

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON PUBLIC SAFETY

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December 18, 2019
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HELD AT: Committee Room - City Hall

B E F O R E: Donovan J. Richards
Chairperson

COUNCIL MEMBERS: Donovan J. Richards
Adrienne Adams
Justin Brannan
Fernando Cabrera
Andrew Cohen
Chaim M. Deutsch
Vanessa L. Gibson
Rory I. Lancman
Carlos Menchaca
I. Daneek Miller
Keith Powers
Ydanis Rodriguez
Paul Vallone

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

John Miller
Deputy Commissioner
Intelligence and Counterterrorism
New York Police Department

Oleg Chernyavsky
Assistant Deputy Commissioner
Legal Matters
New York Police Department

Sergio De La Pava
New York County Defender Services

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Ross O'Neill Nevada Morgan
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Youth Justice Board

Ahmed Mohammed

Litigation Director
New York Chapter
Council on American Islamic Relations

Nathan Sheard
Associate Director of Community
Organizing
Electronic Frontier Foundation

Towaki Komatsu

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2 JANIA JONES: Mic check. This is the
3 Committee on Public Safety. Today's date is
4 12/18/2019. And this is being recorded by Jania
5 Jones.

6 UNIDENTIFIED: We're going to wait two
7 more minutes and then we will begin.

8 CHAIRPERSON RICHARDS: [gavel] All righty,
9 good afternoon, good afternoon. Today we are hearing
10 Introduction number 487, in relation to creating
11 comprehensive reporting and oversight of NYPD
12 surveillance technologies. The bill is based on an
13 essential concept in any free and democratic society.
14 The public has a right to know what its government is
15 doing to its own citizens. Many of us may take for
16 granted that our government is comprised of well-
17 meaning individuals who aim to keep us safe. But the
18 alternative in an authoritarian state that uses its
19 power to control dissent is by no means a
20 hypothetical or imaginary fear. Just this morning
21 the *New York Times* reported Chinese authorities are
22 knitting together old and state-of-the art
23 technologies, phone scanners, facial recognition
24 cameras, face and fingerprint databases, and many
25 others into sweeping tools for authoritarian control.

1 While you might say that's just China, that's not the
2 United States of America. That's not the New York
3 Police Department. We have government oversight. We
4 have judicial oversight. But the basic question
5 posed by this legislation is do we really? Is China
6 structurally all that different from what we have?
7 The *New York Times* report continues. The
8 surveillance networks are controlled by local police,
9 as if county sheriffs in the United States ran their
10 own personal versions of the NSA. The truth is we
11 don't know what the NYPD has. We don't know what the
12 NYPD is doing with what technology we do know about.
13 And before the esteemed witnesses before me get too
14 definitive, I want to say I do believe that you have
15 the best of intentions, that you aim to keep us safe,
16 that you know how to keep us safe. I'm not
17 advocating for this bill because I think something
18 personally negative about you or the rest of the NYPD
19 commanders. This bill is simply not about you. Laws
20 exist to regulate institutions and the NYPD, like
21 every other, has on occasion demonstrated serious
22 failures as an institution that require us to ensure
23 that there are adequate protections in place. The
24 legislative oversight that we at the council have is
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2 meaningless without information. The judicial
3 oversight that you have argued is a sufficient
4 oversight mechanism that only exists because the NYPD
5 was found to be unconstitutional surveillance of
6 political groups in the 1970s. Much more recently, a
7 civilian monitor was installed because of what
8 appeared to be surveillance targeting Muslim groups.
9 You can't get caught with your hand in the cookie jar
10 and say, well, now that somebody is watching the
11 cookie jar everything is good now. The fact that the
12 NYPD directed its officers to violate the Fourth
13 Amendment rights for decades against exclusively
14 minority groups only begs the question, what has
15 replaced Stop and Frisk in 2019? Is it such a
16 stretch to wonder if it is technology? Now, let me
17 take a big step back. Anyone who doubts that the
18 NYPD plays a crucial counterterrorism function in the
19 wake of 9/11 doesn't know what they are talking
20 about. We have to respect the organization that has
21 along with federal law enforcement prevented number
22 other attacks on our citizens. As much as many of
23 us, myself included, would like to chalk up their
24 arguments to fear-mongering, terrorism is real. It's
25 real. The NYPD needs modern technology to keep us

1 safe. I don't know a single elected official in the
2 world who wants to be responsible for another
3 terrorist attack in New York City, and I certainly
4 don't. And what reason do we have to simply
5 disregard what the NYPD says about what they need?
6 Like it or not, we don't know what they know and
7 maybe that's part of the problem. In a democracy, we
8 the people must decide how to balance civil liberties
9 and safety, not you. So to the NYPD witnesses before
10 me, I'm asking to convince the civil liberties
11 advocates here and the reporters and the public at
12 large that there truly is the need for the secrecy
13 you want to maintain. And I don't want to just hear
14 this bill would be a roadmap to terrorists. Frankly,
15 you've made that argument before, most recently with
16 [fare evasion] data and at least one judge called it
17 speculative, at best. You have to do better than
18 that. I believe you can. You also need to explain
19 how maintaining that secrecy doesn't strike at the
20 very heart of our democratic principles. To the
21 members of the public who will testify later, I'm
22 asking you to recognize that the people before us
23 have dedicated their careers to keeping us safe and I
24 believe that they need to withhold certain
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1 information from public disclosure in order to
2 protect us. I recognize that the department has
3 engaged in tactics that you find offensive and I
4 don't disagree with you. But that doesn't mean that
5 we just disregard their warnings. We have to
6 understand what exactly they need and why. So the
7 key question here today is how we find a middle
8 ground. History tells us that we must view our
9 police authorities, as well-meaning as they may be,
10 with a high degree of skepticism. That transparency
11 and accountability are essential. And yet we also
12 must trust them when they say when they say they need
13 to do certain things to keep us safe. That's the
14 question we need to focus on today. The challenge in
15 finding an answer on the POST Act is who will decide?
16 Who is the right person to give the public confidence
17 that democracy and civil liberties are being
18 protected while maintaining the NYPD's ability to
19 keep us safe. I don't have the answers, and I hope
20 that rather than sticking to hyperbolic arguments
21 that we can have a real discussion about a path
22 forward. That being said, I am now going to turn the
23 mic over to the sponsor of the POST Act, Vanessa
24 Gibson, and I also would like to acknowledge we've
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1
2 been joined by Council Members Vallone, Lancman, and
3 Powers. Thank you.

4 COUNCIL MEMBER GIBSON: Thank you, good
5 afternoon. Thank you Chair Donovan Richards. Good
6 afternoon everyone, to all my colleagues and the
7 NYPD, members of the public advocacy groups. I
8 thank you for being here, again, once again today. I
9 am Council Member Vanessa Gibson. I represent
10 District 16 in the West Bronx, and I am a proud
11 member of the Public Safety Committee and I'm really
12 grateful to our chair and our speaker, Corey Johnson,
13 for ensure that today's hearing has happened around
14 the POST Act, and many of you may know that the POST
15 Act has been around for quite some time. In my
16 previous term when I served as chair of the Committee
17 on Public Safety I joined our former colleague,
18 Council Member Dan Garodnick in introducing the POST
19 Act, and since that time I will acknowledge that
20 there has been a lot that has happened across this
21 city and really across the nation as it relates to
22 public safety. And one thing we always understand
23 will always recognize is the incredibly hard work of
24 the men and women of the NYPD. Just earlier today as
25 I was in my district I hosted an annual NYPD

1 appreciation event. As the year closes and we begin
2 a new year, I take the time to honor all of our
3 police officers in my local precincts. And this year
4 we honored the NCO, neighborhood coordination
5 officers, as well as our NYPD 911 call takers that do
6 tremendous work. And so I say all of that as I begin
7 to recognize that we are partners with the NYPD.
8 This City Council and this body over legislators that
9 I'm proud to serve with work hand in hand with every
10 single agency. And so we come to this space at this
11 time to ensure that our collaboration is as strong as
12 it should be. And we don't always agree, but one
13 thing we will always be is respectful of each other
14 and the work that each of does to keep this city safe
15 and to make sure that we are doing our part. And so
16 this afternoon the legislation that we will hear in
17 this committee is Intro 487, which is known as the
18 POST Act. That is the Public Oversight of
19 Surveillance Technology Act. And this POST Act that
20 was introduced here in the council will increase the
21 transparency and oversight of the New York Police
22 Department's use of new surveillance technologies and
23 information-sharing networks to identify and track
24 New Yorkers. The POST Act in its current form will
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1 require the NYPD to develop and disclose an impact
2 and use policy for each piece of surveillance
3 technology it purchases, as well as new technology
4 that's purchased in the future. These measures are
5 extremely important safeguards to protect the privacy
6 and civil liberties of every New Yorker in an effort
7 to balance both law enforcement and national security
8 concerns with the need for transparency and
9 democratic accountability. The spectrum of the
10 NYPD's powerful surveillance equipment is vast. It
11 includes Stingrays, cell towers that track the
12 location and communication of phones in targeted
13 areas, x-ray vans which we use for radiation to see
14 through walls and inside cars, and more recently
15 we've seen drones. What happens to information that
16 is gathered from innocent New Yorkers? How long is
17 this data kept and who is it shared with? The answer
18 to all of these questions is simply put, we in the
19 City Council and New Yorkers do not know. And in a
20 city like New York, where we pride ourselves on
21 progressive values and protections for all of our
22 residents and citizens, the NYPD has an extremely
23 done work without oversight and public policy to
24 explain how this surveillance equipment is used,
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1 where and who it's targeted for, in what
2 neighborhoods or geographic regions, and how that
3 data is kept and it's stored on file. There is a
4 growing list of other municipalities that have
5 implemented similar and much stronger legislation in
6 this nation, including Seattle, Oakland, Nashville,
7 Detroit, and Cambridge. The POST Act in this form
8 would be the weakest surveillance bill that we have
9 in the country. Why is this important, many may ask.
10 Because the use of surveillance technologies can
11 infringe on our civil rights and liberties. These
12 surveillance tools have the prominent risk of
13 violating the privacy and rights of historically
14 marginalized and over-policed communities like
15 contract, immigrant communities, Muslim communities,
16 and the poor. In a national, political, and social
17 climate that threatens to undermine a lot of the
18 progress that we have made together as it relates to
19 public safety and our overall relationship with law
20 enforcement. The City Council must continue to be an
21 equal partner with the NYPD and this administration
22 in our overall efforts to keep New Yorkers safe while
23 respecting individuals' fundamental civil rights. It
24 is our duty and our obligation to do so and they're
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1 not mutually exclusive. Finally, I again thank
2 Speaker Corey Johnson, our chair of the Committee on
3 Public Safety, Donovan Richards, for bringing this
4 hearing today. I also thank our senior counsel,
5 Daniel Aids, who worked tirelessly on this bill. I
6 also want to thank Brian Crow and many others in the
7 legislative division and certainly want to recognize
8 the advocates that have done a tremendous amount of
9 work, gathering data, doing research, traveling
10 across the country to see what others to ensure that
11 we get this right. The Brennan Center for Justice,
12 the American Civil Liberties Union, New York Civil
13 Liberties Union, as well as the Surveillance
14 Technology Oversight Project, which is the STOP
15 Project, American Islamic Relations, Legal Aid
16 Society, Bronx Defenders, Brooklyn Defenders, and
17 many, many others for their partnership. And as I
18 close and turn this back to Chair Richards, I simply
19 say that there is a time and a space to ensure that
20 measures like this make it through the legislative
21 process. Chair Richards and I have been here long
22 enough to have gone through the Stop, Question, and
23 Frisk era, the Criminal Justice Reform Act, the Right
24 to Know Act, and many other measures that we started
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1 at point A and we didn't end where we started. And
2 so there is always room to grow and what I hope to
3 hear this afternoon is not a repeat of the testimony
4 from the last hearing, where I know the department is
5 in opposition, but what I want to know is how do I go
6 back to my district in the Bronx and tell my young
7 men and women of color and my families that they are
8 being protected while they're not being surveilled,
9 because it's important for me as their leader to have
10 answers and right now I don't have answers and I need
11 answers. So I would love to understand in today's
12 hearing what the department is sharing with the
13 council and the public that you're doing at your own
14 will without a legislative mandate. I think we all
15 owe it to our constituents to ensure that we get it
16 right. We've been beyond litigation and settlements
17 and we know the mistakes that have been made in the
18 past. We owe it to every New Yorker to do something
19 different. Show them something different than what
20 they have expected and experienced in the past. And
21 so I say that on behalf of my district, my young men
22 and women and families of color, my immigrant
23 constituents, my Muslim and Arab American
24 constituents, and everyone I represent that wants
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2 answers to many of the questions they have. I thank
3 you, Chair Richards, and I look forward to this
4 afternoon's hearing. Thank you once again.

5 CHAIRPERSON RICHARDS: Thank you for your
6 important work on this hearing, on this legislation.
7 All righty. We will have our first panel, Assistant
8 Deputy Commissioner Oleg Chernyavsky and Deputy
9 Commissioner John Miller, begin their testimony, and
10 you'll be sworn in first by my counsel.

11 COUNSEL: Do you swear to tell the truth,
12 the whole truth, and nothing but the truth before
13 this committee and answer all questions to the best
14 of your ability?

15 DEPUTY COMMISSIONER MILLER: I do.

16 ASSISTANT DEPUTY COMMISSIONER

17 CHERNYAVSKY: I do.

18 CHAIRPERSON RICHARDS: You may begin.

19 Good afternoon, Chair Richards and
20 members of the council. I'm John Miller, Deputy
21 Commissioner for Intelligence and Counterterrorism
22 for the New York Police Department. I'm joined by
23 Assistant Deputy Commissioner for Legal Matters, Oleg
24 Chernyavsky. And on behalf of Police Commissioner
25 Dermot Shea, we appreciate the opportunity to speak

1 with you today about the department's use of
2 surveillance technology and the ways we ensure
3 citizens' privacy and rights are respected and
4 upheld. Although New York City continues to enjoy
5 the status of the safest big city in the nation, we
6 also at the same time remain the preeminent target
7 for violent terrorists, both foreign and home-grown.
8 This is not speculation. It is the consensus of the
9 global intelligence community. Since September 11,
10 2001, there have been more than 30 terrorist plots
11 against New York City with targets such as Times
12 Square, the Brooklyn Bridge, John F. Kennedy Airport,
13 the New York Stock Exchange, the subway system, as
14 well as major synagogues and other sites. In most
15 cases those plots have been thwarted by the efforts
16 of the NYPD's intelligence bureau and the FBI-NYPD
17 Joint Terrorism Task Force, utilizing traditional law
18 enforcement techniques as well as cutting-edge crime-
19 fighting and counterterror technology. To put this
20 in perspective, since June alone we have uncovered
21 and stopped four plots in various stages. Last month
22 in Brooklyn a man who was radicalized online was
23 arrested. He pledged allegiance to ISIS and was
24 active in encrypted pro-ISIS chat rooms posting bomb-

1 making materials and calling for attacks that
2 included posters of targets in New York City. In
3 September a Hezbollah operative living in New Jersey
4 was charged with terrorism-related crimes after
5 having conducted extensive surveillance of potential
6 bombing targets in New York City, such as the United
7 Nations, the Statue of Liberty, Times Square, our
8 airports and bridges. He specifically scouted these
9 locations for structural weaknesses so as to inflict
10 maximum damage and chaos. In August a Queens man was
11 charged with attempting to provide material support
12 for ISIS after having planned a knife attack near the
13 US Open in Flushing, Queens. He had gone so far as
14 to purchase a tactical knife and a mask, as well as
15 gear to film his attack. In June another Queens man
16 was arrested after obtaining two handguns with
17 obliterated serial numbers to carry out an attack on
18 the red steps in Times Square, where he planned to
19 target and kill civilians and police. Tragically, in
20 recent years four attacks have succeeded in striking
21 our city, attacks we failed to prevent - an explosion
22 in Chelsea, a white supremacist who murdered an
23 African American man with a sword as a practice run
24 for a larger plot, a terrorist who drove a truck down
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1 the West Side Highway, running over 12 people,
2 killing eight along the running path, an ISIS-
3 inspired suicide bomber who set off a homemade
4 explosive device as a suicide vest underneath the
5 Port Authority bus terminal in a subway station that
6 injured three individuals, as well as himself when
7 his bomb didn't function as designed. As you can
8 see, the level of threat against our city has not
9 diminished. The dangerous work of the brave men and
10 women and that of our partners can sometimes be read
11 about in the papers, but oftentimes it is not. Our
12 operations, methods, and tools are sometimes spoken
13 about in the media and in public and depicted in
14 movies, but often they are not. That is by design.
15 The ability to law enforcement to legally employ
16 tools and techniques that are not spoken about in the
17 public domain and thus the logical connection not
18 known to those seeking to do us harm or evade
19 detection is one of the few things, if not the only
20 thing, by and large that keeps us one step ahead.
21 Otherwise, I might be sitting here about many more
22 successful attacks against our city, rather than the
23 larger number that we have thwarted. I want to be
24 clear. While we are always ready to work with the
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1 council and stakeholders in furtherance of great
2 transparency, we are here to voice our serious
3 concerns over any blanket proposals aimed at
4 advertising our most sensitive capabilities. This
5 bill is a product of privacy advocates whose core
6 mission, and it's a good core mission, it is a noble
7 core mission and one we support, is to guard the
8 privacy rights of individuals, particularly from
9 unreasonable government intrusion. The New York City
10 Police Department shares this mission. But we also
11 take our responsibility to protect the City of New
12 York and its people from crime, violence, and
13 terrorism equally seriously. See, we have to do
14 both. Neither one, privacy or safety of our citizens
15 from violence, can necessarily have priority over the
16 other. In the democracy in which we live, we have to
17 balance these things, and I believe we cannot fail at
18 either one or we end up failing at both. September
19 11 forever changed how the NYPD views its mission and
20 the world around us. We have worked tirelessly to
21 keep the city safe while protecting and upholding the
22 constitutional rights and liberties of its citizens.
23 However, we can never and will never forget the
24 tragedy that befell our city and our nation on
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2 September 11, and the threat will be there for my
3 children, and unfortunately, as I sit here and assess
4 that, probably their children, too. I believe it's
5 important to stress that while we are conducting our
6 criminal and counterterrorism investigations, and in
7 some cases deploying state-of-the-art technology, the
8 value that the NYPD places on privacy rights and
9 other constitutional protections is paramount. Our
10 criminal and counterterrorism investigations are
11 treated with particular care because we recognize
12 that they may at times implicate both the First and
13 Fourth Amendments. Accordingly, we abide not only by
14 the United States Constitution and the laws of the
15 State of New York and the City of New York, but also
16 in the case of counterterrorism operations by the
17 Handschu guidelines. As you know, the Handschu
18 guidelines are a consent decree overseen by a federal
19 court judge and an independent civilian observer who
20 sits on the Handschu committee meetings. The
21 Handschu guidelines give us a set of parameters to
22 guide the intelligence bureau investigations into
23 cases involving terrorism or violent hate group.
24 It's important to note that a review by the
25 independent inspector general of the FBI of 10 years

1 of investigations by the intelligence bureau under
2 the Handschu rules concluded that one hundred percent
3 of the cases reviewed were properly predicated under
4 the Handschu guidelines. Since then the independent
5 civilian observer, Steven Robinson, a respected
6 attorney and retired federal judge, has been able to
7 sit in on every detailed review of every
8 investigation and concluded in two reports, but let
9 me quote from his most recent report, "I have not had
10 concerns about the NYPD's compliance with the
11 Handschu guidelines and have not observed any
12 Handschu violations." We do not investigate purely
13 constitutionally protected activities. Likewise, we
14 do not conduct physical surveillance unless it's part
15 of a documented, legally approved investigation.
16 Electronic surveillance has to be conducted in
17 accordance with existing law or approved by a judge.
18 We come and we welcome the necessarily high burden of
19 the Fourth Amendment and the state constitution that,
20 that are placed on law enforcement. The use of
21 cutting-edge technology is a vital component of our
22 mission to protect the city and none of the
23 initiatives I speak about today would be possible
24 without the NYPD's forward-looking embrace of
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1 emerging technology. The NYPD has been very
2 transparent when it comes to technology. We posted
3 the privacy rules for our domain awareness system,
4 which involves both NYPD security cameras as well as
5 private sector security cameras on our website,
6 invited the public to comment, considered those
7 comments in a public forum. As this council is
8 aware, we collaborated with nearly every interested
9 stakeholder in developing our body-worn camera policy
10 and worked hard to come up with a public footage
11 release policy that leans towards transparency,
12 particularly in critical incidents, such as an
13 officer-involved shooting. Both policies were
14 publicly released. The NYPD briefed this council and
15 then the public on when, where, and how under what
16 conditions and rules we use UAVs or drones before the
17 equipment was deployed or the policy was implemented
18 and posted that policy on our website. I'd like now
19 to take a comment, ah, take a moment to comment on
20 the bill being heard. Intro 47 would require
21 granular reporting on nearly every technology, not
22 just surveillance technology, by the definition of
23 the bill nearly every technology used by the NYPD.
24 The department would be required to issue an impact
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1 and use policies about these technologies, which
2 would include their descriptions, their capabilities,
3 so inherently and consequently also their
4 limitations. This bill would prohibit the use of any
5 new technology till after an impact and use statement
6 was posted, the public had an opportunity to comment,
7 the police commissioner had an opportunity to review
8 those comments and then issue a report. The
9 department would also have to amend any impact and
10 use policy when enhancements for current technologies
11 are sought. The department strongly opposes this
12 legislation as drafted. To be clear, the bill as
13 currently proposed would literally require the NYPD
14 to advertise on its website the covert means and
15 equipment used by undercover officers who risk their
16 lives every day. I believe that this would result,
17 that this result may not have been apparent to those
18 advocating for this bill. However, given this face I
19 cannot imagine that any public official would
20 willfully allow this to happen. No reasonable
21 citizen would support it. We have addressed this
22 bill with the council on multiple occasions, and each
23 time we have offered suggestions for a version that
24 would have carve-outs that do not and directly
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2 endanger the lives of undercover officers,
3 cooperating witnesses, and would not erode our
4 collaborative efforts with our federal and private
5 partners. Such undercover operations and
6 partnerships have prevented many of the attacks
7 targeting New York City. Let me read from the bill as
8 it is proposed. Quoting now, "The term 'surveillance
9 technology' means equipment, software, or system
10 capable of or used or designed for collecting,
11 retaining, processing, or sharing audio, visual,
12 location, thermal, biometric, or similar information
13 that is operated by or at the direction of the
14 department." Now that could cover my desktop
15 computer which stores location information and
16 investigative information. It could cover a lot of
17 things. But to get to my core concern about a bill
18 that has good intended consequences but unaddressed
19 and serious unintended consequences. Picture a
20 detective in a room. He's working undercover. In
21 that room is a group of ISIS followers planning an
22 attack on Times Square. That's a real scenario. It
23 happened in June. Picture another undercover
24 detective from the NYPD in another room. Members of
25 a white supremacist group are planning to attack a

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2 Baptist church in Brooklyn. Picture a third
3 detective in another room. The leaders of a violent
4 criminal organization are plotting to murder rivals
5 or innocent victims. These are the type of dangerous
6 and frightening scenarios that our detectives find
7 themselves in on a regular basis. We have to
8 constantly change and adapt the technology we use to
9 be harder to detect, because this is not a game. It
10 is real life and undercover detectives have been
11 killed in this city when they have been discovered.
12 Why would we ever seek to publicly advertise those
13 devices, their capabilities, or limitations? It's
14 not just terrorism. Many of the same processes in
15 surveillance equipment are used in criminal
16 investigations against violent gangs, drug-dealing
17 organizations, organized crime families. How do we
18 recruit an informant into an organized criminal group
19 if that informant sees the equipment we asked them to
20 wear or carry on a website knowing that the people he
21 or she are supposed to record have seen the same
22 thing. We could all agree on transparency as a good
23 thing. I agree on transparency as a good thing. We
24 strive for it. I believe that this police department
25 has even stretched beyond its normal comfort zones

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2 towards greater transparency. We can do that. But
3 we can't do this in its current form. Councilman
4 Richards said it's not about you, meaning we're
5 taking a long look that extends to processes. It's
6 about you, either. I believe this is a well-intended
7 law. But there will be other members of other
8 councils in the future that could interpret this law
9 based on its writing extraordinarily broadly to cover
10 anything as described in that first paragraph I read
11 to you from the bill. With proper exceptions for
12 disclosure that would endanger New Yorkers, exempting
13 the descriptions of gear that would endanger police
14 officers or confidential informants, consistent with
15 exemptions in similar federal laws that have been
16 successfully used on the books in Washington,
17 covering all federal agencies for some time we could
18 reach a reasonable plateau. This is nothing we
19 haven't said before. We can work together as a team
20 and do that because we serve the same public. We
21 guard the same rights and laws. We must consider not
22 just privacy, but also safety for the public and
23 police. I have been to too many police funerals. We
24 all went to another one yesterday in Jersey City,
25 Detective Seals, five children, gunned down in an act

1 of terrorism that was undetected before it occurred.
2 He was a brave police officer who was protecting
3 their citizens. That is literally the doorstep of
4 New York City. In addition to our robust multi-
5 layered internal oversight mechanisms, and we have
6 many, we operate under multiple levels of judicial,
7 legislative, public, and academic scrutiny. I know
8 it doesn't sound like it, but I look forward to
9 continuing this discussion where we're not talking
10 about the same bill with the exact same wording, but
11 a bill that will strike that balance between
12 protecting New Yorkers and guarding the privacy and
13 constitutional rights of citizens, as we attempt to
14 every day. We have to balance both. Thank you for
15 the opportunity to speak to you again about this
16 critical issue and we look forward to answering
17 whatever questions you may have.

18
19 CHAIRPERSON RICHARDS: Thank you. And
20 we're also joined by Council Members Deutsch,
21 Menchaca, and Cohen, and Adams, oh, hey, all righty.
22 Thank you for your testimony and thank you for your
23 service, John. I really appreciate the work you
24 [inaudible].
25

1 DEPUTY COMMISSIONER MILLER: Well, thank
2
3 you for having me, sir.

4 CHAIRPERSON RICHARDS: Yeah, ah, do you
5 agree with what I said in my opening about
6 transparency being essential to democracy, especially
7 with respect to things like surveillance?

8 DEPUTY COMMISSIONER MILLER: I agree with
9 what you said in your opportunity about transparency
10 being essential to democracy, because it is shared
11 with the comments in my opening. I think in your
12 opening statement you also compared the systems being
13 used in China to what could happen here, as well as
14 warning against hyperbolic statements. I think when
15 you compare the United States to China in terms of
16 surveillance technology everything that I talked
17 about we are guided by the United States
18 Constitution. They don't have that in China. We are
19 guided by multiple levels of oversight. They don't
20 have that in China. We are guided by the laws of the
21 City and State of New York and independent observers
22 who report to, in the intelligence bureau's case, a
23 federal court, in the detective bureau's case every
24 court that examines a case in a fairness hearing
25 about what was gathered, how it was collected, and

1 whether it was done within policy and, more
2 importantly, the law. So I understand the parade of
3 terribles of what could be. But I want to remind us
4 as we work together on this that we're a far distance
5 from that happening because of protections that are
6 inherent both to the City of New York, this police
7 department in particular, and this country.

9 CHAIRPERSON RICHARDS: And I appreciate
10 those comments. But as we speak right now the public
11 nor the council has any indication of what
12 technologies you are using, um, so the *New York Times*
13 article this morning, which I read very early this
14 morning, was certainly, I don't know if they knew we
15 were having this hearing today, but it was certainly,
16 um, sounded very similar, being that they're using
17 technologies there with very little transparency and
18 the New York City police department is doing very
19 similar. So can you just speak to a little bit more
20 of what you're doing to make sure that the
21 technologies that you're using are transparent, ah,
22 as of today.

23 DEPUTY COMMISSIONER MILLER: Well, the
24 domain awareness system, ah, which is basically
25 camera, license plate readers, and NYPD's own

1 databases, has a public explanation on our website.

2 We talk about how it's used in different instances

3 where it solves crimes and its privacy policy is

4 posted. The drone issue, we met with this, this

5 council proactively to say this is where we're going,

6 this is where we're not going, this is how we're

7 getting there, and we received valuable input. Drone

8 technology is going to end up saving lives,

9 particularly in hundreds of cases where due to

10 weather or other conditions our helicopters can't fly

11 and we can deploy a drone for the same public safety

12 reasons. And the other, the other issues that we

13 encounter on a regular basis are vetted by courts,

14 appeals courts, um, disclosure, discovery. So I

15 think in terms of technology what I believe we should

16 focus on institutionally is what are the policies

17 that are around the handling of certain information

18 in the broad sense, because the equipment is always

19 going to change. Technology is always going to leap

20 forward. The bill as written gets down to listing

21 very specific things, which is OK in most cases, but

22 has no carve-outs for the instances where it would be

23 inappropriate or worse.

1 COMMITTEE ON PUBLIC SAFETY 32
2 CHAIRPERSON RICHARDS: Could you just
3 speak to what sort of carve-outs you would be looking
4 for?

5 DEPUTY COMMISSIONER MILLER: In the, um,
6 similar federal legislation it says they'll disclose
7 impact statement, description of the system, what it
8 collects, retention, so on, but the carve-outs are
9 for things that disclosure would affect national
10 security, ongoing investigations, public safety,
11 logical carve-outs.

12 CHAIRPERSON RICHARDS: Can you go, let's
13 go back for a second. So you spoke of, um, obviously
14 that the main awareness system. I want you to go
15 into a little bit of what the capabilities, um, you
16 have today on license plate readers, on the domain
17 awareness system, on facial recognition, ah, in real
18 time. Can you just speak a little bit of what are
19 your capabilities today, being that you did speak of
20 having some information on your website.

21 DEPUTY COMMISSIONER MILLER: Our license
22 plate readers allow us to query the system for a
23 specific license plate that will give us return
24 information about what sensors it has passed in
25 public places. Our domain awareness system gives us

1 access to cameras that are both NYPD cameras and
2 stakeholder cameras, where we can go back in time,
3 and I know that there's idea of *Minority Report*,
4 where we can zoom into the future and back into the
5 past and prevent crimes. The reality of it is
6 there's thousands of cameras. We don't have
7 thousands of cops sitting watching them. The
8 practicality is when something happens , an incident,
9 a crime where there's a victim we can go back in time
10 and say can we see that crime, can we see who did it,
11 and so we can query the system if the cameras are in
12 place where something happens. Absent that, we have
13 to go out and find cameras that are there. But this
14 is much faster. Recently there was a shooting in
15 Rockefeller Plaza at 1 o'clock in the morning on a
16 Friday night. I responded to the scene. I notified
17 the domain awareness system operations desk. They
18 were able to quickly, tapping into the stakeholder
19 cameras from Rockefeller Plaza, show us the shooter,
20 the car that the shooter got out of, where the
21 shooter went around the corner and hid the gun and
22 the jacket, and that put us on a very fast path to,
23 ah, the identification and arrest of a serious
24 criminal. That's the kind of core of what that
25

1 technology is for. When we have a ShotSpotter alert,
2 even where no one calls the police, we can see what
3 cameras are in the area. We can go to those cameras
4 and see did we capture that shooting? Did they jump
5 into a vehicle? What kind of vehicle? Which way did
6 it go? This is an essential crime-fighting tool that
7 we use every day.

9 CHAIRPERSON RICHARDS: Can you speak to
10 facial recognition and also Metro card swipes? Does
11 the NYPD have the ability to see where someone has
12 going, where somebody is going using Metro cards or
13 are those things linked to it, and also are those
14 things linked to their credit card as well?

15 DEPUTY COMMISSIONER MILLER: For facial
16 recognition, facial recognition is a technology tool
17 that is used for leads. Um, I think it's equally
18 important to say what it's not, because to be candid
19 surveillance has become a very handy dirty word.
20 It's become some kind of civil liberties course word,
21 where you just call something surveillance and it
22 gets people's hackles up about who's spying on me.
23 That's the other favorite word. Surveillance and
24 spying are used in tandem in multiple senses that
25 have nothing to do with either. We don't conduct

1 blanket or general surveillance looking for crimes.

2 We start investigations and surveillance is sometimes

3 a tactic or a tool, where it's electronic and has to

4 be approved by a court, or physical and it's done by

5 people in the field following a suspect. But it

6 doesn't start with surveillance and go to the

7 investigation. It starts with the investigation,

8 where it's determined by rule and law whether

9 surveillance is appropriate. So let me circle back

10 to your first question about facial recognition. The

11 domain awareness system is not tapping into thousands

12 of cameras storing facial images into a giant facial

13 recognition bank. Not happening. The facial

14 recognition system doesn't crawl across all social

15 media, collecting all faces on the internet and

16 putting those in a bank. Not happening. What

17 happens is if there is a crime and we collect an

18 image, maybe from a bank camera of a bank robbery.

19 Maybe from a security camera on the street of a

20 mugging. Maybe a shooter in a shooting. We can look

21 at that image and determine is this within the realm

22 of facial recognition quality. Some are, many are

23 not. That would then go into the facial recognition

24 system, which does not run against the whole world.

1
2 It runs against the mug shots in our system. These
3 are people who have already been arrest for crimes,
4 and as it scans across those mug shots it will
5 deliver possibilities. An examiner, the same way a
6 fingerprint examiner will look at prints and then
7 have to drill down into the grooves and lines of a
8 print, look at those possibilities and say, OK, who
9 looks most like the suspect? Is somebody a dead
10 ringer? Is somebody in the ball park? Is this not
11 them at all. And they may then do further
12 investigation. Further investigation might be
13 looking at the record of the person in the mug shot.
14 It might be looking at the clothing worn by the
15 person captured on the scene of the crime. It might
16 be finding that the person in the mug shot, you know,
17 has a photograph and publicly facing social media on
18 the same day of the crime, wearing the same outfit.
19 But we wouldn't have gotten there without first
20 running a relatively clear shot of a face that
21 measures a number of parameters against that
22 database. I want to come back to another place,
23 which is every crime starts with a victim. Somewhere
24 there is someone saying I know I have my mug shot in
25 the system, but I don't want to be run against facial

1
2 recognition. Somewhere else there's someone who was
3 beaten, or robbed, or abused, or the victim of a hate
4 crime where they say I want that crime solved, and I
5 want the police to use every reasonable piece of
6 technology and investigative technique at their
7 disposal. All crimes start with a victim. We think
8 about them, too.

9 CHAIRPERSON RICHARDS: And I thank you
10 for those comments, but you may remember 13-year-
11 olds were being, ah, put into facial recognition
12 databases, so can you speak to that?

13 DEPUTY COMMISSIONER MILLER: I believe
14 that's something that Legal Aid brought to our
15 attention. They were correct. They were expunged.
16 But, you know, we do have, we do have teenagers out
17 there who have committed up to 22 robberies or more,
18 so.

19 CHAIRPERSON RICHARDS: That's a blanket
20 statement, though?

21 DEPUTY COMMISSIONER MILLER: Excuse me?

22 CHAIRPERSON RICHARDS: That's a very
23 blanket statement. I mean, how many 13-year-olds
24 are out committing these crimes?
25

1
2 DEPUTY COMMISSIONER MILLER: I can
3 actually get you that number. I don't know it off
4 the top of my head. Um, but, I, I think it's
5 important to realize investigating a crime has to do
6 with identifying the individuals behind it. It also
7 means going by the rules. When we were notified
8 about people who shouldn't have been in that photo
9 manager database they were removed immediately and we
10 appreciate it was not intentional and we appreciate
11 the notification.

12 CHAIRPERSON RICHARDS: Would you consider
13 that checks and balances?

14 DEPUTY COMMISSIONER MILLER: I would
15 consider that very hopeful.

16 CHAIRPERSON RICHARDS: And would you
17 agree that, ah, because there were a lack of checks
18 and balances in this system those 13-year-olds were
19 unjustly put into that system.

20 DEPUTY COMMISSIONER MILLER: Sure. The,
21 the police department, we don't recruit from the
22 Planet Perfect. We're still stuck with the human
23 race as our hiring pool. So we're going to have
24 people who make human mistakes. But I think the, the
25 bill we're talking about today is about systematic,

1 sweeping, intentional, um, violations of people's
2 rights and massive surveillance programs, which I can
3 assure you as the head of intelligence and
4 counterterrorism do not exist in the form that we
5 think this bill will uncover. Nor would this
6 particular bill have affected that outcome.

8 CHAIRPERSON RICHARDS: All right. And
9 let me just, because I know my colleagues want to get
10 to question, I want to get to the sponsor of the
11 bill. Let me just cut to the chase. A lot of what
12 people are concerned about is how the use of
13 technology by law enforcement can have disparate
14 impacts on racial, ethnic, or religious groups that
15 might not be something that is intentional on the
16 part of the NYPD, but it can still be a real
17 consequence. So let's just go back into that a
18 little bit. Because I'm pretty sure that we won't
19 find a lot of white teenagers in this supposed facial
20 recognition database. Um, so what steps does the
21 department take to review how it uses technology,
22 how it uses, how its uses of technology may have a
23 disparate impact on distinct racial or ethnic groups,
24 and would you support a provision requiring you to at
25 least consider what the racial impact would be?

1
2 DEPUTY COMMISSIONER MILLER: So I have to
3 break that down into a couple of sections. One, the
4 NYPD is guided by the Constitution. That would, that
5 would bar intentionally targeting race, ethnicity, or
6 religion in any way for enforcement. Number two, our
7 patrol...

8 UNIDENTIFIED: I'm sorry, guided by?
9 [laughter] No, I just want to make sure I heard
10 correctly. You're guided by the constitution?

11 UNIDENTIFIED: Not intentional.

12 DEPUTY COMMISSIONER MILLER: Our, our
13 decisions are guided by the rules, the rules and laws
14 of the United States. And when I say guided by,
15 Council Member, I mean these are the principles that
16 we follow. So to, to expand on that the patrol guide
17 specifically prohibits targeting any group because of
18 race or religion. And the Handschu guidelines, in
19 their latest revision, although it was already
20 prohibited by the patrol guide, spells that out
21 specifically. Data collection about crime goes where
22 crime occurs. There's two factors there. There is
23 one, what is the racial makeup and background or
24 ethnicity of the suspects in those cases, and
25 depending on where crime is happening in New York we

1
2 can see that skews statistically. The other question
3 is what is the racial, ethnic, or religious
4 background of the victims and we see that skew
5 significantly, too. We have to consider both. We
6 can't say we're going to be less responsive one
7 ethnic or racial group of victims because we want to
8 watch our numbers on the suspects. We have to be
9 responsive to all New Yorkers who call the police for
10 assistance.

11 CHAIRPERSON RICHARDS: You know, I get
12 that. But when you look at history, Stop and Frisk,
13 fear evasion, um, there certainly points to a, a
14 history, so we're not hear speaking of this today
15 because we have nothing better to do. We know that
16 historically there have been challenges in the way
17 the NYPD has dealt with certain communities. Muslim
18 surveillance, um, is another example. So I just
19 wanted to put that out there. You didn't answer.
20 Would you be supportive of, of a provision in the
21 bill?

22 DEPUTY COMMISSIONER MILLER: A provision
23 in the bill that said what? I'm sorry for...

24 CHAIRPERSON RICHARDS: Um, I'm looking at
25 the...

2 DEPUTY COMMISSIONER MILLER: I'm sorry
3 for falling behind.

4 CHAIRPERSON RICHARDS: OK. Um, looking
5 at the disparate impacts on certain ethnicities.

6 DEPUTY COMMISSIONER MILLER: It depends
7 on the specific wording. I mean, we obviously cannot
8 manage our response to crime, um, based on racial
9 considerations when the people who are calling us,
10 um, expect a response.

11 CHAIRPERSON RICHARDS: And DNA database?
12 I know we're not here to talk about that today as
13 well, but the list goes...

14 DEPUTY COMMISSIONER MILLER: The DNA
15 database is, is run and operated by the Office of the
16 Chief Medical Examiner. I don't feel, um, qualified
17 to answer specific questions about it. It's
18 [crosstalk]

19 CHAIRPERSON RICHARDS: And does the NYPD
20 work with them specifically on that database?

21 DEPUTY COMMISSIONER MILLER: Excuse me?

22 CHAIRPERSON RICHARDS: Who gets the DNA
23 to, ah, to them?

24

25

2 DEPUTY COMMISSIONER MILLER: That would
3 be more appropriate for the detective bureau. Um, I
4 don't want to...

5 CHAIRPERSON RICHARDS: But you would say
6 that's the NYPD? The detective bureau is part of the
7 NYPD, correct?

8 DEPUTY COMMISSIONER MILLER: Yes.

9 CHAIRPERSON RICHARDS: OK. Um, just some
10 last, just the last question. What are you willing
11 to disclose as of today? Would you be willing to do
12 impact and use policies for facial recognition, cell
13 site simulators, AKA Stingrays, predictive policing
14 algorithms, and license plate readers?

15 DEPUTY COMMISSIONER MILLER: So I want to
16 be hesitant about negotiating the specifics of a bill
17 here in a public forum when some of this touches on
18 things where we already have public policies posted,
19 and some of this touches on the capabilities, the
20 rapidly changing capabilities, or lack of
21 capabilities as we face going dark, which is because
22 of encryption, a lot of these things are actually
23 being outmoded, um, but I think in principle what I
24 think, ah, the NYPD would be going in the direction
25

1 of is to with certain carve-outs describe the
2 policies that are used around certain collections.
3

4 CHAIRPERSON RICHARDS: OK, and you're not
5 going to give me any specifics on these. So facial
6 recognition, cell site simulators, predictive
7 policing, ah, algorithms.

8 DEPUTY COMMISSIONER MILLER: We've
9 described our facial recognition policy publicly.
10 Um, I'm going to have to kind of go back and see that
11 policy. But it's nothing we haven't described
12 already. I think we'd be happy to share that. It's
13 actually, I think, a legitimate concern and something
14 that we would be willing to speak about publicly
15 because we have. But it's different from the broad
16 swath of disclosure that the bill calls for as
17 written.

18 CHAIRPERSON RICHARDS: OK. I want to
19 thank you and I want to thank obviously you for your
20 work on drones as well, although I do have my own
21 opinions why you did bring us in early on drones,
22 because we would legislate you probably if you didn't
23 [laughs]. But that's another story for another day.
24
25

1
2 DEPUTY COMMISSIONER MILLER: I look at it
3 in the most positive light of transparency and
4 [crosstalk].

5 CHAIRPERSON RICHARDS: [laughs] That's
6 the one time the NYPD got it right because they, I
7 think you were worried about is following California.

8 DEPUTY COMMISSIONER MILLER: Practice
9 makes perfect.

10 CHAIRPERSON RICHARDS: [laughs] Ah, we'll
11 go to Council Member Gibson for questions.

12 COUNCIL MEMBER GIBSON: Thank you, Chair.
13 Good afternoon again, Deputy Commissioner. Thank you
14 for your testimony and I will first and foremost say
15 it's different from the last hearing, so I applaud
16 the revisions, um, and I really thank you for
17 explaining a little bit further in detail about some
18 of the things that the department is currently doing
19 and what you hope to achieve as you continue to work
20 with us. So I agree with transparency. I agree that
21 there's always a way for a balance. I guess I am
22 concerned at how we get there and how much time it
23 will take for us to get there. Ah, the advocates
24 that have been doing a tremendous amount of work on
25 this issue, this is their every-day reality,

1 particularly for many of our public defenders who
2 represent clients that have been surveilled before
3 and really need answers to a lot of the questions
4 that they may have. And so I have several questions,
5 but I want to just echo one of the sentiments of the
6 chair and just getting some accuracy and
7 understanding. When he asked the question about the
8 gang database, is it accurate that the NYPD was not
9 aware that 13-year-olds were entered into the gang
10 database until you were notified by Legal Aid
11 Society?

ASSISTANT DEPUTY COMMISSIONER

13
14 CHERNYAVSKY: No, just to contract that. I don't
15 believe the chair was talking about the gang database
16 with that question. I think he was talking about
17 photos, that there was a glitch in the system that
18 maintained photos of juveniles and in which case they
19 weren't deleted, it wasn't on auto delete. That was
20 something that was brought to our attention by the
21 Legal Aid Society. We worked with them over a course
22 of time. They actually, we had them to One Police
23 Plaza and they tested the new system. We had to
24 effectively rebuild the system to address that glitch
25 and these photos have been purged out and destroyed

1 out of the system, and they actually verify that. We
2 had them to One Police Plaza, where they randomly ran
3 names of clients that they had. We didn't have
4 access to those names ahead of time, of course, and
5 they verified that we in fact corrected the system.

7 COUNCIL MEMBER GIBSON: OK. Thank you
8 for clarifying, 'cause I was sitting here about to
9 jump out of my seat saying that there can't be a
10 possibility that you run a database and are not aware
11 of who's entered into the database. OK. Um,
12 Commissioner, in your testimony you talked about
13 three different types of technology in which the
14 department currently publishes a, an impact and use
15 study, the domain awareness system, the body-worn
16 cameras, and drones. So I would like to think, and
17 I'm absolutely going to make sure that it goes on
18 record, the body-worn camera roll-out that we did
19 after the [inaudible] 54, that was really at the
20 behest of advocates that pushed and pushed to make
21 sure that there was an impact and you studied, and we
22 were a part of briefings, as were many of the
23 advocates, and that was a good thing that should have
24 happened without any push from advocates. So I just
25 want to make sure we're clear of that. Um, I

1 recognize when the department takes the lead, but I
2 also recognize when you're pushed to do something,
3 and it was right thing to do. So outside of domain
4 awareness system, body-worn camera, and drones, are
5 there are any other technologies that the department
6 uses today that that has an impact and use study that
7 is available for members of the public and the
8 council?
9

10 DEPUTY COMMISSIONER MILLER: I'd have to
11 get back to you on that. I would have to go through
12 all this, and I don't want to answer that there are
13 additional ones and find that there are not, or that
14 there are not and find out that they are. Let me get
15 back to you with specifics.

16 COUNCIL MEMBER GIBSON: OK. I appreciate
17 that. And the reason I ask is because, as you
18 mention in your testimony, technology across the
19 department is vast. I think the ShotSpotter, the
20 gun, ah, detector technology, I think of many
21 different things, the 911 call system, and so your
22 reach is enormous, depending on who we are targeting
23 with precision, et cetera, and so what I'm trying to
24 understand further is are there other technologies
25 that the department is using where you have

1 identified that you do need an impact and use study.
2 And that's really the goal of this bill, to
3 understand some of that technology. Um, I think none
4 of us sit here and ever want the city to be a victim
5 of another attack. I don't think any of us sit here
6 with that intention. But what I do think we sit here
7 with an intention is to work with the department to
8 find a balance so that we can reassure all of our
9 constituents that come to us about what the
10 department is doing and we just simply can't answers
11 those questions. And as you said, there are a lot of
12 pieces of technology the department does use and I
13 think we all have a right to understand what those
14 uses are. So in your work with your team, um, I
15 alluded to several cities that have already
16 implemented measures that are very similar to POST
17 but honestly much, much stronger. Um, you have
18 places like Seattle's city council where they enacted
19 legislation where the city council actually approves
20 every technology purchase by their local police
21 department. Right? As one example. Other places,
22 like Cambridge, have done measures that were not as
23 strong but similar to what we're trying to do. So
24 I'd like to understand have you done any research or
25

1
2 travel to other cities to see what these measures
3 were like, how they were implemented, some of their
4 challenges and hitches, gaps in service, and what do
5 you think about some of the things you've seen across
6 the country?

7 DEPUTY COMMISSIONER MILLER: So in the
8 case of, you know, Seattle, at some point they also
9 legislated that their police could not sit on the
10 Joint Terrorism Task Force, which made them blind in
11 some, in some fashion to threats against Seattle.
12 We've seen similar things in cities like Portland.
13 Um, Cambridge, I don't know how high Cambridge is on
14 the ISIS or Al-Qaeda target list. But their needs
15 and requirements and threat picture are very
16 different from that of New York. Seattle has been
17 the target of a couple of serious terrorist plots
18 and, um, has not been as prepared as we would have
19 been or they could have been, ah, based on those
20 kinds of legislative initiatives. So I think I
21 default to the federal statute as one that was
22 carefully considered, passed by Congress after a
23 healthy debate, and sits as a model with reasonable
24 carve-outs to balance both things, protecting city's
25 and guarding privacy and constitutional rights.

2 COUNCIL MEMBER GIBSON: What about San
3 Francisco? They implemented something in 2017. San
4 Francisco is fairly large.

5 DEPUTY COMMISSIONER MILLER: So San
6 Francisco is fairly large, ah...

7 COUNCIL MEMBER GIBSON: Not as large as
8 New York City, but.

9 DEPUTY COMMISSIONER MILLER: I think that
10 have had, um, a bill by their city council that
11 barred the police department from collecting
12 intelligence. We would have a serious problem as a
13 city if we stopped collecting intelligence because
14 the process is intelligence collection, analysis to
15 determine what it means, and prevention, particularly
16 in the terrorist realm, and then in the
17 counterterrorism bureau starting off where we leave
18 off with prevention, preparedness, and response. San
19 Francisco is not New York City.

20 COUNCIL MEMBER GIBSON: Right, no, um, I
21 by no means am mentioning these cities to ever
22 compare to New York City. Nothing that happened to
23 this country you can ever compare to the City of New
24 York with 8.4 million people. That I go on record
25 and say. But I also realize while these cities are

1
2 much smaller and the threat is not as great as the
3 City of New York, it does speak volumes to the fact
4 that there is a national conversation happening
5 around police surveillance and technology. And I
6 think it behooves us as the City of New York, where
7 we pride ourselves in always being a leader in
8 technology, in training, in all of the things that we
9 do, that I think this is something that we really
10 should try to take a lead on and do something. My
11 struggle in understanding how we move forward is that
12 I recognize what the NYPD has done with domain, with
13 body-worn cameras, as well as with drones. But in my
14 honest opinion it's not enough. It's not enough when
15 there's a multitude of technology that the department
16 currently has access to and outside of the Handschu
17 guidelines with the monitor there really is no level
18 of oversight. And so again I repeat when we are
19 asked questions in our communities we just simply
20 don't know and have answers. And so our process here
21 in the council is through legislation because it does
22 stimulate a conversation. Without the introduction
23 of this POST Act we likely would not be having this
24 conversation. Everything would be led by the
25 department. And so when you talk about, you know,

1
2 proper exceptions I want to understand what proper
3 means and I don't think this council wants to give
4 total latitude to the NYPD where you can decide what
5 you want to carve out for your own benefit and for
6 your own responsibility. That we don't want. But if
7 it's something that we believe is reasonable, and I
8 think it's something that obviously we will continue
9 to talk about, but the challenge that we face is many
10 of these pieces of legislation become so weak and so
11 weak that they lose value and none of us are in this
12 business to introduce and pass weak legislation that
13 sometimes is not even worth the paper it's written
14 on. And so I want to understand when you talk about
15 proper exemptions that you would consider to enhance
16 this bill could you give more specifics for us to
17 understand?

18 DEPUTY COMMISSIONER MILLER: Things that
19 would endanger the public, things that would endanger
20 police officers, things that would make it more
21 difficult to prevent crimes of violence or acts of
22 terrorism in New York City. Now, drilling down into
23 that...

24 COUNCIL MEMBER GIBSON: Yes, drill down
25 please.

1
2 DEPUTY COMMISSIONER MILLER: Drilling
3 down into that would be at once self-defeating
4 because I would then have to describe what those
5 things are, which is the point of asking not to do
6 this so broadly, how they're used, and why they
7 shouldn't be disclosed. However, I believe in a
8 discussion where we were cooperating with the
9 crafting of legislation that would do both things,
10 which is to protect safety, um, not have the council
11 micro manage police operations down to individual
12 purchases as they are doing in another city, um, but
13 create a reasonable balance is what we're both
14 looking forward to.

15 COUNCIL MEMBER GIBSON: So the department
16 has already established that in the domain awareness
17 system, which does as I understand include cell phone
18 towers and license plate readers, you've established
19 the body-worn cameras, as well as the usage of drones
20 to a certain extent, are all pieces of technology
21 that don't necessarily infringe on officers' work.
22 It doesn't put them in jeopardy. It doesn't put the
23 city in jeopardy. So we've already established that
24 because you do have an impact and use policy that's
25 on the website. So what I want to understand is some

1
2 of the other items that the chair talked about, like
3 the radiation, ah, other things such as that. What
4 is it about those pieces of technology that makes it
5 so detrimental to public safety that we're at this
6 impasse today?

7 DEPUTY COMMISSIONER MILLER: We are at
8 this impasse today because not one single word of
9 this bill has been changed at all since the three
10 times we've discussed this. We are at this impasse
11 today because privacy advocates and civil rights
12 advocates have to do their jobs with passion and
13 purpose to protect privacy, but they're not
14 responsible for the outcome on the other end, which
15 is if something bad happens and people are hurt or
16 die they're not going to be the ones testifying
17 before this council about why that wasn't detected or
18 uncovered. So I think what I'm trying to say, and I
19 don't mean to be a broken record, is we can come up
20 with alternatives and show them to the council, the
21 council can counter with other alternatives, and we
22 can reach a reasonable agreement that I think we all
23 think would work for both. Um, but trying to, um,
24 trying to get me with my limited faculties to list
25 every technology that the New York City Police

1
2 Department uses, which ones are posted where and how,
3 is more than I'm prepared to do as I sit here. And I
4 mean not because I'm not willing. It's just a lot of
5 technologies and I don't have all the information on
6 each and every one.

7 COUNCIL MEMBER GIBSON: Question. Is the
8 unit that oversees all of the technology is which
9 unit in the police department?

10 DEPUTY COMMISSIONER MILLER: Well.

11 COUNCIL MEMBER GIBSON: Does it span over
12 more than one?

13 DEPUTY COMMISSIONER MILLER: Ah, it
14 might. I mean, the ITB, which is the Internet
15 Technology Bureau, which handles most things related
16 to computers, um, handles large systems. But there
17 are other units in the police department that have
18 specialized technologies that don't necessarily touch
19 the internet or have to do with computers. So there
20 would be more than one.

21 COUNCIL MEMBER GIBSON: And as it relates
22 to the license plate readers, the x-ray vans, cell
23 phone towers, radiation, gunshot, ah, detection
24 ShotSpotter, is there a minimum timeframe in which
25 data is kept on file? How is stored and is there a

1
2 standard process or is everything individualized for
3 that particular piece of technology, and who is it
4 shared it?

5 DEPUTY COMMISSIONER MILLER: OK, so cell
6 phone towers, what do you mean specifically?

7 COUNCIL MEMBER GIBSON: Ah, the cell
8 phone towers that we have that are placed in certain
9 parts across the city, the cell phone towers that
10 pick up your...

11 DEPUTY COMMISSIONER MILLER: Yeah, so, so
12 without getting into that technology which is used to
13 track dangerous fugitives, find missing people, and
14 solve serious crime, that requires, that requires
15 legal authority and a warrant and is limited to a
16 single phone number or more than one single phone
17 number attached to the same target. It is not a, it
18 is not used as a sweeping process that vacuums up and
19 stores data beyond the authorized elements of that
20 particular investigation, which usually boils down to
21 that single target. So it's retained for the life of
22 the case, which should result in a capture or an
23 arrest. That's the point of it, um, and becomes a
24 part of that, a part of that evidence or trial. Ah,
25 for the license plate readers, that's posted publicly

1
2 on our website as to what the retention for license
3 plate readers and videos. That has become useful in
4 solving an endless number of crimes, and if you want
5 specifics I can bring back those success stories,
6 because remember behind each one is a victim who was
7 seeking justice. What were the other categories?

8 COUNCIL MEMBER GIBSON: Ah, I asked about
9 what, what are with doing with ShotSpotter?

10 DEPUTY COMMISSIONER MILLER: Ah,
11 ShotSpotter, I have no idea.

12 COUNCIL MEMBER GIBSON: [inaudible]

13 DEPUTY COMMISSIONER MILLER: I mean,
14 ShotSpotter is when you talk about retention, um, if
15 there is a pistol that wants to sue for its privacy
16 rights because it was recorded firing, I haven't met
17 it yet. But it's more an instant system, which is,
18 the purpose of ShotSpotter is to tell us that the
19 shots are being fired immediately, before someone
20 calls the police, or especially if someone doesn't
21 call the police and to generate the most rapid police
22 response to uncover a shooter or a victim, or both.
23 How long we retain the records of the gunshots going
24 off? I've never asked that question.

1
2 COUNCIL MEMBER GIBSON: So I just have
3 one question to close, as I turn it back over to my
4 chair and we have other colleagues. But I guess you
5 emphasize and I think we all recognize that the
6 technology that's used by the department is obviously
7 geared and focused to go after the bad people. Those
8 that are, you know, engaging in serious violence,
9 those that are victims of a crime, they're kidnapped,
10 I understand. But I think it's also safe to say that
11 for a majority of New Yorkers that have been victims
12 of the past NYPD of surveillance, of over-policing,
13 um, it's a lot for them to go out on a leap of faith
14 and confidence and believe that the unknown is in
15 their benefit, to believe that the department has
16 turned around and under the Handschu guidelines and
17 with all the levels of oversight that you have that
18 innocent New Yorkers are no longer victims of
19 surveillance, right? And so that's what this POST
20 Act is about. It's to give New Yorkers reassurance
21 that the department is doing what it needs to do to
22 keep them safe, not infringe on their individual
23 civil rights, and do it at the same time, right?
24 It's not mutually exclusive. We can do both at the
25 same time. And so while I understand the few bad,

1
2 it's not the majority of New Yorkers that are law-
3 abiding citizens that just want to go about their
4 business and not feel that they're being surveilled
5 everywhere they go. And so I think that's the
6 mechanism behind this POST Act, to try to establish
7 that balance, to get us to a place where we see more
8 impact and use studies and policies, not just domain,
9 not just body-worn camera, not just drone, but all
10 the other pieces of technology that the department
11 has access to. You guys get a significant amount of
12 federal dollars and federal grants and I know the
13 federal government puts mandates on the NYPD and I
14 know you comply because you have to make sure that
15 money comes. But the 6, 5.6 billion dollar NYPD
16 budget that's largely funded by city taxpayer dollars
17 and we can't get information to me is just not, you
18 know, acceptable. And so I want more. We're pushing
19 and I think we can do more and we should do more. I
20 think we owe it to New Yorkers and our constituents
21 that we represent that have not seen all the great
22 things that are happening and really feel like they
23 are, you know, victims of a system that has not been
24 favorable to them for quite some time.

2 DEPUTY COMMISSIONER MILLER: I would like
3 to respond to that just briefly.

4 COUNCIL MEMBER GIBSON: Sure.

5 DEPUTY COMMISSIONER MILLER: Separating
6 Stop and Frisk, which is a separate issue, and I
7 think...

8 COUNCIL MEMBER GIBSON: It's very
9 relevant, though, Commissioner.

10 DEPUTY COMMISSIONER MILLER: Totally. I
11 think we would agree that when Commissioner Bratton
12 came in, followed by Commissioner O'Neill, and now
13 Commissioner Shea, ah, we have reduced Stop and Frisk
14 to what I think anybody would agree in a city of 8.6
15 million people is reasonable levels that suggest it's
16 being done with reasonable suspension or probable
17 cause, ah, in favor of precision policing. You know,
18 the year we stopped 675,000 people and came up with
19 900 guns in a practice that was meant to get firearms
20 off the street, um, as Mayor Bloomberg recently
21 pointed out, I can't do the math, but I don't know,
22 out of three-quarters of a million what 900, but it's
23 a very small return for a practice that alienated
24 entire swaths of the city. The field intelligence
25 offices of the intelligence bureau, week to, year to

1 date, um, we've taken 1200 guns, more than the entire
2 take from Stop and Frisk at its height by developing
3 information, documenting that information, getting
4 search warrants signed by judges, reviewed by
5 district attorneys, and going out and get those,
6 those weapons. It's the difference between massive
7 chemotherapy, which was making the patient more ill
8 than the crime, um, and laser surgery, where we are
9 figuring out who has the guns, who is behind the
10 violence, and targeting those individuals. Not their
11 neighborhoods. I think that's an important step
12 forward. But the other piece that you referred to,
13 which is the New Yorkers victimized by surveillance,
14 um, there's two issues there. One, there's the
15 Muslim surveillance program, which doesn't exist by
16 name except by name in criticism, which was the
17 subject of the review by the inspector general that
18 concluded one hundred percent of the cases we
19 investigated based on what they pulled from a 10-year
20 period were properly predicated and not done at
21 random and not blanket surveillance, and not done
22 outside the rules, but done properly. The last piece
23 is there was the demographics unit, which I
24 personally disbanded after a very short time in my
25

1 office after reviewing what its practices were, the
2 efficiency of those practices, and the fact that we
3 could obtain the same information in less intrusive
4 ways. In the intelligence bureau policy guide I also
5 began the practice of least intrusive means first,
6 meaning when we start an investigation I require,
7 absent a compelling reason to do it differently,
8 which must be documented, that we use the least
9 intrusive means of investigation until we need the
10 next intrusive means, and so on. That we don't start
11 with the most intrusive means, particularly at the
12 beginning of an investigation before we know where
13 it's going to go. So I believe that not only has
14 some of this, um, been unfortunate reality, which we
15 worked hard to correct over the last six years. Some
16 of it has been inflated in discussions where we have
17 been tested, inspected, sued, um, gone through
18 discovery process, and settled with no requirement of
19 any admission of wrongdoing, which doesn't usually
20 happen if there is proof of wrongdoing, that we've
21 come a long way. And I believe that this bill and
22 discussions like this are about continuing to go in
23 that direction, but that it needs to be a
24 collaborative effort and it needs to be done in a
25

2 reasonable way. Otherwise, I think we're in
3 relatively [inaudible] agreement.

4 COUNCIL MEMBER GIBSON: Thank you. Thank
5 you, Chair.

6 CHAIRPERSON RICHARDS: Thank you. All
7 right. We're going to go to Council Members Lancman,
8 Vallone, and then Powers.

9 COUNCIL MEMBER LANCMAN: Thank you. Good
10 afternoon. Um, let's start with first principles.
11 You'd said earlier that the NYPD is guided by the
12 Constitution. And I don't want to quibble with the
13 meaning of the word guided. I understand that you
14 meant it to be that the NYPD is bound by the
15 Constitution.

16 DEPUTY COMMISSIONER MILLER: We follow
17 the law.

18 COUNCIL MEMBER LANCMAN: OK. But I
19 assume that you said that to give us a sense that the
20 NYPD should be trusted to follow the law. I just
21 want to be clear. There have been number examples
22 where the NYPD's practices have been found to violate
23 the Constitution, correct?

24 DEPUTY COMMISSIONER MILLER: [inaudible]
25

1 COMMITTEE ON PUBLIC SAFETY 65
2 COUNCIL MEMBER LANCMAN: Don't, I don't,
3 I not quibble with you. Please don't quibble with
4 me.

5 DEPUTY COMMISSIONER MILLER: I'm not
6 going to quibble with you. I don't want to accept
7 numerous examples where the NYPD has violated the
8 Constitution without understanding the question. Is
9 it individual instances and specific cases? Is it...

10 COUNCIL MEMBER LANCMAN: Well, you had
11 brought...

12 DEPUTY COMMISSIONER MILLER: ...widespread
13 practices?

14 COUNCIL MEMBER LANCMAN: You had brought
15 up the Handschu agreement, right? So let's look at
16 Handschu, right? When Raza was, was brought, right,
17 there was compelling evidence that the NYPD had
18 exceeded even the modified terms of the Handschu
19 agreement. In fact, a court rejected, if I'm not
20 mistaken, I think it was the original settlement that
21 was attempted to be reached in, in, in Raza because
22 the court was not satisfied that it had addressed
23 the, I forget the exact term, I think it was the, the
24 systematic, um, inclination of the NYPD to ignore
25 rules, ah, protecting, um, free speech and, and

1 religion. So we have to find some other way to
2 ensure that the NYPD, every city agency, is complying
3 with the Constitution other than just relying on the
4 Civil Liberties Union and individual plaintiffs
5 commencing litigation. And that is how I view the
6 POST Act and what I understand to be our effort as a
7 the City Council to try to do and fulfill our
8 responsibilities to make sure that our government is
9 acting in a Constitutional manner. It's statements
10 that the NYPD follows the Constitution just isn't
11 enough for us to abdicate what I think we view as our
12 responsibility to make sure that, that you're doing.
13 And there have been numerous instances, many, some,
14 where the NYPD has been found to not follow the
15 Constitution. But we're here, we've got a roll, too,
16 here. So make sure that you do that.

18 DEPUTY COMMISSIONER MILLER: OK, but I
19 think that facts are important as well.

20 COUNCIL MEMBER LANCMAN: Yeah, OK.

21 DEPUTY COMMISSIONER MILLER: In the Raza
22 case that you cite as, you know, systematic
23 violations of the Constitution, I would remind us all
24 the that Raza case settled in an agreement with the
25 NYPD and the attorneys and the plaintiffs that there

1 was no admission of wrongdoing required. In the
2 discovery process we pushed forward the records that
3 were requested and went over them and explained them,
4 and there was no wrongdoing found or argued, that
5 there was no damages paid, um, so the, so the
6 judge's...

8 COUNCIL MEMBER LANCMAN: Well, the...

9 DEPUTY COMMISSIONER MILLER: ...the
10 judge's qualification accepted the idea behind the
11 allegations in that case was a systematic, endemic
12 practice and pattern of conduct that violated the
13 law, which after the discovery process was not
14 detected, proven, or required to be admitted to
15 because we've spent a good deal of time...

16 COUNCIL MEMBER LANCMAN: Well, listen,
17 that, that...

18 DEPUTY COMMISSIONER MILLER: ...working
19 with those lawyers.

20 COUNCIL MEMBER LANCMAN: The fact that it
21 was not required to be admitted to I, I think,
22 certainly I did and I think the other lawyers in the
23 room got their attention when you said something to
24 the effect of it's unusual for there to be a
25 settlement without one side or the other admitting

1
2 wrongdoing. In my experience, both as a lawyer and
3 as a policy-maker it's actually the opposite. It's
4 very unusual for there to be a settlement where one
5 side says and I confess, you got me.

6 DEPUTY COMMISSIONER MILLER: I may have
7 misspoken.

8 COUNCIL MEMBER LANCMAN: OK.

9 DEPUTY COMMISSIONER MILLER: But just to,
10 just to say what I meant, it is unusual in a civil
11 case where systematic wrongdoing is uncovered and
12 that evidence is turned over in discovery and
13 witnesses are examined and deposed that they would
14 settle for no admission of wrongdoing after
15 uncovering systematic wrongdoing. That would be
16 unusual.

17 COUNCIL MEMBER LANCMAN: That, that has
18 not...

19 DEPUTY COMMISSIONER MILLER: And that's
20 what happened in this case.

21 COUNCIL MEMBER LANCMAN: No, well, that
22 hasn't been my experience either as a lawyer or a
23 policy-maker and I suspect that it's not the
24 experience of most of the lawyers in this room. Let
25 me ask you a question. The civilian representative

1 on the Handschu board or committee issued a report.
2
3 I think it was the second report...

4 DEPUTY COMMISSIONER MILLER: Yes.

5 COUNCIL MEMBER LANCMAN: ...over the
6 summer, and found that the number of approved
7 requests to extend investigations, ah, excuse me.
8 The number of approved requests to authorize
9 undercover investigations decreased by 32%. The
10 number of approved requests to open investigations
11 decreased by 36%. It seems to me, and I want to get
12 your take on this, that the presence of someone
13 outside of the NYPD, the presence of a civilian
14 representative is having the effect of reducing the
15 number of investigations that are being authorized,
16 which suggests to me that the NYPD in the absence of
17 that civilian representative's ah, ah, presence, um,
18 was maybe over-broadly interpreting its authority
19 under, under Handschu and, and Raza, and that further
20 that indicates to me that the additional oversight of
21 the City Council might create a further narrowing and
22 focusing of which investigations covered by these
23 agreements that the NYPD would, would open. What,
24 what do you, what do you, why do you think that there
25

1 was such significant and dramatic decreases in
2 authorizations?
3

4 DEPUTY COMMISSIONER MILLER: So we
5 haven't studied the causality, although I attended
6 every meeting that the civilian observer attended and
7 appreciated, um, and continue to appreciate his
8 unique perspectives and advice, but I think during
9 the exact same period of those two years we also saw
10 ISIS going from being a multimillion-dollar
11 organization with an internal footprint and an
12 extraordinarily capable of external operations, um,
13 capability to being crushed, which reduced, I
14 believe, the number of plots that we were facing from
15 the group that generated the most plots.

16 COUNCIL MEMBER LANCMAN: But we, we may
17 be understanding the data differently, and I'm open
18 to, to, a correction to my understanding. My
19 understanding of the decrease is that there were X
20 amount of requires that were made to open an
21 investigation and the approval rate for the number of
22 requires was decreased by 36%. I think the way that
23 you're describing that data and maybe you're right,
24 I need to understand it better, is no, no, no, that
25 is the number of requests in absolute terms, which I

1
2 would understand because ISIS is less of a threat
3 today than it was two years ago. But I interpret
4 this to be, let's put it this way, there were more
5 rejections and declines of requests to open an
6 investigation given the presence of the, the civilian
7 representative, than in, in the past.

8 DEPUTY COMMISSIONER MILLER: Well, I
9 think both are true. I think there were fewer
10 requests to open cases and if there were more
11 declinations, um, if the civilian observer was a
12 contributor to that, so be it. I consider that a
13 good outcome. I was always an advocate of bringing
14 back the civilian observer, or if was resulting from
15 other conditions, um, there have been shifts in
16 terrorism during the same period. I can't answer
17 that scientifically, even though I spoke to Judge
18 Robinson about it. He couldn't answer it either
19 exactly.

20 COUNCIL MEMBER LANCMAN: Last string of
21 questions. Other than for the domain awareness
22 system is there any other technology that for which
23 the NYPD has put out or established something similar
24 to the public security privacy guidelines. For
25 example, is there, is there a similar, um, policy

1 governing privacy vis-à-vis XYZ technology as it
2 relates to facial recognition, or as it relates to
3 Stingrays, or as it relates to the x-ray vans.
4

5
6 ASSISTANT DEPUTY COMMISSIONER

7 CHERNYAVSKY: Yeah, so we've put it the, um, I mean,
8 it's not, I don't think it goes by the same title,
9 but part of posting our patrol guide online is
10 whatever procedures we put into patrol guide by
11 definition will then be online with a very narrow
12 exception. The body-worn camera policy also has
13 retention periods in the, in the policy. It has, ah
14

15 COUNCIL MEMBER LANCMAN: I'm familiar
16 with the body-worn camera because we did that, the...

17 ASSISTANT DEPUTY COMMISSIONER

18 CHERNYAVSKY: Right, so that's...

19 COUNCIL MEMBER LANCMAN: ...hearing last
20 month, yeah.

21 ASSISTANT DEPUTY COMMISSIONER

22 CHERNYAVSKY: ...the police policy. We added to that.
23 We have, ah, with respect to drones we have the drone
24 policy and, you know, one thing that when the
25 Commissioner was talking about it, um, one point that

1
2 wasn't mentioned is we met with you all and then we
3 also met with advocates afterwards, and the result of
4 those meetings was to report, right, self-initiated
5 report, not mandated by the council, ah, on the
6 number of flights that take place quarterly,
7 disaggregated by the purpose. So the patrol guide
8 lays out what are the reasons why we would fly, and
9 one of the reasons, as always, that concerned some of
10 the stakeholders was the catchall provision, because
11 we can't always envision every reason why it would be
12 deployed, and the concern was OK, great, you laid out
13 this list of reasons why you would deploy, but the
14 catchall we think it's going to be overly used.
15 Well, we're seeing zeroes on the catchall provision
16 because...

17 COUNCIL MEMBER LANCMAN: So why do you
18 not have it, unless you do, a similar policy that
19 tries to balance privacy versus, you know, the law
20 enforcement interest, for the Stingrays, for the x-
21 ray vans, for all of the technologies that you have
22 that are arguably invasive of someone's privacy, and
23 all of which in a certain circumstance would have a
24 legitimate law enforcement purpose.

ASSISTANT DEPUTY COMMISSIONER

1
2
3 CHERNYAVSKY: Well, yeah. So I, I think a lot of
4 times a lot of the conversations we seem like we're
5 going pretty far afield of, of the law and what it's
6 gonna do and what its purpose is and how it's gonna
7 play out. So I think by and large there are going to
8 be things that if the law passes, and I should
9 preface this by saying that we agree with you. We're
10 not saying take Intro 487 and burn it. We're not
11 saying that here. What we're saying is, is there's a
12 happy medium, right? So we, we are OK with and we
13 agree with transparency. We've done it unilaterally.
14 There are other technologies that I think, OK, you're
15 naming some. There may be others that we're OK
16 putting this policy out, but the bill, we believe, as
17 written is flawed in a couple of ways. One, it
18 labels a multitude of technologies as surveillance,
19 where, when in fact there's nothing surveilly about
20 them, if that's even a word. The second piece is...

21 COUNCIL MEMBER LANCMAN: Before we move
22 onto the second piece, give me an example. Give me
23 an example of a technology that we purport to
24 cover...

2 ASSISTANT DEPUTY COMMISSIONER

3 CHERNYAVSKY: Ah, we've talked about ECMS, our case
4 management system for detectives, right? It's not
5 administrative office equipment, but it certainly
6 falls under this definition. Is it surveillance
7 technology or is it an investigative tool. Frankly,
8 a desktop computer, although it's, you know, under
9 the definition you exempt out office, routine office
10 equipment, but that...

11 COUNCIL MEMBER LANCMAN: Commissioner,
12 Commissioner, and it's a pleasure to call you
13 commissioner finally.

14 ASSISTANT DEPUTY COMMISSIONER

15 CHERNYAVSKY: I appreciate that, thank you.

16 COUNCIL MEMBER LANCMAN: I mean, the
17 statute clearly exempts, I mean expressly exempts,
18 technology used primarily for internal department
19 communications...

20 ASSISTANT DEPUTY COMMISSIONER

21 CHERNYAVSKY: Administrative purposes.

22 COUNCIL MEMBER LANCMAN: Routine office
23 equipment used primarily...

24 ASSISTANT DEPUTY COMMISSIONER

25 CHERNYAVSKY: Administrative purposes.

1 COMMITTEE ON PUBLIC SAFETY 76
2 COUNCIL MEMBER LANCMAN: ...for
3 departmental administrative purposes. But it's not,
4 it doesn't include your desktop.

5 ASSISTANT DEPUTY COMMISSIONER
6 CHERNYAVSKY: No, but, but, you know, but
7 realistically speaking, look, I don't want to mince
8 words. My point is, my point is, is that the
9 definition of surveillance technology needs to be
10 refined and I don't think that's a controversial
11 statement. The second piece to it is if we're all
12 agreeing that there is going to be a category of
13 technology that's going to be made public, that we're
14 going to put out impact and use policies on, why are
15 we advocating for, ah, the idea that we will be
16 prohibited from utilizing this technology for a
17 period of upward to six months, if we think this
18 technology is going to somehow benefit public safety,
19 right, why would we draft a policy, put it out for
20 public comment, leave it out for 60 days, give the
21 public 45 days to comment, then give it back to the
22 police commissioner, give him 45 days to review it,
23 and then actually finalize it with the understanding
24 that the police commissioner isn't bound by any of
25 the comments that he receives. Which is the point of

1
2 the bill. Why would we refrain from using something
3 that we believe will keep the public safe for six
4 months? If we're putting an impact and use policy
5 out there, it'll certainly be the subject of
6 conversation publicly, public debate, and, as we said
7 numerous times, the patrol guide is not written in
8 stone. We could always change it. We could always
9 amend it. So by putting out an impact and use policy
10 the public will have an opportunity to talk about it,
11 to comment on, why would we refrain from using it?

12 COUNCIL MEMBER LANCMAN: Let me close
13 with this. Um, one of the easiest things that we
14 ever negotiate with the administration is dates of,
15 dates, times, effectiveness periods. That's not
16 really the issue. In, in the instances where the
17 NYPD has adopted some kind of policy, whether it's
18 for the domain awareness system or for drones, there
19 is a recognition that the privacy interests of New
20 Yorkers has to be balanced against the law
21 enforcement interests, which are also fundamentally
22 New Yorkers as well. Commissioner, we represent all
23 those victims. I assure you, we care very much about
24 them. My thing is the balancing of those privacy
25 interests versus law enforcement interests should

2 include the public's elected representatives and not,
3 should not just be decided by the NYPD alone. That
4 is the main reason why I support this legislation.
5 Thank you for your indulgence.

6 ASSISTANT DEPUTY COMMISSIONER

7 CHERNYAVSKY: Thank you.

8 COUNCIL MEMBER LANCMAN: Thank you.

9 CHAIRPERSON RICHARDS: All right, we're
10 going to go to Vallone and then Powers.

11 ASSISTANT DEPUTY COMMISSIONER

12 CHERNYAVSKY: And if I, before Council Member, before
13 you ask your question, I want to make a correction
14 for the record that was brought to my attention. In
15 response to one of Council Member Gibson's question I
16 gave an example of a glitch in the computer system
17 that wasn't deleting a juvenile record. I mentioned
18 photographs. I meant fingerprints. So I just want
19 to clarify that for the record.

20 COUNCIL MEMBER VALLONE: Thank you,

21 Chair, thank you council members. Thank you,
22 Commissioner.

23 UNIDENTIFIED: Thank you.

24

25

1 COMMITTEE ON PUBLIC SAFETY 79
2 COUNCIL MEMBER VALLONE: Would you say
3 the overall goal of the NYPD is to keep New York City
4 safe.

5 DEPUTY COMMISSIONER MILLER: Yes.

6 COUNCIL MEMBER VALLONE: Do you believe
7 this bill as is written keeps New York City?
8

9 COUNCIL MEMBER VALLONE: And there is
10 its. These actions were government oversteps and
11 hinders the ability for the police department to keep
12 our city safe. It's a very critical, dangerous line
13 that we cannot cross. Finding the balance, what
14 council member is asking for here, well, trust me, I,
15 very different from other statements that are up
16 here, so it's not a unified body. I do not support
17 this bill based on the fact that it has not provided
18 the exceptions that we have need to deal with, and I
19 think everyone is saying that but taking their own
20 political agenda to get there. I do not want to
21 jeopardy the safety of this city following what just
22 happened in Barnard College and what happened in New
23 Jersey and what happens every day in this city, and
24 we're the only city to have a 9/11 and thank God
25 we're not Seattle, San Francisco, Chicago, or anybody

1
2 else's policies that cities are failing, we are the
3 best city in the world. And I want to see policies
4 that can enhance and work with communities' concerns
5 versus the ability to keep us safe. The bill is
6 written. Will this hinder the police department's
7 ability to work with counterterrorism and
8 surveillance in New York City?

9 DEPUTY COMMISSIONER MILLER: As it
10 written, yes.

11 COUNCIL MEMBER VALLONE: How do we get to
12 a place where we do not endanger the NYPD's ability
13 to keep us safe and yet bring the concerns of this
14 council to this bill?

15 DEPUTY COMMISSIONER MILLER: I think that
16 we bring forth a bill with the same intended
17 consequence, that we eliminate its unintended
18 consequences, and we do so through an intelligent,
19 patient negotiation where we come to a place, ah,
20 that can promulgate, I think it was Councilman
21 Gibson, ah, said, and Councilman Lancman, where are
22 the policies for the different systems and how much
23 of that can we share, and the answer is probably a
24 lot, um, without, ah, without, ah, intimate
25 descriptions of the systems, what they are, their

1 capabilities, and so on as it only applies to systems
2 that are used specifically for the purpose of not
3 being detected by dangerous people.

4
5 COUNCIL MEMBER VALLONE: Are there
6 surveillance techniques that we could use that are in
7 place that have prevented terrorism or domestic
8 terrorism against the city?

9 DEPUTY COMMISSIONER MILLER: Yes.

10 COUNCIL MEMBER VALLONE: And if those
11 surveillance systems were not in place would those
12 attacks have been imminent?

13 DEPUTY COMMISSIONER MILLER: It's
14 entirely possible, if not likely. I don't want to go
15 as far as to speculate, but if you look at the
16 examples that I cited in my prepared remarks, those
17 undercovers who were in those rooms using this covert
18 equipment and systems, um, they prevented attacks
19 that were supposed to happen and they did so because
20 we have managed to keep two things balanced. One,
21 that that equipment was used within the law so that
22 when those cases get to trial the use will be found
23 proper and legal, and one, ah, two, I'm sorry, that
24 they were used with a degree of secrecy so that they
25 will not be exposed so that they can be used again.

1 COMMITTEE ON PUBLIC SAFETY 82
2 COUNCIL MEMBER VALLONE: And I'll just
3 close, Chair, by saying that we need to work on that
4 balance. I do not support the bill as it is written.
5 I look forward to working out that balance. And I'll
6 give you an example of what the communities are
7 saying where we live. There's something called
8 participatory budgeting, where the community decides
9 how to spend over a million dollars. We have
10 contributed to that every year. The top item every
11 year in northeast Queens is surveillance cameras,
12 across the board. Communities want to feel safe. So
13 they pay from their own tax dollars to have Argus
14 cameras, a surveillance camera, it's placed in areas
15 of concern. And I think that is a very telling
16 factor of not what I feel, but what our communities
17 that we represent are saying. So I thank you. Thank
18 you, Mr. Chair.

19 CHAIRPERSON RICHARDS: Thank you, Council
20 Member Vallone. We'll go to Council Member Powers.

21 COUNCIL MEMBER POWERS: Great, thank you.
22 Thank you for the testimony, taking time to answer
23 questions. Um, you had just raised a similar issue
24 to what I was going to ask about in your testimony,
25 which is the, the definition of surveillance

1 technology means equipment, software, system capable
2 or used to design, collect and retain any processing.
3 You have the definition, I assume you're familiar
4 with it. And then sort of, then it sort of pivots to
5 specific situations of an undercover detective
6 sitting in a room, ah, with a group of ISIS followers
7 planning an attack on Times Square. Ah, I don't, you
8 know, to be fair I don't read the definition as in
9 the bill to cover particular situations where an
10 individual, to disclose an individual who's being in
11 an investigation, to disclose what, it seemed broad
12 enough to me to be able to offer an opportunity for
13 the department to report surveillances being used in
14 the city and have us be able to do our, our, our
15 mandated oversight ability and not to actually put
16 individuals into harm's way, no specific
17 investigations, but I'm, I'm, could, you know, I'm
18 willing to hear your, your side of that, but I don't,
19 I don't, I don't see that to be situation by the
20 definition covered today. Can you give me more
21 information why you think a particular investigation
22 or a particular individual is jeopardized by a
23 broader policy where the department is providing
24 information to the council or to the public?
25

1
2 DEPUTY COMMISSIONER MILLER: So I think
3 that you and I are looking at the same elephant from
4 opposite ends. You're looking at the ear, I'm
5 looking at the tail, but it's the same elephant. The
6 same, um, broadness that you believe would not, as I
7 take from your question, not drill down into the
8 level of specificity about what equipment was used in
9 that apartment I look at as the kind of broadness
10 that could be interpreted by this council or just as
11 likely another council years later to say it includes
12 anything that records audio or retains information.
13 That would include, and I have to be careful with the
14 rest of this sentence, but that would include things,
15 objects, other things that we disguise in order to
16 record audio or video in undercover encounters. It
17 would include it, based on my reading of that
18 paragraph and the reading of many others smarter than
19 me in the department. It's very, very broad.

20 COUNCIL MEMBER POWERS: Well, I do think
21 that we agree that there is an opportunity or ability
22 to get beyond the point of jeopardizing an individual
23 investigation or individual...

24 DEPUTY COMMISSIONER MILLER: We should
25 take the opportunity...

1 COMMITTEE ON PUBLIC SAFETY 85
2 COUNCIL MEMBER POWERS: ...based on the
3 definitions that we use. Is that fair to say?

4 DEPUTY COMMISSIONER MILLER: We should
5 take that opportunity.

6 COUNCIL MEMBER POWERS: OK. I, I just,
7 you know, I think that, I think that the intention
8 here and the sponsor has said this in her, in her
9 questioning as well, is to not put an individual into
10 harm's way, but to provide the public with a clear
11 understanding of, the council even, a clear
12 understanding of how we do surveillance in a way that
13 does not jeopardize an individual's safety. I wanted
14 to ask a second question. You did carve-outs, so I
15 don't have to cover that. But you had mentioned
16 something earlier related to the targeted field
17 investigations. It's just a little bit off topic,
18 but the targeted field investigations, recovering
19 more weapons or guns, I think this particularly, than
20 Stop and Frisk. Can you, can you just restate that
21 again and, and tell us what that, what you're, it's
22 just an interesting point. I'm just curious to hear
23 it again.

24 DEPUTY COMMISSIONER MILLER: Sure. I
25 think when I came into the intelligence bureau as

1 Stop and Frisk was winding down and I think
2
3 Commissioner Bratton all but eliminated, ah, the
4 systemic practice. Ah, we were collecting six or
5 seven hundred guns through field intelligence
6 officers whose job it is, is to stay in each precinct
7 and question people who are arrested for crimes and
8 say where do you know of, you know, guns, where do
9 you know of weapons, who do you know who might be
10 behind another crime or a murder. In those
11 debriefings we then take a source of information, we
12 bring that to a district attorney and a judge. We
13 get a signed search warrant. The point is rather
14 than the randomness of Stop and Frisk, arguably
15 driven by numbers, you have specific targets based on
16 reliable information put through a legal process.
17 The idea that we're at 1200 guns, ah, or thereabouts
18 right now...

19 COUNCIL MEMBER POWERS: Over what time
20 period?

21 DEPUTY COMMISSIONER MILLER: Ah, year to
22 date.

23 COUNCIL MEMBER POWERS: Year to date?

24 DEPUTY COMMISSIONER MILLER: That we're,
25 that we're up from last year. You know, the trend we

1
2 were going for is that as arrests were going down,
3 shootings were going down, gun seizures were going
4 up. That was what we were going for. Now, we may be
5 up in shootings by a number that in a city of 8.6
6 million, um, when you used to have 5000 shootings,
7 you know, if we stay, you know, around 800 or under a
8 thousand, the increase we're going to suffer is
9 statistically insignificant. But it's not
10 insignificant to the victims of shootings or their
11 families. So we treat each one like a big deal.
12 It's why we put so much effort into removing guns
13 from the street, because each gun we take this week,
14 it is next week's homicide that doesn't happen
15 because that individual doesn't have that weapon.

16 COUNCIL MEMBER POWERS: OK. Thank you.

17 CHAIRPERSON RICHARDS: Thank you.

18 Council Member Deutsch, followed by Deutsch, Lander,
19 Cohen, Menchaca.

20 COUNCIL MEMBER DEUTSCH: Thank you, thank
21 you so much. So I just want to begin by saying that,
22 um, this, over this last week we had a wake-up call,
23 um, when we saw what happened in Jersey City, and
24 having this hearing just a week later is to me, I
25 know I could speak for myself, is kind of, ah,

1
2 disturbing. With respect to, to some of my
3 colleagues, I see this as requiring the NYPD to
4 provide too much, way too much information. The
5 public should not have access to detailed information
6 about the surveillance capabilities of law
7 enforcement. Passing, ah, passing this bill is, is
8 to me, is offering criminals a master class on
9 getting away with conducting their illegal
10 activities. Ah, in the last several years we have
11 seen, ah, technology as a critical tool for law
12 enforcement to apprehend lawbreakers. Just last week
13 we saw the surveillance footage, an anti-Semitic
14 domestic terror attack in Jersey City that left four
15 people dead, including a police officer. Here in New
16 York City over the last few months we have seen a
17 massive increase of assaults against minority
18 communities and, ah, Jews in particular. In these
19 cases surveillance cameras often are the only
20 available asset to track down offenders. How would
21 the passage of 487 affect the agency's ability to
22 tackle hate crimes and protect New Yorkers from
23 attack, from an attack like we saw in Jersey City,
24 that's my first question, and secondly and
25 furthermore how would disseminating information about

1
2 your technology capabilities impact NYPD's ability to
3 monitor hate groups, terror groups, and criminal
4 activity?

5 DEPUTY COMMISSIONER MILLER: So I share
6 those concerns. The trend we're seeing is that hate
7 crimes are going up, that anti-Semitic hate crimes
8 are going up markedly. More, more broadly and of
9 greater concern hate groups are increasing in their
10 numbers and their vociferousness, both in public and
11 private forums across the country. If you, you know,
12 look at an America that says in a single period of
13 less than a week, in a target as obscure as a garlic
14 festival in Gilroy, California, not the top of my
15 targeting list, that an individual with massive
16 amounts of ammunition and automatic weapons would go
17 gun down people because he had issues with
18 immigrants, or that that same week and literally a
19 couple of days later an individual who was an avowed
20 white supremacist, who posted publicly online, in
21 public and private chat rooms, would post a manifesto
22 and then drive 10-1/2 hours away to El Paso to kill
23 other immigrants based on his perfectly articulated
24 prejudices and hatreds. That the next day an
25 individual with a strange mix of blended ideologies

1 would open fire on a crowded nightlife street in
2 Dayton, Ohio, killing people before being confronted
3 by police almost instantly. You see a different
4 pitch and tone of the vitriol that leads to violence.
5 The idea that a little more than a year ago the Tree
6 of Life Synagogue in Pittsburg was attacked by an
7 individual who left 11 dead, voicing his hatred for
8 Jews even as he was being captured by the SWAT team
9 because that synagogue was associated with an
10 immigrant assistance association located on Fifth
11 Avenue in Manhattan, New York City. When you see an
12 individual who sent numerous pipe bombs to multiple
13 locations across the city at the same time last year
14 as we approached the holiday season, who wasn't even
15 here, he was living out of a van that functioned as
16 his home and his bomb factory in Florida, but his
17 target was New York City. And you think well that's
18 in a lot of other places and yeah, we're a target.
19 But when you see that kind of hate crime, that kind
20 of conduct of people who come dressed in tactical
21 gear, with hundreds of rounds of ammunition, with
22 bizarre mixed and blended ideologies of hate and
23 targets, in this case again an anti-Semitic hate
24 crime of incredible violence, and it happens across
25

1
2 the river in Jersey City, you have to take the
3 posture that New York City is in that same bull's
4 eye, that we face the same threat. And you have to
5 take that cognizant of the fact that Al-Qaeda has not
6 gone out of business, ISIS has not folded up, in fact
7 they've increased their propaganda as they have
8 decreased their ability to run external operations.
9 And then you factor in this white supremacist, neo-
10 Nazi, increased hate group and hate violence, and I
11 agree that this is not the time, although it's an
12 ironic time, to have a serious discussion about an
13 unbalanced bill where public safety is on the short
14 end and oversight is on the long end. I do believe
15 we can find the middle and I do think we support the
16 same things in principle, but the mechanics here need
17 to be redone.

18 COUNCIL MEMBER DEUTSCH: Thank you. I
19 have one short question. Is the NYPD in the
20 entertainment business, just yes, entertainment
21 business, just yes or no.

22 DEPUTY COMMISSIONER MILLER: No.

23 COUNCIL MEMBER DEUTSCH: No.

24 UNIDENTIFIED: The what, the what
25 business?

1 COMMITTEE ON PUBLIC SAFETY 92
2 COUNCIL MEMBER DEUTSCH: Entertainment
3 business.

4 UNIDENTIFIED: Entertainment.

5 COUNCIL MEMBER DEUTSCH: Yeah.

6 UNIDENTIFIED: [inaudible]

7 COUNCIL MEMBER DEUTSCH: Yes. [laughter]

8 So I just want to know as a follow-up to that
9 question, um, with all those things you mentioned,
10 and I have gone last week to Jersey City, and I
11 followed what happened in [inaudible] and I followed
12 what happened in Pittsburgh and Sri Lanka, just like
13 many of us. How are you today sitting here listening
14 to this bill and entertaining the City Council about
15 we should vet, NYPD should give out information about
16 your techniques and your technology on surveillance
17 on protecting New Yorkers after what we have seen.
18 Um, to me, I have to tell you, it's mind-boggling.
19 It's mind-boggling. I just want to pay two shiva
20 calls just the other day, a husband who lost his wife
21 and a family who lost their child. That's all I have
22 to say. Thank you.

23 CHAIRPERSON RICHARDS: Well you shouldn't
24 vote for any transparency bills the council does.

25 Um, but let me, ah, say this as well. We're not

2 here, um, even remotely looking at taking any of your
3 tools or weapons away, just to be clear. Um, the
4 council is not passing bills, even, not even, this is
5 not even as nearly extreme as what other cities are
6 doing. All we're saying is, just as the FBI does,
7 list some of the things you do...

8 ASSISTANT DEPUTY COMMISSIONER

9 CHERNYAVSKY: Well, I mean...

10 CHAIRPERSON RICHARDS: And some of the
11 technologies you do use.

12 ASSISTANT DEPUTY COMMISSIONER

13 CHERNYAVSKY: Council Member, it's not...

14 CHAIRPERSON RICHARDS: So, hold, hold on.

15 ASSISTANT DEPUTY COMMISSIONER

16 CHERNYAVSKY: Hmm?

17 CHAIRPERSON RICHARDS: So I just wanted
18 to clarify that because the council, and I have to
19 defend the body, even if somebody from the body, um,
20 is you know, making the body feel uncomfortable.

21 Um...

22 COUNCIL MEMBER DEUTSCH: [inaudible]

23 [crosstalk]

24 CHAIRPERSON RICHARDS: Well, let me not
25 say, let me not say that...

2 COUNCIL MEMBER DEUTSCH: [inaudible]
3 [crosstalk]

4 CHAIRPERSON RICHARDS: ... but our job is,
5 well let me not say, let me not say that...

6 COUNCIL MEMBER DEUTSCH: No, I have a
7 right to give my views just like everyone else.

8 CHAIRPERSON RICHARDS: Right, no, I, and
9 I, and I...

10 COUNCIL MEMBER DEUTSCH: No, but I have a
11 right to give my views...

12 CHAIRPERSON RICHARDS: No, I agree.

13 COUNCIL MEMBER DEUTSCH: ...just as
14 everyone else without getting a comment, um, from
15 back of me.

16 CHAIRPERSON RICHARDS: OK, OK, well,
17 just, you know, it's just a lot of things are mind-
18 boggling sometimes. But I just want to put out there
19 we're, we're ensuring that at the very least all
20 you're doing is listing and being transparent, and
21 we're not even saying every single tool that use. I
22 think this bill, um, doesn't even go as far as
23 remotely as it could. But, um, but I will leave it
24 at that. We will go now to Council Member Lander.

25

1 COUNCIL MEMBER LANDER: Thank you, Mr.
2
3 Chair, Commissioners Miller and Chernyavsky, thank
4 you for being here. We've disagreed on these issues
5 in the past and we're going to disagree on them
6 today, but I do appreciate your service and your
7 presence here today.

8 DEPUTY COMMISSIONER MILLER: It's
9 something to look forward to.

10 COUNCIL MEMBER LANDER: I mean, that's
11 our job is to, is to, and so, and I just want to say
12 like I also paid a shiva call to the parent of Moishe
13 Deutsch and I was out in the street at his
14 [inaudible] like we all care about keeping this city
15 safe. We all care about it. So I guess I want to
16 ask, you spoke at the beginning by talking about a
17 balance, um, and then you gave some harrowing and
18 appropriate examples of undercover officers and the
19 risks that they might experience being in harm's way
20 and now you just gave a litany of, ah, the situations
21 that you're trying to prevent and that we're all
22 seeing. So those are important. But what's balanced
23 against that, I guess, is what difference privacy
24 actually makes and I haven't heard you really speak
25 to that. So I wonder if you could tell us why you

1 think privacy matters, what risk or challenge it
2 poses to New Yorkers, and when you say a balance is
3 important, why do you think it's important?

4 DEPUTY COMMISSIONER MILLER: I think it's
5 important in a democracy because, getting back to
6 your and my favorite subject, the Constitution of the
7 United States, says that the government should not
8 conduct unreasonable searches or seizures...

9 COUNCIL MEMBER LANDER: So I'd love it if
10 you could get specific, in the way that you did on
11 the officers in harm's way and some of these terror
12 hate crimes.

13 DEPUTY COMMISSIONER MILLER: Yeah, sure.

14 COUNCIL MEMBER LANDER: What are the
15 specific examples of what overreaching surveillance
16 does to people that we want to prevent.

17 DEPUTY COMMISSIONER MILLER: So let's
18 talk about the things we don't do. Ah, you know,
19 running facial recognition tools against the vast
20 expanse of the internet or against crowds of people
21 on the street, um, is something that probably
22 shouldn't be done. It smacks of what Council, ah,
23 Councilman talked about in China. It takes us back
24 to East Germany. Um, unlawful surveillance, illegal

1
2 wire taps, um, broad programs that are not based on
3 the possibility of criminal activity or geared
4 towards public safety is not what we do in a
5 democracy.

6 COUNCIL MEMBER LANDER: So I'll, you
7 know...

8 DEPUTY COMMISSIONER MILLER: That, that
9 is it. But I mean to go by the law, go by the legal
10 guidance of the NYPD lawyers, go by the standards
11 that are quite exacting, set by prosecutors in the
12 southern and eastern districts of New York, in the
13 federal courts, and five district attorneys, subject
14 to inspection by an inspector general, and, ah, legal
15 review by courts. I think that we have a level of
16 fealty to those laws and that oversight that has put
17 us, in most cases, on the right side of that balance
18 and where it hasn't I believe, and I don't know if
19 you were here when I was talking to Council Member
20 Gibson, we've gone a long way in the past six years
21 in these administrations at the police department to
22 correct that where there's been overreach and stay on
23 the right side of those lines.

24 COUNCIL MEMBER LANDER: So the arguments
25 that you just made, that there's five district

1 attorneys and an attorney general, um, they were the
2 exact same arguments that the NYPD used to vehemently
3 oppose the establishment of the NYPD inspector
4 general. We were going to have more crime, less
5 public safety. It is not my perception five years
6 later that public safety has been reduced or any
7 officers have been put in harm's way. The same
8 arguments were made when the NYPD vehemently opposed
9 the strengthening of our prohibition on bias-based
10 profiling in the way of discriminatory Stop and
11 Frisk. It was gonna lead to, ah, a rampant set of
12 problems. There already was enough oversight. We've
13 seen that dramatic decrease in Stop and Frisk. Both
14 of those were put in place because people had
15 concerns that the NYPD was not living within the
16 constraints of the Constitution. A judge actually
17 found that. Those, we heard almost word for word
18 some of these same, you know, we all want a safe
19 city, but when what the NYPD does is comes and gives
20 vivid examples of the public safety risks to New
21 Yorkers without a real deep understanding of what the
22 risks are on the other side, without having
23 understood that we've heard time and time in the past
24 like the sky will fall if we adopt these very
25

1 reasonable bills and we adopt the very reasonable
2 bills and the sky does not fall, um, it's, it's, you
3 know, it's hard to hear it as other than fear-
4 mongering. I just want to be honest. This bill is
5 so straightforward that to put us in the position
6 where you're telling us we're going to lead to the
7 murder of undercover officers and be responsible for
8 acts of terrorist hate crimes, it's not a reasonable
9 way of approach us about this bill. And I guess I'll
10 just end with this. Like a reasonable way is like
11 really talking specifically about what the risks are,
12 because I don't see how the effectiveness of the
13 Argus cameras to video everything in 360 degrees will
14 be limited by your telling us you use Argus cameras.
15 They will still film just as much. And those
16 undercover officers, if they are wearing a recording
17 device, yes, they putting their lives on the line for
18 us and I am grateful. But like the terrorist cells
19 and crime syndicates that are looking out for
20 undercover officers, they know that there might be
21 recording devices on an undercover officer, so say we
22 use recording devices, I really don't see how that is
23 increasing the already very significant risks. So
24 you're right that there are risks. But when you
25

2 won't work with us to focus on constitutional
3 policing but instead result to a kind of fear-
4 mongering that says if you pass this bill that's way
5 less strong than many other municipalities you're
6 gonna be responsible for the deaths of undercover
7 officers and massive increases in terrorist hate
8 crimes, that does not set up a situation where
9 there's like a belief in good faith or a willingness
10 to work with us to achieve a reasonable bill.

11 ASSISTANT DEPUTY COMMISSIONER

12 CHERNYAVSKY: So, Council Member, I think we're going
13 to disagree, one on the...

14 COUNCIL MEMBER LANDER: I said that.

15 ASSISTANT DEPUTY COMMISSIONER

16 CHERNYAVSKY: ...pure reading and language of the
17 bill. I mean, what you're describing is simply not
18 what's written on paper. And we're...

19 COUNCIL MEMBER LANDER: How is what I was
20 describing is not what's written on paper?

21 ASSISTANT DEPUTY COMMISSIONER

22 CHERNYAVSKY: ...disagree, we're also going to
23 disagree, let's, let's kind of just have a back and
24 forth...

25 COUNCIL MEMBER LANDER: OK.

ASSISTANT DEPUTY COMMISSIONER

1 CHERNYAVSKY: ...where you would ask and I have an
2 opportunity to answer. But we're also going to
3 disagree on the fact that laying out facts to the
4 council is equivalent to fear-mongering. Because
5 it's not. What the Commissioner has spent the last
6 two hours talking about are real facts, real
7 scenarios that our officers are faced with, that the
8 dangers that the city faces, and that's not fear-
9 mongering, that's fact. Now, with respect to the
10 point of the language that we disagree with, the bill
11 does not say Argus camera and everybody knows the
12 camera is up there, so we're not arguing with you
13 about the merits of the Argus camera. Right? What
14 we're talking about is, because I don't believe an
15 undercover officer is wearing an Argus camera on
16 their shoulder when they go into undercover
17 operations. What we're talking about is the
18 sensitive, sensitive equipment that these offices are
19 using. Now, the way you describe the bill is not
20 actually the way the bill is written, whereas we
21 would basically say, well, listening devices and
22 that's just good to go. That's not what the bill
23 says. The bill would actually have us detail every

1
2 piece of listening device that we have available to
3 us and what its capabilities are, and by default its
4 limitations. And that's what we're trying to make
5 clear to everybody here. If what you're talking,
6 what you're saying is you broadly sweep listening
7 devices, or video devices, and talk about, you know,
8 what's your policy on that. Well, our policy is
9 actually pretty simple. The criminal procedure law,
10 the US Constitution, our state constitution, whatever
11 policy we have that governs that is dictated by those
12 laws. So to use it contrary to the law means that
13 evidence is inadmissible in court. Why would we ever
14 use it in a way that violates the law?

15 COUNCIL MEMBER LANDER: But,
16 Commissioner, it's not only, I mean, look, we sat
17 here just a couple weeks ago in the body camera
18 conversation. How you use the information you have
19 is important for the public to be aware of, and we
20 actually have a disagreement right now on how you use
21 some of the video from body-worn cameras. I'm not
22 accusing you of violating the Constitution, but I do
23 think it's the people's right to know and have a
24 conversation about what the right policy would be.
25 But I really would like you to get specific about

1 this, because I want to understand how, um, knowing
2 that we use recording technology in undercover
3 officers is putting that undercover officer in more
4 harm's way than they are right now. I don't think
5 the bill says please tell us whether they're hiding
6 it in their ear or in their coat pocket or in their
7 rectum, you know, it's, it's like what is the bill,
8 you, you're making these broad statements about how
9 the bill will expose people to harm without, so far
10 as I've heard, a single example of something the bill
11 does that you would have to do in a way that would
12 expose an officer to risk or diminish the
13 effectiveness of the technologies. The example of
14 the Argus camera, what you disclose about won't
15 diminish its effectiveness, and I don't see how
16 saying we use recording technology with undercover
17 officers, those officers are at risk, I'm not saying
18 they aren't at risk. But this bill is not, as I read
19 it, going to put them at any more risk, and I guess
20 I'd like you to get specific...

22 ASSISTANT DEPUTY COMMISSIONER

23 CHERNYAVSKY: Well, let's just take a look at...

24 COUNCIL MEMBER LANDER: ...about how you
25 would it would do that.

2 ASSISTANT DEPUTY COMMISSIONER

3 CHERNYAVSKY: Let's take a look at number one. I
4 mean, it's, that's as simple as it goes. It's a very
5 short sentence. A description and capabilities of a
6 surveillance technology.

7 DEPUTY COMMISSIONER MILLER: The term
8 surveillance technology means equipment, software,
9 system capable of or used designed for collecting,
10 retaining, possessing audio, video, location...

11 COUNCIL MEMBER LANDER: But I'm still not
12 understanding how that's...

13 DEPUTY COMMISSIONER MILLER: I mean...

14 COUNCIL MEMBER LANDER: ... diminishing
15 our effective public safety or specifically putting
16 an officer in harm's way.

17 DEPUTY COMMISSIONER MILLER: Council
18 Member. You are the one who...

19 COUNCIL MEMBER LANDER: Give me an
20 example.

21 DEPUTY COMMISSIONER MILLER: ...who
22 invoked the term broad language.

23 COUNCIL MEMBER LANDER: Can you give me a
24 specific example of how your response to this law
25

2 would put an officer in harm's way or diminish public
3 safety?

4 DEPUTY COMMISSIONER MILLER: Because
5 the..

6 COUNCIL MEMBER LANDER: Saying it's
7 overly broad...

8 DEPUTY COMMISSIONER MILLER: ...the
9 interpretation...

10 COUNCIL MEMBER LANDER: ...is not giving
11 us examples and doesn't help us narrow to address the
12 actual risks.

13 DEPUTY COMMISSIONER MILLER: I think that
14 you and I are divided over the English language here,
15 because the interpretation of this bill as written is
16 broad enough...

17 COUNCIL MEMBER LANDER: Can you give me
18 specific examples?

19 DEPUTY COMMISSIONER MILLER: Broad enough
20 so that we would be compelled by this council or
21 another or someone who sued to say you have to comply
22 with this law. We could be compelled under the word
23 equipment to describe the exact make or model or type
24 of devices that we conceal things, that record audio
25 or video. This language, while over-broad, could be

2 fixed by a carve-out that said there can be certain
3 exemptions, but that's not in here.

4 COUNCIL MEMBER LANDER: I'm, I'm really,
5 I'm still asking for a, a specific example...

6 DEPUTY COMMISSIONER MILLER: Do you
7 understand that my giving you a specific example of
8 the kind of tactics, techniques, specific equipment
9 that we use that would be exposed if we followed this
10 to the letter of the law would defeat the purpose of
11 having that covert equipment and its effectiveness?
12 It would be....

13 COUNCIL MEMBER LANDER: Well, if you can't
14 give us examples...

15 DEPUTY COMMISSIONER MILLER: ...basically
16 my doing what we are saying...

17 COUNCIL MEMBER LANDER: ...that would
18 enable us to write the law better...

19 DEPUTY COMMISSIONER MILLER: ...this law
20 shouldn't force us to do.

21 COUNCIL MEMBER LANDER: ...then how we
22 would do it? I mean, if you can give us...

23 DEPUTY COMMISSIONER MILLER: Is that not
24 clear?

2 COUNCIL MEMBER LANDER: ...any specific, I
3 mean, it's clear that you want to use this broad
4 language to prevent us from getting...

5 DEPUTY COMMISSIONER MILLER: The broad
6 language is the language in the bill.

7 COUNCIL MEMBER LANDER: ...a bill that
8 would work. But you haven't given us one specific
9 example...

10 ASSISTANT DEPUTY COMMISSIONER
11 CHERNYAVSKY: Council Member, we've given numerous
12 examples.

13 COUNCIL MEMBER LANDER: ...of how we would
14 be putting an officer in harm's way....

15 ASSISTANT DEPUTY COMMISSIONER
16 CHERNYAVSKY: Because we've given you numerous
17 examples...

18 COUNCIL MEMBER LANDER: And I'll...

19 ASSISTANT DEPUTY COMMISSIONER
20 CHERNYAVSKY: ...that have been shouted down while
21 we're giving them numerous times so far. And the
22 point of it is...

23 COUNCIL MEMBER LANDER: I'm listening.

24 ASSISTANT DEPUTY COMMISSIONER

25 CHERNYAVSKY: ...and I think, I really think you're an

1
2 intelligent person and I think you really understand
3 what we're saying. If we are telling you that there
4 are certain sensitive information that we can't make
5 public and you're telling us give us an example of
6 it, that defies logic.

7 COUNCIL MEMBER LANDER: Oh, you obviously
8 could. So, for example, if you thought that a piece
9 of technology, if there was a piece of technology
10 that was a listening device that was always hidden in
11 the ear, OK, like let's say, I'm making this up,
12 'cause I got no specific information and I'm not
13 disclosing any secrets because I don't know any
14 secrets. But if you buy a piece of technology that's
15 used for undercover officers to record when they go
16 in and it's always imbedded in the ear, like fair
17 enough that I might be open to a carve-out that says
18 in some way, like we don't have, you don't have to
19 tell us the location on that officer's body that the
20 listening device might be hidden on because sure, if
21 we are, if our only listening technology is always
22 hidden in one place and we're gonna, then I could
23 understand how a terrorist cell or a crime syndicate
24 might use some tool to always look in the ears of
25 everybody who came in their meetings in a way that

1
2 then might increase the risk on officers that I don't
3 want to do. But they know there might be a listening
4 device. So saying there are listening devices, I
5 don't understand how that makes officers more in
6 harm's way, but it would enable us to have a
7 conversation about what you're doing with the
8 information and have the kind of public oversight
9 that, that Council Member Lancman was referring to
10 before, and again we are not trying to prevent the
11 use of technologies as other cities have. We want
12 you to use good technologies to keep us safe. But we
13 need to be able to have a meaningful public
14 conversation about what they are, about how that
15 information is stored, about what the genuine risks
16 are that you spoke to pretty eloquently. Like you
17 actually gave me good examples, that you understand
18 what the kinds of risks we're trying to protect
19 people are from. That's the policy that we want
20 here. And the, the sponsor's not closed to some
21 amendments to make the bill work effectively, and I
22 don't think the co-sponsors are either.

23 ASSISTANT DEPUTY COMMISSIONER

24 CHERNYAVSKY: And I don't think we've...

25 COUNCIL MEMBER LANDER: But...

2 ASSISTANT DEPUTY COMMISSIONER

3 CHERNYAVSKY: ...we've indicated a lack of willingness
4 to sit down with the sponsor and work on...

5 COUNCIL MEMBER LANDER: But I...

6 ASSISTANT DEPUTY COMMISSIONER

7 CHERNYAVSKY: ...the bill that's [inaudible]
8 [crosstalk]

9 COUNCIL MEMBER LANDER: I don't honestly
10 understand any better the things...

11 ASSISTANT DEPUTY COMMISSIONER

12 CHERNYAVSKY: It just seems that we're, we're just
13 either talking past each other or...

14 COUNCIL MEMBER LANDER: I'm, I'm just
15 gonna be, can I respect your intelligence as well? I
16 don't understand any better the specific things you
17 think are risky about this bill and the ways in which
18 they would expose officers to risk or diminish public
19 safety. And if I did understand those things...

20 ASSISTANT DEPUTY COMMISSIONER

21 CHERNYAVSKY: We've read, we've read the language of
22 the bill to you. We've given you examples. At this
23 point I think we're, there's really not much we can
24 say to address what you're saying.

1 COMMITTEE ON PUBLIC SAFETY 111
2 COUNCIL MEMBER LANDER: Thank you, Mr.
3 Chair.

4 CHAIRPERSON RICHARDS: Thank you, and I
5 think you're intelligent, too, Council Member Lander.
6 Ah, we're going to go to Cohen and then Menchaca.

7 COUNCIL MEMBER COHEN: I'm just good-
8 looking. Ah, I do appreciate, not only do I
9 appreciate your testimony, I appreciate the tone of
10 your testimony. It is my sense that you do want to
11 work, work with this council to try to get this bill
12 passed. I'm, I'm not a sponsor of this bill, but I
13 do actually support the intent of this bill and I
14 guess we're in agreement on that, that we both think
15 that the underlying policy makes sense. But, but I
16 do have to share a little of the frustration of my
17 colleagues. You know, let me, let me ask you this
18 question. Um, how, how am I, you know, when I go to
19 elementary schools I tell people what, you know, what
20 do you do at City Hall and I say I do budget and
21 oversight. How am I supposed to fulfill my role in
22 my oversight capacity, my duty, my charter-mandated
23 duty, and I, you know, affirmed to Constitution,
24 state constitution charter, if people aren't going,

1 agencies that we're trying to conduct oversight of
2 won't tell us what they're doing.

3
4 DEPUTY COMMISSIONER MILLER: I think we
5 have been crystal...

6 COUNCIL MEMBER COHEN: I mean, your own
7 words were self-defeating.

8 DEPUTY COMMISSIONER MILLER: ...crystal,
9 I think we've been, I think we've been crystal-clear
10 and somewhat repetitive today. We don't oppose the
11 bill in principle. We don't oppose the intent of the
12 bill. We don't oppose the purpose of the bill. We
13 don't oppose the intended consequences of the bill.
14 We do oppose the unintended consequences of the bill.
15 And the fact that we're sitting here, and I like
16 sitting here, I like, I like to see the committee, I
17 like to see my friends who I see in the field, but
18 the fact that it is Ground Hog Day where we're having
19 the same conversation for the third time, albeit in a
20 different way, so thank you for pointing that out,
21 um, without any change in the language or anybody
22 coming back to say let's sit down and make changes to
23 the language that we can both live with, um, seems to
24 be an exercise in, in an annual, um, game of kabuki
25 theater which keeps ending the same way. It's nice

1
2 to see everybody, but until we have a real
3 conversation about changes I think we're just
4 reminding each other of what we've said before.

5 COUNCIL MEMBER COHEN: I don't want to
6 belabor the point. I think, I do really do feel
7 that, that the tone of this is, you know, your own
8 testimony is self-defeating. I can't tell you, I
9 mean, that's hard for us to navigate and, you know,
10 maybe there is a way to navigate it offline. I don't
11 know. I really have tremendous confidence in, in the
12 bill's sponsor, um, and, and I take you at your word
13 that you want to resolve this, um, I guess I just
14 would say I'd like to see it resolved. Thank you,
15 Chair.

16 CHAIRPERSON RICHARDS: Thank you, and
17 John, you do realize that we are in our power to pass
18 legislation with or without you?

19 DEPUTY COMMISSIONER MILLER: Yes.

20 CHAIRPERSON RICHARDS: OK. And [laughs]
21 OK, all right, got it. [laughter]

22 DEPUTY COMMISSIONER MILLER: And I, and
23 I, and I know you wouldn't do that.

24 CHAIRPERSON RICHARDS: Me? Oh. OK. I
25 think we're going to go to Council Member...

1
2 DEPUTY COMMISSIONER MILLER: Because,
3 because I, I, while I find this somehow repetitive, I
4 believe we keep coming back here because you are
5 interested in getting this right, and we are too.

6 CHAIRPERSON RICHARDS: Well, I've only
7 become the chair two years ago. Last time this
8 heard, was heard, was three, I believe. So it's good
9 to see you for the first time. We'll go to Council
10 Member Menchaca.

11 COUNCIL MEMBER MENCHACA: Thank you,
12 Chair and my colleagues for their questions. I have
13 a few questions that I want to get to before ending
14 with some larger observations. First, are there any
15 instances that NYPD shares data with the federal
16 agencies like ICE during investigations and does the
17 data include immigrants who have been charged for any
18 crimes?

19 DEPUTY COMMISSIONER MILLER: We share
20 information with federal agencies we are involved in
21 investigations with.

22 COUNCIL MEMBER MENCHACA: In partnership?

23 DEPUTY COMMISSIONER MILLER: Although we
24 do that within the laws passed by this council about
25 the sharing of immigration information and we do it

1 within the NYPD policies, which are very clear that
2 we don't investigate or enforce anything that is
3 purely immigration law. So to drill down, we might
4 be involved with an investigation with HSI because
5 they're also part of the Joint Terrorism Task Force
6 or ICE because they're part of the JTTF. We might be
7 involved in an investigation with them on human
8 trafficking, again where the victims come first. But
9 the NYPD deliberately and purposefully does not
10 engage in investigations or enforcement that have to
11 do purely with immigration. Our public posture, our
12 behind-the-scenes posture, our social media posture
13 has been widely consistent upon this and you can go
14 no further than the new police commissioner's Meet
15 Dermot Shea video message. We believe that
16 immigrants are friends of New York City and that the
17 police department is friends of immigrants and that
18 they are essential to making this city what it is and
19 we need their help. We need their help as
20 complainants if they're the victim of a crime, of
21 witnesses if they see a crime, of victims of
22 accidents or other things where their first thought is
23 not I can't come forward to the police because
24

2 something may happen regarding my status. It is why
3 we, we...

4 COUNCIL MEMBER MENCHACA: I'm going to,
5 sorry, Commissioner, I'm going, I get, I only have 50
6 more seconds.

7 DEPUTY COMMISSIONER MILLER: I just need
8 to finish this sentence.

9 COUNCIL MEMBER MENCHACA: OK.

10 DEPUTY COMMISSIONER MILLER: It is why we
11 testified in open court against, in support of the
12 NYC ID program for immigrants and undocumented
13 individuals because we believe they fit into the
14 fabric of New York society and are entitled to its
15 services and benefits.

16 COUNCIL MEMBER MENCHACA: Well, let's
17 talk about IDNYC. There is an idea that is I think
18 on the mind of the mayor to add a financial
19 technology chip onto the IDNYC for a whole bunch of
20 different purposes, and is that something that's in
21 your purview right now as you investigate the
22 possibility of that being a tool for NYPD to use for
23 crime fighting purposes?

24 DEPUTY COMMISSIONER MILLER: Yeah, so I
25 don't want to get ahead of myself on that. I'm

1 actually not read into that intimately, so before I
2 issue an opinion...

3
4 COUNCIL MEMBER MENCHACA: You know that
5 that's something that the Mayor's Office wants to do?

6 DEPUTY COMMISSIONER MILLER: I'm not
7 personally aware of that.

8 COUNCIL MEMBER MENCHACA: OK. I'd like
9 to follow up with you and your team on that front. I
10 think this is part of the larger conversation about
11 surveillance and how broad that is and where you have
12 opportunities for data capture, and really the
13 question that I have, we're all buzzing right now,
14 snow squall...

15 DEPUTY COMMISSIONER MILLER: Exciting.

16 COUNCIL MEMBER MENCHACA: ...until 4:15.
17 But where, where I just want to follow up with you on
18 is, is whether or not the concept of surveillance,
19 how far that goes and, and really in the relationship
20 with the federal government, ah, and their ability to
21 take data that you are possibly sharing is, I think,
22 my question, and why I get that we have laws that
23 prevent you from engaging in cooperation with ICE,
24 the cases where there's criminal activity and
25 immigration get difficult to, um, to, to fully

1 understand when, when public safety is important.

2 OK, so let's go to really quick on third-party
3 sharing. So third-party, some of the reports that
4 are kind of coming out relate to your connection to
5 third-party holders of information and data, and talk
6 a little bit about how you're securing some of that
7 data with companies like Microsoft who are holding
8 some of the NYPD surveillance data, and talk a little
9 bit about that. Just kind of offer us an analysis.

10
11 DEPUTY COMMISSIONER MILLER: So this may,
12 I mean, actually how data is stored and, ah, factors
13 around that would be...

14 COUNCIL MEMBER MENCHACA: Who holds the
15 data and especially a third-party entity?

16 DEPUTY COMMISSIONER MILLER: Let me give
17 you this with the caveat that this is my
18 understanding and, and the promise that I will have
19 to double check this. But my understanding is that
20 NYPD data is held within the NYPD and where there are
21 NYPD servers they're controlled and operated by the
22 NYPD, and where there's NYPD information in the
23 cloud, um, that we have the control of that. Now,
24 what operations and maintenance responsibility third
25 parties have, like Microsoft, that would be a little

1 too technical for me, and we can get that answer. I
2 don't have it with me, um, and then in regards to
3 what other kind of third party?
4

5 COUNCIL MEMBER MENCHACA: Any, any third
6 party. Ah, I think the conversation around the chip,
7 the financial technology chip connected to IDNYC
8 present a lot of other issues that I think are...

9 DEPUTY COMMISSIONER MILLER: I mean, to
10 get to the core of what I think your question, um,
11 might touch on, we have information that we keep in
12 our systems. We have rules and guides about that.
13 We have information we share with federal partners,
14 which I think is, is a key concern here, but we don't
15 have federal partners who have unfettered access to
16 our systems who can run that information
17 independently.

18 COUNCIL MEMBER MENCHACA: OK.

19 DEPUTY COMMISSIONER MILLER: So where and
20 when we share information it is pursuant to an
21 investigation where that information is relevant to
22 the investigation, and then I have to circle back to
23 not for purely immigration purposes, where we comply
24 with, ah...

1 COMMITTEE ON PUBLIC SAFETY 120
2 COUNCIL MEMBER MENCHACA: There are local
3 laws.

4 DEPUTY COMMISSIONER MILLER: ...the NYPD
5 patrol guide and the laws passed by this council.

6 COUNCIL MEMBER MENCHACA: Yep. Thank
7 you. I like to hear that any time I can. Ah, and
8 then really the last, the last point that I want to
9 make and you can offer any thoughts or rebuttals, but
10 as I understand where technology is moving, it's just
11 like a New Yorker and anybody who is utilizing
12 technology makes life easier. But technology isn't
13 just, say, phones and, you know, planted technology
14 on your body to hear and record conversations. It's
15 also the work that the officers are doing every day
16 on the ground and using techniques to get
17 information, person-to-person. At the end of the day
18 we're still human and, and a lot of these
19 interactions are happening human-wise, but technology
20 makes it easier for you to extract at the, at the
21 detriment of civil liberties, and I think that's what
22 we're trying to get to the bottom of, and your
23 example of Stop and Frisk as being something that
24 just wasn't good per the percentage-wise of the guns
25 that you were extracting and moved towards more

1 precision-based on the ground conversations with
2 officers that would be able to do that investigation
3 on themselves, seems like it's better for you and
4 civil liberties and the community in relation. And I
5 think this is what we're trying to do here is, of
6 course you can have, you can come up with, the
7 technologies that we're going to be able to come up
8 is going to do incredible things. The question is
9 should be we using that at all at the detriment. And
10 I understand you're trying to balance. But I think
11 the balance is going to get harder when the
12 technology is just going to get that much better and
13 it's going to be easier for you to use that and not
14 tell us about it, because in the name of public
15 safety and all the stories you want to share with us
16 today about those officers that are, are risking
17 their lives, and we get that, we want to honor that,
18 it just, it breaks the system of trust. And so I
19 justice wanted to give you my, my take as we continue
20 the conversation of IDNYC, the chip, and other, other
21 components of this bill.

23 DEPUTY COMMISSIONER MILLER: Thank you.

24 CHAIRPERSON RICHARDS: Thank you. And
25 we're going to begin to let you go. Just one final

1 question. Even in the federal government, even the
2 federal government provides information to elected
3 officials in closed-door meetings. Would you be open
4 to an arrangement like that where in very limited
5 circumstances you have to tell some elected officials
6 outside of the administration what you want to
7 withhold from the public?
8

9 DEPUTY COMMISSIONER MILLER: Again, I'm
10 going to be careful about not negotiating the
11 specifics of what a compromise could look like here
12 in a public forum because the core of this is
13 sensitive operations. But I believe that a committee
14 that has asked to go over this issue, including
15 before you were chair, sir, this many time has never
16 asked for a threat brief about what's facing New York
17 City. I think since our goal is to achieve a balance
18 we should do both. And I think both could be very
19 effective in a closed-door situation. The last
20 member who asked for an actual threat brief was, ah,
21 Melissa Mark-Viverito, who found it extraordinarily
22 useful. So I would suggest that we look at both ends
23 of the threat. What are we facing and what are the,
24 at least in general, the things we use to counter it.
25 Taking that on in a public forum is more difficult.

1
2 CHAIRPERSON RICHARDS: Thank you. I want
3 to thank both of you for coming out to testify this
4 afternoon. Oh, sorry, I didn't have you. Oh, you
5 didn't, OK. Council Member Adams has a question.

6 DEPUTY COMMISSIONER MILLER: I was just
7 going to say we were going to leave very
8 disappointed.

9 COUNCIL MEMBER ADAMS: Thank you,
10 Commissioner. Far be it from me to disappoint. So,
11 again, we're going, I'm not going to be that long
12 with you. But I do welcome you both to this hearing
13 and thank you for spending some time for us today,
14 both of you commissioners, thank you so much. I just
15 did want to note, because I think that my colleagues
16 mentioned something, ah, Council Member Richards and
17 more extensively Council Member Lancman regarding his
18 expression of NYPD's numerous violations of the
19 Constitution and the first thing I thought of,
20 colleagues, were the Adrian Schoolcraft tapes. So, I
21 don't know. I won't go all the way there. But I
22 just wanted to just mention that as an aside. What
23 is the current oversight to ensure that surveillance
24 methods and technology are being properly and
25 justifiably implemented?

1
2 DEPUTY COMMISSIONER MILLER: The current
3 oversight is varied, meaning with systems like the
4 domain awareness system, you know, having that posted
5 publicly makes it so that the parameters are there.
6 We inspect it internally through ITB and the
7 counterterrorism bureau that runs that program, but
8 it is also subject to inspection by the inspector
9 general at will. But if you look at more intimate
10 things that we are talking about needing additional
11 protection here, whether it is covert means or
12 equipment in particular, which is cited in the bill,
13 I think, I think my colleague stated it very clearly,
14 this is evidence we're collecting that is eventually
15 going to lead to, in all likelihood, criminal
16 charges. That means that we're working with
17 prosecutors the intelligence bureau has assigned to
18 it, a group of lawyers from the Deputy Commissioner
19 of Legal Matters. They don't work for me. Their job
20 is to look over my shoulder and the shoulders of our
21 people and review every case, every process, every
22 tool, every document, and make sure that we are
23 within the bounds of Handschu, the law, the
24 Constitution. That is a full-time job. They
25 literally live with us. And then there are the

1
2 prosecutors and ultimately the courts. So for that
3 kind of technique, the most sensitive things, we're
4 guided by the same laws and rules that apply to the
5 same techniques in criminal investigations and more
6 conventional cases.

7 COUNCIL MEMBER ADAMS: Thank you. How do
8 you determine what types of technology and
9 surveillance to use in specific communities?

10 DEPUTY COMMISSIONER MILLER: It doesn't
11 go by community. It doesn't go by cause. Meaning we
12 were criticized and questioned after an incident in
13 New York City about why aren't we doing more
14 surveillance on one kind of group than another, and,
15 you know, we should intensify that. And, you know,
16 our posture on this is very simple. We have one set
17 of rules. In terrorism cases and sensitive
18 investigations that stem from political activity it's
19 the Handschu guidelines. We use the same guidelines
20 when we investigate the Proud Boys, the Atomwaffen
21 Division, Fire Creek, neo-Nazi groups, as we do with
22 ISIS, Al-Qaeda, Hezbollah. It's the same rules.
23 We're politically agnostic as to what their cause is.
24 The thing we're looking for is not to hamper free
25 speech, not to hamper unpopular, abhorrent free

1
2 speech, but to hamper activity that's going to lead
3 to violence and victims. And that's where we put
4 those rules into effect.

5 COUNCIL MEMBER ADAMS: Thank you. I think
6 it was real important to get that out onto the record
7 because of the perception that some may have
8 regarding surveillance, regarding Argus cameras,
9 where they're placed, where they're put, how they're
10 used. So I think it's just really important that we
11 have a clear understanding of, as you said, that
12 these methods are used across the boards, if there is
13 no particular way to cite particular technology in
14 one place or another, that that is a clear
15 understanding of that. I think that Council Member
16 Menchaca made a really, really important thought, you
17 know, placed on the table and that is, of course, we
18 want our communities to trust NYPD. That is really,
19 really the crux of where this legislation comes from,
20 or this bill comes from. We want to be able to make
21 everybody happy as well. So in hearing, ah, your
22 recommendations or objections to some part of this
23 legislation, I just think it's real important to keep
24 in mind the history that communities, certain
25 communities have with NYPD, and we're talking about a

1 lot of things. We're talking about database, we're
2 talking about Stop and Frisk, and a whole lot of
3 other things as well. We're even talking, quite
4 frankly, about when we take a look at surveillance
5 and behavior and body-worn cameras, even to a certain
6 extent now. We're even taking into account in our
7 thought process, even the perception of fellow, ah,
8 brothers and sisters in blue who have been affected
9 by their own brothers and sisters in blue and have,
10 in a lot of different cases, been, ah, you know,
11 quote unquote targeted in some of these broken-
12 windows methods and Stop and Frisk methods as well
13 off duty. So I just wanted to just get that out
14 there that I just think that it's important that
15 there is transparency. I agree that there may be a
16 way to tweak this bill a way or two, but just to make
17 sure that we have a clear understanding that it's so
18 important that the community, that the public,
19 embrace NYPD in certain communities the way that they
20 do in other certain communities. So thank you very
21 much for being here today. Appreciate you.

22
23 DEPUTY COMMISSIONER MILLER: Well, thank
24 you, and I know you're aware by virtue of the fact
25 you're on this committee that as programs like Stop

1
2 and Frisk and the demographics unit were diminished
3 or went away altogether, what we've increased over
4 the last six years is, and I think you heard this
5 from Commissioner O'Neill and heard it reiterated by,
6 ah, Commissioner Shea, introduced by Commissioner
7 Bratton, is a focus on the neighborhood policing not
8 program but philosophy, meaning you don't have to be
9 an NCO to buy the philosophy. It's supposed to be
10 department-wide to engage with all communities and to
11 not be the police, but be your police. It's a sea
12 change on a very big ship that takes time to turn
13 around, but it, um, as a direction has not changed.

14 CHAIRPERSON RICHARDS: Well, thank you,
15 Commissioners for spending so much time with us
16 today. I look forward to seeing you at the bill's
17 passage, as you alluded to earlier. But, seriously,
18 we do want to try to find a medium. You know, it is
19 in the council's interest to ensure that we aren't
20 jeopardizing public safety, but making sure that the
21 department does become more transparent in this area,
22 which only makes New York City safer, um, the more we
23 lose trust in the lack of transparency the less
24 likely it is that communities all across the city
25 will have and feel deeper trust with the NYPD that

1
2 the commissioner and others have worked so hard for
3 over the course of the last few years. So we still
4 have some ways to go. But we look forward to working
5 with you on this bill and trying to find a medium
6 that I think, um, will give you a little pain, but,
7 um, but we'll certainly ensure that we are moving
8 forward. So, I don't look forward to seeing you at
9 another hearing on this. We will certainly look
10 forward to seeing you at the bill signing.

11 DEPUTY COMMISSIONER MILLER: Just a
12 little, just a little pain. [laughs]

13 CHAIRPERSON RICHARDS: Thank you,
14 Commissioner. [laughs] Thank you. All righty, we're
15 going to get to the public now. Thank you for your
16 patience. We're gonna hear first from Barry
17 Friedman, the Policing Project at NYU Law, Albert Fox
18 Cahn, STOP, Angel Diaz, Brennan Center for Justice,
19 Sergio De La Pava, New York County Defender Services,
20 and Michael Sisitzky, NYCLU. So Sergio, NY County
21 Defender Services, Angel Diaz, Brennan Center of
22 Justice, Albert Cahn, STOP, Barry Friedman, the
23 Policing Project, Michael Sisitzky, NYCLU. All
24 righty. You may begin. Press your button, it should
25 light up.

1
2 BARRY FRIEDMAN: Thank you. I'm Barry
3 Friedman. I'm a professional of law at NYU Law
4 School. I have written many articles and a book on
5 this subject. But perhaps more importantly I am the
6 director of The Policing Project at NYU Law School,
7 and we work on the ground every day on issues just
8 like this, and our mission, which I want to stress
9 because I think it's relevant here, is that we work
10 with communities and with the police to ensure that
11 public safety is transparent, equitable, and
12 democratic. I, we've worked in many cities across
13 the country. Because it's come up here many times
14 today, we were the group that actually ran the NYPD's
15 body camera public input process, working both with
16 the Floyd plaintiffs and with the NYPD, and that sort
17 of joint effort is characteristic of what we do all
18 over the country. I'd like to do two things, I
19 think, primarily today. First, I'd like to say a
20 word about why I think passage of this bill is
21 imperative as a matter of democratic accountability,
22 and then I'm going to say something about what I
23 think is wrong with this measure, including some of
24 the issues that came up during the prior testimony.
25 I am going to deviate from exactly what I intended to

1 say because I've sat and listened to the exchanges
2 that have gone on and I think I'd like to respond to
3 some of those and maybe move this process forward.
4 It seems to me, frankly, after what I've heard that
5 it ought to be possible to write a bill that
6 satisfies largely all of the players, and I'm very
7 much hoping that the council does that. So, first I
8 just want to say about democratic accountability and
9 actually to correct something that I sat and listened
10 to for a long period today. So at the Policing
11 Project we distinguish between what we call front end
12 and back end accountability, and I think it's a
13 distinction that's super important to what you're
14 considering and to some of the things that Deputy
15 Commissioner Miller said. So you all know what
16 front-end accountability is, because it's what you do
17 all day long. It's the making of law and policy on
18 the front end before other actors and government act.
19 And you know how it's done. It's done transparently.
20 It's done with public input, and you try to make sure
21 that the laws that you pass do more good than harm,
22 something like cost-benefit analysis. That's front
23 end. Now, any system, any system in government also
24 has a back end. Things go wrong, and so on the back

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2 end you have things like court proceedings, you've
3 got oversight hearings here. But that's after
4 something's gone wrong. And the reason I bring that
5 up is because central to my work and the work of the
6 Policing Project is the notion that what's missing
7 from policing, unlike all of the rest of government
8 is front-end accountability, that when we talk about
9 accountability around policing it is actually all the
10 things Commissioner Miller was talking about. It's
11 lawsuits, it's special monitors, it's CCRBs. That's
12 all on the back end. And what we ought to be talking
13 about, what we need to be talking about, is something
14 that involves accountability on the front end that's
15 transparent, that's public, and that's democratic.
16 And as I say that, I actually just want to make a
17 point about the Constitution. Not to denigrate the
18 Constitution, I've been a constitutional law
19 professor for over three decades. I revere the
20 Constitution. But the Constitution is not and does
21 not purport to be the be-all and end-all of
22 regulating any part of government. It's a floor,
23 it's not a ceiling. So with regard to the kinds of
24 technologies that you're talking about here, facial
25 recognition, license plate readers, maybe Stingrays,

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2 it's unclear that the Constitution has anything to
3 say about all of those things, because the things
4 that are being captured often happen in public. And
5 so much of the conversation that I heard today about
6 what the Constitution has today strikes me as almost
7 irrelevant, because what matters is how we as a
8 society think that these tools ought to be used, and
9 so that's what I want to talk about. Now, turning to
10 the second part, which is that I think this bill is
11 well intentioned, but I think it has problems. And I
12 want to skip over a few of the problems because I
13 think it's worth mentioning them, and then I want to
14 zone in on what seems to be central to the testimony
15 today. So first I actually want to make the point
16 that I'm not sure that the NYPD is the only agency of
17 government you want to be regulating, and I'm not
18 sure that you want to call it surveillance
19 technology. So I'm guessing that there are other
20 agencies of government in this city that are using
21 similar tools, and surveillance does have a negative
22 connotation. But as I've heard the council members
23 speak over and over, you talk about some of these
24 tools as being valuable to achieve public safety, and
25 so you might call them information-gathering

1 technologies, or public safety technologies, which
2 gives a nod to the fact that we are all committed to
3 keeping this city safe and doing it in a way that is
4 transparent. I also think, for what it's worth, that
5 180 days is an impossible amount of time in which the
6 NYPD could come into compliance. Seattle has been
7 two years now trying to come into compliance. And
8 finally, I do think in this bill that you've
9 neglected something super important, which is you ask
10 the NYPD to have an impact statement for these
11 technologies, but you don't tell them impact what.
12 And every other bill like this, including, for
13 example, the ACLU's CCOPS statute talks about those
14 impacts on privacy, on First Amendment values, on
15 racial justice, and I think all of that ought to be
16 specifically in this bill. Now, I want to focus on
17 just two very specific things about the bill that I
18 think require clarification or change. The first,
19 which I'm just not sure I'm reading the same way as
20 the NYPD, is they talk about the NYPD filing an
21 impact statement, filing a use statement, letting the
22 public comment, and then a report. But as I read
23 this bill it doesn't say anything about that final
24 report, and I think that's important. Because there
25

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2 are, generally speaking, two ways of having front-end
3 democratic accountability. One is legislative and
4 the other is, as you well know, is administrative.
5 And the way administrative agencies do front-end
6 accountability is the notice and comment rule-making.
7 And notice and comment rule-making is what this bill
8 seeks to do, but what's critical in notice and
9 comment rule-making is that the agency at the back
10 end tell you that they read the comments and why
11 they're doing what they're doing, so that we can all
12 examine the reasons, and so I would change this bill
13 to make sure that in addition to requiring everything
14 that's in the bill that it make it clear that after
15 the comments are received and the NYPD has reached
16 its decisions, it explains why it's reaching the
17 decisions that it does. It did that precisely with
18 the body camera policy and we were deeply involved in
19 all that. Finally, I just want to say I take very
20 seriously, as I think the council does, the comments
21 that Deputy Commissioner Miller was making about
22 keeping the city safe. And I think this bill suffers
23 from not acknowledging those concerns. I don't buy
24 his solution entirely, and I'm going to suggest a
25 different one to you, but I think this bill needs to

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2 overtly recognize that there are risks here and that
3 those risks need to be acknowledged. Now, I work
4 daily with police departments and with communities
5 all over this country, and the kind of arguments that
6 are being made and particularly in hearings before
7 this one, this sort of wholesale well we just can't
8 tell you anything. I don't buy any of that. I don't
9 believe and I don't think you believe it, and none of
10 should believe it. I mean, we all know there are
11 license plate readers. We all know there is facial
12 recognition. We all know that there are Stingrays.
13 We can see the policies for those things. But I do
14 buy that there may be at retail very specific things
15 that it would be dangerous to reveal. And Deputy
16 Commissioner Miller time and again said he needed a
17 carve-out. Carve-outs make me nervous, because
18 carve-outs, for example, about something like public
19 safety, put it in the hands of the NYPD to tell us,
20 to decide what they're going to tell us. What I
21 think this bill needs is something that maybe
22 involves a standard, but also involves a process, a
23 process behind the scenes in trusted hands of looking
24 at what I anticipate to be very, very, very, very,
25 very few claims about what cannot be revealed and,

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2 you know, think about redaction and effectively do
3 that, that ensure that we're learning everything we
4 need to learn or we cannot govern ourselves, but that
5 we are not revealing the very, very, very few things
6 that cannot be revealed. And I've tried to think of
7 some of those processes. I'm willing to talk about
8 them. I don't know that I have a perfect solution.
9 But I do believe that one can be reached and that
10 once that's reached there's no excuse for not passing
11 this legislation.

12 CHAIRPERSON RICHARDS: Thank you.

13 ANGEL DIZA: Good afternoon, Chairman
14 Richards and members of the Public Safety Committee.
15 My name is Angel Diaz and I'm counsel to the Liberty
16 and National Security Program at the Brennan Center
17 for Justice. I want to thank Council Member Gibson
18 for her leadership on this issue and thank you,
19 Chairman Richards, for holding this necessary hearing
20 and for inviting for Brennan Center to testify. The
21 Liberty and National Security Program seeks to ensure
22 that our country's national laws and policies remain
23 equal to the task of respecting individual rights,
24 constitutional values, and the rule of law. As a
25 part of that work, we actively seek greater

1 transparency over the NYPD's use of surveillance
2 technologies. While these technologies provide
3 opportunities for officers to do their jobs more
4 efficiently, they also raise many issues, ranging
5 from hidden biases to the potential for misuse.
6 Without oversight modern surveillance posed a serious
7 risk for the civil rights and civil liberties of
8 those most often affected by policing - communities
9 of color and immigrant populations. We've seen this
10 play out before. Just last money, former mayor
11 Bloomberg apologized for his support of the Stop and
12 Frisk program, which heavily targeted black and brown
13 young men. But without oversight of the NYPD
14 surveillance apparatus, we can be deploying a system
15 that results in a digital Stop and Frisk program that
16 is harder to detect and harder to redress. This is
17 why we need common-sense accountability measures in
18 place and why the Brennan Center urgently calls on
19 this council to past the POST Act. We're happy to
20 see that this time around more than half the council
21 is already signed on as a cosponsor and we urge you
22 to move quickly. I've submitted longer written
23 testimony, but I want to use my remaining time to
24 focus on a couple of common misconceptions about the
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1 POST Act. First, the POST Act does not require the
2 disclosure of operational details. It asks very
3 simple, high-level questions. What tools do you
4 have? What information are you collecting? Who you
5 are sharing that information with? Is it a private
6 company, like IBM? Is it ICE? What policies do you
7 have in place to protect the privacy and civil rights
8 of New Yorkers? That's it. It doesn't limit their
9 ability to use the tools and it doesn't require the
10 disclosure of operational details that might impact
11 public safety or harm officers in the field. It also
12 doesn't make the tools any less effective. We all
13 know, as my colleague just said, that wire taps exist
14 and they continue to be useful investigative tools
15 despite widespread knowledge and strict legal rules
16 that govern its use. Second, the POST Act is not
17 about a blueprint for the bad guys. Again, it's
18 about front-end accountability that allows us to have
19 a discussion about the rules of the road before NYPD
20 deploys new technologies and before we're hear
21 discussing the latest police scandal. It encourages
22 the NYPD to be more thoughtful about how it
23 approaches surveillance technologies. This approach
24 can prevent foreseeable harms to individual rights.
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2 It can strengthen community trust and it can avoid
3 wasting scarce resources. As the *New York Times* noted
4 in their endorsement of the POST Act, advances in AI
5 make police surveillance the "newest battleground for
6 civil liberties." Unchecked, moderate surveillance
7 tools threatens to completely redefine freedom of
8 speech, the right to privacy, and equal protection
9 under the law. These are foundational values that
10 need to be jealously guarded if New York City is to
11 remain a strong local democracy. It is frankly
12 unsustainable and unacceptable for NYPD surveillance
13 to evade accountability any longer. The Brennan
14 Center strongly supports Intro 487 and urges this
15 council to move quickly. Thank you again for the
16 chance to testify. I'm happy to answer any
17 questions.

18 ALBERT CAHN: Thank you so much. My name
19 is Albert Cahn and I'm the executive director of the
20 Surveillance Technology Oversight Project, or STOP,
21 at the Urban Justice Center. We're an organization
22 committed to fighting discriminatory warrantless
23 surveillance and the impact it has on over-policed
24 communities here in New York, and I've submitted a
25 longer statement for the record. But I would like to

1 address my oral remarks to the presentation we heard
2 earlier today from the NYPD. Because it sounds like
3 we're in a familiar place with familiar arguments, a
4 familiar parade of terribles, of all of these
5 outlandish scenarios that might transpire if we
6 simply enact the POST Act, if we simply enact the
7 requirement for transparency and accountability, and
8 basic civilian oversighting. And you might think
9 that nothing has changed since we were having the
10 same debate in 2017, if not for all the evidence we
11 have accumulated since then. More than a dozen
12 cities which have enacted laws that go far farther,
13 that demand far more information, which requires
14 civilian approval for the deployment of these
15 technologies, and these laws haven't been fought as a
16 security threat by their police departments.
17 Instead, many law enforcement officials from these
18 cities have gone on the record stating that these
19 programs are vital in rebuilding public trust. We
20 didn't hear about that track record because instead
21 we heard about evidence that has nothing to do with
22 the POST Act. We heard about things like the
23 Handschu consent decree, a agreement which regulates
24 the NYPD's use of undercover officers and
25

1 confidential informants, but has almost no bearing on
2 the types of surveillance technology we are hearing
3 about with the POST Act. It is using the fact that
4 the NYPD was successfully sued and forced in federal
5 court to agree to additional oversight. They are
6 citing that as somehow evidence that further
7 legislation is not needed. I could tell you nothing
8 could be further from the truth. We heard about the
9 office of the inspector general's review of NYPD
10 surveillance and we heard the statistic, a hundred
11 percent. A hundred percent of the investigations
12 were approved of. What you didn't hear is that
13 report never looked at the evidence underlying those
14 investigations. It simply looked at the documents
15 that NYPD created themselves, and on the basis of
16 those documents said that they had a basis for an
17 investigation. But there are parts of that report
18 that come into play here, because that same report
19 also said that 95%, 95% of NYPD intelligence
20 investigations in the period reviewed targeted Muslim
21 New Yorkers and associated institutions. That same
22 report found a pattern of boilerplate language, where
23 the same language was copied and pasted over and over
24 and over again into a request for approval of
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1 investigations by the Handschu committee. We know it
2 was the same copy and pasted text because it had the
3 same typo, hundreds of times. And so we see this
4 pattern where a track record of noncompliance, a
5 track record of discrimination, a track record of
6 policing practices that invade the rights of New
7 Yorkers without providing any benefit to the public
8 are finally rolled back through hard-won litigation and
9 hard-fought legislation, and somehow it's held up as
10 evidence that the department is fixing the problem
11 itself. It is not. The department has only improved
12 to the extent it has been compelled by this council
13 and courts to improve, and that is why it is so
14 urgent for the City Council to act and to finally
15 pass the POST Act. The laws, the norms that we heard
16 cited are only as powerful as the bills we're willing
17 to enact. And so that is why it's crucial,
18 especially given the impact of these surveillance
19 tools on communities of color and immigrant New
20 Yorkers that the council finally, after all these
21 years, enact the POST Act. Thank you.

23 CHAIRPERSON RICHARDS: Thank you.

24 SERGIO DE LA PAVA: Good afternoon. I'm
25 Sergio De La Pava. I'm the legal director of New

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2 York County Defender Services, public defender office
3 here in Manhattan that represents tens of thousands
4 of people accused of crimes every year. Now, being a
5 public defender for over 20 years, as I've been, does
6 give you some unique insight into the practices of
7 the NYPD and their use of surveillance technology.

8 And it doesn't take much to conclude that we do
9 essentially in New York live under some sort of
10 surveillance state. Right now the NYPD and our
11 government has us under the surveillance of invasive
12 new technologies in a way that is unimaginable just a
13 few short years ago. Now, what role does the law
14 play in this and why is it that we support this piece
15 of legislation is that the law at its best should not
16 be a blunt instrument, but it should evolve. It
17 should evolve to reflect our concerns that may arise
18 with new technology and this is a perfect example of
19 that. You have my written testimony, but I want to
20 focus on two main concerns that we have with the
21 current situation and with the legislation. First,
22 we recommend that the council strongly consider
23 amending this legislation to require that other city
24 offices or agencies also disclose their use of
25 surveillance technology. And I'll give you an example

1 of that. We've recently, meaning in the last year,
2 found out that our clients are required before they
3 can, our clients who are housed at Riker's Island,
4 before they can use the telephone system, before they
5 can call their attorneys or loved ones they must give
6 a sample of their voice, which was then stored in
7 voice recognition. So this was something that was
8 uncovered by an article by *The Intercept* that we now
9 had confirmation from our clients. Prison
10 authorities have quietly enrolled hundreds of
11 thousands of incarcerated people's voice prints into
12 large-scale biometric databases. Computer algorithms
13 then draw on these databases to identify the voices
14 taking part in a call and to search for other calls
15 in which the voices of interest are detected. Some
16 programs, like New York's, even analyze the voices of
17 call recipients outside prisons to track which
18 outsiders speak to multiple prisoners regardless. So
19 it doesn't take much to realize that attorneys speak
20 to multiple prisoners regardless that their voices may
21 be added to this database. I don't know the answer
22 to these questions. We don't know where to begin to
23 get the answer to these questions because the NYPD
24 practices, and in this case the Department of
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2 Corrections, are cloaked in secrecy, and we all know
3 what happens in secrecy is abuse of power. And
4 that's I think the situation we are find ourselves in
5 and why we welcome this legislation. Another primary
6 issue is secrecy and also leads to a monopoly. So
7 these facial recognition softwares, license plate
8 readers, um, technology that you're hearing about
9 that completely under the control of the prosecution
10 and the NYPD. And we as defense attorneys charged
11 with this constitutional obligation to defend our
12 clients from the loss of liberty are at a deep
13 disadvantage without the ability to conduct our own
14 testing, with our own access to the software and the
15 technology that in many cases we're chasing after
16 kind of information that we have not gotten for all
17 these years. So thank you for the opportunity.

18 Thank you for what we think is a laudatory piece of
19 legislation, but we hope that it can be made even
20 stronger. Thank you.

21 CHAIRPERSON RICHARDS: Thank you.

22 MICHAEL SISITZKY: Good afternoon. My
23 name is Michael Sisitzky, lead policy counsel with
24 the New York Civil Liberties Union. A core component
25 of our work is protecting New Yorkers' rights to be

1 free from dissection and unwarranted surveillance by
2 law enforcement and the NYPD has a long and troubling
3 history of engaging in surveillance tactics that
4 target political dissent, criminalize communities of
5 color, and jeopardize all New Yorkers' privacy. Too
6 often the only meaningful checks on the NYPD's
7 ability to target and surveil New Yorkers have come
8 from court rulings or settlements after the harm has
9 already been inflicted, and to be clear those court
10 rulings have found unconstitutional practices by the
11 NYPD and regardless of whether or not they admit
12 wrongdoing in settlements there is clear wrongdoing
13 in the way that the NYPD surveils and polices New
14 Yorkers. The reason that we rely on courts is
15 because there is no meaningful oversight mechanism
16 that could identify or preempt those harms before
17 they occur and that's what the POST Act aims to
18 address. It aims to allow for a fully informed
19 conversation about what technologies are being used
20 to target communities of color and the ways in which
21 surveillance magnifies discrimination in areas like
22 immigration, housing, and education. To date, most
23 of what we've learned about the NYPD's use of
24 surveillance is based on FOIA litigation, investigative

1 journalism, inquiries by the public defense
2 community. It's not the kind of proactive sharing of
3 information as the NYPD suggested they engage in, in
4 some cases earlier. The secrecy in how the NYPD
5 acquires surveillance technology also extends to how
6 these technologies are being used and what policies
7 govern them, assuming there are any policies in place
8 at all. Through FOIA litigation we've learned that
9 NYPD acquired and used Stingrays, more than a
10 thousand times between 2008 and 2015, without ever
11 having a written policy in place and without going to
12 courts for judicial warrants. We've learned that the
13 NYPD utilizes error-prone facial recognition
14 technology and uses highly flawed techniques that
15 make the risk of misidentification worse. And to be
16 clear, the risks of misidentification with facial
17 recognition technology are much higher for people of
18 color who are the very people in the mug shot
19 databases of the NYPD was referring to because they
20 have been the primary target of NYPD enforcement. So
21 when there are these high error rates and
22 misidentifications, ah, it's very clear which
23 communities are going to be impacted as a result of
24 this flaw in NYPD policy. And the process of the
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1 POST Act again is not taking away the NYPD's ability
2 to use these technologies, but is to require a public
3 conversation about what the rules of the road are.
4

5 The process envisioned by the POST Act is simple and
6 straightforward. Before requiring and using new

7 surveillance tools the NYPD has to disclose an

8 intended use and impact policy, basic information

9 about what it is and what rules the department will

10 follow, and what type of information they're

11 gathering on New Yorkers and who it's being shared

12 with. And, you know, to be clear the NYPD, ah, has

13 proven that it is capable of working within this type

14 of framework, when they want to. As the NYPD

15 acknowledged, they engaged the public in the

16 development of the body-worn camera policy, ah, doing

17 a questionnaire, asking for public input, an as the

18 NYPD acknowledged they incorporated feedback from

19 that process into their final policy. They

20 recognized the utility of this type of public

21 engagement. On a much smaller scale, the NYPD did

22 proactively seek feedback outside the department on

23 the use of drones, but it was very narrow and very

24 limited. Before the NYPD publicly announced their

25 use of drones they reached out to members of the

1 council. They also reached out to the NYCLU in
2 confidence to ask for our feedback on the policy. We
3 gave a lot of it. Very little of it was
4 incorporated. Um, but when the policy was publicly
5 announced the NYPD was rightly criticized for not
6 engaging a broader range of public comment and
7 community input. Advocates cited that the NYPD's
8 approach demonstrated a disregard for the
9 perspectives most impacted by, perspectives of
10 communities most impacted by police abuses. At
11 minimum, even if a broader public engagement hadn't
12 led to more changes in the policy it would have given
13 the NYPD an opportunity to show a commitment to a
14 model of community policing that actually gives voice
15 to the communities impacted by policing and that's
16 what the POST Act aims to accomplish. And the last
17 point I want to make is we have heard that there are
18 other cities that have gone much further that require
19 disclosure and actual approval of the use of
20 surveillance technology. And I just to emphasize
21 that to the extent that there's any surveillance
22 technology that's being used in places like San
23 Francisco, Oakland, Nashville, and other
24 municipalities, information about these types of
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2 surveillance technology is going to be in the public
3 sphere. The public will be able to turn to other
4 localities to be able to figure out basic information
5 about what types of tools are out there. The only
6 difference is they won't be getting that from their
7 own officials here at home and the narrative will be
8 that the NYPD is again trying to govern itself, not
9 be accountable to the council, to communities, um,
10 and that's not the type of, ah, engagement that the
11 NYPD should be, ah, involved in if their goal is to
12 build trust and confidence in the community. Thank
13 you.

14 CHAIRPERSON RICHARDS: Thank you. A
15 quick question for Barry. So it seems that to a
16 certain extent you agree with the NYPD that there
17 needs to be some security exception to disclosure.
18 Can you just go into that a little bit more?

19 BARRY FRIEDMAN: So, ah, we all hear
20 claims in the public sphere that it's impossible to
21 disclose information about what policing agencies are
22 doing, and, again, writ large I don't, I don't buy
23 those. I don't, I think that if we're going to
24 govern ourselves we have to know what is being done
25 in our name. But I do think there's the possibility

1 that in very isolated instances there's information
2 that the NYPD can't reveal. Now, I don't, you know,
3 I listened to Deputy Commissioner Miller's testimony
4 and I thought there was a real mismatch between the
5 examples he was giving and what the concern about the
6 POST Act. I couldn't always connect the two of them
7 up. But I think there needs to be some sort of a
8 process available, ah, that would let the NYPD vet
9 those concerns. And, you know, I guess, ah, I would
10 want to think about this at greater length, but I can
11 imagine some very limited group of people that vetted
12 those or some kind of judicial review, something that
13 permitted the NYPD to say, look, we want to redact
14 this information because we think there's a security
15 risk here and have that adjudicated.

17 CHAIRPERSON RICHARDS: And if the bill
18 were to exclude, ah, in certain circumstances when
19 the NYPD believes there's a distinct threat, what
20 would you say to advocates who believe that has the
21 potential to undermine the entire concept of the
22 bill?

23 BARRY FRIEDMAN: Ah, well, you know, like
24 with any exception it depends how it's drafted,
25 right? You can, any good lawyer can draft an

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2 exception big enough to ruin any rule. Ah, so I
3 think it has to be drafted appropriately. But I
4 think with an appropriately limited standard, and
5 again a vetting procedure, because I think that's
6 essential so that somebody has access to that
7 information, you know, it's just not plausible that
8 the policy for using license plate readers and facial
9 recognition and Stingrays and all these things that
10 we already know exist out in, out in the world and
11 that many departments have their policies, much
12 fuller policies than the NYPD's policies on their
13 website right now, it's just not plausible that
14 releasing that information is going to be a threat.
15 So I think we could accomplish an enormous amount of
16 ground and still indicate that we're willing to take
17 seriously the NYPD's claims, and then, look, time is
18 going to tell. We're all going to learn something
19 and it's possible if the council needs to, to revisit
20 any legislation that it passes.

21 CHAIRPERSON RICHARDS: Thank you. And do
22 you think the Handschu guidelines and the federal
23 monitor is sufficient oversight mechanisms? Do you
24 agree with that?

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2 BARRY FRIEDMAN: Ah, no. I think, you
3 know, all of these mechanisms that Deputy
4 Commissioner Miller kept pointing to are back end
5 accountability measures that were put in place, as
6 many of the folks up here have pointed out, because
7 the NYPD was adjudicated to have violated federal
8 constitutional law. Now, I don't think that's the
9 standard. I think federal constitutional law may say
10 it's fine to have license plate readers, and this
11 council could still say, and the NYPD could say yeah,
12 but, you know, it's not appropriate to have that data
13 retained for more than a day, or a month, whatever
14 that, that period of time is, and that, and having
15 things like federal monitors in place or state
16 monitors or any other kind of monitor is just a back-
17 end solution to a big problem. I think there's got
18 to be this kind of front-end accountability. Though,
19 again, I'm willing to acknowledge that if the NYPD
20 can make its case in some limited way through some
21 limited vetting process that there's some information
22 that perhaps need not be disclosed.

23 CHAIRPERSON RICHARDS: Anybody else who
24 wants to take a shot at that?

1
2 ALBERT DE LA PAZA: Um, I, I respectfully
3 will have to agree, ah, to disagree with Barry. Ah,
4 I, you know, I think that we have accounted for this
5 concern in the narrowness of the initial demand of
6 the POST Act itself, in that it is not requiring
7 civilian approval, it is not getting into operational
8 detail, but it is requiring a narrow class of privacy
9 and use policies which I don't see any scenario in
10 which the narrow class of information we're asking
11 for would necessitate this sort of carve-out and we
12 actually have a number of experts, ah, from, you
13 know, the data science field who will be testify to
14 that later on, talking about how it would not
15 actually be possible to back end the data we're
16 talking about here into something that poses the sort
17 of, ah, doomsday scenario that's being described by
18 the PD.

19 UNIDENTIFIED: I would just add I agree
20 with Albert and respectfully disagree with Barry on
21 the, ah, potential for some kind of exception here,
22 and the problem with any kind of exception when we
23 think about it in terms of the NYPD's disclosure
24 requirements and their general track record when it
25 comes to transparency is if we're talking about an

1
2 exception that essentially is, you know, allows the
3 NYPD to determine the scope of its reporting
4 requirements we're kind of running up against the
5 problem that the council is ceding its authority to
6 conduct oversight based on the NYPD's definition of
7 what falls within the council's oversight authority,
8 and when it comes to the use of these types of
9 technologies, military-grade equipment and things
10 like x-ray vans that can expose New Yorkers to
11 radiation, we're talking about things that have real
12 impact on New Yorkers' lives, to the point where it's
13 so critically important to get information out there
14 that, ah, I think we, you know, and given, as Albert
15 said, kind of the, the state of the bill itself not
16 actually subjecting, ah, the acquisition of these
17 tools to council approval, this is bare minimum that
18 already is in, ah, the POST Act as written, so we
19 would be very concerned about any, ah, potential
20 efforts to carve out specific technologies or uses.

21 CHAIRPERSON RICHARDS: Council Member

22 Lancman.

23 COUNCIL MEMBER LANCMAN: It's two to one,
24 Barry. I'm just, I'm just kidding. So I view this
25 legislation and this issue, um, as addressed more

1
2 towards technology that has the potential to, um,
3 scoop up volumes of, of information and data about
4 people who have nothing to do with the criminal
5 investigation, and so, um, when, when the
6 commissioners talk about, ah, technology, disclosing
7 technology that could harm an undercover when he or
8 she is in the room with the potential bad guys, you
9 know, I'm very sympathetic to that and I don't, I
10 don't know the full scope of the technology, that's
11 part of the problem. I don't, I don't know that
12 those kinds of things need to be covered, like the
13 latest gee whiz technology and to adopt Council
14 Member Lander's example, you know, that's hidden
15 inside somebody's ear. There's no potential in that
16 scenario for me as a law-abiding citizen to get
17 caught up in that, in that technology's use. But I
18 may misunderstand these distinctions. So I'd like to
19 get your opinion as to whether or not there are
20 boundaries that can be drawn between technology that
21 has the potential to, to include people who are not
22 possibly the subject of the investigation versus
23 technology that is, that is very, very narrowly
24 targeted in circumstances where, you know, if you're
25 in the room or if you're on that listening device or

1
2 other device you're fair game. Is that a distinction
3 that means anything?

4 ALBERT DE LA PAVA: I, I would suggest
5 that the same body-worn, ah, undercover camera or,
6 um, wire that an officer might wear in the drug deal
7 scenario is the same exact sort of equipment that was
8 being worn into mosques for a decade under the NYPD's
9 demographics unit. It's the same technology that
10 was, that is being used to fuel the gang database.
11 It's the same technology that is being targeted at
12 countless, you know, New Yorkers who have done
13 nothing wrong but are simply being targeted for the
14 color of their skin or the faith they believe in.
15 And so I do think that we can't approach this by, um,
16 yielding to the PD, as Michael was saying, the power
17 to define the scope of their own reporting
18 obligations, because I think that dangerously upends
19 the power dynamic that this bill is supposed to
20 implement.

21 BARRY FRIEDMAN: So I agree with Albert,
22 but I just want to try something definitional for
23 you, because I actually think there's, there's
24 another way this bill could go further. So, first,
25 when I think about, you know, you suggested that the

1 concern in part, Council Member, was the data, what
2 gets scooped up. So I think of a Venn diagram of, of
3 technology and data, and they overlap sometimes in
4 the sense that technologies collect data. There are
5 some technologies that we're not really worried about
6 the data as much as the technology. So a drone could
7 be looking in your window and not collecting any
8 other data other than looking in your window. Still
9 worried about the drone. The gang databases, which
10 have come up a number of time, I'm not, it's not
11 clear to me that they're covered by this legislation
12 at all. I actually do think we need to regulate
13 police databases in addition to technology, because
14 it doesn't take any particular technology to create a
15 gang database. I mean, it takes a laptop computer
16 and people reporting on people whether they're
17 members of gang or not. So, so that's one place to
18 start. I also think that it, that the technology
19 that can be used in an individual case can, as Albert
20 says, be used pervasively and so you need to worry
21 about that. What I do think you can do, and I want
22 to be clear about what I was just suggesting because,
23 again, I'm the one that started by saying that I
24 don't think carve-outs are a good idea, is that I
25

1 think that you can create a process for vetting
2 information, so your example about the, I guess we've
3 all got this doohickey that's in somebody's ear that
4 nobody will notice when an information goes to a
5 meeting, I'm skeptical, ah, but maybe it's fake ear.
6 I don't know what it is. Ah, the, the, I mean,
7 that's the problem, we don't know what it is and we
8 ought to know. But I think that if you had a
9 process, and I've suggested in conversations outside
10 of this room that, you know, where if there is
11 specific information the NYPD is worried about, it
12 gets vetted with, say, the Public Advocate and two
13 other individuals so that there's some committee that
14 vets that information that has some reliability. You
15 know, it would be possible to tell the public what we
16 all already know anyway, which is that the NYPD's got
17 recording technologies that can be used
18 surreptitiously and not tell us precisely that's an
19 ear phone or whatever it is, and still get the kind
20 of accountability that we need so that we can comment
21 on that and avoid the operational details, because I
22 think that it is indeed the right distinction between
23 policy and operational details, and I just, I just
24 want to confess ignorance, and I think we all should
25

1
2 be humble about this. My guess is there's very
3 little that we can't all be told, very, very, very
4 little. But I also don't know if there's something
5 that I don't know what it is, and so that's why I
6 think, ah, that if you had some external body, I
7 don't think the NYPD should decide for itself, I
8 think that would be a very bad idea, that could vet
9 the very limited information that the NYPD thinks
10 they can't tell people, some other folks could hear
11 that information and say that's absurd or we buy
12 that, but here's what you ought to be able to reveal
13 so people could at least think about it, and it's at
14 least a mechanism that would meet what might be, I
15 don't know, legitimate concerns by the NYPD while
16 making sure we all have the ability to be
17 accountable.

18 UNIDENTIFIED: Just to quickly add one
19 thing, um, I think one of the things you're pointing
20 at is the need to have an impact and use policy, a
21 need to think about what kind of data are we
22 collecting it, about whom. If it turns out, as Barry
23 Friedman said, that we're collecting license plate
24 scans of somebody that's not related to a crime, when
25 are we deleting that data? Um, we spoke earlier

1
2 about juvenile fingerprint staying in databases for
3 far longer than they needed to be. These are
4 foreseeable issue and it's very important for the
5 NYPD to sit down as it deploys each technology and
6 think hey, how long do [inaudible] information, does
7 that information vary depending on whether someone's
8 a suspect or not. These are common sense, thoughtful
9 processes that even the private sector, we all click
10 away privacy policies. These are common things that
11 we should be doing on the front end, not responding
12 to here on the back end.

13 CHAIRPERSON RICHARDS: Thank you. Oh,
14 sorry, Vanessa.

15 COUNCIL MEMBER GIBSON: Sorry. Thank
16 you, thank you all for being here. I know the hour
17 is late and you've been very patient, so I thank you
18 for all of the work you've done on the POST Act and
19 generally speaking about this issue of surveillance
20 across the board representing your clients and the
21 testimony that has been provided really helps us a
22 lot as a council to understand how we move forward
23 together. Um, I just wanted to make two quick points
24 and a lot in my questioning with the Deputy
25 Commissioner, you know, there is acknowledgement that

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2 there are impact, use, and policies that are already
3 established with existing pieces of technology, like
4 the domain, like the body-worn camera, and like, you
5 know, other things and so it's not that farfetched to
6 expect the department to be pushed a little bit more
7 and I think you know I, too, Mr. Friedman, am not a
8 fan of carve-outs because I feel like if you keep
9 carving and carving and carving so much everyone will
10 be excluded and then the bill has no value. And so I
11 generally, like I'm always hesitant about carve-outs
12 and then I also think, you know, above and beyond, I
13 don't think any of us advocates and elected officials
14 together necessarily want to give the NYPD all of
15 that latitude. That's the bottom line. I think past
16 history has shown that we have only been able to get
17 information through litigation, through FOIA
18 requests, and not necessarily through this
19 cooperation and partnership, and so what we're trying
20 to do with this bill is not to stimulate a
21 conversation but get them to a point where they
22 should be offering up information without a
23 legislative mandate and the question that I asked of
24 the commissioner that he was not able to answer with
25 all of the other pieces and types of technology we

1
2 don't even know if there are impact statements and
3 how it's being used, how the information is being
4 shared and stored, and so it's alarming and I feel
5 like this is a bill that has to do something and
6 propel the department to change and obviously change
7 comes with time, um, and so I, I realize that we're
8 here at a time for a reason, but I do think we owe it
9 to a lot of your clients and our constituents that we
10 owe them better and we say that from a point of the
11 history and our history is a part of the past, I get
12 it, but it's also, details how much work that we've
13 gone through to get to this point. And so to me like
14 this bill is necessary and while I know it's the
15 original bill, I appreciate all of the, ah, input and
16 a lot of the concern that's been raised because it
17 really does help us build a stronger relationship
18 with the department. Um, I think I was alarmed when
19 I met with the advocates to learn the DOC does voice
20 recordings on Riker's and probably our other jails in
21 the system and that's alarming and so I think that's
22 something that we should consider as it relates to
23 other agencies that do have that capacity where they
24 are doing some sort of a surveillance on their
25 clients and constituents as well. So I thank you for

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2 being here. I know the hour is late. But I look
3 forward to working with you. Thank you.

4 COUNCIL MEMBER ADAMS: Thank you, Council
5 Member Gibson. Thank you all for being here today
6 and for adding much-needed dimension to what we heard
7 today, for adding, um, layer upon layer upon layer,
8 to enhance our decision to enhance, um, everything
9 that this hearing was supposed to be about today. So
10 I thank you all for being here very much. We're
11 going to call up the next panel at this time.

12 Elizabeth Daniel Vasquez, Alice Fontier, Alex Vitaly,
13 I believe, John Cusick, and Jerome Greco. OK, you
14 may begin when you're ready.

15 ELIZABETH DANIEL VASQUEZ: Am I on now?
16 Um, can you guys hear me? My name is Elizabeth
17 Daniel Vasquez. I'm the special forensics science
18 counsel at the Brooklyn Defender Services. Just to
19 drill won a little bit on what that means, my role
20 with the Brooklyn Defender Services is to monitor and
21 stay on top of emerging scientific, technical,
22 digital, and surveillance technologies to educate the
23 trial lawyers in my office about the technologies
24 that are out there and to analyze the legal as well
25 as technical issues that are raised by those

1 technologies. I want to thank the committee, Council
2 Member Gibson, and also the chair for having this
3 hearing today and for inviting this testimony. I had
4 prepared comments, but after listening to the NYPD I
5 have just a few points that I would like to make that
6 are separate from what I had prepared. I have
7 submitted written testimony that address other
8 concerns. The Chairperson Richards pointed out the
9 *New York Times* article that came out last night about
10 the technologies that are being put forward in China,
11 and as I was reading the article I engaged in a
12 thought experiment that was both horrifying and
13 helpful, which was to read the article and replace
14 the city name with New York City and see if it struck
15 me as wrong. When I got to the end of the article
16 there had not been a point through reading it that I
17 encountered a circumstance or a technology that was
18 being used that I felt was not being used in New York
19 City. The thing that the article focused on was the
20 emergence of a network of the surveillance
21 technologies. What it was focusing at was the use by
22 the police forces of technologies that overlap and
23 speak to each other, and what we are seeing here in
24 New York City with the domain awareness system is New
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1
2 York Police Department's creation of a system of
3 collection aggregation of data and use of
4 surveillance technology that approaches that same
5 concern about a network. I know that the NYPD
6 commissioner spoke about having a use policy for the
7 domain awareness system. When they speak about the
8 domain awareness system they are not getting down to
9 the granular of what the domain awareness system can
10 actually do and what it aggregates and collects and
11 they spent a lot of time talking about the video
12 camera monitoring. But what the domain awareness
13 system actually does is it aggregates all of the data
14 that NYPD has access to. What that means is the
15 domain awareness system includes every type of
16 reporting that the NYPD creates, along with the video
17 cameras, along with the license plate readers, along
18 with the various sensors that are around the city,
19 and then puts on top of that algorithmic thinking to
20 understand what that data might mean. So I want to
21 give an example related to license plate readers and
22 how the domain awareness system works with that.
23 What we know, because the New York Police Department
24 has been trying to sell the domain awareness system
25 to other police departments around the country is

1 that they have advertised the fact that the domain
2 awareness system includes a time and place pattern
3 algorithm that allows them to go through the five
4 years of license plate reader images that they have
5 and to work out where a particular license plate
6 might be at a particular time on a particular day
7 based on where it has been previously. The last
8 point that I want to make that stems from that and
9 some of the comments that the commissioner was
10 presenting to this body is that the commissioner
11 seemed to suggest that the thing that distinguishes
12 us from China is the Fourth Amendment and the role of
13 discovery in the criminal process and the ability of
14 criminal defense lawyers to learn about these
15 technologies and argue their constitutionality in
16 court. The problem is that we aren't hearing about
17 these technologies in discovery in our criminal
18 cases. I'll give you an example. Facial recognition
19 technology is a hot button item right now. There is
20 a lot of reporting that is out there about the use of
21 facial recognition technology. Because of the work
22 of Claire Garvey at Georgetown and the FOIA
23 litigation that they engaged in, it came to light
24 that the NYPD has been using facial recognition
25

1
2 technology for eight years now. I can count on one
3 hand the number of cases in which my office has
4 received discovery related to the use of facial
5 recognition technology in a case over that time
6 period. The NYPD is reporting thousands of arrests
7 using that technology and that technology is not
8 being disclosed in our cases. So to the extent that
9 the NYPD wants to say that the check on their use of
10 technology is the Fourth Amendment and our litigation
11 in our cases, that information is not reaching us
12 through discovery and that is why this bill is so
13 important. We thank Council Member Gibson for
14 sponsoring this bill and we do ask that it be passed
15 expeditiously.

16 ALICE FONTIER: I'm Alice Fontier, the
17 managing director of the criminal practice at the
18 Bronx Defenders. Um, I also submitted written
19 testimony and I do want to follow up on what was just
20 said, um, with a little bit more detail, because I
21 think it is, um, incredibly important and I was
22 heartened when this hearing started with the
23 discussion of the *New York Times* article last night,
24 that was released last night, and I think it is
25 important to note that that article began by saying

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2 China is ramping up its ability to spy on its nearly
3 1.4 billion people to new and disturbing levels,
4 giving the world a blueprint for how to build a
5 digital totalitarian state. Chinese authorities are
6 knitting together old and state-of-the-art
7 technologies. Phone scanners, facial recognition
8 cameras, face and fingerprint databases, and many
9 others into sweeping tools for authoritarian control,
10 according to police and private databases examined by
11 the *New York Times*. Now, I want to read to you from
12 an NYPD statement about the domain awareness system.
13 They say that the domain awareness system, DAS, is a
14 network of sensors, databases, devices, software, and
15 infrastructure that delivers tailored information and
16 analytics to mobile devices and precinct desktops.
17 Originally designed for counterterrorism purposes,
18 the DAS has been modified for general policing . It
19 is now deployed across every police precinct in the
20 city and on the smart phone of every officer. I ask
21 you how that sounds different from the Chinese
22 totalitarian state in any way. Um, it is also, the
23 commissioner repeatedly referred to DAS in their
24 statements about its use as a success in their
25 transparency. That is misleading to the point of

1 being laughable. What is on the NYPD's transparency
2 is a statement about the privacy use that ties
3 together private and NYPD cameras, nothing more. But
4 what they have said about DAS, because DAS is for
5 sale, they developed this with Microsoft and are
6 selling it to other police departments, and they have
7 sought awards for this system. So there is public
8 information about DAS when they try to brag about it.
9 And what the NYPD has said is that it includes all
10 cameras, including stationary, dash cam, body camera,
11 and some private. Um, to put that in some
12 perspective, when the NYPD testified about, in the
13 body camera hearing just a few weeks ago, they stated
14 that they have eight million body cam videos alone.
15 So think about the amount of video that is in this
16 system. That also includes license plate readers.
17 The NYPD reports storing over two billion resources
18 and has stated publicly that they can track any
19 license plate in New York City historically, in near-
20 real time, and then using algorithms predict where
21 that car might be going. It includes ShotSpotters,
22 radiation, x-rays, and other sensors, real-time crime
23 center data, and the real-time crime center data that
24 is available on every smart phone by every officer in
25

1
2 real time includes more than five million New York
3 State criminal records, parole and probation files,
4 more than 20 million New York City criminal
5 complaints, arrests, 911, 311 calls, and summonses
6 spanning five years, more than 31 million national
7 crime resources, and more than 33 billion, with a b,
8 other public resources. And then they say there's
9 just a catch-all for other databases, whatever that
10 may mean. We do not know the answers to what these
11 are, what a police officer in real time can access,
12 because there is no transparency. Um, and more
13 importantly, the DAS is linked through facial
14 recognition systems, fingerprints, and is searchable
15 by any number of inputs, such as name, address, or
16 phone number. The full information on the DAS, the
17 billions of records, are searchable through any of
18 these means and available on every smart phone. Add
19 to this that the smart phones that are standard NYPD
20 equipment are now all biometric, meaning that an
21 officer in the street has the capability to scan a
22 fingerprint and then search DAS using that scan.
23 They also have the capability to take a photograph
24 and search DAS using the facial recognition system
25 with their smart phone in the street. Do we know if

1
2 NYPD is doing this? No. But we know that the
3 technology is capable. That is a question that must
4 be answered. In our cases we now receive DAS reports
5 on all people involved in the case, including
6 witnesses. However, we receive very little or no
7 information about any of the other specific
8 technologies, um, and when we do have like the
9 handful of cases in which we see that any of these
10 technologies were used the NYPD and the district
11 attorneys jump through hoops to make sure that these
12 never see the light of day in court. Um, I want to
13 give you one brief case example in which we actually
14 did manage to receive some discovery so that you can
15 see what I am talking about and why we need things
16 like the POST Act as a starting point because these
17 cases cannot be challenged, um, in a case-by-case
18 basis in criminal court. Our client, who I will
19 refer to as LR, was arrested and charged with
20 robbery. The charges stem from an incident in which
21 a person walked into a department store, took socks,
22 and then was alleged to have threatened the store
23 security officer with a knife as he left. Four
24 months after the alleged incident LR was arrested.
25 We learned from the DA that our client was identified

1 using facial recognition. In this case the police
2 captured a still image from grainy surveillance video
3 and ran that photograph through the facial
4 identification system, the FIS. The FIS produced
5 some number of possible matches. The system is
6 programmed to produce up to 200 possible matches in
7 every case. LR was one of those photographs and was
8 selected by the officer in the FIS unit as the best
9 possible match. The detective working the case then
10 took LR's single prior arrest photograph and sent it
11 by text message to the store's security officer. In
12 court the prosecutor argued that any information
13 about the FIS was not relevant because the prosecutor
14 did not plan to introduce it at trial. The
15 prosecution's plan was to have the security officer
16 come in and make an in-court identification, meaning
17 they would ask the security officer to point to the
18 man whose picture he had been sent by text and was
19 able to keep all the way up through preparation of
20 trial, who was also the man who would be conveniently
21 seated next to defense counsel. That would be the
22 identification and the prosecution would never
23 mention facial recognition. The NYPD, for its part,
24 filed motions to quash the subpoena for information
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1 about the FIS, arguing that it was proprietary
2 information and should not be disclosed in court.
3 Through these means the NYPD and the district
4 attorney prevents anyone who has been impacted by
5 these technologies from challenging them in the
6 court. In this case, instead of, the judge actually
7 issued, granted a hearing on these issues and instead
8 of actually litigating these and let any of this see
9 the light of day in court, the prosecutor offered our
10 client a misdemeanor and time served. He was facing
11 a minimum of a five-year sentence if he was convicted
12 after trial. So of course he took that and walked
13 away. You should also know that in this case LR's
14 son was born two hours after the sock thief was in
15 the department store and LR was in the hospital with
16 his son when he was being born. Our client also has
17 a twin brother. These facts alone should make you
18 question the reliability of facial recognition. But
19 because of the NYPD and the district attorney's
20 efforts to avoid litigation we have never been able to
21 challenge this technology in any courtroom in this
22 state. The NYPD must answer the questions about how
23 this technology works, how they are using it, and
24 whether it is reliable. People are being prosecuted
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1 and sent to jail because of these technologies. In
2 the rare case we actually receive information that
3 the NYPD employed one or more of its many available
4 digital surveillance or identification techniques, we
5 still cannot challenge it in court. We say that we
6 value our freedom. We say that we fear a
7 totalitarian state in which the police have unchecked
8 power, in which the police are able to surveil every
9 one of us on an ongoing basis. Yet we have done
10 nothing to check the authority or even confirm the
11 technologies used by the NYPD. We know the
12 technology exists. We know the NYPD has it. We know
13 the NYPD uses it. We cannot be content to let the
14 police develop, maintain, and use any and all
15 surveillance techniques that they see fit. The
16 council must pass the POST Act. It is not enough,
17 but it is a step in the right direction.

19 ALEX VITALY: My name is Alex Vitaly. I'm
20 a professor of society and coordinator of the
21 Policing and Social Justice Project at Brooklyn
22 Collage. For the last three years we've been helping
23 to coordinate efforts to understand the nature of
24 gang suppression policing in New York City and you
25 have before you a report that we released last week

1 that details a number of the practices that we've
2 uncovered, but also leaves open a lot of questions
3 that we have, and I want to highlight three
4 technological issues that we've confronted in the
5 course of doing this work. You've heard a lot today
6 about gang databases, so I won't go into them in
7 general terms. There were some questions about
8 whether or not they would be covered by the POST Act.
9 On the one hand, I would say that these databases
10 involve the development of a dashboard, which is a
11 specific set of software that allows them to
12 interface with the data. We feel that this would be
13 covered, but if it is not it should be. In addition,
14 the existence and usage of such databases should be
15 subjected to exactly the same kind of transparency
16 that the POST Act calls for. The second technology
17 we're concerned about is the use of social media
18 surveillance. Now, social media surveillance of an
19 officer simply sitting a computer looking at
20 someone's account may or may not be covered. But we
21 have real questions about whether or not the
22 department is using a variety of proprietary scraping
23 software that allows them to access massive
24 quantities of social media data for the purposes of
25

1 developing social networks that allow them to either
2 populate the gang database or to create conspiracy
3 cases that we think rest on a number of dubious
4 premises. The third technology, um, that we're
5 concerned about, sorry, is, um, the third one went
6 right out my head, sorry. Ah, so, is the use of the
7 so-called hot lists. These are lists of young people
8 who are targeted for a variety of focused deterrence
9 initiatives, such as Operation Cease Fire. In other
10 cities these lists are created through the use of,
11 again, proprietary software from firms like Palantir
12 that rely on a totally black-box process of
13 identifying young people that they claim are at high
14 risk for involvement in violence. Palantir is a
15 private company. It has refused the request of other
16 cities to make this proprietary software available,
17 and we have heard a number of concerns in cities like
18 New Orleans and Chicago that these hot lists merely
19 reproduce the patterns of racialized criminalization
20 that are then reinforced by putting these young
21 people on these targeted lists. For three years
22 we've attempted to find out information about these
23 technologies. We've requested an investigation by
24 the NYPD inspector general's office. We have filed a
25

1
2 number of Freedom of Information requests and we
3 continue to remain in the dark about the use of these
4 technologies that we think pose significant risks of
5 enhancing the criminalization of youth of color in
6 this city. Thank you.

7 JEROME GRECO: Thank you for holding this
8 hearing and for having me, giving me the opportunity
9 to present testimony. I'm Jerome Greco. I'm the
10 supervising attorney at the digital forensic unit at
11 the Legal Aid Society. The Legal Aid Society is the
12 largest public defender office in the city and we
13 represent indigent people both in criminal cases,
14 civil cases, and juvenile cases as well, and my unit
15 in particular focuses on digital forensics, as the
16 name suggests, but also on electronic surveillance,
17 including having in-house, ah, analysts and experts
18 to work with us on that. Um, I've provided written
19 testimony and I had previously prepared a different
20 oral statement, but considering my organization was
21 specifically mentioned during the testimony by the
22 NYPD I feel it's my obligation to correct the record
23 on what actually occurred. Um, there was a
24 discussion about the sealing of juvenile
25 fingerprints. And so the NYPD for years, in

1 violation of the law, had not been sealing
2 fingerprints from juveniles, or had not been
3 destroying fingerprints from juveniles, and were
4 retaining them for use. And it was only by the work
5 of our juvenile rights practice that was revealed and
6 then stopped, but it wasn't without problems. The
7 NYPD fought the whole way. They stonewalled us. It
8 was only until Christine Bell and Lisa Friedman, who
9 are the two attorneys who worked on from our juvenile
10 practice, were able to get information from a state
11 agency separate from the NYPD that the NYPD conceded
12 that they were doing this and then fixed it. It is
13 not something they just did, ah, it was not a glitch,
14 so to speak, and it was not something they just fixed
15 once they were notified. It was something they
16 actually actively fought. As for the juvenile photos
17 in the facial recognition database, it is our
18 understanding that those still are included in the
19 facial recognition database. You'll notice that when
20 they corrected themselves they didn't go on to say
21 that the juvenile photos had actually been removed,
22 because to our understanding they haven't. And,
23 according to the *New York Times* that the use of
24 juvenile photos for facial recognition was approved
25

1 by the NYPD's legal bureau, meaning that the supposed
2 checks and balances that they are talking about is
3 literally the check that said this was OK to do. Ah,
4 not to mention, and some of the great work the Bronx
5 Defenders actually did in regards to the sealed
6 records, that sealed photos are also being used in
7 the facial recognition database and we now know that,
8 too. The NYPD claims it follows the law, but it's
9 the NYPD's interpretation of the law, not everyone
10 else's interpretation of the law. And that's never
11 been more true than when we had dealing with cell
12 site simulators, ah, AKA Stingray devices, and we
13 know from 2008 to 2015 they were used over a thousand
14 times without ever once seeking a warrant. Despite
15 all that information coming out, we still, when we
16 see anything that may reference cell site simulator,
17 they're not using warrants, they're using pen
18 register orders and they still are being deceptive to
19 the court and misleading them. Just a last point to
20 finish up, it's fascinating to me that the NYPD
21 seemingly has such NYPD seemingly has such a
22 misunderstanding about how criminal cases actually
23 work and how suppression works, to say that all this,
24 you know, would be ligated in courtrooms. Ah, one,
25

1 most cases don't end with hearings and trials. They
2 end before that, ah, also somebody sitting
3 incarcerated oftentimes while the case is pending,
4 and they are, we can't move to suppress something
5 when we don't know it's happened. We don't know the
6 technology exists or that it's been used, and they
7 are actively covering up the use of many of these
8 technologies and I suspect that there are things that
9 we have no idea they're using and that I don't think
10 we should wait 10 years from now to learn that they
11 were doing some terrible thing all this time and,
12 surprise, we were wrong, so sorry. So I think it's
13 important that we pass the POST Act, we pass it now,
14 and to be clear this bill is the compromise. There
15 should be no other compromise. Thank you.

17 JOHN CUSICK: Good evening. My name is
18 John Cusick. I'm a litigation fellow at the NAACP
19 legal defense and educational fund. We thank the
20 committee for holding this particularly important
21 hearing. Since its founding and central to its
22 mission to eliminate structural barriers for African
23 Americans, LDF has forged long-standing partnerships
24 with allies, activists, and community members in New
25 York City to challenge unconstitutional and

1 discriminatory policing practices, including serving
2 as co-counsel in Davis v. City of New York, which was
3 a federal class action that challenged the NYPD's
4 policy and practice of unlawfully stopping and
5 arresting New York City public housing residents and
6 their guests without the requisite level of
7 suspension. I submitted written, or we submitted
8 written testimony, but I'll draw your attention to
9 some of our concerns about the surveillance
10 technologies that have or are classified as automated
11 decision systems or use algorithms. These tools,
12 such as the ones referenced by Professor Vitaly of
13 social media monitoring, facial recognition, or
14 predictive policing, create an unprecedented and
15 virtually limitless expansion of policing here in the
16 city. Predictive policing, for example, threatens to
17 exacerbate the existing racial inequities in policing
18 that we see. Because algorithms learn and transform
19 through exposure to data, an algorithm is only as
20 good as the data it relies on. An algorithm, for
21 example, that has biases going in will produce those
22 same biases going out. Any data that the NYPD relies
23 on that comes from any type of unconstitutional,
24 discriminatory, or illegal policing practices will be
25

1 infected with those same prejudices and biases. The
2 resulting data-driven outcome will then carry out and
3 perpetuate the same discrimination, making all
4 decisions either produced by an algorithm or
5 automated decision system or generated by one
6 inherently flawed. And because of the well-
7 documented and judicially recognized history of the
8 NYPD's unconstitutional and racially discriminatory
9 practices not an unfortunate reality or in the terms
10 of Deputy Commissioner Miller's terms, I think he
11 said inflated examples, we have substantial concerns
12 that this deeply rooted, anti-black prejudice and
13 other biases are going to manifest themselves and be
14 used as justifications to surveil communities and be
15 used to cast wide nets. These tools also threaten to
16 define the public sphere. I think this is an
17 important point. These tools right now in this
18 conversation has to center who has access to public
19 space and what the technology is going to do to
20 impact those public spaces. We can imagine scenarios
21 where a drone or facial recognition will be used
22 potentially near a school, at large sporting events,
23 and so what happens when people are fearful of
24 associating or going to certain places. We see this
25

1 with the gang database, for example, that essential
2 criminalizes friendship, the racialized criteria
3 there, for example, of being in a gang-prone
4 neighborhood or wearing a color such as blue or
5 white, I think, as the Chairperson Richards discussed
6 in a hearing last year, virtually cast a net wide
7 enough where anybody could be subjected to this. But
8 we know where it's, it's happening. It's happening
9 largely in NYCHA buildings, the same ones that we
10 talked about with Stop and Frisk. And so, and the
11 same thing with drones here. There was a lot of
12 discussion about this earlier. But not a single
13 community was consulted before the NYPD revealed and
14 deployed that, that system. And so these are some of
15 the main concerns that we have. Without meaningful
16 community accountability and comprehensive
17 examination of the impacts the harms are imminent,
18 potentially irreversible, and growing exponential
19 each day. Indeed, Axon during a panel at NYU Law,
20 told the NYPD representative that they didn't have
21 enough technology or even had outdated technology,
22 further incentivizing them to up-speed and consider
23 new emerging technologies. The last point I want to
24 leave with is that, and Chairperson Richards
25

1 mentioned this before, is that we need to have a
2 racial equity analysis if any of these are being
3 considered and thought of. Not having that will
4 allow the NYPD to continue to cast these types of
5 schools, these tools, without an understanding of who
6 they impact and who they hurt. The rapid unchecked
7 deployment of surveillance technologies without these
8 effective mechanisms is untenable. Moreover,
9 implementing and relying on these tools without
10 understanding their impact, particularly of the
11 racial justice impact, will exacerbate the current
12 inequities throughout the city and may continue to
13 lead to illegal discriminatory behavior. Plain and
14 simple, data and technology should not be used or
15 weaponized against its citizens. The city must
16 therefore reaffirm its commitment to accountability,
17 transparency, and unbiased policing by passing this
18 act. Doing so is a critical first step, but it does
19 not address and, more importantly, does not resolve
20 all the concerns here and will be heard later today.
21 But it's an important step and if passes and the
22 information is obtained we can continue to have these
23 conversations in a much more meaningful way and
24 challenge these long term. Thank you.
25

1
2 COUNCIL MEMBER ADAMS: Thank you all.
3 You were an excellent panel today, and can't thank
4 you enough for your testimony, your thoughtfulness,
5 and your commitment to doing this work and helping us
6 to get it right. Thank you very much.

7 UNIDENTIFIED: Thank you.

8 CHAIRPERSON RICHARDS: All righty. Next
9 panel, and we're going to ask everybody to really
10 stick to the timeline because it's almost 5 o'clock
11 and we want to get to every panel. Ross O'Neill
12 Nevada Morgan, plaintiff pro se in Morgan v. City,
13 Genevieve Fried, AI Now Institute, Dee Mandian, Youth
14 Justice Board, Joseph Sellman, hopefully I'm not
15 messing up, Black Lives Matter, Greater New York.
16 Dee Mandian, Van Dian, Justice Board, Genevieve
17 Fried, AI Now Institute, Ross O'Neill Nevada Morgan,
18 and Joseph Sellman, I think. Make sure you fill out
19 a, OK, all righty. OK, cool, come on up. Sure.
20 You may begin.

21 ROSS O'NEILL NEVADA MORGAN: Greetings,
22 City of New York council members. I am Ross O'Neill
23 Nevada Morgan, plaintiff pro se in Morgan v. City of
24 New York civil rights lawsuit, 17CV6454, at the EDNY.
25 In the matter before the United States of America

1 District Court for the Eastern District of New York,

2 I am challenging the unconstitutional policies of

3 anti-African racial profiling, iris scanning, DNA

4 capturing, and forceful removal of turban to be

5 photographed without head covered that was done to me

6 by City of New York police department agents from

7 false arrest on 2nd of, 2nd of November 2014 through

8 Monday, 3rd of November, 2014. From previous civil

9 rights lawsuit against City of New York I know the

10 problem is found in our United States of America

11 Constitutional Amendment 13, which permits slavery

12 and involuntary servitude as punishment for crime

13 where if the party shall have been duly convicted.

14 On the latter, while introduced by City of New York

15 Council and referred to the Committee on Civil

16 Service and Labor, on February 14, 2018, by a prime

17 sponsor, the public advocate, Mr. Williams, the

18 Resolution 181 is calling upon Congress to propose an

19 amendment to the Constitution of America, Section 1

20 of the 13th Amendment to prohibit slavery and

21 involuntary servitude as punishment for crime needs

22 all member support. As 2019 is 400 years since 1619

23 of British colony started enslaving Africans, the

24 Congress passed HR-1242 that was signed into law as

25

1
2 Public Law 115-102. As it relates to the iris scan,
3 I lodged a Freedom of Information request and I
4 received from criminal justice bureau the iris data
5 and the disparity in where iris scan is happening as
6 it relates to the five boroughs. Brooklyn is the
7 highest. To date the last record, dated 2018, it
8 shows to date there's been 63,728 persons iris
9 scanned. In 2018 Brooklyn was approximately 20,000.
10 So in comparison to Staten Island there's only been
11 2200 scanned. So there's a disparity as to the
12 racial makeup of who's scanned, who's tarred and
13 branded. The history of the City of New York being
14 linked to 1625 is troubling as the City of New York
15 is gonna be 400 years in 2024. The problem is not
16 just the police. The problem also is tied to the
17 legislative branch, which the City of New York has.
18 So if we're gonna correct the abuse the abuse that
19 the City of New York is doing vis-à-vis its arm, the
20 police department, we have to pass the POST Act and
21 also pass the Resolution 181.

22 CHAIRPERSON RICHARDS: Thank you for your
23 testimony.

24 GENEVIEVE FRIED: Good evening, council
25 members of the Committee on Public Safety. My name

1 is Genevieve Fried and I'm a technology fellow at the
2 AI Now Institute, an interdisciplinary research
3 institute at New York University that focuses on the
4 social implications of artificial intelligence. AI
5 Now respectfully submits the following testimony on
6 Intro 0487, the POST Act. During the 2017 Public
7 Safety Committee hearing on this bill, and as well
8 today, the NYPD suggested that compliance with the
9 POST Act requirements could allow adversaries to game
10 and subvert NYPD surveillance technology, putting New
11 Yorkers' public safety at risk. As a computer
12 scientist by training with a background in the
13 development and deployment of the machine learning
14 and data-driven systems that drive surveillance
15 technology, I submit the following testimony today
16 with two goals. One, to assure the committee that
17 the NYPD's claims are unfounded because the public
18 disclosure requirements in the POST Act do not
19 present a risk to public safety, and two, that the
20 POST Act is a necessary policy intervention because
21 it provides a meaningful increase in transparency
22 that will help promote democratic oversight and build
23 trust between the NYPD and the communities serves.
24 For the brevity of time, my oral testimony will
25

1 primarily focus on the first point. Concerns that
2 the POST Act poses a risk to public safety are
3 unwarranted. The POST Act requires a relatively
4 modest level of public disclosure that provides
5 valuable insight to the public, but is not
6 sufficiently detailed for someone to game the system
7 and threaten public safety. To game a surveillance
8 system one would need to know far more granular
9 detail about it. At a minimum, one would need to
10 know the specific data and datasets it uses as
11 inputs, the systems or algorithms used to parse that
12 data, the outputs presented by those algorithms, the
13 strategies by which the surveillance systems are
14 deployed, and how those strategies are implemented
15 and practiced. This type of disclosure would almost
16 certainly include schematics, design documents, and
17 often direct access to source code and the algorithms
18 at issue. Moreover, given that many policing
19 technologies are not actually applied in ways that
20 are expected or desired, even knowing the strategies
21 behind surveillance technology does not necessarily
22 allow for gaming of that technology as
23 operationalized by a specific agency. One would also
24 need to know how the surveillance interacts with
25

1 other tools that are being used and how the NYPD uses
2 surveillance tools in connection with specific
3 investigations or types of investigations. The POST
4 Act does not require any of this information to be
5 disclosed. Far from revealing the precise manner in
6 which someone might evade or defeat the surveillance
7 tool, the POST Act only admits that a system is in
8 use, which bodies have access to the system, and
9 whether there are policies or practices in place to
10 regulate the retention, access, and use of data. We
11 know that this type of public disclosure does not
12 impede the efficiency of a given surveillance tool.
13 For example, wire taps remain a powerful
14 investigative tool despite widespread public
15 knowledge of their existence and the rules governing
16 their use. Since the NYPD's statement on risk to
17 public safety in 2017 and today numerous other
18 municipalities across the country have adopted
19 ordinances mandating publication of far more
20 information on surveillance technology and require
21 far more civilian oversight of public, of police
22 surveillance. Though public safety concerns were
23 raised during the deliberations of these ordinances,
24 each measure passed unanimously or near-unanimously
25

1
2 and now provide the public with far more information
3 than the POST Act requires. To date there has been
4 no evidence of the public disclosure required by
5 these ordinances has resulted in any public safety
6 threats. A loss of privacy and a lack of democratic
7 input are not the inevitable outcomes of new
8 technology. It is up to bodies such as the New York
9 City Council to ensure that technological innovation
10 is grounded within public transparency and
11 accountability. The POST Act provides a necessary
12 measure of public disclosure to New York City
13 residents about how they're being surveilled without
14 posing a public safety, security risk. This type of
15 transparency is necessary for robust discourse about
16 the social utility of surveillance technology. Thank
17 you for your time.

18 CHAIRPERSON RICHARDS: Thank you.

19 NANYA AND KEYANA: [first speaker] Good
20 evening, Chairperson Richards and council members.
21 Thank you for the opportunity to submit this
22 testimony on the importance of public oversight of
23 surveillance technology. Our names are Nanya and
24 Keyana and we're speaking on behalf of the Youth
25 Justice Board. The Youth Justice Board trains New

1
2 York City youth in research and public policy and
3 gives young people a voice in public policies that
4 affect our lives. During the current program cycle,
5 which runs through summer 2020, we're focusing on the
6 intersection of digital surveillance and privacy of
7 teens in New York City and interactions with the
8 criminal legal system. [second speaker] During our
9 research process we looked primarily at the
10 relationship between youth actions on social media
11 and systemic consequences. To do this we conducted
12 interviews with 23 experts and practitioners, led two
13 focus groups with young people who have had personal
14 experience with systemic consequences for online
15 actions, and read hundreds of news and journal
16 articles on surveillance, data management, and data
17 ethics. We're here to testify about the importance
18 of public oversight of surveillance technology to
19 youth of color. We believe that our community is one
20 most impacted by surveillance. [first speaker]
21 Growing up in a post-9/11 society we have experienced
22 an increase in surveillance and justification for why
23 that surveillance is necessary. Constant
24 developments in technology have allowed for
25 surveillance to be executed more quickly and to

1 impact larger communities at once. Our research has
2 highlighted social media as a surveillance tactic
3 used by law enforcement. Recent examples include the
4 monitoring of Black Lives Matter protesters through
5 hash tags and geo tagging, as well as the use of
6 social media to place youth of color on the NYPD
7 criminal group database, commonly known as the gang
8 database. For example, we heard about the deaths of
9 a beloved community member who was believed to be
10 gang-affiliated. In honor of that, members of the
11 community posted social media with the hash tag E for
12 R, which means everything for, followed by the first
13 initial of the person's name. NYPD was monitoring
14 that hash tag and labeled members of the community as
15 gang-affiliated. Those people were then added to the
16 doing business. [second speaker] If NYPD shares
17 database information with third parties, such as
18 district attorneys or federal prosecutors an
19 individual may face a higher sentence, higher bail,
20 or no bail options at all, fewer plea options or
21 conspiracy charges, or any mix of those. If any of
22 those community members get arrested for any reason
23 they may face any or all of those consequences
24 because they posted about an alleged gang member on
25

1 social media. They posted to feel like part of a
2 community, which is a major reason any of us use
3 social media at all. [first speaker] In addition to
4 interpersonal relationships, our generation uses
5 social media for entertainment and self-education.
6 We also try to use these platforms as a tool for
7 finding, organizing, and improving our communities,
8 like queer youth of color, immigrant youth, disabled
9 and chronically ill youth, working-class youth, or
10 youth activists. These platforms are then used by
11 law enforcement to monitor our interactions and
12 efforts for advocacy. These places then stop being
13 spaces where we can express ourselves and connect
14 with people and instead become spaces of censorship,
15 paranoia, and mistrust. [second speaker] Mistrust
16 can be remedied through knowledge, through
17 transparency, and communication. The current lack of
18 transparency prevents dialogue between police and the
19 community and makes youth objects of surveillance and
20 suspicion. It takes away our agency and input into
21 how we're treated. If youth know what tools the
22 police are using we would feel safer in interactions
23 with our peers. [first speaker] We want City
24 Council to require NYPD and all its subdivisions to
25

1
2 be transparent about the surveillance tactics and
3 technology it uses and create dialogue with community
4 members by opening up purchases and contracts for
5 public comment. We support the idea of mandatory
6 surveillance impact and use policy and suggest that
7 it also include data disposal practices. We also
8 suggest that it meet written at a third-grade reading
9 level so that it is accessible to the majority of New
10 Yorkers. [second speaker] We also ask that Council
11 determine what consequences will be enforced if
12 surveillance technology is purchased without
13 following these processes. Finally, we want NYPD to
14 obtain external approval for surveillance technology
15 purchases. Without this there is no real
16 accountability on their methods of surveillance.

17 [first speaker] We believe that these steps would,
18 in combination with our other recommendations,
19 dramatically improve the climate around privacy and
20 surveillance for all New Yorkers, particularly young
21 New Yorkers. [second speaker] Thank you for hearing
22 our testimony today, for taking our perspective
23 seriously, and for holding this hearing on the POST
24 Act. We hope that our testimony supports you in
25 taking action on this serious issue.

1 CHAIRPERSON RICHARDS: Thank you to the
2 youth board. Thank you.
3

4 UNIDENTIFIED: Good afternoon, everyone.
5 I'll try and be as quick as possible. I leave it up
6 to my esteemed colleagues to fill you in on the data
7 and their extensive research. I'm speaking from a
8 place of heart, from a place of someone who has been
9 targeted by the police as an activist and also as an
10 adolescent, ah, from a person who's been beaten and
11 brutalized from the police, and as a person who
12 refused that retina scan when I was in Central
13 Booking. Ah, I was brought into this fight by CAIR,
14 the Council on Muslim Islamic Relations and, uh, I
15 guess the core of this for me is I don't trust the
16 NYPD with this sort of power. I'm sure of this as I
17 am as sure that the sun will come up tomorrow that
18 they will abuse these technologies and the ones who
19 will suffer the consequences are black, brown, and
20 activist communities. Ah, earlier I heard talks of,
21 ah, of fear and my heart goes out to everyone that
22 was a victim of the attack last week in Jersey City.
23 But what the NYPD did was sit here and use the fear
24 tactics that the Bush administration used. They used
25 the fear tactics that Trump's fascist regimen uses

1 trying to, to galvanize us to give them more power.
2 It is these fear tactics that have let them run wild
3 in this city for far too long. And what I seen in,
4 in, in this bill, in this piece of legislation, is a
5 way to tame a wild beast, OK. Now we say things like
6 FTP and we mean that clearly, unambiguously, and
7 unequivocally because we see the harm that the police
8 departments cause firsthand. Black Lives Matter goes
9 into schools. We deal with kids from elementary
10 school all the way up to high schools. We've spoken
11 to Alex Vitaly's class, who was here just a few, a
12 little while ago, and none of our kids feel like the
13 police are heroes. There may be a small portion, but
14 they don't incite comfort. They make our people
15 uncomfortable. They make our people fearful. And
16 these are smallish children and that's why we say
17 FTP. We say FTP because they arrest people like the
18 [inaudible] lady. We say FTP because 25 officers
19 point guns at one unarmed black man on the train
20 station. That's why we say FTP. We say FTP because
21 this government puts hundreds of millions of dollars
22 into hiring new police officers to what, arrest
23 people for hopping a train? Like, these, these,
24 these, these, these, these cops are so protected and
25

1
2 they stand by their unconstitutional ways time after
3 time. They sit here and say yes, Stop and Frisk was
4 wrong. Were they saying that years ago? No. Stop
5 and Frisk was every, everything. If, if we didn't
6 have Stop and Frisk then all of our lives were at
7 risk. But now they sit here boasting about how good
8 things are post Stop and Frisk. They defended
9 [inaudible] until the interdepartmental hearing found
10 that he was guilty of murder and then they continued
11 to defend him. In my opinion they're a bunch of
12 unleashed barbarians and they need to be brought to
13 heel. So when I say FTP I expect all of you to say
14 it until things stop happening like this, and I ask
15 you just to bear with me.

16 CHAIRPERSON RICHARDS: Can I ask you to
17 wrap up?

18 UNIDENTIFIED: I got you, Brother Donovan.

19 CHAIRPERSON RICHARDS: Thank you.

20 UNIDENTIFIED: December 2nd, NYPD, two
21 NYPD officers arrested on domestic violence.
22 November 19th, cop beat a woman and falsified a
23 report, said she spat on him. Ah, November 7th, US
24 attorney arrested officers. Ah, October 28th, same
25 thing. The list goes on, all the way down to murder

1
2 for hire. I have 20 different arrests and this is
3 only dating back to May of this, this fricking year.
4 This is what we face, and New York has to be
5 aggressive in bringing them to heel and shutting them
6 down until eventually we abolish the police because
7 they are out of control and our communities need to
8 be protected. Thank you.

9 CHAIRPERSON RICHARDS: Thank you. Thank
10 you again for your testimony. Especially the youth
11 board, see young people up here. Ah, all right,
12 we're going to hear from the last panel. Ahmed
13 Mohammed, the Council on American Islamic Relations,
14 New York, Nathan Sheer, Shard, Electronic Foundation,
15 Towaki Komatsu. If there's anyone else who wishes to
16 testify please fill out a slip now and come up.
17 Seeing none, we will continue. You may begin.

18 AHMED MOHAMMED: Good afternoon, or
19 probably good evening, who knows. My name is Ahmed
20 Mohammed and I'm the litigation director of the
21 Council on American Islamic Relations, the New York
22 chapter. CAIR New York is a leading civil rights
23 advocacy group that represents the Muslim community
24 here in New York City and across the state. As an
25 organization that strives to protect the civil

1
2 liberties of Muslim Americans from discrimination,
3 harassment, hate crimes, and much more, we believe
4 that the Public Oversight of Surveillance Technology
5 Act is a pivotal step forward for our community and
6 the entire city. We believe the POST Act will
7 strengthen police oversight, promote public safety,
8 despite what you've heard today, and transparency,
9 and most importantly it will safeguard New Yorkers'
10 privacy rights. In the interest of time I will
11 shorten my prepared remarks. The one thing I want to
12 make clear is that we all know that since 2002 there
13 has been profiling by the NYPD that has
14 disproportionately impacted Muslim Americans,
15 religious and racial and ethnic profiling, not only
16 in New York City but beyond, and according to the
17 Office of the Inspector General for the NYPD, which
18 the NYPD vigorously opposed the creation of, that
19 office found that although Muslim Americans only make
20 up a small percentage, roughly 3% of this city's
21 population, that 95% of the NYPD's political and
22 religious investigations targeted Muslim New Yorkers
23 and Muslim organizations. That is why, that is one
24 reason why the POST Act is so crucial. It's
25 important that these most invasive NYPD programs,

1
2 like the Muslim surveillance for 20 years, never
3 produced a single lead, let alone stopped a single
4 terrorist attack, and that's according to the NYPD's
5 own testimony. Yet, these same tactics and
6 technologies, whose rewards are so tenuous, have a
7 very clear cost. Now the NYPD sat here today and I
8 wish they would have remained to hear our
9 testimonies. And they stated that the NYPD doesn't
10 engage in blanket surveillance. That same deputy
11 commissioner also said he was responsible for
12 dismantling the demographics unit. I ask all of you
13 what is the demographics unit? What was it there
14 for? Blanket surveillance of the Muslim community.
15 And many Muslim Americans have been the victims of
16 this extensive and suspicionless surveillance for
17 years. They've been treated as second-class citizens
18 in this city. Now, the blanket surveillance I'm
19 talking about, it was conducted against mosques,
20 local businesses that were owned by Muslims, or
21 businesses that catered to Muslims of Middle Eastern
22 descent and Muslim student associations. The NYPD
23 surveillance of Muslims has had a massive impact and
24 toll on the Muslim community and it has created a
25 level of distrust, a great level of distrust of law

1 enforcement. Many of our constituents, many of your
2 constituents, self-censor and refrain from attending
3 religious gatherings or affiliations. And although
4 most New Yorkers continue to unapologetically
5 practice their faith in the face of police
6 harassment, some have stopped attending their places
7 of worship. Those who continue to attend mosque face
8 frequent barriers in building trust with their fellow
9 community members, fearing them to be undercover
10 officers. Other New Yorkers are afraid to practice
11 their faith as they wish. They refrain from growing
12 a beard, like I have, wearing a head scarf or other
13 visible signs of their faith. Muslim faith leaders
14 are often guardedly, guarded to their congregations,
15 fearful that an out-of-context statement or even a
16 disfavorable dialect may spark an investigation.
17 Something I want to say, there's been a lot of talk
18 about the Fourth Amendment in the criminal
19 proceedings. None of these Muslims that were
20 targeted because of the demographics unit, none of
21 them were ever charged. They never got an
22 opportunity to, to discover the evidence or the
23 investigative file that the NYPD was creating against
24 them, so this whole fallacy that we have a due
25

1 process, just go to criminal court. I can't go to
2 criminal court unless I'm charged with a crime.
3 Muslims are law-abiding citizens. They will never
4 get that day and opportunity. Yet we are allowing
5 the NYPD to continue to do surveillance. The NYPD
6 for 20 years mapped and surveilled the Muslim
7 community. We should not give them another
8 opportunity to surveil and to map all of us and all
9 of you. It's been done to the Muslims. Don't let it
10 be done to the rest of New Yorkers. And this is not
11 a first time. We know that the NYPD has a history of
12 doing this. There is a history of at least a hundred
13 years where the NYPD has targeted marginalized
14 communities. Today or yesterday, I should say, it
15 was the American Muslims in New York City. Who knows
16 who is next. This whole idea that we are risking
17 public safety is false. Other major cities around
18 this country have passed statutes or bills similar to
19 the POST Act and as Congress, excuse me, Council
20 Member Gibson, I'm giving you a promotion, um, has
21 stated, you know, those, those bills have been much
22 stronger than this POST Act. So this whole fact that
23 we can't do this is wrong. Every governmental
24 entity, including the NYPD, has to be held
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2 accountable. The only thing I would ask this council
3 to really consider is with all the pushback that the
4 NYPD is going us it really begs the question what is
5 the NYPD hiding from all of us? Thank you.

6 CHAIRPERSON RICHARDS: Thank you.

7 NATHAN SHERD: Hello. Thank you for
8 allowing me to speak this evening in support of the
9 POST Act. My name is Nathan Sheard. I'm the
10 associate director of community organizing for the
11 Electronic Frontier Foundation. I'm an activist and
12 I'm a black man from New York City. Living at the
13 intersection of these realities has provided me with
14 a firsthand intimacy with the benefits that new
15 technologies can bring to our lives, as well as the
16 real-life consequences that these technologies can
17 impose if their acquisition and use are not well
18 thought out. I am proud of being a New Yorker. I am
19 proud of the city's contribution to art, culture, and
20 centuries of political discourse. I am also troubled
21 by our city's history of targeted surveillance of
22 those that would speak truth to power and already
23 marginalized communities. Technology has the power
24 to improve our lives. It can make our government
25 more accountable and more efficient and expose us to

1 new information. But it has also been used to
2 intrude on our privacy and chill our free speech.
3 Every technology used for government surveillance
4 raises a thicket of difficult questions. Should it
5 be adopted at all? What are benefits and the costs?
6 If it is adopted who will be targeted and will it
7 actually make us safer? The maintenance of a
8 democratic society requires an informed public.
9 Finding the most responsible answer to these
10 questions requires an opportunity for our most
11 trusted leaders and experts to engage in the
12 dialogue. When all concerned stakeholders
13 participate we make better decisions. Oakland, San
14 Francisco, Seattle, Nashville, Cambridge, these are
15 just a few of the cities across the US that have
16 already passed more robust legislation that
17 responsibly balances public safety, privacy, and the
18 civil liberties concerns implicated by surveillance
19 technology, empowering their elected city council
20 representatives to make critical decisions regular
21 privacy-invasive technology. While the POST Act
22 stops short of empowering the people's
23 representatives with this authority, it takes a
24 critical first step by bringing the policies and
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2 technologies intended to protect New Yorkers' rights
3 and safety out of the shadows and creating an
4 opportunity for the public and experts beyond those
5 working for the vendors to be heard in the
6 development of these policies. Public safety
7 requires trust between law enforcement and the
8 community served. To ensure that trust we need a
9 transparent and informed process. The POST Act
10 provides that process. On behalf of myself, my
11 family, and other marginalized and targeted New
12 Yorkers, and the Electronic Frontier Foundation, I
13 ask you to support this crucial legislation.

14 CHAIRPERSON RICHARDS: Thank you for your
15 testimony.

16 TOWAKI KOMATSU: I'm Towaki Komatsu. I
17 was in this room on November 18th. By law the video
18 for that hearing was required by law to be available
19 within three days online. It's still not. I
20 apprised Mr. [inaudible], sitting in front of me, um,
21 of that fact. Nothing has been done. I talked to
22 Mr. Grodenchik about that. I emailed you, Mr.
23 Richards, about that, didn't get a response. Um, I
24 also got discovery in this Bronx criminal case I
25 apprised you about, ah, previously. I received that

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2 in the last, I think, two or three days. The problem
3 with that discovery material is that it claims
4 there's an entry in the memo book starting at 7:20
5 p.m. The problem is before I got that memo book I
6 got the body cam. And I also asked for arrangements
7 to be made today so I could present this on a monitor
8 like that. Didn't get a response. So, um, let me
9 preface it. My testimony today, it's really not for
10 any of you. I don't trust any of you whatsoever.
11 It's for the federal judges assigned to my federal
12 lawsuit. Though this is the part of the body camera
13 from December 26, 2017, for an incident that took
14 place 12 days after I was in this room testifying
15 against the damned NYPD. I've got to adjust the
16 audio. Oh, actually, the audio doesn't kick in until
17 after 30 seconds. Wait, sorry, let me double check
18 that. Basically, um, yeah, the times are off. In
19 Steven Perez's memo book, he's an NYPD officer, he
20 claims that he stopped me at 7:20 p.m. The problem
21 is the video from the body camera starts at 7:17 p.m.
22 I'm walking on a public sidewalk. So if it were, Mr.
23 Richards, walking on a public sidewalk, minding your
24 own business, and an NYPD officer comes up to you,
25 puts his hands on you, how, how are going to react to

1 that? How are your kids going to react to that? How
2 is any in this damn room going to react to that?
3 Sorry for the language. But, um, I'm really pissed
4 off. I testified lawfully to you on November 18th.
5 You told me at the end of the hearing that Mr.
6 Gibbons over that would follow up with me. Didn't
7 get a response. So let me conclude. Like I said, I
8 don't trust anyone in this room except for the people
9 sitting to the left of me and sitting behind me. I'm
10 going to file papers in my federal lawsuit in the
11 next two days, voiding today's hearing, I'm voiding
12 the hearing that was conducted on November 18th
13 pursuant to New York State's open meetings law, and I
14 strongly suggest to anyone who is possibly thinking
15 about voting in the election for the Queens borough
16 president to actually choose a leader instead of the
17 person sitting in front of me. Thank you.

19 CHAIRPERSON RICHARDS: Thank you for your
20 testimony. With that being said, today's hearing is
21 concluded. [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 December 29, 2019