

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 25, 2019
Start: 6:04 p.m.
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HELD AT: COUNCIL CHAMBERS - CITY HALL

B E F O R E: GAIL BENJAMIN, CHAIR

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)

RUTH MESSINGER, Former Borough President

VIRGINIA FIELDS, Former Borough President

ALLEN CAPPELLI, Attorney and Borough
Advocate and Activist

PROFESSOR ERIC LANE, Professor of Public
Law at Hofstra University and former
Executive Director/Counsel to the 1988-
1989, Charter Revision Commissions

PROFESSOR JOHN MELLEKOPF, Professor at
CUNY Graduate Center, Director of Center
for Urban Research and former consultant
to the 1988-1989 Charter Revision
Commissions

PROFESSOR ESTER FUCHS, Professor of
International, Public Affairs, and
Political Sciences, Director of the Urban
and Social Policy Program at Columbia
University as well as Former Chair of the
2005 Charter Revision Commission

MARGERY PERLMUTTER, Chair of the NYC
Board of Standards and Appeals

MEENAKSHI SRINIVASAN, Former Chief of
Landmarks Preservation Commission

GABRIEL TAUSSIG, Former Division Chief of
Administrative Law for the Corporation
Counsel

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

LISA KERSAVAGE, Executive Director of
Landmarks Preservation Commission

MARK A. SILBERMAN, General Counsel to
Landmarks Preservation Commission

MEENAKSHI SRINAVASAN, Former Chair of
Landmarks Preservation Commission

PEG BREEN, President of New York
Landmarks Conservancy

MARGERY PERLMUTTER, Chair of NYC Board of
Standards and Appeals and Former
Volunteer LPC Commissioner

ROBERT B. TIERNEY, Former Chair of
Landmarks Preservation Commission

1
2 SARGEANT AT ARMS: Test, test, this is
3 Charter Revision Commissioner Hearing. Today's date
4 is March 25, 2019 this recording is being recorded by
5 Hahn Delute (SP?). (gavel pounding).

6 CHAIRPERSON GAIL BENJAMIN: Good evening
7 and welcome to tonight's public meeting of 2019 New
8 York City Charter Revision Commission. I'm Gail
9 Benjamin the Chair of the Commission and I am joined
10 by the following Commission Members. The Honorable
11 Sal Albanese, the Honorable Jim Caras, the Honorable
12 Lisette Camilo, the Honorable Eduardo Cordero, the
13 Honorable Paula Gavin, the Honorable Alison Hirsh,
14 the Honorable Sateesh Nori, and the Honorable Dr.
15 Merryl Tisch. Would those members, uhm, and the
16 Honorable Lilliam Paoli. With those members presents
17 we have a quorum. Normally we would do a vote now
18 and adopt the minutes. I am going to that to the end
19 because I understand we have severe time limitations
20 from some of the panelists. Today is the conclusion
21 of our series of expert forums on the focus area that
22 we adopted in January. Uhm I have a whole bunch of
23 stuff to say but I am move right to the panel. So
24 that we can have the most amount of time with you.

1
2 And the first speaker to speak about the role of our
3 President is the Honorable Ruth Messinger.

4 RUTH MESSINGER: Thank you very, very,
5 madam Chair and members of the Commission. It is
6 exciting to be here, a little strange to be back in
7 this room. I am going to try to keep my own remarks
8 brief and I thank you for your time adjustment but i
9 am teaching in Harlem at 7:15 so I have my eye on the
10 clock. I am not going to present a lengthy treaty
11 either orally or in writing but I am simply speaking
12 to the importance of continuing to have elected
13 borough Presidents with clear authority to work on
14 borough wide issues and with sufficient office
15 budgets to make it possible for them to do this work.
16 The borough President position I think you really
17 know all of this, but draws its strength precisely
18 from being less narrowly focused, less parochial than
19 individual counsel representatives. It offers a very
20 large and very diverse City and level of Government
21 intermediate between local districts both City and
22 State and the citywide government. There are many
23 issues that ought to bring to city government on
24 behalf of the Council Members and sometimes on behalf
25 of the Council Members and the Community Board Chairs

1 together. A borough president should regularly
2 convene these two groups and urge the members to
3 determine additional and specific budget and land use
4 issues that are important to the borough and then
5 hammer out a borough position rather than letter the
6 Mayor and/or any Commissioner make proposals that set
7 one Council District or Member against another.
8 Similarly, the Mayor and/or Commissioner should bring
9 issues to the Borough President and ask for a
10 coordinated borough position on the matter. I note
11 that some of this happens already did some of this.
12 So, did Borough President Fields but I think more of
13 it should happen and I think more of it can be
14 encouraged structurally by the changes that you
15 choose to make in the Charter and I would note in
16 that regard that I am in accordance with the much
17 more detailed line by line submission made to you by
18 the current Manhattan Borough President. I just want
19 to cite some quick examples from the headlines
20 showing about to demonstrate the power of doing
21 things this way. The question of where and how to
22 design a borough jail. The question of the best way
23 to achieve and improve school integration. The
24 parameters of which site to offer for additional
25

1 affordable houses, of where to sacrifice open space
2 could all benefit from additional borough-based
3 discussion and borough based or borough board
4 negotiations and/or by the borough President. The
5 challenge, one more point first, protecting small
6 businesses. An area where the current Manhattan
7 Borough President has been very involved is just one
8 more example of work that benefits from being studied
9 throughout a borough so I. Effort to keep time. I
10 want to say that during my borough presidency, I
11 think one of the strongest things that happened was
12 the development of a very sophisticated and
13 knowledgeable Land Use Unit which was able to review
14 and comment on Land Use proposals that were
15 eventually going to go before the Council. We were
16 able to influence the Council's consideration because
17 we could bring expertise that was much more difficult
18 for an individual Council Member or Community Board
19 to develop. We could and did provide data and
20 analysis that the involved Council Member could then
21 use in her or his negotiations with the developer or
22 in advancing her or his position. Similarly, our
23 land use unit was available to and used by several
24 Community Boards and developing what the Charter
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1 refers to as 197A plans where communities can be
2 engaged in plotting out some aspects of their own
3 future development, indicating where they want to see
4 growth, where they want to see open space, how they
5 envision changes in traffic patterns and what zoning
6 they would recommend. That works, I think it is
7 something that can be mandated and required for a
8 Community Boards on a rotating basis to develop those
9 individual independent plans before they get hit with
10 requests from Developers. I want to make two more
11 very quick comments. One is that the existence of
12 borough presidents does also provide the public with
13 people that they can consider for citywide offices
14 based on how those individuals have performed in
15 their boroughs. That is a more logical step forward
16 than imagining and guessing which individual office
17 holders could best handle the challenge of citywide
18 positions. One additional point outside the scope of
19 the Borough Presidency, when I was in government and
20 actually when I was on the City Council, that was a
21 million years ago. We required the City to prepare
22 and publish a tax expenditure budget. I believe this
23 provision still exists but I know that on several
24 occasions during my tenure and subsequently the
25

2 report was not published until we asked for it.

3 Given the recent articles about tax forgiveness

4 negotiations around both Amazon and Hudson yards, it

5 would be of interest for this commission to

6 investigate the status of this requirement, ensure

7 that it is mandated and see to it that the document

8 is released annually with the proposed executive

9 budget. Thank you very much, Ms. Fields.

10 VIRGINIA FIELDS: Good evening, Madam

11 Chair and member of the Commission and I thank you

12 for the opportunity to speak before this Commission.

13 I want to applaud to you for your time and commitment

14 and engaging int his critically important process. A

15 given thought to the Commissions charge as it relates

16 to ways to expand and enhance the role of Borough

17 Presidents and how to have the opportunity to ready

18 the presentation of Borough President Brewer and

19 Auto. I wish to support the views and the

20 recommendations made by Borough Present Brewer with

21 respect to the Land Use Matters. Given the fact that

22 a number of changes related to zoning and development

23 have taken place over the last 13 years since I

24 occupied that position and without more in-depth

25 study of the changes and impact, I defer to the

1 current Borough President Brewer who covered the Land
2 Use issues in great detail. One point to make is on
3 the matter on ULURP, that Borough President votes
4 should be changed to binding. On the Community Board
5 level, another major role in responsibility of
6 Borough Presidents, I support Borough President
7 Brewer's comments in relations to term limits of
8 members. Long-time board members through
9 institutional knowledge and awareness can built up
10 the expertise that enable them to navigate and
11 negotiate effectively in the interest of their
12 communities. But in relations to Governance overall,
13 just the Mayor, as Executive Officer of the City
14 under the City Charter is required to communicate to
15 the Council at least once in each year a statement of
16 our finances, government and affairs of the City,
17 etc. and to meet. I propose a formalized
18 institutionalized procedure that requires Borough
19 Presidents not only to submit a written statement to
20 the Mayor as it is generally called for typically, it
21 doesn't always work that way and the Council as well
22 as an annual face-to-face meeting that would expand,
23 enhance and add immeasurable value to the three
24 offices working in a more constructive way on behalf
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1
2 of the City. This could provide a wealth of
3 information and knowledge of Borough President from
4 the perspective of Borough Presidents to discuss
5 budgets, land use issues or other matters that impact
6 residents of the respected boroughs. Pretty much
7 along the line that former Borough President Ruth
8 Messinger actually talked about. Most esuriently the
9 time period should be tied into the Budget and as the
10 Mayor develops the Budget meetings with Borough
11 President, this would be required to gather their
12 input based on the needs of their borough.
13 Presently, such meetings with the Mayor on such
14 matters is directly built on relationships. Mostly
15 along party lines. As a Charter requirement this
16 could be done in the interest of New Yorkers and not
17 on the basis of political parties as to whether a
18 Mayor likes or dislikes a borough present. This also
19 creates a working relationship with the Mayor,
20 Borough President and Council that I think again
21 would be at immeasurable value. So, in my written
22 testimony which I will present to the committee and
23 tonight this is just the oral one. I will expand
24 further on this brief statement as to why I think
25 this is important for consideration as well as speak

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2 to the need for stronger involvement in redistricting
3 process as well as increased discretionary budgets.

4 Thank you.

5 CHAIRPERSON GAIL BENJAMIN: Thank you Mr.
6 Cappelli.

7 ALLEN CAPPELLI: Good evening, my name is
8 Allen Cappelli. Let me begin by thanking the Charter
9 Revision Commission 2019 for inviting me to join on
10 the topic of examining the Office of Borough
11 President. Let me specifically acknowledge the honor
12 it is to be on the panel with two distinguished
13 former Borough Presidents. Some of my favorite
14 office holders and people who I have a great deal of
15 respect for. Uhm their commitment to Social Justice
16 as well as their expertise and handling the office.
17 It also both navigated their jobs having to deal with
18 delegations from Manhattan which are of often a very
19 diverse group of people, strong and independent and I
20 would often say that was a lot like herding cats as
21 they were trying to develop uhm relationship and deal
22 with policies that affected the borough, so the fact
23 that each of the was very successful is a testament
24 to the skills that they have, not necessarily to
25 Charter infused power. I am a native New Yorkers

1 I've been in public service for almost 40 years and I
2 actually started my tenure as an employee of the
3 Manhattan Borough President's Office. Years later I
4 went to work many, many years later I went to work in
5 the Bronx Borough President's Office working for the
6 then Borough President Fernando Ferrera. I have
7 served Governor Mario Cuomo for his entire tenure.
8 He appointed me as Chairman of the Unemployed
9 Insurance Appeals Board. I was an advocate for the
10 Writers as a member of the MTA Board for 8 years, I
11 served several years on the Civil Service Commission.
12 The City of New York had recently left that to join
13 the City Planning Commission. Additionally, I am
14 currently serving as a member of the real estate tax
15 advisory commission of both the Council and the uhm
16 uhm the Office of the Mayor. I offer that a very
17 experienced ideally with public office holders and
18 the conduct of this City. I was also a member of
19 the, I started out as a member of the Planning Board.
20 I agree with much of what my uhm colleagues on this
21 panel have to say and especially with respect to my
22 personal respect Borough President Gail Brewer. What
23 I think, what the City incorporated its various
24 parts, they created a dynamic that the Boroughs were
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1 going to have representation of their own. And as
2 everybody in here is aware when the Court struck down
3 the Board of Estimate which was the ruling body then
4 the City was forced to come up with something for the
5 Borough President to do, comply with one person, one
6 vote standards which in fact empowered the Council.
7 They created a strong merrily to go with the enhanced
8 power and they gave a Hodge podge of things to the
9 Borough President failing to recognize that the
10 Borough President is in a unique position as Council
11 Member Messinger said to really advocate for the
12 Borough and keep a focus on it where often District
13 Council Members don't have the ability to do that.
14 Uhm you know at one time there was a concept and I
15 think it worked to some extent of District Service
16 Cabinet Meetings, Borough Service Cabinet Meeting
17 whereby the services in the, the uhm Borough are
18 coordinated amongst the lead agency officials in the
19 Borough. I think the Charter Commission ought to
20 consider, uhm strengthening that role. I think
21 consideration ought to be given to more appointments
22 being given to the Borough Presidents. You can
23 comply to the voting rights act by uhm making uhm
24 certain appointments you know subject to the
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1 recommendation of the Borough President, so you could
2 have a Borough Fox Commissioner that comes from the
3 uhm, the recommendation of the Borough President.

4 You can have a Borough Traffic, Transportation
5 Commissioner and so on and so forth. Issues that are
6 required to have coordination on a local level that
7 sometimes get lost uhm if you don't have somebody
8 with the Borough concerns on top of it. I know both
9 President Auto and Borough President Brewer are two
10 Borough Presidents who are very much on top of it but
11 there ought to be enhanced power for them to be able
12 to manage the uhm the, the function of service
13 delivery for the Borough. And it's not just in the
14 delivery of resource it is often the coordination
15 amongst agencies who quite frankly it amazes when I,
16 when I talk to various agencies, they don't talk to
17 one another on projects and things just get left out.

18 And so, the Borough President is uniquely qualified
19 to manage the uhm Service Delivery Operations for
20 their, for the fedoras back to boroughs. I will stop
21 talking now so that we can get into some questions.
22 I know my colleagues have to run and then I'll, I'll
23 jump back in after that.
24

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2 CHAIRPERSON GAIL BENJAMIN: Okay I would
3 just like to recognize first that Reverend Miller
4 seated on my left has joined us as has Chair
5 Weisbrod. I'm not quite sure where he is seated and
6 uhm the Honorable Steve Fiala has joined us. Uhm the
7 first question is from the Honorable Steve Fiala. I
8 thought you were first but Sal is second on my list.

9 COMMISSIONER STEPHEN FIALA: Thank you so
10 much. Uhm I've been looking forward to his panel
11 very much. I mean we've got some real experts. The
12 issue that has uhm consumed many of us from the outer
13 borough since the inception of the existing charter
14 that we are operating under has been a borough voice.
15 We have two Borough Presidents here and Mr. Cappelli
16 you have experience across the board so. Would love
17 to hear from all three of you. Does the existing
18 Charter, it seems to me the way the frame, the
19 question with respect to borough empowerment and a
20 meaningful role for that borough voice, the way to
21 frame the question is to ask it very simply. Does
22 the existing language in the current Charter meet the
23 expectations of that meaningful voice and I'd be
24 particularly interested in hearing about your
25 thoughts with respect to Budget? For example, the

1 Charter empowers the Borough President to make
2 recommendations but it has been argued over the last
3 30 years that the Charter doesn't sufficiently
4 provide a meaningful mechanism for enforcing. At
5 least a response of respect from the other players so
6 I viewed the Charter as kind of missing a few dots.
7 If we are connecting the dots, we don't have the
8 whole picture that we need and I would be really
9 curious to hear from all of you with respect to that.

11 RUTH MESSINGER: Uhm Commissioner I
12 absolutely agree with you. I think what I was trying
13 to say is that the Charter as written makes possible
14 most of the things that I talked to, the Eden Borough
15 Presidents feels mentioned. But it doesn't mandate
16 enough of them or as you described it allows them to
17 happen but there is no requirement for a response.
18 That is not a meaningful communication in the
19 structure of City government and so saying when a
20 Borough President makes an opinion on a Land Use
21 issue or makes to take your example, specific
22 recommendations for the use of the City Budget in her
23 or his borough there is going to be a requirement for
24 an informed response not just a thank you very much
25 and some of that it seems pretty clear to me has to

1
2 be mandated. I do want to note since. Mr. Cappelli
3 talked about the, when the role of the President
4 changed, I just want to note for history sake that I
5 was actually involved working with many people and
6 imaging a new Charter back then in the early 80s when
7 I was on the City Council. I knew I was about to run
8 for Manhattan Borough President. I nevertheless
9 thought that this was the only way to comply with the
10 requirement of the supreme court and that what was
11 needed was to beef up the very specific ends, aspects
12 of what a Borough President could do and I feel like
13 we had, we had a room to play with and we did a lot
14 of great things and occasionally we were positive but
15 we would have had much more effectiveness and much
16 more power even if the Mayor was required to respond
17 in a formal fashion to the request from the Staten
18 Island Borough President about the budget or
19 whatever.

20 VIRGINIA FIELDS: And I don't think it
21 comes as a surprise that Borough President Messenger
22 and I agree on the issue especially and I think that
23 is why I kind of sent my comments with respect to
24 institutionalizing, formalizing or strengthening the
25 process in the Charter to make it very clear that it

1 is not just something nice to do to have a Borough
2 President make a statement which nobody perhaps would
3 even read or to say okay they are over there but this
4 where the real game is being played since the last
5 Charter Revision really did strengthen the hand of
6 the Mayor and the Council. Of course, the Borough
7 Presidents have Land Use but Borough Presidents know
8 so much more. Borough Presidents do so much more and
9 their sense in the needs of a borough like now there
10 is really no where to put it. Where it helps to
11 inform Budgets, Land Use decisions before we get so
12 caught up sometimes in things that just become
13 battles. So, I think the language should be
14 strengthened and that's an area by which I think,
15 Edgewood rather that I think that more attention
16 needs to be given. How can we have it written into
17 the Charter that mandates that the statement and
18 these face to face meetings because in the Charter it
19 does state that the Mayor has to meet with the
20 Council in addition to giving them the written
21 statement and it is also pointed out. The way it is
22 written out it really leaves it up to the whims or
23 the likes or the dislikes of a Mayor and we've seen
24 that and we've gone through that. I've certainly
25

1 went through it with Mayor Rudolph Giuliani. I
2 probably had maybe two meetings with him; whatever
3 but it was not around the substantive things that
4 were going on in Manhattan that we knew about, we
5 were working on and we believe could have been very
6 helpful in making some of the ultimate budget
7 decisions and you can have some reasonable you know
8 disagreements but that needs to be mandated and it
9 also gives the Borough Presidents I think much more
10 clout in their own Borough because they are not
11 feeling that they are just out there working and
12 nowhere to house everything that they know and
13 everything that they do. So that's an area that I
14 think we really have to give much more focus and
15 concentration to.

17 CHAIRPERSON GAIL BENJAMIN: Mr. Cappelli
18 did you want to respond?

19 ALLEN CAPPELLI: Well I would my answer
20 would be no; the current Charter doesn't give Borough
21 Presidents the kind of clear authority that they can
22 and should have. The uhm, there is a lot of, as
23 mentioned a lot of vague language and you know can
24 and shall and whatnot. They are part of the
25 Executive Branch of the City and they should, uhm

1
2 have some real power in the Executive Branch of the
3 City as part of the Legislature uhm they can you know
4 as I said you know control or having an effect, the
5 control but having an effect on who was going to help
6 manage uhm the functions of City Agencies and
7 delivery of services as something that clearly could
8 be given to Borough Presidents by making the
9 appointment subject, recommendation by the Borough
10 President like it is with City Planning and Landmarks
11 and other things for them to be a Borough
12 Commissioner or short and uhm they will increase
13 their ability to control the on ground. Just so you
14 know the Chandel Borough President like the Manhattan
15 Borough President currently. He is sitting down.
16 He's looking at traffic patterns. You know he is
17 trying to get DOT to cooperative you know with
18 various other agencies including the DEP and others
19 and he doesn't really have the juice to be able to
20 make that happen under the current system and he
21 should.

22 CHAIRPERSON GAIL BENJAMIN: Thank you
23 very much. Sal and then Jim.

24 COMMISSIONER SAL ALBANESE: Alright good
25 evening it is great to see two of my favorite ex-

1
2 colleagues here in the Chamber. We spent a lot of
3 time together here many years ago. Uhm my question
4 is if you had the option of selecting one additional
5 power for the Borough Presidents Office that would be
6 beneficial to the office and the people in the
7 borough what would it be?

8 RUTH MESSINGER: Well I guess for me it
9 would be what I've said up to this point in terms of
10 the power to help influence decisions around the
11 Budget through different means of communication and
12 mandated communication and working as a part of a
13 team with the Mayor and the City Council because of
14 what I believe Borough Presidents can bring to that
15 process.

16 COMMISSIONER SAL ALBANESE: So, establish
17 a formal process?

18 VIRGINIA FIELDS: That would fall under
19 that establishing, writing into the Charter a
20 formalized process by which this should happen. Not
21 maybe, could, if I like you I will, if I don't I
22 won't, you know that kind of stuff, no, be very
23 specific that there shall be a written statement from
24 the Borough President to the Mayor and the City
25 Council on the variety of issues that we talk about,

1
2 the Budget, Land Use and other matters and an annual
3 meeting, specifically around the Budget time so that
4 the views and the information and the awareness that
5 Borough Presidents have and hopefully help shape the
6 preliminary as well as the final Budget but they
7 don't do that now so that's an area that I would
8 have.

9 RUTH MESSINGER: So, I'm going to try to
10 get in two or three points since you know I have to
11 leave. First of all, I want to, Madam Chair I want
12 to just thank Indiana for her fantastic staffing of
13 the uhm process. It has really been extremely
14 helpful including all the information that she sent
15 out. Second also what I really, what I really sort
16 of align with what Borough President Fields said. If
17 you pushed me to do one thing it would be to mandate
18 the strengthening of the Land Use staffing in the
19 Borough President's Office and mandate how that staff
20 needed to be used because of all due respect, if
21 anybody, right now there is a huge leeway, it is just
22 not a leeway for the Mayor to ignore the Borough
23 Presidents which we are in agreement but also for the
24 Borough President to do what she or he wants with the
25 unit. I think that there should be a map. I don't

1 know how you specify it in size but the Land Use Unit
2 that has a specific requirement to review and inform
3 on major ULUP Projects and on what I spoke to
4 specifically which is making into some system which
5 you would have to sort of design, making that Land
6 Use Unit available to individual Community Board in
7 the borough to do their own pro-active planning. Not
8 all, but every issue in this city is about Land Use
9 and almost all of it is initiated the way it has been
10 for years, largely by the builder community and so
11 the, all of the people in Government have been
12 reacting and we have all seen for a variety of
13 reasons legitimate and illegitimate the first
14 responsive of a community board, of a community board
15 share, of a Council Member, of state leg.. not in my
16 district and that is not just for a homeless shelter.
17 It is for too much height. Its virtually anything.
18 If the in some rotating basis you could go
19 neighborhood by neighborhood and say you know you
20 have use of this Land Use Planning staff I think that
21 the Charter Exhibit A spells a lot of this out but it
22 is to do a plan for the District and maybe something
23 that every district gets to review a plan, do a plan
24 once every 10 years and then it puts some ownness on
25

1 the builder community to be responsive to that and it
2 could eliminate some of the, we just seem to enjoy
3 these battles endlessly and forever. I want to give
4 one example. You may all not agree with what happened
5 but when I was Borough President and David Dinkins,
6 there was no as you all know a great friend of mine.
7 There was a proposal for the development of what is
8 now the Autobahn Biotech up at 168th Street and I had
9 two objects to, to, just an example, I review, I
10 thought it was really insufficient provision to jobs
11 to go to the community despite Columbia's great
12 promises. Nothing was on paper. And I thought and I
13 am aware that Commission Weisbrod will not say
14 anything so I can architectural people did not agree
15 with m that the facade of the ballroom should be
16 capped because of the fame of the Autobahn ballroom
17 but I promise you, that the Executive Branch Mayor
18 David Dingus was against the two things that I
19 proposed and we are absolutely certain that they had
20 to take advantage of this offer from Columbia without
21 tying any additional strings. And for reasons that
22 exist in the bizarre or Kania of New York City
23 Government, they happen to be funding this project
24 with Port Authority Bonds. We can all agree that a
25

1
2 Biotech Station at 165th Street has nothing to do
3 with the Port Authority but that is how they were
4 funding it and the requirement for the Port Authority
5 Bonding was that the County Executive had to sign
6 off. We made the case in court that as Borough
7 President I was the County Executive, we won that
8 case in court and we negotiated an infinitely better
9 agreement and the preservation of the facade which
10 the distinguished architect Lou Davis, subsequently
11 subsequently agreed was a good idea but that was just
12 because that was like one area in which I had actual
13 sign off power, otherwise, I would have been
14 negotiating and David would have been saying you
15 know, we had those discussions like no your ideas are
16 good but we already have an agreement and we can't
17 add anything and because I had veto power we did add
18 things and it worked.

19 CHAIRPERSON GAIL BENJAMIN: Very good
20 example.

21 ALLEN CAPPELLI: I'm sorry, uhm the one
22 thing would be well I; they are related I would
23 mandate uhm Borough Board Meetings on some kind of a
24 schedule and I would mandate and create an effective
25 District Service Cabinet where many of the things

1
2 that, Council Member, or Borough President Messinger
3 stated.

4 CHAIRPERSON GAIL BENJAMIN: Okay she was
5 both.

6 ALLEN CAPPELLI: I'm sorry.

7 CHAIRPERSON GAIL BENJAMIN: She was both.

8 ALLEN CAPPELLI: And I know her, although
9 she was.

10 COMMISSIONER SAL ALBANESE: She was
11 demoted to Borough President.

12 ALLEN CAPPELLI: Well kind of in some
13 respects but uhm because you can create the agenda
14 for the Borough when you are, when you are dealing
15 with the Council delegation. You've got the Council
16 Delegation; you got the Community Board Chairs. You
17 can create the Budgetary priorities for the Borough
18 and you can work in consensus with those people but
19 you could only do it if it is a required and a
20 mandated function of the Borough President because
21 otherwise people are just going to blow the meetings
22 off.

23 COMMISSIONER SAL ALBANESE: Okay thank
24 you.

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2 CHAIRPERSON GAIL BENJAMIN: Okay Jim and
3 then Sateesh.

4 COMMISSIONER JAMES CARAS: I want to
5 thank you all for uhm coming today. It has been
6 great listening to you. I had one question uhm for,
7 well I'll put this to everything. Are there any
8 additional Boards or Commissions that you think the
9 Borough President should have appointments to? DSA?
10 Landmarks Preservation Commission?

11 ALLEN CAPPELLI: Landmarks I believe it
12 has.

13 RUTH MESSINGER: Has landmarks. Right
14 off of the top I can't think of any. I'll give that
15 further thought. Landmarks have that. The...

16 ALLEN CAPPELLI: Uhm certainly the Board
17 of Standards and Appeals.

18 RUTH MESSINGER: Oh, Board of Standard
19 and Appeals.

20 ALLEN CAPPELLI: That is the mechanism b
21 by which...

22 COMMISSIONER JAMES CARAS: That.

23 ALLEN CAPPELLI: City Planning gets run
24 around.

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2 COMMISSIONER JAMES CARAS: It seems that,
3 it, it seems a little odd to me that they would have
4 appointment to the City Planning Commission but not
5 to the BSA as well.

6 ALLEN CAPPELLI: I agree.

7 COMMISSIONER JAMES CARAS: I want to make
8 sure that I am getting right what you said uhm Mr.
9 Cappelli. You think there should be some process
10 whereby the Borough Presidents are involved in the
11 selection of Borough Commissioners?

12 ALLEN CAPPELLI: Yes, I think.

13 COMMISSIONER JAMES CARAS: And do you
14 know what that should look like. Do you have any?

15 ALLEN CAPPELLI: I think that the Borough
16 President should have, it should be a requirement
17 that the make a recommendation to the Mayor. The
18 Mayor doesn't have to accept it. He may have to
19 submit another name it's kinda like. But should have
20 input on who is going to run, you know the, the
21 Staten Island Department of Transportation, the uhm,
22 you know the Parks, uhm the EPA or whatnot so that
23 that person feels that yeah. You know that the
24 Borough President is part of an Executive Branch and
25 he is, he is elected by the people.

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RUTH MESSINGER: He?

ALLEN CAPPELLI: He or she is elected by the people in fact. More shes than hes these days and maybe one day we will get a she for Mayor but the uhm, the uhm absolutely that I think that the real question is what agencies that the Borough Commissioner has real power that shouldn't go through that process?

COMMISSIONER JAMES CARAS: Thank you.

RUTH MESSINGER: I guess that just the current as I you know participate and listen and give thought to come in here this evening. Overall for me again is that the Borough Presidents do much more, they have more information, their interaction at the community levels, by way of community boards as well as public hearings, that they themselves will hold around a variety of issues dealing with Land Use. There is like no place to put all of that to impact decisions at the end of the day and as a result we get into fierce battles quite often that I think can be eliminated, certainly minimized through strengthening the communication, the mandated roles of Borough President and not something like Allen said, I think when he said when the Charter was

1 changed to come up with something for Borough
2 Presidents to do and I think that's what happened but
3 Borough Presidents have shown that it is much beyond
4 that and I think that we need to strengthen it now
5 through these changes and make some of these, you
6 know, institutionalize some of this.

8 COMMISSIONER JAMES CARAS: Thank you.

9 CHAIRPERSON GAIL BENJAMIN: Sateesh?

10 COMMISSIONER SATEESH NORI: Good evening,
11 so I work in Brooklyn. I'm sorry I live in Brooklyn
12 and I work in Queens and I know that the, each of
13 these boroughs has its own unique and distinct
14 characteristics and I think that is true for all of
15 the boroughs but as I think about my kids and their
16 kids, the idea that people identify with the boroughs
17 I think will, will be in question as we move further
18 away from 1898. So, if that is true, first do you
19 think that is true? Do you think that people are
20 going to identify with a particular borough of their
21 birth or where they lived less and less and more as
22 maybe citizens of New York City as a whole? Is that
23 true? And number two, if that is true, what is the
24 role of the Borough President in 50 years? In 75
25 years? In 100 years?

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2 RUTH MESSINGER: Not sure that I can
3 think that far, 50 and 100 years. But uhm I think we
4 probably would live with people identifying with
5 their Boroughs. How many times I go places and
6 people say Brooklyn in the house and everybody
7 shouts, you know Brooklyn is in the house and so. So
8 I think that that's just who we are and we will be
9 associated with our boroughs, where we live but from
10 the perspective of government I don't think that
11 plays so much of a role when we talk about a Borough
12 President making the input around the needs of that
13 borough whether it is an education? Whether
14 healthcare? Senior issues? That's what they know
15 but by making it possible for that input to become
16 part of a broader discussion with the Mayor, the City
17 Council, pardon me, it can be a cabinet of Borough
18 Presidents doing this. You know; however, it gets
19 structured, would at least give some more I think ump
20 if you will to how budgets get set and it, I don't
21 think it will separate people along borough lines in
22 terms of where they live. Whether or not I think
23 Borough Presidents will still be relevant 50 or 100
24 years, of course, none of us know and with trends and
25 changes and so forth but with where we are now and

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2 looking into the immediate and long-term, 10, 15, 20
3 years from now I think the role of Borough President
4 continue to be important. They should be maintained
5 and with some of the recommendations being discussed
6 here and other places I'm sure will only strengthen
7 that role and, in my opinion, make governance of New
8 York City so much better.

9 ALLEN CAPPELLI: Uhm I don't think I
10 agree with your premise and I; I've worked in the
11 Bronx and the Bronx sites are very proud and very
12 much identified with the Bronx as being their
13 community. I've worked in Queens and I was amazed to
14 hear the phrase that they were the forgotten borough
15 which I always thought was Staten Island. Uhm the
16 uhm you know Brooklyn, Brooklyn is where things are
17 happening now and people have strong identity with
18 Brooklyn that is being uhm you know a thriving you
19 know place. Staten Island you know kind of speaks
20 for itself. Manhattan may be the most uhm maybe the
21 most uhm.

22 VIRGINIA FIELDS: Be careful now.

23 ALLEN CAPPELLI: No maybe the, maybe the
24 most dissimilated in terms of thinking of themselves
25 as being New Yorker and not Manhattan Heights. But

1 that doesn't change the premise of somebody focusing
2 on the needs of that particular geography. I mean
3 it's not necessary about identification, it's about
4 who has got their eye on the big picture and it's
5 not, it's not necessarily you know the Councilman
6 from uhm you know the Lower East side, or Washington
7 Heights or Jealousy or whatever, it's going to be
8 somebody who is looking at all of the neighborhoods
9 and the allocation of services and programs and what
10 not who is going to bring a broader perspective to
11 bear and uhm I think that's, that's the important
12 role that is really something for the Borough
13 President to have, uhm and will be, it will be here
14 50 years from now.

16 VIRGINIA FIELDS: And to the part. I
17 think it continues but we had started monthly
18 meetings of all of the 5 Borough Presidents where we
19 ourselves would just get together and we found that
20 there were a number of common issues that we had, for
21 which we could support each other on the Budget as
22 well as some of the policy issues and we found that
23 to be helpful because there was not a way for us to
24 interact say with the Council and the Mayor in the
25 way that we are discussing it here tonight.

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2 CHAIRPERSON GAIL BENJAMIN: I actually
3 have a question and I am going to take my prerogative
4 of Chair so that I can ask my question and then I
5 understand that Jim has a followup question but I am
6 interrupting him. Uhm you've talked about the role
7 of the Borough President and the unique knowledge
8 they have about the borough, would it be useful do
9 you think if there was a formalized role for some
10 type of Borough wide plan that the Borough President
11 helped to develop every 10 years or so where the
12 Borough President working in concert with I don't
13 know their Community Boards, etc. looked at areas of
14 growth, looked at areas where they thought growth
15 could really be sustained, looked at areas that they
16 thought were no longer as useful in the same ways,
17 and came out with their own recommendations for how,
18 the development of the borough both physically as
19 well as service wise.

20 ALLEN CAPPELLI: Okay uhm yeah, I think
21 that of uhm, having uhm a, a planned and scheduled
22 adoption of a blueprint for the future on a periodic
23 basis. I don't know if it is 10 years, 8 years, I
24 mean term limits complicate things so much. You know
25 in this scenario; it is extraordinarily useful. Uhm

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2 so that uhm you know that you try to get people in
3 various levels of government the Council and the
4 Mayor and other people to understand you know the,
5 the desire for uhm you know progress for the future.
6 Yes, I agree.

7 CHAIRPERSON GAIL BENJAMIN: And yes I
8 would agree and I was thinking too along the line of
9 8 years would probably kind of be the cause of term
10 limits which gives a new Council Member as well as a
11 Borough President to reassess where we are and to you
12 know make some changes if necessary based on new
13 information but at least it's a good starting point
14 because when you get into those offices like, you
15 know. There are a number of things you may very well
16 continue from a previous Borough President as I'm
17 sure it is with Council Members but you may start
18 totally different. So, with the blueprint it is at
19 least a good starting point that some thought has
20 been given to what the plans for this borough should
21 look like and a number of, a number of areas and you
22 make your own assessment and go from there so. But 8
23 years not 10.

24 RUTH MESSINGER: Well but don't you.
25 Well I'm.

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2 VIRGINIA FIELDS: I'm guiding a little
3 there. I think that for a plan to be reasonable and
4 effective it needs to go beyond one person's term.
5 It can't just be changed each time there is a new
6 person in that seat or it's not really a plan it's a,
7 I'm not sure what but I do think that if it happens
8 it has to be for a long enough period of time that is
9 an accepted community issue that others can count on
10 so that if you have a building cycle and you are a
11 developer and this is the plan and then Virginia
12 Fields is not the Borough President just as you are
13 putting the spade in the ground it shouldn't be
14 changed.

15 RUTH MESSINGER: Yeah and as a leading
16 planner as you are, I'm not going to quiver with you.
17 But I would just simply say yeah that no I agree with
18 you. You wouldn't just commonly disrupt but you've
19 got to leave space for a person to come in based on
20 new information, change, trends and we have seen that
21 in a number of areas in our boroughs, what was I
22 place, happening 5 years ago, very different now in
23 terms of a number of you know people who come,
24 changes that have been made, rents that have gone so
25 high, forced a lot of the small businesses out. Got

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2 a very different community. So, all I'm saying is
3 that it has got to be opportunities. You've got the
4 blueprint but we would have an opportunity to based
5 on new information.

6 CHAIRPERSON GAIL BENJAMIN: Allen did I
7 see you trying to?

8 ALLEN CAPPELLI: I, well I was going to
9 say that yeah I agree with you that change comes
10 slowly and particularly now that I'm sitting on the
11 City Planning Commission I see things that I was
12 fighting for and advocating when I was on the
13 Community Board 40 years ago finally coming to
14 fruition today or hopefully today. So, you know
15 there, there should be a long term and a short-term
16 plan.

17 CHAIRPERSON GAIL BENJAMIN: Okay.

18 ALLEN CAPPELLI: Or uhm something that's
19 you know broader in scope for, you know, for the
20 Borough.

21 CHAIRPERSON GAIL BENJAMIN: Okay, thank
22 you Jim, did you?

23 COMMISSIONER JAMES CARAS: This is more
24 for Mr. Cappelli along what he said is just having
25 gone from a Community Board, working for a Borough

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2 President and now sitting on the City Planning
3 Commission, is there if you, if you, could say there
4 is one thing, one land use enhancement we can give
5 the Borough President I understand we are probably
6 not going to give the Borough President any kind of
7 binding authority you know in the ULURP Process, what
8 would that be in terms of both sort of in terms of
9 the Community Board role up through the Borough
10 President role?

11 ALLEN CAPPELLI: I think honestly that
12 the Borough President and the City Planning
13 Commission should have greater ability to negotiate,
14 you know subject to the Council's ultimate approval
15 but now I think that both are uhm, are short changed
16 when they have in fact much of the technical
17 expertise.

18 COMMISSIONER JAMES CARAS: Okay thank
19 you.

20 CHAIRPERSON GAIL BENJAMIN: Seeing no
21 further questions, I would like to thank the panel
22 and ask that if uhm and hope that. And we are right
23 on schedule, hope that uhm if there are additional
24 questions from the members, we can count on you to
25 uhm be in dialog with us. I know that Borough

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2 President Fields said that she would be submitting
3 some written comments. If you would like to submit a
4 written submission that would be quite nice.

5 ALLEN CAPPELLI: Thank you.

6 RUTH MESSINGER: Thank you.

7 CHAIRPERSON GAIL BENJAMIN: And we hope
8 to be in touch with all of you. We thank you for
9 being a part of this and we will be in touch and we
10 thank you for your services. Thank you.

11 ALLEN CAPPELLI: I am always available
12 and my number is, everybody in the world has it so
13 thank you.

14 CHAIRPERSON GAIL BENJAMIN: Thank you
15 very much uhm I would like to take a minute right now
16 to entertain a motion to adopt the minutes of the
17 Commissions meeting held on March 21st here at City
18 Hall. A copy of which has been provided to all of
19 the Commissioners?

20 FEMALE: Motion.

21 CHAIRPERSON GAIL BENJAMIN: Second?

22 MALE: Second.

23 CHAIRPERSON GAIL BENJAMIN: Any
24 discussion? All in favor aye?

25 ALL: Aye.

2 CHAIRPERSON GAIL BENJAMIN: Opposed? And
3 the motion carries. We are now going to start on a
4 second panel to discuss the structure of government
5 and balance of power in general which as you know is
6 a big issue in the 1989 Charter. We will be joined
7 by Eric Lane, John Mellenkopf, and Ester Fuchs all of
8 whom have experience with past Charter Revisions.
9 Please go ahead and come up to the dais, introduce
10 yourself and share any initial comments that you
11 have. As with the prior panels, each person will
12 have approximately three minutes to give an
13 introductory speech and then we will begin the
14 questioning. Professor Mellenkopf you are sitting at
15 the end so would you like to go first? When the red
16 light is on your mic is on.

17 PROFESSOR JOHN MELLENKOPF: Got it.

18 CHAIRPERSON GAIL BENJAMIN: But you prob...
19 you need to bring it fairly close in order to be
20 picked up.

21 PROFESSOR JOHN MELLENKOPF: Good evening
22 Chairperson Benjamin and distinguished members of the
23 New York City Charter Revision Commission. My name
24 is John Mellenkopf and I teach and do research in
25 Urban Politics and Policy at the Graduate Center of

1 the City University of New York and it is a pleasure
2 to be here tonight both with you and my distinguished
3 colleagues, Eric Lane and Ester Fuchs. In my short
4 time let me address some of the questions that you
5 raised in Commission documents and suggest one brand
6 new idea for you to consider. As my CUNY Colleague,
7 Doug Musseo testified last week and as Professor Lane
8 will undoubtedly elaborate through deliberations
9 essential amount to an assessment of how well the
10 1989 Charter Revision has fared over the three
11 decades since its enactment. It is a change to
12 confirm what worked from that pivotal effort and to
13 correct what did not. It's basic, the basic aim of
14 that Charter Revision was to dismantle the Board of
15 Estimate and to reallocate its powers to the City
16 Council and to the Mayor thereby substantially
17 reducing the powers of the Borough Presidents. In
18 the main, the 1989 Charter Reform has worked quite
19 well and my overall message is don't fix what is now
20 broken. Perhaps the most important challenge of
21 implementing the 1989 Charter was empowering the City
22 Council to be an effective representative and
23 democratic body. As Henry Stern told many of us at
24 that time the previous council was worse than a
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2 rubber stamp because it did not even leave an
3 impression. Today it is safe to say that the City
4 Council was full of able members who represent their
5 highly diverse constituencies very well. The second
6 aim of the 1989 Charter Reform was to continue the
7 long march to empowering the Mayor and reducing the
8 influence of partial and special interest that often
9 express themselves through the Borough Presidents on
10 the Board of Estimate. The New Charter is that
11 better.

12 CHAIRPERSON GAIL BENJAMIN: No, it's not
13 you, there is someone.

14 PROFESSOR JOHN MELLEKNOPF: Oh sorry.
15 Pardon me. The New Charter succeeded in this aim as
16 well giving us a series of iconic Mayors who whether
17 we liked them or not had the power to respond to the
18 crisis of these times and were held accountable for
19 their performance. The 1989 Charter Revision
20 Commission made a halfway compromise on the position
21 of public advocate. My understanding of the thinking
22 within the 1989 Commission and its staff was that
23 they lean toward abolishing the position of City
24 Council President. The primary reason that they did
25 not do so was a fear that the incumbent Andrew Stein

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2 would spend a lot of his own money to defeat Charter
3 Reform. In the past 30 years, the primary function
4 of the Public Advocate Position has been to provide a
5 platform for aspiring candidates for higher office to
6 win a citywide election and achieve greater political
7 visibility. Generally, to the decrement of City
8 Council Leaders who also sought to be Mayor.

9 CHAIRPERSON GAIL BENJAMIN: You can sum
10 up. You don't have to cut it off.

11 PROFESSOR JOHN MELLENCOPF: Well,
12 basically I practiced this but obviously not well
13 enough. What I, what I want to say is that I would
14 not change the powers of the Borough Presidents or
15 the Public Advocate. I would not give the Public
16 Advocate such things as the Power to Subpoena
17 Evidence and I would however, back the what I think
18 was the best invasion of the 1989 Charter Reform
19 which was the Independent Budget Office which I think
20 has done a great job and in concluding I would like
21 to put an idea before you to consider which would be
22 a large scale survey of New York City residents that
23 would be big enough in sample to give results at the
24 Council Level or the Community District Level that
25 would track how they interact with City Government

1
2 and what impact interacting with City Government has
3 on their life course and this would allow us to
4 answer many, many questions that current data sources
5 do not. Just to give one small example, we are going
6 to have the 2020 Census soon. We could use such a
7 survey to detect where undercount was happening and
8 help to adjust for it and I think it is an idea worth
9 considering, so thanks very much.

10 CHAIRPERSON GAIL BENJAMIN: Thank you
11 very much. Professor Lane?

12 PROFESSOR ERIC LANE: Thanks for having
13 me.

14 CHAIRPERSON GAIL BENJAMIN: You got to
15 bring the mic up, make sure the red light is on.

16 PROFESSOR ERIC LANE: Okay thanks for
17 having me and thanks for the good work that you've
18 undertaken to do. I was the Executive Director and
19 Counsel to the Charter Commissions from '86 to '89
20 and was the Chair of the Mayors Implementation
21 Commission of the New Charter in 1990. I'm going to
22 talk to you very quickly about how we approached,
23 the thing about political and executive power and
24 power, we had adopted four of five principals, namely
25 fair representation, clarity and accountability,

1 checks and balances and meaningful, uhm fair and
2 meaningful representation and I think that with
3 respect to each of them we accomplished quite a bit
4 with respect to representation. The City Council
5 increased the maintenance of the public advocate
6 which I hope someone will ask me about because I
7 think John has it entirely wrong. Uhm, the uhm you
8 the uhm, did a number of things with respect to
9 clarity, we gave the Mayor for example power to be
10 entirely in charge of contracts, so that everybody
11 would know who was in charge of it and a number of
12 other similar things. Uhm there are a number of
13 questions that I've had in my mind watch you and
14 thinking about government in the last uhm period of
15 uhm years since we did what we did. Uhm I think we
16 actually made. So, I'm going to talk to you about
17 some mistakes I think we made or some things that I
18 think we need to learn from with respect to the
19 Public Advocate. I think we should guarantee their
20 Budget. I'm someone that advocates the continuation.
21 I think when people are talking about how good or
22 bad, they are they forget that from the First Council
23 on where the Budget has been slashed in half, $\frac{3}{4}$, just
24 been brutalized. I think that another very serious
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1 thing that I think Gail is intimately knowledgeable
2 about is this member veto that has cropped up under
3 the last speaker for Land Use decision making in
4 particular districts. I think that's corrupting and
5 I don't mean that in a sense of criminal corrupting.
6 I mean legislative bodies are about bearing the full
7 weight of the members on policy, not about giving an
8 individual the right to stop a project in the area.
9 I don't know enough about what has happened with Fair
10 Share, it strikes me that it has gotten umh I
11 thought it was a great idea when we did it. Umh we
12 didn't give it many, much teeth it has been
13 criticized for that. I'm not sure what you would do
14 about it but I think it is something that you could
15 really take a look at. I think the corporation
16 council needs to be looked at to make it really to
17 make the Corporation Councils Office really the
18 City's Legal Office. It is a great office they have
19 filled with wonderful people. Many of my students
20 are there so it's not about them. It's about their
21 sense of who they work for. So, they there have to
22 be some counsel or other involvement with respect to
23 the Corporation Council and then some minor things
24 that were big to use when we did it, itemized

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2 budgets. I think they've really mucked that up or I
3 don't, impoundment by the Mayor. I think its been
4 really, we tried to work through some revisions with
5 respect to the. I'm not sure we are good enough to
6 solve the problem and that's basically it. I am
7 happy to answer any questions for you. I'm sorry I
8 was so quick.

9 CHAIRPERSON GAIL BENJAMIN: Thank you I
10 think will be quite a few. Professor Fuchs?

11 PROFESSOR ESTER FUCHS: When the light is
12 red its on? Okay that's a little backwards but it
13 will work for me. Good evening Chair Benjamin and
14 Honorable Members of the New York City Charter
15 Revision Commission. Uhm I am Ester Fuchs a
16 professor of international and public affairs and
17 politic science at Columbia University and some of
18 you may know Chair the 2005 New York City Charter
19 Revision Commission, hi Steve. A repeat, a repeat
20 offender. I know I have very brief amount of time so
21 I will try and make my points as briefly as possible.
22 Uhm the Charter Revision Commission comes at a very
23 important time as the public's confident in National
24 Institutions of Government are at an all-time low. I
25 don't have to tell you right now, only 18% of

1 Americans today say they trust government in
2 Washington to do the right thing and uhm it gets
3 worse than that and I'm convinced as you probably all
4 area that the strengths of our Democracy as a nation
5 is ultimately will depend on how well our
6 institutions of local government work, sort of o its
7 head from when many of us were in school but really
8 now it is the Cities that lead on everything,
9 including democratic governance and in New York City
10 this will be determined by whether the public thinks
11 that City Government is fair, accountable and
12 responsible to its needs. So, I have a couple of
13 specific proposals to present to you but I just want
14 to make three general points first. Uhm in a system
15 of Democratic governance that intentionally depends
16 on institutions of representation for legitimacy.
17 This process of Charter Revision is the closest we
18 come to engaging in direct democracy where the public
19 actually makes policies. So, it is important to do
20 no harm as other people have said and to recognize
21 that we are fundamentally a representative democracy
22 which makes the legislative branch as well as the
23 Executive Branch exceedingly important from the
24 perspective of maintaining public accountability and
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1 where does the Charter fit in in all of this? We
2 like to think of our Charter as a constitution.
3 However, we all know that it is a considerably more
4 expansive document and that the level of our can
5 detail about the most obscure government agencies
6 minimally gives one pause. The sheer size of the
7 City Charter belies this idea that it is a
8 constitution. The constitution has 17 pages on a
9 good day and 17 pages of amendments, our Charter is
10 over 300 pages, yet there is reason to continue
11 describing the Charter as a constitution. Uhm and
12 the document is not exclusively or primarily one of
13 general principals. So, as I keep this in context I
14 want you to bear in mind five very quick as I ran out
15 of my time as professors often do, I apologize but I
16 want to make five quick proposals in keeping with
17 this idea that our, our Charter really have two
18 purposes to it. It is a legal framework for the
19 functioning of our local democracy and it also is a
20 management tool for getting us into the 21st Century
21 and operating a service delivery system that is
22 effective. So first on the public advocate issue,
23 I'm not, I, I think that issue sort of is done in
24 some way. We have a public advocate we have to let
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2 it work. I certainly, if I had the opportunity to do
3 this over again, I would have certainly figured out
4 something somewhat different from what we have now.
5 Given that we have a Public Advocate, I think an
6 important thing that the public advocate could do is
7 manage a Citizen Survey. A little bit along the
8 lines of what, of what John was saying, even though
9 we did not talk to each other. So, I propose this
10 citizen survey administered and managed by the Public
11 Advocate that would be conducted every year and there
12 is a template for this survey. In 2008, Public
13 Advocate Betsy God pound conducted a survey of
14 130,000 randomly selected New Yorkers and in my
15 written testimony I describe what the benefits of
16 this survey could be. So, to the extent we are
17 interested in keeping abreast what our public thinks
18 and given that we have that we have the modern tools
19 of technologies, other cities do this. We should be
20 doing this. Community Boards. No one has talked
21 much about Community Boards yet and I just want to
22 say, reminding everybody that we have 59 Community
23 Boards, uhm and they are another form of governance
24 structure that was designed to improve our democracy
25 by bringing government closer to individuals in the

1
2 neighborhoods. They don't quite do that, as, as man
3 of you already know and so my proposal at this point,
4 and I won't go through the details of the problem
5 with Community Boards but my proposal at this point,
6 there are 59 Community Boards. They are co-
7 permanents with nothing. They were supposed to be
8 co-terminates with service delivery districts, that
9 hasn't happened. So, I don't think that we need to
10 eliminate them but I think that we need to make them
11 co-terminates with City Council Districts. I can
12 explain more why I think that at another point.
13 Three, I would like to see open primary and ranked
14 choice voting in general elections. There is no
15 question that the level of participation not in New
16 York City is unacceptable. Uhm as a private citizen
17 I've worked hard to improve this through who's on the
18 ballot. If this isn't enough, here is where a
19 structural change could help us dramatically. Make
20 all registered voters eligible to participate in an
21 open primary for Council seats and citywide offices.
22 You could have party labels in this primary. I'm not
23 saying that I am partisan. The top two voter getters
24 would face each other in a rank choice general
25 election. Four, a rainy-day fund. Others have spoken

1
2 about this in the context of fiscal issues. Uhm my
3 Charter Revision Commission spent a lot of time on
4 this and I can explain more why I think we need to
5 create a rainy-day fund, even though we don't have
6 the legal authority as a city to implement it. It
7 would be an excellent message to the State
8 Legislature so that we actually have something real
9 and accountable and transparent that is put into
10 place so that we can evaluate what is actually going
11 on in our budget, uhm and I know Commissioner Fiala
12 might have a lot of say about that. Finally, I would
13 like the rem... that a change, an important structural
14 change made I regard to the department of
15 investigation. Make the removal of the Commissioner
16 of Investigations subject to the approval of the
17 Council. This is one of the few places where I think
18 the Council is too weak and the Mayor has too much
19 authority. We are currently in an untenable
20 situation it is impossible for a Department of
21 Investigation Commissioner to do their job and I
22 won't go into more details about that. There, these
23 are my five proposals. They are related to really
24 general principles that I think we can all probably
25 agree about and if you are interested in that, you

1
2 can look at the written testimony or I can answer
3 your questions. Thank you for your indulgence.

4 CHAIRPERSON GAIL BENJAMIN: Thank you.

5 PROFESSOR ESTER FUCHS: With the time I
6 appreciate it.

7 CHAIRPERSON GAIL BENJAMIN: Uhm Carl,
8 then Sal, then Jim, I will remind you when your time
9 is here.

10 COMMISSIONER CARL WEISBROD: Thank you
11 uhm so first I really want to thank you uhm Ms.
12 Elaine for what I think everyone generally recognizes
13 is that the 1989 Charter had a very high batting
14 average and got almost everything right and uhm, the
15 City has been the beneficiary of it and I, also want
16 to uhm to just personally thank you and uhm Chairman
17 Schwartz for your excellent Law Review Article which
18 really did help at least guide me as I think about
19 the task before us. I have two questions, both to,
20 first to you but to the entire panel. One is, you
21 had mentioned Council Member Veto which is a concern
22 I think, not only here but in cities throughout the
23 country, exacerbated I suspect by uhm term limits?
24 And uhm my first question to you is, do you uhm see a
25 uhm a Charter Remedy problem for that one problem.

1
2 That is one issue and then second which is, I'm more
3 or less a broken record on. In 1989, the Charter
4 Commissioner considered whether to uhm reinstitute
5 the Department of City Planning's partnership with
6 OMB, on preparing the tenure Capital Strategy and
7 shied away from it for reasons that you didn't
8 explain in your lawyer, your Law Review Article and
9 so I'm wondering whether that should be uhm
10 reinstated or, or not or why you shied away from it
11 at the time.

12 PROFESSOR JOHN MELLEKOPF: So, with rest
13 to. The chart so I favored anyone to turn on the
14 computer but we have an issue anymore.

15 COMMISSIONER CARL WEISBROD: They asked
16 me about it. I litigated one of those cases, the
17 first one which we won uhm the Council had to power
18 to do it.

19 PROFESSOR JOHN MELLEKOPF: Uhm I felt; I
20 think with respect to what is the veto? This is the
21 difference given to members uhm determinations
22 particular land uses in their own District. We had
23 created the very elaborate process to stop that kind
24 of decision making to go to the Council. It was
25 called the triple no and our point was we couldn't

1 figure out a way to describe the projects that were
2 sort of policy that could go to the Council and so we
3 decided to do it through a process, that have, if
4 they were important enough they could go to the
5 council and if they weren't they were be stopped at
6 the City. And this was one of the things that we had
7 liked a lot and we made a political decision to uhm
8 change our own approach and the political decision
9 was because some of our most important supporters and
10 remember we have to get a reprimanded. You have to
11 get something processed that is a political process
12 ad we were chastised quite strongly by some of our
13 great supporters including Ruth Messinger who I
14 though was going to be here for. Not giving the
15 council a little more power and in august I remember
16 a meeting collapsing on this point. But I got to
17 promise at the time because Peter Vallone who was a
18 speaker was also pushing us to do the same thing ad I
19 got a promise from Peter Vallone and no member would,
20 we got a promise not me, the Commissions I don't mean
21 to say it personally was wisdom and that no
22 individual member of the, of the Council would get
23 this veto power and he enforced, he kept his word on
24 that through Gail Benjamin and so did the following
25

1 speaker uhm Miller, through Gail Benjamin and it only
2 changed that I know about under the previous speaker.
3 Uhm. And I was shocked, I heard about it one day and
4 now it has been written about in the papers, for
5 example the New York, the Center on Core Innovations
6 attempt to place some, make some changes to bring
7 some drug court to another court in Brooklyn is, so
8 citywide projects are getting, that are important and
9 go through a whole process before we are ready to go
10 are getting stopped by Council Members, you know,
11 individualized powers which I think is a very bad
12 thing because what it does to the Council is since
13 only one member cares about it and it starts to get
14 horse trading. So, it's not a policy issue, it's an
15 individual member issue so everybody will go along so
16 when that Council Members opportunity to stop
17 something, everybody will go along with that. So
18 that's what I mean when I said it is corrupting. I
19 don't mean the people are getting paid off. I mean
20 it doesn't work to the benefit of the port of sort of
21 policy making of a Council and I don't you know other
22 than we struggled a long time with this and other
23 than the triple no is some procedural way of doing
24
25

1
2 this that keeps that keeps these. I'm not sure how
3 to stop it, I'd have ot think about it some more.

4 COMMISSONER CARL WEISBROD: And on the
5 second point?

6 PROFESSOR JOHN MELLEKNOPF: I honestly
7 don't know the answer to your question but I can
8 assure you, this is with respect to the OMB and the
9 City Planning Commission on the 12-year plan. I
10 honestly don't even remember having a discussion
11 about it so I can look. I will talk to Fritz and get
12 in touch with all of you and give you the answer to
13 that or Frank Morrow who probably was involved in
14 that. When I don't know the answer.

15 CHAIRPERSON GAIL BENJAMIN: Okay thank
16 you Sal.

17 COMMISSIONER SAL ALBANESE: Thank you.

18 CHAIRPERSON GAIL BENJAMIN: Not a moment
19 too soon.

20 COMMISSIONER SAL ALBANESE: Yeah, uhm
21 Professor Fuchs let me say I, I agree with you 100%
22 on open primaries and I was one of the advocates
23 here. Unfortunately, it has been eliminated from
24 consideration by a vote of the Commission, but I, I
25 think its uhm, I would have loved for us to have

1 delved into it further because I think it does
2 enhance participation and opens up the process. Uhm
3 Professor Mellenkopf, I have a question for you, your
4 kind, you agree with me about the Public Advocate, I
5 never could get my, my, wrap my arms around that
6 position since 1989. I, and I also pointed out to
7 Doug Mugio who testified that Andrew Stein was
8 partially one of the reasons why this thing, this
9 public advocate position was kept intact. The
10 question I have for you is, if, if the public
11 advocate is really a cesticial structure, uhm and we
12 don't give it any enhanced, any more enhanced
13 responsibilities, why keep it?

15 PROFESSOR JOHN MELLENCOPF: Well, first
16 of all, if we all accept the idea that the public
17 advocate is mainly a stepping stone to citywide
18 office it gives people a chance to run a citywide
19 race to see where their constituencies of support are
20 or are not on a citywide basis and to gain citywide
21 visibility. It is a relatively inexpensive way to
22 add to the pool of potential candidates for Mayor.
23 On the other hand, I agree with you that, I think in
24 the nature of the office, it is very hard for a
25 public advocate to fulfil the hopes that the

1
2 Commission in 1989 had for it in terms of being able
3 to uhm be an on buds person to negotiate between the
4 City Government and individual wrongs that might have
5 been committed at a District level. I think City
6 Council suggests much better prepared to do that job
7 and in terms of highlighting issues that haven't
8 received sufficient attention, uhm any time a public
9 advocate does that, he or she is inevitably
10 interpreting those issues in terms of what is going
11 to advance my political career and not what, what are
12 the issues really. So, I'm skeptical that the Public
13 Advocate can fulfill the functions that are hoped for
14 but on the other hand it's, it's not a huge cost in
15 an \$88 plus billion-dollar office and it does put
16 another person in the citywide debate about the
17 issues facing the City.

18 COMMISSIONER SAL ALBANESE: Well don't we
19 have five Borough Presidents we got the Speaker of
20 the City Council and we have a whole hoard of other
21 people who want to run for Mayor. We have to create
22 an office so that somebody can get exposure?

23 PROFESSOR JOHN MELLENCOPF: I think if
24 the Commission members want to strengthen all of
25 those people that you mentioned then eliminating the

1
2 office of public advocate would probably be a pretty
3 good step from their point of view. But I'm sure,
4 we've elected some very fine public advocates and I
5 am sure that they would disagree precariously with
6 that.

7 COMMISSIONER SAL ALBANESE: Yeah, I mean.
8 It's not reflection on the people, I'm talking about
9 systemically, I mean where does this office fit in?

10 PROFESSOR JOHN MELLEKNOPF: Not well in
11 my view but perhaps, Eric disagrees with the origin
12 story that.

13 COMMISSIONER SAL ALBANESE: I'm sure he
14 does. I mean he was the.

15 PROFESSOR ERIC LANE: No, no, I was at
16 the origin so.

17 COMMISSIONER SAL ALBANESE: Yeah, I know.

18 PROFESSOR ERIC LANE: And I think
19 everybody just heard me say when I was a political
20 deal that I thought went wrong I just acknowledged it
21 to you but I can tell you on this one there wasn't
22 the slightest political deal. This was one for two
23 reasons, one a legal reason and one a good government
24 reason. Let's start with the good government reason.
25 Nat Leventhal who many of you know was the first

1 Deputy Mayor of the City for many years. Was the
2 lead person who made the argument that when he had
3 been the First Deputy Mayor, the public, then the
4 City Council President but played a very important
5 role for him to watch what his bureau-ocracy was
6 doing. It was an oversight function that he found
7 very helpful so he took the lead in the Commission on
8 pushing for that. And uhm given the intensity and
9 density of what the Administrative aspects of City
10 Government are, we felt that that was an important
11 thing even if it was just a little here and a little
12 there that there wasn't enough oversight and at the
13 time that we did this, the Council had had no
14 experience in oversight and to raise, to say for them
15 that they would be an institution to do oversight I
16 think personally would have been a laughable position
17 to take. I don't know where they are in their
18 oversight now. I know they've become a much better
19 body, a much more serious Legislative body but I
20 don't know enough about what they do in that case.
21 The second reason we did it would have been illegal.
22 We would have been knocked out of the box if we
23 didn't do that. Because in 1989, the Justice
24 Department took its section 5 responsibilities very
25

1 seriously and when we went down for three month
2 review, they reviewed everything we had done and they
3 were looking for any diminution of minority power and
4 so one of our big stain sticking points and pushing
5 points with them was that we had created this public
6 advocate or City Council President still to create an
7 opportunity for minorities to get citywide positions
8 or how about Attorney Generals of the State of New
9 York and you will recall in 1989, this is a whole
10 different time, we didn't have Mayor Dinkins elected,
11 we had never had a Minority elected to any position
12 except Council independently. There were a number of
13 Council Members that had been appointed to be Borough
14 Presidents so, but then they, and ran again but they
15 have never been so, we are looking at this as two
16 things, one an oversight function and two a voting
17 rights demand. And that is the sole reason we
18 supported this and I challenge anybody to find one
19 drop of evidence that suggests. I can tell you
20 plenty of political things that we did but Andrew
21 Stein was not one of them.

23 CHAIRPERSON GAIL BENJAMIN: Professor
24 Fuchs.

1
2 COMMISSIONER SAL ALBANESE: I bet to
3 differ but.

4 PROFESSOR ESTER FUCHS: Right so, so
5 other people disagree with your origin story but I am
6 really not interested in that at this point and I
7 just want to make two comments about the, public
8 advocate position. To the extend it served a
9 purpose in 1989, that is all well and good. I think
10 everybody realizes whatever the purpose now its from
11 a governess point of view at least. It's hard to
12 find that governance purpose. I think you are right
13 to point out that it has been a stepping stone for
14 minorities to get elected to broader public office.
15 Is it a training to be Mayor? Absolutely not it
16 probably, probably emphasizes the wrong things that you
17 would want a Mayor to be able to do uhm when they
18 become Mayor. It is almost the opposite of being
19 Mayor where you know and won't elaborate on that
20 because it is fairly obvious. So, I didn't get the
21 impression that anybody, that anybody really had the
22 appetite here to try and propose getting rid of the
23 public advocate in a complex, multi-cultural large
24 city like New York it probably makes sense to have
25 other citywide elected officials. I don't, I don't

1
2 thing one has to really, give more power to the
3 public advocate. I think Betsy Gotham actually got
4 the Public advocates job correct. She was a public
5 advocate. Uhm if there needs to be more funding for
6 that position. I think that's fair. There should be
7 more funding but it should not be uhm codified in a
8 City Charter, the level of funding needs to be left
9 open and negotiated in a Budget process like
10 everything else. But I, I would suggest that that
11 having the pub... giving the public advocate the tool
12 of a yearly survey and articulating the interest of
13 the public and also being a conduit for the public's
14 view of service delivery which is partly what they do
15 anyway, would actually be a useful tool for the
16 public advocate in informing the operational side of
17 City Budget. But beyond, beyond that you know I am
18 sort of like over the public advocate and I think we
19 spend too much time worrying about its purpose.

20 PROFESSOR ERIC LANE: If I could just
21 comment briefly, if we, Ester and I both agree of the
22 importance of this kind of survey but I would worry
23 that if the public advocate were in charge of the
24 process that the survey would be politicized in some
25 way and not really dig into the fundamentals that are

1 needed. And if I could also just say that open, open
2 primaries which both, uhm Mr. Albanese and Professor
3 Fuchs think are a good idea that, the positive
4 argument for that is that there is roughly 30% of the
5 electorate that is locked out because they are either
6 not declaring a party or they are Republican or other
7 third parties and so there is an argument to open up
8 the process to them. But all of the experience with
9 open primaries, for example California by state
10 constitution requires all municipal elections to be
11 in this form and actually the turn out has is low and
12 has fallen in those places because parties are a key
13 mobilizer in politics and if you more or less take
14 the parties out of the process it reduced
15 participation. So, I know this sounds somewhat
16 paradoxical to say but I think that New York City
17 would benefit from a far stronger Republican party
18 than it has and to actually really contest general
19 elections more effectively.
20

21 CHAIRPERSON GAIL BENJAMIN: Steve is
22 actually next.

23 PROFESSOR ESTER FUCHS: Just a quick
24 followup on that op.. my suggestion was not to take
25 the parties out. My suggestion was an open primary

1 but not a nonpartisan primary, so you can still have
2 party labels, you can still have parties be active,
3 I'm just concerned particularly among young people
4 who are not, who are less likely to register for a
5 political party. We are excluding them from the most
6 important election in the City of New York and voter
7 registration is low and voter participation is low
8 and we are all on the same page and wanting to
9 increase it. So, I don't believe the parties have
10 anything to be frightened of in an open primary, the
11 idea just to say that we should have a stronger
12 Republican party is like saying well let, it should
13 snow in July. So, we are not, it is not happening in
14 New York so I believe we need to be reality based
15 here about whats the kinds of things we are doing to
16 change the structural aspects of City governance to
17 make it work better to improve our democracy and we
18 certainly could do that if we had open primaries in
19 which you could identify people with party labels.

21 CHAIRPERSON GAIL BENJAMIN: Steve and
22 then Jim.

23 COMMISSIONER STEPHEN FIALA: Uhm Dr.
24 Fuchs I've been waiting 30 years for a stronger
25 Republican party so I think it might snow in July

1 first. I think you are right. Let me just preface
2 my remarks by saying this. I had the privilege of
3 serving on the Fuchs Commission and what I will tell
4 you is with sometime we can go through Charter
5 Fatigue. I mean we've had a lot of Charter Revision
6 Commissions since the 89, the gold standard. The
7 Fuchs Commission in my estimation got it right
8 because and we will go down as probably the
9 Commission with the least glamor but it was two years
10 and what you did was lead a group of people to take a
11 serious look at the Charter and identify certain
12 touch points that could be shored up to strengthen
13 the next 30, 50, 100 years and we are living with the
14 legacy of your Commission and I am very, very
15 grateful for that and I was grateful to serve under
16 you on that. My question for you and I have one for
17 Dean Lane. My question for you, Professor Fuchs uhm
18 was going to be two-fold but you just addressed the
19 open primaries. If you want to expand a little more
20 you can, but you were right the rainy-day fund. If
21 you wouldn't mind giving a more expansive uhm thought
22 to that. And I will give my question to Dean Lane
23 now. There is probably nobody that we have heard
24 from or will hear from during this Commission that
25

1 can offer us greater forward guidance than you. Uh
2 your written word and your verbal commentary over the
3 last 30 years, quite voluminous so your thoughts
4 matter. I want to piggyback on what Commissioner
5 Weisbrod had to say and that was to thank you for the
6 leadership role that you played in '89. You know we
7 would like to point out the things that don't work.
8 This is a damn good document that you crafted and got
9 through the legal and political muster, coupled with
10 the aspirational goals that you all envisioned but
11 the question for you relates to specifically to an
12 area that you said you thought maybe there was a
13 miscalculation in hindsight and that was that borough
14 voice, the evisceration of the role of borough
15 presidents. What do you think now in hindsight, 30
16 years into this experiment could we do to fine tune
17 to take a scalpel, not an ax to your work and enhance
18 the role of the Borough President without disrupting
19 that very delicate balance of the, the model that you
20 created? Whoever wants to go first.

22 PROFESSOR ESTER FUCHS: I'll go first and
23 I think I made my point clear on the open primaries.
24 I think they you can identify parties have open
25 primaries so you don't eviscerate the role of the

1 parties which I think are very important in
2 mobilizing voters and helping people to cue on things
3 that they think are important particularly when they
4 don't have a lot of information but I think we really
5 do have to ensure that everyone has the opportunity
6 to participate in competitive elections and our
7 general elections have historically not been very
8 competitive and the turn out speaks to that. We have
9 23% turnout in the last general election for Mayor
10 and so we are uhm declining in our participation and
11 doing much worse than the rest of the country frankly
12 on that score. On the on the rainy-day fund and
13 thank you for those kind words. I am very
14 embarrassed and Commissioner Fiala I said he was, he
15 was a Stallworth as he is now having doing this
16 again, there must be a place in, in good government
17 heaven for you and people who serve more than one
18 time on Charter Revision Commissions uhm but you were
19 always an amazing Commissioner and they are lucky to
20 have you on here in 2019. Uhm the Rainy-Day Fund
21 which is complicated of course by State law. Uhm the
22 reason I brought it up is it is, it is part of the
23 some of the proposals that has already come out of
24 the commission but it is a very important fix given
25

1 the complexity of our City Government and the
2 complexity of our finances now and the need to make
3 things as transparent and clear as possible for the
4 public. So much is complicated and as a consequence
5 of not being able to have a real Rainy Day Fund our
6 OMB has figured out ways to put away money and this
7 has all been well and good but it is, it should not
8 be that difficult and we the public should be able to
9 understand how much is in fact in rainy day fund that
10 we are really putting away from when the economy will
11 invariably decline because it always does and how
12 much we are in the whole. I mean there is a tendency
13 for Mayor's to spend it all down and not leave much
14 for the next Mayor and by not having a transparent
15 Rainy Day Fund it is really hard for the average or
16 even the educated person to tell what actually is the
17 status of New York City Finances in terms of a
18 cushion for a downturn in the economy. So, what we
19 could do as a city is, is pass this Charter measure
20 as a message to the State Legislature and have it
21 sort of ready to be uncoated in our Charter. But if
22 we don't do anything dramatic like that and call
23 attention to it through a Commission like this the
24 legislature will not act. Not because they don't

1 care it's just not sexy. Its not an issue that
2 anybody really pays attention to. It is hard to get
3 Fiscal things on the agenda altogether unless there
4 is crisis. By the time there is a crisis it's too
5 late. So, I think this is an opportunity to do
6 something proactive in a really, really important
7 area uhm for the City right now. Can I make a quick
8 point about the Borough Presidents? I just uhm you
9 know for a long time I actually thought we should get
10 rid of the Borough Presidents and have a second house
11 in the Legislature sort of like an upper house that
12 you know was elected in the way that reflects
13 populations in a way and have since the since we
14 can't have a Board of Estimate we don't have that
15 kind of upper legislative body anymore and we are a
16 big City and it seemed like a sort of interesting
17 idea that we might have uhm an upper house. Having
18 thought about it over the years, this is why it is
19 never good to make drastic structural changes because
20 there are always unintended consequences as I'm sure
21 Eric can speak to quite well. Uhm I mean I don't
22 really think we need an upper house anymore. I think
23 one legislative body is quite sufficient for the City
24 of New York right now and uhm and uhm you, yeah, we
25

1 will just leave it at that. Quick sufficient and I,
2 I you know I really thought that the Borough
3 Presidents in some way are decisive right? It
4 encourages people not to think of themselves as New
5 Yorkers, not to think about a citywide agency but
6 still in this old category of Borough. And so, my,
7 my view has sort of come full circle. The City is
8 complex and difficult for people to navigate and the
9 Borough Presidents are an intermediary for people to
10 understand place and space and connect and anything
11 that can help people connect to our City in a
12 positive way now I am in favor of. So, while I don't
13 think that we need to give an extraordinary amount of
14 power to the Borough Presidents I think they help
15 people feel represented in a very complex city where
16 it is very difficult. Eric.

18 PROFESSOR ERIC LANE: So, we actually did
19 think and discuss and it may be in our book, the two-
20 house Legislature and had a long debate about it

21 PROFESSOR ESTER FUCHS: I know.

22 PROFESSOR ERIC LANE: And I want to start
23 with. Since Ester was talking about what's real, I
24 want to start with something that is real is that you
25 are going to have the Borough Presidents after this

1 is done so I don't believe you could possibly pass a
2 referendum without them eliminating the Borough
3 Presidents. That was our thinking in '89 not that we
4 were going to do it but what we needed to do was to
5 find a role for them. Uhm I mean I think Ester's
6 description of that sort of middle level person,
7 somebody you can reflect, relate to in your community
8 or in your, Borough is very important because people
9 in New York actually do identify themselves by
10 Borough and we actually did a number of studies of
11 that but I don't have to tell you about Staten Island
12 and Queens and Brooklyn. I mean people thing of
13 themselves by their Borough and by their community
14 and less by New York City, I think. And so, I think
15 that the Borough Presidents role is an important
16 role. While our goal was to try to give them some
17 partial form of executive role since we were ending
18 their sort of mixed role on the Board of Estimate so
19 we wanted to put them into the Executive type of role
20 which had to do with some budgeting, some more land
21 use power and some more service power minor as it
22 might be.

24 COMMISSIONER STEPHEN FIALA: Uhm I don't
25 know enough I haven't followed strongly enough to

1 know whether we were successful and not overdoing it
2 but I do think and I'm you know I'm not prescient
3 that I could tell you what the future should hold for
4 the Borough Presidents but you know I did think along
5 the lines that we attempted, tried to make sense, so
6 we were balancing this idea of we do have a whole
7 city, the City of New York so you can't give zoning
8 power. If you did, you'd have to create a Council in
9 each Borough also because Zoning Power is
10 Legislative. We couldn't say well you know, we
11 didn't we tried to find enough to have real work that
12 would make a difference and real opportunities for
13 Borough Presidents to weigh in on issues that they,
14 that matter to them. So, they had to listened in
15 the, the political discourse over any particular
16 issue. Uhm you know I don't know whether we
17 succeeded or whether we you know I argued for a long
18 time after, for a couple of years after that it
19 seemed to be working I think with Messinger at one
20 point was a big advocate for the changes that we had
21 made but to be honest with you I've lost sort of
22 sight of what's been going on with respect to that
23 but in terms of what I would be looking if I was
24 wanting to empower then more would be along the lines
25

1
2 of what we are discussing in the, a little more land
3 use, more service, more opportunities to weigh in
4 topics that really concern their community. I mean I
5 don't know what else to tell you. I wish I could
6 come up with a list of 10 things and if you charge me
7 to do it, I guess I would do it for you but I don't
8 have it right off the top of my head.

9 COMMISSIONER STEPHEN FIALA: Well could I
10 ask you, could I ask this specifically to help guide
11 my own thinking on it. Would you characterize the
12 following two recommendations that I am going to
13 offer here as being too disruptive to the balance of,
14 of the framework that we have now? The great
15 argument over the last 30 years is that the Borough
16 Presidents haven't had a meaningful voice. That the
17 Charter contemplates a role for them, the Charter
18 even codifies in language uhm a specific voice but it
19 falls just a little short of compelling that that
20 voice be respected in a meaningful way, so over the
21 years for example, a suggestion was made that a
22 particular section be amended to require that the
23 Mayor provide the details behind the reasons for his
24 not incorporating a Borough President's Fiscal
25

1
2 Recommendations? Is that something so oneness that
3 it would disrupt the power?

4 PROFESSOR JOHN MELLENCOPF: No.

5 COMMISSIONER STEPHEN FIALA: And the
6 second one would be compelling the attendance of City
7 Commissioners and other officials to appear before a
8 Borough Board on a monthly meeting of the Borough
9 President. Would that disrupt the?

10 PROFESSOR JOHN MELLENCOPF: When you say
11 compelling you are not talking about subpoenas?
12 Right? You are talking about.

13 COMMISSIONER STEPHEN FIALA: No, no, no
14 subpoena power.

15 PROFESSOR JOHN MELLENCOPF: Just an
16 affirmative responsibility.

17 COMMISSIONER STEPHEN FIALA: And I is
18 there no right know don't Deputy I forget don't they
19 call them Borough Commissioner meet with the Board
20 of, with the Borough Presidents?

21 PROFESSOR ESTER FUCHS: Some do, some
22 don't.

23 COMMISSIONER STEPHEN FIALA: The great,
24 the great argument over the years was we are halfway
25 there, we are not all the way there. So, we are

1 trying to provide some procedural leverage that does
2 not.
3

4 PROFESSOR JOHN MELLENCORF: I would not
5 have a problem with that.

6 COMMISSIONER STEPHEN FIALA: Alright, you
7 wouldn't, okay, thank you so much.

8 PROFESSOR JOHN MELLENCORF: We talked
9 about that. Thank you.

10 CHAIRPERSON GAIL BENJAMIN: Okay Jim.

11 COMMISSIONER JAMES CARAS: And thank you
12 by the way about my, about our Commission, I
13 appreciate that. Thank you all for being here and I
14 certainly feel the same way. The work you did has
15 influenced my uhm 25 years in City Government and uhm
16 I, I think that you got it you know 99% right and I,
17 I agree with Eric on a couple of areas where I think
18 there could be improvement and a lot of what I'm
19 looking at in terms of improvement is that I've read
20 a lot of the transcripts of the 89 Commission. I
21 wasn't in New York. Well, I had just moved in New
22 York in 1989 actually. Uhm and I know one area w=as
23 Budget where it seems clear to me that what the
24 Charter Revision Commission in '89 intended to happen
25 in the Budget process never happened. I give as one

1
2 example; the Department of Homeless Services I think
3 it's got about; I think it is a budget of about \$2
4 billion and \$1.9 billion is in one unit of
5 appropriation. And if you look at the Charter
6 language it says particular, program, institution or
7 activity and it says that most, multi-purpose units
8 of appropriation an be maintained only if the Council
9 adopts a resolution allowing that and I have, and
10 that was the language that as added by the '89
11 Commission to allow the continuation of big units of
12 appropriation if the Council and the Mayor agreed. I
13 was finance counselor for many years to the City
14 Council an acting finance director. There was never
15 a resolution allowing that but the units of
16 appropriation never changed from pre 1989 to post in
17 1989. So, in areas like that and I guess I know what
18 ____ empowerment is the same thing. I don't think it
19 was every content that the uhm the Mayor like
20 Giuliani did would use empowerment because he was in
21 a fight with the speaker and so he said if you pass
22 your own Budget, I'm going to impound all the Council
23 Program which is what happened. Uhm why not fix
24 things where there have been abuses. I guess I will
25 ask that to, the other two panelists.

1
2 PROFESSOR JOHN MELLENCOPF: You are not,
3 you are asking them? You are looking at me but you.
4 Then Eric you. Do you think I should give my answer
5 to other people? You want to keep it a secret?

6 CHAIRPERSON GAIL BENJAMIN: Yeah, we
7 would like to hear your answer Eric if you don't
8 mind. On the items of appropriation, I think Mayor
9 should you and probably you and I have had the
10 discussion over the years that the Council. What
11 happens is that the Council rushes to pass the budget
12 over the last minute and nobody makes a battle over
13 this and you know I've seen then either rate at the
14 Council. Sooner that they would not go forward
15 unless there was somebody who really, put pressure on
16 it. I think he would have a better outcome. But I
17 do think for good councilmanic review of a Budget,
18 you definitely need items of appropriation, \$1.9
19 billion for homeless services. You know we don't
20 have any idea what you are paying for the Council is
21 just approving anything that the Mayor wants and yes
22 there is a history and they know more than I am
23 saying but in theory they should be doing little
24 better and I am thinking empowerments really has to
25 be worked through. Our intention was to make it

1
2 harder to impound money to make the Council you know
3 much more a participant in this. It shouldn't be a
4 political weapon and if it has become a political
5 weapon between Mayor then I think you have to take
6 some steps. It is a very serious issue because it
7 once again it denies the Council its Budget role by
8 doing that.

9 PROFESSOR ESTER FUCHS: On the Budget, I
10 would just say two things and on the issues of units
11 of appropriation I mean it seems to me that the
12 Council has and I'm not a lawyer but has authority
13 right now to get more details on the Budget where it
14 requests and has the authority to do oversight. Uhm
15 and I would like to see more robust oversight and the
16 Council to use its existing authority around the
17 Budget that it already has. To codify in the Charter
18 the level of detail around appropriation that, you
19 seem to be suggesting makes me just a little bit
20 nervous. I think there has to be flexibility in
21 budgeting because things change and there has to be
22 room for Commissioners, for the Mayor, for the people
23 on the side of implementing programs to make changes
24 on the ground as problems change. So, are we an
25 extreme position in the Department of Homeless

1
2 Services, yes? Should the Council be yelling and
3 screaming now and asking for more information and
4 demanding in using its oversight role about what is
5 going on on homeless service, for God's sake yes. I
6 mean I will do it if they don't. We all should be
7 doing that now on homeless services because we have
8 no idea where the money is being spent and that is a
9 big problem across the Board in social services.
10 Having you know having said that I don't know that
11 creating a Charter Amendment in this area will really
12 resolve the operational problem in the oversight
13 problem that I think is really the issue here. Maybe
14 there should be a sealing on the amount of money you
15 can put in one unit of appropriation and that might
16 be a way of thinking about, thinking about it so you
17 don't, you don't have this huge bundle of God knows
18 whats sitting in a budget and it forces everybody to
19 come to terms with it and that would be the way at
20 this point I would think about that. I don't, I
21 really hesitate to tie the hands of people who have
22 to do the work on the ground. That always creates
23 problems. On empowerment I sort of agree with Eric,
24 I don't see it as a huge problem. I think there are
25 Mayor's who might have taken advantage of this over

1
2 time but it doesn't seem to me to be anything at this
3 point that warrants, warrants a Charter, a Charter
4 Revision.

5 PROFESSOR ERIC LANE: I just want to
6 agree that I don't think, the Charter is necessarily
7 a good way to fix this problem. If there's a pattern
8 in practice of how things are done it usually
9 reflects some interest in, in the process doing it
10 that way and any kind of engineering of it, re-
11 engineering of it would have to take into account
12 what all those interests area and I think a simple
13 statement in the Charter is not likely to do that.

14 COMMISSIONER STEPHEN FIALA: Could I just
15 and we in the Charter there is a requirement that the
16 Mayor provide items of appropriation, not one, that
17 makes sense, a ridiculous idea but I don't know how
18 to change the Charter or fix that. You pass a rule;
19 a law that says you have to have itemized Budget and
20 we mean it. I mean I'm not sure what you are going
21 to put into this thing. I think it is somewhere
22 along the line, this is a political process and I
23 believe if the Speaker were to call up the Mayor on
24 day 1 of the Budget and say I want items of

1
2 appropriation. I mean what do you, I mean you've
3 been there for years, what do you think would happen?

4 PROFESSOR ERIC LANE: Well I think a
5 couple of things happened and I think one of the
6 things is that when the Council did try to create
7 smaller units of appropriation, the Law Department
8 who I think should be subject to Council, more
9 Council accountability came up with arguments that
10 that wasn't allowed. Uhm it in the '98 Budget when
11 the Council passed its own Budget they used terms and
12 conditions to try to and say you know x amount of
13 money in this will be used for these types of
14 programs and I believe the Law department said in
15 the, Giuliani said that they law department said that
16 you couldn't use terms and conditions to subdivide
17 units of appropriation. Uhm so there have been these
18 arguments made to you know, call in to question the
19 Council's ability to create units of appropriation.
20 And I think the part of it is is that the language of
21 the Charter gives the council the ability to keep the
22 large units of appropriate. Not to create smaller
23 units because it starts from the premise that the
24 units of appropriation will be small and that if the
25 Council wants to, they can keep the larger units of

1
2 appropriation. So, I think that raised some, chang..
3 some clarity that we could bring to that and then the
4 big thing was though I believe that after the '98
5 Budget when the Mayor didn't spend or said that was
6 not going to spend a dime of any of the Council
7 Programs. That's seriously influenced the Council
8 against trying to exercise its full budget powers.
9 Because they thought that in the end whatever power
10 they exercised, they could just drop an anvil on
11 their heads.

12 PROFESSOR JOHN MELLENCOPF: But it is
13 very hard to change, I mean you are describing
14 political battle where the Council basically got
15 scared off, let me use that phrase. I'm a little
16 nervous about those kinds of words but basically
17 that's what happened and after the standup on these,
18 on these kinds of issues I can't imagine if you
19 started on day one and these Budget it. You know
20 whenever the budget comes out, it doesn't have, you
21 have until June 30th, we tend to do these budgets in
22 the last 10 days or 15 days or more in the Budget
23 office so what about on day one if someone pushed
24 back and said we it has to be the speaker not someone
25 we want items of appropriation. I mean I think that

2 it is wrong not to have more items of appropriation
3 so the Council can do it, the democratic charter
4 demanded review of reviewing the Budget and creating
5 the Budget so.

6 CHAIRPERSON GAIL BENJAMIN: But the
7 Council can ask for more items of appropriation but
8 they and they don't shift.

9 COMMISSIONER STEPHEN FIALA: But they I
10 depending on who you can ask but.

11 PROFESSOR JOHN MELLENCOPF: The
12 Corporation Council Position so I mean it's too
13 detailed.

14 CHAIRPERSON GAIL BENJAMIN: So, sorry
15 Jim, are you?

16 COMMISSIONER STEPHEN FIALA: Can I ask
17 one or can I come back.

18 CHAIRPERSON GAIL BENJAMIN: Alright ask
19 one more.

20 COMMISSIONER STEPHEN FIALA: Uhm in terms
21 of you know there is one area where I think that
22 people feel that there isn't adequate engagement and
23 that is, that is when we consider these large uhm
24 rezoning, large ULURP applications. Usually they are
25 city applications. They have a really big impact on

1
2 a neighborhood and communities all over the city feel
3 like when the ULURP clock starts running the thing is
4 already 90% baked and we haven't had a voice in it.
5 Is there something that the three of you think that
6 can be done about that, without you know upending the
7 land use process. The ULURP time clock, uhm I just I
8 throw that out to all of you.

9 PROFESSOR JOHN MELLENCORF: Well I mean
10 my answer would be the City Council people are the
11 ones that would be key actors in that, in that
12 process. And you know the Council at the end of the
13 day does have a critical role so there, there is a
14 path for having if the Council people want to
15 organize the input there is a path for it.

16 PROFESSOR ESTER FUCHS: I also noticed a
17 proposal for you know a 10 year city plan which I
18 didn't bring up in this process but I think that
19 would be an extremely important thing to finally do
20 and to the extent that that's done I see that Carl is
21 not excited about a 10 year city plan. I know why
22 not. But that gives, that shines a light on land use
23 in a way that it is impossible for ordinary people to
24 do anything now and I think that in that if we had
25 that then there would be some better understanding

1 of, you know large rezoning. I'm not interested in
2 obstructing those processes or making them more
3 difficult than they already area. Uhm you know there
4 are other things in Land Use that maybe we can fix
5 but right now uhm NIMBI seems to be one of the bigger
6 problems not the, not the larger and giving away
7 large swaths of land to one developer and then
8 forgetting about the Oversight rule.

10 COMMISSIONER STEPHEN FIALA: So, I assume
11 what you are saying is, I mean obviously by the time
12 something goes to the City Planning Commission the
13 staff has to have done a lot of work and because you
14 can't just dump it on them and not have done your
15 work. So, there is going to be, so I assume what you
16 are asking is should there be some interim moment in
17 the staff process where the Community, where they
18 give notice to the Community or something like that?

19 PROFESSOR JOHN MELLEKOPF: Yeah.

20 COMMISSIONER STEPHEN FIALA: I don't, I
21 mean in one since the Council gets all of those big
22 zoning changes, so our notion always was that the
23 Council would have the teeth to make that happen,
24 although it is end the process. There is no question
25 and it is very hard to make many changes. I just, I

1 actually don't think this would work well. Where you
2 know somewhere along the way they say they are at 50%
3 or there is some marker that would get them. I would
4 have to see the kind of proposal about that to give
5 you my view. I was we were very interested in
6 Community participation in our Charter Commission but
7 we were also very interested in making sure that you
8 know the expertise of the City could have the
9 opportunity to operate as it should and you know we
10 wanted to use the channels. The real decision-making
11 channels for the City so the City planning
12 commission, the Borough President. And the City
13 Council to be the place. I don't know how it could
14 fit in earlier, I don't, I just don't know.

16 PROFESSOR ESTER FUCHS: Isn't that what
17 the Community Boards are suppose to do?

18 COMMISSIONER STEPHEN FIALA: Yeah but
19 they are after this point where he is talking about.
20 They are coming in after it is gone.

21 CHAIRPERSON GAIL BENJAMIN: Certification.

22 COMMISSIONER STEPHEN FIALA:
23 Certification.

24 CHAIRPERSON GAIL BENJAMIN: Okay I have a
25 few questions but I am not going to ask them in the

1
2 interest of time and we have a number of other panels
3 and people waiting. So, what I have after I would
4 like to reserve my right to send you my questions and
5 I would love it if you would answer them to me and I
6 will distribute it. Alison you are next and then Sal
7 if you could be quick because we have three more
8 panels, folks.

9 COMMISSIONER ALISON HIRSH: Thank you, I
10 will try to be brief. Uhm this is for uhm Mr. Lane
11 and Jim actually reminded me of this question. I
12 just have two questions, one you mentioned in the
13 issues that you feel like the original 1989 Charter
14 Revision Commission did wrong or missed you mentioned
15 the Corporation Council and the role of the
16 Corporation Council and I'm interested in uhm how you
17 would recommend changing that because that has been a
18 big topic of conversation and then I was also
19 interested to know whether you have any thoughts or
20 suggestions as to how better to execute the Fair
21 Share Criteria. Uhm Borough President Messinger in
22 her written testimony had some proposal that I am
23 giving the Borough Presidents more of an authority
24 over Fair Share in their Borough instead of the Local
25

1 Council Member and I thought that was an interesting
2 idea and didn't know if there were any thoughts.

3
4 PROFESSOR ERIC LANE: So, the Corporation
5 Council is a very uhm in some ways is a very tricky
6 question. The office has been a wonderful office, it
7 employs really good lawyers. It is a very
8 competitive place and for 90% of the legal work of
9 the City they do a phenomenal job but then there
10 becomes this part where they also start to serve as
11 the Mayor's Counsel and as the Counsel since 1989
12 ruined power, there were more and more disputes that
13 started to arise between the Council and Mayor and
14 you would find the City Council, the Mayor basically,
15 the Council, the Corporation Counsel basically taking
16 the Mayor's side on a regular time. There were even
17 a couple of cases where after the law had passed the
18 Mayor had vetoed the law and then the Corporation
19 Counsel supported a litigation to say that the law
20 was invalid and it was preempted which struck me as
21 simply amazing that you would go through the
22 democratic process of the city and then like the
23 Corporation Counsel wanted the Mayor's view to be, to
24 become realized would bring a law suit even though he
25 had been overridden, his veto had been overridden.

1
2 So, I think there has to be some other way of doing
3 this. Either giving the Council its own lawyers with
4 real power in those situations or you know perhaps
5 making the giving some term limit to the Corporation
6 Counsel or review of the corporation with advice and
7 consent of the senate of the Council or something
8 like that. I think there just has to be some
9 accountability of the Corporation Council to the
10 other uhm all of the other parts of government so it
11 could be the control of the borough president. There
12 has to be some other way of striking this, this check
13 and balance. The Corporation Counsel just has too
14 much power I these circumstances. You know they are
15 the voice of the City with respect to Law but it
16 can't always be that they are just the Mayor's voice
17 and that is a political voice what the Mayor wants
18 and with respect to Fair Share, so we, the idea of
19 Fair Share came from a group of, a bunch of community
20 groups saying that they had, Community Groups and
21 Boards saying things would just appear in their
22 neighborhood. They were there one they, they weren't
23 there one day and they were tended to be poor
24 neighborhoods and poor neighborhoods who frequently
25 get dumped in, less political opposition, lower

1
2 priced property so you can do it, right it was easier
3 to do. The Fair Share Plan that we offered was an
4 attempt to get it to be discussed. You know the
5 statement of needs and the fair share to get it. So,
6 our goal here was simply to create a discussion where
7 we hoped that the principal of Fair Share with then
8 form a discussion and push back against the City's
9 just dumping of things in to particular districts.
10 Apparently, I, you know from what I've read and what
11 I have talked about. It hasn't worked in any way
12 that we intended it and I am very sorry for that
13 because we think that it is a very important idea for
14 this City and you know I don't, I haven't really
15 thought through the way to give it some more teeth
16 and if the Borough President plays a role that is
17 important in that, you know, could play a role that
18 might be a very good power to give them. There is
19 certainly more sensitive to the Districts, the people
20 the neighborhoods in their own borough than is the
21 Mayor is because I mean they are elected through
22 that, all of that. So, I think that might be a good
23 suggestion but I really don't have the key answer to
24 this.

1
2 PROFESSOR ESTER FUCHS: A quick point on
3 the uhm, on the uhm Corporation Counsel issue. It is
4 in some ways similar to the question about giving the
5 Counsel more heft on the Budget side, having more
6 capacity to evaluate the, Budget and so it seems to
7 me what needs to be done is that the Council needs to
8 build up its legal capacity. At this point obviously
9 it's not going to create a Corporation Counsels
10 Office just like it didn't create an OMB. But it
11 needs to have sufficient capacity to review these
12 kinds of things and to have disagreements with the
13 executive side. I don't think one should assume that
14 we need to create an enormous capacity because
15 constantly there is going to be legal disagreements
16 with the Executive Side. If the Executive can't
17 operate in a way that that reflects the citywide
18 infra, interest and that the Council Agrees upon most
19 of the time then we are in big trouble, I think. So,
20 you know I think that this is just an opportunity for
21 the Council to uhm build up its legal operation so
22 that it can deal with this.

23 CHAIRPERSON GAIL BENJAMIN: Sal quickly.

24 COMMISSIONER SAL ALBANESE: Yeah, I just
25 a reaction to Professor Fuchs on oversight. I was

1 the critic of the Council as you know Gail when I was
2 there about us not conducting rigorous oversight and
3 I hate to say this but that is still happening today.
4 I don't think it is a sexy practice. It takes a lot
5 of work, got to drill down and the Council has never
6 done that effectively including today. I have a
7 quick question on Ethics and anti-corruption as part
8 of the Chart Out Reform. Uhm we have a number of
9 incredible practices which I think are, are
10 problematic. For example, a lobbyist can't
11 contribute, can't give an elected official \$50 but
12 they can bundle tens of thousands of dollars in
13 donations. That doesn't make sense. And the other
14 area that I would like to focus on is lobbying
15 reform. We have a revolving door where we should ban
16 lobbying for five years for elected officials or even
17 on a lifetime basis. I was wondering if you, Eric
18 and then Professor Fuchs and Professor Mallenkopf, if
19 you have any thoughts on, on anti-corruption
20 provisions or measures that should be in the chart or
21 because people in the City have to have full faith in
22 the government that it minimizes conflicts of
23 interest?
24
25

PROFESSOR ERIC LANE: Want me to start.

The only thought that I have is there are a lot of powerful, powerful interest in the City that want the City government to do things uhm that they are seeking and they will find a way to implement this policy no matter the details of the charter. So, you can kind of rearrange the dentures a little bit I don't think there is anything magical that you a do in a Charter to curtail the power interest from seeing their, their end so anything that would make that process more visible is it, is a good th8ing. Uhm certainly our public finance system for local offices is a model for the rest of the country and has opened up access to office, far wider than just about any other jurisdiction. Uhm in the, in the country several. I guess it is worse thinking about. But I, I am skeptical that we will come up with a charter-based answer to the problem.

PROFESSOR JOHN MELLEKOPF: I think the site of the Council Member or a senior staff member lobbying the legislature right after they leave office is very bad. Even if they don't have, whatever they are doing, however good they are doing it I don't think. I think the public doesn't like

1
2 that at all. We, one of the hardest battles we had I
3 think in 1999 under the Rabbi Commission was over the
4 if I forget what we called the clause but the ethics
5 provision that stops you for being there for one year
6 you can't do it and we were just rocked and socked on
7 that one by many good meaning, well meaning people in
8 the government. The only thing that I can think
9 about doing about that is you might extend that to 2
10 years. I don't think people necessarily come in to
11 office or in to staff with the idea that they are
12 going to immediately become lobbyist and that's the
13 only way they will.

14 COMMISSIONER SAL ALBANESE: It happens
15 soon after they leave.

16 PROFESSOR JOHN MELLEKNOPF: Well they
17 have to wait a year for anybody on any kind of high
18 level as I, as I remember the law that we passed.

19 PROFESSOR ESTER FUCHS: Unless they are
20 going to a not for profit.

21 PROFESSOR JOHN MELLEKNOPF: Unless they
22 are going for a not for profit uhm I think that is
23 the only thing to do because their first amendment
24 rights come to play here, state constitutional rights
25

1
2 come in to say that somebody can't lobby for five
3 years I think you are running the.

4 COMMISSIONER SAL ALBANESE: Well I don't,
5 I don't think that is the case because there are
6 provisions across the country for whatever, 5-year
7 bans. In Washington they are proposing a lifetime
8 ban.

9 PROFESSOR ESTER FUCHS: I would just
10 suggest that minimally it should be a three, a three-
11 year ban on lobbying. I think 5 years is a little
12 too far in the distant future for people to get their
13 arms around. But three years I think could be
14 managed and it is reasonable and it won't discourage
15 people from going into public service as, as
16 everybody likes to say when you put the bans on. And
17 I, I want to reiterate my point about the
18 independence of the Commissioner of the Department of
19 Investigation. They were something substantial that
20 can be done uhm around the corruption issue and it is
21 to ensure that the Mayor doesn't have the sole
22 authority to remove the Commissioner of the
23 Department of Investigation. That it must be done
24 with the consent of the City Council and while I'm
25 not in general think that the City Council needs to

1
2 be involved in a whole lot of things that relates to
3 the Executive Side and the operations of government,
4 in this instance, we really have a problem and we you
5 know regardless of the details of the situation.
6 This past DOI Commissioner was involved in a lot of
7 things that the Mayor did not like and uhm the
8 consequence of not, not having a full-throated
9 discussion the Council didn't even take it up
10 actually when they could have in some way. At least
11 we need to force the Council to engage in this
12 process and be complicit in whatever is going on or
13 stand up and be heard.

14 COMMISSIONER SAL ALBANESE: I think you
15 just have to be, just a second.

16 CHAIRPERSON GAIL BENJAMIN: Concluding
17 remark.

18 PROFESSOR ERIC LANE: I assume you have a
19 lawyer for the Council so for you guys for the
20 Commission and you ought to take a look at whether or
21 not that idea is legal to have the Council involved
22 in the removal of a public official that, executive
23 official.

24 CHAIRPERSON GAIL BENJAMIN: That is one
25 of the things that has been suggested by others and

1 that our attorneys are looking like and reviewing.
2 And with that said I would like to thank all of you.
3 I know it is a lot more than the half an hour we uhm
4 attempted to you come here with. But I really
5 appreciate your coming and would love to hear more
6 from you and to talk. As you know Eric we have
7 talked before at greater lengths. Thank you very
8 much. Uhm the next panel uhm is on the Board of
9 Standards and Appeals and is, we will be joined by
10 Margery Perlmutter, Mennakshi Srinivasan, and Gabriel
11 Taussig. A former member of that Louded Institution
12 that we just ended the last panel on.

14 MARGERY PERLMUTTER: Uhm there's a
15 bigger, yeah. Thanks.

16 CHAIRPERSON GAIL BENJAMIN: Each of you
17 will have approximately three minutes. I know you've
18 waited a long time so I am loath to make you pay for
19 the fact that we are running very slowly but if you
20 could be be mindful of the clock. Uhm both and I and
21 I believe the last panel would be appreciative.

22 MARGERY PERLMUTTER: Okay so this is very
23 short chair. I feel like a. I just want to make
24 sure everyone has the package because it is a little
25 bit of following along with visuals.

1
2 CHAIRPERSON GAIL BENJAMIN: You are, you
3 are first Margery, let us proceed.

4 MARGERY PERLMUTTER: Okay yeah, let us
5 proceed. Okay so good evening Chair Benjamin and
6 Commissioners my name is Margery Perlmutter, I am an
7 architect, land use attorney, former member of
8 Community Board 8M, former commissioner on the
9 landmarks preservation commission and currently chair
10 of the New York City Board of Standards and Appeals
11 thank you for inviting to participate in this paneled
12 discussion tonight. Uhm the DSA was created in 1916
13 to protect the City from challenges that the zoning
14 resolution unconstitutionally deprives persons of
15 their private property rights without just
16 compensation you will see I the packet that I provide
17 to you this is a timeline of the composition of the
18 board in 1916. This shows that the board has always
19 been comprised of between 3 and 6 Commissioner with
20 requirements for architects and engineers. In 1975
21 an Urban Planner was added, BSA commissioners have
22 been full time since 1936, BSA is the sole City Land
23 use Agency with an entirely full time Commission. It
24 is the chart is kind of the more colorful on about
25 page 4. Uhm my fellow Commissioners are City Planner

1
2 and a structural engineer both from Queens, a
3 financial feasibility analyst from the Bronx and an
4 attorney for Staten Island. I am from Manhattan.
5 Two of our Commissioners served on their Community
6 Boards this representation by all five of these
7 professional disciplines combined with Community
8 Awareness is essential to the Board's ability to
9 review and comment on the complex materials presented
10 to it by applicants, professional consults and to be
11 responsive to challengers. With the supportive staff
12 of only 19, the Board hears applications for
13 variances of the zoning resolution, 80 different
14 special permits designed by the Zoning Resolution,
15 renewals of these permits, interpretative appeals to
16 resolve conflicts about the meaning of specific texts
17 in the Zoning Resolution, DOB or FDNY request to
18 revoke or modify certificates of occupancy, vested
19 rights, request to vary New York State Laws governing
20 unmapped streets and multiple dwellings and others.
21 Variances represent only 11% of BSAs total
22 applications annually. The package actually includes
23 a more detailed description of BSAs authority and the
24 balance of application. The BSAs prioritization of
25 transparency is evident in its operations.

1 Applications for variances and special permits are
2 required per the BSAs rules to be submitted to the
3 applicable community board, City Council Member,
4 Borough President, the Department of City Planning
5 and Buildings at the same time as they are filed
6 initially with the BSA. All applications upon filing
7 are assigned to a planner. Uhm its not too much
8 longer, who ensures that materials are complete and
9 undergoing seeker review prior to scheduling them for
10 public hearing. Commissioners then independently
11 review all materials submitted on each application
12 and discuss its merits at Executive Session and
13 public hearings. At the public hearings, the
14 Commissioners hear and discuss testimony from the
15 applicant, Community, interested agencies and elected
16 officials. All of these sessions are and hearings
17 are posted to YouTube, a link to one of which is
18 actually provided in your package. Commissioners not
19 Agency Staff leave the review, project modification
20 and resolution of these applications. It is an
21 extremely transparent and irritative process to
22 ensure independence and transparency. BSA
23 commissioners are prohibited from speaking to anyone
24 outside of the agency about any pending applications.
25

1
2 This long-standing policy will shortly be formalized
3 by an amendment to our rules with the public hearing
4 under CAPP, scheduled for April 11. An increase in
5 the number of BSA commissioners, presumably all but
6 the Chair being parttime as they are at other
7 agencies will reduce transparency by forcing a much-
8 increased staff to take on the irritative review
9 process prior to hearing and advising parttime
10 commissioners on the merits of each application.
11 Pursuant to statute and to court directions over the
12 decades, the Board's written final determination must
13 per force describe the facts the board considered in
14 making its determination under a substantial evidence
15 stand and to explain its rationale in detail. All
16 board decisions are appealable and often are appealed
17 to the New York State Supreme Court in an article 78
18 proceeding. A sample resolution and actually a court
19 case is included in your package. As to you
20 questions about the Board's consistency in its
21 review, we have very specific application standards
22 and review each case according to its particular
23 facts and circumstances so I would like the
24 Commission to provide more information as to what it
25

1
2 would like me to respond to and I thank you for
3 inviting me to participate in this panel.

4 CHAIRPERSON GAIL BENJAMIN: Thank you
5 uhm. Mr. Taussig.

6 GABRIEL TAUSSIG: Good evening
7 Commissioners my name is Gabriel Taussig I was an
8 attorney with the New York City Law Department for 39
9 years, the last 29 of those years as head of the
10 Administrative Law Division. Among its
11 responsibility the division represents the BSA in
12 cases brought against it. As I understand it one of
13 the matters being considered by you concerns the
14 makeup of the BSA. As you know the current Charter
15 provisions addressing that issue requires that the
16 Board consists of at least one architect, one planner
17 and one licensed and professional engineer. Each
18 with at least 10 years' experience. My comment in
19 this regard relates to the importance of maintaining
20 a board with a strong presence of professional
21 experts. The New York State Court of Appeals has on
22 several occasions recognized that the BSA is
23 comprised of experts in land use and planning and has
24 accordingly given the efforts through the Board
25 interpretation of the zoning resolution so long as

1 that interpretation is neither irrational,
2 unreasonable nor inconsistent with the governing
3 statute. In light of the often-technical nature of
4 the matters brought before the BSA I figured
5 advisable that any proposal to change the size and/or
6 makeup of the board take into account that importance
7 of maintaining a Board which has a significant
8 presence of Commissioners who had the relevant
9 professional expertise and experience. It is also
10 being proposed that determinations by the BSA be
11 appealable to the City Council. A precedent for such
12 an appeal was established by a Charter Amendment
13 adopted in 1975 when the Board of Estimate was
14 empowered to review certain determinations of the
15 BSA. That procedure was of course eliminated when in
16 1989 it was determined that the make up for the Board
17 of Estimate was unconstitutional. At the risk of
18 being somewhat wonky I would like to describe that
19 appeal process because I think it might prove helpful
20 in your consideration of the matter before you. The
21 procedure called for the Board of Estimate to
22 initially determine within 30 days whether it would
23 accept jurisdiction of an appeal. The Board was not
24 required to and did not consider all appeals
25

1 submitted to it. If an appeal was accepted by the
2 Board of Estimate, the Charter required that the
3 Board resolve that appeal within 30 days and limited
4 its role to determining whether the decision of the
5 BSA was supported by substantial evidence. It should
6 be emphasized that the BSA does not have unfettered
7 discretion whether to grant a variant of special
8 permit. Rather it can only do so after it issues
9 findings that evidence was submitted to support the
10 requirements specified in the zoning resolution. In
11 line with that, the 1974 Charter Provisions did not
12 give the Board of Estimate discretion to make its
13 only denovo determination in considering appeals from
14 the BSA. Rather it limited the Board to deciding
15 whether the BSAs decision was supported by
16 substantial evidence with respect to each of the
17 findings required by the Zoning Resolution. If this
18 commission decides to propose that the adoption of an
19 appeal process, I think that this precedent can prove
20 helpful in creating a procedure that is appropriately
21 limited and focused in its scope. Thank you.

23 CHAIRPERSON GAIL BENJAMIN: Thank you
24 Gabe. Meenakshi?

1
2 MEENAKSHI SRINIVASAN: The red light, the
3 red light.

4 CHAIRPERSON GAIL BENJAMIN: The red light
5 is on the mic is on.

6 MEENAKSHI SRINIVASAN: Okay. Good
7 evening.

8 CHAIRPERSON GAIL BENJAMIN: You need to
9 move it over though, closer to you.

10 MEENAKSHI SRINIVASAN: Is the light on?
11 It is not on. It is not on. Okay thank you. Sorry
12 about that. Good evening Chair Benjamin and members
13 of the Charter Revision Commission. I am Meenakshi
14 Srinivasan and I want to thank you for inviting me to
15 participate in this comprehensive, rigorous and may I
16 say daunting process to consider reforms to the New
17 York City Charter. I am here to testify and answer
18 any questions on the Board of Standards and Appeals.
19 I am a senior land use and zoning advisor. The land
20 use advisor, the land use practice of Prem 11,
21 Natalas and Franko; however, in here representing
22 myself. I am a former chair of the BSA appointed by
23 then Mayor Bloomberg in 2004 and I served in that
24 position until July 2014. While I support the goals
25 of your Commission to improve accountability and

1 transparency. I would urge the Commission to resist
2 the pressure to make revisions where they are not
3 critically needed and where there are more
4 appropriate ways to implement such revisions. For
5 example, such as changes to Agency policy rules and
6 legislation. Some of the suggestions stem from the
7 dissatisfaction with the BSAs fundamental authority
8 to wave the zoning resolution over to specific
9 decisions that may be in conflict with Community
10 sentiment and therefore there is a perceived need to
11 change the composition of the Board to include
12 representation from elected officials or to allow the
13 City Council to function in the pellet nature to
14 review and overturn unpopular BSA decisions. I
15 believe that neither should be included in the
16 Commissions provisions. First the BSA is an
17 independent body with experts and that independence
18 should be respected and protected. The Board is made
19 up of five Commissioners with set six-year terms.
20 The Charter mandates high levels of expertise
21 requiring the Board to be composed of a city planner
22 and architect and engineer all with at least 10 years
23 of experience as well as multi-borough or citywide
24 perspective. Commissioners must reside in one of the
25

1
2 five boroughs and no more than two members in one
3 Borough. Commissioners are barred from any ex-party
4 communication on pending applications which was
5 strictly held while I chaired the Board and is being
6 formalized through rules by the agency right now.
7 The composition and associated Charter mandates
8 ensure that the board has independence and expertise
9 required and the geographic knowledge necessary to
10 make decision that are sound and impartial. While
11 commissioners are appointed by the Mayor all
12 appointments including the chair must be approved by
13 the City Council. The Commissioners are protected by
14 their term which extend across different
15 Administrations. Unlike City Planning Commission
16 where elected official representation is appropriate
17 the Board is not a policy making quasi legislative
18 body but instead it plays an administrative and
19 quasi-judicial role. This system is well considered
20 and safe guard supports independence and ensure that
21 it functioning outside of political considerations.
22 Second the BSAs decisions should be final and should
23 not be subject to the City Council oversight. If
24 decisions as based on evidence and analysis. I just
25 got a few more comments.

1
2 CHAIRPERSON GAIL BENJAMIN: Yes, go
3 ahead.

4 MEENAKSHI SRINIVASAN: That support
5 findings as well as legal precedence in case law that
6 comes with various laws and codes enclosing Zoning
7 Resolution, the Building Code, the General City Law
8 and the multiple dwelling law. Further the BSA was
9 created to provide a venue for relief for property
10 owners from Zoning regulations and in doing so
11 protect the zoning resolution from constitutional
12 challenge. In this context it would appear to be in
13 conflict to designate the Legislative body that
14 enacts the zoning resolution to oversee the Board's
15 decision to wave the zoning resolution. In 1989, the
16 Charter Reform carefully established the role of the
17 City Council in the City's Land Use Apparatus and
18 purposely did not replace the Board of Estimate
19 review of BSA decisions with the Council. I believe
20 there is no bases now to disturb or change that
21 process prescribed to the Charter and finally the BSA
22 should have the discretion to determine time frame
23 for its public hearings. Such discretion safeguards
24 a more deliberate, transparent and fair review of the
25 response of the complexity, the quality of evidence,

1
2 quality and the level of support in opposition in
3 each individual case. Anything else would undermine
4 the boards ability to make rigorous and rational
5 decision and could create procedural inefficiencies
6 by forcing the board to take untimely decisions or
7 not take action or for applicants to withdraw,
8 resubmit a new application and commence the process
9 again. So, with that, thank you very much.

10 CHAIRPERSON GAIL BENJAMIN: Thank you
11 very much. The first questioner is Carl Weisbrod and
12 then Steve. Uhm and Gail. And Jim.

13 COMMISSIONER CARL WEISBROD: It's a
14 question to Mr. Taussig, back in the old days when
15 the Board of Estimate did review BSA decisions and as
16 you say they were not denovo reviews but simply
17 whether the BSA had sufficient, a sufficient basis
18 for their findings.

19 GABRIEL TAUSSIG: Substantial evidence.

20 COMMISSIONER CARL WEISBROD: Substantial
21 evidence. My assumption is that disappointed
22 litigants could appeal an article 78 from the Board
23 of Estimate as well?

24 GABRIEL TAUSSIG: And they did.

2 COMMISSIONER CARL WEISBROD: And they did
3 so, so wasn't the Board of Estimate merely a, an in a
4 sense an interim and unnecessary step for
5 disappointed litigants? Disappointed litigants who
6 are unhappy with the original BSA? Decision?

7 GABRIEL TAUSSIG: I think at the time it
8 was perceived as a less burdensome way for a neighbor
9 if you will air their grievance rather than go
10 through the most if you will costly process of hiring
11 a lawyer and going to court in the hope that that
12 would resolve it. Uh but you are right, that Board
13 of Estimate decision was an, was often the subject of
14 an Article 78 proceeding.

15 COMMISSIONER CARL WEISBROD: So, and you
16 as the head of the administrative law division and
17 the Law Department would defend the BSA both at the
18 Board of Estimate and then again in an Article 78 if
19 it was brought?

20 GABRIEL TAUSSIG: No, when it came to the
21 board of estimate the BSA counseled to the extent
22 that the BSA was called to explain their position
23 would articulate that. We represented the City if
24 you will in that sense with the Board of Estimate

1
2 being the higher level would then be representing the
3 Board of estimate.

4 COMMISSIONER CARL WEISBROD: But in a
5 sense this process just extended the time before a
6 final decision would be?

7 GABRIEL TAUSSIG: Yes that's, but that's
8 one of the reasons I think that the 75 Charter had
9 the 30-day time limits for the Board of Estimate to
10 run.

11 CHAIRPERSON GAIL BENJAMIN: Carl can I
12 add something in response to your question? Can I
13 respond to your question also?

14 COMMISSIONER CARL WEISBROD: Sure. Madam
15 Chair. Who would object?

16 CHAIRPERSON GAIL BENJAMIN: In the 1975
17 Charter revision on the Commission expressly decided
18 to change who had to go to court, that was the
19 purpose of giving the Board of Estimate the appeal
20 that instead of, if a community was unhappy or felt
21 that the decision that BSA had rendered was unjust it
22 was thought that it was harder for the Community as
23 Gabe said to gather the resources to take out an
24 article 78 so the thinking then was it would change
25 who had to take the 7, the article 78, the guy with

1
2 the big pockets who wanted to develop or the
3 Community. I mean it was a pretty political
4 calculation.

5 GABRIEL TAUSSIG: I would note that the
6 appeal to the Board of Estimate wasn't required. In
7 some instances, an Administrative Law you have to
8 exhaust Administrative remedies before going to
9 court. This was not one of them.

10 CHAIRPERSON GAIL BENJAMIN: Sateesh?

11 COMMISSIONER SATEESH NORI: My question
12 was asked.

13 CHAIRPERSON GAIL BENJAMIN: Okay. Steve?

14 COMMISSIONER STEPHEN FIALA: Thank you
15 very much. Thank you all for being here. Each of
16 you are very concise and clear in your remarks and
17 thank you for supporting material, very helpful.
18 There has been a suggestion made over the years that
19 Borough Presidents be given point of authority of one
20 appointee each. The argument being that that would
21 provide for a greater diversity in view points and at
22 the same time bring to the board a greater
23 appreciation for Borough, for specific Borough
24 interest. Each of you articulated your position, how
25

1
2 would you defend against the argument that I just
3 made, that it provides for a Borough perspective.

4 MARGERY PERLMUTTER: So, the Charter
5 already requires that there be no more than two
6 members from any given borough so that the moment
7 four boroughs are represented and are oddly the Board
8 has had difficulty finding representative from
9 Brooklyn so it is apparently not had a Brooklyn
10 representative I don't know in 12 years or something
11 like that. It is quite strange and in terms of this
12 same issue because you must have three professionals
13 then you would have to decide which borough president
14 appoints which professional and for example we just
15 had to search for an engineer. We searched all over
16 the City for the engineer and we had the luxury of
17 being able to duplicate a borough and it was
18 extremely difficult to find an engineer and so the
19 idea that say one Borough President is assigned the
20 engineer maybe you don't find one and actually I
21 recently had a conversation with one of the Borough
22 Presidents who was looking to appoint on the City
23 Planning Commission who asked my advice about someone
24 who was an architect or an engineer in the borough,
25 in the borough of that Borough President and it was

1
2 incredibly difficult to find a person. And don't
3 forget these are full time positions so you are
4 talking about either somebody who works in City
5 Government which is maybe one kind of easier source
6 but not so easy and then the other is that you are
7 looking for expertise outside the city and it is
8 certain of these professions, expertise from outside
9 the City is extremely desirable because what comes
10 before the BSA is a professional community of Lawyers
11 who are both Land use, litigators, incredible
12 professional engineers so the top, top of the line.
13 Top of the line architects and different types and
14 financial consultants and so they are making
15 arguments to the board and so you need the top level
16 of expertise to be able to respond to those arguments
17 so I think that there would need to be something
18 worked out so that there is sort of a free reign to
19 take a look at those levels of expertise it would be
20 tricky. Very hard as it is.

21 COMMISSIONER STEPHEN FIALA: And when you
22 talk about these professionals you have to realize
23 that if and when these people end their City Career,
24 they are going to be subject to the constraints
25 imposed upon all city employees who leave the City

1
2 and if they want to go back to their practice well
3 they may not be able to at least for some years?

4 MEENAKSHI SRINIVASAN: Uhm I just want to
5 reiterate what Commissioner Perlmutter said which is
6 that the composition requires Commissioners to be
7 representing different boroughs with no more than two
8 within one borough. I think that along with the fact
9 that the Charter and the Administrative code and
10 wherever the Zoning Resolution talks about
11 Commissioners and the need for them to visit, to do
12 site visits. I don't think I've seen that in other
13 kinds of uhm Charter mandates for different bodies
14 that work at a citywide level and so I think that was
15 purposeful that in fact it is not the borough
16 perspective, it's being to understand the geography
17 and understand how a particular projects lets her
18 variance effects that area. And so, I think that
19 coupled with the fact that they have professional
20 qualifications is the kind of, is the kind of
21 expertise that is required to make the kind of
22 decisions that they have to make and the kind of
23 findings that they have to make.

24 CHAIRPERSON GAIL BENJAMIN: And I just
25 want to add one other thing. In the current makeup

1
2 you can't know about every make up, as I said two of
3 the commissioners were on their Community Board which
4 already show an extreme interest in their
5 communities. One of them was very involved in sort
6 of civic and political issues in his borough so I, I
7 would say that and all of them are very, very aware
8 of the things that are going on in their own
9 neighborhoods, right? So, you know, because you can
10 only know so much about your entire borough and the
11 rest, they learn from site visits, listening to
12 Community Board and Community testimony at the
13 various hearings.

14 COMMISSIONER STEPHEN FIALA: Thank you
15 all.

16 CHAIRPERSON GAIL BENJAMIN: Jim?

17 COMMISSIONER JAMES CARAS: Thank you all,
18 my question is about the standard that BSA users. You
19 know they; my understanding is that the law says that
20 they I believe it is substantial evidence but then it
21 sorts of opens it up or to their own experience. So
22 uhm you know in other words that that evidence can
23 come from anywhere. Why isn't it incumbent on the
24 person seeking the variance to present substantial
25 evidence to convince the commissioners.

1
2 MARGERY PERLMUTTER: Okay so the Zoning
3 Resolution which is sort of what the BSA does for a
4 living which is read the Zoning resolution is often
5 not so well written but the, so the substantial
6 evidence standard which is a part of what's required
7 to be made for a variance and again only 11% of our
8 filings are variances and I want to go through that a
9 little bit more so everyone when they think of the
10 BSA they think of variances, it is a tiny bit of what
11 we actually do and of the 11% you will see the
12 statistics in your folder. I think we had 12
13 applications in the last Fiscal Year that required
14 financial analysis so that's the first, the vast
15 majority of our variances are little homes one to
16 three family homes where no financial analysis is
17 done. Very, very many of them are community
18 facilities where there is no financial analysis.
19 They base it on a programmatic need's analysis since
20 that's for museums and hospitals and houses of
21 worship and so on. Uhm and so that, the concern that
22 everything is about financials for one is actually
23 misplaced. The other aspect of variance is that the
24 vast majority of the ones that we renew because some
25 variances come up for renewal were variances granted

1 in the 1930s, the 1950s and those uses are like gas
2 stations, automotive repair and things like that.

3 Little mom and pop shops that just have to come back
4 every 10 years to the Board for a renewal where the
5 Board just looks to see if the variance should still
6 be maintained. So just to put that into perspective.

7 In terms of substantial evidence, the Board must make
8 findings. The findings are all listed as part of the
9 standard for variance and it is incumbent upon the
10 applicant to present to the Board proof that the site
11 is suffering a hardship as a result of its uniqueness
12 and if it can prove those things and what is the
13 financial ramification so its submits all kinds of
14 effectively appraisals for lack of a better word.

15 Their financial analysis and then after its made if
16 the Board is persuaded that it has made that sort of
17 three criteria aspect then it moves on to whether
18 neighborhood character, whether project fits with the
19 neighborhood character, whether the variance is too
20 grand and can be reduced and all of those play into
21 each other and when we don't do that and when we sort
22 of the challengers whoever that is, if it's the
23 applicant who is dissatisfied with our decision of it
24 it is neighborhood opposition when they challenge us
25

1
2 in an article 78 the first thing the court does is
3 look at whether we looked at all of the evidence and
4 even in the case of not variances we often do it for
5 example for interpretative appeals. So, looking at
6 the meaning of the zoning resolution, when the court
7 sees that we or perceives that have we have not
8 looked at all of the evidence or didn't give the
9 evidence it sees before it appropriate weight it
10 reprimands us and it sends it right back for us to
11 look again. So, so the courts are of if the zoning
12 resolution is unclear the courts are extremely clear
13 when they send it back, they scold us.

14 GABRIEL TUASSIG: And opponents will
15 submit their own evidence and then it for the board
16 to decide and you could have substantial evidence on
17 both sides, it is not an on off switch. You know you
18 could have substantial evidence on both sides and
19 then it's for the Board to decide which is if you
20 will more substantial.

21 COMMISSIONER STEPHEN FIALA: No, I guess
22 what concerned me was the part that seemed to open it
23 up to the Commissioner's own experiences and I guess
24 were you saying that that only comes in to place
25

1
2 after they do the initial findings and otherwise the
3 hardship, the uniqueness of the site or?

4 MARGERY PELMUTTER: Well so, let's put it
5 for so for example you, we have experts right. So,
6 the experts come with their own experiences, for
7 example, will just use engineer as our one of our
8 experts who is often dealing with extraordinary
9 expertise in front of him because the best engineers
10 in the whole city come to represent, to represent
11 their client's case, right? So, he works on his own
12 expertise where he reads the material and he say in
13 my experience this is not a proper analysis of the
14 geotechnical conditions. So, if we didn't allow that
15 back and forth, we would have to defer to the
16 expertise of the applicant and we can't do that. We
17 must rely on our own expertise and we do the same
18 with all of the other experts that sit on the board.
19 Each one of them pushes back and then just to pick up
20 on Commissioner's Srinivasan's statement the site
21 visits are another part of the Board's own experience
22 so we go to the sites and, and then we will see on
23 the site that the owner claimed that the slope of the
24 site is real extreme. It is only extreme in the
25 left-hand corner underneath the rock so where is the

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2 hardship and if we hadn't visited the site we would
3 be relying on the text and on bad photographs that
4 are often submitted to us. So, we must go in and do
5 that and sometimes we also have for example a site is
6 in the neighborhood of one of the Commissioner's
7 home. So if the Commissioner drives by that site
8 every week and is told by the applicant that there is
9 no parking problem but the Commissioner actually goes
10 to that retail shop all the time and drives around
11 the block looking for parking then that's, that's
12 evidence even though it is not say data provided by
13 the traffic engineer. But the traffic engineer
14 provides data which is then refuted by actual in the
15 field experience, right so, so to pretend that you
16 don't live in the neighborhood wouldn't be logical.

17 MEENAKSHI SRINIVASAN: Right and I would
18 just add that these kinds of discussion whether they
19 are talking about their own experience in the field
20 or when they go for site visits and their
21 impressions. They are discussed at the public forum,
22 the public meeting, at Executive Session and from
23 that questions may flow at public hearing and so I
24 think that this is all entered into the record and in
25 fact the applicant has an opportunity to refute that

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2 or say well we've got some additional information to
3 give you and persuade the, the Board that in fact
4 what their experience is as what their impressions
5 are. It may not be correct and on the other hand you
6 have, you have members of the Community who come out
7 and also speak to those issues. So, I think that you
8 don't want to bind the Board in a way that they
9 cannot. You cannot put them in a box that way in
10 terms of substantial evidence means only these things
11 and I think that, like any Board they should have the
12 ability to draw from their experience. You know they
13 are experts and to ask them not to use their brain or
14 in, in thinking about something and bringing that to
15 the table I think would be too rigid.

16 CHAIRPERSON GAIL BENJAMIN: Okay I just
17 had a question, well actually several but since the
18 Charter already clearly though that it was important
19 that there be Borough representation on BSA uhm I
20 understand your point of the practical difficulties
21 of deciding who would appoint which expert but since
22 the terms are staggered. Well...

23 MARGERY PELMUTTER: No, they are not
24 staggered.

1
2 CHAIRPERSON GAIL BENJAMIN: You are all
3 up at the same date.

4 MARGERY PELMUTTER: Well that depends on,
5 so for instance when I was appointed everyone was a
6 hold over so everyone was appointed at the same times
7 and their times ran. Once they were reappointed
8 their terms ran concurrently.

9 CHAIRPERSON GAIL BENJAMIN: Weren't they
10 just reappointed for the unfilled terms?

11 MARGRY PELMUTTER: They were appointed
12 for the unfilled terms but some of them. It is not
13 particularly staggered because there is also not
14 control with a Commissioner leaves, right?

15 CHAIRPERSON GAIL BENJAMIN: Right.

16 MARGERY PELMUTTER: So some retire off,
17 so some just life goes on and so on so you can't
18 really control the staggering so this is that, this
19 is the problem for instance, when I came on there was
20 a huge vacancy, right and it took a year to find an
21 engineer and so we were, we cannot exist without an
22 engineer we actually had to delay accepting filings
23 of any applications that had to do with engineering,
24 sub terrain conditions. That means any for profit
25 application had to be held off.

1
2 CHAIRPERSON GAIL BENJAMIN: But would you
3 agree that it is possible that a Borough President
4 could appoint and could do the same search you are
5 doing?

6 MARGERY PELMUTTER: Uhm if they had an
7 appointment department that does that wide search. I
8 mean you have to realize what it entailed; I mean I
9 had about. I had only five people who were
10 interested in the position of engineer and only two
11 were qualified and one was from Georgia. So uhm so
12 it was actually a major dilemma so don't forget these
13 are full time positions for a full time engineer who
14 makes a lot more money working in one of the large
15 engineering firms and it is not a great idea if you
16 get someone necessarily that is retired because you
17 don't know how long the person has been out of
18 practice but you need them to know how to do the
19 analysis, right? And science is how it is and
20 computer programs and all of that so you have to be
21 careful what you wish for there.

22 CHAIRPERSON GAIL BENJAMIN: I agree but.
23 It is possible that a there could be a scheme where
24 the Borough Representation was appointed or
25 recommended or appointed by a Borough President.

1
2 MARGERY PELMUTTER: So that is one of
3 those things where careful if it ain't broke. What,
4 what is it that you are actually trying?

5 CHAIRPERSON GAIL BENJAMIN: I am asking
6 you the question Margery. I'm not.

7 MARGERY PELMUTTER: I'm, I'm but that's
8 what uhm that's my answer I'm not sure how you
9 accomplish what is already a very difficult task of
10 finding very skilled professionals to sit in these
11 positions if you are giving it to all the different
12 Borough Presidents and each one has to figure out how
13 they are going to do this borough wide search because
14 presumably they want someone from their borough,
15 right? And how they accomplish actually finding
16 somebody when we looked all over Brooklyn and found
17 no one to sit in two spots. Two different spots.

18 CHAIRPERSON GAIL BENJAMIN: One and two.

19 MARGERY PELMUTTER: But, no two, two
20 spots.

21 CHAIRPERSON GAIL BENJAMIN: I'm not
22 arguing that you don't do a great job at finding
23 people, that's not my argument. I think you do do a
24 good job but this issue has come up and I think
25

1 saying that it is too difficult for the Borough
2 President is not an answer that works for me.

3
4 MEENAKSHI SRINIVASAN: But I think that
5 one has to ask the question as to what are we trying
6 to achieve here. And I think that there is
7 representation and you know if you look at the
8 workload of the Board. First of all, it changes,
9 over, over periods. Right? It's not always. It's
10 not staffing. So, when I was the Chair it was all
11 about vested rights. That was the Bloomberg
12 Administration blotted down zonings. Now it is
13 something else. They were all in certain Boroughs
14 and that was a particular situation. The variances
15 in the Bronx are very few. Uhm. The what's called
16 the Special Quarter Calendar or the AKISIS are also,
17 they are, you know a lot of them are Manhattan based,
18 because it is not surprising it has the highest real
19 estate and very controversial projects and
20 resourceful communities who can combat them. So, I
21 think that, I really do believe that one should give
22 some difference to the fact that are from all of
23 these boroughs. And its not always three boroughs,
24 it changes as well and they were meant to, to satisfy
25 I think that idea of understanding the City

1
2 geographically and the different communities. And
3 uhm the other thing is that I think that we have to
4 understand that the process allows for public input
5 from Community Board, they get 60 days. Similar to
6 ULURP and so I think the Commissioners are able to
7 understand the implications or variances of the
8 applications in those neighborhoods.

9 CHAIRPERSON GAIL BENJAMIN: Right and
10 just the implications or variances of the
11 applications in those neighborhoods.

12 MARGERY PERLMUTTER: And so, I think the
13 Commissioners are able to understand the implications
14 or variances of the applications in those
15 neighborhoods.

16 CHAIRPERSON GAIL BENJAMIN: Right and
17 just to add again I'm not sure kind of what the
18 difference is in terms of the ultimate outcome. To
19 this point first of all there is someone from ever
20 borough ideally. Uhm we have four boroughs
21 represented but the other is that it is not as if the
22 borough president can ever speak to the Commissioner
23 about a pending application so you are not going to
24 get any influence from that appointer.

25 MARGERY PERLMUTTER: I agree.

1
2 CHAIRPERSON GAIL BENJAMIN: Okay so you
3 know therefore I don't actually understand the ill
4 that is trying to be cured here.

5 MARGERY PERLMUTTER: Okay.

6 CHAIRPERSON GAIL BENJAMIN: Okay, anyone
7 else? Thank you very much I hope we can call on you
8 also if there are additional questions or proposals
9 that come in to let us know your opinions of them and
10 how they would work in real day practice. Thank you.

11 MARGERY PERLMUTTER: Thank you.

12 CHAIRPERSON GAIL BENJAMIN: Thank you
13 very much. Oops my microphone is breaking down.
14 Uhm. Oh lovely. Our last panel which is seated here
15 is on Landmarks Preservation Commission and we have
16 quite a distinguished panel. We are joined by Peg
17 Breen and Lisa Kersavage, have I pronounced it right
18 or screwed it up.

19 LISA KERSAVAGE: Oh.

20 CHAIRPERSON GAIL BENJAMIN: Excuse me.

21 LISA KERSAVAGE: Oh, Kersavage you were
22 very close.

23 CHAIRPERSON GAIL BENJAMIN: Kersavage and
24 we are rejoined by Meenakshi and Margery who both
25 served at the Landmarks Commission in addition to

1
2 serving at BSA although at different times and we
3 also have Mark Silverman who is the Council to the
4 Landmarks Commission and who will not be making a
5 statement but may well be answering questions. Bob,
6 where are you? Oh, a former, would you like to
7 answer questions too, please feel free? Who is, who
8 is a former Chair of the Landmarks Preservation
9 Commission? Oh, wait Tierney. Uhm there are a lot
10 of places here, Lisa may I ask you to start and then
11 we proceed to Lisa, Meenakshi, Peg..

12 LISA KERSAVAGE: Thank you I'm Lisa
13 Kersavage and I am here reading a testimony for Chair
14 Sarah Carroll who is ill and was very sad she can't
15 make it tonight. Thank you, Chair Benjamin and
16 members of the Charter Commission, for the
17 opportunity to testify tonight. Under the City's
18 Landmarks Law authorized by the Charter the
19 Commission has designed more than 36,000
20 architecturally, historically and culturally
21 significant buildings and sites and protects them by
22 regulating proposed work. The City's Law was the
23 subject of a landmark supreme court case, Penn
24 Central versus the City of New York which established
25 the constitutionality of historic preservation

1
2 itself. Consequently, it is the model for countless
3 other meaning simple preservation laws around the
4 country and even internationally. This year
5 preservation leaders from across the globe from
6 Tunisia to Singapore have come to visit and learn
7 from LPC the largest preservation agency in the
8 United States. The Commission is composed of 11
9 commissioners and supported by a staff of about 80.
10 Each year we designate individual buildings and
11 historic districts throughout the City. This effort
12 involves holding public hearings and working with
13 property owners, elected officials, community members
14 and other stakeholders. Once designed, we work
15 closely with property and business owners on a daily
16 basis, host weekly public hearings and review over
17 14,000 applications for work annually. Between 93%
18 to 96% of the applications are approved by staff,
19 pursuant to LPCs rules. The remainder are referred
20 to the relevant community board prior to public
21 hearing before the Commissioners. Commission level
22 applications may range from changing the color of the
23 buildings fasad or installing a new store front to
24 the construction of a major addition or a new
25 building. The law works well. We designate and

1 regulate in an open and transparent process. The
2 drafters of the charter recognize the need for an
3 independent, diverse, and expert commission. The 11-
4 member commission is required to have at least three
5 architects, a historian, a planner or landscape
6 architect and a realtor as well as a representative
7 from each borough with the exception of the Chair all
8 of the Commissioners are volunteers. In addition to
9 meeting all of the statutory expert requirements,
10 four of the current Commissioners have significant
11 experience in historic preservation in their
12 professional lives. All Commissioners are appointed
13 by the Mayor for staggered three-year terms with the
14 advice and consent of the Council. Having the Mayor
15 appoint all of the Commissioners results in a truly
16 expert body where individuals have allegiance only to
17 the institution. This impartial and expert approach
18 is on view every hearing and meeting day. Regarding
19 expanding the Commissions Membership and who
20 nominates Commissioners. I want to emphasize that it
21 is critical to our preservation mandate that we have
22 objective, independent and expert members. The
23 current composition ensures that our Commissioners
24 are independent experts from across the city. I have
25

1
2 concerns that these proposals could impact the
3 Commission's ability to reach consensus and affect the
4 ability of property owners to get a fair and
5 efficient review of their applications. There will
6 be great harm done to preservation if the quality of
7 the Commission becomes diluted, if the size of the
8 Commission become cumbersome or if the Commission
9 cannot make decisions in a timely manner. Finally, I
10 note that it is unclear what qualifications the new
11 member would or should have and which appointing body
12 would be responsible for appointing which experts and
13 I just have a little bit more.

14 CHAIRPERSON GAIL BENJAMIN: Okay.

15 LISA KERSAVAGE: In closing it bears
16 emphasis that the Commission as constituted today
17 works very well, significant buildings in areas are
18 designated and proposed work is efficiently reviewed
19 and potentially improved. We want property and
20 business owners to feel pride in their special
21 buildings. We don't want them to feel that
22 preservation and LPC regulation is just an added
23 burden. It is critical that we review applications
24 for work in an efficient and fair manner. This is
25 not only good government but it is essentially if

1 historic preservation is going to continue to have
2 broad support in our City. I welcome the opportunity
3 to answer any questions that you may have.
4

5 CHAIRPERSON GAIL BENJAMIN: Thank you
6 very much, Meenakshi.

7 MEENAKSHI SRINAVASAN: Good evening Chair
8 Benjamin and members of the Charter Revision
9 Commission I am Meenakshi Srinavasan and I want to
10 thank you for inviting me to participate in the
11 discussion on revision to the City Charter with
12 regards to the landmark's preservation Commission. I
13 am a Senior Land District Zoning Advisor in the Land
14 Use Practice of 11, Natalas and Franco. However, I
15 am here as a private citizen. I am the former Chair
16 of the Landmarks Preservation Commission appointed by
17 Mayor Bill de Blasio in 2014 and serving until June
18 2018. Under my tenure, LPC instituted several
19 reforms and initiatives including addressing a
20 backlog of calendared properties and advancing
21 outstanding designations to fruition, designating
22 historic resources alongside major planning efforts,
23 applying more rigorous analysis and committing to
24 reasonable time frames and the designation process
25 and leveraging technology and data to provide greater

1 transparency and accessibility of the Commissions
2 work. 2015 marked 50 years of the Landmarks Law and
3 LPC. Since it was adopted, the City had flourished
4 with over 36,000 designated properties. The vast
5 majority of property owners keep their sites in good
6 condition and follow the landmarks law. The agency
7 has been effective in addressing an ever growing work
8 load of applications through additional stuff,
9 internal tracking systems and LPC rules. An LPC
10 conducts a robust process for public input on
11 Commission level applications. There have been very
12 few hardship cases over the past five decades and the
13 courts have upheld LPCs authority time and time
14 again. In fact, LPC and the Landmarks Law work
15 extremely well, setting the standard for Municipal
16 Agencies all over the country. As I said in my
17 previous testimony, I would urge the Commission to
18 resist any pressure to make revisions where they are
19 not needed. I would like to comment on a few
20 recommendations as follows. First, the designation
21 process should not be changed. The recommendation to
22 delay designation until a City Council vote would
23 undermine the Commissions Ability if needed to act
24 swiftly to save significant historic properties for
25

1 irreparable harm. This is central to its mandate to
2 protect and preserve the City's historic and
3 architectural and cultural resources. The current
4 designation process ensures fairness, by requiring
5 notifying to property owners and advance of
6 designation and provides the opportunity for comment
7 in public hearing. The ability to LPC to designate
8 up to such requirement are fulfilled, safeguards
9 structures from inappropriate alterations and
10 demolition. If LPC's vote must be ratified by the
11 City Council inappropriate work may ensure on such
12 properties between LPC vote and City Council vote
13 which is up to 120 days. On the reverse, under the
14 current process, the properties are designated and
15 later reversed by the City Council, property owners
16 are not harmed since designation and the
17 applicability of the Landmarks Law, would not compel
18 owners to do work on their properties. Nor would it
19 restrict them from doing work only that it requires
20 LPC review. While LPC rarely acts without
21 considerable discussion with property owners, that
22 discretion should continue empower the Commission.
23 Second, several recommendations reflect the call for
24 deliberation and balancing of historic preservation
25

1 with housing, economic, development or resilience. I
2 would agree that it is legitimate to have a forum to
3 weight benefits of historic preservation with other
4 citywide goals. However, I would urge the Commission
5 to reject these specific recommendations. The
6 Draconian suggestion to transfer landmarks according
7 to the City Planning Commission should be rejected as
8 this fails to understand LPCs unique, separate and
9 independent role from the City Planning Commission.
10 As for the need for Planning and Economic Analysis
11 and the context of the landmark designation process
12 the Charter already allows the State Planning
13 Commission to hold a public hearing and report to the
14 City Council with respect to the relationship of any
15 designation to the zoning resolution, projected
16 public improvements and any plans for development,
17 growth or improvement or renewal in the area. As the
18 charter can see, these considerations are already
19 vested with the City Council today. Third, with
20 regards to recommendations concerning the
21 Commission's composition I believe that the current
22 Charter mandated uhm composition which includes three
23 architects, a City Planner, Landscape Architect or
24 Engineer, a Historian and a Real Estate professional
25

1
2 to provide the professional expertise necessary to
3 review LPC applications. This composition
4 established a minimal requirement for the Commission
5 and allow the remaining Commission position to be
6 filled by other related professionals. Historically
7 the Commission has always had preservation minded
8 professionals willing to serve the public. However,
9 I believe that by including more requirements of the
10 Commission's Composition with only limited
11 flexibility and adversity at the body that has been
12 affected over the past five decades. Finally, I
13 would ask the commission to give consideration to
14 compensation of LPC commissioners. Excuse me. At
15 the time it was established, the volunteer
16 commission, the focus of its work centered on
17 Landmark and Historic District Designation. Perhaps
18 the drafter has never anticipated that over the next
19 five decades would grow into the largest municipal
20 preservation department in the Country which receives
21 over 14,000 applications a year and whose
22 jurisdiction continues to expand as it designates
23 additional sites and neighborhoods. While additional
24 staff has addressed the steadily increasing number of
25 applications, the Commission which reviews over 400

1 applications at 34-36 public hearings a year is fined
2 and at this point volunteer close to 15% of their
3 time to the City. I would ask you to consider parity
4 of the Landmarks Commissioners with the City Planning
5 Commission who are compensated. Thank you.
6

7 CHAIRPERSON GAIL BENJAMIN: Thank you.

8 Ms. Breen welcome back.

9 PEG BREEN: Good evening Chair Benjamin.

10 CHAIRPERSON GAIL BENJAMIN: Your mic.

11 PEG BREEN: Sorry, thank you. Good
12 evening Chair Benjamin and Commissioners I am Peg
13 Breen the President of the New York Landmarks
14 Conservancy, a 46-year-old private nonprofit
15 preservation organization. The City's landmarks
16 preservation commission I agree is one of the
17 strongest and most effective preservation agencies in
18 the Country. That said, there were ways it could be
19 strengthened and improved. We support requiring one
20 or more of the members of the LPC to be trained
21 preservationists. While preservation architects
22 serve on the Commission and the current Chair has an
23 advanced degree in preservation. This requirement
24 should be codified. When the Commission was formed,
25 preservation was a relatively new discipline. It is

1
2 established now and a commission devoted to
3 preservation deserves preservation expertise. We
4 agree Commission members should receive stipends. We
5 agree that serving on the LPC today requires a
6 considerable amount of times at hearings and field
7 trips and in preparation for decision making. Much
8 more time than when the Commission was created.
9 Stipends would recognize the important service the
10 Commission Members perform. We do not support
11 changing the composition of the LPC to include
12 appointments of other elected officials. The Charter
13 already requires commission members from each borough
14 and mayoral control maintains clear accountability.
15 Let me repeat from our earlier testimony, this
16 Charter should make clear the LPC has binding
17 authority over city owned landmarks including
18 schools. Important landmarks such as Arasmus Hall
19 Academy in Brooklyn and Federal Law Omstead's Home on
20 Staten Island has suffered substantial deterioration
21 under the neglect of Agencies responsible for them.
22 The Commission acts when private owner practice
23 demolition by neglect. It needs to act when the City
24 fails to maintain its Landmark properties. The LPC
25 definitely needs to remain independent. Its mission

1 is distinct from that of the City Planning Commission
2 and equally important. The conservancy commission,
3 the first comprehensive study on the economic
4 benefits of preservation in New York City. The
5 Database report found that more than \$800,000 million
6 dollars a year is invested annually in New York's
7 Historic Buildings and that is creating 9000 local
8 jobs and tech firms, the fastest growing segment of
9 New York's Economy prefer to locate in older history...
10 buildings with character, mainly in historic
11 districts. The study shows that the LPC has done its
12 job but we believe the LPC would be even more
13 successful continuing as an independent agency with
14 the changes we support today. And I have one
15 digression because I worked for the City Council for
16 five years and the City Council will never be the
17 Agency that the city deserves and that numerous
18 people were talking about earlier unless you do
19 staggered terms. If you are going to lose 43 Council
20 Members in fell swoop every few years you are never
21 going to have a Legislative Body that should be the
22 Legislative body that we deserve.

24 CHAIRPERSON GAIL BENJAMIN: Thank you
25 very much Ms. Breen. Mr. Tierney.

2 ROBERT TIERNEY: I am here to answer
3 questions I have nothing to add other than the reason
4 I am even down here is that I had read that you we
5 retaking some issues relating to Landmarks Commission
6 and I have a deep commitment to that, spent more than
7 a decade of my professional life, have great pride in
8 that agency and everything that it has done for the
9 City and I wanted to be sure that no harm was done
10 that everyone has been saying and I don't believe
11 harm will be done and uhm I don't disagree with
12 anything that has been said, certainly by my
13 successors here. Or their representatives Meenakshi
14 and Sarah Carroll. So, 100% in agreement with the
15 substantial points that were made, tweak here and
16 there but nothing at all. Just to protect it, keep
17 it going, keep it as strong as it is and do no harm.
18 Thank you for having. Thank you for calling me up
19 and happy to show up here quickly, briefly.

20 CHAIRPERSON GAIL BENJAMIN: Margery?

21 MARGERY PERLMUTTER: I am Margery
22 Perlmutter I am here actually of the voice of what it
23 is like to be a Volunteer Commission so I served
24 before becoming chair of the BSA, I served for I
25 think eight years on the Landmarks Commission as a

1
2 volunteer and uhm under Chair Tierney and Chair
3 Srinivasan and so just to kind of put in perspective
4 for the thought process about paying Commissioners, I
5 think it is an excellent idea. In part because at
6 the time of serving I was a Partner in a law firm and
7 land use firm and I was therefore not able to work on
8 any landmarks work while I served on the commission
9 so it was an enormous blow to my income and in the
10 interest and a lot of people do that actually. Many
11 of the Commissioners who come on are professionals in
12 their discipline and because it is so important for
13 them, they really want to serve on the Commission
14 they are willing to go through all sorts of
15 deprivation really in order to have that opportunity
16 and then they are not compensated. I mean what I
17 remember is that we weren't even allowed to have
18 lunch that cost more than \$4 so we never had lunch
19 paid by the City for us and so giving up lots and
20 lots of money and not even getting a free lunch.

21 CHAIRPERSON GAIL BENJAMIN: When I was a
22 staffer in the Council in the Controller's office, we
23 couldn't take anything, not a cup of coffee, not a
24 lunch, nothing. So, you go to this nice meeting and
25

1
2 everybody has this spread and you are sitting. Uhm
3 the first questioner is Carl.

4 COMMISSIONER CARL WEISBROD: Yes, so I
5 would like to pursue this issue of Compensation for
6 Commissioners because uhm I think probably all of us
7 find it at least superficially very attractive but it
8 would subject Commissioners to a much more stringent
9 conflict of interest requirement than they current
10 uhm face and particularly small, Commissioners who
11 are partners in small practices which many of the
12 Landmarks Commissioners are and I am recall Ms.
13 Perlmutter's testimony a few minutes ago about the
14 challenges of recruiting effective Commissioners, uhm
15 and I know many of you have had those challenges as
16 Chairs of the Landmarks Commission. How much greater
17 difficult? And I've had the challenge as well as the
18 Chair of the City Planning Commission; uhm how much
19 more difficult would it be to get the, the quality
20 uhm Commissioners that you seek if uhm if they were
21 subject to the kind of stringent conflict rules that
22 uhm currently govern other paid positions?

23 MARK SILBERMAN: Hi it's Mark Silberman
24 I'm Counsel at the Landmarks Commission. So that
25 question is obviously one that has been raised a

1
2 number of different times over the years and and uhm
3 just as a pref as I do think that the Commission
4 following up on what has been said at the prior
5 panel. There is, it is difficult to find
6 Commissioners willing, able to serve because of the
7 conflicts issues that happen at the Commission. Uhm
8 but I did confirm with the COIB that actually a
9 stipend would not change the standard of the
10 conflicts of how the conflicts laws apply to the
11 Commissioner. It really would depend on how much
12 time is spent, the 20 hour cut off is really where
13 the more stringent requirements kick in and the
14 Commissioners at least at this point aren't, wouldn't
15 be working probably 20 hours a week so the stipend
16 wouldn't technically or likely increase over the
17 short term there requirements under the conflicts
18 law.

19 COMMISSIONER CARL WEISBROD: So just to
20 be clear you are talking more about daily stipend or
21 an appearance stipend then. I think it was Ms.
22 Perlmutter, maybe it was Ms. Breen who talked about
23 compensating them the way say City Planning
24 Commissioners are compensated which is at a very
25 different level.

1
2 MARK SILBERMAN: Yeah, I think that was
3 my understanding that what was being considered here
4 as opposed to a I mean they obviously have a slightly
5 different work load and stuff. Yeah.

6 MEENAKSHI SRINAVASAN: Can I just add to
7 this, so I have trouble imaging that the confirmation
8 hearings for a Commission, a potential Commissioner
9 who might be paid under a stipend or whatever other
10 kind of method it would be would be more extreme than
11 what Chair Tierney and I went through when I was
12 appointed so I was at the time was both a lawyer and
13 an architect and so the preservation committee and I
14 think Ms. Breen will remember this, were, had a lot
15 of problems with that being potential conflict and
16 we've had successful other possibilities for uhm
17 Commissioners that were also thwarted because of
18 their professional roles to work for free. So,
19 currently what ends up happening is if you are a
20 small business owner you are asked to do something
21 that is imp.. rather impossible by the Conflict of
22 Interest which is to isolate the income that is made
23 by anyone appearing before the landmarks Commission
24 and isolate it away from the Business Partner who
25 will be serving on the Commission. So obviously that

1
2 doesn't work at all for a sole practitioner and so
3 that cuts them out entirely and for a practitioner
4 who say has one partner, uhm that's a very
5 interesting trick and to the point of having a
6 preservationist be one of the requirements, all of
7 the preservationists work and appear before the
8 landmarks commission so it means that they could not
9 be sole practitioners. They could not be partners in
10 their various firms. Uhm and so I again it is one of
11 those things again where other than a retired person
12 I'm not exactly sure how that would work but uhm I
13 think that already the amount of recusals that for
14 example I had to go through and Mark and I often
15 talked about this, I would find out right there at
16 the hearing table that my client is a partner in an
17 application and I wasn't aware until the client stood
18 up and said something, the applicant stood up and
19 said something and then I'm texting Mark Ut-oh I have
20 to recuse so. The recusal requirements are enormous
21 already, the vetting process is enormous already I
22 have trouble imagining it would be worse if they were
23 paid and I don't know if it means that they have to
24 fill out those terrible forms that we have to fill
25 out every year that divulge everything but people who

1 really want to be Commissioners will fill out those
2 forms.
3

4 PEG BREEN: Can I just say that when we
5 are talking about preservation backgrounds
6 professional and preservationists the uhm
7 preservation architects are full filling that now and
8 so it's not as if I want to go beyond the commission
9 but there are plenty of people with preservation
10 backgrounds in various fields that could ensure that
11 a preservationist is there. I think what we are
12 talking about is that it should be recognized that is
13 a profession now and this is a preservation
14 commission so that's why we are asking for it.

15 CHAIRPERSON GAIL BENJAMIN: Jim and then
16 Reverend Miller.

17 COMMISSIONER JIM CARAS: I was uhm
18 intrigued by Peg's comment on the uhm Commission
19 having the authority to ensure that the City is
20 maintaining its buildings and I wanted to ask you,
21 you know practically how would that work and then ask
22 the other panelists to comment on that?

23 PEG BREEN: Practically if it does not do
24 anything except pubic shaming which some agencies
25 thoroughly deserve for the way that they care for

1
2 their properties. It doesn't, it isn't fair that we
3 are asking the public to maintain certain standards
4 and the Commission can sue people if they are
5 committing demolition by neglect and yet some of our
6 most valuable landmarks were literally almost at that
7 stage because of neglect by the City and I don't
8 think that's fair and I think that raising this an
9 trying to make sure that uhm agency budgets are
10 sufficient or agency priorities understand what they
11 have to care for is a role that the commission should
12 be, should be playing.

13 MARK SILBERMAN: So, if I can just
14 respond I think that it is a matter of context. It
15 is important to think about how the law was drafted
16 and I think that you know the Landmarks law has
17 always uhm recognized the mandate for preservation is
18 balanced by other governmental mandates whether it is
19 affordable housing, whether it is criminal justice,
20 whether it is all sorts of different things and so
21 the Law in section 318 has always said that we are
22 advisory and we have only become binding authority
23 when in 1997 the Art Commission Statute, the Charter
24 Mandate was changed to allow us to act in lieu of the
25 Art Commission in certain circumstances where City

1
2 Property is involved. So, we do have the ability to
3 act to sort of kind of bindingly regulate city owned
4 property. We did not as, as Peg points out there is
5 no authority of us to sue or enjoin another city
6 agency and I think that would be a highly unusual
7 situation to find ourselves in. I do think though
8 that the Commission and that is not to say that there
9 aren't situation in which other agencies have not
10 taken care of their landmarks the way that we would
11 prefer but I think that though difficult and
12 sometimes prolonged we do work very closely with
13 other city agencies and I think as a general matter
14 at the end of the day through our working closely
15 with them, through public pressure perhaps these,
16 these resources are in fact ultimately fixed up
17 whether it is a you know the farm colony in Seaview
18 or Staten Island or, or.

19 CHAIRPERSON GAIL BENJAMIN: The point
20 exchange.

21 MARK SILBERMAN: There have been
22 situations right but that was you know it doesn't
23 work perfectly but I do want to just say one thing
24 that Peg stressed, I think that in thinking about
25 this. The reason we can't control you know schools

2 SCA and other authority through state law are exempt
3 from local landmark regulation so it is not the lack
4 of the local landmarks law that prohibits that.

5 PEG BREEN: Can't there be informational
6 hearings? Can't you point out that Snyder Schools
7 are dilapidated in certain instances around the City?
8 I mean it, it seems to me that nothing else you
9 really should use your bully pulpit and I know that a
10 lot of this goes on behind the scenes in government
11 as it properly should most of the time but when its
12 not working uhm valuable buildings are in great
13 disrepair thanks to any number of city agencies and
14 it is not right.

15 CHAIRPERSON GAIL BENJAMIN: Thank you
16 uhm. Reverend Miller.

17 COMMISSIONER REVEREND CLINTON MILLER:
18 Thank you madam Chair, thank you panel for your
19 presentation.

20 CHAIRPERSON GAIL BENJAMIN: Here.

21 COMMISSIONER REVEREND CLINTON MILLER:
22 So, the question is do you feel that the LPC is
23 sufficiently staffed enough to hear some of the
24 concern's neighborhood by neighborhood from
25 residents? I think we all can agree that their pros

1
2 and cons in everything so as a pastor of a landmark
3 church we were proud to partner with Landmarks to
4 maintain a stained-glass window. At the same time,
5 we hear concerns from some of our community home
6 owners that it is very difficult to keep up with the
7 standard that LPC sets. So, does the staff as is
8 have the capacity enough to hear all of these
9 concerns to maintain those standards?

10 PEG BREEN: Yes, thank you for your
11 question. I mean we certainly do strive to work very
12 closely with communities and also with the property
13 owners of landmark buildings or buildings in historic
14 districts across all five boroughs. I do believe we
15 are adequately staffed to address these issues but
16 you know it's a constant issue for us, I mean in
17 terms of outreach with communities, we work very
18 closely with Community Boards with advocacy groups
19 with elected officials. I am trying to understand
20 preservation opportunities, uhm places where people
21 want to see designations and trying to survey and
22 study those properly. In terms of the property
23 owners, we are increasing under Chair Sarah Carroll.
24 Increasing our outreach efforts, we are doing more
25 and more community presentations and trying to work

1
2 more closely with property owners to share what it
3 means to be landmarked, what is how a regulatory
4 system works? And how to work with is and also uhm
5 grant opportunities that we have? But I think we do
6 have the staff to do this work and we are
7 prioritizing it.

8 COMMISSIONER REVEREND CLINTON MILLER:

9 Just to add on it, those grants, those grants are
10 matching grants, correct?

11 MARGERY PERLMUTTER: They are matching

12 grants under certain circumstances. They are through
13 HUD Money so there are criteria in terms of income
14 and certain census tracks where they are eligible but
15 for the grants to property owners, I think they are
16 generally not matching grants right? Oh, sorry they
17 are usually matching grants.

18 PEG BREEN: May I add, at the Landmarks

19 Conservancy we have a sacred sites program that is
20 statewide and we give grants and technical help to
21 landmark religious institutions of all demonization
22 of all over the state. We also have a low interest
23 loan program aimed at low and modern income property
24 owners and we don't just give the grant or the loan
25 in either case, our staff really works with the

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2 institution or the individual homeowners to make sure
3 that their, their work is done with a budget that
4 they can afford and on time.

5 PEG BREEN: And I just want to add that
6 that invaluable to the City's Historic Preservation
7 work.

8 CHAIRPERSON GAIL BENJAMIN: Commissioner
9 Fiala?

10 COMMISSIONER STEPHEN FIALA: Thank you
11 Madam Chair I just like to drill down a little bit
12 deeper into the stipend issue. But before I do
13 though Ms. Breen, I'm very disheartened to hear what
14 you said. I'm the one who purchased with Capital
15 Money the Olmstead House. It took more four years
16 here in the Council to get them to fund it and to
17 hear that it is in the state of disrepair is very,
18 very disheartening. On the.

19 PEG BREEN: We are in the process of
20 working with the Parks Department and we are raising
21 money to stabilize it ourselves.

22 COMMISSIONER STEPHEN FIALA: That is
23 wonderful.

24 PEG BREEN: Because it was be quicker
25 than going through a City Agency to get the money.

2 COMMISSIONER STEPHEN FIALA: Thank you
3 for your leadership on that it is an important jewel.
4 Uhm on the stipend issue and Chairman Tierney you may
5 have, you may have the historical perspective here,
6 do you or does anyone on the panel know the
7 historical rationale for not providing a stipend to
8 the LPC members? And as a followup to that, what
9 would your specific recommendation be? What would we
10 peg it to? What should it look like? If we, if we
11 did mandate a stipend?

12 ROBERT TIERNEY: I don't know the
13 history, Mark may in terms of why there were never
14 stipends and why they were unpaid? Mark?

15 MARK SILBERMAN: From what I understand
16 the, the drafter thought, it was twofold. One was
17 they really wanted they, this to not be a sort of a
18 paid position. They didn't want it to be something
19 that people would make money at this was really seen
20 as people who cared solely about historic buildings.
21 And things that needed to be preserved and protected
22 in New York City. I also think to a certain extent
23 there was a notion that the work load would not be
24 overwhelming and I think 55 years old, with 36,500
25 buildings designated there is a, and as Chair

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2 Srinivasan mentioned you know 36 hearings and
3 meetings a year, the workload is definitely
4 increasing but I think that was the sort of rationale
5 back then.

6 COMMISSIONER REVEREND CLINTON MILLER:

7 What is a fair guesstimate or fair market value for
8 such a stipend today if it was to be imposed?

9 MARK SILBERMAN: I'm going to turn that
10 over to people who actually...

11 MARGERY PERLMUTTER: So I would be happy
12 to say that I cannot see what the different is
13 between what a landmarks commissioner who is a
14 volunteer does and what a City Planning Commissioner
15 does and I have to say that as Land Use Lawyer Mark
16 and I work very often together on cases where there
17 was an application based on a hardship argument to
18 try to demolish a landmark building and so there were
19 times I put in 40 hours a week and so not even for
20 lunch. And so, I think it really depends on the
21 Landmarks Commissioner, some really are involved so
22 they are working much more than those hours and when
23 I saw jus those hours, it is a lot of hours for one
24 each hearing. Some of reviewing materials, some are
25 going on site visits and so it is just a lot more

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2 than just that one day but it is three to four
3 hearings a month, right? So that's a lot. All day.

4 COMMISSIONER REVEREND CLINTON MILLER:

5 What about per diem for that?

6 MARGERY PERLMUTTER: Well I don't

7 actually know how the per diem works but there is
8 already an example at City Planning so I don't know
9 why that.

10 COMMISSIONER REVEREND CLINTON MILLER:

11 Just, just to note that City Planning those
12 Commissioners are City Employees subject to every
13 single conflict of interest requirement which is
14 quite different from a stipend.

15 MARGERY PERLMUTTER: No but we've already

16 talked about conflict of interest and I actually
17 don't think that would be an issue because we already
18 are, were.

19 COMMISSIONER REVEREND CLINTON MILLER: I

20 think that where the difference might be Margery
21 actually is at some point the firm can no longer
22 appear before the landmarks commission and so I'm
23 sure where that line is, whether it is the 20 hours
24 or whether there is a certain amount but that's,

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2 that's the critical thing is the firm would no longer
3 be able to appear.

4 MARGERY PERLMUTTER: But I think that is
5 the key, let's try to find what the magic cut off is
6 and get below it.

7 COMMISSIONER REVEREND CLINTON MILLER:
8 Right, absolutely.

9 CHAIRPERSON GAIL BENJAMIN: Paula?

10 COMMISSIONER PAULA GAVIN: Thank you all
11 for being here. Uhm several of you have mentioned
12 that our Landmarks Commission is considered one of
13 the strongest and most effective in the country and I
14 was curious what are the measures that are used to
15 determine that?

16 MARGERY PERLMUTTER: Well I do but sorry
17 Lisa did a very comprehensive study of I think five
18 cities in the US and so they've compared different
19 aspects, how big the Agency was, how many uhm have to
20 speak to her findings.

21 LISA KERSAVAGE: I have and actually I
22 did a study of different cities for a foundation in
23 Philadelphia and then also LPCs part of a big cities
24 network so we are looking at metrics across different
25 cities with preservation. And uhm definitely in

1 terms of the size of the staff, LPC is the largest in
2 the country, in terms of the number of designations,
3 in terms of the permits issued, we are the largest by
4 far but I would say also by addressing the complexity
5 of preservation so I mean we talked tonight about
6 designation and regulation but we also really strive
7 to address issues of diversity and you know how it
8 relates to say culturally significant landmarks,
9 sustainability issues and how our regulations can
10 streamline resiliency and sustainability efforts.
11 How preservation can fit into larger city planning
12 efforts. So those are the kinds of questions when we
13 have other cities from the US or from around the
14 world. They are coming to ask us about those and
15 also some of the issues with enforcement and just our
16 basic operational issues are also of great interest.

18 CHAIRPERSON GAIL BENJAMIN: Any other
19 questions?

20 LISA KERSAVAGE: It is also the strength
21 of the landmarks law too.

22 CHAIRPERSON GAIL BENJAMIN: Seeing no
23 other questions I would like to thank the panel both
24 the ones we anticipated and the ones who joined.

25 LISA KERSAVAGE: Thank you we think.

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2 CHAIRPERSON GAIL BENJAMIN: And I would
3 like to reserve the right also as people delve
4 further into these topics to call on any or all of
5 you again to help us look through the various
6 proposals and to see how we might address some of the
7 issues that have arisen. Uhm we would like to be
8 able to call on you.

9 LISA KERSAVAGE: Sure, and thank you for
10 saving the best for last.

11 CHAIRPERSON GAIL BENJAMIN: I thank all
12 of you for coming and uhm with that I would like to
13 call our sixth panel. (laughing). Sorry I'm getting
14 a little punch drunk. This concludes. This
15 concludes our series of expert forums. I would like
16 to thank everyone who has joined us over the past few
17 weeks for a very informative series of conversations.
18 The Commission staff will continue to process all of
19 the feedback that we have received and develop
20 recommendations for us which will be followed by
21 another set of hearings in all five boroughs later
22 this spring. With that, the business of today's
23 meeting has concluded. Commissioner while you are
24 more than welcome to take your written materials with
25 you please remember to leave your blue folders and so

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2 that and name cards behind so that we may use them at
3 the next series of meetings. Once again, I thank all
4 of the Commissioners for your participation, for your
5 thoughts and with that do I have motion to adjourn?

6 MALE: Adjourn.

7 CHAIRPERSON GAIL BENJAMIN: Boy that was.

8 ALL: Second.

9 CHAIRPERSON GAIL BENJAMIN: Okay the
10 motion has been seconded, any discussion? Hearing
11 none all in favor, aye?

12 ALL: Aye.

13 CHAIRPERSON GAIL BENJAMIN: Opposed?

14 This meeting is adjourned (gavel pounding). Not yet
15 we have your schedules though so we.

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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 May 17, 2019