

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON IMMIGRATION JOINTLY WITH THE COMMITTEE ON  
CIVIL RIGHTS

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June 18, 2013  
Start: 10:12am  
Recess: 12:52pm

HELD AT: 250 Broadway  
Committee Rm, 14<sup>th</sup> Fl.

B E F O R E:

DANIEL DROMM AND DEBORAH ROSE  
Chairperson

COUNCIL MEMBERS:

Council Member Charles Barron  
Council Member Mathieu Eugene  
Council Member Ydanis A. Rodriguez  
Council Member Jimmy Van Bramer  
Council Member Andy King  
Council Member Margaret Chin  
Council Member Jessica S. Lappin  
Council Member Stephen Levin  
Council Member Julissa Ferreras

## A P P E A R A N C E S

COUNCIL MEMBERS:

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

Andrea Richie  
Co Coordinator  
Street Wise and Safe

Linley Edges  
Attorney  
Sex Workers Project

Treena Vitan  
Representative  
Street Wise and Safe

Michael Pollenberg  
Vice President Government Affairs  
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Kate Mogulescu  
Supervising Attorney  
Legal Aid Society, Criminal Defense Practice

Sharon Staple  
Executive Director  
New York City Anti Violence Project

Soshiata Ming  
Legislative Counsel  
New York Civil Liberties Union

Mitchell Moura  
Youth Leader and Researcher  
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John Corollo  
Member  
NYPD, LGBT Advisory Panel

Elizabeth Lovinger  
Policy Associate  
Gay Men's Health Crisis

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

Haley Gorenberg  
Deputy Legal Director  
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Biani Garcia  
Organizer  
LGBTQ Justice Project, Make the Road, New York

Karina Claudia  
Court Lead Organizer  
Make the Road

Lillian Rivera  
Director of Advocacy and Capacity Building  
Hetrick Martin Institute

Jennifer Pierre  
Health and Human Rights Division  
Human Rights Watch

Rashida Richardson  
Staff Attorney  
HIV Center for Law and Policy

Perla Rivas

Steve Ashkenazi

Odisha Ray  
Founder and Executive Director  
The Red Umbrella Project

Laura Saft  
Deputy Director  
Brooklyn Defender Services

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CHAIRPERSON ROSE: [off mic] This hearing is now called to order. Good morning. My name is Council Member Debbie Rose and I am the Chair of the Committee on Civil Rights and I'm pleased, I mean, really pleased to be joined today by my colleague Council Member Danny Dromm who is the Chair of the Committee on Immigration. And today we'll be holding our first hearing on proposed resolution number 710-A, a resolution calling on the New York State Legislature to pass and for the Governor to sign A2736 and S1379, which would prohibit possession of a condom from being used as evidence of prostitution and certain other offenses. I'd like to recognize my colleagues who have joined me on the dais today, including Council Member King, and I'm sure we'll be joined by, um, the other Committee Members. And I'd like to take this moment now to thank Julian, I'm sorry, Julene Beckford [phonetic] for her help preparing for this and Damian Butfick [phonetic] our Policy Analyst for helping with today's preparations for this hearing. New York City has long been a progressive leader in combating the spread of sexually transmitted

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diseases in the five boroughs. In 1971, ten years before the appearance of the HIV/AIDS epidemic the City began distributing free condoms in public.

The importance of safe sexual practices became ever more apparent in the 1980's when the HIV/AIDS epidemic began to take a devastating toll on our city's communities. Today, New York City even has its own brand of condoms and has been very

aggressive in distributing them. in 2010 alone the New York City Department of Health and Mental Hygiene has distributed more than 36 million condoms. Despite the importance of safe sex and the City's campaign, existing State law permits the possession of condoms to be used as evidence of prostitution and certain other offenses. As a result, sex workers and those that have been profiled as sex workers are less likely to carry condoms on their person for fear that possession of them would ultimately be used against them.

Given the public health threat that HIV/AIDS and other sexually transmitted diseases present we should be encouraging their use, not scaring people away from even carrying them. Last month Brooklyn District Attorney Charles Hines informed

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the New York City Police Department that his office would no longer accept condoms as evidence of prostitution or loitering for the purposes of prostitution. With the exception of sex trafficking cases, while other prosecutors in the City don't have formal policies on the exclusion of condoms for evidence. They are, in reality, rarely used as evidence. These are important steps but they are still no law preventing condoms from being used as evidence of prostitution. To combat this troubling loophole Assembly Member Barbara Clark [phonetic] and Senator Velmanette Montgomery introduced A2736, S1379, which would amend the New York State Civil Practice Law, Criminal Procedure Law and Executive Law to prohibit the possession of a condom from being received as evidence in any trial, hearing or proceeding as evidence of prostitution, patronizing a prostitute, promoting prostitution, permitting prostitution, maintaining a premises for prostitution, lewdness, or assignation or maintaining a bawdy house. A2736, S1379 will finally allow us to make our laws consistent without public health efforts. Proposed Reso 710-

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A, which we are hearing today, calls on the New York State Legislature to pass and for the Governor to sign into law A2736, S1379. I look forward to hearing from the groups assembled here today as we discuss this important resolution and with that I'll turn the microphone over to my co chair, Council Member Danny Dromm.

CHAIRPERSON DROMM: Well, thank you very much, Council Member Rose. It's good to be here and to see so many friends and advocates as well at the hearing today and I thank you all for coming in and I too am very pleased to be able to co chair this hearing with you and appreciate all that you have done fighting for civil rights in the City of New York in terms of chairing this Committee as well. So, it's indeed a pleasure to be here. I'd like to thank all of my colleagues who are here with me as well and for giving us the opportunity for Proposed Resolution Number 710 A to be heard and considered by the Committee.

Proposed resolution number 710-A calls for the New York State Legislature to pass and the Governor to sign A1379 and S2736. If enacted this bill would prohibit the possession of condoms as evidence in



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any trial, hearing or proceeding as evidence of prostitution or certain other offenses. And let me also state that with the number of arrests for false prostitution which have occurred and have been committed by the New York City Police Department, just the issue of those false arrests is another issue of major concern but using condoms as evidence in those false arrests is another issues that deeply concerns me. When I was 16 years old I was arrested on false prostitution charges and for a gay man my age, that was commonplace and it's very unfortunate to see that that was happening even in 2009 when my friend Robert Pinter [phonetic] was arrested on false prostitution charges as well. New York City has been and continues to be proactive in promoting and educating all New Yorkers about safe sex practices and in curbing the spread of sexually transmitted diseases. There are more than 100,000 New Yorkers living with HIV/AIDS and it is of much importance that New York City continue its efforts to educate all New Yorkers about safe sex and the importance of using condoms. Part of these efforts include the

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distribution of free condoms in the City since 1971. Even in my office we have a fish bowl filled with condoms that were given to us by the City's Health Department to distribute to the public. Could you imagine if one of my constituents left my office with a pocket of these government issued condoms only to get arrested with them at a later point in time? Well, unfortunately, it happens. Certainly, simply being in possession of a condom can get you arrested which has the potential to discourage individuals from practicing safer sex. It has also been reported that lesbian, gay, bisexual, transgender and questioning and immigrant New Yorkers are often targeted and profiled by the police officers as sex workers which results in a search and ultimately an arrest if they are found in the possession of condoms. This practice is commonly found in Jackson Heights, part of the district that I represent. Such a law discourages the practice of safe sex, creates a sense of fear in these communities and endangers the public health of New York City. This practice is most troubling since Jackson Heights is one of the

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City's epicenters for new HIV/AIDS infections.

Now, I just had Dr. Monica Sweeney [phonetic] from the Health Department visit my office to tell me how much of an increase we've seen in new infections right along Roosevelt Avenue where all of the bars are and it's something that we need to look into more deeply. At a time when we should be promoting safe sex practices in order to protect new Yorkers we are instead discouraging them because of the current law. I would like to thank all the Council Members here today who have joined us for this important hearing and I would also like to thank the advocates, legal practitioners and other members of the public for attending today's hearing and for providing testimony.

CHAIRPERSON ROSE: Thank you, Council Member Dromm. We have been joined also by Council Members Barron from the Immigration Committee, Van Bramer from Civil Rights, Council Member Rodriguez from Immigration and Council Member Chin from Civil Rights. And for the record, we have testimony from the New York, the mic's not, oh, sorry, do I have to do that all

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over again? Yeah? Okay. We have been joined [laughter] by Council Members Barron from the Immigration Committee, Van Bramer from Civil Rights, Council Member Rodriguez from Immigration and Council Member Chin from Civil Rights. And for the record which will be entered into testimony, we have testimony from the New York City Bar Association. Sure.

CHAIRPERSON DROMM: We also have testimony from three members of Make The Road, which will be read into the testimony and will be included in testimony from Biani Garcia [phonetic], from Perla Rivas [phonetic] and from Johanna Vasquez [phonetic] all who have been, I hate to use the word victimized but who have been arrested for, on false prostitution charges and also for carrying condoms.

CHAIRPERSON ROSE: And with that we well call the first panel. Andrea Richie [phonetic] Linley Edges [phonetic], Treena Vivihan [phonetic], okay, and Michael Pollenberg [phonetic]. Please come up to the table. [off mic] And before you testify please identify yourself and speak into the mic. Thank you. You

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may begin. [off mic]

MS. ANDREA RICHIE: Is that on?

Okay. Great.

CHAIRPERSON ROSE: I'm sorry,  
before you testify I just want to acknowledge one  
of our newest Council Members, Mr. Rodriguez who  
is, who has joined us today, thank you. [off mic]

MS. RICHIE: Good morning, my name  
is Andrea Richie. I'm the Co Coordinator of  
Street Wise and Safe. We're an organization  
focused on ending discriminatory policing of LGBTQ  
youth of color. We proudly serve on the Steering  
Committee of Communities United for Police Reform  
and on the Executive Committee of the No Condoms  
as Evidence Coalition, which is made up of over 70  
anti trafficking, reproductive rights, public  
health, HIV/AIDS, human rights, LGBTQ's and civil  
liberty groups advocating for passage of the  
legislation that's subject of the resolution we're  
discussing today. On behalf of the coalition we  
want to extend our sincere appreciation to Council  
Member Lappin for introducing the resolution and  
our gratitude to the Civil Rights Committee and  
Immigration Committee for taking the time to hold

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this hearing this morning in the middle of a very busy legislative session. As you'll hear today from a very broad range of organizations and individuals who are directly affected by this practice, police and prosecutors confiscation of introduction of the possession of condoms as evidence of intent to engage in prostitution related offenses is a powerful tool of profiling and discriminatory policing by the NYPD and is contributing to a public health crisis in New York City. This practice as we've already heard, directly undermines the City's public health efforts and the safety and reproductive rights of all New Yorkers. As a result of this practice every time we do a Know Your Rights training at Street Wise and Safe or go out into our communities we're asked how many condoms is it legal to carry? When we say there's no law against carrying condoms people argue that there might as well be. This practice plays out against the backdrop of profiling and other discriminatory policing practices in New York City. The over 5 million stops conducted by the NYPD over the past decade, almost 90 percent of which targeted black

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and Latina New Yorkers are the context of the unlawful frisks and searches that reveal condoms which are then used as evidence. Research conducted by public health organizations, human rights watch and the open society foundation all point to a devastating impact of this practice on people's willingness to carry and use condoms, almost half of the people surveyed said that at some point they had not carried condoms for fear of police harassment or they be used against them in a criminal proceeding. This is the effect of continuing to confiscate and introduce condoms as evidence on the populations that remain at the highest risk of HIV. This is why it's critical for New York City Council to urge the New York State Legislature to pass these bills. Finally, anti trafficking advocates and groups which provide life saving services to survivors strongly support this legislation which provide services to victims of trafficking have spoken with one voice on this issue. The State no condoms as evidence legislation not only has the weight of the anti trafficking, civil rights and public health communities behind it, it has the full support of

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the Nassau County District Attorney who will assume leadership of the New York State District Attorney's Association in just a few weeks. DA Rice will also be submitting written testimony to the Committee this morning in support of the resolution and was the first New York City area District Attorney to take a stand by adopting a policy that is completely consistent with the State legislation and includes trafficking related offenses. She weighed the potential harm of continuing to use condoms as evidence and came on this, came down on the side of making sure that prosecutions don't get in the way of public health and protecting the rights of victims of violence, including victims of trafficking. Just a few weeks ago, as was mentioned, four of five New York City area District Attorneys were quoted in the New York Times saying that they too will not use condoms as evidence in prostitution cases.

Brooklyn District Attorney Charles Hines was foremost among them as well as Assistant District Attorney Mark Fleetner [phonetic] and Lance O'Geese [phonetic] are here for DA Hines office this morning. This is not just a local issue,



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it's a national one. The President's Advisory Council on HIV/AIDS has called for elimination of the use of condoms or other measures to prevent HIV transmission as the basis for criminal prosecution or sentence enhancement. Flory Burke [phonetic] the Founder of the Freedom Network, a national network of anti trafficking service providers and advocates who was recently given the presidential award for extraordinary efforts to combat trafficking and persons by President Obama has spoken out strongly in favor of this legislation, noting that the use of condoms as evidence in - - cases effectively takes away one of the only protections someone being exploited may have to protect themselves from HIV, STI's, unwanted pregnancies and forced abortions. This is why we are calling for a comprehensive ban against the use of condoms as evidence in any prostitution related offenses, including trafficking offenses. This is why we're calling for passage of a State law that protects the lives of all New Yorkers and this is why we're also calling for passage of Intro 1080, which would create a strong ban against police profiling in

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New York City. Because it's time for police and prosecutors to stop taking life saving condoms distributed by the City of New York out of our hands, out of our pockets and out of our purses and it's time for legislators to take a stand and affirm the rights of all New Yorkers to protect ourselves, thank you.

CHAIRPERSON ROSE: Thank you.

MS. LINLEY EDGES: Good morning Members of the Committee on Immigration and Committee on Civil Rights. The Sex Workers Project of the Urban Justice Center very much appreciates the opportunity to offer comments on this proposed resolution. My name is Linley Edges and I'm an attorney at the Sex Workers Project where I primarily represent victims of trafficking. I'm here today to illustrate to you why this resolution is so important in the fight against human trafficking and more importantly why this resolution will protect victims of trafficking. The best way to explain how important this resolution is to victims of trafficking is to tell you about Allison. Allison was brought into the United States by a large

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trafficking ring. On a daily basis she was beaten, starved and humiliated by her traffickers. In my office she told me her trafficker gave her only five condoms a day but she was forced to have sex with up to 25 people every day. One of Allison's greatest fears was that she might have contracted a life threatening disease while being trafficked. Even after her escape she tells me that she's so scared for the other girls that she left behind she knows that are being denied access to condoms just as she was. She asked me, do you think I wasn't allowed to have access to condoms because they could be used as evidence? I didn't know what to tell her but I was scared. I know the trafficking ring that Allison was part of and I know that they're still in existence. At that moment I thought to myself, these traffickers know that condoms are being used as evidence and that means more and more victims are going to be denied access to condoms. My client Sarah met her trafficker here in the United States when she was 15 years old. For nine years he forced her through physical violence and threats to work in prostitution. She was arrested many times. Sarah

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told me she pled guilty every time because her trafficker would beat her more if she had to go back to court or if she was sent to jail. Sarah was lucky in the sense that she escaped her trafficker over ten years ago and while she was being trafficked she had access to condoms. But I wonder what would have happened if Sarah's trafficker knew that condoms could be used as evidence of prostitution and trafficking. Do you think 15 year old Sarah would have been allowed to have access to condoms? It's because of Allison, Sarah and so many other victims of trafficking that I consider this resolution calling on the New York State Legislature to pass the no condoms as evidence bill to be a revolutionary moment in the anti trafficking movement. This resolution is calling for passage of legislation that's about trying to protect victims while they're being trafficked. It's about saying to them, while they're being forced into prostitution, we might not be able to reach you now but at least we're going to arm you with condoms. We are not going to give a trafficker any excuse to deny you condoms because we believe you deserve to be safe

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and you should have access to condoms. It's about reaching out to victims while they're being victimized and providing them with a little bit of safety while they're being forced into prostitution. It would also give them a fighting chance once they're able to escape. Now, I've heard some say that we need to use condoms as evidence to prosecute traffickers but I challenge that notion. Condoms are not evidence of trafficking. Successful trafficking prosecutions need evidence that a person was subject to coercion and force. Often through victim statements. I am often asked by Federal law enforcement officers, Linley, how can we make a victim feel more safe? How can we make a victim trust us more so we can help find the person who hurt them? A victim that was denied access to condoms by their trafficker, contracted an STI, contracted AIDS or had a forced abortion because of lack of access to condoms will be much more traumatized and probably less likely to be able to contribute to an investigation. Now, imagine that victim finds out that it's the policy of New York that led them to being denied access to condoms.

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How cooperative do you think that victim will be?

But, if we pass this resolution and this

legislation we send a loud and clear message, the

lawmakers and law enforcers of New York care about

the health and safety of sex workers and victims

of trafficking. What a powerful statement that

makes to victims and to those who exploit them.

Allison was only given five condoms a day and

she's only one of the many victims but there are

still other victims out there being made to risk

their lives every day because their traffickers

won't allow them to have condoms. I'm only here

today because I care about trafficking victims,

those who are my clients and those who have yet to

have escaped. I care about victims safety because

I know what happens when they're denied access to

condoms. I'm asking you to care about them too.

Please don't leave trafficking victims behind.

CHAIRPERSON ROSE: Thank you.

Good morning. My name is Treena

Vitan [phonetic]. I am from Street Wise and Safe.

So, this is my testimony. As also organization

focused on policy and practices that effect LGBT

youth of color, the practices of using condoms and

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1 prostitution related cases effect my community,  
2 LGBT youth people because we are often profiled as  
3 being engaged in sex trades. One time I was going  
4 to a - - Ball on Saturday night in the West  
5 Village. I was standing on the street talking to  
6 some friends and officers approached me. She  
7 asked for my ID, I gave it to her. At the time I  
8 didn't have my legally name changed. She not only  
9 would not call me by my real name but she kept  
10 calling me a man and a faggot. She took a picture  
11 of my ID and sent it to the 6<sup>th</sup> Precinct. The  
12 dispatcher told her that my record was clear but  
13 instead of letting me go she said she wanted to  
14 see in my purse. I didn't know my rights then or  
15 I have, I would have not consent to this search.  
16 I thought that I had to show her the contents of  
17 my purse. When she looked inside she saw two  
18 condoms. She called the 6<sup>th</sup> Precinct back and  
19 asked for a police car to come. I asked her, why  
20 are you locking me up? I can't carry condoms?  
21 She replied, you're getting locked up for  
22 prostitution. I was taken to the 6<sup>th</sup> Precinct and  
23 put in with men. I was 17 years old. This is my  
24 story but this is also the story of many of my  
25

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1 friends who are lesbians, gays, bisexuals,  
2 transgenders and youth of color. When the police  
3 take our condoms or lock us up for carrying  
4 condoms they are putting our lives at risk. How  
5 am I supposed to protect myself from HIV or STI's  
6 when I am scared to leave my house with condoms in  
7 my purse? For my community is not only being put  
8 at risk for HIV, STI's and unwanted pregnancies  
9 but having to be harassed and assaulted by police  
10 officers for being transgender or queer. We thank  
11 you for holding this hearing today and listening  
12 to our voices and experiences. We ask you to help  
13 stop any kind of discrimination against LGBT  
14 youth. I have experienced and my friends have  
15 experienced by passing this resolution and passing  
16 a law against profiling LGBT youth of color.

18 CHAIRPERSON ROSE: Thank you.

19 Thank you for testifying.

20 MR. MICHAEL POLLENBERG: Thank you,  
21 Chair Woman Rose and Chairman Dromm and Members of  
22 the Committees for the opportunity to testify  
23 today. I'm Michael Pollenberg, Vice President of  
24 Government Affairs for Safe Horizon, the nations  
25 leading victim assistance organization and New



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York City's largest provider of services to victims of crime and abuse. Safe Horizon strongly supports proposed State Legislation A2736, S1370 which prohibit the use of condoms as evidence in prostitution and trafficking cases. Simply put, we believe this law can and will preserve the lives and futures of thousands of young victims of sexual exploitation. As one of the country's leading providers of services to survivors of human trafficking we don't believe this bill would have any negative impact on the lives of our current or future clients or the prosecution of their traffickers. In our nationally recognized anti trafficking program we've never once been involved in a case where possession of condoms alone played a critical role in the prosecution of a trafficker. However, passing this bill may allow people who are currently being trafficked to negotiate for their own sexual safety and the right to use condoms while they are in their trafficking situations. We are concerned that if sex traffickers are aware that condoms are being used as evidence of trafficking it will simply prevent their victims from using condoms. From

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our work serving victims of domestic violence from over three decades we know that controlling someone's access to contraception is a form of manipulation and control in relationships. Safe Horizon also operates outreach programs, drop in centers and shelters for homeless youth in New York City through our Street Watch project which City Council supports and we're grateful for that support. We regularly encourage the use of condoms and encourage youth to carry enough condoms to increase the likelihood that they engage in safer sex, similar to Council Member Dromm's office, we have the fish bowls in all of our programs filled with condoms largely from ones made by New York City. This practice is supported by most health departments in our country, including the Centers for Disease Control. Becoming familiar with condoms is an important first step to engaging in safer sex to young adults and easy availability of condoms opens dialogs between sex partners about the need to prevent STI's and other, and HIV. Condom distribution is an invaluable intervention that creates opportunities for sexually active youth to

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learn about sex disease prevention and ethical interpersonal behavior from peers, mentoring adults, outreach workers and social workers. Allowing condoms to be used as evidence in criminal prosecution is contrary to most current public health practice and may deter vulnerable young people some of who are trafficking victims from taking necessary steps to protect their health. If young people are afraid to carry condoms for fear of prosecution or if individuals who exploit them discourage or prohibit them from carrying condoms for fear of prosecution they will likely engage in unsafe sex. We thank you again for your support of this state legislation. We hope the full City Council can support the legislation and happy to take any questions.

CHAIRPERSON ROSE: Thank you so much for your testimony, all of you today. Okay. So, there has been, you know, talk about in the past year, New Yorkers being arrested by NYPD solely for being in the possession of condoms. Do you have any statistics on how many individuals of color, how many immigrants, how many were women and how many identified themselves as LGBTQ?

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MS. RICHIE: Unfortunately now, Council Member Rose, because the NYPD doesn't keep that data. Obviously we know the rates of stops and frisks and arrests. We know that for women the rates of racial disparity in stops, frisks and arrests is equal to that for men, it's 80 percent for African American, it's 80 percent of stops and arrests in New York City among women are of African American and Latina women. There are no statistics kept on immigration status, housing status, gender identity or expression or sexual orientation. But what you've heard today is definitely the experience that people have and why it's important for us to have legislation that would ban profiling on those grounds.

CHAIRPERSON ROSE: Thank you. And do you know how many might have made it to trial?

MS. RICHIE: The attorney from the Legal Aid Society who defends all prostitution cases will be testifying later. She can answer that.

CHAIRPERSON ROSE: Oh, okay, great. Would you know what the charge would be?

MS. RICHIE: The charges are

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loitering for purposes of prostitution and prostitution. Some folks have been charged with promoting if they are walking with a friend and they have condoms and their friend doesn't. so, that's why it's important to include promoting offenses in this ban.

CHAIRPERSON ROSE: And NYPD has LGBTQ liaisons. Have you worked with any of them?

MS. RICHIE: Well, SAS also sits on the LGBT advisory panel to the Commissioner Kelly.

CHAIRPERSON ROSE: Mm-hmm.

MS. RICHIE: You'll also hear from other members of that advisory panel today. We've raised this issue directly with the Commissioner on numerous occasion.

CHAIRPERSON ROSE: Yeah, we have more questions about that. I just wanted to know if anyone on this panel has worked with the liaisons and what your experience has been.

MS. EDGES: I have worked with one of the liaisons on a trafficking case. It didn't go well.

CHAIRPERSON ROSE: It didn't go well? Okay. Are they employees of the NYPD?

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MS. EDGES: I believe they are.

Unfortunately in my case the young woman was a victim of trafficking, a transgender woman and I kept, I had the police liaison come to the meeting because I was concerned about trans phobia. A lot of trans phobic language was used in the meeting and then they told my client she wasn't a victim of trafficking and that she chose to be forced to do prostitution at the age of 16. So, it wasn't a great experience, although people might have had other experiences.

CHAIRPERSON ROSE: Any comments from the panel? No? Okay. Thank you. Then the article in the New York Times entitled Police in Brooklyn are told not to seize condoms for prostitutes, of prostitute, which stated that some City District Attorneys used condoms as evidence against pimps in six trafficking cases and deem it as a useful tool. How do you strike a balance between using condoms as evidence against pimps and dismissing the use of condoms as evidence when the purpose was for safe sex?

MS. RICHIE: Every single prosecutor we've spoken to, and we've been

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speaking with prosecutors on this issue for about two years now, including the State DA's Association, has agreed that condoms are never the sole or even the most critical piece of evidence. They're just one piece among many and we really urge folks to think about and look to the position of District Attorney Kathleen Rice who has made that calculation between public health and protecting victims of violence but also to listen to every single anti trafficking group that's here today that will tell you that the balance must weigh in the favor of protecting the rights of victims of trafficking to access condoms and at least have the trafficking situation or the exploitation situation not also result in a death sentence.

MR. POLLENBERG: I would just add to that, if may, Council Member.

CHAIRPERSON ROSE: Mm-hmm.

MR. POLLENBERG: You know, one of the scenarios we're presented with quite often is, well, what about the case where a raid is done at a brothel, a suspected house of prostitution and boxes and boxes of condoms are found. Isn't that

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evidence. Isn't that something that we should be able to use in court to lock up the bad guys and make sure that they're not causing future harm. And what we've seen in our experience, you know, is that when condoms aren't available because the next trafficker is not going to have the condoms available, you're now putting every single person who's been trafficked at risk of disease. I mean, it's, you're condemning, you know, hundreds, if not thousands, of people to this fate simply because in one instance condoms would have been one piece of the vast collection of evidence that the District Attorney's had at their disposal to try to get a conviction.

MS. LINLEY: And also with the client that I spoke with, Allison, she was trafficked by a very large, large trafficking ring that is still in existence and it possibly is one of the largest, maybe, in New York at this point and I think, you know, law enforcement is working really, really hard to take it down. I think they're making strides. But if he knew, if he was denying her access to condoms that means that all of those other traffickers, part of that ring, are



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also doing the same. I'm just waiting as my other colleagues are also waiting, just for more of these cases to come into our office.

CHAIRPERSON ROSE: Has the New York City Health Department weighed in on this discussion at all?

MS. RICHIE: The New York City Health Department conducted a study which was part of what informed the finding that over half of folks surveyed had not carried condoms for fear of police harassment. And it was cited in the Human Rights Watch report and you'll be hearing from Human Rights Watch later today. Just on the question of pimps and promoters, also again, the question is whether folks are going to be profiled as engaging in those offenses also based on the fact that they have condoms on them but also Human Rights Watch will share more information about this but there is evidence that what Mr. Pollenberg just testified to has, in fact, happened, that people who run places where exploitation may be taking place refuse to take condoms and have them there because they don't want them used against them but also part of the

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New York City Public Health Program is to distribute condoms to businesses, like gay bars, like, video stores, like the LGBT center, like our organizations. And many establishments where we would want to have condoms available, where folks might meet and decide to proceed with something, are now afraid to carry condoms 'cause they're afraid that they will then be shut down as houses of prostitution like the video stores were in Robert Pinter's [phonetic] case.

CHAIRPERSON ROSE: Are there locations that, like Council Member Dromm's office, that distributes them that have been prone to maybe harassment as a result?

MS. RICHIE: Certainly gay bars have had incidents and they've stopped taking them as a result.

CHAIRPERSON ROSE: Okay.

MS. EDGES: And also we've had actually clients who have taken some condoms from our office be stopped after they leave our office and been arrested because they're taking condoms from our office.

CHAIRPERSON ROSE: And then I have

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one last question, after I acknowledge that we've been joined by Council Member Ferreras. Do you know, do you have any knowledge of the administrations support or non support for A1379, S2736, you know, on the State level? Do you—

MS. RICHIE: Sorry, I'm from Canada. I'm not sure which administration you're talking about. The Governor, the...

CHAIRPERSON ROSE: Oh, okay, yeah, yeah. It's the, it's their support or not is the Governor and the State Legislature supporting this or not?

MS. RICHIE: We've been in conversation with the Governor's office and he, they are definitely encouraged by the number of DA'S that are coming forward to bring the bill in by DA Rice's support specifically. And we know that there's considerable support in the assembly and also in the Senate.

CHAIRPERSON ROSE: Council Member Dromm?

CHAIRPERSON DROMM: Mm-hmm, I just wanted to pick up a little bit on the point that Mr. Pollenberg had hit upon. You know, back in my

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activist days when I used to participate in some Act Up demonstrations, in the early days of the HIV/AIDS crisis, et cetera. It was extremely difficult just to get people to become accustomed to using condoms and the policy by the NYPD seemed to really contradict and go against some of the gains that we made even early in on those days just trying to get people to be accustomed to carrying and having condoms on them and the whole idea was to get people to practice safer sex. And I know much of the testimony that's been presented here this morning has been around those who have been trafficked but there are also people who engage in sex work voluntarily. And I am concerned that they also will be effected by this and it seems to, again, contradict what we have been promoting through the health department, through or activism, et cetera, to get people to use condoms. I don't think that if somebody either voluntarily enters into the sex work business or whether they are trafficked or whatever that they deserve to be, you know, open to the risk of contracting a sexually transmitted disease, particularly HIV and AIDS. And I just

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wanted to see if you would agree with that, maybe Linley?

MS. EDGES: No, I absolutely agree with that although I primary represent victims of trafficking at the Sex Worker's Project. We represent anyone who works in the sex industry and everyone deserves a right and should have a right to carry condoms and protect themselves, whether or not they're engaging in sex work by choice, by circumstance or coercion. You know, I think I focused a lot on trafficking because I've noticed that that's, victims are getting left behind and that's unfortunately, I don't think it's in a bad way and it's more in a way not understanding how it's actually going to effect them. But absolutely, sex workers have a right to carry condoms to protect themselves. Sex workers often teach people how to use condoms and if anything, that's educating not only a sex worker but it's educating clients of sex workers. So, the more people who know how to use condoms effectively the better and that is a role that sex workers do play.

MS. RICHIE: I couldn't agree more

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Council Member Dromm, we're focusing on the concerns that have been raised but, of course, we all support the right of everyone to protect themselves no matter what activities they're engaging in.

COUNCIL MEMBER DROMM: The thing, it has such a chilling effect on those engaged in sex work and I just wanted to make sure that that was part of this hearing as well because whatever our opinion may be on sex workers or prostitution as it's called. I think that people have a human right to be able to protect themselves from death, essentially. So...

MS. RICHIE: Absolutely.

COUNCIL MEMBER DROMM: Thank you.

CHAIRPERSON ROSE: Council Member Ferreras?

COUNCIL MEMBER FERRERAS: Thank you, and thank you for coming to testify today. Many of you are partners and we've testified at different occasions, before the Women's Issues Committee. And as you can recall, this is something that's come up in many of our hearings revolving around sex trafficking and my immediate

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focus on, maybe we should focus on the John's and all the other conversations that we have. But the reality is, and I know that it was mentioned already, is, I am one of those sites. We give out condoms for free in my office. And, you know, no one is busting through my door to try to shut us down. And, you know, the unfortunate reality is that a lot of times condoms are not necessarily the most affordable thing to get. So, when you're able to get them free you don't take one or two, you take a bunch. And I think that's the right thing to do. And FYI to any NYPD out there, the number one group that gets condoms out of my office is seniors. [laughter] Seniors are having sex. And it's true and real and at 5 o'clock sometimes I've had to go back and open the door for someone. And I have, and I'm not sorry for that and I think that as we move forward with policies, that's why I'm so supportive of this. And, you know, Make the Road did an amazing report and if anyone doesn't have it you should get your hands on it immediately. And these are the struggles that we're facing in our communities so I just wanted to publically, you know, one,

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support, I'm signed onto the legislation, but also, to acknowledge all the work that you've done on this issue. And all, and you know, and we're going to pass this resolution and we'll go up there with all the strength of our elected officials here on the municipal level but this is a conversation that has to continue on the assembly because unfortunately it's not as progressive as we'd like it to be and it's something that has to be resolved, especially when we're talking about transporting and women and men having it on their position or not. We, we're teaching safe sex, buy condoms or get them, and then we're contradicting ourselves or the policing that we have in our neighborhoods are contradicting those policies. So, if you could just, I just wanted to hear very briefly and I am, I'm sure, and excuse me if you have to repeat yourself, but do we have any accurate numbers, and maybe Michael, you have some accurate numbers on the break down of Latinos and men and women of color when it comes to engaging on the arrest.

MS. RICHIE: Yeah, we, unfortunately the rates of stops and frisks among



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women of color in terms of the racial disparities are the same as they are for men, 80 percent of arrests of Latina, of arrests of women are of Latina and black women, 80 percent of stops and frisks of women are black and Latina women. And you're very correct, Council Member Ferreras, about the profiling of women of color. We talk a lot about profiling LGBT's of color but even non LGBTQ women of color are frequently profiled with the use of condoms as evidence. I have one story of a woman who went to a health center in Bushwick, a women's health center in Bushwick, got nine condoms, went and stood at a bus stop and got stopped by the NYPD, picked up and charged with loitering for purposes of prostitution 'cause she was standing at a bus stop with nine condoms she just got from this health center. That is a pattern and a thing that happens across the City all the time and it's a huge issue of concern for people of color in the context of stop and frisk and beyond in New York City.

COUNCIL MEMBER FERRERAS: Thank you, and I think that that's something that we have to focus in on, you know the, you focus on

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the conversation being of the young black men and Latino men but women face this all the time. And it's very real and it's an every day experience for the women in New York City. But also we have to acknowledge the fact that, you know, these, we're going to send this resolution. We need to, again, I'm going to repeat this 'cause it's so important. We need to focus all of our energy in Albany because policing should not be about counting condoms. There has to be a lot of other ways that we can prove prostitution, right? And before we prove prostitution it just might be sex trafficking. We don't know what it is. So, I think we've been working on this issue for a long time that we can separate a sex worker from prostitution from a victim of sex trafficking and it should not be as simple as how many condoms you carry. So, thank you for your work. Thank you, Madam Chair.

CHAIRPERSON ROSE: Thank you, Council Member Ferreras. And Council Member Van Bramer?

COUNCIL MEMBER VAN BRAMER: Thank you very much to both of our Chairs and also to

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Council Member Ferreras who's been very active on all of these issues as well. I just wanted to make a quick statement in support. When I came out in 1989 and came out, first at the youth group at the AIDS center of Queens County on Queens Boulevard and from my very first meeting they told us to never go anywhere without a condom because the epidemic in 1989 as everyone well remembers was particularly, particularly at a devastating place. And so, I didn't. I listened to the terrific workers there and because of that instruction, because of that 24 years later, I'm HIV negative, I believe that that has a lot to do with why that is so. And so, to me this is insanity, it's absolute insanity that we would be confiscating condoms because a condom that is in some evidence box in a precinct is not able to be used to save a life. It's doing no one any good in an evidence box in a baggie somewhere. That is so ridiculous. So, I just find this so, so dispiriting because instead of encouraging all people to use and carry condoms, particularly LGBTQ youth of color, particularly sex workers. We are, instead, sending the exact opposite

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1 message and saying that somehow you will be safer  
2 if you don't carry condoms on you. And that is  
3 something that has deadly consequences for all of  
4 our people. So, I just want to thank everyone for  
5 their work on this, obviously, I'm proud to be a  
6 co sponsor of this resolution and thank you, in  
7 particular, to Treena for your statement and your  
8 courage. And I don't know if you know this but I  
9 went to Theatre of the Oppressed, had a terrific  
10 theater presentation a few weeks back with lots of  
11 LGBTQ homeless youth and they did a lot of scenes  
12 depicting some things that have happened. And  
13 your scene, one of the scenes was your experience  
14 and it was by far the most powerful, oh, thank  
15 you. [off mic] Sorry about that.

17 CHAIRPERSON ROSE: You're going to  
18 have to start from the beginning. [laughter]

19 COUNCIL MEMBER VAN BRAMER: No, no,  
20 no, no, no. Came out, '89, youth, condoms, - -  
21 [laughter]. So, but it was very powerful. It was  
22 the most powerful piece that was performed that  
23 day by all of the youth and you could have heard a  
24 pin drop as that night in your life was enacted.  
25 So, I just, I'm sorry that had to happen to you.

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I'm sorry that that happens to any LGBTQ youth of color and our city won't be just until what you experienced never ever happens again. And so I just want to thank you, Treena.

MS. VITAN: Thank you.

CHAIRPERSON ROSE: Thank you, Council Member Van Bramer. I would just like to say, also, that as a person who in the '80's worked with the Health Department to bring awareness to the public health issues around HIV AIDS. And we, a lot of effort was devoted to educating people to the importance of using condoms, you know, to the point where I was known as the condom lady. And it took a lot of effort to get people to acknowledge that there was a need to use condoms and I truly believe that helped stem the tide in the HIV/AIDS, you know, fight and struggle. And to have the law, and the NYPD have a policy in place that would totally undermine that and lead to an increase in HIV/AIDS and STD's, STI's, is just unconscionable. And I agree with Council Member Ferreras that we really do need to put a lot of pressure on Albany to make sure that this legislation passes so that it's not

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just a policy decision by a DA which could be arbitrarily enforced or not. We need to make this codified, a part of New York State law. And I think that we've heard pretty much from these two Committees and the Women's Issues Committee that we too are going to work hard for that. So, I, sure, I just want to thank you all for testifying and after Council Member Dromm's remarks I'll call the next panel. Thank you all.

COUNCIL MEMBER DROMM: Thank you, and thank you Council Member Rose 'cause it brought to mind something when you said the DA's and how the DA's are doing this. Are there counties where you see DA's using condoms as evidence more than other counties?

MS. RICHIE: We hate to call certain counties out. [off mic] We hate to call certain counties out but they're certainly being used quite a bit up until recently by Brooklyn and also currently by Queens.

COUNCIL MEMBER DROMMM: That's what I wanted to know. Thank you.

COUNCIL MEMBER ROSE: Thank you all for testifying today. And our next panel will be

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Kate Mogulescu [phonetic] Sharon Staple  
[phonetic], Mitchell Flora [phonetic] and Sasheta  
Ming [phonetic]. [off mic] When you're ready  
please state your name for the record and you can  
begin your testimony.

MS. KATE MOGULESCU: Good morning  
everyone, that's okay. Hi.

COUNCIL MEMBER ROSE: Please speak  
into the mic.

MS. MOGULESCU: Yes.

COUNCIL MEMBER ROSE: You might have  
to pull it closer.

MS. MOGULESCU: I will. I fear  
that I am one of the only attorney's in the world  
that hates the sound of their voice magnified by  
microphone [laughter] but I will suffer through it  
for the purposes of this hearing. My name is Kate  
Mogulescu. I am a Supervising Attorney in the  
Legal Aid Society's Criminal Defense Practice. I  
have a practice called the Trafficking Victims  
Advocacy Project which is dedicated to identifying  
and advocating for victims of human trafficking  
caught in the criminal justice system. I'm happy  
to join the voices you've already heard. I'm

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happy to join the voice of the Legal Aid Society with the voices you've already heard urging passage of both the State legislation and the City Council resolution. Our project is the first of its kind in a Public Defender office that seeks to meaningfully address the issue of human trafficking from the public defense perspective. Over the last several years I've represented close to 1,000 people charged with prostitution offenses in New York City Criminal Courts. Our project focus it's work on the representation of individuals charged with prostitution offenses to better identify victims of trafficking who may be arrested and prosecuted for engaging in prostitution. I think, was listening to some of the comments after the last panel and as I sat down to prepare the testimony that I was going to give today I just kept coming back to one fundamental point which is how tremendously absurd and ridiculous this is and I think we've already sort of touched on that, that I would even need to put in writing why it's necessary for people to be able to carry condoms without fear in New York City, particularly people who may be engaging in



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1 prostitution but this is where we are. As a  
2 result, as a basic matter, the Legal Aid Society  
3 believes it is incredibly important for anyone to  
4 be able to carry a condom without fear of arrest  
5 and prosecution. This goes for those voluntarily  
6 engaging in prostitution and sex work. It goes  
7 for people not engaging in prostitution or sex  
8 work at all. It goes for victims of trafficking  
9 and it goes for people falsely profiled as being  
10 engaged in prostitution or sex work. What we see  
11 in our practice, and I also, I'm happy to try to  
12 provide statistics to the extent that I have them.  
13 unfortunately, as Andrea Richie already pointed  
14 out, this is an area in which great statistics  
15 aren't kept. There are an average of 2,700  
16 arrests each year in New York City for  
17 prostitution and loitering for the purpose of  
18 engaging in prostitution. Those are cases that  
19 are coming through our city's criminal courts.

20  
21 CHAIRPERSON ROSE: Could you give  
22 that number again?

23 MS. MOGULESCU: 2,700, on average,  
24 over the last five years. And that's for two  
25 charges, prostitution and loitering for the

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purpose of engaging in prostitution. The other question, I think, was about the number of those cases that NYPD is tracking information about, gender identity, race and we've had incredible difficulty getting those kinds of statistics. What I will say though, is of the young people who are arrested for engaging in prostitution that my project represents 50 percent identify as LGBT and that's of our 16 and 17 year olds who are arrested throughout the City for engaging in prostitution. Through our work in criminal court we see the practice of seizing condoms as arrest evidence and the potential use of them in criminal prosecutions as extremely problematic, not only as it undermines New York's various efforts to develop and implement public health programs but also as it plays into our concerns about the validity of many of these prostitution related arrests, something that's already been discussed by several people present. In many places the fact of possession of condoms is specifically offered as evidence that a person intended to engage in prostitution. Up until very recently in King's County this was part of the standard paperwork

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that went along with a loitering for prostitution arrest. I'm happy to hear that that practice has been discontinued and I'm looking to my left to confirm that. But up until very recently when someone was arrested for loitering for the purpose of engaging in prostitution the officer filled out an affidavit or a supporting deposition that indicated precisely how many condoms were recovered from that person. We've seen many cases where the number of condoms recovered was one, one condom, yet that was still offered as a factual allegation to support the probable cause for an arrest. Dan you can see how this would be incredibly, incredibly troubling. The other reason why this is troubling is because especially with this subset of cases, the loitering for the purpose of engaging in a prostitution offense cases, these cases allow for wide police discretion as to who to arrest and what factors rise to the level of probable cause for an arrest. What we've seen is this can include an individuals mere presence in a location, such as Jackson Heights, that may be deemed prostitution prone, or the West Village. What an individual is wearing

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that an officer believes to be indicative of intent to engage in commercial sex, which is baffling, especially when you read some of the description of clothing in the police paperwork that we see. People can be arrested under the loitering statute if they have previously been arrested for any sort of prostitution offense. And so then when taken against this backdrop that's when we begin to see how troubling it is that then the possession of condoms can be used to buttress these sort of questionable and really problematic arrests from the inception. Furthermore, specifically in our roll advocating for survivors of trafficking in the criminal justice system, this practice is devastating. We know first hand that many of our clients were victims of trafficking and exploitation are not allowed to carry or use condoms for fear that this may in one way expose them or by extension their traffickers to criminal liability. In a recent case coming out of, actually, the King's County District Attorney's office and enterprise corruption case where the business in question was an organized prostitution business, our clients

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were made to sign explicit contracts that when they were going to be engaging in prostitution they were not allowed to carry condoms. So, to say that this can somehow be parceled out or separated where we can prosecute traffickers over here for, you know, involving condoms as evidence but not over here when we're dealing with people charged with prostitution offenses. It's just not possible, it's not feasible. We know all too well that traffickers control all of this and use this as part of their manipulation and coercion of those that they traffic. So, particularly with respect to that vulnerable population this is troubling as well. We need this to be state wide. We need it to be consistent and uniform, although we certainly applaud District Attorney Rice and District Attorney Hines. We see this in enough jurisdictions where this is not explicit policy and furthermore, where we do make this state wide, consistent, uniform policy, this would then inform our police practices. It's not enough for our local District Attorney's to simply say we're not going to use these as evidence, we also need the police to stop seizing them as evidence. When

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condoms are seized as arrest evidence what happens is the person arrested is given a specific voucher for that property that indicates, one, two, three, ten condoms, at the top, the top heading says very clearly, arrest evidence. These items could be taken as personal property for safe keeping, et cetera, but rather they are labeled as arrest evidence and this sends a very clear signal to those arrested. So, irrespective of what happens in the local prosecutors office or the county level, we need statewide to abolish this practice so that people aren't receiving vouchers, oh boy, sorry, so that people are not receiving vouchers from the police who are arresting them indicating that condoms seized are being taken as arrest evidence. I'm happy to answer any other questions from the criminal justice side if I can but I would love to, you know, welcome, I would love to shut up now [laughter] in other words.

CHAIRPERSON ROSE: Just because you pushed the microphone closer.

MS. MOGULESCU: Exactly, oh yes, I would have kept going otherwise.

CHAIRPERSON ROSE: Thank you. And

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1 before you begin I'd like to acknowledge that  
2 we've been joined by Council Member Lappin who is  
3 the prime sponsor of this legislation and Council  
4 Member Levin.  
5

6 MS. SHARON STAPLE: Good morning.  
7 I'm Sharon Staple. I'm the Executive Director at  
8 the New York City Anti Violence Project. And the  
9 mission of the Anti Violence Project is to work  
10 with lesbian, gay, bisexual, transgender, queer  
11 and HIV affected people on all issues of violence,  
12 hate violence, intimate partner violence, sexual  
13 violence, police violence and institutional  
14 violence in New York City and nationally. And I'm  
15 here to support this resolution and to talk to you  
16 all today about why AVP thinks that no condoms as  
17 evidence is our issue as well. And it really, the  
18 reason that AVP got involved in this issue was  
19 because of the contradiction in the way that we  
20 are doing the work since, you know, the use of  
21 condoms as evidence has become a problem. And I  
22 have submitted testimony to you, the, much of  
23 which goes into the rates of HIV and the epidemic  
24 that HIV is in New York City. And I won't go into  
25 that now and much of it covers the testimony that

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you've already heard from my colleagues. So, I really want to focus on what I think AVP has to offer at this hearing. We are both mandated and funded by the Department of Health, the New York State Department of Health to distribute condoms as a part of our outreach efforts to reduce violence within LGBTQ communities and among our allies. And at the same time we are serving clients who have been profiled, stopped and frisked and arrested for having condoms on them. So, we are at this incredible intersection of not being able to do either job without contradicting the other, right? And we're in this contradictory position that you've heard from many other of the folks who have testified and, I assume, from many more that will testify of on the one hand handing out condoms to people and on the other hand engaging in their criminal prosecution cases when they're arrested for having those condoms. And that's just, I mean, it is, I think, Council Member Van Bramer called it absurd, you now, I've called it illogical. I mean, I think, you know, Kate called it ridiculous. It just doesn't make any public policy sense. The idea that condoms



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are evidence of anything other than the fact that you have a condom on you is illogical. I mean, I don't even think it's evidence of the intention to engage in sex, never mind, you know, anything else. But we, so we are really at this contradictory place. We feel it is critical to our mission of safety for LGBTQ communities as well as our allies in New York City to be able to hand out condoms. We hand out more than 10,000 a year, in addition to what people grab from our office as they're leaving. And at the same time we feel it's critical that people are safe from the profiling, stopping and frisking of the NYPD and, frankly, the, and you've heard this before and you'll hear it again, but I just want to emphasize, the primary targets, at least for folks that come to us and tell us about their experiences are often transgender women, people of color and youth and particularly young transgender women of color who are profiled for just not looking the way the NYPD would like them to look, stopped and then frisked, they have a condom on them and then they're arrested for having that condom. And it's impossible for us at AVP to send

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a message of safety, either from the perspective of safer sex is a good thing and people should be safe by having safer sex, or a message of safety that it's okay to be who you are in New York City, which is our fundamental mission. When we have to explain to people when they say to us, well, if I take this condom will I be arrested for having it, and we have to say, you should be having safer sex. This is good. But yes, you might be arrested for having it. It puts us as a non profit organization that New York City and New York State funds in an untenable position but more than that, it actually forces us to act in a way that is contrary to our mission when we're working with LGBT people who are affected by violence both from their, maybe their intimate partners or sexual violence or hate violence but also institutional and police based violence. And one thing that I would just like to point out, we recently released a report about violence in New York City and this is hate violence or violence that people experience at the hands of non intimate partners. And what we found was that in addition to an overall rise for the third year in

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a row of violence, incidence of violence reported to us by LGBTQ communities we also found that reports of hate violence motivated by anti immigrant bias increased substantially, which I think has much more to do with AVP doing better outreach in immigrant communities because we know that immigrants have been targeted for violence for a very long time. So, we're not reporting new news, we're just reporting numbers that we're seeing for the first time or for the first couple of years. And then also nearly 40 percent of survivors who reported violence to us and engaged with the police reported police misconduct in 2012 and of the folks who engaged with the police reports of hostile attitudes by the police doubled in 2012. So, we're seeing people, even when they are reaching out to the police for, to report incidents of hate violence they are not having positive experiences with the police and in some cases those reports are the police targeting stopping, frisking and arresting them. so, we at the New York City Anti Violence Project can't emphasize enough that this law is completely, it is the law, or the policy, the practice itself is

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completely contradictory in the way that I've just tried to explain our mission based work has become contradictory and this law in Albany would do a very, very simple thing that is completely commonsensical which would allow people to use condoms and that, without fear of being arrested for having them on that. And that's something that AVP must get behind in order for us to be able to do our work. So, thank you very much.

SOSHIATA MING: [phonetic] Good morning. My name is Soshiata Ming and I am Legislative Counsel for the New York Civil Liberties Union. Thank you to the Committees on Civil Rights and Immigration for holding this hearing today on resolution 710-A, which we urge you to pass. This resolution urges New York State's Legislators to fix an inconsistency that places the health of New Yorkers at risk. Because New York State law permits condom possession to be used as evidence of prostitution related offenses, New Yorkers are discouraged from carrying and thus using condoms. This consequently undermines public health efforts to reduce the rates of sexually transmitted infections, HIV and unwanted

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pregnancies. State legislation would remove this existing anomaly thereby allowing New Yorkers to protect their health. Despite City and State wide efforts to promote safe sex practices through the distribution of condoms New York's current policy undermines these efforts. Each year New York City's Department of Health alone distributes approximately 40 million free condoms through it's New York City condom campaign. In a place like New York City where many people live with HIV/AIDS, allowing New Yorkers to carry condoms is critical to combating HIV, AIDS and other sexually transmitted infections. Yet, because condom possession can be used as evidence of crime, New Yorkers, particularly those who are profiled by the police as being sex workers report that they either hesitate or refuse to carry condoms. This is contrary to a sound public health policy and in the case of persons who are routinely stopped by the police LGBT, transgender persons, persons of color and young persons, this policy is especially harmful. Because these persons are more likely to be stopped by the police they are more likely to hesitate to carry condoms thereby jeopardizing

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their health and safety. The importance of the State legislation and resolution 710 in support of it cannot be overstated. The NYCLU urges the City Council to pass resolution 710-A thereby impressing upon our State's Legislators the importance of passing legislation that prohibits condoms from being used as evidence of prostitution related offenses. New Yorkers need this legislation. It is good public health policy and it's also common sense. Thank you.

CHAIRPERSON ROSE: Thank you.

MR. MITCHELL MOURA: My name is Mitchell Moura [phonetic] and I am a Youth Leader and Researcher at Street Wise and Safe, also known as SAS, an organization focused on policing and criminalization of LGBTQ youth of color. In addition to conducting know your rights trainings and engaging LGBTQ youth of color in policy advocacy around issues that affect their lives, Street Wise and Safe is currently partnering with the Urban Institute on a research project funded by the Federal Office of Juvenile Justice and Delinquency Prevention to document the experiences of lesbian, gay, bisexual, transgender and queer

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youth as well as young men who have sex with men and young women who have sex with women who are involved or perceived to be involved in the sex trades. Through this research as well as our know your rights trainings and outreach throughout the city, Street Wise and Safe comes into contact with hundreds of LGBTQ youth in New York City every year. Many of the young people that we come into contact with have experienced homelessness or how are currently homeless and many of them have traded sex for the things they need to survive. Many more have been profiled as being involved in the sex trades based on their gender and race, their sexual orientation, their gender or expression. We know through our work at SAS that LGBTQ youth of color experience many kinds of discriminatory policing, including being profiled for offenses like loitering for the purposes of prostitution and to lewd conduct. When we are just standing in our neighborhoods or walking down the street or hanging out with friends, often police and prosecutors use the fact that young women of color or LGBTQ youth of color are carrying condoms as a tool of profiling. As is

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often the case with small amounts of marijuana condoms are found by police during stop and frisk encounters when we are told to empty our pockets or open up our bags or purses. While this practice effects all LGBTQ youth, it has particular effects on youth who are homeless or without a stable place to live who may or may not be engaging in and trading sex for the things they need to survive who in New York City are subject to aggressive profiling and policing by the NYPD every single day simply because so much of their time is spent in public spaces where they cannot escape stops, frisk and other discriminatory policing practices. When found on LGBTQ youth of color and people of color, condoms are often used to justify a ticket or arrest for prostitution related offenses. They also become a tool of verbal and sexual harassment and questioning ridicule around our sexualities and our sexual orientation or gender identity. Police often take condoms from us or destroy them. I have heard stories of youth being questioned, harassed and charged with prostitution related offenses based on the possession of condoms in all five boroughs,



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in subways, parks, outside of their homes, outside of shelters, going in and out of school and at places where youth access services, demonstrating that this is a wide spread practice not limited to a specific area or time of day. Although it is not illegal to carry condoms the practice of citing condoms as evidence of prostitution related cases including trafficking places has created the climate in which LGBT youth feel unsafe carrying condoms. We feel unsafe carrying condoms because we are. Carrying condoms for us means being harassed by law enforcement and sometimes arrested. Despite the risk of police violence and incarceration the LGBT youth and youth with involvement in the sex trades face when carrying condoms many still do. We hide them in bushes, bras, shoes or hair while trading sex and doing their thing that they need to do to survive. However, all too often LGBT youth don't carry condoms for fear of harassment, arrest, contributing to a public health crisis. For LGBT youth who are among those at greatest risk for acquiring HIV. And not every young person is able to independently make that decision about whether

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or how many condoms to carry, as you've heard earlier. I've spoken with youth who have been involved in the sex trades whose condom access as well as their daily life was controlled by an exploiter. For youth who are forced to trade sex the practice of using condoms is evidence in trafficking offenses creates a strong incentive for the people exploiting them to deny them access to condoms, putting them even further at risk for STI's, HIV, unwanted pregnancies and even forced abortions. This is why we're calling on City Council to join LGBTQ youth of color in speaking out strongly in favor of State legislation that would ban the use of evidence, condoms as evidence of all prostitution related offences across all five boroughs and across New York State. This is also why we are calling on City Council to pass legislation that would include a strong ban on profiling based on sexual orientation, gender identity, age and housing status in addition to race, religion and national origin. We urge you to pass this resolution and send a strong message to legislators in Albany that we need to protect the right of LGBT youth, to protect ourselves and

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we urge you to vote in favor of Intro 1080, which would create a comprehensive ban on profiling LGBT youth of color and create meaning and accountability for violating it. Thank you.

CHAIRPERSON ROSE: Thank you so much. And before we start with the questioning we'll have a statement from the sponsor of this bill, Council Member Lappin.

COUNCIL MEMBER LAPPIN: Well, it's not, well, thank you very much, Chair Rose. And first of all, I just want to thank you both Chair Dromm and Chair Rose for holding this hearing today and for doing it on relatively short notice. This is not a new issue. It's an issue that has been out there and been discussed in the public realm for quite some time but there seems to be, I think, I hope some really positive movement and momentum in discussion about this all over the state. And so this was a really critical moment and I appreciate you seizing it and working with us and I really want to thank the people on this panel, the people who spoke before for keeping this issue in the public's mind, in law enforcement and in the District Attorney's minds,

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getting some of them to change their minds which has been incredibly helpful and I think you've all said it very eloquently, we may not all wear red ribbons on our lapels anymore but it doesn't mean that the crisis is over, by any means. And the idea that we would discourage people in any way from protecting themselves, it makes no sense in terms of public policy and public health policy and we want to make sure that people are being proactive and not afraid of carrying condoms and to use them. So, I want to just thank you, everybody who's here, for your advocacy, for your work. I hope the State Legislature is listening. We know we don't, they don't have very many days left in this session but this is a serious public health issue linked to stop and frisk and other issues and I really do hope that they will take this on. So, thank you.

CHAIRPERSON ROSE: Thank you, Council Member Lappin. You know, the other panel, I had asked about the numbers, the statistics and you were able to pull some statistics but you also said that they're not really tracked by NYPD. So, how is that you have these numbers and could they

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not be much higher because people might have a fear or how do people report these incidents?

MS. MOGULESCU: The number that I provided of the 2,700 arrests.

CHAIRPERSON ROSE: Mm-hmm.

MS. MOGULESCU: That comes from our State Division of Criminal Justice Services. And so they're able to identify by county arrests with the top charge being either prostitution or loitering for prostitution. I've been able to look back several years and see if there's any trends but the numbers remain fairly constant over the last, at least five years, which is what I looked at most recently, the last five years. So, that's not relying on NYPD to report necessarily, that's our State arrest statistics for people who are arrested and then arraigned in each of the five City counties for these charges. In terms of the number I gave of our projects experience and the young people we represent, that was based on self reporting to our project attorneys and social work staff. And that was a number that we were looking at in trying to determine the most appropriate services for young people who are

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1 coming through criminal court charge with  
2 prostitution offences. So, that's why we started  
3 kind of looking at that. The other numbers that I  
4 think that you asked, I think those are the only  
5 numbers I gave - - myself. But the other numbers  
6 that I heard you asking about were the percentage  
7 of cases that go to trial.  
8

9 CHAIRPERSON ROSE: Right, mm-hmm.

10 MS. MOGULESCU: Which is  
11 infinitesimal.

12 CHAIRPERSON ROSE: Yeah.

13 MS> MOGULESCU: Like, percentage,  
14 it's a very, very small number of these cases that  
15 actually go to trial. I've tried 12 of them in  
16 the last, I would say three years, all trials were  
17 in New York County. Ten of those trials were for  
18 loitering for the purpose of engaging in  
19 prostitution, two of them were for prostitution  
20 itself, in those the Manhattan District Attorney's  
21 office sought to introduce evidence of condoms in  
22 three trials, two loitering cases and one actual  
23 prostitution charge. That's, I mean, that's my  
24 experience.

25 CHAIRPERSON ROSE: Right.

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MS. MOGULESCU: That's not more widely documented in any way but I suspect that very few cases, for either of these charges are proceeding to trial in any county throughout the State. I don't remember the other thing, last.

CHAIRPERSON ROSE: Right. Okay, [laughter] that's fine. That's fine. And the NYPD LGBTQ liaison, have you had the opportunity to work with them?

MS. MOGULESCU: No, I haven't but I don't know if anyone else—

CHAIRPERSON ROSE: [interposing] Anyone else on the panel?

MS. MING: We work with Detective Tim Duffy, he is the LGBT Liaison to the Police Commissioner. And we often work with the Gay Officers Action League who are not LGBT liaisons but who are openly LGBT on the police force. I also, as Andrea mentioned, sit on the LGBT advisory committee to the Police Commissioner and we work very closely with the hate crimes taskforce in this way. We tend to reach out to the LGBT liaison when the issue is around police violence but he is as limited as the rest of the

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department is in terms of giving us information about what's going on in those cases.

CHAIRPERSON ROSE: Anyone else have any questions?

CHAIRPERSON DROMM: So Sharon I, just a follow up on your talking about, I've been to the 1115<sup>th</sup> and I've been to the 110<sup>th</sup> precinct with Make The Road, actually, and questioned the Commanding Officers there about their use of condoms as evidence. They denied that it's used as evidence. Is there a disconnect between what the Commanding Officers of the precinct are doing and what the arresting officers are doing and do the Commanding Officers know what the arresting officers are doing, in other words, do they see the paperwork, did that go through them because they, in both cases denied that this happens.

MS. STAPLE: I can't speak to their personal knowledge and I do just want to recognize the irony of, we're sitting now on opposite sides.

CHAIRPERSON DROMM: Yes.

MS. STAPLE: [laughter] But last week we were sitting next to each other - - .

CHAIRPERSON DROMM: Three times



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last week.

MS. STAPLE: Exactly, but it's nice to see you again. I can't speak to their personal knowledge but it would seem to me to be contradictory to suggest that the NYPD isn't collecting condoms as evidence because certainly if the DA's are using condoms as evidence the NYPD would have to collect those condoms as evidence. It's not like the DA's would do it themselves, right? So, I don't know why they would say they weren't. It's not anything that the NYPD has ever actually denied to us, and in fact, I believe, and Andrea I'm looking at you just to make sure that I'm clear, but I believe the Police Commissioner has been very clear that the NYPD collects condoms as evidence. So, you know, I know the precincts you're talking about. We have also spoken to the Commanding Officers in those precincts. We do not have the warmest relationships with those precincts and, I'm sure, Make the Road can talk more in depth about that. But I wouldn't understand why they would publically deny something that their Police Commissioner openly admits that they do.

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CHAIRPERSON DROMM: Well, you hit the nail on the head actually, and that was what I was going to get at and you said it before I could get to it. But, you know, it just appears that it is a policy of the NYPD to, if in fact they have condoms to use it. I want to go back to my question also in terms of the DA Offices as well. I think somebody has acknowledged that the Brooklyn DA's office was here and I'm very glad to see that as well. Has outreach been done to the Queen's DA's Office?

MS. STAPLE: Yes. I believe we have done outreach to all five of the boroughs District Attorney's Offices.

CHAIRPERSON DROMM: Can you tell me who you spoke to or you prefer to do that privately?

MS. STAPLE: No.

CHAIRPERSON DROMM: Or what can we do because I'm very concerned that the Queens DA's Office is doing this and I'm particularly concerned because I represent Jackson Heights and a large number of these arrests and a large number of complaints are coming into my office.

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MS. STAPLE: Yes.

CHAIRPERSON DROMM: And I want to go after it.

MS. STAPLE: Yes. What I would suggest, because I wasn't personally a part of that, those meetings that perhaps someone on this panel, but certainly, if Make the Road is going to testify I think could speak to that.

CHAIRPERSON DROMM: Mm-hmm.

MS. STAPLE: And then I think Andrea Richie is signaling me from across the room that she was there at those meetings and she can tell you in more detail what happened.

CHAIRPERSON DROMM: Okay.

MS. STAPLE: But I think that any support you could give to that effort would be helpful with the Queens District Attorney's office. And just to go back, Council Member Dromm, to something that you were saying, I think it is really critical to understand that there are two steps in this process; one is that the District Attorney's have to stop using condoms as evidence, but the second which sort of logically follows but in practical reality will not follow

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1 as quickly, is that the NYPD has to stop  
2 collecting those things as evidence. And what we  
3 have seen, unfortunately, is a lag between policy  
4 and practice. And what, the testimony that you  
5 have heard is about the practice because that's  
6 what people are experiencing on the streets. And  
7 the things that we are most concerned about are  
8 the practice because it's well and fine to tell  
9 someone that it's against policy to be arrested  
10 for carrying a condom but that doesn't do anyone  
11 any good when they're in lock up for having  
12 carried a condom, right? So, we have to both send  
13 the message to the District Attorney's office that  
14 this policy is, I mean, it really is just, it has  
15 no logic to it. But also send the message to the  
16 NYPD and other police departments throughout the  
17 State that then the practice must immediately  
18 cease or else the policy will have very little  
19 value to those who are experiencing this kind of  
20 violence on the streets.

21  
22 CHAIRPERSON DROMM: Well, that's  
23 always been the major concern for me in terms of  
24 the way that we look at and deal with the NYPD,  
25 not just on this issue but on stop and frisk

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1 issues and somebody mentioned immigrant violence  
2 issues. And it's very interesting for me to see  
3 in my own office how there has been the shift, you  
4 know, I'm one of the first openly gay elected  
5 officials in the borough of Queens, a lot of  
6 people used to be opposed to me and hate me and  
7 threaten to kill me and stuff like that. Now it  
8 doesn't bother them so much about that but every  
9 time I put something in my newsletter about, you  
10 know, I'm Chair of the Immigration Committee about  
11 something that I'm doing regarding immigration  
12 rights, you wouldn't believe the amount of hate  
13 mail that I get in there. And so, I just find  
14 that to be reflected in many of the police  
15 officers attitudes toward our community and it's  
16 something that's very, very concerning to me. So,  
17 thank you.

18  
19 MS. STAPLE: [off mic] In terms of  
20 understanding also from the police side what  
21 happens on prostitution and loitering to  
22 prostitution arrests. In most counties these  
23 arrests proceed entirely by affidavit, meaning the  
24 arresting officer does not even need to speak to a  
25 prosecutor in order to initiate a case or to have

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1 a criminal court complaint drawn up. That's  
2 certainly the case in Manhattan where everything  
3 is done on preprinted affidavit. You've probably  
4 seen some of the affidavits and some of the  
5 studies that have come out. So, what happens is  
6 there's not tremendous oversight on either the  
7 quality of the arrests or the actual processing of  
8 the arrest itself so whether Commanding Officers  
9 are reviewing to that level, you know, invoices,  
10 vouchers, affidavits, I would highly doubt that.  
11 But I imagine that that practice is continuing.

12 CHAIRPERSON DROMM: And one of the  
13 reasons I was asking that is 'cause when I went to  
14 visit with the Precinct Commander in one of those  
15 precincts he pulled out the arrest forms and he  
16 said, well, there's only been three arrests on  
17 prostitution and none of them contain the, you  
18 know, condoms as evidence. I think Ivan from Make  
19 the Road was there with me when they said this.  
20 So, that's why I wanted to get a better  
21 understanding of how they write it up. So, is  
22 there a difference when they write it up as to  
23 what is arrest evidence versus what is personal  
24 possessions? Or are they combined together?  
25

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MS. STAPLE: Yes, certain items are vouchered as, for safekeeping, which would be your personal items, your keys, your identification if you had an MP3 player or, you know, cell phone or any personal items, versus arrest evidence, which go on a separate voucher and are then retained by the New York City Police Department. Also, when you ask about prostitution offences there's an important thing to remember which is that loitering for prostitution offences are often seen in areas like Jackson Heights in higher numbers but are not considered, you know, if you just ask about Penal Law 230.00 which is our prostitution offence, you wouldn't get, fully capture all of those cases. I know in other City Council hearings I participated in the New York City Police Department views those two charges very differently whereas vice squads often govern and make the arrest for prostitution, Penal Law 230.00, but loitering arrests can be made by a variety of conditions, units within a precinct or other squads. You have to make sure that you're getting, accessing both sets.

CHAIRPERSON DROMM: So, do you see

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the loitering charges more contained the use of  
condoms?

MS. STAPLE: Absolutely.  
Absolutely.

CHAIRPERSON DROMM: Mm-hmm, there  
and they're more frequent?

MS. STAPLE: They're more frequent,  
they're less, there's less oversight, and those  
are coming out of your petitions units in most  
precincts and most jurisdictions.

CHAIRPERSON DROMM: Okay, thank  
you.

CHAIRPERSON ROSE: Hearing no other  
questions, thank you all so much. Thank you for  
what you do. The next panel, John Corollo  
[phonetic], Elizabeth Lovinger [phonetic], Haley  
Gorenberg [phonetic], and Biani Garcia [phonetic].  
State your name for the record. Oh, turn your mic  
on first. [laughter] And then state your name for  
the record. You may begin.

MR. JOHN COROLLO: Is it on? Oh.  
Good morning. My name is John Corollo and I'm a  
member of the NYPD, LGBT advisory panel. I'm here  
today to express my support for passage of City



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COMMITTEE ON IMMIGRATION JOINTLY WITH  
THE COMMITTEE ON CIVIL RIGHTS

Council Resolution 710-A which supports the no  
condoms as evidence legislation committee which  
was introduced by Senator Velmanette Montgomery  
and Assembly Member Clark last January. Members  
of the Advisory Panel meet once a month to  
strategize and discuss talking points which would  
be raised at the next meeting with the Police  
Commissioner. I attended my first meeting with  
the Commissioner last October. It was then when I  
learned that currently the presence of condoms on  
a person or in a business or other premises can be  
used as evidence that the person intended to  
engage in prostitution or that the premises are  
being used for prostitution. I was deeply  
disturbed when I considered what a strong  
deterrent to carrying condoms and to making them  
available to people at a business or other  
locations where people are or may be exploited. I  
had the terrible thought of the return of an even  
larger public health crisis ahead, bigger and more  
serious than that in the 1980's, of which I am a  
worried, while HIV negative survivor. During this  
meeting the Commissioner seemed genuinely  
surprised at the news. He asked for time to

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investigate the facts and he would get back to us. He also asked for specific arrest records to be submitted for review. At our next meeting three months later the commissioner informed us that the Department was not making the condoms as evidence policy, it was coming from the District Attorney's offices. But prosecutors agree that the presence of condoms is not essential to making a case that trafficking, exploitation or promoting of prostitution is taking place. They are just one piece of evidence among many. The threat to the health and safety and interference with access to contraception and the reproductive rights of all New Yorkers, including victims of trafficking far outweighs the benefit to the use of condoms as evidence in prosecution. Legitimate businesses including gay bars and establishments have been reluctant to serve as distribution points for the New York City condom program. They are afraid that the police will use this fact that there are condoms on the premises to try to provide that unlawful sexual activities are taking place on the premises. Upon reflection I recall condom blitzes in the gay bars and clubs

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throughout the '90's. A few individuals would arrive to distribute information and condoms to patrons in the city's gay bars and clubs. That doesn't happen anymore. And even more telling, finding condoms in some of these same establishments is next to impossible. They are either hidden or not present at all. In a recent study I read where up to 50 percent of the people surveyed have not carried condoms for fear that they would be used by police or prosecutors to prove that they intended to engage in prostitution. Allowing condoms to be used as evidence of trafficking offenses creates strong disincentives to condom access for the homeless LGBT youth population, a very vulnerable group when one considers that they often resort to sex work just for a place to sleep. I know because I am involved with the Saint Luke in the Fields Youth Outreach Program titled, The Church. I have stressed the importance to the clergy heading this group to let these young men and women know about the importance of continuing to carry condoms in spite of their fears. It is for their and all of our safety. I am here to ask for a common sense

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response from the City Council that will encourage the passage of this bill intended to protect the health and safety of all New Yorkers, in particular, the health and safety of sex workers, people involved in the sex trades and survivors of trafficking. These bills would not jeopardize the ability of law enforcement or advocates to identify or assist traffic persons and they will not impede the prosecution of traffickers. These bills would prohibit the mere possession of condoms as evidence of a persons intent to engage in prostitution related offences. These bills would ensure that law enforcement practices aimed at protecting New Yorkers do not have the unintended effect of undermining sound public health policy. Currently the Department of Health distributes condoms to anyone who asks but there are instances where police officers confiscate condoms to use as evidence, even though it is not official policy. The health risks involved are too great to ignore. Thank you.

CHAIRPERSON ROSE: Thank you.

MS. ELIZABETH LOVINGER: Good morning, Council Members. I want to sincerely

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thank you for the opportunity to testify today.

My name is Elizabeth Lovinger and I'm the Policy Associate at Gay Men's Health Crisis, the oldest and largest HIV/AIDS services agency in the country. GMHC strongly supports - - resolution number 710-A. Condoms are a vital tool for New Yorkers and practicing safer sex and protecting themselves from HIV, and should be promoted by all levels of government as a vital public health and HIV prevention method. Unfortunately, we continually hear from GMHC clients who are afraid of arrest, simply for being responsible and trying to protect themselves and their partners. We are constantly asked how many condoms a person is legally allowed to carry and told of accusations of sex work due to a persons race and real or perceived sexual orientation or gender identity. Clients have even disclosed their HIV status to police officers, a considerable sacrifice of confidentiality in hopes of avoiding arrest for carrying condoms. The threat of condoms being used as evidence of sex work endangers the public health of all New Yorkers. Proven prevention methods are a crucial component of sound public

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policy, responsible budgeting and quality law enforcement procedures. We must do all that we can to promote safer sex and end the HIV epidemic. Possible use of condoms as evidence of sex work undermines the efforts of New York State, New York City and countless non governmental organizations in promoting safer sex tools and multi level HIV prevention by providing a disincentive to regularly carry condoms. New Yorkers disproportionately impacted by HIV must be supported, not criminalized in using and distributing condoms. As one example, transgender women of color are at disproportionate risk for HIV. However, they are also disproportionately subjected to the confiscation of condoms and prosecution for sex work using condoms as evidence. As our City and State governments continue to confront a deteriorating fiscal climate and contemplate further budget cuts it is vitally important that we consider the value of scientifically proven HIV prevention method. Making condoms more accessible is not only sound public health policy but fiscally prudent and responsible. We cannot afford to allow fear to

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put New Yorkers at risk for HIV. GMHC strongly supports the passage of proposed resolution number 710-A as a sound public health measure. Thank you.

MS. HALEY GORENBERG: [phonetic]

Thank you, City Council Leaders for convening this hearing today. I am Haley Gorenberg, and I'm the Deputy Legal Director of LAMBDA Legal. I'll be brief today, but LAMBDA Legal has posted more extensive analysis on the [nocondomsasevidence.org](http://nocondomsasevidence.org) website. For today, as a national LGBT rights organization, LAMBDA Legal is committed to fighting the HIV epidemic. We are keenly aware of how vulnerable our communities are to law enforcement practices gone wrong. We must end that now and stop using condoms as evidence of prostitution and sex trafficking charges. Early in the HIV epidemic here in New York City the epidemic epicenter, LAMBDA Legal won the first HIV discrimination case. We defended the rights of a New York City doctor threatened with eviction because he took care of people with HIV. He was a brave doctor. Three decades into this epidemic we want him and his colleagues to have fewer patients

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with HIV, not more. New York City knows one important way to help stem the epidemic, that's why the City's health programs have distributed millions of free condoms. Turning on a dime and using those condoms as evidence in prostitution and trafficking cases is a public health scandal. It's devastating to public health. When I was a legal services attorney for low income New Yorkers with HIV I kept a basket of condoms out on my desk. My colleagues, as you've heard, tell me their clients don't take them anymore for fear condoms will be used against them if police challenge them on the street. It's a recipe for a public health disaster at the hands of the City's law enforcement. Prostitution and sex trafficking cases are supposedly about public health but right now New York punishes the people whose health is most at risk. No District Attorney has ever pointed me to a prostitution or sex trafficking case that hinged on condoms. If you're going to make these cases don't make them at the expense of the health of the people who are most vulnerable and don't make them at the expense of the whole public's health. And if trafficking cases are



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about saving people from victimization, don't revictimize them and call it law enforcement. We need to end the use of condoms as evidence in prostitution and trafficking cases for everyone's sake. It is backwards, counterproductive and dangerous. Despite every logical public health indicator, despite the pleas of those representing everyone from violence survivors to HIV prevention advocates to at risk youth to victims of sex traffickers, despite statistics and health department reports and history and science and common sense, prosecutors and police in our city are still taking condoms as evidence of prostitution and sex trafficking which endangers us all. Thank you very much for vigorously supporting 710-A.

CHAIRPERSON ROSE: Thank you.

Okay. [off mic] We have it in English. [off mic] for the mic, yes, yes, yes, thank you.

MS. BIANI GARCIA: [Spanish Audio 1:36:20 - 1:36:50] I'm a little sick, sorry. My name is Vinny Garcia. [Spanish Audio 1:36:51 - 1:39:26] [off mic]

MS. KARINA CLAUDIA: [phonetic] I'm

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Karina Claudia. [phonetic] I'm the Court Lead Organizer with Make the Road and I am going to translate this. Thank you for letting me testify in front of this Committee today. Thank you to Council Member Rose and Council Member Dromm and all of the City Council Members present here today who are with us in this struggle. My name is Biani Garcia and I am an Organizer for the LGBTQ Justice Project, Make the Road New York. I am a Mexican transgender woman. I emigrated to the United States eight years ago and I am currently a resident of Jackson Heights in Queens. About three years ago I experienced first hand the practice of the use of condoms as evidence. It was a night when I, went to a bar to dance in the Queens area. We then decided to walk out, we walked arm and arm in Roosevelt Avenue and when we arrived at 86<sup>th</sup> Street an undercover car parked next to us, police car parked next to us, eight undercover policeman came out and threw me against the wall, took my bag and emptied everything on the floor. They found three condoms and that's what they used as evidence to arrest me for, with a prostitution charge. Two males officers

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searched me without asking for my consent. They touched my private parts and made fun of not only me but also my boyfriend. One of the policeman told my boyfriend to go or he would arrest him too, even though he said, we were out dating and he was my boyfriend. That night was the worst of my life. I was taken to the precinct and then before the judge he said, I was arrested on prostitution charges. As an organizer for the LGBT Justice Project I hear stories like mine daily. It is very frustrating to know that the combination of discriminatory practices such as stop and frisk and the use of condoms as evidence are putting all of my community in danger. We risk getting infected with sexually transmitted diseases and we stop trusting the police and wanting to report crimes to them. This is affecting our health and our safety. I am here today to ask the City Council to pass resolution number A-710 which urges the Legislator and the Governor of New York to pass the no condoms as evidence bill. This bill would protect many people in my community from sexually transmitted diseases and other health hazards. It would also

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protect people who are being forced into prostitutions as I have had many interactions with our members and members of our community who are being forced and coerced into prostitution and they tell me that they are not being given condoms because their traffickers know that police will use them as evidence. I do not want to keep feeling afraid to carry condoms. I do not want community members in my community to feel afraid. Keep in mind that condoms save lives - - .

CHAIRPERSON ROSE: Thank you so much. Thank you all. I am really interested in the fact that the NYPD has an LGBT advisory panel. So, could you tell me what the functions and responsibilities of, you know, of a liaison officer is and we'll start with...

MR. COROLLO: I'm probably one of the last, newest members to the panel. It was recommissioned in 2009 and I believe it was initially begun through the Speaker's Office. And it was Carlos Machaco [phonetic] who brought me on board. And he has now moved on and Eric Bocher [phonetic] is back sort of chairing for us.

CHAIRPERSON ROSE: Could you speak

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a little louder into the mic?

MR. COROLLO: Eric Bocher is now--

CHAIRPERSON ROSE: [interposing]

Uh-huh.

MR. COROLLO: --taking that place.

We work with Detective Tim Duffy who is the LGBT  
Community Liaison to the Commissioner Directly.

We meet with the Commissioner every two or three  
months. At that time we go over issues that we've  
discussed amongst ourselves in our monthly  
meetings that need coverage. In the past they've  
managed to change the way in which the academy  
teaches new recruits to relate to transgender  
people, that they are to be gender specifically  
searched by the proper gender, that their name is  
to be as they are now, not what the born name,  
there is a lot of issues that were changed. It  
seems to me I, after today, listening today that  
that's not really being practiced in the precincts  
and we have to cover that issue as well. We're  
trying to get ourselves into at least finding out  
how the training is being performed in all of the  
different precincts, the Commander's down, how  
we've actually asked to sit in on some of the

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training classes just to witness.

CHAIRPERSON ROSE: Are there  
liaison officers in all of the precincts?

MR. COROLLO: That I can't answer.  
I don't think there are. I mean...

MS. CLAUDIA: This is Karina again,  
the Lead Organizer with Make the Road New York.  
Make the Road New York also sits on the NYPD LGBT  
advisory to Ray Kelly and, you know, I think that  
many times they've, the function of the advisory is  
really to bring up issues that community members  
are facing, you know, in regards to policing in  
New York City. One of the changes that John was  
talking about was the transgender policing, patrol  
guide changes that happened that were announced  
last year, June of last year, which was a big  
victory for the folks that had been in the  
advisory before. I was called also in October of  
last year. So, you know, and in that meeting we  
brought this report that we had published called  
Transgressive Policing. And they told us again,  
you know, we need stories of, and we need concrete  
evidence and files and all of these things. And  
we keep telling then, you know, I hear these

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1 stories every week in my office. I, you know, we  
2 publish this report, Human Rights Watch has  
3 published a report, you know, the Prose Network  
4 [phonetic] has published a report. So, there is  
5 enough evidence out there that this is happening.  
6 They can't tell us that this is not happening and  
7 I, you know, this is, I'm seeing these cases every  
8 week in my office. So...

10 CHAIRPERSON ROSE: Do you think  
11 this advisory group is effective?

12 MS. CLAUDIA: I mean, I think that  
13 we try to bring at least as, Make the Road as a  
14 member of the advisory tries to bring the direct  
15 experiences of people from the community forward  
16 to the Commissioner. You know, I think that  
17 there's been some progress made and, you know, I  
18 think the announcements of the Manhattan and  
19 Brooklyn DA's to the Commissioner, they've, at  
20 last the Brooklyn DA has written a letter to the  
21 Commissioner saying, you know, we've stopped using  
22 condoms as evidence, your officers should stop  
23 using them too. I think that's a huge victory.  
24 So, yeah, I think we want to, obviously, make it  
25 as effective as possible but I think there are

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1 limitations as, you know, Tim Duffy does work for  
2 Commissioner Ray Kelly and, you know, and he, his  
3 position is that condoms are still going to be  
4 collected.  
5

6 CHAIRPERSON ROSE: And do you know  
7 if there are liaisons to each precinct?

8 MS. CLAUDIA: There are not. One  
9 of the things that we ask in this report is that,  
10 there is, we ask for a LGBT police liaison in  
11 Jackson Heights. We'd love to see that.

12 CHAIRPERSON ROSE: And so the  
13 liaison officers on the advisory panel that does  
14 exist are primarily from community organizations,  
15 right? How are you appointed? What were the  
16 requirements to be on the advisory?

17 MR. COROLLO: It was last year, you  
18 know, the Speaker's Price Ceremony that she made  
19 an appeal to anyone who was interested in joining  
20 because there was some openings. And I approached  
21 Carlos at that point. Previously I had worked for  
22 an Assemblyman and that's how I got into the  
23 environment of City Hall and Albany. And so, I  
24 managed to maintain those relationships and I  
25 thought there might be a worthwhile place for me



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to be. And in many ways, I mean, I'm not connected politically at the moment but, or in any of the organizations per se, but I'm, as just a citizen of New York I have something, I think, to offer and benefit by.

CHAIRPERSON ROSE: Do you, do meetings with community organizations and then take information back?

MS. CLAUDIA: Yeah, I represent Make the Road and members. You know, and the interests and the concerns of our members in the advisory.

MR. COROLLO: And I think most of the members of the panel come from different agencies and support groups. We have, ADP is represented, SAS.

MS. CLAUDIA: SAS.

MR. COROLLO: Make the Road.

CHAIRPERSON ROSE: How many members are there on the—

MR. COROLLO: [interposing] We also have someone from the Public Health Department. There are 22, I think.

CHAIRPERSON ROSE: Okay, thank you.

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And for Biani, were you aware that it was, that you could be arrested for having condoms prior to your arrest? [off mic]

MS. GARCIA: It was my first time in New York City so that's why I feel like, weird to carrying condoms. - - 'cause, you know, I take some condoms from the bar and then come out with my boyfriend and they are asking for that.

CHAIRPERSON ROSE: Okay, I'm not quite, I didn't quite hear you, I'm sorry. [off mic]

MS. GARCIA: Okay, so, no, I never know about the law, yeah, the laws. So, that's why I feel, I don't know, [Spanish Audio 1:15:15 - 1:15:36]

MS. CLAUDIA: So, before I didn't know that there, this law existed or this practice existed but now I just feel afraid of carrying condoms and walking down the street.

CHAIRPERSON ROSE: Okay. And your case didn't go to trial, did it?

MS. GARCIA: No. [off mic]

CHAIRPERSON ROSE: No?

MS. GARICA: No.

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CHAIRPERSON ROSE: Okay, thank you.  
Council Member Dromm?

CHAIRPERSON DROMM: I have a couple of questions, ideas, statements, whatever. You know, Chair Rose, our, in the LGBT community movement was founded on police corruption and there's a long history of police corruption in relation to it's, sort of the relations that they have with the LGBT community, it started at Stonewall and responds to police taking bribes to allow the bar to stay open. And I don't know, really, how much that has changed in the 40 plus years of the movement. The police officers and Biani's experience in Jackson Heights is similar to my experience as a Council Member in Jackson Heights. They're rude, they're obtrusive, they don't give a darn about you. You come out on a Saturday night along Roosevelt Avenue, it's like Dodge City. They're throwing people up against the wall, they're throwing people's purses on the grounds. We have been out there screaming and yelling and fighting. We have issued reports, we have done everything that we could possibly do civilly to push back against this type of

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oppression from the NYPD to really very little success. This advisory panel that exists now came out of Speaker Quinn in 2009. There were previous panels and Mayor Giuliani had one in 1993 and when they shut down the Queens Lesbian and Gay Pride Parade in 1995 I visited that panel and spoke before them and it was a bigoted police inspector at that time who shut down the parade for no reason except that he hated gay people. And so that was in existence then. What happened is that it became a little bit too controversial because we began to tell the police officers exactly what they were doing and they didn't really want to hear it so the members of the police panel who were here had a very difficult tight rope to walk in terms of being able to state what we know to be the reality of their relations with the LGBT community and how they have to navigate that even dealing with the Police Commissioner himself. So, they're in a little bit of a position to be able to say exactly what it is but I can verify that Biani's experience and that of the people of Make the Road has been my experience with the police in my neighborhood. And it's getting to the point

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where it's really, really crazy. I do have a question, though, for John. Has this topic of condoms been directly addressed at the panel hearings?

MR. COROLLO: Since I joined the panel in October, yes. Every time we meet separately and every time that we meet with the Commissioner we, it's part of the, one of the first talking points that we deal with.

CHAIRPERSON DROMM: Can you say what they say?

MR. COROLLO: As I—

CHAIRPERSON DROMM: [interposing]  
And by the way, what, do you know the name of who, is it only Tim Duffy who's there or is there a higher person there?

MR. COROLLO: Well, the Commissioner is there.

CHAIRPERSON DROMM: He's always there?

MR. COROLLO: Yes.

CHAIRPERSON DROMM: The Commissioner is always there. Oh, okay. He comes—

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MR. COROLLO: [interposing] No, no, no. He comes, we meet as a panel separately every month and we come up with strategy and discuss what we want to cover with the next meeting. And we meet with the Commissioner every couple of months.

CHAIRPERSON DROMM: Okay.

MR. COROLLO: We just met with him in May.

CHAIRPERSON DROMM: And this was brought up to him?

MR. COROLLO: Yes. And it has been every time we've met since I've been on board. And he's changed the direction. Originally he said, well, you know, he didn't know anything about it and then he said that in the next meeting that it wasn't police policy, it was the DA's policy. And from my understanding some of the members, Andrea especially and, I think, Karina, went to the different DA offices to discuss the issues. And the last I had heard they hadn't been able to get a firm commitment from any of the DA offices, they didn't want to change it.

CHAIRPERSON DROMM: I also

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attended--

MS. CLAUDIA: [interposing] Sorry, to clarify, we did get the Brooklyn DA's office to send a letter--

MR. COROLLO: [interposing] Yeah.

MS. CLAUDIA: --to Ray Kelly saying that they are not collecting condoms as evidence anymore from prostitution related cases.

MR. COROLLO: This is something new to me. I mean, I was happy to hear that today but... And I also went up to Albany, or Andrea and Karina had, and I think the sex workers had organized a lobby trip up to Albany to discuss this bill and at that time one of the strategists for Senator Aspinall [phonetic] made it very clear that it should be come a public health issue and we should approach the Chair of the Public Health Committee to hold a public hearing. and so that's where it's been left off. But, that makes more sense than anything.

CHAIRPERSON DROMM: Well, it's really disappointing because all the Commissioner has to do is to say, end the practice, and that will end the practice. It needs to come from the

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top down. It's a military type organization and if he puts us foot down about it it would end.

MR. COROLLO: I agree with that but I also see how even with the police handbook and procedures that it's still not being practiced, you know, but it's out.

CHAIRPERSON DROMM: You mean with the transgender rights?

MR. COROLLO: The transgender, yes. I mean, I've heard instances today, that's disappointing.

CHAIRPERSON DROMM: Because there's no emphasis placed on it. They do these things but they don't place as much importance on it as should be placed on it. And until they highlight it and make it a priority then it, the changes still are going to take a long time to occur. That's always been the case. I've met with the police ad nauseum. I, since 1992 sat with and brought them into gay bars to sensitive training. I have done 20 years of sensitivity training. I go to every single time they have a graduating class. I talk to all the officers. I'm an elected official. And somehow they still ain't



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getting it. And it's a disgrace for New York City to be in this position.

MS. CLAUDIA: Yeah, and I, if I may add Council Members, I think that, you know, we need several approaches to this problem, right? It's not only calling on the DA's but the DA's calling on the NYPD, the Council calling on the State to pass the State bill so that it's not only on the, in the City, that it's a state wide and, you know, I agree that we need several approaches to make the practice go away.

CHAIRPERSON DROMM: Thank you.

CHAIRPERSON ROSE: Thank you. [off mic] Thank you all so much for testifying. The next panel will be Lillian Rivera [phonetic], Kayla Rivas [phonetic], Jennifer Pierre [phonetic] and Rashida Richardson [phonetic]. Yes, you may. [off mic] When you're ready please identify yourself and speak into the mic.

MS. LILLIAN RIVERA: Good afternoon and thank you to the Committees on Civil Rights and Immigration for having this hearing this afternoon. My name's Lillian Rivera. I'm Director of Advocacy and Capacity Building at the

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Hetrick Martin Institute [phonetic]. Hetrick Martin Institute is the nations oldest and largest LGBTQ youth serving agency focusing on the creation of a safe and supportive environment in which youth can thrive. HMI serves over 2,000 LGBTQ youth within it's New York City program space and over 6,000 through various outreach and homeless youth programs annually. At HMI we prioritize the health and well being of all young people we work with and ensure that we create an environment that fosters their physical, mental and emotional health. A large part of our programming is aimed at addressing health disparities. Our youth are disproportionately impacted by depression, anxiety, STI and HIV infections. We work on addressing the social determinants of health such as poverty, lack of access to education and marginalization. These factors drive up disparities as do legal practices that limit the possibilities of youth maintaining their health such as using condoms as evidence. LGBTQ youth have various challenges in their lives that their heterosexual peers do not face. They experience rejection from families of birth,

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violence within the educational system and are overrepresented within juvenile justice system. Not because they are bad or defective but because they live within a world that can be hostile to who and what they are. LGBTQ youth are often have huge holes in the safety net that should be there to catch them when they stumble and fall along their path to development. Often following Federal mandates such as the distribution of condoms as a preventive measure against contracting HIV, the virus that causes AIDS, flies counter to the message they're receiving on a local level where the practice of carrying condoms on their person becomes a reason for suspecting them of prostituting or other unlawful acts. Youth are left mistrusting the very service providers and law enforcement that is charged with the responsibility of caring for them. Thus, using condoms as evidence creates another hole in the safety net, a hole which can lead to involvement in the juvenile justice system for attempting to take care of their health, a hole which can lead to and STI or HIV. As adults concerned for the well being of LGBTQ youth it is

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imperative that we ensure that this net is in place. HIV infections among YMSM of color are on the rise and we must step up and ensure that we remove all barriers to decreasing these rates, especially the ones we are responsible for creating. HMI applauds the City Council's efforts to ensure that our state moves towards eliminating the use of condoms as evidence 'cause it just makes sense. It makes sense that we encourage our youth, our future, to take care of their health, to make healthy choices, to transition into adulthood without the fear of being criminalized for health seeking behaviors. It makes sense that we work with our public health colleagues to eliminate health disparities. It makes sense that our policies and practices reflect what we know to be true. And it's simply common sense. Condoms and their distribution save lives and any practice that jeopardizes this practice, such as using condoms as evidence, or the perception of this practice must be adamantly halted. Young lives are at stake. Thank you.

MS. JENNIFER PIERRE: Good afternoon. Thank you for your time. It is an

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honor to be speaking with you today. My name is Jennifer Pierre and I work with the Health and Human Rights Division of the International Research and Advocacy Organization, Human Rights Watch. We submit this testimony in support of City Council Resolution 710-A. the use of condoms as evidence of prostitution related offenses is - - and it is essential to protecting the rights and the health of all New Yorkers. Adoption of this resolution would send a clear message to State Legislators that the no condoms as evidence bill is essential to promoting both public health and human rights. Between October 2011 and July 2012 Human Rights Watch conducted research in New York City on the existence and effects of police seizing condoms as evidence of prostitution related offenses. In July 2012 Human Rights Watch released a report documenting the use of condoms as evidence of prostitution in New York and three other major US cities based on over 125 interviews in New York City. We have submitted to the Council today written testimony that includes a copy of our report for your reference. Among some of the people we interviewed the practice of

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condoms being seized as evidence has caused them to fear carrying condoms to the point where they carry only a few or none at all. The health consequences of failure to use condoms for sex workers can be dire. New York City is the epicenter of the AIDS epidemic in the United States with an AIDS case rate three times the national average. A recent study in New York City among people who exchange sex for money or other goods found that 14 percent of men and 10 percent of women were HIV positive. New York State and City have devoted enormous resources to curbing the HIV epidemic, including through condom distribution. But these efforts will continue to be frustrated if vulnerable populations are discouraged from protecting themselves because their condoms may be used against them by the police. Human Rights Watch believes the State bill is particularly important to protecting the lives of victims of trafficking. For the same reasons that permitting condoms to be used as evidence for prostitution undermines human rights, including the right to health permitting condoms found at a location where people have been coerced

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into the sex trade to be used by prosecutors as evidence to support charges of trafficking or promoting prostitution is in practice counterproductive and risk more harm to victims of trafficking. Although the intent to secure a successful prosecution of traffickers is commendable and consistent with government obligations to combat trafficking, using condoms as evidence of trafficking cases provides a perverse incentive to traffickers to prohibit victims from carrying or using condoms or to restrict victims access to condoms including by refusing to make them available at locations where they are being exploited. Human Rights Watch urges the New York City Council to adopt resolution 710-A without delay to encourage the New York State Legislature to enact S1379 and A2736 to before the end of the 2013 budget legislative session. In order to expand the strengthen the promote of condom use among New York's most vulnerable residents, trafficking victims, sex workers and LGBT youth as well as among the general public. Thank you very much for your time.

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MS. RASHIDA RICHARDSON: Good

afternoon and thank you for allowing me to testify this afternoon. My name is Rashida Richardson and I'm a Staff Attorney at the Center for HIV Law and Policy, the first national and legal policy resource and strategy center for people living with HIV and their advocates. I also coordinate our positive justice project, a national coalition of people living with HIV, their advocates, healthcare providers, public health professionals and others working to end the criminalization of HIV in the United States. The Center for HIV Law And Policy supports the resolution calling for legislation to end the reliance of health protection measures such as condoms to support criminal charges against individuals at risk of HIV and other serious sexually transmitted infections. Condom confiscation and reliance on protection measures as evidence of wrongdoing is a matter of great public concern. The HLP works with communities disproportionately affected by this practice including women of color, transgender individuals and immigrants in Jackson Heights, Queens, and with attorney's representing



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individuals who are targeted for prosecutions.

Our support for the City Council resolution is

based on our experience on the fact that condoms

remain the best protection against not only HIV

but STI's such as treatment resistant gonorrhea.

Condom confiscation creates serious obstacles for

public health campaigns to address the health

threats because it makes people afraid of

accessing, carrying and using condoms. Over

100,000 people are living with HIV in New York

City. To help curb the HIV epidemic New York City

distributes millions of condoms. This is an

important public health intervention. It

encourages safe sex, prevents unwanted pregnancies

and protects individuals from STI's, to employ the

resources of one government agency created to

protect the public, to undermine the public health

initiatives of another is at least, at the very

least very wasteful and counterproductive. Yet

recent discussion with community members confirm

an alarming trend. Women of color, especially

immigrant and transgender women are being stopped

searched for condoms. Police officers are

confiscating and destroying condoms on the street

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and leaving immigrants and transgender women who are at risk of high STI and HIV even more vulnerable of having unprotected sex. Police officers are also using condom possession as grounds for arrest and as evidence of criminal activity. The law enforcement practices are producing a chilling effect in neighborhoods like Jackson Heights. Transgender Latina women are refusing to carry condoms because they increase the likelihood of arrest and prosecution. Using the criminal system to penalize possession not only places women at risk it also contributes to over criminalization of people of color, immigrants and transgender individuals. Condom criminalization can have devastating collateral consequences including barriers to housing, employment and voting, often following arrest HIV status is used improperly as an aggravating factor in criminal charges which in turn can trigger serious immigration consequences including deportation. The Council's proposal, or proposed resolution supports the national trend to end this - - practice. Evidence by recent agreement between prosecutors and public defenders in San

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Francisco brokered by the San Francisco Human Rights Commission and also more locally by the District Attorney Charles Hines, a Nassau County District Attorney, Kathleen Rice also issued policy directives prohibiting the use of condoms as evidence of criminal activity. Since these policies and their implementation can change over time we urgently need legislation. We applaud the New York City Council for showing leadership and calling for legislation that will end the policing that undermines our investment in public health.

CHAIRPERSON ROSE: And we've been joined by Council Member Eugene. Thank you. [off mic]

MS. PERLA RIVAS: [Spanish Audio 2:10:10 - 2:11:56]

CHAIRPERSON ROSE: Could you speak in the mic?

MS. RIVAS: [Spanish Audio 2:11:57 - 2:12:02] Sorry [Spanish Audio 2:12:02 - 2:12:33]

FEMALE VOICE 1: So, good morning and thank you to Council Members here for letting me testify today. My name is Perla Rivas. I am 35 years of age, Salvadorian. I've been here for

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ten years. About a year ago I was in the corner of 94<sup>th</sup> Street and Roosevelt waiting for a friend so that we can go get some drinks around midnight. Suddenly an NYPD cop car stopped in front of me. Three cops came out in their uniforms, asked me what I was doing there. I said, I was waiting for a friend. One of them answered, I'm not stupid. I know what you're doing here. He took my bag, found three condoms that I had there. The other policemen were searching around. They saw that there was apparently some urine in the sidewalk and they said that I had to choose between being arrested for prostitution charge because they had the evidence or being fined with a fine for urinating in the street. He confiscated my condoms and then gave me a ticket but now I live in fear of carrying condoms because I know that they can be used against me. A lot of women in my community are being stopped by the police because of how they dress or how they express their gender identity. I'm afraid to go out to the streets or even carry condoms because daily I know that transgender women are being stopped in my neighborhood, condoms are being confiscated and we

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are being falsely accused of prostitution charges. That's why we urge the Council Members to pass resolution A-710. This would help a lot of people in my community. I don't want to feel afraid to carry condoms. Condoms are to protect us not to criminalize us.

CHAIRPERSON ROSE: Thank you so much.

CHAIRPERSON DROMM: Just one comment for Perla too, because, again, this is a story I'm hearing all the time, Madam Chair along Roosevelt Avenue, 86<sup>th</sup> Street. Just last weekend I had a former member of the Internal Affairs Bureau of the NYPD tell me this his friend was stopped on 86<sup>th</sup> Street and Roosevelt Avenue for urinating. He was not urinating and the cops gave him a ticket as well and threatened him with every other type of arrest and everything like that. And because he's an immigrant, undocumented immigrant here eh figured the best thing to do was just to keep his mouth shut, take the ticket and at least get out of that situation. And that's what's happening in the neighborhood. I hear it so often it's really just terrible to hear it again. So, thank you for

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coming in though everybody and sharing your concerns.

CHAIRPERSON ROSE: Thank you all for testifying, and again, you know, it's really a shame that you all have to experience, you know, this breach of your civil rights, and I apologize. Please, we'll have the next panel. Steve Ashkenazi [phonetic], Audacia Ray [phonetic], Laura Saft [phonetic], and Canina Claudio [phonetic]. Karina? I'm sorry, Carina Claudio [phonetic]. Sorry, Carina.

MS. CARINA CLAUDIO: It's okay.

CHAIRPERSON ROSE: Identify yourself and you may begin.

MR. STEVE ASHKENAZI: [phonetic] Chairs Rose and Dromm and other Members of the City Council, my name is Steve Ashkenazi. Some of you know me from work I've done at many organizations such as the Hetrick Martin Institute, the Harvey Milk High School, the Alley Forney Center, Madrigal House, the LGBT Community Center, Heschel [phonetic] Manhattan Community Board Two, and I'm also a member of Commissioner Kelly's LGBT advisory panel. As a social worker

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work with New York City Youth for more than 40 years and for the last nearly 30 years that work has included encouraging those who were sexually active or considering becoming sexually active to please use condoms. So, when I recently heard that young people are now afraid to carry condoms for fear of being arrested for prostitution I was sure it was a joke. When the rumors persisted I was convinced it was the new urban myth. And I continued to urge kids to ignore these rumors because I believed that such a dumb idea could not possibly be real policy. So, you can imagine my shock and my horror when I discovered that this policy is real and is threatening to undo all of the important safe sex education that is going on in schools and youth programs around the city. Why is condoms as evidence of prostitution a dumb idea? Well, besides the obvious reason that it doesn't make any sense because carrying condoms does not indicate an intent to commit prostitution or even to have sex, it is also a dumb idea because it is a dangerous policy which deters condom use and thereby exposes people to life threatening illnesses. Let me tell you something,

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as anybody who has every worked in the field of AIDS and HIV prevention can tell you, it's not easy to get people to use condoms. That is especially true of young people who were convinced that they are invincible, indestructible and just basically immune from consequences. So, since the mid '80's counselors and youth workers have wracked their brains trying to figure out ways to make condoms cool, fun and familiar. We've talked about them, played with them, we've made them in bright colors and yes, we have even shoved them onto cucumbers to demonstrate how to put them on. But most of all we've made them ubiquitous, giving them out in droves. Of course we know that most of them don't get used for their intended purposes. Kids make water balloons out of them, they play practical jokes with them, they make obscene gestures with them, they lose them, waste them and throw them away. But we don't care, we just want to know that kids are getting comfortable enough to be around them and to keep them close enough at hand so that should they find themselves in a sexual situation maybe just maybe they will remember to use a condom for protection.



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So, why would a young person have to carry a whole bunch of condoms on their person? Probably to prevent their snoop parents or sneaky little sister from finding them were they to leave them at home. And I can assure you that if a young person has recently come from an appointment with a guidance counselor or meeting up with friends at the drop in center, there is a very good possibility that they are carrying a bunch of condoms. So, the notion that carrying condoms can be used as proof of prostitution is a dangerous, nonsensical policy and this problem has to be fixed and it is up to you, the Members of the City Council to fix it. As long as some of our DA's continue to be more interested in wracking up convictions than in justice and more interested in promoting their own careers than in saving the lives of young people then I urge you to step in and fix this problem by voting on this bill opposing the use of condoms as evidence in prostitution. It not only makes sense. It's the right thing to do.

CHAIRPERSON ROSE: Thank you very much for your testimony.

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MS. ODISHA RAY: Good morning, afternoon now. My name is Odisha Ray and I'm the Founder and Executive Director of The Red Umbrella Project. We are a peer led organization that amplifies the voices of people in the sex trades through media, storytelling and advocacy programs. We've been working with a growing coalition of organizations on the issue of condoms being used as evidence of prostitution related offenses since 2009 and we're part of the Executive Committee of No Condoms as Evidence Coalition. I'm here today to offer testimony in support of resolution 710-A. As a former sex worker myself and as a current advocate I support the passage of State Bill A2736, S1379 because in our current situation condoms which are a safer sex tool that the Department of Health gives away in the millions every year are being confiscated, destroyed and used as evidence of prostitution. Many community organizations that make of the use of the free condom program but increasingly people in the communities we serve are not taking advantage of free condoms because of the fear that they will be stopped and frisked and that the condoms will be

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used against them. I know that one of the concerns on this issue is that prostitution is illegal and legislators do not want to condone the practice, especially in cases where prostitution sexually and economically exploits people participating in it. I want to address this first by saying that although prostitution is illegal the people who work in the sex trades, whether we were there by choice, circumstance or coercion are human beings who deserve access to condoms so that we can protect ourselves from unwanted pregnancy and sexually transmitted infections, including HIV. The mere fact of access to condoms does not condone prostitution. Access to condoms is a harm reduction strategy. Secondly, for people who enter the sex trade by coercion it is important that this bill is a comprehensive one that includes a ban on condoms as evidence in trafficking cases. Traffickers exert a lot of control over their victims and if condoms can be used as evidence against them they will restrict or deny access to condoms for their victims as we've heard today. This creates an unacceptable situation in which people are being victimized

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twice, forced to exchange sexual labor and prevented from protecting themselves from pregnancy and disease. And last but not least, this issue does not just affect people in the sex trades. Many people of color, transgender women and gender non conforming people are routinely stopped and frisked and if they are carrying condoms they may be charged with 240.37, which is loitering for the purposes of prostitution. The use of condoms is evidence as a barrier both to the public safety and safer sex practices of many people and it needs to be found.

MS. LAURA SAFT: [phonetic] Good afternoon. My name is - - and I am the Deputy Director - - . Okay, sorry, I want to fix this little... Yes, good afternoon. My name is Laura Saft. I'm the Deputy Director of Brooklyn Defender Services. Our office, for those who don't know it, is a, we represent about approximately half of maybe all the people in Brooklyn who have been arrested of crimes and now we represent almost all of the parents who are facing, I'm sorry, who are facing loss of their children and family through the child welfare

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system. And as such we're very familiar with people being charged with prostitution offenses. It's actually an exciting time to be in a defense organization because there are now many opportunities being offered to our clients to help them, to help change their lives and to help them better themselves. This particular practice, mostly by the police and by some prosecutors of arresting people using the condoms as evidence against them, is the opposite of what the trends are in the courts today. Now, for many, you know, for 17 years our office has been in existence and we represented thousands of people charged with prostitution offenses. Day by day these individuals were brought to court, many young women, often victims themselves. Clearly many were sex trafficked and under the domination of others. Many are sex trafficked and are victims of sexual, I'm sorry, of domestic violence and are living in constant fear of abuse. There are many that have serious drug dependency and mental illness and for a very long time the courts were doing nothing for that. There were offers of community service, small periods of incarceration,

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1 fines, and that did nothing to address the needs  
2 of people who are engaging in sex work or any of  
3 the people who were troubled by this. Basically,  
4 they were doing nothing. And then in the last  
5 several years there have been pilot programs. And  
6 Brooklyn, who we are always sort of looking for  
7 progressive and new ideas and to be on the  
8 forefront of things to actually help our clients  
9 and individuals of coercive crimes, we implemented  
10 a program and with the cooperation of the Brooklyn  
11 Criminal Court, the Kings County District  
12 Attorney's Office and defense organizations such  
13 as Brooklyn Defender Services, now, and I don't  
14 know if everyone knows this, virtually everyone  
15 who is charged with a prostitution offense is  
16 offered the chance to get into a program and  
17 change their lives. And once that is successful  
18 and they complete that program their case is then  
19 dismissed and now this is true whether it's  
20 someone's first arrest or their 100<sup>th</sup> arrest for  
21 prostitution, that's a very big change in the way  
22 the criminal justice system has treated people  
23 charged with prostitution. In my office I just  
24 wanted to say that even after the case is  
25

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dismissed we still offer wrap around services for helping people continue their lives, helping them with drug dependency, helping them with mental illness and thanks large part to the City Council, we are also have one of the largest immigration practices in Brooklyn and we help these individuals with their immigration consequences.

So, given that trend we have the opposite trend by the police basically of intimidating people, of arresting them, of profiling, stopping, frisking and in this situation taking condoms from people and discouraging people from possessing or using condoms. And it's really the, a step backwards. So, really until what I see as, until we're able now to reach all the sex workers and until the sex workers themselves are ready and able to make changes we certainly want to keep them safe and that's, you know, thousands of clients who we want to help. Now we're getting offers to help so we need to keep them safe 'til we can reach everyone of them. Of course, we also want to keep their customers safe and any of their intimate partners. So, this bill that we're fully in support of promotes the safety and health of the sex workers

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and their patrons alike and is a further step towards the progressive change that we're seeing. And by promoting safe sex and the use of condoms we have the chance to help people before their behaviors could have devastating effects on other people, on people that are families, their lives and the lives of those they come into contact with. To partake in a system or to persist in a system that discourages the use of condoms and uses it as a negative inference against them at trial is taking a step backward. And this bill is a step forward and it promotes the safety and health of people until they can avail themselves of the opportunity to choose new goals and have new lives. Thank you.

CHAIRPERSON ROSE: Thank you.

Karina?

MS. CLAUDIA: Again, I'm Karina Claudia. I'm a Lead Organizer with Make the Road New York. I am going to read a testimony, I, one of our members that was not able to come here today but I also available to answer any other questions you have of Make the Road New York. Hello, and this is a testimony of Johanna Vasquez,



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one of our members. Hello everyone and thank you for letting me testify today. My name is Johanna Vasquez and I am a member and Leader of Make the Road New York. I'm a proud transgender woman and a resident of Jackson Heights. I came to this country to escape the violence, discrimination and ill treatment of people towards LGBTQ people in my country. Because of circumstances of false discrimination and profiling in the hands of the police I was arrested two years ago on charges of prostitution. It was a night when my friend invited me to go dancing. I didn't want to go but she convinced me. I put on some makeup and a dress and went out. We were waiting for a taxi on the corner of 89<sup>th</sup> Street and Roosevelt Avenue when suddenly a cop car parks next to us, several cops come out and start searching us without telling us the reason why. They found condoms in my purse and I was arrested on charges of prostitution. I spent a year in jail fighting the charges and it affected my record and my chances for immigration relief. I stand before you today to urge you to pass resolution number 710-A, which urges the New York State Legislature to pass the no context

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evidence bill. This bill would protect many people in my community. They would also make sure that what happened to me never happens to anyone again. No one deserves to be criminalized for using condoms. Thank you, Nancy - - .

CHAIRPERSON ROSE: Thank you.  
Thank you Karina for translating and for all--

MS. CLAUDIA: [interposing] No problem.

CHAIRPERSON ROSE: And for all of the members of the community who wanted to give the testimony on the record. Are there any questions? Yeah.

CHAIRPERSON DROMM: So, Karina, you brought up the impact of prostitution related convictions on immigration status and individuals. Going through that a little bit, what does that mean to people?

MS. CLAUDIA: I'm certainly not an immigration attorney. I'm an organizer but I think that the, you know, for people usually who get picked up on these charges either they are, you know, told to plead guilty immediately because it will get them through the system faster and

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1 then they get into the programs that my colleague  
2 here was talking about. And sometimes get  
3 referred to different programs. But then for  
4 some, for the people who decide to fight the  
5 charges, which was the case in Johanna's case,  
6 they can stay in jail and then this goes into  
7 their record and, you know, it effects their,  
8 basically their record and the chances for getting  
9 some immigration relief.  
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11 CHAIRPERSON DROMM: Because if they  
12 have a prostitution conviction, for, maybe Ms. - -  
13 Saft can help us with this, if they have a  
14 prostitution conviction on their record when they  
15 apply for immigration status relief it's a huge  
16 problem, isn't it?

17 MS. SAFT: Yes, fortunately in, at  
18 least in Brooklyn, they're not required to pleaded  
19 guilty up front anymore. They're availed of these  
20 programs and their case is dismissed. So,  
21 sometimes though, I mean, it would be very rare  
22 for a judge to set bail on someone like that.  
23 Occasionally between the time that the person is  
24 arrested in the precinct, and the time they're  
25 arraigned, an immigration hold could drop on them.

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1 And that could have devastating consequence on  
2 their life. They're, fortunately there's now new  
3 immigration laws that with the Department of  
4 Corrections that say that if that is the only  
5 thing that they have holding them. They would  
6 have, the immigration hold would be lifted and  
7 they would have to be released. So, we're making  
8 headway in that area too. But it is true that for  
9 many, many years if an attorney saw, you know,  
10 where they're at, there was condoms there,  
11 there's, you know, whatever the litany that he  
12 police officers say in their profiling of these  
13 individuals and victimizing them. An attorney  
14 might have said in the past that it might be  
15 better to plead guilty and take time served in a  
16 number of those please could be crimes or moral  
17 turpitude and could result in immigration  
18 consequences. And we're trying, we're working  
19 very hard to prevent that and stop that.

21 CHAIRPERSON DROMM: So, if they're  
22 in your, let's say they're in Brooklyn and they're  
23 in court.

24 MS. SAFT: Okay.

25 CHAIRPERSON DROMM: And they

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1 decided not to go with your program to, as you  
2 said, turn around their lives or whatever. By the  
3 way, there are people who are sex workers who  
4 don't believe that they have to turn around their  
5 lives and there may, in fact, be people who are  
6 immigrants who don't believe that they have to  
7 turn around their life and then by not choosing to  
8 go into that program are they further jeopardizing  
9 their immigration status?

11 MS. SAFT: No, no. If they fight  
12 the case and they are successful in their trial of  
13 this decision, it has no consequence on them.

14 CHAIRPERSON DROMM: So?

15 MS. SAFT: If they're unsuccessful,  
16 which is, as one of my former colleagues says is  
17 rare that we have trials in these cases. Often  
18 people who were choosing this lifestyle will be  
19 rearrested, come back and avail themselves of  
20 these programs. Or often we are able to get them  
21 favorable dispositions that have no immigration  
22 consequences. We are taking a different approach  
23 in Brooklyn on the criminalization and  
24 victimization of prostitution cases, particularly  
25 with those that have, are sex trafficked, are

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victims of domestic violence, who have family matters that are, that we can help them with. So, we've come a long way and we're working towards that. So, what I think is really what I'm hearing here is where it really needs to stop is on the street with the police.

CHAIRPERSON DROMM: And I think also the DA's offices and - -

MS. SAFT: Well, I am happy to hear that the Brooklyn DA now is-

CHAIRPERSON DROMM: [interposing]  
Yeah, yeah.

MS. SAFT: --urging them.

CHAIRPERSON DROMM: I agree, I agree. And I just want to also say before we close that I want to thank Steve for giving us a little bit of the history of that because I think it's really important. The work that was done around this issue of getting people to be familiar with and not afraid of and not embarrassed by condom usage was great, was massive effort, massive, massive effort to do that and it seems like we're forgetting that when we go out and we arrest people for having condoms.

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MR. ASHKENAZI: Thank you. And can I just add as a member of the Police Commissioner's LGBT advisory panel, when this issue was brought up in the past, he did say that if the DA's did not ask for this as evidence is he would instruct his officers not to collect it. But so long as some of the DA's continue to ask for it as evidence it's his job to collect it.

CHAIRPERSON DROMM: Sounds a little bit like passing the buck to me but, nevertheless, we do need to work with the DA's, is right. Mm-mhm, okay. Well I, thank you. One of the points I was trying to make was that once somebody gets into the criminal justice system whether they are immigrant or not, it becomes problematic and I think we should avoid that in all cases and whether or not prostitution should be legalized, et cetera, is a whole other case but I'm not going to argue that point right now. I'll wait 'til my third term. So... [laughter] Council Member Rose.

CHAIRPERSON ROSE: Thank you. I want to say before adjourning this hearing, thank you to all of the advocates who have worked, you know, so diligently on behalf of New Yorkers who

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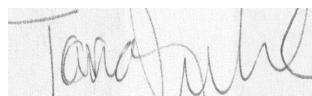
have been traumatized and have had to deal with  
the negative impacts of being arrested for  
prostitution because of condoms. And I'd like to  
just say that thank you for your support of intro  
710-A and this is not the last you'll hear of it,  
I'm sure. And, no, I'm sorry, reso 710-A. And  
with that I'd like to thank you all, I'd like to  
thank Council Member Dromm for all of his efforts  
on behalf of the immigrant communities. And with  
that this meeting is adjourned. [off mic]



C E R T I F I C A T E

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

Signature

A handwritten signature in cursive script, appearing to read "Tara Juhl", written in dark ink on a light-colored background.

Date 7/11/13