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COMMITTEE ON PUBLIC SAFETY 1

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON PUBLIC SAFETY

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June 9, 2020
Start: 10:17 a.m.
Recess: 8:00 p.m.

HELD AT: REMOTE HEARING (VIRTUAL ROOM 1)

B E F O R E: Donovan J. Richards,
Chairperson of the Committee on
Public Safety

COUNCIL MEMBERS:

- Speaker Corey Johnson
- Deborah Rose
- Carlos Menchaca
- Brad Lander
- Robert Holden
- Paul Vallone
- Adrienne Adams
- Ydanis Rodriguez
- Rafael Salamanca
- Andrew Cohen
- Helen Rosenthal
- Vanessa Gibson
- Farah N. Louis
- Fernando Cabrera
- Andrew Cohen
- Mark D. Levine
- I. Daneek Miller
- Francisco Moya
- Keith Powers
- Carlina Rivera

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2 Intro. 721-A also requires the Commissioner to
3 issue quarterly reports of arrests and summonses
4 issued when persons record police activity.

5 There may be no better time to pass legislation
6 as we continue to see people in our city and across
7 this country demand accountability. If it were not
8 for a quarter of officers, we would know videos of
9 officers hitting a cyclist with batons, officers
10 physically pushing a woman to the ground and officers
11 arresting an essential food delivery worker or many
12 others. All of these instances were recorded. I use
13 my own to record instances that were still not
14 believed.

15 Imagine if they were not. Imagine if we were not
16 aware. What justice would be sought? Would the
17 status quo continue? Sadly, even with the video,
18 sometimes there is no justice.

19 Take the case of Rayne Valentine, an essential
20 worker at Kings County Hospital. As he left work on
21 May 30th while walking near the church avenue subway
22 station and saw the crowds of protestors and police
23 officers. Rayne took out his phone to record,
24 leading to shouts from officers to move back. Rayne
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1
2 then was pushed and beaten by officers who quickly
3 stopped and gave him back his phone.

4 Afterward, Rayne bleed from what had happened,
5 went back to the hospital for injuries he sustained.
6 All because he was recording officers. Before these
7 protests, there were many other examples of police in
8 the city inappropriately responding to recordings.
9 Back in May, while walking her dog a defense attorney
10 saw officers stopping men near Tompkins street and
11 Decatur Avenue. She began to record the interaction
12 before officers approached her. While the people
13 stopped by police were let go, the attorney was
14 arrested and detained.

15 There are countless stories of people who were
16 simply recording officers and their right to do so
17 was interfered with by police. On 2014-2016 CCRB
18 investigated 257 complaints involving officers
19 interfering with video recording. Most of the
20 complaints involved officers using physical
21 interference to prevent their recording. This cannot
22 happen. We must ensure every person is entitled to
23 their right to record a police officer without the
24 fear of repercussions. This includes journalists and
25 I'm frightened by recent reports that the press is

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2 being stopped and even arrested for just doing their
3 job.

4 Let's make something very clear, there is no
5 local law that makes it illegal to record the police.
6 In fact, federal and state law allow people to record
7 in a public space. However, we have seen officers
8 inconsistently respond to recordings of their
9 actions. We do not need to see images of people
10 arrested while holding our officers accountable. We
11 do not need officers picking and choosing who gets to
12 record and who does not. It is time for uniform
13 policy and Intro. 721 would do that. The right to
14 record can allow a level of accountability in
15 incidents where officers acted inappropriately. For
16 example, film the last words of Eric Garner in Staten
17 Island after x-official Daniel Pantaleo applied a
18 fatal chokehold. Even though it took five years for
19 Pantaleo to be fired for causing the death of an
20 innocent man, this incident stressed the points of a
21 right to record. We still haven't had an account for
22 the other officers to who caused the death and my
23 understanding is Mr. Archer had just been released
24 from jail himself.

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2 COMMITTEE COUNSEL: Thank you. I will call on
3 each of you individually for a response. Please
4 raise your right hands.

5 Do you affirm to tell the truth, the whole truth
6 and nothing but the truth in your testimony before
7 this Committee and to respond honestly to Council
8 Member questions? Deputy Commissioner Tucker?

9 BENJAMIN TUCKER: I do.

10 COMMITTEE COUNSEL: Assistant Chief Pontillo?
11 Assistant Chief Pontillo?

12 SPEAKER JOHNSON: Committee Counsel, we may have
13 an audio problem with the testimony that's about to
14 be given, there is an echo, which makes it hard to
15 understand their testimony. So, I don't know if they
16 can attempt to fix that on their end.

17 COMMITTEE COUNSEL: Deputy Commissioner Tucker,
18 why don't you begin and we'll stop if we have a
19 problem.

20 BENJAMIN TUCKER: We're still getting an echo, I
21 think. Oh, that's better. Alright?

22 COMMITTEE COUNSEL: That sounds better.

23 BENJAMIN TUCKER: Well, let's begin. Good
24 morning Speaker Johnson, Public Advocate Williams,
25 Chair Richards, and Member of the Council. I am Ben

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2 Tucker First Deputy Commissioner of the New York City
3 Police Department. I'm joined today by Assistant
4 Chief Mat Pontillo, and Assistant Deputy Commissioner
5 for Legal Matters Oleg Chernyavsky.

6 On behalf of Commissioner Dermot Shea, I wish to
7 thank the Council for the opportunity to discuss the
8 important moment in our countries and in our city's
9 history and to comment on the bills we incurred here
10 today.

11 At the core of the Departments mission is our
12 obligation to protect the health, safety, and welfare
13 of those that live in, work in, and visit our city.
14 A well trained focused and disciplined team of more
15 than 36,000 officers is vital to this mission. We
16 are the largest police department in the nation, the
17 most scrutinized. No police department operates
18 under as much public scrutiny or as many layers of
19 oversight as the NYPD.

20 As we have made clear time and again, the Police
21 Department embraces scrutiny and oversight because it
22 has prompted us to review and reflect upon our
23 policies and practices. In over the past six and one
24 half years, we have made unprecedented progress in
25 such areas as training, control function, precision,

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2 policing, use of force, investigative encounters, and
3 discipline.

4 While I intend to outline some of the reforms we
5 have implemented during this administration. In the
6 interest of time, I have attached a far more
7 comprehensive list to my testimony for you and the
8 public to review. Our job is by no means done. We
9 in the policing profession know that we can always
10 improve, that we can always do better, that we must
11 do better. That is why I am here today to commit to
12 you that we will continue to work with you,
13 advocates, academia, and the public on our collective
14 mission to ensure fair and impartial policing
15 throughout our city.

16 The NYPD will remain in the forefront of this
17 issue, which impacts all New Yorkers. Over the past
18 three and one half months, the city has been and
19 continues to traumatized by the onset of the
20 coronavirus that has taken us into uncharted
21 territory. And by the horrific and deeply disturbing
22 murder of George Floyd and the passionate expression
23 of outrage that has driven thousands into our streets
24 seeking justice.

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2 There has been a fair amount of conflict in our
3 city recently, so please allow me to share something
4 that I think we can all agree on. What happened to
5 Mr. Floyd was a great injustice and a shocking
6 tragedy and was certainly deeply disturbing.

7 When police officers start their careers, we take
8 over to protect and serve the public. I did that
9 when I was a young recruit in the early 70's. Police
10 Commissioner Shea did it as well in the early 90's.
11 All police officers swear to protect the people of
12 this great city and they strive to fulfill the oath
13 every time they put their uniforms on.

14 What we saw in Minneapolis was simply a betrayal
15 of the oath, of that oath and a gross sterilization
16 of duty. It's nearly damaged every effort we made by
17 our officers to connect with our communities and
18 build trust without people. Simply put, it was
19 atrocity fatal to Mr. Floyd and deeply damaging to
20 police community relations here in New York and
21 everywhere in our nation. Our profession is better
22 than that. But this is also a time where we can call
23 on, all come together and condemn the lawlessness
24 that has occurred recently. Over the last several
25 days our city has experienced turmoil. The right to

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2 communicate onto ideas is fundamental to a free
3 society. The NYPD believes in the importance of the
4 first amendment and the public's right to free
5 expression. But in demonstrating, counter
6 demonstrating or showing support for a cause, people
7 in groups have the right to peacefully gather. Law
8 enforcement in turn, has the duty to ensure the
9 safety of the general public while protecting the
10 right of peaceful assembly.

11 When protestors march for a better future, it is
12 an overwhelmingly positive thing for our city. Yet,
13 unfortunately, the city has also recently experienced
14 looting, burglaries, and the destruction of property.
15 These actions are not peaceful protests. They have
16 nothing to do with civil disobedience, progress, or
17 reform.

18 They are not about demonstrating against police
19 brutality. Quite frankly, they are the actions of
20 people who have been solely on taking advantage of a
21 moment in American history to call out the cause of
22 equity and justice that we all uphold and
23 intentionally inflict chaos, mayhem, and injury, just
24 for the sake of doing so. And I hope we can all come
25 together and condemn these lawless actions.

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2 The best majority of our police officers abide by
3 the many laws, policies and procedures and rules
4 governing the policing profession. Police work and
5 police decision making in the field relies heavily on
6 the discretionary judgement of officers based on
7 their accumulated experience as well as adherence to
8 guiding principles to solve a variety of problems.

9 Public trust is eroded anytime a New York City
10 police officer's conduct does not adhere to the
11 values and standards of the NYPD and the policing
12 profession.

13 As I noted earlier in recent years, the NYPD
14 enacted a series of sweeping reforms designed to
15 build trust and encourage collaboration with New York
16 City communities. At the heart of these reforms is
17 neighborhood policing, making shift in policy and
18 practice that gave cops the time and the latitude to
19 connect with communities that follow through on local
20 problems and seize the initiative on local crime.

21 I personally led a series of training reforms as
22 we developed a three day course in de-escalation, de-
23 escalating confrontations and avoiding force.

24 Trained our officers in communicating with
25 emotionally disturbed people, prompted a field

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2 training program for recruits and rented [INAUDIBLE
3 39:55] in fair and impartial policing. We also
4 established a much more exacting use of enforced
5 policy to investigate all uses of force and collect,
6 trap and report forced data as never before.

7 The Department implemented what is now the
8 largest police body worn camera program in the world.
9 45,000 of our officers now wear those body worn
10 cameras.

11 By 2019, reported stops were down from 93 percent
12 from 2013. Arrests and criminal summonses fell by
13 46.6 percent, and 79.7 percent respectively, by the
14 end of 2019.

15 Last year, the NYPD stopped 149,000 fewer people
16 of color than it did in 2013 and we arrested 148,000
17 fewer. With the smaller enforcement footprint came
18 deep cuts in crime. Murders below 300 for the first
19 time since 1951 and shootings below 800 as well as
20 33.4 drop in burglaries.

21 Greatly reduced enforcement and significantly
22 lower crime. It was a triumph of progressive
23 policing and I ask you to take these accomplishments
24 and the reforms that helped achieve them into account
25 as you consider further reforms in our department.

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2 One of the most important components in winning
3 the public's trust is the credibility of our internal
4 system for disciplining this kind of violence by police
5 officers. If people see the departments discipline
6 system as minimizing or discounting police conduct,
7 they will be far more likely to doubt the legitimacy
8 of any police action. We recognize that lasting
9 trust cannot be achieved without a fair and transparent
10 police process and the process should be that should
11 provide the people we serve with the understanding
12 and insight into how the department addresses their
13 complaints of misconduct and how we ensure without
14 exception our personnel perform with integrity.

15 In the NYPD, we believe that we have a very
16 robust disciplinary process that holds officers
17 accountable and punishes guilty officers
18 appropriately. But it is crucially important that
19 the public believes it too. This is one of the
20 reasons why former Commissioner O'Neill convened the
21 external panel of respected criminal justice experts
22 in 2018 to examine our internal discipline process
23 and to make recommendations on how we can improve.

24 Last year, when the Commissioner issued his
25 report, he immediately accepted each and every

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2 recommendation. He tasked me with establishing and
3 leading a working group to implement the
4 recommendations, a duty that Commissioner Shea and
5 the entire NYPD leadership continues to embrace.

6 I would now like to speak about the bills being
7 heard yet today. With respect to Proposed Intro.
8 536-A, with dealing with criminalize any form of
9 restraint that restricts the flow of air or blood by
10 compressing the windpipe, diaphragm, or corroded
11 arteries on either side of the neck, in the course of
12 affecting or attempting to affect an arrest. The
13 Department can support this legislation with minor
14 amendments.

15 As you know, our Patrol Guide as prohibited the
16 use of chokeholds for decades. Patrol Guide Section
17 22101, which is publicly available on the NYPD's
18 website, unequivocally and unambiguously forbids any
19 pressure to the neck, throat or windpipe that may
20 inhibit breathing. The quoting from this section,
21 the primary duty of all members of the service is to
22 protect human life, including the lives of
23 individuals being placed in police custody. Force
24 maybe used when it is reasonable to ensure the safety
25 of the member of the service or a third person or

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2 otherwise protect life or when it is reasonable to
3 place a person in custody or to prevent escape from
4 custody.

5 In all circumstances, any application or use of
6 force must be reasonable under the circumstances. If
7 the force used is unreasonable under the
8 circumstances it would deeply be deemed excessive and
9 in violation of the department policy. When
10 appropriate and consistent with personal safety,
11 member of the service will use de-escalation
12 techniques to safely gain voluntary compliance from a
13 subject to reduce or eliminate the necessity to use
14 force. In situations in which it is not safe for
15 appropriate members of the service will use only the
16 reasonable force necessary to gain control or custody
17 of a subject.

18 The use of deadly physical force against the
19 person can only be used to protect members of the
20 service or the public from imminent serious physical
21 injury or death.

22 This is how officers are trained and this is how
23 the vast majority of arrests are effectually.
24 Reality is that being a police officer is one of the
25 most difficult jobs in the world. There are few

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2 professions where the line staff – those officers on
3 patrol must make myriad of decisions on every day on
4 any given day. Cops have to make choices, sometimes
5 very quickly every single day. Some are a split
6 second life and death choices. We hold our officers
7 to high standards even when making these choices but
8 the decision as to when and how to use force on the
9 ground is extremely complicated and may change second
10 by second as circumstances evolve during the course
11 of an arrest and often do.

12 No two arrests are the same. When officers must
13 resort to using force, they must be trusted to rely
14 on their training and their experience. It is
15 critical that officers are able to transition and
16 adapt to the changing circumstance of an encounter.
17 We teach officers to adjust the level of force and
18 response to the subjects changing level of resistance
19 consistent with attendance of the critical decision
20 making model. It is for these reasons that the New
21 York State Penal law acknowledges an officers right
22 to use reasonable force under certain circumstances.

23 If the officer uses excessive force, the penal
24 law already includes a statue criminalizing, criminal
25 obstruction of breathing and strangulation.

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2 If the officers conduct does not rise to a
3 criminal defense, the Department, as a robust
4 discipline system will hold that officer accountable.
5 However, this bill would criminalize violations of
6 department policy that would not rise to the level of
7 criminality. The legislation does not require that
8 an officer intentionally use a chokehold. Rather it
9 criminalizes incidental, unintentional contact with
10 an individual's neck or chest. Furthermore, by
11 criminalizing the act of an officer putting pressure
12 on an individual's diaphragm, the bill fails to take
13 into account or take account on the particular
14 circumstance of many struggles during the course of
15 arrests.

16 It also appears that the bill would criminalize
17 the rendering of CPR, with chest compressions or the
18 Heimlich maneuver, although that is clearly not an
19 intended consequence of the law.

20 Under the provisions of the bill, it is actually
21 hard to imagine a scenario in which an officer would
22 not open him or herself to criminal liability or
23 discipline when effecting the arrest of a resisting
24 subject. While we certainly prefer that people
25 submit to arrests peacefully, it is certainly not

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2 always the case that they do. That is the reality
3 that officers face every day. The bill can be
4 operationalized with two simple amendments. Remove
5 the word diaphragm and add the word intentional.
6 While the unacceptable acts we are all trying to
7 prevent are those that occurred to Mr. Garner and Mr.
8 Floyd, I ask you all to visualize the officers who
9 you are in direct with on a regular day, every day.
10 A coordinating officer or a community affairs
11 officer, they will be the officers led away in
12 handcuffs for unintentional contacts during incidents
13 which they've entrusted. Surely, we can agree that
14 these suggestions are not unreasonable.

15 With respect to Proposed Intro. 760-A, the bill
16 would require the NYPD to create and maintain a
17 centralized system to track, review and evaluate
18 police officer activity and to identify officers that
19 may be in need of enhanced training, monitoring or
20 pre-assignment. The Department already has entire
21 borough dedicated to this purpose, our Risk
22 Management Bureau. Risk Management's mandate and
23 purpose is to track the activities of officers and
24 any deficiencies and in performance of their duties
25 including all complaints made against them.

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2 Together, with the Legal Bureau, Risk Management is
3 tasked with identifying those officers whose
4 performance has not been up to the high standards we
5 expect, retraining these officers and as needed
6 reassigning them. Risk Managements work is above and
7 beyond the existing structure overseen by me in my
8 office.

9 The Department will support this bill and ask
10 that the codification into law of the details of the
11 ever changing evolving system be removed. Instead,
12 we publicly report the criteria we evaluate in the
13 context of such a system, so that this body and the
14 public are fully informed and can offer input.

15 We look forward to working with the sponsor on
16 the relatively small amendments that would make this
17 operationally feasible and valuable in achieving its
18 stated goal.

19 With respect to Proposed Intro. 721-A and
20 Preconsidered Intro. T-20206267, these bills would
21 affirm the right of citizens to record police
22 officers and require that an officers shield or rank
23 be visible. The Department supports the substance of
24 both these bills which are in our Patrol Guide.

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2 No member of the NYPD should be interfering with
3 someone lawfully recording police conduct or
4 intentionally their shield number. That is simply
5 unacceptable. However, we have significant concerns
6 with the private rights of action included in both
7 bills. Respectfully the Department cannot support
8 those provisions in either of these bills. Portions
9 of these bills confirm what is already in law. If an
10 officer impermissibly seizes property including a
11 recording of a law enforcement activity, an
12 individual has a cause of action. NYPD officers
13 must also identify themselves and provide business
14 cards under the Right to Know law. Creating
15 additional causes of civil action and mandatory
16 attorney's fees would only serve to incentivize all
17 avenues of a litigation to the detriment of the
18 already stressed budgets and staffing needs of the
19 NYPD to fight these suits.

20 Often, officers are faced with the challenge of
21 maintaining order at complicated crime scenes. There
22 is often tension between the integrity of the assume
23 and the safety of the officers while allowing the
24 public to observe those officers' actions. It could
25 be a difficult judgment for officers who are

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2 involved. We do not believe that incentivizing new
3 avenues to sue officers further reform or provide
4 justice to crime victims or their families.
5 Requiring officers to defend themselves in civil
6 suits even when they are able to mount a successful
7 defense opens the prospect of defense lawyers
8 impeaching an officers testimony in criminal
9 prosecutions every time that officer testifies.
10 Simply because officers have been named as defendants
11 in civil cases.

12 So, I hope that members of the Council can see
13 that the NYPD has supported matters large and small
14 over the past six and a half years and we remain
15 willing partners in the overall effort to further
16 advance the Department's commitment to criminal
17 justice reform and serving all of the communities of
18 our city. And as we do it is imperative that we move
19 forward together on a common ground to improve our
20 criminal justice system, the safety of all New
21 Yorkers and the safety of the police officers, every
22 police officer working daily to protect us.

23 I thank you for the opportunity to speak about
24 these critical issues. We look forward to answering
25 any questions you may have.