 laboratory received a near perfect score on this  
12 evaluation. This is unprecedented and extra-ordinary  
13 in terms of an achievement that sets the benchmark  
14 for the forensic laboratories throughout the country.  
15 The laboratory provides a wide variety of services to  
16 the criminal justice system. These include  
17 controlled substances analysis, firearms  
18 examinations, latent print development, trace  
19 evidence analysis, gunshot residue, muzzle to target  
20 distance determination, and question document  
21 examinations. While the laboratory is charged with  
22 this myriad of responsibilities, I want to focus my  
23 testimony on three areas, controlled substance  
24 analysis, firearms examinations, and trace evidence  
25 analysis. As one of the largest forensic

2 laboratories in the world, the police laboratory  
3 handles a significant volume of evidence, the most  
4 notable being the controlled substances testing. The  
5 laboratory's controlled substances analysis section  
6 receives 110,000 cases each year and analyzes  
7 approximately 34,000 of them. The controlled  
8 substances analysis section will analyze evidence to  
9 report the identification of one or more controlled  
10 substances or the absence of a controlled substance  
11 in a case. The most commonly tested controlled  
12 substances are cocaine and heroin, but the laboratory  
13 will also perform analysis to identify other  
14 substances such as fentanyl and fentanyl analogs. In  
15 the wake of historic drops in gun crime in our city,  
16 I think it's important to discuss the testing of  
17 evidence related to firearms crimes. The NYPD takes  
18 a holistic forensic approach to reduce violent gun  
19 crimes. The forensic value of a firearm is more than  
20 an instrument that generates a high-velocity  
21 projectile. A firearm is an item of evidence with  
22 potentially probative fingerprint evidence, DNA  
23 evidence, trace evidence, as well as non-scientific  
24 information pertaining to trace and firearms via the  
25 serial number. The laboratory's firearm analysis

2 section conducts operability examinations and  
3 microscopic analysis of firearms and firearms related  
4 evidence. Operability testing is primarily performed  
5 to satisfy statutory requirements in the New York  
6 State Penal Law. Microscopy comparisons performed on  
7 fired bullets and discharged shell casings to  
8 establishing nexus or disassociate a nexus between  
9 firearms and fired bullets and discharged shell  
10 casings recovered from crime scenes. This is of  
11 tremendous value when examinations generate a nexus  
12 between two or more unrelated crimes. Thus, providing  
13 investigative leads that would otherwise be unknown  
14 to investigators. Firearms analysis will also  
15 include a serial number restorations where  
16 applicable. Criminals sometimes attempt to render  
17 firearms untraceable by grinding or filing away the  
18 serial number. Personnel in the firearms analysis  
19 section are able to restore the serial number through  
20 a variety of methods such as chemical etching,  
21 electrical chemical etching, and ultrasonic  
22 capititation. Serial number of a firearm can lead to  
23 critical intelligence for investigators by tracing  
24 the original sale of the firearm. In addition,  
25 personnel in the laboratory will perform bullet-



2 resistant garment tests, firearm trigger pull test,  
3 firearm drop tests, and provide expert testimony in  
4 cases involving firearm prosecutions. Trace evidence  
5 examinations are conducted by the laboratory's  
6 criminalistics section. Trace examinations can  
7 provide scientific link between a suspect and a  
8 victim or the suspect and the crime scene or a victim  
9 and the crime scene. Trace evidence can support or  
10 refute a suspect or a witness' statements, or produce  
11 a potential lead in an investigation. Trace evidence  
12 examinations can involve the analysis of paint,  
13 fibers, textiles, glass, explosives, and fire debris  
14 and footwear impression examinations. The  
15 investigatory and public benefits of such analysis  
16 are immeasurable. For example, the Department has  
17 previously testified before this Council about the  
18 challenges in investigating hit-and-run accident  
19 because many take place on non-major highways and  
20 roads at night without street cameras and with few if  
21 any witnesses. Laboratory analysis of motor vehicle  
22 paint however can lead to determining the color and  
23 the potential make and model of a vehicle from  
24 recovered samples. Crime scene paint samples can  
25 consequently be compared to known paint samples from

2 suspect vehicle or any other known source. Trace  
3 analysis can be conducted with explosive and fire  
4 debris evidence to identify explosive chemicals and  
5 to demonstrate that chemicals were used to construct  
6 an IED or improvised explosive device or an  
7 incendiary device. Scientific analysis can also be  
8 performed to determine the presence and absence of  
9 substances that can accelerate the development of a  
10 fire. Testing such as this provides solid  
11 intelligence to our NYPD investigators and valuable  
12 information that can be used in subsequent  
13 prosecutions. While I have provided a brief overview  
14 of some of the work performed by the laboratory, I do  
15 want to discuss a recent initiative undertaken by the  
16 Department. Over the last few years there has been a  
17 growing need for the laboratory analysis for  
18 narcotics evidence and paraphernalia connected from  
19 fatal and non-fatal overdoses. As part of the  
20 Mayor's Healing New York City initiative, the Police  
21 Commissioner recently approved increased staffing at  
22 the Police laboratory by more than 42 percent to  
23 support opioid-related investigations and combat  
24 overdoses. This has enabled the laboratory to embark  
25 on a new goal to test all drug events obtained from

2 overdose cases. Evidence samples from these cases  
3 are often challenging due the presence of fentanyl  
4 and fentanyl analogs and other traditional controlled  
5 substances, such as heroin, cocaine, ketamine, and  
6 benzodiazepines. In one recent case, as many 12  
7 controlled substances were mixed together in some of  
8 the recovered drugs. The forensic investigation into  
9 each of these compounds in these mixtures is labor  
10 intensive and complex. These analysis, however, are  
11 essential in identifying controlled substances  
12 mixtures that will assist the department in  
13 developing forensic intelligence on distribution  
14 sources based on geographical area, as well as  
15 sharing information with our partners at the OCME and  
16 the NYPD City Department of Health and Mental Hygiene  
17 to warn, educate and inform the public of these  
18 dangerous and toxic synthetic opioids. By increasing  
19 our staffing to process more cases, the information  
20 we can learn from this evidence is critical in our  
21 over-reaching effort to reduce overdoses in New York  
22 City. Now, in shifting gears, the remainder of my  
23 testimony will focus on the other topic of today's  
24 hearing, Intro 1235, known as the Right to Record  
25 Act. This bill seeks to codify a right to record

2 police activities and to create a private right of  
3 action, including the right to obtain damages and  
4 other relief in relation to interfering with that  
5 right. The Department opposes this legislation.  
6 Individuals who believe either that they can be  
7 falsely arrested or have been-- excuse me-- or had  
8 their property wrongfully seized can currently seek  
9 remedies in court. Courts have consistently held  
10 that it is not unlawful to record officers carrying  
11 out their duties. The Department firmly recognizes  
12 that individuals have a general right to lawfully  
13 record police activity and criticize police activity,  
14 provided that an individual does not interfere or  
15 prevent an officer from performing an official  
16 function. This lawful activity extends to the  
17 recording of police activity and applies to  
18 individuals in both public places such as streets,  
19 sidewalks and parks, and private property such as  
20 buildings, lobbies, workplaces, or an individuals'  
21 own property provided that that individual has a  
22 legal right to be present at that location.  
23 Moreover, an individuals' right to engage in this  
24 activity is regularly enforced at the Police Academy  
25 during in-service training, and through the Legal

2 Bureau bulletins and other department guidance.

3 Notably, since 2015, the NYPD has conducted 65 such

4 training session that covered this topic. The

5 Department does not believe that passage of this bill

6 would add anything to an individuals' current ability

7 to engage in this lawful conduct. It would instead

8 create an unnecessary avenue for additional

9 litigation against police officers, the Police

10 Department, and the City as a whole. Thank you for

11 this opportunity to speak with you today, and I am

12 pleased to answer any questions that you may have.

13 CHAIRPERSON JOHNSON: Thank you very much

14 to Doctor Sampson and her team and also to the NYPD

15 for being here today, for your testimony, and to your

16 service for the City of New York. All of you really

17 appreciated. As Doctor Sampson said, you all

18 represent really important pillars of our criminal

19 justice system, and so that's why we're happy to have

20 this hearing today. So, I want to go back to the

21 oversight topic. Doctor Sampson, what is the

22 standard for collecting abandoned DNA evidence? What

23 standard is used?

24 BARBARA SAMPSON: That question is really

25 more under the auspices of the NYPD.

2 CHAIRPERSON JOHNSON: Okay.

3 COMMANDER KATRANAKIS: So, forgive me,  
4 but could you clarify what you mean by standard? I'm  
5 not certain where.

6 CHAIRPERSON JOHNSON: Well, I'm just  
7 trying to understand, when you're collecting DNA,  
8 what is the most optimal way you feel that DNA should  
9 be collected so that it is most useful in criminal  
10 investigations, and when you're trying to collect  
11 evidence, what standard are you using?

12 COMMANDER KATRANAKIS: The standard that  
13 we use is probative evidence. So--

14 CHAIRPERSON JOHNSON: [interposing] Say  
15 that again, I didn't hear you.

16 COMMANDER KATRANAKIS: Probative.

17 CHAIRPERSON JOHNSON: Okay.

18 COMMANDER KATRANAKIS: So, if we deem  
19 that collecting DNA from an individual would be  
20 probative which is clear from Black's Law Dictionary  
21 is something that will either prove or disprove the  
22 fact or a point in issue, then we will go ahead and  
23 make effort and take action to collect DNA from an  
24 individual.

2 CHAIRPERSON JOHNSON: And where are the  
3 profiles from abandoned DNA samples stored?

4 BARBARA SAMPSON: They're stored in the  
5 local database within CODIS at the OCME.

6 CHAIRPERSON JOHNSON: Are-- is abandoned  
7 DNA ever expunged from City records?

8 BARBARA SAMPSON: Can I just clarify what  
9 you mean by abandoned DNA? You mean, for example, if  
10 my DNA on this cup that is--

11 CHAIRPERSON JOHNSON: [interposing] Well,  
12 when--

13 BARBARA SAMPSON: considered probative in  
14 a case?

15 CHAIRPERSON JOHNSON: Well, when I gave  
16 my opening statement I talked about exclusionary DNA  
17 samples.

18 BARBARA SAMPSON: Oh, okay.

19 CHAIRPERSON JOHNSON: People that are not  
20 suspects in any way, their DNA is used for a  
21 particular case to exclude themselves from that case  
22 to rule them out as suspects. Then their DNA, I'm  
23 sure, during that process is stored within the  
24 database that you just mentioned. Is there ever a  
25 point that DNA for people who are not suspects is

2 expunged from city records and the database? Or is  
3 that DNA kept?

4 BARBARA SAMPSON: You're changing some of  
5 the words as you go through that. So, first, if  
6 someone is--

7 CHAIRPERSON JOHNSON: [interposing] I want  
8 to just apologize again.

9 BARBARA SAMPSON: Right.

10 CHAIRPERSON JOHNSON: I'm a layman, so--

11 BARBARA SAMPSON: [interposing] No, no, I  
12 just want to be clear and answer the question that I  
13 think you are asking. I believe you're asking if  
14 someone gives a DNA sample because they are a suspect  
15 in a case and we generate a profile, is that ever  
16 expunged from the system.

17 CHAIRPERSON JOHNSON: Exactly.

18 BARBARA SAMPSON: The answer to that is  
19 that yes, it is expunged under court order. That's  
20 the only situation under which it is expunged.

21 CHAIRPERSON JOHNSON: Why only under  
22 court order?

23 BARBARA SAMPSON: That's the-- we, at  
24 OCME as keepers of CODIS, we are not allowed to  
25 expunge anything other than under court order.



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2 CHAIRPERSON JOHNSON: That's by law?

3 BARBARA SAMPSON: Well, that's for the--  
4 that's the regulation of CODIS. The local database  
5 is not necessarily governed by that. Florence, would  
6 you like to speak to that?

7 FLORENCE HUTNER: [off mic] General  
8 Counsel.

9 CHAIRPERSON JOHNSON: Florence, you agree  
10 to tell the truth to all of us today as General  
11 Counsel?

12 FLORENCE HUTNER: Yes, I do.

13 CHAIRPERSON JOHNSON: Thank you very  
14 much.

15 FLORENCE HUTNER: Even not as General  
16 Counsel. So, there are a couple questions, I think,  
17 as Doctor Sampson was alluding in the questions that  
18 you have asked her. Yes, suspects' samples can be  
19 expunged from the database. Those are expunged. The  
20 only mechanism we have at the moment is pursuant to  
21 court order as Doctor Sampson said. And with regard  
22 to exclusionary samples, those are in a different  
23 category. They are not kept in the same way, and  
24 they are not included in the-- are they in-- they are  
25 not even in the CODIS database. They are used only

2 for the purpose of excluding a particular individual  
3 as-- or for excluding a profile that is obtained from  
4 an evidence sample if it matches an exclusionary  
5 sample to understand that-- for example, somebody who  
6 lives in a home that has been burglarized. If that  
7 person's DNA is found on an evidentiary sample that  
8 was taken in the home, then that helps explain the  
9 sample, but it doesn't help necessarily solve the  
10 crime.

11 CHAIRPERSON JOHNSON: So, on that theme,  
12 if either you or Doctor Sampson could explain to the  
13 public the standards and guidelines to ensure that  
14 when DNA evidence is collected, how is it stored?  
15 How is it used properly? And if you could bring us  
16 through the process from crime scene to courtroom  
17 that DNA evidence goes through. So, it's collected  
18 at a crime scene, and then sort of-- by the NYPD.  
19 It's given to OCME to process whether it be a rape  
20 test kit or whether it be blood evidence that's  
21 found, or all the things that the NYPD described in  
22 their testimony, can you bring us through the  
23 protocols that are used to ensure that it remains  
24 properly stored and safe from beginning when you

2 receive it from the NYPD to when it gets to a  
3 courtroom?

4 FLORENCE HUTNER: So I'm going to pass  
5 the microphone to Doctor Craig O'Connor who is an  
6 Assistant Director in the Forensic Biology  
7 Department. I think he can probably take you through  
8 that in more detail than I can.

9 CHAIRPERSON JOHNSON: Thank you.

10 CRAIG O'CONNOR: Good afternoon, Council  
11 Members. Doctor Craig O'Connor, Assistant Director  
12 in the Department of Forensic Biology. So,  
13 basically, when we receive the evidence from the  
14 NYPD, it is received through our Property Control  
15 Unit or Evidence Unit as we call it. So, they will  
16 receive that evidence and store it in a secure  
17 location until a criminalist at the Forensic Biology  
18 Laboratory takes it from them to do their examination  
19 of the evidence. So, there's a controlled facility  
20 where only the evidence unit has access to that  
21 evidence at the time, and then the analyst will go  
22 get the evidence one piece at a time. Once they get  
23 that evidence from the Evidence Unit, they will then  
24 bring it to their work station where they will do  
25 their examination. It's pre-sterilized. At that

2 time they will take that evidence, looking at the  
3 outer packaging, looking for any identifying marks,  
4 numbers, basically to make sure they have the correct  
5 item of evidence, comparing it to the NYC NYPD  
6 voucher that it's associated with and such. Once  
7 they open up the evidence, again, they'll do a  
8 cataloging of what's inside the packaging, take any  
9 photos if necessary, again, any identifying marks,  
10 and then they'll begin their visual examination of  
11 that item of evidence usually looking for the  
12 presence of any biological looking material. So, for  
13 instance, if we're looking for blood, we'll look for  
14 a reddish/brown stain. Some preliminary screening  
15 tests may be done, and then if there are any samples  
16 that are taken they're sent on for DNA testing. At  
17 that stage there are a number of steps to DNA  
18 testing. The first is the extraction step where  
19 we're getting the DNA out of the cells. So whether  
20 we're talking skin cells, blood cell, semen cells, we  
21 will get the DNA out of those cells. At this  
22 instance now the samples are kept in a test tube,  
23 each individual test tube and worked on one sample at  
24 a time. once the samples are sent on for that  
25 preliminary step of DNA, the items of evidence are

2 then repackaged and given back to the property unit  
3 to store until all the testing is complete, and then  
4 it will be sent back to the NYPD. So, once those  
5 samples go through that first extraction step, it  
6 then goes to a quantitation step where we find out  
7 how much DNA we have in the sample. Obviously, if we  
8 don't have enough or any we can't continue on with  
9 our testing. Once the DNA samples are quantitated,  
10 it then goes through our process that we call PCR  
11 amplification. So, similar to a Xerox machine, we're  
12 making copies of the DNA at the locations that we do  
13 our testing and do our analyzing on. After the  
14 samples are amplified, they're then separated out by  
15 size, and then the analyst will look at those  
16 samples, interpret them, make their conclusions and  
17 write a report. Once the report is written  
18 summarizing their conclusions, it is technically  
19 reviewed by a senior analyst or supervisor before it  
20 is released out to the District Attorney's Office or  
21 the U.S. Attorney's Office, our usual-- and the NYPD  
22 are usual customers that we do release those reports  
23 out to.

24 CHAIRPERSON JOHNSON: Are these protocols  
25 public?

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2 CRAIG O'CONNOR: Yes, they are. They are  
3 on our public-facing website.

4 CHAIRPERSON JOHNSON: So when we talk  
5 about databases, there's the CODIS database that  
6 Doctor Sampson just referred to which is the database  
7 that is regulated or under the purview of state and  
8 federal regulations which is why you said only under  
9 a court order can someone be removed from that, but  
10 there's also the local database which is different.  
11 So, I guess the question I was asking before or was  
12 trying to ask before is what goes into-- does  
13 everything go into both?

14 BARBARA SAMPSON: The--

15 CHAIRPERSON JOHNSON: [interposing] If you  
16 could talk into the mic. Does everything go into the  
17 local database and the CODIS database?

18 BARBARA SAMPSON: It depends, the short  
19 answer.

20 CHAIRPERSON JOHNSON: What does it depend  
21 on?

22 BARBARA SAMPSON: Craig, go ahead, yeah.

23 CRAIG O'CONNOR: Really, it depends on  
24 for the most part the completeness of the profile and  
25 where that evidence sample was received from. As

2 Florence Hutner was saying, that if it is a sample  
3 that seems to be matching a victim or somebody that  
4 was sent in for elimination purposes, then it will  
5 not be stored in any of the databases. It will just  
6 be used in that specific case in order to compare to  
7 the evidence and see, again, if it matches or it does  
8 match. If it is a qualifying type of sample, then it  
9 can go into the local database only-- again, this has  
10 profiles of known and unknown individuals trying to  
11 match up things locally. If it meets the  
12 requirements to go up into the state level, then it  
13 will be in the local and the state, and then if it  
14 meets the requirements for the national level, then  
15 we'll go up into Albany.

16 CHAIRPERSON JOHNSON: So, again, to go  
17 back to the question I asked Doctor Sampson before,  
18 if there is an individual who is trying to be  
19 excluded as a suspect and gives their DNA, they  
20 voluntarily give their DNA because they say I have  
21 nothing to hide, I want to make sure I'm not  
22 considered a suspect, does that go into the local  
23 database?

24 BARBARA SAMPSON: Yes, yes. Yes, it does.  
25

2 CHAIRPERSON JOHNSON: And when they're  
3 excluded, does that come out of the local database?

4 BARBARA SAMPSON: No, only under court  
5 order.

6 CHAIRPERSON JOHNSON: I thought only  
7 CODIS was under court order.

8 BARBARA SAMPSON: No, I mean, LDIS [sic]  
9 is part of CODIS. There is three levels to CODIS,  
10 the local database, the state database, and the  
11 national database.

12 CHAIRPERSON JOHNSON: Okay.

13 BARBARA SAMPSON: So we run LDIS, for the  
14 most part, under the same general guidelines as  
15 CODIS.

16 CHAIRPERSON JOHNSON: Does any entity  
17 outside of OCME dictate local database protocols?

18 BARBARA SAMPSON: No, but we follow--

19 CHAIRPERSON JOHNSON: [interposing] So,  
20 you could, if you wanted to, without court order  
21 remove people who are not suspects anymore from the  
22 local database. That's up to you. You don't need a  
23 court order to do it.



2 BARBARA SAMPSON: Our-- what I described  
3 is our practice is to do it under court order, but  
4 we--

5 CHAIRPERSON JOHNSON: [interposing] But  
6 you don't have to.

7 BARBARA SAMPSON: That's right, correct.

8 CHAIRPERSON JOHNSON: So then why are you  
9 not doing that? If someone is no longer deemed a  
10 suspect, why are you still requiring a court order?

11 BARBARA SAMPSON: So, the-- right. The  
12 first problem, that we don't find out when a person  
13 is no longer a suspect or when a case--

14 CHAIRPERSON JOHNSON: [interposing] Why  
15 not?

16 BARBARA SAMPSON: has been adjudicated.  
17 Because we are not-- we don't get that feedback from  
18 either the District Attorney's Office or--

19 CHAIRPERSON JOHNSON: [interposing] But  
20 wouldn't that be very important feedback to get if  
21 you're storing people's personal DNA information that  
22 could be used against them given the number of  
23 exonerations we've seen and wrongful convictions?

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2 BARBARA SAMPSON: How-- I fail to see how  
3 this DNA could be used against them. Would you  
4 clarify what you mean by that?

5 CHAIRPERSON JOHNSON: If you're storing  
6 someone's DNA because they were initially part of a  
7 potential crime and then they were excluded and  
8 you're holding onto their DNA, and you continue to--  
9 when new crimes come up, to run through databases the  
10 evidence that you have, and you're keeping people  
11 that have done nothing wrong, have not been accused  
12 of anything, have not been convicted of anything,  
13 they're still staying in that database, because they  
14 voluntarily gave their DNA to OCME, how is that fair?

15 BARBARA SAMPSON: Because--

16 CHAIRPERSON JOHNSON: [interposing] What  
17 is the public purpose?

18 BARBARA SAMPSON: it would not come up  
19 again. It would never match against anything else  
20 unless it matched to another crime.

21 CHAIRPERSON JOHNSON: But that other  
22 crime is potentially separate from why they initially  
23 came to you in the first place.

24 BARBARA SAMPSON: I think that has to do  
25 with the NYPD as they collect these samples.

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2 CHAIRPERSON JOHNSON: Okay, we can move  
3 on. So, now outside-- entity outside of OCME  
4 dictates local database protocols. It's only OCME  
5 that dictates that.

6 BARBARA SAMPSON: If anyone's-- a suspect  
7 who is in the database, if their attorney comes to us  
8 and asks us to expunge it, we will, but this is the  
9 way it runs now.

10 CHAIRPERSON JOHNSON: So, I don't want to  
11 stereotype here or generalize, but a lot of people  
12 who end up in the criminal justice system are people  
13 who may not be wealthy, may not have attorney's that  
14 are versed in this in the way that they should, and  
15 so I don't understand why you will do that if someone  
16 asks in a proactive way, but if for some reason  
17 someone doesn't act in a proactive way, they don't  
18 get the same benefit.

19 BARBARA SAMPSON: Well, it's because-- as  
20 the NYPD I'm sure would be happy to explain, the  
21 local database is a very important tool that they use  
22 to solve other crimes that are associated.

23 COMMANDER KATRANAKIS: Well, I think it's  
24 important to talk about success of the local database  
25 and the impact of the local database on the citizens

2 of the City of New York. So, I'd like to talk to you  
3 about a remarkable case that occurred on July 27<sup>th</sup>,  
4 2004. A 68-year-old woman was in her Brooklyn  
5 apartment when an unknown male knocked on the door.  
6 He asked to use her phone. She turned him away and  
7 locked the door. Seconds later the male pushed in  
8 the door and grabbed the woman by the neck. He  
9 displayed a knife and instructed her not to scream.  
10 He then raped her and proceeded to rob her. The  
11 suspect left and the victim called for help. A male  
12 profile was developed from a rape kit and uploaded  
13 into CODIS. Nine years later in 2013 the male  
14 profile matched to a second rape of a 26-year-old  
15 woman. The case continues to remain unsolved. We  
16 have a serial rapist in the streets of the City of  
17 New York. 2014, a suspect exemplar was collected  
18 from an individual, submitted for an unrelated  
19 incident to the OCME. His DNA matched both rapes.  
20 He was arrested for Rape First-Degree, Robbery First-  
21 Degree, Robbery Second-Degree, Burglary Second-  
22 Degree, and Assault Second-Degree. This had a  
23 significant impact not only in solving this case,  
24 bringing closure to the victim and victims' families  
25 for being a sexual assault victim, but moreover

2 prevented this individual from committing additional  
3 rapes and more violent crimes in the City of New  
4 York.

5 CHAIRPERSON JOHNSON: I'm really--

6 COMMANDER KATRANAKIS: [interposing] This  
7 is a testament to the--

8 CHAIRPERSON JOHNSON: [interposing] Yes,--

9 COMMANDER KATRANAKIS: [interposing]  
10 immeasurable value of the local DNA index system.

11 CHAIRPERSON JOHNSON: I'm really happy to  
12 hear that that case was solved and that we took a  
13 serial rapist and violent criminal off the streets of  
14 New York because I know that District Attorney Vance  
15 through his settlement monies was able to fund rape  
16 test kit processing program nationally across the  
17 country for us to do similar things, which is find  
18 serial rapists who are out there committing crimes  
19 across state lines and getting people off the  
20 streets. So, I'm really-- it's helpful to hear that,  
21 and the hearing today is no way to try to impede  
22 that. That is not what-- that's not what my line of  
23 questioning is about. I'm trying to understand how  
24 we collect certain things, how we remove people that  
25 have in no way been suspects or convicted of anything

2 in any way because there's always this very important  
3 line between ensuring that innocent people do not get  
4 pulled into the criminal justice system undeservedly  
5 so in an unwarranted way and maintaining a criminal  
6 justice system that is able to go after bad people  
7 who are committing violent crimes and lock them up so  
8 they cannot perpetrate violent acts against the  
9 public, and I think that is the very difficult  
10 question that we straddle which is how do we ensure  
11 that people's constitutional rights are protected  
12 while at the same time allowing law enforcement to go  
13 out there and convict, apprehend and bring to trial  
14 people that are committing these crimes. So, that's  
15 a very helpful example and I'm glad that you raised  
16 it, but I want to keep going down this line of  
17 questioning. So, the local database, are these  
18 guidelines public, the local database guidelines?

19 BARBARA SAMPSON: My understanding is  
20 that the OCME has a manual that governs how and how  
21 we deal with all aspects of CODIS. It is not to my  
22 knowledge at this time public, but the system we can  
23 go back and look at. I don't have further  
24 information at this time.

2 CHAIRPERSON JOHNSON: So, the guidelines  
3 for the local database are not public?

4 FLORENCE HUTNER: I don't believe so.

5 CHAIRPERSON JOHNSON: Why not?

6 FLORENCE HUTNER: At this time, Council  
7 Member, all I know is that-- as far as I know they  
8 are not public. This is something we can go back and  
9 look at and get back to you.

10 CHAIRPERSON JOHNSON: No, I don't want  
11 to-- I mean, you all-- this is a very, very important  
12 thing you all do on a daily basis, and there are very  
13 significant things at stake here again to go back to  
14 ensure public safety and that we take violent people  
15 off the streets, but at the same time, given the  
16 questions that have come up-- and I'm going to give  
17 it to my colleague in a second, I apologize for  
18 speaking so much-- you can't tell me you don't know  
19 why it's not public. There has to be a reason.  
20 You're the general counsel; you're the Chief Medical  
21 Examiner. You have to have some explanation on why  
22 these guidelines aren't public. There has to be some  
23 thought behind why the guidelines aren't public.

24 BARBARA SAMPSON: These are documents  
25 that can be FOIL'd. So, I don't know if anybody has

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2 made any requests under the Freedom of Information  
3 Law for them, but they are, you know, to the extent  
4 that they are agency policies, and they are file  
5 policies, they--

6 CHAIRPERSON JOHNSON: [interposing] Any of  
7 the advocates here try to FOIA-- you raised your  
8 hand. Have any of the advocates here try to FOIL  
9 these guidelines?

10 FLORENCE HUTNER: Not to my knowledge.  
11 The FOIL request comes to my office.

12 CHAIRPERSON JOHNSON: Okay. Okay. So,  
13 does the New York State Forensic Commission or its  
14 DNA subcommittee weigh in on the handling and the  
15 guidelines of the local database?

16 FLORENCE HUTNER: I don't believe so. The  
17 CODIS is governed by the FBI and by FBI rules, and we  
18 follow those guidelines and the quality assurance  
19 standards that are set forth by the FBI.

20 BARBARA SAMPSON: May I add also that the  
21 DNA Subcommittee and the Forensic Science Commission  
22 are well aware of the local database and that such  
23 local databases are used in many jurisdictions  
24 throughout the country.

25



2 CHAIRPERSON JOHNSON: So, the-- just  
3 forgive me if I'm being a little dense and slow here.  
4 There's CODIS, which is governed by the FBI and  
5 federal law enforcement, correct?

6 FLORENCE HUTNER: So, let me see if I can  
7 help here. CODIS is the combined DNA--

8 CHAIRPERSON JOHNSON: [interposing] Walk  
9 me through DNA Database for Dummies.

10 FLORENCE HUTNER: Okay, I'm going to do  
11 my best because that's more or less the level where I  
12 am. I am not a DNA scientist. So, CODIS stands for  
13 the Combined DNA Database. It has different  
14 Components. At the local level there are local DNA  
15 index systems, the LDIS, which is our local DNA  
16 database which you have been referring to. AT the  
17 next level are state databased. People may have used  
18 the term SDIS. SDIS is the acronym for the state DNA  
19 index system, and at this sort of pyramid, if you  
20 will, is the National DNA index system, the NDIS.  
21 And the FBI Quality Assurance Standards govern all of  
22 those to the extent that for any local database to be  
23 eligible to provide DNA profiles from evidence  
24 samples to higher levels within the CODIS system.

2 They must abide by those and conform to those FBI  
3 Quality Assurance Standards.

4 CHAIRPERSON JOHNSON: Was the local  
5 database that was created, and I believe are there  
6 eight local labs that have local databases? How many  
7 local databases are there in New York State? Do we  
8 know?

9 BARBARA SAMPSON: I don't have the number  
10 off-hand.

11 CHAIRPERSON JOHNSON: Eight?

12 BARBARA SAMPSON: It is eight.

13 CHAIRPERSON JOHNSON: Okay, so there's  
14 eight. So, the eight local databases that were  
15 created and exist in New York State. When-- on this  
16 diagram right here, the linkage, there's no linkage  
17 detailed on how these things link together when it  
18 comes to the local database, and my understanding is  
19 that's because when the legislature authorized the  
20 creation of local databases they, indeed, did not  
21 authorize OCME to maintain a database of un-convicted  
22 individuals. Were you ever-- as General Counsel, as  
23 your understanding of the legislative intent and the  
24 regulations behind the local database that you were  
25

2 very authorized to collect and keep unconvicted  
3 individuals?

4 FLORENCE HUTNER: My understanding is  
5 that there is no legislation or state or federal  
6 regulation barring that, that there is no--

7 CHAIRPERSON JOHNSON: [interposing] So you  
8 guys, it may not be barring it, but you guys are--  
9 without guidance you guys are interpreting it as to  
10 act that way without clear legislative intent or  
11 without clear regulation saying that you should  
12 interpret it that way.

13 FLORENCE HUTNER: As far as I know, we  
14 have the authority to set up the database to the  
15 extent-- there are local databases, I believe, in the  
16 country that don't necessarily conform to the FBI  
17 Quality Assurance Standards, and those are not part  
18 of CODIS. In order for our local database to be part  
19 of CODIS, we must comply with those quality assurance  
20 standards, and we do.

21 CHAIRPERSON JOHNSON: Okay, so while DNA-

22 -

23 FLORENCE HUTNER: [interposing] There is  
24 nothing prohibiting the storage of the profiles of  
25 unconvicted individuals.

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2 CHAIRPERSON JOHNSON: There's nothing  
3 prohibiting it, but is there anything authorizing it,  
4 explicitly authorizing?

5 FLORENCE HUTNER: There is nothing  
6 explicitly--

7 CHAIRPERSON JOHNSON: So, it's a grey  
8 area, and you guys--

9 FLORENCE HUTNER: [interposing] if that is  
10 something we should do.

11 CHAIRPERSON JOHNSON: and you guys are  
12 interpreting it a certain way, and the legal  
13 community, I think, has some concerns about that.

14 FLORENCE HUTNER: I understand that there  
15 are members of the legal community who have concerns  
16 about this database, but it's my position as General  
17 Counsel for this agency that what we do is fully  
18 authorized by law.

19 CHAIRPERSON JOHNSON: So, you know, the  
20 Innocence Project is probably the most well-known,  
21 and they're going to testify today, but they're  
22 probably the most well-known organization that has  
23 been successful in exonerating individuals who are  
24 wrongly convicted; spent a significant amount of  
25 time, cracked old cold cases when attorneys had

2 abandoned certain clients who had been incarcerated

3 for long periods of time. many of them poor

4 individuals, individuals of color who could not

5 afford significant legal representation and were able

6 to make their case to have the Innocence Project come

7 in and take a look at their case, go back, look at

8 DNA evidence and information, and to try to

9 understand if these folks were wrongfully convicted.

10 They're one of the folks that I think are going to

11 testify today that they have an issue with this. I'm

12 not going to speak for them, but the-- we're not

13 talking about some cracker-jack organizations that

14 are out there saying crazy things. We're talking

15 about organizations that have spent decades trying to

16 ensure that people are not wrongfully convicted,

17 imprisoned, and lose their liberty as citizens of the

18 United States based off of some issues in our

19 criminal justice system that may not ensure that

20 these citizens have been fully given the

21 constitutional protections that they're needed, and

22 it would be helpful if the OCME staff, Doctor Sampson

23 including you, and the NYPD would stay today to hear

24 their testimony, because I think they're going to go-

25 - you may know it already, but I think they're going

2 to go into detail about some of the real concerns  
3 around this. They're a lot more fluent in these  
4 issues because they deal with them on a daily basis,  
5 and I may not be the best person to be asking these  
6 questions, because I'm not a lawyer. I'm not someone  
7 that specializes in Criminal Defense Law, or in the  
8 issues that you will have to grapple with every  
9 single day. And again, I want to go back to the  
10 statement I made to the fine member of the NYPD  
11 that's here, that you know, these are difficult  
12 issues that we grapple with, but it would be helpful  
13 if you could hear your concerns today.

14 FLORENCE HUTNER: I appreciate that.

15 There are a couple of things that I want to clarify,  
16 Council Member. One is that without these databases,  
17 some of those exonerations could not have taken  
18 place, that the DNA profiles and the DNA analysis  
19 that the OCME has done have contributed to a number  
20 of exonerations, and Doctor Sampson described just  
21 oen of those as an example in her testimony. The  
22 other thing that I want to make sure is clear is that  
23 we were talking about statutes and regulations a  
24 moment ago, but I do want to clarify that there are a  
25 number of New York State Supreme Court decisions that

2 uphold the authority of the OCME to maintain its  
3 local database in the way that it does, and if that  
4 information is something that would be helpful to you  
5 or your counsel, I would be happy to provide it to  
6 you.

7 CHAIRPERSON JOHNSON: Thank you. I want  
8 to move on quickly because I know Council Member  
9 Williams here, and he's a bill that needs to be here  
10 today, and the NYPD gave some testimony in that bill,  
11 but I'm sure he has questions for the NYPD about  
12 their testimony, and I want to be time. But I want  
13 to move on to high-sensitivity testing and forensic  
14 statistical tool issues. So, while DNA analysis of  
15 single-source and a sample, a mixture of samples is  
16 well established as I said in my opening statement.  
17 The President's Council of Advisors on Science and  
18 Technology found that more research was required to  
19 establish the foundational validity of DNA analysis  
20 of complex mixture. Does OCME dispute this finding  
21 with regards to the forensic statistical tool or the  
22 STRmix? Do you dispute PCASs' finding that more  
23 research was required to establish the foundational  
24 validity of DNA analysis of complex mixtures.

2 CRAIG O'CONNOR: Well, when it comes to  
3 looking at both of those types of situations, both  
4 the analysis of complex mixtures, whether it's using  
5 the FST or STRmix, or with lowered copies of DNA LCN,  
6 we do agree that research needs to be done and it  
7 needs to be properly validated, and these are the two  
8 things that OCME has done. We have properly  
9 validated both techniques thoroughly, both of these  
10 techniques. The LCN testing and the FST were  
11 validated over a course of multiple years before they  
12 are ever put online. They're also subject to--

13 CHAIRPERSON JOHNSON: [interposing] FST  
14 has been abandoned.

15 CRAIG O'CONNOR: It has not been  
16 abandoned. We are still using it today on older  
17 cases. So, if there was a new case starting in 2017  
18 that was processed in the laboratory, then we would  
19 be STRmix because STRmix was validated on the New  
20 York DNA typing kit that we began using this year.

21 CHAIRPERSON JOHNSON: So, you feel more  
22 confident about STRmix than you do about FST?

23 CRAIG O'CONNOR: Absolutely not. The  
24 thing is that we would have had to validate FST on  
25 the newer kit to be used starting this year, but



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2 since we had validated and developed FST back in 2010  
3 and 11 more kits have come online, programs have come  
4 online that were commercially available.

5 CHAIRPERSON JOHNSON: So, just I want to  
6 say this again. PCAST has said that they do not  
7 fully agree that there is foundational validity to  
8 the methods we're talking about, FST and STRmix. Do  
9 you agree with-- they're not saying that? They still  
10 have questions?

11 BARBARA SAMPSON: That PCAST said that?

12 CHAIRPERSON JOHNSON: Yes.

13 BARBARA SAMPSON: Yeah, but there's  
14 numerous problems with the PCAST report, and I'd like  
15 to have an opportunity to address them.

16 CHAIRPERSON JOHNSON: Go ahead.

17 BARBARA SAMPSON: PCAST is widely  
18 criticized by scientists as politically motivated and  
19 scientifically unfound, and its report has generally  
20 been discredited. There are many shortcomings in the  
21 PCAST report including its failure to reflect the  
22 view of the forensic science community, and they-- as  
23 evidence by the lengthy open letter by Doctor Bruce  
24 Budowle, an expert who frequently testifies on behalf  
25 of criminal defendants, and he not only notes the

2 absence from the PCAST report of any data or other  
3 indication that PCAST reviewed or tested any  
4 probabilistic genotyping programs-- that's what FST  
5 is-- but he lists multiple other inadequacies as  
6 well, and he wrote that the PCAST report it was so  
7 obvious that the report was not particularly helpful  
8 from a scientific perspective as it was myopic, full  
9 of error, and did not provide data to support its  
10 contentions. A more significant concern regarding  
11 the failings of the PCAST report was that it claimed  
12 its focus was science, but obviously was dedicated to  
13 policy. Initially, he considered writing a critique  
14 about the failures of this report to assist the  
15 community, but the problems with this report were so  
16 obvious that he did not think it necessary to devote  
17 time to such an effort. So, I think--

18 CHAIRPERSON JOHNSON: [interposing] This  
19 is a scientist?

20 BARBARA SAMPSON: This is a scientist  
21 saying--

22 CHAIRPERSON JOHNSON: [interposing] One  
23 scientist?

24 CRAIG O'CONNOR: Well, he's the former  
25 head of the FBI's DNA laboratory for over 30 years.

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2 He now heads up a laboratory at the University of  
3 North Texas, but his sentiments have been echoed by  
4 many scientists throughout the community, including  
5 the American Academy of Forensic Science, to name a  
6 few, that do govern a lot of the work that we do in  
7 our daily work.

8 BARBARA SAMPSON: And I also want to  
9 point out at this point that the science is either  
10 good or you think it's not good, you think it's bad,  
11 but defense attorneys including those, some from the  
12 Legal Aid Society have specifically asked OCME to run  
13 both LCN and FST in particular cases. So, if the  
14 science is no good, I don't understand why they ask  
15 for that.

16 CHAIRPERSON JOHNSON: Would you be open  
17 to reviewing cases in which low copy testing was done  
18 on very small mixtures?

19 BARBARA SAMPSON: Did you understand the  
20 question? [off mic] We don't understand the  
21 question.

22 CHAIRPERSON JOHNSON: Would you be open  
23 to reviewing cases in which low copy number testing  
24 was done on very small mixtures, or you feel totally  
25 confident and certain about all of the methods and

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2 science that's been used on every case that's come  
3 through your lab?

4 BARBARA SAMPSON: We are totally  
5 confident.

6 CHAIRPERSON JOHNSON: Okay. The New York  
7 Times' article, traces of DNA stated in regard to  
8 Forensic Statistical Tool, "The software's inventors  
9 acknowledge a margin of error of 30 percent in their  
10 method of quantifying the amount of DNA in a sample,  
11 a key input into the FST calculation. They  
12 acknowledge that FST didn't consider that different  
13 people in a mixture, especially family members might  
14 share DNA." Yet, you stand by this methodology?

15 BARBARA SAMPSON: Yes, we stand by the  
16 methodology.

17 CHAIRPERSON JOHNSON: How many cases-- in  
18 how many cases was high sensitivity testing used on  
19 samples of less than 25 picograms containing mixtures  
20 of two or more individuals? Is that often? Is it  
21 not often? Does it happen? It's rare?

22 BARBARA SAMPSON: Certainly not often.  
23 It might even be rare. Any numbers from anyone? No.  
24 Low numbers.

25 CHAIRPERSON JOHNSON: Low numbers, okay.

2 CRAIG O'CONNOR: I would just add,  
3 though, for the quantitation system that had  
4 mentioned 30 percent, that's a little bit of  
5 misleading, because the quantitation at the time was  
6 the gold standard for the community and what was  
7 available to us, and there was, again, hundreds of  
8 samples that were done and years of validation that  
9 was done to show that that quantitation value-based  
10 system was adequate and a reasonable estimate for  
11 what we are doing.

12 BARBARA SAMPSON: I also want to offer to  
13 you, Councilman Johnson, at this point, for the-- our  
14 response to the IG, the complaint to the IG's Office,  
15 we have an extensive written response that  
16 exhaustively talks about all the points that you  
17 raised in your opening statement, and we would be  
18 glad to share that with you.

19 CHAIRPERSON JOHNSON: That would be very  
20 helpful. I appreciate that, Doctor Sampson. And  
21 again, this is not personal. I think you guys have  
22 done a great job, but I think it's important to ask  
23 these questions given that there is concern around  
24 this. I'm not an expert, and so I don't ask these  
25 questions with any real bias. I'm going to ask hard

2 questions to the other folks that come up here as  
3 well to try to understand this and help the public  
4 understand these complex, complicated scientific  
5 issues in a broader way. So, I just want to be clear.  
6 I'm not going after you. I'm just trying to get  
7 answers to things that have been questioned. There  
8 have been news reports and there are real concerns.  
9 So, I know the PCAST report talked about many, many,  
10 many things, and I know that you just, of course,  
11 read a quotation and some testimony from the  
12 scientist who was explained to me was the former head  
13 of the FBI's lab for many decades. Were there things  
14 in that report that you remember that you do think  
15 were valid? I'm not talking about as it relates to  
16 FST or low copy. I'm just talking about generally did  
17 you think that it was sort of just a blatantly  
18 political report or there were some scientifically  
19 helpful valid things that actually existed in that  
20 report?

21 CRAIG O'CONNOR: Oh, I mean, of course  
22 there were scientifically valid things. Like we had  
23 said before, it says that these methods should be  
24 based on solid science foundation with the research  
25 and validation that's needed to prove their efficacy

2 and use in case, for example. So, we wholeheartedly  
3 agree with that, and that's why before any technique  
4 is put online for casework, we do go through that  
5 research and validation process not only internally,  
6 but looking at what others throughout the community  
7 and leaning on some of those lessons learned as we go  
8 through our own validation process. Along with that,  
9 we do have the Forensic Science Commission of the  
10 State of New York which has a DNA Subcommittee made  
11 up of experts within the DNA community that is  
12 responsible for reviewing these new techniques. So,  
13 it's not like we're just putting these out on  
14 casework with no oversight. We have to go through  
15 these steps following validation guidelines put out  
16 by the FBI, their scientific working group, on DNA  
17 analysis methods. We're also following the FBI's  
18 quality assurance standards and then going through  
19 the process of bringing these in front of the  
20 Forensic Science Commission and DNA Subcommittee for  
21 approval. So we do agree with those sentiments that  
22 are put into the PCAST report.

23 CHAIRPERSON JOHNSON: That's helpful.

24 That's helpful to have that context to understand  
25 kind of what you all thought was valid and that was

2 resonant with the work that you do on a daily basis  
3 and the issues that you have concerns about. I have  
4 a question for the NYPD. The PCAST report concluded  
5 that bite mark analysis and footwear analysis are not  
6 scientifically valid methodologies. Does the NYPD  
7 continue to use bite mark analysis and footwear  
8 analysis when it's conducting investigations?

9           COMMANDER KATRANAKIS: So, bite mark  
10 analysis is not conducted by the NYPD. Footwear  
11 impression examinations are a service that we provide  
12 in the NYPD. As far as the--

13           CHAIRPERSON JOHNSON: [interposing] You  
14 guys don't do anything related to bite marks?

15           COMMANDER KATRANAKIS: We do not.

16           CHAIRPERSON JOHNSON: Okay. That's  
17 helpful to hear. I didn't know that. Okay.

18           COMMANDER KATRANAKIS: Other than  
19 potentially collecting probative DNA evidence from a  
20 bite mark--

21           CHAIRPERSON JOHNSON: [interposing] Yes,  
22 yes.

23           COMMANDER KATRANAKIS: on a victim.

24           CHAIRPERSON JOHNSON: Okay. And then,  
25 the PCAST report also recommended converting latent



2 fingerprint analysis that you had mentioned in your  
3 testimony from a subjective method to an objective  
4 method using automated image analysis. The NYPD or  
5 OCME considering doing that, moving from the  
6 subjective method to the objective method by using an  
7 automated image analysis?

8           COMMANDER KATRANAKIS: The assertion that  
9 our method is subjective is erroneous and without  
10 merit.

11           CHAIRPERSON JOHNSON: Do you--

12           COMMANDER KATRANAKIS: [interposing] Our  
13 approach is what we call the ACEV [sic] method, which  
14 is the accepted method in the forensic fingerprint  
15 comparison community that has been around for decades  
16 and is accepted in the courts of law.

17           CHAIRPERSON JOHNSON: So you--

18           COMMANDER KATRANAKIS: [interposing] This  
19 method provides us with the ability to objectively  
20 examine fingerprints.

21           CHAIRPERSON JOHNSON: So you disagree with  
22 the PCAST, them saying that? Well, they're saying  
23 you're not obj-- they're contending that it's  
24 subjective. You're saying it's not. You're saying it  
25 is already objective.

2 COMMANDER KATRANAKIS: Precisely.

3 CHAIRPERSON JOHNSON: Great. I think  
4 that's all the questions that I have. I appreciate  
5 your testimony, and I look forward to continuing to  
6 have a conversation about this, and I appreciate the  
7 really hard work you all do on a daily basis in  
8 keeping our city safe in a fulsome way with the  
9 criminal justice community, law enforcement,  
10 scientists, the District Attorneys, and the other  
11 folks that work to keep our city safe. At the same  
12 time, I want to ensure that New Yorkers'  
13 constitutional liberties, rights and protections are  
14 afforded to them in the best way possible, and that's  
15 always the balance have to look at here. So, I want  
16 to turn it over to my co-chair, Council Member  
17 Gibson.

18 CHAIRPERSON GIBSON: Thank you very much,  
19 Chair Johnson. I don't know that there's anything  
20 left to ask this afternoon, but I'll always find  
21 something. Before I begin I just want to acknowledge  
22 additional colleagues who are here, Council Member  
23 Robert Cornegy, Council Member Jumaane Williams,  
24 Council Member Chaim Deutsch, Council Member Inez  
25 Barron, and Council Member Rosie Mendez. Thank you,

2 colleagues, for joining us. And certainly before I  
3 ask any questions, I just want to join Chair Johnson  
4 in commending both the NYPD as well as OCME for the  
5 stellar work that you have done. The fact that we  
6 have so many New Yorkers in the state that have been  
7 exonerated for many different infractions of  
8 misidentification, of witness tampering and other  
9 issues. The fact that we have made such incredible  
10 advancements in science and technology in DNA many of  
11 those individuals are free today. So, I want to  
12 thank you. As Chair of this committee, I've worked  
13 very closely with Innocence Project and many others  
14 that represent many of our New Yorkers who have been  
15 exonerated. I hate to categorize them, but it's a  
16 very unique but important population that has a real  
17 powerful testimony, but I truly know that because of  
18 DNA evidence many, a majority of them are free. So,  
19 I want to thank you. This is the first time this  
20 Committee has really talked about DNA and forensic  
21 evidence and the practices and procedures and  
22 guidelines and all of the different measures that  
23 both of your offices undertake. So, I appreciate the  
24 testimony and all of the work that you and your  
25 staffs do while you're here. Certainly, all of the

2 scientists and all of the civilian staff both at the  
3 NYPD and OCME do every day really does make a  
4 difference. When I heard the numbers of 155,000  
5 cases and test, I mean, that's a lot of work. So,  
6 definitely today's hearing is really an opportunity  
7 to further understand the work you're doing. You  
8 talked about some of the staffing issues, the Healing  
9 NYC initiative that we embarked on that really  
10 provides more critical staff that's needed for  
11 technology and for training and investigations, and  
12 certainly, moving forward for January, know that we  
13 are going to remain partners in this work as we  
14 continue to advance technology, as we continue to  
15 deal with the opioid and the fentanyl crisis that  
16 we're going through, and I say that personally  
17 because there is a high concentration in Bronx County  
18 and Richmond County, so I take this obviously deeply  
19 personal to make sure that we can do everything  
20 possible to avoid overdose death. In working with  
21 Bridget Brennan, the Special Narcotics Prosecutor and  
22 others, we've been able to save countless lives with  
23 Naloxone and other measures. So, I am grateful for  
24 that, and I'm grateful for your work. I just wanted  
25 to make sure that's clarified, because I know while

2 we talk about some of the challenges that we may  
3 face, I don't want to overstate enough the work that  
4 is done and the fact that we are here to talk about  
5 all of the successes, all of the incredible work  
6 we've done. You know, giving victims and opportunity  
7 to provide not only justice but a second chance at  
8 life so that that crime does not have to overpower  
9 them and take over their lives is really impactful.  
10 So I really want to give all of you credit where  
11 credit is due. I wanted to just ask a couple of  
12 questions specific to the local database as Chair  
13 Johnson alluded to, and you talked about some of the  
14 different stakeholders, the District Attorney,  
15 prosecutors and others that have access to the  
16 database. I wanted to understand the-- in terms of  
17 court order-- sorry, let me clarify that. I wanted  
18 to understand the interplay and the coordination.  
19 That may not be the right word. But what is  
20 happening with federal and FBI oversight in terms of  
21 having access to the database? Do you get-- how does  
22 it work in terms of getting any inquiries and  
23 accessing DNA and the profile? Does the FBI have  
24 access to the local database, generally speaking?

25 BARBARA SAMPSON: No, they do not.

2 CHAIRPERSON GIBSON: Okay.

3 BARBARA SAMPSON: So, I-- it's an  
4 excellent question. Obviously, this database is very  
5 carefully regulated.

6 CHAIRPERSON GIBSON: Right.

7 BARBARA SAMPSON: Both by the FBI and  
8 then our-- locally. We have a CODIS group that  
9 consists of about four scientists, and then another  
10 100 scientists who go through FBI clearance to be  
11 able to interact--

12 CHAIRPERSON GIBSON: [interposing] Okay.

13 BARBARA SAMPSON: with the CODIS system.  
14 So, the NYPD has no direct access to the CODIS  
15 system, and the information in CODIS is DNA profiles.  
16 So, there's no personal identifiers in there.

17 CHAIRPERSON GIBSON: Right.

18 BARBARA SAMPSON: So you can't just go in  
19 and say, you know, let me see Barbara Sampson's DNA.  
20 So, it is a very well protected system? Anything you  
21 want to add, Craig, on that?

22 CRAIG O'CONNOR: Really the FBI controls  
23 the computer system. So, that--

24 CHAIRPERSON GIBSON: [interposing] Okay,  
25 the computer software.

2 CRAIG O'CONNOR: The computer software  
3 that will connect and, you know, do the matches and  
4 the hits. So, if there is a hit nationally, they may  
5 coordinate the states to get that information, but at  
6 the state level, it's the State DNA index system  
7 that's run by--

8 CHAIRPERSON GIBSON: [interposing] Okay.

9 CRAIG O'CONNOR: the state lab up in  
10 Albany that would coordinate state hits, and then  
11 obviously we would coordinate the local hits.

12 CHAIRPERSON GIBSON: Okay.

13 CRAIG O'CONNOR: As far as access in the  
14 database like Doctor Sampson says, there are no  
15 identifying names in there at all. It's just a  
16 profile.

17 CHAIRPERSON GIBSON: Right, it's a  
18 profile.

19 CRAIG O'CONNOR: And the FBI does not  
20 have access to our local database.

21 BARBARA SAMPSON: And no demographic  
22 information of any sort either.

23 CHAIRPERSON GIBSON: Right. So when you  
24 say hits, is that equivalent to inquiries?

2 CRAIG O'CONNOR: A hit equivalent to a  
3 match.

4 CHAIRPERSON GIBSON: A match, okay.

5 CRAIG O'CONNOR: SO, if there's a  
6 potential match between one item of evidence that had  
7 a profile to another profile, whether it be another  
8 unknown item or from an unknown individual, that's  
9 what we call a hit or a potential match that would  
10 then lead to some further investigation.

11 CHAIRPERSON GIBSON: Okay. So, in terms  
12 of any time frame, I mean, you, Chief, talked about a  
13 case. Obviously, it was incredibly important where  
14 the DNA was, you know, there was a hit on that  
15 profile almost nine years after that first crime and  
16 you were able to solve a separate crime. So, that's  
17 very valuable, and I want people to understand that,  
18 you know, sometimes you have habitual offenders that  
19 don't commit a crime the next day or the next month  
20 but there is some time that does pass. What I wanted  
21 to understand was the DNA sample itself and the  
22 comparison to the actual profile. So, the profile  
23 itself that's in CODIS is a part of the computer  
24 software, but what happens to the actual DNA sample  
25 that you talked about where it goes through a series



2 of a process? I have friends who are scientologists  
3 and criminologists, and they try and explain this and  
4 it's really like in another language in terms of how  
5 you test it. It has different samples, and it goes  
6 through different measures before you can say with,  
7 you know, confidence, this is the DNA match to  
8 someone. So, that DNA sample itself, how is that  
9 stored, and how long is that stored and what happens  
10 over time? Because I can imagine there's some  
11 compromise as time passes with that DNA sample.

12 CRAIG O'CONNOR: Well, once we process a  
13 sample and we get a profile--

14 CHAIRPERSON GIBSON: [interposing] Okay.

15 CRAIG O'CONNOR: That's basically it for  
16 that sample. We don't need to go back. We don't  
17 need to rely upon that actual piece of evidence--

18 CHAIRPERSON GIBSON: [interposing] So,  
19 it's discarded?

20 CRAIG O'CONNOR: So, most of the evidence  
21 we get are items, so whether it's a shirt--

22 CHAIRPERSON GIBSON: [interposing] Oh,  
23 okay, I see.

24 CRAIG O'CONNOR: or you know, clothing, a  
25 weapon, like a baseball bat or something to that

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2 effect, or we'll get what we call "swabs." So,  
3 imagine--

4 CHAIRPERSON GIBSON: [interposing] Right.

5 CRAIG O'CONNOR: the q-tip that's used to  
6 try and collect off the DNA or the biological  
7 material. So we'll take a portion of that, or  
8 sometimes if it's a very small sample, we may consume  
9 it, but if it's just a portion, we'll test that  
10 portion, and then the rest of it gets sent back to  
11 the Property Clerk at NYPD. So, the sample--

12 CHAIRPERSON GIBSON: [interposing] Okay.

13 CRAIG O'CONNOR: itself does not stay with  
14 us in most cases.

15 CHAIRPERSON GIBSON: Does that also  
16 include blood as well in terms of-- because you  
17 described different items, toothpa-- you know,  
18 toothbrush and stuff like that, what about bodily  
19 fluids, is that?

20 CRAIG O'CONNOR: We'll get items of  
21 evidence that will have bodily fluids on them.

22 CHAIRPERSON GIBSON: Oh, okay, I see.

23 CRAIG O'CONNOR: And then we'll do that,  
24 and then obviously we'll get, for elimination  
25 purposes, a sample from autopsy, a blood sample which

2 we'll again take a very small portion, get the DNA  
3 profile, and then send that back to the ME's office  
4 for that one, but once we get that DNA profile, which  
5 again is just a string of numbers that represents the  
6 person's DNA at the locations that we're testing,  
7 once we get that profile that's what's stored in the  
8 databases if it's eligible, and the items of evidence  
9 will be sent back.

10 CHAIRPERSON GIBSON: Okay. Defense  
11 attorneys, what access do they have to-- if they're  
12 defending a client, and their client's DNA is  
13 collected, and there is a CODIS profile on that  
14 particular person, does a defense attorney have to  
15 also go through the route of a court order to obtain  
16 any evidence to defend their client? How does that  
17 work?

18 CRAIG O'CONNOR: I'm not sure what you're  
19 asking as far as that.

20 CHAIRPERSON GIBSON: You talked about  
21 prosecutors, District Attorneys being able to access  
22 information through a court order. Is that also  
23 applicable to defense attorneys that are defending  
24 their clients? Does that make sense?

2 FLORENCE HUTNER: So, if I understand  
3 your question, Council Member, I think the answer is  
4 that defense attorneys do have access to the case  
5 files--

6 CHAIRPERSON GIBSON: [interposing] What  
7 I'm asking.

8 FLORENCE HUTNER: Under the-- there is a  
9 slight wrinkle with that under the City Charter. We  
10 need the approval of the District Attorney to turn  
11 over any material that relates to--

12 CHAIRPERSON GIBSON: [interposing] Okay,  
13 to the defense attorney.

14 FLORENCE HUTNER: homicide cases, but that  
15 applies to family members as well. I mean, that's  
16 just across the board. So, as a general-- and  
17 usually they-- if there is a homicide matter, my  
18 understanding is that the prosecutor will provide the  
19 information to the defense. So, I think  
20 fundamentally that was a very long way of saying  
21 essentially yes.

22 CHAIRPERSON GIBSON: Okay, okay. But, so  
23 you need the District Attorney to be on board. What  
24 happens if the District Attorney--

2 FLORENCE HUTNER: [interposing] Only in  
3 the case of a homicide.

4 CHAIRPERSON GIBSON: Oh, okay, okay.

5 FLORENCE HUTNER: And it is-- you know,  
6 if the defense attorney in question is, you know,  
7 representing the defendant in the homicide case, I  
8 assume that all of the criminal procedure rules that  
9 apply would ensure that the defense gets what it  
10 needs at some point, but we don't have as much  
11 control over that.

12 CHAIRPERSON GIBSON: Okay, okay. That  
13 makes sense. I understand. I had a few questions  
14 about just specific forensic analysis, which is hard  
15 to understand as a layperson. So I wanted to ask a  
16 question about fingerprints and how that works in  
17 terms of the methodology and the process that the  
18 crime lab uses on analyzing fingerprints. How does  
19 that work?

20 COMMANDER KATRANAKIS: That's somewhat of  
21 an open-ended question. Is there a specific  
22 hypothetical example you'd like to use, or do you  
23 want me to just take it from a crime scene and--

24 CHAIRPERSON GIBSON: [interposing] If you  
25 could take it from a crime scene, and in terms of

2 what your standard is in terms of the threshold that  
3 you have to use to analyze fingerprints. Like, what  
4 is your threshold? What is some of the criteria that  
5 the crime lab has to use as it relates to finger  
6 prints?

7           COMMANDER KATRANAKIS: So, finger print  
8 evidence is collected fundamentally in two different  
9 ways.

10           CHAIRPERSON GIBSON: Okay.

11           COMMANDER KATRANAKIS: Looking at a crime  
12 scene, we will process surfaces and areas for the  
13 presence of latent finger prints.

14           CHAIRPERSON GIBSON: Okay.

15           COMMANDER KATRANAKIS: And consequently  
16 we will go ahead and collect those finger prints via  
17 a lifting method. So, we call that--

18           CHAIRPERSON GIBSON: [interposing] You  
19 said lifting?

20           COMMANDER KATRANAKIS: Lifting.

21           CHAIRPERSON GIBSON: Okay, lifting.

22           COMMANDER KATRANAKIS: Yes, ma'am. It's  
23 a lift. We use a piece of what we call lift tape  
24 which secures the evidence, and we subsequently  
25 package those lifts and submit those lifts for

2 examination. So, that's one way that finger prints  
3 are collected from a crime scene. A second way is  
4 when the actual what I'll call substrate, or standard  
5 item, for example this glass case may have finger  
6 prints that may aid in the criminal investigation.

7 It would be collected by a member of the NYPD's Crime  
8 Scene Unit or evidence collection teams, or a

9 detective, and forwarded to the laboratory for

10 processing. So, this particular glass case would be

11 packaged properly. Documentation would be prepared

12 and subsequently this evidence item would be

13 forwarded to the laboratory. In the laboratory we

14 have a unit called the Latent Print Development Unit,

15 which I talked about in my testimony, and they will

16 go ahead and employ laboratory techniques to develop

17 finger prints on the surface of this glass case. In

18 the event there is a finger print that is developed

19 based on the methods and techniques that we employ,

20 we will take a high-resolution digital image with a

21 digital camera of that finger print that is developed

22 and electronically forward that finger print to a

23 separate unit which is outside of the laboratory

24 under our division called the Latent Print Section.

25 That image will be examined by Latent Print

2 Examiners, and they will, based on the first step,  
3 assess whether or not that print is what we call of  
4 value or no value. Of value essentially means that  
5 there is enough friction ridge information to move  
6 forward to perform a comparison with that finger  
7 print that was developed.

8 CHAIRPERSON GIBSON: Is there a value?  
9 Is there a number you have to achieve to get? So,  
10 out of-- given, you know, one to ten ratio, is there  
11 a value that you have to meet as a threshold for that  
12 particular sample to be deemed valid?

13 COMMANDER KATRANAKIS: No.

14 CHAIRPERSON GIBSON: Okay.

15 COMMANDER KATRANAKIS: This is based on  
16 the subject matter expertise of Latent Print  
17 Examiners.

18 CHAIRPERSON GIBSON: Okay.

19 COMMANDER KATRANAKIS: We do not use a  
20 quantitative method to count the amount--

21 CHAIRPERSON GIBSON: [interposing] Okay,  
22 that's why I was asking.

23 COMMANDER KATRANAKIS: of friction ridge  
24 detail. It's simply not accomplished in that manner.  
25 Many years ago there was a point method that was



2 generally accepted in the community. We don't look  
3 simply at points. We look at the totality of the  
4 forensic evidence and the print evidence, the  
5 friction ridge detail, and the knowledge that we have  
6 of performing comparisons in the friction ridge  
7 evidence. So taking it from that point we would move  
8 forward and we would either use a database to search  
9 that finger print seeking candidates, or we would do  
10 direct comparisons, similar to DNA evidence. Those  
11 comparisons could be to suspects that are developed  
12 through the criminal investigation by detectives in  
13 the field, or we would compare them to individuals  
14 that we know have legitimate access or victims,  
15 because we want to exclude them as being the  
16 individuals that left their finger prints at a crime  
17 scene. So, all of this is the holistic approach to  
18 the forensic investigation via finger prints.

19 CHAIRPERSON GIBSON: Okay.

20 COMMANDER KATRANAKIS: At that point, in  
21 the event a conclusion is drawn-- so, we draw  
22 conclusions which are identifications to a known  
23 person. We draw exclusions to known persons and then  
24 the third type is what we call inconclusive.

2 CHAIRPERSON GIBSON: Okay. And what's on  
3 average a typical timeframe? So this is just one  
4 part of an overall investigation using this  
5 particular analysis or finger prints. So, what you  
6 just described is very detailed, very tedious, but  
7 necessary. So what's an average time frame that, you  
8 know, one of your analyst would have to go through  
9 just to determine if that finger print that they  
10 obtained is of useful value for that particular  
11 crime?

12 COMMANDER KATRANAKIS: So, I do want to  
13 apologize because it's a very complicated system.

14 CHAIRPERSON GIBSON: I know, it sounds  
15 it.

16 COMMANDER KATRANAKIS: It's so large.  
17 So, it depends. So, it depends. So, for example,  
18 the glass case that requires latent print development  
19 work up front, it depends on the number of prints  
20 that are developed. It depends on the techniques.  
21 We have dye staining techniques that we use. Some of  
22 the techniques actually take two days in the  
23 laboratory to let the chemical reagents dry and for  
24 the examiner to evaluate the results of the chemical  
25 enhancement. Other types of evidence that I talked

2 to you about as far as lifts, lifts are readily  
3 available to examine immediately. So when those  
4 lifts are collected, the appropriate documentation  
5 accompanies those lifts to the latent print section,  
6 and in general based on our routine system, analysis  
7 and examinations will begin within two days. So, if  
8 it's a lift, it's in general two days. If it's  
9 something that's sent to the laboratory it may be  
10 double or triple the amount, bearing in mind that  
11 when we look at forensic cases they vary. So a case  
12 that has 18 finger prints is going to take a lot more  
13 time than a case with a single finger print, and very  
14 similar to DNA. So, the more comparisons that are  
15 conducted, the more evidence that is developed and  
16 acquired, the turnaround time to report results to  
17 our customers being either the detectives that are  
18 investigating or prosecutors in an arrest case  
19 depends on the amount of evidence, the complexity of  
20 the evidence, and the type of evidence.

21 CHAIRPERSON GIBSON: Okay. You can tell  
22 I probably watch Law and Order quite a bit, so this  
23 is really interesting for me. So, now that I've  
24 asked you about finger prints, I want to understand  
25 the process for analyzing footwear, right, and how

2 does that work? Because again, construction wear,  
3 sandals, I mean, everything have some level of  
4 evidence that you could extract that would be helpful  
5 in solving these crimes. So, can you tell me like  
6 the process and what you do in terms of extracting  
7 any evidence from footwear?

8                   COMMANDER KATRANAKIS: Sure. So, it's  
9 important to kind of start this conversation off with  
10 the frequency of footwear evidence being collected on  
11 crime scenes.

12                   CHAIRPERSON GIBSON: Okay.

13                   COMMANDER KATRANAKIS: And let me tell  
14 you it's infrequent--

15                   CHAIRPERSON GIBSON: [interposing]  
16 Infrequent?

17                   COMMANDER KATRANAKIS: Infrequent.

18                   CHAIRPERSON GIBSON: Of footwear?

19                   COMMANDER KATRANAKIS: Footwear  
20 impressions.

21                   CHAIRPERSON GIBSON: Oh, okay.

22                   COMMANDER KATRANAKIS: So, based on the  
23 nature of the city that vast majority of the  
24 geography of New York City is concrete, structural.

25                   CHAIRPERSON GIBSON: Okay.

2           COMMANDER KATRANAKIS: Quite often we do  
3 not recover finger prints-- excuse me, footwear  
4 impressions at crime scenes. However, if there is a  
5 probative footwear impression that is at a crime  
6 scene, crime scene investigations are trained to  
7 competency to go ahead and employ collection  
8 techniques and methods to acquire that footwear  
9 impression evidence, and it begins with photography.  
10 So, very sophisticated photographs and enhanced  
11 photographs are taken at the crime scene, and then  
12 depending on the type of footwear impression. So,  
13 you could have a footwear impression that is in dirt  
14 or mud. You could have a footwear impression which we  
15 call a three-dimensional footwear impression. You  
16 could have a two-dimensional footwear impression on a  
17 ceramic tile or another surface. We would go ahead  
18 and employ the technique which is appropriate based  
19 on the evidence and based on the environmental that  
20 that footwear impression is present. Once the  
21 evidence is collected, it is forwarded to the  
22 laboratory, and then the laboratory's criminalistics  
23 section we have examiners that will begin to examine  
24 a footwear impression collected by the crime scene.

2 CHAIRPERSON GIBSON: Okay. I wanted to  
3 ask about the analysis of firearm and ballistics.  
4 That's my third one. And you talked a little bit  
5 about, you know, just the serial numbers on guns that  
6 could be compromised in some way. You talked about  
7 the different techniques that are used to make sure  
8 that you can still extract that serial number. In  
9 terms of bullet-resistant garment tests, firearm  
10 trigger pull tests, firearm drop test, and there was  
11 something that you've mentioned that I had a question  
12 on. How often do you find in the cases that you see  
13 where in ballistics analysis, the serial number is  
14 compromised in some way? Like, is that something  
15 that happens with frequency, or is that infrequent  
16 that you see?

17 COMMANDER KATRANAKIS: It is common.

18 CHAIRPERSON GIBSON: Okay.

19 COMMANDER KATRANAKIS: We see serial  
20 numbers that are defaced where individuals attempt  
21 either to drill out, scrape out, carve out the serial  
22 number on a firearm.

23 CHAIRPERSON GIBSON: Got it, okay. I  
24 wanted to understand, how many ballistics tests on  
25

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2 average do you guys conduct at the NYPD? Do you have  
3 a number on how many tests you conduct every year?

4 COMMANDER KATRANAKIS: Sure, so you're  
5 talking about--

6 CHAIRPERSON GIBSON: [interposing] You  
7 gave me the number of cases that you look at, but  
8 just in terms of ballistics, do you have a number for  
9 that?

10 COMMANDER KATRANAKIS: I do. So, just so  
11 I understand your question, so the number of  
12 examinations which is the totality of all  
13 examinations that are provided by the firearm  
14 analysis section in the laboratory.

15 CHAIRPERSON GIBSON: Correct, yes.

16 COMMANDER KATRANAKIS: I have that for  
17 you. So, it's upwards of 10,000. My apologies--

18 CHAIRPERSON GIBSON: [interposing] In a  
19 year?

20 COMMANDER KATRANAKIS: I don't have  
21 precise number, but it's upwards--

22 CHAIRPERSON GIBSON: Okay.

23 COMMANDER KATRANAKIS: of about 10,000  
24 examinations each year.

25

2 CHAIRPERSON GIBSON: Okay. That's a lot.  
3 Okay. And in terms of the examiners that you have in  
4 the unit that deals with firearm and ballistics, what  
5 types of-- well, not just the basic training that  
6 they get, but in terms of understanding enhanced  
7 technology measures and other things that could be  
8 used to further determine an analysis that involves a  
9 firearm or ballistics, how does that work? So how  
10 often are your examiners able to look at technology  
11 to see a new measure, a new upgrade that they could  
12 use that would allow them to better do their jobs?

13 COMMANDER KATRANAKIS: So, overall, we  
14 are actively engaged in the forensic community. What  
15 that means is we are continually attending  
16 national/international conferences--

17 CHAIRPERSON GIBSON: [interposing] Right.

18 COMMANDER KATRANAKIS: as to where the  
19 pulse of the forensic community is, new technologies  
20 that become available. We also communicate  
21 constantly, meet constantly with our partners and  
22 other agencies including the OCME. Quite often we're  
23 taking trips to Philadelphia and other states.  
24 Recently, it was the New Jersey State Police, talking  
25 to some of their folks in the forensic laboratory in



2 their Crime Scene Unit. So there's this ongoing  
3 effort to always learn more about new technologies  
4 and make certain that we're exploiting those  
5 technologies to keep the public safe.

6 CHAIRPERSON GIBSON: Okay. That's great.  
7 And I agree and I figured that was the answer. I just  
8 wanted to make sure. I know the Department has an  
9 incredible amount of relationships with other  
10 localities, as well as us being just a national model  
11 and always looking at ways that we can be more  
12 efficient and traveling to do so looking at other  
13 localities and what they're doing. So that makes  
14 sense to me. I wanted to ask you to expand a little  
15 bit on trace evidence, because you talked about the  
16 laboratory's criminalistics section. What do they  
17 do?

18 COMMANDER KATRANAKIS: The criminalistics  
19 section is a section and under that section you have  
20 a host of what we call sub-disciplines. So,--

21 CHAIRPERSON GIBSON: [interposing] Sub-  
22 disciplines?

23 COMMANDER KATRANAKIS: Sub-disciplines.  
24 So, the discipline of criminalistics--

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2 CHAIRPERSON GIBSON: [interposing] Another  
3 word.

4 COMMANDER KATRANAKIS: is similar to the  
5 discipline of DNA evidence testing.

6 CHAIRPERSON GIBSON: Okay.

7 COMMANDER KATRANAKIS: Or firearms  
8 examinations. We've kind of grouped all of these  
9 smaller disciplines together, and we call those  
10 disciplines sub-disciplines under the criminalistics  
11 section.

12 CHAIRPERSON GIBSON: How many do you  
13 have?

14 COMMANDER KATRANAKIS: Quite a few.

15 CHAIRPERSON GIBSON: Oh, goodness, okay.  
16 Quite a few sub-disciplines?

17 COMMANDER KATRANAKIS: Most I've  
18 mentioned, yes. So most of them I've mentioned to  
19 you. The primary is the Latent Print Development  
20 Unit. We also have, as I mentioned, the Trace  
21 Evidence Collection Unit, the Question Document Unit,  
22 which works with documents and letters and evidence  
23 that's in writing.

24 CHAIRPERSON GIBSON: Okay.

25

2                   COMMANDER KATRANAKIS: We also have our  
3 Gun Shot Residue Muzzle-to-Target Distance  
4 Determination Unit.

5                   CHAIRPERSON GIBSON: Okay.

6                   COMMANDER KATRANAKIS: Some as these  
7 units as I talk about them get smaller and smaller as  
8 far as the number of individuals that are trained to  
9 competency to do casework, and the number of evidence  
10 samples that are submitted. So, we have a Fire  
11 Debris Unit. We have a Paint Examination Unit. We  
12 have individuals trained in something called General  
13 Unknowns. We do glass analysis. We do plastic bag  
14 analysis. We do explosives analysis. We do what we  
15 call jigsaw fit, or physical fit analysis, tape  
16 analysis, etcetera.

17                  CHAIRPERSON GIBSON: Wow. What's the  
18 discipline that focuses on other weapons that are not  
19 guns, like knives and other measures? What  
20 discipline is that that looks at in terms of--  
21 there's a stabbing. There was a knife used. Like,  
22 what part of this division analyzes that evidence?  
23 We look at the probative forensic evidence that may  
24 be on the weapon. So, for example, we would look at

2 a knife, in your hypothetical example, for the  
3 presence of finger prints.

4 CHAIRPERSON GIBSON: Okay.

5 COMMANDER KATRANAKIS: That may be the  
6 perpetrators for the presence of blood.

7 CHAIRPERSON GIBSON: Blood, right.

8 COMMANDER KATRANAKIS: There may be some  
9 potential trace evidence.

10 CHAIRPERSON GIBSON: Hair?

11 COMMANDER KATRANAKIS: We make at hair,  
12 precisely. So, we'll collect this item of evidence,  
13 and that item of evidence will come to our  
14 laboratory, and our examiners will look at this  
15 evidence using a variety of methods. So, obviously,  
16 optical magnification, looking under microscopes in  
17 certain instances. In other instances using  
18 alternate light sources at different frequencies.  
19 The objective is to identify evidence that is on that  
20 knife, again, that'll further the investigation and  
21 help us get to the truth. So quite often there's  
22 physical evidence that's present that is not visible  
23 by the naked eye. So we have techniques. We have  
24 equipment. We have methods that we employ to find

2 that evidence and see that evidence despite the fact  
3 that it's not visible to us with our eye.

4 CHAIRPERSON GIBSON: Okay.

5 BARBARA SAMPSON: And after NYPD finishes  
6 that part of the examination, if there's a stabbing  
7 fatality, often the Medical Examiner will look at the  
8 knife, for example, and make an opinion as to whether  
9 that knife could possibly have caused a wound that  
10 was seen on the body.

11 CHAIRPERSON GIBSON: Okay. Wow. I had  
12 an incident yesterday in the Bronx that was a  
13 stabbing in my district that I'm sure that you guys  
14 now have in High Bridge in the 44. There was a  
15 gentleman who was stabbed several times, but he  
16 survived, and thank God it looks like he will make a  
17 full recovery. So, that's just one example, but I  
18 know this happens unfortunately more often than not.  
19 So, I wanted to understand, you know, just in terms  
20 of not gun shots, but knife wounds as well and how  
21 both of your offices work together in terms of  
22 looking at that weapon and collective evidence and  
23 putting it all together.

24 BARBARA SAMPSON: One thing that you may  
25 not realize about the Medical Examiner's Office is

2 that on occasion we are asked by the District  
3 Attorney's to examine living victims for analysis of  
4 their wounds. For example, is this knife possibly  
5 caused this wound? Range of fire in--

6 CHAIRPERSON GIBSON: [interposing] Okay.

7 BARBARA SAMPSON: shooting. So we do a  
8 lot of other things besides autopsies.

9 CHAIRPERSON GIBSON: Right. So besides  
10 the work that you do at the crime lab at the OCME's  
11 office, do you often have to send staff out? So, in  
12 my case yesterday the young man is still in the  
13 hospital. So, do you have to go vary-- not just the  
14 crime scene itself, but other parts of that  
15 individual, that victim, where their last, you know,  
16 visits were, where they visited, as well as like  
17 hospital visits, do you have to do that as well?

18 BARBARA SAMPSON: On occasion the  
19 District Attorney will ask us to see a living victim  
20 in the hospital to make exactly that kind of  
21 analysis, or if someone is still alive but likely to  
22 die, and they may have to spend several weeks in the  
23 hospital, and during those several weeks some of the  
24 information from the initial attack might disappear,  
25 we're often asked to go in. We've had to send

2 medical examiner staff physicians to examine the  
3 patient and also photographers to document that so  
4 when the case does go to trial we can offer that as  
5 well and our opinions as well at trial.

6 CHAIRPERSON GIBSON: Okay, understand. I  
7 guess my final questions, I just wanted to talk  
8 about-- I'm a member of the Finance Committee so I  
9 always have my Finance hat on. Everything we do has a  
10 cost, and I know through Healing NYC when we  
11 announced that earlier this year there was resources  
12 given to the NYPD as it relates to more staffing. So  
13 you talked about it a little bit in your testimony,  
14 so I wanted to make sure in terms of staffing what  
15 the staff look like in terms of detectives,  
16 civilians, criminologists, I mean, what does your  
17 staff look like, and have we been able to fulfil all  
18 of those positions today?

19 COMMANDER KATRANAKIS: Sorry. So, as far  
20 as our total staff in the laboratory, we have 376  
21 individuals that consist of both uniformed members of  
22 the service and civilian members of the service.

23 CHAIRPERSON GIBSON: Got it.

24

25

2           COMMANDER KATRANAKIS: Of the 376 we have  
3 120 uniform, 256 civilians, and when to drill down on  
4 the Healing initiative of the Mayor--

5           CHAIRPERSON GIBSON: [interposing] Right.

6           COMMANDER KATRANAKIS: we recently  
7 increased our Controlled Substance Analysis section  
8 by approximately 50 individuals. We've created a new  
9 tour. So, given the fact that we don't have enough  
10 space, we started a 4:00 to 12:00 shift in order to  
11 ramp up and up-staff to provide this service to the  
12 public. We have 43 individuals that are currently in  
13 training. So, as you're aware in order to do  
14 casework, in order for us to authorize you to do  
15 casework, you must prove that you are competent to do  
16 the work, not only physically, but you also have the  
17 cognitive skills to demonstrate and understand  
18 precisely what it is that you're doing and also prove  
19 to us that you come up with the correct answer and  
20 the most accurate result based on our standards and  
21 methods. So, therefore, in order for us to begin to  
22 use these new individuals, they will not be available  
23 until March or April. So, they're currently in  
24 training. The training program takes seven months  
25 due to the complexity of the work that they do and



2 the chemical analysis they do. We anticipate that  
3 they will be available to start casework at the end  
4 of March, early April.

5 CHAIRPERSON GIBSON: Okay. So, the  
6 Controlled Substance Analysis team that you're  
7 talking about, are they specifically assigned to deal  
8 with the opioid and fentanyl or would their  
9 responsibilities delve over the entire Department?  
10 So, specifically for Healing NYC there was a focus  
11 and there was an urgent need to hire and staff up to  
12 really focus on a targeted need, and that need is  
13 ongoing. So, as these civilians are in the academy,  
14 so to speak, in their training, will they be assigned  
15 to deal with this, or will their responsibilities  
16 span over more than just opioid and fentanyl,  
17 etcetera?

18 COMMANDER KATRANAKIS: So, every day we  
19 receive hundreds if not in certain instances  
20 thousands of items of alleged controlled substances  
21 for us to test. Not only do we need to test this  
22 evidence, but we also need to provide a report based  
23 on the speedy trial requirements within a timely  
24 manner to a prosecutor. So, those results could  
25 either be the identification of a controlled

2 substance, and in certain instances the fact that  
3 there is not a controlled substance present where we  
4 generate exculpatory evidence, and we do this every  
5 day. So, these individuals that are in training that  
6 I mentioned coming in April they'll be available to  
7 do casework will be working on non-opioid cases, and  
8 the reason for that is that we have come to  
9 understand through our examinations of opioid cases  
10 and fentanyl cases that they are much more  
11 complicated to analyze, interpretation-wise,  
12 reporting, and investigating the evidence. So,  
13 taking that into consideration we anticipate and plan  
14 on having the opioid evidence tested by our more  
15 senior examiners in the Controlled Substance Analysis  
16 Section.

17 CHAIRPERSON GIBSON: Okay. As I turn  
18 this over to my colleagues, I guess the final thing  
19 I'll say is this is a lot to understand and absorb. I  
20 will keep my day job. This is a lot, but I give you  
21 a lot of credit for the work that you and your teams  
22 really do on this every single day. It is a lot to  
23 understand and absorb. I guess my final question to  
24 both OCME and the NYPD is understanding some of the  
25 nuances we have with technological advances, some of

2 the challenges we face, what do you see are your  
3 biggest challenges in the industry, and where can we  
4 as the City Council be helpful? You know, Chair  
5 Johnson alluded to the local database, and obviously  
6 I share a lot of those concerns. While we are doing  
7 great and incredible life-saving work, you know, I do  
8 recognize that there are challenges that we do face  
9 as an industry, and so certainly we want to  
10 understand some of our lessons that we're learning.  
11 We want to understand what we can do to be more  
12 efficient, and so I'm asking, you know, from both of  
13 your perspectives, what are the challenges you see  
14 that your agencies are facing today as it relates to  
15 forensic evidence and crime analysis and making sure  
16 that we solve crimes faster, more efficient, and  
17 where can we as a Council be helpful in moving this  
18 forward?

19 BARBARA SAMPSON: The biggest challenge,  
20 I think, facing the Medical Examiner's Office is not  
21 so much in the laboratory end of things. We're  
22 getting wonderful support from the City to hire what  
23 we need to do both Healing NYC initiatives and our  
24 DNA mandates as well, but as Council Member Johnson  
25 asked me last time, the biggest challenge to all

2 Medical Examiner's Offices throughout the country  
3 particularly with the huge increase in the opioid  
4 crisis nationwide is the lack of medical examiners.  
5 So, the medical examiners are the people who do the  
6 autopsies, determine cause and manner of death,  
7 determine if a case is a homicide, and then they go  
8 and present those facts to a jury when the case comes  
9 to trial. Doing that completely and effectively and  
10 to the highest standard has been our goal, and we  
11 have well been able to achieve that. We have 30  
12 medical examiners here in New York City. There are  
13 only 500 Board Certified medical examiners in the  
14 entire United States. There are 2,000-- over 2,000  
15 medical examiner and coroner offices throughout the  
16 United States. So, you can easily see the math that  
17 does not work. The quality of death investigation  
18 varies dramatically across the United States. We're  
19 very fortunate here in New York City to have had a  
20 very great support since Mayor Koch's era and that  
21 continues through today. So, we're not feeling it  
22 here in New York City yet, but it's a huge problem  
23 nationwide. I do also want to point out that of  
24 those 500 medical examiners, 100 of them have been  
25 trained in New York City. We have the largest

2 training program for medical examiners in the United  
3 States. So our footprint is large and we're  
4 certainly not only doing a great service for New York  
5 City by providing young medical examiners for this  
6 city, but also across the nation literally from the  
7 Chief Medical Examiner in Hawaii to the Chief Medical  
8 Examiner in Maine.

9           COMMANDER KATRANAKIS: So, I just want to  
10 say that I'm elated that I'm here today. So, I  
11 thank-- the fact that you're holding this meeting, to  
12 me, is definitely an inspiration that forensic  
13 sciences are important to the City of New York, and I  
14 want to thank you for that before I go forward.  
15 Commissioner O'Neill, the Police Commissioner of the  
16 City of New York, is extremely supportive of the  
17 Forensic Investigations Division and the forensic  
18 functions of the NYPD. So, he has provided us with  
19 the support here as far as our up-staffing. He's  
20 resilient and responsive, and I have to say that he's  
21 nonetheless but an amazing leader that has come all  
22 the way through on the end of forensic services. The  
23 one thing to talk about, this is my 21<sup>st</sup> year working  
24 in forensic investigations, and this is a passion.  
25 There's nothing else I want to do. I want to help the

2 public. I want to help the public be safe, and at  
3 the same time I want to have science do more to make  
4 certain we're bringing the truth to the courts and  
5 the criminal justice system, without a doubt. One  
6 thing that we didn't talk about in great detail today  
7 is the very fact that we have historic lows in gun  
8 violence, and I can tell you that with our partners  
9 at the OCME collectively we have seen a significant  
10 increase in the number of DNA hits since we've worked  
11 on an initiative regarding firearm and firearms  
12 violence in the last two years. We have seen  
13 increase of 312 percent in regards to DNA hits when  
14 it comes to having a named person to a firearm in the  
15 last two years, and I can say that without any  
16 uncertainty that this is attributed to the work done  
17 collectively by the forensic service providers in the  
18 City of New York, but what I do see forward looking  
19 at the future path of forensic science is that things  
20 are becoming more and more technical that extend  
21 beyond DNA laboratories and simply the laboratory  
22 work. It connects out to the crime scene. It  
23 connects out to the technology in crime scenes. It  
24 connects out to the actual collection methods and the  
25 standardization of collection methods, and the one

2 thing that I would ask it to take a look in certain  
3 instances at the facility that we have for example in  
4 our police laboratory. I know the medical examiner,  
5 the forensic biology laboratory recently had a new  
6 structure built which is absolutely beautiful. On  
7 our end we have a retrofitted department store out in  
8 Queens on Jamaica Avenue, which we love very much and  
9 we take to heart as far as it being our home, but I  
10 just point that out to you I'm so limited with space  
11 that I had to start a night shift in order to be  
12 responsive to the Mayor's initiative on healing. So,  
13 looking at potentially a new building or a new space  
14 to take into consideration the fact that technology  
15 and forensic sciences will grow and continue to grow.  
16 We see increases in evidence in almost every  
17 particular area, primarily the identification  
18 techniques. In that particular sense, I think our  
19 physical structure is something where I think in the  
20 next decade or so in order for us to operate  
21 effectively and adequately and meet the expectations  
22 of the public to provide quality and accurate  
23 results, we need to be in a new facility. Thank you  
24 again.

2 CHAIRPERSON GIBSON: Thank you very much.  
3 We will continue to have that conversation on the  
4 Finance matter. I made sure I told my analyst to  
5 record that so we can talk to the department about  
6 that, but thank you so much. I want to turn this  
7 back over to my Co-Chair. Really appreciate the work  
8 you do and looking forward to working with you.  
9 Thank you for the work. Thank you for being here,  
10 and I really appreciate it. Thanks.

11 CHAIRPERSON JOHNSON: And we agree with  
12 you on Commissioner O'Neill, I think both the Chair  
13 and I. He's been a great leader and a good person to  
14 partner with. I want to turn it over to Council  
15 Member Barron. Did you have a question, Council  
16 Member Barron? Yes.

17 COUNCIL MEMBER BARRON: Yes.

18 CHAIRPERSON JOHNSON: Great. Sorry for  
19 the delay.

20 COUNCIL MEMBER BARRON: Thank you very  
21 much. What is the relationship between police  
22 medical-- what is it-- and the Chief Medical  
23 Examiner's Office?

24 BARBARA SAMPSON: What was the first part  
25 of the question?



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2 COUNCIL MEMBER BARRON: Yes.

3 BARBARA SAMPSON: The NYPD runs their  
4 crime lab that focuses--

5 COUNCIL MEMBER BARRON: [interposing] Can  
6 you pull the mic a little closer to you?

7 BARBARA SAMPSON: Sorry, sure. That  
8 focuses on non-biologic evidence as we were just  
9 discussing, while the OCME runs the forfeiture  
10 laboratories that are responsible for biologic  
11 evidence mostly of entirely DNA for forensic biology  
12 and toxicology specimens.

13 COUNCIL MEMBER BARRON: Okay. So, the  
14 medical examiner does the autopsy.

15 BARBARA SAMPSON: That's one of the  
16 things we do, correct.

17 COUNCIL MEMBER BARRON: And the medical  
18 examiner gives the manner of death.

19 BARBARA SAMPSON: The cause and the  
20 manner of death.

21 COUNCIL MEMBER BARRON: Why would a  
22 medical examiner not give the manner of death?

23 BARBARA SAMPSON: We do give the manner  
24 of death.

25

2 COUNCIL MEMBER BARRON: I'm referring  
3 back to 1983 to the case of Michael Stewart [sp?] who  
4 was beaten by Transit Officers who was brutally  
5 beaten and went into a coma. He was in a coma for 13  
6 days and then he died. The medical examiner was  
7 Elliot Gross [sp?], and the District Attorney was  
8 Robert Morgenthau [sp?]. Are you familiar with that  
9 case?

10 BARBARA SAMPSON: No.

11 COUNCIL MEMBER BARRON: Okay. During--  
12 it was revealed that during the time of this autopsy  
13 it was alleged that the police officers, the Transit  
14 Police who arrested Michael Stewart for graffiti had  
15 beaten him and put him in a chokehold and that's what  
16 sent him into the coma. The medical examiner at that  
17 time removed Michael Stewart's eyes, which I've been  
18 told would have shown tension in the eyes that would  
19 have been caused by pressure that might have been put  
20 on the throat. He removed the eyes and put them in a  
21 solution which would in fact obscure that evidence  
22 that might have been determined from examining the  
23 eyes in the state which they were at the time of  
24 death, and he did not give the manner of death. He  
25 gave the cause of death, but not the manner of death.

2 It was quite controversial at that time, 1983. There  
3 were many people, activists, and others who came out  
4 and said that this had been a great miscarriage of  
5 justice because evidence had been tampered with or  
6 mishandled under the Office of the Medical-- Chief  
7 Medical Examiner. So, it was an outrage.

8 BARBARA SAMPSON: I couldn't-- did you  
9 have a specific question, then I'll be glad to  
10 respond to that.

11 COUNCIL MEMBER BARRON: What exists--  
12 first of all, is that true that taking the eyeballs,  
13 removing them and putting them in whatever type of  
14 solution it was-- my chemistry is long gone-- would  
15 in fact alter what would be the findings in that  
16 case?

17 BARBARA SAMPSON: I am not acquainted  
18 with that kind of method. These days we only remove  
19 eyes in baby cases where we need to examine the  
20 retina which is the part of the back of the eye. If  
21 it was looking at the eyes for signs of choking or  
22 strangulation--

23 COUNCIL MEMBER BARRON: [interposing] Yes.  
24  
25

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2 BARBARA SAMPSON: is done by just looking  
3 externally at someone's eyes whether they're living  
4 or dead. We can see little hemorrhages in there.

5 COUNCIL MEMBER BARRON: Exactly.

6 BARBARA SAMPSON: Right.

7 COUNCIL MEMBER BARRON: So that was the  
8 point that was raised, why would the medical examiner  
9 do that which would alter the findings, and why would  
10 he refuse to give the manner of death? Basically, my  
11 question is I wanted to put it on the record that  
12 we've not always had 100 percent honesty,  
13 transparency in what goes on, and what exists now so  
14 that we can say that it won't happen again?

15 BARBARA SAMPSON: I couldn't be more  
16 happy that you raised that question, because the  
17 state of the Medical Examiner's Office in the late  
18 70's and 80's, exactly the period that you described.  
19 You said it was 1983--

20 COUNCIL MEMBER BARRON: [interposing]  
21 Correct.

22 BARBARA SAMPSON: was a disaster. It was  
23 an embarrassment for New York City. Routine New York  
24 Times articles about situations like you just  
25 described. The-- often, manners of death were left

2 blank or just called "undetermined" because they  
3 couldn't be sure. Different cases, whether law  
4 enforcement was involved during a police shooting,  
5 for example, they might issue a different manner of  
6 death than they would if a so-called layperson was  
7 involved in the shooting. You know, if I shot  
8 someone that would be a homicide. If a police  
9 officers did it, they'd leave it undetermined. We  
10 just don't know. We don't do that anymore. What  
11 happened was in the late 80's a commission was formed  
12 under Mayor Koch called the Lyman [sp?] Commission,  
13 and there's a Lyman Report that exists. I would be  
14 glad to share it with you. it's a chilling  
15 description of the medical examiner's office at that  
16 point, and Doctor Hirsch, my predecessor, as well as  
17 I keep that report on our desk as a constant  
18 reminder, and every medical examiner who comes in  
19 reads that report to see where we came from, and this  
20 Lyman Commission identified the problems in New York  
21 City, made of number of recommendations. A  
22 nationwide search was done for a medical examiner who  
23 would fix these problems, and Doctor Charles Hirsch,  
24 who was my predecessor who was Chief Medical Examiner  
25 for 24 years through four different mayors,

2 straightened out the office. The procedures  
3 starting-- he came January 3<sup>rd</sup>, 1989, and since then  
4 our office has had a radical transformation and  
5 things like you described would not happen today. I  
6 absolutely guarantee you that.

7 COUNCIL MEMBER BARRON: Great. I thank  
8 you for that. And finally, just a comment in terms  
9 of gathering evidence. We know that the Attorney  
10 General has a special investigator when there is a  
11 police involved shooting of an unarmed person, and I  
12 have grave concerns with that, because it's incidents  
13 where the police are allowed to gather the evidence  
14 that would be needed in the case of a police, fellow  
15 police officer, killing an unarmed person. So, I  
16 think that there's a problem there that you're  
17 allowing the same department that needs to defend  
18 itself or to gather evidence. Doing both at the same  
19 time I think is-- needs to be address, and we've  
20 addressed that to the Attorney General. How can you  
21 rely on the Police Department to gather evidence in a  
22 case that would be brought against another police  
23 officer? So, I just wanted to put that on the record  
24 as well, and that's what happened in the Delron Small  
25 [sp?] case which just recently concluded, and we

2 raised that with the Attorney General. How can you  
3 rely on the police together evidence? So, thank you  
4 to both Chairs.

5 CHAIRPERSON JOHNSON: Of course. Thank  
6 you, Council Member Barron, as always, for your  
7 questions. I want to turn it back to Council Member  
8 Gibson who I think is going to ask Council Member  
9 Williams to-- before we call up the public, Council  
10 Member Williams has a bill that's being heard today,  
11 and the NYPD testified on this bill earlier, and so  
12 we want to give him an opportunity to have a back and  
13 forth with the NYPD on this proposed piece of  
14 legislation.

15  
16 COUNCIL MEMBER WILLIAMS: Thank you, Mr.  
17 Chair. Thank you, Madam Chair, in particular for  
18 having this bill heard and working with me to make  
19 sure it's heard in this term, although probably for  
20 the delight of the NYPD we probably won't be able to  
21 vote it on this term, but I just thought it was a  
22 very important piece of legislation to have a  
23 discussion around particularly of where we are. It  
24 is the Right to Record. Just to be clear, we've  
25 made, I think, some very good advances, particularly

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2 in this city. I think across the country some folks

3 could learn about what we're doing here. This is a

4 movement in of course the country as well. Finally,

5 there's an officer who is going to be in jail for a

6 while for killing Walter Scott Lee, although the

7 murder of Eric Garner hasn't been held to justice.

8 We saw it on video. I saw that because without the

9 cameras, without many of the videos, the progress

10 we've made, which is clearly not enough, wouldn't

11 even be here. So, videos have been important pieces

12 of any progress that people would agree that we've

13 made, and without them I don't know where we would

14 be. So it's an important right to make sure it is

15 not just there in name, but is also there in reality.

16 And so in the briefing report, I just want to read a

17 few things just to help out in context. First,

18 according to a CCRB report Worth a Thousand Words,

19 Examining Officer Interference with Civilian

20 Recordings of Police, published in June 2017, from

21 January 1, 2014 to December 31<sup>st</sup>, 2016 the CCRB

22 closed 257 complaints covering 346 allegations in

23 which civilians reported that an officer interfered

24 with their ability to record. in 58 percent of these

25 complaints civilians were recording their own



2 interaction with police officers, and the remaining  
3 42 percent were bystanders recording-- attempting to  
4 record an encounter with a third party. Of the 346  
5 interference-related allegation, CCRB substantiated  
6 28 percent of those. Complaints of verbal abuse  
7 included commands to stop recording, commands to  
8 leave the area, threats of physical force.

9 Complaints of physical interference included use ASP  
10 [sic], night stick, pepper spray, or other means of  
11 physical force against a civilian to stop them from  
12 recording, physically seizing or detaining recording  
13 civilians, physically blocking the view, and  
14 recording the civilian as a means as intimidation.

15 According to the CCRB, the Patrol Guide commonly  
16 refers to a civilian's right to record indirectly and  
17 briefly in an unrelated section entitled "arrests,  
18 general processing." While the NYPD more explicitly  
19 included the right of civilians to record in the  
20 FINEST message issued in 2014 in an internally  
21 circulated legal bulletin in 2016 with clear detail  
22 and specific examples. This content was not further  
23 included in the Patrol Guide which would allow police  
24 officers an ease of reference. One, I just want to  
25 see-- know if the NYPD has read that report?

2           COMMANDER KATRANAKIS: Yes, I've read the  
3 report in preparing for the hearing.

4           COUNCIL MEMBER WILLIAMS: They made a  
5 bunch of suggestions. One of them was recommending  
6 that it is added to the Patrol Guide. Is there any  
7 reason why it wasn't, or are there any other  
8 suggestions that were followed?

9           COMMANDER KATRANAKIS: Well, I look  
10 through the suggestions in the report, and to see  
11 there are a couple of things that the Department is  
12 doing, I think, that's worth mentioning. As you  
13 said, in 2014 we put out a FINEST message that was  
14 directed at all members of the service indicating  
15 that individuals recording police activity are  
16 engaged in lawful activity, and they should not be  
17 interfered with absent-- the only type of enforcement  
18 that we would take in that scenario, and I think you  
19 addressed this in your bill as well, if an individual  
20 is interfering with a police officer engaging in  
21 their lawful duties. So, short of that, an  
22 individual can record a police officer. An officer  
23 may ask them to move back a little if they're too  
24 close to the police action, but short of that they're  
25 allowed to record. what we did after that is we also

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2 included it in the Patrol Guide section that you  
3 mentioned in the general arrest processing section,  
4 and then we issued a very detailed legal bureau  
5 bulletin and disseminated that to all police  
6 officers. They get that on their smartphones now,  
7 and it's posted on the department's intranet for  
8 officers to be able to review. I think also worth  
9 noting that both-- whether it's the FINEST message,  
10 the Legal Bureau bulletin, the Patrol Guide section,  
11 when we as a department draft promotional exams,  
12 Sergeants, Lieutenants, Captains, information is--  
13 questions are created based on information gleaned  
14 from these various types of department directives.  
15 On top of that, since 2015 we've identified 65  
16 separate trainings that have been done in the  
17 Department where an individuals' ability to-- where  
18 an individual's right to record was brought up and  
19 explained to officers in those settings, and they  
20 were told that individuals are engaged, are in fact  
21 engaged in legal conduct when they're recording short  
22 of interfering with police conduct.

23 COUNCIL MEMBER WILLIAMS: So, why not  
24 just add it to the Patrol Guide in a more specific  
25 way?

2           COMMANDER KATRANAKIS: We're not  
3 necessarily opposed to it. We've done a variety of  
4 different methods, but I mean, that's certainly  
5 something we can review. That's something certainly  
6 we can review.

7           COUNCIL MEMBER WILLIAMS: And so one of  
8 the-- it seems like the primary opposition-- I'm just  
9 going to read from your testimony, "The Department  
10 opposes this legislation. Individuals who believe  
11 either that they have been falsely arrested or have  
12 had their property wrongfully seized can currently  
13 seek remedies in court." Which remedies can they  
14 seek?

15           COMMANDER KATRANAKIS: Well, I think as  
16 you mentioned in your bill that there are existing  
17 remedies in court whether you're filing a state  
18 action, a federal action against an officer whether  
19 it be for violation of their right against  
20 unreasonable search and seizure if the phone is taken  
21 unreasonably and with no legal basis from an  
22 individuals. If an officer acts under color of law  
23 in a way that diminishes the right of an individual,  
24 there's a current recourse, and you highlight that in  
25 your bill that there are all of these avenues.

2 COUNCIL MEMBER WILLIAMS: But you  
3 understand that avenues that exist because of the  
4 resources that are needed often dissuade people from  
5 moving forward. so we've had a number of bills come  
6 out of this committee and just the Council in  
7 general, I think, that are meant to supplement what  
8 already exists to give people the private right of  
9 action more locally than what's available. Do you  
10 understand that part?

11 COMMANDER KATRANAKIS: Well, not really  
12 in the sense that an individual-- an individual  
13 filing a lawsuit against a police officers, the  
14 Department or the City would still have to avail  
15 themselves in State Court, in Federal Court. In this  
16 case it would be I'm assuming in State Court. So,--

17 COUNCIL MEMBER WILLIAMS: [interposing]  
18 For some people it could be federal.

19 COMMANDER KATRANAKIS: Right. So, I  
20 mean--

21 COUNCIL MEMBER WILLIAMS: [interposing]  
22 It's hard to go to Federal Court.

23 COMMANDER KATRANAKIS: I'm sorry, say  
24 that--

2 COUNCIL MEMBER WILLIAMS: [interposing]

3 It's hard to go to Federal Court.

4 COMMANDER KATRANAKIS: Right, right,  
5 right. So, I mean, the mechanism is there is a cause  
6 of action created, a private right of action created,  
7 and we believe on a very broad standard, so it will  
8 invite a significant amount of litigation against  
9 officers, because if quoting the bill, "If an  
10 individuals is recording or attempting to record,"  
11 and the fact that they were attempting to record,  
12 we're not sure what exactly constitutes an attempt to  
13 record, and they're interfered with, and interference  
14 again, there are a few examples given of what  
15 interference may be, but it's not limited to those  
16 examples. And part of the four enumerated points are  
17 preventing or attempting to prevent an individual  
18 from recording, these are very, very broad standards,  
19 and an individual can very easily-- there could be  
20 significant frivolous litigation against an officer  
21 for simply standing in the frame of a camera  
22 exercising their lawful duties, but since these terms  
23 aren't really defined it's inviting these types of  
24 lawsuits against police officers, against the Police  
25 Department.

2 COUNCIL MEMBER WILLIAMS: So, one, I  
3 understand that there's always going to be difficulty  
4 in these conversations regardless of what it is, even  
5 if it's the most innocuous [sic] thing. It's always  
6 going to be responded to-- making the conversation  
7 difficult. There's going to be some people, I think,  
8 that testify later, not as much as would have because  
9 of the late time and there's some other bills that  
10 people are focused on right now. So, we're going to  
11 have some people testifying complaining about their  
12 problems actually in the street trying to do this.  
13 But I want to just separate them out, because there  
14 are specific examples that you talked about that is  
15 wording of the bill, which I'm happy to go into, then  
16 there's the general theory. I just want to first  
17 understand-- let's assume that we can fix all the  
18 wording you're talking about. Would the Department  
19 agree that we could have a private right of action  
20 locally for people who are aggrieved?

21 COMMANDER KATRANAKIS: No, I mean, I  
22 think that's-- I think that the Department is in  
23 agreement with you, and I think we've exhibited that  
24 because the directives we put out in many-- in both  
25 the FINEST message, the Legal Bureau bulletin, the

2 Patrol Guide procedure predate the introduction of  
3 the bill. So, we did recognize that with technology  
4 becoming more prevalent with individuals carrying  
5 phones around in public and videotaping officers that  
6 we needed to ensure that officers understood that  
7 individuals are allowed to do this and that you  
8 shouldn't interfere. So, and I think an important  
9 part to mention is if we look at even the CCRB report  
10 that you mentioned from 2014 to 2016 there were 257  
11 complaints. I think the important part to realize  
12 there is from 2014 to 2016 there was a 40 percent  
13 reduction in complaints over those years while at the  
14 same time CCRB highlights that the amount of cameras  
15 have significantly increased over that time. I think  
16 also important to recognize is of that 200-- of those  
17 257 complaints in three years, that amounted to less  
18 than two percent of overall complaints to CCRB, and  
19 of that 257, about 60 percent of those complaints  
20 were either unsubstantiated, determined to be  
21 unfounded, or the officer was exonerated. So, I  
22 think we're heading down the right path. I think the  
23 training-- the department directives we're putting  
24 out, the training that we're doing and kind of  
25 reinforcing it through training, through different



2 avenues within the Department, I think we're having a  
3 very significant affect. I think CCRB's data  
4 demonstrates that. So, in that sense we are in  
5 agreement with that part of the bill that says  
6 individuals have the ability to do this. I think  
7 once we go down the road of creating private rights  
8 of action, I think that's-- the concept we are  
9 opposed to that there are rights of action currently,  
10 and there shouldn't be a new right of action created.  
11 And then, with respect to the reporting provision of  
12 the bill, I think the type of data that the bill  
13 calls for simply can't be collected. I think--

14 COUNCIL MEMBER WILLIAMS: [interposing]

15 So, I just want to jump in a little bit, because I'm  
16 not sure how much time I have. I want to not abuse  
17 it. But I just want to separate it out, because  
18 you're going into now the details of the bill of  
19 specific things that could change. I want to put that  
20 in box because we won't get to there because you've  
21 already said you don't agree with it in theory. So I  
22 want to just stick with that part. You don't agree  
23 with creating a local private right of action.

24 COMMANDER KATRANAKIS: Correct.

2 COUNCIL MEMBER WILLIAMS: So, I want to  
3 focus on that just a little bit, because that's  
4 actually a comment that comes up most times when  
5 we're try and create a private right of action, and  
6 to read from your testimony again, "It would instead  
7 create an unnecessary avenue for additional  
8 litigation against police officers, the Police  
9 Department, and the City as a whole." Can you give  
10 me an example of where this body has created a local  
11 private right of action and it has created an  
12 additional problem for litigation against police  
13 officers?

14 COMMANDER KATRANAKIS: I think honestly  
15 we, the Department, does not defend itself. You  
16 know, the Law Department defends the City Council and  
17 City agencies, so that's data that I would have to  
18 get from them, but I think it's a reasonable  
19 conclusion to draw that when a right of action is  
20 created with such broad terms and broad standards  
21 built into it that it's a very reasonable conclusion  
22 that there will be a significant increase in  
23 lawsuits, and based-- and I would assume that based  
24 on the broad language that a lot of them will be  
25 found frivolous in the sense that if we look at

2 CCRB's substantiation rate, if we're looking at 60  
3 percent of--

4 COUNCIL MEMBER WILLIAMS: [interposing]

5 Let me just say it, because again, I don't want to  
6 talk about the language, because I think we can find  
7 a way to get language that would be agreeable.

8 You're opposed to the concept, so I'm going to just  
9 stay on the concept, not about the language of the  
10 bill, because the language part comes secondary if  
11 both parties agree that it's a good thing to codify,  
12 and right now you said you don't think it's a good  
13 thing to codify.

14 COMMANDER KATRANAKIS: Right. There's  
15 already a cause of action in State Court.

16 COUNCIL MEMBER WILLIAMS: So, I'm going  
17 to get to that. So, contrary to popular belief, I  
18 actually try to listen to-- whenever I'm doing things  
19 around policing to make sure I'm listening to  
20 officers, and bills I've passed have actually been  
21 changed because of that. Believe it or not, even the  
22 PBA, I listened to and try to affect to make sure I'm  
23 not doing something that unnecessarily prevents an  
24 officer from doing the job that they were hired to  
25 do. So--

2           COMMANDER KATRANAKIS: [interposing] I've  
3 worked with you many times on these bills, so I would  
4 second that.

5           COUNCIL MEMBER WILLIAMS: Thank you.

6           COMMANDER KATRANAKIS: With this bill it  
7 sounds remarked familiar to when we were passing the  
8 bias-based policing bill, part of the Community  
9 Safety Act. Literally, we were told it would be a  
10 cottage [sic] industry that would be created because  
11 there was a ban already, same process. There was  
12 already a ban on bias-based policing. The same  
13 avenues existed that existed then, and we were told  
14 that that was enough, and we passed the bill anyway.  
15 There hasn't been a cottage [sic] industry, and you  
16 can tell me if it has significantly affected an  
17 officer's ability to do something or how many  
18 officers have felt that they were sued because of  
19 this bill, frivolously.

20           COMMANDER KATRANAKIS: I mean, again,  
21 those are numbers Law Department would have. I'm  
22 very happy to look at them and get back to you.

23           COUNCIL MEMBER WILLIAMS: Alright. It's  
24 important because if you're going to make this  
25 statement, and we have a lot of previous history with

2 this statement and passing bills, that statement  
3 never comes to fruition. In fact, I would say most  
4 of the opposition that we heard from NYPD on bills  
5 that we passed don't come to fruition. I just want  
6 to give credit to this particular commissioner and  
7 this agency now and this Administration. The  
8 conversations are much easier, and so I'm thankful  
9 for that. That doesn't mean we don't have to stop  
10 pushing. This bill in particular I think is  
11 important to people on the ground who routinely  
12 experience this, and I know why people always push  
13 back on a private right of action, but I have not  
14 been convinced, I haven't seen any data, and my own  
15 experience with bills is that it does not create a  
16 cottage industry. It does not create unnecessary  
17 litigation against police officers. So, that is just  
18 unpersuasive, and so what I'd like to find, because  
19 you know, I have some big dreams in this body, and  
20 hopefully next year they may come true, they may not,  
21 but I will still be here and it is something that I  
22 want to proceed pushing forward. I'd like to do it in  
23 conjunction with the Department, and I'd really like  
24 to get what the real concerns are. The litigation  
25 necessarily by itself based on experience is just not

2 a real concern. I do want to make sure that if  
3 there's hope for language or if there's thing that we  
4 can change that get exactly to the heart of what  
5 we're saying happens, but there's always a rejection-  
6 -

7                   COMMANDER KATRANAKIS: [interposing] Well,  
8 as you said, I think you said it right, the hearing  
9 relative to this intro is a starting point for the  
10 conversation, and what I'll commit to you is that  
11 I'll be in contact with the Law Department after this  
12 hearing. We'll take a forensic look at the various  
13 bills passed by the Council that contained a private  
14 right of action and we'll reference that with data  
15 relative to an increase, possibly decrease, or flat  
16 line on litigation. So, this way we'll have concrete  
17 examples to give you one way or the other.

18                   COUNCIL MEMBER WILLIAMS: Is there any  
19 reason-- why wouldn't have that data if you're making  
20 a statement on this bill for this hearing?

21                   COMMANDER KATRANAKIS: Well, I promise  
22 you I'll take a look at the data moving forward.

23                   COUNCIL MEMBER WILLIAMS: Cool. Any  
24 reason you wouldn't have that data if you're going to  
25 make the statement for this hearing?

2           COMMANDER KATRANAKIS: I think the  
3 statement is based on an obvious observation that  
4 based on the broad language of the bill, and I don't  
5 think we can get away from the language and separate  
6 the concept from the language, because--

7           COUNCIL MEMBER WILLIAMS: [interposing]  
8 why?

9           COMMANDER KATRANAKIS: Because if you  
10 take a look at the broad language of the bill it is  
11 only reasonable to conclude that such broad language,  
12 such a broad standard will invite litigation. I'm  
13 sure that the bills that you're referencing were  
14 subject to significant negotiation that Law  
15 Department weighed in on and made more focused  
16 language there, but again, I'll have to take a look  
17 at those particular bills. This is an un-negotiated  
18 bill, it's an introduced bill--

19           COUNCIL MEMBER WILLIAMS: [interposing]  
20 Yeah.

21           COMMANDER KATRANAKIS: and the language  
22 that's present in the bill can't be ignored, and I  
23 think one issue feeds off of the other. I think it's  
24 very, very reasonable to assume that reading this  
25

2 bill as it stands will invite additional litigation,  
3 significant additional litigation, much of which--

4 COUNCIL MEMBER WILLIAMS: [interposing]

5 And so the words as it stands can denote that there  
6 is an agreement in principle, and I'm saying it  
7 doesn't even sound like-- like if we find language  
8 that was more fine-tuned and wanted to codify an  
9 individuals' right to record and give them a private  
10 right of action, it sounds like you would not support  
11 that either. So, that's why I just wanted to--

12 COMMANDER KATRANAKIS: [interposing] I

13 mean, I think our-- as I've said, I think our issue  
14 is with the private right of action.

15 COUNCIL MEMBER WILLIAMS: That's what I'm  
16 saying.

17 COMMANDER KATRANAKIS: Right.

18 COUNCIL MEMBER WILLIAMS: It's not the  
19 language.

20 COMMANDER KATRANAKIS: I think that an  
21 individuals' right to record or their ability to  
22 engage in this activity has been put forward by the  
23 department, predates the bill. We recognize it with  
24 the evolution of technology, and we made appoint of  
25 training our offices. So,--



2 COUNCIL MEMBER WILLIAMS: [interposing]

3 What we found is that without something backing up  
4 what we're saying, people don't often listen to it.

5 So, the reason we have to pass the bias-based  
6 policing one with what was called an enforceable ban  
7 is because the one for all intents and purpose that  
8 existed wasn't enforceable because of the amount of  
9 resources that were need to enforce it.

10 COMMANDER KATRANAKIS: But I think if we  
11 take a look at the bill and the CCRB data that you  
12 highlight, I think that what we're doing is working  
13 and it's actually proven by the CCRB data. So, we've  
14 taken it upon ourselves to re-instill or reinforce  
15 this information. We've trained our officers based  
16 on our own initiative.

17 COUNCIL MEMBER WILLIAMS: So, I want to--

18 COMMANDER KATRANAKIS: [interposing] But I  
19 think it's important to say that the training and the  
20 Department directives and the work that we've engaged  
21 in is actually proving and bearing fruit. We've seen  
22 a significant decline in the number of complaints  
23 CCRB is seeing by 40 percent in their three-year  
24 study. At the same time, CCRB acknowledges that the  
25 number of these phones that are being used, the

2 recording devices, has increased. So, with an  
3 increase in devices and a decrease in the number of  
4 complaints--

5 COUNCIL MEMBER WILLIAMS: I will say  
6 personally there are numerous amounts of times where  
7 this happens that are not reported to CCRB, and I  
8 think you'd probably agree with that as well. So, I  
9 use the CCRB which is great, and we're going-- one of  
10 the data points I use to know that we're moving in  
11 the right direction is the fact that complaints are  
12 down all around for police, which I think is just a  
13 fantastic data-set. With the dropping of shootings,  
14 the dropping of murders, the dropping of summons,  
15 each of those is work we could do that, you know, I  
16 talk about which we should, particularly on  
17 transparency and accountability where we haven't  
18 moved and we've gone backwards on some, but those are  
19 good datasets. That doesn't mean the problems that  
20 still exist within them we shouldn't address. And so  
21 it sounds like you're saying what you're doing you  
22 think addresses it fully, which again, is what we  
23 always hear when we want to codify stuff.

24 COMMANDER KATRANAKIS: I think--

2 COUNCIL MEMBER WILLIAMS: [interposing]

3 The last part is--

4 COMMANDER KATRANAKIS: [interposing] I

5 think just to answer that one point, I think what

6 we're doing is significant, and I think it's bared

7 out in the statistics from CCRB, but as we always

8 say, and I think as you've seen through our action

9 over the last four years, that we're always ready to

10 engage with the Council. We're-- I think this is a

11 conversation opener. I'm more than willing to have a

12 conversation with you on this topic as we did with

13 many other topics. We may not agree on certain

14 points of the bill, but I think we're in agreement as

15 to what this bill is trying to do which is to let

16 individuals know that they have the ability to engage

17 in that conduct, which is reporting police activity.

18 COUNCIL MEMBER WILLIAMS: Well, I

19 appreciate it, and I'm going to hold you to the last

20 part of what you said, which is you disagree with

21 certain points in the bill, which is different than

22 what it sounded like when you started. So, I'm just

23 going-- I'm going to hold that piece there. I do want

24 to also mention that most times the Administration

25 and the Council, they don't want us to codify things,

2 and there's different reasons. Our position maybe  
3 one day it might change when I sit in a different  
4 seat, but our position is the Administration has  
5 changed. So even if we have an Administration that  
6 we think is doing what it should be doing and moving  
7 the right direction, that administration is not going  
8 to be there forever. It's much easier to change  
9 policy, training, directives, than it is to change  
10 codified law, and that's why it's another reason why  
11 it's important. Just briefly a couple of questions  
12 and then I'll turn it back over. Do you have any  
13 numbers on how many internal investigations are  
14 conducted by the NYPD annually of incidents where  
15 officers are accused of obstructing or interfering  
16 with these constitutionally protected activity? And  
17 how many have responded, resulting in disciplinary  
18 changes, specifications?

19                   COMMANDER KATRANAKIS: No, I don't. I,  
20 again, I reviewed CCRB's numbers. I would assume that  
21 those, the substantiated complaints were referred to  
22 us at some point, but I'll take an independent look  
23 to see if there were any complaints made directly to  
24 us. I'm sure that if there are-- if there is a

1 COMMITTEE ON HEALTH JOINTLY WITH COMMITTEE ON PUBLIC SAFETY 141  
2 number there it would be a significantly smaller  
3 number than the CCRB number.

4 COUNCIL MEMBER WILLIAMS: Thank you very  
5 much. You know, when this comes up again, and sure  
6 will, my hope is that you have the numbers at the  
7 time that the hearing occurred so we can have a more  
8 in-depth conversation. But looking forward to  
9 continuing to work with you on this, and thank you,  
10 and thank you, Madam Chair.

11 COMMANDER KATRANAKIS: Thank you.

12 CHAIRPERSON GIBSON: Thank you, Council  
13 Member Williams, and we do have other panels that are  
14 following you. So, I always ask with all of my  
15 hearings that you allow one of the members of your  
16 team to remain behind for the rest of the hearing to  
17 hear the other panelists that are coming before the  
18 committees. So, I want to thank you for being here.  
19 I mean, we've talked about this quite a bit, but for  
20 me as Chair of the Committee it was really a greater  
21 understanding of the world of forensic science and  
22 technology from both the NYPD Crime Lab as well as  
23 the Office of the Chief Medical Examiner. So, I look  
24 forward to our continued work. Thank you so much for  
25 your service to our great city, and I look forward to

2 seeing you again. Happy Holidays. Thank you. Our  
3 next panel that we're calling is Sarah Chu from the  
4 Innocence Project, Joshua Carmen [sp?] from the Legal  
5 Aid Society, Julie Fry from the Legal Aid Society,  
6 Marika Meis from the Bronx Defenders, and Guy  
7 Raimondi from the Brooklyn Defender services. Please  
8 come forward. Thank you all once again for being  
9 here. We have Sarah Chu. Joshua's here, okay. We  
10 have Julie. Okay, Marika is here, and Guy is here.  
11 Okay, wonderful. Thank you. Okay, I thank you all  
12 for being here. There is one more panel after you as  
13 well. So, as this is my last hearing I'm going to be  
14 extremely generous, and I do not always do this, I am  
15 not going to put you on a time, but I'm going to ask  
16 you out of respect to all of your colleagues if you  
17 can be as clear and concise as possible, and if you  
18 have any written testimony please make sure you give  
19 it to the Sergeant at Arms, and we will make sure we  
20 have it for our record. Thank you again for being  
21 here. Thank you for all the work you do, and I'm  
22 looking forward to hearing your testimony. You may  
23 begin.

24 SARAH CHU: Hello, Chairperson Gibson,  
25 Chairperson Johnson, members of the committee. Thank

2 you so much for holding this hearing today. It  
3 couldn't have come at a better time. My name is  
4 Sarah Chu and I'm the Senior Forensic Policy Advocate  
5 at the Innocence Project, and as you know, our  
6 organization's mission is to free the staggering  
7 number of innocent people who remain incarcerated and  
8 to bring reform to the system responsible for their  
9 unjust imprisonment. For today's hearing, I'd like  
10 to focus on what New York City can do now to ensure  
11 transparency and forensic practice and to ensure that  
12 it's more accurate and more reliable. Currently,  
13 there is a pending complaint at the Office of The  
14 Inspector General in New York State with regard to  
15 in-house methods that were developed at OCME. Right  
16 now, the state of New York relies on the Inspector  
17 General to be the primary system of public  
18 accountability in forensic science, and this raises  
19 concerns for a few reasons. First, the Inspector  
20 General is the dedicated system of accountability  
21 because of a grant called the Paul Coverdale [sp?]  
22 Forensic Science Improvement Grant. It's a federal  
23 grant that laboratories receive, and as a condition  
24 of receiving this money, they appoint an independent  
25 external investigator that investigates any

2 allegations of negligence or misconduct that any  
3 citizen can raise. Now, if Congress doesn't fund  
4 this grant in the future, we may lose that  
5 independent investigator, and that's a problem  
6 because first of all, the New York State Commission  
7 on Forensic Science which was raised previously has  
8 proven to be inadequate in providing oversight for  
9 forensic science services in New York State. At the  
10 Commission, at the request of a Commissioner even,  
11 OCME was asked to turn over internal validation  
12 studies for one of its techniques. The Commission  
13 voted against it. When the FBI notified the  
14 Commission that for decades it had been training  
15 examiners to conduct comparison-- microscopic hair  
16 comparison analysis, and teaching examiners to  
17 testify in an erroneous way, and that New York State  
18 laboratories including New York City laboratories had  
19 examiners who were trained by the FBI. When the FBI  
20 notified the Commission, the Commissioner debated  
21 this for two and a half years, and eventually noted  
22 not to take action. So, when the Commission does not  
23 take action, the City Council has an obligation to  
24 step in. We're deeply grateful to Council Member  
25 Ferreras-Copeland for her leadership previously why



2 she chaired the Women's Issues Committee which led  
3 the passage of local laws 85 and 86 in 2013 with the  
4 Health Committee, and to Council Members Koo, Mendez,  
5 Van Bramer, and Williams who were among the original  
6 cosponsors of those bills in 2013. The bills were  
7 well-written but we've yet to see OCME's full  
8 implementation of those bills based on your  
9 legislative intent. For example, there has been a  
10 lot of concerns raised about the validity of bite  
11 mark comparison and although OCME uses bite mark  
12 comparison, it has not done root cause analysis of  
13 their use of this evidence even though that's  
14 required by Local Law 85. OCME has not turned over  
15 validation studies or other information related to  
16 scientific procedures despite the fact that it's  
17 required by Local Law 86. When city agencies do not  
18 take action, the City Council needs to step in. We  
19 rely on you to assure justice for the people of New  
20 York City, and the City Council, we need you to be a  
21 safety net and to guarantee the public access to  
22 forensic science accountability when there are  
23 concerns that raised. So, to this end, in my written  
24 testimony we are recommending four suggestions for  
25 how we can very simply improve public accountability

2 in New York City forensic sciences, and we're only  
3 asking for changes that have already been positively  
4 and successfully implemented in the state of Texas.  
5 First, we'd like to ask that a formal online public  
6 complaint and disclosure provision be added to the  
7 Root Cause Analysis bill. Second, we'd like to add  
8 specifics to the transparency bill. So, when  
9 advocates or defenders are asking for raw electronic  
10 data or validation studies, that there will be no  
11 debate. Third, we would like to expand these bills  
12 to cover NYPD as well. All forensic science sexually  
13 exploited in the city should meet the same  
14 requirements. Lastly, we have a broad diversity of  
15 stakeholders in the criminal justice system in New  
16 York City and we can work together to advance justice  
17 by creating a taskforce to develop a defendant  
18 notification policy. When things go wrong, someone  
19 needs to let effected defendants know. So, taken  
20 together these four recommendations, I believe, can  
21 help us identify errors when they happen, ensure that  
22 there's a fix to those errors that prevent them from  
23 happening again, and lastly, ensure that individuals  
24 who are effected have the agency to respond and to  
25 move forward as they see fit in their cases. If time

2 allows, I would welcome questions with regard to why  
3 accreditation alone is insufficient for ensuring  
4 accuracy and transparency, s that was a topic that  
5 was previously raised. The Innocence Project  
6 encourages Public Safety and health Committees to  
7 take decisive section that is needed to keep New York  
8 City on the leading edge of forensic science  
9 accountability. We look forward to supporting and  
10 assisting al efforts that advance a forensic science  
11 system that is more accurate and more just. Thank  
12 you.

13 CHAIRPERSON GIBSON: Thank you very much.

14 Who's next?

15 JULIE FRY: Good afternoon. My name is  
16 Julie Fry. I'm a Staff Attorney with the DNA Unit of  
17 the Legal Aid Society. I want to thank, first of  
18 all, Chairperson Johnson and Chairperson Gibson and  
19 the Committees on Public Safety and on Health for the  
20 opportunity to testify concerning forensic lab  
21 oversight in New York City. The Legal Aid Society  
22 believes this matter is of high public concern and is  
23 vital to the fair administration of justice. Year  
24 after year we learned that innocent people have spent  
25 decades in jail based on faulty hair comparisons,

2 bite mark analysis, and arson investigations, what  
3 history has shown now to be junk science, and yet,  
4 forensic science is now an indispensable and ever-  
5 present part of the criminal justice system. Juries  
6 and judges increasingly rely on the testimony of  
7 forensic science to sort the guilty from the  
8 innocent. The forensic scientist wields an  
9 incredible amount of power over the outcome of  
10 criminal cases. We testified several times in the  
11 last two years about the lack of transparency and the  
12 defensive and secretive culture that we've  
13 encountered particularly at the Office of the Chief  
14 Medical Examiner at their Forensic Biology  
15 Department. The Council, to its credit, took a  
16 significant step toward creating accountability at  
17 the OCME through the passage of the Local Law 85 in  
18 2013. Our most recent experiences, however, that far  
19 more oversight is needed from the Council to create  
20 meaningful accountability and transparency in the New  
21 York City's forensic labs. And here I know that  
22 Councilperson Johnson has already outlined the recent  
23 complaints that we've made to the New York State  
24 office of the Inspector General very expertly, so I  
25 won't go over them in detail here, because I

2 understand that the council people are already aware  
3 of our complaint. We have attached our full  
4 complaint, as well as the OCME's reply and our  
5 response to their reply to our written comments, and  
6 we hope that the council will have an opportunity--  
7 the Committees will have an opportunity to review  
8 those. I would like to clarify a few points based on  
9 some of the comments that were made earlier by those  
10 who testified for the OCME. First of all, we are  
11 still-- remain concerned about the use and the past  
12 use of both FST and LCN at the OCME, and we-- and the  
13 now the current use of a new program called STRmix  
14 which is also a probabilistic genotyping program like  
15 FST. As councilperson Johnson has already correctly  
16 pointed out, this type of technology has been  
17 criticized in the PCAST report and the-- which was  
18 really historic report put out by some of the top  
19 scientists not only the in country, but in the world.

20 CHAIRPERSON JOHNSON: How would you  
21 respond? I don't want to cut you off, you can of  
22 course finish your testimony, but how would you  
23 respond to the Chief Medical Examiner's trying to,  
24 you know, disregard what that report said and saying  
25 that the former Director of the FBI Crime Lab has

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2 said that it was very, very problematic? From the  
3 Legal Aid Society perspective, how would you respond  
4 to the comments that were made earlier?

5 JULIE FRY: Well, it's very interesting  
6 to us that they chose to use the remarks of Doctor  
7 Bruce Budowle to criticize PCAST, because Doctor  
8 Bruce Budowle actually testified as an expert witness  
9 for the Legal Aid Society in our Fry hearing against  
10 LCN and FST and said that both of those techniques  
11 were invalid and unreliable. So to say that he  
12 somehow endorses the idea of FST really goes counter  
13 to his sworn testimony in the Fry decision and people  
14 [inaudible] and we are happy to provide that to the  
15 Council where he goes into detail about why both of  
16 those technologies should not be used in the  
17 courtroom.

18 CHAIRPERSON JOHNSON: But was there  
19 validity to what the Chief Medical Examiner said  
20 related to the scientist who you just referenced and  
21 who she referenced saying that there were some  
22 problematic and non-reliable things that came out of  
23 that PCAST report?

24 JULIE FRY: So, I am not a scientist, but  
25 the people who comprised PCAST are like I said, some

1 COMMITTEE ON HEALTH JOINTLY WITH COMMITTEE ON PUBLIC SAFETY 151  
2 of the top scientists in the world. It was co-chaired  
3 by Eric Lander who is the lead author of the Human  
4 Genome Project. Some of its members included people  
5 like Sylvester James Gates who is a renowned  
6 astrophysicist who is the winner of the National  
7 Medal of Science. So, if there are specific ways in  
8 which the report was flawed, certainly that can be  
9 discussed, but to just dismiss it as political  
10 without any evidence of it being so, certainly this  
11 wasn't a body of politicians or even of lawyers.  
12 These were scientists, some of the most renowned  
13 scientist in the world who came-- who reached these  
14 conclusions. So, I certainly don't think their  
15 conclusions can be dismissed so easily.

16 CHAIRPERSON JOHNSON: Is the first time  
17 you've heard the report trying to be discredited, or  
18 before this hearing today had you heard criticisms of  
19 the report in the past?

20 JULIE FRY: The criticism I've heard of  
21 the report come primarily from law enforcement,  
22 District Attorney's Associations or from people  
23 within forensic science itself, but not,  
24 interestingly enough, as far as I know, not from  
25 fields out-- not from sci-- other scientific

2 disciplines outside of forensic science. So,  
3 essentially PCAST-- what the essential criticism of  
4 PCAST is that forensic science should be subject to  
5 the same standards that other scientific disciplines  
6 are subject to, peer review, transparency, the less--

7 CHAIRPERSON JOHNSON: [interposing] How  
8 many members of that commission were there? Do you  
9 know off the top of your head?

10 JULIE FRY: It was a large commission. I  
11 don't know off the top of my head how many members--

12 CHAIRPERSON JOHNSON: [interposing] Okay,  
13 I apologize for interrupting--

14 JULIE FRY: [interposing] Yeah.

15 CHAIRPERSON JOHNSON: your testimony. You  
16 may finish. I apologize.

17 JULIE FRY: Absolutely. Feel free to  
18 interrupt at any time. I'd love to-- the opportunity  
19 to clarify any questions the Council may have. Back  
20 to our Coverdale complaint against the OCME, in  
21 addition to our sort of global concerns about the use  
22 of FST, the reliability of FST and LCN in the  
23 courtroom, we found that DOC may have frankly been  
24 untruthful with the bodies that were charged with  
25 this oversight about the validation studies and the



2 source code that they used when getting approval for  
3 those methods, and Ms. Chu from Innocence Project  
4 already outlined one such instance with regard to LCN  
5 which we detail in our comments and in our Coverdale  
6 complaint itself where they were specifically asked  
7 about the existence of a specific study in their  
8 validation of LCN, and an official from the OCME gave  
9 just a false answer to the Commission with respect to  
10 that, the existence of that study. With regards to  
11 FST, we have tried for years to obtain a source code  
12 for that software program to review it to make sure  
13 that it was functioning accurately, that it did what  
14 was described by the OCME on the scan. We were  
15 unsuccessful in our efforts to procure that in state  
16 court. However, a federal judge just last year  
17 ordered the OCME to provide the source code in a  
18 criminal case, and an expert who reviewed it found  
19 that it functioned very differently from the way that  
20 it was described by the OCME in their published  
21 papers, in the validation-- in the reports that they  
22 gave to the New York State Commission in order to get  
23 it validated, that they had essentially changed the  
24 source code from its original-- from the original  
25 code somewhere after it was approved and did not

1 COMMITTEE ON HEALTH JOINTLY WITH COMMITTEE ON PUBLIC SAFETY 154  
2 report this based on finding a very significant error  
3 in the way it was functioning and did not report this  
4 to anybody, not the New York State Commission, not  
5 the defense, not even the prosecution, not even the  
6 prosecutor's office. And this type of lack of  
7 transparency and lack of forthrightness is what we  
8 are concerned with at the OCME, that there is this  
9 culture of defensiveness and secretiveness there that  
10 still exists. With regards to FST--

11 CHAIRPERSON JOHNSON: [interposing] Julie,  
12 I-- Julie, right?

13 JULIE FRY: Yes.

14 CHAIRPERSON JOHNSON: I just have a  
15 question on that. So,-- and I'm not looking, I'm not  
16 trying to elicit or solicit you attacking OCME with  
17 my question. You can, that's up to you, but I'm not  
18 asking you a leading question with what I'm about to  
19 say. It's hard when we hear from OCME and the folks  
20 that sat here today a very strong, robust defense of  
21 their methods, of why they believe it's right, of why  
22 they believe they're not in contravention of the  
23 guidelines and regulations that were put in place for  
24 CODIS, and I tried to point out the gray area on the  
25 local database through my line of questioning, it's

2 hard to hear that and have that comport with what  
3 you're telling me. And so what is your sense of why  
4 there are two different sort of stark realities or  
5 not realities here related to what OCME is telling  
6 us? Why do you think they are giving that line of  
7 defense so strongly? Because there wasn't much-- and  
8 again, I'm not saying this to attack Doctor Sampson.  
9 I work with her often. I think she's a very good  
10 person and I admire the work that she's done over the  
11 course of her career. Why do you think she is  
12 defending it in such a strong way when the legal  
13 community that works on these issues have such strong  
14 concerns and objections?

15 JULIE FRY: Well, I won't pretend to know  
16 the individual motivations of officials at the OCME,  
17 but what I will say is that some more global  
18 criticism of forensic scientists and especially  
19 institutions and labs that are allowed to operate  
20 within-- without transparency, and we've seen this in  
21 labs across the country where there have been  
22 scandals and labs have been shut down is that a  
23 culture develops that, whereas these labs are held  
24 out to be independent. Without transparency, without  
25 accountability they become more of a tool of law

2 enforcement and less inclined to be forthright and  
3 frankly honest with the public. So, you know, I  
4 can't speak individually to the OCME's motivations,  
5 but I can say that we feel that it's imperative that  
6 that culture not be allowed to thrive in New York  
7 City, and we think that there is a lot that the  
8 Council can do to encourage more openness, more  
9 transparency from our labs so that that problem does  
10 not happen.

11 CHAIRPERSON JOHNSON: And have any of the  
12 folks-- and I apologize for having to step out to  
13 make a phone call, so if I missed some of your  
14 testimony, I have it, I'll read it. Have any of the  
15 f-- when I asked the question earlier if any of the  
16 folks who work in the legal community on these issues  
17 with nonprofit organizations and other legal defense  
18 organizations, had anyone done a FOIL request on the  
19 protocols and guidelines associated with the local  
20 database, no one raised their hand, and that sort of  
21 surprised me. Why is that the case?

22 JULIE FRY: And we-- first of all, the  
23 Legal Aid Society has made several FOIL requests, we  
24 have actually several pending right now with the  
25 OCME, and had various degrees of success and

2 obtaining information from them. With respect to the  
3 guidelines regulating their local database, which I  
4 think that you were able to pull out that they have  
5 just sort of made up on their own, we did not know  
6 that there were-- that such guidelines existed. We  
7 had never heard of them before. So, now we will be  
8 happy to FOIL whatever rules exist. We didn't know  
9 that there were any.

10 CHAIRPERSON JOHNSON: Good luck with  
11 that.

12 JULIE FRY: Thank you.

13 CHAIRPERSON JOHNSON: Let's move on to  
14 someone else who will testify. We'll come back for  
15 more questions so you'll be able to expound further  
16 on the things you wanted to present here today, but I  
17 want to be respectful of the other panelists that are  
18 up here as well.

19 GUY RAIMONDI: Good afternoon. My name  
20 is Guy Raimondi, and I'm a Supervising Attorney in  
21 the Criminal Defense practice of Brooklyn Defender  
22 Services, and I join with my colleagues here in their  
23 comments and recommendations on the OCME and on the  
24 NYPD Crime Lab. Now, Councilman, before I get to my  
25 comments, you did ask a question, a very important

2 question about critics of the PCAST report. My  
3 recollection is that during the comment period, the  
4 authors of the PCAST report actually issued an  
5 addendum indicating that there were some critics,  
6 primarily I think they were District Attorney  
7 Organizations, and those critics had claimed that the  
8 Presidents Council, the authors of the PCAST report,  
9 had overlooked some studies that established the  
10 validity of some of these disciplines. And so the  
11 authors of the PCAST report actually then expanded  
12 the time period and asked them to submit any of these  
13 studies that they might have overlooked, and my  
14 recollection is that the addendum in the PCAST report  
15 indicates that those critics, those organizations  
16 actually then withdrew their claims. They actually  
17 could not point to any studies that would establish  
18 the validity of those various disciplines. I  
19 believe, and I believe my organization believes that  
20 the PCAST report is a very solid report. What I  
21 would like to talk to you in furtherance of  
22 transparency is, Brooklyn Defender Services is urging  
23 the City Council to require the NYPD lab to list all  
24 of their laboratory protocols, validation studies,  
25 technical manuals, and proficiency exams on the

2 internet so that they will be available to the  
3 public. In 2013, this committee actually passed  
4 transparency legislation with respect to the OCME,  
5 and the OCME has in fact to their credit put those  
6 things on their website.

7 CHAIRPERSON JOHNSON: On root cause  
8 analysis?

9 GUY RAIMONDI: There is not only  
10 validation studies, several other things. I don't  
11 know if all root cause analysis--

12 CHAIRPERSON JOHNSON: [interposing] Okay,  
13 thank you very much.

14 GUY RAIMONDI: But we would ask you to  
15 pass similar legislation requiring the NYPD crime lab  
16 to post this information on their lab, and I would  
17 think that the law that was passed in 2013, Local Law  
18 86-2013 could serve as the role model for such a  
19 bill. Right now, in 2017, the NYPD Crime Lab does  
20 not have its own website that contains any of these  
21 critical documents, protocols, technical manuals,  
22 validation studies. Obviously, defense attorneys  
23 need these things in order to challenge the evidence  
24 in their particular cases, but the public at large  
25 needs to be able to access these things just to

2 determine whether generally their lab is in fact  
3 complying with national and international forensic  
4 testing standards, and I think this is particularly  
5 important in light of the findings in the 2016 PCAST  
6 report because there is no doubt that certainly with  
7 respect to things like finger print matching and  
8 microscopic ballistics testing, and there was  
9 testimony about that with the earlier panel. There  
10 is no doubt that the PCAST report established  
11 weaknesses and the fact that those disciplines are in  
12 fact entirely subjective. So, I would think that in  
13 the interest of transparency having the protocols  
14 online would be very important. I would like to  
15 address something that was discussed in the testimony  
16 earlier today about drug testing, and it is  
17 gratifying to know that there will be in the future  
18 more technicians who will be doing drug testing for  
19 the NYPD lab, but what we would ask this council to  
20 do is to help us to make this priority one, and that  
21 we ask you to support us in calling for the immediate  
22 and automatic testing of controlled substances  
23 particularly in misdemeanor cases. And you may ask  
24 why I'm saying that it needs to be done in  
25 misdemeanor cases, and that is because lab testing of



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2 controlled substances in misdemeanor cases is  
3 particularly concerning because of a Court of Appeals  
4 Case called People versus Kaylin [sp?] that in effect  
5 can leave innocent people incarcerated at Rikers  
6 Island for months without the testing of evidence in  
7 their case. You may be aware that with respect to  
8 defendants who are charged with drug felonies, the  
9 prosecutor must within six days of the defendant's  
10 arrest present the Grand Jury with a lab report  
11 indicating that the item in question is in fact a  
12 controlled substance. However, those safeguards or  
13 similar safeguards simply do not exist with respect  
14 to our misdemeanor clients. With respect to our  
15 misdemeanor clients, a prosecutor can secure the  
16 defendant's continued incarceration simply with an  
17 assertion by the recovering police officer that based  
18 on his or her training and experience and his  
19 familiarity with packaging that the item in question  
20 is in fact a controlled substance. And so the actual  
21 testing by the lab is actually pushed down the road.  
22 It may very well be pushed down the road until the  
23 eve of trial.

24 CHAIRPERSON JOHNSON: That's crazy.  
25

2 GUY RAIMONDI: It is, and you could have  
3 people, and we have had people that have been  
4 incarcerated for a prolonged period of time, and then  
5 it is discovered that the--

6 CHAIRPERSON JOHNSON: [interposing]  
7 Unacceptable.

8 GUY RAIMONDI: drugs that they were  
9 charged with were in fact not drugs, that there in  
10 fact was no crime committed. And so we would urge  
11 this committee to get involved in that and make sure  
12 that there is immediate testing on misdemeanor drug  
13 cases.

14 CHAIRPERSON JOHNSON: We will take a  
15 very, very serious look at this, and we'd love to  
16 talk with you further about this in the New Year.

17 GUY RAIMONDI: We appreciate that. The  
18 one last thing that I will briefly discuss since we  
19 are talking about transparency is discovery, and my  
20 office has testified many times before the Committee  
21 on Public Safety and Courts and Legal Services about  
22 the need for discovery reform at the state level, but  
23 in cases involving forensic evidence, early an  
24 automatic disclosure of evidence is even more  
25 critical to ensure that the defense has time to have

2 experts assess the evidence. In Brooklyn, we are  
3 able to get discovery in most cases under an  
4 agreement with the DA's Office, something called  
5 "Open File Discovery." This is not the case in other  
6 boroughs, and even in our borough even with open file  
7 discovery critical documents are not turned over  
8 until months into the case and often not without some  
9 protracted litigation or back and forth. One thing  
10 that I will call the Council's attention to is  
11 electronic raw data. That is not something that the  
12 OCME turns over as a matter of course. Our  
13 experience has been that the OCME will turn over the  
14 electronic raw data if they are given a judicial  
15 subpoena to do so. The problem is some judges are  
16 receptive to a defense request for a subpoena, and  
17 others aren't, but I think it's very clear that  
18 electronic raw data is essential in order for defense  
19 counsel to be able to evaluate their cases.

20 CHAIRPERSON JOHNSON: Thank you very  
21 much, sir.

22 GUY RAIMONDI: Thank you.

23 CHAIRPERSON JOHNSON: Very helpful  
24 testimony all of you. Thank you.

2 MARIKA MEIS: Hi, I'm Marika Meis, and  
3 I'm the Legal Director and the Director of the  
4 Forensic Practice Group at the Bronx Defenders. I  
5 thank you for the time and the opportunity, and I do  
6 join the comments of my fellow people testifying  
7 already. You know, the issue here is just that  
8 science and forensic science require openness and  
9 testing in order for them to be valid, and that's all  
10 we're seeking as defense counsel is an opportunity to  
11 objectively test, analyze and interpret forensic  
12 evidence that's used against our clients where their  
13 liberty is at stake. It's fundamental that  
14 transparency and openness are part of this process if  
15 these disciplines are really scientific. And I  
16 wanted to just mention briefly some of the reasons  
17 why we need to ask these questions and the kind of  
18 questions we need are things like, does the  
19 laboratory have protocols? Are they consistent with  
20 the scientific standards? Are the methods used by  
21 the laboratory validated? What kind of validation  
22 was that? Was it the kind of validation OCME  
23 routinely does, which is only internal validation, or  
24 was it the kind of open validation science demands  
25 where people outside of that lab actually got to look

2 at the methods, especially the controversial ones  
3 like FST and LCN, to see what's really being done  
4 there? Does the laboratory have protocols? Are they  
5 being followed? Are there proficiency test? Do the  
6 proficiency tests actually use casework like  
7 material, or are they easy tests that aren't  
8 representative of the kind of things they see in  
9 actual casework? Are the tests administered blindly?  
10 Has the laboratory done anything to account for human  
11 error and cognitive bias? These are all fundamental  
12 concepts of science that apply equally to forensic  
13 science. And I wanted to talk specifically about a  
14 couple of comments of the OCME during their testimony  
15 where Council Member Johnson, you raised some concern  
16 specifically on the local data bank when you asked  
17 initially about exclusionary or abandonment samples,  
18 and they said, "No, we don't put those in." well,  
19 what they were referring to is, for example, a rape  
20 victim or a person who owns a place that's been  
21 burglarized, but later they finally answered that  
22 yes, they actually do routinely put in their local  
23 databank a profile generated from someone who is  
24 exonerated and who is shown not to be a perpetrator  
25 of a crime, and they do so automatically and without

2 clear legislative authority to do so, and the only  
3 way to get that profile out is by court order, but  
4 they don't even tell us or that individual that they  
5 have to seek a court order. So, absent a court order  
6 using really specific language both the swab with the  
7 genetic material and the profile remain forever to be  
8 tested against all evidence samples in the future  
9 with no reason to suspect that individual of anything  
10 even if they've never been arrested or convicted of a  
11 single crime, and that is a genuine concern.

12 CHAIRPERSON JOHNSON: But what about the  
13 issue that was raised by the general counsel from  
14 OCME saying that the way they've handled the local  
15 database has actually been helpful to organizations  
16 like the ones that are represented on this panel to  
17 actually exonerate people and to help people because  
18 of the way they've collected these samples and the  
19 way they've stored them, that it's actually been  
20 helpful for certain defendants who have been unfairly  
21 convicted and prisoned, how do you respond to that?

22 MARIKA MEIS: I think the bulk of  
23 exonerations come from them catching a real  
24 perpetrator whose profile ends up in a databank of a  
25 conviction in a permissible manner, and not in the

2 manner we just described. Save, perhaps, the example  
3 the police gave, but that's another example of OCME  
4 who's purportedly independent working as an arm of  
5 law enforcement and keeping profiles with suspect  
6 legislative authority to assist law enforcement when  
7 they're supposed to be an independent agency. So, it  
8 remains problematic in our opinion. And then just  
9 briefly on the police lab, we did see some  
10 improvement with OCME since the passage of the bill  
11 in 2013 in terms of putting their protocols online  
12 and providing us with forensic profile-- forensic  
13 biology case files more readily just by direct  
14 request, but again, they are a purportedly  
15 independent lab, whereas the bulk of other forensic  
16 evidence used against those accused of crimes comes  
17 from the NYPD, and with them, we see zero  
18 transparency. Not only do they not provide the  
19 protocols and the proficiency tests that they claim  
20 they do, but we don't even have access to what  
21 they're even really testing. You heard the police  
22 talk about in the finger print scenario how they take  
23 a high-resolution image and use that to do a  
24 comparison, but we aren't provided with that high-  
25 resolution image. Similarly, in the firearm analysis

2 section where they do these microscopic comparisons  
3 of a bullet, a test-fired bullet against discharged  
4 bullet, and what they're supposedly looking for is  
5 matching, their protocols only require them to put a  
6 conclusion of a match or not and they're supposed to  
7 document something, but they have 65,000 dollar  
8 microscopes that can take high-quality color images.  
9 They don't do that, and if they do ever take them, we  
10 don't get them. We get a low quality black and white  
11 photograph from which we can do no independent  
12 analysis or review of this so-called scientific  
13 evidence being used against people where their  
14 liberty is at stake, and if these disciplines are  
15 scientific, they are undoubtedly subjective. We  
16 agree with PCAST in that nature. But if there's  
17 scientific-- if there's forensic science, then there  
18 should be the openness and testing and an independent  
19 review by defense counsel. And just in closing, I  
20 did want to note that the Bronx Defenders offers  
21 strong support for Intro. 1265. We do-- or 1235. We  
22 do believe that-- we've supported it since inception,  
23 since it was introduced. We think that clearly  
24 there's been a benefit in having individuals use  
25 cellphone videos to capture police conduct and expose



2 countless abuses, and we think that the private right  
3 of action does much to put value into that right, and  
4 we have clients at our office who are charged with  
5 interfering with police activity in this regard where  
6 we believe they were just exercising their  
7 constitutional right in an important way. Thank you.

8 CHAIRPERSON JOHNSON: Thank you for your  
9 testimony. Yes, sir? If you could just speak into  
10 the mic?

11 JOSHUA NORKIN: Sure. I'm actually here  
12 to testify about Right to Record, so I'm not sure--

13 CHAIRPERSON JOHNSON: [interposing] That's  
14 fine, that's okay.

15 JOSHUA NORKIN: You want me to join in  
16 with these folks?

17 CHAIRPERSON JOHNSON: That's totally  
18 fine.

19 JOSHUA NORKIN: Okay.

20 CHAIRPERSON JOHNSON: Just pull the mic a  
21 little closer, because you--

22 JOSHUA NORKIN: [interposing] sure, sure.

23 CHAIRPERSON JOHNSON: You're on TV. I'm  
24 not sure how many people are watching, but they need  
25 to hear you.

2 JOSHUA NORKIN: As I mentioned, I'm with  
3 Legal Aid Society. I'm here representing the Special  
4 Litigation Unit, which is the specialized unit that  
5 focuses on systemic problems in the criminal justice  
6 system. I feel like with the limited time I have I  
7 should probably respond to some of the things that  
8 were said by the panelist from the NYPD who were here  
9 earlier. In particular, the NYPD is correct that  
10 courts have recognized that there is a right to  
11 record, but the remedies have been inconsistent, and  
12 therefore they have been ineffective. The statute is  
13 important. The proposed bill is important, because  
14 it sets forth a clear remedy. The NYPD referred  
15 several times that there are suits that people have  
16 been able to bring suits for false arrest or unlawful  
17 seizure when they've actually been arrested or their  
18 recording devices have been confiscated. These,  
19 however, are qualitatively different than the private  
20 right of action that is contained in the bill which  
21 provides that someone has a cause of action for any  
22 interference of any kind, not just for a full-blown  
23 arrest or a detention and provides a clear remedy.  
24 So then anything short of that-- so when officers do  
25 attempt to block recording happening or they

2 confiscate and throw phones or they just threaten to  
3 arrest or give somebody a summons, the bill would  
4 provide a private right of action for that. Another  
5 reason why the bill is critical is because despite  
6 all the corrective actions that were touted by the  
7 NYPD up here earlier, they referred to issuing a  
8 FINEST message in 2014 and a couple of legal  
9 bulletins in 2016. As a CCRB report that was  
10 mentioned that covered from years 2014 to 2016  
11 indicates, it is not sufficiently-- whatever actions  
12 they have taken so far have not sufficiently deterred  
13 police interference, and in fact that issue may  
14 actually be getting worse. The CCRB just recently  
15 issued a semi-annual report that covers January and  
16 June of 2017-- I'm sorry, January to June 2017 that  
17 shows that for the same period compared to 2016  
18 actually complaints about officer interference have  
19 gone up 400 percent during that period. So, that  
20 bears mentioning. That said, if I still have time, I  
21 would just add that Legal Aid is a part of the  
22 Communities United for Police Reform Coalition. We  
23 hope everyone here and everyone on the Council will  
24 also sign on to the Consent to Search Act, which is  
25 Intro. 541, but not the identification bill number

2 182. I also would bring to your attention that in  
3 our written testimony which I've submitted, I won't  
4 go into details here, we do have some recommended  
5 revisions to the language of the Right to Record Act  
6 or the Right to Record Police Activities Bill. So,  
7 please, please, I wanted to bring that to your  
8 attention, and I believe that's probably all I'll say  
9 at this point. So, thank you.

10 CHAIRPERSON GIBSON: Thank you very much,  
11 and I'm sorry for the sake of time we really do have  
12 to move the hearing forward, but I do thank you for  
13 being here. Thank you for your testimony, and  
14 certainly we will continue to follow up, and we thank  
15 you so much for your work. Thank you. Our next  
16 panel to call up is Michael Sisitzky from the New  
17 York Civil Liberties Union, Sergio De La Pava from  
18 the New York County Defender Services, and Yul-san  
19 Liem from the Justice Committee, please come forward.  
20 You can begin.

21 MICHAEL SISITZKY: Thank you, Chair  
22 Gibson. My name is Michael Sisitzky, Lead Policy  
23 Counsel at the New York Civil Liberties Union. I'll  
24 be testifying today in support of Intro. 1235, the  
25 Right to Record Act, as well as making

2 recommendations for other steps the Council can take  
3 to improve police/community relationships. The First  
4 Amendment protects the right to record the police in  
5 public. This is among the most direct and  
6 participatory forms of public oversight, and it can  
7 serve as a necessary check against official  
8 misconduct. In recent years, bystander recorded  
9 footage of the police killings of Eric Garner, Walter  
10 Scott, Alton Sterling, and Philando Castile focused  
11 national attention on the systemic targeting of  
12 communities of color by law enforcement. Recognizing  
13 the power of video to tell stories that are often  
14 unseen, the NYCLU developed an app to enable New  
15 Yorkers to turn their phones into tools to document  
16 racial profiling and expose the aggressive tactics  
17 used by law enforcement to prevent New Yorkers from  
18 filming. With the surge of protest activity as New  
19 Yorkers resist threats from Washington, the NYCLU  
20 regularly trains volunteers on documenting and  
21 recording police activity at protests and  
22 demonstrations. Yet we constantly have to remind  
23 people that, although they have the right to record,  
24 they may be at risk by exercising that right, so long  
25 as officers continue to ignore it. Despite a long-

2 standing consent decree and Patrol Guide policy, the  
3 NYPD has not respected the right to record police  
4 activities. Journalists have frequently been  
5 arrested for doing nothing more than reporting on  
6 matters of public importance, and in the current  
7 climate where they are routinely attacked by a White  
8 House intent on discrediting a free press  
9 safeguarding the ability of journalists to do their  
10 jobs is vital to protecting our democracy, as is  
11 protecting New Yorkers' ability to get involved in  
12 public policy conversations. In 2012, the NYCLU  
13 filed a lawsuit on behalf of a woman who attempted to  
14 film a stop-and-frisk encounter. Instead of  
15 respecting her right to do so, the officers arrested  
16 her, threw her in a jail cell, and told her, "This is  
17 what happens when you get involved." And while we  
18 know of countless examples like this and have some  
19 limited data from the CCRB, there's no comprehensive  
20 reporting on how often these encounters happen.  
21 Because it will fill the gaps in this data, the NYCLU  
22 enthusiastically supports the Right to Record Act's  
23 detailed reporting requirements, which will bring a  
24 powerful measure of transparency and crucially  
25 uncover racial disparities in law enforcement

2 interference with the Right to Record. The Right to  
3 Record Act will make the First Amendment more easily  
4 accessible here at home through its private right of  
5 action, and it will say loudly and clearly that we  
6 are a city that values both the First Amendment and  
7 our rights to hold police accountable. We urge the  
8 Council to pass this measure into law. Lastly, this  
9 Council has just days left to deliver on its promise  
10 to reform abusive and discriminatory police  
11 practices. In the coming days, members will be asked  
12 to vote on two bills collectively referred to as the  
13 Right to Know Act. Unfortunately, only one of these  
14 bills still deserves to carry that name and to be  
15 passed into law. The NYCLU fully supports and urges  
16 passage of Intro. 541C, which will require the NYPD  
17 to inform people of their rights regarding searches  
18 unsupported by probable cause and to document proof  
19 of a person's knowing involuntary consent to such  
20 searches, but we do not support Intro. 182D. We had  
21 long supported earlier versions of this bill that  
22 would have required officers to identify themselves,  
23 tell someone why they were stopped, and offer that  
24 person a business card. This common sense proposal  
25 was a direct response to the lived experiences of New

2 Yorkers of color who were repeatedly harassed by the  
3 police but who lacked the most basic information  
4 needed for accountability, the names of the officers  
5 who mistreated them. But Intro. 182D has carved out  
6 the most common law enforcement interactions from its  
7 coverage. While prior versions required officer  
8 identification during any investigative questioning,  
9 this latest version only applies to questioning when  
10 the person is suspected of criminal activity, but  
11 officers don't need to suspect someone of a crime to  
12 harass them or engage in misconduct. We know of  
13 countless examples of New Yorkers harassed by the  
14 police who were never accused of or suspected of  
15 criminal wrong-doing, including women who frequently  
16 experienced sexual harassment by officers in these  
17 lowest level encounters. We're talking about  
18 encounters that are the least transparent and the  
19 most susceptible to abuse with impunity. By  
20 excluding these interactions from coverage, Intro.  
21 182D allows officers to continue hiding behind  
22 anonymity and to exempt themselves from  
23 accountability from misconduct. This never should  
24 have been controversial. It's not controversial for  
25 New Yorkers to know the names of officers who stopped



2 them. It's not controversial for New Yorkers to have  
3 the most basic reason for why those stops are  
4 happening, and it is not controversial for officers  
5 to introduce themselves during traffic stops. What  
6 is controversial is elected officials cutting deals  
7 behind closed doors, cutting out the communities  
8 behind legislative proposals from the process and  
9 failing in their obligation to be responsive to New  
10 Yorkers who are most directly impacted by police  
11 misconduct. Intro. 182D is sadly representative of a  
12 missed opportunity to make genuine progress to shift  
13 the culture of policing, but that spirit is still  
14 present in Intro. 541 C, and the NYCLU urges the  
15 Council to stand with New Yorkers by passing Intro.  
16 541C into law. Thank you.

17 SERGIO DE LA PAVA: Thank you for this  
18 opportunity to be heard. I'm Sergio De La Pava of  
19 New York County Defender Services. I'll be brief, as  
20 I believe my colleagues have adequately expressed  
21 what the defense bar feels about the Crime Lab and  
22 the OCME. Both entities we believe claim to be  
23 functioning entirely in the realm of dispassionate  
24 scientific inquiry, but the reality is far more  
25 troubling. The reality is an overriding lack of

2 transparency and partisan secrecy. This leads to  
3 arrogance and sloppiness, which in turn creates  
4 wholesale injustice. New York City should lead the  
5 way for the nation in implementing meaningful reforms  
6 that will ensure the true independence and  
7 reliability of these vital operations. Recent event  
8 at OCME are illustrative of the problem. For years  
9 the office conducted its DNA mixture testing under an  
10 entirely unwarranted cloak of secrecy.

11 Unfortunately, lack of transparency is often a  
12 breeding ground for laziness and abuse. Here, the  
13 OCME used that unchallengeable platform to foster a  
14 reputation for unsurpassed expertise. This gave them  
15 the arrogance to introduce two highly troublesome  
16 techniques that would ultimately greatly reduce the  
17 reliability of their DNA testing and shatter their  
18 illusion of expertise. I'm speaking here, of course,  
19 of high-sensitivity testing and FST. These  
20 techniques were used for 11 years in thousands of  
21 cases without significant external scrutiny and in an  
22 environment prime for abuse. Only the skillful  
23 persistence of the defense bar ultimately revealed  
24 how scientifically unsound these practices actually  
25 were. A hugely important development, but one that

2 is surely of minor consolation to the many mostly  
3 indigent people of color convicted on the basis of  
4 dangerously unreliable evidence. A similar reckoning  
5 would be highly unsurprising in the context of the  
6 NYPD crime lab. Given what we've learned about the  
7 inherent unreliability of so-called forensic science.  
8 Last year's PCAST report established conclusively  
9 that the pattern matching that gets called forensic  
10 science is essentially subjective and partisan  
11 evidence building, and at least the OCME pretends to  
12 independent. The Crime Lab, on the contrary, makes  
13 no such claims, openly employing primarily former  
14 police officers in the place of unaffiliated  
15 scientists. This despite the obvious and growing  
16 recognition that the best way to prevent toxic errors  
17 in this field is by creating a forensic lab that is  
18 truly independent from law enforcement and  
19 prosecutorial agencies. New York must act now.  
20 Every day the danger of wrongful convictions based on  
21 pseudoscience grows unjustifiably. True independence  
22 and impeccable reliability are achievable. The only  
23 thing lacking is the will. Thank you.

24 YUL-SAN LIEM: Good afternoon. My name  
25 is Yul-San Liem. I'm a Co-Director of the grassroots

2 organization called the Justice Committee. Some of  
3 our programming is aimed at spreading the practice of  
4 monitoring and documenting police activity as safely  
5 and effectively as possible in order to deter police  
6 abuse. This is a practice we call Cop Watch, and as  
7 you've heard, it's a constitutionally protected  
8 practice. We've been operating our Cop Watch program  
9 since 2007, and over the years of this work the  
10 NYPD's practice of illegally interfering with  
11 attempts to legally document their activity has been  
12 rampant and unchecked. Some of the ways in which the  
13 NYPD interferes with cop watching include verbal  
14 harassments, threat, and threats of violence or  
15 arrest, physical violence, using their bodies to  
16 blocks teams or individuals from filming, blocking  
17 and hiding their badge numbers, making false claims  
18 that documenting police activity is illegal, ordering  
19 those who are documenting to move and false claiming  
20 that they are blocking pedestrian traffic, shining  
21 police lights at cell phones and cameras, unlawfully  
22 confiscating recording equipment, slapping phones and  
23 recording equipment out of the hands of those who are  
24 filming, and unjustly issuing tickets and making  
25 arrests. To give you some concrete examples from our

2 experience and those of the organizations we work  
3 with, in March 2012 at the request of Council Member  
4 Jumaane Williams, the Justice Committee, and the  
5 Malcolm X grassroots movement organized Cop Watch  
6 teams to monitor police oppression of protest  
7 following the NYPD killing of Kemon Gray [sp?].

8 During these protests, three members of our teams  
9 were illegally arrested for documenting police abuse  
10 of the young protesters in East Flatbush. Two of  
11 those who were arrested were also brutalized.

12 Notably, none were ever convicted of a crime or  
13 violation. In more recent years, the NYPD unlawfully  
14 arrested one of our members as he was recording in a  
15 subway, making the claim that the light on his cell  
16 phone violated recording laws. Again, there was no  
17 conviction in this case. The great majority of  
18 Justice Committee members and other members of Cop  
19 Watch teams and organizations have been bullied and  
20 threatened with arrest while exercising their  
21 constitutional right to record police activity. NYPD  
22 officers have demanded ID from our members while they  
23 were recording and then escalated incidents,  
24 threatening our members with arrest if they asked  
25 questions or declined to produce identifications in

2 situations where the law was, they were legally  
3 allowed to leave. Once while our Jackson Heights Cop  
4 Watch team was documenting a street stop, one of the  
5 officers involved attempted to bribe the community  
6 member into telling us to stop filming by saying, "If  
7 you tell them to leave, this ticket will go away."

8 The community member did not comply with this, and we  
9 later learned that they actually didn't understand  
10 anything that was going on in the stop because the  
11 officers involved did not speak Spanish. Directly  
12 after this stop, the officers involved jumped in  
13 their vehicle, drove up the street, staged a stop.

14 When the Cop Watch team came running up the block to  
15 see what was going on, they jumped back in their van  
16 laughing and drove away. We filed a CCRB complaint  
17 regarding this incident and never heard a response.

18 A police-- once a police officer in the passenger  
19 side of a NYPD vehicle maintained his flashlight on  
20 our member's camera to interfere with recording,  
21 while another NYPD officer in the driver seat held up  
22 his middle finger. Shining lights at people who are  
23 attempting to record in order to interfere is a very  
24 common practice and something most of our Cop  
25 Watchers have experienced. In all of our years of

2 experience, none of the offending officers have been  
3 held accountable which allows and encourages the  
4 behavior to continue. We thank and commend Council  
5 Member Jumaane Williams for introducing Intro. 235  
6 which will establish a private right of action. We  
7 feel like it's a step in the right direction, but  
8 also want to highlight that in order for this NYPD  
9 practice to stop, there has to be significant  
10 discipline and accountability for officers who engage  
11 in this behavior. And I just want to conclude by  
12 echoing Legal Aid and NYCLU. The Justice Committee  
13 also works with families who have lost loved ones to  
14 the police, and so on behalf of the family of Eric  
15 Garner, Ramarley Graham [sp?], Shawn Bell [sp?],  
16 Shantelle Davis [sp?], and many, many others, we  
17 want to strongly urge the Council to vote yes on 541  
18 and no on 182. Thank you.

19 CHAIRPERSON GIBSON: Thank you very much  
20 for coming.

21 CHAIRPERSON JOHNSON: I just want to make  
22 a quick comment, and it's one that's probably not  
23 going to make the folks on this panel happy, but I'm  
24 proud of Council Member Torres and the work that he's  
25 done. I understand that the advocates aren't happy.

2 I think he's put a good faith effort into this, and I  
3 support him on this, and I look forward to voting in  
4 favor this measure.

5 CHAIRPERSON GIBSON: Thank you very much  
6 for being here. We look forward to working with you.  
7 I definitely want to move the hearing, but I thank  
8 you so much for coming today and providing us  
9 testimony. We have our final panel this evening. I  
10 want to call up Towaki Komatsu, representing himself.  
11 Please come forward, and I believe we have your  
12 testimony. Thank you so much.

13 TOWAKI KOMATSU: Hi. I previously  
14 testified at New York City Council meetings. I also  
15 have put your colleagues on notice of the fact that  
16 the Mayor's Head of Security is currently a defendant  
17 in an active Federal Civil Rights lawsuit with  
18 regards to the subject matter of the last person who  
19 testified. The basis for that lawsuit that he  
20 actually had someone arrested back in 2012 who was  
21 riding his bicycle to go to a protest in September of  
22 2012. So, the question I really have is, if he's  
23 still defending this act of Civil Rights lawsuit that  
24 dates back to an incident from five years ago, why  
25 not find some other candidate to be the Mayor's Head



2 of Security? Well, after he did that to that  
3 bicyclist he's repeatedly violated my civil rights.  
4 He violated civil rights of Nathan Tempe, a  
5 journalist in Newark Airport in last year that made  
6 the news. With regards to one of the bills up for  
7 discussion, the right to record government officers  
8 as long as you're not violating their ability to do  
9 their job, there's actually a legal precedent for  
10 that in New York City. So, that bill may be  
11 redundant. But what I was kind of hoping through  
12 this meeting is if I could get a commitment from the  
13 New York City Council to effectively intervene to  
14 prevent the Mayor's NYPD Security Detail from  
15 continuing to violate the First Amendment, 14<sup>th</sup>  
16 Amendment rights of people that are looking to attend  
17 public meetings lawfully and act as a whistle-blower  
18 during those meetings. For you, Mr. Johnson, the  
19 first time I met you was on March 15<sup>th</sup> in your town  
20 hall meeting. That meeting was recorded on video.  
21 Throughout that meeting I acted entirely lawfully. I  
22 told the Mayor that the head of HRA had repeatedly  
23 lied to me about getting legal assistance. Following  
24 that meeting with you, he's continued to do that. He  
25 made a statement to me during the Mayor's November

2 30<sup>th</sup> town hall meeting he lied. I got confirmation  
3 following that meeting that he lied to my face. So,  
4 in terms of oversight, I know it's not specific to  
5 this particular meeting, if you have a Commissioner  
6 of HRA whose engaging in deceit and that is  
7 essentially a waste of taxpayer resources, who  
8 provides oversight of HRA? And when people like me  
9 try to go to the Mayor's town hall meetings to talk  
10 to the Mayor about that, if the Mayor said to me face  
11 to face on December 5<sup>th</sup> that, brother we've been over  
12 this a thousand times, and that latest lie by Mr.  
13 Banks had just occurred one week earlier, how is it  
14 possible that the Mayor and I had a discussion about  
15 that issue over a thousand times between November  
16 30<sup>th</sup> and December 5<sup>th</sup>? That's not possible. So,  
17 again, I told the Mayor actually on July 18<sup>th</sup> about  
18 this federal lawsuit against his Head of Security--  
19 that was also recorded on video; the meeting was in Q  
20 Gardens-- he told me at the time he wouldn't comment  
21 about it. So, if the head of the City, the top  
22 political official in the City has stated that if  
23 someone has a problem with policing, ultimately he's  
24 responsible for that, if I brought it to his  
25 attention face to face on December 5<sup>th</sup>, that I've

2 continued to be kept out of public meetings in  
3 violation of 18USC245, a federal criminal statute-- I  
4 can give you the exact provision in that statute.

5 It's under subsection B5 that talks about lawful  
6 speech, lawful assembly. So, if a government

7 official is retaliating against me while I'm engaged  
8 in lawful speech, lawful assembly, it's really up to

9 you and your colleagues to have decisive, immediate,  
10 corrective action taken such that voters don't have

11 to-- voters don't have to contend with a top

12 political official who is allowed, constantly allowed

13 that to continue. I mean, I have other things to

14 attend to, I'm sure you do. I don't want to waste

15 your time, but you are law makers. You have the

16 ability to introduce legislation. If instead of

17 doing that, you turn your backs on the problem, the

18 problem continues. It's just like a rapist. If a

19 rapist isn't caught, and dealt with, they just

20 continue to do it until something is done. So, I'll

21 leave it at that. Except for, before coming here

22 today I also had videos that I wanted to present

23 during my testimony. I called ahead to try to make

24 arrangements for that. There's a U.S. Supreme Court

25 case that talks about the right to be heard in a

2 meaningful way at a meaningful time. So, if I  
3 contacted City Hall in advance of my testimony today  
4 and specifically requested to have arrangements made  
5 such that I could present that video so that people  
6 in the audience could watch it, could make  
7 independent decisions as to whether I'm full of it,  
8 or whether there's substance to what I'm stating. I  
9 don't see why this City Council, this Committee would  
10 act in defiance of an existing U.S. Supreme Court  
11 decision that is essentially about fundamental due  
12 process. That's all I have to say.

13 CHAIRPERSON JOHNSON: Thank you for your  
14 testimony today. I don't agree with much of what you  
15 said, but you have the, of course, legal right to say  
16 it, and we didn't want to interrupt your testimony.  
17 You're able to say whatever you wanted, and I really  
18 appreciate you coming today.

19 CHAIRPERSON GIBSON: Thank you.

20 CHAIRPERSON JOHNSON: Anything else,  
21 Madam Chair? So, with that we would-- we're going to  
22 adjourn this meeting.

23 [gavel]

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C E R T I F I C A T E

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



Date January 17, 2018