

Transcript of the Meeting of the
CHARTER REVISION COMMITTEE
held on Tuesday, August 14, 2001
at LaGuardia Community College,
Little Theater, Borough of Queens

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P R E S E N T

RANDY M. MASTRO
Chairman

COMMISSIONERS:

ROSA GIL

JONATHAN BALLAN

VINCENT ROBERTS

YVONNE LIU

TOSANO SIMONETTI

HERBERT RUBIN

MARTA VARELLA

MARY SANSONE

AMALIA BETANZOS

EXPERT PANEL SPEAKERS:

Anthony Crowell, Staff Member

Mark Davies

Les Taub

Joan Salzman

Natalia Pavlova

Randy Wills

CHAIRMAN MASTRO: Good evening, ladies and gentlemen, we're going to get started. First tonight, there will be expert testimony taken on three of the proposals the Staff has recommended the Commission be considering.

The three topics that we'll hear testimony on tonight are a proposal for the Human Rights Commission and the Mayor's Office of Immigrant Affairs to be established as Charter agencies, and that certain of the protections and rights recognized in connection with our immigrant population, that they be embodied in the Charter.

The second area we'll be hearing expert testimony on involves the conflicts of interest rules and proposed changes and to the ability of that Board to conduct investigations by subpoena, to have open proceedings and other changes that will affect some of the City's conflicts rules and procedures.

The human rights and immigrants affairs proposals, we'll be hearing testimony on both tonight. They've been recommended by the staff as an integrated proposal dealing with human rights and they encompass, that same proposal encompasses the proposals relating to immigrant affairs as well.

So let's begin by hearing first from two speakers in connection with human rights and immigrant affairs. Okay? I can speak very loudly, so I can be heard anyway.

It looks like there's a question from the audience. We don't usually entertain them. Go ahead.

VOICE: When the schedule of hearings of the Commission was announced, I called and asked when testimony would be taken on a matter I wished to submit to the Commission. The dates in Manhattan were not available because that was Commission work and hearings and so on, and I was told that the Commission would be taking testimony from the general public at this session and the other sessions in this category, and I'm here this evening in that, with that intention.

CHAIRMAN MASTRO: Yes, sir. At 7:00, after we have heard from these parties whom we invited to give testimony on the proposals, we will commence at 7:00, or close to 7:00, the public hearing where any member of the public can comment on any proposal, any matter that they want to raise with the Commission.

VOICE: That wasn't clear in the way the schedule was presented.

CHAIRMAN MASTRO: We will be doing that, so at 7:00, we will welcome your testimony.

VOICE: Thank you.

CHAIRMAN MASTRO: If I can call up Randy Wills from the Human Rights Commission and Natasha Pavlova.

MS. PAVLOVA: Good evening, Chairman Mastro, honorable members of the Commission. In introducing the staff's recommendation of proposed amendments, for the Commission to consider regarding immigrant affairs, I would first like to make a few general remarks.

New York prides itself on being the

nation's immigrant world city and is often referred to as the capital of the world. New York City is one of the oldest cities of immigration internationally. The history of immigration to New York City is at least 400 years old. From a Dutch settlement in the mid-17th century to the present, New York City has served as a haven for the persecuted. Over 200 languages and dialects can be heard in the streets of the City and there are countless cultures here. The 2000 census indicates that over one-third of the City's current residents were born outside of the United States, and actually over 50 percent of the babies born in New York City have at least one foreign born parent. A majority of New Yorkers have close personal or business ties to another country.

New York City's success is largely due to the role that immigrants play in the life of the City. It has long been the policy for the City to make its services available to all of its residents. The policy can be preserved in the Executive Order No. 124 initially issued by Mayor Koch and renewed by both Mayor Dinkins and Mayor Guiliani. Executive Order 124 emphasizes that it is to the disadvantage of all New Yorkers if some of its residents are uneducated and untreated for illness, particularly contagious diseases; are inadequately protected from crime by not reporting to the police when they are either victims of it or witnesses to it.

Since its initiation in the early '90s, the Mayor's Offices of Immigrant Affairs and Language Services has been the lead agency charged

with responding to the needs of the City's foreign-born population and helping newcomers adapt to life in the City. Until 1994, the City's relationship with its immigrant constituents wasn't cemented. By working on community-specific issues, the Mayor's Office of Immigrant Affairs addressed a wider spectrum of topics covering immigration and immigrant policies which are often regarded as alike. It is important to differentiate between the two.

In 1995, the Mayor's Office of Immigrant Affairs and Language Services became a cabinet level office within New York City Government. The Mayor's Office of Immigrant Affairs serves as a liaison between the foreign-born population of New York City and other City of New York agencies. It has developed and maintained relationships with over 5,000 community based partners in linking newcomers with services they need.

The Office serves as a liaison between the City of New York and those Federal agencies charged with implementing Federal immigration policy, such as the United States Immigration and Naturalization Service, the Department of State and the Social Security Administration. The Mayor's Office of Immigrant Affairs acts as an advocate for immigrants with these agencies and helps formulate immigrant policy for the City of New York through public education and information. It uses research and analyzes Federal, State and City legislation affecting immigrants. It has formulated recommendations to the Mayor and other City agencies

on immigration- related issues, and developed and implemented special immigration initiatives.

The 1996 Federal immigrant and welfare reform legislation made non-citizens ineligible for Federal social assistance benefits. In late 1995, in anticipation of its passage, and in conformance with Article 17, Section 1 of the New York State Constitution's provision for the aid, care and support of the needy, the Mayor's Office of Immigrant Affairs was instrumental in convening the welfare reform working group. The working group composed of representatives from City agencies, analyzed their administrative, fiscal and human cost of the proposed Federal legislation to the City of New York.

The Office of Management and Budget projected the cost shifts would be \$2.78 billion by fiscal year 2002. In early 1987, the Mayor's Office of Immigrant Affairs took the lead in forming a task force to implement an extensive Citywide naturalization effort. The result of the task force recommendations was the 1997 creation of Citizenship New York City program within the Department of Youth and Community Development.

To date, this program has assisted over 32,000 New Yorkers with their citizenship applications.

In the spring of 1999, during the Balkan crisis, the New York City Refugee Resettlement Agency Forum contacted the New York City Office of Immigrant Affairs. The forum consists of local affiliates of all the voluntary organizations in the

United States charged with resettling refugees, such as Catholic Charities, Archdiocese of New York City and Brooklyn diocese, the Church Avenue Merchant Block Association, Church World Service, the International Rescue Committee, Lutheran Immigration and Refugee Service, New York Association For New Americans and the New York City Refugee Employment Project.

The forum was concerned about resettlement and integration of arriving possible refugees as well as the impact that a new group of refugees would have on their and the City's resources. As a consequence of a series of meetings between the forum representatives and the Mayor's Office of Immigrant Affairs, the human Resource Administration established the Office of Immigrant and Refugee Services to provide immigrant- specific social services programs in what were called one-stop shop environments.

Earlier this year the Mayor's Office of Immigrant Affairs, together with Citizenship New York City, the Governor's office, the Association of the Bar of the City of New York, mounted an extensive outreach and education campaign on the Federal Legal Immigration Family Equity Act or LIFE act as it is known in the immigrant community. Prior to the passage of the LIFE act, there were rumors in the immigrant community that a general amnesty would be declared. As a result, the outreach and information effort included an information and referral telephone line concerning renewal, the update of multilingual brochures

published in nine languages, Beware of Immigration Services Fraud, which is published by the Mayor's Office of Immigrant Affairs and the New York City Consumer Affairs Department and also two workshops were organized.

The first workshop trained law students in how to assist immigrants in applying for immigration benefits under the LIFE act. The second workshop directly aided as many eligible immigrants as deemed possible.

Since 1989, the New York City Charter has required that the City assist populations with limited English skills by providing translations of official City documents and organizing language resources within the City agencies. The Language Services Division of the Mayor's Office of Immigrant Affairs and Language Services was established to coordinate this requirement. It initially reached out to New York City residents with limited English proficiency so they could understand Government directives and communicate with City agencies. The Mayor's Office of Immigrant Affairs and Language Services coordinates the City Language Volunteer Bank of over 3500 City employees. The language bank, which is constantly growing in numbers, and expanding in language capacities, provides assistance to non-English speakers who have dealings with City agencies.

The Language Services Division has an ongoing relationship with the Mayor's Office of Emergency Management, providing language assistance on such urgent projects as "Beat the Heat" or the

hurricane warning brochures. The Language Services Division has responded to other numerous emergency situations in New York City. Those have included, but are not limited to the TWA Flight 800 memorial event, the City's alert on the West Nile mosquito virus, multilingual information on the Y2K alert and others. It has been participated in producing public hearing notices for this Charter Revision Commission so these meetings are known to all New Yorkers.

The staff's first recommendation is the Mayor's Office of Immigrant Affairs and Language Services be in a Charter status. Doing so provides a firmer legal foundation for its activities and also insulates the office from the vagaries of politics. Providing Charter status to the Mayor's Office of Immigrant Affairs and Language Services provides the continuity in intra- Governmental and inter-Governmental relations. It will also encourage immigrants to have greater confidence in City Government by demonstrating the City's long term commitment to assistance.

The staff's second proposal is that the Commission consider amending the Charter so that it explicitly states that public services are available to all eligible persons, regardless of their alienage and citizenship status. This amendment essentially codifies the one portion of the Executive Order already referred to. In addition, it recognizes that the Mayor's Office of Immigrant Affairs and Language Services should be empowered to take all appropriate action to implement this

policy.

The third proposal made by the staff is that the Commission consider amending the Charter to provide that the City as part of an inherent power may require confidentiality in order to protect the trust of individuals who have business with the City. This amendment would also state that they may issue rules and regulations to the extent permitted by State and Federal law to protect the confidentiality of such information, including information relating to the immigrant status of a person. The amendment proposed here is specifically framed to address concerns expressed by the United States Court of Appeals for the Second Circuit in its 1998 decision in City of New York versus United States. That decision resulted in a facial challenge to the legality of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The Federal welfare legislation presumably invalidated the provision of the Mayor's Executive Order that guaranteed the confidentiality of information concerning immigration status; the thrust of the decision was that it might invalidate the Federal legislation if it could be shown that guarantees of confidentiality were essential to preserve the integrity of municipal programs. The amendment proposed here facilitates the capacity of the City to make such a showing.

Protecting confidential information such as a person's immigration status is an important objective for the City of New York, and it is

appropriate that the City reflect this fact.

In conclusion, I would like to thank the Charter Revision Commission for the opportunity to articulate the need to codify in the City Charter policies and procedures that the City of New York have adopted for over a decade. Thank you.

CHAIRMAN MASTRO: Thank you. Mr. Wills.

MR. WILSON: Good evening, Commissioner. My name is Randy Wills. I'm the Deputy Commissioner in charge of the Law Enforcement Bureau of the New York City Commission on Human Rights. Thank you for giving me the opportunity to testify in support of preliminary recommendations that the Charter Revision Commission has made with regard to the Commission on Human Rights.

This year the Commission on Human Rights celebrates its 46th anniversary. Since its creation in 1955 as the Commission on Intergroup Relations, an agency with high purpose but no enforcement powers, the Commission has become New York City's most effective leader in the battle against discrimination and in the protection of civil rights.

Its long and successful history, grounded in the breadth of its civil rights protections, is enduring proof of the City's commitment to making New York City, in the words of Mayor Fiorello LaGuardia, "a place where people of all religions and races may work and live side by side in harmony."

The Commission takes particular pride in its accomplishments of the past eight years:

Increased efficiency in productivity, the effective use of mediation in the resolution of cases and the Commission is widely recognized as having the best mediation program of the civil rights agencies serving New York City and its noteworthy decisions, especially in the areas of sexual harassment, racial steering, disability and sexual orientation discrimination.

I have annexed for your information a list of some of those significant cases and I would just like to share a digest of three of them with you to give you a better notion of the kind of work we do.

In the employment context, one of our most significant cases was a sexual harassment case where the Commission found after trial that a cleaning company was to be held liable for \$450,000 in damages for the sexual harassment of a complainant, who was a female immigrant from Columbia who had been forced to engage in sexual relations with her supervisor.

In the housing context, particularly with regard to racial steering, the Commission found a large Brooklyn real estate brokerage firm liable for a pattern and practice of discrimination against African Americans, Hispanic Americans and families with children. In addition, the landlord who listed an apartment with the brokerage firm was liable for refusing to show the complainant an apartment on the basis of her race. The Commission awarded damages of \$6,000 to the complainant and assess the civil penalties in the amount of \$30,000 against the

respondents.

In the public accommodation context, and the Commission is particularly active in this area with regard to the rights of people with disabilities. We recently had a decision from the New York State Supreme Court ordering the owners of a diner in Manhattan to comply with the terms of a conciliation agreement it reached with the Commission where the diner was to construct an access ramp for people with disabilities who used wheelchairs. The diner did not comply with that agreement and the Court ordered the diner to construct the ramp within 30 days and levied a civil penalty of \$50,000 against the diner.

As you know, the Commission is charged with one of the most comprehensive Civil Rights Laws in the nation. Originally promulgated to combat discrimination on the basis of race, color, creed and national origin, the City's Human Rights Law now prohibits discrimination against 14 protected classes. Furthermore, in addition to prohibiting discrimination in employment, housing and public accommodations, the law prohibits bias-related harassment as well.

The City's law is significantly broader than its Federal and State counterparts. It is unique in its prohibition of discrimination on the basis of sexual orientation, alienage or citizenship status and most recently on the basis of one's status as a victim of domestic violence. This latest amendment of the City's Human Rights Law is a significant factor in the City's recent broad-based

initiative to combat domestic violence. The Mayor created the Commission to Combat Family Violence to coordinate the services of the many City agencies that deal with this issue. To institutionalize this successful reform, it has also been proposed that the Charter be revised to establish domestic violence services coordination, through the creation of a new office to combat domestic violence.

Insuring the protections afforded by the City's Human Rights Law to domestic violence victims, by granting Charter status to the Commission on Human Rights serves well the Mayor's goal of developing and implementing a comprehensive Citywide strategy to combat domestic violence. These unique, locally-granted rights should be afforded the greatest possible protection.

To the argument that the work of the agency will become duplicative and unnecessary should State and Federal legislation be one day amended to afford equal or greater rights than those provided by the City's Human Rights Law, there is but one prayerful response: Accountability. A City Agency directly accountable to the public it serves is far more aware of and responsive to the needs of City constituents than are corresponding State and Federal agencies. The public interest in the elimination of discrimination is best served by assuring that the Commission is empowered to discharge its broad statutory mandate as effectively as possible and that the law it enforces is not subject to erosion through the vagaries of politics.

The preliminary recommendations of the

Charter Revision Commission recognize the significant contribution that the Human Rights Law makes to the quality of life in the City, and the important enforcement role executed by the Commission on Human Rights. Accordingly, the Commission on Human Rights strongly endorses the recommendations. Thank you.

CHAIRMAN MASTRO: Thank you very much. Thank you both for being here. Any questions from the Commissioners? Thank you very much.

Next we will hear from three speakers regarding the conflict of interest rules changes that the staff has recommended the Commission consider. The speakers will be Mark Davies, Les Taub and Joan Salzman.

MR. DAVIES: Mr. Chair, members of the Commission. My name is Mark Davies. I'm the executive director of the New York Conflicts of Interest Board and I have with me Joan Salzman the Deputy Director and Chief of Enforcement, and Les Taub, our Director of Training and Education.

First of all, I'd like to thank you for the opportunity to testify on the proposed amendments of Chapter 68 of the New York City Charter, which is the Ethics Law of the City of New York. I'd like to thank your staff, particularly general counsel Anthony Crowell, for their consideration in meeting our concerns about some of the original proposals.

The proposed amendments contain a number of changes in Chapter 68, many of a rather technical nature. I will address only three of the changes.

The first authorizes the Board to make post petition enforcement proceedings public; the second, granting to the Board investigative authority, and the third, mandating Chapter 68 training for every public servant. These are significant and important changes.

First, public post petition enforcement proceedings. Certain types of accusations by their very nature possess the power to seriously damage an official's career or even to effect the outcome of an election. Allegations of ethical impropriety are one such type of accusation. At the same time, an Ethics Board that acts only in secret after months of silence tends to engender public cynicism and distrust and also to discourage complainants with ever coming forward. Thus, ethics laws must tread a fine line between keeping the public abreast of the actions of the Ethics Board and protecting officials from the impact of unjustified accusations.

We believe that the line was drawn too far on the side of confidentiality in the '88-'89 Charter revision amendments. Under current law, the Board may make an enforcement proceeding public only if there is a final finding of a violation, not even a complainant may be told of the outcome of his or her complaint, absent a final finding of violation.

The amendment would essentially permit the Board to make a Chapter 68 enforcement proceeding public, once the petition is served, thereby adopting the confidentiality provisions for the City that are similar to those applicable to the State.

Prepetition proceedings, that is, the fact of the investigation, and the notice of probable cause, would remain confidential.

At the State Ethics Commission, notice of reasonable cause, which are analogous to petitions, are public. Hearings are public at the office of the Commission. The proposed amendment does permit the Board in appropriate cases to close the proceedings, including upon application of the Respondent. Public enforcement reassures the public; public servants, the media and complainants, that an enforcement matter is being pursued.

Public enforcement also performs an educational function, by alerting City employees to the requirements of Chapter 68, and the enforcement power and actions of the Board.

Second change, investigative authority. Let me begin my testimony on this topic by emphasizing that we have the best relationship with the Department of Investigation that we've ever had. They are terrific. Responsive, hard working and highly professional. We can never hope to have a better relationship with DOI than we now have. So why do we need our own investigators? Because as good as our relationship with DOI is, there are simply unavoidable institutional impediments that hamper our ability to dispose of smaller enforcement cases quickly.

For starters, DOI is a separate agency. Their investigators working on our cases do not report to us. This severely impedes our control over our cases.

Now, in major investigations such as Holtzman or Katsorhis, where we would continue to use DOI, such a lack of control presents few problems, but the vast majority of our cases are small. In those cases we need quick and often very limited investigation of narrowly defined issues. Departments of investigation are simply not geared to those types of investigations.

We have approached DOI about detailing DOI investigators to us, so that we would have full control over them. DOI rejected that idea. I don't blame them, I would reject it, too, because otherwise I would have no control over my own employees in an area that is within my agency's jurisdiction.

Several points in the proposed amendment should be emphasized. First, and perhaps most important, the amendment does not compromise DOI's power or investigations. DOI will still have complete authority to investigate Chapter 68 violations. Indeed, as I noted in some instances, the Board will necessarily continue to rely on DOI for investigations. Two in-house investigators, as we have contemplated adding if this amendment is enabled, could not hope to handle a matter of the magnitude of Holtzman or Katsorhis.

In addition, in order to avoid simultaneous investigations, the amendment requires the Board to give DOI prior notification before issuing any subpoena. This amendment would provide us with a basis for developing a small Conflicts Board investigative staff trained by DOI.

Consultation with the Securities Exchange Commission, the Pennsylvania Ethics Commission and Massachusetts Ethics Commission confirmed that in those agencies Commissioners issue investigative subpoenas on the request of staff, but are not involved in the investigation itself and ultimately adjudicates the matter. Precisely the proposal you have before you. Indeed, the vast majority of Ethics Boards and Ethics Commissions in this country that have enforcement authority, that is that have the authority to impose civil fines and other sanctions, also have the power to investigate possible violations of that law and issue subpoenas in the course of such investigations.

New York City is an anomaly in that regard. We are one of the few, one of the very few Ethics Boards with the power to fine, but not the power to investigate. I have distributed actually in your gray folder there a handout, a little chart of municipal Ethics Boards and Commissions that have enforcement authority, all of which also have investigative authority and subpoena power.

Now, the Ethics Boards of some large municipalities, such as Philadelphia or Washington, D.C. do not appear to have any enforcement authority at all. They can't fine or do anything, unlike the Conflicts Board. A review of state ethics agencies yields similar results. I just listed some municipal agencies.

The amendment as proposed thus tracks the approach of a substantial majority of Ethics Boards adjudicates the matter. Precisely the proposal you

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The amendment as proposed thus tracks the approach of a substantial majority of Ethics Boards around the country.

Finally, the third change, mandatory Chapter 68 training and education. Our Board has repeatedly stated that the purpose of the Conflicts of Interest Law is to promote both the reality and the perception of integrity in City Government by preventing conflicts of interest from occurring. But prevention requires knowledge. Public servants

must know what the law is before they can obey it.

This is not a case of "got-ya." The board is mandated under current law to train every public servant about Chapter 68, but public servants are not mandated to receive that training. As a result, too often City agencies effectively refuse to allow us to teach their employees about Chapter 68. And even if every agency cooperated with us to the fullest, the Board cannot possibly all by itself educate 300,000 public servants on Chapter 68.

The amendment would make ethics training mandatory for all public servants and would permit the Board within agencies' existing budget lines, and that's key, in their existing budget lines, to delegate the trainers and other persons within each agency ethics training and education responsibilities.

This approach has worked extremely well at the Department of Transportation, where every DOT employee receives Chapter 68 training, some by the Board, but many, most by DOT trainers whom we have trained. Les Taub, our director of training and education will tell you about this approach and give you a brief demonstration effectively showing you how this would work in practice, and it's actually very simple and very cheap to do it this way.

First, however, I'd be happy if you have any questions on the other two issues, the first two issues or of course any other amendments, unless the Chair wishes to hold the questions until we're finished.

CHAIRMAN MASTRO: Why don't we hold.

MR. TAUB: Thank you. I am Les Taub, director of training and education for the Board. As Mark mentioned in his presentation, the Board is mandated to provide Chapter 68 training to all City agencies, but the agencies are not mandated to receive it, beyond the chart that all employees get a copy of the Conflicts of Interest Laws and a declaration that they have read and shall conform to Chapter 68 of the Charter.

Over the past three years we have greatly expanded our outreach, thanks to an expanded training and education budget. In the year 2000, we conducted a total of 377 classes at 36 agencies, compared with a total of 300 classes over the previous five years combined. We have also greatly expanded our website and our publications, too, yet with all this activity and all this outreach, we may have reached 7 to 10 percent of the City's total work force in our busiest year, barely scratching the surface in our attempts to provide every public servant with some form of basic ethics awareness.

Some agencies will not work with us on ethics education, simply because the training isn't mandated or because they think it's unfeasible for us to reach all their employees.

So, if and when more comprehensive ethics education is mandated for all public servants, how will we reach them and provide them with useful information? As Mark said, it can be done effectively, cheaply and easily. First -- with your indulgence here for one moment.

First, every City worker should receive

our one-page Ethics Guide, along with Chapter 68.

As you see, it gives some of the do's and don'ts contained in the Conflicts of Interest Law, about moonlighting, second jobs, gifts, post employment, et cetera, and most importantly, it shows public servants where they can get specific information on their specific, the specific situations by contacting the Conflicts of Interest Board and that's key, how they can reach us to get their ethics questions answered.

In addition to this one-pager, we have a thirty minute videotape that can be shown at staff meetings, orientation sessions; we have posters, leaflets and our website is quite complete in terms of our publications and also we're developing interactive training components which reside on our website so that any City employee can go to our website and participate in training with that, given plain language explanations of the law. That's key as well, plain language.

Second, we at the Board will continue to teach many, probably hundreds of classes every year, especially to public servants at greatest risk for conflicts of interest. It's the small agencies that lack their own training facilities, and to attorneys, as we are a certified continuing legal education provider, but we can never possibly conduct classes for every public servant, so to supplement our own classes, we developed a very effective train the trainer program.

In this program, we provide agency training personnel with an interactive Power Point

outline, customized to the individual agencies' ethics focus and regulations, and I'll just take you very quickly. Here is basically something that any trainer, any professional trainer can follow and present to a class, our basic introduction, the basis and purpose of the law, and then we incorporate kind of an interactive quiz, so to test people's perceptions of the law, their first impressions.

We give the answers to the questions. It is a violation for Oscar to accept a dinner from Veronica and here's what the law says, that you may not accept a valuable gift and the valuable gift is defined. And again, this is done for the various topics and the most important thing, how to get your ethics questions answered.

We also provide the trainers with their own training guide to help them through this, we provide on-site consultation and information on the law and on the Board's operations, so that they can do a credible job in presenting this information to agency staff.

As Mark noted, the Department of Transportation, which recently required that all its employees receive ethics training, is conducting its own classes and a handful of other agencies are preparing to do the same, including the Parks Department and DEP. As DOT can testify, it's possible to train all agency employees about the City's ethics law with minimal cost, time and resources.

Now, as you can see, we can't hope to

make every public servant an expert in Chapter 68, that's not our goal nor would it be the agency's goal. Instead we're seeking to impart three basic lessons: One, that there is a Conflicts of Interest Law that applies to all public servants; two, the law places restrictions on public servants' private financial dealings, such as second jobs, outside businesses, volunteer work, political activities, superior-subordinate relations and post employment restrictions, and third, as you can see, the public servants can get their ethics questions answered quickly and confidentially.

Our telephone number and website address are featured prominently in all our classes and all our educational materials. Now when we teach these lessons and the agency trainers teach these lessons, we use various media. Class formats are flexible in terms of time and focus and most combine formal presentations with interactive training tools, as we have done right here. We might convene a mock conflicts of interest court from among the class participates for a hypothetical case and determine if a violation of the law has occurred.

Most of the sessions conclude with one of our computerized games. And here is "A Question of Ethics, 2001." Some music that goes with it, and questions on various topics on the law. The class is divided into teams and they pick categories and amounts. For instance, here, a California vendor pays your travel expenses so you can inspect equipment the vendor is producing for your agency. Is that a violation? Actually, the answer is no, it

is not. Not only do we give the answer, but we explain why it's not a violation, but what the conditions are to make sure it's not a violation.

So not only do we given the answer, but we give the background information, so that not only is this an effective tool for us, but it's also an effective tool for the other agency trainers.

Then we have another game, which I'll show you very quickly, keeping very current in terms of 21st century entertainment, "Who Wants To Be Ethical?"

We have our rules, we have our lifelines, and again, we start out with basic information, so people know how they can get their ethics questions answered. Of course, the answer here is all of the above, then it goes on to similar questions about things that have been covered.

So this is the way that we review the material that we've covered, and hopefully send folks out of these classes with smiles on their faces. Because it can be a very dry topic. Also, people who participate in these classes get a little Ethics Lighthouse pen with our phone number on them, but these are not valuable gifts, I assure you.

The bottom line is this training works, people enjoy it, the feedback we get is almost uniformly positive and enthusiastic, but it must be mandatory so that we can reach everyone. Thank you.

CHAIRMAN MASTRO: Thank you.

MS. SALZMAN: Good evening, members of the Commission. I'm Joan Salzman and I'm the Deputy Executive Director of the Conflicts of Interest

Board and the Chief of Enforcement.

First I want to thank the Staff of the Commission for the courtesies that they have extended to us and particularly Jan English. I think it's widely known if you want something done in the City, call Jan, and especially your general counsel, Anthony Crowell, who has brought a striking level of professionalism to the work. He clearly understands how the City Government works, how you write law, and whatever happens with the ballot proposals, you got the right guy in that job.

Actually, I'm told tonight that I'm going to give you, deliver the testimony that Henry Miller would have delivered if he could have been with us tonight and I think you have it in a written form. He would testify in support of the proposal of the Commission to revise Chapter 68 of the City Charter.

Henry Miller has a long and distinguished career as an attorney in ethics and Government. He was President of the Westchester County Bar Association, President of the New York State Bar Association, Chair of the New York State Temporary State Commission on Local Government Ethics and he's a practicing attorney who has represented lawyers in disciplinary proceedings.

In his various roles Mr. Miller has come to appreciate the critical importance of ethics rules in promoting both the reality and the perception of integrity in our legal profession and in our Government. Neither can succeed unless they are honest, not only in fact, but also in the eyes of the public. Ethics rules themselves can succeed

only if they are fair and reasonable.

The temporary State Commission found to be effective, municipal ethics law must contain three elements: First, a clear comprehensive and common sense code of ethics that is understandable to lay persons without resort to lawyers. Second, you need sensible disclosure, and third, you must have an independent Ethics Board with a budget, the powers and duties to enforce that law to provide quick answers to public servants on ethics questions and to teach public servants what the law requires.

The New York City Conflicts of Interest Laws is in many ways a model for municipal ethics. But it also requires some serious revision. The substance of the Code of Ethics in Chapter 68 is excellent, but interpreting it presents a challenge even to experienced municipal attorneys.

The Code should be written in plain English. Mr. Miller would recommend that the Commission propose the establishment of a subsequent Charter Revision Commission to consider rewriting the Code into plain English and also the employees can understand pro se.

A quick word on financial disclosure, which is very important, but is not on the agenda of this Commission. Mr. Miller would tell you that the City's annual financial disclosure law is an abomination for several reasons: First, we need more transactional as opposed to annual disclosure to link specific conduct to the need for disclosure. The disclosure law needs a reasonable connection to Chapter 68's ethics law, and the current law fails

to distinguish between high level public servants with major responsibilities and part time virtually volunteer Board members with limited jurisdiction.

We know that some citizens are discouraged from serving because of the Financial Disclosure Law. Mr. Miller would have urged this Commission to recommend that action be taken at the State level, such changes will require action by the State Legislature.

Finally, administration. Unless an ethics law is administered by an independent Ethics Board with real teeth with the power to initiate investigations and impose civil fines, the law will not work. The Temporary State Commission saw this time again in municipalities throughout New York State. An Ethics Board without independence and enforcement authority is marginalized and ignored. It raises expectations it cannot meet, thus increasing rather than decreasing public cynicism about integrity in Government.

Henry Miller would tell you that the New York City Conflicts of Interest Board has an impression history of independent action. I can't tell you that because I work there. But I can say the Board enjoys enormous support from the current administration and the City Council and for that we're very grateful. But the law must survive individual public servants.

Alone amongst all City agencies, an Ethics Board has the power to fine and punish the very people who hold its purse strings. The risks therefore remains great that some future Mayor or

future Council piqued at the Board's decisions or actions, may slash the Board's budget and staff.

For that reason, we need some form of budget protection, and as an example, the California Fair Political Practice Commission has by state law a guaranteed minimum budget.

The City's Independent Budget Office has under the Charter a budget that is a percentage of the budget of the Office of Management and Budget. The Conflicts of Interest Board needs similar protection. At a minimum, any reduction in the budget of the Board should require the Council to pass and the Mayor to sign a separate budget bill containing only the enforced budget.

Mr. Miller would have urged this Commission, and does urge the Commission to adopt some form of budget protection for the Conflicts Board.

On investigation and enforcement, the Board has the power to impose civil fines and has done so judiciously many times. However, an Ethics Board must also have the power to control and conduct its own investigations while having the access to the resources of other investigative agencies when needed. No matter how close the relationship between an Ethics Board and another investigative agency like DOI, it remains virtually an institutional truism that the investigative agency and the Ethics Board will differ in the ordering of their priorities.

In addition, departments of investigations and Ethics Boards reflect different

mandates and different cultures. As a law enforcement agency, a Department of Investigation seeks to discover, prosecute and prevent corruption. An Ethics Board proceeds from the assumption that the vast majority of public officials are honest and want to do the right thing and that the purpose of the Board is to prevent conflicts from occurring. Consequently, an ethics Board looks to its enforcement actions mainly to their educational value.

The quick completion of the case becomes more critical for an Ethics Board before the public's interest have waned. But DOI, therefore, typically undertakes exhaustive investigations and produces reports with evidence supporting every element of each possible criminal charge beyond a reasonable doubt. An Ethics Board may require quick surgical investigations and establish the grounds to believe that a Respondent has violated the Ethics Code by a preponderance of the evidence, in a civil context.

For all of these reasons, the necessity that an Ethics Board control and conduct its own investigations in order to employ targeted probes to obtain quick results in cases that have educational value, an Ethics Board must have investigative authority which includes subpoena power. Mr. Miller strongly supports the Charter Revision Commission to grant such power to the Conflicts Board of New York City. He likewise supports the proposal to make ethics training mandatory for all public servants and require all agencies within their established

budget to provide training from the Conflicts Board.

Again, the primary purpose of an Ethics Law lies in prevention of conflicts, but public servants cannot comply with that law and conflicts cannot be prevented unless public servants know what the law says and means. Therefore, it's an axiom that ethics training must be mandated for every Government employee.

Thank you very much for the opportunity to convey Mr. Miller's thoughts with a few minor editorial comments of my own.

CHAIRMAN MASTRO: Any questions?

COMMISSIONER SIMONETTI: I have several questions. First is, who currently does your investigation?

MR. DAVIES: The New York City Department of Investigation, under the Charter.

COMMISSIONER SIMONETTI: If you did good the Authority as a Charter agency to bring in investigative staff, who would make the decision on which cases you would keep in house and which cases you would farm out to DOI?

MR. DAVIES: Under the proposal, we would make that determination.

COMMISSIONER SIMONETTI: And how would that work out? You have to envision how you'd be able to discern which cases you would keep in and which cases you would turn over?

MR. DAVIES: It would be largely, there's really two issues. One issue is, if it's primarily a criminal case, then we as we do now, we act as assistants to the District Attorney, but it's

primarily a criminal case, a bribe, whatever, so forth, the DA's would handle that and DOI would handle that, we would not do those investigations. So that's the first cut.

The second cut is, it's a question of resources. As you say, the vast majority of our cases are small. They're not large. That's the cases that we would be handling. Any case that's large, it would be pointless and foolish to try to handle that in house. Those cases would be given for DOI, if it has the resources to go through thousands of documents, and all the rest of that.

COMMISSIONER SIMONETTI: Again, if you did have the statutory authority, how large would your initial investigative staff be?

MR. DAVIES: Well, based on our current estimates, with the current caseload, we figure two investigators.

COMMISSIONER SIMONETTI: Reporting to?

MR. DAVIES: Reporting ultimately to the Chief of Enforcement. Directly to an examining attorney who is subject of DOI and ultimately to the Chief of Enforcement.

MR. RUBIN: Since the department has an adjudicative function, makes the determinations, do you see there's a problem involved where you have an investigative group which now investigates its own superiors who are going to make a determination? Isn't that contrary to a developing concept which you have determinative agencies to separate out the investigative group from the ultimate decision makers?

MR. DAVIES: Actually, the same issue exists because we have enforcement attorneys. The enforcement unit, which Joan heads up, we also have--we have practically a wall that we erect and that wall is set up as soon as the petition is served. There's a probable cause notice. If probable cause is sustained, a petition goes out.

At that point by our rules, our rules adopted pursuant to CAPA, there are no ex parte communications between the enforcement staff and Board members. The exact same thing would happen here. There would be no communication between the investigative unit ultimately part of the enforcement unit and the Board members. It's really no different than we currently have with respect to enforcement.

It also is, the way its works, for example, in the Securities and Exchange Commission and most of the major Ethics Boards throughout the country, works the same. The Ethics Commission has criminal jurisdiction as well.

MR. ROBERTS: How many investigative cases do you try during the year?

MS. SALZMAN: Last year we had 148 complaints and not all of them are cases where the allegations are substantiated. And that represents a huge increase since the Board was founded. When we began gingerly working with these powers in 1990, my predecessors had eight complaints and the more we publish and the more people come to know us, the more complaints we receive.

There were, out of 148, there were 117

dispositions last year, and ten of those imposed fines. So it's hardly a runaway Board. The board acts I would think very judiciously in using its enforcement powers.

MR. ROBERTS: Did you find that DOI was closing you off in any of those investigations at all?

MS. SALZMAN: I can only say this of DOI. They're a really professional group of attorneys and highly effective investigators so clearly the answer is no. They do the best they did with the resources they get. We are only a blip on their screen, I fully understand that.

We have a mandate to ferret out all kinds of misconduct, mismanagement, corruption and criminal activity and they devote, what they do to us is very good and we're grateful for that. It would be, but your concern is more of an institutional concern, and in that sense, it would be more efficient for us to have the ability to go after some of the small cases without getting into the docket of DOI, which is much, much broader than our mandate.

MR. ROBERTS: You're talking about what percentage of the 148 cases that you handled last year?

MR. DAVIES: The vast majority were handled in house, the vast majority are small. Again, we have nothing but good to say about DOI, they're wonderful, but a typical investigation done by DOI, it's an institutional issue. It would be very rare for us to hear back from DOI in less than

four or five months and sometimes it's a year. It's an institutional issue. No DOI. We are so close to DOI, we work so closely with them and they are so good, nonetheless, it takes months and months and months to get a report from DOI, that's not going to change, it's simply not going to change.

Even with this excellent relationship we have, we think, however, that if we have internal investigators, we do it much more rapidly because we simply, we have a different culture, we have a different purpose, and we do kind of surgical investigations where we would say, we only need to have this question, this question answered. We don't need all this, not now, maybe later, probably not, and then we make a contact.

It's a very, very different process than DOI as an institution does.

MS. SALZMAN: I would simply add that when it comes to resources like transcription and videotaped depositions of witnesses who are about to leave the jurisdiction, we fully depend on DOI to supply that and I think the cutoff is not a subject or title of the potential respondent, but say the number of witnesses and the amount of documents.

CHAIRMAN MASTRO: Any other questions? Do any of you have a view on the proposal on when salary increases for elected officials would go into effect?

MR. DAVIES: No.

COMMISSIONER SIMONETTI: I have one more question, Mr. Chairman. Do you envision the investigative staff working on an investigation,

coming to some sort of conclusion and making some sort of recommendation to you and then you bring that to the Board, ultimately can the Board overrule that decision?

MS. SALZMAN: The Board can and does overrule all the time. In fact, I think the current way that DOI has come to function is not to, in general, not to recommend a finding in particular. They just, it's like the TV show, only the facts. They give you the facts and it's the Board's province to decide whether or not there's a violation. The staff can only recommend in any event, it's a Board decision.

CHAIRMAN MASTRO: Thank you very much.

MS. SALZMAN: Thank you.

CHAIRMAN MASTRO: That concludes the expert testimony portion of the evening. We will next go to the public hearing. We look forward to hearing comments from the public about any subject which they want to raise with the Commission, not simply the subjects that we received expert testimony on this evening.

(Time noted: 7:10 p.m.)