



**Testimony of**  
**The Legal Aid Society**  
**Before the New York Advisory Committee to the**  
**United States Commission on Civil Rights**  
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## The Legal Aid Society

The Legal Aid Society is the nation's oldest and largest not-for-profit legal services organization. With its annual caseload of more than 300,000 legal matters, the Society takes on more cases for more clients than any other legal services organization in the United States, and it brings a depth and breadth of perspective that is unmatched in the legal profession. The Society's law reform/social justice advocacy also benefits some two million low-income families and individuals in New York City, and the landmark rulings in many of these cases have a national impact. The Society accomplishes this with a full-time staff of nearly 1,900, including more than 1,100 lawyers working with over 700 social workers, investigators, paralegals and support and administrative staff through a network of borough, neighborhood, and courthouse offices in 26 locations in New York City. The Legal Aid Society operates three major practices — Criminal, Civil and Juvenile Rights. The Society's Pro Bono program coordinates volunteer help from law firms, corporate law departments and expert consultants.

The Society's Criminal Practice is the primary public defender in the City of New York. During the last year, our Criminal Practice represented over 230,000 indigent New Yorkers accused of unlawful or criminal conduct on trial, appellate, and post-conviction matters. In the context of this practice the Society represents people accused of crimes from their initial arrest through the post-conviction process. Many thousands of our clients with criminal cases in Criminal Court and Supreme Court are teenagers who are treated as if they are adults. The Criminal Practice has a specialized unit of lawyers and social workers dedicated to representing many of our youngest clients prosecuted in the criminal system. The Adolescent Intervention and Diversion Project provides enhanced representation for our most vulnerable clients who are often involved in multiple systems including foster care, special education, mental health, substance abuse.

The Society's Community Justice Unit provides legal services and advice in specific catchment areas in each of the five boroughs providing anti-violence services through the CureViolence model. This public health model, originated as CeaseFire in Chicago, responds to gun violence with services in the community including mediation, social services, violence interrupters, and education. The model works on the theory that conflicts addressed by people in the community prevents further violence.

## The experience of teenage students in New York City

The Legal Aid Society represents thousands of school aged youth each year in Criminal and Supreme courts in all five boroughs of New York City. These young people enter the court system after an arrest or a summons. If arrested, the student is held in police custody, transferred to central booking, and usually arraigned by a judge twenty four hours after being placed in custody. A summons requires a student sixteen years of age or older to appear in criminal court to respond to a criminal charge. Students, many of whom are compulsory school age under New York State law<sup>1</sup>, are required to miss a day of school to attend a court proceeding for behavior that occurred in school.

The court proceeding is overseen by a judge who knows nothing about the student or the school he or she attends and whatever punishment is meted out, if any, as many of these summonses are dismissed, is completely disconnected from the school. Because New York is still one of two states in this country that prosecutes all sixteen and seventeen year olds as adults, these students face adult criminal sanctions—permanent convictions with all the collateral consequences: deportation, eviction, monetary fines and surcharges, negative impact on financial aid and work opportunities.

We represent a large number of adolescents who are arrested for theft of service, or failure to pay subway fare. Many of these arrests occur after school. In fact, if you go to any subway stop that is frequented by local high school students after school lets out, you will see a disproportionate number of police officers. I have been told by principals that they expend effort to ensure that students in their schools have photo school identification and, sometimes, letters verifying that they are current students to help mitigate any contact with the police at the subway stations. Students who look older than high school age are at particular risk of being stopped and questioned.

Last calendar year, the Legal Aid Society represented approximately 1,200 adolescents aged 16 and 17 who were arrested for failure to pay subway or bus fare. Of the 1,200, 39% were 16 and 61% were 17 years old. The city-wide breakdown of arrests was as follows: 33% in Brooklyn, 29% in the Bronx, 20% in Manhattan, 15% in Queens and 4% in Staten Island. Fifty-three percent of those cases were dismissed at arraignments or thereafter. An additional thirteen percent are currently pending dismissal. In short, two-thirds of the cases filed against 16 and 17 year old clients charging theft of services were dismissed.

Sixteen and seventeen year old adolescents should not be criminally charged for failure to pay subway or bus fare. They are required to attend school and cannot hold anything more than a part-time job. Subway fare is expensive in New York City. The Department of Education has moved away from the neighborhood high school model and many students have to travel long distances to and from school, requiring the use of public

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<sup>1</sup> NYS Educ. Law §3205.

transportation. Approximately 72% of New York City's public school students receive free or reduced price lunch.<sup>2</sup> Simply, New York City considers students' economic status for eligibility for lunch, but not for eligibility for arrest. Teenagers should not be arrested or issued summonses for failing to pay subway fare.

This exposure to law enforcement is representative of what many of New York City's students face in their communities on a regular basis. Approximately three-quarters of our school children are classified as living in poverty and two-thirds are African-American or Hispanic.<sup>3</sup> It is well documented that the vast majority of police interactions in New York City are in our poorest neighborhoods and affect communities of color the most. This pattern continues in our schools as well, as black and brown students bear disproportionate exposure to referral to the court system.<sup>4</sup>

The NYPD continues to stop a disproportionate number of youth of color. Black and Latino youth from underserved communities all throughout New York City are aggressively stopped, frisked and then questioned by police officers. The fact that these stop and frisk encounters are not reported does not mean that they do not systematically occur, or that the *Floyd*<sup>5</sup> litigation actually ended this tactic. On the contrary, clients and community members at large from predominantly minority communities such as East New York, Far Rockaway, Harlem, South Bronx, and Stapleton inform us that the NYPD continues to engage in stop and frisk. Some of the stories we have heard include: Police officers throwing Black and Latino youth against walls and cars, demanding to know information about guns in the neighborhood, and, in some instances, destroying their identification cards so that another cop blocks away can conduct the same search only this time with a basis to make an arrest, i.e. lack of proper identification. Our clients also tell us that marijuana enforcement, which the NYPD claimed to have decriminalized, remains focused on Black and Latino youth giving officers another pretext to engage in unlawful stops and frisks.

Through our work in the community justice unit we were able to join our community partners in sessions of the *Floyd* Joint Remedial Process where the facilitator, retired Judge Ariel Belen, met with youth and young adults in neighborhoods throughout the City. In every single session Black and Latino youth expressed their frustrations with the NYPD's racially disparate practice of stopping and frisking them. Black and Latino youth repeatedly expressed feeling dehumanized, abused, and afraid of the very same people who took an oath to protect and serve them. Black and Latino youth who identified as LGBTQ were especially fearful for their safety because many of them had been particularly targeted.

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<sup>2</sup> [http://www.nyskwic.org/get\\_data/indicator\\_narrative\\_details.cfm?numIndicatorID=31](http://www.nyskwic.org/get_data/indicator_narrative_details.cfm?numIndicatorID=31)

<sup>3</sup> "Data About Schools," New York City Department of Education, 2015.  
<http://schools.nyc.gov/AboutUs/schools/data/default.htm>.

<sup>4</sup> [https://www.nyclu.org/sites/default/files/ssa\\_FactSheet\\_2014-2015.pdf](https://www.nyclu.org/sites/default/files/ssa_FactSheet_2014-2015.pdf)

<sup>5</sup> *Floyd et. al vs. New York City et. al*, 770 F.3d 1051 (2<sup>nd</sup> Cir. 2014)

There are other, more organized methods of police intervention in the lives of young people. The New York Police Department created a specialized unit in 2007 known as the Juvenile Robbery Intervention Program or JRIP. It was expanded in 2009 and again in 2015 to reach teenagers throughout the City.<sup>6</sup> The program assigns detectives to adolescents aged 14-21 who are suspected of or have been charged with committing a robbery. These adolescents are tracked by these units until they turn twenty-one years of age. The program claims to be able to connect teens to services, but our experience indicates that outside of the most basic services provided in the community, not much has been offered. Instead, the program serves as a surveillance unit with no exit for youth. In fact, despite an internal NYPD audit of the program demonstrating a lack of impact, the program has been continued and expanded.<sup>7</sup>

We believe that assigning police officers to serve as “social workers” is not an appropriate service delivery system. Additionally, police officers are not trained to detect and address mental illness, family fracture, substance abuse, special education needs, just to name some of the most significant issues with which court-involved youth often present. If funding is to be allocated to support youth in underserved neighborhoods, those dollars should support therapeutic services, supportive housing, after school programming and special education services, among others.

We would also suggest that adolescents who are identified by NYPD’s “Operation Crew Cut”, particularly the very youngest, as involved in illegal street activity be referred for services. Police officers are now tracking the social media activity of teenagers and some children who are quite young—ten or eleven years old, possibly younger. Often, these young children and older adolescents affiliate with neighborhood crews in the belief, sometimes accurately, that these groups will protect them from other negative forces in their neighborhood. Some affiliate for purely social reasons. Not all are “gang members” in the traditional sense and some of them need supports. For those who need supports as outlined in the paragraph above, referrals to appropriate service providers should be made to support these identified youth, many of whom are truly at risk. Serious caution should be taken to limit the labeling of children and adolescents as gang members simply on the basis of their social media contacts.

I would like to share an example of reform in New York City’s schools. It is a process that started over ten years ago as an outgrowth of a grassroots movement of community-based organizations and legal advocacy groups that garnered the attention of a small number of city council persons, eventually winning the support of the city council and the mayor when the Student Safety Act was signed into law. We have now had the benefit of the transparency that the Act permits for approximately six years, requiring public reporting of the number of school suspensions, arrests and summonses by school safety officers. Last year, the Act was amended

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<sup>6</sup> [http://www.nyc.gov/html/nypd/html/pr/pr\\_2009\\_023.shtml](http://www.nyc.gov/html/nypd/html/pr/pr_2009_023.shtml)

<sup>7</sup> [https://www.nytimes.com/2016/01/05/nyregion/report-finds-juvenile-program-failed-to-reduce-robberies-but-police-are-expanding-it.html?\\_r=0](https://www.nytimes.com/2016/01/05/nyregion/report-finds-juvenile-program-failed-to-reduce-robberies-but-police-are-expanding-it.html?_r=0)

to include the number of summonses and arrests of students by precinct and uniformed task officers.

The School Safety Division of the New York Police Department has reduced the arrest and summons rate of students by almost 65% since 2011.<sup>8</sup> It is an accomplishment that demonstrates that true reform can occur where there is political will. A remarkable amount of effort and resources has contributed towards this transformation. NYPD has committed to training the school safety agents in Collaborative Problem Solving, a method developed at Massachusetts General Hospital grounded in improving communication skills and reducing conflict. Other training in adolescent development, conflict de-escalation and alternatives to punitive response has been implemented. Both the incidence of law enforcement response and the crime rate decreased.

Six years ago, an alarming number of students were being prosecuted throughout the city in adult court for felony assaults against school safety agents—incidents that began as minor conflicts were often escalated unnecessarily by the agents. Today, the number of such cases is almost non-existent. There is still work left to be done. The effort to keep schools safe while maintaining a supportive environment is an on-going process, but it is well underway and a robust demonstration that where there is political will, change can occur.

Reform is often supported by transparency in government, and we are hopeful that now that we and the broader public have access to the numbers of arrests and summonses issued by precinct officers and uniformed task force officers in our schools, that we will see a similar reduction in those incidents. Currently, it is these officers that are responsible for the vast majority of arrests and summonses of New York City's public school students. It is critical that the precinct and uniformed task force officers who are assigned to schools receive the same training and oversight as the school safety agents. Students should not face a criminal response for normative adolescent behavior which forms the basis of most arrests made and summonses issued by precinct and uniformed task force officers in schools.

Additionally, the schools and the police department are functioning under an MOU that is almost twenty years old. Work is underway to update the memorandum of understanding, in order to clearly delineate the respective roles of law enforcement and educational staff. Over the years, we have seen an overuse of school safety agents to carry out traditional roles of teachers and administrators. A clear understanding of the roles are necessary in order to properly train staff and avoid confusion among the adults in a school building as to which staff members are responsible for the functions that affect students. The Mayor's Leadership Team on School Climate and Discipline made such a recommendation last year in its report.<sup>9</sup> It is imperative that an updated MOU is adopted as soon as possible.

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<sup>8</sup> [http://www.nyc.gov/html/nypd/html/analysis\\_and\\_planning/reports.shtml](http://www.nyc.gov/html/nypd/html/analysis_and_planning/reports.shtml)

<sup>9</sup> <http://www1.nyc.gov/site/sclt/index.page>

## Transparency

The effective collection, analysis, use and reporting of police misconduct data can be instrumental in improving police accountability and engendering greater trust in police-community relations. In addition to endorsing body cameras “to enhance agency transparency”, the President’s Task Force on 21<sup>st</sup> Century Policing, a task force created to “provide meaningful solutions to help law enforcement agencies and communities strengthen trust and collaboration” calls on police departments to “embrace a culture of transparency,” and to “regularly post on the department’s website information about stops, summonses, arrests, reported crime, and other law enforcement data aggregated by demographics.”<sup>10</sup> Regarding the dissemination of body camera footage, the Task Force recommends that the Department of Justice develop best practices that can be adopted by state governments.<sup>11</sup> Existing “best practices”, based on the Police Executive Research Forum (“PERF”) for the Office of Community Policing Services’ report, caution that “law enforcement agencies should apply these exceptions judiciously to avoid any suspicion by community members that police are withholding video footage to hide officer misconduct or mistakes.”<sup>12</sup>

In contrast, however, police secrecy laws like N.Y. Civ. Rights Law § 50-a affords police disciplinary data unparalleled secrecy regarding an officer’s disciplinary history. For this reason, in New York City, we continue to have no information about Officer Daniel Pantaleo’s history of misconduct (including substantiated misconduct) and, thus, whether some intervention could have prevented Eric Garner’s death. For this reason, we may not learn the outcome of the administrative trial of Richard Haste, the officer who shot unarmed teenager Ramarley Graham.

Multiple petitions by The Legal Aid Society for summaries of substantiated police misconduct over the past year have been granted yet still appealed by the City of New York, claiming that Section 50-a prohibits absolutely all disclosures, even summaries, of officer misconduct records, even those that have been substantiated through investigation.<sup>13</sup> Without reform of laws like Section 50-a, which we urge this committee to support, it would be difficult—if not impossible—to fully evaluate the police officers’ accountability to the public.

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<sup>10</sup> UNITED STATES DEPARTMENT OF JUSTICE, POLICE EXECUTIVE RESEARCH FORUM (“PERF”), IMPLEMENTING A BODY WORN CAMERA PROGRAM, RECOMMENDATIONS AND LESSONS LEARNED V (2014), *available at* <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>, at 13 (“1.3.1 Action Item”); *id.* at 31 (discussing BWC programs).

<sup>11</sup> *Id.* at 35. (“Recommendation 3.3”).

<sup>12</sup> BUREAU OF JUSTICE ASSISTANCE (“BJA”), BODY WORN CAMERA TOOLKIT: BODY WORN CAMERA FREQUENTLY ASKED QUESTIONS 32, *available at* <https://www.bja.gov/bwc/Topics-Policy.html> (referencing PERF, *supra*, note 10 at 15).

<sup>13</sup> *In re Luongo v. Records Access Officer*, Civilian Complaint Review Bd. (Luongo I), 15 N.Y.S.3d 636, 642–43 (N.Y. Sup. Ct. 2015), *In re Luongo v. Records Officer*, Civilian Complaint Review Bd. (Luongo II), No. 7617/2015, slip op. at 3 (N.Y. Sup. Ct. Jan. 19, 2016) (Purificacion, J.), *Luongo v. Records Access Officer*, NYPD (Luongo III), Index No. 160232/2016 (pending).

The Legal Aid Society also supports the following efforts as critical steps supporting accountability and transparency:

#### City Level

- **End broken windows policing** (criminal and civil enforcement of minor/"quality of life" offenses)
- **Pass Right To Know Act** ([Intro 182](#) and [Intro 541](#) in the City Council) as law to increase accountability in the most common interactions between the NYPD and New Yorkers. We need to change the front end of abusive policing to be able to decrease risk for immigrants of color who get summonsed/charged w/low-level non-violent offenses that are deportable offenses by code; as well as because the Trump administration has expanded immigration enforcement priorities to include minor non-violent offenses without due process (when immigrants are charged, and even if not charged but found to have engaged in a "chargeable offense" which can arguably include civil offenses that have parallel criminal charges). The Right To Know Act begins to address this front end of abusive policing. *[Right To Know Act polices were part of President Obama's 21st Century Policing recommendations and has been endorsed by over 200 organizations, the New York Times, Amsterdam News, El Diario and others]*
- **End Mayor de Blasio/NYPD (mis)re-interpretation of NY Civil Rights Law Section 50-a**, which has increased secrecy of police disciplinary actions and shields abusive officers and NYPD patters from public accountability.

#### State-level

- Pass comprehensive Raise the Age legislation.
- Pass the Police STAT Act ([S147/Squadron](#); [A5946/Lentol](#)) to create police transparency related to enforcement of minor offenses (summons and arrests) and deaths of civilians in police interactions (killings by police and deaths in custody).
- Pass legislation to End Unecessary Arrests Act ([A3201/Aubry](#)) to end arrests for minor non-criminal offenses (e.g. violation-level offenses and similar offenses in Parks/transit/health codes that may be misdemeanors but have a parallel violation offense).
- Pass special prosecutor legislation ([A5617/Perry](#)) to make a special prosecutor for police killings permanent beyond the current executive order. This bill passed out of Assembly a few weeks ago, we're working on Senate side strategy.
- Repeal NYS Civil Rights Law Section 50-a to end police secrecy and lack of transparency of police officers' misconduct.



- Support passage of DPA's marijuana decriminalization and legalization-related legislation.

The Legal Aid Society appreciates the opportunity to testify before the Committee and thanks you for your time and commitment.