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Park Slope Tragedy Must Become an Example to Deter Drivers Who Endanger Others

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Park Slope tragedy must become an example to deter drivers who endanger others

By ROBERT BLECKER
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The driver who hit several people including two children is treated by EMS after the crash Monday. (Todd Maisel/New York Daily News)

Should we punish the driver in Brooklyn for tragically killing two children and injuring others? That depends upon what we would accomplish by it. We certainly want to get dangerous drivers off the road.

Drivers who know they are dangerous — who in the words of the New York Penal Law, "consciously disregard substantial

and unjustifiable risks" must be pressured — by the prospect of a serious penalty — not to endanger the rest of us.

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They must be deterred. We make an example of one so others shall not follow suit. A hefty civil suit would probably accomplish that result.

What is deserved in this case? The driver had multiple sclerosis and knew it. She has given prosecutors access to her medical records. Surely they will want to see if she had

earlier episodes that made her aware that she was dangerous, that she occasionally lost control. If so, and she chose to drive, we've got to decide whether the risk she knowingly took or consciously disregarded was substantial and unjustifiable.

We demand more before we criminally prosecute and punish. Consciously disregarding risk must make her grossly deviant from what a reasonable person would do. Ordinary deviance leaves the driver subject to a civil suit with substantial damages. Unless she was grossly deviant, she has not committed a crime.

Suppose somehow she was driving, but unaware of the risk she posed. Can we, should we punish her for that inattentiveness? Experts in criminal law disagree over whether "negligence" belongs in the criminal law. Is there really a culpable and thereby punishable mental state? New York Penal Law contains negligence as a basis for the least culpable criminal homicide. Criminally negligent homicide can get you one and third to four years in prison.

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SPORTS FINAL

Cloudy, 46/34, Tuesday, March 6, 2018

DAILY NEWS

NEW YORK'S HOMETOWN NEWSPAPER



PARK SLOPE HORROR

● **Car blows red light in B'klyn, kills tot, 1-yr.-old**

● **Pregnant B'way mom hurt at notorious corner**



Angelic 4-year-old Abigail Blumenstein, killed in Monday's street mayhem, is held by Tony-winning mom Ruthie Ann Miles, who was badly hurt. Out-of-control Volvo also dragged a 1-year-old boy in stroller, killing him, before striking cars (above).

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BLAZ TAPS SCHOOLS BOSS ON 2nd TRY PAGE 6

Front page of New York Daily News for March 6, 2018 on Brooklyn driver running red light, killing two children, ages 4 and 1. (New York Daily News)

New York's highest court, the Court of Appeals, has attempted to restrict criminally negligent homicide convictions only to those situations where the defendant has engaged in "morally blameworthy" risk. The car clearly constitutes a dangerous instrument with which she killed children, seriously injured adults and risked the lives of the rest of us trying to live our daily day.

A tragedy? Certainly. Reckless manslaughter, reckless assault, reckless endangerment, criminally negligent

homicide, criminally negligent assault? All these crimes she arguably committed. Should prosecutors make an example of her to deter others who might otherwise drive and kill? At the very least, publicity surrounding this tragedy may make her an example to all other similarly situated dangerous drivers.

Finally, does she deserve to be tried, convicted, denounced and punished? Reasonable minds can disagree. I hope prosecutors present the facts to the community and let a grand jury of her peers initially decide.

Professor Robert Blecker teaches Criminal Law and Constitutional History at New York Law School
