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Transcript of the Meeting of the
CHARTER REVISION COMMISSION
held on Tuesday, May 3, 2005
at St. Francis College
183 Remsen Street
Borough of BROOKLYN

TANKOOS REPORTING COMPANY, INC.	
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1 Meeting convened at 7:25 p.m.

2 P R E S E N T

3 DR. ESTER FUCHS, Chair

4 DALL FORSYTHE, Vice Chair

5 COMMISSIONERS:

6 ROBERT ABRAMS

7 AMALIA BETANZOS

8 DAVID CHEN

9 ANTHONY CROWELL

10 MARY McCORMICK

11 STEPHANIE PALMER

12 Also Present:

13 TERRI MATTHEWS, Executive director

14 BRIAN GELLER, Analyst

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1 CHAIRPERSON FUCHS: I'd like to call this
2 public meeting of the New York City Charter Revision
3 Commission to order. I am Ester Fuchs and I am Chair of
4 the Charter Revision Commission. With us today are
5 members of the Commission: The Honorable Robert Abrams,
6 Mr. David Chen, Ms. Amalia Betanzos, Dr. Dall Forsythe,
7 Dr. Mary McCormack, Ms. Stephanie Palmer and Mr. Anthony
8 Crowell.

9 And I would like to before we begin, welcome
10 our host, president Frank Macchiarola.

11 (Applause.)

12 CHAIRPERSON FUCHS: Who I was about to thank
13 for graciously hosting this public meeting of the
14 Charter Revision Commission. Would you like to say a
15 couple of words before we begin?

16 MR. MACCHIAROLA: Well, what I would say is
17 I couldn't think of a nicer group of people to support
18 City issues, not only nice, but smart, decent. Good
19 luck on it. I hope you did better than I did. I'm sure
20 that won't be hard.

21 CHAIRPERSON FUCHS: Thank you so much.

22 MR. MACCHIAROLA: Thank you. Bye-bye.

23 CHAIRPERSON FUCHS: As I mentioned, this is
24 a public meeting, not a public hearing and the rules of
25 a public meeting are that the public can observe, but

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1 they cannot testify.

2 We do, however, continue to welcome comments
3 from the public and they can call us at 212-676-2060, or
4 they can send us mail at 2 Lafayette Street, 14th floor,
5 New York, New York, 10007, or you can go on line and
6 find us at www.nyc.gov/charter. You can sign up to be
7 on our mailing list or on our e-mail list at the back of
8 the room and you can pick up a copy of our first report,
9 Summary of Issues Under Consideration for Charter
10 Revision.

11 We have two meetings scheduled now for the
12 future and we will have one more round of public
13 hearings where the public will be invited to testify at
14 the point in which we have a draft version of our
15 propositions for the ballot. The next public meetings
16 will be May 16th at 7 p.m. at New York Presbyterian
17 Hospital, 3969 Broadway at 165th Street, first floor
18 conference room in upper Manhattan, and on Wednesday,
19 May 23rd, 7 p.m. at 22 Reade Street, in Spector Hall

20 which is in lower Manhattan.

21 The way we would like to proceed for the
22 Commission this evening is ask our Executive Director,
23 Terri Matthews, to summarize the testimony from the
24 expert witnesses, as well as the staff recommendations
25 in two areas: Fiscal stability and in administrative

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1 judicial reform.

2 Then we will, first we'll do fiscal
3 stability and then we will have a discussion among the
4 members of the Commission and then we will address
5 administrative judicial reform. So, Terri, why don't
6 you begin.

7 MS. MATTHEWS: Hello, can you hear?

8 CHAIRPERSON FUCHS: Yes.

9 MS. MATTHEWS: To review, on the 23rd of
10 March, in Brooklyn, at the public library, we had a
11 panel of experts focusing on the topic of fiscal
12 stability. There was a general consensus among these
13 experts that the City should import the salutary
14 financial planning practices mandated by the FEA that
15 are not currently in the Charter, such as requiring GAAP
16 budget balance at the end of the fiscal year, details of

17 the four-year financial plan process, including the
18 quarterly modification of the four-year financial plan
19 and restrictions on short-term indebtedness.

20 There was additional consensus that the
21 reporting of and discussion about the four-year
22 financial plan and modifications were positive features
23 of the monitoring process that has evolved while the FEA
24 has been effective. There were differing views among
25 the panel members about the value of a State Control

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1 Board that could impose sanctions on the City for
2 failing to comply with the imported financial practices.
3 Furthermore, State law would be required to compel state
4 officials to participate on a board of this nature.

5 So these are the recommendations of your
6 staff.

7 Since the FEA does not expire immediately,
8 there is an opportunity in this Charter revision process
9 to import into the Charter those elements of the FEA
10 that all agree are positive financial planning and
11 management tools for the City to continue to use. There
12 is still time, however, for the various stakeholders to
13 continue discussing other elements of the FEA about
14 which there is less consensus and achieve consensus

15 before the FEA expires. Indeed, we think having
16 imported some of the provisions into the Charter may
17 make for a better discussion about the remaining
18 provisions.

19 With respect to the debt service fund, which
20 was another item that had been on the list, we believe
21 that legislation proposed by the City is a better way to
22 deal with the particular part about the debt service
23 fund. So, thus, we recommend that you, the Commission,
24 consider a ballot proposal that adds the following
25 features of the FEA to the Charter:

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1 That the City end the fiscal year, each
2 fiscal year, with a GAAP balanced budget with no more
3 than 100 million operating deficit.

4 The City continues preparation of the
5 four-year financial plan document, with quarterly
6 modifications during the year.

7 Three, the City consider stricter limits on
8 short-term indebtedness, and, four, that the City
9 continue to produce and make available to the public on
10 a regular basis financial plan statements showing
11 updated actual financial information compared to

12 projections, which will enable public assessment of the
13 progress the City is making towards achieving end of
14 year budget balance.

15 So that's -- do you want me to do the next
16 topic?

17 CHAIRPERSON FUCHS: No. So why don't we
18 open for discussion issues around the ballot proposal as
19 we have it from the staff at this point. Commissioner
20 Abrams.

21 COMM. ABRAMS: Terri, where did we get the
22 hundred million dollar figure for the maximum amount of
23 deficit that the City would have to adhere to?

24 MS. MATTHEWS: That's currently in the FEA,
25 the Financial Emergency Act, that's the State law that's

8

1 the subject of this importation.

2 CHAIRPERSON FUCHS: But that has been an
3 issue among some of the experts, that that's too low,
4 given the changing size of the City's budget, and there
5 was an alternative that was floated to change this to 1
6 percent of the operating budget.

7 If we want to discuss that, we can. There
8 are plusses and minuses to changing it. We didn't want
9 it to look, obviously, like we were doing something less

10 restrictive, so we didn't want to call attention to
11 saying, oh, we're now going to allow for a larger gap in
12 terms of importing it into the Charter.

13 On the other hand, I think it's true that it
14 would be rational to up this number at this point. It's
15 not reflective of the changes that have occurred during
16 the past thirty years.

17 COMM. CROWELL: So that was based on a
18 number from thirty years ago?

19 MS. MATTHEWS: Yes.

20 COMM. CROWELL: So what percentage of the
21 City's annual budget was that, expense budget?

22 MS. MATTHEWS: From talking to people, it
23 was 1 percent.

24 COMM. CROWELL: So obviously now it's far,
25 far more.

9

1 MS. MATTHEWS: Yes.

2 COMM. ABRAMS: What is 1 percent of the
3 current budget?

4 MS. MATTHEWS: I think when we had
5 discussions it was 400 million.

6 COMM. FORSYTHE: Closer to five.

7 MS. MATTHEWS: There is some talk it was
8 pegged not to the whole budget but to the City tax levy
9 portion of it, that portion -- but somewhere, it would
10 be bigger than \$100 million.

11 CHAIRPERSON FUCHS: If we were going to
12 change it, we didn't want to put a number in and be
13 caught in that same place again. Most of us prefer the
14 percentage of either the operating budget or of the City
15 tax levy revenues.

16 Is there any sense, does anybody have a
17 sense here that we should move in that direction or not?

18 COMM. FORSYTHE: Just a comment for
19 information more than my own preference. The City has
20 been able to balance its budget within something like \$5
21 million at the end of every year for many, many, many
22 years, so although the argument we're having sounds
23 perfectly rational --

24 CHAIRPERSON FUCHS: Discussion.

25 COMM. FORSYTHE: I'm sorry, the discussion

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1 we're having sounds perfectly rational about whether
2 that limit ought to be adjusted, in fact, even in its
3 very worst years in these last 21 or 22 years, well, 24
4 years, I guess, while the City's had GAAP balanced

5 budget, I don't believe it's ever had a surplus more
6 than \$10 million and it's never had a deficit, so the
7 band within which the City has been able to manage its
8 GAAP results was already very narrow.

9 As a practical matter, I don't know that it
10 matters, and if as a practical matter it doesn't matter,
11 then the Chair's thought that there is not much point in
12 sending an incorrect signal might be compelling.

13 COMM. ABRAMS: I subscribe to that. To me
14 it sounds pretty persuasive.

15 CHAIRPERSON FUCHS: Are there any other
16 issues around the propositions of importing what we're
17 viewing as the salutary fiscal practices from the Fiscal
18 Control Act into the Charter and putting this on the
19 ballot in the fall? Yes, Dall. First Commissioner
20 McCormick and then Commissioner Forsythe.

21 COMM. McCORMICK: I just have a question for
22 information and that is in the discussion with the
23 experts and your own deliberations on the next point,
24 that the City must continue preparation of four-year
25 financial plan documents with quarterly modifications

1 during the year, did anyone suggest any variation to

2 that, such as instead of quarterly, twice a year?

3 MS. MATTHEWS: No.

4 CHAIRPERSON FUCHS: That's interesting,
5 because even OMB has agreed that the quarterly
6 modifications have worked very well for them.

7 COMM. McCORMICK: I'm sure they worked well
8 for OMB and from a financial point they're harder from
9 the program service delivery perspective.

10 CHAIRPERSON FUCHS: That's true.

11 COMM. McCORMICK: That was why I was
12 wondering if anyone had brought it up, that they only do
13 it twice a year.

14 MS. MATTHEWS: You think, though, that
15 having it be less frequent would be easier or better in
16 some way?

17 COMM. McCORMICK: The question is, if it
18 were less frequent, what would be the fiscal
19 implications of that, and I think for agencies not
20 having to take PEGs quite so frequently, that it would
21 be somewhat helpful to them. It's just a question.

22 CHAIRPERSON FUCHS: It's a good question.

23 COMM. FORSYTHE: I have a comment on that,
24 and I do think that the MSRB, the Municipal Securities
25 Rule Making Board I think probably requires at least

1 quarterly reporting. Whether it requires modification
2 or not, I'm not sure.

3 But once you've established a GAAP
4 requirement for the end of the year, it's extremely
5 difficult for a Government to report poor results and
6 not take steps towards adjusting its budget to meet
7 those. So I think that the GAAP balance requirement may
8 push it towards modification, no matter what.

9 I have a different topic, but I'd be glad to
10 postpone that discussion until we finish talking about
11 this one.

12 CHAIRPERSON FUCHS: No, I think the point
13 you make is really well taken, which is if we have to
14 report to meet GAAP requirements, we don't want to be
15 out there reporting a problem and not doing something
16 about it. So if there's already a requirement for
17 quarterly reporting, it makes sense for us to try and
18 remedy the problem in that quarter as opposed to
19 postponing it.

20 If there hadn't been that quarterly
21 reporting requirement, although I think Commissioner
22 McCormick's point would be very well taken from the
23 perspective of the agencies, it is a huge task, and the
24 providers to have to deal with the modifications that
25 occur quarterly. If we did it just biannually, it would

1 make sense from the programmatic point of view.

2 COMM. FORSYTHE: The question I want to ask
3 is whether the fourth suggestion you've made, that
4 reporting of actuals against financial plan numbers on a
5 quarterly basis really sufficiently covers the
6 information needs of the ongoing monitoring, at least as
7 it exists now.

8 Under the Financial Control Board, I think
9 there's a fair amount of other information that's been
10 put forward on a regular basis, and that now has become
11 fairly routine in its provision, and I'd love for you,
12 Terri, to think about whether there's some mechanism by
13 which the monitors know and they can discuss those
14 informational needs and do so in a way that puts them
15 forward so that they can be met or at least some
16 judgments can be made about whether they're being met or
17 not.

18 The reason why I'm worried about this is
19 because I was a budget director, and I think that the
20 DNA of a budget office is to restrict information flow.
21 I don't think that's true of OMB and the City of New
22 York, because of years of practice, but I think that the
23 DNA could reassert itself without the requirements and
24 expectations of a fuller information flow and I think
25 that would be unfortunate and create problems for the

1 two controllers, IBO and non-profit monitors outside of
2 Government, probably for the City Council as well, so I
3 would just offer that as a thought and ask whether you
4 wouldn't think about that a little more and think about
5 whether there should be additional detail, although I
6 don't think it's wise right now to discuss what those
7 requirements ought to be, or some process for review,
8 discussion or action on the informational needs as the
9 monitors might see them.

10 MS. MATTHEWS: Although I did want to
11 mention that the fourth point, at some point the draft
12 of the language, you'll be seeing it, so I think that
13 would be the time, you could see whether the language
14 works, but -- because we have a sneak preview of some of
15 it on the staff.

16 The regular basis isn't the quarterly. The
17 intent is to be somewhat more frequently than quarterly.

18 COMM. FORSYTHE: It's not so much the
19 frequency as what the types of data are as well.

20 MS. MATTHEWS: I did know that it was more
21 than quarterly, and you will see it and we could have a
22 discussion about that.

23 COMM. FORSYTHE: Okay, thank you.

24 CHAIRPERSON FUCHS: Any other points on the
25 fiscal issues?

15

1 Then I'm going to ask the Executive Director
2 to report on the second area, which is administrative
3 judicial reform.

4 MS. MATTHEWS: Thank you.

5 COMM. ABRAMS: Before we leave, Madam Chair,
6 may I just ask?

7 CHAIRPERSON FUCHS: Sure.

8 COMM. ABRAMS: Just to refresh at least my
9 recollection, what are we leaving out from the FEA that
10 might be incorporated into the Charter? Obviously, the
11 Financial Control Board is one.

12 CHAIRPERSON FUCHS: That's really it.

13 COMM. ABRAMS: Is that the only thing?

14 MS. MATTHEWS: The only thing we're leaving
15 out, there was a reference to a debt service fund where
16 we did establishment of a general debt service fund to
17 pay bond holders in related City bond holder covenants.

18 CHAIRPERSON FUCHS: Terri, is that in the
19 FEA?

20 MS. MATTHEWS: Yes, it is in the FEA and the

21 consensus of OMB and the Law Department, they proposed
22 legislation already in Albany to do this. The thought
23 is that to do it at the local level wouldn't be as
24 strong as doing it at the State level, considering its
25 bond covenants, so that --

16

1 CHAIRPERSON FUCHS: That's a good point.

2 MS. MATTHEWS: -- is something that we
3 wouldn't be doing because it's being handled at the
4 State level and that's kind of it.

5 COMM. FORSYTHE: Just to elaborate on your
6 point about the Control Board being the thing that's
7 left out, the other thing that's left out if the Control
8 Board is left out are any consequences of a failure to
9 balance the budget according to GAAP, so the way the law
10 works now, if the City fails to meet its targets, and
11 again for 24 years it has met those targets, and done so
12 with a varying great deal of precision, but if the City
13 fails to meet its targets, then something happens, the
14 control period is reestablished. There are
15 consequences, as Mark Page described it in his very
16 thoughtful testimony.

17 So it's not just the existence of the

18 Control Board which people said is helpful as a place
19 where State and City officials could discuss City
20 finances and keep current with them, but also the fact
21 of some consequences if the budget doesn't get balanced.

22 But I should add that I like the proposal
23 that you've made and I think that -- I think the City
24 has outgrown the need for that particular shackle so I
25 think it's a wise proposal.

17

1 COMM. ABRAMS: Does it follow if we choose
2 to omit the Control Board it's also wise to consider not
3 putting in consequences for failure to meet standard?

4 COMM. FORSYTHE: I don't think anybody's
5 come up with a good proposal for consequences absent a
6 Control Board and a control period, so I think at this
7 stage, yes, I think it's wise to omit it. But just, we
8 should be real clear on what the big things are that
9 would be included.

10 CHAIRPERSON FUCHS: I would add to that two
11 points. There are consequences that already exist. As
12 every municipality has to deal with this issue of a
13 possible State takeover of their finances if they go out
14 of budget balance. So Yonkers, Nassau, Buffalo, have
15 all gone into essentially receivership in some way,

16 shape or form, modelled after this Financial Control
17 Act, and the State has the authority to continue doing
18 that and seems to be able to do it fairly effectively
19 and fairly quickly when there is a crisis.

20 In one of the conversations we had in our
21 outreach, someone pointed out to me that it doesn't make
22 sense to have a bureaucracy in place that's really about
23 a crisis, to be operating in what is considered to be
24 sort of standard time in which we're not really in
25 crisis, we're doing normal budgeting.

18

1 So the only point I would add is that we are
2 still under State law and the State could still do what
3 it has to do if we fall out of balance.

4 And the other issue is, I don't think we
5 have, and Terri, you can correct me here, I don't think
6 we have the legal authority through Charter to create a
7 Financial Control Board mechanism because it involves
8 State actors, so we would have to make some
9 recommendation to the State, even if we thought it was a
10 good idea.

11 I for one am convinced at this point that
12 there is sufficient oversight to the City finances when

13 you include the State Comptroller's office, which does
14 not have to sunset; the City Comptroller, the IBO, the
15 credit rating agencies, as well as other good Government
16 organizations in New York like Citizen's Budget
17 Commission and others who are out there continually
18 monitoring the City's finances.

19 We are the most monitored City, probably the
20 most monitored Government in the country right now, and
21 I think we've earned the right to be considered sort of
22 a normal municipality in terms of this issue of
23 oversight. That's what I was convinced of from
24 listening to the experts and the staff on this issue at
25 this point in time.

19

1 So I agree with what Dall was saying, I
2 would just add that point.

3 Well, then I'm going to ask the Executive
4 Director to report to us on administrative judicial
5 reform.

6 MS. MATTHEWS: On March 7th, we had the
7 expert panel on administrative judicial reform. The
8 experts at that panel generally agreed that the creation
9 of the position of Administrative Justice Coordinator
10 was a necessary first step to assuring appropriate

11 uniform standards and greater coordination among the
12 City's administrative tribunals.

13 There was consensus, however, that it was
14 not necessary to create such a position by ballot
15 initiative, since the Mayor has the authority to create
16 it by Executive Order and further, that sufficient study
17 has occurred as a result of what we did and a result of
18 what the 2002 Charter Revision Commission did when they
19 looked at this issue, to support the creation of such a
20 position.

21 Although there is value in creating the
22 position by ballot initiative, there was a consensus
23 that the higher value was establishing the position as
24 soon as practicable. The thought is having had
25 experience with such a position created by

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1 administrative action would increase the support down
2 the road for creating the position in a more permanent
3 place in the Charter.

4 So that's on the first half of the topic.

5 On the second half, the panel has also
6 discussed perceptions of Administrative Law Judges and
7 Hearing Officer conduct at hearings and the advisability

8 of creating a uniform Code of Conduct for ALJ's and
9 hearing officers. The lack of a formal standard Code of
10 Conduct governing hearings has created cause for concern
11 about a system in which many litigants represent
12 themselves without counsel. It is extremely important
13 and necessary to insure that the tribunals have
14 credibility and be sure the public perceives them as
15 resolving their disputes in a fair manner.

16 So the staff recommends that the Commission
17 request the Mayor to establish an Office of
18 Administrative Justice by Executive Order, in view of
19 the consensus of experts that a coordinator is necessary
20 to assess the State and the City's administrative
21 tribunal system and make recommendations for appropriate
22 coordination and better practices, and that it is not
23 necessary to put such creation before the voters, the
24 staff recommends that the Commission send a letter to
25 the Mayor requesting him to create such a position by

21

1 administrative action, and we have sent around a draft
2 of a letter that, you know, we would like you to
3 consider.

4 And then the second recommendation is that
5 you consider a ballot proposal to authorize the Conflict

6 of Interest Board to establish uniform ethics for ALJ's
7 and hearing officers. The existing general conflicts of
8 interest statute and related rules do not specifically
9 address the quasi judicial aspect of the work that the
10 ALJ's and hearing officers perform. The Conflicts of
11 Interest Board is the appropriate entity to establish
12 rules governing the conduct of ALJ's and Hearing
13 Officers that would be more appropriate than the general
14 provisions, given the unique quasi judicial nature of
15 the work. The Charter amendment would provide a
16 meaningful opportunity to insure adequate enforcement
17 measures that are in place to properly implement the new
18 rules.

19 Thus, we would recommend that you consider
20 this as a ballot initiative.

21 CHAIRPERSON FUCHS: Discussion?
22 Commissioner Abrams?

23 COMM. ABRAMS: With respect to the second
24 recommendation, the Conflicts of Interest Board is the
25 appropriate entity to establish rules governing the

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1 conduct of ALJ's, how about the issue of training and
2 the standards for appointment? Shouldn't there be some

3 more uniformity and actual standards set out, and is
4 that contemplated as part of what the Conflicts Board
5 would do or does it have the authority to do that? It
6 seems to me, it's not just ethical considerations, but
7 training and standards.

8 MS. MATTHEWS: Do you want to --

9 COMM. CROWELL: I assume you were going to
10 say that would be the mandate of the Criminal Justice
11 Coordinator itself, that office would do the training
12 and the standards setting for -- I don't think it's
13 explained in our briefing document, but I think that
14 would be the, what I would envision as the mandate for
15 the person who holds that office and then the ethics
16 component would be something that would be in the
17 Charter and enforceable through the Conflicts of
18 Interest Board. I think to do that, I think if I'm
19 correct to amend the Charter dealing with conflicts, you
20 actually need a referendum to do that.

21 COMM. ABRAMS: That sounds satisfactory to
22 me, but we should perhaps state in the proposition of
23 the recommendation for the establishment of the Office
24 of Administrative Justice by the Executive Order as part
25 of its mandate that it should include, it should

1 promulgate training standards or guidelines and
2 standards for the appointment of those who are to be
3 Administrative Law Judges.

4 CHAIRPERSON FUCHS: That's important. We
5 can put that in the letter to the Mayor and have the
6 Mayor include that directly in the Executive Order.

7 MS. MATTHEWS: But that was the plan. The
8 ability for us to know at this moment just what the
9 standards are to apply across to all the -- we're not in
10 a position to really know. The thought is and what you
11 heard among the experts is that somebody needs to take
12 the time to do an assessment of the whole system and to
13 see what goes on, and so that would be one of the most
14 important jobs of this coordinator. And I'm sorry, I
15 didn't -- I was trying to be brief so I didn't go into
16 all the things that we were hoping.

17 But maybe, do you want to talk about some of
18 the things the administrative judicial coordinator would
19 cover, the functions?

20 COMM. CROWELL: Certainly you'd want to --
21 this was an issue that we put on the ballot in 2003,
22 when I was sitting in Terri's spot, and obviously the
23 Mayor wanted it to be revisited. Training was
24 definitely at the top. Ethics and obviously operational
25 procedures. I don't think that there was ever a thought

1 at the last Commission that the Administrative Justice
2 Coordinator would get involved with the day-to-day
3 decision making when you're on the bench and having
4 people appear before you, but making sure there's the
5 right processes in place, the right technology, to make
6 sure the work gets done, that there's not a backlog of
7 cases and that the public is served well and
8 respectfully.

9 And I think certainly training was at the
10 top of that.

11 One of the thoughts, as I've been working
12 with staff, one of the thoughts is to even create an
13 Administrative Law Judge training institute to actually
14 have the ongoing CLE training with them. That's
15 something I think would be great. As the Deputy Mayor
16 Robles-Roman spoke about in her testimony, we actually
17 had a retreat at Gracie Mansion where a number of chief
18 ALJ's and their staff came. It went extremely well.

19 It was the first time in the history of the
20 City that they actually came together to have such a
21 meeting, surprise surprise, but it was over sixty
22 people. There was enormous value, they've gone back and
23 trained their staff with the information they've got and
24 they asked for more.

25 The Mayor organized three separate

1 committees; one on ethics, one on training and one on
2 technology. So that's going on contemporaneously with
3 the work of this Commission. It's quite promising, I
4 think.

5 COMM. ABRAMS: As we move forward towards
6 the development of recommendations for either inclusion
7 in the Charter or by Executive Order, the more ample we
8 can be as the rationale for making these
9 recommendations, I think, you know, the better the
10 prospect for the public understanding why we're doing
11 it, the need for it, and why they should be supportive
12 of these efforts.

13 CHAIRPERSON FUCHS: Commissioner Forsythe?

14 COMM. FORSYTHE: Along the same line,
15 Anthony, maybe you could speak to this. It sounds like
16 you said that the coordinator would also be involved in
17 the ethics issues, but then I thought Terri was
18 proposing that that was going to be the Conflict of
19 Interest Board, so I'm just a little confused.

20 COMM. CROWELL: That's what we had looked
21 at, that the coordinator would look to -- in '03 what we
22 looked at was the coordinator would be involved in the
23 ethics interest and the issue of having the conflicts

24 board promulgate rules. It would be contemplated the
25 coordinator would actually assist of course, because it

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1 would be a facilitator of the tribunals and the thinking
2 obviously, you want to consult with all the chief ALJ's
3 and the coordinator in terms of the development of those
4 rules, but also that there be ethics training and I
5 think while the Conflicts of Interest Board would have
6 some role in that I think the Coordinator of
7 Administrative Justice would have a role in ethical
8 issues.

9 CHAIRPERSON FUCHS: Terri, maybe you would
10 want to address, though, the issue of what we think
11 around ethics should be a ballot proposition. That's
12 what I think Commissioner Forsythe was getting at, that
13 we're actually reserving the ethics piece for a ballot
14 proposition. Not to disagree with anything you said,
15 that will be part of what the judicial administrative
16 coordinator does, but this is a piece that we feel needs
17 to be done in the Charter, as opposed to simply through
18 an Executive Order.

19 So it really gets at Commissioner Abrams'
20 point as well.

21 MS. MATTHEWS: It's just that currently

22 there's nothing that covers all of them. To the extent
23 they are lawyers, they're covered by the code of
24 professional responsibility. To the extent they are
25 City employees or deemed City employees they're covered

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1 by the conflict of interest provisions that apply to all
2 of us.

3 But when you look at the conflict of
4 interest provisions, they're not focused on the role of
5 quasi judicial issues. It's just working in a City
6 Agency, so the ballot proposal would authorize the
7 Conflict of Interest Board to promulgate a special set
8 of rules applicable to this particular milieu, and we
9 believe that you can't do that administratively and have
10 it be effective and enforceable. So there's an overlap,
11 I guess, in the issue of ethics that the Conflicts of
12 Interest Board would promulgate the rules and the
13 coordinator, as they're both developing, the coordinator
14 gets up and running and the Conflict of Interest Board
15 is beginning its work, they'll be talking to each other.
16 The coordinator will be sharing what he learns or she
17 learns -- the first, as we talk to people, it seems one
18 of the first thing this persons needs to do is a survey

19 of what goes on at all of the tribunals. It's a little
20 embarrassing, but it seems like this -- they were
21 created over a period of time. A lot of this stuff that
22 went to them came out of the, when they decriminalized a
23 lot of offenses, and it's been just a period of things
24 getting thrown over there, so there will be a period of
25 time where I think they'll be overlapping, but the

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1 actual rules, we believe, have to be done by the Board
2 because that's the place in the City where that kind of
3 stuff gets done. But they'll be working together,
4 sharing information, I think.

5 Does that help?

6 CHAIRMAN FUCHS: Yes. Commissioner Abrams?

7 COMM. ABRAMS: Is it contemplated that the
8 coordinator position is a full time position?

9 MS. MATTHEWS: Yes, absolutely.

10 COMM. CROWELL: There will be a staff, too,
11 I imagine.

12 CHAIRPERSON FUCHS: There will be a staff,
13 it will be a full time position. It's modelled on some
14 level to the criminal Justice coordinators office which
15 was also originally done in Executive Order and after it
16 was found to be successful, it was put directly in the

17 Charter. So we think that makes sense.

18 We also think that it should be part of the
19 Mayor's office, so that it would have as much authority
20 to coordinate as anybody could possibly have, given the
21 variety of agencies which will have to be dealt with.

22 COMM. ABRAMS: So I think, if I may, that
23 kind of little bit of amplification also to be in the
24 letter to the Mayor, so that, again, the public knows
25 that this is not just some flimsy temporary or part time

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1 appointment, somebody else has a different
2 responsibility, they're asked to do this, it's a full
3 time position with a staff and where it's to be located
4 as the Chair indicated, the Mayor's office, I think that
5 would be helpful.

6 CHAIRPERSON FUCHS: Any other suggestions?

7 I'd like to read into the record a draft
8 letter to the Mayor, then, taking into account the very
9 specific suggestions by Commissioner Abrams, where we
10 need amplification, we will amplify.

11 "Dear Mayor Bloomberg: You asked this
12 Commission to consider administrative judicial reform.
13 We have heard testimony from Deputy Mayor for Legal

14 Affairs, Carol Robles-Roman, in which she outlined the
15 issues facing the City's administrative tribunals, as
16 well as the proposal to create the position of
17 Coordinator of Administrative Justice.

18 "We have also heard from a panel of experts
19 on this topic and Commission staff has reported to us
20 the many conversations they have had with other experts
21 and stakeholders.

22 "There is a wide consensus that creating the
23 position of Administrative Judicial Coordinator is a
24 necessary first step towards assessing the state of the
25 City 's administrative tribunal system and making

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1 recommendations to approve its operation. There is also
2 a consensus that it is not necessary, either legally or
3 practically, to put the creation of this position before
4 the voters in a ballot proposition.

5 "The Commission endorses the establishment
6 of a Coordinator of Administrative Justice, which should
7 be a full-time appointment with staff in the Mayor's
8 office, and respectfully request that you create such a
9 position by Executive Order as soon as practicable."

10 Any comments on the letter? I will be
11 producing a letter that we will be then sending to the

12 Mayor.

13 COMM. CROWELL: And we're going to give you
14 express authorization here to modify it as you see
15 appropriate in light of the discussion with what the
16 transcript says about adding additional information in,
17 so we're giving her full authority as Chair to do that.

18 CHAIRPERSON FUCHS: Commissioner Abrams.

19 COMM. ABRAMS: Madam Chair, when do you
20 contemplate this letter going out? Because what's
21 running through my mind is the synchronization and
22 coordination of this Commission's actions, you know.
23 Maybe at the time -- maybe it shouldn't go out right
24 away, maybe at the time that we release our suggested
25 proposals for Charter revision, that that's the moment

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1 that the letter be released, so that there is the total
2 package of, you know, what this Commission has
3 considered and what it's recommending. Just a thought.

4 CHAIRPERSON FUCHS: That's an interesting
5 question. Because I think the staff thinks at this
6 point that we should send this letter to the Mayor as
7 soon as possible so that the proposition of having an
8 ethics proposition on the ballot reflects the fact that

9 we have a judicial administrative coordinator in place
10 through an Executive Order as recommended by the Charter
11 Commission. So sequentially, it seemed like it would be
12 more difficult to put on the ballot a recommendation for
13 this ethics standard without having this operational
14 apparatus, really, in place, that could make it
15 meaningful.

16 Having said that, I'm open to any
17 suggestions from the Commission on how, when we should
18 bring this letter to the Mayor, and how it should be
19 placed in terms of the work of the Commission.

20 COMM. ABRAMS: And what if the ballot
21 proposal does not succeed? You know, if the letter goes
22 out, the Mayor appoints the coordinator, and we have a
23 series of recommendations and let us assume that at an
24 appropriate time we adopt this recommendation of the
25 ethics board and it goes on the ballot and the people

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1 reject it.

2 So now we have in place and in being an
3 Executive Director. I guess there's no problem with
4 respect to that, the Executive Director could even work
5 with the ethics board at that point in time to develop
6 guidelines, et cetera, et cetera, et cetera. Just

7 thinking through what we're doing and the timing of it,
8 what makes the most sense.

9 CHAIRPERSON FUCHS: No, that's a very good
10 point and I think part of the reasoning that we took
11 away from the earlier discussions about putting this on
12 as an Executive Order was essentially not to repeat what
13 might have happened in the past, that this is so
14 important, that we're convinced now from the discussion
15 that we've had on the Commission that this needs to be
16 done and it's clear that it doesn't have to be done
17 through a ballot initiative, unlike pretty much
18 everything else we are probably going to propose.

19 So in keeping with the spirit of the
20 Commission as we outlined it in the beginning of making
21 proposals to other branches of Government to act when we
22 see something important, this area in which the Mayor
23 specifically asked us to look at, I think we've looked
24 at pretty effectively and I think there's complete
25 consensus that this is an idea whose time has come

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1 twenty years ago.

2 This is a mess that's been growing without
3 any operational capacity to fix it. So we were

4 concerned and again wanted to use the example of the
5 Criminal Justice Coordinator, which is go the Executive
6 Order route first, so that we could move that forward.

7 But on the ethics issue, it seemed almost
8 essential that we get that in the Charter. It doesn't
9 mean there still can't be action on the ethics front,
10 but it's principles, it's critical, it's important.
11 That part of it, I was advised, is much more appropriate
12 to the Charter than an operational fix that we would
13 have to do in this other area.

14 COMM. ABRAMS: And if the letter goes out
15 quickly, does the Chair contemplate that there be a
16 public release of the action of this Commission in
17 authorizing this letter or does it just go out in its
18 normal course?

19 CHAIRPERSON FUCHS: I think we need, my
20 proposal to City Hall would be for a public release of
21 this, together with, basically as a proposal from the
22 Charter Revision Commission specifically, and that
23 assuming that there's agreement here, that we're asking
24 the Mayor to act with deliberate speed on this issue,
25 that there isn't -- the work's been done, there's no

1 reason to slow it down now and there's no reason to

2 wait.

3 As a good government matter and as a matter
4 that is in keeping with the kind of work the Mayor has
5 been doing for the past three years, which is improving
6 efficiency and management and addressing the public's
7 need to make Government more accountable, this is the
8 area, what struck me is this is an area of Government in
9 which every person, and I learned this from Commissioner
10 Crowell, every person has some interaction with these
11 tribunals, and it more or less isn't that good most of
12 the time.

13 To the extent that we can make Government
14 more accountable in this area and improve the ordinary
15 citizen's experience with the justice system, I think
16 this would be a very important achievement for the
17 Charter Commission to both move the Mayor to act through
18 Executive Order and then bring the ethics issue to the
19 voters to act.

20 That seems to the staff and to the experts
21 the right division of labor, and I think that the
22 Charter Commission has a unique role here in helping to
23 move this in an expeditious manner, something that might
24 not otherwise move expeditiously, I think now. We on
25 this Commission can help move it that way.

1 part of the amplification in the letter to the Mayor and
2 we will include that. I think that's an excellent point
3 and I like it framed as public education, because that's
4 a very important part of what we have to do with the
5 Commission.

6 Any other points about the letter or this
7 issue?

8 We have a third area that we're preparing,
9 the staff is preparing discussion for, for the next, for
10 our next public meeting, so I'm going to at this point
11 ask the Commission if we have any new business that
12 anybody would like to put before the Commission? Just
13 to remind you, that you've received a calendar from the
14 staff on how we expect to proceed getting draft copies
15 of the amendments to you and making sure that you have
16 sufficient information to deliberate on the issues
17 before the Commission.

18 If there's no new business, I call for a
19 vote to adjourn?

20 COMM. FORSYTHE: So moved.

21 CHAIRPERSON FUCHS: Second?

22 COMM. PALMER: Second.

23 CHAIRPERSON FUCHS: All in favor of
24 adjourning?

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(Chorus of "Ayes.")

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1 CHAIRPERSON FUCHS: Thank you very much,
2 members of the Commission and members of the public for
3 attending.

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

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C E R T I F I C A T I O N

I, LINDA FISHER, a Registered Professional Reporter and a Notary Public, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.

LINDA FISHER,
Shorthand Reporter

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