



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

Yung-Mi Lee – Supervising Attorney, Criminal Defense Practice
BROOKLYN DEFENDER SERVICES
Written with Jared Chausow, Advocacy Specialist

Presented before

The New York City Council Committee on Public Safety

Hearing on Intro 1482

June 14, 2017

My name is Yung-Mi Lee. I am a Supervising Attorney in the Criminal Defense Practice at Brooklyn Defender Services (BDS). I have practiced as a criminal defense attorney in New York and New Jersey for more than 23 years. I currently represent clients charged with misdemeanors and felonies in Brooklyn Criminal and Supreme Court.

BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for over 30,000 clients in Brooklyn every year. We thank the City Council Committee on Public Safety, and in particular Chair Vanessa Gibson, for the opportunity to testify about Intro 1482, which would bring greater transparency to the use of surveillance technologies by the New York Police Department (NYPD). We also thank Councilmember Dan Garodnick for introducing the bill.

I. BDS Supports Intro 1482

BDS strongly supports Intro 1482. Specifically, this crucial legislation would require annual reporting on surveillance technologies used by the NYPD, including a description and capabilities of each qualifying technology; usage and intra-departmental restrictions on the use of such technology, including information on court authorizations or the lack thereof; safeguards to protect the data collected; policies and practices relating to the retention and use of- and access to the data, including by members of the public and entities outside the NYPD, such as private companies or federal agencies; a description of internal oversight mechanisms to ensure compliance with these policies; and any tests or reports regarding the health impacts of the technologies.

While many Americans were alarmed in recent years by successive revelations of domestic surveillance programs by the federal government, the proliferation of powerful surveillance technologies used by state and local law enforcement agencies has received comparatively little attention. This is, in part, by design. Much of this technology is provided to the agencies pursuant to non-disclosure agreements, either by the manufacturers¹ or the federal government². Some police agencies justify this secrecy as critical to our national security, particularly as it relates to the threat of terrorism. However, just as military-grade equipment like armored vehicles sold to local police forces have been deployed at public protests, surveillance technology may be used by police in monitoring political activities. Likewise, revelations about the NYPD's use of at least one undercover agent to infiltrate a Muslim student group at Brooklyn College, despite the absence of any allegations of wrongdoing, raises questions about what other types of surveillance the Department has engaged in.

As a public defense organization, BDS is principally concerned about the undisclosed use of these tools in investigations against our clients, particularly those facing criminal allegations and/or immigration enforcement. Given the disparate impact of law enforcement in general, it is possible, if not likely, that these tools are disproportionately used in low-income communities of color. It is also possible that they have been used without proper court authorization, potentially undermining the integrity of untold numbers of criminal convictions. However, the secrecy with which surveillance technology has been procured and implemented prevents any and all accountability. This common-sense legislation simply creates a measure of transparency so that policymakers and the public can more fairly evaluate it.

II. Surveillance & Policing in New York City: What We Know and What We Don't

It is important to understand the types of surveillance technology used by the NYPD that have been disclosed, generally as a result of lawsuits by the New York Civil Liberties Union. They include StingRays, which can track peoples' movement and location via their cellphones,

¹ Kim Zetter, Police Contract With Spy Tool Maker Prohibits Talking About Device's Use Wired (2017), <https://www.wired.com/2014/03/harris-stingray-nda/> (last visited Jun 14, 2017).

² Juliet Linderman & Jack Gillum, Baltimore police often surveil cellphones amid US secrecy KRON4 (2015), <http://kron4.com/2015/04/08/baltimore-police-often-surveil-cellphones-amid-us-secrecy/> (last visited Jun 14, 2017).

monitor voice and data transmissions, and even jam communications; Automatic License Plate Readers, which can track movement and connect with a privately owned and operated nationwide database; a growing network of Closed Circuit Television Cameras that feed into a central repository; body-worn cameras, which are slated to be used by all 22,000 patrol officers and may be used with facial recognition software; Shot Spotter, which purports to only record and transmit the sound of gunfire; x-ray vans, which can peer through walls, vehicles and clothing and may expose New Yorkers to dangerous amounts of radiation; and mobile tablets that can record New Yorkers' fingerprints during street stops.

It is also important to understand that the vast majority of police interventions in New York City are not related to counter-terrorism, but summonses and arrests for minor offenses in marginalized communities under the Broken Windows strategy. Without transparency and accountability, it is impossible for policymakers and the public to know which police activities involve invasive and sometimes costly surveillance tools, and whether any justifications offered by the NYPD are valid.

Intro 1482 will provide this much-needed transparency. Policymakers and the public will then have to ensure accountability.

III. Repealing New York State's #BlindfoldLaw is Necessary to Ensure True Transparency in Surveillance

In New York, unlike most of the rest of the country, prosecutors and police are not required to provide police reports and other crucial evidence, or "discovery," to people facing criminal allegations or their attorneys until trial begins – months or years after an arrest. More than 95% of cases never make it to trial; they either end in plea deals or dismissals. That means nearly everybody who is charged with a crime might never see all the evidence collected by police and prosecutors. In short, they are blindfolded.

We were heartened to read an op-ed by Speaker Melissa Mark-Viverito and Seymour W. James, Jr., Attorney-in-Chief of The Legal Aid Society of New York, supporting discovery reform legislation introduced by Assembly Member Joe Lentol (A.7292), which would finally bring New York in line with most other states. The "Blindfold Law" contributes to mass incarceration, wrongful convictions and court delays. It critically undermines defense attorneys' ability to do our jobs, though a voluntary agreement between BDS and the Brooklyn District Attorney does put us ahead of most New York counties on this front.

Among the many injustices with our current criminal discovery law, defense attorneys may be denied access, not only to the substance of the evidence collected in a criminal case, but also the mechanism by which it is collected. Therefore, we rarely know whether any of the surveillance technologies in question are used against our clients, whether they are used properly and in accordance with scientific standards, and whether they are used with necessary court authorization. Frankly, the courts might not know that, either. Repealing the Blindfold Law and passing meaningful discovery reform would help to shine a light on these practices in court.

IV. Police Accountability and Body Cameras

BDS and other public defenders have amply commented on the false promise of police body cameras given broad police control of the footage.³ As we wrote in Huffington Post in 2015, “Body cameras join facial recognition software, domain awareness systems, remote fingerprinting, X-ray scanners and a whole host of technological advances that are pushing law enforcement into new territories that bump more regularly into protected civil liberties. While these tools may increase the efficacy of arrest and punishment, relying on them to provide transparency and accountability will never be more than a hollow talking point unless the controls are taken out of the hands of the police.” At the very least, Intro 1482 will answer more questions about the growing use of body cameras, but ultimately the City Council must regulate them if they are to be a meaningful check on police misconduct.

V. Does the NYPD Share Surveillance with ICE?

BDS greatly appreciates the inclusion in Intro 1482 of a provision requiring reporting on the entities that have access to the information and data collected by NYPD surveillance technology, particularly as it relates to federal immigration enforcement. U.S. Immigration and Customs Enforcement (ICE) participated in at least one joint operation with the NYPD last year in which hundreds of officers raided a public housing complex in the Bronx using military-grade weaponry. Other public housing raids have involved both federal and local law enforcement agencies, as well. All of these raids were reportedly based largely on surveillance of young men and boys of color for several years, beginning when some of them were in middle school. Typically, several dozen would be charged with racketeering and other conspiracy charges stemming from comparatively few alleged crimes and, according to law enforcement’s seemingly capricious definitions, alleged gang involvement.

Among other troubling aspects of these raids, BDS is deeply concerned that NYPD surveillance may be aiding in federal immigration enforcement – not only against alleged gang members, but also anyone else who may be caught up in the dragnet in these or other investigations. Moreover, we seek clarity on whether the NYPD’s broad network of surveillance technologies are openly accessible to ICE and whether city resources are therefore used to aid in the federal government’s mass deportation effort.

I understand that when law enforcement and the media affix the term “gang” to groups of people, as they did in these raids, a common response is to feel fear and presume collective guilt, but we must not forget our values and principles.

³ Brooklyn Defender Services, A Tragedy in Chicago Lays Bare the False Hope of Police Body Cameras The Huffington Post (2015), http://www.huffingtonpost.com/brooklyn-defender-services/a-tragedy-in-chicago-lays_b_8762986.html (last visited Jun 14, 2017).

VI. Conclusion

This common-sense legislation will shine a spotlight on practices that warrant public scrutiny and debate. It is simply unfair and undemocratic for law enforcement to have undisclosed access to rapidly evolving technology despite a long, documented history of abusing surveillance capabilities. It is likewise unfair for law enforcement to point blinding klieg lights on the walking paths through public housing while police and prosecutors peer into peoples' private lives with more and more powerful tools in complete darkness. We need not wonder why many in our city describe their communities as open-air prisons, constantly watched and checked through stop & frisk, Broken Windows policing, or mass surveillance. As the federal government debates reforms to its domestic spying program to quell a national uproar, New York City should lead the country into a new era of transparency. For now, our local government may be spying on us with tools we have never imagined.

Thank you for your consideration of my comments. I respectfully urge the Council to pass Intro 1482.