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**The City of New York
Community Board 8 Manhattan
Social Justice Committee
Monday, March 24, 2025 – 6:30 PM
*This meeting was conducted via Zoom***

MINUTES

CB8 Members Present: Bill Angelos, Sarah Chu, Saundrea I. Coleman, Wendy Machaver (Public Member), Valerie Mason, Rita Popper, Barbara Rudder, Judith Schneider, and Todd Stein.

Absent: Jennifer Michaels

Approximate Number of Public Attendees: 18

Item 1 – Discussion of NYS Discovery Laws featuring guest speakers

The Social Justice Committee met to discuss Governor Hochul's proposed changes on the NYS Discovery Laws (full text [here](#)). During the planning discussion, the speakers and Co-Chairs discussed how people who are familiar with discovery are rarely neutral about it, therefore the Committee is opting to disclose perspectives rather than claim neutrality.

Disclaimer: Co-Chair Sarah Chu's organization has taken a position on New York State Discovery Laws, therefore Co-Chair Saundrea I. Coleman will lead the discussion.

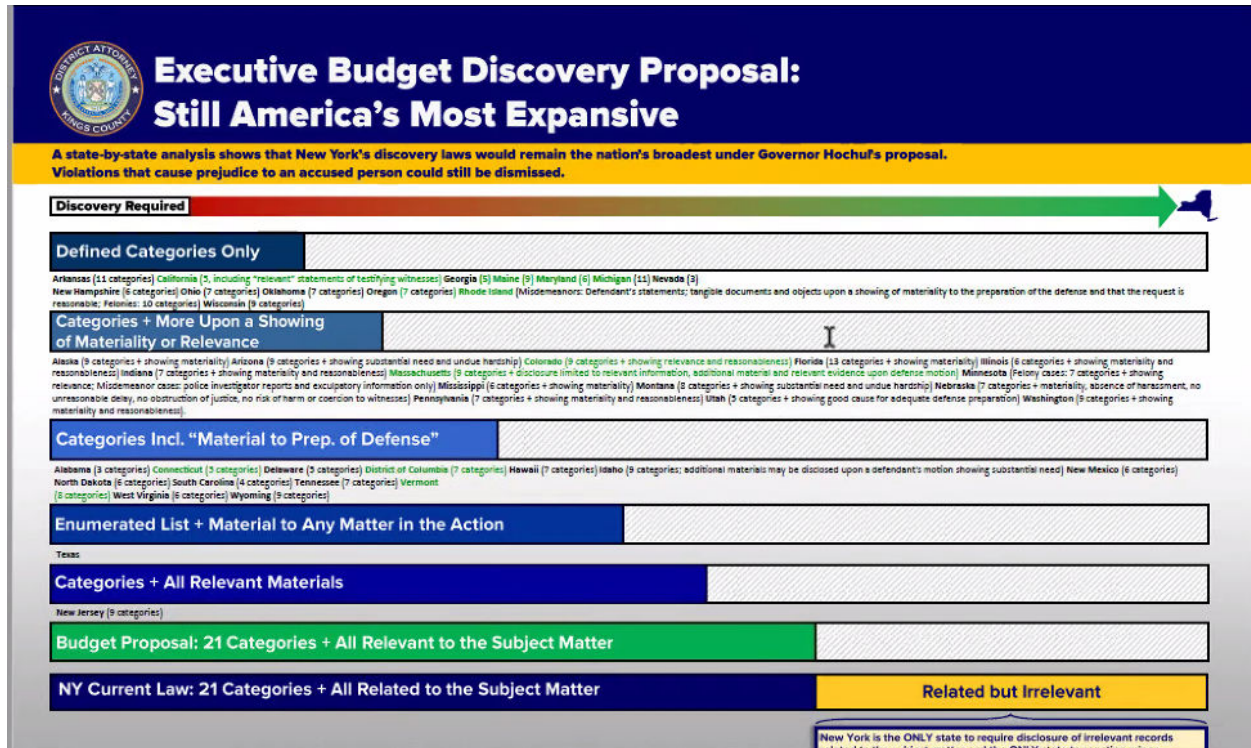
1. Presentation from Professor Martin LaFalce, St. John's University School of Law

- Discovery is information that is possessed by the prosecution and law enforcement that relates to the subject matter of a person's case. It consists of a wide range of evidence and currently, all evidence that is relevant to a person's case is required to be turned over.
- Prof. LaFalce's presentation included a story about a client who was accused of menacing with a weapon. Police bodycam video clearly showed he did not commit. No gun is recovered from a search of the client's car. The client is charged because an offsite police supervisor ordered the police officers to arrest him. The case took 11 months and was dismissed because discovery was received early. Under the previous discovery regime, this evidence would not have been turned over, and the client would probably have been advised to take a plea.
- Prof. LaFalce's law school clinic has 25 clients and 4 of these clients were exonerated because of early discovery. He is concerned that the Governor's discovery proposal would be a repeal of the current discovery law.
 - i. The proposal makes a distinction between constructive possession (possessed by other agencies) v. actual possession of discovery evidence and only requires sanctions if actually possessed evidence is not turned over.

2. Presentation from Assistant District Attorney Andrew Warshawer from Manhattan District Attorney Alvin Bragg's Office (DANY)

- Assistant District Attorney (ADA) Andrew Warshawer agreed that the pre-2020 discovery law was intolerable but believes that the Governor's proposal is being unfairly demonized. Article 240 as it existed before 2020 should be rejected. He does not believe the changes proposed by the Governor takes us back to Article 240.

- ADA Warshawer stated that the proposal is being read as only requiring prosecutors to turn over actually possessed evidence, but that ignores the requirement for diligence. The decision in *People v. Bay* also affirms that if a prosecutor is acting with due diligence and in good faith, then certificates of compliance (how prosecutors signal to the court they are ready for trial) should be valid. However, he states that the way that it plays out in court is different and sometimes not turning over evidence that provides no meaning to a case can lead to a case being dismissed. ADA Warshawer gave an example of a case of domestic violence being dismissed when a piece of unrelated evidence was not turned over and called the current law the most prosecutor unfriendly law.



- ADA Warshawer showed the above graphic and stated that their office is downgrading felonies at a rate he believes no one is comfortable with. He believes a great deal of crime is being ignored where cases should be adjudicated. Some need treatment.

3. Presentation from Amanda Jack (AJ), Legal Aid Society (LAS) and Alliance to Protect Khalief's Law

- AJ shared Khalief Browder's story. He was charged with stealing a backpack and held at Rikers for three years as a young person. His case was continually delayed until it was revealed that there was no evidence against him. Most of Mr. Browder's time at Rikers was spent in solitary confinement, and he died by suicide shortly after the charges were dropped. Mr. Browder's family has lent his name to the discovery cause that led to the 2020 revision of the law in his honor.
- Former NYS Senator Joe Lentol spent 20 years pursuing discovery reform, and decades of thought and input were invested in the change and can't be distilled in a one-hour Community Board meeting or a rushed budget process. AJ stated that discovery is a fundamental right. In New York, there is no speedy trial statute, however other states that allow a prejudice standard (where the sanction is proportional to the discovery violation) do have speedy trial laws.
- Often left unsaid is that the new discovery law has required an enormous culture change which hasn't fully been realized, in part because the process to repeal the law began as soon as the reform was implemented.
- AJ noted that dismissal rates have only increased in NYC and not in other parts of the state. Often, the evidence that is needed is in the possession of the police.

- AJ spoke to the attorney in the domestic violence case that ADA Warshawer described, and the evidence in the case was given over on the 84th day. When the day misdemeanor cases get dismissed is on the 90th day. She also cited the standard in *People v. Bay* as the appropriate solution – there is no requirement for a perfect prosecutor, only a diligent one. Other solutions include training for judges, getting up to speed on evidence sharing technology, and ensuring resources to facilitate discovery.

4. Q&A Discussion (Summarized for Brevity)

Question: What resources were provided to implement the discovery law and what other resources are needed?

Amanda Jack (LAS): Funding did not accompany the passage of the law in 2019 and the first-year prosecutors received funding was in 2021 (\$40M + additional \$50M that was not received). Public defenders received funding in 2023 (\$40M). Legal Aid Society used the funding to hire paralegals as litigation assistants to organize discovery for cases. Both people power and technology are needed.

Andrew Warshawer (DANY): No amount of money pays our way out of this. 2019 law was passed in the budget with no money with the purpose of reducing the volume of cases that are prosecuted. The money has come, and it has gone to hire people to process the evidence. The problem isn't the resources, it's not knowing the evidence that we don't have. Structural change is required to address increase in dismissals and downgrades of charges.

Martin LaFalce (ML): DA offices make choices about priority cases. I represented clients charged with selling M&M's on the subway, selling bread in Chinatown without a license, selling bottles of water on the Brooklyn Bridge without a license, selling Dominican flags at the Dominican Day parade without a license, for possessing utility knives purchased at hardware stores, and selling drugs to undercover officers outside methadone clinics. Prosecutors have choices which include not prosecuting these cases or resolving them with a misdemeanor.

Question: Are 50% of felony charges dismissed?

DANY: NYPD can make charging decisions. Prior to change in discovery laws, 28% of all felony arrests were dismissed and that number now stands at 42%. Based on our policy positions, that number might be 28% or 30%. There is a chunk of those dismissals that are undeniably due to our inability to bring cases. Regarding the cases the professor raised, no one liked prosecuting those cases, and supervisors were going to make you prosecute those cases. Those arrests aren't being made anymore and are now resolved through summonses.

Question: One of the changes is that only evidence relevant to the subject matter of the crime needs to be turned over and wouldn't need to reveal the disciplinary records of the police?

DANY: Materiality is a stricter standard that relevant and related is even broader. The credibility of a testifying witness is always relevant and the analysis of the disciplinary record of a police officer is about the thorniest legal issues related to discovery. It should be relevant to the subject matter of the case, but we are still under the obligation to pursue this information.

Question: What about the Myrie/Lasher bill (full text [here](#))?

DANY: The bill would get us information faster, but it wouldn't help with dismissals related to evidence we are not aware of.

LAS: Responding to a few issues. I take the ADA's point about the passage of the law in the budget, but by the time it passed, it had been debated for 20 years. What feels difficult was that this proposal was made without input from the defense bar. I want to dispel that the cases are not dismissed on technicalities. Under the law, *Bay* does not allow for that. It is very hard to push back on some examples we are hearing without reading the decisions, and I have a very different take on the case ADA Warshawer referenced after reading the decision. While selling water bottles may not be prosecuted any more, a man arrested for stealing \$214 worth of goods from Home Depot died during arraignments, and with him was a man arrested for taking up three seats on a subway sleeping in the middle the night. DANY felony indictments are up. It is important to have more information about these cases and an understanding that despite this being statewide laws that implementation is local.

Question: Has 50-A been useful for your litigation?

LAS: It has been helpful and has served as a check for the biggest part of our budget, the NYPD, which has outsized power.

DANY: I would love for Judge Zayas to rule on our cases if he doesn't believe in dismissals for technical remedies, I have a pile of decisions to show you. Does this mean training judges to ignore the arguments that Legal Aid Manhattan makes compared to Legal Aid Albany? I have to sit with people and tell them their cases are over and their attacker will never see a courtroom.

LAS: One of the problems with blaming discovery laws for survivors having their cases dismissed is that it ignores the very real reality that so many people who are charged with crimes are survivors of interpersonal violence. This binary we are being asked to accept is the problem with how we can't get past this dark age of mass incarceration. The discovery law is still in its infancy, and we are asking to add a little sunshine into our discovery laws, ask prosecutors to do their jobs, and ask

police to do their jobs and hand over the evidence. That's how we can stop wrongful convictions and coerced pleas from happening.

MF: I served on the Mayor's advisory committee in the judiciary which vetted judges in criminal court. When we talk about dismissals by judges in NYC, it's important to note these are not radical folks on the bench, many were prosecutors. When dismissals are happening in NYC, it is not on the basis of minor issues. These decisions are happening because prosecutors failed to be reasonable in efforts to provide discovery.

Question: These complaints seem to be all pre-2019? Why is it taking cases so long – are defense attorneys holding it up? What about recidivism?

AJ: Evidence sharing cannot cure nor stop recidivism or facility recidivism. It's evidence sharing. If someone jumps a turnstile, we have 90 days to see how the case will be handled. One change in the law is that they can't take away a plea until you see the evidence. In the end, if a case does get dismissed or a person takes a time served plea for three months, that's three months they are checking in with the court and with their public defender. I think the ADA would agree that we need more mental health, drug, and support services. How does evidence sharing impact this? Rhetoric from elected officials echo what we heard during bail reform, and I would challenge us to get beyond that and understand that the criminal system will never fix these issues. 55% of people at Rikers have a known serious mental illness diagnosis. Evidence sharing doesn't stop the violence because violence has already occurred. Let's think about how community-based resources can work because there are solutions, but I don't think it bears on evidence sharing. To answer the first question, the three major things in the proposal that would take us back to the old days are instilling the prejudice standards that would allow DAs to stop the speedy trial clock, allows DAs to redact items without judicial oversight, and the relevant v. related standard for turning over evidence.

DANY: The way it is relevant to recidivism is that when you raise the price of person hours of every case, we have to get complaint by between 300 to 400%, which is about the best estimate we have, we can do fewer cases. In the data cited by Legal Aid, we held on to indicted felonies by throwing all the resources we can at those cases. That means when someone shoplifts, 6-10 times a week, and we used to stop and charge a felony on the second, we don't have the bandwidth to do that. Better treatment court or prison are the options. Or we do fewer cases. The ones we've had to dry up or downgrade are shoplifting, nonviolent robberies and burglaries. We are indicting too few cases and are getting compliance on too few cases. There is an impact on recidivism in the budget of hours we have available to do property crime cases. Sometimes prosecutors and defense attorneys will use delays as strategies, but we need to step back and say what is good for this system as a whole.

MF: One the issue of someone being arrested 7-8 times a week, our bail law covers that scenario. In a provision called the harm plus harm provisions that allows a judge to set bail for a person who's been repeatedly arrested in a short period of time. There's a provision in our trespass and burglary law that allows a prosecutor to charge a felony when a person returns to a store and steals for a second or third time. They go from facing a year at Rikers to 7 years in state prison. This is recidivism data from the Division of Criminal Justice Services. I controlled for what happens 6 months after a case has been dismissed, what is the rearrest rates 6 months out after a case has been dismissed from 2013-2022, the number has hovered between 20% and 15%. In 2022, the rearrest rate after a person's case has been dismissed is 18%. Claims that recidivism has spiked is entirely inconsistent with DCJS data.

	Cohort N	6mo	12mo	18mo	24mo	30mo	36mo	42mo	48mo	54mo	60mo
2013	81,527	20%	31%	38%	42%	46%	49%	51%	53%	55%	56%
2014	85,030	20%	30%	36%	41%	45%	48%	50%	52%	53%	54%
2015	78,006	20%	30%	37%	42%	45%	48%	50%	51%	53%	54%
2016	78,317	19%	29%	36%	40%	43%	46%	48%	49%	51%	52%
2017	74,982	18%	28%	34%	38%	41%	44%	45%	47%	48%	49%
2018	76,896	17%	26%	31%	35%	37%	40%	42%	44%	46%	47%
2019	75,583	16%	24%	29%	33%	37%	40%	42%	44%		
2020	51,507	15%	25%	31%	35%	39%	43%				
2021	84,365	15%	25%	31%	36%						
2022	82,383	18%	28%								

Note: Individuals between 16 and 17 years old at time of crime are only included in the cohorts through the end of 2019, at which point the Raise the Age legislation had taken full effect and most of these cases were being processed in family court.

Question: Follow up question on recidivism.

DANY: In harm cases, it only works if a case is open. If someone takes a plea, they get time served. One person was arrested 53 times on 17 different dates and had time served in each charge. On discovery, people with long records don't care if they add time served on a misdemeanor because these charges are not bail eligible.

Question: What is one thing you can change today about the discovery system?

AJ: I would turn it back to 2019 and make sure that funding was part of this for both sides which I hoped would have led to less immediate backlash.

MF: One thing we can all agree on is our desire for public safety. We want a world that is safer with less crime and the disagreement lies in what achieves public safety. I am firmly convinced that evidence sharing does not jeopardize public safety. Housing and mental health services are strongly correlated with public safety.

DANY (via Eric Strazza): Expanded access to meaningful and well-funded treatment with real incentives for people to engage in consequences if they don't, and changes to discovery.

Question: What are the rules for judges and how much discretion do they have?

MF: *People v. Bay* discussed the factors that judges consider when they are evaluating the reasonableness of a prosecutor's failure to disclose evidence. One factor that judges are required to consider is the amount of discovery that has and has not been disclosed.

AJ: There are no automatic dismissals unless the prosecutor agrees to dismiss cases because they never got the evidence. The question in these cases is about diligence. The notion of automatic dismissals – 90 to 120 days is enough time for motion dismissals. It's important to read the decisions to understand why cases are being dismissed.

DANY (via Eric Strazza): The case related to the pre-arraignment report dismissal is *People v. Aiken*. In many cases, we are unable to conduct that reasonable and diligent search because we are conducting those types of searches on higher level cases like felonies, rapes, and homicides. It's a resource and budgeting hours argument.

Item 2 – Old Business

No items of Old Business were discussed.

Item 3 – New Business

No items of New Business were discussed.

This meeting was adjourned at 8:44 pm.

Saundrea I. Coleman and Sarah Chu, Co-Chairs