

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON PUBLIC SAFETY

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April 6, 2016  
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HELD AT: Council Chambers - City Hall

B E F O R E:  
VANESSA L. GIBSON  
Chairperson

COUNCIL MEMBERS:  
Vincent J. Gentile  
James Vacca  
Julissa Ferreras-Copeland  
Jumaane D. Williams  
Robert E. Cornegy, Jr.  
Chaim M. Deutsch  
Rafael Espinal, Jr.  
Rory I. Lancman  
Ritchie J. Torres  
Steven Matteo  
The Public Advocate

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

Tonya Cantilo  
Representative  
Brooklyn Borough President Eric L. Adams

Laurel Durst  
Representative  
New Yorkers Against Gun Violence

Paul May  
Representative  
New Yorkers Against Gun Violence

Phil Jonas  
Representative  
New Yorkers Against Gun Violence

Rebecca Brown  
Policy Director  
Innocence Project

[gavel]

CHAIRPERSON GIBSON: Good morning ladies and gentlemen, welcome to City Hall to the council chambers. I am Council Member Vanessa Gibson of the 16th District in the Bronx and I am proud to chair the City Council's Committee on Public Safety.

I welcome you all to our hearing this morning in which we are looking at supporting state and federal gun reform legislation and exploring what we can do in our city to ensure the safe storage of guns, universal background checks for all potential gun owners, research on gun violence, a local jurisdiction's ability to decide who can carry concealed weapons, and providing safeguards against wrongful convictions.

Sadly, it seems that we hear about an incident of gun violence each and every day, whether it is a mass shooting or intimate partner domestic violence, the violence and injury caused by firearms is far too common and simply must be addressed. We need to use objective data to implement reasonable and responsible measures to protect our communities.

In 2014, the Centers for Disease Control and Prevention found that 33,599 Americans died from

1  
2 gun violence; similarly, that same year the City of  
3 New York had 6,839 incidents of violent crime  
4 involving a firearm. While we work hard every day to  
5 protect all New Yorkers from illegal handguns, we  
6 simply cannot do it alone. New York State and New  
7 York City have some of the strictest gun law in the  
8 country, but weaker laws in other states have  
9 resulted in an alarming flow of illegal guns in our  
10 city and in our state. Of the 4,585 guns that were  
11 recovered in New York State in 2014 whose source  
12 states were identified, 70 percent were from out of  
13 the state of New York.

14 The lack of simple safety procedures,  
15 even by lawful gun owners, leaves all of our  
16 children; neighbors at risk. We cannot stop this  
17 public health crisis alone and this public safety  
18 crisis and today we will discuss the various ways  
19 that we can combat this issue with our partners on  
20 the state and federal levels.

21 This City Council and this administration  
22 have made tackling gun violence a major priority. In  
23 Fiscal Year 2016, we have invested almost \$20 million  
24 in the New York City Crisis Management System to  
25 provide a comprehensive and community-based approach

1 to addressing gun violence. This crisis management  
2 system includes a variety of programs, such as Cure  
3 Violence, community therapeutic services and a number  
4 of services for our youth. Through this funding we  
5 attempt to address many of the root causes that  
6 contribute to gun violence in our city. In addition,  
7 I'm extremely proud that one of my bills, Int. 0809,  
8 will work to reduce gun violence and crime in  
9 general, it will mandate that this administration  
10 creates a plan to provide social services to address  
11 systemic issues, such as unemployment, lack of  
12 education, substance abuse; mental illness that often  
13 contribute to gun violence and crime in general.

14  
15 This City Council is working with the  
16 administration to also create an office to end gun  
17 violence. In her latest State of the City speech,  
18 our Speaker, Melissa Mark-Viverito, announced that  
19 she would be creating an Office of Victim Services  
20 that would support victims of gun violence, along  
21 with other crimes.

22 Today we are hearing four resolutions  
23 relating to firearm regulations; two of today's  
24 resolutions are sponsored by Council Member Jumaane  
25 Williams. Proposed Res. 0674-A, calls on the state

1  
2 to pass Nicholas' Law, which would require the safe  
3 storage of guns and Res. 0940 calls on the federal  
4 government to restore funding for gun violence  
5 research.

6 Res. 0853, sponsored by our Public  
7 Advocate, Letitia James, calls on the federal  
8 government to close the loophole in the current gun  
9 background check system.

10 The Preconsidered Resolution, which is  
11 sponsored by The Speaker, and I proudly co-sponsor,  
12 calls on the federal government to oppose the  
13 Constitutional Concealed Carry Reciprocity Act of  
14 2015, which would allow a resident from one state who  
15 has a license to carry a concealed handgun to  
16 lawfully carry the gun into a different state,  
17 regardless of the licensing standards of the other  
18 state.

19 In addition to the four resolutions we're  
20 hearing today relating to firearms, we're also  
21 hearing a resolution on a very important issue;  
22 providing safeguards against wrongful convictions.

23 Studies have shown that two of the  
24 leading contributing factors resulting in wrongful  
25 convictions are eyewitness misidentification and

1 false confessions. Just last month our Brooklyn  
2 District Attorney, Ken Thompson, testified before  
3 this committee that his office has exonerate 18 of  
4 the 60 cases they have reviewed in their Conviction  
5 Integrity Unit, 18 cases, 18 individuals released.  
6 We need to make every effort to prevent against these  
7 miscarriages of justice. Res. 0979, which I am proud  
8 to prime sponsor, calls on the State Legislature to  
9 pass legislation that requires the recording of  
10 entire custodial interrogations in certain serious  
11 crimes, mandates blind or double-blind  
12 identifications and allows photo identifications to  
13 be admissible at trial. These basic procedural  
14 methods would safeguard against wrongful convictions.

15 I am thankful for the collective support  
16 of all of my colleagues, as well as the prime  
17 sponsors of all these very important resolutions and  
18 certainly I am committed to working as chair of this  
19 committee to working with our colleagues in Albany as  
20 a former Assembly Member, working with many of my  
21 former colleagues as well as our colleagues in the  
22 U.S. Congress to make sure that we can make an  
23 impactful difference this year during the legislative  
24 session.  
25

1  
2 And before I get to several of my  
3 colleagues who will give opening remarks, as they are  
4 prime sponsors of some of these resolutions, I want  
5 to acknowledge the members of this committee who are  
6 here; our Minority Leader Steve Matteo, Council  
7 Member Chaim Deutsch, Council Member Rory Lancman,  
8 and Council Member Jumaane Williams are here with us.

9 I also wanna acknowledge the staff of the  
10 Committee on Public Safety for whom this hearing is  
11 possible with their work and with their  
12 collaboration; our Committee Counsel, Deepa Ambekar;  
13 our Legislative Counsel, Beth Golub; Legislative  
14 Policy Analyst, Laurie Wen; Legislative Financial  
15 Analyst, Ellen Eng; The Speaker's staff, Faiza Ali  
16 and Theodore Moore, and my Budget Director Kaitlyn  
17 O'Hagan and Dana Wax. Thank you all for being here  
18 this morning and now I'd like to turn this over to  
19 one of our prime sponsors of two resolutions for  
20 opening remarks, Council Member Jumaane Williams.

21 COUNCIL MEMBER WILLIAMS: Thank you,  
22 Madame Chair and thank you for your leadership on gun  
23 violence and in general; it's obviously a very  
24 important issue; I'm happy that it has reached its  
25 way to the presidential debates, but disappointed by



1  
2 some of the headlines I saw this morning; my hope is  
3 that some of that will be reversed.

4 As usual, I always try to make sure that  
5 gun violence is talked about in two buckets; one is  
6 the supply, which is mostly the gun control issue  
7 that -- we do have some control over; mostly federal  
8 will have more control of that, and the demand, which  
9 I think we do have a lot of control over and this  
10 council is showing a lot of leadership in trying  
11 their best to fund programs that deal with the demand  
12 of violence; even if the guns are available, they  
13 don't have to be used.

14 So I'm proud to sponsor these  
15 resolutions, which don't have the force of law, but  
16 at the very least can let folks know where this  
17 Council stands. So I'm pleased that Chair Gibson is  
18 hearing Res. 0940, which, if adopted, will put the  
19 Council on record as having joined at least 10 other  
20 city councils across the United States in calling on  
21 the federal government to repeal a ban on research on  
22 the cause of gun violence in our nation. I thank  
23 Laurie Wen of the Legislative Division for drafting  
24 this bill.

1  
2 As sad as it is to say, gun violence  
3 afflicts us every day, from the mass shootings of  
4 Sandy Hook, South Carolina, California, Colorado,  
5 Oregon, Tennessee, Texas, Washington, D.C.,  
6 Connecticut, and Wisconsin, among others, to the  
7 daily occurrences of shootings that continue to claim  
8 lives and cause injuries, but have ripple effects  
9 throughout our communities across the nation.

10 In 2013, there were nearly 30,000 deaths  
11 related to firearms and approximately 85,000  
12 incidences by firearms; majority of those deaths were  
13 suicides.

14 In 1996, a republican member of Congress,  
15 Jay Dickey, was a prime sponsor of banning the Center  
16 for Disease Control from "engaging in scientific  
17 research into the causes of gun violence, arguing  
18 against further gun control." However, the former  
19 congressman has reversed his position. In a December  
20 1, 2015 letter, to U.S. Representative Mike Thompson,  
21 Chair of the House Gun Violence Prevention Task  
22 Force, Representative Dickey stated that "research  
23 could have been continued on gun violence without  
24 infringing on the rights of gun owners in the same  
25 fashion that the highway industry continued its

1  
2 research on how to reduce head-on collisions on  
3 highways without eliminating the automobile and  
4 scientific research should help answer how we can  
5 best reduce gun violence; doing nothing is no longer  
6 an acceptable solution."

7           It's important to note that gun violence  
8 kills just as many people as automobile accidents,  
9 yet it is very limited on research. This is one of  
10 the bills that I just clearly don't understand the  
11 opposition from, particularly from those on the  
12 right. While I disagree with them on some of the  
13 opposition on gun control measures, this one in  
14 particular I don't understand what the reason is,  
15 except for, I believe, the NRA's opposition to it.

16           To be clear, allowing CDC research has  
17 nothing to do with the politically-charged debate  
18 over the Second Amendment; this research is something  
19 that we should be able to support regardless of  
20 political affiliation.

21           I'm also very proud that local  
22 legislative officials across the country have either  
23 passed or vowed to pass such a resolution in the  
24 following cities through the National Network to  
25 Combat Gun Violence, which I convened -- Los Angeles,

1  
2 California; Detroit, Michigan and Minneapolis,  
3 Minnesota have already passed it; Berkeley,  
4 California; Westchester, Pennsylvania; St. Louis,  
5 Missouri; Cleveland, Ohio, and Hudson, New York, to  
6 name a few of the others who have agreed to put this  
7 same resolution at city council and hopefully get it  
8 passed.

9 Proposed Res. No. 0674-A; I'm very proud  
10 to be the prime sponsor of that resolution, along  
11 with my Brooklyn Borough President, Eric Adams. This  
12 resolution calls on the Legislature to pass Nicholas'  
13 Law, which would require the safe storage of all guns  
14 that are not in the immediate possession or gun  
15 control of the owners. This legislation will go a  
16 long way toward avoiding situations like what  
17 happened to 12-year-old Nicholas Naumkin of Saratoga  
18 Springs, New York, who died in 2010 after being shot  
19 unintentionally by a friend playing with his father's  
20 unlocked gun. According to a 2012 general social  
21 survey, one-third of households with children contain  
22 a firearm in the United States, according to the U.S.  
23 Centers of Disease Control and Prevention; 1.7  
24 million U.S. children under 18 lived in homes with a  
25 loaded and unlocked firearm in 2002, and according to

1  
2 the CDC, 98 American children died from accidental  
3 shootings in 2010. Further, the Harvard School of  
4 Public Health writes that children were the shooters  
5 in roughly 85 percent of accidental shootings of  
6 children in the U.S. between 2003 and 2006.

7           When this legislation is passed, New York  
8 State will join 14 states, along with the District of  
9 Columbia, to hold adults criminally liable if they  
10 fail to store a gun safely.

11           The guns must be stored either in a safe  
12 storage depository and or with a lock device to  
13 prevent access by children or others who should not  
14 have access to them. Owners who fail to comply will  
15 be subject to criminal liability, ranging from a  
16 violation to a Class E felony and an owner who fails  
17 to store a weapon safely will be subject to a Class E  
18 felony if that gun fires, causing physical injury or  
19 death.

20           We should be able to support commonsense  
21 gun legislation while still respecting the Second  
22 Amendment. Indeed, a majority of gun owners on the  
23 other side of the issue of NRA and believe in many of  
24 these commonsense gun control measures, but it is  
25 simply the NRA and gun manufacturers who are really

1  
2 pushing against this. I'm not sure how much death we  
3 have to see before we really step up.

4 So I urge my colleagues to support these  
5 measures to save New Yorkers' lives and I thank the  
6 Chair again. And I also wanna thank my staff, Nick  
7 E. Smith, who worked on this.

8 CHAIRPERSON GIBSON: Thank you very much,  
9 Council Member Williams. And I also wanted to add in  
10 reference to Proposed Res. 0674, and I know New  
11 Yorkers Against Gun Violence are here, and I just  
12 received information last night from Lea Barrett that  
13 the City Council of Saratoga Springs unanimously  
14 passed Local Safe Storage Law named in honor of  
15 Nicholas Naumkin, and I'm thankful for that;  
16 Nicholas' mother is thankful for the Saratoga Springs  
17 City Council and Mayor Yepsen essentially said safety  
18 is the number one priority for any community and  
19 Saratoga Springs families deserve any sensible  
20 precaution that can collectively be taken. If  
21 Nicholas' Law saves even one life, it will help  
22 ensure that other families will not have to endure  
23 such a horrific tragedy. So I wanna thank New  
24 Yorkers Against Gun Violence and certainly commend  
25 the City Council of Saratoga Springs in Upstate New

1  
2 York for unanimously passing the bill that we're  
3 looking to pass as well.

4 So thank you once again, Council Member  
5 Williams, and we've also been joined by Council  
6 Member Robert Cornegy and Council Member Ritchie  
7 Torres, thank you colleagues for being here. And we  
8 will get our first panelist representing Brooklyn  
9 Borough President Eric Adams; we have Tonya Cantilo  
10 here on behalf of Brooklyn Borough President Eric  
11 Adams; please come forward. Thank you so much for  
12 joining us.

13 TONYA CANTILO: Good morning.

14 "Good morning, Chair Vanessa Gibson and  
15 members of the New York City Council's Committee on  
16 Public Safety. My name is Eric L. Adams and I am the  
17 Brooklyn Borough President, representing the 2.6  
18 million residents who call Brooklyn home. Thank you  
19 for the opportunity to submit written testimony in  
20 support of Res. 0674, a resolution calling upon the  
21 New York State Legislature to pass and the Governor  
22 to sign Nicholas' Bill, submitted on my behalf by  
23 Council Member Jumaane D. Williams.

24

25

1  
2 Thank you to Council Members Margaret  
3 Chin, Vincent Gentile and Chair Gibson for co-  
4 sponsoring this important legislation as well.

5 In December 2010, 12-year-old Nicholas  
6 Naumkin of Saratoga Springs, New York died after  
7 being shot by a friend who was playing with this  
8 father's unlocked gun.

9 In response, State Senator Jeff Klein and  
10 Assembly Member Amy Paulin are serving as sponsors of  
11 the Child Access Prevention (CAP) Safe Storage Bill,  
12 also known as Nicholas's Bill. I thank them and the  
13 more than 50 state senators and assembly members who  
14 have signed on as co- or multi-sponsors of this  
15 legislation.

16 Nicholas' Bill would require that the  
17 safe storage of all guns not in the immediate  
18 possession or control of the gun owner either in a  
19 safe storage depository or with a locking device to  
20 prevent access by children and others who should not  
21 have access to them. The law would prevent gun  
22 injuries and deaths by limiting children's access to  
23 guns. More than half the states [sic] in the United  
24 States have safe storage on their books; despite New  
25 York's traditionally strong gun laws, CAP is not one



1 of them. According to New Yorkers Against Gun  
2 Violence, a chief proponent of this legislation,  
3 studies have found these laws to be effective in  
4 reducing accidental shootings of children by as much  
5 as 23 percent. In addition, according to New Yorkers  
6 Against Gun Violence, among states with the highest  
7 level of child gun deaths, 7 of 10 do not have CAP  
8 laws, while states with low levels of child gun  
9 deaths, 7 of 10 do have CAP laws. New York State's  
10 continued reluctance to pass this legislation has  
11 real casualties.  
12

13           Unfortunately, Nicholas' story is just  
14 one of the many that afflict our state and country.  
15 According to "Innocents Lost: A Year of Unintentional  
16 Child Gun Deaths," a report from every town for gun  
17 safety, at least 100 children were killed in  
18 unintentional shootings from December 2012 to  
19 December 2013, nearly two-thirds of which could've  
20 been avoided if gun owners stored their guns  
21 responsibly and prevented children from accessing  
22 them.

23           In New York State alone, from 2015 to  
24 today, 10 children were killed or injured  
25 unintentionally; 5 of these shootings occurred in New

1  
2 York City, 3 of which took place in my borough of  
3 Brooklyn. Enough is enough.

4 Brooklyn's Borough Board passed a  
5 resolution endorsing Res. 0674 last year; I urge the  
6 New York City Council to follow suit and pass this  
7 important resolution, calling upon the New York State  
8 Legislature to enact and Governor Cuomo to sign  
9 Nicholas' Bill." Thank you.

10 CHAIRPERSON GIBSON: Thank you very much.  
11 And you answered my question; I was going to ask if  
12 you knew of any cases relative to what we're trying  
13 to do in passing Nicholas' Law that apply to the  
14 Borough of Brooklyn and you outlined that. Do you  
15 know with any of these cases, in terms of some of the  
16 details where it was, in the case of Nicholas, where  
17 he was able to -- you know, his friend was able to  
18 get access to a gun and obviously Nicholas' Law is  
19 something that we want to have an impact in the  
20 entire State of New York, but with those cases in  
21 Brooklyn, is there any detail you could share with us  
22 that would be helpful in our further conversations  
23 with our colleagues in Albany?

24 TONYA CANTILO: I don't think I have any  
25 additional information at this time; I could probably

1  
2 get back to you with further information if you need  
3 it.

4 COUNCIL MEMBER WILLIAMS: Just wanna tell  
5 you thank you for being here and thank the Borough  
6 President for leadership on this bill and to his  
7 leadership on gun violence throughout the borough and  
8 the city as well. Thank you.

9 CHAIRPERSON GIBSON: Thank you very much;  
10 I echo the same sentiments. Please give our warmest  
11 regards to the Borough President and thank him for  
12 his support and working with him as a partner to end  
13 gun violence across the city. Thank you very much  
14 for being here.

15 Before we call the next panel up for this  
16 hearing, I'd like to acknowledge the presence of our  
17 New York City Public Advocate, the Honorable Letitia  
18 James, who is the prime sponsor of Res. No. 0853,  
19 which calls on Congress to pass and the President to  
20 sign H.R. 1217, also known as the Public Safety and  
21 Second Amendment Rights Protection Act of 2015, which  
22 closes loopholes in the current gun background check  
23 system and ask her to make her opening remarks.  
24 Public Advocate Letitia James, thank you so much for  
25 being here.

1  
2 PUBLIC ADVOCATE JAMES: Thank you, Madame  
3 Chair. I wanna thank you for holding today's  
4 hearing.

5 As you mentioned, I am the prime sponsor  
6 of Res. No. 0853, calling on Congress to pass and the  
7 President to sign H.R. 1217, also known as the Public  
8 Safety and Second Amendment Rights Protection Act.

9 H.R. 1217 would close loopholes in the  
10 current gun background check system by requiring  
11 background checks for guns sold online, at gun shows  
12 and through classified ads.

13 Our First Amendment gives us the freedom  
14 of speech and religion, amongst other freedoms, but  
15 those freedoms have limitations; you cannot scream  
16 fire in the proverbial crowded theater, obscenity can  
17 be prohibited in certain circumstances, religious  
18 activity in the form of consuming illegal drugs or  
19 polygamy can be prohibited because they violate  
20 federal law. We as a nation accept that there are  
21 reasonable constraints on these First Amendment  
22 rights; why then do these radical gun advocates  
23 refuse to accept that reasonable constraints should  
24 also apply to the Second Amendment? The bottom line  
25 is that background checks will keep Americans safer

1  
2 by ensuring that guns don't end up in the wrong  
3 hands; unfortunately, opponents of sensible gun  
4 control are not interested in ensuring that guns  
5 don't end up in the wrong hands; they want guns in as  
6 many hands as possible, because it's really all about  
7 the bottom line, and their own ideas about how laws  
8 should address a gun demonstrates just how irrational  
9 their position truly is. In fact, a bill was  
10 recently introduced in the State Legislature in  
11 Missouri and it would basically charge any member of  
12 the Assembly with a Class D felony if that member of  
13 the Assembly proposes a piece of legislation that  
14 restricts gun rights; that's insanity; that means you  
15 can go to jail simply for introducing legislation to  
16 prohibit the sale of guns to 4-year-olds, but the  
17 government couldn't perform a background check on a  
18 suspected terrorist trying to buy an AK-48. Council  
19 Member Lancman, if you were in Missouri, you would go  
20 to jail just for proposing a reasonable law; it's  
21 really ridiculous. And at least 15 states have bills  
22 aimed at barring officials from enforcing federal gun  
23 laws. In Montana, a voter referendum sought to grant  
24 police the authority to arrest FBI agents trying to  
25 enforce gun laws, in Montana; it would give the

1  
2 police the authority to arrest their fellow law  
3 enforcement officer, an FBI agent simply because they  
4 wanted to enforce gun laws and they would basically  
5 charge those individuals, those FBI agents with  
6 kidnapping, crazy; not reasonable; not rational. And  
7 so no surprisingly, existing laws concerning  
8 background checks are equally saddening -- 40 states  
9 do not require background checks for gun sales  
10 between private parties; it is estimated that 40  
11 percent of all guns sold in the U.S. are not subject  
12 to background checks and no federal background check  
13 is required on the sale of ammunition. Even when a  
14 background check is required, the FBI only has 72  
15 hours to determine whether a purchaser is prohibited  
16 from owning a gun, 72-hour window, that's it, and if  
17 they cannot or do not make a determination in that  
18 time, the gun sale can proceed. In spite of how  
19 illogical and insurmountable the opposition to  
20 sensible gun regulations seems, we must not lose  
21 faith. The fact of the matter is that history,  
22 morality and the laws are on our side and the people  
23 are on our side; reasonable people would not want to  
24 put guns in the hands of individuals on the terror  
25 watch list, convicted domestic abusers or people

1  
2 previously convicted of gun-related felonies; for  
3 that reason we must require background checks for all  
4 gun sales, whether sold online, at gun shows or  
5 through classified ads. I firmly believe that if we  
6 continue to demonstrate the facts and the logic of  
7 our position we will turn the tide on this dangerous  
8 chapter in our country's legal history and if we fail  
9 to do that, then there's always the law on our side  
10 and I'm certain that at some point in time the law  
11 will reverse all of this insanity that's happening in  
12 our country and keep our children safe.

13           Again, I wanna thank Chair Gibson and all  
14 the members of this committee and I urge the Council  
15 to speak with one voice in supporting this important  
16 resolution and I thank you for your attention to this  
17 most important issue. Thank you, Madame Chair.

18           CHAIRPERSON GIBSON: Thank you very much,  
19 Public Advocate James. Thank you for your support,  
20 for your leadership and being a strong advocate  
21 standing against gun violence and calling on sensible  
22 reforms that must happen in our state.

23           Our next panel is from New Yorkers  
24 Against Gun Violence, three members -- Laurel Durst  
25 is here, Paul May and Phil Jonas. Anyone here --

1 Phil, Paul May and Laurel Durst, from New Yorkers  
2 Against Gun Violence. Please come forward.

3 LAUREL DURST: 'Kay. Good morning; I'm  
4 Laurel Durst and I will be reading a testimony about  
5 Proposed Res. No. 0674, Nicholas' Law, which we  
6 already heard about from..

7  
8 The unsafe storage of firearms is a  
9 public health and safety issue in the United States.  
10 A 2000 study of firearm storage practices in American  
11 homes with children found that 55 percent reported  
12 having one or more firearms in an unlocked place and  
13 43 percent reported keeping guns without a trigger  
14 lock in an unlocked place.

15 A 2005 study on adult firearm storage  
16 practices in U.S. homes found that over 1.69 million  
17 children and youth under age 18 are living in homes  
18 with loaded and unlocked firearms.

19 Unintentional shootings: Each year  
20 firearms cause thousands of unintentional deaths and  
21 injuries. A 2013 *New York Times* study found that  
22 unintentional shooting deaths occurred roughly twice  
23 as often as the records indicate because of  
24 inconsistencies in how such deaths are classified by  
25 the authorities. Nevertheless, between 1999 and



1  
2 2014, 10,500 people in the United States were  
3 reported as dying from unintentional shootings,  
4 including 2,974 children and young people ages 0-21.  
5 In New York, over the same period, 240 people died  
6 from unintentional shootings, including 56 children  
7 and young people ages 0-21. In New York State, an  
8 annual average of 210 children age 19 and under are  
9 treated in a hospital because of an unintentional  
10 firearm injury; 75 seriously enough to be  
11 hospitalized; 4 children die each year because of an  
12 unintentional firearm incident.

13           Suicides: Suicides by firearm represent  
14 nearly two-thirds of all U.S. gun deaths annually.  
15 Between 1999 and 2000, over 290,000 Americans killed  
16 themselves with a gun; 7,145 in New York State. In  
17 2014, firearm suicides were 54 percent of total New  
18 York gun deaths, about 85 percent of suicide attempts  
19 with a firearm are fatal; whereas many of the other  
20 most widely used suicide attempt methods have  
21 fatality rates between 5 percent. A 1999 study found  
22 that more than 75 percent of the guns used in youth  
23 suicide attempts and unintentional injuries were  
24 stored in the home of the victim, a relative or a  
25 friend. At least two studies have found that the

1  
2 risk of suicide increases in homes where guns are  
3 kept loaded and/or unlocked. Between 2010 and 2014,  
4 250 New York children and young people ages 24 and  
5 under used a gun to commit suicide.

6 The U.S. Secret Service and Department of  
7 Education published a study in 2004 of 37 school  
8 shootings from 1974-2000. The study found that in  
9 more than 65 percent of the cases the shooter got the  
10 gun from their home or that of a relative. Research  
11 has shown that laws requiring the use of gun locks or  
12 storage containers are effective at preventing  
13 suicides and saving lives. States with a law in  
14 place that required handguns be locked, at least in  
15 certain circumstances, there were 68 percent fewer  
16 firearm suicides per capita than states without these  
17 laws.

18 Gun Thefts: Securing firearms not only  
19 reduces unintentional shootings and suicides, but  
20 also gun thefts. Research indicates that at least  
21 500,000 firearms are stolen annually from residences.  
22 Many stolen guns are used to commit subsequent  
23 crimes.

24 A U.S. Department of Treasury study  
25 revealed that nearly a quarter of ATF gun trafficking

1  
2 investigations involved stolen firearms and were  
3 associated with over 11,000 trafficked firearms; 10  
4 percent of the investigations involved guns stolen  
5 from residences.

6 In the City of Albany, over 100 firearms  
7 were reported stolen from homes and motor vehicles  
8 between 2010 and 2015; law enforcement supports safe  
9 storage laws because they help prevent gun thefts,  
10 reducing the numbers of illegal guns on the streets.  
11 Safe storage laws are consistent with the Second  
12 Amendment.

13 Opponents of laws requiring the safe  
14 storage of firearms claim that such laws violate the  
15 Second Amendment; this claim ignores the scope of the  
16 right articulated by the U.S. Supreme Court in  
17 *District of Columbia v. Heller* and has been  
18 repeatedly rejected by the courts. In challenges to  
19 the law on Second Amendment grounds, the courts have  
20 consistently found that safe storage laws place only  
21 a minor burden on the Second Amendment, because a  
22 firearm is accessible in a matter of seconds and this  
23 burden is justified by the state's interest in public  
24 safety in keeping firearms from falling into the  
25 hands of children and other prohibited individuals.

## Existing New York Safe Storage Laws:

Safe storage laws have been enacted in the following New York jurisdictions: Rochester, Syracuse, Buffalo, New York City, Westchester County, and Albany and Saratoga Springs.

The 2013 New York Safe Act requires firearm safe storage only in households where individuals live who have been convicted of a crime, involuntarily committed or subject to an order of protection; however, there is no law requiring gun owners to safely store firearms around children.

State Laws: There is no national firearm safe storage law. However, 28 states and the District of Columbia have some form of child access prevention law; Massachusetts is the only state that requires that all firearms be stored with a locking device in place when not in the owner's immediate possession or control. New York, if it passes Nicholas' Law, would be the second state to have a safe storage law.

We urge the City Council to pass Res. 0674-A in support of Nicholas' Law, which will help keep guns out of the hands of thieves and children and young people who may otherwise use them

1  
2 in unintentional shootings, suicides or school  
3 shootings. Thank you.

4 CHAIRPERSON GIBSON: You may proceed.  
5 Thank you very much.

6 PAUL MAY: Thank you. Thank you, Madame  
7 Chair for giving us this opportunity; thank you  
8 members of the Council for hearing what we have to  
9 say and in particular I wanna thank the Honorable Ms.  
10 James for sponsoring this and offering this  
11 intelligent resolution.

12 Conducting a criminal background check  
13 with every gun sale is an easy and effective way to  
14 keep dangerous weapons from getting into the hands of  
15 criminals, violent abusers; the dangerously mentally  
16 ill. Currently federal law does not require a  
17 background check on private sellers at gun shows, at  
18 flea markets or over the internet, which represents  
19 approximately 40 percent of all gun sales. This  
20 gaping loophole contributes to the epidemic of gun  
21 deaths and injuries in the United States, so if  
22 someone is required to submit to a background check,  
23 they can avoid it very easily by going to one of  
24 these forums. The effective background checks on New  
25 York State is that New York State closed the private

1  
2 sale loophole in 2013 with the passage of the Safe  
3 Act; this means that background checks must be  
4 performed for all gun sales, with the exception of  
5 transfers between immediate family members; as a  
6 result, New York State's relatively strong gun law,  
7 our gun death rate is the nation's fourth lowest.  
8 Gun deaths fell 14 percent from 2013-2014.

9           There is compelling evidence in the  
10 Missouri case that the background checks work. For  
11 decades Missouri did require handgun buyers to pass a  
12 background check and obtain a permit to purchase  
13 firearms; in 2007 the state dismantled this permit  
14 system and eliminated its background check  
15 requirements. While federal law continues to require  
16 background checks for all gun sales by licensed  
17 dealers, handgun buyers who shop with unlicensed  
18 sellers in Missouri effective at that point are no  
19 longer subject to background checks or permit  
20 systems. Felons, convicted domestic abusers and  
21 others legally prohibited from buying guns can evade  
22 these background checks by seeking out unlicensed  
23 sellers, including at gun shows or even online. As a  
24 result, it became easier for criminals to buy guns  
25 and as a result of that or immediately after that,

1 the share of crime guns recovered in Missouri that  
2 were purchased in state grew by 28 percent, gun  
3 trafficking nearly doubled and importantly, the gun  
4 homicide rate increased 25 percent per year after  
5 that legislation was dismantled.  
6

7 H.R. 1217, by requiring criminal  
8 background checks on all commercial gun sales,  
9 including at gun shows and on the internet, would  
10 keep guns out of the wrong hands. However, H.R. 1217  
11 would not close the private sale loophole completely;  
12 it would go some way towards keeping guns out of  
13 dangerous hands and would benefit New York by  
14 reducing gun trafficking in our state.

15 The effect of background checks on  
16 suicides and mass shootings; background checks reduce  
17 gun suicides. A recent study showed that there are  
18 48 percent fewer gun suicides in states that require  
19 background checks for private handgun sales than in  
20 states that do not, and there's more statistics on  
21 that in today's agenda by your own Council.

22 In states that require criminal  
23 background checks for all handgun sales, there were  
24 52 percent fewer mass shootings between January 2009  
25 and July 2015; significantly, states with background

1  
2 check requirements for all handgun sales had 63  
3 percent fewer mass shootings committed by people  
4 prohibited from possessing firearms and 64 percent  
5 fewer domestic violence mass shootings.

6 We urge the City Council to pass this  
7 resolution in support of strengthening our weak  
8 federal gun laws by expanding criminal background  
9 checks and note that a member of Congress from Staten  
10 Island, a republican member, who has been both for  
11 and against this H.R. 1217, was a sponsor of it but  
12 then did not vote to vote it out of committee, may be  
13 swayed by the City Council's resolution, so we  
14 appreciate your input. Thank you.

15 CHAIRPERSON GIBSON: Thank you very much.  
16 Thank you.

17 PHIL JONAS: Chairwoman Gibson, thank you  
18 so much for this opportunity to surface these issues  
19 and allow us to discuss them and particularly I  
20 wanted to thank Council Member Jumaane Williams for  
21 your consistent support of these measures and your  
22 sponsorship of this particular proposal, proposal  
23 0940, which would restore funding to allow the  
24 federal government to support gun violence prevention  
25 research.



1  
2           Research into the causes of gun violence  
3 is critical to devising policies that will reduce gun  
4 deaths and injuries and make our communities safer;  
5 without good research, it's far more difficult to  
6 develop effective lifesaving policies, something the  
7 NRA and the corporate gun lobby understood when it  
8 succeeded in getting Congress to cut off federal  
9 funding for gun violence research in 1996; that's 20  
10 years we've been without federal funding.

11           In 1992, the Center for Disease Control  
12 and Prevention launched the National Center for  
13 Injury Prevention and Control to do research on the  
14 causes of injury in America and the center sought to  
15 research injuries that were considered intentional --  
16 guns, which have consistently killed over 33,000  
17 people and injured over 84,000 Americans each year  
18 fall into that category. A year later the *New*  
19 *England Journal of Medicine* published the CDC-funded  
20 research paper that found keeping a gun in the home  
21 was strongly and independently associated with a  
22 greater risk of homicide by a family member or  
23 intimate partner. Various research has shown that a  
24 gun in the home is 14 times more likely to be used on  
25 a member of that household than on an intruder.

1  
2 The NRA saw the results as an impending  
3 disaster for gun sales, already in decline since the  
4 1970s, so the NRA leadership directed its point  
5 person at the time, Arkansas Representative Jay  
6 Dickey, to insert language in the 1976 Appropriations  
7 Bill stripping the CDC of its entire budget of \$2.6  
8 million for firearm injury research, \$2.6 million;  
9 not a tremendous amount of money when we're talking  
10 about the federal budget. It also included a  
11 provision explicitly prohibiting any CDC funding to  
12 "advocate or promote gun control." This so-called  
13 "Dickey Amendment" was effective in achieving the  
14 NRA's goals, public funding for gun violence research  
15 plummeted from \$2.5 million from '93-'96 to just  
16 \$100,000 in 2012, a decline of 96 percent; as a  
17 result, the rate of firearms injury has remained  
18 unchanged over the last 20 years; firearms killed  
19 28,800 Americans in 1999 and 33,600 in 2014, an  
20 increase of 15 percent, representing the increase in  
21 population.

22 By contrast, major motor vehicle injury  
23 claimed nearly 41,000 lives in 1999; however, a \$500  
24 million annual research budget led to policies that  
25 reduced this to 33,736 in 2014, a decrease of 18

1  
2 percent. Again, despite the fact there are more cars  
3 and more people on the roads.

4           Since 1996, the gun industry, through its  
5 willing minions in Congress, has restricted law  
6 enforcement's access to gun trace data, preventing  
7 cities and elected officials from sharing data about  
8 gun crimes. In 2004, the National Research Council  
9 issued a report, "Firearms and Violence," an  
10 assessment of the state of knowledge in the field and  
11 said, "The inadequacy of data on gun ownership and  
12 the use is among the most critical barriers to a  
13 better understanding of gun violence. If  
14 policymakers are to have a solid empirical and a  
15 research base for decisions about firearms and  
16 violence, the federal government needs to support a  
17 systematic program of data collection and research  
18 that specifically addresses this issue."

19           The virtual research blackout has stymied  
20 efforts to craft legislation to reduce gun violence,  
21 since there is little empirical evidence to rely on;  
22 a meaningful evidence-based discussion has given way  
23 to an emotional and ideological debate, yielding no  
24 new federal firearm legislation since 1994. We urge  
25 the City Council to pass Res. 0940 without delay.

1  
2 We would like to leave you with a  
3 proposal that is within our power as New Yorkers to  
4 realize; in the current absence of federal gun  
5 violence research, we ask you to support the creation  
6 of a gun violence research center in New York; that's  
7 what California's trying to do; a bill currently  
8 before the California Senate would fund firearm  
9 violence research by establishing the California  
10 Firearm Violence Research Center within the  
11 University of California; the center would provide  
12 scientific research into the origin of firearm  
13 violence and prevention models.

14 In New York, my Assemblyman, Matt Titone,  
15 with Assembly District 61 on Staten Island, recently  
16 proposed two bills, A.9245 and A.9224, that would  
17 start a gun violence research fund supported by a  
18 \$5.00 fee on firearm registrations in New York and  
19 establish a dedicated taxpayer gift check-off on  
20 state returns. If two of the largest states, New  
21 York and California, were to take this step to  
22 initiate gun violence prevention research, it would  
23 go a long way to address the problem and provide  
24 pressure on Congress to finally repeal the "Dickey  
25 Amendment" and to get on with this lifesaving

1  
2 research at the federal level of what is clearly a  
3 public health issue.

4 I wanna thank the panel; I also want to  
5 thank also Council Member Vinnie Gentile for also co-  
6 sponsoring this legislation and also being a  
7 consistent supporter of this work. Thanks.

8 CHAIRPERSON GIBSON: Thank you very much,  
9 and I certainly want to commend New Yorkers Against  
10 Gun Violence; you guys do a tremendous job helping us  
11 better understand what some of our state laws and  
12 federal laws are saying and not just Nicholas' Law,  
13 but I was a part of the legislature when we passed  
14 the Safe Act in 2013, so I really wanna thank you for  
15 the tremendous amount of work you do in making sure  
16 that we can pass comprehensive legislation that  
17 really saves the lives of many, many New Yorkers, so  
18 thank you for that. And I also wanna acknowledge we  
19 have been joined by Council Member Julissa Ferreras-  
20 Copeland and we will have questions from one of my  
21 colleagues, Council Member Ritchie Torres. Ritchie.

22 COUNCIL MEMBER TORRES: Thank you so  
23 much, Madame Chairwoman; thank you for your advocacy  
24 around anti-gun violence prevention.

1  
2 In the presidential race there's been  
3 much discussion about immunity for gun manufacturers  
4 and I wanna just get a deeper understanding of that  
5 issue. So what's the present state of federal and  
6 state law when it comes to immunity for gun  
7 manufacturers?

8 PAUL MAY: There is one industry that is  
9 immune from lawsuits; it is the gun industry; car  
10 manufacturers, cigarette manufacturers are all  
11 subject to liability for deficiencies in their  
12 products; gun manufacturers are not; that has been  
13 the case since I believe 1972, when the law was  
14 passed or that may not be exactly accurate. Some  
15 members of Congress, including one who's currently  
16 running for president; was from a rural state, had  
17 not supported changing that and I think that's  
18 probably to what your... [crosstalk]

19 COUNCIL MEMBER TORRES: That's not even a  
20 question of gun control; that's just quality  
21 assurance for customers, right, like if you buy a  
22 product, you do so with the expectation that it's  
23 free of defects and that it's safe, so I as a gun  
24 manufacturer, under federal law have no obligation to  
25 manufacture a safe product; is that...

1  
2 PAUL MAY: I think perhaps it may be the  
3 same reasoning that was referred to earlier by Public  
4 Advocate James about somebody who proposes  
5 legislation and how that person should be subject to  
6 criminal sanctions; not something that I can explain,  
7 because it's not something that makes any sense to  
8 me, but that does seem to be the case.

9 COUNCIL MEMBER TORRES: And then on the  
10 question of storage, so if I'm a parent of the..  
11 [interpose, background comment] if I'm a parent and I  
12 leave a gun unlocked on the table and my child kills  
13 himself; I have no liability at all in New York  
14 State?

15 PAUL MAY: At present -- the question is  
16 if... under the current law, if a parent were to leave  
17 a gun and their child were to use it, if it's not in  
18 their immediate control... [interpose, background  
19 comment]

20 LAUREL DURST: Well in most cases there  
21 is no harm found, they're not charged with any crime;  
22 there is no law against it.

23 PAUL MAY: The only instance where there  
24 would be if they were a convicted criminal or if they  
25 had an order of protection against them; those are

1  
2 the things that are currently covered by the Safe  
3 Act, but under Nicholas' Law, if it's not in your  
4 immediate control, you would be subject to criminal  
5 sanctions for having left that gun negligently out  
6 for a child.

7 COUNCIL MEMBER TORRES: And I have one  
8 question regarding the research, CDC research into  
9 gun violence, and I'm gonna ask a skeptical question.  
10 What do we hope to achieve with greater research; I  
11 think... like what do we hope to gain that we don't  
12 already know; we know that gun violence is a social  
13 pathology that's responsible for the deaths of  
14 thousands of Americans, so what do you hope to  
15 achieve with further research into the matter?

16 PHIL JONAS: Well I think there are  
17 several research targets; understanding who is most  
18 subject to violence; who's most prone to committing  
19 violence, coupled with their capacity to arm  
20 themselves is something that's very worthwhile  
21 studying. I spent several years as a psychologist  
22 doing violence risk assessment and the more you know  
23 about who should not have access to lethal firepower,  
24 the more you can understand the intersection of  
25 dangerousness and accessibility. Mr. Williams



1  
2 referenced earlier supply and demand; another area of  
3 research that we do actually at New Yorkers is we  
4 look at our in-school... we have in-school programs in  
5 all five boroughs now that address really the supply  
6 side; we look to enable young people to perceive  
7 their influence and their empowerment through  
8 advocacy and through their ability to, for instance,  
9 go to Albany and advocate on behalf of their own  
10 communities; we partner with John Jay College in  
11 assessing the viability of this approach, along with  
12 the approaches that are being employed in Chicago,  
13 Los Angeles, Detroit, Philadelphia, and many other  
14 cities. Research on violence prevention is also  
15 germane to the issue and I think that would be  
16 another reason why Congress should renew its very  
17 tentative commitment; that \$2.5 or \$2.6 million  
18 commitment was really frankly a drop in the bucket,  
19 given the size of the public health problem.

20 COUNCIL MEMBER TORRES: And one final  
21 question about the Heller decision, which establishes  
22 a right to bear arms for the first time I believe,  
23 the individual right to bear arms, as far as I know.  
24 I guess, what are the legal limits of gun control in  
25 light of that decision; how far can we go legally

1  
2 without running afoul of that decision; what can  
3 states do?

4           PAUL MAY: I think the significance of  
5 Heller as it regards this discussion is that Heller  
6 allowed that it was permissible to apply limitations  
7 to the Second Amendment and to the right to bear  
8 arms. I think the significance in Heller, from our  
9 perspective, is that in that particular instance the  
10 restrictions that were applied were not found to have  
11 been legitimate; however, the decision was quite  
12 clear in Heller that the right to bear arms is not a  
13 unilateral right, it's not a complete right, it's not  
14 a right without the ability to restrict; it clearly  
15 can have restrictions to it and that's... I think it's  
16 bearing on our discussion today.

17           COUNCIL MEMBER TORRES: What's the  
18 standard for determining which limitations are  
19 permissible, if any...? [crosstalk]

20           PAUL MAY: It's not... It's not  
21 particularly clear... [crosstalk]

22           COUNCIL MEMBER TORRES: Okay.

23           PAUL MAY: and there's a great deal of  
24 legis... but that's a very interesting question and  
25

1  
2 what we'll do is, we'll get back to you, specific to  
3 your office, specifically with an analysis of that.

4 COUNCIL MEMBER TORRES: Again, thank you  
5 for all the work you do. Madame Chairwoman, thank  
6 you so much.

7 CHAIRPERSON GIBSON: Thank you, Council  
8 Member Torres. We have also been joined by Council  
9 Member Vincent Gentile and before I get to two other  
10 colleagues that have questions, I just wanted to ask  
11 two questions quickly related to Nicholas' Law. I  
12 wanted to ask about the difference between an  
13 internal and an external lock on guns and I also  
14 understand that New York State currently prohibits  
15 any retail sales of firearms without a locking device  
16 during gun shows and other places, but private  
17 sellers are exempted from this current law, so I  
18 wanted to know your thoughts on that, on private  
19 sellers being exempted from selling guns that do not  
20 have a locking device and then if you could just  
21 explain some of the benefits, pros and cons of having  
22 an internal lock versus an external lock, if you're  
23 aware.

24 PAUL MAY: Both external and internal...

25 [internal]

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PHIL JONAS: Go ahead.

PAUL MAY: and internal locks are effective if they're used. An external lock would be a locking safe, for example, or a... [crosstalk]

CHAIRPERSON GIBSON: Okay.

PAUL MAY: a device that wraps through the trigger that prevents it from being fired and the internal lock would be built into the device, the gun itself; both are effective if they're used. For example, a biometric trigger that can only be pulled by the person who's programmed... that owns the gun, and then same with biometric safe, which is only usable to the people who have programmed the safe, but that's an external lock. So that's basically the difference between the two; both are effective... [crosstalk]

CHAIRPERSON GIBSON: Okay.

PAUL MAY: it's more a question of which, you know, of having the device enabled, because having a safe or having a trigger lock doesn't do any good if it's not used.

And in answer to your second question, an internal or external lock that's not a part of the gun itself is really of no use if it's obviously not

1  
2 being implemented, but I think you're correct about  
3 the fact that a gun lock must be provided as part of  
4 a gun purchase, but again, there's no obligation by  
5 the owner to use it and so they're available; I mean  
6 you can go out and actually buy a separate gun lock  
7 and apply it to your shotgun or weapon of any type,  
8 but having it is of no use if you don't use it.

9 CHAIRPERSON GIBSON: Right, but that's  
10 only an individual decision that's made by that  
11 particular person; right?

12 PAUL MAY: Correct.

13 CHAIRPERSON GIBSON: Okay.

14 PAUL MAY: It's made available.

15 CHAIRPERSON GIBSON: Right. Okay. Okay.

16 Thank you very much. I will have Council Member  
17 Williams, followed by Public Advocate James.

18 COUNCIL MEMBER WILLIAMS: Thank you very  
19 much, Madame Chair. I don't have any questions; I  
20 just wanted to say thank you so much for the work  
21 that your organization is consistently doing and for  
22 your support and pushing of these bills, not just  
23 here, but actually in the state, where we really can  
24 have an affect if we get them to pass. Most of these  
25 will be working primarily on the supply side and my

1  
2 hope is that we'll continue both, working on the  
3 supply side and making sure that we're dealing with  
4 the demand and particularly of the handgun violence  
5 that affects cities every single day.

6           And I just wanted to give a shout-out to  
7 the movie, *Making a Killing: Guns, Greed and the NRA*,  
8 which is a new documentary that I know you also  
9 support and my hope is that can be to the gun  
10 industry what *Blackfish* was to Disney [sic] World, so  
11 one can only dream; I hope we can continue supporting  
12 these bills and continue to make changes and.. I'm in  
13 awe of how difficult it has been to make these  
14 changes; it just amazes me that people continue to  
15 push back on the most commonsense of bills, not even  
16 the bills that I support, but I can understand where  
17 someone would say there's an issue here; these bills  
18 are the simplest of them all and we still have  
19 continuous pushback, which just is disgusting in its  
20 own right, but hopefully that will begin to change,  
21 particularly with the work that you're doing, the  
22 documentaries that are going forward and the work  
23 that's being done here in the City Council. Thank  
24 you.

1  
2 CHAIRPERSON GIBSON: Thank you very much,  
3 Council Member Williams; I echo the same sentiments.  
4 Next we'll have Public Advocate James.

5 PUBLIC ADVOCATE JAMES: Thank you; I too  
6 wanna share in that sentiment and thank you for all  
7 of your service. But for the record, I just wanna  
8 note that in 2005 a republican-led Congress passed  
9 the Protection of Lawful Commerce in Arms Act, which  
10 basically gives immunity to gun manufacturers and gun  
11 dealers, and those who, unfortunately have been  
12 victimized by gun violence, it prevents them from  
13 seeking any liability in state or federal court.  
14 There have been a number of cases that have been  
15 dismissed, unfortunately, all throughout the country  
16 as a result of this statute, but right now there is  
17 one particular case that we are tracking in the  
18 Office of Public Advocate; we look to file an amicus,  
19 basically challenging the constitutionality of this  
20 case. I believe that politics is not going to fix  
21 this; I think that the law will fix this; just as the  
22 law was able to bankrupt the Ku Klux Klan, hopefully  
23 the law will bankrupt the NRA and bring them to their  
24 knees and bring some sanity and some safety to  
25 countless Americans in this country. I thank you for

1  
2 all that you do and I look forward to working with  
3 you.

4 CHAIRPERSON GIBSON: Thank you very much,  
5 Public Advocate James. I just had one more question.  
6 I know we have a lot of stats that we are looking at  
7 to make a lot of decisions and focus on priorities,  
8 but could you just give me a sense of the numbers  
9 that we have for New York State of legal guns versus  
10 illegal guns, right? I know that many of the guns  
11 that are trafficked across our city are coming from  
12 other states, but do we have any numbers like  
13 statewide that look at the number of legal guns we  
14 have versus illegal?

15 PAUL MAY: We can provide information,  
16 but if you could just clarify your question in terms  
17 of a gun that's purchased legally, I mean a gun  
18 that's purchased legally and then sold on to, for  
19 example, through a straw buyer and sold on I would  
20 consider an illegal gun; is that more or less what  
21 you have in mind?

22 CHAIRPERSON GIBSON: Yes. So I remember  
23 when we passed the Safe Act, we got a lot of pushback  
24 from gun manufacturers that employed a lot of New  
25 Yorkers in upstate counties and Remington was one of



1  
2 the companies that employed about maybe 5-600 New  
3 Yorkers and they gave us a lot of grief; it wasn't  
4 easy, but I mean obviously it was easy to pass what  
5 we believe was a fair and sensible gun legislation  
6 for the state, but it was a lot of pushback because  
7 of the impact on jobs, of course. So I just wanted  
8 to know; do we have an idea of how many legal gun  
9 owners we have in the state of New York?

10 PAUL MAY: You're absolutely right, the  
11 statistics are numbing in this case; 'cause some of  
12 them are just so crazy they're hard to believe..

13 [crosstalk]

14 CHAIRPERSON GIBSON: Okay.

15 PAUL MAY: I don't have that answer and I  
16 don't know... [crosstalk]

17 CHAIRPERSON GIBSON: Gotcha.

18 PAUL MAY: if we do [sic] exactly the  
19 number of licensed gun owners there are in New York  
20 State, but we'll get you that; you don't need a  
21 license of course for a long gun in New York State..

22 [crosstalk]

23 CHAIRPERSON GIBSON: Right.

24 PAUL MAY: only for certain guns, but  
25 we'll get you the answer to the number of legal guns

1 versus those, which would be an estimate, of course..

2 [crosstalk]

3  
4 CHAIRPERSON GIBSON: Of course. Right,  
5 of course.

6 PAUL MAY: of illegal guns, but then  
7 also, perhaps the number used in crimes, the number  
8 of guns recovered in crimes that were legal  
9 [background comment] versus illegal; we'll get you  
10 that information.

11 CHAIRPERSON GIBSON: Okay.

12 PHIL JONAS: Yeah, we have.. our  
13 experience I believe is that in New York City up to  
14 90 percent of guns recovered from crime scenes were  
15 not sold within New York State..

16 CHAIRPERSON GIBSON: Right.

17 PHIL JONAS: so they are be definition  
18 illegal in that they were not registered.

19 CHAIRPERSON GIBSON: Right.

20 PHIL JONAS: But that's only part of the  
21 answer; we'll get you the rest.

22 CHAIRPERSON GIBSON: Right. [background  
23 comments] ...collect is based on the original source of  
24 that gun sale; right, in terms of no matter where it  
25 ends up, it usually ends up in the City of New York,

1  
2 but we trace it by the origins and that's the data  
3 that we're looking at; right? Okay, great. Council  
4 Member Williams had a final question; I also wanna  
5 acknowledge the presence of Council Member Jimmy  
6 Vacca.

7 COUNCIL MEMBER WILLIAMS: Thank you. Not  
8 a question, but yeah, two things I wanted to.. just  
9 important to point out that New York City does get,  
10 unfortunately, a significant amount of guns from New  
11 York State, but outside of New York City because  
12 other parts of the state do have more lax gun laws,  
13 so I think it's a point to point that out. And also,  
14 sometimes the legal versus, I believe, sometimes the  
15 illegal guns versus legal guns is misnomer; while we  
16 need those statistics, most of the illegal guns were  
17 legal at some point and so it's very important to  
18 make sure we remember that when we're discussing how  
19 best to apply both the gun control laws on the supply  
20 side and dealing with the demand side as well.  
21 Although there's some pushback we always get about we  
22 don't wanna... we only should deal with illegal ones,  
23 they were legal at some point, which is why we need a  
24 lot of these laws. Thank you.

1  
2 CHAIRPERSON GIBSON: Thank you very much.  
3 Council Member Vincent Gentile.

4 COUNCIL MEMBER GENTILE: Thank you,  
5 Madame Chair and I just wanna also add my thanks and  
6 congratulations to New Yorkers Against Gun Violence  
7 for your consistent advocacy in this regard; I  
8 remember standing on the steps of the State Capitol  
9 more than a decade ago with you at your rallies back  
10 then and so you have been doing good work for a long  
11 time to get some sensible gun control in this state,  
12 so I thank you for that.

13 I just had a quick question, and I'm  
14 sorry I got here late, so it may have been answered,  
15 but I'm curious, if H.R. 1217 were to pass and become  
16 law, tightening the background check system, how  
17 would that work for the private sales that happen in  
18 localities by classified ads; how would those people  
19 be required to do a background check and what  
20 enforcement would there be in that regard?

21 PAUL MAY: Good question and the NICS,  
22 the NICS rule does not address private sales;  
23 H.R. 1217 would address private sales by licensed gun  
24 owners, so you would still have a loophole for people  
25 who were not license gun owners, which as Councilman

1  
2 Williams pointed out, would be the second or third  
3 buyer, for example, or a family member; right now  
4 it's probably easier without this law for me to  
5 transfer my car to my child than it is for me to give  
6 my gun to anyone. I mean I'm sorry, it's harder to  
7 do the car than the gun; I mean you would have, by  
8 this 1217, you would have added restrictions for  
9 private sales by license gun owners. Private sales  
10 between non-licensed gun owners would not be affected  
11 by this and this is not a perfect solution, but as  
12 we've seen over many years of attempts legislatively,  
13 as well as in other ways to get things done in  
14 sensible gun legislation, you have to take what you  
15 can get and this would be a step in that direction.

16 COUNCIL MEMBER GENTILE: It seems almost  
17 and unsolvable problem then with unlicensed gun  
18 owners; do you have a proposal that in the best of  
19 all worlds would work with unlicensed gun owners?

20 PAUL MAY: I think I'd ask Phil to  
21 address that. My feeling is that you're gonna get  
22 more done through education than you're gonna get  
23 through legislation; legislation's important, but I  
24 think the more important thing that we do now is with  
25 our reaction program, teaching high school students

1  
2 the alternatives to gun violence and the alternatives  
3 to guns themselves, in showing that you're cool, so  
4 Phil.

5 PHIL JONAS: Yeah. Yeah and just to add  
6 a little bit of color to 1217; 1217 would purport to  
7 close the gun show loophole and also would address  
8 internet sales, so currently, 60 percent of gun  
9 transfers are subject to background check; it would  
10 raise it to something over 90; there's a definitional  
11 problem, of course, as to what is a private sale; in  
12 fact the administration has been addressing that  
13 specifically, with trying to come up with a harder  
14 definition of what is a private seller; if you sell  
15 15 guns in a month, you're not a private seller  
16 anymore; I forgot the exact number, but the DOJ is  
17 actually addressing this right now. So I think that  
18 1217 would go a long way, but not all the way and to  
19 the earlier point, virtually all guns start off as  
20 legal sales and it's the tracing of the 5 percent of  
21 dealers who steer too much traffic into the black  
22 market immediately through the avoidance of gun  
23 registration, so this would be the third rail, if you  
24 will, in Congress, but gun registration from  
25 manufacturer to licensed dealer to eventual owner

1  
2 would be the long-term solution; that's not gonna  
3 happen in the near future.

4 COUNCIL MEMBER GENTILE: Well if we're  
5 around long enough, we'll do it; keep up... [interpose]

6 PHIL JONAS: We'll still be at it.

7 COUNCIL MEMBER GENTILE: keep up the good  
8 work. Thank you.

9 CHAIRPERSON GIBSON: I just have one  
10 question. I wanted to ask about the background check  
11 and the database, the National Instant Criminal  
12 Background Check system; so that is a requirement for  
13 any gun seller to use before that gun sale is  
14 conducted; right?

15 PAUL MAY: That's correct.

16 CHAIRPERSON GIBSON: Okay. How long does  
17 that process take and do you know the actual cost to  
18 administer that?

19 PAUL MAY: Hopefully it takes less than  
20 72 hours, because as the Public Advocate noted  
21 earlier, if it takes longer than that it's overruled  
22 and so... [crosstalk]

23 CHAIRPERSON GIBSON: Okay.  
24  
25

1  
2 PAUL MAY: without it. So generally it  
3 will take up to 48 hours if it's not done over a  
4 weekend and there's all of sort of... [crosstalk]

5 CHAIRPERSON GIBSON: Right.

6 PAUL MAY: other factors that figure into  
7 it. And I'm sorry; what was your second part of your  
8 question?

9 CHAIRPERSON GIBSON: The cost.

10 PAUL MAY: I don't know that, but I can  
11 get that for you.

12 CHAIRPERSON GIBSON: Okay, just wanted to  
13 know... [crosstalk]

14 PHIL JONAS: It' nominal. It's...

15 PAUL MAY: nominal.

16 PHIL JONAS: It's nominal.

17 PAUL MAY: The number that jumps into my  
18 head is \$20, but I'm not sure of that. Yeah, it's  
19 not much, but I'll look into it.

20 CHAIRPERSON GIBSON: Wow. Okay, great.  
21 Thank you. Well if my colleagues don't have any  
22 further questions, I wanna thank all of you New  
23 Yorkers Against Gun Violence for your tremendous  
24 work; it is an absolute pleasure working with you and  
25 I am very committed to continuing to work with you



1 and certainly ask you to use us to help move the  
2 process along in Albany and at the federal level; if  
3 there is anything else that we should be considering,  
4 please let us know as well as, you know, we're in the  
5 middle of a budget process and we are very committed  
6 as a council and as an administration to fund  
7 programs against gun violence, secure a violence  
8 model, the crisis management system; very important  
9 to us looking at the root causes of gun violence, so  
10 we are very supportive of youth employment,  
11 employment, all year round, youth employment for  
12 young people, focusing on areas where we have a lot  
13 of poverty, domestic violence, intimate partner  
14 violence; I mean, all the things we know where we  
15 have lots of statistics to look at we are very  
16 focused this year in the budget to make sure we  
17 continue to make investments, but certainly on a  
18 legislative level we can do a lot more. I agree; we  
19 get what we can get, but we will not give up and  
20 education is absolutely critical to the conversations  
21 moving forward, so I thank you for your work and look  
22 forward to working with you and thank you for being  
23 here this afternoon. Thank you so much.

1  
2 Our next panelist is Rebecca Brown of the  
3 Innocence Project; please come forward. And if  
4 there's anyone else here that is still interested in  
5 testifying before the committee, please do so and  
6 sign up with sergeant at arms to your right and we  
7 will call you up shortly. Thank you once again.  
8 [background comments] We've also been joined by  
9 Council Member Rafael Espinal and Council Member  
10 Jimmy Vacca. [background comments] Okay, thank you  
11 for being here; you can begin.

12 REBECCA BROWN: Thank you so much,  
13 Chairwoman. My name is Rebecca Brown; I'm the Policy  
14 Director with the Innocence Project. We are a  
15 national organization dedicated to exonerating the  
16 innocent through post-conviction DNA testing and also  
17 to prevent future wrongful convictions through policy  
18 reform.

19 Nationally there have been 337 post-  
20 conviction DNA exonerations and here in New York  
21 State there have been 29 post-conviction DNA  
22 exonerations.

23 Eyewitness misidentification and false  
24 confessions are two of the leading contributing  
25 factors to wrongful conviction; of the 29 New York

1 state DNA-based cases that I mentioned earlier, 15  
2 involved a false confession and 14 involved at least  
3 one mistaken identification.  
4

5 We are so grateful to Councilwoman  
6 Vanessa Gibson for authoring and sponsoring  
7 Res. 0979, calling upon Albany to require law  
8 enforcement to record custodial interrogations and to  
9 use evidence-based practices shown to enhance the  
10 accuracy and reliability of eyewitness evidence.

11 Res. 0979 urges the State Legislature to  
12 pass Assembly Bill 8157-A and Senate Bill 5875, which  
13 would codify the practices that I just described.

14 Assembly Bill 8157 would require police  
15 to adopt evidence-based practices that have been  
16 proven to enhance the accuracy of eyewitness  
17 identifications. The National Academy of Sciences,  
18 the nation's leading scientific entity, the  
19 International Association of Chiefs of Police and the  
20 American Bar Association and many other organizations  
21 have recommended these best practices, which include  
22 the blind administration of line-ups; that means that  
23 the person administering a line-up does not know who  
24 the suspect is, so they're not in a position to  
25 provide any suggestion, intentional or inadvertent,

1  
2 and this critical reform is part of the legislation  
3 that has been winding its way through the Legislature  
4 in Albany for quite some time.

5           This bill would also require the  
6 recording of custodial interrogations in their  
7 entirety for serious felony cases, and that really  
8 protects against wrongful convictions grounded in  
9 false confessions. False confessions played a role  
10 in 18 exonerations in New York City and those are DNA  
11 and non-DNA cases, as listed by the National Registry  
12 of Exonerations; that's the database that's  
13 maintained by the University of Michigan.

14           And while people with mental limitations  
15 and juveniles are particularly susceptible to false  
16 confessions, perfectly mentally capable adults  
17 provide false confessions all the time; it's a  
18 counterintuitive phenomenon, but there are many  
19 factors that explain why people provide false  
20 confessions; fear of a harsh punishment, fear of  
21 authority figures, being sleep deprived, you know,  
22 being subjected to hours and hours of interrogation,  
23 coercion, many, many reasons why people false confess  
24 to crimes they did not commit.

1  
2 Recording interrogations in their  
3 entirety sheds light on circumstances that led up to  
4 the confession and this is a critically important  
5 point, because in many cases solely the confession is  
6 recorded; not the interrogation that led up to the  
7 taking of that confession and that's critically  
8 important evidence that is lost to fact-finders if  
9 this practice is not in place and if it is not in  
10 place uniformly; that needs to be done in every  
11 serious violent felony case in New York City and  
12 across the state and that's what this legislation  
13 would require.

14 This legislation would've made a hug  
15 difference in the Central Park Five case. Earlier  
16 this morning we held a press conference on the steps  
17 of City Hall; we were joined by Raymond Santana, one  
18 of the Central Park Five, who spoke about the fact  
19 that seven years of his life behind bars could have  
20 been prevented had this practice been in place. And  
21 frankly, in his case and many others, the judge and  
22 the jury only see the confession, they don't see, for  
23 instance, in the case of the Central Park Five, the  
24 30 hours of interrogation that led up to the taking  
25 of that confession. While the teenagers were

1 convicted of a crime they didn't commit, the actual  
2 perpetrator went on to rape another woman.

3  
4 And we've actually collected a lot of  
5 data at the Innocence Project around the country of  
6 crimes that could've been prevented had reforms been  
7 in place and had the person not been wrongfully  
8 convicted. So we are now aware of more than 70 rapes  
9 and more than 30 murders that took place at the hands  
10 of the real perpetrators while the innocent languish  
11 behind bars. So there are many reasons why this  
12 legislation is critically important for the State of  
13 New York; obviously to protect the innocent, to spare  
14 them and their families and their communities  
15 countless years of pain and suffering; it's also a  
16 public safety risk to not put these very important  
17 reforms in place.

18 So in conclusion, this would protect  
19 against wrongful convictions, it would benefit the  
20 entire criminal justice system by increasing  
21 transparency, accuracy and fairness and we hope that  
22 the committee will indeed pass this resolution;  
23 calling on Albany to act at long last. And I'm happy  
24 to answer any questions. Thank you.

1  
2 CHAIRPERSON GIBSON: Thank you so much,  
3 Rebecca. You and the Innocence Project have been  
4 doing tremendous work; it is a pleasure working with  
5 you and you know this morning's press conference for  
6 me just continued to reaffirm how we must be  
7 committed to changing state law; whether the number  
8 is 1 or 29, as it is in the state, that's one person  
9 whose life can never be replaced; it's lost time that  
10 could've been ultimately prevented, so I understand  
11 the critical nature of what we're looking to do and  
12 certainly my support; the support of this Council,  
13 we'll make sure that we really work with Assembly  
14 Member Lentol and Senator Nozzolio and the Governor,  
15 because we have to have all the stakeholders  
16 involved.

17 I wanna make sure you know the public  
18 understands that we're talking about transforming  
19 lives; people who have always been innocent from the  
20 very beginning and no price tag, no lawsuit, no  
21 dollar figure can ever give them back the life that  
22 they have lost, the 20 and 30 years that they have  
23 served in prison. So there is a lot at stake and I  
24 am thankful the Innocence Project is really doing a  
25 lot of this research and understanding how we can

1  
2 provide better reforms in the interrogation process  
3 from beginning to end; I don't think many of us knew  
4 that the interrogation process is not videotaped,  
5 only the confession and everything that happens  
6 before that, we just simply don't know. And so we  
7 wanna look at this obviously from a balanced  
8 perspective, because this is about protecting  
9 everyone. I'm thankful that we have district  
10 attorneys like Ken Thompson that has exonerated 18  
11 individuals already and that number's probably going  
12 to grow. The Bronx district attorney has recently  
13 exonerated someone as well with four months in  
14 office; I appreciate the district attorneys that are  
15 recognizing through their offices a conviction review  
16 unit is the way to go, because we all make mistakes  
17 and if we can change someone's life and recognize the  
18 mistake that has happened, think about the message  
19 that we send. So I think New York is in a great  
20 place to be a leader behind so many other states that  
21 have recognized this necessary reform that's already  
22 happened. So I guess I just had one or two questions  
23 and then want to get to my colleagues that also have  
24 a couple of questions.



1  
2 I wanted to ask, within New York State,  
3 are there any local jurisdictions that currently have  
4 any reforms around double blind line-ups and the  
5 recording of statements during the interrogation  
6 process; any other jurisdictions in the state that we  
7 could look to for a model?

8 REBECCA BROWN: Sure, absolutely. We  
9 conducted a FOIA, or Freedom of Information Act  
10 request of police agencies a few years ago and very  
11 few police agencies, and I don't recall the number or  
12 names of those agencies off the top of my head, do  
13 use a blind administrator for line-ups, so very, very  
14 few agencies are in reform when it comes to  
15 eyewitness identification protocols. When it comes  
16 to recording of interrogations, quite a number of  
17 police agencies have been doing this for many, many  
18 years, so Broome County, for instance upstate, has  
19 been doing this for years and years and years and you  
20 know, it is... the NYPD has represented that at this  
21 stage they have rolled out the recording of custodial  
22 interrogations; it's unclear to us in what crime  
23 categories they are doing that; it is unclear to us  
24 how widespread it is; we don't know when the tape  
25 starts officially, so we have not seen that policy;

1  
2 we don't know if it's happening; we don't know if  
3 its' happening uniformly and with regularity, and a  
4 law is basically the best way to ensure that there is  
5 uniform practice across the state on both of these  
6 critically important issues.

7 CHAIRPERSON GIBSON: I couldn't agree  
8 more. I think we struggle sometimes with the  
9 recognition that we propose legislation and support  
10 legislation to codify and put matters and practices  
11 in law beyond an existing administration to maintain  
12 the universal approach and the consistency. You  
13 know, we don't want this to be done in any police  
14 department, including the NYPD, where it's happening  
15 on an interim basis, you know, a model, an  
16 initiative, a pilot, you know many things that we  
17 start now that ultimately we want to be universally  
18 done, but we wanna make sure, to me, it sends a loud  
19 message as well that we wanna do better; we recognize  
20 there are loopholes and things happen, mistakes  
21 happen and so that's why we have these proceedings  
22 and we want them to be recorded from beginning to end  
23 to ensure that things are done properly. I think  
24 that's a fair statement and I am hoping that your  
25 work, as well as the work of the advocates and the

1  
2 voices of those that have been exonerated continues  
3 to be loud; we wanna make sure that people understand  
4 as easily as it's the 29 individuals exonerated in  
5 the state, it could be our loved one, our friend, our  
6 neighbor and when you put that in a greater  
7 perspective, people sometimes have a different  
8 position and they don't think it can happen to them;  
9 it absolutely can; it can happen to anyone these days  
10 with false identification with the line-up process;  
11 it can happen to anyone; I can't emphasize that more  
12 than, you know, just seeing the faces of the Central  
13 Park Five and others who have recently been  
14 exonerated. So I didn't realize Broome County had  
15 something, so that's good to know, an upstate rural  
16 county like Broome County.

17 I wanted to ask about the... after... you  
18 mentioned it in your testimony, but in some of these  
19 cases where an individual has been exonerated, a  
20 conviction has been overturned, how often is the real  
21 suspect identified and not only identified, but  
22 actually prosecuted and brought to a court of law and  
23 ultimately convicted; does that usually happen; what  
24 is the process and are you familiar with that?

25

1  
2 REBECCA BROWN: Right. So we know of the  
3 nation's 337 DNA-based exonerations, the real  
4 perpetrators have been identified in about half of  
5 those cases, so approximately 150 of those cases the  
6 real perpetrator was subsequently located. The  
7 crimes that I mentioned to you earlier, the more than  
8 70 rapes and more than 30 murders, those are actually  
9 convictions, that they were subsequently convicted,  
10 so those don't represent for instance the breadth or  
11 scope of criminal activity that those people were  
12 likely engaged in. After all, our clients are often  
13 accused of rape or murder because that's where DNA is  
14 most probative of guilt or innocence. And so I think  
15 it's noteworthy, right, that a lot of these real  
16 assailants are probably serial rapists, so it's  
17 actually a public safety hazard, right, to have the  
18 wrong person in prison and the real perpetrator at  
19 large in a position to commit additional crime. So  
20 there are many reasons that we should care about  
21 these reforms and you know it's hard to rank what is  
22 most important; obviously the wrongfully convicted  
23 are made to suffer so much and I can't really put  
24 into words what our clients go through, what their  
25 families go through; these are people robbed of their

1  
2 children, their children robbed of their parents for  
3 years and years on end; on average our clients spent  
4 14 years behind bars; we have clients that have spent  
5 nearly 40 years behind bars for crimes they did not  
6 commit and so when you really think about those  
7 numbers, I mean it's impossible to wrap your head  
8 around it, but certainly, you know for those people  
9 who are impacted individually, it's not just that,  
10 it's their families, it's their loved ones, it's  
11 their communities and it's the public really that can  
12 no longer really trust a system that can produce  
13 these kinds of wrongful convictions.

14 CHAIRPERSON GIBSON: Right; I agree.  
15 Can you tell me where we are with the state  
16 legislation; is there an update and any strategy we  
17 have, you know, obviously working together to get  
18 both houses to pass the bill and also I know in the  
19 past the DA's Association of the state has not been  
20 supportive; do you think that, you know, DAs that  
21 establish their own conviction integrity units is  
22 certainly a way to go and any other thoughts on how  
23 we can get the bills passed in Albany?

24 REBECCA BROWN: Sure. So the bill that,  
25 you know your resolution speaks to was actually

1 ultimately supported by the New York State Bar  
2 Association, the DA's Association and the Innocence  
3 Project at the close of session and it had passed the  
4 entire senate and the issue around this bill is that  
5 there are a lot of factors, right; this affects sort  
6 of the collection and introduction of evidence  
7 related to two key forms of evidence -- eyewitness ID  
8 and confession evidence, and because of that, the  
9 devil is in the details, right; this really affects  
10 how both defense lawyers and prosecutors are going to  
11 present this evidence in court and because of that,  
12 there has been a lot of back and forth over the years  
13 about what provisions should stay, what provisions  
14 have to go and ultimately, you know our position is  
15 that the perfect cannot be the enemy of the good;  
16 that we really have to at least get this started.  
17 There are always ways of improving this bill, but  
18 what I will say is that, you know I think we had an  
19 unprecedented amount of support at the close of  
20 session; we continue to work with the stakeholders; I  
21 think you raised a very critical point earlier about  
22 the need to bring all of the stakeholders together;  
23 we continue to engage in negotiations; most of that  
24 has been mediated by the State Bar Association;  
25

1  
2 they're bringing all the parties together, but  
3 ultimately, we're gonna have to figure out how to get  
4 to yes on this bill, because it will always be a  
5 situation where there are enhancements that could be  
6 made that will gum up the works and we're hopeful  
7 that we can get an even more progressive bill than we  
8 did at the close of session; that's certainly I think  
9 the hope of the Assembly, but at the end of the day  
10 we also wanna make sure that these interviews, these  
11 interrogations are recorded; every year that we wait  
12 there are countless people who are subjected to  
13 interrogations that may be innocent; that may be  
14 wrongfully convicted and so from our perspective the  
15 time is now to act.

16 CHAIRPERSON GIBSON: 'Kay. Do you know  
17 where the defense attorneys; have they taken a  
18 position in the past and currently?

19 REBECCA BROWN: The Defense Bar continues  
20 to I think support the value of these reforms; they  
21 certainly would like to see a more progressive piece  
22 of legislation come through and we continue to work  
23 with them; I mean we're very, very helpful that that  
24 can happen. You know for instance, I think that the  
25 Defense Bar would like to see enhanced crime

1  
2 categories; this bill speaks to some serious violent  
3 felony crimes; it does not include all of them; a lot  
4 of the language that's contained in this legislation  
5 grew out of the work of the first permanently  
6 judicially created task force by former Chief Justice  
7 Lippman, and that task force issued a set of  
8 recommendations; it was based on consensus; certainly  
9 folks from the Defense Bar would have liked to have  
10 seen a more progressive set of recommendations grow  
11 out of the justice task force, but that was the basis  
12 for this legislation and our hope is that we can  
13 continue to add some elements to this bill that bring  
14 the bill to a more progressive place; that's  
15 certainly our hope as well, but we also believe at  
16 the same time that this bill cannot keep being sort  
17 of held back in Albany, because we would like to see  
18 more, all of us would like to see more.

19 CHAIRPERSON GIBSON: I know. I agree; I  
20 know we have to start somewhere; we aim high, right...

21 REBECCA BROWN: Right.

22 CHAIRPERSON GIBSON: and we know that at  
23 the end of the process there's always a compromise,  
24 but I think the bottom line is, something that we  
25 should not falter in our commitment on is the



1  
2 interrogation process as well as line-ups. I always  
3 want more, but I know that, you know, at minimum we  
4 need to get some serious reform to that process.

5 Has there been any recent conversation  
6 with our newly confirmed chief justice that succeeded  
7 Chief Justice Lippman, because the courts, the judges  
8 play a major role in this process as well and you  
9 know many of them, they're limited in their own  
10 positions, but are we having conversations with  
11 Office of Court Administration?

12 REBECCA BROWN: Absolutely.

13 CHAIRPERSON GIBSON: Okay.

14 REBECCA BROWN: And you know, the chief  
15 justice as well sits on the justice task force and  
16 she for years has been engaged in these issues and  
17 our hope is that the courts also will take notice.  
18 The truth is, when it comes to these issues, everyone  
19 needs to be educated about sort of the fallibility of  
20 identifications; about the fallibility of  
21 confessions. In some ways it is a counterintuitive  
22 phenomenon to understand that somebody could get on  
23 the stand and say that is the person that raped me  
24 and they could be wrong, right; it doesn't seem to  
25 make sense to the average citizen that somebody would

1  
2 be wrong. We now know through research and through  
3 archival studies that actually, eyewitnesses get it  
4 wrong about a third of the time; they just are wrong  
5 and it's not because they're being misleading or  
6 intentionally misleading the system; it's because  
7 they truly -- it is a memory test; that's what an  
8 eyewitness identification procedure is and if the  
9 real person, the real perpetrator is absent from that  
10 line-up, often people will pick the person that looks  
11 most similar, and that is incredibly problematic,  
12 because there is nothing more compelling to fact-  
13 finders than somebody saying, I will never forget  
14 that face; that is the person who did this to me.  
15 You know and when it comes to confessions, also a  
16 counterintuitive phenomenon, you know, I have family  
17 members who say, well who would confess to something  
18 they didn't do and I have to say, actually a lot of  
19 people and in fact you might, you know, under the  
20 right circumstances or wrong circumstances, as the  
21 case may be. You know any one of us is susceptible  
22 to that and you know, I think it's incorrect when  
23 people say, oh it's people with mental limitations or  
24 it's just young people; perfectly mentally capable  
25 adults can provide false confessions; it's very

1  
2 important for people to really appreciate that and  
3 that's why, as you noted I think so eloquently, one  
4 person is too many; it has to be done in every  
5 instance, because we never know when this is gonna  
6 take place and it's just key evidence that needs to  
7 be safeguarded.

8 CHAIRPERSON GIBSON: Thank you. Council  
9 Member Jumaane Williams.

10 COUNCIL MEMBER WILLIAMS: Thank you very  
11 much and sorry I couldn't make the press conference  
12 today, but it was fantastic; thank the Innocence  
13 Project and the Chair and thank you for the work  
14 obviously that you're doing. I just wanted to know  
15 if -- or not... I don't know that it matters, because I  
16 think you just have to provide justice, I just wanna  
17 know if any of the places where this has been adopted  
18 have complained about clearance rates being affected  
19 or anything like that. I am completely supportive of  
20 it, but I did wanna know that. And are law  
21 enforcement officials generally supportive of the  
22 changes?

23 REBECCA BROWN: Right, it's a great  
24 question. So we know of 19 states that mandate the  
25 recording of custodial interrogations; not one of

1 those states has gone back to doing it the old way,  
2 meaning not recording, which to me is indicative of  
3 the fact that if they were losing strong convictions  
4 because of that practice; certainly there would be an  
5 outcry from law enforcement to go back to doing it  
6 the old way. Same with eyewitness misidentification;  
7 15 states now require blind administration through  
8 policy or law; again, none of those states have  
9 returned to doing it the old way. This is only  
10 anecdotal, so you know nobody has collected this  
11 data, but what I will say is that certainly from a  
12 law enforcement perspective and you know, a  
13 prosecutorial perspective, you know if there was sort  
14 of this loss of good convictions and the belief was  
15 that it was based on these practices, certainly those  
16 parties would go back to the legislatures and try to  
17 overturn those laws; that's never happened, so I  
18 think it's a great question; we haven't seen that  
19 happen.  
20

21 COUNCIL MEMBER WILLIAMS: How long have  
22 those states had it in effect?

23 REBECCA BROWN: Right. Various degrees.  
24 New Jersey was the first state to implement  
25 eyewitness identification reform, so our sister state

1  
2 did this back in 2001, so they've done this for now  
3 over 15 years and are doing it uniformly; in fact my  
4 brother was a victim of a robbery recently and I  
5 walked through the procedure with him and I said, did  
6 they do this; did they do that and he said, do you  
7 care about me and I said I do, I just wanna make sure  
8 they're doing it and he said they did it exactly the  
9 right way and he did make an identification, so in  
10 fact, when these procedures are used, there is no  
11 reason to believe that you're gonna lose strong  
12 identifications; there is no reason to believe that  
13 and in fact, these are better identifications for law  
14 enforcement and the prosecutorial community to move  
15 forward with, because they're unassailable; they've  
16 been generated using best practices. And same with a  
17 confession where someone can see the entire  
18 interrogation that led up to that confession; they  
19 will not be left to wonder what happened during that  
20 interrogation and in fact, in the recent prosecution  
21 of Mr. Hernandez in the sort of infamous Etan Patz  
22 case, there was no recorded interrogation and in fact  
23 there was a hold-out juror who said, had I seen an  
24 interrogation tape I might have felt differently, but  
25 I could not trust or believe or know what happened in

1  
2 that interrogation room and therefore I was not able  
3 to vote guilty. So I think there's a real law  
4 enforcement incentive actually to get this right as  
5 well, because you wanna produce strong unassailable  
6 evidence of guilt and you don't wanna leave open  
7 questions about what took place in the interrogation  
8 room or how evidence was collected.

9 COUNCIL MEMBER WILLIAMS: Thank you for  
10 the continued work and I just wanna give a shout-out  
11 to my Brooklyn DA, Ken Thompson, for the work he's  
12 doing around making sure that innocent people do not  
13 remain in jail. Thank you.

14 REBECCA BROWN: Yes and I'd like to echo  
15 that; we are incredibly grateful to Ken Thompson for  
16 his leadership and also to Councilwoman Gibson for  
17 hers. Thank you.

18 CHAIRPERSON GIBSON: Thank you. And on  
19 that note I wanted to ask your thoughts on district  
20 attorneys establishing review conviction integrity  
21 units; obviously when I think about the Innocence  
22 Project and a lot of the advocacy groups, the  
23 impacted community, you know, obviously the focus is  
24 very much the same, but just a different way to get  
25 there; what are your thoughts on DAs establishing

1  
2 these units and do you think generally they are  
3 successful; is that something that we should  
4 obviously look to expand among other district  
5 attorneys across the state?

6 REBECCA BROWN: I think that's a great  
7 question and I think, much like this legislative  
8 proposal, the devil is in the details; Ken Thompson  
9 has done a wonderful job; I think there's no question  
10 that he has revealed plenty of wrongful convictions  
11 since coming into office and should be applauded for  
12 his work. I think it's critically important though  
13 that the defense and innocence voice be involved in  
14 any sort of undertaking of that magnitude; it's  
15 critical, because I think any of us sort of reviewing  
16 our own work are fallible; we can make errors; it so  
17 important that there be sort of an independent voice  
18 and assessment of the evidence that was presented so  
19 that there is a true look back at these convictions  
20 in an authentic way. And so while we're very  
21 supportive of conviction integrity units, in theory  
22 and in concept, I think it really comes down to  
23 implementation and how they are put together and our  
24 office remains very happy to consult with and work  
25 with district attorneys' offices, prosecutors'

1  
2 offices that are interested in forming their own  
3 units, but there are a lot of sort of guiding  
4 principles and best practices that have to be part of  
5 the mix.

6 CHAIRPERSON GIBSON: Right. And you  
7 know, without having a uniform series of regulations  
8 and guidelines that a DA is bound by, I imagine it's  
9 up to that individual district attorney and what he  
10 or she wants to do while they're in office; what have  
11 you seen with other district attorneys across not  
12 just the City of New York; we have a new district  
13 attorney in Richmond County, we have Cy Vance in  
14 Manhattan, Judge Brown in Queens and my new district  
15 attorney in the Bronx, Darcel Clark, that came in  
16 with a vision and has established a conviction  
17 integrity unit to really look back at all of the  
18 cases that have come to her office, but also within  
19 the state, like what have you seen with other DA  
20 offices and how they're putting together these units  
21 that would focus on current convictions?

22 REBECCA BROWN: Right. I mean as I said,  
23 I'm not expert in the individual unit, so I can't  
24 really weigh in on one versus the other, mainly  
25 'cause I'm sort of working more in the policy setting



1 and not sort of in the case review setting, but what  
2 I will say and sort of, you know, I guess echo my  
3 earlier point; it's just so important that these  
4 reviews not be sort of these closed-door processes,  
5 but instead be those processes whereby there really  
6 are sort of independent voices asking questions about  
7 that evidence. Anyone can look at old evidence and  
8 believe and truly believe that it confirms guilt, for  
9 whatever set of reasons and it's therefore all the  
10 more important that there be different voices at the  
11 table to really do an independent objective review of  
12 these cases and I think certainly in many instances  
13 the proof is in the pudding; what Ken Thompson has  
14 produced and revealed with respect to wrongful  
15 convictions has been extraordinary. There are  
16 examples and I'm not gonna speak specifically to  
17 particular units, but I mean certainly around the  
18 country where there are concerns that it really  
19 amounts to more of a public relations kind of effort  
20 as opposed to like a true reinvestigation of old  
21 cases and I think we have to be very careful to be  
22 sure that if these units are established they're done  
23 so responsibly.

25

1  
2 CHAIRPERSON GIBSON: Great, thank you so  
3 much; I have no further questions. Innocence Project  
4 does a great job; I'm very proud to work with you and  
5 over the next several weeks, before June, I hope that  
6 we can get further action and I, once again, am very  
7 committed to working with my former colleagues in  
8 Albany to see if we can get movement on this very  
9 critical bill; the longer we wait, the more people  
10 that are impacted and so I can't emphasize enough that  
11 time is always of the essence; we think we have a lot  
12 of time, but we really don't, because there are a lot  
13 of innocent voices that are sitting behind bars right  
14 now that are waiting for someone, waiting for  
15 collective action and we have to recognize that it's  
16 great to have the impacted community work with us,  
17 but there are so many other voices that have a  
18 similar testimony and whose voices we don't hear and  
19 you know, I'm very committed because I know there are  
20 a lot of people out there that don't see government  
21 ever helping them, that don't see a way out; they  
22 don't see light in the midst of darkness and all the  
23 other factors and families have been ripped apart as  
24 well, so if we can save one more New Yorker, one more  
25 person; if we can exonerate another person from a

1  
2 wrongful conviction I think we've done a good job and  
3 so I thank you again, Innocence Project and Rebecca  
4 for your work, for your leadership and certainly  
5 we'll work with you over the next several weeks so we  
6 can pass this state legislation and get ready for the  
7 bill signing. Yeah, the day is coming.. [crosstalk]

8 REBECCA BROWN: And we are so grateful to  
9 you... Madame Chair, we are so grateful to you and  
10 really thankful to the Council for its consideration  
11 of this and.. [crosstalk]

12 CHAIRPERSON GIBSON: Absolutely.

13 REBECCA BROWN: you know, hopefully this  
14 is the year, so thank you.

15 CHAIRPERSON GIBSON: Yes, thank you very  
16 much; thank you for being here today.. [crosstalk]

17 REBECCA BROWN: Take care. Thank you for  
18 having us.

19 CHAIRPERSON GIBSON: Thank you to  
20 everyone who have come today for the Committee on  
21 Public Safety; thank you to the staff; thank you to  
22 all of my colleagues in government, including our New  
23 York City Public Advocate Letitia James; thank you to  
24 the sergeant at arms and this hearing of the  
25 Committee on Public Safety is hereby adjourned.

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COMMITTEE ON PUBLIC SAFETY

[gavel]

C E R T I F I C A T E

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



Date April 29, 2016