

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON PUBLIC SAFETY

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October 10, 2012
Start: 10:25 a.m.
Recess: 3:46 p.m.

HELD AT: Council Chambers
City Hall

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

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

A P P E A R A N C E S

COUNCIL MEMBERS:

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

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

Michael Best
Counselor to the Mayor

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

Djibril Toure
Malcolm X Grassroots Movement

Nicholas Peart
Brotherhood/Sister Sol

Bianey Garcia
Make the Road NY

Daniel Puerto
Interpreter

Naz Ali
Desis Rising Up & Moving

Kirsten Foy

Donna Lieberman
Executive Director
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Uti Ofer
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NYCLU

Kate Rubin
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Faiza Patel
Brennan Center for Justice

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

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Owen Center for Constitutional Rights

Brittney Saunders
Senior Staff Attorney
Center for Popular Democracy

Steve Kohut
Justice Committee

Raul Rodriguez
Picture the Homeless

William Gibney
Director of Criminal Practice
Special Litigation Unit
Legal Aid Society

Sienna Fontaine
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Linda Sarsour
Executive Director
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Cyrus McGoldrick
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Ramzi Kassem
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City University of New York

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

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Deputy Director in Charge of Community Organizing and
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NYC Gay and Lesbian Anti-Violence Project

Chris Bilal
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Streetwise and Safe

Catherine Togers
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Rahima Wachuku
Stop Stop-And-Frisk New York City

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

Carlton Berkley
Retired NYC detective

Beau Samatopoulos

Fred Newton

Allen Feinblum

Mitchyll Mora
Youth Leader
Streetwise and Safe

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

Pastor Michael Vincent Crea
One World Life Systems

Roxanne Delgado

Gene Reiss
Picture the Homeless

Evan Goldstein
Drug Policy Alliance

Brian Ellicott

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

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

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

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

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2 you won't get your chance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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2 straight to Jumaane Williams at this point.

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

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

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

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[Applause]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 If there is reasonable suspicion,

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

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

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

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

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

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

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

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

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

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

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

24 [Applause]

25 CHAIRPERSON VALLONE: As I said,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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warrant or supported by probable cause.

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

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

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

The bill conflicts with state law

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

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

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

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

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

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

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2 enforce this section.

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4 The last bill in this series, Intro
5 801 would require police officers to identify
6 themselves to individuals who are the subject of
7 any stops, frisks, searches, traffic stops or
8 other law enforcement activity, provide the reason
9 for the activity and provide a business card with
10 their names as well as contact information for the
11 Civilian Complaint Review Board. This would apply
12 to any police/civilian interaction, including
13 those with victims or witnesses.

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

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

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

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

25 In the particular area addressed by

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 MICHAEL BEST: Yes.

24 [Background noise]

25 CHAIRPERSON VALLONE: We may need a

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2 new mike.

3 [Pause]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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curtailing the mayor's appointment power.

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

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

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

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

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

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

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

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

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to avoid a curtailment problem.

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

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

MICHAEL BEST: That's correct.

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

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

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

MICHAEL BEST: Yes, I believe it was.

SPEAKER QUINN: Better for my

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

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

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

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

25 MICHAEL BEST: Sure. Can you hear

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me now?

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SPEAKER QUINN: That's much better,

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thank you.

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MICHAEL BEST: First off, I'll say

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that I was not here and therefore not part of the

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discussions on that bill when it came through. I

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wasn't in this job; I was in a different job.

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That said, I think that one could make preemption

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arguments about that bill.

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SPEAKER QUINN: But it was signed

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by the mayor.

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MICHAEL BEST: It was signed. It

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was, in fact, signed by the mayor. I think that

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there is a very different situation from that. If

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you look at that bill, under the Equal Protection

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Clause of the Constitution, under the

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individualized suspicion requirements of state and

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federal law, racial profiling was already without

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that law, something that was already illegal, in

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my view, under the law, under both federal and

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state law. That bill, in saying that racial

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profiling was prohibited, simply codified

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something that was entirely consistent with what

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the Criminal Procedure Law, what the state court

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

4 SPEAKER QUINN: [interposing] But
5 can I just ask you a question?

6 MICHAEL BEST: Yeah.

7 SPEAKER QUINN: As a non-lawyer.
8 What does that matter, if you are applying what is
9 or isn't legal, right, which to some degree is the
10 large part of your job? To say to the mayor, and
11 kind of base one, this is or isn't legal and then
12 talk about the policy. If it's illegal, even if
13 it's chicken soup, which is kind of what you were
14 implying, it shouldn't be done because it's not
15 legal and you don't pass laws that are not within
16 the legal power of the City of New York's
17 legislative body.

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

25 MICHAEL BEST: I suppose I would

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

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

22 MICHAEL BEST: I do, yeah.

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

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

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

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

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

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

25 MICHAEL BEST: Yes.

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

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

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

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

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

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

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

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

9 MICHAEL BEST: Yeah.

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

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

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

13 SPEAKER QUINN: Excuse me.

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

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

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

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

25 CHAIRPERSON VALLONE: Thank you,

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

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

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

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

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2 go now to Council Member Jackson.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 [Applause]

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

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

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

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

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

20 Finally, Mr. Chair--

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

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COUNCIL MEMBER JACKSON:

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[interposing] No--

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

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

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CHAIRPERSON VALLONE: Well then
you're wrong.

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

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

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COUNCIL MEMBER JACKSON: --and
detailed.

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CHAIRPERSON VALLONE: These four
bills.

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

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

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

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

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

22 COUNCIL MEMBER FOSTER: Anyway.

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

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

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SPEAKER QUINN: Hey, hey, hey--

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COUNCIL MEMBER FOSTER:

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

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SPEAKER QUINN: --can I--

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COUNCIL MEMBER FOSTER:

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

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not talk to me like that.

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[Applause]

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SPEAKER QUINN: Okay. So let's--

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CHAIRPERSON VALLONE: [interposing]

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I thought you were a professional.

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SPEAKER QUINN: Peter. Everybody.

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COUNCIL MEMBER FOSTER: I thought

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you were too.

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SPEAKER QUINN: Everybody.

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COUNCIL MEMBER FOSTER: Don't do

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

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SPEAKER QUINN: I think it is

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

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important to understand how emotional this topic

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is to people, how personal it is. That is

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important and never a bad thing, in looking at

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legislative issues, that we bring our personal

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

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

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

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

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

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

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

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

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

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

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

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procedure?

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MICHAEL BEST: The NYPD's police--

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COUNCIL MEMBER FOSTER:

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

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yes or no. The city stands behinds these numbers

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and feels that yes, these numbers reflect NYPD

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following their policies.

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MICHAEL BEST: The city believes

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that the vast majority of police officers do their

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jobs professionally and appropriately and

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according to the facts as they know them and stop,

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question and frisk is not an exception to that.

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COUNCIL MEMBER FOSTER: Okay. My

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next question goes to the call for an inspector

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general. Given these numbers and given the

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concern from the communities that are targeted, is

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it also the city's feeling that IAB can police

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

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

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

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that IAB can do, is doing a sufficient job in

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monitoring potential misconduct by police officers

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as it pertains to stop, question and frisk?

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MICHAEL BEST: We do believe that

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

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

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

23 COUNCIL MEMBER FOSTER: Thank you.

24 CHAIRPERSON VALLONE: Speaker Quinn
25 has a follow-up.

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

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

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

10 MICHAEL BEST: Yes, it does.

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

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

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

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

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

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

16 MICHAEL BEST: I am not.

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

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

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

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

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

25 MICHAEL BEST: I've checked to see.

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

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COUNCIL MEMBER LANDER: Preempts
all local laws?

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MICHAEL BEST: Yes.

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

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

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

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

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

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

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

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

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

6 COUNCIL MEMBER LANDER:

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

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

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

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

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2 cause; it is supported by reasonable suspicion.

3 Therefore--

4 COUNCIL MEMBER LANDER:

5 [interposing] But 799 addresses consensual
6 searches.

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

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

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

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2 as I said, about the general preemption point.

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

6 COUNCIL MEMBER LANDER:

7 [interposing] Thank you.

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

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

25 MICHAEL BEST: [interposing] Not in

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2 this case, sir.

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

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

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

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

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

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

25 I want to understand, though, you

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

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

22 COUNCIL MEMBER LANDER:

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

25 MICHAEL BEST: [interposing] But in

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

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

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

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MICHAEL BEST: I do. I don't

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

14 COUNCIL MEMBER LANDER:

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

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

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

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

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

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

16 COUNCIL MEMBER LANDER:

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

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

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

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

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

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

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

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

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

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

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

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

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

4 MICHAEL BEST: [interposing] That
5 said--

6 COUNCIL MEMBER LANDER: --
7 oversight. So I'm asking you questions about
8 important areas of oversight that I believe are
9 not addressed by those.

10 MICHAEL BEST: I understand that,
11 Councilman. That said, I believe that the, again,
12 all of the areas you're talking about, there is in
13 fact, in the entities that I mentioned, the
14 ability to investigate any of those issues at
15 multiple different levels. So, no, I do not
16 believe there's a need for an additional entity to
17 do what those entities already can do.

18 COUNCIL MEMBER LANDER: So I'll
19 just conclude with this. There hasn't been a
20 meaningful investigation into the allegation of
21 the systemic illegal use of quotas, as has been
22 alleged by a range of police officers. There
23 hasn't been a meaningful investigation into
24 allegations of systemic crime statistics
25 downgrading. The Mayor's Office of Police

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

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

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

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

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

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

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

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

10

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

14

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

22

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

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

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COUNCIL MEMBER GENTILE:

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

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MICHAEL BEST: [interposing] Yes.

9

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

13

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

23

Secondly, it requires a whole host
24 of things--well, actually it's more than two.

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There are a number of things that the bill would

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

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

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

25 COUNCIL MEMBER GENTILE:

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2 [interposing] Right.

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

16

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

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2 situations.

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COUNCIL MEMBER GENTILE: I

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understand the concerns you have on the

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legislation, and I appreciate what you've said.

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

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achieved with someone who does not speak the

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language?

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MICHAEL BEST: Well, I think they

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

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ask--

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COUNCIL MEMBER GENTILE:

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

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housing project.

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MICHAEL BEST: They would have to

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find a way to communicate with the person, either

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

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spoke the language or another officer who spoke

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the language or something along those lines. If

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

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

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get consent.

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That said, the thing that I think

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seems to be getting somewhat lost here is that

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stop, question and frisk, which is what many of

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

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

11 COUNCIL MEMBER GENTILE:

12 [interposing] But 799 applies to consent searches.

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

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

25 MICHAEL BEST: [interposing] That's

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2 one of the conflicts.

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

5 MICHAEL BEST: Yes.

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

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

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

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

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

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

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

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

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

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

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

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2 situation.

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[Pause]

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COUNCIL MEMBER GENTILE: Well, I

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

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

8 CHAIRPERSON VALLONE: Sorry.

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

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

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

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

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

25 COUNCIL MEMBER WILLIAMS: I see.

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

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

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

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of the committee who may disagree with that.

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

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fact of the matter is I believe quite strongly

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that those are the primary problems with these

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bills.

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In terms of whether there is an

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issue about the merits of the bills and whether

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the Council should legislate here, I think first

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off that since they're preempted, the Council

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should not legislate on these matters. I think

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secondly that the police department in general

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does a very professional job on all of its crime

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fighting strategies, including stop, question and

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frisk.

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I believe that a number of the

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things that are proposed in this legislation would

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cause enormous problems for the city. Some of

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them have been alluded to by some members of the

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committee, some of them I have alluded to. I

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think that it would make police officers--there

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are a lot of very impractical things in these

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bills, some of which I have discussed.

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I also think that the provisions

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relating to lawsuits would cause--whether there

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

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

24 COUNCIL MEMBER WILLIAMS:

25 [interposing] My question was--

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

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

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

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

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

25 COUNCIL MEMBER WILLIAMS:

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

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

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

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

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

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

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

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

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

8 COUNCIL MEMBER WILLIAMS:

9 [interposing] Yes, murders are down.

10 MICHAEL BEST: --we are on--

11 COUNCIL MEMBER WILLIAMS:

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

15 MICHAEL BEST: It is one--

16 COUNCIL MEMBER WILLIAMS:

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

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

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all of these things together have succeeded.

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

MICHAEL BEST: That is not--

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

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

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

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

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

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

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

17 COUNCIL MEMBER WILLIAMS: So even--

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

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

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

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

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searches, would it be something that you can support?

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

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

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

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

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

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

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

25 MICHAEL BEST: Well--

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COUNCIL MEMBER WILLIAMS:

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

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MICHAEL BEST: Well, I would say

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that they are, as I mentioned in my testimony,

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court cases going on right now where the systemic

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issue is being litigated. So I suppose one could

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look at that also as a protection about the police

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

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into the specifics of litigation here, but, you

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know, we'll litigate those cases in court.

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COUNCIL MEMBER WILLIAMS:

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Primarily, there is no proactive oversight of the

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police department. All of this, we have to have

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great resources to bring these to court, just to

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mention.

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Intro 801, let me see what you said

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about that. This would apply to civilian

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interaction, including those victims or witnesses.

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This is the one that says we have to get express

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consent. So your big thing is legal. As Council

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 COUNCIL MEMBER WILLIAMS:

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

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

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

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

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

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

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

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

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

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

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

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

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COUNCIL MEMBER WILLIAMS:

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

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

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COUNCIL MEMBER WILLIAMS: Okay.

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

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

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

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COUNCIL MEMBER WILLIAMS: Yes.

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

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

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

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

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

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

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

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

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

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

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pushing these hearings forward.

There is a problem here, sir.

Unless the administration deals with it, it's just going to grow. Thank you.

CHAIRPERSON VALLONE: Thank you, Council Member. I feel compelled to point out, again as I said in the opening statement, there is a law right now that bans stopping people just because of race.

We've got seven or eight more Council Members on the list, at least one Assembly Member. Thirty people have signed up, at least. So I do appreciate people keeping their comments on topic and as brief as possible so we can get to everyone. We'll go now to Council Member Rose.

COUNCIL MEMBER ROSE: Thank you.

Thank you, Chair. I want to thank Jumaane Williams for being, you know, so steadfast in pursuing this issue because it is a gross violation of people's civil rights. With that in mind, I'd like to know what office monitors whether the police department adequately protects the civil rights and civil liberties of New York City residents.

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

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

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

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

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

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

15

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

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

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

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MICHAEL BEST: Well, I would talk

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 MICHAEL BEST: I don't--

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

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

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

25 MICHAEL BEST: I'm not sure

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

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COUNCIL MEMBER ROSE: I'm asking you what is the correlation between the productivity quotas and the stop, question and frisk numbers. Have not police officers been given a number that they're supposed to bring back? Does this have a correlation in stop, question and frisk? Every morning the precinct commander gives out directions on what quotas, productivity numbers they need to bring back.

MICHAEL BEST: The police department does not set quotas, Council Member. So that's--

COUNCIL MEMBER ROSE: [interposing] There are quotas, counsel--

MICHAEL BEST: [interposing] Well, I think we disagree on that, Council Member.

COUNCIL MEMBER ROSE: They call it productivity, but it's a quota. I was told that they--the commissioner even admitted that how do they know if officers are doing their jobs if they're not bringing back a certain number of arrests, of stop, question and frisk numbers.

MICHAEL BEST: I think there's a

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

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

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

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COUNCIL MEMBER ROSE: --a
15 description.

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

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

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

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COUNCIL MEMBER JAMES: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

23 MICHAEL BEST: [interposing] Yes.

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

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2 even in the case of codification of existing law.
3 That's what you said.

4 MICHAEL BEST: Well, yes--

5 COUNCIL MEMBER JAMES:

6 [interposing] And if that's what you said, then in
7 2004 when Mayor Bloomberg signed the racial
8 profiling law, even if it was a codification of
9 the law, he had no authority to do that and then
10 in fact he was wrong. And so if he was wrong
11 then, then your position is he was wrong then,
12 then he should not have done it and therefore he
13 was preempted and he should not have passed that
14 law. Is your testimony, is your position that the
15 Mayor of the City of New York should not have
16 passed any legislation because he was preempted,
17 notwithstanding of the fact that it was a
18 codification of existing law?

19 MICHAEL BEST: My position is, and
20 as I said earlier, no one really knows what would
21 happen if it got to court.

22 COUNCIL MEMBER JAMES: Thank you.

23 MICHAEL BEST: That said--

24 COUNCIL MEMBER JAMES:

25 [interposing] Thank you.

1

MICHAEL BEST: That said--

2

COUNCIL MEMBER JAMES:

3

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

4

MICHAEL BEST: [interposing] That

5

said--

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COUNCIL MEMBER JAMES:

7

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

8

[Crosstalk]

9

CHAIRPERSON VALLONE: --the

10

question please.

11

COUNCIL MEMBER JAMES: Let's move

12

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

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to all of these organizations that exist, all of

14

these entities that exist that are responsible for

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systematic--for engaging in any investigations

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regarding the systematic oversight of NYPD. As

17

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

18

attorney have no broad oversight authority. In

19

fact, they focus on the criminal justice system.

20

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

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attorney have authority to engage in

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investigations of NYPD, that is somewhat beyond

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their scope, because they deal primarily with

24

criminal activity.

25

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

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

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

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

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

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

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

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

11 COUNCIL MEMBER JAMES: Okay.

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

15 COUNCIL MEMBER JAMES: Okay.

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

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

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

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

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

COUNCIL MEMBER JAMES: I am respecting the witness--

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

COUNCIL MEMBER JAMES: --Mr. Chair.

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

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

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

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

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

COUNCIL MEMBER JAMES:

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

11 [Applause]

12 CHAIRPERSON VALLONE: And you are
13 almost done.

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

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

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

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

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

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

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

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

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

4

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

9

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

13

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

15

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

18

[Pause]

19

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

21

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

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

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

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

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

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

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

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

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

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

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

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

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

1

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

4

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

8

COUNCIL MEMBER GREENFIELD:

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

11

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

21

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

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

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

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

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

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

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

25 COUNCIL MEMBER GREENFIELD: The

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

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

7 COUNCIL MEMBER GREENFIELD:

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

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

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

5 COUNCIL MEMBER GREENFIELD:

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

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

15 COUNCIL MEMBER GREENFIELD:

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

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

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

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

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

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

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

3 MICHAEL BEST: Yes, I was.

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

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

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

1
2 arresting New Yorkers who were trying to entertain
3 themselves in their freedom of speech rights.
4 Those rights were found to have been violated
5 eight years later. So my point that I'm making is
6 that just because you believe something is illegal
7 or unconstitutional or undoable does not mean that
8 the courts will disagree with you. That's why I
9 believe it's a disservice to not engage in the
10 fundamental discussion over the actual pieces of
11 legislation rather than to simply stonewall by
12 saying we don't believe that this is in fact
13 constitutional or allowable. Because I think that
14 there's a very good chance that the courts, which
15 have a history of disagreeing with the NYPD on
16 these issues, will disagree with you on these
17 pieces of legislation as well. Thank you.

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

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

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

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

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

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

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

15 MICHAEL BEST: All right.

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

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

22 CHAIRPERSON VALLONE: Okay, thank
23 you.

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

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

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

25 So I would like to have some sort

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

8

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

15

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

18

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

21

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

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

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MICHAEL BEST: [interposing]

5

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

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and I believe the Chairman said at the beginning

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that this is an oversight hearing on four bills.

8

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

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in these bills. The bills are not about training

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and--

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COUNCIL MEMBER LAPPIN:

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

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bills?

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MICHAEL BEST: Do I think that

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they're relevant to the bills? I believe that

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they're relevant to the general issue of police

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practices. But the specific hearing was--

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COUNCIL MEMBER LAPPIN:

19

[interposing] Well, more specifically stop-and-

20

frisk practice--

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MICHAEL BEST: --this is not--

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COUNCIL MEMBER LAPPIN:

23

[interposing] It's not just police practice.

24

MICHAEL BEST: Council Member, this

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

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

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

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

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

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

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

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

11 MICHAEL BEST: We shall do that.

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

15 MICHAEL BEST: Sure, that's fine.

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

25 COUNCIL MEMBER WILLIAMS: Thank you

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

12 [Applause]

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

19 [Pause]

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

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

5

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

10

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

17

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

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2 package of bills.

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

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

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

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

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It seems pretty basic to me.

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

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

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

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

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CHAIRPERSON VALLONE: Thank you,

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

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

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

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

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

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

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

20 KEVIN FINNEGAN: Thank you.

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

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

12 [Pause]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 CHAIRPERSON VALLONE: Thank you.

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

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

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

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

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He basically stated that he knew

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

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

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

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

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

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

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

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

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

If you haven't experienced it, you

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

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

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

CHAIRPERSON VALLONE: Thank you.

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

6 [Crosstalk]

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

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

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

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

25 In November of last year, when news

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

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

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

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

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

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

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

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

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

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

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CHAIRPERSON VALLONE: Thank you.

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Who's left?

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DANIEL PUERTO: Good afternoon. My

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name is Daniel Puerto and I'm a community

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

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doing translation for Ms. Garcia.

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BIANEY GARCIA: [Through

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Interpreter] Hello and thank you for letting me

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

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22-year-old transgender woman from Mexico and

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currently live in Jackson Heights Queens. I came

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to this country at the age of 15 because I wanted

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to be safe from the harassment and discrimination

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that people like me face in my country.

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I became a member of Make the Road

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New York's LGBTQ Justice Project about a year ago

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because I realized that this discrimination still

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happens to us transgender women in the United

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States and oftentimes it's carried out by the same

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people that are supposed to be protecting us, the

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

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

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2 hurting and not helping our communities.

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

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

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was with my boyfriend and they said I was lying.

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

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

BIANEY GARCIA: [Foreign language].

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

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

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

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

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

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

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

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

16 [Pause]

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

23 [Laughter]

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

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

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

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

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2 their gender or their skin color.

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

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

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

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

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

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

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

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

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

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

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

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

13 CHAIRPERSON VALLONE: Could you
14 skip the rest?

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

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

8 KATE RUBIN: Good afternoon.

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

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

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

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

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

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

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

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

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

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

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professional and respectful.

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

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

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

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

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

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

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

1
2 or corruption by police officers and a department
3 wide policy.

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

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

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

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2 Congress.

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

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

The Department of Investigation

1
2 simply does not cover the police. New York's U.S.
3 attorneys and district attorneys do not
4 proactively oversee the NYPD's policies and
5 procedures. They get involved when they become at
6 issue in a particular case. I think this was
7 mentioned already this morning, but the idea that
8 a civil rights action commenced by the DOJ is how
9 we want to have the NYPD overseen is frankly going
10 a little bit beyond where we should be.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 CHAIRPERSON VALLONE: [interposing]

16 You really have to finish up.

17 DR. DELORES JONES-BROWN: I am

18 finishing up.

19 CHAIRPERSON VALLONE: It's not fair

20 to everyone else.

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

22 without teeth and provides an additional level of

23 oversight to drive home the fact that the NYPD

24 mandates and rewards only fair and just policing.

25 Thank you.

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CHAIRPERSON VALLONE: Thank you.

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

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

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finish up before the buzzer. Thank you. You have

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a clock, everyone, right there.

7

DARIUS CHARNEY: Good afternoon to

8

the chairman and the other committee members. My

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name is Darius Charney. I am a senior staff

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attorney with the Center for Constitutional

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Rights.

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CCR is a national legal and

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educational organization dedicated to upholding

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rights guaranteed by the United States

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Constitution and the Universal Declaration of

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Human Rights.

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For more than a decade, through

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litigation, public education and advocacy, CCR has

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worked to end the abuses and increase the

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accountability and transparency of the New York

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Police Department. What we have learned from this

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

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will not and cannot police itself.

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In 1999, in the wake of the tragic

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killing of Amadou Diallo by members of the NYPD's

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

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

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

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

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

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

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

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

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

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

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

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

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

23 UTI OFER: Thank you.

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

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

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

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

11 [Pause]

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

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

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

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

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

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disciplined for his last minute absence.

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

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

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

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

4 His job offered no paid vacation
5 and limited unpaid vacation and sick time. Within
6 a week of the arrest, he was fired because of his
7 absences from work. He applied for unemployment
8 benefits was ultimately denied because his guilty
9 plea as a matter of law resulted in a finding that
10 the job had cause to fire him.

11 When he came to our office, he had
12 been unable to find a job, was on public
13 assistance and was facing eviction because of the
14 loss of that income. So this is just one story.
15 We have many others like it that show how
16 destabilizing even a single unjustified arrest can
17 be for individuals trying to make better lives for
18 themselves and their families. So thank you very
19 much.

20 CHAIRPERSON GENTILE: Classic
21 ripple effect I guess. Yes. Thank you.

22 STEVE KOHUT: How you doing? My
23 name is Steve Kohut. I'm with the Justice
24 Committee. I'm born and raised and still living
25 in the Lower East Side of New York.

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2 As a lifelong Latino member of the
3 Lower East Side, I've been victimized by the NYPD
4 more times than I can remember, starting at the
5 age of 12. I've had my head slammed against a
6 car. I've been choked. I've had property taken
7 from my pockets and not returned. I've had my
8 property intentionally broken without
9 reimbursement. I've even had my life threatened
10 by the NYPD.

11 One instance in particular, I'm
12 walking down the street. It's a one-way street
13 headed that way. Here comes a van going down the
14 wrong way of a one-way street, hops the curb.
15 Three gentlemen walk out of the car, all with guns
16 in their hand, pointed at me. They walk up to me,
17 put one gun against my temple, one gun against my
18 neck and one gun dead square in my chest. All are
19 point in blank range.

20 They start searching me. They tell
21 me if I move I'll be shot. Starting searching me,
22 don't find anything, go underneath my clothing,
23 into my pockets, never asked me for my consent.
24 Never told me why I was stopped. They didn't
25 find, I guess what they were looking for. I

1
2 didn't have anything on me. They start searching
3 my boots, remove my boots, undo my belt, search
4 inside my pants, my genitals, everything, remove
5 my pants, dropped them by my leg. Long story
6 short, they ended up leaving me there standing
7 wearing my boxers and my socks, in broad daylight
8 on the street in February. Then just walked away,
9 looked at me and said you got lucky this time.

10 CHAIRPERSON GENTILE: Were they
11 uniformed officers?

12 STEVE KOHUT: No.

13 CHAIRPERSON GENTILE: No.

14 STEVE KOHUT: The only reason I
15 even knew they were cops was because while I had--
16 you know, the gun's like this, I looked down and I
17 see sticking just slightly like this out of his
18 jacket, I see a little corner of a badge. That's
19 the only way I even knew they were cops and I
20 wasn't being robbed.

21 As I think back on that particular
22 as well as many others, all I could think of is
23 that if the Community Safety Act had been active
24 at that point, that would have never happened to
25 me.

1

CHAIRPERSON GENTILE: Right.

2

3

STEVE KOHUT: As well as many other things. I mean, you have Intro 800 that's going to protect against discriminatory profiling, which is what happened to me. I got stopped because I'm a Latino walking down the street in Lower East Side.

4

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CHAIRPERSON GENTILE: Right.

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STEVE KOHUT: There was no other reason. That wouldn't have happened if that was in effect. Intro 801 would have made it necessary for them to identify themselves and let me know they're cops, let me know how to better prepare myself for what's about to take place, other than being, you know, scared my life, you know not knowing what's going on.

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CHAIRPERSON GENTILE: We've got to wrap it up quickly.

19

20

STEVE KOHUT: The last one, I mean that I'm going to mention is 799, which would have required them to ask me for permission rather than just strip me in the street.

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22

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CHAIRPERSON GENTILE: Right.

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STEVE KOHUT: You know, these

1

2 things that I mean, providing someone with an ID,
3 I mean what's so hard about that.

4

CHAIRPERSON GENTILE: Understood.

5

6 meet somebody every day; you give them your card.
7 What's so hard about that? I wasn't given a card.
8 I was given three guns to my head.

9

CHAIRPERSON GENTILE: Thank you for
10 that testimony.

11

STEVE KOHUT: In cases like mine,
12 it's something that's definitely necessary.

13

CHAIRPERSON GENTILE: Understood,
14 yeah. Thank you for coming in and thank you for
15 that testimony. Yes, go ahead.

16

RAUL RODRIGUEZ: Hi, my name is
17 Raul Rodriguez. I'm a member of the grassroots
18 organization called Picture the Homeless and also
19 a member for the Communities United for Police
20 Reform.

21

Being homeless has made me a prime
22 target for the officers to stop me and harass me
23 in every sense of being. Whenever it's in the
24 train, in the street or even in a hospital
25 emergency room, police officers always use the

1
2 excuse that I match the description of someone who
3 did something wrong. I ask you should this be the
4 fact of me being Latino and me being homeless be
5 enough to warrant any type of constant targeting
6 from the NYPD?

7 They always demand me to empty my
8 pockets and they check everything that I have on
9 me, without asking for my consent. On a good day,
10 on their legal stop and search, because that's how
11 we call it, I will be allowed to leave, not only
12 but for it to happen like in about a day or two.
13 But if I assert my legal and constitutional rights
14 and question why I was stopped, I know that the
15 officers will become more aggressive and the
16 experience will only get worse for me, often
17 leading for me being handcuffed and even slammed
18 in the floor.

19 In one incident, I was stopped in
20 front of my residence after coming home from work
21 late one night. I worked as a maintenance manager
22 in a gym late at night. In retaliation of my
23 question I was stopped, I was unlawfully charged
24 with menacing. The consequences of that charge
25 extended far way beyond that incident that night,

1
2 for months. The unwarranted menacing charge
3 costed me my job, including my place of residence.

4 These encounters have me going
5 through a judicial revolving door, having me
6 subject to a risk of paying fines that I can't
7 afford to jail time to justify the reasons of why
8 they're stopping me. This is due to that it is
9 very difficult for me to find employment since
10 nobody wants to hire a person that has a record.
11 It also has prevented me from opportunities to be
12 housed because who could afford a place to live
13 without a job?

14 The damage of these encounters have
15 done to me are irreplaceable. How can I ever
16 enjoy the American dream with a criminal record
17 that has been forced upon me just because I'm
18 homeless? It is hard enough for anybody to deal
19 with life's challenges being a homeless person in
20 the City of New York. But to have the very same
21 people that are supposed to protect me harass me
22 because I'm homeless is ridiculous. In all
23 encounters have made in my life much more
24 difficult to bear. I support the Community Safety
25 Act because I believe that reforms will prevent

1
2 similar experiences from happening again to myself
3 and others and bring in transparency and
4 accountability to the police officers who
5 sometimes act above the law. The passage of the
6 Community Safety Act will bring me closure and
7 actually the Community Safety Act will restore the
8 courtesy, professionalism and respect that we
9 expect and deserve from the NYPD.

10 CHAIRPERSON GENTILE: Thank you for
11 your testimony. Sorry to hear the experiences,
12 but thank you for your testimony.

13 RAUL RODRIGUEZ: Thank you, sir.

14 BRITTNY SAUNDERS: Good afternoon.
15 My name is Brittney Saunders and I'm senior staff
16 attorney for immigrant and civil rights at the
17 Center for Popular Democracy. CPD is a proud
18 member of the Communities United for Police
19 Reform. We'd like to thank you for having us here
20 today.

21 I'd like to take this opportunity
22 to place the Community Safety Act in the national
23 context by discussing efforts that have been made
24 in other parts of the country to deal with the
25 problem of discriminatory policing. In recent

1
2 years, some 13 states have enacted measures like
3 Intro 800 that bar profiling on the basis of race,
4 national origin and in some cases religion or
5 gender. Of course, Intro 800 would expand the
6 universe of protections, covering characteristics
7 like immigration status, age, housing status and
8 gender identity or expression, which as we've
9 already today are already the basis for a lot of
10 unjust stops.

11 Two states, West Virginia and
12 Colorado, have provisions like Intro 799 that
13 require police officers to secure proof of
14 consent. Importantly, data collected in West
15 Virginia after the provision was put into place
16 shows that having a proof of consent law did not
17 eliminate consensual searches as a category. It
18 did not appear to impose any undue burdens on
19 police officers.

20 However, the data that was
21 collected also underscore the ineffectiveness of
22 racial profiling, as it showed that African
23 Americans and Latinos were far more likely than
24 whites to be stopped but far less likely to
25 actually be carrying contraband.

1
2 As you've heard earlier and
3 actually just on this panel, unlawful stops are
4 often made even more traumatic by the fact that
5 police officers do not identify themselves. Intro
6 801 would change this, establishing a tone of
7 respect and increasing transparency and
8 accountability. Similar measures are already in
9 place in Minnesota and Arkansas.

10 States have taken a number of steps
11 in order to ensure ongoing oversight and
12 transparency and accountability to make sure that
13 such profiling measures actually result in real
14 change on the ground. These have ranged from the
15 IG structure that is already in place in Los
16 Angeles to a number of other forms.

17 But basically, what all of this
18 taken together shows is that the NYPD can in fact
19 reject discrimination in favor of approaches that
20 are more equitable, more effective and more likely
21 to foster healthy relationships between police
22 officers and the communities that they serve.
23 Thank you.

24 CHAIRPERSON GENTILE: Great.
25 Interesting.

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2

WILLIAM GIBNEY: Good afternoon.

3

My name is William Gibney. I'm the director of

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the criminal practice special litigation unit of

5

the Legal Aid Society.

6

You've heard the statistic earlier

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in the hearings about 90 percent of the people who

8

were stopped last year did absolutely nothing

9

wrong, were not charged with anything, were just

10

often very aggressively stopped and frisked,

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targeted and let go for doing absolutely nothing.

12

As the largest public defender in

13

the City of New York, I'm here to testify about

14

the 10 percent that were accused of something. I

15

think the bottom line of our testimony is that if

16

you only focus on the 90 percent, then you're

17

vastly understating the really destructive nature

18

of this program, because many of those other 10

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percent that justify this program are absolutely

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bad arrests.

21

Two developments in cases that we

22

have filed have occurred in the last two weeks.

23

Last week, a federal district court in the class

24

action case of Davis against the City of New York

25

ruled that the false arrest, unlawful detention

1
2 and other claims of nine residents and visitors to
3 New York City Public Housing may proceed to trial.
4 The judge, Judge Scheindlin, found that the claims
5 raise a constitutional question of whether they
6 NYPD is violating the very rights of the residents
7 and guests whom they seek to protect. Her
8 question that she asked is "are defendants acting
9 within constitutional limits of the presumably
10 sincere efforts to provide a safe environment for
11 the residents of public housing or in their zeal
12 to provide that protection are they violating the
13 very rights of the residents and guests they seek
14 to protect?"

15 She ruled further that there is
16 nothing suspicious about a person walking down the
17 stairs of a NYCHA building in a high crime area.
18 There is nothing suspicious about a person stating
19 that he was visiting a friend in a NYCHA building.

20 Our testimony goes on to talk about
21 other problematic patterns of arrests. We file
22 litigation also this summer also about marijuana
23 in public view, another situation where thousands
24 of arrests are occurring improperly each year.

25 Those are not the only problematic

1
2 patterns. The NYCLU has another trespass case
3 pending in the private buildings. We have heard
4 testimony today about other problematic patterns
5 of arrest. Thank you.

6 CHAIRPERSON GENTILE: Thank you.
7 If you have the testimony, you can submit it to us
8 and we'll see the rest of it. I just have a
9 question for Ms. Saunders. Is it fair to say then
10 that New York City is behind the curve with the
11 rest of the country in not only legislating but
12 experiencing the benefits of legislation that we
13 have before us?

14 BRITTNY SAUNDERS: I think what I
15 would say is that there have been a number of
16 steps taken in other parts of the country. What
17 the Community Safety Act really does is it takes
18 the best and the strongest of that thinking and
19 pulls it together. So I think it really creates
20 an opportunity for New York to take a huge leap
21 forward and really to expand some protections that
22 are really much needed in the city.

23 CHAIRPERSON GENTILE: Council
24 Member Lander?

25 COUNCIL MEMBER LANDER: No

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2 disparagement meant to West Virginia but we've got
3 a problem when New York is behind West Virginia in
4 protecting our civil rights. Thanks all of you
5 very much on this panel.

6 CHAIRPERSON GENTILE: Thank you.
7 Our next panel: Linda Sarsour, Cyrus McGoldrick,
8 and Ramzi Kassem.

9 [Pause]

10 CHAIRPERSON GENTILE: Again, we'll
11 set the clock at two minutes and we'll begin. Ms.
12 Sarsour, if you'd like to start.

13 LINDA SARSOUR: Could we start with
14 Professor Ramzi because he needs to run?

15 CHAIRPERSON GENTILE: Okay, sure,
16 absolutely. Professor Ramzi?

17 RAMZI KASSEM: Thank you. I'll
18 repeat that. My name is Ramzi Kassem. I'm an
19 associate professor of law at the City University
20 of New York, where I also direct the Clear
21 Project. Chair Vallone and members of the
22 Committee on Public Safety, thank you for offering
23 me the opportunity to address some of the failure
24 of the NYPD and hopefully highlight the need for
25 reform. I do so in my own name, on behalf of the

1
2 Clear Project, and in the name of the Muslim
3 American Civil Liberties Coalition, which Clear
4 advises.

5 As the Associated Press confirmed
6 in a Pulitzer Prize winning series of exposés, the
7 NYPD has been engaged in perhaps the largest
8 spying program by a local law enforcement agency
9 on record. It is a sprawling effort, targeting
10 entire Muslim communities for surveillance,
11 mapping and infiltration and it stretches from the
12 heart of our city to the border of Canada and
13 beyond. In the name of total security, the NYPD
14 has treated basic acts of daily living as
15 potential crimes, disregarding privacy and the
16 freedoms of speech and religion.

17 The program's founders found the
18 ideological underpinnings and the guiding
19 principles they needed in so-called radicalization
20 theory, a deeply flawed doctrine positing the
21 existence of a conveyor belt relationship between
22 religiosity and violent action. According to that
23 theory, New Yorkers from, quote, "all walks of
24 life" are potential radicals and that includes,
25 quote, "university students, engineers, business

1
2 owners, teachers, lawyers, cab drivers and
3 construction workers," end of quote. No suspicion
4 of actual criminal activity is needed.

5 For all, the novelty of
6 radicalization theory, the NYPD was in many ways
7 primed for it. Long before the war of terror,
8 there was the war on crime and with it came stop-
9 and-frisk, which is a profiling model that was
10 applied almost exclusively to communities of
11 color.

12 Similarities abound between covert
13 NYPD spying on Muslims and stop-and-frisk. Just
14 as Muslim mapping stems from roots in
15 radicalization theory, the stop-and-frisk program
16 grew out of the broken windows theory: the idea
17 that constant policing of low-level disorder
18 deters serious criminal activities. As applied,
19 both theories result in the discriminatory over
20 policing of minority communities.

21 The excesses of the NYPD must be
22 checked. A broad coalition of organizations that
23 transcends ethnic or religious differences,
24 including the Communities United for Police Reform
25 Campaign is present today to demand the

1
2 prohibition of racial and religious profiling and
3 the appointment of an inspector general to oversee
4 NYPD policies. Together, these New Yorkers cannot
5 only make stop-and-frisk, Muslim mapping and other
6 expressions of bias-based policing unlawful
7 through the Community Safety Act, they are
8 hopefully making them politically untenable as
9 well. Thank you.

10 CHAIRPERSON GENTILE: Thank you,
11 Professor Ramzi. We do have your testimony and
12 your attachment. We will take a look.

13 RAMZI KASSEM: Thank you.

14 CHAIRPERSON GENTILE: Thank you so
15 much.

16 RAMZI KASSEM: My apologies--

17 CHAIRPERSON GENTILE: [interposing]
18 You have to leave? Yes, you can leave. Okay, who
19 wants to go next?

20 CYRUS MCGOLDRICK: I think it's me.
21 To the members of the City Council and to members
22 of the audience, thank you for your time and for
23 the opportunity to discuss our support for the
24 Community Safety Act. You know, these bills are
25 the fruit of tremendous collaboration and

1
2 coalition. I really think that it takes
3 tremendous leadership to see this vision and to
4 make it a reality, and so we appreciate the City
5 Council and especially the work of Communities
6 United for Police Reform in this effort. My name
7 is Cyrus McGoldrick. I'm the advocacy director at
8 the New York Chapter of CARE the Council on
9 American Islamic Relations.

10 Primarily we deal with cases of
11 religious, racial, and ethnic discrimination.
12 When we discuss these bills it's very important
13 to, of course, see this within the framework of
14 constitutional rights and human rights more
15 broadly. I think many of the panelists today have
16 made that point very clearly.

17 I'd like to take just a slightly
18 different way. As an issue of cost, whether we're
19 talking about surveillance or we're talking about
20 stop-and-frisk or police shootings and the effects
21 in communities, it's a waste, both in the
22 political capital that NYPD built 11 years ago, or
23 in terms of budget. Especially when you have NYPD
24 and Chief Gallati admitting in a deposition that
25 the surveillance produced absolutely no leads, no

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2 leads whatsoever in the Muslim community. This is
3 absurd.

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5 It's not just the fact that they're
6 going after people based on race or religion or
7 ethnicity, but they're going after the best.
8 They're going after mosque leaders. They're going
9 after the politically active, people involved in
10 social justice causes. There was a blog headline
11 about the NYPD treating liberal protest groups
12 like Muslims. It was a perfectly ironic headline
13 that I think deserves some attention. So I
14 encourage you to read the AP documents yourselves
15 if you haven't seen them yet. It's really
16 chilling. There really is no defense of the NYPD,
17 except if you ignore them.

18

19 You see that also, especially in
20 relation to the oversight issue. This is a top-
21 down policy. This is beyond the Internal Affairs
22 Bureau. This is beyond the CCRB. We know very
23 well that writing letters to the CCRB is like
24 writing a letter to Santa Claus. So it's very
25 important that we really have a higher top-down
oversight.

26

Finally, my last point is that--I

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2 missed the shot clock--but the last point is that
3 the inspector general, we just see that this bill
4 and the other standards set by the Community
5 Safety Act is important, it's obvious and it's
6 very necessary. So we thank you for your time and
7 for your interest and for your care on this issue.

8 CHAIRPERSON GENTILE: Great. Thank
9 you for your testimony, appreciate it. Now,
10 someone from my neck of the woods, Linda Sarsour.

11 LINDA SARSOUR: My whole testimony
12 is directed straight at you, Council Member
13 Gentile.

14 CHAIRPERSON GENTILE: Okay.

15 LINDA SARSOUR: So again, my name
16 is Linda Sarsour. I'm the executive director at
17 the Arab American Association of New York and the
18 advocacy director for the National Network for
19 Arab American Communities.

20 Bay Ridge Brooklyn, where I live
21 and work, is home to the largest Arab American
22 community in the state of New York, an area
23 heavily targeted by NYPD intelligence and other
24 federal law enforcement agencies. Our businesses,
25 mosques, coffee shops, civic associations all

1
2 monitored by the demographics unit of the NYPD and
3 mentioned in secret documents revealed through
4 reports by the Associated Press.

5 Young college students who
6 recognize their individual names, emails they sent
7 and events they organized. Our previous Imam
8 Sheikh Redda Shata, in our mosque, Islamic Society
9 of Bay Ridge were listed among those monitored. A
10 mosque, a sacred haven, a place where community
11 members escape to find serenity and deepen their
12 relationship with God.

13 This is the same mosque that has
14 invited and hosted NYPD officials on dozens of
15 occasions, opened our doors to them, broke bread
16 with them and extended our hand in partnership and
17 cooperation. It is the same NYPD officials that
18 have been authorizing the surveillance and
19 monitoring of our entire community, not based on
20 evidence or probable cause but based on ethnicity
21 and religion.

22 It is not just about statistics or
23 the number of mosques or cafes or number of
24 informants, it's about the wounded psyche of an
25 entire community: trauma, mistrust, alienation.

1
2 The targeting and profiling of any
3 group based on race, ethnicity and national
4 origin, not only reflects bias but also is a
5 completely ineffective means for law enforcement
6 to prevent crime. The Arab and Muslim communities
7 in New York are guilty until proven innocent,
8 which goes against everything our constitution and
9 our country stands for. NYPD officials, including
10 Commissioner Kelly, who oversaw these initiatives
11 that clearly violate the civil rights of New
12 Yorkers must be investigated and held accountable
13 for their actions, and a process must be
14 expediently implemented to safeguard that such
15 abuses will never be justified by NYPD policy.

16 This process is the passage of the
17 Community Safety Act that I hope my City Council
18 Member signs onto and more specifically the NYPD
19 inspector general act. An inspector general will
20 provide transparency, thus allowing the mayor and
21 the City Council to better exercise their
22 oversight responsibilities and increase public
23 confidence in policing. The inspector general
24 would have the mandate, expertise and perspective
25 to make sure that as NYPD works to keep our

1
2 communities safe, they do so consistent with our
3 constitutionally granted liberties.

4 Quote, "I could tell you that I
5 have never made a lead from rhetoric that came
6 from a demographics report and I'm here since
7 2006. I don't recall other ones prior to my
8 arrival." End quote. These words are not my
9 words; they are said by Assistant Chief of NYPD
10 Thomas Gallati, in a June 28th deposition. No
11 leads translate to an ineffective program.

12 In light of a weak economy, we
13 should ensure that our tax dollars are spent
14 efficiently. This includes education, health
15 care, infrastructure, transportation. We owe it
16 to New Yorkers to do the right thing. The right
17 thing is to pass the Community Safety Act and for
18 Council Member Gentile to sign onto it. Thank
19 you.

20 CHAIRPERSON GENTILE: I'm here
21 learning also, so that's good to hear. I had a
22 question that came to mind as you were speaking.
23 We've talked a lot about this issue in the past.
24 If the NYPD went back to more of a community
25 policing policy rather than a stop, question and

1
2 frisk policy, whereby there were more police
3 officers who would engage in the community and
4 know the people in the community, would that be
5 something as a step in the right direction that
6 would negate or have less necessity in their mind
7 to do a stop-and-frisk if in fact this community
8 policing were in place?

9 LINDA SARSOUR: So the NYPD boasts
10 a diverse police force and they also boast a
11 community affairs department. While you know in
12 Bay Ridge we love our community affairs officers
13 and we think they do a good job, but that is
14 negated by the interaction that our young people
15 have with law enforcement, also in Bay Ridge,
16 including by Fort Hamilton High School. There
17 have been many occasions of stories that we've
18 shared with NYPD and us having to pick up our own
19 kids from a local police department.

20 But I think for the Muslim
21 community specifically on the surveillance issue,
22 there's a distinction between the work that we're
23 doing with our local precincts and the
24 intelligence division and the counterterrorism
25 efforts of the New York Police Department. It is

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2 not our community affairs director who is coming
3 into our mosque to surveil and monitor us. It's
4 not their NYPD security cameras who are monitoring
5 our area.

6 I think what our community wants is
7 accountability from Mayor Bloomberg and from
8 Commissioner Kelly to say that yes, something is
9 wrong here and we want to fix it. There has been
10 no response from the Mayor or Commissioner Kelly
11 to our, the people that they consider the people
12 of dissent. So, we've been criminalized for
13 dissenting against the policies of the New York
14 Police Department. Mayor Bloomberg and
15 Commissioner Kelly continue to meet with only
16 those who agree with them and not those who stand
17 up against them. That's the problem that we have
18 in our community.

19 CHAIRPERSON GENTILE: Well said.

20 COUNCIL MEMBER LANDER: So I do
21 think, Council Member that the point is sort in
22 some ways similar in stop, question and frisk and
23 in surveillance is that what has happened as a
24 result of profile-based discriminatory policing is
25 that there's less trust and that people, whether

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they're kids on the street or whether they're respected Imams are a lot less likely to be able to reach out their hand to the PD. That's the kind of trust that you need to identify a suspect or to follow a real lead.

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I appreciate your pointing to the AP stores, which I hope people look at and to Chief Gallati's testimonies which I hope people will look at. I would urge people also to look at the Pro Publica, look at the NYPD intelligence unit, which really demonstrates that profile-based surveillance has not yielded anything. We've spent a lot of money. We've harmed a lot of relationships of trust.

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Two things I would just say about the relationship between this package of bills and this issue. First, the commissioner has said in the past that that in surveillance they don't engage in racial profiling but that they follow leads. So he shouldn't have any trouble making that the law and passing Intro 800 to include preventing profile-based surveillance if that's already the PD's practice.

25

This really gets to the need for an

1
2 inspector general because none of us can look at
3 those files. It wouldn't be appropriate. We need
4 somebody with a security clearance and that's the
5 idea of the inspector general, who can look at
6 those files and then come out with a report that
7 doesn't identify individual cases but that says
8 here is a case where they had consent decree, or,
9 after Intro 800 is passed, the end of racial
10 profiling, the profiling act, that will help make
11 sure those roles are being followed. So thank you
12 very much for your leadership and for being here.

13 CHAIRPERSON GENTILE: Council

14 Member Williams?

15 COUNCIL MEMBER WILLIAMS: I just
16 wanted to say thank you so much because you guys
17 have been doing such great work on these fronts
18 and I appreciate working with you.

19 CHAIRPERSON GENTILE: Thank you so
20 much. Thank you for coming in and for your
21 testimony. Our next panel will be Ejeris Dixon,
22 Chris Bilal and Catherine Totes [phonetic].

23 [Pause]

24 CHAIRPERSON GENTILE: We've reset
25 the clock. We'll begin, I guess, with Ejeris

1
2 Dixon. Turn on your mike. The light should be
3 on.

4 EJERIS DIXON: There we go. Thank
5 you. Good afternoon. My name is Ejeris Dixon and
6 I'm the deputy director in charge of community
7 organizing and public advocacy at the New York
8 City Gay and Lesbian Anti-Violence Project.

9 I testify in support of the
10 Community Safety Act. AVP empowers lesbian, gay,
11 bisexual, transgender, queer and HIV affected
12 communities to end all forms of violence, through
13 organizing, education, counseling and advocacy.

14 For the past 30 years, AVP has
15 provided services to New York City's LGBTQ
16 communities and our programs reach over 25,000
17 people each year. We're a member of the LGBT
18 Advisory Committee to the NYPD, police
19 commissioner and we've worked to revise the patrol
20 guidelines. We also regularly conduct trainings
21 to the NYPD's lieutenants, sergeants, and captains
22 on the needs of LGBTQ survivors of violence as
23 well as we do outreach and education to LGBT
24 communities.

25 We know that there are numerous

1
2 barriers that prevent our community from engaging
3 safely with the police, including institutional
4 homophobia, biphobia and transphobia. These
5 barriers mean that survivors of violence do not
6 always report to the police. In our 2011 hate
7 violence report, less than half of survivors did
8 not report their instances of violence to the
9 police.

10 Of those who did report, 62 percent
11 experienced indifferent or hostile attitudes and
12 at times this hostility turns violent. Fifty-two
13 percent of LGBTQ survivors reported experiences of
14 unjustified arrest, 27 percent reported excessive
15 force, 17 percent entrapment, and 5 percent
16 experienced raids. Transgender people, LGBTQ
17 people of color, LGBTQ youth were almost twice as
18 likely to be impacted by police misconduct and
19 police violence.

20 In our communities, we know that
21 LGBTQ people are profiled based upon their gender
22 identity and sexual orientation, in addition to
23 their race or ethnicity, housing status,
24 immigration status, under the NYPD stop-and-frisk
25 policy. We regularly receive reports that

1
2 officers stop, frisk and arrest transgender and
3 gender nonconforming people as sex workers with
4 little to no explanation as to why they're
5 stopped. We've even collected reports of stop-
6 and-frisk leading to sexual assault of LGBTQ
7 people.

8 We joined Communities United for
9 Police Reform because we knew that the Community
10 Safety Act would dramatically increase safety for
11 LGBTQ survivors of violence. It's our position
12 that the Community Safety Act will significantly
13 reduce the violence that our communities
14 experience at the hand of the police and increase
15 options for survivors of all forms of violence.

16 I thank the City Council for the
17 opportunity to speak with you today and offer this
18 testimony. We strongly support the Community
19 Safety Act and we urge the City Council to pass
20 it.

21 CHAIRPERSON GENTILE: Thank you,
22 Ms. Dixon. Thank you. Mr. Bilal?

23 CHRIS BILAL: Good afternoon. My
24 name is Chris Bilal and I'm a peer educator at
25 Streetwise and Safe, an organization that fights

1
2 to end the criminalization of our LGBT youth of
3 color. We are here today to testify in support of
4 the historic Community Safety Act because LGBTQ
5 youth of color are among the people subjected to
6 over 700,000 stop and frisks in 2011 and who
7 experienced profiling and discriminatory policing
8 based on race, ethnicity, age, sexual orientation,
9 gender identity expression, occupation and the
10 fact that we are disproportionately homeless.

11 A recent CUNY study found that
12 LGBTQ youth are much more likely to have negative
13 experiences with police than their heterosexual
14 peers, including baseless stops, ticketing and
15 arrests for minor offenses, verbal harassment, and
16 physical abuse. That recently released audio is
17 an everyday experience for us and sometimes it's
18 worse because we are LGBT. We are here to testify
19 in support of the Community Safety Act because the
20 constant threat of being subjected to unlawful
21 searches haunts us every day.

22 Due the ubiquity of this
23 discriminatory practice, many of the youth that we
24 work with at Streetwise and Safe don't even carry
25 condoms anymore because condoms found on consent

1
2 searches are repeatedly used against them by the
3 NYPD as evidence of involvement in criminal
4 activity. Condoms are not contraband.

5 Despite the fact that as a peer
6 educator, I teach alienated and distrustful young
7 people of color across the city about their rights
8 during police encounters, I know firsthand, based
9 on the three traumatic times that I was stopped
10 and frisked, how hard it is to exercise our right
11 not to consent to an unlawful search.

12 In all too many instances, and I
13 hear this repeatedly like a broken record during
14 the trainings, LGBT youth of color who attempt to
15 exercise their right not to consent to a search
16 are ignored or retaliated against by NYPD
17 officers, with the search becoming more terrifying
18 and intrusive. Young people who have attended
19 Streetwise and Safe workshops describe being
20 slammed against cars after school, having officers
21 grab or order them to expose their genitalia
22 during searches to assign them gender and even
23 being strip searched in front of their friends as
24 a fact of life, not because they have a gun but
25 because they are young and homeless or they're

1
2 young and living in the Bronx or simply because
3 they're young and lesbian, gay or trans.

4 So it is paramount that we pass the
5 Community Safety Act now so that we can protect
6 the rights of our people and protect New Yorkers
7 from unlawful searches where there is no
8 reasonable suspicion that the person is armed and
9 no probable cause to believe that they have
10 committed a crime. That that search is based
11 solely on consent and that that consent is real,
12 voluntary and informed. Thank you so much.

13 CHAIRPERSON GENTILE: Thank you,
14 Mr. Bilal. Thank you for your testimony. Ms.
15 Togers [phonetic]?

16 CATHERINE TOGERS: Thank you to the
17 members of the committee for your time. It's an
18 honor to be speaking with you today. My name is
19 Catherine Togers. I'm a lawyer and a researcher
20 with the Health and Human Rights Division of the
21 international research and advocacy organization
22 Human Rights Watch. We submit this testimony in
23 support of the Community Safety Act.

24 We believe that these bills are
25 essential to protecting the rights, among others,

1
2 of lesbian, gay, bisexual and transgender persons
3 who are profiled as sex workers and subjected to
4 abusive practices, such as police confiscating
5 their condoms as evidence of supposed criminal
6 activity.

7 Over the past year, Human Rights
8 Watch has been conducting research in New York
9 City on the existence and effects of police
10 seizing condoms as evidence of prostitution
11 related offenses. In July 2012, Human Rights
12 Watch released a report documenting the use of
13 condoms as evidence of prostitution in New York
14 and three other major U.S. cities, based on over
15 125 interviews in New York City.

16 Among sex workers, the practice of
17 condoms being seized as evidence has caused some
18 to fear carrying condoms to the point where they
19 carry only a few or none at all. The health
20 consequences of failure to use condoms for sex
21 workers can be dire. New York City is the
22 epicenter of the AIDS epidemic in the United
23 States with an AIDS case rate three times the
24 national average.

25 A recent study in New York among

1
2 people who exchange sex for money or other goods
3 found that 14 percent of the men and 10 percent of
4 the women were HIV positive. New York State and
5 City have devoted enormous resources to curbing
6 the HIV epidemic, including through condom
7 distribution. But these efforts will continue to
8 be frustrated if vulnerable populations are
9 discouraged from protecting themselves because
10 their condoms may be used against them by the
11 police.

12 Our research indicated that police
13 stop and search practices directed towards
14 prostitution enforcement often failed to comply
15 with civil and human rights standards. Sex
16 workers, transgender women and LGBT youth
17 described being subjected to profiling practices,
18 and stopped and searched while walking home from
19 school, going to the grocery store and waiting for
20 the bus. It is in the course of these searches
21 that police recover condoms from sex workers and
22 catalog those condoms as evidence.

23 Most of these searches are not
24 reflected in the NYPD records of tarry stops based
25 on reasonable suspicion of criminal activity, and

1
2 would be deemed consent searches. However, these
3 are populations whose experiences deserve
4 attention and redress from the New York City
5 Council as it considers the Community Safety Act.
6 If the Community Safety Act is passed, it would
7 help to ensure that stops are not based on
8 profiling but on criminal activity and would also
9 permit New Yorkers to decline searches not based
10 on probable cause that do not advance public
11 safety or health such as those that target condoms
12 as indications of criminal acts. Thank you very
13 much for your time.

14 CHAIRPERSON GENTILE: Great. We
15 have your Human Rights Watch booklet.

16 CATHERINE TOGERS: Yeah.

17 CHAIRPERSON GENTILE: Thank you for
18 that.

19 CATHERINE TOGERS: Thank you very
20 much.

21 CHAIRPERSON GENTILE: Any
22 questions? Council Members, any questions?

23 COUNCIL MEMBER LANDER: Just one
24 small point again. Thank you for being here and
25 helping make these connections amongst the bills

1
2 the different ways they affect the LGBTQ
3 community. I would have mentioned actually that
4 even the surveillance issue, right, that the
5 Handschu Consent Decree which governs the rules by
6 which you can place undercover and surveillance
7 partly stem from unwarranted surveillance of the
8 gay rights community back in the stonewall days.
9 So even there, there's important connections to
10 make. I want to thank you again for being here.

11 CHAIRPERSON GENTILE: Thank you for
12 coming in and thank you for your testimony.

13 CATHERINE TOGERS: Thank you very
14 much.

15 CHAIRPERSON GENTILE: Our next
16 panel will be Jose LaSalle [phonetic], Carlton
17 Berkley [phonetic], Lavelle Pointer [phonetic] and
18 Rahima Wachuku, I guess.

19 [Pause]

20 CHAIRPERSON GENTILE: Okay, we're
21 going to set the clock back at two minutes, and
22 who would like to go first? Turn on your mike.

23 LAVELLE POINTER: Good afternoon.
24 My name is Lavelle Pointer.

25 CHAIRPERSON GENTILE: Speak into

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2 the mike.

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LAVELLE POINTER: I'm a volunteer at NYHRE, that's New York Harm Reduction Educators. I'm going to get right into my testimony to save time.

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I was living in Staten Island and at around 11:30, I had some friends over and we were coming out to go to the store to get some cigarettes. A car pulled up just as we left the driveway and it was the New York City Police. They was undercovers. They pressed us up against the wall and they searched us.

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There was no drugs found, there were no weapons found. They made us empty our pockets on the hood of the car. Another car pulled up and because the officer recognized me from a previous stop and search, he got out of the car and he searched the items that were on the hood of the car. One of those was a prescription bag from a pharmacy. He opened it and found that the prescription didn't have my name on it, but it belonged to my neighbor.

24

25

I asked him to go and check with my neighbor about it and he didn't do this. So I was

1
2 arrested. I spent four months on Rikers Island,
3 waiting for tests to come back on the supposed
4 drugs. After the four months, I had to cop a
5 plea, because I needed to get back home. When I
6 returned home, I found that my apartment was
7 closed out because I was accused of abandoning it.
8 So I was homeless and I was without my property.

9 This kind of thing shouldn't be
10 happening. Basically what it is, is this, I feel
11 like I was robbed by the police department and the
12 city. Basically no one should have to go through
13 this kind of thing and not be reimbursed in some
14 form or fashion or treated with some kind of
15 respect because they never actually went and asked
16 my neighbor if it was legal for me to have that
17 property.

18 CHAIRPERSON GENTILE: Well said.
19 Well said. Thank you. Thank you.

20 [Background noise]

21 CHAIRPERSON GENTILE: Are they too
22 close together?

23 LAVELLE POINTER: No, you can't
24 bring them close together I think.

25 RAHIMA WACHUKU: Hello?

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2

CHAIRPERSON GENTILE: Is it

3

working?

4

RAHIMA WACHUKU: Yes. My name is

5

Rahima Wachuku. I created a meet up group on

6

meetup.com called Stop Stop-And-Frisk New York

7

City. I did so because I felt like it's just that

8

commonsense. You know, you meet up to go bike

9

riding, you meet up to go skydiving, or what have

10

you. You would meet up to support New Yorkers

11

violating other New Yorkers.

12

Things I didn't know when I came to

13

this meeting. I didn't know I had the right to

14

wear a political button to City Hall because on a

15

prior occasion I went to a trail for Noche Edward

16

Diaz [phonetic] and my buttons were confiscated by

17

the--is the Supreme Court in the Bronx?

18

JOSE LASALLE: Bronx, Hall of

19

Justice.

20

RAHIMA WACHUKU: Hall of Justice.

21

I was told to fill out a form for their return. I

22

refused because I was afraid to give them my

23

information because I'm afraid of being targeted.

24

These fears are founded. I came home one evening

25

from a rehearsal. I'm an actor. I found four

1
2 police officers on the ramp of my building,
3 pantomiming beating up someone.

4 Stop-and-frisk is segregating our
5 city. I take the subway every day and it has
6 always been a microcosm of New York City. People
7 are no longer choosing their seats on the basis of
8 availability, rather by who is sitting around
9 them. Fear and anger fester and erupt in
10 violence. African Americans and Latinos, gay,
11 lesbian and transgender New Yorkers are afraid of
12 being attacked and Caucasian Americans are afraid
13 of irrational retaliation. A crowded subway car
14 is as volatile. The tension is as palpable as an
15 active volcano.

16 I don't know when any of you last
17 rode the subway, but \$2.25 is all you need to find
18 out that stop-and-frisk is tearing our city apart.
19 Thank you.

20 CHAIRPERSON GENTILE: Thank you.

21 JOSE LASALLE: Hello? My name is
22 Jose LaSalle. I'm one of the co-founders of Stop
23 Stop-And-Frisk movement that started with Cornell
24 West, Carl Dichts [phonetic], Debra Street
25 [phonetic], Reverend Fell [phonetic] and October

1
2 21st. We started putting our body in the line
3 because we started realizing that it was a problem
4 in the community with the stop, question and frisk
5 policy.

6 So every since then we've been also
7 targeted because of, you know what I'm saying, of
8 the stop-and-frisk policy because we are against
9 it.

10 Now, real quick, if it's okay with
11 you, I would like to play a little bit of an
12 audio, just so you could hear what kind of led me,
13 you know what I'm saying, to bring about this Stop
14 Stop-And-Frisk movement.

15 [Audio playing]

16 JOSE LASALLE: Now, this is my
17 stepson who was stopped in 2011 and was treated
18 like he was some kind of criminal. The funny
19 thing is he was also an explorer in the 25th
20 Precinct, which they also recognized it. They
21 called him a "mutt" which for a Puerto Rican,
22 that's a mixed breed, like a mixed breed dog.
23 They also took his arm and pushed it to the back.
24 I mean, if you all see it, it's going to be all
25 over the news. It's been on--we released it out,

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2 so it's all over the place now.

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So basically that's what pushed me to start fighting against Stop Stop-And-Frisk. You know, the community reform is something very important because these officers need to be accountable for these things that they do. By making sure that this Community Safety Act is passed, we ensure these youth out there that they will not be treated, all right, like animals. They'll not be treated less than a human being. Thank you.

13

CHAIRPERSON GENTILE: Thank you.

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CARLTON BERKLEY: Hello, my name is Carlton Berkley. I'm a retired New York City detective. I did 20 years. I also worked with Eric Adams, who's a senator in the 20th Senatorial District and I was a member of the 100 Blacks in Law Enforcement who Care.

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I'm here to speak on the stop-and-frisk. Now there is a legal stop-and-frisk is what I used to do when I was on the job and it never resulted in what's happening today. That legal stop-and-frisk protects the police officer and helps the police officers do the job

1
2 efficiently. However, the illegal stop-and-frisk,
3 that's what I'm here to speak about today.

4 The illegal stop-and-frisk what
5 happens is nine times out of ten, the officer
6 doesn't have any suspicion of the person, that the
7 person did anything wrong. It's a quota system.
8 Officer Polanco [phonetic] has stated it in the
9 42nd Precinct and he has taped it.

10 Also, with this stop-and-frisk,
11 most of the victims are the homeless because they
12 figure that they have no one to speak up for them
13 and in the minority communities. The number one
14 reason why officers are also doing this, other
15 than the quota, is because that stop-and-frisk
16 nine times out of ten results in an arrest and
17 that arrest generates overtime for the officer.
18 Then the supervisors at times tells the officers
19 if they need someone to watch for their kid--if an
20 officer needs a tour of duty, they have to go out
21 and affect these arrests, which are illegal.

22 For 30 seconds, I want to tell you
23 that--Tourin [phonetic] get up here. I want to
24 demonstrate to you what is a real stop-and-frisk,
25 because most people don't know what a frisk is and

1
2 what a search is. If I can just demonstrate it
3 really quickly, hopefully one of you are a lawyer,
4 I can demonstrate to you what a frisk is and what
5 a search is. Most people don't know, and that's
6 why I wrote a book and I'm trying to educate the
7 community on what's a search, a frisk and a pat
8 frisk. So if you would allow me just 30 seconds.

9 CHAIRPERSON GENTILE: Quickly.

10 CARLTON BERKLEY: Okay. This
11 gentleman is walking down the street, if you can
12 hear me. I'm a cop. I stop him, right, for
13 nothing at all. And I ask him, do you live here?
14 He said no. Do you got any ID? Well hold on, put
15 your hands on the wall. Now, to just degrade him
16 a little bit, they'll take the hat off because the
17 way he's wearing his hat. An officer will take
18 the hat off and throw it on the ground just to
19 degrade him. Then this is what the officer will
20 do.

21 I want to ask you and everyone
22 here, tell me, is this a frisk, a pat frisk or a
23 search? You tell me.

24 [Pause]

25 CARLTON BERKLEY: Now, does anyone

1

2 here know what did I just do?

3 FEMALE VOICE: Pat down.

4 CARLTON BERKLEY: It's a pat down.

5 CHAIRPERSON GENTILE: Pat down,
6 okay.

7 CARLTON BERKLEY: Pat down. All
8 right, someone said search. Who said search? How
9 did I search the person?

10 CHAIRPERSON GENTILE: Okay, no, no,
11 no, we can't do this in the audience.

12 CARLTON BERKLEY: Okay, well let me
13 tell you. She's the only one that's right. You
14 said pat frisk. Councilman, you said pat frisk.
15 It's not a pat frisk. The cops are psyching
16 people out. What I really did was I searched him.
17 I searched him twice. When I took his hat off, I
18 looked inside his hat and then I lifted his shirt
19 up to see that he was wearing a belt. You know,
20 and that is against the Fourth Amendment right,
21 which protects all citizens against unreasonable
22 searches and seizures. This is what the cops are
23 out there doing. They're violating people's
24 rights and they're saying they're frisking them
25 but they're really searching them. That's what

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2 I'm trying to do to educate people so that they
3 will be able to come into court and articulate a
4 difference between a pat frisk, a frisk and a
5 search.

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CHAIRPERSON GENTILE: Very

interesting.

8

CARLTON BERKLEY: Thank you.

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CHAIRPERSON GENTILE: Do you have

copies--

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CARLTON BERKLEY: [interposing]

12

And I support--

13

CHAIRPERSON GENTILE: [interposing]

14

Do you have copies of that book?

15

CARLTON BERKLEY: I have one which

16

is a sample. If you want it, I'll--

17

CHAIRPERSON GENTILE: [interposing]

18

No, no, I'm just saying if you had some you could

19

leave it with us, but that's fine.

20

CARLTON BERKLEY: I'm come and see

21

Councilman Jumaane Williams.

22

CHAIRPERSON GENTILE: Sure, that'd

23

be great.

24

CARLTON BERKLEY: And I'll leave a

25

few with him.

1
2 CHAIRPERSON GENTILE: That'd be
3 great. Absolutely.

4 CARLTON BERKLEY: Free of charge.

5 CHAIRPERSON GENTILE: Okay, great.
6 Thank you all. Any questions?

7 COUNCIL MEMBER WILLIAMS: No, I
8 just want to say thank you guys. One, I've been
9 wearing your button since you gave it to me.
10 Thank you to the former police for coming out.
11 Thank you guys for your personal testimony,
12 because not many people understand how some
13 people--they don't experience it, don't understand
14 what's the problem with a simple stop. They don't
15 understand how it can really damage not just your
16 psyche but also actually your life after that. We
17 really can be damaged by something that made no
18 sense to begin with. So I'm glad that we can get
19 some personal testimonies so people can truly
20 understand the effect it's having in many
21 communities. Thank you.

22 CHAIRPERSON GENTILE: Thank you
23 again for your testimonies. Thank you so much.
24 Thank you for waiting this long to testify. Our
25 next panel will be Beau Samatopolous [phonetic],

1
2 Allen Feinblum [phonetic], Fred Newton [phonetic]
3 and Mitchyll Mora.

4 [Pause]

5 CHAIRPERSON GENTILE: So let's try
6 to keep it as close to two minutes as we can.
7 We'll start down here.

8 BEAU SAMATOPOULOS: Hello?

9 CHAIRPERSON GENTILE: Yes, you're
10 on.

11 BEAU SAMATOPOULOS: Over three ago,
12 nine shots from a .40 caliber semiautomatic--

13 CHAIRPERSON GENTILE: [interposing]
14 Just identify yourself also.

15 BEAU SAMATOPOULOS: Beau
16 Samatopoulos.

17 CHAIRPERSON GENTILE: Okay.

18 BEAU SAMATOPOULOS: Nine shots from
19 a .40 caliber semiautomatic were fired in front of
20 my house. One of them went into my daughter's
21 bedroom, not by mistake. To this day, not one
22 detective or investigator has come to my house to
23 ask what I know about the shooting or the people
24 involved. Instead, I was told by the commanding
25 officer of the precinct that "as far as I'm

1
2 concerned there was no crime committed." I guess
3 that's what they mean when they say crime is down.

4 His remarks and lack of proper
5 policing have led to further threats and abuse of
6 me and my property. The police have effectively
7 put a bull's eye on my back. Those with any
8 knowledge of the shooting know that the police
9 don't care to do anything that might expose their
10 own incompetence.

11 A year after the shooting, I filed
12 a complaint against the precinct and its
13 commanding officer. The complaint went to
14 Internal Affairs. I made the complaint
15 specifically against the local precinct and the
16 commanding officer.

17 A few months later, I got a call
18 from a man claiming to be investigating my
19 complaint. After a few questions, it occurred to
20 me that he hadn't identified himself. I asked who
21 he was and where he was from. He said I'm
22 Sergeant X and continued making suspiciously
23 pointed questions, questions designed to cast
24 doubt on my complaint. I asked again "where are
25 you from?" He ignored me and kept asking

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questions.

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After the third time, he admitted that he worked out of the very precinct that I had lodged the complaint against. I asked who his commanding officer was. He said the very same person that I had complained about. Then I asked if he expected me to believe that the precinct that I filed a complaint against would do a proper investigation of itself. He said, and I quote, "if you want an investigation, this is the only one you'll get." Needless to say, I got nowhere with that complaint.

Later, I called Internal Affairs to find out what had happened. After being led on a three-day long wild goose chase from one section to another unit to another, I finally got someone who said to me "this seems strange. Why did they refer your complaint to the same precinct to the same precinct that you complained about? I don't know what to tell you but I suggest you file another complaint and be specific that you want it not to go to the same people."

CHAIRPERSON GENTILE: Can you summarize the rest? Summarize the rest?

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2 BEAU SAMATOPOULOS: The second
3 complaint, they did exactly the same thing.
4 Nothing was done. In a nutshell, this is how our
5 police department polices itself, both itself and
6 the criminals of the city. Everything they do is
7 designed to protect and serve a select few and
8 themselves.

9 CHAIRPERSON GENTILE: So you're
10 advocating for the inspector general?

11 BEAU SAMATOPOULOS: Absolutely.

12 CHAIRPERSON GENTILE: Okay.

13 BEAU SAMATOPOULOS: Absolutely.

14 CHAIRPERSON GENTILE: Okay, great.
15 Thanks. Next please?

16 FRED NEWTON: Good afternoon. I
17 thank the Council and the sergeant-at-arms and
18 everybody in the audience for being here and
19 making this possible. My name is Fred Newton.
20 Since retiring, I'm spending my golden years
21 networking with and going to a lot of campaign in
22 the New Jim Crow Police Reform Organizing Project
23 meetings and New York Vocal meetings.

24 Late at night when I get bloodshot
25 eyes, you know going through the blogosphere, I

1
2 read of numerous feminist advocacy groups
3 complaining that the police and law enforcement
4 aren't doing enough to go after rape and deal with
5 battered women. I saw a long TV show about
6 missing children. They bitterly complained that
7 law enforcement is not doing enough to, you know,
8 find, research and deal with missing children.
9 Newspaper columnist in my neighborhood complains
10 about illegal bike riding and bike lanes. These
11 are all productive things that the police could do
12 more of to enhance public safety and reduce crime
13 instead of these unconstitutional egregious civil
14 rights violations.

15 The police department doesn't like
16 to use the word "quotas." They call it
17 productivity goals or productivity expectations.
18 So I'm particularly curious, I wish it would have
19 come out in the wash if there were research, but
20 what are the quotas, say for the 13th, the 17th
21 and the 19th Precinct, which is Murray Hill,
22 Midtown East, Upper East Side, compared to the
23 26th, 30th and 32nd Precincts, all of which are in
24 Harlem? What are the difference--are there
25 different quotas expectations, either total

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2 numbers or percentage wise for these precincts?

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One of the mayor's favorite arguments for stop-and-frisk is it stops people who would have been carrying guns from carrying guns. Well maybe he's right. But putting yourself in the shoes of someone who's been stopped and frisked dozens of times, who's been traumatized--if I were such a person and I knew somebody had a gun, my policy would be if I see something, say nothing. The reason being is--

CHAIRPERSON GENTILE: [interposing]
You've got to sum up.

FRED NEWTON: --the gangs are the lesser of two evils. The cops are the greater of two evils.

CHAIRPERSON GENTILE: Okay, thank you, Mr. Newton.

ALLEN FEINBLUM: Hello, my name is Allen Feinblum. It's been mentioned today that the mayor and the police commissioner isn't present today, but one person that should be present today is Mr. Lynch of the Police Benevolent Association. No one is here to defend the officers. He is not here to explain why his

1
2 officers stop people illegally, even though there
3 is a law and it is protected by the Supreme Court,
4 but certain guidelines have to exist and in most
5 cases, out of 685,000 arrests, those situations
6 don't exist.

7 Out of these 685,000 people last
8 year, 87 percent was Afro American and Puerto
9 Ricans. If 685,000 people and 87 percent were
10 Jewish like I am, there would be an uproar. This
11 wouldn't be accepted.

12 The mayor and the police
13 commissioner feel that since it's 87 percent Afro
14 Americans, including people that are homeless,
15 people that are mentally ill like myself, we're
16 not going to be able to speak up, nobody is going
17 to protect us. Just like in Nazi Germany, no one
18 protected the Jews. Over here we have a similar
19 situation. I feel that something is very wrong.

20 Last Friday was my birthday. I'm
21 73-years-old. I could be now at the senior
22 citizen getting a meal for one dollar, but I'm
23 disturbed. The amount of time I have left is
24 going to protect Afro Americans, Puerto Ricans,
25 mentally ill people, homosexuals and every other

1
2 group that's being exploited and don't have a
3 voice. I want to give my voice and that's why I'm
4 here today. Thank you very much.

5 CHAIRPERSON GENTILE: Great. Thank
6 you, Mr. Feinblum. Thank you for being here. Mr.
7 Mora?

8 MITCHYLL MORA: My name is Mitchyll
9 Mora and I'm a youth leader with Streetwise and
10 Safe. The policing of brown and black people
11 begins with the color of our skin, our race, our
12 ethnicity, our speech, our dress and our youth but
13 it does not end there. It includes experiences
14 such as the one I had earlier this year.

15 I was walking alone on the Lower
16 East Side and a police car pulled up and three
17 police officers jumped out, yelling at me, "Stop,
18 get against the wall, open your bag." I put my
19 hands on the wall. One officer took my bag while
20 another began to aggressively frisk me. I asked
21 them why I was being searched. I said I didn't
22 consent to the search, like the other four times I
23 had been stopped and frisked. I have been stopped
24 and frisked in the last two years. I
25 unsuccessfully attempted to exercise my rights to

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2 not consent to the search, but this time I was
3 wearing tights and high heeled boots and this time
4 the police officer frisked, responded by calling
5 me a faggot and sexually assaulting me. They
6 drove away after telling me that they had been
7 looking not for a gun but an open container. They
8 found nothing on me, so there was nothing to
9 suppress and the violation of my rights went
10 unaddressed.

11 These bills will counteract many
12 ways in which LGBTQ youth of color are policed by
13 protecting us from being profiled based on our
14 race, and also based on our age, our sexual
15 orientation or gender identity, our HIV status or
16 disability or the fact that we are
17 disproportionately homeless and by ensuring that
18 our right to not consent to a search is respected.
19 Whether we are being told to empty our pockets,
20 open up our bag or purse or submit to a gender
21 check without any legal basis.

22 It will help ensure in moments that
23 I have described here today that our rights will
24 become a reality. So this is why we need the
25 Community Safety Act.

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CHAIRPERSON GENTILE: Well said.

2

3 So you're in support of all of the pieces of
4 legislation?

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5 MITCHYLL MORA: Yeah, absolutely,
6 all four.

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7 CHAIRPERSON GENTILE: Okay.

7

8 Council Member Williams?

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9 COUNCIL MEMBER WILLIAMS: I just
10 want to say that I thank you for the testimony. I
11 did want to put on record, the PBA was mentioned,
12 is also on record against the way the stop,
13 question and frisk is being done and the quota
14 system. So they are opposing as well and they're
15 on the record. We want to encourage patrol people
16 to be able to do good police work. We want our
17 PBA union members to be able to do the police work
18 that helps lower crimes, not be forced to do lazy
19 police work that violates civil rights and civil
20 liberties. Thank you.

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21 CHAIRPERSON GENTILE: Thank you for

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22 your testimony. Before I call the next panel, I

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23 just want to mention for the record that we have

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24 testimony, written testimony that was submitted by

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25 Harry Levine, Professor of Sociology at Queens

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2 College and the Graduate Center, City University;
3 and from Vocal New York, Brian Pearson [phonetic].
4 Those are for the record that have been submitted
5 to us and we'll put them in the record.

6 We may have to add an extra chair
7 there because we're going to ask five people to
8 come up. On the next panel, we have Pastor
9 Michael Crea; Roxanne Delgado [phonetic]; Gene
10 Reiss [phonetic]; Evan Goldstein; and Brian
11 Ellicott [phonetic].

12 [Pause]

13 CHAIRPERSON GENTILE: So you may
14 have to share, you will have to share the mike and
15 move a little closer to it when you speak. We'll
16 set the clock again at two minutes each. Who
17 would like to start? Anyone in particular want to
18 start?

19 EVAN GOLDSTEIN: I guess I'll
20 start.

21 CHAIRPERSON GENTILE: Okay, very
22 good.

23 EVAN GOLDSTEIN: Good afternoon.
24 My name is Evan Goldstein. I'm with the Drug
25 Policy Alliance. I'll be speaking in favor of

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2 Intro 799. I want to thank the Public Safety
3 Committee and specifically the leadership of
4 Council Member Williams and Lander for really
5 talking and exposing issues that, although we're
6 having discussion today about, you know, biased
7 police practices, this really is an issue that
8 affects all New Yorkers. So thank you so much for
9 holding this hearing today.

10 Earlier this year, the Council
11 passed Resolution 986-A which was a resolution in
12 support of legislative policy introduced by
13 Governor Cuomo, supported by the Mayor, Police
14 Commissioner, all five district attorneys and the
15 Policeman Benevolent Association that discussed
16 reforming the marijuana arrest practices of New
17 York City. I'm going to use that sort of lens to
18 discuss why 799 is an important issue and should
19 be passed by the City Council.

20 There was an acknowledgement by the
21 mayor and the police commissioner and the governor
22 that there was something wrong with the way that
23 the police were exposing and arresting people for
24 small amounts of marijuana. Namely, the police
25 would approach someone, usually a young man of

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2 color, through an initial stop and then demand
3 that they empty their pockets. Now that in itself
4 is potentially an illegal search. Many of the
5 people that we've talked to found that they were
6 arrested that way, it's when the police would come
7 up to them and they would comply with an officer's
8 request for them to empty their pockets, not
9 wanting to escalate a situation into something
10 much more serious.

11 The other way is just quite frankly
12 and flagrantly an illegal search where a stop
13 turns into a frisk turns into a search then the
14 police finding small amounts of marijuana and then
15 arresting them for marijuana in public view, when
16 it in fact was an illegal search and the marijuana
17 was in their pocket.

18 Interestingly enough, so this
19 legislation would mandate that the police would
20 get informed consent to people, that people don't
21 know their own constitutional rights. This would
22 be, of course, for things where the police don't
23 have probable cause to search them but get through
24 a variety of ways, do illegal searches anyway.

25 I think the most telling thing is

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2 that when we talk to young people, they don't know
3 that they have the right not to consent to a
4 search and in fact think that denying--if they do
5 refuse to consent to a search is actually probable
6 cause for a search by the police. So that is
7 ultimately a catch-22 that young people don't know
8 they have the rights to deny a search and to
9 enforce their constitutional rights. So we hope
10 that this legislation will help reduce the amount
11 of illegal searches and arrests due to improper
12 police conduct. Thank you.

13 CHAIRPERSON GENTILE: Just a quick
14 question. You're saying then that if this
15 legislation passes, they would not be able to ask
16 someone to tell someone to empty their pocket
17 without going through the process?

18 EVAN GOLDSTEIN: Yeah, without
19 informing them that they have the right not to
20 consent to a search, because many people don't
21 know that they do have the right not to consent to
22 a search when there isn't probable cause for the
23 police to search their pockets or their bag, their
24 purse or their backpack.

25 CHAIRPERSON GENTILE: Right.

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2 Great, thank you.

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BRIAN ELLICOTT: Hi, my name is Brian Ellicott. I'm speaking on behalf of myself. I'm going to give a personal testimony of a situation that happened to me after leaving an event that at which I was--while still interning for Speaker Quinn.

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I am nine months into a female to male transition. NYPD officers stopped me. They didn't ask me for ID. They didn't ask me anything. They put me up against the wall and they searched me on the basis of they felt like it. They pretty much said they felt like it because they didn't agree with how I identify.

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I identified myself as a male. I have had a legal name change. Upon leaving, they asked me for ID. They saw that my name and my gender marker said I was male. They're like "we'd like to make sure that you are what you say you are" and decided to just go search for it.

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Upon not finding it, they decided that they were going to lock me up for no reason. I did get out, on the basis of I know my rights and I was not able to tell them that I did not

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2 want to be searched. I knew my rights and they
3 didn't do that.

4 Upon leaving, I found out that
5 these officers in general have done this to many
6 trans men, specifically white, short trans men.
7 Upon that, I decided that I am for the Community--
8 support the Community Safety Act. That's all I'd
9 like to say.

10 CHAIRPERSON GENTILE: Okay. How
11 long were you in prison?

12 EVAN GOLDSTEIN: Oh I wasn't in
13 prison. I was just in holding for--

14 CHAIRPERSON GENTILE: [interposing]
15 Just a holding cell.

16 EVAN GOLDSTEIN: --48 hours.

17 CHAIRPERSON GENTILE: Okay.

18 PASTOR MICHAEL VINCENT CREA: Good
19 afternoon. I'd like to thank the Council for
20 having these hearings, especially Councilman
21 Williams, who perhaps with the other Council
22 person who's left, who was stopped down at Occupy
23 Wall Street are prime examples of your own
24 colleagues being targeted because of their color,
25 not given the proper respect.

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2 My name is Pastor Michael Vincent
3 Crea. I've pastured One World Life Systems. I
4 work with all people. It's amazing what we're
5 trying to do today is putting new coffee grinds
6 into old wine skins, or old coffee grinds--I mean
7 new coffee grinds into old filters or old coffee
8 grinds into new filters. We need a change. This
9 is important.

10 I wrote this after having a gun put
11 to my head on Staten Island after a pastoral visit
12 in February 2000, two weeks after Patrick
13 Dorismond was killed on his birthday for refusing
14 undercover cops who were trying to sell him drugs.
15 I stood up to Michel Brennan in which I spoke
16 about being stopped and searched.

17 This is what I asked for back then.
18 To protect immigrants and the poor, people of
19 color and I'm asking for the following changes
20 affecting arrests by police and adjudication
21 thereof by the courts. Immediate statement of
22 probable cause and determination of detainees'
23 native language. Miranda rights read in native
24 language. On-call interpreters and pro bono
25 attorneys within three hours of arrest.

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2 Computerized summonses, giving names of officers,
3 shield numbers, precinct numbers, commander's name
4 and direct phone number. Public defender at all
5 summons cases and cameras in the court. And for
6 police brutality and hate crimes, a human rights
7 court to adjudicate complaints as swiftly as we do
8 landlord/tenant, parking/driving or small claims
9 in two weeks time.

10 I've had police officers say yes,
11 if there's a bad apple, if a bad landlord or a bad
12 tenant can be brought in, in two weeks time, why
13 should we have to wait for a bad cop.

14 CHAIRPERSON GENTILE: Okay, sum up.

15 PASTOR MICHAEL VINCENT CREA: I
16 would like to sum up with the other requests.
17 Have immediate moratorium on evicting seniors and
18 the disabled. I'm disabled. Michael Bloomberg is
19 costing the city now because he didn't answer a
20 judge's demand or decision in order of last
21 October 31st. Unless you house and keep people
22 housed, they will be kicked like me by the police,
23 they will be awakened by me by the police, other
24 homeless will be discriminated against without
25 having reasonable accommodation, and with no

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2 housing policy, money bags morally bankrupt
3 Michael Bloomberg is spending \$3,030 a month for
4 one individual in a shelter where the average
5 subsidy that he's been denying me is about \$750.

6 CHAIRPERSON GENTILE: Okay, thanks.

7 PASTOR MICHAEL VINCENT CREA: you
8 have to take positive action and it's not just the
9 police, it's judges, it's the courts, but it's the
10 council people being Serpico and not the Godfather
11 if you want to play the part of Al Pacino.

12 CHAIRPERSON GENTILE: Thank you,
13 Pastor. Next?

14 ROXANNE DELGADO: Hello, my name is
15 Roxanne. I'm a female Hispanic who lives in the
16 Bronx. I'd like to mention another group that's
17 exploited and exposed to police misconduct, it's
18 activists. In my case, animal rights activist.

19 I don't believe in reforming stop-
20 and-frisk, it should be eliminated because the
21 police, it's against the nature of the beast to
22 follow the rules. It's just they can't do it.
23 You're just going to expose taxpayers to more
24 liability and more lawsuits, which comes out of
25 their pockets not out of the NYPD's pensions.

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This is not us, a free person. We are in a free city, why can we not be permitted to walk freely? I have been abused by police verbally and mentally. I have been doing protests from the horse carriage demos and have carriage drivers calling me dike, making racist remarks and police actually participate in those remarks because they say that I'm not--I should not be at the presence of a workplace. I'm protesting their place of business.

The police choose what they want to enforce. They choose who they want to enforce. I have drivers spit at me, push me, but the police doesn't make any arrests. But then they harass me and they surround me with police squads, asking me for my ID. When I refuse to, they arrest me. I mean, really. I've made complaints against Sergeant Rendezo [phonetic] from Midtown North, and IAB forwarded my email to him, and he calls me and talks to me over the phone, saying that he wants to be famous, for me to continue putting him on YouTube because he wants to be famous.

I mean it's unbelievable. I'm fighting for compassion for horses and I'm being

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2 abused by the carriage drivers and the NYPD. They
3 don't protect me. In fact, they arrest me. This
4 is like outrageous. Like I can't believe this is
5 New York City. This is my experience; it's why
6 I'm here because I don't think the police can
7 behave well. They can't speak properly to people,
8 not to a woman. I mean, it's like forget it,
9 we're like--it's a shame. It can bring you to
10 tears, but you can't cry, you just have to
11 continue fighting. Thank you.

12 CHAIRPERSON GENTILE: Thank you.
13 Thank you for coming in. Sir?

14 GENE REISS: Good late afternoon,
15 ladies and gentlemen. I never thought that I
16 would have anything in common with the mayor's
17 representative but I confess right now that I'm
18 not prepared for this. My name is Gene Reiss.
19 I'm from Picture the Homeless but I'm here to
20 deliver a message from the chairperson's
21 constituents Occupy Astoria and they've delegated
22 my organization, who we mobilize with, to deliver
23 this message.

24 It goes as follows: we are members
25 of Occupy Astoria and Council Member Vallone's

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2 constituents in City Council District 22, Astoria.
3 We express our enthusiastic support for the
4 Community Safety Act now before the council. We
5 regret not being able to attend today's hearing,
6 but we look forward to meeting with Council Member
7 Vallone to discuss this legislation soon.

8 We call on the City Council to pass
9 all four intros that make up the Community Safety
10 Act. All of these proposed reforms are
11 reasonable, fair and absolutely necessary. The
12 New York City Police Department's stop-and-frisk
13 policy and practice is discriminatory and racist.
14 The overwhelming majority of those detained and
15 forced to submit to a personal search are Latino
16 and African American. This fact, from a
17 commonsense perspective makes it clear that the
18 policy is discriminatory and a case of selective
19 use of police powers against certain communities.

20 Stop-and-frisk is not employed
21 equally and across the board. For example, those
22 in the NYPD who wish to combat drug crime do not
23 conduct large numbers of stop and frisks on New
24 York City college campuses where drug use is
25 rampant and in some cases--bear with me a second.

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2 CHAIRPERSON GENTILE: Okay, you've
3 got to sum up.

4 GENE REISS: Okay. But anyway,
5 they're going to submit this to you in print and
6 in then you'll put it there. I'll close with one
7 message from my organization, Picture the
8 Homeless, hands off our youth; the constitution is
9 bulletproof. Thank you.

10 CHAIRPERSON GENTILE: Excellent,
11 okay. Council Member Williams?

12 COUNCIL MEMBER WILLIAMS: I just
13 want to say thank you guys and everybody who
14 stayed to the end. It's quite a number of hours,
15 which just shows how passionate everyone is about
16 this. So thank you guys for your personal
17 testimony.

18 I did have one question to the
19 person who wanted to end stop, question and frisk.
20 I wanted to be clearer in what you wanted. Are
21 you saying that you don't believe police officers
22 should even stop someone if they had reasonable
23 suspicion to do so, such as if someone calls in to
24 say that they were robbed by a white male with
25 blue jeans and an orange shirt?

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2 ROXANNE DELGADO: But that's not
3 reasonable, that's probable cause. That's
4 actually adhered by the constitution.

5 COUNCIL MEMBER WILLIAMS: All
6 right.

7 ROXANNE DELGADO: But reasonable
8 cause, I mean I know Supreme Court has sided on
9 that side, but just because you're walking down
10 the street, unless there's a report of you, a
11 similar description, at least with gender and
12 color--

13 COUNCIL MEMBER WILLIAMS:
14 [interposing] I said that because I always want to
15 make sure we're clear. They keep trying to divide
16 the argument in enders and menders and I believe
17 everybody is really saying the same thing. We
18 want to end the policy that currently exists while
19 keeping police--having police have the ability to
20 do the job that they need to do. So I want to
21 make sure we're all saying the same thing because
22 they're trying to pretend as if we're saying two
23 different things. I believe the enders and the
24 menders all have one message.

25 ROXANNE DELGADO: Well our Founding

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Fathers already written it, I just wish they would follow it.

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COUNCIL MEMBER WILLIAMS: Thank

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you, again.

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ROXANNE DELGADO: It's the law of

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the land.

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CHAIRPERSON GENTILE: Great. I

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join Councilman Williams and the rest of the panel

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that was here in thanking you all, thanking you

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for coming and thanking everyone for staying.

12

This ends the hearing and the hearing is now

13

closed.

C E R T I F I C A T E

I, Donna Hintze certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature 

Date October 29, 2012