

CHARTER REVISION COMMISSION

PUBLIC ISSUE FORUM

PUBLIC INTEGRITY

CITY COLLEGE

160 Convent Avenue

New York, New York

6:15 P.M.

CHAIR: DR. MATTHEW GOLDSTEIN

COMMISSION MEMBERS:

JOHN H. BANKS, VICE CHAIR

ANTHONY PEREZ CASSINO

BETTY Y. CHEN

DAVID CHEN

HOPE COHEN

ANTHONY W. CROWELL

STEPHEN FIALA

ANGELA MARIANA FREYRE, SECRETARY

ERNEST HART

REV. JOSEPH M. McSHANE, S.J.

KENNETH M. MOLTNER

KATHERYN PATTERSON

CARLO A. SCISSURA

BISHOP MITCHELL G. TAYLOR

1 CHAIRMAN GOLDSTEIN: Good evening, everybody.
2 I am told that we have a quorum so that we will
3 start our business for this evening.

4 I'm Matthew Goldstein, the Chairman of the
5 New York City Charter Revision Commission. We're
6 pleased to be here tonight at the City College of
7 New York, which dates back to its founding in
8 1847. We're very pleased that our newly installed
9 President Lisa Staiano-Coico was here earlier and
10 wanted to welcome you. And we thank the folks at
11 City College for graciously hosting us this
12 evening.

13 Several Charter Commissions have looked at
14 issues of public integrity in the past and that
15 is our topic for this evening. The 1988 Charter
16 Revision Commission which did its work after a
17 series of local corruption scandals found that
18 the issue of government integrity was of primary
19 concern. In today's world government integrity
20 remains of critical importance to a well-
21 functioning city government that has the
22 confidence of its people. New York City has an
23 extensive system for preventing and prosecuting
24 conflicts of interest and corruption in
25 government and for insuring that transparency in

1 government operations follow the electoral
2 process.

3 The current Commission heard testimony at
4 its first round of public hearings regarding
5 several public integrity topics. At tonight's
6 forum will be looking at the roles of two key
7 institutions that were established as charter
8 entities in 1988: The Conflicts of Interest
9 Board and the Campaign Finance Board. We will
10 also consider more broadly how the current system
11 under the Charter handles modern day public
12 integrity issues.

13 This is the Commission's fourth forum. We
14 have held forums in Brooklyn, the Bronx and
15 Staten Island on the subjects of term limits,
16 voter participation and government structure
17 respectively. Next week on Thursday, June 24, we
18 will be meeting at the Flushing Library in Queens
19 to discuss land use.

20 Looking ahead, after the issue forums are
21 concluded, I will ask the staff to write a
22 preliminary report, including possible proposals
23 for us to consider for revising the Charter, and
24 those provisions might wind up on the ballot for
25 the voters in November of 2010. The preliminary

1 report will be based upon academic and legal
2 articles and treatises, and, most important,
3 input received from Commission members, the
4 public city agency heads, elected officials and
5 good government groups through written and oral
6 communications and via the public hearings and
7 forums.

8 Commission members will be asked to offer
9 their thoughts and make there views known on the
10 content of the report for modification and to
11 report to the staff and to me as Chairman before
12 writing begins, you know, insuring a consultative
13 process that we followed since the inception of
14 this Commission.

15 Once that preliminary report is drafted all
16 of the Commissioners will have an opportunity to
17 review and comment on it for several days before
18 it is released for public comment. Thereafter,
19 there will be five more public hearings in all
20 five boroughs in July and early August regarding
21 the preliminary report and to learn about other
22 policy issues.

23 The Commission will then meet to discuss
24 possible final proposals and to define what
25 issues should be deferred for additional

1 consideration by possible future commissions and
2 to identify areas where changes are recommended.
3 There may be the need for another public hearing
4 or meeting later in August before any vote takes
5 place on a final ballot proposal or proposals.

6 Let me just respond a little more deeply on
7 what it is that I just said. When we convened as
8 a Commission we indicated that we would drill
9 deep into the bedrock of issues. Noting that we
10 began our work in March, March 3rd, I believe,
11 and we will need to conclude the first iteration
12 of our work by the end of August so that items
13 can be placed on the ballot. We've already made
14 the decision that term limits will be an issue
15 that the Commission wants to bring forward for
16 consideration.

17 But in anticipation that there are many
18 other issues that the Commission would need to
19 look at, because the Mayor has asked us to do a
20 top to bottom review of the Charter, we are in
21 the process of developing many treatises and
22 other items, written research that will be made
23 available for future consideration depending upon
24 how the Mayor wishes to address what happens
25 after this Commission sunsets. And that obviously

1 is not in our province of decision making. That
2 is for the Mayor to decide what he wishes to do
3 after the Commission would complete its work once
4 we bring something to the ballot.

5 But let's get back to tonight. The
6 Commission will hear from five experts on public
7 integrity. Each one will make a presentation,
8 and then the Commissioners will have an
9 opportunity to ask questions. Then we will allow
10 the public to comment on tonight's subject, which
11 can be done through the microphone in the center
12 of the aisle. Also, you understand that this is
13 being Webcast tonight, where people will have an
14 opportunity to opine on any issue which is
15 discussed within the rubric of the topic this
16 evening through Facebook and through Twitter, and
17 throughout the evening I will be pausing and just
18 sharing with the audience and for the public
19 record what we are hearing as a result of using
20 those tools of technology. There will be other
21 opportunities, including additional public
22 hearings as I've mentioned earlier, to discuss
23 other issues we would like the Commission to
24 examine.

25 We want to hear from everyone. And in order

1 to do so, please keep your remarks for those of
2 you who will be speaking after the panelists are
3 finished with their opening remarks and given the
4 opportunity for the Commission members to be
5 heard. If you have more extensive comments for
6 the Commission you can submit them via our Web
7 site, or the Commission through E-mail, or
8 through any of the other tools that I have
9 mentioned. For example, a number of good
10 government groups, including the Brennan Center
11 For Justice, Common Cause/New York, the League of
12 Women Voters, the New York Public Interest Group
13 and the Women's -- the City Club of New York
14 recently wrote to the Commission regarding
15 tonight's topic.

16 I want our Commissioners to understand that
17 staff has compiled a very rich inventory of
18 commentary that has been received, and I've asked
19 Lorna Goodman, our Executive Director, to make
20 those items available by an inventory, of
21 compiling an inventory of all of these items, and
22 the staff has them for any Commissioner to wish
23 to look more closely at that information.

24 The Commission's ongoing goal is to enhance
25 outreach and public access. As a reminder, public

1 service announcements can be found on our Web
2 site in nine languages now and have been
3 distributed to television and cable stations and
4 other media outlets. Civic, educational and
5 community organizations and elected officials are
6 being provided with links for their Web sites as
7 we spread the word about this Commission's work.
8 Once again, staff will be monitoring the
9 Commission's Facebook page during the forum, and
10 we encourage those joining us tonight via Webcast
11 to make their opinions known to us. Again, I want
12 to acknowledge the very good work of our staff
13 led by Lorna Goodman, who is our Executive
14 Director, our Research Director Joseph Viteritti,
15 our General Counsel Rick Schaffer and all of the
16 other very distinguished and hard-working members
17 of the staff who are working tirelessly to help
18 inform the public today.

19 Now for the benefit of our guest panelists
20 that I will introduce in just a minute, I would
21 like our Commissioners who are here with us this
22 evening to just introduce themselves, and I will
23 start at the end with Ernest Hart.

24 COMMISSIONER HART: Good evening. My name is
25 Ernie Hart.

1 COMMISSIONER COHEN: Hi, I'm Hope Cohen.

2 COMMISSIONER TAYLOR: Bishop Mitchell Taylor.

3 COMMISSIONER MOLTNER: Good evening, Ken
4 Moltner.

5 COMMISSIONER FREYRE: Good evening, Angela
6 Mariana Freyre.

7 COMMISSIONER CROWELL: Anthony Crowell.

8 COMMISSIONER SCISSURA: Carlo Scissura.

9 COMMISSIONER FIALA: Good evening. Steve
10 Fiala.

11 COMMISSIONER CASSINO: Good evening. Tony
12 Perez Cassino.

13 CHAIRMAN GOLDSTEIN: Thank you all. All of
14 you have distributed in front of you, our
15 audience and members of the Commission, full
16 biographies of -- fairly extensive biographies of
17 our panelists. But let just introduce them very
18 briefly.

19 Mark Davies is the Executive Director of the
20 New York City Conflicts of Interest Board.

21 Welcome, Mr. Davies. Amy Loprest, who is the
22 Executive Director of the New York City Campaign
23 Finance Board. Richard Rifkin serves as Special
24 Counsel to the New York State Bar association.
25 Benito Romano is partner at the law firm of

1 Freshfields, Bruckhaus Deringer. He previously
2 served as the U.S. Attorney for the Southern
3 District of New York and served on the City's
4 Conflicts of Interest Board. Richard Briffault is
5 the Joseph P. Chamberlain Professor of
6 Legislation at Columbia University's Law School
7 and has served on a previous Charter revision
8 Commission.

9 We're going to start with Mr. Davies. And
10 I'll ask each of our panelists if they could
11 restrict their opening remarks to about 10
12 minutes. Then we will have an opportunity for any
13 member of the Commission to ask questions and
14 engage in a dialogue, and we'll see how that
15 goes. And once we are finished with that phase
16 of tonight's process we will open this up for the
17 microphone in the center of the aisle. And
18 again, for those of you in the audience who have
19 signed up to speak, I ask that you limit your
20 comments to no more than three minutes. So
21 Mr. Davies we'll start with you.

22 MR. DAVIES: Mr. Chair, members of the
23 Commission, for the record my name is Mark
24 Davies. I'm executive Director of the New York
25 City Conflicts of Interest Board, and I've been

1 asked to speak to you this evening as an expert
2 on government ethics laws. Specifically, I have
3 been asked to provide a primer on government
4 ethics laws generally, and an introduction to the
5 New York City Conflicts of Interest Board, and to
6 the New York City Ethics Law. I've also been
7 asked to address the Charter and amendments that
8 the Board has proposed. My testimony will be
9 under ten minutes.

10 For the sake of time, I will dispense with
11 the discussion of the history of ethics laws and
12 their place within the larger context of rules,
13 regulations and its practices regulating good
14 governments. For a detailed discussion of these
15 matters I will refer to various articles of the
16 book chapters, many of which are available on our
17 Web site. This testimony will really seek to give
18 you an in-the-trenches perspective of these
19 issues.

20 I have distributed a one-page outline that
21 I'll be referring to as well as some basic
22 statistics about the Conflicts of Interest Board,
23 or the COIB, the Board's August 3, 2009 letter to
24 Speaker Quinn summarizing the Board's proposed
25 Charter amendments and the text of two of those

1 amendments.

2 So, first of all, government ethics laws
3 generally. The purpose of a government ethics law
4 is to promote both the reality and the perception
5 of integrity in government by preventing
6 conflicts of interest violations, unethical
7 conduct before they occur. Now, by conflict of
8 interest we mean divided loyalty. A conflict,
9 usually a financial conflict, between one's
10 private interest and public duty. Therefore, a
11 conflicts of interest system promotes not only
12 the reality but also the perception of integrity
13 in government. It focuses on prevention, not
14 punishment, and it is intended not to catch
15 crooks, but rather it recognizes the inherent
16 honesty of our public officials.

17 The structure of an effective conflicts of
18 interest system rests upon three pillars. The
19 first pillar is a clear and comprehensive
20 conflicts of interest or ethics code that
21 addresses such issues as gifts to public
22 servants, use of office for personal gain,
23 moonlighting, post government employment.

24 The second pillar is sensible disclosure,
25 transactional disclosure, when a potential

1 conflict of interest actually arises, applicant
2 disclosure and annual financial disclosure.

3 And the third pillar is effective
4 administration by an independent Ethics Board
5 which requires independent Board members, budget
6 protection, and the unique power to
7 authoritatively interpret the Ethics Law.

8 If you remove any of those three pillars,
9 the entire structure collapses. An ethics Board
10 then has four primary duties. First, to provide
11 quick and confidential advice on the legality of
12 future conduct and interest under the Conflicts
13 of Interest Code, and to waive restrictions when
14 a waiver is in the best interest of the
15 government. Second, to train all officials in the
16 requirements of the Code. Third, to administer
17 the disclosure system, including penalizing
18 violations, reviewing reports for conflicts of
19 interest and making the reports available to the
20 public. And then finally, fourth, to enforce the
21 Code when violations occur.

22 The touchstones of fair and effective
23 enforcement include investigative authority, the
24 authority to impose a wide range of significant
25 penalties, such as civil fines and disgorgement

1 of ill gotten gains, enforcement power over all
2 public servants subject to the Board's
3 jurisdiction and confidentiality.

4 Now, in light of all this, how does New York
5 City measure up? Very well. But not well enough.
6 The Board fulfills the four primary duties of an
7 Ethics Board. It provides legal advice, ethics
8 training, education, administration of disclosure
9 and enforcement. If you could please turn to page
10 2 of the hand out, page number 2, which is the
11 flip side of the first page, you'll see a
12 statistical summary of some of the Board's
13 actions. First of all, if you go down to "Legal,
14 Advice," the second bold face item on the left-
15 hand column, you'll see that in 2008 we answered
16 over 3,700 phone calls for advice. We gave 574
17 written opinions, including 226 waivers, and in
18 2008 our then two trainers conducted 535 ethics
19 training classes for about 20,000 public
20 servants. Of course, that's less than 7 percent
21 of the City work force. In "Financial
22 Disclosure" we have over 7,800 required filers at
23 about a hundred City agencies, all current public
24 servants filed electronically from whom the
25 compliance rate is over 99 percent. Last year we

1 received over 1,400 requests from the public and
2 from the media to view reports, and our staff
3 reviewed over 8,000 reports for possible
4 conflicts of interest.

5 In enforcement last year we received 443
6 complaints, imposed fines in 98 cases amounting
7 to a little over \$160,000, gave 21 public warning
8 letters and sent 51 private warning letters. And
9 unlike the State, we enforce the law against
10 legislators, City Council Members and their
11 staff.

12 Finally, then, what changes need to be made?
13 To make Chapter 68 measure up to the requirements
14 of an effective government ethics law, as I've
15 outlined them. That is precisely what the Board's
16 proposed Charter amendments do as summarized in
17 the Board's August 3, 2009 letter to Speaker
18 Quinn, which is included in the handout. But let
19 me focus on just two of them.

20 First of all, a guaranteed budget for the
21 Board which is proposed Charter section 2602(i).
22 This proposal has topped the Board's legislative
23 agenda for over a decade. Virtually alone among
24 City agencies, the Board has the power to permit
25 or prohibit conduct or interest of and to

1 sanction violations of the law by the very public
2 officials who set the Board's budget, often at
3 the very time that the Board's budget is up for
4 review, discussion and debate. We may be sitting
5 across the table negotiating our budget with an
6 official against whom we have an enforcement case
7 pending or who has asked us for permission to
8 accept a job or a gift. This is in itself an
9 unseemly conflict that undermines the Board's
10 independence in the eyes of the public and of the
11 public servants. That ongoing threat to the
12 Board's independence should finally be eliminated
13 through a Charter amendment removing the Board's
14 budget from the direction of the public officials
15 who are subject to the Board's jurisdiction.

16 While many City agencies have power over
17 other City agencies, the Conflicts of Interest
18 Board has power over individual public servants.
19 Not merely to examine their conduct but to fine
20 them or to prohibit their interests or actions to
21 say whether they can or cannot take a job or own
22 a business or accept a gift or run for office. In
23 some cases, the Board effectively has that power
24 even over their family members.

25 Second, "Penalties." Charter section 2606.

1 Currently, this provision, 2606, is far too
2 limited. Thus the Board has proposed three
3 substantive amendments on penalties. First,
4 increasing from \$10,000 to \$25,000, the maximum
5 civil fine the Board may impose for a violation.

6 Second. Make it explicit that the Board has
7 the power to seek debarment and suspension of
8 vendors involved in conflicts of interest
9 violations by public servants.

10 And third, authorizing the Board to order
11 repayment to the City of the value of any gain or
12 benefit of payment as a result of violation of
13 Chapter 68. That is a disgorgement provision.

14 The maximum civil fine of \$10,000 has not
15 been increased since 1989. Inflation alone
16 dictates a significant increase which would also
17 permit the Board to better distinguish between
18 violations that are egregious and violations that
19 while significant are less egregious. The Board
20 already has the power to void contracts entered
21 into violations of Chapter 68. The debarment
22 provision merely reflects the procurement policy
23 of Board rules. The disgorgement provision,
24 which is based on a similar provision in the
25 California Government Code, addresses the

1 inequity that results when a public servant
2 profits significantly from a violation that of
3 the Conflicts of Interest Law but would otherwise
4 face at most a civil fine of now 10,000, proposed
5 \$25,000.

6 As noted in the commentary, such
7 disgorgement provisions are relatively common in
8 the United States. These are only two of our
9 proposed amendments, but the Board believes after
10 20 years of experience that all of them are long
11 overdue and should be enacted.

12 So then to conclude, a conflicts of interest
13 system based upon these three pillars of a
14 comprehensive Conflicts of Interest Code,
15 sensible disclosure, and effective administration
16 by an independent Ethics Board, promotes both the
17 reality and the perception of integrity in
18 government by preventing conflicts of interest
19 violations, by guiding our honest public
20 servants, reassuring our citizens and reenforcing
21 the core values upon which the government is
22 based. By these standards, New York City's
23 conflicts of interest system is good. But it
24 needs to be better. Thank you.

25 CHAIRMAN GOLDSTEIN: Thank you very much,

1 Mr. Davies.

2 We'll now go to Miss Loprest.

3 MS. LOPREST: I'm Amy Loprest, Executive
4 Director of the New York City Campaign Finance
5 Board.

6 Thank you for your service to the City and
7 for the invitation to appear before you here
8 today. The review of the structure of the City's
9 government is a meaningful and vital task, and
10 the Board and I were encouraged by the
11 seriousness this Commission has brought to its
12 early work.

13 The topic before you tonight is public
14 integrity. There is a clear link between the
15 integrity of our public officials and campaign
16 finance law. Any time elected officials or
17 candidates solicit or receive funds from private
18 sources, there is the potential for influence-
19 seeking behavior to enter the political process.
20 Justified or not, the public often perceives the
21 political fundraising is itself inherently
22 corrupt.

23 The Campaign Finance Program helps mitigate
24 the threat of actual or perceived corruption in
25 City elections by matching small contributions

1 from City residents with public funds, the
2 Program ensures that candidates for public office
3 are not reliant on large private contributions.

4 In addition to administering the Campaign
5 Finance Program the Board has two other key
6 mandates: Public disclosure and voter education.

7 I'll start by speaking about how the Board
8 was established and its current structure. I will
9 briefly talk about the work of the Board enclosed
10 with a proposal about how our work might be
11 enhanced through changes to the Charter.

12 The Campaign Finance Program was originally
13 created with the enactment of Local Law 8 in
14 1988. Our system of public financing was created
15 the same way that most significant campaign
16 finance reforms are enacted in jurisdictions
17 across the United States, as response to a
18 scandal. Specifically in this case as a response
19 to the scandal in the Parking Violations Bureau
20 that had nothing at all to do with campaign
21 finance. The scandals of the mid-'80s did,
22 however, highlight the potential for corruption
23 when private money, politics and governance
24 converged. They eroded the trust New Yorkers had
25 invested in their elected leaders.

1 The leaders who created a public financing
2 system for elections in New York City, the first
3 of its kind in a jurisdiction of this size, hope
4 that reform would enhance ethics and promote
5 greater public confidence in City government. To
6 administer the program, the Campaign Finance
7 Board was created by a 1988 Charter Revision
8 approved by the voters with a 79 percent
9 majority.

10 As you consider how best to approach further
11 reforms to the structure of City government with
12 the aim of enhancing public integrity, there are
13 two principles governing the CFB's structure that
14 have made our work successful. The Board is both
15 non-partisan and independent. We are governed by
16 a Board of five members. The Speaker of the City
17 Council makes two appointments as does the Mayor.
18 The two appointees may not be enrolled in the
19 same political party. The Chair of the Board is
20 appointed by the Mayor in consultation with the
21 Speaker.

22 The arrangement is non-partisan as distinct
23 from bipartisan. The Charter does not specify
24 which parties, if any, the appointees must
25 represent.

1 The Board's non-partisan nature has allowed
2 us to build a staff of qualified professionals
3 regardless of partisan affiliation. It also
4 means that determinations on enforcement matters
5 before the Board do not break down on party
6 lines. Jurisdictions with bipartisan campaign
7 enforcement bodies can often be paralyzed with
8 partisan gridlock. The quality of the original
9 appointments and staff leadership of the Board
10 created a strong foundation for the Board's
11 continued independence.

12 The Board's founding Chairman, Father Joseph
13 O'Hare, was a member of the 1988 Commission that
14 created the agency. Along with Nicole Gordon, my
15 predecessor as Executive Director, Father O'Hare
16 established from the start of his tenure that the
17 that the Board would enforce the Campaign Finance
18 Act for all candidates uniformly, without favor
19 or bias. To illustrate, the Board found
20 violations of the Act against each of the mayors
21 elected during Father O'Hare's tenure as
22 Chairman.

23 The 1998 Charter Revision Commission made
24 two key proposals that enhanced the independence
25 of the Board. The proposals, which were approved

1 by referendum, established a method for the Board
2 to fill vacancies when appointments are not made
3 in a timely fashion and gave the Board
4 independent budget authority.

5 The Board presents the Mayor with its budget
6 request in March. The Mayor's required to include
7 the Board's budget request in the executive
8 budget he submits to the City Council without
9 revision. The Commission noted specifically that
10 this proposal was designed to insulate the Board
11 from political pressure. Other independent
12 agencies, such as the Independent Budget Office,
13 receive a fixed percentage of the overall budget,
14 allowing the Board greater control over its own
15 budget provides it with flexibility to more
16 accurately budget public funds payments to
17 candidates based on the circumstances of the
18 pending election.

19 These two essential qualities,
20 non-partisanship and independence, help the Board
21 to be as effective as possible at achieving our
22 central mandate: Administering the Campaign
23 Finance Program.

24 For participants in the Campaign Finance
25 Program there are two key elements: Matching

1 funds and spending limits. Unlike other states
2 with public financing programs such as Arizona or
3 Maine that provide candidates with a flat grant
4 of public money, New York City's system relies on
5 matching funds. The program matches the first
6 \$175 of contributions from New York City
7 residents at a rate of six dollars to one dollar.
8 The matching funds provide an incentive for
9 candidates to focus their fundraising efforts on
10 small-dollar contribution from individual New
11 Yorkers rather than relying on large gifts that
12 may create the potential or perception of
13 influence seeking by donors who contribute large
14 sums. As opposed to so-called "clean money"
15 programs, candidates must continue to seek
16 support from small donors throughout the campaign
17 if they wish to realize the full benefits of the
18 program.

19 In accordance with the Supreme Courts's
20 landmark 1976 ruling in Buckley v. Valeo, the
21 public matching funds program is voluntary.
22 Candidates who choose to join the program agree
23 to limit their overall spending. The spending
24 limits ensure city elections do not become an
25 endless chase for more and larger contributions.

1 In a race between participating candidates, the
2 spending limits mean that money will not be the
3 deciding factor. There are other provisions of
4 the Campaign Finance Act that apply to all
5 candidates whether or not they choose to join the
6 program.

7 Contribution limits, including "Doing
8 Business" limits, auditing enforcement and
9 disclosure.

10 To control the influence any single
11 contributor may gain, all candidates must observe
12 reasonable limits on the amounts and sources of
13 contributions they may accept. Candidates for
14 citywide office, for instance, may not accept
15 contributions larger than \$4,950. Candidates may
16 not accept contributions from corporations, a
17 reform initiated by a proposal from the 1998
18 Charter Commission. Since 2008, candidates have
19 been barred from accepting contributions from
20 limited liability companies and partnerships as
21 well. The 1998 Charter Revision Commission also
22 directed the Board to find a way to regulate
23 contributions from those who do business with the
24 City government. That mandate led to legislation
25 enacting strict low limits on so-called "pay-to-

1 play" contributions that are among the broadest
2 of any jurisdiction in the nation. The limits
3 cover lobbyists, contractors, applicants to the
4 Land Use Review Process, and other individuals
5 with an interest in decisions about government
6 resources. The "pay-to-pay" law, enacted in two
7 2007, survived a Court challenge last year in
8 Ognibene v. Parkes.

9 To ensure compliance with the requirements
10 of the Act and Board rules, the Board audits
11 every campaign before, during, and after the
12 election. Each campaign is held to an equally
13 high standard of compliance. Candidates know we
14 will enforce the law against their opponent the
15 same way we enforce the law against them. If
16 public funds are not spent for the purpose the
17 law intends, or if their use is not properly
18 documented, they must be returned to the
19 taxpayers. Violations of the Act may result in
20 financial penalties. Candidates, treasurers and
21 campaign committees are held liable for penalties
22 and repayment of public funds.

23 Our Candidate Services Unit provides
24 detailed training for campaigns in their
25 requirements of complying with the law and Board

1 rules, and is available daily by phone, by
2 E-mail, or in person to answer any questions
3 candidates may have. In addition, Candidates
4 Services staff trains campaign personnel to use
5 the CFB's filing software and provides assistance
6 in completing their disclosure filings.

7 Complete, instantaneous public disclosure
8 provides transparency and accountability to the
9 campaign finance system. All candidates must
10 submit regular reports of their fundraising and
11 spending to the CFB, which makes the information
12 available to the public through its Website on a
13 realtime basis. The CFB's online public database
14 is regularly updated with current information and
15 is fully searchable. Users can search
16 contributions, for example, by a contributor's
17 name, employer, zip code, or other criteria.

18 We collect the disclosures electronically
19 through software provided to campaigns without
20 charge. Our proprietary filing software is
21 evaluated and updated after each election to
22 ensure it continues to meet candidates' needs.

23 In addition to informing the public through
24 disclosure, the Board also provides voter
25 education through its Voter Guide and Debate

1 Program.

2 The Campaign Finance Act and the Charter
3 give the CFB significant additional mandates to
4 provide information to voters about candidates,
5 and to encourage educated participation by voters
6 in the political process.

7 We produce a non-partisan Voter Guide, which
8 is mailed to every household with a registered
9 voter before the primary in general elections.
10 Along with information about voting, the guide
11 contains candidates' bios, photos, and answers to
12 questions about issues. The CFB Voter Guide also
13 provides information about ballot questions,
14 including a plain-language summary of the
15 proposals, arguments for and against, and
16 statements submitted by the public.

17 If this Commission places a question before
18 the voters in the fall, we will produce a
19 citywide Voter Guide. The printed guide is
20 produced in English and Spanish for the entire
21 City, and in Chinese and Korean for selected
22 areas consistent with the Voting Rights Act. The
23 CFB also produces an interactive online guide
24 available on our Web site, which contains links
25 to video statements created by candidates for the

1 Video Voter Guide.

2 In 2009, the CFB played a significant role
3 with the Voters Assistance Commission in
4 producing the Video Guide, providing staff,
5 budgetary and organizational support, using our
6 relationship with candidates to arrange for
7 appointments with candidates to record their
8 statements.

9 The Board also produces a series of debates
10 before the primary and general election.
11 Candidates for citywide office who participate in
12 the Campaign Finance Program and meet certain
13 financial threshold are required to take part in
14 debates, which are broadcast on television and
15 radio, and streamed live on the Internet.

16 In the final analysis, the Program is most
17 effective if candidates believe it can help them
18 run competitive campaigns. It is indeed the case
19 that participation in the program has increased
20 over time. For 2009 elections overall, 79 percent
21 of the candidates on the ballot joined the
22 Campaign Finance Program in the primaries, 93
23 percent of the candidates on the ballot opted in,
24 equalling the highest participation rate in the
25 Program's 20-year history.

1 The Board's mandate to recommend changes to
2 the law allows the Board to propose specific
3 remedies to particular challenges. The recent
4 Supreme Court decision in Citizens United, which
5 struck down Federal restrictions on independent
6 spending in elections by corporations and other
7 actors, had highlighted a significant disclosure
8 gap in City elections. The Citizen United
9 decision has the potential to further encourage
10 independent spending in elections at every level
11 of government, including New York City. Yet the
12 Campaign Finance Act does not provide for any
13 disclosure of independent expenditures.

14 Despite existing limits on direct
15 contributions, the law allows corporations,
16 unions, wealthy individuals, and other special
17 interests to spend freely to elect or defeat
18 candidates in New York City elections as long as
19 the spending is independent. The disclosure gap
20 means that this potential source of influence is
21 blocked from public view.

22 CHAIRMAN GOLDSTEIN: Miss Loprest, could you
23 finish up.

24 MS. LOPREST: I have one more sentence.

25 We urge the Commission to consider amending

1 the Charter to require disclosure under
2 expenditures that support or oppose candidates in
3 City elections. There is more information about
4 this proposal in the materials you have been
5 given.

6 I appreciate your invitation to address the
7 Commission this evening, and I look forward to
8 your questions.

9 CHAIRMAN GOLDSTEIN: Thank you very much, Ms.
10 Loprest.

11 We'll now turn to Mr. Rifkin. Richard
12 Rifkin.

13 MR. RIFKIN: Yes, thank you, Mr. Chairman.

14 First of all, as you noted I'm Special
15 Counsel to the New York State Bar Association. I
16 just want to say that the comments I make tonight
17 reflect my own views and not those of the
18 Association.

19 CHAIRMAN GOLDSTEIN: Thank you.

20 MR. RIFKIN: Let me use my time tonight to
21 the talk about how I think --

22 CHAIRMAN GOLDSTEIN: Could you speak into the
23 microphone. We're having a little trouble.

24 MR. RIFKIN: Okay. Is this one better?

25 I'd like to use my time tonight to speak

1 about how I believe a Commission like this should
2 approach the matters of government ethics, and
3 how you should sort of carry out your function.

4 Let me put two propositions in front of the
5 Commission. I'll explain each one. The first is
6 that government employees are not monks. The
7 second is that some ethics provisions, and
8 especially those relating to gifts, are really
9 inconsistent with commonly use (inaudible) let me
10 go to the first one.

11 COMMISSIONER COHEN: We're still having
12 trouble. I know I'm still having trouble hearing
13 you. Move the mike close to you and the other
14 mike not facing it.

15 MR. RIFKIN: Is this better?

16 COMMISSIONER COHEN: That's better.

17 MR. RIFKIN: Okay. Government employees. As I
18 say, government employee's are expected to engage
19 in activities outside of government. They do, and
20 should, participate in community affairs. They
21 have financial interests. They may have business
22 interests. They engage in political activities,
23 and they should. I think it's to the benefit of
24 the people of the City that its employees are
25 part of the society of the City and engage in

1 activities, which all of our citizens engage in.
2 They should not be people who just go to their
3 office during the day and go home at night and
4 withdraw from society. Because we have government
5 employees who do that, they will not understand
6 the nature of the problems of the citizens of
7 this City, they will not be part of this City. I
8 submit that as public employees, they will make
9 better decisions with a better understanding of
10 what government can do for the population if they
11 in fact are active in these types of activities.
12 But of course, many of these activities create
13 personal interest. And they may compete with the
14 public interest in which these employees have to
15 act at all times when they're acting in their
16 public capacity. So, that's the balance.

17 How do you make sure that government
18 employees are permitted to act and yet at the
19 same time allow them to be good and active
20 citizens of the City?

21 You know, very often when an issue arises,
22 there will be an outcry that somebody's violated
23 the Ethics Law and we want to do something about
24 ethics because it sounds bad.

25 Let me use an example which is at the City

1 level and historical. When John F. Kennedy was
2 the president of the United States, he appointed
3 his brother who was the Attorney General. Did he
4 give his brother a job? Was he using his office
5 to benefit a member of his family? As it turned
6 out, I think everybody can agree that Robert
7 Kennedy had the qualities and ability to
8 eventually be president of the United States. It
9 didn't happen. It didn't turn out that way. But
10 to just say that because the president appointed
11 his brother that's an ethical violation really is
12 very narrow.

13 What happens if somebody who is close to a
14 high public official in this State is in fact the
15 most competent person to do the job? Should we
16 automatically preclude it? I'm not so certain
17 that doing that serves the public interest. Now
18 let me be clear. I don't believe that public
19 officials should have conflicts or engage in
20 activities which create the appearance of a
21 conflict. I'm not trying to lower the ethical
22 standard. But what I'm saying is in looking at
23 ethics concepts we have to be attuned to the fact
24 that there is a tension that has to be balanced,
25 and we have to be careful not to tilt the balance

1 one way or the other.

2 Let me now talk about the other part of my
3 testimony and that is that there are provisions
4 which fundamentally are inconsistent with the
5 common human experience, and most of that arises
6 in the area of gifts.

7 Gifts in an ethical concept are not easily
8 understood by people outside of government who
9 haven't studied this. Everybody knows that if
10 somebody on the outside who wants something from
11 government gives a benefit to a public employee,
12 gives them cash or entertains them, and there's a
13 quid pro quo and that is the public employee will
14 in fact do a favor for the person giving the
15 gift, that's not an ethical violations, that's a
16 bribe. You don't need ethics to do that. But a
17 gift violates the Ethics Law, and correctly, if
18 it creates a perception that the gift is intended
19 to influence the public employee if it can
20 reasonably, in the language of the State law,
21 that can reasonably be inferred that it was
22 intended to influence the state employee.

23 What does that mean? It means that you look
24 at the benefit given to the public employee, not
25 through the eyes of either the government -- the

1 giver of the gift or the recipient of the gift --
2 you look at it through the eyes of a third-party,
3 an outsider, looking at the transaction. And the
4 reason I say this is antithetical to common human
5 experience, is this is not the way the private
6 sector works at all. Entertainment -- and
7 entertainment is a benefit, no question about
8 that. Entertaining people is just an inherent
9 part of the way our society operates. That's why
10 we have luxury boxes at Citi Field, at Yankee
11 Stadium, Madison Square Garden. That's why we
12 have restaurants which fundamentally cater to
13 business meals. Entertainment is a part of our
14 society. And a part that's easily -- is commonly
15 engaged in.

16 But government is different. Government is
17 different. We can't give benefits, we can't
18 entertain government officials. And this is very,
19 very hard for people in the private sector to
20 understand. I know in my own position with the
21 State Bar Association we have a lot of receptions
22 we hold. We give awards. We hold membership
23 receptions, which are recruitment receptions for
24 membership, and I have to tell the receptions and
25 committees that sponsor these that because we are

1 a registered lobbying organization we cannot
2 invite public officials to the receptions and
3 give them food and drink, and they look at me
4 like I'm crazy. But I fight with them. I tell
5 them we can't do it. But it is very, very hard to
6 explain to them. And so ethics is hard. It's
7 really -- it's hard. It's antithetical to human
8 nature, and yet we've got to be aware of what the
9 consequences are if ethical violations persist.

10 So what does this do? Where does this leave
11 us? Well, I think this speaks to the importance
12 of giving guidance, which I believe is the most
13 important function of any ethics body. They have
14 to guide the people, both in government and out
15 of government, who are subject to difficult and
16 complex and sometimes incomprehensible ethics
17 rules. Obviously, enforcement is necessary, and I
18 don't say we shouldn't give enforcement powers to
19 any ethics body. But in upholding ethics and
20 ethical standards, properly understood, it is far
21 more important that we focus on education and the
22 availability of guidance to those who wish to
23 comply with the ethics laws.

24 You know, and this is my conclusion, when
25 bad things happen, when something happens that's

1 wrong, very often you will see a legislative
2 reaction, people want to be tough on crime, you
3 know, an act occurs, let's make it a criminal
4 offense, if it is a criminal offense, let's
5 enhance the penalties, let's be tough. That's
6 our solutions to Society's problems. And yet if
7 you step back and look more carefully at the
8 criminal justice system, you realize that this is
9 not a silver bullet and it really is a much more
10 complex than easy statements would imply.

11 And I submit the same thing is true for
12 ethics. We need high standards. And please
13 understand I am not arguing against high ethical
14 standards. But we need workable standards in the
15 world in which we all live. And we need to help
16 those who are seriously committed to meeting
17 these standards. Thank you.

18 CHAIRMAN GOLDSTEIN: Thank you very much,
19 Mr. Rifkin.

20 We'll now turn to Mr. Benito Romano. Thank
21 you, Mr. Romano.

22 MR. ROMANO: Thank you. Is this working?

23 CHAIRMAN GOLDSTEIN: Yes, it is. Just talk
24 into the microphone.

25 MR. ROMANO: Mr. Chair, members of the

1 Commission, again my name is Benito Romano. I am
2 a practicing attorney in New York, and I've been
3 a member and Chair of the New York City Conflicts
4 of Interest Board. My --

5 COMMISSIONER FREYRE: Can you bring the mike
6 closer?

7 MR. ROMANO: My opening statement will be
8 very brief.

9 COMMISSIONER FREYRE: I think we're still
10 having a problem.

11 MR. ROMANO: No? MR. ROMANO: It's terrible
12 for a lawyer.

13 CHAIRMAN GOLDSTEIN: You've got to get the
14 slope right.

15 COMMISSIONER TAYLOR: Maybe if we turn these
16 monitors down in the center. We're getting
17 feedback.

18 MR. BRIFFAULT: This one --

19 MR. ROMANO: My opening statement will be
20 brief and please let me know if you can't hear
21 me.

22 CHAIRMAN GOLDSTEIN: Well, if we can't hear
23 you it's going to be very brief.

24 MR. ROMANO: And much of my statement will
25 echo what you've heard from Mark Davies tonight.

1 It has been the primary mission of the COIB,
2 like its predecessor, Board of Ethics, to prevent
3 conflicts by issuing sensible, concise, and
4 comprehensible rulings, setting the proper limits
5 of self-interest for public servants and assuring
6 the public that the City has the undivided
7 loyalty of its employees.

8 For the last two decades the City's Ethics
9 Code has been embodied in Chapter 68 of the
10 Charter. Chapter 68 sets forth in a more or less
11 straightforward fashion prohibitions and
12 standards to guide public officials in such areas
13 as gifts to City employees, the use of office for
14 personal gain, moonlighting, post employment
15 revolving door prohibitions and others.

16 In my current law practice, and for some of
17 you who are lawyers this will sound familiar, I
18 spend most of my time counseling American- and
19 European-based companies trying to do business in
20 countries in the Middle East and Asia where
21 public corruption is so deeply embedded in the
22 business culture, and the government plays such a
23 large role in the economy and in the business
24 life of these countries, corruption so entrenched
25 as to make government oppressive and

1 undemocratic. It's as far from the world of
2 Chapter 68 as one can imagine.

3 It's a useful reminder, however, of how far
4 we have come. We're indeed fortunate to have had
5 Chapter 68 for the last 20 years administered by
6 an independent board, the COIB.

7 Experience, however, has taught that Chapter
8 68 is not a perfect document. As required by the
9 Charter, the COIB has periodically recommended
10 amendments to Chapter 68, and has done so again
11 as recently as August of 2009 to the City
12 Council.

13 These amendments come after a thorough going
14 over and review of Chapter 68. They cover
15 substantive changes that have previously been
16 recommended by the Board new, substantive
17 provisions and changes to make Chapter 68
18 internally consistent and consistent with Board
19 precedent.

20 I agree with all of the recommended changes.
21 They're all worthy of consideration by this
22 Commission, including the ones mentioned by Mark
23 regarding disgorgement as a remedy, and debarment
24 as a remedy. But I would like to just confine my
25 brief remarks to one particular issue, a

1 guaranteed budget for the Board. To hundreds of
2 formal written opinions, waivers, and thousands
3 of phone calls for advice that is received
4 annually, the Board and staff directly shape the
5 behavior of City employees so that we both have
6 the reality and the perception of honesty in
7 government. Apart from having the authoritative
8 voice on the meaning of Chapter 68, the Board has
9 the power to punish violations of the law and
10 does so regularly as part of a robust and
11 effective enforcement program. But the authority
12 of any agency of government that exercises such
13 power, the power to adjudicate cases and to
14 impose punishment ultimately derives from the
15 public's perception of independence and
16 integrity.

17 In the case of the COIB, the Board and staff
18 often find themselves in positions directly
19 facing public officials that have matters pending
20 before the Board who also have substantial
21 influence over the Board's budget. And given the
22 relatively small size of that budget, it would
23 not take much to cripple the COIB to devastating
24 effect for the City.

25 Consider for a moment the appearance created

1 when an adjudicatory or enforcement authority,
2 like the COIB, is summoned in a meeting to
3 justify its budget request, or to avoid budget
4 cuts while a significant matter is pending
5 affecting the reputation, or even the future
6 employment, of the official on the other side.
7 Even with the most generous allowances made for
8 the good faith and personal integrity of all the
9 public officials involved, the public is still
10 entitled to a reasonable assurance that the
11 budget process does not undermine the integrity
12 of the adjudicatory and enforcement process.
13 Public confidence in the Boards's independence is
14 essential to its mission.

15 A guaranteed budget has been a priority for
16 the Board since my days on the COIB for over a
17 decade. With each budget data gathered in which
18 the Board's future is put into play the public's
19 right to wonder whether the Board's
20 pronouncements continue to be entitled to
21 respect.

22 That threat to the Board's independence
23 should end now. The COIB should have a
24 guaranteed budget. Thank you very much.

25 CHAIRMAN GOLDSTEIN: Thank you, Mr. Romano.

1 Let's conclude with Professor Briffault.

2 MR. BRIFFAULT: Thank you how. Is this?

3 CHAIRMAN GOLDSTEIN: Great.

4 MR. BRIFFAULT: Okay, good.

5 Chair Goldstein and members of the
6 Commission, I'm honored by your invitation to
7 participate in tonight's forum. The Charter
8 Revision process is critical to the long-term
9 health of New York City government. The Charter
10 provides the framework for an effective,
11 accountable, and responsive City government.
12 Public integrity in turn is crucial to
13 accomplishing those goals. It is essential in a
14 democratic system that the people have confidence
15 in the honesty, integrity, independence and
16 public commitment of the officials in whom they
17 have entrusted their government. Such confidence
18 depends not only on the conduct of those who
19 exercise official power, but on the rules that
20 determine their election and in effect how they
21 carry out their duties.

22 Government must not only be honest it must
23 be seen by the people as focused on public
24 purposes, not private gain.

25 The Charter Revisions of 1987, 1989, made

1 enormous contributions to the integrity of New
2 York City's government. As was already pointed
3 out, one of the major issues going into Charter
4 Revision were municipal standards. I was honored
5 to have worked with the '87 to '88 and '89
6 Commissions on these issues, and I'm very happy
7 to talk to you about them today.

8 Preliminarily, I should say I think that the
9 work that was done 20 years ago and continues --
10 and implements those Commissions' results is a
11 success story. I think the two agencies that
12 have presented here today have great reputations.
13 The laws they enforce are national models. I
14 actually don't think this is a problem area. I'm
15 tempted to say we should stop now and do land use
16 are issues which I think are more controversial.
17 But we are here tonight and I think they are
18 probably issues worthy of discussion. I'm going
19 to echo one of the proposals that was made by one
20 of the other panelists and throw out a couple of
21 other items, which I think are on no one's
22 agenda, but might be worth thinking.

23 The keystone of New York's public integrity
24 structure of the jewel in the crown is our
25 campaign finance system, including the voluntary

1 Public Funding Program, the anti-pay-to-play
2 rules, and the Campaign Finance Board. New York
3 is one of the first cities to adopt a public
4 funding program and it continues to be held up as
5 model for other cities, for states, and for the
6 nation as a whole. As with all campaign finances
7 reforms, it is not a panacea. Political reality
8 and constitutional doctrines make it difficult to
9 curb the role of private wealth in public
10 election. But New York City's campaign finance
11 system has made major strides in that direction.

12 Campaign finance reform is currently under
13 siege in the Supreme Court, and public funding
14 systems may soon have to deal with an adverse
15 ruling from the Court if it takes the petition
16 for certiori in the McComish case from Arizona.

17 The recent Citizen's United decision also
18 creates new issues for campaign finance
19 regulation. As it happens, most of the details
20 of our campaign finance programs are actually
21 matter of local law, not Charter Revision. Here,
22 at least, the Charter actually does what a
23 Charter ought to do. It simply provides the
24 necessary broad grant of authority for local
25 campaign finance legislation. It does appear,

1 though, as the Campaign Finance Board has
2 indicated, that a Charter amendment is necessary
3 to clearly authorize the City to require the
4 disclosure of independent expenditures. That is,
5 expenditures undertaken by individuals, groups,
6 associations, political parties, businesses, or
7 other organizations that support or oppose the
8 election of candidates to municipal office.

9 With Citizens United, we may see greater
10 corporate independent spending in elections, and
11 the Appellate Division decision in the Avella
12 made it clear that political parties may make
13 independent expenditures in primaries. Although
14 independent expenditures can benefit candidates,
15 legally and constitutionally if they are
16 undertaken independently of a candidate they may
17 not be treated as contributions. In particular,
18 they may not be limited.

19 Public understanding of the money at work in
20 an election requires that independent
21 expenditures be reported and disclosed in a
22 timely fashion in the preelection period. There
23 is evidence that some groups and businesses do
24 not want to be seen as making expenditures, so in
25 effect and will choose to make their expenditures

1 through conduits and shell organizations, so
2 effective disclosure will be important in
3 informing the public who is behind those
4 expenditures.

5 As currently structured, the campaign
6 finance provisions of the Charter are focused on
7 candidates and those who contribute to
8 candidates. The Charter may need to provide
9 authority to require the disclosure of
10 expenditures by those who spend to support or
11 oppose candidates without giving to or
12 coordinating with them. The City has the
13 authority to do this as a matter of Home Rule,
14 and it would not be preempted by State law, in
15 part because the State also has failed to
16 regulate independent expenditures until now.

17 This authority would be particularly
18 important in the event that the Commission
19 recommended, and the voters approve, some form of
20 top-two election system. Even after Avella,
21 party participation in primaries is relatively
22 uncommon. With a top-two system party
23 organizations may well want to spend money in the
24 first round to promote certain candidates.
25 Reporting a disclosure of party independent

1 expenditures would certainly be needed then. But
2 even under the current voting system, the
3 disclosure of independent expenditures would be
4 desirable.

5 The second goal of the 1989 Charter Revision
6 process was to strengthen the City Council as it
7 took over many of the functions of the Board of
8 Estimate and make it an effective partner with
9 the matter. The role and reputation of the
10 Council both increased over the next two decades,
11 but the Council's reputation, at least, suffered
12 a blow in the member item slush fund scandal of
13 2008, and the subsequent indictment and
14 resignation of a Council Member. Indeed, the
15 main integrity issue that the City has failed in
16 the last several years. The Council has adopted
17 new rules to deal with member items. The
18 Conflicts of Interest Board issued a detailed
19 advisory in May of 2009 dealing with the
20 conflicts, legal and ethical issues posed by
21 member items; that is, awards to community-based
22 not-for-profit organizations, essentially at the
23 discretion of the Council Members. Speaker Quinn
24 has put in place a series of reforms designed to
25 ensure member items are only from legitimate

1 organizations and to provided greater disclosure
2 of relationships between the Members who sponsor
3 the items and the organizations that receive the
4 funds. But the issue of Council integrity is too
5 important to be left to the current rules of the
6 current Speaker, or even to internal Council
7 rules. The Charter should be amended to address
8 the problem of Member items to specifically
9 require disclosure of the relationships between
10 members, their staffs, and people associated with
11 them, particularly family members, and the
12 recipients of these grants. And to more clearly
13 bar grants to organizations where such grants
14 would directly benefit a Council Member, someone
15 in the Member's family, or a business associate.

16 The work of the Conflicts of Interest Board,
17 and especially the Campaign Finance Board,
18 require them to consider the interactions of
19 government officials with lobbyists. Now the
20 oversight of lobbyists, the collection and review
21 of the lobbyist registration forms and periodic
22 reports is left to the City Clerk, an appointee
23 of the City Council. I wonder whether it might
24 not be more efficient, and this is more
25 tentative, likely to lead to more effective

1 administration of the conflict of interests and
2 campaign finance rules, and more likely to do
3 lead to more vigorous administration of the
4 requirements of the lobbying law and lobbying
5 oversight and enforcement were given to one of
6 these two independent agencies: The COIB or CFB.

7 The reason we require the registration of
8 lobbyists in the disclosure of their activities
9 is because of the implication of lobbying for
10 public integrity. It would make sense for one of
11 these public up integrity agencies both of which,
12 as I have said, have strong reputations to take
13 charge of the lobbying law.

14 The Campaign Finance Board, because of its
15 enforcement of the "Doing Business" rules and the
16 restrictions on lobbyist contributions, as I
17 suggested, the Conflicts of Interest Board
18 because of its intention to the interaction
19 between public servants and private interests
20 would be another candidate for this.

21 I don't have a strong sense of which one
22 would be the better one, but I think it's
23 something to think about in terms of
24 consolidating functions. I think I'll stop
25 there.

1 inadequate resources that you have that require
2 you to do less work than more work, or is it by
3 design? I mean, a guaranteed budget means that
4 you have to have associated with it either
5 greater expectations, or changes in workload with
6 existing expectations. Clearly, the workload is
7 shifting downward here. Unless I'm misreading
8 the data, and if can you help me understand it
9 I'd be appreciative of it.

10 MR. ROMANO: I'll leave the data
11 interpretation to Mark Davies. But what I am
12 talking about in a guaranteed budget is not so
13 much a guarantee that it will go up but that
14 there be a floor below which it cannot fall.

15 CHAIRMAN GOLDSTEIN: That's a maintenance of
16 effort.

17 MR. ROMANO: Absent some extraordinary
18 circumstance. And there are a number of
19 matrixes -- number of ways you can achieve that,
20 or references you can use.

21 I think Mark and his staff and current Board
22 have offered a fractional percentage of the
23 expense budget as the proper reference for
24 determining what that number, what that budget
25 should be. I don't what that number comes to

1 today and how it compares with the current
2 budget. But the concept is to provide a floor
3 which would remove this unseemly process that
4 goes on with distressing regularity where a small
5 agency like the COIB is essentially performing a
6 judicial function as to -- while matters are
7 pending as to --

8 CHAIRMAN GOLDSTEIN: I'm just trying to get
9 at the finance algorithm here.

10 MR. ROMANO: Right.

11 CHAIRMAN GOLDSTEIN: If you take a percentage
12 against some organization, say it's the City of
13 New York, if it's the municipal budget of the
14 City of New York and you say the organization
15 should have "X" percent of whatever that budget
16 is, invariably that goes up, so it's not a stable
17 budget. And once you use a percentage of an
18 existing budget, those budgets go up year to
19 year, so your budget is increasing, so you don't
20 have a fixed budget, and you don't have the
21 maintenance of effort.

22 If on the other hand what happens if the
23 work load goes down? Are you prepared to take a
24 lesser budget? So it has to be, it has to be
25 indexed against something that is rational, and

1 that's what I'm trying to understand what you
2 mean.

3 MR. ROMANO: I don't think it's an effort to
4 make -- to exempt the COIB as an organization
5 from ordinary prudent municipal management
6 either. I think the concept is to achieve a
7 floor -- and I personally am not so concerned
8 about it going up regularly. You could justify
9 an increase, but it's the cuts, it's the threat
10 of having your mission undermined by having it
11 cut that I think presents the greatest actual and
12 perceived threat.

13 CHAIRMAN GOLDSTEIN: Mr. Davies, do you
14 have --

15 MR. DAVIES: Yes. First of all, on the data?

16 CHAIRMAN GOLDSTEIN: Yes.

17 MR. DAVIES: It varies from year to year. If
18 I gave you a 10-year spreadsheet instead of these
19 couple of years, you would have seen going up
20 somewhat -- up and down from year to year.
21 Generally, if you compare 1993, for example, to
22 2009 you'll see that over time it has gone up
23 rather significantly. So, you know, the workload
24 over time goes up. From year to year it's going
25 to vary, but over time it's clearly going to

1 trend upward. The -- our proposal would be a
2 percentage of the expense City budget, of the
3 City's expense budget.

4 CHAIRMAN GOLDSTEIN: Independent of your work
5 closed changing?

6 MR. DAVIES: Yeah, because you can't really
7 calculate that from year to year. And of course,
8 remember that our budget is 95 percent PS,
9 personal services. There's very little OTPS in
10 it. And of course, union increases alone, I mean,
11 we don't give varying increases. Union increases
12 alone drive your budget up, drive it up fairly
13 significantly, oftentimes in excess of the
14 additional percentage.

15 So that's part of the problem when you have
16 an agency that's almost, almost entirely PS-
17 driven. So that alone means your budget is going
18 to have to go up or you just tell, you know, the
19 unions, "Screw you. We're not giving you an
20 increase," which you can't do. So as long as we
21 have CB increases in the City, you'd better be
22 prepared to increase your budget. And this year
23 it went up rather dramatically just to keep up
24 with the CB increase.

25 CHAIRMAN GOLDSTEIN: So if I were to look at,

1 and I don't want to monopolize my time here,
2 but -- your time or the time of the Commission,
3 if you were to look at a longitudinal ten-year
4 scan you would not see budget increases
5 reflecting in cost of living or union negotiating
6 changes for your staff attorneys or any of that?
7 It's been constant; is that what you're saying?

8 MR. DAVIES: I'm not sure I understand your
9 question. Our budget has over time generally gone
10 up. It is, as you can see it's gone down
11 significantly from 2008, 2009; FY '09, FY '10 it
12 went down dramatically. You have to compare it
13 to 1993 to 2009 you can see it went up, you know,
14 several thousand dollars. But of course, there's
15 a lot of inflation between '93 and 2002. Whether
16 or not that equals COIB increases, I can't answer
17 that. But it is true that COIB increases alone,
18 no merit raises, COIB increase will eat up your
19 increases from year to year for the most part.

20 CHAIRMAN GOLDSTEIN: It's not uncommon that
21 your budget would be dominated by personal
22 services as it is throughout the City.

23 I'm just asking as other people, other
24 organizations have gotten raises, and I assume
25 people that are in the Conflicts of Interest

1 Board staff of people are covered by unions?

2 MR. DAVIES: Yes.

3 CHAIRMAN GOLDSTEIN: So they are getting
4 their increases as everybody else is --

5 MR. DAVIES: Right.

6 CHAIRMAN GOLDSTEIN: -- so that stability in
7 your budget has not been reflected in those
8 raises. The raises are going to be there.

9 MR. DAVIES: That's right, yeah. Exactly.

10 CHAIRMAN GOLDSTEIN: Thank you.

11 We open this up now for the Commissioners.

12 Commissioner Taylor.

13 COMMISSIONER TAYLOR: Mr. Davies, is there a
14 mechanism that determines the COIB's budget from
15 its genesis? How do you determine what the right
16 budget fit is for the agency?

17 MR. DAVIES: Currently? Yeah, well currently
18 we start of course -- OMB does it, we don't do
19 it. We have little input on the whole.

20 OMB simply starts with the previous year's
21 executive budget, not the adopted budget, because
22 often we've had Council restorations. OMB starts
23 previous year's executive budget, which is
24 typically lower than the adopted budget, and then
25 make whatever judgments they make. If there are

1 cuts, they make cuts. If there are collective
2 bargaining increases, they add those in and so
3 forth.

4 We know we'll make our pitch. But in the
5 past it hasn't made much difference to OMB.

6 COMMISSIONER TAYLOR: Follow-up to that.
7 Would it be safe to assume that you basically
8 know the range or the number of employees of the
9 City, of municipal workers in the City, and you
10 know that you have to cover that number, you
11 basically know what that number looks like based
12 on that inventory of people that you have to
13 serve? Does that create a floor or a balance that
14 you basically have to work with?

15 MR. DAVIES: Well, yeah. I mean, we're
16 responsible for 325,000 public servants, and we
17 have to the try to service 325,000 public
18 servants. Obviously, in some ways we don't.
19 Formal education, we had at the beginning of last
20 year to now only one trainer. With 325,000
21 public servants we can't do a lot of the kind of
22 training we should be doing. So we simply don't
23 do it. You know, things like that. So you make
24 adjustments by simply not doing things you should
25 be doing. I mean, what else can you do? That's

1 throughout the City.

2 CHAIRMAN GOLDSTEIN: Commissioner Cassino.

3 COMMISSIONER CASSINO: Thank you,

4 Mr. Chairman.

5 I have want to thank the representatives
6 from both agencies here, because I've had
7 extensive dealings with both the Conflicts of
8 Interest Board and on issues as well as the
9 Campaign Finance Board, and I really find your
10 agencies to be outstanding at what you do.

11 I have a question for the Conflicts of
12 Interest Board, two questions. One is related to
13 how you function, and the other one is related to
14 one of the areas you cover.

15 In terms of the issue that we've been
16 talking about here in terms of budgets, and I
17 know the Chair talked a little bit about how your
18 budget is, what direction it's moving in. And
19 there's a great deal of discussion here about the
20 unseemly position that you could be in, in terms
21 of negotiating with some of the very same people
22 you may be investigating, et cetera, and maybe
23 you can't talk to it Mr. Davies, but maybe others
24 who would have been involved in the Conflicts of
25 Interest Board can talk to.

1 Can you give some examples of how it's
2 actually happened that that concern has been
3 actualized? You know, we talked about budgets, we
4 talked about, you know, we've been in existence
5 long enough to give us some examples of how other
6 than the concern, which is real, I believe, but
7 some real examples of how that's been actualized.

8 And my second question relates to the issue
9 of discretionary funding, or as some people call
10 it member items, or some people refer to as slush
11 fund issues. Can you -- I've read your memo
12 regarding how the many contortions that you have
13 to address when it comes to Members, Council
14 Members' funding not-for-profits and all of the
15 variations and permutations that can come up. I
16 give you a lot of credit of trying to deal with
17 all those permutations. And I guess my question
18 is related to after doing all that I'm still
19 concerned, because we continue to see these
20 issues arising in the press in terms of slush
21 fund scandals, et cetera. Is this dealing with
22 the problem? Are we really getting at the problem
23 here?

24 It's been suggested many times that this be
25 something that be eliminated, that Council

1 Members not be allowed to make these
2 discretionary appropriations. Built into that
3 is, of course, an uneven distribution of funds of
4 51 members who are not always evenly given the
5 amount of funds available, and there's a whole
6 issue it related to that. So if somebody could
7 speak to the issue of that part of things and
8 discretionary funds as to what can be done,
9 because we have to look at that as well and
10 figure out whether that's working or not.

11 MR. ROMANO: I would try to, probably not
12 successfully, to respond to your first question,
13 because it's been some time since I've been a
14 part of the COIB. I can tell you -- I cannot be
15 specific about specific matters that were before
16 the staff of the Board during budget
17 negotiations, but I can tell you, I can remember
18 specifically being uncomfortable with that going
19 on while we were deciding some very difficult
20 matters. And as I said, I think in my statement,
21 at least, and I think Mark included in his, I'm
22 assuming absolute good faith on the part of
23 everybody involved. Subjectively, we think we're
24 doing our job. And subjectively I think the
25 person on the other side of the table with whom

1 we're negotiating I believe is, subjectively, we
2 believe they're doing their job.

3 The problem is does the public have reason
4 to question that as a result of this negotiating
5 with someone over your budget when there's a
6 matter that, that is pending?

7 On the second question, I'm going to have to
8 defer to Mark, because I've read the opinion, as
9 you have, but I wasn't involved in it, and I may
10 have my own views as to whether it should be --
11 member items should be abolished, but I think you
12 really ought to give it to Mr. Davies.

13 COMMISSIONER CASSINO: Either one, whoever
14 can speak to.

15 MR. BRIFFAULT: Just briefly, I'm on the
16 member item point. I didn't mean to make this an
17 indictment of the Council in particular. This is
18 a problem that affects all legislatures. Earmark
19 scandals in Congress in the middle of this past
20 decade led to earmark reforms. In 2007 Federal
21 lobbying ethics law, known as HLOGA. There's now
22 a detailed regulation, I don't know how effective
23 it's been, but detailed regulation about Federal
24 earmarks mostly focused on advance notice and
25 disclosure in identifying who the person is, who

1 is seeking it, and who the beneficiaries are,
2 which is at least in some sense our member items
3 were arguably more transparent since they were
4 named entities sometimes at the Federal level,
5 you couldn't tell who was getting it. It's been
6 an acute problem with the State Legislature who
7 typically has done nothing about it as Council
8 has addressed it.

9 I was more focusing on the fact it's been
10 addressed in a formally informal and temporary
11 way. And the Charter doesn't speak to it very
12 clearly, leading to the intricate opinion that
13 the Conflicts of Interest Board had developed.
14 There are now some rules -- I don't think, I
15 don't know if they're ultimately abolishable in
16 some way, or they migrate to some other form as
17 long as you give individuals a greater impact on
18 the budget. There's also the particular question
19 of the balance of power in the City government.
20 But I think what we're looking -- talking about
21 is, at very least, making sure only legitimate
22 entities are receiving them, which has been one
23 initial focus, that there were shell
24 organizations and other illegitimate
25 organizations, more transparency as to who is

1 getting them and why. But in particular, the
2 connections between the members who are
3 sponsoring the items and their people associated
4 with them, and the recipient of the item, and I
5 think the Conflicts of Interest Board felt it had
6 to draw a line -- not clear it's a workable line
7 in practice -- between voting and sponsoring. It
8 could be that if it's actually done as a Charter
9 Revision as opposed to interpreting current law
10 you could come up with a clearer set of
11 requirements and prohibitions.

12 I think again not to exaggerate the amounts
13 of money are relatively small relative to the
14 budget as a whole. But I'm talking about public
15 trust and public confidence in government. It was
16 a major blow.

17 MR. DAVIES: You know, if I could, I'd like
18 to say something about discretionary funding.
19 This is a public forum, and I'd like to speak
20 publicly, and that is that I think, you know, it
21 needs to be stated in the record that Speaker
22 Quinn, as I understand it, is the one that blew
23 the whistle on the scandals, and she has set up a
24 system in working closely with us and closely
25 with Rose Gill Hearn, Commissioner of

1 Investigation, and this system they have set up
2 is really a model for the entire country. You
3 know, maybe if Speaker Silver and Speaker Pelosi
4 would listen a little bit to Speaker Quinn on
5 this issue things would be a little bit better in
6 Albany and in Congress on this issue of
7 discretionary funding.

8 I don't want to express any opinion, because
9 we've taken no position on it, on restricting. I
10 would and say the system that has been set up by
11 the Speaker in conjunction with and requesting
12 this opinion, is really, I think, a model for the
13 country. It's very, very good.

14 CHAIRMAN GOLDSTEIN: You have spoken about
15 increase in penalties. I think you said from
16 10,000 to 25,000 --

17 MR. DAVIES: Right.

18 CHAIRMAN GOLDSTEIN -- if I remember,
19 disbarment.

20 Absent those changes, do you believe that we
21 are inviting further misbehavior because the
22 penalties or the consequences are not what you
23 think they should be?

24 MR. DAVIES: No, I wouldn't say that. I
25 wouldn't say that. This is a system, it was

1 pointed out, this is a system -- this is a
2 success story, let's be clear, this is a success
3 story. The Conflicts of Interest Board, like the
4 CFB, but it's not as good as it should be, and we
5 can make this better, so it's not the -- a
6 question people are doing it out there, doing
7 conflict of interest because it's only \$10,000
8 penalty, not a \$25,000 penalty, that's not the
9 issue. The issue is just partly inflation and
10 it's partly because when you squeeze penalties
11 down to a smaller range it makes it hard to
12 distinguish between really egregious violations
13 and those that they're significant violations but
14 they're simply not as egregious. It wasn't
15 venomous, it wasn't done to steal. But, you
16 know, it's significant.

17 CHAIRMAN GOLDSTEIN: So it's not about
18 changing behavior --

19 MR. DAVIES: No.

20 CHAIRMAN GOLDSTEIN: Trying to use the stick
21 to change behavior.

22 MR. ROMANO: I think the way the question is
23 posed I disagree with maybe the premise. It may
24 not be just a matter of economics and inflation
25 that might justify increasing the penalty.

1 The Board, like any enforcement agency, the
2 Board does rely on the deterrent effect of a
3 penalty and the perception of a \$500 fine and a
4 \$5,000 fine. And a 10,000 and 15,000 is
5 different, and it changes over time when we -- as
6 inflation changes the value of money. So I think
7 it does -- it is not the difference between
8 inviting someone to commit a crime because our
9 penalties are too low. I don't think that's the
10 issue. But it gives you flexibility in
11 distinguishing among grades of offenses, if you
12 will, and it also allows you in some cases to
13 make a meaningful statement about the seriousness
14 of the conduct and that hasn't a very -- it is
15 believed, and I think it's true, that it has an
16 impact on the behavior of others who get
17 public -- whose public whose attention is drawn
18 to an enforcement action.

19 MR. RIFKIN: If I may. On the State level in
20 2007, we increased the penalties that could be
21 imposed by the State's Public Integrity
22 Commission. And there are obviously inflation and
23 so forth. But the other thing we found in State
24 government -- I was then in State government and
25 involved in this -- was that there were people

1 who were gaining more money personally than the
2 penalty that could be imposed. In other words,
3 you had a two-year bar when a person leaves State
4 government. A person violates the two-year bar,
5 but in doing so actually earned more than the
6 penalty that could be imposed, so that at least
7 from a public perspective, looking at it
8 economically, that person still came out ahead
9 even though he or she was penalized. And the
10 concept is to raise the penalties to a level
11 where this is not likely to happen.

12 CHAIRMAN GOLDSTEIN: To change behavior.

13 MR. RIFKIN: Well, it's to change behavior
14 and to sort of give the public the concept that
15 the person is truly being penalized for his or
16 her wrongdoing.

17 MR. DAVIES: If I could just add to that
18 finally, because I think it's important. I think
19 you're right. Again, we're in the prevention
20 business, that's our business. The single most
21 effective educational tool is enforcement. Hands
22 down. I go out there and I give a talk and I
23 say, "You can't, you can't seek a job with
24 someone you're dealing with in City government."
25 Yawn, yawn, yawn. Fine, we heard this before.

1 "Don't forget, Mr. Mathos, we fine Mr. Mathos
2 \$1,000 for submitting his resume for somebody who
3 is dealing with a City job to 'network.'" All of
4 a sudden. "Excuse me? A thousand dollars for
5 sending a resume?" Now all of a sudden the eyes
6 open, they sit up straight, and they're paying
7 attention. It is incredibly effective
8 enforcement, as an educational tool, so I agree
9 with you.

10 CHAIRMAN GOLDSTEIN: Yes, Commissioner Cohen.

11 COMMISSIONER COHEN: First, I want to pick up
12 on this question of the maximum penalties. It
13 seems to me that if we are to, we're going to
14 make an amendment to the Charter about penalties
15 I would argue against stating in the Charter what
16 a maximum is going to be.

17 It seems to me that, you know, over time the
18 same inflation question will arise again. It
19 seems to me that a Charter -- I think Professor
20 Briffault made reference to this -- it should be
21 about the house, it should be about the house and
22 the particular laws.

23 On the question of penalty, I would be
24 interested in what you would suggest other than
25 changing the number 10,000 in the Charter

1 language to the number 25,000 in the Charter
2 language, or any other number. And I wanted to
3 actually -- so I'm throwing that out there, but I
4 have another question since we are on the
5 question of violation and penalties. There was
6 an article in the Gotham Gazette just in the last
7 couple of weeks about Council Members who were
8 fined significantly -- actually by the Campaign
9 Finance Board -- and how they go about dealing
10 with those fines.

11 So, first of all, the question is
12 substantial fines, and, second of all, the
13 question of addressing them, and this article was
14 specifically about setting up legal defense funds
15 for which there is no transparency, no
16 accountability, and so forth. So I realize we
17 might be getting to a meta, meta, meta on the
18 conflict of interest, but I could see how that
19 would be an issue too, and I was wondering if
20 you're thinking about that, because does that
21 enter into any discussion about that this
22 evening?

23 MS. LOPREST: You've had a series of
24 questions. I guess I can answer the last one
25 first about the level defense funds.

1 We have a twenty-year history and it's the
2 Board's experience with candidates setting up
3 legal defense funds is relatively slight. I think
4 in that article pretty much mentioned every
5 single instance where it's happened over the
6 course of 20 years. It is an issue of interest of
7 the Board, and it's something that we're spending
8 some time looking at models that other
9 jurisdictions across the country are
10 implementing. As a matter of fact, the City of
11 Philadelphia passed a law I think within the past
12 couple of weeks dealing with the issue of legal
13 defense funds. Their issue -- their law, and
14 many laws, deal with legal defense funds as
15 paying for attorneys' fees rather than the
16 penalties, but the concepts are similar. And
17 there's something that we're looking at again. I
18 would say that that is the type of -- it's a -- a
19 nuts and bolts that might be more appropriate for
20 legislative change than for Charter
21 implementation, but it is something that the
22 Board is looking into.

23 COMMISSIONER COHEN: It's not something you
24 would need additional enabling language in the
25 Charter to get you legislation later?

1 MS. LOPREST: I don't believe so.

2 MR. ROMANO: Mark will correct me if I'm
3 wrong, but the current Charter has a penalty
4 provision in it specifying. So it's sort of
5 already -- if it was an error to include that
6 kind of detail in the Charter --

7 COMMISSIONER COHEN: I think it is, that's
8 why I'm asking the question. I agree the \$10,000
9 is the wrong number, and I'm suggesting to you
10 that stating any definite number in the Charter
11 is a mistake. Is there another way to do that?

12 MR. ROMANO: It's a very interesting
13 question. Also baked into the process is the
14 requirement in the Charter that the Charter is
15 reviewed every five years. Presumably the
16 framers Chapter 68 concluded that every five
17 years it's worth looking at whether the penalty
18 should be increased or lowered, and any other
19 changes should be recommended, and every Board
20 has done that every five years.

21 And one other thing. Since we are talking
22 about a penalty, fair notice would suggest that
23 it should be published. Now, that could be
24 achieved if it were legal for the Board to simply
25 announce a schedule of penalties and publish it.

1 I suppose it could be done that way. Although if
2 it's in the Charter it would represent the
3 collective judgment of not just an administrative
4 agency but the public. So in that sense the
5 number has not just in volume but maybe legal
6 substance.

7 MR. DAVIES: Just speaking for myself, I
8 would be very nervous about not having a cap on
9 the fines. I mean, you know, that just makes me
10 nervous. Our highest fine was \$180,000. Remember
11 this is \$10,000 per violation. So the former
12 Chair of the City of the New York (inaudible) who
13 a law practice is a serial violator, we fined
14 \$180,000. That's a pretty big fine. So it's
15 10,000 per violation. So I would be very nervous
16 under the circumstances about a cap. I don't
17 know if Professor Briffault...

18 MR. BRIFFAULT: Yeah, I was just thinking
19 about whether indexing would be an option here,
20 but I'm actually not familiar with indexing as
21 penalties. Typically things like reporting
22 thresholds and things like that are frequently
23 indexed. The public funding is indexed. I could
24 see typically we can index, and often do index,
25 reporting thresholds and things like that. But I

1 think it's -- I think criminal penalties, civil
2 fines, are very rarely indexed. If you could come
3 up with a schedule that says it will go up \$5,000
4 in five years. You could in some sense have a --
5 but it's going -- you could jump up now and five
6 years go up another "X" amount and five years
7 after that go up another "X" amount. But it's
8 very rare to literally put an index provision in
9 the penalty.

10 MR. ROMANO: There are penalty provisions in
11 the criminal law which are calculated on formula
12 based on gain or loss. But even there the
13 Legislature starts out with a cap and then the
14 formula can be applied simply, and so there is
15 the numbers actually included in the statute. I
16 don't know, I'm not familiar with any
17 administrative agency that can publish a series
18 of civil penalties without it being dictated by
19 the Legislature.

20 CHAIRMAN GOLDSTEIN: Let me acknowledge
21 Commissioner Freyre.

22 COMMISSIONER FREYRE: Professor Briffault,
23 regarding your proposal that oversight of
24 lobbyists having to do with the Conflicts of
25 Interest Board to Campaign Finance Board, can you

1 give us your thoughts on which of the two Boards
2 would be most suited for that oversight? And I
3 would appreciate hearing from the two
4 representatives of the Board also.

5 MR. BRIFFAULT: Yeah, as I said, this is
6 fairly tentative and I don't have strong views. I
7 think the Campaign Finance Board has been sort of
8 doing it in the sense that it's had to develop a
9 pay-to-play database or has administered the
10 pay-to-play database and a lobbying database in
11 terms of the out the differential contribution
12 limits and the match ability of funds for the
13 public funding program. So there probably -- it
14 would probably be easier for them to step into
15 it, is my guess, but I really don't know. I
16 mean, there's a logic to either one in that the
17 Conflicts of Interest Board looks more at the
18 interactions between public servants and private
19 parties. That's what lobbying is.

20 The Campaign Finance Board, though, I think
21 because of the August 1998 provisions, ultimate
22 changes in 2005, 2006 had sort of -- doesn't
23 regulate lobbying but has developed information
24 about who lobbyists are. I would be actually
25 curious as to what they have to say about it. If

1 anybody wants this.

2 MR. DAVIES: Obviously, I can only speak on
3 my own behalf, not on behalf of the Board.
4 Obviously, we're not looking for more business
5 (inaudible) and I really tell you the truth, I
6 really don't have a particular view one way or
7 the other. And I see arguments on both sides
8 between the two agencies or the argument of even
9 of where it is, because, you know, if it's
10 working now -- and I don't know if it is or it's
11 not -- but if it's working now, you know, why
12 make the change? I think that generally around
13 the country if you look, for example, the
14 Pennsylvania State Ethics Commission, the L.A.
15 City Ethics Commission, the Philadelphia Ethics
16 Commission, the San Francisco Ethics Commission,
17 in all those instances they also have
18 jurisdiction over lobbying. Although in some of
19 those instances have jurisdiction over campaign
20 finance as well. So it is true around the
21 country generally it's given to the Ethics Board.
22 But I don't know if that's a big argument one way
23 or the other.

24 MR. RIFKIN: One thing you might want to do,
25 and evaluate how it works in the State. There

1 used to be two separate commissions, the Ethics
2 Commission and the New York State Lobbying
3 Commission, and in 2007 they were combined into
4 what is now known as the Public Integrity
5 Commission, and you can certainly examine that
6 experience.

7 MS. LOPREST: I would like to make a comment
8 about that. You know, as Professor Briffault has
9 pointed out, I mean, there is the intersection
10 the current work of the Campaign Finance Board
11 and the City Clerk's registration of lobbyists.
12 The lobbyists intersection predates the
13 comprehensive play-to-pay law that was passed in
14 2006. The lobbying law was amended to prevent the
15 match ability of lobbyists' contributions in
16 2006. And so through in conjunction with the
17 Mayor's Office of Contracts and the City Clerks's
18 Office there has been developed a fairly
19 comprehensive database of those who do business
20 with the City including, lobbyists. And we use
21 that to do our work to regulate the lower
22 contribution limits and the matching funds
23 provisions of the "Doing Business" law.

24 From what I understand from people who do a
25 lot of work with the lobbyists is that the two

1 things that could be included are, you know,
2 education of the people who have to file those
3 disclosure forms. There is -- I think you presume
4 that people want to obey the law and that there's
5 a significant need for comprehensive education
6 for people who are lobbyists to know what are the
7 provisions of the law are and how they are to
8 comply with them, and I understand, and this is
9 again just very, very anecdotal, that there is
10 some need for an improvement in that process. And
11 then also for more transparent disclosure of who
12 they are.

13 As I mentioned, these are two things that we
14 do. I'm not advocating one way or the other, but
15 we do have a significant education staff with our
16 Account Services Unit, and also we do the
17 comprehensive disclosure. Again, it's done in
18 different ways throughout the country. Some of
19 the organizations that Mark mentioned, the L.A.
20 Ethics Commission, and I think the Philadelphia
21 Ethics Commission now have some also oversight of
22 the campaign financing in those jurisdictions, so
23 there are -- I'm sure you can find models that
24 have it stand alone, some that have it as part of
25 an ethics commission, and then some that have it

1 as a comprehensive campaign finance ethics and
2 lobbying commissions.

3 CHAIRMAN GOLDSTEIN: I'm sensitive to the
4 time, but I do want to acknowledge Commissioner
5 Crowell and Commissioner Fiala and then
6 Commissioner Moltner.

7 COMMISSIONER CROWELL: Mrs. Loprest, can you
8 make your -- the Commission has heard a lot of
9 the Voters Assistance Commission over the past
10 few weeks. Can you give us some more detailed
11 perspective on how you work with them and the
12 roles in which had you see your work with them in
13 the future?

14 MS. LOPREST: The Voter Assistance
15 Commission, obviously, in the Charter is mandated
16 to educate voters about voting and their rights
17 and responsibilities.

18 In the original Charter, the Voter
19 Assistance Commission, when it was originally
20 passed in 1988 was a part of the Campaign Finance
21 Board, kind of overlapping authority in that it
22 was broken apart. You know, I think that we have
23 over the past couple of years developed a good
24 working relationship to enhance -- we have a
25 significant voter education mandate, Voter Guide.

1 We have worked with the Voter Assistance
2 Commission in their outreach. They have Voter
3 Awareness Month, and we've always participated in
4 some way in their programs during that month. In
5 particular, the Video Voter Guide, which is a big
6 project. We did a significant amount of work
7 assisting the Voters Assistance Commission (1)
8 because we have a bigger staff, and (2) because
9 we have already the existing relationships with
10 the candidates. Our Candidates Services staff
11 talks to candidates on a daily/weekly basis, so
12 it was very, very natural for us to take over
13 portions of outreach to the candidates to inform
14 them that the Video Voter Guide was available to
15 them to schedule their appearance this year. In
16 2009 the profiles were videotaped at NBC studios
17 and we did all the scheduling related to that.
18 And all the outreach. I think that we worked
19 very well together, and I think because we have a
20 larger staff and a larger budget we've been able
21 to kind of assist them in their mandate somewhat.

22 CHAIRMAN GOLDSTEIN: Commissioner Fiala.

23 COMMISSIONER FIALA: Thank you, Mr.
24 Chairman. Let me thank the Panel. It's very,
25 very informative and helpful to us.

1 Public integrity is a very sexy topic, and I
2 very much appreciated the observations of you
3 all. My own feeling is corruption is like water;
4 it will find a way. Corruption in personal and
5 public spheres have existed since the beginning
6 of mankind and will always exist. The greatest
7 insurance policy to ensure public integrity is
8 the personal ethics of public servants. And each
9 of you have in your own way have alluded to it,
10 but I think it's important that we too allude to
11 it.

12 This is a city, a municipal corporation of
13 some 300 thousand-plus public servants, and the
14 vast majority of them come to work every day and
15 labor to do the people's work, and they do it
16 honestly. They earn their day's pay. And we
17 applaud them for it. I, you know, I've watched
18 for 20 years efforts to improve on public ethics
19 and public integrity.

20 In 1998 the Charter Revision Commission
21 barred the contributions from corporations. I
22 think in 2008, and correct me if I'm wrong, Miss,
23 Loprest, it was a legislative act that actually
24 dealt with the LLC's in barring those
25 contributions.

1 There's only so much we can expect to do
2 through legislation or Charter-imposed language
3 to keep people honest. Because we start with that
4 premise that most of us, like everyone in this
5 room, are honest. There will always be those who
6 will find a way, and for every reform we
7 promulgate, they will find a way around it.
8 History has proven that.

9 Here are three points, then, I ask that you
10 respond to them. One is I happen to believe that
11 the greatest disinfectant, they say, is sunshine.
12 So in that regard, with respect to Charter
13 reform, because I agree we shouldn't get into the
14 area of picking how much of a fine should exist,
15 because the unintended consequences of Charter
16 reform is that its binding. And it's harder to
17 change. That's what the legislative body is
18 there for. So what types of -- the first
19 question is what types of disclosure requirements
20 presently exist and perhaps should be revisited
21 and beefed up? Because that provides for the
22 opportunity for self-governing people. That's
23 what we are. Lest we forget there's no way to
24 insulate the public from responsibility of public
25 affairs. Ultimately each of us is accountable and

1 responsible for ensuring that those of us in
2 public life are doing our job honestly, so we
3 can't insulate the public from that
4 responsibility. Disclosure requirements are one
5 way to provide for meaningful information to
6 allow me as a voter or an interested resident to
7 see just how honest our public servants are.

8 The second question relates to this notion
9 of independent budgets. I understand, and there's
10 a big piece of me have that agrees that that's a
11 potential solution, but like I said, there are
12 unintended consequences to every action. You
13 know, we kind of want to insulate more and more
14 the government from the traditional legislative
15 role. We ultimately elect people to manage the
16 purse. So the question relating to this
17 insulation of budgets is what does the State
18 ethics bodies, how are they constructed with
19 respect to their budget and other municipalities,
20 if they are aware of it?

21 And the third question is for the Campaign
22 Finance Board. The 2008 legislation, which dealt
23 with the limited liability corporations and
24 partnerships and a much heralded legislation
25 we're going to try to limit undue influence. Has

1 the Board taken a position on unions? Why weren't
2 unions part of this? Certainly, unions have about
3 as much influence, and many of us would argue a
4 lot more than just about any other special
5 interest out there. So you're talking about loop
6 holes to be closed? Why weren't unions part of
7 that discussion? And is there a position on the
8 Campaign Finance Board with respect to that
9 issue?

10 MR. RIFKIN: Can I answer? I unfortunately
11 have to leave to go back to Albany, so let me
12 answer the question about the State that you
13 asked, and that is the Public Integrity
14 Commission budgets, like any other agency. They
15 have to submit their budget to the Governor's
16 office, and it then becomes part of the executive
17 budget that's submitted to the legislature for
18 consideration. But, but, there's a difference
19 between -- because the Public Integrity
20 Commission in the State does not have
21 jurisdiction over the Legislature. So one can
22 argue there's a conflict with the Governor,
23 because the Governor submits the executive budget
24 but you don't have the same conflict with the
25 legislative body.

1 MS. LOPREST: And I can answer a couple of
2 questions that apply to Campaign Finance Board.
3 First, with regard to a question about the
4 Board's position on union contributions. The
5 Board has probably since its 1989 post election
6 report, and you may be aware that after every
7 municipal election the Board is required by the
8 Charter to produce a report on how the Program
9 worked in that election. And the Board has made a
10 recommendation that there be a ban on all
11 organizational contributions pretty much since
12 the 1989 report. Again, however, the 2007 law
13 that went into effect in 2008 it really went
14 very, very far to, you know, eliminate the
15 influence of many other organizations, and also
16 it has this comprehensive pay-to-play law, which
17 covers unions if they have contracts with the
18 City of New York, the same as anyone else who has
19 contracts with the City of New York. So I mean,
20 in some respect unions are covered by the
21 pay-to-play law with the lower contribution limit
22 if they are in the City- State-based in the
23 definition of pay-to-play.

24 As far as disclosure, I couldn't agree with
25 you more that disclosure is incredibly important.

1 It's one of the reasons the Board is recommending
2 an expansion of disclosure to people who are
3 actively, independently in an election and, you
4 know, our recommendation is that that disclosure
5 would cover everyone who is acting independently
6 in an election whether they be a corporation, a
7 union, a PAC, a private individual, that that
8 disclosure would cover all of those independent
9 spending.

10 And I briefly described our independent
11 budget. Our budget does allow for the legislative
12 process to be, you know, to take place because
13 our budget is put into the executive budget
14 rather than, you know, it's not mandated to be in
15 the final adopted budget.

16 CHAIRMAN GOLDSTEIN: Mr. Davies, did you want
17 to say anything? Mr. Romano.

18 MR. ROMANO: My impression has been that our
19 disclosure laws have been working fine. There
20 have been times in the past when we have had
21 filers who exercised very little discretionary
22 authority. For them I think it was the vast
23 majority of the information that was made through
24 public disclosure useless. And over time we've
25 been become more sophisticated and experienced.

1 And when disclosure can meaningfully help the
2 employee making the disclosure focus on the right
3 issues and also provide the public with
4 meaningful information about employees who
5 exercise, truly exercise discretion over
6 authority.

7 I would not, and never have regarded it as a
8 centerpiece of what we have do. I think the real
9 core function is actually giving advice. Someone
10 else has said that, and I agree with that; and
11 giving advice that's sensible and practical and
12 sensible and timely and confidential. Because
13 you're right, most employees come to work and
14 want to do the right thing. And they know now,
15 and have much more familiarity with our staff and
16 are much more willing to pick up the phone and
17 talk to them about a proposed course of conduct.
18 So I agree with much of what you said.

19 I don't know where it leads us, because I
20 think the idea of budget security is to try to
21 enhance the independence of the agency. We have
22 independent directors, Board members, and we
23 always have, and the mayors who have exercised
24 their appointment authority have been sensitive
25 and careful about that. They picked -- I don't

1 mean to include myself in this crowd, but they've
2 picked people of some stature and standing and
3 who are sensitive to these issues. But, but,
4 because we do perform this quasi judicial
5 function, because we frequently are dealing with
6 issues that involve employees at a very high
7 level of government, anything we can do to
8 enhance and insulate at least the appearance of
9 influence is something we ought to consider.

10 I don't -- I think it's a fair point how do
11 we manage it as a City agency? Are they no longer
12 accountable? I don't think any, anything I've
13 said is intended to suggest that we want to be
14 exempt from sensible management or oversight. Or
15 not to be accountable, because we should be
16 accountable. We absolutely should be accountable.

17 CHAIRMAN GOLDSTEIN: Let me recognize now
18 Commissioner Moltner.

19 COMMISSIONER MOLTNER: Thank you,
20 Mr. Chairman. We received a letter from the
21 Brennan Center For Justice, Common Cause, New
22 York League of Women Voters, NYPIRG, and Women's
23 Civic Club of New York. In part, that letter
24 deals with the split appointment issue to the
25 COIB. I would appreciate any member of the Panel

1 that would like to do so to comment on their
2 thoughts about the appointments to the COIB.

3 MR. DAVIES: Yeah. I'd like to comment on it.
4 I think because it's getting late, I'd like to
5 submit my comments. So just very, very briefly, I
6 think to summarize. First of all, this is my
7 personal view, our Board did not make any
8 proposal on the appointment process. I really
9 didn't consider it in any particular detail.
10 These are my own views. I would really make only
11 two points.

12 The first point is that currently the
13 process works very, very well. The Mayor appoints
14 our Board members with the advice and consent of
15 the City Council. In my experience, not in this
16 Administration but the previous Administration,
17 one of the previous administrations, on two
18 occasions the Council refused to confirm those
19 appointments. This is a real checks and balances
20 system. It works. Also, the Council in fact
21 looks at the -- they have their investigative
22 staff, they actually, they come to your house,
23 they interview your employer, they do a real
24 investigative job. Council, not just DOI. And
25 in addition, there's a public hearing, and as

1 Benito can testify, the focus of the public
2 hearing is how independent are you of the Mayor?
3 That's the focus of the public hearing. So
4 there's a real checks and balances process that
5 works, and we have an extremely competent Board.
6 We've always had. So it's worked very, very
7 well. No factions on our Board. No leaks. None
8 of the excruciating delays you sometimes see.
9 You may want to compare it to other ethics boards
10 around the country (inaudible) appointment.

11 I have grave reservations about split
12 appointments. I really do. In part, because it
13 undermines accountability. You know, when
14 everybody's accountable no one's accountable.
15 Also, if you're talking about split appointments
16 you're talking about different elected officials,
17 that are making those appointments, it's no one's
18 accountability. Also, it tends to politicize the
19 Board, it tends to fractionalize the Board.
20 We've seen that. There's -- anybody that's ever
21 been involved in arbitrations, there are two
22 models of arbitration. One is the
23 party-appointed arbitrator. Each party appoints
24 their arbitrator, and inevitably, in my
25 experience in arbitrations, inevitably the

1 party-appointed arbitrator views his appointor
2 as, you know, he's representing the person who
3 appointed him. That's the way the party-
4 appointed arbitration works, and you try to
5 convince they're neutral. If you have on the
6 other hand an arbitration where the arbitrator is
7 appointed by all parties, there is no factions.
8 No factionalism.

9 It is absolutely critical that the Conflicts
10 of Interest Board not become politicized or
11 fractionalized, that is absolutely critical. And
12 split appointment by different elected officials,
13 that has been the tendency. If you have a look
14 at the New York City Board of Education. Maybe
15 some of us here remember the old New York City
16 Board of Education were split appointments and
17 how, you know, you had those various factions and
18 so forth. So it's a problem.

19 The press, if you read in the press about
20 the -- it's too bad Richard had to leave -- about
21 the New York state Public Integrity Commission,
22 you see the same thing, that there are leaks,
23 there are factions, there are representatives,
24 and so forth, of various constituencies, and
25 that's not what you need. (Inaudible) I've taken

1 too long. Just to finish, there are other models
2 where you don't have split appointments. Hawaii,
3 for example. Hawaii State Ethics Commission,
4 those members are nominated and, therefore, have
5 to be appointed by an independent body and each
6 of them an independent Commission that is set up
7 by law. You have law school deans and you have
8 ethics experts, certain designated people. All
9 together they agree on who is going to sit on the
10 state ethics commission.

11 This is not a screening committee.
12 Screening committee doesn't work. This is an
13 independent commission that determines who the
14 members of the ethics board is. That's another
15 model that nobody has talked about, so forth.
16 I'm not putting it forward, I'm just saying there
17 are other possibilities.

18 The split appointments I think by
19 independent elected officials, in my mind, raise
20 very, very grave concerns.

21 CHAIRMAN GOLDSTEIN: We look forward to any
22 commentary on this, as you said.

23 Miss Loprest?

24 MS. LOPREST: I just want to say that I mean,
25 I don't make any comment on who, obviously, the

1 COIB Board should appoint. I just want to say
2 that, you know, obviously Mr. Davies has said a
3 lot about split appointments. I think that is
4 the way that the Campaign Finance Board is
5 appointed and has been very, very successful for
6 the Campaign Finance Board. I make no statement
7 about whether or not this (inaudible) Conflicts
8 Board, but having the split appointment by the
9 Speaker and the Mayor and having the
10 non-partisanship of the Board has really been a
11 very, very successful model for the Campaign
12 Finance Board.

13 CHAIRMAN GOLDSTEIN: You know, tonight's
14 discussion is a great validation of what this
15 Commission intends to do and intended to do at
16 its inaugural meeting. We wanted to ensure that
17 the Commission was as well-informed by the very
18 best people that we could corral to help us
19 understand the issues deeply, understanding full
20 well that if we have to bring certain things to
21 the voters in November we could not possibly
22 complete all of our work. And what we are
23 attempting to do here not only is to inform what
24 we will do in November but to pave the way --
25 whether this Commission continues after November

1 or a new Commission -- to inform the way in the
2 manner that we've created by bringing people of
3 your stature to help us really understand the
4 issues in depth. And so much of what you said
5 tonight has really enhanced our understanding,
6 about really developing even further questions
7 for the Commission as we look down the road.

8 So I want to thank all of you for a very,
9 very lively discussion.

10 Mr. Fiala, did you want to?

11 COMMISSIONER FIALA: If you don't mind,
12 Mr. Chairman. I would like to make a comment
13 following up on your remarks.

14 You've used the word figuratively Charter
15 Revision, Charter Revision Commission's work is
16 and it is. It's important that the public
17 understand that there is a natural organic
18 progression of activity for which a Charter
19 Revision Commission goes through, and we are in
20 that phase. We're coming out of the phase where
21 we're informing ourselves. We've listened to
22 hundreds and hundreds of citizens across the
23 City, offering ideas. We are now in our third of
24 five public -- we're on our fourth of five expert
25 hearings.

1 You set a goal at our first meeting, and I'm
2 going to steal your language, I hope you don't
3 mind because I think it's apropos, you have
4 talked about this Commission drilling deep into
5 the bedrock of the issues that will be presented
6 before.

7 I think we have done that, and having served
8 on a previous Commission and having participated
9 in the -- all commissions since the Schwarz
10 Commission of '89, whether as an elected official
11 or a citizen testifying, I want my fellow
12 Commissioners to know, as well as the public to
13 know, that I am very encouraged by your comments,
14 and I'm also of the mind-set that we have already
15 done more work than just about any Commission.
16 And it's obviously self-serving for me to say
17 that, and I'm sitting on it. But I have to
18 remind all of us that absent a precipitating
19 event, or some kind of a galvanizing force
20 necessitating change, Charter Revision is a very
21 difficult and complex subject to take up. You
22 know, we are not, never will be, nor could we
23 ever be, the Ravitch or Schwarz Commission,
24 because we don't have that precipitating event.
25 The Supreme Court of the United States didn't say

1 to us, "Hey, your government is unconstitutional.
2 Create another one." That creates a significant
3 force for change.

4 What we got was an opportunity to listen to
5 residents from five Boroughs and have them come
6 before us with a myriad of ideas for solutions to
7 problems that they perceive exist at the
8 municipal level. And now we have the
9 responsibility of winnowing all that down and
10 trying to come up with some kind of a framework
11 for possible reform.

12 I wanted to say that because I know that
13 this is a very esoteric exercise. I've said that
14 the Charter Revision is esoteric, and I've been
15 criticized for saying that. It is not by it's
16 nature, by design, or its intent. It is by
17 practice. This is something that 99.9 percent of
18 New Yorkers don't deal with every day. So by
19 virtue of the political, the legalistic, and the
20 bureaucratic elements that constitute a Charter,
21 it is by definition esoteric.

22 Trying to now somehow solve all of New
23 York's problems in one year is somewhat wishful
24 thinking. But I, for one, commend you and my
25 fellow Commissioners for again digging very

1 deeply in the bedrock. No other Commission has
2 done this absent that compelling, necessitating
3 force, so we should feel good about what we've
4 done here.

5 We're coming out of the tunnel now. This is
6 far from over, but we are getting, as you said,
7 to that phase where we've got to now start to
8 bring this all together, bring this in for a
9 landing, and do an assessment on what we could
10 offer the voters.

11 Thus far, this has been an exercise that we
12 should all be proud of. It is worthy of New
13 Yorkers, and they have been well-served, because
14 we have actually dealt with some very, very
15 complex issues. And the forums that you've
16 overseen and the staff you have brought together
17 in the last four weeks have been particularly
18 enlightening. So I commend you. I'm heartened
19 by your words, and I'm looking forward to working
20 with my 14 colleagues to try and winnow this down
21 into some kind of a sensible opportunity for a
22 more responsible and efficient government.
23 That's the goal you set out for us, Mr. Chairman,
24 so thank you.

25 CHAIRMAN GOLDSTEIN: Thank you. That was

1 very eloquently said, Commissioner Fiala.

2 Commissioner Moltner.

3 COMMISSIONER MOLTNER: Thank you,
4 Mr. Chairman. I would just like to lend my
5 wholehearted support for what you said and what
6 Commissioner Fiala said and just add that it's
7 been inspired by an unprecedented outreach, which
8 is thanks to the staff and the Commission. And
9 there is much yet we have to do, but I firmly and
10 fully support what Commissioner Fiala said.

11 CHAIRMAN GOLDSTEIN: Well, we didn't have the
12 exogenous force. We have developed an indigenous
13 force, so I thank you all for that.

14 Mark Davies, thank you for being here this
15 evening. Amy Loprest, thank you. Richard Rifkin
16 is on his way to Albany, but we'll make sure that
17 he gets our thanks for his participation. Benito
18 Romano, that's very nice to have met you and to
19 listen to you this evening, and, of course,
20 Professor Briffault, thank you.

21 We have about five or six speakers in the
22 audience, and instead of us taking a break I
23 think we ought to go right into that. And the
24 Panel, if you wish to stay you're certainly
25 welcome. If you want to exit gracefully now is

1 your time.

2 Let me get you the list rather quickly.

3 Steve Rosenfeld is the first to sign up.

4 Mr. Rosenfeld, welcome.

5 MR. ROSENFED: Thank you, Mr. Chairman. My
6 name is Steven Rosenfeld, and I am the current
7 Chair of the Conflicts of Interest Board, which I
8 have been honored to be since 2002.

9 I want to add just a few words to what you
10 already heard from Mark Davies and my
11 predecessor, Benito Romano, about the opportunity
12 afforded by this Commission to adopt the Board's
13 proposed amendments to Chapter 68 of the City
14 Charter.

15 The importance that our Board attaches to
16 these amendments is reflected by the fact that
17 the entire Board is present here this evening:
18 Andrew Irving on my far right, Monica Blum, Burt
19 Lehman and, of course, your Commission Member,
20 Miss Freyre.

21 The Conflicts of Interest Law is in Chapter
22 68 of the City Charter. We don't have any other
23 law. So if there are going to be changes they
24 have to be made through Charter amendment. Miss
25 Cohen, I want to address that to you, because we

1 can't make the changes that need to be made
2 except by Charter amendment in the current
3 structure.

4 Mr. Chairman, the statistics in our annual
5 reports in the eight years that I've been Chair
6 really do paint a different picture from the more
7 recent statistics that I think Mark gave you.
8 And they really show that in each of the four
9 areas of the Board's responsibility that the
10 Board's never been busier than in the past eight
11 years. We've answered more requests for advice
12 from public servants, including from City Hall,
13 and including, by the way, I'm sorry Mr. Rifkin
14 left, including a comprehensive recent decision
15 on when registered lobbyists can and can't be --
16 can and can't invite public servants to events.
17 And we brought more -- brought and resolved more
18 enforcement actions than any comparable period in
19 our 20 years of existence.

20 But still, I'm keenly aware that a
21 perception exists that somehow we're not
22 independent of the Mayor who appointed each of
23 us. In short, that we never say "no" to him,
24 although nothing can be further from the truth.
25 I'm convinced that that perception stems, in

1 part, from the fact that we've granted waiver
2 requests or published advisory opinions in
3 response to requests for advice from City Hall,
4 and those decisions are public. But the many,
5 many times that we denied a request or given an
6 informal advice that a proposed action would
7 violate Chapter 68, those decisions are, by law,
8 confidential. And indeed, this Administration
9 has shown itself to be unusually sensitive to
10 issues under the Conflicts of Interest Law
11 reflected in the number of requests for advice we
12 get from in City Hall.

13 Nonetheless, there are several steps that
14 can and should be taken to beef of up our legal
15 powers and our independence. None of them is
16 more important to strengthen both the perception
17 of the reality of the COIB's independence than
18 the guaranteed budget provisions that Mark and
19 Benito have already discussed.

20 Mr. Chairman, it's not really a question of
21 a cap, or a floor, or correlating the budget with
22 our workload. It is the process that's the
23 problem. Simply put, having our purse strings
24 controlled by the very people at City Hall, or
25 the OMB, whose ethics we're supposed to be

1 monitoring is really at odds with a independent
2 ethics board. In fact, it's a true conflict of
3 interest all by itself.

4 As you heard from Miss Loprest, the CFB and
5 the Independent Budget Office both have budget
6 protection, and the COIB is the third leg of the
7 trilogy that should have it, too.

8 Many of the other provisions we've proposed,
9 I won't go through them, would also give the
10 Board more muscle and thereby increase our actual
11 and perceived independence.

12 The Charter, Chapter 68 actually requires
13 that we propose revisions of the law every five
14 years, which we've done, but Chapter 68 remains
15 essentially the way it was 20 years ago when it
16 was first enacted. And the Board for that reason
17 undertook to scrub Chapter 68 from top to bottom,
18 came up with a comprehensive list of long overdue
19 amendments to make Chapter 68 more user-friendly
20 internally consistent and intelligible and in
21 harmony with 20 years of established Board
22 precedent.

23 We've submitted this entire package to you
24 and this Commission, or Charter amendment, is the
25 only way to get the law enacted. Many, many of

1 them can't be enacted by local law, so we're
2 hopeful that all of these amendments can be
3 adopted, hopefully this year if not in the near
4 future. If one or two of them turn out to be
5 debatable, let's not let that stand in the way.
6 Finally cleaning up Chapter 68 after 20 years by
7 enacting the rest of our changes.

8 CHAIRMAN GOLDSTEIN: Thank you very much,
9 Mr. Rosenfeld. I think the Commission has a
10 better understanding now when you use language
11 like a "predictable" and "guaranteed budget." I
12 think the give and take was helpful in
13 understanding what I thought was a little
14 fuzziness but it's much clearer now.

15 Joseph Garber. Is Mr. Garber here?

16 RABBI GARBER: Yes.

17 CHAIRMAN GOLDSTEIN: I ask all of our
18 speakers to please be assiduous, attentive to the
19 three-minute ruling.

20 RABBI GARBER: Good evening, one and all.
21 My name is Joseph Garber. I'm the Director of
22 the Civil Service Mayor's Prayer Council, and I
23 have broad experience in New York City
24 government.

25 I have to relate something. As I was coming

1 into this room this evening, okay, Police Officer
2 Anne Pallonia, shield number 595, stopped me and
3 asked me where am I going and she wrote my name
4 down. I said, "What is this? This is
5 unbelievable." So I hope -- I have to find out
6 what this was about.

7 Okay. The Council for Integrity in
8 Government can be found in biblical Talmudic
9 concept. On Rosh Hashana and Yom Kippur we see in
10 the (reciting in Hebrew) a corrupt government
11 from the land. Okay. We also have a concept
12 (reciting in Hebrew) justice shall (inaudible)
13 pursued. (Reciting in Hebrew). And it talks
14 about the concept of the bribery that blinds the
15 corrupt person. The concept of stealing and an
16 idea that is called (reciting in Hebrew) stealing
17 somebody's mind. And the concept of not working
18 with the greatest sense of competence is called
19 withholding your pay from the person who pays
20 you. So a City worker who dreams or doesn't
21 do -- uses best mind-set is technically, in a
22 way, stealing from government.

23 I am a strong believer in integrity, public
24 structure, and organization of integrity,
25 control, to eliminate malfeasance, misfeasance

1 and nonfeasance.

2 The first corruption scandal in New York
3 City was probably the "Boss" Tweed corruption
4 scandal. In New York City had -- excuse me,
5 there was later a Federal military scandal, the
6 Teapot Dome scandal, in New York City was a
7 series of political scandals, police corruption.
8 The Wexell (phonetic) investigation (inaudible)
9 and corruption commissions or problems such at
10 (inaudible) Parking Violations Bureau (inaudible)
11 by City employees and timely reporting as well as
12 the illegal people voting --

13 COMMISSIONER CROWELL: Mr. Garber, I have a
14 question, if I may. There's a friend in the room
15 here. My question is what are you asking the
16 Commission to do?

17 RABBI GARDNER: Well, I'm going through, I
18 quoted the Charter -- give me -- I want to give
19 you some background which I think is important to
20 hear about the extent of corruption to show what
21 it was and to go --

22 COMMISSIONER CROWELL: What is the bottom
23 line? I'm trying to help you, because you always
24 have so much good to say, I'm trying to help you
25 focus.

1 RABBI GARDNER: I'll skip in going through
2 the Charter on the Department of Investigation.
3 Okay?

4 Chapter 34, Department of Investigation is
5 covered on pages 198 and 199. Alright. I'll
6 stop.

7 CHAIRMAN GOLDSTEIN: Thank you very much
8 Mr. Garber, and if you have something written.

9 RABBI GARBER: Yes, I will bring it in the
10 next few days.

11 CHAIRMAN GOLDSTEIN: Thank you very much.
12 Walter South? Is Mr. South here?

13 MR. SOUTH: This is a hard act to follow,
14 you know.

15 My name is Walter South. I'm a Community
16 Board Member 9. I'm not speaking for the
17 Community Board but as myself.

18 I think the Community Boards are essential
19 in New York City, and they should really
20 represent the communities. I think one of the
21 problems is they don't. Community Board 9, for
22 example, represents Morningside Heights,
23 Manhattanville, and Hamilton Heights.

24 I think if Community Boards were more
25 focused on representing entire communities in our

1 City they could be more representative.

2 The other thing is the Community Boards I
3 think need to be strengthened. Right now they're
4 supposed to be advisory capacity. And sometimes
5 the City Council listens to us and sometimes they
6 don't. Particularly when questions of eminent
7 domain come up.

8 And I think the other thing that the City
9 Charter could do is that all the City agencies
10 could be formed around the Community Boards. For
11 example, our Police Department could be
12 exclusively in Community Board 9. Even if there
13 might be two offices. The Board of Education
14 should be limited to the Community Boards. The
15 Department of Health, all the other City
16 agencies, should be focused around the Community
17 Boards. Because right now all these agencies are
18 on two or three different Community Boards and
19 are responsible to no one and particularly in the
20 community itself. Thank you.

21 CHAIRMAN GOLDSTEIN: Thank you, Mr. South.
22 Prishwa, is Dr. Prishwa (phonetic) here?
23 Christine Davis?

24 MS. DAVIS: Hello. My name is Kristen Davis.
25 I'm a resident of Manhattan. I'm also a taxpayer

1 and an Independent candidate for Governor.

2 I want to thank the City Charter Commission
3 for the opportunity to testify today.

4 I had hoped to testify in favor of term
5 limits in earlier Commission hearings, but
6 unfortunately the hearings conflicted with my
7 responsibilities under my probation after
8 pleading guilty to providing prostitutes for
9 former Governor Eliot Spitzer for which I served
10 four months on Rikers Island. Spitzer, of
11 course, avoided prosecution.

12 Four months in prison gives you a lot of
13 time to read and to think. I've thought about
14 the inequities of our political system and how to
15 return government to the people. And I have
16 thought extensively about the hypocrisy and
17 double standards that exist for the ruling
18 political elite in New York City and New York
19 State.

20 Specifically, I urge you to consider City
21 Charter revision that will strip elected City
22 officials of their City-Funded pensions if they
23 are convicted of a crime. Why should City
24 taxpayers be required to fund the lifestyle of
25 those who have betrayed the public trust? Why

1 should we carry disgraced politicians on the
2 City's back? When is enough, enough?

3 Other states and cities strip their
4 convicted public officials of their rich pension
5 benefits when they betray the public. Why not
6 New York City? Every day brings new stories of
7 corrupt politicians behaving badly. It's time to
8 end our current policies so that those entrusted
9 with public office realize that there are
10 consequences for their actions. Thank you.

11 CHAIRMAN GOLDSTEIN: Thank you, Miss Davis.

12 Frank Morano.

13 This is nine for nine.

14 MR. MORANO: I'm the Lou Gehrig of Charter
15 Revision Commission hearings. But I want to thank
16 you again, as always, for the opportunity to
17 testify. And I hope, Mr. Chairman, I want to echo
18 Commissioner Fiala's sentiments about this
19 Commission fulfilling the goals that you laid out
20 at the initial meeting that the Commission had.

21 And I want to disagree slightly with
22 Commissioner Fiala's point, though, that this
23 Commission didn't have a Ravitch or Schwarz-type
24 mandate to kind of rework the system.

25 While it's true that there was no legal

1 mandate to do that, there is a cynicism about
2 government and corruption in government in this
3 City which has, I think, mandated the formation
4 of this Charter Revision Commission. And some
5 serious, serious reform.

6 I certainly agree with what Miss Davis said
7 regarding stripping pensions for disgraced public
8 officials. And I think it's very appropriate
9 that we have the "Manhattan Madam" to come here
10 to speak, because so many public officials and
11 members of the City Council are little more than
12 prostitutes. Only they're not as honest as
13 prostitutes. They pretend to the public as if
14 they're going forward and performing honest
15 service and doing the public trust, and their
16 interests so often is in lining their pockets.

17 So I want to suggest three or four
18 fundamental reforms that I think would go a long
19 way towards reforming public integrity in City
20 government.

21 There's going to be corrupt public officials
22 for as long as there's going to be public
23 officials. But the first thing, I referenced
24 this at the last Charter Revision hearing
25 regarding government structure, the first thing

1 that I think we should seriously look at is
2 ending the practice of the taxpayers paying the
3 legal bills for people that are -- for public
4 officials that are either under investigation or
5 under criminal investigation or possibly under
6 indictment. I think you'll see elected officials
7 be a lot more hesitant and a lot less brazen
8 about breaking the law if they know they're going
9 to have to pay their own legal bills.

10 I have to pay my own legal bills, and if
11 you're investigated for a crime you will, too.
12 But if you're in the New York City Council that's
13 not the case.

14 The second area that I would love for you
15 guys to take a look at is the whole system as it
16 relates to member items and discretionary
17 spending. I think, you know, in almost every
18 district there is a group that receives money
19 from a Council Member that also has employees or
20 family members of the employees of that
21 non-profit group making campaign contributions to
22 that Council Member. So I think that creates the
23 appearance of impropriety, if not actual
24 impropriety, and that's something that should
25 certainly look at being banned.

1 The third reform that I would suggest, and
2 might be somewhat counterintuitive, is that the
3 prohibition on county chairmen serving as City
4 elected officials.

5 Currently, if you're a county chairman of
6 any political party you can serve in the State
7 Legislature but not the City Council. Often this
8 leads to puppet regimes being put in, in county
9 party organizations, whereas the City elected
10 official still wields just as much control. At
11 least if you do away with this prohibition it's
12 more honest and the voters can decide for
13 themselves, okay, this fellow was chairman of the
14 Conservative Party, Independence Party. We don't
15 want to elect him. We feel there's a conflict of
16 interest. I would suggest to you that's a
17 decision for the voters to make, not something
18 that should be prohibited by City Hall. Thank
19 you.

20 CHAIRMAN GOLDSTEIN: Thank you very much.

21 We have a number of Facebook and Twitter
22 communications. Erica Kay said, "Elected
23 officials must remember it's the people's money,
24 not the politicians." And W. Lonny said,
25 "Integrity first and integrity now." And it goes

1 on to another of other items.

2 Our last speaker is Henry Stern.

3 MR. STERN: Thank you very much, Chancellor
4 Goldstein. I'm Henry Stern. I'm appearing here
5 today for the New York Civic Group. You should
6 know by now I'm a retired City official, having
7 spent 40 years working for the City in both
8 elected and appointed office. I know the time is
9 brief, so I'll just highlight a few things. And
10 obviously, if you want to discuss them later in a
11 more intimate contact with members of your staff,
12 convey what their thoughts are.

13 The first is that I'm glad you're here in an
14 academic setting and that people like me have the
15 opportunity to revisit their Alma Mater, City
16 College. Also yours. I must say I graduated nine
17 years before you did. Look what you've
18 accomplished in a short time. It's good to be
19 here at City.

20 The worst outrage, in descending order, is
21 the contributions by interested parties to
22 political campaigns. The fact that the chairman
23 of the Land Use Committee and the Chairman of the
24 Finance Committee have huge rolls of contributors
25 whose interest is purely economic. And the fact

1 that the Comptroller gets contributions from
2 people who want to be -- have a chair in the
3 patronage, the Comptroller gives out. Leads to
4 me, even though they're probably legal, are
5 outrageous. And in the independent spirit of
6 this Commission should find some way to make it
7 illegal.

8 The next outrage deals with the Campaign
9 Finance Board, which works well in some instances
10 and badly in others. And the worst feature is the
11 subsidizing of campaigns, which are either
12 exercises in vanity by candidates who have no
13 chance of election, or a similar exercise in
14 vanity by people who are sure to be reelected and
15 want the public to pay for it. This is terribly
16 wrong. It's a raid on the public treasury.
17 There's a way it can be stopped, either by not
18 granting money, or by granting money on the
19 condition it's forfeited if the candidate gets
20 fewer than 20 or 30 percent of the vote or more
21 than 60 or 70 percent of the vote. See how many
22 of them will -- you know, you have these
23 falsified affidavits, they have enormous
24 (inaudible) amount great risks is nonsense, we
25 know this. And you have to have a sanction in

1 there to stop this raid on the public treasury.

2 The whole area of the Conflicts of Interest
3 Board troubles me somewhat. First of all, it
4 should be renamed what it was, the Board of
5 Ethics. There's nothing wrong "ethics." It's a
6 good clear, simple word, what it is. It doesn't
7 have to be the COIB.

8 Secondly, the gentleman's been Chair since
9 2002. His term (inaudible) 2013. I think that
10 position should rotate and no one should serve
11 more than four years. This is no reflection on
12 the gentleman, who I'm sure is fine, I don't care
13 a fig about what the man says. But just in the
14 interest of cleanliness, a rotation of office and
15 independent judgment, there should be a term
16 limit of four years for the Chairman of the
17 Conflicts of Interest or Ethics Board, whoever he
18 is.

19 I think the taxpayers are deeply troubled by
20 activities and funds collected by people where
21 there's a personal interest, and a personal
22 financial interest in the decisions that this
23 person, this elected official, or appointed
24 official, may make, and I think you ought to go
25 beyond the law and see what you can do to correct

1 the situation.

2 I'm over the time and I'll stop there.

3 CHAIRMAN GOLDSTEIN: Thank you very much,
4 Mr. Stern, and welcome back to your Alma Mater.

5 MR. STERN: Thank you.

6 CHAIRMAN GOLDSTEIN: That concludes our forum
7 this evening -- Commissioner Scissura.

8 COMMISSIONER SCISSURA: Hi. I just have a
9 quick happy birthday to Frank Berry on behalf of
10 the entire Commission. Thanks for being here on
11 your birthday, Frank.

12 COMMISSIONER CASSINO: Mr. Chairman?

13 CHAIRMAN GOLDSTEIN: Yes, Commissioner
14 Cassino.

15 COMMISSIONER CASSINO: I just want to get
16 one issue on the record that didn't come up here
17 in our meeting, but it is in our briefing
18 materials, and I don't know if this would have
19 been the right panel to discuss it with. But I
20 want to have it on the record for future
21 discussion and that is the issue, the issue of
22 full-time Council Members.

23 I do think it's one of those issues that is
24 very appropriate for some of this discussion. I
25 think it's akin to the issue of term limits in

1 that it's very, very much an issue that can be
2 self-serving in terms of the people who are
3 making these decisions. It's very appropriate
4 for Charter discussions, and I just want to have
5 it on the record that at some point I hope we can
6 come back and deal with that issue.

7 CHAIRMAN GOLDSTEIN: You're absolutely
8 right, Commissioner Cassino. It straddles
9 probably at least two of the forums, but it is
10 good to have this on the public record.

11 I'll ask for a motion to adjourn?

12 COMMISSIONER HART: Second.

13 CHAIRMAN GOLDSTEIN: Second? All in favor?

14 (A chorus of aye's.)

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17 (Concludes on the next page.)
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1 CHAIRMAN GOLDSTEIN: Thank you,
2 Commissioners, and thank you, the audience, for
3 your participation this evening.

4 (Whereupon, at 8:36 P.M., the above matter
5 concluded.)

6
7
8 I, NORAH COLTON, CM, a Notary Public for and
9 within the State of New York, do hereby certify
10 that the above is a correct transcription of my
11 stenographic notes.

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14 _____
 NORAH COLTON, CM

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