

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES
of the
COMMITTEE ON JUSTICE SYSTEM

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HELD AT: 250 Broadway, Committee Room
14th Floor

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Chairperson

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2 CHAIRPERSON LANCMAN: Good afternoon. I'm
3 Council Member Rory Lancman, chair of the Committee
4 on the Justice System. And welcome to this hearing on
5 the technology gap that exists between district
6 attorneys and public defenders. We are joined by
7 Council Member Alan N. Maisel from Brooklyn. We are
8 very aware of the unequal positions of public
9 defender organizations compared with their district
10 attorney counterparts. Fundamentally, there are
11 structural inequalities between the state and the
12 accused in our criminal justice system. In
13 investigating their cases, district attorneys have
14 access to the NYPD, the medical examiner, New York
15 City Health and Hospitals, and all of the information
16 that comes through those relationships. The
17 expansive power of the state represents a built-in
18 challenge for defenders. We need to know much more
19 about the widening gap between the technological
20 reaches of our DAs verse the abilities of public
21 defenders to keep up, and that is the scope of
22 today's hearing. For example, here in Manhattan
23 prosecutors' resources include a multi-million-dollar
24 NYPD lab where police can use algorithms to try to
25 get data out of locked phones and a super computer

1 that can generate 26 million random pass codes per
2 second, as well as its own cyber crime and identity
3 theft forensics lab. No public defender organization
4 has similarly deep technological resources. And we
5 need to think about ways to bridge gaps like this
6 one. The ability of a defendant to prove his or her
7 innocence may sometimes depend on their having access
8 to exonerating digital information. The Legal Aid
9 Society, one of many providers of criminal defense
10 services has built a digital forensics lab for just
11 these sorts of cases, but it is severely limited and
12 constrained by the Legal Aid Society's budget
13 resources. Other public defender organizations do
14 not have even Legal Aid's resources and access to
15 such a lab is not routinely available to those
16 organizations and their client. Today's topic is one
17 we need to understand more fully. The specific
18 technologies that define the disparities between
19 prosecutors and defense teams, how defendants are
20 impacted by those disparities, and ultimately the
21 ways in which we might address them. We look forward
22 to hearing from the Mayor's Office of Criminal
23 Justice, as well as some of our city's criminal
24 defense organizations for a sense of where we are and
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1 possibly some creative ideas for how to move forward.

2 And with that I would to invite the gentlemen from
3 the Mayor's Office of Criminal Justice to deliver
4 their testimony once they are sworn in. Ready? Do
5 you swear, raise the right hand, do you swear or
6 affirm the testimony you are about to give is the
7 truth, the whole truth, and nothing but the truth?
8

9 UNIDENTIFIED: It is.

10 CHAIRPERSON LANCMAN: Good.

11 JORGE CAMACHO: Thank you. Good
12 afternoon, Chair Lancman and members of the Justice
13 System Committee. My name is Jorge Camacho, senior
14 counsel at the Mayor's Office of Criminal Justice,
15 and I am accompanied by MOCJ's senior counsel, Scott
16 Matthews-Novelli. On behalf of the office, we thank
17 you for the opportunity to testify today. MOCJ
18 advises the Mayor's Office on criminal justice policy
19 and is the mayor's representative to the courts, the
20 district attorneys, the defenders, and state criminal
21 justice agencies, among others. MOCJ designs,
22 deploys, and evaluates citywide strategies to
23 increase safety, reduce unnecessary arrests and
24 incarceration, improve fairness, and build the strong
25 neighborhoods that ensure enduring public safety. At

1 your request, we appear before you today on the topic
2 of technology used by the city's public defenders and
3 district attorneys' offices. We would like to begin
4 by first expressing our support of the council's
5 efforts to explore this matter and to explore the
6 resources our criminal justice partners have to
7 fulfill their important responsibilities. It is our
8 hope to provide the City Council with the information
9 we currently have to aid in its consideration of this
10 topic. One of MOCJ's most important functions is to
11 coordinate with our criminal justice partners,
12 including the city's indigent defense providers and
13 district attorneys' offices to evaluate and meet
14 their institutional needs. Some developing needs may
15 be met through redeployment or utilization of
16 existing resources. Additionally, defense providers
17 may identify areas where they believe additional
18 funding would be beneficial. Regardless, MOCJ has
19 long strived to be responsive to our criminal justice
20 partners and their needs and we will continue to be
21 so. To best understand the resource interest of our
22 partners MOCJ relies on a number of pathways for
23 soliciting and receiving their input. First, MOCJ
24 regularly hosts various task forces and committees
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1 dedicated to particular areas, like criminal justice
2 reform implementation, raise the age implementation,
3 and addressing domestic violence, among others. The
4 district attorneys' offices and the city's defense
5 providers are consistently invited to participate in
6 these groups and we provide opportunities to each
7 participating organization to offer their insights,
8 present their challenges, and provide their proposed
9 solutions to those challenges. These groups have
10 been productive in addressing the challenges raised
11 by participants and we believe we have been
12 responsive to requests for assistance and additional
13 resources that have been made through them. For
14 example, we recently asked members of the criminal
15 justice reform implementation task force, including
16 defenders and district attorneys' offices, to
17 identify the resources they believed would be
18 necessary to facilitate their compliance with and
19 implementation of state criminal justice reforms that
20 were enacted last year and that went into effect on
21 January 1 of this year. We then assisted them with
22 their requests, resulting in a substantial allocation
23 of new resources to them. In addition to these task
24 force and committee meetings, we maintain a
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1 continuous and direct line of communication with each
2 of the district attorneys' offices and defense
3 providers on a range of issues and for a number of
4 purposes, including policy coordination, information
5 sharing, and troubleshooting of problems that may
6 arise. This regular communication provides our
7 partners with another channel through which they are
8 welcome to share any resource request that they would
9 like for us to consider. Again, we believe we have
10 been able to meet many of our partners' needs through
11 these channels. We understand that a conversation
12 relating to technology issue involving the district
13 attorneys' offices and defense providers is a
14 complicated and highly technical one and that the
15 issues that might arise merit careful consideration.
16 It is important to note the immense promise of
17 criminal justice reform to address at least some
18 potential issues [inaudible] each of the district
19 attorneys' offices and defense providers on a range
20 of issues, including a number of purposes [inaudible]
21 may not have been disclosed prior to a case's
22 disposition. The new discovery process may thus help
23 address some of the concerns about which technical
24 resources were utilized by law enforcement in the
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2 investigation and prosecution of a case, permitting
3 defense attorneys to better evaluate the merits of
4 the case at an earlier point than was previously
5 typical. Accordingly, when this new process reaches
6 maturity it will be clearer whether issues might
7 require additional attention and solution [inaudible]
8 the promise of criminal justice reform to address at
9 least [inaudible] inequity of the criminal justice
10 policy. And we look forward to continuing our work
11 with them in service of those needs. Should any of
12 them advise us of any particular concerns they may
13 have about technical resources we welcome that
14 conversation with them. We thank the council for its
15 attention to these issues and for the opportunity to
16 engage with you further today, and we are happy to
17 address any questions you may have.

18 CHAIRPERSON LANCMAN: Thank you. So, um,
19 I'm wondering if the techniques of the indigent
20 defense providers are taken into consideration when
21 formulating the, the RFP for their, I wouldn't say
22 annual, but their multi-year contracts. Um, how are
23 some of the following services and technologies
24 currently used by the district attorneys' offices
25 funded for public defenders - digital, forensics

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2 generally, such as what the Manhattan DA has, the
3 cyber crime lab, um, the social media and GPS data,
4 um, which is through the use of such programs as
5 Cloud Analyzer, smart phone and cloud storage access
6 used, um, which is obtained through such software as
7 Magnet Forensics, Great Kay, Black Swan Digital
8 Forensics that are used by the DAs' offices, and DNA
9 results analysis. How are these kinds of services
10 currently used by the DAs' offices? How are they
11 funded so that public defenders can use the same kind
12 of services?

13 SENIOR COUNSEL CAMACHO: So generally
14 speaking...

15 CHAIRPERSON LANCMAN: The same kind of
16 tools and services.

17 SENIOR COUNSEL CAMACHO: Certainly. Ah,
18 generally speaking the defense organizations are
19 allocated a technology budget as part of their
20 contracts. Those budgets do not go into granular
21 detail as to how that allocation is to be expended.
22 The organizations are afforded a great degree of
23 discretion, um, to prioritize their needs, and so we
24 don't direct them as to how to use those funds.

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2 CHAIRPERSON LANCMAN: Are those, is that
3 technology budget part of their, their contract, or
4 that's done on a yearly basis through the city's
5 regular budget process?

6 SENIOR COUNSEL CAMACHO: So it's, it can
7 be part of the contract, ah, process itself. Um, we
8 also do maintain lines of communication with them to
9 assess any new needs that may arise outside of the
10 budget process, outside of the contracting process.
11 Um, so there are any number of ways in which, in
12 which these resources may be allocated to them.

13 CHAIRPERSON LANCMAN: Well, we'll get to
14 those, those other means of communication the task
15 force, the various task forces for this or that in a
16 minute. But, um, in the contracts themselves is, is
17 any consideration given and then any resources given
18 to provide these particular services or to provide,
19 ah, digital or, or biological forensics services, um,
20 at all? Or is it just lumped into the same
21 technology budget that they might have to draw upon
22 for their, for their phone system and for their
23 computers.

24 SENIOR COUNSEL CAMACHO: Consideration is
25 given to the needs that are brought to our specific

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2 attention, ah, as part of the, the contracting
3 process. Ah, we have not been approached by any of
4 the defender organizations on this specific topic or
5 on these specific needs. But, again, we're open to
6 having those communications with them and those
7 conversations with them.

8 CHAIRPERSON LANCMAN: And you like you're
9 wishing to say something.

10 COUNSEL MATTHEWS-NOVELLI: I'd just like
11 to add the agreements don't go into that level of
12 specificity with regards to, um, how funds are used.

13 CHAIRPERSON LANCMAN: Um-hmm. And, and,
14 just to, to be clear, none of the public defender
15 organizations have come to you and said, hey, we need
16 a forensic lab. We need to be able to, to unlock
17 iPhones. We need to, ah, have more access to, to DNA
18 analysis in, in the context of, of reviewing the
19 multi-year contracts?

20 UNIDENTIFIED: Not so far.

21 CHAIRPERSON LANCMAN: OK. Um, has MOCJ
22 or any other city agency conducted any kind of study
23 on the forensic tech needs of public defenders,
24 particularly as it relates to the, the disparity
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2 between what the public defenders have access to and
3 what the district attorneys have access to?

4 SENIOR COUNSEL CAMACHO: Ah, no, I'm
5 sorry, I was just [inaudible]. My apologies. Could,
6 ah, could you please that?

7 CHAIRPERSON LANCMAN: Sure. Has MOCJ or
8 any other city agency, or to your knowledge any state
9 agency done any kind of study, um, analyzing the, ah,
10 forensic technology and services needs of public
11 defenders, particularly as it relates to what the
12 district attorneys are able to, to marshal to make
13 their case?

14 SENIOR COUNSEL CAMACHO: Ah, we have not
15 conducted any such study. I'm not aware. I can't
16 speak to whether or not anyone else has.

17 CHAIRPERSON LANCMAN: Are you concerned
18 that it seems the public defenders are at, at a very
19 significant disadvantage when it comes to access to
20 this kind of technology? And I don't mean just for
21 the sport of winning or losing cases, but to be able
22 to adequately represent their clients and prevent
23 wrongful convictions, etc.

24 SENIOR COUNSEL CAMACHO: We're certainly
25 eager to, to hear more about their concerns, which is

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2 why part of our efforts including participating in
3 this hearing and, ah, continuing thereafter to remain
4 to hear what their concerns are as they testify.

5 CHAIRPERSON LANCMAN: Well, I would
6 appreciate that very much. There's nothing more
7 frustrating to the council and to those who are
8 testify after the, the relevant government agency
9 that the government officials then leave the hearing
10 and don't hear what anybody else has of the say. Um,
11 the, um, the task forces that you mentioned, I don't
12 know how formal they are, but I know that, that they
13 exist. I had the pleasure of seeing down with Liz
14 Glazer in the Queens district attorney's office
15 yesterday to talk about some bail reform issues, um,
16 and I know that there's the, the task force done on
17 implementing the reforms that were passed up in
18 Albany. Um, do you think that it would be worthwhile
19 to have some kind of task force or committee or
20 however you want to call it, but something with some
21 formality that looks at these issues and examines
22 ways that the public defenders could maybe get more
23 support to do the kind of forensic work that, that
24 their counterparts in the DAs' offices are doing?

2 SENIOR COUNSEL CAMACHO: Once we have a
3 better understanding from our partners as to what
4 their needs, ah, we can evaluate whether that's the
5 best to, to consider that topic with them.

6 CHAIRPERSON LANCMAN: OK. Um, just get
7 into a little bit of detail for me. Going back to
8 the contracts, um, is there some kind of formula
9 applied to what percentage of the contract will go to
10 technological forensic services, or is it based on
11 some estimation of what the actual need would be, and
12 if so is that estimation based on case load? How do
13 you figure out, OK, this is how much technological
14 funding should go to Legal Aid verse New York County
15 Defender Services verse Bronx Defenders Services,
16 etc?

17 SENIOR COUNSEL MATTHEWS-NOVELLI: Ah, so
18 providers are given a...

19 CHAIRPERSON LANCMAN: Is the red light
20 on?

21 SENIOR COUNSEL MATTHEWS-NOVELLI: Yes.

22 CHAIRPERSON LANCMAN: And just move it a
23 little closer, please.

24 SENIOR COUNSEL MATTHEWS-NOVELLI: Ah,
25 yeah, the providers are given a great deal of

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2 discretion with regards to where they direct the
3 funding that they receive each year, and so it's not
4 kind of a, a top-down process of determining
5 allocations on that basis.

6 CHAIRPERSON LANCMAN: No, I understand
7 what you said earlier, which is there's a pot of, and
8 correct if I'm from wrong and even expressing it in
9 this way. There's a pot of technology money that is
10 part of the contract. Is that correct?

11 SENIOR COUNSEL MATTHEWS-NOVELLI: There's
12 a pot of money for an organization and then it's, you
13 know, then we have conversations about, um, how it's
14 allocated. So it's not that there's a, we don't
15 restrict funding like that for a specific use for a
16 specific organization.

17 CHAIRPERSON LANCMAN: When you say
18 funding like that, just so I understand the
19 contract...

20 SENIOR COUNSEL MATTHEWS-NOVELLI: Yes.

21 CHAIRPERSON LANCMAN: Is there an element
22 of the contract, well, there's, there's a part of the
23 contract which is for personnel services. There's a
24 part of the contract for, I don't know, how many
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2 other different categories. Is one of those
3 categories technological/forensic services?

4 SENIOR COUNSEL MATTHEWS-NOVELLI: No, um,
5 you know, I mean, well, kind of when I say like that
6 it's, ah, if there's a specific city initiative such
7 as, ah, cost of living...

8 CHAIRPERSON LANCMAN: Just time out. Can
9 we get, can we get control of whatever's going on
10 over here? Thanks. Go ahead.

11 SENIOR COUNSEL MATTHEWS-NOVELLI: Um, it,
12 you know, if there's a specific initiative that we
13 have funded that would be kind of a separate funding
14 allocation, but other than that it doesn't kind of
15 go, go beyond that in terms of how we direct, ah, do
16 the specific expensing.

17 CHAIRPERSON LANCMAN: OK. Um, I do
18 believe that, ah, the public defenders' offices had,
19 had stated some specific needs, um, related to IT and
20 their capital request associated with their criminal
21 justice reform initiative, which they designated as
22 technology projects. Do you know about that request
23 and whether or not any of those requests were funded?

24 SENIOR COUNSEL CAMACHO: So, yes, we did
25 receive those requests from the district DAs' offices

2 as well as the defense organizations and those
3 requests were substantially funded as a result.

4 CHAIRPERSON LANCMAN: They were
5 substantially funded?

6 SENIOR COUNSEL CAMACHO: Yes.

7 CHAIRPERSON LANCMAN: Can you tell me
8 what some of those requests were, do you recall?

9 SENIOR COUNSEL CAMACHO: Ah, it, it
10 ranged from, from a host of issues, you know,
11 something as simple as providing technological
12 resources to both gather discoverable material on the
13 law enforcement side and also to receive it on the
14 defense side. So there were myriad, ah, myriad
15 things that were funded with that, with those
16 allocations.

17 CHAIRPERSON LANCMAN: To your knowledge
18 do the public defenders have access to, and to what
19 extent, do they have access to, um, the DA, the
20 Manhattan DA cyber crime and identity theft lab, or,
21 um, the New York-New Jersey Electronic Crimes Task
22 Force. And some of the other, um, organizations and,
23 and labs that have been, ah, that are available to be
24 used by the district attorneys' offices, or is there
25 a clear demarcation all of that stuff is prosecutory

1 use and public defenders you're on your own. Just
2 trying to understand.

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4 SENIOR COUNSEL CAMACHO: Ah, we, we
5 couldn't speak to, to the access that they each have.
6 We defer to them to, to explain what access they do
7 or do not have.

8 CHAIRPERSON LANCMAN: All right. Well, I
9 don't mean to be difficult, but shouldn't you have an
10 understanding of that in order for you to be able to,
11 um, think through what other resources that the
12 public defenders need in order to be able to
13 represent their clients? I get that they'll know
14 better than you, but shouldn't MOCJ have an idea of
15 what resources are available to the public defenders
16 so that you can put out RFPs and ultimately sign
17 contracts that ensures that these organizations have
18 some baseline level of resources and able to do their
19 job well?

20 SENIOR COUNSEL CAMACHO: So that's why we
21 have these multiple channels to, to get that type of
22 input from them directly. Again, they have not
23 raised these specific concerns with us, but those
24 channels remain open.

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2 CHAIRPERSON LANCMAN: OK. Um, has there
3 ever been discussion, as far as you're aware, of
4 creating some kind of lab, forensics lab, digital,
5 biological, whatever, that the various public
6 defenders organizations funded by the city could,
7 could maybe share, so they can have a lab or a
8 resource of their own? Has that ever been a, a topic
9 of discussion as far as you know?

10 SENIOR COUNSEL CAMACHO: Ah, none that's
11 been brought to us for participation, for
12 consideration.

13 CHAIRPERSON LANCMAN: All right. Let me
14 just raise one discrete issue which I know has come
15 up, um, and I think our public defender friends will,
16 will talk about it, and that specifically has to do
17 with access to the Office of the Chief Medical
18 Examiner. Um, I've received complaints, concerns,
19 that that access is very, very limited, that they
20 might, um, have, you get one meeting that maybe lasts
21 an hour and, and then that's it. Whereas obviously
22 the, the prosecutors it's a constant back-and-forth.
23 Are you, are you aware of any such policy or practice
24 in the medical examiner's office to so limit the
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2 access to the public, ah, by the public defenders to
3 their work.

4 SENIOR COUNSEL CAMACHO: Ah, we couldn't
5 speak to that, no. We again defer to OCME, ah, to
6 discuss their policies and practices or to the
7 defense organizations...

8 CHAIRPERSON LANCMAN: But are you, but
9 are you aware of that practice?

10 SENIOR COUNSEL CAMACHO: No, we could not
11 speak on [inaudible].

12 CHAIRPERSON LANCMAN: Well, there's a
13 difference between could not speak about it to, to
14 not being aware of it.

15 SENIOR COUNSEL CAMACHO: [inaudible]
16 [cross-talk]

17 CHAIRPERSON LANCMAN: I just want to
18 cross the threshold that you're not aware of it.

19 SENIOR COUNSEL CAMACHO: [cross-talk]
20 saying that there is or is not any such policy.

21 CHAIRPERSON LANCMAN: Got it. OK. All
22 right. I think that's all we have for you. I do
23 appreciate your willingness to, to stick around and
24 hear from the public defenders. Um, at the very
25 least, at the very least, at the end of this hearing

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2 I'm sure that I will form the opinion that there
3 should be some kind of task force committee or
4 whatever you want to call it that engages with the
5 public defenders on these issues and we would love to
6 hear, um, that that is going to be created and at
7 some point, ah, speaking just for myself, would
8 welcome some input from MOCJ and the public defender
9 community on some of the resources that might need to
10 be put into the budget to, ah, level the playing
11 field somewhat. So thank you for your testimony.

12 SENIOR COUNSEL CAMACHO: Thank you.

13 CHAIRPERSON LANCMAN: And stick around.

14 SENIOR COUNSEL MATTHEWS-NOVELLI: Thank
15 you.

16 CHAIRPERSON LANCMAN: OK. Next we will
17 hear from, um, the public defender organizations. I
18 think it's Jerome Greco from the Legal Aid Society,
19 Elizabeth Vasquez from Brooklyn Defender Services,
20 Sergio De La Pava from New York County Defenders
21 Services, and Olivia Sheck from the Bronx Defenders.
22 Is there, is there room for all of you? I don't know
23 if we have access to another table, but you could
24 pull up as many chairs as you want.

25

2 UNIDENTIFIED: I think, ah, I think we're
3 OK. We're used to sharing spaces.

4 CHAIRPERSON LANCMAN: I'm just going to
5 wait a second for them to distribute your, your
6 written testimony. Have you all given copies of your
7 testimony to the Sergeant at Arms?

8 UNIDENTIFIED: Yes.

9 CHAIRPERSON LANCMAN: We're not going to
10 put you on the clock, but top marks for brevity, so,
11 to the point. But let's get you sworn in first. So
12 if you can raise your right hand. Do you swear or
13 affirm that the testimony you are about to give is
14 the truth, the whole truth, and nothing but the
15 truth?

16 UNIDENTIFIED: Yes.

17 UNIDENTIFIED: I do.

18 CHAIRPERSON LANCMAN: Good. In whatever
19 order you would like.

20 JEROME GRECO: Good afternoon. I'm
21 Jerome Greco. I'm the supervising attorney for the
22 digital forensic unit at the Legal Aid Society. I
23 want to thank you for holding what I think is a very
24 important hearing, as I think you've actually
25 eloquently pointed out earlier. Um, because it seems

1 that you have an understanding of some of the issues
2 already, I think some of the things I was going to
3 discuss I may skip over a little bit. Um, but I
4 think, ah, I'm in a unique position versus the other
5 public defender offices in that I have some of the
6 in-house access to experts and to, um, technology,
7 and I'm able to see on a day-to-day basis just the,
8 the, how different that makes our practice and how
9 much better that is for our clients. Um, I wanted to
10 give a particular example, ah, which was, ah, we had
11 a case where a client had been falsely arrested
12 multiple times for harassing his ex-girlfriend by
13 allegedly messaging her threats and posting
14 information about her online. The problem here was
15 that both our client and the complainant were
16 actually victims in this case. Um, we were able to
17 extract data from multiple phones, social media
18 accounts, email accounts, and cloud storage. We
19 obtained phone records and preserved public social
20 media information. We were eventually able to
21 present to the prosecution that not only was our
22 client not the person harassing the complainant, but
23 we also identified the individual responsible. Our
24 client's case was dismissed, but it took extensive
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1 work and resources to prove the available evidence
2 was false and misleading. It would be have been
3 difficult to defend our client solely through cross
4 examination because the complainant, for her part,
5 legitimately believed that our client was the
6 harasser and the evidence on the surface appeared as
7 such, and it was only with our access to technology
8 and our expertise that we were able to show
9 otherwise. Ah, the NYPD's investigation never came
10 close to that level, nor did they have any interest
11 in that. Um, so we, you know, we can't solely rely
12 upon law enforcement and their access to, ah, to do
13 this for us and we need our own ability to analyze
14 our own results. Since my unit was featured in the
15 *New York Times* article a few months ago I've received
16 phone calls and emails from approximately 20 public,
17 different public defender offices from around the
18 country. They all wanted a version of what we
19 already had and they all understood what the problems
20 are here and the benefits of using it. Ah, it was
21 more of a question as, as it always tends to be with
22 public defender offices is do we have the funding and
23 resources available. I think you had mentioned about
24 the, the technology budget, ah, and the technology
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1 budget, you know, is not sufficient for what we're
2 talking about here, for a number of reasons. And,
3 and I say to MOCJ, you know, I appreciate the, their
4 testimony, ah, so if we haven't specifically
5 mentioned it to you we're mentioning it today, ah,
6 and so here's, here's your call and we're happy to
7 talk to you about these things and be able to talk
8 about cost and price and be able to help you with the
9 other public defender offices, too, since we have a
10 better idea of where this actually leads. Um, with
11 that, the technology is not the same. Even, even on,
12 on the basic level we don't have the, the same
13 capabilities as the DAs' offices. Oftentimes we're
14 asking to borrow their equipment in courtrooms in
15 order to be able to properly present things, ah, to a
16 jury. Ah, we don't have our own large screen smart
17 boards and we don't have our own speaker systems.
18 There are courtrooms that have some of that already
19 built in, but very few of them are criminal courts.
20 Most of them are commercial litigation courts which,
21 obviously, can afford that type of, a, that type of
22 thing on their own. Um, with that as well, you had
23 mentioned about OCME, ah, and, and I do want to point
24 out that what you heard is, is accurate, that they
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2 are not meeting with us as much as they would meet
3 with the district attorney's office, even when we
4 request it. They do limit our time with them, and on
5 a, in a recent incident we were made aware that OCME
6 met with the DAs' offices to discuss, ah, their
7 obligations under the new discovery law, the new
8 criminal justice reform. And when our office, ah,
9 when the Legal Aid Society requested a similar
10 meeting we were turned down. And it's difficult for
11 us to understand how you can say this is an independent
12 agency when you coordinate with the prosecution and
13 you don't allow the defense to have that same level
14 of access. Um, as, I think an important part of
15 this, too, for everyone to realize is that this is
16 not just, ah, a one time bang, that's it. This
17 requires ongoing recurring costs. For example, our,
18 our analysts and examiners need to recertify
19 certifications. That costs money. They need to go
20 to trainings. Technology changes at a rapid pace.
21 While we're sitting here there's probably something
22 significant has changed that I'll find out when I
23 walk out the door. And if we don't keep getting
24 trainings and keep learning we'll lose our ability to
25 be qualified as experts in court, and we'll lose our

1
2 ability to properly represent our clients. Just a
3 change in IOS or Android systems, ah, could change
4 what we're actually able to accomplish and, or how we
5 are going about doing that, and that's a significant
6 problem. And so, you know, we have licensing fees,
7 we have upgrade costs, ah, we have staff costs, and
8 realistically this is something that needs to be
9 built in for all future budgets because this isn't
10 going away. It's going to get greater and greater.
11 As, as technology imbeds itself more and more into
12 every individual's life. It's no different in the
13 criminal justice system, and I even see this with our
14 juvenile rights practice now. Every one of those
15 kids knows some app that I have to go research, and
16 it's my job to know it, right? And that's not gonna
17 change. It's just going to become more and more
18 prevalent and I think it's important that we, that we
19 take care of that now before the problem gets too big
20 for us to address. And I'd like to point out that we
21 have this opportunity right now and the rest of the
22 country is watching this, not maybe live feed or
23 anything like that, but they're paying attention to
24 this because they're all trying to do the same thing,
25 because they all realize that the world in which we

1
2 operate has changed and the world in which public
3 defenders represent their clients has also changed as
4 a result. Thank you.

5 OLIVIA SHECK: Good afternoon, Chairman
6 Lancman. My name is Olivia Sheck and I'm an attorney
7 in the criminal defense practice at the Bronx
8 Defenders. I'm also a member of our office's
9 forensic practice group. There is indeed an enormous
10 gap between public defenders and law enforcement when
11 it comes to access to technology. And by technology
12 I don't just mean the digital forensic tools that
13 Jerome just discussed, but also other technologies
14 that are used to generate evidence against our
15 clients, such as DNA analysis software, pattern
16 recognition tools, verbalistics, and fingerprint
17 evidence, and also breath alcohol testing devices,
18 which I'll talk about later. This technology gap
19 undermines our ability to assess and challenge the
20 reliability of the prosecution's evidence, as well as
21 our ability to gather exculpatory information on
22 behalf of our clients. The first step to achieving
23 this goal, we believe, must be to create greater
24 transparency about what technologies are being
25 employed as well as the methodologies that are being

1 used. Unless we are notified when law enforcement
2 begins to use a new technology we will also be
3 playing catch-up. We also need additional funding to
4 be able to hire experts who can help us to understand
5 the technologies that are being used and also assess
6 their reliability. Just last week our office and the
7 Legal Aid Society jointly ligated a hearing about the
8 admissibility of firearm tool Mark identification
9 evidence. Our offices were able to share costs
10 because we represented co-defendants and much of the
11 expense had already been shouldered by public
12 defender offices in other jurisdictions. So the cost
13 was in the tens of thousands. Because we were able
14 to make this investment, however, we were able to
15 persuade the court that the evidence the prosecution
16 sought to introduce was not reliable and should not
17 be admitted. If we hadn't been able to hire these
18 experts the evidence likely would have come in and
19 the precedent would have been set and used to
20 introduce unreliable evidence in every similar case
21 that followed. This example highlights the need for
22 additional funding for us to be able to hire experts
23 in these cases. But in some case, in some cases
24 money to hire experts isn't enough to bridge this
25

1 gap, because even the experts don't have access to
2 the technologies that are being used by law
3 enforcement. Take, for example, the case of breath
4 alcohol testing, which is used in virtually every
5 driving while intoxicated case. A couple of months
6 ago the *New York Times* published an expose which
7 found that many commonly used breath testing devices
8 produce unreliable results. The article also
9 recounted a number of cases from other jurisdictions
10 where defense attorneys fought and were able to gain
11 access to breath testing devices and they ended up
12 discovering serious problems with those machines, for
13 example, with the machine's internal source code.
14 Here in New York City the NYPD recently transitioned
15 to using a new breath testing device that is
16 completely shrouded in secrecy. The machine is
17 called the Intoxilyzer 9000 and the manufacturer has
18 refused to allow independent experts to access the
19 device or attend their trainings. The Intoxilyzer
20 9000, yes. Um, the result here is that there's only
21 one expert based out of Canada who was available to
22 the defense who has ever actually interacted with
23 this machine and he had to do so at a secret location
24 without the permission of the manufacturer. This
25

1 dearth of experts who could consult or testify about
2 the potential for error in the Intoxilyzer 9000 makes
3 it impossible for us to adequately confront the
4 prosecution's evidence in these cases.
5

6 CHAIRPERSON LANCMAN: And, and the
7 results of that machine's tests, that is being used
8 in evidence?

9 OLIVIA SHECK: Yes, in virtually every DWI
10 case.

11 CHAIRPERSON LANCMAN: Without the
12 defense's ability to understand the test and examine
13 it's methodology?

14 OLIVIA SHECK: Yes, that's exactly what's
15 happening.

16 CHAIRPERSON LANCMAN: That's very
17 shocking to me.

18 OLIVIA SHECK: To us as well. Um, so
19 just to make this example more vivid, I'll share a
20 story from our office. Um, we had a case that went
21 to trial last year where our client appeared to be
22 sober on video, but he registered a blood alcohol
23 concentration of 0.10 on the Intoxilyzer 9000, which
24 is above the legal limit of 0.08. As it turned out,
25 he worked every day with a chemical that had been

1 shown on previous models of the Intoxilyzer to
2 artificially inflate the results. We attempted to
3 call an expert to testify about the possibility that
4 our client's result could have been artificially
5 inflated as a result of his occupational exposure to
6 this chemical, but the judge precluded our expert
7 from testifying on the grounds that he had never
8 interacted with the 9000. This client was convicted
9 and now has a criminal record. So as this story
10 demonstrates there is no way for us to assess or
11 challenge the reliability of these test results
12 coming from this machine without actually having
13 access on behalf of experts to the machine. Yet
14 there is at this moment no way for us to access it.
15 So we're asking for the City Council to intervene to
16 correct this injustice by requiring the NYPD to grant
17 our experts access to the machine and also to the
18 trainings that they conduct on how to operate and
19 maintain it. There is both the need and the
20 potential for the City Council to alleviate the
21 technology gap between public defenders and law
22 enforcement. This can be accomplished in part
23 through additional funding, which would allow public
24 defenders to retain experts, license new
25

1 technologies, for example, and I think this will be
2 discussed later, um, the STRMIX technology that's
3 used by the OCME to analyze DNA, it's also discussed
4 in our written testimony. And also to hire staff who
5 could help us operate these technologies. The City
6 Council could also provide crucial assistance by
7 requiring greater transparency from law enforcement,
8 and I'll just note that, you know, in the case of the
9 9000 we're now in a position where if the NYPD did
10 agree to allow us to access the machine the
11 manufacturer would likely intervene to try to prevent
12 that from happening. Had we known in advance that
13 the NYPD was considering purchasing this particular
14 machine, then we would have had an opportunity to
15 voice our concerns about the lack of transparency.
16 There are other machines in existence that don't,
17 where the manufacturers don't take this secretive
18 approach. So I think that's a good example of the
19 need for transparency. Only by closing this
20 technology gap can the council ensure that public
21 defenders are prepared to uphold our adversarial
22 function and effectively defend our clients. Thank
23 you.
24

1
2 SERGIO DE LA PAVA: Thank you for this
3 hearing. I'm Sergio De La Pava of New York County
4 Defenders Services. And I think the goal of this
5 hearing is quite, um, laudable, um, because there is
6 a technology gap and, more importantly, as Mr. Greco
7 mentioned, it's a gap that threatens to widen pretty
8 much as we're having this hearing. So if you know
9 anything about technology it's that it advances at a
10 rapid rate and reliance on it advances at a rapid
11 rate. So to talk about, um, as was done earlier,
12 talk about what we brought up in contracts with the
13 city that were being negotiated or at least
14 negotiations that began years ago, um, it's, it's
15 pretty clear to say that a lot of the technology
16 we're discussing today simply wasn't on our radar and
17 a lot of the credit goes to, um, the Legal Aid
18 Society and other defender offices for bringing to
19 light a lot of the technology that's being used by
20 law enforcement and the prosecutors. Um, you know, I
21 will say that when the article came out referring to
22 Legal Aid's, you know, right lauded unit, and it's a
23 great credit to them that they created it. There
24 was, there has been, um, a national reaction of
25 saying, you know, essentially, we're a public

1
2 defender office, why didn't we think of that. And
3 some of that might be a failure of imagination, but a
4 lot of it, um, 99% of it, is tied to resources.
5 Legal Aid has approximately 20 times the amount of
6 employees that New York County Defenders Services
7 has. So while we have a technology budget, it's
8 going towards things like printers and monitors, um,
9 not anything that essentially is allowing us to
10 fulfill our constitutional obligation to make sure
11 that the people are meeting, um, their burden of
12 proof in, in every respect. Um, there was some
13 discussion of, of potentially the defender offices in
14 this city sharing resources, whether it being an
15 independent panel. We think, um, quite strongly, and
16 I think we all agree, that the technological gap can
17 only be closed by having in-house, ah, systems in
18 place and not via a shared system. Part of the
19 reason why there are multiple offices in New York
20 City providing indigent defense is the rules
21 regarding conflict of interest in legal
22 representation. So while I don't doubt that, ah,
23 Jerome would, would take my phone call and offer to
24 help, um, as much as he could, it would be unethical
25 for me to ask him to do some kind of analysis on the

1
2 phone that could ultimately, um, implicate one of the
3 Legal Aid's clients or, for example, if we had co-
4 defendants. So it's just simply not realistic that
5 we will share our resources that way. Nor is it a
6 good idea to create, for example, a citywide lab, um,
7 because that would invite a whole host of other
8 issues, which is how do you prioritize the cases?
9 How would they, ah, would there, almost instantly you
10 could envision a backlog in that, in that, um, um,
11 agency. You could also envision problems with
12 confidentiality and problems with, um, the potential
13 of information leaking out. So I think, um,
14 ultimately I think all the public defender offices
15 agree we need to follow the model that was
16 brilliantly established by Legal Aid and be able to
17 do these analyses ourselves and decide the relevance
18 of the results that we get. Um, and, and I will say
19 that with respect to costs, I do want to urge that,
20 again, you heard this before. It's not a one-time
21 situation of like well if we buy STRMIX, or if we,
22 more accurately, license STRMIX for \$25,000, let's
23 say, or we then, um, establish a relationship that
24 allows us to do this digital forensic, ah, there's
25 still the question of what is coming tomorrow that we

1
2 don't even know about yet. With technology it's the
3 need not just to staff but to constantly be training
4 that staff and to constantly be aware of what the
5 technological, um, advances are at, the DA's office,
6 believe me, is aware of, and we were here a few weeks
7 ago talking about the POST Act and how important it
8 is for us to know what they're using, but that's,
9 this is a hearing that I think piggybacks on that.
10 It's like once we know what they're doing, do we have
11 a meaningful ability to test it, to test their
12 result? And I think it's clear that right now, at
13 least in my office, we do not. We would rely on
14 outside experts so we would have to pay out of our
15 existing budget and, and that's simply not feasible,
16 you know, we represent tens of thousands of people a
17 year. So I join in all of my co-defenders are
18 talking about and I do think it's important for all
19 of us to establish our own individual in-house lab.

20 ELIZABETH DANIEL VASQUEZ: Thank you for
21 having us for this hearing, Chairman Lancman. My
22 name is Elizabeth Daniel Vasquez. I'm the special
23 forensic science counsel at Brooklyn Defender
24 Services. And I want to talk for a second about how
25 important it is that we're having this conversation

1 now. Where we are in this moment is with the new
2 year, the implementation of the new discovery statute
3 has pushed New York City along a path where we are
4 moving much more rapidly to digital discovery, um,
5 which starts to expand the question of the
6 technological gap. We've been talking more
7 specifically about the applications within the
8 forensic practice, which is near and dear to my
9 heart. But with the implementation of the move to
10 digital discovery these issues about the
11 technological gap begin to spread. And they spread
12 not just because we are moving into a world of
13 digital discovery, but also because technological
14 issues are starting to take over all of our cases.
15 And so where it was 10 years ago that you might be
16 able to confine your concerns about DNA testing to
17 homicides and rape cases, we now are seeing DNA
18 testing conducted in the most low-level cases that we
19 defend. This is a moment where we have the
20 opportunity as digital discovery comes into place and
21 also as we see the infection of technological
22 forensic issues through all of our cases to really
23 stand up now and face this gap and close it, because
24 if we don't it truly will become an insurmountable
25

1 one. And so I want to focus on one particular issue
2 that underscores all of the issues that my colleagues
3 up here have raised, but that we haven't addressed
4 directly, which is that this is not just a question
5 of involvement in new software, gadgets, tools,
6 technologies, it is truly an involvement in people.
7 And so I, I came to New York, I came to the Brooklyn
8 Defender Services from the public defender service in
9 the District of Columbia. And I use them as a model
10 in my understanding because they've done something
11 quite interesting and helpful. They have on staff
12 within their forensic practice group two individuals
13 who have advanced designs in forensic science.
14 They're not attorneys. They are forensic
15 practitioners who are available to review case files,
16 identify issues, help with motion practice, and
17 assist in attorney support. This is the type of
18 resource that is also reflected by the digital
19 forensics unit that Mr. Greco has in having on staff
20 in-house analysts as well. This is an essential part
21 of the picture. We don't just need the tools and the
22 gadgets and the software. We need the people
23 qualified to run them. We need the people qualified
24 to keep on top of the developments in a way that goes
25

1 beyond our legal expertise, and we need the people to
2 be able to, having technological issues in here, we
3 need the people to be able to show up in court and
4 testify for us in instances where hiring an outside
5 expert doesn't make sense, but there is a
6 technological issue that needs to be put before the
7 jury. And so I just want to point out that that is
8 going to be a major part of what defender offices are
9 thinking about is how we beef up the size of our
10 offices that include professional staff who are not
11 attorneys but are in fact technology practitioners,
12 if you will. The other thing that I want to address
13 is as digital discovery comes into effect, as the
14 volume of digital evidence in cases expands, as we
15 are having to deal more and more with algorithmic
16 processing, we also are going to need robust e-
17 discovery tools, which begins to fall into the, the
18 question that was raised earlier about the technology
19 budget and where it goes. One piece that we're all
20 going to have to be looking at is how we purchase
21 robust e-discovery tools that allow us to capitalize
22 on the developments in artificial intelligence,
23 machine learning, and other ways of processing the
24 vast amounts of data that we receive. I go into this
25

1
2 in more detail in my written testimony. But I think
3 that that also is going to have to be a part of the
4 conversation because these are tools that the
5 district attorney offices do indeed have. I'll leave
6 it there.

7 CHAIRPERSON LANCMAN: And just looking at
8 your written testimony, which I appreciate your
9 giving the shorter version in your oral testimony,
10 but you listed a number of software, um, programs,
11 software, softwares, ah, I think just as it relates
12 to DNA you've got the, it's called STRMIX?

13 ELIZABETH DANIEL VASQUEZ: Yes.

14 CHAIRPERSON LANCMAN: That's how you say
15 it? S-T-R-M-I-X.

16 ELIZABETH DANIEL VASQUEZ: Correct.

17 CHAIRPERSON LANCMAN: Pace?

18 ELIZABETH DANIEL VASQUEZ: Um-hmm.

19 CHAIRPERSON LANCMAN: And then getting
20 beyond DNA, but fingerprints, ballistics, Mideo, um,
21 Leica?

22 ELIZABETH DANIEL VASQUEZ: Um-hmm.

23 CHAIRPERSON LANCMAN: You know, all of
24 these things obviously are expense to originally
25 license and then to, then to maintain it, and you

1
2 need the people to do it. Um, let me address the
3 issue of a shared lab. Um, it seems to me that if
4 we're talking about trying to shake some money out of
5 the city budget, whether this year or, or next year
6 after there's been this engagement that's gonna
7 happen between the public defenders and MOCJ, um,
8 it'd be a lot easier to do so if we were funding one
9 entity that all the public defenders could, could
10 resource than trying to fund six, seven different
11 offices. I understand, it's clear to me why it would
12 not be a workable system where New York County
13 Defenders Services can't go to Legal Aid and say let
14 us use your stuff because there may be a conflict.
15 But is the, is the hurdle to having a separate, I'll
16 just use the term lab, right, a separate lab that
17 isn't run by any of your organizations but is run by,
18 let's say a nonprofit that the city funds. The
19 conflicts in that scenario are not addressable?

20 SERGIO DE LA PAVA: The conflicts, ah,
21 are more easily addressable than the other issues it
22 brings up. For example, OCME is supposed to be an
23 independent, um, entity, and not at the beck and call
24 and not part of law enforcement, and so, and we see
25 where that's gotten...

2 CHAIRPERSON LANCMAN: Well, but it's, but
3 it is a city agency...

4 SERGIO DE LA PAVA: It is, and your...

5 CHAIRPERSON LANCMAN: So, you know, there
6 are certain biases that are built into that.

7 SERGIO DE LA PAVA: You're creating,
8 you're talking about creating yet another city
9 agency...

10 CHAIRPERSON LANCMAN: No, let's say we
11 were funding, I don't want to get too deep into this
12 because it's really just a thought and you all seem
13 to not like it, but I want to, before we, you know,
14 kill that thing I just want to think it through.
15 Like CJA, you know, and I hope you all don't hate
16 CJA, we won't spend any time on that. But it's, it's
17 an entity that's separate. It's not part of city
18 government, but it gets funding from government
19 sources to, to provide that, that service. So, so to
20 fund it, a nonprofit, you know, the Public Defenders
21 Lab, Inc., and then you all serve on its board and
22 make it work, and use it. And I don't know that
23 anybody beyond me is interested in this idea at all,
24 but before we move on from that I just want to

1 understand why it's impossible to make that work and
2 you've got to give each office it's own lab.

3
4 JEROME GRECO: So one thing I guess to
5 address there is that, is that even if it's a
6 independent third party once one of us engages with
7 them that's when no one else can. That's, our, our
8 conflict duties are bound upon them as well. So if I
9 hire an outside expert now, let's say I hire a doctor
10 to review medical records, they can hire that doctor
11 to review medical records, ah, then they relate to
12 what I'm doing. And it doesn't matter if that person
13 is completely separate from our organization. Once
14 they're engaged with us the rules of ethics would
15 prohibit it. And so we would essential end up with
16 the same problem, which would be that you would need
17 the same number of staff and, and equipment and all
18 that, um, which at that point makes more sense just
19 to at least have them nearby. Also, from a realistic
20 perspective of the day-to-day issues, I can't tell
21 you the number of times that I have go directly and
22 talk to clients when they bring us their devices,
23 because they're giving up their lives and they want
24 to know who they're giving it up to and what my
25 interest is in that, and I have to give them legal

1
2 advice. I have to tell them like this is what
3 attorney-client privilege is. This is what attorney
4 work product is. And I can't see a, ah, independent
5 third party having that type of relationship with
6 that.

7 CHAIRPERSON LANCMAN: What if you had
8 your own, and I know you wanted to say something, but
9 let me put this out there. What if you had your own
10 analysts, your own people, but, but shared devices,
11 shared software, shared hardware, you know, your own
12 people.

13 SERGIO DE LA PAVA: But we'd still be
14 providing them evidence on our client's case and
15 that's problematic, given our duty of confidentiality
16 to the client, what that might then develop into and
17 what it might reveal. It's just far less preferable.
18 I wouldn't go as far to say as it's, it's completely
19 unworkable. It's just not the way we view our duty
20 of confidentially to our clients to be handing over
21 their phones to another, even if you call it
22 independent agency, to develop more information is
23 not something we're generally comfortable with.

24 CHAIRPERSON LANCMAN: I know you wanted
25 to add something?

1
2 ELIZABETH DANIEL VASQUEZ: I just wanted
3 to add about the day-to-day experience of having, um,
4 consultants in-house and the effect that that has on
5 the ability to litigate. From experience of having
6 such individuals available to you, it is a very
7 different thing when they're in the same building and
8 you can, you know, you're in the middle of ligating a
9 complex issue and something comes up and you can go
10 directly to those individuals and pose your questions
11 face-to-face, as opposed to, even in instances where
12 you've hired an outside expert, which is similar to
13 what this would become, having to schedule time with
14 those individuals. They become much less available,
15 and so the impact that they can have on day-to-day
16 ligation and the processing of cases is minimized
17 when you remove them from the physical space. And so
18 that would also be a concern that I would have in
19 thinking about having an external centralized lab.

20 CHAIRPERSON LANCMAN: Can you just give
21 us a picture, you worked in D.C., right?

22 ELIZABETH DANIEL VASQUEZ: Yes.

23 CHAIRPERSON LANCMAN: And I read that you
24 talk about it in your, in your written testimony.
25 Just, just, can you give us an example or two of what

1 the D.C. public defender's office can do that, um,
2 you know, Brooklyn Defenders can't do or Bronx
3 Defenders can't do?
4

5 ELIZABETH DANIEL VASQUEZ: I think in
6 terms of having, there are two individuals on staff
7 with master's degrees in genetic fields, um, and what
8 that means is that there is, there are independent
9 scientists within the office. Any DNA case that you
10 get you walk down to their office and hand them the
11 file. They, with scientific training, can review the
12 raw data. They use GeneMapper to look at the outputs
13 from the DNA testing and can actually go, you know,
14 under the analytical threshold and, and look at
15 what's actually happening within the testing and
16 provide us scientifically sound analysis of what's
17 occurring there, give advice on what type of expert
18 you may want to engage if you need an outside expert
19 or if this is an instance where whatever you need to
20 litigate is something that they can provide the
21 technical support to include in that litigation. That
22 is the, the major impact that they have. They also,
23 when you are in trial and there are experts
24 testifying, those individuals come to court with you
25 and they are in the audience and able to help you

1 parse the answers that are being given, make
2 arguments, and understand in the moment what's
3 happening.

4 CHAIRPERSON LANCMAN: What, what
5 percentage of the, the gap is personnel verse, I'm
6 gonna say, ah, equipment, which would include
7 software and hardware. And I'm going to ask each of
8 your offices, like in terms of the gap that's
9 missing, how much of that is filled by you need to
10 hire people and how much of it is we need to buy
11 stuff?
12

13 ELIZABETH DANIEL VASQUEZ: I think that
14 those are very difficult to untether, um, but...

15 CHAIRPERSON LANCMAN: That's cheating.

16 ELIZABETH DANIEL VASQUEZ: But if we were
17 talking today, I think if, if you were talking about
18 starting it up you would be looking at a pretty even
19 percentage in terms of distribution. As time
20 progresses the investment, your new investment year
21 over year is going to be on the, the gadget software
22 technology side as opposed to the personnel side,
23 would be the way that I analyze that. So I think
24 that up-front investment you're looking at,
25 percentages that are roughly balanced. But as you

1
2 move forward you're going to be looking at increasing
3 the training for the individuals you already have and
4 also adding the new technologies as they emerge.

5 SERGIO DE LA PAVA: We're gonna provide,
6 as I mentioned in our written testimony, we're gonna
7 provide some specific details. My guess is that
8 personnel is expensive. Um, it is not a one-time
9 cost. It's a recurring daily cost and that probably
10 something like 80% of it is going to be personnel.

11 JEROME GRECO: For us I think it depends
12 on which unit we're talking about. For the DNA unit
13 I think it'd be personnel, they, like you were just
14 discussing, they would like to have an in-house
15 scientist who can review these things and I would
16 have to try to send it out and pay extra costs, to
17 have somebody who actually has that knowledge
18 available. Ah, for the digital forensic unit, while
19 personnel, more personnel would always be great, um,
20 for us there's a number of licenses and programs that
21 I would love to get my hands on. Some of them we've,
22 we've done trials, but were not able to, to go
23 forward because of the cost. Additionally, training
24 is, is, there's an unbelievable amount of possible
25 training and it's, it's frustrating having to choose

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2 who can go, when, and try to figure out who needs to
3 go in order to get their certification recertified.
4 Um, and then for just the regular technology about
5 receiving discovery and the networking, I think,
6 again, personnel would be great but I think there is
7 really upgrading our capabilities to handle
8 everything.

9 OLIVIA SHECK: I would say in our case
10 it, ah, will soon be seen. We were fortunate to
11 recently get some money from MOCJ to be able to buy a
12 few, ah, digital forensic programs and also to be
13 able to hire a single investigator. Um, we'll see if
14 that single investigator is able to keep up with the
15 demand for using these technologies. But I also just
16 want to make the point that, um, having an in-house
17 person in some cases would actually be a money-saving
18 exercise because it means that we don't have to hire
19 experts to do things that can be done by somebody who
20 isn't necessarily a Ph.D. but has a master's degree
21 or some other training in a particular technology.

22 CHAIRPERSON LANCMAN: To what extent, if
23 any, do you have access to the labs that are, that
24 are in place, run by, let's say, the police
25 department, the Manhattan DA's office, um, any other

1
2 law enforcement or government agency. Do you have
3 any access to any of that whatsoever?

4 JEROME GRECO: The short answer is no.
5 Um, maybe, ah, if we get lucky, a particularly nice
6 ADA, we can convince them to do something. But it's
7 rare and, and that's beholden, we're beholden to
8 them. Um, we do not have that access at all.

9 CHAIRPERSON LANCMAN: All right.

10 SERGIO DE LA PAVA: I would say that...

11 CHAIRPERSON LANCMAN: Yes?

12 SERGIO DE LA PAVA: ...in the past,
13 because I do want to be, in the past they have given
14 a tour of their lab in Queens. And then, about a
15 year ago, I called up and said, hey, can we do that
16 tour again and they were like, no. So there was a
17 time when they were more open and more transparent,
18 verifiably so, because indigent public, ah, indigent
19 defense offices were given tours of the lab, but, um,
20 for the last 18 months I've not been able to, ah, get
21 that to happen.

22 OLIVIA SHECK: I would just note that,
23 um, as public defenders we are frequently in the
24 position of our clients telling us something that we
25 can't completely rely on as being true. So, for

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2 example, if your client tells you I wasn't there, you
3 don't want to turn over their cell phone because
4 there's a chance that they're not being completely
5 candid with you and you could be burying them in
6 terms of, um, the prosecution's ability to prove the
7 case. But the danger there is that, you know, we
8 don't want public defenders or defense attorneys of
9 any kind being in the position of saying, well, I
10 don't believe what you're saying so I'm not going to
11 take the step to test that evidence and that's why we
12 need the ability to do this, um, through, ah, in
13 confidential ways.

14 CHAIRPERSON LANCMAN: My last question.
15 What percentage of your budgets do you know is
16 available for technology and of that roughly how much
17 of that goes towards these forensic tools and efforts
18 verse just the day-to-day technological needs of an
19 office to have computers and phones that work? If
20 you don't know off the top of your head that's OK.

21 SERGIO DE LA PAVA: A hundred percent of
22 our technology budget goes to just what we need to do
23 run an office every day. None of it goes towards the
24 things we've been discussing.

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2 CHAIRPERSON LANCMAN: Before we get there
3 [inaudible], all right, just give me a second. Ah,
4 and let me know we've been joined by Council Member
5 Andy Cohen from the Bronx and the Majority Leader
6 Laurie Cumbo, from Brooklyn. Um, yeah, all right,
7 Andy, go ahead. [laughter]

8 COUNCIL MEMBER COHEN: [laughs] I think
9 it's gonna be worth your while 'cause the first thing
10 I want to say is I, I think your credit, Chair
11 Lancman, on your dogged pursuit regarding the
12 inequities in terms of funding for public defenders
13 really is to be applauded, ah, and the fact that
14 we're taking this deep dive still doesn't belie that
15 it, it just, I don't, I don't understand and, you
16 know, I'm an attorney, but what do I know, you know,
17 that, that we devote X, that it's OK that we can
18 devote X amount of resources to prosecuting people
19 but we devote, you know, X-minus to defending
20 people's rights. I, I don't understand how the Sixth
21 Amendment makes that OK. I don't understand how we
22 as New Yorkers find that OK, um, and again, there's a
23 deep dive going on here, which is do appreciate,
24 that's sort of focusing on a specific issue. But,
25 again, I guess really it's not a question, but I just

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2 want to thank everybody who testified and the work,
3 for the work that you do. And, again, Chair Lancman,
4 I think that you deserve a lot of credit for, ah,
5 really fighting on this and not letting it go and
6 keeping a spotlight on this, and, and the council has
7 the ability to at least contribute in some, in some
8 way and to put pressure on the administration to, to
9 participate and try to, to achieve some semblance of
10 equity in this area. So we should keep that fight up
11 and you can count on me to help you with that.

12 CHAIRPERSON LANCMAN: Madam Majority
13 Leader, do you want to tell everyone how awesome I
14 am? [laughter]

15 MAJORITY LEADER CUMBO: Thank you. Um,
16 just another brief question. This is unrelated to
17 what you're discussing right now. But I just wanted
18 to know, um, are you aware of or have you been
19 following, or how would this help in some ways with
20 the, um, Text 911, um, bill in terms of, um, the
21 ability for the public to be able to utilize Text 911
22 as an opportunity to gather information to be able to
23 correspond with law enforcement agencies more,
24 faster, more effectively? Are you following it or do
25 you have any opinions on it? No? And that's OK if

1 not, it's not on the agenda for the topic today. But
2 I was curious, um, in terms of what I want to hear
3 what your world is saying about this, because this is
4 legislation that I'm also really excited about
5 passing. Or seeing implemented, rather. No? OK.
6 Thank you so much. That's it'

8 CHAIRPERSON LANCMAN: Um, before I let it
9 go, can we just, can you just tell me about the OCME
10 issue that your, your organizations seem to be having
11 and the ability to have, um, if so, meaningful
12 interactions with that office and how we could help?

13 JEROME GRECO: So, yes, ah, a, one of the
14 more recent issues was that OCME conferred with the
15 district attorney office for, I believe, all five
16 boroughs, about what they think they're required to
17 turn over as part of discovery, under the new
18 discovery rules. And we, ah, once we heard the DAs
19 make the arguments in court we already disagree with
20 what they, what they have decided, and as a result
21 we, my office, the Legal Aid Society, requested a
22 similar meeting to have, to have a discussion and to
23 express our points and to see where they're coming
24 from, maybe they could convince us otherwise, and we
25 were, we were turned down. Um, additionally, going

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2 back to having OCME do testing for us, um, on more
3 than one occasion we've asked them to change the
4 parameters of what they're using in STRMIX, um, and
5 to, you know, to see what, if a different result
6 would occur, and we've been turned down, we've been
7 ignored on that. Also, just the amount of time and
8 the ease in which the district attorney offices have
9 access to OCME greatly dwarfs anything that we have.

10 CHAIRPERSON LANCMAN: Could you just
11 explain for me and for those following at home why
12 that makes a difference? Why more time, more access
13 would make a difference in, in representing your
14 clients.

15 JEROME GRECO: So I think that's, that's
16 for a couple of reasons. One, something we kind of
17 covered about having in-house access to experts, ah,
18 allows us to better understand the evidence that's
19 being put forth and allows us to either challenge it
20 or to accept it, ah, or to better explain it to a
21 jury. Um, at the same time, ah, it's, it's difficult
22 for, it's difficult for us to properly prepare for a
23 trial without having, ah, the same ability to ask
24 questions of OCME that the DA's office would have and
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1
2 have the same ability to access information that the
3 DA's offices would have.

4 CHAIRPERSON LANCMAN: But OCME, OCME
5 produces a result, you could have your people, your
6 team analyze it as much as the DA's office analyzes
7 it. Like what is there for OCME to do beyond what
8 they're doing now, for you?

9 JEROME GRECO: Well, I mean, one example
10 of that is that OCME has the, the knowledge and
11 technology and the background to properly analyze
12 these results. You know, as was mentioned earlier,
13 we don't have in-house scientists for DNA, and while
14 our attorneys are excellent at what they do they're
15 not, they didn't get degrees in that. And OCME has
16 that. They are the actual experts in that way. And
17 if we need something of that level we have to pay a
18 lot of money to have somebody do that.

19 SERGIO DE LA PAVA: And a lot of times
20 there's, sorry, there's just, you know, there's this
21 fallacy that DNA testing is like, you know, just
22 simply connecting two things that match and then
23 just, you know, informing the jury that that's what
24 happened, when in reality there's a lot of underlying
25 biases that play a role and that, you know, slight

1 variations in, in methodology can make a world of
2 difference, um, which is, you know, and the only way
3 we would know about that is by examining the people
4 who made that analysis, who did that analysis, and to
5 what their procedures were and how this particular
6 case was handled. That's why it's so important for
7 us to have access to OCME, um, more meaningful
8 access, and it can't be matched by just us then
9 handing it someone else and say now you do your own
10 analysis. We need to know in far greater detail
11 exactly what transpired.

13 ELIZABETH DANIEL VASQUEZ: And to that
14 point...

15 CHAIRPERSON LANCMAN: Just move the mic?

16 ELIZABETH DANIEL VASQUEZ: Sure. To that
17 point the OCME analyst is nine times out of 10 the
18 person that's going to show up in court if you're in
19 trial and testify. And in order to understand what
20 the opinions that they're going to provide actually
21 are and the reasons and bases in detail for those
22 opinions in order to prepare, explain adequately to
23 our clients what the analysis was and what the
24 results were, and to understand whether there are
25 things that the OCME has done in the course of their

1 protocols that either deviated from protocol or that
2 an outside expert might take issue with. We have to
3 have the opportunity to speak with the analyst who
4 conducted the analysis to truly get into what did you
5 do here, and the cold record, the cold paper, doesn't
6 give us all of that detail on its own.

8 OLIVIA SHECK: I would just add to that
9 that OCME is responsible for DNA testing, but there
10 is a lot of forensic testing that's done at the NYPD
11 laboratory and unlike OCME, which does make itself
12 available to a limited extent to defense attorneys,
13 the NYPD lab, ah, in my experience has refuse to
14 speak to us unless we, ah, actually subpoena them to
15 testify. Which doesn't make a lot of sense if you
16 assume that these are, these are meant to be unbiased
17 criminalists who are arriving a neutral result.

18 CHAIRPERSON LANCMAN: So that gets to my,
19 my almost last question. Um, how will the discovery
20 laws, will the discovery laws, the new discovery
21 laws, change any of this? Will the NYPD crime lab
22 now need to get you or deal with you or get you what
23 you need, ah, at all or in a timely, more timely
24 manner?

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2 ELIZABETH DANIEL VASQUEZ: It certainly
3 is helpful, um, in terms of we are now actually
4 getting CVs for NYPD analysts, which we weren't
5 receiving before. We're getting access to
6 proficiency testing. We're getting a better
7 understanding of who the NYPD examiners are and how
8 they were trained. We're getting more documentation
9 on the testing that they did. But that still alone
10 cannot replace the, what we were just discussing,
11 which is once you have the, the cold record and you
12 can go through it and make assumptions about what the
13 analyst has chosen to do or not, you need to be able
14 to have a conversation with the analyst, whether
15 they're OCME or NYPD to understand the choices that
16 they themselves made and how they would explain them,
17 and my experience has been the same as Ms. Sheck.
18 The NYPD labs are not putting themselves out there to
19 be available for pretrial conference.

20 CHAIRPERSON LANCMAN: OK. And, um, we're
21 joined by Council Member Farah Louis from Brooklyn.
22 Ah, my last question, I assume that you would see
23 some benefit in there being some kind of formal
24 dialogue with MOCJ, whether it's a task force or
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2 commission, round table, whatever you want to call
3 it, um, and that you would participate in that?

4 JEROME GRECO: Yes.

5 ELIZABETH DANIEL VASQUEZ: Yes.

6 OLIVIA SHECK: Yes.

7 SERGIO DE LA PAVA: Yes.

8 CHAIRPERSON LANCMAN: OK, good. All
9 right. So I'm going to close this panel with a
10 challenge, and it's this. Um, we're about to go into
11 the budget process. This committee will have, like
12 every other committee, will have a hearing on the
13 mayor's preliminary budget in March. And it is up to
14 each of your organizations and the public defender
15 organizations that weren't able to testify here this
16 afternoon, to tell us exactly how much money you need
17 to do the things that you think you need to do, to
18 hire the people you need to hire, the software you
19 need to license, the equipment you need to purchase.
20 Without that there's nothing the council can do to go
21 to bat for you and you will have to make decisions,
22 as we all do, and as you do every year, your
23 organizations do every year, about what your
24 priorities are. But we are going to do what we can.
25 This committee is going to do what it can to make

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2 sure that MOCJ, which I appreciate their willingness
3 and openness on this topic that I heard them testify
4 to, that they, they have these meetings with you, um,
5 but it's up to you now. The ball is in your court to
6 tell us exactly how much you need and for what and,
7 um, whether you do that and present that at the March
8 budget hearing, um, will speak for itself. All
9 right? Thank you very much for your them.

10 OLIVIA SHECK: OK, thank you.

11 CHAIRPERSON LANCMAN: That concludes our
12 hearing. Thank you again very much. [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 February 1, 2020