

TESTIMONY

The Council of the City of New York
Committee on Civil Rights
Committee on Public Safety
Committee on Public Housing

Policing in NYCHA: Examining Policies and Procedures

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Good morning. I am William Gibney, Director of the Legal Aid Society's Special Litigation Unit in the Criminal Practice, a specialized unit dedicated to addressing client problems with the criminal justice system. I am joined by Jin Hee Lee, Associate Counsel from the NAACP Legal Defense and Educational Fund, which is co-counsel with the Society in, Davis et al v. City of New York et al., a federal class action that was filed this year to challenge the systemic practice of illegally stopping and arresting individuals for purported trespass violations on New York City Housing Authority property.

We thank Chairpersons Rose, Vallone, and Mendez, as well as the Committees on Civil Rights, Public Safety and Public Housing, for inviting our testimony on Policing in NYCHA.

ORGANIZATIONAL INFORMATION

Since 1876, The Legal Aid Society has provided free legal services to New York City residents who are unable to afford private counsel. Annually, through our criminal, civil and juvenile offices in all five boroughs, our staff handles about 300,000 cases for low income families and individuals. By contract with the City, the Society serves as the primary defender of indigent people prosecuted in the State court system. In this capacity, and through our role as counsel in the Davis case, the Society is in a unique position to testify about policing in NYCHA. We represent many of those who are arrested and have spoken with them about the circumstances of their arrests.

The NAACP Legal Defense and Educational Fund, Inc. ("LDF") is a non-profit, civil rights law firm founded in 1940 by the late U.S. Supreme Court Justice Thurgood Marshall. Recognized as the nation's finest civil rights and public interest law firm, LDF and its Criminal Justice Project are recognized for their pioneering and long-standing advocacy for racial justice

in the criminal justice system. Because the police practices at issue in the Davis litigation target NYCHA residences, which are overwhelmingly communities of color, LDF believes that the trespass enforcement on NYCHA property is a serious racial justice issue of great importance to New York City and your respective committees.

THE PROBLEM OF NYCHA TRESPASS ENFORCEMENT

On January 31, 2009, Roman Jackson, a NYCHA resident for over 20 years, stepped outside of his apartment to have a conversation with his invited guest Kristen Johnson. Mr. Jackson was living at the St. Nicholas Houses in Manhattan with his grandmother, Eleanor Britt. While they were talking, Mr. Jackson and Ms. Johnson were approached and stopped by NYPD officers. Mr. Jackson told the officers that he was a resident of the building and was just having a conversation with Ms. Johnson. Nevertheless, the officers told Mr. Jackson and Ms. Johnson to stand up and put their hands up against the wall. The officers patted them both down and searched Ms. Johnson's bag. No contraband was found. When asked for identification, Mr. Jackson explained that it was in his apartment. He offered to take the officers there to retrieve his identification, but the officers denied this request. Ms. Johnson showed the officers her identification.

Mr. Jackson and Ms. Johnson were then handcuffed and arrested for trespass. After they were placed in the police van, two officers went to Mr. Jackson's apartment and were shown Mr. Jackson's driver's license by his grandmother as proof of his residency. The license plainly stated that Mr. Jackson lived in the building. Despite knowing that Mr. Jackson was a building resident, the officers took him and Ms. Johnson to the police station, where they were processed for trespass arrests and held for about six hours before they were given a desk appearance ticket

and released. On March 2, 2009, the New York County District Attorney declined to prosecute their trespass cases.

Unfortunately, Mr. Jackson and Ms. Johnson's cases are not unique. In recent years, countless numbers of law-abiding people have been stopped or arrested for criminal trespass despite having legitimate reasons to be on NYCHA grounds, either as a NYCHA resident or the guest of a NYCHA resident. In practice, NYPD officers often wait in or around the lobby of a NYCHA residence and stop almost anyone entering or leaving the building, even though the law requires that they have individualized suspicion. Officers routinely question both visitors and residents about their reason for being in the building. When a response fails to satisfy an officer for whatever reason, that person is searched and often arrested for trespass despite the lack of sufficient evidence to support probable cause that a law has been broken.

In many respects, officers stop individuals on NYCHA property already presuming that they are guilty and force them to affirmatively establish their innocence to avoid arrest. For instance, visitors have been arrested when the NYCHA resident is not home or where there is some miscommunication with officers, such as references to a formal name instead of a more commonly used nickname. Officers often fail to perform even the most basic investigations to verify a visitor or resident's legitimacy. Most arrestees are held in jail for about 24 hours until they are arraigned, and others have been detained even longer. By shifting the burden to NYCHA residents and visitors to prove their innocence, rather than requiring an officer to establish probable cause before an arrest, NYCHA trespass enforcement practices have permitted rampant Fourth Amendment violations on NYCHA grounds. Individuals do not lose their constitutional rights simply because they are on NYCHA property.

Many NYCHA residents live in fear that family members or friends will be arrested when they visit. Some have told us that they are more afraid of the police than drug dealers. Indifference and disrespect for the people, families, and especially young men and women that reside in public housing have become the norm in the NYCHA community. Those unfortunate individuals who are unlawfully arrested for trespass suffer severe consequences, such as missing work or medical appointments, being unable to satisfy family obligations, and navigating the criminal justice system over several months and with multiple court appearances. Those who plead guilty to avoid the burden of criminal proceedings are left with a criminal conviction that may affect their ability to obtain higher education or certain employment positions. These false arrests also strain our overburdened court system, divert limited police resources away from “real” criminal activity, and subject the City to potential damages for false arrest claims.

TARGETING COMMUNITIES OF COLOR

These unlawful trespass stop and arrest policies specifically target communities of color. Over 95% of the people living in NYCHA apartments are non-white, and NYCHA residences have far higher rates of trespass stops and arrests than their surrounding neighborhoods. As a result, 90% of those arrested for trespass are African-American or Latino despite the fact that African Americans and Latinos constitute only 54% of the City’s population. White New York City residents make up only 4.5% of those stopped and 6.7% of those arrested for trespass. African Americans are particularly affected by current trespass policies: they are stopped for trespass approximately 19 times more often than whites and are 10 times more likely to be arrested for trespass. Although Black residents comprise only 25% of the City population, they are 61.5% of citywide trespass stops and 51.6% of trespass arrests.

THE RESPONSIBILITIES OF NYCHA AND THE NYPD

NYCHA bears the ultimate responsibility for ensuring the safety and security of its residential buildings. Until 1995, NYCHA had its own police force that worked full time in and around public housing and developed close ties to the patrolled neighborhoods, thus promoting more cooperative, less confrontational relationships between officers and residents. In 1995, the NYCHA police merged with the NYPD and, since that time, NYCHA has completely ceded its security responsibilities to the NYPD, which is paid approximately \$70 million per year for extra police services. The NYPD, however, does not have the same familiarity with NYCHA buildings and residents. In the absence of NYCHA oversight, the NYPD has been given free reign to implement police practices that create a pattern and practice of unlawful stops and false arrests, exacerbate ongoing conflict with the community, and further burden the criminal justice system.

Last June, the NYPD revised the Patrol Guide to give more guidance on how officers should approach people on NYCHA property and to provide an option for officers to ask people to leave the building rather than arresting them. While these changes may be steps in the right direction, they are far from sufficient. The new Patrol Guide language fails to provide accurate and sufficient guidance on when to stop, search, and/or arrest a person on NYCHA property – guidance that is essential to prevent officers from committing Fourth Amendment violations. In addition, simply modifying language in the Patrol Guide is insufficient to change the entrenched police practices on NYCHA property that have led to countless unconstitutional trespass stops and arrests in NYCHA residences across the City.

NYCHA residents deserve to feel safe in their homes. They should not be asked to tolerate a policy that violates their constitutional rights in exchange for that safety. Without substantial reform, innocent residents and guests will continue to suffer the indignities of being searched, handcuffed, fingerprinted and detained, along with the extensive collateral consequences of an arrest, simply for being on NYCHA grounds. These unlawful police practices have enflamed community distrust of the NYPD and prevented necessary collaboration for effective crime prevention. For the communities of color that have already suffered from numerous police abuses and other forms of discrimination, the present situation is intolerable and demands immediate reform.

NECESSARY REFORMS:

- Additional revisions of the NYPD patrol guide and implementation of housing-specific training to provide officers with sufficient guidance to prevent unlawful stops, searches and arrests on NYCHA property.
- Evaluation of officer performance, as well as that of their supervisors, that would prioritize a qualitative, performance-based metric system.
- Implementation of internal accountability measures to address police misconduct on NYCHA grounds with a modicum of transparency to ensure trust and credibility to the general public.
- Improved communication and information-sharing between the NYPD and NYCHA tenants and staff regarding trespass enforcement procedures and interactions between police and NYCHA residents.
- Retention of onsite property managers by NYCHA to serve as an intermediary between the NYPD and residents, assist with the identification of unauthorized individuals, and oversee the general welfare of NYCHA residences.
- Improved oversight by NYCHA of police services provided by the NYPD and paid for with NYCHA funds.

RECOMMENDATIONS TO THE NYC CITY COUNCIL:

- Request an itemized accounting from NYCHA of all police services funded by NYCHA payments and a cost-benefit analysis of those expenditures with consideration of alternatives to the NYPD.
- Request an annual comprehensive survey of all NYCHA residences to ascertain resident satisfaction of security services, including those provided by the NYPD.

- Request periodic reporting from the NYPD on stops, frisks, and arrests on NYCHA property, data on crime levels on NYCHA property, the total number and percentage of arrests that lead to convictions, all complaints and subsequent investigations about police misconduct on NYCHA property, and officers' overtime by hours and cost incurred while processing NYCHA arrests. All of the data should include demographic details such as race and or ethnicity.
- Condition funding to NYCHA and the NYPD on the satisfactory provision of the requested reports.
- Establish an effective system to collect, address, and report on complaints by NYCHA residents and guests about NYCHA policing.