

**TESTIMONY OF THE BRONX DEFENDERS
TO THE U.S. COMMISSION ON CIVIL RIGHTS
ON POLICE PRACTICES AND ACCOUNTABILITY IN NEW YORK CITY**

March 20, 2017

By Jenn Rolnick Borchetta, Deputy Director of Impact Litigation:

Good morning Commissioners and Committee members. I am honored to testify before you today on behalf of The Bronx Defenders. We thank you for the opportunity to shed light on police practices in New York City from our unique perspective as a public defender that holistically represents indigent people in the Bronx.

The Bronx Defenders is a client-centered model of public defense that uses interdisciplinary teams of advocates to address both the underlying causes and collateral consequences of criminal justice involvement. We serve around 35,000 Bronx residents each year who are trapped in criminal, family, housing, and immigration proceedings. Created and staffed by advocates with a broad vision of public defense, The Bronx Defenders treats clients as whole people rather than the sum of the claims or controversies they face. Our dedicated attorneys, social workers, investigators, advocates, and support staff work together to help clients reach a better life, whether by fighting eviction, reuniting parents with their children, preventing deportation, or defending the accused.

The Bronx is New York City's poorest borough. Its congressional district is the poorest in the country. In the nine zip codes immediately surrounding our office, half of the residents live below the poverty line and half of our clients are unemployed and lack a high school diploma. Forty percent struggle with addiction, over three times the citywide rate. One out of four has been homeless.

The Bronx Defenders operates across multiple dimensions beyond individual cases - from community education and partnerships to affirmative litigation and legislative reform - to remedy the underlying problems that drive our clients into the criminal justice system. At The Bronx Defenders, we bear witness to the impact of NYPD policies and practices on low-income people of color as we work with clients to break the cycle of poverty and criminalization.

We have had the opportunity to speak with people of color about their encounters with the NYPD. We have heard from young people who were stopped and frisked while walking home, who were arrested on their way to the local bodega, or who were detained and then questioned about their friendships.

These encounters share common characteristics. NYPD officers approach abruptly and without identifying themselves. They use force without provocation. The young person is often confused and scared. They are jilted out of their ordinary routine. And their encounter is a result of the NYPD's commitment to the Broken Windows policing tactic, that is, the aggressive policing of certain people in certain places for low-level crimes and offenses.

Aggressive enforcement against low-level offenses requires officers to go after people in certain neighborhoods for misdemeanor arrests, criminal-court summonses, and violations. The offenses are objectively minor, and include things like turnstile jumping and being in the park after dark. They also include offenses for which officers have a great deal of discretion, either in deciding whether the person's conduct constitutes a crime, such as in the case of disorderly conduct, or in deciding whether to arrest the person or simply issue a civil penalty, such as in the case of subway fare evasion.

Calling these encounters "low-level enforcement" is misleading because of the grave ripple effects that flow directly from them. Of course, it's true that this tactic targets enforcement at low-level crimes. Necessarily, though, this enforcement tactic, when it is prioritized by a police department as it has been in New York City, is not isolated; it is not a single incident, but hundreds or even thousands or even hundreds of thousands of police encounters. And although misdemeanor arrests might be affected and c-summonses might be issued all over the City, the brunt of this enforcement is targeted at neighborhoods that are predominantly low-income and predominantly people of color, like the South Bronx.

We see so clearly how this enforcement tactic can rip through the fabric of a community, with a particularly pernicious burden placed on the community's young people. We see these tears as they extend into family, home, employment, and the basic necessities of life.

The encounter itself is experienced by many as humiliating and degrading. We often see evidence of excessive force used against clients charged with the misdemeanors, particularly

those charged with disorderly conduct, resisting arrest, and obstruction of governmental administration. One client of mine, a person I represented prior to coming to The Bronx Defenders, had an experience that is not uncommon among those we represent. Crossing the street one day after school, he exhibited truly teenage judgment when an NYPD officer driving a van cursed at him and he volleyed back with his own expletive. That's when the police jumped him and threw him through the glass wall of a bank on the corner. They arrested him for disorderly conduct, resisting arrest, and obstruction of governmental administration. Those charges were later all dismissed. But not before his terrified mother arrived on the scene to see the smashed bank wall and her son's blood on the ground.

We see, too, that the encounter does not end on the street where it began. A person who is arrested is held in the precinct and sometimes sent to jail. Even those who are released relatively quickly after arrest face months and often years of court appearances while they await trial, which means time off from school or work and which means the cost of metro cards and childcare. For our clients who are paid hourly wages or who rely on seasonal jobs, these appearances mean money and opportunity lost, and sometimes lost jobs. For young people, this a disruption at the starting line of employment.

The encounter does not end with the person the police targeted. A young person arrested as a result of aggressive low-level enforcement tactics, even if it's an arrest for a minor offense, might face exclusion from public housing and his family might even face eviction. This is the reality for many of our clients: A young person is arrested for smoking marijuana in the hall of a New York City Housing Authority building, and as a result his family's government housing

tenancy can be terminated. It's hard to see how putting families out on the street could be the solution to crime.

Worse still, low-level enforcement can divide families. We receive reports of children who are traumatized after witnessing the violent arrests of their parents. And when a parent is arrested, even for a low-level offense, the NYPD has a practice of bringing children to the precinct and turning them over to the Administration for Children's Services, even if family members or neighbors who know the children are available. These kids then often spend time in an overcrowded children's center. This is not a hypothetical. We have seen this case play out time and again.

And these encounters with the criminal justice system have immigration consequences, too. Relatively benign charges can be interpreted under federal immigration law as removable conduct and arrests for low-level offenses can trigger notification to federal law enforcement authorities. Even marijuana violations can subject people to removal proceedings that can and do lead to the permanent separation of families. Because of the president's immigration policies, the NYPD's commitment to Broken Windows policing will mean more families torn apart.

When multiplied by the hundreds and thousands, these so-called low-level enforcement tactics sow vast and lasting damage in communities like those in the Bronx. This is the landscape our clients must traverse because of policing tactics like Broken Windows.

The NYPD has said it wants to build public trust. To advance this laudable goal it says it aims to make people feel better about police encounters, as though trust is a public relations

issue. At the same time, the NYPD continues to encourage and require aggressive low-level enforcement tactics. It does this even though no honest research proves Broken Windows reduces crime and, to the contrary, jailing people increases the likelihood of future involvement in the criminal justice system. The NYPD promotes this policing policy through a narrative that creates a Hollywood-style binary of victims and villains, with officers cast as heroes. In this fiction, certain people in certain neighborhoods are immutably criminals who must be vanquished.

This fiction brings me to the three recommendations we respectfully submit to the Commission today.

First, police departments must not design tactics that classify whole swaths of communities as villainous. This framing is and always will be a shorthand for race and class, and it will continue to result in racial profiling, no matter how the department might dress up the tactic in other names. Policing strategies must begin with the premise that every person on the street is an important member of our community with a family and fundamental rights – no matter if the street they are walking on is in the West Village or the South Bronx.

Second, building on this premise, police departments must create permanent mechanisms for community input into policing strategies, with the intentional inclusion of the community members most affected by policing tactics. These should not be loose town hall meetings but an elected or appointed group of people representing a cross section of the community. This is a necessary precursor to trust in the police, and it appropriately requires those setting police policy

to address the possible collateral consequences of their policies before irrevocable damage is done.

Third, police departments must document everyday investigative encounters with the public to create a complete and transparent accounting of how low-level enforcements tactics play out on the street. The experiences of our clients that I have shared today are not historical, they represent today's reality. Based on what we know from representing tens of thousands of indigent people in the Bronx, investigative street encounters in New York City are not as decreased as the documentation of stops might suggest. Indeed, internal NYPD auditing suggests that the decrease in stops is attributable to a decrease in recording stops, rather than a meaningful change in activity. To fully understand and address low-level enforcement, police must be required to document lower level encounters. By "lower level encounters," I am specifically referring to what in New York are called level one and two encounters, that is, street encounters that do not rise the level of a stop as a technical legal matter. The Police STAT Act, legislation that is currently pending at the state level in New York and which would create police transparency related to the enforcement of minor offenses, is an example of a policy that would advance this recommendation.

I recently attended a public forum in the Bronx as part of the Joint Remedial Process in *Floyd et al. v. City of New York*, the case that proved in 2013 that the NYPD's use of stop and frisk was unconstitutional and racially discriminatory. As a lawyer for the plaintiffs in *Floyd*, I was there to listen. An African American woman turned to me and told me about her sons, the two teenage boys sitting beside her. She worried about them because of crime, yes, but also

because of police – that her sons might be targeted, wrongfully arrested, brutalized or even killed by the NYPD. She worried when they left for school in the morning and when they walked home from football practice at night. She brought up the recent wave of nationalism that has attended the rise of the new American president, and she said to me: “I was afraid for my sons before. And now, with this election, I’m even more afraid. You’re a lawyer. Tell me what to tell my sons that will protect them. Tell me.”

This Commission can issue a report and recommendations that protect young people of color in low-income communities like the Bronx from racial profiling, police brutality, and the criminalization of poverty. On behalf of our clients, we hope it will.

Thank you.