

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Transcript of the Meeting of the
CHARTER REVISION COMMISSION
held on Monday, August 11, 2003
St. Francis College, 180 Remsen Street
Borough of Brooklyn

AR-TI REPORTING COMPANY, INC.	
305 Madison Avenue	142 Willis Avenue
Suite 405	P.O. BOX 347
New York, N.Y. 10038	Mineola, N.Y. 11501
(212)349-9692	(516)741-5235

1 Meeting convened at 6:05 p.m.

2 P R E S E N T

3 FRANK MACCHIAROLA, Chairman

4 COMMISSIONERS:

5 BILL LYNCH

6 JERRY GARCIA

7 MOHAMMED KHALID

8 FRED Siegel

9 VERONICA TSANG

10

11 Also Present:

12 DR. ALAN GARTNER, Director

13 ANTHONY CROWLEY, General Counsel

14

15

16

17

18

19

20

21

22

23

24

25

1 CHAIRMAN MACCHIAROLA: Ladies and gentlemen,
2 we are calling this meeting to order. We are waiting
3 for Veronica Tsang, who is on her way. Since we're not
4 going to be taking action in any formal way, we're going
5 to be doing tonight what we did last week. We can
6 continue, knowing that we will be seeing on Wednesday a
7 set of proposals that we will formally vote on, which
8 votes are not recommendations of the Commission, but
9 votes that form the basis of what we send out for the
10 next two nights of hearings, and then ultimately for a
11 vote on the 25th of August. Is everyone on board with
12 that?

13 COMM. LYNCH: On Wednesday, what are we
14 voting on?

15 CHAIRMAN MACCHIAROLA: Tonight we'll look at
16 proposals that clean up some of the items from last
17 Monday and administrative forum issues tonight.

18 COMM. LYNCH: I'm talking about on the 13th.

19 CHAIRMAN MACCHIAROLA: On the 13th, we will
20 get --

21 DR. GARTNER: You can get it before 6:00 on
22 the 13th. That I promise you.

23 COMM. LYNCH: That concerns me,
24 Mr. Chairman, of getting it that late in the process.

25 DR. GARTNER: We will hope to get it to you

1 as early Wednesday or as early in front of the Wednesday
2 meeting as we possibly can.

3 CHAIRMAN MACCHIAROLA: You're moving as
4 quickly as possible on it?

5 DR. GARTNER: And then some.

6 CHAIRMAN MACCHIAROLA: I don't think there's
7 any difficulty with getting it in more than one
8 installment. So as you --

9 COMM. LYNCH: My concern is that, not that I
10 want to push the folks who are drafting this any faster
11 than they can go, is it possible for us to move the
12 meeting so we get it in a timely fashion?

13 DR. GARTNER: We've already mailed out 9,000
14 announcements, the calendar and posted in the City
15 Record, et cetera, et cetera, et cetera.

16 MR. CROWELL: The News and the Post --

17 DR. GARTNER: We've placed ads to that
18 effect. I don't think we can easily change that.

19 CHAIRMAN MACCHIAROLA: Why don't we see what
20 we get on the 13th, if there are things we haven't
21 concluded, I think we can get most of what we wanted to
22 do out of the way, there's not a problem for most of
23 what we want.

24 DR. GARTNER: Let me point out that the
25 calendar that you adopted is that next week after the

1 13th, there are two evenings during which it is a
2 combination meeting and hearing. We did that
3 intentionally to allow if there was business the
4 Commission didn't finish on the night of the 13th, it
5 could begin with a meeting and then turn to a hearing.
6 It could do that if need be the subsequent night as
7 well.

8 CHAIRMAN MACCHIAROLA: Let's move it as
9 quickly as you can. If there are items that you can do,
10 you can get them out. You don't have to limit it to one
11 package, you examine use three packages.

12 DR. GARTNER: All right.

13 CHAIRMAN MACCHIAROLA: Okay, Alan, it's in
14 your hands.

15 DR. GARTNER: As you pointed out, the major
16 items of this meeting are items concerned with
17 Government reorganization. But there were several items
18 that were left over from the last two meetings. I just
19 want to report briefly to you. In the discussion of,
20 and I'll go through these five, then Anthony will go
21 through the Government reorganization items.

22 In the discussion the evening we talked
23 about non-partisan elections, there was a question of
24 when might one hold the primary election, was it
25 possible to hold it earlier than September or October.

1 The Law Department advises us in a careful reading of
2 the State law that there's explicit language in the
3 State law that authorizes only the State Legislature to
4 change it, that it cannot be done by any other body.
5 Although a Charter Revision Commission has per the Law
6 Department's advice a fair amount of discretion, there's
7 explicit language in the State law about changing the
8 primary date and it says only the Legislature can do
9 that.

10 CHAIRMAN MACCHIAROLA: Anthony, you looked
11 at the statute yourself on that? You looked at the
12 ruling from counsel?

13 MR. CROWELL: Yes.

14 CHAIRMAN MACCHIAROLA: Can you give us a
15 sense of why what Alan is saying is as strong as it is.
16 In other words, the interpretation that the Corp.
17 Counsel has given to the other kinds of changes has been
18 they are acceptable. This one they've fallen back on
19 the language of the statute. I wonder if you can
20 explain that?

21 MR. CROWELL: The statutory language is
22 explicit that the fall primary date is on that September
23 date. So it's similar to our analysis on when the
24 general election needed to be held, and what we've been
25 looking at and seeing if we have any flexibility is

1 separate from just general statutory construction, where
2 a statute is clear that we have to do something, we've
3 obviously been following that. Where there's been a
4 question, we rely on the Behren decision, which allows
5 municipalities to adopt a system of non-partisan
6 elections and gives them flexibility to deviate from
7 their current election systems and may give some
8 flexibility to deviate from the Election Law. Doesn't
9 appear in this case to be advisable to deviate from what
10 the statute explicitly states.

11 CHAIRMAN MACCHIAROLA: Anybody have any
12 questions around that? Would it be possible, you're
13 drafting also language for a Home Rule message that
14 includes these items that are being --

15 MR. CROWELL: That can certainly be
16 incorporated.

17 CHAIRMAN MACCHIAROLA: All right.

18 COMM. LYNCH: We have to have a Home Rule
19 message to move the changing of the date?

20 CHAIRMAN MACCHIAROLA: What Anthony is
21 saying is, what the Corp. Counsel says is if we change
22 the primary date -- that we can't do it, because the
23 language in the Charter, the language in the State law
24 -- you guys are going to have to correct me if I go off
25 on this -- the language in the State law says that the

1 primary date shall be established upon the date -- the
2 primary date shall be established by the State
3 Legislature, State law. And so, what we would want to
4 do in the package of proposals that we have been
5 suggesting, and the Home Rule message, the reason we're
6 thinking of Home Rule message, as I understand it, is
7 we're not concerned that these changes should apply to
8 the rest of the State. The issue for us is New York
9 City and therefore what we would be asking for would be
10 the same day registration, we would be asking for
11 consideration of non-citizen voting and then also the
12 moving of the primary day from September to June, but we
13 cannot do it through the Charter, we have to do it by
14 request of the Legislature. That's the interpretation.

15 MR. CROWELL: You should know that Election
16 Law 8-100 sub 1A specifically states that a primary
17 election known as the fall primary shall be held on the
18 first Tuesday after the second Monday in September
19 before the general election, and I emphasize, "unless
20 otherwise changed by an act of the Legislature." So if
21 you want to have an exemption for New York City to have
22 a June primary, then it would obviously require perhaps
23 a Home Rule message from the Council to request that
24 legislation.

25 CHAIRMAN MACCHIAROLA: Any other questions?

1 Item 2.

2 DR. GARTNER: In the course of discussion
3 about procurement, one of the issues that came up was
4 the relative burden, if you will, that procurement
5 officers had in small agencies, small in size and small
6 in volume of procurement activities, versus the
7 business, if you will, of procurement of larger
8 agencies, large in size and large in procurement.

9 Provisions of the State law limit the
10 ability of departments to share that responsibility, so
11 that two or three small -- each department has an agency
12 chief contracting officer, an ACCO. The notion here is
13 to allow the Department of Citywide Administrative
14 Services, DCAS, to perform that function for small
15 agencies with the agreement between the agency and the
16 Department of Citywide Administrative Services,
17 consolidating functions, allowing for, we expect, an
18 efficiency of doing it collectively rather than each
19 agency having its own ACCO and its own responsibilities.
20 We heard some of that when Commissioner Gatling, when
21 she pointed out the difficulties that she was having as
22 a Commissioner in dealing with procurement issues when
23 there was no longer an ACCO in her department. And so
24 what we're asking for, what we're proposing is that the
25 Charter be amended to allow agencies and DCAS to jointly

1 agree to combine those services.

2 CHAIRMAN MACCHIAROLA: I think you've got to
3 read this one with 3, just as you're talking about 2,
4 I'm reading 3.

5 DR. GARTNER: 2 grew out of the thinking
6 about 3, but they stand alone.

7 CHAIRMAN MACCHIAROLA: So what you're saying
8 is that if the procurement officer of the agency is an
9 accredited -- and 3 talks about accreditation standards
10 for those officers, then that would apply. If an agency
11 doesn't have someone who has those qualifications, the
12 way I've seen it --

13 DR. GARTNER: Or may not seek someone.

14 CHAIRMAN MACCHIAROLA: Right, or the agency
15 itself is too small.

16 DR. GARTNER: One doesn't require it.

17 CHAIRMAN MACCHIAROLA: If they could fulfill
18 those functions by going through another agency or
19 through DCAS.

20 MR. CROWELL: Or DCAS is used as a
21 consultant in those matters. It's what Commissioner
22 Gatling was talking about last week how at Human Rights
23 Commission she has someone who does their contract work
24 but is also Comptroller -- they wear a number of hats in
25 the agency. So to alleviate that burden, DCAS could

1 serve as a service center by mutual agreement, we would
2 explicitly state in the Charter to give the flexibility
3 to do that.

4 CHAIRMAN MACCHIAROLA: Okay. Commission
5 members, anybody -- okay. It sounds like a compromise
6 that sort of joins the issues that we were talking about
7 last time, wanting to professionalize the procurement
8 officers and their requirements, at the same time not
9 wanting to require agencies to be so structured that
10 they have to live with that.

11 DR. GARTNER: It surely grew out of
12 consideration, the two issues together and let me turn,
13 then, to number 3. You recall that many Commissioners
14 were much impressed by the testimony by the ACCO from
15 the homeless services about professionalization and what
16 we have proposed after discussion with various people in
17 the procurement community that the Charter be revised so
18 that the PPB develop a rule by rule statement for ACCO's
19 and a certification system to effectuate that,
20 recognizing, as I pointed out a moment ago that agencies
21 have different volume and different complexity of needs,
22 so there might be two or three ACCO levels, we haven't
23 explored that well enough and I don't think that's for
24 us to do at the Charter level, but at least that the PPB
25 is instructed to take into consideration the differing

1 needs of agencies. Some agencies are really contract
2 shops and don't do very much other than contracts; other
3 agencies may do a half dozen contracts in a year. Those
4 require different levels of skill upon the ACCO.

5 CHAIRMAN MACCHIAROLA: Okay. Any questions,
6 anyone, on that? All right.

7 DR. GARTNER: Number 4. This was a topic of
8 considerable discussion before the Commission at the
9 last meeting. I must say the more I learn about this,
10 the more complicated and intriguing it gets. It was
11 specified by a previous Charter Commission that interest
12 be paid to any vendor, profit or not-for-profit, and I
13 may have misinformed the Commission about that
14 distinction.

15 CHAIRMAN MACCHIAROLA: I think what you said
16 was that the rules for non-profits were never
17 promulgated or zero percent.

18 DR. GARTNER: It's zero percent, where the
19 Comptroller and head of OMB were authorized to set the
20 interest rate, which not-for-profits would receive, and
21 they set it, at zero percent, and so I'm not entirely
22 sure whether the not-for-profits got a check for zero
23 dollars and zero cents. It reminds me of a chapter I
24 wrote in an encyclopedia for which I have gotten
25 royalties every year for the last twenty and a half

1 years, they range everywhere from 28 cents to 48 cents.

2 CHAIRMAN MACCHIAROLA: You got what you paid
3 for, Alan.

4 DR. GARTNER: Or they got what they paid
5 for.

6 What we're proposing is that, in oratory
7 language, we reinforce the need for timely contract
8 payment, but the PPB develop a range of activities that
9 would allow for the payment of either loans, advances or
10 interest to entities where this is not the case.

11 CHAIRMAN MACCHIAROLA: How about suggesting
12 in the Charter that the interest rate shall be the same
13 for profits and not-for-profits, let them take on the
14 for-profits.

15 DR. GARTNER: I don't know enough about how
16 that interest rate is set to be able to give an
17 intelligent response.

18 MR. CROWELL: It's very unusual for a City
19 Charter to explicitly state what an interest rate shall
20 be without giving some --

21 CHAIRMAN MACCHIAROLA: I'm not saying that.

22 MR. CROWELL: You're talking about evening
23 it out.

24 CHAIRMAN MACCHIAROLA: I'm saying that the
25 Charter prohibits discrimination between interest rates

1 of for profits and not-for-profits.

2 DR. GARTNER: Let me explore if that is a
3 problem or not, not on the substance, but whether there
4 are reasons that that doesn't make sense and we'll
5 report back to you on Wednesday, since we do have to
6 come back on Wednesday with this language.

7 CHAIRMAN MACCHIAROLA: I'll tell you, it's
8 really -- I'd like to have a credit card like that. If
9 I don't pay the bill, I don't get paid interest. Are
10 the Commission members disposed to equal treatment for
11 profits and not-for-profits? Does anybody have a
12 problem with that?

13 COMM. LYNCH: I'm with you.

14 COMMISSIONER KHALID: It should be the same.

15 COMM. SIEGEL: I like the language here,
16 though, because it allows for a certain amount of
17 flexibility, loans, advances, payment of interest. I
18 suspect for most non-profits a loan or advance is
19 preferable to interest.

20 CHAIRMAN MACCHIAROLA: I suspect that's
21 true.

22 DR. GARTNER: That's what we understand. I
23 hear the Chair's suggestion allowing a parenthesis after
24 the interest, for a rate equal to that. I just learned
25 enough about this area to know there are some landmines

1 that I don't know.

2 CHAIRMAN MACCHIAROLA: I'm not suggesting
3 that the other part of the program not be -- I think the
4 more desirable program is the one that Fred is talking
5 about, which is interest free loans in situations where
6 it's clear that the services have been performed, the
7 contracts have been fulfilled. It's just that things
8 haven't been worked out. I'm not suggesting that the
9 interest be the only remedy that non-profits have in
10 these circumstances. Unless you tell us why there's a
11 reason for it, it just doesn't seem on its face that the
12 Charter having different interest rates, i.e., zero,
13 plus a real interest rate makes any sense.

14 MR. CROWELL: We'll find out what the
15 rationale is or how it's administered and that will
16 inform your decision.

17 DR. GARTNER: Last item, question about the
18 role of the Council in the revision of Vendex. You
19 recall that the proposal we discussed and that you
20 approved was for the Mayor and the Comptroller to
21 develop rules for Vendex, hoping, intending to sharpen
22 of focus of Vendex as a tool of integrity protection for
23 the City. The question was, was there a role for the
24 City Council. We met with staff members of the City
25 Council, had a good discussion and staff now recommends

1 that the rules that the Mayor and the Comptroller
2 develop should be submitted to the Council for comment
3 for a specified period of time. There's nothing magic
4 about thirty days, and that at that point the
5 Comptroller and the Mayor would issue the rules, having
6 taken into account, if they wish, the comments of the
7 Council. It is not approval, it is a comment.

8 CHAIRMAN MACCHIAROLA: And it doesn't go
9 into effect until 30 days.

10 DR. GARTNER: That's correct.

11 MR. CROWELL: They would have to go through
12 the CAPA hearing. This is a pre-CAPA review by the
13 Council.

14 DR. GARTNER: Tell them what CAPA means.

15 MR. CROWELL: City Administrative Procedure
16 Act. There would be a draft rules, then a public
17 comment period, then an agency would come back with the
18 final rule.

19 CHAIRMAN MACCHIAROLA: And at that point the
20 Council then gives its input?

21 DR. GARTNER: In that process.

22 MR. CROWELL: Under what we were just
23 discussing, the Council would have a preview, if you
24 would, of what the rules would be before they're
25 actually published in draft form, so the Council would

1 have input before the wider public ever sees them, and
2 may be making suggestions and making changes to them.
3 Then they would kick off the CAPA process and then the
4 Council would again have another shot at making
5 comments.

6 CHAIRMAN MACCHIAROLA: They get two shots,
7 then? There's a period of time in which the Council's
8 jurisdiction is to review, a thirty-day period of time
9 before enacting, before effecting, is that --

10 DR. GARTNER: Yes.

11 MR. CROWELL: Twice.

12 CHAIRMAN MACCHIAROLA: They do it first with
13 everybody else, then they have a thirty-day period
14 after.

15 DR. GARTNER: First before everybody else.

16 MR. CROWELL: They do it before everybody
17 else. If Alan and I were promulgating rules, he's the
18 Mayor, I'm the Comptroller -- actually, I'm the Mayor
19 he's the Comptroller, that's much better. And then
20 you're the Council. What we would do before we ever
21 published a draft of them in the City Record is we would
22 share them with you, you would give us your input,
23 feedback, say "change this," "change that," "oh, we like
24 this," and then it would go for draft publication.

25 DR. GARTNER: Then the Council would have

1 another turn after the public comment period.

2 CHAIRMAN MACCHIAROLA: That's fine. Did
3 they jump up and down about this, or they didn't quite
4 like it?

5 DR. GARTNER: It was a mixed response.

6 CHAIRMAN MACCHIAROLA: Okay, let's see what
7 happens when we put it out.

8 DR. GARTNER: Those are the five followup
9 items that I had and I'm happy to turn it over to
10 Anthony, whose product -- my responsibility and his
11 work.

12 CHAIRMAN MACCHIAROLA: Okay.

13 MR. CROWELL: At our June 26 meeting, the
14 staff had presented to you a series of issues that we
15 would go forward and review upon request and we did so.
16 What I've done for you in your packet is give you a grid
17 breaking down what the issues are, what Charter
18 provision is effected, and then the staff
19 recommendation. The information I've given you is
20 broken down into three areas. Obviously, the first set
21 of issues that were from June 26th, then another set of
22 the issues that Commissioner Steve Newman, who is not
23 here tonight, unfortunately, asked the Commission staff
24 to review at that same meeting and then there's a third
25 set of issues that have come to us by way of City

1 agencies, and so, as to the first two, staff has made
2 recommendations because that's what you requested.

3 On the third set of issues from the
4 agencies, we have not made a recommendation, but if you
5 ask us to do so we will be happy to do so.

6 All right. On the first topic, is the
7 coordination of the City's administrative justice
8 system. In our June 26th report and I believe at our
9 first public hearing, the issue of the Office of
10 Administrative Trials and Hearings was brought up and
11 discussed and the idea was that the City's
12 administrative tribunals, of which there are many, and
13 it's on one of the pages in your packet, gives a
14 breakdown of all the tribunals. Currently, there is no
15 single coordinating mechanism between each of the
16 tribunals. So, obviously, some of them are stand alone
17 agencies and some of them reside within the agencies,
18 and what we have presented here is an opportunity for
19 the Charter to be revised, whereas there would be a
20 central coordinator of the City's administrative justice
21 system and they would work on operational policies and
22 management practices that are common to all the
23 tribunals, it would enhance coordination of technology
24 movements within the agencies, case management
25 strategies, as well as working towards an overall system

1 to serve the public better.

2 There has been some significant advances
3 within the City agencies in recent years with the New
4 York City Serves project, where a variety of tribunals
5 are actually housed together as a service center and
6 citizens can go and return complaints and be processed
7 at a central agency. What this would do is create a
8 mechanism to coordinate more broadly all those tribunals
9 that serve the public, and allow for a more efficient
10 information flow between them and strengthen management
11 practices.

12 The staff recommends that we do this.
13 There's actually one other thing, there's an issue that
14 I'll move to. Currently, with the exception of the
15 Office of Administrative Trials and Hearings, the City's
16 Administrative Law Judges and Hearing Officers, of which
17 there are approximately a little more than five hundred
18 are not required to abide by any judicial Code of Ethics
19 or Code of Conduct for those who aren't attorneys.

20 The Office of Administrative Trials and
21 Hearings does have a Code of Conduct and what we would
22 also propose is that the Mayor be authorized to
23 promulgate rules for a Code of Conduct.

24 CHAIRMAN MACCHIAROLA: So we're creating an
25 office --

1 MR. CROWELL: We would be creating a
2 position, yes.

3 CHAIRMAN MACCHIAROLA: We're creating a
4 position, the task of which is to coordinate the
5 administrative trials in the various agencies that the
6 City has --

7 MR. CROWELL: It would be to coordinate the
8 operational policies and management practices above --
9 coordinating among and above the chief judges of those
10 agencies, who would actually coordinate the internal
11 mechanics.

12 Let me step back. The tribunals are
13 established either by State law or Local Law. What the
14 Charter cannot effectuate is an actual consolidation of
15 all of them under one umbrella. What we can do is
16 similar to a criminal Justice coordinator, have one
17 person who is the sounding board and responds to the
18 different voices in the agencies to make sure that
19 everyone is getting the resources they need and that
20 operational policies and management practices are
21 shared.

22 CHAIRMAN MACCHIAROLA: Also creating a Code
23 of Conduct?

24 MR. CROWELL: Right, a code of ethics, if
25 you will.

1 CHAIRMAN MACCHIAROLA: Creating in this a
2 function, an ombudsman function for those who feel
3 they've been aggrieved by agencies so the administrative
4 coordinator would in effect have the investigative
5 authority to examine what's happening from the
6 standpoint of the judicial system in place?

7 MR. CROWELL: Yes.

8 CHAIRMAN MACCHIAROLA: Any other questions
9 about anything like this?

10 COMMISSIONER KHALID: That, Anthony, is
11 within the jurisdiction of this Commission?

12 MR. CROWELL: Absolutely. In fact, a
13 Charter Revision Commission.

14 DR. GARTNER: Originator.

15 MR. CROWELL: The originator of the Office
16 of Administrative Trials and Hearings. Originally
17 Office of Administrative Trials and Hearings was created
18 by an Executive Order in 1979. However, it was later
19 codified in the 1988 Charter revision.

20 CHAIRMAN MACCHIAROLA: So we're
21 strengthening, giving the Mayor additional authority.
22 Does anyone have any questions on this?

23 COMM. LYNCH: The only concern that I have,
24 when they came before us in front of the auditorium,
25 when we had this discussion, it all made sense, but I'm

1 really ignorant on this. Mr. Chairman, because of your
2 expertise, I'm leaning towards you, but I would like to
3 know what is the negative towards doing this? Is there
4 any dissent on, not amongst Commissioners, just
5 generally. We didn't hear anybody talking against
6 consolidating.

7 MR. CROWELL: First off, I think
8 consolidation is not the right word. What we're doing
9 is we're coordinating, and coordinating is by no means
10 consolidating. Right now take the criminal justice
11 coordinator as an example. He is the coordinator of
12 criminal justice activities citywide, but he works
13 between and among the Commissioner of the Fire
14 Department, Police Department, Correction Department and
15 other, District Attorney, none of them are consolidated.
16 This is exactly the same model. It would just basically
17 be someone who could coordinate the various issues that
18 are common to all tribunals and serve as someone in City
19 Government who could be a filter and someone who could
20 coordinate the resources that they need; the budget
21 priorities, help them with budget issues.

22 CHAIRMAN MACCHIAROLA: And also measure the
23 way in which the systems are being conducted. I mean,
24 the trial units in these agencies are just off in their
25 own. No Commissioners efficiency or effectiveness is

1 measured by the way the trial system operates. It sort
2 of goes under the screen, and by highlighting it, we're
3 really telling people, look, this is just going to be
4 lost in this agency. It's, you know, why I like it is
5 that it takes the concept of justice that you want to be
6 administered at trials and doesn't leave it at the door
7 of the Commission, of a Commissioner or of that office,
8 and it does say something about training, you begin to
9 think about how training programs could work, how these
10 judges can in fact be brought forward from the ranks of
11 people and a whole series of just management issues that
12 really are generally neglected by the agencies in these
13 areas.

14 That's why I think it makes sense. We know
15 that agency works, the people there are highly regarded.

16 COMM. LYNCH: So we're proposing to put in
17 essence another layer, a coordination layer, not a
18 consolidation layer.

19 MR. CROWELL: Right, just coordination.

20 DR. GARTNER: Not a supervising level.

21 That's the hard layer. I think to some extent I and
22 perhaps other Commissioners saw OATH playing a
23 supervisory role or a consolidation role, to use your
24 word. As we explored it, and came to understand the
25 differing jurisdictions, different authorities that

1 govern each of them, it wasn't something that one could
2 address with a consolidation, but rather it could be
3 done with coordination.

4 CHAIRMAN MACCHIAROLA: You may over time.
5 You may find as something develops, you may find a
6 Commissioner saying, you know what? I think OATH ought
7 to be handling this directly and take the jurisdiction
8 away. It gives you that ability also and it gives you
9 the ability to hold them to more uniform standards,
10 which agencies are in fact administering justice. I
11 think once we see it, you'll hear people either positive
12 or negative on it.

13 COMM. GARCIA: Just one general question.
14 I'm not sure if this is the right time, Anthony, or
15 later, but as we go through this, you guys have made
16 five recommendations out of ten and then there's like
17 seven agency recommendations which you guys haven't
18 formally made a recommendation on, then nine of
19 Commissioner Newman's which you all felt or recommended
20 no.

21 What would be helpful, for me at least, as
22 we go through these, we have some sense of order of
23 magnitude of any of the benefits of any of these
24 exercises. Because I don't think we want to put ten
25 questions on the ballot necessarily.

1 MR. CROWELL: Absolutely, sure. I think the
2 staff's feeling is this is something that's significant,
3 it's an issue that this Commission has talked about on a
4 number of occasions moving forward, so in terms of an
5 order of magnitude, it seems to staff that this was
6 something that there was a lot of interest in, and I
7 will tell you in terms of our research, we found pretty
8 much everyone we had spoken to, to be in favor of this.
9 Certainly the Office of Management and Budget thought it
10 was a good idea and nobody really saw a down side to it,
11 because what you're really doing is coordination which
12 is something that's long been needed. Obviously
13 economies of scale could be achieved from performance
14 which the Chair has said, so there's a lot of positives
15 as to that.

16 DR. GARTNER: If I may, one of the questions
17 that we'll have some thoughts about and you'll have a
18 decision to make is whether to take these six, eight,
19 ten, whether that is a single Charter question. I
20 don't, without prejudging what we're going to recommend,
21 I think it's quite clear we're not going to recommend
22 ten items on the ballot.

23 CHAIRMAN MACCHIAROLA: We also can recommend
24 ten items for public discourse and then figure out which
25 stand and figure out which can be joined.

1 DR. GARTNER: And how to package.

2 MR. CROWELL: In addition, what you can also
3 do, as we said before, we're more than happy to bring
4 whatever experts you'd like to testify on any of these
5 for next week. People we've been in contact with have
6 said that that is a possibility and people are willing,
7 are happy to come.

8 CHAIRMAN MACCHIAROLA: Two.

9 DR. GARTNER: Anthony, salaries of elected
10 officials.

11 MR. CROWELL: The next issue is salaries of
12 elected officials. The issue is should be Charter be
13 amended to provide that salary increases for elected
14 officials only take effect after they've been elected to
15 a second term of office. This is similar to what we
16 have in the U.S. Constitution right now where a member
17 of Congress has to be elected to another term of office
18 before any salary increase they may have voted for
19 themselves could take effect.

20 There were, by way of history, this is an
21 issue that had come up in the 2001 Charter Commission.
22 We have received a letter and also, correspondence and a
23 phone call from a member of the public this year want to
24 go bring this issue up again. It was also the subject
25 of a Daily News editorial in 2001 in favor of the

1 proposal. That Commission decided not to go ahead with
2 it. The issue was then, the rest of the history of the
3 issue, let me get into that. Basically salaries right
4 now for elected officials are informed by what's known
5 as a Quadrennial Advisory Commission on Salaries for
6 Elected Officials and they meet, obviously, every four
7 years. They generally meet midterm of a four year
8 cycle.

9 COMM. GARCIA: Who appoints the Commission?

10 MR. CROWELL: The Mayor.

11 COMM. LYNCH: I thought it was the Mayor and
12 Council. It's just the Mayor?

13 MR. CROWELL: It may be the Mayor with
14 consultation of the Council.

15 COMM. LYNCH: That's the one thing I
16 remember.

17 MR. CROWELL: Actually, you had the first
18 one, I believe. That's right. So the Mayor makes the
19 appointment with the consultation of the Council. And
20 basically, the Commission meets every fourth year, but
21 in the middle of a four-year term, and the reason that
22 they had met in the middle of a four-year term is that
23 because to give the legislative body and the Mayor the
24 ability to enact changes to the salary without having
25 the effect of being afraid that the public would, you

1 know, get a negative spin from the idea that elected
2 officials are increasing their own salaries. At the
3 same time, the concern was that there not be compression
4 of administrative staff salaries as a result of elected
5 leaders not being able to rise, the salaries of elected
6 leaders being able to rise, so what you have is really a
7 concern that attraction and retention of the City
8 service could be afforded without salaries being able to
9 rise and be competitive and they put it on a four year
10 cycle.

11 COMM. SIEGEL: There's a missing synapse
12 there. Staff salaries are contingent on --

13 MR. CROWELL: They're not contingent on, but
14 if the elected officials' salaries don't rise, then a
15 Commissioner's salary can't rise. If a Commissioner's
16 salary can't rise, then a Deputy Commissioner's salary
17 can't rise.

18 COMM. SIEGEL: First proposition, why if
19 elected officials salaries don't rise, why can't
20 Commissioners salaries not rise?

21 MR. CROWELL: It's the general premise that
22 the highest ranking elected officials are the top
23 salaries and so they move up that way. That's the
24 principle that this model is based on. It's not to say
25 that someone couldn't make more than an elected

1 official. I believe it has happened, but it's the
2 general principal.

3 CHAIRMAN MACCHIAROLA: That's why I made a
4 thousand dollars less than Mayor Koch when I was
5 Chancellor.

6 MR. CROWELL: You have that a lot. There
7 are a lot of Deputy Commissioners who made a thousand
8 dollars less than the Commissioner of their agency.

9 CHAIRMAN MACCHIAROLA: He was worth more
10 than I was, though.

11 MR. CROWELL: Actually, right now the
12 Chancellor makes more than the statutory --

13 CHAIRMAN MACCHIAROLA: Are you kidding? The
14 Chancellor's housing allowance is twice my old salary.

15 MR. CROWELL: That's the principle, the
16 model that it's based on, so there's really a concern
17 not to compress lower level salaries and for being able
18 to allow agencies to retain and attract people to City
19 service, especially in New York City where certainly
20 private sector bonuses and perks are --

21 COMM. SIEGEL: I understand that. What I'm
22 puzzled by is the connection between the issue and the
23 recommendation. Why if you allow salaries to take
24 effect only in the second term would that reduce
25 compression?

1 MR. CROWELL: Well, the idea is that you
2 also have the other concerns that you would have to --
3 the paper explains this. What you would have to do if
4 you wanted to effectuate this change is alter the time
5 in which the Advisory Commission met, so instead of, the
6 last time a salary increase was voted was in 1999.

7 CHAIRMAN MACCHIAROLA: Excuse me, Anthony,
8 are you saying if we do anything we would gum up the
9 works?

10 MR. CROWELL: I'm saying that you could very
11 well gum up the works.

12 CHAIRMAN MACCHIAROLA: Which is, I guess,
13 the basis for the recommendation.

14 COMM. SIEGEL: Excuse me, I apologize, I
15 didn't see this, I wasn't in my office this afternoon so
16 I didn't --

17 MR. CROWELL: Not a problem. So what you
18 have to do, you have to have a gap somewhere, a two-year
19 gap now and have the Advisory Commission meet at least
20 prior to 2005 so that it could change salaries, if they
21 so chose to do that; the Council and Mayor would have to
22 make the change legislatively, it would then take effect
23 in 2006 after the 2005 election, so all those
24 changes would have to take place before the primary in
25 2005 so.

1 You could do it, it just creates a
2 logistical problem on how to do it and perhaps the idea
3 that legislators would be less apt to want to make the
4 change in an election year when voters are paying more
5 attention to their actions.

6 CHAIRMAN MACCHIAROLA: Is there any
7 objection to the recommendation of not doing anything?
8 Okay. Item 3.

9 MR. CROWELL: Okay. Item 3 is unfunded
10 mandates. The question was, should the Charter ban
11 unfunded mandates and provide that mandates arising from
12 Local Law should be binding upon the City only to the
13 extent that funding is actually appropriated to
14 accomplish such mandates. This was an issue that the
15 1989 Commission reviewed and deferred for consideration
16 by another Commission. It was brought back to you
17 because there's obviously a budget crisis going on in
18 the City, though we've heard testimony from Speaker
19 Miller and others that they do not think this change is
20 warranted and also various Commissioners have spoken
21 with the staff, so we thought that maybe it was just
22 best to defer this for consideration to another
23 Commission -- by another Commission.

24 CHAIRMAN MACCHIAROLA: Any objection?

25 COMM. SIEGEL: This is near and dear to my

1 heart, but as a practical matter --

2 CHAIRMAN MACCHIAROLA: I don't think there's
3 a way of figuring out how to do it. That's part of the
4 problem. It's the same body that's creating the
5 mandates is voting the appropriation. It's not like
6 it's coming from someplace else. That's the problem.

7 COMM. SIEGEL: It's the Pogo cartoon.

8 CHAIRMAN MACCHIAROLA: Theoretically, there
9 is no mandate. If the Legislature refuses to
10 appropriate what they mandate you spend, you can't spend
11 it, so it's not a mandate. Item 4.

12 MR. CROWELL: This item concerned the Voter
13 Assistance Commission. The question is should the Voter
14 Assistance Commission be reconstituted. You had heard
15 testimony on, I believe, the 22nd of July from
16 Dr. Jeffrey Krauss, who is now the Chair of the Voter
17 Assistance Commission and he suggested that one of the
18 problems with the Voter Assistance Commission, besides
19 being historically underfunded dating back about a
20 decade is that the Board itself, the Commission itself
21 is sixteen members and it's somewhat unwieldy and
22 difficult often to get a quorum and perhaps if it were
23 smaller sized it could be a more focused, more
24 disciplined body and it could actually do its work
25 better. Funding is a totally separate issue, of course,

1 and members of the Commission have spoken to the staff
2 and expressed a desire to have in whatever report the
3 Commission produced a statement that proper funding of
4 that be made, especially in light if the proposal for
5 non-partisan elections goes on the ballot and succeeds,
6 it would want a Voter Assistance Commission that would
7 educate the voters on the changes in the City's
8 electoral processes.

9 In addition, obviously, the Voter Assistance
10 Commission's primary mandate is to oversee voter
11 registration efforts in the City in a non-partisan
12 manner.

13 Right now, the sixteen-member Board would
14 be, under the staff proposal would be reduced to five
15 members. Three would be appointed by the Mayor with the
16 advise and consent of the Council, one would be
17 appointed by the Council in consultation with the Mayor
18 and the Public Advocate would sit ex officio, and the
19 Chair would be an appointed member elected by the body
20 and the coordinator of voter assistance would be
21 appointed by the Mayor with the advise and consent of
22 the Council.

23 In addition, those ex officio members that
24 currently sit on that including the Campaign Finance
25 Board, Corporation Counsel, the Office of Management and

1 Budget, Schools Chancellor, would, the proposal would
2 provide that the coordinator of voter assistance as
3 needed could call upon them for assistance in whatever
4 services may be requested to perform the mandate of
5 that.

6 CHAIRMAN MACCHIAROLA: This is sort of like
7 a death without a certificate.

8 MR. CROWELL: No.

9 DR. GARTNER: There were three options that
10 we had. One was to let it die, as it were. The other
11 was to fold it into the Campaign Finance Board and the
12 third was the recommendation that we made. We were
13 influenced in thinking at least about option two,
14 folding it into the Campaign Finance Board by Father
15 O'Hare's disposition, that that had been thought about
16 and was not going to work out very well. I guess the
17 mortuary business was not one that we were fond of, so
18 we ended up with the option that we are proposing.

19 CHAIRMAN MACCHIAROLA: Everybody is pro in
20 favor of it, but --

21 DR. GARTNER: Whether it will be sufficient
22 is something that's a question worth asking.

23 CHAIRMAN MACCHIAROLA: Somebody has to know
24 that we have a lot of rules that are already
25 disregarded, we have a capacity of three people to vote

1 which we haven't done.

2 COMM. TSANG: My question is why five, why
3 five members? What is the reason behind having reduced
4 a sixteen member board to five?

5 MR. CROWELL: The Campaign Finance Board now
6 is five. So five seemed like, because the Campaign
7 Finance Board is a very successful board and the program
8 is successful, we thought five was a number that could
9 work well.

10 COMMISSIONER KHALID: They also mentioned
11 the quorum was never there.

12 MR. CROWELL: One of the problems that
13 Dr. Krauss mentioned, with a sixteen member board, it
14 was very difficult for them to get a quorum. So using
15 the number five was part of the thing that was the model
16 of Campaign Finance Board, provided also the idea that
17 we wanted to have the Public Advocate as an ex officio
18 and have sufficient representation appointments by the
19 Mayor and the Council, so it seemed to work well.

20 CHAIRMAN MACCHIAROLA: Are we disposed to go
21 this way?

22 COMM. LYNCH: I had some initial concerns
23 about the sixteen member and not being able to make a
24 quorum at the meeting. But sitting here thinking about
25 this, I don't want to make it too cumbersome, because I

1 think the problem with the Voter Assistance Commission
2 is more than just the numbers of people who sit there,
3 but can we take another shot at looking at getting
4 borough representation and that might help energize some
5 of this, and possibly go to, three more or five more
6 might make it unruly again, but I want some
7 configuration where each borough is represented on it.

8 CHAIRMAN MACCHIAROLA: We could make it an
9 eight person and require each borough be represented,
10 which is done in the Districting Commission's
11 composition. I think, having served, I served as
12 Chancellor on a number of committees and commissions,
13 but the one I never went to, although now if they put me
14 on the board I'd go to every meeting was the Museum of
15 Natural History. I thought that was a really neat board
16 to go on, but when you're Chancellor, you don't have
17 time to go on. So being a representative to that is
18 really just paying deference to the title, not getting
19 efficient or good board members. But the idea of doing
20 it on a borough basis makes more sense to me than just
21 sort of hanging it out.

22 COMM. SIEGEL: I agree. I like that. I
23 like the idea of borough representatives.

24 DR. GARTNER: Let me ask you a question,
25 Commissioner Lynch. Is it, in the instance of the

1 Districting Commission where a set number of members
2 must be from each of the five boroughs, or are you
3 suggesting that the Borough Presidents be the designee
4 or that the Borough Presidents collect from among
5 themselves a designee? I'm not sure where you're going.

6 COMM. LYNCH: Where I was going is, either a
7 representative from each borough or a designee by the
8 Borough Presidents on the Board. I want to give the
9 Borough Presidents, we had this discussion up in the
10 Bronx, of trying to give Borough Presidents, I don't
11 want to say more to do, but some real work to do. And
12 my -- I think this is an important Commission, if we
13 could get it working.

14 CHAIRMAN MACCHIAROLA: It is important.
15 There's no question. I served on the advisory committee
16 to that from the very beginning. We take it very
17 seriously.

18 COMM. LYNCH: It should be taken seriously.
19 I think this is one of the vehicles to meet one of the
20 goals of this Charter Commission and that is to increase
21 voter participation, and I don't want to make it too
22 cumbersome, Dr. Gartner. I would -- if you ask me at
23 this moment what would be my 'druthers between the three
24 proposals, I'd say have each Borough President appoint
25 somebody from their borough on the Commission. And like

1 was done in the past for the school boards, and in some
2 way they're held accountable, that they come to meetings
3 and that the people they appoint come to meetings, and
4 that maybe we'll even move that in the Borough
5 Presidents budgets they'll put some money in there for
6 the Voter Assistance Commission.

7 DR. GARTNER: Let me play it out. You would
8 anticipate, then, a ten-member Commission, the five that
9 Anthony mentioned plus five designees?

10 COMM. LYNCH: The five he mentioned plus the
11 five.

12 MR. CROWELL: One model to look at, and
13 staff will have to recalibrate its proposal, obviously,
14 is to look at the Taxi and Limousine Commission. It
15 says "the Commission shall consist of nine members." In
16 this case they're all to be appointed by the Mayor with
17 the advise and consent of the Council. Five of said
18 members, one resident from each of the five boroughs of
19 New York City shall be recommended for appointment by a
20 majority vote of the Council Member of the respective
21 borough. It's the Council delegation who does it in
22 this case. You can do it as the Council delegation in
23 consultation with the Borough President, something to
24 that effect where I think if you use the TLC model, we
25 could somehow -- it is of course expanding it to a much

1 larger board.

2 COMM. LYNCH: That's the thing that concerns
3 me is the expansion, but I would like to have borough
4 representation.

5 CHAIRMAN MACCHIAROLA: The advantage of the
6 Council, of the Borough Presidents I think is that the
7 Borough Presidents get something to do. The
8 disadvantage of it is that nobody pays attention to it
9 after that. So in other words, if there's a board
10 consisting of members of the borough selected by the
11 Borough Presidents and there's no significant Mayoral
12 input, then you're not going to get the funding that
13 you're talking about. Because the funding doesn't --
14 Borough Presidents aren't going to put funding from the
15 very limited budget that they have into something like
16 that. So you got to find a way to get the borough
17 input, I think, without sacrificing the fact that you
18 need Mayoral clout to get it done.

19 COMM. LYNCH: I'm trying to think this
20 through as we're sitting here.

21 CHAIRMAN MACCHIAROLA: That's what I'm doing
22 with you.

23 COMM. LYNCH: And I want to be careful that
24 the four Borough Presidents who are friends of mine,
25 tomorrow my phones are going to be ringing off the hook.

1 COMM. TSANG: Especially if you say you'll
2 give them something to do.

3 CHAIRMAN MACCHIAROLA: Well, I'm prepared to
4 outvote you, if it will help you.

5 MR. CROWELL: You could have a six or seven
6 member, I would recommend seven member Commission. You
7 could do it that the Mayor appoint five in consultation,
8 one each with each of the Borough Presidents, with the
9 advise and consent of the Council, have the Public
10 Advocate sit ex officio.

11 CHAIRMAN MACCHIAROLA: No.

12 DR. GARTNER: In 2037 this Commission would
13 have its first meeting.

14 CHAIRMAN MACCHIAROLA: I can't imagine the
15 Mayor speaking to the five Borough Presidents about
16 this. I can't -- I mean, I could imagine the topic, but
17 I think we're over -- I think the simplest is to say
18 that the Commission shall consist of seven members
19 appointed by the Mayor, at least one from each borough
20 and in consultation with the City Council. With the
21 advise and consent of the Council.

22 MR. CROWELL: One ex officio would be the
23 Public Advocate.

24 CHAIRMAN MACCHIAROLA: The Public Advocate.
25 I think that's --

1 COMMISSIONER KHALID: Then there would be a
2 coordinator on top of that?

3 DR. GARTNER: A coordinator under that.

4 COMM. SIEGEL: Staff.

5 CHAIRMAN MACCHIAROLA: The reason I'm saying
6 that, I'm not trying not to get the Borough Presidents
7 involved. What I'm trying to do is to say that if we go
8 that way, we lose the ability to have the Mayor buy into
9 this with, quote, the Commission as well as an
10 executive.

11 DR. GARTNER: If I may, Mr. Chair, let me
12 get on the core of this for Commissioner Lynch before
13 noon tomorrow to figure out some scheme somewhere
14 between the TLC or the seven that you suggested and try
15 to honor the principle of borough representation. We
16 can only talk about devices now, not the principle.

17 COMM. LYNCH: I will await Alan's call.

18 CHAIRMAN MACCHIAROLA: Campaign finance.
19 Should the Charter be amended to ban all organizational
20 contributions to candidates participating in campaign
21 finance programs. I thought it did.

22 MR. CROWELL: No, it doesn't.

23 CHAIRMAN MACCHIAROLA: Not quite. Well, it
24 should maybe?

25 MR. CROWELL: The question is should there

1 be a ban on namely PAC, union and party spending
2 directly on behalf of individual candidates in the
3 primary and the general election. Proposal to that
4 effect has been represented by the Campaign Finance
5 Board, but has not been enacted by the Council.

6 CHAIRMAN MACCHIAROLA: Now, let me ask you
7 this question: If a candidate receives funds from one
8 of these organizations, doesn't that go to the limit
9 that the candidate can receive?

10 MR. CROWELL: Yes.

11 CHAIRMAN MACCHIAROLA: So this is not
12 affecting the limit at all. This is saying the funds
13 shouldn't come from --

14 DR. GARTNER: It's affecting the source.

15 CHAIRMAN MACCHIAROLA: It's affecting the
16 source of that and it isn't limiting the expenditures,
17 they remain the same.

18 MR. CROWELL: Right. Those who contribute
19 are subject to contribution limits and those who receive
20 are subject to expenditure limits.

21 COMM. LYNCH: You're saying the entities
22 that you listed cannot make a contribution, even though
23 it stays under the cap?

24 DR. GARTNER: Correct.

25 MR. CROWELL: Correct.

1 COMM. LYNCH: I have big problems with that.

2 MR. CROWELL: One of the reasons we're
3 bringing this up is because of the concern that we heard
4 from the Executive Director of the Campaign Finance
5 Board who said that the Campaign Finance Board couldn't
6 figure out a way, if non-partisan elections came into
7 being to how to regulate party spending in a
8 non-partisan primary.

9 CHAIRMAN MACCHIAROLA: They didn't say it
10 couldn't, they said it would be difficult.

11 MR. CROWELL: They said they hadn't yet
12 thought of a way.

13 COMM. SIEGEL: On television she said she
14 couldn't.

15 MR. CROWELL: She said she was waiting for
16 us to come up with something. So we tried to think of a
17 way. One would be to outrightly ban contributions in
18 the primary.

19 DR. GARTNER: Let me point out historically
20 that this idea is an idea you mentioned a moment ago of
21 the Campaign Finance Board that predates the discussion
22 about non-partisan elections. They proposed it as a
23 good idea in the context of the campaign finance
24 program. We are affirming it in that context as well as
25 its role in non-partisan elections.

1 MR. CROWELL: But this is obviously a
2 proposal that is more than endorsed by the Campaign
3 Finance Board. In fact, it is their proposal.

4 COMM. SIEGEL: When the Council took up this
5 issue, why didn't it adopt it?

6 MR. BERRY: I don't think there was anything
7 ever publicly said about it. Following the 2001
8 elections the Campaign Finance Board put forward its
9 legislative proposals, this was one of them and the
10 Council as I remember it, had a grab bag of items and
11 put together a bill and this item was not part of it.

12 COMM. SIEGEL: So the item was never
13 explicitly debated.

14 MR. BERRY: Right.

15 CHAIRMAN MACCHIAROLA: Today who does the
16 ban apply to? Corporations?

17 MR. CROWELL: Corporations.

18 CHAIRMAN MACCHIAROLA: For profit?
19 Not-for-profit?

20 MR. CROWELL: It's for-profit. It's for-
21 profit corporations and that's from the '98 Charter
22 revision.

23 CHAIRMAN MACCHIAROLA: Well? Discussion?

24 MR. CROWELL: I'd like to add one other
25 thing. We're also looking at other ways that we will

1 have for you on Wednesday on how to get at the issue of
2 party spending for a non-partisan candidate through an
3 attribution system, but this is a new issue for the
4 Commission, that's why it's presented here.

5 CHAIRMAN MACCHIAROLA: Okay. Who's going to
6 talk? Mr. Siegel.

7 COMM. SIEGEL: I like it because I'm alarmed
8 by the Chairman of the Campaign Finance Board, the
9 departure on television was slightly frightening. I
10 couldn't tell if she was disingenuous or not, but it
11 seems to me if she insists, and she's someone whose
12 voice counts, that as matters are now currently
13 constituted she can't control such spending, then this
14 is the next logical step. Give her the tools to do it
15 and close the door.

16 This goes back -- people remember Denny
17 Farrell's testimony. Couldn't remember whether Denny
18 Farrell was saying non-partisan elections would do too
19 much to hurt parties or too much to help parties and he
20 went back and forth and this was the hinge here. I
21 think it was a purely rhetorical hinge, I think he knew
22 where he stood, but just as a practical matter, I think
23 it closes the door. It closes the door to a rhetorical
24 line of attack. The objections are obvious enough.

25 MR. CROWELL: This wouldn't prohibit

1 organizations, including parties, from doing issue
2 spending. Of course attribution would have to be
3 monitored, when that process goes to benefitting an
4 individual candidate, then we would have the systems in
5 place that we're talking about right now.

6 CHAIRMAN MACCHIAROLA: It's a loophole right
7 now.

8 MR. BERRY: Just to provide a little
9 context, according to the CFB report, contributions that
10 came from organizations, PACs, et cetera, constituted a
11 little less than 5 percent of the total amount of money
12 contributed in 2001. So that's the ballpark.

13 COMM. LYNCH: This sounds a lot like the new
14 527 Federal Law, the McCain-Feingold bill, and as we're
15 finding out, there are all kinds of loopholes around
16 that, and we're just asking for more trouble by going
17 down that road, I think. But I don't have -- I'd like
18 to know more about this before I say hard and fast, no,
19 I'm opposed to it, where we're trying to go here.

20 CHAIRMAN MACCHIAROLA: If we put something
21 out, you'll sure hear about it.

22 DR. GARTNER: I think you're right,
23 Commissioner Lynch, to tie it to at least the ethos of
24 McCain-Feingold. It does draw from the argument
25 implicit in the Campaign Finance program that one wants

1 to reduce private spending, or at least non-individual
2 private spending in the political process and this is
3 yet another step in that direction.

4 No doubt it will produce complications and
5 loopholes and escapes through loopholes, like any change
6 in the IRS Code does that as well, but it is a step that
7 will at least stop some portion of private spending on
8 public election campaigns and that's the issue of
9 whether one sees that as a virtue and wants to support
10 it or sees that as a problem and wants to oppose it.

11 We will try to get you additional
12 information and as the Chair said, I'm sure if it's put
13 out for discussion next week, it will invoke
14 consideration by many people.

15 CHAIRMAN MACCHIAROLA: Let's put it out.

16 MR. CROWELL: What I think is compelling,
17 because as Frank Barry just said, only 5 percent of the
18 spending in the last major election is attributed to
19 this kind of campaign contribution, that this would
20 really serve as a true prophylactic measure to the harm
21 that Nicole Gordon spoke of, the harm that we believe
22 could be effectively regulated by this measure as well
23 as other things that we are working on now.

24 CHAIRMAN MACCHIAROLA: This is not the time
25 tonight, but the whole issue of the way the campaign

1 finance program is now structured, it's created under
2 the assumption we have elections. The point of fact, we
3 have primaries that are elections and then a whole load
4 of money goes to candidates for the general election
5 that have no race. We close our eyes to the fact that
6 people are receiving money for participating in
7 elections that are not really competitive. The 51
8 Councilmen elections within the last year and one of
9 them is within 10 percent? And they're getting funded.
10 So I think we've got to push on a number of issues here
11 to improve the philosophy of campaign finance. Let's
12 put it forward, let's see what people say.

13 Board of Correction. Where did this come
14 from?

15 MR. CROWELL: This is another issue that was
16 from the 2001 Charter Commission. The question is
17 should the role of the Board of Corrections be clarified
18 to reflect regulatory realities in the Charter. This is
19 an issue where the Board of Correction's role is
20 somewhat confusing whether it's a regulatory body or
21 advisory body.

22 At the time we had gotten comments and some
23 agency input from the Department of Corrections that the
24 Board of Correction often promulgates rules that are in
25 conflict, the Department is actually sandwiched between

1 State regulations and local regulations, in that the
2 Board would best function as an advisory body working
3 with the Department in the context of the State
4 regulatory scheme.

5 CHAIRMAN MACCHIAROLA: If I were
6 Commissioner of Corrections, I wouldn't want a Board of
7 Corrections either. What did the Board of Corrections
8 say?

9 MR. CROWELL: The Board of Corrections have
10 not opined, even though they have been sent this
11 proposal.

12 CHAIRMAN MACCHIAROLA: Maybe you should get
13 their opinion before you take sides.

14 MR. CROWELL: We'll certainly invite them
15 in.

16 CHAIRMAN MACCHIAROLA: This looks like an
17 internal problem between the Department and the Board.

18 MR. CROWELL: I should say this Commissioner
19 did not opine on this matter. It was the former
20 Commissioner. I do not want to attribute any of this to
21 the current Commissioner.

22 CHAIRMAN MACCHIAROLA: Why don't you just
23 get their opinion. Do we have time to look at this on--

24 MR. CROWELL: We could invite someone in --

25 DR. GARTNER: It's relatively easy and it's

1 easy for me to say because Anthony will do it. We will
2 draft language for this on Wednesday. The way in which
3 it will be addressed is to invite both the Commissioner
4 and the Board to come in on the 19th or 21st and then
5 come back to you on the 25th for you to make a decision.

6 CHAIRMAN MACCHIAROLA: Okay.

7 MR. CROWELL: The next issue concerns the
8 PMMR, Preliminary Mayor's Management Report and the
9 question is should the Charter be amended to reform the
10 performance of reporting provisions of the Charter to
11 better focus resources to improve public accountability.
12 PMMR and the MMR, the Mayor's Management Report, have
13 been around for about 25 years. They're the city's way
14 of benchmarking progress, performance measures on
15 general city operations of all the agencies. The
16 question here is, are two reports a year necessary or is
17 just one, given technological realities that have
18 evolved over the 25 years.

19 Specifically, the PMMR covers about four
20 months' worth of performance each year. It's published
21 in January of any fiscal year and the final, the MMR is
22 published in September of the fiscal year, so, of the
23 next fiscal year, to give an entire year wrapup. The
24 PMMR is actually something that is not actually doing
25 the job that it was originally intended to do, because

1 it doesn't reflect up to the minute performance, because
2 we have something known as CASCAP, the Citywide
3 Assessment Program. It's like COMCAP, where it's a
4 computer system that gives a month to month actually
5 performance measure of how agencies are performing, how
6 neighborhoods are faring, things like that. So it
7 really, the PMMR winds up taking numerous staff at every
8 city agency a lot of time prepare, while they're also
9 preparing the data that actually goes into the citywide
10 databases that are on line, and also with the advent
11 311, which serves as a conduit for information and for
12 reporting on agency performance which is up to the
13 minute, it's believed that the PMMR really is not the
14 tool that does the job anymore and so by just having a
15 one annual Mayor's Management Report, which would
16 embrace the year's performance and to leave in place,
17 obviously, the technology and future advances in
18 technology that give up-to-the-minute performance, that
19 the PMMR really isn't necessary, and it would be an
20 enormous cost savings for the City in terms of staff
21 time as well as in resource in printing it.

22 COMM. SIEGEL: One question. Is CAPSTAT
23 available on the web?

24 MR. CROWELL: I believe it is.

25 COMM. SIEGEL: Has anyone else tried to find

1 it? I couldn't find it.

2 MR. CROWELL: I have access to it. I will
3 help you.

4 COMM. SIEGEL: So it's just me, it's not --

5 MR. CROWELL: I believe it's available. Or
6 information flowing from CAPSTAT is available on the
7 web, I should say, if you don't have access to the full
8 program, information flowing there from is.

9 CHAIRMAN MACCHIAROLA: Am I right that the
10 composition of this report varies and has varied,
11 depending upon the seriousness with which it's been
12 taken both by the mayors as well as by the various
13 agencies?

14 DR. GARTNER: The MMR has surely varied.

15 MR. CROWELL: The MMR has varied. What
16 Mayor Bloomberg has done, he's using this as a report
17 card for his administration's performance. Other mayors
18 have not necessarily used it as that, and so this
19 administration has revamped the entire format of the
20 PMMR and the MMR. But with the use of technology the
21 way it is, the feeling is the PMMR isn't needed.

22 CHAIRMAN MACCHIAROLA: The reason I ask the
23 question, I'm really of the opinion that the whole issue
24 depends upon the seriousness with which the Mayor takes
25 his management responsibilities and it's less to do with

1 the time in which it's got to be done and more to do
2 with, as I said, how serious the Mayor takes it, because
3 there are mayors who have used it as propaganda, and
4 they can't help but think that's going to happen. Then
5 there are other mayors that have used it to be a real
6 management tool. And I don't know that you can
7 prescribe that in the Charter.

8 COMM. SIEGEL: Frank, in reality, I don't
9 think either of those things has occurred. If I look,
10 without mentioning names, in the early '90s there are
11 people who made, I think really improved -- I'll mention
12 names. Harvey Robbins took this very seriously, took
13 benchmarking very seriously and did a lot of it. But
14 management wasn't improved, statistical gathering was
15 improved.

16 In the subsequent years management was
17 improved and the Mayor's Management Report was degraded.
18 I don't know that there's much -- ideally, Harvey's
19 improvements would have been useful, would have been
20 useful to carry forward.

21 CHAIRMAN MACCHIAROLA: What I'm really
22 saying is no matter what you prescribe in the Charter
23 it's not going to have that effect unless it's taken
24 seriously both as a document as well as --

25 COMM. SIEGEL: I agree. Tony's point is a

1 fair one in the sense there's a lot of time and effort
2 that goes into making this copy. If it's genuinely
3 available, if you don't need a secret decoder to get to
4 it, I played around for half an hour and couldn't find
5 it, then it seems to me legitimate, if instructions on
6 how to get there is available.

7 CHAIRMAN MACCHIAROLA: So then the issue for
8 you is the availability of data information, and rather
9 than the requirement of doing it at a time specific, you
10 want it timely.

11 COMM. SIEGEL: It is timely. The example
12 how this works with COMSTAT, you go on, find the COMSTAT
13 numbers for your precinct and you see if your fears are
14 confirmed or not. That should be appropriate with
15 CAPSTAT as well, that you could go on line and find out
16 quickly. That doesn't guarantee the statistics are
17 reliable, obviously.

18 CHAIRMAN MACCHIAROLA: So you basically
19 support the recommendation.

20 COMM. SIEGEL: I do.

21 CHAIRMAN MACCHIAROLA: And the addition that
22 you make to it, to be more specific, would be that we
23 insure its accessibility to the public through the use
24 of Internet.

25 COMM. SIEGEL: The reason I don't want to go

1 too far, this may be my own ineptitude in not being able
2 to --

3 CHAIRMAN MACCHIAROLA: It may in some ways
4 be restricted. Anyone else on this?

5 COMMISSIONER KHALID: In your opinion, has
6 that in the past been a waste, that the PMMR was a waste
7 of money?

8 MR. CROWELL: I can tell you that I have
9 actually prepared portions of agency performance for the
10 PMMR and it is a very burdensome process, not something
11 that isn't worthwhile in terms of a year-long
12 performance report, but it is difficult, sort of at that
13 four-month mark to start preparing the data, whereas now
14 with the technology in place, we actually have it being
15 fed much more efficiently rather than having to dedicate
16 staff towards a publication.

17 CHAIRMAN MACCHIAROLA: I remember those
18 beautiful reports we had at the Board of Education that
19 were a year old. By the time they were printed, they
20 were a year and a half behind. They were very nice
21 historical documents.

22 MR. CROWELL: What we're proposing here is
23 by no means a criticism of the MMR program, we think
24 it's very strong. It's just the necessity of that
25 preliminary report in light of the technology.

1 CHAIRMAN MACCHIAROLA: Do we have difficulty
2 with any regulatory body like the City Council who may
3 have acquired or may have put a schedule forward, the
4 Comptroller or the City Council or anybody, that the
5 Mayor must comply with? Is that anywhere?

6 DR. GARTNER: Not to my knowledge.

7 CHAIRMAN MACCHIAROLA: We're not dealing
8 with anybody's prerogatives in this change that you're--

9 DR. GARTNER: We talked to the people who
10 are responsible for it in the Mayor's office, and with
11 my permission they have informed various constituents of
12 what was going forward. Let me just read a sentence
13 from the document you had. "Through the CAPSTAT and My
14 Neighborhood statistics program," which is another
15 program, "The City provided performance data on line to
16 over 56,000 users." So I assume it could have been
17 56,001 or two.

18 CHAIRMAN MACCHIAROLA: Fred, I can't believe
19 it, 56,000 people are ahead of you.

20 COMM. SIEGEL: I can believe it.

21 DR. GARTNER: All I can do is commend
22 Anthony as a tutor, because he's got me as a student.
23 In the five months between the release of the PMMR and
24 the end of the fiscal year in contrast the combined
25 interest of the PMMR on the web in distribution from the

1 print publication during the same time frame amounted to
2 4300.

3 COMM. SIEGEL: That's a strong case.

4 DR. GARTNER: That's eleven times more.

5 CHAIRMAN MACCHIAROLA: I asked you when you
6 were in my office if you had Internet access and you
7 said to me you didn't know.

8 DR. GARTNER: That's what I did say.

9 MR. CROWELL: You know now.

10 DR. GARTNER: Yellow pads and styluses are
11 what got me.

12 CHAIRMAN MACCHIAROLA: The philosophy
13 department turned in its request for audio visuals here
14 at the College. It did. A chart.

15 DR. GARTNER: Moving on. Independent Budget
16 Office.

17 MR. CROWELL: This is should the IBO be
18 eliminated and reformed.

19 CHAIRMAN MACCHIAROLA: You answered no?

20 MR. CROWELL: The answer is no.

21 CHAIRMAN MACCHIAROLA: Any problem with
22 that? I think I would have a problem if you said yes.

23 MR. CROWELL: Commission on Publication and
24 Information Communication, this question is should be
25 the Commission be eliminated.

1 COMM. SIEGEL: Before we go on, just a
2 question. Why should, if it's so clear, why should it
3 be considered by other Charter Commissions?

4 CHAIRMAN MACCHIAROLA: So we can pass it
5 off. We're saying it should be considered by other
6 Charter Commissions.

7 MR. CROWELL: This has been an issue that
8 Charter Revision Commissions in the past have evaluated.
9 I could tell you as a staff person I have seen the idea
10 go through different cycles and it appeared in this
11 administration, certainly a function, as was testified
12 here, it's not something the staff recommends be
13 reviewed for reform or elimination. At this time we
14 have not identified any reason to change any part of
15 this mandate.

16 You should also recall that the reason we're
17 looking at these small offices like the Board of
18 Correction, IBO, VAC, the Equal Employment Practices
19 Commission these were all things that were created in
20 the '88-'89 Charter Commission, so they're really part
21 of the Charter revision process and other Commissions
22 have looked at them, so that's why they're being brought
23 back, because they've been looked at regularly.

24 COMM. SIEGEL: Okay.

25 MR. CROWELL: And their usefulness is often

1 questioned by a variety of constituencies and many of
2 them find them helpful and many of them find them either
3 a sort of a redundant function or not really serving any
4 function.

5 CHAIRMAN MACCHIAROLA: Or bothersome.

6 MR. CROWELL: Or bothersome, and that's why
7 they're being reviewed. The xx Commission on Public
8 Information and Communication, we don't recommend any
9 change to it. It basically has not been operating at
10 this time, it hasn't been really since its inception
11 it's had very little activity and it's not funded. It's
12 not providing, it's not posing any problems, it's kind
13 of on the books but not doing anything. You should know
14 that the City Council earlier this year passed a law
15 requiring on line publication of agency reports and on
16 line publication or transmission to the Department of
17 Records and Information Services. The kind of
18 consistent open access to information that the
19 Commission actually was designed to work towards.

20 CHAIRMAN MACCHIAROLA: Why should we keep it
21 if it's already in law required to do what the City
22 Council --

23 MR. CROWELL: What I said about the City
24 Council, that's consistent with the FEMA program. What
25 the City Council did, doesn't replace what every

1 ultimate goal of COPIC was. I guess it's to say with
2 proper funding COPIC could serve as a veritable resource
3 for the City. It's not been funded right now, it's
4 historically been unfunded. Every time a fiscal crisis,
5 budgets aren't going to start increasing out of the
6 blue, but--okay.

7 Equal Employment Practices Commission. The
8 question is should there be any aspect of it, of the
9 Commission reformed. The Commission was subject to
10 Comptroller's audits with negative findings or I should
11 say findings that were less than positive about the
12 performance in 1997 and 1999. However, since that time
13 it appears, although there have been no Comptroller
14 reports, it appears that the number of audits performed
15 by the Commission has actually increased, even though
16 the Commission reports that they've had fewer staff and
17 less resources to actually do it. So there's no change
18 to EEPC at this time recommended.

19 CHAIRMAN MACCHIAROLA: Commissioner Gatling
20 is not here tonight. One of the consequences of her not
21 being here tonight is that we could give it to her
22 agency. We always do that, you know, if someone is not
23 here, we give them an assignment.

24 MR. CROWELL: One of the things you should
25 know, that has actually been a discussion in terms of

1 what to do with EEPC in relation to Human Rights
2 Commission which has a similar mandate in terms of
3 looking at equal opportunity in the city, with the
4 City's Human Rights Law as well with the Department of
5 Citywide Administrative Services, which has the
6 responsibility of coordinating the equal opportunity
7 programs throughout the city. It's obviously been a
8 topic of discussion and are these three separate
9 agencies working towards the same goal and is there a
10 way to bring them together. Perhaps there's a way that
11 DCAS and the Human Rights Commission could work more
12 closely on this goal so this Commission may actually
13 want to consider what you're suggesting as a way to fold
14 EEPC into that if you thought it was appropriate. The
15 staff would be happy to do additional research.

16 COMM. LYNCH: I support it, if you double
17 her budget.

18 MR. CROWELL: You support --

19 DR. GARTNER: That was a quip.

20 CHAIRMAN MACCHIAROLA: He'd support it if
21 we'd increase her budget so she could fulfill her
22 responsibility. Listen, if I was the Mayor she'd have
23 the budget. Of course I'd increase taxes minus the
24 levies we have today.

25 MR. CROWELL: The staff is happy to do more

1 work on this if you like. We can do a budget analysis
2 for you.

3 CHAIRMAN MACCHIAROLA: Do you want to do it?
4 She's not here to fight us.

5 COMM. LYNCH: On the face of it, it makes
6 sense. The question is what comes with to it give her
7 the necessary help and support. That's always an issue.

8 CHAIRMAN MACCHIAROLA: Why don't you take a
9 look. Look, don't put it on -- if you have some time --

10 MR. CROWELL: We would be happy to do that.
11 There is a case to be made to have EEO, major EEO
12 activities at three different agencies probably
13 consolidation or coordination of them in one place could
14 probably serve the City's interests better. There's a
15 strong argument --

16 CHAIRMAN MACCHIAROLA: It certainly serves
17 the Complainant's interests better to have a strong
18 agency where advocacy is required than diffusing it.

19 COMM. LYNCH: I agree with the concept, but
20 you know what my concern is.

21 CHAIRMAN MACCHIAROLA: Once more, we'll
22 check on it.

23 MR. CROWELL: We'll look at the budget
24 issues and see how to overcome it.

25 CHAIRMAN MACCHIAROLA: Should the Department

1 of Education have a representative included in the
2 cabinet. The answer is yes, they do.

3 MR. CROWELL: The Charter already authorizes
4 that.

5 CHAIRMAN MACCHIAROLA: So it's not an issue.

6 MR. CROWELL: Next issue is the merger of
7 the Department of Juvenile Justice and the
8 Administration for Children's Services. Staff's
9 recommendation on this is no, that this would undermine
10 the current mission of each agency and run contrary to
11 current thinking on serving at-risk youth as well as
12 juvenile offenders.

13 CHAIRMAN MACCHIAROLA: Now, we should all
14 realize that these were issues that Steve just
15 addressed. These are not positions he had taken.

16 MR. CROWELL: That's right, they were issues
17 identified.

18 CHAIRMAN MACCHIAROLA: The fact you say no
19 to everything doesn't mean that you're --

20 MR. CROWELL: By no means. That's why we
21 labeled these as issues identified by Commissioner
22 Newman. He wanted Commission input on them, he had no
23 opinion on them.

24 The next question deals with carving out a
25 separate water utility from the Department of

1 Environmental Protection. Staff did extensive research
2 and had conversations with DEP and the different unit
3 heads and our conclusion was that the way the agency is
4 structured now is that its organization runs well and it
5 works in the City's best interests. So at this time no
6 change would be necessary.

7 DR. GARTNER: Just a parenthetic note on a
8 word that Anthony used, "now." I think historically the
9 premise of Commissioner Newman's question perhaps was
10 correct that in fact it did not have a consumer focus
11 and was a water utility. I think the experience in the
12 recent period is that it has shifted some of its focus.

13 MR. CROWELL: Next issue deals with agency
14 responsibility for city bridges. The question is should
15 the decision to keep bridge engineering and construction
16 with the Department of Transportation instead of the
17 Department of Design and Construction be reevaluated.
18 Again, staff had talked with representatives from both
19 agencies, and based on what we found, we made a
20 recommendation that no change is needed and that the
21 current system is functioning fine and that future
22 Commissions, of course, may choose to consider this
23 issue.

24 CHAIRMAN MACCHIAROLA: Very different
25 functions performed by both of those agencies.

1 DR. GARTNER: Yes, right.

2 CHAIRMAN MACCHIAROLA: If anybody has any
3 questions, wants to ask, raise anything --

4 MR. CROWELL: I'll be happy to discuss it
5 more fully. I just want to bring you through this.

6 CHAIRMAN MACCHIAROLA: I assume the
7 recommendations meet with general consensus.

8 MR. CROWELL: Remember, everybody can go
9 back and read the document and bring up questions at
10 Wednesday's meeting. Give me a call. I'll discuss it
11 more fully.

12 Next question is the merger of the Taxi and
13 Limousine Commission and Department of Transportation,
14 the question is whether they should be merged. Staff
15 recommendation is no and we note that administrative
16 steps are already being taken to optimize the
17 operational relationship between the two agencies.

18 Next issue deals with the Department of
19 Transportation and Mass Transit and the question is
20 should the duties of the Department of Transportation be
21 modified to allow it to be involved with mass transit
22 services and play an expanded role in the process of
23 mass transit planning.

24 We find, the staff finds there's no reason
25 for a Charter change, that DOT already has explicit

1 Charter authority to be involved in mass transit
2 planning and in addition any broadening of that
3 authority may actually require change of State law.

4 The next issue deals with the Uniform Land
5 Use Review Procedure and with leasing. The question is
6 should the City's ULURP process be expanded to projects
7 that the city leases. I think if Commissioner Newman's
8 been out for the past few weeks, it would have been
9 helpful to have him clarify a little bit more. Our
10 reading of ULURP shows that most projects the City is
11 involved with at City land or City leasing of properties
12 already requires the ULURP process. Staff does note
13 that ULURP should be made more flexible.

14 The next issue is fiscal rules for labor
15 welfare benefit funds. The question is should the
16 Comptroller's authority be explicitly extended to
17 mandate fiscal rules for the City's labor benefit funds.
18 Again, staff recommends no change. The Comptroller
19 already has broad authority where public funds are
20 involved.

21 The next issue deals with the City's pension
22 funds. The City has five pension funds, New York City
23 Employee Retirement System, NYCERS; the Teachers'
24 Retirement System, Board of Education Retirement
25 Systems, the Police Pension Fund and Firemen's Pension

1 Fund. The question is should the back office functions
2 of the City's five pension funds be merged. You should
3 know the front office, investment management side is
4 managed by the Comptroller, but the back office systems,
5 each separate fund does their own back office work and
6 administrative work.

7 Here no Charter change is needed, largely
8 because issues of the merger of these functions is
9 likely best left to the Pension Board themselves working
10 with their representatives from the Comptroller's and
11 Mayor's offices. You should know that City elected
12 officials all have seats on these boards and are in
13 constant contact with them. It's our view, however,
14 that a merger of these back office functions could be
15 done administratively rather than through a Charter
16 legislative process, so a Charter change may not even be
17 needed if this is desired.

18 CHAIRMAN MACCHIAROLA: One job instead of
19 five.

20 COMM. GARCIA: Is there anything afoot to do
21 that or is this just not discussed between the boards?

22 MR. CROWELL: I should note as I sit on two
23 of the five pension boards for the Mayor in my capacity
24 prior to joining the Commission, there have been
25 discussions about that. I don't know if they are

1 actually doing anything moving towards that, but there
2 have been discussions that it may be easier to do that.
3 There have even been discussions about merging some of
4 the pension funds together completely.

5 CHAIRMAN MACCHIAROLA: There's too many
6 jobs. We don't want the City to lose any more jobs.

7 MR. CROWELL: The next issue deals with
8 joint infrastructure reports. The question is should
9 the Departments of City Planning, Design and
10 Construction be required to submit status reports on the
11 entire City infrastructure every five or seven years?
12 Well, what the staff found was that just involving the
13 Department of City Planning, Design and Construction in
14 such a report wouldn't really be effective and that
15 actually to effectively encompass the City's entire
16 infrastructure network in one report, you would need to
17 include other agencies such as the Department of
18 Information Technology Telecommunications, the
19 Department of Environmental Protection, Department of
20 Transportation and New York City Transit, which is part
21 of the MTA or State authority, so no change is
22 recommended at this time and seems those that we had
23 spoken to didn't think it was necessary because the
24 reporting systems that were in place seemed adequate at
25 this time.

1 Moving on to agency submissions, the first
2 agency submission we received was an issue dealing with
3 ULURP, Uniform Land Use Review Procedure and the issue
4 of subleasing. The question is should the ULURP process
5 be made more flexible so City leased subleased office
6 space can be subleased in a timely manner to prevent
7 waste. Here it is that you know obviously the City owns
8 many of its office buildings, but the City also leases a
9 number of office buildings to house City agencies. For
10 example, the 40 Rector Street is a leased building where
11 the Human Rights Commission, where Commissioner Gatling
12 has her offices.

13 The question is, when the City wants to
14 sublease vacant space to someone else, they have to go
15 through the ULURP process and it's, as you know, a very
16 lengthy process, can often take up to a year, so the
17 City will have paid out a year's worth of rent on a
18 property without having the ability to get someone in
19 there quickly to sublease it without having to go
20 through the full procedure.

21 What DCAS is asking for is an exemption for
22 the subleasing of this property, of City leased
23 property, that would enable, first off, for the City not
24 to lose money on the rents that it has to pay; also, it
25 would free up office space for those who need it,

1 especially in the downtown area, but the City obviously
2 leases properties throughout the City, and it would be a
3 positive thing for economic development citywide.

4 CHAIRMAN MACCHIAROLA: So the ULURP process
5 would only apply to private, not Government?

6 MR. CROWELL: No, no, the ULURP process
7 would still apply for when the City wants to lease
8 office space. Once, if I'm the City and you are a
9 private land owner, and I want to lease office space in
10 your building, I have to go through the ULURP process
11 to lease your property and that's going to take me six
12 months to a year, whatever it takes. But then of the
13 twenty floors I'm leasing from you, I only need 19 of
14 them and I want to sublet that floor to a private
15 company, in order for me to do that, I have to go
16 through another process.

17 What DCAS is asking for and obviously DCAS
18 is the citywide property manager, they want the
19 flexibility to lease these out without a lengthy process
20 or at least --

21 DR. GARTNER: Another round of ULURP.

22 MR. CROWELL: Right, without another round
23 of ULURP.

24 COMMISSIONER KHALID: Makes sense.

25 CHAIRMAN MACCHIAROLA: I just wonder what

1 the impact is on the private holders of these spaces.

2 COMM. SIEGEL: I think this makes sense on
3 the face of it. The problem is, you'll get a case in
4 which the sublease use will arouse hostility in the
5 neighbors for whatever reason. Seems to me the way to
6 go with this is to provide for an expedited process as
7 opposed to the ULURP process. Does that make sense to
8 you? Under circumstances where twenty floors have
9 already been leased and now there's an attempt to
10 sublease part of that space, you ought to be able, you
11 ought to have some review to consider what the
12 consequences will be, but not necessarily the full ULURP
13 process which is extraordinary. Is that --

14 MR. CROWELL: We can certainly invite DCAS
15 in if you're interested in this as an issue, we'll
16 invite them in and see what will work administratively,
17 because they are the citywide property manager.

18 COMM. SIEGEL: This may seem trivial, but
19 it's interesting because the city leases so much space
20 in lower Manhattan and because lower Manhattan is in
21 such bad shape and it's important to get space filled,
22 we don't want the City contributing to the problem of
23 vacancies in lower Manhattan, simply put. So if we
24 could expedite space use, we ought to do it.

25 CHAIRMAN MACCHIAROLA: Take a look at an

1 expedited system without eliminating ULURP all together.

2 MR. CROWELL: This would not do anything to
3 the overall system, correct.

4 CHAIRMAN MACCHIAROLA: Not going through the
5 full ULURP, but going through some kind of process that
6 would deal with the issue of community input.

7 Conflict of Interest Board.

8 MR. CROWELL: Okay. Conflicts of Interest
9 Board has submitted for consideration five proposals.
10 The first one as proposal to give them assured funding.
11 The first question is should the Charter be amended to
12 assure funding for COIB. They would like to have
13 written into the Charter a provision that would give
14 them a guaranteed formula as a baseline for funding,
15 such as like one-fifth of one percent of the entire City
16 budget, something along those lines. Campaign Finance
17 Board, for instance, has a budget provision that gives
18 them baseline money based on a formula. So that's
19 what--

20 DR. GARTNER: IBO has a formula. Campaign
21 Finance Board just submits a budget.

22 MR. CROWELL: Campaign Finance Board's
23 formula is that they submit a budget and it's not
24 subject to amendment.

25 DR. GARTNER: It's a nice budget.

1 CHAIRMAN MACCHIAROLA: Does anyone want to
2 give this nice arrangement to this group? I have a real
3 problem with mandates, I tell you that.

4 MR. CROWELL: It will be a mandated budget.

5 CHAIRMAN MACCHIAROLA: No. Next.

6 MR. CROWELL: The Conflicts of Interest
7 Board penalty is the next interest. Should be Charter
8 be amended to increase the maximum penalty from 10,000
9 to 25,000 for violations of the conflicts of interest
10 law. The issue here is one of the things they point
11 out, that this has not been changed since 1989 and they
12 would like the ability to levy heavier fines, especially
13 on people, for instance, who may have been found to have
14 defrauded the system in the amount of \$250,000, and they
15 don't think that \$10,000 is enough of a fine. That's
16 the request.

17 COMMISSIONER KHALID: Is there a limitation
18 on it?

19 DR. GARTNER: No, the limitation is from 10
20 to 25.

21 MR. CROWELL: Right now they're only allowed
22 to have a fine a maximum of \$10,000.

23 COMMISSIONER KHALID: Regardless of the
24 defrauding of 250,000.

25 COMM. TSANG: 25,000, you said.

1 COMM. GARCIA: 25,000 would be the new
2 maximum.

3 CHAIRMAN MACCHIAROLA: What do you say?

4 COMMISSIONER KHALID: They should be
5 punished.

6 MR. CROWELL: We could have COIB come in and
7 testify about it if you want more information.

8 DR. GARTNER: Let's see how the Commission
9 feels about the other recommendations.

10 MR. CROWELL: The next one is the Conflicts
11 of Interest Board member nomination process should the
12 Charter be amended to give the City Council and the
13 Mayor more parity in the nomination process for the
14 members of Conflicts of Interest Board. Currently all
15 five members are appointed by the Mayor with the advise
16 and consent of the Council. They would want that
17 changed to give more power to the Council and Mayor.
18 They didn't give any specific recommendation on how that
19 would be--this does require a Charter revision as to how
20 these would be split.

21 MR. CROWELL: All these would require.

22 CHAIRMAN MACCHIAROLA: This was a
23 recommendation made to us by the members of the
24 Conflicts of Interest Board?

25 MR. CROWELL: By the Conflicts of Interest

1 Board itself.

2 CHAIRMAN MACCHIAROLA: First of all, I don't
3 have a problem with that.

4 COMMISSIONER KHALID: How long has this been
5 in practice?

6 MR. CROWELL: Since 1989.

7 CHAIRMAN MACCHIAROLA: Who is the Chair of
8 it?

9 MR. CROWELL: Steve Rosenfeld, he's the
10 Chair of it.

11 CHAIRMAN MACCHIAROLA: Designated as Chair
12 or voting.

13 MR. CROWELL: Designated by Chair who has
14 the advise and consent of the Council.

15 CHAIRMAN MACCHIAROLA: To be the Chair or to
16 be a member?

17 MR. CROWELL: To be the Chair.

18 CHAIRMAN MACCHIAROLA: Three members
19 appointed by the Mayor with the concurrence of the
20 Council, two members appointed by the Council with the
21 concurrence of the Mayor.

22 DR. GARTNER: They don't specify.

23 CHAIRMAN MACCHIAROLA: No, they say parity.

24 DR. GARTNER: They talk about parity. I
25 presume what they're asking this Commission to do, is I

1 guess, Anthony, you had conversations. Are they asking
2 for Charter language that simply talks about parity or
3 are they asking for Charter language that defines
4 parity.

5 MR. CROWELL: That would define.

6 CHAIRMAN MACCHIAROLA: Give parity in the
7 nomination process.

8 MR. CROWELL: That would define -- they give
9 examples of other Boards of Ethics throughout the
10 country that we may look to.

11 COMM. GARCIA: Whose words were "more
12 parity" in the issued statement? Was that ours or
13 theirs?

14 MR. CROWELL: These are their words. The
15 staff did not change the wording of their proposal.

16 CHAIRMAN MACCHIAROLA: It's either "parity"
17 or "no parity." More parity --

18 MR. CROWELL: They said "more parity."

19 CHAIRMAN MACCHIAROLA: Right? Parity or
20 not.

21 COMM. SIEGEL: Approaching parity.

22 MR. CROWELL: They used the words "more
23 parity." You should realize that advise and consent of
24 the Council is often viewed as a balance of the powers,
25 because without the advise and consent of the Council --

1 CHAIRMAN MACCHIAROLA: All right, let's move
2 to three, maybe we don't have to deal with any of this.
3 Investigative and subpoena power.

4 MR. CROWELL: Investigative and subpoena
5 power. Should the Charter be amended to give COIB
6 investigative and subpoena power. Right now the
7 Conflicts of Interest Board has to rely on the
8 Department of Investigation for their investigations and
9 for the subpoenaing of witnesses. This was an issue
10 that they presented to the 2001 Charter Commission and
11 you should know that that Commission expressed concern
12 that such a proposal could actually wind up undermining
13 the authority of the Department of Investigation when
14 they have ongoing investigations, should it be that the
15 Conflicts of Interest Board were to conduct an
16 investigation or open up an investigation into a matter
17 that's already being investigated.

18 CHAIRMAN MACCHIAROLA: Anybody think we
19 ought to touch any of these issues? Is there enough in
20 here to warrant Charter --

21 COMM. TSANG: No.

22 CHAIRMAN MACCHIAROLA: Andy, what do you
23 think, in his absence?

24 MR. HUMM: He has not expressed himself.

25 CHAIRMAN MACCHIAROLA: He hasn't discussed

1 this.

2 COMM. SIEGEL: The only one that seems, the
3 consequences of the fines, the maximum penalties.

4 CHAIRMAN MACCHIAROLA: That makes sense, but
5 you know what, if what you end up doing -- it's not
6 enough to put it, unless it's put somewhere else. So
7 why don't we see if we can put it with something else.
8 Why don't we keep it as fines to go to 25,000, if we can
9 get, to figure out a way to incorporate an omnibus
10 proposal to go in, if not, it will just fall aside. But
11 the other proposals we won't go forward with.

12 Hearing authority for the Department of
13 Consumer Affairs?

14 MR. CROWELL: The question is should the
15 Charter be amended to invest the Department of Consumer
16 affairs with hearing authority. Currently the
17 Department of Consumer affairs is charged with enforcing
18 a variety of State and local laws. They have their own
19 administrative tribunals right now in which their
20 authority over some local laws can, is brought before.
21 However, when it comes to the State consumer protection
22 laws that they of course have to go to State Court in
23 order to bring enforcement proceedings, and so while
24 some cases are being heard in their own tribunal they
25 have to have their attorneys go out to State Court and

1 initiate proceedings against offenders, and obviously
2 that's not the most efficient use of their time or the
3 most effective way to enforce consumer protection laws.

4 CHAIRMAN MACCHIAROLA: Is there a State
5 consumer protection law?

6 MR. CROWELL: Well, there are State consumer
7 protection laws.

8 DR. GARTNER: And the State has an agency.

9 CHAIRMAN MACCHIAROLA: Would the State
10 agency pursue those? So what are we doing here? We're
11 giving the City agency the authority to enforce State
12 law?

13 MR. CROWELL: The City has the authority to
14 enforce those laws and the idea is that the City, the
15 City which wants to be vigorous enforcement of those
16 laws doesn't have the authority to do that and the
17 Charter has the authority to set forth the Authority for
18 the Department of Consumer Affairs to enforce a variety
19 of laws, but they don't give them the hearing authority
20 to do it in their own tribunal so they have to go out in
21 order to do that.

22 CHAIRMAN MACCHIAROLA: If you gave them the
23 hearing authority to do it in their own tribunals and
24 they were acting pursuant to State regulation or State
25 rules --

1 MR. CROWELL: What they're doing is they are
2 acting under State law, that there are State consumer
3 protection laws --

4 CHAIRMAN MACCHIAROLA: Why would a City
5 consumer protection agency enforce State law? I don't
6 understand what they want. They want concurrent
7 jurisdiction?

8 MR. CROWELL: They want to be able to
9 enforce the laws that they're entitled to enforce in
10 their own tribunal. They have the authority under State
11 law to enforce State law and Local Law but they have to
12 go into State Court, it's where the jurisdiction of the
13 court is. They want to do it in their own tribunal and
14 Local Law won't allow them to do that. We actually have
15 someone from the Department of Consumer affairs here.

16 MS. TOOLE: I was scribbling a note here.

17 MR. CROWELL: Would you like to comment?

18 MS. TOOLE: I was actually going to say it's
19 the city's consume protection laws that we want to
20 enforce in our consumer tribunals. Currently what
21 happens is we license 55 kinds of businesses and we can
22 enforce the license law against the 55 kinds of
23 businesses and the CPL against our licensees and we have
24 an administrative tribunal that does that, but the
25 consumer protection law which protects consumers tells

1 the City's tribunal for the half of the businesses that
2 are licensed. The half of the businesses that aren't
3 licensed sort of can break the law and the Agency has no
4 recourse unless the violation is so egregious that we
5 take it to State Court. That's the system, so if you
6 have a \$50 violation for not having the correct signage,
7 the Department is not going to pursue that in State
8 Court because it's just counter productive, it
9 economically makes no sense and if you're not a licensed
10 business the Department cannot hold a hearing on you,
11 but if you're a licensed business and you break that law
12 you go to the tribunal. It's an unequal system.

13 I'll sit down now.

14 CHAIRMAN MACCHIAROLA: Fred?

15 COMM. SIEGEL: I want to ask you a question.
16 I thought you were going to mention the signage, which
17 is driving the merchants on my shopping street crazy.
18 Can you give us an example of something of real
19 consequence rather than too many letters on an awning?

20 MS. TOOLE: Well, that actually is not a
21 Department of Consumer Affairs issue. That is a
22 Buildings Department issue. But an example would be
23 variance of the weights and measures law that the State
24 gives us authority to enforce which because they're not
25 against licensed businesses, we can't hold a hearing on

1 them. So they continue --

2 COMM. SIEGEL: I understand that. But give
3 me an example of some egregious activity occurring
4 because you lack the ability to hold these people
5 accountable?

6 MS. TOOLE: Well, a business that has bad
7 scales that you can't sort of enforce against that, that
8 would be for a consumer a big deal.

9 COMM. SIEGEL: You can't enforce that if
10 it's a non-licensed business.

11 MS. TOOLE: We can issue a ticket.

12 COMM. SIEGEL: Give me something specific, a
13 non-licensed business where scales are an issue and it's
14 too trivial to pursue in State Court.

15 MS. TOOLE: I think certain of the gasoline
16 dealing violations would fall under that. I would have
17 to go back and do more, I could come back with a
18 comprehensive list for you, but there are several big
19 issues.

20 COMM. SIEGEL: Why do you mean by that?
21 When gasoline stations do what?

22 MS. TOOLE: The Department is charged with
23 insuring that every scale in the City is balanced,
24 whether -- and with gasoline stations they measure the
25 octane level. They measure different other sorts of

1 weights and measures violations. Some of those the
2 Department can hear, some of those they can't, and if
3 you're purchasing gasoline and it's at the wrong octane
4 level, you're being defrauded and it would be good to
5 bring you to court or before the administrative --

6 CHAIRMAN MACCHIAROLA: A gas station isn't
7 regulated by the City?

8 MS. TOOLE: Gas stations are not licensed by
9 the Department, no, but there are some weights and
10 measures issues that the Department can hold hearings on
11 and some they can't, but I believe octane is one they
12 cannot.

13 CHAIRMAN MACCHIAROLA: So octane no, but
14 quantity of petrol going into the tank, yes?

15 MS. TOOLE: I can't actually answer that for
16 a certainty but yes, that would sound right to me.

17 COMM. TSANG: How does a regular consumer
18 know? I wouldn't know.

19 DR. GARTNER: A regular consumer clearly
20 does not know.

21 CHAIRMAN MACCHIAROLA: I just think they've
22 been writing too many tickets lately, that's my problem.
23 I don't want to go forward with a Charter proposal to
24 tell the voters we're now going to think of another way
25 to haul you into court on a violation you never knew was

1 against the law. I'm hesitant is, what I'm saying.

2 DR. GARTNER: Let me propose that we take
3 up--

4 CHAIRMAN MACCHIAROLA: I think Fred's
5 question is really important. What are we really
6 talking about? What kind of egregious issues are not
7 being brought and I think if we find a list of things we
8 find really to be egregious, then I think we would be
9 more favorably disposed, but absent that --

10 Okay, are there any other items that are
11 missed. I think there's one I remember coming before
12 the Commission that we have not touched and I just
13 thought of it as we were going through this list, it was
14 a proposal to reinstitute the Police Review Board.

15 MR. CROWELL: Yes, that comes under our
16 public -- that is a, what he wanted to do is have the
17 Commission to Combat Police Corruption eliminated and
18 then to institute an independent police review board in
19 its stead.

20 CHAIRMAN MACCHIAROLA: Okay, I just didn't
21 see it here.

22 MR. CROWELL: Let me explain a little more
23 fully. He expressed concerns that the CCPC wasn't doing
24 its job and hadn't performed its Charter mandate.
25 However, you should know that in a review of the CCPC's

1 work in the past seven years, they've issued twenty
2 reports and they have also been at the forefront of
3 insuring integrity of the police system. In addition,
4 the administration, I believe today, just today,
5 appointed a whole new slate of top notch appointees n
6 consultation with the Council, to the Commission itself,
7 so there's a number of U.S. former U.S. Attorneys --

8 CHAIRMAN MACCHIAROLA: I just thought of it
9 and I just wanted to -- it was one issue that I remember
10 seeing. Not one that I think we have to go forward
11 with, but I just wanted to put that on the record.

12 Anybody else remember anything that we heard
13 that hasn't been brought up here that should be?

14 Okay, so the next order of business is for
15 us to move forward with --

16 DR. GARTNER: Wednesday night.

17 CHAIRMAN MACCHIAROLA: Wednesday night's
18 proposals you're going to get to us as quickly as
19 possible as many of those, as they are bundleable so
20 that we'll get --

21 DR. GARTNER: Basically there will be three
22 bundles. I hear your suggestion, recommendation and
23 desire to get them bundle by bundle as they're finished,
24 as they will be.

25 CHAIRMAN MACCHIAROLA: I think it's been

1 fairly -- I think the work has been phenomenal, I have
2 to say, the response and everything else that we've
3 gotten have been of high quality as well as timely.
4 It's not a criticism, it's more of an exhortation that
5 we get a chance to read it early on.

6 DR. GARTNER: I appreciate that.

7 CHAIRMAN MACCHIAROLA: Is there any other
8 business to come before this group? We took a -- in
9 your absence we looked at only one of those issues from
10 the Conflict of Interest Board which was the increasing
11 the fine. We'll put a proposal forward. Whether we go
12 forward or not, it will depend, is this thing worth
13 standing alone or can we cobble it together with
14 something, but at least we'll have it in front of us so
15 when we move forward on we know.

16 COMM. LYNCH: And come back.

17 CHAIRMAN MACCHIAROLA: And come back to it.
18 Okay? We've also left open the question of what is
19 compelling in the request of the Department of Consumer
20 Affairs to have a tribunal.

21 Okay. Are there any other questions that
22 the Commissioners have?

23 DR. GARTNER: I just want, if I may, to take
24 note of two Commission staff members who are here who
25 worked particularly on this topic, Elaine Reese and Mark

1 Tyler.

2 CHAIRMAN MACCHIAROLA: I see them sleeping
3 in the back.

4 DR. GARTNER: It's better they sleep now
5 than slept last night.

6 COMM. TSANG: They're very tired of
7 preparing all this.

8 CHAIRMAN MACCHIAROLA: Very nice job. We
9 appreciate it. Thank you.

10 (Applause.)

11 CHAIRMAN MACCHIAROLA: We stand adjourned.

12 (Time noted: 8:00 p.m.)

13

14

15

16

17

18

19

20

21

22

23

24

25