

**Written Testimony of Angel Diaz  
Counsel, Liberty & National Security Program  
Brennan Center for Justice at NYU School of Law  
Before the  
New York City Council Committee on Technology  
Regarding  
Oversight – Commission on Public Information and Communication’s  
Collaboration in Developing City Information Policies  
and Promoting Governmental Transparency  
February 12, 2019**

Good afternoon Chairman Koo and members of the Committee on Technology. My name is Angel Diaz, and I am Counsel to the Liberty and National Security Program at the Brennan Center for Justice. I am pleased to be testifying today about how the Commission on Public Information and Communication (COPIC) can help advance policies that increase governmental transparency.

The Brennan Center is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. The Liberty and National Security Program focuses on restoring the proper flow of information between the government and the people by securing increased public access to public information; ensuring government policies targeting suspected criminals and terrorists do so effectively and without religious or ethnic profiling; and securing appropriate government oversight and accountability.

As part of this work, we actively seek greater transparency and oversight of the NYPD’s surveillance tools. The NYPD has touted itself as being the most transparent police department in the world.<sup>1</sup> But in fact, the NYPD has frequently resisted transparency, requiring lawyers, journalists, and others to expend significant resources in order to obtain even basic information that is of critical interest to the public.<sup>2</sup>

For example, the Brennan Center is party to a multi-year legal dispute with the NYPD to obtain information about the Department’s use of predictive policing technologies. These systems rely on

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<sup>1</sup> See JPat Brown, Five Examples of the NYPD’s Commitment to “Transparency,” MUCKROCK (June 14, 2017), <https://www.muckrock.com/news/archives/2017/jun/14/five-examples-nypd-transparency/>.

<sup>2</sup> See, e.g., Adam Klasfield, Sound-Cannon Case Heralds E-Transparency for NYPD, COURTHOUSE NEWS (June 30, 2017), <https://www.courthousenews.com/sound-cannons-case-heralds-e-transparency-nypd/>; Brown, *supra* note 9.

algorithms to analyze large data sets and generate statistical estimates about crime, which are used to direct police resources.

Predictive policing tools have been roundly criticized by civil rights and civil liberties advocates,<sup>3</sup> as they often rely on historic crime data that both reflects and recreates decades of biased enforcement against communities of color.<sup>4</sup> In addition, there is little consensus that predictive policing is actually effective in predicting and reducing crime.<sup>5</sup> There is a common refrain that predictive policing predicts policing – it does not predict crime.<sup>6</sup>

Despite these concerns, former Police Commissioner Bratton and Mayor de Blasio announced in 2016 that the NYPD planned to spend \$45 million on predictive policing technologies over the next 5 years.<sup>7</sup> We believed it was critical for the public to know more about the Department's existing systems, as well as any future versions of it. We therefore filed a public records request in July 2016 for a range of documents that would shed light on the NYPD's predictive policing efforts, including information about what type of information was fed into these algorithms and the results they generated.

The NYPD denied our initial request and subsequent appeal, forcing the Brennan Center to file suit in late 2016.<sup>8</sup> Despite months of good faith negotiations, the NYPD kept stonewalling, refusing to produce most of the documents we requested. In late 2017, a judge finally ordered the Department to produce records about its testing, development, and use of predictive policing tools.<sup>9</sup> But even then,

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<sup>3</sup> See, e.g., Leadership Conference on Civil and Human Rights, et al., Predictive Policing Today: A Shared Statement of Civil Rights Concerns (Aug. 31, 2016), available at [http://civilrightsdocs.info/pdf/FINAL\\_JointStatementPredictivePolicing.pdf](http://civilrightsdocs.info/pdf/FINAL_JointStatementPredictivePolicing.pdf).

<sup>4</sup> See, e.g., Jack Smith IV, Crime-prediction Tool PredPol Amplifies Racially Biased Policing, Study Shows, MIC (Oct. 9, 2016), <https://mic.com/articles/156286/crime-predictiontool-pred-pol-only-amplifies-racially-biasedpolicing-study-shows> (last visited Oct. 15, 2017); See also Laura Nahmias, NYPD Testing Crime-Forecast Software, POLITICO (July 8, 2015, 5:52 AM EDT), <http://www.politico.com/states/new-york/cityhall/story/2015/07/nypd-testing-crime-forecast-software-090820> (quoting maker of predictive policing software as noting the importance of assessing “how we apply statistics and data in a way that’s going to be sensitive to civil rights and surveillance and privacy concerns”).

<sup>5</sup> See, e.g., WILLIAM J. HAYES, NAVAL POSTGRADUATE SCH., CASE STUDIES OF PREDICTIVE ANALYSIS APPLICATIONS IN LAW ENFORCEMENT (Dec. 2015), available at <https://www.hsdl.org/?view&did=790324>; Martin Maximino, The Effectiveness of Predictive Policing: Lessons From A Randomized Controlled Trial, JOURNALIST RES. (last updated Nov. 6, 2014), <https://journalistsresource.org/studies/government/criminaljustice/predictive-policing-randomized-controlled-trial>; Matt Stroud, Chicago’s Predictive Policing Tool Just Failed A Major Test (Aug. 19, 2016, 10:28 AM EDT), <https://www.theverge.com/2016/8/19/12552384/chicagoheat-list-tool-failed-rand-test>.

<sup>6</sup> See Ezekiel Edwards, Predictive Policing Software Is More Accurate At Predicting Policing Than Predicting Crime, HUFFPOST (Aug. 31, 2016, 2:58 EDT), [https://www.huffingtonpost.com/entry/predictive-policingreform\\_us\\_57c6ffe0e4b0e60d31dc9120](https://www.huffingtonpost.com/entry/predictive-policingreform_us_57c6ffe0e4b0e60d31dc9120).

<sup>7</sup> See, e.g., CITY OF N.Y., DEVELOPING THE NYPD’S INFORMATION TECHNOLOGY 6-7, available at <http://home.nyc.gov/html/nypd/html/home/POA/pdf/Technology.pdf> (last visited Oct. 16, 2017); Mayor de Blasio, Police Commissioner Bratton Announce CompStat 2.0, CITY OF N.Y. (Feb. 23, 2016), <http://www1.nyc.gov/office-of-the-mayor/news/199-16/transcript-mayor-deblasio-policecommissioner-bratton-compstat-2-0#/0> (last visited February 12, 2019).

<sup>8</sup> See Rachel Levinson-Waldman and Erica Posey, “Predictive Policing Goes to Court,” September 5, 2017, <http://www.brennancenter.org/blog/predictive-policing-goes-court>.

<sup>9</sup> See Rachel Levinson-Waldman and Erica Posey, “Court: Public Deserves to Know How NYPD Uses Predictive Policing Software,” January 28, 2018, <https://www.brennancenter.org/blog/court-rejects-nypd-attempts-shield-predictive-policing-disclosure>.

it took almost a full year from the judge's order before the NYPD finally produced some of the information in our request.

This is just one example of the NYPD's many surveillance tools. The NYPD also has object-recognition software<sup>10</sup> that can identify individuals based on their skin tone; it deploys cell-site simulators<sup>11</sup> that can trick every phone in their vicinity into sharing identifying information; and it operates a Domain Awareness System<sup>12</sup> that combines information from NYPD records and databases with the thousands of public and private security cameras that blanket New York City. Earlier this year, a public records request showed how the NYPD was engaging in social media monitoring of Black Lives Matter activists during protests back in 2014.<sup>13</sup>

In short, there is a serious need for mandatory transparency and oversight when it comes to the NYPD, to ensure that the Department is disclosing the records and other data that the public is entitled to access. This is why the Brennan Center calls on this Committee and the COPIC to support the POST Act, a bill that was re-introduced by Council Member Gibson and Co-Sponsored by Council Member Lander of this Committee. The POST Act would require the NYPD to publicly report on the surveillance tools it uses and describe the rules it has for using them.<sup>14</sup>

Specifically, the bill would require the NYPD to create an "impact and use policy" for each surveillance tool it uses now or in the future. These reports would provide descriptions and capabilities of each technology, establish rules and guidelines for their use, and contain policies for retaining and using any data collected by a surveillance tool. The impact and use policy would also describe safeguards to protect the privacy of New Yorkers and outline any internal audit and oversight mechanisms.

Although the NYPD may not wish to discuss the surveillance tools they use, a strong local democracy like New York City requires at least a basic level of information about what its local police are doing and how they're doing it. The POST Act is carefully balanced to achieve transparency and accountability while avoiding the disclosure of operational details that might compromise police investigations or harm public safety.

In an increasingly data-driven society, it is important that our elected officials do not let transparency and accountability fall by the wayside. We commend this Committee for addressing this important issue and urge you to support measures that empower the public to hold the NYPD accountable.

Thank you again for the opportunity to testify today. I am happy to answer any questions.

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<sup>10</sup> See, George Joseph and Kenneth Lipp, "IBM Used NYPD Surveillance Footage to Develop Technology That Lets Police Search By Skin Color," *The Intercept*, September 6, 2018, <https://theintercept.com/2018/09/06/nypd-surveillance-camera-skin-tone-search/>.

<sup>11</sup> See <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/stingray-tracking-devices>.

<sup>12</sup> Joe Coscarelli, "The NYPD's Domain Awareness System Is Watching You," *New York Magazine*, August 12, 2012, <http://nymag.com/daily/intelligencer/2012/08/nypd-domain-awareness-system-microsoftis-watching-you.html>.

<sup>13</sup> See George Joseph, "Years After Protests, NYPD Retains Photos of Black Lives Matter Activists," *The Appeal*, January 17, 2019, <https://theappeal.org/years-after-protests-nypd-retains-photos-of-black-lives-matter-activists/>.

<sup>14</sup> For more on the POST Act, short for Public Oversight of Surveillance Technology Act, see "The Public Oversight of Surveillance Technology (POST) Act: A Resource Page, available at <https://www.brennancenter.org/analysis/public-oversight-surveillance-technology-post-act-resource-page>.