

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON PUBLIC SAFETY

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November 2, 2016  
Start: 10:16 a.m.  
Recess: 1:32 p.m.

HELD AT: Council Chambers - City Hall

B E F O R E: VANESSA L. GIBSON  
Chairperson

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

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

Robert F. Messner, Assistant Deputy Commissioner  
New York City Police Department, NYPD  
Civil Enforcement Unit

Oleg Chernyavsky, Director  
Legislative Affairs  
New York City Police Department, NYPD

Larry Byrne, Commissioner  
Legal Matters  
New York City Police Department, NYPD

Robert Sanderman, Staff Attorney  
Housing Rights  
Queens Legal Services

Austria Bueno

George C. Gardner III, Staff Attorney  
Housing Rights Unit  
Queen Legal Services

Phyllis Williams

Lucy Newman, Legal Aid Society

Runa Rajagopal, Director  
Civil Action Practice, Bronx Defenders

Bill Brian, Supervision Attorney  
Brooklyn Defender Services

Emily Ponder, Staff Attorney  
Civil Defense Practice  
Neighborhood Defender Service of Harlem

Bobby Hodgson, Staff Attorney  
New York Civil Liberties Union

2 [sound check, pause]

3 SERGEANT-AT-ARMS: Quiet, please

4 CHAIRPERSON GIBSON: Good morning ladies  
5 and gentlemen. Welcome to City Hall, to the City  
6 Council's Committee on Public Safety and our hearing  
7 this morning. I am Council Member Vanessa Gibson of  
8 the 16<sup>th</sup> District in the Bronx, and I am proud to  
9 serve as Chair of the Committee on Public Safety. I  
10 welcome each and every one of you here for today's  
11 hearing. First and foremost, on behalf of the  
12 Speaker and all of my colleagues, we want to express  
13 our sincere and heartfelt thoughts and prayers to  
14 the Des Moines Police Department and the Urbandale  
15 Police Department on the horrific loss of two police  
16 officers early this morning. We pray for their  
17 families and for their colleagues, and we know we  
18 have two families who will never be the same again.  
19 So on behalf of the City Council, we mourn the loss  
20 of these fallen police officers. This morning I want  
21 to recognize and thank my colleagues for being here,  
22 and to the prime sponsors for proposing important  
23 pieces of legislation that we are hearing on today's  
24 agenda. I first want to acknowledge and recognize  
25 and thank the Speaker Melissa Mark-Viverito for her

2 leadership on today's issues and also, I want to  
3 thank each and every one of my colleagues for being  
4 here, and to all of the advocates in the  
5 administration for joining us today.

6 Today's hearing will focus on 13, yes 13  
7 bills relating to the New York City Nuisance  
8 Abatement Law, for short NAL. The Nuisance Abatement  
9 Law was—the Nuisance Abatement Law was first passed  
10 by the City Council in 1977 to streamline the legal  
11 process for evictions and civil actions for  
12 apartments and houses of prostitution, obscenity,  
13 environmental violations, violations of Alcohol  
14 Beverage Control Law, and other similar activities.  
15 The original law was effectively used to target the  
16 conditions in Times Square during the 1970s and  
17 1980s. Since that time, the law has been expanded to  
18 include additional activities that would constitute a  
19 nuisance under the law. While the law has been  
20 effective in addressing an abundance of quality of  
21 life issues in our communities, it has been unevenly  
22 applied. Between 2013 and 2015, close to 45% of such  
23 cases were filed in a residential context and  
24 primarily for drug related offenses.

2 Today's package of legislation on NAL  
3 will limit the applications to ensure that innocent  
4 residents or business owners do not lose their homes  
5 or businesses. These amendments will still ensure  
6 that the NYPD and law enforcement agencies will have  
7 the tools to swiftly close houses of prostitution,  
8 bodegas and grocery stores that may sell K2 and  
9 other actual nuisances, but also to protect innocent  
10 New Yorkers that are not involved in such activity.  
11 The first bill that I will begin with is Intro 1308  
12 sponsored by the Speaker, which is in relation to  
13 repealing sections of Nuisance Abatement Law  
14 permitting certain forms of injunctive relief.  
15 Currently the law allows judges to order the closure  
16 of a home or a business based solely on the allegations  
17 of the NYPD without affording that defendant the  
18 opportunity to be heard. The legislation will permit  
19 a business residence to be closed pending the outcome  
20 of a case only after defendants are notified and may  
21 appear in court.

22 The next bill Intro 1315 sponsored by  
23 Council Member Dan Garodnick is in relation to  
24 resolving conflicts between the NAL and related  
25 proceedings. NAL actions often duplicate similar

2 proceedings in other courts or under other laws such  
3 as alcohol beverage control laws. This double  
4 adjudication could lead to double punishment, and is  
5 inefficient. This legislation would prohibit an NAL  
6 case where there is a duplicate proceeding. The next  
7 bill of which I'm proud to prime sponsor is Intro  
8 1317 in relation to excluding the possession of a  
9 controlled substance or marijuana from the NAL and  
10 increasing the number of sales of controlled  
11 substances sufficient to create a nuisance. The law  
12 currently defines a nuisance as either the possession  
13 or sale of drugs including Marijuana. This  
14 legislation will restrict the application of the NAL  
15 to only the sale and not the possession of drugs.  
16 The bill will also require four drug sales instead of  
17 three to establish a nuisance. The next bill is  
18 Intro 1318 sponsored by Council Member Barry  
19 Grodenchik, which is in relation to requiring  
20 verification of a nuisance prior to enforcing  
21 injunctive relief pursuant to the NAL. Residences  
22 and businesses may be shut down for incident that  
23 occurred many months ago, and have since been cured  
24 negating the reason behind the NAL in the first  
25 place. This legislation would require the NYPD to

2 verify the ongoing nature of a nuisance before  
3 executing any order.

4           The next bill is Intro 1320 sponsored by  
5 Council Member Corey Johnson, which is in relation to  
6 requiring laboratory reports in drug-related nuisance  
7 abatement cases. This bill addressed documented  
8 issues of NAL cases based on substances that turn out  
9 not to be controlled substances by requiring the NYPD  
10 to submit laboratory results in all drug NAL cases.

11           The next bill is Intro 1321, sponsored by  
12 also Council Member Corey Johnson in relation to  
13 requiring a police or peace officer to personally  
14 witness a drug violation to file an action under the  
15 NAL. Many drug NAL cases rely on confidential  
16 informants who may not be reliable, and an NAL case  
17 could be filed after a search warrant was executed  
18 and revealed only evidence of possession and not the  
19 sale of drugs. This bill will require any drug  
20 sales, nuisance case to have at least one incident  
21 personally witnessed by a police officer eliminating  
22 the ability to file NAL cases based solely on  
23 information from confidential informants.

24           The next bill is Intro 1323 sponsored by  
25 Council Member Karen Koslowitz, which is in relation



2 to prohibiting permanent exclusion pursuant to the  
3 NAL. Some NAL cases permanently restrict persons  
4 from certain property eliminating any chance of  
5 rehabilitation and family reunification. This  
6 legislation will establish a time limit for the  
7 exclusion of any person from a residence to one year  
8 or three years in certain circumstances.

9 Intro 1326, sponsored by Council Member  
10 Steve Levin is in relation to repealing the padlock  
11 law. The padlock law permits the NYPD to close a  
12 residence or business without any judicial order.  
13 The NYPD has not used this harsh remedy for more than  
14 15 years, and this bill will repeal this section.

15 Intro 1327, sponsored by Council Member  
16 Mark Levine is in relation to requiring the reporting  
17 on the use of the Nuisance Abatement Law. This  
18 legislation would require comprehensive reporting on  
19 the NYPD's use of the NAL including the rate of the  
20 use of injunctive relief, the relationship between  
21 NAL action and 311 or 911 calls, the rate of NAL by  
22 precinct, and the relationship between NAL actions  
23 and other legal proceedings.

24 Proposed Intro 1333-A, sponsored by  
25 Council Member Donovan Richards, is in relation to

2 establishing a statute of limitations for the NAL and  
3 repealing provisions of the NAL that defines some  
4 types of nuisances. This legislation will establish  
5 a four-month statute of limitation for all NAL cases  
6 and 90 days for drug cases. This legislation will  
7 also eliminate unused NAL provisions, which are  
8 addressed through other enforcement mechanisms.  
9 Finally, this bill will also require NAL orders to be  
10 executed within 15 days of being signed by a judge.

11 Intro 1338, sponsored by Council Member  
12 Rafael Salamanca, which is in relation to requiring  
13 procedures for the corporation counsel when filing  
14 actions under the NAL. This legislation would  
15 require the Law Department to check every NAL case to  
16 ensure that no sealed records are being used in an  
17 NAL action. It would also require that personal  
18 services of legal papers to ensure defendants are  
19 properly notified.

20 Intro 1339, sponsored by Council Member  
21 Ritchie Torres in relation to restricting certain  
22 orders and dispositions pursuant to the NAL. This  
23 legislation will restrict any NAL remedy to only the  
24 least restrictive remedy meaning that a judge could  
25 evict a person or a shutter a business only if there

2 were no other means of ceasing the nuisance. This  
3 bill would also prohibit the NAL from restricting the  
4 rights of any person who was not aware or had no  
5 reasons to be aware of a nuisance.

6           And finally, the last bill Intro 1344,  
7 sponsored by Council Member Jumaane Williams, which  
8 is in relation to reforming the NAL regarding the  
9 Alcoholic Beverage Control Law. The law currently  
10 requires only one incident of an alcohol sale to a  
11 minor even when such a sale was not intentional.  
12 This bill would restrict the application of the NAL  
13 to repeated willful and flagrant cases, and require  
14 four such incidents to establish a nuisance.

15           In closing at today's hear, I would like  
16 to have a conversation about each of these bills,  
17 hear the concerns, suggestions and input from the  
18 administration as well as many of our advocates who  
19 were here, and those who have been affected by  
20 current NAL on how we can make these bills stronger  
21 and enhance them, and also to balance the needs of  
22 our residents and truly over-overall achieve public  
23 safety for all New Yorkers. I think many of my  
24 colleagues and I support the concept of nuisance  
25 abatement. We just want to make sure it's applied

2 fairly and equitably, and we want to close any  
3 loopholes that we have in existing NAL law.

4 I want to thank all of the sponsors who  
5 are here, as well as all of my colleagues, and I also  
6 want to recognize that we have been joined by our  
7 Speaker of the New York City Council, Speaker Melissa  
8 Mark-Viverito, and I'd like to thank the staff that  
9 did all the work to get today's hearing. Our  
10 committee staff, our Senior Legislative Counsel Deepa  
11 Ambekar; Legislative Counsel Beth Golub, our Senior  
12 Legislative Council Brian Crowe. I also want to  
13 thank Laura Popa, and on my staff my Chief of Staff  
14 Dana Wax and Kaitlyn O'Hagan, and I want to recognize  
15 the members who are here with us. As I mentioned, we  
16 have our Speaker Melissa Mark-Viverito, our Minority  
17 Leader Steven Matteo, Council Member Chaim Deutsch,  
18 Donovan Richards, Mark Levine, Jumaane Williams, Rory  
19 Lancman, James Vacca, and now it is my honor and  
20 pleasure to recognize our Speaker, and certainly  
21 thank her for her leadership in addressing the issue,  
22 the topic of nuisance abatement. Her leadership has  
23 been critical in this conversation, and we are  
24 thankful that you are here with us. Madam Speaker.

2 SPEAKER MARK-VIVERITO: Thank you, Madam  
3 Chair, and—and thank you for chairing this important  
4 hearing, and thanks to everyone in attendance for  
5 engaging in this important matter, and to those  
6 representatives from NYPD. It's a pleasure to see  
7 you here today. Let me say right at the outset that  
8 I believe that our city's Nuisance Abatement Law is  
9 an important tool for the NYPD and other city  
10 agencies, and when used correctly, it is an  
11 appropriate and effective means of addressing illegal  
12 behavior that is of great concern to many  
13 neighborhoods. Anybody who has ever attended a  
14 community board meeting knows how important these  
15 issues are to our constituents. However, it has  
16 become clear to me over the past few months that this  
17 tool has been used in a manner far beyond how the  
18 Council originally intended it to be use, and in many  
19 cases has been used to inflict punishment beyond what  
20 is necessary to actually abate a nuisance. The basic  
21 structure of this law are the same as when it was  
22 originally enacted almost 40 years ago, and the time  
23 has now come to revisit those structures, and  
24 comprehensively reform the Nuisance Abatement Law to  
25 ensure that it is used appropriately. And that is

2 exactly what these 13 bills that this committee is  
3 hearing today collectively known as the Nuisance  
4 Abatement Fairness Act will do. There's a lot of  
5 ground to cover with these bills, and I think  
6 obviously our chair has gone over each and every one  
7 of them. So I want to be brief, but one of the  
8 issues that I believe is most critical to address is  
9 the usage of ex parte orders, in which locations are  
10 shut down without the owners or tenants ever having  
11 been given any notice of the order or having been  
12 afforded any chance to defend themselves in court.  
13 Intro 1308, of which I am the prime sponsor, would  
14 eliminate ex parte orders requiring that any resident  
15 or business owner at least be afforded the  
16 opportunity to plead their case before court prior to  
17 their residents or business being closed down, a  
18 tenant being evicted or being order to comply with  
19 any court ordered condition. Affording residents and  
20 business owners proper notice is consistent with  
21 national standards of practice. I'm also proud to  
22 co-sponsor all 12 of the other bills that make up the  
23 Nuisance Abatement Fairness Act, all of which will  
24 work together to create necessary reform.

2 Intro 1317, which eliminates the New York  
3 Possession of Drugs and the definition of nuisance to  
4 ensure 1333, which establishes a robust statute of  
5 limitations for all nuisance abatement actions to  
6 Intro 1339, which ensures that nuisance abatement  
7 remedies do not go beyond what is necessary to abate  
8 a nuisance. This package of bills comprehensively  
9 refines our city's Nuisance Abatement Law to ensure  
10 that it remains an effective tool or one that is used  
11 in only the right circumstances. I look forward to  
12 hearing from the Administration, from advocates and  
13 members of the public on all of the items that under-  
14 for review today, and I already—and I do want to  
15 thank the NYPD for engaging with us proactively and  
16 productively in conversations regarding these bills.  
17 So again, thank you to all for being here today, and  
18 with that I'll turn right back over to the Chair.

19 CHAIRPERSON GIBSON: Thank you very much.  
20 Thank you, Madam Speaker, and I, too, agree and want  
21 to thank you from the NYPD. I'm looking forward to  
22 today's hearing. I think we will agree a lot more  
23 than we disagree, and that has not always happened  
24 here in this committee. So I'm extremely grateful  
25 that, you know, we can collectively work together on,

2 you know, nuisance abatement, and really make sure  
3 that we protect those businesses, and residences that  
4 need to be protected, but also we can get rid of  
5 those bad apples that make it bad for many of our New  
6 Yorkers. So I thank you once again for being here.  
7 I also want to recognize we've been joined by Council  
8 Member Rafael Espinal, and I want to call the panel  
9 that's here. We have our Assistant Deputy  
10 Commissioner for the Office of Civil Enforcement,  
11 Robert Messner; our Director Oleg Chernyavsky from  
12 the NYPD. We have the Deputy Commissioner of Legal  
13 Matters, Larry Byrne also from the NYPD, and with  
14 that, I will turn this over to the counsel to  
15 administer our oath, and once again thank you for  
16 joining us today.

17 LEGAL COUNSEL: Do you affirm to tell the  
18 truth, the whole truth, and nothing but the truth in  
19 your testimony before this committee, and to respond  
20 honestly to Council Member questions?

21 DEPUTY COMMISSIONER BYRNE: I do.

22 CHAIRPERSON GIBSON: Thank you. You may  
23 being.

24 DEPUTY COMMISSIONER BYRNE: Let me thank  
25 you Chairperson Gibson, and Speaker for holding this



2 hearing today giving us an opportunity to have  
3 continuing dialogue about these important issues.  
4 With the committee's permission, my colleague Rob  
5 Messner, who's been doing this very effectively for  
6 decades is going to give an opening statement of  
7 testimony outlining how this tool has been used and  
8 the history of it, and then we look forward to  
9 answering all questions. I think what I hear you  
10 saying, Chairperson Gibson and Speaker Viverito is we  
11 are in agreement that properly used this is a  
12 valuable tool, one of the many valuable tools that's  
13 available not just to affect quality of life, but to  
14 reduce the destructive impact of violent crime  
15 throughout the city. So I'm pleased that we're  
16 starting from the same point, which is we want to use  
17 this tool going forward. We want to use it very  
18 carefully and lawfully, and not overuse it against  
19 any segments of the community. So thank you for  
20 that. Starting from that point of agreement with  
21 everyone's permission, I'd like Rob to deliver our  
22 opening testimony, if that's okay?

23 DEPUTY COMMISSIONER MESSNER: Thank you.  
24 Good morning, Speaker Mark-Viverito, Chair Gibson and  
25 members of the Council. I'm Robert F. Messner,

2 Assistant Deputy Commission of the New York City  
3 Police Departments Civil Enforcement Unit. I'm joined  
4 here today by Lawrence Burn, the NYPD Deputy  
5 Commissioner of Legal Matters and Oleg Chernyavsky,  
6 the NYPD's Director of Legislative Affairs. On  
7 behalf of Police Commissioners James P. O'Neill. We  
8 wish to thank the City Council for the opportunity to  
9 comment on the bills under consideration today, which  
10 relate to reforms of the City's Nuisance Abatement  
11 Law. The Nuisance Abatement Law and how the Police  
12 Department administers its Nuisance Abatement Program  
13 have the subject of robust public debate. At the  
14 outset of my testimony, I believe it is important to  
15 say that the NYPD has engaged in significant  
16 discussions on this subject with the Council, other  
17 elected officials and interested stakeholders, and  
18 the Police Department is open to reforms of the  
19 Nuisance Abatement Law and how it conducts this  
20 program. The Police Department's Nuisance Abatement  
21 Program is designed to address public nuisances that  
22 occur within a particular location. On the surface,  
23 the terms public nuisance sounds more benign that it  
24 really is as defined by law. Under the  
25 Administrative Code, a wide variety of crimes are

2 deemed public nuisances. These include gun crimes,  
3 the sale of synthetic marijuana known as K2,  
4 prostitution, gambling, drug sales and violations of  
5 the Alcoholic Beverage Control Law. The Nuisance  
6 Abatement Law, which was enacted in 1977, is designed  
7 to provide direct and immediate relief to  
8 neighborhoods impacted by these type of crimes,  
9 thereby improving the quality of life of these  
10 neighborhoods as well as those who live and work in  
11 the community. The Nuisance Abatement process  
12 already contains procedural and due process  
13 safeguards, which culminate in every case being  
14 subject to judicial review and approval. The  
15 department identifies locations for potential  
16 nuisance abatement proceedings before they are  
17 referred to the Civil Enforcement Unit for possible  
18 action. In many of these cases, judicially issued  
19 criminal search warrants were previously executed at  
20 the subject location. Attorneys with the Civil  
21 Enforcement Unit then review the facts to determine  
22 whether they comport with the strict requirements of  
23 the law. For every nuisance abatement case a set of  
24 legal papers containing sworn allegations of criminal  
25 conduct is drafted and sent to the New York City Law

2 Department for review. If an action is authorized by  
3 the Law Department, the action is filed with the  
4 court and then reviewed by a judge who will  
5 independently assess the allegation, and may issue a  
6 temporary restraining order that may exclude offending  
7 parties from the premises in order to prevent the  
8 illegal conduct from continuing and/or an order  
9 temporarily closing the particular location. Within  
10 days of obtaining either a temporary restraining  
11 order or closing order from the court, the affected  
12 parties have an opportunity to contest the court  
13 ordered relief. The vast majority of these civil  
14 cases are initiated in response to complaints from  
15 the community, neighbors, residents, people who are  
16 victimized by illegal activity and often elected  
17 officials in areas where specific criminal conditions  
18 and activities are occurring such as unruly or  
19 illegal nightclubs, brothels, and more recently  
20 commercial establishments selling K2.

21 Now turning to the legislation under  
22 consideration today, rather than address each of the  
23 13 bills individually, I will broadly discuss this  
24 legislative package. The department is supportive of  
25 the concepts behind many of these proposals, and more

2 broadly the goal of reforming the Nuisance Abatement  
3 Law. We look forward to further discussions with the  
4 Council to find the right balance, which we ensure in  
5 fairness and the ability to proceed to provide  
6 expedited relief to communities through the use of  
7 this valuable précising policing tool. Some of the  
8 bills, however, if enacted in their current form,  
9 place significant limitations on the department's  
10 ability to provide immediate and much needed relief  
11 to an affected community. For example, increasing  
12 the number of violations required before a nuisance  
13 abatement action can be initiated and significantly  
14 reducing the time frame within which these violations  
15 are to occur would alter the existing scheme that  
16 tracks the criminal court process that has been  
17 initiated. These criminal court proceedings require  
18 a minimum of two drug buys before a search warrant is  
19 issued. The issuance of a search warrant search  
20 warrant reflects a New York State Supreme Court  
21 judge's determination that there is probable cause to  
22 believe that drug sales are occurring at the  
23 location. One of the legal requirements of the  
24 issuance of a search warrant is that the judge must  
25 make a formal determination that the source of the

2 information, the witness, is reliable. Two  
3 undercover narcotics purchases together with the  
4 recovery of drugs and/or evidence of drug sale at the  
5 time that the search warrant is executed, currently  
6 serve as the three violations required to trigger a  
7 Nuisance Abatement action in such cases. The  
8 proposed increase in such required incidents would  
9 necessitate additional enforcement activity, which by  
10 its nature would put confidential informants,  
11 undercover officers, and supporting officers  
12 participating in such operations at significantly  
13 greater safety risk. Likewise, shortening the time  
14 frame within which all such incidents are to occur is  
15 either three or four months prior to filing depending  
16 on the nuisance being addressed creates two short a  
17 window in which to conduct all of the required  
18 operations and a multi-stage reviewed aimed at  
19 determining viability of a case. Additionally, the  
20 department is willing to work with the Council in  
21 examining whether marijuana possession of a personal  
22 use amount alone should be viewed as a violation of  
23 the Nuisance Abatement Law. We believe that  
24 exemptions for individuals using locations for the  
25 purpose of sale or possessing such large amounts that

2 it eventually intends to sell, should not be  
3 inactive. It is these types of locations that drive  
4 community complaints—complaints and create dangerous  
5 conditions for law abiding residents by drawing  
6 individuals into their buildings and neighborhood to  
7 engage in criminal behavior. Another area of concern  
8 is the requirement that the department verify within  
9 15 days of an operation that an offender is still  
10 present at a targeted location and the illegal  
11 activity is ongoing. As written, the department  
12 would be obligated to conduct an independent  
13 operation at a location even though it has otherwise  
14 met its burden to demonstrate an ongoing nuisance  
15 exists. While we are certainly supportive of working  
16 with the Council for its instituting even greater  
17 safeguards aimed at determining that an offending  
18 tenant has not relocated, that a 15-day verification  
19 requirement, as proposed, may not be the most  
20 effective way to ensure this, and we would welcome  
21 the chance to discuss alternative ways of achieving  
22 this goal.

23                   After the drafting and filing of nuisance  
24 actions, the department supports including lab  
25 reports and excluding sealed records from the legal

2 papers. These are procedures that the department has  
3 already implemented as a matter of policy. The  
4 department has concerns about prohibiting the filing  
5 of Nuisance, of a nuisance abatement case when a  
6 similar proceeding is filed in other venues. This  
7 would prevent a nuisance case from being filed in  
8 instances where, for example, the State Liquor  
9 Authority may have a pending action related to a  
10 licensee; the New York City Housing Authority has  
11 commence-commenced an exclusion proceed; the district  
12 attorney or a landlord commences an eviction  
13 proceeding or when any other agencies have commenced  
14 a proceeding. While the department understands the  
15 desire to avoid duplicative action, the ability to  
16 proceed against criminal locations and provide  
17 effective and immediate relief to impacted  
18 communities, should not be precluded in favor other  
19 proceedings that may take several months or even  
20 years to resolve. We would like to work with the  
21 Council to identify specific types of proceedings to  
22 which nuisance abatement proceedings should defer.  
23 Likewise, the department is concerned with proposals  
24 to repeal existing statutory provisions that provide  
25 temporary relief. The department's ability to file a



2 nuisance case's ex parte, enables courts to expedite  
3 these actions and provide immediate relief to  
4 affected communities from locations where ongoing  
5 illegal activity is taking place during the pendency  
6 of the underlying case. Understanding the  
7 seriousness—excuse me. Understanding the seriousness  
8 of this process as well as the concerns raised by key  
9 stakeholders, including members of the Council, the  
10 Police Department has already reformed its use of ex  
11 parte proceedings, and is willing to undertake  
12 additional reforms in the use of ex parte filings I  
13 nuisance abatement actions. We look forward to  
14 further conversations about this significant subject.

15           The proposed legislation also seeks to  
16 limit the method of service of nuisance abatement  
17 actions in a manner that would result in the  
18 department having to expend significant resources.  
19 We look forward to working with the Council on a  
20 compromise that will continue to ensure proper  
21 service is effected on all defendants in nuisance  
22 abatement cases pursuant to state law. The  
23 department is supportive of many of the reforms of  
24 the settlement process involving nuisance actions,  
25 including limiting the period of exclusion. However,

2 requiring that settlements or court decisions in  
3 nuisance abatement actions use the least restrictive  
4 means to stop the nuisance is a broad and unclear  
5 standard. While the least restrictive means would  
6 likely prohibit the closing of a location, it could  
7 also be interpreted that any enforcement greater than  
8 an injunction against that which is already illegal,  
9 is too restrictive. Furthermore, prohibiting closure  
10 of a business unless the owner is actively involved  
11 would provide owners with an exemption from liability  
12 and in effect eliminate their current level of  
13 accountability for agents they employ or activity  
14 that they were aware of and did not stop. We are  
15 certain that we can reach a compromise that provides  
16 a workable standard that is protective of business  
17 operators who do not have knowledge or involvement in  
18 criminal activity.

19           The department supports improving public  
20 awareness through the reporting of nuisance abatement  
21 data. Although we have some concerns about our  
22 current technological abilities to track certain data  
23 sought in the bill, and the upgrades necessary to do  
24 so, we look forward to working with the Council  
25 towards the goal of transparency we both seek to

2 achieve. Lastly, the department has not enforced the  
3 Padlock Law in over a decade and supports its repeal.  
4 That said, while the Police Department does not  
5 enforcement certain sections of the Nuisance  
6 Abatement Law, such as obscene performance, obscene  
7 material, noise and certain environmental violations  
8 that the Council also seeks to appeal, other city  
9 agencies and officers may still utilize these tools  
10 in connection with carrying out their primary  
11 mission, and we urge an open dialogue with all such  
12 agency stakeholders prior to finalizing this series  
13 of bills. Notwithstanding some of the concerns and  
14 challenges we have presented today and in discussions  
15 with the Council to date, the Police Department  
16 believes we can work together to strike the  
17 appropriate balance between fairness and the  
18 department's ability to provide the public with  
19 effective relief at locations where public nuisances  
20 have been created. We look forward to maintaining an  
21 open and robust dialogue on these legislative  
22 proposals. Thank you for the opportunity to speak  
23 with you today, and we are happy to answer any  
24 questions that you may have.

2 CHAIRPERSON GIBSON: Thank you very much,  
3 Deputy Commissioner. We appreciate you giving a lot  
4 of detail and thought behind this package of  
5 legislation related to NAL. I want to acknowledge  
6 the presence of Council Member Ritchie Torres, and  
7 now I'll turn it over to our Speaker for questions.  
8 Thank you.

9 SPEAKER MARK-VIVERITO: Thank you, Madam  
10 Chair. Thank you for this testimony and—and sharing  
11 with us your areas of concerns. Obviously, we're  
12 going to continue engaging those conversations. So  
13 just a couple of—of general questions that it's been  
14 made public or at least has been reported. I'm  
15 trying to confirm that with you that based on the Pro  
16 Publica article and the Daily News coverage as well,  
17 that the department has made some policy amendments,  
18 I think you kind of represented at the beginning of  
19 your testimony. You know, some of the NAL  
20 procedures, for instance that you only exclude  
21 individuals that are connected to legal activities.  
22 Can you talk a little bit about what based on the  
23 concerns that were raised, what are the policy areas  
24 that you've adjusted the new changes to?

2 DEPUTY COMMISSIONER BYRNE: Yes, let me  
3 ask my colleague Rob Messner to address that in  
4 detail, but to respond to your general question, we  
5 work on all of these nuisance abatement actions,  
6 residential and commercial in conjunction with our  
7 colleagues at the Law Department. We have been  
8 working with our colleagues at the Law Department for  
9 months to tighten the process, and it's important  
10 that we distinguish between the process, the legal  
11 process that we go through in a residential or  
12 commercial nuisance abatement action, and the  
13 remedies that we seek during and at the end of that  
14 process. So we have institute on our own initiative  
15 with the Law Department a number of changes to the  
16 way we have used this law including, quite frankly,  
17 the—quite frankly using it far less frequently, which  
18 is consistent with the downward enforcement trend  
19 we've had in fewer C summonses, fewer misdemeanor  
20 arrests, the dramatic decline of the use of stop,  
21 quest and sometimes frisk. Similarly, nuisance  
22 abatement actions by us have declined in use. At the  
23 same time, and as you know, crime hit an all-time  
24 record low in the Compstat era during the month of  
25 October 2016. I'm going to ask Rob to describe some

2 of the things we've instituted in conjunction with  
3 our colleagues at the Law Department and many of  
4 those things are the subject of the bills, and we  
5 have no objection to, are in effect policy changes  
6 being codified as legislation by the Council.

7           DEPUTY COMMISSIONER MESSNER: Thanks,  
8 Commission Byrne. We have essentially shortened up  
9 the time period that it takes that we—in which we  
10 institute these actions to a much shorter time period  
11 than the one year, which many of the nuisance  
12 abatement, many but not all of the Nuisance Abatement  
13 sections allow, and we have also put in place  
14 procedures to make sure that the nuisance is ongoing  
15 by observation and—and other means, and we have also  
16 continued with the Law Department our practice of it  
17 is getting lab reports as one of the bills requires  
18 of not using sealed records, which actually pre-dated  
19 this more current analysis. And essentially have  
20 shortened the time period, and at the same time tried  
21 to not use all of the tools that the Nuisance  
22 Abatement Law permits in every action. So the  
23 Nuisance Abatement Law as written permits an  
24 application for a temporary closing order in every  
25 action where the threshold is met. It permits a

2 request for temporary restraining order. In every  
3 action where the threshold is met, we have started  
4 asking for many, many less temporary closing orders.  
5 We even started asking for many less temporary  
6 restraining orders, and the goals. So that is the  
7 difference in the initial remedies that we're asking  
8 for, and then also in settling actions we have been—  
9 tried to be much precise in specifying when and who  
10 would be excluded for what action in the case of, you  
11 know, where an exclusion is going to be possible.  
12 Additionally, we now actively encourage the courts to  
13 conduct all of these proceedings on the record, and  
14 we always have, as all lawyers must, strongly  
15 encourage all defendants who are not represented by  
16 attorneys to seek counsel. And when they do not get  
17 counsel, we actively ask that all the proceedings be  
18 on the record so that the court—when the court  
19 explains the proceedings to the person that is on the  
20 record to ensure that the people understand the  
21 proceedings that are going on.

22 SPEAKER MARK-VIVERITO: Just going back  
23 to the exclusion part, right, you're saying you've—  
24 you've been—you're more focused on that in terms of  
25 who you—you target, so to speak, right? So how do

2 you go about that? How do you determine in the case  
3 of all residential who is the person who will be  
4 excluded versus the whole household, for instance?

5 DEPUTY COMMISSIONER BYRNE: It's an  
6 excellent question. So we sat back for a second not  
7 to engage in too much legal mumbo jumbo as a lawyer,  
8 I intend, I, you know--

9 SPEAKER MARK-VIVERITO: [interposing] I'm  
10 not a lawyer so don't--please don't--you know, don't  
11 [laughs] refrain from the legal mumbo jumbo.

12 DEPUTY COMMISSIONER BYRNE: Technically,  
13 what the Nuisance Abatement Law as currently written  
14 allow us to do is to proceed against the location,  
15 and the repeated patterns of criminal conduct that  
16 occurred, and to physically close that location as a  
17 means of cutting off further criminal activity there.  
18 In practice, even before the recent reforms and  
19 changes to policy that Rob outlined that we've agreed  
20 to with the Law Department, we've always used that  
21 closing vehicles just against the perpetrators of the  
22 criminal activity. So what does that mean in a  
23 practical sense? In a drug context, we've gone in  
24 and we've bought drugs and done a search warrant on  
25 two or three or four occasions from Son A and Son B



2 who lives with his mother and his grandmother and a  
3 daughter. When we go to enforce the Nuisance  
4 Abatement Order of the Court, we say Son A and Son B  
5 who have engaged in drug dealing, you're no longer  
6 allowed to live here. Mom and grandma and your  
7 daughter you don't have to leave, and you don't have  
8 to go anywhere. That's in practicality how it  
9 works. In a commercial setting it's slightly more  
10 com-complex and it varies on top of crime. For  
11 example whether we're looking to close an illegal  
12 night club, which has been the source of repeated  
13 shootings, or a commercial location selling K2, as we  
14 did in your district, Speaker, as you know last  
15 summer. We have to use that differently. So we  
16 still try when we can not to close the business, but  
17 to ensure that the illegal activity is no longer  
18 conducted out of that business. That's the goal when  
19 we use this tool. We're not looking to exclude from  
20 residences whether they're NYCHA facilities or  
21 private residences or commercial locations anyone who  
22 is not knowingly engaged in criminal activity.

23 SPEAKER MARK-VIVERITO: I appreciate that  
24 clarification. Just a question on the—on the ex  
25 parte orders. I'd like because I want to understand

2 a little bit more what your concern is there, right.  
3 If a search warrant has been already issued for the  
4 location, then why do you feel that you need to then  
5 surprise that location with an ex parte order because  
6 I mean you would think they were already on notice.  
7 They already realize that the Police Department is  
8 watching them. So explain your concerns about the  
9 bill and why you don't think the way it's written  
10 right now is--

11 DEPUTY COMMISSIONER BYRNE: [interposing]  
12 Right.

13 SPEAKER MARK-VIVERITO: --is effective.

14 DEPUTY COMMISSIONER BYRNE: So ex part  
15 applications to the courts have been around for  
16 decades in criminal proceedings, and in civil  
17 proceedings. That's just a fancy way to say that you  
18 can go before the judge and ask the judge to enter  
19 some type of order without giving prior notice to the  
20 other side. We do that, as you know, in the criminal  
21 context for search warrants because by definition if  
22 we gave criminals advance notice that we're coming to  
23 their apartment or business to look for evidence of  
24 crimes, they would get rid of the evidence of the  
25 crimes before we arrived. And search warrants are

2 subject to suppression hearings, and judicial  
3 oversight when the judge decides to issue the search  
4 warrant, and then after the search warrant is  
5 executed we have to file a return with the court  
6 indicating that we executed the search warrant and  
7 what we did or didn't find sometimes results in a  
8 criminal prosecution or continuing criminal  
9 investigations, sometimes it doesn't. In the past,  
10 we have used ex parte Nuisance Abatement holders.  
11 (sic) Really for two reasons, as a means of safety,  
12 which is not always present in the drug trade in  
13 certain houses of prostitution where basically women  
14 are enslaved into prostitution and forced there with  
15 threats of violence, clubs where there have been  
16 shootings. There's a danger factor to the people  
17 executing the Nuisance Abatement Order, and we still  
18 often when we go in and close a premises we will see  
19 further evidence of criminal activity in plain view  
20 eve though we're not conducting a search at that  
21 point. That said, one of the reforms we are prepared  
22 to agree to in principle is to eliminate or reduce  
23 dramatically our use of ex parte applications going  
24 forward. The concern I would have is if you're going  
25 to the—any residence or a commercial establishment

2 where part of the crime is existing have been crimes  
3 of violence or where we've seen weapons present, I'd  
4 want to talk about drafting tight language that would  
5 retain our ability to go ex parte in that narrow set  
6 of circumstances, but as a general matter going  
7 forward, we're not opposed to doing the initial  
8 application to the court on notice to the people who  
9 will be subject to the application. The manner of  
10 service, the remedy we get, we want to have a further  
11 discussion about that, but in the majority of  
12 nuisance abatement actions that we do going forward,  
13 particularly on the residential side, I think some in  
14 commercial settings, we don't have an opposition to  
15 giving the other side notice before we go to the  
16 judge rather than going to the judge and getting an  
17 order and having them appear later, which is the way  
18 it currently works. And I do want to just put some  
19 context. I said that we have used this nuisance  
20 abatement for our last--for the calendar years 2013  
21 to 2015, we used Nuisance Abatement 2,609 times.  
22 That's a combination of residential Nuisance  
23 Abatement and commercial. It varied from a high of  
24 926 in one year to 801 in another year. For the  
25 period of 2016, January 1<sup>st</sup> through October 1<sup>st</sup>, we've

2 done only 307 nuisance abatement actions. Almost  
3 two-thirds of them, 200, have been against commercial  
4 establishments, and 107 have been against residential  
5 establishments. Some of those are NYCHA established-  
6 NYCHA residential facilities, and many-most are not.  
7 Most are actually private. So, we've brought 14  
8 NYCHA resident proceedings and 93 private whether  
9 that's an apartment or a residential or house. So it  
10 is a tool that we're using less frequently as part of  
11 the overall precision policing the department is now  
12 engaged in.

13 SPEAKER MARK-VIVERITO: So obviously then  
14 and that was one of my last questions is to go back  
15 to the exclusion issue about the data you're  
16 capturing right now looking at-across, you know,  
17 across years an-and the-the impact. So recent news  
18 reports have indicated that fewer than half of the  
19 people banned from homes as a result of an NAL  
20 action, ultimately convicted of a crime. So, I know  
21 you've talked about kind of fine tuning, about who  
22 you target in a residential situation, and who is  
23 excluded from a home, but is there any data to  
24 demonstrate this access of it. Like it's-you're  
25 saying that, and I'm not sure the time reference this

2 leads to, but there have been reports that say fewer  
3 than half of the people banned from homes as a result  
4 of an NAL action were ultimately convicted so--

5 DEPUTY COMMISSIONER BYRNE: Yeah, let me  
6 address that--

7 SPEAKER MARK-VIVERITO: [interposing]  
8 Sure.

9 DEPUTY COMMISSIONER BYRNE: --because  
10 that's—I'm familiar with those set of reported news  
11 articles. That's one of the most leading aspects of  
12 those articles that has caused a lot of  
13 misinformation about what is otherwise a constructive  
14 discussion about how we use these laws. There is nor  
15 requirement in the nuisance abatement action that  
16 anybody be convicted of a crime, that anybody be  
17 charged with a crime, and there are all sorts of  
18 reasons everyday in the city where people are  
19 engaging in crimes, but they're not charged or  
20 prosecuted. Starting with the limited resources that  
21 prosecutors' offices have around the city to  
22 prosecute cases, and how they choose to do that.  
23 When we observe criminal activity, as you're well  
24 aware at the Police Department and we execute search  
25 warrants, and we make arrests, we no longer control

2 the decision to prosecute that case, or the outcome  
3 of that case. One of the broader initiatives, which  
4 is for another hearing, not today, is the way we're  
5 working with our prosecutor counterparts in the new  
6 Brooklyn Gun Court, and others to have the entire  
7 Criminal Justice system work more closely together.  
8 But whether someone is actually convicted of running  
9 an illegal house of prostitution out of an apartment  
10 in Queens is irrelevant to whether repeated acts of  
11 prostitution have been discovered by us, and that's  
12 all the law requires. We are still having to go  
13 before a judge, an independent judge in a civil  
14 nuisance abatement action, and demonstrate the  
15 judge's satisfaction that repeated criminal activity  
16 was engaged in by person or this group of people or  
17 the people controlling the premises. And  
18 prostitution is a good example because in many of  
19 these locations used for prostitution, the women who  
20 are doing this are basically being trafficked as sex  
21 slaves and forced to it by unseemly people who are  
22 running these premises. Our goal is not to punish  
23 those women, it's to remove that criminal act of  
24 prostitution from a location because of the  
25 difficulties it creates for the people who have to

2 live and work right around that location. So there  
3 never has been, and there never should be a  
4 requirement of criminal conviction. What there  
5 should be is credible showing to the judge that  
6 criminal activity has occurred very recently there  
7 such that the people engaged in crimes should be  
8 excluded. Some of those people will be prosecuted,  
9 some will not be.

10 SPEAKER MARK-VIVERITO: Well,  
11 Commissioner, I'm not going to take more time. I  
12 want to thank you for your testimony. What you've  
13 indicated today, which obviously we will take back  
14 and we will discuss further in terms of whether or  
15 not our analysis and yours can coincide on the  
16 changes that you were requesting. But appreciated  
17 again that you're here, and the conversations that  
18 have ensured, and thank you to all the colleagues who  
19 have sponsored legislation, and I'll hand it back  
20 over to the Chair.

21 CHAIRPERSON GIBSON: Thank you, Madam  
22 Speaker, and thank you once again. We've also been  
23 joined by Council Member Vincent Gentile, and I just  
24 have several questions that I wanted to get to  
25 generally speaking. Commissioner, in your testimony,



2 you talked about the source of information that you  
3 get whether it's from 311 or 911 to propel the  
4 beginning of a potential NAL case. Is there a  
5 threshold that you have that would allow you enough  
6 information to begin a case? So is it just 311, 911  
7 data? Do you look at crime data in that area? How  
8 do you begin a potential NAL action against a  
9 residence or a business?

10 DEPUTY COMMISSIONER BYRNE: Let me clarify  
11 that process, and you're very familiar with this,  
12 Chairperson Gibson given your activity in your own  
13 district. The 311 calls, the 911 calls, the  
14 complaint at a community Council meeting now with our  
15 NCO commands the complaints by residents to their  
16 neighborhood coordinating officers is not what  
17 initiates the nuisance abatement action. That  
18 initiates some type of criminal investigation and  
19 where appropriate criminal enforcement activity  
20 whether it's drug buys by confidential informants or  
21 whether it's the execution of search warrants. What  
22 the 311 call, the 911 call, the complaint to the  
23 precinct, the complaint, which I happily welcome all  
24 the time from our elected officials through some of  
25 your colleagues about an illegal club or

2 establishment in their district initiates a criminal  
3 investigation and enforcement process. Once that  
4 process plays out, and again like the district  
5 attorneys and the prosecutors we at the department  
6 have limited resources. Notwithstanding the  
7 generosity of the Council a recent budget source,  
8 which we appreciate. We have to pick and choose  
9 those locations that appear to be most problematic  
10 whether they are residential locations and  
11 commercial, but before can do that, there has to be  
12 the requisite predicate of criminal acts there. In a  
13 drug case at least two buys and a search warrant,  
14 varies according to other crimes. So the nuisance  
15 abatement action is not initiated like we don't start  
16 preparing the papers at the point that the 311 or 911  
17 call comes in. We allow the criminal investigation,  
18 the criminal enforcement action to proceed, and then  
19 we talk with the local precinct commanders to protect  
20 his squad without the additional location where this  
21 tool should also be used in addition to what you've  
22 done on the criminal side.

23 CHAIRPERSON GIBSON: Okay. So describing  
24 that process, what's a typical timeframe that it  
25 takes once you get the source, 311, 911, precinct,

2 Council or other, you know, residents that come  
3 forward, what's the timeframe by which you wait for  
4 any investigation before you decide to begin an NAL  
5 action?

6 DEPUTY COMMISSIONER BYRNE: Again, it's -  
7 the beginning of the NAL action is not based on the  
8 time frame of when we begin an investigation. I  
9 would hope that in our precincts today, a 311 call a  
10 911 call, a complaint to the precinct's CO or the NCO  
11 is being addressed immediately by that precinct  
12 whether it's a visit to the location, whether it's  
13 surveillance, whether it is a drug thing, and we have  
14 the resources to go in and do a buy. We can't always  
15 do a buy. Drug dealers are very wary people and they  
16 are suspicious of informants. So the nuisance  
17 abatement is-is not a direct correlation between the  
18 time lag to address the condition, and the time lag  
19 to begin the nuisance abatement. It's a question of  
20 whether through addressing the condition, we find the  
21 pattern of criminal activity necessary such that we  
22 can prove it to the court in a nuisance abatement  
23 action. So it's really-it is part of an overall  
24 enforcement construct, if you will, but it's a  
25 separate piece of it. It doesn't-you don't

2 automatically when you get a 911 call start saying  
3 we've got to nuisance abate this location. It could  
4 take many months to see whether we get an informant  
5 in there to confirm whether, in fact, prostitution is  
6 occurring there, to confirm whether, in fact, K2 is  
7 being distributed out of our location. It takes  
8 time.

9 CHAIRPERSON GIBSON: Okay, that was my  
10 question. What other alternatives do we have at our  
11 disposal in addition to NAL? So an NAL action is not  
12 taken against a location in every single instance,  
13 correct?

14 DEPUTY COMMISSIONER BYRNE: Correct. We  
15 had las year and this year we'll have about 100,000  
16 index crimes maybe a little higher, maybe a little  
17 lower. The major seven felonies, we have hundreds of  
18 thousands of other crimes. We've brought at a peak  
19 year slightly over 900 nuisance abatement actions.  
20 We're not nuisance abating every facility in the city  
21 where criminal activity is taking place.

22 CHAIRPERSON GIBSON: Okay and the Speaker  
23 asked you in terms of numbers, and I think from our  
24 last conversation understanding NALs are used for  
25 residential and commercial. Some of the residential

2 are private residences as well as public housing, but  
3 we also have exclusions that are full exclusions  
4 where the entire household is excluded from that  
5 location, but we do have instances where there is  
6 partial as well. I think much of the concern that  
7 came out of, you know, the public and various  
8 articles was that, you know, a mom or a grandmother  
9 that is the head of the household is not engaged in  
10 that illegal activity that the grandchild or a child  
11 may be involved. So what steps are we taking in this  
12 process to ensure that we're targeting the right  
13 parties in this particular location?

14 DEPUTY COMMISSIONER BYRNE: Just as we've  
15 been doing with every other enforcement tool, Stop,  
16 Question and Frisk, sometimes issuing a summons,  
17 making a misdemeanor arrest. We're making sure that  
18 we're focused on the right people for the right  
19 reasons. A big part of the dialogue with the Law  
20 Department and NYPD has had over the past several  
21 months is now in the exclusion order only to those  
22 people clearly identified as participating in the  
23 criminal activity. Full exclusion orders in the  
24 residential context is the exception rather than the  
25 rule, and certainly today basically unless every

2 person in that apartment is engaged in the pattern of  
3 criminal activity, there is going to be no full  
4 exclusion order.

5 CHAIRPERSON GIBSON: I wanted to ask  
6 about the Office of Civil Enforcement, what it looks  
7 like. So, you as the Deputy Commissioner, Deputy  
8 Commissioner of Legal Matters what does this team  
9 look like? Because I know in NAL cases we use  
10 confidential informants. Do we have other  
11 administrative staff that compiles the data and the  
12 evidence? Do we have uniformed officers? What does  
13 the Office of Civil Enforcement look like in terms of  
14 staffing?

15 DEPUTY COMMISSIONER BYRNE: I'm to ask  
16 Commissioner Messner to address that in detail, but  
17 let me begin generally. The Civil Enforcement Team,  
18 the Civil Enforcement Unit is part of the Legal  
19 Bureau. As the Deputy Commissioner of Legal Matters,  
20 I preside over the entire Legal Bureau including  
21 Commission Messner's Civil Enforcement Unit. The  
22 Civil Enforcement Unit does a lot of other things in  
23 addition to nuisance abatement. So it's not just a  
24 nuisance abatement issue. Commissioner Messner will  
25 describe that. He also will describe the personnel.

2 The personnel in that unit are a mixture of civilians  
3 and uniformed officers. They're a mixture of  
4 attorneys, uniformed officer attorneys and civilian  
5 attorneys, investigators, support personnel. The  
6 Civil Enforcement Unit and indeed the Legal Bureau do  
7 not conduct criminal enforcement operations. We  
8 don't control confidential informants. We don't  
9 place undercovers in. We don't engage in  
10 surveillance. That's left to the operational parts  
11 of the department. We, in effect, come in at the  
12 tail end of their enforcement efforts and we see  
13 whether there's a basis and a policy need to use this  
14 civil tool against the people committing the crime.  
15 So it's a very important support function within the  
16 department, but it's not using confidential  
17 informants. That's controlled. We have very strict  
18 procedures in the department about how we handle  
19 confidential informants, about when and how we use an  
20 undercover. At a press conference earlier this week—  
21 I'm not sure that you were there—Chief Boyce, our  
22 Chief of Detectives was asked about certain things,  
23 and he correctly noted that the two most dangerous  
24 jobs in the Police Department are to be an undercover  
25 officer and to be in the Bomb Squad, and so we use

2 those tools very carefully as long as when we choose  
3 to send the confidential informant into a location.  
4 But I would like Commissioner Messner to have an  
5 opportunity to describe the resources he has, and how  
6 they are used for nuisance abatement, and the other  
7 tools he uses as well.

8 DEPUTY COMMISSIONER MESSNER: Thank you,  
9 Commissioner Byrne. The—I'm the Planning Officer of  
10 the Civil Enforcement Unit, and I have been since its  
11 inception in 1991, and currently we have 44 people  
12 assigned to the unit. Of those, 32 are attorneys.  
13 Twenty-nine of those attorneys right now are  
14 civilians, which is an unusually high percentage.  
15 Only three are uniformed attorneys, but I'm hoping  
16 that we'll get to nice good, young uniformed  
17 attorneys because they're out there. We also have a  
18 support staff of 12 people, which includes our  
19 Integrity Control Officer who is permanently assigned  
20 to make sure that we fulfill all our moral, ethical  
21 and legal obligations that every unit has in the  
22 Police Department. Included in that are uniformed  
23 police officers, experienced uniformed police  
24 officers whose job is to a large degree doing service  
25 and also accompanying us in all of our field



2 operations to ensure that everyone gets kept safe,  
3 and by everyone I mean not only the people who are  
4 assigned to the Civil Enforcement Unit, but the  
5 neighbors and the bystanders who come out as well as  
6 the people who are going to be the defendants in the  
7 action. So our very experienced police officers  
8 accompany us on all of our field operations to keep  
9 everyone safe. Our field operations, as Commissioner  
10 Byrne was saying, we do a lot more than just nuisance  
11 abatement. I know, Chair, that you're very familiar  
12 with the multi-agency K2 Inspections that were  
13 created and are run out of the Civil Enforcement  
14 Unit, which have been very successful in driving down  
15 the Emergency Department Admissions for K2 overdoses  
16 around the city. In addition to that, we also  
17 coordinate and run the March Operations and attend to  
18 the March operations, which are conducted at nights  
19 or on the weekends to make sure that—that licensed  
20 premises bars and clubs, places where people drink  
21 alcohol on the premise are run in a—in an appropriate  
22 way. March stands for Multi-Agency Response to  
23 Community Hotspots, and basically what that is, is we  
24 work with the precincts and the communities to  
25 identify licensed premises that may be conducting

2 whose behaviors may be problematic for the community  
3 because they're illegal, they're serving under-aged,  
4 they're serving after hours, and we go out with other  
5 enforcement agencies to enforce the existing  
6 regulations against places that are posing a problem  
7 to the community. We also have a robust Officer  
8 practice going on in the Civil Enforcement Unit. So  
9 our attorneys are quite busy, and just one last brief  
10 comment. We have many people who have been there for  
11 many years. We are blessed I think with some of the  
12 most dedicated public servants that you'd ever want  
13 to meet, people who work on their own time, and who  
14 really love the city, and want to see the best things  
15 happen to it. So, I feel it's a privilege to work  
16 with them all.

17 SPEAKER MARK-VIVERITO: I'm-I'm sorry,  
18 just clarification on the MARCH-MARCH?

19 DEPUTY COMMISSIONER MESSNER: Yes.

20 SPEAKER MARK-VIVERITO: Which is the  
21 first time I was looking over at the staff and I just  
22 heard that. What-how long has that been in place,  
23 and you're saying it's a multi-agency--

24 DEPUTY COMMISSIONER MESSNER:  
25 [interposing] yes.

2 SPEAKER MARK-VIVERITO: --so obviously--

3 DEPUTY COMMISSIONER MESSNER: Since 1993.

4 SPEAKER MARK-VIVERITO: Oh, wow. So this  
5 is particularly around clubs and--?

6 DEPUTY COMMISSIONER MESSNER: It's only  
7 places that serve alcohol for on-premises functions.

8 SPEAKER MARK-VIVERITO: Okay, thank you.

9 DEPUTY COMMISSIONER BYRNE: I don't want  
10 to move out of this equation the valuable resources  
11 that the City Law Department, who worked with us on  
12 these actions, the senior attorneys over there as  
13 well. We're not part of the NYPD, but he worked  
14 seamlessly with us.

15 CHAIRPERSON GIBSON: Thank you. So  
16 before I get to my colleagues, I want to just go over  
17 specifics on the bill that I'm a prime sponsor of,  
18 which is Intro 1317 that relates to the drug sale of  
19 marijuana, and I want to understand the department's  
20 position because you specified in your testimony: The  
21 department has used drug possession as evidence of a  
22 nuisance when building a NAL action. I wanted to  
23 understand and ask if you believe drug possession is  
24 an appropriate crime for combat with an NAL action  
25 because in-in many instances, we have individuals

2 that may be in possession, but they're not the actual  
3 sellers, and the level that they're possessing is a  
4 low level where it's not being used for anything  
5 other consumption. So I wanted to understand your  
6 thoughts behind that because this specific bill is  
7 looking at just the—not the possession but the actual  
8 sale in four instances. Because now, the three  
9 instances we used it includes possession and sale.  
10 So do you believe that possession is an important  
11 part of an NAL action?

12 DEPUTY COMMISSIONER MESSNER: Let me  
13 address that. We don't oppose the part of the bill  
14 that would make—in effect, we don't oppose removing  
15 unlawful possession of marijuana. There are certain  
16 degrees that are consistent with personal use. We  
17 don't oppose taking those out as a predicate for  
18 nuisance abatement. As a general matter, we don't  
19 nuisance abate locations where the only thing going  
20 on is person—people are personally using narcotics.  
21 We don't think there should be an amount of drugs  
22 recovered as a threshold to bring the nuisance  
23 abatement in action, and let me give you an example.  
24 If I go into a location on two occasions and purchase  
25 even small quantities of crack for my personal use,

2 it's still unlawful distribution. It's not  
3 possession with intent to use under State Law, and  
4 then I go and do a search warrant on the third  
5 occasion, and I find only a scale, with small powder  
6 traces of crack, but I find 10,000 vials, I find  
7 large quantities of the other chemicals made to make  
8 crack. I find \$300,000 in cash under the bed for  
9 someone who says he's been unemployed for three  
10 years. Those indicia would be indicia sufficient in  
11 a criminal trial to prosecute someone for intending  
12 to distribute crack illegally. We think those same  
13 types of evidentiary standards should be available in  
14 the nuisance abatement. So we're not looking to  
15 nuisance abate a drug addict or casual drug user who  
16 may be peacefully albeit illegally using narcotics in  
17 his residence or the back office of his bodega.  
18 We're talking about in the drug context people who  
19 are unlawfully distributing drugs, and it's unlawful  
20 to distribute any quantity of drugs in New York  
21 State. We oppose the jump from four to—from three to  
22 four because I think it will have a consequence that  
23 you did not intend to occur. Currently, we have to  
24 have two purchases or distributions of narcotics at a  
25 location before we're able to satisfy a judge to

2 issue a search warrant for that location. Typically,  
3 not always, but typically after we do a search  
4 warrant at that location, for some people of time,  
5 whether it's hours or days, the people doing the  
6 illegal activity there are going to stop and figure  
7 out what the next step is in the investigation,  
8 figure out—try to figure out what the source of the  
9 information with the search warrant was. By adding a  
10 third requirement, you are in effect delaying when we  
11 go. It's not your intent, but you are in effect  
12 delaying when we go before a court and get a search  
13 warrant because once we go and do a search warrant  
14 we're never going to send a confidential informant or  
15 an undercover officer back into that location. The  
16 cat is out of the bag, if you would. So we support  
17 working with you on eliminating personal possession  
18 for personal use as a predicate for any nuisance  
19 abatement. We want to keep the three instances, but  
20 consistent with unlawful distribution not use or mere  
21 possession.

22 CHAIRPERSON GIBSON: Thank you for that  
23 and I think we all acknowledged that early on when we  
24 had NAL in the books, we had five instances, but I  
25 don't think it was used as frequently during that

2 time as it is now. I simply wanted to understand in  
3 the testimony increasing it from three to four would  
4 be required to initiate, another drug buy warrant is  
5 executed. Bob, you said that it would be unlikely  
6 that the department would be successful in a sale.  
7 So my question is why is the execution of a search  
8 warrant not sufficient to abate the actual nuisance?

9 DEPUTY COMMISSIONER BYRNE: Rob answered  
10 that, but let me address two things you said. With a  
11 predicate of five acts was before the Nuisance  
12 Abatement Law was amended to allow to be used against  
13 illegal drug dealing. The five acts that we were  
14 talking about are acts of illegal gambling.

15 CHAIRPERSON GIBSON: Okay.

16 DEPUTY COMMISSIONER BYRNE: And I'll let  
17 Rob address the second part of your question.

18 DEPUTY COMMISSIONER MESSNER: Thank you,  
19 Commissioner. Chair, when we're looking at places  
20 that are selling drugs, they're—we're talking about  
21 an illegal business. It may be in the setting of a  
22 residence or it may be in a commercial setting, but  
23 it's—it's a business nonetheless. People are doing  
24 this to make money. So like any other business, when  
25 you have a search warrant executed there, that's a

2 cost of doing business for them. An individual as a  
3 result of that search warrant may or may not be  
4 arrested, but the organization that's behind the drug  
5 sale the supplier, the person who's financing it, the  
6 person who hires the people who are selling the  
7 drugs, that organization still exists. So we search  
8 warrant being executed over and over and over again  
9 in the same places and the illegal activity  
10 continues. What nuisance abatement is really  
11 designed to do is to address the—the organization, to  
12 deny the organization the use of this piece of  
13 property to commitment their crimes. It would be as  
14 if a—let's say you live—let's say you have a row of  
15 houses in a block that's only zoned for—for  
16 residential, and all of a sudden someone knocks down  
17 one of the houses and builds a McDonald's. It's  
18 completely illegal because it's not zoned for that  
19 purpose. How would the people who surround that  
20 McDonald's attack the McDonald's? They wouldn't go  
21 in and grab the young person who's working behind the  
22 cash register at McDonald's and drag that person out  
23 because that's not going to stop the McDonald's from  
24 operating. What they would do is sue McDonald's and  
25 in essence, that's what the nuisance abatement was



2 about. You sue the organization behind the problem,  
3 not the individuals who are acting on their behalf.

4 DEPUTY COMMISSIONER BYRNE: And just to be  
5 clear, we've never closed a McDonald's location in  
6 New York City under Nuisance Abatement.

7 CHAIRPERSON GIBSON: Okay I'm glad you  
8 clarified that. Thank you. Okay, I'll—I'll  
9 interject as I keep calling my colleagues, but I want  
10 to get to other members that have questions, and I  
11 also want to acknowledge Council Member Julissa  
12 Ferreras-Copeland who was here with us and today is  
13 her birthday. So I wish her well, and I'm going to  
14 begin with my colleagues who are here, and let  
15 everyone know we have a five-minute clock for now as  
16 we get through today's hearing, and if we have time  
17 for a second round, we'll put back on the next list.  
18 We're going to start with Council Member Deutsch  
19 followed by Council Member Richards. Thank you,  
20 colleagues.

21 COUNCIL MEMBER DEUTSCH: Thank you,  
22 Chair. Madam Chair. Good—good after—good morning.  
23 My first question is how many Nuisance Abatement  
24 cases did you have in 2016?

2 DEPUTY COMMISSIONER BYRNE: In 2016  
3 through October 1, we've brought 307 Nuisance  
4 Abatement actions, 200 involving commercial premises,  
5 107 involving residential premises.

6 COUNCIL MEMBER DEUTSCH: And how many  
7 calls did you receive in 2016 that may fall under the  
8 NAL?

9 DEPUTY COMMISSIONER BYRNE: Well, we don't  
10 get calls saying please do a Nuisance Abatement  
11 action against this person.

12 COUNCIL MEMBER DEUTSCH: So in other  
13 words, my question is how many calls do you receive  
14 that have to do with drug sales, with selling--

15 DEPUTY COMMISSIONER BYRNE: [interposing]  
16 We have I believe--I'm happy to get you--

17 COUNCIL MEMBER DEUTSCH: --alcohol to  
18 under--underage minors?

19 DEPUTY COMMISSIONER BYRNE: --yeah, I  
20 don't think we can break it out by contract as by  
21 crime, but I believe we received last year between  
22 311 and 911 calls and I'll get you this exact number  
23 after the hearing, but more than five million  
24 citywide.

2 COUNCIL MEMBER DEUTSCH: I'm sorry, more  
3 than five million?

4 DEPUTY COMMISSIONER BYRNE: More than five  
5 million I believe citywide, but we'll get you that  
6 exact number after this hearing.

7 COUNCIL MEMBER DEUTSCH: So that like  
8 more than five million citywide and there were 307  
9 that were actually initiated, 307?

10 DEPUTY COMMISSIONER BYRNE: Correct.  
11 That's why I say this is a tool that we're using very  
12 careful.

13 COUNCIL MEMBER DEUTSCH: I think that's  
14 very low. I think 307 is like extremely low. The  
15 next question is when a commercial establishment is  
16 closed up, do they close up that—that established  
17 ownership or do they close up that address?

18 DEPUTY COMMISSIONER BYRNE: That's an  
19 excellent question, and it varies with the location  
20 and it varies with the crime. So, for example with  
21 establishments that are engaged in repeated and legal  
22 sales of alcohol to minors we typically don't put  
23 them out of business, but we ask them to refrain from  
24 selling to minors to take certain steps as part of  
25 the settlement so we can monitor that. On the other

2 extreme, it is a club, which may have been the source  
3 of repeated drug dealing, violent acts and in those  
4 rare instances we will actually close the location.  
5 In the commercial context, it's more complicated than  
6 in the—in the residential context, and I'll give you  
7 an example. If there's a club at a corner building,  
8 there may be one corporation that's registered as the  
9 property owner of that property. There may be  
10 another corporation that has a lease to do that, to  
11 run some business at that property. Although it's  
12 operating an illegal business, and it's hard for us  
13 to identify sometimes who the shareholders are behind  
14 those corporations, which is why in those instances  
15 of violence we may actually close the club as well as  
16 other city agencies may be. For example, they don't  
17 have a C of O, they're in violation of the Fire Code.

18 COUNCIL MEMBER DEUTSCH: [interposing]

19 Okay, if a commercial establishment--

20 DEPUTY COMMISSIONER BYRNE: [interposing]

21 As a general matter, if a commercial establishment,  
22 they shut them down.

23 COUNCIL MEMBER DEUTSCH: If a commercial  
24 establishment is not in violation of any Building  
25 Code, but you close up a commercial establishment,

2 how often do you see that the ownership is-is  
3 fulfilled with another name that they conduct the  
4 business as usual?

5 DEPUTY COMMISSIONER BYRNE: It's pretty  
6 frequently, the vast majority of times.

7 COUNCIL MEMBER DEUTSCH: In other words,  
8 that's a loophole for business owners to get-to go  
9 back into business after the--

10 DEPUTY COMMISSIONER BYRNE: [interposing]  
11 Yes, it is.

12 COUNCIL MEMBER DEUTSCH: --not to believe  
13 illegal activity. (sic)

14 DEPUTY COMMISSIONER BYRNE: Yes.

15 COUNCIL MEMBER DEUTSCH: How far apart--  
16 when you perform a nuisance abatement, how far apart  
17 is each operation being done from one to the next?

18 DEPUTY COMMISSIONER BYRNE: Well, it  
19 would be on different days. We're probably in any  
20 given week performing a nuisance abatement action  
21 almost everyday. It depends on the location.

22 COUNCIL MEMBER DEUTSCH: So if I want to  
23 take an establishment from one day--from one operation  
24 to the next on what the--one given establishment, how  
25 far apart would each operation be?

2 DEPUTY COMMISSIONER BYRNE: Well, usually  
3 we would—hopefully only have to abate an  
4 establishment once, not go back and start the whole  
5 process again. If the abatement has been successful,  
6 we've addressed the condition. How these are  
7 staggered depends on satisfying the statute, the  
8 resources and the police officers that should be able  
9 to go out and do these things safely. But, they  
10 occur on an ongoing rolling basis, and one of the  
11 things that we've worked very hard with the Law  
12 Department in the last several months is to shorten  
13 the time period between the last criminal act and the  
14 location, and when we're actually going with a court  
15 order to try to stop the criminal activity at that  
16 location. And we don't—we don't oppose that  
17 principle. We had some issues with the particular  
18 time frame for these bills.

19 COUNCIL MEMBER DEUTSCH: In fact, I have  
20 about 30 seconds left. That's the end of that. (sic)

21 DEPUTY COMMISSIONER BYRNE: Go ahead,  
22 sir.

23 COUNCIL MEMBER DEUTSCH: So you have  
24 about five million calls per year that include 311.  
25 You initiated about 307 in 2016. I find that kind of

2 low, extremely low. I have constituents particularly  
3 in buildings where there's drug sales, and it's  
4 almost—I think it's almost impossible or very  
5 difficult to find someone selling drugs [bell] in a  
6 building because I constantly have—get these  
7 complaints, and I asked my constituents to basically  
8 make note of a pattern times, hours, days, which days  
9 they come back. This way when they give it to me I  
10 could give it over to—to Narcotics with the NYPD. I—  
11 what I see is—is that since these—this number is low,  
12 maybe it's a manpower issue in the NYPD or maybe we  
13 need to take more proactive steps to enforce and—and—  
14 nuisance abatement that we pick on buildings where  
15 there's drug sales. We have children, families,  
16 residing there, and it's a constant issue throughout  
17 the city. I know especially in my—in my district I  
18 receive these calls all the time, and basically  
19 there's—there's no end to it. So I never hear any  
20 constituents coming back to me telling me that—that  
21 they got, the received satisfactory results when  
22 there's drug sales in the building. So I would like  
23 to see—I would like to see enforcement, extra  
24 manpower in the—within the NYPD, and frankly I think  
25 that for cooperation is way too much because that

2 could take a year, a year and a half before you pose  
3 the case, and that's way too long, and four is like  
4 way too-way too much. The quality of life of-of the  
5 residents we see in New York are far more important  
6 than if there's illegal activity being done in any-  
7 any-any particular establishment or residential  
8 building then that-that enforcement must be taken.

9 DEPUTY COMMISSIONER BYRNE: Thank you. I  
10 just want to clarify. My colleague has reminded me  
11 that in a typical year, the 911 call center receives  
12 about 10 million calls a year in addition to about  
13 half million 311 calls on top of the 10 million.  
14 That varies from year to year.

15 CHAIRPERSON GIBSON: Okay. Thank you  
16 very much, Council Member Deutsch, and we're just  
17 going to-thank you Council Member Richards. I'm  
18 going to go to Council Member Williams and then  
19 Council Member Richards. Thank you.

20 COUNCIL MEMBER WILLIAMS: Thank you Madam  
21 pair-Madam Chair and thank you Council Member  
22 Richards for allowing me to jump the line so they can  
23 get to me. So I really appreciate. Thank you, Chair  
24 and the Speaker for the leadership on this issue, and  
25 I just want to note the ease in which we are able to



2 have these types of discussions. So I want to thank  
3 the Police Department from the Commissioner on down  
4 for how the discussions go forth. Even when it's an  
5 agreement and seems at least in this case there's  
6 willingness to try to work with us. So I appreciate  
7 that. I only have a couple questions. The first, I  
8 found your answer interesting when the Speaker asked  
9 about why fewer than half of the people are banned  
10 from their homes result in enriching the requirement.  
11 It seemed to put us a little bit of a quandary  
12 because obviously we don't want people to be  
13 convicted if they don't have to, but I was trying to  
14 figure out then how do you know if the process you  
15 made was actually a good one if there's no evidence  
16 at that the end that actually something was  
17 happening?

18 DEPUTY COMMISSIONER BYRNE: It's an  
19 excellent question. Let me try to clarify, and draw  
20 now on my prior experiences as almost seven years as  
21 Federal Criminal Prosecutor in New York City and  
22 Washington, DC in the 80s and the 90s when we were  
23 combatting the large spread crack surge in addition  
24 to the other illegal narcotics that were seized in  
25 New York City. I'll give you a very concrete example

2 in a drug transaction of why criminal prosecution  
3 might not exit. We may send a confidential  
4 information in to Apartment A at the building on two  
5 occasions, and he may purchase drugs Defendant A.  
6 Then we go to execute the search warrant after those  
7 two transactions, and we find drugs and other things  
8 in the apartment, but the Defendant A who sold the  
9 drugs is not in the apartment on that day, and  
10 Defendant A is not the person who's leasing that  
11 apartment. He's not the lawful tenant. We don't  
12 want to reveal the identity or existence of the  
13 confidential informant who may be working in other  
14 investigations who may be working in other parts of  
15 this organization who will be in grave danger if we  
16 reveal his identity, and so we don't lock up  
17 Defendant A for the first two drug sales, because in  
18 effect the only testimony we have that we could use  
19 in court to support that process prosecution is by  
20 revealing the identity of the confidential informant,  
21 which we don't want to do. That-that patter scenario  
22 happens virtually ever day in New York City in  
23 precincts all across the city. There are lots of  
24 other reasons why criminal prosecutions don't result,  
25 but that is the principal example that I would give

2 you in the drug context. It doesn't diminish the  
3 fact that drug dealing is unquestionably illegal  
4 distribution with drugs.

5 COUNCIL MEMBER WILLIAMS: [interposing]  
6 So, in-in that-in that example was the drug being  
7 abated?

8 DEPUTY COMMISSIONER BYRNE: Well, we hope  
9 by going back with a Nuisance Abatement action and  
10 saying Defendant A, you can no longer live here or  
11 enter these-enter these premises for some period of  
12 time. That at least Defendant A won't be dealing  
13 drugs out of the location for that period of time.  
14 Well, the Defendant A goes down the block, and when  
15 Defendant B comes into that apartment and do that we  
16 continue to watch that, but we've addressed what we  
17 know about, which is Defendant A's drug dealing from  
18 that apartment.

19 COUNCIL MEMBER WILLIAMS: Thank you, and  
20 I-I have one more question. I did want to make sure  
21 for those who are listening because where my  
22 constituents are concerned. We're not trying to pass  
23 laws that would-might enable us to respond to their  
24 complaints, since we get a lot of nuisance  
25 complaints. We just want to make sure that as most

2 of the things that we've pointed out previously that  
3 everything is applied fairly, and I've seen in some  
4 of the cases this wasn't. So this is an--an effort.  
5 This is our opportunity to try to mold the law to get  
6 at nuisances that we want to without unfairly  
7 burdening people. So I do have one question about  
8 1344, which was my bill referring to Alcoholic  
9 Beverage Control Law. There wasn't any comment that  
10 I saw in your testimony. So I just wanted to know if  
11 you had anything more.

12 DEPUTY COMMISSIONER BYRNE: [pause] Yeah,  
13 we--like all of the bills, we'd like to work with you  
14 on that bill. There are some aspects of it that we  
15 think are difficult to apply so they maybe addressed  
16 with drafting. I do want to speak specifically to  
17 the unlicensed security guard problem because that's  
18 one of the many success stories that this Nuisance  
19 Abatement Program against commercial establishments.  
20 Many you recall a tragic incident not so long ago  
21 when an unlicensed security guard at one of these  
22 clubs killed one of patrons. That unlicensed  
23 security guard predicate, and specifically added by  
24 counsel--the counsel to address the then prevalent  
25 problem of unlicensed security guards assaulting and

2 physically harming patrons of these clubs. We've  
3 largely through our Civil Enforcement seen that  
4 phenomenon disappear, but I don't think we should  
5 create the potential for it to creep back in by  
6 eliminating that as a--as a valid use--with proper  
7 supervision of the Nuisance Abatement Law. On the  
8 ABC violations, we're going to work with you on that.  
9 That's the standard by which you would have to  
10 demonstrate that the owner knew as opposed to the  
11 person who was working at the shift at that time.  
12 That's something we want to have a dialogue with you  
13 about.

14 COUNCIL MEMBER WILLIAMS: Thanks again.  
15 I actually am thankful that we can abate some of the  
16 uses and without everybody going to jail. So think  
17 that's a--that's a good thing, and hopefully we can--we  
18 can be working on this. I thank you again, Madam  
19 Chair and Council Member.

20 CHAIRPERSON GIBSON: Thank you very much,  
21 Council Member Williams. Next, we'll have Council  
22 Member Richards.

23 COUNCIL MEMBER RICHARDS: Well, thank  
24 you, Chair and Speaker Melissa Mark-Viverito, and I  
25 also want to thank the NYPD in particular for being

2 here, and I'm going to do my questions very fast.  
3 So, under the NAL right now, only the New York City-  
4 well, it was said that before under the-under  
5 Nuisance Abatement, the New York City Law Department  
6 would be able to bring NAL action. However, info  
7 provide to the City Council by the Law Department and  
8 NYPD, explains that the NYPD and Law Department has  
9 incidents and agreement whereby the Law Department  
10 has delegated their authority to the NYPD to file  
11 MAL-MAL cases. Can you speak to why you pretty much  
12 have more so authority rather than the Law  
13 Department, and sort of what is the downside of  
14 having the Law Department as they file these NAL  
15 cases, if there is any?

16 DEPUTY COMMISSIONER BYRNE: We welcome  
17 the work and supervision of the Law Department as  
18 well as the-we welcome the supervision of the judges  
19 who have to sign every one of these orders.

20 COUNCIL MEMBER RICHARDS: With the  
21 supervision from the Law Department, two systems  
22 (sic)?

23 DEPUTY COMMISSIONER BYRNE: We cannot,  
24 yeah, so we're not to use the technical, legal term,  
25 but we're designated by the Law Department. We're

2 not delegated to go to court. The Law Department has  
3 and will continue to review every single application  
4 that we bring for a resident or commercial nuisance  
5 abatement. If they approve it after their  
6 independent review, we are then designated. We are  
7 authorized to go to court on behalf of the City and  
8 the Police Department.

9 COUNCIL MEMBER RICHARDS: [interposing]  
10 So the NYPD goes to court?

11 DEPUTY COMMISSIONER BYRNE: We are the  
12 ones who goes to court. It's a resource question,  
13 and when it comes to executing the order, as  
14 Commissioner Messner said, we send out lawyers and  
15 uniformed police officers because we're going by  
16 definition to a location where repeated criminal  
17 activity has occurred, and there is always some  
18 element of potential physical danger to the people  
19 who are there.

20 COUNCIL MEMBER RICHARDS: So this is a  
21 question of resources for the Law Department?

22 DEPUTY COMMISSIONER BYRNE: Well, it's  
23 re—it's more than resources. It's expertise. The  
24 Law Department is full of excellent outstanding  
25 lawyers, and our total of experience of on police

2 officers who now know how to go into drug locations  
3 where drugs and firearms exist.

4 COUNCIL MEMBER RICHARDS: Right. So, but  
5 according to the Daily News, and obviously the Pro  
6 Publica Report that we've been following in 2013 and  
7 in 2014 it first has of--of those years 297 actually  
8 were filed, correct or is that correct that data?

9 DEPUTY COMMISSIONER BYRNE: No, that's  
10 not. That's not correct.

11 COUNCIL MEMBER RICHARDS: How many were  
12 filed in that time period?

13 DEPUTY COMMISSIONER BYRNE: I only have  
14 the full calendar year so--

15 COUNCIL MEMBER RICHARDS: Well, I meant  
16 the--the 297 they identified. I apologize. So can  
17 you speak to why half of those individuals in  
18 particular weren't convicted of a crime and--and--can  
19 you speak to why?

20 DEPUTY COMMISSIONER BYRNE: [interposing]  
21 Yeah, I'll be happy to speak to it again.

22 COUNCIL MEMBER RICHARDS: They were  
23 uprooted from their homes.

24 DEPUTY COMMISSIONER BYRNE: I'll be happy  
25 to speak to it again for a lot of valid reasons. The



2 law does not require as a predicate to using Nuisance  
3 Abatement that someone be convicted of a crime. I've  
4 just given you a very specific example, Councilman  
5 Williams, in the drug context of why someone might  
6 not be convicted of a crime. We've gone in on two  
7 occasions and purchased through a confidential  
8 informant narcotics directly from the Defendant A.  
9 When we did the search warrant on the third occasion,  
10 Defendant A is not in the apartment, but we find  
11 pounds of Heroin and dollars, and illegal guns. But  
12 Defendant A is not the tenant on the lease. He's  
13 there with or without the permission of a family  
14 member or friend. We typically would not prosecute  
15 that case without more because we would have to  
16 reveal the identity of the confidential informant in  
17 court.

18 COUNCIL MEMBER RICHARDS: [interposing]  
19 Now let me—let me put it—I have a minute left. I  
20 have a major concern with you just utilizing  
21 confidential informants because we understand that,  
22 you know, in a sense where someone may have their  
23 back up against the wall, you know, they are  
24 obviously being pushed, and I people personally who  
25 have sort of been affected by this personally. So,

2 you're using confidential informants. Is there any  
3 other burden of proof right now that you look at  
4 outside of this thing?

5 DEPUTY COMMISSIONER BYRNE: Yeah,  
6 absolutely.

7 COUNCIL MEMBER RICHARDS: And are you  
8 just using confidential informants to go and target  
9 people as well? How many? (sic)

10 DEPUTY COMMISSIONER BYRNE: We're not  
11 targeting anybody unless we get a suspicion that  
12 they're engaged in criminal activity.

13 COUNCIL MEMBER RICHARDS: But according  
14 to the Pro Publica article there were individuals who  
15 were targeted who actually weren't engaged in any  
16 criminal activities.

17 DEPUTY COMMISSIONER BYRNE: [interposing]  
18 The Pro Publica article is completely wrong on that.  
19 It's facts generically.

20 COUNCIL MEMBER RICHARDS: [interposing]  
21 Wait--wait a minute, wait a minute. So people Hold  
22 on, hold on, hold on.

23 DEPUTY COMMISSIONER BYRNE: [interposing]  
24 I'm not going to -I'm not going to say--

2 COUNCIL MEMBER RICHARDS: So people were  
3 pro--

4 DEPUTY COMMISSIONER BYRNE: [interposing]  
5 You asked a question. I'd like to---

6 COUNCIL MEMBER RICHARDS: Okay, but I'd--

7 DEPUTY COMMISSIONER BYRNE: --to  
8 courteously answer you.

9 COUNCIL MEMBER RICHARDS: --correct you  
10 on that because there were--there were pictures of  
11 individuals in this--in this article. I don't think  
12 these people were fabricating any of these stories.  
13 They--they were willing to be photographed and spoke  
14 on the record on these issues. So I think that you  
15 know for you to sort of minimize the impact that this  
16 has had on these families is wrong.

17 DEPUTY COMMISSIONER BYRNE: We're not  
18 minimizing the impact of anyone, but we also  
19 shouldn't minimize the impact on the people who live  
20 next door to these facilities who have to suffer the  
21 collateral consequences of this criminal activity  
22 everyday. That's why this law was created in 1977,  
23 and to answer your first question there are very  
24 valid important reasons why people are not prosecuted  
25 even though they're engaged in illegal drug dealing.

2 There are all sorts of checks and balances. We don't  
3 use only confidential informants. As we explained  
4 earlier, one of the acts you almost always have in a  
5 narcotics case is a search warrant. We can't get a  
6 search warrant unless we go before a judge, and  
7 establish to the judge's satisfaction that probable  
8 cause exists to believe that evidence of a crime is  
9 in that location. After we get that search warrant,  
10 we have to go back before a different judge, and  
11 establish to that judge that the threshold under the  
12 Nuisance Abatement Statute exists, but before the  
13 judge will give us an order to take action against  
14 them. So the notion that people are being kicked out  
15 of apartments or residences simply are the  
16 uncontrolled and un-reviewed allegations of  
17 confidential informants is fiction. It bears no  
18 resemblance to reality of what's happening every day  
19 in this city.

20 COUNCIL MEMBER RICHARDS: So I'll just  
21 say I think that and-and-and for the most part listen  
22 I-we appreciate the work that the NYPD does, and very  
23 obviously, you know, nuisance abatement is critical  
24 to-to our community. I just feel that we have-even  
25 though you're saying there's checks and balances that

2 that we have failed in certain areas, and would you  
3 acknowledge that there are cases that we had failed.  
4 And then lastly, I just want to speak to my bill  
5 1333, which establishes the statute of limitations  
6 on—from a year to 90 days. So in your testimony you  
7 acknowledge three to four months is too short of a  
8 time period to conduct required—require actions. Can  
9 you speak to that a little bit more, and is it  
10 manpower issue because right now you have a year,  
11 correct?

12 DEPUTY COMMISSIONER BYRNE: As a general  
13 matter, we have a year. It's—it's not simply a  
14 matter of manpower. It's a—it's a matter of process  
15 of sequence. So, you have to first have approvable  
16 acts of criminality. That takes time.

17 COUNCIL MEMBER RICHARDS: How long does  
18 that take on average?

19 DEPUTY COMMISSIONER BYRNE: It varies by  
20 case to case. We may be able to send a confidential  
21 informant in, in May to buy narcotics. That  
22 confidential informant may not be able to go in again  
23 for various months for a variety of reasons, and then  
24 we do the search warrant. After we have all of that,  
25 and that's a matter of criminal investigation, and we

2 don't do criminal investigations in vacuums.

3 Sometimes there are criminal investigations of entire  
4 enterprises, entire drug orientations. That's that  
5 norm in fact.

6 COUNCIL MEMBER RICHARDS: So, I'll-I'll  
7 just say based on my experience in really dealing  
8 with these issues within our district and working  
9 with the local PD and Vice and-and all of these  
10 particular processes, sometimes we are seeing way  
11 more than a year. It's taken way more than a year to  
12 really close down whether it's a club or whether it's  
13 drug houses, and there's no transparency in us being  
14 able to get back to our constituents in particular,  
15 and report to them on evictions, and-and I mean  
16 you're saying it may take an informant a year, a  
17 month or two, but we know these drug addicts. I  
18 could go there now and not that I'm going to do that,  
19 but I can go there now. That's a back-to-back, and I  
20 can assure you that those individuals who are-who are  
21 selling drugs I would be able to go there say today  
22 to really-to carry out these actions. I'm finding it  
23 very hard to believe that it takes a year or a month  
24 to send one confident witness in or-or whatever you  
25 want to call it to-to go into these facilities, and

2 it's taken so long to really—to really capture, if  
3 they really are committing these particular crimes.  
4 And then lastly—I'm going to shut up because I told  
5 her this ten minute ago—I also would like you to  
6 touch base so—so the NYPD rarely uses Nuisance  
7 Abatement on noise control, air pollution. It's  
8 rarely ever used, and I find it very hard especially  
9 on noise to understand why the NYPD is not using it  
10 in particular on that issue, and I know we're looking  
11 at repealing it. But noise is the number one 311  
12 complaint to my knowledge, and I'm just finding it  
13 hard why to—to understand why the NPD really isn't  
14 using it in that area. That's a major source of  
15 complaints--

16 DEPUTY COMMISSIONER BYRNE: Right.

17 COUNCIL MEMBER RICHARDS: --across the  
18 borough, across the geography, across racial lines,  
19 and I'm not understanding why for these facilities  
20 like clubs we're not technically using it. So can  
21 you speak to that, and then—and then I'll close out.  
22 Sorry, Chair, sorry.

23 CHAIRPERSON GIBSON: It's okay, I'll get  
24 you back, council member. [laughter]

2 DEPUTY COMMISSIONER BYRNE: We—we enforce  
3 the laws that we have the authority to enforce,  
4 Building Code violations. Noise levels typically are  
5 enforced by other city agencies, but we still—we  
6 still—

7 COUNCIL MEMBER RICHARDS: [interposing] I  
8 know you're going to say DEC, but they don't really  
9 don't enforce it.

10 DEPUTY COMMISSIONER BYRNE: Well, that's  
11 a different issue. You'll have to take that up with  
12 those other agencies. As we said from the outset,  
13 there are other agencies in addition to the NYPD who  
14 may choose to take advantage through the Law  
15 Department of the Nuisance Abatement Tool. We  
16 probably are by far the ones who use it most  
17 frequently than we're using it less frequently. The  
18 point is that, and it's the whole point of these 13  
19 bills that are being introduced. You want to  
20 introduce and should want to introduce review,  
21 supervision, further due process into this process of  
22 using this tool. We agree with that in principle  
23 that takes time. If you want lab reports, if you  
24 want verification of people who have committed the  
25 crimes are still there, principles, which we support



2 that takes time. It's not simply a question of man-  
3 manpower. Part of this process is linear. You cant  
4 get to point A when until you cross points C and D  
5 and that takes time. We're not opposed to shortening  
6 the time from the last criminal act, not from the  
7 last first criminal act, but from the last criminal  
8 act to when have to actually go and apply for the  
9 court order. We think four months is too short.  
10 We're willing to have a dialogue with you about what  
11 the appropriate measure is here. We may agree that a  
12 year is too long. The right number might be six  
13 months, it might be eight months, but as a practical  
14 matter to do all the things these 13 bills are asking  
15 to do, it can't be done within four months of the  
16 first criminal act and when the court order is  
17 obtained.

18 CHAIRPERSON GIBSON: Thank you.

19 COUNCIL MEMBER RICHARDS: The court  
20 records seen in that data. Thank you, Chair. Sorry.

21 CHAIRPERSON RODRIGUEZ: Thank you. Well,  
22 thank you, thank you very much, colleague.

23 COUNCIL MEMBER RICHARDS: I owe you time  
24 on—whenever a committee—whenever you're in one of my  
25 committees.

2 CHAIRPERSON GIBSON: [laughs] Donovan, I  
3 made a not of it.

4 DEPUTY COMMISSIONER BYRNE: And if you're--  
5 if you are willing to sign up as a confident  
6 informant, I can refer you to our local precinct  
7 manhunt.

8 COUNCIL MEMBER RICHARDS: [laughter]

9 CHAIRPERSON GIBSON: Thank you very much  
10 Council Member Richards, and I'm glad you brought up  
11 that point because I wanted to ask what would your  
12 recommendation be on the actual timeframe? So when  
13 you talk about the three different sales from  
14 beginning to getting the sales, to getting the NAL  
15 action, like that time frame varies depending on--

16 DEPUTY COMMISSIONER BYRNE: [interposing]  
17 Right.

18 CHAIRPERSON GIBSON: --that particular  
19 case.

20 DEPUTY COMMISSIONER BYRNE: Yes. So my  
21 suggestion would be as a general principle that when  
22 we talk about the time period, the statute of  
23 limitations whatever term we want to use, we have  
24 that period of time run from the last criminal act,  
25 not the first criminal act. So let's use the drug

2 example. If we have two purchases of narcotics by  
3 confidential informant or different confidential  
4 informants, and then we have search warrant that's  
5 executed on November 1<sup>st</sup> of 2016, our position is  
6 whatever time limitation exists to begin a Nuisance  
7 Abatement action, should start to run on the day of  
8 execution of that search warrant. I think four  
9 months is too short given our experience, give  
10 Commissioner Messner's experience. He's been doing  
11 this for a lot longer than I've been doing it. A  
12 year we agree is probably too long, and one of the  
13 things we've done voluntarily with the Law Department  
14 is shorten significantly the time period between the  
15 last criminal act and when we're going to court to  
16 ask the judge to give us an order particularly in the  
17 residential context, but in the commercial context  
18 we'd like to have a further dialogue with the Council  
19 around those issues. We agree the time period should  
20 be shortened, but the time period should be  
21 calculated by the last criminal act.

22 CHAIRPERSON GIBSON: Okay, thank you. We  
23 have also been joined by Council Member Robert  
24 Cornegy and Council Member Steve Levin, and now I'll  
25 turn to Council Member Ritchie Torres.

2 COUNCIL MEMBER TORRES: Thank you, Madam  
3 Chairwoman. I have one question about our  
4 confidential informants. Do you know the percentage  
5 of Nuisance Abatement actions that depend exclusively  
6 on—on the confidential informants?

7 DEPUTY COMMISSIONER BYRNE: There's no  
8 nuisance abatement action that depends exclusively o  
9 the use the use of confidential informants. Beyond  
10 that, I'm not going to discuss anything about our use  
11 of confidential informants for obvious reasons. We  
12 have strict internal guidelines about how we use  
13 informants, about which offices ae authorized to  
14 supervise informants, and when we have our own checks  
15 from time to time to make sure the confidential  
16 informants are still being credible with us. Much of  
17 the information supplied by confidential informants  
18 is independently reviewed by judges in the context of  
19 search warrant applications, but I can think of no  
20 case, and Commissioner Messner will correct me if I'm  
21 wrong, where a Nuisance Abatement action was brought  
22 solely on the basis of information provided by a  
23 confidential informant.

24 COUNCIL MEMBER TORRES: So in every  
25 Nuisance Abatement action there is both information

2 from a confidential informant and verification from a  
3 police officer?

4 DEPUTY COMMISSIONER BYRNE: There may be  
5 no confidential informants on a Nuisance Abatement  
6 action.

7 COUNCIL MEMBER TORRES: But everyone of  
8 these Nuisance Abatement actions has first hand  
9 verification from the law enforcement official?

10 DEPUTY COMMISSIONER BYRNE: It depends on  
11 what you call first hand verification, but as the  
12 General Manager--

13 COUNCIL MEMBER TORRES: [interposing] So  
14 an officer witnessing the criminal activity as  
15 opposed to a confidential informant? That's how you  
16 would characterize it.

17 DEPUTY COMMISSIONER BYRNE: If an officer  
18 executing a search warrant and finding drugs is  
19 witnessing criminal activity, yes.

20 COUNCIL MEMBER TORRES: And that--that  
21 kind of circumstance exists in every application that  
22 needs it to be?

23 DEPUTY COMMISSIONER BYRNE: That I'm  
24 aware of. I believe so. We don't always use the  
25 search warrant.

2 COUNCIL MEMBER TORRES: I have a question  
3 about your concerns about the standard of least  
4 restrictive means. At one point in your testimony  
5 you said indicating that applying that standard would  
6 prohibit the closure of a business and it would  
7 eliminate accountability for business owners for  
8 activity that they are aware of. That's not how I  
9 read the law, the proposed law. It reads: No  
10 disposition reached or issued may permit the closure  
11 of any business if the owner was not directly  
12 involved with, was not aware of and had no reason to  
13 be aware of the public nuisance. So it seems like  
14 the--the proposed law is defining accountability much  
15 more broadly than your testimony leads us to believe.

16 DEPUTY COMMISSIONER BYRNE: I think we're  
17 blending two concepts and I'm happy to discuss those.  
18 The least restrictive means. I frankly don't know  
19 what that means. So we'd have to put some clarity  
20 around that. If the least--if the least restrictive  
21 means is meant to suggest that only people engaged in  
22 the criminal activity will be excluded from the  
23 premises we agree with that principal. We're  
24 practicing that principal. If the least restrictive  
25 means--means before we can close a club, we have to

2 send a letter to an absentee landlord of the premises  
3 in Florida, which is a corporation that says, Four  
4 people have been murdered at your location by  
5 unlicensed security guards. Please stop doing that.  
6 That's not a workable solution for us. So that's our  
7 objection to that language. In the commercial  
8 context what we're addressing is the criminal  
9 activity. Frankly, I don't care whether the absentee  
10 landlord in Florida knows that unlicensed security  
11 guards of the business he's leased his premises to  
12 are assaulting people or selling illegal drugs or  
13 distributing K2. If those criminal activities are  
14 being done at that location, the people and the  
15 corporate entity doing that activity has to be  
16 closed. We're not forfeiting the building owner's  
17 interest in the building, but we're telling the  
18 building owner you can't lease this premises to  
19 individuals or shell corporations who are going to  
20 engage in criminal conduct. That's what our aim is  
21 in using the commercial abatement.

22 COUNCIL MEMBER TORRES: So it seems that  
23 I'm a layperson. I imagine the least restrictive  
24 means of—might be a term of art. I'm not sure. But  
25 it seems like—it seems like it would be reasonable to

2 expect the NYPD to exhaust every means of--of abating  
3 a nuisance before resorting to a nuisance abatement  
4 because even though it might be valuable as a law  
5 enforcement tool, it is a blunt instrument. It does  
6 result in the eviction of people from properties,  
7 closing their businesses. Is that a premise that you  
8 disagree with or--?

9 DEPUTY COMMISSIONER BYRNE: I do. I  
10 don't think it's a blunt instrument at all.

11 COUNCIL MEMBER TORRES: Okay.

12 DEPUTY COMMISSIONER BYRNE: I think it's  
13 a precision tool used against people who have  
14 engaged in repeated acts of criminality.

15 COUNCIL MEMBER TORRES: So what's the  
16 right standard in your opinion?

17 DEPUTY COMMISSIONER BYRNE: I think the  
18 right standards is what we've outline in our  
19 testimony. We have to show the requisite criminal  
20 activity that we shorten the time period. This is  
21 all subject to judicial review. We're not using it  
22 on its owns. As we said earlier, we don't opposed  
23 repealing the Padlock Law (a) because we haven't use  
24 it, and (b) because it's exclusively a management  
25 process of the Police Department. There's no



2 external oversight or supervision of that. We're  
3 supporting continued oversight by the Law Department  
4 and by the judges who issued these orders, and that  
5 is the proper standard just like it's the proper  
6 standard when we get search warrants everyday around  
7 the city.

8 COUNCIL MEMBER TORRES: I guess my time  
9 is up.

10 CHAIRPERSON GIBSON: I've been generous  
11 today. [laughs] Next. Thank you Council Member  
12 Torres. Next, we'll have Council Member Gentile.

13 COUNCIL MEMBER GENTILE: Thank you, Madam  
14 Chair and thank you all for being here today.  
15 Commissioner, would or do MARCH Operations can they  
16 form the basis for a Nuisance Abatement action?

17 DEPUTY COMMISSIONER BYRNE: They don't  
18 normally because MARCH Operations are more concerned  
19 with enforcing codes that are enforced by uniform  
20 personnel. They're not normally investigated in  
21 nature. However, there are times when it could lead-  
22 -what's observed in MARCH operation could lead to an  
23 investigation that would to Nuisance Abatement.

24

25

2 COUNCIL MEMBER GENTILE: I see. So-so  
3 the MARCH Operation can lead you to-to go down the  
4 road of a Nuisance Abatement? Okay.

5 DEPUTY COMMISSIONER BYRNE: Yes.

6 COUNCIL MEMBER GENTILE: But it is your  
7 unit that puts the MARCH Operation together?

8 DEPUTY COMMISSIONER MESSNER: Well, my  
9 unite coordinates the MARCH Operations but the-the  
10 diagnostic work, if you will, is done consistently  
11 for the department's context process. So for example  
12 the-when we do a MARCH Operation in a precinct, the  
13 target of the MARCH Operation, the places that will  
14 be visited are selected by the precinct based upon  
15 the community complaints that they get about  
16 locations in the precincts. We, in other words,  
17 don't pick the target, but we administer and we  
18 accompany the-all the operations to ensure that  
19 there's smooth collaboration with the other agencies  
20 and that all the usual and appropriate codes are  
21 enforced.

22 COUNCIL MEMBER GENTILE: Good. We're  
23 done. Thank you. I want to ask also, though, that  
24 we issued the search warrants and the requirement in  
25 the bills to increase the number of incidents. I

2 just want to understand what you're saying. You're  
3 saying that according to the Criminal Court procedure  
4 with two drug buys you can then go into court and ask  
5 the warrant to be issued.

6 DEPUTY COMMISSIONER BYRNE: Correct, and  
7 if the judge finds that there is credible evidence to  
8 establish probable cause the judge will give us that  
9 warrant, but we can't go seek the search warrant  
10 until we at least have those two buys or other  
11 similar type evidence.

12 COUNCIL MEMBER GENTILE: Right, and—and—  
13 and—and—and then you would—you would then normally  
14 file a Nuisance Abatement Act?

15 DEPUTY COMMISSIONER BYRNE: Correct. So  
16 what we would do is we would execute the search  
17 warrant. Let's assume we recover narcotics and other  
18 evidence of narcotics distribution. We would send  
19 those drugs to the lab and get a lab test. We would  
20 then evaluate the case. We would determine whether  
21 it's a case that should be presented to the district  
22 attorney for prosecution. If at the time we went in  
23 and executed the search warrant, there were drugs  
24 there and there were people in the apartment connect—  
25 connected to those drugs, we might arrest them on the

2 spot. The apartment may be empty, but that last  
3 search warrant and whether there's going to be a  
4 criminal prosecution or not. We then will determine  
5 whether it's now an appropriate location for Nuisance  
6 Abatement, and if it is, we'll start the Nuisance  
7 Abatement process with Commissioner Messner and the  
8 Law Department engaging together.

9 COUNCIL MEMBER GENTILE: So then under  
10 this—one of the pieces of legislation, you're saying  
11 that the requirement of an—of an additional—  
12 additional buy or additional incident kind of throws  
13 all all—all of that.

14 DEPUTY COMMISSIONER BYRNE: It throws.  
15 Correct. That's absolutely right. It's an  
16 unintended consequence, but in effect by requiring  
17 the additional fourth act, we would have to delay a  
18 fine for the search warrant to look for a third act  
19 before we went for search warrants.

20 COUNCIL MEMBER GENTILE: [interposing]  
21 Okay, so you wouldn't—you wouldn't execute--

22 DEPUTY COMMISSIONER BYRNE: [interposing]  
23 We wouldn't execute just one.

24 COUNCIL MEMBER GENTILE: --even though  
25 under—under the current procedure you—you--

2 DEPUTY COMMISSIONER BYRNE: We are, but if  
3 we wanted to keep open the option of using the  
4 Nuisance Abatement Tool, we'd be faced with the  
5 choice of delaying search warrant to look for a third  
6 act. We're going with the search warrant, and  
7 foreclosing ourselves from using Nuisance Abatement  
8 in the future. That's the problem with the provision  
9 from our point of view.

10 COUNCIL MEMBER GENTILE: Right. Okay.  
11 So-okay, I get that. Let me ask you then also about--  
12 you had mentioned limited the method of service. Are--  
13 are you saying that the method of services is  
14 preempted by--by the CPL or the State Law?

15 DEPUTY COMMISSIONER BYRNE: No, I'm not  
16 saying. I'm saying that we should break it down very  
17 simply. I think what I've said earlier is the  
18 department's position is with a narrow exception for  
19 potential crimes of violence and--and physical safety,  
20 we would be willing to forego as part of the package  
21 of these bills, the right to go to court ex parte.  
22 That's one step in the process. So if we're going to  
23 give up the right to go ex parte, we have to--we have  
24 a means of telling the other side that we're going to  
25 court to seek this order. What we would like is a

2 method of service that is workable and fair. So in  
3 the case of let's say an apartment where Defendants A  
4 and B have been selling drugs, we'd would want to  
5 have the opportunity to mail and leave a physical  
6 copy of those papers at the department telling the  
7 defendants we will be going to court on X day, and  
8 you should appear if you want at that time to opposed  
9 our application as opposed to spending months trying  
10 to find Defendant A and hand him the papers, and that  
11 is consistent with, you know, the CPLR and New York  
12 State for all sorts of legal actions.

13 COUNCIL MEMBER GENTILE: Okay.

14 DEPUTY COMMISSIONER BYRNE: That's what  
15 we're asking for.

16 COUNCIL MEMBER GENTILE: Okay, so-so we  
17 do have some—we—we do—we do have some authority and—  
18 and

19 DEPUTY COMMISSIONER BYRNE: [interposing]  
20 We have well established authority that the courts  
21 have accepted in this state for decades on how to  
22 properly serve people and give them notice of court  
23 proceedings.

24 COUNCIL MEMBER GENTILE: Great. Okay, I  
25 think my time is up, but thank you so much.

2 DEPUTY COMMISSIONER BYRNE: Thank you.

3 CHAIRPERSON GIBSON: Thank you, Council  
4 Member Gentile. I just had a few more questions that  
5 I wanted to ask. When the Speaker was here and was  
6 asking the question about some of the efforts that  
7 the department engages in to ensure that illegal  
8 activities are still going on, can you give a little  
9 bit more detail on what sorts of observations that  
10 you engage in?

11 COUNCIL MEMBER GENTILE: It varies by  
12 location. It varies by crime. The things we used to  
13 detect whether prostitution is being done out of an  
14 apartment are different than the things we use to  
15 determine whether K2 is being sold out of a  
16 storefront or drugs are being distributed out of a  
17 location. It varies not only by type of crime, but  
18 by specific situation including physical layout. We  
19 enter a building where we have to go once we get into  
20 a building. So it's not one—I'm not trying to avoid  
21 your question, but it's not one cookie cutter formula  
22 that we apply and say oh this is how we're going to  
23 do that there. When we're talking about  
24 verification, I think what we're saying is once we've  
25 established whatever the required pattern is of

2 criminal activity, before we go to court there should  
3 be some effort to verify that the people using that  
4 location for criminal activity are still there. They  
5 haven't moved out, and that there's some indicia of  
6 ongoing criminal activity. One of the ways we do  
7 that is what the bill has proposed is shorten the  
8 amount of time between the last criminal act and when  
9 we have to go to court because the closer in time  
10 we're going to court for the last criminal act, the  
11 greater the permissible inference is that the  
12 criminal activity is ongoing, or put differently, the  
13 criminal activity hadn't ceased

14 CHAIRPERSON GIBSON: Okay. In most of  
15 the residential cases in NAL actions, what's the  
16 percentage of residential for 2016 year to date that  
17 involve NYCHA? Is it a large percentage or a small.

18 DEPUTY COMMISSIONER BYRNE: I'll—I'll give  
19 you the exact numbers and—and we can provide these to  
20 you in writing afterwards. We put these numbers up  
21 for you, if you recall, when we did the briefing for  
22 the entire Council earlier in this year over at 1 PC.  
23 So for the period January 1<sup>st</sup> to October 1<sup>st</sup> 2016  
24 citywide, we did 107 residential Nuisance Abatement  
25 actions.



2 CHAIRPERSON GIBSON: Uh-huh.

3 DEPUTY COMMISSIONER BYRNE: Fourteen were  
4 in NYCHA facilities, 93 were in private residences.  
5 The 14 in the NYCHA facilities all 14 involved drugs,  
6 and in the 93 private facilities, 79 involved drugs  
7 or involved prostitution. Seven involved gambling  
8 and three involved, you know, miscellaneous other  
9 violations.

10 CHAIRPERSON GIBSON: Okay. So what's  
11 your relationship with NYCHA as it relates to the  
12 full exclusion versus the partial exclusion?

13 DEPUTY COMMISSIONER BYRNE: We don't  
14 fully exclude anybody under the current protocol with  
15 the Law Department. It's according to the different  
16 locations. We only exclude people from NYCHA and  
17 private and private residences. They don't have a  
18 different set of standards for both. Everybody is  
19 treated equal whether you have a private lease or a  
20 lease with NYCHA. We only exclude people who are  
21 engaged directly in the criminal activity. If that  
22 means there are just three brothers in the apartment  
23 and all three have engaged in criminal activity,  
24 we're going to exclude them whether they're in a  
25 NYCHA facility or a private residence. NYCHA's are

2 actually much more restrictive than ours, or in a  
3 sense more broader than hours because they can  
4 exclude people for all sorts of reasons including  
5 you're not on a lease, you're not a relative. You're  
6 out of process. So we collaborate with NYCHA, but  
7 it's separate processes and separate tools. And we  
8 don't for example, when we send a confidential  
9 informant in who purchases drugs at a NYCHA location,  
10 we don't tell NYCHA we've done that for obvious  
11 reasons. It's a confidential ongoing criminal  
12 investigation.

13 CHAIRPERSON GIBSON: Okay. Of the 107  
14 residential, do you know how many have been ex parte?

15 DEPUTY COMMISSIONER BYRNE: [pause] I just  
16 want to check for you on this. We're not--yeah, so  
17 one of the refinements we've made in the last few  
18 months, and I'd have to check this out for you, is we  
19 are no longer as a matter of policy asking for ex  
20 parte closing orders. So when we go ex parte before  
21 a judge now for residential, which simply means we go  
22 without telling the other side we went before the  
23 judge. We say, judge, here are the papers, here are  
24 the sworn affidavits, which have been reviewed by the  
25 NYPD and the Law Department. Drug dealing was going

2 on at this location. We're asking you to enter a  
3 temporary order saying no more drug dealing at this  
4 location. We then serve that order and ask the  
5 people at that location to come back to court on the  
6 appointed day where we will argue before the judge,  
7 or reach a settlement if the people want to settle.  
8 And if we reach a settlement, the judge has to  
9 independently approve the settlement say Person A, B  
10 and C, you've engaged in drug dealing at the  
11 location. You have to stay away from that location.  
12 Person D and E, you can continue to live there  
13 without restriction except you can't sell narcotics  
14 out of the place. In essence, that's how the process  
15 now works. So we are not the popular misconception  
16 going before a court and saying close this apartment  
17 and kick everyone out, and then going and kicking  
18 everybody out of the apartment and rendering them  
19 homeless and making them come to court a week later.  
20 That's not how this is operating today.

21 CHAIRPERSON GIBSON: Okay. So when were  
22 these changes instituted?

23 DEPUTY COMMISSIONER BYRNE: Well, we were  
24 never doing that previously, but the changes were  
25 strengthened and institutionalized earlier this year

2 in discussions with the Law Department and between  
3 myself and Zack Carter.

4 CHAIRPERSON GIBSON: Okay. So previously  
5 when you went to the judge to get the temporary  
6 order, that particular party was not informed until  
7 the order was served on them?

8 DEPUTY COMMISSIONER BYRNE: Correct.

9 CHAIRPERSON GIBSON: Right?

10 DEPUTY COMMISSIONER BYRNE: So we would go  
11 before a judge and we would say please give us an  
12 order for this premises. Sometimes the judge would  
13 do that. Sometimes the judge wouldn't. When the  
14 judge did, he would go to the premises. Even though  
15 the order actually permitted us to close the  
16 premises, we very rarely did that. Instead, we said  
17 these three can't stay until you come to court, and  
18 you two can stay but you still have to come to court,  
19 too. So we were doing less as a matter of practice  
20 than the order authorized us to do.

21 CHAIRPERSON GIBSON: Okay. In your  
22 analysis and in all of the NAL cases you have done to  
23 date, is it typically common to have individuals a  
24 party that violate the terms of the NAL and if so,  
25 what happens in that particular case?

2 [background comments]

3 DEPUTY COMMISSIONER MESSNER: Yes, there  
4 are—because many, if not most of the Nuisance  
5 Abatement actions and in a court approved settlement,  
6 there are terms of the settlement, and yes, there are  
7 a number of incidents that, where people don't live  
8 up to that, and in that case then when you—as with  
9 any other court ordered stipulated settlement we end  
10 up going back to court, and we end up trying to prove  
11 that there was violation of the court ordered  
12 stipulation. And usually, there are consequences for  
13 violating that court order or if they're also  
14 violating any court order. And the—what's going to  
15 happen as a result of that violation is determined by  
16 the judge.

17 DEPUTY COMMISSIONER BYRNE: Maybe you  
18 should think of the--the exclusion orders we've been  
19 obtaining as sort of like an order of protection.  
20 It's an order of protection against the individual  
21 continuing to commit crimes at that location, but it  
22 is a court order. Even if it's settlement, it's  
23 still a court order. So if Defendant A is told  
24 you've been dealing drugs out of this apartment,  
25 you've got to stay out of this apartment, and on a

2 subsequent occasion, Defendant A comes out of that  
3 apartment, Defendant A is in violation of court order  
4 even if he's not back there selling drugs again.  
5 Just like you're in violation of an order of  
6 protection if you go too close to someone even if you  
7 don't assault them. That's how I would think of the  
8 order. And when we get the information and when we  
9 have the ability, there are times where we will try  
10 to enforce that previously entered court whether it  
11 was done by settlement or whether it was done by the  
12 judge's determination over the objection of the other  
13 parties.

14 CHAIRPERSON GIBSON: So in those  
15 particular cases of a violation, you go back to the  
16 judge and there's another—is there another order that  
17 would come out of that or there would be—

18 DEPUTY COMMISSIONER BYRNE: Well, we would  
19 have to demonstrate to the judge's satisfaction that  
20 their order was violation.

21 CHAIRPERSON GIBSON: Okay.

22 DEPUTY COMMISSIONER BYRNE: We'd have to  
23 produce evidence, and the judge would have to make an  
24 independent separate determination.

2 CHAIRPERSON GIBSON: Okay, are there any  
3 instances--

4 DEPUTY COMMISSIONER BYRNE: [interposing]  
5 But there's full-full due process around that.  
6 That's not a decision--

7 CHAIRPERSON GIBSON: Okay.

8 DEPUTY COMMISSIONER BYRNE: --the NYPD  
9 gets to make.

10 CHAIRPERSON GIBSON: Are there any  
11 instances where an NAL action is brought against a  
12 business or a residential location more than once in  
13 a given timeframe and can you describe that?

14 DEPUTY COMMISSIONER BYRNE: Yeah, I'll  
15 let Commissioner Messner speak to that, but sure if  
16 we get a commercial location that says you can't sell  
17 alcohol without a license any more, and we get that  
18 order, and then the next week they're open under a  
19 different shell corporation selling alcohol without a  
20 license, and we know about, we're gong to go back to  
21 that location because the criminal activity hasn't  
22 ceased regardless of who's conducting it. [pause]

23 DEPUTY COMMISSIONER MESSNER: In addition  
24 there are locations that have over the years repet-  
25 repeated sometimes for different things. I'm

2 thinking of a notorious strip club up in the Bronx.  
3 Five years ago there was a nuisance abatement action  
4 brought against the prosecution, and then more  
5 recently within the last several months there was a  
6 separate nuisance abatement order going against them  
7 for drug sale because there were drug sales occurring  
8 by their employees inside the strip club basement.  
9 So unfortunately, despite our best efforts there—just  
10 as there are people who are recidivists in the  
11 criminal justice system, there are locations that are  
12 recidivist in the criminal justice system, and  
13 sometimes if the stipulated settlement is still in  
14 effect we move as per a contempt of that stipulated  
15 settlement, and other times we start a fresh nuisance  
16 abatement case.

17 CHAIRPERSON GIBSON: Okay, I wanted to  
18 quickly as--

19 DEPUTY COMMISSIONER BYRNE: [interposing]  
20 Chairperson Gibson, I want to make sure we answer all  
21 your questions. I had only planned until 12 o'clock.  
22 So we can certainly play-stay until 12:30, but a  
23 little bit beyond that is going to start to conflict  
24 with another obligation, but we'll stay as long as we  
25 can answer all your questions.



2 CHAIRPERSON GIBSON: Okay, no, I'm—I'll  
3 be quick. I just have two final questions. I wanted  
4 to ask--

5 DEPUTY COMMISSIONER BYRNE: [interposing]  
6 No five-minute time limit for the chairperson.

7 CHAIRPERSON GIBSON: Thank you. I wanted  
8 to ask about your relationship with the State Liquor  
9 Authority. I think many New Yorkers, many of my  
10 constituents don't always understand the partnership  
11 and the overlap. They see problem businesses and  
12 they see them remain open. They call excessively  
13 and, you know, many don't understand the process by  
14 which NAL is used in the first place. So my two  
15 questions: When an NAL—NAL is executed and it's  
16 complete, the businesses and the residents that live  
17 around that particular location like is there any  
18 information that is shared through the local precinct  
19 at the community board so that residents will say  
20 I've call 311 a dozen times. What are we doing about  
21 this particular location so that they can understand  
22 that something is happening, and obviously there's a  
23 level of patience and cooperation. But how does any  
24 information that you are engaging in and getting to  
25 rid us of these particular locations, how does that

2 information get to the local precinct, which would  
3 then get to the residents?

4 DEPUTY COMMISSIONER BYRNE: So I'll let  
5 Commissioner Messner go into more detail, and this is  
6 another important component of the neighborhood  
7 community policing model and the NCO officer role.  
8 We don't do any nuisance abatement action, commercial  
9 or residential without the participation of the local  
10 precinct whether it's the patrol function whether  
11 it's the anti-crime function, whether it's the  
12 protective squad. So while the papers may be drawn  
13 up across the street from 1PP, the precinct is  
14 intimately involved in the process in determining  
15 that this is a the location that we should use to  
16 close. Let's stay with the commercial unlaw-illegal  
17 distribution of alcohol whether it's a club, whether  
18 it's a store zoned for minors. You've made the  
19 perfect example of why we need to attain commercial  
20 nuisance abatement. The powers of the State Liquor  
21 Authority are basically limited to fines, and in the  
22 extreme revoking someone's license, serve alcohol on  
23 the premises. To sell alcohol through off-premises  
24 consumption that is a very lengthy time consuming  
25 process full of due process as it should be, but it

2 can take months and often years. The importance of  
3 commercial nuisance abatement is we can go before a  
4 judge more quickly and try to stop the illegal  
5 activity that's creating the difficulties for the  
6 local residents and the precinct commander frankly.  
7 And let the State Liquor Authority choose to run its  
8 course or not. When we close a commercial  
9 establishment, it's incumbent on us to make sure that  
10 we're getting community feedback formally and  
11 informally through dialogue and through further calls  
12 to 911 and 311 if that nuisance, if that criminal  
13 conduct hasn't been abated by our action. And we  
14 would encourage people to—to let us know that.

15 CHAIRPERSON GIBSON: Okay, and my final  
16 question is with the partnerships you have with State  
17 Liquor Authority and others, one of the bills on  
18 today's agenda talked about trying to avoid duplicity  
19 and duplicate cases. So there's not a—almost a  
20 double, you know, penalty. How do you work with the  
21 various agencies including district attorneys to  
22 ensure that, you know, your NAL case doesn't conflict  
23 with an ABC case? I mean how does all of that work  
24 to ensure that individuals and the parties are given

2 fairness and are not being charged with a crime from  
3 both the city and state level?

4 DEPUTY COMMISSIONER BYRNE: Well, nobody  
5 is being charged with the same crime twice. They may  
6 suffer different consequences for the same crime. So  
7 I'll give you an example. You may sell drugs out of  
8 an apartment and get criminally convicted for those  
9 drugs sales. You then may be subject to a nuisance  
10 abatement action, which says you can't to back tot  
11 hat apartment under these bills let's say for a year.  
12 But if it's a private residence, the landlord may say  
13 I don't want you distributing drugs out of my  
14 apartment at all. You've diminished the amount of  
15 rent I get. The diminished the amount of property,  
16 the value of my property. You've harmed the other  
17 tenants I'm trying to rent to. I want you evicted  
18 off the lease. That's a much longer process. The  
19 person is going to go through a Housing Court  
20 proceeding, but there's due process around that.  
21 It's not the same punishment. It's a different  
22 remedy designed to address the issue more quickly.  
23 The same with the State Liquor Authority example I've  
24 used. We may tell someone stop illegally  
25 distributing liquor at these premises, and three

2 years later the State Liquor Authority may actually  
3 revoke their liquor license or may not but we don't  
4 think we should have to wait for three years once we  
5 have the requisite criminal pattern of conduct if we  
6 can satisfy a judge under that it needs to be  
7 addressed now. So I don't think they're mutually  
8 exclusive and I don't think they're at odds. And as  
9 you know from your own oversight, very rarely are—are  
10 tenants or illegal residents who aren't tenants ever  
11 evicted or excluded successfully from NYCHA  
12 proceedings because of the—the processes that agency  
13 has, the limited resources that agency has. It's not  
14 intended that a—as a criticism of NYCHA. We intend  
15 it as a recognition of reality that very few people  
16 through NYCHA proceedings are ever excluded from  
17 remaining in a NYCHA facility.

18 CHAIRPERSON GIBSON: So there is a level  
19 of communication that happens. So if you executed an  
20 NAL—NAL action, are you aware of existing or other  
21 actions? Is that something that's shared by the  
22 state or vice versa?

23 DEPUTY COMMISSIONER BYRNE: We do our best  
24 to learn about that. We do that all the time in the  
25 context of criminal investigations. We try to

2 coordinate with the other agencies. While the system  
3 is by no means perfect, but as long as each action  
4 has sufficient due process protections around it,  
5 whether it's a nuisance statement, whether it's a SLA  
6 administered proceeding, whether it's a NYCHA  
7 proceeding as long as proper due process surrounds  
8 each of those processes, that should protect the  
9 people who are subject to those types of legal  
10 proceedings.

11 CHAIRPERSON GIBSON: Okay. Thank you.  
12 That's all, and I finished before my timeframe.  
13 Thank you very much. I thank you for coming today  
14 and, you know, obviously this is a conversation that  
15 we will keep having. I appreciate your presence and  
16 really outlining a lot of what you do through NAL,  
17 and also I think it was important because not  
18 everyone understands that the Office of Civil  
19 Enforcement does much more than NAL. I mean K2,  
20 synthetic marijuana and many other infractions that  
21 we deal with at the—the unit itself. I certainly want  
22 to keep talking because, you know, we—we always want  
23 to keep moving the—the needle making sure we can get  
24 the full agreement of most of our bills the entire  
25 package. But I thank you for being here, and I

2 always ask or let know that with all of our hearings  
3 it's really important for you to keep someone behind  
4 from the NYPD to hear the other panels testifying.  
5 We have attorneys who are here, but more importantly  
6 for me we have individuals that have been impacted by  
7 an NAL action, and I want to hear their stories, and  
8 I would love for you to hear that as well so--

9 DEPUTY COMMISSIONER BYRNE: Yeah, thank  
10 you for the opportunity to be here. We do intend to  
11 stay. We do want to hear those stories, too. I  
12 personally can't stay, but several members of the  
13 team will be staying for the balance of the hearing.  
14 SO thank you.

15 CHAIRPERSON GIBSON: Okay, great. Thank  
16 you very much. Thanks for coming.

17 DEPUTY COMMISSIONER MESSNER: Thank you.

18 [pause]

19 CHAIRPERSON GIBSON: Our next panel  
20 coming before the committee is Austria Bueno from  
21 Legal Services NYC; Phyllis Williams; Robert  
22 Sanderman from Legal Services New York; and George  
23 Gardner also Legal Services, Queens Legal Services  
24 NYC, and if there's anyone here that wishes to  
25 testify before the committee, please make sure you

2 see the sergeant-at-arms on your right hand side to  
3 fill out a slip so that your name can be called at a  
4 subsequent panel. Thank you. [pause] Okay, so we  
5 have Austria here, Robert, Phyllis and George.  
6 Right? Okay. Who would like to begin?

7 ROBERT SANDERMAN: I would like to begin.

8 CHAIRPERSON GIBSON: Okay, thank you.

9 ROBERT SANDERMAN: Good afternoon. Thank  
10 you so much for holding this very important hearing.  
11 My name is Robert Sanderman, I'm a staff attorney at  
12 Queens Legal Services, which is a borough branch of  
13 Legal Services NYC, the largest civil-free civil  
14 legal services providers for low-income New Yorkers.  
15 I work as a housing rights attorney where I defend  
16 tenants facing eviction, discrimination, termination  
17 of subsidies and also those who are in need of  
18 repairs in their apartments. Today, one of our  
19 clients, Ms. Austria Bueno(sp?) and I will speak to  
20 the new amendments and the disastrous effect that the  
21 Nuisance Abatement Law on the people of color, people  
22 and communities of color. Currently, my office is  
23 representing Ms. Bueno in a federal lawsuit alleging  
24 that the public, the current Public Nuisance Law is a  
25 violation of the due process laws of the United



2 States, and that this is, of course, may effect  
3 people of color and communities of color. As the  
4 current law stands, the NYPD may engage in temporary  
5 ex parte evictions wherein the city and/or the NYPD  
6 locking New York City residents out of their homes by  
7 literally sealing the doors without any notice  
8 regardless of whether the apartment's residents are  
9 even suspected of committing a crime. Simply on the  
10 basis of past alleged criminal activity happening at  
11 that address—at that address. The Nuisance Abatement  
12 Law violates the most basic principles of due  
13 process. The City needs simply to make these  
14 allegations, which are usually still a month old,  
15 often based on unverified reports by confidential  
16 informants. That they are purchased—that they  
17 purchased an unspecified quantity of drugs at the  
18 apartment in question. As a result, even where the  
19 alleged wrongdoer is not charged let alone tried or  
20 convicted of any crime, everyone in the home  
21 including innocent minors, elderly and infirm tenants  
22 are subject to cause eviction that can occur many  
23 months after any alleged activity. This is occurring  
24 in the city experiencing affordable and homelessness  
25 crisis where gentrification is rampant and NYC—New

2 York City residents are struggling to make ends meet.  
3 The current Nuisance Abatement Law thus allows the  
4 NYPD and the City Law Department to circumvent hard  
5 fought eviction protection laws, and procedures that  
6 currently protect residents from sudden, unexpected  
7 evictions. Moreover, the Nuisance Abatement allows  
8 the City to put low-income residents of color in  
9 impossible situations requiring them to sign waivers  
10 of their Constitutional and onerous stipulations of  
11 settlement as a condition of being allowed to simply  
12 return to their apartment and access their  
13 belongings. While the Nuisance Abatement Statute  
14 requires a court date three business days from the  
15 lockout, this is insufficient time for tenants to  
16 obtain legal counsel and moreover, as we understand  
17 it, the City Law Department rarely, if ever, appears  
18 at these court dates prepared to put on their proof.  
19 Rather, the Court date is a mere formality wherein  
20 the actual hearing date is adjourned leaving tenants  
21 to remain evicted from their apartments pending a  
22 date for them to—to have an actual hearing, unless  
23 they are willing to sign away the Constitutional.  
24 This is a very discriminatory practice as the ex  
25 parte eviction like stop and frisk normally occur in

2 communities of color. The Independent Journalism  
3 Center Pro Publica and the New York Daily News  
4 recently reviewed the NYPD Lockout file between 2013  
5 and mid 2014, and found that over 85% of those ex  
6 parte lockouts occurred in communities of color.  
7 Legal Services NYC in working with Paul Rice, Rifkin,  
8 Warren and Garrison found similar results when we  
9 reviewed all the nuisance abatements filed by the  
10 City from January 2014 through mid-October 2016. As  
11 you can see by the map behind me, these aren't  
12 occurring in predominantly white communities. This  
13 is truly a tale of two cities that Mayor de Blasio  
14 has so eloquently described. There's a city where  
15 people go home at night, close their door and know  
16 that they are safe, and there is the other city where  
17 anyone might simply come home one day to discover  
18 that their home is no longer their own. That, if  
19 they ever want to see any of their belongings again,  
20 they must go home—they must go to court and try to  
21 prove their innocence. To the extent that the City  
22 will continue to utilize the nuisance abatement  
23 against residential tenants instead of utilizing the  
24 well established process of a landlord commencing a  
25 case in Housing Court. We are glad to see the

2 amendments to ensure that New York City residents  
3 such as Ms. Bueno Samella (sic) are served personally  
4 and put on notice of the City's charges, receive  
5 adequate time to secure an attorney and prepare  
6 defenses, and that the City has to verify that some  
7 type of nuisance is ongoing and continuing, that the  
8 lockout could be used only when they are determined  
9 to be the least restricted means to achieving an end  
10 to a given nuisance. And the window for narcotics  
11 for narcotics abatement will be reduced from a year  
12 to 90 days. However, we are concerned that providing  
13 a defendant with only three days to find a lawyer and  
14 prepare for a defense and the preliminary injunction,  
15 which you learned about earlier, is insufficient.  
16 Any tenant would need more than three days to secure  
17 an attorney, and so that attorney would definitely  
18 need more than three days to prepare defense. With  
19 reasons mentioned above, LSNY (sic) applauds the City  
20 Council proposed bill. I would like to thank the  
21 Committee on Public Safety and the Speaker's Office  
22 for holding this very important hearing again.  
23 Specifically, we would like to thank the Speaker for  
24 her—for introducing the bill to eliminate the factors  
25 of locking people out of their homes without notice

2 or a change to be heard. In essence, ending the  
3 practice of ex parte lockouts entirely. Hopefully,  
4 this will set a new standard in all types of eviction  
5 cases. New York City has one of the strongest and  
6 most effective housing and human rights laws in the  
7 country. This Council has repeatedly acted to  
8 strengthen the rights of New York City residents by  
9 passing forward thinking legislation to protect  
10 tenants facing homelessness and discrimination. As  
11 advocates, we thank you for your commitment to  
12 protecting the rights of all New Yorkers. Adopting  
13 these amendments will keep families together,  
14 preserve affordable housing, decrease recidivism,  
15 secure—protect the Constitutional of New York City  
16 residents, mitigate discrimination based on race, and  
17 the many collateral consequences that result from an  
18 arrest, eviction and this engagement work. Just as  
19 the Council has passed this sort of legislation to  
20 protect tenants from harassment, the proposed  
21 nuisance bill will constitute a promising step for  
22 security the constitutional rights of all New Yorkers  
23 and improve community and police relations. A home,  
24 as the Council is fully aware, is a fundamental—  
25 fundamental for the stability of New York families.

2 New York City residents should be afforded an  
3 opportunity to defend themselves in court. Thank  
4 you. I'll like to—I would now like to introduce my  
5 client Ms. Austria Bueno.

6 AUSTRIA BUENO: Good afternoon. This is  
7 Austria Bueno. I applied for help and I tried to  
8 like six years ago when I was pregnant because I was  
9 paying so much, the bill in court is like \$2,000 ad  
10 something. I am glad I had approved designation one  
11 year, and it was hard for me when I cook, when I went  
12 to pick up my son, the door is locked. [laughs] My  
13 little son he was six years old at that time, and my  
14 other son who is 15 years old, it was terrible, he  
15 was crying. I don't know what to do. I called the  
16 police. The police they don't help me. They say you  
17 have to wait until Monday to go to the court. I  
18 wait. At midnight we went to my family (sic) and  
19 then after that, we went to the hotel. We paid like  
20 \$200 and something dollars just for one night, and we  
21 couldn't afford it. I didn't send my--my son to  
22 school. I didn't go to work because I don't have no  
23 money. I don't have no place to go, and we went to  
24 my mother-in-law. When I went to my mother-in-law  
25 with my husband and two sons, we sleep in the floor

2 for five days. And I think this is not right because  
3 I work hard, and I don't deserve this. They treat me  
4 like a criminal, and I—I am not a criminal. I am a  
5 mother. I support my family and I don't deserve  
6 this, and nobody can deserve this.

7 CHAIRPERSON GIBSON: Thank you very much.  
8 Thank you. [pause]

9 GEORGE C. GARDNER III: Good morning and  
10 thank you for your time. My name is George C.  
11 Gardner III, and I'm a staff attorney in the Housing  
12 Rights Unit in Queen Legal Services, which I think  
13 that somebody mentioned is a branch of Legal Services  
14 NYC. Earlier this year, I represented Ms. Phyllis  
15 Williams in an eviction proceeding that arose in part  
16 from the law we are discussing today. Ms. Phyllis—  
17 Ms. Phyllis Williams is a 70-year-old mother who has  
18 lived in her apartment for 50 years. Her son was  
19 accused of selling marijuana on two occasions, but  
20 the charges were never substantiated, and were  
21 ultimately dismissed. Still, through the Assistant  
22 District Attorney's presence and undue influence in  
23 Housing Court, Ms. Williams was pressured to  
24 permanently exclude her son from her home. Then, six  
25 months after the alleged sale, and with no new

2 information, the City requested a closing order for  
3 Ms. Williams' apartment. Without an attorney, and at  
4 risk of losing her home again, she was forced to  
5 sign a second agreement to exclude her son. The  
6 Nuisance Abatement Law too often operates as a weapon  
7 that threatens to uproot long-term low-income tenants  
8 and rip apart multi-generational families. Legal  
9 Services NYC welcomes the proposed amendments and  
10 thanks the Council for providing an opportunity for  
11 Ms. Williams to share her story. [pause]

12                   PHYLLIS WILLIAMS: Good morning. My name  
13 is Phyllis Williams and I live in College, Queens. In  
14 June of 2015, my son was arrested in my  
15 apartment. They say that he was selling marijuana.  
16 So in an order for 2015, I had to go to Housing  
17 Court. My landlord went stupid. He wanted to cut me  
18 out. I had no place to go, and I was afraid to lose  
19 my home. So I signed a paper that said my son had to  
20 move out in three weeks, and that could never come  
21 back. Later in December of 2015, I had to go to the  
22 Supreme Court. I was confused because I had been to  
23 Housing Court already, and I did not have any  
24 attorney to hear me, to help me, I'm sorry. But they  
25 told me that I had to sign a paper to say that my son



2 could not live in my house. So my son came to my  
3 house to get his belongings. My landlord took me  
4 back to Housing Court to put me out. The court asked  
5 me to--to make me confusing, worried and thinking  
6 about losing a lot of sleep. Queens Legal Service  
7 helped me to explain to the jury why it was unfair to  
8 put me put for something that I did not do, and for  
9 something that I did not know about. The judge let  
10 me keep my apartment, but my son can never come back.  
11 I think it is wrong that I was almost put out of my  
12 home that I had live in for 50 years for something  
13 that I did not do--do, and that I did not know about.  
14 I think it is wrong that I had to get to two  
15 different courts for the same thing, and I think it  
16 is wrong that my son who helps take care of me, has  
17 to leave forever. But I think it is right that the  
18 City wants to change the law so that other families  
19 do not have to go through what my son and I had gone  
20 through. Thank you.

21 CHAIRPERSON GIBSON: Thank you very much.  
22 Is there anyone else that--?

23 ROBERT SANDERMAN: That's it, but I'd  
24 just like to highlight a very important point that  
25 already in Ms. Bueno's written testimony. Ms. Bueno

2 moved into her apartment August 1, 2015. She was  
3 temporarily evicted on the basis of selling drugs,  
4 and this—on December 11. So these allegations--

5 CHAIRPERSON GIBSON: Before she moved in,  
6 right?

7 ROBERT SANDERMAN: Before she moved in  
8 and this is another reason why all the proposed  
9 amendments are so essential, and why cutting down the  
10 period is so important and why process is so  
11 essential. Because these alleged sales occurred  
12 January and February 2015. The people who allegedly  
13 moved there based on the Pro Publica article moved  
14 out in April. Ms. Bueno didn't move in until August,  
15 and on December 11<sup>th</sup>, she's—as she stated, cooking at  
16 home. She picked her son up from school, came back  
17 and she's locked out. If she was afforded any basic  
18 due process, she could have showed up in court with  
19 her lease. Actually, when we represented her, I  
20 showed up in court with her lease, and we still had  
21 a difficult time. So the case dragged on from  
22 December 15 until March because they—the City didn't—  
23 would not want to drop the case unless Ms. Bueno  
24 waived her Constitutional rights, and she felt like  
25 she shouldn't have to waive her Constitutional

2 rights. So that's why it was—it was ultimately  
3 withdrawn after we filed the Motion to Dismiss that  
4 we clearly would have won because she never lived in  
5 the apartment and had nothing to do with it.

6 CHAIRPERSON GIBSON: Right, and I agree  
7 and I think that's why this package is so critical.  
8 We want to make sure that those that the department  
9 identified are rally the actual targets and, you  
10 know, that's why I one of the bills in this package  
11 looks at that year-long process, and tries to  
12 minimize it because if it was minimized this is a  
13 case that obviously could have been avoided in this  
14 particular instance because when Ms. Bueno moved in  
15 that would have already been a case that essentially  
16 would have been closed because the previous tenants  
17 moved out months before. I just have a quick  
18 question, and I hate to ask about specifics of a  
19 specific case but I mean you raised a case. During  
20 the time that you represented Ms. Bueno and her  
21 family, was she allowed access into the apartment,  
22 and if not, the alternative location where you lived  
23 I mean were you responsible for the rent while you  
24 were out of your apartment? And where you able to  
25 get any expenditures that you used to live, was that

2 reimbursed or anything? I mean, your life was  
3 transformed for so long for something that you  
4 obviously didn't do. I mean just trying to  
5 understand in terms of--of restitution how that works  
6 particularly since you have counsel.

7           ROBERT SANDERMAN: Yes, thank you for  
8 that question. I just want to highlight another very  
9 fine point relating to that. There's also the  
10 verification aspect of it because if the city or the  
11 Law Department actually verified that the nuisance  
12 was ongoing and continuing, they should have never  
13 have come to the apartment in the first place. To  
14 your specific point, when I appeared in court with  
15 Ms. Bueno, I had showed them the lease. They needed  
16 time to verify the lease so I pleaded with them if  
17 she can go back into her home. I explained  
18 everything. No offer of restitution was communicated  
19 to me. They basically just wanted her to sign a--a  
20 court agreement waiving her rights to sue the City,  
21 waiving any damages that my have occurred pretty  
22 much. So it was opposite. They wanted to waive her  
23 rights. They didn't offer any sort of compensation.  
24 In the federal case, in addition to the important  
25 proposed amendments as in the ex parte--getting rid of

2 the ex parte order, we are also asking for damages to  
3 compensate Ms. Bueno for what she went through, her  
4 and her family.

5 CHAIRPERSON GIBSON: Okay. Thank you  
6 very much. Does anyone have anything else to add?  
7 [pause] Well, I thank you for being here, and  
8 certainly, Ms. Bueno, I thank you for coming today  
9 and really telling your story. I mean I—I hope  
10 you'll understand that, you know, we as the Council  
11 obviously support this measure of nuisance abatement  
12 because there are individuals and businesses out  
13 there that are engaged in many illegal activity, and  
14 for that we want to make sure that we get to the  
15 heart of those particular parties. But there are so  
16 many others that are innocent victims that get caught  
17 up within this system, and that's today's hearing is  
18 really important because we want to make sure that  
19 there are systems in place to avoid everything that  
20 has happened to you, and your life being uprooted for  
21 months as it was. Not only does it affect you, but  
22 your—your family and your children. So I appreciate  
23 you coming and telling your story. I—I know it's  
24 certainly not easy, but I appreciate, you know, Legal  
25 Services and everyone for being here and Ms. Phyllis

2 as well because it's really important. These are the  
3 types of stories we have to hear. Nothing is  
4 perfect, and we are constantly trying to make  
5 improvements to the system so that the system  
6 functions better, and certainly knowing that there's  
7 always a disproportionate impact on many immigrant  
8 families and families of color. I mean these are all  
9 the efforts that we want to put forward to make sure  
10 that legislation like this puts new laws in place so  
11 that we could prevent instances like this from  
12 happening ever again. So I thank you and I thank the  
13 entire panel for being here, and we have your  
14 testimony that's written into the record, and we will  
15 continue to make sure that we have this--this  
16 important conversation. So thank you for coming out  
17 this afternoon. Thank you very much. Gracias.

18 ROBERT SANDERMAN: Thank you.

19 GEORGE C. GARDNER III: Thank you.

20 [pause]

21 CHAIRPERSON GIBSON: Our next panel is  
22 Lucy Newman from the Legal Aid Society; William Bryan  
23 from Brooklyn Defender Services; Emily Ponder from  
24 Neighborhood Defender Services of Harlem; Runa  
25 Rajagopal, Director of Civil Action Practice at the

2 Bronx Defenders; and Bobby Hodgson from the New York  
3 Civil Liberties Union. [pause] We have Lucy  
4 Williams; Emily Runa and Bobby. Five to five.

5           Good afternoon. I'm—I wanted to thank the  
6 Speaker Melissa Mark-Viverito and Chairperson Gibson  
7 and members of the Committee on Public Safety for the  
8 opportunity to testify today, but also for the  
9 introduction of this package of 13 bills. [laughs]  
10 As an aside. Later today I'm going to email my  
11 comrades here and ask them whether or not they've  
12 memorized which bill deal with which amendment and  
13 which—which Council Members sponsored, and yes have  
14 much, sir, we've been paying attention to this.  
15 Anyway, the bills obviously are comprehensive reforms  
16 to some of the most egregious causes of the NAL, and  
17 hopefully will hold the NYPD more accountable for its  
18 actions in enforcing this law. I just want to talk a  
19 little bit about the residential aspect of these  
20 cases and in particular the ex parte orders.  
21 Unfortunately, my client couldn't be here today to  
22 testify, but I wanted to talk to you a little bit  
23 about Ms. R, my client whose facts are all too  
24 familiar in these cases. She's a NYCHA tenant.  
25 She's lived in her house for 20 years. She's a

2 single mom. She's 47. She is disabled. She Resos

3 (sic) Asthma, depression, PTSD. She sees a

4 psychotherapist twice a week. She survives on SSI.

5 In March of 2014, the NYPD executed a search warrant

6 in her apartment. He twin sons were arrested and

7 charged with possession of marijuana and drug

8 paraphernalia. That very same day, they pled guilty

9 to disorderly conduct, which is a violation and not a

10 crime. In June of 2014, her landlord, the New York

11 City Housing Authority commenced a termination of

12 tenancy proceeding against her. She had an

13 evidentiary hearing in front of the hearing officer,

14 and after that, the hearing officer issued a decision

15 in which the hearing officer found her eligible to

16 remain in her home of 20 years, but excluded the twin

17 sons from the apartment. Her twin sons then

18 immediately left the apartment in accordance with the

19 hearing officer's decision. In February of 2015, the

20 cops arrived at Ms. R's apartment again this time

21 with a--Law Department lawyer from the City's Law

22 Department, and she was very confused. They served

23 her with an order, a sealing order, a closing order

24 that had been signed in secrete by a judge. Based on

25 exactly the same allegations that had formed the



2 basis of the termination of tenancy proceedings, and  
3 had actually been resolved 11-1/2 months before that  
4 with a non-criminal violation. So she was very,  
5 very confused. She went to court three days later.  
6 The NYPD lawyer handed a stipulation of settlement in  
7 which she was to agree to permanently exclude her-her  
8 sons, but also would basically subject herself to  
9 being evicted at any time upon any allegation by the  
10 NYPD in the future without an judicial intervention  
11 and that was their offer of settlement, and obviously  
12 she was very scared. And just as a point, the papers  
13 that were filed by the NYPD Law Department had no  
14 allegations of ongoing nuisance. In fact, the two  
15 alleged incidents were those based on the  
16 confidential informant, and the other was the search  
17 warrant, which again had happened over 11-1/2 months  
18 before hand and, in fact, they filed the case on  
19 February 26, which was exactly one day before the one  
20 year statute of limitations. Yet, they were asking  
21 the judge to give an ex parte close order because the  
22 close order was allegedly the only way that they  
23 could stop this ongoing nuisance from occurring. So  
24 for a year, they sat on it with no sense of urgency,  
25 but suddenly they raced to court and wanted a secret

2 order to close her apartment. With the passage of  
3 Intro 1308, what happened with Ms. R and Ms. Bueno  
4 and others wouldn't be able to happen because as we  
5 know most cases in our legal system don't start like  
6 those in the NAL. Most people get notice of the  
7 case, and an opportunity to be heard. In NAL cases,  
8 residents come home from being at work or collecting  
9 their kids from school or going grocery shopping to  
10 find that they've been evicted from their apartment  
11 and they don't know why, and they're told to go to  
12 court. And there's reasons for that because it's a  
13 very Draconia measure—Draconian measure for enforcing  
14 the law. If she had an opportunity to go to court  
15 before they were locked out, Ms. R. would have been  
16 to talk to the judge and show that no only had her  
17 sons moved out of the apartment, so therefore, there  
18 was no ongoing threats to neighbors or public safety,  
19 but the case had been resolved and a hearing officer  
20 she found her eligible to remain in her apartment  
21 after an evidentiary hearing at NYCHA. In April  
22 2015, Legal Aid together with Legal Services sent a  
23 letter to the Chief Attorney at Corporation Counsel,  
24 Zachary Carter, and raised our concerns about ex  
25 parte close order. And in his response in June of

2 2015, the corporation counsel assured us that they  
3 were—the were never going to evict innocent tenants  
4 using those ex parte orders. But you heard earlier  
5 from Ms. Bueno, six months after that six months  
6 after that letter had been issued was locked out of  
7 her apartment for—for alleged activities that  
8 occurred with prior tenants way before she'd even  
9 lived in the apartment. So, what this demonstrates  
10 to us is that the NYPD and the Law Department don't  
11 actually have safeguards against evicting innocent  
12 tenants who are not involved in illegal conduct. And  
13 today the NYPD was here saying that don't worry,  
14 don't worry we've changed our policy, you know,  
15 obviously in response to the Pro Publica article.  
16 But without the legislative change, they could change  
17 their policy again and go back to filing the cases  
18 they are filing which had no allegations of ongoing  
19 conduct. Were being enforced against people that  
20 weren't involved in any crime, and were being served  
21 a year after the fact. So I—we also—Legal Aid also  
22 supports the other bills that are part of this  
23 Nuisance Abatement Fairness Act. We obviously  
24 encourage the narrowing of the scope of the law so  
25 that it is as NYPD believes it to be a precision

2 tool. We believe that the Council will actually be  
3 helping the NYPD in making it a precision tool. We  
4 would recommend—we were very, very grateful for your  
5 commitment to this, and the first steps that we would  
6 encourage the Council to consider actually removing  
7 residential dwellings from the purview of the—of the  
8 north—south. There are 40 house cases in Housing  
9 Court and NYCHA terminations of tenancy proceedings  
10 that can do the same job, and actually target  
11 particular illegal behavior as necessary. But again,  
12 I wanted to thank the committee, and we look forward  
13 to working with you to ensure the successful passage  
14 of these bills.

15 CHAIRPERSON GIBSON: Thank you. Thank  
16 you very much.

17 RUNA RAJAGOPAL: Good afternoon. My name  
18 is Runa Rajagopal. I'm the Director of the Civil  
19 Action Practice at the Bronx Defenders. I want to  
20 thank the Council for allowing me and our  
21 organization to testify today. The Bronx Defenders  
22 represents over 35,000 people in the Bronx everyday—  
23 every year, not everyday, and the Civil Action  
24 practice was created to defend against a multitude of  
25 civil consequences and civil problems that arise for

2 folks who are simply accused, arrested, but not yet  
3 convicted of a crime. And as you can imagine,  
4 housing is a major area that we—we stabilize. And  
5 just to give—may fear about our position where, you  
6 know, wherever the Civil Enforcement Unit at the  
7 NYPD, the Civil Action practices on the other side to  
8 protect, serve and defend our community and make sure  
9 their rights are protected. The NAL is one of the  
10 most offensive, hostile and unfair laws that I have  
11 seen in my practice and has far, far strayed from its  
12 original intended purpose. I was shocked to learn  
13 about it as a practitioner, particularly with respect  
14 to ex parte closings and, of course, I'm talking  
15 about—I'm going to focus on residential closings  
16 specifically, because that's what we see the most of  
17 and impacts our community greatly. I want to talk  
18 about one of our clients who called Dennis who was  
19 similarly—you know, you're getting a lot of the same  
20 themes. Obviously a person who was living in a  
21 private apartment, a long term tenant, and in the  
22 cover of night one fine day, the NYPD barged in---  
23 barged into his apartment and served him with papers  
24 alleging that approximately seven months earlier he  
25 had sold unpacked cigarettes, and he had in fact,

2 seven months earlier been arrested for that issue,  
3 and not yet convicted had an attorney in criminal  
4 court and was fighting the case. So seven months  
5 later based on allegations that were seven months  
6 stale, the police told him that he had to immediately  
7 leave his apartment. Well, Dennis had nowhere to go.  
8 He had to immediately leave and basically slept on  
9 the train. The next day he went back to his  
10 apartment because he had a debilitating illness, and  
11 actually needed medication, which he hadn't taken.  
12 He went back to—got access to his apartment, and  
13 shortly thereafter was arrested for trespassing in  
14 his own home. When he went to the precinct he felt  
15 ill and needed medical atten—attention. He went—was  
16 taken to the hospital and shackled to the bed and  
17 watched over by two police officers. After he was  
18 released his hearing and court date in Supreme Court  
19 for NAL was several days later, but prior to that he  
20 connected with our office. So we went with Dennis to  
21 Supreme Court, and the issues were navigated and set—  
22 settled seamlessly, right. They came to a  
23 resolution. Dennis was able to go back to his  
24 apartment. The case was settled on favorable terms.  
25 And just to let you know, Dennis' criminal case was—

2 took several years in the Bronx to get there, but  
3 ultimately dismissed the appeal. So he was never  
4 con-convicted of the crimes of-in which he was  
5 accused of. So that also-of course you're hearing  
6 all of these stories that really paints a full  
7 picture of the people, not criminals, who are  
8 impacted by the NAL, and as we see it, these cases  
9 and issues are not about criminal enterprise and  
10 organizations. I have seen and defended multiple  
11 people who are accused and face the application of  
12 the NAL, and none of them rose to the level that the  
13 NYPD described about these mysterious institutions,  
14 scar faces, if you will. That's not who we see. We  
15 see mothers and grandmothers and grandchildren and  
16 people who are impacted and the NAL is used to evict  
17 tenants, and families in the communities of color  
18 without due process, and that is the reality that we  
19 see. I just want to talk about and address some of  
20 the issues that NYPD brought up, and there was  
21 comment that when sort of-that was stated that said  
22 there were all sorts of reasons why people aren't  
23 charged with crimes, and we agree. It's usually  
24 because of the Constitution and rights, right? And  
25 the higher protections and constitutional rights that

2 exist in criminal court. The process, the right to  
3 counsel and the right to jury trials and against  
4 self-incrimination and so on and so forth. Civil  
5 enforcement techniques like the NAL are used by  
6 design, right. They're used intentionally to punish  
7 people, communities, families in spaces that actually  
8 have less rights, and that's why they're used. NAL  
9 and sort of the ex—the immediate ex parte relief is  
10 convenient for the NYPD because there are none of  
11 those pesky Constitutional rights that get in the way  
12 of this application. And what we see day in and day  
13 out is that it's hugely problematic when the NYPD can  
14 take action simply based on accusations and arrest,  
15 and not a conviction, and it's—it undermines the  
16 protections in criminal court right to paint a  
17 picture of our client Dennis. He was put in a  
18 situation where he had the right to a lawyer in  
19 criminal court, and had no one, right? In that  
20 situation, he connected with us, but by and large  
21 most people don't because there is no right. He was  
22 put in a position where the accusations in criminal  
23 court was—afforded the highest burden of proof,  
24 right, the highest the presumption of reasonable  
25 doubt if he gets to a—a trial, which is, you know,



2 pretty tough in the Bronx. Where for NAL only four  
3 ex parte relief is there a heightened relief, but for  
4 an injunction it's the lowest burden of proof. So  
5 I'm just trying to illustrate the problems of  
6 bringing these proceedings that are just based on  
7 accusations and the quandary dilemma and so is the  
8 the undermining it does is by our systems of justice.  
9 I also just want to say in terms of the comment about  
10 judicial review and the Law--Law Department reviews  
11 the papers and judges review the papers and there's  
12 lots of reviews. Honestly, what we see is--and our--my  
13 experience as a practitioner is that the NAL as  
14 written is confusing for judges and for a lot of  
15 people, and understanding the standards when does  
16 clear convincing apply? When does preponderance of  
17 apply? When do hearings take place? It--it doesn't  
18 happen as it's supposed to, right? I've had clients  
19 who ae supposed to have a hearing in three days and  
20 they have to wait weeks and weeks and weeks until a  
21 judge is available to hear their defenses. We see  
22 that the NYPD as a repeat litigant is given  
23 incredible deference by judges, and for all of these  
24 cases, this--I'm speaking anecdotally from my  
25 experience. We see the bare minimal violations that

2 are based on hearsay allegations, right? The  
3 affidavits that are submitted are second hand, third  
4 hand, fourth hand knowledge of unspec-unspecified  
5 drug sales, five, seven, nine months later-later  
6 where tenants who are directly impacted by  
7 displacement are never actually named as necessary  
8 parties to these actions. (sic) They're named as  
9 John and Jane Doe. So, I-I just want to say I thank  
10 the Council for this incredible important first step  
11 to reforming NAL. Obviously, we first and foremost  
12 believe that eliminating the ex parte closing order  
13 is-is important and critical to making this  
14 meaningful reform-reform, and are fully appreciative  
15 based on the support of that, because that was a  
16 critical element. We also in terms of creating a  
17 statute of limitations, increasing violations,  
18 eradicating permanent exclusion for all the reasons I  
19 already mentioned in our important reform. We  
20 believe that this doesn't go far enough, and want to  
21 reiterate that. NAL in the residential context is  
22 totally unnecessary, and that should be eliminated.  
23 That families should not be subject to housing  
24 punishments in perpetuity, which is what happens now.  
25 That in addition to NAL, as Lucy said, there is body

2 house drug holdovers in Housing Court. NYCHA's  
3 subsidies may be terminated. There are terminations  
4 in NYCHA and we represented clients who face all of  
5 those consequences one after the other. That one  
6 doesn't proceed the other and so far in this endless  
7 cycle and this in perpetuity of answering for this  
8 one thing that happened several months ago, or maybe  
9 several years ago. And we've asked that the Council  
10 consider to take this legislation a step forward that  
11 again that simply an arrest not be sufficient, and  
12 there be some consideration of staying these recent  
13 abatement cases that are brought simply on an arrest  
14 when a criminal case, if there is a criminal case,  
15 while it's pending and asking for a stay of that  
16 proceeding or—perhaps even waiting until there's  
17 an actual conviction because what we find again is  
18 that where there is report criminal activity, many of  
19 the cases resolve or are dismissed and sealed, right?  
20 They're resolved in non-criminal—with non-criminal  
21 dispositions or they're dismissed. So we ask that  
22 the Council consider the full picture of—of how  
23 people are prosecuted both in criminal court and in  
24 different civil spaces. And lastly, we believe the  
25 right to counsel is an important—in general important

2 in the housing context, and I know we've already had  
3 a hearing on that, but particularly for this type of  
4 hearing, which is quasi criminal. Again, there's-  
5 there's an inextricable connection between criminal  
6 and civil court that is particularly important that  
7 there is an attorney standing by-by so it's like huge  
8 of all of these horrendous things who are unable to  
9 navigate the process in front of judges and spaces  
10 where the NYPD have attorneys and are repeat  
11 litigants and are known to the court because that  
12 would be something that would be powerful, meaningful  
13 and allow for a lot of this comprehensive reform to  
14 actually benefit families. Thank you.

15 CHAIRPERSON GIBSON: Thank you very much.  
16 Thank you.

17 BILL BRYAN: I don't want to call with  
18 that. (sic) My name is Bill Bryan. I'm a  
19 supervising attorney in the Civil Justice Practice at  
20 Brooklyn Defender Services, and we like everyone  
21 thank the Council for the opportunity to testify, and  
22 for taking on the need for reform of these laws. I'm  
23 just going to make some brief comments. A lot of it  
24 has been covered. First, you know, it seems clear  
25 from the NYPD testimony that this will be an ongoing

2 discussion, and we urge the Council to keep, you  
3 know, advocates, attorneys, and affected clients and  
4 communities involved in that discussion as amendments  
5 are proposed and, you know, I think everyone is  
6 obviously happy to be a part of the process and we  
7 hope you'll continue to take our input. Also, it's  
8 covered the NAL actions are based on the same  
9 circumstances as a criminal court action, and when  
10 our clients come to us with these cases, it's often  
11 the third time around. They faced these allegations  
12 in criminal court. They maybe already been taken to  
13 determination proceedings at NYCHA or facing eviction  
14 in Housing Court, and now for the third time they're  
15 again being forced to answer for the same conduct.  
16 This is happening at a time when they no longer have  
17 access to an attorney not only for representation,  
18 but even to ask questions. Maybe their criminal case  
19 settled or was dismissed or ended with a violation,  
20 and they now have no attorney to even ask what this  
21 proceeding is about. Just sort of the flip side of  
22 these proceedings that maybe wasn't mentioned that  
23 even where they end favorably even for a pro se  
24 tenant, they still are completely confused by the  
25 process. We have routinely see individuals come in

2 at the time that they're facing NYCHA termination  
3 where they've already settled a nuisance abatement  
4 case months earlier, and they have no idea why  
5 they're being, you know, facing eviction a second  
6 time. They think it's the second case. We represent  
7 a NYCHA resident who suffers from mental health  
8 issues, and after two drug buys from a non-resident  
9 that was visiting in her apartment, she was arrested  
10 and also criminal charges were dismissed, and a  
11 couple months later she--this is all pro se and  
12 brought to court on a nuisance abatement act--  
13 abatement action. Somehow she managed to settle that  
14 case as well, and then a year later she had her NYCHA  
15 termination proceeding, and not understanding the  
16 procedure, she spent almost the entire hearing trying  
17 to explain to the NYCHA attorney and the hearing  
18 officer I've already been found innocent. I already  
19 had this case. The judge told me I won. I've  
20 already had this. Nobody could even figure out what  
21 she was talking about. It was never clear to the  
22 judge or the attorney that she was talking about a  
23 nuisance abatement action, and she was--her tenancy  
24 was terminated. So, we're now representing her on  
25 appeal, but despite the fact that the City in one

2 forum was going to say okay we see no ongoing risk  
3 here, the city in NYCHA termination proceeding  
4 decided yes, your-your continued tenancy is such a  
5 danger to fellow residents that we have no choice but  
6 to kick you out. And we would say, you know, whether  
7 that's double jeopardy, it's certainly the same  
8 conduct and a very similar standard being heard  
9 twice, you know, two years apart. So just a few  
10 other points that came up based on the NYPD  
11 testimony. It seems from a lot of these amendments  
12 the Council is definitely concerned about the  
13 percentage of cases that don't result in criminal  
14 convictions. Saying okay you have all these NAL  
15 actions, but what about these articles explaining  
16 that most of these people are never convicted of a  
17 crime, and the NYPD said, you know, that's not a  
18 requirement in the laws and, you know, maybe Person A  
19 wasn't there when they went to execute the search  
20 warrant. So, you know, it didn't lead to conviction  
21 of Person A, but they didn't really fill in the next  
22 couple of steps for why they still need to file a  
23 nuisance abatement action, or why that's going to  
24 lead to stopping Person A. If Person A is not there,  
25 I don't see why it's burdensome to ask them to make

2 sure that Person A is back. And if Person A is back,  
3 and the legal premise is ongoing, why isn't the  
4 criminal justice system sufficient to handle it? I  
5 don't think they ever really explained why two  
6 undercover buys, execution of search warrant means  
7 dot, dot, dot, we can't do anything after that. If  
8 the standard for a criminal injunction is that the  
9 conduct is ongoing and it's an eminent risk to  
10 health, safety and welfare, presumably they need to  
11 show that it's still ongoing. And if it's still  
12 ongoing, that can be their fourth, you know,  
13 instance. Even if they need to get another search  
14 warrant, if they tried prosecution somehow everything  
15 was dismissed. Okay, we'll if this happens again, we  
16 can try again. They don't explain why the nuisance  
17 abatement action is actually solving the problem that  
18 they're claiming a criminal prosecution fails to  
19 solve. So, you know, related to the same thing the  
20 statute of limitations concerns the four occurrence  
21 concerns. If the goal with some of these changes  
22 require a showing that they verify ongoing activity,  
23 I don't see how any of those are concerned. Alleging  
24 that yes as of yesterday before we filed the  
25 allegations were ongoing, that would—they wouldn't



2 have an issue with the statute of limitations in that  
3 case. So, again, just to point out just something  
4 that maybe wasn't mentioned with requirements like  
5 the lab reports of course it's great to have  
6 something that's more infallible or better, you know,  
7 better proof, the best evidence that the substance  
8 recovered was drugs, but on the flip side, it's not  
9 just to ensure that you're not relying only on, you  
10 know, field tests or offer testimony that it looks  
11 likes and smells, it's also to make sure that when  
12 they have laboratories that came back negative, they  
13 don't get to still go into court and file saying now  
14 we're going to rely on Officer X for TD. (sic) Like  
15 the eggshell case that everyone, you know, read about  
16 in the—in the Pro Publica. So, you know, we  
17 routinely see that occurring. We're in the criminal  
18 case, a lab report might come back negative and then  
19 months later they're still going to file nuisance  
20 abatement case to say Officer so and so recovered  
21 drugs based on this expertise. Well, you know, the  
22 lab said it was not drugs. On that note, though, a  
23 lot of these are aimed at, you know, as Runa was  
24 mentioning extra layers of review, requirements, but  
25 a lot of this stuff would be from the defense is that

2 a pro se individual is not even going to know to  
3 raise. Things like saying sealed records can't be  
4 used, sealed records already can't be used, band yet  
5 they're routinely relied upon in the filing. So, you  
6 know, there could be other ways to strengthen that  
7 language and make sure that this filing doesn't  
8 happen if it has some of these deficiencies. As Runa  
9 mentioned, you know, they're given great deference in  
10 being repeat litigants, but also by the clerks in  
11 being repeat filers. Many of us I'm sure have heard  
12 from our clients if they try to go to Brooklyn  
13 Supreme Court and file, you know, an Article 78 pro  
14 se, and get a TRO or something, it's definitely going  
15 to get kicked for missing something. They fail to  
16 allege X, Y or Z and the clerks are the ones looking  
17 through the paper and saying sorry no, you know, take  
18 this home and work on it some more. When the NYPD  
19 comes in, they're certainly not saying oh, no, you  
20 forgot to allege that somebody verified conduct for a  
21 filing and, you know, go a long way and even if the  
22 resident is going to be stuck in pro se, it's someone  
23 in the court system was obligated to make sure that  
24 we were, you know, filing prerequisite as opposed to  
25 criminal defenses that are going to have to be

2 raised. And, I think, you know, that's about it. We  
3 have comments in our testimony on each bill, and to  
4 the—to a large extent we really applaud the Council  
5 for these amendments, but like I said, we'd like to  
6 remain part of the discussion, and hope that, you  
7 know, you'll give us the opportunity to respond to  
8 any of the statements that the NYPD might make as far  
9 as what is necessary to continue to use this tool.  
10 Thank you.

11 CHAIRPERSON GIBSON: Thank you very much.

12 EMILY PONDER: Hi. Good morning, my name  
13 is Emily Condor. I am a staff attorney at the  
14 Neighborhood Defender Services of Harlem in the Civil  
15 Defense Practice, and I also want to thank you for  
16 the opportunity to testify and thank my colleagues  
17 for sharing their experiences, which line up very  
18 much with what NDS has experienced with the—  
19 practicing with the Nuisance Abatement Law. NDS has  
20 represented Harlem tenants in these proceedings, and  
21 when we have not been able to take on representation  
22 we provided advice to numerous tenants are who are  
23 facing these proceedings, and it is apparent that the  
24 current Nuisance Abatement practices have a severe  
25 and lasting impact on New York City's most vulnerable

2 tenants, and communities. Earlier—earlier this year,  
3 for example, NDS represented a 73-year-old immigrant  
4 grandmother who was living with her extended family  
5 in a rent stabilized Harlem apartment. She had  
6 recently been diagnosed with liver cancer, and had  
7 Social Security as her only source of income. After  
8 her son—her grandson excuse me—was arrested in her  
9 apartment when a small amount of drugs was recovered  
10 only in his bedroom, the District Attorney's Office  
11 compelled her landlord to start a body. She was  
12 devastated. She was traumatized. She was incredibly  
13 stressed. At a time to focus on her own health as  
14 well as facing the possibility of losing her home,  
15 but then months after the Housing Court proceeding,  
16 was initiated, months after the arrest, the NYPD  
17 appeared at her door with an ex parte closing order  
18 authorizing them to oust her and her entire family.  
19 After this—after this occurred, Miss—NDS' client's  
20 health began to severely deteriorate. She felt that  
21 she could not continue to fight two cases at that  
22 same based on the exact same allegations. She was  
23 confused. She couldn't understand how she could be  
24 continuing to face punishment for something her  
25 grandson had—had done, but since then had begun to

2 get himself together. He was engaged in drug  
3 treatment. He had received employment and was  
4 continuing to fight his criminal case, but due to her  
5 health condition, she decided that she wasn't able to  
6 risk losing her home, and she did agree to  
7 permanently exclude her grandson. Although she  
8 understood what that would mean, she's only just  
9 beginning to understand the permanency of that  
10 situation and the gravity it will have with her life  
11 and her family especially as she is facing limited  
12 mobility, and the ability to leave her home to see  
13 hear-her grandson and to be together as a family. I  
14 just want to speak a little bit to what the NYPD has  
15 said, and address some of their points. That the  
16 NYPD mentioned that one of the reasons the Council  
17 should not consider the duplicitous portion of the  
18 bill, the portion of the bill seeking to the-the  
19 proceedings is that the Nuisance Abatement Laws are  
20 supposed to be a fast and ready tool to abate ongoing  
21 nuisances. But in this case example, the NYPD waited  
22 far after proceedings were already beginning in  
23 Housing Court. There was no ongoing nuisance. NDS'  
24 client's grandson no longer even lived at the  
25 apartment. He was vol-voluntarily vacated

2 temporarily to hopefully help her—her case. This is  
3 not a situation where other process are not working.  
4 This is a situation where the NYPD is layering on  
5 extra—extra punishment, extra strain on vulnerable  
6 tenants and families. It's for the reasons like this  
7 that essentially when tenants are appearing pro se in  
8 these proceedings, very, very one-sided settlement  
9 agreements are being entered. Agreements where  
10 family members are excluded, agreements where tenants  
11 will allow warrantless searches by the NYPD, and  
12 provision that allow NYPD to padlock apartments  
13 without any further judicial intervention if there is  
14 an alleged breach. These laws are harming families.  
15 They are harming communities. They are encouraging  
16 homelessness because they are often affecting the  
17 most low income and vulnerable tenants in our  
18 communities. So NDS does applaud the Committee on  
19 Public Safety for recognizing the deficiency in and  
20 inequity of these Nuisance Abatement Laws. We  
21 believe that eliminating ex parte orders that force  
22 vulnerable tenants into the streets without warning  
23 or judicial review, and limiting duplicitous  
24 proceedings reduces pressure on tenants to enter one-  
25 sided settlement agreements, and set—tear families

2 apart and even relinquish Constitutional rights.  
3 Prizing the standards of proof, eliminating  
4 production as a basis for cases, ensuring the least  
5 restrictive means are used to abate an alleged  
6 nuisance will all ensure that families and  
7 communities are not uprooted and ton apart in the  
8 name of other cases. (sic) And I thank you for your  
9 work on this bill.

10 CHAIRPERSON GIBSON: Thank you very much.

11 BOBBY HODGSON: Thank you as well. My  
12 name is Bobby Hodgson. I'm a staff attorney at the  
13 New York Civil Liberties Union. I want to thank the  
14 committee and all of the sponsors of the bills for  
15 inviting the NYCLU to provide testimony today. You  
16 know, in—in light of the NYCLU's focus on vigorously  
17 defending the rights and liberties of New Yorkers  
18 against unjust and unconstitutional police action,  
19 we're—we're certainly pleased to testify in support  
20 of these bills. I'll be brief because we—we  
21 certainly echo all the sentiments that my colleagues  
22 up here, you know, particularly the fact that the  
23 Nuisance Abatement Law we would certainly urge that  
24 could be repealed in its entirety. And that said,  
25 these bills represent a welcome step taken by the

2 Council to address the absence of the process  
3 protections in the current law, and to ensure that  
4 the NYPD cannot continue to do an end run around the  
5 Constitution, and the many New York laws that protect  
6 the rights of tenants and small businesses. I think  
7 my colleagues have describe many, many cases that  
8 demonstrate the failure of the current law to protect  
9 New Yorkers from unjust evictions and closures, and  
10 it's also obviously and widely documented in  
11 reporting, and—and as they described, you know, these  
12 practices threaten to violate the core Constitutional  
13 interest—interests of New Yorkers. They're depriving  
14 people of access to their property without notice,  
15 without the opportunity to be heard. They're  
16 disproportionately affecting and targeting Black and  
17 Latino communities, and they're flouting the  
18 confidentiality provisions of the Criminal Procedure  
19 Law. So, I will say, you know, we certainly support  
20 each of the proposed bills. We think taken together  
21 they address some of the most pressing deficiencies  
22 in the current law. The most vital reform as—as  
23 folks have said, will be the elimination of ex parte  
24 temporary restraining orders and temporary closing  
25 orders. This current practice and particularly as



2 described when a complaining non-emergency  
3 situations, as this often is, is a clear violation of  
4 the procedural due process right afforded by the  
5 Constitution, which does require a notice and a  
6 hearing prior to such a—a significant property  
7 deprivation. I would think Council is right to get  
8 rid of these completely, and I will say again as my  
9 colleagues noted, some of the things that the—the  
10 NYPD raised, sort of this sector of an emergency  
11 situation where they need to go in very quickly. I  
12 think we would want to emphasize the fact that the  
13 NYPD has a vast array of tools in its toolkit to  
14 address an emergency situation in a residence, in a  
15 business. It certainly is not only relying on the  
16 Nuisance Abatement Law to address some of the violent  
17 behavior that was described earlier today. So there  
18 are plenty of ways to—to address this situation, and  
19 they do not require any sort of rethinking of the  
20 elimination of zeros and the ex parte order. I think  
21 you put it—you know, we certainly applaud each of the  
22 bills' sponsors and co-sponsors for their recognition  
23 that the Council is responsibility to reduce the  
24 number of unjust and unjustifiable actions brought  
25 pursuant to this law. As has been described, these

2 overwhelming affect tenants and business owners who  
3 belong to communities that have long been  
4 disproportionately targeted by police action, and we  
5 think that this is the welcome step towards  
6 fulfilling the city's promise to ensure a fair  
7 criminal justice system to all. And we'd also echo  
8 the desire to kept abreast of any developments in-in  
9 the law, and to have the opportunity to continue  
10 producing constructive discussions about any  
11 potential changes. Thank you.

12 CHAIRPERSON GIBSON: Thank you all. I  
13 appreciate it, and we have your testimony. I think  
14 in-in concept we all support many of the reforms that  
15 are provided in this Nuisance Abatement Act, and as  
16 we keep having conversations getting down to more  
17 detail, working with the Administration, you know,  
18 making sure that they're on board, I certainly look  
19 to your guidance and your level of expertise. You  
20 represent many of the clients that are innocent  
21 victims in this process, and so I thank your for the  
22 work you do. I thank you for sharing those stories,  
23 really horror stories especially seniors that have  
24 health conditions that feel like their back is  
25 against the wall, and they have no other option is-is

2 really disheartening to hear. So, and I know there  
3 are many out there like that. I forget who it was,  
4 but when I first heard about NAL last year, and we  
5 talked about this, you know, right around the time  
6 when many of the articles surfaced. My first two  
7 issues, and I think many of us shared, was language  
8 access for many immigrant families, and also legal  
9 representation. So if someone is even made aware of  
10 an NAL order against them, how can they protect  
11 themselves, and defend themselves in court? So, how  
12 do the clients get to all of you? I mean how do you  
13 identify where they are? I mean are you able? Do  
14 you get to most of the clients when it's like at the  
15 vert tail end or is it at the beginning where there's  
16 some work you can do to allow that client to get back  
17 into their home and/or business? [pause]

18 RUNA RAJAGOPAL: At the Bronx Defenders  
19 it's-it's both actually. I mean our holistically  
20 model when it works because we are representing folks  
21 in the criminal courts they can connect with our  
22 practice at our best, right. And we also-folks in  
23 the community that's-that's a lot of what's happened.  
24 Folks in the community with their pre-existing  
25 relationships have gotten calls at 9:00 or 10:00 at

2 night when we say the police are here, and they're  
3 arresting you again. Oh, no way. They're just  
4 telling me that I have to leave. So it's again  
5 you're hearing the theme of confusions, but it's only  
6 by way of having some pre-existing relationship that  
7 people know to call our civil practice and a criminal  
8 attorney or walk in because of community  
9 relationships. The say this awful thing happened to  
10 me. Can you help me? But we've also had people who  
11 say I've been kicked out. I went by myself. I was  
12 excluded and all—you know, it—it moves so fast, and I  
13 think in fear of that. You know, at least free the  
14 articles that we were missing a lot of people who  
15 just were on their own, and just gave up, right,  
16 because what we've seen again is that [coughs] even  
17 when we are there pushing, we—we actually never moved  
18 forward on a hearing, right. Prove your case.  
19 You're saying this happened, and almost—I can say  
20 most, well close to 100% of these cases settle. So  
21 really paper tigers. They start with this  
22 displacement immediate eviction, but they really end  
23 up, you know we're able to settle them favorable with  
24 like limited, permanent injunctions. But it's only  
25 by way of that pre-existing relationship that people

2 can connect with, and I know there are mostly people  
3 on their own.

4           EMILY PONDER: So to your point I mean  
5 sometimes I'll get calls sometimes, too. I've been  
6 representing two years beforehand in a NYCHA cases  
7 and a Housing Court, and then I'll get a voice mail  
8 from them, and while I'm always happy to hear from my  
9 old clients, I also get nervous because I know  
10 there's probably something going on with their  
11 housing. And so that's how I get a lot of those  
12 cases nuisance abatement cases because routinely they  
13 are being brought over a year after the alleged  
14 conduct and—and just as it, you know, just before  
15 they can get into the Statute of Limitations  
16 expiration. And otherwise it is purely luck if  
17 someone—to Runa's point if someone is in the  
18 community whether they know about legal services and  
19 access to free legal services, then they'll come to  
20 us. Otherwise it really is pure luck that they  
21 manage to get, you know, an intake appointment. But  
22 again because of the ex parte orders it is usually  
23 after this person has been out of their apartment.  
24 So, you know, not a great situation.

2 BILL BRIAN: Yeah, briefly. It's an  
3 excellent point, and as they said, and the NYPD said  
4 it's a quicker process. It's meant to be a quicker  
5 process and that's all the more reason why there  
6 needs to be access to attorneys for individuals in  
7 these situations. If you're taken to Housing Court,  
8 you know, the Housing Court judges, the court  
9 attorneys, people are familiar with, you know, for  
10 better or worse the fact that most respondents are  
11 pro se, they can give you an adjournment and direct  
12 you to where you can try to get an attorney at least.  
13 But when you're already out of your home, and the  
14 first person you see in the hallway in the Supreme  
15 Court is the NYPD saying hey, sign here, you know,  
16 you might get to go talk to an attorney eventually,  
17 but it might be after you are already excluded half  
18 your family. And the Supreme Court for better or  
19 worse is just not the same type of setup as Housing  
20 Court or as 250 Broadway at NYCHA. Nobody there is  
21 as equipped to point-point tenants in the right  
22 direction to help them find an attorney. So for us  
23 especially the civil justice practice at Brooklyn  
24 Defenders I think is the newest of the sort of  
25 holistic, you know, civil practices we rely on, you

2 know, hoping the criminal attorneys will think to  
3 mention it to us. And if their client won't make  
4 their way to us, and sometimes like I mentioned with,  
5 you know, the--the client I have, it's only luck that  
6 I find out from the tenant like oh, yeah, I did have  
7 a case like that year ago, and they just, you know,  
8 never found help. So, you know, whether it's through  
9 right to counsel or specifically in these bills  
10 requiring the NYPD to show that they have provided a  
11 list of free legal service providers as a condition  
12 of filing or something like that. I think there  
13 definitely needs to be more assurances that people  
14 have at least the opportunity to try to find an  
15 attorney.

16           EMILY PONDER: Just a really quick  
17 comment because it's the same for us, but I just want  
18 to say that having ex parte closing orders it just  
19 completely limits the ability to find an attorney  
20 because when you appear in court on that third  
21 business day, and we keep saying business days, but  
22 we will frequently see people serve those papers on a  
23 Friday set for hearing on a Monday. That's not--it's  
24 not actually even business days. They are appearing  
25 in court. They've been locked out of their apartment

2 and NDS actually has a, you know, our information in  
3 that court part in New York County Supreme Court  
4 directing tenants to us. It hardly ever happens  
5 because when those tenants do show up, they're--  
6 they're entering settlement agreements because they  
7 don't have a choice. They need to get back into  
8 their apartment, and the NYPD isn't willingly lifting  
9 CRO in order for them to adjourn to obtain counsel.

10 CHAIRPERSON GIBSON: [pause] So, thank  
11 you once again. As someone in the Bronx who  
12 represents all of the courts, I certainly understand  
13 the concern jut in terms of the differences when you  
14 walk through the door of, you know, Criminal Court  
15 versus Housing Court, and I hear from many of my  
16 constituents, but I also would defend all of you. So  
17 I thank you very much, and your testimony will be  
18 submitted into our record, and we look forward to  
19 working with you. Thank you for your work. Thank  
20 you. [background comments, pause] Thank you,  
21 everyone for attending today. I want to recognize  
22 and thank the Speaker, and the staff. Thank you to  
23 Deepa to Beth and Dana and Brian. I want to thank  
24 the sergeant-at-arms for helping us today with



1 COMMITTEE ON PUBLIC SAFETY

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2 today's hearing, and this hearing of the Committee on

3 Public Safety is hereby adjourned. [gavel]

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C E R T I F I C A T E

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



Date November 30, 2016