

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

CHARTER REVISION COMMISSION 2019

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March 18, 2019
Start: 6:08 p.m.
Recess: 9:22 p.m.

HELD AT: Council Chambers, City Hall

B E F O R E: GAIL BENJAMIN
Chairperson

COMMISSIONERS: Sal Albanese
Dr. Lilliam Barrios-Paoli
Lisette Camilo
James Caras
Eduardo Cordero, Sr.
Stephen Fiala
Paula Gavin
Lindsay Greene
Alison Hirsh
Rev. Clinton Miller
Sateesh Nori
Dr. Merryl Tisch
James Vacca
Carl Weisbrod

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

Panel 1 (Public Advocate)

Honorable Letitia James, NYS Attorney General
and Former Public Advocate

Betsy Gotbaum, Former Public Advocate

Mark Green, Former Public Advocate

Panel 2 (Corporation Counsel)

Karen Griffin, Corporation Counsel, Professional
Responsibility and Ethics Counsel

Viktor Kovner, Former Corporation Counsel,
Partner at Davis Wright Tremaine, LLP

Panel 3 (Governance Matters (generally))

Doug Muzzio, Professor, Baruch College

Stanley Brezenoff, Interim Chair and CEO of the
New York City Housing Authority, Former
President of the Health and Hospitals
Corporation, Deputy Mayor for Operations, and
First Deputy Mayor

Panel 4 (Elections)

Michael Ryan, Executive Director, NYC Board of
Elections

2 [sound check] [background comments]

3 CHAIRPERSON BENJAMIN: Good evening and
4 welcome to tonight's public meeting of the 2019 New
5 York City Charter Revision Commission. I'm Gail
6 Benjamin, the Chair of the commission, and I am
7 joined by the following members: The Honorable Sal
8 Albanese, the Honorable Dr. Lilliam-Barrios-Paoli,
9 the Honorable James Caras, the Honorable Lisette
10 Camilo, the Honorable Eduardo Cordero, Sr., the
11 Honorable Steven Fiala, the Honorable Paula Gavin,
12 the Honorable Alison Hirsh, the Honorable Sateesh
13 Nori, and the Honorable Carl Weisbrod. With that, we
14 have a quorum, and we will proceed. Before we begin,
15 I have—I'll entertain a motion to adopt the Minutes
16 of the Commission's meeting no March 14th at the
17 Borough of Manhattan Community College, a copy of
18 which has been provided to all of the Commissioners.
19 Do I hear a motion?

20 COMMISSIONER: [off mic] I so move.

21 CHAIRPERSON BENJAMIN: Second.
22 Discussion. All in favor?

23 COMMISSIONERS: [in unison] Aye.

24 CHAIRPERSON BENJAMIN: Opposed? The
25 motion carries. Today, we will continue to the

2 Commission's series of expert forums on the focus
3 areas we adopted in January. This evening we are
4 privileged to be joined by a distinguished set of
5 panelists put together in consultation with my fellow
6 commissioners who have generously agreed to speak to
7 us about several governance related topics. First, we
8 are delighted to be joined by three former public
9 advocates who will be sharing with us their
10 experiences holding that office for almost 20 years
11 if we add all of you together, and engaging with us
12 on what they believe would be the best way to
13 approach the role of that office moving forward. We
14 were—we will start with now Attorney General Tish.

15 ATTORNEY GENERAL TISH JAMES: That's it.
16 Just Tish.

17 CHAIRPERSON BENJAMIN: I can't—I'm—I'm
18 blank. [laughter]

19 ATTORNEY GENERAL JAMES: James.
20 [laughter]

21 CHAIRPERSON BENJAMIN: Because Ms. James
22 has agreed to come and speak with us, but has another
23 engagement right after, but she has agreed to answer
24 any other questions or any questions that we ask
25

2 later on in writing, and we'll be providing copies to
3 all of you of her responses. Ms. James.

4 ATTORNEY GENERAL JAMES: Madam Chair, it
5 would have been great if we had had all four former
6 Attorney Generals, but--

7 CHAIRPERSON BENJAMIN: Public Advocate,
8 you did it there.

9 ATTORNEY GENERAL JAMES: Public Advocate.

10 CHAIRPERSON BENJAMIN: [laughter]

11 ATTORNEY GENERAL JAMES: My name is
12 Letitia James, and I am the Attorney-General for the
13 State of New York, and it's great to be in the
14 company of my former colleagues, all of my colleagues
15 in government and friends, the Honorable Mark Green
16 and the Honorable Betsy Gotbaum. As you know, I
17 served as Public Advocate for five years, and I want
18 to thank the Chair, Chair Benjamin and the rest of
19 the Commission for inviting me here this evening to
20 discuss reforming the governance of the city of New
21 York. As the Public Advocate, as the City of New
22 York, as you know, I was proud to sponsor the bill
23 that set in motion this first even Legislatively
24 created Charter Revision Commission. That was one of
25 my proudest accomplishments as Public Advocate, and

2 I'm gratified that this body has been every bit as
3 independent and thorough as it could be—as I could
4 have hoped. The office of Public Advocate is a
5 special one. It's an important one. It's the only
6 democratically elected watch dog, which is really
7 unique in all the annals of government. To harden
8 the role of Public Advocate is to ensure the voices
9 of all New Yorkers are heard, particularly when it
10 comes to Government entities and agencies that exist
11 to serve them. I've seen all throughout my life how
12 our laws and the government that makes them are not
13 neutral, not monolithic, or unchangeable. In the
14 wrong hands I've seen that they can oppress and
15 degrade individuals, and in the right hands I can see
16 how they can protect—they can protect and lift
17 individuals up. It is, therefore, a profound thing
18 to have helped lead a new experiment in the eternal
19 struggle for a government that is truly by and for
20 the people. I was proud of the things we
21 accomplished during my time as the fourth ever Public
22 Advocate, and I expect great things from our newly
23 elected Public Advocate and my friend Jumaane
24 Williams. Thirty years after the office was first
25 created, I believe two things are abundantly clear:

2 the office has proven its worth many times over, and
3 it is time that the powers be strengthened after
4 three decades of living with half measures. Although
5 there is a great deal an aggressive and creative
6 Public Advocate can do to tackle systematic problems,
7 it is time to move past the watered down compromises
8 of 1989. The office is empowered to demand and
9 agencies are expected to provide any information the
10 Public Advocate needs to complete an investigation,
11 but those demands are not backed up and given any
12 teeth by the power to issue subpoenas, and so it's
13 really critically important that the office of
14 Attorney be allowed to issue subpoenas. The office
15 is charged with resolving citizens' complaints with
16 city agencies, but the office does not have the
17 explicit statutory capacity or standing to sue on
18 their behalf. We pushed the envelope as the Public
19 Advocate, and we hope that this body would seriously
20 consider giving the Office of Attorney—the Office of
21 Public advocate the ability to sue on behalf of New
22 Yorkers. We are allowed to sue in a very, very
23 limited capacity, but we really need to put in law
24 clear and exact language with respect to standing.
25 The office exists to serve as an independent check on

2 the Mayor, and it's critically important that we have
3 checks and balances, but it the Mayor who sets the
4 budget for the Office, and that presents a conflict.

5 It is possible to get information and to resolve
6 complaints with these legal mechanisms and with some
7 changes, and I think it is clear that I and my three-
8 my two predecessors who were able to act

9 independently of the Mayor despite his control of the
10 budget, but the time has come to put structural

11 underpinnings and strength behind these good

12 intentions. I believe that as we look at the

13 governance of this great city with fresh eyes. We

14 should take this opportunity finally to fulfill the

15 promised of a fully empowered people's watch dog. As

16 the Public Advocate of the City of New York, during

17 my five years in office, I was contacted by

18 jurisdictions all across this nation who were

19 fascinated by the Office of Public Advocate, and who

20 were interested in creating a Public Advocate in

21 their jurisdiction. And so, it's really critically

22 important that we lead by example, and so to me that

23 requires again having subpoena power, having the

24 capacity to sue, and having an independent budget

25 beyond the reach of any mayor, and so I thank you for

2 this opportunity. I look forward to continuing to
3 work with you as you move towards a final proposal,
4 which would strengthen the Office of Public Advocate,
5 and which would allow it to serve as that check on
6 the Office of the Mayor. Thank you.

7 CHAIRPERSON BENJAMIN: Thank you, Tish.
8 We will be forwarding to you a set of the questions
9 that are asked of the other members so that you can
10 respond to those questions that may be asked once
11 you— If you're saying for awhile, that would be
12 great. If you have to leave, you did tell us that
13 your schedule was very tight.

14 ATTORNEY GENERAL JAMES: Well, one I've
15 got to applaud all of you for being very timely, and
16 so—So I did not expect that you would start on time,
17 and that you would have a forum, and so I can stay
18 until 6:30.

19 CHAIRPERSON BENJAMIN: Okay.

20 PUBLIC ADVOCATE JAMES: Thank you.

21 MARK GREEN: Please don't take this out
22 of my time. I have a question for General James.
23 Did you or any of your staff see the premier show of
24 billions last night.

25 PUBLIC ADVOCATE JAMES: No, we did not.

2 MARK GREEN: Paul Jumaane is a --

3 PUBLIC ADVOCATE JAMES: [interposing] I
4 did not.

5 MARK GREEN: --a corrupt former U.S.
6 Attorney who was doing everything in his power to
7 become Attorney General of the State of New York, and
8 I checked, and it said not based on any living
9 characters so why--?

10 PUBLIC ADVOCATE JAMES: [interposing] But
11 it's my understanding that that show was filmed where
12 my office is currently, and it's my understanding
13 that they've reached out to my office and so-

14 MARK GREEN: Yeah.

15 PUBLIC ADVOCATE JAMES: --look forward to
16 having conversations with you.

17 MARK GREEN: I just want to clear that
18 up.

19 PUBLIC ADVOCATE JAMES: But it's not,
20 again-

21 MARK GREEN: Take a look. It's really--

22 CHAIRPERSON BENJAMIN: -[interposing] But
23 that isn't--

24

25

2 PUBLIC ADVOCATE JAMES: [interposing] But
3 that's not patterned after any particular attorney-
4 general as far as I know.

5 MARK GREEN: Yeah.

6 CHAIRPERSON BENJAMIN: Public Advocate,
7 Gotbaum. [laughter]

8 COMMISSIONER CARAS: Oh, [laughter] but
9 I'm done? [laughter]

10 BETSY GOTBAUM: [off mic] Can I just say
11 something?

12 CHAIRPERSON BENJAMIN: [interposing]
13 Well, you're not. Gotbaum comes before Green.
14 [laughter]

15 BETSY GOTBAUM: [off mic] He always used
16 to say that. --

17 CHAIRPERSON BENJAMIN: Your mic is not
18 on. How quickly we forget. (sic)

19 BETSY GOTBAUM: [interposing] He always
20 used to say that I'm older than he is and, therefore,
21 I went first.

22 CHAIRPERSON BENJAMIN: Oh, not, it's
23 beauty before age.

24 BETSY GOTBAUM: Thank you. [laughter]

25 CHAIRPERSON BENJAMIN: Sorry, Mark.

2 BETSY GOTBAUM: Good evening everybody
3 and it's very nice to be here with a lot of my old
4 friends, and some I haven't seen in a long time. I'm
5 very pleased to be able to talk about the Office of
6 Public Advocate, and I've given you a long sort of
7 treatise on what we've--what we've written, but I
8 really just want to emphasize some of the things that
9 Tish--that that Tish talked about that I feel are
10 terribly important and I do, of course, believe that
11 the Public Advocate's Office is one of the most
12 important offices in the city of New York, and one of
13 the things that I feel hasn't been emphasized enough
14 in this latest campaign is the role of the Public
15 Advocate as the ombudsman because people don't have a
16 lot of places to turn, a lot of places for people in
17 this city, as Tish mentioned, don't know where to go.
18 They don't know what to do, and they can turn to the
19 Public Advocate's Office and that is such an
20 important thing, and when people say they want to
21 eliminate the office, I say you don't think it's
22 important that people have a place to go when--I mean
23 I always tell my wonderful example of a man who lived
24 in a homeless shelter with his two children, and he
25 was denied food stamps, which caused--he called and

2 for some reason I think I picked up the phone,
3 something I can't resist doing, and-and he said to me
4 that he couldn't—he couldn't the application. I
5 looked into it. It was 16 pages long, and it took me
6 almost a year to get that 16-page application down to
7 four pages. I wonder what it's back up to now. But,
8 it was helpful to him. He was able to get his food
9 stamps, and to me when you can help people like that,
10 if it's one person or 500 people, or as many people
11 as all three of us—sorry. Four of us I guess helped.
12 That's essential to me. I totally agree with—with
13 what Tish said. It's very important that the office
14 have an independent budget, and I—I suffered quite a
15 bit under that as some of you may recall whenever
16 criticized a certain mayor, he got pissed off, and he
17 would make sure that my budget got cut. Now, that I
18 would come to the Council, and I would beg the
19 Council and generally the Council was very supportive
20 and-and rein-gave some of the money back, but it was
21 this constant gas and constant fight. That's just
22 unnecessary. So, I believe that the Public
23 Advocate's Office should have a set budget, and it
24 should be—I—I don't even want to say what it should
25 be, but certainly it should have a certain percentage

2 perhaps of what the City Council's budget is, but
3 that's for others to decide. There are other issues
4 that I feel very strongly about, but I want to
5 emphasize that one other issue to me. Because we are
6 the—the ombudsman of the city of city of New York
7 and—and have people calling in all the time, you
8 know, we have a great call—we have a great center,
9 311. Now it seems to me 311 gets a lot of
10 complaints, and it refers complaints out, but the
11 Public Advocate actually gets a complaint and tries
12 to figure out the solution to the problem.
13 Therefore, it seems to me that 311, the Public
14 Advocate's Office, the Borough Presidents' offices
15 and many of the City Council constituent offices
16 should all be united together in—in some way
17 technologically. Needless to say, I have no idea how
18 you do that, but I've been told it can be done, and
19 that, therefore, what would happen is that you would
20 get a problem in 311 and that problem would be
21 referred to the Public Advocate as well as some of
22 the Council or some of the borough president
23 constituent problems, and the Public Advocate could
24 then be the leader in—in solving those problems,
25 which are very clearly linked to the agencies at the

2 City of New York that need to be—need to give their
3 services a little bit better. So, those are really—
4 that's really a very important issue for me, and I
5 was thrilled that the Speaker Corey Johnson took this
6 up as one of his ideas, and I certainly hope that
7 this committee will consider that and—and in your
8 wisdom you'll be able to figure out how to do it
9 technologically. Anyway, on that I will stop, and
10 turn it over to my friend here, and predecessor.
11 Predecessor. That's right, uh-hm.

12 MARK GREEN: Thank you, Madam Chair and
13 thank you for finding me 31 minutes ago wandering
14 into 250 Broadway and then you leashed me and brought
15 me here. Otherwise, who knows. I'm too old and long
16 married to have profited from speed dating. So, I
17 will do my best at speed testimony, which I think I
18 can pull off. I'd like to make three points. First,
19 I'd like to read a quote on the very well known
20 person not in this room about the office. In 1997,
21 this Chief Executive came to a middle school in
22 Brooklyn to speak on trips that say, in fact, have
23 been offices, right been in office. "I don't know, if
24 there's another city in America that has an elected
25 public advocate. So, think about what that means.

2 What would it mean for you to be a public advocate?

3 Someone who is standing up for the people at large
4 for the public. I'm sort of the country's public
5 advocate. President William Jefferson-Clinton.

6 [coughs] Point 2: I-I would urge with all due respect
7 this panel not waste their time on the every eight
8 year unserious proposal to eliminate the Office of
9 Public Advocate where investment was eliminated
10 because it was unconstitutional said, the United
11 States Supreme Court. Short of that, I think it's
12 earned its place in city government. [off mic] I'm
13 not saying that you can do those public dealings with
14 the public-with republican people in the world, and
15 [off mic] [on mic] I heard myself.

16 CHAIRPERSON BENJAMIN: Alright, we hear
17 you better now, and that's always a good thing.

18 MARK GREEN: Should I start over?

19 CHAIRPERSON BENJAMIN: No, I direct you
20 to not.

21 MARK GREEN: You know, Tish and Betsy and
22 Bill and Corey can comment on how much they
23 accomplished but, you know, we proposed, the Public
24 Advocate Office proposed 311, and then Mayor
25 Bloomberg capably implemented it. We got tobacco

2 signs and down at the stadium where kids would see
3 them, and see our vending machines, which would
4 addict 13-year-olds gone and force and for the NYPD
5 to disclose—we had standing for that matter under the
6 Charter's provision to obtain information, and we
7 forced them to disclose how many police officers had
8 substantiated complaints, but suffered not penalty as
9 a result. I think the office has shown it's
10 importance of the decades and you should discuss how
11 to strengthen it or not I the time that you have been
12 given the large section that you have. Point Number
13 2 is a point that both refer to and Betsy focused on,
14 Budget. I will now tell you a story, as they say on
15 television this is a true story and my source is
16 Speaker Peter Vallone Sr.'s memoirs. First, City
17 Budget. I'm entering office, Rudy Giuliani is
18 entering office, and Peter and the Mayor sit down to
19 do their first budget. They finish and the Mayor
20 says, Oh, there's one more thing, Peter that I'd like
21 to discuss. I'd like to eliminate the budget for the
22 Office of the Public Advocate, and the Speaker said,
23 what are you talking about, Rudy? I mean it's in the
24 Charter. You can't just eliminate it. He said, Yes
25 we can and I warn you—I'm quoting Peter's book—some

2 day Mark Green may run against you for Mayor, and you
3 should get him now, and Speaker Vallone to his credit
4 said, You're out of your mind. For get it. Now,
5 they then negotiated with that starting point of zero
6 that the Public Advocate Office I was entering went
7 from \$3.3 million down to \$2.7 million. You know, a
8 loss of \$600,000 over \$3.3 million is a lot. It
9 eventually got back up after eight years to \$3.3
10 million, which and it's about where it is now I'm led
11 to understand so obviously in real dollars it-it
12 suffered a significant cut. It is wrong and foolish
13 that if an office does its job it loses its job
14 because of a mayor who is politically or personally
15 antagonistic. To conclude, I can't-we can't, but you
16 can come up with a percentage of either the City
17 Council Budget or the city budget as the Independent
18 Budget Office does successfully and peg the budget at
19 a fixed percentage so it keeps up with everything
20 else, and inflation, a goal that it should now have
21 not \$3.3 given its wide jurisdiction, but at least \$6
22 million to be a monitor over all city agencies and
23 over City Hall. Thank you.

24 CHAIRPERSON BENJAMIN: Thank-thank you.

25 Are there questions from-Commissioner Fiala then

2 Commissioner Caras, then Commissioner Albanese, then
3 commissioner Nori?

4 COMMISSIONER FIALA: Thank you, Madam
5 Chair. Let me thank the three Public Advocates for
6 being here and to Madam Attorney General
7 congratulations on your historic win, and thank you
8 for one of your legacies from the Council—from the
9 Public Advocate, this body. Hopefully, we'll achieve
10 something that will make you proud. This is what
11 Chairman Schwartz and Eric Lane had to say about this
12 position. As with the Comptroller, the Commission
13 the '89 Commission wanted the Council President or
14 Public Advocate now to serve as a "watch dog" on the
15 Mayor on service issues, and to propose solutions
16 rather than merely point out inadequacies,
17 inefficiencies, mismanagement or malfeasance. Each
18 of you have served in the office at different periods
19 in our city's history, but more instructive for
20 tonight's purposes at different stages of our
21 evolution as a post-89 Charter city. So, you three
22 have a very unique perspective to offer us. Public
23 Advocate Green sat up there when I sat out there and
24 I testified out in Staten Island one day with him
25 sitting about two feet from me advocating the

2 abolition of the office and the Public Advocate threw
3 his arms u and said, of course, [laughter] of course,
4 and I said no-no personal offense, Public Advocate.

5 A decade later, I was in the Metro Tech Center with
6 Public Advocate Gotbaum testifying, and what I said
7 to that Charter Commission was, Look, if you're going
8 to keep the office, get it right. Right? Make sure
9 it works, and watching this experiment over 30 years
10 and having been part of a Charter Commission, three
11 Charter Commissions now myself, no issue other than
12 term limits has consumed or subsumed a Charter
13 Commission's attention as much as this. I hope we're
14 looking at finding a way to put a lid on it one way
15 or another. My question to each of you related to
16 your time in that office during that period of-that
17 evolution the I spoke about in this-this construct
18 that we have. If there was one threshold item, one
19 key missing ingredient that you think could bring the
20 promise of the office as envisioned by the 89 framers
21 to give it a meaningful voice and a counter weight to
22 it-to the mayor on service issues, what would that
23 one threshold issue be?

24 CHAIRPERSON BENJAMIN: Tish so that's
25 even, Mark.

2 ATTORNEY GENERAL JAMES: So,

3 Commissioner, first let me respond to the testimony
4 of my colleagues. The 311 system is a system of last
5 resort. They have—we tracked the number of referrals
6 to the Office of Public Advocate when I was the
7 Public Advocate and, in fact, I used that in my
8 negotiations with the Mayor of the City of New York
9 for increased resources in the budget. So, calls I
10 referred to the Office of Public Advocate on a
11 regular basis. In fact, each and every day most
12 calls are referred to the Office of Public Advocate.
13 Two, in my tenure my office handled more than 45,000
14 complaints. We have passed more laws than all
15 previous Public Advocates combined. We've issued
16 reports. We were very active in the NYCHA's Board.
17 I sat in that seat where our current Public Advocate
18 decried that the Office should be eliminated after my
19 election to the Office of Attorney General. I've
20 used litigation, and I pushed the envelop. If I
21 could ask for one thing, and that would be the
22 ability or the capacity to initiate litigation so
23 that we could have some strength and some teeth
24 behind our reports and behind our findings. We were
25 successful in some cases, and the current

2 administration pushed back and challenged our
3 standing, and they were successful in getting I would
4 argue a bad decision in the Appellate—the Court of
5 Appeals, and that is why I am so happy to have been
6 elected the Attorney General because no one can
7 question my ability to serve. [laughter]

8 BETSY GOTBAUM: Well, I—I—I'm so glad to
9 hear that--the during Tish's time here that the 311
10 connection with the Public Advocate's Office
11 occurred. It did not happen when I was Public
12 Advocate, and I—because to me the ombudsman's
13 function is upset over, over and over again. It's so
14 important. To me the fact that you would not only
15 have 311, which I consider a very good service, but
16 it's also a referral service, and Tish, I would love
17 to hear from you what—what were some of the examples
18 of calls that were referred from 311 to you? From my
19 perspective it would seem to me that you'd get
20 trends, and you would get a call say from Staten
21 Island where there was something going on in Staten
22 Island, but all of a sudden you hear from the Borough
23 President of the Bronx that the same thing is going
24 on there, and then the Public Advocate could be or
25 would be the entity or the official who would take

2 that information and figure out if it had something
3 to do with the city agency, then go after that city
4 agency in the best way you can. I frankly because we
5 didn't have subpoena power or I didn't bring
6 litigation against anybody, frankly the kind of
7 accountability because you're a citywide elected
8 official to get agency heads to respond was very
9 easy. I mean I found that was one of the things that
10 was—that worked very well. My understanding and
11 maybe Mark can talk to this that when Mark was Public
12 Advocate, Giuliani told the Commissioners they could
13 not speak to him, and they couldn't respond to him.
14 Well, that was absolutely outrageous as far as I'm
15 concerned, but it was not the case in—in my case, but
16 I do think figuring out this connection with 311 and
17 all the constituent services of the Council of the
18 borough presidents figuring some way to combine them
19 and, therefor to use that information to make the
20 agencies do what they're supposed to do. That would
21 be the most important thing for me.

22 MARK GREEN: [coughs] Going back to my
23 original testimony, two points: Your question about
24 no issue other than a couple has consumed Charter
25 Commissions over time more than this one exist and

2 prove. I would ask the Commission to call Members of
3 the City Council, only, you know, 51 and certainly
4 the Speaker who served in both offices, how many
5 human beings have written them or called them? My
6 top issue: Eliminate the Office of Public Advocate.
7 I'm going to make a guess. Zero in the city of eight
8 plus million over 30 years. Why? Who in the world
9 would want to eliminate an office that's your lawyer.
10 Average citizens, of course, can't hire a lawyer or a
11 lobbyist to make a case for them, and the Public
12 Advocate like the Attorney General is the people's
13 lawyer and one other argument to abolish it to
14 abolish it I find extremely odd, it's sometime
15 complained of that, oh, it's a platform for people to
16 seek higher office. [laughter] Now, you're going to
17 end up okay here. Al--Fiarello La Guardia and Al
18 Smith were predecessors in the prior from which this
19 one has descended is and descended in the line of
20 authority. [coughs] Bill de Blasio becomes Mayor,
21 Tish James become the Attorney General, some others
22 came close, no cigar.

23 CHAIRPERSON BENJAMIN: [laughter]

24 MARK GREEN: It is hardly a criticism
25 that if someone rises to this office, number 2 next

2 line of the Mayor and then seeks and wins higher
3 office, I don't know if the city is hurt because La
4 Guardia, Smith, de Blasio and James have held higher
5 office. Finally, in-in terms of one issue, I would
6 go back to the Budget because that's the only thing a
7 Mayor could almost unilaterally do. If you had two
8 Giulianis at the same time seeking to get someone,
9 then it would be a done deal, and it escaped
10 elimination at that moment. I was prepared with
11 David Boyce to litigate if he actually did it.
12 Fortunately, for David's per-hour time and my time,
13 it never came to that, but you really have to either
14 eliminate it, which I think is spurious and silly, or
15 strengthen by giving it more automatic standing than
16 the standing we once earned because we were seeing
17 information under the Charter, but to give it a more
18 long-standing standing.

19 CHAIRPERSON BENJAMIN: Thank you. I
20 think you're next Jim.

21 COMMISSIONER CARAS: Thank you all for
22 being here, this is

23 CHAIRPERSON BENJAMIN: [interposing] When
24 the light is on, you're on.

2 COMMISSIONER CARAS: Yes. Can everyone
3 hear me? This is maybe a little afield, and I see in
4 Betsy's testimony that she talks about giving the
5 Public Advocate appointments to the BSA, the FCRC and
6 COIB, well, and Mark made the statement about the
7 Public Advocate being the people's lawyer. Do-I know
8 some of the agencies that we're looking at in terms
9 of more independence are other sort of watch dog
10 entities COIB the CCRB. We're talking to the Law
11 Department next, and here we have the Public
12 Advocate's Office that is supposed to be in some
13 sense an independent watch dog. We may not have the
14 bandwidth to go there or the time, but is there a
15 role for the Public Advocate in-given some of these
16 other entities more independence or accountability?

17 PUBLIC ADVOCATE JAMES: I would like to
18 say the Office of Public Advocate serve on other
19 commissions such as CCRB, Human Rights and the list
20 goes on. There's other agencies obviously that need
21 to include the Office of Public Advocate. I think
22 that's really critically important particularly since
23 (1) looking at complaints is a way to establish and
24 identify trends, but (2) Issuing subpoenas is another
25 way to look at problems with certain agencies, but

2 sitting and being appointed to a number of
3 commissions is another way to determine patterns and
4 practices all throughout the city government. Let me
5 also go on to another issue. We—we're talking a lot
6 about expense budget but we—the Office of Public
7 Advocate, it also needs a portion of capital funds.
8 Why to I say that, and I've asked this Administration
9 for capital funds for the Office of Public Advocate.
10 The carpet in the Office of Public Advocate hasn't
11 been touched since Mark Green once walked on it.
12 The—the—the chairs, the couches, everything. The air
13 quality in the Office of Public Advocate I believe
14 aggravates those who—who suffer from respiratory
15 problems. I do know that I have—I had some staff
16 members who has asthma, and it was because of the air
17 quality in the Office of Public Advocate because
18 nothing has been touched since the office was
19 created. Whereas, you go to other offices in—at One
20 Center Street, they have all been renovated. The
21 Office of Public Advocate has not been renovated at
22 all, and that is fundamentally unfair, and it also—
23 again, it says something about the office and how
24 city government treats and respects the Office of
25 Public Advocate. It is a shame.

2 BETSY GOTBAUM: One-

3 MARK GREEN: Go ahead, Betsy.

4 BETSY GOTBAUM: One-one comment I'd like
5 to make is that [coughs] we have a very, very
6 powerful mayor in this city, and the Mayor has a lot
7 of appointments on many of those commissions. I've
8 listed them in-in my testimony, and I do believe that
9 putting more entities on some of those commissions
10 like the-It's right here-the Board of Standards and
11 Appeals, the Advise and Consent. Putting more public
12 officials on those committees would at least get
13 more-a better balance of--

14 CHAIRPERSON BENJAMIN: [interposing]

15 Well, I think--

16 BETSY GOTBAUM: --of interest in-on those
17 committees so that the Mayor isn't so, so powerful.
18 So forgive me those of you who represent the Mayor. I
19 do feel strongly about that, and therefor, I think
20 the Public Advocate should have a position on those-
21 on those various committees. Not sure about the MTA
22 because I don't know if just one seat on the MTA
23 would-would-would give enough of the balance that's
24 needed but I do feel the other one is an agent.

2 CHAIRPERSON BENJAMIN: Well, I also don't
3 think we could change the constituency of the MTA.
4 That's a state law.

5 BETSY GOTBAUM: Okay.

6 CHAIRPERSON BENJAMIN: Mark.

7 MARK GREEN: A—a good question and test
8 is has this office added value to the city without it
9 sena qua non and, of course, on paper you could say
10 oh, some other entity, some other ombudsman or
11 oversight entity could have done it. That's a double
12 hypothetical. Did it and I—I did put it into the
13 record in lieu of my having testimony, a Law Review
14 article that I wrote with Laurel Eisner (sp?) our
15 then General Counsel in 1999 for the New York Law
16 School Law Review, which as of then analyzed the
17 history and the accomplishments of the office and
18 I'd—I'd like to submit that for you all to see, and
19 so let me give you a specific example. There's—when
20 I entered that office among other constituents, and
21 we said lets do something for disadvantaged women,
22 which could have come up anywhere else, but of a
23 domestic violence survivor came to my office about
24 how she was threatened with being fired by a private
25 company because she needed a—an office and seat far

2 enough away from the door in case her estranged
3 abusive husband lost his head, and we organized a
4 collation with business, labor and consumers, enacted
5 a law that, you know, if you're not otherwise
6 protected by union rights, you can fire somebody at
7 will, but it can't be as we know for race or gender
8 or if you're a domestic violence survivor, it became
9 law then Governor Patterson made it a state law and
10 other states picked up on. Women came to me and
11 said, It's kind of ridiculous that we pay more for
12 the same dry cleaning services and hair cutting
13 services. Now, when I would mention this to men,
14 they'd look at me like what plane are you on? But,
15 of course, if there were two sets of prices on a wall
16 by race or religion, we all know, you know, what that
17 would be, and so we proposed and Mayor Giuliani went
18 along with requiring them to post prices so the
19 consumer at point of purchase would say, excuse me,
20 why am I paying more? And finally, women visited the
21 office who were un-moneyed spouses. It's a term of
22 art in the—a divorce bar where the person has no deep
23 pockets, and often is out-moneyed in court often by a
24 male spouse in terms of paying for lawyers and
25 protecting their rights to have access to their

2 children, and it became a standard and then the late
3 Judge Judith Kaye's Bill of Rights State Law, it-that
4 divorce lawyers to hand spouses especially women a
5 Bill of Rights that they had before they were
6 victimized by the defense bar and so I use that only
7 as an example. Like I had no idea I would that this
8 would take eight years. It wasn't overnight. I
9 couldn't know that, but I think we added about-I
10 think every office added value because the city can't
11 do everything especially when you have a mayor any
12 mayor who is naturally defensive about his and
13 someday her-his appointees. In fact, the office, the
14 idea of Ombudsman is a Swedish name that comes from
15 the 1700s when a king didn't trust the people around
16 him, and he appointed certain people to report to the
17 King about who was not performing well in his office,
18 and many iterations later stand on the-then the
19 Lieutenant Governor implemented it in Upstate New
20 York when he was the mayor of the city there, and
21 Paul Dwyer implemented it. He added to the stat-the
22 structure of the office in the 1970s when he was the
23 City Council President, and here we are. It's proven
24 its worth over 30 years. Until the Supreme Court

2 moves, you know, I would hope it strengthened and
3 maintained.

4 CHAIRPERSON BENJAMIN: Thank you very
5 much. Sal, you're next.

6 COMMISSIONER ALBANESE: Thank you, Madam
7 Chair. Good evening. I must confess that I—that
8 I've never been able to wrap my arms around the need
9 for this office since 1989 when the Charter first
10 created the Office of Public Advocate. Now, I'll
11 give you the reasons why and then I have a question.
12 We do have a system of checks and balances. We have
13 the Mayor, we have the Legislature, we have the
14 Comptroller, the Chief Fiscal Officer who orders
15 agencies and—and on and so forth. . And my—my
16 criticism of the office is not about the people that
17 have held it because I think the people that have
18 held done it have done superb—a superb job, present
19 company included and I—my belief is you would have
20 done a great job as Council Members as—as—as Letitia
21 James and if Mark Green was a Council Member, he
22 would have made the same—the same accomplishments as
23 a Council Member. I served on that legislative body,
24 and if you're savvy, and you know how to use the
25 press, you can get your—you can be a—you can have the

2 bully puppet citywide as you do with Public Advocate.

3 I've served with some outstanding legislators. I

4 think of Ruth Messenger who was my colleagues on the

5 City Council who very, very effective and—and was

6 constantly in the press constantly promoting issues.

7 So, my point is that if the three of you were in the

8 City Council, you would be as effective as you were

9 when you serve as the Public Advocate. Also, the

10 position of ombudsman, I was a legislator. I

11 represented South Brooklyn for 15 years in the City

12 Council. I had a very effective constituent office,

13 and I was their ombudsman. Then we had the state

14 legislators who were ombudspersons. We head the

15 state, we had the Congress member who had a case

16 office. We had the borough president. So, the issue

17 of the ombudsperson to me is not that significant

18 because there are so many vehicles for people to

19 reach out. My office was constantly getting calls,

20 and we were solving issues. So, the—the—one of the

21 sponsors of—in response to Mr. Green one of the

22 sponsors that—that's promoting abolishing the City

23 Council, the Public Advocate Office in the City

24 Council related to me that once he introduced the

25 bill, he received a-a lot of calls and emails and

2 Tweets about, yeah, why do we need this office, and
3 you mentioned the Editorial Boards. The Editorial
4 Boards also raised that issues not because they're
5 being frivolous because I think they have the same
6 issue that I have: Why do we need this office?

7 MARK GREEN: Not the New York Times,
8 though.

9 COMMISSIONER ALBANESE: Well, not the New
10 York--well I know what the New York Times said that
11 they supported it. They don't support it.

12 MARK GREEN: They support it.

13 COMMISSIONER ALBANESE: The--the--I--when I
14 campaigned around the city, average citizens said
15 continuously, Why do we need this office? It's a
16 waste of money. It's a waste of time. Well, don't
17 we owe the people of the city an opportunity to weigh
18 on this issue either as most of you mentioned the
19 office is really virtually powerless under--under the
20 present circumstances beside the bully puppet. I
21 mean it's virtually powerless. Let's face it. Why
22 don't we give people the opportunity since there is--
23 this is the only office where there's this
24 controversy whether it should be in place or be
25 abolished to vote on either strengthening the office

2 making it real—a real position and with some power,
3 or abolishing it. How do you feel about that?

4 MARK GREEN: Well, I don't—

5 BETSY GOTBAUM: I don't—

6 MARK GREEN: No, I don't—we—to use the
7 cliché we have to agree to disagree that you as an—

8 COMMISSIONER ALBANESE: [interposing]
9 You'd be surprised.

10 MARK GREEN: --extremely skillful,
11 dynamic, well known person in your district would
12 then come to this conclusion, and that people would
13 come to you agreeing, it's not scientific. I will go
14 back to surveys I have done on the 51 members and how
15 many sua spontes say, God, we got to do this. Here's
16 the reason: First, you may disagree, but when we all
17 listed things that had been accomplished, the City
18 Council with estimable members didn't come up with
19 311. It didn't—get the data from the Police
20 Department on substantiated uses against police. It
21 didn't taken down tobacco signs and in other words,
22 you're hypothesizing it could have happened. It
23 didn't. I don't mean that only the Public Advocate
24 could have done it, but here's why the Public
25 Advocate would run circles around an individual

2 Council Member, which is why so many sought the
3 office. They're not dumb, and the reason is Jumaane
4 Williams apparently thought that he could do more as
5 Public Advocate then a Council Member, and the reason
6 is when you're elected citywide and you're know that
7 people hold the lever for you citywide, and you
8 become increasingly well known if you do a good job,
9 when you contact a city agency so long as Giuliani
10 isn't shutting them down--he's busing shutting down
11 other things--you then have the institutional and the
12 public authority to get your call returned, and for
13 people to know that you could have access to data
14 perhaps outstanding as the Attorney General urges,
15 and have a fixed budget on going nowhere. So, until
16 you show me a really good argument why all the things
17 that are in this volume and my colleagues here have
18 done would have, of course, I'm going to throw the
19 burden on you, Sal. Why didn't you all do it? It's
20 not because you're bad people. We, in this office we
21 had a concentration of talent citywide. Each
22 borough, each Council Members' districts when they
23 complained, only the citywide person could say wait a
24 second. Look at these 10 Council Districts and five

2 boroughs all have the same problem, which, of course
3 a local Council Member could not.

4 COMMISSIONER ALBANESE: Let's agree to
5 disagree on that. I-I-Let's

6 MARK GREEN: I never--

7 COMMISSIONER ALBANESE: Let me--let me
8 also say that as--as a Council Member if you chair a
9 committee even if you don't Chair a committee, you
10 have budget power. You actually--if a commission does
11 not return a call from a City Council Member, that
12 Commission has got to be--has to be either stupid or
13 I'd be terrified of a Giuliani like Mayor. I mean
14 because you know you're going to be in front of that
15 Council. You know, they're going to be voting on
16 your budget. So the Public Advocate can't do
17 anything to a commissioner besides just shame them
18 and Council Members can do that as well. I'm sorry.
19 Go ahead.

20 BETSY GOTBAUM: I-I just don't understand
21 one thing. You know, people have a problem. They
22 don't know where to go. To me the fact that
23 government can do something to help them on a large
24 scale as Mark just said is essential, and look at the
25 size of the budget. It's tiny. It's just tiny.

2 That's not—and it can do such good. I mean I—I—I
3 could—I could list all the things, which I won't bore
4 you, but there were things that happened that would
5 break your heart because I was able to and Tish was
6 able to, Mark was able to really do things that a
7 single Councilperson couldn't do.

8 COMMISSIONER ALBANESE: Ms. Gotbaum, I—I
9 don't doubt that one bit. I'm talking about the—where
10 does this office—what is the essential need for this
11 office in our political system, and I maintain that
12 all the things that you—that the Public Advocate does
13 can be—are done and are probably done with greater
14 leverage because the Council has greater leverage
15 than—than a Public Advocate that has no power.

16 ATTORNEY GENERAL JAMES: Let me just say
17 I—I fundamentally disagree with that position.

18 COMMISSIONER ALBANESE: I'm surprised at
19 you, General--[laughter]

20 ATTORNEY GENERAL JAMES: Most City
21 Council Members view issues through a local lens, and
22 not a city lens, and one of the reasons why I wanted
23 to be the a part of this body was to learn the issues
24 in each of the respective districts and connecting
25 with them at the City Council hearings were critical.

2 Two, not all City Council offices are equal. I did a
3 study of all City Council offices and based on the
4 number of calls that we received to the Office of
5 Public Advocate, and when a certain Council Member
6 was advocating for the abolishment of this office, I
7 provided him a copy of the number of calls that came
8 from his district. When he put forth that
9 recommendation, he claims that he received a
10 significant number of calls. I received a
11 significant number of calls basically saying that the
12 office should be strengthened, and that all four
13 public advocates did a really good job in responding
14 to the needs of New Yorkers. It's also critically
15 important that individuals understand that there are
16 advocacy offices within each—within a number of
17 agencies that really should be consolidated and
18 housed in the Office of Office of Public Advocate.
19 ACS has a—has an ombudsman. DOB has an ombudsman.
20 Taxi and Limousine has an ombudsman. We work with a
21 lot of them, and so that's why as opposed to
22 abolishing an office which has been highly effective,
23 we should strengthen it. During my tenure as the
24 Public Advocate, we sued on behalf of foster care
25 children. Even though you have a—you had a committee

2 here, the reality is that those issues were not being
3 addressed until we initiated litigation and got a lot
4 of pushback from this administration. We pushed back
5 on behalf of CECAS (sp?) and we know that it's a
6 system within the Department of Buildings go identify
7 services going to children who were disabled and the
8 Administration just recently threw out CECAS as a
9 result of what we had righted, and the list goes on.

10 COMMISSIONER ALBANESE: Tish, I'm—I'm
11 not—I am not debating your effectiveness as the
12 Public Advocate. There are some Council Members that
13 are lemons, and we may get a lemon as a Public
14 Advocate. The question is: Do we need the office
15 within our political system. We know there's a lot—
16 there are a lot of reasons why it was created, one of
17 them, which is not reported is to keep Andrew Stein
18 who is the City Council President employed at that
19 time, but—but bottom line—bottom line is that the—the
20 Office in my opinion under its present power—powers
21 is prestigious structure.

22 ATTORNEY GENERAL JAMES: And I would
23 agree with you.

24 COMMISSIONER ALBANESE: And—and I would
25 also point out—let me also point out, Mr. Green

2 points out why do public officials want to climb into
3 the office. It's pretty easy. I mean it's great for
4 politicians. It's great exposure. You can cherry
5 pick your issues. You don't have to make any tough
6 decisions and—and it's—it's ideal, and I'm not saying
7 that that happened in your case or Mark's case, but
8 it is if you look at it from the perspective—

9 MARK GREEN: Uh-hm.

10 COMMISSIONER ALBANESE: --of-of a Council
11 Member, sure it's—it's certainly—it will enhance your
12 visibility. You have a police detail. You get to go
13 around the city. You use the bully pulpit. You
14 don't have to vote on the budget. You don't have to
15 take any real responsibility for what goes wrong.
16 It's an ideal political job. The question is, it is
17 ideal for the people of the city of New York?

18 ATTORNEY GENERAL JAMES: See, I would
19 disagree that it's political and I would disagree
20 that you don't have to make hard decisions because
21 again presiding over the City Council often times you
22 are asked if you had a vote, how would you vote? And
23 two, you—you serve on the NYCERS Board, and you've
24 got to make decisions there, and so we led the way on
25 the NYCERS board to get guns out of the hands of

2 retailers. We led the way on banning fossil fuels in
3 the city of New York, and it was—and it's not a
4 question of cherry picking. It's a question of
5 identifying patterns and practices that come to your
6 office either through the 311 system or through the
7 hotline, and that's what's so critically important,
8 and then—and then issuing reports, which have
9 recommendations, and so I would totally and
10 fundamentally disagree with you that the office
11 should be abolished, but I agree that it should be
12 strengthened, and we should give it power.

13 COMMISSIONER ALBANESE: Well, would you
14 agree that—

15 CHAIRPERSON BENJAMIN: [interposing] I
16 think we—

17 COMMISSIONER ALBANESE: --we need to
18 strengthen it or we abolish it?

19 MARK GREEN: No.

20 ATTORNEY GENERAL JAMES: No, it's not an
21 either/or.

22 MARK GREEN: One last point with Mr.
23 Albanese if I—if I could. You—you and I like each
24 other. [laughter] Here you're a dog with a bone,
25 and nothing's happened over the decades and you're

2 not letting up on it and when you commented just now
3 you said, Oh, I respect everybody, but you do it for
4 the police detail, for publicity. It's easy. I mean
5 tell me which public advocate you're hypothesizing?
6 Which Public Advocate has done that?

7 COMMISSIONER ALBANESE: I'd rather not
8 mention any names.

9 MARK GREEN: I assume but there aren't
10 that many.

11 CHAIRPERSON BENJAMIN: I think we have
12 one--Sateesh.

13 COMMISSIONER NORI: Yes. Thank you all
14 for staying late particularly Attorney General James.
15 My day job is to fight bad landlords, and I think on
16 that hasn't been mentioned is the Ten Worst Landlords
17 list. I think that's a great service to the people
18 of the city of New York. Number two, I'm always
19 nervous when someone says we should kill something.
20 It makes me look extra carefully about what that
21 thing is, and why we might need it, and in that vain,
22 I want you to, if you can--I know we're over time--
23 address two points. Number 1 the subpoena power.
24 Now, can you distinguish or differentiate the role of
25 the Public Advocate with subpoena power from the

2 subpoena power that the DOI already has and why do we
3 need that? And number 2, symbolically, as a check on
4 the power of the Chief Executive, now it's easily
5 arguable, and I'm sure Council Member Albanese would
6 make a great argument for this that the City Council
7 is the check on the power of the Mayor. Why do we
8 need the Public Advocate in that role? If you could
9 just elaborate further on those two points.

10 MARK GREEN: Since we have a Mayor why do
11 we need a Public Advocate?

12 COMMISSIONER NORI: No.

13 MARK GREEN: I'm sorry. I may have
14 misheard you.

15 CHAIRPERSON BENJAMIN: Since they have a
16 City Council.

17 COMMISSIONER NORI: Since we have a City
18 Council---

19 MARK GREEN: Oh, city Council.

20 COMMISSIONER NORI: --as a check on the
21 Mayor, what additional check does the Public
22 Advocate's Office have?

23 MARK GREEN: Why do we have a GAO? We
24 have a president, we have Congress, we have agencies
25 and there are independent council in each agency to

2 look for wrong doing. The-the Council you refer to
3 by and large looks for criminality, not always, but
4 usually. The Public Advocate's Office doesn't look
5 for criminality. It looks for patterns of problems
6 that may not rise to the level of a felony or
7 misdemeanor and so Washington and actually the Public
8 Advocate is sort of a New York City GAO because it
9 has often come up with things that you may think a
10 Congress person or an agency head may come up with,
11 but for reasons of the way we elect members of
12 Congress, which are there losing money and we know it
13 all, you need an independent office with a tradition
14 of independence, not reliant on the Mayor who is
15 naturally defensive [bell] and going back to the
16 question of all these people seek the office because
17 it's a good detail.

18 CHAIRPERSON BENJAMIN: It's not that.

19 MARK GREEN: What was wrong with Tish
20 James, Bill de Blasio or me seeking office of Mayor
21 and Attorney General? I think without getting person
22 obviously, I think that was a good thing, and-

23 CHAIRPERSON BENJAMIN: Okay.

24

25

2 MARK GREEN: --and the reason we were
3 able to do it, it's a citywide office. It's elected
4 citywide and people know it.

5 CHAIRPERSON BENJAMIN: Thank you---

6 BETSY GOTBAUM: [interposing] I-

7 CHAIRPERSON BENJAMIN: --Mark. Go ahead.

8 BETSY GOTBAUM: I'm sorry. My-my answer
9 would be when-when an incident I recall and I'm sure
10 everybody in this room recalls that when the City
11 Council voted to extend to the third term, that as
12 something that that Mayor wanted, and there was a lot
13 going on and the Council didn't stop something that
14 frankly I thought since the people of the city of New
15 York had voted I think twice not to have that happen,
16 and the Council did that, now--

17 MARK GREEN: [interposing] I'm going to
18 go-what a great example.

19 CHAIRPERSON BENJAMIN: Mark, I-Mark I
20 think that, I'm

21 MARK GREEN: It was corrupt.

22 CHAIRPERSON BENJAMIN: Mark, Mark, Mark,
23 hold on for a minute.

24 MARK GREEN: From the beginning because
25 the--

2 CHAIRPERSON BENJAMIN: Mark.

3 MARK GREEN: --Mayor was able to persuade
4 here billionaires who run the newspapers to do it for
5 him. He's a very important--

6 CHAIRPERSON BENJAMIN: [interposing]
7 Mark.

8 MARK GREEN: --Mayor and the--

9 CHAIRPERSON BENJAMIN: [interposing]
10 Mark.

11 MARK GREEN: --Public Advocate was of
12 the--

13 CHAIRPERSON BENJAMIN: [interposing] I'd
14 like not to have this--

15 MARK GREEN: --they were harmless. They
16 didn't do anything. They couldn't do anything.

17 CHAIRPERSON BENJAMIN: Sal.

18 COMMISSIONER ALBANESE: [interposing] No,
19 that's fair.

20 CHAIRPERSON BENJAMIN: Wait, wait. Every
21 body wait for a minute. This was Letitia's question.
22 Not yours and Betsy Gotbaum was speaking. You were
23 speaking prior to her. So, I'd like to keep the
24 decorum. We've had a very good time with that. So,
25

2 Betsy, you can finish answering that question, and
3 then I believe that Ms. James would like to—

4 ATTORNEY GENERAL JAMES: I defer to my—
5 that's a great segue. I voted against the extension,
6 third term and one, let me just say we—the Office of
7 Public Advocate during my tenure we turbo charged the
8 worst the worst landlord list, and again a number of
9 City Council Members were only concerned about
10 landlords in their back yard, and it was really
11 critically important that we establish a citywide
12 approach to bad landlords and bad actors in the city
13 of New York, and I want to get information from this
14 Administration with respect to whether or not any of
15 those bad landlords were receiving public subsidies.
16 I couldn't—the only way that I could possibly obtain
17 that information was through a subpoena. So, it's
18 really critically important that as I establish
19 pattern and practices on the—or this Public Advocate
20 establish pattern and practices, that they have the
21 information which is somehow, which is from time to
22 time withheld by this administration. DOI, I've
23 worked with DOI on certain cases, but again, they
24 look primarily from criminal prosecution as opposed
25 to civil, and I think this office should have the

2 ability to Initiate civil litigation based on pattern
3 and practices and engage in affirmative litigation
4 that is so critically important. We do not have an
5 office in the City of New York that can engage in
6 affirmative litigation to identify patterns in this
7 city and one of the patterns again is focusing on bad
8 actors in the real estate industry.

9 CHAIRPERSON BENJAMIN: Thank you, Tish.

10 I am the next questioner and I'd like to ask Public
11 Advocate Green you proposed legislation in 1994 that
12 would have established a three-member panel of the
13 Mayor the Comptroller and the Chair of the Conflicts
14 of Interest Board to appoint the DOI Commissioner
15 rather than appointment solely by the Mayor, and it
16 also established the five-year term for a DOI
17 Commissioner, which I believe still exists. Can you
18 talk about what inspired that legislation and whether
19 your current view is similar to that legislation or
20 whether over time your position has ameliorated that
21 particular proposal?

22 MARK GREEN: I can't recall the thinking
23 that went into it at that time other than the obvious
24 institutional conflict of a Mayor potentially
25 appointing a buddy to watch over City Hall corruption

2 and his Commissioners. It has not gone unnoticed
3 that a recent DOI pick was (a) the Treasurer of Bill
4 de Blasio's campaign, and (b) ended up very critical
5 of Mayor de Blasio and (c) was fired. I don't know
6 how that real event would contribute to the idea of a
7 little more independence for the DOI head or not. I
8 suspect it would argue for a more tri-partite group
9 recommending the person because it—it was not a good
10 idea to appoint the treasurer of your campaign as
11 faint as these two people were because of the obvious
12 inherent conflicts, which ripened in a bad way.

13 CHAIRPERSON BENJAMIN: Betsy, the same
14 question basically for you because in your testimony—
15 in your written testimony and the agencies that you
16 felt that the Public Advocate should be able to have
17 an appointment, you did not mention the Conflicts of
18 Interest Board, and I was wondering if that was just
19 not something you had thought about, or if you think
20 the roles of Public Advocate and the—and DOI are that
21 separate?

22 BETSY GOTBAUM: No, I—I—I omitted to say
23 that I do think the Public Advocate should have a
24 seat on the Conflicts of Interest Board, yes.
25 Because it's again—it goes back to that original

2 theme of mine that the Mayor is very, very powerful
3 in the city, and this balances the power a little bit
4 better.

5 CHAIRPERSON BENJAMIN: And DOI?

6 MARK GREEN: Yeah. I mean DOI would be
7 the same argument. Yes, I would be inconsistent if I
8 said no.

9 CHAIRPERSON BENJAMIN: Tish.

10 ATTORNEY GENERAL JAMES: Yes.

11 CHAIRPERSON BENJAMIN: Sorry. Public
12 Advocate James.

13 ATTORNEY GENERAL JAMES: [laughter]

14 Ditto. [laughter]

15 MARK GREEN: We're going to get this
16 right.

17 CHAIRPERSON BENJAMIN: Okay the last
18 person I have with a question for this panel is Sal
19 in a second round.

20 COMMISSIONER ALBANESE: Yeah, I-I just
21 want to clarify one of the assessments that was made
22 about Council Members only having a local
23 perspective. Council members if they're-if they're
24 any good have a local perspective, but also have to
25 have a citywide perspective. I certainly-I certainly

2 focused on that as a Council member and other-other
3 Council Members as well and I-and I point to-to
4 Council Member Jumaane Williams the new Public
5 Advocate. I think one of the reasons why he did so
6 well in the Lieutenant General-in the Lieutenant
7 Governor's race and then wind up winning the Public
8 Advocate race was because he was considered a very
9 active Council Member and was constantly in the news
10 around citywide issues, not issues just involving his
11 Flatbush Neighborhood. So, my point is that good
12 Council Members and there are a good number of them,
13 have a local perspective and also should have a
14 citywide perspective, but the average one or the ones
15 that are below average don't, but that's not a reason
16 to have a Public Advocate.

17 ATTORNEY GENERAL JAMES: There's a
18 difference between being an activist and being a
19 legislator, and so although I support and I know that
20 my friend Jumaane Williams will do a great job, all
21 of the issues that we focused on in the Office of
22 Public Advocate I-I-at this point in time and most of
23 the City Council Members based upon my five years in
24 my work as a former city council member we're
25 localized and not citywide.

2 CHAIRPERSON BENJAMIN: Okay. I'd like to
3 thank the panel for being here and sharing your
4 perspectives and answering our questions. I know
5 that if we—or members have additional questions, that
6 you would be available to answer them. I'd also like
7 to ask Public Advocate Green, he mentioned a report,
8 if he could give us the report and we will copy it
9 and—and send it to each on the—the Commissioners, and
10 if there's any other materials that any of you would
11 like us to—to read or review, if you send them to us
12 we will copy them, and send them to all of the
13 Commissioners. I do appreciate you being here, and I
14 appreciate your service, and your thoughts. [pause]
15 Our next panel. We will be joined by Karen Griffin
16 and Viktor Kovner, former Corporation Counsel.
17 [pause] Mr. Kovner, the floor is yours.

18 VIKTOR KOVNER: Is this on? Okay.

19 CHAIRPERSON BENJAMIN: Yes, when the red
20 light is on, you're on.

21 VIKTOR KOVNER: I believe my testimony
22 has been circulated. I hope it has. I won't read
23 all of it, but let me begin by saying my name is
24 Viktor Kovner, and I had the honor to serve as
25 Corporation Counsel of the city of New York during

2 the Administration of Mayor David N. Dinkins, who I
3 actually saw today and is in good health and it's a
4 pleasure to see him. I'm going to comment on the
5 City Law Department. In my remarks, I-I do hold it
6 in very high regard. I say in my remarks that it's
7 really a treasure. It's been led by people over the
8 years who have without exception run the office in a
9 non-political manner, serving the entire city, which
10 is the heart of my remarks today, and-and it doesn't
11 respond to any particular body in the city and not
12 the Council, not the various other elected officials
13 and not necessarily the Mayor. The Mayor has his own
14 counsel. It's the Office of Counsel to the Mayor,
15 and while the Law Department will advise the Mayor,
16 it will advise other entities, and there are as
17 you've heard by the-from the illustrious panel just
18 now, there are lots of occasions when various elected
19 officials and agencies will take different positions
20 on issues, and that's natural and it's healthy, and-
21 and that comes from the fact that they're looking at
22 issues from different perspectives particularly from
23 if it's an agency, the work of that agency. If it's
24 a particular office, it's the work of that office and
25 their jurisdiction, but outside of the Law

2 Department, there is no official or agency that has
3 the responsibility for focusing on the interest of
4 the city as a whole as opposed to one or more of its
5 many parts and none of the agencies are—are well
6 equipped to evaluate what happens when they take a
7 legal position on one position or another—on one
8 issue or another. Only the Law Department can do
9 that but, you know, when I was Corporation Counsel
10 there were 50,000 pending matters at any point in
11 time, and I think that number today, my colleague
12 here may know it, but it's probably 70, 75,000 and
13 the Law Department has some knowledge of all of those
14 matters and it has lots of knowledge about past
15 significant issues in court. So, when—for the city
16 to take a position in a Federal Court or a State
17 Court, Appellate Court or a particular judge there
18 are consequences to that, legal consequences and the
19 courts in the first place are entitled to know the
20 position of the city as a whole and not of a
21 particular official within the city, and only the Law
22 Department can weigh the consequences as an adverse
23 consequence may be taken because a borough president
24 or a Council Member has a particular view, but they
25 are unaware of all the other matters in which the

2 city has a stake so that and with respect I differ
3 with some of my old friends who were on the prior
4 panel, the Public Advocate's Office as--as Public
5 Advocate Green says is not the public's lawyer. It's
6 the city Law Department that is the lawyer. That's
7 the agency that speaks for the city in court, and I
8 think it would be a serious mistake to question the
9 representation of the city in judicial proceedings
10 because it may be dependent upon one particular
11 official or another. And sometimes, the Court of a
12 law department the corporation counsel has the
13 discretion to permit one body or another to appear
14 independently of the Law Department and that is
15 principally when there is a question of varying--of
16 different view of the core powers of that office
17 where is the counsel authorized to take a position or
18 the borough president or the City Planning
19 Commission, and if it's--the Corporation Counsel's
20 Office will permit on occasion those bodies to be
21 represented separately, but the notion as, and I've
22 got many friends on--on the City Council that every
23 Council Member should have the opportunity to take a
24 position in court as the--as a member of the City
25 Council is only going to multiply, confuse the courts

2 as to what the city's interests are, multiply the
3 number of lawyers who will proceed—who appear in
4 proceedings, multiply litigation for the city of New
5 York, which is complicated and costly enough as it
6 is. So, I urge the that the existing—what is set
7 forth in this charter and in prior charters that the
8 city Law Department is the sole body authorized to
9 represent the city [bell] be retained, and I would
10 urge that I think it's wrong to limit the Corporation
11 Counsel to a three-year term or make his or her
12 appointment dependent upon Council Advise and
13 Consent. It would undermine the independence of that
14 office at great cost to the city. Lastly, I'd like
15 to say I'm concerned having read the report of the
16 recommendations of the Commission as a whole that it
17 really—I'm not going to address any particular one,
18 but it does—

19 CHAIRPERSON BENJAMIN: [interposing] Let
20 me just correct you. We haven't made any
21 recommendations.

22 VIKTOR KOVNER: Well, then I
23 mischaracterized this Council Revision Commission
24 report. I thought they were recommendations that—
25 that was circulated to me or, maybe it is a draft,

2 and maybe they're draft recommendations, and in the
3 draft recommendations it really calls for changes,
4 reducing dramatically the power of the Mayor,
5 enhancing the power of the Council and other
6 agencies. There's a case for, it seem to me
7 broadening in the representation on various bodies
8 and think some of those points were made earlier, but
9 this rather sweeping change is—should be done with
10 great caution. Thank you.

11 CHAIRPERSON BENJAMIN: Thank you, Mr.
12 Kovner. Ms. Griffin.

13 KAREN GRIFFIN: (off mic)

14 CHAIRPERSON BENJAMIN: Your mic is not
15 on.

16 KAREN GRIFFIN: (on mic) Is it on now?

17 CHAIRPERSON BENJAMIN: Yes.

18 KAREN GRIFFIN: Great. Thank you. Good
19 evening, Commissioner, Commission staff and members
20 of the public. My name is Karen Griffin and I am the
21 Professional Responsibility and Ethics Counsel for
22 the New York City Law Department. In this role, I
23 counsel and train city attorneys on a wide array of
24 professional responsibility and legal ethics issues.
25 I also chair the Law Department's Committee on

2 Professional Responsibility and Ethics, and I served
3 as a member of the New York City Bar Association's
4 Committee on Professional Ethics since 2011 to 2016.
5 I'm pleased to appear before the Commission to
6 describe the rules and roles and duties of the
7 Corporation Counsel. Under the Charter, the
8 Corporation Counsel is the attorney and Counsel for
9 the city and every agency thereof and shall have
10 charge and conduct of the all the law business of the
11 city and its agencies in which the city is
12 interested. This means the corporation counsel that
13 presents all agencies in the city as well as the
14 Mayor, the City Council, and all other city
15 officials. Other than the Corporation Counsel—the
16 Corporation Counsel and Assistant Corporation
17 Counsels, no other attorneys are authorized to
18 represent the city in New York in litigation absent a
19 special litigation—designation by the Corporation
20 Counsel. The Corporation Counsel is the head of the
21 Law Department, which is—now has over 920 lawyers and
22 8,000 support professionals, and while I don't know
23 the actual number, that is over 50,000 matters that
24 are currently pending. Law Department attorneys give
25 Advice to our many clients, and we also represent the

2 city in court. This means we defend the city in a
3 variety of different lawsuits as well as employees of
4 the city when appropriate. For example, our legal
5 and employment division represents the city in labor
6 disputes and employment actions. Our back tax
7 division stems the city. We have a Property Tax
8 assessment in Article 7 cases and also represent the
9 interests of all city entities and agencies in
10 bankruptcy proceedings in in Federal Court, and our
11 Environmental Law Division addresses some of the most
12 pressing environmental problems facing municipalities
13 today, including protecting the nation's largest
14 unfiltered surface drinking water supply, Solid Waste
15 Management, clear air and water issues, and the
16 protection of the New York City's harbors, rivers,
17 parkland and open spaces. Although Environmental Law
18 Division's work consisted-of was affirmative and
19 defensively litigation on behalf of the city, the Law
20 Department also has an Affirmative Litigation
21 Division, which files lawsuits on behalf of the
22 city's interests. Giving Advice and representing the
23 city in court are our offices' primary duties, but we
24 additionally their procurement contracts, real estate
25 leases and financial instruments through the sale of

2 municipal bonds. We represent the city in juvenile
3 delinquency proceedings brought in Family Court, and
4 administrative code enforcement proceedings brought
5 in Criminal Court. Our Legal Counsel's Division
6 frequently works with the Administration and the City
7 Council on local legislation, and we also work on
8 state legislation that affects the city. The largest
9 division in the Law Department is the Tort Division,
10 and much of the Law Department's work is defending
11 the city when private individuals and entities sue
12 the city over and alleged harm. In defending the
13 city in such matters, the Law Department in
14 consultation with affected agencies and entities, and
15 when appropriate with the Comptroller's office
16 determines which approach best protects the city's
17 interest as a whole. When confronting legal issues,
18 different officials of the city may disagree as to
19 what is the best approach to take. In these
20 situations attorneys in our office first try to
21 develop a defensible approach that meets the primary
22 goals of the different entities and officials. If
23 such an approach is not feasible, then after
24 consultation with the various entities and officials
25 the office will advance a legally defensible position

2 it believes in good faith will best promote the
3 interest of the city as a whole taking into account
4 the need to maintain consistent and defensible
5 litigation positions on the city's behalf across many
6 litigations. However, if the disagreement is a good
7 faith legal dispute over the powers or duties of an
8 independent official or body, the Law Department will
9 authorize conflict counsel to be retained to
10 represent that official or body. We are counsel to
11 the entire city including this commission and we
12 strive faithfully to serve all of our clients. We
13 take our statutory duty to represent the city of New
14 York and our ethical duties to our various clients
15 seriously. Thank you for inviting me to speak on
16 behalf of the Law Department, and I look forward to
17 your questions.

18 CHAIRPERSON BENJAMIN: Thank you very
19 much. The first person who had their hand up is Jim
20 and then Carl and then Paula, Sal and Steve.

21 COMMISSIONER CARAS: Thank you both for
22 being here. In an article on the legal legacy of
23 Mayor Bloomberg, Professor Richard Briffault said, "A
24 particularly striking feature of the Bloomberg
25 Administration's approach to home rule is the attempt

2 to blunt home rule by invoking state law and on at
3 least one occasion actually securing the state law to
4 limit the scope of the city's legal authority. He
5 basically said it was bad enough when the Law
6 Department repeatedly argued that the city was
7 preempted to and that the City Council was preempted
8 in a number of cases, but then in 2011 they actually
9 backed Bloomberg in giving back decades of city
10 authority over taxicab medallions. How can giving up
11 city regulation of its streets and transportation
12 possibly serve the city in the long run?

13 VIKTOR KOVNER: I presume that's
14 addressed to me and I'm happy to answer it.

15 COMMISSIONER CARAS: Uh, but—yes.

16 VIKTOR KOVNER: The—the sad truth is that
17 state law infringes on the power of our city
18 government to run our own affairs and—and that power
19 is enormous, and I resented it at night. I know that
20 other people in—in—who held that office have resented
21 it. However, on some of the issues alas that law is
22 clear. I wish it were—I wish it were different.
23 Some of us made attempts to limit it from time to
24 time, but if a—if the Law Department in those years
25 advised publicly that the city was unable,

2 unauthorized to take certain actions because of
3 existing state law and I'm not familiar with the
4 exact circumstances, but I believe deeply that that
5 is because that was the law as they saw it, and as
6 they truthfully conscientiously advised their
7 clients.

8 COMMISSIONER CARAS: But for four decades
9 we had taken those actions as a city and nobody had
10 ever questioned it. We had already issued taxicab
11 medallions as a city not through Albany doing it for
12 us.

13 VIKTOR KOVNER: If unfortunately that may
14 have been inconsistent with stage law, and if when
15 the issue arose and the—and the Law Department
16 expressed an opinion, I'm confident that that was
17 there honest and often unhappy information.

18 CHAIRPERSON BENJAMIN: Jim, would you
19 like to ask Ms. Griffin the same question?

20 COMMISSIONER CARAS: Yes, I—I would.

21 KAREN GRIFFIN: So, I—I don't' think my
22 answer is going to differ very much. I wasn't
23 involved in this decision. So but again, I know that
24 I—my responsibilities include training every single
25 attorney in the Law Department about their ethical

2 obligations to the various clients, and when the Law
3 Department takes a legal position, it—it looks at the
4 position objectively and reaches a conclusion. So, I
5 can only assume in that circumstance that perhaps it
6 was the first time the Law Department was asked to
7 look at this, and they look at it and reached that
8 conclusion, but again, I don't know the specifics so
9 I can't speak to the specifics.

10 COMMISSIONER CARAS: I would just, you
11 know during the Giuliani years when the Law
12 Department stood next to Giuliani and said that he
13 had the right to stop duly appropriated funds from
14 flowing to the Brooklyn Museum because he found their
15 art offensive, and no First Amendment expert thought
16 that was the right answer. No—no court ended up
17 thinking that was the right answer, and not only
18 that, but the other public officials—I worked on a
19 brief for Peter Vallone and Mark Green with Lorelei
20 Eisner and Mark Green's General Counsel at that time
21 opposing that action. So, I mean the Law Department
22 was clearly picking sides in an area where most of
23 the weight of authority went against the position
24 they decided to up—uphold.

2 VIKTOR KOVNER: You know, I wrote an
3 amicus brief on behalf of all the museums or the
4 major museums in the city taking that very position.

5 COMMISSIONER CARAS: [interposing] I read
6 your brief while we were working on ours and I found
7 it--

8 VIKTOR KOVNER: [interposing] And I
9 agreed with your judgement obviously. There were
10 cases on the other side not persuasive in my view,
11 but I believe that the Law Department in their
12 presentation did it conscientiously even though I
13 deeply disagreed with them.

14 COMMISSIONER CARAS: But then whose
15 lawyer were they acting as if the Council Speaker and
16 the Public Advocate and all the other officials were
17 on the other side?

18 VIKTOR KOVNER: They were the lawyer for
19 the city as a whole--

20 COMMISSIONER CARAS: [interposing] As a
21 particular--

22 VIKTOR KOVNER: --and like any other
23 lawyer, they are capable of error, and you're quite
24 right, the courts, the Federal Courts in that

2 instance took a very contrary position, which we all
3 celebrate over the years.

4 COMMISSIONER CARAS: Can I follow up with
5 one more question?

6 CHAIRPERSON BENJAMIN: Just one.

7 COMMISSIONER CARAS: Or-or-

8 CHAIRPERSON BENJAMIN: Wait. Can I put
9 you down?

10 COMMISSIONER CARAS: Yes, absolutely.

11 CHAIRPERSON BENJAMIN: Okay. Carl and
12 then Paula.

13 COMMISSIONER WEISBROD: So, first of all,
14 I just want to clarify something Mr. Kovner you said
15 at the outset the--the proposals that you were looking
16 at were proposals from the City Council not draft
17 proposals from this Commission, which has had no
18 draft proposals whatsoever, yet--

19 VIKTOR KOVNER: Thank you

20 COMMISSIONER WEISBROD: --and have
21 received proposals from many, many sources and I'm
22 sure we'll receive more, and second, I just like to
23 say as someone who's in and -in and around the City
24 Government for almost half a century that I've always
25 been tremendously impressed with both the

2 professionalism and the quality of the Law Department
3 including I have to say as a target personally of in
4 one instance as the Giuliani Administration where the
5 corporation counsel did stand up to the Mayor and—and
6 told the Mayor in a very personal situation that the
7 Mayor—Mayor Giuliani couldn't do what Mayor Giuliani
8 wanted to do. I guess my question to both of you is
9 recognizing that the Corporation Counsel in the Law
10 Department represents the city as a whole, which is a
11 very complicated entity, and does from time to time
12 have within its structure disagreements. That—that's
13 not really any different I suppose than the state
14 having differences, the state, the Governor or the
15 State Executive Branch having differences with
16 various independent agencies in the state or with the
17 legislature or the Attorney-General of the United
18 States having—representing the Executive Branch and
19 also representing independent agencies and having
20 disagreements internally as well. How does that Law
21 Department, or if it does, different in its
22 obligations to—with respect to those internal
23 disagreements from the way the Attorney General of
24 the State of New York or the Attorney General of the
25 United States has to deal with similar disagreements?

2 VIKTOR KOVNER: It is.

3 KAREN GRIFFIN: I'm not sure I'm equipped
4 to answer this. I'm not completely familiar with how
5 the Attorney General, State Attorney General's Office
6 and-and that the state works, or the federal system.
7 I know they're similarly structured where their legal
8 office is given the power to represent the entity in
9 court. How they work through that on a day-to-day
10 basis I'm not familiar. I can tell you that the
11 Corporation Counsel's Office and how we operate we-
12 when we have a matter and-and because we are the-the
13 Law Office for the city, we are involved in all of
14 the legal matters that occur within the city, and-and
15 when we have an issue we will often go to our various
16 clients, and get their opinion on that particular
17 issue, and-and find out where they stand on the
18 litigation. We look to find out how any particular
19 position could affect that agency or that entity or
20 that independent-independently elected official, and
21 we consider all of that, and that, you know, if we
22 can get it, we want to be on the same page well that
23 is-that's idea. And if we can get them all on the-
24 everyone on the same page, we look to find-to meet
25 their-their largest demands or their-their largest

2 areas of concern. So, it's always a process.

3 Ultimately, however, the Charter does give the
4 Corporation Counsel the authority to make the final
5 decision as to what's in the best interest of the
6 city.

7 VIKTOR KOVNER: I can't answer it in
8 great detail either, but basically, it's clear that
9 only the Attorney General of the state appears for
10 the state and the Comptroller never appears, and the
11 Legislature never appears, and the various state
12 commissions rarely, if ever, appear and if they do,
13 there may be some circumstance. Similarly in the
14 federal government the Justice Department is on
15 almost every—is the lawyer for the government in
16 almost every proceeding, and again they have rare
17 exceptions to that where a particular agency or where
18 they may be disputes between agencies where a
19 judgment is made that both agencies or one or another
20 may be represented by separate counsel. So that the
21 structure here is not significantly different than
22 state or federal to my knowledge.

23 COMMISSIONER WEISBROD: Thank you.

24

25

2 CHAIRPERSON BENJAMIN: [off mic] I agree,
3 but that is-that is [on mic] that the Attorney
4 General is elected.

5 VIKTOR KOVNER: In the state.

6 CHAIRPERSON BENJAMIN: Yes.

7 VIKTOR KOVNER: That is true.

8 CHAIRPERSON BENJAMIN: Paula--

9 COMMISSIONER GAVIN: Yes.

10 CHAIRPERSON BENJAMIN: --and then Sal.

11 COMMISSIONER GAVIN: Thank you both for
12 being here. I wanted to ask you both to comment on
13 the Advise and Consent recommendation that came from
14 the City Council for Corporation Counsel.

15 KAREN GRIFFIN: That is good?

16 VIKTOR KOVNER: Go ahead.

17 KAREN GRIFFIN: So, Law Department
18 because that's a policy issue that's ultimately left
19 up to the voters, the Law Department will not take a
20 position on-on that particular policy, proposal.

21 VIKTOR KOVNER: I, however, am free to
22 give you my best thinking on it.

23 COMMISSIONER GAVIN: [laughter] Thank
24 you.

2 VIKTOR KOVNER: Unrestrained by the
3 offices. I think it's a great mistake. It's—it will
4 in my judgment undermine the independence of that—of
5 the Law Department. It's—it is a treasure. It works
6 very well for the city of New York, and I urge you
7 not to change its structure. There are some agencies
8 of the city of New York that could do significantly
9 better and it's—I think it's great that you're taking
10 a look at the overall structure, but I urge you as to
11 the Law Department not only if it's not broke don't
12 fix it, leave it. It's working well.

13 COMMISSIONER GAVIN: Thank you.

14 CHAIRPERSON BENJAMIN: Sal.

15 COMMISSIONER ALBANESE:

16 VIKTOR KOVNER:

17 COMMISSIONER ALBANESE: I—I happen to
18 agree with your assessment that the corp counsel
19 generally speaking is professional. It does a great
20 job representing the city, but I think Commissioner
21 Caras raises some legitimate issues about power pitch
22 raising its ugly head about independence. I've seen
23 it over the years with different mayors. I served
24 under four different mayors, and I've seen the
25 politics in play and I think Commissioner Caras just

2 listed one example during the Giuliani era, but I've
3 seen others, and I don't want to spend time talking
4 about him. My question is since we do—the City
5 Council does have Advise and Consent power over the—
6 over the DOI Commissioner, what would be the harm of
7 having Advise and Consent for such a very important
8 position as the Corp Counsel, and I also—I also
9 believe that helps the vetting process. During
10 Advise and Consent if it's done properly, you can do—
11 you can minimize damage if the person isn't
12 qualified. A lot of stuff comes out during those
13 hearings. So, my question is why—why is that such a
14 big deal?

15 VIKTOR KOVNER: It—well intent—those who
16 are subject to Advise and Consent are interviewed in
17 advance, and I believe this happens in the city and
18 in state and certainly in the federal government
19 where commitments are sought on particular issues
20 and—and granted and the—and the official subject to—
21 is sort of constrained. Now, that may be healthy in
22 some circumstances, but it does diminish independence
23 of that officer, and I—I think that what you have in
24 the Law Department is—is a—is a history, really a
25 tradition of total independence from any particular

2 official. In the time I served there, I know that
3 decisions are made that have troubled people in I
4 hope not so often, but on occasion a variety of
5 people in government and it's—you need to be free to
6 do that to the best of your ability as a lawyer,
7 which is why I urge that that not apply.

8 COMMISSIONER ALBANESE: So, you think you
9 would have been hampered? Had you gone through that
10 process, you would have been less independent?

11 VIKTOR KOVNER: I—I watch—you know I
12 watch the hearings Councilman going on with the
13 Attorney General who has just gone into hearings, and
14 he's—I'm not unhappy that he's been constrained in
15 various—a variety of areas, and as to what he will do
16 in office. I don't know that that is—that those
17 restrictions in effect will be—that would be imposed
18 on a corporation counsel will diminish that
19 independence and I think weaken the independence of
20 the office.

21 CHAIRPERSON BENJAMIN: [off mic] Thank
22 you. I think—[on mic] Steve, you're next.

23 COMMISSIONER FIALA: Thank you, thank you
24 both for being here. How does the corporation
25 counsel identify potential conflicts of interest in

2 representing various city entities, and once you've
3 identified that a conflict exists, how do you resolve
4 that? Let's say the entity believes corp counsel is
5 conflicted out. How do you resolve that? Is there a
6 formal mechanism or review in place now or is it more
7 ad hoc as these situations come up?

8 VIKTOR KOVNER: Karen is the best person
9 to answer that.

10 KAREN GRIFFIN: I will—I will take that
11 question. So, as I said, initially, we do train
12 every single attorney on conflicts or potential
13 conflicts and they are trained to look out for them
14 and—and conflicts, you know, it's—it's-- First,
15 let's define what a conflict is. Disagreements are
16 not conflicts, and it is not our—it's not our
17 position in any organization and—and under the rules
18 of professional conduct, the—any government office is
19 and organization. So, 1.13 does apply, and there are
20 always disagreements in organizations. Various
21 organizations wants different results, and they're
22 looking out to protect the interest of their
23 particular segment or area, and—and ultimately that
24 might not be in the best interest of the organization
25 as a whole. So, everyone gets to have their say, and

2 they may disagree, but we would not consider that a
3 conflict. That's just a disagreement. However,
4 that's not to say that conflicts don't arise, and
5 when conflicts do arise, we are looking for whether a
6 position being taken by one entity, it could be the
7 Administration. It could be another independently
8 elected official or body. If they're taking a
9 position that undermine the duties and powers or
10 authority of another entity, we would consider that
11 to be a conflict. So, it could be an actual in that
12 it will—it will—it will definitely affect or it could
13 even be a potential. So, you're looking for
14 something that would potentially undermine or affect
15 their duty or authority and in that circumstance when
16 we identify a conflict, we would independently decide
17 which position we believe is legally correct. We may
18 have already opined on it. Sometimes we have. Other
19 times we haven't yet opined on it. So, we take a
20 fresh look at it and—and then we make a determination
21 as to what entity or individual the Law Department
22 will—will represent in that matter and we will
23 authorize conflict counsel to be retained for the
24 other official or entity.

2 COMMISSIONER FIALA: So, if-if an agency
3 or an official believes you're conflicted out as corp
4 counsel and corp counsel believes no, corp counsel
5 determines whether or not such a conflict exists or
6 is there a mechanism where the official or the entity
7 that's pointing the finger at you guys say no, no,
8 you are conflicted out. That's when you go to an
9 outside contract?

10 KAREN GRIFFIN: So, initially, if-if an
11 agency or entity believes that there is a conflict,
12 they always reach out. They would reach out to me in
13 the first instance, and I would hear them out. I
14 want to know why they believe there's a conflict,
15 what they believe the conflict is and why they think
16 the office cannot represent them in that matter, and
17 sometimes in consultation with Georgia Pestana, for
18 instance with the Corporation Counsel, we make a
19 determination as to whether or not we believe a
20 conflict exists. So, it's-it's-we analyze it under
21 the Rules of Professional Conduct and we make a
22 determination. So, ultimately, yes, it is the office
23 that determines that our conflict exists.

24 COMMISSIONER FIALA: And the recourse for
25 the opposing party would be it literally goes al the

2 way up the chain so that the entity has his or her
3 day in court so to speak.

4 KAREN GRIFFIN: Absolutely. The entity
5 is fully heard on whether or not a conflict exists.

6 COMMISSIONER FIALA: Okay, thank you very
7 much.

8 VIKTOR KOVNER: It may not just be an
9 entity. It may be an individual employee whose
10 conduct may be so bad so reprehensible that the Law
11 Department decides that that individual best be
12 represented by his or her own counsel. That doesn't
13 happen very often, but it-it can happen. So, it's
14 not just-it's not just agencies. It can be
15 individuals as well.

16 KAREN GRIFFIN: And if I can just add,
17 Mr. Kovner makes a very good point. I mean conflicts
18 are, you know, we also represent individual city
19 employees under General (sic) Law 50-K. So, it's
20 another area of conflict we always have to be alert
21 for. It was un, you know, it is uncommon that we
22 will encounter the situation described. Often times
23 city employees are involved in litigation against the
24 city, and we are representing the city adverse to
25 that city employee. We have to be mindful of that if

2 we're going to undertake to represent that city
3 employee in an entirely unrelated litigation. So,
4 these are the matters that we're constantly and—and I
5 will say we are vigilant about looking and—and
6 seeking out to see if there's any potential conflicts
7 on the horizon.

8 COMMISSIONER FIALA: Thank you.

9 CHAIRPERSON BENJAMIN: I have a question
10 for either or both of you. Do you believe that in
11 the cases where a non-mayoral entity believes there
12 is a conflict and/or has a position about a matter
13 that is antithetical to what the Law Department
14 believes is in the best interest of the city even if
15 it may not be in the best interests of that
16 particular non-mayoral entity. Do you believe your
17 non-mayoral clients feel that they are well
18 represented by you in those cases?

19 KAREN GRIFFIN: So, I think whether it's
20 non-mayor or even mayoral, because this comes—I
21 understand this—

22 CHAIRPERSON BENJAMIN: [interposing]
23 Well, I'm asking for my own--

24 KAREN GRIFFIN: [interposing] understand
25 your question goes to non-mayoral, but I—I would just

2 point out that it actually comes up in mayoral
3 instances as well when you have a mayoral agency that
4 does not agree with the position of the Law
5 Department, it's not—it's not isolated or limited to
6 non-mayoral, but to I believe I think understanding
7 the structure of the Charter what we give them is we
8 absolutely give them the opportunity to be heard. We
9 hear them out. We consider they'll their legal
10 arguments, and the-the structure allows us to make—
11 and—and I think it's important to note that the--the
12 Law Department because we represent every single
13 entity and an agency, we have a much more global
14 view. We know and consider how any particular
15 position not only could affect this--this matter at
16 hand, but also it--how it could play out for--with
17 regard to other entities and individuals.

18 CHAIRPERSON BENJAMIN: But when you get
19 it wrong let's say in the case of the Brooklyn
20 Museum, what is the recourse that that entity has.
21 In this case, there were other electeds who decided
22 despite your denying them the ability to have
23 representation to file briefs.

24 KAREN GRIFFIN: I'm sorry. So, what is
25 the recourse? Is that what you're asking?

2 VIKTOR KOVNER: No, I don't believe that
3 other elected file briefs in that case. I think
4 there were—Oh.

5 CHAIRPERSON BENJAMIN: Yes. Jim did.

6 VIKTOR KOVNER: And was the—and the Law
7 Department said fine?

8 COMMISSIONER CARAS: That was before I
9 was—in—in my notes I had written down that I'm sure
10 that the Law Department may not even—may take the
11 position now that we weren't even allowed to do what
12 we did, which was follow the amicus brief.

13 VIKTOR KOVNER: [interposing] But—but—but
14 they didn't at the time. They didn't object at that
15 time.

16 COMMISSIONER CARAS: No.

17 VIKTOR KOVNER: It was—I would have been
18 surprised. It was such a controversial case such a
19 decision with a—which I deeply disagreed that I would
20 have been surprised if they objected to a separate
21 submission at that time.

22 COMMISSIONER CARAS: Although today the
23 Law Department seems that they would reserve the
24 right to stop us from doing that.

2 VIKTOR KOVNER: Well, I think even they—
3 the fact that they didn't exercise their right
4 doesn't mean that they would say they had no power to
5 stop. It's a—the other—there were so many briefs
6 submitted, it—I have to say it was not the finest
7 moment for the Law Department. I'm hardly objective
8 on it since I opposed them in that case.

9 CHAIRPERSON BENJAMIN: But what is the
10 remedy in a case such as that what is the remedy for
11 the agency or entity that still strongly disagrees
12 with the position that the Law Department is taking?

13 COMMISSIONER CARAS: It—it can meet with
14 co—there's a case pending as to whether it could put
15 in amicus brief, but the first remedy is to ask to
16 put it in the amicus brief and if denied they can put
17 it in an amicus brief with officials not as
18 officials, but as citizens, and—and they can
19 participate in other amicus briefs and set for the
20 their views and I'm sure they can find a way to
21 remind the court that they are not only citizens but
22 happen to also hold some particular office. That
23 case, HUD, which had as we note a happy outcome, you
24 know, the court had wide varieties of views. An
25 enormous number of submissions came in on it.

2 CHAIRPERSON BENJAMIN: Jim, you're next.

3 COMMISSIONER CARAS: How Many times has
4 the Law Department ever—the Law Department and the
5 Council have sued each other. I mean that the Law
6 Department—the Mayor and the Council have been in
7 litigation numerous times since I've been in city
8 government. You know and sometimes the Mayor and
9 sometimes the Council wins. How many times has the
10 Law Department ditched the Mayor and represented the
11 Council?

12 KAREN GRIFFIN: So, it's my understanding
13 that in every instance where the Mayor's Office, the
14 Mayor was adverse to the City Council, the Law
15 Department represented the Mayor in those situations
16 and—and there's a—there's a history for that if I can
17 explain just shortly briefly. I mean one, mayors
18 work incredibly closely with the department as—as I'm
19 sure that the department will—will attest. So, often
20 times we are counseling them the Mayor's Office all
21 along. So, whether we're siding with them or that
22 the Mayor's Office has just adopted the Law
23 Department's legal analysis in the first instance. I
24 can't speak to every case because I—I don't—I wasn't
25 involved in them, but I think it's important to know

2 that the Mayor's Office does work closely with the
3 Law Department. So, that guides a lot of what the
4 Mayor's Office does, and two, there is a history.
5 There's long status case law for when there's an
6 appointing authority that when a conflict exists the-
7 that the authority-that the appointed counsel will
8 represent the appointing authority, and-and, you
9 know, it-it makes sense and it's for no other purpose
10 than you don't have to hire two separate conflict
11 counsels, but-so there is a longstanding story on
12 that. [pause]

13 VIKTOR KOVNER: It didn't happen while I
14 was there. [laughter]

15 COMMISSIONER CARAS: A hypothetical
16 question. A certain borough president is thinking
17 its suing because the administration has not put in
18 its plan for NYCHA infill at Holmes Towers for ULURP.

19 CHAIRPERSON BENJAMIN: [laughter]

20 COMMISSIONER CARAS: One of the factors
21 is she has no budget for outside counsel. Should the
22 Law Department pay or have a separate unit to help
23 with that?

24 KAREN GRIFFIN: So, I'm-I-I with all
25 respect, I'm not going to engage in hypothetical nor

2 will I engage in analysis that—that would may
3 otherwise be a frivolous analysis in a public forum.

4 COMMISSIONER CARAS: And I'm just—this
5 will be it. Couldn't a mayor just decide on his or
6 her own we're taking the borough out of the ULURP
7 process. Nothing will go to the borough president
8 any more and borough presidents don't have the money
9 for outside counsel so they can't sue us.

10 KAREN GRIFFIN: I have not looked into
11 that issues nor do I know whether my office has
12 looked into the issue. So I could not opine on
13 whether or not that the Mayor has that authority.

14 VIKTOR KOVNER: Well, I'll take a crack
15 at it. The answer is that goes to the core powers
16 of an—of another—another city official, the Borough
17 President in this instance, and the tradition and the
18 practice of the law department is to permit and pay
19 for outside counsel for the borough president if—if
20 there's a difference in—as to view as to the
21 applicable law because that—that would undermine that
22 official's authority. So, and I don't think there's
23 any occasion in which outside counsel wouldn't be
24 allowed in the—under those circumstances. So that's

2 pending. I'm sure that the borough president will be
3 able to get the outside Counsel.

4 KAREN GRIFFIN: And that is absolutely
5 the current practice of the Law Department.

6 COMMISSIONER CARAS: One last quick
7 question. I'm sorry. There was a case made of the
8 Mayor and the Council (sic) in the 2007-8 around
9 there. It went up to the Court of Appeals on
10 curtailment, and it was the judge ruled that the
11 Mayor—he called it the Mayor's fury was that any
12 Local Law that lessened the Mayor's flexibility was a
13 curtailment and he—the Court of Appeals shot that
14 down saying that, you know, sort of take into its
15 conclusion that would be untenable position because
16 the Council then couldn't even lower or raise a
17 parking fine because it would limit the Mayor's
18 flexibility to issue a ticket of a different amount.
19 But yet, during that whole time when we were
20 negotiating legislation on all different issues with
21 the Administration, we would constantly be told that,
22 you know, what we were trying to do was a
23 curtailment. Who was the Law Department representing
24 during those legislative negotiations? Were they
25

2 representing the Mayor? Were they representing the
3 Counsel? Were they representing the city?

4 KAREN GRIFFIN: Again, I wasn't privy to
5 those that were involved in these negotiations, but
6 it is--the Law Department is always representing the
7 city of New York. At the end of the day, that is the
8 Law Department's client. So, the Law Department
9 looked for the legal issue and--and will reach a
10 conclusion that it believes is the proper legal
11 conclusion in the best interest of the city as a
12 whole. So, I can only assume that at that point
13 that's what the Law Department, that's who the Law
14 Department was representing.

15 COMMISSIONER CARAS: And wouldn't it--I've
16 never in my 25 years of government gotten, you know,
17 have some from the Law Department tell me well, you
18 know, here's the issue, you know, the may--this is the
19 city's position, but here are all the cases on the
20 other side. You know, here's a legal memo for you
21 guys to use. You know, what--if you're everybody's
22 lawyer shouldn't you be doing that?

23 KAREN GRIFFIN: So, for you guys to use
24 in what context?

2 COMMISSIONER CARAS: To support the
3 argument the Council is trying to make that it has
4 the authority to do so.

5 KAREN GRIFFIN: I think it depends on—it
6 depends on the context. So, if the Council is coming
7 to the Law Department and making a—asking is this
8 something that we can do? So you believe we have the
9 authority to do this. The Law Department will look
10 into that, and reach a conclusion and often provide a
11 memo to the Council stating yes or no and giving the
12 basis for that conclusion and—and presumably in that
13 instance if that was asked, they were provided that
14 memo. If the council is saying, but we want a
15 different answer, can you please provide us with the
16 strongest argument for a different answer, I think
17 then you're kind of running up against where the—the
18 city Charter is saying the Law Department ultimately
19 gets to make the, you know, when there's different
20 issues, the Law Department must look at it, and say
21 well what's in the best interest of the city? What
22 is the most defensible legal position, and what is in
23 the best interest of the city?

24 VIKTOR KOVNER: Do you know in—go ahead.
25

2 CHAIRPERSON BENJAMIN: One--sorry. Go
3 ahead.

4 VIKTOR KOVNER: I just--in '91 the city
5 was facing with an unanticipated recession, and we
6 had to make a lot of reductions in--in--in budget
7 actions of the Council, and there were in those years
8 some--a field you will recall there were many court
9 orders restricting what the city could do and what
10 the city couldn't do, and we were advising both the
11 Council and the Mayor, and what we did was summarize
12 a--the areas of the--of the budget that could not be
13 modified because to do so would violate a court
14 order, and we made clear that in all other areas the
15 judgment as to what--how many should be allocated or
16 reduced was entirely the judgment of the Council. I
17 don't think the Law--Law Department is sensitive to
18 those restrictions that it's got to advise on the law
19 and--and leave the policy judgements to other
20 officials.

21 CHAIRPERSON BENJAMIN: I think I have the
22 last question. You had said, Ms. Griffin that in
23 issues of conflict between two entities that in the
24 end if it could not be resolved, you would lean on
25

2 the side of the appointing authority that that's kind
3 of the established.

4 KAREN GRIFFIN: So, if-if-if it's in
5 conflict so if it's something that is a disagreement
6 that goes to the core duties and responsibilities of
7 an--

8 CHAIRPERSON BENJAMIN: Uh-hm.

9 KAREN GRIFFIN: --independently elected
10 body or official. Historically, the-the Law
11 Department has sided with the Administration when
12 it's the Administration against City Council, and
13 there's case law in support of that like that why
14 that happens because the appointing if it generally
15 the attorney is-represents the appointing authority.

16 CHAIRPERSON BENJAMIN: And if others were
17 appointing authorities?

18 KAREN GRIFFIN: So, if others were
19 appointing-

20 CHAIRPERSON BENJAMIN: [interposing] If
21 there was like either Advise and Consent by the
22 Council, would that change the appointing authority?

23 KAREN GRIFFIN: I that what it would
24 change, it would add another component certainly. I
25 think at the, you know, in that instance it would

2 again be the Law Department making a determination as
3 to what's in the city's best interest, and—and that
4 may change the equation. I mean I—I don't know, and
5 again I wasn't involved in the earlier cases so I
6 don't know what informed the decisions then either.

7 CHAIRPERSON BENJAMIN: Okay. Thank you
8 very much. Are there any further questions? I'd
9 like to thank both of you for coming today.

10 VIKTOR KOVNER: And thank you.

11 CHAIRPERSON BENJAMIN: You've given us a
12 lot to both think about, and I hope that we can call
13 on you again as we wind down this—this process of
14 looking at the Charter. Thank you very much for
15 coming--

16 VIKTOR KOVNER: Thank you.

17 CHAIRPERSON BENJAMIN: --and for sharing
18 your information with us. The next panel is Stan
19 Brezenoff and Doug Murzio—Muzzio. [pause] You don't
20 have to bring your coats down. No one is going to
21 take it. [laughter] [background comments/pause] Why
22 don't you introduce yourselves and the two of you can
23 decide who will go first. [background
24 comments/pause]

2 DOUG MUZZIO: Madam Chair and members of
3 the Commission--

4 CHAIRPERSON BENJAMIN: [interposing] Your
5 mic is not on.

6 DOUG MUZZIO: Excuse me.

7 CHAIRPERSON BENJAMIN: Your mic is not
8 on.

9 DOUG MUZZIO: It is. It's red.

10 CHAIRPERSON BENJAMIN: Yes and you need
11 to pull it closer to you.

12 DOUG MUZZIO: Madam Chair and members of
13 the Commission, thank you for the opportunity to
14 testify before you. I'm Douglas Muzzio. I'm a
15 Professor of Public Affairs at the Austin Mark School
16 of Public and International Affairs at Baruch
17 College, CUNY. [bell] I am a confessed Charter
18 Revision nerd. [laughter] My affliction began 1989
19 when I co-authored the City Council Report for the
20 1989 Commission followed in 1992 as a survey
21 researcher for the New York State Charter Commission
22 for Staten Island. It has persisted through the 2003
23 Commission as an expert witness. That was the non-
24 partisan election, and as a consultant to the 2010
25 Commission, and I've submitted to the Commission two

2 reports that I submitted to the 2010 Commission. I
3 want to congratulate you all for the obvious
4 thoroughness so far of your efforts and the
5 comprehensiveness of your agenda. I was a strong
6 supporter of this Commission because it was more
7 inclusionary of the public and would comprehensively
8 examine the 1989 Charter Changes in light of
9 challenges and opportunity that have arisen in the
10 past 30 years. My feeling is any meaningful review
11 of today's Charter should stay cognizant of the 1989
12 Charter changes, what has worked, what hasn't? Why?
13 How have post-1989 commissions attempted to fix it?
14 Have they been successful? How do we fix it now and
15 on the—and are any unwanted consequences lurking? A
16 comprehensive charter in my way of thinking ought to
17 be framed by three broad themes: Centralize power
18 versus local power and Advise and Consent,
19 governmental checks and balances, essentially how to
20 contain the power of the Mayor, expand the power of
21 other city officials and institutions, and an
22 expansion of an informed and efficacious electorate.
23 In my testimony today, I am prepared to discuss
24 matters of governmental structure and process among
25 them, the role of the City Council vis-à-vis the

2 Mayor through Advice and Consent and enhanced
3 budgetary power, the Public Advocate. We talk about
4 [coughs] reasons for retaining, eliminating or
5 enhancing the office if not eliminating dedicated
6 questions about funding stream and subpoena power.
7 Borough Presidents the same paradigm, retain,
8 eliminate or reduce authorities such as land use
9 decision making and capital planning and budgeting.
10 Next, the role of the corp Counsel, the Law
11 Department, independent budgeting and finally two
12 cautions. I'm under time.

13 CHAIRPERSON BENJAMIN: [off mic] Yes, you
14 are. Stan. [on mic] Stan.

15 STANLEY BREZENOFF: Yes.

16 CHAIRPERSON BENJAMIN: It's all yours.

17 STANLEY BREZENOFF: So, I have probably
18 because I learned about this only a few days ago, I
19 haven't prepared any-any testimony, but I-I do want
20 to make some-some general comments. First by way of
21 how I got here. I think it's worthwhile to see the
22 perspective that I'm bringing to a general set of
23 conclusions about the current-current effort or at
24 least-at least concerns. My first bout in government
25 with the issues of separation of powers

2 decentralization versus centralization was in the
3 mid-60s when as a consequence of the federal war on
4 poverty and approach to develop local empowerment
5 within the—within the city was integral to the
6 thinking of how to deliver on anti-poverty programs,
7 and at that point in timer you may recall there was a
8 heavy emphasis on empowering communities through the
9 creation of structures like community corporations,
10 decentralized school boards with budgetary authority
11 of various—of various kinds, and define streams of
12 dollars. That thinking evolved into broader strokes
13 as it—as it were, and in the City of New York at that
14 roughly during that same period of time the evolution
15 of Community Boards began, and over time the
16 increased empowerment of—of Community—of Community
17 Boards. Doug referenced the 1989 Charter. I think
18 that that Charter revision is seminal and we need to
19 think about the fact that that Charter was a
20 consequence of a major court decision that undid the
21 structure of the government that the city had known
22 for a very long time, principally the Board of
23 Estimate and the principle of one person one—one
24 vote. They called into question the—and ultimately
25 required the dissolution of the—of the Board of—of

2 the Board of Estimate, and an rethinking of the third
3 citywide position the City Council President that
4 became the Public Advocate largely for the argument
5 of having a third citywide official, the debate. I
6 was present at lots of those debates working for then
7 Mayor—for Mayor Koch, was actually to figure out what
8 authority, what responsibilities the city—the Public
9 Advocate or whatever the term would turn out to be
10 who replaced the notion of a City Council President,
11 but always the underlying thought was having a third
12 citywide official and the successor to the—to the
13 Mayor. That was a part of it and this—an additional
14 thought was a rethinking of the role of the borough
15 presidents. The borough presidents at that point in
16 time, though in more—more restricted form than had
17 been the history of the borough president. Some of
18 us in the room, probably just me are old enough to
19 remember with borough presidents had significant
20 budgets, were in charge of the roadwork and the
21 infrastructure in the—in the boroughs. Those were
22 not the how C & Ds of old as—as we think about the
23 consequence centralization of authority that has
24 generally evolved in a straight line in New York
25 City. That thinking reflected a reform approach

2 because of the vulnerabilities, the inefficiencies,
3 the lack of cohesion in city policy and governments
4 that was reflected in the borough presidencies. So
5 all of that was and more was a part of the thinking
6 that went on under the gun because another court
7 order had said no more board of—no more Board of
8 Estimate. The pattern of developing government
9 policy, delivering government services—Was that five
10 minutes?

11 CHAIRPERSON BENJAMIN: Continue.

12 Continue.

13 STANLEY BREZENOFF: Oh, oh, okay. I'm
14 more verbose than I thought. The—but always—let me
15 cut to the chase here. Always the thought that was
16 embodied in the deliberations throughout that
17 particular Charter, which was a fundamental Charter
18 revision was how to retain the concept of a strong
19 mayoralty, and in addition to my many years in
20 government I spent a long time at the Ford Foundation
21 and I think I have more than a passing view of
22 municipalities around the country, and what separates
23 those that do well however imperfectly from those
24 that do not that those who have learned how to manage
25 and assure their fiscal wellbeing and those that have

2 not, and generally, the major principle that
3 separates those cities and, in fact, with New York
4 City being the prime example is a strong mayoralty.
5 Now, I understand, and it was reiterated in response
6 to Victor's comments on the earlier panel that there
7 are no recommendations, no particular proposals that
8 have been put forth, but I have read the background
9 material, pages of the background material, and I
10 offer no added value on the particular issues, but I
11 do have a very strong reaction to what I regard as
12 the general tendency in those documents, which is--
13 would result in a reduction, a restriction of the
14 strong mayoralty that New York City has had over
15 these decades, and I think that would be a very great
16 mistake.

17 CHAIRPERSON BENJAMIN: Thank you very
18 much. Steve, you're the first person who asked.

19 COMMISSIONER FIALA: Thank you very much.
20 We've heard from hundreds of citizens and residents
21 of the city. We've heard from dozens of experts, but
22 I'll preface my remarks by saying of all the panels
23 that we've put together as experts, this is the one
24 that I've looked most forward to. Dr. Muzzio is
25 probably the single most important source for framing

2 my own thought processes as relates to Charter
3 Revision in all the years that we've been in engaged
4 in this. For me it's a little more than 20. Your
5 thoughts not only help inform mine, but the approach
6 helped to inform my approach this time around. So, I
7 thank you for Dr. Muzzio. To the First Deputy Mayor,
8 you're a heavy weight [laughter] and no, and I had
9 the privilege of-of-of having as a friend a former
10 boss and colleague of yours Ed Koch and twice a month
11 for 15 years Ed Koch and I would have dinner for
12 about 5 or 6 hours on a Saturday night and, you know,
13 when I asked Ed who was the most spectacular
14 administrator you had in government, who was the
15 person that you identified as a superstar, he
16 identified you. And that says a lot to me. So, I
17 don't think there are two people more equipped that
18 we'll hear from or have heard from that can offer us
19 the right insights. My focus, and just so you know,
20 Mr. First Deputy, I referred to us as civic surgeons.
21 I-I argue that we have a great document in our
22 Charter. It's always got room for improvement, but
23 it is fundamentally sound with respect to its
24 structure. This is a very complex political ecosystem
25 that we operate in this city, and you mess around

2 with one part and it's amazing the impact it can have
3 on other parts of that ecosystem, but there is one
4 permanent theme that has run through this great
5 experiment since 1898. In 1898, we come together as
6 a city. In 1901, as a result of Brooklyn legislators
7 they're ready to say enough. The centralization is
8 killing us, right? So Albany steps in and enhances
9 the role of the borough presidents. You go another
10 30 years and it kind of ebbs this way. Another 30 and
11 it ebbs that way. In '89 we've had the most
12 substantial reform in our history, but many of us
13 would argue that the underlying tension of
14 centralization versus decentralization continues. Is
15 there anything that either of you envision that a
16 body like this could do to provide for a meaningful
17 voice because there are three levels of government in
18 this city right? Citywide perspective, boroughwide
19 perspective and local perspective, Dr. Muzzio, thanks
20 to you. How could we provide a meaningful voice to
21 the borough executives without disrupting that strong
22 mayoral formula that you referred to?

23 DOUG MUZZIO: Well, as I think there are
24 a number of ways that—that it can—and it can be done,
25 you know, you could enhance the power of the borough

2 president. First of all, the Charter changes gave-
3 took away powers from certain bodies and individuals
4 and gave it to others. They strongly as Stan said,
5 they strongly wanted to preserve a strong mayor form
6 of government. I believe that the borough presidents
7 will weaken to a not inconsiderable extent and at
8 that-and a detrimental extent. I would provide an
9 independent budget for the borough presidents. I
10 require the appearance of departmental commissioners
11 at Mont Clayton (sic) to agency meetings; increase
12 the borough presidents important influence in the
13 ULURP process. There are ways to give the Borough
14 President more power in this very complex city . We
15 have a city of 8.6 million people going to be 9
16 million people and we-we don't have a government
17 fortunately that is simply a top government and a
18 bottom government. We have an intermediate
19 government that can-that can recognize the needs and
20 desires of borough and at the same time work within a
21 citywide paradigm. So, I think that the borough
22 presidents even though greatly reduced in its power.
23 I remember walking across the all to the borough
24 president and seeing real power exercised by the
25 borough presidents. That doesn't happen any more,

2 and I think that the-the 1989 Charter pushed it too
3 much in the-the-the direction of weakening the
4 borough president, and this is a supplemental power.
5 It's not a revolutionary. It's not going to change
6 the basic strong mayor structure of city government.

7 STANLEY BREZENOFF: So, it's possible to
8 agree both with the thrust of the question, and with
9 what Doug has said in a-in a general way, but this
10 surgical approach to governmental structure is hard
11 stuff, and to be mindful of what's involved here,
12 first 1989 is a long time ago. Since then, in order
13 to make government work better, there are things like
14 borough commissioners in the Parks Department. There
15 are community board meetings and aggregate community
16 board meetings where local officials from the
17 important service departments present regularly, and
18 interact with those bodies as well as with the
19 borough presidents. So, I think the rubber hits the
20 road here in involvement versus power and authority
21 because it is important for city agencies and the
22 elements that go into the delivery of services to be
23 ultimately accountable to the Mayor, to the Office of
24 Management and Budget to the Office of Operations and
25 to dilute that or to make it more ambiguous, a quick

2 governance story. When I came back into government
3 with Ed Koch and he had initially about 10 different
4 Deputy Mayors, Carl and William will--will remember
5 that, and I was running an agency at the time, and I
6 was panicked. It seemed to me on the chart I was
7 reporting to three or four different Deputy Mayors
8 and in some sense I was, but I had a revelation:
9 Reporting to three or four deputy mayors is reporting
10 to none. Reporting to a mayor and borough president,
11 et cetera, et cetera. So, I come back to that one-
12 liner: Involvement and engagement role, but power
13 and authority we must be very careful about.

14 COMMISSIONER FIALA: So, could I ask
15 then, there's--there's been proposals advanced in
16 years past, and I heard one alluded to earlier if I'm
17 correct, professor. Would in your view tweaking the
18 Charter to mandate the appearance of commissioners to
19 attend monthly meetings with borough presidents,
20 would that substantially undermine the authority of
21 the Mayor--

22 DOUG MUZZIO: No, that would--

23 COMMISSIONER FIALA: --or is that one of
24 those--?

2 DOUG MUZZIO: [off mic] That was the
3 point that I was attempting to make that these
4 changes would not—all the changes together would not
5 substantially significantly or even to a modicum of
6 it extent impact on the ability of the Mayor to
7 determine policy and government. [on mic]

8 COMMISSIONER FIALA: And finally, several
9 borough presidents over the years have requested the
10 authority to appoint borough commissioners, I assume.
11 I would view that as that would usurp the authority
12 of the central--

13 DOUG MUZZIO: [interposing] Yes, yes--

14 COMMISSIONER FIALA: Administration.

15 DOUG MUZZIO: --there--there are certain
16 lines or ranges where that would transgress.

17 COMMISSIONER FIALA: Thank you for that
18 voluminous material you provided. That's going to
19 prove very helpful. Thank you both.

20 DOUG MUZZIO: Thank you.

21 CHAIRPERSON BENJAMIN: Okay. Sal, Carl,
22 Alison, and Jim.

23 COMMISSIONER ALBANESE: Professor Muzzio,
24 I—I read through your testimony here, and I see that

2 you share my view that the Public Advocate's office
3 makes not institutional sense.

4 DOUG MUZZIO: Yes.

5 COMMISSIONER ALBANESE: And--and my
6 question to you is as I posed to the panel on the
7 Public Advocate is would it be fair for this
8 Commission to consider either providing them with
9 enhanced responsibilities--

10 DOUG MUZZIO: [interposing] Right.

11 COMMISSIONER ALBANESE: --or if we don't
12 abolish the office.

13 DOUG MUZZIO: That--that--that is the
14 position in my testimony and the position of the
15 papers that I have presented to the--the Commission.

16 COMMISSIONER ALBANESE: And is your sense
17 that there's--that this is the only office in the city
18 that is controversial in nature in terms of whether--
19 whether it should be abolished or not.

20 DOUG MUZZIO: Well, it--it derives from
21 the ambiguity of the position. It was never decided
22 what the purpose of the body was, and it was given
23 very discreet powers and--and in the sense all the
24 reforms are purported. It's like random decorations
25 on the Christmas tree.

2 COMMISSIONER ALBANESE: I like that.

3 DOUG MUZZIO: They just hang there.

4 They're not integrated into a purpose that is
5 coherent, logical and--and is--and is adequately
6 funded, in fact.

7 COMMISSIONER ALBANESE: Uh-hm. Well--

8 DOUG MUZZIO: [interposing] I have trouble
9 like you to get grasp, getting my mind around the--

10 COMMISSIONER ALBANESE: [interposing]

11 Yeah.

12 DOUG MUZZIO: --the office and I was
13 involved in the discussions of the then City Council
14 President wring the report for the '88-'89 Charter,
15 and it was a highly contentious discussion.

16 COMMISSIONER ALBANESE: I recall.

17 DOUG MUZZIO: There was lots of politics.
18 I think you mentioned Andrew Stein and there was--

19 COMMISSIONER ALBANESE: [interposing] Why
20 we keep Andrew employed.

21 DOUG MUZZIO: The--the--

22 COMMISSIONER ALBANESE: Right.

23 DOUG MUZZIO: I--I would have to say that
24 was an element in the--in the decision making.

2 COMMISSIONER ALBANESE: One-one more-one
3 more question to you Professor Muzzio regarding the
4 Charter itself. Should we codify that on a regular
5 basis we have a review of the Charter. Things change
6 on a regular basis--very fast. We're in 2019 now.
7 Should we put that in the Charter instead of just
8 waiting for the Mayor to appoint the--the
9 Commissioners?

10 DOUG MUZZIO: I don't know. I didn't
11 think--it doesn't work very well at the state level.
12 I mean we've had what every--every decade that or
13 every 20 years there's a refer--and automatic
14 referendum, and it get's voted down all the time
15 anyway.

16 COMMISSIONER ALBANESE: But this wouldn't
17 be a referendum. This will--we would have--it would be
18 mandating that we have--

19 DOUG MUZZIO: I don't know. I mean the
20 1989 Charter was--was necessitated by a Constitutional
21 crisis. The--the voting scheme and the Board of
22 Estimate is unconstitutional. There is no such
23 crisis now. We have the luxury of thinking not in a
24 crisis situation, and at the same time there there's
25 a negative to that that there is no pressing issue or

2 issues that are motivating us. It's-it's-it's a
3 scholarly exercise. I don't like to-to think of you
4 people as scholars who are examining the document and
5 offering, you know, fixes and-and applauding what-
6 what has worked well.

7 CHAIRPERSON BENJAMIN: Thank you, Carl.

8 COMMISSIONER ALBANESE: Do I get a second
9 round or just?

10 CHAIRPERSON BENJAMIN: Second round.

11 COMMISSIONER ALBANESE: Okay.

12 CHAIRPERSON BENJAMIN: Carl.

13 COMMISSIONER WEISBROD: Thank you both and
14 I guess it's were you stand because you started with
15 discussion of how you started in city government in a
16 period in the 1960s when the thrust was more local
17 control, more neighborhood control and-and we had a
18 Charter at that time where-which vested control in
19 the borough presidents, and in citywide elected
20 officials and not at the-at the local level and the
21 '89 Charter, which I think was sort of boldly written
22 with a-with some-with-with some-probably some
23 trepidation about how the new-newly empowered City
24 Council would work has I think and I speak for all of
25 my colleagues. So, I think there's a general sense

2 that it has generally speaking stood the test of
3 time, but as our chair has from time to time noted,
4 one major change from 1989 to now is—is term limits,
5 and that has I think been—been a new dynamic and you
6 talked about the—the—the need, which certainly I
7 share, of a strong mayor system and the balance
8 between the Mayor and the Council, but there's also a
9 strain of what is the proper balance between the
10 neighborhood and the central—the central city, and
11 that is I think because of term limits becoming
12 harder to maintain as a balance, and just in
13 furtherance of the point that Commissioner Fiala
14 raised is there a role for the borough president just
15 thinking back on the Board of Estimate to think more
16 broadly about issues facing the city and particularly
17 in terms of land use that would lift some of these
18 contentious issues above the more parochial level.

19 STANLEY BREZENOFF: So, here's where the
20 scalpel that was referred is—is required and I'm not—
21 I'm not sure which way it needs to—it needs to cut.
22 One of the—one of the beauties—I know all you would
23 laugh out of the room on this—of ULURP is it's
24 certainty is the timeframes is the fact at least as
25 initially conceived, there's a start and there's a—

2 and there's a finish, and there are assigned roles in
3 the—in the decision—in the decision making because
4 many of us had trepidation because when you're in the
5 centralized government as it—as it were, I tend not
6 to think in such grand terms for the city, but just
7 as you describe it, there's nothing as important as
8 getting something done, getting the job done, getting
9 the project moved, getting the housing done or the
10 bridge replaced. So, how to—and—and, of course,
11 there is a greater good principle embedded in—in that
12 one hopes, any—anyway. So, to safeguard that. How
13 to assure that things, in fact, can get done. On the
14 other hand, how to assure that it really does reflect
15 greater good, best interest, the role—the—the
16 engagement of the—of the community, the—the data
17 points that—that come from—from that—those—those
18 sources. I—I think there is a balance that has
19 emerged in the—in the city of New York, imperfect
20 because certainly there's a lot of uncertainty and
21 projects are not always completed timely. They're not
22 always—they're not always completed. On the—on the
23 other hand there are lots of instances of—for lack of
24 a better term of—of NIMBY and lots of instances where
25 the decentralization of authority can turn into the

2 veto power of an individual an elected official
3 perhaps or a community group. This is a very
4 difficult balancing that a—a balancing act, and I
5 would just urge care and in my long experience the
6 borough presidencies have not always been
7 repositories of statesmanship or the balancing of—of
8 interest. They—they, too, are in the elected
9 official business. I do not say this about the
10 particular borough presidents. I don't know most of
11 them, but I—I do remember the days when they did have
12 a lot of—a lot of power, and stalemates that existed,
13 conflicting policy directions; questions about how
14 resources should be—should be allocated; and in
15 truth, most of the time the issues we're talking
16 about are not impactful, only to the neighborhoods or
17 the—or the borough. Boroughs are kind of artifices
18 and they're—they're essentially counties in a—in a
19 structure. So, I—I have no quarrel with thoughtfully
20 approaching, and deliberating over how to make these
21 things work better, how to enrich the—the community,
22 the community involvement the engagement of—of—of
23 citizenry. But ultimately, the city has to—has to
24 work. It has to grow. It has to be economically

2 viable. Its financial integrity needs to be—needs to
3 be assured.

4 COMMISSIONER WEISBROD: Thank you.

5 CHAIRPERSON BENJAMIN: Alison.

6 COMMISSIONER HIRSH: Thank you both very
7 much for being here. I wanted to actually follow up
8 a little bit on the borough president question, and
9 Professor Muzzio, in your testimony you actually
10 suggests giving the borough president greater input
11 and influence in the ULURP process specifically, and
12 I'm curious as to how you would go about that.

13 DOUG MUZZIO: I don't have any panacea
14 regarding that. I'm just offering that the borough
15 presidents as vital actives in the boroughs, and
16 aggregating so the teaming in the borough should be
17 incorporated in the process in some way. I am not a
18 ULURP expert.

19 COMMISSIONER HIRSH: Okay, thank you.

20 CHAIRPERSON BENJAMIN: Jim.

21 COMMISSIONER CARAS: I don't know if you
22 were both here when I asked for the Law Department or
23 the former Corporation Counsel and the
24 representatives from the Law Department and all the
25 cases in which the Mayor and the Council had sued

2 each other. You know, some of them the Council has
3 won some of them, and the Mayor has one, you know, so
4 many times did they think it was in the city's
5 interest to take the Council's side and the answer as
6 zero. What—what do you—do either of you have any
7 suggestions for how some of the—some would say
8 perceived. Some would say actual lack of
9 accountability of the Law Department to other
10 independently elected bodies could be addressed, and
11 I guess I—I want to be clear. You know, I also agree
12 that we have to have a surgical approach to this.
13 You know, I don't think we should have somebody else
14 appoint the Corporation Counsel, but and I don't—and
15 I think that—I want to be clear the lawyers and the
16 Corporation Counsel are great. I've worked with so
17 many of them for so long, and I don't think they give
18 different answers to the Mayor than to some—a Council
19 Member who calls. I do think when there is—when there
20 are gray areas, and there's a 30% argument on one
21 side and a 70% argument on the other side the
22 independently elected official will be told, you
23 know, no that argument isn't sufficient. You can't
24 do that, and if City Hall pushes hard enough the 30%
25 argument may become a 40 or 50%. I think that's

2 probably how it works. Is there a way we can add some
3 more accountability in there?

4 DOUG MUZZIO: The more structural changes
5 as you do away with the Mayor's appointment of the
6 corporation counsel and created a city attorney as
7 other jurisdictions do like Los Angeles, like San
8 Francisco so you could solve your problem. It's not
9 surgical. It's a--it's more a mass of surgeries.
10 [laughter] It's like the new has. [laughter] But I
11 would expect that's like chloroform, and now that
12 would address the issue because then you would have
13 the city attorney acting in the city's interest,
14 defined as all the relevant actors of the city so
15 they would have to make hard choices. They wouldn't
16 necessarily either explicitly or implicitly
17 prioritize the wishes of the Mayor. So there is an
18 institutional form that could be an anecdote and then
19 if you place the Public Advocate you'd have the same
20 number of offices so, you know, it's economical as
21 well.

22 STANLEY BREZENOFF: I thought you were
23 going to ask me the Holmes question.

24 COUNCIL MEMBER CARAS: [laughter]

2 STANLEY BREZENOFF: The answer is no.
3 No, not to you. [laughter] Inside joke. So, I have
4 to confess I'm not as troubled as it seems that many
5 of you are and I-and I understand the-the disquiet
6 about the unevenness, the raggedness, as it were of
7 the relationships, of the way that questions get-
8 evolve, emerge, evolve, debated and so on. I've run
9 a lot of agencies. I've been a Deputy Mayor. This
10 was true even when I ran the Port Authority with-with
11 two-with two governors. There's Harley Raley (sic).
12 There is back and forth. There's no-there's no
13 cookbook that's going to ultimately avoid this, no
14 hierarchy and language that's going to-the Mayor is
15 the Mayor, the Governor is the Governor, the
16 Comptroller is the Comptroller. They will-they bring
17 big sticks to all of these meetings. In my
18 experience I've lost quite a few battles, one
19 recently.

20 CHAIRPERSON BENJAMIN: [laughs]

21 STANLEY BREZENOFF: [laughs]

22 CHAIRPERSON BENJAMIN: With them on. It
23 is their watch.

24 STANLEY BREZENOFF: [laughs] So, I-I
25 know that happens, but it's sort of the nature, the

2 messy nature of our government. I don't believe it
3 can be completely fixed by any structure because I
4 can imagine all kinds of stuff with an independent-
5 with an independent entity. We see it just
6 institutionally there, not the individuals, but all
7 of us who have been involved in government know the
8 back and forth between city Comptroller and-and Mayor
9 and the-how that affects contracting, how that-that-
10 so what they think of services, how it affects the
11 determination of what's effective and what-what isn't
12 effective. So, you might move the boxes around,
13 restructure something, and there'll be a whole new
14 set of ambiguities and-and uncertainties. To my
15 mind, even with the hard cases, I'm not a lawyer, but
16 I did listen to the discussion with Viktor and I
17 didn't know the-the other lawyer-

18 CHAIRPERSON BENJAMIN: Griffin.

19 STANLEY BREZENOFF: --and to me a lot of-
20 a lot of those were hard cases and I've-I've learned
21 getting instructed by lawyers and all the times that
22 I've been sued that hard cases make bad law, and I
23 think that-that you struggle through those, you work
24 through them. The-the Speaker of the City Council,
25 the-the Mayor, the and the odd case gets to a point

2 where it can't—it can't resolve, and then people
3 figure out how they're going to—the City Council
4 figures out a way to get an attorney to take their
5 other case or some group of citizens does it. It—it
6 gets—it gets worked out and I'd be concerned about
7 trying to do something structural that in and of
8 itself will present new issues not solve very much
9 because as I said, these are hard—these are hard
10 cases. Secondly, I'd be—I want—I want to add
11 something about mayoral agencies, non-mayoral
12 agencies and so on. There's no doubt that the
13 leadership of those agencies even when they're
14 pursuing their cases. Honestly I speak from very
15 painful often painful experience including the
16 recent—the recent example where I'm advocating for—
17 for something, and not all the pieces are coming to
18 together as I would like them, and ultimately it ends
19 up with the Mayor, in other lives the governor or the
20 Governor of New Jersey and it gets decided. Well,
21 there are choices if you can't—if you can't live with
22 it. Somebody has to make the—the judgment. It
23 happens that the—the Mayor is the person in this town
24 who gets elected by the—the majority of the people in

2 the city. So, I'm not as troubled as you are by the
3 unevenness of some of these things.

4 COMMISSIONER CARAS: I'm—I'm persuaded by
5 Stan that there is much to be admired by practical
6 experience, but I'm an active bandit (sic) so I deal
7 with structural change.

8 CHAIRPERSON BENJAMIN: [laughs]

9 STANLEY BREZENOFF: [laughs]

10 CHAIRPERSON BENJAMIN: I have a question
11 for both of you. I come from the days of the Board
12 of Estimate, and I represented Jay Golden at the
13 Board of Estimate for many years and I was in HHC
14 after that. So, I've kind of followed you around,
15 but when the Charter commission was looking at the
16 responses to the quit case and to the invalidation of
17 the voting structure of the Board of Estimate, they
18 could have made other choices, but they chose to do
19 away with the Board of Estimate and to try and
20 rebalance that power elsewhere. They tried to
21 elevate the City Council and to give them certain
22 responsibilities. But since the City Council was
23 viewed by and large as a weak little sister in those
24 days, they—the Charter Commission then also did not
25 want to give too much of the Board of Estimate's

2 responsibilities to the Council because they just
3 didn't think the Council was up to it So, many of
4 the powers that have not been the Mayor's previously
5 that have belonged to the Board of Estimate were
6 given to the Mayor. So, looking now after 30 years
7 and a different Council and what Carl said of, you
8 know, wasn't anticipated was term limits, and that
9 the Council would be changing out, and would not have
10 the benefit of the old sage members who-- Do you
11 still think that balance is the right one that the
12 amount of mayoral power and prerogative is balanced
13 with a check in the system?

14 DOUG MUZZIO: That's a box question.

15 [laughter] It's box way in. Yeah, I think—I think
16 you can enhance the power of the Council vis-à-vis
17 the Mayor without out fundamentally altering the
18 relationship, the strong mayoral relationship. It
19 will—it will weaken it certainly certain—certain
20 reforms, but I don't think it's going to shift—shift
21 the balance where, you know, what was the—of the old
22 hag is now the beautiful young woman. You don't have
23 that just all switched. So, I don't—I don't think
24 that—I do think that you can make incremental
25 changes, and some of the changes recommended by the

2 Council, not all of them, move in that direction,
3 incremental increasing of power to the Council at the
4 expense of the Mayor, but it is not—it is not balance
5 altering. It is not—the—the balance is still heavily
6 in favor of the Mayor. Even if all the—all the
7 recommendations were adopted, which isn't going to
8 happen--

9 CHAIRPERSON BENJAMIN: [interposing] No.

10 DOUG MUZZIO: --and shouldn't happen.

11 STANLEY BREZENOFF: So--

12 CHAIRPERSON BENJAMIN: Stan.

13 STANLEY BREZENOFF: So, I would say that
14 actually a lot of change has occurred even in the
15 period of time that I've been absent from government,
16 and now that I've returned. I am struck by how
17 effectively the City Council through its—with term
18 limits as a limiting factor, how the Council through
19 its committee structure, its oversight of the—of the
20 budget, which I almost every respect I would say is
21 superior to what I remember in the City Council. The
22 one exception being a consequent of term limits where
23 the—the people who led the—the Finance Committee for
24 example back in the day could be in the City Council
25 for years, decades and became as conversant with the

2 Budget as-as the steward at OMB. So, it's hard to do
3 that in two terms, and you do have to rely on staff,
4 but overall I would say that the City Council has
5 filled some of the vacuum, and that's I guess
6 attributable to the membership to the leadership of
7 the-of the Council the Speakers who have had the
8 mantle to-to lead. Again, hard to talk about in the
9 abstract making these kinds of-of changes. It's
10 really important to see in the particular and to be
11 very, very, very, very careful. One of the-it's a
12 long time ago, the Fiscal Crisis was real, and the
13 credibility of the city the ability for the city to
14 bounce back and to demonstrate that it could manage
15 its resources and be trustworthy around revenue
16 projections and expenditures, and definitions of
17 capital expenses and so on is in no small measure
18 attributable to the Mayoralty, and the burden that
19 the Mayor whoever the Mayor is has to accept for
20 assuring the financial integrity. Now as I said, and
21 this is not empty. This is my-my genuine view. I
22 have seen the City Council now in-in two recent
23 assignments over approximately two years in the main
24 embracing that same responsibility, care about
25 expenditures, care about effectiveness of the-of

2 expenditures. So, I don't dismiss the possibility
3 that an elected--an elected body can behave
4 responsibility and effectively in this arena, but I
5 think it has to be very well laid out because you do
6 not want a-delimited Mayor to the point where our
7 face, the city's face to the world as to the
8 integrity of its financial activities is questioned.

9 DOUGLAS MUZZIO: I agree with Stan on the
10 notion of the dramatic improvement in the quality of
11 the Council on many dimensions. I was a Chief of
12 Staff for a Councilman from 1978 to 1980, and it was
13 in a year where Henry Stern's dictum went large that
14 the City Council was less than a rubber stamp because
15 at least a rubber stamp left an impression. That is
16 no longer the case.

17 CHAIRPERSON BENJAMIN: That wasn't Henry,
18 though. Wasn't that what's his name from Queens with
19 the red hair.

20 STANLEY BREZENOFF: No Stern.

21 DOUGLAS MUZZIO: Stern.

22 CHAIRPERSON BENJAMIN: Got it.

23 DOUGLAS MUZZIO: So, it's that it--it has
24 dramatically improved on many dimensions. I mean I
25 remember being the Chief of Staff to a wing of the

2 Council that was known as the Liberals and there were
3 five of us buried at 4951 Chamber Street and Tom Chu
4 (sp?) you know, would send the budget proposals the
5 day after it was voted on. [laughter] I know that
6 that all does, and you're right that incrementally
7 and with the—the 1989 Charter and subsequent changes,
8 you have a dramatic improvement, but I still think
9 that there are steps that can and should be taken to
10 enhance the Council's effectiveness, which—which
11 again balancing out with the necessity for, which I
12 believe, as you do in a strong mayor form of
13 government. I think the benefits accrued to the—the
14 city through the Council or the citizenry through the
15 Council is worth it.

16 CHAIRPERSON BENJAMIN: Thank you. Sal,
17 you were next?

18 COMMISSIONER ALBANESE: Yeah. I—I just
19 wan to echo the words of Professor Muzzio. I—I
20 happen to agree that as Stan pointed out, and you've
21 got more institutional memory probably than anybody
22 in the city, Stan given—given all your roles.

23 STANLEY BREZENOFF: I've lived this long.
24 [laughter]

2 COMMISSIONER ALBANESE: That--that we need
3 a--we need a strong Mayor form of government. I think
4 it's important for the city, but--but we also need
5 clear lines of authority. So, as you pointed out,
6 with ULURP timeframe things get done. We have to
7 move along but there's no reason why we can't make
8 structural reforms that can make the city even more
9 effective, and--and the checks and balances are more
10 effective, and we've seen that. For example, as you
11 pointed out the hurly-burly of government that--that
12 always is going to take place. It comes down to
13 power, you know, the Comptroller's clout, the Mayor
14 the Governor, but we've seen changes for example with
15 the Board of Estimate. I think the '89 Charter
16 despite the Public Advocate was a good thing because
17 a lot of--I was around when the Board of Estimate was
18 around, and there was a lot of--some were passing
19 paper bags around with money and can't stop. I
20 remember those.

21 CHAIRPERSON BENJAMIN: I never saw those
22 paper bags with money.

23 COMMISSIONER ALBANESE: But--but--but--not--
24 not we would go--

2 STANLEY BREZENOFF: He was in different
3 rooms that I was.

4 DOUGLAS MUZZIO: Yes, different--

5 COMMISSIONER ALBANESE: [interposing] But
6 it was-it was-it was cumbersome. It was very
7 cumbersome. Now, and-and-and I think the-the Charter
8 did help in that regard. Also, we saw the same thing
9 happen with the Central Board of Education. Choosing
10 a chancellor was a nightmare until-until that was-
11 that was changed and evolved into a much better
12 system where the mayor was accountable for pointing
13 to the Chancellor instead-instead of going through
14 that horrible process over and over again. So there
15 are things like that that we can do I think that-that
16 can make a difference. I have-I probably know the
17 answer to this question, but I read today for example
18 that there were 14 vacancies in the Administration,
19 deputy mayors, commissioners or agencies. You know,
20 agencies need leadership. Is it possible or what's
21 your view on imposing a time limit for making
22 appointments that the mayor has to make an
23 appointment within 90 days? I mean because I think-I
24 think to have agencies without leadership for months
25 and months and months is not a good thing.

2 STANLEY BREZENOFF: Hmm. [laughter] So, I
3 don't believe that this mayor or any mayor delays in
4 showing the--the significant positions deliberately
5 and I don't think that a--a standard will advance the--
6 the cause of the speedier identification of
7 effectively leadership and if it's an artificial
8 requirement, then they'll simply appoint somebody,
9 and then and someone will replace them. I want to,
10 though tell you what I think is at work in this kind
11 of a--in this kind of environment having watched
12 government for a long time. There are terrific
13 consequences to term limits. In my view, this--it
14 reflects in part a bad consequence of term limits. If
15 you have very difficult positions, challenging
16 positions, positions where the outcomes were--are
17 uncertain where success can be elusive where you need
18 to cast a wide net and perhaps get people to re--to
19 relocate and so on. They're not going to race to
20 work for elected officials, great elected officials
21 who are only going to be in office for a year or two,
22 and we all know what happens in administrations since
23 term limits or when an elected official makes it
24 clear they are not going to stay. As the days perter
25 out people start to leave and more and more positions

2 are filled from within. It's not necessarily a bad
3 thing, but it's just a fact, and I think you're sort
4 of a t the cusp here.

5 COMMISSIONER ALBANESE: Okay.

6 CHAIRPERSON BENJAMIN: Anyone?

7 Gentlemen, I thank you very much, and I hope you'll
8 let us call upon you again and again and again with
9 questions and concerns and as we move towards
10 proposals, maybe you would be willing to come back.

11 DOUGLAS MUZZIO: Yeah, Certainly.

12 COMMISSIONER GAVIN: The Chair doesn't
13 let us applaud but she does let us go like this.

14 CHAIRPERSON BENJAMIN: Jazz hands.

15 COMMISSIONER GAVIN: Yes, thank you so
16 we've looked. (sic)

17 CHAIRPERSON BENJAMIN: Our next forum
18 will be on Thursday, March 21st. [background
19 comments]

20 CHAIRPERSON BENJAMIN: Oh, I'm sorry.
21 Michael Ryan. I'm very, very sorry.

22 COMMISSIONER: You surprised me.

23 [laughter]

24 CHAIRPERSON BENJAMIN: Mr. Ryan, would
25 you please. laughter/background comments]

2 CHAIRPERSON BENJAMIN: I'm very sorry,
3 Mr. Ryan.

4 MICHAEL RYAN: That's okay. Good evening.
5 So, my name is Michael Ryan. I'm the Executive
6 Director of the Board of Elections in the city of New
7 York and for those that don't know, the Board is an
8 independently established body pursuant to the New
9 York State Constitution, and I answer to a Board of
10 10 Commissioners a bi-partisan board of 10
11 commissioners, one from each party from each borough.
12 So, when it comes to elections we are ministerial
13 agency and we follow the rules primarily of the state
14 and to a limited extent the laws that are set forth
15 by New York City. I expect that there will be some
16 questions on ranked choice voting, and runoff and
17 such. So, I'll leave that to the question and answer
18 portion so that I can answer your questions
19 specifically, but I do want to point out something
20 that I think is and—and the Commissioners have
21 indicated is a glaring inconsistency in the present
22 setup, and we've just experienced it by running the
23 Special Election on February the 26th. The New York
24 City Charter as presently constituted does not square
25 well with the state law vis-à-vis the—the operation

2 of elections and special elections in particular.

3 So, under the current City Charter if there's a

4 vacancy in a city office for any office other than

5 Mayor, the Mayor has to issue a proclamation in

6 three—within three days of the vacancy and a special

7 election has to occur within 45 days. That gives the

8 Board of Elections really almost no time to prepare

9 for the election. So, under state law I would

10 encourage this panel to look at Section 42 of the

11 Public Officer's Law and see how some of the

12 considerations that have been given to Special

13 Elections in the City Charter that might not be

14 accommodated in the state law can be dovetailed more

15 neatly. So that the city can still do what it wants

16 to do in terms of elections, non-partisan elections

17 and such, but also meet the timeframe that is

18 necessary to accomplish an election event. So,

19 presently under State Election Law, the Governor has

20 70 to 80 days to—to call for a special election,

21 substantially longer than the 45 days for a special

22 here. The primary reason that that 70 to 80 days was

23 put in place was to make sure that we can meet the

24 mandate of mailing our particularly military ballots

25 within 45 days from the date of an election. So,

2 clearly, if an election must be called 45 days,
3 within 45 days, we can't meet that 45-day requirement
4 to mail to militaries. The other piece of that
5 puzzle is the petitioning process to get on the
6 ballot is set by the State Law, and it has its
7 timeframes inclusive of hearings that we have to
8 conduct in a special election particularly one
9 leaving the other discussions about the Public
10 Advocate off to the side, the current iteration of
11 the City Charter indicates that the Public Advocate's
12 Office is an important one, and so to have that
13 office can be conducted—a special election for that
14 office be conducted within 45 days not leaving any
15 real meaningful time to challenge an on the ballot or
16 off the ballot decision made by the Board of
17 Elections through the use of the court challenge
18 process is a—is a hole in that system. So, now we
19 got the Public Advocate's Office, Special Election
20 that occurred, it's now created another vacancy in a
21 city office and sometime between the certification of
22 this special election tomorrow and the June Primary
23 because of this 45-day rule, we're going to be
24 conducting another special election for the Council
25 Seat that's been vacated—that will be vacated by

2 Council Member Jumaane Williams, Public Advocate
3 Elect upon his resignation, and I under—I think I
4 understand why some of those considerations were
5 made, but I also think in the context of this process
6 this—this body has the opportunity to make some
7 recommendations to make that more in keeping with
8 the—the state timeframes, and also marry within that—
9 the spirit of why the changes were made in the first
10 place. So, really I think our guidepost here is
11 Public Officers Law Section 42, which lays that out,
12 and I think the lawyers on this—for this committee
13 can look at those two things and marry them together
14 in a way that makes more sense for the Board of
15 Elections and the citizens of the City of New York.

16 CHAIRPERSON BENJAMIN: Steve.

17 COMMISSIONER FIALA: Thank you very much.
18 Director Ryan, thank you for being here, and being so
19 patient. I appreciate it. This subject matter that
20 you raise is actually very interesting, and I imagine
21 there are some unintended consequences that would
22 result from—from going forward with it. You know, I
23 don't know what the—the cons are. It seems to me
24 there are a lot of pros right now, but if—if 45 days
25 is insufficient—let me back up. Is the 45 days

2 insufficient because of the military ballots? Did I
3 hear that right?

4 MICHAEL RYAN: That's an element of it
5 certainly.

6 COMMISSIONER FIALA: If 45 days is
7 insufficient, is there a--where's the happy medium?
8 Would you just say jut mirror what's in public
9 offices all 42, you know the 70 or 80 days or is
10 there a better number? 55 days? 65 days?

11 MICHAEL RYAN: Well, I think that we like
12 it closer to the 80 days, and I think that when you
13 consider now that after November of 2019 we will be
14 conducting early voting for every election event from
15 that election moving forward including absent the
16 change including special elections. So, we're going
17 to look to really push to the end of--within our--
18 within the sounds of our voice. I mean obviously
19 there are executives that are elected for a reason,
20 and--and they get to make those decisions within their
21 discretion, but our preference would be pushing that
22 closer to the 80 days to allow for everything that
23 needs to be done to adequately plan for an election
24 including if the Board of Commissioners is deemed to
25 have made an error in taking somebody off the ballot

2 or—or leaving them on the ballot or just that one
3 party or another has a disagreement with that
4 decision, there is no opportunity for meaningful
5 litigation in that regard under the 45-day rule as
6 presently constituted.

7 COMMISSIONER FIALA: And just a follow up
8 final question I have. Has the board—have the 10
9 commissioners—I don't want to say ruled on this. Are
10 they in unison on this matter or would it be possible
11 maybe for the Board to submit to the Commission a
12 resolution saying that, you know, we've looked at
13 this. The impediments are such that blah, blah,
14 blah, blah, we recommend that the Commission adopt X,
15 Y and Z accordingly.

16 MICHAEL RYAN: Certainly I can raise that
17 issue with the Board of Commissioners, but I—I think
18 that I can speak cogently and coherently on this
19 particular issue. The more predictability that
20 people have in the conduct of elections, the better
21 off we're all going to be whether that be candidates.
22 So, so for example a candidate that—that has run for
23 public office on the state system and now is running
24 in a special on, you know, for a citywide elected
25 office, it would be nice to know that the rules are

2 substantially similar—similar enough that you're not
3 reinventing the wheel every single time there's an
4 election being put on.

5 COMMISSIONER FIALA: Well, thank you. At
6 first glance it seems like a common sense course to
7 take. Thank you.

8 MICHAEL RYAN: Thank you.

9 CHAIRPERSON BENJAMIN: SATEESH.

10 COMMISSIONER NORI: Good evening.

11 MICHAEL RYAN: It is a 12-part question.

12 [laughter] And you want—I'm going to take part 9
13 first, and then I'll go to part 7

14 COMMISSIONER NORI: Just really quickly.
15 Do you take a position on ranked choice voting?

16 MICHAEL RYAN: The Board has no official
17 position on—on ranked choice voting. If there's
18 questions regarding the operational concerns, we can
19 certainly have that discussion.

20 CHAIRPERSON BENJAMIN: Okay, let's ask
21 what are the operational concerns?

22 MICHAEL RYAN: Well, presently ranked
23 choice voting can be conducted using the machines
24 that we—that the Board of Elections utilizes and so
25 keep in mind for those people that don't know the

2 Board of Elections does not have wide ranging
3 authority with respect to voting systems that are
4 used. Presently there are two vendors that are
5 allowed to be used in New York State and we use one
6 of them. Both of them have similar systems. You've
7 seen those paper ballots with the ovals, our vendor
8 uses the paper ballots with the ovals and so does the
9 other vendor. So any changes that would be made to
10 the firm ware or the operating software, if you will,
11 of the election system can only be accomplished
12 through action by the New York State Board of
13 Elections. So, we can make--unilaterally make no
14 changes to the system to accommodate ranked choice
15 voting. So, assuming no action by the New York State
16 Board of Elections to make such changes or to approve
17 such changes, that would in a contest where ranked
18 choice voting occurred. Here is what would happen,
19 and this is a 5,000-foot view because all of that
20 depends on how are you going to conduct Ranked Choice
21 Voting? Is it going to be purely Ranked Choice? Is
22 it going to be weighted depending on, you know, you
23 get so much of a weight for you first place votes, so
24 much of a weight for your second place votes and
25 third place votes. So, all of those decisions would

2 have to be made. You know, recommendations by this
3 group and then ultimately amended to the City
4 Charter, but on a very basic level, on election night
5 if we stuck just with who got the first place votes
6 and you want to say that okay, that's going to—first
7 place votes will determine the 40% threshold that
8 could trigger a runoff. If no one gets over that 40%
9 threshold, we don't announce a projected winner in
10 any way, shape or form on election night. Then we
11 have to wait until the following week where we could
12 first start opening our absentees, militaries,
13 oversees ballots. Then we have to do all of that
14 work, come up with numbers and then external of the
15 voting system, plug those numbers into an algorithm
16 that has been determined by the manner in which
17 ranked choice voting is to be conducted. So suddenly
18 the—it is no longer one person, one vote. It is now
19 one person, one algorithm and then you'd have to wait
20 for several weeks down the road not just for us to
21 complete the certification process, but to have any
22 understanding who won or lost without any
23 predictability in my opinion.

24

25

2 CHAIRPERSON BENJAMIN: And so what—I'm
3 sorry. It was not my turn. Sateesh, does that
4 address your question?

5 COMMISSIONER NORI: I'll pass it to
6 Commissioner Hirsh who seems to have a lot of
7 questions. If I could read her mind.

8 COMMISSIONER HIRSH: Okay. Very good.
9 Thank you. Thank you so much for being here. So,
10 you're—you're saying that absent the State Board of
11 Elections acting and protect—and telling the vendors
12 that they have to change the software within the
13 machines, there's no way to count on election night
14 ranked choice votes?

15 MICHAEL RYAN: It depends on how it's
16 going to be administered and unless you're going to—
17 unless we're going to know what the rules are, are
18 you doing top five? Are you doing top three? How is
19 the first place vote differentiated from the second
20 place vote when you're ranking the choice? All of
21 those decisions I ignored to my detriment.
22 Algorithms when they discussed them in high school,
23 but now that I'm in this position as a lawyer, I know
24 enough about them to know that you need to know the
25 rules how the election is going to be conducted

2 before you can craft the algorithm that's going to
3 interpret the data.

4 COMMISSIONER HIRSH: I-I understand
5 that's need another rule. I guess what I am confused
6 by in your assertion is are there any rules under
7 which in a ranked choice voting system you believe
8 that you could count all of the votes on election
9 night?

10 MICHAEL RYAN: You can count the
11 unofficial votes on election night.

12 COMMISSIONER HIRSH: But that's true of
13 any election.

14 MICHAEL RYAN: Correct, but you're
15 talking about a very specific threshold, and I had a
16 little baptism by fire when I first took job. I came
17 in the 26th of August 2013, and there was an election
18 three weeks after I took-I took over as the Executive
19 Director, oh, and by the way, there was a really
20 close call on whether the current mayor reached the
21 40% threshold. So, it is a real issue and we guarded
22 the results of that election jealously until we were
23 sure that we could make an affirmative representation
24 to the city of New York that now Mayor de Blasio was
25 far enough along past that 40% threshold that we

2 could state with confidence. He was, in fact, the
3 nominee for the Democratic Party, which in that
4 particular case was de facto, the mayoral election as
5 it turned out after the general election. So, it's a
6 very important distinction to make, and you don't
7 want to get ahead as city of that representation
8 because the public confidence in my opinion would be
9 undermined. We want to know who the winner is. We
10 want to know who the winner is as quickly as
11 possible, but we don't want to make an assumption
12 that Party A is the victor, oh, and then two weeks
13 later find out well really Party A now has to be in
14 run-off, you know, with-with this other individual
15 under present circumstances or under Ranked Choice
16 circumstances. Oh, well, no because of the way that
17 we assess weight of second and third place votes, the
18 person that got the most first place votes, which can
19 happen and happened in Maine is no, in fact, the
20 winner of the primary election, but actually the
21 person who got more second place votes is the winner.
22 All of these are considerations that I'm just raising
23 and I'm -we're not making the recommendation one way
24 or the other on how it-it's going to operate. I'm
25 just say that these have-these are considerations

2 that must be taken into account when establishing the
3 ground rules for conducting ranked choice voting.

4 COMMISSIONER HIRSH: I have many more
5 questions, but I will pass, but I don't—that I will
6 not ask. (sic)

7 CHAIRPERSON BENJAMIN: Did—did I see
8 your—is Cordero—is it Ed or Carl whose hand was up?

9 COMMISSIONER ALBANESE: So, are mine.

10 CHAIRPERSON BENJAMIN: Sorry, Sal.

11 COMMISSIONER ALBANESE: Yeah, okay. Mr.
12 Ryan, how are you?

13 MICHAEL RYAN: Well. Yourself?

14 COMMISSIONER ALBANESE: Good. The—the—so
15 are you—there's—there's a possibility that we may
16 endorse Ranked Order Voting.

17 MICHAEL RYAN: Right.

18 COMMISSIONER ALBANESE: It's a possibility
19 because we are discussing it. So, are you guys at
20 the board doing any stress testing on—on figuring
21 this out? What the different—different options and
22 how to—how to expedite the process? Are you—are you
23 drilling down on this stuff?

24 MICHAEL RYAN: The stress testing really
25 isn't—isn't so much of an issue for us because we've

2 stress tested our election night results process well
3 past what we would ever expect for, you know, for the
4 number of voters that would—that would show up, but
5 we have had conversations with our vendor about what
6 could be done, and what I was told is that already
7 what I've—what I've told you folks is until we know
8 what the rules are and what the expectation is, the
9 algorithm can't be—can't be determined. So, once it
10 is—once we do know what the rules are, then there are
11 those that mathematicians much smarter than I that
12 can establish an algorithm, and we can put that to
13 the election night results.

14 COMMISSIONER ALBANESE: Are you
15 discussing this with any other jurisdictions? For
16 example, we had folks here from I think it was South
17 Carolina or was it South Carolina.

18 CHAIRPERSON BENJAMIN: Austin. We had

19 COMMISSIONER ALBANESE: Austin and South
20 Carolina. Those folks have implemented it. Are you
21 talking to them?

22 MICHAEL RYAN: I've spoken to a Midwest,
23 you know, it was a private conversation and—and—and I
24 got some--

2 COMMISSIONER ALBANESE: [interposing] So
3 maybe we could—we could--

4 MICHAEL RYAN: --advice, but I think the
5 administrators that are in jurisdictions that operate
6 Ranked Choice Voting are constrained in what they
7 will say publicly with respect to the Ranked Choice
8 Voting.

9 COMMISSIONER ALBANESE: I mean unless
10 they perjured themselves here, the—the folks from—a
11 guy from Austin and a woman from South Carolina were
12 very enthusiastic about Mr. Ryan on that.

13 MICHAEL RYAN: Well, I don't—I don't
14 doubt their enthusiasm, but I also know that they
15 have a structure within which they work and a
16 position that they have to take based on that—based
17 on that structure. I'm not trying to be the cold
18 glass of water. What—what I'm simply saying is there
19 are limits to what we can do to make adjustments to
20 the election system that we presently utilize and
21 until such time as an entity other than the Board of
22 Elections of the City of New York, i.e. the New York
23 State Board of Elections knows what changes needs to
24 be made, goes through the change process, which
25 typically takes 8 to 12 months by the time they make

2 all the changes, and they have it audited by an
3 outside entity, the interim plan would be to conduct
4 the election exactly the way that we conduct it, and
5 to use an external algorithm that would have to be a
6 program that we run separate and apart from the
7 elections machine. So, it would no longer be the
8 elections machines tallying the votes and telling us
9 what the results are. We'd have to tally the votes,
10 then take those votes, pass them through the
11 algorithm, and then give the ultimate results. It-it
12 bifurcates the process is the best way that I could
13 say it.

14 COMMISSIONER ALBANESE: You know your
15 business. I don't mean to tell your business, but I
16 would recommend you reach out to these folks and have
17 some preliminary-preliminary discussions because, you
18 know, they've already done it for a number of
19 elections.

20 CHAIRPERSON BENJAMIN: Carl, you're next
21 and then Alison again.

22 COMMISSIONER WEISBROD: So, I'm sorry. I
23 think I'm a little confused. Just to be clear, did
24 you say that the-the system we have now could with
25 adjustments handle Ranked Choice Voting with enough

2 lead time to [coughing] readjust the current-current
3 system. Is that--?

4 MICHAEL RYAN: That is my understanding
5 that the algorithm could be with proper programming
6 baked into the cake so to speak. So, if--

7 COMMISSIONER WEISBROD: So, if--

8 MICHAEL RYAN: [interposing] And if I'm
9 wrong about that, I will double check that, and I'll
10 get back to this committee immediately, but that's my
11 understanding.

12 COMMISSIONER WEISBROD: So--so we have
13 gotten pretty much across the board testimony here
14 from--as my colleagues have indicated from a number of
15 different places that Ranked Choice Voting whenever
16 it's positives and negatives as a mechanical matter
17 has worked fine, and that voters seem to understand
18 it, and as far as we know at least from major places
19 that have implemented it, it has mechanically worked
20 fine. Do you--are you saying that that has not been
21 the case from what you've heard and I think we would
22 be interested in knowing where it has not worked
23 fine.

24 MICHAEL RYAN: It's--it's not a question
25 of whether it works or it doesn't work, it's--it's a

2 math problem. There is a public education fact--
3 factor associated with that.

4 COMMISSIONER WEISBROD: We're fine. We
5 understand--we understand that and we certainly--

6 MICHAEL RYAN: [interposing] So--so I
7 think from the conversations that I have had, and
8 they have not been extensive, there is a--there is a
9 disconnect between what the system the system can do
10 and whether--whether the machines can add versus the
11 challenges that elections administrators face, you
12 know, when it comes to questions--

13 COMMISSIONER WEISBROD: [interposing] I'm
14 sorry.

15 MICHAEL RYAN: --when it comes to
16 questions at the pole sites educating the pole
17 workers and such like that.

18 COMMISSIONER WEISBROD: Right. So, just
19 let me--if I--I--I just want to be clear on this. We
20 understand--what you're saying is that the--the
21 software and the system itself can be adjusted with
22 enough lead time to make this work as long as you
23 know what the ground rules are and, et cetera and
24 your concern--just to be clear about it, your concern
25 about it, which has not been expressed elsewhere has--

2 is that somehow the--the very implementation of this
3 would create confusion at polling places and that
4 voters won't understand it. Is that--or hear that.
5 Is that a fair statement?

6 MICHAEL RYAN: That's--that's part of it
7 but I think the major thrust of what I was--was
8 saying earlier was if it gets implemented now,
9 you've--you've changed the--the premise of what I was
10 saying. So, I just want to clarify. If it gets
11 implemented now, before the change process conducted
12 by the State Board of Elections is complete, what
13 we're left with then is a bifurcated process. That
14 was the most important point that I wanted to make.
15 Those other things I was--I was simply responding to--
16 to--

17 COMMISSIONER WEISBROD: [interposing]
18 Okay.

19 MICHAEL RYAN: --Mr. Albanese that there
20 are other concerns beyond that.

21 COMMISSIONER WEISBROD: So, Mr. Ryan,
22 just let me be clear. So, if there--if we approved
23 some form of Ranked Choice Voting, and provided
24 enough lead time for it to be implemented, for the
25 machines to be changed, the software to be adjusted,

2 et cetera, et cetera, et cetera that are the two
3 current vendors that the state has approved can
4 accommodate that as long as it's not some crazy
5 system that none of us have ever heard of with enough
6 lead time. Is that a fair statement?

7 MICHAEL RYAN: I can only speak to the
8 vendor that we presently use, and my conversation
9 with them is yes.

10 COMMISSIONER WEISBROD: Thank you.

11 CHAIRPERSON BENJAMIN: Alison, you were
12 next.

13 COMMISSIONER HIRSH: So, this is actually
14 a comment with staff and Chair Benjamin. I wonder if
15 it's possible to speak to the vendors directly as the
16 Commission and understand how they implemented Ranked
17 Choice Voting in other jurisdictions, and what kind
18 of lead time from a technical perspective would be
19 necessary so we could hear directly?

20 CHAIRPERSON BENJAMIN: We will certainly
21 try.

22 COMMISSIONER HIRSH: Thank you.

23 CHAIRPERSON BENJAMIN: Jim.

24 COMMISSIONER CARAS: Just what's your
25 qualification? [laughter] Is there a risk that the

2 state wouldn't authorize the changes or would they
3 have to authorize the changes because that is how the
4 City Charter now reads that our elections are
5 conducted?

6 MICHAEL RYAN: I believe that the State
7 would accommodate since this is a wholly—these
8 elections will be wholly contained within the City of
9 New York and only affecting city offices. I can't
10 imagine a scenario where the state would say no.
11 What I—what I can imagine a scenario though is you
12 have to appreciate the State Board of Elections is
13 not a big entity. It presently has a \$7 million
14 budget. It's looking for a \$10 million budget, and a
15 lot of other changes have been thrown at the State
16 Board of Elections recently with respect to the
17 elections process, and they have other change
18 processes ongoing presently. I have not been aware
19 of a scenario where they're able to do, you know,
20 several of those simultaneously because of how
21 cumbersome they are. I mean there's been a voting
22 system, a new voting system that one of the vendors
23 is introducing and they've submitted over four
24 million—four million lines of code to the State Board
25 of Elections. Each one of them has to go—be gone

2 through line by line to make sure that there's no
3 interference in the overall operation and that gets
4 vetted by an outside vendor to make sure it's
5 alright. So, it is—it is cumbersome.

6 COMMISSIONER CARAS: I would ask that we
7 reach out to the State as well.

8 CHAIRPERSON BENJAMIN: Okay. Are there any
9 further questions of Mr. Ryan? Then I thank you, Mr.
10 Ryan and I'm sure we will be in touch with you. This
11 is obviously a topic of great interest for most of
12 the members.

13 MICHAEL RYAN: Thank you very much.

14 CHAIRPERSON BENJAMIN: Okay. Seeing no
15 other panels [laughter] it's done. Our next forum
16 will be on Thursday, March 21st at 6:00 p.m. here at
17 City Hall on several land use related topics
18 including ULURP, comprehensive planning and
19 franchises and concessions. With that, the business
20 of today's meeting has been concluded. Once again,
21 while you're more than welcome to take the written
22 materials with you, if you could leave your little
23 blue pamphlets so that we could reuse them, recycle
24 them, that would be wonderful, and your name cards.

2 Don't take them away. We want them again. May I
3 have a motion to adjourn?

4 COMMISSIONER ALBANESE: I so move, madam
5 Chair.

6 CHAIRPERSON BENJAMIN: [laughter] Any
7 discussion?

8 COMMISSIONER CARAS: Not now.

9 CHAIRPERSON BENJAMIN: Oh, I thought you
10 wanted to discuss this. [laughter] Are you sure?
11 Sal, do you want to discuss this motion?

12 COMMISSIONER ALBANESE: No.

13 CHAIRPERSON BENJAMIN: You're sure?

14 COMMISSIONER ALBANESE: Okay, all in
15 favor.

16 COMMISSIONERS: [in unison] Aye.

17 CHAIRPERSON BENJAMIN: All opposed?

18 [gavel] The meeting is adjourned.

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C E R T I F I C A T E

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



Date April 24, 2019