

Testimony of

The Legal Aid Society

And

Coalition for the Homeless

on

Oversight: NYPD's Responses to Persons in Mental Health Crisis

prepared for submission to

The New York City Council
Committee on Public Safety and the Committee on Mental Health, Developmental Disability,
Alcoholism, Substance Abuse and Disability Services

by

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We want to thank you for the opportunity to testify today. We believe that proper oversight of the NYPD with regard to its responses to persons with mental health crisis is vitally important to the health and safety of the people of New York City. Better oversight can help save lives, avoid needless tragedies, improve the safety of both the community and police officers, provide better access to essential mental health services and help achieve longer term goals such as reducing the cost of incarceration and eventually closing Rikers Island.

A History of Needless Violence

The litany of needless tragedies involving the NYPD and those in mental health crisis is a long one. Last October, New York police Sergeant Hugh Barry shot and killed Deborah Danner, a 66 year-old African American woman with a mental illness. Neighbors had called the NYPD saying Ms. Danner had been acting erratically. When police officers arrived at her Bronx apartment, she waived a pair of scissors and then a baseball bat. She took a swing at the Sergeant, who then shot her twice. The Sergeant is now charged with murder, accused of failing to follow protocol by using his taser or waiting for specially trained backup to arrive.¹

Just over a month ago, police fatally shot a man named Dwayne Jeune in his apartment after they reported that he charged at them with a knife.² The man's mother had called 911 emergency operators and had reported that he was acting erratically but not violently. This incident is just the latest in a long line of incidents where something went horribly wrong when NYPD officers interacted with a mentally ill person in crisis.

Over the years, there have been far too many highly publicized police interventions that resulted in the deaths of people with psychiatric disabilities, such as Eleanor Bumpers, Gidone Busch and Kevin Cerbelli – people who were disturbed and agitated at the time of the call to the police. Within the past year alone, Davonte Pressley³ and Ariel Galarza⁴ were also shot. In addition, many less publicized calls for help on behalf of emotionally disturbed persons have resulted in the injury, arrest and incarceration of the person in need of help and the injury of those who went to the scene to provide assistance.

Not all of the injuries are suffered by those directly involved in an incident. In 2013, the police shot two innocent bystanders in Times Square when they attempted to stop a disoriented man lurching amid traffic by shooting at him.⁵

Last January, the New York City Department of Investigation Office of the Inspector General for the NYPD (OIG) issued a sensible report titled “Putting Training Into Practice: A Review of the

¹ Editorial Board, The Death of Deborah Danner, *The New York Times*, October 20, 2016

² Dwayne Jeune, July 2017

<http://www.nydailynews.com/new-york/brooklyn/emotionally-disturbed-man-fatally-shot-nypd-cops-brooklyn-article-1.3371791>

³ Davonte Pressley, October 2016

<https://www.dnainfo.com/new-york/20161027/east-flatbush/davonte-pressley-shot-by-police-knife-charged-assault>

⁴ Ariel Galarza, November 2016

<http://www.nydailynews.com/new-york/bronx/man-critical-condition-cops-taser-bronx-clash-article-1.2855934>

⁵ Michael Schwirtz and J. David Goodman, Police Bullets Hit Bystanders, and Questions Rise Yet Again, *The New York Times*, September 15, 2013

NYPD's Approach to Handling Interactions With People in Mental Crisis.”⁶ The report concludes that simply training NYPD officers in Crisis Intervention Team (CIT) techniques is unlikely to have a significant impact on police responses unless the NYPD figures out a way to get the officers that it has trained to respond to crisis incidents. Until now, the Department has primarily relied on a goal of training about 25% of its active patrol officers in CIT methods and just assumed that the precepts of the training would automatically produce some effect across all responding officers. While CIT training is a laudable goal, it has become apparent in the past year that many of the incidents like those cited above involved officers who were not properly trained. The report urged the NYPD to get officers who actually had CIT training to the scene of a call involving a person in crisis.

The OIG report also called for the creation of a dedicated mental health unit and revisions to the Patrol Guide that would incorporate the principles of the CIT training. The current Patrol Guide unfortunately does not emphasize helpful approaches like the use of de-escalation techniques, consideration of alternatives to arrest, or the use of available community resources. A properly updated Patrol Guide should provide clear instruction for officers to use these parts of the CIT training. Other recommendations of the report included greater allowance for officer discretion, better data collection so that the NYPD can properly study what works and what does not, and training of 911 dispatchers in CIT techniques.⁷

The NYPD responded to the OIG report in April of 2017, and its defensive tone says much about why mentally ill people continue to die and why the problem of the NYPD's reaction to mentally ill people in crisis continues today. The NYPD reports that the OIG “fails to account for the NYPD's historical success in interacting with people in mental crisis.”⁸ For a Police Department that denies that a problem exists and instead sees only historical success through rose-tinted glasses, it is hardly surprising that the required change in practices is so slow to come. The Department argues at length that it always had an effective policy in dealing with “EDPs” (emotionally disturbed persons) and that it has always had a highly trained and effective Emergency Services Unit (ESU) trained to respond to crises.

The fact that the Department cites its ESU – which consists of several hundred officers trained as frogmen, demolition experts, first responders to malfunctioning elevators, experts who climb bridges to stop people from jumping, among other things – as a properly trained response team for people in mental health crisis shows how far the NYPD is from fully embracing the nationally recognized Crisis Intervention Team approach.

Of note, in its response the NYPD claims to have trained 5,217 officers in CIT techniques, towards its goal of training 5,500 officers. We understand, however, that the NYPD is now counting a watered down version of the training for new recruits as a part of that total. While an introduction of the CIT concepts to people who have never been in the field is a good idea, this

⁶ New York City Department of Investigation Office of the Inspector General for the NYPD, Mark G. Peters, Commissioner, *Putting Training Into Practice: A Review of the NYPD's Approach to Handling Interactions With Mentally Ill People in Mental Crisis*, January 2017

⁷ *Id.* at pp. 4, 5

⁸ Lawrence Byrne, Deputy Commissioner, Legal Matters, Letter to Honorable Bill de Blasio, Honorable Melissa Mark-Viverito, Honorable Mark G. Peters, Honorable Phillip K. Eure, April 18, 2017, p. 3

training is hardly the equivalent to the fully developed course. We urge that the Council to require additional and more intensive training of patrol officers.

It is also important to note that individuals who are homeless and living on the streets have much higher rates of severe mental illness than the general population and come into contact with NYPD much more frequently. It is therefore crucial that all officers responding to an emotionally disturbed person on the street or in a shelter be trained appropriately.

Treatment as an Essential Option

In addition to requiring additional and more intensive training, we believe that an important next step for the City is the establishment of fully operational, specially designated diversion centers – rather than hospital emergency rooms – for use as an alternative to arrest.

We know that mentally ill persons arrested by the police comprise a significant proportion the population of Rikers Island. In 2012, the City reported that, on average, 36% of City inmates (58% of women and 42% of inmates aged 16 to 18) had some level of mental illness – a dramatic increase from 2005, when the percentage was less than 25%. The average length of stay in City DOC for the mentally ill was over twice as long as the rest of the population, and for young people the disparity is even more pronounced. The mentally ill are less able to post bail than those without mental illness, even for similarly situated crimes. The differences exist regardless of gender or borough.⁹

Two years later, in 2014, the City reported that people with mental illness had risen to 38% of the jail population, and people with serious mental illness comprised 7% of the total population.¹⁰

The practice of arrest and jail that has caused a growing percentage of mentally ill persons to be incarcerated is an expensive one for New York City taxpayers. According to a study of the City Independent Budget Office, it costs an average of \$167,731 per year to feed, house and guard each inmate at Rikers Island.¹¹ The arrest practice also creates added costs for the court, prosecution and defense. Additionally, with higher rates of severe mental illness among street homeless individuals, the practice of arresting individuals with mental illness has led countless individuals to cycle in and out of homelessness and jails, without ever receiving the appropriate care to meet their needs, at great expense to those individuals' personal health and City taxpayers.

We recognize that the City has begun to take steps to divert mentally ill persons out of the criminal justice system, but much more needs to be done. The addition of fully developed drop-off centers where those in crisis can receive appropriate treatment is an essential next step.

⁹ Justice Center, The Council on State Governments, *Improving Outcomes for People with Mental Illnesses Involved in New York City's Criminal Court and Correction Systems*, December 2012

¹⁰ Mayor's Task Force on Behavioral Health and the Criminal Justice System, *Action Plan*, 2014

¹¹ Marc Santora, *The New York Times*, August 23, 2013

Other jurisdictions use models that divert mentally ill persons who commit low level offenses from the criminal justice system. These models are designed by the local police department in cooperation with mental health professionals to achieve a variety of important goals: reduced arrest rates, improved services for people with mental illness, and improved efficiency for law enforcement. This is achieved by reducing the time spent on calls for individuals in crisis and improved effectiveness for law enforcement. Other goals of these models include decreased recidivism by repeat offenders; diversion of offenders from the criminal justice system to systems better equipped to meet their needs; reduction of officer and civilian injuries; improved officer knowledge about mental illness; and the formation of more effective partnerships with the mental health community.¹²

There Has Been Progress, But More Needs to be Done

The Legal Aid Society has a group of trained social workers in arraignment court who interview mentally ill people who have been arrested. They are there for the specific purpose of diverting people away from Rikers Island and into more appropriate treatment settings. The social workers frequently interact with the arresting police officers, and report that some officers are now showing a vastly improved ability to interact with mentally ill arrestees.

We have started to see some NYPD officers in Court who are skilled at deescalating potentially dangerous situations, calming down a person in crisis, helping a person sign a HIPAA form, putting a defendant at ease to begin an interview, and making sure that a person with mental illness is returned to a hospital after arrest. The progress has, however, been uneven and we still see far too many instances in which seriously mentally ill people going through withdrawal are brought into court with no idea where they are or what they are doing there. Sometimes they are released in such poor condition that they have no idea of how to get home. There has, however, been some improvement in determining when a person should be brought to a hospital instead of being processed for arrest. We suspect this progress is the result of the better training being given to some of the officers.

Based on what we have seen in the arraignment court, we believe that further expansion of the intensive CIT training for officers responding to emotionally disturbed persons will enable them to make more informed decisions as to when it is appropriate to make a full arrest as opposed to a hospital referral. Better judgments regarding referrals should lead to increased community safety, more appropriate responses to homeless persons in crisis, and a reduction of the number of serious incidents for crimes such as assault that would not occur with proper treatment and medication.

We thank the Council for the opportunity to testify and look forward to working together on this and many other issues.

¹² See Melissa Reuland, Jason Cheney, *Enhancing Success of Police-Based Diversion Programs for People with Mental Illness*, TAPA Center for Jail Diversion, National GAINS Center, May, 2005

About The Legal Aid Society and Coalition for the Homeless

The Legal Aid Society: The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform.

The Legal Aid Society has performed this role in City, State and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of more than 1,100 lawyers, working with some 800 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 Society provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel.

The Society's legal program operates three major practices — Civil, Criminal and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, The Legal Aid 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 Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits more than 1.7 million low-income families and individuals in New York City and the landmark rulings in many of these cases have a State-wide and national impact.

The Legal Aid Society is counsel to the Coalition for the Homeless and for homeless women and men in the Callahan and Eldredge cases. The Legal Aid Society is also counsel in the McCain/Boston litigation in which a final judgment requires the provision of lawful shelter to homeless families.

Coalition for the Homeless: Coalition for the Homeless, founded in 1981, is a not-for-profit advocacy and direct services organization that assists more than 3,500 homeless New Yorkers each day. The Coalition advocates for proven, cost-effective solutions to the crisis of modern homelessness, which is now in its fourth decade. The Coalition also protects the rights of homeless people through litigation involving the right to emergency shelter, the right to vote, and life-saving housing and services for homeless people living with mental illness and HIV/AIDS.

The Coalition operates 11 direct-services programs that offer vital services to homeless, at-risk, and low-income New Yorkers. These programs also demonstrate effective, long-term solutions and include: Supportive housing for families and individuals living with AIDS; job-training for homeless and formerly-homeless women; and permanent housing for formerly-homeless families

and individuals. Our summer sleep-away camp and after-school program help hundreds of homeless children each year. The Coalition's mobile soup kitchen distributes over 900 nutritious hot meals each night to homeless and hungry New Yorkers on the streets of Manhattan and the Bronx. Finally, our Crisis Intervention Department assists more than 1,000 homeless and at-risk households each month with eviction prevention, individual advocacy, referrals for shelter and emergency food programs, and assistance with public benefits as well as basic necessities such as diapers, formula, work uniforms, and money for medications and groceries.

The Coalition was founded in concert with landmark right to shelter litigation filed on behalf of homeless men and women (*Callahan v. Carey* and *Eldredge v. Koch*) and remains a plaintiff in these now consolidated cases. In 1981 the City and State entered into a consent decree in *Callahan* through which they agreed: "The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter." The *Eldredge* case extended this legal requirement to homeless single women. The *Callahan* consent decree and the *Eldredge* case also guarantee basic standards for shelters for homeless men and women. Pursuant to the decree, the Coalition serves as court-appointed monitor of municipal shelters for homeless adults, and the City has also authorized the Coalition to monitor other facilities serving homeless families.