

1 COMMITTEE ON JUSTICE SYSTEM JOINTLY WITH COMMITTEE ON
GOVERNMENTAL OPERATIONS 1

2 CITY COUNCIL
3 CITY OF NEW YORK

4 ----- X

5 TRANSCRIPT OF THE MINUTES

6 Of the

7 COMMITTEE ON JUSTICE SYSTEM JOINTLY
8 WITH THE COMMITTEE ON GOVERNMENTAL
OPERATIONS

9 ----- X

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13 HELD AT: Committee Room - City Hall

14 B E F O R E: Rory I. Lancman,
15 Chairperson for Committee on
16 Justice System

17 Fernando Cabrera,
18 Chairperson for Committee on
19 Governmental Operations

20 COUNCIL MEMBERS:
21 Andrew Cohen
22 Laurie A. Cumbo
23 Farah N. Louis
24 Alan N. Maisel
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2 A P P E A R A N C E S

3 David Goldin
4 Administrative Justice Coordinator in the Mayor's
Office of Criminal Justice

5 John Burns
6 First Deputy Commissioner and Supervising
7 Administrative Law Judge at OATH

8 Dr. Denise Paone
9 Department of Health

10 Chelsey Davis the Director of Health Initiatives
from MOCJ

11 Matali Nagrecha
12 Criminal Justice Policy Program at Harvard Law
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14 Lindsay Smith
15 Attorney in the Youth Justice Debt Fellow at
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16 Joanna Weiss
17 Co-Director of the Fines and Fees Justice Center

18 Adam Mansky
19 Director of Criminal Justice at the Center for
Court Innovation

20 Ivan Bohoquez
21 Legal Advocate in the Civil Action Practice of
22 the Bronx Defenders

23

24

25

2 CHAIRPERSON LANCEMAN: [GAVEL] Good morning, I
3 am Council Member Rory Lancman; Chair of the
4 Committee on the Justice System and welcome to this
5 joint hearing with the Committee on Governmental
6 Operations chaired by my colleague, Council Member
7 Fernando Cabrera.

8 Today, we discuss a proposed pilot program to
9 study so-called Day Fines, as well as a bill on
10 tracking the collateral consequences of drug arrests
11 and convictions in the city.

12 The Civil and Criminal Justice Systems have long
13 relied on fines as a part of a matrix of sanctions
14 designed to increase compliance with laws involving
15 everything from trash collection to criminal
16 offenses.

17 We're getting some feedback. Let's see if that
18 works. On laws generally establish a range of exact
19 dollar amount as the fine for a given offense.

20 Looking at data from the Office of Administrative
21 Trials and Hearings from the past year, we see that
22 the average fine for failure to remove K9 waste was
23 \$147.05. That's an awful lot of money for many New
24 Yorkers, while for others, it may simply be the cost
25 of doing business so to speak.

2 For many decades that duality has raised
3 questions about whose behavior we are actually
4 correcting with our fines and about what happens when
5 people truly cannot afford to pay.

6 In 1996, the United States Department of Justice
7 found that when fines are set at levels that make it
8 difficult or impossible for poor defendants to pay.
9 Their failure to pay in many cases lead to jail
10 sentences. Before that in the 1980's, there was a
11 movement to take an individual's ability to pay into
12 account in setting fines. It was already understood
13 that fixed fines, fines that were too high for people
14 living in poverty to afford, contributed to a
15 burgeoning mass incarceration and mass probation
16 crisis.

17 In 1987, the Vera Institute of Justice and the
18 National Institute of Justice, piloted a project
19 study project to study fines that were set by taking
20 into consideration the individual's ability to pay,
21 along with the seriousness of the offense. The pilot
22 was in Staten Island and others followed around the
23 country. These projects each looked at graduating
24 economic sanctions. We call them day fines because
25 they are calculated based on an individuals adjusted

2 daily income. But they faced opposition in a
3 political climate that tolerated or even favored
4 harsh punitive approaches to civil and criminal
5 justice.

6 Despite years of discussion and bipartisan
7 support, such proposals have yet to take hold,
8 including here in New York City. But the
9 consequences for failing to adjust our system of
10 assessing and collecting fines may be very serious.
11 This seriousness became tragically clear in the after
12 math of civil and rest resulting from controversial
13 fines and policing in Ferguson Missouri. The need
14 for a more thoughtful approach is clear.

15 Today, we will hear testimony regarding a
16 proposal to bring a day fines pilot to the New York
17 City Office of Administrative Trials and Hearings.
18 The pilot would be limited to a set number of
19 offenses and would be administered through an
20 external non-profit with a goal of producing a report
21 to guide us in the future.

22 We may finally be at a moment where it is
23 politically possible to address the problem that has
24 been recognized and debated for more than 30 years.
25 We will also hear testimony concerning a pre-

2 considered bill sponsored by Council Member Alicka
3 Ampry-Samuel, which would require citywide auditing
4 of the many ways that city agencies create or
5 exacerbate collateral consequences of drug arrests
6 and convictions. Whether for their employees or for
7 the New Yorkers who receive their services.

8 And with that, I turn it over to my Co-Chair
9 Council Member Cabrera for his opening remarks.

10 CO-CHAIRPERSON CABRERA: Thank you so much and
11 good morning. I am Council Member Fernando Cabrera;
12 Chair to the Committee on Governmental Operations. I
13 want to thank my colleague and Co-Chair Council
14 Member Rory Lancman for holding this hearing today
15 and for his long standing commitment to making our
16 justice system more equitable for all New Yorkers.

17 Today, the Committee will be hearing two pieces
18 of legislations that intend to address disparities in
19 the city justice system, pre-considering Intro.
20 Sponsored by Speaker Johnson would require the Office
21 of Administrative Trials and Hearings to create a day
22 fine pilot program in conjunction with a non-profit
23 organization. The office will additionally be
24 required to report findings for recommendations based
25 on the pilot.

2 Building on my Co-Chair's remarks, a day fine
3 program will take into account a persons income when
4 a judge is determining the amount of civil penalty to
5 impose. Right now, when an OATH judge imposes a
6 civil penalty, it is imposed based on the type of
7 violation for penalties assessed against individuals.
8 These increase based on the penalty of the repeat
9 violation.

10 Currently, OATH judges do not take into account
11 the defendants ability to pay. This bill will pilot
12 a program of day fines at OATH that will give
13 administrative judge's discretion to impose penalties
14 based on an individual's ability to pay. The
15 underlined principle here being that each individual
16 will bear an equal burden by being penalized but pay
17 a different amount in fines.

18 The second bill to be heard today, a pre-
19 considered Intro. sponsored by Council Member Alicka
20 Ampry-Samuel, will require the Department of Health
21 and Mental Hygiene and the Mayor's Office of Criminal
22 Justice to conduct an audit of collateral
23 consequences on drug related arrests and convictions
24 across city agencies. This bill will also establish
25 a task force that will study the consequences of drug

2 related arrests and convictions to both city
3 employees and members of the public who regularly
4 interface with city agencies. The task force will
5 make accommodations to the city about ways in which
6 it can implement a harm reduction model for its
7 employees and its program and service delivery.

8 I look forward to a comprehensive discussion
9 today with the administration, advocates and members
10 of the public on this bill as well as the community
11 service program administered by OATH for certain
12 violations designated by the Criminal Justice Reform
13 Act enacted last session.

14 I also want to thank our Committee staff who do a
15 fantastic and marvelous job Daniel Collins, Emily
16 Forgione, Elizabeth Kronk, Sebastian Bacchi, as well
17 as the staff of the Committee on Justice Systems and
18 my own Legislature Director Claire McLeveighn for
19 making this hearing possible.

20 With that, I'll turn it back to my Co-Chair.

21 CHAIRPERSON LANCMAN: Alright, now, we'll hear
22 from our first panel from the administration. I
23 understand we have representatives from MOCJ and from
24 the Office of Administrative Trials and Hearings
25

2 OATH. Is there also a representative from the
3 Department of Health and Mental Hygiene?

4 Alright, ma'am, is she going to be testifying or
5 - what's that? Q&A. Alright, would you like to sit
6 up at the table? If you're going to be doing Q&A at
7 some point, we need to swear you in anyway. Plus,
8 the view is much better from here.

9 So, let's get you sworn in and we'll get started.
10 Can you raise your right hand? Do you swear or
11 affirm the testimony you are about to give is the
12 truth, the whole truth and nothing but the truth?
13 Good, thank you.

14 As between MOCJ and OATH, I don't know if you
15 have a preference who goes first?

16 DAVID GOLDIN: Am I on? Okay, good morning
17 Chairman Lancman, Chairman Cabrera and members of the
18 Committee on Justice Systems and Committee on
19 Governmental Operations. My name is David Goldin; I
20 am the Administrative Justice Coordinator in the
21 Mayor's Office of Criminal Justice. I will be giving
22 the testimony and then I have with me, to answer
23 questions John Burns the First Deputy Commissioner
24 and Supervising Administrative Law Judge at OATH. I
25 am also joined for purposes of answering questions

2 with respect to the second Intro. to be discussed
3 today from the Department of Health Dr. Denise Paone
4 and from MOCJ, Chelsey Davis the Director of Health
5 Initiatives.

6 As you know, MOCJ advises the Mayor on public
7 safety strategy and together with partners inside and
8 outside government develops and implements policies
9 that promote safety and fairness and reduce
10 unnecessary incarceration. As Administrative Justice
11 Coordinator, I work with the City's Administrative
12 tribunals on matters of shared concern across
13 agencies and on the use of civil adjudication in
14 enforcement of that city's health and safety
15 regulations.

16 In recent years, the Council has taken critical
17 steps to promote equity and fairness in the city's
18 enforcement of those regulations. In particular, in
19 May 2016, the Council passed the Criminal Justice
20 Reform Act which substituted civil tickets returnable
21 to the City's Office of Administrative Trials and
22 Hearings for certain low level offenses that were
23 previously issued criminal summonses. These offenses
24 include violations of open container, littering and
25 unreasonable noise laws. With the passage and

2 implementation of the CJRA, criminal summonses for
3 these offenses have been reduced by more than 90
4 percent.

5 Failure to appear at criminal court results in an
6 arrest warrant. Researchers at the data
7 collaborative for justice have estimated that the
8 CJRA has likely resulted in 63,000 fewer criminal
9 warrants in its first 18 months in effect.

10 For offenses adjudicated at both under the CJRA
11 respondents at the auction of participating in an
12 educational module instead of paying the fine. To
13 date, more than one in three individuals found in
14 violation have chosen to complete the community
15 service educational module.

16 The CJRA reflects principles of fostering
17 fairness and economic justice and enforcement, which
18 MOCJ shares with the Council. Advancing those same
19 principles, the city lightened the touch of law
20 enforcement in other ways. Resulting in a 79 percent
21 decrease in criminal summons for year end 2018 since
22 the beginning of the administration.

23 As reported by state law, people issued a
24 criminal summons and found guilty of even a violation
25 must pay a mandatory surcharge of \$120. Taking steps

2 to reduce the likelihood that an individual comes
3 into contact with the Criminal Justice System means
4 reducing the changes they will have to pay a costly
5 and often unaffordable court fee.

6 We continue to work with stakeholders both within
7 and outside city government to examine the ways our
8 criminal justice system subjects individuals to
9 financial penalties and in particular, how those
10 penalties impact individuals who can least afford
11 them.

12 We work with law enforcement prosecutors and the
13 courts to create prearrest diversion opportunities
14 for individuals facing economic and mental health
15 challenges, so they can avoid the criminal justice
16 system all together. We are also examining
17 opportunities to expand the use of community service.
18 We believe that in certain cases, community service
19 in the form of educational engagement is a more
20 appropriate penalty than a fine. For example, where
21 the underlying offense is minor and does not cause
22 harm to another person, both the individual and the
23 city benefit from initiatives that seek to educate
24 and correct behavior rather penalize.

2 Against that background, MOCJ offers these
3 comments on the Intro. at issue today. In keeping
4 with our overall approach and research interests, we
5 are familiar with the use of day fine models and the
6 criminal law context, both abroad and as part of
7 pilots in the United States. Day fine models start
8 from a sound premise. Acknowledgement that a \$100
9 fine impacts a person making minimum wage differently
10 than a person earning a six figure salary. We
11 believe this is an important issue to examine, but we
12 want to highlight four critical issues that need to
13 be addressed in developing the pilot proposed in the
14 interim.

15 First, we note that the penalties now imposed for
16 violations of the city's health and safety codes are
17 constrained by statutes enacted by the Council and
18 are specifically set forth in penalty schedules
19 adopted by the various enforcement agencies. Those
20 schedules were adopted to maintain uniformity in
21 adjudication outcomes and prevent disparate results
22 in cases involving similarly situated individuals and
23 facts.

24 For most of the relevant statutes, significant
25 changes in the penalties to be imposed for violations

2 would require specific legislation. Then amending
3 those penalty schedules to take into account
4 legitimate considerations of equity and fairness
5 would require agency rule making as mandated by the
6 City Charter.

7 We believe the Council should involve the city's
8 enforcement agencies in designing a pilot program to
9 address these issues. The enforcement agencies, not
10 OATH are most familiar with the relationship between
11 where and how many tickets they issue. What
12 penalties they impose and why and how to craft an
13 enforcement approach best calculated to maintain
14 health and safety without economic unfairness and
15 overall inequity.

16 Likewise, the agencies can and should help inform
17 enforcement strategies that reduce disproportionate
18 financial penalties by increasing reliance on for
19 example, agency issued warnings or demonstrations of
20 compliance by respondents.

21 Moreover, a successful adjustment of the penalty
22 schedules could promote equity and fairness, should
23 also protect a respondents ability to resolve an
24 outstanding summons directly with the agency that
25

2 issued it, without requiring the unnecessary
3 involvement of both.

4 Second, many specific features of the traditional
5 day fine model reflect its development and use in a
6 criminal, rather than civil enforcement context. In
7 addition, we believe that that model may in some
8 respects be too procedurally complex and time
9 consuming, to implement without significant
10 modifications when it comes to tickets returnable to
11 OATH.

12 Instead of importing the traditional day fine
13 model, we suggest the Council may want to consider
14 developing a different approach, that more
15 efficiently takes into consideration the respondents
16 financial situation.

17 For example, consideration could be given to
18 setting penalty schedules with three or four tiers
19 corresponding to income levels and/or a fee waiver
20 for individuals who are indigent.

21 Consideration could also be given to expanding
22 the use of community service to other offenses
23 adjudicated at OATH or at New York City's summons
24 courts.

2 Third, we note that if the Council determines
3 that a not for profit organization should play a role
4 in designing the pilot program, budget and
5 procurement issues would need to be addressed
6 requiring time to implement.

7 Whether the work of evaluating the pilot is done
8 by such an organization or otherwise by the city, we
9 agree that it could yield needed data and research on
10 the use of ability to pay models in courts. Although
11 much has been written about the need for evaluating
12 an individuals ability to pay when setting a penalty,
13 much of the field research is outdated or anecdotal.

14 Data on the cost of implementation and the impact
15 on collection rates and amounts collected, for
16 example, could help determine what the appropriate
17 use of standardized ability to pay calculations
18 should be in other contexts.

19 Fourth and finally, we understand the Intro. is
20 not intended to include offenses that were moved to
21 OATH as part of the CJRA. We think that intent
22 should be made explicit by incorporating language
23 clarifying that CJRA offences would not be included
24 in the pilot.

2 As mentioned earlier, individuals found in
3 violation of those offenses can avoid paying the fine
4 all together by selecting the community service
5 option. The availability of this option mitigates
6 concerns about economic inequality.

7 The administration is committed to promoting
8 equity and fairness in criminal and civil enforcement
9 of the city's laws and will carefully study this
10 issue with a thoughtful manner with the appropriate
11 enforcement agencies. We look forward to working
12 with the Council toward this end in amendments to the
13 proposed Intro.

14 Turning towards the second pre-considered Intro.
15 mandating a citywide audit of collateral
16 consequences, the city is committed to ensuring
17 equity and fairness and recognizes the barriers,
18 collateral consequences imposed.

19 This core value was routed in the work of the
20 Mayor's task force on cannabis legalization and our
21 support for the expungement of criminal records for
22 past cannabis offenses. We thank the state for
23 championing expungement for cannabis offenses this
24 past session.

2 Regarding the legislation being heard today, we
3 support the proposed expansion of municipal drug
4 strategy Council to examine the impact of collateral
5 consequences as it relates to controlled substances.

6 However, there are a number of legal and
7 operational questions posed by this bill that we need
8 to investigate further with the City Council. For
9 example, given public safety consideration implicated
10 for various employees as well as additional legal
11 obligations and oversight by federal and state
12 entities, we recommend defining collateral
13 consequence to exclude adverse agencies, adverse
14 actions, agencies are required by law to impose and
15 for which there is no discretion.

16 Similarly, we should ensure that any reporting
17 requirements exclude private health information
18 obtained in a clinical or treatment context.

19 Thank you for the opportunity to testify here
20 today. I would be happy to answer any questions.

21 CHAIRPERSON LANCMAN: Are we hearing from OATH or
22 no?

23 UNIDENTIFIED: No, I'm here for a Q&A.

24 CHAIRPERSON LANCMAN: Okay, good, let me note,
25 we've been joined by Council Member Farah Louis from

2 Brooklyn and Council Member Deborah Rose from Staten
3 Island.

4 So, let me get the questioning started. My
5 understating is your first objection that you lay out
6 is that we note the penalties now imposed for
7 violations of the city's health and safety codes are
8 constrained by statutes enacted by the Council.

9 And then you go on, it sounds like you're
10 concerned that in the Administrative Code, the
11 Council has established certain refined levels and
12 that this pilot upends that.

13 Since the Council is the body that is
14 establishing the fines, what is your concern or
15 problem with the Council saying, we're going to do a
16 pilot where these fines that we set are going to be
17 different and they're going to be potentially met
18 through a day fine model? What's wrong with the
19 Council changing what the Council's determined the
20 fine should be?

21 DAVID GOLDIN: Well, we're trying to point out
22 that there are some complexities built into this
23 process. That we would be talking about the need for
24 additional legislation which would identify the
25 specific Code provisions that would be affected.

2 That's what was done in CJRA; and then in addition,
3 there would be a need for rule making under CAPA and
4 those would be preconditions not to implementing an
5 entire reform package as was done under CJRA but to
6 conducting a pilot program. Which means that as we
7 gather data and made adjustments through the pilot
8 program, we might have to repeat the process in order
9 to adjust and incorporate new violations and
10 different penalty schedules in light of what we
11 learned.

12 CHAIRPERSON LANCMAN: I don't know, it seems that
13 the bill was designed to give the administration the
14 maximum flexibility in implementing the pilot
15 program. What you're suggesting, you know, it seems
16 rigid and it would ultimately limit the flexibility
17 of OATH and the Administration to kind of craft the
18 pilot in a way that you thought made sense. I mean,
19 as a Council Member, I probably have no problem with
20 the idea that we should just lay out for you exactly
21 what you should do and how you should do it.

22 In terms of elsewhere in this first objection,
23 the advise or the suggestion that these particular
24 offenses and the relative fines should be determined
25 in consultation with the agencies that are

2 responsible for writing those summonses or overseeing
3 that area of jurisdiction.

4 I mean, these are the admin agencies, I mean,
5 the OATH and MOCJ and the Admin would be just as
6 capable as communicating with the Fire Department and
7 DEP and whoever else as the Council no?

8 DAVID GOLDIN: Well, I think that we can
9 communicate with those agencies but I think that we
10 want to bring the agencies into a collaboration with
11 this committee and with the Council, these committees
12 and with the Council in order to be able to work
13 collaboratively.

14 CHAIRPERSON LANCMAN: So, how does the structure
15 of the pilot preclude that though? That's what I
16 don't understand.

17 DAVID GOLDIN: But what I'm saying is, that I
18 think when we look at a pilot program, we need to
19 make sure we both got the same basic orientation that
20 we want to enhance economic fairness. We want to try
21 and promote equity. We have a wide range of
22 violations, a wide range of enforcement schemes.
23 Those schemes are also concerned about maintaining
24 public health and safety. Individual agencies that
25 are involved in enforcement are in the best position

2 to determine what impact on public health and safety
3 is going to arise if we make changes.

4 We need that input; we need their input in order
5 to be able to be able to identify who is being
6 affected by the violations that are being issued
7 today? They are the ones who actually have
8 inspectors issuing officers in the field who have
9 data and experience with whose being impacted by
10 their penalties. And we're not necessarily talking
11 as we were in the CJRA context about an individual on
12 the street who is getting a ticket from a police
13 officer. We may be talking in the cases of some of
14 these violations about economic fairness and equity
15 issues but we're talking about somebody who is a
16 homeowner or a property owner or small business
17 owner. That gets into a more complicated analysis of
18 who is being effected and we need that input from the
19 agencies in order to inform what we design.

20 CHAIRPERSON LANCMAN: My understanding and I hope
21 I'm not being obtuse, why can't you MOCJ, OATH,
22 whoever else in the administration talk to the
23 Department of Sanitation or DEP or Fire Department
24 whomever is the issuing agency or the responsible
25 agency for the summonses, the categories of offenses

2 that you're being empowered to select. Like, what
3 about the way this pilot project is structured that
4 would prevent you from engaging in dialogue? I think
5 it's fully expected that you would engage in that
6 dialogue and consultation with those agencies. I
7 don't see how the bill is written precludes that.

8 DAVID GOLDIN: We can, we will, that's ongoing
9 now and we will be in any event consulting further
10 with Council as those conversations develop. We just
11 wanted to point out in this paragraph that the
12 process of translating that into a pilot program, we
13 believe is more complex than simply directing that a
14 pilot program be established. There is going to be a
15 need for specific legislation and for rule making
16 that will be part of that process. We would envision
17 that being obviously consultative since the
18 legislation would have it here.

19 We would be coming back to the Council to
20 establish that where we are going with this is
21 consistent with the Council's expectations that we
22 all understand what we're doing here. We're just
23 pointing out that there are those complexities and
24 one of the reasons why we think that it merits
25 considering other options and why we would want to

2 flag that because those might be things that we would
3 be considering presenting as part of this pilot or
4 developing simultaneously. Is because given that,
5 this might be a good time to broaden our vision of
6 economic fairness here and talk about other options
7 that would also contribute, like a tiered system,
8 like an expansion of community service, like more
9 reliance on using warnings rather than financial
10 penalties to try to affect peoples behavior.

11 CHAIRPERSON LANCMAN: So, those are all good
12 points but let's move onto the second category of
13 objection or concern. Many specific features of the
14 traditional day fine model reflect its development
15 and use in a criminal, rather than civil enforcement
16 context. And then you say in addition, we believe
17 that that model may in some respects be too
18 procedurally complex and time consuming. What is it
19 about the fact that the traditional day fine model
20 was developed in the criminal justice context and
21 we're now looking to do a pilot in the civil justice
22 context. Why is that a distinction that matters?

23 DAVID GOLDIN: For a couple of reasons. First,
24 we just wanted to flag the fact that the impetus
25 towards day fines when that concept was first

2 originated in Scandinavia and then expanded to
3 Western Europe and it was trialed in the United
4 States 20-30 years ago, was an alternative to
5 incarceration. The important point that people took
6 away from it was that you could say to people, rather
7 than having to go to jail because you can't afford to
8 pay, we can adjust the fine.

9 With the CJRA, we have an approach in which we
10 have taken many of the -

11 CHAIRPERSON LANCMAN: Sorry, meaning in those
12 systems, a person might face either incarceration or
13 a fine but a fixed fine and if they couldn't afford
14 the fine, well, than for practical purposes, they
15 could only be incarcerated.

16 DAVID GOLDIN: Yeah, and the idea behind calling
17 it a day fine goes back to the idea that that's a day
18 that you could be spending in jail or that you could
19 be paying for. Their references to it is a ransom
20 system, in which you're essentially paying you know -

21 So, we think that with something like CJRA,
22 taking offenses out of the category of those that you
23 could be incarcerated for and out of the category
24 that you pay for and saying you can perform community
25 service and avoid either incarceration or the

2 financial impact. We have a process that addresses
3 the same issue, the same underlying issue, avoiding
4 incarceration without the concern about financial
5 impact for those who are unable to pay all together.
6 But let me put that aside, I just wanted to mention
7 that by way of introduction.

8 CHAIRPERSON LANCMAN: Listen, we're very proud of
9 the CJRA and the less reliance on incarceration.
10 Just before you move on, make the observation that
11 CJRA didn't solve all of the ills and inequities of
12 the justice system and I remember at the time having
13 been very involved. There was a lot of discussion
14 about okay, we're going to be imposing fines on
15 people. This very topic; for some people, these are
16 still high fines, so now we're moving onto that,
17 trying to deal with that.

18 DAVID GOLDIN: So, no, I think we're absolutely
19 on the same page with that, but so, moving on to the
20 issue about procedural complexity. A couple of
21 things.

22 First of all, a criminal court proceeding is in a
23 sense fundamentally course. That is, if you don't
24 show up, you are subject to a bench warrant. If you
25 are in that process ultimately, you have to provide

2 certain information. I don't want to overdo the
3 course of aspect of it, but you are compelled to
4 provide information which is used as part of the
5 ultimately sentencing process. What we have here in
6 the city is for the criminal justice agency.

7 So, the idea that is part of that process, you
8 provide income data is not fundamentally different
9 from the way the process works already.

10 In the administrative enforcement area, hearings
11 at OATH and other administrative agencies, they have
12 a very different process. It's not coercive, it is
13 not forcing people under the threat of the issue and
14 civil warrant to appear. It's true that if there is
15 a default, we have the ability to docket that as a
16 civil judgement but that is the extent to which the
17 system is compulsory.

18 We are not extracting from people the kind of
19 information that you would need in order to establish
20 income, that would be a significant change. Right
21 now, the process is one which is and we have worked
22 hard on maintaining and enhancing this over the
23 years. Streamlined, it is amenable to people's
24 participation remotely. We are very sensitive to the
25 fact that when you come into a hearing at OATH or any

2 other agency, there are costs that are already
3 incurring in terms of the time that you're taking off
4 from work, the interruption of education, childcare
5 arrangements, transportation costs. We want to
6 minimize that.

7 So, any step such as requiring people to provide
8 information about income, creating more steps in the
9 process in order to add to what's going adjudication,
10 any step which works against maintaining the
11 efficiency of that process. It's I'll say customer
12 friendliness, obviously we're not literally talking
13 about customers but its friendliness for respondents.
14 Anything which cuts against that is something that
15 gives us pause and that's why we're suggesting again
16 that some of these other options including having
17 simple tiers, including using warnings, expanding
18 community service and the like, maybe worthy of
19 giving some consideration.

20 CHAIRPERSON LANCMAN: So, right, so, I think you
21 acknowledged or at least it's implicit in what you
22 said, that there is corrosive element to a civil
23 ticket. If one does not show up, there are
24 consequences. It's reduced to a judgement; the
25

2 consequence is not as dramatic as a warrant is issued
3 for your arrest and you could end up going to jail.

4 So, it's just a matter of degree. Let me ask you
5 about the gathering of the information. I could
6 imagine in my mind, where the gathering of the
7 financial information necessary to make a
8 determination about what someone should be able to
9 pay, five or ten questions at most, a formula you
10 fill out.

11 My understanding is this is not envisioned where
12 people have to show up with tax returns or pay stubs
13 or W2's or anything. It's self-reporting and the
14 administrative judges are bright, smart people and
15 capable of discerning whether someone is completely
16 misrepresenting themselves. How much time do you
17 think it would take to determine, how much
18 information do you think a judge would need to make a
19 determination about what this person can afford in
20 the construct of a day fine?

21 DAVID GOLDIN: Well, you know, this is something
22 that we're obviously in the first stages of thinking
23 about and I don't know that I can give you a very
24 highly developed answer to that. I think that if we
25 are talking about something which grows out of the

2 day fine concept, and again, I want to stress how
3 much we're all in agreement that adjusting the
4 financial impact of the penalty or alleviating it
5 altogether in light of somebody's financial
6 circumstances is absolutely something that we need to
7 look at, consistent with maintaining health and
8 safety.

9 You know, I think that how much we want to go the
10 day fine route of saying, this is the essence of the
11 day fine concept, precisely calibrated to somebodies
12 income. That's why we're talking about having a
13 multiplier and a formula versus a more general
14 category. You know, I think that we have to look at
15 how much more would that complicate the system.
16 Every time you collect data in a system, every time
17 you say to a judge, it's part of an adjudicative
18 process, there now needs to be a framework for
19 inputting that into how you determine the outcome of
20 the case and there needs to be a basis on which that
21 can be challenged by somebody who participates in the
22 system and reviewed on appeal, you introduce
23 complications into the process.

24 CHAIRPERSON LANCMAN: Alright, it doesn't seem
25 very burdensome. Again, if we're willing to allow

2 people to self-report five questions; what do you do
3 for a living? What's your pay? A little math, I
4 mean, it just doesn't seem like it's a lot and the
5 fact that OATH doesn't do that now, it's not because
6 you don't have a reason to do it, it's something
7 that's done in a much more fraught criminal justice
8 environment thousands of times a day.

9 I understand it's a new thing to do, but there's
10 nothing about the way that OATH is set up or its
11 structure that would preclude having a system, asking
12 those series of questions. Which again, we leave it
13 to OATH, we leave it to the administration to figure
14 out what are the questions that you need to ask.

15 DAVID GOLDIN: If I could just respond to that
16 for a moment, because I think this illustrates part
17 of the issue in the collaborative process, which I
18 really do want to stress we're eager to participate
19 in.

20 If we're talking about small businesses, and we
21 certainly think that there are small businesses that
22 face stresses from economic regulations and if we are
23 thinking about this issue generally, we would want to
24 consider. I think that the kind of approach that
25 you're discussing may require some modification as we

2 start talking about how we assess the income with the
3 financial viability of the business.

4 You know, maybe we want to say that's too
5 complicated and it's a great idea but we can't do it.
6 Maybe we want to say, we need to think more
7 creatively about how we could incorporate that into
8 the model, but you know, I'm just saying, I think
9 those are the kinds of issues that we need to explore
10 further and that we think can be flushed out in
11 amendments to this Intro.

12 CHAIRPERSON LANCMAN: Now, the idea of doing
13 tiers, I assume you're talking about for a particular
14 offense, instead of there being a fixed fine, maybe
15 that fine is fixed at a higher amount based on
16 previous findings of guilt you would have or tiers
17 based on a persons ability to pay. The fine might be
18 \$10, \$25, \$50, \$100. I'm not the sponsor of the bill
19 so I'm not here to negotiate it in that way but I get
20 that and I could see where that would make sense and
21 potentially ease some administrative challenge of
22 trying to finally and perfectly calibrate that you
23 know, that this person can pay \$28 a day as opposed
24 to just lumping them into a tier. But wouldn't it
25 still be necessary to collect the financial data from

2 that person to figure out which tier their in? Like,
3 either way, your suggested way or the bills language,
4 you got to figure out what the person can afford.

5 DAVID GOLDIN: Yeah, you need to collect
6 something but you might just collect the information
7 that somebody is eligible, represents that their
8 eligible for certain benefits.

9 CHAIRPERSON LANCMAN: Okay, alright, I've got
10 some more questions but I know my Co-Chair does and
11 I'm sure other members do as well. I want to mention
12 we've been joined by Council Member Ydanis Rodriguez
13 from Manhattan and Council Member Bill Perkins from
14 Manhattan. Mr. Cabrera.

15 CO-CHAIRPERSON CABRERA: Thank you so much and
16 welcome and thank you for all the good work that you
17 do.

18 According to recent figures from open data
19 between October 2018 and 2019, the most frequent
20 cited violations stem from the Department of
21 Sanitation. There were 59,398 charges for failure to
22 clean 18 inches from the street and the average fine
23 was \$148.66. There were 52,277 charges for having a
24 dirty sidewalk, with an average fine of \$162.19.

2 Can you please let us know why are these the most
3 cited offenses out of the tens of thousands that get
4 heard at OATH?

5 DAVID GOLDIN: I'm not sure how to answer why a
6 particular offense is more commonly written other
7 than to say that it's one that is frequently observed
8 as an impact on the community, is part of an
9 enforcement approach that relies on the individual
10 property owner. Which may be a business owner, which
11 may be a homeowner to be responsible for an area that
12 is also used by others.

13 And that again, I think is important to
14 maintaining the overall cleanliness and safety of the
15 city. Obviously, it's an area that we can look at in
16 terms of the kind of economic fairness issues that
17 we're raising here, but in terms of why that
18 violation is more commonly written than others, I
19 would think those would be the factors.

20 CO-CHAIRPERSON CABRERA: Have you done an
21 internal study as to where most of these tickets are
22 being given? Or are we talking about communities of
23 people of color? Are we talking about communities
24 where people are wealthy? Where are these tickets

2 given and have you done an internal assessment? If
3 you haven't, why not?

4 DAVID GOLDIN: We do have those data; I don't
5 have them here today. We can supply them to you.

6 CO-CHAIRPERSON CABRERA: So, from what I hear,
7 they aren't communities of people of color. My
8 sources are telling me, I mean it's glaring. Would
9 love for us to have a discussion regarding that
10 because it would be kind of odd that it would seem
11 that the bill curve will be more in community of
12 people's of color or there's targeting is taking
13 place which is my inclination and based on what I do
14 know. And that will be rather disturbing and we
15 would need to tackle that right away because it would
16 be baffling to me to understand why there would be
17 any other answer other than that one.

18 And so, can we get that information and also, not
19 just from the Department of Sanitation, from all of
20 the other agencies as well? And this request is not
21 one that I'm asking and then we'll forget about it
22 because I really want to pursue this and entertaining
23 a hearing regarding this, because that seems to be
24 disturbing.

2 In light of everything we're talking about here
3 today, I know that carrying issue that we're dealing
4 with here. Anything you want to address regarding
5 what I just said.

6 DAVID GOLDIN: I mean, we can look into the data
7 and we can certainly let you know what we have.

8 CO-CHAIRPERSON CABRERA: Okay, great, by when do
9 you think that we could get a hold of that?

10 DAVID GOLDIN: I'm sorry.

11 CO-CHAIRPERSON CABRERA: By when do you think
12 that we could get a hold of that?

13 DAVID GOLDIN: I don't know. I mean, we can
14 update you and your staff as we look into this and
15 get back to you.

16 CO-CHAIRPERSON CABRERA: Okay, thank you. I just
17 want to be clear, because this day fine and maybe
18 I'll ask the advocates as well. We're not talking
19 about - we're talking about looking into the
20 potential of reduction in the fines based on
21 someone's income, but we're not talking about
22 increasing fines for those who can't afford to
23 compensate for those who are you know, at an economic
24 disadvantage position. Is that correct?

2 DAVID GOLDIN: That's my understanding.

3 Obviously, we haven't talked about this so far this
4 morning in the traditional day fine programs that is
5 in aspect.

6 CO-CHAIRPERSON CABRERA: It is an aspect.

7 DAVID GOLDIN: To increase the upper levels.

8 CO-CHAIRPERSON CABRERA: You know, I personally
9 have a problem with that approach and I'm going to
10 tell you why. If right now, it seems reasonable and
11 logical and we feel that justice is when you commit
12 this infraction, you should pay this. I mean, that's
13 really - it goes all the way down to the
14 constitution. It almost seems like you're paying for
15 what you're paying and then paying for somebody
16 else's.

17 The second piece is that from the outside and I
18 think it's a good way to look at it. You know, these
19 fines were never intended originally and should never
20 be the intentions to fill [INAUDIBLE 1:05:07] here.
21 And so, I'm just curious as to why would anybody want
22 to increase? It's almost like a penalty if you're
23 doing well. If the reality is, this is what I did,
24 this is what I should pay. It's almost like you're
25 paying for somebody else's as well, or the intention

2 is that we're trying to raise more funds and that
3 should not be really big in gain. Does that make any
4 sense?

5 DAVID GOLDIN: Yeah, I honestly believe as we
6 have discussed the Intro. on the table today that
7 although we are referring today fine programs, we're
8 really only referring to the half of the day fine
9 model that involves reducing penalties or removing
10 them entirely for people who are unable to pay the
11 basic penalty. We're not talking about the other
12 half of the model that expands penalties for people
13 with higher incomes.

14 CO-CHAIRPERSON CABRERA: That's great because you
15 know, I want just want a point of clarification
16 there, because I know how things in government take
17 place. We'll start here and then government starts
18 looking for ways to fund other things or we go into
19 recession. I remember when we went to the recession,
20 I was here in the administration then starts taking
21 in everybody. We had over almost what was it, a
22 billion dollars' worth of tickets. It was
23 ridiculous. And that was the way they were trying to
24 balance the budget. I don't want us to go that way.
25 I do foresee eventually we'll enter into another

2 recession. Our debt here that we have is going to go
3 over a \$100 billion, service debt \$9 billion. It's
4 going to be harder this next time to be able to make
5 those payments and to run all the programs we want to
6 run and I just hope that it doesn't spiral. I
7 appreciate that.

8 My last question, because I know we have
9 colleagues that have questions. It's in reference,
10 does OATH recommend or offer payment plans for paying
11 fines, and if so, how often do people enter into the
12 payment plans. And if so, are there limits on
13 payment plans? For example, minimum payment, a
14 maximum duration of the payment etc.?

15 JOHN BURNS: Well, it's part of OATH's mission is
16 adjudication. Once we've finished an adjudication,
17 it then goes to a period of time where the
18 respondent, whether it's a business or an individual
19 would have to make the payment and that is usually
20 always sent not to any - it goes to the central fund
21 and it stops and the Department of Finance takes care
22 of that. We don't enter into any sliding scale or
23 analysis of somebody or we don't have the ability to
24 mitigate a penalty over a period of time.

2 So, the penalty is imposed and it's based on the
3 schedule, the penalty schedule that the enforcement
4 agencies have sent forward for us to adjudicate.

5 CO-CHAIRPERSON CABRERA: Is that something that
6 you would like to have the power to determine in
7 OATH?

8 JOHN BURNS: As I'm sitting here, it's -

9 CO-CHAIRPERSON CABRERA: I want to give you more
10 power.

11 JOHN BURNS: A business policy, a policy decision
12 between the administration and the Council, we are
13 more than willing to accept whatever the law is,
14 adjudicate that law, as we've been doing for 40 years
15 in the city. We're a neutral, tribunal, whatever you
16 and the administration Chair want to agree on, we're
17 there, we'll do it. Just give me enough time and
18 money and we'll do it.

19 CO-CHAIRPERSON CABRERA: Okay, thank you so much.
20 I'll turn it back and thank you for your response.
21 I'll turn it back to my Co-Chair.

22 CHAIRPERSON LANCMAN: Sure, we've been joined by
23 Council Member Ben Kallos, Council Member Keith
24 Powers and Council Member Kalman Yeger.

2 Do any of the members have questions before I ask
3 some more? Council Member Yeger.

4 COUNCIL MEMBER YEGER: Good morning Mr. Chair and
5 Mr. Chair. How much did OATH pay their center for
6 court innovation to run the community service
7 component of the Criminal Justice Reform Act? It's
8 not a free service, right?

9 JOHN BURNS: We had a contract of demonstration
10 project with them and for the first 18 months, that
11 the Criminal Justice Reform Act was in effect, the
12 Center for Court Innovation ran that program.

13 Approximately 11 months ago, OATH took that
14 program internally and we now are staffing that
15 program and the Center for Court Innovation has left
16 that to us using the model that they worked on in the
17 first 18 months of the law.

18 As far as the actual figures, I'd have to get
19 back to you on that.

20 COUNCIL MEMBER YEGER: Okay, and how many people
21 use that service?

22 JOHN BURNS: Excuse me?

23 COUNCIL MEMBER YEGER: How many people use the
24 Center for Court Innovation services during that time
25 that they had a contract?

2 JOHN BURNS: Well, I can tell you right now, as
3 of the 31st of October 2019, we have just short of
4 1,600 members of the public respondent's that have
5 opted for community service.

6 COUNCIL MEMBER YEGER: Okay, so, when you find
7 out what that amount is and I divide it by 1,600
8 people, I will find out the cost per person of that
9 contract?

10 JOHN BURNS: That might not be as straight
11 forward as how many people per but we can give you a
12 number and we'll let you know.

13 COUNCIL MEMBER YEGER: Okay.

14 JOHN BURNS: The Center for Court Innovation, as
15 I've said, handed over the operation of this
16 internally to OATH, as of last January.

17 COUNCIL MEMBER YEGER: Voluntarily, Voluntarily
18 or you took it back from them?

19 JOHN BURNS: Well, they came in when we started
20 the Criminal Justice Reform Act in June of 2017 and
21 it was a three year demonstration project. As we -
22 collaborating with the Center for Court Innovation
23 realized that it might be beneficial to the city, to
24 OATH and everybody else and as far as money savings,
25 we could internally bring the program into OATH and

2 that's what we have been doing almost for the last 11
3 months. We're coming up to the one year anniversary
4 in January.

5 COUNCIL MEMBER YEGER: Okay, and as I understand
6 it, OATH, should this bill pass will be using
7 consultants again. They will not be doing it
8 internally, is that correct?

9 JOHN BURNS: It seems from looking at the bill,
10 there's a carve out for an organization, but again,
11 it's a policy issue. Whatever is determined between
12 the Council and the Administration as to how this
13 will operate -

14 COUNCIL MEMBER YEGER: You're the administration.

15 JOHN BURNS: I am the First Deputy Commissioner
16 and the Supervising Administrative Law Judge.

17 COUNCIL MEMBER YEGER: You're the first, you are
18 the number one guy because the Acting Commissioner is
19 not here, right. So, you're the first, you are the
20 administration.

21 JOHN BURNS: I'm with an independent, neutral
22 tribunal. Our position would be as implementing
23 whatever policy is determined by the Council and the
24 administration, we adjudicate on said policy.

2 COUNCIL MEMBER YEGER: Okay, and you'll let me
3 know what the Center for Court Innovation got, right?

4 JOHN BURNS: Sure.

5 COUNCIL MEMBER YEGER: The cash, okay, very good.
6 Thank you very much Mr. Chairman.

7 CHAIRPERSON LANCMAN: Let me ask about the bill
8 being introduced by Council Member Ampry-Samuel. As
9 you know, the Council is very concerned about the
10 issue of collateral consequences, particularly for
11 anybody in the criminal justice system but
12 particularly for people who are arrested or convicted
13 of drug related offenses. And the essence of her
14 legislation is that we do not know across the various
15 in sundry agencies of city government how a person's
16 arrest or conviction for a drug related offense will
17 collaterally impact their relationship and
18 interactions with that agency.

19 So, for example, a mother who is interacting with
20 ACS whether or not if she has a drug related arrest
21 or conviction is that going to be - in what ways is
22 that going to be held against her in whatever
23 services or investigation that ACS is conducting.

24 The bill requires an audit by agency designated
25 by the Mayor of all of the collateral consequences

2 through across all of the city agencies for
3 individuals arrested or convicted of drug offense and
4 then it directs I guess it's the Mayor's Office of
5 Drug Policy to based on that audit, propose
6 recommendations to the administration for how these
7 agencies can do things differently and better.

8 Let's start with - does the administration have a
9 position on this legislation?

10 UNIDENTIFIED: Hi, we share -

11 CHAIRPERSON LANCMAN: Oh, sorry, please introduce
12 yourself.

13 CHELSEY DAVIS: Hi, I'm Chelsey Davis; the
14 Director of Health Initiatives at the Mayor's Office
15 of Criminal Justice.

16 CHAIRPERSON LANCMAN: Good morning.

17 CHELSEY DAVIS: And at MOCJ and in the
18 administration we certainly share the recognition of
19 the impacts of collateral consequences and the
20 concern about ensuring equity and fairness in our
21 policy implementation. And so, we believe that this
22 analysis of city imposed collateral consequences
23 related to substance use and related to drug
24 convictions would be a productive analysis to help
25 ensure that we are aligning citywide policy to ensure

2 those core values of fairness and equity and we
3 believe that given further discussions to work out
4 some of the legal and operational questions that we
5 have, that adding this analysis to the work of the
6 municipal drug strategy council that's run by DOHMH
7 would be a productive way to conduct that analysis.

8 CHAIRPERSON LANCMAN: Are there any legal or
9 operational questions that you have that you can tell
10 us today?

11 CHELSEY DAVIS: Sure, so I believe the two that
12 were outlined in the testimony are some of the major
13 ones. We'd like to work out the definition of
14 collateral consequences and ensure that we're
15 focusing on city imposed, city policy on collateral
16 consequences. And we also want to make sure that we
17 aren't publishing any private health information that
18 was obtained in the clinical setting.

19 CHAIRPERSON LANCMAN: I'm pretty sure that the
20 Council would want you to audit, become aware of and
21 to report upon any collateral consequences that are
22 mandated by state law or federal law, just so we know
23 them and could give consideration to how we as a city
24 can or should deal with those impositions.

2 Is there anything anyone else wants to add on
3 that?

4 Okay, lastly, from me on the bill, has DOHMH
5 given any through to what should policies that are
6 routed in harm reduction for agencies look like?

7 DENISE PAONE: That is like you know, the
8 foundation of the work we do. I don't have anything
9 like very specific to say, other than one of the
10 concerns for the Health Department, particularly in
11 the context of the opioid overdose epidemic is that
12 we know think about the standard of care for treating
13 an opioid use disorder, methadone and buprenorphine
14 and that those don't get swept up into you know, a
15 drug testing and any kind of collateral consequences
16 that are associated with that. Which obviously is a
17 harm reduction strategy and is also protecting
18 against overdose deaths and retention and treatment.

19 CHAIRPERSON LANCMAN: And then just lastly, you
20 know, the Council had asked the Admin, I think it was
21 in 2018 in response to the last municipal drug
22 strategy council report to do such an audit and I
23 feel like I would be remiss - we want to move
24 forward, we want your support for this bill and we
25 want this to happen, but I do feel like I would be

2 remiss if I didn't say that we asked you to do this
3 essentially over a year ago. To do this audit - I
4 don't want to make you or anyone here feel bad but
5 it's a really important issue and it's a little
6 surprising and disappointing to us that the city, the
7 administration doesn't already know the answer to
8 that question and what are the collateral consequence
9 for people who have been arrested or convicted of
10 drug offenses and the agencies that the city runs.

11 And so, in our dialogue to get to a point where
12 hopefully the admin will support this bill. I want
13 to impress upon you the need to have a sense of
14 urgency. A lot of the work that the city does, as
15 you well know, reaches deeply into people's lives and
16 we want to make sure that we're not adversely
17 affecting people beyond what justice and fairness
18 requires.

19 Was there a reason why our request that this be
20 done in 2018 wasn't done. There is some operational
21 legal reason that it requires us to pass a bill to
22 make this happen.

23 CHELSEY DAVIS: I'm not sure if you have anything
24 to add; I'm not aware of that request. I'm happy to
25 look into it and find out what happened but we share

2 the belief that this is incredibly important and I
3 think really look forward to finalizing the bill and
4 having the Municipal Drug Strategy Council work
5 toward this analysis.

6 CHAIRPERSON LANCMAN: Well, I appreciate that
7 very much and I'm sure the sponsor of the bill
8 appreciates that very much.

9 Any other questions? Yes, Council Member Rose.

10 COUNCIL MEMBER ROSE: Thank you. In 1987, the
11 first day fine pilot project was launched in Staten
12 Island by the Vera Institute of Justice in
13 partnership with the National Institute of Justice.
14 However, these pilot programs were short lived, as
15 day fines never really gained popularity. Part of it
16 was due in part to, you know, sort of the tough on
17 crime policies and rhetoric during that period.

18 So, this won't be the first go around for the day
19 fine pilot. So, what do you expect to see
20 differently or what outcomes do you hope to achieve
21 that you know, didn't manifest themselves the first
22 go around?

23 DAVID GOLDIN: Well, thank you Member Rose. I
24 think that illustrates part of what we've been
25 talking about today, that was a program that was

2 focused on criminal violations and grew out of a
3 concern with over incarceration with over reliance on
4 incarceration as a means of enforcement in the
5 context often of lower level offenses.

6 One of the things that's changed since that trial
7 was conducted in around 1990, is that as reflected in
8 the testimony and as we've been discussing, the
9 Council has enacted and we've implemented the CJRA
10 and the affect of that has been to take many of those
11 offenses, move them out of the criminal court context
12 all together. Move them into a setting in which
13 there is no longer any option for incarceration and
14 there is in fact an option for respondents; they no
15 longer come with the defendants to fulfill their
16 obligation in the event that they're found in
17 violation through community service in the form of an
18 educational module.

19 So, that aspect of what was at issue back when
20 the experiment was conducted in Staten Island has
21 changed. Another issue that we are talking about
22 today is how we would adapt that model to the
23 administrative context. I know when looking over the
24 material that's been published about what was done in
25 Staten Island, some of the issues that I was just

2 discussing and Chair Lancman raised, and that we were
3 just discussing about how you obtain income
4 information. The circumstance under which judges are
5 then able to use that, do reflect the fact that it's
6 a criminal context.

7 COUNCIL MEMBER ROSE: But wouldn't another
8 potential of the advantage of the day fines model be
9 to generate a higher revenue?

10 DAVID GOLDIN: Well, a couple of things about
11 that. I mean, first of all, I think as we were
12 discussing before, Chair Cabrera raised this issue.
13 I don't think that we are looking at that aspect of
14 day fine programs. At least as we've been discussing
15 it in the context of a pilot, as something that we
16 would be looking at, raising penalties for people who
17 have higher income. There are a few reasons why that
18 would be true.

19 For all the procedural and operational
20 complexities that we were talking about earlier, I
21 think that those would be quadrupled if we started
22 talking about having a pilot program that temporarily
23 imposed higher penalties on people. If we talked
24 about how we would handle defaults under those
25 circumstances, how we would give people notice. How

2 we would justify having temporary penalties in only
3 certain parts of the city, that were higher than for
4 similarly situated people elsewhere in the city.

5 But the larger issue that I would want to mention
6 in connection with that is, looking over some of the
7 policy arguments that were made in this country in
8 favor of day fine programs, in the 1980's and 1990's,
9 you do see references to these programs as ways of
10 generating revenue.

11 And as Chair Cabrera was mentioning, I think we
12 know now if people didn't know then that you want to
13 be very careful before you start looking at a
14 criminal enforcement or an administrative enforcement
15 fine generating program as a way of filling city -

16 COUNCIL MEMBER ROSE: Revenue generation and if
17 you do, how is this revenue going to be allocated?
18 Would it be allocated in terms of maybe creating you
19 know, more pre-arraignment facilities for youth since
20 we've changed the age?

21 DAVID GOLDIN: There are obviously good things
22 that revenue that -

23 COUNCIL MEMBER ROSE: What is the thought in
24 where this increased revenue would go?
25

2 DAVID GOLDIN: I agree with you, there are good
3 things that government can do with increased revenue
4 that flows into its coffers. We would just say that
5 we should be cautious about relying on enforcement
6 mechanisms to enhance that revenue because as you
7 substitute enforcement generated revenue for tax levy
8 dollars or other sources, that can become addicting
9 for government. And that's something that we've seen
10 some the negative consequences.

11 COUNCIL MEMBER ROSE: But it might be counter
12 intuitive to the purpose of the day program.

13 DAVID GOLDIN: I'm sorry?

14 COUNCIL MEMBER ROSE: It might be counter
15 intuitive to -

16 DAVID GOLDIN: Well, I just think that that's
17 something that we would want to be very cautious
18 about saying is an aspect of the day fine program
19 that would cause us to adopt it. I think there are
20 other policy arguments in favor of day fine programs
21 that have had more appeal. I think that that one has
22 certainly been raised, but I think it's one that
23 comes with some cautionary signs.

24 COUNCIL MEMBER ROSE: I'm just concerned about if
25 we are going to generate revenue, off the backs of

2 these folks, that it would then be used to improve
3 the criminal justice system. Such as, one of my
4 concerns were that there were no pre-arraignment you
5 know, facilities for youth who find themselves you
6 know, in a part of the increase the age.

7 DAVID GOLDIN: Thank you.

8 COUNCIL MEMBER ROSE: Thank you.

9 CHAIRPERSON LANCMAN: That's all we have. Thank
10 you very much for your testimony and we very much
11 look forward to working with you. Except for this
12 one last question.

13 CO-CHAIRPERSON CABRERA: One last question.

14 CHAIRPERSON LANCMAN: Council Member Columbo
15 here.

16 CO-CHAIRPERSON CABRERA: Yeah, there you go.
17 According to MOCJ, that's a good one, I've never been
18 called that before.

19 September 2018 report on summons - report of the
20 2,000 people found in violation after a hearing, only
21 720 chose to complete the E-learning community
22 service module and the rest chose to pay a fine.

23 Does that mean that most people can't afford the
24 fine or is there something about the community
25

2 service that is stopping people from being able to
3 use it?

4 DAVID GOLDIN: We've looked at the level of
5 satisfaction or the response that people have from
6 the community service module and it's generally been
7 very high. As we mentioned in the testimony, one in
8 three people who are found in violation at a hearing
9 do chose it. Almost everybody who chooses it
10 completes it. The feedback is that people are
11 satisfied with it. We are talking about low fine
12 amounts and we're talking about making the community
13 service option available to everybody regardless of
14 income.

15 So, it's understandable that there are going to
16 be a significant number of people who are going to be
17 offered the option and who are going to decline it.

18 CO-CHAIRPERSON CABRERA: Is it a work schedule
19 issue? I mean, when does this take place?

20 DAVID GOLDIN: I don't think it's a work
21 schedule. Understand how this works, basically,
22 somebody come in, they have a hearing, they're found
23 in violation. At that point, they're offered
24 community services in option of leu of paying a
25 penalty. It's available right then and there.

2 JOHN BURNS: If I may Chair Cabrera, one of the
3 technological limitations when we launched this
4 because we had to weigh the cost of doing it remotely
5 of community service. There was a large number given
6 to us. Technology catches up with us, so we're in
7 the midst of very shortly being able to launch a
8 community service option instead of payment if you
9 are going to admit.

10 And you will be able to do that remotely and that
11 will hopefully be online as with a lot of the
12 technological issues that we're working out the bugs
13 on it within the next 90 days, I'm hoping. So, that
14 if you're in a situation like you are raising, you'll
15 be able to admit this - the penalty, and instead of
16 just paying a fine, let's say if it's for an open
17 container of \$25, you will have the option.

18 So, we're going to see those numbers drive up
19 higher because now you'll have an hour of the E-
20 learning that you'll be able to do remotely. And
21 just like attorney, continuing legal assessment,
22 continuing legal education, we have built in as part
23 of the technology to make sure that the person doing
24 it is the person that got the fine and they're not
25 paying someone else to do it.

2 So, there's safeguards that we have incorporated
3 in this, so when we're about to launch this within
4 the next few months, there will be presumably a
5 greater number of folks being able to do that.

6 Before you had to come into OATH in order to
7 [INAUDIBLE 1:42:41], even if you wanted to admit, you
8 had to come to the office in one of the five boroughs
9 into our hearing location, admit and then we would
10 send you in and you could do the E-learning.

11 So, we're working towards making it a lot more
12 transparent and a lot more accessible to members of
13 the public.

14 CO-CHAIRPERSON CABRERA: I have to be honest, a
15 community service to me when I hear the word
16 community service, I think of someone who is going to
17 be doing something in the community and making the
18 community better. That's not what we're talking
19 about, right. It's just basically an educational
20 module?

21 JOHN BURNS: It's an educational module. The
22 person is able to sit there, be told why you're here.
23 You know, we do adopt the principles of procedural
24 fairness as part of that. So, that they understand
25 why they're there, how this happened, what the

2 difference between being in criminal court for your
3 offense versus at OATH a civil administrative law
4 court and the consequences their behavior may have on
5 the city and their fellow residents. That's
6 something that you know, when we put a module
7 together you know, we just didn't say alright if you
8 are here for an open container, you'll see ten
9 minutes of open container.

10 No, we're going to have you sit for an hour and
11 see what the consequences are of drinking in public
12 in a park. So, that little kids the next morning
13 because of the broken beer bottles that have been
14 left behind prevent them from playing in the park.

15 Or to a store owner, if there's somebody using
16 the side of the alleyway for public urination
17 purposes at night, that they'll see the impact that
18 that has on the shop owner and the community as a
19 whole.

20 CO-CHAIRPERSON CABRERA: I think we should change
21 the name, because I'm telling you, the average person
22 doing community service, it's just that, you're
23 servicing the community. And the first picture in my
24 mind when I think community service is just that,
25 you're doing a project in the community, you're

2 working in a garden, public garden, you're helping
3 the seniors and the shelter or whatever it is.

4 JOHN BURNS: There was discussion about that. I
5 think we tried to talk more about the idea that it's
6 an E-learning module that you're getting somewhat of
7 a civics lesson and also somewhat of an understanding
8 of what your conduct is. You know, the impact you
9 are having.

10 It might be a low level offense, previously
11 criminal but you're having an impact on the community
12 and moreover, by adopting the ideas of a procedural
13 fairness to make sure that they don't do it again
14 after they've sat through that for one hour. And
15 we've also added an extra hours, that's the part
16 that's in the works right now.

17 CO-CHAIRPERSON CABRERA: I love the program,
18 don't get me wrong.

19 JOHN BURNS: Thank you.

20 CO-CHAIRPERSON CABRERA: I think it's great. I
21 just in terms of semantics here, is I, you know, many
22 of us when we think community services, because there
23 were many other programs where they say community
24 service, this is what you end up doing. Maybe they
25

2 should call it community civic something, something,
3 I don't know.

4 JOHN BURNS: There's been discussions around
5 changing the name to reflect what's happening.

6 CO-CHAIRPERSON CABRERA: That's great. Thank you
7 so much.

8 CHAIRPERSON LANCMAN: Thank you very much. Thank
9 you for your testimony. Our next panel will be
10 representatives from the Center for Court Innovation,
11 the Fines and Fees Justice Center, Brooklyn Defender
12 Services, the Harvard Law School of Criminal Justice
13 Policy Program and Bronx Defenders.

14 Good morning everyone.

15 PANEL: Good morning.

16 CHAIRPERSON LANCMAN: Please raise your right
17 hand, so you can get sworn in and we can get started.
18 Do you swear or affirm the testimony you are about to
19 give is the truth, the whole truth and nothing but
20 the truth?

21 PANEL: Yes.

22 CHAIRPERSON LANCMAN: Good, if you have written
23 testimony, please make sure you give it to the
24 Sergeant at Arms, so we can follow along, read ahead,
25 cut right to the important parts, you know.

2 Any preference for who wants to start first. How
3 about we just go from our left to right, is that
4 good.

5 Alright, I'm going to ask the Sergeant at Arms to
6 put five minutes on the clock. If you feel an urgent
7 need to speak longer, we'll indulge you but we got a
8 lot of panelists and we want to get through it all.
9 Ready? Go.

10 UNIDENTIFIED: I plan to speak only for three.

11 CHAIRPERSON LANCMAN: Just turn the mic on and
12 bring it closer to you.

13 MATALI NAGRECHA: Okay, my name is Matali
14 Nagrecha; I'm at the Criminal Justice Policy Program
15 at Harvard Law School.

16 CHAIRPERSON LANCMAN: Red light.

17 MATALI NAGRECHA: I think it's on, yeah, it's on.
18 Okay, my name is Matali Nagrecha; I'm at the Criminal
19 Justice Policy Program at Harvard Law School and I've
20 worked on the issue of high fees and fines since
21 2010, so about a decade now. And in my current role,
22 we started to look at day fines as a potential
23 solution for the U.S. and so, over the last year, I
24 was in Germany conducting research into how exactly
25 day fines look in practice and it is based on that

2 research that I will quickly raise sort of six high
3 level lessons and then I'm happy to answer more
4 detailed questions.

5 I'm also drawing upon lessons implementing some
6 of these recommendations across the country including
7 in North Carolina, Arkansas and other jurisdictions.

8 So, the first lesson is that it is possible and
9 actually I think quite easy to transition a system
10 from one that does not look at ability to pay upfront
11 to one that does. That was an easy transition in
12 Germany and judges and prosecutors today will
13 basically tell you that they could not imagine a
14 different system. That they really bought into the
15 idea that fees and fines should be tailored to a
16 person's circumstances. And they also, like judges
17 or adjudicators in our systems talk about how busy
18 they are and yet they see this I think actually a
19 small amount of time which I'll get to, to be worth
20 the effort.

21 And so, I think you know, the first point is that
22 you know, we're very glad that the City Council is
23 looking into this.

24 The second point though is that day fines are not
25 a magic bullet. They say that we should look at

2 someone's ability to pay upfront but they don't tell
3 you what that means, right. So, it's only with
4 robust standards that limit how much a person – of
5 someone's income, they should be paying towards their
6 fine at all. Will they actually make a difference
7 and increase fairness for people who are low income.

8 And so, it's important to define success as
9 accomplishing that as lowering the fines for people
10 at the lower end and to set clear standards hopefully
11 in this pilot legislation as well that say, you know,
12 x percentage of someone's income should only go to
13 their fines or something along those lines.

14 And so, that kind of leads to my third point,
15 which is that there should be such clear guidelines.
16 We have detailed thresholds in a report that we've
17 done on proportionality of fees and fines. One
18 example is that in North Carolina in Mecklenburg
19 County, the judges implemented a standard that said
20 that only 10 percent of your net income, after all of
21 your expenses. So, your 10 percent of your
22 discretionary income should go towards fines and the
23 reason for that, is that for especially for people
24 living at the lower end of the income spectrum, it

2 should not be a big portion of discretionary income
3 that goes towards fines.

4 The fourth point is that for day fines to be a
5 productive innovation in New York City, that the
6 implementing authorities need to be very, very
7 careful about the offenses that are selected. The
8 thing you don't want to do is to widen the net by
9 implementing a reform that looks like it's more fair
10 but really just increases incentives to police low
11 level of cases to bring people in on violations to
12 punish crimes of poverty. A very clear example, and
13 I know it's not probably at issue in this particular
14 pilot but just for color would be something like fair
15 evasion.

16 So, there's a lot of other innovation and
17 advocacy in the city to get people fair cards.
18 That's a better approach, not fair fines in that
19 context. And so, that would likely apply to some
20 things that come before OATH as well.

21 The fifth point is that Germany's entire system,
22 so all misdemeanors punishable by up to one year of
23 punishment. So, things like assault, DUI's, they are
24 all punished by day fines. For all of those cases,
25 courts rely on people's testimony to ascertain

2 someone's ability to pay. They have trust in what
3 people are telling them. There is no documentation
4 and I'm sort of happy to talk more about what that
5 looks like, but as I think was discussed earlier, the
6 judge asks a few simple questions and/or a person
7 fills out a form that has a few simple questions
8 about their ability to pay. And I think part of it
9 is trust, that's how the system works. The other
10 piece is sort of not obsessing over perfection. I
11 think you know; we want to get sort of a ballpark
12 that means that the fine is sort of affordable but
13 you know, worrying about whether the person forgot to
14 mention \$100 is really not a real problem and
15 research supports that.

16 And the sixth point, is that in setting up the
17 pilot program, what we also found in Germany is there
18 are often cultural barriers between adjudicators and
19 the people who come before the court. And so, things
20 that sound affordable to a judge or an adjudicator at
21 OATH are not necessarily affordable for the people
22 before the court.

23 And so, we want to make sure that whatever
24 standards are set for how much these fines are don't
25 sort of rely on current amounts, but really truly

2 reflect people's ability to pay ad to get input as to
3 what that should look like and to be sort of
4 comfortable with the fact that these numbers might
5 look lower or lower to someone who has a good salary,
6 but may not be to low for the person before the
7 court.

8 And kind of a related point, you know, it sounds
9 like not on the table is increasing fines. On the
10 higher end, I just want to reframe that. So, I don't
11 think the reason to increase fines and I don't really
12 care one way or another if you do. But I think the
13 reason for increasing fines isn't to say we're trying
14 to compensate for people on the low end, it's to say,
15 the way fines are set today and sort of how that
16 legislative process probably worked, what's in mind
17 usually is the fact that that fine has to apply to
18 everyone. And once we sort of break down that basic
19 structure and say, we're going to tailor it, there
20 may be room to increase the fine for people who do
21 have a higher income. And again, it's not because
22 we're trying to be meaner to them, but to actually
23 reflect what it is that would be the equivalent fine
24 for someone whose making more money.

25 CHAIRPERSON LANCMAN: Thank you.

2 LINDSAY SMITH: Good morning everyone. My name
3 is Lindsay Smith; I'm an attorney in the Youth
4 Justice Debt Fellow at Brooklyn Defender Services.
5 Thank you to the Council and Committee Chairs Lancman
6 and Cabrera for holding this hearing.

7 Every day indigent New Yorkers are punished with
8 court imposed fines, fees and surcharges. They have
9 no meaningful ability to pay. Like all sanctions,
10 these have a serious or aggressive and
11 disproportionate effect on people of color, on Black,
12 Latinx and poor communities and people's families.
13 And those are the people who are targeted by the
14 criminal legal system.

15 When a person doesn't pay, they may face
16 warrants, incarceration or civil judgement destroying
17 their credit. And no one should face these kinds of
18 severe repercussions because of monetary sanction
19 that never took into account their ability to pay.
20 Especially in Brooklyn where 90 percent of criminal
21 defendants cannot afford an attorney.

22 Fines like all sanctions should not have a
23 harsher effect on the poor. They should not be
24 ruinists to indigent people and merely inconvenience
25 people with means and the day fines pilot does have

2 the potential to begin to alleviate that punishment
3 of poverty by eliminating unaffordable OATH fines.

4 However, we have some concerns. First of all, even a
5 proportionate fine regime will not establish a fair
6 and equal punishment system because of the deep
7 inequalities in enforcement. They determine who
8 receives a sanction in the first place.

9 To the extend, day fines would be implemented to
10 address so-called quality of life offenses. Those
11 offenses often relate to poverty or arise from bias
12 enforcement practices and even a day fine is not
13 going to be truly fair. Those kinds of quality of
14 life offenses arising from poverty or lack of access
15 to resources should be addressed by providing more of
16 those resources.

17 For example, with public urination, we should
18 provide more public bathrooms, and that's something
19 we continue to urge.

20 Second, the pilot should provide meaningful
21 access to alternative sanctions across the board.
22 That means first availability to people who have zero
23 disposable income, as many of our clients do. Not
24 requiring a court appearance to access those
25 alternatives. I believe that Chair Cabrera recently

2 mentioned community service and having to come in in
3 person. Right now, that's only available if you come
4 in to have your OATH hearing in person and that of
5 course, limits it from people who cannot afford
6 childcare, transportation or to take a day off work.

7 And finally, there shouldn't be any mandatory
8 minimum fines in the day fines program because that
9 reduces substance of equality at the lowest income
10 levels. Namely Chair Cabrera and Council Member
11 Rose, both mentioned this issue of taxation by
12 citation that we've seen in the city before. It's
13 critical that the revenue motive does not come into
14 play in assessing whether any day fine pilot program
15 is a success.

16 Moving on to the drug arrests and conviction
17 collateral consequences audit, BDS supports
18 T20195492, requiring an audit of all city agencies on
19 their policies regarding collateral consequences of
20 drug arrests and convictions. However, we recommend
21 amendments, so that the audit includes all arrests
22 and convictions, not just those related to drugs. We
23 would also respectfully urge the Council to extend
24 the scope of the audit to include adverse actions by
25 agencies against applicants for employment in

2 addition to current employees. And adverse actions
3 against people targeted for enforcement by agencies,
4 such as Chair Lancman mentioned, the families under
5 investigation by the administration for Children's
6 Services.

7 Ultimately, with respect to drug arrests and
8 convictions, BDS believes that a public health
9 approach is essential to reduce the harms of
10 substance use disorder and other drug use.

11 In terms of harm reduction, the criminal legal
12 system is really ill-equipped to prevent drug use.
13 Meaningfully reduce the supply of drugs or most
14 importantly, help keep people who use drugs as safe
15 as possible and minimize harm to communities and
16 families. Portugal's model for drug policy suggests
17 that we may build a dramatically reduced overdose
18 deaths and serious harms through a careful and
19 deliberate decriminalization of use and position of
20 all drugs. Along with an aggressive public health
21 strategy.

22 In that country, heroin use has been cut by an
23 estimated 75 percent. More importantly, overdose
24 deaths have plummeted. Portugal's the lowest rate of
25 drug induced death in Western Europe. It's less than

2 2 percent of the overdose death rate in the United
3 States. In light of the overdose epidemic,
4 specifically with regard to opioids, law makers
5 should really study this model seriously, import its
6 successes. In addition to the collateral consequence
7 analysis.

8 Thank you to the Council for the opportunity to
9 speak on these issues. We hope you will continue to
10 view BDS as a resource.

11 CHAIRPERSON LANCMAN: Thank you.

12 LINDSAY SMITH: Thank you.

13 JOANNA WEISS: Good morning, my name is Joanna
14 Weiss; I'm the Co-Director of the Fines and Fees
15 Justice Center. We're a national organization that
16 seeks to restore integrity to our justice system by
17 eliminating fees and making sure that any fines that
18 are imposed are proportionate, both to the offense
19 and the individual.

20 Fines and fees hurt New Yorkers and New York
21 City. They make our communities less safe. They
22 perpetuate and exacerbate poverty and they extract
23 millions of dollars from our most vulnerable
24 communities in particular, from communities of
25 color.

2 I want to thank the Council and Committee Chairs
3 Cabrera and Lancman for bringing us together to talk
4 about the possibility of a day fines pilot program at
5 the Office of Administrative Trials or Hearings or
6 OATH.

7 We think that this program would constitute an
8 important step towards ensuring that the imposition
9 of fines in New York City are both fair and
10 equitable.

11 I also want to thank the Council for the other
12 steps that they have taken to reform the way fines
13 and fees are administered in New York City.

14 The Fines and Fees Justice Center supports the
15 proposed day fines pilot, although we have some
16 caveats and concerns that we would want to think
17 through as such a pilot program was addressed. As
18 has been well discussed today, when we have flat
19 fines, they're inherently regressive compared to a
20 day fines which can take people's means into account.

21 The other thing is that when we impose fines, if
22 they are truly to improve public safety and health,
23 they are meant to deter people from committing an
24 offense again. But what deters me maybe very
25 different from what deters someone at minimum wage

2 and is very different from what would deter Bill
3 Gates or Donald Trump Jr.

4 We shouldn't expect New Yorkers to pay the same.
5 We should be looking for the lowest sanction possible
6 to deter behavior from continuing.

7 I want to try not to repeat what some of my
8 friends and colleagues have said. I do want to add
9 that the day fines pilots in the 80's and 90's
10 provide promising evidence that a properly designed
11 and operating day fines program can be efficient and
12 effective at calculating a persons ability to pay, as
13 well as being a more equitable sanctioning scheme. I
14 want to talk a little bit about the selection also,
15 of the kinds of offenses that might be included in
16 such a pilot program.

17 I know that OATH would have the opportunity to
18 chose ten offenses that are issued by at least two
19 different agencies. We recommend that the day fines
20 violations be chosen from ones that are particularly
21 harming poor communities and communities of color to
22 be sure to operate the right relief.

23 We were thinking of things like, offenses that
24 are imposed on street vendors or taxi drivers who we
25 know are suffering right now a lot of economic harms.

2 But I think that the best way to really understand
3 what are the harms that fines are causing community
4 is to have more community engagement and to learn
5 from community organizations, what are the fines that
6 are pain points in the community and how do we
7 address them?

8 I also thought looking at the New York Times
9 article that came out a few months ago about building
10 codes violations that are meant to protect worker
11 safety and prevent serious building accidents instead
12 are being enforced heavily on single family owners,
13 single family homeowners instead of developers that
14 are actually in attentive to the building code and
15 causing workplace accidents and those fines are
16 having massive harms on individuals and their
17 families.

18 We need to ensure that ordinary New Yorkers are
19 not substantially harmed financially let alone ruined
20 by the same fines that are treated by developers as
21 the cost of doing business.

22 For a day fines program to be successful, it has
23 to impose as few burdens as possible on the people
24 who are subjected to fines. Most people who appear
25 at OATH are not represented by a lawyer; many don't

2 speak English as a first language. Many can't take
3 off work to handle a low level violation.

4 So, any of the solutions that are offered need to
5 be available online and that includes a day fine
6 model where fines can be lowered for people who are
7 low income or potentially raised for people of high
8 income, but also there needs to be another
9 alternative for people who have no income at all,
10 like the community service or education modules that
11 are available now for CJRA offenses. But we also
12 recognize that these need to be accessible. So, they
13 need to be available online as an alternative. There
14 also needs to be the capacity of judges to simply
15 wave fines when it's in the interest of justice.

16 We've talked a little bit about self-reporting
17 and we agree that self-reporting, all research shows
18 that this is a very reasonable and viable options for
19 accurate assessments of peoples income and in fact,
20 past day fines pilots suggest that people may even
21 overestimate how much their income is.

22 And finally, we appreciate the Council wants to
23 evaluate the day fines program and we work with
24 researchers who would be happy to assist on that but
25 we also want to talk about how we look at revenue as

2 part of that evaluation and just reaffirm that the
3 pilot should not be deemed a success based on
4 revenue. Courts are not revenue centers and we
5 should be evaluating the programs on how well they
6 dispense justice, not on how much revenue is brought
7 in.

8 Thank you very much for letting me testify about
9 this and for bringing this important topic to us
10 today.

11 CHAIRPERSON LANCMAN: Thank you.

12 ADAM MANSKY: Terrific, good morning and thank
13 you Co-Chairs Cabrera and Lancman and other members.
14 My name is Adam Mansky and I'm Director of Criminal
15 Justice at the Center for Court Innovation.

16 We are a nonprofit dedicated to creating a more
17 humane, fair and effective justice system. I want to
18 thank you for the opportunity to testify and to
19 submit written testimony regarding the proposed day
20 fines pilot.

21 To us, the envisioned pilot response to a need
22 and opportunity to reduce the harmful effects of
23 fines and fees on low income and marginalized
24 communities in New York City. Failing to adjust
25 financial penalties to what individuals can afford,

2 can perpetuate cycles of poverty and produce
3 continuing system involvement resulting from non-
4 payment.

5 As we've learned from our work as the technical
6 assistance provider and a national price of justice
7 initiative, adjusting fines to peoples actual ability
8 to pay is a cutting edge practice that many
9 jurisdictions are beginning to adopt. In 2019 alone,
10 California and Washington state implemented
11 computerized ability to pay assessments designed to
12 rigorously identify individuals whose financial
13 situation merits a reduction in a fine or fee.

14 Michigan, North Carolina and Texas and the counties
15 of San Francisco and Mecklenburg have all distributed
16 bench cards or launched other reforms designed to
17 lessen burdens of a fine, including self-reporting.

18 Here in New York, the bail reform law that goes
19 into effect next month, includes trailblazing
20 language requiring criminal courts to consider
21 individual financial circumstances and ability to
22 post bail without posing undo hardship in cases that
23 remain eligible for bail. We see an opportunity now
24 to bring these types of pioneering reforms to New
25 York City Civil Justice system as well.

2 The most important domains for measuring
3 someone's ability to pay a fine are well known.
4 Collecting information on household size and
5 household income together, allowing for comparing an
6 individuals financial resources against thresholds
7 contained in the federal - sorry - collecting
8 information on household size and household income
9 together allow for comparing an individuals financial
10 resources against thresholds contained in the federal
11 poverty guidelines.

12 Peoples expenses, if unusually high, may merit a
13 further adjustment in what they can afford and
14 finally, the living situation should be determined,
15 for instance, to know whether someone has a current
16 or recent history of homelessness. Recognizing that
17 federal poverty standards underestimate the
18 thresholds below which people experience financial
19 strain especially in an expensive city like New York
20 City. We would need a thoughtful approach that
21 combines national best practices and good stakeholder
22 and community outreach to obtain meaningful input and
23 build trust in a final approach.

24 As for the key step of providing meaningful
25 alternatives which have been discussed here. In

2 2017, OATH partnered with the Center for Court
3 Innovation to provide an in person community service
4 and E-Learning program in leu of fines ranging from
5 \$1 to \$1,000. In person, the community service
6 options included facilitated group sessions focused
7 on how to avoid receiving another summons and
8 community service projects such as assembling hygiene
9 kits to be distributed to those in need.

10 However, in our experience, about 78 percent of
11 participants given the option, opted for the E-
12 Learning when they were given the option between
13 completing community service or going through this E-
14 Learning module to receive a one hour alternative
15 mandate. The E-Learning tool created by OATH and the
16 Center for Court Innovation in conjunction with MOCJ
17 and City Council, this module provides information
18 about the CJRA, other civil offenses, and how users
19 can change their behavior to avoid receiving other
20 summonses in the future. The module uses the
21 principles of procedural justice, respect,
22 understanding, neutrality and voice and a variety of
23 user interactions including role plays, matching
24 games and videos to create an informative and
25 enjoyable user experience.

2 Initial data shows that 91 percent of users found
3 what they learned to be useful and 89 percent
4 reported feeling positively at the end. The Center
5 and OATH have recently developed an additional E-
6 Learning module for people who have received larger
7 fines and a website that will allow these modules to
8 be completed remotely. This will be available in the
9 coming weeks.

10 In sum, the Center for Court Innovation generally
11 agrees with the concept of establishing a day fines
12 pilot as a first step towards rigorously considering
13 peoples financial resources and where appropriate,
14 linking them to alternatives.

15 I want to thank you for your time.

16 IVAN BOHORQUEZ: Good morning, my name is Ivan
17 Bohoquez and I am a Legal Advocate in the Civil
18 Action Practice of the Bronx Defenders. I will be
19 testifying in regards to the citywide audit only.
20 Thank you for the opportunity to testify today and
21 for your interest in this important matter.

22 As a Civil Legal Advocate, I provide direct
23 representation, advocacy and support for clients who
24 are entangled in multiple legal systems. I see
25 regularly how drug related accusations and

2 convictions can lead to a whole host of direct,
3 devastating, civil consequences, not only for the
4 person accused but for their entire family. As
5 holistic public defenders in the Bronx, we have seen
6 how drug related arrests have lead to the loss or
7 suspension of city regulated occupation licenses or a
8 clearance. The denial of an application to or
9 termination from or permanent exclusion of family
10 members in New York City Housing Authorities Public
11 Housing and the Seizure of cash and other important
12 property by the New York City Police Department.

13 When faced with such consequences, we have seen
14 how individuals stand to lose their income, homes,
15 licenses and livelihoods without the right to Counsel
16 to represent them in Civil Court or Civil
17 Administrative proceedings with less constitutional
18 protections than available in Criminal Court.

19 In my written testimony which I will submit later
20 today, I have included data that sheds light on who
21 is being effected as well as several examples of
22 clients of the Bronx Defenders. For [INAUDIBLE
23 2:26:59] I will highlight too.

24 Mr. A.W. worked as an art teacher in a New York
25 City public school where he had been a founding

2 faculty member. One morning, he was making chalk
3 drawings on the sidewalk in front of his building
4 when police officers approached him.

5 He was arrested after an officer alleged that he
6 recovered a cigarette believed to be marijuana, which
7 had been dropped to the ground. The New York City
8 Department of Education was notified through the
9 division of Criminal Justice Services at the time
10 arrest and Mr. A.W. was immediately suspended from
11 work pending the outcome of his case.

12 Many months after he was arraigned, he was
13 offered an adjournment and contemplation of
14 dismissal. Because this allowed him to return to
15 work, he accepted this outcome rather than continue
16 to fight the case to full acquittal. Mr. A.W. missed
17 over a year of classes at the school he loved as a
18 result of this arrest.

19 Another client, Mr. A.S. lived with his elderly
20 mother in their New York City Housing Authority
21 apartment for over 25 years. When his mother passed
22 away, Mr. A.S. had to fight for succession rights to
23 his mother tenancy and get a lease in his name. When
24 he was younger, Mr. A.S. went undiagnosed with mental
25 health impairments and had various interactions with

2 the criminal legal system relating to the use of
3 drugs, which he used to self-medicate.

4 Mr. A.S. now in his 50's and clinically
5 diagnosed, still struggles with substance abuse. One
6 day he was arrested for buying a pill from an
7 individual who turned out to be an undercover
8 officer. While fighting his criminal court case,
9 NYCHA stated this arrest was the reason he should not
10 get a lease in his name. The Criminal Court diverted
11 his case and he participated in mandated treatment.
12 Nevertheless, NYCHA sought to evict him and prevent
13 him from getting a lease.

14 After connecting with the Bronx Defenders, we
15 were able to successfully challenge his lease denial
16 and also successfully defend against his eviction.
17 However, many public housing residents and their
18 family members are not lucky enough to obtain
19 representation and stand to lose their housing based
20 on drug arrest, even those deemed related to
21 substance problems.

22 Both client experiences exemplify how the
23 criminalization of drugs disrupts the precarious
24 balance of New Yorkers lives and leads to a host of
25 other destabilizing problems.

2 Given the civil consequence and punishments that
3 exist, we support an amendment to the New York City
4 Charter that would mandate a citywide audit of
5 collateral consequences for drug arrests and
6 convictions.

7 This would allow for a full assessment of how the
8 lives of individuals accused of drug crimes are
9 impacted and would give a bigger picture of barriers
10 that exist.

11 Our hope is that such an audit would be
12 comprehensive and far reaching. We hope that
13 impacted communities will be consulted towards these
14 ends. The result of any audit should be made
15 publicly available and accessible on an annual basis.
16 And once such data is collected, our hope is that the
17 city will commit to eradicating these practices that
18 unjustly and disproportionately harm marginalized
19 communities of color and those who struggle with
20 substance abuse.

21 The spirit of which is antithetical to the
22 important Criminal Justice Reforms that have passed
23 to improve the lives of impacted individuals.

24 Thank you for your consideration.
25

2 CHAIRPERSON LANCMAN: Thank you. So, let me ask
3 a series of questions and then I'll pass it off to my
4 Co-Chair. Ms. Nagrecha, am I pronouncing that right?
5 Thanks, you said something to the effect to be
6 careful about the offenses that are selected. I'm
7 paraphrasing, what did you mean by that sentiment and
8 what should we and MOCJ and OATH be looking out for?

9 MATALI NAGRECHA: Yeah, I think - yes, I think
10 there's a tricky balance here, right. So, one
11 misapplication of day fines is to sort of distract
12 from over policing or over enforcement or
13 disproportionate policing in certain neighborhoods
14 and say, well, you know, that doesn't matter the
15 amount of the fine is fair. And that's not what
16 we're trying to do.

17 And so, I think we want to find offenses where
18 people generally agree that there is likely going to
19 be a fine for this offense and that there isn't a
20 whole lot of contention over doing that at all, such
21 as fair evasion. It's just an easy example, I know
22 it's not on the table here. And to you know, find
23 those offenses where they're likely to be ticketed in
24 ways that are fair but that the amounts need to be
25 adjusted.

2 And so, I think it's a balance of not picking
3 things that only apply to wealthy landlords or
4 something and things that aren't sort of reinforcing
5 practices of you know, over policing in minority
6 neighborhoods, quality of life.

7 CHAIRPERSON LANCMAN: So, you mean, find offenses
8 where there's broad public acknowledgment that the
9 person shouldn't be doing the thing that the
10 application of enforcement is fair. Where people
11 have confidence that this is an offense that people
12 are being appropriately held accountable for.

13 MATALI NAGRECHA: Right.

14 CHAIRPERSON LANCMAN: That's what you mean?

15 MATALI NAGRECHA: I think that's right, yeah.

16 CHAIRPERSON LANCMAN: Okay, thanks. Then I have
17 a question for the - I think it was you're from
18 Brooklyn Defenders? I know when we were doing CJRA
19 and other things we were doing related low level
20 offenses, there was a lot of concern on the part of
21 the public defenders who were in the criminal realm,
22 right. Even if we were talking about violations,
23 criminal court, about allowing people to plead guilty
24 by mail.

2 I just want to understand, when we're talking
3 about these civil offenses that are in front of OATH,
4 it seems that you are recommending that the ability
5 to plead guilty by mail or online, should be
6 available and expanded?

7 So, I understand, if that's your point of view, I
8 understand it, I just want to flush it out a little
9 bit. Your view on allowing people to plead guilty,
10 accept fees, fines, etc., by mail in these civil
11 cases.

12 LINDSAY SMITH: Thank you for highlighting that
13 distinction, I think there is a difference between a
14 criminal sanction and a civil one. Here if we're
15 talking about the current state of availability of
16 alternative sanctions in the civil context at OATH,
17 right now, even to get this E-Learning module, you
18 have to physically attend your hearing date. And I
19 think the representative from MOCJ also talked about
20 all the costs of that kind of attendance.

21 So, here, those alternative sanctions should be
22 available by mail or online for people who cannot
23 attend in person and that really serves the substance
24 of equality point of this day fines pilot.

2 CHAIRPERSON LANCMAN: Okay, and just on the
3 collateral consequences audit, you might have heard
4 me earlier say that I did think it was important for
5 the city in doing that audit to also identify state
6 and federal policies or mandates that impose
7 collateral consequences and we are going to read the
8 bill carefully and make sure that that is part of the
9 audit. I know you mentioned that in your written
10 testimony as well.

11 And then, you had mentioned - it's good to see
12 you by the way.

13 JOANNA WEISS: Good to see you.

14 CHAIRPERSON LANCMAN: It's good to see you all
15 but it's good to see her too. We've done a lot of
16 work together on this issue. Specifically, recommend
17 implementing day fines for violations often imposed
18 on low income and vulnerable New Yorkers, such as
19 unlawful vending or fines imposed by taxi drivers.
20 Those are - you give a couple of examples. Do you
21 want to expand on that a little bit or are you able
22 to expand on that a little bit. What in your
23 experience are some of the fines, some of the
24 offenses that particularly impact low income New
25 Yorkers?

2 JOANNA WEISS: Sure, and full disclosure, I am
3 currently the Co-Director of the Fines and Fees
4 Justice Center but I should also acknowledge that I
5 was once the Deputy Administrative Justice
6 Coordinator and I served actually as Commissioner
7 Goldin's Deputy for six years working to improve
8 access to justice at the city's administrative
9 tribunals.

10 So, my information is a little bit out of date
11 but it comes from doing a lot of work at OATH and
12 seeing the kinds of violations that -

13 CHAIRPERSON LANCMAN: You remember the Staten
14 Island pilot from like decades ago. We call that
15 institutional memory, it's valuable.

16 JOANNA WEISS: Well, thank you.

17 CHAIRPERSON LANCMAN: At least some people think
18 it's valuable. Now days, you know, if you've been on
19 twitter for five minutes, you're an expert but I
20 digress.

21 JOANNA WEISS: Right, I mean, there were a lot of
22 types of offenses that judges regularly acknowledge
23 that it was very painful to put in place because they
24 knew that the economic consequence to some people was
25

2 excruciating versus other people where they knew it
3 was the cost of doing business.

4 So, I brought up the building code one, another
5 one that I can think off the top of my head are
6 illegal postings. You're not supposed to put up a
7 paper flyer on public property and for every paper
8 that the police find, they can issue a citation of I
9 think \$75. People can rack up hundreds, even
10 thousands of dollars in citations. Where if it's a
11 business and they're putting those properties up to
12 advertise themselves, this is a cost of doing
13 business to an individual whose trying to start a
14 daycare center in their house and they don't realize
15 that that's a violation, you know, hitting them with
16 thousand of dollars of fines is a big problem.

17 There are a lot of kinds of fines like that are
18 issued and heard at OATH. That's why I brought up
19 that New York Times story as well about building code
20 violations. Those are violations that can - there's
21 a penalty that can be imposed every single day until
22 something is fixed. If you're talking about an
23 average New Yorker who doesn't have experience with a
24 building code, they can easily rack up hundreds or
25 thousands of dollars in debt. Where again, for a

2 developer, it might be a cost of doing business to
3 ignore the building code and actually put people in
4 danger.

5 So, we want to look at those things where if we
6 really care about public safety, that we're enforcing
7 public safety and not burdening people with massive
8 fines.

9 But also, back to the other ideas that you know,
10 I'm looking at this as an outsider and a third party
11 because I haven't had any fines imposed on me that I
12 couldn't afford to pay. And I think what we really
13 need to do is an assessment of the kinds of fines
14 that are imposed by the city generally and really
15 make sure that we are imposing fines that need to be
16 imposed in order to protect public health and safety.
17 Make sure that those fines are not being
18 disproportionately imposed on poor communities and
19 communities of color. Figure out which of those
20 fines also the punishment could be a warning or
21 something else other than a fine but really also
22 talking to community organizations to figure out
23 which fines are harming communities.

24 CHAIRPERSON LANCMAN: And you know, CCI, I want
25 to thank you very much for a very thorough testimony

2 and analysis. You go in the written testimony some
3 length about the factors that would go into
4 determining someone's financial ability to pay etc.

5 Can you just tell us how much of a burden do you
6 think this would impose on the process on OATH? Was
7 I being naive when I said, you know, you ask five set
8 questions and you get to where you need to go. What
9 are we talking about here?

10 ADAM MANSKY: I mean, I'll just open by saying
11 I'm not an expert. I think that you know, of course,
12 I think we're talking about a self-reported model as
13 opposed to some of the other jurisdictions. I do
14 think that it probably could be limited to several
15 questions and you know, that seems manageable to me
16 but I would probably defer a little bit to OATH on
17 that.

18 CHAIRPERSON LANCMAN: And Ms. Nagrecha, in the
19 experience of other jurisdictions, how long and how
20 disruptive is it to the process of you know, hundreds
21 of cases that each one has to have this kind of
22 evaluation?

23 MATALI NAGRECHA: If I was to guess a number, I
24 think 30 seconds or less. I mean, I think it can be
25 pretty fast and get to a place that's accurate enough

2 so that the fine is not disproportionate to the
3 person's economic circumstances. And I think there's
4 ways to build in relatively easily protection, so
5 that if someone has, I don't know, a big healthcare
6 expense that they need to tell the OATH officer about
7 that would sort of cut against a basic calculation
8 based on their income, that they can be prompted to
9 bring those things up, again, with relative ease.

10 And so, in Germany, again, they really ask two to
11 three questions. There the things that are most
12 important are your net income, your number of
13 dependents and sort of big expenses. Those are the
14 things that they ask about. Like I said, we've also
15 implemented similar models, day fines light maybe in
16 jurisdictions in the U.S.

17 And so, for example, in North Carolina in a very
18 misdemeanor court in Mecklenburg, the judges again,
19 spent some amount of time under one minute asking the
20 questions that they are prompted to ask on the bench
21 card and it sort of follows the day fines concept.
22 So, I think it's quite fast.

23 CHAIRPERSON LANCMAN: And then my last question
24 for the Bronx Defenders, it's the same question I
25 asked before. In your experience, what are the kinds

2 of offenses that you're - because the bill as written
3 gives OATH and MOCJ the leeway to identify ten
4 offenses.

5 In your experience, what are the offenses that
6 your clients are most frequently hit with that they
7 have the most difficulty in being able to pay fines?

8 IVAN BOHORQUEZ: I won't be able to answer to the
9 direct offenses, but I will be able to answer towards
10 a lot of the consequences that are being seen, right.
11 And so, a lot of the clients that we see now, run
12 into a lot of issues with property forfeiture,
13 employment and licensing and access to public housing
14 and maintaining that public housing.

15 In terms of offenses, because I don't have the
16 answer, I will be more than gladly to get that
17 information from my colleagues and provide that to
18 you later today.

19 CHAIRPERSON LANCMAN: Well, we would appreciate
20 that and probably from Brooklyn as well, it would be
21 good insight. Council Member Cabrera.

22 CO-CHAIRPERSON CABRERA: Thank you so much and I
23 just want to recognize we've been joined by Council
24 Member Cohen here today.

2 I wanted to know, do you have any data to show us
3 how effective these E-Learning modules that people
4 take, do we see any positive results?

5 ADAM MANSKY: The Center for Court Innovation has
6 not done an analysis of impact. That was not part of
7 what we were asked to do. I'm not sure if OATH has
8 been looking at that.

9 CO-CHAIRPERSON CABRERA: So, I guess my big
10 question is, if it was shown worst case scenario and
11 I hope this wouldn't be the reality. That it didn't
12 have any effect, that people are continuing doing
13 whatever they were doing before. Should we continue
14 having the E-Learning if it's having no effect?

15 ADAM MANSKY: I think that's a policy decision, I
16 would just say that I think that what we are trying
17 to do is come up with a proportionate response to
18 these kinds of situations, these kinds of offending
19 and I actually commend City Council and the City for
20 making the effort to create both to reduce the
21 collateral consequences that were coming from these
22 when they were criminal summonses. And the effort to
23 reduce the penalty and burden on low income people by
24 giving them some other non-monetary obligation to
25 satisfy what they're doing.

2 I also will say that the initiative is anchored
3 in notions of procedural justice, that when people
4 feel that they've been treated with respect and
5 understand what's going on and feel that they have a
6 voice, they are more likely to feel that the process
7 has been a fair one. And there is some research that
8 show they're more likely to comply with their
9 obligations and certainly, in the instance of the E-
10 Learning tool and the educational groups, we focused
11 very significantly on ensuring that those components
12 were you know, included, embedded in the curriculum.

13 CO-CHAIRPERSON CABRERA: Do you think this is
14 data that we should be looking into gathering?

15 ADAM MANSKY: It's hard for me to — I mean, I
16 don't know how easy it would be to gather that.
17 Again, I think that would be a function of OATH or
18 MOCJ.

19 CO-CHAIRPERSON CABRERA: That's what I mean,
20 OATH, yeah.

21 ADAM MANSKY: But I mean, you know, I guess that
22 you know, of course it's a calculus that's always
23 worth considering but I would also just affirm the
24 idea that if people have an experience as they are at
25 least reporting, where they're learning things and

2 finding the experience to be a very positive one,
3 that's a very different experience from the one we
4 traditionally think people have when they're going to
5 a hearing or whatever.

6 CO-CHAIRPERSON CABRERA: I know, but I will want
7 that experience to translate into action. And so, in
8 real life, because otherwise, then the effect of the
9 purpose, the initial purpose of having the E-Learning
10 would have failed. I mean, I would think that maybe
11 we would have to look at the content, maybe the
12 monadology. Sometimes there's nothing wrong with the
13 process, it's just the content, material or looking
14 at other innovative ways to go about it but I'm into
15 results. I want to see results, I just don't want
16 people to go through something and it doesn't
17 translate into real life because then the initial
18 purpose well, let's don't fine anybody or have them
19 go through the E-Learning in the first place if it
20 doesn't have you know, a personal impact.

21 And so, again, I'm all for what we're talking
22 about here today. I'm just always looking how we can
23 make it better. I love the comment, I forgot who
24 mentioned it, that we don't want to do taxation by
25 citation. I loved the line, I don't know who

2 mentioned that, you could take the credit. But it
3 kind of goes against – it actually supports what I
4 was sharing earlier that what I don't want see is and
5 I know it was mentioned by two other panelists here
6 today, of increasing for those who are more wealthy.

7 And let me make my case and bring more
8 clarification. One, I don't want this class war that
9 often occurs. Second of all, if we do that, then
10 we're supporting the system of taxation by citation.

11 I don't want a system that I saw here when I
12 first got here in 2010. We're ticketing people left
13 and right and trust me, it will happen again. Then
14 they started targeting the taxi drivers, many of
15 which live in my community. They were looking for
16 cash cows and when government officials get desperate
17 about trying to find sources of income to pay for bad
18 decisions that were made previously and not prepare
19 for recessions, not prepare for bad times, I really
20 fear that at the end of the day, to me it's not just.
21 Why should I have to pay more, anybody, and by the
22 way, these are not going to be the billionaires that
23 get driven. Okay, it's not going to be them.

24 It's going to be the middle class that always
25 gets stuck at the end of the day paying a tremendous

2 amount of taxes, forms of taxation that we have here
3 in the city. And so, why would we want to support
4 the idea of increasing to compensate.

5 So, what that tells me if we compensate, instead
6 we want to have more funding's coming in and that's
7 not the idea of why we give people tickets. Does
8 that make sense? Who wants to pick that up?

9 JOANNA WEISS: I mean, I certainly understand
10 what you're saying and I will say like Ms. Nagrecha,
11 I don't feel particularly strongly about what happens
12 to fines at the top. With that being said, and you
13 know, I agree that fines should not be used to
14 generate revenue. I have two responses though; I
15 mean one is that we're supposed to be using fines to
16 deter behaviors we don't want. And so, the deterrent
17 value should actually be equal both for people at the
18 top of the economic scale and at the bottom of the
19 economic scale.

20 And I also say, and you know, we talk about this
21 in our office, that you know, if we suddenly
22 incentivized enforcement against you know, a rich
23 White dude driving a Mercedes, I feel like reform
24 happens incredibly quickly when that's the case,
25

2 versus the people getting burdened at the bottom of
3 the scale who often have no voices.

4 So, it's a slight push back about what you're
5 saying, but again, you know, my real interest in what
6 happens to people at the bottom, I care less about
7 what happens to people at the top.

8 CO-CHAIRPERSON CABRERA: And to that, I have to
9 say that the root of the fruit problem here is what I
10 mentioned earlier, that certain neighborhoods are
11 being targeted. And as long as that happens, it
12 doesn't matter how we try to configure; more here,
13 more there, we're going to continue to have this
14 problem. We're going to try to dance around it. The
15 fact is, communities like mine, communities that
16 historically have you know, the suffer economically,
17 they are being targeting. I mean, hands down, I
18 can't wait to get all the data and appreciate the
19 willingness of the administration to bring forth, but
20 I know for a fact, that this is happening. There is
21 no way on earth that it happens because it's being
22 done more in one neighborhood versus another and all
23 across. You know, I can understand if you have some
24 neighborhoods, you know, wealthy here, they are doing
25 the same amount in fractions as here, but then you

2 have other ones that are the same level, but when you
3 have this versus this, as long as we have that. And
4 so, anything to you know, address that, I think we'll
5 get to the heart of the problem.

6 But I appreciate all the comments taken to heart
7 everything that was mentioned by all of you. You're
8 doing fantastic work; we have to do something about
9 this problem.

10 You mentioned the ticketing to a business; I know
11 a gentleman who lost his business, just because of
12 what you just mentioned and he paid somebody to go
13 and put those flyers out. It was cards, that was
14 just business cards and he put it in the wrong
15 places. He ended up with a \$75,000 fine just before
16 I became an elected official and he ended up giving
17 up his business. He had it shut down. That was his
18 livelihood, it was very sad and these are some of the
19 things that are pushing some of the New Yorkers to
20 leave New York, where they're not being harassed in
21 other states.

22 Thank you so much, with that, I give it back to
23 my Co-Chair.

24 CHAIRPERSON LANCMAN: Thank you very much and
25 that concludes our hearing for today. [GAVEL]

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 April 1, 2018