

**Written Comments of The Bronx Defenders
New York City Council
Committee Public Safety
Oversight: The Police Department's Plan to Enhance Officer Trainings
September 8, 2014**

The Bronx Defenders is a holistic public defender located in the South Bronx. Each year we represent over 30,000 people arrested in Bronx County. Nearly all of our clients are Black and Latino, and the great majority are arrested for low-level “quality of life” offenses like marijuana possession, trespassing, and turnstile jumping. We staff arraignments in the Bronx every week, and every week we meet people who have been brutally mistreated and falsely arrested by the NYPD. We work not only in the courthouse but also in the Bronx community, investigating cases, leading Know Your Rights trainings, staffing clinics, and holding Town Hall meetings and other community events. We thank the Council for the opportunity to submit testimony.

These comments were prepared jointly by Criminal Defense Attorney Emily Galvin, Civil Legal Advocate Phoebe Lytle, and Criminal Defense Investigator Daniel Loehr. Each section shares a valuable perspective on policing in the Bronx and all arrive at the same conclusion: Enhanced officer training—especially in the area of de-escalation—is important, but it is a small piece of a much bigger picture. The NYPD must change its entire approach to policing in order to begin to undo the damage of two decades of “Broken Windows” policing.

Comments of Emily Galvin, Criminal Defense Attorney

In my capacity as a Criminal Defense Attorney at The Bronx Defenders, I have represented hundreds of citizens of the Bronx who have been subject to NYPD policing policies, and who have been charged, as a result, with criminal offenses.

In the wake of the death of Eric Garner, as the public looked on in shock, I am sad to say that I was not surprised. I was not surprised at the way in which officers applied force. I was not surprised at the way the situation was escalated. I was not surprised at the resultant death. I was not surprised because nearly every time I step into the Bronx courthouse for an arraignment shift, I meet people who have been subjected to unjustifiable violence by police.

I met a 19-year-old client in arraignments who arrived in court with his face covered in cuts because police officers had brutally shoved it into the gravel-covered ground after stopping him for kneeling near a car while in possession of a screwdriver (conduct which is not a criminal offense). I represented a woman in her sixties who arrived with her wrists cut and swollen from cruelly over-tightened handcuffs, her back injured by police during her arrest for failing to pay a cab fare. My colleague recently represented a client who arrived in arraignments disabled by officers who, having learned that he had recently undergone spinal surgery, intentionally kneeled on his back while arresting him for possession of marijuana. One young man I represented had been arrested for nonpayment of a cab fare, and, between his arrest and the precinct, was hit over the head with a pepper spray canister, sprayed in the face at point-blank range, and later restrained and beaten by a group of officers at the precinct who split his lip and cracked his ribs, all because he would not stop asking questions. These are just a handful of the people I meet whose experience of the police has been abusive rather than protective, violent rather than quelling. As I said, when I learned of the death of Eric Garner, I was not surprised.

Children in the South Bronx grow up seeing depictions of police officers in cartoons and movies as the strangers you could actually trust, who would protect you if you were lost or frightened or alone. These fictional officers use their skills as negotiators to de-escalate volatile situations, convince people to walk away, apologize, or otherwise do the right thing. These

officers are members of their community. They are trusted by the people they police, and would not violate that trust. But Bronx children quickly learn that the reality of policing is radically different from this idealized vision. The officers who police their communities are not people to trust but people to fear. They are not people who protect but people who harm. And they cannot convince others to do right because they, themselves, are doing wrong.

Officers like those that exist in the minds of children can become a reality. But they cannot emerge from the policies currently governing the NYPD. There are two key reasons why—the first is the Broken Windows theory, and the second is escalation. Both are at the heart of the situations described above, and both need to be addressed by any reforms currently being considered.

Under the Broken Windows theory of policing, police officers are ordered to make arrests for minor quality-of-life offenses. As implemented by the NYPD, this means that superior officers exert intense pressure to make low-level arrests and write summonses, and use quota systems that measure “productivity” in the form of arrests.¹ Focused almost entirely on black and Latino communities in New York City, these policies have resulted in grossly disproportionate numbers of arrests in low-income neighborhoods of color, flooding the court system with low-level offenses like those described above. This type of policing—in which officers are mandated to take individuals into custody for remarkably low-level transgressions, put them through booking, and into jail, sometimes for 24 hours or more before they are given a chance to see a judge—results in outcomes which echo far beyond the walls of the courthouse.

¹ See, for example, Plaintiffs petition in *Matthews v. City of New York*, filed the New York Civil Liberties Union on behalf of a 14-year veteran NYPD Officer who maintains that supervisors in the 42nd precinct developed a detailed quota system, which includes regular color-coded computer reports used to track compliance with quotas. Available; <http://www.nyclu.org/files/releases/42%20Pct%20Quota%20Complaint%202-23-12.pdf>.

An arrest, after all, is never just an arrest. An arrest prevents an individual from showing up at work, often resulting in the loss of a job. An arrest pulls young people out of school, and leaves parents terrified. An arrest of a parent can leave children unattended, or hastily taken in by unfamiliar neighbors. An arrest can result in loss of housing, loss of admission to college, loss of a car. A typical example of the impact of arrest can be seen in the case public defenders see almost every day—an individual hops over a turnstile because he does not have the money to buy fare, but has an appointment across town he absolutely cannot miss—perhaps a job interview or a public assistance appointment. As a result of the arrest, he loses his job or benefits, trapping him in poverty. When the booking and arraignment process stretches to 24 hours or more, the arrest prevents him from reaching his shelter by curfew time, ending his access to shelter when he emerges, 36 hours later, having hastily taken a plea to a crime just to get out of jail. This is not an arrest that has increased public safety. It is an arrest that took a man with some measure of stability in his life and rendered him homeless.

This precise situation is seen day in and day out in the Bronx, but any person who wants to challenge his arrest in court will face a whole new set of nightmares. Because of the tremendous number of low-level arrests and the resulting volume of cases in the system, these cases linger, forcing people to come back to court month after month, seeking a fair resolution. Cases that are "on for trial" are rarely heard by a judge because of a lack of available judges and courtrooms. In a study we conducted that followed 54 clients fighting low-level marijuana arrests over nearly two years, not a single hearing on the constitutionality of the NYPD's practice

was ever completed, due to delays and pressure from judges to resolve cases before trial. This was despite the fact that, on average, clients came to court 5 times over the course of 8 months.²

Each court date is a day away from work, away from school, a day on which a client has to find the money to pay for childcare and/or transport. In most cases, a client will spend hours waiting in court for a thirty-second appearance where lawyers set a new court date. The disruption of a court case in our clients' lives cannot be overstated. Because the court system is overrun with extremely minor cases that have no efficient path to fair resolution, the simple failure of police to de-escalate a situation, or to exercise discretion in not making an arrest, spirals out into a profound upheaval in the life of the person who is arrested.

These minor arrests do not benefit the community they serve. Rather, they further alienate the community from the police and are vastly more common in the Bronx than on the Upper East Side of Manhattan. The people impacted by Broken Windows policing know that when they encounter police officers, those officers are looking for a reason to make an arrest. There can be no trust in a police officer when you know he is under pressure to find a reason to put you in cuffs. There can be no functional community policing when there is no common ground between the police and the community.

Further undermining the trust of the community is the problem of escalation. Each of the scenarios described above involved unnecessary violence towards our clients. If the police need to make an arrest, there are means of doing so without injuring an elderly woman, or cutting a teenager's face on dirty rocks. Yet NYPD officers are not being taught necessary skills. Police in the United States receive less than half as many weeks of training as police in countries like England and Ireland, where the rate of police violence is drastically lower than here. In other

² *No Day in Court: Marijuana Offenses and the Failure of Bronx Criminal Court*, The Bronx Defenders. May 2013. Available: <http://www.bronxdefenders.org/wp-content/uploads/2013/05/No-Day-in-Court-A-Report-by-The-Bronx-Defenders-May-2013.pdf>.

parts of the world, police departments invest significant amounts of time teaching officers how to calm people down, how to de-escalate, how to use words to defuse a tense moment rather than using force. As a result of this training, police overseas simply do not need to use force with the frequency of American police.³

Going beyond training, if there were an incentive system in place that rewarded officers who successfully avoided conflict instead of those who successfully made an arrest, fewer citizens would be injured by police action. If fewer citizens were injured by police action, the community would have a better relationship with the police. If the community has a better relationship with the police, the police can do their job—reducing harm, increasing safety—more effectively. Essentially, in order to diminish situations that result in violence, police must learn to use nonviolent methods in place of more forceful means.

Clearly, broadening the scope and depth of police training is a long process, which will involve changes in both police budgets and police culture. But we owe it to our communities to make the necessary changes to keep them safe from harm—including at the hands of police. What happened to Eric Garner—and what has happened elsewhere in the nation in recent weeks—is a national shame that we must take every measure to amend. Changing the way our police are trained is the crucial first step, but it must be done as part of a comprehensive change in the NYPD’s approach to policing low income communities of color.

Comments of Phoebe Lytle, Civil Legal Advocate

Along with my colleagues in the Civil Action Practice at The Bronx Defenders, I coordinate a monthly Police Misconduct clinic in which clients and community members learn

³ *Expert: U.S. Police Training in Use of Deadly Force Woefully Inadequate* by Paul Waldman, The American Prospect, August 27, 2014. Available: <http://prospect.org/article/expert-us-police-training-use-deadly-force-woefully-inadequate>.

about the process of filing a lawsuit against the city and preparing a Notice of Claim. Clients are referred to the clinic by criminal attorneys at the Bronx Defenders and increasingly, other legal services providers who bear firsthand witness to the physical injuries and trauma many clients present following their arrest. Community members find us via word of mouth, often seeking recourse for a bewilderingly hostile interaction with the NYPD that did not result in an arrest or formal charges.

The Bronx Defenders started the clinic to respond to the growing number of clients seeking counsel about police misconduct. In our work, we recognized that our clients had similar experiences of excessive force, discourtesy, and discriminatory policing that needed to be documented and analyzed. Over the past year, from September 1, 2013 through August 31, 2014, the Civil Action Practice has provided counsel in approximately 375 police misconduct cases, more than half of which resulted in Notices of Claim being filed against the city. During that same period, 163 clients and community members were served in the Police Misconduct Clinic, over half of those also resulting in claims filed. These numbers don't even begin to capture the full picture of New York City residents victimized by the NYPD, many of whom remain isolated in their experience and do not know where to turn to for justice.

Rarely if ever do clients come to the clinic with the expectation of being financially compensated for their experience of police brutality. Most are seeking only a space to have their story heard, and to ask the question, "Can they do that?" Can the NYPD break into my private home in the middle of the night, without explanation or warrant, traumatizing my 3 sleeping children, leaving by way of follow up only the door broken beyond repair? Can they deny me a translator at the precinct and tell me I "shouldn't be allowed to drive a taxi" if I can't speak English? Can they remove my pants, grope my genitals and penetrate my anus, while searching

me on a public street? They ask already knowing the answer, knowing that essential liberties were violated, a deep wrong perpetrated against them, yet trying desperately to find a “why” to make sense of and find relief from their experience.

At the clinic, we often see clients who want to register the use of excessive force—gratuitously applied and disproportionate to the offense. A Peace Officer employed with a local hospital sat with me for hours as he, bewildered, described getting pulled over in a routine traffic stop. He had asked the officer not to pound on the window, which was frightening his pregnant girlfriend in the car. Within seconds, our client was ripped from the car and maced in the face.

We hear countless stories of both common discourtesy and overt racism. A city parks employee was locking the gates of a park for the night when, unbeknownst to him, he got caught up in an arrest happening within the park. Irritated, the sergeant on the operation arrested our client and charged him with “obstruction of justice,” calling him a “monkey” and telling him to “get in the cage” as he pushed him into the police van.

Community members come to the clinic frustrated, humiliated, and worn down at the experience of consistently being regarded as suspect in the hallway of their own apartment complex, on their own street, in their own neighborhood; subjected to detention and arrest as they return from work, visiting a neighbor, dropping their kids off at school, or standing in front of their local bodega to catch up with a neighbor. Their description of the emotional and psychological toll of these stops and the aggressive omnipresence of law enforcement in their communities I can only characterize as akin to symptoms of Post-Traumatic Stress Disorder. The violation of trust and feeling of being unsafe at the hands of the police is profoundly felt in these communities. We are all here and doing this work because we have faith that the damage is

not irreparable, and that the NYPD is committed to safeguarding communities and restoring a relationship with their locality that enables them to effectively do so.

Comments of Daniel Loehr, Investigator

As a Criminal Defense Investigator at The Bronx Defenders, I interact on a daily basis with residents of The Bronx who are involved in one form or another with the criminal justice system. As we all agree, building trust between police officers and the communities they serve is critical for effective policing and public safety. Unfortunately, based on my conversations and interviews with hundreds of Bronx residents, there exists a severe lack of trust for police officers and an overwhelming disillusionment with the justice system in general.

I want to share three incidents that are illustrative of the problems that plague police-community relations but which are by no means unique.

Last Tuesday, I was walking across a busy Bronx intersection. There was a steady flow of traffic and many people walking along the sidewalks. A police car put on its sirens to cross the intersection against the light. An elderly man was crossing in front of the police car.

Although he walked with a cane, he attempted to speed up to get out of the way. As the marked NYPD car approached, the officer in the driver's seat put down his window and leaned out to yell loud enough for other pedestrians, including myself, to hear, "get out of my fucking way, you cracky." To be clear, this is verbatim.

On Wednesday, I investigated a case where a mother called 911 in fear because her son and his girlfriend were getting into an escalating argument. The cops arrived and quickly arrested her son on assault charges. Both the mother and her son's girlfriend insisted to the police that no physical violence had occurred. When the mother spoke to me, she expressed shock that her son had been arrested when no one reported that he had done anything illegal. Because of this

experience, she said, “I am never going to call the cops again, it just makes everything worse.” I have heard these words time and time again in The Bronx.

On Thursday, I investigated a case involving the assault of a bodega employee. When the cops arrived on the scene, they ran into the bodega with guns drawn, pointed their guns at our client’s stomach, and proceeded to arrest him. The bodega owner and numerous other people who were present explained to the police that our client was not involved. He was merely buying food. The police arrested him anyway. Later, none other than the bodega owner bailed the client out. Regarding this incident, our client said to me, “They are targeting me. I know it. They keep doing this. But that’s OK. They can keep targeting me and so long as they do, I will keep suing them.”

As I said, these stories are commonplace. These are merely the three most recent examples of the severe lack of trust that Bronx residents have in their police officers. Such a deficit of trust does a disservice to the residents of the Bronx, as well as to police officers themselves. As trust is eroded, so too is safety. People who have little trust in the police come to disrespect the criminal justice system in general—they become less willing to cooperate in criminal proceedings and more likely to break the law. For example, I hear one remark frequently. People say to me: “I don’t trust the police, I don’t trust the system, so I don’t use them.”

Trust is critical to effective policing and safe communities. Trust is eroded every time Bronx residents feel they are stopped unnecessarily, treated unfairly, or spoken to disrespectfully. Enhanced training is an important step in the right direction and is critical to decreasing the frequency of these hostile encounters. But training can only do so much while the strategy of Broken Windows policing remains intact. Whether the officers are trained or not, the

encounters designed by Broken Windows policing increase the odds of misconduct and create distrust due to the volume of police encounters it generates and the disparate targeting of communities of color. More targeted training is important, but the real work of building trust requires a thoughtful reevaluation of Broken Windows policing.