

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON PUBLIC SAFETY

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B E F O R E: Adrienne E. Adams  
Chairperson

COUNCIL MEMBERS: Adrienne E. Adams  
Justin L. Brannan  
Fernando Cabrera  
Vanessa L. Gibson  
Robert F. Holden  
Carlos Menchaca  
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Keith Powers  
Kevin C. Riley  
Ydanis Rodriguez  
Helen K. Rosenthal

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

Marcos Soler  
Director  
Mayor's Office of Criminal Justice

Deanna Logan  
General Counsel and Deputy Director of  
Crime Strategies  
Mayor's Office of Criminal Justice

Michael McMahon  
Richmond County District Attorney

Tina Luongo

Yung-Mi Lee

Ann Matthews

Elizabeth Fischer

Lisa Ohta

Roy Wasserman

Edda Ness

@



SERGEANT AT ARMS: Computer recording started.

SERGEANT AT ARMS: Cloud recording started.

SERGEANT AT ARMS: Backup is rolling.

SERGEANT AT ARMS: Sergeant Lugo.

SERGEANT AT ARMS LUGO: Welcome to today's remote New York City Council hearing of the Committee on Public Safety. At this time would all panelists please turn on your videos. [inaudible] disruption please place electronic devices to vibrate or silent. If you wish to submit testimony you may do so at [testimony@council.nyc.gov](mailto:testimony@council.nyc.gov). Again, that's [testimony@council.nyc.gov](mailto:testimony@council.nyc.gov). Thank you for your consideration.

CHAIRPERSON ADAMS: Good morning and thank you for joining today's virtual hearing. I'm Council Member Adrienne Adams, chair of the Committee on Public Safety. I'd like to acknowledge that we have been joined by my colleagues this morning, Council Members Miller, Powers, and Menchaca. I'm sure that more are on the way. We're here to discuss the process of reopening the criminal courts and today's hearing is going to be a little different from a

typical oversight hearing. But before we begin I'd like to ask for a moment of silence for Justin Wallace of Far Rockaway who was senselessly gunned down a few weeks ago, just days before his 11th birthday [moment of silence]. Thank you. While there are a number of issues that concern us about how the court closures have impacted everyone involved in the criminal justice system, I have to begin by stating the simple fact that the problem that we're addressing today are nobody's fault. Slowing the spread of COVID-19 unfortunately required drastic measures and anyone who had ever set foot in one of our courthouses before the pandemic know full well that social distancing was simply impossible. So I'll acknowledge that the courts had to be closed, but there were, of course, tremendous consequences. Without juries and grand juries the case backlog grew and the amount of time people spent at Riker's increased, regardless of their guilt or innocence. Instead of challenging the decisions that were made, we're here today to take stock of where we are now and to see how we can help move forward. We're here today to take stock of where we are now and to see how we can help move forward, to highlight the

problems the court system has faced, the extent of the backlog, the consequences to incarcerated individuals of the suspension of grand juries and the lack of jury trials, the rising jail population, and the challenges that the court system faces in returning to normal business, or at least what the new normal will be. I want to note that we are unfortunately not going to hear from OCA today. Instead, the Mayor's Office of Criminal Justice, which has been coordinating this effort amongst the various stakeholders will provide us and the public with a detailed update of where we are today and what the challenges are that lie ahead. I want to sincerely thank MOCJ for being here today and for their efforts during the pandemic to monitor the situation and coordination between multiple city agencies and our defender community under extremely difficult circumstances and especially for their work advocating for as many people as possible to be released from the city jails safely. Those efforts save lives and I commend you, Director Soler, and your entire staff for everything you did during the last 15 months to minimize the impact of COVID-19 on our fellow New Yorkers, whether they were people who

were incarcerated, correction officers, medical staff, or anyone who was most at risk in our jail. I can assure you that we're not here to criticize, but to raise awareness and for learning what we can do to help. After all, the ramifications of closing the courts has directly threatened some of our most significant criminal justice reform achievements, like bail reform, the expansion of supervised release, and perhaps most importantly of all, the plan to close Riker's Island. With that, I look forward to hearing what you can tell us about the current state of the courts, how are our reform efforts have been impacted, and what we can do to support you going forward. I will now turn it over to our moderator, Committee Counsel Daniel Addis, to over some procedural items.

COMMITTEE COUNSEL: Thank you, Chair.

I'm Daniel Addis, counsel to the Committee on Public Safety of the New York City Council. Before we begin testimony, I want to remind everyone that you will be muted until you are called on to testify, at which point you will be unmuted by the host. I will be calling on panelists to testify. If council members would like to ask a question of the administration or

a specific panelist, please use the Zoom raise hand function and I will call on you in order. We will be limiting council member questions to five minutes, which includes the time it takes to answer questions. All hearing participants should submit written testimony to [testimony@council.nyc.gov](mailto:testimony@council.nyc.gov), that's [testimony@council.nyc.gov](mailto:testimony@council.nyc.gov), if you have not already done so. Members of the public may also submit written testimony. The deadline for written testimony is 72 hours after the hearing. The first panel will include members of the Mayor's Office of Criminal Justice. We will then hear from Richmond County DA, ah, District Attorney Michael McMahon, followed by members of the public. To the first panel, before I call on you to testify, I will administer the oath. I will read the oath, then call on each of you to affirm. Can we have Mr. Soler and Ms. Logan, ah, unmuted? And do you swear to tell the truth, the whole truth, and nothing but the truth before this committee and to respond honestly to council member questions? Ah, Executive Director...

DIRECTOR SOLER: Yes, I do.

COMMITTEE COUNSEL: Thank you.

DIRECTOR LOGAN: I do.



DIRECTOR SOLER: Good morning, eh, Chair Adams and members of the Committee on Public Safety. My name is Marcos Soler and I am the director of the Mayor's Office of Criminal Justice. I'm joined here today by Deanna Logan, general counsel and deputy director for crime strategies. It is a pleasure to be here with you, Chair Adams. Thank you for inviting us. Thank you for the opportunity to testify about MOCJ's role and the city's role in coordinating the expansion of in-person operations for the city's criminal court system. MOCJ, as you know, advises the mayor on criminal justice policy and runs a number of programs and justice initiatives, from the Crisis Management System and, you know very well, [inaudible] incarceration and supervised release, which you already have mentioned. We work with law enforcement, city agencies, service providers, not-for-profits, foundations, and the public to implement effective strategies that make the city safer, fairer, and with a smaller criminal justice footprint, while improving system coordination. The courts are critical to fully functioning justice system and are necessary, and are necessary to achieve the goals of improving public

safety, reducing unnecessary enforcement and incarceration, and promoting fairness. For a large system, such as New York City's system, to operate well multiple steps might take place in a highly coordinated way. The police must put the evidence together, built on strong cases, and arrest suspects. Prosecutors must arraign cases, appear before the grand jury to establish probable cause, and try defendants upon indictment. Defenders might represent those who are accused at all stages. Jurors must determine guilt if the case goes to trial, and the courts must secure appropriate dispositions and sentences for people convicted of crime. This whole process might happen with some degree of efficiency, speed, and, above all, finality. All stages of the process I just described are important, and no stage is more important than the adjudicated finding, resulting in a determination of guilt or innocence. The pandemic has made it clear that adjudication drives the process. If we cannot get cases to conclusion, the administration of the justice system slows down significantly. To make sure the system doesn't [inaudible] or come to halt, all participants in the system must work in close

coordination to reach finality and case disposition.

The system, the system only works if trials are a possibility, even as we know trials are only 5% of all cases [inaudible] or less. Since the summer of 2020 the city has been calling for the full reopening of the courts, including the convening of more grand juries, addressing the backlog and prioritization of cases involving gun violence, and the scheduling of trials. There are important functions of the justice system that were impacted for too long. In the last two months we have experienced notable increases in court activity. These are positive signs. We now need the courts and all actors, including the city, to fully reach pre-pandemic capacity the city is doing, and will continue to do, everything possible to support that work. From the start of the pandemic the city has worked with the courts, the district attorneys, the defenders, and other partners to facilitate the continued operation of the central function of the criminal justice system and bring cases to conclusion. Last year in March 2020 as in-person operations decreased due to the pandemic's health mandates, MOCJ and other partners worked together around the clock to implement virtual

essential operations. Within two weeks arraignments and other court appearances were entirely virtual, while court employees continued to report to the courthouse to perform the essential tasks that help to maintain the system. Throughout the pandemic as guidelines and requirements shifted as a result of the dynamic nature of the pandemic and the COVID emergency that we faced, in-person operations from grand juries to trials resume in a reduced capacity MOCJ worked with the various court actors to coordinate COVID-19 mitigation measures at each phase of the public health emergency. My office partnered with DCAS and OCA to, to survey the ventilation capacity of the courthouses. In coordination with OCA, DCAS provided portable air filtration units for spaces where ventilation was limited, installed plexi, sorry, plexiglas in all areas that required close interaction, implemented hand cleaning measures through the buildings, and installed COVID-19 best practices signage, such as physical distancing, face coverings, and hand washing in public areas. MOCJ worked with the Department of Health and Mental, eh, Health, eh, to clarify the screening outlines on processes for reporting and handling contact tracing.

MOCJ also helped to plan the, for the resumption of some in-person operation, including grand juries, grand juries to deliberate on felony indictments, and some criminal jury trials. In order to mitigate the risks of exposure to, ah, transmission of COVID-19, the city obtained at-home COVID-19 tests for in-person staff. Understanding that the vaccine is our most critical tool in protecting us and the communities in which we live from severe COVID-19 illness, hospitalization, and death, the city worked with health agencies to confirm vaccination eligibility for various court actors before vaccinations were open to all adults. We worked with the courts and other [inaudible] actors to facilitate vaccines to their employees in different ways. I would like to outline now some of the progress that we have made today from a quantitative perspective. But first I would like to make a [inaudible] point. As the mayor has stated since the summer of 2020, in-person court operations are critical to the overall functioning of the criminal justice systems and to the deterrence of violent criminal conduct. Virtual operations are important and they have sustained us through the difficult days of the pandemic by

facilitating some essential functions. But nothing can fully replace in-person operations. Two work efficiently and fairly, and fairly, I state, the adversarial criminal justice system must operate in person. Jurors and grand juries might be, must be able to meet to hear evidence and determine whether criminal charges shall be brought. Similarly, the accused is entitled to a speedy and public trial by an impartial jury and to be confronted with the witness against him. To protect the due process our Constitution affords to all of us, there is no other way to do this than in person. The courts are now well on their way to being back to full in-person operations and the city is working with our [inaudible] to make sure the volume of work in all the stages return to pre-pandemic levels this summer. In April of 2021 the mayor put forth a comprehensive plan to end gun violence, Safe Summer NYC. With courts being one of three areas of focus along with communities and [inaudible]. The city is and will continue to do everything possible to support a fully functional justice system. We are currently seeing some positive trends [inaudible] the criminal process has returned, or is fast returning to pre-pandemic

1 levels as the courts continue to increase in-person  
2 appearance. I will not read them. They are part of  
3 the record that [inaudible] you have. We are also  
4 seeing that there is a significant backlog and we  
5 believe the full resumption of in-person appearances  
6 and consistent system coordination will help to  
7 address. Again, please see the appended list of  
8 relevant system-wide data on arraignments,  
9 indictments, pleas, sentencing, as well as a case  
10 backlog [inaudible] custody to measure and to show,  
11 eh, the signs of progress that we see in the system.  
12 I thank you very much for the opportunity to share a  
13 small portion of our work during the pandemic and I  
14 look forward to answering any questions that you  
15 might have.

17 CHAIRPERSON ADAMS: Thank you very much,  
18 Director Soler. I'd like to acknowledge that we've  
19 also been joined by Council Member Rosenthal.  
20 Director Soler, um, in, in dealing with the backlog  
21 and in speaking about the backlog, according to data  
22 from OCA there are over 49,000 criminal cases pending  
23 in the city's court. That number isn't terribly  
24 unusual, but the number of pending misdemeanors is  
25 way down, though the increased backlog is made up

largely of felonies. For example, in Manhattan there are 4130 pending Supreme Court cases in 2020 as compared to only 3437 in 2019. Those are the most serious cases for both the victims who want to see justice and for defendants who are incarcerated while they wait for trial. What can you tell us about the plan to reduce the backlog?

DIRECTOR SOLER: Thank you. This is a very important question, as you know, and I, as you have well indicated, when we compare to historical moments we have seen, obviously, high numbers particularly in misdemeanors and also in felonies. For instance, [inaudible] prior to the pandemic we have about 15,000 case, felony cases, in the system. Most of them were, eh, were both indicted and knowing that right now we have 24, about 24,000 felonies. What we are doing is the following. Number one is we are working very closely with the courts and, ah, with the district attorneys and they expand these, on expanding the number of grand juries. In order to do that, we need to do that creating the safe conditions. What we need to do is to find a space and allow us to do that, social distancing and other measures, facilitate vaccinations, as I indicated.



Grand juries are essential. Right now we have about 9500, eh, felony cases that are indicted, but there is a substantial number of them which need to be indicted. I think the number is about 14,000. So certainly our priority is to work with the DAs to make that possible. The other thing that we are working very closely is similarly, eh, to make sure that we facilitate, eh, trials. The city, obviously, does not run the process, but works very closely with, again, with [inaudible] the age of offenders to make sure then those trial rooms are [inaudible] running. We think it's absolutely essential. We, so, for instance very recently in certain boroughs then there was limited room and we worked very effectively, I think, with, eh, the courts to make sure there was an expansion of the number of trial rooms. I also think that it's important that we have agreed with the courts, eh, and the defenders as well as, eh, eh, as the DAs to have in-person, eh, operations is starting next week, I think, the next week, and particularly for arraignments and other type of appearances. All of this movement will certainly, in my view, is we'll move, eh, cases. As I said before, I think in-person appearances are

essential to the resolution of those cases and obviously while we will completely respect as a city the decisions made by the district attorneys on how to decide how to move all these cases forward. But we will do everything possible to support, eh, and provide the resources that they might need.

CHAIRPERSON ADAMS: Thank you very much.

Ah, I'd also like to acknowledge that we've been joined by Council Member Brannan. Ah, Director Soler, ah, according to OCA only 21 jury trials have started this year across all of the city's Supreme Courts. We're gonna need a lot more than 21 courtrooms to get through the backlog. So what can you tell us about the plan to speed up the process of getting these trials underway?

DIRECTOR SOLER: Right. So as I was saying, eh, during my testimony, we know that trials do not, eh, in any given year trials do not resolve cases. Most cases are resolved, as you know, through the plea process, eh, and other, eh, eh, decisions, and what we want to make sure, however, is that those trial rooms, as I indicated, are available. So as we increase trial capacity and people are seeing that trials are happening we believe that that will

incentivate all parties to address, eh, to address, eh, to come to the table and increase the number of pleas, and that's one of the ways in which we can do, eh, we will address the backlog. With regards trials, what I will say is the following, is that we identify, for instance, just as you had mentioned, 21 trials. We identified, for instance, very recently, as I mentioned before, that in one of the counties there was only one trial room operating. Now we know then we have four or five, eh, trial rooms operating in that county. It's the work that we continue to do in addition to obviously provide these centers so cases can be pled out and then people have that incentive. But what we will also do for sure is to provide all the efforts that, you know, that all the resources that the city has to increase that trial capacity. That includes, that includes also, of course, to bring more jurors and to, eh, and to bring that. I know Deanna wants to add, eh, one element, eh, of the plan. She is my deputy in charge of this process and can tell you more specific details about what are the plans of the city in this area. Go ahead, Deanna.

DEPUTY DIRECTOR LOGAN: Thank you very much. So I just wanted to make clear that during the height of the pandemic what, what the city and OCA worked together to do was to take a courtroom that had historically in pre-pandemic use for trials and use them as grand juries to be able to provide the grand jury rooms to be able to provide the secrecy that grand juries need. However, as we are coming out of the health crisis we are converting those trial rooms back to their original purpose of trial rooms, expand capacity, working with OCA to identify alternative spaces for grand juries that can still accommodate grand jury members and social distancing. So that is part of the physical interagency operations that we're working with, DAs' offices, OCA, um, and DCAS to find and identify space to make sure that we are expanding capacity as the health conditions become better and we are able to do so safely.

CHAIRPERSON ADAMS: OK. Along those lines, Ms. Logan, can you expound on that a little bit for us and give us some more insight as far as the grand juries, where we are, ah, what the plan of restoration of grand jury, ah, assembly is, what

that's going to look like, how, ah, did the assembly maybe of the grand jury have, ah, contributed to the backlog or to the jail population itself?

DEPUTY DIRECTOR LOGAN: So overall we, we know that grand juries, as, as Director Soler explained, need to be in person and during the height of the pandemic grand juries were not able to operate. However, all of the system actors work together to do preliminary hearings when the health conditions allow it, and then move towards having grand juries operating, albeit at a lower level. So we started slowly to make sure that OCA and all of court participants were able to, um, adjust to the social distancing, the cleaning routines. DCAS came in and made sure to provide enhanced cleaning measures within the grand jury rooms and, and ultimately we moved to having at least two grand juries in each borough, ah, with the exception of Staten Island, which has a smaller volume so they had one grand jury operating. And as we are coming out of the health crisis each one of the boroughs and OCA are working to expand them. So approximately four grand juries are operating in the different boroughs, but, as you have made very clear and Director Soler

has made clear, the actual volume of cases is larger than the current capacity and, as the health conditions allow, the courts are sending out summonses and impaneling additional grand juries to be able to move forward with the continued in-person operation of courts.

CHAIRPERSON ADAMS: Thank you. Um, in, in going back to arraignment time, um, and arrests, ah, according to the NYPD the average arrest for arraignment time in May of 2021 was about 21 hours, down from a May 2020 pandemic height of 23 hours and 23 minutes, but still up from the May 2019 average of 18 hours and 27 minutes. That's the average. So a lot of people are in for a lot longer before they actually see a judge, including a lot of people charged with low-level misdemeanors and cases that can get dismissed right off the bat. How can we get back to that 2019 number, and do you expect the return to in-person arraignments in the next few weeks to help that, um, move along?

DIRECTOR SOLER: Yes, we do, and just to confirm, what we have seen in recent, eh, months is an improvement in the key indicators pertaining an average arrest time, arrest to arraignment times, as

well as processing times. So as you, right now the number of, ah, the average that we have is about 20 hours for arraignment. We still can do better, as you said, and we will continue to work the courts and we think [inaudible] in-person will do. We know the during the pandemic, eh, 95% of cases were arraigned within 36 hours and 66% rate, 66% during, eh, within 24 hours. And those numbers, again, have increased. We are now up to 97% within 36 hours and 72% within 24 hours. But what we expect to do is to increase not only the situation where 99% of the cases are within at least 36 hours and 85% of them are arraigned within 24 hours, which is what will allow to be in that position. We certainly believe that in-person arraignments are going to be important. Again, we have a [inaudible] scheduled and we have agreed with the courts, with the DAs, with the defenders, is being implemented over the next two to three weeks. We think that's absolutely going to be essential and important, and, as you said, primarily for the defenders and, eh, certainly, as I stated, we want a safer but also a fairer system, and part of fairness is to being able to be speed and a finality

to, to the criminal justice, eh, when people have cases.

CHAIRPERSON ADAMS: OK. I want to touch on, ah, bail, just a little bit, and then I'm gonna get my colleagues in here. Um, despite bail reform taking effect last January the rate of bail being set has actually gone up in the last year. Now, I'm sure that a year ago a lot of judges were more reluctant to send someone to Riker's because of the incredible health risk, so it's understandable that it would have gone up some. But we're now approach pre-bail reform levels and that is concerning to me. It's also troubling that more bail is being set in cases that were not affected by bail reform law at all. I know you don't control when bail gets used, but what can you tell us about what you're seeing with respect to how often bail is being set and what impacts that may have going forward?

DIRECTOR SOLER: So let me, let me tell you what we did internally and we'll try to address your question. Eh, we regularly track, as you said, we do not control bail and we want to stay away from those decisions. Those decisions belong, obviously, to the court system. What we do is we track every



1 week, very closely, the bail trends. Eh, what we  
2 also do is to track very closely the rate at which  
3 people are making bail. What we see in particular is  
4 that, eh, when it comes to violent felony offenders,  
5 eh, which is probably what you're seeing, the rates  
6 are, as you indicated, we don't see exactly the same  
7 rates for violent felons, sorry, for felons, no  
8 violent felonies [inaudible] misdemeanors and what we  
9 are trying to make sure is that we implement two of  
10 our strategies that we think have been quite  
11 successful. One is we continue to educate the judges  
12 about the importance of our supervised release. As  
13 you know, we implemented supervised release and we  
14 think it's a very successful program, initially for  
15 misdemeanors and nonviolent felonies. But right now  
16 supervised release is a strategy that works well also  
17 for violent felons. Eh, there are obviously some  
18 limitations but, eh, to any program, but, eh, overall  
19 we are working to continue to expand supervised  
20 release. And we have seen an increase in those  
21 numbers. And the second is to track very closely the  
22 difference between making a, whether or not judges  
23 set bail and the ability that people have to make  
24 bail. And I think one of the things that we have to  
25

1 be very mindful of is probably that is the best  
2 indicator as to whether or not bail reform  
3 [inaudible] succeed with regards to bail reform. Our  
4 data indicate that people are making, making bail at  
5 a higher rate after they are set bail than before.  
6 But I will definitely discuss this further with my  
7 team and report back to you on what we seen in these  
8 trends. Eh, but, eh, certainly we are concerned, as  
9 you said, about everything that might have an, an  
10 impact, you know, in our projections with a rush to,  
11 eh, close Riker's and our efforts to reduce  
12 incarceration. So certainly bail is one of the  
13 things that we look closely every single week.

14  
15 CHAIRPERSON ADAMS: Yeah, that, that's  
16 great, and, and I agree with you. MOCJ has done a  
17 great job, um, of creating programs like supervised  
18 release, um, to give judges another option, ah,  
19 rather than, you know, just setting bail or releasing  
20 a defendant on their own recognizance. Is there  
21 anything, ah, that you may be looking into to give  
22 judges another alternative? We know the city has  
23 started to use electronic monitoring for the first  
24 time recently. Is that something that can possibly  
25 be used more often?

1                   DIRECTOR SOLER:  Eh, yeah.  I will refer  
2                   to Deanna Logan, who runs our electronic monitoring  
3                   program and can you the information regarding  
4                   electronic monitoring.  I don't want to provide, eh,  
5                   wrong information.  Deanna, please would you address  
6                   that question?  
7

8                   DEPUTY DIRECTOR LOGAN:  Absolutely.  So,  
9                   yes, Chair, in, um, very lightening speed the city  
10                  provided electronic monitoring as a tool back in 2020  
11                  and rolled it out through the sheriff's department.  
12                  So the program actually runs out of the Department of  
13                  Finance and Sheriff Joseph Fucito is, and his team,  
14                  runs the actual monitoring of individuals that are  
15                  assigned to an electronic monitoring, ah, device.  
16                  The program has started to see increases.  Ah, during  
17                  the pandemic we had, um, much stricter rules and  
18                  protocols for who could be on electronic monitoring  
19                  and much of that centered around what was considered  
20                  a stable home life because of some of the limitations  
21                  with the technology itself needing a monitor that was  
22                  affixed in a home that could read the actual  
23                  bracelet.  As we have gotten more experienced with  
24                  it, the sheriff's team has expanded what they, what  
25                  they are able to do as it relates to making sure

1 they're monitoring individuals that are using  
2 additional types of maybe untraditional housing  
3 scenarios and therefore we have seen the program go  
4 from, end up having as few as, you know, 10  
5 individuals, to now having more than, ah, 50  
6 individuals that are participating and the courts  
7 have put into the program. We, ah, we expect to see  
8 some of the courts taking advantage of this tool as  
9 well and, and all of the tools that the city is  
10 providing. We make sure that the courts are aware  
11 that we do have supervised release, that there is the  
12 electronic monitoring, and we stay in constant  
13 contact with OCA to determine if there are any other  
14 tools and supports that [inaudible] can provide.

16 CHAIRPERSON ADAMS: OK, thank you. Are  
17 there, are there any, um, concerns about, um,  
18 widening, ah, the process for electronic monitoring  
19 at all, or abuse?

20 DEPUTY DIRECTOR LOGAN: I'm, I'm sorry,  
21 Chair Adams, when you say concerns can you just be a  
22 little clearer what concerns would you, are you  
23 worried about?

24 CHAIRPERSON ADAMS: Um, in, in looking at  
25 the process a step further, ah, and stretching it

1 out, net widening the process, are there any concerns  
2 about net widening?  
3

4           DEPUTY DIRECTOR LOGAN: So, ah, I think  
5 given that the ultimate decision is made by the  
6 jurist, meaning the judge, that will sit down and  
7 actually write the securing order in terms of what  
8 the actual tool is being used for and when and how,  
9 what limitations are put on an individual that is  
10 being given electronic monitoring as an alternative,  
11 that we at this juncture are comfortable that the  
12 courts are using the tool in the way that, ah, is  
13 consistent with the law and therefore this time there  
14 doesn't seem to be an issue with the net widening, as  
15 you say, that the courts are using the tools  
16 available to them consistent with what the law has  
17 said it is to be used for.

18           CHAIRPERSON ADAMS: OK, thank you. Um,  
19 before I pass it on to my colleagues I'd like to  
20 acknowledge that we've been joined by Council Member  
21 Holden, and I believe I recognized Council Member  
22 Menchaca at the top, but I will recognize Council  
23 Member Menchaca again as well [inaudible].

24           COMMITTEE COUNSEL: Yeah, I will now call  
25 on council members in the order they appear in the

Zoom, in the order they have used the Zoom raise hand function. If you would like to ask a question and you have not yet used the Zoom raise hand function please do so now. Council members, you will have a total of five minutes to ask your questions and receiving an answer from the panelists. Ah, the Sergeant at Arms will keep a timer and will let you know that your time is up. Once I have called on you please wait until the sergeant has announced before, before you begin asking your questions. Um, I believe Council Member Powers will be up first.

SERGEANT AT ARMS: Time begins.

COUNCIL MEMBER POWERS: Thank you, thank you Chair Adams and everyone for, ah, being here today. Um, I want to just go into a little bit of, ah, ah, data around the shootings, you know, the sort of surge in shootings over the past year, and we've been [inaudible] explanations for that. And one of the narratives or explanations we've heard during the pandemic has been the, um, closing of the criminal courts as a reason that would lead to increased shootings, and I think there's been some debate over whether that would be the correct narrative or not. Can, this is, from the Mayor's Office of Criminal

Justice can you tell us what, if any, impact you believe to examine that narrative just for a bit and if you can tell us any impact you might believe that the closing of the criminal courts would have or has had perhaps on the, the, ah, large increase in shootings in the city over the last, ah, last calendar year?

DIRECTOR SOLER: So, as you know and the mayor has stated several times, we face an increase in shootings that has impacted not just, obviously, New York City, but the entire country. It's also an exceptional situation where the profound dislocations of the pandemic are impacted. What I can tell you is what I pretty much believe is happening, eh, and it's important. Deterrence eh, matters when we have certainty of enforcement and we have certainty of, eh, prosecution. So, eh, I think very few people will dispute that you need to have those, that thing in place in order to deter individuals. Eh, certainly, eh, I think that is more the case when it comes to violence in any other area, and this is why we see increases in gun violence, but we do not see increases in overall crime. Deterrence, as I said, depends on the certainty of, again, arrest and

1 prosecution. Similarly there is the need to  
2 incapacitate certain folks, with, eh, certain  
3 individuals who are not likely, who are likely to  
4 hurt, eh, members of the community and that has also  
5 been generally impacted during the pandemic, eh, our  
6 ability to, you know, with a system where we have  
7 much more limited finality and cases could not move  
8 as fast we, we have some limitations in our ability  
9 to incapacitate. I think those two things have  
10 changed recently. I can...

12 COUNCIL MEMBER POWERS: OK, my time is,  
13 I, just 'cause I'm using a lot of time here.

14 DIRECTOR SOLER: Yeah, sorry.

15 COUNCIL MEMBER POWERS: So let just let  
16 me just go back to do [inaudible] yes or no, do you  
17 believe that closing of our criminal courts has led  
18 to an increase in shootings in the city over the last  
19 calendar year?

20 DIRECTOR SOLER: I think that there are  
21 multiple factors, it's not a yes or no. There are  
22 multiple factors...

23 COUNCIL MEMBER POWERS: Well, the, the,  
24 the question is do you believe it's part of the  
25 equation, I guess, then?



DIRECTOR SOLER: Do I believe it's part of the equation? The answer is yes, it is one part of the equation that we are looking into, for the reasons...

COUNCIL MEMBER POWERS: OK, and, and, and is that because you believe that the, what I heard is that there's no, no level of [inaudible] because there's no finality of the case?

DIRECTOR SOLER: What I believe, as I said, yes. You need to have deterrents in the system and you have to have incapacitation, and then you have to have finality, yes.

COUNCIL MEMBER POWERS: For individuals that are caught with a, ah, caught in a shooting and arrested are they, um, those individuals would be held in our city jails while they await trial, is that correct?

DIRECTOR SOLER: [inaudible]

COUNCIL MEMBER POWERS: Can you...

DIRECTOR SOLER: The, the answer is it depends on the individual. Those are decisions that are made individually by the judge. There are some individuals that will be held. There are some individuals who will not be held. There are some

1 individuals that will receive bail and will make  
2 bail. There are other individuals who will be  
3 remanded, and some people will be released.

4 SERGEANT AT ARMS: Time.

5 COUNCIL MEMBER POWERS: OK. I guess what  
6 I'm trying to figure out is like how much of the  
7 impact this, um, ah, closing of the criminal courts  
8 has on the shootings. I think the mayor has used  
9 that as a explanation, predominant, predominant  
10 explanation in many of the, ah, instances where he's  
11 been asked. It, it strikes me as perhaps a piece of  
12 the equation, but it, it's hard to believe that's  
13 the, ah, the driving cause of a massive increase in  
14 shootings. Can you give us some other maybe  
15 explanations or other thoughts on what, ah, since I  
16 haven't had a chance to ask this at other hearings.  
17 Could perhaps you could give us other thoughts as  
18 well in terms of what might be leading the increase  
19 in gun violence over the past year?

20 DIRECTOR SOLER: Yes. I think the social  
21 and economic dislocations, eh, are significant. I  
22 think the amount of trauma in the community are  
23 significant, issues of legitimacy and the ability,  
24 eh, of people to trust the system, willingness to  
25

1 cooperate with the police department, and with  
2 government in general. Those are all factors that  
3 have contributed. I think, eh, to this end, eh, and  
4 certainly it might be that we see greater potential  
5 for interpersonal conflict than we have seen in many  
6 decades because of the, again, the conditions of the  
7 pandemic has impacted us all. We have seen that  
8 issues where we have seen in other dynamics, eh,  
9 where we, so there are multiple theories that we  
10 explore and that we are trying to, eh, you know,  
11 provide evidence for. We believe the courts  
12 certainly functioning is important, a functioning,  
13 eh, court system is important to provide the  
14 deterrents and incapacitation that I mentioned. It's  
15 part of the equation. How much, what percentage, I  
16 cannot tell you right now. But it is part of the  
17 equation.

19 COUNCIL MEMBER POWERS: OK, I'll just,  
20 ah, my time has run out. But I'll just ask one more  
21 question. I, I did see a chart that, um, MOCJ put  
22 it, I think it was last year, showing a timeline in  
23 the increase in shootings and some events that had  
24 happened, um, at the same time, sort of like COVID  
25 hit, things like that. Um, have you, has, has the

1  
2 Mayor's Office of Criminal Justice issued any short  
3 of updated information or datasets that might help  
4 the, ah, ah, council, the public, the press  
5 understand, ah, factors leading, ah, or, um, factors  
6 contributing to whether, whether it's arrest data or,  
7 um, other data might help, ah, you know, the public  
8 perhaps? I mean, I think just because we have, we're  
9 seeing a lot of [inaudible] everybody is reading it  
10 newspapers, I think we're getting lots of questions  
11 about what's happening here, what impact it was, the  
12 closing of criminal court, destabilization of, ah,  
13 COVID, you know, a lot of different theories. Is  
14 there any the Mayor's Office has put out, Criminal  
15 Justice has put out that discusses what is happening  
16 right now in the city and provides any data to  
17 support any theories of what's, why we're seeing a  
18 surge?

19 DIRECTOR SOLER: The answer is yes. We  
20 will share with you some of the updated information  
21 that we have posted.

22 COUNCIL MEMBER POWERS: OK, all right.  
23 Thank you.

24 DIRECTOR SOLER: Yes.  
25

COUNCIL MEMBER POWERS: Thanks, Chair  
Adams.

COMMITTEE COUNSEL: Thank you, Council  
Member Powers. We'll now turn to Council Member  
Holden, followed by Council Member Rosenthal.

SERGEANT AT ARMS: Time begins.

COUNCIL MEMBER HOLDEN: Thank you, Chair,  
and, um, thank you all for your testimony. Um, I  
just have a question, um, to follow up, ah,  
electronic monitoring that the chair asked. Um, when  
meeting, meeting with the Queens DA, and I'm not  
gonna, you know, I'm not gonna put words in her  
mouth, but, um, 'cause I, I mentioned the same thing  
about electronic monitoring, couldn't that be  
expanded, and it seems like the process is that the  
suspect, let's say the person is arrested. They,  
before their court case or that they had, they,  
they're, they go home and then they have to come back  
for to put the, ah, once they get approval for  
electronic monitoring they have to come back. Is  
that the process, where there's a, there's a, there's  
a space in there, there's, there's a time element,  
it's not done in the courts right away?

DEPUTY DIRECTOR LOGAN: It's not done on the day of the arraignment. Hi, good afternoon, ah, Council Member Holden. It's Deanna Logan.

COUNCIL MEMBER HOLDEN: Hi.

DEPUTY DIRECTOR LOGAN: Ah, so especially during the height of the pandemic what happened was A, the, the pipe of electronic monitoring was only the, what people colloquially refer to as house arrest, meaning that the person was going to be in a home with the bracelet and therefore they wouldn't be able to leave that location. In those cases, individuals were remanded, held in custody, and then the sheriff's team would go and perform whatever the interview was to determine whether the individual was somebody that had the ability to be monitored. Thereafter the, they would report back to the courts and then the courts would made a determination whether or not they agreed that this individual should actual be put on electronic monitoring. Currently the same type of analysis is done. But, obviously, the court, depending on the charge, has the ability to remand the person for interview or to let the person remain at liberty and report to the sheriff's office or have a virtual interview with the

1                   sheriff's office to have the final determination and,  
2                   and information sent to the court as to whether or  
3                   not the court really wants to use that tool for that  
4                   individual.  
5

6                   COUNCIL MEMBER HOLDEN: But, but do you  
7                   see like, um, a better way to do it? Do, do you see  
8                   that maybe use could be done in like one, at, at the  
9                   court right away and, and have the electronic monitor  
10                  in the court, um, like there's an office there. We  
11                  don't have the, we don't to have a lull or a few days  
12                  figuring this all out?

13                 DIRECTOR LOWENSTEIN: Absolutely, and as  
14                  the, again, health crisis subsides and there is the  
15                  ability to have more in-person then we will work with  
16                  OCA to make sure that we can do that. Right now  
17                  space in the courthouses is limited and therefore the  
18                  ability for the sheriff and his team to kind of set  
19                  up shop within the courthouse has been also limited.

20                 COUNCIL MEMBER HOLDEN: OK. Um, one  
21                  other question on, um, the shootings that the chair,  
22                  that, um, was brought up by, ah, Council Member  
23                  Powers, um, when I met with the police commissioner,  
24                  this was, um, some weeks ago, ah, they said that  
25                  they're making the arrests. NYPD is making arrest,

1  
2 arrests, but only, I think it was last year, 12% of  
3 the suspects caught in, in a shooting went to jail,  
4 and I think this year it's up to 17%. So given New  
5 York City's gun, you know, tough gun laws, I, I  
6 could, you know, this could to MOCJ or it can go to,  
7 um, anybody in the DA's offices, ah, that are there,  
8 that are on this, but it seems to me that that's a  
9 low number. So we're, are we arresting the same  
10 people who are committing these, ah, shootings? Um,  
11 and if only 17% so far this year are going to jail,  
12 that seems to be a problem. So, ah, is it, how,  
13 what, does anybody have a, a more updated number of  
14 how many people are actually incarcerated, ah, held  
15 after a shooting, after they're caught with a gun or  
16 in a shooting?

17 DIRECTOR SOLER: So I, all right, so I,  
18 I'm not sure exactly what information the police  
19 department provided. I can tell you the information  
20 we have. I can tell you that the number of people  
21 who are, eh, the number of people in Riker's, in, in  
22 the jail system for murder and attempted murder, are  
23 up by 48%, eh, over the last, eh, over the last year.  
24 I can tell you that, eh, the number of people for gun  
25 possession is also up, eh, about that, eh, 46% I



think is the correct number. So certainly I understand, eh, what the police commissioner was indicating. I have not, but, eh, again we, as we, ah, in my answer to Chair Adams is this [inaudible]

SERGEANT AT ARMS: Time.

DIRECTOR SOLER: ...about.

COUNCIL MEMBER HOLDEN: Ah, it's freezing, you're freezing up. Is it, do I, everybody see that or do I just see that?

DEPUTY DIRECTOR LOGAN: No, no, I, I think we're all seeing that you're...

COUNCIL MEMBER HOLDEN: Yeah, we, we missed your...

DEPUTY DIRECTOR LOGAN: ...um, [inaudible].

COUNCIL MEMBER HOLDEN: Yeah, we missed your answer, ah, so far.

DIRECTOR SOLER: So sorry, can you, can you hear me now?

COUNCIL MEMBER HOLDEN: Yeah.

DIRECTOR SOLER: All right. So what I was saying is that, eh, the information, the data that I have is murders, eh, people accused,

defendants for murder, in Riker's, in jail, are up,  
eh...

COUNCIL MEMBER HOLDEN: No, but, but the  
question, no, but I'm asking you not about murders or  
attempted murders, I'm asking you about, I'm in,  
let's say I try, I fire a gun. I don't hit anybody,  
but I'm firing a gun. What percentage of those guys,  
or those people that go to jail when you shoot a gun  
in New York City?

DIRECTOR SOLER: Eh, the, the problem  
with your question, and not that your, your question  
is wrong, what I'm saying is then we, what we don't  
charge people for shooting, we charge for either a  
murder, which are people for an attempted murder, an  
attempted murder. We charge with an assault one, we  
charge people [inaudible]...

COUNCIL MEMBER HOLDEN: Well, reckless  
endangerment, whatever, whatever charges are, are  
charged or go along with firing a gun in New York  
City. That was the question. Like what, what  
percentage of those people are going to jail, because  
what, according to the police department it's a very  
low number.

DIRECTOR SOLER: I, I will follow up with the police department...

COUNCIL MEMBER HOLDEN: OK.

DIRECTOR SOLER: ...the numbers, the information that I have is what I stated.

COUNCIL MEMBER HOLDEN: Thank you.

DIRECTOR SOLER: Eh, yeah.

COUNCIL MEMBER HOLDEN: OK, thank you. Thank you, Chair.

COMMITTEE COUNSEL: Next up is Council Member Rosenthal.

SERGEANT AT ARMS: Starting...

COUNCIL MEMBER ROSENTHAL: Thank you so much. Thank, thank you, Chair for the opportunity to ask questions. Um, I, I guess my question is sort of first, ah, just to sort of observe, observe the previous questions and what people are searching for is, um, comprehensive data that can help us get to, um, better, ah, public laws or policy. I'm wondering if you all are hearing that as well and, ah, what your timing is on getting the reports that would answer some of these questions?

DIRECTOR SOLER: So what I said is some of these reports are already online. Eh, I'm, we

1 have released them through, eh, for the last year and  
2 most recently. But, eh, there are additional data.  
3 We will definitely, eh, we are always planning. I,  
4 we will, eh, we update data regularly. I, I will  
5 check with my team and I'll get back to your office  
6 and ...

8 COUNCIL MEMBER ROSENTHAL: Yeah.

9 DIRECTOR SOLER: ...tell you exactly when  
10 is the next report on this issue.

11 COUNCIL MEMBER ROSENTHAL: I guess... I  
12 remember now we released something two or three  
13 months ago, but I don't remember right now when is  
14 the next one.

15 COUNCIL MEMBER ROSENTHAL: [inaudible] my  
16 point just being that, um, you know, politicians, the  
17 NYPD, ah, interested parties are using disparate  
18 information or no data to assert things that may or  
19 may not be true, and your office could play a  
20 critical role, right? So, you know, to Bob Holden's  
21 point, wouldn't it be great if we could have some  
22 dispositive information answering his concern, which  
23 is about people shooting guns and whether or not the  
24 criminal justice system is interacting with them or  
25 any system is interacting with them in some way. Um,

1 in my district it's less about shootings. It's more  
2 about people who are repeatedly let out, um, because  
3 there's nothing to keep them on and then causing, um,  
4 some physical harm to someone. You know, if we could  
5 have real data about that and not just one-off  
6 examples, um, as policy makers we could all have  
7 better answers. So my question is more centered  
8 around a plea for accurate data, um, because  
9 otherwise, ah, people are rushing to judgment based  
10 on limited information and it's too important of an  
11 issue in a time to duck the ball on that. I mean,  
12 so, so with that, trying to ask a question, are, are  
13 there are any barriers to getting information from  
14 your office? Are you able to see court data? Are  
15 you able to track somebody from arrest to outcome,  
16 um, stuff like that?

18 DIRECTOR SOLER: So we do not have, eh,  
19 significant barriers. What we do is, ah, for  
20 instance to your point, we, the last report I was  
21 referring about two months ago was data pertaining to  
22 rearrest. That's our report. Then we have to wait  
23 for two months. I think it's very informative for  
24 what the kind of, for the kind of information you're  
25 looking for. Eh, but we need to wait about a couple

of months just because the data is coming. We need to process it and we need to put it out there.

COUNCIL MEMBER ROSENTHAL: Right.

DIRECTOR SOLER: And the system and, and the data is not constantly updated. Eh, I agree with you. Data that will allow us to know about gun violence, but also about all the felonies and nonviolent felonies. So, eh, I will check with my team. I will...

COUNCIL MEMBER ROSENTHAL: I mean, wouldn't it be great...

DIRECTOR SOLER: ...and I will try to put...

COUNCIL MEMBER ROSENTHAL: ...if that at this hearing...

DIRECTOR SOLER: Yep.

COUNCIL MEMBER ROSENTHAL: ...you could give some dispositive numbers, right? What percentage of people who have been let out 10 times have now committed, um, I guess it's called a felony assault, I'm not a lawyer, you know, how many...

DIRECTOR SOLER: Hmm?

COUNCIL MEMBER ROSENTHAL: ...you know, what percentage of the felony assaults are done by

people who have been let out repeatedly, etcetera? I wish you were able at a hearing like this, and, and, and of course the shootings. I just represent the Upper West Side where...

DIRECTOR SOLER: Right.

COUNCIL MEMBER ROSENTHAL: ...we're not having that issue. But, you know, the same with shootings. Like y'all should be able to have this information readily available so the mayor's talking about it, obviously, too.

DIRECTOR SOLER: So I, so, again, eh, I can tell you that the...

SERGEANT AT ARMS: Time.

DIRECTOR SOLER: ...rearrest rate, the rearrest rates in, in the city are remarkably stable and have been remarkably stable in, in recent months. Eh, about 36, about 30% of people who have, eh, who are involved in the criminal justice system are rearrested at some point within a year. Eh, right now...

COUNCIL MEMBER ROSENTHAL: Is that different than before bail reform?

DIRECTOR SOLER: No. We, we don't see a substantial difference...

COUNCIL MEMBER ROSENTHAL: So there's no change. So when...

DIRECTOR SOLER: There is no such...

COUNCIL MEMBER ROSENTHAL: ...police officers...

DIRECTOR SOLER: No, there is...

COUNCIL MEMBER ROSENTHAL: When my NYPD, Chair, with your permission, just one more quick second? Um, when my NYPD says at the police council meetings, um, that, ah, the reason there's so much, ah, so many people punching people on the street is because people are just out over and over and over again so they can't do anything about it, what's, what should they be saying?

DIRECTOR SOLER: They, I don't, I don't what the PD should be saying. What I am saying is, eh, the data is much more complex, obviously, and I presented that overall numbers do not change. There are changes within categories that we can discuss and I will contact your office and everybody who [inaudible]. I'm mostly [inaudible] with, with this data publicly, to make it available and show in what categories things are different than they were before



and which categories things, things have not changed.  
But, eh, overall...

COUNCIL MEMBER ROSENTHAL: OK. Yep,  
sorry, go ahead.

DIRECTOR SOLER: No, overall in our, when  
we analyze the data, and as I said, we look  
regularly, the rearrest rate, ah, indicates that, eh,  
numbers have not changed drastically than it was  
[inaudible].

COUNCIL MEMBER ROSENTHAL: That's  
incredibly important information. I hope it is  
shared with the precincts.

DIRECTOR SOLER: I, ah, and you have our  
report publicly, my website, if you go to the website  
you will see our report already on [inaudible]  
presentation, both historically and what has happened  
most recently.

COUNCIL MEMBER ROSENTHAL: Yeah, yeah.  
I, I urge the NYPD, if you're listening to this, to  
share that information with your local precincts.  
Thank you very much, appreciate it.

DIRECTOR SOLER: Thank you.

COUNCIL MEMBER ROSENTHAL: Thank you,  
Chair.

COMMITTEE COUNSEL: Thank you, Council Member Rosenthal. I'll give, um, any other remaining council members just a minute in case they want to use the Zoom raise hand function. And after that we will move on to the next panel.

CHAIRPERSON ADAMS: Acknowledging that we've been joined by Council Members Gibson and Cabrera.

COMMITTEE COUNSEL: OK, seeing no hands, though I'll proceed slowly, um, thank you very much to the Mayor's Office of Criminal Justice. We'll now to, ah, the Richmond County District Attorney Mike McMahon.

DISTRICT ATTORNEY MCMAHON: Thank you so very much, Chair Adams and all the members of the committee. Much appreciated.

CHAIRPERSON ADAMS: Thank you.

COMMITTEE COUNSEL: Um, I'm just going to, um, administer the oath. Ah, District Attorney McMahon, could you please raise your right hand? And do you swear or affirm to tell the truth, the whole truth, and nothing but the truth before this committee and respond honestly to council member questions?

DISTRICT ATTORNEY MCMAHON: Yes.

COMMITTEE COUNSEL: Thank you. You may  
being your testimony.

DISTRICT ATTORNEY MCMAHON: Thank you.  
Is my volume OK? Can you hear me?

COMMITTEE COUNSEL: Yes.

DISTRICT ATTORNEY MCMAHON: OK. All  
right. Ah, good morning everyone. It's an honor,  
ah, to once again be before the New York City  
Council, ah, in particular, ah, the Committee on  
Public Safety, and you, Chairwoman Adams, ah, and to  
all fellow members. I want to Council Members  
Miller, Powers, Menchaca, Rosenthal, Brannan, Holden,  
Gibson, and Cabrera, ah, for joining us today, ah,  
and, ah, I also want to thank, ah, the delegation  
from Staten Island, led by Minority Leader Steven  
Matteo and Council Member Debbie Rose, and Council  
Member Joe Borelli for all the work that they do  
advocating for the people of Richmond County. I know  
you, many of you've heard to often, but as an alum of  
the New York City Council, ah, I'm honored, ah, to be  
with you. Thank you for all the great work that you  
do. I also want to thank our partners, ah, those,  
ah, ah, from, ah, MOCJ, ah, certainly, ah, Marcos and

1 Deanna for the work that they've done helping us get  
2 through the COVID crisis, ah, our partners in  
3 delivering justice for the people of Staten Island  
4 and the City of New York, ah, the defense bar of  
5 legal aid, the, the public defenders, ah, the  
6 privilege, ah, attorneys, and of course ATB counsel,  
7 ah, as well. Ah, when I last appeared before this  
8 council we were just getting ready to relaunch the  
9 first trials again, ah, in Richmond County Supreme  
10 Court since the onset of the pandemic. And today I  
11 can report that we have safely completed three felony  
12 trials to verdict and a fourth trial was resolved  
13 with a plea during jury selection, and a fifth, a  
14 murder trial, ah, is currently underway. So we are,  
15 to answer the questions, ah, posed by the hearing  
16 notice on the state of the courts, we are getting  
17 away at the, ah, Supreme Court level. Ah, this was  
18 fraught with logistical challenges brought by COVID  
19 and the safety precautions, and this was no easy  
20 feat. Ah, but with determination and collaboration  
21 between those many partners that I mentioned, ah, and  
22 OCA, although I'm with you, ah, Chairwoman Adams,  
23 they should have come to this hearing today, ah, and  
24 most notably a willing public, ah, and those  
25

intrepid, ah, jurors and grand jurors who showed up to fulfill their, ah, civic duty, ah, but we are slowly making progress and, and, and this is all made possible by them. Um, that said, trials have yet to resume in the, ah, Richmond County Criminal Court. Ah, in criminal court we continue to work with our partners and OCA and the defense bar to resolve as many cases as possible in the pretrial phase, but, to be sure, there are certain cases that do need, ah, to proceed to trial and that's not happening currently. And, as we know, there's new state legislation that says in New York City, ah, ah, [inaudible] misdemeanor cases and unspecified misdemeanor cases will have to have a trial as well. So that clog continues to exist. Ah, like the other counties, we have seen an uptick in the backlog of cases and DATs in criminal court in this pandemic and it presents a difficult task for our office, the court, and the defense bar to work through this in the months ahead. For the DA offices across the city, the challenge will be the discovery obligations on the unrealistic timeline set by the state legislature in 2019 in the criminal justice reform laws amid a surge in violent shooting and homicide cases while also balancing the

ballooning backlog of cases is indeed daunting. The resumption of trials and the full functioning of the courts is the only way to clear some of this backlog. It's not the only way, but it's, it's an important way, and will take time and resources, particularly personnel resources, to be accomplished fully. As we face the obstacles ahead our biggest challenge is a fiscal one, created by the administration and the council, and it threatens us with dozens of layoffs and, at the worst, at this worst possible juncture. And, to be sure, without financial relief we cannot meet our criminal justice obligations. And let me explain. At the end of 2019 the city gave the five DAs office and the special narcotics prosecutor money to hire staff and build the infrastructure needed to respond to the new criminal justice reform mandates passed in Albany that went into effect in January 2020. The administration and council approved and instructed our office to hire expeditiously 61 new positions to meet these demands. At the time these positions were funded on a pro rata basis, ah, for fiscal year 20, in other words seven months instead of 12 months, ah, for these salaries. It was promised that in the fiscal year 21 adopted these

positions would be fully funded, assuming that we fill the spots by that time. By the spring of 2020 we had hired over 95% of these positions, yet the full funding never promised was delivered [inaudible] adopted in the November plan, the January plan, and it still never happened. And there's no question that if you believe in criminal justice reform that these new, ah, positions are vital for our agency to fulfill the mandated obligations under the new criminal justice reforms. In fact, in an effort to provide responsible good faith projections as to our needs we may have underestimated them. But I'm not here to argue with that today. I just want to remind this council that we will not be able to function on the promise of criminal justice reform without help. Over the past year our office has had to delay start dates, implementing a hiring freeze, and accumulated a significant number of vacancies to avoid layoffs. In looking forward to fiscal year 22, we face a significant, ah, personnel, budget, a PS budget deficit of approximately a million and a half dollars because of this unfulfilled, ah, promise in funds. Without the funding we will have layoffs amidst a time of, ah, budget, ah, increases for the City of

New York and in a time of great concern about safety on our streets. This depletion in personnel will have a devastating impact on our ability to address case backlog, to meet the discovery mandates of the new criminal justice reforms, and all at a time when we are battling the surge in violent crimes, as we have heard through the questioning of many of your colleagues, Madam Chairwoman. Ah, and violent crimes and emerging from the COVID pandemic. Put simply, we cannot continue down this road and ensure safety in Staten Island if this funding crisis remains unaddressed. And it's not Staten Island only, it is the other four offices in the SMP. I implore the council to help our office and all of the prosecutorial offices to fulfill the mission we are entrusted do for our communities and right the wrong in this fiscal year adopted budget. I'd like to now just give you an overview of where we are in our, our court processes and our numbers. Our grand juries resumed in August 2020 before they were [inaudible] into an uptick in COVID cases. They resumed in January and we have been operational since. As you heard, we operate one grand jury at time here in Staten Island. As I mentioned, Supreme, Supreme



1 Court trials resumed in 2021, April 2021. All court  
2 personnel returned to the courthouse in late May, and  
3 currently, as I said, the criminal court inventory in  
4 Richmond County is just below 1700 cases, and there  
5 are an additional 800 to 900 unarraigned DATs not  
6 reflected in that number. Although at one point  
7 during the pandemic the criminal court inventory of  
8 cases, ah, that were pending over a year had  
9 ballooned to over, ah, 200 cases. We have worked  
10 with the defense bar and the court to bring that  
11 number down to about 130. This is despite not have  
12 trials resume in criminal court yet, as I've  
13 mentioned. There is no tentative plan that we are  
14 aware of for trials to resume in criminal court at  
15 this time. But our ADAs are all preparing their  
16 cases and managing their case loads as if hearings  
17 and trials are moving forward. Our office has worked  
18 hard to maintain low arrest to arraignment times,  
19 even amid the pandemic. In April 2021 our average  
20 arrest arraignment time was 14.51 hours, ah, 14  
21 hours, 51 minutes, bringing our annual average to  
22 just over 16 hours. When I came into office in 2016,  
23 Staten Island had one of the worst, ah, numbers, at  
24 over, ah, 21 hours and we've consistently brought

1 that down, and it's something that we're extremely  
2 proud of, even, ah, amidst the COVID crisis. We have  
3 been told that OCA is committed to making virtual  
4 appearances a fixture of court proceedings where  
5 appropriate. Some of this depends on future  
6 executive orders by the governor and modifications to  
7 the criminal procedure law. The court has begun in-  
8 person appearances for unarraigned DATs on June 1.  
9 Defendants are notified to appear in person in the  
10 arraignment court. Our arraignment judge has been  
11 calling approximately 25 unarraigned DATs per day.  
12 This includes the DATs that have come in during the  
13 pandemic, as well as all DATs on the warrants  
14 calendar. So as we sit before you today, over a year  
15 into readjusting our world to fight a dangerous  
16 global pandemic, it goes without saying that this  
17 time has been filled with challenges and setbacks.  
18 Despite these difficult times, however, I am proud  
19 that my office was able to adapt and persevere.  
20 We've remained vigilant in our dedication to the rule  
21 of law and protection of victims of crime...

22  
23 MICHELLE OTIS: Excuse me, Mr. McMahon.

24 DISTRICT ATTORNEY MCMAHON: Yes?  
25

MICHELLE OTIS: We need to pause for one moment. We're having some technical difficulties. Would you mind just pausing for one moment?

DISTRICT ATTORNEY MCMAHON: Sure.

MICHELLE OTIS: Thank you.

UNIDENTIFIED: [inaudible] guys, everyone's got tight schedules.

MICHELLE OTIS: OK, I believe we've got our technical difficulties worked out and we can resume testimony. Thank you so much for your patience.

DISTRICT ATTORNEY MCMAHON: So can you hear me now? You can. So, um, I am, did you hear any of my testimony at all? Because I'm told the public didn't.

MICHELLE OTIS: Would you like to, would you like to start over, um, from the beginning, Mr. McMahan?

DISTRICT ATTORNEY MCMAHON: Sure, that'd be fine.

MICHELLE OTIS: Thank you, just to make sure [inaudible]. Thank you.

DISTRICT ATTORNEY MCMAHON: Um, very good. So, ah, good morning everyone. Ah, it is an

1 honor to appear before the City Council today. Ah,  
2 and I want to thank, ah, the chair of the Committee  
3 of Public Safety, ah, Councilwoman, ah, Council  
4 Member Adrienne Adams, ah, and the fellow members who  
5 are here today, Council Members Miller, Powers,  
6 Menchaca, Rosenthal, Brannan, ah, Holden, Gibson, and  
7 Cabrera. Ah, and I want to thank, ah, Speaker Corey  
8 Johnson for his leadership in the city. And I also  
9 want to thank Staten Island's council, ah,  
10 delegation, ah, Council Member Debbie rose, Minority  
11 Leader Steve Matteo, and Council Member Joe Borelli  
12 for their continued, ongoing advocacy on behalf of  
13 the people of Staten Island. Ah, I also want to  
14 thank our partners, in particularly from, ah, MOCJ,  
15 ah, Marcos Soler and Deanna Logan, as well as, ah,  
16 the defenders, the, ah, people from legal aid here in  
17 Staten Island, ATB attorneys, ah, the private defense  
18 bar, ah, for working with us together to get us  
19 through, ah, the difficulties of the COVID crisis and  
20 to start getting our criminal justice system here on  
21 Staten Island back on track. When I last appeared  
22 before this council we were just getting ready to  
23 relaunch trials again in Richmond County Supreme  
24 Court, ah, since the onset of the, the pandemic.

1 Today, Madam Chairwoman, I can report that we have  
2 safely completed three felony trials to verdict. A  
3 fourth trial was resolved with a plea during jury  
4 selection, and a fifth, which is a murder trial, is  
5 currently underway. Fraught with logistical  
6 challenges brought by COVID safety precautions, this  
7 was no easy feat. But with determination and  
8 collaboration between, amongst the many partners and  
9 the willing public who nobly showed up and  
10 performed their civic duty as jurors, this necessary  
11 step forward was made possible. That said, trials  
12 have yet to resume in Richmond County's criminal  
13 court. In criminal court we continue to work with  
14 our partners in OCA with [inaudible] court and  
15 resolved as many of the cases at pretrial as  
16 possible. But we will not be fully back on track  
17 until we have trials in criminal court, especially  
18 with the advent of the mandate to have jury trials,  
19 ah, in, um, a B misdemeanor and unspecified  
20 misdemeanor cases. Like other counties, we have seen  
21 an uptick in the backlog of cases and DATs in  
22 criminal court amid the pandemic, which presents a  
23 difficult task for our office, the court, and the  
24 defense bar to work through in the months ahead. For  
25

1 DA offices across the city the challenge being  
2 discovery obligations and the unrealistic timeline  
3 set by the state legislature in the 2019, ah,  
4 criminal justice reform laws amid a surge of  
5 violence, ah, particular in shootings, homicide  
6 cases, while also balancing a ballooning backlog of  
7 cases is indeed daunting, and the resumption of  
8 trials and the full functioning of the courts is the  
9 only way to clear some of this backlog, but it will  
10 take time and resources, particularly personnel  
11 resources to fully accomplish this. And as we face  
12 the obstacles ahead, our biggest challenge is a  
13 fiscal one, created by the administration and the  
14 council, which threatens us with dozens of layoffs at  
15 this worst possible juncture, and to be sure we  
16 cannot without financial relief meet our obligations  
17 under the criminal justice reform law and keep the  
18 people of Staten Island and the City of New York  
19 safe. [inaudible] to explain, ah, what I'm referring  
20 to. At the end of 2019 the city gave the five DA  
21 offices and the special narcotics prosecutor money to  
22 hire staff and build infrastructure to respond to the  
23 new criminal justice reform mandates passed in  
24 Albany, that went into effect in January 2020. The  
25

administration the council approved instructed our office to expeditiously hire 61 new positions to meet these demands. At the time these positions on a pro rata basis for fiscal year 20, and that is seven months instead of the full 12 months. We were promised that in fiscal year 21, um, the adopted, in the adopted these positions would be fully funded, assuming that we filled the spots by that point. By spring of 2020 we had hired over 95% of these positions, yet the full funding has never followed. There's no questions that these, question that these positions are vital for our agency to fulfill our mandated obligations under the new criminal justice reforms. In fact, in an effort to provide responsible, good faith projections as to our needs, we may have underestimated, ah, some of these. But we're not here to ask for more. We're simply here to ask that you give us the money promised so that we don't have to, ah, run into the, ah, possibility of not fulfilling our obligations. Over the past year we have had to, ah, delay start dates, implemented a hiring freeze, and accumulated a significant number of vacancies to avoid layoffs. In looking forward to fiscal year 22 we face a significant PS budget

deficit of approximately 1.5 million because of this unfulfilled commitment and gap in funds. Without this funding we will have to lay off dozens of staff members on top of the unfilled vacancies we have already accumulated, this at a time when the city is facing a public safety crisis, increase in shootings, and we have to now implement all of the criminal justice reforms which, ah, discovery reforms which were on hold pursuant to the governor's orders and now those have been lifted. We are facing a budget and, ah, fiscal crisis here in our office, and this is true in the other, ah, prosecuting offices as well. So we urge you to please, as you sit down at the budget negotiating table, to simply give us what was promised and allow us to fulfill our mission. That being said, I would like to discuss briefly where we are with court operations and how it is affecting, ah, our ability, ah, to, ah, meet our mandates. In Richmond County grand juries resumed in August of 2020, but they were paused due to an uptick in COVID cases. We resumed in January and have been operational since. Supreme Court trials resumed in April 2021. All court personnel returned to the courthouse in May, and currently the criminal court



inventory in Richmond County is just below 1700 cases. But there are also approximately 800 to 900 unarraigned DATs, not reflected in that 1700 number. Although at one point during the pandemic the criminal court inventory of cases that were pending over a year old have ballooned to over 200 cases. We have worked with the defense bar and the court, ah, and MOCJ to bring that number to about 130 cases. And this is despite not having trials resume in criminal court yet, as I had mentioned. There's no tentative plan that we are aware of for trials to resume in criminal court at this time, but our ADAs are all preparing their cases and will be ready when necessary. Our office has worked hard to maintain low arrest to arraignment times, even amid the pandemic. In April 2021 our average arrest to arraignment time was 14, ah, hours and 51 minutes, to bring our annual average to just over 16 hours. I'm personally very proud of this, because when I came into office the Staten Island average was over 20 hours, well before the COVID pandemic. We have been told that OCA is committed to making virtual appearances a fixture of court proceedings where appropriate. Some of this depends on future

executive orders by the governor and modifications to criminal procedure law. And lastly, the court began in-person appearances for unarraigned DATs on June 1, defendants notified to appearance in person in the arraignment part, and our arraignment judge has been calling about 25 unarraigned DATs per day. And this includes the DATs that, ah, come in during the pandemic as well as all the DATs, ah, on the warrants calendar. So, as we sit before you today, over a year into readjusting our world to fight a dangerous global pandemic, it goes without saying that this time has been filled with challenges and setbacks. Despite these difficult times, however, I am proud that my office was able to adapt and persevere. We are partnered with the police department and others, and, as I said, the defense bar to keep the people of Staten Island as safe as possible. We remain vigilant in our dedication to the rule of law, protection of victims of crime, and the overall improvement of public safety in our borough. Our staff and ADAs have performed admirably and I'm very proud of them all. So I thank you for your time and consideration of my testimony. I'd be glad to, ah,

answer any questions about the subjects of this hearing or any around public safety, ah, as you wish.

CHAIRPERSON ADAMS: DA McMahon, it is always to a pleasure to see you, sir, and I can't thank you enough for hanging in there with us, ah, in spite of the technical difficulties. Um, your, your testimony is so heartfelt, and thank you for the representing the DAs across the city this morning. You represent them in excellence, as always. Um, your budget, ah, plea has not fallen on deaf ears, certainly not by myself, and I certainly feel that your request is most reasonable. And I will, ah, do my best to make sure that you along with your colleagues are taken care of as far as our, our budget, ah, from the city. We will do our best to fight to maintain and restore that, um, for you. So thank you for bringing that again to my attention. Um, we know that you have been through so much, your staff has been through so much. What I'd like to know is what coordination have MOCJ, DCAS, and OCA done with your office in terms of the safety of reopening the courthouses and what still needs to be done, and do you have a sense of how your staff feels

1 right now about fully physically returning to the  
2 courthouses?

3  
4 DISTRICT ATTORNEY MCMAHON: I think  
5 that's a great question, Madam Chair, and thank you  
6 for hearing our concerns on the budget. Ah, as you  
7 understand, I'm just trying to get operational. I'm  
8 not trying to ask for more. I'm just trying to get  
9 what, 'cause I don't want to do layoffs, this would  
10 be a terrible time to do that because of the COVID,  
11 the economy, but also public safety. So thank you.  
12 Ah, yeah, I mean, we, it's, it's, you know, as you  
13 know and I'm sure, ah, with, with the council and you  
14 hear from members in, in your district, getting  
15 things started again has always been a work in  
16 progress, and that's the way it's been, ah, here in  
17 the courts, ah, but we are, ah, very, ah, you know,  
18 fond, if you will, of the work that we do with MOCJ.  
19 Ah, they're great people who work there and they're  
20 trying to do their best, um, and what we've done, ah,  
21 in our, you know, in the physical space is that all  
22 of the courtrooms now are outfitted with plexiglas  
23 and the grand jurors and the jurors continue to be,  
24 ah, separated and, and, and as you heard, using full  
25 courtrooms now for the grand jury, um, limiting, ah,

access, ah, within constitutional, ah, bounds to the people in the courtrooms so that trials can progress. And overall, ah, our people are, are cautious, nervous, worried, ah, but they're doing their jobs, like so many other New Yorkers, stepping up and doing what they have to do. Um, there have been some frustrations, ah, as you know, from their nonappearance at the hearing today, OCA can be a difficult partner. Ah, but somehow we've got great leadership here in Staten Island in Judge Desmond Green and we are able to get up and running. It's not perfect. Um, space is always an issue. Ah, we don't have, you know, we don't have enough space for our personnel as it is. But all that being said, I, I feel confident that if we continue the way we are going, and let's not forget, vaccination is so important, um, and if we are able to do that we will get up and running. A big concern is criminal court, um, trials, ah, because as, as we know, not all cases go to trial. In fact, if it's 10% it's a lot. But that is sort of what hangs over the criminal, ah, procedure, ah, ah, process, and if people know there is some sort of end they make decisions, ah, that will allow, ah, ah, justice to be delivered in a

timely fashion. If there is no end it can continue forever, whether it's myself, my staff, the defendants, the defense counsel, courts, they let things linger and, as we know, ah, that's not good for anyone. So we've made a lot of progress. We have a lot more work to do.

CHAIRPERSON ADAMS: Thank you very much.

Ah, in looking at, ah, the, um, jury, ah, how the juries having going, um, I went over this a little bit with MOCJ a little while ago. How many grand juries have you actually been able to empanel over the last few months, and, um, are there enough to meet your, your workload, your backlog?

DISTRICT ATTORNEY MCMAHON: Yes. So, and, and as you heard, our, our caseload is a lot for a community our size, but it's not, you know, when you compare it to, ah, Brooklyn and, and Queens and Manhattan and the Bronx, ah, it's, it's, to be honest it's not. So we maintain one full grand jury per month. Ah, they meet 11 days out of the month. Ah, we'd like to expand that a few days, and that's something we've been working on. Ah, but overall we've been in, in pretty much normal operations since January 1. There were fits and starts last year.

1 Ah, but we were able in January to start clearing up,  
2 ah, the backlog of cases, ah, that had been sort of  
3 stayed because of executive orders, ah, and we are  
4 now at a place where we're operating fairly  
5 successfully. We never had to, we were, we lost a  
6 few grand jurors because of COVID, but, ah, since  
7 January 1 we've been doing OK. So we're, ah, thanks,  
8 as I said, to the intrepid, ah, Staten Islanders who  
9 get the call for civic duty and come in, ah, the core  
10 personnel, our partners in the defense bar, the  
11 police department, everyone, we're, we're doing OK,  
12 ah, with that. And, ah, really, ah, we are no longer  
13 in the space that we used to be in, ah, in a, in an  
14 office building. We're across the street. They have  
15 a full courtroom, sort of a full wing of the old  
16 courthouse here in Staten Island that we use for the  
17 grand jury now. So as long as we have those face  
18 opportunities I think we'll be OK.

19  
20 CHAIRPERSON ADAMS: Nice to hear. My, my  
21 final question, ah, was going to be dealing with the  
22 backlog, but it doesn't sound like you've a got a  
23 backlog right now, which is, ah, [inaudible].

24 DISTRICT ATTORNEY MCMAHON: Yeah, so, so  
25 it's, it's, ah, I'm not gonna, I mean we're, we're,

we're OK, um, and, ah, in, in that regard. Again, um, unindicted felonies, you know, we're working on those numbers, ah, and felonies, getting them resolved or getting them to trial. It's a process that's just beginning now and, and, ah, we're somewhat OK with it. Greatly concerned, as I mentioned, now being able to meet our obligations under the criminal justice reform act, ah, but I know you hear me on that.

CHAIRPERSON ADAMS: We certainly do, and I will, ah, I'll thank you for your testimony. I'll go to Counsel to see if any of my colleagues have questions at this time.

COMMITTEE COUNSEL: Thank you, Chair. I don't see any hands raised at this time, but I'll just remind any other council members to use the Zoom raise hand function. And seeing no hands, ah, thank you to DA McMahon. I'll now turn to members of the public.

DISTRICT ATTORNEY MCMAHON: Thank you.

CHAIRPERSON ADAMS: Thank you, DA McMahon.

DISTRICT ATTORNEY MCMAHON: Thank you, Councilwoman.



COMMITTEE COUNSEL: Um, we will now turn to public testimony. I'd like to remind everyone that unlike our in-person council hearings we'll be calling on individuals one by one to testify. Each panelist will be given three minutes to speak. Please begin your testimony once the sergeant has started the timer. Council members who have questions for a particular panelist should use the Zoom raise hand function and I will call on you in the order you raised your hand after the panelist has completed their testimony. Council members, you will have a total of five minutes to ask your questions and receive an answer from the panelists. For panelists, once your name is called a member of our staff will unmute you and the Sergeant at Arms will set the timer, then give you the go-ahead to begin. Please wait for the Sergeant at Arms to announce that you may begin before delivering your testimony. I'm going to read the first, ah, four names so that you know who's coming up. Just one moment. First up will be Tina Luongo from Legal Aid Society, followed by Yung-Mi Lee from Brooklyn Defender Services, Ann Matthews from the Bronx Defenders, and Elizabeth

Fischer from Neighborhood Defender Service of Harlem.  
Um, Tina Luongo [inaudible].

SERGEANT AT ARMS: Time begins.

TINA LUONGO: Good afternoon, and thank you very much for holding this very critical, ah, hearing at this, ah, time, Councilwoman, ah, Adams and members of the committee. I'm Tina Luongo. I'm the chief defender at the Legal Aid Society. It's a citywide public defender, and I'm joined by, ah, members of the other defense, ah, our sister organizations. Um, I, I want to sort of frame out, ah, and respond to, to some of the concerns brought forward in here, particularly around the number of shootings, um, and the reasons why, um, um, and some of the claims made, ah, about the reasons why, ah, our city is facing this. Ah, there is no doubt that COVID was pandemic like none other that swept not only our city, our state, but our nation and our world, and left people, um, homeless. Ah, it left people unemployed. It, it, ah, abruptly cut critical mental, ah, mental health and, and medical services, and as we all know and we must reckon with, it highlighted the disparity in BIPOC communities that existed long before COVID hit us. And it's that

backdrop that I sort of want to respond to the rhetoric we have heard through this entire year and a half about the causes of sort of violent crime uptick. And, in fact, use some of the data that was presented here about the number of felony, felony matters that are backlogged and the number of arrests that have been made, many of them on violent crimes during this entire year and a half. And to also say that the courts are not reopening. They are resuming in person. In fact, the courts have been open vis a vis remotely and none of us thought that that was actually in the best interest of anybody from public defenders, most importantly our clients, who face a tech divide like no other. Um, but the reality of the situation is the uptick of violent crimes isn't because our courts are closed, and it isn't because of bail reform. It is because a pandemic like no other severed the vital wounds and traumatized and retraumatized people in our city. It also sort of raised the disparity of lack of services that we know existed before COVID. And the, actually the thing I wanted to talk about, as we think about resuming in person is in fact centering, um, the folk who have been in custody, detained and held in our, in, in our

city because of either bail or other holds, um, and pivot away for a moment about sort of the rhetoric of the NYPD [inaudible] and the sort of idea that somehow the answer to all of this is deter people by holding more people in and talk about people who have been held because when the governor stopped all of these executive orders that meant due process to those people who have been in, who haven't had a grand jury as fast as they could have, who have, are waiting for their discovery. And actual I want to sort of frame it this way. That the one concern we continue to have is public defenders and, and my colleagues will talk about other things. But I want to focus on the health...

SERGEANT AT ARMS: Time expired.

TINA LUONGO: ...and safety and humanity of the people who are held in custody. Because if the measure of society is how we treat the people who are detained, waiting for arraignment, or waiting for their day in court, well New York City has failed. And DCAS is not here to talk about it. Long before COVID what we knew of the holding areas of our criminal courts have been a shameful demonstration of the lack of concern that our city sometimes has when

1 they cage BIPOC people who are charged, um, and  
2 merely only accused. The poor quality of air, vermin  
3 and roach infestation, filth and sometimes human  
4 waste, ah, and the, and the outcry of clients to be  
5 treated with humanity have long been a problem in our  
6 city. So when COVID hit and the public defenders  
7 immediately went to the city, March 19, 2020, was our  
8 first letter, we began to push what needed to be  
9 done, better air quality, sanitation, make sure masks  
10 happen, social distancing, don't crowd. Month after  
11 month after month we sent reminders, we called to  
12 action, we made meetings. The public defenders  
13 pushed locally. We pushed OCA. We emailed MOCJ,  
14 DCAS, EOC, NYPD. And while, um, ah, Deputy Director  
15 Logan did testify that there were remediation we are  
16 still waiting for a full and complete list to ensure  
17 that every holding area, every arraignment move that,  
18 that clients are in and our staff now have to return  
19 to have been remediated. Because what we knew from  
20 DCAS is the public areas of the courthouses were  
21 remediated, ah, months and months and months ago.  
22 But when we followed up with a question about whether  
23 or not the nonpublic areas where BIPOC communities  
24 are held waiting for their day in court, waiting to  
25

1 be arraigned, we still have not gotten the full list.  
2 And we are about to return. So this is not only  
3 about public safety. This is about humanity. And I  
4 want to frame and reframe the conversation around  
5 that as my colleagues from the sister organizations  
6 talk about the rest of what needs to happen, because  
7 there is no doubt, and let me be very clear that  
8 there's a bit of rhetoric that the public defenders  
9 don't want to go back to court. Let me be very clear  
10 that we do. We will always stand for their clients.  
11 We will always stand with our clients whether we are  
12 standing one foot away from them or whether we are  
13 [inaudible]. And that is why we need to change this  
14 conversation about resuming safely, ensuring that we  
15 don't go back to all-purpose [inaudible] with 200  
16 people and most importantly to have transparent,  
17 data-driven, efficient and effective plans and that  
18 we get communicated those plans and this council get  
19 those plans and those plans be posted on OCA and  
20 MOCJ's website, the same as we post data about how  
21 many arrests we have made for violent crimes. That  
22 is what I ask that the city turn to as we go back  
23 hopefully to a better, more humane way in which we  
24 treat the people that we caged for [inaudible] of  
25

their trials. And with that I will turn it over to my sisters from the other organizations.

COMMITTEE COUNSEL: Thank you very much.

Ah, next up will be Yung-Mi Lee from Brooklyn Defender Services, followed by Ann Matthews from the Bronx Defenders.

YUNG-MI LEE: Good morning.

SERGEANT AT ARMS: [inaudible].

YUNG-MI LEE: Good morning. My name is Yung-Mi Lee and I'm the legal director in the criminal defense practice of Brooklyn Defender Services. I want to thank the Committee on Public Safety and Chair Adams in particular for inviting us to testify today. I join in my colleagues' testimonies about the resumption of in-person appearances. My testimony today will focus on in-person trials, ah, although my written testimony covers other aspects. The ability to have trials is obviously of paramount importance, but they must occur in person, but not in name only. In-person trials can occur and can be done safely without compromising important constitutional rights, including the rights to effective assistance of counsel, an impartial jury, effective confrontation,

public trials, and other due process considerations. The right to an impartial jury includes the right to a fair cross section of jurors. Given the disparate impact of COVID-19 across the city, let alone the country, we are concerned about the ability to obtain fair cross sections of jury pools. Courts must be aware of this heightened concern and ensure transparency and the ability to obtain master jury selection lists so that the attorneys can ensure that we are in fact obtaining a fair cross section. In order to, in order to fulfill the right to effective assistance of counsel and the right to confront witnesses, courts must also ensure that courtrooms are large enough to accommodate socially distanced jurors that are sitting, but also to ensure that jurors can see and hear the witnesses. Jurors, as you all know, must make important credibility determinations. If they cannot see the official expressions or properly hear voice intonations they cannot make, um, that they cannot fulfill that important duty. Additionally, attorneys must be able to view to, to not just view the witnesses, but also to see all the jurors at the same time. Conducting a trial with some jurors looking at the backs of



attorneys implicates assistance of counsel rights. This is particularly concerning as we have BDS attorneys on trial right now where jurors are so, so spread apart that they cannot be attorneys cannot see all the juries all at once at any given time. The right to effective, effective assistant, effective assistance of counsel also means attorneys should have adequate time to communicate with their clients both before and during the trial, inside and outside the courtroom. Discussing the right to testify and then preparing a client to testify is vital to effective representation. As such, incarcerated individuals should never be rushed back to Riker's, nor should they be produced late to court. The right to a public trial also means that the public should be able to hear and see the trial at all times. Family members and loved ones especially should never be excluded from the courtroom. Finally, we understand that there may be enormous pressure to complete a trial and for jurors to render verdicts. Courts must ensure that there is adequate time to deliberate and in a safe place. Coercive charges such as Allen charges, should be used sparingly. I want thank, ah, this committee for holding this

critical hearing on the courts' resumption of in-person appearances. The city must ensure that there is a plan to ensure the safety of all effect, of, of all actors in the courtroom, that defenders are made aware of the plan. So far, as of this date, we have not been aware, made aware of these plans to ensure the safety of all participants as we resume in-person criminal court arraignments in early July...

SERGEANT AT ARMS: Time expired.

YUNG-MI LEE: ...and as well, as we have already resumed in-person jury trials I do want to note that, ah, while we are doing this trial, which was started in early June, it's become clear and apparent to us that there has been no, ah, guidance given to courts, ah, in terms of how to even select juries safely, ah, and then to conduct, ah, these trials as jurors are spread out throughout the courtroom. I welcome any questions.

COMMITTEE COUNSEL: Thank you very much.

Next up will be Ann Matthews from the Bronx Defenders, followed by Elizabeth Fischer from Neighborhood Defender Services.

SERGEANT AT ARMS: The clock is ready.

ANN MATTHEWS: Good morning. Good morning. My name is Ann Matthews and I am the managing director of the criminal defense practice at the Bronx Defenders. Thank you, Chair Adams and members of the committee for the opportunity to speak with you today. In pre-pandemic times people charged with criminal offenses would routinely appear in person dozens of times in court before their cases ended. At each appearance a person could spend hours sitting on hard benches, unable to access phones or even read a newspaper or a book, having taken a day off from work or school, arranged childcare, only to be called and have a court appearance that could easily last less than a minute. In New York's criminal courts, in which the majority of cases are for lower-level misdemeanors, the process of court itself has often been the punishment. Now is the time to make good on reimagining the future of New York City's criminal courts and using the lessons learned not only from the past year and a half, but all of the years prior to truly transform the ways in which New York City's criminal courts operate. In effecting that transformation the experiences, the needs, and the preferences of those appearing in

criminal courts, the majority of whom are black and brown New Yorkers, must be front and center. New York City's criminal courts have remained opened, as my colleagues have said. They have remained open throughout this entire public health crisis and have continued to hear cases throughout that time. But how those cases have been heard has changed dramatically from pre-pandemic times. No longer are our clients appearing in person, but have instead been appearing remotely, virtually, or have even had court appearances excused altogether. It took a deadly global pandemic to demonstrate what many defenders have long been saying. There is no need to force people to appear in person or even at all at most appearances in New York City's criminal courts. In-person appearances should be limited to certain fundamental appearances - arraignments, hearings, and trials, though people should always have the option of appearing in person if they so choose. They should otherwise have the option to appear virtually or simply be excused altogether. All appearances for incarcerated clients should be in person, absent an individual's express request not to be brought to court. Choice and autonomy are critical. The courts

should prioritize the cases people in custody and those cases in which real rights, interests, and collateral consequences are [inaudible].

SERGEANT AT ARMS: Time expired.

ANN MATTHEWS: Thank you. Reducing, if I may just complete, reducing the number of required in-person appearances, providing choice and autonomy to those appearing in criminal courts, and prioritizing cases for people in custody are concrete steps towards focusing the limited resources of a court system where they are most needed and such steps also advance the promise to reimagine the future of the courts and to remedy the current racial and economic inequities so deeply imbedded in the current criminal court system. Thank you.

COMMITTEE COUNSEL: Thank you. Next up will be Elizabeth Fischer.

ELIZABETH FISCHER: Good morning. Thank you to the committee for holding this critically important hearing. My name is Elizabeth Fischer and I'm the managing attorney of the criminal defense practice at the Neighborhood Defender Service of Harlem. I want to join in the concerns and recommendations of my colleagues at the Legal Aid

Society, Brooklyn Defender Services, and Bronx Defenders. For our clients the pandemic has been an incredibly difficult time. Ah, for too many it has meant a denial of due process, additional months living under the burden of criminal charges, and often extended periods incarcerated due to the suspension of speedy trial laws. With all of these consequences for those criminally accused, however, has come one development that could be used to lessen the often catastrophic effects of facing criminal charges on our clients. And that is the creation of a system for virtual appearances in criminal, supreme, and family courts. Even before being convicted the process of the criminal legal system renders punishment, leaving people in a more precarious position simply by the fact of being, ah, accused of a crime. Prior to the pandemic, on an average day thousands of New Yorkers would wait in packed criminal courtrooms across the boroughs for hours, simply to do things such as get a new court date, nothing more. To avoid the disastrous effects of missing work and school, many people unfortunately choose to plead guilty rather than fight the charges against them, and too often the discussion with our

clients about whether to plead guilty is not about whether they actual committed the offense charge, but whether they can afford to miss work or school to fight a case that will likely drag on for months and require dozens of days in court of missed work and missed school. I will never forget one of my very first clients in juvenile, in family court, ah, 13 years old, who decided to plead guilty despite having maintained his innocence because his mom's job told him that if she missed one more day of work to appear in his numerous court appearances she would lose her job. Our clients should not have to be forced to choose between due process and their families' livelihoods. During the pandemic the implementation of virtual court appearances when our clients consent has lessened the burden of the process substantially for many of our clients. Instead of waiting for hours in packed courtrooms for a 30-second appearance, they can log into a virtual appearance during a break from work. The use of virtual court with our clients' consent for minor appearances has meant countless hours of productivity has been saved, thousands of persons have been able to actualize their due process rights without experiencing

devastating effects on their careers and educations. While the efforts to create this system were born out of necessity by the pandemic, virtual appearances will be needed by our clients long after the pandemic to preserve their jobs and educations. As the courts return to in-person appearances...

SERGEANT AT ARMS: Time expired.

ELIZABETH FISCHER: ...we hope that the court will not revert back to business as usual, where our clients must spend endless hours in court waiting for minor appearances that could easily have been completed virtually. We urge the council to encourage and support OCA to implement the permanent use of virtual appearances on consent of our clients to lessen the impact of the criminal legal process as punishment of the accused. Thank you.

COMMITTEE COUNSEL: Thank you. I'll now turn it to the chair for, um, questions and then we'll resume with the remaining public witnesses.

CHAIRPERSON ADAMS: You know, I, I have to just say, you know, for those of you that have been in oversight, ah, hearings with me it is always so compelling to hear from the defenders. Ah, full disclosure, I have family members who are defenders



1 and, um, your, your, your work, you know, your drive,  
2 your passion, you know, for what you do and for your  
3 clients, always strike a particular nerve with me.  
4 So, again, I thank you all for always just pouring  
5 out your heart and soul in these hearings, because  
6 it's very important that not, not just my committee  
7 hear this, but that the public hear this as well and  
8 know what goes on behind the scenes when it comes to  
9 our most marginalized communities and the treatment  
10 that they get, particularly of concern always with  
11 the back room operations, um, and the conditions, you  
12 know, that you continue to bring out, um, that people  
13 don't really see at face value in our court, in our  
14 courthouses. So thank you for that. Ah, Ann you,  
15 you expounded on the question that I had as far as  
16 virtual appearances, and Ms. Fischer, you took it  
17 even a step further for me. Yung-Mi, you were right  
18 in there in the pocket as well. Um, in, in this  
19 very, ah, important testimony when it comes to the  
20 necessity for the option of virtual appearances and  
21 what that means, and what this pandemic over the past  
22 year or so has shown us when it comes the trial, when  
23 it comes to compassion, when it comes to humanity,  
24 all of those things that need to be taken very, very  
25

1 seriously and move. I mean, all of that has to be  
2 reformed, changed, moved, because things cannot  
3 continue to be the way they were pre-pandemic. There  
4 is an opportunity for the city to get this right and  
5 to change the way that business as usually is  
6 handled. So in some ways we've been brutalized by  
7 this pandemic and in many others our eyes have been  
8 opened to learn how to do things better and how to  
9 treat our constituents and our clients better.  
10 There, there, there is a better way. So just know  
11 again that everything that you say always is taken to  
12 heart by me. I'm very sensitive when it comes to  
13 this issue. These issues, particularly, ah, Tina, of  
14 humanity that you always bring, you know, with such  
15 passion before, before my committee. So I'm so  
16 grateful for you, ah, for that. I just want to touch  
17 on one thing, and maybe Tina you can expound or for  
18 anyone, ah, really. When you talk about information  
19 that's received from MOCJ and DCAS and OCA how  
20 [inaudible], um, have you actually received from  
21 these agencies regarding pandemic modifications made  
22 to the courthouse? Do you receive them regularly?  
23 How frequently are you getting this information? How  
24 does it, what does that look like?

1                   TINA LUONGO: Ah, thank you very much for  
2                   sort of, ah, sort of, you know, sort of wanting more  
3                   detail on this. We have not gotten regular, ongoing  
4                   information and, um, we did receive, as I said  
5                   earlier, about September, um, ah, we did receive a  
6                   full list of the public areas showing that the MERV  
7                   ratings of all the courthouses, including those, ah,  
8                   family court, criminal court, and some of the housing  
9                   court, that most, ah, of the, ah, DCAS-controlled  
10                  spaces were, public areas were MERV 13 or higher.  
11                  When we did a follow-up as to the non-public areas,  
12                  right, the central booking area, the arraignment  
13                  areas, the holding areas, behind the courtrooms where  
14                  clients are held prearrest or if bail is set  
15                  brought to court from DOC's facilities, um, we got a  
16                  bit of a run-around, there was a lot of pointing of  
17                  fingers. MOCJ has taken the lead. I do appreciate  
18                  them for trying to get this information. But we  
19                  even, we even had our CEO, um, in communication with  
20                  the general counsel of DCAS, to which the last  
21                  information they provided, ah, DCAS provided back was  
22                  you have to go to OCA and DOC. It's their controlled  
23                  facilities. Which obviously it's an inappropriate  
24                  response. But DCAS are the people who care for the  
25

those facilities, are in charge of those facilities, and should be coordinating. So we are asking that not only do defenders get that information, but that information be posted, what the remediation was. If a HVAC system could not be brought to a MERV 13 they, all of the experts say there are remediation measures, stand-alone HEPA filters that can be used and what we are asking is that that be confirmed, that every area in which we are detaining an individual be remediated and we be told and it be posted, more importantly so that the people who are held also understand that the space that they're in has been remediated.

CHAIRPERSON ADAMS: Thank you. Thank you very much. Um, I, I think the only other question that I have, um, and I can maybe guess what the answer is. Ah, for any of you, do you have any data on longer incarceration terms for clients that are detained pretrial?

TINA LUONGO: I, I can speak for Legal Aid Society. Obviously, we know because of the suspension of the executive orders, lack of grand juries, no hearings and in trials that those incarceration rates, those detention rates are in

fact longer and that speedy trial was actual, um, was actual suspended for, ah, almost a year, right, where the governor has lifted that now. Um, and I think that that's what DA McMahon is talking about when he says that discovery was going to flow. Um, and I'll, I'll turn it over to my other, my other colleagues, to sort of talk about that. But, obviously, we know that to be true. That being said, we are doing what we can as public defenders to make sure our social workers, our investigators are doing the work to prepare cases, that we are analyzing discovery, that we do receive, um, and, and make sure that we are ready, um, we are advising our clients, ah, we're video conferencing. We're in fact going to Riker's to visit our clients to prepare for trial and hearing, if possible, and when it happens. But obviously for all the reasons we talked about today, um, things have, have in fact been longer for those who are, who are held in.

YUNG-MI LEE: So at, at Brooklyn Defender Services we don't have specific data. But, ah, I, I can tell you that as I work, ah, on individual cases with all the criminal defense lawyers, ah, whether it's through writ practice or making bail arguments,

1 it's clear that the executive orders that suspended  
2 3030 and 19080, ah, definitely had an impact on, ah,  
3 lengthy periods, ah, of incarceration. Um, there  
4 have been a couple of isolated cases where, ah, DOC's  
5 failure to produce individuals in court who were  
6 scheduled to be released into programs were delayed  
7 by a week or so. Um, so there are all different  
8 reasons for, ah, these really lengthy and  
9 unnecessary, ah, periods of detention. Ah, but in  
10 terms of, unfortunately in terms of specific data we  
11 don't have the hard numbers. But it definitely, um,  
12 exists.

14 ANN MATTHEWS: And I will just echo Tina  
15 and Yung-Mi here and say, um, you know, that, that  
16 the concern for our clients who are in custody, many  
17 of whom were in custody prior to the pandemic and who  
18 literally had, um, their cases in a legal limbo  
19 status, ah, for close to a year and for many it  
20 continues, um, it is, you know, we are concerned,  
21 obviously, for the well-being of all of our clients,  
22 but is why we are putting such particular emphasis as  
23 we look towards the increased resumption of in-person  
24 appearances and especially expanded trial capacity  
25 that we are focusing, um, so much of our interest and

attention on the needs of our incarcerated clients and hoping, ah, for prioritization within the court system for those individuals for all the reasons, um, that everyone has shared here today on the panel.

CHAIRPERSON ADAMS: So much great information, and, again, you know, I want to thank all of you, um, for always, you know, just being, you know, so at the top of your game. It's just unfortunate that, you know, the situation continues. Um, these hearings, ah, are going to continue, um, to get this out, um, so that we can continue to partner together to fix this thing, um, something's got to give and unfortunately I think it's the pandemic that is causing something to finally give. So I thank you all again for your testimony today, and I appreciate you being here.

UNIDENTIFIED: Thank you.

COMMITTEE COUNSEL: Thank you, Chair.

Um, we now to the remaining public witnesses, who I believe are also public defenders, perhaps testifying in their individual capacities. Um, next will be Lisa Ohta from the Association of Legal Aid Attorneys, ah, followed by Roy Wasserman, who is a senior staff attorney at the criminal defense

division of Legal Aid, and, ah, Edda Ness. Um, Lisa Ohta.

LISA OHTA: Um, thank you all for the opportunity to speak today on the reopening of criminal courts. My name is Lisa Ohta and I am the president of the Association of Legal Aid Attorneys, United Auto Workers Local 2325. ALAA represents over 2000 public-interest attorneys and advocates in New York, in the New York City metro area at 20 nonprofit legal service providers. And every day our members fight for justice for poor and low-income New Yorkers. Our members include public defenders and staff at the Legal Aid Society, Neighborhood Defender Service of Harlem, the Bronx Defenders, and the Queens Defenders. With the immediate reopening of in-person appearances in the criminal courts I'm here to ask for the committee's support in pressing OCA and other agencies to provide current, real time health and safety information, as well as to use a common sense approach to reopening in-person criminal court proceedings and to find a way to use this as an opportunity to make significant and lasting changes in how we effect [inaudible] justice. Since the COVID-19 outbreak began we have learned that this is



a virus that is most dangerous in crowded, poorly ventilated buildings with inadequate fresh air and air filtration. This is basically a description of our New York City courthouses. To date we have received no detailed information on mechanical upgrades, testing results, or detailed plans on occupancy limits in specific locations. And yet in-person arraignments are reopening imminently. Criminal arraignments by their very nature require significant staffing, including court personnel, the NYPD, Corrections, prosecutors, interpreters, court reporters, and defense attorneys. For years our members have been working arraignments in small, crowded, poorly ventilated spaces, like interview booths and holding areas, and they are often speaking with multiple people in close proximity for extended periods of time. Moreover, at least one arraignment court used in Queens is particularly noteworthy for being so cramped there is no ability to physically distance. These conditions in, in these spaces are notoriously filthy. And our members have seen no significant improvements in the courthouses since the beginning of the pandemic. For everyone involved we must minimize risk as much as possible. ALAA and

other legal service providers have been asking for basic information about remediation efforts OCA has undertaken to minimize these risks of transmission of the COVID-19 virus and to make sure the courthouses are as safe as possible moving forward. Last month OCA provided a report from AKF Consulting, listing 23 recommendations for safety in the New York City courthouses and a spreadsheet from September listing the MERV filter, filtration ratings in various courts around the city that covered public areas. They've also recently shared a spreadsheet which shows where enhanced air filtration has allegedly been implemented. But to date OCA, DCAS, and any other government agency has not provided any significant details on the implementation of these recommendations, including areas that will soon be heavily occupied, and this is not accessible. We are seeking basic assurances and confirmation that OCA has implemented reasonable preventative measures that will ensure the health and safety of everyone who will be required to enter these spaces soon. A report and a few spreadsheets are not enough to rely on. Moreover, it must be noted that AKF did not conduct in-person inspections of the courthouses.

And this is why we are asking for initial third-party expert to be allowed to inspect these premises and share those results with interested parties. ALAA has requested access to the courthouse in which in-person arraignments will soon begin to conduct indoor environmental inspections with our expert Micro Ecologies. And our experts, um, in health and safety at the UAW and Micro Ecologies have examined these reports and agree with the recommendations, um, but we need to ensure that all of the areas, public and nonpublic, have been properly remediated. And this is an easy and reasonable solution to the lack of information that has been provided to the public. Being transparent and providing information about the implementation of the government's own expert recommendation serves everyone's interest in ensuring the best possible health and safety conditions in the New York City courthouses. We're asking for real-time sharing of information about remediation efforts, providing regular maintenance records, detailed policies on cleaning protocols, and ensuring that physical distancing and masking policies are being enforced. This will provide our members, clients, court staff, and everyone else the

1     assurances they need to know that New York City  
2     courthouses are safe. And on a final note, we must  
3     not forget some of things that we've learned in the  
4     past year. This pandemic has given us the unique  
5     opportunity to reevaluate how justice is served.  
6     Justice is not sitting in the courthouse all day to  
7     adjourn a case, causing clients and litigants to miss  
8     a day of work or finding themselves unable to obtain  
9     childcare. And we appreciate the courts have found  
10    ways to work through this pandemic, and we want to  
11    partner moving forward to continue using new methods  
12    that are working to guarantee access to justice. We  
13    are all committed to justice and equality. And by  
14    reevaluating how the court does business we can make  
15    steps towards our shared commitment to racial and  
16    social justice. Let us use this as an opportunity to  
17    make changes we need to balance the scales of justice  
18    towards fairness and equity, and let good grow from  
19    something so devastating. And I'm here today to  
20    offer the union's assistance in this effort and to  
21    demand transparency and information about whether  
22    recommendations that OCA's own experts have provided  
23    have been implemented. Thank you for your time  
24    today.  
25

COMMITTEE COUNSEL: Thank you. Ah, next up will be Roy Wasserman.

ROY WASSERMAN: Thank you so much. I want to thank the committee for this opportunity to speak to you. Um, my name is Roy Wasserman. I've been an attorney with the criminal defense division of Legal Aid Society for 34 years and I want to, um, emphasize some of the points that have been that have been made and give you kind of an on-the-ground view of the problems in the arraignment areas that have been mentioned before. My colleagues and I work eight-hour arraignment shifts two to three times a month, interviewing clients who have been arrested. We conduct these interviews in booths that are no bigger than broom closets. These rooms are in use 16 to 17 hours a day, seven days per week, 365 days a year. We speak to each other in private with doors closed. These tiny booths are hidden from the public, tucked behind the courtrooms. These cramped booths contain two sides, one for our clients and one for the lawyers. Each side is not much bigger than an airplane bathroom. There's no ventilation, no windows, no filtration in these rooms and, from what I can tell, none in the holding areas where our

clients remain for hours. Once in the booth the interviews can last anywhere from five minutes to as long as an hour, depending on a lot of factors. My colleagues have been provided with very little information, as has been mentioned. I recently visited these areas. I spoke with NYPD, court officers and clerks who were present. I was told by NYPD officers that the air on the inmate's side of the holding areas is continuously stuffy and not ventilated. That side of the arraignment area is controlled exclusively by NYPD and is often packed with far too many clients to fit into the cells pre-pandemic. They chuckled at the idea that NYPD would attempt to make these areas COVID-safe when I inquired. A court clerk told me that no HEPA filters for local units had been ordered for the holding or interview areas despite their being ordered for other areas in the courthouse. She also made clear that DCAS is responsible for the area on lawyer's side of the interview areas and that NYPD was responsible for the holding areas. MOCJ, in a recent email to defender organizations, indicated that air purifiers are now located in the courthouse areas previously identified with ratings below MERV 13 filtration and

there are now open windows. I saw the opposite. There are no filters in the arraignment and holding areas, and a court officer made clear to me that all windows had been sealed shut upon an order to seal them shut. There are those who might say that even if courthouse areas are unhealthy it's OK because vaccinated folks are completely protected, with nothing to fear. Unfortunately, as we all know, many of our clients remain unvaccinated. We have learned that many NYPD and court officers are unvaccinated, and even vaccinated people can be carriers, of course, of the virus, infecting those unvaccinated and immune-compromised family members, clients, and colleagues. Imagine going to a dentist office that has no ventilation. Even if you were vaccinated would you feel comfortable going for a teeth cleaning if you knew that for a half hour you'd be with an unvaccinated hygienist and unvaccinated patients in the reception area? The arraignment interview booth is a professional setting, just like a dentist's office. Like patients, clients of ours deserve a safe space to meet with their lawyer and await their arraignment. OCA's own consultant, AKF, which Lisa mentioned earlier, reported to the chief judge

recently that buildings where MERV 13 filtration cannot be updated, should be provided with local recirculating units with high-efficiency filters, or HEPA. That same consultant recommends that local filtration develops with UV capability be provided to spaces that don't have or can't have MERV 13 filtration. The report said that those, I'm sorry, that those spaces include meeting rooms, large conference rooms, and bathrooms. The report stated, "These units increase the air circulation rates in areas where multiple people may be [inaudible]." That precisely describes the arraignment booths. With in-person arraignments on the verge of returning we need an outside consultant like Micro Ecologies to examine the arraignment, holding, and interview areas to determine if the air flow meets safety guidelines. If they don't, then we need to upgrade these hidden areas with HEPA filters and anything else recommended by the court's own consultant. And finally I just want to emphasize, again as a lawyer on the ground who works there every day, what two of my colleagues mentioned about the revolution of virtual appearances for our clients as an equity issue. It can't be overemphasized. I've had clients appearing in court



1 while taking a break from work, or even I had one  
2 client who was chopping vegetables in the back of a  
3 restaurant and didn't have to miss even cutting a  
4 carrot in order to appear for 10 seconds in court.  
5 That same client not only would have missed that day,  
6 but possibly could have been fired for missing work.  
7 And all of us can give you tons of examples of  
8 clients who didn't have to find child care, elder  
9 care, miss work, get fired, because of the revolution  
10 of virtual appearances and time-certain slots. Even  
11 for those cases that return to in-person we need for  
12 our clients and us to have the respect of giving a  
13 time-certain, not for hundreds of people to have show  
14 up at 9:30 in the morning and wait all that. The  
15 time-certain and the virtual appearance has literally  
16 been a revolution in the process of the criminal  
17 courts so that the process is not the punishment.  
18 And I want to thank you again.

20 COMMITTEE COUNSEL: Thank you, Roy. Nice  
21 to see you. Ah, next up will be Edda Ness.

22 EDDA NESS: Hi, good afternoon everybody.  
23 I want to echo what Mr. Wasserman just said. I've  
24 been a public defense lawyer for many, many years. I  
25 also worked in the probation department as a social

1 worker before that. So I've been working in the  
2 system for well over 30 years. I think it cannot be  
3 underestimated how much bias affects everything in  
4 the system. From the time that the police choose to  
5 arrest somebody, from the way a prosecutor choose to  
6 write up a case, I think it's difficult for many  
7 people to step into other people's shoes and see the  
8 circumstances that they have to experience. It's  
9 easier not to talk about it or to deny that there are  
10 unsafe conditions in the courthouse and how we don't  
11 ensure that the cells and the spaces for people who  
12 are locked up are safe. The judges sit not that far  
13 away actually in the arraignment part, but they sit  
14 high up on a bench from where our clients are kept in  
15 the back. But there's such a wide chasm between the  
16 two places where people are kept. Our clients are  
17 not kept in safe spaces. They're crowded, they're  
18 dirty. The cells in the back, they're filthy. Just  
19 because someone's arrested doesn't mean they should  
20 be treated in a way that's not humane. They  
21 shouldn't be treated as someone that's less than. As  
22 defense lawyers we go in the back, so we're able to  
23 see the conditions and we experience them ourselves,  
24 but not in the same way that our clients have to.  
25

1 They are kept up to 24 hours before they're able to  
2 see a judge. They're kept in situations in the cells  
3 where they're dirty, where they're open to getting  
4 infectious diseases. There should definitely be  
5 portable air filters, filter systems, but they're in  
6 the back. They're not there. It seems like very,  
7 very little has changed in all this time. It's been  
8 so many months since the pandemic started. It's only  
9 brought out the stark reality, the fact of, of the  
10 unhealthy spaces there, because before COVID the  
11 spaces were filthy, they were not cleaned properly.  
12 And even more so now that this pandemic has occurred  
13 nothing has been remedied there. Really it's  
14 essentially the same. So really what I wanted to  
15 express in terms of reacting to what other, ah,  
16 council people had said, that I heard, ah, Ms.  
17 Rosenthal say, I think people are not focused enough  
18 on the fact that we need more community resources to  
19 help people in the communities. I mean, it's a fact  
20 that just poor people and black and brown people who  
21 are being locked up in a disparate way in our system,  
22 so there's no reason that we shouldn't be discussing,  
23 when we're talking about reopening the courts we  
24 should be discussing about the fact that there aren't  
25

enough community resources being given to people.

Again, this is brought out, this has been brought out very starkly this past year during the pandemic when we see all the people who are on the streets suffering, whether it's mental illness and other things, and they are not being given the community resources they need. We have so many teenagers who come through the systems and yet we don't have enough youth programs and community resources put into those to help people. It doesn't make any sense to me.

And then we focus after the fact and, and, and people will say, well, let's just lock people up again and again. And the fact is that the bail reform system was created in part because wealthy people can afford to pay bail, so poor people should not be stuck in jail because they don't have the resources.

SERGEANT AT ARMS: Time expired.

EDDA NESS: Yeah, I just want to say taxpayers, we spend so much money as taxpayers in terms of incarcerating people, in terms of who the prosecutors choose to write up complaints against, it doesn't make any sense for the, that money not to be put into community resources. And thank you to the City Council for holding its hearing.

COMMITTEE COUNSEL: Thank you very much.

Um, that is the last witness that we have registered to testify who appears to be logged on, but I will pause for one moment. If anybody else wishes to testify please use the Zoom raise hand function. OK, seeing no hands, I'll turn it back to the chair for closing remarks.

CHAIRPERSON ADAMS: Thank you very much, Counsel. Um, as we have come to the close of this hearing, um, I'm sure that we see that there are so many areas that need to, ah, be repaired, um, within the system. Um, if, if we're looking for true justice across the board, there must be justice in our court, the place where justice is supposed to take place for all people. What we continue to learn is that there is, there's a plethora of inequity in our system that must be addressed. It must be taken seriously. And it must be reformed. So, that said, I would like to thank MOCJ, DA McMahon, defenders, members of the public, of course, all of my colleagues on this committee, Counsel Daniel Addis and Max Camper Williams, for all of their hard work on putting this committee hearing together, ah, and

1 COMMITTEE ON PUBLIC SAFETY

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2 making this hearing possible. With that, this  
3 committee meeting is adjourned.

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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 July 24, 2021