

Testimony of Michael Best  
Counselor to the Mayor  
Committee on Public Safety

October 10, 2012

Good afternoon, Chairman Vallone and members of the Committee. My name is Michael Best, and I am the Counselor to Mayor Bloomberg. Thank you for allowing me to testify on Introductory numbers 799, 800 and 801, which concern police officers' daily interactions with residents of this City in their work to make this City safer for all of us, and also on Introductory number 881, which would establish an Inspector General for the New York City Police Department. The NYPD works tirelessly to ensure the safety of our City, protecting the lives of New Yorkers and always seeking to reduce the incidence of criminal activity. Thanks to their efforts, New York City remains the safest big city in the country. During this administration, thanks to proactive, data-driven policing, major crime is down 31.3% and murder is down 32.1%. This year, the number of shootings has decreased and we are on track for a record low number of murders.

Three of the bills before this Committee today—numbers 799, 800 and 801—relate to the use of the tactic known as stop, question and frisk. This tactic, which is statutorily authorized in the New York State Criminal Procedure Law and was specifically authorized by the United States Supreme Court in Terry v. Ohio in 1968 and in countless New York state and federal court cases since then, is a critical element in the NYPD's broader crime fighting strategies. The NYPD is committed to providing training to its officers to make certain that

when officers engage in a stop, question and frisk, they do so consistent with, and only to the extent authorized by, the federal Constitution and the New York State Criminal Procedure Law. Moreover, the Administration, including the NYPD, shares the Council's interest in ensuring that police officers' interactions with residents of this City be marked by respect and courtesy.

Introductory Numbers 799, 800 and 801 are all efforts to regulate the manner in which police officers question people and, in some cases, search their persons and property. In other words, the proposed bills would attempt to regulate the powers and duties of police officers when they are engaged in law enforcement activity. But as a statutory matter, these issues are governed entirely by state law—specifically the Criminal Procedure Law, which sets forth the powers of police officers in these areas. The Criminal Procedure Law sets forth when police officers are authorized to stop a person, search a person or their property for a weapon or other contraband, and arrest a person with or without a warrant. It is a comprehensive set of laws that governs the administration of the criminal law throughout the state, and it leaves no room for local legislation in this area. Indeed, the state legislature made clear its intention to regulate all aspects of criminal procedure in section 1.10 of the Criminal Procedure Law, which provides that “[t]he provisions of this chapter apply *exclusively* to: (a) *All criminal actions and proceedings* commenced upon or after the effective date thereof . . . “ (emphasis added). Accordingly, these proposed bills are preempted by state law, and would be invalid if enacted.

Introductory Number 799 would add a new section to the Administrative Code which would mandate that a law enforcement officer follow certain procedures when he or she conducts a search of a person, or of her vehicle, home or belongings, and that search is not undertaken pursuant to a warrant or supported by probable cause. Introductory Number 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. Introductory Number 799 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 the 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 this recorded consent to any individuals 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 that authorizes officers to conduct searches and recover evidence in situations like those where they have reason to believe an individual is carrying a weapon or the contraband or evidence is in plain view.

Introductory Number 800 would amend section 14-151 of the Administrative Code, which prohibits members of the Police Department or other law enforcement officers from engaging in racial or ethnic profiling. This bill would expand the current prohibition on use of race, ethnicity, religion or national origin as the determinative factor for law enforcement action to include relying on factors such as age, sex, gender identity, sexual orientation, immigration or citizenship status, language, disability, housing status, occupation or socioeconomic status. As drafted, the bill would prohibit the use of these characteristics "to any degree", even when coupled with other known identifying factors about a suspect, such as a description of a perpetrator provided by a victim. In addition to expanding the current prohibition on racial or ethnic profiling to "bias-based profiling", the bill would create a cause of action for an individual subject to bias-based profiling or for an organization "whose interests are germane to the purpose

of this section". The remedies sought could include compensatory and punitive damages and injunctive and declaratory relief against the City of New York, the law enforcement officer who engaged in such profiling, and any supervisor of such officer. Introductory Number 800 would also establish a cause of action for an unlawful discriminatory practice, which could be established when an individual or organization demonstrates that a law enforcement officer has engaged in bias-based profiling and fails to prove such profiling was necessary or narrowly tailored to achieve a compelling governmental interest. The bill would also establish a cause of action alleging that police activity had a disparate impact on individuals in any of the protected categories. Finally, this bill would authorize the payment of attorney's fees and expert fees to the prevailing plaintiff in any action or proceeding used to enforce this section.

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

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 field, local legislation is preempted and impermissible. Here, the Criminal Procedure Law is an elaborate and comprehensive set of laws governing the entire field of criminal procedure. The Criminal Procedure Law was enacted in 1970 following a nine-year process undertaken by a state commission created at the behest of the state legislature, which was engaged in a wholesale effort to unify, modernize and make uniform

the criminal court system and criminal procedure law. The Governor approved the legislation, heralding it as “the State’s first comprehensive modernization of procedures for the administration of criminal justice” and a “complete system of criminal laws...carefully designed as an integrated framework for the effective administration of criminal justice.” And it has been held that the intent of the legislature was to enact a Criminal Procedure Law that would govern all criminal actions in this State, thereby occupying the field of criminal procedure in its entirety.

In the particular area addressed by these proposed bills, Section 140.50 of the Criminal Procedure Law—which is entitled, “Temporary questioning of persons in public places; search for weapons”—governs the stopping and questioning of persons by police officers. It specifies the conditions under which a stop may lawfully be made and the conditions when an officer may lawfully search a person. This section, based on a statute enacted in 1964, was intended, according to the legislative history, to “clarify the power of police to stop, question and search criminal suspects . . . .” This purpose would be wholly undermined by local legislation that imposed new strictures on stop, question and frisks. Indeed, to take one example, Introductory Number 799 could effectively prevent police officers from conducting some searches expressly authorized by section 140.50 of the Criminal Procedure Law, such as those where officers have reason to fear for their own safety or the safety of the public.

In the area of criminal procedure, it is understandable why the State decided to create one body of law that would be exclusively applicable statewide. When it comes to the exercise of police and prosecutorial authority and the procedures that can result in prosecution for crimes, the determination of guilt or innocence, and the sentencing and incarceration of offenders, it is important for our state’s citizens to know that there is one standard and one set of procedures that governs throughout the state. Criminal procedure, moreover, is an area that must

take into account constitutional rights as determined by the courts, and setting forth procedures for the entire state that comport with the Constitution makes eminent sense. A set of criminal procedures that varied from city to city, or county to county, however, would make no sense and would endanger the fair administration of justice.

In any event, as a legal matter, when a field is preempted by state law, like the Criminal Procedure Law, there is no authority for local governments to legislate. Introductory Number 799 would prescribe how police search individuals, their vehicles, homes or belongings. Introductory Number 800 would micro-manage the bases for the thousands of contacts police officers commence every single day with individuals in this City. And Introductory Number 801 would dictate how police initiated and concluded interactions with the public. All three of these bills, then, are attempts to regulate criminal procedure and the authority for and limits on police activity in stopping, questioning and searching individuals. This is an area where the state has established the law, where the State's intent that the Criminal Procedure Law shall be the exclusive law in this area is expressly set forth in the statute, and where the detailed, comprehensive nature of the Criminal Procedure Law makes clear that the state intended to preempt the field. These bills are pre-empted.

Furthermore, the bills would create confusion in an area of law that is already the subject of extensive jurisprudence in the courts. The Fourth, Fifth and Fourteenth Amendments of the United States Constitution impose limits on the activities of police officers, limits that protect individuals' rights and that ensure that the laws are applied on an equal basis to all persons. State and federal courts regularly navigate the intersection between the Criminal Procedure Law and the protections guaranteed by the federal Constitution, and there are thousands of court decisions analyzing the daily encounters police have with the public and

determining whether the police properly exercised the powers granted them by state law. Indeed, where members of the public believe that the police have violated those rights, they can and do bring suit challenging these police actions. For instance, as the members of the Committee undoubtedly know, there is now a class action pending in federal court challenging the nature of the NYPD's stop-question-and-frisk tactics. Given the role of the judiciary in adjudicating challenges and interpreting the applicable law, there is no role for local legislation in this field. This series of bills, by creating standards and procedures only applicable to New York City, standards that are not based on either the Criminal Procedure Law or established constitutional protections, would create confusion and limit police officers' ability to lawfully protect the public and themselves.

Moreover, in attempting to legislate in areas of criminal and civil procedure already governed by a well-established body of federal and state law and federal and state court jurisprudence, and by proposing standards that confuse and conflict with established precedent, the bills would have the effect of creating unwieldy litigation; of undermining important jurisprudential principles, such as judicial and constitutional principles regarding who has standing to sue; and of creating unnecessary questions as to the applicable law. For example, the provisions in Introductory Number 800 establishing two new causes of action ignore important principles of standing and would give a wide variety of organizations the right to sue over virtually any type of police activity. The breadth of exposure that would be created is unprecedented.

I have also been asked to comment on Introductory Number 881, which would amend the New York City Charter to establish an office of the Inspector General for the New York City Police Department.

The NYPD is already subject to a large amount of oversight by a number of different entities at the city, state and federal levels, and there is no need for the addition of an inspector general. While most City agencies have an inspector general which is part of the Department of Investigation, the NYPD has an Internal Affairs Bureau to investigate allegations of corruption and misconduct within the Department. And IAB is far larger than any of the City's inspectors general, with a staff of approximately 700 and a budget of nearly \$70 million. In fact, under this Administration, IAB's budget has increased roughly sixty percent. And there are also multiple levels of oversight outside the NYPD. The Civilian Complaint Review Board, which investigates complaints by members of the public against police officers and—pursuant to an agreement earlier this year between the NYPD, the CCRB, the Mayor and the Speaker—brings disciplinary actions where warranted, and the Commission to Combat Police Corruption, which investigates police policies and procedures that implicate issues of possible corruption—and it should be noted that the Commission received additional resources to hire four new attorneys this year as well. There are also the five District Attorneys in New York City, the State Attorney General, and the two federal prosecutors in the Southern and Eastern Districts of New York.

Besides being unnecessary, Introductory 881's attempt to add an inspector general would violate the prohibition on curtailing the Mayor's authority. Whenever local legislation would "abolish, transfer or curtail" the powers of an elected official, both the State Municipal Home Rule Law and the City Charter mandate that such legislation cannot be enacted without a voter referendum. Twice before, the Council has passed bills to create entities akin to an inspector general for the NYPD, and both times the courts struck down those bills on curtailment grounds. Introductory Number 881 contains several of the kinds of structural flaws that, absent a

referendum, would inevitably be deemed to violate State law and the Charter, such as limitations on who can serve as Inspector General and on the direction of investigations. It is, therefore, legally infirm.

I thank you for the opportunity to testify today and look forward to a continued dialogue with the Council about these issues so that our dedicated, hard-working police officers can do their job to make every neighborhood in this City a safe one and our residents have respectful interactions with the officers who patrol their streets every day.



*For The Record*

*Bio: Brian Pearson is a leader in VOCAL-NY, where he works on campaigns to end mass incarceration. He is the father of a young daughter and resides in Woodhaven, Queens, where he works part-time in construction while looking for permanent employment. He was born and raised in Brownsville, Brooklyn.*

My name is Brian Pearson and I am a leader of VOCAL New York.

I am here today to tell my own experience with an illegal search that cost me a job and almost cost me my freedom, which is why I'm here today to testify in favor of Intro number 799, which will protect New Yorkers against unlawful searches by the police.

One year ago I was on parole, but my life was improving. I was up for early release. I was working on the construction of subway tunnels and on my way to getting a union position. I had moved from a 3-quarter house for parolees, and was renting a room in Crown Heights.

On a Wednesday, my cousin drove me to the train at Eastern Parkway and Utica Avenue so I could get to work for the 3PM to 11PM shift.

Before I could exit the car we were surrounded by officers who came out of nowhere. They claimed we fit the description of recent bank robbery suspects. My cousin tried to assert his rights to not be searched, but we were pulled from the car and frisked.

The officer found the remainder of a joint, about a thumbnail long, after searching my cousin. My cousin said they had no right to conduct the search and argued that it was a tiny amount of marijuana. Most importantly, he told them everything he had on him and in the car was his and asked that they let me go to work.

They refused.

All of this was an illegal search and violation of our rights, but common for people in the African-American and Latino community.

I was eventually arrested and held in Central Booking's tombs for about 72-hours before I finally saw a judge. When I was released, I was given another court date.

In all, I had three court dates before all charges were dropped.

Three days I was held without a lawyer, missing work and all for a wrongful arrest. But upon being released I began to suffer the collateral consequences.

I was able to convince my job to keep me on, but it set me back in the competitive process to get a union book needed to get union membership. This meant that after the temporary construction work ended in the tunnels, I was left without employment or union membership.

Next, I had to immediately visit my parole officer so I would not be violated and sent back to prison. After a negative urine test for drugs and a statement by my cousin I was not violated, but my early release from parole was terminated and I had to spend an additional 4-months on parole.

The NYPD are not trying to create safe and healthy communities for people who look like me. They are using policies to harass us, to intimidate us and to drive us into the criminal justice system because they believe that blacks and Latinos are more likely to be criminals.

While I believe that the underlying institutional racism of the New York Police Department will not end with the passage of the Community Safety Act bills, it will restore some measure of public accountability of a police force that many of us have come to fear rather than view as a source of safety.

For further information contact Brian Pearson 347-779-4288 or Alfredo at 718-415-9254

# For The Record

## Testimony of George Gresham, President of 1199 SEIU United Healthcare Workers East Public Safety Committee Hearing October 10, 2012

Chair Vallone, Speaker Quinn, Members of the City Council. Thank you for calling this hearing on an important package of bills – the Community Safety Act. I appreciate the opportunity to testify on this important matter.

My name is George Gresham and I am the President of 1199 SEIU United Healthcare Workers East, a union representing with 375,000 healthcare workers in New York, New Jersey, Massachusetts, Maryland, Florida and Washington, D.C.

On their behalf, I urge you to pass this important package of bills. Illegal, discriminatory policing is dangerous, irresponsible and costs the city millions of dollars a year. These four pieces of legislation would both protect New Yorkers from discriminatory policing and protect the city from paying out millions of dollars a year from lawsuits.

Taken together, these four bills would ensure that all New Yorkers – regardless of gender, race or gender identity and expression – would be safe from discriminatory policing. This in turn will help keep our city safe. And the issue of safety in our communities is incredibly important to all our members in New York City.

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

Intro 799 – which is similar to laws in Colorado and West Virginia – simply requires officers to tell people that they have the right to refuse a search if there is no warrant or probable cause. Too many young people think that simply because a police officer asks them to empty their pockets, they have to.

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

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 for the NYPD has. New Yorkers ought to be sure that the Police Department is being monitored by other professionals.

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

This past summer, tens of thousands of New Yorkers from all walks of life marched in silence and solidarity for justice in our communities at the Stop & Frisk Silent March. The Community Safety Act would enact much needed reforms that will improve public accountability and trust with the NYPD.

Crime is down – and for that we should be thankful – but we do not need to be stopping hundreds of thousands of young men and women without cause to keep crime down.

Instead we should be ensuring that there is mutual respect between our communities and the Police Department – so that the community can be partners in keeping crime at bay.

We urge swift passage of these important reforms.

FTK



# State Senator Velmanette Montgomery

*18th New York Senatorial District*

Ranking Member, Committee on Children and Families

October 10, 2012

## Comments to the New York City Council on Stop & Frisk Legislation and the Establishment of an Office of Inspector General for the NYPD

I appear before you today to voice my support and thanks to the Council for the introduction of these measures to rein in Stop & Frisk and to establish an office of an Inspector General for the New York City Police Department.

Stop & Frisk creates a criminal class. This targeted practice of unwarranted questioning by the police has only been practiced this widely in South Africa, and the tactics of apartheid, treatment acceptable only in ghettos of military regimes have no place in New York City.

Our police are there to serve and protect. The squad cars promise "CPR," where the R stands for Respect for the citizens. But our police do not protect us when they are enforcing strategies that create and perpetuate a criminal class. The Police Chief and Mayor say that Stop & Frisk makes us safer: it does not. The statistics that are quoted for reduction in crime are found across the country, and are linked to the economy, not to this deeply troubling practice.

In the children's book series, "Dick & Jane" the children seek help from their friendly local policeman, Officer Bill. I fear a book about Moesha and Jamal would have a very different relationship. Fear. Humiliation. Avoidance. Maybe hate. Our children learn what they live, and in the poorer neighborhoods of New York City they are learning that they will be treated like criminals from birth, no matter what. This does nothing to produce a safe society. If the aim is to get guns off the streets, pursue the gun laws, which I applaud Mayor Bloomberg for doing. But don't create a class of people who know they will be seen as criminals as a result of these policies. Or if it can be proved that these tactics make the city safer, apply them to everyone. Let's be as safe as possible. That is of course, absurd. But so is everything about Stop & Frisk.

**Committees:** Children & Families (Ranking Member,) Ethics (Ranking Member,) Crime Victims, Crime & Correction, Education, Finance, Health, Rules  
**District Office:** 30 Third Avenue, Room 207, Brooklyn, NY 11217  
Tel (718) 643-6140, Fax (718) 237-4137  
**Albany Office:** Legislative Office Building, Albany, NY 12247  
Tel (518) 455-3451, Fax (518) 426-6854  
**Website:** [www.nysenate18.com](http://www.nysenate18.com)  
**Email:** [montgome@nysenate.gov](mailto:montgome@nysenate.gov)



The establishment of an Inspector General for the police department is long overdue. Far from acting as a burden on the work of the force, it will provide a much needed perspective on policies and operations, one that will include the elected representatives acting as the voice of the people. "Consent of the governed" has been lacking in our police operations for too long. This will only make the force stronger and in the long run produce a healthier New York City where all the citizens know they are being protected, not targeted.

In making policy decisions it is vital to remember the values of this country, values such as unity and equality. Fortunately we have reminders all around us, and every day our children, having made it through the school metal detectors, recite them every morning with a straight face. "One nation, under god, indivisible, with liberty and justice...for all."

Again, I offer you my sincerest thanks and support on these pieces of legislation

*Senator Velmanette Montgomery*

Senator Velmanette Montgomery  
18<sup>th</sup> NYS Senate District

Testimony of George Gresham, President of 1199 SEIU United Healthcare Workers East  
Public Safety Committee Hearing  
October 10, 2012

FTR

Chair Vallone, Speaker Quinn, Members of the City Council. Thank you for calling this hearing on an important package of bills – the Community Safety Act. I appreciate the opportunity to testify on this important matter.

My name is George Gresham and I am the President of 1199 SEIU United Healthcare Workers East, a union representing with 375,000 healthcare workers in New York, New Jersey, Massachusetts, Maryland, Florida and Washington, D.C.

On their behalf, I urge you to pass this important package of bills. Illegal, discriminatory policing is dangerous, irresponsible and costs the city millions of dollars a year. These four pieces of legislation would both protect New Yorkers from discriminatory policing and protect the city from paying out millions of dollars a year from lawsuits.

Taken together, these four bills would ensure that all New Yorkers – regardless of gender, race or gender identity and expression – would be safe from discriminatory policing. This in turn will help keep our city safe. And the issue of safety in our communities is incredibly important to all our members in New York City.

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

Intro 799 – which is similar to laws in Colorado and West Virginia – simply requires officers to tell people that they have the right to refuse a search if there is no warrant or probable cause. Too many young people think that simply because a police officer asks them to empty their pockets, they have to.

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

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 for the NYPD has. New Yorkers ought to be sure that the Police Department is being monitored by other professionals.

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

This past summer, tens of thousands of New Yorkers from all walks of life marched in silence and solidarity for justice in our communities at the Stop & Frisk Silent March. The Community Safety Act would enact much needed reforms that will improve public accountability and trust with the NYPD.

Crime is down – and for that we should be thankful – but we do not need to be stopping hundreds of thousands of young men and women without cause to keep crime down.

Instead we should be ensuring that there is mutual respect between our communities and the Police Department – so that the community can be partners in keeping crime at bay.

We urge swift passage of these important reforms.

**Testimony of Darius Charney**

**New York City Council**

**Committee on Public Safety**

**Hearing on the Community Safety Act, October 10, 2012**

Good morning, my name is Darius Charney. I am an attorney with the Center for Constitutional Rights. For more than a decade, through litigation, public education, and advocacy, CCR has worked to end the abuses and increase the accountability and transparency of the NYPD. What we have learned from this work is that, if left to its own devices, the NYPD will not and cannot police itself.

In 1999, in the wake of the tragic killing of Amadou Diallo by members of the NYPD's Street Crimes Unit, CCR filed *Daniels v City of New York*, a federal class action challenging the constitutionality of the stop-and-frisk practices of the SCU, whose officers were among the most aggressive and abusive practitioners of SQF. Under a settlement reached in 2003, the City was supposed to, among other things, (1) adopt and implement a department-wide policy against racial profiling and (2) develop a system of internal audits to assess whether NYPD officers' stops-and-frisks comply with the constitution.

Yet, as we all know, over the next 8 years, stop-and-frisk exploded across the City, increasing by over 600%, while enormous racial disparities in who gets stopped have persisted. And, as demonstrated in a 2010 study by Professor Jeffrey Fagan of Columbia University, the most comprehensive statistical study ever done on the NYPD's SQF data, these disparities cannot be explained away by crime patterns, officer deployment, or other non-racial factors. So

in 2008, we went back to Court to file a new class action lawsuit, *Floyd v. City of New York*, which, after four years of contentious litigation, is finally scheduled to go to trial in March 2013.

And what about the Department's promise to implement an anti-racial profiling policy, and monitor its' officers' stop-and-frisk activity? Well, through discovery in the *Floyd* case, we have learned that (1) many NYPD supervisors, precinct commanders, and members of the central administration had never even read the Department's anti-racial profiling policy, and (2) the NYPD's internal stop-and-frisk audits do nothing more than check whether officers' stop-and-frisk forms are filled out correctly, without assessing whether the underlying stops are based on reasonable suspicion as required by the Fourth Amendment of the U.S. Constitution.

So what these last 8 years have taught us is that the NYPD cannot be trusted to make the needed changes to its stop-and-frisk policies and practices, which is why we are seeking through the *Floyd* lawsuit a court-appointed monitor to oversee the NYPD's implementation of whatever changes the federal court orders it to make. However, time-limited federal court oversight, while necessary in the short term, is not enough to ensure the accountability of the NYPD in the long term. Real and lasting accountability requires permanent independent oversight of NYPD policies and practices. Yet, there is currently no agency external to the NYPD with the power to examine its policies and practices to ensure that they will not lead to constitutional violations. This is why we need an Inspector General of the NYPD to monitor and shine a light on the policies coming out of One Police Plaza and their impact on New Yorkers' civil rights and liberties. The IG is a standard feature of government agencies within the City of New York, including the City Departments of Education, Parks and Recreation and the FDNY, and around the country, including the Los Angeles Police Department. I therefore urge the passage of Council Bill 881.



LA UNIÓN HACE LA FUERZA  
THE COMING TOGETHER OF  
LATIN AMERICAN INTEGRATION CENTER  
AND MAKE THE ROAD BY WALKING

Hello and thank you for letting me testify today. My name is Bianey Garcia. I am a ~~21~~ 22 years old transgender woman from Mexico and currently live in Jackson Heights, Queens. I came to this country at the age of 15, because I wanted to be safe from the harassment and discrimination that people like me face in my country. I became a member of Make the Road NY's LGBTQ Justice Project about 1 year ago because I realized that this discrimination still happens to us transgender women in the United States, and often times it is carried out by the same people who are supposed to protect us: the NYPD. Today I am hear with members of Make the Road to denounce that Stop and Frisk is hurting, not helping our communities.

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 realized 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 <sup>3</sup>2 years ago I went out with my boyfriend. He had invited me to go to a club in Jackson Heights Queens. At around 4AM 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 from the car, and threw me against the wall and started frisking my boyfriend. After they frisked him, they frisked me, took my bag, emptied it on the sidewalk and found 3 condoms. They then proceeded to handcuff me and told me I was being arrested for "doing sex work". I told them that I was with my boyfriend and they said that I was lying. My boyfriend came to the 110<sup>th</sup> 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 that he couldn't do anything. I was taken to court and was charged unjustly with prostitution charges.

I felt humiliated because I was accused of something that I didn't do. And now I don't even want to go to the corner store at night because of fear of being stopped or falsely accused. Stop and Frisk is a policy that is unfair and that really affects people in my community. Often times we are stopped just because of the way we look, or because of the way we express our gender identity. And often times we are also falsely accused of doing sex work because the police search our bags without our consent, and if they find condoms, they use them as evidence of prostitution. This is why we need the Community Safety Act and all the provisions that are in it. Specifically I want to make sure that I or other members of the transgender community are no longer stopped based on our gender identity or sexual orientation. And I want to make sure that if we are stopped, that our property is not searched without our consent. I was lucky to have only spent a night in jail. But for many transgender women, who are also undocumented, these false charges could mean that they can be sent back to the countries where they came from, fleeing from discrimination and persecution.

301 GROVE STREET  
BROOKLYN, NY 11237

TEL 718 418 7690  
FAX 718 418 9635

92-10 ROOSEVELT AVENUE  
ELMHURST, NY 11372

TEL 718 565 8500  
FAX 718 565 0646

479 PORT RICHMOND AVENUE  
STATEN ISLAND, NY 10302

TEL 718 727 1222  
FAX 718 981 8077

Greetings, My name is Djibril Toure and I am here today as a member of the Malcolm X Grassroots Movement and Communities United for Police Reform to lend my voice to those calling for passage of the Community Safety Act

I am a lifelong resident of Bedford-Stuyvesant a college graduate and business owner and have directly experienced the racially biased stop and frisk policies of the NYPD. I have had the experience of walking down the street in my own community where I grew up, and being stopped, forced to stand against a wall and being illegally searched by four officers who demanded that I show them some ID or go to jail. This is an all too common occurrence across neighborhoods and communities in this city. Too many of my peers have shared similarly frustrating stories of being stopped and searched, for no apparent reason without explanation.

(Intro. 801) of the Community Safety Act would require that NYPD officers provide their name and rank to the subjects of law enforcement activity, such as New Yorkers being stopped and frisked. The officer would also have to provide the specific reason for the stop, and a business card to the person being stopped that includes information on how to file a complaint. In my experience this is a key issue that must be addressed because often when people in my community are approached by undercover officers for questioning, they do not even initially understand that they are dealing with a police encounter. This often leads to people not being able to identify who they were stopped by. In my personal experience, I have on several occasions witnessed officers refusing to provide their name and badge number – or even providing a false one.

In addition the community safety act seeks to strengthen the ban profiling by the NYPD. It would prohibit the NYPD from relying, to any degree, on race, ethnicity, religion, or other protected categories when engaging in law enforcement activities, with few exceptions. This is a key component to restoring trust between law enforcement and affected communities because when you talk to residents they often feel their race/gender or ethnicity is the determinative factor in these stops.

Often when people are stopped in my community, they are not aware of what their legal rights are relating to being searched, and are not aware that officers are required to obtain consent in most cases to proceed. This proposed legislation would end the practice of the NYPD pressuring New Yorkers into consenting to wrongful searches (for example, searches that lead to the disproportionate arrest of black and Latino New Yorkers for possession of minor amounts of marijuana). Police officers would have to explain to New Yorkers that they have the right to refuse a search when there is no warrant or probable cause.

Finally this act calls for the creation of independent oversight of the NYPD – which has been called for by many communities across this city to review the alarming numbers of complaints of police misconduct

**We as citizens and taxpayers can no longer tolerate the fact that a generation of young people are growing up in this city knowing that they are more likely to be profiled, stopped, and frisked by NYPD officers based on discriminatory policing practices. Today we are seeking to address these discriminatory and illegal policing practices which trample on the rights of millions. we are no longer willing to accept biased and discriminatory policing policy under the guise of protection, and we respectfully ask your support for passage of the Community Safety Act**

December 17, 2011

## Why Is the N.Y.P.D. After Me?

By NICHOLAS K. PEART



Ashley Gilbertson/VII, for The New York Times  
Nicholas K. Peart, 23, has been stopped and frisked by  
New York City police officers at least five times.

WHEN I was 14, my mother told me not to panic if a police officer stopped me. And she cautioned me to carry ID and never run away from the police or I could be shot. In the nine years since my mother gave me this advice, I have had numerous occasions to consider her wisdom.

One evening in August of 2006, I was celebrating my 18th birthday with my cousin and a friend. We were staying at my sister's house on 96th Street and Amsterdam Avenue in Manhattan and decided to walk to a nearby place and get some burgers. It was closed so we sat on benches in the median strip that runs down the middle of Broadway. We were talking, watching the night go by, enjoying the evening when suddenly, and out of nowhere, squad cars surrounded us. A policeman yelled from the window, "Get on the ground!"

I was stunned. And I was scared. Then I was on the ground — with a gun pointed at me. I couldn't see what was happening but I could feel a policeman's hand reach into my pocket and remove my wallet. Apparently he looked through and found the ID I kept there. "Happy Birthday," he said sarcastically. The officers questioned my cousin and friend, asked what they were doing in town, and then said goodnight and left us on the sidewalk.

Less than two years later, in the spring of 2008, N.Y.P.D. officers stopped and frisked me, again. And for no apparent reason. This time I was leaving my grandmother's home in Flatbush, Brooklyn; a squad car passed me as I walked down East 49th Street to the bus stop. The car backed up. Three officers jumped out. Not again. The officers ordered me to stand, hands against a garage door, fished my wallet out of my pocket and looked at my ID. Then they let me go.

I was stopped again in September of 2010. This time I was just walking home from the gym. It was the same routine: I was stopped, frisked, searched, ID'd and let go.

These experiences changed the way I felt about the police. After the third incident I worried when police cars drove by; I was afraid I would be stopped and searched or that something worse would happen. I dress better if I go downtown. I don't hang out with friends outside my neighborhood in Harlem as much as I used to. Essentially, I incorporated into my daily life the sense that I might find myself up against a wall or on the ground with an officer's gun at my head. For a black man in his 20s like me, it's just a fact of life in New York.

Here are a few other facts: last year, the N.Y.P.D. recorded more than 600,000 stops; 84 percent of those stopped were blacks or Latinos. Police are far more likely to use force when stopping blacks or Latinos than whites. In half the stops police cite the vague "furtive movements" as the reason for the stop. Maybe black and brown people just look more furtive, whatever that means. These stops are part of a larger, more widespread problem — a racially discriminatory system of stop-and-frisk in the N.Y.P.D. The police use the excuse that they're fighting crime to continue the practice, but no one has ever actually proved that it

reduces crime or makes the city safer. Those of us who live in the neighborhoods where stop-and-frisks are a basic fact of daily life don't feel safer as a result.

We need change. When I was young I thought cops were cool. They had a respectable and honorable job to keep people safe and fight crime. Now, I think their tactics are unfair and they abuse their authority. The police should consider the consequences of a generation of young people who want nothing to do with them — distrust, alienation and more crime.

Last May, I was outside my apartment building on my way to the store when two police officers jumped out of an unmarked car and told me to stop and put my hands up against the wall. I complied. Without my permission, they removed my cell phone from my hand, and one of the officers reached into my pockets, and removed my wallet and keys. He looked through my wallet, then handcuffed me. The officers wanted to know if I had just come out of a particular building. No, I told them, I lived next door.

One of the officers asked which of the keys they had removed from my pocket opened my apartment door. Then he entered my building and tried to get into my apartment with my key. My 18-year-old sister was inside with two of our younger siblings; later she told me she had no idea why the police were trying to get into our apartment and was terrified. She tried to call me, but because they had confiscated my phone, I couldn't answer.

Meanwhile, a white officer put me in the back of the police car. I was still handcuffed. The officer asked if I had any marijuana, and I said no. He removed and searched my shoes and patted down my socks. I asked why they were searching me, and he told me someone in my building complained that a person they believed fit my description had been ringing their bell. After the other officer returned from inside my apartment building, they opened the door to the police car, told me to get out, removed the handcuffs and simply drove off. I was deeply shaken.

For young people in my neighborhood, getting stopped and frisked is a rite of passage. We expect the police to jump us at any moment. We know the rules: don't run and don't try to explain, because speaking up for yourself might get you arrested or worse. And we all feel the same way — degraded, harassed, violated and criminalized because we're black or Latino. Have I been stopped more than the average young black person? I don't know, but I look like a zillion other people on the street. And we're all just trying to live our lives.

As a teenager, I was quiet and kept to myself. I'm about to graduate from the Borough of Manhattan Community College, and I have a stronger sense of myself after getting involved with the Brotherhood/Sister Sol, a neighborhood organization in Harlem. We educate young people about their rights when they're stopped by the police and how to stay safe in those interactions. I have talked to dozens of young people who have had experiences like mine. And I know firsthand how much it messes with you. Because of them, I'm doing what I can to help change things and am acting as a witness in a lawsuit brought by the Center for Constitutional Rights to stop the police from racially profiling and harassing black and brown people in New York.

It feels like an important thing to be part of a community of hundreds of thousands of people who are wrongfully stopped on their way to work, school, church or shopping, and are patted down or worse by the police though they carry no weapon; and searched for no reason other than the color of their skin. I hope police practices will change and that when I have children I won't need to pass along my mother's advice.

*Nicholas K. Peart is a student at Borough of Manhattan Community College.*



## PICTURE THE HOMELESS

2427 Morris Ave., 2<sup>nd</sup> Fl., Bronx, New York 10468  
646.314.6423

My name is Raul Rodriguez and I'm a member of a grassroots organization called Picture the Homeless and of Communities United for Police Reform.

Being homeless has made me a prime target (re: Intro 800) for officers to stop me and harass me on a regular basis. Whether in the train, on the street, or even in the hospital emergency room, police officers always use the excuse that I "match the description" of someone who did something wrong. I ask you, should the fact that I am a Latino or that I am homeless be enough to warrant this type of a constant targeting by the NYPD?

They always demand that I empty my pockets (re: Intro 799) and check everything I have on me without asking for my consent. On a good day, after a <sup>illegal</sup> Stop Frisk and Search, I will be allowed to leave, only to have it happen again in a day or two. But if I assert my legal and constitutional rights and question why I was stopped, I know that the officers to become even more aggressive and that the experience will only get worse for me – often leading to me being handcuffed or slammed on the floor.

In one incident, I was stopped in front of my residence after coming home from work late one night. In retaliation for my questioning the stop, I was <sup>wrongfully</sup> charged with menacing. The consequences of that charge extend far way beyond that incident and that night. That unwarranted menacing charge cost me my job and it cost me my home where I lived in a furnished room.

These encounters have me going through the judicial revolving doors. Having me subject and at risk to paying fines that I cannot afford, to jail time to justify their reasons for stopping me. It is due to this that it is very difficult for me to find employment, since nobody wants to hire a person with a record. It also prevents me from opportunities to be housed, for who can afford a place to live without a job? The damage that these encounters have done to me are irreparable. How can I ever be able to enjoy the American dream with a criminal record that has been forced onto me, just because I'm homeless?

It is hard enough for anyone to deal with life's challenges being homeless person in New York City. But to have the very same people that are supposed to protect me harassing me because I'm homeless is ridiculous. In all, these encounters have made my life much more difficult to bear. I support the Community Safety Act because I believe that these reforms will prevent similar experiences from happening again to myself and others. In bringing transparency and accountability to police officers who sometimes act above the law, the passage of the Community Safety Act would bring me closure. Lastly, the Community Safety Act would restore the Courtesy, Professionalism and Respect we expect and deserve from the NYPD.



# JUSTICE COMMITTEE

105 East 22<sup>nd</sup> St. Room 103, New York, NY 10010 | Justicecommittee.org

Testimony of Steve Kohut, Organizer, The Justice Committee  
Before the New York City Council, Committee on Public Safety  
Regarding the Community Safety Act: Intro: 799, 800, 801, and 881  
October 10th, 2012

My name is Steve Kohut and I'm a member of the Justice Committee, A grassroots organization whose work revolves around racial and police violence.

I'm born, raised, and still residing in the Lower East Side of Manhattan, as a life-long Latino community member of the Lower East Side, I've been victimized by the NYPD more times than I can remember. I've had my head slammed against a car, I've been choked, I've had property taken out of my pockets and not returned, I've had my property intentionally broken without reimbursement, I've even had my life threatened by the NYPD.

I remember one February afternoon in particular, I was walking down the block when all of a sudden a van coming the wrong way down a one-way street jumps the curb and stops on the sidewalk right beside me. Just as soon as it stops, 3 men jump out, guns in hand, all pointed at me. They put one gun up against my right temple, one against the left side of my neck, and one point blank at the center of my chest. I was told if I moved I'd be shot. They proceeded to search my pockets without asking for my consent. After nothing was found in my pockets, they searched my boots, and then removed them. Then they unbuckled my belt and put their hands down my pants and proceeded to search my genitals. Then dropped my pants to my ankles and started stripping me of my clothing, before leaving me there in broad daylight, standing in the snow, wearing nothing but my underwear and socks. As they were leaving, all they said to me was "you got lucky this time" and walked away. They never identified themselves as NYPD, never pulled out a badge and showed it to me, the van didn't even have any police lights on or any other identifying marks on it to inform you that it was an NYPD vehicle. The only way I even knew they were cops was because I just so happened to catch a glimpse of part of a badge that was just barely sticking out of the down vest of the cop with his gun pressed up against my chest was wearing.

As I think back on instances like this all I think of is that if the Community Safety Act had been in place during those times. I would've never had to go through it in the first place. Intro 800 protects against discriminatory profiling, which to me would've meant that they wouldn't have been able to stop me in the first place. Intro 801 would have made it necessary for them to identify themselves as NYPD by showing me a business card instead of guns, and tell me why I was being stopped. Intro 799 would have required them to ask for my permission to search me and obtain evidence of my consent, which would've prevented me from being stripped in public.

The community Safety Act is something that is long overdue in communities like mine.

Steve Kohut  
Organizer  
The Justice Committee  
Steve@Justicecommittee.org

## **TESTIMONY**

New York City Council  
Committee on Public Safety

October 10, 2012

Council Chambers  
City Hall, New York, NY

Re: Int. No. 799, 800, 801, 881

Submitted by:

The Legal Aid Society  
Criminal Practice  
199 Water Street  
New York, NY 10038

Presented by:

William Gibney, Director  
Criminal Practice Special Litigation Unit

Good morning. I am William Gibney, Director of The Legal Aid Society's Criminal Practice Special Litigation Unit. I submit this testimony on behalf of The Legal Aid Society, and thank the City Council and the Committee on Public Safety for inviting our comments on pending legislation that would prohibit biased-based police profiling, require police to identify themselves, a written or audio consent to search and create an Office of Inspector General. Together these bills are intended to address the abuses of the NYPD stop and frisk program by informing New Yorkers of their privacy rights, creating greater transparency in law enforcement practices, and providing New Yorkers with legal remedies when their rights are violated. We appreciate your attention to these matters of vital concern.

The Legal Aid Society is the nation's largest and oldest provider of legal services to low-income families and individuals. From offices in all five boroughs in New York City, the Society annually provides legal assistance to low-income families and individuals in some 300,000 legal matters involving civil, criminal and juvenile rights problems. The Society operates three major practices: the Criminal Practice, which serves as the primary provider of indigent defense services in New York City; the Civil Practice, which improves the lives of low-income New Yorkers by helping families and individuals obtain and maintain the basic necessities of life – housing, health care, food and subsistence income or self sufficiency; and the Juvenile Rights Practice, which represents virtually all of the children who appear in Family Court as victims of abuse or neglect or as troubled young people facing charges of misconduct.

During the last year, our Criminal Practice handled nearly 240,000 trial and post-conviction cases for clients accused of criminal conduct. Through this work we are all too familiar with the abusive and illegal arrests caused by the NYPD stop and frisk police practices. We witness firsthand the destructive impact of stop and frisk in our communities. We represent the people falsely arrested on trespass charges who are legitimately visiting a friend or loved one who lives in a public housing apartment and the improper “in open view” marijuana arrests when a person is found to have a marijuana joint in his pocket. These needless arrests drain so many of the resources away from the serious priorities of the criminal justice system.

The impact of the stop and frisk practice, however, is not limited to the stops and the bad arrests that stem from them. The fact that people of color, lesbian, gay, bisexual, transgender or gender non-conforming communities are being aggressively stopped and frisked when they do such ordinary things as take out the garbage or go for a walk leads to a climate of fear and suspicion towards the police. When the police are viewed as a hostile occupying force, it becomes far more difficult for the police to gather information about serious crime in these communities. The resulting lack of trust damages police-community relations in ways that undermine public safety.

For the individual a criminal conviction or even an arrest can trigger a cascade of collateral consequences that impact public housing, student loans, public benefits, immigration status, deportation and loss and inability to find employment. A frequent target of the stop and frisk program is our youth and for that reason the destructive impact of stop and frisk will be experienced for many years to come.<sup>1</sup>

---

<sup>1</sup> According to the Center for Constitutional Rights in 2011 over 55% were of people aged 25 and under. *Stop and Frisk The Human Impact*, Center for Constitutional Rights, July 2012

Because The Legal Aid Society represents people in so many of the substantive areas impacted by the stop and frisk program, we are uniquely positioned to address this public safety issue.

## **STOP AND FRISK PRACTICE**

In 2011 there were 685,724 reported police stops in New York City, a 14 percent increase over the number of stops in 2010. 605,328 of them, or almost 90%, were stops of innocent people who were not charged of any violation of the law. A superficial analysis of the stop and frisk program might lead one to think that it has a 10% success rate in detecting criminal behavior. Our experience shows, however, that many of the arrests are for behavior that is perfectly legal or for which the law expressly prohibits an arrest. A superficial analysis of the stop and frisk practice misses the true destructiveness of the program. As the largest public defender in the City on a daily basis we experience the problematic arrests that are the result of the aggressive stop and frisk practice.<sup>2</sup>

## **THE PROBLEM OF NYCHA TRESPASS ENFORCEMENT**

Aaron Brown, age 24, is an information technology manager for a federal agency who grew up in the Clinton Houses in East Harlem. He moved out to attend college. On a Friday evening last year, he went home to visit, and to bring his brother to his new apartment in the Bronx. While he was waiting for his mother and brother in the lobby of

---

<sup>2</sup> This testimony focuses on two fact patterns that have produced abusive arrest patterns. There are others, see, e.g., *Ligon et al. v. City of New York et al.*, 12 civ 2274, regarding abusive trespass arrests in the clean halls program.

the building, he was surrounded by three police officers who demanded to know what he was doing there.

They wanted to know, "Do you live here," and he said, "No, but I lived here for 10 years and my mother is on her way back from the store." He gave them her apartment number. One of them asked, "Do you have any drugs on you or concealed weapons?" Mr. Brown said, "No, why would you ask that? I just told you what I am doing here." He was then cuffed and frisked.

His mother arrived in the lobby from the store and vouched for him. But this did not change the course of events. Four hours later, after being arrested and fingerprinted at the station house, he was released from custody with a summons to return to court. Despite his clean record and incontestable evidence that he was in his own home, he had to make three court appearances before the charges were dropped. The incident cost him three days pay, and an incalculable loss of security in his own home and confidence in his government.

Unfortunately, Mr. Brown's case is not unique. In recent years, countless numbers of law-abiding people have been stopped or arrested for criminal trespass despite having legitimate reasons to be on NYCHA grounds, either as a NYCHA resident or the guest of a NYCHA resident. In practice, NYPD officers often wait in or around the lobby of a NYCHA residence and stop almost anyone entering or leaving the building, even though the law requires that they have individualized suspicion. Officers routinely question both visitors and residents about their reason for being in the building. When a response fails to satisfy an officer for whatever reason, that person is searched

and often arrested for trespass despite the lack of sufficient evidence to support probable cause that a law has been broken.

In many respects, officers stop individuals on NYCHA property already presuming that they are guilty and force them to affirmatively establish their innocence to avoid arrest. For instance, visitors have been arrested when the NYCHA resident is not home or where there is some miscommunication with officers, such as references to a formal name instead of a more commonly used nickname. Officers often fail to perform even the most basic investigations to verify a visitor or resident's legitimacy. Most arrestees are held in jail for about 24 hours until they are arraigned, and others have been detained even longer. By shifting the burden to NYCHA residents and visitors to prove their innocence, rather than requiring an officer to establish probable cause before an arrest, NYCHA trespass enforcement practices have permitted rampant Fourth Amendment violations on NYCHA grounds. Individuals do not lose their constitutional rights simply because they are on NYCHA property.

Many NYCHA residents live in fear that family members or friends will be arrested when they visit. Some have told us that they are more afraid of the police than drug dealers. Indifference and disrespect for the people, families, and especially young men and women who reside in public housing have become the norm in the NYCHA community. Those unfortunate individuals who are unlawfully arrested for trespass suffer severe consequences, such as missing work or medical appointments, being unable to satisfy family obligations, and navigating the criminal justice system over several months and with multiple court appearances. Those who plead guilty to avoid the burden of criminal proceedings are left with a criminal conviction that may affect

their ability to obtain higher education or certain employment positions. These false arrests also strain our overburdened court system, divert limited police resources away from "real" criminal activity, and subject the City to potential damages for false arrest claims.

## **TARGETING COMMUNITIES OF COLOR**

These unlawful trespass stop and arrest policies specifically target communities of color. Over 95% of the people living in NYCHA apartments are non-white, and NYCHA residences have far higher rates of trespass stops and arrests than their surrounding neighborhoods. As a result, 90.7% of those arrested for trespass are African-American or Latino despite the fact that African Americans and Latinos constitute only 44.8% of the City's population. Although Black residents comprise only 19.7% of the City population, they comprise 62% of citywide trespass stops and 52% of trespass arrests.

## **TWO RECENT TRESPASS DEVELOPMENTS**

Last week a federal district court in the class action lawsuit, *Davis et al. v. the City of New York et al.*, 10 civ. 0699, ruled that the false arrest, unlawful detention and other claims of nine residents and visitors to New York City public housing may proceed to trial. Residents and guests of public housing, on behalf of a class, sued to stop the NYPD -- funded and supported by NYCHA -- from unlawfully stopping, frisking and arresting public housing residents and their lawful visitors. Judge Shira A. Scheindlin found that the claims raise a Constitutional question of whether the NYPD is "violating

the rights of the very residents and guests whom they seek to protect." "[A]re defendants acting within constitutional limits in their presumably sincere efforts to provide a safe environment for the residents of public housing? Or, in their zeal to provide that protection, are they violating the rights of the very residents (and guests) whom they seek to protect?"

The Legal Aid Society, along with co-counsel the NAACP Legal Defense and Education Fund, represents the proposed class of thousands of public housing residents and their visitors. One plaintiff, stopped and then arrested and held overnight in police custody -- missing work and a planned mother's day visit to his mother as a result -- was simply walking down the stairs to exit a public housing building. The court allowed his claim to proceed, finding the police did not have reasonable suspicion for a stop: "There is nothing suspicious about a person walking down the stairs of a NYCHA building in a high crime area. There is nothing suspicious about a person stating that he was visiting a friend in a NYCHA building."

In the 84-page decision, the Court characterized the case as the latest chapter in "decades long battle by NYCHA tenants for a life both dignified and safe."

A second significant development was reported two weeks ago by *The New York Times*. Robert Johnson, the Bronx District Attorney, issued a new policy that his office would not prosecute people who were stopped in public housing projects and private buildings in the clean halls program and then arrested for trespass unless the arresting officer was interviewed to ensure that the arrest was warranted. The new policy received wide-spread media attention and praise with *The New York Times* in an editorial urging other District Attorneys to follow Johnson's lead.

According to a July 18 letter issued by the Bronx District Attorney's office, prosecutors in the Bronx have been "experiencing a great deal of problems with trespassing"<sup>3</sup> arrests. The Bronx District Attorney's office found that "in many (but not all) of the cases the defendants arrested were either legitimate tenants or invited guests." In some cases the police arrested people even when there was persuasive evidence that they were not trespassing. There have been "several instances where defendants who were guests, had the person whom they were visiting verify this fact to the arresting officer, yet the defendant was arrested anyway." In those cases, the initial deposition from the arresting officer "indicated the defendant did not know the name of any tenant or the apartment number."

We agree that verification of trespass arrests is exactly what prosecutors should be doing before proceeding with criminal prosecutions — namely making sure that formulaic statements by police officers actually have some basis to support the arrest and prosecution.

## **ILLEGAL MARIJUANA ARRESTS**

The Legal Aid Society commenced a lawsuit in June of this year regarding a second widespread abuse of the stop and frisk practice. This action against the New York City Police Department seeks to prohibit the NYPD from arresting people who have small amounts of marijuana on their person. State law requires that people who possess small amounts of marijuana that is not "open to public view" should be charged only with a violation and be given a ticket to appear in court at a later date. In thousands of cases every year, however, NYPD officers, having found a small quantity

---

<sup>3</sup> Letter from Assistant District Attorney Jeanette Rucker, July 18, 2012

of marijuana in a pocket or bag, charge the persons with the misdemeanor and subject them to the full arrest process, which often takes more than 24 hours and leaves them with a criminal record.

In September 2011, Police Commissioner Kelly issued an order that prohibited the misdemeanor charge and arrest in cases where the marijuana is found on the person. In spite of this order, the practice of filing the misdemeanor charge and ordering the arrest for non-public-view cases has continued to this day.

The plaintiffs in this action, *Gomez-Garcia et al. v. The New York City Police Department et al.*, are five New Yorkers who come from the Bronx, Richmond, Kings and Queens Counties. Their arrests occurred in April and May of this year. Each plaintiff was charged with the misdemeanor-level possession of marijuana in public view in spite of the fact that marijuana was produced only as a result of a police order or action. In one case the person was charged with public view possession and arrested despite the fact that the complaint written by the arresting officer said that the marijuana was recovered from the defendant's person.

## **THE STOP AND FRISK ABUSES MUST END**

Against this background of the widespread stop and frisk of innocent persons and abusive arrest patterns, the New York City Council has proposed a series of bills that are intended to place limits on some of the worst aspects of the stop and frisk practice. We support their adoption.

Int. No. 799 seeks to inform New Yorkers of their privacy rights in situations when they are being searched with their consent by the police. It would require the police

officer to explain that the request for a search is voluntary and that the person has a right to refuse the request. It would also require an audio or written and signed consent by the person being searched. The record of the consent must be retained and a statistical report of these searches is required.

Int. No. 800 expresses concern about the NYPD's growing reliance on stop and frisk tactics and their impact on communities of color. The proposal would ban bias-based profiling which is defined as the reliance to any degree on actual or perceived race, color, ethnicity, religion, national origin, age sex, gender identity or expression, sexual orientation, immigration or citizenship status, language, disability(including HIV status), housing status, occupation, or socioeconomic status by a member of the NYPD that links a person or persons to suspected unlawful activity. Violation of this law would be enforceable by a private right of action.

Int. No. 801 seeks to increase transparency of police conduct by requiring law enforcement officers to identify themselves and provide a reason for the law enforcement activity that is being conducted. At the conclusion of law enforcement activity that does not result in an arrest the officer is required to give a business card to the subject of the activity. An exception is provided for undercover officers.

Int. No. 881 calls for the creation of an office of Inspector General that would provide independent oversight of police operations and report directly to the Mayor. The Inspector General is directed to review the practices of the NYPD, make recommendations for change and keep the Mayor informed about NYPD programs and practices. The Inspector General is given strong authority to obtain records, conduct

reviews, issue subpoenas, investigate employee complaints, and enter into partnerships to effectuate its purpose.

Because we think that passage of these four proposals would reduce the present abuses of the stop and frisk practice we urge the Council to adopt them.

10-10-12

From **D. Samajopoulos**

### City Council Hearing Regarding Implementation of External Police Oversight

In August 2009, 9 shots from a 40 caliber semi automatic were fired in front of my house.

1 of those shots was, purposely, fired into my daughters bedroom.

To this day, not one detective or investigator has come to my house to ask what I know about that shooting or the people involved.

Instead I was told, by the Commanding officer of the precinct that:

“As far as I'm concerned, there was no crime committed”

I guess that's what they mean when they say that “Crime is down”.

His remarks and lack of proper policing have led to further threats and abuse of me and my property. The police have effectively put a bulls eye on my back. Those involved or with any knowledge of the shooting know that the police don't care to do anything that might expose their own incompetence.

1 year after the shooting & with the police handling of this incident, I was advised to file a complaint against the Precinct and it's commanding officer. I was told that it had to go through Internal Affairs. I made my complaint, specifically against the local precinct and it's commanding officer and waited. A few months later, I got a call from a man claiming to be “investigating” my complaint. After a few questions, it occurred to me that he hadn't identified himself. I asked who he was and where he was from. He said I'm Sergeant X and continued to make very suspiciously pointed questions. Questions designed to cast doubt on my complaint. I asked – again – Where are you from? He ignored me and kept asking questions. After I asked for the 3<sup>rd</sup> time, he admitted to work out of the very precinct that I had lodged my complaint against. I asked who his commanding officer was and he said it was the very same person that I complained about. I almost fell out of my chair. Then I ask if he expected me to believe that the precinct that I filed the complaint against would do a proper investigation of it's self. He said: “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 why this had happened.

After being led on a 2 day wild goose chase from one section or unit to another I finally got to someone who said to me: “This seems strange...why did they refer your complaint to the precinct you complained about.” He then said: “I don't know what to tell you but I suggest that you call the first # that you spoke to and ask that they file another complaint about this whole incident... and be specific that you don't want this being sent back to the same people.”

I did as he advised me. After 6 months tried to find out the status of that complaint. 2 days and many phone calls later, I found out that the second complaint was handled exactly the same as the first, and then closed.

This in a nut shell is how our Police department polices. Both itself and the criminals in this City. Everything they do is designed to protect and serve the interests of a select few AND themselves.

Crime is down? Of course it is - for some. For the rest of us it's just ignored and/or brushed under the rug. This leads to a vicious cycle of less people willing to speak or report anything and less faith in our police and elected.

Is that what we pay taxes for? Is that what we want for the future of this city? Is that what we want for our children?



147 West 24<sup>th</sup> Street, 4<sup>th</sup> Floor, New York, NY 10011 • 212-929-0562  
info@streetwiseandsafe.org • www.streetwiseandsafe.org

## TESTIMONY OF MITCHYLL MORA IN SUPPORT OF THE COMMUNITY SAFETY ACT

My name is Mitchell Mora and I am a youth leader, “know your rights” educator, and researcher with Streetwise and Safe, an organization focused on LGBTQ youth of color’s experiences of policing.

We know from the NYPD’s own statistics that the discriminatory policing practices of the NYPD target Brown and Black bodies. We know from the data collected by the NYPD that these policing policies disproportionately affect young people aged 14-21. The policing of Brown and Black people begins with the color of our skin, our race, our ethnicity, and our youth, but it does not end there. What is hidden in the official numbers is how NYPD profiles us based on our actual or perceived sexual orientation, and based on our actual or perceived gender expression and our gender identity.

But research shows that rates of racial disparity in stops of Black and Brown women are the same as they are for the rest of our communities. Research shows that LGBTQ youth like myself are much more likely to have negative experiences with police than their heterosexual peers, and we are more than twice as likely to report negative sexual contact with the police

These experiences look like a friend of mine, a trans-identified woman, being told to unzip her pants to reveal her genitals to satisfy the curiosity of a police officer. They look like a young queer person being profiled and arrested for a prostitution-related offense based on New York City condoms found on them when they are

ordered by an NYPD officer to empty their pockets or open up their purse. They look like young women in SAS being sexually harassed and assaulted by police during stops, or, being told by officers that they wouldn't get stopped if they didn't dress "like a boy."

They look like my experience earlier this year, when I was walking alone on the Lower East Side and a police car pulled up across the street from me, lights flashing, and three police officers jumped out. Immediately they began to yell at me from across the street to "Stop!" "Get against wall!" "Open your bag!" Flashlights were shining in my face as their commands rang in my ears. I didn't know what to do. Was I supposed to get against the wall? Open my bag? Stop moving? I put my hands on the wall. One officer took my bag while another began to aggressively frisk me. I asked them why I was being searched. I said, I didn't consent to the search. Like other times I have been stopped, I attempted to exercise my rights, rights that I quickly learned I didn't have with the NYPD. But this time, the police officer frisking me responded by called me a "faggot" and grabbing my ass. They drove away after telling me that they had been looking not for a gun, but an open container. They found nothing on me, so there was nothing to suppress, and the violation of my rights went unaddressed.

My body, my life, my very being as a young Brown gay person is policed by the NYPD. Our bodies, our lives, our very beings as LGBTQ youth of color are policed by the NYPD.

This is why we need the Community Safety Act. These bills will counteract the many ways in which LGBTQ youth of color are policed - by protecting us from

being profiled based on our race, and also based on our age, our sexual orientation or gender identity, our HIV status or disability, or the fact that we are disproportionately homeless, and by ensuring that our right to not consent to a search is respected whether we are being told to empty our pockets, open up our bag or purse, or submit to a 'gender check' without any legal basis. It will help ensure that in moments like I have described here today that our rights will become realities during our daily encounters with the NYPD, and represents an important step toward achieving true safety for all New Yorkers.



**Testimony of Evan Goldstein  
Policy Coordinator, New York  
Drug Policy Alliance**

**Submitted to:**

**City Council of New York/Committee on Public Safety**

**Hearing on the Community Safety Act and Intro. 799**

**October 10, 2012  
New York, NY**

Thank you Mr. Chairman and members of the Public Safety Committee for inviting me to testify in support of Intro 799, a local law to amend the administrative code of the city of New York, in relation to requiring law enforcement officers to provide notice and obtain proof of consent to search an individual.

The Drug Policy Alliance is the nation's leading organization promoting alternatives to current drug policy that are grounded in science, compassion, health and human rights. We seek to advocate policies that move drug use and abuse towards a health-oriented framework. Our office in New York works to promote sensible drug policies and to build a movement to end the drug war in New York City and State. To that end, our campaigns are developed in partnership with grassroots community organizations, researchers, service providers and other advocates for reform.

For the past two years, we have worked on a campaign with our organization partners to educate New Yorkers about the illegal, costly, and racially biased arrests for small amounts of marijuana in public view. We have met with hundreds of organizations throughout New York City to learn about how marijuana arrests impact their communities. And while New Yorkers want to prevent youth from using marijuana, there is unanimous agreement that these racially biased and unconstitutional searches and arrests are not an effective prevention strategy. New Yorkers understand that these arrests represent a huge cost in their communities, both in fiscal terms – we spend \$75 million a year on these arrests every year – but also in human terms, including the collateral consequences associated with such arrests.

Marijuana arrests are a gateway into the criminal justice system in New York City, especially for young people of color, even though young whites use marijuana at higher rates. Recent news investigations and our own interviews with hundreds of people facing these charges demonstrate that many of these arrests are the result of illegal searches and false charges. This process starts when the police approach and stop someone on the street -- usually a young man of color -- and demand that they "empty out your pockets/bag." This request is itself unlawful, but, not wanting to elevate the situation, people usually comply with the officer's request. Sometimes the person may pull out a small amount of marijuana, even though they are not legally required to do so. Once in "public view," the marijuana possession becomes a misdemeanor – a criminal offense – and the person is arrested. But more often, the police, in the course of conducting a stop-and-frisk, unlawfully move from a frisk into a full-scale search, and uncover small amounts of marijuana from a pocket or bag. The police then charge the individual with possession of marijuana in public view, or burning in public view. In September 2011, NYPD Police Commissioner Ray Kelly issued an internal directive, ordering police to follow the law – they must stop making arrests for marijuana possession in "public view" when the person was compelled by an officer to display marijuana in public. Commissioner Kelly's order did *not* address the blatantly unlawful searches frequently conducted by police that lead to these arrests.

Intro 799 would help reduce these unlawful searches leading to false charges for marijuana in public view by requiring officers to get consent prior to searching a person, their vehicle, home, or other belongings *when a warrant of probable cause does not exist*. Through the above illustration, many people do not realize that they have the right to deny consent to a search. Intro 799 reminds law enforcement that the 4<sup>th</sup> Amendment applies to all New Yorkers, and can help reduce the mistrust of law enforcement by communities are subject to unlawful police practices such as illegal searches.

The Council has already demonstrated leadership on this issue -- in June, the City Council passed Reso. 986A, which supported Governor Cuomo's legislative remedy to bring clarity to the penal law for marijuana possession. The proposal would clarify the law and hopefully reduce the incidence of arrests due to false charges by police officers. The Council was not alone in its support -- support of this legislation came from around the state, including Mayor Bloomberg, NYPD Commissioner Ray Kelly, the NYC Patrolman's Benevolent Association, all five New York City District Attorneys, and District Attorneys from Long Island and upstate. Unfortunately, that legislation has yet to pass and will be taken up next year.

The Council can again demonstrate leadership by taking the next step and passing Intro. 799. The proposal would not only help ensure that people are informed of their 4<sup>th</sup> Amendment rights, but it will help repair the deleterious relationship between the police and communities where constitutional rights are routinely violated. Please support Intro 799, which out help stop these unlawful arrests that the City Council has already found to be detrimental to community safety.

### ***History of marijuana arrests in New York City***

In 1977, a Republican State Senator and a Democratic State Assemblyperson sponsored legislation to remove the criminal penalties for *possession* of marijuana for personal use. The Legislature passed the *Maribuana Reform Act of 1977*, finding that “arrests, criminal prosecutions and criminal penalties are inappropriate for people who possess small quantities of marihuana (sic) for personal use.”<sup>1</sup> Possession of 25 grams or less of marijuana (about 7/8 of an ounce) was decriminalized – that is, it was made a *violation*; a first offense punishable by a \$100 fine, not jail. Multiple possession offenses were punishable by a \$250 fine and up to 15 days in jail.

When they decriminalized small amounts of marijuana, the Legislature also established a *misdemeanor* penalty for burning marijuana or possessing it *in public view* – a *criminal* offense punishable by arrest, fine, and/or a jail sentence of up to three months.

For nearly fifteen years after marijuana decriminalization in 1977<sup>2</sup>, there were relatively few marijuana possession arrests in New York. But changes in policing practices led to a dramatic increase in these arrests. For instance in New York City, in 1990 there were only 892 arrests for possession of small amounts of marijuana. In 2011, 50,684 people were arrested, a 5,500% increase.<sup>3</sup> Since Michael Bloomberg became Mayor in 2002, there have been over 400,000 arrests in NYC for possession of small amounts of marijuana – more than Mayors Dickens, Koch, and Giuliani combined.

This police practice is extremely expensive and wasteful to New York City: a study found that each of these arrests costs about \$1,500. That means that in 2011, New York City spent \$75 million arresting people for possessing small amounts of marijuana in public view. These arrests continue, even while the City eliminates bus and subway lines, cuts youth summer job and after-school programs, closes senior centers, shuts hospitals, and eliminates services for the homeless and desperately poor. In the past 10 years, New York City taxpayers have spent over \$600 million dollars on the more than 400,000 arrests for marijuana possession in public view.

These arrests are racially biased and target young people. In the City, nearly 85% of all those arrested are Black and Latino, even though the federal government’s national household survey consistently shows year after year that young whites use marijuana at higher rates. Nearly 70% of those arrested for possessing small amounts of marijuana are young people aged 16-29. Statewide, studies by Dr. Harry Levine of Queens College show that among cities and counties in the U.S., Buffalo, Syracuse, along with New York City rank among the highest in terms of racial disparities associated with arrests for possessing small amounts of marijuana.

---

<sup>1</sup> “The Legislature finds that arrests, criminal prosecutions and criminal penalties are inappropriate for people who possess small quantities of marihuana (sic) for personal use. Every year, this process needlessly scars thousands of lives and waste millions of dollars in law enforcement resources, while detracting from the prosecution of serious crime.” — *New York Maribuana Reform Act of 1977*

<sup>2</sup> *Maribuana Reform Act of 1977*, Public Law 360, 1977-1978 Legislature, Regular Session (29 June 1977)

<sup>3</sup> Where simple marijuana arrests are the top charge. That is, these are not arrests for sales or for other offenses. These are arrests only for low-level possession.

These arrests also impact documented and undocumented immigrants, especially under the Secure Communities program being forced upon New York by the federal government. Secure Communities requires that the local police send fingerprints to the FBI and Immigration and Customs Enforcement (ICE) for every criminal arrest. ICE then reviews the prints to determine if the individual is a “criminal alien,” often placing a detention hold on the individual. Misdemeanor marijuana possession arrests are currently a fingerprintable criminal offense. Thus, it is highly likely that documented and undocumented immigrants will face severe consequences – including deportation – as Secure Communities is implemented in New York even if arrested through unlawful tactics described above. The proposed legislative reform – A.10581 – won’t stop Secure Communities and won’t stop racial profiling, but it will drastically reduce the number of people – including immigrants – falsely charged and arrested for marijuana possession in NYC, which is currently the number one arrest in the city.

### *Two stories of those arrests*

- Anthony was walking out of a store with his friend when he was stopped on the street by two uniformed police officers. They did not provide Anthony with a reason for the stop and did not ask to see his ID. The officers said, “We know you got it on you, just cough it up, and we won’t put you through the system.”

Anthony verbally denied consent to a search and invoked his right to remain silent. The police officers disregarded this and proceeded to illegally search him. The officers illegally recovered a small amount of marijuana from Anthony’s pocket and arrested him for criminal possession of marijuana in public view. He was held at the precinct for 24 hours and then taken to Central Booking for an additional 24-26 hours.

He saw a lawyer only shortly prior to his appearance before a judge. He was sentenced with an Adjournment in Contemplation of Dismissal (ACD). Anthony believes that he was racially profiled. When he was released from court his mother asked him, “What happened?” to which he replied, “I was just breathing while Black.” This happened after the Kelly operations order was initiated.

- During one early evening around 10pm in February 2012, Jonathan had been asleep in the backseat of his friend’s car, and his cousin was asleep in the passenger seat. His friend had parked the car in a driveway and ran to the store leaving his friends sleeping in the car. Three plain clothed police officers approached the car and woke him up. Jonathan woke up to the words, “roll down the window”. The police officers had him get out of the car and searched his bag, searched him, and searched the car. He asked them why they were searching his bag and was told the car was parked illegally. They asked him, “Do you have anything on you that you are not supposed to have”. He admitted that he had marijuana on him in his inside jacket pocket. The officers asked him to give it to them and he complied. They found nothing in the car or on his cousin.

Jonathan and his cousin were both arrested. By the time their friend got back from the store about ten minutes later they were gone, arrested and sent to precinct 115. Jonathan spent 10 to 12 hours at the precinct before he was sent to central booking. His court case is still opened. He stands by the fact that his cousin did not have anything on him and should not have been charged. He believes he should have been given a ticket because he did not have marijuana in public view, and he was asleep, not smoking.

**NEW YORK HARM REDUCTION EDUCATORS** INFO@NYHRE.ORG

953 Southern Boulevard Suite 302 Bronx, NY 10459 P: 718.842.6050 F: 718.842.7001

1991A Lexington Avenue New York, NY 10035 P: 212.828.8464 F: 212.828.9105



**Leleve Pointer  
Testimony before the NY City Council Public Safety Committee  
October 10, 2012  
City Hall**

**Re:** Support for the Community Safety Act, Intro #799, 800, 802, and 881

Good Morning Mr. Chairman and Members of the Public Safety Committee

Thank you for this opportunity to testify in support of the Community Safety Act, Intro #s 799, 800, 802, and 881. My name is Leleve Pointer, and I am a participant of the New York Harm Reduction Educators also known as NYHRE. NYHRE is a non-profit organization devoted to promoting the health, safety, and well-being of marginalized, low-income persons who use drugs, their loved ones, and their communities. Our organization represents thousands of New Yorkers who are fed up with being targeted by the NYPD because we are minorities, because we are poor, homeless, homosexual, drug users, or for any other reason that has nothing to do with whether or not we are criminals.

I would like to use my time to tell you a true story that happened to me. I was living in Staten Island and I was having some friends over my apartment. At around 11:30pm I went to the store with a few of my guests to buy cigarettes. As I left my driveway we were stopped the NYPD. They made us empty our pockets onto the hood of the NYPD car. They proceeded to go through my pockets, look through my socks, check my waist band, and pretty much violate me right there in front of my neighbors. They found no illegal drugs, weapons, or anything else on anyone.

At this time another NYPD car drove up and an officer got out. The officer looked through all of our stuff sitting on the hood of the car and picked up a stapled white bag from the pharmacy and opens the bag. He asked me what my name was and when I told him he said, "This is not yours". I told him that it was my neighbor's medication and that I had signed for it as a favor to her. My neighbor was an elderly lady who I liked to help out when I could. I would often sign for her packages and turn it over to her when I got a chance. I suggested he ring my neighbor's bell and confirm all of this with her, but instead I was arrested. Another officer said that a pen that was in my pocket looked like it was a crack pipe. He took the top off of it and showed it to the other officers.

As a result of this arrest, I was in Rikers for 4 months. I had to wait for the lab to test my pen to see if it came back with drug residue. They claimed the lab report got lost and they had to send it back again. In the end I took a plea because I wanted the whole ordeal to be over with. When I got out I found out all of my stuff was gone and I was now homeless. The landlord claimed I had abandoned the apartment and cleaned it out and re-rented it out to another tenant.

Members of the Public Safety Committee I beg of you, pass the Community Safety Act. If I had been informed of my right to refuse to consent to a search I would not have been subjected to this unfair treatment. The NYPD robbed me of my dignity, my freedom, my possessions, and my home! I may not be able to get those things back, but I can urge you to prevent this story from being told over and over again. Stop criminalizing young men of color! Stop profiling people who look like me! Stop robbing our communities! Pass the Community Safety Act and Stop Stop and Frisk!

Thank you again for the opportunity to tell my story,

Level Pointer

All Comments or Questions Should be Directed to Mike Selick the NYHRE Policy and Participant Action Fellow (718) 842-6050 x 128 or [mselect@nyhre.org](mailto:mselect@nyhre.org)



## **Testimony of Legal Services-NYC Before the New York City Council's Committee on Public Safety Oversight Hearing—October 10, 2012**

### **INTRODUCTION**

Legal Services NYC (LS-NYC) is the nation's largest provider of free civil legal services to the poor. For more than 40 years, LSNYC has provided expert legal assistance and advocacy to low-income residents of New York City. Each year, LSNYC's 19 neighborhood offices serve tens of thousands of New Yorkers, including homeowners, tenants, the disabled, immigrants, the elderly, and children. We thank the New York City Council's Committee on Public Safety for this opportunity to submit written and oral testimony on Ints.0799-2012, 0800-2012, 0801-2012, and 0881-2012.

High concentrations of arrests—driven in large part by stop-and-frisk tactics—are devastating the low-income communities of color that we serve. The consequences of these arrests—including rising unemployment, homelessness, poor education, and unstable family structures—create and perpetuate a cycle of poverty in these neighborhoods.

In 2011, according to the NYCLU's recent report,<sup>1</sup> the police stopped 685,724 individuals last year. Almost 12 percent (80,396) were arrested or issued summons. These individuals faced collateral civil consequences that flowed from their criminal charge or arrest, including the possibility of eviction, termination from public housing, termination from their job, and the foreclosing of job or employment possibilities in the future due to having this charge on their criminal record.

The NYCLU reports that black and Latino males between the ages of 14 and 24 accounted for 41.6 percent of stops by the police in 2011, although they account for only 4.7 percent of the city's population. Ninety percent of the young black and Latino men stopped were innocent.

---

<sup>1</sup> [http://www.nyclu.org/files/publications/NYCLU\\_2011\\_Stop-and-Frisk\\_Report.pdf](http://www.nyclu.org/files/publications/NYCLU_2011_Stop-and-Frisk_Report.pdf)

Non-whites might be more likely to be arrested rather than issued summons to appear because they are less likely to have physical ID when they are stopped. As the RAND Corporation pointed out when it testified before the New York City Council Committee on Public Safety and Committee on Civil Rights in 2009,<sup>2</sup> two-thirds of white suspects stopped in the Manhattan South precinct on suspicion of a drug crime had physical ID on their person, but only a little more than half of the non-white suspects had physical ID. If a person is arrested rather than being issued a summons, it is more likely that he will be forced to miss work unexpectedly and might end up being fired or 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, and consumer debt—increase the financial pressure. This destabilizing combination of unemployment, high debt, and lack of housing pushes individuals into repeated contact with the criminal justice system. The statistics reflect the tremendous difficulty individuals face successfully re-entering civilian life. According to a 2011 report by the Center for Court Innovation based on data collected between 2001 and 2008, three years after release the re-arrest rate in New York City was 53%, the re-conviction rate was 42%, and almost one third of parolees had their parole revoked and were re-incarcerated.<sup>3</sup>

The low-income communities—particularly black and Latino communities—we serve pay a high price for over-criminalization. Loss of income (and increased expenses) sends many families deeper into poverty. Children enter the foster care system or are sent to live with relatives. In public housing, the largest source of low-income housing in NYC, the arrest of a relative puts entire families' housing at risk. Communities struggle with unemployment and homelessness and the cycle of poverty continues. Educational opportunities, including the ability to qualify for financial assistance, are foreclosed for students with criminal records. Finally, people with arrest records and convictions are frequently excluded from accessing some of the most significant civic privileges of citizens in this country—including the ability to serve in the armed forces, to vote and to serve on juries—resulting in the disenfranchisement of vast swaths of people of color in New York City.

## Employment

Arrest and conviction records make it extremely difficult for individuals to find and maintain gainful employment. Stop-and-frisk, along with other policing practices in communities of color, has serious consequences for the ability of young men to get and keep jobs and for the economic vitality of these communities. The high levels of unemployment contributed to increased recidivism and long-term decreased income and lack of economic opportunity. In 2009-2010, only 1 in 4 young black men in New York City were employed. Of young black men without a high school diploma, less than 15% were in the labor force. This lack of

---

<sup>2</sup> [http://www.rand.org/pubs/testimonies/2009/RAND\\_CT329.pdf](http://www.rand.org/pubs/testimonies/2009/RAND_CT329.pdf)

<sup>3</sup> Recidivism Among Parolees in New York City, 2001-2008; available at [http://www.courtinnovation.org/sites/default/files/documents/Recidivism\\_Parolees\\_NYC.pdf](http://www.courtinnovation.org/sites/default/files/documents/Recidivism_Parolees_NYC.pdf)

employment, particularly when combined with a lack of a high school education, puts this group at a high risk of incarceration.<sup>4</sup>

Once individuals have been convicted and incarcerated, finding employment becomes tremendously difficult. Two out of every three people released from prison in New York City are unemployed post-discharge.<sup>5</sup> Only 12 percent of people coming out of prison are able to secure employment which pays them above minimum wage.<sup>6</sup>

With the increasing availability of criminal history information at a low cost on the internet, as many as eight in ten private employers conduct criminal background checks before making hiring decisions.<sup>7</sup>

State and City agencies are often required by law to conduct background checks and frequently impose automatic bars disqualifying applicants with criminal records from obtaining occupational licenses and employment. Ex-offenders are frequently unaware of the steps they will need to take in order to rehabilitate themselves for the job market, including getting and cleaning up their rap sheets, and acquiring Certificates of Relief from Disabilities and Certificates of Good Conduct. Even if they are able to prove rehabilitation, people with criminal histories face tremendous barriers to obtaining the professional licenses needed for employment in over one hundred stable professions in New York because State and City licensing agencies often deny their applications in violation of the law. Finally, even when applicants are armed with these kinds of licenses, public and private employers illegally consider criminal histories when making hiring decisions. Because of the racialization of the criminal justice system, these roadblocks to employment disproportionately affect people of color.

Moreover, while unemployment is a profoundly destabilizing experience for all workers, it has a particularly staggering effect on ex-offenders and people with criminal histories. Encounters with the criminal justice system come with extraordinary financial costs in the form

---

<sup>4</sup> Community Service Society, "Unemployment in New York City During the Recession and Early Recovery" (December 2010), available at <http://www.cssny.org/userimages/downloads/OnlyOneInFourYoungBlackMenInNYCHaveaJobDec2010.pdf>; see, e.g., Bruce Western, "Reentry: Reversing Mass Imprisonment," *Boston Review*, July/August 2008, available at [http://www.wjh.harvard.edu/soc/faculty/western/Boston\\_Review\\_Reentry.htm](http://www.wjh.harvard.edu/soc/faculty/western/Boston_Review_Reentry.htm).

<sup>5</sup> Data from the NYS Division of Criminal Justice Services from December, 2009, shows that only 31.7% of parolees in New York City who were available and able to work were employed after release from prison. Of this percentage, 12.4% were employed only part-time. 7.4% of the total employed parolees had full-time jobs at minimum wage, and the balance of 11.9% had full-time employment at above minimum wage. Over two-thirds of parolees were not employed at all. New York State Criminal Justice, "2009 Crimestat Report"(June 2010), available at <http://criminaljustice.state.ny.us/pio/annualreport/2009-crimestat-report.pdf>.

<sup>6</sup> See fn 1, supra.

<sup>7</sup> Sharon Dietrich, "When 'Your Permanent Record' is a Permanent Barrier: Helping Legal Aid Clients Reduce the Stigma of Criminal Records," *Clearinghouse Review*, July-August 2007.

of fines and penalties, restitution, parole supervision fees, and other deferred financial obligations, such as child support payments. Once the individual is able to extricate himself from the criminal justice system, meeting these financial obligations becomes a paramount necessity in order to avoid further encounters with the system. Against this canvas of pressing financial obligations, ex-offenders confront overwhelming barriers to gainful employment. The remainder faces the crushing reality of attempting to meet their financial obligations on minimum or no wages at all. Taking this impossible scenario into account, it is no surprise that unemployment is the single strongest predictor of recidivism among ex-offenders and other people with criminal histories.<sup>8</sup>

The City argues that many of the minor arrests end in dismissal and sealed cases. Yet, for a variety of reasons, even arrest records can have a devastating impact on people's economic opportunities. First of all, while arrests are still pending and before a resolution of the case, employers can (and do) consider them in making employment decisions. This can add to the pressure to accept a plea bargain.

Second, while dismissals should be considered by most employers, background screening companies do not always purge information—so even if an arrest ends in a dismissal or the records are sealed, the arrest may continue to show up in background checks without the applicant's knowledge. Rap sheets have a high level of error and many people do not know how to check their rap sheet or clean it up if errors occur.

Third, the restrictions on considering dismissed charges are in State and City civil rights laws. Many jobs—including with the federal government and certain jobs in the security industry—can consider all past arrests, regardless of the disposition of the case.

Fourth, the pressure to accept a plea often results in a misdemeanor conviction for small offenses, such as the possession of small amounts of marijuana (not in and of itself a crime). These convictions remain on an individual's record for the rest of his life and can have far reaching consequences.

Mr. M, a client of Legal Services NYC – Bronx, worked opening boxes. One day, on his way to work, he picked up tools, including a box cutter and a small knife, at a local hardware store. As he walked down the street, he was stopped and frisked. He was then arrested, because his tools were characterized as weapons. Mr. M was held overnight and, at the advice of his assigned lawyer, took a plea and was released. His job offered no paid vacation and limited unpaid vacation and sick time. Within a week of his arrest, he was fired because of his absences from work. He applied for unemployment benefits and was ultimately denied because his guilty plea, as a matter of law, resulted in a finding that his absences were unjustified. When he

---

<sup>8</sup> New York State Bar Association, "Re-entry and Reintegration: The Road to Public Safety," (May 2006), available at [http://www.nysba.org/AM/Template.cfm?Section=Substantive\\_Reports&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=11415](http://www.nysba.org/AM/Template.cfm?Section=Substantive_Reports&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=11415).

returned to our office, he had been unable to find a job, was on public assistance and was facing eviction because of his loss of income.

Mr. W, a client of South Brooklyn Legal Services, got into a fight as a teenager on the subway. He was arrested and ended up with a youthful offender adjudication on his record. Almost twenty years later, he applied for a position as a traffic cop. He was denied based on this 20 year old incident, even though it never resulted in a conviction.

These stories—and others like it—show how destabilizing even a single, unjustified arrest can be for individuals trying to make better lives for themselves and their families.

## Housing

### *Applications for Public Housing and Section 8*

People with arrest records are often excluded from public housing and Section 8 because of their criminal history or because of claims by the Housing Authority that they pose a risk to public safety. The New York City Housing Authority (NYCHA) administers New York's public housing program and most of the Section 8 voucher program in New York. When a family applies for public housing or Section 8, NYCHA reviews the criminal history of every family member who is 16 years or older. Applicants will be found ineligible for housing for several years after even minor criminal convictions or violations.

Our state law treats violations as substantially more minor offenses than felony and misdemeanor convictions. Under New York criminal law, a violation is not a crime. Common violations arising from stop and frisk incidents are unlawful possession of marijuana (PL § 221.05), disorderly conduct (PL § 240.20), loitering (PL § 240.35), appearance in public under the influence of narcotics or drug other than alcohol (PL 240.40), or trespass (PL § 140.05). Under law, the police, prosecutor, and Department of Criminal Justice Services records of violation cases are sealed under CPL § 160.55. However, the court documents themselves remain unsealed, and NYCHA can still obtain the court record and take punitive action based on the information it contains.

Convictions for violations can have virtually the same negative effect on an applicant's public housing application as a felony or a misdemeanor conviction. If an applicant has been convicted of a violation, he is presumptively ineligible for public housing for two years after his sentence is completed, including any period of probation, and any fines are paid. If the applicant has three or more violations on his record, the period of ineligibility is extended to three years.

For example, as the typical sentence for a plea to disorderly conduct is a one-year conditional discharge, a public housing applicant with a first time disorderly conduct violation would be ineligible for three years from the date of the plea. An applicant with several disorderly conduct violations would be ineligible for four years from the date of the last violation. In 2011, NYCHA provided data to South Brooklyn Legal Services in response to a FOIL request. The data revealed that in 2010, 251 applicants for public housing were deemed presumptively

ineligible due to disorderly conduct violations. Thirty one applicants were denied due to trespass violations, and 30 were denied due to unlawful possession of marijuana violations.

Another common result of a stop and frisk might be a misdemeanor conviction for possessing marijuana in a public place in public view (PL § 221.10). This class B misdemeanor will make the applicant presumptively ineligible for public housing for three years. If he has been convicted three or more times for this or other class B misdemeanors, the period of ineligibility lengthens to four years from the end of his sentence or probation. Criminal possession of marijuana was by far the largest category of B misdemeanors for which NYCHA applicants were deemed presumptively ineligible for public housing: in 2010, 53 applicants were denied on this ground. Fifteen applicants were denied due to B misdemeanor trespass convictions. We have compiled some of the most common grounds on which NYCHA applicants were denied admission to public housing due to their criminal records below.

<b>Criminal Offense</b>	<b>Number of Applicants Denied in 2010</b>	<b>Level of Offense</b>	<b>Length of Ineligibility for First Offense</b>
Disorderly Conduct	251	violation	2 years
Unlawful Possession of Marijuana	30	violation	2 years
Trespass	31	violation	2 years
Criminal Possession of Marijuana	53	B misdemeanor	3 years
Criminal Trespass	15	B misdemeanor	3 years
Criminal Possession of a Controlled Substance	182	A misdemeanor	4 years
Criminal Possession of Marijuana	11	A misdemeanor	4 years
Criminal Trespass	61	A misdemeanor	4 years
Resisting Arrest	14	A misdemeanor	4 years

If an applicant has a pending criminal case, NYCHA will not continue to process his public housing application. The agency will wait until there is a final disposition in the criminal case to make a decision on whether to admit or deny the public housing application. This is so even if the applicant has been given an ACD, or adjournment in contemplation of dismissal. NYCHA will wait until the six month adjournment period is completed and the case is actually dismissed before completing the processing of the public housing application.

In 2010, 1,714 families of the 18,980 applicants for public housing had at least one member who did not pass the criminal background check. Of those, 1,075 had a criminal offense on their record that made them presumptively ineligible for some period of time, while 639 had pending criminal cases that caused NYCHA to halt the family's public housing application.

The rejected family then faces the difficult decision of how to proceed. The family might decide to exclude the family member with the criminal record from the family unit, so that the rest of the family might be able to obtain housing. This might not be an acceptable choice for the family, however, or NYCHA might believe that person is an essential family member and so would not allow the family to take that person off the application.

Then, the family's only option is to contest NYCHA's rejection of their public housing application by attempting to prove at a hearing that the applicant deserves public housing despite a member's criminal record. At this hearing, known as a McNair hearing, the applicant must produce evidence of rehabilitation in order to overcome the denial of eligibility. The applicant must "convince[ NYCHA] that there is reasonable probability that the offender's future conduct would not be likely to affect adversely the health, safety or welfare of other tenants, and would not be likely to affect adversely the physical environment or the financial stability of an Authority project."<sup>9</sup>

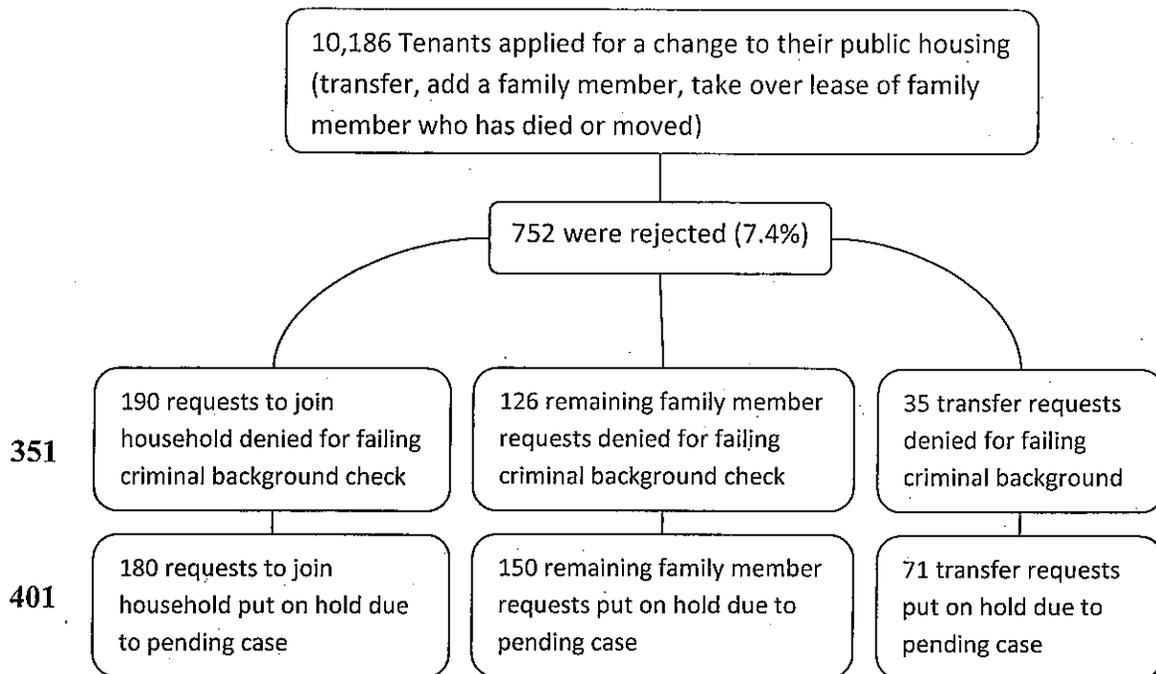
If an applicant has drug-related arrests on his criminal record, NYCHA also has the discretion to deny his application for public housing on the basis that NYCHA believes that he is a drug abuser. The burden is on the applicant to prove that he has been rehabilitated and does not have a drug problem.

### *Transfers within public housing*

In 2010, NYCHA also processed the applications of 10,186 current tenants who sought to transfer to another apartment or add a family member to their household, or the application of a remaining family member who sought to succeed to the lease of a family member who had moved away or died. Of these 10,186 applications, 7.4% (752) did not pass the criminal background check. 351 had a criminal offense on their record that made them presumptively ineligible for some period of time, while 401 had pending criminal cases that caused NYCHA to halt the applicant's application. The vast majority of the applications were tenants who were seeking to add a family member to the household (190 rejected for failing the criminal background check; 180 on hold due to a pending case) or were remaining family members seeking to take over the lease (126 rejected for failing the criminal background check; 150 on hold due to a pending case). A smaller number were existing tenants who were denied a transfer request due to a criminal case (35 rejected due to criminal history; 71 on hold due to a pending case). The following table tabulates the statistics for 2010.

---

<sup>9</sup> Guidelines for the Applications Information Division ("AIO") and McNair Hearing Officers When Considering Applicants Found Ineligible Because of Penal Offenses, p. 2.



A great number of the change requests that existing public housing tenants made were denied due to minor offenses or crimes that we believe often result from stop and frisk arrests. The data we obtained from NYCHA shows that a little more than half (180 of 351) of the rejections for failing the criminal background check were for disorderly conduct, low-level drug possession, trespass, and resisting arrest.

Criminal Offense	Number of Existing Tenants Denied Change to Tenancy in 2010	Level of Offense	Length of Ineligibility for First Offense
Disorderly Conduct	6	violation	2 years
Unlawful Possession of Marijuana	1	violation	2 years
Criminal Possession of Marijuana	23	B misdemeanor	3 years
Criminal Trespass	8	B misdemeanor	3 years
Criminal Possession of a Controlled Substance	106	A misdemeanor	4 years
Criminal Possession of Marijuana	6	A misdemeanor	4 years
Criminal Trespass	24	A misdemeanor	4 years
Resisting Arrest	6	A misdemeanor	4 years

### *Evictions from Public Housing*

Stop and frisk incidents also put existing public housing tenants at risk of termination of their tenancy.

NYCHA has the discretion to terminate the tenancy of any tenant who has been arrested for a criminal offense. Just as with applications, this includes minor criminal violations such as marijuana possession or disorderly conduct.

Typically, when NYCHA learns of an arrest on or near project grounds, NYCHA will initiate a termination proceeding. The NYCHA Management Manual states that a tenancy may be terminated for “non-desirability” or for breach of NYCHA’s rules and regulations if the tenant has engaged in conduct or behavior that is:

- 1) a danger to the health and safety of the tenant’s neighbors;
- 2) “a sex or morals offense” on or near the premises;
- 3) a source of danger or a cause of damage to NYCHA employees or NYCHA property;
- 4) a source of danger to the peaceful occupation of other tenants;
- or (5) a common law nuisance.

NYCHA is allowed to terminate a tenancy for a drug-related charge, even if it does not occur on project grounds. NYCHA can also terminate a tenancy for a drug-related charge of a family member or guest on the premises, even if the head of household did not know, could not foresee, or could not control the behavior of their family member or guest.

It is not necessary for the tenant to be convicted in the criminal case. Once each is commenced, the criminal and civil cases proceed on independent tracks. Dismissal or some other favorable outcome in the criminal case will not necessarily conclude the housing termination case. NYCHA may decide to continue trying to evict the tenant, either because the burden of proof is lower in the civil case, or for some other reason.

The Hearing Officer who conducts the trial-type hearing has the discretion to insist that the offending family member be permanently barred from the apartment as a condition for allowing the rest of the family to keep their tenancy. It is quite common for NYCHA to commence termination proceedings based on quite minor offenses, and to condition continued occupancy on the exclusion of a family member. For the remainder of that family’s time in public housing, the excluded family member is never allowed to live in or even visit the apartment. NYCHA employs a group of investigators who monitor apartments and conduct surprise inspections, often on birthdays or holidays like Mother’s Day, Christmas, or Thanksgiving, to ensure that the excluded family member does not return even for a holiday visit.

### *Evictions from Section 8*

NYCHA and HPD are the public housing agencies that administer the Section 8 program in New York City. The agencies and the private landlords have the authority to terminate or evict residents for criminal activity. Alternately, they can require that a family member be excluded from the household as a condition of maintaining their tenancy or voucher.

The agencies and private landlords can terminate a resident from the Section 8 program for engaging in the illegal use of a drug or engaging in drug-related criminal activity. Just as in the public housing context, neither an arrest nor a conviction is necessary to evict a tenant or terminate their voucher; they simply must be able to prove that the requisite activity occurred.

The resident has the opportunity to present mitigation evidence to avoid termination, just as in the public housing context.

### *Evictions from private housing*

The danger of eviction after a stop & frisk arrest is not confined to public housing tenants; tenants in private housing also face this risk. Under RPAPL § 711(5), commonly known as the “Bawdy House” law, the District Attorney or the private landlord has the authority to evict a tenant for repeated illegal conduct in or near their apartment. Therefore, if a tenant is frisked in front of his apartment building and a small quantity of marijuana is found, leading to a charge on a marijuana crime, this would serve as a predicate offense under the Bawdy House law.

Many private apartment buildings are also enrolled in the District Attorney’s Trespass Affidavit Program (TAP), which permits police officers to patrol inside the building in order to curtail illegal activity. TAP is a component program of Operation Clean Halls, a citywide NYPD program. The NYCLU reports that it has received many reports that the NYPD often stops TAP building residents and their invited guests and then arrests them for “trespassing.”<sup>10</sup>

### **Education**

A student loan recipient will automatically have his student aid suspended if he is convicted of any offense involving sale or even possession of a controlled substance. The suspension period is one year for the first offense, two years for the second offense, and permanently for the third offense. This means that mere possession of a marijuana cigarette alone would bar him from receiving student loans, even though this offense is a mere violation and is not technically a “crime: under New York law. NY PL § 221.05; 20 U.S.C. § 1091(r)(1); Pub. L. No. 109-171, § 8021, 120 Stat 4 (February 8, 2006). The student and his family are also barred from receiving the Hope tax credit if the student has any prior felony drug convictions.

Aggressive policing is not just directed at adults. Children in low-income communities of color are also the victims. By criminalizing what might be considered normal childhood behavior in the suburbs, children are taught to distrust the very institutions that could help them escape poverty.

Fourteen year-old Joey S., a client of LS NYC – Bronx, was bullied both by his peers and by the peace officers at his school for being effeminate. The bullying culminated in a physical altercation with a safety agent, he was suspended and faced criminal charges for a fight that he says, he did not instigate. To escape the abuse, he was forced to change schools but the damage was done. Disillusioned with a system that punished instead of supported him, he dropped out of school.

### **Civic Participation**

---

<sup>10</sup> <http://www.nyclu.org/case/nyclu-v-new-york-county-district-attorney-seeking-access-records-concerning-das-trespass-affida>

A person who has charges pending for, or who has been convicted of a crime that carries a maximum penalty of more than one year is disqualified from serving on a federal grand or petit jury under 28 USC § 1865(b)(5).

An individual who wishes to join the United States armed forces will find their way barred if they have even minor criminal offenses on their record. The Army will generally reject recruits if they have three or more minor, non-traffic violations, such as possession of a marijuana cigarette, or if they have four misdemeanor convictions. The Marines will reject anyone with a pending case, and will reject anyone with any drug offenses, including marijuana possession, on their criminal record.

In New York, under N.Y. Elec. Law § 5-106(2), the right to vote is lost upon conviction of a felony if it results in a sentence of actual imprisonment, and is not restored until expiration of the sentence, including parole.

### CONCLUSION

Our experience as civil legal services providers to the poor and moderate income communities in New York shows us in stark relief the extraordinarily disruptive effects of bias-based policing policies such as stop-and-frisk. Consequently, we urge the New York City Council's Committee on Public Safety to enact into law on Ints.0799-2012, 0800-2012, 0801-2012, and 0881-2012.



## **DRUM - DESI RISING UP & MOVING**

72-18 ROOSEVELT AVE, 2<sup>ND</sup> FLOOR, JACKSON HEIGHTS, NY 11372  
TEL. (718) 205-3036 | FAX (718) 205-3037 | WWW.DRUMNYC.ORG

---

October 9<sup>th</sup>, 2012

New York City Council – Committee on Public Safety

My name is Naz Ali. I am a leader in DRUM-Desis Rising Up & Moving, and we are an organization of 1500 low-income South Asians fighting for their rights as immigrants, youth, workers, and as communities of color. I am here today to ask support for the Community Safety Act.

I got involved in DRUM because I am a low-wage worker, and wanted to fight for workers' rights, but I also care about issues such as unfair policing of our communities. In November of last year, when news reports were confirming the suspicions about the NYPD spying program, DRUM organized a rally to demand for NYPD accountability. At this rally, I met a community member who joined our group, and he was very energetic, very angry, and chanting really loudly. I thought to myself, that so many people in our community are too afraid to even come out, and here this guy came to the rally by himself. He really cares about this issue. I thanked him for coming out, and told him to stay in touch.

In March of this year, we learned from one of the leaked documents that the NYPD was spying on our organization, DRUM, and many of our allies as well, because we helped organize rallies in support of Sean Bell and his family. So we held a press conference at One Police Plaza. Two days later, as I left my work as a seamstress in Jamaica, Queens, I was followed as I walked home. Nothing was said to me. No one came up to me. Just followed from afar.

Two days after that, the same guy who came to the rally called and said he wanted to meet. So I met him in a restaurant in the neighborhood. I am working with DRUM to collect surveys and stories about NYC Muslims and their experiences with the police. So I wanted to do a survey with him. In my survey, he told he had been profiled by the FBI, by the NYPD, and he was really upset about these issues. So I thought he would be great to join DRUM, and come share his stories at places like this hearing. But when I got to end of survey and asked him about his occupation, he would only tell me he did "security." After I pressed him for the company name, he told me he did "security for the NYPD." I got scared and left soon. Before I left, he asked me if he was now a member of DRUM and could come participate. Later we have heard similar things about him from other community members.

I became so scared that for several weeks I stopped talking to people I didn't know. I stopped doing surveys and collecting stories.

Why is the NYPD sending informants and undercover to rallies about the NYPD? Why are they sending informants to spy on community organizations like DRUM, and people like me for speaking out? Is this the kind of work the NYPD should be doing? Should we be afraid of our own police department?

I know from the community members that I have spoken to, and the stories that I have collected that the same thing is happening to many other people. We are treated as guilty until proven innocent. That is why they stop-and frisk Black and Latino communities, target low-wage workers, harass LGBTQ communities, surveil Muslim communities, and criminalize youth in schools. But we stand together in solidarity today.

I know that the FBI, the CIA, and the LAPD have independent oversight. Why doesn't the NYPD? We need an Inspector General to oversee NYPD policies systematically. Good policing requires transparency and accountability.

**We need the Community Safety Act!**

**Testimony presented by:**

**Naz Ali**

**DRUM –Desis Rising Up & Moving**



## Current Data from DRUM's Survey and Documentation Project

In August of 2011, DRUM (Desis Rising Up & Moving) launched a Muslim community survey project to document the experiences of our communities in their interactions with law enforcement agencies, and the impacts on their lives. While surveying is still underway, the preliminary stories of community members encounters with the NYPD are astounding:

- A Bangladeshi cab driver being pulled over by the NYPD for a minor traffic violation and being asked if he was Muslim, what mosque he goes to, and if he prays regularly
- An Indian youth being stopped, searched and repeatedly harassed by school security and NYPD officers in and around his high school, causing him to drop out of school
- A Pakistani woman and her family being detained by Immigration and Customs Enforcement (ICE) in retaliation for her political activities demanding for NYPD accountability
- A Yemeni man being pressured to become an informant to provide information on fellow Muslims by the NYPD and FBI, and upon his refusal being threatened, harassed, and followed around the city by unmarked cars
- A community-based organization reporting having to stop taking in new clients after a series of individuals were suspected, and at least one confirmed to be an NYPD informant
- Two Bangladeshi youth being stopped and frisked over 60 times, or over 80 times, by the NYPD in their own neighborhood. Both report being frisked so many times that they have lost count. One described an instance of being forced to take his pants off on the street before being frisked in broad daylight
- A Pakistani woman being threatened and harassed to show her immigration documents by a plainclothes NYPD officer who is a regular customer at her workplace (Dunkin' Donuts)
- The leadership of a mosque throwing an attendee out of their mosque for engaging in inflammatory rhetoric, only later to discover that the man was an undercover NYPD officer

These are just some of the stories we have gathered so far, and we have barely completed 2/5th of our surveys (300 out of 700). As result of such policies and tactics, the quantitative data are not surprising either:

- Nearly 74% of the community members surveyed indicated that they do not have trust in the NYPD, and another 19% expressed uncertainty about whether they trust the NYPD.
- Nearly half of those surveyed (47%) feel uncomfortable or think twice before going to their places of worship or building friendships with general community members for fear of informants and surveillance.
- Nearly 79% report feeling unsafe or uncomfortable engaging in political activities, discussions, or going to rallies and events.
- Not only has trust been undermined in law enforcement agencies, but the hostile environment is breaking down the social fabric within communities.

### ABOUT THE SURVEY PROJECT WORK

DRUM has teamed up with our community partners to create a city-wide standard survey to gather data on law enforcement practices and patterns of racial profiling and the effects of these practices on our communities. The surveys is documenting interactions with law enforcement in a **completely safe and anonymous manner**. The survey is shaped and conducted by our members themselves along with teams from the DataCenter, which specializes in such community-based surveying. This research project is **documenting** interactions and compelling stories of Muslims in New York City with law enforcement bodies (FBI, NYPD, ICE, JTTF). The data will be made public in a **report** of findings and recommendations for policy makers for accountability and change.

Oral Testimony  
Faiza Patel  
Co-Director, Liberty and National Security Program, Brennan Center for Justice

NY City Council Public Safety Committee Hearing on Community Safety Act  
October 10, 2012

Thank you for the opportunity to present my views to this Committee. My name is Faiza Patel and I serve as Co-Director of the Liberty and National Security Program at the Brennan Center for Justice at NYU School of Law. I will be talking today about the need to establish an inspector general to review the policies and practices of the NYPD.

The NYPD has the important task of keeping the city safe. We have been fortunate to see drops in crime and have been spared a successful attack. But serious questions have been raised about some police policies. I will mention just two:

- The stop and frisk policy which disproportionately targets young Black and Latino men.
- The surveillance of Muslim New Yorkers, which was documented by the Associated Press.

Lawsuits are one way to address these types of issues. And the police are facing a number of these.

But a more proactive and cost efficient path is to establish independent oversight of the police policies and practices. Oversight by democratically elected officials – such as this Council – informed by an inspector general has worked for federal agencies and major police departments.

Like the FBI, the NYPD runs its own counterterrorism and intelligence operation. It has 1000 officers in 12 countries and a budget of \$100 million. But the FBI is overseen by an inspector general who reports regularly to both the Attorney General and Congress.

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 rates.

In New York, however, systematic 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 "effective corruption control." It is also not independent.
- The Mayor's Commission to Combat Police Corruption studies the NYPD's systems for combating corruption. It does not look at other policies or practices.
- The Civilian Complaint Review Board examines complaints against individual officers.
- The Department of Investigation does not cover the police.

- New York's U.S. Attorneys and District Attorneys also don't oversee NYPD policies and practices. They get involved when these policies and practices become an issue in a particular case.

The City Council has the duty to oversee the police. An inspector general can assist the Council in doing so by providing regular, reliable information. The inspector general can work with the police to address problems and also help build trust with the City's diverse communities.

For all of these reasons, I believe that oversight by an independent inspector general can only strengthen the NYPD.

Thank you for your attention.



# NYCLU

NEW YORK CIVIL LIBERTIES UNION

125 Broad Street  
New York, NY 10004  
212.607.3300  
212.607.3318  
[www.nyclu.org](http://www.nyclu.org)

**TESTIMONY OF DONNA LIEBERMAN AND UDI OFER  
ON BEHALF OF THE NEW YORK CIVIL LIBERTIES UNION**

**Before**

**THE NEW YORK CITY COUNCIL PUBLIC SAFETY COMMITTEE**

**In Support of**

**THE COMMUNITY SAFETY ACT (INTRO. NOS. 799, 800, 801 AND 881)**

**October 10, 2012**

**I. Introduction**

In July of this year, the Bronx District Attorney—an elected official whose job it is to protect public safety in his borough—took a step that epitomizes the extent to which New York City has lost faith in the ability of its police department to do its work. After discovering that many public housing residents who were arrested on criminal trespass charges were in fact innocent (even though police officers had provided written statements to the contrary), the District Attorney decided to stop prosecuting people that police officers arrested for trespassing in public housing unless prosecutors also interviewed the arresting officer to ensure that the arrest was warranted. As *The New York Times* described in its article about this decision, “By essentially accusing the police of wrongfully arresting people, the stance taken by Bronx prosecutors is the first known instance in which a district attorney has questioned any segment of arrests resulting from stop-and-frisk tactics.”<sup>1</sup>

This action, while the first of its kind, is hardly the first by a New Yorker in response to a growing sense that the NYPD, in its current state, is faltering. In June, thousands of New

---

<sup>1</sup> Joseph Goldstein, “Prosecutor Deals Blow to Stop-and-Frisk Tactic,” N.Y. TIMES, Sept. 25, 2012, *available at* <http://www.nytimes.com/2012/09/26/nyregion/in-the-bronx-resistance-to-prosecuting-stop-and-frisk-arrests.html>.

Yorkers took part in a silent march against abusive stop-and-frisk tactics.<sup>2</sup> Just two weeks ago, close to 1,000 New Yorkers rallied outside of City Hall in support of the legislative proposals before the City Council today. Indeed, not a week goes by without media accounts or public events on the problems of stop-and-frisk abuses and related policing practices.

Legally, stops and frisks are two separate acts that involve two different levels of required legal justification. To stop a person, a police officer must have reasonable suspicion that the person has committed, is committing, or is about to commit a crime. To frisk a person, however, the officer must have reason to believe that the person stopped has a weapon that poses a threat to the officer's safety, a higher and more specific standard.

Yet clearly this tactic, while permissible in certain circumstances, is being widely abused by the NYPD. The use of stop-and-frisk has grown by more than 600 percent under the Bloomberg administration.<sup>3</sup> Of the 4,694,361 stops conducted during Mayor Bloomberg's tenure,<sup>4</sup> 4,128,233 resulted in no arrest or summons, meaning that in 88 percent of the time, NYPD officers stopped innocent people. In 2011 alone, the NYPD conducted 605,328 stops of innocent people. In 53.6 percent of these stops of innocent people, a frisk also took place, and force was used in 19.7 percent of the stops.

While the stopping-and-frisking of tens of thousands of innocent people every year negatively impacts many communities in New York City, the indignities of the NYPD stop-and-frisk program are borne in large measure by communities of color. The program requires thousands of innocent young black and Latino men to suffer repeatedly the indignities associated with routine police stops and searches on the public sidewalks. In 2011 alone, black and Latino residents comprised 87 percent of stops of innocent people. That year the number of stops of young black men (ages 14 to 24) exceeded the entire city population of young black men (168,126 as compared to 158,406). Ninety percent of young black and Latino men stopped were

---

<sup>2</sup> Max Rivlin-Nadler and Andrea Jones, "Father's Day March Unites Thousands Against NYPD's Stop-and-Frisk Policy," THE NATION, Jun. 19, 2012, *available at* <http://www.thenation.com/article/168488/fathers-day-march-unites-thousands-against-nypds-stop-and-frisk-policy#>.

<sup>3</sup> See New York Civil Liberties Union (NYCLU), STOP AND FRISK 8, 17 (2011), *available at* <http://www.nyclu.org/publications/report-nypd-stop-and-frisk-activity-2011-2012>.

<sup>4</sup> Period covering January 2002 to June 2012.

innocent.<sup>5</sup>

Indeed, instead of a crime fighting tool, stop-and-frisk has become a demoralizing means of racial profiling for tens of thousands of New Yorkers. As a federal judge who granted class action status to those who have been stopped and frisked on the streets of New York recently put it, the City's misuse of stop-and-frisk has revealed a "deeply troubling apathy towards New Yorkers' most fundamental constitutional rights."<sup>6</sup>

Moreover, current stop-and-frisk practices simply do not work. Despite the enormous increase in the NYPD's use of the stop-and-frisk tactic, there has not been a significant reduction in gun violence. During Mayor Bloomberg's first year, there were 1,892 shooting victims, while police officers conducted 97,296 stops. In 2011, there were 1,821 shooting victims, a decrease of four percent from 2002, while police officers conducted 685,724 stops, an increase of 605 percent from 2002. Clearly this six-fold increase in stop-and-frisk did not lead to a comparable reduction in gun shootings in New York City.

This should come as no surprise, as the overwhelming majority of stops do not lead to the recovery of a gun, and the gun retrieval rate has only declined under the Bloomberg administration. In 2011, only 0.1 percent of stops and 0.2 percent of frisks resulted in the recovery of a gun, yielding 804 guns. Yet in 2003 (the earliest year for which a gun recovery figure is available), the Department recovered 627 guns when it conducted 160,851 stops, still a very small recovery rate but significantly higher than in 2011. In other words, stops in 2003 resulted in one gun being recovered for every 257 stops, while stops in 2011 resulted in one gun being recovered for every 853 stops. In short, the empirical evidence does not support the claim that the stop-and-frisk program genuinely reduces gun violence.

At the same time that stop-and-frisk tactics have risen exponentially in New York City, so have other programs that similarly rely on abusive practices. Today, New York City has the distinction of being the "marijuana arrest capital of the world," as the NYPD still arrests more

---

<sup>5</sup> These disparities persist even in neighborhoods with the lowest black and Latino populations. In the 10 precincts with the lowest black and Latino populations, blacks and Latinos accounted for more than 70 percent of stops in six of those precincts. For example, the population of the 17<sup>th</sup> Precinct, which covers the eastside of midtown Manhattan, has the lowest percentage of black and Latino residents in the city at 7.8 percent, yet 71.4 percent of those stopped in the precinct in 2011 were black or Latino.

<sup>6</sup> *Floyd v. City of New York*, 2012 WL 1868637, at \*16 (S.D.N.Y. May 16 2012).

individuals for the possession of small amounts of marijuana than for any other offense (nearly 140 each day) despite the fact that in the 1970's the state decriminalized the private possession of small amounts of marijuana. Community members have long complained that many of these arrests are based on illegal stops and coercive tactics that trick individuals into consenting to a search. New York City spends at least \$75 million a year enforcing these low-level marijuana arrests, and much like the NYPD's stop-and-frisk practices, 86 percent of arrestees are black or Latino, despite the fact that marijuana use is less prevalent among people of color than with whites.<sup>7</sup>

Meanwhile, former and current NYPD personnel have also revealed that the NYPD has conducted surveillance on New York City's Muslim communities, targeting New Yorkers based on their religious beliefs and practices and with no suspicion of wrongdoing. According to the reports, among other things, the NYPD has dispatched undercover officers to Muslim and Arab neighborhoods in New York City in order to monitor daily life, including at mosques, bookstores, restaurants, and Internet cafes;<sup>8</sup> deployed "mosque crawlers" to monitor hundreds, if not thousands, of mosque prayer services;<sup>9</sup> monitored neighborhoods for "angry rhetoric and anti-American comments" and targeted individuals based on their reading habits and Internet search histories;<sup>10</sup> and monitored Muslim student associations at City College, Baruch College, Hunter College, LaGuardia Community College, St. John's University, Queens College, and Brooklyn College.<sup>11</sup> The allegations contained in the media accounts appear to be consistent with a "radicalization" report released by the NYPD in 2007, which conflated religious beliefs and

---

<sup>7</sup> Drug Policy Alliance, "2010 NYC Marijuana Arrest Numbers Released: 50,383 New Yorkers Arrested for Possessing Small Amounts of Marijuana," Feb. 10, 2011, *available at* <http://www.drugpolicy.org/news/2011/02/2010-nyc-marijuana-arrest-numbers-released-50383-new-yorkers-arrested-possessing-small>; Harry Levine, et al., "75 Million a Year: The Cost of New York City's Marijuana Possession Arrests." Queens College and the Graduate Center, City University of New York. Feb. 2011, *available at* <http://marijuana-arrests.com/docs/75-Million-A-Year.pdf>.

<sup>8</sup> Adam Goldman, "With CIA Help, NYPD Moves Covertly in Muslim Areas," ASSOCIATED PRESS, Aug. 24, 2011, *available at* <http://www.ap.org/Content/AP-in-the-News/2011/With-CIA-help-NYPD-moves-covertly-in-Muslim-areas>; Adam Goldman, "NYPD Monitored Where Muslims Ate, Shopped, Prayed," ASSOCIATED PRESS, Aug. 31, 2011, *available at* <http://news.yahoo.com/nypd-monitored-where-muslims-ate-shopped-prayed-193844288.html>; Leonard Levitt, "The NYPD: Spies, Spooks and Lies, NYPD Confidential Blog," Sept. 5, 2011, *available at* [http://www.huffingtonpost.com/len-levitt/the-nypd-spies-spooks-and\\_b\\_950448.html](http://www.huffingtonpost.com/len-levitt/the-nypd-spies-spooks-and_b_950448.html).

<sup>9</sup> Adam Goldman, "With CIA Help, NYPD Moves Covertly in Muslim Areas," *supra*; NYPD Intelligence Unit Seen Pushing Rights Limits, NATIONAL PUBLIC RADIO, August 24, 2011, *available at* <http://www.npr.org/2011/08/24/139890556/nypd-intelligence-unit-seen-pushing-rights-limits>.

<sup>10</sup> Adam Goldman, "NYPD Monitored Where Muslims Ate, Shopped, Prayed," *supra* note 5; Adam Goldman, "With CIA Help, NYPD Moves Covertly in Muslim Areas," *supra* note 6.

<sup>11</sup> *Id.*

practices with preparations for terrorism, and focused exclusively on people who practice Islam in the United States.<sup>12</sup>

The New York Civil Liberties Union and our allies in Communities United for Police Reform who support the Community Safety Act strongly support the NYPD's fight against crime in our city. We appreciate the daily sacrifices made by police officers to keep our city safe. At the same time, we believe that too many NYPD practices have simply spiraled out-of-control, and have made our city less safe by alienating entire communities, while wasting precious law enforcement resources by going on fishing expeditions rather than following solid leads.

In order to stop the NYPD from continuing practices that have not made our city safe but have led to community mistrust and daily violations of constitutional rights, and in order to reinstate the public's faith in those who are intended to be its protectors, the New York Civil Liberties Union respectfully submits the following testimony in support of Intro. 799, Intro. 800, Intro. 801, and Intro. 881. These bills, known collectively as the Community Safety Act, will (1) protect New Yorkers against racial profiling and other forms of discrimination by the NYPD; (2) protect New Yorkers against unlawful searches, including during a stop-and-frisk; (3) ensure that police officers act in a transparent manner during a stop; and (4) create an Inspector General's office that will monitor the policies coming out of One Police Plaza. Not only will these bills help to change the public's eroding trust in the NYPD, they will also lead to a better NYPD and will allow the Department to do its most difficult job: keeping New Yorkers safe while also protecting their essential freedoms.

## **II. Intro. 800: Protecting New Yorkers Against Racial Profiling and Other Forms of Discrimination**

At the core of the problems that currently plague the NYPD is the disproportionate impact of policing abuses against certain communities in New York City. In order for the public to regain trust in its police force, it must be assured that all New Yorkers, regardless of their race, ethnicity, age, gender or religion, are treated equally. Without clear standards in place to guide the Police Department's investigatory practices, the NYPD may, on a whim, engage in fishing expeditions that subject entire communities to unwarranted questioning, searches, arrests, and

---

<sup>12</sup> Leonard Levitt, "The NYPD: Spies, Spooks and Lies, NYPD Confidential Blog," Sept. 5, 2011, *supra* note 8.

surveillance. These bias-based policing tactics fundamentally undermine community trust in the NYPD, waste officers' time, and, furthermore, undermine the NYPD's purpose of keeping communities safe.

As a solution, the NYCLU strongly encourages the City Council to pass Intro. 800, which would protect the rights of New Yorkers who have been profiled due to their actual or perceived race, color, ethnicity, religion, sex, gender identity or expression, sexual orientation, or immigration status, in addition to numerous other categories.<sup>13</sup> The bill does so by (1) strengthening the current definition of bias-based policing, (2) broadening the list of communities protected against discrimination by the NYPD, and (3) allowing New Yorkers to hold the NYPD accountable for practices that have a disparate impact.

#### *A. Strengthening the Definition of Bias-Based Policing*

Intro. 800 vastly improves upon New York City's current definition of racial profiling<sup>14</sup> by banning the NYPD from relying, to any degree, on protected categories when engaging in law enforcement activities, with an important exception for when the NYPD has trustworthy information, relevant to a specific location and time, which links a person to suspected unlawful activity. This change would much improve upon the current definition of profiling in city law, and ensure that police officers do not waste their valuable time focusing on innocent people instead of following specific leads. That is why the United States Justice Department uses a similar standard to Intro. 800's in its own anti-racial profiling policy.

To be clear: Intro. 800 would permit the NYPD to use race, ethnicity, religion, and other protected categories in its law enforcement activities, but it would limit the use of such information to situations that involve trustworthy information that is relevant to the locality and timeframe of alleged illegal activity. For example, if police officers receive a call that a white man who looks six feet tall and weighs about 200 pounds committed a crime on the morning of October 10<sup>th</sup> in the vicinity of City Hall, then of course police officers would be able to look for a white man who fits the profile. What the NYPD will be prohibited from doing, however, is to

---

<sup>13</sup> Other enumerated categories that Int. 800 includes are "language, disability (including HIV status), housing status, occupation, and socioeconomic status."

<sup>14</sup> N.Y. Code § 14-151.

stop every white man in New York City for the next two weeks because of this one suspect description.

This strengthened definition of profiling will greatly enhance both the efficiency and function of the NYPD and ensure that whole communities will not be singled out and profiled based on the alleged misdeeds of the few. It will also ensure that NYPD officers follow solid leads when conducting law enforcement activities, and not go out on baseless fishing expeditions. And it will bring New York City in line with the Justice Department’s current definition of profiling, which it adopted during the Bush administration.

*B. Broadening the Communities Protected Against Discrimination*

The legislation will also bring New York City in step with numerous other states and cities that have been similarly troubled by bias-based policing practices. These cities and states have taken similar steps in expanding the categories of people protected from bias-based policing. For example, California law prohibits law enforcement discrimination against individuals on the basis of “race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability.”<sup>15</sup> Similarly, officers in New Mexico are not permitted to rely on a person’s “race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability or serious medical condition.”<sup>16</sup>

Intro. 800’s broad inclusion of protected categories reflects the concerns raised by community members throughout the city about the need to protect them from police abuses. Stop-and-frisk data indicates that young people, and specifically young men of color face the brunt of stop-and-frisk abuses, yet neither age nor sex are protected categories under New York City’s current anti-profiling law. Similarly, “housing status” has been added as a protected

---

<sup>15</sup> Cal. Gov’t Code § 11135.

<sup>16</sup> N.M. Stat. § 29-21-2. *See also* Chicago, Illinois, Code § 8-4-086 (“[A]ctual or perceived race, ethnicity, gender, religion, disability, sexual orientation, marital status, parental status, military discharge status, financial status or lawful source of income” may not be used.)

category in light of the widely acknowledged police practice of unlawfully arresting public housing residents and visitors for trespassing.<sup>17</sup>

Similarly, including “immigration status” as a protected category reflects the current fears in New York City that federal deportation programs, like Secure Communities, will lead to an increase in false arrests as a pretext to check a person’s immigration status. As Governor Cuomo asserted last year when he issued a moratorium on implementation of the federal Secure Communities program, New York State has an interest in protecting the rights of undocumented immigrants from being caught up in aggressive immigration enforcement schemes. It was for this reason that he attempted to suspend New York’s participation in the Secure Communities program,<sup>18</sup> which subjects arrestees to deportations even in if the underlying arrest was illegal. However, despite Governor Cuomo’s concerns with the Secure Communities program, New York City is, nonetheless, being required to participate in the program.<sup>19</sup> This bill would provide a much needed safeguard to protect immigrant families. It will also ensure that New York City police officers will not engage in profiling for the purpose of checking a person’s immigration status.

### *C. Providing a Private Right of Action and Disparate Impact Claims*

In addition to broadening the categories of people protected under Intro. 800, this bill also sets forth that any person who has been subjected to bias-based policing practices is entitled to injunctive and declaratory relief. Most significantly, the bill would permit an individual or organization to bring a legal action to demonstrate that law enforcement activities have had a disparate impact on certain groups of people. This is an important component of the bill because it allows communities to hold the NYPD accountable for practices that have a disproportionate impact with no legitimate justification.

While Intro. 800 would create a legal presumption of suspicion when it comes to practices that have a disparate impact, it is important to note that proving a disparate impact does

---

<sup>17</sup>Joseph Goldstein, “Loitering Rules in Projects Are Too Vague, Judge Says,” N.Y. TIMES, Oct. 4, 2012, <http://www.nytimes.com/2012/10/05/nyregion/federal-judge-says-obscure-loitering-rules-are-unconstitutional.html>

<sup>18</sup> Governor’s Press Office, “Governor Cuomo Suspends Participation in Federal Secure Communities Program,” June 1, 2011, available at <http://www.governor.ny.gov/press/06012011FederalSecureCommunitiesProgram>

<sup>19</sup> Mirela Iverac, “Despite Opposition, NY Joins Fed’s Secure Communities Program,” WNYC NEWS, May 12, 2012, available at, <http://www.wnyc.org/articles/wnyc-news/2012/may/14/despote-opposition-ny-joins-feds-secure-communities-program/>

not mean that the case will be over. Rather, the burden will then shift to the government to prove a substantial justification for the disparate impact. If the government is able to do so, then it will be up to the plaintiff to provide an adequate alternative to achieving the governmental interest without the discriminatory effect.

This legislation is in line with the Civil Rights Act of 1964,<sup>20</sup> which was enacted to address pervasive discrimination based on race, ethnicity, national origin and religion. The Civil Rights Act had an enormous impact, effectively outlawing the unequal application of voter registration requirements and racial segregation in schools, in the workplace, and in public accommodations. Intro. 800 would allow New York City to fill in a significant gap in this law – something that was foreclosed after the U.S. Supreme Court in *Alexander v. Sandoval*<sup>21</sup> found that a regulation enacted under Title VI of the Civil Rights Act did not include a private right of action based on evidence of disparate impact.

Justice Antonin Scalia, in that infamous 5-4 decision, held that while section 601 of Title VI contained an implied private right of action,<sup>22</sup> it did not include a private right of action based on disparate impact claims (the Justice Department still has the authority to bring disparate impact claims, and does so on a regular basis).<sup>23</sup> Many scholars have since criticized this decision, but here in New York City we have the ability to do something about it: Intro. 800 would restore this right to New Yorkers, and allow them to do what they were able to before 2001; that is, to hold the NYPD accountable for practices that have a disparate impact. It is worth noting that the state of Illinois did exactly this when in 2003 it restored the right of the people to bring disparate impact claims against law enforcement practices.

Intro. 800 also mirrors the language of the End Racial Profiling Act (“ERPA”), which is co-sponsored by Kirsten Gillibrand in the Senate and by a majority of New York City’s congressional delegation in the House. The federal legislation includes an almost identical definition of profiling as the one included in Intro. 800, and similar to Intro. 800, would create a

---

<sup>20</sup> Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 2 U.S.C., 28 U.S.C., and 42 U.S.C.).

<sup>21</sup> 532 U.S. 275 (2001).

<sup>22</sup> *Id.* at 279.

<sup>23</sup> *Id.* at 280.

private right of action based on disparate impact claims.<sup>24</sup> The End Racial Profiling Act would address many of the concerns that the Community Safety Act is aimed to address, but, in the absence of movement in Congress, New York has the unique opportunity to implement similarly groundbreaking legislation in New York – a City with a great need for reform to our policing practices.

It is especially important to note that disparate impact theories of liability are already available in numerous federal and city laws. For example, plaintiffs are able to bring disparate impact claims to enforce the Fair Housing Act (42 USC § 3613), Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352), the Americans with Disabilities Act, (42 USC § 12112), and the Equal Credit Opportunity Act<sup>25</sup> (15 U.S.C. § 1691). Moreover, New York City’s Human Rights Law broadly provides New Yorkers an opportunity to bring disparate impact claims in the context of employment, public accommodations, housing, licensing and other areas. Disparate impact claims are, in fact, widely available and accepted in many contexts.

Finally, it is the NYCLU’s understanding that certain Council Members have expressed concern about the cost of implementing a bill that includes expansive remedies. In response to these concerns, the sponsors of this bill have proposed an amendment to remove compensatory and punitive damages, leaving the sole remedies of injunctive and declaratory relief. This will not only prove more cost-effective for the City, but it will ensure that plaintiffs bringing claims will be doing so in the interest of implementing reforms to the NYPD, rather than for monetary gain.

### **III. Intro 799: Protecting New Yorkers’ Privacy Rights during a Consensual Search**

While Intro. 800 would protect the rights of New Yorkers to be free from discrimination, Intro. 799 would allow them to better protect their privacy rights when being asked to consent to a search. Specifically, this bill would allow all New Yorkers to be better informed about their rights during what are known as “consensual” searches by the police, by making sure that these searches are truly voluntary and informed —just as the Constitution intends.

---

<sup>24</sup> S. 1670 112<sup>th</sup> Cong. (2011).

<sup>25</sup> The Equal Credit Opportunity Act prohibits creditors from discriminating against any applicant on the basis of race, color, religion, national origin, sex or marital status, or age.

Under the Constitution, there are only a few exceptions to when a police officer can search an individual without probable cause or a warrant.<sup>26</sup> One of these narrow exceptions permits an officer to search an individual without probable cause or a warrant when the individual has consented to the search. The Supreme Court has interpreted the law of consent according to the concept of “voluntariness,” ruling that, when a subject of a search is not in custody, the Constitution requires that it “demonstrate that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied.”<sup>27</sup>

However, while this is the standard under which officers are supposed to be operating, in reality, the concept of voluntariness is actually not understood by most civilians: instead, “a police ‘request’ to search a bag or automobile is understood by most persons as a command.”<sup>28</sup> As a result, New Yorkers have often misunderstood the extent of their privacy rights during a consensual search.

In order to ensure that the practice of uninformed consensual searches halts, Intro. 799 will ensure that consensual searches are truly voluntary and informed by making sure that New Yorkers are aware of their constitutional right to approve or refuse consent in searches that are not pursuant to probable cause, a warrant, or arrest. In those searches, Intro. 799 will simply require two things: First, police officers will have to articulate to the individual that the person is being asked to voluntarily consent to a search and that he or she has the right to approve or refuse consent. Second, in order to shield police officers from false claims of wrongdoing and to create greater transparency in these sorts of searches, Intro. 799 will also require that police officers create a record of the person’s consent. It will be up to the Police Commissioner to determine how to capture proof from the individual being searched.

Importantly, this bill would not apply when an officer has probable cause or when an officer believes that the individual he or she just stopped is armed and dangerous and should be frisked. Instead, this bill would only apply to those searches that are truly intended to be consensual, rather than coerced or assumed by the officers involved. In doing so, this bill will

---

<sup>26</sup> See e.g., *U.S. v. Santana*, 527 U.S. 38 (1976); *Horton v. California*, 496 U.S. 128 (1990); *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>27</sup> *Schneekloth v. Bustamonte*, 412 U.S. 218, 248 (1973).

<sup>28</sup> Tracy Maclin, “The Good and Bad News About Consent Searches in the Supreme Court,” 39 MCGEORGE L. REV. 27 (2008).

improve police-community relations by ensuring that officers request consent in such a way that it is not taken unilaterally as a command.

This bill will also address the problem of New Yorkers being wrongfully arrested for private possession of small amounts of marijuana. In 1977, New York legislators passed the bipartisan Marijuana Reform Act, under which possession of small amounts of marijuana was decriminalized.<sup>29</sup> Having marijuana “in public view or burning” became a misdemeanor.<sup>30</sup> As arrests for possession of minor amounts of marijuana increased during the Bloomberg administration, community members have complained of being arrested for having marijuana “in public view or burning” when in fact the small amount of marijuana came into public view only after the person emptied his or her pockets following a “request” from an officer. This legislation would ensure that any search conducted under these circumstances was based on voluntary and informed consent, and not based on trickery.

In summary, Intro. 799 would create the functional equivalent of a *Miranda* warning for searches by requiring officers to advise people of their right not to consent to a search when there is no other legal basis for the search, and obtain proof from the person to be searched that the consent given is real, voluntary, and informed.

#### **IV. Intro 801: Requiring NYPD Officers to Act in a Transparent Manner**

Intro. 801 will bring about greater transparency in policing practices by ensuring that residents know who they are dealing with when they are stopped by the police and also know the reason for the stop.

Given the huge increase in stop-and-frisk in the last several years, a vast majority of which do not lead to arrests or summonses, too many New Yorkers are currently having negative experiences with the police. In these stops-and-frisks, community members have consistently expressed concerns that they do not know the identity of the police officer who stopped them or the reason why. As *The New York Times* reported in June, with a typical stop-and-frisk, “The officers swoop in, hornetlike, with a command to stop: ‘Yo! You, come here. Get against the wall.’ They batter away with questions, sometimes laced with profanity, racial slurs and insults:

---

<sup>29</sup> New York Penal Law § 221.05 (2012), L.1977, c. 360, § 3.

<sup>30</sup> New York Penal Law § 221.10 (2012), L.1977, c. 360, § 3.

‘Where's the weed?’ ‘Where's the guns?’ The officers tell those who ask why they have been stopped to shut up, using names like immigrant, old man or ‘bro.’ Next comes the frisk, the rummaging through pockets and backpacks. Then they are gone.”<sup>31</sup>

Intro. 801 would help change at least some of these practices and make the NYPD a more transparent agency by requiring law enforcement officials to identify themselves to those who they are stopping, frisking, or searching, and by providing them with their full name, rank and command, as well as the specific reason for the law enforcement activity. At the end of a stop or frisk that does not result in an arrest or summons, the police officer will have to provide the civilian with a written record of the encounter and information on how to file a complaint with the Civilian Complaint Review Board. This law represents the kind of basic “courtesy, professionalism, and respect” that the NYPD supports, and it would represent an important change in the way that its officers approach their street-level duties. Similar legislation has been passed in Arkansas, Minnesota, and Colorado.<sup>32</sup>

#### **V. Intro 881: Establishing an Inspector General to Monitor the NYPD**

Finally, Intro. 881 would create an Office of Inspector General to monitor the policies coming out of One Police Plaza to ensure that they do not lead to the violations of civil liberties and civil rights.

Oversight and transparency are hallmarks of American democracy, and this is particularly true for law enforcement agencies, who we entrust with extraordinary powers. Yet in New York City, there is no agency charged with the sole responsibility of monitoring the NYPD to ensure that its policies do not lead to the violations of New Yorkers’ constitutional rights.

All federal law enforcement and intelligence agencies, including the CIA, FBI and Justice Department, employ inspectors general, as do most New York City agencies.<sup>33</sup> The Los Angeles

---

<sup>31</sup> Wendy Ruderman, “Rude or Polite, City's Officers Leave Raw Feelings in Stops,” N.Y. TIMES, Jun. 27, 2012, available at <http://query.nytimes.com/gst/fullpage.html?res=9401EFD7123AF934A15755C0A9649D8B63&ref=stopandfrisk>.

<sup>32</sup> See Ark. Code. Ann. § 12-12-1403, Minn. Stat. Ann. § 626.8471, Colo. Rev. Stat. § 24-31-309.

<sup>33</sup> For example, on a federal level, the Central Intelligence Agency, the Federal Bureau of Investigation, and the Department of Education all have Inspector General offices. See Central Intelligence Agency, Inspector General, available at <https://www.cia.gov/offices-of-cia/inspector-general/index.html> (last accessed Oct. 1, 2011); The Federal Bureau of Investigation, Ensuring Accountability and Compliance, available at <http://www.fbi.gov/stats-services/publications/facts-and-figures-2010-2011/ensuring-accountability-and-compliance> (last accessed Oct. 1,

Police Department has an Inspector General, and all five of the next-largest municipal police departments have some form of independent oversight with subpoena power. Yet the NYPD, the largest police force in the country, does not have an Inspector General. Moreover, while the CCRB and Internal Affairs Bureau investigate individual complaints of police misconduct, they are not charged with the mission of monitoring policing patterns and practices, and making recommendations for systemic changes. Intro. 881 will fix this problem.

Intro. 881 would create an Inspector General to be appointed by the mayor with the non-binding advise of the Speaker of the City Council and chairs of the Public Safety Committee and Civil Rights Committee. The Inspector General will have the authority to issue subpoenas to audit NYPD records as well as to issue subpoenas to individuals whose testimony the Inspector General believes is necessary in order to fully investigate the problem.

The Inspector General will be required to keep the Mayor, the Police Commissioner, and the City Council fully informed about any problems or deficiencies in the department's policies that it discovers and any corrective actions it might recommend. The Inspector General's office will also create a mechanism for the public to submit requests for reviews on matters within its jurisdiction. This way, individual New Yorkers who have observed problematic NYPD patterns or practices, such as stop-and-frisk abuses or the unconstitutional surveillance of the Muslim community, can submit requests for the Inspector General to use its powers to begin investigating the issue. Finally, the Inspector General will be able to receive and investigate complaints from any employee of the NYPD concerning the possible existence of problems with the department's programs, including any complaints of retaliation against officers or other individuals in the department. This may, for example, permit many police officers who have already expressed displeasure with the NYPD's quota system—which forces officers to make a minimum number of stops-and-frisks, summonses and arrests—to make these complaints to the Inspector General.

---

2011); The U.S. Department of Education, Office of Inspector General—Home Page, *available at* <http://www2.ed.gov/about/offices/list/oig/index.html> (last accessed Oct. 1, 2011). On a state level, there is an Inspector General for all of State government and its employees, *see* New York State Office of the Inspector General, *available at* <http://ig.state.ny.us/> (last accessed Oct. 1, 2011). In New York City, more than thirty city agencies have Inspector Generals through the Department of Investigation, *see* City of New York Department of Investigation, List of DOI Inspectors General, *available at* <http://www.nyc.gov/html/doi/html/contact/inspectors.shtml> (last accessed Oct. 1, 2011).

By creating the Inspector General's office, City Council will be creating a body that will be able to watch the NYPD to ensure that in the future, the patterns that currently plague it--such as stop-and-frisk abuses and quotas--are addressed early and effectively. Review by an outsider will allow the NYPD to better perform its job and will help to reinstate the public's faith in the NYPD.

## **VI. City Council's Authority to Pass the Community Safety Act**

Finally, contrary to what some in the Bloomberg administration have stated, the City Council does clearly have the authority to pass the Community Safety Act. The Act does not create structural changes in city government, and does not curtail the Police Commissioner's authority to discipline police officers. Rather, the bills that comprise the Community Safety Act involve what the New York Court of Appeals has described as a general regulation of the "operations of city government," and any limitation on the Police Commissioner's freedom to act is "merely a consequence of legislative policymaking." *Mayor of City of New York v. Council of City of New York*, 874 N.E.2d 706, 711 (N.Y. 2007).

Indeed, a number of counties and cities throughout New York State have passed legislation similar to the bills that comprise the Community Safety Act, even though they operate under the same state laws as the New York City Council. These examples include laws passed by local legislative bodies that require that police officers identify themselves to the public, prohibit racial profiling by police officers, and create police oversight mechanisms.

## **VII. Conclusion**

The NYCLU urges the City Council to pass the Community Safety Act and to take this important step to reform NYPD practices that have led to the violations of New Yorkers' constitutional rights. By passing this legislative package, the City Council will also demonstrate to the public that it shares its concerns about Police Department abuses. The City Council will make sure that New York City is once again seen as a city in which residents from all backgrounds can call the police when they need help, seeing the NYPD as an ally in the fight against crime and violence.

# For the Record

**Statement to the City Council by John A. Eterno, Ph.D. a retired New York City police captain, a professor and associate dean of criminal justice at Molloy College and a co-author of *The Crime Numbers Game: Management by Manipulation*.**

**October 10, 2012.**

This is not about being happy with the police department. We can be happy with them but realize that policing in democratic society is complex. Management must develop policies that not only properly protect society from crime but also ensure those same policies protect basic rights such as the right to assemble, the right to be free from unreasonable search and seizure, the right to free speech, the right to a free press, and so forth. In *The Federalist Papers* number 51 James Madison puts it succinctly, "... the great difficulty lies in this: you must first enable the government to control the governed and in the next place oblige it to control itself."

To this end, New York City is the largest and one of the most diverse metropolitan areas in the United States. What NYPD does is emulated throughout the free world. Importantly, policies and practices need to be open to public scrutiny and debate. Recent police practices have been controversial such as overuse of stop and frisk, numerous arrests for marijuana in public view based on consent searches, and preventing the press from covering basic stories. While some are content with these policies, others are concerned. For example many, especially in minority communities, have been complaining about police practices; there are increasing lawsuits against the police department and the city -- including the media who are now suing the department for mistreatment by the police at the Occupy Wall Street rallies; and, importantly, other cities who emulate NYPD are currently under consent decrees from the federal courts including Baltimore and New Orleans where former NYPD management were in command. These bills under consideration are modest proposals which simply provide the avenues for prudent public discourse.

It can be argued that NYPD currently uses highly aggressive tactics to police the city. They play a numbers game in which officers have to fill quotas. Indeed, the Patrolmen's Benevolent Association has purchased full page advertisements stating, "Don't blame the cop, blame NYPD management for the pressure to write summonses and the pressure to convict motorists." Nothing could be clearer. Data driven policy where officers are forced to make their numbers is dangerous and ineffective policing that must, at a minimum, be held to scrutiny by this body and the public.

Certainly the aggressive tactics used by NYPD today are not the only way to police in a free society. A highly respected conservative criminologist, James Q Wilson, helps us to understand the various ways communities can be policed. He categorizes police agencies into three key styles: legalistic, watchman, and service. The legalistic style is essentially the type of policing that NYPD has adopted. Nearly all are arrested or given a summons to be reflected in the Compstat meetings. Such a cookie cutter style means little discretion by police officers -- make arrests, write summonses, conduct forcible stops. It will be most felt in minority areas where more officers are sent. Police in this environment are like an army of occupation demanding that the public follow the law or a formal action will be taken. A

second style is known as the watchman style. In this case police essentially wait for something to happen. This situation is how NYPD policed in the 1980s where the main concern was corruption.

The final style is the service style. For this style, police take all calls seriously and attempt to work with the public to find viable solutions to deeply seated and complicated issues that lead to criminal activity. Rather than an army of occupation the officers work with the communities to fight crime. In this way, people are more likely to approach the police rather than be alienated by them. If someone sees something they are more likely to say something. The Federal Bureau of Investigation, for example, has directed public criticism at the NYPD for NYPD's spying on Muslims. As one news report puts it, "The head of the Newark FBI said Wednesday the NYPD's monitoring of Muslims in New Jersey has had a chilling effect on the feds' ability to gather counter terrorism intelligence. 'What we're seeing now with the uproar that is occurring in New Jersey is that we're starting to see cooperation pulled back. People are concerned that they're being followed. People are concerned that they can't trust law enforcement,' said FBI Newark Special Agent in Charge Michael Ward." (WCBS News)

Indeed Mr. Kelly himself ushered in the decrease in crime as Police Commissioner under Mayor Dinkins – not through an aggressive data driven policy – but through working with communities. Securing committed support from all communities to help identify and locate those who are committing crime or have illegal weapons is a key police strategy that is tested and works. Local commanders too should be thought of as a team and given wide discretion to do their jobs instead of today's top down approach. Some communities may require arrests and summonses, others may simply require a large presence of uniformed officers, and still others require informal sanctions such as warning and admonishing citizens. The officers and commanders in the field do not have that discretion today. As the advertisement by the PBA indicates NYPD management has taken that discretion away – "Blame management not the cop."

Working with other law enforcement agencies such as the FBI in a meaningful and trustworthy way is also necessary to reduce crime. When agencies such as the FBI complain about NYPD tactics, it is clear that they are not working together harmoniously to fight crime and terrorism.

Additionally, the legislation under consideration provides whistleblowers with an alternative to the police department. At least three whistleblowers were retaliated against for their revelations: Adrian Schoolcraft, Adyl Polanco and Robert Borrelli. All three have backed up their allegations with audiotapes. Providing another avenue outside the police department will enhance transparency, give officers more confidence to come forward, and raise the level of public trust in the police.

In sum, there are other ways for the police to keep the city safe. These include: police working closely in partnership with communities such that when people see something they will actually say something, providing commanders and officers the discretion they need to do their job, working closely with other law enforcement agencies, and developing a service and team approach. Also, whistleblowers will be offered additional protections so necessary to democratic policing. These current bills are akin to getting a second opinion from another doctor before conducting a serious surgery. There is no threat meant to the first doctor who recommended surgery, it is simply prudent to get the

second opinion. Public discourse of policy is good for democratic policing. I fully support this legislation.

**Written Comments of The Bronx Defenders  
New York City Council  
Committee on Public Safety  
October 10, 2012**

**Introduction**

---

My name is Kate Rubin and I am the Director of Policy and Community Development at The Bronx Defenders. I also serve as a member of the Steering Committee of Communities United for Police Reform. I submit these comments on behalf of The Bronx Defenders, and thank the Public Safety Committee and the City Council for the opportunity to testify.

The Bronx Defenders is a holistic public defender that provides criminal defense, family defense, civil legal services, and social services to indigent people in the Bronx. We serve over 28,000 Bronx residents each year, all of whom are poor and nearly all of whom are Black and Latino. The Bronx Defenders views our clients not as "cases," but as whole people: caring parents, hard workers, recent immigrants, native New Yorkers, and students with hope for the future. Whether defending a client's liberty; connecting a young man to mental health services; preventing an elderly woman's eviction; working to keep a family together; or preparing a neighborhood teenager to join the next generation of leaders, The Bronx Defenders ultimately strives to improve the lives and futures of all Bronx residents.

**The Need for Meaningful Reform**

Every week, we meet hundreds of clients in criminal court arraignments, family court intake, and community intake in our office. Day in and day out, these clients relate to us their experiences of police misconduct: unlawful stops, non-consensual searches, and false arrests. And far too often, use of force. We joined the Steering Committee of Communities United for Police Reform and have

made advocating for the Community Safety Act a priority because this issue rises to the top of the list of concerns for many of our thousands of clients, their families, and the broader community that we serve.

The vast majority of stop and frisk encounters—88% in 2011—are of people who are completely innocent of any crime.<sup>1</sup> But from our position at The Bronx Defenders, we see a picture of the 12% for whom the stop doesn't end on the street. In every arraignment shift, we meet people who were arrested for extremely low-level offenses as a result of unlawful stops and searches. The sheer volume of misdemeanor arrests made each year in New York City is documented by the by the Office of Court Administration's Annual Report on the Criminal Court of the City of New York:

- In 2011, 289,816 misdemeanor cases were arraigned in the City's criminal courts, compared to 50,548 felonies.<sup>2</sup>
- Of the top ten arraignment charges in 2011, the top eight were misdemeanors and the ninth was a violation—consumption of alcohol in a public place.<sup>3</sup>
- The most common arraignment charge by far was possession of less than 25 grams of marijuana either “burning” or “open to public view.”<sup>4</sup>

What the Annual Report of the Criminal Court doesn't document, but the stop-and-frisk numbers do, is the extreme disproportionality in enforcement of these misdemeanors and violations. Profiling based on race, age, gender, sexual orientation, disability, housing status, and immigration means that these targeted groups are not only stopped more frequently, they more frequently receive

---

<sup>1</sup> New York Civil Liberties Union Stop and Frisk Briefing 2011, p. 17, *available at* [http://www.nyclu.org/files/publications/NYCLU\\_2011\\_Stop-and-Frisk\\_Report.pdf](http://www.nyclu.org/files/publications/NYCLU_2011_Stop-and-Frisk_Report.pdf) (last accessed October 8, 2012).

<sup>2</sup> Criminal Court of the City of New York, Annual Report 2011, p. 26, *available at* <http://www.courts.state.ny.us/courts/nyc/criminal/AnnualReport2011.pdf> (last accessed October 7, 2012).

<sup>3</sup> *Ibid.*, p. 30.

<sup>4</sup> *Ibid.*, p. 30.

summons for minor offenses and are more frequently falsely arrested on misdemeanor charges like marijuana possession and trespassing.<sup>5</sup>

While the charges that stem from unlawful arrests are nearly always minor, the consequences are not. As the Council is well aware, now that Secure Communities has been activated in New York, some of our non-citizen clients have already been flagged by Immigration and Customs Enforcement (ICE) for detention and deportation before we meet them in arraignments. Many clients are suspended from work as soon as they disclose their arrest to employers. They remain suspended without pay while their cases are pending, which can mean months or even more than a year. We represent parents in Family Court whose children were removed by the Administration for Children's Services and placed in foster care on the basis of a single arrest for misdemeanor-level marijuana possession.

And these are just the consequences triggered by arrest; the consequences of guilty pleas are often even more certain and severe. A plea to disorderly conduct, defined by New York law as a non-criminal offense, makes a person presumptively ineligible for New York City public housing for three years.<sup>6</sup> Simple possession of a marijuana cigarette cuts off federal student loans for a year for a student who is receiving them.<sup>7</sup> Every single guilty plea to a violation carries a mandatory surcharge of \$120 and every misdemeanor plea carries a surcharge of \$200. These fees are leveled against people who are already struggling economically—young people, homeless people, and people who

---

<sup>5</sup> See generally, New York Civil Liberties Union Stop and Frisk Briefing 2011, *available at* [http://www.nyclu.org/files/publications/NYCLU\\_2011\\_Stop-and-Frisk\\_Report.pdf](http://www.nyclu.org/files/publications/NYCLU_2011_Stop-and-Frisk_Report.pdf) (last accessed October 8, 2012); *Marijuana Arrests in NYC: Fiscally Irresponsible, Racially Biased and Unconstitutional*, *available at* [http://www.drugpolicy.org/sites/default/files/NYC\\_MJ\\_fact\\_sheet\\_GENERAL\\_2012.pdf](http://www.drugpolicy.org/sites/default/files/NYC_MJ_fact_sheet_GENERAL_2012.pdf) (last accessed October 9, 2012); Amended complaint in *Davis v. City of New York*, May 27, 2011, *available at* [http://www.naacpldf.org/files/case\\_issue/Davis%20Amended%20Complaint.pdf](http://www.naacpldf.org/files/case_issue/Davis%20Amended%20Complaint.pdf) (last accessed October 9, 2012).

<sup>6</sup> The period of ineligibility runs two years from the expiration of any sentence; the standard sentence for a Disorderly Conduct plea is a one-year conditional discharge. *See*: N.Y. Penal Law § 240.20 (defining disorderly conduct); N.Y. Penal Law § 10.00(6) (defining crime as misdemeanor or felony); N.Y. Crim. Proc. Law § 1.20(39) (defining petty offense as violation); New York City Housing Authority Applications Manual, "Standards for Admission: Conviction Factors and End of Ineligibility Periods—Public Housing Program" Ex. F.

<sup>7</sup> NY PL § 221.05; 20 U.S.C. § 1091(r)(1). On February 8, 2006, this provision was amended to bar student loan eligibility only when the drug conviction occurred during receipt of student loans.

lost their jobs or can't find work because of their criminal justice involvement. And while most violation convictions will seal automatically, misdemeanor convictions remain on our clients' criminal records permanently; New York State currently has no general provision for sealing or expunging misdemeanors, even decades after the convictions.

### **The Community Safety Act**

---

The four bills that comprise the Community Safety Act have the potential to radically alter street encounters between the NYPD and New Yorkers—encounters that have come to be accepted despite the fact that they are disrespectful, unlawful, and have driven an enormous wedge between the NYPD and communities it is supposed to serve and protect. If enacted, the Community Safety Act could also fundamentally change the current reality of an overloaded court system that can afford only a tiny fraction of people who encounter it a real “day in court”.

Our testimony focuses on Intros 799, 800, and 801, because our expertise is on street encounters that lead to arrest and the consequences of those encounters on individuals, families, and communities. But passing one or any combination of the bills will not suffice; the bills function together to create a system of transparency and accountability for the New York City Police Department that every city should strive for.

#### *Intro 800*

All over the Bronx, every single day, people are stopped because they are young and black or Latino. Because they appear to be homeless. Because they appear to be drug-users. Because they appear to be sex-workers. Because they have a psychiatric disability. Because they are transgender. Most of these stops don't lead to arrest, but some of them do. We meet people in arraignments every week charged with trespass when they were visiting a friend, charged with prostitution because of

their gender appearance or how they dress, and falsely charged with possessing marijuana “open to public view”.

Far too frequently, our clients plead guilty to these charges when they are not guilty of any crime, and they do so despite the fact that the consequences can be severe. They take pleas at arraignments because they can't afford a few hundred dollars bail and also can't afford to stay in jail for weeks or months to fight their cases. They take pleas because after months of returning to, missing days of work and school, having to find childcare or drag their children along with them, they decide that the consequences of having an open case are worse than the consequences of a guilty plea. At the bottom line, they take pleas because the court system is so overloaded with cases, largely because of the over-policing of quality-of-life offenses, that it simply cannot afford to offer a fair trial to more than a tiny fraction of people arrested each year. At The Bronx Defenders, we represent clients charged with marijuana possession who have been waiting for more than year to take their cases to trial, and who cannot get a trial date no matter how many times they return to court. One client returned to court 11 times over nearly 18 months before his case was finally dismissed this past August.

If enacted, Intro 800 would help to reduce unlawful arrests and the backlog of people in the city's court system. But in order to be effective, Intro 800 must be enforceable. The need for enforcement by private right of action is illustrated by a class action lawsuit that we settled in February of this year on behalf of 20,000 New Yorkers who were charged under three unconstitutional “loitering” statutes between 1983 and 2012. The New York City Police Department and the City of New York continued to charge these void statutes for decades after New York State and Federal courts had struck down the laws in the 1980s and 1990s, on First Amendment and other constitutional grounds. In April of 2010, a Federal court judge found the NYPD in contempt of court

for *continuing* to enforce void statutes, decades after the statutes were struck down and years after litigation was filed against them to stop the practice.<sup>8</sup> Only after the City was held in contempt and threatened with progressively increasing sanctions did the NYPD institute an effective program to cease the enforcement of unconstitutional laws.

Intro 800 won't solve all of the problems with the court system, but together with Intro 799—and with proper enforcement mechanisms in place—it will reduce the number of people who are put through the system unnecessarily for unlawful stops and searches that begin with profiling.

---

#### *Intro 799*

Between May and October of 2011, The Bronx Defenders Marijuana Arrest Project interviewed over 500 clients arrested for low-level marijuana possession from every precinct and command in the Bronx. While a full report is forthcoming, our initial analysis suggested that more than 40% of cases reviewed presented clear problems stemming primarily from unconstitutional searches and seizures and improper charging of clients by the NYPD. Our interviews document how NYPD officers manufacture thousands of misdemeanor arrests by charging people with possessing marijuana “open to public view”, despite the fact that it came into public view only as a result of a police request or, more frequently, an unlawful search. If these numbers reflect NYPD practices across the city, more than 20,000 arrests could be called into question for 2011 alone.

The Marijuana Arrest Project interviewed and reviewed the cases of 518 clients charged with misdemeanor-level marijuana possession, Penal Law 221.10.

---

<sup>8</sup> *Casale v. Kelly*, 710 F. Supp. 2d 347 (S.D.N.Y. 2010).

- In 34% of cases reviewed, the NYPD lacked legal basis to justify the initial detention of our client. In other words, the stop itself was unconstitutional and, in nearly every case, the result of profiling.
- In 36% of cases, police officers manufactured the misdemeanor charges by making a misdemeanor arrest after a small amount of marijuana came into view *only* as a result of police action.

---

- ~~In the majority of these cases—79%—the marijuana was brought into public view as the result of an intrusive physical search by the police officer rather than voluntarily by the client.~~

- Taken together, cases in which the police had no legal cause for the detention and/or manufactured misdemeanor charges account for 41% of all of the cases evaluated by MAP (212 of 518).

The Council has already passed Resolution 986-A, calling for an end to racially biased, costly, and unlawful marijuana arrests. This year, the New York State legislature tried and failed to take action to address the problem. We don't know what will happen in Albany in the 2013 session, but we don't need to wait to find out. The City Council can significantly reduce the number of marijuana and other arrests that stem from unlawful stops and unconstitutional searches by passing the Community Safety Act now.

Moreover, this legislation is needed even if the legislature does act to fix the marijuana possession law. Marijuana arrests are the most common, but they are far from the only arrests that stem from unconstitutional stops and searches. Women are arrested for prostitution after police officers reach into their purses and find condoms; people in harm-reduction programs are arrested for carrying clean syringes as directed under the Public Health Law; and grocery-store workers are

arrested for criminal possession of a weapon when illegal searches turn up box-cutters and small pocketknives that they use on the job.

The fourth amendment contemplates a narrow exception to the probable cause requirement, where police officers may conduct searches with consent. Implicit in this exception is the assumption that individuals know that they have the right to refuse consent, because freedom from unreasonable search and seizure is one of the most important founding principles of our legal system. Yet many of our clients—like many New Yorkers in general—are not aware that they have a right to refuse to consent to searches. Even when they are aware, they do not feel empowered to exercise that right when an armed police officer commands them to empty their pockets or open up their bag. And in too many cases, our clients who attempt to exercise their rights are ignored or even retaliated against by NYPD officers.

Intro 799 would clarify the procedure for consent searches by requiring that police officers notify the subject of a stop of the right to refuse a search, and by ensuring that consent is properly obtained. By doing this, it would also make prosecutions more efficient by cutting down on hearings and litigation over the question of voluntariness of consent.

To be clear, Intro 799 would not change the underlying Constitutional standard for a search. If passed, police officers would still be able to search people with probable cause, or with full consent. An officer who observes a gun being shoved into a backpack will have probable cause to search that backpack, with or without consent. An officer who receives a tip saying that a person fitting a specific description is carrying a gun will have probable cause to search that person unburdened by a consent requirement. In the narrow band of cases where law enforcement has founded suspicion to question a person but lacks probable cause for a search, federal law already requires the officer to obtain voluntary consent before searching. Intro 799, if enacted, would simply

require that they also obtain proof of that consent. The proposed protection is similar to the *Miranda* warning and informed waiver that many people sign before making voluntary statements to the police. This waiver has not stopped the NYPD from obtaining statements and introducing them in countless criminal proceedings.

Likewise, Intro 799 would not interfere with an officer's ability, in the course of a lawful stop, to frisk a person for his or her own safety. Intro 799 would *only* apply to a search, not to a pat down where an officer has reasonable suspicion that the subject of a stop is armed and dangerous. Rather than putting officers in danger, Intro 799 would make officers and civilians safer by establishing the best practice for consensual searches that could serve as a model for cities around the country.

#### *Intro 801*

At the most fundamental level, New Yorkers want to be treated with respect by the NYPD. We hear this every day from our clients, their families, and Bronx residents of every age, race, and occupation. By passing Intro 801, the Council can take an important step towards ensuring that all police interactions are defined by fairness and respect.

Under Intro 801, NYPD officers would have to provide their name and rank to the subjects of law enforcement activity. When making stops, officers would have to provide the specific reason for the stop, and give the person being stopped information about how to file a complaint.

The proposal is simple, but the impact would be dramatic. Intro 801 would change the very nature of routine stops, which are often defined for the subjects of those stops by the utter powerlessness that they feel. Simply requiring officers to identify themselves would add an automatic layer of accountability to every police interaction.

And should an officer abuse his or her power during a stop, the subject of that stop would have all the information necessary to file a complaint. Currently, even when people want to file complaints they are frequently not able to because they have no way of identifying the officers who were involved. All too often, a request for an officer's name or badge number is perceived as disrespectful, and results in escalation of a police encounter and even retaliation.

Increasing accountability for individual officers is not only good for our clients and the public; it is also good for the NYPD. It would allow the Department to monitor and track the “bad apples”—the officers who abuse their power and give the Department a bad name. It is in the interest of every city agency—just as it is in the interest of every private business—to monitor its workforce for unlawful, inappropriate, and counter-productive behavior. Intro 801 would create a mechanism to do that.

## **Conclusion**

The foundation of genuine public safety is trust between police and the communities they serve. If enacted, the Community Safety Act has the potential to repair some of the trust that has eroded between police and communities of color over the past decade. None of the bills, separately or together, attempt to tell the NYPD how to police the city. Instead, they create bottom-line standards of transparency and accountability. These are standards that every city agency should be held to, but none more so than the NYPD, which is tasked with the crucial job of keeping New Yorkers safe, and vested with significant powers to use in doing so. The Community Safety Act would improve the experiences of tens of thousands of New Yorkers—particularly the most vulnerable New Yorkers—in daily interactions with the police. We urge the Council to take action and pass this legislation immediately.

*For the record*

**MEMO IN LIEU OF TESTIMONY OF**

**HARRY G. LEVINE**

**Professor of Sociology  
Queens College and The Graduate Center  
City University of New York**

**HEARINGS OF THE NEW YORK CITY COUNCIL COMMITTEE ON PUBLIC SAFETY, Regarding**  
Int. No. 799 - In relation to requiring law enforcement officers to provide notice and obtain proof of consent to search individuals.  
Int. No. 800 - To prohibit bias-based profiling by law enforcement officers.  
Int. No. 801 - In relation to requiring law enforcement officers to identify themselves to the public.  
Int. No. 881 - In relation to establishing an office of the inspector general for the New York city police department.

**October 10, 2012, New York, New York**

**POLICE STOPS, ILLEGAL SEARCHES, AND MARIJUANA POSSESSION ARRESTS**

I am a professor of sociology at Queens College and the Graduate Center of the City University of New York. For many years I have been researching and writing about the history and sociology of alcohol and drug policies and problems. With a few colleagues, I have been researching racial disparities in arrests for marijuana possession in New York City and throughout the United States. In the last year we have developed the web site [www.marijuana-arrests.com](http://www.marijuana-arrests.com) as an online library of information about marijuana possession arrests, the NYPD's stop and frisks, and other policing issues. Thank you for inviting me to testify today. I am very sorry that I am unable to present my testimony in person. I am submitting this memo in lieu of my oral testimony.

I would like to briefly present information relevant to the legislation under consideration from our research on police stops and marijuana arrests. New York City's large number of marijuana possession arrests (500,000 since 1997) have received considerable public, media and political attention; I know the Council is well aware of what has been happening.

Central to the question of these arrests is how police officers find the marijuana. As the Governor, the Police Commissioner, the city's District Attorneys, former Mayor Koch and others have pointed out, often the bit of marijuana is retrieved from the pockets of the young people stopped by the police. As the Governor has explained, police will direct or order people to empty their pockets. On other occasions police will ask people to do so. And sometimes, in the course of a pat down for weapons, police officers will reach into a person's pockets to retrieve what is there. As public defenders, people who have been arrested themselves, and people who have interviewed such people learn, this happens far more often than most New Yorkers expect or believe. In this testimony I wish to present some of the public evidence showing that this has been going on.

In the last two years, news coverage about New York City's marijuana arrests has increased dramatically. Experienced, reputable journalists have quoted citizens, mostly young

people of color, describing encounters in which police had put their hands inside of someone's pockets. For example, on February 1, 2012, Jennifer Peltz of Associated Press reported on the case of Stephen Glover. He was standing outside a Bronx job-training center,

"sharing a box of mints with friends, when police came up to him, asked him whether he had anything in his pockets that could hurt them, and searched them [his pockets] without asking his permission. They found the remains of two marijuana cigarettes in his pockets, he said. 'They just take it upon themselves to search,' the 30-year-old Glover said." <sup>1</sup>

In December of 2011, Steve Wishnia of Alternet quoted Sydney Peck, a Brooklyn public defender: "A police officer pulls marijuana out of someone's pocket, and all of a sudden, it's marijuana in public view" Wishnia also quoted Joshua Saunders, a staff attorney at the Brooklyn Defenders, who said he has "seen a lot of 'dropsy' cases, in which police say they saw the defendant drop the marijuana on the ground" Saunders cited the police report of a man in front of a bodega, "in possession of a quantity of marihuana, which was open to public view" which the officer reported he "recovered from defendant's pants pocket" The attorney, perplexed by how marijuana in a pocket could be open to public view, wondered if his client had worn "transparent pants." <sup>2</sup>

Most thorough of all was the DuPont Award-winning, two-part series by Ailsa Chang, the police and criminal justice reporter for WNYC, about illegal searches for marijuana by the NYPD. In April 2011 she reported a number of cases of police putting their hands inside people's pockets and searching their clothing.

WNYC tracked down more than a dozen men arrested after a stop-and-frisk for allegedly displaying marijuana in public view. Each person said the marijuana was hidden – in a pocket, in a sock, a shoe, or in underwear. There's no videotape to confirm their accounts, but they each said the police pulled the drugs out of his clothes before arresting him for having marijuana in public view. None of them had been buying their drugs outside. And none of them were carrying a weapon when they were stopped....

Antonio Rivera, 25, said he gets stopped by police up to five times a month. In January, he said he was stopped and frisked near the corner of E. 183rd Street and Creston Avenue in the Bronx. He was arrested for misdemeanor marijuana possession. Critics of the police say his case is an example of how officers may be conducting illegal searches when making marijuana arrests. Rivera said his marijuana was in his pants and that police pulled it out of his clothes after searching him without his consent. "So they checked my pockets, my coat pockets, and they patted my jean pockets," Rivera said, "and then once he felt the package I had in my crotch area, he went into my pants and he pulled it out."

Rivera had lodged a soft Ziploc bag of marijuana between his legs inside his pants while still in the room where he bought it. He said he never took the drugs out when he

went outside, but the police officer who arrested him told prosecutors Rivera was openly displaying his drugs.

In the criminal complaint against Rivera, the arresting officer stated that he "observed the defendant to have on his person, in his right hand 1 ziplock bag containing a dried-green leafy substance with the distinctive odor alleged to be marijuana in public view"....

Leo Henning, an African-American, said he was walking with a Ziploc bag of marijuana in his sock – under his foot – when two officers stopped him in March on a street corner in East Harlem. He had just bought the marijuana inside a warehouse several blocks away and had tucked the bag in his sock before he stepped outside, he said. Henning said one of the officers who stopped him placed his hands on him almost immediately.... "He went into my front right pocket. Then he went into my front left pocket," Henning said. "Then he went into my right back pocket. Then he went into my left pocket" Finding nothing, Henning said the officer stuck his fingers down Henning's left sock. "And then he switched over to my right sock," Henning said. "He stuck his hands in. His fingers was going under my foot inside my sock. That's when he felt it, I gather." At that point, the officer allegedly pulled out the bag of marijuana and arrested Henning for displaying marijuana "open to public view." Henning spent the night in jail.<sup>3</sup>

Below are three photographs of New York police officers reaching into people's pockets during a frisk. One we received from an extremely trustworthy source who witnessed the frisk in his Bedford Stuyvesant neighborhood and filmed it on his iPhone. The other two photos are from videos taken by Jazz Hayden, a long-time civil rights activist who posts photographs, videos and news stories about the police stops, frisks, and searches on his web site [www.allthingsharlem.com](http://www.allthingsharlem.com).

***Police with with a hand in a suspect's pocket. No arrests were made in these cases.***



1. Brooklyn - Bedford Styvesant, April 2011



2. Harlem on Broadway, April 2009



### 3. Harlem on Broadway, April 2009

Full video for #2 and #3 at:

<http://www.allthingsharlem.com/copwatch/2009/4/26/nypd-harassment-in-harlem-stop-and-frisk-kids-on-bench.html>

It is illegal and unconstitutional for police to reach inside of someone's pockets without prior "probable cause" to believe the person has contraband – meaning evidence sufficient to justify an arrest. As Ira Glasser, a constitutional expert and the former executive director of the American Civil Liberties Union, has explained:

"A full search, in which the person stopped is required to empty his pockets, or where an officer puts his hands in an individual's pockets or otherwise goes beyond the pat-down of outer clothing for the purposes of determining whether there is a weapon, requires probable cause – that is, enough evidence to justify an arrest."

As the U.S. Supreme Court established in *Terry v. Ohio* (1968), police officers may formally, officially stop and detain someone only when they have "reasonable suspicion" that something illegal or dangerous is going on that warrants further investigation. However, in order to conduct a frisk – what the Supreme Court called "a limited search of the outer clothing for weapons," especially a gun – the officer must have "reasonable suspicion" to believe that the person is armed and dangerous, posing a threat to the officer or others. But even this frisk, this pat down, this "limited search," is to be of only the "outer clothing," and there is no legal justification for reaching into someone's pockets or possessions unless the officer feels a weapon – and guns are relatively easy to feel.

"What Terry means, therefore, is that in the absence of probable cause – that is, in the absence of enough evidence to justify an arrest or a search warrant issued by a court – a police officer may frisk someone, once he has been legally and forcibly stopped, *only* if the officer has good and specific reasons to suspect a concealed weapon. What the officer may not legally do is frisk someone because he "suspects" a crime other than the possession of a concealed weapon. And he certainly may not legally frisk someone,

much less search their pockets, for a small amount of marijuana, which could not possibly be mistaken for a weapon, and which in any case is not a crime in New York if it remains concealed and weighs 25 grams or less." <sup>4</sup>

The second common way that police retrieve marijuana is that some individuals take out their marijuana and hand it over to the police. Few people do this without being asked or ordered. When we began our research on the marijuana arrests five years ago we had many reports from public defender and legal aid attorneys, and from people who had been stopped and searched, that police, in effect tricked people to empty their pockets or take out their marijuana.

Since Police Commissioner Kelly's order of September 11, 2011, it has become far more common to acknowledge that police officers, in Kelly's words, "*recover marihuana pursuant to a search of the subject's person or upon direction of the subject to surrender the contents of his/her pockets or other closed container.*"<sup>5</sup> Commissioner Kelly also referred to individuals who are "*requested or compelled*" by police officers to empty their pockets and reveal their marijuana. As Kelly's order acknowledged, police officers sometimes ask people to empty their pockets, but police also "*direct*" or "*compel*" people to do so.

In his press conference of June 4, 2012, Governor Cuomo also addressed this situation of police ordering people to turn out their pockets. The Governor said:

"I understand the intent of the law in 1977, and what Governor Carey was intending to do, and the legislature was intending to do. That is not [the] current effect of the law. There is a blatant inconsistency. If you possess marijuana privately, it's a violation; if you show it in public, it's a crime. It's incongruous; it's inconsistent the way it has been enforced. There have been additional complications in relation to the stop and frisk policy where there are claims that young people can have [a] small amount of marijuana in their pocket. During the stop and frisk the police officer says "turn out your pockets" and marijuana is now in public view. [The offense] Just went from [a] violation to a crime, to a possible misdemeanor."

Numerous newspaper and other media stories have also reported cases where people were told (or directed, ordered, commanded, instructed) to empty their pockets, to turn their pockets inside out.

Given that so much of the marijuana for the hundreds of thousands lowest-level possession arrests has been retrieved from people's pockets, it seems me and many of my colleagues that it is appropriate and necessary for the New York City Council to do do everything it possibly can to reduce and even eliminate police from conducting these unconstitutional searches on the streets and public spaces of New York City..<sup>6</sup>

The legislation proposed and under consideration, especially Int. No. 799, Int. No. 801, and Int. No. 881 would make a significant contribution to reducing these frankly disgraceful practices.

---

NOTES

<sup>1</sup> "Pot arrests Top 50K in 2011 Despite NYPD Order" by Jennifer Peltz, *Associated Press*, Feb 1, 2012 (over a hundred papers across the US carried this AP story)  
<http://news.yahoo.com/pot-arrests-top-50k-2011-despite-nypd-order-182052393.html>

<sup>2</sup> "Hypocritical NYPD Continues Racist Pot Arrest Crusade," By Steven Wishnia, *Alternet*, Dec 30, 2011  
<http://www.alternet.org/module/printversion/153617>

<sup>3</sup> "Alleged Illegal Searches by NYPD May Be Increasing Marijuana Arrests." by Ailsa Chang, *WNYC*. April 26, 2011 (excellent 10 minute radio show plus text)  
<http://www.wnyc.org/articles/wnyc-news/2011/apr/26/marijuana-arrests/>  
Also: "Alleged Illegal Searches By NYPD Rarely Challenged in Marijuana Cases." Ailsa Chang, *WNYC*., April 27, 2011 (excellent 8 minutes radio show plus text)  
<http://www.wnyc.org/articles/wnyc-news/2011/apr/27/alleged-illegal-searches/>

<sup>4</sup> Ira Glasser is the author of numerous works on the constitution including *Visions of Liberty: The Bill of Rights for All Americans* (New York:1991). The quotes are from a pamphlet written in direct response to the NYPD stop and frisks and marijuana arrests: *Stop, Question and Frisk: What the Law Says About Your Rights* (Drug Policy Alliance, 2011). At: <http://www.drugpolicy.org/resource/stop-question-and-frisk-what-law-says-about-your-rights>

<sup>5</sup> New York Police Department Operations Order: "Charging Standards For Possession Of Marihuana In A Public Place Open To Public View" By Direction Of The Police Commissioner, September 19, 2011  
On line here: <http://marijuana-arrests.com/docs/NYPD-ORDER-RE-MARIJUANA-ARRESTS-SEPT-19-2011.pdf>

<sup>6</sup> For a critical but neglected source of rich description about how NYPD narcotics police routinely made illegal searches and arrests in the 1980s and early 1990s, see Chapter 4, "Perjury and Falsifying Documents" (pages 36- 43 of: *The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, Commission Report*, July 1994. This is the report of the "Mollen Commission," appointed by Mayor Dinkins to investigate police corruption. Although much of the report focused on gangs of police who robbed drug dealers, one chapter focused on the most common and routine form of corruption which the Commission termed "Perjury and Falsifying" We have excerpted parts of that chapter describing the routine illegality that occurs when narcotics police seek to make drug arrests on the street. For those unfamiliar with its findings, or who wish to understand what narcotics policing has historically meant in New York City, it is an eye-opening work, available here: <http://marijuana-arrests.com/docs/Mollen-Excerpts-Falsification.pdf>

**Statement of Ramzi Kassem  
Associate Professor of Law  
Director, CLEAR—Creating Law Enforcement Accountability & Responsibility  
City University of New York School of Law**

before the

**New York City Council Committee on Public Safety**

concerning

**Statement in Support of the Community Safety Act  
(Int 0799-2012, Int 0800-2012, Int 0801-2012, Int 0881-2012)**

October 10, 2012

Chair Vallone and members of the Committee on Public Safety:

Thank you for offering me the opportunity to address some of the failures of the New York City Police Department and hopefully highlight the need for reform. I do so in my own name, on behalf of the CLEAR project, and in the name of the Muslim American Civil Liberties Coalition (MACLC), which CLEAR advises.

As the Associated Press confirmed in a Pulitzer Prize-winning series of exposés, the NYPD has been engaged in perhaps the largest spying program by a local law enforcement agency on record. It is a sprawling effort targeting entire Muslim communities for surveillance, mapping and infiltration that stretches from the heart of our city to the border of Canada—by way of Connecticut, New Jersey and Long Island. In the name of total security, the NYPD treated basic acts of daily living as potential crimes, disregarding privacy and the freedoms of speech and religion.

To accomplish this, the NYPD first weakened the applicable legal restrictions that prevented it from spying on protected activity absent a connection to crime. It then unleashed its CIA-inspired Intelligence Division on unsuspecting American Muslim communities. The program's founders found the ideological underpinnings and guiding principles they needed in "radicalization theory," a deeply flawed doctrine positing the existence of a conveyor belt relationship between increased religiosity and violent action.

According to that theory, New Yorkers "from all walks of life" are potential radicals, including "university students, engineers, business owners, teachers, lawyers, cab drivers [and] construction workers." No suspicion of actual criminal activity is needed. The NYPD even identified "signature" phases in the so-called radicalization process, all of which overlap with benign indicators of increased religious and political

awareness. Among these are “giving up cigarettes, drinking, gambling,” “growing a beard,” or “becoming involved in social activism and community issues.”

Experts pointed out that the general theory lacked both empirical and social science support, and that the NYPD was favoring sweeping generalizations that stigmatized entire communities without specific evidence or suspicion. But none of this seemed to matter to the NYPD.

For all the novelty of radicalization theory, the NYPD was in many ways primed for it. Long before the “war on terror” there was the war on crime and with it came stop-and-frisk, a profiling model applied almost exclusively to communities of color.

Similarities abound between covert NYPD spying on Muslims and stop-and-frisk. Just as Muslim mapping stems from roots in radicalization theory, the stop-and-frisk program grew out of the “broken windows” theory—the idea that constant policing of low-level disorder deters serious criminal activity. And like radicalization theory, “broken windows” has been empirically challenged by social scientists and other experts.

As applied, both theories result in the discriminatory over-policing of minority communities. And despite their evident deficiencies, both theories have flourished under Police Commissioner Ray Kelly.

While stop-and-frisk is a visible practice and the NYPD’s Muslim mapping program is covert, the two are kindred exercises in supposedly preventive but fundamentally crude profiling. Black and Latino neighborhoods where street stops are most common are predominantly classified as “high-crime areas” in police reports, irrespective of the actual crime rate. Similarly, Muslim areas seem to have been assessed as high terrorism risk zones by the authorities, warranting indiscriminate surveillance. And many communities in New York must contend with both stop-and-frisk and surveillance. As an African-American friend who is also Muslim remarked, “It’s like being black twice.”

Many of our clients at CLEAR seek legal representation in connection with questioning and surveillance by the NYPD Intelligence Division. Muslim New Yorkers who find themselves in the cross-hairs of the NYPD are trapped in an inescapable, reductive binary: they are potential informants or possible terrorists. Either way they are targets, be it for cultivation or surveillance.

For innocent clients of CLEAR caught in the NYPD’s intelligence dragnet, as well as Muslim communities in our city more broadly, the effects have been devastating. Imams are reluctant to counsel congregants, fearing they may be informants; community members’ ties to local police precincts are vitiated, undermining communication on matters of daily concern like street crime; parents tell their children not to be active in Muslim Student Associations to avoid police monitoring; and fear and paranoia deter people in affected communities from discussing current events.

The excesses of the NYPD must be checked. A broad coalition of organizations that transcends ethnic or religious differences, including the Communities United for Police

Reform campaign, is present today to demand the prohibition of racial and religious profiling and the appointment of an inspector general to oversee NYPD policies.

Together, these New Yorkers can not only make Stop-and-Frisk, Muslim mapping and other expressions of bias-based policing unlawful—they are making them politically untenable, too.

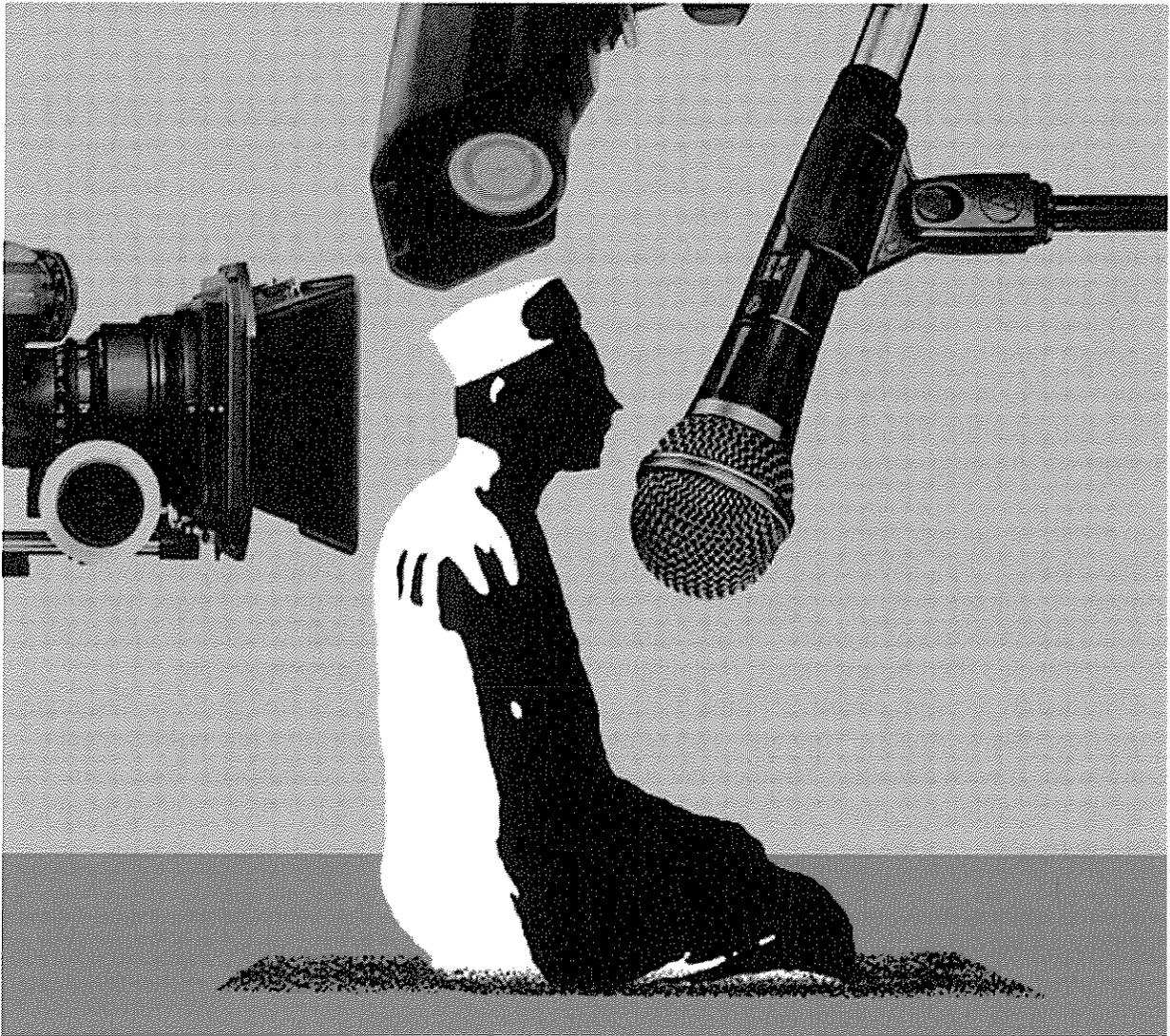
Thank you.

# THE Nation.

---

## The Long Roots of the NYPD Spying Program

Ramzi Kassem | June 13, 2012



*TIM ROBINSON*

The stories are as remarkable for their banality as for their detail.

On February 8, 2006, the imam at a Bronx mosque advised congregants to boycott Danish products in response to caricatures of the Prophet Muhammad published by a Danish newspaper. In November 2006, a member of the Muslim Students Association at the state university in Buffalo forwarded an e-mail to a Yahoo chat group advertising a conference featuring various Muslim scholars. And in April 2008, college students on a rafting trip discussed religion and prayed “at least four times a day.”

What the imam and students didn't know was that members of the New York Police Department Intelligence Division were spying on them and recording their names and actions in secret reports forwarded to Police Commissioner Raymond Kelly. None of these people had done anything wrong or even suspect: they were simply Muslims practicing their constitutionally protected freedoms of religious belief and speech. But for today's police, that was enough to earn them a place in the department's secret counterterrorism database.

As the Associated Press revealed in a Pulitzer Prize-winning series of exposés, the New York Police Department has been engaged in a vast domestic spying operation targeting Muslims for surveillance, mapping and infiltration. Stretching from the heart of New York City to the border of Canada—by way of Connecticut, New Jersey and Long Island—the program is as massive in scope as it is in ambition. In the name of total security, the NYPD treated basic acts of daily living as potential crimes, disregarding privacy and the freedom of speech and religion. Traditional barriers between foreign and domestic spying were partially collapsed. And the “war on terror” took lessons from the war on crime. In the process, the NYPD created perhaps the largest spying program by a local law enforcement agency on record—a sprawling effort to map entire communities that emerged from the toxic convergence of the permanent state of emergency gripping our society since 9/11 with the NYPD's historic propensities.

The details of the operation are stunning. From an office at the edge of Brooklyn, a secret Demographics Unit dispatched “mosque crawlers” (informants) and “rakers” (undercover police officers) to engage in the “human mapping” of mosques, cafes, bookstores and other hangouts within “communities of interest.” These communities consisted—or still consist, as officials have not denied that the program is ongoing—of people with roots in twenty-eight predominantly Muslim countries (think Syria, Egypt, Iran and so on) as well as those designated “American Black Muslim.” Imams—including those reputed to be close to law enforcement—came in for special attention, but the truth is that no one was exempt. Cabdrivers, food-cart vendors and college students were all fair game, and not a single detail of their lives seemed too small to record.

“A Black Muslim male named Mussa was working in the rear of [the] store,” reported one covert operative canvassing Long Island businesses. Another sleuth saw fit to report—without a hint of irony—that the Al Jazeera news network wasn't being shown at a Brooklyn tea room “because the owner feels it brings about extra scrutiny from law enforcement.”

Of course, the leaked NYPD files paint only a partial portrait. Guessing at the surveillance program's full contours requires relying on anecdotal evidence gleaned from the accounts of

targeted people. Since 2009 I have supervised the Creating Law Enforcement Accountability & Responsibility (CLEAR) project at the CUNY School of Law, and during this time my students, colleagues and I have represented many members of New York's Muslim communities whom the NYPD Intelligence Division approached for gratuitous questioning unrelated to any crime. Our clients were interrogated about articles posted online and downloaded content; they were even asked their opinions regarding the Arab Spring. In the majority of our cases, as soon as CLEAR intervened with the authorities, the attempts at questioning ceased, further suggesting that the NYPD was on a massive fishing expedition, unmoored from any nexus of concrete criminal activity.

### **The 'War on Terror,' New York Style**

To understand how the NYPD came to create this brave new police order, it's necessary to untangle some of the many influences that went into creating it—beginning with Ray Kelly's dream of a Langley on the Hudson.

Throughout much of the twentieth century, the NYPD ran aggressive spy operations. Anarchists, communists, labor organizers, civil rights organizations and various ethnic groups were all monitored by a succession of "Red Squads." But in the decades immediately before 9/11, the department had largely retreated from the spy business. So when Kelly took office several months after the attacks, he saw one of his first tasks as developing a spy program that would rival the US government's efforts. "The city could not simply defer the responsibility of counterterrorism to the federal government," he explained in a recent speech.

As part of this lone-wolf effort, Kelly hired David Cohen, a veteran CIA heavyweight, to head the NYPD Intelligence Division. In a book written about the division, Cohen compared that initial phase to "starting the CIA over in the post-9/11 world."

But first Cohen had to get rid of a longstanding consent decree that had restrained the NYPD's spying efforts for nearly twenty years. In 1971 a coalition of activist groups had filed a federal lawsuit, *Handschu v. Special Services Division*, challenging the NYPD's overzealous surveillance of political activism and the compilation of police files on outspoken citizens with radical (often left-wing) beliefs. The resulting Handschu Guidelines, which were formalized in 1985, limited the NYPD's ability to spy on activists in the absence of specific information that criminal conduct was afoot. These strictures were widely seen as important bulwarks against improper police interference with political activism.

A day after the first anniversary of the 9/11 attacks, Cohen submitted a sworn declaration to the federal court in New York that oversaw implementation of the guidelines, stating that "the counterproductive restrictions imposed on the NYPD by the Handschu Guidelines in this changed world hamper our efforts every day," making it "virtually impossible to detect plans for attack" and placing "this City, our nation and its people at heightened and unjustifiable risk." The court agreed to pare down the restrictions, most significantly eliminating the criminal activity requirement.

With the Handschu agreement out of the way, Cohen went about creating an intelligence division modeled on his CIA experience. He recruited another veteran spook, Larry Sanchez, who helped design the sprawling NYPD surveillance program while still on the CIA's payroll. Since then, at least one NYPD detective has taken the "tradecraft" course offered to all clandestine agents training at the Farm, the CIA's spy academy, while a seasoned CIA operative was embedded with the NYPD.

This intimacy between a local police force and America's principal overseas intelligence agency is unprecedented and alarming. Because of past excesses, the CIA is generally precluded from domestic spying by presidential order and can only provide expert personnel or assistance to support local law enforcement agencies with the approval of its own top lawyer. No such authorization was granted for its operatives' work with the NYPD, and the leaked documents indicated that CIA elements may have ignored restrictions on the domestic collection of intelligence.

The resulting NYPD spying venture had a distinctly hybrid quality, applying methods intended for overseas use domestically. It also harked back to the counterinsurgency strategies deployed in the war zones of Afghanistan and Iraq, where the US military canvasses residents' opinions while collecting photographs and fingerprints, under the rubric of "human terrain mapping." No less disturbing: according to a former police official quoted by the Associated Press, the NYPD approach was partly modeled on how Israeli authorities operate in the Occupied Palestinian Territories, casting the NYPD in the role of brutal occupying force—and the areas where American Muslims live as occupied foreign territory.

### **Tarot Card Policing**

With the applicable legal structures weakened and the CIA-inspired infrastructure in place, the program's founders needed firm ideological underpinnings, a set of guiding principles. They found these in "radicalization theory," a doctrine popular in federal policy-making circles despite considerable empirical flaws.

Radicalization theory draws much of its vigor from the collective trauma of 9/11, which made plausible the notion of a constant, omnipresent, almost supernatural threat. In turn, this made mythical prospects of total security particularly appealing to officials and the public alike. The distortion of policy-making through a total security prism—a phenomenon I call "9/11 warping"—can be observed both in the altered functioning of already existing systems (such as the imposition of cruel pretrial and post-conviction conditions of confinement in terrorism cases) and in the creation of new systems (such as military commissions, the prisons at Guantánamo Bay and Bagram, and the infamous CIA black sites).

Another major expression of 9/11 warping can be found in the national shift toward a sharply preventive law enforcement paradigm, supplanting the conventional, mostly retrospective model. Cohen had declared to the court that "in the case of terrorism, to wait for an indication of crime before investigating is to wait far too long." In its quest for precursor conduct and predictive models, the NYPD naturally embraced radicalization theory, even issuing a report,

“Radicalization in the West,” in 2007 that posited the existence of a conveyor belt relationship between increased religiosity and violent action.

According to that report, “the City’s Muslim communities have been permeated by extremists who have and continue to sow the seeds of radicalization.” New Yorkers “from all walks of life” are potential radicals, including “university students, engineers, business owners, teachers, lawyers, cab drivers [and] construction workers.” The NYPD identified four phases in the radicalization process, all with their own “specific signatures.” However, these signatures often overlap with benign indicators of increased religious and political awareness, such as “giving up cigarettes, drinking, gambling and urban hip-hop gangster clothes,” “growing a beard,” or “becoming involved in social activism and community issues.”

The NYPD’s resulting tarot card police strategy sought out the signs and symbols of radicalization with the intention of taking “pre-emptive” measures to prevent future crimes. That this “preventive” policing doctrine became popular at the same time that George W. Bush’s “pre-emptive war” doctrine dominated the foreign policy conversations hardly seems accidental.

Civic groups such as the Muslim American Civil Liberties Coalition roundly condemned the NYPD’s approach. Experts pointed out that the general theory lacked both empirical and social science support, while the NYPD report relied on news articles instead of scholarship or representative data and favored sweeping generalizations that stigmatized entire communities. Indeed, major academic studies on the topic arrived at conclusions almost diametrically opposed to the NYPD’s. In “Rethinking Radicalization,” analysts at the Brennan Center for Justice pointed out that it is “simply not possible to identify ‘markers’ of radicalization...that allow early identification of would-be terrorists.” Moreover, they stressed that “the claim that religiosity is linked to a propensity for terrorism” is empirically invalid.

But none of this seemed to matter to the NYPD. Bad religion though it may be, radicalization theory nonetheless provided a useful blueprint and rationale for police spying on American Muslims.

### **Echoes of the War on Crime**

For all the novelty of radicalization theory, the NYPD was in many ways primed for it. Long before the “war on terror” there was the war on crime, which reached its apogee under Mayor Rudolph Giuliani. A former prosecutor with a sheriff complex, Giuliani grew the already massive NYPD into a small army of roughly 40,000 officers. (Chicago was a distant second, with only 13,000.) Along the way, he and his police chiefs implemented a number of controversial tactics that disproportionately affected black and Latino New Yorkers and erupted in high-profile abuses, such as the torture of Abner Louima in 1997 and the killing of Amadou Diallo in 1999.

Among the flagship programs of the Giuliani crime-fighting era was stop-and-frisk, a profiling model applied almost exclusively to communities of color. Generally, a police officer may stop, question and sometimes frisk a citizen if there is an articulable, reasonable suspicion of criminal

activity. Since Giuliani's time, however, the "reasonable suspicion" requirement has typically come down to ethnicity and skin color.

Similarities abound between covert NYPD spying on Muslims and stop-and-frisk. Just as Muslim mapping stems from roots in radicalization theory, the stop-and-frisk program grew out of the "broken windows" theory—the idea that constant policing of low-level disorder deters serious criminal activity. And like radicalization theory, "broken windows" has been empirically challenged by social scientists and other experts, who have faulted its champions for mistaking a correlation between disorder and crime for a causal relationship.

As applied, both theories result in the discriminatory over-policing of minority communities. And despite their evident deficiencies, both theories have flourished under Kelly, who significantly ramped up the stop-and-frisk regime. Thanks to a lawsuit challenging stop-and-frisk, we now know that NYPD officers conducted 2.8 million street stops between 2004 and 2009. In 2011 alone, the number reached 684,000, and in the first three months of 2012, police stopped 11 percent more people than in the previous year's corresponding trimester. Blacks and Latinos represented 87 percent of those stopped in 2011, though close to 90 percent of these stops resulted in no arrest or summons whatsoever.

While stop-and-frisk is a visible practice and the NYPD's Muslim mapping program is covert, the two are kindred exercises in putatively preventive but fundamentally crude profiling. Black and Latino neighborhoods where street stops are most common are predominantly classified as "high-crime areas" in police reports, irrespective of the actual crime rate. Similarly, Muslim areas seem to have been assessed as high terrorism risk zones by the authorities, warranting indiscriminate surveillance. Kelly himself recently drew the parallel between the NYPD's counterterrorism methods and those used "to arrest drug dealers, human traffickers and gang leaders," apparently equating entire American Muslim communities with organized criminal gangs. And many communities in New York must contend with both stop-and-frisk and surveillance. As an African-American friend who is also Muslim remarked, "It's like being black twice."

### **Fallout and Fight-Back**

Unusual though they may be for local police, the NYPD's tactics are not unique. The majority of our clients at CLEAR seek legal representation in connection with questioning and surveillance by the Federal Bureau of Investigation. Despite White House statements that domestic counterterrorism policy is premised on empowering local partners, our clients typically feel neither empowered nor treated as partners in these interactions. Whether they find themselves in the cross-hairs of the NYPD or the FBI, American Muslims are trapped in an inescapable, reductive binary: they are potential informants or possible terrorists. Either way they are targets, be it for cultivation or surveillance.

For clients of CLEAR caught in the NYPD's intelligence dragnet, as well as Muslim communities more broadly, the effects have been devastating. Imams are reluctant to counsel congregants, fearing they may be informants; community members' ties to local police precincts are vitiated, undermining communication on matters of daily concern like street crime; parents

tell their children not to be active in Muslim Student Associations to avoid police monitoring; and fear and paranoia deter people in affected communities from discussing current events. Repeated harassment by Intelligence Division detectives, compounded by the confirmation of pervasive NYPD surveillance of entire communities, even led one client recently to consider returning with his family to their country of origin or relocating to Canada.

The NYPD spying program sends an unambiguous message to American Muslims that they are potentially subject to secret government surveillance at any time. It validates discrimination in the public eye and as a policy option, setting the stage for hate crimes and paving the path to a proliferation of copy-cat approaches by other police departments nationwide. The expansion of such methods to other demographics is not only assured but well under way, with leaked documents confirming NYPD spying on progressive and antiwar groups.

For these reasons, the excesses of the NYPD must be checked. Its prestige and influence are such that its methods—and New Yorkers' response to them—will be tracked and emulated elsewhere. Restoring and strengthening the original Handschu Guidelines governing NYPD monitoring of political activity, including the criminal activity requirement, would be an important step. Another would be challenging the surveillance program in court, which is already in progress.

But litigation is slow and laborious, and most effective as part of a broader social movement calling for change. In New York City, efforts are under way to institute reliable oversight structures and promote legislation that would end stop-and-frisk and surveillance abuses. A broad coalition of organizations, including the Communities United for Police Reform campaign, is pressing for the appointment of an inspector general to oversee NYPD policies as well as for the passage of a municipal law that would clearly declare religious and racial profiling unlawful.

The NYPD's wager is that American Muslims are incapable of effective civic mobilization and that few other Americans will care about their plight. Therein lies the silver lining. By stirring up previously dormant or politically disenfranchised communities, the confirmation of NYPD spying has spurred the creation of coalitions that transcend ethnic or religious differences. Together, these New Yorkers can not only make Muslim mapping and other expressions of profiling unlawful—they can make them politically untenable, too.

## HUMAN RIGHTS WATCH

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300  
Fax: 917-591-3452

Kenneth Roth, *Executive Director*  
Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*  
Carroll Bogert, *Deputy Executive Director, External Relations*  
Jan Egeland, *Europe Director and Deputy Executive Director*  
Iain Levine, *Deputy Executive Director, Program*  
Chuck Lustig, *Deputy Executive Director, Operations*

Walid Ayoub, *Information Technology Director*  
Emma Daly, *Communications Director*  
Barbara Guglielmo, *Finance and Administration Director*  
Peggy Hicks, *Global Advocacy Director*  
Babatunde Olujobi, *Deputy Program Director*  
Dinah Pokempner, *General Counsel*  
Tom Porteous, *Deputy Program Director*  
James Ross, *Legal and Policy Director*  
Joe Saunders, *Deputy Program Director*  
Frances Sinha, *Human Resources Director*

### PROGRAM DIRECTORS

Brad Adams, *Asia*  
Joseph Amon, *Health and Human Rights*  
Daniel Bekele, *Africa*  
John Blagg, *International Film Festival*  
Peter Bouckaert, *Emergencies*  
Richard Dicker, *International Justice*  
Bill Frelick, *Refugee Policy*  
Arvind Ganesan, *Business and Human Rights*  
Liesel Gemholtz, *Women's Rights*  
Steve Goose, *Arms*  
Allison Parker, *United States*  
Graeme Reid, *Lesbian, Gay, Bisexual and Transgender Rights*  
José Miguel Vivanco, *Americas*  
Lois Whitman, *Children's Rights*  
Sarah Leah Whitson, *Middle East and North Africa*  
Hugh Williamson, *Europe and Central Asia*

### ADVOCACY DIRECTORS

Philippe Belpion, *United Nations*  
Kanae Doi, *Japan*  
Jean-Marie Fardeau, *France*  
Meenakshi Ganguly, *South Asia*  
Lotte Leicht, *European Union*  
Tom Malinowski, *Washington DC*  
David Mepham, *United Kingdom*  
Wenzel Michalski, *Germany*  
Juliette de Rivero, *Geneva*

### BOARD OF DIRECTORS

James F. Hoge, Jr., *Chair*  
Susan Manlow, *Vice-Chair*  
Joel Molloy, *Vice-Chair*  
Sid Sheinberg, *Vice-Chair*  
John J. Studzinski, *Vice-Chair*  
Hassan Elmasry, *Treasurer*  
Bruce Rabb, *Secretary*  
Karen Ackman  
Jorge Castañeda  
Tony Elliott  
Michael G. Fisch  
Michael E. Gellert  
Hina Jilani  
Betsy Karel  
Wendy Keys  
Robert Kissane  
Oki Matsumoto  
Barry Meyer  
Pat Mitchell  
Aolfe O'Brien  
Joan R. Platt  
Amy Rao  
Neil Ringer  
Victoria Riskin  
Amy L. Robbins  
Shelley Rubin  
Kevin P. Ryan  
Jean-Louis Servan-Schreiber  
Iavier Solana  
Siri Stolt-Nielsen  
Jarlan W. Swig  
ohn R. Taylor  
Marie Warburg  
Catherine Zennaro

Robert L. Bernstein, *Founding Chair, (1979-1997)*  
Jonathan F. Fanton, *Chair (1998-2003)*  
Sue Olson, *Chair (2004-2010)*

New York City Council  
250 Broadway  
New York, NY 10007

October 10, 2012

To the City Council:

Human Rights Watch submits this testimony in support of the Community Safety Act (Int. Nos. 799-801 and 881), which would both ban profiling by police based on race, color, ethnicity, religion, national origin, age, sex, gender identity or expression, sexual orientation, immigration or citizenship status, language, disability (including HIV status), housing status, occupation or socioeconomic status (Int. No. 800) and place on New York City police officers an affirmative obligation to explain to New Yorkers that they have the right to refuse consent to a search, absent a warrant or probable cause (Int. No. 799).<sup>i</sup> Amendment of the existing law is essential to promoting public health and human rights. We believe that this law is essential to protecting the rights, among others, of lesbian, gay, bisexual and transgender (LGBT) persons who are profiled as sex workers and subjected to abusive practices, such as police confiscating their condoms as evidence of supposed criminal activity.

Human Rights Watch is an independent non-governmental organization that conducts monitoring, reporting, and advocacy on human rights issues in nearly 90 countries worldwide. Human Rights Watch has published numerous reports on barriers to effective HIV prevention in vulnerable populations including prisoners, drug users, sex workers, youth, and LGBT populations.

Over the past year, Human Rights Watch has been conducting research in New York City on the existence and effects of a practice of police seizure of condoms as evidence of prostitution-related offenses, and introduction of condoms as evidence of prostitution-related offenses in criminal proceedings. In July 2012, Human Rights Watch released a 112-page report documenting the use of condoms as evidence of prostitution in New York and three other major US cities.<sup>ii</sup> Human Rights Watch's research involved over 125 interviews with sex workers, outreach workers, sex worker advocates, public defenders, and law enforcement officials in New York City. The report also documented the experience of LGBT youth in relation to police confiscation of condoms as evidence of prostitution.

Our research indicated that police stop and search practices directed toward prostitution enforcement often fail to comply with civil and human rights standards. Sex workers, transgender women and LGBT youth described being subjected to "profiling" practices inconsistent with their right to liberty and security of the person. Most of these stops are not reflected in New York City Police Department (NYPD) records of "Terry stops" based on reasonable suspicion of criminal activity, which are the usual "stop and frisks" for which statistics are reported. However, these are populations whose experiences deserve attention and redress from the New York City Council as it considers the Community Safety Act. If the Community Safety Act is passed, it would

HUMAN  
RIGHTS  
WATCH

www.hrw.org

help to ensure that stops are not based on profiling but on criminal activity, and would also permit New Yorkers to decline searches that do not advance public safety or health, such as those that target condoms as indication of criminal acts, where such searches are not based on probable cause to believe a crime was being committed.

### **Public Health Consequences of the Use of Condoms as Evidence**

New York City is the epicenter of the AIDS epidemic in the United States, with more than 110,000 people living with HIV and an AIDS case rate that is three times the national average. A recent study in New York City among people who exchange sex for money or other goods (a category broader than those who self-identify as sex workers<sup>iii</sup>) found that 14 percent of the men and 10 percent of the women were HIV-positive.<sup>iv</sup> This is dramatically higher than the 1.4 percent HIV prevalence in New York City generally and the 0.6 percent prevalence in the United States overall.<sup>v</sup>

New York State and City have devoted enormous resources to curbing the HIV epidemic, targeting prevention efforts to many of these vulnerable populations. A cornerstone of these prevention efforts is promoting universal access to condoms. The New York City Department of Health and Mental Hygiene expanded an already-existing condom distribution program in the mid-1980s in response to the AIDS crisis, and in 2007 launched the New York City Condom Campaign, the first condom to be branded by a municipality in the United States. New York City currently distributes more than 40 million free condoms annually.<sup>vi</sup>

Yet the NYPD makes condom possession an indicator of criminal activity, undermining these public health efforts. Sex workers in Manhattan, Queens, Brooklyn, and the Bronx told Human Rights Watch that they were frequently stopped by police and searched. It is in the course of these searches that police recover condoms from sex workers and catalogue the condoms as evidence. Tanya B., a Latina transgender sex worker in Queens, told Human Rights Watch,

I was stopped and threatened. The cops said ‘empty your purse.’ I cleared out everything but left the condoms at the bottom—I got caught. They said ‘how come you didn’t pull out the condoms? I can arrest you because of this.’ I said ‘it’s not a problem, I have no weapons, no drugs,’ and the police officer said ‘next time I will arrest you because this is evidence you are a prostitute.’<sup>vii</sup>

In Brooklyn criminal courts “condoms” are one item listed as an option as “additional evidence of prostitution” on forms filled out by police officers in support of prostitution and loitering charges. On forms used in Manhattan criminal court, officers have added condoms to the narrative as “additional evidence” to support prostitution charges.

Among some sex workers, the practice of condoms being seized as evidence has caused them to fear carrying condoms to the point where they carry only a few, or none at all. Mona M. sits in a neighborhood restaurant at a regular time so that she can provide condoms to women who are afraid to carry condoms when they are working:

The majority have fear, they don’t carry condoms.... I’m an outreach worker. They know Mona will be in the cafe. They will only come when they have a client, get one condom, then leave with the client. For me it’s a risk to have the condoms in my purse. But I’ve worked as an outreach worker, and I feel

obligated to carry condoms because if someone comes up and asks me, and I don't have one, what are they going to do?<sup>viii</sup>

While some women told Human Rights Watch that they continued to carry and use condoms despite the possible consequences, others said that fear of arrest overwhelms their need to protect themselves from HIV and they therefore engage in unprotected sex while working.

As Anastasia L., a transgender woman from Mexico who did sex work in Queens until 2007, said,

If I took a lot of condoms, they would arrest me. If I took few or only one, I would run out and not be able to protect myself. How many times have I had unprotected sex because I was afraid of carrying condoms? Many times.<sup>ix</sup>

### **Police Stops and “Profiling”**

Testimony provided to Human Rights Watch from transgender women and LGBT youth indicated that police stops and searches on suspicion of prostitution are often a result of profiling, a practice of targeting individuals as suspected offenders for who they are, what they are wearing, and where they are standing, rather than on the basis of any observed illegal activity.

In New York, many people, particularly members of the transgender community, told Human Rights Watch they were stopped and searched for condoms while walking home from school, going to the grocery store, and waiting for the bus. The broadly drafted law prohibiting loitering for the purposes of prostitution invites stops based on “profiling” and Human Rights Watch has recommended its repeal.<sup>x</sup> Factors that lead to being targeted by police include appearance, being known to officers as a sex worker, being in an area “known” for prostitution activity, and other factors unrelated to present engagement in criminal activity. Members of the Queens Latina transgender community, in particular, experienced being stopped and searched by the police on suspicion of prostitution while walking in their own neighborhoods.

Many of the women with whom we spoke did not fully understand their rights in relation to a police search after a stop, and described simply handing over their purse to the police when asked for it. Alexa L., a transgender woman from Mexico living in Queens, said,

Eight days ago I wasn't working because I was sick. I left my house to get a coffee, and had two condoms in my pocket. The police stopped me and said ‘what are you doing?’ I said I was getting coffee. They searched me and found two condoms. They asked ‘what are you doing with two condoms, what are they for?’ I said they were for protection. They took the condoms. I couldn't get coffee, I was so scared. I felt very bad. I'm not a delinquent, I didn't steal. When they searched me and found them, I was shaking, I was so scared.<sup>xi</sup>

The Latino Commission on AIDS has identified profiling of Latina transgender women in Queens as a major problem:

The false arrest is mainly on loitering charges, including loitering for prostitution. It ends up boiling down to being a trans woman in a place where known sex work is happening... These are places where prostitution happens, but they are also places where people socialize.<sup>xiii</sup>

## **Stops of Alleged Sex Workers and LGBT People Not Fully Reflected in “Stop and Frisk” Statistics**

Much of the criticism of “stop and frisk” practices has focused appropriately on the disproportionate impact of these practices on black and Latino men, who are its primary targets. In New York City, however, other populations also feel the effects of police stops that are of questionable legitimacy under civil and human rights standards. The majority of these stops are not recorded by NYPD as “stop and frisks” and thus not reflected in the “stop and frisk” statistics.

The US Constitution and New York State Law permit an officer to stop an individual temporarily if the officer has reasonable suspicion that the individual is committing or has committed a crime, and to frisk the individual for a weapon if the officer reasonably suspects that he is in danger of physical injury.<sup>xiii</sup> Police stops under this standard (*Terry*) are recorded, and in 2011, there were 161 of these stops for loitering (a category including but not limited to loitering for the purposes of prostitution) and 1,208 for prostitution.<sup>xiv</sup>

These statistics do not include all prostitution-related stops, as they exclude those that were not based on reasonable suspicion, those in which the search was categorized as voluntary or otherwise not appropriate for the UF-250 recording form, or because they were simply not documented when they should have been. For these stops not recorded on the UF-250 form and in the “stop and frisk” statistics, it is unclear how many annual stops by the NYPD are conducted related to prostitution, because it is not clear how or even whether these types of stops are recorded.

The number of arrests on these charges suggest that the number of prostitution-related stops are significantly higher than those recorded as *Terry* stops. From January through November 2011 the NYPD made 4,054 arrests for prostitution-related offenses.<sup>xv</sup> This included 1,899 prostitution cases (targeting the alleged provider of sex). Six hundred and nineteen arrests were made for “loitering for the purpose of engaging in a prostitution offense.”<sup>xvi</sup>

In addition, many of the neighborhoods where stops and frisks occur on a regular basis are the same neighborhoods where sex workers are frequently stopped. Jackson Heights, Queens, for example, the location of much of the police activity targeted to Latina transgender women documented in our research, has the third-highest rate of stops and frisks in the city.<sup>xvii</sup>

Human Rights Watch is currently attempting to identify the number of stops and searches conducted for prostitution-related offenses and has repeatedly asked to meet with the NYPD to discuss these and other issues related to the use of condom possession as evidence of prostitution. To date, the NYPD has declined these requests.<sup>xviii</sup>

## **Conclusion**

Much of the criticism of “stop and frisk” practices has focused appropriately on the disproportionate impact of these practices on black and Latino men, who are its primary targets. In New York City, however, other populations also feel the effects of police stops that raise questions of compliance with civil and human rights standards. Sex workers, transgender women, and LGBT youth described being subjected to “profiling” practices inconsistent with their right to liberty and security of the person. Most of these stops are not reflected in NYPD records as “*Terry* stops” or “stop and frisks” and indeed, may not be recorded at all. However, these are also New York residents whose experiences deserve attention and redress from the New York City Council as it considers the Community Safety Act. If the Community Safety Act is passed, it would help to ensure that stops are not based on profiling but on criminal activity. It would

furthermore permit New Yorkers to resist and decline searches that do not advance public safety or health, such as those that target condoms as indication of criminal acts.

Respectfully submitted,



Katherine Todrys, JD  
Researcher  
Health and Human Rights Division  
Human Rights Watch  
todrysk@hrw.org



Rebecca Schleifer JD, MPH  
Advocacy Director  
Health and Human Rights Division  
Human Rights Watch

---

<sup>i</sup> "Requiring Law Enforcement Officers to Provide Notice and Obtain Proof of Consent to Search Individuals," Int. No. 0799-2012; "Prohibiting Bias-Based Profiling by Law Enforcement Officers," Int. No. 0800-2012; "Requiring Law Enforcement Officers to Identify Themselves to the Public," Int. No. 0801-2012; "Establishing an Office of the Inspector General for the NYPD," Int. No. 0881-2012.

<sup>ii</sup> Human Rights Watch, "Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities," July 2012., <http://www.hrw.org/reports/2012/07/19/sex-workers-risk-0>

<sup>iii</sup> Samuel M. Jenness et al., "Patterns of Exchange Sex and HIV Infection in High-Risk Heterosexual Men and Women," *Journal of Urban Health*, vol. 88, no. 2 (2011), pp. 329-341. Jenness stated, "commercial sex work is a sub-category of exchange or transactional sex, defined as the trading of sex for material goods," p. 329.

<sup>iv</sup> *Ibid.*, p. 338.

<sup>v</sup> New York City Department of Health and Mental Hygiene, New York City HIV/AIDS Surveillance Slide Sets, March 2012.

<sup>vi</sup> New York City Department of Health and Mental Hygiene, "New York City Condoms," <http://www.nyc.gov/html/doh/html/condoms/condoms.shtml> (accessed April 11, 2012.)

<sup>vii</sup> Human Rights Watch interview with Tanya B., New York City, December 9, 2011. Pseudonyms are used in this report for the sex workers interviewed, in order to protect confidentiality.

<sup>viii</sup> Human Rights Watch interview with Mona M., New York City, February 9, 2012.

<sup>ix</sup> Human Rights Watch interview with Anastasia L., New York City, March 22, 2012.

<sup>x</sup> New York Penal Law, sec. 240.37.

<sup>xi</sup> Human Rights Watch interview with Alexa L., New York City, December 9, 2011.

<sup>xii</sup> Human Rights Watch interview with Juan David Gastolomendo, Latino Commission on AIDS, Queens, New York, November 23, 2011.

<sup>xiii</sup> *Terry v. Ohio*, United States Supreme Court, 392 US 1 (1968); *People v. Debour*, New York Court of Appeals, 40 NY 2d 210 (1076); New York Criminal Procedure Law, sec. 140.50.

<sup>xiv</sup> New York Civil Liberties Union Stop and Frisk database, <http://www.nyclu.org/content/stop-and-frisk-database> (accessed May 7, 2012).

<sup>xv</sup> New York Department of Criminal Justice Statistics, "Prostitution-Related Arrests in New York City," through November 22, 2011.

<sup>xvi</sup> *Ibid.*

<sup>xvii</sup> New York Civil Liberties Union Stop and Frisk database, <http://www.nyclu.org/content/stop-and-frisk-database> (accessed May 7, 2012).

<sup>xviii</sup> Human Rights Watch telephone communication with Cesar Bonila, administrative sergeant, New York City Police Commissioner's Office, April 19, 2012; Email to Human Rights Watch from Cesar Bonilla, administrative sergeant, New York City Police Department, September 28, 2012.



N  
S  
H

# Sex Workers at Risk

Condoms as Evidence of Prostitution in Four US Cities

SUMMARY AND RECOMMENDATIONS

HUMAN  
RIGHTS  
WATCH

## **Sex Workers at Risk**

Condoms as Evidence of Prostitution in Four US Cities

Copyright © 2012 Human Rights Watch

All rights reserved.

Printed in the United States of America

Cover design by Rafael Jimenez

Human Rights Watch is dedicated to protecting the human rights of people around the world. We stand with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. We investigate and expose human rights violations and hold abusers accountable. We challenge governments and those who hold power to end abusive practices and respect international human rights law. We enlist the public and the international community to support the cause of human rights for all.

Human Rights Watch is an international organization with staff in more than 40 countries, and offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Goma, Johannesburg, London, Los Angeles, Moscow, Nairobi, New York, Paris, San Francisco, Tokyo, Toronto, Tunis, Washington DC, and Zurich.

For more information, please visit our website: <http://www.hrw.org>

## Summary

If I took a lot of condoms, they would arrest me. If I took a few or only one, I would run out and not be able to protect myself. How many times have I had unprotected sex because I was afraid of carrying condoms? Many times.

—Anastasia L., sex worker, New York City, March 22, 2012

Felicia C. is a sex worker in the Columbia Heights neighborhood of Washington, DC. When Human Rights Watch met Felicia, it was 2 a.m. on a cold and windy morning. Felicia ran over to an outreach van to get a warm cup of coffee from the volunteers. She took the “bad date” sheet that warns of recent attacks on sex workers, and was offered some condoms. She would not take more than two. When asked why, she said she was afraid to be harassed by the police. She said that a month earlier, she had been stopped and questioned by police and told to throw her condoms into the garbage. She said she’d held her ground and refused, but she didn’t want to be harassed again.

Felicia’s story is not unique. In four of the nation’s major cities—New York, Washington, DC, Los Angeles, and San Francisco—police stop, search, and arrest sex workers using condoms as evidence to support prostitution charges. For many sex workers, particularly transgender women, arrest means facing degrading treatment and abuse at the hands of the police. For immigrants, arrest for prostitution offenses can mean detention and removal from the United States. Some women told Human Rights Watch that they continued to carry condoms despite the harsh consequences. For others, fear of arrest overwhelmed their need to protect themselves from HIV, other sexually transmitted diseases and pregnancy.

Alexa L., a New York City sex worker, said, “I use condoms. I take a lot of care of myself. But I have not used them before because I was afraid of carrying them. I am very worried about my health.” Carol F., a sex worker in Los Angeles who had been arrested partly on the basis of carrying condoms, had a similar story: “After the arrest, I was always scared...There were times when I didn’t have a condom when I needed one, and I used a plastic bag.”

Prostitution—the exchange of sex for money or other consideration—is illegal in 49 states and in all of the cities addressed in this report. Law enforcement agencies in these jurisdictions are charged with enforcing laws, including those relating to prostitution. Enforcement, however, must be compatible with international human rights law and governments should ensure that police policies and practices do not conflict with equally important public health policy imperatives, including those designed to curb the HIV epidemic.

Police stops and searches for condoms are often a result of profiling, a practice of targeting individuals as suspected offenders for who they are, what they are wearing and where they are standing, rather than on the basis of any observed illegal activity. In New York, Washington, DC, and Los Angeles, many people, particularly members of the transgender community, told Human Rights Watch they were stopped and searched for condoms while walking home from school, going to the grocery store, and waiting for the bus. Vague loitering laws invite interference with the right to liberty and security of the person, permitting police to consider a wide range of behavior and other factors suspicious, including possession of condoms and being “known” as a sex worker. The anti-prostitution loitering laws in New York, California, and Washington, DC are inconsistent with human rights principles prohibiting detention or punishment based on identity or status and should be reformed or repealed.

Sex workers in New York, Washington, DC, and Los Angeles described abusive and unlawful police behavior ranging from verbal harassment to public humiliation to extortion for sex, both in and out of detention settings. Transgender women described being “defaced” by police who removed their wigs, threw them on the ground, and stepped on them. Police subjected transgender women to a constant barrage of vulgar insults, mockery, and disrespect. Most disturbing were reports in both New York and Los Angeles that some police regularly demanded sex in order to drop charges or coerced women into sex while in detention. Few of these women filed complaints, fearing further abuse and having lost faith in police to respond with fairness and integrity. Police officials in each of these cities should take action to increase accountability, restore community trust, and end an unacceptable cycle of impunity for human rights abuses against sex workers and transgender persons.

Human Rights Watch interviewed more than 300 persons for this report, which focuses on police use of condoms as evidence to enforce prostitution and sex trafficking laws, as part of an investigation into barriers to effective HIV prevention for sex workers in the four cities covered by this report. Those interviewed included nearly 200 sex workers and former sex workers as well as outreach workers, advocates, lawyers, police officers, district attorneys, and public health officials. In New York, Washington, DC, and Los Angeles our investigation focused on complaints of police using condoms as evidence while targeting sex workers on the street. In San Francisco, condoms were used as evidence for street enforcement to some extent, with police photographing rather than confiscating condoms, in what appeared to be a dubious nod to public health concerns. In San Francisco, much of the anti-prostitution enforcement using condoms as evidence targeted women working in businesses such as erotic dance clubs, massage businesses, and a nightclub with transgender clientele.

Police use of condoms as evidence of prostitution has the same effect everywhere: despite millions of dollars spent on promoting and distributing condoms as an effective method of HIV prevention, groups most at risk of infection—sex workers, transgender women, and lesbian, gay, bisexual, and transgender (LGBT) youth—are afraid to carry them and therefore engage in sex without protection as a result of police harassment. Outreach workers and businesses are unable to distribute condoms freely and without fear of harassment as well.

Sex workers and transgender women are highly vulnerable to HIV infection as a result of many factors including stigma, social and physical isolation, and economic deprivation. In San Francisco one of three transgender women has HIV; in Los Angeles the Department of Health has identified HIV prevention for transgender women as an “urgent” priority. It is not surprising that those on the front lines are confused about the message city governments are sending on condom use. Maria, a sex worker in Los Angeles asked, “Why is the city giving me condoms when I can’t carry them without going to jail?” Ironically, if Maria went to jail in Los Angeles or any of the cities addressed in this report she could get a condom, as condoms are available in detention settings for prevention of HIV and other sexually transmitted diseases.

Police and prosecutors defended the use of condoms as evidence necessary to enforce prostitution and sex trafficking laws. However, the use of any type of evidence must be

determined by weighing the potential harm that occurs from its use and the benefits provided. In legal systems everywhere, categories of potentially relevant evidence are excluded as a matter of public policy, with laws excluding testimony regarding a rape victim's sexual history providing but one of many examples. Law enforcement efforts should not interfere with the right of anyone, including sex workers, to protect their health. The value of condoms for HIV and disease prevention far outweighs any utility in enforcement of anti-prostitution laws.

In the summer of 2012, Washington, DC will be hosting the 19<sup>th</sup> International AIDS Conference. As more than 30,000 delegates from all over the world converge on the nation's capital, the US response to the epidemic will be in the spotlight. This is an extraordinary opportunity for the city of Washington, DC as well as the cities of New York, Los Angeles, and San Francisco to enact policies that protect those at risk of HIV and to eliminate those that undermine HIV prevention such as the use of condoms as evidence of prostitution.

Strong federal leadership is also needed. The US government provides millions of dollars of funding to each city addressed in this report to prevent HIV among groups at high risk of HIV infection. Condoms as evidence of prostitution should be identified as a barrier to implementing the National HIV/AIDS Strategy and federal, state, and municipal agencies should work together toward its elimination. Most importantly, the US recently pledged at the United Nations Human Rights Council to protect the human rights of sex workers, a commitment that should begin without delay. A critical step towards meeting this obligation would be to call for the end to the use of condoms as evidence of prostitution, a policy that endangers the health and lives of sex workers, transgender persons, LGBT youth, and all members of the community.

## Recommendations

### New York

#### *To the New York State Legislature*

- Enact legislation to prohibit the possession of condoms as evidence of prostitution and related offenses.
- Reform or repeal New York Penal Law Section 240.37, the statute prohibiting loitering for the purposes of prostitution as incompatible with human rights and US constitutional standards.

### New York City

#### *To the New York City Council*

- Enact legislation to prohibit the possession of condoms as evidence of prostitution and related offenses.
- Enact the Community Safety Act, legislation prohibiting and providing a remedy for profiling that disproportionately impacts individuals and communities based on race, sexual orientation, gender identity, and other prohibited grounds.

#### *To the Mayor of New York City*

- Support legislation to prohibit the use of condoms as evidence of prostitution and related offenses.
- Issue an executive order prohibiting the use of condoms as evidence of prostitution and related offenses by the New York City Police Department.
- Provide the necessary policy, oversight, and disciplinary action to ensure that the New York City Police Department's interactions with sex workers, transgender persons, and LGBT youth in New York City comply with human rights and US constitutional standards and are conducted with respect and professionalism.

### *To the New York City Police Department*

- Immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses. Issue a directive to all officers emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health. Ensure that officers are regularly trained on this protocol and held accountable for any transgressions.
- Support legislation to prohibit the possession of condoms as evidence of prostitution and related offenses.
- Adopt policies, guidelines, and enforcement mechanisms to ensure that interactions with sex workers, transgender persons, and LGBT youth comply with human rights and US constitutional standards and are conducted with respect and professionalism.
- Adopt policies, guidelines, and enforcement mechanisms to ensure that all stops, searches, and frisks of individuals comply with human rights and US constitutional standards.

### *To the District Attorneys for the City of New York*

- Immediately cease using the possession of condoms as evidence to prosecute prostitution and related offenses.
- Support legislation to prohibit the use of condoms as evidence of prostitution and related offenses.

### *To the New York Department of Health and Mental Hygiene*

- Support legislation to prohibit the possession of condoms as evidence of prostitution and related offenses.
- Call upon the New York City Police Department (NYPD) to immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses. Conduct trainings and engage in other collaborative efforts with the NYPD emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health.

## Washington, DC

### *To the Council of the District of Columbia*

- Enact legislation to prohibit the possession of condoms as evidence of prostitution and related offenses.
- Reform or repeal anti-prostitution statutes that are vague, overbroad, and that invite discrimination and arbitrary arrest as incompatible with human rights and US constitutional standards.

### *To the Mayor of Washington, DC*

- Support legislation to prohibit the possession of condoms as evidence of prostitution and related offenses.
- Issue an executive order prohibiting the possession of condoms as evidence of prostitution and related offenses by the Metropolitan Police Department.
- Support reform or repeal of anti-prostitution statutes that are vague, overbroad and that invite discrimination and arbitrary arrest as incompatible with human rights and US Constitutional standards.
- Provide the necessary policy, oversight, and disciplinary action to ensure that the Metropolitan Police Department's interactions with sex workers and transgender persons in Washington, DC comply with human rights and US constitutional standards and are conducted with respect and professionalism.

### *To the Metropolitan Police Department*

- Immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses. Issue a directive to all officers emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health. Ensure that officers are regularly trained on this protocol and held accountable for any transgressions.
- Adopt policies, guidelines, and enforcement mechanisms to ensure that interactions with sex workers and transgender persons comply with human rights and US constitutional standards and are conducted with respect and professionalism. Ensure compliance with MPD guidelines for interaction with transgender individuals, including those that prohibit profiling transgender persons as sex workers.

- Adopt policies, guidelines, and enforcement mechanisms to ensure that all stops and searches of individuals comply with human rights and US constitutional standards.

*to the Department of Health of the District of Columbia*

- Support legislation prohibiting the use of condoms as evidence of prostitution and related offenses.
- Call upon the Metropolitan Police Department (MPD) to immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses. Conduct trainings and engage in other collaborative efforts with the MPD emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health.

## California

### *To the California State Legislature*

- Enact legislation to prohibit possession of condoms as evidence of prostitution and related offenses.
- Repeal California Penal Code Section 1202.6 mandating HIV testing for all persons convicted of prostitution and California Penal Code Section 647f providing for enhanced penalties for persons convicted of a second prostitution offense while HIV-positive as discriminatory, unnecessary, and incompatible with human rights and US constitutional standards.
- Reform or repeal California Penal Code Section 653.22, the statute prohibiting loitering with intent to commit prostitution, as incompatible with human rights and US constitutional standards.

### *To the California Alcoholic Beverage Control Board*

- Immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses. Issue a directive to all officers emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health. Ensure that officers are regularly trained on this protocol and held accountable for any transgressions.

## Los Angeles

### *To the Los Angeles City Council*

- Enact legislation to prohibit the possession of condoms as evidence of prostitution and related offenses.

### *To the Mayor of Los Angeles*

- Support legislation prohibiting the possession of condoms as evidence of prostitution and related offenses.
- Issue an executive order prohibiting the possession of condoms as evidence of prostitution and related offenses by the Los Angeles Police Department.
- Provide the necessary policy, oversight, and disciplinary action to ensure that the Los Angeles Police Department's interactions with sex workers and transgender

persons in Los Angeles comply with human rights and US constitutional standards and are conducted with respect and professionalism.

### *o the Los Angeles Police Department*

- Immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses. Issue a directive to all officers emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health. Ensure that officers are regularly trained on this protocol and held accountable for any transgressions.
- Adopt policies, guidelines, and enforcement mechanisms to ensure that interactions with sex workers and transgender persons comply with human rights and US constitutional standards and are conducted with respect and professionalism. Ensure compliance with LAPD guidelines for interaction with transgender individuals, including those that prohibit profiling transgender persons as sex workers.
- Adopt policies, guidelines, and enforcement mechanisms to ensure that all stops and searches of individuals comply with human rights and US constitutional standards.

### *o the City Attorney of Los Angeles*

- Immediately cease using the possession of condoms as evidence to prosecute prostitution and related offenses.
- Support legislation prohibiting the possession of condoms as evidence of prostitution and related offenses.
- Support repeal of California Penal Code Section 1202.6 mandating HIV testing for all persons convicted of prostitution and California Penal Code Section 647f providing for enhanced penalties for persons convicted of a second prostitution offense while HIV-positive as discriminatory, unnecessary, and incompatible with human rights and US Constitutional standards.
- Support reform or repeal of California Penal Code Section 653.22, the statute prohibiting loitering with intent to commit prostitution, as incompatible with human rights and US constitutional standards.

### *To the Los Angeles County Department of Public Health*

- Support legislation prohibiting the possession of condoms as evidence of prostitution and related offenses.
- Call upon the Los Angeles Police Department (LAPD) to immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses. Conduct trainings and engage in other collaborative efforts with the LAPD emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health.

## **San Francisco**

### *To the Board of Supervisors of the City of San Francisco*

- Enact legislation to prohibit the possession of condoms as evidence of prostitution and related offenses.

### *To the Mayor of San Francisco*

- Support passage of legislation prohibiting the possession of condoms as evidence of prostitution and related offenses.
- Issue an executive order prohibiting the possession of condoms as evidence of prostitution and related offenses by the San Francisco Police Department.

### *To the San Francisco Police Department*

- Immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses, including photographing condoms for this purpose. Issue a directive to all officers emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health. Ensure that officers are regularly trained on this protocol and held accountable for any transgressions.

### *to the San Francisco District Attorney*

- Immediately cease using the possession of condoms as evidence to prosecute prostitution and related offenses.
- Support legislation prohibiting the possession of condoms as evidence of prostitution and related offenses.
- Support repeal of California Penal Code Section 1202.6 mandating HIV testing for all persons convicted of prostitution and California Penal Code Section 647f providing for enhanced penalties for persons convicted of a second prostitution offense while HIV-positive as discriminatory, unnecessary, and incompatible with human rights and US constitutional standards.
- Support reform or repeal of California Penal Code Section 653.22, the statute prohibiting loitering with intent to commit prostitution, as incompatible with human rights and US constitutional standards.

### *to the San Francisco Department of Public Health*

- Support legislation prohibiting the possession of condoms as evidence of prostitution and related offenses.
- Call upon the San Francisco Police Department (SFPD) to immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses. Conduct trainings and engage in other collaborative efforts with the SFPD emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health.
- Ensure that the work of the Environmental Health inspectors is coordinated with that of the HIV/STD Prevention unit on issues of HIV prevention and the importance of promoting access to condoms in business establishments in San Francisco, including massage parlors, erotic dance establishments, and other venues.
- Support the proposal of the HIV Prevention Planning Council for a city-wide ordinance mandating access to condoms and lubricant in all businesses that sell liquor in San Francisco.

## To the United States Government

- The Office of National AIDS Policy and the federal agencies charged with implementing the National AIDS Strategy should:
  - Recognize that human rights abuses are significant barriers to HIV prevention for sex workers, transgender women, LGBT youth, and other vulnerable groups and prioritize structural interventions to address those abuses;
  - Call upon states to prohibit the possession of condoms as evidence of prostitution and related offenses, and develop a plan to provide guidance, technical assistance, and model legislation to accomplish this objective;
  - Ensure the inclusion of sex workers and transgender women in the efforts of the Working Group on the Intersection of HIV/AIDS, Violence against Women and Girls, and Gender-related Health Disparities;
  - Ensure that HIV research and surveillance data adequately reflects the impact of HIV on sex workers and transgender women.
- The Department of Justice should investigate the treatment of sex workers and transgender persons by police in New York City, Washington, DC, and Los Angeles and provide ongoing review, enforcement, and oversight to ensure that policies and practices comply with human rights and US constitutional standards.

## To the United Nations

To the United Nations Committees on Human Rights, Economic, Social and Cultural Rights, and Racial Discrimination; the Working Group on Arbitrary Detention; the United Nations Special Rapporteurs on the Right to the Highest Attainable Standard of Health and Questions of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment; and the United Nations Human Rights Council:

- Call upon the United States to ensure that police and prosecutors cease using condoms as evidence of prostitution and related offenses.
- Call upon the United States to reform or repeal overly broad loitering statutes that invite discrimination and punishment based on identity or status rather than criminal behavior.
- Call upon the United States to protect the human rights of sex workers, transgender persons, and LGBT youth by police, both in and out of police custody.

# Workers at Risk

## is Evidence of Prostitution in Four US Cities

Watch interviewed more than 300 people, including 200 current and former sex workers, in New York, Los Angeles, DC, and San Francisco as part of an investigation into barriers to effective HIV prevention for sex workers. The shocking: city public health departments spend millions of dollars promoting and distributing condoms as an aid of HIV prevention. Meanwhile, police departments undermine these efforts by harassing and threatening sex workers by using possession of condoms as evidence to support prostitution arrests.

Sex workers, particularly transgender women, arrest means facing degrading treatment and other abuse at the hands of police. For immigrants, arrest for prostitution offenses can mean detention and removal from the United States. Some women told us that they continued to carry condoms despite the harsh consequences. For others, fear of arrest and their need to protect themselves from HIV, other sexually transmitted diseases, and pregnancy. An alarming number of sex workers told us they were afraid to carry the number of condoms they needed, and some had unprotected sex with clients.

Prosecutors should stop using condoms as evidence of prostitution. The value of condoms for HIV prevention far outweighs the utility they might have in the criminal justice system. Strong federal leadership is also needed. The US Department of Justice provides millions of dollars of funding to each of the cities addressed in this report to prevent HIV among sex workers, and other groups that it has targeted because of their high risk of infection. That investment should be protected by police officers telling sex workers to throw their condoms away or risk arrest.



Rights Watch



**Testimony of Brittny Saunders  
Senior Staff Attorney for Immigrant & Civil Rights  
Center for Popular Democracy  
Before the New York City Council  
Public Safety Committee**

October 10, 2012

**I. Introduction**

On behalf of the Center for Popular Democracy (CPD), I'd like to thank the Public Safety Committee for hosting today's hearing and for inviting us to participate. The Center for Popular Democracy is the national sister organization of Make the Road New York and a proud member of Communities United for Police Reform (CPR).

CPD is working with community organizations in states across the country to develop policy solutions that guarantee the safety of all residents—regardless of what they look like, where they come from or other characteristics. Our approach focuses on building relationships, crafting policy and creating effective strategies for moving these policies. CPD is proud to provide legal and technical support for CPR's broad-based, community-driven movement for justice and respect.

I'd like to take this opportunity to place the Community Safety Act in the national context. I'll do this by discussing the ways in which other jurisdictions have dealt with discriminatory policing and how they have been able to craft policies that foster security and respect for all members of the community. The work that has been done in these states makes it clear that it is in fact possible to police effectively while also respecting the rights of residents and increasing levels of transparency and accountability. Taken together, these efforts suggest how the NYPD—arguably the most sophisticated police department in the nation—can reject discrimination and instead embrace innovative approaches that are more equitable, more effective and more likely to foster healthy relationships between officers and the communities they serve.

**II. Multiple Jurisdictions Have Successfully Implemented Prohibitions on Police Profiling to Protect the Rights of All Residents.**

Thirteen states have outlawed the use of identity-based profiles by law enforcement agencies by enacting measures like Intro 800.<sup>1</sup> Recognizing the corrosive effect that profiling has on the relationship between law enforcement officers and community residents and the ability of law enforcement agencies to effectively address crime, legislators in each of these states have barred the practice of targeting on the basis of race. Some of these state measures offer even greater degrees of protection,

---

<sup>1</sup> CA, CT, KS, KY, MN, MT, NE, NV, OK, RI, TX, WA and WV.

outlawing targeting on the basis of race, ethnicity and national origin.<sup>2</sup> Other state statutes build upon these protections by including religion<sup>3</sup> and in one case, gender.<sup>4</sup>

Intro 800, however, would provide protection for even more residents by expanding beyond these categories. The proposed legislation would bar profiling on the bases of age, sex, gender identity or expression, sexual orientation, immigration or citizenship status, language, disability (including HIV status), housing status, occupation, or socioeconomic status.<sup>5</sup> CPR's effort to expand the bases on which profiling is prohibited is no abstract, intellectual exercise. It is a reflection of the experiences of its members—New Yorkers who are subjected to harassment and abuse by law enforcement over and over again. It is fitting that New York City—a city with a tradition of welcoming individuals from across the country and around the world—would exercise the leadership necessary to guarantee protection for all those who need it.

### **III. Measures Requiring Proof of Consent to Search Have Not Imposed an Undue Burden on Law Enforcement or Led to the Elimination of Consensual Searches.**

Two jurisdictions have enacted measures similar to Intro 799, which requires police officers to secure proof that an individual has consented to a search. In West Virginia, for example, law enforcement officers may not search a vehicle unless they have probable cause, another lawful basis for search or have received documented consent from the driver of the vehicle.<sup>6</sup> This proof of consent may be in the form of a standardized form featuring the driver's signature or an audio or video recording.<sup>7</sup> In either case, the driver must affirm that he or she has been asked to consent to the search, has been informed that he or she may refuse consent, is aware that he or she may withdraw consent at any time and has, in fact, freely and voluntarily consented.<sup>8</sup>

In Colorado, law enforcement officers who wish to search either a vehicle or a pedestrian must inform individuals they have stopped that they are being asked to consent to a search and that they have the right to refuse consent.<sup>9</sup> Before the search can go forward, the individual must provide either verbal or written consent.<sup>10</sup> Oregon requires that the target of the search be advised that he or she has the right to refuse to consent and that this refusal cannot be held against him or her.<sup>11</sup> Officers must also inform members of the public that items found in the course of the search can be seized as evidence of a crime or seized for forfeiture.<sup>12</sup> Additionally, several other states require officers to collect and report data on whether a search was consensual.<sup>13</sup>

---

<sup>2</sup> See W. VA. CODE, § 30-29-10; KAN. STAT. ANN. § 22-4606; ARK. CODE ANN. §12-12-1402 (2003).

<sup>3</sup> See KAN. STAT. ANN. § 22-4606; ARK. CODE ANN. §12-12-1402 (2003).

<sup>4</sup> See KAN. STAT. ANN. § 22-4606. In Kansas, proposed legislation would expand the categories to include age and socio-economic status. See 2011 Kansas House Bill No. 2653, Kansas Eighty-Fourth Legislature 2012 Regular Session.

<sup>5</sup> See Intro 800, § 2(1).

<sup>6</sup> W. VA. CODE ANN. § 62 – 1A – 10 (West).

<sup>7</sup> See W. Va. Code Ann. § 62 – 1A – 11(c) (West)

<sup>8</sup> See *id.*, WV ADC §§ 149-6-3, 149-6-5.

<sup>9</sup> See COLO. REV. STAT. ANN. § 16-3-310 (1)(b) (2010).

<sup>10</sup> See COLO. REV. STAT. ANN. § 16-3-310(1)(c) (2010).

<sup>11</sup> See OR. REV. STAT. ANN. § 131A.025(1) (2009).

<sup>12</sup> See *id.*

<sup>13</sup> See TEX. CODE CRIM. PROC. ANN. ART. 2.132(b)(6)(B) (2009); 625 ILL. COMP. STAT. ANN. 5/11-212 (2012); R.I. GEN. LAWS § 31-21.1-4 (2003); MO ANN. STAT. §590.650(2)(4) (2000); and W. VA. CODE ANN. §17G-1-2(f) (2004).

Importantly, the requirement that police officers secure proof of consent for searches does not appear to have either eliminated consensual searches as a category or imposed undue burden on law enforcement officers. In West Virginia, for example, the state-mandated traffic stops studies reveal that consensual searches continued following implementation of the state's proof of consent policy. Between April 2007 and September 2008, over 7,000 consensual searches were conducted.<sup>14</sup> Importantly, data from the latter report confirm that people of color are unjustly targeted and that this targeting actually diverts law enforcement resources from more productive activities. The 2008 study found that while African-American and Latino drivers were more likely to be searched than white drivers, they were less likely than their white counterparts to be in possession of contraband. Forty three percent of African American and 30% of Latino drivers were found with contraband, while 47% of white drivers were similarly situated.<sup>15</sup>

#### **IV. Multiple Jurisdictions Have Successfully Implemented Police Identification Measures.**

For too many New Yorkers—particularly New Yorkers of color—unjust and unlawful encounters with the police are made even more traumatic by the fact that officers do not identify themselves as law enforcement actors. Activities like these, repeated day after day in communities across the City, erode trust and build fear, ultimately undermining the ability of the NYPD to keep all communities safe. Intro 801, would address this by requiring police officers to explain to individuals why they are being stopped and to provide a written document including the officer's name and rank as well as information on how to file a complaint.<sup>16</sup>

Three jurisdictions have put into place measures similar to Intro 801 that require law enforcement officers to identify themselves to members of the public during stops. In Minnesota, law enforcement officers must inform individuals involved in vehicle searches of the officer's name, badge number and department.<sup>17</sup> In Arkansas, law enforcement officers must identify themselves by full name and jurisdiction, state the reason for the stop and, where possible, provide written identification.<sup>18</sup> In Colorado, Denver law enforcement officers are required, without being asked, to provide anyone detained in a traffic stop with a business card featuring, at a minimum, the officer's name, division, precinct, badge or other identification number, as well as a telephone number that may be used to report either positive or negative comments regarding the stop.<sup>19</sup>

The Community Safety Act's police identification measures are a critically important part of the legislation. They will help to set a tone of respect and a culture of transparency and accountability that will contribute to improved interactions between NYPD officers and City residents. With time and ongoing oversight, these identification measures will help to transform relationships between law enforcement officers and the communities they serve.

---

<sup>14</sup> See WEST VIRGINIA DIVISION OF JUSTICE AND COMMUNITY SERVICES, WEST VIRGINIA TRAFFIC STOP STUDY FINAL REPORT 2009 i (2009), [http://www.djcs.wv.gov/SAC/Documents/WVSAC\\_Traffic\\_NEWOverviewofStatewideFindings2009.pdf](http://www.djcs.wv.gov/SAC/Documents/WVSAC_Traffic_NEWOverviewofStatewideFindings2009.pdf).

<sup>15</sup> See *id.*

<sup>16</sup> See Intro 801.

<sup>17</sup> See MINN. STAT. ANN. § 626.8471 (2001).

<sup>18</sup> See ARK. CODE ANN. § 12-12-1403 (2003).

<sup>19</sup> See COLO. REV. STAT. ANN. § 24-31-309 (2001).

## **V. Other Jurisdictions Have Institutionalized Mechanisms for Ongoing Oversight of Law Enforcement in Order to Identify and Address Trends in Discriminatory Policing.**

By passing Intro 881, the Council would ensure the sustainability of the Community Safety Act as a whole. The bill would create an Office of the Inspector General, which would be empowered to examine systemic issues within the NYPD and provide effective oversight of the Act's implementation.

The establishment of an Inspector General's Office to oversee law enforcement agency activities is far from unprecedented. Major federal agencies like the FBI and CIA operate with such oversight. And for 17 years, the Los Angeles Police Department has been subject to monitoring by an Inspector General who has the authority to conduct investigations.<sup>20</sup> Other jurisdictions have taken a range of approaches to oversight of the implementation of anti-profiling measures, in some cases assigning responsibility to the state attorney general.<sup>21</sup> In Arkansas, for example, the attorney general is authorized to monitor law enforcement agencies' compliance with the state's anti-profiling policy and to take any necessary enforcement actions.<sup>22</sup> The attorney general is also required to maintain statewide statistics on racial profiling complaints to produce reports on findings.<sup>23</sup> Such transparency and accountability mechanisms are an essential part of any anti-profiling legislation, and Intro § 881 promises to be a particular effective structure of this kind.

## **VI. New York City Has an Opportunity to be at the Vanguard of Smart & Equitable Policing Policy**

As this testimony makes clear, a growing number of jurisdictions across the country have come to recognize that profiling is both unjust and ineffective. With the Community Safety Act, New York City has an opportunity to both draw upon some of the best ideas already in practice and to demonstrate the leadership for which it is famous. On behalf of all New Yorkers, I urge the City Council to pass all four Community Safety Act bills, sending a powerful message that the rights of all New Yorkers must be respected.

---

<sup>20</sup> See Los Angeles Board of Police Commissioner, Policies and Authority Relative to the Inspector General 1 (2000), <http://www.oiglapd.lacity.org/documents/policies&authority.pdf>.

<sup>21</sup> See e.g. MO. CODE ANN §590.650; ARK. CODE ANN.§ 12-12-1403 (2003).

<sup>22</sup> See ARK. CODE ANN.§ 12-12-1403 (2003)

<sup>23</sup> See ARK. CODE ANN.§ 12-12-1405 (2009).

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/10/12

(PLEASE PRINT)  
Name: Bryan Elliott  
Address: 57 Pitt St, NY, NY 10002  
I represent: Myself  
Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)  
Name: Nicholas Pearl  
Address: 125 West 144 Street Apt 1B  
I represent: Self  
Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 794-801 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/10/12

(PLEASE PRINT)  
Name: Ejeris Dixon  
Address: 240 W. 35<sup>th</sup> St Suite 200 NY, NY 10001  
I represent: New York City Gay and Lesbian Anti-Violence Project  
Address: 240 W. 35<sup>th</sup> St. Suite 200

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 1040

in favor  in opposition

Date: 10/70/12

(PLEASE PRINT)

Name: Jose LaSalle

Address: ~~347 285 7090~~

I represent: A

Address: ANONY.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Michael Best

Address: \_\_\_\_\_

I represent: Counselor to the Mayor

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

1030

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10 Oct 2012

(PLEASE PRINT)

Name: Pastor Michael-Vincent Crea

Address: One World Life Systems PO Box 1259 10027

I represent: Disabled, Homeless, Poor & all Nyers

Address: One World Life Systems

PO Box 1259 NY NY 10027

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

9:48

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/10

Name: Sienna Fontaine (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: Legal Services NYC

Address: 40 Worth St.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

9:47

I intend to appear and speak on Int. No. 801 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/10/11

Name: Ann's Bilal (PLEASE PRINT)

Address: 147 W 24th St

I represent: Streetwise and Safe

Address: 147 W 24th St

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

9:35 AM

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/10/12

Name: Batthy Saunders (PLEASE PRINT)

Address: 802 Kent Ave, BK, NY 11205

I represent: ~~Center for Public Democracy~~

Address: Communities United for Police Reform

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:00

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10-10-12

Name: ALLAN FEINBLUM (PLEASE PRINT)

Address: 1342 E 18th Street

I represent: RIPP0 - RIGHTS FOR IMPRISONED PEOPLE  
with mental disabilities

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:00

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: BO SAMATROVLOJ (PLEASE PRINT)

Address: 148 16th St

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

9:50AM

I intend to appear and speak on Int. No. 799, 800, 801, 802 Res. No. \_\_\_\_\_

in favor  in opposition

Date: October 10, 2012

(PLEASE PRINT)

Name: Katherine Todrys

Address: 9 Pierrepont Street, Brooklyn, NY 11201

I represent: Human Rights Watch

Address: 350 Fifth Avenue New York, NY 10118

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:05 am

I intend to appear and speak on Int. No. 881 Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Darius Charney  
Address: 666 Broadway, 7th Fl New York, NY 10012  
I represent: Center for Constitutional Rights  
Address: 666 Broadway, 7th Fl New York, NY 10012

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10<sup>00</sup>

I intend to appear and speak on Int. No. 799,800,801 Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 10/10/12

(PLEASE PRINT)

Name: Kate Rubin  
Address: 860 Courtlandt Ave, Bronx NY 10451  
I represent: The Bronx Defenders  
Address: see above

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10.5

I intend to appear and speak on Int. No. Testify Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 10/10/2012

(PLEASE PRINT)

Name: NAZ ALI  
Address: 72-18 Roosevelt Ave throuso  
I represent: rights NY 11732  
Address: and MOVING DSWM Desas Rising UN  
72-18 Roosevelt Ave NY 11732

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:05

I intend to appear and speak on Int. No. A11 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/10/12

(PLEASE PRINT)

Name: Michael Best

Address: Counselor to the Mayor

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:11AM

I intend to appear and speak on Int. No. 709, 800, 801, 881 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10.10.2012

(PLEASE PRINT)

Name: Mitchell Mora

Address: 147 w 24th Street 4th floor

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

1008

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/10/20

(PLEASE PRINT)

Name: FRED NEWTON #20

Address: 140 W 14th Avenue NY NY 10026

I represent: CENSC W/ VOCAL PROJ

Address: 230 W 11th St NY NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10-15

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/10/12

(PLEASE PRINT)

Name: Faiza Patel

Address: 161 6th Ave, NYC 10013

I represent: Biennan Center

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:15

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: RAUL RODRIGUEZ

Address: 2765 WEBSTER AVENUE Bx NY 10458

I represent: Picture the Homeless Communities United

Address: 2437 MORRIS AVE. Police Reform

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:15

I intend to appear and speak on Int. No. 799/800/801 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/10/12

(PLEASE PRINT)

Name: STEVE KOHUT

Address: 484 E HOUSTON ST. NY NY 10002

I represent: CPR / JUSTICE COMMITTEE

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:16

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: OCT. 10, 2012

(PLEASE PRINT)

Name: BIANLEY GARCIA

Address: \_\_\_\_\_

I represent: Communities United for Police Reform

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:15

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: DARIUS HARNEY

Address: 666 BROADWAY

I represent: CENTER FOR CONSTITUTIONAL RIGHTS

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:19

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Brian Pearson

Address: 81-16 91st Ave Woodhaven 11421

I represent: UDCAL

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:19

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Lereke Pointer

Address: 835 E. 156 St. Bronx N.Y.

I represent: NyHRR

Address: Bronx N.Y.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:20

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Djabril Touré

Address: 195 Bainbridge Street

I represent: Communities United for Police Reform

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:20

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: KEVIN FINNEGAN

Address: 12 CHARLES ST #20 NYC

I represent: 1199 SEIU

Address: 310 W 43rd St NYC

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:20

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Rahima Wachukwa

Address: 175 Saratoga Ave, Apt. 1D

I represent: Stop Stop and Frisk NYS

Address: Meetup.com

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:20

I intend to appear and speak on Int. No. 79,800,801 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/10/12

(PLEASE PRINT)

Name: DONNA LIEBERMAN & UDI OFER

Address: 125 BROAD ST., 19TH FLOOR, NY, NY 10004

I represent: NEW YORK CIVIL LIBERTIES UNION

Address: SAME AS ABOVE

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:20

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: WILLIAM GIDNEY

Address: 198 WATER ST 6TH FL. NY NY

I represent: THE LEGAL AID SOCIETY

Address: 198 WATER ST NY NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

90:25

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/10/2012

(PLEASE PRINT)

Name: Linda Sarsour

Address: 7111 5th Avenue Brklyn, NY

I represent: Arab American Association of NY

Address: Same

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10:25

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Cyrus McGoldrick

Address: \_\_\_\_\_

I represent: CAIR - New York

Address: 475 Riverside Drive, New York, NY 10115

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

11:30

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Dr. Delores Jones-Brown

Address: John Jay College 899 10th Ave, NY, NY 10019

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

11:35  
11:00 AM

I intend to appear and speak on Int. No. 8004 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/10/12

(PLEASE PRINT)

Name: KIRSTEN LOUCH FOY

Address: 393 MADISON ST

I represent: NATIONAL ANTI-CORRUPTION NETWORK

Address: 106 WEST 145TH ST NEW YORK 10037

Jose LaSalle  
S-S-R-F

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/10/12

(PLEASE PRINT)

Name: CARLTON BERKLEY

Address: 4555 CARPENTER AVE

I represent: BROTHERS + SISTERS WHO CARE

Address: 4555 CARPENTER AVE

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

1:04 PM

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: RAMZI KASSEM

Address: CUNY SCHOOL OF LAW, 2 COURT SQUARE, LIC, NY 1101

I represent: CLEAR PROJECT, CUNY SCHOOL OF LAW;

Address: MUSLIM AMERICAN CIVIL LIBERTIES COALITION (MALL)

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

120

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Roxanne Delgado

Address: Bx 1000

I represent: Bronx NY COYS

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

1

I intend to appear and speak on Int. No. 800 + 881 Res. No. \_\_\_\_\_

in favor  in opposition

Date: Oct. 10, 2012

(PLEASE PRINT)

Name: Jean Rice

Address: \_\_\_\_\_

I represent: (Speaking on behalf of) Occupy Astoria / LIC

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/10/12

(PLEASE PRINT)

Name: Sienna Fountain e.

Address: Manhattan

I represent: Legal Services NYC-Bronx

Address: 579 Courtland Ave; Bronx NY 10451

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 799 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Evan Goldstein

Address: 131 West 33rd St. 15th Fl

I represent: Drug Policy Alliance

Address: see above

Please complete this card and return to the Sergeant-at-Arms