

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON PUBLIC SAFETY

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January 13, 2009

Start: 1:15pm

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HELD AT: Council Chambers
City Hall

B E F O R E: PETER F. VALLONE, JR.
Chairperson

COUNCIL MEMBERS:
Eric Martin Dilan
Helen D. Foster
Melinda R. Katz
David Yassky
Vincent Gentile
Daniel R. Garodnick
Elizabeth Crowley
James F. Gennaro

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

Ama Dwimoh
Chief, Crimes Against Children Bureau
Kings County District Attorney's Office

Eric Rosebaum
Assistant District Attorney
Special Victims Bureau
Queens District Attorney's Office

Yolanda L. Rudich
Chief of Sex Crimes/Special Victims Bureau
Richmond County District Attorney's Office

Joseph Muroff
Bureau Chief, Child Abuse/Sex Crimes Bureau
Bronx District Attorney's Office

Harvey Weiss
Executive Director
National Inhalant Prevention Coalition

Christine Berthet
Co-Founder
CHEKPEDS

Audrey Anderson
Resident

Mary Beth Kelly
Resident

Paul Schubert
Community Organizer

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2 CHAIRPERSON VALLONE: Okay, please
3 be seated. Turn off all cell phones. Welcome,
4 everyone to this hearing of the Public Safety
5 Committee. We'll have a few members joining us
6 momentarily. But today we take on some very
7 important topics. We're going to be calling on
8 Albany to strengthen up our laws when it comes to
9 protecting some of society's most vulnerable, our
10 children. As the Public Safety Committee, we have
11 a responsibility to hold hearings on this topic;
12 and these resolutions before us cover a wide range
13 of issues, from increasing penalties against
14 parents and guardians whose abusive behaviors
15 result in the death of a child, to make it easier
16 for prosecutors to convict people who cause
17 accidents due to driving under the influence of
18 drugs and alcohol. We've got three resolutions
19 today that stem from the tragic death of Nixzmary
20 Brown in 2006. The city was shaken when it
21 discovered the seven-year-old child died at the
22 hands of her stepfather and her mom during the
23 course of a brutal beating, and her mother did
24 nothing to stop it. Then we were shocked again
25 when they were sentenced to what most people see

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2 was a lenient sentence. In that case, Brown's
3 mother received a sentence of 43 years, while her
4 husband, who dealt Nixzmary the fatal beating
5 received only 29 years behind bars, and both might
6 get a chance at parole. Both escaped murder
7 convictions because this law, the law as it stands
8 today, does not do enough to protect our children.
9 We're lucky enough to have with us today the
10 prosecutor in that horrific incident, who did a
11 great job considering the laws that she was forced
12 to work under, Ms. Ama Dwimoh, and we'll be
13 hearing from her about-- and from all the
14 prosecutors who are here today, we're going to get
15 more suggestions on how to improve these
16 resolutions and make the law in this state work
17 when it comes to protecting our children. We'll
18 also be calling on the state to close loopholes
19 when it comes to the VTL, the Vehicle Traffic Law,
20 which allow unsafe drivers to literally get away
21 with murder. Too often accidents that harm
22 children are the fault of unsafe drivers who have
23 suspended or revoked licenses. It's the leading
24 cause of accidental deaths in New York City and
25 the rest of the United States, are motor vehicles.

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2 Nearly 250,000 children are injured every year in
3 car accidents. We need tougher enforcement when
4 it comes to VTL laws.

5 [Pause]

6 CHAIRPERSON VALLONE: On the road
7 we have new enemies that create threats to our
8 public safety, but a few tools to fight them.
9 Thousands of Americans are driving under the
10 influence of drugs, both legal and illegal. The
11 availability of prescription drugs and the
12 popularity of abusing these drugs has grown
13 substantially in the years. In 2007, 9.9 million
14 persons reported driving under the influence of
15 illicit drugs during the past year. Of those
16 individuals, the rate was highest among young
17 adults 18 to 25. The popularity of huffing or
18 using inhalants to get short-term highs remains
19 popular among adolescents. In 2007, there were
20 775,000 people who used inhalants for the first
21 time, within the past 12 months, and 66 percent
22 were under the age of 18 when they were first
23 used. Driving under the influence of any of these
24 drugs is incredibly dangerous and often leads to
25 fatal accidents, yet prosecutors struggle to

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2 convict people, like Vincent Litto of Brooklyn,
3 who's car struck and killed a 17 year old woman,
4 allegedly after he sniffed a can of Dust-Off. He
5 escaped harsh penalties because the ingredients of
6 Dust-Off are not listed under the New York State
7 Public Health Law, and we're calling on the state
8 to close that loophole. Finally we discuss a
9 resolution calling on the State Highway Patrol to
10 make Amber Alerts more accessible to New York City
11 travelers. Amber Alerts is a very successful
12 tool, but if you're driving on a highway here in
13 New York City, it may or may not say Amber Alert
14 issued, but that's about all it says. Now if you
15 want to find out anything about it, you've got to
16 turn to News Radio and hope in the next 22 minutes
17 they actually get to some information about the
18 Amber Alert. Why not just say, tune to our
19 Highway Radio Advisory Station or something of
20 that nature, so you can actually get the
21 information they need to catch someone who may
22 just have abducted a child? So, we are lucky
23 enough to have with us today representatives from
24 just about every District Attorney's office.
25 We're also lucky enough to have with us our newest

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2 Council Member, Elizabeth Crowley. Today is her
3 first hearing-- at all or just of the Public
4 Safety Committee?

5 COUNCIL MEMBER CROWLEY: My first
6 Committee Hearing.

7 CHAIRPERSON VALLONE: First
8 Committee hearing ever, so. You'd better testify
9 very well today, because first impressions are
10 everything when it comes to hearings. But we're
11 lucky to have you on this Committee, so thank you
12 for being here; and Council Member Helen Foster
13 and Council Member Erik Dilan, long-time veterans
14 of this Committee, and we're happy to have you
15 also. Let's call up now every representative of
16 the DA's Office who's here. We've got from Robert
17 Johnson's Office, Joseph Muroff, who is the Chief
18 of the Child Abuse, Sex Crimes; from the Richmond
19 County District Attorney, Yolanda Rudich; From the
20 Queens DA Special Victim's Bureau, Eric Rosenbaum;
21 and from Brooklyn, Ama Dwimoh, who is the head of
22 the unit there also, I believe. So if we have
23 written testimony, please hand it in.

24 [Pause]

25 CHAIRPERSON VALLONE: Eric, I'm

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2 told you have some pretty substantial testimony,
3 which goes pretty in depth with this, so why don't
4 we start with you, so the others can then talk
5 about what you may have not spoken about or add
6 their comments to that.

7 ERIC ROSEMBAUM: Thank you very
8 much, Mr. Chairman and the other ladies and
9 gentlemen of the Council. Good afternoon. My
10 name is Eric Rosenbaum. I'm an Assistant District
11 Attorney for the Office of Richard A. Brown, the
12 District Attorney of Queens County. I thank the
13 Council for the opportunity to speak today on the
14 question of how to fix New York State's broken
15 child abuse statutes. My comments are also given
16 with the endorsement of my colleagues from the
17 Brooklyn and Bronx District Attorneys' Office and
18 Safe Horizon; the victims service provider and
19 advocacy organization. I've spent most of my 15
20 years as a prosecutor in the Special Victims
21 Bureau on the front line of child abuse
22 prosecutions. Sadly, I find myself increasingly
23 frustrated with the inadequacies of laws available
24 to prosecutors to protect the youngest and most
25 vulnerable victims in New York City and New York

1 State, our children. That frustration is shared
2 by child abuse prosecutors with whom I work
3 throughout the City and State. The current
4 condition of the law is such that there are
5 significant gaps in the child abuse statutes and
6 in the criminal justice system to treat serious
7 offenders any differently than those who are first
8 time offenders or those who commit acts of lesser
9 harm. In every county, child abuse prosecutors
10 see cases of serious, and often on going, child
11 abuse and neglect that we can prosecute only at
12 the misdemeanor level because of the way that
13 these laws are written. For example, there is no
14 provision under the law to increase the level of
15 charges against misdemeanor child abusers who have
16 prior misdemeanor convictions for child abuse.
17 The law allows repeat misdemeanor offenders to be
18 treated as if they were first time offenders.
19 Similarly, abusers who engage in long courses of
20 endangering or who endanger multiple children,
21 typically can be charged with nothing more than
22 misdemeanors, despite the aggravating factors of
23 their cases. Also evading justice are those
24 abusers who inflict sadistic physical and
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2 psychological pain but leave no marks in the
3 process. For all these types of abusers, the
4 repeat offender, the one who engages in long
5 courses of conduct or against multiple victims,
6 they generally face only misdemeanors, which means
7 they can avoid meaningful jail time or any jail
8 time at all. And what's more, because
9 misdemeanors are the only available charges in
10 these cases, prosecutors lack sufficient leverage
11 to compel the abusers to participate in corrective
12 counseling programs. We therefore propose
13 strengthening the Penal Law to include felony
14 child endangering for the more egregious types of
15 cases. Reform to our child abuse laws must not
16 stop only though with a felony child endangering
17 statute. We advocate the adoption of a
18 comprehensive child abuse reform package to refine
19 and bring coherence to the patchwork of laws that
20 currently exists. There are terrible gaps in the
21 current statutes that result in offenders being
22 prosecuted at only the misdemeanor level despite
23 extreme and sometimes life-threatening conduct
24 against children. In recent years, different
25 child abuse reform proposals have been suggested

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2 to address the problems, and the solution may lie
3 in any one of them or through a combination of
4 them. But what virtually everyone can agree on is
5 that the laws need to be fixed. By way of an
6 example of how they may be fixed, I'd like to
7 discuss for a moment a package of reform that was
8 drafted by the New York State District Attorneys'
9 Association Child Abuse Prosecutors. In addition
10 to finally including a felony child endangerment
11 statute in New York State's Penal Law, this
12 proposal would accomplish several other important
13 goals when it comes to protecting our children:
14 One, it would simplify confusing existing statutes
15 dealing with child homicides and assaults, many of
16 which are so complex, so complicated, that they
17 are practically unusable; two, the proposed law
18 that the DA's Association drafted would fill
19 longstanding gaps in the assault statutes that can
20 leave prosecutors having to choose between the
21 highest level of assault, Assault I, or the lowest
22 level, Assault III, with no options in between, or
23 even worse, with no option to charge the felony at
24 all; three, the proposed law would correct
25 deficiencies in existing statutes involving the

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2 mental state known as depraved indifference. Such
3 statutes that contain this mental state of
4 depraved indifference make it virtually impossible
5 to prove child abuse homicides and assaults unless
6 the prosecutor can prove specific intent to commit
7 the harm, which is rarely present. Let me give
8 you some examples of the types of cases that fall
9 through the cracks of the existing laws. In terms
10 of the misdemeanor endangering statute's
11 inadequacies, let me give you a couple of examples
12 that we've actually encountered. One, involving a
13 special education teacher, who left her baby alone
14 every day while she went to work. When the baby
15 was rescued he was found inside a house of
16 indescribable filth. There was even a dead animal
17 laying in the dining room, a dead cat. The boy
18 had seven layers of diapers on him and his body
19 was infested with ticks. The child had been kept
20 in near complete isolation his entire life. He
21 purred like a cat and could not use his thumbs.
22 He was severely developmentally behind. He had
23 cognitive problems as a result, and yet the only
24 felony available at that time, some years ago, to
25 prosecutors was Felony Reckless Endangerment. But

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2 today, even that felony would not be available
3 under recent court rulings, and only a misdemeanor
4 would lie. In another case, a woman was seen
5 dangling an infant by its ankle outside a fifth
6 story window. When a neighbor screamed, she
7 pulled the baby back in and moments later did the
8 exact same thing again, 50 or 60 feet above the
9 pavement below. As with the last example, because
10 of recent Court of Appeal's decisions severely
11 restricting the usefulness of child abuse statutes
12 involving depraved indifference, it's all but
13 certain that only a misdemeanor would be charged.
14 The inadequacies of the current misdemeanor
15 endangering statute are further revealed when one
16 looks at the other forms of abhorrent behavior
17 against children that carry no more consequence
18 than a year in jail, or more often only a shorter
19 period, or even probation and time served.
20 Examples of egregious behaviors that can only be
21 charged as a misdemeanor, and which we have
22 actually seen are: A mother who watches a baby
23 being beaten by its father for three weeks, its
24 hands tied so tightly that they become infected,
25 the baby beaten so that it has bleeding on its

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2 brain and retinal hemorrhages at the hands of the
3 father. The mother does nothing to seek medical
4 care, seek safety, provide safety for the child.
5 That is a misdemeanor. A child forced to kneel on
6 pencils for hours on end; misdemeanor. Two
7 sisters who have to gargle with Tabasco and kneel
8 on rice; misdemeanor; a child forced to sit
9 outside on an icy stoop at night, wearing nothing
10 but underwear and a t-shirt as punishment in the
11 middle of the winter; a child submerged in ice
12 cold baths or forced to remain in a closet for
13 hours on end; a bus driver that duct taped a child
14 who his seat, who had special needs; deadly
15 narcotics hidden in a baby's crib or the battery
16 compartments of its toys; an eight year-old sent
17 to deliver narcotics; a four year-old who died
18 after drinking methadone in a juice bottle in the
19 refrigerator. That case was charged and convicted
20 as a manslaughter, but had that child not died and
21 had that child lived; only a misdemeanor would
22 likely have laid. In addition to the inadequacies
23 of the exiting endangering statutes, there are
24 far-reaching consequences of these weaknesses in
25 the law. We recoil when we hear of horrific child

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2 homicides, where a baby is beaten to death in
3 astoundingly violent circumstances. When the
4 investigations are done, we invariably learn that
5 there were multiple instances of endangering that
6 led up to the murder; horrendous, torturous, cruel
7 abuse that left no marks. These repeated
8 instances of abuse today are prosecuted only as
9 misdemeanors under the endangering statute. Yet,
10 if the abusive precursors to the death of a child
11 could be prosecuted as felonies, there would be
12 more opportunities for meaningful intervention
13 that could save lives. It isn't just the
14 endangering laws that are out of step. A case
15 underscoring the inadequacies of the assault
16 statutes is the last example I'd like to give you
17 today, and it's that of Joseph and Silva Swinton.
18 They had at home, without medical intervention, a
19 three-pound baby, and nearly starved that baby to
20 death. No breast milk or formula of any kind was
21 given to that baby by its parents, and instead
22 they provided it only with a bizarre diet of
23 herbal teas, berries, nuts and juice-- a newborn.
24 Even when told by a relative with nursing
25 experience that that baby needed a doctor, they

1 ignored her and just further isolated themselves
2 and the child. That baby was rescued at 16 months
3 of age, one year and four months of age. She
4 weighted 10.2 pounds. Some babies are born just
5 shy of 10.2 pounds. She could not walk, stand,
6 crawl, sit; she had no teeth. Her bones were
7 deformed from clinical Rickets. She was so weak
8 she couldn't inhale fully or cry. Her body was
9 covered with a fine coating of hair, known as
10 lanugo, which is a condition seen in late stage
11 anorexics. Doctors said she was on the brink of
12 death. When charging these defendants, the
13 existing laws allowed us two choices, assault in
14 the first degree, a high level felony, based on
15 the defendants having acted with depraved
16 indifference to their child's life and recklessly
17 causing serious physical injury, or a misdemeanor
18 for recklessly causing simple injury. There was
19 no middle ground in prosecutorial terms. It was a
20 B Felony or an A Misdemeanor. The grotesque 16
21 months of maltreatment this little baby suffered
22 cried out for more than a misdemeanor, so the
23 felony assault was charged. And a horrified jury
24 convicted these two people of assault in the first
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2 degree after a month-long trial, and the Court
3 imposed sentences of five and six years
4 respectively on the parents. The victory was
5 short-lived. On appeal, the State's highest court
6 found that a key phrase in the Assault I statute,
7 the term depraved indifference, which I mentioned
8 earlier, does not mean what prosecutors in lower
9 courts have thought it meant for years. Under the
10 new interpretation, the conviction was reduced to
11 nothing more than a misdemeanor. The defendants
12 got time served for what they did to this little
13 girl. In the aftermath of the case and the high
14 court's ruling, it's doubtful that Assault I as a
15 statute could ever be used again in a starvation
16 case like this. Were the child to have died, a
17 felony manslaughter prosecution could have been
18 mounted. But because the baby had the good
19 fortune to live, we were relegated to the use of a
20 misdemeanor under court rulings. This law has to
21 be fixed. It's an example of just how broken the
22 law is. The children of New York State deserve
23 better. The overly complicated, inadequate
24 patchwork of statutes that we currently use to
25 protect children too often simply does not work.

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2 We are talking about doing the right thing for the
3 most vulnerable and powerless citizens of our
4 great City and State, and we thank you for the
5 opportunity to address you today and for taking up
6 these important issues. In your effort to find
7 solutions, the community of child abuse
8 prosecutors and victims service providers stands
9 ready to assist you in any way, you need only ask.
10 I thank you very much for your attention and time
11 today.

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CHAIRPERSON VALLONE: Thank you

very much, Mr. Rosenbaum. That was very

compelling testimony, and we'll start asking

questions after everyone has their say. So I have

no particular order, so why don't we just start I

guess with Yolanda and go on from there.

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YOLANDA L. RUDICH: Good afternoon.

I am Assistant District Attorney Yolanda Rudich.

I am Chief of the Sex Crimes/Special Victims

Bureau in the Richmond County District Attorney's

Office. I am honored to testify today on behalf

of Daniel M. Donovan, Jr., the District Attorney

of Richmond County, and current President of the

New York State District Attorneys Association.

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2 Before the Committee today are a variety of
3 resolutions grouped together as dealing with child
4 welfare issues, and a number dealing with
5 intoxicated drivers. I would like to commend the
6 Committee and Council for its attention to the
7 very real issues dealt with in the various
8 resolutions, and in particular, the effort to aid
9 prosecutors in our efforts to ensure that those
10 who harm children are punished in a fashion
11 commensurate with the crimes they have committed.
12 I would also like to commend the Committee and
13 Council for its attention to the intoxicated
14 driver problem. I would like to focus my remarks
15 on the child abuse issues. And with respect to
16 that, I will speak to one that has arisen most
17 frequently in my county, and will leave discussion
18 of others to my colleagues from the other
19 counties. And at the end, I will also briefly
20 discuss the resolutions dealing with impaired
21 drivers. Resolution 106 urges the creation of
22 felony endangering the welfare of a child. It is,
23 as the resolution observes, of crucial importance
24 to put law enforcement in a position that it can
25 take action to protect each and every child before

1 the way in which that child is being treated
2 results in the child's serious injury on death.
3 But it is equally important to make sure that in
4 acting in a manner injurious to a child in any
5 fashion, physical or otherwise, is appropriately
6 punished. What we have seen in Richmond County is
7 that adults have involved children as young as one
8 and a half years old in sexual activity of a sort
9 that is not punishable by any of the penal law
10 provisions governing sex crimes, but could be
11 punished only with a charge of endangering the
12 welfare of a child. Thus, for example, a 41-year
13 old defendant who exposed himself to a six year
14 old, and as she described, made his pee-pee dance,
15 could only be charged with misdemeanor
16 endangering. A defendant who sexually abused a
17 three-year-old girl, while her one a half-year-old
18 sister lay on the bed nearby, could similarly be
19 charged only with misdemeanor endangering with
20 respect to that baby. I would suggest that this
21 kind of non-contact sexual activity can lead to
22 more serious forms of such conduct. Though not a
23 Richmond County case, there was a Rensselaer
24 County case which highlights the connections.
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2 People against Kuykendall. Kuykendall had become
3 involved with a 16-year-old runaway, plied her
4 with alcohol, marijuana and pornography and then
5 engaged in sexual activity with her. Although he
6 was ultimately convicted only of endangering, this
7 case highlights the connection between endangering
8 in a circumstance in which the act that endangers
9 is a non-contact sexual one, and that it becomes
10 ultimately sexual contact and abuse. I will note
11 that there have been a variety of proposals
12 offered to address this problem. We continue to
13 review them and consider them. We hope, as you
14 do, that the legislature will give them serious
15 consideration and enact something that will better
16 protect all our children. There are other issues
17 surrounding felony endangering, as you have heard
18 from Assistant District Attorney Rosenbaum and you
19 will be hearing from my other colleagues, and
20 those along with the issues underlying your other
21 child welfare related resolutions are going to be
22 discussed. With respect to the driving while
23 intoxicated or impaired issues that you raise,
24 please be aware that the State District Attorneys
25 Association has a subcommittee dedicated to the

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questions you raise and the chair, Joe McCormack, could not be here today. He is best positioned to help with any concerns or questions you may have, and I will be happy to provide you with a phone number at which you and your staff can reach out to him for discussion on those issues. Thank you so much.

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CHAIRPERSON VALLONE: Thank you,

and we will be taking that phone number at the end, because these resolutions were drafted by a lot of prior staff that was here a long time ago, and we're going to rework some of them and incorporate the ideas that you guys are giving us today into these. And so we'll be contacting you after today. Why don't-- Ama, you go next.

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AMA DWIMOH: Okay.

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[Pause]

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AMA DWIMOH: Thank you very much.

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Good afternoon. My name is Ama Dwimoh, and I am the Chief of the Crimes Against Children Bureau at the Brooklyn District Attorney's Office. And on behalf of District Attorney Charles Hinds, I also thank you for inviting us here to engage in this very important discussion. And I want to applaud

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2 my colleagues, the colleagues in the fight against
3 child abuse, especially Mr. Rosenbaum for the hard
4 work and what he presented here today be for this
5 Committee. As difficult as this work is, and it
6 can be difficult, it brings me great comfort to
7 know that child abuse prosecutors in this City
8 feel so passionately about these issues. And
9 while I sat here and listen to my colleagues tell
10 this Committee of numerous fact patterns of the
11 cases that we see as prosecutors, I couldn't help
12 but think of the little seven-year-old girl who
13 sadly gave her face and her name to this campaign,
14 Nixzmary Brown. And as the lead prosecutor who
15 tried her mother and her stepfather in the brutal
16 death and the life of Nixzmary, I'm reminded on a
17 daily basis that what my colleagues say here today
18 only magnifies one thing, and that is Nixzmary
19 Brown is one of hundreds of children who suffer
20 horrendous abuse at the hands of their parents and
21 guardians. Mr. Rosenbaum, ADA Rosenbaum, is
22 correct, as well as ADA Rudich. Often our current
23 child abuse endangerment laws are wholly
24 inadequate, both when it comes to protecting
25 children and when it comes to punishing their

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2 abusers. As prosecutors, we know and we see the
3 effects, the psychological torture inflicted on
4 many of the children who are not necessarily the
5 per say victim of the abuse, of the serious abuse,
6 but may have been present while their siblings
7 were being abused or murdered. Just in fact this
8 past weekend, which was the third anniversary of
9 the murder of Nixzmary Brown, I had the
10 opportunity to spend time with her five surviving
11 siblings, who witnessed the horrific beatings, the
12 torture, and who were also abused, and who
13 eventually witnessed the murder of their sister.
14 Now, under the current law, the defendant could
15 only be charged with the misdemeanor endangerment
16 regarding to the siblings. Yet these five
17 children, like other children in these types of
18 environments, these houses of horrors, will always
19 and will continue to be haunted by the memories of
20 what they witnessed and endure, and will continue
21 to be haunted for the unforeseeable future. They
22 live with this. See, that's their life sentence,
23 and they're they victims, and they're the
24 children. You see, if ever a set of circumstances
25 ever warranted that such a conduct be a felony,

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2 it's this type of circumstance. So I say to all
3 of us in this room, whether we're prosecutors,
4 lawmakers, concerned citizens, it's time for
5 action on behalf of the children. And let's not
6 add another little face to this campaign. And
7 that is why we applaud the opportunity to address
8 all of you, and we want to be helpful as we move
9 forward to protect our children. Now a couple of
10 examples where I think might be helpful to also
11 continuously illustrate the importance of the
12 endangering the welfare of a child be considered
13 at times as felony, we had one case in Brooklyn,
14 years ago, where the mother-- she was an African-
15 American, black woman-- she shaved the heads of
16 her three children and super-glued blond wigs onto
17 their heads and repeatedly scrubbed their faces
18 and arms and legs with bleach, because she wanted
19 to make them white. We can only imagine the
20 psychological impact on these children; and that's
21 a misdemeanor. And those children live with that
22 forever. We've seen a 42-year-old defendant, who
23 was arrested on two separate occasions for
24 masturbating in front of toddlers, and once
25 masturbating on the feet of a three year old;

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2 that's a misdemeanor. We've seen a mother who
3 used duct tape to bind the arms, and I say mother
4 loosely mind you, who used duct tape to bind the
5 arms of her eight and nine year old sons behind
6 their backs and bound them at their elbows for
7 days and nights on end because they took food out
8 of the refrigerator without asking; misdemeanor.
9 Another-- to move on in terms of examples, in the
10 resolutions I noted that-- and we are in firm
11 agreement, that the need for increased jail times
12 for those who kill children. And as prosecutors
13 of course, we want to see significant jail
14 sentences for those who kill the most vulnerable
15 beings. However, I want us all to remember the
16 importance of prosecutorial discretion. Because
17 each and every case represents a family, a whole
18 separate different set of facts, and we have to be
19 mindful. And I say this to say, to point this
20 out. We have had defendants as young as 14, 15
21 years old, who get pregnant and kill their
22 newborns. My bureau, unfortunately, has seen way
23 too many of these kind of cases. And when you see
24 an encounter a situation like this, we have to ask
25 ourselves, what are we going to do as a society.

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2 If you don't have discretion and a young defendant
3 like this is mandated for jail, even if she goes
4 to jail for ten years or 20 years, she's still
5 going to be able to come out one day, have
6 children and be, hopefully, a functioning member
7 of society. So what I think we have to do as we
8 look to improving the legislation and we think
9 about these issues, we have to also ask ourselves
10 how to we prevent these horrific things from
11 happening. And we can never lose focus on the
12 prevention aspect when it comes to stopping child
13 abuse. Is it really worth a young woman at 15 who
14 kills her baby, mandated to jail, without any
15 discretion of other alternative sentencing, when
16 she'll get out and she might be in her mid-
17 twenties. What do you do? Is it worth making
18 someone like that a hardened criminal? And then
19 you look at someone like that and you look at
20 someone as in Nixzmary Brown's mother, Nixzaliz
21 Santiago. See they're two different people who
22 have committed crimes against a child. So
23 discretion and the ability for prosecutors to have
24 discretion is critical. Now, there are some
25 defendants no doubt about it who deserve a

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2 lifetime behind bars for killing a child. But as
3 ADA Rosenbaum discussed, perhaps we would be
4 better served if we could start taking a closer
5 and more critical analysis of depraved
6 indifference murder, and that is the definition
7 and the crime that Nixzaliz Santiago and Cesar
8 Rodriguez were charged with. And as all of us
9 know, the jury came back and found them guilty of
10 manslaughter in the first degree. We need to
11 focus on the language and its interpretation by
12 the courts, because at this point's it's almost
13 impossible to sustain. For us to have to prove a
14 complete evilness, that a defendant lacked all
15 feeling for a child, is a hard burden because, see
16 in child abuse, not every day will necessarily be
17 a bad day for a child victim. That's what makes
18 it confusing for children, because some days there
19 are good days. And that's why the children are
20 able to hold on to their secrets, because they
21 pray and they hope that that good ay will be
22 another day, because that's mommy or daddy, and
23 oftentimes that's all they know in terms of love.
24 So I think that as we concerned citizens and
25 prosecutors and lawmakers go forward in all this,

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2 there are things to keep in mind. But we always
3 have to remember, see for a child victim,
4 sometimes they won't be able to testify at a
5 trial, because of the impact that it will have on
6 them, and maybe they just can't do it. It doesn't
7 mean it didn't happen. And then there are
8 children who are empowered and who can testify.
9 But at the end of the day, whether they testify or
10 not and whether you pass and we get laws passed or
11 not, they're still going to be the victims, and
12 they are still going to live with this for the
13 rest of their. And no child, none of us, should
14 ever have a life sentence of this. So whatever we
15 can do. Ask all the questions; we're here to aid
16 you. But from the bottom of my heart, I must say,
17 and on behalf of my colleagues because we work
18 with children every day, we hear and see the
19 stories, we see their faces; and that kind of
20 betrayal of trust, as a system, we can't be a part
21 of. Thank you.

22 CHAIRPERSON VALLONE: Thank you.

23 And last, we'll hear from Mr. Joseph Muroff.
24 Before we get to you, Joe, let me introduce a few
25 Council Members who showed up, Council Member

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2 David Yassky, Council Member Dan Garodnick,
3 Council Member Melinda Katz and Council Member
4 Vincent Gentile have all joined us. Thank you.

5 JOSEPH MUROFF: My name is Joseph
6 Muroff, and I am representing the Bronx District
7 Attorney's Office and DA Robert Johnson. I am the
8 Bureau Chief of our Child Abuse/Sex Crimes Bureau.
9 I appreciate the remarks of my colleagues and
10 support them in what they've said. I too want to
11 thank the Council for this hearing. And let me
12 take a brief moment to focus on the need for a
13 felony endangering the welfare of a child statute.
14 And a typical case which we, as prosecutors of
15 child abuse cases, are all too familiar; a two
16 year old child is discovered with burns, bruises
17 and scarring from head to toe, all over his or her
18 body. The mother and father offer little or no
19 explanation as to how or when this all happened.
20 If anything, they're pointing fingers typically at
21 each other. The two-year-old victim is unable to
22 say who did it, when it happened or how it
23 happened. A trained child abuse doctor can tell
24 us the injuries occurred over the span of many
25 months, but can't tell us precisely when or how

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2 each injury was inflicted. Under those
3 circumstances, we usually have to resort to
4 charging an endangering the welfare of a child.
5 We can charge an endangering the welfare of a
6 child against both parents, because they both have
7 a duty of care for the child. We can charge an
8 endangering the welfare of a child, because it can
9 be charged as a single, continuing crime, unlike
10 other statutes. We are not bound to try and
11 figure out when each individual injury occurred.
12 We can charge an endangering the welfare of a
13 child, because we do not need to know precisely
14 how each individual injury occurred. What we
15 can't do is charge endangering the welfare of a
16 child as a felony. So, for the parents who decide
17 to subject their children to daily torture by
18 pouring scalding water on them because they peed
19 on themselves, or by hitting them with a broken
20 chair leg because they broke the VCR, or by
21 whipping them with an extension cord for taking
22 food out of the refrigerator, or by locking them
23 in a closet for sustained time periods for no
24 particular reason-- these parents who engage in
25 repeated acts of cruelty and inhumanity, they may

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only be subject to a misdemeanor charge. They choose their victim, who doesn't have a voice, that two year old, who is completely vulnerable, and whom the exercise power and control over. This victim, who needs to be nurtured and loved, but instead is horrifically abused, all we are asking is to give these children a voice and hold their abusers accountable in a way that makes sense. Thank you.

CHAIRPERSON VALLONE: Thank you all. Let me start first, just to try to sum up for some people who are not attorneys, the situation that you face. First of all, if a child dies you have few options, one being intentional murder. But to prove intent, all of us may think that a parent obviously intended to kill a child based on the actions. Proving that beyond a reasonable doubt is almost impossible, and so that's almost always off the table. Then you have depraved indifference, which back in my day 15 years ago was tough. And I want to know about the new standard that you just mentioned in a second. But depraved indifference is a very, very high standard, also almost impossible to prove, which

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2 leaves you with reckless, which is provable as we
3 saw in the Nixzmary Brown case, but which is a C
4 Felony, which doesn't even have mandatory jail
5 time. And that's the universe, with a child who
6 has died, that our prosecutors are forced to
7 operate under. And when the child has not died,
8 you've heard the problems, again, that exist with
9 the lack of laws that take that seriously. Quite
10 clearly from the experts, Albany is not protecting
11 our children. They are being abused and tortured
12 while Albany fiddles. This is not complicated.
13 This is not the first time that prosecutors are
14 saying this. They've gone to Albany many times.
15 While Albany takes no action, our children are
16 being abused, and their abusers are either going
17 free or staying free. Some very, very simple law
18 changes could fix this. That's what the City
19 Council is taking up today. We're going to pass
20 some resolutions after we amend them based on your
21 testimony, calling on Albany to finally protect
22 the children and do our job. Mr. Rosenbaum, why
23 don't you just for a moment explain what that
24 Court of Appeals decision did to the law in the
25 state?

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2 ERIC ROSEMBAUM: In lay terms, I'll
3 try not to be a lawyer on this, the rulings that
4 we've received for cases involving depraved
5 indifference, as you laid out, there are
6 intentional crimes, but there are also reckless
7 crimes. The higher level reckless crimes require
8 not only that a risk exists of harm and that the
9 person committing the act disregards the risk, but
10 that they acted with depraved indifference to
11 human life, a standard now set so high that it's
12 the equivalent of leaving a child at the door of a
13 hungry lion's cage and walking away. Short of
14 that, it's not depraved indifference; the highest
15 court has interpreted those words to mean. The
16 result for us is, as you've very accurately
17 pointed out and perhaps my colleagues from the
18 Kings County office would comment, as she's
19 certainly the expert on the homicide aspect of
20 this after the Nixzmary case; in a homicide
21 situation, you're left with manslaughter if
22 there's no depravity but you do have recklessness.
23 The problem that I encounter the most is in the
24 assault context, where you don't intentionally
25 assault a child meaning to cause injury, but you

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2 recklessly engage in acts that are horrific. If
3 the depravity is missing, then now it basically
4 can never be proven. What you have is an Assault
5 III, a misdemeanor. So with the recent court
6 decisions having gotten rid of, essentially, an
7 depraved indifference crimes, for the assault of a
8 child that's reckless, which most are, we have
9 misdemeanors, and that's the assault fix that I
10 think is so desperately needed, amongst others.

11

CHAIRPERSON VALLONE: And on a
12 related topic, you can have 100 misdemeanors and
13 never face a mandatory day in jail, because Albany
14 hasn't enacted three strikes and you're out, which
15 is something else that I've asked them to do-- if
16 you're convicted of three misdemeanors within a
17 ten-year time period, let's get some mandatory
18 jail time. But even that's not happening; so you
19 can conceivably be constantly convicted of that
20 offense and never do a day in jail. Ama, did you
21 have something to say on that?

22

AMA DWIMOH: You know, and I think
23 that's why even when you look at, looking at the
24 endangering the welfare of a child in terms of a
25 bump up-- like for instance, if you had been

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2 previously convicted of it before and now here you
3 come, you're back in the system again, then, you
4 know, the defendant should be faced with a
5 felonious charge of endangering the welfare of a
6 child.

7 CHAIRPERSON VALLONE: Let me
8 interrupt you there, because one of our
9 resolutions does call for that charge, and I
10 wanted your expert advice on when that charge
11 should lie. And the resolution basically at this
12 point says there is-- it should just be a felony.
13 But I understand where many people might,
14 especially for prosecutorial discretion reasons,
15 want both charges there, so it's going to be
16 amended. So other than multiple-- prior offenses,
17 you mentioned ongoing offenses, you mentioned
18 multiple children, but what would the
19 circumstances that you believe be appropriate to
20 make it a felony?

21 AMA DWIMOH: Well I think that
22 actually if we had it by a fact by fact basis, if
23 we had the latitude-- that's why the discretion is
24 important-- but when I think about like for
25 instance in the case of Nixzmary Brown the

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2 siblings, who are present, who live in a house of
3 horrors. You have the psychological torture and
4 you have ongoing abuse, I think that's where it
5 would have been most appropriate. But I have to
6 just keep nailing in that whole importance of
7 discretion, because we have cases where someone, a
8 child might be left home alone for a very short
9 period of time, and then we have home alone cases
10 where children are left home for a very long
11 extended period of time. So that discretion
12 becomes critical. Like what we are doing right
13 now in Brooklyn in terms of these kind of home
14 alone situations is that we started a program
15 called SAFE. So what happens is that the first
16 time that this is encountered a part of their
17 sentence is-- now this I go back to prevention,
18 it's about getting resources to the people and
19 people understanding the perils that children face
20 when they're left home alone. Someone might just
21 think, oh, I just have to run out the store real
22 quick. But real quick could end up, you know,
23 significant time and we could end up with a fire
24 on our hands. Or someone just leaves their
25 children completely for a number of days. But

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2 once people are educated-- because sometimes you
3 do see young defendants, and we do need to be
4 mindful of this, because these are all
5 interfamilial family offences, they go to the very
6 fabric of our day-to-day culture. It's not like,
7 you know, the strange drug dealer on the block.
8 This is mom, dad or, you know, my guardian. So
9 what these defendants do, they go through a
10 program where they are spoken to and they hear
11 from people like ACS, the Fire Department, other
12 child abuse prevention programs, and they also are
13 forced to talk about it. And we interview them.
14 Because sometimes, it's interesting, people really
15 may not get it, and sometimes people really do get
16 it. And sometimes people just don't care. So I
17 think if we have that discretion, it becomes
18 important. But I think that's why I always say I
19 have to look at every case on a fact-by-fact
20 basis, and when I think of the children who are in
21 a torturous, psychologically abusive environment
22 where there's ongoing abuse, I would say that
23 would be a prime case for a felony endangering the
24 welfare of a child. I'll turn this over to my
25 colleagues if they'd like to chime in.

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2 JOSEPH MUROFF: Let me comment on
3 the last question. There's been a senate bill
4 kicking around, a state senate bill, and we've
5 made recommendations as a sub-committee. And I
6 think the commonalities are a-- they would
7 aggravate it into a felony endangering would be a
8 pattern of abuse, a prior conviction, abuse that
9 actually resulted in physical injury and if the
10 nature of the act itself is so sadistic or cruel.
11 So I think you wanted to make a compilation of
12 aggravating factors, those would be my four.

13 CHAIRPERSON VALLONE: Would it be a
14 situation like in a DWI where if there's a prior
15 you would have the option of filing a document and
16 making it a felony?

17 ERIC ROSEMBAUM: The prosecutor
18 would always have the option under bump up
19 statutes, if you will, of charging the crime as if
20 it were a first time, if that's what the situation
21 seemed appropriate for, or using the prior
22 conviction as the aggravating factor to charge the
23 higher level. So the prosecutor would remain in a
24 position to, you know, afford leniency where it
25 seems appropriate under given facts. I should add

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2 that the language we've used that we'd like to
3 elevate crimes involving especially cruel or
4 vicious acts, that language is lifted out of our
5 agricultural law as protections we have afforded
6 animals in New York State. We'd like those same
7 protections to be afforded to our children, and we
8 don't think that's much of a stretch to ask for
9 it.

10 CHAIRPERSON VALLONE: That's a very
11 good point. The senate bill you mentioned, has it
12 been introduced? Has it been voted? Where is it?

13 ERIC ROSEMBAUM: There were three
14 different bills introduced over the past three
15 years since the District Attorneys Association has
16 drafted this proposed child abuse reform package.
17 It was introduced in some different forms each
18 year, and we'd be happy after the Committee
19 hearing to get you those bills and their actual
20 senate numbers. They were introduced and passed
21 in the senate.

22 CHAIRPERSON VALLONE: And also,
23 whether there's any of those specifically you'd
24 rather us to work with as opposed to others, or
25 all of them. We'll talk to you about that when

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2 we're done. Joe you mentioned that you no longer
3 have to prove date and time on these offenses, and
4 that's due, I think to my colleague Melinda Katz,
5 who introduced the Kendall Law up in Albany, not
6 that we want to lose you, but we could use more of
7 that type of common sense up there in Albany.

8 JOSEPH MUROFF: Well what I was
9 alluding to was endangering. The good news for an
10 endangering statute, it's one of the few statutes
11 that allow you to charge it as a continuous crime,
12 where you don't have to get so caught up in
13 figuring out precisely when and how and sometimes
14 who. So it's a valuable tool, but it's only a
15 misdemeanor. That's where I was going to that.

16 CHAIRPERSON VALLONE: Let me turn
17 it over to Melinda Katz now.

18 COUNCIL MEMBER KATZ: Actually we
19 were talking about the sexual course of conduct,
20 which is the Kendall Law, which actually became a
21 felony under-- with the help of the District
22 Attorneys Association statewide. It was really a
23 great advocacy that you guys did on that.

24 JOSEPH MUROFF: Well I can--

25 COUNCIL MEMBER KATZ: [Interposing]

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2 But that was only sexual conduct.

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JOSEPH MUROFF: Yeah I--

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COUNCIL MEMBER KATZ: [Interposing]

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It didn't include all other types of abuse.

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JOSEPH MUROFF: I can give you

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common problem that we face almost weekly in

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charging course of conduct, which should speak to

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a felony endangering the welfare of a child,

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because it's a great statute course of conduct.

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The problem is that one of the elements is two or

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more acts beyond a three-month period; those are

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two elements, two or more acts and beyond a three-

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month period. Well, the younger the child and the

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more time that passes, when you try to sit down

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and figure those elements out you sometimes can't

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get there. The child can't articulate that it was

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beyond a three-month period, because to that child

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three months might as well be two years. There's

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no frame of reference in terms of time, so we're

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not able to legally satisfy beyond a three-month

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period, or we're not able to sometimes even get to

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two or more acts, because everything's so jumbled

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in that child's mind. So as a result, sometimes

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at the end of the day, we figure out that the only

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2 charge, viable charge, is an endangering the
3 welfare of a child, and it's only a misdemeanor.

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COUNCIL MEMBER KATZ: Well, I guess
5 with all due respect, it's a lot better now than
6 it was before--

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JOSEPH MUROFF: [Interposing] Oh,
8 please. Please. Of course.

9

COUNCIL MEMBER KATZ: And actually
10 the reason we did it at the time was because the
11 Court of Appeals came out with their decision
12 saying that you had to remember the date and time
13 and the child couldn't remember the distinction
14 between Thanksgiving and New Years, if the same
15 uncle or aunt, you know, was over to the house.
16 But I guess my main question though is because I
17 was so involved with this in Albany, I'm just
18 curious-- and maybe Peter did this in the
19 beginning and I apologize for being late, do we
20 know how many of these bills are Uni bills in
21 Albany? Do we know how many of them have sponsors
22 that we can maybe advocate for one particular bill
23 that's already written? Do we know that? Sorry.

24

CHAIRPERSON VALLONE: Well, I
25 didn't do that at the beginning but we were going

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2 to get all that information when this was done and
3 figure out what bills are out there and which ones
4 we want to support and which ones we don't.

5 ERIC ROSEMBAUM: Yeah. Part of the
6 difficulty of course is that the landscape is so
7 different in Albany right now.

8 COUNCIL MEMBER KATZ: So I hear.

9 [Laughter]

10 ERIC ROSEMBAUM: But we will be
11 happy to discuss with you and provide with copies
12 and some ideas about what was done in the past.

13 COUNCIL MEMBER KATZ: Thank you.

14 CHAIRPERSON VALLONE: Yolanda, you
15 mentioned and so did you Joe, that the non-contact
16 sexual crimes-- what would your suggestion be
17 regarding those and improving the penal law
18 regarding those?

19 YOLANDA L. RUDICH: I think there
20 are such conduct that just we know endangers the
21 moral and mental welfare of a child of a young
22 age, that it cries out for something more than
23 just a misdemeanor. I think we know it, because
24 we've given examples of it. And how is it that in
25 all our years of doing it, and all of us are very,

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2 very long tenured in dealing with child abuse and
3 sex crimes--

4 CHAIRPERSON VALLONE: [Interposing]
5 Experienced.

6 YOLANDA L. RUDICH: So, in seeing
7 such a range of abuse of children, the fact that
8 we got this notice and knew immediately what has
9 struck us as prosecutors that the law has not
10 addressed and relating it to you, and just hearing
11 sometimes the gasps among the audience, we know
12 that right thinking people who want to protect
13 children will know that those kind of non-contact
14 but sexually motivated acts against young children
15 are just the kind that the molesters need to have
16 to stop them before they actually commit the
17 contact crime. Some of these examples involve the
18 grooming. And we know that the pedophiles often
19 start with the non-contact crimes, showing
20 children pornography, seeing how they deal with
21 that, discussing sexual matters in front of a
22 child. And then that is part of the grooming
23 process, which ultimately leads to the sexual
24 contact and penetration that becomes the greater
25 felony.

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2 CHAIRPERSON VALLONE: Well we just
3 raised the penalties here in the City for flashing
4 under that exact theory. And there were many
5 instances of someone who flashed and then the same
6 person not too much longer was sexually abusing a
7 child, within an hour sometimes or over the course
8 of time. So it was the exact same theory. And
9 you're absolutely right. So right now it's a
10 misdemeanor.

11 YOLANDA L. RUDICH: Correct.

12 CHAIRPERSON VALLONE: And we'll
13 work with you with whether or not we should be
14 putting that into the aggravated or into coming up
15 with its own crime under the sexual abuse statute.
16 We'll work with you on that. Joe gave us some
17 horrific examples of that being a misdemeanor,
18 which is amazing. We don't have any other
19 questions right now, but we have-- you have a
20 question? Vincent changed his mind. We have one
21 question.

22 COUNCIL MEMBER GENTILE: I'm sorry.
23 And I apologize, because this is really important
24 testimony and I missed most of it, so I'm sorry
25 about that.

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2 CHAIRPERSON VALLONE: Can you
3 repeat it all please?

4 [Laughter]

5 COUNCIL MEMBER GENTILE: So, if I
6 ask a question that's been answered, forgive me.
7 But I'm just curious and I was trying to find it
8 in testimony, in the proposal for a felony level
9 endangering the welfare, is there a specific mens
10 rea for that or how does that work? I couldn't
11 find it in the testimony.

12 ERIC ROSEMBAUM: We're not seeking
13 to change the current law in terms of mens rea or
14 mental state. Every criminal statute, for the
15 audience, involves an actual act and a mental
16 state that goes along with it to equal a crime.
17 In the endangering statute, the mental state is
18 knowingly. We're not looking to change that.
19 That would be the same. So it's basically that
20 you're aware of your actions and you do one of
21 these other things that we've talked about as bump
22 ups.

23 CHAIRPERSON VALLONE: Council
24 Member, I don't know if you were here for this,
25 but what we did discuss regarding the elements of

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2 the felony would be the type of action, regarding
3 whether it was an ongoing course of conduct,
4 multiple victims, something so horrendous that it
5 should not be a felony, prior convictions, those
6 sort of things would raise it to the felony, if
7 that was your question.

8 COUNCIL MEMBER GENTILE: I see.

9 Okay. So, a felony endangering would cover a
10 course of conduct, so that you don't have-- if you
11 add an indictment, you wouldn't have 16 counts of
12 endangering the welfare on 16 specific dates, is
13 that what we're talking about?

14 YOLANDA L. RUDICH: Yes.

15 JOSEPH MUROFF: We use that charge
16 right now to cover a course of conduct, but it's
17 charged as a misdemeanor and we only charge one
18 count to cover the entire course. That's already
19 sort of built into the statute. The difference
20 would be we would be able to charge it if it
21 applies to a series of sexual assaults, then we
22 would be able to under a felony endangering
23 statute to charge it as a felony.

24 COUNCIL MEMBER GENTILE: One of the
25 other concerns we as prosecutors, when we were

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prosecutors and doing sexual abuse cases, had been-- and you may have discussed this, actually getting timeframes in sexual abuse cases and trying to frame that in some time of a count of an indictment. Has it changed any? Because I recall having 35 counts of an indictment and, you know, on or between this date, and it's very difficult with a child to try to pinpoint when certain things have happened.

ERIC ROSEMBAUM: Councilman, you've really focused on a very important issue. We discussed it briefly before, but with the passage of the course of sexual conduct against a child crimes, we are now able to charge those courses without specific dates, so long as we have a range. But we also must prove that at least two of the acts occurred greater than 90 days apart. What we're saying is in those cases where we can't prove the acts occurred more than 90 days apart, yet they were in sexual nature against a child, an E level or lowest level felony endangering statute, would help us be able to more appropriately charge those cases than simply resorting to the misdemeanors.

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2 COUNCIL MEMBER GENTILE: Well
3 that's good. Yeah, just one quick question, on
4 testimony of children, have you employed to any
5 great extent the use of the videotaping of a
6 child's testimony in lieu of having live testimony
7 in court?

8 YOLANDA L. RUDICH: We use that
9 very frequently in Staten Island in grand jury.

10 AMA DWIMOH: In the grand jury we
11 take the testimony of the children by way of
12 videotape. However a trial, the children either
13 have to testify live or by way of use of the
14 closed circuit TV. Now, we thought about, when we
15 thought about having the children testify in the
16 Nixzmary Brown case, that maybe that would be the
17 best way for the court to accept their testimony.
18 However, it's really hard on the child, you know,
19 and it's almost as scary. So on one hand it
20 works, theoretically, but when I really was
21 working with the children in trying to employ the
22 closed circuit TV is it was more difficult. And
23 what worried me was that I wasn't sure if a jury
24 would really kind of get the feeling of having a
25 live person there. However, I think no matter

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2 what you do, it's going to be traumatizing to the
3 child. But we're very thankful that we're able to
4 use the videotaped testimony in order to present
5 our cases to the grand jury. Because that's what
6 we do in Brooklyn for all of our children under
7 the age of 11, because that's the bureau I work
8 in. And it's helpful to them because it's not so
9 scary and it's the beginning of the telling of
10 their story.

11 COUNCIL MEMBER GENTILE: You just
12 qualify them by going through a series of
13 questions indicating that they can tell the
14 difference between the--

15 AMA DWIMOH: [Interposing] Yes,
16 pursuant to the statute, yes.

17 COUNCIL MEMBER GENTILE: --truth
18 and a lie.

19 AMA DWIMOH: Yes. With their
20 ability, yes. Yes. We go through that as well.
21 And sometimes with close cases, we may go to the
22 court to have a court make a, you know, make a
23 finding at that point. But we are able to accept
24 their testimony by way of a video tape for the
25 grand jury.

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2 COUNCIL MEMBER GENTILE: Has anyone
3 gone the closed circuit route in trial?

4 ERIC ROSEMBAUM: It's really an
5 extraordinary measure that we don't use with any
6 frequency. In my 15 years in sex crimes
7 prosecutions we've not used it in my bureau. It
8 is something that the District Attorneys
9 Association is looking into now to see how we
10 might tweak that law. You know, it does result in
11 some disconnect between the witness and the jury,
12 which is a strong consideration we have to take
13 into effect on the ultimate result in such a
14 trial. It's not without cost, even where it's
15 successfully done. From a jury standpoint; there
16 is a problem with it. But we are looking at ways
17 to possibly expand the rules so that when we do
18 feel this would be a valuable tool, it would be
19 available to us.

20 AMA DWIMOH: One of our concerns
21 also, because all the years I've been in Brooklyn
22 we've not used the closed circuit TV as well, but
23 the child must be found, deemed, vulnerable. And
24 there are certain things that you have to do pre-
25 trial. One of the things is they may have to hear

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2 from a therapist or social worker. And one of the
3 things that concerned me is that when you have
4 cases of high publicity and it's open to the
5 public, you may not have a sealed courtroom in
6 that situation so all the things that should be
7 protected for any victim are now not protected for
8 children, and that's really not fair. So let's
9 say, for instance, you know your-- a person's
10 psychological history is protected. And, you
11 know, that would not be open to the public.

12 However, with children-- and this is one of the
13 considerations I had in the Nixzmary Brown case
14 with all the publicity and all the media there, to
15 go further forward to the hearing where you will
16 call children's' therapists and what have you,
17 everything that should be protected isn't.

18 COUNCIL MEMBER GENTILE: Because at
19 that point you have to put it on the record to
20 establish--

21 AMA DWIMOH: [Interposing] Yes.
22 Right--

23 COUNCIL MEMBER GENTILE: --
24 vulnerability.

25 AMA DWIMOH: Exactly.

1
2 COUNCIL MEMBER GENTILE: I see. I
3 get it. Well fascinating and very important work,
4 and keep up the good work. And Mr. Chairman, I
5 wish I were here earlier but I'll read the
6 testimony. Thank you.

7 CHAIRPERSON VALLONE: Thank you. I
8 just want to ask you one more question, but I'm
9 going to keep it short only because our next
10 witness, who is the Executive Director of the
11 National Inhalant Prevention Coalition has a
12 flight to catch, but that's what I wanted to ask
13 you about. The other resolutions we're discussing
14 today will deal-- most of them deal with closing
15 loopholes regarding drugs which aren't listed
16 either to possess or drive under, especially
17 inhalants, things like that, prescription drugs.
18 Do you each have a position in support or would
19 you like any changes of these? Have you taken a
20 look at them? Are you dealing with Albany? I
21 assume you're dealing with Albany with other
22 bills. Does anyone want to be heard on those
23 other resolutions we have regarding closing
24 loopholes?

25 ERIC ROSEMBAUM: I think we're

1
2 outside our area of expertise for this panel.
3 We're really career sex crimes prosecutors and I
4 don't feel that I, for one, am qualified to answer
5 the question. I'm sure the District Attorneys
6 Council would be happy to get back to you and
7 provide you with the District Attorneys position.

8 CHAIRPERSON VALLONE: Well give
9 your principals our best and we will be contacting
10 them also on this other topic, and look forward to
11 working with all of you and commend you on the
12 work you do every day to keep children of this
13 City safe. So keep up the great work. God bless.

14 ERIC ROSEMBAUM: Thank you.

15 AMA DWIMOH: Thank you. God bless
16 you.

17 JOSEPH MUROFF: Thank you.

18 CHAIRPERSON VALLONE: Okay. Next
19 witness is Mr. Harvey Weiss, the Director of the
20 National Inhalant Prevention Coalition, who came
21 all the way here from Tennessee, just to testify.

22 [Pause]

23 CHAIRPERSON VALLONE: To the last
24 panel, I have Ms. Rose Previte, who will be
25 meeting you out in the back to get information

1

2 from you. Okay, thanks.

3

[Pause]

4

CHAIRPERSON VALLONE: Mr. Weiss

5

6 thank you for flying all the way here on this very
7 important topic, and we look forward to your
8 testimony.

9

HARVEY WEISS: Thank you very much.

10

11 I enjoy the opportunity to talk with you a bit
12 today. Good afternoon. My name is Harvey Weiss
13 and I'm the President of SYNERGIES, a non-profit
14 corporation and the Executive Director of the
15 National Inhalant Prevention Coalition, located in
16 Chattanooga, Tennessee. SYNERGIES funding comes
17 primarily from the Federal Government, with
18 additional funding from contributions from
19 individuals and corporations. SYNERGIES initiated
20 its inhalant prevention efforts in 1992 as part of
21 a statewide substance abuse prevention program in
22 Texas. According to Texas statewide surveys, our
23 inhalant prevention program lead to a 40 percent
24 reduction inhalant use at the high school level
25 and over a 50 percent reduction at the elementary
school level within three years that our program
began. Thank you for the opportunity to speak in

25

1 support of Resolution 807. This Resolution is to
2 amend current vehicle and traffic laws to include
3 chemicals and products that are misused by
4 intentional inhalation to get high. This process
5 is commonly called huffing, sniffing, bagging,
6 glading and dusting, etcetera. Supporting this
7 resolution has two important outcomes, closing a
8 loophole in current legislation in driving while
9 intoxicated and two, drawing attention to this
10 common though usually under appreciated form of
11 substance abuse. Inhalant use or abuse is an
12 activity that results in intoxication, rapid
13 intoxication. The physiological intoxication
14 response to the chemicals in inhalants is almost
15 immediate, while the high from the inhalants
16 dissipates in a couple of minutes or less. The
17 chemicals in the fumes of inhalants enter the body
18 through the mouth or noses and go directly to the
19 lungs. There they are absorbed in the bloodstream
20 and go directly to the brain where there is
21 instantaneous intoxication. Compare this to other
22 substances such as alcohol: A person gulps a
23 drink; the liquid goes from the mouth, down the
24 throat on its way to the stomach. From there, the
25

1
2 intoxicating chemicals begin their trek to the
3 brain, via the liver and kidneys, etcetera, where
4 some toxins are filtered out of the bloodstream
5 and finally to the brain, where the chemical
6 response results in intoxication. The
7 intoxication, and its effects, can last for a
8 significant period of time. My point is that the
9 end result of using inhalants is the same as other
10 psychoactive, intoxicating substances and ought to
11 be treated in the same manner under the law. Also
12 the rapid onset and dissipation of inhalant
13 intoxication makes it difficult to detect. Having
14 said this about the commonality of inhalants with
15 other intoxicating substances, inhalants are
16 different because of the difficulty in detecting
17 them. In general, inhalant use is very difficult
18 to detect during general drug screening, which
19 does not detect inhalants, and the effects of
20 inhalants may have dissipated by the time of
21 interaction with law enforcement and or first
22 responders in the case of accidents or death.
23 What to do if intoxication is suspected? If
24 unexplained intoxicated behavior or a death
25 without obvious cases is observed, check the

1 vehicle and the area adjacent to the law
2 infraction, accident or death scene to see if
3 potentially abused products can be observed. Be
4 prepared to conduct specific toxicological tests
5 to determine the existence of intoxicating
6 chemicals, and if there is an accident scene where
7 there is an unconscious victim, first responders
8 and later emergency room personnel must know what
9 drugs not to administer to the victim. To assist
10 with inhalant detection, the NIPC urges that an
11 inhalant fact sheet similar to the attached,
12 Inhalant Abuse Symptoms and Considerations For Law
13 Enforcement and Emergency Medical Personnel, be
14 distributed to appropriate New York law
15 enforcement and first responder personnel. The
16 NIPC developed this resource at the request of the
17 Nashville Metropolitan Police Department.

18 Inhalants: the silent epidemic. Inhalants hover
19 below most people's radar screen, even though they
20 are one of the most popular substances of abuse,
21 ranking third after the use of alcohol and tobacco
22 for youngsters. They are usually the first
23 substance a young person experiments, with. In
24 fact, use may occur prior to the teen years.
25

1
2 Consequently - - looking at inhalants as gateway
3 drugs. Inhalants can be as addictive as cocaine.
4 There are over 1,000 common legal household,
5 office and school products that can be
6 intentionally inhaled to get high. And any time
7 an inhalant is used, even the first time, there
8 can be immediate death via cardiac arrest. This
9 is known as sudden sniffing death syndrome. Each
10 year about 125 deaths are reported directly to the
11 NIPC. In the face of all of these facts, inhalant
12 use remains cloaked in the shadows, waiting to
13 claim another victim. Passing Resolution 807 and
14 the subsequent amending of current New York State
15 driving while intoxicated laws to include
16 inhalants would draw public attention to this
17 issue. This attention to the inhalants use will
18 alert the public to the dangers of inhalants.
19 This attention will lead to education and
20 awareness, the only two viable ways of preventing
21 the intentional misuse of common household
22 products. However, denying access is another
23 effective approach. Speaking of this, the
24 international association that develops building
25 codes, broadened their guidelines to require

1
2 locking caps on air conditioning Freon intake
3 valves in all new construction.

4 [Pause]

5 HARVEY WEISS: As a housekeeping
6 matter, we have found that mentioning a specific
7 product brand name can be counterproductive. Our
8 vocabulary stresses using generic products such as
9 computer cleaner or duster, air freshener, canned
10 whipping cream etcetera, when communicating about
11 inhalant dangers. Consequently, we would suggest
12 that this resolution not mention specific product
13 brand name. More inclusive would be mentioning
14 classes of products such as aerosols, gasses,
15 etcetera, or computer keyboard cleaner, air
16 fresheners, cooking gasses, etcetera, or products
17 that have the notation on them, harmful if
18 inhaled. In conclusion, I would urge that the
19 Council take a broad look at the problem of
20 inhalant abuse to develop appropriate inhalant
21 strategies and guidelines. Thank you for the
22 opportunity to speak in support of Resolution 807.
23 I welcome any suggestions you may have-- any
24 questions you may have.

25 CHAIRPERSON VALLONE: Thank you for

1

2

your suggestions. I did not realize it was the third most popular form of abuse for children.

3

4

That comes from what study or--?

5

HARVEY WEISS: Okay, Councilman.

6

Monitoring the Future Survey, developed by the

7

National Institute of Drug Abuse and the SAMHSA,

8

Substance Abuse and Mental Health Services

9

Administration's national survey on drug use and

10

health.

11

CHAIRPERSON VALLONE: And more

12

importantly, do you agree/

13

HARVEY WEISS: Well yeah.

14

CHAIRPERSON VALLONE: Okay.

15

HARVEY WEISS: And besides that,

16

what we've found is that prior to the age of 12,

17

let's say, inhalants are the most widely used

18

substance of abuse. And prior to 15 years old,

19

mostly females are abusing inhalants as opposed to

20

males, according to Monitoring the Future.

21

CHAIRPERSON VALLONE: What is your-

22

- what have you found when it comes to the use of

23

inhalants and driving? How common is that?

24

HARVEY WEISS: I think there's a

25

common use of that on a number of classes of

1
2 people. Number one, if a person wants to get
3 intoxicated while driving or doing something else,
4 with the hope of not being detected of being high,
5 they would use inhalants, because it's very
6 difficult to detect it. We also found a high
7 percentage of people that have been in treatment
8 that use inhalants because of the ineffectiveness
9 of drug screens. You're talking about older
10 teenagers, early 20s; this is a significant
11 population that we found that is using inhalants,
12 are people in the military. Inhalants are one of
13 the most widespread substances being abused by the
14 military, especially overseas right now, because
15 the random drug testing does not pick up
16 inhalants.

17 CHAIRPERSON VALLONE: Not only is
18 it hard to detect, here in New York and probably
19 in other places, it's not illegal to drive under
20 the influence of that, which is one of the
21 loopholes that we want to close. I know that you
22 have a flight to catch--

23 HARVEY WEISS: [Interposing] Okay.

24 CHAIRPERSON VALLONE: --so I'm
25 going to keep it brief, but I know that we have

1

2 your number.

3 HARVEY WEISS: Okay.

4 CHAIRPERSON VALLONE: And we're
5 going to be reaching out to you on this. So
6 succinctly though, you support our resolution?

7 HARVEY WEISS: Wholeheartedly.

8 CHAIRPERSON VALLONE: Great.

9 HARVEY WEISS: And I hope that some
10 of the people that we contacted did provide
11 letters of support of the resolution.12 CHAIRPERSON VALLONE: And before
13 you leave I just want to place on the record the
14 fact that we did receive a letter from one of the
15 products that we did actually mention in our
16 briefing paper, who agrees with you that we
17 shouldn't be mentioning product names, not for the
18 same reasons, but we happen to agree with them and
19 you. We aren't singling out any of these products
20 as being bad; they have a purpose when they're
21 used correctly. And your point is well taken
22 also, once you mention them, then that might make
23 some people curious.24 HARVEY WEISS: Well it's two
25 things, two ends of the spectrum. One, it might

1
2 make people curious to use it and say well this is
3 one way of getting high and say not use other
4 things. And the other things that young people
5 might say, gee whiz, I understand that Dust-Off or
6 White Out is dangerous for me, so I guess it's
7 okay to sniff some other product. So it can go as
8 a two-way sword.

9 CHAIRPERSON VALLONE: Well, it was
10 Dust-Off that sent us the letter. So we won't
11 mention them ever again. So thank you for--

12 HARVEY WEISS: [Interposing] Thank
13 you very much.

14 CHAIRPERSON VALLONE: --flying in,
15 and have a great flight back, and we'll be in
16 touch. Thanks.

17 HARVEY WEISS: Thank you.

18 CHAIRPERSON VALLONE: And our last
19 panel is made up of members of the public, who
20 will each have three minutes to testify. It's
21 hard to read their handwriting. But it's
22 Christine Berthie [phonetic] or Berthette
23 [phonetic], something--

24 CHRISTINE BERTHET: [Interposing]
25 Berthet.

1
2 CHAIRPERSON VALLONE: --close to
3 what I was saying, I hope. Audrey Anderson, Mary
4 Beth Kelly, and Paul Schubert. In that order
5 we'll take the testimony. And you'll have to give
6 it to her. And you'll each have three minutes.
7 Thank you.

8 [Pause]

9 PAUL SCHUBERT: Christine, I didn't
10 realize you had actually been part of our invitee
11 list, so you are not going to be on any clock. So
12 just you go first just as long as you don't exceed
13 four and a half hours, you'll be fine. They'll
14 throw us out of here.

15 CHRISTINE BERTHET: Yes, thank you
16 so much. My name is Christine Berthet. I am also
17 the co-chair of the Transportation Committee of CB
18 4 and Board Member of TA, but I am speaking today
19 as the co-founder of CHEKPEDS, the Clinton
20 Hill/Hells Kitchen Coalition for Pedestrian
21 Safety, which includes over 800 members,
22 institutions, businesses, concerned citizens, and
23 I appreciate the opportunity to give our support
24 to the proposed resolution. And after all what we
25 have heard about all those children, I'm going to

1
2 take that in slightly different direction. From a
3 driving standpoint, 9th Avenue is a deadly
4 corridor, with five killings by drivers in 2007,
5 and 500 injuries in the last ten years. A driver
6 who was speeding killed a five-year-old boy last
7 year on 17th Street off 9th Avenue, received no
8 summons. One month ago, at the corner of my
9 street, 38th Street, a turning truck driver who
10 did not yield to her, although she had the
11 crossing light, killed a 23-year-old neighbor.
12 She was seven months pregnant. And the driver was
13 not penalized. And two years ago, a driver hit a
14 girl who was on a first date, crossing 9th Avenue
15 at 37th Street. She's still in the coma, and
16 there is no penalty for the driver. And after
17 killing all these pedestrians, the drivers get
18 back in their cars and drive away. And we, Mass
19 Transit users and pedestrians, which are 80
20 percent of the New York commuters, we are outraged
21 at the current permissiveness towards the 20
22 percent of citizens who drive and the lawlessness
23 of our streets. In fact last week, a drunken
24 driver was given eight weekends of, you know,
25 imprisonment, for killing a drunk pedestrian.

1

2 Eight weekends, that's it.

3

CHAIRPERSON VALLONE: And as you
4 mentioned, leaving the scene is barely punished
5 here in New York City.

6

CHRISTINE BERTHET: Yeah, leaving
7 the scene was--

8

CHAIRPERSON VALLONE: [Interposing]
9 And I've called on Albany to make the laws tougher
10 and of course when Albany acts, they act but this
11 much--

12

CHRISTINE BERTHET: [Interposing]
13 Right.

14

CHAIRPERSON VALLONE: --they barely
15 made them tougher--

16

CHRISTINE BERTHET: [Interposing]
17 So--

18

CHAIRPERSON VALLONE: [Interposing]
19 Let me just finish. If you are drunk and you hit
20 someone and you leave the scene and come back, you
21 know, a couple hours later or a day later, you
22 can't prove-- leaving the scene is very tough to
23 prove because you have to prove that you knowingly
24 caused injury, which is very tough. I thought I
25 hit a garbage can or a dog or something like that.

1

2 And then you can't prove the drunkenness anymore
3 either. And that's typical of Albany to let that
4 loophole out there. But you're right; they don't
5 take it seriously enough.

6 CHRISTINE BERTHET: Yeah. And so
7 and then I think it's a larger cultural issue,
8 because just two days ago I gave you a copy-- the
9 Post published statistics that show the depths of
10 the problem. NYPD has issued 7.7 percent in 2008
11 less tickets than in 2006 for what is called
12 Traffic Offenses. And, you know, they include
13 speeding and running a red light. Which I don't
14 call that traffic offenses, you know, chances of
15 pedestrian death increase from five percent at 20
16 miles an hour, to 85 percent at 40 miles an hour.
17 And so what you are doing is really reckless
18 endangerment by crossing a light, because there
19 is-- whatever you are going to hit is probably
20 going to die. And I look at that as intentional
21 crimes and should be categorized that way. So
22 yes, we support these bills. However, I have some
23 questions. You know, why is my 23-year-old
24 pregnant neighbor excluded from the bills? And I
25 understand your focus was very much on children,

1
2 but I'm trying to open-- widen the scope here.
3 And why is the 85 years old lady who died in
4 Chelsea excluded? Why should we allow for drivers
5 to repeat a crime before applying severe
6 penalties, the rule of two? Crossing a red light
7 and speeding do not need to be done twice to be a
8 crime; they are a crime the first time. Why give
9 them a chance-- the criminal with intent, to kill
10 again. FHA, has identified speeding as the
11 largest single cause of pedestrian killing. And
12 finally, when is the NYPD going to change its
13 priorities and directives vis-à-vis traffic
14 summons based on current laws? How to get the law
15 enforcement personnel to consider speeding,
16 crossing a red light and not yielding to
17 pedestrians worthy of their status and treat them
18 as a priority? You know, if we eventually do not
19 want to put those people in jail, at the very
20 minimum we should take their cars; we should take
21 them off the road. We should take their cars away
22 for a while. We should take their drivers license
23 away for a week, for months, for a year. We
24 should get them through community training of
25 pedestrian safety, and give community work to

1
2 train other people on pedestrian safety. So yes,
3 we support these bills, but we'd like them to be
4 more comprehensive, and we want them to be
5 enforced. So thank you for undertaking this.

6 CHAIRPERSON VALLONE: Thank you.
7 Why don't we start on the right and just?

8 [Pause]

9 MARY BETH KELLY: Now it's on.
10 Okay. Thank you. My name is Mary Beth Kelly, and
11 I'm a clinical social worker by profession. I was
12 married to Dr. Carl Henry Nacht. And in June of
13 2006 we were cycling on the Hudson River Bike Path
14 when an NYPD tow truck crossed the path and hit my
15 husband. He died several days later from his
16 injuries. I, like Audrey, live with the ongoing
17 consequences of such a death. The loss to us goes
18 on and on, and to our children as well, the
19 siblings of Audrey's son, my two children. My
20 husband was a physician, thousands of people
21 relied on him in New York City. He had brothers,
22 sisters, nieces, nephews. We live with the
23 damages forever. The man who hit and killed my
24 husband did not receive a summons. He failed to
25 yield. He was driving a tow truck, which crossed

1
2 the Hudson River Bike Path in the park multiple
3 times a day. He knew there were pedestrians and
4 there were bicyclists on that path. He did not
5 yield. He claimed he never even saw us. The two
6 of us were riding together, blinking white light
7 on the front of my bike. To me there was depraved
8 indifference on the part of this individual,
9 because after hitting my husband, he got out of
10 the truck and walked away. He never even called
11 411. He called his supervisor. I'm sorry, 911.
12 The total consequences for this man's act, which
13 left my husband dead and the rest of us
14 traumatized, was three months of him losing his
15 license. There is no way to know whether even
16 during that three-months period of time this man
17 stayed out of his car or not. He may have been
18 one of the people that has killed someone in
19 Brooklyn, several days ago. And we just don't
20 know about people whose licenses are suspended as
21 to what they actually do, what happens. The laws,
22 the investigation of crashes that affect
23 pedestrians or cyclists are not investigated
24 unless there is a death. The investigations are
25 often delayed, inadequate. The penalties for

1
2 these street deaths are wholly inadequate, and
3 every single one of us needs to identify with the
4 victims of these crimes. Many of us, like myself
5 included, drive a car. I don't drive a car in the
6 City. It's totally unnecessary for most people to
7 do that, and only 20 percent of the people in this
8 City actually drive a car in the City. So, we
9 need to be identifying with the person next door,
10 the person up the block, the person you read about
11 in the news that is going through what myself and
12 my family and Audrey's family have gone through.
13 Because we, we bear the brunt of these things
14 forever. So I thank you, Council Member Vallone
15 for introducing this bill, and anything more that
16 can be done. I totally support what Christine
17 Berthet is saying about why are you limiting this
18 to children? My husband was 56 years old. If we
19 protect our most vulnerable, we will protect the
20 rest of the City, but we can't limit it to the
21 most vulnerable.

22 CHAIRPERSON VALLONE: Well just to
23 clarify, we're not-- the only things that are
24 limited to children are the child abuse. The rest
25 of it--

1

CHRISTINE BERTHET: [Interposing]

2

Oh, good.

3

MARY BETH KELLY: Oh, okay.

4

CHAIRPERSON VALLONE: We categorize

5

it as protecting children because they're being

6

killed on our streets, but it's not limited, so

7

don't worry about that.

8

MARY BETH KELLY: Thank you.

9

CHRISTINE BERTHET: Thank you.

10

CHAIRPERSON VALLONE: It's a little

11

bit confusing. It's our fault.

12

MARY BETH KELLY: I'm glad you

13

clarified that.

14

CHAIRPERSON VALLONE: And

15

condolences for your loss.

16

MARY BETH KELLY: Thank you.

17

AUDREY ANDERSON: Good afternoon

18

and thank you for this opportunity. My name is

19

Audrey Anderson. I speak today on behalf of all

20

the families who have lost their loved ones by

21

vehicular death, and who could not make it here

22

today. But most importantly, on behalf of my only

23

son, Andre Anderson; he was 14 years old when he

24

was fatally struck from behind on September 24th,

25

1
2 2005 on Shore Front Parkway on Beach 77th Street
3 in Rockaway Beach. Immediately after that moment,
4 I was forced to lived with this intense loneliness
5 in my heart, and I want you all to understand it,
6 what it's like to suddenly lose someone you love
7 more than yourself. I was just thrown into this
8 position, I wasn't asked for it. The fact that
9 I'm not being able to see my son or touch him
10 again hurts like hell. It's like there's a big
11 sore in my heart most nights. It hurts so bad all
12 I can do is scream and cry. And this is what
13 happens to all these parents who lost loved ones
14 on the streets. Andre was and still is the love
15 of my life, though. And I know that none of us,
16 even though we would like to stay here forever,
17 none of us was meant to stay on this planet
18 forever. But what bothers me most is the fact
19 that this man, Jose Vincerns, was set free, never
20 charged, never issued a summons. He was allowed
21 to roam free immediately after this accident. Can
22 you imagine Jose Vincerns saw Andre ahead of him
23 on the road, a straight road just like this, no
24 obstructions, for quite some time. But he acted
25 negligently, by not attempting to take any of the

1
2 following actions: applying his breaks or honking
3 his horn, or even stopping before he approached
4 Andre on his bicycle. Instead he just drove
5 straight down on him and hit him off his bike from
6 behind and killed him. He was never charged, as I
7 said. Hew as even allowed-- this is what we
8 discovered at the deposition, he was even allowed
9 to drive his truck home the same day, which should
10 never have happened. It should have been
11 confiscated by the NYPD and taken in for
12 processing. However, I am in support of
13 Resolution 145, but I'd also like the panel to add
14 this to the following-- I'm sorry. Add this
15 resolution--

16 CHAIRPERSON VALLONE: [Interposing]
17 We're going to let you go a little bit over time,
18 but you've got a substantial amount to go, so if
19 you could just kind of sum it up now, it would be
20 great.

21 AUDREY ANDERSON: Yeah. I'd like
22 you to add the fact that there is a batch of
23 drivers out there who do not fall in any of the
24 categories stated, that is drivers who have a
25 clean license and they are not impaired, however

1
2 because of their careless and reckless actions,
3 they inflict bodily harm resulting in death to
4 pedestrians and cyclists. They must be held
5 accountable for their actions. I believe that the
6 vast majority of these can be prevented. However,
7 because it is like a given in New York City,
8 drivers have this psychological awareness that I
9 could kill you on the street and walk away, as
10 long as I remain at the scene of the accident, I
11 will be free. It is a given. There is no care
12 for people who walk or ride. It is my desire--
13 sorry. If the desire is to address the
14 inadequacies of all the aspects of vehicle death,
15 one must be aware that there are a number of
16 loopholes that need to be closed in order to
17 arrive at a mutual agreement. I believe a vehicle
18 should be classified as a weapon, simply for the
19 fact that it is used carelessly at times and
20 recklessly to inflict death on an individual. So
21 I ask the panel here what you can you do about
22 that to have that mentality change within the law
23 where a man or a woman can use his vehicle
24 carelessly and recklessly, not because he's drunk
25 or impaired, because he has all his marbles going

1

2 on, but because of his own actions kill somebody
3 else-- why is it that he cannot be charged with a
4 crime?

5 CHAIRPERSON VALLONE: Well there is
6 vehicular manslaughter on the books. It's not
7 easy to prove but there is-- it would probably
8 potentially be a topic for another day. That's
9 not what we're looking at today, but you cannot
10 recklessly kill someone with your car. It's not
11 something we're covering today, but I understand
12 your cause for concern here. Sometimes it's-- as
13 you heard with children, even though you and I
14 would think it's reckless or careless, it's not
15 provable because it has to be proven beyond a
16 reasonable doubt. So I understand your
17 frustration. There is a crime, vehicular
18 manslaughter; my Counsel might be able to provide
19 it to you if you give us your information. But
20 it's not like it's an unpunishable offence.

21 AUDREY ANDERSON: But my major
22 point also is that what is the purpose of having
23 this law existed if in fact the NYPD, who should
24 be doing these investigations in order to arrive
25 at apply that crime to the person who commit the

1

2

act, is not actually doing the investigation?

3

That has to be also addressed. Without an

4

investigation, the law has no value. They go hand

5

in hand, and I would like for you all to put it on

6

the record somewhere and have it addressed.

7

Because this doesn't just affect me. If you take

8

a look at all the accident, crash accident or

9

crashes-- I don't know what's the correct

10

clarification for them, I'm sure if you get a pile

11

of them and look at them like I did my son, you

12

will discover the inept--

13

CHAIRPERSON VALLONE: [Interposing]

14

I don't disagree. It's a very good point. It

15

goes back to my point, which I make here almost

16

daily, that we don't even have enough police to

17

investigate robberies and murders and things, and

18

they just cannot, unfortunately, investigate every

19

car incident because they just don't have the

20

manpower. But I understand your point completely.

21

MARY BETH KELLY: Then we need

22

something that assists the police. We need red

23

light cameras. We need speed cameras on the

24

street of New York City.

25

CHAIRPERSON VALLONE: I support

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2

those--

3

MARY BETH KELLY: [Interposing]

4

Because enforcement will not happen, particularly

5

in today's economic climate.

6

CHAIRPERSON VALLONE: I believe the

7

Mayor is asking for permission from Albany to get

8

more red light cameras, but I'm not all that up to

9

date on that. I need to get this room free for

10

something that's happening, so let me move to the

11

last witness. And..

12

PAUL SCHUBERT: Good afternoon. My

13

name is Paul Schubert. I'm a community activist

14

from the Rockaways. As in my written testimony on

15

page 3, I have a letter signed by the Queens

16

Borough Commissioner stating that at three

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different locations on Woodhaven Boulevard,

18

Metropolitan Avenue, Liberty Avenue and Rockaway

19

Boulevard, the traffic light was long enough to

20

cross. I use those locations at a regular basis.

21

The young man who ran over the nine year old last

22

week was charged with failure to yield, driving

23

with a suspended license. I believe that the

24

criminal liability laws, which state quite simply,

25

if one injures somebody, one is fully culpable,

1 yet right now it's a class A misdemeanor. I
2 believe those laws need to be turned into a class
3 A felony. And if a corporation also decides it
4 wants to tell its employees don't worry about the
5 dangerous condition situation, it's only a
6 misdemeanor; with a good lawyer you'll have
7 community service. I believe we need to hold
8 people responsible for their actions, completely
9 and totally, whether they be individuals or they
10 be corporations. And I also-- City, state
11 employees, like an ACS, the Agency for Children's
12 Services, let's say a social worker or an
13 investigator decides they don't want to fully
14 investigate something; a child dies, a child is
15 crippled, that is 195 of the Penal Code, official
16 misconduct. I believe that should be changed from
17 a class A misdemeanor into a felony. A law is no
18 good unless the penalty equals the severity of the
19 crime. And I believe that recklessly as in
20 article 15 Penal Code, principals of criminal
21 liability, culpability, parties through offenses
22 and liability through accessorial conduct, we need
23 to make these into class A felonies. Throw the
24 book at these people. Corporations understand,

1
2 individuals who are state employees understand,
3 they do 10 years in prison, they're going to be
4 seriously-- facing serious, real jail time. And
5 you know this, Peter, as a former prosecutor, you
6 know this. And that's what I want to complete
7 with. And I know that I have your full support on
8 this, as I do Vincent Gentile, who is also a
9 former prosecutor. Thank you.

10 CHAIRPERSON VALLONE: Well, there's
11 no one out there I don't think in City Hall that's
12 increased the penalties for more crimes than I
13 have. Though I don't think you mean class A
14 felony, because that's the intentional killing of
15 a Police Officer, but I understand what you mean
16 by raising the standards here.

17 PAUL SCHUBERT: Well, then make it
18 a class B felony. I tried to look up what the
19 different felonies were on Find Law and on the
20 Penal Code.

21 CHAIRPERSON VALLONE: It's not
22 easy.

23 PAUL SCHUBERT: And I could not
24 find them.

25 CHAIRPERSON VALLONE: It's not

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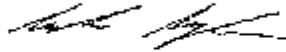
easy.

PAUL SCHUBERT: I was told that Article 60 and Article 70 might be where I got to look.

CHAIRPERSON VALLONE: I got what you're getting at though, so thank you. Thank you all for coming down today, and we look forward to working with you all. This hearing-- we were joined by Council Member Gennaro for a moment. I want to thank our newest member for staying for the entire hearing, which is a rarity. So thank you for that. Hopefully it will happen again in the future. So thank you, Ms. Crowley. And this hearing is adjourned.

C E R T I F I C A T E

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



Signature _____

Date January 29, 2009 _____