

CITY COUNCIL
CITY OF NEW YORK

-----X

TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON TRANSPORTATION

-----X

January 22, 2013
Start: 10:05 a.m.
Recess: 11:18 a.m.

HELD AT: Council Chambers
City Hall

B E F O R E:
JAMES VACCA
Chairperson

COUNCIL MEMBERS:

Gale A. Brewer
Daniel R. Garodnick
David G. Greenfield
G. Oliver Koppell
Jessica S. Lappin
Darlene Mealy
Ydanis A. Rodriguez
Deborah L. Rose
James G. Van Bramer
Vincent M. Ignizio
Peter A. Koo
Eric A. Ulrich

A P P E A R A N C E S

Daniel Alonso
Chief Assistant District Attorney
Manhattan District Attorney's Office

Jeffrey Ferguson
Assistant District Attorney
Brooklyn District Attorney's Office

John Corlett
Director/ Chairman Legislative Committee
AAA New York

CHAIRPERSON VACCA: Good morning.

It is now 10:10 on January 22nd. I will call this meeting to order. This is the Committee on Transportation of the New York City Council, and I am James Vacca, Committee Chair. I have been joined to my left by Council Member Peter Koo from Queens, and he is now chairman of the Waterfronts Committee, and we congratulate you. Today we have a general oversight hearing entitled Reducing Auto Insurance Premiums. We are also hearing proposed Resolution 1194-A, which calls on the state legislature to allow the practice of dishonest medical clinics paying for clients as part of no fault insurance fraud-what did I say? Oh, okay. Let me go over this again then. Today we have a general oversight hearing entitled Reducing Auto Insurance Premiums. We are also hearing proposed Resolution 1194, which calls on the state legislature to outlaw the practice of dishonest medical clinics paying for clients as part of no fault insurance. Every driver in the city knows that on top of things like the high cost of gas and ever increasing rates of parking meters and tolls, the inflated cost of auto insurance is one

1
2 of the most painful indignities facing anyone who
3 needs to drive a car in the city of New York. New
4 Yorkers know they are being charged higher rates
5 just because of the borough or the zip code of
6 their address, and the statistics back it up. One
7 recent study found that New York State has the
8 fourth highest auto insurance rates in the nation
9 and another found that we here in the Bronx where
10 I live pay rates 57 percent higher than the New
11 York state average and in Brooklyn, it's almost
12 doubled. With this hearing, we are saying enough
13 is enough. We know that many factors influence
14 our car insurance rates and some, such as
15 population density are largely outside our
16 control, but one thing we can do something about
17 is the prevalence of various types of auto
18 insurance fraud, which contribute to higher rates
19 by artificially inflating the amount insurance
20 that providers must pay out in claims.

21 A particularly persistent type of
22 fraud is carried out by sham clinics, which
23 operate elaborate schemes which involve
24 exaggerating injuries sustained in car accidents
25 or even staging fake accidents altogether. While

1
2 such schemes having many moving parts one key
3 typically involves employing so called runners,
4 who are responsible for recruiting clients for the
5 clinic. Because it is often difficult to prove
6 fraudulent intent on the part of each party
7 involved, there have been calls by many in the law
8 enforcement community to make the already
9 unethical employment of a runner a crime in and of
10 itself. This would prevent no fault fraud in the
11 first place. Only the state legislature can make
12 these acts a felony and that is exactly what the
13 resolution before us today asked them to do. At
14 the same time though, we need to ensure that those
15 injured in legitimate car accidents are able to
16 get the redress they need—a topic this Committee
17 has addressed before, and intends to return to. I
18 also want to point out that in 2006 I was proud to
19 support an anti-runner bill in the Council, which
20 became local law 11 of 2006. Part of the law
21 required medical clinics processing a high volume
22 of no fault insurance claims to report their
23 activity to the Department of Consumer Affairs,
24 and it had prohibited these clinics from employing
25 runners. We hope today to inquire about the rate

1
2 of compliance with this law as well as its
3 effectiveness in combatting no fault auto
4 insurance, but the Department of Consumer Affairs
5 was unable to attend. The Transportation
6 Committee will continue to work with the Consumer
7 Affairs Committee on this issue. The Committee is
8 also interested in hearing other ideas for ways to
9 lower car insurance from anyone who has another
10 idea. One idea is looking to ways to expand pay
11 as you drive insurance in New York. The basic
12 premise is that drivers who drive infrequently and
13 for short distances would pay less for insurance
14 than those who drive more. Besides making logical
15 sense in that someone who drives a lot is more
16 likely to get into an accident pay as you go drive
17 has also the potential to be good for society by
18 discouraging unnecessary driving and therefore
19 decreasing pollution and congestion, not to
20 mention the fact that since so many New Yorkers
21 use their cars only for occasional trips paying
22 less for driving seems like a win win. It is my
23 understanding that the city is exploring ways to
24 encourage pay as you driving and I look forward to
25 partnering with them. I want to thank everyone

1
2 for being here. The Department of Consumer
3 Affairs did not want to come and the Department of
4 Transportation did not want to come, but that is
5 their loss. They should be here. I invited them.
6 I am sorry that they chose not to attend, but we
7 will proceed. I think having a great
8 understanding of this issue is very important. I
9 do take exception though when I as chair or when
10 any chair of a committee of the Council invites
11 agencies to attend, they are expected to attend,
12 and they not being here today speaks volumes of
13 themselves. Okay. We have been joined by Council
14 Member Koppell. I will now call on the witnesses.
15 We have three witnesses: Daniel Alonso, Manhattan
16 DA's office, Jeffrey Ferguson, Brooklyn DA's
17 office, John Corlett of AAA New York. Do you want
18 to come up? All three of you can come up. Who
19 would like to lead off?

20 DANIEL ALONSO: Would you like me
21 to start?

22 CHAIRPERSON VACCA: Yes, please.
23 Give your name for the record.

24 DANIEL ALONSO: Sure. My name is
25 Daniel Alonso, A-L-O-N-S-O. I'm the chief

1
2 assistant district attorney in Manhattan. Thanks
3 a lot for giving us the opportunity to talk about
4 this issue. It's a very important issue to law
5 enforcement. It is one that we spend a lot of
6 resources on. You are going to hear my colleague,
7 Mr. Ferguson, from the Brooklyn DA's office talk a
8 little bit more about resources. I would like to
9 talk to you in some detail about the issue of
10 runners and how they facilitate no fault fraud.
11 Let me give you a little bit of background about
12 myself. I don't intend to stick to my prepared
13 remarks. Hopefully, I'll be a little bit more
14 brief. A little background about myself I have
15 been a prosecutor for 17 years including 9 years
16 as an assistant U.S. attorney in the eastern
17 district of New York where I spent three years as
18 chief of the criminal division. As such I
19 supervised many cases of healthcare fraud
20 including no fault accident fraud and I personally
21 prosecuted what at the time we announced it in
22 2001 was the biggest staged accident case in New
23 York's history up to that time. DA Vance has also
24 made this issue a priority and we have deep
25 experience in it going back to Mr. - - and many

1
2 decades. I'm not going to talk about specific
3 cases that we have done. I think Mr. Ferguson has
4 more experience than I do in state prosecutions of
5 these cases, but I do want to give you an overview
6 of what this problem is, why it's so intractable
7 and why a runner law is the best way to attack it.
8 In law enforcement we are keenly aware not just in
9 this area but in many others that whenever this is
10 a pot of money that is out there, there is a group
11 of group of criminals scheming to steal it. That
12 is just what long experience has taught us. One
13 of the largest pots of money around is state
14 mandated no fault insurance coverage. No fault
15 has leant itself over many decades to massive
16 fraud and abuse which as you said has contributed
17 to our high insurance rates. The reason my office
18 strongly believes in this proposed resolution and
19 the bill that you are proposing to support is
20 because it criminalizes acting or paying as a
21 runner as a means to prevent actual fraud. A
22 runner is in brief a shady middleman who doesn't
23 care at all about accidents, injuries, patients,
24 laws or taxpayers—doesn't care about any of that.
25 All he cares about is money in his pocket and he

1
2 gets paid for every patient that he brings to a
3 clinic. That is what runners care about. Before
4 I discuss details of why this runner proposal is a
5 good one, I would like to stress one thing to you
6 and I have stressed this in the past to the state
7 senate and I think that the bill that they passed
8 last session strongly recognizes this.

9 Prosecutors do not need more laws criminalizing
10 fraud. We have those laws already. Fraud is
11 already a crime. Even insurance fraud is a
12 separate crime. Even healthcare fraud is a
13 separate crime from that. We don't need more laws
14 that purport to attack a problem by naming it X
15 fraud. Right now I currently co-chair the New
16 York State White Collar Crime Taskforce, which is
17 an initiative of the District Attorney
18 Association. We are seeking ways to streamline
19 our fraud laws to make them simpler, not more
20 complicated. What we need is a law that
21 criminalizes paying for patients and clients as a
22 means to prevent fraud. This is a prophylactic
23 measure against fraud. Without years of
24 investigation, which we do every day, it is
25 impossible to prove that the various participants

1
2 in these schemes acted with knowledge of
3 fraudulent claims. The runners and the providers
4 who are clinic managers, doctors and sometimes
5 lawyers, they know this. They know that it's very
6 difficult for us to prove this, so we need this
7 law to prevent crime. Why do we have laws to
8 prevent crime? You are very familiar with this.
9 Particularly I'm sure all of you including Council
10 Member Koppell as a former attorney general is
11 aware that we have laws on the books that seek to
12 prevent greater harms. For example, we
13 criminalize the possession of firearms to try to
14 prevent shootings. We criminalize the possession
15 of switchblades to try to prevent stabbings. The
16 federal government has some excellent laws in this
17 regard. The federal Medicare/Medicaid anti-
18 kickback act prevents exactly what I am suggesting
19 that the state legislature prevent today. It
20 prevents paying for patients as a way to combat
21 Medicare and Medicaid fraud. They are not fraud
22 laws. They are laws that prevent paying for
23 patients. That law is cited in my prepared
24 testimony. The no fault scam—I am going to
25 describe it very briefly and then turn it over to

1
2 my colleague—it's like a 21st century military
3 industrial complex for the underworld. Every
4 participant works to make sure that every other
5 participant makes money. The runner brings
6 patients to the clinics, and he gets paid. The
7 patient visits the clinic, and he gets paid. The
8 lawyer who has been helpfully provided by the
9 clinic often physically setting up shop in a
10 medical clinic—a lawyer—signs up the patient and
11 gets paid one-third contingent fee for what is
12 typically a nuisance value pain and suffering
13 claim and of course, the clinic owners and other
14 providers get paid for providing as many kinds of
15 treatments as they can—neurology, psychology,
16 MRIs, x-rays, acupuncture, physical therapy and
17 durable medical equipment to name a few.
18 Everybody wins in that scam except the insurance
19 companies and their rate payers, those of us who
20 own cars. We lose. So despite our many successes
21 we encounter this commonly. People know the
22 entire enterprise is premised on the understanding
23 that the participants will stick to a simple plan
24 if they are questioned by the police. The
25 patients know to say falsely that they were really

1
2 injured or really needed medical treatment. The
3 doctors say they merely treated a patient who
4 complained of injuries. The lawyers say they
5 filed a claim on behalf of the client who
6 complained of injuries and had an accident report,
7 and the runners run away. So it's very difficult
8 under these laws. Last session with the help of
9 the Manhattan DA and a coalition of other law
10 enforcement folks from around the state, including
11 the Brooklyn DA and others, supported S. 7451,
12 which would make it illegal either to act as a
13 runner or to hire a runner. It also for certain
14 thresholds would make it a felony, a Class E
15 felony or a Class D felony, subject to the
16 provisions of New York's organized crime control
17 act. At the end of the day, this is a form of
18 organized crime, and we seek to do with runners
19 and this military industrial complex of these
20 clinics exactly what we did with the mafia over
21 the last 20 or 30 years. This is very significant
22 and needs to be hit from the roots to dry up the
23 supply of patients. I want to stress in closing
24 that if this law gets enacted legitimate patients
25 will not suffer. Legitimate clinics will not

1
2 suffer. Legitimate lawyers will not suffer. Only
3 this entrenched scam will suffer. DA Vance is
4 sorry he couldn't be here today. He commends your
5 leadership, Chair Vacca, and that of this
6 Committee, and that of Speaker Quinn in taking on
7 this very, very important issue. Thank you again
8 for providing us the opportunity to weigh in.

9 CHAIRPERSON VACCA: Thank you. Can
10 I hear from the Brooklyn DA next? Okay. Would
11 you identify yourself?

12 JEFFREY FERGUSON: My name is [off
13 mic]

14 CHAIRPERSON VACCA: If your
15 microphone on, sir? Just make sure your
16 microphone is on and let me indicate we have been
17 joined by Council Member Lappin, Council Member
18 Debbie Rose. Please proceed now. It should be
19 on.

20 JEFFREY FERGUSON: Yeah, is it on?
21 Okay. Good morning ladies and gentlemen. My name
22 is Jeffrey Ferguson. I'm an assistant district
23 attorney and executive assistant district attorney
24 in King's County, and I too have been involved in
25 the whole area of insurance fraud, Medicaid fraud

1
2 for the past close to 40 years. I started in the
3 70s as a detective investigator for Mr. Heinz when
4 he was a special prosecutor for nursing homes
5 which of course grew into the Medicaid fraud
6 control unit, and I would also like to echo much
7 of what Mr. Alonso has been saying. This is a
8 task that we have taken on and have been pursuing
9 now for several years and I too support the
10 proposal of the Committee regarding runners, and I
11 applaud it because it addresses actions. It does
12 not get into the whole issue of intent to commit
13 insurance fraud. This is something that Mr.
14 Alonso and I have been trying to address and
15 trying to point out to the legislature and anybody
16 frankly who will listen to us. We don't need laws
17 that already exist. The penal law has an entire
18 section on insurance fraud. That section on
19 insurance fraud addresses almost every action
20 designed to fraud an insurance company. We need
21 laws that address acts, such as the activity of a
22 runner, and you have already been told what a
23 runner is. A runner is the person who stages the
24 accident, who gets together participants in the
25 phony accident and then refers those participants

1
2 to the clinics who in turn will treat the alleged
3 victim of an accident and then bill the insurance
4 company for either phony injuries or over treat
5 patients for injuries that may occur, so I applaud
6 you. I hope that you will continue in this vein
7 and while I'm at it and as Mr. Alonso also alluded
8 to, I'd like to talk about resources—resources to
9 fight insurance fraud. While this Committee is
10 taking on the task of making suggestions to the
11 legislature on how the problem of insurance fraud
12 can be corrected, lessened, I would also like to
13 suggest that they consider other proposals to be
14 made to the legislature. In particular, I would
15 like to direct the Committee's attention to the
16 need for more equitable distribution of particular
17 funds that are collected pursuant to the New York
18 State insurance law section 9110, and these monies
19 are collected by insurance carriers. Originally
20 these funds were intended to be earmarked for the
21 investigation of vehicle theft and insurance
22 fraud. The legislation was first created in 1992
23 and required insurance carriers to forward to the
24 state a portion of every insurance premium
25 collected from almost every motorist was to be

1
2 contributed to this fund. A portion of the monies
3 collected was given to the Department of Criminal
4 Justice Services to be distributed to local law
5 enforcement agencies in the form of grants. The
6 remainder of the funds were given to the state
7 police. Over the years the legislation has been
8 periodically amended and in 2010 it required that
9 the insurance carriers collect and forward to the
10 fund \$10 per motor vehicle insurance, which
11 amounts to approximately \$120 million.

12 Approximately \$115 of the funds collected were
13 distributed to the state police. While less than
14 5 million was distributed to local law enforcement
15 entities through DCJS grants. Additionally the
16 way the law has evolved has made it so that the
17 state police are no longer required to devote the
18 entirety of these funds to the prevention of auto
19 theft and insurance fraud. In fact in 2010 less
20 than 10 million of the 115 million given to the
21 state police was devoted to this purpose. This is
22 a troublesome situation, which was legislatively
23 created and therefore must be legislatively
24 corrected. The investigations that we conduct at
25 Mr. Alonso's office, my office, these

1
2 investigations in order to be properly conducted
3 are extremely labor intensive and very, very
4 expensive; therefore, local law enforcement
5 agencies including district attorneys' offices
6 need a greater piece of this pie in order to
7 effectively and efficiently combat the problem.
8 Again, I strongly urge the City Council to pass
9 proposed resolution 1194-A recommending the
10 criminalization of the activities of runners as
11 well as those who utilize their services, and I
12 further urge the committee to consider additional
13 no fault reform. Your efforts may greatly enhance
14 our chances to succeed in stemming the increasing
15 incidents of no fault fraud. Thank you very much
16 for your time and attention.

17 CHAIRPERSON VACCA: Thank you, Mr.
18 Corlett?

19 JOHN CORLETT: Good morning, Mr.
20 Chairman. My name is John Corlett. I am the
21 legislative committee chairman for AAA. We have
22 2.7 million members residing in New York state.
23 As you know, New York is awash in the tsunami of
24 insurance fraud. Indeed no fault is rampant in
25 New York, particularly in the city of New York.

1
2 In fact, no fault amounted to nearly \$400 million
3 last year, a cost shared by every single driver.
4 This is the principal reason drivers face as you
5 mentioned in your opening statement the fourth
6 highest insurance rates in the country and
7 particularly in the city of New York in Brooklyn
8 or the Bronx, it can cost as much to insure a
9 vehicle as it can to finance one, so from staged
10 crashes to unscrupulous doctors and medical mills
11 that trump up injuries and treatments, scammers
12 are cashing in by abusing the no fault system and
13 taking advantage of loose laws. Nearly one-fifth
14 of all no fault claims filed in 2010 had elements
15 of fraud says a study by the Insurance Research
16 Council. While some insurance fraud busts make
17 headlines such as the March 2012 roundup of 36
18 individuals allegedly tied to a \$270 million
19 scheme, these are just band aids on a wound that
20 is gushing money. Last year Governor Cuomo began
21 a crackdown on doctors and others whose no fault
22 medical bills raised red flags and after years on
23 the back burner there is now bi-partisan support
24 to enforce current laws and pass new measures
25 decertifying even criminally charging

1
2 practitioners of no fault medical rip offs, but
3 more is needed. As we want to press legislators
4 in Albany, we are debating a range of reforms
5 backed by AAA. Among them bills that would make
6 it a felony to stage a crash, not only because
7 it's thievery, but also because there are
8 miscreants often that prey on senior drivers
9 particularly women who seem less likely to
10 challenge other drivers and injured passengers,
11 yet for the unwitting drivers targeted to be hit
12 by the accident stagers, the damage and injuries
13 they face are quite real. Other proposals would
14 make it a felony to steer crash victims towards
15 unnecessary medical treatments, runners people who
16 recruit patients for medical mills and even cast
17 the staged crashes with willing victims, they
18 deserve prison time. The states no fault
19 insurance system needs serious reforms to make it
20 a money saver and hassle saver it was meant to be.
21 It's about time that New York drivers stop being
22 easy pickings for criminals. In our opinion State
23 Senate Bill 7451 and Assembly Bill 9768 could help
24 reduce the scale of insurance fraud and premiums
25 in New York state. Accordingly our association

1
2 strongly supports the City Council's resolution
3 and just to add to what Mr. Ferguson said, we did
4 serve on the state motor vehicle insurance fraud
5 and auto theft taskforce. As he mentioned the
6 state has been diverting money, a premium
7 surcharge for many years. I don't know what the
8 case is now, but when we served on the board we
9 would see quite a few credible funding requests
10 from law enforcement that would have to be
11 rejected because there simply was not enough
12 money.

13 CHAIRPERSON VACCA: I thank you
14 all. Let me ask some questions. Why would this
15 not advance? What happened in Albany? Why is
16 this what they call a one house bill that never
17 goes anywhere because of the politics or what
18 happened?

19 DANIEL ALONSO: I don't think so.
20 This bill was introduced for the first time in
21 this form just last session at the very end, and
22 it passed the Senate unanimously and it was just
23 in the very last few days in the session. I think
24 that to the extent the City Council would help
25 with the Assembly's backing that would be very

1
2 helpful. The Assembly passed a bill shortly after
3 this bill that would make it an E felony to stage
4 a car accident. That is not particularly useful
5 because if it were say a C felony or a B felony to
6 stage an accident that might be useful, but nobody
7 stages an accident for a reason other than to file
8 a fraudulent insurance claim. No fraudulent
9 insurance claim in the state of New York is less
10 than \$1000. Once it's over \$1000, it's a Class E
11 felony anyway, so we don't need a bill that says
12 it's a crime to stage a car accident for the
13 purpose of making an insurance claim. Also, I
14 want to make sure that the Council understands the
15 distinction--well, the various kinds of claims that
16 are made. It's not all about staged accidents.
17 First of all staged accidents are two kinds--one is
18 staged and one is caused. Staged is fully a
19 motion picture event with both cars being part of
20 the scam. They both know they are going to have a
21 low impact collision or no collision and then they
22 call the police and they pretend they had a real
23 accident. Caused is I think what our colleague
24 from AAA just alluded to, which is people ramming
25 into other people who are unwitting victims of

1
2 this. That is more rare in my experience, much
3 more common is the motion picture where people
4 stage an accident, but remember that the runner
5 doesn't care where these people come from. They
6 could have been in a real accident and not gotten
7 hurt. They could have been in a real accident and
8 not particularly need to go to therapy 50 times.
9 There is a whole continuum. The runners don't
10 care and the clinics don't care. All they care
11 about is somebody signing their book so that they
12 can show it to the insurance company that somebody
13 was really there, and then the rest is up to
14 billing. The rest is MRIs, psychological
15 treatment and therapy and chiropractor,
16 acupuncture, yeah everything. This is not just
17 about staged accidents. If we can prove staged
18 accidents, we can prosecute the people who staged
19 the accidents. Now remember the people who stage
20 the accidents are the runners and the people from
21 the neighborhoods, the people who they get to do
22 it, right, so if we are just going after staged
23 accidents then the people who are really making
24 the real money are getting away with it. Right?
25 We can prosecute lots and lots of people from the

1
2 neighborhood who are getting \$250 to participate
3 in the staged accident, and they are now felons.
4 Right? Those are the small fish. The people that
5 are financing this knowingly are the ones that
6 take years and years of investigation. If we
7 could make it a crime to pay for patients—
8 remember, legitimate doctors don't pay for
9 patients. Nobody in this room has gone to their
10 doctor and had the doctor pay for the privilege of
11 having us go in there to get treatment.
12 Legitimate doctors don't pay for patients.
13 Legitimate lawyers don't pay for clients. That is
14 not the way it is supposed to work.

15 CHAIRPERSON VACCA: I remember
16 years ago in the '80s the Bronx always had a
17 higher rate of insurance, as long as I can
18 remember, but I remember being told in the '80s it
19 was because we had so many cars stolen in the
20 Bronx and our car theft rate was the highest. Now
21 you can't say that because car theft across New
22 York City is dramatically down, so now we are
23 being told basically that Brooklyn and the Bronx
24 still have the car rates in the nation I would
25 think, and am I to believe that this is because of

1
2 the insurance fraud claims—the amount of insurance
3 fraud claims? Why are we at the high end of the
4 spectrum constantly?

5 JEFFREY FERGUSON: That is
6 absolutely correct. In the Bronx and in Brooklyn
7 car thefts are down as well. It's not the crime
8 that it was 10, 15 years ago. The basis for your
9 auto insurance premium more than any other factor
10 is no fault fraud. It's not the coverage that the
11 insurance companies have to and legitimately
12 provide for accidents. It's no fault fraud. I
13 truly believe that there is such a large
14 percentage of your premium that is going simply to
15 reimburse insurance carriers for the monies that
16 they have to pay out to cover no fault claims.
17 That is where your money is going. Take a look at
18 the stats that you cited in your resolution about
19 the difference between New York City premiums and
20 average premiums outside the state. It speaks for
21 itself. The reason for the dramatic discrepancy
22 between New York City premiums and as you said
23 particularly Brooklyn and the Bronx is because of
24 no fault fraud.

25 CHAIRPERSON VACCA: Let me ask you

1
2 something further. What percentage of claims in
3 the Bronx, for example, do you estimate are
4 fraudulent no claim frauds—that doesn't sound
5 right—fraudulent no fault claims?

6 JEFFREY FERGUSON: Hold on just a
7 moment.

8 CHAIRPERSON VACCA: Okay.

9 JEFFREY FERGUSON: I don't have
10 figures that address simply the Bronx, but I do
11 have some figures that address motorist and
12 insurance claims in New York City. In 2010 it was
13 suspected that 22 percent of no fault claims
14 submitted had elements of fraud while an
15 additional 14 percent of no fault claims submitted
16 were either inflated or were for unnecessary
17 treatment. That was—

18 CHAIRPERSON VACCA: [interposing]
19 That is 36 percent.

20 JEFFREY FERGUSON: Yes.

21 CHAIRPERSON VACCA: 36 percent of
22 claims submitted in New York City?

23 JEFFREY FERGUSON: That's correct
24 in 2010.

25 CHAIRPERSON VACCA: In 2010 have

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

significant—

JEFFREY FERGUSON: [interposing]

I'll repeat. 22 percent of no fault claims submitted—this is the year 2010, which was the latest year for which I had stats, had elements of fraud while an additional 14 percent of no fault claims were either inflated or for unnecessary treatment, so that is 22 percent that were fraudulent and an additional 14 percent which were perhaps on a level a little bit less than fraudulent, but they were for inflated—well, no they were not. They're fraudulent for inflated claims for unnecessary treatment.

CHAIRPERSON VACCA: There's 36 percent.

JEFFREY FERGUSON: 36 percent.

Yes.

CHAIRPERSON VACCA: More than one out of every three. I mean this leads me to believe that the average motorist who is out there obeying the laws and only claiming what he should claim is being ripped off because of exorbitant rates that they have to pay. Those who obey the law are being penalized because we can't come to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

grips with those who don't obey the law.

JEFFREY FERGUSON: That is correct, and I think my colleague from AAA, who mentioned that insurance premiums are as much as it cost to finance a car may even be understating it. It sometimes costs more to insure a car than it does to purchase a car in the city of New York. That is a ridiculous situation, and as I brought up there are funds out there. There are funds available that can be used to fight this problem. My office this year received that grant that I was referring to in my testimony that is funded by that \$10 that is collected per vehicle for every vehicle owner in the state. My office received a grant for 2013 of approximately \$200,000—a little bit over. I'm not sure what Mr. Alonso's office received for 2006.

DANIEL ALONSO: In the same ballpark.

JEFFREY FERGUSON: In the same ballpark. In total DCJS had approximately \$5 million to distribute to Mr. Alonso's office, my office, the Bronx district attorney's office, while the state police are collecting in excess of

1
2 \$100 million, and only a small portion of that
3 money is used by the state police for auto
4 insurance fraud and for auto theft investigatory
5 purposes. This is something that was created back
6 in 1992 and evolved or devolved over the years to
7 the situation where it's at now.

8 CHAIRPERSON VACCA: How many
9 convictions do we have for auto fraud? Is this a
10 priority with the Das--do we have a lot of
11 convictions for people who are engaging in auto
12 fraud?

13 DANIEL ALONSO: I might recast the
14 question. I mean sure we have a few dozen every
15 year, but depending on the year, depending how big
16 the tape guns are, but ask me how many convictions
17 compare to how many people are out there doing it.

18 CHAIRPERSON VACCA: Oh no. 'Cause
19 when you said a few dozen--

20 [crosstalk]

21 DANIEL ALONSO: It's like swatting
22 at a swarm of flies.

23 CHAIRPERSON VACCA: You are -- at
24 flies basically.

25 DANIEL ALONSO: Yeah, that is

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

exactly right.

CHAIRPERSON VACCA: When you have a few dozen convictions in one year and I'm told that there are 36 percent of the people engaging in insurance fraud every year—that is a spit in the ocean. Why so few? Why can't we legally get to these people?

DANIEL ALONSO: Because we don't have a runner law. We have runners who sit in our office once we have probable cause to arrest them who look at us and say it's not a crime for me to get money from that lawyer, as long as I declare it on my taxes.

CHAIRPERSON VACCA: So you are saying that this law will significantly—you feel will result in a significant reduction in insurance premiums?

DANIEL ALONSO: We're not actuaries. That's ultimately going to be up to the insurance companies. What we are saying is that we will—

CHAIRPERSON VACCA: [interposing]
That's unsettling to me too of course.

DANIEL ALONSO: --that we will make

1
2 an enormous push towards ending this military
3 industrial complex once and for all if we can get
4 at the root cause which is these payments. These
5 illegal payments ought to be felonies.

6 CHAIRPERSON VACCA: To the best of
7 your knowledge, somebody who engages in auto
8 fraud, who is convicted, are they then allowed to
9 get—are they even allowed to keep their driver's
10 license or renew their driver's license in New
11 York state?

12 JEFFREY FERGUSON: I know of no
13 prohibition to that. No.

14 CHAIRPERSON VACCA: There's no
15 prohibition?

16 JOHN CORLETT: They can.

17 CHAIRPERSON VACCA: So someone even
18 in New York state if you are convicted of the auto
19 fraud charge you can continue to drive, go back on
20 the road?

21 JOHN CORLETT: Absolutely.

22 CHAIRPERSON VACCA: That to me is
23 the most outrageous. This is someone who is not
24 charged—someone who is convicted of auto insurance
25 theft or fraud could continue to drive and maybe

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

do that again.

DANIEL ALONSO: But remember it's less about the people on the street than it is about the people who follow the money, follow the money, follow the money. It's worth talking about. You asked what was the opposition in Albany? I believe the opposition boils down to two places, and I think the bill that you are considering a resolution in support adequately confronts both of these issues. One issue is the idea that if people are getting paid to get the word out to communities where people don't know as much, are not sophisticated, do not have the same kind of economic means than are they running afoul of the law? If you are sort of advertising does that violate the don't pay for patients part of this law? There is an exception in S 7451 for advertisements through public media, so that is not something that this law is intended to do, and in fact we wrote in a specific exception in that law. The second is legitimate referral fees among professionals—I'm talking about lawyers now. Lawyers are allowed under certain circumstances to split their fees with other lawyers who refer

1
2 clients to them. There is sort of a slightly
3 complicated ethical scheme that you have to
4 follow, but putting that aside, that is not what
5 we are going after either, and the bill that you
6 are considering has a specific exemption for that.
7 If something is otherwise authorized by law as
8 professional fee splitting among lawyers is
9 authorized by law under the right circumstances.
10 That is not covered by the law. We are not
11 looking for the trial lawyer who takes a third
12 referral fee from the guy who advertises on the
13 subway for clients. That is not what we are
14 looking for. We are looking for the person who is
15 a middle man between clinics and accidents and
16 between lawyers and accidents. That is what we
17 are looking for.

18 CHAIRPERSON VACCA: I am interested
19 in the topic of recidivism because not being an
20 attorney; I would think that many people convicted
21 of auto fraud never go to jail. Do most people
22 convicted of auto fraud end up with probation,
23 community service, bah, bah, bah, bah?

24 DANIEL ALONSO: It runs the gamut—
25 federal, state. It depends if they do it multiple

1
2 times. I mean I'd say somebody that you know that
3 does it multiple times typically does some time in
4 jail or prison, but if it's a one-time thing,
5 probably not.

6 JEFFREY FERGUSON: I agree. If
7 it's a one-time thing, sometimes even two time
8 thing, no, those individuals don't go to jail, but
9 I would also like to remind the committee that
10 while we are asking for legislation that is
11 directed at the middle man, the purpose of that
12 legislation is to affect the people who profit the
13 most from that. If we can shut down the middle
14 man, we can shut down the clinic owner, who is
15 really making the money in this scheme. They are
16 the ones who are treating patients who aren't
17 injured. They are the ones who are submitting the
18 bills to the insurance carriers and are making the
19 lion's share of the money.

20 CHAIRPERSON VACCA: I agree with
21 you, but I would be interested in knowing how many
22 of the people out there are recidivists. I think
23 it would be an interesting revelation for the
24 public to see because I would speculate that you
25 have people who have engaged in auto fraud time

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

and time again. They are right back on the streets because there is nothing stopping them—

DANIEL ALONSO: [interposing] Much more common is people who we couldn't prove fraudulent intent against and they were never prosecuted to begin with. I'm sure there are recidivists. Look, the professionals obviously aren't, right? If you were a lawyer and you were convicted of this, you are no longer a lawyer—the same with a doctor.

CHAIRPERSON VACCA: And maybe the recidivists just know how far to go or how far—

DANIEL ALONSO: [interposing] There is one more thing that is relevant to this conversation I wanted to make sure was on the record is that these clinics that we are talking about they pretty much get 100 percent of their business from no fault. They turn away people who walk in off the street if they are not brought in by a runner, and they are on paper owned by medical professionals as required by state law, but in reality, they are owned by a non-doctor clinic manager, who is typically also a shady type who is just looking to make money. The reason

1
2 state law requires that doctors own clinics is so
3 that treatment will be done based on medical
4 necessity, not based on a desire to bill insurance
5 companies. The shady clinic manager who we have
6 both prosecuted many times, that guy doesn't care
7 about medical necessity. All he cares about is
8 how much can I reasonably bill without making it
9 too big a red flag so that Allstate comes knocking
10 on my door.

11 CHAIRPERSON VACCA: One last
12 question then I want to go on to my colleagues.
13 Is insurance this way in other no fault states—do
14 other no fault states have similar problems to
15 this degree as New York has from your testimony
16 today?

17 JOHN CORLETT: I have been pretty
18 busy with New York state, so I can't really give
19 you a definitive answer. I would assume that
20 where—my experience is this, wherever there is a
21 pot of money that can be had, there is a scam
22 artist out there who is going to figure out a way
23 to do it. I do not know the details of the no
24 fault laws in the other states, and you point out
25 a very good—you pose a very good question. I

1
2 should find out to see to what degree the problem
3 exists in other states as opposed to here. I
4 believe—my basic problem is not with no fault;
5 it's with the way the laws allow no fault to be
6 abused. If there are ways to correct the abuses
7 to no fault, that would be my option, but you do
8 pose an interesting question to which I plan to
9 find an answer.

10 DANIEL ALONSO: One very brief
11 answer is that this bill that we helped draft is
12 patterned after the New Jersey anti-runner law,
13 which is an excellent law.

14 CHAIRPERSON VACCA: Thank you.
15 Council Member Rose and then Council Member Koo
16 and we have been joined by Council Member Brewer.

17 COUNCIL MEMBER ROSE: Good morning.
18 Thank you. I was very interested to hear that you
19 are not really concerned about targeting the
20 clinics that are a part and parcel of this
21 fraudulent practice.

22 DANIEL ALONSO: I'm sorry. I don't
23 know if that was a misunderstanding. We are
24 interested in targeting the clinics and the clinic
25 managers who pay runners.

1
2 COUNCIL MEMBER ROSE: Okay because
3 you did say that you were more interested in the
4 runner and the middle man.

5 DANIEL ALONSO: If I said that I
6 apologize for the miscommunication. What we are
7 interested in is runners who get paid for bringing
8 in patients and those who pay them for bringing in
9 patients, and that is typically the clinic that
10 pays the runner but sometimes lawyers pay the
11 runner directly. Sometimes the lawyer pays the
12 clinic. There are different varieties of it, but
13 we are certainly interested in targeting these
14 clinics, not legitimate clinics. The important
15 thing here is that nobody should be afraid that we
16 are looking to go after clinics who do Medicaid or
17 otherwise serve our less advantaged communities.

18 JEFFREY FERGUSON: I'd like to add
19 to that if I may. Again I echo Mr. Alonso's
20 statements. We are very interested in clinic
21 owners. We understand how the hierarchy works and
22 it is so hard to get at the clinic owners. They
23 are so insulated because as Mr. Alonso described
24 before on paper you are going to see a doctor who
25 owns a clinic. It's generally not the doctor who

1
2 is orchestrating this entire scenario; it's
3 somebody else who is actually the true owner and
4 he is the one we want, but by passing legislation
5 that is tougher on the runners, it is going to
6 give us a lot more leverage in possibly getting at
7 who that clinic owner is. We would love to be
8 able to have the bat so to speak to swing at the
9 runner so that perhaps, if he were faced with a
10 penalty that was meaningful he might be willing to
11 give up the person who is paying him the referral
12 fee. Oh, absolutely. That would be a home-to
13 continue the metaphor—that would be the home run
14 we would all be looking for.

15 COUNCIL MEMBER ROSE: Right, so
16 then to—is there a history or a way of targeting
17 these clinics that are filing the fraudulent
18 claims? Is there like a paper trail that would
19 lead you back to the runners?

20 DANIEL ALONSO: Typically the paper
21 trail ends at the clinic. If you are just looking
22 at the files of an insurance company, you see a
23 bunch of claims, a bunch of MRIs, a bunch of
24 reports, a bunch of accident reports, it all looks
25 very legitimate on paper. You have to have a

1
2 trained fraud investigator maybe doing some big
3 data analysis to see who is making inordinate
4 claims. We get referrals from insurance companies
5 to see sort of—there are certain red flags like
6 somebody billing 100 percent to no fault, and
7 turning away people who walk in off of the street.
8 That is more of a bother than it's worth for these
9 clinics. They have one way to do things and that
10 is this way, but I don't think—Jeff, you may know
11 better than I do—I don't believe that there is a
12 shortage of law enforcement knowing where this
13 stuff is going on. The problem is having the
14 right tools to combat it.

15 JEFFREY FERGUSON: We have a very
16 good idea where this is good on. The problem is
17 proving it, and it sometime is very, very
18 difficult to prove as much as you may suspect it.
19 When you see certain bills coming out of a clinic
20 for the same type of services, our burden in
21 putting someone away is awfully high. It is
22 beyond a reasonable doubt, and again, it would be
23 a much simpler path to go through the runner
24 towards the clinic than the other way around, and
25 also that is really more directly addressing the

1
2 problem 'cause it's the clinic owner who is making
3 the money as opposed to the runner.

4 DANIEL ALONSO: Just to clarify,
5 that wouldn't reduce our burden of proof. We
6 obviously would still have to prove a case beyond
7 a reasonable doubt. It would just be a different
8 crime. It would be intentionally and knowingly
9 paying this kind of money for the purpose of
10 making a medical claim.

11 CHAIRPERSON ROSE: Would this
12 legislation impact a clinic or a person's ability
13 to collect a claim? Would clinics have more
14 difficulty collecting claims? Is it going to
15 change the scrutiny, the process by which claims
16 are going to be paid?

17 MALE VOICE: I don't believe that
18 this legislation would affect a clinic's ability
19 to collect on a claim. There has been other
20 legislation, no fault reform legislation, which
21 would make it a little bit more difficult for a
22 clinic to collect on their claims because the
23 purpose of this proposed legislation, which also
24 wasn't successful, would be to give insurance
25 companies more time to examine claims for red

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

flags that would indicate fraud, but—

DANIEL ALONSO: [interposing] In fact in all of these cases when we are prosecuting fraud two, three years later in 100 percent of the claims, they have been paid. We have to then go back and undo and claim these were fraudulent. It's not like the money is not getting paid. It is getting paid. Remember, it is not getting paid to the patients. It's getting paid to the clinic, but they are getting paid. In fact defendants use the argument how could I have known it was fraudulent, the insurance company even paid off, which is ironic.

COUNCIL MEMBER ROSE: My last question—is there any way that if in fact this legislation is passed and it does have an impact on the number of fraudulent claims, how do we then make sure that that is passed on to the insured across the board? Is there a way that we can—

DANIEL ALONSO: [interposing] It's a great point. It's beyond my expertise, but I think that is a political issue for you and for the state legislature. It's a great point. Sure.

JEFFREY FERGUSON: My understanding

1
2 is the way an insurance company is supposed to
3 work is that while insurance companies are allowed
4 to make money, they are not supposed to be able to
5 make unconscionable profits. The way it works is
6 that an insurance company needs to make money to
7 pay its shareholders and to pay its claims. The
8 reason why insurance premiums are so expensive are
9 because the claims are fraudulent. If the
10 fraudulent claims are reduced, then theoretically,
11 and this would be up to the Department of
12 Financial Services, which governs insurance
13 companies to make sure this happens, but
14 theoretically if the claims are reduced, the
15 premiums should be reduced.

16 COUNCIL MEMBER ROSE: Is that why
17 we see the difference or the disparity in what the
18 boroughs are paying because on Staten Island we
19 pay 32 percent, which is still 4 percent above the
20 national average, but is that why?

21 JEFFREY FERGUSON: That is the way
22 it is designed. Yes. The so called accidents
23 that have to be paid by insurance companies the
24 concentration is happening in the Bronx and in
25 Brooklyn, not so much in Staten Island, not so

1
2 much in--well, it's still high in Staten Island;
3 it's still high in Nassau County, but not so much
4 out in Suffolk County or when you get above
5 Westchester.

6 COUNCIL MEMBER ROSE: So then they
7 are actually doing that already--

8 JEFFREY FERGUSON: [interposing]
9 That is correct.

10 COUNCIL MEMBER ROSE: So with this
11 legislation if it brings about a decrease, then
12 automatically based on the formula that they are
13 already using we should see a decrease in our
14 premiums across the board statewide.

15 JEFFREY FERGUSON: That seems
16 logical to me, and that is one of our aims.
17 That's why we want to do what we want to do.

18 COUNCIL MEMBER ROSE: Thank you.

19 CHAIRPERSON VACCA: In my opening
20 statement I mentioned a local law 2006 involving
21 the New York City Department of Consumer Affairs.
22 Have any of you had occasion since that local law
23 was passed dealing with the Department of Consumer
24 Affairs as they were supposed to enforce this
25 local law?

1
2 JOHN CORLETT: I have not. I'm
3 sorry.

4 DANIEL ALONSO: Nor have I.

5 CHAIRPERSON VACCA: Because my
6 understanding is that this local law is not being
7 enforced.

8 DANIEL ALONSO: I don't want to
9 mislead you though. I have only been back at the
10 DA's office since 2010, so I don't know, but I
11 have not heard of it.

12 CHAIRPERSON VACCA: This law
13 specified in 2006, and that is why I am very upset
14 that the Department of Consumer Affairs could not
15 be here, that 50 percent—any clinic that has 50
16 percent or more of its business coming through no
17 fault claims must file a report with the
18 Department of Consumer Affairs, and it's my
19 understanding that those reports have not been
20 filed.

21 DANIEL ALONSO: Well, I'll tell you
22 if the Department of Consumer Affairs has its
23 filings in Manhattan than those reports are false.
24 That is already a felony, so we would be pleased
25 to take a look at that. I was not aware of that

1

2 law.

3

CHAIRPERSON VACCA: I am going to follow up. I did want to give them an opportunity to appear today and they did not want that opportunity obviously, so I will follow up to make sure now that this law is enforced. We in the Council are always making new laws, but more and more I find out that laws we have made are not enforced, and we keep making new laws, but I'd rather have the laws in the books enforced. I think we need a police officer or someone of that type to make sure that the expressed legislative authority we exercised was carried out, and I will get on this. Alright, Council Member Koo.

16

COUNCIL MEMBER KOO: Thank you, Chairman Vacca. Thank you all for coming to give us testimony. I think this is nothing new this insurance fraud. I remember when I was in college like 40 years ago I was driving. I got rear ended by a car in L.A. while we were going to the Super Bowl. I was in a hurry to come back to New Mexico for college, so I just let this go, but my friend who was a passenger got called the next day by a lawyer, so - - helping him to see doctors and

25

1
2 suing the other party, so eventually after three
3 years I think he got \$7,000 or something like
4 that, but that was good money at the time - - .
5 He wasn't hurt that much, but he was - - insurance
6 fraud actually. Now it's medical fraud, so that
7 was happening 40 years ago and it's happening here
8 now, but at that time when I was in college I
9 didn't think much about it, but now the more I
10 thought about it, the more I think maybe we can
11 tackle the problem. So you said the main
12 profiteers are the medical clinics. What about
13 the lawyers? Are they making much money?

14 DANIEL ALONSO: Yes.

15 COUNCIL MEMBER KOO: Because they
16 are suing the-

17 DANIEL ALONSO: [interposing] I
18 alluded to it briefly. It's not suing. It's
19 making a demand. Lawyers who are engaged for a
20 personal injury claim can either file a lawsuit,
21 which they'd rather not do because it's expensive
22 or they can just make a demand on the insurance
23 company and I alluded earlier that a lot of these
24 claims settle for what is called nuisance value,
25 which means an insurance company decides that it's

1
2 cheaper to pay say \$10,000 than to actually pay
3 lawyers to defend the case, pay adjusters to
4 negotiate the case, they will just pay a nuisance
5 value and think about it from the point of view of
6 the patients. They get two-thirds tax free of
7 \$10,000 that is quite a haul for nothing, for a
8 fake accident. The lawyer if he does enough
9 volume or she does enough volume is getting 3 or
10 \$4,000 per, and then there is often some of that
11 shared between the lawyer and the medical clinic.
12 I want to follow up on your statement about how
13 this is not a new problem. I'd say this is
14 probably an 80 or 90 year old problem in New York.
15 It's well documented. There's a great book I
16 have—I can't remember the name of the author, but
17 the book is called Accidentally On Purpose, and it
18 documents the entire it's called the makings of a
19 personal injury underworld in New York. It
20 documents it for going back many, many decades. I
21 believe a big investigation in the '30s lead to a
22 law against ambulance chasing, so what that lawyer
23 did to your friend is illegal in New York, but
24 it's only a misdemeanor. So...

25 COUNCIL MEMBER KOO: So how does

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the industry pay for the runners? Do they pay them in cash?

DANIEL ALONSO: Typically. Sure. Sometimes they disguise it as an investigative fee, like they pretend that they are paying an investigator by check, and they will write investigation, but usually it is cash. Is that your experience?

MALE VOICE: My experience is also it's usually paid in cash.

COUNCIL MEMBER KOO: So it's really hard to prove they are being hired by these scam people - - to prove that they are actually staging the-

DANIEL ALONSO: [interposing] We are actually pretty good at proving illicit cash payments. In lots of different areas we have a lot of experience in different ways to find that money is changing hands, and there is lots of techniques to do that, so the problem is that we can prove those payments in those cases, but they are not illegal by themselves. They are great evidence if we have other evidence of fraudulent intent. It's good that they are paying. Like I

1
2 said, legitimate doctors don't pay for their
3 patients, but it's not in and of itself a crime.

4 COUNCIL MEMBER KOO: So you can
5 prove that they received payments?

6 DANIEL ALONSO: I'm not going to
7 say it's easy, but we do it. We can see his
8 ledgers with search warrants. We can have wire
9 taps. We can entice somebody to go operate and
10 tell us about it. We can have surveillance in a
11 diner parking lot where envelopes are changing
12 hands. There's all different techniques to do it.
13 It's difficult. It's labor intensive, but we are
14 able to do that. We do it in all sorts of other
15 kinds of cases.

16 COUNCIL MEMBER KOO: So can you - -
17 in - - tax fraud case because at the end of the
18 year, I'm sure they don't report the income?

19 DANIEL ALONSO: You could, but it's
20 often hard to prove how much they are getting in
21 cash. It's also a tax case doesn't become ripe
22 until late the following year. It's not the most
23 fruitful way to do it. It is possible, but it's
24 not the most fruitful way.

25 COUNCIL MEMBER KOO: Because that's

1
2 the way the - - usually get the mafias, no? By
3 income tax evasion?

4 DANIEL ALONSO: Well, I wouldn't
5 say usually, but I would say sometimes. Yeah.

6 COUNCIL MEMBER KOO: So what about
7 on the patient side? Can we have legislation that
8 makes them understand that if they defraud the
9 insurance companies, they have to pay for the
10 consequences?

11 DANIEL ALONSO: and I think they
12 are paying for the consequences. We are often
13 rounding up dozens of patients, and they are
14 criminals. They shouldn't have done it, but they
15 are much less morally culpable than the clinic
16 owners and the people who pay for the runners.

17 COUNCIL MEMBER KOO: So they are?

18 DANIEL ALONSO: It's already a
19 crime for what the patients are doing.

20 JEFFREY FERGUSON: We often find in
21 Brooklyn that that is where an awful lot of our
22 efforts begin--the fraudulent accident
23 investigation squad, which is part of the city of
24 New York police department, that is where they
25 begin. They begin with the so called injured

1
2 parties of a staged accident, and they find out
3 first of all where they were anywhere near the
4 staged accident to begin with, whether the staged
5 accident even occurred, we call them staged
6 accidents, generically sometimes these accidents
7 don't even occur. There is a police report filed
8 and there are people who are listed as
9 participants in the accident, so yeah, we do work
10 with them and we often get them for false filings,
11 for filing a false police report, but these are
12 not major crimes, and we will start with these so-
13 called victims and hope to get to the runner or
14 the stager, and as I have mentioned before, it's a
15 process. You can start with the victim, you can
16 go to the runner and from the runner you can go to
17 the clinic, but it's a painstaking very methodical
18 procedure.

19 DANIEL ALONSO: And it's unlikely
20 to lead to the incarceration of the clinic
21 personnel because the runners tell the patients
22 what to say at the clinic. If you send in a
23 patient wearing a concealed recorder to sit in
24 with a doctor and say the best part about this,
25 doc, is we are all going to make a ton of money

1
2 because this was a fake accident, the doctor, no
3 matter how crooked he may be in his head, ain't
4 dumb. He is going to say, oh, I'm sorry. I don't
5 do that and send him out. So that is not how you
6 are—it's not going to be very fruitful to have the
7 patients sort of flip on the clinics. They will
8 tell you about the runner, but the runner will sit
9 in your office and say it's not a crime for me to
10 pay people.

11 JEFFREY FERGUSON: Again, this is
12 why I spoke before about the importance of having
13 some leverage against runners to go after clinic
14 owners 'cause Dan is right. You go after a
15 doctor, you go after a clinic owner, and what does
16 he say? Without anything more, you see all these
17 bills going for no fault coverage and going out to
18 the insurance carriers, and what does the doctor
19 say? Look, a guy comes into me and he complains
20 his neck is hurt. I take x-rays. I may not see
21 anything with an MRI. I may not see anything with
22 x-rays, but he is complaining to me that his neck
23 hurts. If he tells me his neck hurts, I have got
24 to take him at his word his neck hurts, and yeah,
25 I am going to bill for the treatment I gave to him

1
2 to try and alleviate the pain. What do I know if
3 he has participated in a staged accident? That is
4 what we are up against.

5 COUNCIL MEMBER KOO: So there is no
6 way to go after them?

7 JEFFREY ALONSO: Yes, there is.
8 There is a way. It's legislation like the
9 legislation we are talking today, which prosecutes
10 actions, doesn't talk about intent to commit
11 insurance fraud. If somebody acts as a runner,
12 makes the referral, solicits, then if we can get
13 that runner, we have a greater possibility of
14 getting at the clinic operator, and if we have
15 something strong to—strong laws with strong
16 penalties that the runner is facing, he is much
17 more likely to try to cut a deal with our offices
18 by turning in or implicating the people who are
19 paying him.

20 COUNCIL MEMBER KOO: - - some
21 innocent people may get caught between the law.
22 Some people will recruit some neighborhood people.
23 They didn't know they were in a crime.

24 DANIEL ALONSO: Well, remember that
25 the people in the staged car accident always know

1
2 because they are in a fake car accident, so they
3 always know they are committing fraud. It
4 wouldn't be a crime under this law to pay a
5 patient. It would be a crime to get paid as a
6 runner or pay a runner.

7 COUNCIL MEMBER KOO: So what about
8 we ask the insurance company to do more audits on
9 these medical clinics—

10 DANIEL ALONSO: [interposing]
11 Audits are an imperfect way to get a criminal
12 fraud because auditors look for paper, and the
13 paper is all here. The auditors don't see the
14 payoff ledgers.

15 COUNCIL MEMBER KOO: They are using
16 so many procedures.

17 DANIEL ALONSO: They can find red
18 flags, and they are good for that, but they are
19 not going to prove criminal fraud.

20 COUNCIL MEMBER KOO: Alright, so
21 this is a big problem. I hope we will find some
22 ways to stop them.

23 [background conversation]

24 DANIEL ALONSO: If you could help
25 us with the legislature, that would be great.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COUNCIL MEMBER KOO: Alright.

Thank you very much.

DANIEL ALONSO: Thank you.

CHAIRPERSON VACCA: Thank you,
Councilman Koo and we were joined before by
Council Member Ulrich and we have been joined by
Council Member Van Bramer to my left. I'd now
like to call upon Council Member Koppell.

COUNCIL MEMBER KOPPELL: Thank you,
Mr. Chairman. I certainly support the intent of
the legislation, but I have a few questions, and
this is probably not the place, Mr. Chairman, to
deal with the precise terms of the legislation.
That's Albany, but since I gather you have
participated in lobbying for this bill in Albany?

DANIEL ALONSO: We don't lobby,
Senator. We give advice to the legislature. We
are exempt from the lobbying law. I called you
Senator-Council Member. Sorry.

COUNCIL MEMBER KOPPELL: Advice.
Okay, well, you have given advice to the
legislature on this?

DANIEL ALONSO: We worked with
legislative staff and I testified in front of the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Senate. I think Mr. Ferguson did too.

COUNCIL MEMBER KOPPELL: If I could just make a couple of comments. First of all this is based on New Jersey law?

DANIEL ALONSO: It's based on the New Jersey-

[crosstalk]

COUNCIL MEMBER KOPPELL: Are these the same kinds of terms as the New Jersey law?

DANIEL ALONSO: Yes.

COUNCIL MEMBER KOPPELL: And how long has the New Jersey law been in effect?

DANIEL ALONSO: I don't know. Less than ten years I think.

COUNCIL MEMBER KOPPELL: Let me say that you have got to tread a very narrow path because obviously there are ways in which referral of patients for a fee or obtaining patients for a fee is a perfectly legitimate activity, and you have recognized that in this by saying advertising in the media is exempt from this and then you also say a person who refers clients, patients or customers is otherwise authorized by law. I want you to think about that a little bit because you

1
2 could be creating a loophole there that these
3 runners could get through because they'll say what
4 they are doing is otherwise authorized by law, so
5 I caution you on that. I also want to say that
6 you while you talk about getting attorneys and
7 others you really are specifically talking about
8 healthcare clinics here. If you look at the
9 second section, section 8 I guess paragraph 8, you
10 really—I'm looking at the text of the Albany bill,
11 and it really only applies to healthcare
12 providers. It doesn't really apply, and you might
13 want to broaden it if you want it to apply to
14 lawyers although lawyers paying for a referral is
15 already—I know it's unethical. I think it's
16 illegal. I'm not sure. I know it's definitely
17 unethical. Is it illegal? I don't know if it's
18 illegal under the—it's certainly unethical.

19 DANIEL ALONSO: The ambulance
20 chasing law—it's a misdemeanor. It's not a model
21 of clarity, and I haven't read it lately, but it
22 essentially prohibits lawyers from making the
23 first move.

24 COUNCIL MEMBER KOPPELL: Well, you
25 might want to—

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DANIEL ALONSO: [interposing] - -

COUNCIL MEMBER KOPPELL: --if you are dealing with this subject here with the runners, I think that you might want to clarify that this also applies to referring clients to lawyers because as I say it's already unethical. It just--I don't want to belabor it because we are not drafting the bill, but I think you should look at it carefully. I think it only applies if as I read it to healthcare clinics, not to lawyers, and maybe it should apply to lawyers, and then again, this otherwise authorized by law language I think could be a loophole that people could get through. At the same time, we don't want to penalize people for doing legitimate advertising and such, and so, as I say you have got to go--it's a narrow path to go through.

DANIEL ALONSO: I am delighted that that is the view you have of it, Council Member, because it would be great if you pass this resolution if you could communicate that to the State Trial Lawyers Association--

COUNCIL MEMBER KOPPELL:
[interposing] Are they opposed to this?

1
2 DANIEL ALONSO: Well, not formally,
3 but certainly they have expressed their concerns
4 because they think it's too broad and overly
5 applies to lawyers. If you look at the definition
6 of provider at the very first lines of the bill on
7 page 1-

8 COUNCIL MEMBER KOPPELL:
9 [interposing] I know that includes lawyers, but if
10 you look at the later provision it doesn't seem to
11 apply really to lawyers except if lawyers are
12 engaged in some activity with the clinics, and
13 there is should be applied.

14 DANIEL ALONSO: Right.

15 COUNCIL MEMBER KOPPELL: But what
16 about the medical society? What is their position
17 on this?

18 DANIEL ALONSO: I don't know that
19 they have taken one.

20 COUNCIL MEMBER KOPPELL: Because
21 again there are instances where for instance if
22 you are selling a practice it could come within
23 the terms except maybe that is exempt under
24 otherwise provided by the law.

25 DANIEL ALONSO: Yeah. I don't

1
2 think that doctors share fees legitimately like
3 lawyers do. Lawyers have an ethical way to share
4 fees—

5 COUNCIL MEMBER KOPPELL:

6 [interposing] But doctors can sell their practice.

7 DANIEL ALONSO: Sure, and that is
8 authorized by law.

9 COUNCIL MEMBER KOPPELL: I think
10 it's authorized by law, but you have got to take a
11 close look at it. Mr. Chairman, I think that the
12 basic purpose is a good one. I do think that it
13 should be looked at carefully to make sure it is
14 not too narrow and not too broad.

15 CHAIRPERSON VACCA: Council Member
16 Brewer?

17 COUNCIL MEMBER BREWER: Thank you.
18 I just wanted to pick up on the Chair's question
19 about the ads. What is—'cause lots of times the
20 City Council does pass laws on happening to do
21 with consumer affairs issues only because we can't
22 do the many issues and passage that Albany can.
23 So how do these clinics advertise now and could it
24 be addressed by the bill that the Council Member
25 referenced?

1
2 MALE VOICE: When I am reviewing
3 the legislation that the Council Committee is
4 proposing to the Council for the state, I don't
5 think we are trying to address advertising or
6 anything of that nature. I know we are not and
7 frankly in my experience I have seen little or no
8 advertising as you are describing for the clinics
9 that we are trying to target. Never seen it.

10 DANIEL ALONSO: And they don't want
11 people to come in from an advertisement. They
12 specifically don't want that because that person
13 doesn't come with a runner who has clued them in
14 on the program, right? Somebody who looks at an
15 advertisement might come in just one time. If
16 your neck hurt a little bit you might come one
17 time, two times, that's it.

18 COUNCIL MEMBER BREWER: You don't
19 want that person.

20 DANIEL ALONSO: You don't want that
21 person. You want somebody to come 20 or 30 times
22 to build up the number of bills and to build up
23 the record for the personal injury claim for pain
24 and suffering--this nuisance claim that we were
25 talking about.

1
2 COUNCIL MEMBER BREWER: Okay 'cause
3 in many causes we do close things down with ads,
4 but this would not be—with false advertising, but
5 this would not be false advertising.

6 DANIEL ALONSO: No.

7 COUNCIL MEMBER BREWER: Second
8 question, picking up on Debbie Rose. These
9 clinics exist all through the state or do they
10 concentrate in the five boroughs and maybe Nassau
11 as you said?

12 DANIEL ALONSO: I have been told by
13 colleagues upstate that it is becoming a big
14 problem in the cities upstate.

15 JEFFREY FERGUSON: I understand the
16 same thing. When you get into the urban areas
17 upstate—Rochester, Syracuse, Buffalo, Albany—yes,
18 it's there, but of course not to the extent that
19 it is here in the five boroughs.

20 COUNCIL MEMBER BREWER: And does it
21 tend—although maybe you don't know—to be one owner
22 or is it a multitude of different doctors and fake
23 doctors, so to speak? In other words is it like
24 several or is it hard to know—like something that
25 is maybe upstate is spreading by people who are

1
2 "owners" in the city or is it sort of franchised
3 so to speak? Horrible term.

4 JOHN CORLETT: I know no connection
5 between the owners of clinics upstate and the
6 owners of clinics in the city. We have seen in
7 the city where individuals or a group of
8 individuals will certainly substantively own more
9 than one clinic. It makes more sense to do that,
10 but don't forget, and we get back to the whole
11 issue of these clinics are not supposed to be
12 owned by laypeople—

13 COUNCIL MEMBER BREWER:

14 [interposing] No, I know that. I was very clear.
15 I just didn't know how much of—it's almost a
16 deeper fraud by what you have described.

17 DANIEL ALONSO: By and large this
18 is not evil mastermind genius doctors, who are
19 saying wow, I am going to make so much money from
20 this. I am going to own several clinics and
21 really make a fortune from fraud. This is doctors
22 who allow their names and licenses to be used—
23 maybe they actually go in five days a week and see
24 patients. That is all fine, but they are just
25 allowing somebody to take over their business.

1
2 This happens a lot in South Brooklyn, Brighton
3 Beach, areas like that.

4 COUNCIL MEMBER BREWER: Okay, and
5 then my final question is how if there are fewer
6 such clinics upstate, but if they are going to
7 grow as you suggested does that mean that maybe
8 the premiums would go up up there also? In other
9 words you indicated above Westchester this isn't
10 practiced as much, but just we are also all trying
11 to follow up on Council Member Rose's issue of if
12 we are able to curtail this issue, do the premiums
13 go down, and I guess I am wondering do you think
14 the additional clinics upstate will drive the
15 premiums up up there or is it just hard to know?

16 JEFFREY FERGUSON: I don't think
17 it's that hard to know, although it's still
18 speculative, but I would assume, yes. If this
19 activity continues to grow in the upstate urban
20 areas, their premiums will also increase. Yes.

21 COUNCIL MEMBER BREWER: Does the
22 Department of Motor Vehicles either at their
23 locations—a lot of us do a lot online now in terms
24 of getting our licenses, so we don't thank God
25 have to go to the DMV offices as often, but are

1
2 there any signs up there or any indication to the
3 driver if you engage in this kind of activity,
4 blah, blah, blah? Not that it would make a big
5 difference, but is that something that DMV has
6 ever done to the best of your knowledge? Or on
7 their website or any indication that this is the
8 kind of activity that is frowned upon?

9 JEFFREY FERGUSON: Not to my
10 knowledge. I know of no—

11 COUNCIL MEMBER BREWER:
12 [interposing] It may not make a big difference,
13 but it does seem to me that the public—this is
14 kind of eye opening. I thank the Chair for having
15 this hearing. This is so outrageous. So go
16 ahead.

17 JEFFREY FERGUSON: Not to my
18 knowledge. Dan?

19 COUNCIL MEMBER BREWER: Or AAAs?

20 DANIEL ALONSO: No, my gut tells me
21 that for this particular crime, a public education
22 campaign wouldn't help.

23 COUNCIL MEMBER BREWER: Right.
24 Okay. Too much money involved. Alright. Thank
25 you, Mr. Chair.

1
2 CHAIRPERSON VACCA: I will only say
3 this that some of the poorest drivers in the
4 nation live in the Bronx and Brooklyn, and these
5 are the people who often have a car not out of
6 luxury, out of necessity and these are the people
7 who have to pay the highest insurance rates
8 because of all the fraud, and they cannot afford
9 it. It's like the most regressive tax. This is
10 purely a regressive tax, and I have seen
11 regressive taxes. Most people when you think of a
12 regressive tax, you think of the sales tax, but
13 this is a regressive tax on people who have done
14 nothing wrong. It's a regressive tax on people
15 who are trying to make a living, but who are
16 suffering because of others and the insurance
17 companies raise their rates. They are least able
18 to afford it. They live in parts of our city
19 where a car is important to them. They cannot
20 access to mass transit. I represent one of those
21 districts. A car is not a luxury. It's a
22 necessity in parts of my district. You come live
23 on City Island or in Throgs Neck. You have parts
24 of Brooklyn the same way. You need a car, and why
25 should they be paying these rates if you are poor,

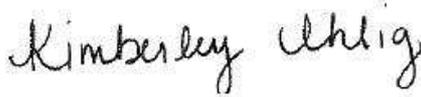
1
2 if you are a senior citizen? Why should anyone be
3 paying it? But the reality is we have people who
4 are elderly and poor who are trying to keep up
5 with the rising price of gas, yet they have to
6 keep up with insurance rates that are beyond what
7 they should be because we cannot address insurance
8 fraud in this state. It just seems to be. You
9 say it's no fault, but I say, sir, it's somebody's
10 fault. This is somebody's fault that we are
11 paying this. Okay. Council Member Greenfield is
12 here and Council Member Mealy have joined us. I
13 thank them. There being no further questions and
14 there is no other testimony—do you have a
15 question, Council Member? No. Okay. It is now
16 11:20. I thank everyone for attending. I thank
17 our witnesses especially, and this hearing is now
18 adjourned.

19 [gavel]

C E R T I F I C A T E

I, Kimberley Uhlig certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature



Date

2/5/13