

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON PUBLIC SAFETY

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April 6, 2017
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HELD AT: Council Chambers- City Hall

B E F O R E:

VANESSA L. GIBSON _____
Chairperson

COUNCIL MEMBERS:

VINCENT J. GENTILE
JAMES VACCA
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RORY L. LANCOUNCIL MEMBERAN
RITCHIE J. TORRES
STEVEN MATTEO

A P P E A R A N C E S (CONTINUED)

Frank Maiello
Sergeant for NYPD

Oleg Chernyavsky
Director of Legislative Affairs at NYPD

Thomas Giovanni
New York City Law Department

Hannah Pennington
From the Mayor's Office to Combat Domestic
Violence

Nancy Savasta
Deputy Chief of the Tort Division in charge of
Risk Management

Beth Nedow
Litigation Support Director for Practice
Management

Andrew Sta. Ana
Director of Legal Services at Day One

Carrie Goldberg
Victim's Rights Law Firm in Brooklyn

Catherine Ball
Third Year Law Student speaking on behalf of
Cyber Harassment Clinic at New York Law School

Lindsey Wallace
Attorney with Sanctuary for Families

Shira Kaufman
Attorney with Sanctuary for Families as well as
Work at the Manhattan Family Justice Center

Julie Ciccolini
Administrator of Cop Accountability Project
Database

[gavel]

CHAIRPERSON GIBSON: Good morning

ladies and gentlemen and welcome to the city council, to our chambers. I am Council Member Vanessa Gibson of the 16th district in the Bronx and I'm proud to serve as the Chair of the city council Committee on Public Safety. I welcome each and every one of you to City Hall this morning and to today's very important hearing. I want to thank the members of the city council and the Public Safety Committee who have joined us, our Minority Leader, Council Member Steve Matteo, Council Member Rory Lancman, and Council Member Dan Garodnick and we will also be joined by other members of the city council throughout the course of today's hearing. This morning our hearing examining enforcement issues with revenge porn will give us an opportunity to understand the challenges the police department faces when receiving complaints related to cyber sexual assault and what our city can do to assist in the prosecution of these cases and the support of victims. The non-consensual disclosure of sexually explicit images or videos commonly referred to as revenge porn is a new phenomenon

1 where intimate photos are used to blackmail or
2 coerce or punish victims. Unfortunately, over the
3 past ten years this has become a national issue.
4 One in 25 internet users mostly between the ages of
5 18 and 29 years old have been a victim. The sharing
6 of intimate content without one's consent is a
7 traumatic experience for victims, which can lead to
8 an array of mental health affects such as
9 depression and suicide as well as the loss of
10 employment. We know that many victims undergo an
11 uphill battle and challenge to rebuild their lives,
12 preserve their integrity and dignity after this
13 experience and it is important that our city
14 recognizes this criminal act and has a process by
15 which victims can receive justice. While victims
16 greatly suffer they often have nowhere to turn. In
17 recent years, many states in this country have
18 passed laws criminalizing this behavior. Currently
19 35 states and the District of Columbia have
20 criminalized the non-consensual disclosure of
21 sexually explicit images. However, in the city due
22 to a gap in state law the NYPD and prosecutors have
23 had a difficult time arresting and prosecuting the
24 perpetrators of these actions. Local prosecutor's
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2 offices have shared with us their frustration and
3 inability to prosecute an individual who sends
4 explicit private images to an ex-partner's employer
5 and or friends. We need laws on our books to
6 protect all New Yorkers so no one is a victim of
7 such behavior. Intro number 1267 sponsored by
8 Council Member Lancman will help close this gap in
9 our law. This bill will criminalize the non-
10 consensual disclosure of sexually explicit images
11 making this act a misdemeanor punishable by up to
12 one year in prison and or a one thousand dollar
13 fine. I want to thank Council Member Rory Lancman
14 for his commitment and leadership on this issue and
15 sponsoring this important piece of legislation. In
16 addition, our committee will also hear this morning
17 Intro number 927A sponsored by Council Member
18 Daniel Garodnick and which I'm also proud to co-
19 sponsor. This bill would require the maintenance of
20 an information sharing system within the NYPD
21 regarding civil actions, civil claims, complaints
22 and investigations alleging improper police
23 misconduct. In 2015 our former police commissioner,
24 William Bratton testified that the department was
25 developing at the time an early warning system for

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2 police officers that have excessive complaints and
3 allegations of abuse against them. In an effort to
4 be proactive this system would help officers who
5 may be going through circumstances that cause them
6 to stray from the proper course of action in their
7 role as a police officer or who would otherwise
8 benefit from help and intervention. In recent cases
9 where officers have abused their power or used
10 excessive force on civilians their actions were
11 typically part of a pattern of multiple complaints
12 and or lawsuits that were filed against them.
13 Research shows that only a small subset of officers
14 are often responsible for a disproportionate number
15 of complaints and misconduct incidents. The
16 civilian complaint board found that just ten
17 percent of officers who are responsible for 78
18 percent of misconduct claims. As a department and
19 the city, we must strive every day to be more
20 proactive than reactive in acknowledging these
21 circumstances and really giving officers the
22 support that they need. The use of an early warning
23 system can prove to be beneficial as it will allow
24 us an opportunity to identify those challenges that
25 we know officers face and connect them to the

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2 appropriate services. We know that police officers
3 are people, public servants that go through an
4 incredible amount of stress both professionally and
5 personally. Balancing the day to day operations of
6 being a public servant in this city is a challenge
7 of its own and we want to be as supportive as
8 possible. So, we hope that through the increased
9 information sharing required by Intro 927A when we
10 can be proactive and address any issues that
11 officers may have and truly work to support the
12 department in taking the necessary steps to assist
13 our officers. I want to thank Council Member
14 Garodnick for his leadership and commitment and
15 also sponsoring this very important piece of
16 legislation. Finally, I also want to thank everyone
17 whose here to testify this morning. I'd also like
18 the time... to take the time to recognize and thank
19 the men and the women in this city who are here
20 today that may have been victims of cyber sexual
21 assault. Thank you for coming forward and sharing
22 your voices and powerful stories this morning. We
23 can use your stories as a catalyst for change and
24 opportunity so that we can prevent any other victim
25 from being a victim of this particular

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2 circumstance. I can only imagine how challenging
3 and distressing that experience has been and I want
4 to commend you for your continues bravery. My hope
5 is from this hearing we will end with an
6 understanding of how best to address these issues.
7 As a city, we want to make sure that we protect the
8 individual rights of every New Yorkers by
9 legislating regulations that will not only prevent
10 and deter this behavior but will send a very loud
11 message that is plain and simple that this behavior
12 is unacceptable and it is illegal. The city will
13 continue to act aggressively in our efforts to
14 target those who use revenge porn and cyber sexual
15 assault and abuse as a means to cause physical,
16 emotional, and financial harm to someone else. I
17 want to thank the administration for being here as
18 well as my colleagues. I want to also thank the
19 staff for all of the work they have done, the
20 Committee on Public Safety; our legislative
21 council; Deepa Ambekar, our senior legislative
22 council; our legislative council, Beth Golub; our
23 legislative policy analyst, Casey Addison; our
24 financial analyst, Steve Riester; and I also want
25 to thank Kelly Taylor for her work on this

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2 legislation. And now I'd like to turn to our two
3 prime sponsors of the bills on today's agenda, I
4 will begin with Council Member Rory Lancman, thank
5 you colleagues.

6 COUNCIL MEMBER LANCOUNCIL MEMBERAN:

7 Thank you Madame Chairwoman. We are here today to
8 discuss among others my bill, Intro 1267 to
9 criminalize so called revenge porn. Revenge porn
10 commonly refers to the nonconsensual disclosure of
11 sexually explicit images or videos. It is often
12 used as a form of domestic violence where abusers
13 use disclosure or the threat of disclosure to keep
14 their partner under control. It's estimated that
15 roughly four percent of the population has been a
16 victim of revenge porn although for younger
17 internet users and members of the LGBT community
18 that number is higher. According to the Cyber Civil
19 Rights Initiative while 94 percent of Americans
20 believe that their intimate photographs are safe
21 with their current partners as many of... as ten
22 percent of ex-partners have threatened to expose
23 nude photographs or sexual content, content of
24 their former partners and 60 percent of those who
25 make such threats actually follow thru. The mental

1 health effects of these nonconsensual disclosures
2 are profound; depression, anxiety, even PTSD and
3 they often have economic implications too. Very
4 often images are posted to websites with
5 identifying information including the victim's
6 name, e-mail, home or work address which can lead
7 to further harassment or stalking by strangers or
8 images can be sent directly to a victim's family,
9 friends or employer to shame, humiliate, or get
10 them fired. Currently 35 states and the District of
11 Columbia have laws that criminalize revenge porn
12 with a nonconsensual disclosure of sexually
13 explicit content but neither New York City nor New,
14 New York State current criminalize this terrible
15 practice. April as we know is sexual assault
16 awareness month and today we are taking an
17 important step toward protecting victims of this
18 kind of cyber sexual assault known as revenge porn.
19 We must protect victims who have slipped through
20 the cracks of our current laws that have been
21 shamed, humiliated and harmed by the disclosure of
22 intimate images. I look forward to the testimony
23 from advocates and, and others this morning, we
24 appreciate the, the comments which I know will come
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2 from the police department which I saw having read
3 their testimony and I want to thank the, the Chair
4 and, and my partner in this endeavor, Council
5 Member Dan Garodnick. Thank you.

6 CHAIRPERSON GIBSON: Thank you Council
7 Member Lancman, prime sponsor of Intro 1267 and now
8 we'll hear from the prime sponsor of Intro 927A,
9 Council Member Dan Garodnick.

10 COUNCIL MEMBER GARODNICK: Thank you
11 very much Madame Chair for holding a hearing on
12 927A which I was pleased to introduce with you and
13 with Council Members Torres and Williams as well as
14 Intro 1267 which I was proud to co-sponsor with
15 Council Member Lancman. Intro 927A would require
16 the police department, the law department, the
17 comptroller, the CCRB and the Inspector General to
18 share with each other information regarding civil
19 actions, complaints and other data points relating
20 to allegations of police misconduct. For decades,
21 the New York City police department has had an
22 early intervention system to identify officers
23 prone to violence based on their discipline and
24 complaint history yet through leaks last month we
25 learned that the officers who killed Eric Garner

1 and Ramarley Graham had extensive records of
2 complaints against them. despite so many documented
3 problems the officers remained in a position to
4 harm the very people they were sworn to protect, in
5 these cases the early intervention system did not
6 do its job. We must do better and hold the NYPD
7 more accountable for ensuring that its officers and
8 the public are receiving all of the benefits of a
9 robust early intervention system. Several city
10 agencies from the law department to the civilian
11 complaint review board oversee the NYPD to some
12 extent, each of them should have complete access to
13 the information that exists on police misconduct
14 but today they do not. Officers with unusually high
15 rates of alleged misconduct should be well known
16 not only to the police department but also to all
17 the entities that do oversight, that is what we
18 will accomplish with Intro 927A. More eyes on
19 police misconduct will mean greater accountability
20 for the NYPD's early intervention system with a
21 better system we could ensure that the NYPD acts
22 faster to address serious issues and to protect the
23 public. We'd also ensure that our many talented and
24 capable police officers do not have to be partnered
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2 with people who are going to put anyone's life in
3 danger. I urge my colleagues to support this bill
4 and to help us support a truly and effective system
5 here for the 21st century. Thank you Madame Chair.

6 CHAIRPERSON GIBSON: Thank you Council
7 Member Garodnick, thank you colleagues for being
8 here and now we're going to get to our first panel
9 of the administration, Sergeant Frank Maiello from
10 the NYPD; our Director of Legislative Affairs at
11 the NYPD, Oleg Chernyavsky as well as Thomas
12 Giovanni from the New York City Law Department,
13 Beth Nedow from the New York City Law Department
14 and Nancy Savasto from the New York City Law
15 Department as well I have tickets for. Okay, if
16 she's not here... okay.

17 THOMAS GIOVANNI: No, that, that's not
18 correct, Nancy and Beth are here, they're... [cross-
19 talk]

20 CHAIRPERSON GIBSON: Okay... [cross-talk]

21 THOMAS GIOVANNI: ...sitting in the
22 audience, this group is actually a, a... kind of
23 combination, the police are here to talk about the
24 revenge porn, the law department came to talk about
25 927A... [cross-talk]

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CHAIRPERSON GIBSON: Okay... [cross-talk]

THOMAS GIOVANNI: ...so the... why it's
just kind of split up but we're all here.

CHAIRPERSON GIBSON: Okay, great, thank
you and we're going to ask you to raise your right
hand for the affirmation of the oath, thank you.

COMMITTEE CLERK: Do you affirm to tell
the truth, the whole truth and nothing but the
truth in your testimony before this committee and
to respond honestly to council member questions?

CHAIRPERSON GIBSON: Thank you very
much, you may begin.

OLEG CHERNYAVSKY: Good morning Chair
Gibson and members of the... of the council. I am
Oleg Chernyavsky, the Director of Legislative
Affairs for the New York City Police Department.
I'm joined here today by my colleague Sergeant
Frank Maiello from the NYPD's Domestic Violence
Unit. On behalf of Police Commissioner James
O'Neill, we wish to thank the City Council for the
opportunity to discuss nonconsensual disclosure of
sexually explicit images from a police perspective,
as well as the legislation under consideration
today, Intro 1267 and 927A. Nonconsensual

1 disclosure of sexually explicit images, commonly
2 referred to as "revenge porn," is the practice of
3 publicly sharing private sexually graphic images of
4 individuals without their consent. As social media
5 has continued to grow, the public dissemination of
6 private sexually explicit images without the
7 subject's consent has become all too common.

8 Current law in New York protects an individual from
9 this behavior if they are unaware that images are
10 being taken. Unfortunately, someone may provide an
11 intimate image to another person in the context of
12 a mutual relationship with the expectation that it
13 will remain private. When the relationship ends,
14 the spurned partner has a means to humiliate the
15 other by sharing those intimate images with
16 literally millions of strangers as well as with the
17 person's family, neighbors, friends, employer and
18 co-workers. Such actions have a devastating impact
19 on a person's family, career, and well-being and
20 the current state of the law provides little
21 recourse for these victims. Moreover, this
22 phenomenon has also taken shape in the.. in the
23 domestic violence arena as abusive partners can and
24 do threaten the disclosure of these intimate images
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1 to prevent victims from leaving the relationship or
2 reporting abuse. It is a significant tool for
3 abusive partners to utilize in order to gain and
4 maintain control over their victims. Intro 1267
5 would create a new section in the Administrative
6 Code to prohibit the nonconsensual distribution of
7 intimate images of another person, unless such
8 distribution is a matter of public interest. The
9 bill would make it unlawful for a person to
10 disseminate, or cause the dissemination of an
11 intimate image of another identifiable person with
12 the intention to cause economic, emotional, or
13 physical harm. The bill represents a constructive
14 effort to address the current legal gaps associated
15 with this phenomenon and the police department
16 supports the creation of criminal sanctions to hold
17 perpetrators accountable for such nonconsensual
18 dissemination. We welcome the opportunity to
19 collaborate with the council on achieving the goal
20 of this legislation which is to deter this behavior
21 and withstand scrutiny under the First Amendment.
22 We appreciate the council's efforts to expand the
23 enforcement options available to our officers and
24 we look forward to further discussions on this
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2 legislation. Turning to the second bill under
3 consideration today, Intro 927A, which covers an
4 entirely different subject area. Intro 927A
5 requires the development and maintenance of a
6 system that would allow the Police Department, the
7 Law Department, the Comptroller, the Civilian
8 Complaint Review Board, and the NYPD Inspector
9 General to share information regarding civil
10 actions. The Police Department believes this bill
11 is a thoughtful means to facilitate regular
12 information-sharing with each of the named
13 agencies. We look forward to further discussions on
14 this bill and on partnering with the council and
15 the affected agencies on this legislation. Thank
16 you for the opportunity to speak with you today,
17 and my colleagues and I are pleased to answer any
18 questions you may have.

19 CHAIRPERSON GIBSON: Thank you very
20 much. Thank you and now the Law Department, thank
21 you.

22 THOMAS GIOVANNI: Good morning, my name
23 is Thomas Giovanni and I serve as the Chief of
24 Staff and Executive Assistant for Government Policy
25 at the New York City Law Department. I am pleased

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2 to be here today to offer the Law Department's
3 comments regarding Intro 927A, which is before you
4 today. I am joined by Nancy Savasta, the Deputy
5 Chief of the Tort Division in charge of Risk
6 Management, and Beth Nedow, the Litigation Support
7 Director for Practice Management in a Litigation
8 Support Division are there in the audience as I
9 stated earlier and can answer any specific
10 questions you might have about the information
11 infrastructure as we go forward. Now Intro 927A
12 would require the Law Department to compile, on at
13 least a bi-weekly basis, certain information
14 regarding civil actions... certain information
15 regarding civil actions filed in state or federal
16 court against the Police Department, individual
17 police officers, or both, that result from
18 allegations of improper police conduct. This
19 includes claims involving the use of force, assault
20 and battery, malicious prosecution and false arrest
21 or imprisonment. [clears throat] excuse me... among
22 the information required would be the court in
23 which the civil action was filed, the name of the
24 law firm representing the plaintiff, the name of
25 the law firm or agency representing each defendant,

1 the date the action was filed, the kind of improper
2 police conduct alleged in the action, and if the
3 action has been resolved, the date of its
4 resolution, the manner in which... the date of its
5 resolution, the manner in which it was resolved,
6 whether the resolution included a payment to the
7 plaintiff by the city and if so the amount of such
8 payment. The compiled information, along with other
9 information provided by the police department,
10 would then be entered into a system developed and
11 maintained by a city department or office
12 designated by the Mayor that would be accessible by
13 the Law Department, the Police Department, the
14 Comptroller, the Civilian Complaint Review Board,
15 and the NYPD Inspector General. The information
16 that would, would be required by 927A reflects the
17 productive ongoing discussions between the council
18 and the Law Department and of course our Police
19 Department that originated with the council's
20 proposed bill known as Intro 119C, about which I
21 testified last year before the Council's Committee
22 on Oversight and Investigations. One of the key
23 components of that bill is its realistic and
24 operationally feasible requirements that the Law
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2 Department post on its website twice a year, the
3 data required by that bill. During my testimony on
4 Intro 119C, I stated that the bill strikes an... that
5 bill struck an appropriate balance between our
6 capability to produce the kind of data required by
7 the bill and our mandate to maintain client
8 confidentiality as legal counsel to the city
9 agencies, including the Police Department. I am
10 glad to see that Intro 927A requires the same
11 information to be compiled and provided by us to
12 whatever city agent, agency or department or office
13 is designated to develop and maintain a system
14 allowing for electronic access, access and
15 information sharing. The Law Department is
16 supportive of the development of a system
17 establishing information sharing between the city
18 agencies specified in the bill. However, the bill
19 before you now proposes an approach that is quite
20 different from the one reflected in the earlier
21 bill because 927A seeks to establish a system that
22 will take significant time, at the very least we
23 believe two or three years to design, procure and
24 build. The complexities of data sharing, even among
25 city agencies involve not only technological

1 challenges regarding the integration of individual
2 agencies' distinctive applications and formats, but
3 also requires designing an infrastructure that
4 accommodates the demands of security and
5 confidentiality. I also must mention that the
6 additional technology and support personnel will be
7 required in order for the Law Department to comply
8 with the responsibilities assigned to us under this
9 bill. As I'm sure you can appreciate, the costs
10 associated with our own compliance are only part of
11 the equation, for we believe that whatever agency
12 is tasked with establishing the data sharing system
13 will be faced with an exponentially larger
14 financial commitment necessary for building a
15 reliable and robust platform. Now with respect to
16 the system that is built, the frequency with which
17 the data is generated should be carefully
18 considered. In that connection, we believe that the
19 at least bi-weekly requirement is not only an
20 unrealistic expectation but would actually produce
21 data that's not meaningful. Accurate information is
22 developed over the course of litigation but this
23 development is measured in months and sometimes in
24 years. Reporting on cases every two weeks will
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2 likely present a picture that is both under and
3 over inclusive depending on the case. For example,
4 in the naming of police officers in a lawsuit, it
5 is often the case that a complainant will name
6 every officer who was in any way involved in an
7 incident. As the case proceeds through the
8 litigation and it is learned that certain officers
9 actually played no role in the incident in
10 question, these officers may be dismissed from the
11 case. On the other hand, an officer at times may
12 only be identified as a John Doe and that officer's
13 name might not be known for several months until it
14 is learned in the process of discovery. These are
15 just two examples that illustrate the reasons the
16 Law Department believes that reporting every six
17 months, when there is a stronger likelihood that
18 more accurate information will be obtained after
19 it's been developed, is the better course to take
20 to satisfy the goals of the bill. For that reason,
21 when we deliberated over the provisions of Intro
22 119C, we agreed with the council to provide data
23 twice a year that is useful and reliable. The Law
24 Department is ready and willing to work with the
25 council towards accomplishing the goals of Intro

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2 927A so that agencies' decision making is
3 predicated on access to timely and accurate
4 information. While we share the goals of the
5 proposals or... the apparent goals of the proposal
6 and are committed to helping develop a successful
7 and workable system, we want to collaborate in
8 crafting a process that's realistic, achievable,
9 and results in the sharing of meaningful data.
10 Thank you for the opportunity to provide these
11 comments on Intro 927A. My, my colleagues and I are
12 pleased to answer any questions that you may have.

13 CHAIRPERSON GIBSON: Thank you very
14 much, I appreciated your testimony and certainly
15 some of the suggestions that you have provided on
16 how we can enhance the bill and obviously, some of
17 the challenges the Law Department would face. I
18 recognize that 119 and 927 have a lot of
19 similarities and a lot of overlap but truly almost
20 the same goals and the same vision in mind. So, I
21 just have a couple of questions before I turn to my
22 colleagues and prime sponsors of the legislation. I
23 want to start with Intro 1267 and I wanted to find
24 out from the NYPD on average how many complaints do
25 you receive and have you received to date regarding

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2 the nonconsensual disclosure of sexually explicit
3 images and, and even with, with those numbers where
4 are they categorized in terms of classification so
5 I understand it could be harassment, can you give
6 us a little bit of understanding of what complaints
7 you've received to date and where they're
8 classified as of now?

9 OLEG CHERNYAVSKY: Sure, thank you for
10 the question. I, I think the challenge for the
11 police department in capturing these type of
12 offenses is that as this bill does it properly
13 identifies a gap in the law so there is no charge
14 currently on the books in the state for revenge
15 porn or disseminating an intimate image that
16 otherwise doesn't fall within or isn't otherwise
17 captured by a different offense. So, what I mean by
18 that is for example if we have an image that's
19 captured without the knowledge of say one of the
20 two people in the video that could be an unlawful
21 surveillance and that would be captured by another
22 statute. If for example an image that's otherwise
23 lawfully taken is disseminated in a repeated manner
24 that's meant to harass we can fall into a stalking
25 charge. If the image depicts an underage individual

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2 there could be potentially an unlawful
3 dissemination of a child pornographic image. For
4 example, if a telephone is taken from a victim and
5 that image or, or a phone is hacked by an
6 individual and then the image is taken from that
7 phone and disseminated you would have a computer
8 crime. So, when there is another crime on the books
9 we would charge that other crime. However, in
10 situations where an image is lawfully captured,
11 lawfully taken and then ultimately disseminated
12 without an individual's consent assuming everybody
13 knew the image was being taken, everybody is of
14 age, it's posted for example one time on an... on the
15 perpetrators Facebook page you fall out of all of
16 the other charges. So in that situation if a victim
17 comes to the police department we would never turn
18 away a victim and say there was nothing we can do,
19 we would document that incident as a harassment
20 because the victim does in fact feel harassed and
21 is alleged harassment in the situation where its...
22 involves intimate partners we would document the
23 incident on a domestic incident report and that
24 would be created to document it and ultimately if,
25 if over time there are a number of incidence that

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2 would fall into stalking that's a charge that we
3 would... that we would charge. However, currently
4 there is no way to aggregate this type of data. So,
5 what... and I've actually brought Sergeant Maiello
6 from our domestic violence unit that could actually
7 highlight a couple of examples when we did a word
8 search so this is highly inaccurate in, in, in the
9 sense that if you are looking for data on how many
10 of these do we get in a year we couldn't give you
11 that with any level of accuracy but when we ran
12 certain keywords we were able to pull out a few
13 examples and maybe we could share those with you.

14 CHAIRPERSON GIBSON: Okay.

15 FRANK MAIELLO: Good morning.

16 CHAIRPERSON GIBSON: Good morning
17 Sergeant.

18 FRANK MAIELLO: I'm here today to share
19 with you the council some stories from domestic
20 incident reports that indicate disclosure of a
21 nonconsensual disclosure of sexually explicit
22 images. The victim stated in substance of my first
23 example, her ex-boyfriend continuously calls and
24 texts her from numerous numbers with no caller ID.
25 She told him to stop many times and if he didn't

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2 stop harassing her that she would get a restraining
3 order. He has threatened her that he will post
4 naked pictures of her everywhere; on her house,
5 parent's cars and at her jobs. My second example,
6 our victim stated in substance, victim states that
7 she has been receiving inappropriate text messages
8 from her ex-husband, he has a Facebook account
9 where he uploads naked pictures of her, he calls
10 her all the time cursing and screaming at her. The
11 naked pictures are also being sent to their sons
12 via text message. And my third example, the victim
13 states in substance that his ex-wife is harassing
14 him and his new wife by posting naked pictures of
15 him with his ex-wife on social media such as
16 Facebook, Instagram and snapchat. She's also
17 sending him text messages with the pictures as well
18 and in this case, he has a valid order of
19 protection against his ex-wife. And my fourth
20 example, again the victim stated in substance that
21 her son's father hacked into her phone and deleted
22 all of her information. He also hacked into her
23 social media account and posted inappropriate
24 pictures of her. He also sent these pictures to her
25 family as well. His words to her were I'm going to

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2 continue to stalk you, she states that he won't
3 leave her alone. And then my final example, the
4 victim once again stated in substance that her ex-
5 boyfriend has been repeatedly texting her and
6 calling her demeaning names and he posted naked
7 pictures of her on her Instagram where he tagged
8 all of her friends from school. He has also
9 threatened her on snapchat telling her that she has
10 herpes. Now she fears for her safety. So, these are
11 just a few examples where the charge related to the
12 dissemination of nonconsensual pornographic
13 disclosure would be applicable and would enhance
14 law enforcement's response to these forms of
15 intimate partner violence.

16 OLEG CHERNYAVSKY: And just, just to
17 point out from, from the examples the Sergeant just
18 gave if you take a look at the first example you
19 have a... you... these are real victims that we don't
20 have a tool on the books to, to actually assist or,
21 or to help directly assuming every... there are no
22 other charges but if you take a look at the first
23 example you have... you have a victim that's actually
24 being harassed that is entitled to get an order of
25 protection and when she had indicated that she

1 would get an order of protection if the harassment
2 doesn't stop she was actually intimidated by the
3 perpetrator via the use of these intimate images
4 trying to pretend... protect... prevent her from going
5 to court and getting the order of protection she
6 would deserve in other situations that the sergeant
7 mentioned you have perpetrators interfering with a
8 current marriage with the children, with... you know
9 and... if, if you take a look at all of these
10 examples yes, some of them may highlight a separate
11 crime aside from the, the dissemination of the
12 intimate image but important to note is that those
13 are the only crimes that could be charged. There is
14 no independent crime that could be charged for the
15 dissemination itself. So, it... to, to your larger
16 question and your original question that if we were
17 to aggregate, you know one, how many of these
18 incidents are there and two, what are the crimes or
19 charged in conjunction with these disseminations I
20 think by having a charge on the books we would be
21 able one, to capture the charge itself... [cross-
22 talk]
23

24 CHAIRPERSON GIBSON: Uh-huh... [cross-
25 talk]

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2 OLEG CHERNYAVSKY: ...and two, we would
3 be able to capture correlating charges that...
4 [cross-talk]

5 CHAIRPERSON GIBSON: ...right. Right, no
6 I agree and I think, you know this legislation it's
7 so important to have a better tracking system.
8 Everything you described from DIR's to harassment
9 to stalking, I mean there's so much overlap. I
10 recall within this administration when we saw an
11 eruption of stalker cases and also harassment cases
12 the NYPD Community Affairs Unit as well as the
13 Mayor's Office to Combat DV focused on a, a massive
14 public service campaign and even the fact that we
15 have a gap in the law what, what is it that we're
16 doing to try to make sure that any potential
17 victims can identify some of those signs, so
18 usually in the DV world, you know we're able to, to
19 see some of those signs before it gets to a
20 physical nature but what has the department
21 attempted to do now to try to make sure that
22 victims understand, you know this could be a, a
23 potential problem and a serious issue where your
24 public safety is in jeopardy. I think hearing those
25 stories and knowing that there are so many more is

1
2 extremely horrifying for victims and you describe
3 both male and female victims so it goes both ways
4 and that's probably something that we don't always
5 talk about either where you could be a victim as a
6 male or a female, perpetrator as a male or female.
7 So, there's just so much overlapping in this
8 particular circumstance so I'd like to understand
9 what we're doing in terms of public service
10 awareness.

11 HANNAH PENNINGTON: Well good morning
12 Chair Gibson... [cross-talk]

13 CHAIRPERSON GIBSON: Good morning..
14 [cross-talk]

15 HANNAH PENNINGTON: ...so pleased to be
16 here. I'm Hannah Pennington from the Mayor's office
17 to Combat Domestic Violence and I oversee the
18 policy and training at the office and I'm so
19 grateful to the council for paying attention to
20 this issue and wanting to strategize around how
21 we're going to hold people accountable for this
22 behavior and you're absolutely right as is Council
23 Member Lancman and his remarks about the
24 intersection with intimate partner violence. I
25 think that at this... I know this committee knows

1 that actually the issue of intimate partner
2 violence itself is highly unreported and so I think
3 that this issue is in parallel with that in that we
4 just... you know beyond what the police department
5 testified too in terms of their difficulty in, in
6 terms of tracking this. We know that many victims
7 don't come forward period and especially when it
8 relates to this kind of behavior because it's so
9 embarrassing and shameful. We know that, you know
10 some of the images themselves are, are, are coerced
11 in the first instance and we also know that this is
12 just a... you know doing this is, is basically
13 following the pattern, pattern of control that
14 we're always looking at because it's a new tool to
15 be able to do that. To answer your question about
16 what we're doing to make sure that victims, you
17 know can know to come forward, I mean I think in
18 general we are constantly out in communities and
19 across the city making sure that everybody knows
20 that there are now five family justice centers. I
21 can speak anecdotal because again we don't... we're
22 not able to track it very precisely that these
23 kinds of cases come to the family justice centers
24 and to advocacy groups around the city on a very,

1
2 very regular basis and I actually think that part
3 of what's great about bringing attention to this
4 issue is that if a victim does come forward because
5 it's so hard for so many too to then not have a
6 remedy to address this kind of behavior is, is
7 particularly troubling. I would say that in the
8 workshops that we do with young people, in the
9 trainings that we do for staff, for city agencies
10 and CBO's, we've been talking about the
11 nonconsensual dissemination of sexually explicit
12 images as a form of domestic violence for, for a
13 long time and we'll continue to do so particularly
14 with young people. I think that's really very
15 important and also when we're talking about groups
16 that are particularly vulnerable, we know that
17 LGBTQ people are, are more impacted by this
18 behavior based on surveys that have been done. So I
19 think being able to, you know in New York City
20 which we don't think really has happened at the
21 local level to address it, we will be able to add
22 that tool to the work that we do to make sure
23 people know when we... you know that's our role in
24 the family justice centers, the CBO's that staff
25 them their job is to let... and this is true of all

1
2 the advocacy communities around the city is to let
3 clients know what their options are and so to be
4 able to add this as an option for what they can do
5 to try... to try to address this very, very
6 significant harm would be a really great step
7 forward.

8 CHAIRPERSON GIBSON: And that also
9 includes I can imagine an aggressive campaign
10 within schools, college campuses but also what are
11 we doing to make sure, you know with the younger
12 generation, you know this is almost seen as a joke,
13 as amusement, as a form of entertainment so even
14 with, you know the perpetrators who are teenagers
15 and young adults themselves are we also offering a
16 level of support for these individuals so they can
17 understand that this is not the type of behavior
18 that we can laugh about, people's lives are at
19 stake. I can only imagine with, you know suicide in
20 some communities on the rise, in my community
21 especially Latinos, we've tried to work on healthy
22 relationships and, and how we're trying to break
23 down the pattern. A lot of young people see
24 violence in their homes and in their communities
25 and it's a cycle that perpetuates itself. So, are

1
2 we also looking at it from both victim and
3 perpetrator perspective, services for, for both
4 parties?

5 HANNAH PENNINGTON: Yes, again thank
6 you for the question and it's not just the Mayor's
7 office that does this, there are a lot of youth
8 organizations around the city who, including Day
9 One who I think you're going to hear from today
10 who, who target this issue in exactly the way
11 you're talking about. So we're going and we're
12 talking to young people and staff and parents about
13 all sorts of things related to healthy
14 relationships in addition to being able to provide
15 some intervention on youth dating violence because
16 it's so prevalent but I think that in those
17 workshops where we create safe spaces to talk to
18 young people we absolutely are looking at it from
19 both sides, we're not just talking about it in the
20 sense of victims of this behavior but also
21 potential perpetrators who could use this kind of
22 tactic in a... in an abusive or unhealthy
23 relationship and those are very hard conversations
24 to have with young people but that's why we use a
25 peer education model and our... in the Mayor's

1
2 offices healthy relationship training academy we
3 use skilled peer educators who absolutely include
4 this very, very important topic because I think it...
5 both of you met... both you and Council Member
6 Lancman acknowledged that this is a particularly
7 important issue to talk to, to, to think about when
8 we're talking about young people.

9 CHAIRPERSON GIBSON: Right, so I guess
10 my final question before I get to my colleague, in
11 terms of the NYPD and our Domestic Violence
12 Officers who have a certain unique level of
13 training to understand intimate partner violence,
14 domestic violence victims and families in the basic
15 training and the academy training that all patrol
16 officers get how are our individual officers able
17 to make that determination from the onset as a 911
18 call comes in, as a victim comes to the local
19 precinct to determine based on the circumstances
20 that that's a domestic incident, that's harassment,
21 that's stalking so, you know absent of having, you
22 know law on the books what types of protocols do
23 all of our officers have where they can immediately
24 identify those factors and say this is harassment,
25 this is stalking and this is how you can proceed so

1
2 that victims can actually move forward and get on
3 with their lives in a productive way?

4 OLEG CHERNYAVSKY: Sure, well I, I, I
5 think its... in the academy the law portion of the...
6 of the curriculum is a fairly heavy portion where
7 officers, new officers and recruits are trained on
8 how to... the elements of, of a variety of crimes and
9 you've, you've just listed some of the most common
10 crimes; harassment is certainly one of the more
11 common complaints and so in that sense they're,
12 they're taught what the elements of the crimes are,
13 they're taught... they certainly have sensitivity
14 training and they certainly are taught that... you,
15 you know we, we evaluate every complaint on its
16 merits to see where exactly it fits because turning
17 away a complainant, somebody coming to the police
18 department whether it's through 911 and calling us
19 to the home or whether it's coming to the precinct
20 turning away a victim is not something that we do.
21 We will interview the individual, we will see if
22 there's a crime being alleged, if there is no crime
23 being alleged certainly with intimate partners and
24 the definitions of, you know what falls within the
25 DV unit, a domestic incident report would be

1
2 created, would be generated and certainly as I, I
3 mentioned earlier that if, if we are going to... if
4 we compile a number of incidents to make out a
5 course of conduct for a... for stalking that doesn't
6 necessarily have to be multiple incidents of
7 harassment, it could be multiple DIR reports that
8 outline a course of conduct... [cross-talk]

9 CHAIRPERSON GIBSON: ...uh-huh... [cross-
10 talk]

11 OLEG CHERNYAVSKY: ...over time and that
12 in itself can, can be put together... [cross-talk]

13 CHAIRPERSON GIBSON: ...right... [cross-
14 talk]

15 OLEG CHERNYAVSKY: ...to, to create a
16 stalking.

17 CHAIRPERSON GIBSON: And with the
18 recent office of victim services that Safe Horizon
19 has instituted social workers in the precinct and
20 also sanctuary for families are in many of our
21 PSA's, they're in mine in the Bronx, I can imagine
22 that in terms of services for victims to deal with
23 the traumatic emotional stress, the financial
24 impact many of these victims are sometimes, you
25 know prohibited from getting sufficient employment

1
2 because of the public image that's, you know
3 against them in the... in the public. So, I can
4 imagine that this staff working with uniformed
5 police officers are able to provide them that level
6 of support that they need for, you know the after
7 affects, right? Okay... [cross-talk]

8 HANNAH PENNINGTON: Yeah... [cross-talk]

9 CHAIRPERSON GIBSON: ...I just wanted to
10 make sure... [cross-talk]

11 HANNAH PENNINGTON: ...I, I would just
12 add too, to my colleague that something you
13 mentioned before are the coordinated approach to
14 stalking program that we partnered with the
15 Department... the police department on which has..
16 includes extensive training for the boroughs in
17 which we've expanded that program for officers that
18 includes a pretty extensive module around
19 technology so that those officers who are now, you
20 know involved in that project have more tools in
21 their tool belt on this issue which has... had
22 incredible results as you know and it has increased
23 the number of stalking charges and prosecutions..
24 [cross-talk]

1
2 CHAIRPERSON GIBSON: Uh-huh... [cross-
3 talk]

4 HANNAH PENNINGTON: ...prosecutions and
5 certainly those cases are being enhanced by their
6 ability to identify this kind of behavior as well.
7 Again, that's only going to be applicable when
8 you're able to include it into a, a... you know a, a
9 series of charges and won't necessarily be
10 available to all the victims of this behavior but
11 it has been I think a successful effort to
12 collaborate around training to make sure the
13 officers are, are really very aware of this issue.

14 CHAIRPERSON GIBSON: Okay, thank you.
15 Now I'll have the prime sponsor of the legislation
16 ask question, Council Member Lancman.

17 COUNCIL MEMBER LAN
18 Thank you. I want to thank the police department
19 and, and the administration generally for your,
20 your generally supportive comments. It... I know that
21 it's very frustrating to law enforcement to have
22 victims come to you and, and you see that they've
23 been harmed, they've been damaged, they've been
24 hurt and, and they've been done so intentionally
25 and being frustrated with an inability to hold the

1 person who, who, who's committed that act
2 accountable. I, I just want in the brief time that
3 I have read a couple of excerpts from the written
4 testimony of two of the district attorneys who were
5 going to be here this morning but, but then were
6 not able to, to make it. From the Queen's district
7 attorney's office, too often we find ourselves
8 unable to hold accountable those individuals who
9 have posted or threatened to post intimate images
10 because there are no criminal statutes that address
11 this conduct. Frustratingly more often than not the
12 situations do not meet the criteria for prosecution
13 under existing criminal statutes in New York and we
14 are powerless to stop the continued dissemination
15 of the images or to hold accountable those who had
16 engaged in such antisocial behavior. While in rare
17 instances we can charge the crime of coercion under
18 penal law 13560 sub-paragraph nine. In the vast
19 majority of situations, the elements of that charge
20 does not fit the facts and the resulting harm and
21 the wrongdoers are beyond the reach of the criminal
22 law. The Staten Island district attorney writes,
23 the majority of states across our nation have
24 enacted statutes that criminalize this behavior
25

1 including some that recognize this conduct as a
2 felony offense, New York State is not one of those
3 states therefore this legislation to criminalize
4 this behavior in our city is commendable. There's
5 no question in our mind that those who willingly
6 and knowingly share the private explicit images of
7 another without their permission regardless of how
8 they came to possess them should be held legally
9 accountable. It is past time for New York to join
10 the majority of the nation in passing legislation
11 protecting those whose private images are
12 disseminated without their consent, a little bit of
13 that was the paraphrasing and then they go on to
14 offer some very constructive guidance on to how the
15 bill could be amended and, and changed in, in ways
16 to, to better support the law from, from any
17 expected legal challenges but it's clear that this
18 is a problem that is frustrating not just victims
19 and not just advocates but law enforcement as well
20 from our frontline folks at the police department
21 and our... and our, our district attorneys. It's good
22 to see everybody on the same page in the sense of
23 we need legislation to address this problem, we
24 definitely look forward to working with the
25

1
2 administration to address any particular concerns
3 you might have or, or get any guidance that you
4 might have to offer, we want to share with you some
5 model legislation that the Queen's district
6 attorney's office has drafted for us to address
7 some of their concerns regarding intentionality and
8 conformity to existing New York definitions of
9 certain conduct and hopefully we'll, we'll, we'll
10 be on the same page far enough that we can get a
11 bill sent to the Mayor's desk that he would be
12 happy to sign. So, thank you very much, thank you.

13 CHAIRPERSON GIBSON: Thank you Council
14 Member Lancman. I just wanted to ask a question, in
15 my opening I referenced that there are 35 states
16 that have introduced similar measures making this a
17 misdemeanor and then there are eight states
18 including DC that have recognized it as a felony;
19 Delaware, Florida, Minnesota, New Mexico, Oregon,
20 and South Dakota. Do any of you have any thoughts
21 in terms of have you done any analysis of what
22 other localities have done with this misdemeanor
23 and or felony charge and has it been successful?

24 HANNAH PENNINGTON: Are you asking
25 about the penalty portion of the... [cross-talk]

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CHAIRPERSON GIBSON: Yes... [cross-talk]

HANNAH PENNINGTON: ...legislation...

[cross-talk]

CHAIRPERSON GIBSON: ...yes... [cross-talk]

HANNAH PENNINGTON: Well I believe for this bill that we wouldn't... it wouldn't be able to include a felony charge this... and at the state level we haven't passed a bill yet that's why, you know we're, we're eager to work with the council on this bill and if I recall correctly the... there's, there's multiple bills that are pending at the state level and I can't recall if any of them have a felony level charge but I do recall that most of them have a misdemeanor charge.

CHAIRPERSON GIBSON: Okay, there are always multiple bills circulating... [cross-talk]

HANNAH PENNINGTON: Yes... [cross-talk]

CHAIRPERSON GIBSON: ...in Albany. Can you tell me from the perspective of OCDV what the consequences have been for victims as well as their family and friends like what have you seen in the day to day work that the agency does?

HANNAH PENNINGTON: Well certainly I, I mean I think that... it's hard to quantify the

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2 significant harm that, that comes into play when
3 this happens... [coughs] excuse me... and I also think
4 that that, that is true outside of the context of
5 intimate partner violence and that's important to
6 remember but from our work, for the, the victims
7 that we're seeing I think you've referenced many of
8 them but there's often, I mean I think a survey
9 that the cyber civil rights initiative conducted
10 found that 93 percent of the victims reporting...
11 reported significant emotional distress following
12 this behavior, we know and actually... and something
13 that we think a lot about is the physical danger
14 that can often result and that's because so often
15 this happens with identifiable information about
16 the victim and you know unsolicited messages and
17 threats that are coming from strangers and in the
18 most scary situations there's sometimes identifying
19 information about where the person works or where
20 the person lives and so they honestly just live in
21 a constant state of fear that some stranger not
22 even their intimate partner or whomever it was that
23 nonconsensual disclosed this image could be... could
24 be stalking them and after them but I do think as
25 you referenced before there can be significant

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2 financial impacts as well obviously we all know
3 that one of the first things that people do now is
4 look at people's social media accounts when they're
5 looking for jobs and this can often be a barrier to
6 employment so I do think when we have victims
7 coming in and, and this is... this is the case when
8 there isn't nonconsensual pornography in our cases.
9 We, we see the same kind of, you know escalating
10 problems for somebody trying to get back on their
11 feet when they're trying to get out of an intimate
12 partner violence situation and so you know the, the
13 services that we have at the center, at the family
14 justice centers and the... many... and all of the
15 advocates in community based organizations have
16 are, are actually already built to be able to
17 address that sort of cascading effect from this
18 behavior.

19 CHAIRPERSON GIBSON: Here's a question
20 that I just want to toss out there and in this
21 entire, you know arena of this revenge porn social
22 media and just media in itself plays a major role
23 and to the extent that there could be some level of
24 responsibility or even a level of promotion of the
25 fact that, you know this is behavior that we want

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2 to avoid and should not be tolerated what are your
3 thoughts on, you know just the role and the level
4 of responsibility that I think social media... you
5 know the Facebook and twitter and everyone should
6 play, I mean these situations can turn into some
7 very dangerous situations and we're talking about
8 people's lives and their, their future so I, I
9 would hate to have a scenario where something, you
10 know tragic happens to someone and then when you,
11 you know do the investigation and we find out that
12 there's just a... an entire, you know portfolio on
13 social media, I mean how do we hold these
14 individuals accountable for the role they play in
15 this process?

16 HANNAH PENNINGTON: Well I think
17 passing bills like this one or others at the state
18 level and across the nation I think what's
19 important about creating new civil and criminal
20 remedies is that we're holding people accountable
21 for this behavior but also hopefully preventing it
22 from happening in the first place and in, in terms
23 of social media we are all thrilled to see that
24 Facebook actually announced a new set of policies
25 around the nonconsensual disclosure of sexually

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2 graphic images which including use of artificial
3 intelligence so I think that there's definitely a
4 lot of progress of something that's, that cyber
5 civil rights initiative has been working on with
6 Facebook for a really long time. So I think that's
7 there's ways in which we can get other actors
8 involved to help try to stop the behavior from
9 happening in the first place or when it does happen
10 having a, a swifter response and I think also as I
11 mentioned earlier and we are constantly thinking
12 about ways in which we develop whatever public
13 message that OCDB is getting out there and we are
14 in the midst of building a new public awareness
15 campaign and I think we need to make sure that
16 those campaigns always are really addressing the
17 fact that there's so many different forms that
18 abuse can take and making sure that people know
19 that certain things that may not seem like they
20 fall within the context of what we're trying to
21 stop that these things are included and so we are
22 thinking about that and we'll continue to think
23 about that.

24 CHAIRPERSON GIBSON: Okay, Sergeant
25 would some of the cases that you described that you

1
2 talked about marriages that ended so ex-wife and
3 ex-husband is there any different approach we have
4 to these cases when it's an ex-husband and an ex-
5 wife or if there are children involved and there's
6 an order of protection, I mean how are we handling
7 these cases when, you know obviously there are
8 these extenuating circumstances that are very
9 prevalent in moving on if you share children with
10 the perpetrator or with, you know your ex-husband
11 or ex-wife, I mean that's significant you still
12 have to have to some extent contact with that
13 person so how do delineate to ensure that the
14 victims are still getting the support but also some
15 of these other cases where children are involved or
16 there's some sort of an agreement how do you make
17 sure that we're still protecting those victims and
18 allowing them a chance to, to move on as well?

19 FRANK MAIELLO: That's a good question,
20 you know there really is no difference as to the
21 approach whether they're formally married or still
22 married or a child in common, it still would be a
23 domestic incident, we would take the same approach.

24 CHAIRPERSON GIBSON: Okay... [cross-talk]

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2 FRANK MAIELLO: When children are
3 involved of course we take it very seriously, we
4 want to make sure that everyone is given an
5 opportunity to hear from the domestic violence
6 officers personally to home visits, speaking with
7 them about safety planning, things they can do in
8 regards to protecting themselves from these type of
9 situations and I think that it's important to
10 understand that we work well and collaborate with
11 the other advocates that the city offers to say
12 that we can... the police department might not be
13 able to give you services but there are agencies
14 out there that can and to... working with them and
15 referring them to these agencies is, is critical to
16 a successful domestic violence program.

17 HANNAH PENNINGTON: And I would just
18 add Council Member Gibson that I think to your
19 question about when there's children involved but
20 even when it's an intimate partner relationship
21 that family court does come into play even without
22 any new... [cross-talk]

23 CHAIRPERSON GIBSON: Uh-huh, right...
24 [cross-talk]

25

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2 HANNAH PENNINGTON: ...legislation and I
3 know that the legal advocacy community for
4 survivors of New York City as you know is really
5 strong and robust and have banded together to train
6 each other in terms of how they can advocate for
7 clients in family court to make sure that orders of
8 protection include really explicit, explicit
9 directives about this behavior to make sure that
10 during the course of a... during the course of a
11 litigation that this behavior is stopped but also
12 prevented and even in final orders of protection
13 and, and certainly I think that family court judges
14 would take this kind of behavior very seriously...
15 [cross-talk]

16 CHAIRPERSON GIBSON: Uh-huh... [cross-
17 talk]

18 HANNAH PENNINGTON: ...it could be very...
19 you know even including thinking about it as a
20 potential endangering, you know the welfare of a
21 child so there's definitely... again even in the
22 current context things that, that can be done but I
23 think again with, with more remedies that that will
24 be able to be furthered even, even more.

25

1
2 CHAIRPERSON GIBSON: Okay and once this
3 bill moves through the process and I'm grateful
4 that we have the administration on board, I think
5 it's a huge testimony to the recognition of this
6 pressing issue and the fact that we need something
7 on the books to codify a local law to ensure that,
8 you know we're sending a message that this behavior
9 is illegal. Once this bill passes and is chaptered
10 from the administration's perspective what
11 additional resources do you think that you may need
12 in order to comply with, you know the new law?

13 OLEG CHERNYAVSKY: Well we'd have to
14 still obviously study the final version of the
15 bill, I mean... [cross-talk]

16 CHAIRPERSON GIBSON: Okay... [cross-talk]

17 OLEG CHERNYAVSKY: ...I think the obvious
18 component would be training, we'd have to train
19 every member of the service coming into contact
20 with victims that this charge is available to them
21 and what the elements of this new charge are so... to
22 ensure that its used properly.

23 CHAIRPERSON GIBSON: Okay and then also
24 from OCDV I imagine your staff and the provider
25 world, FJC Centers, I mean everyone would have to

1
2 go through the enhanced training as well to
3 understand what the new law is and to encourage
4 victims to come forward, that there is a measure
5 that can really help them seeking the justice that
6 they deserve, right?

7 HANNAH PENNINGTON: Absolutely, I
8 think... [cross-talk]

9 CHAIRPERSON GIBSON: Okay... [cross-talk]

10 HANNAH PENNINGTON: ...though that the
11 timing is great, we've actually enhanced the work
12 that we do, you know we have a core set of
13 trainings that run on a regular basis at the family
14 justice centers that certainly includes a lot of
15 information about technology abuse generally and we
16 are adding to that, that, that type of training as
17 it is and we can easily work to include additional
18 remedies into that training.

19 CHAIRPERSON GIBSON: Okay, great. So, I
20 don't have any further questions, Council Member
21 Lancman on 1267, okay. So now I want to recognize
22 the presence of Council Member Chaim Deutsch whose
23 here with us and I wanted to get to Intro 927A,
24 Council Member Garodnick's bill and I wanted to
25 find out how many... well first can you give me an

1
2 understanding of what the NYPD's internal
3 monitoring system looks like as we speak just
4 learning a little bit about it and understanding
5 that the NYPD has a monitoring system that is under
6 risk management that identifies those officers that
7 may have a significant amount of lawsuits, civil
8 actions, etcetera and then there are three
9 different categories and I'd like to know in terms
10 of the services that are available for these
11 officers and how do we get them into a category and
12 how long are they monitored, sorry for my loaded
13 question... [cross-talk]

14 OLEG CHERNYAVSKY: No, no, no, not at
15 all... [cross-talk]

16 CHAIRPERSON GIBSON: I like to throw it
17 all out...

18 OLEG CHERNYAVSKY: So, I mean we came
19 prepared obviously for the oversight on, on the
20 Intro 1267... [cross-talk]

21 CHAIRPERSON GIBSON: Okay... [cross-talk]

22 OLEG CHERNYAVSKY: So, I can generally
23 speak about, about our risk management and our
24 early monitoring but I would... I would ask that if
25

1
2 we get into specifics maybe we set up a briefing
3 for you... [cross-talk]

4 CHAIRPERSON GIBSON: Okay... [cross-talk]

5 OLEG CHERNYAVSKY: ...and, and you... we
6 can get the experts in the room that can better,
7 better address some of your more pointed questions
8 but I think you're correct in saying that the NYPD
9 has had a, a variety of versions that evolved over
10 time but we've had early intervention for, for
11 upwards of 20 years already, it's involving
12 science, you know both nationally and
13 internationally, the NYPD has created the risk
14 management bureau in 2015 and has... [cross-talk]

15 CHAIRPERSON GIBSON: Uh-huh... [cross-
16 talk]

17 OLEG CHERNYAVSKY: ...put the oversight
18 of early intervention with that bureau and that
19 bureau basically looks at both studies done
20 nationally and internationally on early
21 intervention and indicators, they also look at
22 other departments with the recognition obviously
23 that we are the largest department in the nation
24 but that doesn't mean that smaller departments that
25 we can't learn from, from the smaller departments

1
2 and see what works there, what doesn't work there
3 and, and test some of these... some of these
4 indicators or, or implement some of the... some of
5 the processes that they've implemented in other
6 jurisdictions and over time if we see that it's not
7 working or otherwise not indicative and doesn't
8 serve the purpose of early intervention we can
9 change and amend our system and take a look at the
10 carbon studies that are out there and what
11 indicators they're suggesting and what indicators
12 that maybe we're picking up from our own monitoring
13 and, and work them into early intervention and I
14 think... I think we could all agree that the goal is
15 that we, we have an early alert with respect to at
16 risk officers and that way we can get these members
17 of the service either... whether it'd be monitoring,
18 training, increased supervision, whatever, whatever
19 that is we can get that type of a service and, and
20 use it.

21 CHAIRPERSON GIBSON: Okay, so I agree
22 and we'll certainly put on the record the request
23 to have an additional meeting with the department
24 to talk about the monitoring system so that we can
25 understand a little bit more of what the unit does

1
2 but can you answer the question of if an officer is
3 identified for the need to get intervention
4 services many of those officers potentially are on
5 patrol or in a unit where they're dealing with the
6 public and, and so what I'd like to understand is
7 initially at the onset when they're identified is
8 there a change in their day to day work and their
9 responsibility or is that something that is done
10 case by case or is it almost a procedure that when
11 they are identified they automatically would change
12 responsibility or is it done on a case by case
13 basis?

14 OLEG CHERNYAVSKY: No, I, I, I think
15 again I'll, I'll leave it to the experts to...
16 [cross-talk]

17 CHAIRPERSON GIBSON: Okay... [cross-talk]

18 OLEG CHERNYAVSKY: ...to, to explore
19 during the briefing but I, I mean I, I think that,
20 you know one... if an officer is identified, you know
21 there are... whether again like I said whether it'd
22 be additional training, whether it'd be monitoring,
23 whether it'd be increased supervision I wouldn't... I
24 really couldn't speak intelligently to whether or
25

1
2 not their, their job duties change but we can
3 certainly address that during the briefing.

4 CHAIRPERSON GIBSON: Okay, great. And
5 the law department in your testimony you talked a
6 lot about the parallel and the overlap between
7 Intro 119 as well as 927, the law department
8 currently tracks officers that have a high number
9 of lawsuits, is that correct?

10 THOMAS GIOVANNI: In a course of any
11 individual litigation with an officer we do get the
12 officer's history... [cross-talk]

13 CHAIRPERSON GIBSON: Right... [cross-
14 talk]

15 THOMAS GIOVANNI: ...but I don't think it
16 would be accurate to say in, in terms of our
17 internal information controller management system
18 that... [cross-talk]

19 CHAIRPERSON GIBSON: ...Okay... [cross-
20 talk]

21 THOMAS GIOVANNI: ...we track officers
22 who have a lot of cases that, that just isn't what
23 the... our system isn't set up to do that we're... it's
24 set up to defend the individual cases so we can
25 find out about a particular individual's history

1
2 but we don't actually keep a database of officers
3 in that way.

4 CHAIRPERSON GIBSON: So, how does the
5 law department monitor, you know when let's say an
6 officer happens to have a lawsuit filed against
7 them multiple times, I, I know... obviously, their
8 privacy needs to be maintained throughout the
9 course of that litigation... [cross-talk]

10 THOMAS GIOVANNI: ...uh-huh... [cross-talk]

11 CHAIRPERSON GIBSON: ...but once the case
12 is resolved and there is a settlement and or
13 there's some other procedure... [cross-talk]

14 THOMAS GIOVANNI: ...uh-huh... [cross-talk]

15 CHAIRPERSON GIBSON: ...your current
16 system does or does not allow you to track those
17 particular cases so again, I mean I'm talking about
18 excessive so obviously, there is a number but what
19 is the system you have currently do?

20 THOMAS GIOVANNI: We track every
21 resolution of every case that comes into the
22 office, we are, are completely aware of what
23 happened... [cross-talk]

24 CHAIRPERSON GIBSON: Uh-huh... [cross-
25 talk]

1
2 THOMAS GIOVANNI: ...I, I thought the
3 import of your question was asking whether or not
4 there was may... almost a separate category of
5 multiple settlements for one officer or something
6 like that that we were maintaining in an... apart
7 from that system, we don't maintain it separate
8 database or a separate chunk of information but our
9 risk management group speaks frequently with the
10 risk management and other leadership in the police
11 department about these kinds of cases and we do
12 have robust communication about them just to the
13 extent you're asking about an electronic
14 maintenance of a particular category of information
15 we don't do that.

16 CHAIRPERSON GIBSON: Okay and how often
17 do you work with the department in terms of sharing
18 that information?

19 THOMAS GIOVANNI: Every day.

20 CHAIRPERSON GIBSON: Every, every day?

21 THOMAS GIOVANNI: I mean we are in
22 daily conversations with them about... well there
23 are... there are about 6,000 pending cases and we get
24 about 2,300 last year of new cases, those are
25 always being litigated, we're in constant

1
2 communication of different levels, we have
3 structured monthly reporting that we actually send
4 it to PD and communicate with them but in terms of
5 all the litigation that we do we're in daily
6 contact with various levels of the police
7 department about various issues with the litigation
8 of every case.

9 CHAIRPERSON GIBSON: Okay, so the
10 monthly reporting that you share with the
11 department what does that look like?

12 THOMAS GIOVANNI: This is Nancy Savasta
13 who I introduced earlier, I think she needs to be
14 sworn in.

15 CHAIRPERSON GIBSON: Okay, yes, I have
16 her, I have her, thank you, thank you Nancy.

17 COMMITTEE CLERK: Do you affirm to tell
18 the truth, the whole truth and nothing but the
19 truth in your testimony before this committee and
20 respond... and to respond honestly to council member
21 questions?

22 NANCY SAVASTA: I do. I'm sorry, I'm
23 going to have to ask you to repeat the question...
24 [cross-talk]

1

CHAIRPERSON GIBSON: Oh that's okay...

2

[cross-talk]

3

NANCY SAVASTA: ...I apologize.

4

CHAIRPERSON GIBSON: He talked about

5

the monthly... because there's so much interaction

6

and conversation with the police department daily

7

basis you submit monthly reports to the NYPD so I

8

just wanted to understand the content of what that

9

looks like.

10

NANCY SAVASTA: We provide the police

11

department with monthly reporting on commenced and

12

disclosed actions... [cross-talk]

13

CHAIRPERSON GIBSON: ...Okay... [cross-

14

talk]

15

NANCY SAVASTA: ...so with every action

16

commenced or disclosed in the preceding month and

17

it includes information about the forum, the

18

parties to the litigation both plaintiff and

19

defendants and I'm... I actually... [cross-talk]

20

THOMAS GIOVANNI: ...certain on amounts...

21

[cross-talk]

22

NANCY SAVASTA: ...without... yeah, I'm,

23

I'm actually not 100 percent sure what all the

24

25

1
2 other categories are though Beth Nedow from our
3 litigation support group can speak to that issue.

4 CHAIRPERSON GIBSON: Okay.

5 THOMAS GIOVANNI: Beth was also
6 mentioned earlier and she has a, a sheet up there,
7 she needs to be sworn in.

8 CHAIRPERSON GIBSON: Thank you.

9 COMMITTEE CLERK: Do you affirm to tell
10 the truth, the whole truth and nothing but the
11 truth in your testimony before this committee and
12 to respond honestly to council member questions?

13 BETH NEDOW: I do. The monthly reports
14 that we provide to the police department and to a
15 number of different client agencies, to the police
16 department we've been providing them for over ten
17 years they include a variety of information and my
18 colleagues have attested to including the date of
19 the litigation start, the.. a bit of information as
20 alleged by the complainant as well as forum
21 information, I'm trying to.. [cross-talk]

22 CHAIRPERSON GIBSON: Uh-huh... [cross-
23 talk]

24 BETH NEDOW: ...remember because they've
25 been modified over the years but a significant

1 amount of information about the litigation
2 specifically as Thomas mentioned in his testimony
3 as the litigation changes there's new information
4 by the time this matter is disposed the parties on
5 a matter will be quite different because we'll... by
6 the end the litigation when it's disposed we'll
7 know more about the officers who were actually
8 involved.
9

10 CHAIRPERSON GIBSON: So I, I guess...
11 and, and the reason I'm asking all the questions is
12 because I just really want to understand that
13 within the monthly reports that you give to the
14 police department do you look at or track any
15 trends with the defendants so do you notice that if
16 it's the same officer in a given year a certain
17 time frame does that raise a red flag for the law
18 department at all where you would have a
19 conversation with the police department where you
20 can acknowledge that, you know something is wrong
21 here and we just want to obviously get more
22 information so that services could be available for
23 that particular officer so that you don't get to
24 see their names on additional lawsuits.
25

1
2 BETH NEDOW: So we usually know that
3 before the time of a monthly report and I'll pass
4 it back to my colleague... [cross-talk]

5 CHAIRPERSON GIBSON: Okay... [cross-talk]

6 BETH NEDOW: Nancy Savasta.

7 NANCY SAVASTA: So, the monthly
8 reporting is, is geared to provide the information
9 to the police department so that they can marry it
10 with their internal information... [cross-talk]

11 CHAIRPERSON GIBSON: ...Uh-huh... [cross-
12 talk]

13 NANCY SAVASTA: ...to the extent... [cross-
14 talk]

15 CHAIRPERSON GIBSON: ...right... [cross-
16 talk]

17 NANCY SAVASTA: ...that the... just the
18 commencement of the litigation raises red flags, we
19 also look in each of our cases to see who our
20 individual parties are, both plaintiff and
21 defendants, we have individuals who are frequent
22 litigators sometimes frequent frivolous litigators,
23 sometimes someone will have an event occur and then
24 another event will occur and they could be
25 completely unrelated. The, the law department

1 handles all personal injury litigation regardless
2 of which agency may... agency's operations may be at
3 the heart of that litigation. So, people may appear
4 for a multitude of reasons. We do work closely with
5 the police department when we see an officer's name
6 appear frequently and that actually falls into my
7 specific area of jurisdiction in risk management
8 and we bring things to their attention and what we
9 do is we look collaboratively at the allegations
10 and the litigation not just the facts of the
11 litigation, sometimes those numbers can be
12 deceptive, you can have an active officer on a
13 tactical team who is present but not necessarily in
14 the room who because their name appears on
15 paperwork they may get named multiple times and by
16 the time the resolution of, of litigation comes
17 about they're removed because they didn't play a
18 role in whatever gave rise to the litigation. So,
19 we try to look very closely at allegations because
20 that's what they are and then try to get to the
21 heart of all of the information so that we're
22 reporting accurately and working closely with the
23 police department and we do make recommendations
24 if... or raise a flag when we see someone's name come
25

1
2 up frequently and that's been a part of our
3 practice for quite some time... [cross-talk]

4 CHAIRPERSON GIBSON: Okay, okay and I
5 appreciate that and I thank you for explaining in
6 detail and, and certainly any officer that may be
7 named is accused but at the end of the process may
8 not be guilty and so their integrity is important
9 to maintain so they can still fulfill their job and
10 once that information gets sent to PD does that go
11 to risk management, the report? We'll, we'll check,
12 okay.

13 THOMAS GIOVANNI: I would assume so
14 but... [cross-talk]

15 CHAIRPERSON GIBSON: Okay... [cross-talk]

16 THOMAS GIOVANNI: ...we'll check.

17 CHAIRPERSON GIBSON: Okay, great and
18 with respect to the legislation I know you raised
19 several concerns in terms of the multiagency
20 coordination and you gave a timeframe of about two
21 to three years and that's a long time, can you give
22 us some suggestions on number one how we can speed
23 that time up and then number two the system you
24 have right now is that system amenable to this
25

1
2 particular legislation or are we talking about a
3 full-fledged transformation so to speak?

4 THOMAS GIOVANNI: I, I'm sorry I...
5 [cross-talk]

6 CHAIRPERSON GIBSON: ...I know we have...
7 [cross-talk]

8 THOMAS GIOVANNI: ...should... [cross-talk]

9 CHAIRPERSON GIBSON: ...our agencies need
10 to be in the 21st century.

11 THOMAS GIOVANNI: I mean it... that's why
12 I'm smiling... [cross-talk]

13 CHAIRPERSON GIBSON: We try... [cross-
14 talk]

15 THOMAS GIOVANNI: ...that's, that's part
16 of the reason I'm smiling, I mean you're, you're
17 asking a question about a particular system but it
18 really... the question applies to government in
19 general, I mean... [cross-talk]

20 CHAIRPERSON GIBSON: True... [cross-talk]

21 THOMAS GIOVANNI: if multiagency,
22 information sharing with confidential and
23 privileged information... [cross-talk]

24 CHAIRPERSON GIBSON: ...uh-huh... [cross-
25 talk]

1
2 THOMAS GIOVANNI: ...to be distributed in
3 the same format in real time if, if we went to two
4 weeks a procurement process for what we just
5 described right now would take a year
6 conservatively then you have to have the
7 consultants to build that infrastructure then we'd
8 have to agree on the formats of the data to be
9 shared then we'd have to find the personnel to
10 input that data then we'd have to check that data
11 and roll it out, that's a complicated system.

12 CHAIRPERSON GIBSON: Okay. Okay.

13 THOMAS GIOVANNI: And, and I'm only
14 describing the surface of it so that's why we have
15 an estimate in that sense. Using the existing
16 systems and existing communication modes that we
17 have and bolstering them could be accomplished with
18 some additional personnel, some additional
19 information technology sharing modes but in terms
20 of like coordinated four or five-pronged system
21 across these agencies that would be a significant
22 undertaking.

23 CHAIRPERSON GIBSON: Okay, I appreciate
24 your conservative time frame.

25

1
2 THOMAS GIOVANNI: I've been working
3 here for a little while.

4 CHAIRPERSON GIBSON: Okay, if my
5 colleagues don't have any other questions then... you
6 do... [cross-talk]

7 COUNCIL MEMBER DEUTSCH: Yeah, I would
8 like... [cross-talk]

9 CHAIRPERSON GIBSON: ...Oh okay, sorry,
10 Council Member Deutsch, sorry.

11 COUNCIL MEMBER DEUTSCH: I'm a
12 politician I like to talk. It's mentioned that... the
13 states say that in 2014 the city paid out 216
14 million dollars now did that number go up from
15 previous years or did it go down?

16 THOMAS GIOVANNI: I'm, I'm not sure
17 which number you're... are you talking about all
18 judgments and claims or judgements and claims
19 involving police?

20 COUNCIL MEMBER DEUTSCH: Involving
21 police... [cross-talk]

22 THOMAS GIOVANNI: ...it's not... I'll have
23 to say we did not prepare to talk about the overall
24 numbers of judgements and claims, we'd be happy to
25 follow up with you and give you the, the accurate

1
2 numbers on that and I just don't want to just go
3 off the top of my head and, and give you that...

4 COUNCIL MEMBER DEUTSCH: Okay, great.
5 Do you know how many lawsuits come in per year?

6 THOMAS GIOVANNI: Yes. For alleged
7 police misconduct, currently at halfway through FY
8 '17 we've got 800, last year we had 2,300 overall,
9 the year before we had 3,000, the year before that
10 3,100 approximately.

11 COUNCIL MEMBER DEUTSCH: And how many..
12 how many ended up being unfounded like when there's
13 a lawsuit that, that doesn't get paid out?

14 THOMAS GIOVANNI: I can get you that
15 information, I, I don't have all that detail with
16 me today.

17 COUNCIL MEMBER DEUTSCH: Now when
18 there's a lawsuit against an officer do most cases
19 get settled, all cases get settled or does it end
20 up in litigation or do they... what's the percentage
21 that gets settled opposed to that the, the law
22 department fights till the end?

23 THOMAS GIOVANNI: I can get you more
24 detailed information on that but I can tell you
25 that between five and seven percent of all cases

1
2 end up in trials so most of the cases will settle
3 some other way be, before a trial now that can be a
4 dismissal or a settlement depending on the
5 situation and... at any state in a litigation. I can
6 get you more detailed information on the breakdown
7 but that overall picture is true.

8 COUNCIL MEMBER DEUTSCH: Okay, thank
9 you, no further questions.

10 CHAIRPERSON GIBSON: Thank you Council
11 Member Deutsch, I also want to acknowledge we've
12 been joined by Council Member Jumaane Williams,
13 Council Member Ritchie Torres and Council Member
14 Julissa Ferreras-Copeland and do my colleagues have
15 any questions, I'll give you a moment to, to, to
16 settle in. In the unit, you do track the settlement
17 cases, right and, and that information gets sent
18 over to the police department?

19 THOMAS GIOVANNI: Yes.

20 CHAIRPERSON GIBSON: Okay. Okay, just
21 wanted to make sure. And is there anything that any
22 of you want to add in terms of guidance that we
23 should be looking at for strengthening these bills
24 that you have not already talked about both for 927
25 as well as 1267 because we're ready to go and... not

1
2 here today I'm just saying, we're ready to go in
3 terms of moving the bills forward.

4 THOMAS GIOVANNI: I would just say as,
5 as we have said before more communication is always
6 better and the earlier we do it and the more we do
7 it the better off we'll be with the bills, I think
8 we've gotten to a pretty good place but as we point
9 out with the time line on the reporting more
10 communication about how we can go about giving you
11 the best information is always, always appreciated.

12 CHAIRPERSON GIBSON: Okay, I agree and
13 I think Council Member Deutsch was talking about,
14 you know the number of, of lawsuits and settlements
15 because we're talking about tax payer dollars and
16 you know at the end of the day we want to identify
17 more intervention services, I think it's safe to
18 say in any agency but especially in law
19 enforcement, the culture is not that welcoming when
20 an officer needs additional assistance it's just
21 not something that's embraced and I, I always want
22 to maintain confidentiality, the privacy of
23 officers but you know people talk, there is chatter
24 and you know officers don't always feel comfortable
25 confiding that they may be going through something

1
2 professionally and or personally. I've experienced
3 in my district and we've seen throughout this city
4 we've had officer's take their own lives and commit
5 suicide and then when you delve into some of the
6 history, you know everything looks great on the
7 surface but you never know what someone is going
8 through so it is my hope that through both pieces
9 of legislation that we identify, you know the
10 warning system I think is great to provide an
11 assistance and just intervention. Sometimes we need
12 to talk to somebody, all of us, every public
13 servant at some time just needs to talk to someone
14 so that we can do our jobs better obviously much
15 more efficiently and effectively and then with
16 revenge porn I'm just grateful that this bill is
17 coming forward, thank you Council Member Lancman
18 because absent of having it we have just so many
19 cases that are categorized in harassment and
20 stalking and intimate partner violence and domestic
21 violence and I think it allows us to have a, a real
22 tracking system so that we can look at data and
23 then from our perspective as the city council we
24 can provide a level of support so that we can have
25 the public awareness campaign, we can make sure

1
2 that there are services out there for victims as
3 well as their families. I think in this internet
4 world in the 21st century our young people are
5 engaging in so much and you know this is
6 entertainment to people, it's not fun when you
7 shame someone in public and you try to denigrate
8 them and embarrass them, it's really tough for
9 young girls and boys to resurface from that and
10 also in our young adult community I've had young
11 girls commit suicide because they were bullied,
12 they were shamed in public, how do you return to
13 school after naked photos of you are posted all
14 over social media? So that's why I was asking you
15 about the services, if you are a mother how do you
16 feel comfortable sending your child to school, how
17 do you return to work, you know these are all the
18 things that I'm always... I do a lot of thinking, I'm
19 always thinking about because I can only imagine,
20 it's not done in a silo, there's so many
21 extenuating circumstances and unattended
22 consequences that come from, from revenge porn. So,
23 I thank you all and if my colleagues don't have any
24 questions I will just allow you to adjourn and then
25 we'll have our other panels come forward. So, thank

1
2 you for being here, we look forward to working with
3 you and thank you for your presence and your
4 participation this morning. Thank you.

5 OLEG CHERNYAVSKY: Thank you.

6 THOMAS GIOVANNI: Thank you.

7 CHAIRPERSON GIBSON: Our next panel
8 that I'm going to call forward is Andrew Sta Ana
9 from Day One, Carrie Goldberg, Catherine Ball from
10 the New York Law School Legal Services, Shira
11 Kaufman from Sanctuary for Families Center for
12 Battered Women's Legal Services, Lindsey Wallace
13 from Sanctuary for Families. Okay, okay, everyone's
14 here; Andrew's here, Carrie, Catherine, Shira and
15 Lindsey, okay and if anyone has any testimony
16 please make sure you give it to the Sergeant at
17 Arms and we will begin and each of you will have
18 five minutes, don't feel obligated to use all five
19 minutes, just kidding, feel free to speak your
20 mind, this is a very important issue and we are
21 thankful for the work, we're thankful for your
22 presence here and certainly hope that you have a
23 lot to share on the issue and how we can move
24 forward so thank you for joining us today and we
25 appreciate your presence. Yep, you can begin.

1
2 ANDREW STA. ANA: Okay, great... [cross-
3 talk]

4 CHAIRPERSON GIBSON: Thank you.

5 ANDREW STA. ANA: Thank you Council
6 Member's Lancman and of course Chairwoman Gibson.
7 My name is Andrew Sta. Ana and I'm the Director of
8 Legal Services at Day One. This is issue is really
9 important to us and we applaud the intent to create
10 legislation that addresses the issue of
11 nonconsensual pornography and would like to offer
12 our suggestions to enhance the bill based on our
13 experience working with young people throughout New
14 York City. Our organization, Day One is the only
15 organization in New York City committing its full
16 resources to address the issue of dating abuse for
17 young people age 24 and under. Through a
18 combination of services that include prevention,
19 social services, legal advocacy and leadership
20 development, we work to create a world without
21 dating violence. Since 2003, we've combined these
22 services to assist approximately 10,000 youths
23 under the age of 14... rather 24 who are experiencing
24 or at risk of dating violence and with this model
25 we ensure that all of our services are delivered

1 within the framework that appreciates the
2 intersectionality of identities and the complex
3 dynamics of intimate partner violence. Our clients
4 are young women and girls, LGBTQ people, people of
5 color, immigrants, students, parents, siblings,
6 children and of course survivors of violence and
7 trauma. At these intersections, we are also mindful
8 that not all survivors will come forward to report
9 abuse and we work towards creating a system that
10 allows them to report the abuse and to have a
11 system that is sensitive and responsive to that
12 abuse. Through our work we've learned a lot about
13 young people, about love, about communication,
14 about boundaries, about trust and about violence.
15 As young people, our clients are native users and
16 early adopters of technology; whose knowledge far
17 exceeds that of most adults in the areas of social
18 media, apps, and online communications. Because
19 young people use technology as a primary form of
20 communication, and that understanding is critical
21 to our work, we believe we can offer a, a unique
22 perspective on the issue of nonconsensual
23 pornography. Indeed, the same platforms that are
24 used by our clients to explore, build and foster
25

1
2 their relationships are also used by their abusive
3 partners to isolate, manipulate, shame and silence
4 them. Facebook, Instagram, Tumblr and messaging
5 apps, once used to communicate with partners and
6 family and community become weaponized. Abusive
7 partners as we've seen from our experience working
8 with clients can post explicit material on Tumblr,
9 on private Facebook pages and through the creation
10 of fake ads on Craigslist, fake profiles on
11 Instagram, Grindr, and other communication apps.
12 Frequently, this abuse carries over into real life
13 as survivors can show up... or strangers can show up
14 at a young person's home demanding sex because of a
15 fake profile posted on Craigslist and others are
16 shamed by their families, classmates, and
17 communities. One client had naked printouts... naked
18 pictures of her printed out and posted by her ex at
19 her school, in her neighborhood, and in her
20 family's apartment building. It is obvious for...
21 that some of these young people these actions can
22 have a ripple effect to their personal lives, their
23 education and health. And no, the answer is not
24 simply to block your ex-partner, change your e-mail
25 address, phone number, and log off of Facebook.

1
2 Indeed, survivors and victims can find strength,
3 resources and support online and we believe it is
4 foolish to unilaterally determine how they should
5 lead their lives. In light of these survivor
6 stories, the city council has an opportunity to act
7 and pass the right bill, which is sensitive to the
8 needs of a range of populations in, in a city as
9 diverse and beautiful as New York. At Day One, our
10 experiences working with young people tell us that
11 the criminal legal system is not always uniform or
12 neutral in its availability and its response. While
13 some survivors will seek out a criminal justice
14 remedy because of what it offers, others avoid it
15 for the same reasons. Guided by the voices of our
16 clients, and keeping those experiences centered, we
17 have the following suggestions. One, survivors need
18 the need... young survivors in particular need the
19 ability to report nonconsensual pornography without
20 self-incrimination. The bill we believe in its
21 current formation creates a potential risk for
22 young people, we believe that by reporting because
23 of other existing laws they may be prosecuted for
24 either the creation, distribution, or possession of
25 child pornography. We want young survivors to be

1
2 able to report their victimization without running
3 afoul of related laws. New York State with, with
4 good reason has created a statutory framework
5 around the criminalization around the issue of
6 child pornography. However, these laws as initially
7 written did not conceive of the use of the issue...
8 of young people exchanging messages on social media
9 and cell phones. As such without other changes in
10 the law a young person reporting that they have
11 been victimized could potentially face criminal
12 prosecution. Two, create a civil remedy; we
13 recommend the creation of a similar remedy in the
14 form of a family offense so this can be addressed
15 in other forms without a criminal penalty, which is
16 not often what our clients are seeking. Indeed,
17 there can be value to creating a new law to create..
18 to address nonconsensual pornography, it can send a
19 powerful message towards deterrence and
20 accountability, it can work to change the
21 perception that this behavior is without harm or
22 harmless. Through our years of this work we
23 acknowledge that criminalization can send more than
24 one message however and the numerous messages... may
25 I continue? Yes, thank you. We, we know that

1
2 criminalization sends more than one message and the
3 numerous messages it can send can be contrary to
4 the goals of our clients. Indeed, our clients who
5 have been victimized by nonconsensual pornography
6 want their... the images of them contained and
7 deleted and not necessarily to have the person who
8 posted these images incarcerated. And lastly just
9 to echo some of the things that were talked about
10 previously we also believe that a robust proactive
11 education campaign and trainings for schools and
12 law enforcement are really essential here, right.
13 To change this issue, it requires all of us and all
14 of us working towards a goal, right and that
15 includes education for not only law enforcement,
16 for young people, for parents, for schools and for
17 community members so that this change is long
18 lasting. Again, we commend that the city council is
19 taking steps for this bill but we want to be sure
20 that this message sends the right message for young
21 people so that they can access these services.
22 Thank you and I'm happy to answer any questions
23 that you have.

24 CHAIRPERSON GIBSON: Sure, thank you so
25 much.

1
2 CARRIE GOLDBERG: Hi, hi, good morning.
3 Good morning, my name is Carrie Goldberg and I own
4 a, a Victim's Rights Law Firm in Brooklyn and I
5 stand for the belief that we are all a moment away
6 from meeting somebody who's going to be hell bent
7 on destroying us. I'm a board member at the Cyber
8 Civil Rights Initiative, I've helped hundreds of
9 victims of nonconsensual porn, I've removed
10 thousands of images from the web depicting pictures
11 of people nude who didn't want to be the sexual
12 entertainment of other people. I've worked on
13 drafts of 13 of the 35 states that have bills and,
14 and I'm also a member of the Unit... United States
15 Uniform Law Committee that, that's working to
16 create a uniform bill across the country. I've
17 worked alongside our federal lawmakers in creating
18 a federal bill called the Intimate Privacy
19 Protection Act, which is pending as well as the
20 Extortion Act. I've worked... I, I drafted the civil
21 part of the New York State proposed law (1:31:39)
22 and I'm saying all this not to brag but to just
23 express that this is my every day all day passion.
24 Penguin is publishing a book about the
25 weaponization of tech that I'm writing. So, I've

1 had clients that have been turned away by police
2 precincts eight times and they very well should be
3 because there is no law and it would be
4 unconstitutional for our lawmakers or our, our
5 police to, to arrest anybody but I want to tell you
6 about one client of mine. She came to me about a
7 year ago, a social worker and her... nonconsensual
8 porn depicting her was on Instagram and over the
9 last year her ex's behavior escalated, the stalking
10 became absolutely unimaginable, false police
11 reports, messages to her, her workplace that she
12 had STD's, it was like his full-time job. He was
13 arrested two weeks ago, Juan Thompson because he
14 had impersonated our client and, and called Jewish
15 Community Centers all over the country threatening
16 to bomb them. This started with nonconsensual porn,
17 if he had been arrested for distributing her naked
18 pictures none of this would have happened, it
19 became a national outcry, you know the, the passage
20 of a properly drafted bill will illustrate that we
21 prioritize our sexual privacy and a strong bill
22 can't discriminate based on the offender's motive
23 and right now it does. Offenders are motivated by
24 all sorts of reasons; to injure or humiliate but
25

1
2 also out of boredom to show off sexual conquests,
3 for sexual gratification, money, competition, just
4 because hacking is fun for some people because he
5 or she may think that the victim is hot and wants
6 to show all, all his friends what he's... what he's
7 gotten, I mean there are websites created by
8 fraternities that just depict sorority members that
9 have been passed out. This isn't because of the
10 intent to harm or injure it's just... it's because
11 of... I mean we can't... we can't discriminate based on
12 intent. To... the injury to all victims is massive.
13 In addition to, to the intent issue a strong bill
14 also must contain exceptions such as when
15 circulation is, is in the process of reporting a
16 crime or in a medical context or some other lawful
17 purpose and there must be really precise
18 definitions of nudity and other key terms and not
19 only does nudity have to be contained but also sex
20 acts. An image of somebody performing oral sex may
21 not show the victim's nudity but the image is just
22 as embarrassing. The New York City bill sponsored
23 by Council Member's Lancman and Garodnick is
24 definitely a step in the right direction and with a
25 little bit of elbow grease we can... we can created

1 something, something fantastic and I really urge
2 the committee to look at Assembly, Assemblyman
3 Edward Braunstein's state bill which is excellent,
4 I drafted part of it, I drafted the civil portion,
5 I agree with Andrew we need a civil remedy in, in
6 this as well and I also just want to passionately
7 recommend against any sort of carve outs for
8 minors. Minors are capable of doing heinous,
9 heinous acts and all of the young clients that I've
10 had have been suicidal, they don't have the coping
11 skills, we need the deterrent effect that this bill
12 would have, we need that to be put forth on, on
13 minors. So, thank you very much.

14 CHAIRPERSON GIBSON: Thank you very
15 much, thank you.

16 CATHERINE BALL: Good morning Council
17 Members and Chair Gibson. Thank you for holding
18 this hearing today to address the bill, to address
19 nonconsensual dissemination of sexually explicit
20 images. My name is Catherine Ball and as a third-
21 year law student I speak on behalf of the Cyber
22 Harassment Clinic at New York Law School. As part
23 of the law school's institute for Cyber Safety the
24 clinic is the first of its kind law school... law
25

1 student pro-bono clinic that helps victims of cyber
2 harassment obtain justice. In our inaugural year,
3 the clinic has worked to raise awareness
4 about the prevalent and the threat of cyber
5 harassment and to provide direct services to
6 victims of nonconsensual pornography, cyber
7 bullying and other forms of long... of online
8 harassment through legal advocacy and policy work.
9 Our goal is to empower victims of cyber harassment
10 to raise awareness about the impact and the risks
11 of cyber harassment and related forms of violence
12 such as nonconsensual pornography. We also aim to
13 use the law as an instrument for justice for
14 victims. So, here's why this is important,
15 technological advances has facilitated the ease and
16 speed at which we consume and, and disseminate
17 information. People today rely on technology to
18 facilitate even the most intimate of relationships.
19 Unfortunately, even as Andrew mentioned earlier
20 even the most beneficial of advancements can be
21 used in ways that can harm individuals. In fact, a
22 recent study from the Cyber Civil Rights Initiative
23 had shown that one in four survey respondents were
24 victims of nonconsensual pornography. Further a
25

1
2 survey by Kochs Communications showed that one in
3 five teens between the ages of 13 and 18 admit to
4 sending sexually explicit images through text
5 message or social media. Due to these new trends
6 the bill before us is an important step in
7 providing victims with an appropriate avenue for a
8 legal recourse and specifically for victims of
9 cyber harassment this is important because based on
10 our experience at the clinic we believe that a
11 carefully drafted law that criminalizes this
12 behavior... this nonconsensual disclosure of these
13 images can be valuable to victims and to send a...
14 and send a strong message of deterrence. Though
15 victims of nonconsensual pornography do span the
16 gender spectrum the consequences that stem from
17 publicizing intimate images overwhelmingly and
18 negatively impact women and girls, the LGBTQ plus
19 community and other marginalized groups. We view
20 the fight against nonconsensual pornography as...
21 pornography as an issue that affects those groups
22 alone and at their various intersections.
23 Ultimately it, it is also an issue for our leaders
24 to address through meaningful legislation. We
25 believe that victims of nonconsensual pornography

1 should be able to pursue both criminal and civil
2 actions against their perpetrators and this law...
3 and the... and the law as it exists in its current
4 capacity does not currently provide victims with
5 adequate remedies. The bill before the council
6 today which imposes criminal liability on those who
7 would disseminate this... these images provides an
8 early pathway for victims that seek redress through
9 the courts. Through our experiences with clients
10 we've realized that the existing laws only
11 partially address this harm and can offer only
12 imprecise and imperfect remedies. Additionally, we
13 also recognize that the imperfections within the
14 criminal justice system such as fears of reporting,
15 lack of enforcement and the very real concern about
16 the negative impact to immigrant and minority
17 groups and that can prevent victims from coming
18 forward in the first place. We are mindful that in
19 2017 there are victims who believe that reporting
20 may do more harm to them than good. Over the course
21 of our inaugural year the Cyber Harassment Clinic
22 has provided services to victims as diverse as New
23 York City, to members of the LGBTQ plus community,
24 to young adults, to parents seeking to protect
25

1
2 their children, victims of domestic violence,
3 professionals, young students, people of color,
4 even artists. In one case our clinic worked with a
5 young woman whose partner in the course of their
6 relationship took numerous intimate photos of her
7 without her knowledge or consent. The intimate
8 moments they shared were secretly recorded,
9 collected and stored without her permission.

10 COUNCIL MEMBER LAN: COUNCIL MEMBER AN:

11 Sorry, if I may interject, if we could get to your,
12 your recommendations on the next page... [cross-talk]

13 CATHERINE BALL: Sure... [cross-talk]

14 COUNCIL MEMBER LAN: COUNCIL MEMBER AN:

15 I'd love to hear that and then I have a bunch of
16 questions for you, I think that'd be... that'd be
17 best.

18 CATHERINE BALL: Of course. So, in our
19 analysis of this statute we look towards several of
20 the other state statutes that have passed similar
21 laws and we have four key suggestions. First, we
22 ask that, that this statute offer adequate
23 protection to individuals under the age of 18. Our
24 clinic supports the notion that people should be
25 able to report victimization regardless of their

1
2 age. In under existing New York State laws victims
3 would not be able to come forward without
4 subjecting themselves to potential prosecution. We
5 want a law that addresses nonconsensual pornography
6 to fit within the frame... within the larger
7 statutory framework of the state to prevent... to
8 protect children and victims. Further we ask that
9 this... that there be a statutory affirmative defense
10 for family members sharing baby photos. Some... I
11 think my time... thank you. Some states such as
12 Washington have thoughtfully allowed for provisions
13 that allow parents to share photos of their
14 children with, with the... with the understanding
15 that there's no intent to harm the child. And third
16 we ask that the language throughout this bill
17 reflect a full understanding of the complexities of
18 what victim's experience when their images are
19 disclosed without their consent and often this
20 discloser and dissemination go beyond peer to peer
21 sharing and can occur through larger channels which
22 need to be accounted for. Such behavior amplifies
23 the harm to the victim exponentially and the
24 normalization of this harmful behavior is
25 detrimental to the community as a whole. So, we

1
2 hope that with thoughtful amendments to the bill
3 will be... will more accurately address the potential
4 harms to victims face every time they turn on their
5 computer, check their phone or seek to connect to
6 social media. We believe that the harm is real and
7 that the dangers are ongoing and we hope that the
8 feedback and suggestions have been helpful and will
9 be helpful and we also again want to thank you for
10 your time and for the opportunity to speak here
11 today.

12 CHAIRPERSON GIBSON: Thank you very
13 much, thank you. Next.

14 LINDSEY WALLACE: Good morning members
15 of the Committee on Public Safety. My name is
16 Lindsey Wallace and I'm an Attorney with Sanctuary
17 for Families. Sanctuary for Families is the largest
18 organization in New York exclusively serving
19 victims of gender based violence with a vast
20 majority of our clients located within the five
21 boroughs. I want to again thank Council Member's
22 Lancman and Garodnick for their strong leadership
23 in fighting these heinous acts and for Chair Gibson
24 for providing us the opportunity to share our
25 testimony today on how nondisclosure... on

1 nonconsensual disclosure of intimate images
2 terrorizes our clients. Through my work, I've seen
3 the lives of countless domestic violence victims
4 destroyed when abusers disclose or threaten to
5 disclose their intimate images. Our clients
6 affected by these acts also range from teenagers to
7 those in their 60's, those of elementary school
8 education to those of graduate degrees and
9 professional careers and span the spectrum of race,
10 ethnicity, sexual orientation and gender identity,
11 nationality, immigration status, and more. The
12 unifying factor in their stories however remains
13 the fear, shame and the horror they suffered as a
14 result of the dissemination of their most private
15 intimate images and I'd like to share just a few of
16 their stories with you. I know that these
17 narratives underscore some of the proposed changes
18 that my colleague will outline in just a few
19 moments. All victim names and identifying
20 information have been changed for their privacy and
21 protection. Thirty-year old Amanda's physically
22 abusive husband threatened her that if she ever
23 left him, he would send damaging photos of her, of
24 naked photos, to her co-workers, family and friends
25

1
2 and if she ever filed for custody or divorce she
3 would lose custody because the judge would see her
4 as an unfit mother due to these photographs. After
5 summoning the courage to flee her abuser, Amanda's
6 abuser posted several naked images of her across
7 social media, some taken without her knowledge
8 while she slept. She now lives in a terrified,
9 vulnerable state, she worries that future employers
10 or her own children may see these images and we
11 want the council to know, quote "I hope that issues
12 like these are taken more seriously because it
13 leaves us feeling defeated." Twenty-year old
14 Laura's, Laura's ex-boyfriend used physical
15 violence and threats to force her to take naked
16 videos of herself. He then posted these videos to
17 social media and they spread rapidly. The abuser
18 said it was not his intention to cause harm to
19 Laura but that he needed to teach her a lesson
20 about being promiscuous and dressing provocatively.
21 When her naked video's when viral, spreading
22 locally and even internationally Laura had to flee
23 New York and start a whole new life in another
24 state. To this day, Laura is recognized from these
25 videos and the humiliation follows her wherever she

1 goes. Despite prosecutor's interest in charging
2 Laura's abuser for posting these videos, due to the
3 lack of a criminal law in New York on a state and
4 local level, the abuser was only prosecuted for the
5 abuse that took place when he forced... forced her to
6 film the video and not for the truly damaging and
7 life ruining acts of disseminating these explicit
8 videos. Another one of our... last client, 60-year
9 old Betty broke up with her abusive ex-boyfriend
10 and her abuser located an intimate photo she had
11 once shared with him and sent her the image
12 hundreds of times including 111 texts on one, one
13 day. He then sent this photo to men who attempted
14 to contact her online. She... he began threatening
15 her at work and at home, forcing her to leave her
16 well paid position as a professional nurse out of
17 fear her abuser would continue to distribute this
18 intimate photograph to her co-workers. When Betty
19 sought help from the police, she was told by
20 domestic violence officer that it was essentially
21 her fault because she should not have sent her
22 abuser her intimate photograph in the first place.
23 Betty remains terrified of her abuser and his... and
24
25

1
2 his threats and I'll turn it over to my colleague
3 Shira.

4 SHIRA KAUFMAN: Thank you. Well as you
5 have heard at length and I think understand cyber
6 sexual abuse wreaks havoc on victims of domestic
7 violence. I am Shira Kaufman also an Attorney at
8 Sanctuary for Families and I work also at the
9 Manhattan Family Justice Center run by the New York
10 city Mayor's Office to combat domestic violence. I
11 also want to first and foremost praise Council
12 Member's Lancman and Garodnick for your tremendous
13 leadership on this issue as well as the bills co-
14 sponsor, thank you to the Committee on Public
15 Safety and the city council for holding this
16 community dialogue. I also want to particularly
17 thank Committee Chair Vanessa Gibson for your
18 incredible support over the years of Sanctuary for
19 Families. Well Sanctuary for Families absolutely
20 agrees that New York City urgently needs a criminal
21 law banning cyber sexual abuse however in order to
22 properly address the various ways that domestic
23 violence victims are harmed that my colleague has
24 outlined some of them we urge the council to adopt
25 a few critical changes to the legislation some of

1
2 which are similar to what others on the panel have
3 mentioned. First incorporating a civil cause of
4 action for damages and injunctive relief. A great
5 model can be found in the city's administrative law
6 known as the Actions by Victims of Gender Motivated
7 Violence codified at sections 8901 through 8907,
8 victims should have recourse even if the prosecutor
9 does not take their case. Second prohibiting also
10 the threat to disseminate images. Abusers often use
11 the threat of dissemination in order to control
12 their victims and victims because the, the, the
13 dissemination is so damaging victims are often
14 willing to do almost anything to avoid the harm
15 that's caused by publication including staying in
16 abusive relationships, not filing for custody,
17 engaging in sex trafficking and the like. So, the
18 law must be able to actually prevent the
19 dissemination before it happens prosecutors must be
20 able to step in at the moment of a threat because
21 once the image is out there no amount of jail time
22 or monetary damages is going to undo that damage,
23 we must include threats of dissemination in this
24 criminal law. Third removing the requirement that
25 the victim be identifiable in the image. Abusers

1 should not have free reign because they blurred out
2 their victim's face or because they only posted it
3 to websites where nobody was able to identify the
4 victim or something to that effect, that should not
5 be a carve out. Fourth including also faked and
6 spoofed sexual images. Dissemination of spoofed
7 images have caused victims and clients of ours to
8 be disowned by their families, lose jobs, need
9 asylum claims because they cannot return to their
10 very religious home countries and even to attempt
11 suicide. You can't exactly go to your boss or your
12 family members and prove that that's not your naked
13 image, there's really no recourse even with a
14 spoofed image and this abusive behavior is just as
15 harmful to victims. And lastly removing the
16 requirement of the intent to cause harm. The
17 correct intent standard for the criminal law should
18 be the intent to do the act, knowingly
19 disseminating should be the language not a specific
20 motive of causing harm and the problem is that such
21 an intent and specific motive will be impossible to
22 prove especially beyond a reasonable doubt in many,
23 many cases and including cases for victims of
24 domestic violence. It'll be too easy for
25

1
2 perpetrators and abusers to both create a record in
3 advance online and then also claim that they were
4 only motivated by something else as, as Miss
5 Goldberg mentioned like profit by selling the image
6 to a revenge porn website or they were motivated by
7 impressing their friends or they just wanted to
8 join the Marine Facebook group or the Penn State
9 fraternity Facebook group, that it just turns them
10 on, that they thought that she would be flattered
11 that so many men liked her naked image, etcetera
12 and then suddenly they've become immunized from
13 liability. The rights of victims over their privacy
14 and sexual autonomy cannot turn on the prosecutor
15 proving what is in the mind of the abuser. And
16 additionally, the harm here is inherent in the act,
17 it's not in the mindset, it's in the act. An intent
18 to cause harm is not required for many inherently
19 harmful crimes including robbery, sexual abuse,
20 strangulation, drunk driving or various criminal
21 privacy protections such as HIPPA, you do not have
22 to have an intent to cause harm you only have to
23 knowingly disclose the private information. Now we
24 understand that there are concerns with the law
25 being overly broad and bringing in innocent people

1
2 or violating the first amendment but we believe
3 that such concerns are better addressed with proper
4 narrow tailoring to those concerns such as the
5 public interest exception in the present draft
6 bill, restricting liability to instances where the
7 victim has a reasonable expectation of privacy and
8 we agree it should not ban culpability altogether
9 for minors because if the perpetrator is a minor or
10 if the victim is a minor but, but differentiations
11 for minors. Several other state laws on this issue
12 do not contain the intent to harm and we urge New
13 York to follow their lead, thank you.

14 CHAIRPERSON GIBSON: Thank you very
15 much everyone, I appreciate your presence, your
16 guidance and certainly a lot of the suggestions you
17 made on strengthening the bill and all of the work
18 you do obviously with the impact to community and
19 allowing victims to rebuild their lives. I want to
20 turn to our, our prime sponsor who has several
21 questions, Council Member Lancman?

22 COUNCIL MEMBER LAN: COUNCIL MEMBER AN:
23 Yes, thank you very much. Thank you all for your
24 testimony, very valuable and very interesting stuff
25

1
2 and from New York Law School, what's, what's the
3 name of the clinic?

4 CARRIE GOLDBERG: We're the cyber... the
5 Cyber Harassment Clinic part of the institute for
6 cyber safety at New York Law School.

7 COUNCIL MEMBER LAN: COUNCIL MEMBER AN:

8 That's, that's terrific. My wife went to New York
9 Law School, we... she graduated in 1994, I graduated
10 at a different school in '95 and I'm sure that
11 neither of us had the opportunity of participating
12 in, in a cyber anything clinic that's just because
13 we're old. Let's go through some of these really,
14 really important issues because we're at the point
15 where I think there's broad agreement there needs
16 to be a bill, we need to create this criminal
17 sanction and now we're, we're in the weeds to get,
18 get to the finish line. So, let's go through the
19 concerns that were raised in, in the order that,
20 that they were raised. Can, can, can you and
21 whoever else are concerned about, I think it was...
22 it was you, child pornography and minors, explain
23 that briefly... [cross-talk]

24 ANDREW STA. ANA: Okay... [cross-talk]

COUNCIL MEMBER LAN: COUNCIL MEMBER AN:

...but to the point and then I'd love to hear from the other witnesses who thought it would be a mistake to, to create some kind of carve out, I really want to understand that, that... let's do that first, you and then you... [cross-talk]

ANDREW STA. ANA: Sure. Okay, great.

So, I tell you when we worked with young people who are in abusive relationships and through the course of those relationships they'll, they'll share images, right and for the young people that we've encountered there's a risk for them to report, right so it's in the course... [cross-talk]

COUNCIL MEMBER LAN: COUNCIL MEMBER AN:

What, what... so two young people sharing images of each... [cross-talk]

ANDREW STA. ANA: ...right... [cross-talk]

COUNCIL MEMBER LAN: COUNCIL MEMBER AN:

...other one to the other are, are they under state or federal law engaging child pornography by doing that?

ANDREW STA. ANA: Technically yes, there's... the, the... I don't... I have them with me here but there are... the child pornography laws

1
2 again are important and there for a reason but they
3 were designed for, you know sort of the classic
4 understanding of who a child pornographer was and
5 not for young people who are exchanging, you know
6 highly risky and in some cases very inappropriate..

7 [cross-talk]

8 COUNCIL MEMBER LAN COUNCIL MEMBER AN:

9 So, so for the child pornography laws and I, I
10 appreciate the, the primer on this if it.. there's
11 no requirement of the person taking the video being
12 above a certain age and the.. it's two 13 year olds
13 sending sexts, that's a term, sexts?

14 ANDREW STA. ANA: Sure.

15 COUNCIL MEMBER LAN COUNCIL MEMBER AN:

16 They're committing child pornography, everybody
17 agrees that that's the case, no disagreement? Okay,
18 very interesting.

19 ANDREW STA. ANA: Yeah and so.. again
20 these laws are on the books for a very good reason..

21 [cross-talk]

22 COUNCIL MEMBER LAN COUNCIL MEMBER AN:

23 Got it.. [cross-talk]

24 ANDREW STA. ANA: ...they weren't
25 designed for the 21st century.. [cross-talk]

1
2 COUNCIL MEMBER LAN: COUNCIL MEMBER AN: So
3 the concern is... [cross-talk]

4 CARRIE GOLDBERG: The concern is then
5 that for two young people engaging in an intimate
6 relationship that happens to include the taking and
7 sending of photos consensually to one another...
8 [cross-talk]

9 COUNCIL MEMBER LAN: COUNCIL MEMBER AN:
10 Uh-huh... [cross-talk]

11 CARRIE GOLDBERG: ...should those photos
12 get out in a nonconsensual manner the person who
13 reports it would then be guilty of, of creating,
14 possessing and disseminating child pornography...
15 [cross-talk]

16 COUNCIL MEMBER LAN: COUNCIL MEMBER AN:
17 ...got it... [cross-talk]

18 CARRIE GOLDBERG: ...even if they are the
19 victim and even... [cross-talk]

20 COUNCIL MEMBER LAN: COUNCIL MEMBER AN:
21 ...so, so do, do the other witnesses do you see it
22 that way and if so why not create some kind of
23 exception if, if that's even possible for minors in
24 that situation?

25

1
2 SHIRA KAUFMAN: We agree, we see it
3 that way, the problem is the child pornography laws
4 are the ones that have to be changed. So, you can
5 certainly... we would agree with including a
6 provision that, you know reporting for law
7 enforcement purposes or reporting of a crime should
8 be an exception obviously because it might not be
9 the victim that reports, it might go viral at the
10 school and somebody else shows the image, the
11 teacher... if the teacher looks at the image they are
12 guilty of child pornography, if it's on your phone
13 you're guilty of child pornography. So... but those
14 are laws at the state level that the carve out's
15 actually have to be created there. In the meantime,
16 this does not create new liability under the child
17 pornography laws but we need a redress for victims
18 so we would agree with a carve out for any... which I
19 believe is in the present bill lawful purpose... you
20 know reporting to law enforcement... [cross-talk]

21 COUNCIL MEMBER LAN
22 Uh-huh... [cross-talk]

23 SHIRA KAUFMAN: ...we would advocate
24 separately for a proper carve outs under the child
25 pornography laws so that youth are not culpable but

1 I don't believe the city bill could achieve that...

2 [cross-talk]

3 COUNCIL MEMBER LAN
4 COUNCIL MEMBER AN:

5 So... you know I'm looking at the model bill that the
6 Queens District Attorney's office gave us which
7 says, this section shall not apply to disclosures
8 made by law enforcement personnel blah, blah, blah...
9 or in the course of reporting unlawful activity.

10 That would just protect the person from being
11 guilty of this revenge porn section, it wouldn't
12 protect them from exposure to the state's
13 underlying child pornography law.

14 CARRIE GOLDBERG: If, if I can
15 interject... [cross-talk]

16 COUNCIL MEMBER LAN
17 COUNCIL MEMBER AN:

18 Yes... [cross-talk]

19 CARRIE GOLDBERG: So, I, I believe that
20 exception relates to when the, the circulation or
21 the, the transfer happens during the course of
22 reporting it but not if the victim herself has...

23 [cross-talk]

24 COUNCIL MEMBER LAN
25 COUNCIL MEMBER AN:

26 Right... [cross-talk]

1
2 CARRIE GOLDBERG: ...created and
3 distributed the image and then becomes a victim...
4 [cross-talk]

5 COUNCIL MEMBER LAN: COUNCIL MEMBER AN:
6 How, how... [cross-talk]

7 CARRIE GOLDBERG: ...so basically...
8 [cross-talk]

9 COUNCIL MEMBER LAN: COUNCIL MEMBER AN:
10 ...did you deal with this... [cross-talk]

11 CARRIE GOLDBERG: ...all we really need
12 is just immunity for the victim.

13 COUNCIL MEMBER LAN: COUNCIL MEMBER AN:
14 How did you deal with it in the state bill that you
15 wrote or you didn't because you don't think...
16 [cross-talk]

17 CARRIE GOLDBERG: ...we... [cross-talk]

18 COUNCIL MEMBER LAN: COUNCIL MEMBER AN:
19 ...there should be an exception?

20 CARRIE GOLDBERG: Well no, I... there
21 absolutely needs to be an exception. Every time I
22 have a young victim I have to contact the, the law
23 enforcement before I go there and basically get an
24 agreement that she should be immunized before we
25

1
2 report it and that, that issue just needs to be
3 spelled out in the law.

4 COUNCIL MEMBER LAN COUNCIL MEMBER AN:

5 Well what... [cross-talk]

6 CARRIE GOLDBERG: ...so that... [cross-

7 talk]

8 COUNCIL MEMBER LAN COUNCIL MEMBER AN:

9 ...what would you spell out in the law though, we're,
10 we're writing the law now so... [cross-talk]

11 CARRIE GOLDBERG: Okay, well... [cross-

12 talk]

13 COUNCIL MEMBER LAN COUNCIL MEMBER AN:

14 ...what would you spell out in the law?

15 CARRIE GOLDBERG: Immunity for victims.

16 ANDREW STA. ANA: Alright, if, if I

17 just may add what, what our experience has been
18 with this is that when we... you know approaching
19 this case, corporation council with this it becomes
20 essentially like a zero sum game, right so it often
21 is a victim is reporting these images and to
22 prosecute the person who distributed the images
23 means that... you know and I don't necessarily agree
24 with this argument either but they say that well
25 then we can also prosecute your client for

1
2 possessing, distributing or disseminating them. So
3 we don't want it to be a zero... [cross-talk]

4 COUNCIL MEMBER LAN: COUNCIL MEMBER AN: ...I
5 get it... I get it... [cross-talk]

6 ANDREW STA. ANA: ...sum game... [cross-
7 talk]

8 COUNCIL MEMBER LAN: COUNCIL MEMBER AN:
9 ...Let me ask you this, are you aware of any instance
10 in the five boroughs where charges have been
11 brought against a minor in, in, in circumstances
12 where they were sexting each other, sending
13 pictures to each other in the course of their, at
14 the time consensual minor relationship like has
15 that ever happened?

16 SHIRA KAUFMAN: You know it, it does... I
17 believe it has happened, I don't know about the
18 five boroughs... [cross-talk]

19 CARRIE GOLDBERG: It, it happened in
20 North Carolina where a law maker just wanted to
21 make an example of everybody, it happened in New
22 Jersey and we can't rely on the discretion of, of
23 a, a police officer or a... [cross-talk]

24 COUNCIL MEMBER LAN: COUNCIL MEMBER AN:
25 I'm, I'm not sure... [cross-talk]

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CARRIE GOLDBERG: ...a prosecutor...

[cross-talk]

COUNCIL MEMBER LAN
COUNCIL MEMBER AN:

I'm not sure that New York City... you know that's something that we have to talk... we... you switched. So, I'm not sure that New York City can build into its revenge porn law immunization from prosecution under the state law...

CARRIE GOLDBERG: That's correct.

COUNCIL MEMBER LAN
COUNCIL MEMBER AN:

So... [cross-talk]

SHIRA KAUFMAN: So... but the... but I mean

that's not a... [cross-talk]

COUNCIL MEMBER LAN
COUNCIL MEMBER AN:

...We just pack up and like... [cross-talk]

SHIRA KAUFMAN: ...no, I mean this is not

a reason to block the bill because the, the liability already is there, this, this city bill does not increase liability for minors. Once that image is on somebody's phone they are already liable under the child pornography laws so this bill does nothing more, what it does is it adds liability for terrible perpetrators of nonconsensual disseminations what we need is to

1
2 modify the child pornography laws at the state
3 level to protect this issue more generally because
4 it applies outside of this context and then
5 education for practitioners and people coming
6 forward etcetera so that there is that... [cross-
7 talk]

8 COUNCIL MEMBER LAN COUNCIL MEMBER AN:

9 So, I get it so it seems to me that this bill
10 provides a lot of added protection and a lot of
11 enforcement capabilities that doesn't currently
12 exist now, it doesn't in and of itself expose a
13 person to, to a liability but for that very small
14 segment of the population but nonetheless a segment
15 of the population where they're reporting could
16 expose them to a liability they've... going to have
17 to make that judgement call and they're going to
18 have to hopefully have good counsel that can
19 communicate with the DA and... got it, yes.

20 ANDREW STA. ANA: We... it... we believe
21 its... [cross-talk]

22 COUNCIL MEMBER LAN COUNCIL MEMBER AN: I
23 don't know what else we could put into the bill.

24 ANDREW STA. ANA: Again I... we're
25 supportive of this bill but we believe it sends

1
2 mixed messages to young people. We've testified
3 that... you know that young people as early adopters
4 of technology are the ones who are engaging this
5 behavior and again we... because we also come from an
6 intersectional analysis around this we also believe
7 that unfortunately the law as they are currently
8 structured will, you know for a lack... will wrap up
9 survivors of that, we believe that young people
10 will have this bill... will have the law used against
11 them potentially, we want that not to be the case
12 since we want it to be crafted in a way that
13 adequately addresses the... like their desire to seek
14 a remedy under the law.

15 SHIRA KAUFMAN: And one way that could
16 be achieved potentially is to put in an obligation
17 upon law... New York City law enforcement and
18 prosecutors that if somebody comes forward and is
19 in the process of reporting that they have a duty
20 under the city law to inform that person of the
21 risks and discuss immunity with them, that could be
22 a great protection so that if somebody comes
23 forward and says I need to report, you know
24 nonconsensual images before they actually show the

1
2 image and get anywhere with that that the... [cross-
3 talk]

4 COUNCIL MEMBER LAN COUNCIL MEMBER AN: Oh
5 I... I'm... [cross-talk]

6 SHIRA KAUFMAN: ...law person... [cross-
7 talk]

8 COUNCIL MEMBER LAN COUNCIL MEMBER AN:
9 ...I'm, I'm... [cross-talk]

10 SHIRA KAUFMAN: ...have a duty to
11 discuss... [cross-talk]

12 COUNCIL MEMBER LAN COUNCIL MEMBER AN:
13 ...I'm very sensitive to what you're saying but it's
14 often the case often enough that people who are
15 reporting crimes, misconduct, etcetera are
16 themselves and I, I hate to use this term in the
17 context of minors, are not coming to the police or,
18 or the prosecutors with perfectly clean hands, it's
19 the kind of thing that everybody has to... [cross-
20 talk]

21 SHIRA KAUFMAN: Correct and it would be
22 a... it would be specific immunity for... [cross-talk]

23 COUNCIL MEMBER LAN COUNCIL MEMBER AN:
24 ...yeah... [cross-talk]

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2 SHIRA KAUFMAN: ...if they are reporting
3 what it is they claim they're reporting, if they're
4 actually turn out... you, you know you could draft
5 that for of immunity very specifically... [cross-
6 talk]

7 COUNCIL MEMBER LAN
8 ...okay... [cross-talk]

9 SHIRA KAUFMAN: ...so that if they're not
10 correctly reporting the thing they wouldn't be
11 immune but I also just want to flag, I mean this is
12 a corner case, I understand it has happened but
13 some estimates are that over 90 percent of youth
14 today have exchanged or seen another youth, you
15 know... (cross-talk]

16 COUNCIL MEMBER LAN
17 Right... [cross-talk]

18 SHIRA KAUFMAN: ...private image it's not
19 exactly like all of these kids are sitting in
20 prison, okay this is a very corner case at the same
21 time you have... [cross-talk]

22 COUNCIL MEMBER LAN
23 what case?

24 SHIRA KAUFMAN: Corner case, it's very
25 rare my point is... [cross-talk]

2 COUNCIL MEMBER LAN COUNCIL MEMBER AN: A
3 corner?

4 SHIRA KAUFMAN: Yeah, it's just a...
5 [cross-talk]

6 COUNCIL MEMBER LAN COUNCIL MEMBER AN: I
7 never heard that... [cross-talk]

8 SHIRA KAUFMAN: ...phrase, yeah... [cross-
9 talk]

10 COUNCIL MEMBER LAN COUNCIL MEMBER AN: I
11 never heard that... [cross-talk]

12 SHIRA KAUFMAN: ...way in the corner, you
13 know what... but... [cross-talk]

14 COUNCIL MEMBER LAN COUNCIL MEMBER AN:
15 ...I'm going to use that... [cross-talk]

16 SHIRA KAUFMAN: ...very high rates of
17 youth in New York City are seeing their classmates
18 being victims of nonconsensual disseminations of
19 sexual images and nothing happening that is sending
20 a message to 100 percent of our youth that its...
21 that there's no such thing as sexual privacy,
22 there's not... that sexual consent doesn't matter and
23 that is what needs to be deterred right now. If a
24 prosecutor goes rogue you're talking about one in a
25 million instances that exist right now. So it'd be

1
2 great to draft around that but it should absolutely
3 not stop... [cross-talk]

4 COUNCIL MEMBER LAN
COUNCIL MEMBER AN:

5 Yeah... [cross-talk]

6 SHIRA KAUFMAN: ...this legislation from
7 going forward.

8 COUNCIL MEMBER LAN
COUNCIL MEMBER AN:

9 Got it. Let me ask the next topic that was raised,
10 the need to put in the statute a civil private,
11 private right of action... [cross-talk]

12 SHIRA KAUFMAN: Uh-huh... [cross-talk]

13 COUNCIL MEMBER LAN
COUNCIL MEMBER AN:

14 ...Miss Goldberg aren't you litigating and, and
15 bringing cases against people, do we... do we need to
16 put something in the statute, isn't that exist in,
17 in... it... aren't there avenues existing in tort law?

18 CARRIE GOLDBERG: Our New York State
19 privacy remedies are garbage, we... we're probably
20 one of the... I mean we've got one... I mean they all
21 require some sort of commercial exposure and
22 commercial gain for the... for the defendant. So, the
23 only thing we can ever use is intentional
24 infliction of emotional distress and it's just... you
25 know one of the benefits in having a, a specific

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2 civil law is that you can have other things within
3 it which... like in Assembly Member Edward, we have
4 injunctive relief in it that stops the, the
5 offender from continuing to, to distribute the
6 bill, we have relief that lets the, the plaintiff
7 file as a Jane Doe because these are... this is a
8 privacy issue and her privacy is at stake. There
9 is... there is discovery measures... [cross-talk]

10 COUNCIL MEMBER LAN COUNCIL MEMBER AN:

11 Would... and we'll look at this that's, that's our
12 job but I'm just going to ask you since you all are
13 experienced in this issue and many if not all of
14 you are lawyers yourselves, inspiring lawyers, I
15 recommend Barbry worked for me... that... would putting
16 a private right of action in our city bill be
17 preempted by the states existing privacy laws that
18 you're telling us now are interfering with just
19 bringing a tort claim?

20 CARRIE GOLDBERG: I don't... our state
21 laws do not interfere with bringing a tort claim,
22 there... it's just not enough.

23 COUNCIL MEMBER LAN COUNCIL MEMBER AN:

24 Okay... [cross-talk]

25

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2 SHIRA KAUFMAN: ...there, there basically
3 is no protection, I mean lawyers like Carrie have
4 to become so creative in generating legal theories
5 that... and, and finding plaintiff's that even fit
6 into the existing protections. The majority of
7 victims don't fit into the existing New York civil
8 protections at the state level and it's very
9 difficult, you know we work down the hall from the
10 prosecutor's office it's hard to get the
11 prosecutors to bring a case, you need probable... you
12 need beyond a reasonable doubt standard, the civil
13 case would have a... probable... sorry, preponderant
14 standard and, and like Carrie mentioned Jane Doe
15 protections, it could be also in a, a longer
16 statute of limitations. The bill that I mentioned
17 that's the city administrative law bill has a
18 seven-year statute of limitations, intentional
19 torts in New York are one year which means that if
20 you discover five years into the postings that
21 these images of you have been up in a private
22 fraternity website somewhere for five years you
23 can't prosecute anymore.

24

25

COUNCIL MEMBER LAN: COUNCIL MEMBER AN:

Right. Lastly, just explain to me the spoofed images issue?

SHIRA KAUFMAN: Yes... [cross-talk]

COUNCIL MEMBER LAN: COUNCIL MEMBER AN:

...what is... starting with what is a spoofed image?

SHIRA KAUFMAN: Okay, so it basically is where somebody uses photoshop to put our clients face on some naked image that they got on the web or they could photoshop the... an actual photo of our client and photoshop the bikini top off or something like that. We have a client who's a New York City resident and her husband spoofed images, he just put her face onto some images on the web and sent them back to her small village that she comes from in another country, her father legally disowned her, she's totally cut off from her family and she attempted suicide. So there really is no reason to do this type of spoofed images that you're passing off as real and its absolutely just as abusive. If somebody sends a naked spoofed image to your boss, how do you prove its not you... [cross-talk]

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2 COUNCIL MEMBER LAN COUNCIL MEMBER AN:

3 Right, I get it... [cross-talk]

4 SHIRA KAUFMAN: ...you... [cross-talk]

5 COUNCIL MEMBER LAN COUNCIL MEMBER AN:

6 Are there any of the 35 states and the District of
7 Columbia that have these criminal statutes, do any
8 of them include spoofed images?

9 SHIRA KAUFMAN: I don't think it
10 includes those words, I'd have to look back, I
11 don't know but I'd have to look.

12 COUNCIL MEMBER LAN COUNCIL MEMBER AN:

13 Right, okay. Okay, thank you very. I just... I just
14 do want to make sure you're aware all of the
15 district attorney's that have inclined on this and,
16 and they're supportive have really insisted that
17 there be an intent requirement. I've heard... I've
18 heard your views otherwise and I see your testimony
19 but I do want to let you know that that's what
20 we're hearing from all of them including the state
21 district attorneys association.

22 CARRIE GOLDBERG: Do they say why?

23 COUNCIL MEMBER LAN COUNCIL MEMBER AN:

24 I'd be happy to share with you their testimony
25 rather than to characterize it, I think... first of

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2 all I think they if nothing else got spooked by an
3 ACLU... [cross-talk]

4 CARRIE GOLDBERG: Yeah... [cross-talk]

5 COUNCIL MEMBER LAN: COUNCIL MEMBER AN:
6 ...lawsuit in Arizona, was it Arizona... [cross-talk]

7 CARRIE GOLDBERG: It was Arizona...
8 [cross-talk]

9 COUNCIL MEMBER LAN: COUNCIL MEMBER AN:
10 ...you can talk about it, yeah... [cross-talk]

11 CARRIE GOLDBERG: ...but, but there was
12 no ruling on that issue, there was... [cross-talk]

13 COUNCIL MEMBER LAN: COUNCIL MEMBER AN:
14 ...alright, there was a settlement... [cross-talk]

15 CARRIE GOLDBERG: there was... yeah, I
16 mean the, the, the Arizona state decided to just
17 withdraw their laws, you know I think the real
18 concern with having this intent requirement is that
19 it makes the law unconstitutionally narrow because
20 you're excluding so many people, I mean sanctuary
21 and, and the clinic and Day One we all deal with
22 clients all day every day, we're telling you that
23 our clients are, are being victimized by this in
24 all sorts of different ways by people with all
25 sorts of different intentions. We're telling you as

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2 experts who deal with clients all day and so you're
3 not going to take our advice that, that everyone
4 should be included whose, whose being humiliated in
5 this way and instead say only this little
6 subsection of people who had this one type of
7 offender that we might not even be able to prove
8 what his intent was or her intent was?

9 SHIRA KAUFMAN: I agree, if I could
10 speak to the first amendment concerns of the ACLU..
11 [cross-talk]

12 COUNCIL MEMBER LAN
13 ...yes... [cross-talk]

14 SHIRA KAUFMAN: ...So, the standard to
15 pass first amendment scrutiny is, is strict
16 scrutiny, right, so you have to have a compelling
17 government interest which you clearly have and then
18 you have to have what's called narrow tailoring,
19 it's not just narrowness, it has... it can't just be
20 that you've somehow narrowed the liability so like
21 its everybody who posted on a Sunday that would be
22 unconstitutional because its arbitrary. The
23 narrowing has to be properly tailored to the
24 identified government harm, here where you have an
25 intent standard you're going to be under broad in a

1
2 major way, you're actually going to be excluding
3 some of the worst perpetrators for example people
4 who post secretively to third party websites, how
5 are you going to prove that they intended to harm
6 the victim who didn't even know about it, you're
7 going to be unconstitutionally narrow and you're... I
8 don't even think you're going to carve out some of
9 the cases that the ACLU raises as their concerns.
10 For example, they always point to what about a
11 woman's on a dating website and a stranger sends
12 her a picture of his genitals and she never asked
13 for it and she shows the picture to her roommate,
14 how do you protect her from criminal liability,
15 well an intent standard does not carve out because
16 if she texted it to her roommate and says oh my god
17 can you believe this guy, what a jerk and the
18 roommate writes back yeah what a jerk I would never
19 date him they have intent to harm his reputation so
20 you are unconstitutionally over broad, you're
21 unconstitutionally under broad and you're not
22 tailoring it to the harm you're trying to prevent.
23 What would be better for first amendment purposes
24 is to, you know take these narrow cases that ACLU
25 is worried about and, and draft around them so that

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2 you've actually tailored it. So, for example in the
3 cyber civil rights initiatives model law they
4 describe that there's only liability where the
5 victim has a reasonable expectation of privacy. So,
6 if there's a guy on the subway and he's exposing
7 himself and a website of female activist's posts
8 that to their website to shame him that is carved
9 out because he's in a public place and he doesn't
10 have the expectation of privacy. If a stranger
11 sends an, an image of themselves they don't have a
12 reasonable expectation of privacy and you could
13 even define within the statute what is a reasonable
14 expectation of privacy. That would narrowly tailor
15 and surpass a... an intelligent first amendment
16 scrutiny. The, the court has not ever passed on
17 what would be a first amendment tailoring to this
18 issue other than the many court decisions by the
19 Supreme Court and the night circuit etcetera that
20 find that clearly these are private images that are
21 very easy to legislate over because their... they
22 fall in the private realm and no public interest
23 realm.

24 COUNCIL MEMBER LAN COUNCIL MEMBER AN:

25 Got it... got it... [cross-talk]

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2 CATHERINE BALL: And just to... [cross-
3 talk]

4 COUNCIL MEMBER LAN
COUNCIL MEMBER AN:
5 Yes... [cross-talk]

6 CATHERINE BALL: ...further elaborate on
7 that point I'd have to look back at the statutory
8 language to be able to quote it but California
9 through bench warrant does have... a bench warrant
10 statute does have an intent requirement and that
11 intent requirement has been a burden in prosecuting
12 under that statute because it's been so difficult
13 to prove intent in these instances for instance
14 there was, I think it was sometime within the last
15 three years there was a huge leak of naked photos
16 of celebrities that came out and because that was
17 simply to, to prove that they could leak these
18 photos that wouldn't of fallen under that statute
19 and because of that the, the Department of Justice
20 in California has had to sort of continue going
21 through legalistic hurdles to fit these facts in...
22 the, the new facts into other crimes such as like
23 computer crimes instead of using the statute that
24 was drafted to protect revenge porn victims.

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2 SHIRA KAUFMAN: And I also want to
3 point out, sorry, there are several states that
4 don't have this intent requirement including
5 Illinois, Minnesota, North Dakota, Texas,
6 Washington, Wisconsin, and New Jersey which was the
7 first state to pass such a law in 2004, it has not
8 had any first amendment... [cross-talk]

9 COUNCIL MEMBER LANCOUNCIL MEMBERAN:
10 Have, have any... [cross-talk]

11 SHIRA KAUFMAN: ...problems... [cross-talk]

12 COUNCIL MEMBER LANCOUNCIL MEMBERAN:
13 ...of those been challenged and, and upheld, that'd
14 be very helpful.

15 CARRIE GOLDBERG: No, absolutely not,
16 none of them have. Furthermore... [cross-talk]

17 SHIRA KAUFMAN: Been challenged, you
18 mean... [cross-talk]

19 CARRIE GOLDBERG: ...been challenged...
20 [cross-talk]

21 SHIRA KAUFMAN: Yeah, they're all still
22 on the books, I don't know that there's even been
23 a, a valid first amendment challenge because this
24 imaginary scenario that the ACLU has cooked up is
25 just not happening.

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COUNCIL MEMBER LAN COUNCIL MEMBER AN:

Uh-huh... [cross-talk]

CARRIE GOLDBERG: Right and the

intimate privacy protection act which is the pending federal law which was drafted by our country's leading experts on first amendment and constitutional law it doesn't have an intent requirement, I mean Edwin Chemerinsky has said that there is no intent required now we recommending amendment knowingly distributing but... [cross-talk]

COUNCIL MEMBER LAN COUNCIL MEMBER AN:

Could you... I get it, could you do us a favor and get to Rachel Kagan my, my council just copies of the, the federal bill, i mean she could track it down but you'll save us a lot of time and the... she probably... she might even have it already, the cyber something model something...

CARRIE GOLDBERG: The cyber... [cross-talk]

COUNCIL MEMBER LAN COUNCIL MEMBER AN:

...cyber something model something... [cross-talk]

CARRIE GOLDBERG: ...Cyber Civil Rights

Initiative Model, I'm a board member I'll get it to you guys.

COUNCIL MEMBER LANCOUNCIL MEMBERAN:

Okay, get it to Rachel. Good that's all that I have very, very helpful testimony, thank you.

CARRIE GOLDBERG: Thank you.

CHAIRPERSON GIBSON: Thank you all for joining us and thank you for all of your helpful suggestions and moving forward certainly working with our sponsor. I forget who talked about it but I think that there has to be a massive and tailored education campaign that has to work together. I think what we often find sometimes is we have different agencies trying to achieve the same goal but we're not working together and so we're going to avoid that with this, we've going to make sure that we talk to each other and I will also look at Ed Braunstein's bill, I will form a colleague in Albany and, and look at that state bill. Do you know if there's a senate sponsor for his bill?

CARRIE GOLDBERG: There is like 30 sponsors...

SHIRA KAUFMAN: yeah... [cross-talk]

CHAIRPERSON GIBSON: ...Okay, okay good, alright. So, we'll look into that...

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2 SHIRA KAUFMAN: And Jane Fisher is
3 here.

4 CHAIRPERSON GIBSON: Okay, alright,
5 thank you so much. Thank you all for coming today,
6 thank you for your testimony... [cross-talk]

7 CATHERINE BALL: Thank you... [cross-
8 talk]

9 CHAIRPERSON GIBSON: ...and your
10 presence, thank you. Our next panel that we call
11 forward is Cynthia Couti Cook from Legal Aid
12 Society and Julie Ciccolini also from Legal Aid
13 Society.

14 JULIE CICCOLINI: Good afternoon.

15 CHAIRPERSON GIBSON: Good morning,
16 thank you for coming... [cross-talk]

17 JULIE CICCOLINI: Thank you for having
18 me... [cross-talk]

19 CHAIRPERSON GIBSON: You can begin.

20 JULIE CICCOLINI: So good morning Chair
21 Gibson, the council members. I'm here on behalf of
22 the Legal Aid Society. I'm Julie Ciccolini, I
23 currently am the Administrator of our Cop
24 Accountability Project Database and I work in our
25 special litigation unit, which is a specialized

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2 unit dedicated to addressing client problems with
3 the criminal justice system. We thank the committee
4 for the opportunity to provide testimony on Intro
5 927A and 119C. the Legal Aid Society supports the
6 amendments, the administrative code of the city of
7 New York and the New York City Charter. We believe
8 that the collection and evaluation of this
9 information is essential to the fairness and
10 integrity of policing reform in New York City.
11 While this bill is an important first step in
12 identifying patterns and trends of police
13 misconduct we would urge the city council to
14 collect additional information in order to
15 effectively help the city monitor problematic
16 patterns. First, we think the bill should be
17 expanded to include criminal court decisions like
18 finding some credibility against officers and
19 suppression of evidence due to unlawful officer
20 conduct. In the past year alone we have been
21 tracking this through our own cases and have found
22 72 officers who were found incredible or had
23 evidence suppressed as a result of constitutional
24 violations. We have listed a few examples of these
25 cases in our testimony. We also believe this

1 information should be shared with the city's
2 district attorneys who are exempt 50A, the city
3 should work with them to collect information on
4 decline prosecutions as you can glean patterns of
5 the lawful misconduct and abusive arrest patterns
6 through that as well. In addition to the details
7 from the civil actions that were mentioned in Intro
8 119C we also think there should be an additional
9 collection of data on issues that... for issue
10 specific reporting and other types of key words
11 like the type of force it alleged in civil actions.
12 Speaking to the challenges that the law department
13 mentioned we have been doing a heavy text analysis
14 of these lawsuits for the past two years, we
15 analyze every lawsuit filed against the New York
16 City police department every day in federal court
17 while it is time consuming we've been able to
18 manage it with a few hours of work when you do the
19 math it's about eight lawsuits a day and through
20 that you can get a view of the systemic abuse
21 patterns going on in the department. We also have
22 been able to set up technology that updates us on
23 when police officers are added or removed from
24 lawsuits so as the law department mentioned
25

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2 sometimes the officers named at the... in the first
3 compliant are not always the officers at the final
4 settlement but through technology you are able to
5 glean when officers are being added or taken off.
6 We also recommend that the NYPD be transparent in
7 this data analysis it's important that New York
8 City residents understand the conduct of officers
9 serving their community and how the NYPD is using
10 this information to identify trends and problematic
11 behaviors and then the steps they're taking to
12 remedy the identified problems to the extent that
13 the department can disclose this information we
14 also believe they should do so on a public facing
15 website and lastly in order to affectively be able
16 to identify and track each individual officer the
17 bill should specify that the officer needs to
18 identify their tax ID and their command as that's
19 the only unique identifier for each individual,
20 thank you.

21 CHAIRPERSON GIBSON: Thank you very
22 much, just a quick question did you say that you at
23 the Legal Aid Society you guys track the number of
24 lawsuits against police officers?

25 JULIE CICCOLINI: Yes, so... [cross-talk]

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CHAIRPERSON GIBSON: Okay... [cross-talk]

JULIE CICCOLINI: In federal court we're able to see the lawsuits filed against any officer in NYPD every single day and we have been tracking that, we analyze it through various different types of information, incident date information, where the stop was occurring, we write a summary of the lawsuit, any types of force that are used, where it be tagging and other kinds of key words for things of interest like if officers are making arrests in retaliation for a citizen recording them.

CHAIRPERSON GIBSON: Okay and while I know the NYPD didn't really fully talk about the early intervention monitoring system that they have in the risk management unit... [cross-talk]

JULIE CICCOLINI: Uh-huh... [cross-talk]

CHAIRPERSON GIBSON: ...the idea and the concept behind it I assume is something that legal aid thinks is a good thing in terms of identifying the trends and patterns, I feel like there are always factors and warning signs and red flags that emerge that we sometimes don't see and only when you see a high profile case that hits the public,

1
2 you know and, and we see all the information is it
3 made available that this officer had excessive
4 complaints, lawsuits, CCRB complaints and so these
5 are the things that we're trying to diffuse and
6 we're trying to prevent as well.

7 JULIE CICCOLINI: But... yeah and we
8 agree that it all should be collected and from all
9 the different sources just specifically with the
10 civil actions I think the bill only mentions
11 collecting kind of like metadata on it like when it
12 was filed and the officer's name, you're not going
13 to be able to identify what the misconduct is and
14 then... [cross-talk]

15 CHAIRPERSON GIBSON: Okay.. [cross-talk]

16 JULIE CICCOLINI: ...redirect for certain
17 training like if there's a specific team that keeps
18 having unlawful search allegations or warrantless
19 entries into homes that's something we have been
20 tracking and are able to do and we think the city
21 should be able to do it as well.

22 CHAIRPERSON GIBSON: Okay, great, thank
23 you very much, thank you for your testimony, we
24 appreciate the legal aid and all the work you do
25 and we look forward to working with you, thank you

1 so much for being here today, thanks. Okay. Okay,
2 that was our last panel and I also want to
3 acknowledge for the record Council Member Lancman
4 read the testimony provided by the Richmond County
5 District Attorney, Michael McMahon's office as well
6 as the Queens District Attorney, DA Richard Brown,
7 we thank them both for submitting testimony for the
8 record and once again thank you to my colleagues
9 for joining us today and to all the staff, thank
10 you to the Sergeant at Arms, thank you to the
11 Public Safety legislative team for all of their
12 work, this hearing of the Committee on Public
13 Safety is hereby adjourned.

14 [gavel]
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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date May 5, 2017