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Committee on Public Safety

Oversight - Examining NYPD Investigative Procedures and Safeguards Relating to Wrongful Convictions

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My name is Jackie Gosdigian, and I am Supervising Policy Counsel at Brooklyn Defender Services (BDS). BDS provides comprehensive public defense services to approximately 22,000 people each year who are accused of a crime, facing the removal of their children to the foster system, or challenging deportation. As public defenders, we know that access to counsel is critical to prevent wrongful convictions. Zealous representation alone is not enough, the city must ensure accountability for the NYPD to prevent abusive tactics and opaque practices that cause wrongful arrests, false confessions, and lead to wrongful convictions. We thank the Committee on Public Safety and Chair Salaam for inviting us to address the Council about NYPD procedures relating to wrongful convictions.

For over 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. Our staff consists of specialized attorneys, social workers, investigators, paralegals, and administrative staff who are experts in their individual fields. BDS also provides a wide range of additional services for our clients, including civil legal advocacy, assistance with educational needs of our clients or their children, housing, and benefits advocacy, as well as immigration advice and representation.

Importance of access to counsel in preventing wrongful convictions.

BDS' Criminal Defense Practice provides zealous legal representation to thousands of people arrested and charged with a crime in Brooklyn each year. From the first court appearance, our interdisciplinary defense teams advocate to keep people out of jail, address pre-trial issues, such as bail and orders of protection, and support clients who are detained. As we prepare cases for trial, we explore all opportunities for negotiated plea bargains to reduce additional consequences and advise our clients of their options. And, as we work towards the best outcome for the people we represent, we provide a wide range of support, including jail-based services for people who are detained, social work resources, and access to a wide range of legal services for issues like housing, benefits, education, and employment.

Access to counsel is critical to prevent wrongful convictions, but simply providing someone with a free lawyer is not enough. In addition to attorneys, at BDS those charged with a crime have access to investigators, social workers, DNA and forensic experts, and numerous team leaders and supervisors with years of trial experience. It's also imperative that public defense continue to attract new lawyers from top law schools around the country, lawyers who have a calling for public service, and genuinely want to fight for people's rights and reform the criminal legal system. This wrap-around, client-centered defense approach not only minimizes the risk of wrongful convictions but helps break the cycle of rearrest and legal system involvement.

All New Yorkers deserve high-quality representation regardless of their ability to pay for an attorney. But perpetual underfunding has contributed to a significant departure of staff from legal services organizations and widespread vacancies. The rising cost of living, skyrocketing inflation, and burden of student loans will only exacerbate the hiring and retention issues being faced. It is critical that the city budget not underfund and undervalue these essential legal services and constitutionally guaranteed rights. New York City must show that it values the work of public defenders fighting tirelessly to guarantee justice for their clients, by closing the pay parity gap and fully funding the staffing and operational needs of legal services organizations.

Access to discovery is a key element in preventing wrongful convictions.

In criminal cases, discovery is the process by which prosecutors share information with the defense. Much of this information comes from law enforcement: police reports, witness statements, video surveillance, body-worn camera footage, identification procedures, crime scene photos, 911 call recordings and transcripts, witness statements, and more. Even a note on a slip of paper is a part of discovery that could lead to exoneration.

Timely access to evidence is critical for defense attorneys to conduct the investigations, research, and analysis necessary for their clients to receive a complete defense. For many decades in New York, prosecutors and police were not required to provide discovery to people facing criminal allegations or their attorneys until the eve of trial. Instead, people were coerced to plead guilty

while blindfolded to the evidence, fueling mass incarceration and wrongful convictions. In 2019, New York enacted comprehensive discovery reforms to ensure that New Yorkers accused of crimes have timely access to the most important information in their case, bringing New York’s discovery law in line with those of the rest of the country.

Simultaneously, New York, like the rest of the country, has experienced a massive shift in the way that we store and access information, including discovery. Digital storage costs have declined significantly, and digital processing speeds have increased exponentially. Capitalizing on these technical achievements, the NYPD spent millions of dollars on document and case management systems, as well as data collection and storage products (often called surveillance technologies). Partnering with companies like Microsoft and IBM, the Department built multiple systems to store, organize, analyze and share collected data, including police reports, body-worn camera videos, and other digitally collected evidence.¹ Despite using multiple systems internally, modern computer science and data architecture make the sharing of information amongst those systems and database instances simple and able to be automated. The NYPD uses those data innovations daily to coordinate, collate, and analyze its numerous data sources. As the NYPD noted almost a decade ago, “[t]he amount of information available through [its] Crime Data Warehouse is astonishingly large and incomparable to other law enforcement and public safety agencies.”²

For external sharing, each of the NYPD’s data systems are designed to make the collection and sharing of information—particularly the kind of information required by New York’s discovery statute—quick, straightforward, and simple. However, **even though it has never been easier to disclose information electronically in a timely manner, turnover of discovery continues to be inexcusably delayed. These delays can be directly attributed to a fundamental lack of transparency about NYPD’s systems and NYPD’s failure to turn over their records to the District Attorneys**, causing pre-trial delays and backlogs in the court system.

Discovery is a critical tool for defenders to properly investigate a case. Access to discovery is necessary for someone to make an informed decision about their case, ensuring people have the information to decide about whether to go to trial or make an informed plea decision. And it is indisputable that access to discovery minimizes the likelihood of wrongful convictions.- We call on the City Council to investigate NYPD’s lack of transparency and delays in providing access to records, documents, data, and video content.

¹ Some of NYPD’s major internal systems include the NYPD Enterprise Case Management System, Omniform, Z FINEST, and the Domain Awareness System. The NYPD also contracts with outside companies for data collection and storage. For example, NYPD purchases its body-worn cameras and body-worn camera video storage from a company called Axon. Axon provides storage, sharing capabilities, and analysis via its cloud-based platform: evidence.com.

² NYPD Information Technology Bureau, [Developing the NYPD’s Information Technology](#).

Faulty forensics lead to wrongful convictions.

Errors in forensic analysis are one of the leading factors in wrongful convictions.³

New York City is not immune from the risks posed by irresponsible, unscientific, and invalid forensic methods being used in the criminal legal system. In the last year, our city has experienced two separate forensic scandals, and our state has been home to several more.

- *NYPD's Latent Print Section:* in April 2015, three examiners with the NYPD's Latent Print Section erroneously identified a New Yorker as the source of prints left at a crime scene. That forensic error was discovered the same year and was shared with at least one New York City prosecutor. The analysts involved were either transferred from the unit or retrained. One went on to become the sole and lead trainer for the entire Latent Print team, and falsely testified at at least one trial that he had never made an erroneous identification. But no systemic disclosure was made to defenders regarding these errors, the lab's quality assurance and quality control failures, or the later false testimony for eight years.

When these laboratory failures finally came to light, the problem had been left to fester. These analysts' work implicates thousands of cases. But the years and the lack of transparency have made it impossible to fully identify affected trials, pleas, and clients.

Further, both the initial failure and the laboratory's secretive handling of it point to deep-seated issues with quality assurance and quality control. Ultimately, QA/QC programs are the greatest line of defense against forensic failure and downstream wrongful convictions. Our city's failure to engage in a full forensic audit of the lab following this scandal publicly, independently, and fairly merely perpetuates the risk that past wrongful convictions will remain undiscovered and future wrongful convictions will come to pass.

- *OCME's Forensic Biology Section:* On December 22, 2023, for the first time in the history of Section 17-207 of the Administrative Code, the Office of the Chief Medical Examiner notified the Council of a "significant event," involving the "violation[] of standard operating procedures and accreditation standards," that required a root cause analysis. Specifically, a supervisor in the laboratory's Department of Forensic Biology "authored case report[s], different criminalists . . . electronically signed the case report[s] as the author[s], and the [supervisor] who had authored the case report . . . also performed the technical review of his own work."

This scandal raises numerous concerns. First, the fraudulent conduct was only discovered after these same staff cheated on a promotional examination. It was not identified by the lab's quality assurance and quality control (QA/QC) programs. It was not identified during any integrity-related process work targeting testing. This reflects extremely poorly on the reliability of

³ <https://nij.ojp.gov/topics/articles/impact-false-or-misleading-forensic-evidence-wrongful-convictions>

the laboratory's scientific functions, throughout the laboratory. A properly run QA/QC program *should* catch this kind of basic cheating on forensic tests.

Second, the fraudulent conduct was neither flagged nor prevented by the OCME's laboratory information management system (LIMS). To be clear, the supervisory staff member, who conducted the lab work under other's names, logged in to LIMS under his own credentials for the cases that OCME identified where this cheating happened. This raises two red flags: primarily, LIMS registered that the work of one person was being signed by another person, but it did not automatically alert QA/QC staff, supervisors, or others in the laboratory to this conduct. Secondly, this conduct highlights the laboratory's failure to think carefully and concretely about their QA/QC responsibilities in relationship to their technology and information systems. Specifically, for example, why is the LIMS set up in a way that allows one person to input the technical testing results and another person to sign off on that input work? Why is the LIMS set up in a way to then allow that first person to technically review their own input work? This is not the first time that Brooklyn Defenders has encountered this kind of technical structural failure, including having a case where exculpatory results were "accidentally" deleted from the OCME's computers or having learned that OCME's use of STRMix (the probabilistic genotyping software the lab uses to analyze DNA results) is not automatically tracked by LIMS. Perhaps, it is appropriate to permit this conduct to occur in LIMS so that it is tracked and caught, but the laboratory's failure to either structure their system to prevent this kind of misconduct or at the very least automatically flag the conduct is intensely troubling.

Third, the culture in the laboratory that led to a supervisor choosing to do the case work of less experienced staff should similarly cause significant pause. What motivated this conduct? Was it just friendship and helping out less skilled colleagues? Was it some kind of blackmail or coercion that pushed this supervisor to do this? Was it something more intrinsic to laboratory culture? The choice to do this by both the supervisor and the lower-level staff is both puzzling and troubling.

However, given the structural failures with the OCME both from a QA/QC perspective and a culture perspective, the OCME's solution to conduct an internal root-cause analysis is insufficient.

When other cities across the country have faced similar scientific failures, those cities have engaged in full-scale, transparent, independent audits. Washington, D.C., and Houston, Texas, both hired outside auditors, developed rigorous review processes, and publicly reported on the results. Both cities allowed their auditors to review the complete breadth of forensic practice in those jurisdictions. The results were breathtaking, but they were also essential and set those two cities on a path to more justice. The people of New York City deserve that kind of transparency, accountability, and scientific rigor. "Science and secrecy do not sit comfortably together."⁴ We

⁴ Sheila Jasanoff, *Transparency in Public Science: Purposes, Reasons, Limits*, 69 *Law and Contemporary Problems* 21, 21 (2006).

call on the City Council to demand a full, public audit of the city's forensic providers, including the NYPD and the Office of the Chief Medical Examiner.

Racially biased policing, technology, and data lead to wrongful convictions.

As a public defense organization, Brooklyn Defenders has witnessed firsthand the devastating impacts of both mass incarceration and the systemic racism of America's criminal legal system, specifically on the communities we serve in Brooklyn. New York City has invested more than \$1 billion in a twenty-year surveillance infrastructure building program.⁵ The city is blanketed in surveillance⁶ and no police department in the country has more military-grade surveillance resources than the NYPD. We are deeply concerned by the NYPD's use of surveillance technology that disproportionately collects personal data from Black and Latine New Yorkers.

Many of the people that we serve live in heavily policed and highly surveilled communities. These predominantly low-income and Black and Latine communities bear the brunt of our city's surveillance network, carrying a disparate proportion of surveillance load. Biometric identification technologies are deployed in public housing, on our public transit system, in our public benefits programs, and throughout our policing systems from the criminal legal system to the family regulation system and beyond. This technology is subject to racist malfeasance, as well as technological and analytic errors.

Despite NYPD's technology investments and deployments, the promise of enhanced public safety has not been realized. Instead, all this surveillance infrastructure has accomplished is to expand the burgeoning surveillance state, repeatedly infringe on New Yorkers' dignity, privacy, and First Amendment freedoms, and further entrench the systemic racism inherent in our criminal legal, family separation, and immigration systems. This reality has nothing to do with accuracy or the need for improvement. There is no way to construct a surveillance state in a way that honors our fundamental rights and dignity or builds real justice.

Racial bias in technology

The NYPD's surveillance policies ignore the different ways surveillance technologies are racially biased.⁷ For example, one form of racial bias associated with surveillance technologies occurs because the technology's programming and development itself has rendered it inherently biased against Black and brown people. This bias can either emanate from the invisibility of Black and brown communities or the hyper-visibility of those same communities. A prime

⁵ Ali Watkins, How the N.Y.P.D. is using Post-9/11 Tools on Everyday New Yorkers, NYTimes (Sept. 8, 2021) at <https://www.nytimes.com/2021/09/08/nyregion/nypd-9-11-police-surveillance.htm>

⁶ See, e.g., Amnesty International, Inside the NYPD's Surveillance Machine at <https://banthescan.amnesty.org/decode/>.

⁷ For a more comprehensive discussion of the ways in which law enforcement surveillance technologies may replicate, mask, transfer, and exacerbate racial bias, see Laura M. Moy, A Taxonomy of Police Technology's Racial Inequity Problems, 2021 U. Ill. L. Rev. 139, 154–75 (2021).

example of the invisibility effect has been facial recognition software. Study after study has demonstrated that the facial recognition systems used in the United States are least accurate when used on young Black women and most accurate when used on older white men.⁸ The reason for this bias lies in the choices made in developing the facial recognition system itself: the data sets used to train the facial recognition algorithms fail to include a diversity of images resulting in algorithmic bias.

Another dimension of racial bias infecting surveillance technologies is the impact of data sets biased in the other direction: hyper-visibility. A prime example of this hyper-visibility effect has been predictive policing algorithms. Given the NYPD's racist track record, such as its ongoing use of stop-and-frisk primarily against Black and Latine New Yorkers, the data sets used to train and develop any predictive policing system will inevitably reproduce racially biased outcomes.⁹ The reason for this garbage-in-garbage-out bias lies in the choices made in developing the predictive policing system itself: the data sets used to train the predictive policing algorithms were collected in a biased manner to begin.

Beyond the development of surveillance technology, another common racial justice concern arises in the deployment of the technology post-development. Specifically, the threat presents itself that the racism present within police departments will lead officers to use surveillance technologies in racially biased ways. A police department may, for instance, choose to deploy license plate readers in predominantly Black and brown neighborhoods, leading it to gather huge amounts of information on some neighborhoods but not others. This form of bias helps explain the state of the NYPD's "Gang Database," which consists almost entirely of Black and Latine New Yorkers.¹⁰

This reality makes clear what has come into alarming focus for us: the biggest threat posed by surveillance in our city comes not from any single piece of technology, but instead from NYPD's massive accumulation of data. And all of this has a direct impact on wrongful convictions, because these algorithms do not factor in the false positives produced by large numbers of arrests in specific communities, which ultimately leads to wrongful arrests and wrongful convictions.¹¹

⁸ Brendan F. Klare et al., Face Recognition Performance: Role of Demographic Information, 7 IEEE Transactions on Information Forensics and Security 1789, 1789 (2012); see also Perpetual Line-Up.

⁹ See, e.g., Rashida Richardson, et al., Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems, and Justice, 94 N.Y.U. L. REV. ONLINE 192 (2019).

¹⁰ Nick Pinto, NYPD Added Nearly 2,500 New People to Its Gang Database in the Last Year, The Intercept (June 28, 2019), <https://theintercept.com/2019/06/28/nypd-gang-database-additions>.

¹¹ Innocence Project, How Racial Bias Contributes to Wrongful Conviction <https://innocenceproject.org/how-racial-bias-contributes-to-wrongful-conviction/>

Take ShotSpotter as an example. In 2021, the Chicago Office of Inspector General’s Public Safety Section investigated the accuracy and deployment of the ShotSpotter system in Chicago.¹² The Chicago OIG concluded: “from its analysis that CPD responses to ShotSpotter alerts can seldom be shown to lead to investigatory stops which might have investigative value and rarely produce evidence of a gun-related crime. Additionally, OIG identified evidence that the introduction of ShotSpotter technology in Chicago has changed the way some CPD members perceive and interact with individuals present in areas where ShotSpotter alerts are frequent.”¹³

The technology deployed in New York City is identical to that deployed in Chicago. NYPD’s public statements regarding ShotSpotter’s deployment here—namely that deployment targets “high crime areas”—mimics precisely the Chicago Police Department’s statements about deployment. Despite our city’s investment in these listening systems, the data indicates that ShotSpotter is not resulting in a reduction in crime, but instead is contributing to hyper-policing in Black and brown neighborhoods. New analysis of ShotSpotter locations from a leaked dataset nationwide suggests this targeting is systemic: “in aggregate, nearly 70 percent of people who live in a neighborhood with at least one SoundThinking sensor identified...as either Black or Latine. Nearly three-quarters of these neighborhoods are majority nonwhite, and the average household earns a little more than \$50,000 a year.”¹⁴

It is time for legislative solutions to focus on the data being collected, not merely the technologies being used. Legislative solutions must center on implementing limits on law enforcement’s ability to collect our personal data, on law enforcement’s repurposing of data that they had previously collected, and on law enforcement’s retention of that data for years, decades, and lifetimes.

Legislative solutions to curb police misconduct

False confessions are a leading cause of wrongful convictions and more safeguards by law enforcement are needed in this area. NYPD can implement common sense safeguards, including:

- ensuring all interrogations are recorded in every case and at any time in the police precinct, regardless of whether the person is “in custody”
- Requiring an attorney be present before young people subject to interrogation deciding to waive their rights;
- Modernizing evidence laws to protect against mistaken eyewitness identifications, another leading cause of wrongful convictions. NYPD must be required to follow well

¹² The City of Chicago’s Office of Inspector General, [The Chicago Police Department’s Use of Shotspotter Technology](#) (Aug. 2021).

¹³ *Id.*; In fact, the OIG’s analysis and a subsequent review by the Cook County State’s Attorney’s Office both fed the decision this month for Chicago to end its contract with ShotSpotter.

¹⁴ Dhruv Mehrota & Joey Scott. Here are the secret locations of ShotSpotter gunfire sensors. *Wired*. (February 22, 2024). <https://www.wired.com/story/shotspotter-secret-sensor-locations-leak/>

recognized best practices in the conduct of pre-trial line-ups and photo arrays. Law enforcement must also be required to record all identification procedures.

The Council should work with defenders, advocates, and impacted communities to ensure NYPD implements meaningful safeguards to prevent wrongful convictions.

Additionally, we urge the City Council to continue to work with your state partners to safeguard youth interrogations. We are grateful to the Council for passing a resolution last year in support of the **Right to Remain Silent Act (S.1099, A.1963)**, which would require youth under 18 have the opportunity to consult with counsel prior to police interrogation. Millions of children under the age of 18 have face-to-face contact with police in any given year and 90 percent of young people waive their Miranda rights prior to police interrogation.¹⁵ Youth are also more than three times as likely as adults to falsely confess. This legislation will help to remedy this increasingly harmful issue. We are grateful for your continued advocacy on this issue.

Legislative solutions to reduce coercive guilty pleas

The number of criminal cases that go to trial in New York state has steadily declined over the last three decades. And now 98 percent of cases are resolved by guilty plea. This high percentage of guilty pleas is “a troubling phenomenon that severely weakens the integrity of the justice system by circumventing juries.”¹⁶ The reason for this is the existence of Mandatory Minimum Sentencing which “serve to coerce defendants, innocent and guilty alike, to take plea deals rather than risk severe sentences for exercising a basic right assured to them by the Constitution.”¹⁷

Put another way, people are afraid to exercise their right to trial because they will likely serve a longer prison sentence if they are found guilty after trial than if they had just plead guilty. In many cases, people are coerced into pleading guilty with the promise of a lesser prison sentence or a non-jail sentence. What’s more is that mandatory minimum sentencing “has been shown to induce innocent accused persons to plead guilty.”¹⁸

¹⁵ <https://jlc.org/issues/access-counsel#:~:text=Miranda%20and%20the%20Adolescent%20Brain,if%20a%20confession%20is%20voluntary>.

¹⁶ National Association of Criminal Defense Attorneys, *The New York State Trial Penalty: The Constitutional Right to Trial Under Attack*, <https://www.nacdl.org/Document/NewYorkStateTrialPenaltyRighttoTrialUnderAttack#:~:text=As%20of%202019%2C%2096%25%20of,justice%20system%20by%20circumventing%20juries>.

¹⁷ Nancy Gertner, *Commentary: A former judge’s call to eliminate mandatory-minimum sentencing laws* <https://www.timesunion.com/opinion/article/Commentary-A-former-judge-s-call-to-eliminate-17697670.php>

¹⁸ National Association of Criminal Defense Attorneys, *The New York State Trial Penalty: The Constitutional Right to Trial Under Attack*, <https://www.nacdl.org/Document/NewYorkStateTrialPenaltyRighttoTrialUnderAttack#:~:text=As%20of%202019%2C%2096%25%20of,justice%20system%20by%20circumventing%20juries>.

Urge the State to End Mandatory Minimums

Even with available alternatives to incarceration, judges across the City and the State of New York are bound by mandatory sentencing guidelines set forth in the Penal Code. We must end mandatory minimum sentencing and we ask the Council to support and pass a resolution urging the enactment of the **End Mandatory Minimums Act (Myre S.7871/Meeks A.9166)**. In addition to mandatory incarceration, having a criminal record has lifelong insurmountable consequences for a person. Mass incarceration does not deliver justice, safety, or healing. It tears at the fabric of families and communities who lose loved ones, breadwinners, and caretakers to New York State prisons.

Lengthy mandatory minimums strip judges of their discretion when determining sentencing and serve as prosecutorial leverage in coercing plea deals. Two-strike laws further lengthen the sentence of an individual with a prior conviction, and three-strike laws condemn people to life in prison. The Eliminate Mandatory Minimums Act legislation would eliminate mandatory minimum sentences, allowing judges to consider the individual factors and mitigating circumstances in a case. In doing so, this legislation will finally undo the harm of the Rockefeller Drug Law era and provide for alternatives to incarceration that will address the root causes of criminal system involvement, breaking the cycle of arrest and incarceration, and reducing the risk of wrongful convictions.

Urge the State to Pass the Youth Justice and Opportunities Act

Young people in the communities we serve are particularly vulnerable to police interaction, especially when they are continuing to grow and mature into their mid-twenties and grappling with peer pressure and decision-making skills. Nationally and in New York, young people aged 18 to 25 make up only 10% of the population, but over 20% of all arrests. Nearly three quarters of those arrests in New York are of youth of color. A recent Sentencing Project report found that across the country, Black youth are five times more likely to be incarcerated than their white peers.¹⁹ Without the protections of youthful offender laws, young people are also subjected to harsh mandatory minimum sentences and are similarly being coerced into guilty pleas. We ask the Council to support and pass a resolution urging the enactment of the **Youth Justice and Opportunities Act (YJ&O) (Myrie S749A/O'Donnell A3536A)**. The Youth Justice & Opportunities Act would expand opportunities for programs and other alternatives to incarceration and immediate record sealing for young people up to age 25. By passing YJ&O, New York has the chance to lead the nation by protecting the futures of young people up to age 25, enhancing community well-being, and providing emerging adults the opportunity to move forward in their lives without the barrier of a criminal conviction. The Act would also reduce State and local spending on youth incarceration—money that should be invested in communities

¹⁹Joshua Rovner, Racial Disparities in Youth Incarceration Persist, February 2021. Available online at: <https://www.sentencingproject.org/fact-sheet/racial-disparities-in-youth-incarceration-persist/>

to alleviate poverty and homelessness, ensure quality education, and fund other needed resources. In turn, this bill would help stabilize communities, increase public safety, and reduce the risk of wrongful convictions.

Conclusion

We thank the council for the opportunity to testify today and look forward to continuing to work with the council to prevent wrongful convictions, to ensure those with criminal legal system involvement have access to zealous representation regardless of their ability to pay, and to invest in our communities, rather than police them, to ensure individuals and families have access to the resources they need.