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Transcript of the Meeting of the
CHARTER REVISION COMMISSION
held on Wednesday, August 13, 2003
St. Francis College, 180 Remsen Street
Borough of Brooklyn

AR-TI REPORTING COMPANY, INC.	
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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 STEVEN NEWMAN

10 FATHER O'HARE

11 CECELIA NORAT

12

13 Also Present:

14 DR. ALAN GARTNER, Director

15 ANTHONY CROWLEY, General Counsel

16

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1 CHAIRMAN MACCHIAROLA: Ladies and gentlemen,
2 Alan, can we start? We were waiting for Anthony to
3 start. Anthony is here, so why don't we begin. We had
4 this morning a presentation that Alan made to the press.
5 He's going to make a little of that presentation here
6 today, is that right?

7 DR. GARTNER: Correct.

8 CHAIRMAN MACCHIAROLA: And you're also going
9 to discuss the reason that we don't have a complete set
10 of proceedings for tonight.

11 DR. GARTNER: Correct.

12 CHAIRMAN MACCHIAROLA: And you're going to
13 introduce us to these other subjects.

14 DR. GARTNER: Correct.

15 CHAIRMAN MACCHIAROLA: Is there anybody else
16 that would like to ask Alan anything before we let him
17 start? Or ask the Chair anything? Okay. Alan.

18 DR. GARTNER: Let me just pick up on one
19 very small item. Commissioner Siegal at the last
20 meeting raised the question of whether the information
21 of CAPSTAT and other information that was part of the
22 PMMR was in fact accessible. The answer at that point
23 was yes, but we couldn't tell him how to do it. We
24 found out how to do it, and I gather he figured it out
25 himself.

1 COMM. SIEGEL: Eventually.

2 CHAIRMAN MACCHIAROLA: So the answer is, it
3 is available.

4 Let me apologize and explain. We had hoped
5 to get to you early today the legislative language on
6 non-partisan elections. Because we wanted it to be as
7 full and complete and the issues are more complicated as
8 one digs into them, we asked the Law Department to
9 review it. They're doing that very carefully, but not
10 very swiftly. Their review is also complicated by the
11 fact, somewhat of an embarrassment, I guess, to the
12 administration, that their computers were down for five
13 hours today. What we are proposing is that we will have
14 to you tomorrow the non-partisan elections material.
15 Should you wish, Anthony and I will be available to
16 Commissioners on Monday and Tuesday for a briefing on
17 that material and as you recall when we set the schedule
18 for next week, we set two, if you will, double headers,
19 a hearing and then a -- a meeting and then a hearing,
20 and I propose that assuming that you get through tonight
21 procurement and the agency reorganization items, that
22 you use the meeting opportunity on Tuesday evening to
23 discuss non-partisan elections.

24 As I said, I apologize that we didn't have
25 it to you sooner. I think the only mitigating factor is

1 that you will have a richer and fuller and more well-
2 reviewed document and should you adopt it, will be
3 further down the line in terms of the kind of language
4 that we need to develop.

5 CHAIRMAN MACCHIAROLA: That meeting is
6 scheduled for 6:00, and I'm wondering if we could
7 schedule it for four, so that we could move and make
8 sure that we do get time for that as well as other
9 hearings that we are scheduled, because we've scheduled
10 that time for public comment and hearings as well as for
11 our own meeting. So if there's no objection --

12 COMM. SIEGEL: This is next Tuesday?

13 CHAIRMAN MACCHIAROLA: Tuesday. Move the
14 Tuesday time to four instead of six and that should give
15 us time to complete those deliberations, as well as any
16 of the other deliberations that we have. If there's no
17 objection, then we'll meet at 4:00. Okay. Thank you.

18 DR. GARTNER: You have heard, we have heard
19 a whole variety of critiques about non-partisan
20 elections. Many of them individual and individual
21 instances, many of them at the same time drawing from a
22 common base. I'm a little reluctant in this place and
23 with Father O'Hare here, but I believe in Biblical
24 studies, there is the term Ur or Ur text, U-R, the
25 notion of the common text which underlies the written

1 text that we have. Is that correct, Father?

2 COMM. O'HARE: That sounds correct to me.

3 DR. GARTNER: That's as far as I'm going to
4 go.

5 COMM. O'HARE: The Ur text.

6 DR. GARTNER: There is in this area an Ur
7 text, it's from a colleague of mine Doug Musseo at CUNY
8 and some similar work by Deborah Goldberg at Benning
9 Center. We've spent a lot of time analyzing those
10 studies and looking at the data that underlie them and
11 what I want to give to you is a copy of the report that
12 we've done that analyzes those studies and other reports
13 and present to you additional data. Why now? It's
14 because we finished it day before yesterday. The
15 Brennan Center study we've had for about ten days and
16 digging out all the references and the resources simply
17 were a matter of working as fast as we could to get them
18 out. We will post this material that's in the beige
19 book on the web tomorrow, so it will be available to the
20 public and anyone else to wishes it.

21 Let me talk about two things fairly briefly,
22 because I know we have an extensive agenda. I'm
23 certainly learning something that each of you had which
24 is at one point the Musseo paper at another point the
25 Goldberg paper. I do this because I want to be sure as

1 you look at our comments that we have fairly
2 characterized what each of them said and you can make
3 your own judgments on it.

4 Let me first call your attention to the
5 somewhat cryptic numbers on the flip chart behind
6 Dr. Macchiarola, and I've characterized those numbers as
7 the facts on the ground in New York. It is interesting,
8 and also, I would say that both the Musseo and the
9 Goldberg papers talking about other jurisdictions and
10 what the experience is in other jurisdictions according
11 to their own experience. They don't talk about New
12 York. I think that's important to note, because
13 ultimately the rationale for doing whatever it is that
14 you as a Commission decide to do in New York is about
15 New York.

16 Let me put it in terms of the preclearance
17 application to the Department of Justice. The
18 Department of Justice is going to ask us, you and us
19 what difference is this going to make in New York? What
20 difference is this going to make for the so-called
21 protected classes in New York and if one says to them,
22 it was terrific in Sheboygan -- that's my general term
23 for everywhere else -- if it was terrific in Sheboygan,
24 the Department of Justice will say, "That's interesting,
25 but you're wasting your time telling us about Sheboygan.

1 What is the issue in New York?"

2 So I want to say a little bit about the
3 facts on the ground in New York, say a little bit about
4 what those studies talk about and then be available if
5 you have any questions.

6 There are some 670,000, in round numbers,
7 people who are registered in New York who are not
8 registered by party and who thus, given the current
9 arrangements are barred from participating in the
10 primary process. They cannot vote in the primary, they
11 cannot sign petitions for people seeking to run in the
12 primary, they cannot carry a petition for those who seek
13 to run in the primary. There are an additional -- it's
14 puzzling, but so the numbers go, and those numbers come
15 from the Board of Elections -- an additional
16 approximately 670,000 people who are registered to vote
17 in a party, but other than the Democratic Party. So you
18 have in sum a million three people which is about a
19 third of the total registered voters in New York City
20 who cannot participate in the election that is
21 dispositive in New York, namely, the Democratic primary.

22 On the one hand, you have the people who are
23 in effect excluded from the process. On the other hand,
24 you have the consequence for the process, and those are
25 the last two sets of numbers. In fifty of the 51

1 Council races in 2001, the winning margin was greater
2 than 10 percent. In 42 of the 51 Council races in the
3 general election in 2001, the winning percentage was
4 greater than 30 percent. By any account, a landslide.
5 By any account, not a real election in November. The
6 real election is in September under the current scheme
7 and the million three people can't participate in the
8 real election that mattered.

9 Let me turn to the two largest of the
10 assertions that critique non-partisan elections. And
11 there are nine or ten of them that are discussed in the
12 booklet that we've given you. I won't take the time
13 today to talk about them. One, the issue of turnout and
14 the other the issue of opportunities for minorities.

15 The evidence that's cited in the two papers about
16 turnout consists of the following: A report on a study
17 in Toledo in 1967. I cannot imagine the relevance of
18 that, but that's one of the items that is cited as a
19 basis for saying that non-partisan elections reduce
20 turnout. Second, a comparison between the turnout in
21 Champagne and Urbana, Illinois in the early 1980's.
22 That's an interesting idea, and as a social scientist,
23 it's a kind of natural experiment. Those are adjacent
24 cities, they share the major employer, which is the
25 university; they share a single newspaper, so one could

1 say -- and one of them has partisan elections, one has
2 non-partisan elections, so one thinks maybe one could
3 make that comparison.

4 The problem in making that comparison is
5 that they have different forms of Government. Not
6 different forms of election, but different forms of
7 Government. One has a strong Mayor system. That's not
8 a characteristic of the individual, that's a
9 characteristic of the system. The other has a Council
10 Manager system, in effect a weak Mayoralty, and it
11 should be no surprise that in the election for Mayor in
12 the former, in the government with a strong Mayor
13 system, there's a larger turnout in the jurisdiction
14 that has a weak Mayor, Councilmanic.

15 The third piece of evidence that's cited is
16 a more recent study in Michigan, which compared the
17 election turnout in the vote for members of the Board of
18 Trustees of the State University with the turnout for
19 the judicial, highest judicial court in the state of
20 Michigan, which is called the Supreme Court, not like
21 ours, and it found in those elections which was partisan
22 versus non-partisan, the turnout was greater.

23 Board of Trustees of a university? Judicial
24 candidates? Where does that fit to what we're doing?
25 And furthermore, in the study where this is cited, cited

1 in the footnote is the fact that it was the partisan
2 election that gained the greatest attention from the
3 media and at least that is a factor that one has to
4 think about in the turnout.

5 The final item cited in the papers is an
6 item we heard, an old chestnut several times, namely
7 Chicago. The most recent Mayoral election in Chicago
8 was Mayor Daley's fifth term running. I think it's fair
9 to say that no one named Richard Daley will ever lose an
10 election in the City of Chicago and he ran against the
11 nonentity and it was no surprise that the voters did an
12 intelligent thing. They stayed home. Why would you
13 come out and vote in such an instance?

14 And let me just cite one item. I'm quoting
15 now from Doug Musseo's paper which you have. He said,
16 presents a paragraph on page 21 of his paper, about the
17 election in Chicago and he notes the turnout. But what
18 he doesn't note -- he ends the paragraph saying --

19 COMM. SIEGEL: Alan, where are you reading
20 from?

21 DR. GARTNER: I'm really reading from a
22 document I wrote from the staff, but I'm going to quote
23 something on page 21 of the Musseo paper that we just
24 distributed to you.

25 CHAIRMAN MACCHIAROLA: I don't know if you

1 distributed it. You distributed the Brennan.

2 DR. GARTNER: Oh, the Goldberg. I'm sorry,
3 let me pass it around.

4 COMM. PATTERSON: We don't have the Musseo
5 paper.

6 DR. GARTNER: Sorry.

7 MR. CROWELL: It's on page 5, the last
8 paragraph of the staff report.

9 DR. GARTNER: And page 20 of the Musseo
10 paper. Fred, did it come around?

11 COMM. SIEGEL: Thanks, now we got it.

12 DR. GARTNER: Like a handsome pair of
13 bookends, the first sentence in this paragraph makes
14 some sense. "There is no comparable case in New York,"
15 and I want to emphasize that. As much as we have looked
16 and others have looked and you have data in the staff
17 report about other cities, when it comes down to it we
18 have to think about New York.

19 He goes on and points out that Daly won the
20 election with a landslide, he continued to do that, the
21 turnout was not very great. He ends by saying, quote,
22 "What effect non-partisanship has had in this decline is
23 unknown." That's hardly an argument that the Chicago
24 elections produce or offer some evidence for us.

25 Let me turn just briefly to the question of

1 opportunity for minorities. The citation, again, goes,
2 the assertion goes to the Toledo election, the 1997
3 election and an Atlanta election, the first non-partisan
4 election for Mayor in Atlanta, and it points out the
5 turnout in that election was reduced. But what the
6 paper doesn't point out, that that first election,
7 non-partisan election in Atlanta elected the first black
8 Mayor of Atlanta, Maynard Jackson and Atlanta has
9 continued using non-partisan elections to elect a black
10 Mayor. Now, that's a function at least in part of the
11 demographics of Atlanta, nothing about non-partisan
12 elections pro or con.

13 Second, the papers do fail to cite a study,
14 one of the few that looks across the country, McManus
15 and Bullock study, and that's cited in your references
16 in the staff paper, that says that ballot type doesn't
17 seem to make a difference in terms of turnout, it's in
18 effect neutral, although it does say that ballot type
19 seems to have a positive effect for Hispanics. This is
20 a kind of general conclusion, doesn't seem to make any
21 difference, but then it ends up saying it seems to have
22 some positive effect for Hispanics.

23 Then, finally, comparing those jurisdictions
24 which elected a minority person, black or Latino, those
25 are the only minority people in the top 50 cities.

1 There's a 50 percent greater likelihood that a city that
2 conducts its elections on a non-partisan basis has
3 elected a minority Mayor than those cities that have
4 conducted their elections on a partisan basis. Is that
5 dispositive for New York? No, it is not. Is it
6 suggestive that non-partisan elections in and of itself
7 go hard on minorities? I think it is.

8 I think we have to come back to New York
9 City facts. We have a large number of people in New
10 York City who can't participate in an election that
11 matters. In effect, the voters have told us the
12 election that matters is one that they don't want to
13 turn out for. I'm sorry, the election in November is
14 one they don't want to turn out for. So we end up with
15 a situation in November of only one out of 51 Council
16 races being in any way competitive.

17 Let me give you an example that's
18 contained -- and finish with that -- that's contained in
19 the report. We looked at a number of districts. I'll
20 pick District 8, the point to be made for any of a
21 number of them. We used it this morning, so those
22 numbers are clear in my head. Let me just tell you
23 where I'm reading from. It's on page 19 of this
24 document. There was, as there were in many districts, a
25 quite competitive Democratic primary. Phil Reed

1 defeated Phillipe Luciano by a narrow margin, 53 to 48
2 percent in a District that was a couple of hundred votes
3 difference. Reed went on in the general election to run
4 against a Republican candidate, who was nominated by the
5 party, not through a primary, and wumped him, got 83
6 percent of the vote.

7 Luciano, who was a serious candidate, who
8 had substantial support in that District, didn't get
9 another turn at bat, with the larger electorate that
10 comes out in November. In a non-partisan election, the
11 November election would have been Reed versus Luciano,
12 and two candidates who had substantial support in that
13 District would have had a shot at getting elected,
14 rather than only one candidate. Obviously no comment
15 about Phil Reed, about the system, and the point is
16 there in a number of these other examples that we give.

17 I guess the conclusion that I would suggest
18 to you and what I suggested to the press, is that there
19 isn't a body of evidence that we've heard as the
20 assumption that non-partisan elections leads to decline
21 in turnout, that non-partisan elections in and of
22 themselves are harmful to minorities, or non-partisan
23 elections favor fringe candidates. The argument in one
24 of the papers, I can't help but tell you what, because I
25 find it so puzzling and indeed ironically amusing. The

1 two instances that were given for arguing that fringe
2 candidates were enhanced in non-partisan elections was
3 the presidential race in France and a gubernatorial race
4 in Louisiana. I mean, that's a stretch, ladies and
5 gentlemen.

6 So, ultimately, I think what it is that you
7 need to consider is what does this mean in New York
8 City; this unique, strange, wonderful city,
9 substantially larger than any other, with a higher
10 percentage of minorities, with a mixture of minorities,
11 no single, it's not black and white, mixture of at least
12 three significant minority groups; with a very active
13 press. This is not a one-newspaper town, like many of
14 the other cities.

15 Having had a fair amount of attention the
16 last couple of days in the press, I know a bit about
17 several of them, pro and con. With cable television and
18 over the air television far in excess of any other city;
19 with term limits, with campaign finance, with the Voting
20 Guide, with the debate program. There's no city that
21 has anything like that package of issues or components
22 of an electoral system.

23 So ultimately, what I'm suggesting is that
24 you need to look at New York City and think about New
25 York City and not be affected by what I think, what I

1 would characterize as out of date, not very relevant and
2 sometimes mischievous data about other jurisdictions.

3 If there are questions, I'd be glad to
4 answer, Mr. Chairman. There's a lot of material to
5 digest, this is not the only shot you'll have at me.

6 COMM. NEWMAN: Just as a straight factual
7 question. When Musseo and others talk about turnout not
8 being higher or maybe being lower, they're talking in
9 percentages, I assume, that the turnout --

10 DR. GARTNER: As opposed to absolute
11 numbers?

12 COMM. NEWMAN: Right.

13 DR. GARTNER: Yes, that's correct.

14 COMM. NEWMAN: Because presumably in a
15 non-partisan election, the base is higher.

16 DR. GARTNER: 1.3 million people could vote.

17 COMM. NEWMAN: So if the turnout was 30
18 percent in a primary, let's say, and using your example
19 up there, and 25 percent in a non-partisan election, you
20 still might have more people voting?

21 DR. GARTNER: The absolute number would be
22 significantly more.

23 COMM. NEWMAN: Using those same examples
24 that they used, has anybody gone back and looked at
25 absolute numbers?

1 DR. GARTNER: We've looked at it in a couple
2 of cases. It seems not to make any big differences, not
3 like a third of the electorate being excluded, although
4 there are now interesting data, I'm sure some of you saw
5 the story in The New York Times the other day, that half
6 the registered voters in Massachusetts are registered as
7 independent; that something like 30 percent of blacks
8 between 18 and 35, according to the Joint Center are
9 registered as independents. That base is climbing very
10 substantially.

11 CHAIRMAN MACCHIAROLA: Anyone else?

12 DR. GARTNER: Let me say, I know it's unfair
13 to expect many questions. I think there's a lot of data
14 in the report. I'd be glad to answer them in a
15 subsequent meeting or individually with any
16 Commissioner.

17 CHAIRMAN MACCHIAROLA: Father?

18 COMM. O'HARE: You're making the point that
19 because of the unique situation in New York City, the
20 data that's proposed from other jurisdictions really is
21 questionable in itself, but also isn't really pertinent.

22 DR. GARTNER: Exactly.

23 COMM. O'HARE: In terms of arguing that it
24 will reduce voter turnout.

25 DR. GARTNER: Or that will enhance it.

1 COMM. O'HARE: The other side is that one
2 argues to promote non-partisan elections, there's no
3 research to support the likelihood of those advantages
4 either.

5 DR. GARTNER: The positive advantages are in
6 the facts I've cited there, to have a million three
7 people who non-partisan elections would enfranchise.

8 COMM. SIEGEL: I would add something to
9 that. One thing we know about turnout, turnout is
10 driven by competitive elections.

11 DR. GARTNER: That's the other side of that.

12 COMM. SIEGEL: To the degree in which you
13 have competitive elections in a non-partisan framework,
14 you'll drive turnout.

15 DR. GARTNER: That's the point we made, I'm
16 sorry.

17 CHAIRMAN MACCHIAROLA: It also has the
18 effect of not only dealing with races in the District,
19 but also affecting citywide office, because to the
20 extent that people are involved in their local
21 elections, they're also going to be involved in the
22 election of the citywide level, and I think the more
23 people you can get to vote, the more people that are
24 going to be involved in the citywide level, the better
25 that is.

1 DR. GARTNER: I think you're the only
2 political scientist in the room. What is the meaning of
3 rolloff, rolloff is as it goes down, you're arguing in
4 effect the opposite of that.

5 CHAIRMAN MACCHIAROLA: Absolutely, because
6 it invests in more candidates at the local level, it
7 will bring out your electorate. In other words, if I am
8 a candidate for City Council and I have the support of
9 someone running for Mayor and running for Borough
10 President and I have a connection to enhance support for
11 me, I'm going to also be enhancing support for the
12 candidate that has that grass roots. I think Bill would
13 probably like that.

14 COMM. LYNCH: I'm not a PhD or political
15 scientist.

16 CHAIRMAN MACCHIAROLA: You're just a country
17 boy.

18 (Laughter.)

19 CHAIRMAN MACCHIAROLA: Anyone else have a
20 question?

21 MS. PATTERSON: I do. Do you have any
22 demographic data on the 1.3 million who are not
23 registered Democrats, particularly the 670,000 that
24 aren't registered to any party?

25 DR. GARTNER: We don't, but as you register,

1 as you know, you don't identify yourself by race.

2 COMM. PATTERSON: Any kind of exit poll
3 data or anything like that?

4 DR. GARTNER: Since they're not registered
5 in the primary, the exit polls talk to three or four
6 people who do the exit polling and, of course, that's an
7 unofficial activity, that's not a governmental activity
8 and none of those exit poll groups that I've talked with
9 ask those whom they interview whether they're, in the
10 general election, whether or not they're enrolled in a
11 party.

12 You can do some analysis, we did it in
13 districting, by looking at names, you do what's called a
14 surname directory, there are certain surnames that are
15 more likely to be Asian American and Hispanic, a
16 somewhat mischievous exercise, because it assumes that
17 the spouse who takes the same name as a male, would be
18 named, if I may, Garcia, is also a Latina, which she may
19 or may not be. There are some names, like Lynch --

20 COMM. PATTERSON: Or like Patterson.

21 DR. GARTNER: That might not fit.

22 COMM. PATTERSON: So that's misleading.

23 DR. GARTNER: At best imperfect.

24 MR. BERRY: We did cite two surveys in the
25 report, one from Paul Glick, Glen McIntyre (ph), who

1 said based on two different surveys the number or
2 percent of Asian Americans who are registered
3 independents is about 33 percent or one-third, and we
4 looked at the surveys by the Hispanic Federation showing
5 that the number of registered voters who are in neither
6 Democrat nor Republican Party about 15 percent. So
7 that's the best information we have.

8 DR. GARTNER: I'm not very confident in
9 those estimates.

10 CHAIRMAN MACCHIAROLA: Your data do show,
11 however, in your voter registration totals, that the
12 percentage of change in the Democratic Party has been 19
13 percent in increase in the decade between 1993 and 2003,
14 and for the unaffiliated, it's been 29.9 percent, and so
15 I think this 19.4 percent doesn't include the 82,000,
16 11,000 and 6,000 in the 2003 numbers. So you've had an
17 increase in people not registering in the Democratic
18 Party, people absenting themselves from that political
19 process.

20 It's a story that was in fact in The New
21 York Times over the weekend in terms of what, where
22 black voters are, young voters, immigrants, in walking
23 away from the political process or political parties for
24 any number of reasons.

25 DR. GARTNER: You're correct,

1 Dr. Macchiarola. I guess the reason I didn't mention it
2 is that we've talked about that before, and there were
3 presumptions, and I thought Commissioner Patterson asked
4 for some data behind those presumptions that that
5 increase was disproportionately young,
6 disproportionately immigrant, disproportionately
7 minority. I don't know that comfortably enough to want
8 to assert it. I think that's reasonable, and the Times
9 story and the research done at the Joint Center, I'm
10 very comfortable with. That's national research, not
11 local research.

12 CHAIRMAN MACCHIAROLA: It also struck me
13 that when you went through the different Councilmanic
14 districts, if you look at the first Councilmanic
15 District, that's an intriguing result, because it really
16 suggests that the underrepresentation of Asian Americans
17 in the Democratic Party is part of the reason that that
18 election was held between different people than it would
19 have been had the election been more open.

20 DR. GARTNER: Yes, that's true.

21 CHAIRMAN MACCHIAROLA: The other piece that
22 it shows, and I think Father O'Hare to some extent, this
23 bears on the work that has to be done in campaign
24 financing, it sort of suggests that most of the money
25 which goes into the general election is really going to

1 elections that are less competitive, and fewer of those
2 dollars are going into the elections that are really
3 competitive, so that, for example, Republican
4 candidates, where there are primaries, only get one shot
5 at campaign funds. Democrats running in competitive
6 primaries get one shot, but then when the election is
7 over, more money comes even though those elections, 42
8 of 51 of them are basically noncompetitive.

9 So we're in effect spending money on
10 elections that are less significant than the elections
11 would be if they were truly competitive and truly open
12 to people of all parties. So I think it ends up being a
13 plus in terms of the relationship between campaign
14 finance, as well as the general election, as being of
15 benefit.

16 DR. GARTNER: Yes.

17 CHAIRMAN MACCHIAROLA: Anyone else have any
18 observations on this report? Yes, sir.

19 COMM. NEWMAN: They're not observations,
20 they're questions or comments on Commissioner
21 Patterson's questions. There are firms that do that
22 analysis and could probably quickly get it done by
23 Tuesday and they layer geography over the name
24 dictionary so that they deal with the Patterson being
25 white or black.

1 DR. GARTNER: Actually, what they do --

2 COMM. NORAT: Try that in the Upper West
3 Side.

4 DR. GARTNER: In fact, we've consulted the
5 best firm in the city that does that. They use surname
6 directories to shred out the Hispanic and Asian American
7 voters. That leaves white and black voters. They then
8 look at geographic location for white and black voters.
9 It's a very dicey kind of thing.

10 COMM. NEWMAN: Every candidate running for
11 office risks their careers on those lists.

12 DR. GARTNER: I would not want to spend,
13 very frankly, the public's money to hire the best of
14 those firms, and I've talked with them about it.
15 Without turning the business down, they weren't very
16 encouraging that I'd get numbers that I could stand
17 upon.

18 CHAIRMAN MACCHIAROLA: I don't know to what
19 extent we have to be precise on this. We're going to
20 put a proposal forward, we're going to put it with
21 information we best have and I would rather get our
22 people focused on the language that has to be presented
23 rather than the data that will only, I think, if it
24 doesn't confirm, at least won't -- I just don't see it
25 having any --

1 COMM. NEWMAN: Okay. The second is, Scott
2 Stringer sent us all a letter in which he referred to
3 the 1970 Los Angeles primary. There was another in
4 2001, which as I understand was more competitive. Can
5 we look at what the turnout was?

6 COMM. SIEGEL: The turnout went way up in
7 2001, which is the obvious reason why Scott doesn't
8 mention it. I have the number at home.

9 CHAIRMAN MACCHIAROLA: There's too much
10 blood from the last time that Mr. Stringer took on
11 Mr. Siegel and it's not Mr. Siegel's blood.

12 DR. GARTNER: I do want to underscore
13 Commissioner Siegel's point. That while there are
14 structural impediments to participation, competitiveness
15 is a major factor and the more we can encourage
16 competitiveness as well as dealing with structural
17 issues --

18 COMM. NEWMAN: I don't remember the numbers,
19 but I'm sure the 2001 Democratic primary in New York
20 City had a much greater turnout than in 1997.

21 DR. GARTNER: Mayoral. Absolutely. For the
22 same reason.

23 CHAIRMAN MACCHIAROLA: Anyway, it would be
24 useful, since he wrote us this letter, to pull out the
25 2001 data.

1 DR. GARTNER: We'll try to do that.

2 COMM. SIEGEL: Apropos, what was
3 extraordinary about the 1997 Mayoral race there, it was
4 won by 20 points, there was so little interest, there
5 was a media blackout. The eleven o'clock news carried a
6 total of 23 minutes of election coverage. It was
7 Riordan, a popular incumbent, versus Tom Hayden.

8 DR. GARTNER: The Tom Hayden.

9 COMM. SIEGEL: Say no more.

10 DR. GARTNER: Jane Fonda's ex-husband.
11 Exactly. Will the Commission let me ask Anthony to turn
12 to --

13 CHAIRMAN MACCHIAROLA: Sure. Are there any
14 other questions at all on this? Okay, thank you, Alan.

15 COMM. LYNCH: Just help me, Mr. Chairman,
16 Tuesday, we'll have an opportunity to look at this and
17 revisit this?

18 CHAIRMAN MACCHIAROLA: On Tuesday, because
19 we don't have the proposals for non-partisan elections,
20 we're not going to vote on anything on non-partisan
21 elections until Tuesday. We are going to do the
22 procurement and the agency reorganization tonight.
23 Originally planning to do it all.

24 COMM. LYNCH: The reason I ask that
25 question, we were given a lot of information and I'm not

1 quick enough to go through it, and I need my two
2 colleagues to help me go through it. I just want to
3 know, will we have an opportunity to revisit this
4 discussion on Tuesday?

5 CHAIRMAN MACCHIAROLA: Non-partisan
6 elections.

7 COMM. LYNCH: Yes.

8 CHAIRMAN MACCHIAROLA: Yes. That's why we
9 moved it ahead. We moved it ahead so that we'll do
10 non-partisan elections and then hopefully have enough
11 information to put this to a vote. We're going to put
12 to a vote tonight, procurement and agency
13 reorganization, papers that have already been
14 distributed.

15 DR. GARTNER: Dr. Macchiarola, I think we
16 understand Mr. Lynch's question to mean whether you'll
17 have a shot at the data we just presented now.

18 COMM. LYNCH: That we just got tonight.

19 DR. GARTNER: I presume the answer is yes to
20 that?

21 CHAIRMAN MACCHIAROLA: Yes.

22 COMM. LYNCH: I hope we don't go straight to
23 voting, but we have an opportunity to discuss this.

24 CHAIRMAN MACCHIAROLA: Absolutely. That's
25 why we're starting early.

1 COMM. LYNCH: Okay.

2 CHAIRMAN MACCHIAROLA: Okay, we're now going
3 to do the two items that --

4 DR. GARTNER: I'm sorry, could I just say
5 one thing. I said it the other night about Mark Tyler
6 and Elaine Reese on the procurement. Needless to say,
7 the work that I presented is the work of many people,
8 most particularly including Frank Barry, who worked long
9 and hard and good hours on this, and I really want to
10 acknowledge his role, so that you share the credit, if
11 not the responsibility.

12 CHAIRMAN MACCHIAROLA: You didn't put your
13 name on it, Alan, so I assume it was all staff. It's
14 not like a real professor to hide himself.

15 DR. GARTNER: I never understood in medical
16 journals, Dr. Macchiarola, when they had seventeen
17 authors, how they figured out. Did they arm wrestle? I
18 never wrote with more than one author, so she and I just
19 went A-B, B-A.

20 CHAIRMAN MACCHIAROLA: Mr. Crowell.

21 MR. CROWELL: What we have for you tonight
22 are two different sets of issues; one on procurement,
23 one on agency reorganization and Government
24 accountability issues, a number of which we discussed on
25 Monday night.

1 Let's start with the agency reorganization
2 materials. This is an opportunity for you to look at
3 the material, make comments as to revisions and for us
4 to bring back to you whatever comments you have and
5 changes you wish, if there are any. So, the first issue
6 we're addressing is coordination of the City's
7 administrative justice system, and this is the proposal
8 we talked about that would provide for similar to the
9 criminal justice coordinator, a coordinator --

10 COMM. GARCIA: Anthony, I'm sorry, do you
11 have a handout?

12 MR. CROWELL: I'm sorry, I thought that
13 everybody had one. They were e-mailed to everyone
14 earlier.

15 (Pause.)

16 MR. CROWELL: And, of course, to the extent
17 you want additional testimony from any experts, we have
18 time next week to arrange for that as well for any of
19 the proposals that we're discussing here tonight.

20 All right, again, I'll wait till --

21 DR. GARTNER: Go ahead.

22 MR. CROWELL: On the coordination of the
23 City's administrative justice system, this would provide
24 for coordination of operational policies and management
25 practices among the various City administrative

1 tribunals to improve the overall effectiveness of the
2 city's administrative justice system.

3 As I explained to you the other night
4 currently the city's administrative justice system are
5 created through a variety of various state and local
6 laws, so while consolidation is not an option for a
7 Charter Revision Commission, certainly coordination of
8 them is something that is achievable and would be good
9 for the public in terms of insuring that the public's
10 needs are met with the tribunals as well as they all
11 operate efficiently as an appropriate case management
12 technology and have proper training and professional
13 development opportunities available to them.

14 In addition, the proposal also provides
15 for -- also authorizes the Mayor to promulgate rules
16 establishing a code of professional conduct for Hearing
17 Officers and Administrative Law Judges. Currently only
18 the Office of Administrative Trials and Hearings
19 requires of its own Administrative Law Judges that they
20 adhere to a code of judicial conduct similar to the
21 states, but there's no other provision in law that
22 provides for such a code of professional conduct and so
23 this is what this proposal would do.

24 Does anyone have any comments on the
25 specific language effectuating the proposal?

1 COMM. NEWMAN: One, I apologize, because
2 obviously I'm reading this stuff as you speak. It says
3 the Chief Administrative Law Judge at OATH may serve as
4 the coordinator of administrative justice.

5 MR. CROWELL: Yes.

6 COMM. NEWMAN: Does that not mean that in
7 the construct of all these various agencies, a person
8 who runs one of them now controls the fates of others?
9 Meaning, if I were to go to, use Criminal Justice
10 Coordinator as an example. I would think if the Police
11 Commissioner was appointed the Criminal Justice
12 Coordinator, there would be a variety of very unhappy
13 people, such as the Probation, Corrections Commissioner,
14 DA's --

15 CHAIRMAN MACCHIAROLA: I think that's the
16 reason for the language that says "may." I think you're
17 not requiring it, but that you're permitting the Mayor
18 to do it.

19 COMM. NEWMAN: There's an instinct in me
20 that says that we shouldn't allow it, and so that "may"
21 is --

22 MR. CROWELL: A couple of things. First
23 thing is the language explicitly states that the
24 coordinator's role is to advise and assist the Mayor in
25 the coordination of policies, plans and operations

1 common to the City's administrative tribunals. This is
2 not designed to provide any supervisory role over any of
3 the individual tribunal chiefs or their judges or
4 hearing officers. Rather, this is someone who serves as
5 an ombudsman between tribunals and the Mayor, that
6 coordinates issues that are common to all of them and
7 important to all. So it's not creating --

8 COMM. NEWMAN: It was the budget stuff. He
9 who controls the gold controls whatever.

10 MR. CROWELL: They assist in terms of
11 establishing budget priorities, I understand what you're
12 saying. Similar to the way the Criminal Justice
13 Coordinator does now, but the Criminal Justice
14 Coordinator by no means controls the fate of criminal
15 justice agencies.

16 COMM. O'HARE: What prevents the Mayor from
17 doing these things right now? Does he need these
18 Charter revisions? We're saying he may do them if he
19 wishes. Couldn't he do them right now, according to the
20 coordinated policy, issues, codes of conduct?

21 MR. CROWELL: Yes, this would codify the
22 ability to do this. Right now the Mayor could do this
23 through other means, whether it be by Local Law or
24 perhaps even Executive Order. However, this would put
25 in the Charter a requirement that these operational

1 issues be coordinated and provide for a code of
2 professional conduct.

3 COMM. O'HARE: So we're telling the Mayor
4 that he has to do what he may do now already, that he
5 could appoint a coordinator right now.

6 MR. CROWELL: Yes.

7 COMM. O'HARE: We're saying now, putting
8 into the Charter that he has to.

9 MR. CROWELL: Yes.

10 CHAIRMAN MACCHIAROLA: Well, there's an
11 office that's been established, the Mayor shall appoint.

12 COMM. O'HARE: What purpose does that serve?

13 CHAIRMAN MACCHIAROLA: It picks up on the
14 discussions that we've had. We had a pretty extensive
15 discussion on this question, trying to balance between
16 the need to have a strengthened administrative trial
17 procedure, at the same time recognizing, number one,
18 there are various jurisdictions that presently have
19 authority in this area, and that is not simply something
20 that can be established without a good deal of work at
21 the various agency' concern.

22 There's also, from the standpoint of what
23 we've seen in testimony, confirmed that an agency that
24 is in fact focused on the way in which Justice is
25 dispensed through the various agencies of the City

1 Government. That issue has been overlooked from the
2 standpoint of oversight procedure and that overlooking
3 that agency has created some difficulties both within
4 the agencies and some things that in the OATH office
5 have been done extraordinarily well, and it's designed
6 to professionalize it, designed to coordinate it, to
7 have a level of supervision that is not at the same time
8 interfering with the work of the various agencies and to
9 bring and elevate the level of administrative tribunals
10 to a position where it will be taken seriously by the
11 Mayor. Sort of reminds him of what we think is
12 something that hearings should include.

13 COMMISSIONER KHALID: Mr. Chairman, isn't
14 that a new position, there's going to be a new position
15 created, correct?

16 CHAIRMAN MACCHIAROLA: It calls upon the
17 Mayor to appoint someone and authorize him. He may very
18 well appoint the head of OATH. I think part of it may
19 take place when he sits with Corporation Counsel and
20 others involved and decides just exactly how do we want
21 to shape this. Do we want to go at it in an aggressive
22 fashion? Do we want to go from the standpoint of
23 codifying new rules? Do we want to go at it from a
24 standpoint of training, and code of ethics, in which
25 case, the agency that has a code of ethics and is doing

1 a good job could be the lead agency.

2 So it instructs the Mayor without forcing
3 the Mayor to do something that he may not necessarily
4 do.

5 Okay. Any further discussion on this? Do
6 we have a sense of the body that it should be moved? Do
7 you want me to count noses? Khalid, do you --

8 COMMISSIONER KHALID: I would go along with
9 that.

10 CHAIRMAN MACCHIAROLA: Commissioner Norat?

11 COMM. NORAT: I think I'll go along with
12 that. I'm a little bit hesitant as to why we want to
13 tell the Executive how to run the show. I mean, that's
14 one of my concerns is, I believe in a very strong
15 Executive. I'm not sure, I apologize, because I've
16 missed a couple of meetings, so where did this
17 originate? Whose idea was it to mandate it, because I'm
18 hearing --

19 MR. CROWELL: Originally, what you had was
20 testimony back in May, I believe, at this very
21 facility--

22 COMM. NORAT: From?

23 MR. CROWELL: From the Deputy Chief Judge of
24 the Office of Administrative Trials and Hearings who
25 spoke about OATH as a resource to hear cases for

1 possible consolidation of cases into OATH. But as the
2 staff researched it more, various state laws really made
3 it more difficult. But it's the recognition that OATH
4 is the citywide tribunal that most agencies can refer
5 cases to OATH for findings and non-binding
6 determinations. They go back to the agency for signoff
7 ultimately, but that OATH has tremendous resources in
8 terms of the citywide scope.

9 COMM. NORAT: So far I'm in agreement.

10 MR. CROWELL: So, then, what evolved is
11 coordination of the tribunals, because there isn't
12 anyone right now who coordinates all these tribunals.
13 They have, of the tribunals, there's about five hundred
14 attorneys employed as ALJ's or hearing officers and this
15 would provide a mechanism to have policies and practices
16 and training all synchronized for that. You should know
17 that the Deputy Mayor for legal affairs who oversees the
18 Office of Administrative Trials and Hearings is also
19 very supportive of this.

20 In fact, this is something I've been
21 researching contemporaneous with this and in addition
22 the Office of Management and Budget was very supportive
23 of this as well. So there's a lot of support on the
24 administration side.

25 COMM. NORAT: My question wasn't so much

1 what it does, because I think what it does makes a lot
2 of sense. My question was following Father O'Hare's
3 question was, the Mayor can do it. I have a built in
4 dislike for putting in all this detail for how you run
5 the Government in the Charter. I personally don't think
6 these things belong in the Charter and that's why it's
7 very difficult now.

8 MR. CROWELL: This puts in the explicit
9 authority to promulgate rules for a professional Code of
10 Conduct, which should be explicit.

11 COMM. NORAT: Now you hit on the point I
12 was looking for. All right, I'm for it.

13 MR. CROWELL: It's the explicit
14 authorization to do it.

15 COMM. NORAT: Which he could or could not
16 have. Certainly.

17 CHAIRMAN MACCHIAROLA: Patricia?

18 COMM. PATTERSON: I'm in favor of it. It
19 could raise the level of the administrative tribunals to
20 have someone who is knowledgeable specifying the code of
21 professional conduct. That's what I find appealing
22 about it.

23 CHAIRMAN MACCHIAROLA: Father?

24 COMM. O'HARE: If the Mayor wants to be told
25 what he can do already, I have no problem with it.

1 MR. CROWELL: This is consistent with what a
2 lot of other jurisdictions have done, especially the
3 District of Columbia, New Jersey. They've moved towards
4 centralizing their tribunal system. New York City can't
5 do it, but this is a step towards centralization and
6 you'll also note here it provides for programs and
7 development of alternative dispute resolution.

8 COMM. NORAT: The substance, I don't think
9 anybody has a problem. The questions we were getting
10 was more on you were forcing the Mayor to do something.

11 MR. CROWELL: Mechanics.

12 COMM. O'HARE: You did say Deputy Mayor
13 Robles Roman supports this?

14 MR. CROWELL: Yes. As you know she was
15 Deputy Administrator --

16 CHAIRMAN MACCHIAROLA: Does she have a
17 Fordham degree, by chance?

18 MR. CROWELL: She has a Fordham degree and
19 Fordham Law School.

20 COMM. O'HARE: As does her husband.

21 COMM. LYNCH: Father O'Hare. Supports it
22 I'll support it.

23 COMM. GARCIA: I support it.

24 COMM. NEWMAN: I'll support it, though I'm
25 still troubled by the joint function that's going to end

1 up, rather than an independent function.

2 CHAIRMAN MACCHIAROLA: Fred?

3 COMM. SIEGEL: Yes.

4 CHAIRMAN MACCHIAROLA: Okay, it goes.

5 COMM. NEWMAN: I support it, but I'm
6 troubled by the ability of one of the players to become
7 the coordinator.

8 CHAIRMAN MACCHIAROLA: Okay. Voter
9 Assistance Commission. Oh, you missed this, Father.
10 This was a lively discussion when you were gone.

11 COMM. O'HARE: I see it's changed.

12 MR. CROWELL: It has changed.

13 COMM. O'HARE: I want to make it clear, I
14 was never proposing that it be under the Campaign
15 Finance Board. My point was, if it is going to be
16 there, should be certain changes made.

17 DR. GARTNER: At least I understood that.

18 CHAIRMAN MACCHIAROLA: Okay, you want to
19 tell us about this one?

20 MR. CROWELL: This, the Voter Assistance
21 Commission is currently comprised of sixteen members.
22 What this proposal would do is reducing it from sixteen
23 to seven members. Five of the members, one each from
24 the five boroughs will be appointed by the Mayor with
25 the advise and consent of the Council.

1 The Council Speaker would appoint one member
2 in consultation with the Mayor and the Public Advocate
3 would sit ex officio. The Chair of the Commission would
4 be appointed from the -- I'm sorry, would be designated
5 from the appointed members by the Mayor in consultation
6 with the Speaker and the Coordinator of Voter Assistance
7 will be appointed by the Mayor with the advise and
8 consent of the Council, and what we did explicitly to
9 address concerns raised by Commissioner Lynch and some
10 other Commission members, was to put in the language
11 that no two members appointed by the Mayor shall be a
12 resident of the same borough.

13 Because the Mayor would be appointing five
14 members, that would provide for representation of one
15 member from each of the boroughs.

16 DR. GARTNER: Essentially, what we tried to
17 do is to strike a balance on this question of size,
18 about borough involvement, about involvement of the
19 Mayor and the Council in this kind of balance of advise
20 and consent and approval, try to strike a balance to
21 give a resource there.

22 CHAIRMAN MACCHIAROLA: And as best we can
23 figure out, no one was happy with the way in which it's
24 presently structured.

25 DR. GARTNER: I think that's a fair

1 consensus.

2 COMM. O'HARE: I just have a general
3 question. Is this the language that's going to be on
4 the ballot? If we approve this language, this is the
5 language necessarily that's going to revise the Charter,
6 this language, but this is the language that's going to
7 be on the ballot?

8 MR. CROWELL: We will develop the ballot
9 language for your review based on the outcome of the
10 proceedings tonight and subsequent nights.

11 CHAIRMAN MACCHIAROLA: We're going to have
12 hearings --

13 COMM. O'HARE: I guess my question is how
14 detailed is this language going to be on the ballot.

15 DR. GARTNER: My flip answer is to fix that,
16 and the description something more than that, but
17 clearly we're not going to have the level of detail
18 here, but in a certain sense, we've jumped to, because
19 what I, that we've jumped to the Charter change
20 language, skipping over the step of the ballot language.

21 CHAIRMAN MACCHIAROLA: Well, also, I mean,
22 obviously, this will be worked with the Campaign Finance
23 Board, because the Voter Guide will in a sense be -- I
24 don't know --

25 DR. GARTNER: There are two separate steps.

1 One is the Charter language --

2 CHAIRMAN MACCHIAROLA: Do you do that?

3 MR. CROWELL: We do that as well.

4 DR. GARTNER: One is the ballot language,
5 the other is the language in the Voter Guide.

6 MR. CROWELL: It's a three-pronged process.
7 One, we will adopt ballot questions. Accompanying the
8 ballot questions will be a summary of what the
9 provisions would do, what change it will make. That
10 will appear on the ballot as well as appear in the Voter
11 Guide.

12 CHAIRMAN MACCHIAROLA: And then a narrative
13 description --

14 MR. CROWELL: The narrative description is
15 what I'm talking about. That would appear in the Voter
16 Guide and the ballot. It's accompanying text explaining
17 what the provision does.

18 CHAIRMAN MACCHIAROLA: The ballot question
19 is like that (indicating). The Voter Guide is like that
20 (indicating).

21 COMM. O'HARE: That I understand. Once you
22 make those gestures, Frank, it clears it up.

23 CHAIRMAN MACCHIAROLA: Any questions on
24 this?

25 MR. CROWELL: This is one issue I would like

1 to raise. Currently the term for that member is three
2 years. The staff draft presents five years as the first
3 option, it would be staggered over five year terms.

4 Another option would be four year terms. I
5 think there's a number of ways of thinking about it. If
6 you did a five year term, it would, no one would be
7 appointed for any single amount of time for any one
8 Mayor or Council Speaker. A four year term would be
9 staggered, so there would be some overlapping between
10 administrations, arguably. It's just an issue for you
11 to decide how you want to handle that in terms of
12 insuring a broad representation in that at no one time
13 there's only one Mayor's appointees or one Council
14 Speaker's appointees on the board.

15 CHAIRMAN MACCHIAROLA: So the terms are
16 staggered.

17 MR. CROWELL: The terms are staggered. The
18 way we wrote it right now, obviously, there's
19 flexibility for you to define the term. We would
20 recommend that three would serve for a two-year term in
21 the beginning and then another three would serve for a
22 four-year term and that would kick off the staggering
23 and upon the effective date of this, the current terms
24 of the City members would expire and the entire
25 Commission would need to be reappointed.

1 CHAIRMAN MACCHIAROLA: Speaker's nominee
2 gets a four-year term, two Mayoral appointees get a
3 four-year term and three Mayoral appointees get a
4 two-year term at the beginning and after that everyone
5 gets a four year term.

6 MR. CROWELL: Could be five or four. You
7 could keep it at three also.

8 DR. GARTNER: The design we proposed allows
9 for a mixture of appointing authorities at any one time.
10 I think is this that is a positive step.

11 CHAIRMAN MACCHIAROLA: Well, at one time
12 you're going to get three Mayoral appointments. At
13 another time you're going to get two Mayoral
14 appointments and a Council appointment. I think four
15 year terms is better to do it that way. I wouldn't
16 worry about who the incumbent is. Anybody else, any
17 thoughts?

18 COMM. LYNCH: I would ask, Dr. Gartner, my
19 mistake. We were supposed to be in consultation and I
20 was probably busy focussing somewhere else. We just
21 lost the whole issue of borough input?

22 DR. GARTNER: No. You and I had a
23 conversation and you suggested a scheme that produced
24 the larger body that I thought made sense. I played
25 around with the notion of having the Borough Presidents'

1 involvement, and the requiring that the Mayor's
2 appointees, A, be from each of the five boroughs and, B,
3 that they be done with the advise and consent of the
4 Speaker, I believe is a way or at least it's intended to
5 be a way that at the very least the borough delegations,
6 as I understand it. How the Council runs in such
7 matters would be a matter in which the Speaker would
8 consult with the borough delegation, it makes his or her
9 appointment of a Manhattan seat a Bronx seat, whatever.

10 That was our effort to strike a balance,
11 it's obviously not the only way to strike a balance.
12 The change here reflects surely some of your ideas at
13 the meeting. It doesn't reflect all of your ideas.

14 CHAIRMAN MACCHIAROLA: Do you want to pursue
15 the modification and get a sense of the body that the
16 Borough Presidents do this or do you prefer the way it
17 was done.

18 COMM. LYNCH: In our discussion I was trying
19 to figure out a way where there would be consultation
20 between the Council delegation and the Borough
21 Presidents' office, and that they come up with a
22 candidate together, and I think I, right now, I could
23 live the way it is. I'm fine.

24 CHAIRMAN MACCHIAROLA: Okay. Anyone else on
25 this issue or on the other issue on Voter Assistance

1 Commission?

2 MR. CROWELL: So for a four-year term.

3 CHAIRMAN MACCHIAROLA: I think it makes the
4 most sense, four years, then every two years. Okay?

5 COMM. NEWMAN: Can I ask a question? I have
6 no problem with this, but at an earlier point and I
7 probably missed it at one of the meetings I was gone
8 for, there was a discussion of the Voter Assistance Unit
9 being merged into the Campaign Finance Board.

10 DR. GARTNER: That was the reference that
11 Father O'Hare made a bit ago. I think we came out of
12 the meeting, you came out, I'm sure the staff came out
13 of the meeting where Professor Krause, the Chair of the
14 Voter Assistance Commission, testified that it was a
15 broken system. In effect the options seemed to be
16 three, as Dr. Macchiarola would say: Issue a death
17 certificate; second, some scheme of reducing the numbers
18 that Professor Krauss talked about, and third, in some
19 way tucking it into the Voter Assistance Commission.

20 Conversations I had with Father O'Hare, he,
21 one, helped me know about the history of previous
22 involvement, and the problems of a design that had on
23 the one hand an autonomous Voter Assistance
24 Commission -- I think I used the word "placed" in the
25 Campaign Finance Board, and Father O'Hare, I think at

1 least in my judgment, raised a series of questions of
2 what does it mean to live in someone else's house if
3 someone else hasn't invited you there and doesn't have
4 authority over the way in which you behave.

5 And so as we struggled back and forth
6 between those options, it seemed that the various ways
7 of incorporating it into the Campaign Finance Board,
8 whatever the general merit was, which I continued to
9 think about, I didn't think that we could end up with a
10 scheme that allowed for efficient management and
11 operation of the system and that was Father O'Hare's --

12 COMM. O'HARE: I'm perfectly content with
13 the proposal. But before I went off to Asia I thought
14 you adjusted it so that the approval is that it would be
15 in the Campaign Finance Board, but that the coordinator
16 would be appointed by the Campaign Finance Board.

17 DR. GARTNER: I did make that change in
18 response to your concern. On reflecting on it, it ended
19 up not making sense and this was a better option. I
20 don't think either one of the options are so extremely
21 better than the other. I could live with either option,
22 I think this is a slightly better option.

23 CHAIRMAN MACCHIAROLA: Okay. Any problem
24 with this? Okay. This one's okay.

25 COMM. LYNCH: Mr. Chairman, I have a concern

1 on how we'll proceed. And I raised this in my memo. It
2 looks like we're doing consensus for these what I call
3 easy issues to move, it's moving pretty simple, but I'm
4 wondering if we're going to take a formal vote on this.

5 CHAIRMAN MACCHIAROLA: I could do that right
6 now. What I was doing, the first time I went around the
7 room so I could do that and put everybody on the record
8 with this. Commissioner Siegel, for?

9 COMM. SIEGEL: Yes.

10 CHAIRMAN MACCHIAROLA: Mr. Newman?
11 Mr. Garcia?

12 COMM. NEWMAN: Yes.

13 COMM. GARCIA: Yes.

14 COMM. LYNCH: Yes.

15 COMM. O'HARE: Yes.

16 COMM. PATTERSON: Yes.

17 COMM. NORAT: Yes.

18 COMMISSIONER KHALID: Yes.

19 CHAIRMAN MACCHIAROLA: Okay.

20 COMM. LYNCH: I'm just worried about as we
21 get down and the stuff gets a little tougher.

22 CHAIRMAN MACCHIAROLA: One of the things, I
23 guess, is from the world I'm in, the less I can -- the
24 less difficulty -- it's better to make it less difficult
25 than more difficult. So if consensus exists, I'd much

1 rather, if there is a consensus, we have six slots,
2 seven votes, eight votes, nine votes, I don't know that
3 we have to identify who is where.

4 COMM. O'HARE: It doesn't sound like the
5 world of academia that I'm in.

6 CHAIRMAN MACCHIAROLA: Preliminary Mayor's
7 Management Report. This one's a live one, I think.
8 Okay.

9 MR. CROWELL: Okay. As we discussed on
10 Monday night, there is a proposal that the Preliminary
11 Mayor's Management Report be eliminated from the Charter
12 and it would leave in place, obviously, the Mayor's
13 Management Report, which must be issued by September
14 17th annually. However, by eliminating the Mayor's
15 Preliminary Management Report we would be allowing for
16 advances in technology through the citywide
17 accountability program, the CAPSTAT program and My
18 Neighborhood program to provide the interim data on
19 agency performance and that's really an up to the
20 minute, up-to-date online information on agency
21 performance and Government performance overall.

22 And so what we did with proposed revision
23 was to remove any reference to the Preliminary Mayor's
24 Management Report in the Charter, but left all other
25 provisions untouched.

1 CHAIRMAN MACCHIAROLA: Okay. We had that
2 discussion pretty extensively.

3 MR. CROWELL: A pretty extensive discussion,
4 yes.

5 CHAIRMAN MACCHIAROLA: You didn't
6 participate in it, this would be a discussion you, I
7 think, would be concerned about and from Bill's memo, he
8 may be a little anxious to have that discussion, too.

9 COMM. NEWMAN: What is CAPSTAT? What is My
10 Neighborhood?

11 MR. CROWELL: CAPSTAT is the Citywide
12 Accountability Program, like COMSTAT, but instead it
13 gives agency performance and government program service
14 performance. My Neighborhood is a new program on line
15 that someone can plug right into where they live and
16 there's statistics available about crime, about a whole
17 host of other issues; services that are available,
18 things like that, nearest facilities to use. So it's
19 sort of a catchall database for every bit of information
20 you would need in your immediate geographical area.

21 COMM. NEWMAN: CAPSTAT, is that information
22 public also?

23 MR. CROWELL: Absolutely, it's on line.

24 DR. GARTNER: If you ask Mr. Siegel, he will
25 show you.

1 CHAIRMAN MACCHIAROLA: We had a discussion
2 of this the last time, Steve, and Fred in fact raised
3 some issues.

4 COMM. SIEGEL: I couldn't find it. Then I
5 realized I'm not so good at this. I got a phone call, I
6 got assistance from my children and I found it.

7 CHAIRMAN MACCHIAROLA: He also got the news
8 that 65,000 other New Yorkers had gotten the information
9 before him.

10 COMM. NEWMAN: The number of indicators the
11 same?

12 MR. CROWELL: I think it may be more.

13 DR. GARTNER: Greater.

14 COMM. GARCIA: And there was a general
15 feeling that the information in the Preliminary
16 Management Report, once it's published, is actually out
17 of date.

18 MR. CROWELL: It's out of date, that's part
19 of it. The other thing is that publication alone
20 requires an enormous amount of staff resources that
21 could be dedicated instead to actually doing what they
22 do with the CAPSTAT and the My Neighborhood program, as
23 well as focussing on the broader agenda of actually
24 meeting service delivery goals for the ultimate report
25 which is in the MMR.

1 CHAIRMAN MACCHIAROLA: Now, your discussions
2 have also occurred with the Agency?

3 MR. CROWELL: We've had extensive
4 discussions with the Mayor's Office of Operations, which
5 spearheads the publication of the MMR and PMMR and
6 they're very supportive of this. Agencies are also
7 supportive of this. Given staff resources, they must
8 dedicate twice annually both through the PMMR and MMR.

9 COMM. O'HARE: Anthony, it seems to me that,
10 I wasn't in the earlier discussion, I'm just curious.
11 The advances in technology that you cite would seem to
12 me to make production of the preliminary, the PMMR much
13 easier. Therefore, would not take so much time to do
14 it.

15 MR. CROWELL: It's the actual publication of
16 it and time that it takes to provide. The PMMR cannot
17 be as up to date as the on line program, plus there's
18 obviously the cost for staff resource to both produce
19 the printed version and actually publish the printed
20 version, so you're reducing staff time and cost as well
21 as publication costs for information that's readily
22 accessible on line or through the 311 program, which for
23 those who are not on line, can call up 311 immediately
24 and get whatever information they need and that's
25 generally up to the minute information.

1 DR. GARTNER: On your question,
2 Dr. Macchiarola, the head of the Mayor's Office of
3 Information, Susan Kupferman, has asked my permission
4 and I agreed for her to contact the major agencies that
5 they deal with in terms of the PMR and she reported to
6 me as recently as this afternoon that the response was
7 positive and several of the people she talked to
8 volunteered to come and testify at the hearings next
9 week in favor of this change. The one name I'm
10 frequently hearing is Mary McCormack from the Fund for
11 the City of New York.

12 COMM. GARCIA: This all makes sense to me,
13 but we're making a Charter change to eliminate the PMMR.
14 The existence of CAPSTAT and the My Neighborhood
15 programs, with a new Mayor do those programs necessarily
16 continue to exist or could they possibly go away because
17 a new Mayor decides I'm not going to do that anymore.

18 MR. CROWELL: I think if you look at it
19 practically speaking, while those programs -- first of
20 all, the requirement is for information to be made
21 available generally. What you have to understand,
22 there's been a lot of political accountability with
23 removing information like that.

24 B, the Council is now requiring on line
25 reporting. DORIS has to get on line reports from

1 agencies, agencies are required to have performance
2 statistics, plus MMR, it all feeds in that program.
3 There's an enormous level of political accountability,
4 so receiving information, it comes to be as a matter of
5 course in a public place.

6 CHAIRMAN MACCHIAROLA: It doesn't eliminate
7 the requirement for the Mayor's Management Report.

8 MR. CROWELL: That's precisely the data that
9 will be used to ultimately produce the final printed
10 version of the MMR.

11 COMM. NEWMAN: Since a couple of people
12 volunteered to come and testify, can I suggest that we
13 maybe postpone this and have that happen, and I gather
14 from Bill's memo that Harvey Robbins is troubled by
15 this, and that we invite him to come and tell us what
16 his problems are and then I guess for me, trying not to
17 duplicate Fred's experience, can you send me the
18 websites and I'll try not to rely on my children to
19 rescue me?

20 CHAIRMAN MACCHIAROLA: I think if we don't
21 vote to put this forward, we don't have a topic for
22 discussion. So I think we have to vote to put it
23 forward.

24 COMM. LYNCH: Before they can come and
25 discuss it?

1 CHAIRMAN MACCHIAROLA: They can come and
2 testify and tell us whether we are wrong headed in what
3 we intend to do, in which case we will vote. The vote
4 tonight is not a vote to put it on the ballot. The vote
5 tonight is to put it out so we can get comments on it,
6 so that on the 25th of August, we can vote what we want
7 to put on the ballot. If we don't give them a framework
8 to look at, then we're not going to be able to get
9 responses. Why should anybody come to testify if we
10 don't put it up? I think we have to put it up.

11 COMM. NEWMAN: I don't have a problem with
12 putting it out there for discussion.

13 CHAIRMAN MACCHIAROLA: Then we'll listen to
14 what people tell us. As we have. We've made changes
15 when people told us things.

16 Okay, so this is a vote to put it forward.
17 Is there any other comment, anyone want to go around the
18 room again? We'll start on this side. Dr. Khalid?

19 COMMISSIONER KHALID: Yes.

20 COMM. NORAT: Yes.

21 COMM. PATTERSON: Yes.

22 COMM. O'HARE: Yes.

23 COMM. LYNCH: Yes.

24 COMM. GARCIA: Yes. Yes, but I'd also like
25 to suggest that we invite the City Council staff and the

1 Comptroller's staff to come and testify as well and the
2 Citizens Budget Commission. I'm trying to think of
3 people who use the report.

4 CHAIRMAN MACCHIAROLA: You know what? We're
5 going to send a notice out to people and then if they
6 want to testify they can come and testify and if those
7 groups want to testify, obviously we will hear from
8 them.

9 COMM. LYNCH: I'm not saying the list should
10 be for everyone, like we did in the earlier hearings,
11 where we'll have expert testimony. Anybody else who
12 wants to --

13 CHAIRMAN MACCHIAROLA: I think the format is
14 to have anyone testify.

15 DR. GARTNER: Yes, it's an open hearing.

16 COMM. NEWMAN: I think there's a nucleolus
17 of people you want to reach out to.

18 COMM. NORAT: Call them. You know them,
19 call them.

20 COMM. NEWMAN: Not my job.

21 CHAIRMAN MACCHIAROLA: No, my feeling is
22 whoever wants to testify should be free to testify and
23 obviously if these groups, obviously any State official
24 or any representative will certainly be permitted to
25 testify. We're not going to not allow that, but I think

1 to --I don't want to be in the business of sending out
2 invitations to some and not to, so any Commission member
3 should feel free to extend the invitation to anyone on
4 behalf of the Commission. You don't need the approval
5 of the Commission, the Commission will listen to anyone
6 you would like to invite to testify. But I'm not saying
7 A comes and B doesn't, and through that I'm going to be
8 told that I did not invite someone. We're inviting
9 everyone. Did you vote, Fred?

10 COMM. SIEGEL: Yes.

11 CHAIRMAN MACCHIAROLA: There is a
12 requirement here that prior to April 8 that each of the
13 Council conducts public hearings on the Preliminary
14 Management Report proposed program and performance
15 goals, measures of City agencies contained in such
16 report and the Council shall submit to the Mayor and
17 make public a report or reports of findings and
18 recommendations. To what extent has that been
19 occurring?

20 MR. CROWELL: We can ask exactly how the
21 process has worked and if the Council has timely done
22 this and responded.

23 CHAIRMAN MACCHIAROLA: I think that we
24 should -- Kitty just pointed this out. Perhaps we
25 should have a sentence that nothing contained in this

1 change shall in any way prevent the Council conducting
2 meetings and hearings, et cetera.

3 COMM. PATTERSON: That was my concern. If
4 that was intended to delete one more reference to the
5 PMMR that's fine, but if the effect is a substantive
6 one, there should be something else in there to make
7 sure you're not taking power away from the Council.

8 MR. CROWELL: It's not intended to take any
9 power away from the Council. We will --

10 CHAIRMAN MACCHIAROLA: Check that language
11 out.

12 MR. CROWELL: We'll make it clear, I don't
13 think it's a substantive change, but we'll make it
14 clear.

15 COMM. PATTERSON: They could take a look at
16 CAPSTAT --

17 MR. CROWELL: Sure.

18 CHAIRMAN MACCHIAROLA: Campaign finance.
19 This is a very important revision to the jurisdiction of
20 the campaign -- well, restriction on the campaign
21 contributions and an authorization for the Campaign
22 Finance Board to enforce those changes.

23 MR. CROWELL: There's two changes that go
24 hand in hand. Both changes are obviously inspired by
25 testimony we've heard from people concerning

1 non-partisan elections and the campaign finance system,
2 namely, that currently in a partisan primary, State law
3 prohibits party spending on behalf of candidates and the
4 concern was when you look at a non-partisan primary the
5 State law would no longer be there and party spending
6 would go unregulated.

7 What the staff has done to address these
8 concerns is create a system where the Campaign Finance
9 Board shall promulgate -- and I have some suggested
10 changes to my own work here that I'm going to add in
11 there -- shall promulgate appropriate rules that
12 attribute expenditures by a political party in a primary
13 or general election that directly or indirectly assist
14 or benefit a candidate participating in the voluntary
15 campaign finance program as in-kind contribution to such
16 candidate. The Board shall use participating candidate
17 party affiliation endorsement, identification and
18 membership as factors of determining attribution of
19 expenditures.

20 And what that basically does is make clear
21 to the Campaign Finance Board the authority, albeit the
22 authority that the staff believes it already had, to
23 attribute party expenditures on behalf of candidates in
24 a non-partisan primary and general election.

25 CHAIRMAN MACCHIAROLA: And it is actually

1 giving them the authority as they deem appropriate.

2 MR. CROWELL: Rather than, I would recommend
3 that as we, we remove the language that says as it deems
4 necessary and just say "shall promulgate appropriate
5 rules." Therefore it's a requirement that appropriate
6 rules be promulgated without any discretion and without
7 any ambiguity that this is what they would need to do to
8 insure that party spending is properly regulated in the
9 non-partisan primary.

10 CHAIRMAN MACCHIAROLA: Okay. Discussion.

11 COMM. O'HARE: What you're doing with this
12 recommendation is telling the Campaign Finance Board,
13 who warned against the difficulty of attributing
14 expenditures and making them independent of a candidate
15 in a non-partisan election, you're telling them you
16 promulgate rules to solve that problem. That's what
17 you're doing. The problem is that presently they can
18 operate on a presumption that the candidate who is
19 nominated by the party, the party spends on behalf of
20 that candidate, it could be considered not an
21 independent expenditure.

22 Once you break that presumption, that's
23 where their concern is and that's the fear that Nicole
24 Gordon expressed, not opposing non-partisan elections,
25 but pointing out that that would be a danger, and what

1 the staff now is proposing is that, well, it's not a
2 danger, because we're going to require you to develop
3 rules that will eliminate the danger, which strikes me
4 as an odd way to receive -- when someone says "this is a
5 problem," you're saying we're requiring you to solve the
6 problem. Isn't that what you're doing?

7 MR. CROWELL: Well no, not exactly. What
8 we're doing is the Campaign Finance Board Executive
9 Director has on numerous occasions been unable to
10 identify any way in which to regulate party spending in
11 a non-partisan primary. Indeed, they've been successful
12 in attributing independent expenditures in the partisan
13 general election. What we're doing is requiring them
14 now to take the model they've used and have had success
15 with and put that into the, use that in the non-partisan
16 primary.

17 COMM. O'HARE: But the point the Executive
18 Director made in her testimony was the mechanism they
19 use is the presumption that a candidate nominated by a
20 party, the party spending on behalf of the candidate is
21 a coordinator, not an independent expenditure. Once the
22 party does not nominate the candidate, that presumption
23 they believe can't be invoked, so they cannot take the
24 model that they presently use and apply it to
25 non-partisan elections, because they can't invoke the

1 presumption that expenditures by a party that's
2 nominated a candidate are not independent expenditures.

3 CHAIRMAN MACCHIAROLA: Is the only way they
4 can attribute expenditures on behalf of a candidate
5 through basically attributing it without --

6 If there is evidence that there is a direct
7 intervention in the political process, they don't have
8 to worry about attributing anything do they?

9 COMM. O'HARE: All sorts of groups can
10 publish ads supporting candidates. The issue is whether
11 the spending is independent of the candidate.

12 CHAIRMAN MACCHIAROLA: And if they have
13 reason to believe that the spending is not independent
14 of the candidate, then they can act, regardless of who
15 the spending is by. Is that right? If it were an
16 organization that were created for the benefit of the
17 candidate, and they could, and proclaim that it was
18 independent and it could be shown that there was a
19 connection between the candidates --

20 COMM. O'HARE: You could have the Sierra
21 Club, for example, decide that they want to support a
22 particular candidate in an election. You could not on
23 the basis of that attribute those expenditures as
24 contribution to the candidate unless they were
25 coordinated.

1 MR. CROWELL: I think our next proposal may
2 actually address your concern, because, as I said, they
3 go hand in hand. Let me read that and then we can
4 incorporate the two discussions.

5 The second one would read: "Notwithstanding
6 any other provision of law, the Board shall prohibit
7 candidates participating in a voluntary system of
8 campaign finance reform from accepting either directly
9 indirectly or by transfer a campaign contribution, loan,
10 guarantee or other security for such loan from any
11 corporation, partnership, limited liability corporation,
12 political committee, employee, organization, nonresident
13 individual or other entity. The Board shall promulgate
14 such rules as it deems necessary to implement and
15 administer this provision."

16 And that is directly from the Campaign
17 Finance Board's proposal before the City Council to
18 regulate in this area.

19 COMM. O'HARE: That's a good provision in
20 itself, but it has nothing to do with issue of
21 attributing expenditures as contributions to a
22 candidate. The whole point is on the expenditures of
23 the party contributions to the candidate. All that says
24 is that no one can contribute to the candidate, which is
25 fair enough, but party spending on behalf of a candidate

1 on the basis of that can't be considered contributions
2 to the candidate.

3 The only way the Campaign Finance Board
4 controls contributions there is through the candidate,
5 not through the contributors, so the issue of whether
6 expenditures on behalf of a candidate are independent of
7 the candidate is not addressed by that provision.

8 COMM. SIEGEL: Father, I'm confused. Why is
9 it addressed at any other time? I'm not sure why this
10 is so fundamentally different. The key issue, I heard
11 Nicole Gordon, I was confused by her. She seemed
12 incoherent. On one hand she said she doesn't track
13 parties, she tracks individuals and tracks money given
14 to those individuals. Why is a party different from any
15 other entity in tracking the money?

16 COMM. O'HARE: Because in partisan elections
17 the party has nominated the candidates.

18 COMM. SIEGEL: If you don't have a partisan
19 election, you still have to track the contributions.
20 That doesn't change.

21 COMM. O'HARE: But the presumption by which
22 you can say support of the party is not independent of
23 the party, the basis for that presumption is eliminated
24 in non-partisan elections.

25 COMM. SIEGEL: It's eliminated on an ipso

1 facto basis, but not a practical basis. The Campaign
2 Finance Board has to make practical judgments all the
3 time when there a linkage, when is there not a linkage.
4 After all, parties have been known to set up entities
5 independent of themselves, but are in fact subsidiaries
6 that engage in spending.

7 COMM. O'HARE: I'm making the point that the
8 Campaign Finance Board has pointed out a problem that
9 this shift will indicate and what the response to their
10 proposal is to the Campaign Finance Board that will
11 promulgate rules to solve that problem.

12 COMM. PATTERSON: Can I ask a question that
13 shows my level of ignorance on the Campaign Finance
14 Board level? Certainly at the federal level special
15 interest groups, whatever you want to call them,
16 including until recently parties, could produce issue
17 ads that didn't specifically identify the candidates,
18 but identify the issues, and anybody who knew anything
19 knew exactly which candidate they were talking about in
20 a particular election.

21 MR. CROWELL: That goes to the heart of the
22 idea about attribution.

23 COMM. PATTERSON: That's why I ask about
24 attribution in a campaign finance context, because,
25 obviously, you don't have that in a federal context. If

1 you have the Democratic Party going out and buying local
2 air time or buying local ad, newspaper time in a
3 partisan election, that says we favor, whatever it is,
4 and there are six guys we can think of, and here are
5 their names that favor two. That's attributed to those
6 six guys, isn't it, the Democratic Party goes out and
7 supports that time?

8 COMM. O'HARE: Buys time to support six
9 candidates?

10 COMM. PATTERSON: They come out with an
11 issue ad. I don't want to pick an issue ad, because I
12 don't want to pick a political hot button.

13 COMM. O'HARE: You're talking about six
14 Democratic members for six offices?

15 COMM. PATTERSON: Council Members, six
16 different Councilmanic issues, we like this issue and
17 these are the six guys who are in favor of it.

18 COMM. O'HARE: I think the issue is whether
19 this is a contribution to the candidate.

20 COMM. PATTERSON: Exactly.

21 COMM. O'HARE: And the presumption under
22 which they've operated is that if it's party spending on
23 behalf of a candidate nominated by the party, it is a
24 contribution.

25 COMM. PATTERSON: At a federal level the

1 Democratic Party could not cross the line to name six
2 guys. They could only identify a particular issue that
3 was near and dear to the heart of those six guys. My
4 understanding is that on a City basis they could
5 actually name those six guys and then it's up to the
6 Campaign Finance Board to figure out whether that's
7 attributable.

8 What happens if you have a non-partisan
9 election, Democratic Party comes out, buys exactly the
10 same air time and says "we favor such and such an issue
11 and so does Mr. So-and-so, Ms. So-and-so," who happens
12 to be running on the Muppets party.

13 CHAIRMAN MACCHIAROLA: Running in a
14 non-partisan election.

15 COMM. PATTERSON: In a non-partisan
16 election. Because in a non-partisan election at the
17 moment you're not allowed to say you're a Democratic or
18 Republican, you say you're a member of the Muppets
19 party, picking something that everybody loves.

20 MR. CROWELL: I was pointing out one thing.
21 If the Commission were to choose allowing candidates to
22 have their party registration, that would go part of the
23 way to understanding.

24 COMM. PATTERSON: Let's leave that issue
25 aside for now, because that's clear. What I'm trying to

1 figure out is how do you attribute now in a non-partisan
2 election where you know very well, for example, that
3 Gifford Miller who in his first election ran under a
4 made up party name as he admits, was a Democrat. How
5 did you attribute party spending. I'm sure the
6 Democratic Party was going out you know, handing out
7 leaflets --

8 COMM. O'HARE: He did not participate in the
9 campaign finance program.

10 COMM. PATTERSON: Let's pick someone who
11 did. Good example, but pick someone who did. There has
12 to be a way to attribute. And I don't know, I mean how
13 is it done now.

14 COMM. O'HARE: The way it's been attributed
15 now, there's a presumption if the party nominated a
16 candidate, it supported a candidate who was not
17 independent. Once you eliminate that, the basis for the
18 presumption is saying spending is coordinated with the
19 candidate, is not independent and therefore is to be
20 considered a contribution to the candidate. That's the
21 problem.

22 CHAIRMAN MACCHIAROLA: There's two issues,
23 the issue of presumption and, yes, it makes it more
24 difficult. But I regarded Nicole's testimony, I have a
25 tremendous amount of respect for Nicole, as similar to

1 that of the Board of Elections coming to tell us how
2 difficult it was to list candidates in non-partisan
3 elections on the ballot. That is a problem that they
4 have to deal with. If we feel that participation by
5 political parties in this election is violative of the
6 standards we set for a campaign finance program and we
7 give to the Campaign Finance Board the authority to
8 regulate that spending, then they have to fashion those
9 rules.

10 The second piece is, that in the rules that
11 have been interpreted by the Campaign Finance Board and
12 the way you ran that Board, Father and you get
13 compliments from me on that --

14 COMM. LYNCH: Be careful.

15 CHAIRMAN MACCHIAROLA: A little bit
16 tentative for you, but you took issues on and you -- it
17 wasn't done by the force of legal authority in the
18 courts that ultimately adjudicated it, it was in the
19 courts of public opinion, it was in the issues and the
20 way in which that staff and the members of the Campaign
21 Finance Board brought those issues forward. You
22 embarrassed political candidates who very clearly
23 violated the spirit of the Campaign Finance Board, if
24 not, as they argued, the letter of the law, and those
25 attributions in all cases that you made were sustained

1 in the court of public opinion and ultimately by the
2 candidates themselves who realized the moral authority
3 that was there.

4 COMM. O'HARE: Right, but what you're saying
5 is the Campaign Finance Board has raised a problem that
6 you see and you're saying the Campaign Finance Board
7 will be able to resolve that problem. They may well be
8 able to resolve it, but I'm pointing out the fact that
9 they've raised the warning about a problem and the staff
10 is saying we require you to solve the problem, which is
11 fair enough if that's what the staff wants to say.

12 COMM. SIEGEL: Excuse me, I'm not entirely
13 sure that's right. I thought Nicole Gordon went beyond
14 that. When I watched her -- not testimony, New York 1,
15 she was openly in opposition on non-partisan elections.

16 COMM. O'HARE: She was careful in her
17 statement before us to take no position.

18 COMM. SIEGEL: I'm talking about her
19 position on New York 1 which went way beyond. It was a
20 sense you had that she was staking out not a technical
21 position, but a judgmental position. I had trouble with
22 that, one.

23 Two, seems to me all of this involves
24 matters of judgment and yes, it may be more problematic,
25 but she had no trouble coming to a judgment on that.

1 I'm surprised she's going to have trouble coming to a
2 judgment on independent expenditure. The issue that
3 Kathy pointed to about national expenditures, whatever
4 you think about Campaign Finance Law, I'm dubious about
5 them, but they're in place, they have to run. The whole
6 point was to get away from the game of soft money where
7 people play the game of non-attribution, attribution.
8 All of this involves judgment. I don't see how you
9 avoid that. I don't see why this demand for judgment is
10 particularly exceptional except if, and this is what I'm
11 suggesting, if she bears an animus.

12 COMM. O'HARE: I didn't see Nicole's
13 testimony. I'd have to object, though, on the basis of
14 the testimony that she gave here, that she made very
15 clear the Campaign Finance Board was taking no position
16 on the issue of non-partisan elections. I really must
17 object to your suggestion that she was being deceptive
18 in that sense.

19 COMM. SIEGEL: I'm just describing what she
20 said, she was interviewed for fifteen minutes and her
21 animus was clear and it was quite different from what
22 she said here.

23 COMM. PATTERSON: I still get back to my
24 question. When you have now interim non-partisan
25 elections, where you have two candidates who in a

1 partisan election certainly state their party
2 affiliation, whatever it is, and in most cases those
3 candidates are going to have some sort of support from
4 their party, how do you attribute at that point? You
5 know, when you have two guys who say they're with the
6 Muppets party but we all know they're Democrats.

7 COMM. O'HARE: I don't think there's been
8 significant party spending in those non-partisan special
9 elections. At least, it's never come up.

10 CHAIRMAN MACCHIAROLA: Party spending?

11 MR. BERRY: For specials has not been an
12 issue.

13 CHAIRMAN MACCHIAROLA: 5 percent, did you
14 give us that figure?

15 MR. BERRY: No, that's contribution, direct
16 contribution to a candidate.

17 CHAIRMAN MACCHIAROLA: They tend not to be
18 as involved in these elections.

19 MR. BERRY: If I could just make what I hope
20 will be a clarifying point and to draw on this a little
21 further. As I understand it, if a party makes an
22 expenditure now in a partisan general election, and in
23 some way makes a reference to a candidate that may be
24 perceived as benefitting that candidate, but, say, it's
25 unclear, nevertheless it mentions electioneering, flyer

1 or something, without saying "vote for," the burden
2 under the present system is on the candidate to show
3 that there was absolutely no coordination between -- in
4 other words, they have to overcome that presumption.
5 The burden is on the candidate to show there was no
6 coordination between campaign and party spending, and I
7 think what we're saying is that the Campaign Finance
8 Board has the authority and I'm trying to make it
9 explicit in this recommendation, to keep that burden on
10 the campaign to show that there was no coordination
11 between candidate and other entity.

12 COMM. PATTERSON: So that in the example I
13 gave, it really wouldn't matter whether the candidate
14 had stated his or her party, let's say we're in a
15 non-partisan environment, if the Democratic Party or the
16 Republican Party or the Working Families Party,
17 whatever, if a political party were to spend money on an
18 issue ad, that implicitly or explicitly endorsed that
19 candidate, the burden would be on that candidate to show
20 that he had no involvement in that issue ad.

21 COMM. O'HARE: I think the issue is really
22 whether the Charter Revision Commission can give that
23 authority to the Campaign Finance Board. There's a
24 question of whether judgments that were made about
25 coordinated expenditures and attributing expenditures as

1 contributions to a candidate, whether they would be
2 sustained in Court or whether they would be interpreted
3 as restriction on the free speech of the independent
4 party, whether it's a PAC or a corporation or a civic
5 group or it's a political party.

6 DR. GARTNER: As I understand it. That was
7 an issue that the Campaign Finance Board developed the
8 attribution rule that currently exists in partisan
9 elections. You have to navigate between a series of
10 shoals to deal with free speech rights of parties and
11 candidates and the desire to limit those expenditures.
12 I guess what the staff, and not I guess what the staff
13 that rule that will need to be adopted is different from
14 the rule that is currently adopted because the basis of
15 the presumption is different. We don't believe that the
16 challenge is an impossible challenge.

17 Now, maybe you could say it's easy for us to
18 say and throw the ball to the Campaign Finance Board. I
19 think that's a reasonable thing to ask of the campaign
20 finance coordinator at this time.

21 COMM. O'HARE: I'm simply pointing out,
22 that's what you're doing. That they came with a problem
23 and you're saying "solve the problem."

24 CHAIRMAN MACCHIAROLA: Anyone else have a
25 question on this? Anyone else want to address this

1 issue?

2 COMM. NORAT: I have an issue on the second
3 part. The second piece of it, the issue that
4 eliminates--

5 CHAIRMAN MACCHIAROLA: Excuse me, what are
6 you saying?

7 COMM. NORAT: The second part of the
8 proposal, the outright ban. Right now the ban is only
9 corporate, and this proceeds to ban PACs and employee
10 organizations. I have to tell you this is where
11 everybody believes this is wonderful, clean government
12 across the country. I find this, that it's become an
13 open invitation for the trial bar. Because what we have
14 done by prohibiting any business entity to contribute to
15 candidates they may like more than others is, and
16 particularly corporate I understand, but PACs, we work
17 very hard to educate our employees on how important it
18 is for them to make contributions towards our PACs and
19 how important it is to maintain their jobs, the
20 well-being of the company for them to participate.
21 You're now prohibiting PACs and I understand there's
22 this big issue of the big PACs and the big money, but
23 basically what this now permits is every trial bar firm
24 which are very, very rich. As you know, the trial bar
25 has won millions of dollars in the tobacco litigation,

1 and have used it across the entire United States to fund
2 campaigns. However, they're never banned, because they
3 bundle it as individuals.

4 So by having prohibited at least the
5 employee PACs, you have now taken the only possibility
6 that we as employers in the City of New York have of
7 participating in supporting candidates in the City
8 Council or the Mayoralty or the citywide offices.
9 That's why I personally, since I do this across the
10 fifty states, I have to oppose that.

11 COMM. GARCIA: Just so I understand your
12 position, would you be not in favor of expanding it to
13 make it stronger to avoid that type of situation?

14 COMM. NORAT: You can't. It's impossible,
15 because in order to prevent the bundling of the money
16 that comes out of the trial attorneys, you would have to
17 prohibit individuals and that is probably
18 unconstitutional, to prohibit an individual from
19 contributing. That's free speech. Therefore, this is a
20 problem that we have faced across the country. I mean,
21 it's not that I want the unleashed power of the
22 corporate money, but what I'm saying is, if I spend so
23 much time educating our employees to participate in the
24 political process, to understand the issues that are
25 important to them from their job and their well-being

1 and the well-being of the city, you know, I do this
2 across fifty states, and then not to even be allowed to
3 use my PAC money to support, with limitations, I mean, I
4 don't care if the limitation was PACs can give no more
5 than a thousand dollars or whatever, I find that very
6 disturbing, because we are at a terrible disadvantage
7 with the trial bar.

8 COMM. SIEGEL: How would this apply in the
9 City election with the Campaign Finance Law?

10 COMM. NORAT: Because here we're
11 prohibiting from --

12 COMM. SIEGEL: Let's suppose the trial
13 lawyers bundle the money.

14 COMM. NORAT: Let's say you have a firm of
15 a hundred lawyers, fifty partners give the maximum,
16 which is what?

17 COMM. SIEGEL: But that goes up against the
18 limit, that goes against the limit of what can be
19 contributed --

20 COMM. NORAT: But they're individuals,
21 Fred. They bundle it only because, they, in other
22 words, as John and Peter, Mary, Jane.

23 COMM. SIEGEL: But since there's a limit on
24 total spending, they displace other money. They're not
25 producing additional money. Assume your candidate is

1 going to max out.

2 COMM. NORAT: They'll max out.

3 COMM. SIEGEL: That's usually the case
4 anyway.

5 COMM. NORAT: Probably, but I can't
6 contribute one dollar.

7 CHAIRMAN MACCHIAROLA: Individually you can
8 and your employees I would suspect not through the PAC
9 would be encouraged to participate.

10 COMM. NORAT: But they've already given to
11 the PAC. My employees are not all executives.

12 CHAIRMAN MACCHIAROLA: We're all in a period
13 of time in which we are banning all kinds of
14 contributions and representatives of labor unions are
15 going to say the same thing.

16 COMM. NORAT: I agree. I just want to put
17 it on the table because it's a national problem that we
18 have faced as a result of campaign financing all over.
19 I'm not suggesting that you're going to go along with
20 it. This is an issue, though, that needs to be
21 discussed, because people truly believe corporate
22 business equals evil and it's not necessarily the case.
23 We do create the jobs and pay the taxes and we should
24 not be totally prohibited from participating in the
25 political process.

1 CHAIRMAN MACCHIAROLA: Listen, I'm a big
2 shareholder. You don't have a problem with me.

3 COMM. NORAT: I'm talking about business in
4 general.

5 COMM. NEWMAN: I guess I was troubled by the
6 labor union inclusion in this, because corporations and
7 partnerships are basically dealing with relatively
8 well-to-do people who will find the way to organize the
9 politicians no matter how many rules and restrictions we
10 establish, because the amount of money people will be
11 contributing is significant.

12 In the case of labor unions, they are
13 basically accumulating lots of small contributions from
14 numerous people, and to try to do that independently
15 from some formalized process will probably end up
16 costing more than the contribution themselves, so I
17 guess I'm troubled by, because I think this elimination
18 makes it easier for well to do, for candidates who
19 receive money from well to do people to have even a
20 greater advantage.

21 COMM. PATTERSON: Commissioner Norat's
22 point was that corporate entities and PACs have exactly
23 the same issue.

24 COMM. NEWMAN: In her case it's a dispute
25 between two well-to-do groups.

1 COMM. NORAT: Well, I take exception to
2 that, because I don't consider myself well-to-do.

3 CHAIRMAN MACCHIAROLA: We have opposition on
4 the left and opposition on the right now. Moving
5 along--

6 COMM. NORAT: To tell you the truth, most
7 of my PAC contributors are not wealthy, because the
8 people that are very well-to-do in my corporate world do
9 contribute personally to whatever they like. My PAC
10 contributions come from individual employees and
11 interestingly enough, they're the lower paid employees,
12 because the program we have is we educate them, we make
13 them do, you know, they understand that if they want to
14 participate in the civic process, but as a reward for
15 that, we also then match that and allow them to pick a
16 charity of their choice, so that this is a way for them
17 to see more of the value, so it's not the well to do.

18 CHAIRMAN MACCHIAROLA: I think one of the
19 things, though, that we have established in New York is
20 a public finance system in which a four-to-one match
21 takes place. We have made the determination that the
22 person who hustles the dollars and quarters, nickles and
23 dimes from a number of people and there's nothing to
24 prevent the unions from soliciting membership
25 contributions or business from doing that. As a matter

1 of fact, probably be more efficient to allow your
2 members to make a \$25 contribution and thereby doing
3 that, give the candidate \$125.

4 So I don't think by taking the organizations
5 out of it we really are diminishing anything by way of
6 input. What we really are doing is providing for that
7 input to be on an individual basis. When you take it
8 out of your own pocket and you make that decision,
9 you're going to give that money to that candidate and it
10 is essentially a person to candidate relationship rather
11 than through any kind of intermediary. I think that's
12 the philosophy the campaign finance system we have in
13 New York was intended to promote and I think we're now
14 closing the door on the kinds of things we were --

15 COMM. NORAT: I understand all that. The
16 only point I wanted to make, by allowing all the
17 individuals that have not stopped the enormous amount of
18 money that is spent by a special interest. Which is the
19 trial bar.

20 CHAIRMAN MACCHIAROLA: But here in New York
21 we're talking about, the tremendous amount of money
22 that's spent is spent by the Campaign Finance Board,
23 it's public funds. It's done on the basis of a match.

24 COMM. NORAT: What's the maximum?

25 CHAIRMAN MACCHIAROLA: A thousand dollars,

1 and up to 250 you're matched four to one. You give a
2 \$250 contribution you're giving the candidate \$1250.
3 The cap on contributions, for City Council we're talking
4 about --

5 MR. CROWELL: It's 75,000 for Council,
6 thereabouts.

7 DR. GARTNER: Each election.

8 COMM. NORAT: At least here it works that
9 way. It is a lot of money, but when you think about how
10 you go out and get it. I think the person that
11 revolutionized it from my standpoint was Ruth Messinger.
12 She got dollars from everybody and built a tremendous
13 war chest and that's probably the way it should be done.

14 Okay, we've got an item in front here I'm
15 going to take it as a whole item, vote it up or down.

16 COMM. LYNCH: When you say take it as a
17 whole item.

18 CHAIRMAN MACCHIAROLA: Take campaign
19 finance, two sections as a whole item rather than break
20 it up. If you want to break it up. Yes?

21 COMM. NEWMAN: I'd like a vote on that,
22 because I'm for one prepared to vote yes on one and no
23 on the other.

24 CHAIRMAN MACCHIAROLA: Well, if we don't get
25 a yes vote on the whole thing, I'll bring it back and

1 vote it in parts. I'll break it out in its parts. If
2 you want to vote no, you can vote know and we can break
3 it up in its part.

4 COMM. NEWMAN: Also there was a suggestion I
5 wanted to make which I didn't get to do, which is taking
6 off on what the Securities and Exchange Commission has
7 done concerning people in the municipal finance
8 business, where they've taken a strong stand on those
9 folks contributing to campaigns. People then raise the
10 objection that Cecilia made concerning democracy and
11 freedom of speech and what the SEC did was go to okay,
12 we accept freedom of speech, but if you're a New York
13 resident we find it odd you're contributing in the
14 Connecticut gubernatorial election, and so they allowed
15 a contribution up to \$250, but only if you were a
16 resident of a community you were making a contribution
17 of and I wanted to suggest that that become a part of
18 this also that the contribution should only be made by a
19 resident, that it ban --

20 CHAIRMAN MACCHIAROLA: Of the district
21 itself?

22 COMM. NEWMAN: Or the City.

23 CHAIRMAN MACCHIAROLA: Well, that's the
24 rule.

25 COMM. NEWMAN: No --

1 CHAIRMAN MACCHIAROLA: 250, the match is
2 only for city.

3 COMM. NEWMAN: But you can still make
4 contributions from outside.

5 CHAIRMAN MACCHIAROLA: Up to the limit, but
6 there's no match for a noncity resident.

7 COMM. NEWMAN: But you can still make the
8 contributions.

9 CHAIRMAN MACCHIAROLA: You want to exclude
10 non-city residents?

11 MR. CROWELL: I actually added that. When I
12 read it, I added nonresident individual. It's not in
13 your draft, but as I prepared again for tonight I looked
14 at that and I would include that as well.

15 DR. GARTNER: Where would you put that?

16 COMM. PATTERSON: Where would it go in the
17 laundry list?

18 MR. CROWELL: Partnership, limited liability
19 corporation, political committee, employee organization,
20 nonresident individual or other entity.

21 COMM. NORAT: So you would prohibit a
22 nonresident individual?

23 CHAIRMAN MACCHIAROLA: A non-resident can't
24 make a contribution.

25 COMM. NORAT: To anybody? What if I live

1 in Long Island?

2 CHAIRMAN MACCHIAROLA: Non-residents are
3 presently no match, but --

4 MR. CROWELL: What about someone who is
5 affiliated with a corporation and wants to give from
6 their own pocket?

7 COMM. NORAT: Suppose they like --

8 DR. GARTNER: Let me suggest we withdraw
9 that.

10 MR. CROWELL: Why don't we look at that
11 again.

12 CHAIRMAN MACCHIAROLA: That's really --

13 COMM. NORAT: That I'm truly opposed to.

14 CHAIRMAN MACCHIAROLA: Could you imagine
15 having to give money back?

16 COMM. NEWMAN: It is what the SEC has
17 mandated and enforced for municipal bond holders,
18 municipal finance firms.

19 CHAIRMAN MACCHIAROLA: The SEC is absolutely
20 right. Who the hell cares who the Comptroller is to
21 make a contribution, unless you're doing business with
22 the office. It shouldn't be an elected office.

23 COMM. NEWMAN: Not just Comptroller, but
24 Mayor.

25 CHAIRMAN MACCHIAROLA: We're voting on this

1 resolution exactly the way it's written.

2 COMM. PATTERSON: Except you're adding
3 "limited liability corporation."

4 CHAIRMAN MACCHIAROLA: Commissioner Siegel?

5 COMM. SIEGEL: Yes.

6 COMM. NEWMAN: No, I'm troubled by the
7 second half.

8 COMM. GARCIA: Yes.

9 COMM. LYNCH: No.

10 COMM. O'HARE: No.

11 COMM. PATTERSON: Yes.

12 COMM. NORAT: Yes.

13 COMMISSIONER KHALID: Yes.

14 CHAIRMAN MACCHIAROLA: Okay, carried.

15 DR. GARTNER: Yes.

16 CHAIRMAN MACCHIAROLA: We will take a break
17 after this. This is the maximum penalty for the
18 violation of the Conflicts of Interest Law from 10,000
19 to 25. This was the only thing that survived a whole
20 series of requests made by the Conflicts of Interest
21 Board.

22 MR. CROWELL: And they may also require
23 disgorgement of any funds acquired by the violation of
24 the Conflicts of Interest law in an amount up to the
25 25,000.

1 CHAIRMAN MACCHIAROLA: Correct.

2 MR. CROWELL: That's the only change.

3 CHAIRMAN MACCHIAROLA: We're not sure
4 whether we're going to ultimately, we're going to put
5 this one out for discussion. We may decide this is not
6 sufficient to warrant a place on the ballot or that it
7 fits. I don't think we can put this on the ballot.

8 MR. CROWELL: I just want to note two other
9 things. We also discussed --

10 DR. GARTNER: Hold it. Let's see if there's
11 approval of this.

12 CHAIRMAN MACCHIAROLA: We haven't -- you're
13 moving ahead? You were moving ahead?

14 MR. CROWELL: I spoke inadvertently.

15 CHAIRMAN MACCHIAROLA: Okay, I'm sorry. But
16 you were talking about this.

17 MR. CROWELL: I wanted to get Linda to her
18 break. I'm sorry.

19 CHAIRMAN MACCHIAROLA: Can we get a vote on
20 this? Do we need a discussion? We discussed this one
21 the last time.

22 COMM. O'HARE: The conflict of interest
23 penalty?

24 CHAIRMAN MACCHIAROLA: To increase the
25 penalty. Something they asked for.

1 COMM. SIEGEL: Yes.

2 COMM. NEWMAN: Yes.

3 COMM. GARCIA: Yes.

4 COMM. LYNCH: Yes.

5 COMM. O'HARE: Yes.

6 COMM. PATTERSON: Yes.

7 CHAIRMAN MACCHIAROLA: Yes.

8 COMM. NORAT: Yes.

9 COMMISSIONER KHALID: Yes.

10 CHAIRMAN MACCHIAROLA: Unanimous.

11 MR. CROWELL: We also discussed a proposal
12 in terms of the Equal Employment Practices Commission
13 and consolidating that along with DCAS's functions
14 concerning citywide EEO policies into the Human Rights
15 Commission. Due to Commissioner Gatling's absence, we
16 haven't had a chance to consult with her as to how that
17 language would look, but we will also present that to
18 the Commission.

19 CHAIRMAN MACCHIAROLA: Better do it on --

20 MR. CROWELL: Tuesday, yes, as well as --

21 CHAIRMAN MACCHIAROLA: We'll take a
22 ten-minute break.

23 (Brief recess.)

24 CHAIRMAN MACCHIAROLA: Ladies and gentlemen,
25 can we get started? All right, ladies and gentlemen,

1 we're going into the procurement section. This is a
2 little bit different in format than what we've had
3 before. The explanations aren't the same way, and what
4 we take that to mean is this will be able to move more
5 quickly.

6 MR. CROWELL: This one should move.

7 CHAIRMAN MACCHIAROLA: Okay, Alan, why don't
8 you imagine how many questions we're going to and then
9 we'll move to you. In other words, as we look at this
10 document, you've got --

11 DR. GARTNER: A number of documents --

12 CHAIRMAN MACCHIAROLA: 23 sections.

13 DR. GARTNER: For example, for example,
14 number 3, number 5, 6 and 7, number 14 are legalistic,
15 with due respect to my colleague here, are clutter. I
16 don't think there is anything of any substance that
17 anybody would want to talk about on those. So I think
18 the number is not that large. Secondly --

19 MR. CROWELL: Clutter?

20 CHAIRMAN MACCHIAROLA: What number would you
21 say are significant items on which we would have to vote
22 on?

23 COMM. PATTERSON: I want to talk about the
24 grid for renumbering sections.

25 DR. GARTNER: Right. And I understand,

1 Commissioner Patterson, that there was a semicolon there
2 that could be challenged in lieu of a colon.

3 Second, all of these are intended to reflect
4 the consensus, if I may use that word, that the
5 Commission had reached on these subjects, and third, the
6 most contentious of the issues I'm going to propose we
7 take a pass on when we get to it, it's issue number 15.
8 When we get to it, I'll explain the reason for it. So I
9 think you could move through it with some dispatch.

10 CHAIRMAN MACCHIAROLA: That's encouraging.

11 DR. GARTNER: And I do note that the college
12 does charge us overtime or time and a half when we're
13 here late.

14 CHAIRMAN MACCHIAROLA: Time and a half of
15 nothing is nothing.

16 DR. GARTNER: Exactly.

17 MR. CROWELL: With dispatch, we shall move
18 through this. I will point out to you a number of the
19 provisions, the textural provisions you've already seen.
20 They were in your original staff report. We'll move
21 through where changes were made.

22 First section will remove the reporting
23 requirement of procurement actions in the Mayor's
24 Management Report and in the second section of the text,
25 the creation of a separate report on procurement actions

1 to be due the same day as the MMR, so what you'll have
2 is actually a broader stand-alone report on angles of
3 procurements.

4 COMM. LYNCH: I'm a little bit confused. I
5 thought the last time we met that there was going to be
6 a discussion between the Administration and the
7 Comptroller's office to work out a proposal that they
8 would, an agreement that would come back here, and just
9 before I came here, I called the Comptroller's office to
10 see if such a meeting took place, and they told me no.
11 I want to know where that's at.

12 DR. GARTNER: When we get to item 15, that
13 was the topic about which the discussions were to be
14 held. I left City hall somewhere around 5:30 and the
15 last word I had from the Mayor's Office was those
16 conversations, that I was authorized to state that those
17 conversations are going on. I literally do not know
18 whether physically there was a meeting.

19 MR. CROWELL: There's been no resolution.

20 DR. GARTNER: In any case, there's been no
21 resolution and I'm going to suggest that the Commission
22 withhold action on that item pending some resolution
23 between the two parties if that in fact could happen;
24 that being the better arrangement, then the Commission
25 trying to figure something out. And it was only about

1 that item, not the other 20 odd items that were
2 involved.

3 COMM. NEWMAN: If I could add a comment from
4 my reading of that and obviously as a known defender of
5 the institution of the Comptroller, that item 15 is the
6 only one that negatively impacts on the Comptroller's
7 office.

8 CHAIRMAN MACCHIAROLA: Okay.

9 MR. CROWELL: Okay. Section 4 requires the
10 Procurement Policy Board to establish procedures and
11 programs --

12 DR. GARTNER: Excuse me, Dr. Macchiarola, on
13 procedure, to you want to get Commission approval as we
14 move along? Do you want to do it --

15 CHAIRMAN MACCHIAROLA: I think some of this
16 doesn't really --

17 DR. GARTNER: Section 1 and 2 are of some
18 substantive importance and I would urge that --

19 MR. CROWELL: Why don't we go section by
20 section, then?

21 CHAIRMAN MACCHIAROLA: You want section by
22 section--

23 COMM. NEWMAN: One, and two you have to --

24 CHAIRMAN MACCHIAROLA: Let's deal with one
25 and two.

1 DR. GARTNER: Yes.

2 MR. CROWELL: You could change your
3 procedure and if someone has an objection ask them to
4 raise it to a different section if you want to, a little
5 different than the individual ones we did last time.

6 CHAIRMAN MACCHIAROLA: Why don't we do it,
7 why don't we bundle these as relevantly as possible.
8 Maybe have four or five votes on these, so that Section
9 1, Section 2 and Section 3 are all related?

10 MR. CROWELL: Yes.

11 DR. GARTNER: Yes.

12 CHAIRMAN MACCHIAROLA: Okay. Do you want to
13 characterize it for us? Is it controversial?

14 MR. CROWELL: No. What they do is actually
15 provide an opportunity to maximize information on
16 procurement actions through a single report, stand alone
17 just on procurement rather than incorporation into the
18 MMR.

19 CHAIRMAN MACCHIAROLA: Okay. Let's deal
20 with that one. Anyone want to ask any question about
21 that; 1, 2 and 3? Does anyone raise any objections to
22 that? Let's take "yes" or "no" around the table.
23 Mr. Siegel?

24 COMM. SIEGEL: I'm sorry, I was asking
25 Steve -- would you repeat that?

1 CHAIRMAN MACCHIAROLA: Did you see the case
2 in California where one Commissioner whispered to
3 another and it was challenged as a violation of the Open
4 Meetings Law? It's gone to court.

5 (Laughter.)

6 CHAIRMAN MACCHIAROLA: I hereby hold you in
7 violation.

8 MR. CROWELL: Commissioner Siegel, CAPA is
9 the City Administration Procedure Act.

10 COMM. SIEGEL: Thank you. I couldn't
11 remember the acronym.

12 CHAIRMAN MACCHIAROLA: We're voting on
13 Sections 1, 2 and 3, which we've been told is
14 non-controversial.

15 COMM. SIEGEL: I agree.

16 COMM. NEWMAN: Yes.

17 COMM. GARCIA: Yes.

18 COMM. LYNCH: I abstain.

19 COMM. O'HARE: Yes.

20 COMM. PATTERSON: Yes.

21 COMM. NORAT: Yes.

22 COMMISSIONER KHALID: Yes.

23 CHAIRMAN MACCHIAROLA: One abstention.

24 Section 4, 5 to 7, right?

25 MR. CROWELL: Right. Sections 3 and 5

1 through 7 merely make informing changes, adjusting
2 Section numbers. Section 4 requires the Procurement
3 Policy Board establish procedures and programs to
4 facilitate timely procurement and proper registration of
5 contracts, and provides that those programs include
6 advances and loan opportunities to the extent permitted
7 by law and it also requires the PPB to promulgate rules
8 for consolidated audits of vendors as well as a
9 professional standards and certifications programs for
10 agency contracting officers, taking into account the
11 volume and complexity of agency contracting activities.

12 DR. GARTNER: This proposal bundles -- if I
13 could use the word from our previous discussion --
14 together, three things that the Commission had dealt
15 with. One regarding the consequence for not-for-profit
16 organizations in particular of late registration or late
17 contracting to offer them the opportunity of advances
18 and loans. We deal with the interest rate question
19 separately.

20 Second, that the consolidated audit, the
21 shorthand, the A133 as an example, and third, the
22 question that came from Sue Ellen Schulman's testimony
23 in Washington Heights, about setting a standard for the
24 certification of Agency Chief Contracting Officers.

25 CHAIRMAN MACCHIAROLA: Okay. Now, do you

1 want to take -- Steve, why don't we have a conversation
2 and then we'll decide whether we want to break that out
3 or put it together.

4 COMM. NEWMAN: You say the interest rate is
5 dealt with separately, which is I guess Section 19.

6 MR. CROWELL: That's right.

7 COMM. NEWMAN: But nowhere is does it talk
8 about interest for late contracting, it talks about it
9 for unpaid vouchers. It doesn't talk about it in either
10 4 or 19.

11 MR. CROWELL: Let's turn -- why don't we,
12 when we get to Section 19, why don't we discuss it.
13 There's the provision in --

14 COMM. NEWMAN: Well, because in Section 4 is
15 where we're -- the Section 4 provides or at least the
16 summary of Section 4 provides the sort of rhetoric, but
17 I'm not so sure it provides the specifics to deal with
18 the issue. Section 4 talks about PPB establishing
19 procedures and programs to facilitate timely procurement
20 and prompt registration of contracts, so that's where I
21 would believe the interest for late contracting belongs
22 or is a companion to that.

23 My fear about all this stuff, to be honest,
24 is in my view on all these things that are good and
25 correct to do, the more specific we are, I think the

1 better off the contracting community will be than if we
2 allow it to be up to PPB to make policy. PPB should
3 figure out how to implement the charge, not to have the
4 discretion to make policy.

5 CHAIRMAN MACCHIAROLA: I think one of the
6 ways in which we dealt with it in conversations that we
7 had, Steve, was to argue that the interest payments
8 would be uniform, not set a zero interest payment. That
9 was one of the ways we had discussed implementing that
10 kind of suggestion.

11 We can do it either way. We can wait until
12 we get to that and keep open the opportunity to amend
13 this section to include it in this section in that
14 discussion or we can approach the discussion right now,
15 whatever your 'druthers.

16 COMM. NEWMAN: When I look again at Section
17 19 the detail of it, it's about payments, not
18 contracting.

19 CHAIRMAN MACCHIAROLA: You prefer to address
20 it here?

21 COMM. NEWMAN: I don't care where it gets
22 addressed.

23 CHAIRMAN MACCHIAROLA: For purposes of
24 discussion. We can either wait or do it now. Do you
25 want to do it now? I don't have a preference.

1 COMM. NEWMAN: From my standpoint, if it was
2 put in either of the sections, I'd be happy to vote for
3 either of them.

4 CHAIRMAN MACCHIAROLA: Alan, do you want to
5 tell me when you want to discuss it?

6 MR. CROWELL: You can discuss it now in
7 Section 4, and what we did was, requiring the PPB to set
8 forth procedures and programs to facilitate timely
9 procurement and prompt registration of contracts. These
10 programs may include advances in loan opportunities to
11 the extent permitted by law.

12 You could also insert in there interest
13 payments.

14 COMM. NEWMAN: Yes, but it shouldn't be that
15 it's their discretion whether to implement interest
16 payments. It should be how they set up the interest
17 payments in a very similar way to the, I guess '89
18 Charter established interest payments for late payment
19 on contracts, all PPB was given the responsibility of is
20 to figure out how to do it, and what the interest rate
21 should be and all that kind of stuff. Which eventually
22 they punted to the Comptroller's office and OMB.

23 DR. GARTNER: You can look at language on
24 Section 19: "Procurement Policy Board shall promulgate
25 rules for," and then skip down to small number 2, "a

1 program for the payment of interest at a uniform rate."
2 This is not a matter in which the PPB has some
3 discretion about whether doing it, the word is "shall"
4 and the point that the Commission raised at its last
5 meeting is that that should be at a uniform rate and not
6 involved in the kind of game that is played where the
7 rate was set for one set of vendors and different for
8 another set of vendors.

9 COMM. NEWMAN: I agree with all that, but
10 it's talking about payments, it's not talking about
11 contracts. I have no problem with the uniform rate,
12 because that's a legitimate, that's an issue --

13 DR. GARTNER: Then help me with what it is
14 that you would like inserted where?

15 COMM. NEWMAN: "The Procurement Policy Board
16 shall promulgate rules" --

17 CHAIRMAN MACCHIAROLA: Where are you
18 reading?

19 COMM. NEWMAN: Looking at Section 19. "The
20 Procurement Policy Board shall promulgate rules for
21 expeditious processing the payment vouchers by city
22 agencies and departments," and then there should be some
23 other line that talks about the Procurement Policy Board
24 shall promulgate rules for the expeditious processing of
25 contracts and contract registration and that interest

1 should be paid out for contractors who have gone forward
2 on a City official's urging, recommendation, whatever,
3 for the period between when they started work and when
4 the contract got registered. Because that's the period
5 in question.

6 The average contract for not-for-profit
7 agencies in the city gets registered six months after
8 they began. I mean, I don't think that's in dispute in
9 either the Mayor's side or the Comptroller's side. It
10 shows up in the Mayor's Management Report, it shows up
11 in the Comptroller's reports and it's that six-month
12 period, and if you're a day care program, just picking
13 one at random, you've got an existing day care program
14 and the Commissioner, the Agency for Children's Services
15 tells you to go forward, you're not about to not go
16 forward when you've got all your staff and the kids
17 there.

18 COMM. PATTERSON: It goes beyond that, just
19 to make a point. I agree with you, but it is Section
20 19-332 that you're amending really relates only to
21 already registered contracts in which vouchers are
22 submitted and not timely paid.

23 COMM. NEWMAN: It may be better in Section 4
24 than 19.

25 MR. CROWELL: Commissioner Newman, there's a

1 legal question with the ability to codify a provision
2 that will provide for interest for a contract that's not
3 already registered. What the City has done as a way to
4 address it is that there's special programs administered
5 through a not-for-profit corporation which receives a
6 grant from the City and then contractors can approach
7 that not-for-profit corporation for assistance in
8 bridging the gap between the time of commencement of
9 work and contract registration, and so I think it's
10 legally difficult to mandate something when the
11 presumption is that the registration process is what
12 kicks off lawful financial activity on behalf of the
13 City proper.

14 COMM. PATTERSON: That not-for-profit
15 corporation is that the Non-Profit Finance Fund?

16 COMM. NEWMAN: It's the Fund for the City of
17 New York. It doesn't have adequate money from the City
18 to cover all the problems that not-for-profits have. I
19 participated in that process in the amount of money,
20 it's limited by the budget process, it serves as no
21 incentive to get the system to be better.

22 I have a problem, I'm not an attorney, but I
23 have a problem with the argument that it's not legal,
24 because it's what the State of New York does. The State
25 of New York pays out interest on contracts that are

1 registered after they began, if the agency can
2 demonstrate they were authorized to go forward by an
3 official of the State. An official is defined loosely
4 as any bureau chief or Assistant Commissioner or above
5 who is responsible for the program, which happens in the
6 City constantly.

7 CHAIRMAN MACCHIAROLA: I mean, it's kind of
8 interesting, too, that you're raising a legal argument
9 that the City is prevented from making those payments,
10 and at the same time the City when it audits those
11 functions will audit them for compliance with standards
12 that are in place, even though you're arguing there was
13 no contract. That just seems to be with all the smart
14 people in the Corporation Counsel who are working on
15 finding a way to put non-partisan elections on the
16 ballot --

17 COMM. NORAT: How does the State work it?

18 COMM. NEWMAN: The State has a law that
19 provides interest payments to organizations who started
20 a contract before the contract is registered, their
21 equivalent of registration. If the contractor was told
22 to go forward by someone they should reasonably believe
23 was in authority, and I can get you a copy of the law,
24 if you want.

25 COMM. NORAT: That makes sense.

1 CHAIRMAN MACCHIAROLA: It does make sense.

2 COMM. NORAT: It's been kicking around PPB
3 for a number of years.

4 CHAIRMAN MACCHIAROLA: Well --

5 COMM. PATTERSON: When we spoke about it,
6 there was some institutional resistance to the idea of
7 doing that with respect to not-for-profits, because
8 these contracts, even if they are renewals, have to get
9 kicked from pillar to post, so ACS says, well, it's not
10 my problem, it's sitting on somebody else's desk and I
11 wonder whether that understandable concern is to some
12 degree driving the bus here, when rather than what I
13 think Steve is talking about, what I think I was talking
14 about, unfortunately you were clearer, Steve, which is
15 how do we shift some of the burden away from the
16 not-for-profits and back on to the City where it
17 belongs.

18 CHAIRMAN MACCHIAROLA: It's the resistance
19 of the bureaucracy to change.

20 COMM. PATTERSON: And also to their being,
21 ACS will get penalized because it will be evaluated as
22 whatever the City equivalent is as a profit center,
23 because its contract didn't get approved with such and
24 such day care center.

25 COMM. NEWMAN: The hope would be that like

1 the '89 Charter Commission did with late payments, that
2 the act of paying out interest and reporting on paying
3 out interest would result in internal government action
4 to speed the process, and over the years, you can track
5 the drop in the amount of interest payments for late
6 payments, because in fact, most agencies either devote
7 additional resources or rearrange themselves so they get
8 the payments done promptly and I assume at least the
9 goal here would be that the same thing happens. At
10 least my goal and others who support this, is not to get
11 the City to pay out more money. It's to get the process
12 speeded up.

13 CHAIRMAN MACCHIAROLA: So like when your
14 Visa and Master Card comes due, you pay the interest,
15 you don't pay the bill.

16 I think I would like to suggest that we
17 amend whatever is here to include language that covers
18 that and that we would vote on that. We vote on this
19 set, this section with the additions that Commissioner
20 Newman has elaborated, we'll find the language to do
21 that. That's my suggestion to that.

22 COMM. NORAT: I agree with Commissioner
23 Newman. The only question I have is have we made
24 provisions, then, to make sure that the pieces that have
25 to come into the puzzle to get this registered rapidly

1 is also accomplished. Because since I missed this
2 discussion, I know that particular section that
3 obviously is being discussed between the Mayor's office
4 and the Comptroller's office, rather, is one of those
5 pieces, because if it sits in some bureaucrat's desk
6 because they're still missing two pieces of paper and
7 that delays the registration of the contract, and then
8 the City is incurring additional expense because of this
9 interest, then I would be concerned. Well, it's a
10 hundred percent logical and I agree and it's fair, it's
11 only fair to the contractor who's being asked to begin
12 working.

13 On the other hand, we need to do something
14 about this bureaucracy that has ten steps, where
15 everybody takes their eternal time.

16 CHAIRMAN MACCHIAROLA: I think the language
17 that -- the language that we would put forward would
18 require the City to make those payments and I think when
19 the City realizes, as Steve said, when the City realizes
20 that the obligation is as serious as it probably is,
21 there's no incentive now to record anything about what
22 that is. This is like a dropout. These are the dropout
23 programs where you don't count the kids.

24 MR. CROWELL: May I make a suggestion?
25 Resolution of this issue is informed by the outcome of

1 the discussion on the issue of registration. Perhaps to
2 me it's premature to discuss this until this is resolved
3 and once we have a resolution on that we can work
4 backward.

5 COMM. PATTERSON: Is it really?

6 COMM. NEWMAN: I don't believe it is. The
7 number of contracts that get caught up in that Mayor
8 Comptroller dispute that we need to deal with, is
9 minuscule. At least it was in the Giuliani Hevesi
10 world, and I assume it's less so now, although I don't
11 know.

12 CHAIRMAN MACCHIAROLA: Hard to imagine that
13 it's worse.

14 COMM. NEWMAN: Although there was some
15 amount in the Dinkins Holzman world, I know it was worse
16 in the Giuliani Hevesi. While this happens for
17 virtually every not-for-profit contract, most of which
18 roll through the process. The delays are frequently in
19 the agency and have nothing to do with anybody else.

20 COMM. PATTERSON: I thought the concern
21 that was expressed last time was not about registration.
22 Once the Mayor's office is willing to propose it and get
23 it to the Comptroller's office, that goes through very,
24 very smoothly. It's within the agencies where ACS says
25 well, I got to get some NBL's to approach it, it's old

1 people, but it's old people who are drug addicts it may
2 be another organization and so on and so forth. So it
3 gets mired in the agency process and I thought that was
4 what you were --

5 COMM. NEWMAN: An easy example of a reform
6 that could take place that I don't think is an
7 appropriate role for the Charter Commission, but might
8 happen out of this kind of regulation, is that contracts
9 now go from the agency to MOC, to the Law Department, to
10 OMB if it's above a certain dollar figure, and at least
11 to me there's never been a reason why those things can't
12 happen parallel and why they happen in series, and if
13 people started paying out money, they might quickly
14 discover that for the one out of five hundred cases
15 where we wasted two agencies' time because the third one
16 changed the contract, it's worth it to save the money on
17 the other 499 and that process would happen in parallel.

18 CHAIRMAN MACCHIAROLA: It seems to me we've
19 identified a problem. The problem is that people aren't
20 getting paid for work that they're performing for the
21 City. That's the problem, and what we're suggesting
22 here is the City, which causes the problem because of
23 the bureaucracy that it has and the system that it has,
24 causes that problem, solve the problem. If it's not
25 willing to solve the problem, then it pays for what it

1 refuses to solve.

2 That seems to me to be a very logical
3 process for this Commission, independent Commission to
4 take, with respect to what the City ought to be doing
5 for its citizens. It's the access issue, the issue of
6 being fair to its people.

7 MR. CROWELL: The Fund for the City of New
8 York is designed to address the problem. The
9 discussions with the Law Department, it's been concluded
10 that there are legal objections to putting this
11 provision in. We can have further discussions about
12 other ways to restructure this, but that's the position
13 of where we are sort of on the legal side.

14 Policy side, you know, lawyers understand
15 where you're coming from. It's an issue of how to do it
16 legally.

17 CHAIRMAN MACCHIAROLA: I'll tell you, you
18 want to do it legally, then we require that the City
19 fund fully all obligations that it has and fund the Fund
20 for the City of New York to accomplish that objective.
21 That we could do. Would they prefer that we do that?

22 DR. GARTNER: No.

23 CHAIRMAN MACCHIAROLA: I think not. So
24 let's then figure out how they solve the problem that is
25 caused to people who deal with the City. These are

1 vendors who are being cheated.

2 DR. GARTNER: I'm prepared on behalf of
3 staff to hear specific suggestions that we will seek to
4 incorporate in the Charter proposals.

5 COMM. PATTERSON: I'm a little confused
6 about, just from my purely legal perspective. A Charter
7 amendment affects a change in the laws of the City of
8 New York.

9 DR. GARTNER: Correct.

10 COMM. PATTERSON: Commissioner Newman is
11 stating that there is some State law out there that
12 provides virtually the same kind of protection at a
13 State level that we're trying to achieve at the City
14 level. Where is the legal restriction that would
15 prohibit a Charter amendment if there's no State law
16 that prohibits that?

17 MR. CROWELL: It's the concept of what
18 registration is and its operational institutional
19 history. It's sort of like christening the baby before
20 it's born.

21 DR. GARTNER: Not felicitous.

22 CHAIRMAN MACCHIAROLA: But they're
23 authorizing the agency to perform the service. You want
24 a proscription against it, saying under no circumstance
25 shall any agency be authorized to perform any contract?

1 Would you like that? Would you like child care agencies
2 to close their doors?

3 MR. CROWELL: It's certainly not a decision
4 for what I want or what I would like.

5 CHAIRMAN MACCHIAROLA: I'm saying, what's
6 the alternative, if you stiff the person --

7 MR. CROWELL: As the legal technician, I'm
8 advising you on the negotiations I've had with the Law
9 Department. I can have further discussions with them,
10 and maybe I will get the same conclusions. I will
11 endeavor to have those discussions.

12 COMM. PATTERSON: If there's a system at
13 the State law level that contemplates registration of
14 contracts with not-for-profits and payment of interest
15 in an event of a registration that, under the
16 circumstances that Commissioner Newman outlined, just
17 purely as a legal matter I find it hard to believe that
18 a Charter amendment, a City Charter amendment couldn't
19 effect the same thing, unless somebody in the Law
20 Department is telling you that registration for City
21 contracts has some special sacrosanct status that
22 registration of State contracts for services performed
23 by virtually the same not for profit agencies doesn't
24 have.

25 I mean, somehow registration is more serious

1 at the City level than it is at the State level.
2 There's got to be a way, if you've got a State model for
3 it, there's got to be a way to incorporate that model on
4 a City basis unless you're receiving some sort of
5 institutional recalcitrance. But just as a legal
6 matter, I would think you got to be able to fix that.

7 COMM. NEWMAN: You could incorporate the
8 State law as written, take out "State" and put in
9 "City."

10 COMM. PATTERSON: There's no State
11 prohibition on it.

12 CHAIRMAN MACCHIAROLA: We're ready to vote
13 on this with an amendment that embraces the intent of
14 the Commission. Okay? Can we get Mr. Siegel, are you
15 on this for pushing the Corp. Counsel to the limit?

16 COMM. SIEGEL: Right to the edge.

17 COMM. NEWMAN: Yes.

18 COMM. GARCIA: Yes.

19 COMM. LYNCH: Yes.

20 COMM. O'HARE: Yes.

21 COMM. PATTERSON: Yes.

22 COMM. NORAT: Yes.

23 COMMISSIONER KHALID: Yes.

24 CHAIRMAN MACCHIAROLA: Unanimous. Next?

25 DR. GARTNER: Steve, excuse me, could you

1 get us that State language, please?

2 COMM. NEWMAN: Sure.

3 MR. CROWELL: The next section is Section 8.
4 This is a, and 9. 8, 9 and 10, 9 and 10 conforming
5 amendments. This is a section in your initial report.
6 I don't believe it's been changed since the staff report
7 of June 26th.

8 Section 8 provides the PPB with the
9 authority to prescribe alternative procurement methods
10 and it consolidates existing provisions of the Charter
11 into one section, 317.

12 CHAIRMAN MACCHIAROLA: Okay. We've heard
13 testimony on -- this was, okay.

14 DR. GARTNER: This was basically providing
15 flexibility with the constraints of the State limits.

16 CHAIRMAN MACCHIAROLA: Fred?

17 COMM. SIEGEL: Yes.

18 COMM. NEWMAN: Yes.

19 COMM. GARCIA: Yes.

20 COMM. LYNCH: Yes.

21 COMM. O'HARE: Yes.

22 COMM. PATTERSON: Yes.

23 COMM. NORAT: Yes.

24 COMMISSIONER KHALID: Yes.

25 CHAIRMAN MACCHIAROLA: Unanimous.

1 MR. CROWELL: Section 12, 13 and 14. 12 and
2 13 --

3 CHAIRMAN MACCHIAROLA: Is there 11?

4 MR. CROWELL: Did I -- I'm sorry. We
5 incorporated 8, 9 and 10, and there should be 11.

6 CHAIRMAN MACCHIAROLA: And 11, okay.

7 MR. CROWELL: Section 11.

8 All right, Section 12 and 13.

9 COMM. NEWMAN: Could you just define what 11
10 means?

11 MR. CROWELL: Let's look at the language.
12 It has to do with prequalified vendors and basically
13 when agencies determine they're going to use an
14 alternative procurement method, they will get prior
15 approval from the Mayor in order for them to pursue that
16 procedure.

17 COMM. NEWMAN: By the Mayor personally?

18 MR. CROWELL: Well, it could be the Mayor's
19 Office of Contracts, the Mayor or his designee within
20 the Mayor's Office.

21 COMM. NEWMAN: One, I think it should say
22 "designee of the Mayor" or something rather than the
23 Mayor. But I guess the broader issue I have is
24 everything in the system drives towards competitive
25 bidding. This is an effort to communicate something

1 different and every roadblock one sets up to an
2 alternative to competitive bidding makes it less likely
3 that people will go in those directions, even if they're
4 the right thing to do.

5 MR. CROWELL: This is by no means to set up
6 a roadblock, but it's to make sure that lawful process
7 is being followed. And so I think over time it will
8 flesh out and it will be clear how agencies can do it.
9 Right now there needs to be some restriction to make
10 sure that a legal process is adhered to.

11 COMM. NEWMAN: Would you accept modifying it
12 to designee of the Mayor or --

13 DR. GARTNER: Mayor or his designee.

14 MR. CROWELL: That's fine.

15 CHAIRMAN MACCHIAROLA: Okay, that was
16 included, so we don't have to vote again now. We're on
17 to Sections --

18 MR. CROWELL: Sections 12, 13 and 14. Taken
19 together, Sections 12 and 13 provide exception to the
20 public notice requirement where the procurement is
21 related to a sensitive public safety matter. So, for
22 instance, if procurement is related to counterterrorism
23 and gives information pertaining thereto, it would not
24 be divulged publicly, but would be maintained within a
25 closed circuit so as to not compromise the City's

1 ability to insure public safety.

2 CHAIRMAN MACCHIAROLA: Okay. We heard
3 testimony on this one. Okay, Mr. Siegel?

4 COMM. SIEGEL: Yes.

5 COMM. NEWMAN: Yes.

6 COMM. GARCIA: Yes.

7 COMM. LYNCH: Yes.

8 COMM. O'HARE: Yes.

9 COMM. PATTERSON: Yes.

10 COMM. NORAT: Yes.

11 COMMISSIONER KHALID: Yes.

12 CHAIRMAN MACCHIAROLA: Okay, unanimous.

13 15. This one we are going to look at after
14 those discussions have come to a hopefully agreeable
15 conclusion. I'm getting a look from you. Let's hope
16 so, right.

17 DR. GARTNER: There can be an agreeable
18 conclusion and there can be a conclusion to leave it the
19 way it is and figure it out. I know there's a
20 disposition on both parties' part to try to reach an
21 agreement, but there's also a sense that there's some
22 agreements that may be worse than no agreement.

23 CHAIRMAN MACCHIAROLA: Let's hope there is.

24 Okay, 16.

25 MR. CROWELL: 16 and 17.

1 CHAIRMAN MACCHIAROLA: We've heard testimony
2 on that.

3 MR. CROWELL: This provides that a
4 procurement of a specific good could be delegated to a
5 user agency upon request and approval by the Department
6 of Citywide Administrative Services.

7 CHAIRMAN MACCHIAROLA: Okay.

8 COMM. NEWMAN: If I -- when we had testimony
9 there were a couple of different people who testified
10 for it. The case made by the police official was
11 compelling. I had no problem with the suggestion that
12 they would know more about helicopters than any other
13 city agency and therefore why turn it over to DCAS. On
14 the other hand, the testimony of the Department of
15 Homeless Services that they thought they should do food
16 purchasing, was less than compelling.

17 MR. CROWELL: We address that concern and I
18 think you and I spoke about it.

19 COMM. NEWMAN: Is it in here?

20 CHAIRMAN MACCHIAROLA: That's why it
21 basically says DCAS has the authority.

22 MR. CROWELL: We added language to address
23 your concern in 16E and it -- there's a proviso there it
24 says, "Provided, however, that such delegation shall not
25 be made for goods that are to be generally used by city

1 agencies."

2 COMM. NEWMAN: Okay.

3 MR. CROWELL: So that would certainly be
4 food and commissary services.

5 DR. GARTNER: I think the clear intent of
6 the legislative history is there's no such thing as
7 homeless food.

8 COMM. NEWMAN: It's got to be something you
9 could make the case that there's only one or two
10 agencies that does it.

11 MR. CROWELL: Anecdotally, you should know
12 there are policy discussions about doing bulk food
13 purchases.

14 COMM. NEWMAN: No, certainly the City should
15 be doing that, in fact.

16 CHAIRMAN MACCHIAROLA: Okay. Item 16, 17,
17 do we have a vote on that?

18 COMM. SIEGEL: Yes.

19 COMM. NEWMAN: Yes.

20 COMM. GARCIA: Yes.

21 COMM. LYNCH: Yes.

22 COMM. O'HARE: Yes.

23 COMM. PATTERSON: Yes.

24 COMM. NORAT: Yes.

25 COMMISSIONER KHALID: Yes.

1 CHAIRMAN MACCHIAROLA: Unanimous.

2 Item 18.

3 MR. CROWELL: Item 18 pertains to the Vendex
4 provisions. This section would supersede the Vendex
5 provisions in the Administrative Code and provide for a
6 joint promulgation of rules on integrity criteria by the
7 Comptroller and the Mayor.

8 The change from that, which you've seen, is
9 the rules must be presented to the Council for review
10 and comment at least 30 days prior to the commencement
11 of any publication pursuant to CAPA. So what it now does
12 is provides for a three-pronged review; the Mayor and
13 the Comptroller jointly promulgate the rules and they
14 would be reviewed by the Council. The Council would
15 give advice, obviously, any suggestions for amendment
16 before they would ever be published for public comment.

17 CHAIRMAN MACCHIAROLA: There also is
18 consultation before the --

19 MR. CROWELL: That's the pre-CAPA. Then, of
20 course, after the rules are published preliminarily, the
21 Council would have another shot at comment prior to
22 final publication.

23 CHAIRMAN MACCHIAROLA: Okay. Let's go
24 around the table.

25 COMM. SIEGEL: Yes.

1 COMM. NEWMAN: Yes.

2 COMM. GARCIA: Yes.

3 COMM. LYNCH: Yes.

4 COMM. O'HARE: Seeking the advice of Council

5 means they could overrule that advice.

6 MR. CROWELL: That's correct.

7 COMM. O'HARE: Yes.

8 COMM. PATTERSON: Yes.

9 COMM. NORAT: Yes.

10 COMMISSIONER KHALID: Yes.

11 CHAIRMAN MACCHIAROLA: Unanimous.

12 19 is what we've already discussed as the

13 standard of uniform, meaning uniform for nonprofits as

14 well as profits established that uniform standard. Is

15 there any discussion on that, anyone wish to discuss

16 that any more than we already have?

17 COMM. SIEGEL: Yes.

18 COMM. NEWMAN: Yes.

19 COMM. GARCIA: Yes.

20 COMM. LYNCH: Yes.

21 COMM. O'HARE: Yes.

22 COMM. PATTERSON: Yes.

23 COMM. NORAT: Yes.

24 COMMISSIONER KHALID: Yes.

25 CHAIRMAN MACCHIAROLA: Unanimous.

1 20.

2 MR. CROWELL: Section 20 is a section that
3 we discussed the other day, it's I believe new to
4 Commissioner Newman. I think you'll like this,
5 actually. It authorizes the Mayor to designate agencies
6 with limited contracting or personnel activities to be
7 given assistance by DCAS. Basically what it would do is
8 allow for expert personnel to step in for smaller
9 agencies that have very limited contracting needs and
10 actually be able to do it in a much more efficient and
11 perhaps more professional way rather than, when we heard
12 that some agencies had very limited experience there, so
13 this would give that flexibility and probably speed up
14 the process.

15 CHAIRMAN MACCHIAROLA: We're not
16 recommending professionalization of this in any way, is
17 that right?

18 DR. GARTNER: We deal with the
19 professionalization in the earlier section.

20 COMM. NEWMAN: That's in Section 4.

21 DR. GARTNER: That would provide for
22 procurement professionals in smaller agencies, it would
23 be varying standards based on scope.

24 CHAIRMAN MACCHIAROLA: Right. Let's get a
25 vote on this. Section 20.

1 COMM. SIEGEL: Yes.

2 COMM. NEWMAN: Yes.

3 COMM. GARCIA: Yes.

4 COMM. LYNCH: Yes.

5 COMM. O'HARE: Yes.

6 COMM. PATTERSON: Yes.

7 COMM. NORAT: Yes.

8 COMMISSIONER KHALID: Yes.

9 CHAIRMAN MACCHIAROLA: Unanimous.

10 21.

11 MR. CROWELL: Okay 21. This section would

12 require the Mayor to insure citywide agency coordination

13 of policies and programs designed to expand the universe

14 of vendors with whom the city does business.

15 CHAIRMAN MACCHIAROLA: This is a following

16 up of the Mayor's --

17 DR. GARTNER: The discussion of the Mayor's

18 Executive Order.

19 CHAIRMAN MACCHIAROLA: Correct. Okay.

20 Mr. Siegel?

21 COMM. SIEGEL: Yes.

22 COMM. NEWMAN: Yes.

23 COMM. GARCIA: Yes.

24 COMM. LYNCH: Yes.

25 COMM. O'HARE: Yes.

1 COMM. PATTERSON: Yes.

2 CHAIRMAN MACCHIAROLA: Yes.

3 COMM. NORAT: Yes.

4 COMMISSIONER KHALID: Yes.

5 CHAIRMAN MACCHIAROLA: Unanimous.

6 MR. CROWELL: Section 22 deals with

7 employment reports would authorize the Commissioner of

8 Small Business Services to make requirements for the

9 submission of employment reports more flexible. It

10 means reducing the volume of information required in

11 reports on employer contracts.

12 COMM. SIEGEL: Yes.

13 COMM. NEWMAN: Yes.

14 COMM. GARCIA: Yes.

15 COMM. LYNCH: Yes.

16 COMM. O'HARE: Yes.

17 COMM. PATTERSON: Yes.

18 COMM. NORAT: Yes.

19 COMMISSIONER KHALID: Yes.

20 CHAIRMAN MACCHIAROLA: Unanimous. Finally--

21 MR. CROWELL: Finally, we would accept the

22 effective date of these revisions to be effective nine

23 months after the adoption by the voters.

24 COMM. SIEGEL: Yes.

25 COMM. GARCIA: Yes.

1 COMM. LYNCH: Yes.

2 COMM. O'HARE: Yes.

3 COMM. PATTERSON: Yes.

4 COMM. NORAT: Yes.

5 COMMISSIONER KHALID: Yes.

6 COMM. NEWMAN: Could I make a suggestion?

7 Election day will be something, November something.

8 Assuming it passes, nine months later will be July 4th.

9 Instead of that, why don't we say the beginning of the
10 following fiscal year?

11 MR. CROWELL: Okay.

12 CHAIRMAN MACCHIAROLA: Okay. Is there any
13 other business? Okay, we know the drill. We're meeting
14 at 4:00, we're meeting in Manhattan, I believe.

15 DR. GARTNER: EDC on Williams Street.

16 CHAIRMAN MACCHIAROLA: That meeting is going
17 to address the question of non-partisan elections.
18 You're going to get a series of proposals, they will be
19 certainly timely. You'll have the opportunity to review
20 them. We will then vote on them, if we have sufficient
21 affirmative votes on all of these, we will then put them
22 forward in a forum that will allow comment. We'll have
23 comment for two weeks and then we will on the 25th -- or
24 a week.

25 Then on the 25th, we will meet to relook at

1 what we've put forward and then decide which of those
2 items goes forward on the ballot, or indeed, if there
3 are other items that should go on the ballot that we
4 hear about during the course of these discussions.

5 So we are still a work in progress.

6 I want to thank you. You guys were
7 terrific, for your time, energy and dedication.
8 Certainly on the part of the staff and on the part of
9 the Commissioners. Appreciate that. Any other
10 business?

11 COMM. NEWMAN: Just a quick question. The
12 public meetings are about any of the three topics?

13 CHAIRMAN MACCHIAROLA: Yes, and any of the
14 other topics. They could come in and tell us that
15 Borough Presidents should be abolished. We'll have to
16 listen to that again.

17 COMM. NEWMAN: There's no way to restrict it
18 down to just the items?

19 CHAIRMAN MACCHIAROLA: We can when they
20 come. We'll see who comes. I have never, Alan will
21 tell you, we had Districting Commission meetings that
22 went on until 1:00 in the morning.

23 COMM. NORAT: I'm not looking forward to
24 that.

25 CHAIRMAN MACCHIAROLA: We never stopped

1 people from talking.

2 COMM. LYNCH: Mr. Chairman, my one concern
3 is that we will review at 4:00 and then at 6:00 people
4 will be able to respond to what we've reviewed at 4:00
5 and if we make any changes, they won't know the changes,
6 unless I've got this wrong.

7 CHAIRMAN MACCHIAROLA: Well, they won't have
8 a text in front of them that we've approved, that's
9 correct, but then they'll have a meeting two days after
10 that.

11 COMM. LYNCH: To come back.

12 DR. GARTNER: We will post on the web the
13 points that we have adopted tonight on two of the three
14 broad topics. We will do that subsequent to Tuesday's
15 meeting, so that people will have an opportunity to see
16 them prior to Thursday's hearing.

17 CHAIRMAN MACCHIAROLA: What you might want
18 to do is to list the items that are being considered by
19 the Commission at that time.

20 DR. GARTNER: We can surely identify
21 non-partisan elections as a topic.

22 CHAIRMAN MACCHIAROLA: But then you're going
23 to give us seven or eight questions similar to the one
24 we have.

25 DR. GARTNER: We can play around with eight

1 topical things, which offices, how many rounds, et
2 cetera, we can do that.

3 CHAIRMAN MACCHIAROLA: Good.

4 COMM. O'HARE: About the schedule. After
5 the August 25 meeting, the work of this Commission is
6 finished?

7 DR. GARTNER: No. Sorry, sir. We have an
8 obligation -- we, you, have an obligation to carry on
9 educational activities based upon what it is that you
10 decide to propose to the voters for their consideration
11 in November.

12 COMM. O'HARE: What does that mean? Does
13 that mean we're supposed to be advocates for the change?

14 DR. GARTNER: I use the word "education,"
15 not the word "advocacy." I know there's a difficulty in
16 crafting that line, but there is an obligation that has
17 been carried out by other Charter Commissions to inform
18 the public of what it is that has been proposed and what
19 it is that they will be voting on.

20 COMM. O'HARE: And what form would that
21 take, that voter education?

22 DR. GARTNER: We have thought about it a
23 little bit in staff. Among other things --

24 CHAIRMAN MACCHIAROLA: I'm hearing this for
25 the first time myself. I want you to know that.

1 COMM. NORAT: It's an invention of Alan's.

2 DR. GARTNER: No, it's not an invention of
3 Alan's.

4 CHAIRMAN MACCHIAROLA: The experience that
5 I've had with other Charter Commissions --

6 DR. GARTNER: It's to respond, to reach out
7 to community groups and offer opportunities to meet with
8 them. In the past, Charter Revision Commissions have
9 done mailings describing the changes. It's something
10 that I have to confess we haven't spent a lot of time
11 thinking through, but I'm mindful of the fact that we
12 did have that obligation to explain to the voters what
13 it is that we have adopted.

14 COMM. NORAT: But not as a group. We won't
15 have to have meetings.

16 DR. GARTNER: One of the things that I'd
17 want to think about is the extent to which you as a
18 group need to be involved. I surely would think about
19 calling upon you to play some role in education
20 activities. I surely don't anticipate anything like the
21 current schedule of meetings.

22 CHAIRMAN MACCHIAROLA: But I also think and
23 we can discuss this too, one of the things you might
24 want is to reconvene for the purposes of just decision,
25 dialogue and discourse. In other words, I don't think

1 necessarily that from when we put it out until the
2 voters choose, we should not let it drift.

3 COMM. O'HARE: The reason I raise the
4 question whether this is voter education or advocacy, I
5 think it's an important distinction.

6 DR. GARTNER: I think it is, absolutely and
7 in fact one of the things that I've been exploring is
8 distinguishing between those two. In fact, I've had
9 some people who approached me and said we'd like to do
10 what is in effect advocacy, and my response has been
11 that's fine and wonderful, but that's not the business
12 of the Charter Commission.

13 CHAIRMAN MACCHIAROLA: I think we can have a
14 meeting. In other words, we haven't scheduled a meeting
15 for after it goes on the ballot. We could schedule a
16 meeting and just go over what's happened.

17 DR. GARTNER: I would be comfortable, this
18 is the first time I hear it, too, but I would be
19 comfortable sometime subsequent to Labor Day, early
20 subsequent to Labor Day to have a meeting of the
21 Commission and to lay out to you what it is we plan to
22 do with educational activities in the two months of
23 September and October.

24 CHAIRMAN MACCHIAROLA: And if there's a
25 feeling on the part of the Commission it's

1 inappropriate, we can so instruct you. We don't want to
2 be advocates, with all due respect to everybody, but we
3 do have a responsibility up until the election takes
4 place.

5 COMM. NORAT: But that doesn't mean we have
6 to told a hearing. Because I'm not listening one more
7 time to what people think.

8 (Laughter.)

9 COMM. PATTERSON: She's not really saying
10 that. That's not on the record.

11 (Laughter.)

12 CHAIRMAN MACCHIAROLA: Number one, we
13 definitely haven't completed our work, we should have
14 some sense of what's going on and the Mayor is a party,
15 you can tell the Mayor that.

16 COMM. NORAT: We can have a final meeting
17 where we vote to put it on the ballot or not. That's
18 what I'm referring to. Once that is done, I am not
19 sitting through another hearing.

20 COMMISSIONER KHALID: Our obligation still
21 remains after that --

22 COMM. NORAT: That I understand.

23 COMMISSIONER KHALID: -- to educate the
24 masses, the public.

25 COMM. NORAT: I did it last year, they took

1 me all over the city to do it. Anthony is the guilty
2 party.

3 DR. GARTNER: If I can speak to the
4 distinction we've used, I can see that event as a
5 meeting of the Commission, not a hearing, not a forum.
6 Where it is a meeting of the Commission, the public is
7 free to attend and listen.

8 CHAIRMAN MACCHIAROLA: Okay, if there's a
9 motion to adjourn --

10 COMM. LYNCH: So moved.

11 COMM. PATTERSON: Second.

12 (Time noted: 9:25 p.m.)

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