



Testimony of

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Before the

City Council Committee on Public Safety

Oversight Hearing on NYPD's Strategic Response Group

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My name is Rebecca Phipps and I am a Special Litigation Attorney at New York County Defender Services (NYCDS), a public defense office that represents New Yorkers in thousands of cases in Manhattan's Criminal Court and Supreme Court every year.

During the summer of 2020, as protesters around the world and New York City rose up to march for racial justice in the wake of George Floyd's murder, public defenders stood at the ready to defend their rights if they were arrested. My testimony today is not so much about the Strategic Response Group specifically but about the trickle-down effects to the court system for the people caught in the crosshairs of the SRG and other NYPD units in late May and early June 2020. This is crucial because the role of the NYPD broadly and the SRG specifically is not limited to treatment of protesters in the streets, horrific as their actions may be. Rather, the treatment of protesters by the NYPD and SRG specifically resulted in protestors, disproportionately Black and Latinx ones, becoming entrenched in the criminal justice system for months or even years to come. Our data shows that although the vast majority of cases stemming from the first week of protests were resolved without a criminal conviction of any kind, those cases nonetheless dragged on for an average of 232 days.

## **1. Background**

NYCDS is a public defender office based in Manhattan that serves more than 10,000 clients in criminal cases every year and over half a million people since we opened our doors 25 years ago. Generally, our caseloads do not include many people accused of crimes allegedly committed while protesting, but 2020 was no ordinary year.

When the protests erupted in spring 2020, the NYPD responded aggressively. As we noted in a joint sign-on letter to this committee in January 2022:

“[T]he SRG’s brutalization of demonstrators came into full view. On June 4, 2020, the SRG descended on demonstrators in Mott Haven before the 8 pm curfew. With demonstrators unable to escape, SRG officers brutally beat, zip-tied, and arrested 263 protesters, medics, and legal observers. Sixty-one people were injured. Human Rights Watch called this conduct ‘intentional, planned, and unjustified.’”

Our office was in arraignments at 100 Centre St representing clients in the summer of 2020. We saw dozens of misdemeanor and low-level felony cases coming into our courts through arraignments as the protests continued and arrests skyrocketed, after months during the height of lockdown where arrests had slowed to a fraction of what they had been pre-pandemic.

By June 2, *The City* reported that the NYPD had arrested 1500 people over several days of demonstrations and nights of disturbances.<sup>1</sup> That number continued to climb in the days that followed. More than 700 people were accused of looting or related charges on a single night, with more than 400 people awaiting arraignment the following day.

### **Arraignments**

It quickly became clear in late May 2020 that the courts could not handle the massive numbers of protest arrests in compliance with the law.<sup>2</sup>

During the spring of 2020, arraignments were occurring virtually because of the threat of COVID-19, which had already killed 20,000 New Yorkers. Defenders, prosecutors, judges and even accused people would appear as boxes on a computer screen, with only a clerk and court officer present in the courtroom. The situation was often chaotic as it could be difficult to hear, especially for accused people appearing virtually from central booking or city jails.

It was next to impossible for defenders to get to know their clients in a pre-arraignment interview as we had been accustomed to pre-pandemic, in a process that was already hurried, confusing and dehumanizing for people accused of crimes when court appearances took place in person.

When the protests started, people were languishing in detention past the 24-hour rule. When our attorneys met their clients in arraignments during that period, they were routinely learning that their client had been languishing in central booking for 48 or even 72 hours before even being

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<sup>1</sup><https://www.thecity.nyc/2020/6/2/21278679/george-floyd-death-protesters-locked-up-over-24-hours-in-nyc-lawsuit-says>

<sup>2</sup> A person accused of a crime in New York City is required to appear before a judge within 24 hours of arrest, pursuant to the Court of Appeals decision in *Roundtree v. Brown* in 1991. [https://www.law.cornell.edu/nyctap/191\\_0035.htm](https://www.law.cornell.edu/nyctap/191_0035.htm)

brought to a courtroom. Ultimately, defenders were forced to file writs of habeas corpus to compel the courts to comply.<sup>3</sup>

### **What we heard on the ground**

One thing we heard over and over again from the clients that we represented during that time was how racist the process was.

NYCDS Trial Attorney Jessica Heyman reported to *Vice* in 2020, “The only folks who were being held were the kids of color, who were being charged with these ridiculous, trumped-up felony cases. And that was just really, really enraging.”<sup>4</sup> This overrepresentation of people of color in the arrests that stemmed from these protests is especially alarming given the overall demographic makeup of these protests. In fact, news media remarked when contrasting the protests in June 2020 to similar movements of the past: “one of the striking differences from years past has been the sheer number of white people.”<sup>5</sup> One group of researchers conducting a survey of protesters in New York City during the first weekend of June 2020 found that about 61% of those participants were white. And yet, the vast majority of those arrested during those same protests were Black. Very few of those arrested were white.<sup>6</sup>

Such a pattern of arrests, so grossly divergent from the pattern among those actually participating in protests, can only mean that decisions being made by officers on the ground were influenced by race. Officers on the ground decided how to interact with each protester they encountered: to detain or to ignore. Of those they detained, officers again decided whether to escalate: to issue a summons or proceed to the precinct for booking. Even once a decision is made to arrest, officers again made the impactful decision: to issue a desk appearance ticket and release the individual, or to proceed with arrest, detention, and eventual arraignment in front of a judge. It is incontrovertible, from what we saw on the ground once we met our clients at the final stage of this decision-making process, that white protesters were diverted from the most arduous and violent branches of that decision-tree, while only Black and Latinx protesters were subjected to the full extent of the officers’ discretionary power.

### **Our Data**

Between May 29 and June 6, at the height of protest arrests, New York County Defender Services handled arraignments for 71 people charged in what we called “protest-related cases” in

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<sup>3</sup> [https://legalaidnyc.org/wp-content/uploads/2020/06/FINAL-Roundtree\\_Writ-2.pdf](https://legalaidnyc.org/wp-content/uploads/2020/06/FINAL-Roundtree_Writ-2.pdf)

<sup>4</sup> <https://www.vice.com/en/article/akz3z4/black-and-brown-protesters-in-new-york-were-jailed-longer-and-punished-more-harshly-than-white>

<sup>5</sup> <https://www.nytimes.com/2020/06/12/us/george-floyd-white-protesters.html>.

<sup>6</sup> This was corroborated by the experience and observation of public defenders working arraignments those first two weeks of June, across multiple defender offices. *See* <https://www.vice.com/en/article/akz3z4/black-and-brown-protesters-in-new-york-were-jailed-longer-and-punished-more-harshly-than-white>

Manhattan Criminal Court. Roughly 72% of the group's clients were Black. More than 26% were Hispanic. Just about 5% were white. And the majority of our protest-connected clients were younger than 26.

As defense attorneys, we had the unique perspective of seeing what happened with these protest-related arrests at the hands of SRG officers long after the news cycle had moved on to other topics. Every single individual who interacted with SRG during a protest-related activity in June of 2020 suffered the lasting harm of prolonged criminal court involvement and all of the direct and collateral consequences that entails.

The length of this criminal court involvement was indeed prolonged. Only ten cases (14%) were resolved within 90 days. Twenty-four cases (34%) remained open between 90 and 180 days. A majority of the cases (52%) lasted over 180 days. Looking at all 71 protest-related cases handled by NYCDS, the average length of the case was 232 days.

In reality, almost none of these protest-related arrests ever actually resulted in a criminal conviction of any kind. Most of the cases, 72%, resulted in dismissals (28.2% were dismissed outright, while 43.7% were granted an adjournment in contemplation of dismissal). Another 12.7% of the cases resolved with a non-criminal conviction. But the fact that a case was ultimately dismissed, or resolved with a non-criminal conviction, does not erase the significant harm done to each individual dragged through this process. Even if a case is ultimately dismissed, living with an open and pending criminal case may lead to loss of housing and employment. It can jeopardize an individual's immigration status or ongoing family court case. Living with an open and pending criminal case has a significant impact on an individual's mental health as well, creating an ongoing baseline of stress and anxiety.

One NYCDS client who was arrested during a protest in June had her case drag on for over two years. A 22 year old woman with no criminal record, this young woman faced a pending felony indictment for over two years because of her interaction with SRG officers one night in June 2020. She was never convicted of any felony. She was never even convicted of any misdemeanor. Her case finally resolved 26 months later with a non-criminal violation. Yet that does not erase the lasting impact this SRG interaction inevitably had on her life.

From the vantage point of public defenders, we viewed the lasting harm done by SRG through its violent and discriminatory tactics in June of 2020. Such a unit simply cannot be allowed to exist in our city, and New York County Defender Services joins the call for it to be disbanded.

I am happy to discuss further if you have additional questions. I can be reached at [rhipps@nycds.org](mailto:rhipps@nycds.org).