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In the Matter of
The Lobbying Commission Meeting

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March 15, 2011
6:28 p.m.

22 Reade Street
New York, New York

APPEARANCES:

HONORABLE HERBERT BERMAN
ELISA VELAZQUEZ
MARGARET MORTON
JAMILA PONTON BRAGG

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2 HONORABLE HERBERT BERMAN: Good evening,
3 ladies and gentleman. My name is Herbert Berman. I
4 have the honor of chairing the newly appointed New
5 York City Lobbying Commission and welcome to our very
6 first public meeting. In 2006, the New York City
7 Council passed and the Mayor signed three local laws
8 strengthening the regulation of lobbyists in the
9 City. These laws fortified the registration
10 requirements for lobbyists and clients of lobbyists,
11 and banned the giving of gifts of lobbyists to City
12 officials and made campaign contributions for
13 lobbyists non-matchable. At the time, it appeared to
14 the speaker and the Mayor that more and more
15 organizations would fill in the need to hire
16 lobbyists to access City government. Let me stress
17 that these laws do not aim to cast a negative or
18 positive judgment on lobbyists or lobbying
19 activities. They did, however, seek to strengthen
20 ethical standards and ensure that lobbyists and
21 lobbying activities are fully transparent to the
22 public.

23 The law provided for the creation of a
24 Lobbying Commission. The Commission's general
25 mandate is to recommend any change to the strength to

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1
2 the administration and enforcement to the Lobby
3 Administration Law, including whether or not the
4 dollar threshold that triggers the obligation to file
5 as a lobbyist should be increased and to review and
6 evaluate the activities and performance of the City
7 Clerk who is charged with implementing the lobbying
8 laws. The Commission is looking to assist the Mayor
9 and the councilman in assuring that the City has a
10 set of lobbying laws that are rigorous and
11 comprehensive. This necessitates that the City have
12 adequate and serious enforcement tools, but it also
13 requires that the system not be so burdensome or
14 unforgiving that lobbyists view operating outside of
15 it as a preferable course of action. Hence, we plan
16 on hosting a series of public meetings and hearings
17 to learn the experiences, concerns and
18 recommendations of the various constituents involved
19 in the regulatory process. The regulators,
20 themselves, the public who are the beneficiaries of
21 this transparency, oversight and accountability that
22 the new system affords and, of course, lobbyists and
23 their clients who communicate with City government.
24 We will notify you of our additional public meetings
25 and hearings. We anticipate that some of the public

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2 meetings will focus on particular issues, but there
3 will be opportunities for all interested individuals
4 or organizations to testify in any issue relevant to
5 the lobbying law. Just in keeping with that, letters
6 have already gone out to everybody who is registered
7 as a lobbyist that we are, in fact, in business and
8 that we're looking for their input, and we invited
9 them to participate by submitting testimony or
10 communicating with us. Because we expect to finalize
11 our report and recommendations by this summer and
12 want to afford as many of you an opportunity to have
13 your view considered, I also invite you to all to
14 send a written comments to the Commission at Lobbying
15 Commission at City Hall dot NYC dot gov. The purpose
16 of our meeting today is to gain a deeper
17 understanding of the roles of the New York City
18 Clerks Office in implementing lobbying laws and from
19 both the Clerk and Department of Information,
20 Technology and Telecommunications on how the City
21 eLobbyists online registration system works. Because
22 this first meeting is designed to lay the foundation
23 for our work ahead by educating the Commissioners on
24 the lobbying laws, their implementation and the
25 eLobbyists system, we will hear this evening only

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2 from City officials involved in the administration of
3 the lobbying laws. Before we hear from the City
4 Clerks Office, I would now like to introduce my
5 colleagues on the commission, Jamila Ponton Bragg,
6 Leslie Horton, Margaret Morton and Elisa Velazquez.
7 Each member will make a statement at the conclusion
8 of this. As a matter of fact, let's do that now.
9 Ms. Bragg, would you like to start?

10 JAMILA PONTON BRAGG: Good evening. My name
11 is Jamila Ponton Bragg --

12 HONORABLE HERBERT BERMAN: Excuse me, press
13 the button so that the light is on.

14 JAMILA PONTON BRAGG: The light at the --
15 Can you hear me now? Is that better? Okay. Good
16 evening. My name is Jamila Ponton Bragg. I am
17 honored for the opportunity to serve on this
18 commission and to get a sense of what the current
19 lobbying laws are and what the challenges that are
20 faced. I have -- have been working in nonprofit
21 organizations for over twelve years now and from that
22 perspective, I'm very interested in making sure that
23 this is something that works for everybody, for all
24 parties involved. So I'm looking forward to this
25 process.

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HONORABLE HERBERT BERMAN: Thank you.
Leslie Horton -- commissioner Leslie Horton.

LESLEY HORTON: Good evening my name is
Leslie Horton and as a New York City resident and
practicing attorney, I believe it's extremely
important that we really begin to evaluate our City's
current lobbying laws so that we can make sure that
-- ensure that they're as effective as possible in
providing full disclosure. And so it's really with
that in mind that I looking forward to hearing from
all of you this evening and working with my
colleagues to collectively strive toward that goal.

HONORABLE HERBERT BERMAN: Commissioner
Margaret Morton.

MARGARET MORTON: Good evening. I'm
Margaret Morton. I'm also an attorney. I have
worked, however, also with nonprofit organizations
for the City of New York representing and serving
nonprofit organizations, and I look forward to the
testimony this evening and the testimony from the
other officials and persons involved in the lobbying
administration. Thank you.

HONORABLE HERBERT BERMAN: Commissioner
Elisa Velazquez.

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2 ELISA VELAZQUEZ: Hi, my name is Elisa
3 Velazquez. I'm General Counsel in the Mayor's Office
4 of Contract Services and I, like my colleagues on the
5 Commission, am thankful for the opportunity to be
6 part of this process. In my current role as General
7 Counsel, I deal very often with the nonprofit
8 community and I also charged with administering a
9 statute called the VENDEX statute which has mandatory
10 filings and -- and so -- and I also, in a past life,
11 did some lobbying. So I'm hoping that all of those
12 experiences will help me help the commission do our
13 work. Thank you.

14 HONORABLE HERBERT BERMAN: Thank you.
15 Finally, before we begin, I'd like to introduce the
16 staff to this commission. As a Joint Mayoral Council
17 Commission, we, as staff, are fortunate to have staff
18 in both the Mayor's office and the council, and I'm
19 very proud of them. Bill Henson and Jim Carris are
20 serving as the commission's co-directors back here.
21 Emoung Blann and Joey Koch as co-counsels to the
22 commission. Matt Gordon is our senior policy advisor
23 and Lisa Jones is our administrative aide. Before we
24 begin, is there anything that anybody else wants to
25 say?

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Okay, sir, would you please introduce yourself and the people with you and the organization to which you are affiliated?

MICHAEL McSWEENEY: Thank you, Mr. Chairman, members of the commission and members of the commission staff. My name is Michael McSweeney. I'm the City Clerk and Clerk of the council. It is my job under the City charter to enforce the City's Lobbying Commission and I'd like to give you a briefing of a little bit about the City's lobbying law and how we have enforced the City's lobbying law. I'm joined tonight by my General Counsel, Patrick Synmoie. Patrick has been with the Office of the City Clerk for, I believe, nine years and has been involved in every single aspect of the -- the change in the lobbying law and in its application and in all the rule changes and pretty much everything that has occurred with respect to the lobbying law. And if there is anyone who can write a practice manual about lobbying in New York City, that would be Patrick.

HONORABLE HERBERT BERMAN: He's also probably the best dressed man in around the City Hall area.

MICHAEL McSWEENEY: That's actually well

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2 known around City Hall. I'm joined by other members
3 of my staff, as well. So thank you for the
4 opportunity to present testimony. First, I'm just
5 going to talk briefly about the history of lobbying
6 in New York City. Lobbying in New York City began on
7 November 9th in 1972 when Local Law 79 was signed
8 into law by Mayor John Lindsay. This was the first
9 attempt to regulate lobbying activity in the City of
10 New York. The law provided for the idea of a -- the
11 lobbyist would be known under this law as a municipal
12 legislative advocate who would have to meet a
13 threshold of twenty-five dollars per quarter. The
14 City's Clerk office was charged with issuing an
15 identification card to any municipal legislative
16 advocate and would also have to swear them in. There
17 were specific fines and violations implemented in
18 this law, but the law could not be immediately
19 carried out because there were some issues with
20 enforcement. Local Law 86 of 1973 addressed those
21 problems. It rescinded and amended Local Law 79. It
22 broadened the registration requirement for municipal
23 legislative advocates and also required that the
24 municipal legislative advocate would have to pay a
25 fee of fifteen dollars to be sworn in by the City

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2 Clerk and to receive an identification card. That
3 was the law of lobbying in New York City until 1986.
4 Local Law 14 of 1986 was enacted by Mayor Edward Koch
5 and it laid a foundation for the current lobbying law
6 including the definitions and enforcement mechanisms,
7 many of which are still in place. Local Law 14
8 further expanded the definition of lobbying and
9 lobbying activities that required more detailed
10 reporting. It increased the penalties for
11 noncompliance and it magnified the powers of the City
12 Clerk to include giving the City Clerk subpoena
13 powers and power to conduct investigations. This
14 also -- this version of the law also increased the
15 threshold for filing to \$2,000 in the calendar year
16 and it also -- this law also prohibited contingency
17 fee of lobbying, and that was --

18 HONORABLE HERBERT BERMAN: Excuse me, did
19 you say that that was the law that established the
20 \$2,000 threshold?

21 MICHAEL McSWEENEY: That is correct. And it
22 also prohibited any lobbying for contingency fee.
23 The next change to the lobbying law took place in
24 1993 and Local Law 67 of 1993 instituted several
25 changes. It removed the board of estimate from the

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2 definition of lobbyists. It increased the threshold
3 of expenses to its current number of seventy-five
4 dollars per year and it provided certain exemptions
5 to what was lobbying and make some of the exemptions
6 to lobbying more specific. So enforcement of the
7 law -- that was the law as it was. There was one
8 other change made to the law in 2003 where the
9 registration fees were increased. So enforcement for
10 the City Clerk under the old law was not that
11 rigorous. There were two employees in the City
12 Clerk's office that handled that work. One employee
13 was a clerical worker who accepted the paper filings
14 and the fees submitted by lobbyist. Once per year,
15 that clerical employee would work with the General
16 Counsel to come up with an annual report that was not
17 required by law and was more or less a report of
18 everything that lobbyists had reported over the
19 course of the year, which was essentially what their
20 -- what their revenue was per filing period. And in
21 this report, we included a top ten list that stated,
22 you know, who the top ten lobbyists were. But there
23 was a feeling in 2006 that the law did not go far
24 enough. There were concerns of --

25 JAMILA PONTON BRAGG: I'm sorry, what made

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2 the top ten lobbyists, by how much they did, how
3 often they lobby?

4 MICHAEL McSWEENEY: It was the total amount
5 of compensation that they received from each of their
6 clients for lobbying in each calendar year. So there
7 was a section where we would report each client by
8 their lobbyist, the amount of compensation that they
9 included by period, and then we added numbers and
10 came up with totals

11 JAMILA PONTON BRAGG: Okay, thank you.

12 MICHAEL McSWEENEY: Okay, so government
13 groups in 2006 were concerned that the lobbying law
14 did not go far enough. One issue that they were
15 concerned about was the fact that lobbyists who had
16 previously served as political consultants were
17 entering the lobbying business and there was not
18 enough transparency about how people who formerly
19 served at political consultants were now lobbying.
20 There were also concerns about the effect of
21 fundraising on decisions made by public official. So
22 there was -- you know, that was one thing that was of
23 primary concern in 2006. So the Mayor -- that year,
24 the Mayor and the council adopted a Local Law -- a
25 package of different initiatives, and those

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2 initiatives were known as Local Law 15, 16 and 17 of
3 2006 is. Local Law 15 is the law that regulates
4 lobbying as it currently exists today. Local Law 16
5 and Local Law 17 were administered by the conflict of
6 interest board and the campaign finance for respect
7 and I believe that they will be making presentations
8 later in this hearing. What Local Law did -- Local
9 Law 15 of 2006 did was it increased the amount of
10 public disclosure for lobbying activities. It it
11 created more enforcement mechanisms. It required the
12 filing of fund raising and political consulting
13 reports. It increased penalties for violations. It
14 added late filing penalties for late filing reports.
15 It empowered the City Clerk to conduct random audits
16 and create a random audit program. It required all
17 annual reports from lobbyists to be posted online.
18 It required that lobbyists' spouses or domestic
19 partners and unemancipated children be listed on
20 statements of registration. It provided for total
21 and full electronic filing of reports. It required
22 the establishment of this commission to review and to
23 evaluate the City Clerk's performance. It increased
24 civil penalties for knowing and willful violation up
25 to \$30,000. It increased the civil penalties for

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2 late filers to be a maximum of \$20,000. It also
3 required the City Clerk's investigation staff to be
4 trained by the Department of Investigation. It
5 required the City Clerk to train lobbyists and to
6 post an annual report on its website every year by
7 March 1st. So the City Clerk was confronted for the
8 first time with having to expand its enforcement
9 measures.

10 HONORABLE HERBERT BERMAN: Excuse me, one
11 minute. Did you say it provided subpoena power or
12 you already had it?

13 MICHAEL McSWEENEY: We already had subpoena
14 power. I believe it expanded it to a certain degree.
15 The first thing -- well, the first thing I'd like to
16 say is that I'm very proud of the work my staff has
17 done to carry out the lobbying law and I want to talk
18 a little bit about what we did to carry out the law
19 and where we are today. The first thing we did was
20 we made a new needs request to OMD for funding the
21 people and to give us the resources to do the
22 enforcement work. We received a budget, a PS budget
23 of \$350,000 and an OTPS budget of \$5,000 with six
24 additions to our head count. We envision that to be
25 the --

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2 HONORABLE HERBERT BERMAN: Is the six
3 additions in addition to the 300,000?

4 MICHAEL McSWEENEY: Well, that was include.
5 That was part of the 350,000. Okay, so there were --
6 we were funded for the six heads for 350,000 as part
7 of our personal service budget and other than
8 personal service budget increased by 5,000. That
9 remains our budget as of today. That budget has not
10 been changed. Included in that budget was room for
11 the hiring of one attorney, one administrator and
12 four investigators, and that's exactly what we did.
13 We hired, you know, those people and filled those six
14 heads and started working --

15 HONORABLE HERBERT BERMAN: Can we safely
16 assume that you had existing staff already
17 functioning?

18 MICHAEL McSWEENEY: We had existing -- the
19 existing staff that was already functioning was the
20 clerical employee that handled and processed the
21 filing of paper reports. And the General Counsel to
22 the City Clerk handled the legal work, worked on the
23 annual report that we submitted every year and also
24 did the -- you know, did whatever lobbyist
25 enforcement measures that were taken. Okay, one of

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2 the weaknesses of the law, prior to 2006, was the
3 fact that any filer that was not in compliance would
4 have to receive a fourteen-day notice to cure from
5 the City Clerk. So there was really no incentive for
6 any lobbyist to file in a timely fashion because if
7 they forgot to file --

8 HONORABLE HERBERT BERMAN: They could wait
9 two more weeks.

10 MICHAEL McSWEENEY: You could wait two more
11 weeks, get the paperwork in and that's what usually
12 happened. And that was, you know, sending out
13 notices to cure and letters to try to induce filers
14 to file, you know. It was basically all the work
15 that the council and the City Clerk did with respect
16 carrying out the lobbying enforcement. And then the
17 General Counsel handled all the other legal issues of
18 the City Clerk's office.

19 HONORABLE HERBERT BERMAN: How did Local Law
20 15 correct that?

21 MICHAEL McSWEENEY: Local Law 15 corrected
22 that by implementing mandatory late fees. It
23 empowered us to do that by rule and to let go of the
24 late fees that were being handled by the state
25 Lobbying Commission.

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HONORABLE HERBERT BERMAN: And the imposition of late fees was universal no matter what the income or the percentage of --

MICHAEL McSWEENEY: That is correct.

HONORABLE HERBERT BERMAN: Thank you.

JAMILA PONTON BRAGG: I'm sorry, you have a staff of nine now?

MICHAEL McSWEENEY: Six.

JAMILA PONTON BRAGG: Six, I'm sorry. Okay, and I lost -- could you -- I don't know if you're going to do this or not. Could you talk about what everyone is doing and where you would need more staffing and where it would be helpful where you need more staffing?

MICHAEL McSWEENEY: Sure why don't I talk a little bit about what the staff has done? The first thing I just want to mention, after we got our funding, the first thing we had to do was comply with the electronic filing requirement made by the law. So around the late summer of 2006, we met with the City's Department of Information, Technology and Telecommunications, which we all know is commonly known as DOITT, and we had less than a half a year to create an entirely new system from scratch, and DOITT

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2 did a pretty impressive job with trying to create a
3 new system without any outside resources, to do it
4 completely inhouse and without adequate time to test,
5 because the first time the electronic filing would be
6 needed was for the first filing period of 2007. So
7 DOITT put together an application in order to do
8 that. What our staff members had to do as it got
9 close to roll out that application was to answer
10 questions from people on how to do their compliance
11 as well as to help them with any issues that they had
12 with the lobbying law. This was a sea change of
13 pretty dramatic proportions with respect to lobbying
14 regulation because many people in the lobbyist
15 community were not computer savvy. They did not --
16 many lobbyists complained that didn't have a computer
17 or they never needed to use one and we had to walk
18 many lobbyists through the process of doing their
19 computer-based filing.

20 HONORABLE HERBERT BERMAN: Was that the only
21 way they could file was through the computer?

22 MICHAEL McSWEENEY: Yes. The Local Law 15
23 mandated only electronic filing and then there was an
24 amendment passed just to help facilitate that before
25 the end of 2006 that required that the last paper

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2 report would be for the last filing period of 2006.
3 So for the first filing period, it was required that
4 electronic and only electronic filing would be done,
5 and there was a pretty loud outcry from people in the
6 lobbying business --

7 HONORABLE HERBERT BERMAN: Oh, I would
8 imagine so, yes.

9 LESLEY HORTON: Did you see a drop in
10 registrations because of that in the number of people
11 registering?

12 MICHAEL McSWEENEY: No, actually, we didn't.
13 We didn't see a drop. However, we -- you know, we
14 had to do a lot of the work at kind of helping
15 lobbyists through the electronic filing. The second
16 thing that we did with our staff -- well, the second
17 thing that we did was we hired the staff to do the
18 law -- to comply with the law. And then we put
19 together three training programs in -- at the end of
20 2006 and the beginning of 2007, and we had hundreds
21 of lobbyists attend those training programs. The
22 first one was held in our former office at 1 Centre
23 Street and the second and third training sessions
24 were held in this room. And that was the biggest --
25 you know, that was the biggest complaint that

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2 lobbyists had was that they weren't given a choice.
3 So in addition to the training session, we did a lot
4 of one-on-one training with lobbyists via the
5 telephone. Lobbyists -- we set up a kiosk in our
6 office for lobbyists to come in to use -- if someone
7 didn't have computer, they could come to our office
8 and we would walk them through the process. So I'd
9 say the lion's share of the time of our investigative
10 staff of the first year -- I'd say probably somewhere
11 like ninety-five percent of their time was devoted to
12 fielding questions from the lobbying community to
13 help people with their compliance.

14 ELISA VELAZQUEZ. The investigative staff is
15 also the staff that does auditing, correct?

16 MICHAEL McSWEENEY: Correct.

17 ELISA VELAZQUEZ: Okay.

18 MICHAEL McSWEENEY: Okay. Okay, as far as
19 investigations and audits are concerned, we began to
20 hold a series of meetings with the Department of
21 Investigation to train our lobbyist staff to do
22 investigations and audits. DOI set up a lobby law
23 unit that helped us to deal with training. They held
24 a training session at their headquarters to train our
25 staff with auditing, forensics and entity

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2 relationships, among other things. This enabled our
3 process to begin conducting investigations as well as
4 audits. And in the following year, we began our
5 first random audit program in 2007 where we sent out
6 -- we consulted with the consultant -- the state
7 lobby commission used to help facilitate the state's
8 automatic random audits and we sent out the first
9 letters in 2008 for auditing all of the -- you know,
10 the -- auditing randomly chosen lobbyist for their
11 filings in 2007.

12 ELISA VELAZQUEZ: So of the six staff, how
13 many are doing investigations and audits?

14 MICHAEL MCSWEENEY: In the beginning, we had
15 four staff members that were doing investigations.
16 Now, the original administrative position has become
17 the position of our chief investigator, the
18 investigator that's doing the lion's share of the
19 work. And now he now supervises an investigative
20 unit of four investigators.

21 ELISA VELAZQUEZ: Okay, so most of them are
22 doing investigations or auditing?

23 MICHAEL MCSWEENEY: Most of them are doing
24 investigations or audits, but I would say it probably
25 takes up no more than twenty percent of their time

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even now. What our investigations have spent most of their time doing by necessity is answering questions from filers for their compliance.

ELISA VELAZQUEZ: And the -- I'm sorry to get you off course. The questions that they're answering about their filings, is it -- are they technical questions about the eLobbyist systems? Are they compliance questions, like, does this count as lobbying or does that count as lobbying? Or are they looking for other types of information? What -- what kind of --

MICHAEL MCSWEENEY: I would say all of the above.

ELISA VELAZQUEZ: Okay.

MICHAEL MCSWEENEY: I would say all of the above. It could be anything from I'm having a hard time with my enrollment. Or it could be something -- we require that filers enroll in the eLobbyist system first. They have to file enrollment. They have to acquire a password and then we require them to send a cancel check so we have something to use as an identifier of the filer. So we have questions about enrollment. We have question about what information do I put on my form. We have technical

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2 questions about, you know, did I press the wrong
3 button in my -- you know, working the eLobbyist
4 application. And then they have questions about
5 should I -- you know, should I comply this year; have
6 I reached the threshold of lobbying of \$2,000. And I
7 can go on and on. I mean, any conceivable question
8 about the legal requirements or their compliance are
9 asked on a -- on a very regular basis and we receive,
10 you know, a minimum of one hundred calls per week

11 ELISA VELAZQUEZ: So there's a large -- a
12 large part of your time really goes to technical
13 assistance?

14 MICHAEL MCSWEENEY: That's correct

15 JAMILA PONTON BRAGG: Is that one person's
16 -- does one person handle technical assistance
17 specific to the eLobbying program and those type of
18 questions, or do you have it that all four
19 investigators have to go back and forth with DOITT to
20 answer questions?

21 MICHAEL MCSWEENEY: Well, certain questions
22 we'll refer directly to DOITT if it's something to do
23 with the software. By the way, the person that is
24 our liaison with DOITT is here tonight, Andrea
25 Mitchell. She's done a superb job at, you know,

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2 bringing our changes and request of improvements to
3 the system forward and I believe she's going to give
4 you a presentation of how eLobbyists works. So we
5 refer things to Andrea's office on a regular basis if
6 there are any questions that we can't answer, you
7 know, we'll call her.

8 LESLEY HORTON: I have a quick question
9 about your audit system. If I heard you correctly,
10 it sounded like you said you would use the same
11 consultant that the state used.

12 MICHAEL McSWEENEY: Right. Well, the law
13 requires that we select a number of lobbyists to be
14 randomly audited and we cannot know the identities of
15 those lobbyist in the choosing of who we're going to
16 randomly audit.

17 LESLEY HORTON: Okay, so does that mean that
18 the process that your office uses is the same as on
19 the state level?

20 MICHAEL McSWEENEY: It's very similar. I'd
21 like to move forward to some numbers that I just want
22 to talk about. In 2006 when we began this process,
23 there was 246 lobbyist entities registered and 1,433
24 clients. In our March 1st report that we posted on
25 the website just this March 1st that covered calendar

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2 year 2010, we reported that there are 734 registered
3 lobbyists and 2,494 clients. So the number of
4 registration of lobbyists has more than tripled since
5 we started, since the Local Law 15 took effect. And
6 the number of clients registered has more than -- has
7 almost or close to have doubled. So we definitely
8 have seen an increase in the number of people out
9 there that have complied with the lobbying law.

10 When we set up the rule change that was
11 required to implement the law, we set up a procedure
12 for us to do our enforcement. We also set up a
13 procedure for any action that we take against
14 lobbyist to be adjudicated at the City's Office of
15 Administrative Trials and Hearings and we designate
16 -- or I should say an administrative law judge is
17 designated in each case to handle the adjudication of
18 any action. We have, so far to this date, commenced
19 ninety-three enforcement actions at the City's Office
20 of Administrative Trials and Hearings and we have
21 adopted the recommendations of both -- I'm sorry, of
22 administrative law judges in all but one case and we
23 had to make a change based on a technical issue.

24 HONORABLE HERBERT BERMAN: I'm sorry, those
25 ninety-three was over what period of time?

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2 MICHAEL MCSWEENEY: Since we began following
3 the procedures in the rules which started in 2007.
4 We have delivered eleven training sessions that were
5 in a large room format, including the three that I
6 mentioned. And we have conducted training each year
7 that we have been carrying this out using this room
8 and we also use the room in the Health Department
9 building.

10 We are working on improving our training by
11 adding interactive training modules on our website
12 that are modeled after the conflict of interest board
13 and we have already met with the DECAS training
14 division that handles training for all City employees
15 to help us set that up. We also work with DOITT to
16 create video presentations to give directions on how
17 to comply with the eLobbyist system. The first of
18 those videos have been posted on our website and they
19 reflect the training that we provided at the last two
20 training sessions that we held in December of 2010.

21 Okay, we have conducted several
22 investigations, some of which resulted in late fees
23 and civil penalties and some of which resulted in a
24 finding by the City Clerk of no probable cause. With
25 respect to audits, we have conducted a total of

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2 ninety random audits. We decided to do thirty audits
3 in each calendar year and we audit one client of one
4 lobbyist and we audit every filing that they
5 submitted in that calendar year. So it's not just --
6 it's an audit of their entire body of filings.

7 ELISA VELAZQUEZ: Can you describe a little
8 bit what the audit process is like, what kind of
9 documents you're looking for, you know, that kind of
10 thing? Thirty audits, one would be -- that doesn't
11 sound like a lot. So I think you want to -- I want
12 to understand kind of what goes into an actual audit
13 and I realize you're doing, I think, more. You're
14 digging deeper than what the state actually does when
15 they audit. But if you can describe that process a
16 little bit, that would be helpful.

17 MICHAEL McSWEENEY: Sure. So we randomly
18 select the lobbyists and their filing to the audited.
19 Once we have that list of randomly selected lobbyist,
20 we send out a notification of the lobbyist that they
21 have been selected for a random audit. We advise
22 them we will be contacting them for a date where we
23 will visit their offices onsite. We do a preliminary
24 request for certain documents and then we go to --
25 when we have an onsite visit by our auditing staff,

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2 we ask to look at, you know, any records that are
3 pertaining to their filing. Mostly, they are -- our
4 auditors -- our investigators look at copies of
5 canceled checks, ledgers, payroll records and any
6 other record that the lobbyist may have kept. We
7 answer questions based upon the review that we do and
8 our investigators come back to the office and they,
9 you know, do an audit report. And in the process, we
10 issue all the audit reports together after we've had
11 a time to review the findings of the investigators
12 and to make corrective -- recommended corrective
13 actions to any issues that we've discovered during
14 the audit process.

15 ELISA VELAZQUEZ: In the report that you
16 guys just issued on March 1st, there were, I think,
17 seventy actions. You said there were thirty audits
18 and there were seventy findings, right?

19 MICHAEL McSWEENEY: That sounds correct.

20 ELISA VELAZQUEZ: So can you describe what
21 some of those findings are and what some of the
22 corrective actions may be that the lobbyists are told
23 or the clients are told to take?

24 MICHAEL McSWEENEY: Sure. We sometimes find
25 that there's a discrepancy between what was reported

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2 by the lobbyist and what the client reported. One of
3 the important things about having clients, you know,
4 do an -- a client annual report is so that we have
5 something to compare the lobbyist reports to. So
6 that's the first thing that we look at to see whether
7 or not the compensation and expenses reported by the
8 lobbyist matches what has been reported by the
9 client. Okay, we look at -- some of the findings
10 would be that a -- a filing was inadvertently made
11 and we would ask a lobbyist to submit an affidavit
12 stating that they -- it wasn't necessary for them to
13 file in a given year. There may have been a
14 termination statement that wasn't correctly filed
15 under the lobbying law. We would require them to
16 file that statement. There would be instances where
17 a lobbyist would be unable to produce a record that
18 we would need to see or that we would require them to
19 produce a record and we would ask them to do that as
20 part of the required action.

21 ELISA VELAZQUEZ: Are there action -- are
22 there findings or problems or issues that are common
23 that -- so did those seventy findings spread over the
24 thirty audits or did you find fifty findings with one
25 lobbyist? I'm trying --

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MICHAEL McSWEENEY: Those findings are spread, you know, throughout all of the thirty audits. So some of those findings would also include having the lobbyist amend, you know, any of their registration. If there's some kind of a discrepancy or if we find that, you know, the numbers don't match what's in the ledgers or in their books or doesn't match what the clients have listed in their client annual report, we would ask either the lobbyist and/or the client to amend whatever record was incorrect as part of that. So one client could have an error in all six of the periodic reports and there could be a similar error in the client annual report. So in that instance, you know, we would have six filings -- actually, seven required actions, one for each of those periodic reports -- or, I should say one amendment for each of the six periodic reports and then we would have, in the same audit, required action with the client conduct a similar amendment so that the numbers are correct in comparison to whatever the documents were that we looked at.

HONORABLE HERBERT BERMAN: Does that automatically call for the imposition of a fine?

MICHAEL McSWEENEY: No, it does not.

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2 HONORABLE HERBERT BERMAN: Is that up to
3 whom?

4 MICHAEL McSWEENEY: Well, we haven't fined
5 anyone or imposed any civil penalties for any of the
6 audits that we've done because we simply haven't
7 found any egregious action that would merit or
8 warrant any kind of fine. In addition, we check to
9 see that the random -- that the required actions are
10 taken after a certain period of time. I believe we
11 give each person thirty days to comply with the audit
12 and in our review of required actions, we have found
13 that of the people who have been audited, of the
14 organizations that have been audited have followed
15 our required actions

16 HONORABLE HERBERT BERMAN: Thank you.

17 MICHAEL McSWEENEY: Okay, one last thing I
18 want to note is one new development that is pretty
19 significant that just occurred last year. In the
20 previous year, I requested a formal opinion from the
21 Corporation Counsel to question whether or not any
22 attempt by any placement agent or other actor to
23 influence any investment decision by the City
24 Comptroller's office or any staff member or trustee
25 of any of the City's five pension funds would fall

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2 into the lobbying law. The reason I asked that
3 question was that when the placement agent scandal
4 came out, one of the aftermath was we had inquiry
5 about why we weren't enforcing lobbying laws against
6 placement agents. The so the Corporation Counsel
7 responded that the answer is yes, that any actions,
8 any attempt to influence the Comptroller's staff or
9 any staff member of the pension fund or trustee is
10 considered lobbying. So as a result of that, we sent
11 letters to various funds that have contracts with any
12 of the five pension funds to advise them of the
13 opinion of the Corporation Counsel and that beginning
14 in calendar year 2011, we will be reviewing -- we
15 will be reviewing this issue and we will be requiring
16 that they file under the City's lobbying law if it is
17 applicable. Now, we don't know at this point who is
18 lobbying and who is not, so we began the process by
19 reaching out to people that are on the -- you know,
20 City's database for having contracts for pension
21 funds.

22 HONORABLE HERBERT BERMAN: Does that also
23 apply for the ULURP process?

24 MICHAEL McSWEENEY: The ULURP process is
25 already covered by the lobbying law and it's part of

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2 the specific definitions.

3 JAMILA PONTON BRAGG: What's the ULURP
4 process?

5 HONORABLE HERBERT BERMAN: The uniform land
6 use for community property law. So if somebody comes
7 to the City Planning Commission or community boards,
8 et cetera, and advocates commission.

9 MICHAEL McSWEENEY: So that concludes my
10 discussion of how we have handled, you know, and
11 carried out the City lobbying law. There's just a
12 few -- I'd just like to thank certain people, since
13 this may be my one public opportunity to do so. I'd
14 like to thank the commissioner of DOITT and the staff
15 at DOITT, particularly Andrea Mitchell and Dominick
16 Picciotto for their work in carrying out and creating
17 and improving eLobbyist. I'd like to thank
18 Commissioner Rose Gil-Hern of the Department of
19 Investigation for making her staff available to help
20 us with training and creation of the lobbying law
21 unit which has been instrumental in providing us with
22 advice on enforcement. I'd like to thank the
23 commissioner of DCAS and the executive director of
24 Oath for helping us with training and be able to
25 adjudicate of lobbying issues. I'd also like to

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2 thank the law department and the Corporation Counsel
3 Michael Cardozo and his staff that has been very
4 available to us in dealing with any questions or
5 anything on the law we couldn't figure out. I'd also
6 like to thank the two agencies that duck tail with
7 the Lobby Reform of 2006, the conflict of interest
8 board and the campaign finance board for their work in
9 help us out.

10 I'd like to conclude my remark. There are
11 various issues of concern that we would like to bring
12 to your attention in the lobbying and I think some of
13 the -- you know, just before the meeting started, I
14 think some of those issues were brought up, but I'd
15 like to bring them to your attention on the record.
16 First, the issue of the reporting threshold. So has
17 it stands today, any organization that receives,
18 incurs or expends \$2,000 in fees is required to
19 register with the lobbying bureau. That has been a
20 requirement as before -- since 1986. And there is
21 concern as to whether or not that threshold is too
22 low. I believe in 2006, the state increased its
23 threshold from 2,000 to \$5,000 and, you know --

24 HONORABLE HERBERT BERMAN: Is it your
25 recommendation that would be appropriate here?

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2 MICHAEL MCSWEENEY: At the minimum, I think
3 we should have -- we should match the state and it
4 may be efficacious to consider possibly a higher
5 threshold.

6 ELISA VELAZQUEZ: If we were to consider a
7 higher threshold, isn't there a requirement from the
8 state's side that individuals who lobby the City have
9 to report that lobbying activity separate from their
10 state activity? So they would -- I guess my point is
11 if we raised it past the state threshold and got
12 people that would have had to file with us not having
13 to file with us, they would still have to file with
14 the state.

15 MICHAEL MCSWEENEY: That's correct. It
16 might be better to consider having a threshold that
17 matches exactly what the state's threshold is.

18 ELISA VELAZQUEZ: All right. And just while
19 we're on that train of thought, in terms of the
20 state, how much communication do you have -- I guess
21 it's the Public Integrity Commission, right?

22 MICHAEL MCSWEENEY: Yeah.

23 ELISA VELAZQUEZ: Do you ever compare kind
24 of who is reporting on the state side with whose
25 reporting on the City side?

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MICHAEL McSWEENEY: We've used the state's reports to, you know, just verify issues that we've, you know, been looking at with your filings. But we haven't, as a regular course, compared all of your filings, all of the state's filings.

HONORABLE HERBERT BERMAN: Can that easily be done?

MICHAEL McSWEENEY: Yes, it can. And it's something that, you know -- it's something that I plan to require of the staff immediately.

LESLEY HORTON: Do you have a sense percentage-wise how many registered lobbyists will fall out of the register pool if that were enacted, in terms of -- let's say if the threshold were raised to 5,000, any idea how that would affect the registration pool?

MICHAEL McSWEENEY: I have an exact number, I believe. We know that at least thirty-eight to forty organizations would not have to register based upon last year's filings.

HONORABLE HERBERT BERMAN: That would probably be many of the not-for-profits, right?

MICHAEL McSWEENEY: I would imagine, you know, the smaller not-for-profits, but I'm not clear

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2 that that number represents just not-for-profits.

3 JAMILA PONTON BRAGG: It would still be a
4 little less than 700 registered

5 MICHAEL McSWEENEY: Right, that's correct.
6 You know it may also be something to consider that if
7 a change is made, that a change might, you know,
8 require the City to change its threshold any time the
9 state changes its threshold so that you have
10 uniformity in that area.

11 HONORABLE HERBERT BERMAN: An automatic
12 matching.

13 MICHAEL McSWEENEY: Right.

14 HONORABLE HERBERT BERMAN: Excuse me,
15 Commissioner Morton.

16 MARGARET MORTON: Yes, were you finished
17 with your recommendations?

18 MICHAEL McSWEENEY: There's a few other
19 issues I wanted to bring to your attention.

20 MARGARET MORTON: I'll let you finish. I'll
21 let you finish.

22 MICHAEL McSWEENEY: The lobbying law is --
23 has a number of what I would call discrepancies,
24 areas where certain things are not clearly defined.
25 For example, the definition of who a lobbyist is is

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not clear. The law refers to lobbying, you know, entities or lobbying organizations. It also refers to lobbyists. We require a lobbying organization to enroll with us if it's not just a one-person entity, but we consider that an entity of itself.

HONORABLE HERBERT BERMAN: That's in addition to the lobbyist who may be employed or own those?

MICHAEL McSWEENEY: Right. So I think that it's an issue to consider whether or not to change the law so that it's very clear as to whether a lobbyist is a person or an organization. Another discrepancy is that there's no -- there's nothing in the lobbyist's -- in the lobby law that speaks to whether or not an accrual -- in terms of the accounting principal, whether or not we should be viewing lobbying reporting in accrual basis or on a cash basis. You know, by practice, we have been -- we have applied an accrual basis --

HONORABLE HERBERT BERMAN: What do you mean accrual?

MICHAEL McSWEENEY: In other words --

HONORABLE HERBERT BERMAN: Billing?

MICHAEL McSWEENEY: In terms of what -- you

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2 know, what has actually happened but hasn't
3 necessarily been collected. So we've adopted an
4 accrual basis for all of our findings but it might be
5 something --

6 HONORABLE HERBERT BERMAN: So even if you
7 haven't collected the money, but if you've billed it
8 or you've, so to speak, earned it, you would be
9 required to file.

10 MICHAEL McSWEENEY: Right, and that's what
11 we require. There's also an issue with clarity with
12 respect to expenditures versus expenses, and from an
13 accounting point of view, I think there needs to be
14 clarity as to whether or not expenses or
15 expenditures -- I think there should be one word to
16 describe that used -- you know, clearly defined and
17 used uniformly throughout the statute. There's also
18 a number of technical corrections to the code that
19 you'll see that you might want to consider that would
20 be in the briefing book that's being prepared for you
21 and you should have very shortly. There's another
22 concern that we have about our subpoena powers. So
23 we have powers to subpoena records, statements and so
24 forth, but it doesn't speak to how that power should
25 be applied. It doesn't speak to what court would

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have are jurisdiction over our issuing of subpoenas and, you know, we've -- we haven't had to issue subpoenas, okay, but it's something that when we consider those --

HONORABLE HERBERT BERMAN: The time will come that you will have to.

MICHAEL McSWEENEY: We actually considered it and, you know, it was a problem that we had to kind of discuss strategy to deal with with the law department. If there was some clarity to that, it would make our issuing of subpoena much easier in the future.

ELISA VELAZQUEZ: Has that been an issue where maybe there would have been circumstances where you might have issued the subpoena if you had clarity on that?

MICHAEL McSWEENEY: I'm not sure. The issue that I'm thinking of, we didn't have to issue the subpoena because it kind of resolved itself. I guess the issue was resolved. I believe the lobbyist in question, you know, provided the information that we needed. So I'm not sure, but I think -- you know, it's one of those unforeseen areas, but I know from our discussions with the law department, we would be

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2 able to turn things around much faster if there was
3 more clarity on that end. And in addition to that,
4 there is no affirmative duty for a lobbyist or a
5 client to respond to a subpoena or to respond for any
6 document request that we might make during an audit.
7 And, you know, those things together would make that
8 process happen much more expeditiously.

9 HONORABLE HERBERT BERMAN: I don't
10 understand what you mean when you say no affirmative
11 duty or obligation.

12 MICHAEL McSWEENEY: The law doesn't
13 require -- the law doesn't say what the duties of a
14 lobbyist shall do. It doesn't say what a lobbyist
15 shall comply with any subpoena made by a lobbyist.
16 It doesn't say that a --

17 HONORABLE HERBERT BERMAN: So is that a
18 mandated proceeding?

19 MICHAEL McSWEENEY: It's not clear. I mean,
20 the law department, I believe, said that, you know,
21 we can still proceed with the subpoena but without
22 having clarity, you know, it might be a defense that
23 somebody receiving the subpoena or a document request
24 might say we have no affirmative duty to comply. And
25 that might extend, you know, the time it takes for us

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2 to resolve whatever the issue is.

3 Okay, another issue that we've found is the
4 question of when lobbying actually begins. The
5 lobbying law states that a lobbying activity shall be
6 any attempt to influence the passage or the feat of
7 the Local Law by the City Council. And there is --
8 you know, there is some -- you know, there's some
9 lack of clarity as to when that process starts.
10 Technically, a Local Law is what results from the
11 legislative process. If the City Council introduces
12 the -- they submit what is known as an intro or a
13 resolution, there is the drafting of that intro.
14 There is the deliberation over it, possible committee
15 hearings on it and then deliberation by the committee
16 that's reviewing the law.

17 HONORABLE HERBERT BERMAN: It can literally
18 take months before it becomes a Local Law.

19 MICHAEL McSWEENEY: Right. So I think that
20 needs to be considered whether or not that definition
21 should be clarified. So, you know, there's no, you
22 know, argument over when lobbying action begins.

23 ELISA VELAZQUEZ: How are you providing
24 guidance on that particular issue now?

25 MICHAEL McSWEENEY: Well, you know, we did

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2 -- there's a lack of clarity on that and it's
3 something that we know that -- or I believe --
4 correct me if I'm wrong. The state has said that
5 there's no lobbying until an actual piece of
6 legislation has been created and submitted. So, you
7 know, I believe that in the past, there -- you know,
8 there has been, you know, the thought that a -- that
9 lobbying did not begin until an intro number was
10 applied to a certain bill. So if someone was
11 lobbying for the creation of a bill, there was no
12 actual lobbying until an intro was actually created.
13 So, you know, we've looked at that briefly and it's
14 something that's recently come to our attention, but
15 we think that clarifying that would be a very big
16 help.

17 JAMILA PONTON BRAGG: What's the current
18 practice in terms of when organizations register? Do
19 they register when the law is in place? Do they
20 register during that preliminary time?

21 MICHAEL McSWEENEY: Lobbyists are required
22 to register when they anticipate that they're going
23 to meet that \$2,000 threshold, but the technical
24 issue has to do with whether or not somebody could be
25 deemed not lobbying. If somebody calls, let's say, a

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2 legislature and talks about something that they would
3 like to see adopted as a law or introduced as
4 legislation, because technically, there's no Local
5 Law and it doesn't actually, you know, exist. So
6 that's the question we wish to --

7 HONORABLE HERBERT BERMAN: So you don't
8 necessarily have a recommendation. You're saying you
9 need clarification.

10 MICHAEL McSWEENEY: We definitely -- yes, we
11 need clarification and we think that if the
12 definition was changed to reflect that, I think it
13 would be very helpful.

14 ELISA VELAZQUEZ: So do you know -- I'm
15 sorry. So do you know if, let's just say for
16 example, a group or someone went to go to speak to a
17 community board and it's the precursor to like a
18 ULURP or something like that, do you know if you're
19 capturing those individuals if they're registering?

20 MICHAEL McSWEENEY: We know that a great
21 number of lobbyists report that they're lobbying
22 before community boards for, you know, ULURP matters,
23 for zoning matters or any real estate matters. So we
24 know that lobbyists are clearly registering their
25 activity in front of community boards.

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ELISA VELAZQUEZ: But it could take the --
it could take a different form, not just community
boards where that would occur?

MICHAEL McSWEENEY: Well, I mean, one of the
things that we plan to do and we would like to do and
just, you know, haven't had the time to do it is we
would like to go to every one of the City's
diplomatic community boards and just talk a little
bit about the lobbying law so that people on the
grassroots level are aware that anyone that is, you
know, trying to influence their vote on the ULURP
matter or on any other matter pertaining to zoning or
real estate under the City's jurisdiction, that, you
know, they are public officials for the purposes of
lobbying bureau and they have to follow all of the
relevant laws and they cannot receive a gift from the
lobbyist and so on. We also think that they might
increase compliance on the community board level. We
know that lobbyists are reporting their activities in
front of a community board. We just don't know
whether or not there's any gap in what actually
happens and what is actually reported. Okay, did you
--

MARGARET MORTON: No, I wanted to hear the

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2 rest of your recommendations.

3 MICHAEL McSWEENEY: Okay, thank you. Okay,
4 there's two more recommendations we'd like you to
5 consider. First, there is this idea that has come up
6 about what we would like to refer to as co-lobbying
7 or the state refers to as third-party lobbying.
8 Essentially, we've seen a number of lobbyists hire a
9 co-lobbyist or a third-party lobbyist kind of,
10 something akin to co-counsel, where a lobbyist would,
11 in trying to advance the goal for their client, would
12 need the assistance of another lobbyist. Now, we're
13 trying to set up a mechanism so that in eLobbyist, we
14 can accurately reflect that but there's nothing in
15 the law that speaks to any definition of a
16 third-party lobbyist and we believe that that is an
17 issue that you might want to consider, actually,
18 codifying the role of a co-lobbyist or third party
19 lobbyist. The last issue of concern we wanted to
20 bring to you, and we think it's maybe the most
21 controversial and our understanding of the law is
22 that we do not have the flexibility when it comes to
23 assessing late fees. The law says that the City
24 Clerk shall impose a late fee of ten dollars, per
25 lobbyist, per client, for any lobbyist filing for the

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2 first time and twenty-five dollars for any other
3 lobbyist that has ever filed previously. That is an
4 issue that -- you know, it's a very thorny issue and
5 there are two sides to it. The -- our understanding
6 that it's said in law that we don't have flexibility
7 with respect to late fees kind of insulates us for
8 any political pressure that might come from an
9 organization that feels the late fees are, you know,
10 unwarranted for whatever reason and we feel that
11 there's some efficacy to not having any discretion
12 with respect to late fees. On the other hand, if
13 late fees -- if there were some discretion for late
14 fees, it would allow us to deal with unforeseen
15 circumstances that may be, you know, no one in any of
16 the previous drafting of the lobby laws could
17 foresee. But if that were to be considered, what we
18 would -- you know, we would say that it would have to
19 come with very clear objective criteria that would
20 describe how the discretion would be applied because,
21 you know, we think that if there were discretion with
22 respect to late fees, it would be very hard to
23 enforce them if everybody was trying to use influence
24 to convince the City Clerk's office that the late
25 fees are unwarranted. Considering the fact that

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we're regulating the business of lobbying and lobbying is about, you know, earning -- earning money for being able to levy influence, I think that that's something that would have to be very carefully considered. It has been a controversial issue, and, you know, I think that's the biggest issue we would like to present to you for consideration.

HONORABLE HERBERT BERMAN: Commissioner Morton?

MARGARET MORTON: I have a few questions about training. Your testimony has actually been very thorough and maybe we'd love to invite you back at some point, too, because -- first of all --

MICHAEL McSWEENEY: I look forward to that, thank you

MARGARET MORTON: Great. Training. Do you think you're doing enough of it. It sounds like you're doing it annually and you're also developing an E format. But do you think it's enough?

MICHAEL McSWEENEY: We would like to do more training. We clearly think that more training is needed. The problem is our -- the resources that we have are kind of inadequate to the task of being able to do training. So when we -- when we plan to do a

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2 training session, we have to create a -- you know, a
3 syllabus. We usually, you know, try to collaborate
4 with DOITT any time we do training so that if there's
5 any issue with the law, we'll touch on that. We'll
6 be available to answer any questions that may have
7 come up and then DOITT will kind of do their own
8 presentation and usually reflects all of the changes
9 that they've made to eLobbyist. What I would like to
10 do if I could, you know, what I think would be the
11 best thing to enable us to improve our training would
12 be if we had additional staffing. We would like to
13 -- to be able to bring in a full-time trainer,
14 somebody that we would model after the full-time
15 trainer that a conflict of interest board has,
16 somebody that is very well known, Alex Kipp, who has
17 trained thousands and thousands of City employees on
18 the rules of chapter sixty-eight of the charter. We
19 would love to have a trainer that could, you know,
20 provide more one-on-one training, you know, smaller
21 training courses that we could schedule on a regular
22 basis which, I believe, is what the campaign finance
23 board does. So if we have a full-time trainer, they
24 could do that. A full-time trainer could also do the
25 work of going out to community boards and, you know,

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2 spreading the word to community boards, maybe
3 visiting not-for-profit boards, civic organizations
4 and so forth to really do more grassroots efforts to
5 train people on lobbying and let people know what
6 their duties are under the lobbying law.

7 MARGARET MORTON: Do you gage now your -- it
8 sounds like you're doing technical assistance.
9 You're taking phone calls. It would probably be in
10 your interest to start to documenting that to see to
11 the extent that you're doing technical assistance and
12 phone calls with enforcement, for example, and
13 general education and knowledge about the law. But I
14 don't know if you're doing that, but you should.

15 MICHAEL McSWEENEY: We -- we -- I know that
16 we did it in the beginning and then, you know, it got
17 to a point where we were so overwhelmed by phone
18 calls, it was hard to measure. But one of the things
19 we've talked about was acquiring some kind of
20 software package where -- like a timekeeping package
21 where attorneys use, where we would document every
22 phone call that comes in and keep a record of the
23 amount of time each call takes and look at the
24 question and be able to kind of actually report back
25 on the amount of phone calls we take, what the topics

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are and what is the population we're serving. That's something we would like to do.

MARGARET MORTON: If we can request a copy of the training syllabus, if we don't have it, that would be great for the curriculum.

MICHAEL McSWEENEY: Most of the syllabi that we provided have been posted online. We'll double check to see if there's anything else that isn't posted and we'll make sure we get that to you. We also -- I don't know if I mentioned -- I did mention it. We've posted the first video instruction that was created by DOITT and -- to reflect our last training. So that, we think, is a very good effort and, you know, we'll double check to make sure you have everything.

MARGARET MORTON: Thank you.

HONORABLE HERBERT BERMAN: Has the number of the amount of late filings fines been decreasing since the laws were first changed, or if so, what do you attribute this change to?

MICHAEL McSWEENEY: We found that in the first years of enforcement, the number of fees increased and they kind of maxed out in 2008 and started to trend downward. Then in 2010, there was a

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2 decrease from the fines and penalties issued to
3 lobbyists and clients. There was a newspaper story
4 that covered this and they said there was a
5 ninety-six percent increase. That actually is not
6 correct. The actual increase is forty-three percent
7 if you calculate all fees by lobbyist and clients for
8 2009 as opposed to 2010. The reason we would
9 attribute the decrease to increased enforcement of
10 the lobby law, the lobbyists and clients know what
11 the law is. A lot of fines have been paid and, you
12 know, they've gotten used to complying with the law.
13 In addition, we've answered more questions by more
14 individuals and, you know, between that and the
15 training, we feel that that is -- you know, those are
16 some of the reasons. We also implemented an
17 automatic e-mail system in eLobbyist so that if you
18 -- if the day after the filing deadline comes and you
19 haven't filed, an automatic e-mail is generated and
20 sent to the filer. And then the other thing that
21 we've improved is the speed in which we send out our
22 notices to cure. So now, within thirty days after a
23 late fee has happened, we send out a notice to cure
24 for that filer. So by doing that, you know, we're
25 helping to, you know, improve filing and that is, you

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2 know -- I would believe explain why compliances are
3 -- the amounts of fees has decreased.

4 ELISA VELAZQUEZ: Once you have somebody
5 that's registered, it's easy obviously -- and, I
6 guess, eLobbyist, like you said, send out an
7 automatic e-mail and it's time for you to be doing,
8 you know, this report, this report, this report. But
9 can you talk a little bit about some of the efforts
10 you've undertaken to cast the net for -- because you
11 don't know if people that aren't in the system, you
12 don't know if they should be in the system. So how
13 are you getting -- I know you said you had sent, I
14 guess, letters with the pension funds. But what are
15 some of the other things your doing to make sure that
16 you're enforcing and you're getting the -- the people
17 that are lobbying actually registered so you can
18 monitor them?

19 MICHAEL McSWEENEY: We started to send
20 letters out to entities that are on the City's doing
21 business list and we also sent out letters to every
22 single entity that has a discretionary -- any kind of
23 council discretionary funding. And in that letter,
24 we just, you know, said that we are contacting you
25 because you're on one of the City's databases that

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2 you're doing business with the City. We want to make
3 you aware of the City's lobbying bureau if, in the
4 event, that you might be subject to our jurisdiction.
5 We said that it doesn't necessarily mean that you
6 have or have not lobbied, but, you know, for your
7 consideration, we are enclosing a summary of the
8 City's lobbying law and we would like you to take
9 this into consideration and to, you know, contact our
10 office if you have any questions.

11 HONORABLE HERBERT BERMAN: Do you include
12 any information for them to refer to or --

13 MICHAEL McSWEENEY: Yes. We created a kind
14 of a -- you know, a summary of the City's lobbying
15 law and I think -- did we include a copy of the law?

16 PATRICK SYNMOIE: (Unintelligible.)

17 MICHAEL McSWEENEY: Oh, that was for the
18 pensions. We included -- for the pension letters, we
19 included the Corporation Counsel's opinion with
20 respect to pension business. In the other letters,
21 we sent a summary of the City's lobbying law and that
22 was included in every letter to give, you know, the
23 letters and contacts. So that was something that we
24 introduced in the calendar year 2010 and we're
25 looking to increase that correspondence. The problem

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2 is, you know, because the system is self reporting --
3 I mean, when the law was adopted in 2006, you know,
4 the committee testimony of the people that were
5 advocating for this law, it was clear that the
6 intention was that this is a self reporting law so
7 that we would be using the reports of lobbyists to,
8 you know, do our filings and our audits. And that
9 was -- you know, that was the original intention.
10 So, you know, what we're trying to do now is to find
11 more people to, you know -- by, you know, sending out
12 letters and, you know, if we could increase our
13 presence in the City through using a trainer or
14 something else, that, we think, we could increase
15 compliance. I mean, clearly, since the law was
16 introduced, as I mentioned before, compliance has
17 increased. But, you know, we're looking to find
18 innovative ways to find people because while some
19 people have, you know, said that, you know, we're not
20 doing enough to pursue people who haven't filed, it's
21 hard to know who hasn't filed. I mean, it's a purely
22 speculative thing because it's a self reporting
23 mechanism.

24 LESLEY HORTON: Other than through the
25 random audits that you just discussed previously, is

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2 there any other -- I guess maybe the investigators in
3 your office -- sort of oversight in comparing the
4 lobbyist filings and the client filings with respect
5 to discrepancies or is it that, you know, if I'm a
6 lobbyist and I filed and there's a discrepancy, would
7 it only be captured if I was randomly audited or is
8 there now currently sort of oversight of all that
9 would catch that even if I wasn't randomly audited?

10 MICHAEL McSWEENEY: Well, the random audit's
11 kind of -- you know, that's clearly the way we find
12 most of our discrepancies. We have the power to
13 review any filing and I know at times our staff, for
14 various reasons, has reviewed every filing. I think
15 one of the things that the staff does is just kind of
16 randomly checks different filings for -- to see what
17 happens. But I can't say that we've analyzed every
18 single filing.

19 LESLEY HORTON: Right, right. But it's
20 possible that beyond some of the thirty, you might be
21 able to catch others sort of here and there?

22 MICHAEL McSWEENEY: Yes, definitely. If I
23 may, there's just one thing I want to touch on a
24 little bit more with respect to when lobbying begins.
25 I think -- I'd like my General Counsel just to add to

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2 my comments, if you would, Patrick.

3 PATRICK SYNMOIE: If I may, I just wanted to
4 point out that one of the problems with this that the
5 state has already put out there that that is their
6 practice. Therefore, if there is an introduction
7 into legislation, then you're not lobbying. The
8 state actually practices a little different than it
9 happens down here. So just about everything, there
10 is some bill sent. So maybe it works up there, but
11 down here, the truth is if that were indeed adopted,
12 that position were adopted, then pretty much the
13 lobbying law would be gutted. So we really are not
14 on the side of taking that position.

15 HONORABLE HERBERT BERMAN: Well, in view of
16 that, have you -- considering the fact that the
17 City's legislative process is so different from the
18 state's in that regard, have you ever advised anyone
19 that law made is not begin until the bill is
20 introduced?

21 PATRICK SYNMOIE: I believe that information
22 has been out out there inadvertently, but it's not
23 the position of the office.

24 HONORABLE HERBERT BERMAN: So that has been
25 corrected, then?

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PATRICK SYNMOIE: Yes. Yes, it's been out there, but it's never been our official position. We're certainly are not in favor of putting that out there. It absolutely would gut the law.

HONORABLE HERBERT BERMAN: Before I conclude the City's Clerk's testimony, would you be good enough -- are you going to submit your statement as your testimony or are you going to give us something else?

MICHAEL MCSWEENEY: What I'd like to do is we've been putting together a briefing book that contains everything that I've mentioned and has a number of indexes so you can see all the audit filings -- all of the audit requirement recommendations, all our annual reports and a lot of other information, and we will be submitting that to you very shortly. That will contain everything that was included in my testimony.

HONORABLE HERBERT BERMAN: Would it also be an imposition if you gave us your written testimony?

MICHAEL MCSWEENEY: I can provide it to you. I don't have it. I kind of have notes spread out.

HONORABLE HERBERT BERMAN: That's okay.

MICHAEL MCSWEENEY: I'd be happy to give

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2 that testimony to you by Friday.

3 HONORABLE HERBERT BERMAN: If that's okay.
4 Now, fellow commissioners, I'd appreciate if we can
5 go on to DOITT. I want to thank you very much. We
6 will definitely be dealing with you and calling upon
7 you again, but this testimony was a good beginning.

8 MICHAEL McSWEENEY: Thank you.

9 HONORABLE HERBERT BERMAN: Thank you very
10 much.

11 MICHAEL McSWEENEY: We look forward to
12 working with you.

13 HONORABLE HERBERT BERMAN: Now, we need a
14 five-minute break in order to set up the screen and
15 everything for DOITT. Am I right, Matt?

16 Okay, so everybody do what you have to do
17 for five minutes.

18 (Whereupon, a recess was taken at this
19 time.)

20 HONORABLE HERBERT BERMAN: Okay, reconvening
21 the Lobbying Commission. This is the audio-visual
22 part of it and would you be good enough -- you're
23 from DOITT, right?

24 ANDREA MITCHELL: Yes.

25 HONORABLE HERBERT BERMAN: Just identify

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2 your name, please, your agency and your position
3 there.

4 ANDREA MITCHELL: My name is Andrea
5 Mitchell. I'm with the Department of Information,
6 Technology and Telecommunications.

7 HONORABLE HERBERT BERMAN: Andrea, one
8 minute. Could you close that door? Go ahead. I'm
9 sorry.

10 ANDREA MITCHELL: I'm with the Department of
11 Information, Technology and Telecommunications, also
12 known as DOITT.

13 HONORABLE HERBERT BERMAN: Is there a button
14 that lights up?

15 ANDREA MITCHELL: I'll start over. My name
16 is Andrea Mitchell. I'm with the Department of
17 Information, Technology and Telecommunications, also
18 known as DOITT. I am the project manager for the
19 eLobbyist application. I've been the project manager
20 since May of 2009. Prior to me, it was a consultant
21 and also Dominick Picciotto. The application started
22 with DOITT in 2006 with the launch of the first
23 filing in January of 2007. We are still in the
24 process of enhancing the application, so we have
25 seven more releases planned.

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HONORABLE HERBERT BERMAN: It's on ongoing process?

ANDREA MITCHELL: It's an ongoing project and we hope to wrap up by the end of summer with the current list of enhancements. So I'm going to do today is walk you through the application from the perspective of a lobbyist and a client. What I will not be showing you are the add-in screens the City Clerks use for their processes. So I'm going to -- some of this may seem a little boring because I'm filling out forms, but this is what our users go through. If you have any questions at any time, please stop me and I'll elaborate.

HONORABLE HERBERT BERMAN: Just bear in mind that if there is anything that requires legislative remediation that you want to refer to us for our recommendations, please do that.

ANDREA MITCHELL: So any of the functionality that's within this application is based off of the requirements set forth from the City Clerk and their interpretations of the law. So if anything does require a legislative change from an application perspective, we can change it but it would just be future enhancement and, of course, an additional

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2 funding request. So for whether you're a lobbyist or
3 a client, you first must enroll within the
4 application. Also, please keep in mind this is not
5 our production system. This is our test environment
6 so it's a little slower than what you would normally
7 see and we're also not within the DOITT network, so
8 it's a little slower. So basic information regarding
9 the principal officer, I'm putting in dummy
10 information. This e-mail address will also act as
11 the user ID for the user on future logins. This will
12 also be used to send any e-mail notifications that
13 the system generates. The principal officer is
14 required to accept the terms-of-use agreement. The
15 enrollment process is a one-time process for an
16 entity. Any information that needs to change
17 regarding the principal officer or the business name
18 would be done through the City Clerk's office.

19 ELISA VELAZQUEZ: One question, I'm sorry.
20 Does the principal officer have to be the actual
21 lobbyist or could it be the secretary filling it out
22 for them?

23 ANDREA MITCHELL: For this piece, it should
24 be the actual principal officer who's filling it out.
25 The principal officer can put in designees within the

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system that can fill out the form, but the only person who has the ability to certify a report would be the principal officer.

ELISA VELAZQUEZ: Okay

ANDREA MITCHELL: So we would ask if they are here for the -- to make this faster, I'm just going to answer no. This is where the filer would designate if they are a lobbyist or a client or both. So for this, I'll just put them as a lobbyist. But the forms are the same -- this form is the same regardless of whether you're a lobbyist or a client. And they're required to enter in their TIN number. If -- an organization cannot enroll twice with the same TIN number so it would prevent duplicates. The users are also required to send a check or information to the City's Clerk's office, so they have to click one or the other. Okay, an e-mail, at this point, would go out to the user to have them create a password for the system. For time, I'm not going to go through that whole process. But it's a length. They go in. If they've already have an account with NYC dot gov, they put in that password. If it's brand new, they create a password. At this time, the Clerk's office would wait for their

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affirmation or check and put the enrollment in the accepted status. The users would still be able to continue on with their filing until that time. The system doesn't prevent them from moving forward.

ELISA VELAZQUEZ: Even if they're not an accepted status, they keep filing, their information would still be publically available on the Clerk's site, correct?

ANDREA MITCHELL: Correct, on the lobbyist search application, yes. So I'm going to login with an account that has already had their enrollment accepted. Okay, so here would be a list of all the entities that officer is associated with. So from this screen, the principal officer would be able to view their entity profile, which is where they would be able to add any designees they want who can file the initial report on their behalf, and they would click here to do that. So also, on this screen is where they would add all their employees that are currently working on the lobby.

ELISA VELAZQUEZ: I have a question. If you are a principal officer and you have ABC Lobbying Corp. and you're filing because you do lobbying with ABC Lobbying Corp. but you have -- you're affiliated

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with three other organizations, do you need to report those, as well? Or when you say the organizations or the other entities, they would be other entities that you would be associated with that are doing lobbying?

ANDREA MITCHELL: You can be a principal officer of multiple organizations.

ELISA VELAZQUEZ: So I guess my question is do you report those organizations even if they're not engaged in lobbying themselves, if they're just connected to you?

ANDREA MITCHELL: No, they just need --

ELISA VELAZQUEZ: So it's everyone that doing lobbying. We don't care for purposes of this if you have affiliation with some other organization that's not lobbying. You don't need to report that? Okay.

ANDREA MITCHELL: So from the screen you would enter the employee's information. This information would carry forward to the registrations and periodic reports. You would select the employees from there. They're required to select an employee type from here, so an employee lobby or if you're the certifying principal officer who lobbies, you would select from that list. The employee's home address,

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2 this information is never available publicly, the
3 employee's home address. This is where they would
4 also enter their spouse's information and their
5 children's information. The employee start date is
6 important in that if you're not -- if the -- the
7 employee start and end date needs to coincide in the
8 period in which you're filing and if it does not, it
9 does not allow you to add that employee to a filing.
10 What did I miss? So when an employee is added or
11 edited, the principal officer would be required to
12 recertify the list of employees that are lobbying for
13 them.

14 ELISA VELAZQUEZ: And they do that with each
15 periodic filing?

16 ANDREA MITCHELL: No. The employees are
17 added only as needed, so you would do it -- if
18 someone's -- you just do it the one time. But any
19 time you make a change to it, you need to recertify
20 the list.

21 ELISA VELAZQUEZ: Got it, okay.

22 LESLEY HORTON: Just to clarify, all the
23 employees that are added to this are only employees
24 that are actually lobbying, right? Or could you have
25 a principal registering and their entities and have

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2 employees who are not lobbying? Would those people
3 that be included?

4 ANDREA MITCHELL: You can have your
5 employees that support the lobbyists. You can have
6 an employee that lobby. You can be a principal
7 officer that also lobbies or just a principal officer
8 that just certifies the reports.

9 LESLEY HORTON: But employees who are
10 associated with the entity or clearly who work for
11 the entity but are not engaged in lobbying activities
12 would not be included on this, correct?

13 ANDREA MITCHELL: No. So I'm going to do a
14 client registration. For each year, you select the
15 year that you're going to be doing the registration.
16 And in order to do a -- in order to register a
17 client as a lobbyist, the client would need to have
18 previously enrolled in the application. This was put
19 in place to prevent issues where the client didn't
20 know they were there or there was a misspellings or
21 -- so this makes sure that the data is a little
22 cleaner. So they would enter the start date of the
23 contract. The client information will pre-populate
24 from their enrollment. You just need to enter in
25 their industry and select from here. You would add

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2 the employees from the organization which would be
3 working with this client. It will only allow you to
4 select active employees. You can view all the
5 details of that employee. Nothing needs to be
6 reentered. You would enter here your proposed
7 lobbying activities for the year. This is just what
8 you plan on doing. This is not your actuals. So we
9 have broken this down so it's all drop downs entered
10 and the details of it. We have a list of all the
11 target agencies, the City Council and the community
12 boards. Depending on what you select, this may --
13 I'll select City Council.

14 ELISA VELAZQUEZ: The flow chart that you
15 have up at the top, is that there for us or is that
16 there all the time?

17 ANDREA MITCHELL: That's there all the time.
18 That's to guide the user to how many more steps you
19 have before you register. Also, we have the user
20 guide on the top of every page that opens up. Right
21 now, it's a PDF. It's a rather large document, but
22 very thorough. And one of our goals is to add a more
23 -- more help features here so that if there's your on
24 a line, you can click on it and pull it back. But
25 that is a future enhancement that we'll work on. We

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pre-populate all the current council members for a period so that there is less typing involved.

LESLEY HORTON: Have you found that people are having issues with, let's say, a lobbyist is trying to register but the client hasn't yet completed their registration? Because you said in one of the prior steps that essentially can't finish it until the client has already -- has already entered their information, right?

ANDREA MITCHELL: Yeah. So that -- those kind of issues don't bubble over to me. I don't know if you --

MICHAEL McSWEENEY: Doesn't happen too often. It happens, but not --

LESLEY HORTON: Oh, okay.

ANDREA MITCHELL: So the lobbying activity is there, submit. You can enter as many as you need. At this point, you would either -- it's for your retainer letter and payment. The users have the option of uploading their retaining letter or mailing it in. Either way, they also have to send in their check or money order for the registration. First registration is \$150. Each subsequent registration is fifty dollars. So I will -- I'm not going to

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2 actually upload because I don't have a document on
3 this machine, but I'll show you the steps. It's your
4 basic document upload that you've done on any
5 website. You click on browse. You find your
6 document and it saves it for you. So to help with
7 speed, say I'll send it in and continue. At this
8 point, the principal officer would send in their
9 password to certify the registration. The
10 registration is not marked as complete until the City
11 Clerk's receives the requirement documentation and
12 check. But, like before, they can fill in any of the
13 reports that they would need to for that period. So
14 to show you a report, I have one started for another
15 client. This would be the -- the client periodic
16 report filed by the lobbyist on behalf of their -- on
17 behalf of what the client activities were for that
18 period. So the lobbyist information pre-populates
19 from the enrollment as well as the client information
20 from the registration. You will add whatever
21 employees actually worked on that client for that
22 year. We do not -- we do not bring over the
23 employees from what you put on your client
24 registration because we -- this is supposed to be
25 your actuals. The registration is what you think is

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2 going to happen. So it forces the user to actually
3 go in and say yes, this is the person who did it, so
4 -- and you'll also be able to view the details here,
5 as well, regarding the lobbyist. You would add your
6 activity similar to how it was done on the
7 registration. When you select an individual agency,
8 you're required to put in the name of the person in
9 the registration. I showed you the council member's
10 in. Since we pre-populate that information, you
11 don't have to go back in. But if we're selecting
12 DOITT or -- I can show you the council. You would
13 put in their contact information. If it's multiple,
14 you would have the option of adding each person you
15 spoke to at that specific agency. If you -- if there
16 was no activity for that session, you have the
17 ability of selecting a box that says no activities
18 for that time. If you do that -- if the user does
19 that, they also shouldn't be putting any employees on
20 the E report. This is where the lobbyist would enter
21 in the compensation for that period. For the prior
22 periods, I just put in zero. So if there was
23 compensation in the prior periods, the total would
24 show up here for them to view. This is where they
25 would enter in the expenses for their support staff

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2 and their lobbying expenses for that year if it's
3 less than seventy-five dollars. If it's greater than
4 seventy-five, they need to list it individually.
5 We'll do it that way. And at this point, the
6 principal officer would certify the periodic report
7 for that period. If you're a designee, you would get
8 stopped here and then the principal officer could
9 login, go to the report and just certify it. I
10 should also mention when an enrollment is done, a
11 registration, a periodic report, e-mail notifications
12 are sent out to the users saying, you know, X, Y and
13 Z was done for this organization on this date. For
14 the reports, we also send out a hash value so that
15 you can compare for a later date saying this report
16 and what you have in your system, they match. So no
17 one's touched it. This is what you've done. So in
18 case anything ever comes up, they can --

19 ELISA VELAZQUEZ: You don't have to publish
20 hash, do you? Like, I know --

21 ANDREA MITCHELL: CYB publishes the hash.
22 No, we don't publish hash. I'm going to logout now
23 and show you what a client would file. The clients
24 are only required to file their client annual report
25 whereas the lobbyist files six reports throughout the

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2 year. So for this client, we'll be filing the 2010
3 registration. They would also be able to view their
4 entity profile similar to the lobbyist. So for the
5 client annual report, the client information is
6 pre-populated. They would add the lobbyist entities
7 that they have retained. This also is a selection
8 from the -- from a list. They would select how many
9 they have, just select one here. So for each
10 lobbyist entity, they would be required to enter the
11 activities that that specific lobbyist had worked on
12 for their behalf, the compensation they've paid and
13 the reimbursed expenses for that person. I'm not
14 going to walk you through -- I think I have to,
15 sorry. It won't let me move forward. It would
16 prevent the user from going forward if they put zeros
17 for everything, so it kind of makes them go in and
18 see did I actually do anything. They can select no
19 activities.

20 ELISA VELAZQUEZ: I have a question.

21 ANDREA MITCHELL: Sure.

22 ELISA VELAZQUEZ: So if you -- let's just
23 say the Clerk's office wanted to see the lobbying
24 activities for a certain client or for the clients of
25 a certain lobbyist, does the system have the

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2 reporting ability to do that? I mean, do they have,
3 like, canned reports that they could run if they
4 wanted to look at data in certain days or --

5 ANDREA MITCHELL: We have provided them a
6 number of canned reports and we're still continuing
7 to develop new ones. One of the new ones will be the
8 -- where you can compare the lobbying activities that
9 the client reported against what the lobbyist
10 reported on their reports. This functionality only
11 came out about two months ago -- well, December. So
12 for the 2010 client annual reports was the first time
13 the lobbyist were broken down into this lobbyist
14 worked on this for me whereas before, it was I
15 employed all these lobbyist and these were all my
16 activities throughout the year. It wasn't matched
17 who did what and now it is. So that kind of
18 reporting would be possible and that's one of the
19 items we're working on with the Clerk office, the
20 file requirements of that report

21 ELISA VELAZQUEZ: How many canned reports
22 exist now?

23 ANDREA MITCHELL: I think nine. About that.
24 I think we could provide a list if it --

25 ELISA VELAZQUEZ: Yeah, that would be great.

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2 We would love to see that, the list of reports.

3 Thanks.

4 ANDREA MITCHELL: This is for the
5 compensation for that specific lobbyist. The user
6 would continue to loop through until they all -- for
7 all the lobbyist they have entered, they have filled
8 out that same information. And when they're
9 complete, the client principal officer would be able
10 to certify the report. Users can view the reports
11 they've filed or print them out. Any amendments,
12 they'd be able to do them through the system. And
13 that's basically everything that a lobbyist and a
14 client would go through during a typical filing
15 period. Are there any questions?

16 HONORABLE HERBERT BERMAN: Thank you very
17 much. I appreciate the presentation. And obviously,
18 staff will be in touch with you. I appreciate your
19 continued cooperation. Thank you very much.

20 ELISA VELAZQUEZ: Thank you, Andrea.

21 HONORABLE HERBERT BERMAN: We have a
22 four-minute-and-thirty-three second hiatus while we
23 get the lights back on.

24 (Whereupon, a recess was taken at this
25 time.)

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HONORABLE HERBERT BERMAN: I did that only because I have a pension for knocking on wood. Good evening. Please be good enough to identify yourself and the position of the agency you're with.

WAYNE HAWLEY: Chairman Berman and members of the Committee, my name is Wayne Hawley. I'm the deputy executive director and General Counsel at the City's Conflicts of Interest Board. Thank you for the invitation to speak tonight and I should also say thanks to all of your for this service to the City. My remarks will be brief.

The added responsibilities given to the board by the 2006 lobbying reform legislation, while significant, were in fact probably less than those assigned to your fellow City agencies. More particularly, Local Law 16 of 2006 prohibited City lobbyists from offering or making gifts to public servants of the City. That law assigned to the board the responsibility to interpret and enforce this lobbyist gift ban in the same manner as it interprets and enforces the City's conflicts of the interest law, which is set forth in chapter sixty-eight of the City charter. Local Law 16 also directed the board to undertake rule making to define prohibiting gifts

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2 and to set forth exceptions particularly and
3 including de minimus gifts, gifts from family and
4 close personal friends and gifts that would be
5 considered permissible gifts to the City. Finally,
6 the law directed the board in its ruling by its
7 implication and its advice giving function to conform
8 whenever practicable the prohibition on gift giving
9 by lobbyists the chapter sixty-eight restrictions on
10 receipts on gifts by public servants. Pursuant to
11 that mandate, the board first undertook the directive
12 in rule making. The testament is the notice of
13 adoption of the board's rule 1-16 entitled prohibited
14 gifts from lobbyist and exceptions thereto, which is
15 published in the City record of December 27th, 2006
16 and effective thirty days thereafter. As an aside,
17 as this notice states, the public hearing for the
18 rule was held here at 22 Reade, like today, a
19 courtesy of the City Planning Department. As the
20 notice also reflects, the board took care in its rule
21 making to conform, whenever practicable, the
22 restrictions on the giving of gifts by lobbyist to
23 the existing restriction of receipt of gifts by
24 public servants, and also took the occasion to enact
25 a few amendments to the corresponding rule on receipt

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2 of gifts, which is board rule 1-01. The board's next
3 major effort with respect to the lobbyist gift ban
4 was the issuance in December of 2007 of its advisory
5 opinion number 2007-3, also attached to my testimony.
6 This opinion was issued in response to requests,
7 particularly from not-for-profit organizations whose
8 principals were required to register as lobbyists
9 about their offering free admission to public
10 servants to fundraising events and to other widely
11 attended functions. In this seventeen-page opinion,
12 the board discussed the variety of scenarios posed by
13 these organizations throughout the opinion as
14 directed by the law. The board's analysis turned
15 substantially on its rules and opinions concerning
16 the receipt of gifts by public servants, including
17 its omnibus so-called tickets opinion issued in the
18 year 2000. That was number 2000-4. Now, I'm going
19 into particulars about the 2007 opinion. I think
20 it's fair to say that the opportunity to think and
21 write carefully on the subject of permissible gift
22 giving was helpful to the board in refining and
23 expressing its jurisprudence on the subject of
24 receipt of a free admission. I should also note for
25 its possible relevance to the deliberation of this

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2 commission that this omnibus opinion of 2007-3
3 concluded with a caution that in addition to being
4 bound by the City's lobbying regulations, local
5 lobbyist are also subject to the state's lobbyist
6 laws which, like Local Law 16, impose restrictions on
7 gift giving by lobbyist. That's codified legislative
8 law section 1-M. Finally, I report what the board
9 has not done since the enactment of Local Law 16, it
10 has not found any lobbyist to be in violation of the
11 lobbyist gift ban. The relative paucity of request
12 for advice about the lobbyist gift law, the complete
13 absence of board enforcement dispositions, a
14 concerning lobbyist, combined with a lack of news
15 articles suggesting inappropriate gifts from lobbyist
16 to public servants suggested this law, Local Law 16,
17 as enacted by the council, as implemented in the
18 board's rule and as interpreted in the board's
19 advisory opinion is working well. That concludes my
20 prepared remarks. I'd be happy to answer any
21 questions.

22 HONORABLE HERBERT BERMAN: Thank you,
23 appreciate your testimony. Are there any questions?
24 If you don't mind just waiting to the end of the next
25 witness, we'll conclude. I want to speak to you.

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2 Okay?

3 WAYNE HAWLEY: Happy to.

4 HONORABLE HERBERT BERMAN: Thank you very
5 much. The final witness, I believe, is Campaign
6 Finance Board.

7 Good evening, would you be good enough to
8 introduce yourself and your agency and your position?

9 AMY LOPREST: I am Amy Loprest, executive
10 director of the New York City Campaign Finance Board
11 and I thank you for allowing me -- inviting here to
12 testify before you tonight. I'm here to share with
13 you CFB's history with the lobbying law and hopefully
14 lay some ground work for the Commission's
15 deliberations. The lobbying law has helped to
16 provide the public with important information about
17 the political process, and I hope our experiences in
18 administering aspects of the law can help the
19 commission analyze how best to approach its
20 deliberations.

21 Since 1988, the CFB has administered the
22 City's public financing program, which matches New
23 Yorkers' small contributions with public funds.
24 Participation in the matching funds program is
25 voluntary, and candidates who qualify have the first

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2 \$175 of contributions matched at a rate of six
3 dollars to one. However, all candidates in City
4 elections are required to file their disclosure
5 activity to the CFB. Our staff conducts pre-election
6 audits to determine if candidates are eligible to
7 receive public funds, and full post-election audits
8 to ensure campaigns have complied with our rules and
9 spent their funds appropriately.

10 In June, 2006, the lobbying law was enacted,
11 requiring lobbyists to register with the City Clerk
12 and disclose the targets and subject of their
13 lobbying activity to the public. The law also
14 prohibited City candidates from receiving public
15 matching funds for contributions made by registered
16 lobbyists. The prohibition on matching contributions
17 extends to all individuals listed on the lobbyist
18 registration, including employees and immediate
19 family members of registered lobbyists.

20 Prior to the law's passage, we regularly
21 reviewed each contribution and supporting
22 documentation submitted by candidates to determine
23 whether a contribution was eligible to be matched,
24 based on residence and other factors. The lobbying
25 law created a new class of people whose contributions

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2 were not eligible to be matched. To enforce this
3 prohibition, we compared campaign records with
4 information provided by the City Clerk's office to
5 determine which contributions were ineligible to be
6 matched with public funds.

7 The passage of Local Law number 34 in 2007,
8 the "Doing Business" law, resulted in new
9 restrictions on lobbyist contributions. The "Doing
10 Business" law names a broad range of individuals who
11 are considered to be engaged in business dealings
12 with the City; those holding or bidding on City
13 contracts, franchises or concessions; recipients of
14 City grants; parties to economic development
15 agreements, pension fund investment agreements, real
16 property transactions, or land use action; and, most
17 significantly for this discussion, registered
18 lobbyists.

19 Like the lobbying law, the "Doing Business"
20 law prohibits matching funds for payments -- payments
21 for contributions from individuals covered by the
22 law. The "Doing Business" law also places strict low
23 limits on contributions from these individuals. For
24 example, a City Council candidate can receive
25 individual contributions up to \$2,750, but can

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2 receive only \$250 from someone, quote, doing business
3 with the City.

4 While lobbyists are covered, employees and
5 immediate family members of registered lobbyists are
6 not included in the law's definition of those doing
7 business with the City. Because registered lobbyists
8 are covered by the "Doing Business" law, they are A,
9 ineligible to have their contributions matched with
10 public funds and B, subject to the lower contribution
11 limit. However, under the lobbying law, employees
12 and family members of lobbyists cannot have their
13 contributions matched, but they are not subject to
14 the lower contribution limits.

15 Both the lobbying law and the "Doing
16 Business" law serve to reduce the potential for
17 influence seeking through the political process by
18 people who have a clear and narrowly-defined interest
19 in government business. A more uniform approach to
20 lobbying and doing business would further the goals
21 of these important laws by simplifying compliance.
22 We highlighted some of these issues in our
23 post-election report, and I want to briefly summarize
24 them today.

25 As mentioned previously, by including

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2 lobbying as a covered category of business dealings,
3 the doing business law resulted in a second mandate
4 to withhold matching funds for lobbyist
5 contributions. The lobbying law is more inclusive
6 than the "Doing Business" law. It applies the
7 matching funds restrictions to all people listed on
8 the lobbyist registration, while the "Doing Business"
9 law applies the restrictions only to lobbyists,
10 themselves. On the other hand, the lower
11 contribution limits in the "Doing Business" law apply
12 only to registered lobbyists and not to their
13 employees or family members.

14 The discrepancies between these two have
15 created confusion for campaigns and contributors
16 alike. During the campaign, we received many calls
17 for guidance from campaigns, contributors, lobbyists
18 and their clients, many of whom were confused about
19 the law and their ability to contribute to campaigns.

20 Information about those doing business with
21 the City is collected in a central Doing Business
22 Database, or the DBDB. Data about contractors and
23 those in most other categories of doing business are
24 collected in a uniform manner by the Mayor's Office
25 of Contracts. This information is collected for the

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2 express purpose of complying with the "Doing
3 Business" law. To meet the requirements of the
4 lobbying law, information is collected under the
5 authority of the City Clerk's office through the
6 eLobbyist system, created by the DOITT. For purposes
7 of administering the doing business limits, that
8 information is passed through the DBDB. Because it
9 is collected in a different format, through a
10 different system, lobbyist registration information
11 is generally less consistent, less reliable and more
12 duplicative than other data in the DBDB, which
13 obscures public disclosure and presents challenges
14 for our work.

15 Timing is a key concern, as well. Most
16 doing business dealings are tied to the initiation of
17 a process, for example, an application or a proposal,
18 and run for a fixed period of time that governs the
19 individual's inclusion in the DBDB. On the other
20 hand, lobbyist registration is tied to the calendar
21 year starting every January. Extensions to file
22 lobbying registrations are routinely granted, but
23 retroactive coverage in the DBDB cannot extend more
24 than thirty days. As a result, there are instances
25 when a lobbyist's contribution might be covered under

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2 the lobbying law, i.e., not matched with public
3 funds, but at the same time, is not restricted under
4 the "Doing Business" law, particularly if a
5 registration is filed late.

6 These inconsistencies in the law and the way
7 it is administered create difficulties in conducting
8 our regular reviews. The overlap and inconsistency
9 between the two laws treats one group of people
10 unequally. There are two potential solutions. One
11 simple approach would be to remove those provisions
12 of the lobbying law that deal with public matching
13 funds, ensuring there is a single authoritative
14 treatment of contributions from lobbyists and others
15 under the Campaign Finance Act. Another solution
16 might be to seek and create a more seamless
17 administration of the two laws. We are happy to
18 provide greater detail on these proposals at your
19 convenience.

20 We thank the Mayor and City Council for
21 appointing the Commission to review the lobbying
22 law's administration and enforcement, and hope you
23 will consider our experience with the issues outlined
24 above as you embark on your review of the lobbying
25 law. And I'm happy to answer any questions.

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HONORABLE HERBERT BERMAN: Thank you very much, and I identified and introduced staff members and the recommendations that you have. I'd appreciate --

AMY LOPREST: I have a copy of our testimony.

HONORABLE HERBERT BERMAN: Good. All right, are there any questions?

ELISA VELAZQUEZ: I just want to clarify. Okay, I need you to walk me through one more time the discrepancy and what happens if you have a late registration.

AMY LOPREST: Okay, the problem is a timing issue because the doing business database can only go back thirty days. If you gave a contribution, you know, more than thirty days and then you file a registration late, then we wouldn't be able to cover you. The contribution wouldn't be matched because you would be covered under the lobbying law --

ELISA VELAZQUEZ: I understand.

AMY LOPREST: But you wouldn't be covered under the business law by the lower contribution limit.

ELISA VELAZQUEZ: I understand. So is that

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a byproduct of granting the extensions or is it more of a technology issue in terms of what you have accessible to you from DBDB and from the lobbyist -- from eLobbyist?

AMY LOPRES: Well, the law doesn't require us -- allow us to go back thirty days. So, I mean, part of it is a legal issue. Part of it is caused by the definitional issues, you know -- you know -- you know that the City Clerk ably described, who is a lobbyist, when does lobbying begin. A lot of those issues tie together in the administrative issues that I talked about.

HONORABLE HERBERT BERMAN: Commissioner Morton?

MARGARET MORTON: Yes, thank you. Actually, my -- I wanted to direct my question for later or further analysis with Wayne Hawley with respect to the gift rule, the COIB's current gift rule and how that -- how that connects now to the state law and the definition of the state's -- of the state's rule. We'd like to just perhaps have more time with you, either in a meeting or invite you back to -- to go into that and how it actually plays out. I know that City public officials have certain obligations and

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2 under their COIB's gift rule whereas the state law
3 actually conflicts to some extent for non-profits and
4 -- and how they can actually invite public officials
5 to their events. And so again, I think for further
6 analysis, either at a follow-up meeting --

7 HONORABLE HERBERT BERMAN: Thank you. Okay,
8 I want to acknowledge that I've received written
9 submission by the department of investigations who
10 has a representative here this evening. I appreciate
11 commissioner's submission and it will be given to
12 members and distributed to everybody. Thank you very
13 much.

14 Before we leave, I have one small piece of
15 business. I have a motion that I want to make before
16 we conclude and that's a motion to direct staff to
17 prepare for and schedule a series of public meetings
18 between now and mid-May. Each one should have a
19 panel and a public testimony portion. The exact
20 number in issue should be open to change as our work
21 progresses and we're hear from constituencies, but it
22 certainly prepares from the work so far that the
23 those meetings would minimally include one, a
24 foreman, a state system; two, a forum on issues
25 related to not-for-profits; and three, a forum on

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threshold issues such as a definition of lobbying and other issues on the scope of the law. Having given that, I'd appreciate a vote on this motion. Or is there any discussion on the motion? Okay, then, all in favor? Oh, I was reminded --

JAMILA PONTON BRAGG: Seconded.

HONORABLE HERBERT BERMAN: Thank you very much, this concludes the business tonight and and I appreciate your input and I want to thank everybody for their testimony. Believe me, it was incredibly important and incredibly helpful and certainly was educational. Thank you.

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(Whereupon meeting was concluded at 8:47 p.m.)

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C E R T I F I C A T E

I, CARYN R. MILLER, a shorthand reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness(es) whose testimony is hereinbefore set forth was duly sworn by me, and the foregoing transcript is a true record of the testimony given by such witness(es).

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

CARYN R. MILLER