

1 JOINT HEARING BEFORE THE NEW YORK STATE
2 SENATE STANDING COMMITTEE ON ETHICS AND
INTERNAL GOVERNANCE;
3 SENATE STANDING COMMITTEE ON WOMEN'S ISSUES;
4 SENATE STANDING COMMITTEE ON INVESTIGATIONS AND
GOVERNMENT OPERATIONS;
5 ASSEMBLY STANDING COMMITTEE ON LABOR; and
ASSEMBLY TASK FORCE ON WOMEN'S ISSUES

6 JOINT PUBLIC HEARING:

7 TO EXAMINE SEXUAL HARASSMENT ISSUES IN THE WORKPLACE

9 Assembly Hearing Room 1923
10 250 Broadway, 19th Floor
New York, New York

11 Date: May 24, 2019
12 Time: 10:00 a.m.

13 PRESIDING:

14 Senator Alessandra Biaggi, Chair
15 Senate Standing Committee on
Ethics and Internal Governance

16 Assemblyman Marcos Crespo, Chair
17 Assembly Standing Committee on Labor

18 Senator Julia Salazar, Chair
Senate Standing Committee on Women's Issues

19 Senator James Skoufis, Chair
20 Senate Standing Committee on
Investigations and Government Operations

21 Assemblywoman Latrice Walker, Chair
22 Assembly Task Force on Women's Issues

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SENATE MEMBERS PRESENT:

Senator Jamaal Bailey
Senator David Carlucci
Senator Andrew Gounardes
Senator Brad Hoylman
Senator Liz Krueger
Senator John Liu
Senator Shelley Mayer
Senator Zelnor Myrie

ASSEMBLY MEMBERS PRESENT:

Assemblyman David Buchwald
Assemblywoman Catalina Cruz
Assemblywoman Natalia Fernandez
Assemblyman Dick Gottfried
Assemblyman Michael Montesano
Assemblywoman Yuh-Line Niou
Assemblymember Felix Ortiz
Assemblyman Dan Quart
Assemblyman Edward P. Ra
Assemblywoman Linda B. Rosenthal
Assemblywoman Rebecca Seawright
Assemblywoman Jo Anne Simon
Assemblywoman Aravella Simotas

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1 ASSEMBLYWOMAN SIMON: Okay, we're going to
2 begin our hearing this morning, our joint hearing
3 between the New York State Senate and the New York
4 State Assembly, on Sexual Harassment in the
5 Workplace.

6 Today is May 24, 2019.

7 I am State Senator Alessandra Biaggi. I will
8 be one of the co-chairs on the State Senate side.

9 And I'm joined by my co-chair on the Assembly
10 side, Assemblymember Marcus Crespo.

11 I'm going to begin with some opening remarks,
12 and then I'm going hand it over to the Assembly to
13 also have some opening remarks, and remind us of our
14 time constraints in terms of our testimony that we
15 have here today.

16 I'm also joined by my co-chair,
17 Senator Salazar on my right.

18 And later in the afternoon I'll be joined by
19 Senator James Skoufis.

20 For the first time in 27 years, on Wednesday,
21 February 13, 2019, joint public hearings of the
22 New York State Legislature were held on the subject
23 of sexual harassment in the workplace.

24 February's hearing was convened in response
25 to a troubling pattern of high rates of persistent

1 and continuing behavior of harassment over the past
2 quarter century.

3 More currently, and specifically, the hearing
4 was an outgrowth of, and in response to, the
5 courageous efforts of seven former New York State
6 legislative employees who witnessed, reported, or
7 experienced sexual harassment during their time
8 working in state government.

9 They formed the Sexual Harassment Working
10 Group, and have played an essential role in ensuring
11 that there will be action to deal with the issue.

12 At the urging of these brave women and other
13 tireless advocates, and men, the goal of the hearing
14 was to gather information that would reveal
15 opportunities to create stronger and clearer
16 policies and procedures that will endure in public
17 and private sectors throughout the state.

18 We hope that the hearing might aid in the
19 strengthening of proposed legislation, and spur the
20 development of new legislation, that will make
21 New York State a leader in workplace safety and
22 anti-harassment law.

23 We heard from the federal, state, and city
24 agencies that play roles in policy development and
25 enforcement of workplace safety.

1 Representative experts from advocacy
2 organizations testified about the shocking nature of
3 harassing behaviors, and recommended pathways for
4 strengthening policy and enacting new legislation.

5 Finally, and most powerfully, individual
6 witnesses delivered searing testimony about their
7 lived experiences of being subjected to sexual
8 harassment while working in government.

9 It was universally found that there is a lack
10 of reliable policy and standard reporting structures
11 that address victims in a trauma-informed manner.

12 Critical gaps and obstructions impede timely
13 and complete reporting of harassing behaviors.

14 Throughout the hearing, witnesses exposed the
15 grossly inadequate avenues of recourse available to
16 them, and widespread institutional failure to
17 resolve matters without subjecting survivors to
18 further harm.

19 Clearly, one hearing on this subject, after
20 27 years of silence, is insufficient to address the
21 scope and stubbornness of this problem, and to help
22 us fully understand how to best refurbish policies
23 and develop appropriate and enduring legislation
24 that protects all workers in the state of New York.

25 Absent from the February hearing were key

1 state governmental agencies, such as the New York
2 State Human Rights Division, who is joining us here
3 today, and the New York State Governor's Office of
4 Employee Relations, that provide oversight, and
5 exist as repositories for reporting.

6 Without the opportunity to hear from these
7 critical agencies and evaluate how policies were
8 developed and how complaints are fielded, an entire
9 dataset germane to making improvements in the system
10 has not been captured.

11 Despite the 11-hour marathon of February's
12 hearing, blue-collar and service workers who were
13 scheduled to testify were not able to. Some did not
14 have access to sufficient child care to remain with
15 us into the night.

16 As a result, their voices remain unheard.

17 Professional white-collar governmental
18 workers were the only individual victims of sexual
19 harassment available to testify.

20 We did not hear from any women or men of
21 color.

22 We know that when the target of harassment is
23 both a woman and a member of a racial minority
24 group, the risk of experiencing harassing behaviors
25 is greatly increased because that if -- because,

1 beyond that, if the individual belonged to only one
2 of those groups.

3 Many service workers earn minimum wage or
4 rely on tips, and have less than optimal control
5 over their schedules, especially if they have
6 dependent children.

7 Taking this all into account, and reflecting
8 on the importance of hearing from as many voices
9 across all employment sectors as possible, we are
10 conducting today's hearing.

11 Finally, we need further testimony from those
12 governmental leaders and agencies responsible for
13 the laws and internal guidelines in places so we can
14 closely examine the disparity between their
15 intentions and the willful outcomes.

16 Developing policy that is rigorous enough to
17 produce better results requires a complete
18 exploration.

19 Through examination of past practice will
20 enable us to determine how we have failed to achieve
21 desired outcomes.

22 It is not enough to have strong laws. We
23 must also have enforcement systems that function
24 with equal strength.

25 We laid the groundwork in February that

1 demands additional hearings in order to have a clear
2 survey of the landscape before we begin to build a
3 truly strong framework as a foundation for new
4 structures.

5 Survivors need to be heard so that oversight
6 and enforcement bodies can develop informed policies
7 and procedures.

8 Our work is off to a good start, but it has
9 only just begun.

10 I'd like to address those who have chosen to
11 testify with a moment of gratitude.

12 It is because of your courage and your
13 willingness to share your experiences today that
14 New York can move one step closer towards building a
15 society and culture that is harassment-free.

16 And before I hand it over to my Assembly
17 co-chair, I would like to acknowledge all of my
18 Senate colleagues who are here today.

19 On my right we have Senator Liz Krueger,
20 Senator Andrew Gounardes, Senator David Carlucci,
21 Senator Jessica Ramos.

22 In the first row in front of us, we have
23 Senator John Liu, Senator Brad Hoylman,
24 Senator Shelley Mayer, and Senator Zelnor Myrie.

25 ASSEMBLYMAN CRESPO: Thank you, Senator.

1 Appreciate your leadership on these issues,
2 and to work with you.

3 It's a great experience to be able to work
4 with you on these issues, and to talk about ways to
5 improve the workplace throughout the state of
6 New York, and all industries.

7 I am joined by a number of my colleagues in
8 the New York State Assembly:

9 Assemblywoman Aravella Simotas;

10 Assemblywoman Rebecca Seawright;

11 Assemblywoman Catalina Cruz;

12 Assemblymember Dan Quart;

13 Assemblymember Dick Gottfried;

14 Assemblywoman Jo Anne Simon;

15 Assemblymembers Ra, Montesano;

16 Assemblymember David Buchwald;

17 And Assemblywoman Yuh-Line Niou.

18 And we are -- many of us were in the first
19 hearing that lasted those 11 1/2 hours, but it
20 wasn't enough.

21 And as the Senator mentioned, too many
22 presenters were not able to give their testimony and
23 there are still too many voices to be heard.

24 We know that this issue continues to prevail
25 in the workplace, to occur in all industries.

1 Discrimination and sexual harassment need to
2 be eradicated from our workplace, and we have work
3 to do.

4 Despite our efforts in last year's budget,
5 and there were significant measures included in our
6 budget, more work needs to be done.

7 And that remains clear from the powerful
8 testimony of those that came forward, the victims,
9 that spoke to us in the first hearing, and those
10 that we'll hear from today.

11 There is still room for improvement, and
12 room -- and ways for us to strengthen, not only the
13 protections, but the enforcement mechanisms, as was
14 mentioned by the Senator.

15 I think about this from a personal
16 perspective. My 19-year-old daughter who's a
17 sophomore in Queens College, or my 5- and
18 6-year-olds who are first-graders in the Bronx.

19 I want to make sure that they are able to
20 enter a workplace where they are given every
21 opportunity in a harassment-free space.

22 And that's what we should aspire to, and we
23 have to challenge ourselves; to not rest on our
24 laurels, to not assume that things are okay, to not
25 think that what we have already done is sufficient,

1 when we continue to hear horror stories, and --
2 and -- and -- and abuse, taking place across the
3 board; and, again, it's important to note, in all
4 industries, affecting all communities, affecting all
5 racial demographics, affecting all genders.

6 We need to make sure that we strengthen our
7 policies.

8 You're seeing already significant pieces of
9 legislation introduced by many of my colleagues who
10 are here today, and others.

11 And we want to make sure that, through your
12 voices, we can strengthen those bills, and make sure
13 that we move forward with a strong legislative
14 package.

15 We will probably never eradicate this from
16 ever happening again, but we need to make sure that
17 we make it a rare occurrence, and not the norm, in
18 the workplace.

19 That is our goal, and we will work hard to
20 make sure that, together, we accomplish that in
21 terms of our policies in the state of New York.

22 So I'm grateful for this opportunity to hear
23 your testimony.

24 I will remind my colleagues, again, that we
25 want to provide as much time to those presenters.

1 After 5:30, in this building, security
2 leaves.

3 So we can remain; however, if you leave the
4 building after 5:30 p.m., they will -- you will not
5 be able to re-enter.

6 So, keep that in mind, and we'll keep
7 reminding you as the day goes on.

8 But we want to ask our colleagues as well, to
9 keep your questions direct and succinct, so we can
10 ensure that the presenters have as much time as they
11 need.

12 And, again, thank you, all, for being a part
13 of this important conversation.

14 SENATOR BIAGGI: Thank you.

15 Our first witnesses who will be testifying,
16 is the New York State Division of Human Rights, are
17 Melissa Franco, the deputy commissioner for
18 enforcement, and, Gina Martinez, the deputy
19 commissioner for regional affairs and federal
20 programs.

21 And they will be joined by the New York City
22 Commission on Human Rights, who is represented by
23 Dana Sussman, the deputy commissioner of
24 intergovernmental affairs and policy.

25 Thank you for being with us today.

1 D.C. MELISSA FRANCO: Good morning, everyone.

2 Distinguished members of the Committee, thank
3 you for the opportunity to discuss the important
4 issue of sexual harassment in the workplace on
5 behalf of the New York State Division of Human
6 Rights.

7 My name is Melissa Franco, and I am the
8 deputy commissioner of enforcement.

9 I am joined here by my colleague,
10 Gina Martinez, who is the deputy commissioner of
11 regional affairs and federal programs.

12 The New York State Human Rights Law prohibits
13 discrimination on a wide range of protected classes,
14 including prohibited sex discrimination and sexual
15 harassment in employment, housing, credit, and
16 places of public accommodation, volunteer
17 firefighting, and educational institutions.

18 The Human Rights Law also provides separate
19 protections against retaliation.

20 Last year Governor Cuomo signed a
21 ground-breaking package of legislation that
22 strengthened protections against sexual harassment.

23 Now employers can be held liable under the
24 Human Rights Law to non-employees performing work in
25 the workplace; for example, independent contractors,

1 consultants, service providers, and delivery persons
2 who were sexually harassed.

3 This applies to all employers of any size,
4 public or private.

5 Today, any individual in a workplace, of any
6 size, public or private, is entitled to protections
7 against sexual harassment under the law.

8 If an employer is found liable under the
9 Human Rights Law for sexual harassment, they may be
10 ordered to provide injunctive or appropriate
11 affirmative relief, back and front pay, and
12 compensatory damages for emotional distress.

13 Civil fines and penalties and attorney fees
14 may also be awarded in sexual-harassment cases.

15 The division of human rights was created in
16 1945 to enforce the Human Rights Law, to ensure that
17 all New Yorkers have an opportunity to participate
18 fully in the economic, cultural, and intellectual
19 life of the state.

20 DHR investigates, hears, and adjudicates
21 complaints filed by individuals, as well as those
22 brought by the division itself, to address systemic
23 discrimination.

24 DHR also engages in outreach and education
25 campaigns, designed to inform the public of the

1 effects of discrimination, and their rights and
2 obligations under the law, and issues, policies,
3 regulations, and guidance, implementing the
4 Human Rights Law, and addressing issues of
5 discrimination and harassment.

6 DHR has approximately 164 full-time
7 employees, including 63 investigators at 12 regional
8 offices across the state.

9 The agency receives over 6,000 individual
10 complaints annually, of which, approximately,
11 80 percent relate to employment.

12 For any claim of discrimination or
13 harassment, individuals may file a complaint with
14 DHR within one year of the last act of the alleged
15 discrimination.

16 Complaints with DHR can be filed in person at
17 any office, or can be sent in via e-mail, fax, or
18 mail.

19 If individuals need assistance filing a
20 complaint, they can call our hotline, or call or
21 visit any of our regional offices.

22 An individual does not need an attorney to
23 file a complaint or utilize our process.

24 DHR provides free translation and
25 interpretation assistance at all offices.

1 Once a complaint is filed with our agency, it
2 is reviewed to determine if DHR has jurisdiction
3 over the conduct alleged.

4 Next, the investigators conduct an
5 investigation into whether there is probable cause.
6 As part of this process, investigators may issue
7 written requests for information, visit the site of
8 the alleged incident, and meet with the parties
9 and/or witnesses.

10 Once DHR receives and files a complaint, it
11 is served upon the respondent, who is asked to
12 respond to it in writing.

13 Any responses received are sent to the
14 complainant, who is given an opportunity to provide
15 a rebuttal.

16 Once a final determination is made, both
17 parties will receive a written determination in the
18 mail.

19 Currently, 97 percent of all claims
20 investigated by DHR are completed and determinations
21 are made within 180 days.

22 During 2008, the average processing time to
23 investigate a sexual-harassment case at the division
24 was 172 days.

25 If the investigator finds no probable cause

1 or lacks -- or a lack of jurisdiction, the complaint
2 is dismissed.

3 A complainant may appeal this dismissal
4 within 60 days to the State Supreme Court.

5 If a determination of probable cause is
6 found, the claim will then proceed to a public
7 hearing.

8 If a complainant doesn't have a private
9 counsel, the division will assign an attorney to the
10 claim.

11 If a settlement is not reached, the case will
12 be calendared for a public hearing before an
13 administrative law judge.

14 If the complainant does not have a private
15 attorney, the assigned division attorney will
16 interview the complainant, review the evidence in
17 the file, formulate a hearing strategy, and put
18 forth the evidence at the hearing.

19 The division attorney may also conduct
20 cross-examination of the respondent's witnesses, and
21 rebut any other evidence entered by the respondent.

22 A division administrative law judge reviews
23 all of the evidence, and then drafts a recommended
24 order for the commissioner's consideration.

25 The parties then have 21 days to file

1 objections to the recommended order.

2 The commissioner makes the final
3 determination as to whether the Human Rights Law has
4 been violated, and may award any available remedy
5 under the law.

6 Either party may appeal an order directly to
7 the State Supreme Court in the county where the
8 discrimination is alleged to have occurred.

9 DHR attorneys will appear in any of these
10 cases on appeal to support our findings of
11 discrimination in these matters.

12 DHR is also empowered by the New York State
13 Legislature to oppose systemic patterns of
14 discrimination through division-initiated
15 investigations and complaints.

16 The division-initiated investigation unit is
17 responsible for identifying, investigating, and
18 bringing complaints to remedy large-scale systemic
19 discrimination in New York State.

20 The unit identifies potential targets through
21 various means, including referrals from other state
22 agencies, anonymous tips, newspaper articles, and
23 meetings with various advocacy groups.

24 Once a potential target is identified, the
25 unit uses various investigative tools to gather

1 evidence to determine if a potential target has
2 violated the law.

3 If the evidence gathered shows a violation of
4 the law has occurred, the unit will file a complaint
5 on behalf of the State of New York.

6 It will then be investigated by a separate
7 regional office to determine whether there is
8 probable cause to believe that discrimination has
9 occurred.

10 If there is a determination of probable
11 cause, the complaint will proceed to a public
12 hearing before an administrative law judge.

13 The division is committed to the efficient
14 and effective investigation and adjudication of all
15 individual complaints of sexual harassment.

16 In light of the powerful organizing that is
17 laid bare the society-wide harm caused by sexual
18 assault, DHR is seeing a dramatic rise in complaints
19 coming forward.

20 Since 2016, there has been a 62 percent
21 increase in individual complaints of sexual
22 harassment filed with the division.

23 By taking effective action, DHR is able to
24 bring justice on behalf of complainants who have
25 faced such harassment.

1 For example, in 2017, DHR issued an order in
2 favor of three women from Western New York who faced
3 sexual harassment at the dental office where they
4 worked. The complainants were subjected to being
5 called derogatory names, persistent invites to
6 dates, inappropriate touching, and other offensive
7 behavior.

8 When one of the complainants notified her
9 manager of the unwanted sexual advances, the
10 employer countered by saying "the aggressor plays
11 like that."

12 The complainants were collectively awarded
13 over \$152,000 in damages for emotional pain and
14 suffering, unlawful retaliation and discrimination
15 against them. And DHR issued a civil fine of
16 \$60,000, payable to the State, for violating the
17 law, and required that the respondents to -- provide
18 additional training.

19 DHR order -- DHR's order was affirmed by the
20 Fourth Department, Appellate Division, this past
21 summer.

22 The division is also committed to ending
23 sexual harassment and other forms of discrimination
24 via outreach and education.

25 In 2018, and early 2019, the division

1 participated in approximately 40 education and
2 outreach presentations across the state, that
3 included discussions of preventing and addressing
4 sexual harassment.

5 Additionally, the division held six outreach
6 events that specifically focused on sexual
7 harassment, in Seneca Falls, Rochester, Cheektowaga,
8 Newburgh, Buffalo, and Long Island.

9 DHR is currently planning a robust outreach
10 and education campaign, which will include public
11 events and an active social-media presence, focusing
12 on all elements of the law, including protections
13 against sexual harassment.

14 As part of last year's harassment package,
15 the New York State Labor Law now requires all
16 employers in New York State to establish a
17 sexual-harassment policy, and provide annual
18 sexual-harassment training.

19 DHR was proud to work closely with the
20 department of labor in developing a model policy,
21 model complaint form, and model training for
22 employers to adopt in the workplaces, as well as an
23 easy, accessible website, with guidance and
24 resources for workers and employers on New York
25 State's laws against workplace sexual harassment.

1 Prior to being finalized, the models were
2 presented to stakeholders and the public for public
3 comments. And the department of labor and DHR held
4 meetings with employee and survivor groups, as well
5 as business leaders and employers across the state.

6 Hundreds of comments and suggestions were
7 reviewed and taken into account before the final
8 documents were released.

9 The model policies and trainings are
10 available online in readily accessible formats,
11 translated into eight languages.

12 Both the department of labor and DHR continue
13 to engage in outreach and education on the state
14 requirements, and we look forward to continuing
15 those efforts as part of our upcoming outreach and
16 education campaign.

17 Thank you all for the opportunity to discuss
18 the great work we do at DHR in our efforts to
19 protect all New Yorkers from harassment and
20 discrimination.

21 D.C. DANA SUSSMAN: Good morning, Senators
22 and Assemblymembers.

23 Thank you for convening today's joint hearing
24 on the critical issue of combating sexual harassment
25 in the workplace.

1 I am Dana Sussman, deputy commissioner for
2 intergovernmental affairs and policy at the New York
3 City Commission on Human Rights.

4 I'm pleased to be back with you again after
5 the first hearing on this topic in February.

6 And I want to thank you, and the tireless
7 advocates in the room today, who have brought us
8 together to continue this vital and overdue
9 conversation.

10 In February, my testimony focused primarily
11 on the ways in which the State Human Rights Law
12 could be amended to align itself more closely with
13 the New York City Human Rights Law, giving this
14 state law more teeth to hold harassers and those
15 that enable them accountable, and to afford more
16 victims the legal protections they need to pursue
17 justice.

18 My testimony identified four areas to
19 strengthen the law.

20 1. Correcting the decades of case law
21 establishing the unnecessarily high, severe, or
22 pervasive standard as the New York State legal
23 standard for sexual harassment.

24 2. Explicitly rejecting the Faragher-Ellerth
25 affirmative defense.

1 3. Making it possible for managers and
2 supervisors, even if they do not have an ownership
3 interest in the employer, to be held personally
4 liable for sexual harassment; and,

5 4. Ensuring that punitive-damage awards are
6 available with respect to State Human Rights Law
7 claims, as they are under other civil rights laws.

8 Today I'm here to briefly discuss the work of
9 the commission's gender-based harassment unit, and
10 several recent developments in the commission's
11 efforts to combat sexual harassment in the
12 workplace.

13 The gender-based harassment unit at the
14 commission was launched in January of this year,
15 with the budget of \$300,000. It has personal lines
16 for four dedicated staff members, one supervisor,
17 two attorneys, and one non-attorney investigator.

18 As soon as an individual with a workplace
19 sexual-harassment claim contacts the commission
20 through our general intake line or our web form, the
21 unit supervisor is alerted, and will make a quick
22 assessment as to whether there should be any
23 immediate action taken.

24 While most individuals who report workplace
25 sexual-harassment cases to the commission come to us

1 after they have left their place of employment,
2 there are certain situations in which the unit may
3 be able to intervene early and quickly to
4 de-escalate a situation or to prevent retaliation.

5 In some circumstances, the unit has been able
6 to intervene immediately to ensure that evidence is
7 preserved, either through surveillance video footage
8 or documentary evidence, or, to obtain an immediate
9 transfer of a victim of harassment to ensure the
10 victim is not interacting with the alleged harasser.

11 Not all circumstances warrant immediate
12 intervention, so, for most cases, attorneys in the
13 unit will meet with the complainant within several
14 weeks after the initial call or e-mail, unless there
15 is an urgent need to bring them in earlier, for
16 example, where a statute of limitations may be
17 running.

18 The unit's attorneys primarily focus on
19 workers in low-wage industries. And while the
20 commission has cases of workplace sexual harassment
21 spanning all industries, in both high-paying and
22 low-wage work, the unit has identified the private
23 security and building-management industry and the
24 hospital industry, particularly the restaurant
25 industry, where -- which represent a

1 disproportionate amount of the unit's cases.

2 Those industries highlight the
3 vulnerabilities of workers who experience harassment
4 in isolated and disconnected workplaces, and the
5 lack of a clear or centralized management or
6 reporting structure.

7 The gender-based harassment unit also reports
8 that, while most of the victims of cases at the
9 commission are women, they're seeing a significant
10 number of men who are now reporting sexual
11 harassment.

12 The vast majority of the alleged sexual
13 harassers, although not all, are men, including in
14 the cases in which men are the victim.

15 While the unit's work is focused on
16 investigating and prosecuting workplace
17 sexual-harassment claims, other attorneys in the
18 agency's law enforcement bureau also handle
19 sexual-harassment cases.

20 There are simply too many for the unit to
21 handle alone.

22 The commission's caseload of workplace
23 gender-discrimination cases that include a
24 harassment claim doubled in a single year after
25 Tarana Burke's #MeToo movement relaunched in late

1 2017, from 56 in 2017, to 115 in 2018.

2 And I note that this number is slightly
3 higher than the number I reported in February,
4 because it didn't account for some very late 2018
5 filings.

6 For the first four months of 2019, the
7 commission filed an additional 42 complaints of
8 workplace gender discrimination that included a
9 harassment claim.

10 And as of April 30, 2019, the commission is
11 investigating 207 total cases. That includes
12 13 matters in a pre-complaint posture, in which the
13 commission is seeking to resolve matters before a
14 complaint is filed.

15 I also want to highlight a significant recent
16 development since the hearing in February.

17 In March of this year, the State Supreme
18 Court, in Automatic Meter Reading Corporation versus
19 The NYC Commission on Human Rights, upheld the 2015
20 commission decision and order in a workplace
21 sexual-harassment case.

22 The commissioner's decision and order was
23 issued in late 2015 before the #MeToo reawakening,
24 which demonstrates the leadership and the commitment
25 of the commission to recognize the seriousness of

1 these claims.

2 The commission ordered the highest-ever civil
3 penalty in commission history, the only time we've
4 ordered this amount, and the highest available under
5 the City Human Rights Law, at \$250,000, for willful,
6 wanton, or malicious conduct; in addition to over
7 \$420,00 in total damages to the complainant,
8 including back pay, front pay, interest, and \$200,00
9 in emotional-distress damages.

10 The case involved a business owner who
11 sexually harassed a female employee over a
12 three-year period, repeatedly engaging in unwanted
13 touching, regularly using lewd and
14 sexually-inappropriate language to and about her,
15 and posting a sexually-explicit cartoon in the
16 workplace identified as the complainant.

17 The State Supreme Court's decision in March,
18 upholding the commission's order, is significant, in
19 that it had -- it upheld one of the highest damages'
20 awards and the highest civil penalty in commission
21 history in a sexual-harassment case, reaffirming
22 that sexual harassment causes real emotional and
23 mental trauma, and devastating economic
24 consequences, to those who experience it.

25 It also affirmed the commission's finding

1 that the complainant was constructively discharged
2 from her employment; meaning, that the sexual
3 harassment made the workplace so unbearable, that
4 she had no other option but to leave.

5 The State Supreme -- the State Court decision
6 further reinforces that administrative agencies
7 tasked with enforcing local anti-discrimination laws
8 are entitled to deference in their decision-making,
9 and it sets a precedent for the issuance of the high
10 penalties and damages where the evidence supports
11 it.

12 My last update is that, on April 1, the
13 commission launched its online, interactive, and
14 free anti-sexual-harassment training. The training
15 can be used to meet both the new City- and
16 State-mandated annual anti-sexual-harassment
17 training requirement.

18 It is fully accessible to people with hearing
19 and vision disabilities and mobility disabilities.
20 It is available in Spanish, with nine additional
21 languages on its way, and it is optimized for smart
22 use -- for smartphone use as well.

23 The training uses a story-based learning
24 model; features scenarios drawn from real cases, and
25 highlights the ways in which sexual harassment

1 commonly intersects with other protected categories,
2 including race, immigration status, national origin,
3 religion, sexual orientation, gender identity, and
4 pregnancy and lactation.

5 It educates the user on the complainant -- on
6 the commission's encompassing definition of
7 "gender," which includes gender identity and gender
8 expression, and of its broad and protective
9 sexual-harassment standard.

10 It also provides tools and strategies for
11 bystanders to disrupt patterns of sexual harassment.

12 The training was developed with, and
13 incorporates feedback, from over two dozen external
14 stakeholders, including some of the stakeholders and
15 advocates in this room today.

16 Several government partners from our sister
17 agencies on the state level, and several dozen
18 internal city-agency administration partners,
19 representing interests and expertise across city
20 government.

21 The training includes content that fulfills
22 both the State and City requirements for
23 anti-sexual-harassment training, and can be used by
24 employers both within the city and outside the city,
25 across the state, to meet the training requirement.

1 And, as of May 23, earlier this week, the
2 training has now been completed over 25,000 times
3 since we launched a month and a half ago.

4 That's an undercount, because it does not
5 reflect how many people view the training together
6 at once, because multiple people or entire
7 workforces can watch and participate in the training
8 together. And that would only account for one
9 completion.

10 We are grateful to be here today for the
11 second hearing on workplace sexual harassment
12 convened by the New York State Assembly and the
13 Senate this year.

14 To the women, men, and non-binary people who
15 have organized, spoken out, and demanded action,
16 accountability, and system change, we, as
17 government, are in your debt.

18 Thank you.

19 ASSEMBLYMAN CRESPO: Thank you,
20 Deputy Commissioners, for your presentation, and for
21 agreeing to do this jointly. It's an interesting
22 approach you both have.

23 Let me try this.

24 For the City of New York, you -- for the last
25 10 years, you have applied a different standard.

1 You do not apply (indiscernible) gives a -- more
2 opportunities for cases to be considered, heard, or
3 determinations to be made.

4 I'm curious, in those 10 years, has there --
5 has the sky fallen on the employer community?

6 Has -- have you seen a detrimental impact to
7 the city's economy because of this policy?

8 D.C. DANA SUSSMAN: Well, I'm no economist,
9 but I will say that, we understand our standard in a
10 way -- we've heard that most employers or most
11 employees expect workplace conduct to align with the
12 standard that the City law sets out; that people are
13 typically surprised that other standards across the
14 country and the state standard is what it is,
15 because I think expectations of workplace conduct in
16 2019, or at least for the past few decades, have
17 comported more closely with the being treated less
18 well because of your gender standard than the
19 "severe/pervasive" standard.

20 So I think what's interesting is that, it
21 seems like the law needs to catch up to what the
22 current expectations of conduct are in the
23 workplace.

24 So I -- and I can say, I have not seen the
25 sky fall, but, again, I'm no economist. I wouldn't

1 be able to reflect on -- on the impact to the
2 New York City economy, but it's not something I've
3 seen.

4 ASSEMBLYMAN CRESPO: And with the increase in
5 case, you mentioned also in your testimony, that
6 there's been an increase in reports.

7 Have you -- has the city council been helpful
8 in increasing your budget significantly in order to
9 address these issues?

10 D.C. DANA SUSSMAN: We are always in constant
11 communication with the council, with the
12 administration, about resources, and about how we
13 can be flexible and responsive to the need, which is
14 one of the reasons why I think our -- the
15 gender-based harassment unit is particularly
16 important, because we can get cases, particularly
17 urgent ones, where someone may be in the situation
18 and needs an immediate transfer or needs to
19 negotiate a way out, they can come to us quickly.

20 So we're trying to be -- the litigation and
21 administrative process is long, we recognize that,
22 and not everyone is situated to go through that full
23 process.

24 So, we try to work with the resources we have
25 to provide the appropriate response.

1 ASSEMBLYMAN CRESPO: And then, speaking of
2 litigation, so if someone files a complaint with --
3 a City employee files a complaint with your agency,
4 do they have the option to also go to court?

5 D.C. DANA SUSSMAN: You can come to the
6 commission at a certain point in the process, before
7 we issue a decision, a determination, whether it's
8 probable cause or no probable cause, you can remove
9 your case from our agency and take it to court.

10 After it crosses a threshold into a
11 determination at the City level, you've,
12 essentially, chosen your venue, and you would not be
13 able to go to court.

14 But you preserve your right with respect to
15 federal claims, if you file with the City
16 commission, it's cross-filed with the EEOC. So that
17 preserves your federal claims as well.

18 And you could, again, remove your complaint
19 from our agency and choose to go court at a certain
20 point in the process.

21 But if you sort of choose to proceed to
22 completion, then the venue has been chosen, and that
23 would be the commission.

24 ASSEMBLYMAN CRESPO: Then, for the State, so,
25 first of all, I've got to preface whatever I ask

1 with this:

2 I appreciate the work you all do. And I'm
3 sure that everyone in your agency is fully committed
4 to doing the best they can with limited resources.

5 And I'm sure your experience had -- we do in
6 the Legislature, I'm sure you have the same
7 challenge, given, particularly, the increase in
8 caseloads that you've seen.

9 I'm very bad at math, but, 6,000 cases, and
10 you have 63 officers --

11 OFF-CAMERA SPEAKER: (Inaudible.)

12 ASSEMBLYMAN CRESPO: Investigators?

13 D.C. MELISSA FRANCO: Investigators, yes.

14 ASSEMBLYMAN CRESPO: So, 164 full-time, but
15 63 investigators; so, 95 cases each, more or less?
16 Is that --

17 D.C. GINA MARTINEZ: It depends.

18 We have an office that is completely
19 dedicated to sexual harassment. It's the office of
20 sexual-harassment issues.

21 If you want to do an average, I would say the
22 regional offices around the state --

23 We also have an office dedicated to housing
24 discrimination, so that's a totally different
25 office.

1 -- if I think of the numbers, I would say
2 there's probably -- taking out housing, I would say
3 50 to 60 cases. It fluctuates.

4 ASSEMBLYMAN CRESPO: So it's -- but it's fair
5 to say that the investigators have their fair share
6 of work?

7 D.C. GINA MARTINEZ: A heavy caseload,
8 absolutely, yes.

9 ASSEMBLYMAN CRESPO: And, anecdotally, do you
10 hear them often, maybe, express a sentiment that,
11 somebody got away with one; that they just -- you
12 know, there was something wrong, but, they just
13 could not meet the standard, they just couldn't
14 prove it?

15 Do you hear that?

16 D.C. GINA MARTINEZ: I haven't heard that.

17 It's hard to say "somebody got away with
18 one."

19 We construe our law with a liberal
20 interpretation.

21 I wouldn't be able to say, I mean --

22 ASSEMBLYMAN CRESPO: I know it's a tough one.

23 D.C. GINA MARTINEZ: -- it is (indiscernible
24 cross-talking) --

25 ASSEMBLYMAN CRESPO: I'm not trying to put

1 you on the spot.

2 D.C. GINA MARTINEZ: -- (indiscernible)

3 tough --

4 (Indiscernible cross-talking.)

5 ASSEMBLYMAN CRESPO: The reason -- I guess

6 what I'm really trying to get at is this:

7 We know the City has done away with this
8 "severe and pervasive" standard, and it has created
9 a better road map for cases to be brought forward
10 and/or investigated and/or, you know, decisions to
11 have been made.

12 We seem to keep hearing that we are applying
13 a standard that makes it too difficult, often cases,
14 to find justice.

15 And, I -- I mean, and that's a policy
16 decision that I guess we would have to make.

17 But, how do you feel, do you -- would you
18 welcome a -- the City standard at the state level?

19 D.C. GINA MARTINEZ: Well, I -- I -- I'd have
20 to say that, you know, we enforce the laws as
21 currently written.

22 If you believe that, you know, a change to
23 the law should be made, we'd certainly enforce it,
24 as you feel the need to strengthen it.

25 I do want to point out, for our cases, for

1 sexual-harassment cases in particular, we have a
2 probable-cause rate of about 25 percent. That's --
3 that's a pretty high rate, that's a good rate, and
4 that's above the average for all cases.

5 So, we -- we -- going back to your prior
6 question, there's not too many of those that got
7 away.

8 And in terms of filing, you know, we have a
9 pretty easy process, as Deputy Commissioner Franco
10 stated earlier in her testimony.

11 People can come to our -- any of our regional
12 offices and file anywhere in the state. And they
13 can file, you know, via mail, e-mail. They can call
14 us and we will send them a complaint form, and we
15 will route it to the appropriate office.

16 And like I said, we take this very seriously.
17 We have an entire office that's dedicated to this
18 issue.

19 ASSEMBLYMAN CRESPO: I don't doubt that.

20 I mean, if it was completely up to me, I'd
21 give you more resources so you can do even more.

22 D.C. GINA MARTINEZ: And I would welcome that
23 with open arms.

24 ASSEMBLYMAN CRESPO: But -- so, and one last
25 thing, so I asked this question of the City as well:

1 But, again, if somebody files -- if an employee
2 outside the city of New York files a complaint with
3 your office, do they have the option to go to court?

4 D.C. MELISSA FRANCO: They do have the option
5 to go to court. We -- they can remove it to state
6 court even after a determination is made of probable
7 cause.

8 ASSEMBLYMAN CRESPO: Even after the
9 determination is made?

10 D.C. MELISSA FRANCO: Yes.

11 D.C. GINA MARTINEZ: And they can also file a
12 claim within three years of the alleged act of
13 discrimination.

14 So they have one year to file with us, and
15 three years to file in state court.

16 ASSEMBLYMAN CRESPO: How many applications do
17 you get of someone who is past that one-year
18 deadline and has to be turn down, turned away?

19 D.C. GINA MARTINEZ: I don't readily have
20 those numbers available, but I -- if you'd like, I
21 can find those out --

22 ASSEMBLYMAN CRESPO: I'm curious to know.

23 D.C. GINA MARTINEZ: -- and forward them to
24 you.

25 ASSEMBLYMAN CRESPO: And in that process, do

1 you notify, do you explain, to the person who
2 brought the complaint about their options to go to
3 court, and the timeline of when and how they should
4 proceed with that?

5 D.C. GINA MARTINEZ: Absolutely.

6 ASSEMBLYMAN CRESPO: Thank you.

7 SENATOR BIAGGI: I just want to acknowledge
8 that we've been joined by Senator Jamaal Bailey.

9 And we will hear now from Senator Salazar.

10 SENATOR SALAZAR: Thank you.

11 Thank you all for your testimony.

12 My -- I have a few questions for Dana.

13 First, I want to ask about, you mentioned
14 that the gender-based harassment unit's budget is
15 \$300,000, and that there have been 207 cases, that
16 are both gender-based harassment and -- or, that are
17 gender-based harassment.

18 Is this enough, in your opinion -- and
19 I realize you said you're not an economist -- in
20 your opinion, or your experience, do you think that
21 this is adequate funding to handle that many cases?

22 D.C. DANA SUSSMAN: Well, like I said, the --
23 you know, the unit has folks that are dedicated to
24 these cases. But, because there are quite a number
25 of them, and they are challenging cases to work on

1 and to collect the evidence around, attorneys in our
2 general, sort of, pool of investigating attorneys
3 handle these cases as well.

4 So it's not -- it's -- the unit is very
5 useful, especially when there's a quick response
6 that's needed.

7 But we also have attorneys who take on all
8 sorts of cases; also take on gender-based harassment
9 cases as well.

10 SENATOR SALAZAR: Excellent.

11 And then, also, regarding, you mentioned in
12 your testimony, that when the unit supervisor is
13 alerted to a claim, they'll make a quick assessment
14 as to whether there should be any immediate action
15 taken.

16 Could you possibly elaborate on what that
17 assessment -- what is factored in in that
18 assessment?

19 D.C. DANA SUSSMAN: Sure.

20 So our typical process is that, someone will
21 either send in -- complete our form on our website,
22 or will call our info line, and, either way, it gets
23 routed to our gender-based harassment unit
24 supervisor.

25 They will then look at the report, and will

1 often speak with the potential complainant directly.

2 And in the cases that they've highlighted for
3 me, they are -- there are situations in which
4 someone was actually harassed on the job interview;
5 was misgendered repeatedly, was harassed based on
6 gender identity and stereotyping.

7 And the unit was able to intervene quickly,
8 to ensure that the person was not discriminated
9 against in getting the job. And then once on the
10 job, would be, you know, not misgendered, not
11 harassed, not work with the person who interviewed
12 them.

13 So that was a unique situation in which the
14 person really was adamant about not filing a
15 complaint; wanted the job, didn't want to create a
16 huge fuss, but wanted to be treated with dignity and
17 respect, and not misgendered.

18 So -- so that's a unique situation.

19 But there have been others, where, it's --
20 video surveillance was captured pretty quickly.
21 They would send out sort of a non-spoilation letter,
22 a preservation request, to say, We're initiating an
23 investigation. You must preserve this evidence and
24 deliver it to us;

25 Or, in other circumstances of immediate

1 transfer to a different location;

2 Or, a schedule change to avoid interaction
3 with the harasser.

4 So we can't -- you know, we have limited
5 ability to sort of prosecute cases without a
6 complaint filed. But what we can do is help, sort
7 of, navigate some of those complicated issues before
8 someone initiates the whole process.

9 SENATOR SALAZAR: And this is somewhat
10 related to my last question.

11 You also mentioned that, in the matters that
12 the commission is investigating, this includes
13 some -- in pre-complaint posture, where the
14 commission is seeking to resolve them before a
15 complaint is filed.

16 Could you maybe elaborate on what the
17 motivation has been, or might be, to resolve before
18 a complaint is filed?

19 Maybe this is obvious, but is -- is it just
20 for efficiency? Is it to minimize the process that
21 both parties have to go through?

22 D.C. DANA SUSSMAN: I think it's -- some of
23 those things.

24 I think there are people who call us, who
25 say, This is happening. I don't want to file a

1 complaint.

2 So there are a few options.

3 We can initiate our own investigation.

4 There have been a few instances, that I'm
5 aware of, where it's a restaurant. There's just
6 pervasive hostile work environment for every -- you
7 know, for many people. And we'd get reports of
8 that.

9 And so we'll initiate sort of a pre-complaint
10 intervention. We'll alert the respondent that we're
11 investigating.

12 And some respondents, before they're actually
13 respondents, will come to the table and say, Okay,
14 we know there's a problem. We want to fix it. How
15 can we work with you?

16 So we've negotiated mandated training, policy
17 development, and then ongoing monitoring, so that
18 they have to report back to the commission on the
19 steps that they've taken.

20 And if they don't, we can file a complaint;

21 Or, if we are notified that they're not
22 complying, we can file a complaint.

23 So it's a mix of efficiencies, what the
24 people coming forward want.

25 And -- and if a respondent is willing to come

1 to the table pretty early on, then we don't need to
2 go through, like, sort of extended investigation and
3 litigation.

4 ASSEMBLYMAN CRESPO: Before I go to
5 Assemblywoman Simotas, I want to acknowledge we've
6 been joined by Assemblywoman Latrice Walker, the
7 Chair of the Assembly Task Force on Women's Issues.

8 We have -- we'll be rotating back and forth
9 on the questions.

10 Assemblywoman Simotas.

11 ASSEMBLYWOMAN SIMOTAS: Thank you.

12 I'm sure we all can appreciate how difficult
13 it is to come to terms when somebody is being
14 sexually harassed in the workplace.

15 My question is for DHR.

16 Do you believe that one year is enough to --
17 time to bring an action with your agency?

18 D.C. MELISSA FRANCO: If you're -- I believe
19 you're talking about the statute of limitations.

20 ASSEMBLYWOMAN SIMOTAS: Yes.

21 D.C. MELISSA FRANCO: May I begin by saying
22 that, when we do our education and outreach, one of
23 the first things that we do is, we make potential --
24 we make individuals aware in the public that it is a
25 one-year from the last date of discrimination.

1 As to any changes in the statute of
2 limitations, of course it's up to you; and if you
3 changed it, we would abide by it.

4 However, in the administrative process, you
5 know, the idea is that a complaint be addressed and
6 adjudicated within a quicker manner than it would be
7 in court.

8 So we have found that, if witnesses come
9 closer in time to the last identified act, their
10 memories are better, the documents haven't been
11 destroyed, the respondents haven't gone out of
12 business.

13 So there is -- that's what we have seen.

14 However, if you choose to change the statute
15 of limitations, we welcome it, and we will abide by
16 it.

17 ASSEMBLYWOMAN SIMOTAS: I have another
18 question, follow-up to that.

19 You know, normally, you would think that, if
20 somebody is going through an administrative process,
21 they might not need an attorney, or they can maybe
22 file the complaint themselves.

23 If you're going to go through the court
24 system, oftentimes people feel intimidated, and they
25 believe that they need -- they need attorneys.

1 If they decide to go through the
2 administrative process with DHR, do you think we
3 should toll the statute of limitations, that they
4 can then file claims in state court, to actually
5 give them an opportunity to really have their
6 grievances heard?

7 D.C. MELISSA FRANCO: Should we toll the
8 stat -- let me make sure I understand it.

9 Would you mind repeating that?

10 ASSEMBLYWOMAN SIMOTAS: Yes.

11 Should we -- if somebody decides to go
12 through the administrative process with DHR, should
13 the time frame that it takes to go through that
14 process be looped on to the amount of time they can
15 file a claim in state court?

16 In other words, if it takes 180 days,
17 ideally, or if it takes two years, because
18 sometimes, you know, as we know from the testimony
19 that you submitted, it takes longer, should their
20 time not run out to actually go to state court and
21 file a claim if they're actually able to secure an
22 attorney?

23 D.C. GINA MARTINEZ: That's a tough one.

24 They have three years to go to court. That's
25 a good amount of time.

1 I think -- I think it's an issue of, you have
2 to pick your forum.

3 But, again, the way the law is currently
4 written, they have a year for us, and they have
5 three years to go to court.

6 The way it is currently written, we enforce
7 it.

8 If changes are to be made, then we will -- we
9 will enforce them.

10 ASSEMBLYWOMAN SIMOTAS: Thank you.

11 SENATOR BIAGGI: Senator Gounardes.

12 SENATOR GOUNARDES: Thank you very much.

13 I have --

14 SENATOR BIAGGI: Excuse me, I'm so sorry.

15 Pardon my interruption.

16 We have been joined by Senator James Skoufis,
17 my other co-chair.

18 Sorry, Senator Gounardes.

19 SENATOR GOUNARDES: Okay. Anything for
20 Senator Skoufis.

21 [Laughter.]

22 SENATOR GOUNARDES: Thank you very much for
23 your testimony this morning.

24 I want to start with some questions for DHR.

25 You said that, of all the cases you received,

1 that you invest -- you received, and then you closed
2 out, 25 percent of them in sexual-harassment cases,
3 complaints filed, had probable cause to move on to a
4 hearing. Is that right?

5 D.C. GINA MARTINEZ: Correct.

6 SENATOR GOUNARDES: The non-sexual harassment
7 cases, what's the percentage of cases that you've
8 investigated that result in the probable cause --

9 D.C. GINA MARTINEZ: For the past -- since
10 2016, they have been hovering around 10 to 12
11 percent.

12 SENATOR GOUNARDES: So the sexual-harassment
13 complaints have a higher rate of probable-cause
14 findings?

15 D.C. GINA MARTINEZ: Correct.

16 SENATOR GOUNARDES: Okay. Thank you.

17 What is the -- after a cause of probable --
18 after a finding of probable cause is made, what's
19 the time window for a hearing in which a complainant
20 gets the hearing at that point?

21 D.C. GINA MARTINEZ: Okay.

22 SENATOR GOUNARDES: Can you walk us through
23 that?

24 D.C. GINA MARTINEZ: Absolutely.

25 SENATOR GOUNARDES: Average time?

1 D.C. MELISSA FRANCO: So -- just so you know
2 the process:

3 In all cases but for housing cases, once
4 there is a determination of probable cause, again,
5 all cases but housing cases will be scheduled for a
6 prehearing settlement conference.

7 During that time, the complainant, if they
8 have a private attorney, they will be on there. If
9 not, a division attorney is assigned.

10 An administrative law judge is on the call.
11 She run -- she or he runs the call, as well as the
12 respondent and the respondent's attorney.

13 That usually is scheduled about four weeks
14 after a probable-cause determination.

15 If there is a settlement, the case will come
16 off the calendar, and the attorneys will reduce it
17 into writing.

18 And once the parties sign off on it, the
19 division attorney will send it to the administrative
20 law judge, who will review it, okay it, and then
21 it's sent to the commissioner to sign off on an
22 order.

23 However, if there isn't a settlement, the
24 case will then be scheduled for a public hearing,
25 and that's, usually, anywhere between two to

1 three months after the prehearing settlement
2 conference.

3 SENATOR GOUNARDES: And in those cases, if it
4 gets to the hearing, is the preliminary finding of
5 probable cause given any additional weight to the --
6 to the judge, or is it a -- is it basically like
7 starting from scratch again, to (indiscernible
8 cross-talking --)

9 D.C. MELISSA FRANCO: It's a de novo hearing.

10 SENATOR GOUNARDES: It's a de novo hearing?

11 D.C. MELISSA FRANCO: Yes.

12 SENATOR GOUNARDES: So it's kind of like
13 another bite at the apple, you know, to kind of have
14 a fresh start, for both the complainant and the
15 alleged harasser?

16 D.C. MELISSA FRANCO: They put on their
17 evidence anew, yes.

18 SENATOR GOUNARDES: Okay.

19 In what percentage of cases that you receive,
20 that you make a determination on, can you kind of
21 walk us through how many of the cases you're able to
22 make a probable-cause determination on without doing
23 any additional fact finding?

24 In other words, how many cases do you just
25 get a complaint, you talk to the alleged harasser,

1 give the complainant a chance to rebut, and then
2 make a closing?

3 Or, how much time -- in what cases do you
4 actually go beyond the back-and-forth, to come to a
5 conclusion?

6 D.C. GINA MARTINEZ: So I can't give you an
7 actual number for that.

8 There are cases where they're pretty
9 straightforward and we can just move forward pretty
10 quickly.

11 However, each investigation is obviously done
12 on a case-by-case basis. All of the cases are
13 fact-specific.

14 And our investigations are done using tools
15 at the discretion of the regional director.

16 So some cases require one- and two-party
17 conferences; some don't.

18 Some cases require additional requests for
19 information; some don't.

20 Site visits as well.

21 I don't have exact numbers for which ones
22 kind of go through the process because, they're so
23 good, that we have that, you know, piece of
24 evidence, where the alleged harasser is saying, you
25 know, X, Y, Z, and we're good to go within, you

1 know, two or three weeks.

2 SENATOR GOUNARDES: Got you.

3 Okay, thank you.

4 And I guess this question is -- sorry, one
5 more question for DHR, and then a question for both.

6 You said that you have a 62 percent increase
7 in the number of complaints that have been received?

8 D.C. GINA MARTINEZ: 62 percent increase in
9 sexual-harassment filings since 2016. So that's,
10 from 2016 to 2018, the filings for sexual-harassment
11 complaints have increased by 62 percent.

12 Correct.

13 SENATOR GOUNARDES: Has your budget increased
14 by any reasonable amount in that time window as well
15 to process those?

16 I know there was a similar question raised on
17 the Assembly side about more resources.

18 But if you have -- that seems like a pretty
19 dramatic increase.

20 D.C. GINA MARTINEZ: It definitely is a
21 pretty dramatic --

22 SENATOR GOUNARDES: Have you received any
23 additional support -- budgetary support to kind of
24 help accommodate?

25 D.C. GINA MARTINEZ: I'd have to speak to my

1 finance director about that.

2 SENATOR GOUNARDES: Okay. Thank you.

3 I guess for both DHR and the city commission,
4 what -- are the investigators that you have, are
5 they trained in, you know, kind of, dealing with
6 trauma victims, when they are interviewing and
7 taking complaints, and interviewing complainants,
8 about these cases?

9 D.C. DANA SUSSMAN: So we've have partnered
10 with the Mayor's office to end gender-based
11 discrim -- gender-based violence -- domestic and
12 gender-based violence, to train our staff. They
13 provide a pretty comprehensive victim-centered and
14 trauma-informed training to City employees.

15 And so we partner with them to get our staff
16 trained.

17 I think the next upcoming training is this
18 summer.

19 And one of the benefits of having the
20 gender-based harassment unit, is we have individuals
21 who are regularly working with people who are coming
22 out of or are currently in very stressful,
23 emotionally-charged, and, in many cases, devastating
24 situations.

25 And so they are particularly well positioned

1 to handle those cases.

2 D.C. GINA MARTINEZ: All of our investigators
3 are trained thoroughly in conducting confidential
4 investigations.

5 And our regional director has been trained
6 specifically in conducting sexual-harassment
7 investigations, so she does train her staff.

8 SENATOR GOUNARDES: When we held our last
9 hearing in February, we heard from a different
10 agency, JCOPE, in which they said that it's, you
11 know, common for them to ask complainants about
12 their prior sexual history at the invest -- at the
13 complaint state, as a potential rebuttal for
14 defenses raised later on.

15 Is that a practice that either of your
16 agencies engage in when you are taking complaints or
17 doing preliminary investigations or interviews.

18 D.C. DANA SUSSMAN: I am not aware of that
19 practice.

20 D.C. GINA MARTINEZ: I am not aware of that
21 practice either.

22 SENATOR GOUNARDES: Thank you.

23 ASSEMBLYMAN CRESPO: We've also been joined
24 by Assemblywoman Linda Rosenthal.

25 For the next question,

1 Assemblywoman Rebecca Seawright.

2 ASSEMBLYWOMAN SEAWRIGHT: That you for your
3 testimony.

4 I replaced a legislator that was a harasser.

5 And as a young staff member, I was sexually
6 harassed by a state legislator.

7 I have a question.

8 Do you have recommendations for legislation
9 that would assist you in your enforcement actions?

10 D.C. DANA SUSSMAN: I -- from the City's
11 position, we are -- you know, we are in the process
12 of implementing a package of bills from last year,
13 including the extension of the statute of
14 limitations for gender-based harassment claims, from
15 one year, to three years.

16 And so I think the work that we're doing to
17 implement that bill package has been informative,
18 and I think we're seeing the benefits of those new
19 laws, and increased awareness around the commission,
20 through that bill package.

21 So, I don't have any specific recommendations
22 to share, other than to share the experience that
23 we've had at the city level.

24 D.C. MELISSA FRANCO: I would say, as to DHR,
25 you know, we're neutral, we're impartial, and we're

1 an enforcement agency. We're not an advisory
2 agency.

3 However you decide as legislators to change
4 the law, we will definitely enforce it.

5 ASSEMBLYWOMAN SEAWRIGHT: Thank you.

6 SENATOR BIAGGI: Senator Liu?

7 SENATOR LIU: Thank you, Madam Chair.

8 I -- I appreciate these wonderful individuals
9 for attending our hearing and answering questions.

10 You know when -- when your superiors put you
11 in this position, it's potentially unpleasant.

12 And so let me ask you not to take anything
13 personally. Okay?

14 But I'm listening to this back-and-forth.
15 I'm listening to the testimony from the State
16 Division of Human Rights.

17 And I will say that I really appreciate the
18 City's Division of Human Rights testimony.

19 But the testimony that the State is giving
20 here, it's all about how proud you are, how happy
21 you are about the work that you do, how efficient
22 you do things.

23 It's as if there are no problems whatsoever.

24 And then you answer the questions from my
25 fellow legislators here. They're asking you

1 specific things, and sometimes you just sound
2 defensive.

3 So my -- and your testimony, towards the end,
4 at least I'm kind of happy that you at least say,
5 your -- "the division is also committed to ending
6 sexual harassment and other forms of discrimination
7 via outreach and education."

8 So, are you committed to enforcing the law as
9 it currently is written, or are you truly enfor --
10 are you truly committed to ending sexual harassment
11 and other forms of discrimination?

12 See, the City's testimony specifically says
13 that they think the law should be changed, and cites
14 a specific example, such has, "correcting the
15 decades of case law establishing unnecessarily high,
16 severe, or pervasive standard, and explicitly
17 rejecting the Faragher-Ellerth affirmative defense."

18 They give examples of how the City thinks
19 they should -- the state law should change.

20 You don't cite any examples. You just talk
21 about how well the division has been doing.

22 Even though it is clearly a new day, the laws
23 haven't changed very much.

24 We haven't had a hearing until our co-chairs
25 here put together something a few months ago.

1 And it's like the division of -- the State
2 Division of Human Rights is, like, everything is
3 fine and dandy.

4 Am I mischaracterizing you?

5 I certainly hope I am.

6 Maybe you can clarify some of your testimony
7 and the responses that you've given to questions
8 from these legislators?

9 Or maybe I can be specific.

10 Is there one law, or, maybe one of our
11 proposed bills, about a dozen proposed bills, that
12 the State Division of Human Rights would like to see
13 enacted?

14 D.C. MELISSA FRANCO: Well, I would say,
15 I don't take it personal.

16 SENATOR LIU: Okay.

17 D.C. MELISSA FRANCO: That is --

18 SENATOR LIU: Good. And it is --

19 D.C. MELISSA FRANCO: -- that is -- we'll
20 start from there.

21 SENATOR LIU: -- not meant personally.

22 D.C. MELISSA FRANCO: Right, we'll start from
23 there.

24 But, again, if we're to remain neutral, and
25 enforce the laws as we are, if any opinion that we

1 gave would be inappropriate, right, because it takes
2 away from that.

3 So, again, while you would like us to say any
4 recommendations I'd have to stand by, in order to
5 remain neutral, we can't.

6 SENATOR LIU: Well, you know what? I've
7 heard much testimony from police commissioners, from
8 commissioners of other agencies, that are sworn to
9 uphold the laws as it -- laws as they currently are,
10 but have no hesitation to suggest changes or
11 improvements to current law.

12 And if you truly are committed to ending
13 sexual harassment and other forms of discrimination,
14 as per your testimony, there's got to be some kind
15 of change.

16 I mean -- either everything is fine and
17 dandy, or there's got to be some kind change that
18 you think would make sense.

19 So once again, the question is: Is there at
20 least one of these bills that you think would make
21 sense?

22 We've had -- we've got about a dozen bills on
23 the docket. Is there at least one that make sense?

24 The City cites four specific areas.

25 I have named two of the four specific areas

1 that they've mentioned.

2 Is there one?

3 Are you -- even in response to
4 Chairman Crespo's question about pervas -- pervas --
5 "severe and pervasive," you kind of said that, oh,
6 it's not really -- to me, it sounded like you didn't
7 think it was necessary for the State to adopt that
8 kind of standard.

9 D.C. MELISSA FRANCO: Well, it's definitely
10 not our position, and I hope you don't take this
11 personally, but I'm going to stand by my answer.

12 It is my belief that if any recommendation on
13 potential changes to the law, or pending
14 legislation, would be inappropriate.

15 D.C. GINA MARTINEZ: Can I -- I'm sorry.

16 SENATOR LIU: (Nods head) Yeah.

17 D.C. GINA MARTINEZ: Can I just add,
18 without -- again, I have to agree, and say, again,
19 what Deputy Commissioner Franco says, we can't say
20 anything specific. We enforce the law; we don't
21 make the law.

22 But I also want to respond to the assertion
23 that we think everything is fine and dandy.

24 We don't.

25 We enforce the oldest human rights law in the

1 country, and we aggressively enforce it. But we
2 know that discrimination exists, and that an
3 aggressive approach is required.

4 And it has taken a long time for us to get
5 here.

6 And we want to work with all of you to
7 strengthen the protections that exist, and that's
8 why we're here.

9 But it's a multi-prong approach that we need.
10 There's a culture shift going on right now.

11 But -- but we're -- we're getting there, but
12 we're not there.

13 And that just doesn't go for sexual
14 harassment.

15 You know, the discrimination, in and of
16 itself, is still existing.

17 Black people are still getting fired from
18 jobs. People on public assistance are still losing
19 their homes. People in wheelchairs still can't get
20 into restaurants.

21 We don't think that things are fine and dandy
22 by any stretch of the imagination.

23 SENATOR LIU: Those forms of discrimination
24 are -- are terrible --

25 D.C. GINA MARTINEZ: Absolutely.

1 SENATOR LIU: -- and you should continue the
2 enforcement actions against those kinds of
3 discrimination.

4 But there is a heightened awareness of sexual
5 harassment.

6 D.C. GINA MARTINEZ: Yes.

7 SENATOR LIU: And you can't be doing the same
8 things as usual. It's not business as usual. You
9 have to change some of the approaches.

10 And working with the legislative body,
11 I think is fine.

12 Maybe, as deputy commissioners, I will allow
13 this. Maybe as deputy commissioners you're not
14 empowered to go beyond this testimony.

15 But I would encourage you to go back to your
16 commissioner, and send us some kind of feedback as
17 to:

18 Do you absolutely oppose all the bills that
19 we've proposed?

20 Or might there be one, two, perhaps a few
21 bills, that you think would make sense and would
22 help you do your job better?

23 The mission that you specifically cite in
24 your testimony, of ending -- of your commitment to
25 "ending sexual harassment and other forms

1 discrimination via outreach and education."

2 D.C. GINA MARTINEZ: Noted. Thank you. We
3 will.

4 SENATOR LIU: Thank you.

5 ASSEMBLYMAN CRESPO: I want to acknowledge
6 we've been joined by Assemblyman Harvey Epstein,
7 who's off to the side beyond the column where I
8 can't see him.

9 [Laughter.]

10 ASSEMBLYMAN CRESPO: But he's there, he's
11 there.

12 Assemblymember Quart.

13 ASSEMBLYMAN QUART: Good morning.

14 My questions are for Ms. Franco.

15 In your comments to Senator Liu's questions,
16 you said it is your job or your agency's job to
17 enforce the law, not write the law.

18 So let me ask you a couple questions about
19 enforcement.

20 If you can turn to page 3 of your testimony,
21 you talked about 172-day time period.

22 That's about a six-month time period, from a
23 complaint being registered, to a final
24 determination.

25 Is that correct?

1 D.C. MELISSA FRANCO: I'm Franco, and it was
2 my testimony.

3 Yes, it's about six months.

4 ASSEMBLYMAN QUART: About six months.

5 Where in that timeline, generally, is the
6 probable-cause determination?

7 D.C. GINA MARTINEZ: At about the end of it,
8 that's it's when -- the determination is made, the
9 172 days.

10 ASSEMBLYMAN QUART: So somewhere, month five,
11 month six, is that fair to say?

12 D.C. GINA MARTINEZ: Yes.

13 ASSEMBLYMAN QUART: What happens to the
14 complainant for the first five months while he or
15 she waits for adjudication?

16 D.C. GINA MARTINEZ: Well, we keep in touch
17 with the complainant, generally. They can contact
18 us. They know who's assigned to their case; the
19 investigator that's assigned to their case.

20 They can --

21 ASSEMBLYMAN QUART: You keep in touch with
22 the complainant?

23 That's -- let me ask it a different way.

24 D.C. GINA MARTINEZ: Okay.

25 ASSEMBLYMAN QUART: What regulations exist,

1 what statutory -- what regulations exist under your
2 statutory mandate that allow you to prevent
3 irreparable harm from the complainant during that
4 five or six months while you wait to make -- while
5 you investigate, and then make a determination on
6 probable cause?

7 D.C. GINA MARTINEZ: The only statutory
8 protection that exists is the anti-retaliation
9 protection that we have --

10 ASSEMBLYMAN QUART: So there's no --

11 D.C. MELISSA FRANCO: -- where the respondent
12 is informed that, if they do retaliate against the
13 complainant for filing a complaint, an additional
14 action may be brought against them.

15 ASSEMBLYMAN QUART: So other than laws
16 against retaliate -- retaliatate (ph.) --

17 D.C. GINA MARTINEZ: Retaliation.

18 ASSEMBLYMAN QUART: -- retaliatory laws --

19 D.C. GINA MARTINEZ: Yes.

20 ASSEMBLYMAN QUART: -- statutes --

21 D.C. GINA MARTINEZ: Yes.

22 ASSEMBLYMAN QUART: -- do any regulations
23 exist that allow you, as an agency, to take
24 preventive action within that 150-day time period to
25 prevent that complainant from a worsening condition,

1 an exacerbation, of why they came to you in the
2 first place?

3 D.C. MELISSA FRANCO: Not that I'm aware of,
4 no.

5 ASSEMBLYMAN QUART: Do you think that would
6 be a welcomed area that we should legislate in, to
7 give you greater tools to prevent irreparable harm,
8 from someone who comes forth and complains, while
9 you investigate and make a determination on probable
10 cause?

11 D.C. GINA MARTINEZ: That is something to be
12 considered.

13 ASSEMBLYMAN QUART: Thank you.

14 SENATOR BIAGGI: Before I hand the microphone
15 over to Senator Krueger, I just want to make one
16 comment about what Senator Liu had said.

17 You had made a comment about being neutral on
18 the cases.

19 But it is your job to not to be neutral on
20 the law.

21 In fact, as a former counsel and staffer in
22 Governor Cuomo's counsel's office, one of the things
23 I did, in fact, when the legislators ended their
24 session and the bills came to our desk, was I called
25 the agencies right away, and they weighed in on all

1 of the bills.

2 And, in fact, as a non-subject-matter expert
3 on many of the bills, the agencies were my allies
4 and my strongest supporters on those topics.

5 And without them, the bills wouldn't have
6 been able to have been passed.

7 And so I would actually disagree that you
8 can't be neutral. In fact, I would implore you to
9 not to be neutral, because you can't fully
10 effectuate your roles.

11 And we, as the Legislature, need your
12 opinions because, if not you, then who; who should
13 we go to?

14 Senator Krueger?

15 SENATOR KRUEGER: Thank you, Senator.

16 Oh, I think this is working.

17 Thank you.

18 So it's -- mine is follow-up on a whole
19 series of the questions.

20 So given the problem we're hearing -- two
21 parts of a problem:

22 One: Some employers saying, well, there are
23 good policies now. There's no reason anyone ever
24 have to go sue, because they report to someone and
25 it gets taken care of.

1 And then you have the reality that, because
2 we have the Faragher-Ellerth defense as a viable
3 employer stance regarding sexual harassment, if the
4 employee is just completely confused about what
5 harassment policy is, and where they're supposed to
6 go, and how they're supposed to report, that the
7 burden of proof falls on them, and they failed to
8 meet their responsibilities to report and complain
9 harassment.

10 So I want to ask the three of you: If you
11 were victims of sexual harassment, and you've
12 already answered that it's the person's
13 determination whether they go to courts or whether
14 they go to one of your agencies, if it was one of
15 you, would you go to your agency or would you go to
16 the courts?

17 D.C. DANA SUSSMAN: Well, it's hard to be
18 unbiased.

19 You know, I think that there -- there's
20 strengths to either -- or, there's reasons to choose
21 your venue.

22 I think what's important here, too, to
23 recognize is that, while the agencies enforce
24 their -- our own anti-discrimination laws, courts
25 are also interpreting these same laws.

1 So while the state division is committed to
2 interpreting the law quite broadly and protectively,
3 as is the commission, we have no say or influence
4 over state court judges or federal judges in how
5 they interpret the standards.

6 So these standards that you're debating today
7 will not just impact our work, or the state
8 division's work, but how judges interpret the laws.

9 And that's where we see the real stark case
10 law in which a City Human Rights Law claim survives
11 a motion to dismiss or a summary judgment, and a
12 State Human Rights Law claim does not, for the same
13 behavior, because one standard is so much -- is
14 higher than the other.

15 So I think that's an important thing to
16 recognize, that when you go to state court, you can
17 bring a City Human Rights Law claim, you can bring a
18 State Human Rights Law claim, but you may not
19 prevail on your State Human Rights Law claim as it
20 currently is interpreted by case law because the
21 standard is quite different.

22 I think it's about -- it's all -- it's very
23 much about resources, and I think it's also very
24 much about -- about how public the process is.

25 At the city commission, there's no public

1 filing. There is no online, you know, database
2 where you could search for someone's complaint.

3 That may happen some day, and, certainly, we
4 are subject to FOIL when the case is closed.

5 But, if you want to -- if -- when you file
6 with the commission, it's, essentially, a document
7 that you sign on that -- that an attorney drafts,
8 and it's served on the responding party.

9 So it's not -- you can make it public. It's
10 not as though anyone is prevented from making it
11 public. And the respondent will know. But it is
12 not, sort of, going to court and having it be in a
13 public forum in the same way.

14 So I think it's both about resources and it's
15 about how public you wish to be, and many other
16 factors.

17 But, I'll leave it at that.

18 SENATOR KRUEGER: Other lady?

19 D.C. MELISSA FRANCO: Sure -- you want to go
20 ahead? Go on.

21 D.C. GINA MARTINEZ: Well, I would file with
22 my agency, given the timing of the investigations,
23 how quickly they are investigated; and the
24 probable-cause rate at 25 percent; and the fact that
25 I know that my staff is very well equipped to handle

1 these cases, and trained.

2 I believe that my agency is the best to
3 handle my claim.

4 D.C. MELISSA FRANCO: For myself, speaking
5 from personal experience, I was the victim of
6 discrim -- of sexual harassment. I chose to file
7 with my employer first. Then I consulted with an
8 attorney, and took it from there.

9 SENATOR KRUEGER: So you're, all three, in a
10 situation also where you work for the agency that's
11 supposed to be overseeing these cases, but that
12 doesn't necessarily make you that different than
13 people I've heard from who work for -- who have
14 worked for the executive, agencies, or the
15 Legislature.

16 Or even, today, we had more exposures about
17 the Harvey Weinstein case, where you had people
18 working for very powerful people.

19 And we've already learned that you can't
20 necessarily do anything to protect them for five,
21 six months, even if you're taking the case.

22 I guess I don't understand why I wouldn't try
23 to go to a court to get resolution, rather than face
24 the problems inherent of going to an agency that is
25 overseen, or agencies that are overseen, by people

1 who may be the ones committing the crimes.

2 So I -- again, I do -- I don't want to have
3 not multiple options for people.

4 But I think, particularly because of the
5 failure to eliminate the Faragher-Ellerth defense,
6 we are putting victims between a rock and hard
7 place, where one or the other decision might be the
8 right one or the wrong one at that moment, but they
9 can just get caught in -- what's that sci-fi movie
10 loop, where you just --

11 I don't -- I'm not good at sci-fi, so I'm
12 sorry I made the reference.

13 [Laughter.]

14 SENATOR KRUEGER: -- but you're just caught
15 in this loop.

16 OFF-CAMERA SPEAKER: Inception?

17 SENATOR KRUEGER: John Liu, do you --

18 OFF-CAMERA SPEAKER: I think you're right.

19 SENATOR LIU: "Liu." It's not "Loop."

20 SENATOR KRUEGER: -- that loop -- okay, no,
21 I wasn't attacking you, John Liu.

22 "Loop."

23 [Laughter.]

24 SENATOR KRUEGER: My colleagues, it's very
25 hard to work with them.

1 [Laughter.]

2 SENATOR KRUEGER: Well, you get caught in a
3 loop, and you've got time frames, and you're not
4 allowed to do both.

5 And so I really think this is a critical part
6 of our assignment as a legislator, to figure out and
7 make sure that we aren't leaving victims in
8 different scenarios where neither option is really
9 the right option, and they're left hanging out
10 there, and they, potentially, can lose all their
11 rights and protections, because we didn't make the
12 law clear enough about what path is the correct path
13 to take to be protected, and to ensure that you have
14 rights, and that you don't end up losing your job
15 when someone else was at fault.

16 So I think that's what I'm struggling to try
17 to get an understanding of today from you all.

18 Thank you.

19 ASSEMBLYMAN CRESPO: Assemblywoman Walker.

20 ASSEMBLYWOMAN WALKER: Thank you to our
21 Co-Chairs, and to the witnesses here today for your
22 testimony.

23 One of the -- I guess, one of the major
24 concerns that I have with respect to these issues
25 are regarding nondisclosure agreements.

1 And I understand now that these are
2 instruments that are frowned upon.

3 And, you know, we hope, that when litigants
4 are coming to their settlement arrangements, that
5 they are instruments that are no longer being
6 utilized.

7 When parties are settling, do you have an
8 opportunity to review their settlement agreements in
9 order to ensure that NDAs are not used either
10 affirmatively or in a -- or in a nondescript manner?

11 D.C. DANA SUSSMAN: When cases are resolved
12 through the commission process and a conciliation
13 agreement is negotiated, that's an agreement between
14 the complainant, the respondent, and commission.
15 There is no nondisclosure provision. It's against
16 the public interest.

17 The commission is not prevented from talking
18 about the case, the complainant or the respondent
19 are not prevented from talking about the case.

20 Parties can negotiate -- request to remove
21 their case from our office and negotiate their own
22 settlement.

23 And, currently, that could involve, from what
24 I understand, nondisclosure agreements in a sort of
25 private settlement posture.

1 The commission still retains the ability to
2 continue the investigation of the workplace.

3 If we understand that this is not an isolated
4 situation, we can continue to work to ensure
5 training; monitoring; potentially, civil penalties.
6 We can reach out to see if there are other victims.

7 But if the parties -- if the two parties
8 specifically remove the case to negotiate their own
9 resolution, there may be an NDA in there.

10 But cases that are resolved through the
11 commission, there is no nondisclosure provisions in
12 those agreements.

13 D.C. GINA MARTINEZ: With the State, where
14 there is a settlement agreement done at the regional
15 level, which is during the investigative stage, the
16 division is a party to that agreement, so we review
17 all the provisions. And the NDA is only a part or a
18 separate agreement at the -- if it's the
19 complainant's preference.

20 As with the city commission, if the
21 complainant and the respondent wish to enter into a
22 private agreement, we are not a party to that, and
23 that is a separate issue.

24 And we let them know that we cannot enforce
25 that.

1 So if the respondent agrees to do something,
2 and then they fail to do it, we cannot enforce that.

3 So with agreements where the case is settled
4 before a determination is made, you know, before the
5 investigation is completed, yes, we make sure that
6 there are no NDAs in there, unless the complainant
7 wants it.

8 D.C. MELISSA FRANCO: It's the same for post
9 determination as well, it really is the
10 complainant's preference.

11 The assigned division attorney explains to
12 them the ramifications of having one in or not
13 having one in.

14 But, again, it is the complainant's
15 preference that dictates it.

16 ASSEMBLYWOMAN WALKER: So even in -- even in
17 an instant, because I believe I read that if a
18 complainant does not have an attorney, then the
19 agency provides them an attorney? Is that --

20 D.C. MELISSA FRANCO: That is correct, and
21 that's after there is a post determination.

22 So for the settlement conferences, post
23 determination, as well as the hearing, an attorney
24 is assigned to the case.

25 ASSEMBLYWOMAN WALKER: So, ultimately, the

1 attorney that's assigned has an ability to have a
2 conversation with the complainant about NDAs, or
3 encourage them or discourage them, or whatever; but,
4 either way, they still have the ability to enter
5 into these types of agreements on behalf of a
6 complainant?

7 D.C. MELISSA FRANCO: Again, the attorneys
8 do -- when they do reach a settlement in principle,
9 and, let's say, and they reduce it to writing, we do
10 send the documents to the complainant. We go
11 through each -- all the terms of the settlement,
12 explain each term to them, including a potential
13 confidentiality agreement, and explain what would
14 happen if they agree to it, and what they don't if
15 they didn't agree to it.

16 ASSEMBLYWOMAN WALKER: Have there been
17 instances where perhaps someone agreed to a
18 nondisclosure agreement, and then came back again to
19 the agency, to say, you know, I made a mistake; or,
20 you know, I want to -- you know, I want say
21 something, I want to tell someone something?

22 Have you seen them sort of, you know, recant,
23 I guess, their feelings with respect to entering
24 into such an agreements?

25 D.C. MELISSA FRANCO: Not that I am aware of.

1 D.C. GINA MARTINEZ: I have not been made
2 aware of any, any of those instances.

3 ASSEMBLYWOMAN WALKER: Do you believe that
4 we, as a state, should allow liquidated damages if a
5 victim decides to speak about their experiences?

6 D.C. MELISSA FRANCO: I'm sorry, can you
7 repeat that one more time?

8 ASSEMBLYWOMAN WALKER: Do you believe, as a
9 state, that we should allow liquidated damages if a
10 victim decides to speak about their experiences with
11 re -- when there is an NDA agreement established?

12 D.C. MELISSA FRANCO: I've never had to deal
13 with that, so I'm thinking about it a second. I've
14 never had that issue brought to me.

15 So, if you could just give me a moment.

16 ASSEMBLYWOMAN WALKER: Perhaps because
17 there's an NDA?

18 [Laughter.]

19 D.C. MELISSA FRANCO: Not right now.

20 I mean, it's something to be considered, but,
21 I take no position on that.

22 ASSEMBLYWOMAN WALKER: Say that again?

23 D.C. MELISSA FRANCO: I said, it's something
24 to be considered, but, you know, having not thought
25 about that, I can't really, like, give an informed

1 opinion about it, not knowing the pros and the cons,
2 and having had time to think about it.

3 ASSEMBLYWOMAN WALKER: I guess it's just sort
4 in the era of, you know, time's up, and, you know,
5 and -- and encouraging individuals who have gone
6 through these experiences to -- to come out, and
7 utilize their story to help other people who are
8 going through them.

9 Or, in many instances, it's therapeutic just
10 for themselves, to be able to have a forum by which
11 they are able to engage about their experiences, not
12 just with the sexual assault or harassment that
13 they've gone through, but, also, as -- you know, to
14 speak about their experiences through the process,
15 even with your agencies.

16 So -- so it's just -- you know, I guess my
17 concern is, is that we are, as a state, sort of
18 allowing for, I don't know, the victimization of an
19 individual to be muted.

20 And so I'm just trying to figure out, like,
21 how, or what is it that we can do, in order to
22 encourage more individuals to come forward, as
23 opposed to saying, that there's this forum that's
24 available to you to adjudicate your claims, but once
25 you go through the process, don't ever talk about

1 this again.

2 And, I mean, it's something that happens in
3 families.

4 And I just don't think that it's something
5 that should -- it happens in church, it happens in
6 schools, it happens in communities.

7 And I just don't think that it's something
8 that we should be allowing, condoning, and, also, as
9 in the case of the attorneys, really encouraging
10 someone in their professional lives and in their
11 careers to be supportive of.

12 So those are just my thoughts.

13 And, thank you.

14 SENATOR BIAGGI: Senator Carlucci.

15 SENATOR CARLUCCI: Thank you.

16 I want to thank the Co-Chairs, and thank you
17 Commissioner Sussman, and Commissioners Franco and
18 Martinez, for testifying here today.

19 And I share my colleagues' sentiment, and the
20 frustration, that we want to work together to pass
21 important legislation. And we're -- we're excited
22 about a package of legislation put forth by
23 Senator Biaggi, that we believe will truly make an
24 impact in helping and protect survivors.

25 And to that effort, I'll ask a few questions,

1 just to see what guidance we could get.

2 You know, some of the alarming things that
3 stand out, of many, but one I'll focus in on, in
4 terms of statute of limitations, when we talk about
5 the "one year," and I know it was asked by some of
6 my colleagues this morning, what would be some of
7 the unforeseen consequences of extending the statute
8 of limitations?

9 And I know it was said that, as time passes,
10 memories become foggy, not as clear, and that's
11 understandable; or, that documents might not exist
12 anymore.

13 What I'm thinking about is where the memory
14 is clear three years later, or 12 -- 13 months
15 later, the documents still are intact, and we've
16 totally shut the door.

17 That concerns me, and I think it concerns
18 many members here today, and looking to extend that
19 statute of limitations.

20 Could you give us any type of guidance in
21 that direction, or things that we should be
22 concerned about?

23 D.C. GINA MARTINEZ: Well, if the statute of
24 limitations were to be extended, I think, assuming
25 we could actually find the respondent, and other

1 witnesses, then more complaints would be filed.
2 Obviously, you know, you'd be opening the door to
3 additional complaints.

4 But I think, as Commissioner Franco said
5 before, the concern, and this is a concern in
6 litigation as well, is that, right, memories do go
7 stale; respondents go out of business, people die.

8 It's not that, you know, we're looking to
9 limit the amount of complaints that we get. That's
10 not the case at all, we're not doing that.

11 It's just that this is -- this is the amount
12 of time that we've been given.

13 But, by giving, you know, the additional
14 time, you're right, we would be getting more
15 complaints. The numbers wouldn't necessarily go up
16 with probable-cause rates. We would just be getting
17 more complaints.

18 But, again, I can't take a position on that.

19 But if you were to do that, we would
20 absolutely be open to more investigations.

21 SENATOR CARLUCCI: So I'm just trying to
22 understand that --

23 D.C. GINA MARTINEZ: Sure.

24 SENATOR CARLUCCI: -- some of the concerns
25 would be, yes, you would be dealing with a bigger

1 caseload.

2 D.C. GINA MARTINEZ: Absolutely bigger
3 caseload.

4 SENATOR CARLUCCI: That --

5 D.C. GINA MARTINEZ: Resources.

6 SENATOR CARLUCCI: -- but any of these
7 issues, like, a business going out of business --

8 D.C. GINA MARTINEZ: Yes.

9 SENATOR CARLUCCI: -- or someone passing
10 away, I mean, that could happen at any time.

11 D.C. GINA MARTINEZ: At any time, yes.

12 But, then, how do we redress the complainant
13 when that happens --

14 SENATOR CARLUCCI: Well, how do you do it
15 now?

16 D.C. GINA MARTINEZ: -- if the respondent
17 dies --

18 We can't, unfortunately.

19 So the three years doesn't --

20 SENATOR CARLUCCI: Just to give that
21 opportunity.

22 D.C. GINA MARTINEZ: -- sure, absolutely, the
23 person is able to file the complaint, at least.

24 But it's the same thing, right, with the
25 "one year," if --

1 SENATOR CARLUCCI: You know --

2 D.C. GINA MARTINEZ: -- go ahead, please.

3 SENATOR CARLUCCI: -- well, I was just moving
4 on, unless you had any other --

5 D.C. GINA MARTINEZ: No, no, no. Please.

6 SENATOR CARLUCCI: When we talk about the
7 average determination, with 180 days, and -- or
8 172 days, and we've seen the increase in the past
9 year, has that number increased in the past year, or
10 has that been the standard for the past few years?

11 D.C. GINA MARTINEZ: I'm sorry, has what
12 number increased?

13 SENATOR CARLUCCI: You -- it says,
14 "Currently, 97 percent of claims investigated by DHR
15 are completed and determinations are made within
16 180 days."

17 D.C. GINA MARTINEZ: Correct.

18 SENATOR CARLUCCI: And we know that, as was
19 stated earlier, since 2016 --

20 D.C. GINA MARTINEZ: Yes.

21 SENATOR CARLUCCI: -- the amount of
22 complaints have increased by over 60 percent.

23 D.C. GINA MARTINEZ: Yes.

24 SENATOR CARLUCCI: And so I'm just trying to
25 understand that -- has that completion time of

1 180 days, has that increased since 2016, or has that
2 stayed about the same?

3 D.C. GINA MARTINEZ: No, the -- the 172 days
4 you're asking, has it increased?

5 I think that's been -- that's been pretty
6 steady. We've been holding -- we've been doing very
7 well with our investigation times --

8 SENATOR CARLUCCI: Okay.

9 D.C. GINA MARTINEZ: -- (indiscernible
10 cross-talking).

11 SENATOR CARLUCCI: And then, in there, "We
12 take into consideration that, if the investigator
13 finds no probable cause, or lack of jurisdiction,
14 that the complaint is dismissed."

15 D.C. GINA MARTINEZ: Yes.

16 SENATOR CARLUCCI: And, obviously, that's
17 understandable.

18 Probable cause would take some time to
19 investigate, and 180 days sounds appropriate.

20 When we talk about lack of jurisdiction --

21 D.C. GINA MARTINEZ: Yes.

22 SENATOR CARLUCCI: -- how long does that,
23 usually, typically take?

24 D.C. GINA MARTINEZ: It depends on the
25 circumstances. It could take a lot less time.

1 I don't have the actual average number for
2 LOJs, but we can safely say it takes less time
3 (inaudible).

4 SENATOR CARLUCCI: What would be an example
5 of a lack of jurisdiction?

6 D.C. GINA MARTINEZ: What's an easy one.

7 The respondent is outside of the state.

8 SENATOR CARLUCCI: Okay. And I'm just trying
9 to figure out, because I think that would be simple
10 to figure out --

11 D.C. GINA MARTINEZ: Yes, yes.

12 SENATOR CARLUCCI: -- and it wouldn't take
13 180 days.

14 D.C. GINA MARTINEZ: Yes.

15 SENATOR CARLUCCI: Okay.

16 D.C. GINA MARTINEZ: Yeah.

17 Or we are outside of the statute of
18 limitations.

19 SENATOR CARLUCCI: And that's, jurisdiction
20 includes the statute of limitations?

21 D.C. GINA MARTINEZ: Yes.

22 SENATOR CARLUCCI: Do you have any ideas of
23 how many reports are filed each year that are
24 actually outside the statute of limitations, or are
25 you trying to deny those from even being filed in

1 the first place?

2 D.C. GINA MARTINEZ: No, we take all
3 complaints. We never turn anyone away.

4 But I don't have the number regarding how
5 many cases come in --

6 SENATOR CARLUCCI: If it's possible to get --

7 D.C. GINA MARTINEZ: -- over the one year.

8 SENATOR CARLUCCI: -- that information, that
9 would be helpful.

10 D.C. GINA MARTINEZ: Sure.

11 SENATOR CARLUCCI: And then when there is the
12 lack of jurisdiction, and let's say it's not because
13 of statute of limitations, but it's because it's
14 actual jurisdiction, but there might possibly be a
15 claim that is eligible to be filed, are you able to
16 walk that person through the process of what they do
17 if it's not within your jurisdiction?

18 Is there any mechanism to help them file the
19 appropriate complaint, maybe with another
20 jurisdiction?

21 D.C. GINA MARTINEZ: Yes.

22 So we have, when a complainant comes in to
23 file the complaint, or even when they call in to
24 inquire about the process, we will let them know --
25 we'll ask them about the facts of their case, and

1 we'll let them know, if they don't -- if they can't
2 file a complaint, or, if they don't want to pursue
3 our process, these are the other available avenues
4 for them. And then we can give them their phone
5 number as well.

6 We do give them their information.

7 SENATOR CARLUCCI: And then just one last
8 question: When there is a determination of probable
9 cause and the case is moving forward, do you have an
10 idea of what percentage of people are represented by
11 private counsel as opposed to you providing counsel?

12 D.C. GINA MARTINEZ: I don't -- when they
13 file the complaint?

14 SENATOR CARLUCCI: No, actual -- after
15 probable cause.

16 D.C. GINA MARTINEZ: Post probable cause?

17 SENATOR CARLUCCI: Yeah.

18 SENATOR BIAGGI: I don't have that number
19 with us, but we can get that to you.

20 SENATOR CARLUCCI: Okay.

21 Okay, thank you.

22 Thank you, Chairman.

23 ASSEMBLYMAN CRESPO: Assemblywoman Simon.

24 ASSEMBLYWOMAN SIMON: Yes, thank you.

25 Okay, thank you very much.

1 I have a couple of quick questions for you.

2 Now, the State has already commented about
3 the -- when the statute of limitations begins to
4 run; it's the last discriminatory act.

5 I just wanted to ask the City, is that also
6 the case?

7 D.C. DANA SUSSMAN: That's correct, the last
8 discriminatory act.

9 And we can reach back further in time if it's
10 a continuing violation, a pattern or practice of
11 behavior.

12 ASSEMBLYWOMAN SIMON: And you're taking a
13 liberal view of a "continuing violation"?

14 D.C. DANA SUSSMAN: We do, yes.

15 ASSEMBLYWOMAN SIMON: Okay.

16 D.C. MELISSA FRANCO: We do as well at the
17 State.

18 ASSEMBLYWOMAN SIMON: Okay.

19 Well, that's good to know.

20 It would be nice if the feds did the same
21 thing.

22 The other -- another question I have is: Do
23 you have any data with regard to the industries from
24 which these complaints emanate?

25 So, for example, higher education, there are

1 a lot of employment cases, but also other forms of
2 harassment cases, within institutions of higher
3 education, which are, actually, fairly major
4 employers in a whole host of fields.

5 So I'm particularly curious about higher
6 education, for some other reasons.

7 And I'm curious whether you have that data?

8 D.C. MELISSA FRANCO: Do not have that data
9 with us.

10 ASSEMBLYWOMAN SIMON: Do you collect that
11 type of data?

12 D.C. MELISSA FRANCO: Well, we just actually
13 got back jurisdiction for the public schools.

14 So when you say "higher education," are you
15 talking about the colleges?

16 ASSEMBLYWOMAN SIMON: Colleges and
17 universities.

18 D.C. MELISSA FRANCO: It may be possible for
19 us to pull that kind of data.

20 So when I go back, I will find out if it can
21 be.

22 ASSEMBLYWOMAN SIMON: Wonderful; if you do
23 have the data, I would like to see that.

24 And then the other question I have for the
25 State:

1 We've talked a little bit about matters
2 relating to the budget.

3 And last year I know, in the budget, we
4 provided funding for three additional attorneys,
5 I believe, because we were expanding the policies
6 and requiring the training, and anticipated that
7 there would be more complaints.

8 My question is: What about investigators?

9 Do you need investigators?

10 How many more investigators?

11 I've heard various reports from colleagues
12 who are practicing in the field, that they believe
13 more investigators are needed.

14 D.C. GINA MARTINEZ: Do you want my wish
15 list?

16 ASSEMBLYWOMAN SIMON: Yes.

17 [Laughter.]

18 D.C. GINA MARTINEZ: Well, to start with,
19 I would love an additional investigator in every
20 regional office, absolutely.

21 ASSEMBLYWOMAN SIMON: There's 13 regional
22 offices? Is that --

23 D.C. GINA MARTINEZ: There's 12 regional
24 offices around the state, yeah.

25 I think that would be highly beneficial for

1 our staff, to kind ease the caseload for everyone.

2 Ultimately, my wish list is to open
3 additional regional offices as well.

4 But I -- I think that, you know, the more --
5 and I'm sure we'll talk about the outreach in
6 education that we do.

7 The more that we do outreach and education,
8 and we do -- we have a new commissioner, who has big
9 plans for outreach and education in the future.

10 And the more outreach and education that we
11 do, I have a feeling that our 6,000 is going to
12 skyrocket.

13 So, I might be better off asking for two or
14 three additional investigators in every office right
15 now, if I could predict the future.

16 We are planning robust outreach and education
17 all over the state, in hard-to-reach areas,
18 hard-to-reach populations, that -- where there are
19 individuals that maybe, necessarily, haven't been
20 made aware of our process, and who should be made
21 aware.

22 So, you know, with this 6,000 complaints that
23 we get every year, and this 62 percent increase,
24 I absolutely expect that that will continue to go
25 up.

1 ASSEMBLYWOMAN SIMON: I just, yesterday, was
2 speaking with a group of -- who represents
3 merchants, for example, in a business-improvement
4 district. And many of them are small employers,
5 some of them are larger employers. And they're all
6 very confused about the sexual-harassment
7 provisions.

8 D.C. GINA MARTINEZ: Right.

9 ASSEMBLYWOMAN SIMON: And were -- they have,
10 in fact, engaged someone to do training, and so
11 they've been through training.

12 But it's very difficult, often, to get shop
13 owners, for example, to participate in these
14 programs because they can't leave their businesses
15 to do that.

16 And they expressed an interest to have more
17 robust communications from the State and the City
18 with regard to these requirements, so that they
19 could better help their members comply with the law.

20 So I just wanted to throw that out there for
21 your consideration.

22 D.C. GINA MARTINEZ: Thank you.

23 And that's exactly the kind of information
24 that we want to know, so that we can actually go out
25 there and engage those different organizations.

1 That's very helpful.

2 D.C. DANA SUSSMAN: And just from the City
3 side, we will be sending out mailers to all
4 department of finance-identified businesses, with a
5 focus on small businesses, in English and Spanish,
6 which lays out all of the new City requirements,
7 including providing the English and Spanish poster
8 that must go up in all businesses, and links to the
9 online training that we have, which I mentioned is
10 optimized for smartphone use.

11 We anticipate people will take it on phones,
12 crowd around one screen together, take it together,
13 which is totally compliant.

14 And so we're trying to make -- we understand
15 and recognize that laws are changing rapidly. Very
16 few small businesses have access to legal counsel to
17 guide them.

18 And that we want to work with small
19 businesses, and provide as much information as we
20 can, given the resources, to get them up to speed.

21 ASSEMBLYWOMAN SIMON: And if I may, just --
22 and this will be my last point, one of the concerns
23 that was expressed to me yesterday in this meeting,
24 was that the department of finance's records for the
25 addresses of owners, for example, that they would

1 send this information to, are hopelessly out of
2 date. And that the bids are getting a lot of
3 returned address -- returned mail, and have no idea
4 how to reach out to the owners.

5 And so perhaps you might encourage the
6 department of finance to step up some efforts to
7 clarify their records.

8 D.C. DANA SUSSMAN: That's helpful. Thank
9 you.

10 ASSEMBLYWOMAN SIMON: Thank you.

11 SENATOR BIAGGI: Senator Mayer.

12 SENATOR MAYER: Thank you.

13 I have a question for the division of human
14 right's staff.

15 Within your practice, if you get a complaint
16 that -- while the person may come to you, thinking
17 it belongs in your bailiwick, upon review, it is a
18 potential criminal action, or, potentially, a
19 criminal action, by the accused, do you ever refer
20 matters to the district attorney of the county in
21 which this occurs?

22 D.C. MELISSA FRANCO: It's our practice, if
23 we do come across that -- it's not often that I have
24 come across it -- but we do, depending on what the
25 facts are, it could be that I will call the district

1 attorney's office and let them know, or, I will
2 refer it to -- I will inform the complainant that
3 they should call the district attorney's office.

4 SENATOR MAYER: Do you know how many times
5 the division has referred matters to the district
6 attorney's office in the past year?

7 D.C. MELISSA FRANCO: In my own experience,
8 just once.

9 SENATOR MAYER: Would you support legislation
10 that explicitly directed the division to report
11 potential criminal acts to the district attorney?

12 D.C. MELISSA FRANCO: It's our practice to do
13 that.

14 SENATOR MAYER: Yeah, but not -- I'm sorry.

15 D.C. MELISSA FRANCO: Whether or not
16 legislation is warranted --

17 SENATOR MAYER: I'm asking you --

18 D.C. MELISSA FRANCO: -- I don't know, but it
19 is our practice.

20 SENATOR MAYER: -- as someone who gets these
21 complaints.

22 This is important.

23 Someone might come to me and say, This
24 happened. I'm going to call the division of human
25 rights.

1 That's all they know. They don't really know
2 it may be criminal.

3 You are the experts in the field.

4 I'm asking if it would be helpful.

5 I understand your reluctance to talk about
6 any legislation, which I would acknowledge with my
7 colleague Senator Liu, that Executive Law 290,
8 subdivision 3, and, Article 15 of the Human Rights
9 Law, makes clear the division is not a neutral
10 player. It has a function and a mission.

11 D.C. MELISSA FRANCO: Poor choice of words
12 I guess I used earlier today. So I apologize.

13 SENATOR MAYER: Yes.

14 But that being said, this agency, and I've
15 been around long enough to know, was established
16 with the mission of addressing discrimination in
17 New York State.

18 So I would respectfully suggest that your
19 reluctance to talk about how to improve the law is
20 not consistent with the mission of the agency.

21 The second thing is: Do you ever refer cases
22 to the attorney general's office when you see a
23 pattern and practice?

24 Well, let's say someone calls and they say,
25 Oh, no, three other people in my shop have the same

1 problem with this guy.

2 You have the authority to have them
3 individually hire -- file a complaint.

4 But the attorney general's office can bring
5 an injunctive action immediately if there's a
6 pattern and practice.

7 Do you ever refer matters to the civil rights
8 bureau?

9 D.C. MELISSA FRANCO: We have not.

10 We have our division-initiated investigation
11 unit, where we look for systemic cases, and
12 investigate them, and bring them on behalf of the
13 State. So we handle those cases that way.

14 Uhm --

15 SENATOR MAYER: But you --

16 D.C. MELISSA FRANCO: -- I'm sorry, go ahead.

17 SENATOR MAYER: -- can't go directly into
18 court?

19 D.C. MELISSA FRANCO: Unless it's a housing
20 case and we filed a complaint.

21 SENATOR MAYER: No, no, on these sexual
22 harassment cases.

23 D.C. MELISSA FRANCO: Cannot, no.

24 SENATOR MAYER: So would it be helpful, and
25 strengthen the mission of the agency, to have

1 direction, that when there is two or more
2 individuals with a similar complaint, that you be
3 directed to file with the attorney general's office,
4 a notice, so that they can go to court immediately,
5 to Mr. Quart's issue, and address some systemic
6 problem that is at -- potentially could impact them?

7 Would that legislation be helpful?

8 D.C. MELISSA FRANCO: Just give me one
9 second, please?

10 SENATOR MAYER: Sure.

11 D.C. GINA MARTINEZ: I just want to make sure
12 I understand what you're saying.

13 Would a directive to the division of human
14 rights, where two or more cases --

15 SENATOR MAYER: A legislative change.

16 D.C. GINA MARTINEZ: Right.

17 -- two or more cases filed against a
18 respondent be sent to the attorney general?

19 SENATOR MAYER: Could be referred to the
20 attorney general.

21 D.C. GINA MARTINEZ: Could be?

22 SENATOR MAYER: Yes.

23 D.C. GINA MARTINEZ: Could be?

24 My hesitation in saying absolutely yes is the
25 "two or more cases."

1 Two or more cases doesn't nec -- it's -- you
2 know, all of the cases, and -- all of the cases that
3 we look at are fact- and circumstance-specific.

4 And I don't necessarily know that we don't
5 have the capacity to handle those cases.

6 And I don't necessarily know that the
7 attorney general would deem those cases something
8 that they want to handle.

9 So I don't know that we need a directive.

10 I think that we have the discretion, and we
11 use the discretion properly to handle cases the way
12 we deem fit.

13 And if we have to refer cases out, I think we
14 do so appropriately.

15 SENATOR MAYER: But you dodge -- you can't
16 bring an action for immediate injunctive relief,
17 civilly?

18 Correct? Right?

19 D.C. GINA MARTINEZ: Yeah, that is correct.

20 SENATOR MAYER: Okay.

21 And you mentioned you have your own
22 sexual-harassment unit.

23 Is that a physical --

24 D.C. GINA MARTINEZ: Yes, it's a physical
25 office.

1 SENATOR MAYER: Where is it?

2 D.C. GINA MARTINEZ: It's 55 Hanson Place in
3 Brooklyn.

4 SENATOR MAYER: And how would --

5 D.C. GINA MARTINEZ: (Indiscernible)
6 government building.

7 SENATOR MAYER: And how would someone know
8 about it, a complainant?

9 D.C. GINA MARTINEZ: It's on our website.
10 It's on our literature. We let people know that it
11 exists when we do outreach and education.

12 They can call. And if they let us know what
13 the nature of their complaint is, we let them know
14 that they can file directly at the office of
15 sexual-harassment issues. Or, they can file at any
16 office, and it will be forwarded to that office for
17 investigation.

18 SENATOR MAYER: Okay. Thank you.

19 D.C. GINA MARTINEZ: You're welcome.

20 ASSEMBLYMAN CRESPO: Assemblyman Buckwald.

21 ASSEMBLYMAN BUCHWALD: Thank you,
22 Mr. Chairman, to you and your fellow co-chairs, for
23 convening this hearing.

24 And my thanks to all of the deputy
25 commissioners for being here.

1 I'll be direct in my questions, primarily at
2 our state deputy commissioners, not being myself a
3 representative from New York City.

4 I'll admit to being a little bit confused,
5 first, on a point of basic math, which is, as
6 earlier stated, and Chairman Crespo accurately
7 calculated, that, with 6,000 individual
8 complaints -- or, over 6,000 individual complaints,
9 the 63 investigators, that works out to,
10 approximately, 95 per investigator.

11 And the response back was that, if you
12 exclude housing, it would be about 50 to 60.

13 But in the written testimony it says that,
14 approximately, 80 percent of complaints relate to
15 employment.

16 So by my math, at least 76 complaints per
17 investigator are those that exclude housing.

18 So I just want to note that.

19 Though my question, which also I'm at a point
20 of confusion, relates to the questioning earlier
21 from Senator Liu, and the observations made by a
22 number of legislative colleagues, about the role the
23 division plays with regards to recommendations for
24 legislation.

25 I'm aware that the division of human rights

1 itself puts out departmental bills, recommendations
2 for legislation.

3 My -- I guess my first question is: Are
4 either of you aware of how many bills, in total, the
5 division has put forward this year to the
6 Legislature?

7 And secondary to that: How many of those
8 bills relate to sexual harassment?

9 D.C. MELISSA FRANCO: I do not. I don't
10 participate in that. I don't.

11 D.C. GINA MARTINEZ: I am not aware of that
12 either.

13 ASSEMBLYMAN BUCHWALD: Just based on public
14 information, as far as I can tell, the division's
15 put out at least four bills, in total.

16 The only two bills that are published are --
17 relate to housing discrimination, not the topic of
18 this hearing directly.

19 I guess what I don't understand, as a general
20 matter, is how the response of the department, with
21 regards to legislators' proposals, or public
22 proposals, is, "we don't get involved in
23 legislation."

24 But, the division feels appropriate, and
25 I think it is indeed appropriate, to put forward

1 legislation, another guise.

2 I totally get that there might not be a total
3 syncing, and any particular piece of legislation has
4 to go through a review process.

5 But there is a process, is there not, for the
6 division to opine on legislation, and to come up
7 with its own legislation?

8 Are either of you aware of any discussions
9 whatsoever in the division on putting forward
10 legislation on this topic?

11 D.C. MELISSA FRANCO: I am not aware.
12 I don't participate in that. That would be our
13 general counsel's office.

14 So I don't have -- I'm not privy to it, so
15 I don't know.

16 D.C. GINA MARTINEZ: We're not involved in
17 those discussions.

18 ASSEMBLYMAN BUCHWALD: How is it possible
19 that any part of the division could put forward
20 legislation related to sexual-harassment
21 enforcement, as is done, in general, through one of
22 your offices, deputy commissioner, or through the
23 regional offices, for the other deputy commissioner,
24 without consulting either of you?

25 Is it conceivable that some other part of the

1 division has put forward proposals, or is
2 considering putting forward proposals, without
3 consulting either of you on this topic?

4 D.C. MELISSA FRANCO: We are -- I oversee the
5 attorneys and I do the DII.

6 So, you know, we enforce it. You know, here
7 is our statutes, this is what we have to enforce,
8 this is our process.

9 It is conceivable that it happens.

10 Again, I'm not a part of it.

11 In the past, may -- I'm trying to think if
12 I've participated in it, and I can't recall that,
13 but I won't speak for Miss Martinez. I don't know.

14 D.C. GINA MARTINEZ: Unfortunately, no, we're
15 not involved in that process.

16 We are involved in, respectively, overseeing
17 our units.

18 ASSEMBLYMAN BUCHWALD: Would either of you
19 plan, after today, to go to the able counsel, and
20 others, maybe under the commissioner's direction,
21 and inquire whether it's appropriate that, when
22 proposals are put forward by the division to the
23 Legislature, that some consultation be made with the
24 folks out in the field that you help oversee?

25 D.C. MELISSA FRANCO: Sure, I'll let them

1 know.

2 D.C. GINA MARTINEZ: I believe that will take
3 place after today.

4 ASSEMBLYMAN BUCHWALD: I suspect it might.

5 On the other proposals that are -- have been
6 put forward by the division, say, related to housing
7 discrimination, which both your offices deal with as
8 well, is there any consultation with your office?

9 Some of these proposals have existed for a
10 number of years.

11 D.C. MELISSA FRANCO: I was not consulted.

12 ASSEMBLYMAN BUCHWALD: Might then your
13 inquiry already pending of supervisors and
14 colleagues, with regards to consultation on
15 sexual-harassment legislation, also extend to making
16 sure the consultation extends on these other topics?

17 Because, frankly, as a legislator, it is
18 disheartening to learn that the imprimatur of the
19 department, on the rare occasions when the
20 department -- excuse me, the division -- on rare
21 occasions when the division wants to get involved,
22 it turns out, it is not based on the broad expertise
23 of the division.

24 Is that fair to say?

25 D.C. GINA MARTINEZ: I believe that we will

1 extend that discussion as well.

2 ASSEMBLYMAN BUCHWALD: And what -- what --
3 I would, then, maybe, through the collective
4 legislative Chairs, you know, request that, if at
5 any point, the Assembly and Senate are informed of
6 new proposals from the division, or updated
7 proposals on the ones even outside the realm of
8 sexual harassment that come from the division, that
9 we learn whether those proposals are, in part,
10 informed by the broader expertise.

11 Which, in general, I commend. The division
12 has an office in my district in White Plains. I'm,
13 you know, very pleased that that's available to my
14 constituents.

15 Nonetheless, I'd like there to be some
16 greater, you know, consultation between the handful
17 of legislative proposals and what folks are
18 experiencing out in the field.

19 And, obviously, the broader point that
20 colleagues have already made, which is, the division
21 has the capacity to chime in on legislation.

22 Maybe that's to create its own, and to leave
23 legislators and the public to create their own, and
24 so forth.

25 I understand a lot of deference, certainly,

1 to our state's Chief Executive.

2 And I'm not saying there shouldn't be
3 consultation in that regard too, and shouldn't
4 necessarily be divisions and departments going off
5 on their own.

6 But, nonetheless, I think the process has not
7 been as robust, is could be to say the least.

8 And unless there is any further comment,
9 I yield back, and thank the Chairs for their time
10 for these questions.

11 SENATOR BIAGGI: Thank you.

12 I'm going to actually ask a few questions
13 now, after hearing from several of my colleagues.

14 So, I think I would like to begin with the
15 State.

16 In your testimony you mentioned that you
17 spoke with survivor groups.

18 Which survivor groups did you speak with?

19 D.C. MELISSA FRANCO: And that's the -- that
20 was, I believe, when they were doing the drafting
21 and the policymaking for the DOL. We weren't
22 involved in that part of the process.

23 SENATOR BIAGGI: Who was involved?

24 D.C. MELISSA FRANCO: That would be our
25 general counsel's office, and perhaps our outreach

1 office.

2 SENATOR BIAGGI: How often do you communicate
3 with your general counsel's office?

4 D.C. MELISSA FRANCO: Quite frequently on
5 cases, and the stuff that we deal with, in terms of
6 whether it's a matter of a particular case or a
7 particular clause, but, for what we do.

8 SENATOR BIAGGI: So would it be common
9 practice for your general counsel to ask you --
10 either of you, what approach to take on a specific
11 initiative, as this kind of laid out, so that he or
12 she would be able to know what questions to ask or
13 what issues have come up, probably because, I'm
14 assuming, the general counsel is not in the field,
15 but in an office?

16 D.C. GINA MARTINEZ: It would probably be
17 more appropriate for the general counsel to consult
18 with the outreach and education individuals.

19 SENATOR BIAGGI: And who -- who do the
20 outreach and education individuals report to?

21 D.C. GINA MARTINEZ: The first deputy
22 commissioner and the commissioner.

23 SENATOR BIAGGI: And who do both of you
24 report to?

25 D.C. GINA MARTINEZ: I report to the first

1 deputy commissioner.

2 D.C. MELISSA FRANCO: And I report to the
3 commissioner.

4 SENATOR BIAGGI: So, presumably, there is an
5 opportunity in your communication structure where
6 you are able to have these dialogues back and forth,
7 right, to make recommendations of things that you
8 see in the field, where you would be having these
9 conversations.

10 And the reason I highlight this is because
11 one of the frustrations that the public often has
12 with government, is that information is in silos.

13 And I would recommend -- it would be my
14 recommendation, that any findings that you have or
15 make or things that you see, especially on a topic
16 as important as sexual harassment, especially as
17 timely as it is, that there -- the conversations are
18 transparent, that they are open, that they are
19 inclusive, and that no walls are erected to prevent
20 any type of progress from moving forward.

21 You also mentioned that anyone can file in
22 the state. And I heard several times you discussed
23 the different offices throughout the state. And
24 I believe you said that there are 12 regional
25 offices, and I'm happy to learn about this

1 55 Hanson Place office as well.

2 And you mentioned also that you do outreach
3 and you do mailings.

4 Do you use social media; and if so, how?

5 Because I -- the reason I ask is because
6 I haven't heard of this outreach, and I haven't seen
7 this outreach. And I'm on the -- at least I would
8 like to think I'm on the pulse of this issue. I'm
9 not an expert yet, but I'm on my way, hopefully.

10 D.C. GINA MARTINEZ: Yes, we have a Twitter
11 account, we have a Facebook account, we have an
12 Instagram account. And I believe, if I'm not
13 mistaken, we have a LinkedIn account, or we are in
14 the process of creating a LinkedIn account.

15 I'm not really good with social media, but
16 I think those are the main ones.

17 SENATOR BIAGGI: Okay, thank you.

18 D.C. GINA MARTINEZ: You're welcome.

19 SENATOR BIAGGI: In -- with relation to
20 communication, again, going back to that point, at
21 any point in time, does New York State communicate
22 with New York City?

23 D.C. MELISSA FRANCO: We definitely
24 interacted on drafting the model policies and the
25 model training under the new deal -- DOL law.

1 D.C. DANA SUSSMAN: Yes, I'm regularly in
2 touch with, unfortunately, not my two colleagues up
3 here today, but the general counsel and first deputy
4 commissioner.

5 On our side, we're regularly in touch.

6 SENATOR BIAGGI: So just to be clear, so
7 you're in touch with the general counsel at the
8 State --

9 D.C. DANA SUSSMAN: Yes.

10 SENATOR BIAGGI: -- on these issues?

11 D.C. DANA SUSSMAN: That's right.

12 SENATOR BIAGGI: Okay.

13 And, then, does the general counsel often
14 communicate to the State the information that is
15 learned from the City?

16 D.C. GINA MARTINEZ: It depends on what it
17 is.

18 I don't get regular briefings from the
19 general counsel about that.

20 And to answer your question, I do communicate
21 with other members of the New York City commission,
22 other deputy commissioners. And, also, we see each
23 other quite a bit when we attend the EEOC
24 conferences.

25 SENATOR BIAGGI: Okay, if you wanted to make

1 a recommendation, let's say, perhaps to make it so
2 that it's regular communication between the City and
3 the State, how would you go about doing that?

4 This question is directed to the State.

5 D.C. GINA MARTINEZ: There actually is a
6 regular communication. If I'm not mistaken, there
7 is something called "The Civil Rights Roundtable."

8 D.C. DANA SUSSMAN: Uh-huh, that's right.

9 D.C. GINA MARTINEZ: I believe that you --
10 our first deputy commissioner attends that.

11 I'm not really sure how often that is, but,
12 members from the EEOC, HUD, our agency, and the
13 New York City Commission attend.

14 Have you attended those meetings?

15 D.C. DANA SUSSMAN: I have not, but my
16 colleagues regularly do, yes.

17 D.C. GINA MARTINEZ: I haven't attended.

18 SENATOR BIAGGI: And any information from
19 those meetings, how is that disseminated to all --
20 to the State or the City?

21 D.C. DANA SUSSMAN: In my office, it's
22 typically our law enforcement leadership that
23 attends, because it's quite law enforcement-focused,
24 as opposed to my side, which is policy.

25 And we're regularly briefed on the topics

1 that will be discussed, and the conversation that's
2 had there, in our executive team meetings.

3 SENATOR BIAGGI: And for the State?

4 D.C. GINA MARTINEZ: And I get occasional
5 information when I meet with my supervisor as to
6 what occurred during those meetings.

7 D.C. MELISSA FRANCO: If there's relevant
8 case law that they may have discussed, she may bring
9 it back to us.

10 If there's an outreach event, she would talk
11 to the outreach people.

12 Things like that.

13 SENATOR BIAGGI: So you could see where there
14 could be some type of issues if there's not a clear
15 communication or a report after every meeting.

16 And I think that one of the most important
17 things that we can do, especially --

18 And this is with no disrespect to the State,
19 I am obviously a representative of the State.

20 -- that we could do better as a state, by
21 taking the lead from New York City, who has led in
22 so many ways.

23 And, of course, you know, smaller area, but
24 lots of people, still, and has been a real
25 trailblazer, I think, in so many ways.

1 And the State can definitely learn from that
2 type of bravery.

3 So going back to the data that DHR collects,
4 in terms of collecting sexual-harassment reporting
5 data, and I won't go -- I won't belabor you through
6 all the statistics and the numbers that you do, but,
7 at the end of each year, where does that data go?

8 So, does it go to the general counsel, and
9 then does the general counsel report that to the
10 commissioner?

11 And then who does the commissioner, perhaps,
12 report that to?

13 D.C. GINA MARTINEZ: So we have database on
14 our fiscal year, calendar year. We have what we
15 call an "annual report," and that is actually posted
16 on our website, but it has to be reviewed by our
17 general counsel. All of our --

18 SENATOR BIAGGI: Who else is it reviewed by?

19 D.C. GINA MARTINEZ: The commissioner.

20 SENATOR BIAGGI: I'm sorry?

21 D.C. GINA MARTINEZ: The commissioner.

22 SENATOR BIAGGI: The commissioner?

23 D.C. GINA MARTINEZ: Yes.

24 SENATOR BIAGGI: And who else?

25 D.C. GINA MARTINEZ: I'm not really aware if

1 there are other people.

2 I submit my own report from my units.

3 D.C. MELISSA FRANCO: I submit from my units,
4 we review them. We give them to -- they combine
5 them all, and reviewed by the commissioner and
6 general counsel. After that, I'm not aware.

7 SENATOR BIAGGI: Is it probable that the
8 annual report, before being made public, would be
9 reviewed by the Executive?

10 D.C. GINA MARTINEZ: I can't answer that
11 because I don't know the process.

12 I know my process.

13 SENATOR BIAGGI: Has anything that you have
14 created or done been reviewed by the Executive in
15 your normal course of business?

16 D.C. MELISSA FRANCO: No.

17 SENATOR BIAGGI: Nothing that you have
18 done --

19 D.C. MELISSA FRANCO: Not that I'm aware of.

20 SENATOR BIAGGI: -- in the course of your
21 business has been --

22 D.C. MELISSA FRANCO: Not that I'm aware of.

23 I mean --

24 SENATOR BIAGGI: -- discussed with the
25 Executive, ever?

1 D.C. GINA MARTINEZ: I don't know what
2 happens after it goes from me to my boss.

3 It's possible.

4 SENATOR BIAGGI: Okay.

5 Going back to the point, I don't want to
6 belabor this too much, but I think this is -- are --
7 very important to be very succinct on these issues:

8 Are you familiar with Executive Law 294?

9 D.C. MELISSA FRANCO: I'm not -- if you tell
10 me what the law is.

11 SENATOR BIAGGI: So the law is, The Statutory
12 Mandated Powers and Duties of DHR, your agency, and
13 Executive Law 294, says: The division shall
14 formulate policies to effectuate the purposes of
15 this article, and may make recommendations to
16 agencies and officers of the state or local
17 subdivisions of government in aid of such policies
18 and purposes.

19 Are you familiar with Executive Law 295?

20 D.C. GINA MARTINEZ: Would you mind reading
21 it, please?

22 SENATOR BIAGGI: Sure.

23 D.C. GINA MARTINEZ: Thank you.

24 SENATOR BIAGGI: So, Executive Law 295, there
25 are two relevant provisions, Section 8 and

1 Section 9.

2 In Section 8 it discusses advisory councils,
3 and it empowers the division to go through all kinds
4 of different issues, but to discuss and study
5 problems, such as the ones that we're discussing
6 today, and then make recommendations accordingly.

7 In Section 9 it says, that you have the power
8 to develop human rights plans and policies for the
9 state, and to assist in your execution, and to make
10 investigations and studies appropriate to effectuate
11 this article, to issue such publications and such
12 results of investigations and research, as, in its
13 judgment, will tend to inform persons of the rights
14 assured and remedies provided under this article to
15 promote good will, and minimize or eliminate
16 discrimination because of age, race, creed, color,
17 national origin, sexual orientation, gender identity
18 or expression, military status, sex, disability, or
19 marital status.

20 And are you familiar with the submission of
21 program bills?

22 D.C. MELISSA FRANCO: I know that they get
23 submitted, but I don't participate in them, so
24 I can't really speak them.

25 SENATOR BIAGGI: But are you familiar with

1 them?

2 D.C. MELISSA FRANCO: Sure.

3 SENATOR BIAGGI: So Senator Liu's not in the
4 room at the moment, but, this year, DHR actually
5 submitted a program bill for Senator Liu and
6 Senator Martinez.

7 And so I will double down on what
8 Assemblymember Buchwald had asked you, and I would
9 really encourage you, because we would like to be
10 your partners in this fight, it's an incredibly
11 important effort, to please weigh in on the package
12 of legislation that we've put forward because, we
13 cannot wait any longer, and we need your input, it's
14 valuable to us; your opinions are valuable to us,
15 your expertise is valuable to us. And we want to be
16 your partners in the state.

17 And I as a legislator am going to break down
18 that wall that is oftentimes put between us, and I'm
19 inviting you in.

20 D.C. GINA MARTINEZ: We're happy to work with
21 you.

22 SENATOR BIAGGI: Thank you.

23 ASSEMBLYMAN CRESPO: Assemblywoman Cruz.

24 ASSEMBLYWOMAN CRUZ: Thank you.

25 I have a couple of questions related to the

1 process.

2 The first one: What percentage of the
3 complaints that actually get to you represent folks
4 who have been fired by the time that they actually
5 file a complaint?

6 D.C. GINA MARTINEZ: I don't have those
7 numbers for you, but I can try to get them from the
8 regional office.

9 ASSEMBLYWOMAN CRUZ: Thank you.

10 D.C. DANA SUSSMAN: And, unfortunately,
11 I don't have those numbers either.

12 But, anecdotally, most people do come to us
13 after they've left the situation involving the
14 harassment, whether it's, as I mentioned earlier, a
15 constructive discharge, where the circumstances were
16 so unpleasant and so degrading that people were,
17 essentially, forced to resign or forced to quit,
18 versus being fired, versus, you know, some other
19 kind of separation.

20 I don't have those numbers, but, anecdotally,
21 I can say that it's the majority of cases, that
22 people come to us after they've left.

23 ASSEMBLYWOMAN CRUZ: And now I want to talk
24 about what happens to the cases that actually make
25 it to the end portion.

1 For a brief stint, I was an ALJ, so I can
2 tell you that there is a lot of latitude with what
3 happens inside a room when there's a settlement
4 process.

5 My concern, and what I often hear from
6 advocates, and when we worked together on the task
7 force, was, I can't afford to hire a lawyer to go
8 with me to one of these agency meetings, settlement
9 meetings, unofficial hearings, or, actually,
10 official hearings.

11 And so one of these proposals that had been
12 discussed, as -- actually as a departmental, was
13 legal fees for the plaintiffs, for the folks who are
14 coming forward, and being able to file the claim.

15 Did that ever go anywhere with the State; can
16 someone get legal fees for representation to come in
17 front of your agency?

18 D.C. MELISSA FRANCO: In housing cases, yes.

19 And now in sexual-harassment cases as well.

20 ASSEMBLYWOMAN CRUZ: In sexual-harassment
21 cases you can?

22 D.C. MELISSA FRANCO: Yes.

23 ASSEMBLYWOMAN CRUZ: And for the City?

24 D.C. DANA SUSSMAN: Yes, it's a recent
25 change. All cases brought to the commission on

1 human rights, the complainant's attorney may be able
2 to recover attorney's fees.

3 ASSEMBLYWOMAN CRUZ: And what is the -- is
4 there a procedure to connect folks/complainants with
5 an attorney, be it low bono, where there are fees
6 that are getting -- get back; pro bono; or any other
7 way?

8 D.C. MELISSA FRANCO: In terms of assigning
9 an attorney to a case prior to probable cause, the
10 State doesn't assign an attorney. But once there is
11 a probable-cause determination, we do handle it.

12 If a complainant is interested in hiring a
13 private attorney, I've never dealt with it, we
14 usually don't make recom -- I would say we don't
15 make a recommendation as to it.

16 But if they went to legal aid, or if they
17 went to someone like that, they could use those
18 attorneys at our agency.

19 ASSEMBLYWOMAN CRUZ: I mean, my concern with
20 an answer like that, is that, when you have someone
21 who doesn't understand the system, expecting them to
22 go out on their own and actually find a lawyer on
23 their own is nearly impossible.

24 And the power dynamics of what happens inside
25 a settlement room, when you have someone who has an

1 attorney versus someone who doesn't, especially if
2 they're not familiar with the system, it's going to
3 be skewed in favor of the employer who can actually
4 afford to have a lawyer there representing them.

5 D.C. MELISSA FRANCO: Sure, if I may, I'm
6 sorry, I didn't necessarily understand the whole
7 thing.

8 ASSEMBLYWOMAN CRUZ: (Indiscernible) -- yeah.

9 D.C. MELISSA FRANCO: So we would definitely
10 appoint an attorney post PC. And if they said that,
11 you know, they -- they, you know, want a private
12 attorney, when I say we wouldn't recommend somebody,
13 I mean, like an individual law firm. We could refer
14 them to the bar, you can call, or you can call legal
15 aid.

16 That's what I meant.

17 ASSEMBLYWOMAN CRUZ: And once you get to the
18 settlement conference, what's the procedure for a
19 settlement conference?

20 D.C. MELISSA FRANCO: On the prehearing
21 settlement conference, it's set up ahead of time.
22 Notices are sent out to all the parties, including
23 the complainant, as well as well as the respondents.

24 It's scheduled, we have Wednesdays and
25 Thursdays.

1 We assign an attorney.

2 They -- conferences are for one hour. The
3 administrative law judge begins the call.

4 The attorney would have spoken to the
5 complainant beforehand, reviewed the facts of the
6 case, determined what kind of damages they are
7 interested in.

8 Once everybody calls in, and the ALJ leads
9 that call, then discussions are held about whether
10 or not, you know, they can come to terms on an
11 agreement or not.

12 ASSEMBLYWOMAN CRUZ: And, you know, one of
13 the things that quite never happened during my brief
14 stint as an ALJ, was some sort of training about
15 trauma-informed decision-making.

16 Is that happening in either one of the
17 agencies?

18 Because, when you sit there and you have to
19 hear some of the -- some of what's coming in front
20 of you, some cases may be very non-controversial;
21 others can tug at your heartstrings.

22 And we want to make sure, not only that the
23 judgment isn't clouded, but that the ALJ is
24 understanding that who is in front of them is a
25 survivor. And they need to have that knowledge.

1 Are you providing any sort of trauma-informed
2 decision-making training?

3 D.C. MELISSA FRANCO: Are you talking to the
4 ALJ --

5 ASSEMBLYWOMAN CRUZ: Yes, for the ALJs.

6 D.C. MELISSA FRANCO: -- or the attorneys?
7 So we do do our yearly training.

8 The ALJs that we've had have been there for
9 several years. They have been dealing with all of
10 our cases where the victims are of discrimination.
11 Not only sexual harassment, but any kind of
12 discrimination is really personal.

13 But they do receive training.

14 Whether or not it's specific to trauma, I'm
15 not sure.

16 ASSEMBLYWOMAN CRUZ: Okay.

17 I would encourage you to do that, and
18 not just do it yearly. A yearly training for
19 three hours, it's not gonna to cut it.

20 I mean, I am assuming it's a short training,
21 but it's not going to cut it for a topic that's this
22 important to our community, and that truly is that
23 traumatic for all of the parties involved.

24 Does the City do anything like that?

25 D.C. DANA SUSSMAN: We are in touch with our

1 counterparts at OATH -- it's the office of
2 administrative trials and hearings -- for the city.

3 But we, as far as I'm aware, are not
4 providing them with training.

5 But I will take this recommendation back.

6 ASSEMBLYWOMAN CRUZ: Thank you.

7 Thank you.

8 ASSEMBLYMAN CRESPO: Senator Bailey.

9 SENATOR BAILEY: Thank you, Madam Chair, and
10 thank you to the Co-Chairs.

11 And thank you for coming before us today.

12 I have a couple of questions.

13 One is a brief comment and follow-up to
14 Senator Mayer's position.

15 I know you said you don't make recommendation
16 or legislation, but I would implore you to look at
17 Senate Print 24 -- 2874A, which establishes the
18 crime of sexual harassment.

19 That relates specifically to what
20 Senator Mayer was indicating about referrals or
21 indications to the district attorneys. It's
22 something that advanced with the Codes Committee
23 just a couple of weeks ago.

24 And I would ask that you take a serious look
25 into that, and how it would affect your roles and

1 what you're doing there.

2 That is by Senator Biaggi.

3 My main question is about demographics.

4 For the State: Do you aggregate data via
5 democrat -- via demographics?

6 D.C. MELISSA FRANCO: You speak so fast.

7 What?

8 SENATOR BAILEY: I'm sorry.

9 D.C. MELISSA FRANCO: When you say
10 "demographics," are you talking about the types of
11 cases we have? locations?

12 We have the ability to pull the data.

13 If you're talking demographics in terms of
14 locations, we can pull them from what our regional
15 office sees.

16 If you're talking about, we want to pull the
17 types of cases, like sexual harassment, or housing,
18 we can pull those kind of data as well.

19 SENATOR BAILEY: Let me be a little more
20 specific. I apologize.

21 Demographics related to race, gen -- not
22 gen -- race, gender, age, along those lines, do you
23 have -- do you aggregate data along those lines?

24 D.C. MELISSA FRANCO: Do we have any data
25 with us today? No.

1 But we do have the ability to pull that data.

2 SENATOR BAILEY: That would be very helpful.

3 And my final question is related to language
4 access.

5 Language access is huge in any context, but
6 especially in the context where people who are a
7 victim of sexual harassments, are -- they're already
8 scared, they're already fearful.

9 If English is not your first language,
10 I believe that would create another barrier to an
11 individual coming forth.

12 Is there any, like -- what is your agency --
13 are your agencies doing?

14 I heard it from the City in context about
15 having signs in English and Spanish.

16 But, in a city of 8 million people, in a
17 state of 19 million people, we are so diverse.

18 And as our workforce diversifies, we should
19 make sure that we are more in touch with the number
20 of languages that are -- that -- that are spoken in
21 the state.

22 Is -- what is being done in either agency
23 about that?

24 D.C. DANA SUSSMAN: Sure, I can address the
25 Spanish and English posters.

1 The legislation that was passed last year
2 mandates that all employers, even if you have one
3 employee, must post a notice of rights in English
4 and Spanish. That's the mandate.

5 And so we are sending those posters.

6 We've actually done business, walk-throughs,
7 where we're physically handing business owners the
8 posters in English and Spanish.

9 We've additionally translated that document
10 into the local law, 30 languages. So additional
11 languages are available on our website.

12 Just for the cost associated with mailing it
13 in so many languages, we couldn't do it by mail, but
14 we have them available on our website in upwards of
15 10 or 11 languages at this point.

16 In addition, at the commission, we speak
17 about 35 languages. That's up from six languages
18 when our commissioner started in 2015. For a
19 relatively small agency, that was a massive
20 priority, that we ensure we have as many languages
21 covered. It's not all.

22 And our commissioner is constantly trying to
23 up that number.

24 And, also, to reflect, not only linguistic
25 competency, but cultural competency, to ensure that

1 we are bringing in people to work at the commission
2 that reflect the communities that we serve.

3 So we've built positions around Muslim, Arab,
4 South Asian, lead advisor; an African communities'
5 lead advisor; a Jewish communities' liaison.

6 The list goes on.

7 A trans communities' leader.

8 So we take that mandate very seriously. We
9 could always do better.

10 If someone comes in that does not speak a
11 language of a staff member that's available to meet
12 with them in that moment, we obviously will use
13 LanguageLine, and we have contemporaneous telephonic
14 interpretation.

15 We know that that's not always the best, but,
16 again, we try to match people with someone on our
17 staff who speaks the language they speak.

18 ASSEMBLYMAN BUCHWALD: Certainly.

19 And to the State?

20 D.C. MELISSA FRANCO: With the State, we have
21 a language-access policy. That is our mandate. It
22 comes in at least eight different languages.

23 My understand -- I know that, when someone
24 comes into our office, the first thing they try to
25 do is figure out what language they are speaking.

1 If we don't have someone available, we do use
2 the language access line.

3 We do have available to us, any important
4 documents. Or, documents, if a complainant needs
5 something translated, we get that translated for
6 them as well.

7 In addition, our front-line staff, attorneys,
8 are trained in sensitivity, yearly. And we do have
9 discussions with our individual groups about it as
10 well.

11 ASSEMBLYMAN BUCHWALD: I remain concerned
12 about, again, individuals who are already speaking
13 about a very sensitive issue. And if they have to
14 wait any time further than that moment of urgency,
15 that moment of crisis, that they're facing.

16 In the event there is not a language that you
17 have in either a speaker in your office or an
18 individual that you can access via the language
19 line, how long would that process take to be able to
20 translate that document, and be able to at least put
21 that person who is complaining of sexual harassment
22 at a little bit of ease?

23 D.C. MELISSA FRANCO: I don't have an exact
24 date, but from experience, what we try to do, if
25 it's a language that's not so common, such as

1 Fukienese, and we had to find someone, we would work
2 around the complainant's schedule, and so, this way,
3 they're not sitting there; or perhaps the next day.

4 But we would work with an urgency because we
5 do realize this is a sensitive topic. They do want
6 to say what they want to, you know, express, and
7 file complaints.

8 So we try to work with a sense of urgency,
9 but an exact time frame, I can't give you.

10 I would hope that it's at least within a
11 week, if not shorter.

12 ASSEMBLYMAN BUCHWALD: Sure.

13 I would hope that it would be within
14 24 hours, which would be my hope.

15 Would an individual who has language issues,
16 would they be precluded or permitted to bring an
17 individual who was -- would be able to translate in
18 their native language?

19 D.C. MELISSA FRANCO: No, it would be
20 helpful.

21 But if it is a matter of an interpretation of
22 official document, or the signing under a jurat, we
23 would have an official interpreter.

24 ASSEMBLYMAN BUCHWALD: I guess I would have
25 just one more comment concerning the -- your -- the

1 demographic data that, hopefully, we'll be obtaining
2 soon.

3 I would implore you once again to -- as the
4 City has mentioned, going to certain communities
5 that may be at higher risk for harassment, that may
6 be -- that may have reported these incidences in --
7 in -- in more -- in greater frequency, and maybe
8 increase your outreach.

9 Because as Senator Biaggi questioned, the
10 outreach is appreciated, but it seems rather
11 nebulous as to what the nature of the outreach
12 actually is.

13 So, again, I would implore you to -- to --
14 continue to -- and I understand the cost
15 constraints, we all work in state government, I get
16 it. But we have to make sure that we are
17 communicating effectively to those individuals who
18 we want to make sure that we hear them.

19 So, I appreciate your time.

20 D.C. MELISSA FRANCO: If I may just follow
21 up, the demographics that you want, is that for
22 race, age, sexual-harassment cases?

23 Just so I -- or, how do you want that?

24 ASSEMBLYMAN BUCHWALD: I would appreciate
25 sexual-harassment data, yes.

1 D.C. GINA MARTINEZ: And I just -- thank you.

2 I just wanted to add, in terms of our
3 outreach, we do partner with other agencies and
4 community organizations.

5 For example, we've done outreach with the
6 Office of New Americans, for people that have newly
7 come to New York, just to make sure that they
8 understand their rights.

9 As I stated earlier, for individuals that may
10 not feel comfortable, because we are a state agency,
11 we do go work with the Office of New Americans to
12 let them know, when someone comes to their agency,
13 here, this is what you can do if you feel afraid,
14 you can call us, if you feel like you've been
15 discriminated against. If not, here are your rights
16 in case it does come up.

17 ASSEMBLYMAN BUCHWALD: Thank you very much.

18 D.C. GINA MARTINEZ: You're welcome.

19 ASSEMBLYMAN CRESPO: Assemblywoman Niou,
20 patiently waiting.

21 ASSEMBLYWOMAN NIOU: I know (indiscernible).
22 Hello.

23 So I -- I mean, I just wanted to say a couple
24 things before I start my questions.

25 But, I want to echo my colleagues, because

1 every single agency that comes before us to testify,
2 we hear from so many across different issues, right,
3 housing, finance, economic development, et cetera,
4 but they all give us recommendations on the
5 legislation that we have put forth, or speak to
6 them.

7 And so I just want to, you know, also echo
8 their shock.

9 I also want to address a couple of words that
10 you guys used.

11 I know you guys had that, you know, with the
12 statute of limitations, you know, one year, people
13 might have worse memories, or things might go stale,
14 or things aren't as fresh.

15 And I -- I -- I just wanted to address that
16 really quick, because, as a sexual-assault survivor
17 myself, I will say that it was over 20 years before
18 I could even speak up about it.

19 And there has not been a single moment that
20 I haven't lived with it. And, there's -- the
21 memories of it are -- are very fresh, and they won't
22 go stale.

23 I remember what he smells like. I remember
24 what he looked like. I remember the desk, and the
25 color that -- the color of the desk that I was

1 grabbing onto.

2 And -- and -- I -- I just want to -- I just
3 want to put that out there for you before we
4 continue.

5 And using that kind of language is hurtful
6 for the folks in the room.

7 Uhm -- so -- so, for some questions:

8 I also wanted to kind of touch base a little
9 bit on the doubling of the cases.

10 You know, you guys said that it was due to a
11 culture shift.

12 I mean, I personally use different language.
13 I call it the "end of systemic silence."

14 But I just -- I have -- I have a question on
15 why, then, the agencies are not proactive, instead
16 of just reactive, knowing that there are so many
17 folks who are silenced for so long?

18 D.C. DANA SUSSMAN: I think -- first of all,
19 thank you for centering us back to, really, the
20 heart of the issue, and for sharing.

21 I think, you know, the -- our commission has
22 taken this issue seriously from the very start of
23 our commissioner's leadership.

24 The case I cited in my testimony earlier was
25 the first order that our commissioner issued,

1 I worked with her on that order, where we issued the
2 highest civil penalties in the history of the
3 commission; the only time the commission has issued
4 civil penalties of \$250,000, which is the maximum
5 allowable.

6 And we were not sure if the State -- it was
7 appealed to state court. We were not sure if the
8 state court would affirm it.

9 And we waited three-plus years for that
10 decision -- not we -- the complainant had to wait
11 three-plus years for that decision.

12 But from that 2015 moment, to 2019 when that
13 decision was issued, #MeToo relaunched.

14 And it has not -- this is not a new issue, as
15 we know. This is not an issue that -- that sort of
16 reemerged as a problem. It's simply that people are
17 talk -- like you, and so many others, people are
18 talking about it.

19 And, you know, judges are humans too;
20 government folks are humans too.

21 And I don't know if #MeToo had an impact on
22 that judge's decision, but I'd like to think, in
23 maybe my naive way, that -- that -- the movement has
24 made an impact on the judiciary.

25 So, I guess to go back to your question, this

1 has been an issue, regardless of whether it's in the
2 public, it's the story of the day, or not.

3 And what I'm grateful for is that it
4 continues to be the story of the day, day after day.
5 This movement has not stopped.

6 It's -- and, so, you know, we have been
7 committed to this issue. It's one that we take
8 incredibly seriously, and have since the
9 commissioner's very start at our agency; and it will
10 continue to remain a focus.

11 D.C. MELISSA FRANCO: I would say, as for the
12 State, of course, more can always be done.

13 As I previously stated, what we have done
14 with the outreach, our new commissioner, she's now
15 with us for a month and a day, and she's made it
16 clear, our mandate is going to be, we're gonna get
17 out there into the public; we're going to educate,
18 we're going to let them know that we're here, and
19 how we could help.

20 But -- our position -- not our position --
21 but, you will be seeing more of the division under
22 this commissioner; she's going to make it her point.

23 ASSEMBLYWOMAN NIOU: Okay, so I guess, just
24 to follow up, three-plus years is a long time.

25 And then, also, with the numbers of the

1 three years that the statute of limitations for
2 going to court comes up, it brings me to another
3 question of: How -- how do you guys present all the
4 options to folks?

5 Like, how do you -- I mean, I kind of wonder
6 more, because I heard a little bit about how you
7 present, you know, the options to folks, but -- on
8 the City side.

9 But on the State side, how do folks even know
10 what their options are, and how do you guys present
11 them to them?

12 Because you're saying that you do when you're
13 are talking to folks.

14 But, is there an encouragement to do things
15 within the agency, or is there encouragement to go
16 to court?

17 Like, how does that -- how does that work?

18 Like, you guys can role-play if you want.

19 D.C. GINA MARTINEZ: I think -- well, when we
20 do -- or -- when we do an outreach, an education
21 event, we let people know what their rights are.
22 And then we let them know what the complaint process
23 is.

24 And, many times, we have an investigator at
25 the event, so that if someone actually wishes to

1 file a complaint on-site, they can.

2 We also have other additional staff there as
3 well.

4 And we listen to them right then and there.

5 And, depending on what they tell us, we give
6 them their options.

7 If they say, "Yeah, I want to talk to you
8 right now. I'm not ready to file right now," we'll
9 give them a complaint form, we'll give them our
10 literature, and we'll say, Take your time.

11 We ask them --

12 ASSEMBLYWOMAN NIOU: But when that happens,
13 do you -- do you tell them, Well, this is the
14 statute of limitations?

15 D.C. GINA MARTINEZ: Absolutely. And that's
16 actually what I was just going to say.

17 We ask them what the dates are, and we say,
18 Okay, well, this is what you're dealing with in
19 terms of your time frames. If you don't want to
20 file with us, this -- you know, this is the date
21 that you have. If it's ongoing, that's fine. If
22 it's something that --

23 Not that it's fine. I didn't mean it's fine.

24 ASSEMBLYWOMAN NIOU: (Indiscernible
25 cross-talking.)

1 D.C. GINA MARTINEZ: It's never fine.

2 But if it's a finite event, that someone was
3 discharged -- that's a finite event -- then we need
4 to use that date, for purposes of the statute of
5 limitations and purposes of filing.

6 And we let them know that they can also go to
7 court, and, you know, we have to use that date for
8 the three-year mark.

9 We give them the information up front so that
10 they're armed with the knowledge.

11 If they need to go home and think about it or
12 talk to someone else, they can do that.

13 We give them our contact information as well.

14 ASSEMBLYWOMAN NIOU: Can you tell me what
15 kind of language you guys use, though?

16 That's -- I want -- I want specifics.

17 I mean, I wasn't kidding about the role-play.

18 Like, can you just let me know, like, how --
19 what kind of language you would use at one of those
20 events, if somebody -- if I was to say, you know,
21 Something's happening with me at work. I want to
22 see if I could file a complaint. I want to know
23 what my rights are. Can you let me know?

24 D.C. GINA MARTINEZ: Go ahead.

25 D.C. MELISSA FRANCO: Oh, I thought you were

1 going to play the -- okay.

2 I was at work. Uhm, you know, I just came
3 from work. Several things are happening to me that
4 I'm not necessarily comfortable about talking. But
5 I need to speak to somebody about it.

6 D.C. GINA MARTINEZ: Okay. It's very brave
7 of you to come to us today. I'm glad you came.
8 Let's talk about it.

9 Do you want to tell me a little bit more
10 about what happened?

11 Did this happen today?

12 D.C. MELISSA FRANCO: No, it's been ongoing
13 for a while, and it's been, my colleagues, my male
14 colleagues, have been making me feel uncomfortable
15 by doing certain acts.

16 D.C. GINA MARTINEZ: Okay. Are you
17 interested in filing a complaint, taking formal
18 action? Have you spoken to someone else about this
19 yet?

20 D.C. MELISSA FRANCO: No, I haven't spoken to
21 anyone else about it, but I'd like to speak to you,
22 and here's what happened.

23 Just, I'll -- just assume that I told her
24 everything that happens, please.

25 D.C. GINA MARTINEZ: Okay. What I can do is,

1 I can talk to you about your options.

2 So you can file a formal complaint with the
3 division of human rights, and we can actually
4 conduct a formal investigation, and we can talk to
5 witnesses if you have witnesses. We can help to
6 stop the bad actor and the uncomfortable harassment.

7 D.C. MELISSA FRANCO: Do I have any other
8 options?

9 D.C. GINA MARTINEZ: You can also file
10 a formal complaint in state court. You have
11 three years to do that as well.

12 D.C. MELISSA FRANCO: Will that cost money,
13 do I need an attorney?

14 D.C. GINA MARTINEZ: With the division of
15 human rights, you don't need an attorney to file a
16 complaint with us. You don't need an attorney in
17 state court. But we can also put you in touch with
18 agencies where you can find an attorney.

19 ASSEMBLYWOMAN NIOU: Okay. Thank you for
20 that, and thank you for taking the time to do that.

21 Potentially, I mean, this is for the City and
22 the State, can the process, internally, delay, and
23 the -- and the use of the process, internally, can
24 that potentially delay or be used against victims,
25 you know, when they -- if they want to go to court,

1 in the end?

2 Could it potentially be used against them to
3 meet that statute of limitations of three years?

4 D.C. DANA SUSSMAN: I'll have to get back to
5 you specifically.

6 But it's my understanding that, as
7 I mentioned earlier, if you file with the
8 commission, you still have the opportunity to go to
9 state or federal court, because we, essentially,
10 (indiscernible) jurisdictional can cross-file with
11 the EEOC. So we're preserving your federal claims
12 as well, up to a certain point in the process.

13 So if we make a determination on your case,
14 you've, essentially, chosen your venue with the
15 commission.

16 The time that it stays with the commission
17 during that process I think may count against that
18 three-year period.

19 And I just want to clarify that, at the
20 commission, for gender-based harassment claims, you
21 have three years to come to the commission, just
22 like you would if you were going to state court.

23 And what we found, again -- this is anecdotal
24 from our law enforcement bureau -- that the
25 three-year extension has been useful. People have

1 been coming forward in that sort of 1-year to 2 1/2,
2 3-year period.

3 Recog -- and this was one of the legis --
4 pieces of legislation that we were supportive of at
5 the City level, in recognition of how long it takes
6 people to leave that situation, understand their
7 options, come to terms with it, decide what they
8 want to do.

9 And so that's been a successful amendment to
10 our law, from our perspective.

11 ASSEMBLYWOMAN NIOU: Okay.

12 D.C. MELISSA FRANCO: I'm not sure of the
13 answer, but I can get that for you.

14 ASSEMBLYWOMAN NIOU: Could you?

15 Because I kind of -- I kind of wonder,
16 because of the fact that, you know, just -- as we're
17 hearing, that some of the cases take so long.

18 And -- I mean, when -- when -- sometimes it
19 should take longer, and that's why I think a lot of
20 my colleagues are asking about the statutes, and
21 what we should be looking at, because I know that
22 you guys used, in your testimony, the words were,
23 I believe, "efficient and effective investigation."

24 And I just -- I sometimes I just -- I worry
25 that -- that -- that it means something else; that

1 it means that it's quick and they want to stop them.

2 And so I -- I -- I wonder, you know, same as
3 my colleagues on that.

4 And I also wonder, you know, is it DHR's job
5 to also train all of the other state agencies on how
6 to deal with these issues within their agencies?

7 D.C. MELISSA FRANCO: I know that DHR, in the
8 training that is given to all state agencies, I know
9 that, on sexual harassment, DHR took the lead in
10 drafting that training.

11 Perhaps the witness who comes after me could
12 tell you more about it, but I know that DHR has
13 participated.

14 And if any other -- we have worked with DHCR
15 in the cross-training.

16 So if any other agency asked us to come in
17 and help, DHR would.

18 ASSEMBLYWOMAN NIOU: So when something
19 happens, say, for example, at the MTA, do they --
20 do -- should people be filing with you, or should
21 they be filing with the MTA?

22 D.C. MELISSA FRANCO: They could file with
23 us.

24 ASSEMBLYWOMAN NIOU: But do they usually file
25 with the MTA?

1 D.C. MELISSA FRANCO: What they usually do,
2 I don't know.

3 I know that we do get cases from the MTA, by
4 employees.

5 ASSEMBLYWOMAN NIOU: So do you think that
6 maybe there should be some research, or, could you
7 guys get me that answer on how many people file with
8 the MTA rather than file with you, and if they have
9 an internal process, et cetera?

10 Like, I mean, with all the state agencies,
11 I kind of wonder because, we've heard, I've
12 personally heard, a lot of different stories with
13 different state agencies, where the internal process
14 within an agency, there's promises made, obviously,
15 or, like, people are, like, saying, Oh, you don't
16 have to go and report to this place or that place,
17 or you don't have to go to court. We can handle it
18 here. We promise it will be taken care of.

19 And, instead, it takes years and years and
20 years, statute of limitations runs out, and, on top
21 of that, they get nothing, and they get no closure,
22 no resolutions. And people end up being take -- you
23 know, fired, et cetera.

24 D.C. MELISSA FRANCO: Okay, we'll do our best
25 to get that.

1 ASSEMBLYWOMAN NIOU: Yeah, and I also want to
2 know the percentage of complainants that have
3 already been fired when they come to you, and what
4 percentage are current employees, unless you guys
5 have that?

6 D.C. MELISSA FRANCO: No, I believe that was
7 the same questions as Ms. Simon, as to the
8 percentage that come to us already fired.

9 That, I'm going to -- we're going to try and
10 get the answer for that as well.

11 ASSEMBLYWOMAN NIOU: And is there a
12 difference in how you guys handle certain cases when
13 an employee is a member of more than one protected
14 class?

15 Like, a transgender, older, African-American
16 woman?

17 D.C. DANA SUSSMAN: We -- so we assess the
18 facts of the case. And at the complaint-filing
19 stage, we will -- you know, again, we interpret our
20 law quite broadly and protections broadly.

21 So we will, in an effort to ensure that we
22 are as inclusive as possible of the potential
23 violations of the law, we will likely add as many
24 protected categories as we think appropriate, based
25 on the experience of that person.

1 So it could be race and gender and age and
2 disability.

3 And, in fact, we do see a lot of cases where
4 we've got multiple intersecting violations.

5 So, you know, women of color are particularly
6 vulnerable. Undocumented people are particularly
7 vulnerable. Young -- younger employees. LGBTQ
8 employees.

9 So we -- we will "charge," is what the
10 language is, we will charge multiple protected
11 categories in the complaint to ensure that we're
12 capturing the behavior.

13 And if, as we -- as we do the violation, some
14 of those may drop out because it might -- you know,
15 the claim may not be as broad or as all-encompassing
16 as we had originally understood, and that's okay.
17 But we want to make sure that we capture it all at
18 the outset.

19 D.C. GINA MARTINEZ: The same -- the same for
20 the State.

21 In terms of the way we conduct the
22 investigation, it's the same across all bases in
23 filings. We do a thorough investigation, despite
24 how many bases, protected classes, we include.

25 ASSEMBLYWOMAN NIOU: Okay, I appreciate that.

1 Thank you.

2 And one last question, and I know I'm taking
3 up so much time, and I have a lot more, but I'm
4 going to defer to my colleagues.

5 But -- so on -- on the state level, I mean,
6 I was a staffer. I also, you know, have a lot of
7 friends across the board on -- you know, who are
8 lobbyists or advocates, et cetera.

9 And I just kind of wonder, you know, you had
10 mentioned that employers can be held liable for --
11 under the Human Rights Law, to non-employees
12 performing work in the workplace, et cetera, on the
13 State side.

14 In -- in our -- in our workplace, can members
15 of the LCA also report to DHR?

16 D.C. MELISSA FRANCO: I'm sorry, "LCA"?

17 ASSEMBLYWOMAN NIOU: Yeah, that's the --
18 that's the -- the legislative correspondents.

19 D.C. MELISSA FRANCO: Yes. We have
20 jurisdiction over legislative members, yes.

21 ASSEMBLYWOMAN NIOU: No, no. The
22 correspondents, like, news --

23 D.C. MELISSA FRANCO: Oh, (indiscernible
24 cross-talking) --

25 ASSEMBLYWOMAN NIOU: -- news folks, yeah, the

1 press?

2 D.C. MELISSA FRANCO: Yes, they can file.

3 ASSEMBLYWOMAN NIOU: So they're supposed to
4 file with you, or they're supposed to file somewhere
5 else?

6 Because they have their own bosses,
7 et cetera, in their newspaper (indiscernible).

8 D.C. MELISSA FRANCO: If you could just give
9 me an example of what you're saying, maybe I'll
10 understand better.

11 ASSEMBLYWOMAN NIOU: So, uhm -- so, you know,
12 there's a couple of young people in the pressroom
13 that have told me that certain things have happened
14 with certain people.

15 Like, how do -- where do they go to file, and
16 do they file with you?

17 D.C. GINA MARTINEZ: We have jurisdiction
18 over public- and private-sector employees, so they
19 can file with us.

20 ASSEMBLYWOMAN NIOU: So should they be filing
21 with you?

22 D.C. GINA MARTINEZ: Yes, absolutely.

23 ASSEMBLYWOMAN NIOU: So they should be?

24 That's like the -- what they're -- where they
25 should go?

1 D.C. GINA MARTINEZ: Yes.

2 ASSEMBLYWOMAN NIOU: Okay.

3 D.C. GINA MARTINEZ: Yes.

4 D.C. DANA SUSSMAN: Just to clarify, is the
5 question around, they're experiencing harassment by
6 their supervisors, or by other -- in -- with -- with
7 respect to different, sort of like, organizational
8 relationships?

9 ASSEMBLYWOMAN NIOU: It could be
10 organizational, it could be within the pressroom, it
11 could be within the Legislature, it could be within
12 staff.

13 I don't.

14 But I'm just saying, like, for example,
15 within -- we have a lot of different roles in the
16 Legislature, for example. There's a lot of
17 different folks working around each other.

18 You know, so what happens when there's
19 somebody from organizations or from corporations
20 that are not within our body, like, there's
21 something that happens to them, where should they
22 file?

23 That was the question.

24 D.C. GINA MARTINEZ: Yeah, I would -- I would
25 advise them to file with us. Like I said, we don't

1 turn anyone away.

2 And if it's not something under our
3 jurisdiction, we would advise them where to go.

4 ASSEMBLYWOMAN NIOU: Would that be under your
5 jurisdiction, I guess?

6 D.C. GINA MARTINEZ: I'd have to hear the
7 facts of the case first, yeah.

8 ASSEMBLYWOMAN NIOU: So, for -- I mean,
9 (indiscernible) -- so, for example, a person who is
10 in the pressroom, and, something happened to them
11 with, say, you know, another press person within the
12 LCA.

13 ASSEMBLYMAN BUCHWALD: Different employer.

14 ASSEMBLYWOMAN NIOU: Different employers,
15 different newspapers.

16 D.C. GINA MARTINEZ: When did this happen?

17 ASSEMBLYWOMAN NIOU: I don't know.

18 [Laughter.]

19 ASSEMBLYWOMAN NIOU: I don't know.

20 D.C. DANA SUSSMAN: So, if I can jump in, if
21 this happened within New York City --

22 ASSEMBLYWOMAN NIOU: Yeah, within New York
23 (indiscernible).

24 D.C. DANA SUSSMAN: -- uhm -- the -- uhm --
25 so employers are responsible to protect their

1 employees from discrimination or harassment,
2 based -- even when it's conducted by non-employees,
3 when they're aware of the conduct, and, essentially,
4 have acquiesced in the conduct.

5 So that would -- that would happen in the
6 context of, a customer at a restaurant, who
7 regularly harasses a server, or, you know, one press
8 outlet and another press outlet, and the employer of
9 the person who is being harassed knows that this is
10 happening and doesn't do anything about it.

11 So we interpret our law, and the standards of
12 liability require, that, if you are aware that your
13 employee is experiencing harassment or
14 discrimination, based on any of our protected
15 categories, by a non-employee; by a client, a
16 customer, a vendor, an independent contractor, you
17 are obligated to intervene, and, if you don't, you
18 could be liable.

19 D.C. GINA MARTINEZ: And that's the same for
20 us.

21 ASSEMBLYWOMAN NIOU: Uhm -- so, I mean,
22 I just wondered if it would be helpful, since we go
23 through orientation, our staff go through
24 orientation, like, people who work around us, should
25 they go through orientation? Should there be some

1 kind of training?

2 We have ethics training, but...

3 D.C. GINA MARTINEZ: I think the more that a
4 person is trained and knows their rights, and the
5 law, the better off everyone is.

6 Yes, absolutely.

7 ASSEMBLYWOMAN NIOU: Is there any suggestions
8 on that?

9 D.C. DANA SUSSMAN: Well, I mean, I think I'm
10 outside of my purview, geographically.

11 But, you know, the commission does free
12 in-person trainings. We have our online training
13 now as well.

14 Anywhere within the five boroughs we will go,
15 and we will train people on their rights or their
16 obligations under the City Human Rights Law.

17 ASSEMBLYWOMAN NIOU: Thank you.

18 D.C. MELISSA FRANCO: Thank you.

19 SENATOR BIAGGI: Senator Skoufis.

20 SENATOR SKOUFIS: Thanks very much,
21 Madam Chair, and thanks for your leadership on this,
22 and my fellow Co-Chairs.

23 I thank you for your testimony today, and
24 your willingness to answer questions.

25 I have a number of questions about, building

1 off of some of my colleagues, sort of the
2 legislative role of the division, and these
3 questions are for the State, pardon me.

4 But first I want to ask a parochial question,
5 if I may.

6 So I pulled up your website when you
7 mentioned the regional offices that you have in the
8 division, to see where they are.

9 It was news to me that you had regional
10 offices.

11 So, correct me if I'm wrong, but it looks
12 like you have three in New York City, two in
13 Long Island, one in White Plains, one in Albany.

14 And then there are two, sort of, enormous
15 swaths of the state where you do not have any
16 physical presence:

17 One, which I don't represent, so I'm not
18 going to speak about, is in the North Country, where
19 there is no presence at all in the entire
20 north-of-Albany area.

21 And there's zero presence in the Mid-Hudson
22 Valley, you know, which I think is larger than the
23 size of Connecticut.

24 So that's concerning to me.

25 And I don't know if I have a question

1 associated with this, but feel free to respond if
2 you'd like.

3 But, you know, I do encourage you to please
4 consider that fact, that, you know, you have this
5 enormous Hudson Valley Region, basically, north of
6 White Plains, in between White Plains and Albany,
7 that has no presence.

8 D.C. GINA MARTINEZ: Thank you for that.

9 I had mentioned earlier that, you know, part
10 of my wish list was additional regional offices.

11 We do have memorandum of understanding with
12 other local human-resources commissions -- sorry,
13 local human rights commissions, and relationships
14 with local human rights commissions around the
15 state.

16 We are actually going to be conducting an
17 outreach event with the Orange County Human Rights
18 Commission very soon.

19 So we do, despite us not having actual
20 offices, DHR offices, in those areas, we do work
21 with the local offices, to make our presence known.
22 And we also do receive complaints from the local
23 offices around the country.

24 But I do appreciate that.

25 And as I stated, I would love additional

1 resources to open more offices.

2 SENATOR SKOUFIS: Okay, thank you.

3 D.C. GINA MARTINEZ: Thank you.

4 SENATOR SKOUFIS: You know, you made it clear
5 that you two, as deputy commissioners, don't have
6 the authority, by the sounds of it, to weigh in on
7 the legislative proposals that we're all discussing
8 here, that we're certainly discussing, the
9 Legislature.

10 Do you believe the acting commissioner would
11 have the authority, if she were here, to weigh in on
12 the division's position?

13 D.C. MELISSA FRANCO: I don't know if she'd
14 have the authority; but, more so, I don't know if
15 she'd have the knowledge yet, since she just -- she
16 just started a month ago.

17 And, she's incredibly bright and smart --

18 SENATOR SKOUFIS: Yeah, no, I'm not speaking
19 specific to the individual.

20 I'm speaking specific to the position in the
21 division.

22 Does the commissioner, by virtue of the
23 position, you know, have the wherewithal and the
24 authority to, you know, answer us in a way that you
25 can't vis-a-vis these bills?

1 D.C. GINA MARTINEZ: I can say that she would
2 probably have more authority than we do to speak on
3 certain questions that you haven't gotten an answer
4 from us on, yes.

5 SENATOR SKOUFIS: Okay.

6 You've made it clear -- similarly, you've
7 made it clear that, while you're aware, you're not
8 familiar with the program-bill process within the
9 division.

10 Is the commissioner typically familiar with
11 that process?

12 D.C. GINA MARTINEZ: I can't say with
13 certainty if she's familiar with that process
14 because I'm not involved in the process.

15 SENATOR SKOUFIS: Okay.

16 It's commonplace, when we in the Legislature
17 pass bills that touch on either agency operations or
18 an agency's purview, that, while the bill is
19 pending, and the governor has yet to sign or veto a
20 bill, the executive chamber will reach out to that
21 agency for a recommendation as to whether to sign or
22 veto that particular bill.

23 Does that -- do you know if that happens with
24 the division, when there are bills that pass the
25 Legislature, does the executive chamber reach out to

1 the division for a recommendation?

2 D.C. MELISSA FRANCO: (Indiscernible)

3 Senator Biaggi today, that there is communications.

4 However, as to anything particular to DHR on
5 that, I don't know. I'm not privy to those
6 conversations.

7 SENATOR SKOUFIS: Do you suspect that if any
8 or all of the bills in the package that have been
9 proposed here, pass, do you expect, or suspect, that
10 the executive chamber would reach out to the
11 division for a recommendation as to whether to sign
12 or veto those bills?

13 D.C. MELISSA FRANCO: Again, not being not
14 familiar with the procedures, I really can't give an
15 answer, but it sounds like they will be reaching
16 out.

17 SENATOR SKOUFIS: Okay.

18 So it sound -- if, indeed, that is what
19 happens, the division will have a position on these
20 bills.

21 But it just so happens, at least till now,
22 the position won't be helpful to us in the
23 Legislature as we consider whether to pass the
24 bills. It will exclusively be helpful to the
25 Governor as to whether to sign or veto the bills.

1 So it doesn't seem like it's a matter of
2 whether the division is comfortable taking a
3 position; it's a matter of timing.

4 And I would encourage you to go back to the
5 commissioner and your higher-ups, and accelerate
6 that timing.

7 Now, if I may ask, in light of these
8 questions, can I ask where the commissioner is
9 today, the acting commissioner?

10 And, no, I understand, if there was a family
11 emergency, or something came up.

12 Is there a reason she is not here?

13 D.C. GINA MARTINEZ: I am not aware of where
14 she is today.

15 D.C. MELISSA FRANCO: I came straight from
16 home, so I don't know. She may be at the office.

17 SENATOR SKOUFIS: Where's the office?

18 D.C. MELISSA FRANCO: It's in The Bronx. And
19 I come from Brooklyn.

20 SENATOR SKOUFIS: Okay.

21 All right. That's all I have.

22 I look forward to taking up, as Chair of the
23 Government Operations Committee, the acting
24 commissioner's nomination.

25 Thanks.

1 ASSEMBLYMAN CRESPO: Assemblyman Epstein.

2 ASSEMBLYMAN EPSTEIN: Thank you all for being
3 here for so long. I really do appreciate all your
4 time.

5 I wanted to go back to the conversation about
6 nondisclosure agreements, and the usefulness of them
7 for complainants.

8 I'm wondering what, both, on the City and
9 State level, how you feel about them, and whether
10 they've exceeded their useful life, in regards to
11 ongoing issues of harassment, and NDAs really
12 covering that up as a strategy?

13 D.C. DANA SUSSMAN: I think -- you know, from
14 my perspective, I'm a former employment lawyer,
15 representing plaintiffs, and I think that it's a
16 real -- there's a real challenge here.

17 I think some people really do want to resolve
18 cases quietly, and move on.

19 And, in some circumstances, there are workers
20 who have leverage in that, and they will bargain
21 that. And that is something that happens in
22 negotiations; that is, I'm talking outside of the
23 commission process.

24 On the other side, the systemic silencing of
25 victims is something -- and survivors, is something

1 that I think we are all, you know, coming to terms
2 with, and thinking about whether this is sort of, we
3 need to really shift the paradigm around how
4 these -- how we have these conversations, how these
5 settlements are negotiated.

6 And so I think, whenever proposals are made
7 around monitoring of nondisclosures or eliminating
8 them, I think there is a balancing, or at least a
9 recognition, that, in some -- in some context,
10 people -- it -- it -- it could potentially remove
11 some -- some leverage, for lack of a better word,
12 for plaintiffs when they're seeking to resolve cases
13 more expeditiously or quietly.

14 I'm not taking any position one way or the
15 other.

16 I'm just acknowledging that that is a
17 consideration as we think about nondisclosures.

18 From the City perspective, it is not -- it is
19 our position that it is not in the public interest
20 to ever include nondisclosure agreements in
21 conciliations that the City is a party to, for that
22 exact reason; that public disclosure and information
23 is vital.

24 But -- so I'm just putting out there, that
25 I think that this is quite a complex issue, and I'm

1 glad that we're having this conversation.

2 D.C. GINA MARTINEZ: I have to agree with
3 that.

4 And I'm also very satisfied that, you know,
5 with the new law from last year, that it's the
6 complainant's preference; they're given that power
7 to decide if they want it. You know, it's not
8 something where the respondent can say, you have to
9 put it in.

10 You know, they're using that as some kind of
11 leverage.

12 So, I'm glad that the complainants are given
13 that option, and it's only the complainant's
14 preference.

15 The respondent can bring it up, but it's only
16 up to the complainant to make that decision.

17 So that makes me happy.

18 ASSEMBLYMAN EPSTEIN: But don't you think
19 sometimes respondents have bargaining power in that
20 conversation, and want to use the NDA as a leverage
21 tool to get to that agreement?

22 D.C. GINA MARTINEZ: I think they, yeah,
23 respondents definitely do.

24 But, when we're a party to those agreements,
25 we have to make sure that the complainants want to

1 be, or are satisfied with all of the provisions of
2 the settlement agreement.

3 Absolutely, they try with the bargaining
4 power.

5 ASSEMBLYMAN EPSTEIN: And have you seen
6 situations where that's the reason that a settlement
7 agreement falls apart, is the failure for a
8 complainant to want to sign an NDA?

9 D.C. MELISSA FRANCO: I have not.

10 I could find out from the attorneys who
11 handle the case, where they do.

12 But, personally, I have not.

13 ASSEMBLYMAN EPSTEIN: Yeah, it would be good
14 to know how often this comes up where a complainant
15 doesn't want to sign the NDA, and it's in a
16 situation where the settlement will fall apart
17 without the signing of an NDA.

18 So this issue about, going back to statute of
19 limitations as well, you know, obviously, we've
20 heard a lot, especially around abuse situations
21 in -- you know, in faith-based institutions, a lot
22 around people becoming much aware of the abuse, and
23 really come to terms with it, especially with
24 someone who is a leader, like a faith leader or a
25 mentor. And, really, it takes a long time for

1 people to get to that space where they can really
2 process it. Lots of people, you know, we know are
3 in therapy.

4 I'm wondering if, based on more information
5 we have right now, we really need to relook at the
6 statute of limitations, based on a whole host of
7 information, realizing that the victim, who is
8 really likely to be in a, you know, powerless
9 position against the victimizer, really suppresses
10 the information, and it does takes extended periods
11 of time?

12 D.C. DANA SUSSMAN: So as the agency that's
13 now implementing a longer statute of limitations,
14 specifically for gender-based harassment claims and
15 employment, I think that that was the recognition,
16 that this -- while -- you know, that is not to
17 minimize the trauma of all the other forms of
18 discrimination, so I want to be clear about that.

19 And -- and -- we are thinking about this as
20 sort of a first-in-time process, so that, you know,
21 we're -- we've now implemented extended statute of
22 limitations in this area.

23 And I think it's a continuing conversation
24 around maybe moving up every other protected
25 category to that same extension, or that same new

1 reality.

2 But I think that, again, because of the
3 bravery and the courage of so many people here
4 today, we have a renewed recognition that one year
5 to file with the commission was just insufficient
6 for these kinds of claims.

7 And I think a broader conversation around
8 bringing in other kinds of claims into that
9 extension is well worth having.

10 But, you know, as my colleagues mentioned,
11 the truth of the matter is, the broader you make the
12 statute of limitations, the more cases we will get.

13 We are getting more cases, just as we -- as
14 we brought in the categories of protected
15 categories.

16 And so we really want to ensure that there
17 are resources; that it's met with these broadened --
18 our broadened powers and jurisdiction mean more
19 cases, and that could mean longer processing times.

20 That's just the reality, and a challenge that
21 we face.

22 ASSEMBLYMAN EPSTEIN: And that -- and, again,
23 that will be our job, to ensure there are additional
24 resources.

25 But just to hear from the State on that

1 issue.

2 D.C. MELISSA FRANCO: Sorry, in terms of the
3 statute of limitations, could you repeat that
4 question?

5 I got caught up (indiscernible
6 cross-talking).

7 ASSEMBLYMAN EPSTEIN: Yeah, I just -- just --
8 we -- you know, we were just talking a lot about
9 abuse and, you know, sexual assaults, in the context
10 of religious institutions, we've seen extending of
11 the statute of limitations because it takes a long
12 time to -- especially with someone who's in a
13 position of power or a mentor or a religious leader,
14 for people to be able to process that abuse.

15 And in some -- you know, multiple years, in
16 some situations, we've seen people take decades,
17 especially when they're younger and dealing with
18 someone who's in that position of power.

19 Is it really a time to really look at these
20 statute of limitations and think about this in that
21 context, knowing all the trauma that people are
22 experiencing?

23 D.C. MELISSA FRANCO: I mean, it's awful.
24 I know people who have been subjected to it.

25 And to hear that your claim can't brought is

1 heartbreaking.

2 That being said, if it's changed, we'll
3 enforce it. That's what I can say on it.

4 I mean, it's awful.

5 ASSEMBLYMAN EPSTEIN: Thank you.

6 Just one more question, if I can,
7 I appreciate that.

8 So, I know we've talked about, that statute
9 of limitation runs from the last, you know...

10 D.C. GINA MARTINEZ: Date of
11 discrimination --

12 ASSEMBLYMAN EPSTEIN: ...the day of
13 discrimination.

14 D.C. GINA MARTINEZ: -- alleged
15 (indiscernible cross-talking).

16 ASSEMBLYMAN EPSTEIN: But people in power
17 positions have ongoing power against people. You
18 know, someone who's a former employer can be a
19 reference for years, and that -- hold that, or,
20 reputational interests.

21 I mean, how do you view that, someone who can
22 use their power and privilege against someone to --
23 you know, is that an ongoing abuse?

24 Because you can say, well, if you disclose
25 this, I'm going to tarnish your name. I'm not

1 provide good reference.

2 And, how does that play out in that
3 conversation?

4 D.C. DANA SUSSMAN: So, unfortunately, the
5 stand -- or, the statutory framework under the City
6 law is, employee or applicant, essentially. So it
7 does require that relationship.

8 I think, when that relationship ends, it's
9 likely that that would be the last adverse action in
10 the employment context.

11 There may be other torts, potentially, around
12 reputational harm or intentional infliction of
13 emotional distress, or other causes of action.

14 But, from my understanding, and maybe there
15 is area for case law to develop, or other, you know,
16 ways to get at this issue, that the statute assumes,
17 essentially, that employee-employer relationship or
18 applicant-employer relationship.

19 D.C. GINA MARTINEZ: It's basically the same,
20 when the employer-employee relationship terminates,
21 I think the ability to file terminates.

22 ASSEMBLYMAN EPSTEIN: Thank you, all.

23 And thank you both, for the Assembly and the
24 Senate Chairs, for your leadership here.

25 Thank you.

1 ASSEMBLYMAN CRESPO: Assemblywoman Rosenthal.

2 ASSEMBLYWOMAN ROSENTHAL: (Microphone off.)

3 Okay, can you hear me?

4 Sort of?

5 Okay.

6 Thanks for being here.

7 I just have a couple of questions.

8 Do you record the interviews you conduct with
9 people who come forward?

10 (Microphone on.)

11 ASSEMBLYWOMAN ROSENTHAL: Oh, thank you.

12 Do you record interviews?

13 D.C. GINA MARTINEZ: No, we do not.

14 ASSEMBLYWOMAN ROSENTHAL: (Microphone off.)

15 Do you think you -- what is your view on that
16 policy?

17 D.C. GINA MARTINEZ: It's not our policy to
18 record interviews.

19 ASSEMBLYWOMAN ROSENTHAL: Right, do you think
20 that's the right policy, or not?

21 D.C. MELISSA FRANCO: I mean, it's -- if I
22 take it from -- back to my litigation days, you
23 know, the issue with recording any statement is, is,
24 perhaps, you know, you really are locking your
25 witness in to the statement. And if they are to

1 take the stand, it becomes a matter of
2 cross-examination, not only if they're different,
3 but about things they didn't say.

4 So I, potentially, could see an issue, as a
5 former litigator, being that way. But it's just not
6 our policy to record the witnesses.

7 ASSEMBLYWOMAN ROSENTHAL: And the City as
8 well?

9 D.C. DANA SUSSMAN: I will have to confirm
10 the practices with our deputy commissioner for law
11 enforcement.

12 I can get back to you on that.

13 ASSEMBLYWOMAN ROSENTHAL: Okay, great.

14 You mentioned 8 languages, and 45 languages.

15 What -- what do you -- how do you treat
16 people who are hearing- and visually-impaired?

17 D.C. DANA SUSSMAN: So we have systems in
18 place where we can do video conferencing, bring in
19 ASL interpreters.

20 We have looped rooms, with a hearing loop.

21 And we do have, I believe, on staff at least
22 one staff person who is ASL-fluent.

23 So we have accommodations that we make, so
24 that, in real time, people are able to file with us.

25 And, again, if we -- we will call -- we will

1 screen folks on the phone, or however they reach us,
2 either via e-mail or on the phone or in person, and
3 make those accommodations available for that initial
4 interview so that there's no delay.

5 ASSEMBLYWOMAN ROSENTHAL: Okay. And
6 sometimes ASL is not enough.

7 So do you -- how do you treat people who --
8 for whom that is not enough?

9 D.C. DANA SUSSMAN: What we will do on the
10 call, on the intake call, which is, typically, about
11 a 5- to 15-minute screening call, before they will,
12 either, come in to meet with an attorney, or, set up
13 a call -- a subsequent call to speak with an
14 attorney if they are unable to come to the office,
15 we will identify any accommodations that they need.

16 And we have contracts with providers of
17 accommodations, whether it -- whatever -- whether
18 it's CART services, an interpreter, or any other
19 need for that person, we will make that available to
20 them for their -- for whatever they are meeting with
21 our attorneys.

22 ASSEMBLYWOMAN ROSENTHAL: Okay.

23 And did you mention, visually-impaired, what
24 you do for them?

25 D.C. DANA SUSSMAN: So we have trained staff

1 who can work with people who -- if they are -- if
2 they choose, or are unable to come into the office,
3 for an interview, which is our typical practice,
4 they -- we will -- we can do it over the phone. We
5 can do it by video conference if that's a
6 preference.

7 And then, you know, if they do come to meet
8 with us one-on-one, we can work with them. And we
9 have disability-rights specialists who we work with.

10 Whether the claim relates to the disability
11 or not, we ensure that they are given the same
12 access to resources and to attorney time and
13 everything else as any other person.

14 ASSEMBLYWOMAN ROSENTHAL: (Microphone on.)

15 Have you had such cases?

16 D.C. DANA SUSSMAN: I can say with almost
17 certain confidence that we have.

18 I don't have the numbers with me today, but
19 I'm happy to check back in.

20 ASSEMBLYWOMAN ROSENTHAL: Okay. Thank you.

21 What about the State, same question?

22 D.C. MELISSA FRANCO: Very similar.

23 If it's a hearing-impaired, we make sure we
24 have the translators.

25 Our website is also accessible for both.

1 If they're visually-impaired, we have video
2 conferencing. We have the telephonic conferences.
3 We can go visit them.

4 Very similar to the City as well.

5 ASSEMBLYWOMAN ROSENTHAL: Okay. And have you
6 had cases?

7 D.C. MELISSA FRANCO: I'm trying to think, in
8 particular, it would be the hearing side of it.

9 I believe we have had the hearing-impaired,
10 and we have brought in a tran -- a sign-language
11 interpreter. I'm sorry.

12 ASSEMBLYWOMAN ROSENTHAL: And --

13 D.C. MELISSA FRANCO: I can find out if --
14 more data, if you'd like.

15 ASSEMBLYWOMAN ROSENTHAL: -- okay, that would
16 be great.

17 I apologize if this was addressed earlier.

18 Do you have interns from various legislators,
19 agencies, do they file with you? Do they know to
20 file with you? Have they filed with you?

21 On both levels.

22 D.C. MELISSA FRANCO: We do have
23 jurisdictions over interns.

24 In our education, and whenever we go out to
25 our conferences, where we're actually meeting

1 interns and, potentially, bringing them on, we bring
2 all our literature to all the different places we
3 go.

4 When we hold events at the different schools,
5 such as New York Law School, or Touro Law School, or
6 different colleges, we bring all of that out to try
7 and make the interns aware.

8 But we do have jurisdiction over interns.

9 ASSEMBLYWOMAN ROSENTHAL: But -- because --
10 and I have legislation on this:

11 If there's a college student, and he or she
12 goes to work at a private corporation, they are
13 usually not trained.

14 How would they even know to come to speak
15 with you?

16 D.C. MELISSA FRANCO: I guess it would be a
17 matter of looking at our website, but we have to do
18 more education and outreach to let the colleges
19 know.

20 ASSEMBLYWOMAN ROSENTHAL: But -- but --
21 right. And that's my -- my legislation would
22 require training of interns.

23 But, actually, there should be training of --
24 of everyone in every setting, whether they're
25 not-for-profit, corporate, university.

1 But in terms of, do you know if any
2 universities undertake training of people who will
3 go on to be interns?

4 D.C. MELISSA FRANCO: I am not aware, but
5 maybe Dana knows.

6 D.C. DANA SUSSMAN: We partner pretty closely
7 with the CUNY system and with other educational
8 institutions.

9 But, I'm not aware of internal practices at
10 those institutions around sort of a "know your
11 rights" component when they go out into the
12 workforce or into summer internships.

13 What we do every year, and I'm just making a
14 note to myself to make sure that this is teed up
15 for -- for our agency, is a social-media campaign.
16 You know, not -- not -- we don't have the resources
17 to sort of place ads, but to at least to promote the
18 rights of interns to be protected from
19 discrimination and harassment in the workplace,
20 which we usually do around this time every year, in
21 advance of, sort of, the summer-work and internship
22 season.

23 And we also partner with our city agencies
24 that place young people in with internships and work
25 experiences, like the department of youth and

1 community development, to make -- to get trained and
2 understand what their rights are.

3 And for the employers who sign up to receive
4 interns and students, that they understand what
5 their obligations are.

6 ASSEMBLYWOMAN ROSENTHAL: So there's no
7 requirement to, for example, have a poster that
8 says, you are protected, or, here are the rules that
9 your emp -- your -- maybe not employer, because many
10 are not paid, but, the people who work for you, you
11 know, for a period of time, have to -- are protected
12 by, or have to follow, this is what you have to
13 follow?

14 I mean, there's no such provision in City or
15 State law; right?

16 D.C. DANA SUSSMAN: There is a notice
17 requirement in City law, specifically around sexual
18 harassment, and that is, a notice you receive upon
19 employment, and a poster that goes up in English and
20 Spanish, and we have languages, but the mandate is
21 English and Spanish, that has your rights, your
22 resources, some common scenarios of sexual
23 harassment.

24 And that should -- that is supposed to be up
25 in all places of employment, regardless of whether

1 you have unpaid staff or paid staff or interns.

2 That is a requirement as of last year, 2018.

3 ASSEMBLYWOMAN ROSENTHAL: And the State?

4 D.C. MELISSA FRANCO: We do have
5 jurisdiction, whether they are paid or unpaid.

6 As to the requirement, I would have to get
7 back to you on that, unless my colleague knows.

8 D.C. GINA MARTINEZ: I'm not aware of the
9 requirement.

10 ASSEMBLYWOMAN ROSENTHAL: Okay, I'd be
11 interested, because interns often feel they have no
12 leverage, they have no rights. They're dependent on
13 their boss's, you know, attitude toward them, if
14 they want to build a career, or, examine that
15 business to see if they want to proceed with that
16 kind of a job.

17 And they might even be more hesitant than a
18 paid employee because they really don't have rights.

19 D.C. DANA SUSSMAN: Well, I would just
20 clarify, they do have rights.

21 ASSEMBLYWOMAN ROSENTHAL: Well, I'm saying
22 it, in their mind.

23 D.C. DANA SUSSMAN: Understood.

24 I just want to make clear.

25 ASSEMBLYWOMAN ROSENTHAL: Yes, you're right,

1 you are correct.

2 D.C. DANA SUSSMAN: Yes.

3 ASSEMBLYWOMAN ROSENTHAL: But, you know, they
4 can just be --

5 D.C. DANA SUSSMAN: Understood.

6 ASSEMBLYWOMAN ROSENTHAL: -- fired.

7 And if a person is an employee, they might
8 have rights that an intern may not think that they
9 do.

10 D.C. DANA SUSSMAN: Understood.

11 ASSEMBLYWOMAN ROSENTHAL: Okay.

12 Thank you.

13 ASSEMBLYMAN CRESPO: Assemblywoman Walker.

14 ASSEMBLYWOMAN WALKER: Wow, I guess that
15 means we've gone around the world, and we're back
16 again.

17 So, I wanted to thank you for your time here
18 today, and I understand it's been long.

19 But I did just want to ask a couple of
20 questions, now that I feel like -- I feel a little
21 bit better now, I'm in my mojo.

22 #MeToo -- the #MeToo movement sort of was
23 brought about by Tarana Burke, in reference to Black
24 women and girls being able, and being comfortable,
25 with coming forward with our stories, because, in

1 many instances, we're left out of the conversation.

2 We've seen in imagery, and in many societal
3 norms, that Black women and girls are in -- we're
4 unable to be violated, sexually. We are, you know,
5 portrayed as natural sexual beings and/or oversexed.

6 We're categorized in those sort of languages
7 as well.

8 And, so, one of the most pervasive locations
9 where I've been able to hear stories of sexual
10 violence taking place against Black women and girls
11 are in the criminal justice system.

12 So -- so I have two questions.

13 One: When you're doing your outreach, are
14 there any particular organizations that you work
15 with in terms of promoting your policy directives?

16 And I'll say, with the State, now that, you
17 know, you guys are going to be recalibrating,
18 I would imagine, what the outreach and coordination
19 is amongst groups, are there any organizations that
20 you've worked with in order to address the
21 particular instances of women of color?

22 And, in addition to that, with respect to
23 instances where they're reported, do you keep -- do
24 you keep records with respect to tracking --
25 race-based tracking of your complaints, and

1 throughout different agencies?

2 And, lastly, with respect to the criminal
3 justice system, are we going into the correctional
4 facilities, juvenile detention facilities, and
5 providing training therein to, both, the individuals
6 who are incarcerated there, as well as to the
7 employees -- employ -- yes, employees of the
8 institution?

9 D.C. DANA SUSSMAN: I can start, and try to
10 answer as much as I can.

11 So the organizations that we've worked with,
12 I was just kind of doing a mental list of the
13 organizations that we've worked with specifically on
14 sexual harassment, and I can list them if that -- if
15 that's is useful.

16 And many of them are here, or will be
17 speaking shortly, I hope.

18 You know, Girls for Gender Equity, The Sexual
19 Harassment Working Group, National Domestic Workers
20 Alliance, Make the Road a Better Balance, and other
21 initiatives. We're working with LDF.

22 We work with -- with respect to going into
23 spaces where there are young people incarcerated, we
24 do a lot of work in the correctional facilities
25 in New York City, specifically focused on the

1 Fair Chance Act, you know, the "Ban the Box"
2 protections in New York City. So once you leave --
3 once you have -- well, in many circumstances it's,
4 once you've been incarcerated, you have employment
5 protections in the workplace. You can't be asked
6 about your criminal history.

7 So we focus much of our education on that
8 in -- in facilities.

9 But, I recognize that we should be doing
10 more, and it's not that -- you are not only your
11 criminal record, and so we should be recognizing.

12 And I think we do speak to more protective
13 categories in that outreach.

14 But, certainly, I take your direction here,
15 that we can be doing far more -- more, sort of,
16 comprehensive education outreach in corrections
17 facilities.

18 And then, tracking, so one of the complicated
19 factors for us in tracking is that, we don't ask for
20 demographic information. We -- people will
21 self-identify, and that's recorded as part of their
22 case, essentially.

23 So it's, really, protections under our law
24 are actual or perceived race, gender, disability,
25 and everything else.

1 And so -- and especially, you know,
2 particularly with respect to something like
3 immigration status, we do not keep any records of
4 that. And a claim, because you are being
5 discriminated against based on your immigration
6 status, we would charge as actual or perceived in --
7 very intentionally, to make sure that we are not
8 highlighting anyone's actual or perceived
9 immigration status.

10 So, you know, the -- I think we can look at
11 cases alleging race discrimination, and then look at
12 those individual case files and see sort of what the
13 facts are.

14 But, from a 1,000-foot view, or 10,000-foot
15 view, the demographic information is not something
16 that we are tracking, both for privacy reasons, and
17 also because it's not -- it's not vital to -- to the
18 case across the board.

19 It may -- certain aspects of your -- of your
20 personal identity are, but not all of it. And so we
21 aren't keeping that information, as far as --

22 ASSEMBLYWOMAN WALKER: So I guess what makes
23 me think, you know, whether or not -- you know,
24 tracking, whether it's important or it's not
25 important I guess is yet to be seen.

1 But, in many instances, I would imagine, not
2 all, that the sexual harassment of Black women can
3 also be coupled as, you know, race-based
4 discrimination as well.

5 And so, I guess, to the extent that, you
6 know, they may or may not be mutually exclusive,
7 it's important to be -- to know this information.

8 And -- and I'll -- and I'll say that, you
9 know, a lot of -- in a lot of instances, we like to
10 say, you know, we don't see color. Right?

11 So that's almost what I hear, like, the
12 agency is representing.

13 But the fact of the matter remains, is
14 that -- that we are a community of many hues.

15 And a part of the conversation is being sort
16 of left out of a very important conversation, and
17 that -- and that community are Black -- is -- is --
18 represents Black women. Right?

19 And, so, I just want to, I guess, you know,
20 put -- put a -- a -- a -- I don't, a star, or a
21 point, or something, to be able to say that, you
22 know, I appreciate the space; like, I appreciate the
23 fact that #MeToo has arisen, Time's Up is here.

24 But also the National Black Women's Justice
25 Institute released a very good report about -- it

1 was called "Expanding Our Frame: Deepening Our
2 Demands for Safety and Sexual in" -- "Safety and
3 Healing for Black Survivors of Sexual Violence."

4 And so I guess this is the one place where
5 I would appreciate, you know, for the agency to see
6 color, and to recognize that this may be a coupling
7 of maybe some race-based discrimination as well
8 sexual violence in the workplace.

9 D.C. DANA SUSSMAN: And I would just like to
10 put an extra exclamation point, or a checkmark, or a
11 star, that, you know, I think the -- again, speaking
12 anecdotally, and speaking with, and being very -- in
13 very close touch with the supervisor for our
14 gender-based harassment unit, highlights exactly
15 that point: that most of the cases we see,
16 gender-based harassment intersects with race, or
17 immigration status, or national origin, or a
18 multiple of those things.

19 That it is more -- and -- and the statistics
20 bear out, as we've seen, that women of color are
21 more vulnerable to and experience sexual harassment
22 at higher rates than White women.

23 And that is what we see at the commission,
24 and we recognize that, and -- and find -- and that
25 is central to the work that we do.

1 And so I just want to reiterate that that is
2 very much at the center of our work.

3 SENATOR BIAGGI: Senator Liu.

4 ASSEMBLYWOMAN WALKER: Hi -- oh.

5 SENATOR LIU: Thank you, Madam Chair.

6 I apologize. I --

7 SENATOR BIAGGI: Sorry, Senator Liu, one
8 moment.

9 D.C. MELISSA FRANCO: As to whether, and
10 where, we've done the outreach, whether -- and to
11 the particular group, I would have to get back to
12 you on that.

13 In terms of tracking, we -- I wouldn't call
14 it tracking, but, our data, we should be able to
15 pull based on race or based on sexual harassment.

16 We likely could pull that data if you'd like
17 us to get back to you with it. I don't have it
18 today.

19 D.C. GINA MARTINEZ: We do have that data.

20 But I believe the commissioner's assessment
21 indicated, we also have individuals that file on
22 multiple bases; so, people will file based on race
23 and sexual harassment.

24 So it's hard to take apart specific cases
25 because, oftentimes, people are discriminated on

1 multiple bases.

2 But we do have the data.

3 As for us going into juvenile and
4 correctional agencies to train, not since -- not
5 that I'm aware of.

6 But I can bring that suggestion back under
7 advisement.

8 SENATOR BIAGGI: My apologies to
9 Assemblywoman Walker.

10 Senator Liu.

11 SENATOR LIU: Thank you, Madam Chair.

12 I just have one more question to follow up,
13 and that is:

14 On more than one occasion,
15 Commissioner Martinez, you had mentioned that --
16 once again, you're proud that you have a relatively
17 high rate of cases with probable cause at
18 25 percent?

19 Did I hear you correctly?

20 D.C. GINA MARTINEZ: Yes.

21 SENATOR LIU: All right.

22 So does that mean 75 percent of complaints
23 are unfounded; have no probable cause?

24 What does that mean?

25 D.C. GINA MARTINEZ: Well, basically, for all

1 of the cases that we do investigate, that go through
2 the investigation stage, 25 percent of them we find
3 probable cause in.

4 Some of the cases do not finish the
5 investigation stage; they settle.

6 Some of them are withdrawn by the
7 complainants. They decide to maybe pursue other
8 avenues, or, they settle outside, privately.

9 But, yes, that's a higher rate than most
10 other cases.

11 SENATOR LIU: Okay, so "25 percent," that
12 means that your division, ultimately, has to
13 adjudicate, prosecute, I don't know what the words
14 are, but, those -- it's 25 percent of the complaints
15 that come to the division that, ultimately, you take
16 action on?

17 D.C. GINA MARTINEZ: Sexual-harassment
18 complaints.

19 So --

20 SENATOR LIU: Okay, so these are
21 specifically --

22 D.C. GINA MARTINEZ: Correct.

23 SENATOR LIU: -- because that was my next
24 question.

25 These are not all complaints; these are

1 specifically sexual-harassment complaints?

2 D.C. GINA MARTINEZ: Correct.

3 So after a probable-cause determination is
4 made, and the 25 percent is unique to
5 sexual-harassment complaints, then those cases move
6 along to a public hearing.

7 So those -- those are the -- 25 percent of
8 those cases are the ones that don't settle before
9 the investigation ends. They could settle
10 afterwards.

11 SENATOR LIU: And that's great about the
12 25 percent.

13 I'm just worried about the 75 percent.

14 And you're saying that -- it's not -- it's
15 not, as I characterize it, that they were
16 unfounded --

17 D.C. GINA MARTINEZ: Right, right.

18 SENATOR LIU: -- but, in fact, a lot of
19 them --

20 D.C. GINA MARTINEZ: Yep.

21 SENATOR LIU: -- get settled before it
22 actually gets to the public-hearing phase, which is
23 what you're talking about with the 25 percent?

24 D.C. GINA MARTINEZ: Yes.

25 SENATOR LIU: And so -- I mean, are most of

1 that 75 percent settled beforehand?

2 Because, you know, the -- at least the
3 newfound wisdom, is that it's very hard for somebody
4 to claim sexual harassment, and it's almost always
5 true.

6 So that's -- I'm trying to reconcile the
7 75 percent that are not considered cases with
8 probable cause, to our, you know, widely-accepted
9 thinking that people are not going to file
10 sexual-harassment assaults without probable cause.

11 D.C. GINA MARTINEZ: Right.

12 Well, you know, the hard truth of the matter
13 is, there are more cases that do get dismissed than
14 do lead to probable cause. That is the fact of the
15 matter.

16 SENATOR LIU: And is that dis -- okay.

17 Do you know why they get dismissed?

18 Is it because of a deficiency in the law?

19 D.C. GINA MARTINEZ: Not necessarily.

20 It could be for an abundance of reasons.

21 It's different for each case.

22 SENATOR LIU: But they're -- they're --
23 I mean, it seems like one of those reasons would be
24 failure to meet this "severe and pervasive"
25 standard.

1 Would that be one of the reasons?

2 I mean, if some -- you know, if a woman feels
3 like they've been sexually harassed on the job, they
4 make a complaint, but, they don't -- they don't meet
5 the "severe or pervasive" standard, just as one
6 example, they would fall into that 75 percent
7 "without probable cause."

8 Is that correct or not correct?

9 D.C. GINA MARTINEZ: It -- it's -- it's our
10 position that we take a very liberal interpretation
11 of the law.

12 So I -- I -- I can't -- I can't -- what's the
13 word I'm looking for?

14 SENATOR LIU: All right, look, I'm not trying
15 to badger anybody, but, Madam Chair --

16 D.C. GINA MARTINEZ: (Indiscernible
17 cross-talking) understand.

18 SENATOR LIU: -- I think we need to get the
19 commissioner here, somebody who -- you know,
20 I understand your -- your -- your responsibilities,
21 and the constraints that come with it.

22 But we need the commissioner to respond, if
23 not in a hearing, directly in writing, to these
24 kinds of questions.

25 And my last quick question is: How many

1 deputy commissioners are there?

2 Because you're -- there's two of you right
3 now.

4 How many deputy commissioners are there?

5 D.C. GINA MARTINEZ: There's two deputy
6 commissioners --

7 SENATOR LIU: That's it?

8 D.C. GINA MARTINEZ: -- and one first deputy
9 commissioner.

10 Yes.

11 SENATOR LIU: Okay. So there's, basically --
12 so there's a deputy -- a first deputy commissioner
13 above you, below the commissioner?

14 D.C. GINA MARTINEZ: Correct.

15 SENATOR LIU: Okay.

16 I mean, I was hoping you would tell me that
17 there would be like 10 deputy commissioners,
18 because, in response to some of the legislators'
19 questions earlier, you kept saying: Well, I'm not
20 in charge of that, or, I don't know about this.
21 This is what I focus on. That's some -- that's
22 somebody else's job.

23 And that would be a stronger defense for
24 yourselves if there were like 10 deputy
25 commissioners.

1 But there are only two of you.

2 So you got the commissioner, you have the
3 first deputy commissioner, and then there's the two
4 of you.

5 So, you know, between the two of you, you
6 actually should be aware of everything that the
7 division is responsible for.

8 You may not know the exact details, but you
9 can't say "that's not my area," I'm sorry to say.

10 Thank you.

11 ASSEMBLYMAN CRESPO: So a couple -- couple
12 follow-ups.

13 If a settlement is involved --

14 Am I using the right term, "settlement"?

15 -- do those usually involve an admission of
16 some sort of wrongdoing?

17 D.C. MELISSA FRANCO: No, they do not.

18 ASSEMBLYMAN CRESPO: They do not.

19 D.C. MELISSA FRANCO: They do not.

20 ASSEMBLYMAN CRESPO: Okay. I'll have a
21 follow-up to that later, I'll ask another panel.

22 But let me switch gears a little bit on
23 something else: the data.

24 Again, when -- the 25 percent where there's
25 probable cause, you find, and you go after the

1 incident, whatever complaint it was.

2 That usually leads to a charge or a penalty
3 or what -- what does it mean for the individual who
4 committed the harassment and/or the employer who
5 allowed it to happen?

6 D.C. GINA MARTINEZ: After the probable cause
7 is made?

8 ASSEMBLYMAN CRESPO: Yes.

9 D.C. GINA MARTINEZ: So after the probable
10 cause is made, it goes to the next stage, which is
11 the hearing stage, or the settlement before the
12 hearing. And that's when that is decided between
13 the parties, or, by the judge.

14 ASSEMBLYMAN CRESPO: And then once a decision
15 is made there, what could it look like?

16 D.C. MELISSA FRANCO: When you say
17 "decision," what do you mean, I'm sorry?

18 D.C. GINA MARTINEZ: You mean a hearing
19 decision?

20 ASSEMBLYMAN CRESPO: Yes.

21 D.C. GINA MARTINEZ: By the judge. Okay.

22 D.C. MELISSA FRANCO: So, a recommended
23 order, after a review of all the evidence that was
24 heard, any cross-examination, documentation, the ALJ
25 will make a recommended order.

1 It is then sent to both parties, the
2 respondent, as well as the complainant. They are
3 given 21 days to object to it in writing.

4 Once they do, their objections, plus the
5 record, is submitted to the commissioner's office,
6 where two adjudication counsels review the record,
7 and make a recommendation to the commissioner, which
8 could be, she could adopt it as it stands; she can
9 modify the ruling; and she could award more damages
10 or less damages, based on that.

11 And then once she makes the decision, the
12 order gets sent to the -- both sides.

13 ASSEMBLYMAN CRESPO: So the damages could
14 involve certain a payment to the victim and/or
15 certain actions to be taken by the employer --

16 D.C. MELISSA FRANCO: Correct, it could --

17 ASSEMBLYMAN CRESPO: -- either internal,
18 or --

19 D.C. MELISSA FRANCO: -- front pay, back pay.
20 For mental health -- I mean, mental pain and
21 suffering, there could be damages for that. Order
22 to desist from the, or stop the, bad actions --

23 ASSEMBLYMAN CRESPO: Okay.

24 D.C. MELISSA FRANCO: -- instill a policy.

25 ASSEMBLYMAN CRESPO: The reason I'm asking

1 this line of questions, I would like to -- I would
2 hope that we could discuss how to create an
3 environment where we could really try to stop the
4 pervasiveness of this when it involves individuals
5 who may come before you more than once.

6 So, as Labor Chair, I would like to -- you
7 know, we talk a lot about how to create a better
8 environment for job applicants, how to give them an
9 ability to know what environment they're going into,
10 or, an employer who wants to make sure that they
11 maintain a safe work environment, and not
12 inadvertently bring somebody onboard who has been
13 before your agency, you know, on multiple occasions.

14 So I would like to, at some point, maybe have
15 a follow-up conversation with you about this idea,
16 because I believe that we should provide that
17 information.

18 And if the data is made available or public
19 in some way, where, whether it's an affirmative
20 action that takes place, a particular step that
21 happens in an employment process, or, something
22 that's researchable, right, that's available to
23 folks, if I'm interested in working in a law firm:

24 How do I know -- how would I find out or be
25 aware of how many instances that firm, or employees

1 of that firm, have been before your agency?

2 Or, how would I be able to verify that the
3 supervisor that I'm going to be assigned to is
4 someone that I may not want to work for because of
5 his history.

6 That kind pressure point would really
7 encourage employers to address these issues much
8 more forcefully because, now, the reputation of
9 their environment is on the line.

10 Vice versa, the employer should have an
11 ability to know if the applicant that, on paper,
12 looks like well-rounded applicant, may be somebody
13 who has been in previous employment opportunities,
14 on multiple occasions, accused of something.

15 And there's really no mechanism for us, in
16 anything we've discussed so far, unless I'm wrong,
17 that would allow that information to be used the
18 right way; to prevent the wrong people to be in the
19 wrong places before this continues to occur.

20 D.C. MELISSA FRANCO: Sure.

21 I don't know that there is a mechanism. And
22 it does sound like this is definitely a larger
23 conversation that can be had here.

24 It's one of those issues where a lot of what
25 you said makes sense, but I would have to think

1 about, what -- what's the flip side of what you're
2 saying.

3 So, I don't think you're asking for a
4 question, but I definitely think it deserves a
5 greater conversation.

6 ASSEMBLYMAN CRESPO: I just want to put it
7 out there. I think it's relevant to how data is
8 used, and how it's reported, when it's all settled,
9 or, at least for those percentages where there was
10 probable cause.

11 So it's something that I would love to
12 explore as a follow-up.

13 But, you've been incredibly --

14 You have a question?

15 SENATOR BIAGGI: (Nods head.)

16 ASSEMBLYMAN CRESPO: -- incredibly patient on
17 our end, and we really want to thank you for the
18 time and your testimony.

19 SENATOR BIAGGI: Just one comment.

20 Thank you, again.

21 I want to echo what my Assembly Co-Chair just
22 said.

23 Thank you for sitting and listening to us,
24 and answering all of our questions. It's incredibly
25 important.

1 I encourage you to stay, to hear from all of
2 the other individuals in this room who will be
3 testifying, not only because it's important for you
4 to have access to this information, but because,
5 again, we want to be partners in this journey with
6 you as well.

7 And, to anybody in the room who has a
8 complaint, we would encourage you to please speak to
9 these individuals in the room before the end of the
10 day.

11 Or, if anybody who's watching would like to
12 do that in the future, please, we encourage you to
13 use the resources that we have before us, which are
14 the State and the City.

15 Thank you very much.

16 D.C. DANA SUSSMAN: I'd just like to make a
17 quick note.

18 I'm going to be stepping back to my office
19 across the street to pump, and I will be returning
20 to hear the rest of the testimony.

21 So, just to -- I wanted to -- I will be back.

22 SENATOR BIAGGI: Thank you.

23 ASSEMBLYMAN CRESPO: Remember, 5:30 is the
24 deadline.

25 D.C. DANA SUSSMAN: Right.

1 SENATOR BIAGGI: Thank you.

2 ASSEMBLYMAN CRESPO: Thank you for your
3 testimony.

4 While the next presenter, who will be the
5 New York State Governor's Office of Employee
6 Relations, Michael Volforte, the director, comes up,
7 I want to make two quick announcements.

8 We have been joined by Assemblymember
9 Felix Ortiz and Assemblywoman Natalia Fernandez.

10 I want to thank them for joining us.

11 A reminder that, 5:30, security issues, you
12 will be able to exit at any point, but after 5:30
13 not return to the building.

14 And an acknowledgment of the fact that we
15 will be here for quite some time, and not all of you
16 have somebody available to go grab lunch for you.

17 I have ordered pizza for everyone. I think
18 there should be enough coming. It will be in
19 another room. We'll announce when it's available.

20 So...

21 [Applause.]

22 OFF-CAMERA SPEAKER: That's very nice. Thank
23 you.

24 ASSEMBLYMAN CRESPO: As long as my counsel
25 tells me it's a legitimate campaign expense, so...

1 [Laughter.]

2 ASSEMBLYMAN CRESPO: Appreciate your
3 patience.

4 We're going to continue, so if we could
5 settle down.

6 MICHAEL VOLFORTE: I was ambitious with my
7 lead --

8 OFF-CAMERA SPEAKER: You see what you did
9 with the pizza announcement?

10 MICHAEL VOLFORTE: -- where it said "Good
11 morning."

12 ASSEMBLYMAN CRESPO: Too excited. It will be
13 a while.

14 MICHAEL VOLFORTE: I was ambitious.

15 SENATOR BIAGGI: You can begin.

16 Thank you.

17 MICHAEL VOLFORTE: Thank you.

18 Good afternoon.

19 SENATOR BIAGGI: If we could just have quiet
20 and silence in the room.

21 Thank you.

22 MICHAEL VOLFORTE: Good afternoon,
23 Chair Skoufis, Chair Biaggi, Chair Salazar,
24 Chair Titus, Chair Crespo, and Chair Walker, and
25 other members of the Senate and Assembly here today.

1 My name is Michael Volforte, and I am the
2 director of the Governor's Office of Employee
3 Relations, also known as "GOER."

4 Thank you for the opportunity to participate
5 in this hearing on sexual harassment in the
6 workplace.

7 In these remarks I'd like to detail some of
8 the very important steps we've taken under
9 Governor Cuomo's leadership to tackle the issue of
10 discrimination in the workplace.

11 Shortly after the Governor was elected, we
12 created a compilation of all the rights and
13 protections that executive-branch state employees
14 have from employment-based discrimination called
15 "Equal Employment Opportunity in New York State:
16 Rights and Responsibilities," a handbook for
17 employees of the state of New York, also called
18 "The Handbook."

19 The Handbook informs state employees of their
20 rights and responsibilities when it comes to
21 protecting employees from discrimination.

22 In 2013 we implemented a standard
23 investigation process for agencies to follow in
24 investigation of complaints of protected-class
25 employment discrimination.

1 We also created a small unit within GOER to
2 assist agencies in completing those investigations
3 pursuant to that process, and to provide technical
4 guidance to both investigators and agency counsel
5 alike.

6 In 2013 we revised our
7 sexual-harassment-prevention training program, and
8 mandated that all executive-branch employees
9 complete that training on a yearly basis.

10 The next year we added two additional
11 mandated annual training courses on all
12 protected-class employment rights and reasonable
13 accommodation for both disability and religious
14 reasons.

15 In August of 2018 we took another step
16 forward in the investigation of complaints of
17 employment-related protected-class discrimination
18 with the Governor's issuance of Executive Order 187,
19 with the goals of achieving more independent
20 investigations of employment-discrimination
21 complaints, but ensuring that the investigative body
22 has knowledge and understanding of the state
23 workforce, employer-employee relationship.

24 Executive Order Number 187 transferred the
25 responsibility for conducting investigations of all

1 employment-related protected-class discrimination
2 complaints, in agencies and departments over which
3 the Governor has executive authority, to GOER.

4 These investigations include discrimination
5 complaints based upon protected-classes filed by
6 employees, including contractors, interns, and other
7 persons engaged in employment at these agencies and
8 departments.

9 The protected classes are those set forth in
10 the applicable federal, New York State, laws;
11 executive orders; and other policies; including
12 those based on age, arrest, conviction record,
13 color, creed, disability, domestic-violence victim
14 status, gender identity, marital and family status,
15 military status, national origin, predisposing
16 genetic characteristics, pregnancy-related
17 conditions, race, retaliation, sex, sexual
18 orientation, and sexual harassment.

19 Pursuant to Executive Order 187, effective
20 December 1, 2018, all complaints of protected-class
21 employment-related discrimination are being
22 investigated by GOER's anti-discrimination
23 investigations division (ADID).

24 This responsibility covers approximately
25 130,000 executive-branch employees, but does not

1 include employees of SUNY, CUNY, SED (the State
2 Education Department), the Legislature, office of
3 attorney general, or the office of state
4 comptroller.

5 GOER investigates complaints executive-branch
6 employees file internally within these -- within
7 state agencies, and external complaints, like those
8 filed with the division of human rights or the Equal
9 Employment Opportunity Commission.

10 Complainants may include employees, interns,
11 contractors, delivery people, consultants; anyone
12 whose workplace involves the state agency location
13 or interaction with state employees consistent with
14 state law and policy.

15 In preparation for its new responsibility,
16 GOER received 41 affirmative-action administrators
17 called "AAOs" from state agencies, who are already
18 investigating -- already engaged, excuse me, in the
19 investigation of employment-discrimination
20 complaints; and hired another six employees to help
21 manage these employees.

22 We also created an independent investigation
23 process, developed a new complaint form entitled
24 "New York State Employee Discrimination Complaint
25 Form," for employees to use, and revised

1 The Handbook, all the while making sure that our
2 training, policy, and procedures comport with the
3 2018 sexual-harassment prevention laws that were
4 enacted by the Legislature and signed into law by
5 the Governor.

6 Both the New York State Employee
7 Discrimination Complaint Form and The Handbook are
8 posted prominently on the GOER agency web page of
9 our -- homepage of our website, and agencies have
10 been instructed to regularly distribute them to
11 their employees as well.

12 Individuals now file complaints directly with
13 GOER without ever going through the chain of command
14 at their employing agency.

15 We've established an online fillable form
16 that can be e-mailed directly to a dedicated e-mail
17 box. Employees can also mail complaints to GOER.

18 We have AAOs located in a number of agencies,
19 and employees are also free to speak with them and
20 file complaints directly with them.

21 We also mandate that any supervisor or
22 manager who observes, witnesses, or hears about
23 discriminatory conduct, report the conduct by filing
24 a discrimination complaint with GOER.

25 Agencies send out reminders to their

1 employees regularly, to remind them to whom they can
2 complain, where the form and policy on
3 discrimination prevention is located.

4 GOER investigates complaints pursuant to our
5 established 10-step investigative process.

6 Agencies must cooperate with GOER, and
7 provide access to employee's information and
8 documentation relevant to each complaint.

9 When GOER receives a complaint, the
10 complainant receives an acknowledgment of receipt of
11 the complaint, and agency general counsel is also
12 notified of the complaint as well.

13 A respondent is notified at the point in the
14 investigation when it is necessary to inform them,
15 or when interim administrative action is being
16 taken.

17 The parties are notified of the outcome when
18 the investigation is concluded.

19 Once a complaint is concluded, if it is
20 substantiated, we work with the agency to ensure
21 that they are implementing corrective or
22 disciplinary action that we determine.

23 Confidentiality is important in our
24 investigations. Complainants, respondents,
25 witnesses, and administrators at agencies are

1 advised not to discuss complaints while the
2 investigation is ongoing, to prevent anyone from
3 trying to try to influence the outcome and to avoid
4 instances of retaliation.

5 Of course, complainants and respondents,
6 where represented, are free to speak with their
7 representatives.

8 We are clear about prohibiting retaliation.

9 Every employee, whether a witness,
10 complainant, or respondent, is advised during the
11 investigation process that retaliation is
12 prohibited.

13 Statistically, we have seen a rise in the
14 number of complaints overall. This is not
15 unexpected, and was anticipated, given a number of
16 factors, not the least of which, we think is, we are
17 providing regular reminders of where employees can
18 complain. And, additionally, employees now have
19 someone external to their own employing agency to
20 report discrimination to.

21 This is consistent with what we are hearing
22 anecdotally from other entities that handle
23 complaints of discrimination: increasing awareness
24 of what constitutes discrimination leads to more
25 people filing complaints.

1 Also, we determine whether the allegations in
2 each complaint, if substantiated, violate the policy
3 set forth in The Handbook; not whether they actually
4 violate the law.

5 GOER investigates every allegation of
6 discrimination, whether the complainant overheard a
7 single sexual comment or joke, to other than -- to
8 other far more involved and complex allegations of
9 discrimination.

10 We take our role in investigating and
11 resolving complaints of discrimination extremely
12 seriously. No employee should have to endure
13 harassment based on their protected-class status.

14 And we are committed to furthering efforts to
15 both ensure that the State's policies concerning
16 discrimination, harassment, and discrimination in
17 the workplace are followed, and holding individuals
18 accountable who violate our policies.

19 Thank you for the opportunity to appear, and
20 I'll answer any questions that you have.

21 SENATOR BIAGGI: Senator Salazar.

22 SENATOR SALAZAR: Thank you.

23 And thank you for testifying.

24 We missed GOER at the first hearing in
25 February, so I really appreciate you coming here

1 today.

2 I first wanted to ask about the complaint
3 form that was mentioned.

4 I've seen the complaint form online, and
5 I know it's two pages. It includes the division's
6 e-mail and mailing address, but there's no --
7 there's no phone number on the form.

8 I also noticed that there is no disclaimer on
9 the form or any language that might inform an
10 employee of their rights.

11 And I'm just wondering, who exactly developed
12 the form, and -- or who was consulted by GOER in
13 creating it?

14 MICHAEL VOLFORTE: GOER developed the form
15 itself.

16 SENATOR SALAZAR: Right. Okay.

17 And could you perhaps tell me, like, who
18 within GOER, maybe not by name, but what the role is
19 (indiscernible cross-talking) --

20 MICHAEL VOLFORTE: Sure.

21 Myself and my anti-discrimination
22 investigation's division leadership developed the
23 form.

24 SENATOR SALAZAR: Excellent. Thank you.

25 And there was one other question I wanted to

1 ask you.

2 MICHAEL VOLFORTE: On the information on
3 other rights and responsibilities, that's contained
4 in that handbook that I referenced, which is a
5 44-ish-page document, which is located on our
6 website.

7 And all the agencies post on their own
8 intranets where the location of that handbook is.

9 SENATOR SALAZAR: Excellent. Thank you.

10 Another question I had was with regard to,
11 ahead of -- of actually taking responsibility for
12 these complaints, GOER, it says, received
13 affirmative-action administrators from state
14 agencies.

15 I'm wondering what happened to any active
16 investigations from other agencies, after this --
17 after the executive order went into effect, any
18 active investigations from other agencies, such as
19 DHR or JCOPE.

20 MICHAEL VOLFORTE: We don't handle DHR or
21 JCOPE investigations.

22 But if it was an internal complaint, the
23 investigation was finished by the individuals doing
24 that investigation, or one of our investigators.

25 And if it was an external complaint, meaning,

1 somebody filed with DHR, but before there was an
2 employer response, those same individuals would have
3 completed that.

4 We would have no role with JCOPE.

5 SENATOR SALAZAR: I see.

6 So -- so then GOER has not received any,
7 like, active investigations that were transferred
8 over from, or referred by, either by one of these
9 agencies or an agency that was just not equipped and
10 not responsible for handling complaints?

11 MICHAEL VOLFORTE: We -- if an -- if an
12 indiv -- if an agency didn't have an AAO, we will
13 assign an AAO to investigate anything from that
14 agency.

15 That was the general process before, except,
16 they might get somebody from a different agency.

17 This time, as of now, they'll get somebody
18 from GOER to do that.

19 And we took steps, and are taking steps, to
20 make sure all of those open issues were closed after
21 the transfer of the 41 individuals to GOER.

22 SENATOR SALAZAR: Thank you.

23 ASSEMBLYMAN CRESPO: So, uhm, just want to be
24 clear.

25 So, state agencies will no longer have their

1 own internal process?

2 MICHAEL VOLFORTE: Every state agency has an
3 internal process, and it's the same: it's the one
4 that GOER has dictated is the process.

5 ASSEMBLYMAN CRESPO: So you've given them a
6 process, they all have to follow it.

7 But if a -- if I work for an agency, I cannot
8 go to my agency to file; I have to go to your office
9 to file?

10 MICHAEL VOLFORTE: You can still go to your
11 agency to file.

12 So that's not an option, except that that
13 agency is mandated to report it to GOER, and GOER
14 will investigate it, so that the agency isn't
15 investigating themselves.

16 ASSEMBLYMAN CRESPO: So they can only serve
17 as a recipient of the complaint?

18 MICHAEL VOLFORTE: Correct.

19 ASSEMBLYMAN CRESPO: You handle it --

20 MICHAEL VOLFORTE: They --

21 ASSEMBLYMAN CRESPO: -- you enforce it, you
22 investigate it?

23 MICHAEL VOLFORTE: Sorry, I won't interrupt.

24 ASSEMBLYMAN CRESPO: No, no, just --

25 MICHAEL VOLFORTE: Yes, you're absolutely

1 right, they are the recipient of it.

2 They either try to have the individual fill
3 out a complaint form, or they're instructed to fill
4 out the complaint form themselves with the
5 information they have, and forward it to GOER.

6 ASSEMBLYMAN CRESPO: So that -- that an
7 employee would not have a recourse to go to the
8 agencies we just heard from, human rights
9 commission?

10 MICHAEL VOLFORTE: That's different.

11 What my role as -- is, is the employer is
12 investigating ourselves --

13 ASSEMBLYMAN CRESPO: Okay.

14 MICHAEL VOLFORTE: -- so to speak, and they
15 are external agencies. Think of them as law
16 enforcement, just like the courts.

17 Our process does not restrict an employee
18 from -- an employee could go to somebody in their
19 own agency. That gets filed to GOER; an AAO there
20 within GOER.

21 They could come to GOER themselves by
22 e-mailing it, to the -- mailing or -- or e-mailing.

23 They could file a separate complaint with DHR
24 or the EEOC, and follow their procedures.

25 Or, they could go to court in accordance with

1 whatever rules are applied.

2 Those are all options, and those are things
3 that are highlighted also in our handbook.

4 ASSEMBLYMAN CRESPO: So DHR and GOER could,
5 essentially, be making the same investigation
6 simultaneously?

7 MICHAEL VOLFORTE: If the person, yes, goes
8 to both of us at the same time, it -- it -- for all
9 intents and purposes, it will be the same
10 investigation, except that, in the internal
11 complaint, we will be -- we will be reporting, so to
12 speak, to ourselves, and we'll issue a report to the
13 agency, telling them we found "X" happened, and this
14 is how you fix it.

15 In the DHR context, what will happen is, is
16 the agency will use whatever information we put
17 together as an investigation to file their response
18 with DHR.

19 We are not conversing with DHR regarding
20 investigations. We're just investigating on behalf
21 of the agency, to give them the facts, to answer
22 that. And those facts will either be discrimination
23 occurred or discrimination didn't occur, and then
24 they'll -- then the agency themselves will follow
25 the DHR process.

1 ASSEMBLYMAN CRESPO: Thank you.

2 Assemblywoman Simotas.

3 ASSEMBLYWOMAN SIMOTAS: Thank you for joining
4 us today.

5 How does your office track numbers and
6 outcomes of reports of every state agency, and will
7 any of that information become public?

8 SENATOR CARLUCCI: We -- we keep track of it
9 internally now that we're -- we've taken over this
10 investigative process. And, we've built a system to
11 track that, and give data to us, so that it informs
12 future decisions we make, in terms of training and
13 efforts we have make to root out, you know, systemic
14 problems that exist maybe in an agency, in an
15 office, and things like that.

16 So we have that information.

17 We have no current mandate to publish that
18 data, but it's some -- you know, we certainly always
19 review that and plan on reviewing it in the future.

20 ASSEMBLYWOMAN SIMOTAS: Would it something
21 that's FOILable?

22 Is that -- obviously, the random public
23 couldn't get it.

24 But can we as legislators get it if we asked
25 for it?

1 MICHAEL VOLFORTE: Uhm...

2 ASSEMBLYWOMAN SIMOTAS: Well, how about
3 this --

4 MICHAEL VOLFORTE: I can't answer the
5 question totally on FOIL, 'cause it's -- there will
6 be things.

7 Statistical information could be available.
8 Specifics won't be.

9 ASSEMBLYWOMAN SIMOTAS: Well, then, I make
10 the request right now for the Legislature, I can
11 speak on behalf of the Assembly, that we would like
12 that information.

13 Hopefully, we'll figure out a way to make it
14 public, because I think that society -- the public
15 should know about how many complaints are filed
16 regarding state agencies.

17 But, nonetheless, I would make that request
18 right now.

19 MICHAEL VOLFORTE: Okay.

20 ASSEMBLYWOMAN SIMOTAS: My next question is:
21 What efforts has your office made to implement best
22 practices for trauma-informed investigations?

23 We heard at our last hearing, a lot of people
24 who've been through the process, who weren't
25 satisfied with being kept up to date, with some of

1 the questions that were inappropriate.

2 Clearly, these investigations are asking
3 sensitive questions.

4 And it would behoove your office to make sure
5 that people who are trauma -- who are experts in
6 this trauma are doing the investigations.

7 So what steps have -- has your office taken
8 to do so?

9 MICHAEL VOLFORTE: All of the investigators
10 either have a background in this field.

11 And if they -- if they don't, they're all
12 trained by my office now so the training is
13 consistent.

14 The term, the "trauma-based" --
15 "trauma-informed training," we don't, technically,
16 do that exact training. But we do train our
17 investigators in how to be, you know, sensitively
18 asking questions to be inquisitive.

19 Everyone realizes it's very sensitive, both
20 in the sexual-harassment field and in other fields.

21 You know, I did view the last testimony.

22 I'm not sure that people who spoke about the
23 process were speaking about our process, so I can't
24 really comment on the questions about what specific
25 questions were and were not asked.

1 I know I heard some earlier testimony on what
2 JCOPE asked, but that's not what we do.

3 ASSEMBLYWOMAN SIMOTAS: I know, specifically,
4 a lot of the people who testified talked about being
5 kept up to date, being informed, of the whole
6 process of the determinations.

7 What is your process in your 10 steps that
8 you follow to make sure that complainants are kept
9 up to date?

10 MICHAEL VOLFORTE: Sure.

11 They're informed at the beginning, they're
12 consulted during it. They're often interviewed, and
13 sometimes multiple times. And then they're informed
14 at the end whether their complaint is substantiated
15 or unsubstantiated. And if it's substantiated, that
16 we're taking action.

17 There is not a regular updating process as
18 part of that, other than what I've described.

19 ASSEMBLYWOMAN SIMOTAS: Thank you.

20 SENATOR BIAGGI: Senator Mayer.

21 SENATOR MAYER: Thank you.

22 Thank you for being here.

23 Question on your testimony, on page 3, and
24 this is a question I just don't know the answer,
25 but, you say, "We mandate that any supervisor or

1 manager who observes, witnesses, or hears about
2 discriminatory conduct report the conduct by filing
3 a discrimination complaint with GOER."

4 Now, is the -- so mandatory reporting, which
5 I think is extremely critical, is that required by
6 Executive Order 187, or is that a GOER imposition?

7 MICHAEL VOLFORTE: It's -- it's required in
8 our policy, and it's required by GOER.

9 I'd have to -- I didn't -- I don't have the
10 executive order with me, but it may -- it may
11 reference that in the executive order.

12 But it is in our policy, and it is in GOER
13 pronouncements to the agencies.

14 SENATOR MAYER: And so with respect to every
15 executive agency, and I recognize GOER doesn't go
16 beyond that, there is a mandatory reporting
17 requirement of -- by a supervisor or manager of any
18 discriminatory conduct of which they are made aware?

19 MICHAEL VOLFORTE: Yes.

20 SENATOR MAYER: And when you are made aware
21 of conduct which is, arguably, or potentially,
22 criminal, do you -- what steps do you take with
23 respect to that conduct?

24 MICHAEL VOLFORTE: We refer it to law
25 enforcement, and then we wait for an a law

1 enforcement determination to go ahead with an
2 administrative investigation, so as to not disturb
3 the criminal investigation.

4 SENATOR MAYER: And how many times has GOER
5 done that in the last year?

6 MICHAEL VOLFORTE: I don't have -- I don't
7 have a statistic off the top of my head.

8 SENATOR MAYER: Any -- anytime?

9 MICHAEL VOLFORTE: At least one, that I'm
10 aware of.

11 SENATOR MAYER: And not withstanding the fact
12 that this is executive agencies, again, do you ever
13 refer -- let me rephrase that.

14 In the case of a pattern or practice of
15 discrimination alleged against a supervisor or
16 manager of a state agency, what steps do you take
17 that are distinguishable from an individual
18 complaint against a supervisor or manager?

19 MICHAEL VOLFORTE: If an investigation, or
20 investigations, led to a conclusion that an
21 individual supervisor or manager had a pattern or
22 practice, that individual would be brought up on
23 administrative action. And depending on their --
24 their job, they could be -- they might be in a unit
25 where we have to file notice of disciplinary

1 charges. Or, if they're a high-ranking individual,
2 if the conduct is of a level, they'll be
3 disciplined/terminated.

4 SENATOR MAYER: Since this policy, I think
5 it's 2018 the Governor's executive order went into
6 effect, do you know how many employees of state
7 agencies have been terminated as a result of their
8 discriminatory conduct?

9 MICHAEL VOLFORTE: No.

10 SENATOR MAYER: Do you have any -- any idea
11 that -- could we be provided with that number?

12 MICHAEL VOLFORTE: I can see if we have that
13 number.

14 I don't know that GOER has that number,
15 'cause the agencies themselves handle disciplines.

16 So it's not -- it's not a -- we don't have
17 prosecutors that prosecute notices of discipline for
18 the agency.

19 SENATOR MAYER: I understand.

20 But you do the investigation.

21 MICHAEL VOLFORTE: We do the investigation.

22 SENATOR MAYER: Do you make a recommendation
23 with respect to what action should follow?

24 MICHAEL VOLFORTE: Yes.

25 SENATOR MAYER: So are there cases in which

1 you have recommended termination?

2 MICHAEL VOLFORTE: Yes.

3 SENATOR MAYER: How many?

4 MICHAEL VOLFORTE: I don't have that
5 information.

6 SENATOR MAYER: Could you provide it?

7 MICHAEL VOLFORTE: Certainly.

8 SENATOR MAYER: Thank you.

9 ASSEMBLYMAN CRESPO: Assemblywoman Fernandez.

10 ASSEMBLYWOMAN FERNANDEZ: Good afternoon.

11 Following up with, I guess, a topic that
12 Chair Crespo brought, and what we've talked about of
13 you handling your investigation and the agency doing
14 their own investigation, what happens if you come to
15 a decision that is different than what the agency
16 decides?

17 MICHAEL VOLFORTE: The agency is not
18 investigating.

19 ASSEMBLYWOMAN FERNANDEZ: They don't?

20 MICHAEL VOLFORTE: So --

21 ASSEMBLYWOMAN FERNANDEZ: Okay, I thought
22 I heard (indiscernible cross-talking) --

23 MICHAEL VOLFORTE: -- but -- so just in case
24 I was unclear:

25 We get the complaint. We investigate the

1 complaint. We render a factual determination as to
2 what we think occurred.

3 The agency can say to us, Well, we think you
4 should investigate, this.

5 Maybe there's something particular to that
6 agency that we didn't look at in terms of that.

7 There's a final determination as to what
8 facts occurred.

9 GOER determines what those facts are.

10 The agency does not get an opportunity to
11 have a vote or overrule GOER.

12 ASSEMBLYWOMAN FERNANDEZ: Okay.

13 And Senator Mayer kind of took my question
14 with determinations, and how often those happen.

15 But, would you say that that's a successful
16 assessment to a case of sexual harassment if the
17 person gets terminated?

18 Or, has there been instances where they don't
19 get terminated, but they just go through, I guess,
20 more training or policy amendments?

21 Can you give me an example of, I guess,
22 results from a complaint that does not end in
23 termination, but what do you do --

24 MICHAEL VOLFORTE: Oh, sure.

25 ASSEMBLYWOMAN FERNANDEZ: -- with the

1 complainer and the victim?

2 MICHAEL VOLFORTE: Since the overwhelming
3 majority of our workforce are unionized, they all --
4 the -- that vast majority have tenure rights and
5 due-process rights.

6 So you have to bring -- in order to take the
7 ultimate action, termination, for those employees,
8 you have to file written charges. They have to be
9 fairly specific. And then you have to prove them in
10 front of an independent arbitrator, and then that
11 arbitrator is to award termination.

12 Those are -- you know, in serious cases,
13 those are things that we go for.

14 So if there was an -- if there was an
15 incident where a -- you know, a man grabs a woman,
16 we're gonna -- and that's proven, factually, to have
17 occurred, we're going to file charges and we're
18 going to seek termination.

19 There are levels below that,
20 administratively, we can go through.

21 If someone is a -- and it's not to
22 characterize the content as -- or, the action as
23 good or bad, but, if an individual makes one
24 sexually-explicit joke, that typically won't amount
25 to a violation of law. We would still investigate

1 that, make a conclusion. And if it occurred, we
2 would take action.

3 Sometimes that would be, the individual is
4 counseled, which base -- they receive a memo, that
5 goes in their file, that alerts them that it was
6 improper, that they shouldn't do that. And they are
7 retrained on that.

8 So that would be -- that would be the type of
9 thing that wouldn't go to a disciplinary process, on
10 those limited facts.

11 If that individual has some other history,
12 that all gets taken into account and could change
13 that -- that -- the compass on where we go.

14 But if you're talking about an employee with
15 28 years of service, and had never done anything
16 incorrect or bad in their career, and made that one
17 poor choice to tell that one joke, that might be the
18 result in that case if it was founded.

19 ASSEMBLYWOMAN FERNANDEZ: Say, if this person
20 continues -- they get the first warning, go through
21 training, counseling, they do it again -- do you
22 have like a "three strikes, you're out" type of
23 motto? Or, is there some type of limit or statute
24 that you use to take a stronger --

25 MICHAEL VOLFORTE: We try to be consistent

1 across lines.

2 It's all going to be dependent on what their
3 history was, and what they did this time.

4 So if somebody did that comment, and then the
5 next day they're doing another comment, or, you
6 know, maybe they -- then, that's going to -- that
7 timing, in our mind, would ratchet up how we take
8 action on that individual.

9 If there's a long period of time, if we're
10 talking years, that's going to be a factor.

11 The years an employee has, the type of
12 conduct, all of that goes in.

13 So there's no steady answer, and there's no
14 specific chart of, you do X, and you do Y.

15 We do certain things we take extremely
16 seriously, and go to the end, such as complaints of
17 retaliation.

18 If you think you've retaliated against
19 somebody, we will seek your termination.

20 ASSEMBLYWOMAN FERNANDEZ: I've seen how
21 certain people working in a certain agency might
22 move to another agency in the time of their -- you
23 know, (indiscernible) working for the State.

24 If they do have a record of these type of
25 reports and complaints, is the next employer or

1 supervisor made aware of them before hiring and
2 accepting them?

3 MICHAEL VOLFORTE: I don't know what occurred
4 in the past.

5 Certainly, those, that information is now
6 centralized in my office, and it's certainly
7 something we can look at in terms of how that --
8 that's handled.

9 Certainly, that information, now that it's
10 within GOER, becomes relevant if there's another
11 complaint that's in our purview, and so that we'll
12 have that individual's history (inaudible) those
13 make those informed decisions about how to handle
14 that next case, so to speak.

15 ASSEMBLYWOMAN FERNANDEZ: Thank you.

16 SENATOR BIAGGI: Thank you.

17 I have several questions, and I want to just
18 start at the top.

19 So, I think that -- I'm a little bit
20 confused, and I read a lot of the documents before
21 to prepare for this. So, if you could just bear
22 with me and humor me, that would be much
23 appreciated.

24 So how many agencies are currently under
25 GOER's purview?

1 Or, perhaps, maybe it would be easier this
2 way: How many agencies or entities are not under
3 GOER's purview?

4 MICHAEL VOLFORTE: I've listed them in my
5 testimony, and most authorities are not.

6 SENATOR BIAGGI: So from -- at least from
7 what I have found, is it accurate to say that the
8 MTA and the judiciary are not under GOER's purview?

9 MICHAEL VOLFORTE: Correct.

10 SENATOR BIAGGI: Okay. So if a member of the
11 judiciary, or, a staffer in the judiciary, had a
12 problem or an issue, would they just go to DHR?

13 MICHAEL VOLFORTE: They could -- I -- at
14 this -- based on last year's legislation, if they
15 hadn't done it before --

16 SENATOR BIAGGI: Sure.

17 MICHAEL VOLFORTE: -- the judiciary should
18 have their own policy where somebody could make an
19 internal complaint.

20 They could go to DHR.

21 SENATOR BIAGGI: Got it, got it.

22 MICHAEL VOLFORTE: They could go
23 (indiscernible cross-talking) --

24 SENATOR BIAGGI: And the same for MTA;
25 correct?

1 MICHAEL VOLFORTE: Correct.

2 SENATOR BIAGGI: Okay.

3 So who oversees the MTA and the judiciary?

4 Who's going to be doing that oversight?

5 MICHAEL VOLFORTE: I don't know the answer to
6 that question.

7 SENATOR BIAGGI: So there's currently no
8 entity in the state government overseeing any of the
9 complaints and investigations for the MTA and the
10 judiciary; is that correct?

11 MICHAEL VOLFORTE: I know that GOER is not
12 overseeing it. I don't know if anybody else is.

13 SENATOR BIAGGI: Okay.

14 How many employees currently are under your
15 purview?

16 MICHAEL VOLFORTE: In terms of, that are
17 covered by -- that we might investigate complaints
18 of? Or (indiscernible cross-talking) --

19 SENATOR BIAGGI: No, how many individuals are
20 within GOER to be going through the investigations
21 and the complaints?

22 MICHAEL VOLFORTE: There are
23 41 investigators.

24 SENATOR BIAGGI: I saw that, yes.

25 MICHAEL VOLFORTE: And there are a staff of

1 nine individuals that are above those investigators,
2 performing oversight, administrative functions.

3 SENATOR BIAGGI: So about 50, and then you,
4 is 51.

5 So 51 individuals overseeing almost every
6 state agency in the state of New York, and all of
7 the investigations and complaints that come through;
8 is that correct?

9 MICHAEL VOLFORTE: Correct.

10 SENATOR BIAGGI: Okay.

11 What sexual-harassment policy do you have in
12 place for the executive-branch staff?

13 MICHAEL VOLFORTE: The executive-branch
14 staff, it's in our EEO handbook.

15 SENATOR BIAGGI: Okay. Does it go further
16 than the model policy or what's in The Handbook?

17 MICHAEL VOLFORTE: It's consistent with the
18 model policy, but I'm not certain it goes further,
19 other than, we would -- a complaint of that single
20 joke that I stated before, would not, generally, be
21 a violation with DHR. But we could find it to be a
22 violation of policy and take action based on it.

23 SENATOR BIAGGI: Okay.

24 On -- so on December 1, 2018, that was when
25 the inspector general's office switched its cases

1 from the inspector general's office to GOER?

2 MICHAEL VOLFORTE: No.

3 SENATOR BIAGGI: So can you tell me what the
4 date is?

5 MICHAEL VOLFORTE: On December 1, all of the
6 investigators transferred from their agencies to
7 GOER, a physical -- a physical paper move that made
8 them GOER employees.

9 SENATOR BIAGGI: So what was the role, then,
10 of the inspector general's office at that time?

11 MICHAEL VOLFORTE: The inspector general's
12 office operates pursuant to its operating statute,
13 and investigates those things that fall within its
14 purview under, I think it's Executive Order --
15 excuse me, Executive Law 55.

16 They were not handling administrative
17 complaints of -- administrative investigations of
18 discrimination complaints. That was being done by
19 the agencies themselves.

20 SENATOR BIAGGI: Okay.

21 So you mentioned the 41 affirmative-action
22 administrators.

23 What is the role of the EEOs with relation to
24 those affirmative-action administrators?

25 Because my understanding was that the EEOs

1 reported each complaint to GOER. So those were the
2 individuals within each agency, right, that would
3 receive a complaint. And then that complaint would
4 go from the EEO officer to, then, GOER.

5 So, what is the communication structure
6 between the EEOs and the affirmative-action
7 administrators, if any?

8 MICHAEL VOLFORTE: For the most part, those
9 individuals were the same.

10 SENATOR BIAGGI: They were the same?

11 MICHAEL VOLFORTE: They were the same.

12 They're -- the term "EEO officer" and "AAO"
13 were largely used interchangeably. There weren't
14 distinct groups of that.

15 What happened with the -- so -- so what
16 happened with the transfer of function was, those
17 41 AAOs became GOER employees. And, if they had
18 existing complaints, brought the complaints with
19 them.

20 SENATOR BIAGGI: Okay.

21 So -- I mean, since the first
22 sexual-harassment hearing, I'm sure you can probably
23 make an inference that many individuals have reached
24 out to my office about different issues that they've
25 faced as it relates to their complaints with DHR,

1 and whether we can help, and what we can do; and in
2 particular, FOIL requests.

3 And so you had said that GOER does not
4 investigate DHR.

5 So why is it, then, that GOER had sent
6 complaints to -- to -- or, DHR had sent
7 complaints -- their complaints to GOER for this
8 response to a FOIL request that was made?

9 MICHAEL VOLFORTE: I -- I think we're mixing
10 metaphors.

11 SENATOR BIAGGI: Metaphors?

12 MICHAEL VOLFORTE: So, GOER doesn't
13 investigate cases that are filed with DHR in terms
14 of DHR's statutory responsibilities.

15 SENATOR BIAGGI: But what if the -- what if
16 the individual had worked for the agency?

17 MICHAEL VOLFORTE: That complaint would get
18 referred to GOER and we would investigate that.

19 So if -- if it was a state employee
20 complaining -- choosing to use the internal process,
21 and saying, My supervisor within DHR did X and Y,
22 GOER would investigate that employee's complaint,
23 and investigate the supervisor, and render a
24 determination that DHR would implement as an
25 employer.

1 If that employee said, I don't want to go
2 through GOER. I want to -- and I don't want to file
3 with DHR, or, I want to file with DHR, they're
4 filing with DHR in that capacity, with their --
5 DHR's statutory responsibility to investigate
6 complaints of discrimination, in general, or, the
7 EEOC.

8 We wouldn't investigate in that second
9 circumstance contemporaneously with DHR. That would
10 be them in their capacity, and maybe they have some
11 process set up as to how they handle that.

12 But that would not be us.

13 So that's why, what you're looking at may be
14 that there's a DHR complaint. That would be a --
15 what we call an "internal complaint," which is
16 internal to the State, the employer investigating
17 its own actions, which now GOER is doing.

18 SENATOR BIAGGI: So -- I mean, please excuse
19 me, but I feel like you are speaking in tongues.
20 I really do not understand.

21 So can you just lay it out for me in a way
22 that is like very simple, as if I had never read
23 anything before, had no idea, and I am you, right
24 and your relationship to DHR is...?

25 Go.

1 MICHAEL VOLFORTE: If you as an employee
2 of -- well, I'll go back to the example you gave.

3 I'm an employee of DHR. I feel --

4 SENATOR BIAGGI: For an employee of an
5 agency, let's just say. An employee of an agency.

6 MICHAEL VOLFORTE: Take another -- take
7 another -- whatever example you want, I'll run
8 through.

9 So another agency that's covered under our
10 purview, depending on that agen -- on what agency
11 that employee works for, you have a number of
12 options.

13 One: You can file a complaint, which we call
14 an "internal complaint," which is a complaint not
15 filed pursuant to law or statute, which is what we
16 consider DHR's process, EEOC process, or court.

17 So those processes are not what we
18 characterize as internal.

19 So you, as an employee in an agency, can file
20 directly with GOER. You can mail it to us. You can
21 e-mail it to us.

22 Depending on what agency you're located in,
23 GOER may have an investigator on-site. You can go
24 to that investigator, give them your form, or they
25 will help you fill out that form, so you can

1 investigate that.

2 And then that GOER investigator will file
3 that form with GOER, and then that gets
4 investigated.

5 You also have the ability, if you so choose,
6 you can go to your supervisor, and your manager,
7 your general counsel, of your agency; you could file
8 that complaint with them. They're obligated to send
9 that to GOER.

10 Or, if you don't want to do any of those
11 things, you could go to the division of human rights
12 and they'll assign somebody, pursuant to their
13 processes, to look at what the employer does, go
14 through that probable-cause determination that was
15 talked about in the previous testimony, make that
16 determination, and go through their procedures.

17 Or, you can go to the EEOC.

18 Or, you can file with court.

19 SENATOR BIAGGI: Okay.

20 MICHAEL VOLFORTE: Those would be all the
21 potential options.

22 SENATOR BIAGGI: Got it.

23 All right, that's very helpful. Thank you.

24 So -- so, now, going back to the -- where we
25 started: Does GOER track the investigations and

1 complaints that DHR oversees?

2 MICHAEL VOLFORTE: Only if it's in that
3 first, what I'll call, "bucket" I spoke to, before
4 you get to a technical legal filing with DHR or with
5 the EEOC.

6 So if it is -- if it's a DHR employee, and
7 they want to file with their supervisor in the
8 internal complaint process; if they want to file
9 with an on-site AAO, if there is one; if they want
10 to mail it to GOER; if they want to mail it to --
11 or, e-mail it to GOER; all of those would be
12 tracked.

13 If DHR is getting a complaint on their form,
14 pursuant to their procedures and the law, from an
15 employee of any state agency, we don't track DHR in
16 that.

17 SENATOR BIAGGI: Okay.

18 Can you just hold on for one moment?

19 ASSEMBLYMAN CRESPO: While we're on a break,
20 I'll just mention the pizza did arrive.

21 Courage, everyone, not to go at once.

22 It's a room back in this corner direction
23 (indicating).

24 But...

25 (Inaudible comments being made.)

1 [Laughter.]

2 ASSEMBLYMAN CRESPO: Only in Puerto Rico.

3 [Laughter.]

4 SENATOR BIAGGI: Okay. I will -- I'm going
5 to hand it over to Yuh-Line, to -- or, excuse me,
6 Line -- Assemblywoman Niou --

7 ASSEMBLYWOMAN NIOU: We're roomies, that's
8 okay.

9 SENATOR BIAGGI: -- to ask the question.

10 I think that I -- I think I get it; I just
11 want to make sure that I get it.

12 And if I don't, I know where to find you.

13 So, thank you.

14 ASSEMBLYWOMAN NIOU: Hi.

15 So I just -- just a couple of brief
16 questions. I know that you're running out of time.

17 So what did you mean -- when responding to
18 Assemblymember Simotas's question on trauma-informed
19 training, what did you mean when you said
20 "a background in this field"?

21 I just wanted to kind of get a feel.

22 MICHAEL VOLFORTE: A number of the people
23 that we transferred had numerous years investigating
24 complaints of discrimination, either with the State
25 or came from other areas where they had those

1 backgrounds.

2 So --

3 ASSEMBLYWOMAN NIOU: There's like no
4 certification?

5 Is there anything that you --

6 MICHAEL VOLFORTE: Some of them -- I mean,
7 we've had people from work -- who worked with the
8 EEOC, who've worked in private industry, who've
9 worked with the division of human rights, and had
10 whatever training there was there.

11 So that's what I meant on the background
12 (indiscernible cross-talking) --

13 ASSEMBLYWOMAN NIOU: Oh, okay. So it's not
14 standardized?

15 MICHAEL VOLFORTE: It's not -- where we get
16 folks from is not the training we give them is. But
17 it -- I just want to make it -- it does not include,
18 technically, what everyone is referring to in terms
19 of that "trauma-informed training."

20 ASSEMBLYWOMAN NIOU: Okay.

21 How long does an investigation usually take?

22 MICHAEL VOLFORTE: There is no "usual."

23 We -- it -- it -- we have -- because of
24 the -- what's involved, it really depends on
25 complaints, and how -- what -- the number of

1 complainants, the number of respondents, the
2 complexity.

3 If it's a -- if it's an issue that perhaps
4 involves something that was a criminal matter, that
5 got referred back to us, that might jump the line.

6 So all those things work into it.

7 Eventually, we'd like to work towards a goal
8 of 30 days.

9 ASSEMBLYWOMAN NIOU: 30 days, okay, goal of
10 30 days?

11 MICHAEL VOLFORTE: Goal of 30 days.

12 ASSEMBLYWOMAN NIOU: Okay.

13 And what's the procedure for investigation?

14 Do you start with the complainant?

15 MICHAEL VOLFORTE: Yes, the complainant gets
16 an acknowledgment of their -- so they send us the
17 form, and we send them a note back that we received
18 their form, with notice that they should not receive
19 retaliation.

20 The investigator, I'm going to truncate,
21 makes a game plan to investigate. The matter gets
22 investigated.

23 We are in consultation with the agency's
24 general counsel because, since we're investigating
25 other agencies, we need documents that are in their

1 possession, e-mails.

2 So that takes part of the process.

3 There is interviewing of individuals
4 involved.

5 We then wind up with a report, and a
6 recommendation as to how to bring the matter to a
7 conclusion at the end.

8 ASSEMBLYWOMAN NIOU: And you're hoping to do
9 all of that in 30 days?

10 MICHAEL VOLFORTE: At least complete the
11 initial investigative report and -- or,
12 investigation, and start the report write-in.

13 When it comes to things that are going to the
14 EEOC or DHR, because of the statutory time frames,
15 we have to ramp those investigations up, and those
16 also sometimes move in front of other investigations
17 because of time limits that those agencies impose on
18 the State to get back to them.

19 ASSEMBLYWOMAN NIOU: And since it might take
20 a lot longer, do you provide investigations, like
21 status updates or, anything, to those that you've
22 interviewed, the complainant's -- with the witness
23 or the complainant?

24 MICHAEL VOLFORTE: Formally, it's the
25 beginning and the end.

1 And, informally, if the individual calls, we
2 tell them (indiscernible cross-talking) --

3 ASSEMBLYWOMAN NIOU: So they have to
4 instigate?

5 MICHAEL VOLFORTE: Yes, there's no
6 (indiscernible cross-talking) --

7 ASSEMBLYWOMAN NIOU: They have to call you?
8 You don't update them regularly if there's
9 any movement on their cases?

10 MICHAEL VOLFORTE: No.

11 ASSEMBLYWOMAN NIOU: Okay.

12 Uhm -- okay.

13 So -- I mean, I -- I'm just saying all this
14 because, we read recently, the "Times Union,"
15 Gina Bianchi's case, GOER had claimed that the
16 investigation of the case is ongoing for more than a
17 year later.

18 MICHAEL VOLFORTE: As I discussed with
19 individuals, we're not commenting on any ongoing
20 investigations -- on any litigation.

21 ASSEMBLYWOMAN NIOU: I know.

22 I'm talking about the length.

23 And that's -- is that normal? Is that --

24 MICHAEL VOLFORTE: I'm not going to comment
25 on anything in litigation.

1 ASSEMBLYWOMAN NIOU: Okay.

2 All right, thank you.

3 SENATOR BIAGGI: One final question for me.

4 Okay, so, you stated that GOER does not track
5 DHR complaints. Correct?

6 MICHAEL VOLFORTE: I said GOER doesn't track
7 what DHR is investigating, generally.

8 That's what I -- that's what my intent was,
9 that we're not tracking what they are doing,
10 generally.

11 If it relates --

12 SENATOR BIAGGI: What does that mean,
13 "not doing, generally"?

14 MICHAEL VOLFORTE: If it relates to a State
15 agency; so, in those examples, when an employee
16 would go to DHR, in their statutory capacity, and
17 file a complaint with them, we would have that
18 information because the agency would report that
19 they had an employee go to DHR.

20 We would investigate that, and provide
21 information to the agency.

22 So we have information of when State
23 employees file stat -- what I'll call a "statutory
24 complaint."

25 SENATOR BIAGGI: What is a stat -- so, what

1 is a "statutory complaint"?

2 MICHAEL VOLFORTE: DHR and the EEOC exists
3 pursuant to law, to investigate complaints --

4 SENATOR BIAGGI: Okay.

5 MICHAEL VOLFORTE: -- that come to them.

6 SENATOR BIAGGI: So a complaint that's under
7 their purview?

8 MICHAEL VOLFORTE: It's under their purview.

9 SENATOR BIAGGI: So just a complaint?

10 MICHAEL VOLFORTE: It's a complaint --

11 SENATOR BIAGGI: So can we simplify when
12 we're speaking, so that I can stay with you on this
13 page.

14 So GOER -- you had said GOER does not track
15 DHR complaints?

16 MICHAEL VOLFORTE: I -- I -- we don't track
17 complaint -- we don't track all complaints to DHR.

18 If a State employee makes a complaint to DHR,
19 we have that information.

20 SENATOR BIAGGI: Okay, thank you.

21 So I have a response to a FOIL Request, that
22 proves that, from 2015 to the present, GOER has been
23 tracking DHR complaints.

24 MICHAEL VOLFORTE: As I just stated, we have
25 information on --

1 SENATOR BIAGGI: But you -- but you -- see --
2 but do you understand why this is confusing to me?

3 Because you first stated that you're not
4 tracking it. And now you're stating that you do
5 track it.

6 MICHAEL VOLFORTE: I think your question was,
7 or at least I interpret it to be, from a general
8 perspective.

9 SENATOR BIAGGI: A general per -- I don't
10 understand what that even means.

11 MICHAEL VOLFORTE: DHR --

12 SENATOR BIAGGI: GOER -- wait, let me finish.
13 Complaints that DHR had, that are made to
14 DHR, does GOER track those complaints?

15 MICHAEL VOLFORTE: Only if it's made by a
16 State employee.

17 SENATOR BIAGGI: Only if it's made by a State
18 employee?

19 MICHAEL VOLFORTE: Yes.

20 SENATOR BIAGGI: So that was not clarified
21 earlier.

22 So I would just recommend that you be precise
23 with your words, because that is -- that could
24 potentially lead to something very confusing, and
25 not helpful to the inquiry that we're trying to make

1 here.

2 So, thank you.

3 ASSEMBLYMAN CRESPO: I know your time is
4 precious.

5 Senator Liu and Assemblyman Buckwald to
6 close.

7 OFF-CAMERA SPEAKER: (Inaudible.)

8 SENATOR LIU: No, that's okay.

9 Thank you very much, Mr. Chair.

10 I want to go with what our Chairwoman has
11 talked about.

12 The testimony is really not that clear.

13 I know you're trying.

14 It just sounds like a lot of legalese.

15 Generally. Sometimes. Sometimes not.

16 I mean, are you crossing your fingers too?

17 MICHAEL VOLFORTE: (Holds up open hands.)

18 SENATOR LIU: Okay. And no toes?

19 MICHAEL VOLFORTE: No toes.

20 SENATOR LIU: All right, good.

21 Let me ask the question that I asked the DHR
22 also, which is, that, you know, I understand you're
23 running us through your procedures, what you've
24 done, what you haven't been doing.

25 But what about what more you could do?

1 What about complaints that, for example, are
2 probably legitimate complaints, but just don't meet
3 the current legal standard: that's "severe and
4 pervasive."

5 I mean, how does GOERS (sic) deal with that?

6 MICHAEL VOLFORTE: As I stated earlier, we --
7 we take our investigations at a policy level.

8 And to kind of go back a little bit,
9 complaints before DHR can be for any public or
10 private employer in New York State.

11 I over -- our process deals with a segment of
12 only 130,000.

13 So when I talked earlier, what I meant to
14 communicate was, those 130,000, if those people file
15 complaints, I, certainly, we, have that information.

16 For a town, an authority, we probably,
17 generally, don't have that information.

18 A private entity, we definitely don't have
19 that information.

20 So, there is -- there -- you know, that's --
21 in terms of that, that is legalese, but, again,
22 that's from our process.

23 But in terms of what an individual might
24 experience in terms of discrimination, what I'm
25 doing is -- in our agency, is, we -- we're

1 investigating as the employer, and we're looking at
2 whether conduct occurred, regardless of whether it
3 was the con -- what the conduct was, and not
4 focusing so much on that "severe and pervasive"
5 standard.

6 So, for example, if an individual comes to us
7 and complains, and says, "Somebody told me a
8 sexually-explicit joke, and I'm offended," they file
9 a complaint, we'll investigate that.

10 If it's found to have occurred, we will make
11 a finding that it occurred, and we will remedy it
12 administratively, as the employer, and take
13 appropriate action.

14 SENATOR LIU: So does that -- does that imply
15 that the policy, that these 130,000 employ -- State
16 employees are subject to, could be more rigorous or
17 comprehensive than the law currently is?

18 MICHAEL VOLFORTE: Yes.

19 SENATOR LIU: Would that be -- would it be
20 too onerous a standard to apply to private employers
21 in this state?

22 MICHAEL VOLFORTE: I mean, I know you heard
23 the earlier responses.

24 I have a similar response in terms of
25 commenting on existing legislation.

1 But what --

2 SENATOR LIU: No, I'm not asking you to
3 comment on existing legislation.

4 I'm just comment -- asking you to comment on
5 your policy, and whether it is feasible to extend it
6 to all employers in this state.

7 Forget about bills.

8 MICHAEL VOLFORTE: And I can't speak for all
9 the employers. (Indiscernible cross-talking) --

10 SENATOR LIU: I'm not asking you to speak for
11 all your employers.

12 MICHAEL VOLFORTE: (Indiscernible
13 cross-talking) --

14 SENATOR LIU: Just as somebody who is expert
15 in this field, who is an expert in administering it,
16 I mean, just from your own knowledge.

17 Forget the legalese.

18 Look, your fingers are all clear (holding up
19 open hand).

20 Okay?

21 Just from your conscience, what do you think?

22 Is it unreasonable to expect a private
23 employer to uphold these same kinds of standards
24 that we expect our State employees -- the vast
25 majority of our State employees to uphold?

1 MICHAEL VOLFORTE: I really can't comment on
2 whether it's reasonable or unreasonable for a
3 private employer to adopt what the State has
4 adopted.

5 SENATOR LIU: Okay.

6 All right, thank you.

7 Thank you, Madam Chair.

8 SENATOR BIAGGI: Assemblymember Buckwald.

9 ASSEMBLYMAN BUCHWALD: Thank you.

10 My question, I believe, will be very quick,
11 and I preface it by only saying, it's a question out
12 of curiosity, not based on any specific incident or
13 otherwise.

14 Just curious, an employee of GOER, if there
15 were to be any harassment, sexual harassment or
16 otherwise, within the GOER workplace, where do they
17 go for -- other -- obviously, they have the same
18 abilities that anyone, even outside New York State
19 does, of going to DHR and so forth.

20 But is there any -- just like GOER serves as
21 an independent function within, for other state
22 agencies, is there some arrangement that's made for
23 GOER employees to have someone outside of GOER
24 provide that same sort of function?

25 MICHAEL VOLFORTE: What we would consider an

1 internal complaint --

2 ASSEMBLYMAN BUCHWALD: Yes.

3 MICHAEL VOLFORTE: -- in another agency, a
4 GOER employee could have that investigated by a law
5 firm we've retained -- we are retaining.

6 ASSEMBLYMAN BUCHWALD: You've retained a law
7 firm, and you're employees have information on that,
8 as -- as a matter of just, like, your -- the policy
9 procedures that you provide?

10 Or -- or is it, they go to the internal
11 person that's designated, and then they refer it to
12 outside counsel?

13 MICHAEL VOLFORTE: We're in the procurement
14 process, but they would -- they -- they would go
15 file it with our administrative officer, and she
16 send it to the law firm.

17 ASSEMBLYMAN BUCHWALD: So that law firm is,
18 essentially, serving the same function, as far as
19 you're concerned, vis-a-vis GOER -- that GOER is
20 serving vis-a-vis other agencies that are within
21 your purview?

22 MICHAEL VOLFORTE: They will, yes.

23 ASSEMBLYMAN BUCHWALD: Okay.

24 Thank you very much.

25 Thank you, Madam Chair.

1 SENATOR BIAGGI: Last question for me:

2 So we've just established that GOER does
3 track the internal complaints of DHR?

4 MICHAEL VOLFORTE: Yes.

5 SENATOR BIAGGI: Okay. And not the external
6 complaints; correct?

7 That's what you had said?

8 MICHAEL VOLFORTE: Not the external
9 complaints -- and I'm going to get -- not external
10 complaints that are filed by anybody else other than
11 state agencies.

12 If it's a state agency, and they go to DHR,
13 we track that.

14 SENATOR BIAGGI: Okay. So what is the
15 difference between internal and DHR?

16 MICHAEL VOLFORTE: An "internal complaint" is
17 somebody who files -- who -- who follows the
18 complaint process that's established by law, that
19 says that all employers have to have a complaint
20 process.

21 SENATOR BIAGGI: Uh-huh?

22 MICHAEL VOLFORTE: If it is -- if the
23 document you're looking at says "DHR," that means
24 some State employee has filed directly with DHR,
25 pursuant to their statutory and regulatory

1 procedures.

2 SENATOR BIAGGI: Thank you.

3 Senator Liu.

4 SENATOR LIU: Thank you for your indulgence,
5 Madam Chair.

6 So, clearly, in your testimony, you have been
7 very clear, the policy that GOERS (sic) enforces
8 does not apply to legislative employees?

9 MICHAEL VOLFORTE: Correct, yes.

10 SENATOR LIU: Is there any reason why this
11 Legislature should not adopt similar kinds of
12 policies?

13 MICHAEL VOLFORTE: I think even --

14 SENATOR LIU: Forget about what your boss
15 might tell you.

16 Just tell us.

17 Free yourself.

18 [Laughter.]

19 MICHAEL VOLFORTE: I'm even more reticent to
20 advise a coequal branch of government as to how they
21 should run their HR --

22 SENATOR LIU: It's perfectly fine for us to
23 ask you advice.

24 We may -- we may to choose to take or
25 choose -- not take it.

1 It's perfectly fine for us to ask, and it's
2 perfectly fine for you to answer. You're not
3 tying -- binding us to anything.

4 MICHAEL VOLFORTE: I would not answer it this
5 way: I think it's incumbent upon employers to
6 prevent discrimination, and one way you do that, is
7 to prevent it when smaller incidents happen, before
8 they blow up into a bigger incident.

9 So in that regard, I think it's in an
10 employer's interest to do that.

11 SENATOR LIU: Okay, but if -- say, if there
12 is an incident, or alleged incident, or a complaint,
13 under your department, and the 130,000 employees
14 that you have some kind of authority over, would
15 there be a case where a complaint would just be in
16 limbo, like, indefinitely, or is there always a
17 clear time frame for things to be resolved?

18 MICHAEL VOLFORTE: There's -- we don't have
19 an established end date.

20 But, you know, if -- and not that there are
21 many of these, but if a complaint came in, and it
22 was of such a nature that it was criminal, and that
23 got -- that would get referred out, how long that
24 criminal process would leave the internal complaint
25 in limbo, because we wouldn't interfere with -- for

1 various -- for any number of reasons, with the
2 criminal complaint by investigating at the same time
3 the police were.

4 SENATOR LIU: All right.

5 MICHAEL VOLFORTE: So in that regard, that
6 could be one that's out there.

7 SENATOR LIU: Okay. Thank you.

8 Thank you, Madam Chair.

9 ASSEMBLYMAN CRESPO: Thank you so much for
10 your testimony --

11 MICHAEL VOLFORTE: Thank you very much.

12 ASSEMBLYMAN CRESPO: -- and your time.

13 National Economic and Social Rights
14 Initiative, Noelle Damico, senior fellow.

15 REV. NOELLE DAMICO: Good afternoon.

16 I'm Noelle Damico, the senior fellow at the
17 National Economic and Social Rights Initiative, and
18 a member of the board of the Fair Food Standards
19 Council.

20 And I wish to thank you for this opportunity
21 to testify on behalf of the Fair Food Program that
22 was created by the Coalition of Immokalee Workers, a
23 farmworker-founded human rights organization that
24 was awarded a Presidential Medal in 2015, and to
25 share the remarkable success of this program's

1 Worker-driven Social Responsibility paradigm in
2 ending and preventing gender-based violence.

3 In addition to my testimony, I have also
4 submitted 20 copies of 2 additional reports that
5 will provide quantitative and qualitative data on
6 both WSR and the Fair Food Program.

7 At a moment when our society is reckoning
8 with sexual harassment as never before, with these
9 hearings, the New York State Senate and Assembly
10 have stepped forward to declare our state is
11 prepared to combat these abuses vigorously.

12 The #MeToo movement has exposed the chronic
13 infection of sexual harassment and assault in the
14 workplace.

15 What is now needed is an antibiotic capable
16 of helping our body politic work together to create
17 healthy, thriving workplaces.

18 The good news is, we have the cure and we
19 know it works.

20 The cure of Worker-driven Social
21 Responsibility emerged not from the offices of a
22 Manhattan NGO, but from the sweltering tomato fields
23 of Immokalee, Florida, from an approach developed by
24 workers themselves, the true experts on human rights
25 abuses in their workplace.

1 In isolated, under-regulated environment of
2 U.S. agriculture, gender-based violence is severe
3 and ubiquitous.

4 As many as 80 percent of farmworker women
5 surveyed reported being sexually harassed or
6 assaulted. That's four out of five women.

7 Earning low wages, fearing retaliation, and
8 facing barriers to filing legal complaints, many
9 women elect to suffer abuse rather than report it
10 and risk the consequences.

11 As one woman put it, "You allow it or they
12 fire you."

13 But that chilling reality began to change in
14 2011 with the advent of the Fair Food Program.

15 Through the Fair Food Program, sexual assault
16 has been virtually eliminated and sexual harassment
17 has been dramatically reduced for 35,000 workers
18 laboring on program farms in seven states,
19 stretching from Florida to New Jersey.

20 Let me say that again: Cases of sexual
21 harassment by supervisors with physical contact of
22 any kind have been virtually eliminated, and workers
23 consistently report dramatic reductions in all forms
24 of harassment.

25 In U.S. agriculture, a profoundly

1 male-dominated industry notorious for sexual and
2 economic exploitation, in this industry, the
3 Fair Food Program has gotten to the point of
4 prevention of sexual assault and harassment.

5 The story of the Fair Food Program begins
6 with the Immokalee farmworkers' determination to use
7 the market power of retailers at the top of supply
8 chains to realize their rights.

9 The Coalition of Immokalee Workers united
10 with tens of thousands of consumers of conscience to
11 convince 14 brands, including McDonald's, Aramark,
12 and Walmart, to sign legally-binding agreements,
13 committing them to purchase only from growers who
14 implement a farmworker-defined code of conduct with
15 zero-tolerance provisions for sexual assault, and a
16 range of other protections, including the right to
17 work free of sexual harassment and to raise
18 complaints without retaliation.

19 Growers who fall out of compliance lose the
20 ability to sell to all 14 of these massive brands.

21 Participating growers, for their part, commit
22 to implement the code and to cooperate with the
23 program's monitoring organization.

24 These legally-binding agreements form the
25 backbone of the Fair Food Program which has

1 generated a sea change in rights realization,
2 leading "Harvard Business Review" to name the
3 Fair Food Program among the 15 most-important
4 social-impact stories of the last century.

5 The Fair Food Program works because it is a
6 system-level intervention that ends the imbalance of
7 power between employers and workers that is at the
8 root of sexual harassment, sexual assault, and other
9 abuses.

10 In short, it shifts the risk, from the worker
11 who reports sexual harassment, to the employer who
12 fails to address sexual harassment.

13 It put billions of dollars of purchasing
14 power behind guaranteeing a workplace free of
15 gender-based violence and other abuses.

16 What does this mean for workers?

17 One worker put it simply, "Now the fear is
18 gone."

19 A transgender worker spoke at length about
20 the respect that she and others on her crew receive.

21 A male worker, who observed that, at so many
22 farms, women risk losing their job if they speak out
23 against harassment or reject the advances of a
24 supervisor, he remarked how different the
25 environment is at FFP Farms. He added that, as a

1 man, he believes that a more respectful work
2 environment benefits him as well, and he is very
3 relieved to work in a place where women are not
4 treated poorly.

5 Because of the Fair Food Program's phenomenal
6 success in addressing sexual harassment and assault,
7 the Equal Employment Opportunity Commission's Select
8 Task Force singled out the Fair Food Program,
9 calling it "a radically different accountability
10 mechanism," and adopted many of those mechanisms as
11 core recommendations in its landmark 2016 report.

12 The Fair Food Program's groundbreaking
13 approach was distilled by the Coalition of Immokalee
14 Workers into a new paradigm called "Worker-driven
15 Social Responsibility," that is translating and
16 adapting core rights mechanisms successfully in
17 other industries.

18 WSR was strengthened through the design and
19 implementation of the Accord on Fire and Building
20 Safety in Bangladesh, demonstrating the paradigm's
21 exponential potential for realizing human rights for
22 millions of workers.

23 In Vermont, Migrant Justice has adopted
24 the WSR model to the dairy industry through the
25 Milk with Dignity program, where it has proved

1 singularly successful in combating sexual violence
2 among a largely immigrant workforce on isolated
3 dairy farms.

4 Construction workers in Minneapolis are
5 poised to launch their own WSR program, as are
6 female garment workers in the southern African
7 country of Lesotho.

8 And in New York, the Model Alliance is
9 adapting WSR to create a truly inclusive safe and
10 fair place to work through their RESPECT Program.

11 You'll be hearing from them shortly.

12 As the magazine "Civil Eats" recently said,
13 "It's a template that, when you adjust it, can be
14 applied to almost any work situation."

15 And, indeed, that's just what's happening.

16 In response to the hearings (indiscernible)
17 for strategies to combat sexual harassment, here are
18 a few lessons from our experience that can be put to
19 work elsewhere:

20 One: Redress the imbalance of power through
21 legally-binding agreements, with consequences.

22 Whether in a government office or on a
23 factory floor, change does not come from voluntary
24 good will, but from binding agreements with serious
25 consequences for refusing to address sexual

1 harassment or assault.

2 Two: Provide worker-to-worker training and
3 rights, and the ability to report without fear of
4 retaliation.

5 Sexual assault and harassment are crimes of
6 power and opportunity.

7 Trained in their rights and equipped with the
8 ability to report problems through multiple
9 channels, including a 24-by-7 confidential hotline,
10 and protected from retaliation, thousands of
11 farmworkers have become front-line monitors of their
12 own rights, leaving bad actors nowhere to commit
13 their crimes.

14 Workers in other workplaces can be similarly
15 empowered and protected.

16 Third: Monitor conditions, swiftly
17 investigate, require and assist compliance, report
18 findings.

19 The Fair Food Standards Council, which
20 oversees the Fair Food Program, undertakes deep-dive
21 audits, interviewing 50 to 100 percent of workers on
22 farms.

23 Fair Food Standards Council investigators
24 also staff the 24-by-7 complaint hotline in Spanish,
25 English, and Creole.

1 Upon receipt of a complaint, they immediately
2 open an investigation, whatever of the hour of day
3 or night.

4 Almost 80 percent of all complaints are
5 resolved within one month, 50 percent within
6 2 weeks.

7 The FFSC is empowered to render judgments on
8 compliance and design resolutions. They provide
9 assistance to help farm employers thoroughly address
10 problems so that they don't arise in future.

11 FFSC updates its website regularly to reflect
12 current compliance by participating growers, and
13 publishes reports, providing maximum transparency.

14 Finally: Such serious consequences for
15 perpetrators and employers who fail to remedy and
16 prevent.

17 Since the program's inception, 42 supervisors
18 have been disciplined for sexual harassment, and
19 11 of those supervisors have been terminated, and
20 are, therefore, no longer able to work on FFP farms
21 in any state.

22 The removal of notorious supervisors who
23 preyed on women increased worker confidence in the
24 confidential complaint system.

25 The program also requires field supervisors

1 who witness sexual abuse to intervene and report, or
2 else face disciplinary action themselves.

3 Any employer that refuses to terminate an
4 employee confirmed by the Fair Food Standards
5 Council to have committed sexual harassment with
6 physical contact of any kind, will be suspended.

7 People will trust compliance systems when
8 they see them working.

9 As the New York Senate and Assembly consider
10 legislation to address sexual harassment in
11 government offices, I hope you'll consider these
12 lessons, and that you will also consider the
13 important role government can play in ending and
14 preventing gender-based violence in the workplace by
15 encouraging private-sector uptake of WSR by
16 employers, and in corporate supply chains, as well
17 as adopting WSR for government procurement.

18 With your commitment, we will surely step
19 closer to that day when all workers will labor in
20 respectful and dignified workplaces.

21 Thank you.

22 SENATOR BIAGGI: Thank you so much,
23 Reverend Damico.

24 This is an incredible paradigm for what we
25 can apply to different workplaces across the state,

1 including state government.

2 I'm very much looking forward to hearing from
3 The Model Alliance, who I know, last time, wanted to
4 testify, and couldn't, because the day just went on
5 so long.

6 I'm curious how --

7 And if you don't have an answer, it's not
8 meant to put you on a spot yet.

9 -- but how do you think we as legislators can
10 implement this in the state of New York?

11 What can we do; what type of legislation can
12 we pass, and what would it look like?

13 To start this out, would it be a -- like a
14 test program first; and, if so, where would we
15 begin?

16 REV. NOELLE DAMICO: That's a wonderful
17 question, and I'd actually like to give it some
18 additional thought --

19 SENATOR BIAGGI: Sure.

20 REV. NOELLE DAMICO: -- and consult with my
21 colleagues.

22 SENATOR BIAGGI: Sure.

23 REV. NOELLE DAMICO: But what I would say is,
24 one place to start is with some of the principles
25 that I mentioned in my testimony, and think about

1 how they might be comprehensively applied and
2 piloted.

3 Before the Fair Food Standards Program went
4 into full operation, we did have a pilot stage, and
5 that stage was very helpful for one year, working
6 very closely with two growers, in order to get this
7 underway.

8 And once we had it implemented, then it could
9 be expanded very well.

10 So I think a pilot approach is a great way to
11 start.

12 And what I will say is that, this paradigm is
13 very adaptable in flat workspaces, in supply chains,
14 and whatnot.

15 SENATOR BIAGGI: One follow-up question:

16 I think that one of the most significant
17 parts of what you just shared with all of us, and
18 I hope it wasn't lost on my colleagues, but I don't
19 think it will be, and I don't think it was, is the
20 effect of a legally-binding agreement, and how
21 incredibly consequential that can be to the entity
22 that has the deep pockets, or that is really just
23 focused on profit.

24 So much of what we see, when it comes to
25 sexual harassment in the workplace, is an imbalance

1 of power, and an end and abuse of power.

2 And having a legally-binding agreement,
3 I mean, as I'm sitting here, one of the thoughts
4 that I had, that came through my head, I -- I can
5 only imagine the day where this would happen, but
6 anything is possible -- we are here now, after
7 all -- is, imagine if you were running for office;
8 you were a candidate and you ran for office, or, you
9 had won, and you were then the elected official, and
10 you had signed an agreement with your constituents,
11 that you would not do any of the behaviors that are
12 often -- so often, tie the hands of the Legislature,
13 which is such an interesting place, because none of
14 us in the Legislature are employed by the
15 Legislature, if that makes sense.

16 Right?

17 We are, technically, employed by the State of
18 New York, but, the employer is not the Legislature.

19 It makes it very challenging.

20 And, historically, at least in the New York
21 State Legislature, so many individuals who have --
22 who have conducted in quite egregious behavior, have
23 not been able to be held to account because the
24 standards in our laws are so high, which is what
25 we're aiming to change.

1 But more importantly, because of the dynamic,
2 there's really not many mechanisms to use.

3 So -- and there's political implications, and
4 we all know what they are.

5 It's very challenging, as an environment, to
6 enforce any policies against one another.

7 But it's also one of the reasons why I am
8 proud to chair the Ethics Committee.

9 So I just -- I appreciate, that I would love
10 for you to think about what that would look like,
11 and how we can put that forward in the state of
12 New York.

13 REV. NOELLE DAMICO: One thing I will say is,
14 it's important to know, this program's been in
15 operation for eight years now.

16 And over the course of its implementation and
17 operation, what we've seen is an increase in calls
18 coming in to the hotline, and a decrease in the
19 severity of the problems being reported.

20 Simultaneously, we now are operating in such
21 a collaborative manner with growers and
22 corporations, who have come to recognize that
23 cleaning up human rights abuses in the field are the
24 best form of risk management.

25 Right? Actually getting in there and

1 cleaning them up.

2 And every actor in the supply chain, in this
3 instance, has been incentivized to put their
4 shoulder to the plow of ending this; and, indeed,
5 it's working.

6 And so if there is one message that I want to
7 give to this wonderful group that is assembled, with
8 so much power and possibility before us, this can be
9 done.

10 And these mechanisms have proven themselves
11 in one of the most inhospitable industry, as well as
12 are being demonstrated in other industries and types
13 of workplace configurations.

14 So, I also want to invite you to become -- to
15 start thinking about this, and saying, Where would
16 this make sense inside our government system?

17 SENATOR BIAGGI: Thank you so much.

18 REV. NOELLE DAMICO: You're welcome.

19 ASSEMBLYMAN CRESPO: I'll briefly just thank
20 you for your testimony, for the work of the
21 organization.

22 This really is -- it's amazing, the results
23 you have.

24 Just, you mentioned there was a couple of
25 other industries that have applied your model.

1 Have you seen any government; municipal,
2 state, government, apply this model --

3 REV. NOELLE DAMICO: Not yet.

4 ASSEMBLYMAN CRESPO: -- anywhere in the
5 country yet?

6 REV. NOELLE DAMICO: We've had some informal
7 conversations with different government officials in
8 different settings, but it has not been applied yet.

9 But, we'd love to make New York the first.

10 ASSEMBLYMAN CRESPO: We'll take that back.

11 Thank you.

12 Assemblyman Buchwald.

13 ASSEMBLYMAN BUCHWALD: Thank you,
14 Mr. Chairman.

15 And I will take the privilege to ask briefly
16 of my constituent, Reverend Damico, who I'm proud to
17 call a neighbor in White Plains, about the
18 monitoring portion of the setup here, because
19 I think that's one of the topics that,
20 legislatively, we tend not to just focus on, mostly
21 because we like to set policy. But the
22 implementation policy is, obviously, extremely
23 important, and monitoring is crucial for that.

24 Can you go into, so what you feel are the
25 right metrics, in general?

1 You reference in your -- there's metrics to
2 monitor.

3 You reference in your remarks earlier,
4 monitoring time for review of complaints.

5 We've had some discussion of that, obviously,
6 in different contexts today.

7 But you also -- the FF -- FFSC website says
8 "updates regularly, current compliance by
9 participating growers."

10 What level of detail is provided?

11 Like, is it just, in compliance or not in
12 compliance?

13 Or -- or is it like an ongoing, you know,
14 tracking of how many complaints there, and what the
15 process is, and so forth?

16 And, more generally, for an employer, in or
17 out of government, of what you feel is the right
18 level of transparency into this, given
19 (indiscernible) also sensitivities, you know, as you
20 referenced.

21 It's not just a matter of tracking numbers of
22 complaints. In fact, you know, an increasing number
23 of complaints could be a good sign for things.

24 So what would you just say, broadly, on that
25 topic that would be informative to us?

1 REV. NOELLE DAMICO: Well, what I would say
2 is, we have extensive data that we use.

3 And we -- first of all, let me talk about how
4 we get the information, and then the kinds of data
5 that we report, and then how we make that available.

6 First, you'll notice I mentioned the 24-by-7
7 hotline.

8 This is an extremely important vehicle
9 because it, essentially, provides a real-time camera
10 feed, if you will, to ongoing situations. It's
11 available to all workers.

12 When workers, at the point of hire, are
13 trained with "Know Your Rights" booklets, and
14 provided a sexual-harassment video training, where
15 they see farmworkers, like themselves, speaking in
16 their own languages, acting out scenarios, to show
17 how those rights need to be respected in the field,
18 they also receive an ID badge. And on that badge is
19 the Fair Food Standards' hotline.

20 Also, the growers in the program are required
21 to establish, if they don't have one already, and
22 I'll just say at the beginning of this process, none
23 of them had it, a hotline to report.

24 And then they also have a third number to
25 call, which is the worker organization, the

1 Coalition of Immokalee Workers.

2 In addition to those hotlines, we also have
3 other points at which workers can have the
4 opportunity to bring a problem forward.

5 One of those points is when Fair Food
6 Standards Council auditors go into the field to
7 interview, both on- and off-site, 50 to 100 percent
8 of a farm's workforce.

9 In that time, on those interviews, workers
10 are able to bring forth any complaints they might
11 have.

12 In addition, when auditors are there, they're
13 looking at back-office processes; things that
14 farmworkers themselves, or workers in general, are
15 not going to have access to. They're going to look
16 at payroll records, for example, and make sure
17 things are in order.

18 So it's a very comprehensive audit that's
19 going on.

20 Another place where farmworkers can bring
21 forward complaints, is they can bring them forward
22 through the health and safety committees that are
23 operating on each of the farms where the Fair Food
24 Program is in operation. These are worker-led
25 organizations that gather to discuss conditions in

1 the field.

2 Now, you might be hearing me say workers can
3 bring forward complaints, but how do workers know
4 what their rights are, and how do they know how to
5 access this?

6 They're trained in their rights.

7 We've distributed over 250 "Know Your Rights
8 and Responsibilities" booklets, which are
9 culturally-sensitive, in terms of their preparation,
10 keeping in mind that a large number of our workforce
11 is not going to necessarily be literate. There are
12 many different pictures and symbols. They are in
13 three languages, and they're also available through
14 audio.

15 In addition to that, on the farms, at least
16 once a season, and often twice a season, workers get
17 worker-to-worker, face-to-face training, with
18 leaders from the Coalition of Immokalee Workers,
19 using popular education methodologies and other
20 interactive ways.

21 That's another place where complaints or
22 questions arise and can be addressed.

23 So workers are thoroughly educated on their
24 rights, both at the point of hire, then once they
25 hit the field.

1 By the way, that training, worker-to-worker
2 training, is done on the clock on company time, so
3 workers are paid for that time they're in there.

4 Crew leaders and supervisors and a farm
5 representative are also present.

6 That way, the workers know that these
7 standards are to be abided by, and they know that
8 their supervisors know, this is the right way. And
9 the farm supervisor, himself or herself, can step
10 forward and say, Our farm is committed to making
11 sure that you're working in a dignified and
12 respectful environment.

13 So that's how they know, and some of the
14 points of introduction.

15 In terms of metrics, we report different
16 types of complaints. For example: Harassment.
17 Violence. Sexual harassment with touching. Sexual
18 harassment without physical contact.

19 There are a variety of different kinds of
20 disciplinary actions that we report on.

21 We will report on:

22 Whether a grower is in compliance.

23 Whether they're on probation. There's a
24 progressive discipline process within the Fair Food
25 Program.

1 We provide elaborate tables.

2 Now, we're not going to say, so and so at
3 this farm; so we're not using names, and we're not
4 using farm identifiers. But we are giving numbers,
5 to give you a sense of how much compliance; what
6 that looks like, and what the results are.

7 And so, in the annual report of the Fair Food
8 Standards Council on the Fair Food Program, and this
9 is an executive summary of it --

10 A new 2018 report is just about to be
11 released, and I'll be sure to send it to you. It
12 has all the latest metrics.

13 -- it will give you volume information: How
14 many calls have come in? How quickly have these
15 complaints been resolved?

16 When a call or a complaint gets reported,
17 guess what? There's no delay in investigating.
18 People don't have to sit around. It, immediately,
19 an investigator is on this, pursuing it.

20 So it's -- this is to say that it's a very,
21 very deep audit.

22 In fact, it -- I almost hesitate to call it
23 an audit because, when you think of auditing that
24 goes on, especially in corporate- or social
25 responsibility-type check-box monitoring, it just

1 doesn't even compare to that in terms of its depth.

2 Finally, the reporting that comes out the
3 other end is available in the Fair Food Standards
4 Council website. It's published. It's available
5 for researchers as well.

6 So anyone can go to FairFoodStandards.org or
7 to FairFoodProgram.org and take look at the results.

8 We have very high-level results that are
9 quickly published --

10 What growers are in compliance, and which are
11 not.

12 Who are the participating buyers?

13 -- so that consumers as well, who, frankly,
14 have powered this movement, by pressuring
15 corporations to stand up and do the right thing, and
16 put their purchasing behind realizing human rights,
17 consumers want to know what's going on here as well.

18 And so we have different ways of representing
19 that data to them.

20 But I will certainly make sure that you have
21 the 2018 update as soon as it's published, and then
22 you can enjoy, like me, looking through all the
23 tables, because it is a beautiful thing to see this
24 data.

25 This is so beautiful; this data is showing

1 that it is working in a material and real way in
2 people's lives.

3 For every bit of data, there is a
4 transformation.

5 Workers are being protected.

6 Workers have a new day, where, instead of,
7 before, when they had to trade their dignity in
8 order to put food on the table for their families,
9 women are walking with their heads upright, knowing
10 that they are protected.

11 And this is important, because we can't keep
12 putting workers on the front line and asking them to
13 sacrifice.

14 Your questions earlier about, what happens
15 between a report and when this finally gets
16 processed?

17 That's a critical time.

18 In the Fair Food Program, phoom (claps hands
19 together) it's eliminated to zero.

20 And we're working together with workers to
21 protect them, and to help them through any ancillary
22 processes with employers. Or, also, if, in cases of
23 criminal behavior, the government.

24 ASSEMBLYMAN BUCHWALD: Reverend, thank you
25 for the answer, and thanks for the work you and your

1 colleagues are doing.

2 Thank you, Chairs, for the time.

3 SENATOR BIAGGI: Senator Mayer.

4 SENATOR MAYER: Thank you, Reverend Damico.

5 And your energy and passion, and your faith
6 in this program, is infectious to everyone here.

7 It's a welcome -- welcome after some of the
8 things we've heard.

9 And two things I just want to say.

10 One is, this program relies on market
11 consequences if there's a failure to comply. And
12 that's a model that's a little bit more difficult
13 for us to transfer, but I'm very interested in your
14 thoughts.

15 But the second point, which you sort of
16 alluded to, looking at Senator Liu, is the workers
17 have faith that this process will work for them.

18 And I think that is a factor we are
19 struggling with.

20 We have some establishments set up for
21 complaints, but there's a cynicism among ordinary
22 folks about whether these things work.

23 So I think it's -- we look forward to seeing
24 the data to show, for example, you say that
25 50 percent of complaints are adjud -- determined in

1 in two weeks.

2 REV. NOELLE DAMICO: Yep.

3 SENATOR MAYER: Compared to what we heard
4 earlier, about a sig -- you know, six months, you
5 know, and sometimes longer, for equally-challenging
6 factual complaints, I assume, with people, frankly,
7 who have more power than I suspect a farmworker
8 might have.

9 So, I think we want to learn from your model
10 of how to do it quickly. How to give confidence to
11 both complainants and respondents, that it's a fair
12 process.

13 So I don't mean to do all the talking, but
14 I just -- we want to translate some of your passion
15 and effectiveness to ours, and we look forward to
16 your suggestions.

17 REV. NOELLE DAMICO: Well, I look forward to
18 working with you on this.

19 I think what's so exciting is that, I had,
20 well, the unfortunate privilege of seeing what it
21 was like before, and I see the difference today.

22 And I can tell you that some of these claims,
23 I mean, there's one case vignette in the report that
24 you already have now, "The Fear is Gone," where
25 there was a field-level supervisor who had made

1 unwanted advances toward a woman. And then her
2 husband complained.

3 And he said, Oh, hey, I've got a gun here and
4 I'm not afraid to use it.

5 That supervisor was terminated within days.

6 So as soon as that complaint came in, it was
7 investigated, verified; that guy was gone.

8 The (indiscernible) -- people have confidence
9 in processes when they see them working.

10 So part of this is, let it -- the
11 worker-to-worker education piece is important, but
12 worker's own experience will just help other workers
13 have the courage to come forward.

14 Hey, this worked for me. This is what
15 happened.

16 Getting rid of notorious actors in a given
17 industry also sends a very strong signal that this
18 behavior will no longer be tolerated.

19 SENATOR MAYER: Thank you.

20 ASSEMBLYMAN CRESPO: Assemblywoman Niou.

21 ASSEMBLYWOMAN NIOU: Hello.

22 REV. NOELLE DAMICO: Hi.

23 ASSEMBLYWOMAN NIOU: I wanted to ask a couple
24 more practical questions, I guess.

25 You guys have to work so much with folks from

1 different cultures, backgrounds, languages.

2 REV. NOELLE DAMICO: Yes.

3 ASSEMBLYWOMAN NIOU: How does -- how do you
4 implement that, and how do you do your outreach on
5 that part?

6 REV. NOELLE DAMICO: That's a wonderful
7 question, and a really critical one.

8 We have the blessing, in the Coalition of
9 Immokalee Workers, of having people that speak not
10 only Spanish and Haitian Creole, but multiple
11 indigenous languages. Kichai, Q'anjob'al,
12 et cetera, that are -- Mam, from Guatemala, because
13 the workforce itself is comprised of individuals who
14 speak indigenous languages as well.

15 And so what we've done is, both, with the
16 Fair Foods Standards Council, which is an
17 independent third-party monitor, we have hired
18 investigators who are fluent in those languages, and
19 we have buttressed that support with the Coalition
20 of Immokalee Workers itself, leaders from the
21 workers' organization, who are also fluent in those
22 languages.

23 Further, we've really done a lot in terms of
24 making different "Know Your Rights" materials
25 available in those languages; again, not just in

1 written form, and not just in pictoral (sic) form,
2 but also in audio form, which is very, very
3 important.

4 So those are some of the ways that we've done
5 it.

6 But if you're a Haitian worker who has a
7 complaint, and you call at 2 a.m., guess what?
8 You're going to find someone who is capable of
9 responding and opening an investigation right then,
10 and you can speak in your language.

11 ASSEMBLYWOMAN NIOU: And how long did it take
12 you guys to implement language access on that level?

13 REV. NOELLE DAMICO: Well, at that level it's
14 been progressive.

15 We began with a pilot program in 2010. And
16 then the program went into effect in the fall of
17 2011. And, at that point, we were fully Spanish-
18 and English-compliant, with Haitian Creole kind of
19 on the side.

20 And then, in the subsequent years, we're able
21 to bring that forward more fully.

22 And now we have a full-time Haitian Creole
23 investigator -- -speaking investigator with the
24 Fair Food Standards Council.

25 ASSEMBLYWOMAN NIOU: How many languages do

1 you guys help folks in?

2 REV. NOELLE DAMICO: Our principle ones,
3 because the predominant majority speak, are Spanish,
4 Haitian Creole, and English.

5 However, there are 12 or 13 indigenous
6 languages to which we can reach for additional
7 support as necessary.

8 ASSEMBLYWOMAN NIOU: That's great.

9 And, you know, I was reading through your
10 report, and your materials here, and I just kind of
11 wanted to ask about your audits and transparency.

12 And, what are some of the things that you
13 guys have implemented to make it so that there's
14 more transparency on all levels?

15 And, then -- and -- and when -- when --
16 I guess, when you're auditing, like, what are you --
17 what are some of the things that you're looking for?

18 REV. NOELLE DAMICO: Well, one reason that we
19 gained such access and insight into grower
20 operations is because they have signed a
21 legally-binding agreement, saying that they have
22 agreed to give the Fair Food Standards Council that
23 kind of access in order to assure their buyers that
24 their operations are, indeed, in keeping with the
25 Fair Food Standards' code of conduct.

1 So one thing is, we don't have to fight for
2 access. That is part of what's in the agreement to
3 begin with; so it's expected.

4 Of course, you know, it takes a while for
5 employers to get used to this.

6 So, on day one, you know, it was, oh, really,
7 you have this? And -- you know.

8 You have to work through it.

9 But at this point, it's a very regularized
10 and respected operation, one reason being, that the
11 growers have found it incredibly helpful for their
12 own operations.

13 So, when we go in, we're going in in a
14 variety of ways.

15 We're going in with individuals who are
16 interviewing workers in the fields.

17 We're going to take a look at the back-office
18 processes that has to do with hiring, firing,
19 transportation. It would have to do with payroll
20 decisions, and a number of other decisions that they
21 would be making.

22 And we have different metrics by which we are
23 assessing their operation, and they need to be able
24 to demonstrate a very, very high level of
25 compliance.

1 And if they don't, the Fair Food Standards
2 Council doesn't just say, All right, you're gone.
3 We work on compliance assistance.

4 Now, on the zero-tolerance offenses, if
5 there's a situation of forced labor, oh, you're
6 gone.

7 But, then, there is the opportunity for such
8 employers to come back into the program, and regain
9 access, by the way, to the buying from all those
10 14 massive brands that they will have lost by --
11 from being kicked out, if they are able to
12 demonstrate that their systems have undergone a
13 renovation.

14 And that's also true of supervisors or
15 co-workers who may be fired due to
16 sexual-harassment, for example. They can come back
17 in after going through a retraining.

18 But if they have a second violation, then
19 they're gone for the year, and, a third, they're out
20 permanently.

21 And, so, having that progressive kind of
22 discipline also underguards again the idea that it's
23 better for us to be open and transparent as a
24 grower-employer, because that's going to benefit us,
25 it's going to clean up the circumstances in the

1 field, get rid of any bad actors, and then help us
2 become more productive.

3 So in terms of some of the things that we're
4 measuring for, those are some examples.

5 And, I mean, it's such a comprehensive
6 list -- there are, like, 37 different categories --
7 that I think it's most easy to take a look at in the
8 tables that I provided. You can have a quick
9 look-see in the Fair Food Program report, and then
10 in the subsequent report that I provide.

11 ASSEMBLYWOMAN NIOU: And I -- and I love
12 that, you know, you were saying that more people
13 were willing to report. And, then, that the things
14 that were reported have been decreasing in their --
15 I guess -- their --

16 REV. NOELLE DAMICO: Severity.

17 ASSEMBLYWOMAN NIOU: -- severity.

18 And that means that more people are actually
19 talking about their -- the issues that are coming
20 up.

21 And I also love that your goal is for things
22 to be "just expected."

23 And, also, that you're looking for trust and
24 for faith in your system.

25 I think that folks also probably hope that

1 they have -- can have trust and faith in their
2 government, and, also, that things should be "just
3 expected," that they can be in a harassment-free
4 workplace.

5 And, so, I -- I wanted to say thank you for
6 your efforts on this.

7 And -- and I wanted to kind of ask, also,
8 this is my final question, because I know there's so
9 many others, but:

10 When did you start to see that difference?

11 And how many years did it take to start
12 seeing that there was an increase in -- in -- in
13 folks who are willing to -- to speak up, but also a
14 decrease in the severity?

15 REV. NOELLE DAMICO: I would say we got to
16 point of prevention, specifically on sexual
17 harassment and assault, in year three.

18 In terms of the use of the hotline, I want to
19 emphasize, it's a hotline that is used for many
20 different kinds of complaints, not only for sexual
21 harassment.

22 It's the same one that you would call if you
23 had some problem and felt that you were missing
24 wages that you were owed as well.

25 And, so, as workers use the hotline for other

1 abuses that they encounter, or problems that they
2 encounter, they gain confidence that way as well.

3 ASSEMBLYWOMAN NIOU: Thank you so much.

4 REV. NOELLE DAMICO: You're very welcome.

5 ASSEMBLYMAN CRESPO: Assemblywoman Simon.

6 ASSEMBLYWOMAN SIMON: Thank you very much for
7 your testimony. It's very joyful, and it's
8 wonderful, to watch you and to listen to you.

9 Thank you so much for your work.

10 I was not here when you started, so I don't
11 actually have a copy of your testimony.

12 But I wanted to ask, how many farms are
13 involved in this program?

14 REV. NOELLE DAMICO: There are about
15 35 farms, that are stretching, from Florida, all the
16 way up to New Jersey, that employ about
17 35,000 farmworkers.

18 ASSEMBLYWOMAN SIMON: Okay, that was my next
19 question.

20 35,000. Okay.

21 And you said the program went into effect
22 fully in 2011?

23 REV. NOELLE DAMICO: 2011, yes.

24 ASSEMBLYWOMAN SIMON: Okay.

25 And what are you doing next; like, what's

1 your next big move?

2 REV. NOELLE DAMICO: Ah-ha.

3 ASSEMBLYWOMAN SIMON: Now that this is
4 working, how do you plan to expand it?

5 REV. NOELLE DAMICO: Well, it's -- it's began
6 with the Florida tomato industry. And we began to
7 expand, first, to tomato fields beyond Florida that
8 were under the purview of growers who were based in
9 Florida, already participating in the program.

10 So that was our first wave of expansion.

11 And then we went with those growers into
12 other crops, such as strawberries and bell peppers.

13 And we're in the process of expanding to
14 other states and other crops.

15 In our work, it's a matter of getting a
16 combination of the growers and the buyers to do that
17 expansion.

18 We also have an active consumer wing that is
19 working to bring new corporations on board. We have
20 14, some of the biggest-named corporations.

21 You've heard of McDonald's; Burger King;
22 Subway; Whole Foods Market; Ahold, which owns
23 Stop & Shop and Giant and Martins; Walmart; Aramark;
24 Sodexo.

25 So there are a lot of companies that are in.

1 Unfortunately, Wendy's has refused to join
2 the program, is an outlier. It's beyond
3 disappointing, frankly, it's shameful, given that
4 this is a program that is working so effectively
5 right now.

6 But that's the other way the program expands.

7 When a new company comes in, it -- our --
8 that supply chain then opens, and the possibility
9 opens anew.

10 And so we're really looking forward to
11 bringing Wendy's on board and expanding there as
12 well.

13 ASSEMBLYWOMAN SIMON: Great.

14 And I have another question, sort of very
15 practical, sort of "back to when you started"
16 question --

17 REV. NOELLE DAMICO: Sure.

18 ASSEMBLYWOMAN SIMON: -- and that is: How
19 did you physically get your workers to organize?

20 That can be very, very difficult. It's just
21 labor-intensive. Can be expensive. And workers who
22 have never experienced having any power in their
23 lives are going to have, I would imagine, a much
24 more difficult time getting their heads around how
25 this could actually, fundamentally, change things.

1 I'm curious if you could talk about how that
2 happened.

3 REV. NOELLE DAMICO: Absolutely.

4 The story begins about 25 years ago,
5 actually, back in 1993, when some individuals, who
6 had come to the United States from Mexico,
7 Guatemala, and Haiti, began meeting together, to
8 talk about violence that they were experiencing in
9 the fields in the Immokalee region.

10 Now, what was interesting about these
11 workers, is that each of them had had experienced
12 defending their human rights in their home country.

13 So we had some individuals who had been
14 popular educators from the Mouvman Peyizan Papay in
15 Haiti. It's the Haitian small-farmer movement that
16 was very instrumental in resisting the Duvalier
17 regime, and is a very -- has very advanced
18 methodology for analyzing one's political situation,
19 and taking action to change it.

20 We also had workers from Chiapas, and workers
21 from Guatemala, who had been through the civil war.

22 And these were all workers who had
23 experience, not defending their individual rights,
24 but defending their community rights.

25 So they had a very human rights, large-scale

1 model that they brought. It was a -- kind of a
2 reverse-technology transfer, if you will, from the
3 global self to the fields of Immokalee.

4 As they began to meet, they first were
5 ignited because, a young farmworker, in his teens,
6 was beaten within an inch of his life for asking for
7 a drink of water in the fields.

8 And the worker group, the Coalition of
9 Immokalee Workers, had just formed, you know, a few
10 years prior, and was getting off the ground, and
11 thinking about how it would move next, when this
12 happened.

13 And that ignited the entire community.

14 And the worker stumbled into the office of
15 the Coalition of Immokalee Workers in a bloody
16 shirt. And they picked up the shirt, and they
17 helped the worker, and they decided to march to the
18 crew leader's house that night.

19 And they started off with about 25 people in
20 front of their offices.

21 And by the time they got to the crew leader's
22 house, there were several hundred workers, shouting,
23 "An injury to one is an injury to all."

24 And that was the day, really, when, for the
25 first time, the workers in Immokalee felt the power

1 of what it meant to act together.

2 And they refused to go to work any longer in
3 that crew leader's farm who had harmed that worker
4 so badly.

5 There was a change at that moment, because
6 those crew leaders who operated like petty dictators
7 in the fields, who had divided them between race and
8 language and stature; there's all kinds of
9 discrimination that was used to keep workers
10 separate from each other.

11 The reason the Coalition of Immokalee Workers
12 is named the "coalition" is because they came
13 together in that moment and stood together, moving
14 forward.

15 That's how it began.

16 And they further were empowered to do several
17 hunger strikes, a 30-day hunger strike; two massive
18 work stoppages.

19 Of course, they didn't have any money, no
20 strike funds, so they could only stay out for a
21 week. And during that time, one of the growers was
22 heard to say to another, "Why don't we just maybe
23 sit down at the table with these workers?"

24 And the other one replied, "The tractor
25 doesn't tell the farmer how to run the farm."

1 ASSEMBLYWOMAN SIMON: Wow.

2 REV. NOELLE DAMICO: That's where things
3 were.

4 Now think of where things are.

5 From people thought of as mere implements,
6 actual machines, to be used, expendable, to full
7 partners in an industry where their unique position
8 as workers provides the critical insight necessary
9 to making human rights real on the ground in a
10 granular way.

11 Not just a lofty statement of, fair wages,
12 but a, no overfilling of the buckets. Not a great
13 statement as, we're against sexual harassment.

14 But this is what it looks like: this is how
15 it manifests, and this is how we're going to stop
16 it.

17 It's an extraordinary story.

18 Susan Marquis, who is the dean of the
19 Pardee RAND Graduate School, wrote a book, "I Am Not
20 a Tractor," which tells the most in-depth telling of
21 this.

22 And so I would commend that to you, if you're
23 interested.

24 And I'm happy to tell more stories and give
25 you more insight.

1 But when those workers saw, not only that
2 they could stand together, but that consumers were
3 ready to move with them, that became important.

4 And I think there's an analogy here with
5 government.

6 To think, you know, we have, as citizens and
7 residents, we care about these matters. This is
8 about our lives, our families' lives. You're not
9 just out there alone.

10 Just remember, there are so many of us that
11 are counting on you, and are prepared to step
12 forward and support this really important work that
13 you're doing.

14 ASSEMBLYWOMAN SIMON: Thank you very much.

15 REV. NOELLE DAMICO: You're welcome.

16 ASSEMBLYMAN CRESPO: Thank you.

17 Oh, you have a question.

18 SENATOR BIAGGI: I have one final question,
19 it's just a technical question.

20 How are -- how is the organization funded?

21 REV. NOELLE DAMICO: That's a great question.

22 We're funded in two different ways.

23 We receive some foundation grants for the
24 Fair Food Program.

25 And then the other source is, we're funded at

1 the grassroots, through the Fair Food Sustainer
2 Program.

3 So, thousands of consumers across the
4 country, people of good will, pledge to support this
5 work by making a monthly donation.

6 And you can read more about all of that on
7 FairFoodProgram.org.

8 SENATOR BIAGGI: Thank you so much,
9 Reverend Damico. We appreciate you, and your
10 testimony today.

11 REV. NOELLE DAMICO: You're very welcome.

12 Thank you for this, and, thank you, please,
13 all of the -- the work that you're doing here.

14 All of those late nights that you spend
15 pouring over the details, it matters, it matters so
16 much.

17 Thank you to all of you for the extraordinary
18 opportunity that you're taking in this moment.

19 This is the time!

20 We can do it!

21 We can do it!

22 The people in this room, are ready to help
23 you!

24 Don't give up!

25 We're going forward together, we're going to

1 end this.

2 Thank you.

3 SENATOR BIAGGI: Thank you.

4 [Applause.]

5 SENATOR BIAGGI: Next up is the
6 Model Alliance, and, Sara Ziff, the founder and
7 executive director of the Model Alliance, will be
8 testifying.

9 SARA ZIFF: Good afternoon.

10 Thank you for hosting this hearing, and for
11 giving me the opportunity to testify today.

12 My name is Sara Ziff, and I am a longtime
13 model, and the founder and executive director of the
14 Model Alliance, which is a non-profit research,
15 policy, and advocacy organization that advances fair
16 treatments and equal opportunity in the fashion
17 industry.

18 Too often, models are treated as objects, and
19 not as legitimate members of the workforce who
20 deserve to be treated with the same dignity,
21 respect, and basic legal protections that other
22 workers enjoy under New York State's sexual
23 harassment and employment laws.

24 Notwithstanding the success that I've had as
25 a model over the last 20 years, I, like many of my

1 peers, have experienced inappropriate demands,
2 including routinely being put on the spot to pose
3 nude and provide sexual favors.

4 In some cases, modeling agencies are sending
5 models to known predators, and putting them in
6 compromising situations that no person, and
7 certainly no child, should have to deal with.

8 Essentially, all professional models operate
9 under fixed-term exclusive contracts to their
10 modeling agencies who exert a great deal of control
11 over their working lives.

12 The agencies then contract with a client -- a
13 brand, a magazine, department store, or the like --
14 for the model's work.

15 If a model is harassed in the workplace, to
16 whom can she turn?

17 Is it the agency, who will blame the client
18 for the unsafe workplace?

19 The client, who will say that they have no
20 contractual relationship with the model?

21 For models and other independent contractors
22 in this type of triangular relationship, there's
23 still no clear remedy.

24 Moreover, most modeling agencies assert that
25 they are not regulated by New York State laws

1 governing employment agencies, which would subject
2 them to the necessary licensing and regulation.

3 Even though the primary purpose of modeling
4 agencies is to obtain employment for their models,
5 they claim that these activities are incidental to
6 the general career guidance that they provide as
7 management companies, and, therefore, are not
8 subject to the State's regulation.

9 I believe that this is an issue, and I've
10 been banging the drum on this for almost a decade
11 now.

12 This is something that should be investigated
13 by the New York State Department of Labor.

14 So two years ago, I brought these concerns to
15 Assemblywoman Nily Rozic.

16 I had done a research project with the legal
17 clinic at Fordham Law School on the working
18 conditions of models. And when it came to sexual
19 harassment, the law professors there were all
20 mortified by what they found, and surprised by the
21 very limited scope of the law.

22 The Model Alliance has since worked with
23 Assemblywoman Rozic to introduce the Models
24 Harassment Protection Act.

25 If enacted, it would extend certain

1 protections to models, putting designers,
2 photographers, and retailers, among others, on
3 notice that they would be liable for abuses
4 experienced on their watch.

5 The bill would amend the current law to
6 explicitly include models, explicitly forbid sexual
7 advances and remarks or other forms of
8 discrimination linked to their employment, and it
9 would require clients to provide models, upon
10 booking, with a contact and avenue for filing any
11 complaints.

12 Now, models in New York State need specific
13 provisions because they work in this very convoluted
14 employment chain.

15 Agencies in New York say that the models are
16 independent contractors, not employees.

17 The agencies also claim to act merely in this
18 advisory capacity, saying that bookings are
19 incidental to them providing advice.

20 When a client books a model through an
21 agency, the model has no direct contract describing
22 the scope of work with her client.

23 So, essentially, we have fallen through the
24 holes of the existing statutory safety net, and that
25 means that, until now, in New York, which is

1 regarded as the heart of the American modeling
2 industry, it's been unclear where legal liability
3 for job-related sexual-harassment lies.

4 There's been a very long history of
5 institutional acceptance, or, at a minimum,
6 recklessly ignoring sexual harassment by both
7 agencies and clients.

8 We believe that models should have the same
9 recourse as all employees to sue employers.

10 They should have a direct mechanism for
11 making complaints, and should be assured that courts
12 are willing and able to hold the agency and the
13 client, their joint employers, responsible for the
14 abuses they have suffered.

15 Regardless how we're classified, it's
16 imperative that we have an enforceable right to work
17 in a safe and fair environment.

18 So New York State can remedy these
19 shortcomings by passing the Models Harassment
20 Protection Act, and the perceived glamour of this
21 business, and the gaps in the law, should no longer
22 be used to deny models a safe workplace or
23 appropriate recourse if abuse occurs.

24 We really deserve no less than any other
25 member of New York's workforce.

1 And this wasn't part of my prepared remarks,
2 but, I know you just heard in the last testimonial
3 about Worker-driven Social Responsibility.

4 We have learned a lot from the farmworker
5 women, from CIW and the Fair Food Program. Over the
6 last year, we have adapted that model for the
7 fashion industry.

8 That's also another initiative that we're
9 excited about.

10 Our program is called the "RESPECT" program,
11 and RESPECT is like the Fair Food Program; a
12 legally-binding program that will provide a
13 much-needed safety net, not just for models, but for
14 freelance creatives working in the fashion industry,
15 more broadly.

16 It includes a neutral third party to
17 investigate and resolve claims of sexual harassment
18 and retaliation.

19 And we believe that if a company is serious
20 about protecting us, that they will be willing to
21 commit to enforceable standards with real teeth.

22 We've campaigned for the last year. It's
23 very difficult to get a company to sign on to make
24 that -- you know, be the first one to jump.

25

1 ASSEMBLYMAN CRESPO: Thank you.

2 So the Models Harassment Protection Act, has
3 any other state implemented a model like this, or a
4 policy like this?

5 SARA ZIFF: This is something we've been
6 working on for the last couple of years, at least.

7 We did champion legislation in California,
8 the Talent Protections Act, last year. That
9 legislation looks a little bit different, in part,
10 just because there isn't quite the same issue with
11 management companies and how they're structured in
12 California, versus here.

13 ASSEMBLYMAN CRESPO: So, look, I'll -- I'll
14 just say this, and -- my wife did some modeling when
15 she was younger, and would tell me some horror
16 stories of what she experienced, even as a minor,
17 participating in some events.

18 And it is -- it's mind-boggling that an
19 industry as relevant, where -- and particularly here
20 in New York, to your point, right, and you made it
21 in your testimony, with the biggest players in the
22 market operating or based in New York, and that this
23 issue has not been more thoroughly addressed,
24 especially in this movement, right, with #MeToo and
25 with Time's Up, and with everything else that's gone

1 on, that more hasn't been done around this industry
2 in particular.

3 So I'm -- I'm -- as -- I'm new to the
4 Committee on Labor, but I'm going to immediately go
5 back and take a look at the differences, and why we
6 are not treating modeling agencies as employment
7 agencies.

8 And I think you've made some very good
9 points, that we're very interested to go back and
10 look at.

11 So I appreciate your testimony.

12 SARA ZIFF: Thanks, I appreciate it.

13 SENATOR BIAGGI: I just have a few quick
14 questions, and just one -- uhm, just overall broad
15 comment on your work that you've done for so many
16 years, through the Fashion Law Institute, and the
17 modeling law class that I actually took at Fordham
18 Law, with Doreen and Ally (ph.) --

19 SARA ZIFF: Oh, okay.

20 SENATOR BIAGGI: -- in 2008, that you had
21 come to speak at.

22 And I think that one of the most glaring
23 things that was so clear to me, was that there are
24 these known abusers in every single industry.

25 And with modeling, it's everywhere. It's the

1 photographers, it's the agents; it's all over the
2 place.

3 And one of the things that seems to be so
4 challenging, especially if you are a disruptor in
5 that system, where you clearly know, this is the way
6 that we can change it.

7 Passing this law would create a
8 relationship -- or, a legal chain of a relationship
9 that can hold someone to account.

10 And this kind of goes a little bit to what we
11 just heard in terms of that testimony.

12 It's -- and I think Assemblywoman Simon had
13 touched on this, too, in your question of: How do
14 we get -- how do they know how to organize?

15 So my question is:

16 It's one step after that.

17 It's -- you know, after you organize, how do
18 you get people who are in the system to join you?

19 Because there's such a culture around just
20 letting -- like, letting it go, because, again, of
21 the imbalance of power.

22 And I know that you're using this, the
23 RESPECT model.

24 But it is -- it's incredibly challenging.

25 Right?

1 So if we pass -- let's say we pass the
2 Model's Harassment Protection Act, that's -- that's
3 a huge step in the right direction.

4 But before that point, and then after that
5 point, how do we continue to make sure that people
6 are able to feel safe when they can speak up, and
7 still have their livelihood?

8 Because so many men and women in the modeling
9 industry, and agent -- and -- and world, rely on the
10 agencies and the photographers. And, you know, some
11 of the best photographers are some of the worst
12 abusers.

13 Just like some of the best legislators are
14 some of the worst abusers.

15 Right?

16 It's everywhere; it's everywhere in the whole
17 world. And I've always said this, but it's an
18 epidemic.

19 And so I really would be curious to hear your
20 point on that, because that really matters when
21 we're thinking about laws, because we can change
22 laws till kingdom come.

23 But the cult -- like -- I would argue that
24 the culture has reached the point, but it hasn't met
25 everybody where they're at.

1 SARA ZIFF: Right.

2 Yeah, no, that's an important point.

3 And I think, at the moment, people --
4 there's -- people just feel that they can act with
5 impunity --

6 SENATOR BIAGGI: Right.

7 SARA ZIFF: -- because they can.

8 And, you know, I remember calling out a
9 well-known photographer who shoots for -- has shot
10 for many of the, you know, biggest brands and
11 magazines, and even photographed the President of
12 the United States; and, yet, was known, it was just
13 an open secret, was sexually harassing and
14 assaulting even minors.

15 And, you know, I know because I saw it
16 firsthand.

17 And yet all of these, you know, big
18 prestigious companies continued to work with this
19 person.

20 And -- and it's not just about any one
21 person. This is pervasive throughout the industry.

22 And it's really not until the #MeToo and
23 Time's Up movements, through the power of publicity,
24 that we've been able to be heard, despite pushing
25 this forward for a very long time.

1 SENATOR BIAGGI: I have one just follow-up
2 question.

3 Have you considered, and I think the answer
4 is yes, but I'm not sure, the unionization of
5 models?

6 SARA ZIFF: Uh.

7 Before I started the Model Alliance,
8 I approached established unions and asked if they
9 would extend membership to us.

10 They said it was impossible because we're
11 told that we're independent contractors. And under
12 federal law, we cannot unionize.

13 SENATOR BIAGGI: So what makes models
14 different from actors and actresses?

15 SARA ZIFF: That's a very good question.

16 Under -- so, legally, actors are actually
17 considered employees.

18 SENATOR BIAGGI: Of whom?

19 SARA ZIFF: I would believe of the
20 production.

21 SENATOR BIAGGI: That is so remarkably
22 ridiculous because it's an analogous structure. It
23 makes no sense.

24 SARA ZIFF: It makes no sense.

25 SENATOR BIAGGI: Wow.

1 SARA ZIFF: Yeah.

2 SENATOR BIAGGI: Thank you.

3 ASSEMBLYMAN CRESPO: Assemblywoman Simotas.

4 ASSEMBLYWOMAN SIMOTAS: Sara, thank you for
5 coming to tell us the truth about what happens in
6 your industry.

7 My question is very specific about,
8 potentially, what we can do about retaliation,
9 which, in your business, would be blacklisting
10 somebody.

11 I could see how it could -- would be easy for
12 a photographer or for some -- for some label to say,
13 Well, you don't look the part.

14 But it could be because you're trying to
15 complain about, you know, a predator.

16 SARA ZIFF: Uh-huh.

17 ASSEMBLYWOMAN SIMOTAS: How would we be able
18 to structure?

19 We have strong retaliation laws in the state
20 of New York. Like, you're not supposed to retaliate
21 against people if you complain about something, that
22 you feel like you're being harassed.

23 But I think in the modeling industry it's
24 going to be different, because of just the way that
25 the business is run.

1 How do -- do you -- have you thought about
2 how we can prevent blacklisting of models, and maybe
3 create a repository, something, that could be more
4 helpful than just claiming that you're being
5 retaliated against, or blacklisted, and not really
6 being able to prove it?

7 SARA ZIFF: Sure.

8 Yeah, it's a tricky question when you're
9 talking about the gig economy, and -- where you
10 don't have, necessarily, regular work, or one steady
11 client.

12 And I think -- we do, however, have exclusive
13 multi-year contracts with our agencies.

14 And I think, you know, I've seen -- I saw
15 myself, while working as a model, and also in other
16 cases that have come to us through our grievance
17 reporting line, that agencies have, you know,
18 dropped models after they have reported sexual
19 harassment or assault. They have failed to, like,
20 promote models' careers any longer, submit them for
21 jobs.

22 So I think -- I think there are some clear
23 indications that -- that -- you know, that would
24 show retaliation, at least from the agency side.

25 But maybe that's something that the last

1 person who testified, and the folks at the Fair Food
2 Program, could speak to more, since they also deal
3 with contract workers.

4 ASSEMBLYMAN CRESPO: Assemblymember Quart.

5 ASSEMBLYMAN QUART: Yeah, just a quick
6 question.

7 Thank you for your testimony.

8 Having just had the benefit of reviewing a
9 modeling contract, it really shocked me how unequal,
10 what the leverage is, almost to the extent that the
11 young person, and it usually is a young person, is
12 almost as if an indentured servant in some sort of
13 way.

14 I think changing the labeling, from an
15 independent contractor, to employee, is a good
16 start.

17 But in other areas of the law in the state,
18 we, the Legislature, can step in when the balances
19 of power between two parties are imbalanced, if you
20 will.

21 Has any -- have you or your organization
22 given any thought to things that the Legislature
23 should do, policy-wise, on the contract end of
24 things?

25 Because we do legislate in that area, in

1 insurance law, and other places, to try and give
2 more power to young, mostly young women, who are
3 going to become models, because, based upon the
4 contract, it is a desperate situation as I read
5 those contracts.

6 SARA ZIFF: Yeah, no, thanks for raising that
7 point.

8 The contracts tend to be entirely one-sided
9 in favor of the agency.

10 Often it's, you know, 16-, 17-, 18-year-old
11 girls who are signing these contracts. It's an
12 aspirational industry. They don't -- they sign on
13 the dotted line, they don't negotiate. And,
14 frankly, they don't have any bargaining power.

15 And I question whether many of these
16 contracts are even enforceable, frankly.

17 But that's -- you know, certainly, the
18 contracts that these models are held to, where they
19 are, essentially, working in debt to their agencies.

20 And some of these are children, who are, you
21 know, here, sponsored by these modeling agencies to
22 work here, from Eastern Europe, Brazil, and
23 elsewhere.

24 It's -- yes, thank you for recognizing that.

25 I'm not quite sure what the answer is, but

1 it's certainly on our radar.

2 ASSEMBLYMAN QUART: Thank you.

3 SENATOR BIAGGI: I have just one follow-up
4 question.

5 That was an excellent question, and,
6 Assemblymember Quart, thank you for raising that.

7 When -- when child models are signing
8 contracts, is a par -- a parent, I'm assuming, is
9 required to be present?

10 SARA ZIFF: Yeah, I mean, it's not -- it's
11 not enforceable if you sign it when you're under 18.

12 SENATOR BIAGGI: Right.

13 SARA ZIFF: Right.

14 SENATOR BIAGGI: Because that's 'cause child
15 labor is illegal.

16 That's quite interesting.

17 I wonder if there's a mechanism in contract
18 law?

19 You know, we'll see.

20 Thank you.

21 SARA ZIFF: Thanks.

22 ASSEMBLYMAN CRESPO: Thank you.

23 SARA ZIFF: Thanks so much.

24 SENATOR BIAGGI: Next we will be hearing from
25 Marissa Hoechstetter.

1 Thank you.

2 I hope I pronounced your name correctly.

3 MARISSA HOECHSTETTER: Hoechstetter.

4 SENATOR BIAGGI: Hoechstetter?

5 MARISSA HOECHSTETTER: It's okay.

6 SENATOR BIAGGI: Hoechstetter. Okay.

7 ASSEMBLYMAN CRESPO: Hi. Yep, you can begin.

8 MARISSA HOECHSTETTER: Okay.

9 Thank you for the opportunity to address you
10 today about how the lack of oversight of physicians
11 and other licensed medical professionals puts
12 employees and patients in danger.

13 I chose to testify because, while the
14 hospital and clinics where I was sexually assaulted
15 were not my workplace, they are someone's workplace.

16 I'm going to do the best I can today.

17 No hospital or doctor's office, no workplace,
18 should ever put their reputation and profit ahead of
19 their patient's safety.

20 Real improvements must be made so that
21 workers and patients, particularly the most
22 vulnerable among us, are not needlessly and
23 repeatedly exposed to sexual harassment and assault.

24 Most doctors are well-intentioned, caring
25 people dedicated to their field, but the minute you

1 walk into a doctor's office they have power over
2 you.

3 It's a unique profession.

4 There are often legitimate reasons for a
5 doctor's hands to be on or in your body.

6 Those who abuse this do not deserve
7 protection.

8 I'm going to briefly share a little bit of my
9 story, and then, in the context of this hearing,
10 share what I've learned about sexual harassment and
11 sexual assault in health care. And, I'm going to
12 refer to a number of studies that I have included in
13 the attachments.

14 As a patient at Columbia University and
15 New York Presbyterian Hospital from 2009 to 2012, my
16 OB/GYN performed overly-touchy exams, made
17 inappropriate comments about my body, examined me
18 without nurses in the room, and, on my last visit,
19 undoubtedly, sexually assaulted me.

20 When I realized what was happening, I never
21 went back.

22 The assaults and the experience of coming
23 forward have fundamentally changed my life.

24 I know now that what happened to me was
25 allowed to transpire because of a lack of action by

1 his employers and a lack of oversight by regulators.

2 For 20 years this predator retained power
3 over patients and staff, and used that for sexual
4 gratification.

5 Despite more than 20 women reporting to the
6 police and the Manhattan District Attorney, Hadden
7 ultimately only pled guilty to crimes against just
8 one victim, two minor counts called down from a long
9 list, a list that would have been longer had the DA
10 included me and others in the case.

11 Nurses who worked with him claimed to have
12 reported his behavior to supervisors going back
13 decades.

14 His employers have yet to take any
15 responsibility, and victims continue to come
16 forward, even as recently as last week.

17 There are probably hundreds, or even
18 thousands, of others out there. It's a sickening
19 list.

20 Some of us like me were pregnant. Some were
21 minors, including one that he himself had delivered.
22 Some had their babies in the room with them.

23 His own defense attorney said during the
24 criminal trial that he -- Hadden had over
25 30,000 patient visits.

1 Okay.

2 A recent study found that most sexual
3 misconduct by doctors involves a combination of
4 important factors.

5 100 percent of the perpetrators were male,
6 and 85 percent of them examined patients alone.

7 96 percent of known cases involved repeat
8 offenses, And the abuse was often accompanied by a
9 milder, more visible behavior, such as comments and
10 touching, over 90 percent of the time.

11 Yet these same researchers wrote, "It's not
12 possible to provide an accurate estimation of the
13 frequency of sexual violations in medicine. Most
14 patient-victims do not report."

15 And one study estimated that fewer than one
16 in 10 victims come forward, which is much lower than
17 an overall rate of cases of rape and sexual assault
18 in the United States.

19 When you pair this information with reports
20 from the National Academy of Sciences, Engineering,
21 and Medicine that says up to half of medical
22 students have experienced some form of sexual
23 harassment, and another study published in the
24 "Annals of Internal Medicine," that up to 70 percent
25 of female physicians have reported sexual

1 harassment, it is clear that health care has a
2 sexual-harassment and sexual-assault problem.

3 In New York, the education department issues
4 licenses to practice medicine.

5 Discipline is split between two offices under
6 the department of health:

7 The office of professional and medical
8 conduct (OPMC), which investigates reports of
9 incompetent or unethical doctors;

10 And the board of professional medical
11 conduct, which adjudicates those cases and decides
12 on punishments.

13 This is not just a few people in a backroom
14 somewhere, it's a whole system; staff,
15 investigators, board members, administrative law
16 judges reviewing cases, all using public money with
17 a mission to protect the public.

18 New York is one of only six states that does
19 not conduct a background check as a requirement of
20 initial licensure for medical professionals.

21 This might make New York attractive for those
22 with a criminal record to seek licensure here.

23 The National Practitioner Databank, a
24 resource only available to state boards, established
25 by Congress in 1986 to prevent practitioners from

1 moving state to state without disclosure or
2 discovery of previous damaging performance.

3 A survey of databank users found that about
4 21 percent of matched query responses contain new
5 information.

6 This means that in states that reviewed --
7 when states reviewed a doctor's application for
8 licensure, they found new information that had not
9 been self-reported on applications about a quarter
10 of the time.

11 A quarter of the time they're not telling you
12 the whole story.

13 If New York doesn't conduct background checks
14 and doesn't sufficiently query the databank, we are
15 letting physicians get away with lies and omissions
16 and putting the public at risk.

17 In 2014 the New York Public Interest Research
18 Group found that over 77 percent of doctors
19 sanctioned for negligence by OPMC were allowed to
20 continue to practice.

21 Think about that: 77 percent of doctors that
22 were sanctioned were allowed to continue to
23 practice.

24 Nearly 60 percent of those actions were based
25 on sanctions by other states, the federal

1 government, or the courts; not the result of some
2 action that OPMC had actually taken.

3 So an example of that is, the plea that my
4 abuser made, a condition of that was him
5 surrendering his license to the State.

6 OPMC had nothing to do with the loss of his
7 license.

8 And because of a lack of transparency,
9 there's no way to know if he had been previously
10 reported or disciplined.

11 In New York, staff and peers are required to
12 report to the OPMC any information that reasonably
13 appears to show that a doctor is guilty of alleged
14 professional misconduct within 30 days.

15 Hospitals are also required to report when a
16 doctor's clinical privileges have been curtailed or
17 have -- they've resigned to avoid discipline.

18 It's very common that they resign before
19 they're actually disciplined and then there's
20 something on their record.

21 But, there's no penalty for not doing so, and
22 there's no way to know if they're following the law.

23 In my case, Columbia and New York
24 Presbyterian had plenty of notice, but it does not
25 appear that they ever reported Hadden to OPMC.

1 And, I'd ask people to think if it's
2 realistic to imagine the hospital is going to raise
3 its hand and self-report that they've been employing
4 a sexual criminal.

5 Because I speak publicly about my assault,
6 victims regularly contact me, seeking help, and most
7 have never heard of the OPMC.

8 I've spoken with OPMC staff who do not
9 understand or could not clearly communicate what is
10 in their jurisdiction.

11 I specifically asked if sexual harassment of
12 a hospital staff member by a doctor, for example,
13 was reportable, and I was told, that "it depends."

14 People should report the harassment so that
15 OPMC can review the complaint and determine if it's
16 in their jurisdiction or not.

17 How can we expect patients or employees to
18 know what and where to report when we're not clear
19 about whose responsibility it is to investigate or
20 discipline?

21 One thing that's unique, as I understand it,
22 there's actually no time limit, so no statute, on
23 being able to seek justice from the OPMC for a
24 doctor who has abused or sexually harassed you.
25 They are required to investigate all complaints

1 regardless of when they occurred.

2 We encourage victims to speak up, but when
3 they do, they are often met with a justice system
4 that doesn't offer much relief or, as I've learned,
5 much justice.

6 In addition to mustering the courage to come
7 forward, we must overcome mountains of disbelief,
8 inertia, and prosecutorial discretion.

9 Despite OPMC's flaws, the public should be
10 aware of the office as a resource, especially when
11 other criminal justice systems are likely to let us
12 down.

13 Last year, "The Village Voice" reported on an
14 osteopathic doctor from Great Neck who admitted to
15 verbally harassing a patient and sending her
16 inappropriate text messages. He was fined \$10,000,
17 and required to be chaperoned anytime he saw a
18 female patient.

19 He then broke that rule two years later, and,
20 as of yesterday when I checked, his license is still
21 active.

22 Time and again we see abuse happen even when
23 others are present.

24 Think of the Nassar cases.

25 In addition to putting a patient in a

1 vulnerable position with a previously abusive
2 doctor, the chaperon, the person assigned to follow
3 them, who themselves has an employer-employee
4 relationship with the doctor, has to themselves work
5 in a potentially toxic environment.

6 Boards are knowingly putting criminals back
7 in private situations with their previous victims.

8 Think of what we know now about the Catholic
9 Church, where clergy, with credible allegations of
10 abuse, were simply moved to new environments to,
11 supposedly, perform differently under new
12 supervision.

13 The public doesn't know enough about the
14 practice of chaperons to be outraged, but they
15 should be.

16 And, I'll note, that it's not public
17 information why the chaperon is there.

18 So you go in, and there's just another person
19 in the room.

20 And I think many of us, you go into a
21 doctor's office and, you know, there might be other
22 nurses, other staff.

23 So it's not publicly known why that person is
24 assigned to be there.

25 So if you could choose between two doctors,

1 one with a chaperon and one without, I think most of
2 us would choose the one who had not been
3 disciplined, requiring a person to be there with
4 them.

5 I could go on.

6 Patients and medical staff who visit or work
7 with a doctor have a right to know their full
8 disciplinary history.

9 California recently became the first state to
10 require that doctors notify their patients if they
11 are on probation by the Medical Board of California
12 for wrongdoing, including sexual misconduct.

13 The Patient's Right to Know Act puts the onus
14 to inform the public on the provider and the state
15 board, not on the victim.

16 A 2016 Consumer Report survey showed that
17 82 percent of Americans favor the idea of doctors
18 having to tell patients they're on probation, and
19 why.

20 Doctors' offices could be required to post
21 signage about patients' rights, promoting OPMC's
22 website as a resource.

23 We know that victims turn to the Internet
24 privately, seeking information about sex crimes,
25 statutes, and reporting our support resources.

1 OPMC must also update its website.

2 The word "sex" only appears in one buried
3 place. There is nothing that explicitly mentions
4 sexual harassment or assault of -- as professional
5 medical conduct that is within their purview.

6 Think about that: It's an office. I mean...

7 The word "sex" appears only in one buried
8 place as an example of something.

9 The site does offer a link to relevant state
10 laws which could potentially offer more clarity for
11 those who can understand them.

12 Under relevant education law, which offers a
13 definition of "professional misconduct" applicable
14 to physicians, the word "sex" only appears in
15 relation to a definition of "misconduct" under the
16 field of psychiatry.

17 There is a statement that professional
18 misconduct can be willfully harassing, abusing, or
19 intimidating a patient either physically or
20 verbally.

21 Again, I don't think it's explicit enough.

22 Under the relevant Public Health Law, which
23 explains the penalties for misconduct and
24 proceedings for the OPMC, neither the word "sex" or
25 "harassment" appear anywhere.

1 The word "abuse" appears only in relation to
2 drug and alcohol abuse.

3 The relevant laws should clearly state sexual
4 harassment and sexual abuse as crimes that are
5 considered professional misconduct for physicians.

6 I hope that my remarks today help shed light
7 on sexual harassment and sexual assault in medicine.

8 Doctors are an important part of our lives,
9 and have specialized knowledge that we rely on to be
10 happy, healthy, and productive, but they're not gods
11 who deserve to be protected at all costs.

12 There's a lot more I can say, but, for now,
13 I'll share that it's my hope that state re -- that
14 the state resources already set up to protect us
15 can, at a minimum, be made more visible and
16 accessible, and that the role in curbing these
17 crimes can be clarified, and that we can work
18 together to support victims.

19 Thank you.

20 ASSEMBLYMAN CRESPO: Thank you.

21 Wow.

22 First of all, thank you for coming forward
23 and telling your personal story. But, you've shed
24 light on an area that I think a lot of us would
25 easily overlook.

1 I assume, whenever I walk into a
2 medical-facility, appointment, whatever, when my
3 daughters go there, that the people there are
4 highly, you know, regulated, they're licensed, there
5 must be tremendous amounts of oversight.

6 What you've presented shatters all of those
7 beliefs and raises significant questions.

8 I just want to share that.

9 I think we have to do a lot of follow up
10 on -- on -- you present a lot of ideas that can lead
11 to potential legislation.

12 But, simply, I just want to thank you for --
13 for bringing forward something unique to this whole
14 conversation.

15 MARISSA HOECHSTETTER: Thank you for
16 listening.

17 SENATOR BIAGGI: I echo my Assembly
18 Co-Chair's sentiment, and thank you for being so
19 incredibly brave, for sharing your story. It's not
20 ever easy, and it doesn't necessarily get easier.

21 But, you create a space for so many other
22 people when you speak up, and we're very grateful
23 for that.

24 And you -- that's -- I mean, you put a light
25 in an area that I would never even think about.

1 I mean, I'm thinking now about all the
2 doctors that I have gone to, dentists. I mean, if
3 you just -- now it's just -- goes down the list of
4 things.

5 How many times has somebody been in a room
6 with me and the doctor?

7 That's alarming.

8 That's alarming, and it's negligence in so
9 many different ways.

10 And the way that you laid out your testimony
11 is so helpful to what we're trying to achieve here
12 right now, because you do it in a way that gives us
13 clear gaps in the law, so that we can put bills in
14 place for these types of things.

15 And, you know, all of your examples go
16 through, and then you mentioned California so many
17 times.

18 And I really would be remiss if I didn't say
19 how incessantly disappointed I am as a legislator,
20 and as a New Yorker, that New York is constantly
21 second to California's lead on so many things.

22 They are trailblazing in ways that I don't
23 even think we know yet.

24 But it's great that we have --

25 MARISSA HOECHSTETTER: California, you can

1 sign up to get text messages if there's a
2 disciplinary action against your doctor.

3 SENATOR BIAGGI: Oh, my goodness. I mean,
4 that's remarkable. That's good to know.

5 MARISSA HOECHSTETTER: They have challenges
6 for sure there with the medical board, but they
7 are -- they have some really great ideas I think
8 that could be looked at.

9 SENATOR BIAGGI: Sure.

10 I mean, that's incredibly helpful for us.

11 And I think the fact that California has done
12 it already means that we have a model.

13 So even though we can be a little envious of
14 their leadership, we can still use them as a ally
15 and as like a sister state for us.

16 One of the things I just want to ask you
17 about, if you are comfortable --

18 MARISSA HOECHSTETTER: Sure.

19 SENATOR BIAGGI: -- responding to, you
20 mentioned that -- well, first of all, I want to just
21 say, this doctor, and the behavior of this doctor,
22 is incredibly egregious, and it's criminal.

23 To have, as one of the lines in your
24 testimony, that some of them were minors, including
25 one that the doctor had delivered, is disgusting.

1 It's disgusting.

2 And that person should not be able to have
3 the privilege of practicing medicine in the state of
4 New York.

5 So going back to what you had mentioned in
6 that paragraph, which was the Manhattan District
7 Attorney's Office:

8 So 20 women reporting to the police and the
9 Manhattan District Attorney.

10 Okay.

11 I have several friends who have reported
12 these types of acts to the police.

13 And I think one of the things that's very
14 clear is that police officers are not necessarily
15 trauma-informed in this specific subject, so that's
16 a different topic.

17 But when you talk about the Manhattan DA, and
18 the application of the law to specific facts and
19 circumstances, that is what a lawyer and an ADA
20 should be able to do.

21 So I'm curious about, when the Manhattan
22 District Attorney had, I guess, reviewed these
23 cases, if you -- I don't know of the extent to which
24 you know, so any details surrounding that, because
25 that's alarming, in so many ways, seeing what's in

1 front of us, and knowing that it went to the
2 Manhattan DA.

3 And do you know the timing of when it went
4 there?

5 MARISSA HOECHSTETTER: There's a lot I could
6 say about that.

7 SENATOR BIAGGI: You don't have to if you're
8 not comfortable.

9 MARISSA HOECHSTETTER: No, I can.
10 It's something I think that's worthy of a
11 whole other hearing.

12 SENATOR BIAGGI: Wow.

13 MARISSA HOECHSTETTER: I -- what I have
14 learned since going forward to the DA, and
15 subsequent litigation that I'm currently involved
16 in, and other things, the extent to which -- and
17 some has been made of this, you know, publicly, the
18 extent to which political contributions,
19 friendships, networks, and effort, I believe,
20 really, to -- I don't think anybody cared about this
21 doctor. I think it was an effort to protect the
22 reputation of his employers.

23 And I hope that our litigation will provide
24 an opportunity to reveal some of what we believe,
25 this case was handled very badly.

1 When I went in and reported what happened to
2 me, I was told that I was outside of the statute of
3 limitation.

4 I know now that that was a lie.

5 And part of what spurs me on to talk about
6 all the parts of my experience; reporting to the DA,
7 learning about the medical board, you know, talking
8 to people, I mean, this is all stuff that I have
9 just learned and taught and sought out for myself,
10 because I was not able to get justice through the
11 criminal justice system.

12 I mean, we tell people to report. We have
13 ridiculously short statutes of limitation.

14 And we have people that, when you come
15 forward to report a crime, I believe that most of
16 the people, I mean, people who are report -- you
17 know, presenting to you earlier today, I believe
18 that they look at someone like me as work. I'm one
19 more person; I am somebody that now is going to
20 require them to do more work.

21 And that's how I see it.

22 And so I think there's a real incentive for
23 some of these people to look at the case and say, if
24 they can win or not, or, you know, there's a lot of
25 factors there. I mean, there's a lot to talk about.

1 But --

2 SENATOR BIAGGI: Can you talk a little bit
3 about the statute of limitations, a piece of it?

4 So the statute of limitations you were told
5 was expired.

6 MARISSA HOECHSTETTER: It depends on how you
7 define what the crime against me was.

8 I define it as first-degree rape.

9 So I don't think there's a statute of
10 limitation against that.

11 How the -- and, honestly, I know we're
12 talking about statutes right now.

13 I think one of the reasons to get away from
14 all these different little definitions, is that
15 people use different things against you, and they
16 can say, Well, I see it this way, and so, therefore,
17 it's this crime, or, it's misconduct, or, it's
18 forcible touching, or, all these other things.

19 It's all wrong.

20 And as a victim, I mean, I really did
21 research. I tried to understand the law before
22 I came forward, and, it's confusing.

23 It's confusing.

24 And that's why, I mean, I've said it here,
25 like, the fact that the med -- the state office

1 responsible for disciplining doctors does not have
2 the word "sex" anywhere on there. Not "sexual
3 harassment," not "sexual abuse," not sexual
4 misconduct."

5 Nothing.

6 Why would I think that they're an office that
7 has a resource for me?

8 In my case, it is unique, he did lose his
9 license.

10 He -- I got to sit in court and watch him
11 plead guilty, not to crimes against me, but to
12 someone else.

13 That is extremely rare.

14 I'm, like, following a trajectory that almost
15 nobody gets.

16 And I do feel a responsibility because, I've
17 seen that, and I've learned from this process.

18 I feel a responsibility to tell the story.

19 It's a -- it's almost like a privilege that
20 I can say that and do that. And I really believe
21 that, if I can't, you know, who can?

22 And so I'm trying.

23 But -- so in this context and this
24 opportunity, I wanted to talk about the state
25 medical board.

1 I think there is a lot to be said and
2 discussed about statutes, about prosecutorial
3 discretion. Our lack of recourse is none, there's
4 none.

5 If they don't pursue your accusation, you
6 have no recourse, except, for example, this is one
7 way you could go get justice, right, you could go to
8 the state medical board.

9 But nobody knows about them.

10 No one -- I mean, I didn't know that they
11 existed until I read that as a detail of the plea,
12 and then I looked into it.

13 So it's not a resource that people know
14 about.

15 SENATOR BIAGGI: Wow.

16 I think that some of the notes that you
17 touched on, I won't go into details about them at
18 all.

19 But, the criminal justice system not serving
20 justice is a theme that I think all of us here are
21 very much aware of, and are working on, and have
22 worked on significantly this year.

23 The influence of political contributions and
24 money in politics, the -- it's -- you know, it's not
25 surprising that it's shown up here in this room, but

1 it's something that is on our radar.

2 And I think this is also one of the
3 challenges -- analogous challenges in the
4 Legislature as well, that I'm glad that you brought
5 it up in this instance, because I think it's
6 important to take it out of the context of politics
7 and put it into, you know, the normal course of
8 business.

9 And I just want to really thank you for
10 sharing all of your testimony, and being so
11 forthcoming.

12 And to your point of, it's a privilege, it
13 is, but it is also not required.

14 So, it's really remarkable and transformative
15 that you are using that for good.

16 So thank you for doing that.

17 MARISSA HOECHSTETTER: Thank you.

18 Thank you.

19 ASSEMBLYMAN CRESPO: Assemblywoman Simotas.

20 ASSEMBLYWOMAN SIMOTAS: Marissa, thank you
21 for being here.

22 You said that you're a victim.

23 You're not a victim; you're a survivor. And
24 that's really important.

25 I've been working in the arena of rape laws

1 and sexual-assault laws now for quite a while, and
2 I've met a lot brave individuals who've been willing
3 to come forward and tell their story.

4 And what you provide to us, and to the rest
5 of society, is a spotlight on the problems.

6 And we happen to be the people who can try to
7 fix them, but without you, we would never have been
8 made aware of these gaping holes.

9 I want to ask you a little bit about the
10 office of professional medical conduct and your
11 experience reporting, and just ask you: How can we
12 do a better job telling the public that this office
13 exists, and allowing people who may have complaints
14 to navigate the process?

15 I assume that it wasn't so easy for you to
16 report or navigate the system.

17 How could we make it better?

18 MARISSA HOECHSTETTER: So thank you for
19 saying that, and thank you for that question.

20 I have seen, and I think it was
21 North Carolina, that did a study, that only -- and
22 only 10 percent of the public knew about their
23 medical board.

24 So I think, at a minimum, people need to know
25 the office exists.

1 There are some states that require signage to
2 be posted, with a website.

3 Again, I think the website needs to be
4 improved.

5 But, I mean, at a minimum, I think there's
6 some public-relations work that needs to happen.

7 You know, we think a lot about health care,
8 like, what happened to me was in a big hospital,
9 there's people around. You imagine that there might
10 be somebody to go to.

11 A lot of this -- these things happen, I mean,
12 individual doctors have private offices. There's
13 one staff member, or two staff members, there.

14 And you're putting the onus of reporting or
15 knowing where to report on someone who themselves is
16 an employee of that -- that physician.

17 So it's tricky, but I think that there's
18 some, you know, minute -- like, public-relation
19 stuff, having it available.

20 Making sure that different support groups,
21 like, you know, birth groups, people that work with
22 mothers. There's different -- there's -- excuse me,
23 there's different -- there's the AMA; there's ACOG;
24 there's different organizations that work in
25 medicine. All of the medical schools.

1 I mean, I tried to keep my remarks to my
2 personal experience, but, I mean, Times of Health
3 Care just launched. There's incredible data and
4 stories of how pervasive -- I listed a few
5 statistics -- how pervasive sexual harassment is for
6 medical residents and students.

7 That's not something that I, you know,
8 personally can speak to, but I think there's an
9 opportunity to educate people before they are
10 officially in the workforce.

11 You know, you can have mandated chaperons.

12 So not in the sense that I said, but you can
13 require that, for certain types of exams, there's
14 always -- there always has to be a second person in
15 the room.

16 I don't know that that will always curtail
17 this. And a lot of what we see, I think it's
18 probably almost impossible to prevent a first
19 occurrence, but it surely should be possible to
20 prevent repeat occurrences, especially when you see
21 the statistics of how frequently these people are
22 repeat offenders.

23 So I think informing the public, which is
24 part of why I'm here and trying to do this.

25 I think making the law and the language

1 around OPMC more visible.

2 And I think, when you have it, the
3 responsibility spread out between the department of
4 education, and then these two offices under the
5 department of health, it's not clear where to go.

6 So perhaps the department of education and
7 the department of health could also have a
8 responsibility, even if they're not the office
9 responsible, to be responsible for informing the
10 public of where to go.

11 Uhm... yeah.

12 ASSEMBLYWOMAN SIMOTAS: One more question.

13 Is information that's filed, or complaints
14 filed, with OPMC, is it public? Is there any way we
15 can go and check to see who filed the complaint
16 against who?

17 MARISSA HOECHSTETTER: No.

18 What you can see publicly is final actions.

19 Now, again, this is how I understand it, you
20 can see a final action; so if a doctor's license was
21 revoked, suspended, or surrendered.

22 You cannot see if there were files --
23 complaints filed that didn't result.

24 I mean, right, again, you might want to see a
25 pattern of behavior.

1 And I think the number I shared was something
2 like 77 percent of doctors are allowed to continue
3 practicing.

4 So there's a lot of people out there who
5 probably have a disciplinary history.

6 And I'm speaking from a sexual-assault, you
7 know, perspective.

8 There -- this also -- a lot of what I'm
9 talking about applies to the opioid epidemic, for
10 example. There are examples of doctors prescribing
11 medication in exchange for sex.

12 So, like, there's an intersection of a lot of
13 things related to health care that I think could
14 be -- could benefit from some legislation here.
15 It's not just sexual assault, because they leverage
16 that power for people who are the most vulnerable.

17 But, yeah, it's -- it's not public.

18 I mean, there's some information online, but
19 it's pretty limited.

20 ASSEMBLYWOMAN SIMOTAS: Marissa, again,
21 I can't thank you enough for being here and publicly
22 sharing your story.

23 MARISSA HOECHSTETTER: Thank you.

24 ASSEMBLYWOMAN SIMOTAS: Thank you.

25 ASSEMBLYMAN CRESPO: Quick question, before

1 I go to the next.

2 MARISSA HOECHSTETTER: Yeah.

3 ASSEMBLYMAN CRESPO: The chaperon component,
4 we talked about it in terms of, if a chaperon
5 requirement is imposed on a doctor.

6 But does a patient have the right at any
7 given time to bring a chaperon with them to a test
8 or an appointment, that you're aware of?

9 MARISSA HOECHSTETTER: I believe that, yes,
10 you can request that.

11 It is -- I under -- I mean, someone else here
12 might know it.

13 It's my understanding that you can always
14 request that.

15 I think it could be mandated, especially in
16 certain circumstances.

17 What's tricky, and, again, I'm telling you my
18 experience, there can be someone in the room, and
19 then they leave, and you're already in a vulnerable
20 position.

21 So it's not perfect, but I think if you say,
22 you know, there has to be someone in the room for
23 these certain types of exams, or, that you can
24 always request it, that is the law as I understand
25 it, but there's no signage, for example.

1 So, you know --

2 ASSEMBLYMAN CRESPO: In theory (indiscernible
3 cross-talking) --

4 MARISSA HOECHSTETTER: -- you might not know
5 that that's available to you.

6 So I do think that that's something, again,
7 we need more, you know, education around.

8 ASSEMBLYMAN CRESPO: Appreciate that.

9 Assemblyman Gottfried.

10 ASSEMBLYMAN GOTTFRIED: Question, just sort
11 of mechanical: Do we have your testimony
12 electronically?

13 MARISSA HOECHSTETTER: I did submit it, yes.

14 ASSEMBLYMAN GOTTFRIED: Oh, okay.

15 MARISSA HOECHSTETTER: But I can get it to
16 you also. And I submitted all the various
17 attachments too.

18 ASSEMBLYMAN GOTTFRIED: Okay.

19 Well, if -- if the Chairs have it, I can get
20 it from them.

21 Uhm -- you know, as I've chaired the
22 Health Committee in the Assembly for quite some,
23 and, from time to time, we've tried to deal with
24 legislation relating to the physician discipline
25 system.

1 You know, in my experience, OPMC, you know,
2 it's kind of like, if you were talking about a
3 sheriff in some rural county in Mississippi, if you
4 discovered that there were some people in the town
5 that the sheriff, you know, treated extraordinarily
6 harshly, and other people in town, who the sheriff
7 left them do anything they wanted, you would
8 understand what was going on.

9 And in some ways, OPMC is like that.

10 There are people in the medical profession
11 that they come down on very hard, and people in the
12 medical profession who they never touch.

13 And the -- the secrecy of the proceedings,
14 including, not letting the complainant know what's
15 going on, is certainly a major problem.

16 So bottom line is, we'll look into this, and,
17 I imagine, be in touch with you.

18 I think there's a lot here that needs to be
19 looked at.

20 So I appreciate your raising these issues
21 with us.

22 MARISSA HOECHSTETTER: Thank you.

23 As I understand it, you know, a number of the
24 things I've raised have been considered for decades
25 in the state. Some of these are not new.

1 But I do think, as we've seen with some of
2 the other testimony, we're at a different moment
3 where we need to recognize.

4 That's why, even just putting some of the
5 language online.

6 I didn't include this here, and I don't
7 remember the number exactly, but if I remember
8 correctly, it's something like 260 days that it
9 takes to do an investigation. So, that's almost a
10 year, often -- well, I'm going to round up a little
11 bit -- when that person is still practicing.

12 So another thing, as you mentioned, they come
13 down really hard on some people, and not on others.

14 Most -- as I understand most of the board,
15 it's something like two-thirds professionals and a
16 third public.

17 So, you're -- you're, essentially, having
18 peers/doctors discipline other doctors.

19 And even the publicly-appointed members, the
20 public members, often have ties to the medical
21 industry in some way.

22 I think that's something that, you know,
23 I would question.

24 I'm not saying those people are not well
25 intentioned, but, that's, I think, a lot of the

1 reason why you see people, they're saying:

2 Well, you know, it was a mistake;

3 Or, we're going to send this person to, you
4 know, training, and they're gonna go back to work
5 with a chaperon, and it's going to be fine.

6 You know, at some point, I think we have to
7 care more about the people that they're harming than
8 this one person's career.

9 And I get the doctors are an expensive
10 investment, but, our lives are.

11 And I think we need to see a shift on what
12 their priority is.

13 Thank you.

14 ASSEMBLYMAN GOTTFRIED: Thank you.

15 ASSEMBLYMAN CRESPO: Assemblyman Quart.

16 ASSEMBLYMAN QUART: Marissa, thank you for
17 being here.

18 The State of New York has given you every
19 reason never to step foot in this state again, but,
20 here you are.

21 And thank you for your testimony.

22 I want to talk a little bit about
23 Columbia University, and our large, sacred
24 institutions in this city and state.

25 Now, I know you have a civil lawsuit.

1 But the civil courts are a difficult place to
2 seek justice because the end result is usually
3 compensation. It will unlikely end with an
4 admission or a change of policy. And we have to
5 deal with statute of limitations in civil court,
6 which -- beyond the army of lawyers that you and
7 your attorneys will have to deal with.

8 But this Legislature is not bound by a
9 statute of limitations to conduct its oversight
10 responsibilities of our large institutions, which,
11 in this very building, through the council, I'm sure
12 has received largess and land use, and all of that,
13 through state government as well.

14 What would you like to see this Legislature
15 do with respect to holding large institutions, like
16 Columbia University, accountable for what I'll
17 describe as its likely failures to provide any
18 oversight over a sexual predator that was in its
19 midst for two decades?

20 MARISSA HOECHSTETTER: It's a hard question
21 for me to answer.

22 You know, the State already has mandated
23 reporting, so, you have that.

24 But because none of this is -- it's not
25 public to see if somebody's even been reported, it's

1 very hard to hold anyone accountable.

2 Another example in California, if it's found
3 to be that a hospital knew, and did not report, they
4 have fines of, I think, around \$100,000. There's
5 some different fines.

6 That's actually not that much money,
7 considering how much money these nonprofits make.

8 And health care is -- they make a lot of
9 money on health care.

10 The hospital and the university, their
11 partnership, I mean, a lot of this is in their
12 annual report.

13 And their reputation matters a lot.

14 And so I think when you have a system that
15 is, essentially, asking them to self-report,
16 especially in an environment where people bring
17 lawsuits, again, that's one of the only tools that
18 we often have to hold people accountable.

19 It's tricky.

20 So I think there has to be real consequences.

21 When you are found to have known something,
22 to have had notice --

23 And, in my case, I really believe that they
24 had notice for decades.

25 -- and when you have been found to have had

1 notice, and not reported it, you have to be held
2 accountable.

3 So, I don't know if that is monetarily or
4 through, you know, different accreditation.

5 Uhm... yeah.

6 It's a tricky thing, especially, I think, in
7 New York City, where you have such a concentration
8 of the money and politics and these employers, and
9 it's all just so connected.

10 So, if the chair of Columbia's board is a law
11 partner with Harvey Weinstein's lawyer, and they're
12 all making contributions to the DA, like, it's
13 all -- it's all the same thing, it's all a network.

14 So, I mean, that question is hard to answer.

15 Like, how do -- how do you hold people
16 accountable? How do you infiltrate that?

17 You know, I -- you have to expose it, and you
18 have to hold people accountable.

19 And people have to feel like coming forward
20 matters.

21 I have been really fortunate over the last
22 year since speaking publicly, that I do feel like
23 people are listening to me.

24 And I'm the only non-anonymous person of
25 dozens. I mean, I talk to a lot of these other

1 women.

2 It's crazy that I find myself and my life
3 being the only non-anonymous person, but that's
4 where I am.

5 And hearing from all these other women makes
6 me feel -- makes me able to, you know, keep going.

7 But I do not feel like people have been held
8 accountable yet.

9 And what I'm doing has to matter, and so I'm
10 not going to stop talking about it.

11 I'm not going to stop talking about it until
12 there are different people in certain elected
13 offices, I'm not going to stop talking about it
14 until the influence of money and politics is
15 changed, and until patients are really safe, and
16 feel like they have recourse, somewhere to go.

17 And that comes down to statutes, it comes
18 down to state offices, it comes down to holding
19 people accountable when they have notice and they
20 don't act.

21 So, that's probably more of an answer than
22 you wanted, but that's how I feel about it.

23 ASSEMBLYMAN QUART: No, it's -- I think
24 it's important for people to know that,
25 Dr. Hadder (sic) -- accountability, which you talked

1 about, Dr. Hadder (sic) was a 63-year-old doctor.
2 Okay, so they took away his law (sic) license, but,
3 he was able to retire to his home in New Jersey.
4 And nobody sought --

5 MARISSA HOECHSTETTER: I mean, is he -- is he
6 getting a pension?

7 Is he -- I mean, there's some real questions
8 that, again, the criminal case had an opportunity,
9 I think, to look at that, and they didn't.

10 And so there's a limit to what, you know,
11 civil litigation can do.

12 But I believe that we have yet to see the
13 worst of it, unfortunately.

14 ASSEMBLYMAN QUART: And it's my hope, under
15 the leadership our Chairs, that, in future hearings,
16 we can poss -- we can seek to explore the
17 accountability, or lack thereof, of our large-scale
18 institutions in this city and state who have failed
19 you.

20 MARISSA HOECHSTETTER: Thank you.

21 Thank you.

22 ASSEMBLYMAN CRESPO: Assemblyman Epstein.

23 ASSEMBLYMAN EPSTEIN: I also want to thank
24 you for being here, and really bringing issues to
25 light.

1 And -- so what we're talking, like, is
2 systemic change, and I understand the struggle about
3 figuring how to get to it.

4 But do you think more ways to hold
5 institutions accountable for the behaviors of
6 their -- you know, their employers to figure out
7 systems and structures?

8 Like insurance -- like, if you want to change
9 how people drive, insurance companies affect how
10 people operate their vehicles; they create rules.

11 And, so, do we hold hospitals and
12 institutions accountable for the acts of their
13 staff, maybe they would do better training, go back
14 to medical school?

15 Is there -- are -- so just I'm trying to
16 think through some of the structural things that we
17 need to be doing to prevent people in those
18 positions to be happening in the first place.

19 Have you thought through those issues, and
20 where the structural changes has to happen to ensure
21 that people are not put in these positions? Or
22 people who think that --

23 MARISSA HOECHSTETTER: I have ideas about
24 that.

25 I appreciate that question because I think

1 you bring up important points.

2 I don't know that I am, as an individual, you
3 know, an expert to say enough.

4 I know that some of the things that I've
5 raised have come before the Senate and the Assembly
6 before, and have been taken out of legislation by
7 the insurance industry, by the medical industry,
8 themselves.

9 So it is, you know, medical malpractice.

10 I mean, there's -- there's -- we're talking
11 about a whole area, I think, with insurance. It's
12 expensive, and there's a lot of liability there.

13 So I don't know that I'm the best person to
14 talk about that.

15 I think, also, my -- because I'm in
16 litigation, I don't really want to talk about that.

17 But, as I understand, there is history with
18 some of what I'm talking about.

19 And there have been industries that you would
20 think are supposed to help protect the public, are
21 themselves lobbying to keep this stuff out of it.

22 ASSEMBLYMAN EPSTEIN: And what role do you
23 think the medical schools have to -- and nursing
24 schools have, in this conversation?

25 MARISSA HOECHSTETTER: I think they have a

1 huge role.

2 We saw the launch in -- I believe in
3 December, or just recently, of Times of Health Care.
4 They're working to get hospitals and medical schools
5 to sign, you know, pledges.

6 As I understand it -- and I have a family
7 member in medical school, actually, right now --
8 there's no classes, there's no training, there's
9 really nothing, about how to interact with patients.

10 I mean, it should be obvious that you should
11 not abuse your patients, but, it apparently needs to
12 be explicitly stated.

13 The Federation of State Medical Boards, which
14 is an association of groups like the OPMC, they
15 actually use a definition called "sexual
16 misconduct."

17 I think, you know, we're not even really
18 using the real words, and so some of this is like
19 getting really basic, like, putting the word "sex"
20 and "sexual harassment" and "sexual abuse" on the
21 website.

22 Doing some basic, sort of, you know, PR work
23 around -- around these offices.

24 Working with medical schools.

25 Yeah, it's a big challenge, and I'm sorry

1 I don't have all of the answers.

2 I've appreciated learning, and I want to
3 continue learning, and I think work with people who
4 are experts and maybe have more history, you know,
5 in this than I do.

6 But I wanted to sort of raise some of these
7 questions because I think they matter.

8 We're talking a lot about health care in a
9 lot of other context at the moment, and this is part
10 of it, you know, for me, and many other people.

11 ASSEMBLYMAN EPSTEIN: Thank you.

12 MARISSA HOECHSTETTER: Thank you.

13 ASSEMBLYMAN CRESPO: Assemblywoman Niou.

14 ASSEMBLYWOMAN NIOU: Hi.

15 MARISSA HOECHSTETTER: Hi.

16 ASSEMBLYWOMAN NIOU: Is it okay if I ask a
17 couple of more personal questions?

18 MARISSA HOECHSTETTER: Of course.

19 ASSEMBLYWOMAN NIOU: I don't want to -- if
20 you're ever uncomfortable, just, please, feel
21 like -- you know, you don't have to answer.

22 So going back to OPMC, how -- and the BPMC,
23 how did you even find out that they existed?

24 MARISSA HOECHSTETTER: I found out they
25 existed because, in the plea agreement that he

1 signed, it said he had to surrender his license.

2 And I wanted to see that that had actually
3 happened.

4 And so I found the office. I found -- they
5 do -- this is something that is there. I can
6 actually see the letter that they sent him, saying,
7 Send in your license.

8 And it's really funny because it says, Don't
9 send us the frame that it's in.

10 It's, like -- anyways.

11 It actually says: Don't mail the frame in
12 with us. We don't store your frame. But send us
13 the actual paper license.

14 That's how I realized there was an office.

15 And then I started, you know, looking into
16 it.

17 And I'm a member now of a group called the
18 Medical Board Roundtable, which is a national group
19 of advocates really committed to understanding
20 medical boards.

21 ASSEMBLYWOMAN NIOU: And -- so how did you
22 report, since you couldn't use what they had set up?

23 MARISSA HOECHSTETTER: So I did not report to
24 the medical board.

25 I reported to the district attorney's office,

1 and at that point I was led to believe that my
2 reporting to them was all that I could do at that
3 point. I mean, they never suggested, for example,
4 that I go to the OPMC.

5 Uhm... yeah.

6 And then -- yeah.

7 ASSEMBLYWOMAN NIOU: So what -- what led --
8 what did they say to lead you to believe that that
9 was all you could do?

10 MARISSA HOECHSTETTER: They said that my
11 accusation was outside of the statute of limitation.
12 And they appreciated me coming forward. And that
13 perhaps I could be used in Molineux -- that my
14 statement could be used in Molineux.

15 That was it.

16 There are other women who saw the same
17 doctor, who did report to the state medical board.

18 Within a few months of -- he was arrested in
19 2012, and he stopped practicing within a few months.

20 So at that point he wasn't actually
21 practicing, even though he was still employed by the
22 university.

23 ASSEMBLYWOMAN NIOU: I mean, when
24 Senator Biaggi was talking about how (indiscernible)
25 somebody else didn't have to be in the room, I was,

1 like, just as stunned about learning that we didn't
2 need to conduct a background check.

3 MARISSA HOECHSTETTER: It's kind of crazy.
4 Right?

5 I mean, I don't know why you wouldn't do that
6 as a condition of initial licensure.

7 ASSEMBLYWOMAN NIOU: Sure.

8 MARISSA HOECHSTETTER: Yeah.

9 ASSEMBLYWOMAN NIOU: So it's not a condition
10 of initial licensure.

11 It's not a condition of -- I mean, for law
12 school, for law students, you know, you're not
13 allowed to have committed a felony. And there's a
14 lot of different things that make it so that you
15 can't get your law license.

16 So I would think that there should be
17 something.

18 So I really appreciate you're bringing that
19 up.

20 I'm working on a bill now.

21 MARISSA HOECHSTETTER: Thank you.

22 ASSEMBLYWOMAN NIOU: But I -- I also wanted
23 to ask: So when -- when you -- when you found out
24 that they -- so, that these organizations existed,
25 the OPMC, the BPMC, when you found that out, what --

1 what -- did -- when you -- did you talk to them?

2 Like, what was the -- did you go before them?

3 MARISSA HOECHSTETTER: I did reach out to
4 them because I wanted to know if other people had
5 reported him.

6 So I understood that he lost his license as a
7 condition of this plea.

8 And now I understand why the DA made such a
9 big deal about that being "a win," because it is, in
10 fact, quite common for doctors to lose licensure in
11 one state and go seek it in another state,
12 especially a state without background checks.

13 So I -- sorry, ask the question again?

14 ASSEMBLYWOMAN NIOU: Did you go to -- did --
15 how did you reach them? What did you say to them?
16 How did you --

17 MARISSA HOECHSTETTER: Oh, right.

18 So I reached out, I called. I've also --
19 I called, and wanted to know, you know, could I see
20 anything else?

21 And, no, you -- you know, you're -- you
22 can't. You can only see final actions.

23 I have also -- I've spoken publicly at
24 events, and I've met members of the OPMC's board,
25 and I've asked them questions.

1 And I've also called and spoken with other
2 staff members since, just in sort of a personal
3 advocacy way.

4 Like, for example, asking if sexual
5 harassment is covered, you know, in their
6 jurisdiction.

7 And them basically saying, "It depends."

8 And maybe there's good reason for that,
9 I don't know.

10 I just think we need to be clear about what
11 is and what isn't covered.

12 ASSEMBLYWOMAN NIOU: So they never asked,
13 like, to hear more about what happened to you?

14 MARISSA HOECHSTETTER: No, uh-uh.

15 No.

16 ASSEMBLYWOMAN NIOU: Interesting.

17 MARISSA HOECHSTETTER: No.

18 Uhm... yeah.

19 ASSEMBLYWOMAN NIOU: And --

20 MARISSA HOECHSTETTER: In fact, in one
21 instance, and I don't want to make this personal,
22 but, there is one person who was very proud to tell
23 me that they were responsible for him losing his
24 license.

25 And I replied by saying, that OPMC had

1 nothing to do with it.

2 Right?

3 I mean, it was because of the plea.

4 They might have signed the paper, saying he
5 had to turn it in, but they -- it was not because of
6 anything they did.

7 And they might say that they never knew about
8 it, and that might be true.

9 But the point is, there were plenty of
10 opportunities along the way when they should have
11 been notified and been able to act, especially if
12 you have mandated reporting within 30 days.

13 But, if no one does it, then there's no way
14 to follow up on it.

15 ASSEMBLYWOMAN NIOU: That's right.

16 You gave us a lot to work on.

17 Thank you.

18 MARISSA HOECHSTETTER: Thank you.

19 ASSEMBLYWOMAN NIOU: And since they never
20 followed up with you, what would you have liked to
21 have seen coming from them?

22 Like, what would you have liked to have seen
23 coming from them?

24 And is there something that would have been
25 helpful in your case? Like dream scenario.

1 MARISSA HOECHSTETTER: Yeah, I mean, I think
2 that the information available online needs to be
3 much more user-friendly, modern, accessible.

4 I think information needs to be transparent.

5 Or, if there's information that can't be
6 shared, at least to say what is and is not
7 available.

8 Simply linking to the relevant law puts a
9 huge, you know, burden on the individual to be able
10 to read and understand that law.

11 It's only in English -- well, I think there
12 are parts of the website that might be in multiple
13 languages, but it's just really not very accessible.

14 So I think the information needs to be more
15 clear.

16 It needs to be shared and pushed out to the
17 public in another way.

18 I think there's bigger questions about why
19 the licensing and disciplining, and all this is
20 spread across these three different, something is
21 department of ed, something is department of health.

22 I mean, those are bigger conversations to
23 have.

24 But, this is not a small endeavor. I mean,
25 there are hundreds of people who do this work in

1 these offices.

2 So I feel like that's something to look at,
3 and understand, why does it take almost a year to
4 investigate a case?

5 Especially because I think we have a really
6 unique opportunity; there isn't a statute in coming
7 forward.

8 I mean, medical records could be gone. Yes,
9 there's other things that may go over time. But
10 this is actually, as I understand it, you know, you
11 can come forward and seek some justice.

12 And so I think that's pretty unique, but not
13 something that is promoted or readily visible.

14 ASSEMBLYWOMAN NIOU: There were like no
15 signs, nobody telling you, like, hey, this is
16 available to you. Right?

17 MARISSA HOECHSTETTER: No.

18 ASSEMBLYWOMAN NIOU: And how would you hope
19 that they are populated?

20 MARISSA HOECHSTETTER: You mean the staff
21 people?

22 ASSEMBLYWOMAN NIOU: Well, and the -- well,
23 the boards.

24 I mean, I know that Mr. Gottfried had just
25 talked about it being the Wild, Wild West.

1 MARISSA HOECHSTETTER: It's -- as

2 I understand, compared to other states, it's really
3 great, actually, the ratio of public members to --
4 I mean, you need people with specialized knowledge.
5 I mean, they're also looking at cases of medical
6 harm, right, they're looking all kinds of different
7 kinds of behavior.

8 So you need people who understand the
9 specialties of the different boards, and everything,
10 but having public members is good.

11 I think we need to look at whether or not
12 those public members have connections to the medical
13 industry. They might not be doctors, but they have
14 other connections.

15 And I think that is something that I would
16 question.

17 There's also, I think, almost 100 people. It
18 just seems like a lot.

19 As I understand it, part of that is because
20 you need a certain number of people to look and
21 review each complaint. And so -- and there's a
22 volume.

23 And so there might be good reason for that,
24 but it feels to me like it's a really big endeavor
25 that is not having an impact. And if it is, it's

1 not visible.

2 So how can we protect people and respect
3 privacy, but also make their work more visible, so
4 that people see results, see them as a resource, and
5 are willing to come forward.

6 And then we might start to understand the
7 extent of the problem.

8 ASSEMBLYWOMAN NIOU: And what would have been
9 some flag that they would could have helped to post
10 up so that you would know that you're not alone?

11 MARISSA HOECHSTETTER: I mean, I think if
12 there was signage in doctors' offices about
13 resources, someone might see that, you know, you
14 might see that.

15 I think that the district attorney -- I mean,
16 I would think if you're reporting to the police and
17 the district attorney, perhaps they should also
18 direct you to that resource.

19 I mean, it's not exactly like a Title 9
20 complaint, but I think of it a little bit the same.
21 Like, you might report to the police, but you might
22 also might report on campus.

23 Right?

24 So I think there -- there's some value to
25 asking law enforcement to also encourage people to

1 report, because they might not be able to help you
2 in a criminal way, but this is a way to get this
3 person, you know, away from patients.

4 So they should be promoting that to people
5 who come forward with these complaints.

6 ASSEMBLYWOMAN NIOU: Thank you so much.

7 I'm sorry I had to ask so many.

8 MARISSA HOECHSTETTER: That's okay.

9 ASSEMBLYWOMAN NIOU: I just wanted to make --

10 MARISSA HOECHSTETTER: Thank you for asking.

11 ASSEMBLYWOMAN NIOU: -- make a --

12 MARISSA HOECHSTETTER: Very few people want
13 to talk about this stuff, so I appreciate you asking
14 questions. Thank you.

15 ASSEMBLYWOMAN NIOU: Well, I appreciate your
16 being brave enough to, you know, open up your story.

17 Thank you so much.

18 ASSEMBLYMAN CRESPO: Assemblywoman Simon.

19 ASSEMBLYWOMAN SIMON: Thank you.

20 And thank you again for your testimony. This
21 is really very powerful. And, it's also a little
22 bit different than -- from some the testimony we've
23 heard before.

24 And I think it raises one of the issues that
25 I have talked about, and that is, our institutions,

1 our institutions of higher education in particular,
2 are like cities.

3 They have doc -- they have medical centers.
4 They have law clinics. They do research. They --
5 you have co-worker problems, faculty and staff and
6 student; faculty-on-student discrimination,
7 employer-employee relationships. You have campus
8 security, so you have that issue of law enforcement.
9 And you have sports, which is another whole scene.

10 And so it strikes me that today's hospital
11 systems are all linked to a university. There are
12 almost no small community hospitals anymore that are
13 not linked to a bigger institution.

14 And I'm curious whether you have a sense
15 that, the size of the institution, the power of the
16 institution itself, played a significant role in the
17 perpetuation of this doctor's actions?

18 MARISSA HOECHSTETTER: Sure.

19 Thank you for that question.

20 Yes, I believe it did.

21 I think the bigger the institution, the
22 easier it is for people to reassign someone, move
23 them around, look the other way, sort of bury it,
24 leadership changes. You know, someone, that history
25 might not be passed on. I mean, uhm... yeah.

1 You know, I read recently, I think Columbia
2 has -- their insurance rate has like more than
3 quadrupled in the last few years because of the
4 number of sexual-assault and harassment cases they
5 have, but from faculty and students and staff.

6 You know, it's so big, and each one is in a
7 different area, and no one sort of puts it all
8 together.

9 But at some point you kind of wonder, like,
10 what is your commitment here?

11 And I think, especially with really big
12 institutions --

13 You know, I work in higher ed, I understand
14 some of endowments and, you know, financing, the
15 donations. I mean, I work in fundraising.

16 -- when you have really big endowments and
17 you can just sort of throw money at problems, and
18 make things go away, make people sign NDAs, yeah,
19 you can get away with more when you're a really big
20 institution.

21 ASSEMBLYWOMAN SIMON: It also strikes me that
22 we have repeat offenders who are allowed to
23 repeatedly offend.

24 And I'm curious whether, in your experience,
25 and, certainly, talking to the women that you spoke

1 to, and there are likely to be other people in the
2 environment, whether it's the nurse or another
3 physician in the practice, who would have a sense
4 that there was something going on that shouldn't be
5 going on, whether there's a need for greater
6 whistle-blower protection?

7 Whether you had looked at that at all in the
8 work that you've been doing, and in the
9 conversations you've been having?

10 MARISSA HOECHSTETTER: So I can't speak too
11 specifically.

12 I will say that part of our complaint, we
13 drafted suggestions for things that the university
14 and the hospital system should do to have anonymous
15 reporting, to have protection for employees who come
16 forward.

17 I mean, you're putting a lot of the
18 responsibility of reporting on the nurses in these
19 situations, or the sort of orderlies, or people, and
20 they're, like, often the lowest on the chain, and
21 you're asking them to come forward.

22 So, again, in this context, it might not be
23 sexual harassment of those people, but I thought it
24 was relevant, in that they were having to work in
25 this environment, and be afraid of reporting

1 something that they saw.

2 And so I think there needs to be a way for
3 people to be encouraged to report. I mean, really,
4 you need to explicitly say you have a no-tolerance
5 policy, or, a zero, you know.

6 So the fact that the state board lets
7 77 percent of its people go back -- you know, the
8 physicians go back, like, you're saying "we don't
9 have a zero-tolerance policy."

10 So I think most people in any -- anywhere in
11 the chain are not going to say it's worth it to
12 report, because you're putting yourself at risk.

13 Uhm... yeah.

14 So there needs to be reporting mechanisms
15 that are anonymous.

16 I don't know, really, how it relates, like,
17 if you work at New York Presbyterian, you know,
18 partnership with Columbia, are you reporting to the
19 university? are you reporting to the hospital?

20 I really don't know how that works, and
21 I think maybe that's part of the problem.

22 When you have these big institutions with all
23 these partnerships, it might not be clear where you
24 go.

25 ASSEMBLYWOMAN SIMON: That's why they hire

1 lawyers, to figure that out.

2 MARISSA HOECHSTETTER: Yeah.

3 ASSEMBLYWOMAN SIMON: Somebody --

4 MARISSA HOECHSTETTER: Well --

5 ASSEMBLYWOMAN SIMON: Somebody can figure it
6 out, and they ought to be figuring it out.

7 And it strikes me that a lot of what happens
8 when they do these deals, is that they don't figure
9 those kinds of things out.

10 And it's clear that there needs to be a
11 better intersection between the various entities, or
12 units, of these large entities, so that people
13 don't -- the institutions -- entities within the
14 institutions are in that cross-purposes, and leaving
15 people to pay the price.

16 MARISSA HOECHSTETTER: Yeah.

17 I mean, Nassar was at a public institution.

18 The gynecologist at USC was in a school, you
19 know, higher ed.

20 There's something to be said about that: why
21 are they able to get away with this in those
22 institutions for so long?

23 ASSEMBLYWOMAN SIMON: Thank you very much.

24 MARISSA HOECHSTETTER: Thank you.

25 ASSEMBLYMAN CRESPO: Thank you.

1 MARISSA HOECHSTETTER: Thanks so much.

2 ASSEMBLYMAN CRESPO: Just a reminder, it's
3 4:53. 5:30 is the magic hour for security
4 downstairs.

5 SENATOR BIAGGI: Next, we're going to shuffle
6 some of the order.

7 We will be hearing from the National
8 Employment Lawyers' Association, also known as
9 "NELA"; the National Women's Law Center; and
10 A Better Balance.

11 MIRIAM CLARK: I don't know where A Better
12 Balance is.

13 ASSEMBLYWOMAN SIMON: You could start,
14 whenever you're ready.

15 MIRIAM CLARK: I don't know where A Better
16 Balance is.

17 SENATOR BIAGGI: We're just waiting for
18 A Better Balance.

19 We'll wait a moment.

20 MIRIAM CLARK: I don't know where A Better
21 Balance went, but we're here.

22 SENATOR BIAGGI: That's all right, we can get
23 started. And then, when they come back to the room,
24 that's okay, they can share their testimony.

25 ANDREA JOHNSON: My name is Andrea Johnson,

1 and I am senior counsel for state policy at the
2 National Women's Law Center.

3 The law center, we're located in D.C., but we
4 work all across the county, and we've been working
5 for over 45 years to advance and protect women's
6 equality and opportunity, and we've long worked to
7 remove barriers to equal treatment of women in the
8 workplace, including workplace harassment and
9 discrimination.

10 And since January of last year, the National
11 Women's Law Center fund has been housing and
12 administering the Time's Up legal defense fund,
13 which has received over 5,000 requests for
14 assistance just since January of 2018, almost 400 of
15 which are from workers in New York, related to
16 workplace sex discrimination, and the vast majority
17 involve sexual harassment and related retaliation.

18 And over one-third of those requests into the
19 Time's Up legal defense fund from New York have been
20 from workers in the arts and entertainment fields,
21 health care, and education services.

22 And significant numbers of individuals
23 working in local government, food services, finance
24 and insurance, and information and communication,
25 have also sought assistance, and the majority

1 identified as low-income.

2 One thing that I really want to underline is
3 that the requests that we've received into the fund
4 confirmed that sexual harassment does not occur in a
5 vacuum, but it often occurs alongside or in
6 combination with other forms of harassment and
7 discrimination, like pay discrimination or pregnancy
8 discrimination.

9 It also occurs at the intersection of
10 identities, like race and sex, or national origin
11 and sex, or disability and sex.

12 A report that the law center published
13 recently, analyzing EEOC charge data, indicates that
14 women of color, and Black women in particular, are
15 disproportionately likely to experience sexual
16 harassment at work, highlighting how race and sexual
17 harassment can be intertwined.

18 I want to underline that because our #MeToo
19 policy response cannot just focus narrowly on sexual
20 harassment. It must be intersectional, it must
21 cover all forms of harassment and discrimination,
22 because legislation that would focus exclusively on
23 sexual harassment would have the odd and impractical
24 result of providing a worker who experiences
25 multiple intersecting violations with only partial

1 protection, I think a point that was made earlier
2 today.

3 New York, as you all know, passed a number of
4 really important protections last year, and in years
5 prior, to cover independent contractors and
6 employees of smaller employers, those are really
7 important protections, and, to limit the use of
8 NDAs, but they were all focused on sexual
9 harassment.

10 So we urge the Legislature to extend these
11 protections to all forms of harassment and
12 discrimination, and make sure the same is done of
13 future policy reforms that you're considering, so we
14 can truly address the inequities and harassment in
15 the workplace.

16 And in addition to administering the
17 Time's Up legal defense fund, the law center has
18 also been working with federal and state legislators
19 and advocates all across the country to really
20 harness the energy of the #MeToo movement, to make
21 real change, and stop and prevent sexual harassment,
22 both in legislatures and the general workforce.

23 Last year alone, over 100 bills were
24 introduced in states across the country, and by
25 October 2018, 11 states had enacted some of those

1 measures into law.

2 And at the beginning of this year, over
3 300 state legislators, representing 40 states,
4 signed a letter of commitment, pledging to
5 strengthen protections against sexual harassment and
6 violence at work, in schools, in homes, and
7 communities in 20 states by 2020; a call to action,
8 #20Statesby2020, which is very exciting.

9 There's a lot of momentum in the states.

10 And the Congress has also introduced
11 legislation to address the many inadequacies in our
12 federal laws, but little has moved. So it's really
13 fallen to the states to carry the torch of real
14 reform.

15 And New York has enacted several important
16 protections already, but for the state to be a
17 leader in fighting for workplace equality and
18 against harassment, many of these protections need
19 to be strengthened, and additional protections are
20 needed.

21 And I'll just touch quickly on a few that we
22 think are particularly important.

23 One is that, much needs to be done to remove
24 the barriers to survivors accessing justice, like
25 the short statutes of limitations, which we've heard

1 about today.

2 Many workers don't come forward immediately,
3 or even within months, to report, either due to fear
4 of retaliation, or as a result of the trauma they're
5 experiencing. And it's just difficult for workers
6 to -- without resources to easily find and consult
7 with advocates or attorneys about their rights.
8 That can take time.

9 We see with the Time's Up legal defense fund,
10 that many people seeking assistance have run out of
11 time and no longer have legal options.

12 Fortunately, we're seeing states, from Texas
13 to Oregon, working to rectify this; working on
14 legislation this session.

15 We saw New York City last year extended the
16 statute of limitations.

17 In April, Maryland extended their statute of
18 limitations for filing an administrative claim to
19 two years.

20 And yesterday, you might have heard, the
21 California Assembly passed a bill that will very
22 likely become law, that will extend their statute of
23 limitations to three years.

24 So, I know you watch what California does,
25 they are moving ahead.

1 The comprehensive anti-harassment bill that
2 was recently introduced in Congress, the Be Heard
3 Act, which is something that we worked closely on,
4 it would extend the statute of limitations to
5 four years, and also has provisions dealing with
6 federal government employees who have a much shorter
7 statute of limitations, only 45 days, presently, to
8 initiate a complaint. And it would ensure that they
9 would have the same time as others.

10 So we really urge New York to join this
11 movement to extend the statute of limitations.

12 Another important thing is, addressing the
13 "severe/pervasive" standard, which has become unduly
14 narrow.

15 And my colleagues at the table will speak
16 more to that.

17 We urge the Legislature to pass legislation
18 that rectifies the standard, and really ensures that
19 courts' analysis of workplace harassment focuses on
20 the impact of the conduct, and the individual's
21 terms, conditions, or privileges of employment; that
22 it's based on the record as a whole and the totality
23 of the circumstances, and that recognizes that the
24 wide -- a wide range of circumstances may alter the
25 terms and conditions of employment, and that no

1 single type or frequency of conduct is required.

2 New York City, as we've heard, has taken a
3 different standard.

4 California passed legislation last year, also
5 addressing the "severe/pervasive" standard.

6 And the federal Be Heard Act is another bill
7 that has not passed, but has been introduced, that
8 we think provides a model for guiding courts away
9 from the standard -- the "severe/pervasive"
10 standard.

11 And we encourage you to take a look at that.

12 The Faragher-Ellerth defense is something we
13 think is very important, to allowing for punitive
14 damages, which I know will be mentioned.

15 But I'll end by emphasizing the need for
16 measures that increase transparency as a mechanism
17 to really increase employer accountability, and
18 incentivize employers to proactively prevent
19 harassment.

20 So, what we've seen around non-disclosure
21 agreements we think is incredibly important.

22 And we're happy to see that New York is
23 taking some important steps in that regard.

24 We are concerned that, how the law was
25 drafted, leaves it open to -- leaves open to

1 employees being still coerced into signing an NDA.

2 So we encourage the Legislature to, for
3 example:

4 Ensure that workers who breach an NDA are not
5 subject to liquidated damages;

6 Ensure that the agreement to keep a
7 settlement confidential provides independent
8 consideration for that agreement;

9 And also ensure that any settlement agreement
10 clearly includes an explanation in it, that an NDA
11 does not prohibit the worker from filing a complaint
12 or participating in an investigation with the state
13 or federal agency, or in federal or state
14 litigation, or using collective action, to address
15 workers' rights violations.

16 Vermont took -- passed legislation last year
17 that takes that approach.

18 So, all these things we think are some
19 additional important procedural protections to try
20 to address this fear that maybe this actually
21 doesn't shift the balance of power necessarily in
22 the negotiation, to try to give more power to the
23 survivor.

24 And there are other transparency measures
25 that we're seeing in other states, such as requiring

1 employers to report about the number of claims and
2 settlements, and how claims were resolved, as a
3 mechanism, again, for accountability.

4 And Maryland passed legislation to this
5 effect last year, that would require employers of
6 50 or more employees to report about settlements to
7 the Maryland Civil Rights Commission, which would
8 then aggregate and publish those responses.

9 So, some interesting work going on in other
10 states I'd be happy to talk more about.

11 But we do think that transparency is a really
12 important accountability measure, and would
13 encourage you to look more in that respect.

14 Thank you.

15 MIRIAM CLARK: I'm Miriam Clark. I'm the
16 president of the New York affiliate of the National
17 Employment Lawyers' Association.

18 I've been representing employees in New York
19 for more than 30 years.

20 And so it's striking that we're hearing so
21 much at the last hearing, and today, and in the
22 press, this outcry against workplace sexual
23 harassment. It's wonderful to hear.

24 I've been doing this work for a very long
25 time, and I have to say that, when I first started

1 out as a lawyer, I thought that, eventually, I would
2 be out of a job because sexual harassment would end.

3 Who knew?

4 But the point is, that we can't change
5 culture without changing the law.

6 Outrage without meaningful legislation is
7 just this year's noise.

8 So what we need to do is comprehensively
9 change the substance of New York State's
10 discrimination law.

11 And I know you're all familiar with S3817,
12 A7083, which is our omnibus bill that we believe
13 will do just that.

14 So, just to start something that I haven't
15 said before, but I also read the quote in Politico
16 from the business council, and, you know, I do think
17 there's a legitimate concern about what the effect
18 of these laws might be on businesses, especially
19 small businesses.

20 Large institutions like Columbia must be held
21 accountable, but, I think we do have a concern about
22 small businesses that make New York vibrant.

23 But I think what we need to think about is
24 that harassment and discrimination are bad for
25 business.

1 Employees who are harassed and discriminated
2 against suffer physical and psychological illness,
3 which lowers their productivity and increases their
4 absenteeism.

5 Studies show that women of color report the
6 highest level of discrimination in the workplace,
7 and are most likely to suffer symptoms of
8 posttraumatic stress disorder as a result of such
9 experiences.

10 And these -- there are articles that talk
11 about, really, sexual harassment as an occupational
12 health issue, in my printed testimony.

13 Employees who suffer from unlawful
14 discrimination, harassment, quit if they can afford
15 to.

16 A workplace rife with unlawful harassment
17 will suffer turnover, which experts estimate costs
18 employers anywhere from 20 to 213 percent of
19 salaries.

20 So, you have turnover of one highly-paid
21 professional person, you're gonna spend 213 percent
22 of their salary replacing them.

23 Overall, it is estimated that each person on
24 a team affected by sexual harassment is less
25 productive --

1 That makes sense because you're distracted or
2 afraid by what's happening to your co-workers.

3 Right?

4 -- with an average cost through loss
5 productivity of \$22,000 per person.

6 Common sense, and my experience, tells us
7 that this must be the case.

8 My clients who suffer from sexual, racial,
9 and other forms of harassment dread going to work
10 every day. They suffer from physical and
11 psychological symptoms. They're exhausted by the
12 emotional and physical energy involved in trying to
13 get away from their harassers, and, of course, by
14 terror of retaliation if they complain.

15 Those with the ability to leave their jobs
16 almost always do.

17 So who stays? The harasser, free to make the
18 life of the next employee totally miserable.

19 So I'll walk through S3817 in a minute, but
20 first I want to discuss the specific weaknesses of
21 current New York law.

22 So, overall, New York's anti-discrimination
23 law is more than 75 years old.

24 Yay for us for being one of the first, but
25 not yay for us because it needs to be amended.

1 The worst thing right now is that New York
2 courts have deliberately and explicitly chosen to
3 align it with federal law.

4 Every single case you bring under the State
5 Human Rights Law, the first thing the judge says is,
6 "We follow Title 7." That's the federal law.

7 So federal law has gotten significantly less
8 employee-friendly over the years. I can tell you
9 about that. It's become harder to prove age
10 discrimination, harder to prove disability
11 discrimination, harder to prove retaliation.

12 The "severe or pervasive" standard has gotten
13 crazier and crazier, and this is all just likely to
14 become worse, since we know what's happening to the
15 federal bench and the Supreme Court.

16 Okay, so, moreover, there's this procedural
17 mechanism called "summary judgment," which, for
18 people who didn't go to law school, means that,
19 after discovery, but before trial, a judge looks at
20 all the evidence and decides whether there's enough
21 of a factual issue to go to trial.

22 So less than one-third of employment
23 discrimination cases ever get to trial. The rest
24 get knocked out on summary judgment.

25 And the cases that are most likely to survive

1 are pure sexual-harassment cases, but even they get
2 to juries less than half the time.

3 So what you have are these judges deciding,
4 without ever looking at the witnesses, without ever
5 looking at the employee, which cases are deserving
6 enough to go to a jury.

7 So why is it that so few of these cases get
8 to trial?

9 And the answer is, of course, the substance
10 of New York law.

11 So as we all know, discriminatory harassment
12 is only illegal if a Court believes that it was
13 severe or pervasive.

14 By the way, it's "or" -- severe or
15 pervasive -- but many judges think it's "and."

16 I gave some graphic examples of outrageous
17 conduct about "severe/pervasive" when I testified in
18 February.

19 Here's some more.

20 Neil (ph.) in New York did an Amicus brief
21 three years ago, in a case called Kaplan versus
22 The City of New York.

23 There was a claim under the state law and the
24 city law.

25 The claim was, that a supervisor masturbated

1 through his clothes while sitting next to an
2 employee.

3 And the lower-court judge held that not only
4 was that not severe or pervasive, it was actually a
5 petty slight or trivial inconvenience under the
6 New York City law.

7 But see, interestingly, on appeal, the
8 Appellate Court said, no, you do absolutely have a
9 different standard under City law.

10 The employer did not prove that this was a
11 petty slight or trivial inconvenience, and the
12 employee's case was allowed to go to trial.

13 So this is an absolutely clear example of how
14 the City law, which our bill tracks, allowed a case
15 to get to trial that New York State law would not
16 have.

17 Here's another one.

18 In a 2018 case involving a Black woman --
19 this is a case -- one of Laurie's cases, a Court
20 held that being called "a bitch" and "a Black bitch"
21 numerous times, along with comments such as, "This
22 bitch thinks she's the shit," and, "You Black people
23 think you are the shit," did not constitute severe
24 or pervasive harassment. 2018.

25 Also last year, the Second Circuit Court of

1 Appeals affirmed a lower court who held that the
2 following conduct suffered by an African-American
3 public school teacher in Westchester -- this was
4 Rye -- was not severe or pervasive.

5 Plaintiff's colleague forwarded a derogatory
6 e-mail, comparing a minority teenager to a
7 downwardly evolved human, "homo slackass-erectus."

8 "This species receives benefits," the cartoon
9 said, "and full government care. Unfortunately,
10 most are highly fertile."

11 Another teacher referred to African-Americans
12 as "Alabama porch monkeys."

13 Another teacher complained she didn't want
14 another "Hernandez" in her class.

15 The same teacher told plaintiff in front of
16 his class that it was her right as an American to
17 use the n-word.

18 And a baseball coach told an African-American
19 student that he ran as fast as a runaway slave.

20 Not severe or pervasive.

21 We've talked about -- a little bit about the
22 accountability of institutions.

23 New York employers escape liability because
24 they're often held to be not responsible for the
25 hostile work environments created by their low-level

1 and mid-level supervisors. The only exception is
2 the rare situation where the employee can prove that
3 the employer encouraged, condoned, or expressly or
4 impliedly approved the supervisor's conduct.

5 That's really hard to do.

6 It is very hard for an employee to ever prove
7 that, somehow, the employer acquiesced or approved
8 what the supervisor was doing.

9 And most New York State courts follow the
10 federal example, which gets the employer completely
11 off the hook if the employee failed to promptly use
12 a reasonable avenue of complaint provided by the
13 employer.

14 So we talked about this in February.

15 If the employee calls the wrong 800 number,
16 calls too late, calls too early, complains about the
17 wrong thing, then, under the Faragher-Ellerth
18 defense, the employer is off the hook.

19 And, of course, all available research shows
20 that most employees who suffer from unlawful,
21 hostile work environments don't complain, usually
22 because they have a quite justifiable fear of
23 retaliation.

24 So, in some ways, New York law tracks federal
25 law, as I just described. In some ways it's worse.

1 So New York does not provide for punitive
2 damages, which means that awards, especially to
3 low-wage workers, tend to be low and absorbable by
4 the employer as a cost of doing business.

5 Damages in New York State cases are only
6 measured by the worker's economic loss, which could
7 be low if it's a low-wage worker, and emotional
8 distress, which is highly variable.

9 If an employee can't afford psychotherapy,
10 for example, her damages are considered to be
11 "garden variety," and limited to five figures or
12 lower.

13 The employer, therefore, paying very little
14 money, is incentivized to continue to employ the
15 harasser and allow the harassment to continue as a
16 cost of doing business.

17 Under New York law, an employee who wins a
18 case can have the employer pay legal fees only if
19 the case was based on sex discrimination.

20 And small employers are allowed to commit all
21 forms of discrimination, except for discrimination.

22 Employers are only responsible for the acts
23 of independent contractors if the unlawful conduct
24 was based on sex discrimination.

25 As we will describe later, these anomalies

1 allow many forms of discrimination, especially
2 discrimination against women of color, to go
3 completely unchecked.

4 Again, all of this outrage without
5 legislation is meaningless. Fundamental changes
6 need to be made in the substantive law.

7 So 3817 and 7083A, introduced by
8 Senator Biaggi and Assemblymember Simotas, has now
9 been supported by many co-sponsors, including many
10 of you in this room -- thank you -- and more than
11 30 organizations, including the New York City Bar
12 Association, the National Employment Lawyers'
13 Project, Legal Aid Society, Make the Road, New York
14 Legal Momentum, the Chinese Staff and Workers
15 Association, Latino Justice, and others.

16 It would eliminate the "severe or pervasive"
17 standard explicitly, and replace it with an
18 employer's ability to prove that what happened was a
19 petty slight or trivial inconvenience.

20 This comes right out of New York City law.

21 And as we heard from Dana Sussman, New York
22 City law works.

23 Our bill holds employers absolutely liable
24 for discriminatory and harassing acts of their
25 supervisors, and allows employees, who prove that

1 they have been unlawfully discriminated against or
2 harassed, to obtain punitive damages and have their
3 attorney fees paid by the employer.

4 It also protects all employees of small
5 employers, and it protects independent contractors.

6 So the #MeToo movement, and even some of the
7 press coverage that I see of these hearings, might
8 have reasonably led people to believe that, really,
9 what we need to do right now is just strengthen the
10 law against sexual harassment.

11 Given the press coverage, this assumption
12 might be understandable, but it's dead-wrong, as my
13 colleague Laurie Morrison will explain.

14 LAURIE MORRISON: Thank you, Miriam.

15 Hi, I am Laurie Morrison, employee advocate.

16 I have been representing victims of
17 employment harassment, discrimination, and
18 retaliation for almost 20 years.

19 And I'm also a member of the National
20 Employment Lawyers' Association, both the national
21 and the New York affiliate.

22 As Miriam described, the proposed bill,
23 S3817, seeks to include important, critical
24 provisions that are desperately needed in New York
25 State law.

1 But I want to specifically talk about how it
2 wants to eliminate the "severe or pervasive"
3 analysis.

4 Why do we need to eliminate it?

5 Well, because it's a barrier; it's a barrier
6 that says, if you're harassed in the workplace, you
7 have to prove the harassment, but you also have to
8 prove that the harassment you suffered is
9 sufficiently egregious to warrant recognition and to
10 warrant protection.

11 Okay, so we're telling people who are brave
12 enough to come forward, these are survivors, these
13 are thrivers, these are people who need to be
14 applauded for coming forward --

15 It is terrifying to be alone in a workplace,
16 to be harassed, to not be able to -- these people
17 don't necessarily have trust funds. Okay? They
18 need to work.

19 -- and we're telling them, if you are brave
20 enough to come forward and complain so it stops
21 happening to you, and, hopefully, it will help it
22 stop happening to others, well, you need to prove
23 your harassment, and you need to make sure that
24 you're worthy of legal protection.

25 That's not okay, and it has never been okay.

1 And what "severe or pervasive" also does, is
2 it further reduces protection of people who have
3 suffered intersectional harassment.

4 We've talked about it today. Right?

5 So "intersectional harassment" are people who
6 have been -- who have suffered and been targeted
7 because of more than one characteristic.

8 They're a Black woman.

9 They're a White male who is disabled, who
10 might be called, "You're not man enough," just
11 'cause he's disabled.

12 Well, that's his disability and his gender
13 being attacked. Okay?

14 We have so many different examples of this.

15 We have transgender people who are struggling
16 from this, because people are saying, Oh, well,
17 which is this?

18 Okay, we don't have a way yet, or at least it
19 hasn't been exercised yet, to deal with
20 intersectional harassment.

21 So then you add on to it "severe or
22 pervasive," according to studies, half of all people
23 who bring intersectional harassment claims have no
24 protection under the law, just because they happen
25 to be a Black woman who was called a "Black bitch"

1 at work.

2 We have too many people who are not getting
3 covered under the current New York State law, and
4 "severe or pervasive" is paving the way for them to
5 continue to not have that kind of protection.

6 Let me give you the example of the case that
7 I've been working on.

8 This is a Black woman, repeatedly called
9 "bitch," "Black bitch," "These Black people think
10 they're the shit," and other egregious slurs in the
11 workplace.

12 Now, it was very clear that this woman was
13 being targeted specifically because of her race and
14 her gender simultaneously.

15 Now, how do we know that?

16 Well, because White women were not ever
17 called "bitch."

18 White and -- White women and White men were
19 referred to by their proper names, not by their
20 race.

21 So we have a clear signal that race and
22 gender were at -- were at the center focal point
23 here.

24 But, the intersectional nature of this
25 woman's abuse, the "Black bitch," and otherwise, was

1 completely overlooked.

2 So the "Black" was segregated from "the
3 bitch."

4 And then doing so minimized the severity and
5 effect of the abuse this woman suffered.

6 So "severe or pervasive" analysis was applied
7 to the "Black" portion in isolation, and then to the
8 "bitch" portion in isolation.

9 And then it was found that just "bitch," in
10 and of itself, or just "Black," in and of itself, is
11 not sufficiently severe or pervasive to warrant
12 protection under the current New York State law.

13 It gets worse.

14 The person who made these slurs was a woman,
15 but she wasn't an African-American woman. So the
16 "bitch" portion of the slurs were completely
17 disregarded. They were considered just "intragender
18 sparring"; one woman calling another woman
19 "a bitch," no big deal.

20 Then they took the "Black" portion,
21 segregated that as well, and they said, well, just
22 "Black" alone, I'm sure this person was just trying
23 to describe skin color.

24 They completely -- this is what occurred in
25 reality.

1 I know, Senator Biaggi, I see your face.

2 I know, it's the same disgust, and I deal
3 with it every single day with my clients,
4 unfortunately.

5 That's why we have to change these laws.

6 So, when we do not understand, or do not
7 respect or appreciate, the intersectionality, we are
8 all more than just gender, race; we are so many
9 things. We are gender and race and disability and
10 sexual orientation.

11 There are so many ways that we can be
12 targeted for harassment.

13 And if we don't look at those ways and
14 respect those ways, we're not going to protect
15 people who are victims.

16 But if we keep "severe or pervasive," it's
17 going to get even worse.

18 And it still is worse, just like I've just
19 described.

20 So, intersectionality research,
21 intersectionality experts, such as Leah Warner and
22 others, have provided research to show, that not
23 only are intersectional claims only half as likely
24 to win, they are the least likely of all to get any
25 protection under our current laws.

1 They've also found, intersectional
2 researchers, that women of color are most at risk
3 for mistreatment.

4 Well, our laws inform our behaviors, so we're
5 not surprised at that, are we?

6 They're least protected, so they're the ones
7 that you want to target.

8 If we overlook the fundamental aspects of
9 harassment, such as the intersectional nature of
10 abuse, then we help the harassers achieve their
11 goal, because we reduce protection for a large
12 portion of our population.

13 And this negatively affects all of us.

14 Like I said, there could be a gay woman in
15 the workplace who's targeted because she's a gay
16 woman, but a heterosexual man might be treated
17 differently, a gay man might be treated differently.

18 A disabled man might be called "less than a
19 man" in the workplace. It's because he's a disabled
20 man, not one or the other.

21 So we cannot have a law that takes who we are
22 and segregates them, and then puts an artificial,
23 "severe or pervasive" analysis on top of that.

24 And by the way, the "severe or pervasive"
25 analysis is being determined and judged by someone

1 who wasn't there. They didn't see what happened.

2 So let's go ahead and distort what happened,
3 and then let's have a third party be blind to the
4 intersectionality and impose an artificial standard
5 that has not worked, and won't work.

6 Now, Assemblyman Crespo, earlier, when you
7 were speaking with the HID, thank you, you asked,
8 have they heard, "Well, this harasser just got away
9 with it?"

10 Let me answer the question for you.

11 I have heard that daily.

12 I have heard it from my clients.

13 And, unfortunately, I have seen it in person,
14 with these people being brave enough to come
15 forward.

16 And because someone imposed a "severe or
17 pervasive" barrier on them, the "Black bitch," all
18 these other horrible words, not severe or pervasive.

19 Do you think the harasser got away with it?

20 Absolutely, and it happens time and time
21 again.

22 Now, I want to add as well, that some people
23 are concerned that if we remove "severe or
24 pervasive," well, people will just be able to claim
25 harassment, and that's it, and employers will go

1 down, and small employers especially, we have to be
2 careful.

3 Well, to be clear, again, without "severe or
4 pervasive," you still have to prove harassment, and
5 it's not an easy thing to do.

6 So you still have to prove your case.

7 And, employers, they have no interest, at
8 least I hope, to having a workplace that's divided
9 on these severe or pervasive, non-intersectional,
10 artificial grounds.

11 No one wants a workplace where the workers
12 are divided amongst each other, and before
13 themselves.

14 And as we've said and as we've seen, people
15 of color, intersectional people, they are suffering,
16 we are all suffering, severe PTSD, because when we
17 finally do stand forward and are brave enough to
18 complain, our law takes a blind eye and says, You're
19 not protected, you're not good enough. Who you are
20 is who we don't want to see.

21 We cannot allow this to happen in our law.

22 We cannot allow our workers to not be
23 protected.

24 Let them focus on doing a good job; not on
25 having to avoid harassment because the law is not

1 helping them.

2 Thank you.

3 ASSEMBLYMAN CRESPO: First of all, thank you
4 for your patience and for your testimony.

5 A couple of questions.

6 The -- have you handled cases regarding
7 violations or not following last year's
8 implementation of the new policies?

9 MIRIAM CLARK: Not yet.

10 ASSEMBLYMAN CRESPO: Have you seen specific
11 cases?

12 MIRIAM CLARK: Last year's policies,
13 I haven't yet.

14 LAURIE MORRISON: Not yet.

15 MIRIAM CLARK: Although, I have had cases
16 where the additional affirmation, that the plaintiff
17 wanted the NDA, came into play.

18 That's the only interface I've had so far
19 with the new policies.

20 ASSEMBLYMAN CRESPO: Okay.

21 And in Aravella's bill, 7083, you mentioned,
22 if we get rid of the "severe or pervasive" standard,
23 and we apply, instead, the petty slight or
24 inconvenience, that would -- explain one more time,
25 just, layman's terms, what difference does that

1 make?

2 So -- so the victim wouldn't have to prove
3 that the incident was severe or pervasive; instead
4 the employer would have to prove that what occurred
5 amounts to a petty slight or inconvenience.

6 MIRIAM CLARK: Right. So back --

7 ASSEMBLYMAN CRESPO: So it puts the pressure
8 off the --

9 MIRIAM CLARK: -- backing for one minute,
10 though --

11 ASSEMBLYMAN CRESPO: -- yep.

12 MIRIAM CLARK: -- as Laurie said, and this is
13 important, sexual harassment is illegal because it
14 changes the terms and conditions of the person's
15 work environment because of gender.

16 Let's talk about gender.

17 So the employee still has to prove that there
18 was harassment, that it was because of gender or
19 gender and race, or whatever protected class, and
20 that the terms and conditions of her environment
21 were changed as a result; that something happened,
22 and that it happened to her because she was a woman.

23 Under the "severe or pervasive" standard, she
24 would then have to prove that what happened was
25 severe or pervasive, using this line of increasingly

1 restrictive cases, sort of like what I described.

2 Under the New York City law, and under our
3 law, the employer -- the burden of proof would shift
4 to the employer to say, Wait a minute, that was
5 trivial, that was petty.

6 And so that's why, in the Kaplan case,
7 involving the supervisor, the employer was not able
8 to prove on -- that, on papers, this kind of conduct
9 was petty slight or trivial inconvenience. And
10 that's why the case did not get dismissed.

11 LAURIE MORRISON: Yeah, the "petty slight and
12 inconvenience" is the defense.

13 MIRIAM CLARK: Right.

14 LAURIE MORRISON: So first the -- right, so,
15 first, the employee has to -- squarely has to prove
16 the burden, the employee was harassed.

17 MIRIAM CLARK: Because of her membership in a
18 protected class.

19 LAURIE MORRISON: Exactly. Or in the
20 membership in several protected classes.

21 MIRIAM CLARK: Right.

22 So we're not talking about, you know,
23 generalized workplace bullying, even though we would
24 like to be.

25 We're really talking about conduct because of

1 membership in one or more protected classes that
2 changes the terms and conditions of employment.

3 That's Employment Law 101.

4 But instead of the burden on the employee,
5 the burden shifts to the employer to prove that it's
6 petty slight or a trivial inconvenience.

7 LAURIE MORRISON: Exactly.

8 Once the employee proves harassment occurred,
9 then the employer -- the burden shifts to the
10 employer to say, Okay, maybe it occurred, but it was
11 a just a petty slight or inconvenience.

12 And if the employer cannot prove that it was
13 just a petty slight and inconvenience, you win --

14 MIRIAM CLARK: So, yeah --

15 LAURIE MORRISON: -- basically. You get
16 protected.

17 MIRIAM CLARK: -- or in Kaplan, you get past
18 a motion to dismissed.

19 LAURIE MORRISON: Correct.

20 MIRIAM CLARK: Most of these -- this issues
21 come up way before a person ever gets to a jury.

22 They come up in either motions to dismiss,
23 which is a motion that the employer makes right
24 after you file the complaint; no discovery, no
25 nothing.

1 That's what happened in Kaplan.

2 On the complaint, the employee described the
3 masturbation in all of its glory. And the employer
4 made a motion to dismiss the case (snaps fingers) up
5 front, saying that what was written in that
6 complaint was not severe or pervasive.

7 ASSEMBLYMAN CRESPO: We also have this
8 underlying concern that expanding protections to all
9 employees, and to more classes of employees, is
10 going to hurt business.

11 And the first question, I guess the moral
12 question, we have to ask ourselves is, what is more
13 valuable: the rights and protections of every
14 individual to be free of harassment, or the
15 potential financial interest of an entity,
16 corporation, or business owner or individual?

17 I would think that would be an easy answer.

18 I asked a question to the City earlier, if
19 they're expanded -- or, their approach to these
20 protections had hurt business?

21 And while there wasn't a specific issue,
22 I just want you to reiterate the message, and you
23 pointed it out in your testimony: There is
24 tremendous cost to businesses because of the issues
25 arising from harassment in the workplace; whether

1 it's the productivity impacts, whether it's the
2 physical and/or emotional distress on an employee,
3 whether it's that employee now requiring additional
4 services that are expensive to the employer to
5 provide, because of the ramifications of all of
6 these things.

7 So, in your experience, again, looking at
8 other jurisdictions, like the city of New York,
9 would you say it is a highly exaggerated notion,
10 that expanding these protections will end up costing
11 businesses more than, say, the improvement to
12 productivity and morale, and workforce in general,
13 of having a high standard of protection?

14 MIRIAM CLARK: I would say it goes even
15 further than that.

16 It's wrong thinking to think that this is
17 going to have a negative impact economically on
18 employers in the long run.

19 In the long run, a workforce where there's
20 sexual harassment, racial harassment, is a divided,
21 unproductive, physically- and psychologically-ill
22 workforce with a high turnover.

23 And I can tell you, my clients, who are still
24 employed, come to me, they're having such a hard
25 time concentrating.

1 You know, I have a woman right now who works
2 in a big bakery upstate. And, you know, there's
3 derogatory terms written at her workstation. And
4 every time she sees it, she goes into the bathroom
5 and she cries, and she debates about whether she'd
6 reported it, even though it doesn't really help.

7 And, you know, she's not herself for the rest
8 of the day.

9 That's -- she could be a great worker, but
10 she's being horribly, painfully distracted, and you
11 know she's not the only one.

12 LAURIE MORRISON: If I may add dollars and
13 cents to this as well, how this is going to affect
14 or potentially harm business depends on how we're
15 going to define "business." Right?

16 So if we're going to go ahead and have a law
17 that says, anything other than severe or pervasive,
18 you can go ahead and harass people, are we actually
19 doing business, or are we just fostering harassment
20 in the workplace?

21 Are we're just giving a space where we say,
22 Harassers, go ahead, have at it?

23 Okay?

24 But also in terms of, money, just dollars and
25 cents, it is so much more expensive to try to say,

1 Oh, well, no, this is not severe or pervasive.

2 And fighting this, because employers are
3 trying to now get away with, because there's this
4 whole fear of, I don't want to be caught, versus,
5 make the law make sense and make the law be clear,
6 so that it becomes less expensive, far less
7 expensive, for an employer to say, Supervisor, you
8 did that, you're out.

9 Okay?

10 That doesn't cost much.

11 What costs a lot of money is when they're
12 trying to hide how severe or pervasive it is.

13 When you're trying to get -- work within that
14 law and that huge gray area called the "severe or
15 pervasive analysis," it is so confusing, no one
16 knows what's protected and what's not protected.

17 That, is what costs businesses money.

18 MIRIAM CLARK: Just an obvious point is that
19 New York law, for sexual harassment only, already
20 covers all employers. It's an anomaly in the law
21 that, sexual harassment, by itself, is somehow
22 privileged over other forms of harassment, which is
23 something that has to be changed for all the reasons
24 that Laurie said.

25 And, frankly, it's hard to understand how

1 it's moral, ethical, or constitutional to, you know,
2 privilege one form of harassment over another.

3 LAURIE MORRISON: Yeah, what kind of message
4 is that sending, privileging one kind of harasser
5 over the other.

6 MIRIAM CLARK: Right.

7 ASSEMBLYMAN CRESPO: Well, listen, just, last
8 comment.

9 I appreciate your leadership, your voices,
10 your ability to help us come up with a draft of good
11 legislation.

12 I think there are really good bills out there
13 that need to be seriously considered, that,
14 hopefully, we can move forward with in the very near
15 future.

16 And to what has been stated over and over
17 again throughout all presentations: We need
18 results. We need to take action. We need to expand
19 those protections. We need to create real
20 accountability, and real liability, for violations
21 of these protections.

22 And for you to highlight that
23 intersectionality of all of these issues.

24 Somebody, you know, in our community, the
25 Latino community, we've it seen in our immigrant

1 community, and, you're right, there's always this --
2 it's difficult to outline exactly where or what is
3 the thing that is causing people to treat me
4 differently.

5 Some of us have been accustomed to just
6 accepting that that's the way it is and/or that,
7 because of who we are, maybe there's just more to
8 talk about.

9 And it's something we have to kind of, even
10 ourselves, get out of.

11 I'm a legislator, I get a chance to sit here
12 and ask these questions, and talk about this, and
13 maybe shape some of this policy.

14 But, I've got to tell you, even me, I feel it
15 every day.

16 I don't -- I often go into a room feeling
17 like I shouldn't even be in that room to begin with.
18 I have to work that extra hard to feel like I fit
19 in; let alone, how I'm talked to or treated, I often
20 overlook, or ignore, because I don't measure myself
21 in the same.

22 And that's something that, as a community,
23 many of us have to grow out of.

24 And, yet, as a male, I have advantages that
25 others don't, and my daughters may not have.

1 And so, again, I just want to thank you for
2 your leadership, and for fighting.

3 And I hope that all these years of advocacy
4 will finally see some real light of day as this
5 committee leads into its legislative work.

6 MIRIAM CLARK: Thank you.

7 LAURIE MORRISON: May I say, you're saying
8 that you've become accustomed to it.

9 I think you've had to adapt to it.

10 And that's, unfortunately, what a lot of us
11 have had to do.

12 When the law doesn't protect you, and you
13 still have to work, you have to adapt to it, but you
14 still feel it every day. Right?

15 MIRIAM CLARK: And until the point where you
16 can't adapt.

17 LAURIE MORRISON: Exactly.

18 Exactly.

19 SENATOR BIAGGI: No, I just -- I mean, I just
20 wanted to thank you for your testimony, and for
21 being on the record with those examples, because
22 I think it's incredibly important for those
23 individuals who don't really understand the behavior
24 that doesn't reach the "severe or pervasive"
25 standard.

1 This is probably where so much of the
2 confusion lies.

3 You know, we have about 13 days left of
4 session, I believe, which means that we're going to
5 work incredibly hard to prioritize these bills.

6 And so I think my only question that I have
7 for all three of you, because you know that we will
8 be met with resistance:

9 For those individuals, whether they're
10 colleagues, although I can't imagine that that would
11 be the case, especially after today, who wouldn't
12 want this; but, more importantly, for any type of
13 advocacy organization or special interest that would
14 lobby against us doing this now, or have, probably,
15 the strongest argument against doing this now, what
16 would be your best argument, other than what we've
17 already heard, right, of how it is bad for business?

18 The fact that the business council came out
19 with that disappointing statement today, was,
20 I mean, not -- it wasn't surprising.

21 But I'm sure that we'll hear more of that as
22 the weeks go on.

23 So -- I mean, in just the last moments
24 I guess that we have together, if you have any
25 advice for myself and Assemblywoman Simotas for some

1 of the arguments that you think will be made that we
2 haven't foreseen yet?

3 Because I find that, even if you think you're
4 on the right side of things, there's always some --
5 like today, there's always some instance where
6 something surprises you, and then you're not
7 necessarily prepared.

8 And if you are not prepared also to answer
9 this question, you know, that's all right. You know
10 where to find us.

11 MIRIAM CLARK: I mean, we've give an lot of
12 thought to this, obviously.

13 So, we've talked about the cost of harassment
14 in the workplace. Right?

15 We've talked about New York City economy
16 thriving.

17 And I think it's also true, although
18 I haven't researched it, although I could, that
19 every time that the law has moved toward greater
20 protection of workers, the same exact argument is
21 being made: That this is going to be bad for
22 business.

23 My bet is, that you could go back and look at
24 reactions of these people all the way back to
25 Title 7 of the Civil Rights Act of 1964, or maybe

1 even 1945, and find these same arguments.

2 There's a real fear.

3 But I think that Assemblymember Crespo hit it
4 on the head: At a certain point, you have to think
5 about all of the employers, all of the employees,
6 and their need to earn a livelihood, with dignity
7 and with respect, and their ability to be
8 productive, and they're wanting to be productive,
9 and measure that against an inchoate, unmeasurable,
10 and probably not real threat to somebody's profit.

11 Right?

12 And it's one thing to think about it in the
13 context of a very small employer, like, your
14 mother-in-law's barbershop.

15 But, I mean, when you think about the
16 employer as, say, Columbia University, it's really
17 hard to imagine that getting rid of the "severe or
18 pervasive" standard, getting rid of
19 Farragher-Ellerith, is going to bankrupt Columbia.

20 ANDREA JOHNSON: That's right.

21 (Indiscernible cross-talking) --

22 LAURIE MORRISON: (Indiscernible
23 cross-talking) -- please.

24 ANDREA JOHNSON: -- so I'll just add,
25 I always find this question challenging because it's

1 kind of, like, what's the business argument for
2 human rights?

3 Like, it's human rights, and we shouldn't be
4 kind of making this into dollars and cents.

5 But, I also am a pragmatic person and
6 understand how it works.

7 SENATOR BIAGGI: Of course.

8 ANDREA JOHNSON: And so -- I mean, yeah, I'll
9 just reiterate, the productivity and health impacts
10 for employees are significant. That leads to
11 turnover, which is costly for employers, and that's
12 definitely, yeah, a piece of it.

13 And I think -- I think we're in a moment
14 where -- and it's not just moment -- it's a movement
15 that is continuing strong, the #MeToo movement.
16 It's impacting a generation, where folks are
17 realizing that we -- it's not -- we can't just do
18 business as usual before. You can't just have a
19 policy on the books about, you know, don't harass,
20 here's the law, comply with it, check the box, and
21 be done.

22 Like, that is not acceptable.

23 And we want to make sure that's not
24 acceptable per the law, but I think also,
25 culturally, it's becoming less and less acceptable.

1 And so employers need to change regardless,
2 but we need the law to make sure that that is true
3 across the board.

4 And -- I mean, it's -- liability is a cost.

5 And, already, I think employers are --
6 employees much more aware of their rights and feel
7 much more empowered in this moment to speak up.

8 And that is an amazing aspect of the #MeToo
9 movement.

10 And so that is a business-case argument to
11 have -- you know, you need to be doing the right
12 thing.

13 And the law is trying to push employers to
14 have practices, and change structures, so that the
15 right thing is done from the beginning so that you
16 prevent harassment and you don't end up with
17 lawsuits in the end.

18 So -- and I think, you know, recruiting
19 talent kind of thing, I mean, New York has an
20 interest in recruiting talent.

21 And I think to your point about mentioning
22 California, you know, you want to be seen as a
23 leader in this space, and businesses need to be
24 there as well.

25 And so you need to be creating business

1 environments that are safe and dignified, and that
2 that's where people want to work.

3 I mean, everybody wants to work, obviously,
4 but I think that's especially, acutely, people are
5 aware now.

6 LAURIE MORRISON: And if I may add, the
7 New York City law already doesn't have "severe or
8 pervasive" or Faragher-Ellerth.

9 So if they say suddenly making the New York
10 State law comport with New York City law is going to
11 cause such costs, well, really?

12 That's like saying the water is going to be
13 wetter.

14 It just doesn't really -- it doesn't work.

15 [Laughter.]

16 LAURIE MORRISON: Okay?

17 But on top of it, you know, people fear
18 change.

19 OFF-CAMERA SPEAKER: Yep.

20 LAURIE MORRISON: So I think a lot of times
21 what they're talking about is, you need something,
22 something's going to change?

23 Then, okay, but that same change has created
24 a stronger workforce.

25 Employers were terrified back in the '50s and

1 '60s about, you know, giving women and minority --
2 and racial minorities the ability to vote.

3 Well, we're a lot wealthier now because of
4 it, as a nation.

5 So your business, I don't care who you are,
6 small or large, is only as good as the strength of
7 your workforce.

8 So let's keep our workforce strong and make
9 our laws protect them.

10 SENATOR BIAGGI: That's right.

11 Thank you so much.

12 I could not agree with you more.

13 I think the question was more so about the
14 individuals surrounding us who are fear -- who are
15 afraid of the disruption that we are potentially
16 causing their status quo.

17 But this was incredibly helpful.

18 ASSEMBLYMAN CRESPO: I -- we have -- I have a
19 couple of more colleagues to present, but I just
20 want to take a second, first of all, thank everybody
21 who's still in the room with us and going strong.

22 As you know, we've reiterated a number of
23 times, we went on for 11 1/2 hours the last time.

24 I think we're going to beat that record
25 today.

1 But, I'm only saying that because I just want
2 to remind everybody, we purposely did not apply the
3 clock to this conversation -- we didn't do it in
4 February, we didn't do it today -- because we
5 understand, and didn't want to rush a discussion,
6 and we wanted to give everybody ample time to really
7 discuss in-depth.

8 But I think we -- it's incumbent upon all of
9 us to also then try to be as succinct and
10 respectable of that time as possible.

11 So, we have three more -- four more members,
12 questions for this panel, but we will ask the
13 student group --

14 OFF-CAMERA SPEAKER: I thought we were done.

15 ASSEMBLYMAN CRESPO: No, no.

16 -- the student group that's here, we will ask
17 them to come up next, so that -- I appreciate that
18 you have been this patient, and with everybody in
19 the room patient enough, with us.

20 So Assemblywoman Simotas.

21 ASSEMBLYWOMAN SIMOTAS: Thank you.

22 I think what your testimony has highlighted
23 is that the reforms that were passed last year were
24 not enough.

25 Just training people on an insufficient,

1 ineffective standard is not going to change our
2 system.

3 So that is why your testimony today is so
4 very important, to establish why we need to get rid
5 of the "severe or pervasive" standard.

6 Now, I'm going to get into my geeky lawyer
7 self and ask a question that may be asked of myself
8 and Senator Biaggi when we debate this bill.

9 With respect to any precedent with respect to
10 New York City law, now, clearly, the standard that
11 the City applies has been around since 2009.

12 Since then, has there been any case law that
13 you would find did not track the correct standard?

14 We hear that there's -- as you testified,
15 there's a host of federal and state decisions that
16 are applying the state law that can, you know, make
17 your skin crawl.

18 But are there any examples with respect to
19 courts applying the City law?

20 MIRIAM CLARK: Well, Kaplan, I hate to keep
21 talking about this quite disgusting case, but,
22 that's what happened with a lower court in Kaplan.

23 The lower court in Kaplan tried to apply the
24 same State law standard to the City law claim, and
25 got reversed.

1 ASSEMBLYWOMAN SIMOTAS: On appeal.

2 MIRIAM CLARK: On appeal.

3 ASSEMBLYWOMAN SIMOTAS: So there's no other
4 district court other than that one case?

5 MIRIAM CLARK: There's probably others.

6 I mean, we know of the ones where the two
7 were clearly delineated in that way, but there might
8 be some bad City law cases out there, I'm sure there
9 are.

10 ASSEMBLYWOMAN SIMOTAS: May I ask, Miriam, as
11 we're going through the process, if you can provide
12 the Senator and myself (indiscernible
13 cross-talking) --

14 MIRIAM CLARK: Do you want some City cases
15 under the City law where the court applied the wrong
16 standard?

17 ASSEMBLYWOMAN SIMOTAS: No.

18 MIRIAM CLARK: No.

19 Go ahead.

20 ASSEMBLYWOMAN SIMOTAS: What I want, if they
21 misinterpreted the standard, or if -- you know, if
22 it needs to be clarified.

23 I just want to make sure what we're doing now
24 is going to be right.

25 LAURIE MORRISON: It's going to stick.

1 ASSEMBLYWOMAN SIMOTAS: Exactly.

2 MIRIAM CLARK: Sure.

3 I mean, there -- especially in the early
4 days, there were definitely decisions where the
5 courts kept veering off towards "severe or
6 pervasive," and had to be veered back in.

7 So, sure, we can get you those.

8 LAURIE MORRISON: I mean -- and I'd like to
9 say, that's why we call it the "practice" of law,
10 right, because we're really never going to make it
11 perfect.

12 But I think, to your point, the City law is
13 really -- we have a good law here. We have it --
14 you know, we can always make improvements, but we
15 have some clear guidelines here that can help.

16 ASSEMBLYWOMAN SIMOTAS: And we can always
17 amend our sponsors' memo, we can always do things to
18 put things in the administrative record, that if
19 there's ever a question, and there's actually a good
20 law or a law clerk doing the research, they can look
21 into the legislative history of the bill to
22 understand what our intention is.

23 MIRIAM CLARK: Perfect.

24 LAURIE MORRISON: And the City law, by the
25 way, I cite, and I'm sure all of our colleagues,

1 Miriam cites as well, the intention behind the City
2 law we cite it all the time, to make it -- and thank
3 you for that -- because it makes it clear "severe or
4 pervasive" is not appropriate.

5 MIRIAM CLARK: Remedial --

6 LAURIE MORRISON: Any type of
7 discrimination --

8 MIRIAM CLARK: -- right.

9 Remedial purpose of the law. Don't construe
10 the same as. Should be a floor and not a ceiling.

11 All of that language.

12 Some of we put it -- we put some of that into
13 3817, but all of that language helps courts
14 understand that they're not looking at, you know,
15 another version of Title 7.

16 LAURIE MORRISON: Right.

17 ASSEMBLYWOMAN SIMOTAS: Thank you.

18 LAURIE MORRISON: Thank you.

19 ASSEMBLYMAN CRESPO: Assemblywoman Simon.

20 ASSEMBLYWOMAN SIMON: Technology, you know,
21 you can't live with it, can't live without it.

22 So, I'm going to ask you a question that
23 I know you know the answer to.

24 And, last night, when some of us were having
25 a brief -- was it last night, or the night before,

1 I don't remember -- where there was a briefing on
2 this bill.

3 And I remember this case as being somewhere
4 in the Midwest, and it was a school case, and I was
5 wrong.

6 It was actually Upstate New York, and it was
7 a school bus driver, who pleaded guilty to raping a
8 14-year-old. He had applied her with gifts and
9 alcohol, and raped her, and -- a 26-year-old man.

10 And the Court did not give him any jail time.

11 MIRIAM CLARK: Yep.

12 ASSEMBLYWOMAN SIMON: And said, in explaining
13 the sentence, the judge said that "he had no prior
14 arrests, and that only one victim had to be
15 involved."

16 So, in other words, one rape is okay.

17 And this notion of "severe and pervasive" is
18 really about, it's okay to discriminate or to harass
19 or to rape or to assault a couple of times, right.

20 And, you know, sociologists, and people who
21 do research, and also law professors do research.

22 And I had asked about, you know, "how many
23 pass is enough" kind of thing.

24 And you were talking about the "noose"
25 article, and I don't know if there are other

1 articles out there.

2 But I'm curious, if you could address that
3 issue on the record?

4 MIRIAM CLARK: Sure.

5 So the "severe or pervasive" standard leads
6 to discussion about what exactly is "pervasive."

7 Right?

8 So it says "or."

9 So then if something only happened once, is
10 it "severe"?

11 So, again, it's a federal standard.

12 And what I said on Tuesday night was, there's
13 actually a split in the circuit.

14 So the federal courts have the lower courts,
15 which are the district courts, and then the circuit
16 courts, and then the Supreme Court.

17 There are nine circuit courts.

18 There's is a split in the federal circuits
19 about whether one "noose" is sufficiently severe to
20 meet the standard.

21 The 9th Circuit recently held that one noose
22 is not severe.

23 So there's actually -- as I said, I found a
24 "Law Review" article that essentially says, you
25 know, is one noose enough?

1 There's still some debate, although I think
2 it's recently been resolved, about whether one use
3 of the n-word is severe.

4 Certainly, under the cases that I described
5 at the last hearing, it was perfectly clear that
6 having your -- one time your bra strap gets pulled,
7 one time you get squeezed; one touching is
8 absolutely not severe.

9 For a while there was a split in the circuits
10 about whether one rape was severe, although I think
11 that may have come down in the employee's favor
12 since then.

13 So, hard to believe.

14 ASSEMBLYWOMAN SIMON: Clearly this guy.

15 MIRIAM CLARK: Right, right.

16 Well, that was a criminal case. Right?

17 We're talking about the workplace.

18 So -- right, the -- and so then you get
19 equally idiotic results about, what's "pervasive"?

20 Right?

21 What does "pervasive" mean?

22 It pervades the workplace.

23 So that's, like, you know, Laurie's case.

24 Well, if it happened 5 times in 10 years,
25 that's once every 2 years, that's not really

1 pervasive, the courts have found.

2 I think I have one of those in my testimony
3 about -- on the "pervasive" piece of this idiocy.
4 Right?

5 So -- yeah, here you go.

6 I was describing to you the case about the
7 school teacher in Westchester. Right?

8 It cited a case from New York, "Seven
9 racially-insensitive comments over three years,
10 including one instance of using the n-word, were not
11 pervasive."

12 So, yeah, this is what happens with the
13 "severe or pervasive" standard.

14 And I want to say that there's a lot of
15 federal case law, that when the courts feel like
16 citing it, talks about, you're not supposed to take
17 things in isolation. You're supposed to, you know,
18 look at the totality of the circumstances.

19 And when a particular judge feels like doing
20 an overall analysis, he or she will do one.

21 But especially New York State court judges,
22 when they have really high caseloads, they're not
23 accustomed to writing long opinions. What they tend
24 to do is just, boom (snaps fingers), say, "We follow
25 Title 7," and then apply their gut as to whether,

1 you know, one noose is enough, or whatever.

2 So it was a very thoughtful and calculated
3 decision on our part to specifically eliminate the
4 "severe or pervasive" language in this legislation,
5 and then to incorporate the New York City
6 affirmative defense of petty slights and trivial
7 inconvenience.

8 LAURIE MORRISON: I think it's important to
9 add, as well, on top of that, the "severe or
10 pervasive" analysis keeps changing.

11 When it first started, it's like -- it's like
12 trying to nail jello to a wall.

13 When it first started, it was clear, fairly,
14 that one use of the n-word was enough. That's
15 severe or pervasive.

16 MIRIAM CLARK: And it was.

17 LAURIE MORRISON: Now, you can use the n-word
18 and the b-word a lot, "b" being either Black or
19 bitch, whichever one it's applying to, and, you
20 know, you have to actually count --

21 MIRIAM CLARK: How many times.

22 LAURIE MORRISON: -- yeah.

23 So you're caught -- and I can't tell you how
24 many times I've had to do this, and not -- when we
25 talk about it right now, it feels frustrating to

1 have to explain it to a client. It's demeaning.

2 Okay?

3 Well, you were called the n-word five times,
4 and you were called the "bitch" word six times, and
5 the "Black bitch" word seven times.

6 So -- but there was a case where it was --
7 you -- you're -- you're -- you're two less than
8 another case.

9 It is -- what are we sending to our workers?

10 But also what the "severe or pervasive"
11 problem is doing now, is we're having these numbers.

12 Now, who in the world in the workplace, if
13 they're hearing in n-word a lot, is going, okay,
14 that's seven, that's eight, that's nine, I better
15 write those down.

16 I actually had some people ask me:

17 Okay, well, you're able to describe --
18 through the client in a deposition:

19 You're able to describe exactly what
20 happened; that it happened repeatedly during this
21 period of time by this person. And you were there
22 and they were there, and you're able to describe all
23 of that.

24 But can you tell us the exact date and time
25 that this occurred?

1 MIRIAM CLARK: And we need to know that.

2 LAURIE MORRISON: Well, that must not be
3 severe or pervasive, then, because you must be
4 lying, because you have to prove the exact number of
5 times that you heard the n-word or the b-word.

6 MIRIAM CLARK: Because if it was only once,
7 it's not pervasive.

8 LAURIE MORRISON: Well, yeah.

9 And if it was seven, but not ten. Right?

10 So that's -- so -- I mean, it -- it -- we're
11 falling down a rabbit hole of -- of -- of
12 ridiculousness, that "severe or pervasive" begs.

13 So we need to get rid of this. This is
14 not -- yeah.

15 This is reality of what's happening every day
16 because of these analyses.

17 That's why we have to get rid of them.

18 SENATOR BIAGGI: Thank you.

19 I just also want to comment on that.

20 Do you think that's also because the state
21 courts are applying the federal standard which is
22 the "and" versus the "or"?

23 LAURIE MORRISON: No, they're both -- they're
24 both "or."

25 MIRIAM CLARK: They're both "or."

1 SENATOR BIAGGI: I thought that the federal
2 was the "and."

3 LAURIE MORRISON: No.

4 MIRIAM CLARK: No.

5 LAURIE MORRISON: They're both "severe or."

6 SENATOR BIAGGI: So where does the "and" come
7 from?

8 LAURIE MORRISON: Well, it's because --

9 MIRIAM CLARK: Courts screw it up.

10 LAURIE MORRISON: -- exactly.

11 MIRIAM CLARK: People screw it up.

12 It's "or."

13 LAURIE MORRISON: but I want to be clear,
14 the cases that I'm talking about, where my client
15 has to figure out how many times it's happened --
16 Which is, who does that?

17 SENATOR BIAGGI: Crazy, crazy.

18 LAURIE MORRISON: -- these are federal court
19 cases.

20 MIRIAM CLARK: But they're applying the state
21 law. Right.

22 LAURIE MORRISON: Yes, they're applying the
23 state law, and they're applying it just like the
24 Title 7.

25 MIRIAM CLARK: Right, right.

1 And state courts do the same thing, only less
2 verbosely, usually.

3 SENATOR BIAGGI: That's -- that's crazy.

4 LAURIE MORRISON: And we're seeing this
5 happen in depositions, and everything, where, you
6 know, well, they have to prove severe or pervasive,
7 so let me go ahead and make sure this victim can
8 give you a number.

9 And, it doesn't work.

10 SENATOR BIAGGI: So I just want to be, like,
11 clear on the record: So the state courts in New
12 York are applying the wrong standard on occasion?

13 MIRIAM CLARK: No -- well, I have to correct
14 that.

15 I mean, I think -- I have seen cases where a
16 judge mistakenly writes "severe and" instead of
17 "severe or," not only in New York, but in federal
18 cases as well.

19 But everyone understands that the standard
20 really is "or."

21 And as we described, the "or" standard is
22 problematic enough.

23 LAURIE MORRISON: And not for nothing,
24 I think when there -- like, a lot of times when
25 they're using "severe and pervasive," it's a

1 Freudian slip --

2 MIRIAM CLARK: Right.

3 I mean, everybody --

4 LAURIE MORRISON: -- because they're
5 basically applying a much higher standard that needs
6 to happen --

7 MIRIAM CLARK: Everybody --

8 LAURIE MORRISON: -- which is "severe or
9 pervasive."

10 MIRIAM CLARK: -- everybody understands that
11 it's "or."

12 Right, everyone does understand that.

13 SENATOR BIAGGI: Okay, thank you for
14 clarifying that.

15 ASSEMBLYMAN CRESPO: (Indiscernible.)

16 SENATOR BIAGGI: Yes.

17 Assemblymember Gottfried.

18 ASSEMBLYMAN GOTTFRIED: A couple of things.

19 One, if it hasn't happened yet, I'm sure, at
20 some point, some judge is going to say, you've got
21 such a detailed explanation with dates and times,
22 you must have made it up.

23 LAURIE MORRISON: Or you must have been
24 preparing for litigation.

25 ASSEMBLYMAN GOTTFRIED: Yeah.

1 LAURIE MORRISON: It's a catch-22.

2 ASSEMBLYMAN GOTTFRIED: Yeah.

3 MIRIAM CLARK: Right.

4 LAURIE MORRISON: You better name the dates;
5 otherwise, we don't believe you.

6 And if you do name the dates --

7 MIRIAM CLARK: You must be preparing for
8 litigation.

9 LAURIE MORRISON: -- we don't believe you
10 because you must have been trying to prepare for
11 litigation.

12 Right?

13 MIRIAM CLARK: Right.

14 ASSEMBLYMAN GOTTFRIED: Right.

15 And the other thought is that, nobody would
16 apply this standard to petty larceny.

17 I mean, if you were accused of only two or
18 three times grabbing a \$20 bill from her purse while
19 she was away from her desk, nobody would say, Oh,
20 it's only two or three times.

21 And if the thief said, Well, if she had
22 complained, I would have given it back.

23 [Laughter.]

24 ASSEMBLYMAN GOTTFRIED: Nobody would say, Oh,
25 okay, case dismissed.

1 The main thing I wanted to say is, I just
2 want to thank all of you, and I'm sure there are
3 others who have contributed to this process, and,
4 certainly, the working group is a key part of this.

5 You've helped put together, really, an
6 extraordinary package.

7 And at least as important as putting it
8 together, is what you've done to explain it to us in
9 really great detail, legally, and in terms of the
10 practicalities.

11 And I think the work that all of you have
12 been doing on this, I hope we are going to be able
13 to take advantage of the new political alignment in
14 the Legislature to make some really extraordinary
15 changes in the law.

16 And, if and when we are able to achieve that,
17 you and your colleagues are really going to be the
18 ones who made it happen.

19 So, thank you.

20 MIRIAM CLARK: Thank you very much.

21 LAURIE MORRISON: Thank you.

22 ANDREA JOHNSON: Thank you.

23 MIRIAM CLARK: You can do a lot in the next,
24 however, 13 days.

25 LAURIE MORRISON: And I just have to say

1 thank you, to Miriam, who -- and people who work
2 with her, so much, to be able to help create this
3 law, and the intersectionality scholars who have
4 really contributed so much.

5 You know --

6 MIRIAM CLARK: It was a group effort.

7 LAURIE MORRISON: -- well, yeah.

8 MIRIAM CLARK: But we do think that 3817 is
9 one's best, most efficient shot at getting -- of
10 getting this right.

11 And we're really grateful to have the City
12 law as a model.

13 ASSEMBLYMAN CRESPO: Are you done?

14 SENATOR BIAGGI: Yes.

15 ASSEMBLYMAN CRESPO: Oh, okay.

16 SENATOR BIAGGI: Assemblymember Quart.

17 ASSEMBLYMAN QUART: Thank you.

18 And thank you for your presentation.

19 I just wanted to pick up on something
20 Ms. Morrison and Ms. Clark talked about, about the
21 practice of law.

22 And, especially, something stuck with me,
23 Ms. Clark, about summary judgment, in your
24 testimony, because, in so many areas of the law, in
25 civil practice, the results are just the opposite.

1 The tribal issue of fact goes to the moving
2 party more often than not, except in this area.

3 And I suspect that has a lot to do with the
4 exceedingly high and faulty standard, as well as the
5 affirmative defense that lets employers walk away
6 from their employee's conduct.

7 But I wanted to explore with you, and -- if
8 there are other areas that act as obstacles to
9 parties bringing forth their complaints in a
10 successful way through the court system?

11 And I don't know the answer to this, but
12 I would -- Article 16 is very broad, rules of
13 discovery and disclosure.

14 I don't practice in this area, but I wanted
15 to know, from your perspective, are there any
16 changes in civil practice, or best practices, that
17 other states follow, that we could duplicate or
18 replicate in civil practice, that may require
19 statutory reform?

20 We did so in criminal law this year.

21 Are there any changes in this particular area
22 that you see that would take away some of the
23 obstacles to an aggrieved party getting justice in
24 this area?

25 MIRIAM CLARK: What a great question.

1 LAURIE MORRISON: Yeah, it is.

2 MIRIAM CLARK: You know, I think I'd like to
3 get back to you on that.

4 There are things that come to mind, but,
5 because it's sort of a CPLR question, I think I want
6 to think about it.

7 ASSEMBLYMAN QUART: Yeah.

8 MIRIAM CLARK: I can tell you that the
9 mandatory mediation for employment-discrimination
10 cases in the Southern District is a successful
11 program, that I think I would encourage the State to
12 implement.

13 Also, in the Southern District, at least,
14 there is a pro se office that helps pro se
15 plaintiffs.

16 There's not that kind of help for a pro se
17 plaintiff in State Supreme Court, at least not in
18 New York County.

19 And I do think that that would be something
20 else that would be beneficial.

21 Finally, in my personal experience, many
22 New York State court judges don't understand the
23 law.

24 They don't understand the election of
25 remedies that we talked about;

1 They don't understand that the statute of
2 limitations is tolled while you're at the state
3 division;

4 They don't -- it's a very complicated
5 mechanism.

6 And, you know, sometimes we've had to go up
7 to the Appellate Division, just to have them clarify
8 something basic that a lower court -- basic that a
9 lower-court judge got wrong.

10 So I think better training for trial-level
11 judges about the substance of the New York State law
12 and its procedural mechanism would be enormous.

13 And then I'd like to get back to you, when
14 I talk to --

15 ASSEMBLYMAN QUART: And that your answer --
16 oh, I'm sorry. Go ahead.

17 LAURIE MORRISON: And I'd actually also like
18 to add, some type of enforcement with respect to
19 acknowledging and -- and -- and -- and staying pure
20 to the summary-judgment standard.

21 MIRIAM CLARK: Oh, yes.

22 LAURIE MORRISON: Because there are way, way
23 too many cases, I think it was 65 percent, or
24 something, of employment cases, nationally, don't
25 quote me on that, but, a high, high majority of

1 summary judgment -- of employment cases,
2 discrimination, harassment, and retaliation, are out
3 on summary judgment.

4 Now -- but there are very interesting issues
5 with that.

6 It also depends on the race, the
7 intersectionality, what we're arguing, and,
8 actually, even the decision-maker who's making the
9 decision to dismiss the case.

10 The race of that decision-maker affects the
11 number, where, it could be 65 to 75 percent, but if
12 the race of the decision-maker is a person of color,
13 I think it goes down to about 35, 45 percent.

14 MIRIAM CLARK: So having a diverse judiciary
15 is incredibly important.

16 LAURIE MORRISON: Very, very important.

17 MIRIAM CLARK: So we have to --

18 ASSEMBLYMAN QUART: Yeah, that actually, that
19 comment, leads into my second question about other
20 obstacles that may exist, and that's the court
21 system.

22 In other areas where we want to incentivize
23 some sort of policy goal, either through legislation
24 or OCA, we do certain things.

25 We have specialized parts for medical

1 malpractice, or asbestos. If you're 70 years old,
2 you receive a trial preference.

3 We do all sorts of things, whether through,
4 I won't call -- we set forth our policy preferences
5 in our court system because we want a more fair
6 system towards some aggrieved party.

7 It's my understanding we do not do that in
8 this area.

9 So my question is: Are there obstacles we
10 can remove, or things we can do, within the court
11 system, within the -- that we can request of the
12 chief judge or OCA, that will take away another
13 obstacle towards someone who's likely been harassed,
14 being able to set forth their proofs in a court of
15 law?

16 MIRIAM CLARK: Can I take that back to Neil
17 in New York and get back to you?

18 ASSEMBLYMAN QUART: Sure.

19 MIRIAM CLARK: I mean, I said the ones that
20 sort of came to the top of my head, but I'm betting
21 that there are more.

22 ASSEMBLYMAN QUART: Sure.

23 LAURIE MORRISON: Yeah, and there are a lot
24 of -- this is a conversation that can be ongoing,
25 and I think should be ongoing.

1 And thank you so much for the question.

2 I have to also say, when judges are making
3 these decisions, they could be well meaning, right,
4 but employment discrimination, harassment, is --
5 it's a very personal, visual thing.

6 So when you're looking at a piece of paper
7 and you're seeing a bunch of, you know, "Black" or,
8 this, or - or -- or "gay," or whatever it is, it's
9 very difficult to really see -- you're not seeing
10 the person.

11 So when I stand in front of someone and I'm
12 talking -- I just did this the other day, where
13 I was talking in front of the judges, and I said, My
14 client, she's mocha-colored like me, and she's a
15 Black woman.

16 And I tell you -- and I told them
17 specifically, I'm telling you that so you can look
18 at the face of what this happened when I tell you
19 what she was told.

20 And you could see that that made such a
21 difference.

22 But when you're just looking at a piece of
23 paper with some names, and you've got a thousand
24 other cases to deal with, employment discrimination
25 is, just, it's uncomfortable, it's a lot of work,

1 and -- and it's -- and it really lends itself to,
2 sometimes, them wanting to get rid of it, even if
3 they're good and well meaning.

4 I think some way to maybe also get the
5 victims in front of their faces while they're
6 describing it, or while they're having to make these
7 decisions, might also help.

8 ASSEMBLYMAN QUART: I think, to your point,
9 in -- both in this area and criminal law, diversity
10 on the bench --

11 LAURIE MORRISON: Oh, huge.

12 ASSEMBLYMAN QUART: -- is so critical.

13 You've tried cases, you talked to jurors, you
14 tell them, "use your own common sense, use your own
15 experience." That recommendation is not separate
16 and distinct from a judge.

17 And if there's not diversity, you hope they
18 can sort of get out of themselves and see it through
19 another person's lens.

20 But if you have both diversity and excellence
21 amongst your judges, then I think you're farther
22 along in achieving that.

23 LAURIE MORRISON: And it's also diversity of
24 thought and ideology as well. Yeah.

25 MIRIAM CLARK: Another barrier, I just want

1 to say this is obvious, but a barrier, altogether,
2 are mandatory arbitration clauses.

3 And legislation that would ban -- that would
4 bar the State from contracting with any employer who
5 had a mandatory arbitration clause, we talked about
6 this, that would elim -- you know, in practice,
7 eliminate an enormous barrier.

8 Many, many of my clients now are walking in
9 with, you know, mandatory arbitration clauses they
10 had no idea was buried in the handbook somewhere.

11 ANDREA JOHNSON: And I'd like to just add
12 that, you know, so much of the harassment happening
13 in the workplace, I mean, the rates are really
14 severe in the low-wage workforce, and a lot of folks
15 there will not be even going to court at any point.

16 So thinking about what resources are
17 available for them.

18 And I mentioned the Be Heard Act before,
19 which I think is a model that states can look at.
20 It is a very lengthy bill, but it has all the things
21 in it, comprehensive solutions, related to
22 harassment.

23 And there are -- part of the Be Heard is to
24 provide funding to states to -- for independent,
25 private, non-profit entities that can really work --

1 advocate for workers' rights.

2 And, both, maybe that is through the court,
3 but maybe not, other mechanisms like that.

4 So looking at what funding is available, and
5 what support can be given to non-profits in the
6 communities, to represent workers, especially those
7 that -- for -- of a wide variety of reasons might
8 never access court system.

9 ASSEMBLYMAN QUART: And I only asked the
10 questions because we need to pass Senator Biaggi and
11 Assemblymember Simotas's bill.

12 And -- but when we do that, and we cut a
13 ribbon, we should not -- there is much more work to
14 be done.

15 MIRIAM CLARK: There certainly is.

16 We were looking at sort of the bedrock,
17 because it felt like, without changing the heart of
18 the substance of law, that things around the edges
19 could never change.

20 But, absolutely, I mean, the "attorney's
21 fees" provision, by the way, will go a long way
22 toward making cases practical for low-wage people,
23 which now we only have, for some reason, in sex
24 cases.

25 ASSEMBLYMAN QUART: Thank you.

1 ASSEMBLYMAN CRESPO: Assemblywoman Niou.

2 ASSEMBLYWOMAN NIOU: Everybody asked so many
3 questions, I am so sorry.

4 But --

5 MIRIAM CLARK: It's fine. We like to talk
6 about our bill.

7 LAURIE MORRISON: We actually love this
8 stuff.

9 ASSEMBLYWOMAN NIOU: I really -- no, I really
10 appreciate you guys, and I really appreciate the --
11 the issues on intersectionality that you bring up.

12 I guess, you know, with somebody who, you
13 know, has a lot that's happening here, all of this,
14 but I just -- I wanted to ask, especially about the
15 transgender community, and the things that we can do
16 to protect them.

17 So just this year, the legislative -- this
18 legislative session, we are -- we passed GENDA,
19 which is the first time, after 16 years of
20 Assemblymember Gottfried reintroducing the bill, and
21 reintroducing the bill, and reintroducing the bill,
22 that it has passed in our Legislature.

23 And -- and I just -- I feel like, you know,
24 in our transgender community, not only are we -- did
25 we not even have them as a protected class, but,

1 instead, we hyper-policed them. There's like a ton
2 of stuff that is wrong with how we treat folks,
3 including, you know, just people walking around,
4 transgendered, get stopped by the police, and get
5 picked up, and get arrested for prostitution, just
6 for walking. Just for walking.

7 And so -- I mean, I just -- I feel like these
8 are different things that -- that -- you know, that
9 are so pervasive and systemic within our laws,
10 within our system.

11 Do you guys have any suggestions on how we
12 can fix our system, systemically, within how -- you
13 know, with what we've gotten now, knowing that there
14 is a system that is so incredibly discriminatory
15 towards our community, that -- is there something
16 that we can do?

17 MIRIAM CLARK: That's a hard one.

18 I don't know that I've thought about it
19 specifically with regard to the transgender
20 community, but I have thought about this over the
21 years with regard to other forms of people in
22 protected classes, that our society is really
23 atomized, so that I know that in the, you know,
24 White working-class neighborhood where I grew up,
25 nobody knew a person of color.

1 And I think that there are still
2 neighborhoods in New York that are like that.

3 And, so, housing in New York is terribly
4 segregated, just like it was in my childhood.

5 So, people go to work, and that might be the
6 only place where they have to interact with somebody
7 who looks different from them.

8 And so, the workplace, more than the
9 neighborhood school, and more than the neighborhood
10 itself, the workplace becomes the sort of laboratory
11 where people learn how to deal with each other.

12 And so to the extent that we can have
13 workplace laws that encourage not only
14 non-discrimination, but also respect, then I think
15 we are educating people to go back into their lives
16 and deal with their children, and deal with people
17 that they see on the street, in a somewhat different
18 way.

19 So, again, I don't know how much that applies
20 to the transgender world, but I kind of think it
21 does.

22 For somebody who doesn't know any transgender
23 people personally, their first encounter must be at
24 work, so let it be a respectful, regulated,
25 predictable encounter.

1 LAURIE MORRISON: I actually have a trans --
2 a client -- a trans client currently, and she's --
3 God, she's so brave and so fantastic.

4 And what she's going through, just having to
5 deal with this case, all of the abuse.

6 I mean, people don't realize, they think, oh,
7 they're just going to -- you know, you're just going
8 to bring a case because they're trying to make
9 money.

10 No, no, no, no, no, no one brings these cases
11 just to make money. This is so heartbreaking and so
12 terrible to have to tell what's happened to you over
13 and over and over again. It's just awful.

14 So I would say that the first -- just like
15 Miriam was saying, the world is full of
16 discrimination and harassment. It has always been.

17 I -- I -- unfortunately, I think it -- I hope
18 it won't always will be, but, it seems that way.

19 So we need to enact laws that say, when
20 you're in the workplace, behave.

21 Not, you know, oh, this isn't sufficiently
22 severe or pervasive, or, you didn't complain to the
23 right person, even though it was the right person,
24 you complained to HR. But somehow, now, when you
25 bring a lawsuit, well, that's not good enough.

1 Stop giving all these wonderful hiding
2 places, and let's protect these people.

3 I'd say the second thing to do for trans
4 people is, when they complain, believe them. You
5 know, just like if -- just like if a woman
6 complains, and she's being sexually harassed, and
7 raped, believe her. And when a man complains,
8 believe him.

9 It's just, you know -- and when a Black man
10 or -- I mean, all of this, let's have respect for
11 each other in the workplace.

12 And I think one of the best ways to do that
13 is allowing our laws to inform our workplace and
14 say, no, no, severe or pervasive, uh-uh, because
15 that's saying, you don't have to respect them, you
16 can get away with it.

17 Make the law respect these people.

18 Make the law say, I might not understand what
19 you're going through, but it's not my right to make
20 you feel like less than human because of what and
21 who you are.

22 I think that's the first way to do it.

23 ANDREA JOHNSON: And, also, we need to make
24 sure that they're at the table in these policy
25 solutions.

1 And to that point, actually, I'm eager to
2 hear from Girls for Gender Equity, which I know is
3 doing a lot of work with transgender and non-binary
4 students.

5 And so much of that work needs to happen in
6 schools. You know, that's where a lot of this
7 systemic work can take place, and making sure that
8 our schools are inclusive and a safe place for
9 transgender students, and that students are learning
10 behaviors that are -- you know, good behaviors, that
11 can go into the workplace, about dignity and
12 respect.

13 And I think that's incredibly important.

14 ASSEMBLYWOMAN NIOU: Yeah, I just wanted to
15 again, you know, addressing the intersectionality of
16 it, you know, we see that a transgender person, even
17 if they're White, or if they are a person of color,
18 there's differences in how people are treated.

19 LAURIE MORRISON: Oh, absolutely.

20 MIRIAM CLARK: Absolutely.

21 ASSEMBLYWOMAN NIOU: If there's something
22 that happens to somebody who is a transgender
23 person, who -- it's -- they -- they -- there's
24 mistreatment in getting health care. There's
25 mistreatment in being able to go to school safely.

1 There's mistreatment in just walking on the street.

2 There's mistreatment in our government system.

3 And, so, with the systemic -- with the
4 systemic discrimination that we just now, this year,
5 finally passed GENDA, and finally classified
6 trans folks as a protected-class, but our laws have
7 not caught up.

8 And so when we're talking about the
9 workplace, when we're talking about, you know,
10 schools, when we're talking about our hospitals,
11 because the law has not caught up, you know, there's
12 going to be loopholes, and -- and -- and cracks that
13 people can fall through.

14 So how do we make up for that within the laws
15 that we are writing now?

16 LAURIE MORRISON: Other than what we've
17 already described?

18 ASSEMBLYWOMAN NIOU: Yeah.

19 LAURIE MORRISON: I think we should -- if we
20 can get back to you on that as well?

21 ASSEMBLYWOMAN NIOU: That would be great,
22 that would great.

23 MIRIAM CLARK: Yeah, I mean, we've drafted
24 this to, obviously, treat transgender people as a
25 protected class, like any other, but, special

1 protection that might be needed because they're so
2 newly protected, and because what they go through --

3 ASSEMBLYWOMAN NIOU: Right, that -- that's
4 what --

5 MIRIAM CLARK: -- is so extreme --

6 ASSEMBLYWOMAN NIOU: -- exactly the wording.

7 Sorry.

8 MIRIAM CLARK: -- right.

9 No, that's fine.

10 So -- yeah, so, that, and the question about
11 state court procedure, we'll get back to you on.

12 ASSEMBLYWOMAN NIOU: Thank you.

13 MIRIAM CLARK: We need to circle with our
14 members, I think.

15 LAURIE MORRISON: And I think it's really
16 important also to listen to the trans community.

17 I mean, a lot of times we spend so much time
18 talking, and we have well meaning, we want to make
19 things right. But maybe we need to spend more time
20 listening, and maybe we can get the answers that we
21 need as well.

22 ANDREA JOHNSON: Yeah, and understand the
23 unique challenges faced in the workplace, and the
24 fact that there is, you know, likely, a much higher
25 fear of reporting, and what that means in terms of

1 accessing some of these solutions that we are
2 crafting.

3 Like, as I was kind of saying before, will
4 they even get to the point of going to court and
5 being able to use some of these standards?

6 Obviously, the standards impact the workplace
7 outside of the court, and everything.

8 But, just kind of recognizing the challenges,
9 in terms of fear of reporting and retaliation, and
10 how severe those are, and what that means in terms
11 of (indiscernible cross-talking) --

12 ASSEMBLYWOMAN NIOU: I mean, if you can be
13 deemed a criminal, just to walk down the street,
14 then, you know, people are going to, of course,
15 wonder.

16 But, anyways.

17 LAURIE MORRISON: Can I just add one thing,
18 that I don't know if we've actually mentioned, and
19 I'll be quick?

20 When we're talking about costs to business,
21 and what we're going to do with trans and any other
22 group, it seems to me that, when there have been
23 people who have been harassed in the workplace, and
24 they complained, and the employer rectified it,
25 there were no lawsuits.

1 MIRIAM CLARK: Right.

2 LAURIE MORRISON: Okay?

3 MIRIAM CLARK: The employer can always
4 rectify the problem. They very seldom do.

5 Because of Faragher-Ellerth, the complaint
6 mechanism in the workplace is set up to just defend
7 the employer.

8 So it's really rare for the internal
9 complaint to lead to getting any kind of redress,
10 especially getting the person fired.

11 But if their complaint mechanisms worked,
12 there would be no lawsuits.

13 LAURIE MORRISON: Right.

14 So I think that's back to the question, also,
15 when you speak to the business community and they
16 say, Well, this is going -- you know, this is really
17 going to make us pay a lot of money on this, well,
18 let them know, if you behave properly in the
19 workplace, and you don't allow this to occur, then
20 you're not going to have a cost at all.

21 So don't change the law to make it easier to
22 harass; stop the harassment, if you really want to
23 save money.

24 ASSEMBLYMAN CRESPO: Thank you.

25 LAURIE MORRISON: Seems simple.

1 ASSEMBLYMAN CRESPO: Thank you very much.

2 LAURIE MORRISON: Thank you.

3 MIRIAM CLARK: Thank you.

4 ANDREA JOHNSON: Thank you.

5 ASSEMBLYMAN CRESPO: And now we have Ashley,
6 Kylynn, Neillah, Rose, Zoraida, Stacey, Marie, from
7 Girls for Gender Equity.

8 I hope I have the names right.

9 NEILLAH PETIT FRERE: Ready?

10 ASSEMBLYMAN CRESPO: Yep, you can begin.

11 NEILLAH PETIT FRERE: Good afternoon,
12 everyone.

13 My name is Neilla Petit Frere, and I am
14 16 years old. I am a junior at the Brooklyn School
15 for Music and Theater in Brooklyn, where I also
16 live.

17 I am a cisgender Black girl, and I am
18 passionate about speaking out and having my voice
19 heard, and taking steps to empower our future.

20 I am a member of the Young Woman's Advisory
21 Council at Girls for Gender Equity, who I am also
22 here representing today.

23 In Girls for Gender Equity, young people are
24 engaged in the work of enacting institutional
25 change, and we work in the foreign policy, develop

1 as racial and gender experts, and also receive
2 social and mental-health support.

3 I would also like to thank everyone who came
4 here today to support and hear our testimony against
5 sexual harassment in young people's workplace.

6 I will be speaking on sexual harassment
7 occurring in school.

8 In my school, school safety agents sometimes
9 make comments on the bodies of female students, and
10 make attempts to flirt with students as well.

11 If a girl is walking by, school safety agents
12 will look at her in a very inappropriate and sexual
13 way.

14 I have witnessed moments where students in my
15 school were harassed, and that led them to feeling
16 uncomfortable and unsafe.

17 When I feel unsafe in my school, I tend to
18 focus less on my work, and it creates an environment
19 where I'm taught that what I'm wearing is more
20 important than what I'm learning.

21 Schools are microcosms of society.

22 The same way that adults experience sexual
23 harassment at work are the same ways that young
24 people are experiencing sexual harassment in schools
25 by people who are in power.

1 These experiences leave me to question what
2 I wear, fear of being a target, and forces me to
3 believe that what happens to me -- what can happen
4 to me is my fault, because I should be able to
5 control that man's reaction to what I'm wearing.

6 Stories like these are -- so many more -- are
7 so many reasons why I'm here today, calling for the
8 New York State Legislature to support the state
9 expansions of Title 9, and to pass the Safer
10 New York Act.

11 Title 9 and Title 9 coordinators are
12 important to me because, in the workplace of young
13 people, we are vulnerable without them, and they are
14 supposed to keep us safe.

15 There are police officers in my school who
16 are abusing their power and are subjecting students
17 to sexual harassment and violence.

18 In particular, your support of full repeal of
19 Civil Rights Law 50-a is important, because
20 (indiscernible) students (indiscernible) should be
21 made available to survivors.

22 New Yorkers deserve to know who New York
23 City, and police departments across the state, are
24 employing when they come into our schools and harm
25 us.

1 This should be a priority for New York, and
2 I hope you take this testimony into consideration to
3 make your decisions.

4 Thank you.

5 ROSE ANTOINE: My name is Rose Antoine.
6 I'm 16, and I'm from Brooklyn.

7 I'm currently a junior in (indiscernible)
8 Brooklyn High School for Music and Theater.

9 I identify as a first-generation
10 Haitian-American Black girl.

11 I'm also a participate -- a participant in
12 Sisters in Strength at Girls for Gender Equity, who
13 I'm also representing today.

14 Sisters in Strength is a restorative justice
15 group for girls of color, to shed light on issues
16 that are important to them, and support each other.

17 Thank you for taking the time to listen to my
18 testimony today, and I hope this start a
19 conversation which lead to change being made.

20 Today I'm here to talk about police
21 brutality, and the excessive force police use in our
22 communities to harm those around me and people
23 I care about.

24 I feel our police brutality relates to
25 everyone.

1 Over this past year, there has been several
2 incidents where police used excessive force on
3 innocent people for various reasons that we're yet
4 determined why.

5 Once -- once, when me and my brother was
6 driving, ran a red light by accident, and we were
7 stopped and pulled over.

8 The cop axed -- ask us if we knew what
9 happened?

10 My brother said, and he acknowledged, that he
11 ran a red light.

12 The cop looked at us in a very intimidating
13 way, and we felt very threatened.

14 The police officer eventually let us go
15 because my brother have never been stopped or
16 receive a ticket.

17 Afterwards, a White woman walked up to us --
18 a White woman walked up to us and let us know that
19 she was -- she has been watching, and would have
20 been a witness for us if anything would -- went
21 down, happened, or escalate.

22 I -- I should not feel unsafe and helpless
23 when encounter a police officer.

24 This situation showed me how unjust the
25 system is, and how skewed police officers' views can

1 be on people of color.

2 Many officers, when they have -- they use
3 brutal force, sexual harass, or sexual assault
4 community members, are -- who are involved of --
5 in the death of someone, are never held
6 incountable (sic), or walk away from -- with no
7 consequences.

8 Did you know that 43 percent of police
9 officers agree with this sentiment?

10 Always following the rules is not compatible
11 with the need to get their job done.

12 Those 43 percent of police officers are in
13 the streets every day, and not afraid to use
14 excessive force on innocent people, that just to say
15 that their job is done.

16 Did you also know that people who are
17 African-American Blacks are twice as likely to be
18 killed by officer while being unarmed, in comparison
19 to their White counterparts?

20 These statistics tell me, when interacting
21 with a police officer as a Black girl, I should be
22 afraid.

23 We need to advocate and create a safe space
24 for everyone, and this starts with the way the NYPD
25 treats our community; being in concert for this

1 action, and create a transparency between the NYPD
2 and the community it serve.

3 My story is not unique. There are so many
4 young people who looks like me, from communities
5 like me, who are in need of greater police
6 accountabilities.

7 This is why I am here today testifying.

8 Your support of the Safer New York City Act
9 and, in particular, a full repeal of Civil Rights
10 Law 50-a, is important, because survivors knowing
11 the background of police officers will help us to
12 know their track records and keep us safe.

13 When the community is aware of what police
14 officers have done, we can build a stronger case for
15 accountabilities, and we can become a community that
16 prevents police violence instead of being a
17 community that strives on harm.

18 Please take my testimony into consideration
19 when making a decision.

20 Thank you for the opportunity to speak today.

21 MARIE ST. FORT: Good afternoon, everyone.

22 My name is Marie St. Fort. My pronoun is
23 she/her/hers, and I'm a high school student.

24 I'm in a program called Sisters in Strength
25 at Girls for Gender Equity.

1 In our program, we learn about power,
2 privilege, oppression, and it's impact on
3 intimate-partners' sexual gender-based violence.

4 We also engage in healing practices, healing
5 justice work, build community organizing, and engage
6 in organizing work.

7 Before I start, I just want to say thank you
8 to the -- thank you to the Assemblymembers and
9 Senators for being present, supporting the cause,
10 and amplifying the message.

11 I would also like to state that I will not
12 only be speaking on the topic of sexual harassment,
13 but also police brutality.

14 Sexual harassment, it can be found anywhere,
15 any place, at any time; places like schools, homes,
16 industry, and at work, in the morning, afternoon,
17 and night.

18 It's something most of us have experienced.
19 It could be anything, from someone cat-calling you
20 on the street, or touching you in ways you don't
21 feel comfortable with.

22 Most people who are survivors of sexual
23 harassment never tell anyone, and it's usually at
24 the hand of those -- of someone they know.

25 Survivors sometimes ask themselves questions,

1 like: Will they believe me? They probably think
2 I'm lying. Or will they think I'm a snitch? Or
3 just be embarrassed.

4 Sexual harassment has a huge impact on
5 people.

6 I'm pretty sure most of all in here has been
7 in situations -- in a situation where we were not
8 comfortable; not being comfortable in your own skin,
9 especially somewhere you go to every day, or
10 somewhere you have no choice but to go there.

11 No one likes the feeling of being
12 uncomfortable.

13 I know we can't put an end to sexual
14 harassment, and that anyone is capable of sexual
15 harassment. They might not know what they're doing
16 is sexual harassment, but everyone is capable of it.

17 Like, how these two police officers harassed
18 this girl, and they thought she was lying because --
19 people thought she was lying because they didn't
20 believe two officers would do such a thing.

21 It's crazy because, when we do that, we just
22 hurt the victim more, and forces them to shut down.

23 It takes a lot for someone to open up on
24 something like sexual harassment. It's not
25 something we want. It's a disgusting thing that

1 happens, and we can't control it most time.

2 Why not help prevent it?

3 Just like how we can't put an end to police
4 brutality, it's crazy (indiscernible) on how we got
5 to run, and hide from those who's supposed to be
6 keeping us safe and protected.

7 Some people get blindsided by the fact that
8 they are police officers, and that they are just
9 looking out for us and making sure that we're safe;
10 but yet they're the ones who are quick to kills us,
11 beat us to death, choke us to death, and shoot on
12 us.

13 And when you ask them, why? it's because they
14 felt threatened -- threatened by, what? -- or
15 self-defense.

16 But here's the crazy part: They do not get
17 consequences. The most they will get is probably a
18 paid suspension from work. You know, you get to
19 stay home after killing an innocent soul, and
20 getting paid for it.

21 Now please explain to me, how will they learn
22 from their so-called "mistakes" when there's no type
23 of consequences?

24 They just keep doing it over and over again.

25 Nothing is going to change unless we treat

1 them how they treat criminals: prison time.

2 Stop justifying the things these police
3 officers be doing, and start punishing them for what
4 they be doing, or else they are going to keep doing
5 it.

6 Let's start thinking about ways to prevent
7 sexual harassment and ways to end police brutality.

8 To help prevent sexual harassment:

9 We could start by teaching young men ways to
10 properly approach a lady;

11 Help our young people to respect each other;

12 Don't do things to others you wouldn't want
13 to be done to you;

14 And, finally, adults, to please listen. When
15 someone comes to you and tell you that they have
16 been sexually harassed from workplaces, school,
17 home... anywhere, take it seriously.

18 And to help put an end to police brutality,
19 we need to start taking actions. Let them see what
20 they're doing will not go by like that, and that
21 there's no consequences -- and that there's
22 consequences to everyone's actions, and that there's
23 no free pass, and we're not favoring nothing.

24 Thank you again to everyone for attending
25 this hearing.

1 STACEY KING: Good afternoon.

2 My name is Stacey Ann (ph.). My pronouns are
3 she, hers, and hers.

4 I'm a senior in high school, and I'm part
5 of -- I'm a part of Girls for Gender Equity and
6 Sisters in Strength program, or "SIS."

7 SIS helps young women of color become more
8 aware of the social injustice that goes on in our
9 schools, and -- high schools, and community.

10 We primarily focus on healing, and how to aid
11 people who have experienced sexual violence,
12 gender-based violence.

13 I would like to thank everyone for hearing me
14 out today, and I hope everyone is well.

15 I attend a school that has a formal
16 dress-code policy. Understand that we're required
17 to where a uniform; however, the policy does not
18 always seem logical.

19 The ways that they choose to enforce them do
20 not make for a positive school environment.

21 In my junior year, I had experience with --
22 I had experience, where I was wearing a skirt that
23 was above my knee, and my principal and my teacher
24 called me out about it in public.

25 This made me feel self-conscious about my

1 body, and enraged.

2 I don't think the way I dress has any impact
3 on how I learn.

4 I recognize that this was not as severe as an
5 experience as many of my friends and fellow
6 classmates. They have been sent home because of
7 their dresses and clothing.

8 Many of my friends live an hour or so away
9 from school. This travel time takes away from their
10 learning and time in class.

11 Additionally, we receive robo calls at 6 a.m.
12 and 7 p.m. every day about the uniform. They are
13 pre-recorded messages that tells us what to wear, in
14 advance of coming to school.

15 Our uniform policy is gender-biased and
16 culturally insensitive, so this message that we
17 receive daily is offensive, and is how we are
18 beginning and ending our day.

19 The voice recording targets
20 females-identified (sic) students in some cultural
21 or -- and/or religious dress, because it says for us
22 not to wear low-cut shirts, see-through clothing,
23 short skirts, spaghetti straps, leggings,
24 flip-flops, no headband, hair covering, do-rags, or
25 headwear.

1 This makes me feel like I am a distraction,
2 and that I am responsible for my classmate learning
3 or how they learn.

4 Schools frequently have gender-biased dress
5 codes, and these dress codes infer that young women
6 are responsible for their own experience of sexual
7 assault because of what they are wearing.

8 This promotes rape culture.

9 This should not be the case in any situation,
10 because we are responsible for our own action when
11 rules are enforced, and mostly targets women of
12 color.

13 New York State should increase the number of
14 Title (indiscernible) coordinators in schools, and
15 expand Title 9 protection.

16 Title 9 coordinators, coupled with
17 comprehensive sex education, would allow everyone to
18 feel safer and supported in schools.

19 Everyone deserve basic human rights, and
20 I would like for everyone to be aware of Title 9,
21 and, most importantly, be comfortable and safe
22 whatever environment they are in.

23 I believe I should feel and truly be safe in
24 school.

25 Safety looks to me -- safety to me looks like

1 coming to school and not feeling targeted or being
2 called out on how I dress, feel guilty or ashamed of
3 my body, and, more importantly, to be supported
4 mentally and emotionally to be the best version of
5 myself.

6 Thank you for the opportunity for testifying
7 today.

8 ASHLEY TURNER: Thank you.

9 I don't know if this one is on.

10 It is on? Okay.

11 Thank you.

12 Good evening, at this point,
13 Chairperson (indiscernible), Biaggi, thank you
14 for -- Chairperson Crespo, Chairperson Walker, and
15 other members who have stayed this late in the
16 evening.

17 My name is Ashley Sawyer. I'm an attorney,
18 and I'm the director of policy and government
19 relations at Girls for Gender Equity.

20 Girls for Gender Equity obviously has a very
21 unique position in this conversation.

22 We have been around for close to 20 years,
23 but we're most known because we are the
24 institutional home of the #MeToo movement.

25 The very movement that set the stage for this

1 hearing today and the conversation that we're having
2 was founded by a Black woman, Tarana Burke, who was
3 senior director at GGE when #MeToo went viral.

4 And the young people you just heard from are
5 all members of Sisters in Strength, which is the
6 only organization in the entire United States that
7 is the #MeToo movement youth organization.

8 And I am grateful for you all taking the time
9 to hear from young people who identify as survivors,
10 and allies of sexual-assault survivors, and the
11 issues that are coming up for them.

12 The broader framing is, young people want to
13 see changes happening in their schools and in their
14 communities.

15 And we're grateful for the sexual-harassment
16 working group for opening up this conversation about
17 sexual harassment, but we can't have a conversation
18 about sexual harassment or sexual assault in the
19 workplace and ignore the fact that, for many people,
20 millions of people, who have to attend school, that
21 is their workplace.

22 Every single day, by law, they're mandated to
23 go to a place where they may experience sexual
24 assault or sexual harassment.

25 We know that it's not unique to New York

1 City.

2 We know that, in Binghamton, New York, we
3 just learned of four girls of color, Black and
4 Latinx girls, who were forced to strip down into
5 their underwear in front of a principal and a nurse
6 because they were giggling too much.

7 That is sexual harassment.

8 We understand that, for young people, they're
9 not afforded the protections that adults would have
10 in the workplace. And even as you heard today,
11 adults are not getting the support and protections
12 that they need.

13 So you can only imagine what it means to be a
14 student.

15 We also are very grateful for you,
16 particularly, Assemblymember Walker, for naming
17 earlier that the #MeToo movement was founded
18 specifically to name the ways that Black girls and
19 girls of color were impacted by sexual violence.

20 And we are centering cis and trans girls and
21 gender not-conforming (sic) youth and non-binary
22 youth because they're so often left out of the
23 conversation around sexual violence.

24 We also want to name the fact that sexual
25 violence happens at the hands of police at alarming

1 rates, which my colleague Kylynn will testify to,
2 about the alarming rates of police sexual assault
3 and misconduct, which you learned about.

4 And I want to name, that, earlier this year,
5 four -- there was a complaint filed on behalf of
6 four girls in New York; two who raped in their
7 schools, and, two who were sexually harassed, one
8 who was subjected to trans-phobic harassment in
9 particular.

10 And this is not unique.

11 Young people are experiencing sexual
12 harassment at alarming rates across this
13 state (sic), including in New York.

14 Two years ago, three years ago, we did a
15 report called "The Schools Girls Deserve," and it
16 found that one in three students experience some
17 form of sexual harassment in school.

18 So, if we're going to take the work -- take
19 the action to address sexual assault and sexual
20 harassment, we have to begin with schools.

21 We have to understand that, if we don't teach
22 comprehensive, quality sex ed with a focus on
23 consent education, the same people who are doing
24 harmful acts, committing acts of sexual harassment,
25 in their high schools and in their middle schools

1 will go on to do it in the workplace.

2 And so while the package of bills in front of
3 you is mostly focused on changing standards that
4 affect adults, we could not let this opportunity go
5 by without acknowledging that the people who -- some
6 of the people who are most marginalized and most
7 vulnerable to sexual violence are not getting the
8 support that they need.

9 And, the prevention that needs to happen must
10 happen in the environments that young people are in.

11 Schools are the places where we can do some
12 of the most radical, powerful shift --
13 culture-shifting work.

14 And so we recognize that, in addition to what
15 we have asked for on the local level in New York
16 City, our Title 9 coordinators, New York City has
17 1.1 million students, 1 adult, 1 adult who's
18 responsible for investigating claims of sexual
19 assault or harassment in the entire school district.

20 And so we've been pushing a budget ask that
21 we will soon -- I'm hope -- we'll hopefully win, to
22 see if we can get at least seven Title 9
23 coordinators to respond to and prevent school-based
24 sexual assault.

25 But on the state level, we know that there's

1 a lot of work to do, and we hope to partner with you
2 all, and particularly next session, to think
3 specifically about: How are we addressing the issue
4 of sexual assault and harassment in schools; and how
5 can we address this issue as it particularly affects
6 youth of color.

7 And, again, I appreciate you,
8 Assemblymember Walker, for naming the ways it
9 impacts people who are incarcerated.

10 The national data shows that 90 percent of
11 the young people who are put into girls' prisons
12 have experienced some form of sexual harassment or
13 assault. 90 percent.

14 There's no other institution where you're
15 going to see such a high concentration.

16 And so as you all look to this package of
17 bills, we are grateful for the time and energy that
18 you've spent with this existing package, and just
19 being here tonight, recognizing the hour.

20 But also looking to you to please not ignore
21 the ways in which young people, cis and trans girls
22 and non-binary youth, particularly youth of color,
23 are impacted by sexual violence.

24 And we are deeply grateful for your time and
25 your energy, your commitment, to this issue.

1 Thank you.

2 KYLYNN GRIER: Good evening.

3 Thank you all for still being here.

4 My name is Kylynn Grier, and I'm the policy
5 manager at Girls for Gender Equity.

6 Girls for Gender Equity works to -- is an
7 organization challenging the structural forces that
8 work to obstruct the freedom, full expression, and
9 rights of girls, transgender, and gender non-forming
10 young people.

11 We work daily -- sorry.

12 We work daily with young women and TGNC youth
13 of color who are policed at every juncture of their
14 lives; on the way to school by NYPD officers, in
15 school by NYPD school safety agents, and while
16 accessing city services.

17 Young women and TGNC young people are
18 criminalized for normal adolescent behavior,
19 oftentimes, hyper-sexualized due to
20 historically-located racialized and gender-based
21 stereotypes. And their bodies are regularly policed
22 because of their race, ethnicity, sexual
23 orientation, gender identity, and/or gender
24 expression.

25 Three shocking revelations of police

1 misconduct have served as a tipping point for policy
2 change that organizations have been advancing for
3 years.

4 Earlier this year, BuzzFeed News exposed that
5 hundreds of officers were allowed to keep their jobs
6 after committing egregious, fireable offenses.
7 These offenses included lying under oath to grand
8 juries and district attorneys, lying on official
9 reports, physically attacking innocent people,
10 engaging in excessive force, and committing sexual
11 misconduct against members of the public.

12 Then, two scathing reports emerged of an
13 18 -- a then-18-year-old teenage girl, under the
14 alias Anna Chambers, who was handcuffed, raped, and
15 sexually assaulted in the back of a police van in
16 Brooklyn, New York, and who was one of many
17 survivors of police sexual violence against
18 community members in and out of schools across
19 New York State.

20 Shortly thereafter, there was shock and
21 outrage as the nation heard about the treatment of
22 Jazmine Headley, a 23-year-old mother, whose baby
23 was ripped from her arms by the New York Police --
24 New York Depart -- New York City Department of
25 Social Services and the New York Police Department.

1 These experiences and narratives are often
2 unheard in mainstream media, in conversations about
3 policing, or in conversations seeking to address
4 gender-based violence.

5 This silence exists alongside a multitude of
6 systemic barriers, purporting survivors -- supports,
7 and often victim-blaming, and criminalization of
8 survivors.

9 This is absolutely and unequivocally rooted
10 in racialized and gender-based discrimination.

11 For these reasons, Girls for Gender Equity
12 and partners call on New York State -- the New York
13 State Legislature to pass the Safer New York Act.

14 Included in this package is a full repeal --
15 repeal of Civil Rights Law 50-a. It is an essential
16 tool for transparency about police abuses
17 experienced by women, gender (indiscernible) people,
18 and all New Yorkers.

19 We look to partner with you, and support your
20 leadership, to pass a full repeal of this law.

21 A repeal of Civil Rights Law 50-a would
22 follow progress made in New York City to increase
23 transparency, an important step on the road to safer
24 communities.

25 As organizations that serve and advocate on

1 behalf of women and girls, many of whom are
2 survivors of gender-based violence, we know that
3 acts of gender-based violence are often patterned,
4 manifested by extreme power differentials, and are
5 very rarely isolated incidents.

6 These power differentials expressly -- are
7 especially exacerbated in police and community
8 interactions, with a gun-carrying officer, and added
9 layers of an agency that has historic culture of
10 being unaccountable and non-transparent.

11 Even though sexual assault and gender-based
12 violence is drastically underreported, a
13 Cato Institute study of incidents reported shows
14 that sexual misconduct is the second-most reported
15 form of police misconduct.

16 As of February 14, 2018, the New York City
17 Civilian Complaint Review Board, a New York City
18 police-oversight agency, adopted a policy to expand
19 the agency's purview to include incidents of sexual
20 harassment by NYPD officers against members of the
21 public.

22 According to the CCRB, 117 complaints were
23 received in a short 15-month period that included
24 allegations, from cat-calls and sexual propositions,
25 to unwanted touching and rape.

1 It is imperative that police personnel
2 records be made available to survivors of police
3 sexual violence to better understand any history of
4 harm that has been perpetrated by an officer.

5 Repeal of New York State Civil Rights
6 Law 50-a would be a significant step in ensuring
7 that officers who have repeatedly harmed community
8 members across New York State are held accountable,
9 and the full repeal of the law is necessary for true
10 community safety.

11 Thank you.

12 SENATOR BIAGGI: Thank you, all, so much, for
13 staying this long to share your testimony with us.

14 Each one of you, and the words that you
15 spoke, are incredibly powerful, and incredibly
16 important; and let me tell you why.

17 Because you just put a massive crack in our
18 consciousness, that I don't think that many people
19 in this room even thought was there.

20 You connected a law that I don't think
21 I personally would have connected to sexual
22 harassment.

23 I support the repeal of 50-a, I have during
24 my journey here. And I don't think I would have
25 connected the two.

1 And that is a blind spot that you just put a
2 light on for me, and that's a remarkable, remarkable
3 thing that you did.

4 It's incredibly important that you continue
5 to raise your voices. Do not let anybody silence
6 you. Do not let anybody tell you that your voices
7 don't matter, because your voices do matter, because
8 you just created change in this room, today.

9 So, thank you.

10 First, we're going to hear from
11 Assemblywoman Walker -- oh, Assemblymember Crespo.

12 Pardon me.

13 ASSEMBLYMAN CRESPO: Quick question:

14 So, thank you, all, also, for your testimony.

15 If you -- for all of you who are students, if
16 you are harassed by a teacher, who do you go to?

17 OFF-CAMERA SPEAKER: Guidance counselor.

18 ASSEMBLYMAN CRESPO: Guidance counselor.

19 If you feel that you've been harassed by a
20 school safety agent outside of the school building,
21 who do you go to?

22 MARIE ST. FORT: I would probably go to the
23 person I'm most comfortable with in the school, or
24 outside of school.

25 KYLINN GRIER: As it stands now, there's

1 actually not a process. And -- well, that's not
2 completely true.

3 There is a process, but it is nontransparent.

4 Right now, if a young person reports to an
5 adult in the school, at the end of the day, where
6 that report ends up is the internal affairs bureau
7 of the NYPD.

8 And so what that means, is that young people
9 are expected to report to the very officers,
10 uniformed, that did the harm in the first place.

11 We also know that the internal affairs bureau
12 of the NYPD has been notoriously nontransparent,
13 and, still, it's just a really tough place for
14 anyone to report anything.

15 ASSEMBLYMAN CRESPO: So there's no -- there's
16 no current cooperation between DOE and school safety
17 officers, where the student could go to the
18 administration of their school, principals,
19 somebody, within the school building, to make that
20 formal complaint, and have the school then submit it
21 in a more formal sense to the NYPD?

22 KYLYNN GRIER: I can't speak to exactly what
23 is the MOU between the NYPD and the department of
24 education.

25 What I can say, is that, regardless, those

1 reports end up on the desks of the internal affairs
2 bureau of the NYPD.

3 (Inaudible comment by Ashley Turner to
4 Kylynn Grier.)

5 KYLYNN GRIER: Right.

6 And there's -- and to build on that, there's
7 not someone who's in the schools or accessible.

8 Title 9 coordinators, in particular, would be
9 one key place that young people could go, if there
10 were enough.

11 ASSEMBLYMAN CRESPO: So all of you are part
12 of an organization that has made you -- given you a
13 platform, and encouraged you to speak out, and is
14 preparing you to be advocates; not just victims, but
15 advocates for change.

16 How many of you have experienced personally,
17 or know someone directly, who was sexually harassed
18 by or assaulted by a school safety agent or an
19 officer that was assigned to your school?

20 NEILLAH PETIT FRERE: I've seen it, but,
21 like, it hasn't personally happened to me.

22 I've seen, like, police officers, like, talk
23 to students, like, in a very inappropriate way that
24 they shouldn't be speaking to a student.

25 ASSEMBLYMAN CRESPO: (Indiscernible)

1 teachers?

2 NEILLAH PETIT FRERE: Teachers? Uhm, no.

3 MARIE ST. FORT: Can I say something?

4 It had happened to me before.

5 It was outside of school. There's a store by
6 my school. And a police officer that goes to my
7 school, he was talking to me so inappropriately.

8 Where you going, Big Head, (indiscernible)?

9 Talked to me like that.

10 But, yeah, it's made me feel uncomfortable.

11 ASSEMBLYMAN CRESPO: I didn't consider, until
12 you guys made this testimony, just how susceptible
13 those interactions are on a daily basis.

14 And, especially when those officers are
15 imperative to providing safety when leaving the
16 school building, and all the other things that we --
17 the relationship we want them to be able to build
18 with students, but how susceptible that is to
19 someone committing some sort of harassment.

20 And if there is no transparent process for
21 reporting that, it's extremely problematic.

22 So, I appreciate the feedback on that.

23 And as I call on Assemblywoman Walker, I just
24 want to also thank you for -- the organization, for
25 what you represent. And to acknowledge that

1 Ms. Burke is a proud Bronxite, as we acknowledge all
2 of the Brooklyn reps that are here.

3 Ms. Walker.

4 ASSEMBLYWOMAN WALKER: Well, I think I've
5 heard that Brooklyn is in the house.

6 Uhm, although, we're very grateful to
7 The Bronx for the pizza, that I didn't get a slice
8 of.

9 So, I am inspired by your testimony here
10 today, and I guess the thing that inspires me the
11 most is that, we put a lot of emphasis on supporting
12 programs that are very male-centric.

13 You know, I remember, we were having a
14 conversation about supporting a basketball program
15 in our -- in my community, and I represent the
16 neighborhoods of Brownsville, East New York, parts
17 of Bed-Stuy, Crown Heights, and East Flatbush.

18 And they said, well -- I said, Well, what
19 about the girls?

20 Oh, we got girl's basketball.

21 And it's, like, no, it's a boy's sport, but,
22 you know, generally, and -- but you have girls
23 playing.

24 I do recognize that a lot of girls play it.

25 But they -- you know, they -- they give us

1 credence with lots of programming, but through the
2 lens of boys.

3 And so this is special to me because, you
4 know, it's -- it's -- it's girly.

5 And -- and a lot of times our stories are not
6 heard.

7 And I appreciate this, because it -- it --
8 you even had me tap into experiences.

9 When I was, you know, in high school, and
10 I remember a teacher told me to get on the desk and
11 do a couple of jumping jacks.

12 And, you know, even as a young girl growing
13 up, I, you know, was always a big girl.

14 And when that happened to me, I guess it
15 wasn't until you sitting here today, with your
16 testimony, it sort of struck a cord, that that was
17 sexual harassment.

18 And -- so -- so I thank you for -- for
19 helping me to see myself.

20 One of the -- I guess, the question that
21 I have is with respect to the police department, and
22 sexual harassment and the way it's addressed.

23 There was a young girl in my district who
24 was, allegedly, raped, or a sexual assault, in a
25 park.

1 When the report came out, it was -- it was --
2 allegedly, it was done by a group of boys.

3 And then when the report came out, they
4 victimized her. Said that, you know, she was having
5 sex with her father.

6 I mean, it was just crazy, crazy thing.

7 I don't if you remember that.

8 But we were having conversations with the
9 police department about it. You know, the comment
10 that we heard was, Well, most of the people who are
11 sexually assaulted -- who are raped are raped by
12 somebody that knows them.

13 As if, you know, it makes a difference, if
14 you're raped by someone who knows you or someone
15 that's a complete stranger.

16 So hearing your testimony today with respect
17 50-a, and other issues, do you -- are -- do you know
18 if the police department reports instances of sexual
19 harassment, sexual assault, or rape, as that?

20 Or, when it happens, and someone knows that
21 person, is it reported like a domestic-violence
22 scenario?

23 KYLINN GRIER: I can speak to the
24 sexual-harassment and sexual-violence reporting.

25 Currently, they do not report on incidents or

1 allegations of sexual violence.

2 (Inaudible comment by Ashley Turner to
3 Kylynn Grier.)

4 KYLYNN GRIER: Oh, if the assailant is a cop.

5 ASSEMBLYWOMAN WALKER: If the assailant is a
6 cop, they don't report any of that information?

7 KYLYNN GRIER: (Microphone off.)

8 No.

9 ASSEMBLYWOMAN WALKER: But I'm also
10 wondering, what about, even in instances where --
11 you know, where they're not?

12 Because, I looked at, sort of, some Compstat
13 reports prior to coming here, not necessarily
14 thinking about sexual violence per se, and it was
15 sort of alarming to me that there weren't very high
16 instances of sexual violence or sexual assault that
17 was reported in the 73rd Precinct, particularly as
18 the precinct that I was looking at it at.

19 But it doesn't take away from the fact that
20 I know this is happening, but what's happening with
21 respect to it being reported?

22 Is it not being reported because people
23 aren't necessarily coming forward, or is it not
24 being reported because it's being misconstrued as
25 domestic violence, where we see is very high, as

1 opposed to calling it for what it is?

2 So, you don't have to answer that, but it's
3 just, I guess, another thing that your testimony
4 today really just sort of put into my head.

5 So, again, where's your program located?

6 OFF-CAMERA SPEAKER: (Inaudible/microphone
7 off.)

8 ASSEMBLYWOMAN WALKER: Where?

9 OFF-CAMERA SPEAKER: (Inaudible/microphone
10 off) we're actually in Councilmember -- oh, excuse
11 me, in Assemblymember Simon's district, in -- on
12 Chapel Street.

13 ASSEMBLYWOMAN WALKER: Nice.

14 Are you in any --

15 OFF-CAMERA SPEAKER: (Inaudible/microphone
16 off).

17 ASSEMBLYWOMAN WALKER: Are you in any
18 schools?

19 ASHLEY TURNER: Yeah, so, historically, GGE,
20 we've been around for almost 18 years now.

21 We run two after-school programs that were
22 Brooklyn-based. And our youth-development programs,
23 including Sisters in Strength, and our Young Woman's
24 Advisory Council, both serve young people from all
25 five boroughs.

1 And so young people could apply regardless of
2 where they live.

3 So we had young people from Staten Island,
4 and The Bronx, all coming to Brooklyn to be a part
5 of both of our youth-development programs.

6 And our after-school programs have,
7 historically, been just in Brooklyn.

8 ASSEMBLYWOMAN WALKER: So I guess -- well, I
9 guess one of the other questions then, is: Do you
10 provide transportation?

11 STACEY KING: For young people, when young
12 people come to our program, and we always make sure
13 they have MetroCards.

14 And I forgot to mention that, as we phase out
15 of our after-school programming, we're providing
16 technical assistance to schools across the five
17 boroughs, specifically highlighting the research
18 that came out of our "School Girls Deserve" report.
19 That report is where we talk specifically about --
20 it was done alongside 100 students; talked
21 specifically about the issue of sexual harassment,
22 sexual violence, that girls of color and youth of
23 color experience, as well as criminalization that
24 they experience in school.

25 And so the outgrowth of that report, in our

1 years of running after-school programming, has been
2 providing -- we will begin to provide technical
3 assistance to DOE schools that take an interest in
4 wanting to find ways to make their schools more
5 safe, healing, and affirming for youth of color.

6 ASSEMBLYWOMAN WALKER: So -- so you're
7 phasing out of the after-school --

8 ASHLEY TURNER: Yes.

9 ASSEMBLYWOMAN WALKER: -- business, period?

10 ASHLEY TURNER: And shifting to providing TA
11 for DOE schools that want to do better, in terms of
12 sexual harassment, racial-justice issues, cultural
13 competency, and to how to support students across
14 the gender spectrum.

15 ASSEMBLYWOMAN WALKER: Do you -- are you
16 perform -- are you participating in a
17 curriculum-based scenario?

18 So, it's going to be, like, during the day,
19 and will the students be able to avail themselves of
20 the -- in -- in school-time programming?

21 ASHLEY TURNER: So the two youth programs
22 that we run, existing, separate from our
23 after-school programs, we have a curriculum for -- a
24 curriculum that is rooted in what young people
25 mentioned earlier today, about learning about

1 systems of oppression, learning about race and
2 gender and class.

3 Young people get to engage in both of the
4 curriculum -- both of the curricula, excuse me, and
5 both of our youth programming.

6 And then there's another set of curricula,
7 specifically targeting at adults and schools, and
8 how they can be better advocates for young people,
9 and make their schools more safe and more affirming
10 for young people.

11 ASSEMBLYWOMAN WALKER: Okay. Well, I guess,
12 we heard an invitation earlier today from the
13 Senator to the division of human rights.

14 So I'm going to give you, also, an
15 invitation, to say that:

16 I think what you're doing is spectacular.

17 ASHLEY TURNER: Thank you.

18 ASSEMBLYWOMAN WALKER: And I'm not poaching
19 here, but, you know, Brownsville is a beautiful
20 community, and with some beautiful Black girls in
21 there, and who, you know, would gain a lot from
22 having access to a program such as yours.

23 So I extend to you an invitation to
24 participate in some of the programming that's
25 contained within our community.

1 And I look forward to working with you.

2 ASSEMBLYMAN CRESPO: I'll answer that for you
3 with some funding. They would more than happy to --

4 [Laughter.]

5 ASSEMBLYWOMAN WALKER: Oh, I'm willing.

6 ASSEMBLYMAN CRESPO: Assemblywoman Niou.

7 ASSEMBLYWOMAN WALKER: I'll give them
8 \$2 million if I could.

9 Twenty.

10 ASSEMBLYWOMAN NIOU: First, I just wanted to
11 say thank you, guys, for being here, and for
12 speaking up on behalf of your peers, and for
13 yourself.

14 It is incredibly, incredibly brave.

15 For my own experience, I wasn't able to speak
16 up for over 20 years.

17 So, I just wanted to say that I commend you
18 on your bravery, and, that -- that it matters; that
19 it matters -- everything that you're saying matters.

20 I know you guys work with a lot of TGNC
21 youth.

22 You heard my last questions, probably, and
23 I'm just going to reiterate them to you guys, and
24 see if you guys have some other thoughts on policy,
25 on how we can change things in New York State,

1 because the discrimination is so pervasive and
2 systemic, it makes it so that young people, just
3 walking out of a, you know, club, walking out of
4 school, they could get arrested just for being
5 transgender or gender non-conforming.

6 So, I wanted to see if there was anything
7 that we can do.

8 As -- you know, we -- our -- we just passed
9 GENDA this year, way long overdue.

10 And if there was anything that you guys
11 wanted to suggest that we can do as a state.

12 ASHLEY TURNER: Well, a couple of things,
13 really quickly, (indiscernible) time.

14 Actually, there's a rally happening right now
15 that we're missing, in support of trans folks who
16 have been murdered.

17 I think you may know --

18 ASSEMBLYWOMAN NIOU: I think your mic may not
19 be on.

20 ASHLEY TURNER: Oh, sorry.

21 How do I turn this on?

22 Hello? Is this better?

23 Okay.

24 As you know -- you may know that there's
25 actually a rally happening in the city right now.

1 The life ex -- and it's the "Keep Your Hands
2 Off Our Trans Bodies" Rally, and it's in
3 Washington Square Park.

4 But most people know, life expectancy for
5 Black trans women is, like, 36. And so that's --
6 it's a huge issue.

7 GGE centers all -- centers most marginalized
8 folks in all of our narratives and in our work.

9 So some of the things that we've been looking
10 for, particularly in the context of young people in
11 schools, have been thinking about, how do schools
12 provide the type of -- get the type of technical
13 assistance that they need, to understand what's
14 happening for trans youth, and how can they do a
15 better job of supporting them.

16 And we would love to partner with you, and
17 have additional conversations with you about, what
18 are the things that came up in the reporting that we
19 did, or that participatory action research that we
20 did, and what are the things that trans youth are
21 asking for in their schools.

22 We try our best to make sure that trans youth
23 and non-binary youth are included in all of our
24 programming.

25 And those young people have the ideas about

1 what they want to see happening in their schools to
2 make them feel safer in their schools, and in their
3 the community.

4 And we would love to have a conversation with
5 you about some of the feedback that we've received
6 from young people.

7 ASSEMBLYWOMAN NIOU: I would love that.

8 You know, just for the record, I mean, our
9 body knows that, you know, trans youth have the
10 highest suicide rates.

11 We all know that -- I've lost many friends.

12 But I -- I would have to say that, we all
13 know that there's a huge systemic issue.

14 And so we really thank you for your work on
15 those issues.

16 And, please, you know, any -- any ideas that
17 you all come up with, when it comes to protecting
18 folks, and making life just a little bit more
19 bearable, is helpful.

20 ASSEMBLYMAN CRESPO: Assemblywoman Simon?

21 You should join us up here.

22 ASSEMBLYWOMAN SIMON: Try it again?

23 There we go.

24 Thank you.

25 And I want to thank all of you, first of all,

1 for your testimony, which is really incredibly
2 powerful, and, for being here all day long, and
3 listening to us yammer on at times.

4 And -- so thank you for -- for -- for being
5 here.

6 So, Stacey Ann? Right?

7 I went to an all-girls' Catholic school and
8 had to wear a uniform every day, so your testimony
9 really reached out to me.

10 Are you going to a parochial school, or a
11 charter school, or --

12 STACEY KING: I go to a public school.

13 ASSEMBLYWOMAN SIMON: A public school?

14 STACEY KING: Yeah, uhm -- yeah.

15 'Cause, when I first -- where I attended to
16 school, like, in ninth grade, before, it was -- it
17 didn't have a uniform policy.

18 So me coming into freshman year, we had a
19 uniform policy.

20 So, it's very inconsistent. So it's like --
21 yeah.

22 ASSEMBLYWOMAN SIMON: So they have an
23 inconsistent uniform policy?

24 STACEY KING: Yeah.

25 ASSEMBLYWOMAN SIMON: That's bizarre.

1 And -- and -- I -- I also am freaking out
2 about the robo call at 6:00 in the morning.

3 What about the boys, what's their uniform
4 policy?

5 STACEY KING: It's the same as ours, but,
6 like, since -- it's more targeted towards us as
7 girls.

8 ASSEMBLYWOMAN SIMON: Uh-huh?

9 STACEY KING: So, like, if I wear -- if a guy
10 comes into school with like a tank top, he won't be
11 called out or called home.

12 But if I come -- if I come to school with,
13 like, you know, like, maybe a spaghetti-strap,
14 I don't know, tank top, with a cardigan, or
15 something like that, they'd be, like, Oh, what are
16 you wearing? You know, you shouldn't be wearing
17 that. Like, put on a shirt.

18 I understand that there's certain policy that
19 I abide with the rules, and I'm, like, respect the
20 school uniform policy.

21 But I feel like -- like, just the other day,
22 they sent another robo call, saying, you know, like,
23 oh, we're a distraction. And now what you wear will
24 create an unsafe environment.

25 So it's just, like -- yeah.

1 ASSEMBLYWOMAN SIMON: Yeah, cringe. We're
2 all cringing here about that.

3 ASHLEY TURNER: Can I just add?

4 ASSEMBLYWOMAN SIMON: Yes, sure, of course.

5 ASHLEY TURNER: I apologize.

6 So there's national data that backs up, that
7 Black girls are more likely to be targeted for the
8 clothing that they wear.

9 So even if there's a policy about what young
10 people wear, Black girls and Latinx girls are more
11 likely to be told that they're dressing
12 inappropriately because of their body size.

13 And what happens is, we've heard reports from
14 young people say, that they were told that the
15 reason boys are distracted, the reason sexual
16 harassment is happening, is because of the clothing
17 that they are wearing.

18 And so we -- yeah, so that's the problem.

19 ASSEMBLYWOMAN SIMON: I mean, I think that --
20 that is, obviously, a bigger problem in communities
21 of color. It's certainly a problem for women and
22 girls, generally, I think, about clothing.

23 I certainly remember that being something
24 that I was plagued by as well as a young girl.

25 And we were rolling up our skirts in those

1 days. The skirts were below your knee, and
2 everybody was rolling up their skirts.

3 And -- and -- so there's a lot of messaging
4 about -- about -- about clothing.

5 So I'm also curious, for the rest of you who
6 are not in schools with a uniform policy, about that
7 kind of -- the kinds of comments that you may get
8 with regard to what you're wearing, and how, if at
9 all, it has changed the way you dress for school,
10 and has made you comfortable or uncomfortable?

11 NEILLAH PETIT FRERE: Yeah, I think your body
12 is -- takes a huge part in dressing policies,
13 because it can be like a really skinny girl wearing
14 the same thing as you. But if you have a more,
15 I don't know, curvey body --

16 ASSEMBLYWOMAN SIMON: Voluptuous?

17 NEILLAH PETIT FRERE: -- yeah, like, you
18 could get your house called, you could get sent
19 home, or they give you a big shirt to wear.

20 And that -- it's really unfair, because it
21 makes -- it starts making you just, like, feeling
22 insecure about your own body, because, if I'm being
23 pulled out of class, why can't she get pulled out of
24 class, because we're, basically, wearing the same
25 thing.

1 ASSEMBLYWOMAN SIMON: So, I wanted to just --
2 well, I'll leave it at that.

3 But I wanted to just tell you again how
4 impressive your testimony has been here today, and
5 the work that you're doing.

6 And thank you very much for leading this
7 charge, and for being there for -- for these girls,
8 and for you being there for each other, and for the
9 other girls in -- in your schools.

10 And I'm really looking forward to continuing
11 to work with you guys.

12 Thank you.

13 OFF-CAMERA SPEAKER: Thank you.

14 SENATOR BIAGGI: Thank you very, very much
15 for your testimony.

16 I want to just end on one note, because
17 I think that this is an important one, not that the
18 others were not. Every point that was made was
19 incredibly important.

20 But, if there are instances that you
21 experience after this day, that you feel you can't
22 raise to someone in your school or your community,
23 you have allies here in government.

24 And I -- you know, I think I'm going -- I'm
25 not going on a ledge by saying, all of my colleagues

1 here, we are here for you.

2 You can pick up the phone and you can call
3 our offices, you can e-mail us, you can tweet at us,
4 you can even send us messages through Instagram or
5 Twitter or Facebook; whatever is easiest for you.

6 You're not alone, we hear you.

7 And please use your government as a resource
8 to have your voices heard.

9 Thank you.

10 ASSEMBLYMAN CRESPO: Thank you.

11 (All witnesses say "Thank you.")

12 SENATOR BIAGGI: Next we're going to hear
13 from the National Domestic Workers Alliance.

14 ASSEMBLYMAN CRESPO: Thank you, and thank you
15 for your patience.

16 MARISSA SENTENO: I want to, first of all,
17 thank the Joint Committee on Sexual Harassment in
18 the Workplace, Part 2. Right?

19 We really appreciate being able to come down
20 here today and really tell our story.

21 My name is Marissa Senteno. I am with the
22 National Domestic Workers Alliance. I am the
23 enforcement program manager for our New York
24 chapter.

25 So that means I organize domestic workers in

1 New York City and New York State, specifically
2 around enforcing their labor rights, especially as
3 addressed under the Domestic Worker Bill of Rights.

4 And if you don't know our organization, the
5 National Domestic Workers Alliance is the nation's
6 leading voice for dignity and fairness for millions
7 of domestic workers in the United States.

8 We were founded in 2007, and NDWA works for
9 the respect and recognition and inclusion of -- in
10 labor protections for domestic workers, most of whom
11 are women, women of color.

12 The alliance itself is powered by
13 60 affiliate organizations. And then we also have
14 individual membership and local chapters, of which,
15 here in New York, we have a New York local chapter
16 of approximately 3,000-plus contacts -- not
17 contacts -- participants, yeah, 3,000-plus
18 participant members.

19 And then the organization, as a whole, has
20 about 35,000 members nationwide.

21 So NDWA itself leads on several campaigns and
22 coalitions to advance the rights of domestic
23 workers.

24 We advocate for increased labor protections,
25 racial justice, gender equity, and humane

1 immigration policies.

2 So New York State was the first state in the
3 country to pass a Domestic Worker Bill of Rights in
4 2010. It sort of marked the culmination of a 6-year
5 grassroots organizing campaign.

6 It was the first legislation of its kind, and
7 the bill of rights closed gaps in labor laws that
8 left domestic workers with fewer rights than other
9 workers in the state, and it added new protections.

10 It since has inspired a national movement,
11 and we've been able to pass protections in nine
12 other states and one municipality.

13 So it's a big deal that New York State set
14 the bar high, to be able push other domestic workers
15 to seek labor protections for themselves in
16 nine-plus other states.

17 Here in New York, the Domestic Worker Bill of
18 Rights includes domestic workers in protections
19 against sexual harassment and discrimination by
20 changing the previous law, protecting workers in
21 places of employment of four or more for domestic
22 workers, to, if you're a domestic worker, a place of
23 employment of one or more.

24 This is key, because most domestic workers
25 themselves are the only -- are the only employees in

1 their household, and were previously excluded from
2 harassment and discrimination protections.

3 So what we're doing now is that, in the past
4 five years, NDWA has worked with our members and
5 local affiliates to explore the following strategies
6 in pursuit of a more worker-led, community-supported
7 enforcement process:

8 We prioritize leadership development amongst
9 domestic workers, that prepares and utilizes them as
10 key actors in supporting peers throughout the
11 enforcement process.

12 So what that means is, I train up worker
13 leaders, people who are part of our membership, to
14 understand their labor rights.

15 And they go specifically out into the
16 communities; they go to the parks, the libraries,
17 churches, they're talking to each other. And they
18 are expertly doing so because, we have trained them
19 about what their rights are, how to screen other
20 workers, and how to establish the relationship and
21 build the trust that will bring them into our
22 domestic worker-led legal clinic.

23 To my knowledge, it's the only domestic
24 worker-specific legal clinic in the state, and of
25 its kind.

1 We -- we have a legal advocacy group that
2 handles the adjudication of the cases.

3 And then we also work closely with the
4 department of labor.

5 So these worker leaders are dubbed
6 "groundbreakers."

7 That means they are breaking ground in areas
8 that enforcement agencies have told us, time and
9 time again, We don't know how to enforce
10 domestic-worker rights because we actually don't
11 know how -- where they, where to talk to them, how
12 to get them to come forward with cases.

13 This is key, when thinking about very severe
14 cases, such as harassment and trafficking, how do we
15 build trust? And what is required in order to
16 actually enforce the laws that we have?

17 Secondly, we work collaboratively with the
18 government agencies, to share our values and vision
19 and alignment; to explore how to leverage our
20 collective resources and mechanisms in order to
21 increase our capacity to bolster enforcements as a
22 system, and not just as an instance.

23 So this happens through our pilot program
24 with the department of labor, to work really closely
25 with them on domestic-worker cases.

1 We also have been working really closely over
2 the past three years with the department of consumer
3 affairs, and now dubbed "worker protection," and the
4 division of paid care, to help in -- increase our
5 ability to do collective outreach and
6 co-enforcement, and thinking about different
7 co-enforcement models, like a mediation clinic, as a
8 matter of fact, that they will launching shortly.

9 We've had success in collaborating with --
10 with the city agencies and with the department of
11 labor. And it also helps us to get a better
12 understanding of the processes itself when it
13 takes -- when workers themselves need to enforce
14 their rights.

15 And then what happens is that, the agencies
16 themselves get a better understanding of domestic
17 workers.

18 When we effectively investigate
19 domestic-worker cases, most of our cases come
20 through our wage-theft violations. And, often, wage
21 theft is the first indicator that there are other
22 workplace violations, such as sexual harassment and
23 discrimination.

24 Yet, because of the severe power differential
25 between employer and employee, and the isolated

1 nature of domestic work, the way that the cases are
2 investigated and adjudicated affect whether a worker
3 will be able to divulge more serious violations,
4 such as sexual harassment.

5 It's almost as if those first experiences are
6 really valuable, and for being able -- for a worker
7 to be able to determine if they're gonna come
8 forward with anything that is more severe.

9 And it creates a huge barrier when workers,
10 first of all, don't understand the system, but then
11 are also met with an agency, entity, or an
12 investigator that doesn't understand them as a
13 worker, their work sector, the nuances of domestic
14 work itself, and what makes them so vulnerable.

15 We want to make sure that we're strengthening
16 sector-specific knowledge and protocol for domestic
17 workers in enforcement agencies.

18 So it's key to -- what -- what's key for us,
19 is to helping investigators understand and practice
20 how they work with (indiscernible) situations, and
21 we -- and the way that they gather evidence is fair.
22 Right?

23 For a domestic worker, there is no such thing
24 as a human-resources department. So their avenue to
25 seek and redress is to actually come forward in a

1 very -- for them, a very public exposed way.

2 They need to actually engage with some sort
3 of outside entity, like the department of labor.

4 First of all, they would have to figure out
5 how to get to the commission on human rights, or the
6 division of human rights.

7 And, oftentimes, if they're lucky, very
8 lucky, they can find a community-based organization
9 that would help them maneuver that process, or refer
10 them appropriately.

11 And oftentimes, unfortunately, that does not
12 happen.

13 We work specifically towards developing
14 metrics, and measuring the progress in
15 domestic-worker rights enforcement efforts.

16 So, we want to be able to see the patterns
17 of, like, what are the systemic violations, and what
18 are the barriers to making (indiscernible) -- like,
19 enforcement itself successful?

20 So each of the cases that come through, we're
21 just trying to collect as much data as we can, as
22 to:

23 What it took to bring them to our clinic?

24 What is it taking to keep them from dropping
25 off their cases, or, stopping their cases?

1 What does it take for them to find a new job
2 afterwards?

3 Right?

4 And so this is all data that we're
5 collecting.

6 Then, how does the process work, so that we
7 can go back to the department of labor, we can go
8 back to, you know, the commission on human rights,
9 and say, Hey, this is what we're seeing, and we need
10 to be able to work together to address these issues.

11 So what we're seeing on the ground for
12 domestic workers is that, even with these strategies
13 in place, continued collaboration with city, state,
14 and community-based organizations and advocates, we
15 know that it still takes a very long time for
16 workers to know whom to turn to, and whom to trust.

17 Domestic workers have a very hard time
18 admitting that their workplace rights have been
19 violated.

20 They have an even harder time sharing
21 accounts of harassment, and continue living with
22 that trauma and fear every day in their current
23 workspaces of past experiences.

24 And we're committed to, like, the complete
25 screening of potential workplace violations, which

1 includes sexual harassment, but it's not enough to
2 wait for workers to come forward.

3 I think this is one of the biggest lessons
4 learned around the Domestic Worker Bill of Rights.
5 It's 10 years since it's passed, and the kind of
6 prevailing thought was that, you passed the law, it
7 will get enforced, workers' lives will be better.

8 We actually have to go out into the
9 communities, find the workers, and actively support
10 them through the process and life of their case
11 itself.

12 And then once we do so, we're actively
13 engaging them back into organizing, into
14 community-based group organizations, into our
15 chapters, so that they themselves are able to
16 build -- build their opportunities so that they
17 don't have to go back into the same or similar
18 situations.

19 Right?

20 We find that when some workers are -- have
21 decided to come forward, they do so in relation to a
22 different complaint of workplace violations. It
23 might be a lesser offense. They kind of test the
24 waters.

25 And they do that so they can see how well

1 they can trust us, and how well they can trust the
2 support and the process itself.

3 So for domestic workers, it's not -- it's
4 almost never just sexual harassment. That's sort of
5 like added insult to the injury.

6 Unfortunately, while a worker itself has
7 several years, six years, in New York to file a
8 wage-theft complaint, the statute of limitation runs
9 out much sooner for sexual-harassment claims.

10 So, oftentimes, I only counsel workers who
11 will come forward with a claim of harassment, but
12 that claim they cannot pursue, and we would have to
13 figure out if they had some other type of workplace
14 violation that they can actually pursue.

15 Workers themselves need to have time.

16 So, one year is barely enough time for
17 workers to build the stamina and support and
18 understanding of their rights to come forward. But
19 we also know that they require additional time to
20 distance themselves from a job.

21 So, if they are relying on a reference
22 letter, they need to be able to secure their next
23 job, or even the, next, next job, in order to make
24 some kind of a complaint against their previous
25 jobs.

1 So one year is not enough for them to do
2 that.

3 We've had to even -- had to advocate the
4 department of labor, that they were -- they were
5 giving us a three-year cutoff date for when
6 wage-theft violations were made.

7 And we had to push them to please give us the
8 six years, because we knew that workers themselves
9 weren't even able to file -- just, these are just
10 stolen wages -- within the three-year time limit
11 that they had -- had put forward recently.

12 So we know that, for domestic workers,
13 one year itself is not nearly enough.

14 We know that, for domestic workers, because
15 they work in the homes, they're highly -- they are
16 highly surveilled. They're afraid to make a phone
17 call to an agency, they're afraid to seek out
18 support. Their hours are very long.

19 And so would need some extra access to be
20 able to call late at night or on weekends, to figure
21 out where could they file a claim.

22 Right?

23 It takes a long time for a worker to take a
24 day off to come in to any of our offices.

25 We hold clinics very late into the night in

1 order to be able to accommodate their ability to
2 work their full day, and then come in and make a
3 file -- a claim in the evenings.

4 And that's almost impossible with the
5 department of labor, unless we make a very special
6 kind of request, which we have been able to be do,
7 but, how could that be scalable, how could we make
8 it more accessible, statewide, for domestic workers
9 to be able to access the division of human rights
10 and the department of labor?

11 I cite the department of labor a lot because
12 that's probably the entity that workers would reach
13 first. Right?

14 And so there also needs to be an ability for
15 investigators to appropriately refer workers and
16 screen workers for the different types of violations
17 that they might have.

18 I think what I want to say, really, is that,
19 because domestic workers are so isolated, they work
20 in such intimate settings, and they have to uphold a
21 very high standard of work. Right? These are
22 people who take care of our children, of our
23 elderly, and of our homes themselves, that we need
24 to be able to understand that education itself isn't
25 enough.

1 We have laid out some policy requests, and --
2 in my testimony, and, really, those are addressed
3 towards, like, what is going to -- what is it going
4 to require to support very vulnerable workers to
5 come forward and file claims of harassment?

6 Many workers would lose their home because
7 they are live-in. Many workers would lose their
8 job.

9 And so how could we mitigate a retaliated --
10 retaliatory actions from an employer?

11 We know that worker centers themselves are
12 the first point of contact for many workers.

13 So how could we bolster that, by funding
14 worker centers as a point of contact for being able
15 to be sort of like a hub for enforcement?

16 And, you know, create funding streams, so
17 that the community centers themselves can
18 effectively do the pre-work that is required to
19 bring cases forward?

20 We would like for the agencies to really
21 consider what it means to do co-enforcement models.

22 I have a lot of visions of what it would look
23 like.

24 I have worker leaders who are currently
25 really good at investigating domestic-worker cases.

1 They could be -- they could be actual
2 investigators within the DOL. They could be the
3 navigators.

4 And so, when I'm thinking big, what would it
5 be to really collaborate very closely, creating
6 vulnerable-workforce sectors, especially domestic
7 work, to be able to navigate other workers through
8 the system.

9 And then, lastly, I would ask that we think
10 about creating a task force to explore the
11 feasibility of establishing like a statewide
12 sectoral standards board for domestic workers, that
13 monitors and proactively sets standards for the
14 domestic-worker industry, so that when we set the
15 standards for the industry, we don't have workers
16 that are so vulnerable to issues such as harassment.

17 Really, I want to leave the rest of the time
18 for my colleague Daniela, who is a fierce organizer,
19 mother, domestic worker, and, herself, has a
20 powerful story.

21 But she inspires both myself and other
22 workers to come forward with their stories.

23 Thank you.

24 DANIELA CONTRERAS: Buenos stades.

25 My name is Daniela Contreras. I am the

1 organizer at the National Domestic Workers Alliance.

2 I have worked for many years as a domestic
3 worker, and also my family, my mother and my sister.

4 I am the mother of a curious, intelligent,
5 beautiful 6-year-old girl, and I have been
6 undocumented. I am currently a DREAMer.

7 Today I am here to share my story of sexual
8 harassment in the workplace, and how this issue
9 affects the sector in which I organize.

10 Domestic workers have faced a long history of
11 exclusion for basic labor protections.

12 Domestic workers were a specifically excluded
13 from federal labor protections, like minimum wage
14 and the right to organize a union.

15 Many laws, such as anti-discrimination and
16 harassment laws, have also excluded domestic
17 workers, and domestic workers feel the consequences
18 of that. They feel it as disrespect, a lack of
19 dignity in their work. They experience it as wage
20 theft, and not having enough time to take off for --
21 to take care for their families and their loved
22 ones.

23 We feel unsafe in our jobs, unprotected by
24 our laws.

25 When I was 16 years old, I got a part-time

1 job as a nanny, cared for a 3-year-old boy while his
2 parents were at work. I took care of him every day
3 after school, from three to four hours.

4 I was so excited because it meant helping my
5 family financially.

6 My mother at that time was working as a
7 live-in domestic worker, staying with her employer
8 seven days a week, and earning \$125 a week.

9 My sister and I were living with my uncle at
10 that time, and she had very little time to spend
11 with us. Her situation was bad.

12 So bring in an additional income went a long
13 way. I felt proud I was making a contribution. At
14 that time, I was undocumented.

15 In my community, there is a lot of fear of
16 seeking help from law enforcement when you're in
17 trouble.

18 I did not know where I could go, and, at the
19 time, had something bad had happened.

20 And while I understood English, I did not
21 feel I could express myself fully in this language
22 at that time.

23 The mother of the child spoke Spanish, and
24 I -- she interviewed me, and provided me with a work
25 agreement. But the husband was a monolingual

1 English-speaker.

2 My job required me to be alone with him at
3 home often, and this made me feel very
4 uncomfortable.

5 At 16, the idea of being home with this
6 father alone was uncomfortable, but I felt I was --
7 it was a job that my family needed me to have.

8 Sorry.

9 The father will come home from work in the
10 late afternoon. He will go straight to shower.

11 At first, he will come out of the shower and
12 walk from the bathroom to his bedroom, wrapped in a
13 towel.

14 But, over time, he started to call me from
15 the bathroom to get a towel for him. I will bring
16 him a towel and leave it at the door.

17 On some days, I would try to be proactive,
18 and leave a towel in the bathroom before he got
19 home, but it continued to escalate.

20 One day he came home from the show -- he came
21 home -- he came out of the shower, into the bedroom,
22 where I was playing with his child. He began to
23 touch me and pull me into the bed, sexually
24 assaulting me, right in front of his child.

25 I felt so vulnerable and defenseless;

1 I froze.

2 I was lucky enough, someone knocked on the
3 window. He got distracted, and I was able to run
4 away.

5 It was one of the most terrifying experiences
6 of my life.

7 My employers never called me back; I never
8 got paid.

9 And out of fear, and embarrassment, I kept
10 silent for almost two decades. At that time, I kept
11 wondering, why me?

12 And later I began to wonder about other women
13 who did the work I did, but in houses that were
14 significantly more isolated.

15 What happens to them?

16 This was my first experience with sexual
17 harassment in the workplace, but it wasn't my last.

18 I have had also experienced sexual harassment
19 repeatedly, working at a restaurant, and a deli.

20 In the restaurant, the owner required the
21 women employees to wear super-tight clothes in the
22 winter; and short skirts, and low shirt cut --
23 low-cut shirts that revealed cleavage, in the
24 summer.

25 He will specifically target me when he was

1 around, requesting me to be the server, telling me,
2 he'll like to take me to dinner, and then a hotel.
3 And there verbally abusing me when I ignore his
4 behavior and turn him down.

5 My work -- my co-workers would say nothing,
6 not even the servers who experienced some of the
7 same behavior from him.

8 I was the only worker who stood up to him,
9 and, of course, I got fired.

10 I remember dreading working those long hours
11 where I felt such undignity (sic).

12 I did file a complaint against him in 2005.

13 He hired a lawyer, and working with the
14 manager, put a (indiscernible) counter-story,
15 accusing me of pursuing him.

16 My case was thrown out.

17 Later, I saw the same lawyer recently who
18 worked with him in this response to my complaint,
19 and this lawyer was running for office.

20 It angers me to see how unfair power dynamics
21 work against us to so many women in our society.

22 I experienced similar behavior by the deli
23 owner's son where I also work.

24 One day he called me into his office and told
25 me he wanted me -- to have sex with me.

1 I was already older by then, and the
2 experiences from before draw me to want to stop
3 repeating the cycle.

4 I told him, no, that his behavior made me
5 uncomfortable. And if done again, I will report it
6 to the department of labor.

7 It scared him enough to stop his behavior,
8 but that not -- but that's not always the case in
9 our situations.

10 At that time, I knew that the department of
11 labor enforced workers' protections, but I did not
12 know how to find their number or how to access their
13 help.

14 Everyone says, go and take action, but it's
15 difficult to know where to go, and how to go about
16 reporting, and actually changing this situation.

17 Now, as an organizer, every day I hear
18 stories of working women just like me.

19 I moderate several online domestic-worker
20 groups on social media.

21 Recently, I got a call from a house cleaner
22 in Texas. She had gone for an interview, and after
23 the employer drove her home, he attempted to rape
24 her.

25 As she was leaving his car, he threatened

1 her, that if she ever mentioned anything, he will
2 come after her, knowing where she lived, and having
3 information about her personal life, from the fake
4 work interview.

5 She call me, crying. We had a deep
6 conversation about what was happening, and,
7 immediately, I contact her with our -- one of our
8 affiliates in Texas, which they give her support and
9 legal advice.

10 Domestic workers have no way of knowing
11 beforehand how safe the workplace is before they are
12 there. They have no one around, often, to witness
13 their experiences or offer them support and
14 protection.

15 Many domestic workers are immigrant women,
16 American women of color. Their families and
17 communities are constantly targeted, separated,
18 (indiscernible) with violence.

19 Our stories can be fully of pain, fear, and
20 violence.

21 When I have posted videos and articles about
22 my firsthand experience of sexual harassment in the
23 workplace to the online domestic workgroups, there's
24 often little to no response, compared to other
25 postings.

1 Our communities still struggle to talk about
2 this issue openly.

3 And the only thing I am requesting, it's --
4 (indiscernible), but what I'm asking is, as Marissa
5 said, we want more protections for domestic workers.

6 I don't know if my daughter's ever gonna do
7 the domestic work. She has seen me doing it. She's
8 very proud about me doing -- being a house cleaner
9 sometimes.

10 But I want my daughter to also know that,
11 wherever she goes, she's going to be safe.

12 We need those protections.

13 SENATOR BIAGGI: Thank you, both, so much.

14 I don't think that -- I don't think that I've
15 heard testimony as compelling as both of you have
16 given to us tonight about domestic workers at any
17 point throughout the entire inquiry of what we have
18 been doing.

19 And, it's incredibly powerful, but that
20 doesn't even really underscore the feeling that
21 I have.

22 Daniela, when you were speaking, my heart was
23 racing in my chest, because I understand what that's
24 like; how normal it is to just let people, and,
25 mainly, in these dynamics, where it's male and

1 female, to just allow men to say things to you, or
2 just to touch you, or to touch -- rub your back, or
3 to touch your face.

4 It has happened to me more times than I can
5 even count in my entire life, and, it's not okay,
6 it's unacceptable.

7 And, that behavior is unacceptable in every
8 environment, no matter where we go.

9 And so I think that one of the things that
10 you touched on, that is -- really underscores the
11 beginning of this hearing today, was, you said,
12 "It's difficult to know where to go, or how to go
13 about reporting, and actually changing the
14 situation."

15 That is not by accident. That is on purpose.

16 The way that our systems have been designed
17 have been designed in such a way where only a few
18 people can understand where to go.

19 And even if you understand where to go, it
20 doesn't necessarily mean you'll be heard.

21 And I've seen it up close, and I just find it
22 to be incredibly egregious.

23 And that is why both of you here today, to
24 share your testimony, is important, because I'm
25 actually incredibly impressed that you even knew to

1 say, not only "no," which may not be -- may not feel
2 like a big thing, but it's a huge -- a huge
3 statement to make.

4 I didn't say -- start saying no until I was
5 in my late 20s.

6 So, I really -- I'm just -- what I'm really
7 getting at here is, I want to know, how did you know
8 where to go, or that the department of labor was
9 even a place for you to go, at all?

10 How did you find that information out?

11 This is important because -- it's important
12 because, one of the things I feel like that we can
13 do, and one of the things that is a problem, is
14 that, when we pass laws, sometimes people don't even
15 know, or they don't know what their right -- they
16 don't know what their rights are, or where to find
17 their rights. And the information is tucked into a
18 place that, only if you have access to a system can
19 you get the access.

20 So I'm just wondering if you remember how you
21 learned about this information?

22 And what you think we can do to make this
23 information more readily available for everyone.

24 DANIELA CONTRERAS: I -- I have been very
25 involved with my community. I -- I -- if I'm not

1 mistaken, I -- when I was younger, right after
2 school, I will go and volunteer at community
3 centers. There's one specific one in Sunset Park,
4 it's called Mikstaka (ph.), and that's where I learn
5 about it.

6 But it was -- I -- I knew there was a place
7 to go, but like I said, where do I find it; what's
8 the address, what's the phone number?

9 That's what happened back then.

10 And -- and now what we're trying to do here,
11 now, differently, and that's the reasons I came on
12 board, and -- to NDWA, is because I want domestic
13 workers to know how to find help.

14 Maybe it's not the department of labor, but
15 they can come to us.

16 We -- pretty much, what we do, we walk
17 around, with these cards, all over the city, where
18 we have our information; social media, phone number.

19 I call them our "domestic workers' 911 phone
20 number."

21 They can call any time. Each one of us take
22 turns on that cell phone. We answer that cell
23 phone, weekend, night. Anytime a domestic worker
24 calls, we answer them.

25 They can leave a voice message in any

1 language they feel they're more comfortable.

2 We have these cards, where they -- we tell
3 them about their rights. We try to get their
4 information. And we do follow-up.

5 And whenever we have our monthly meetings, we
6 send home, our workers, our members, with 10 cards
7 each, and they got to bring it back, to make sure.

8 And we also walk around the city with
9 T-shirts, with our phone numbers.

10 Like, we're doing all the way.

11 And, Marissa, she has more.

12 MARISSA SENTENO: I -- no, it's just -- I was
13 remembering back the earlier conversation with the
14 division of human rights, around, like, how do
15 people know how to get to you?

16 So, first of all, a "know your rights" is not
17 an enforcement strategy. Right? Like, that is a
18 piece of an entire broad set of strategies that need
19 to happen in order for workers to -- all workers,
20 and the most vulnerable workers, to be able to come
21 forward, and then, also, you know, go through the
22 process, up.

23 So the strategy is, outreach, education,
24 engagement.

25 And then, when we were thinking about

1 "know your rights," what we were finding was that,
2 when I gave just "know your rights" trainings, which
3 were great as one-offs, our trainers were amazing,
4 because they are worker leaders themselves who can
5 engage really actively with the other workers, it
6 can be disempowering because, suddenly, you know how
7 much you have been exploited.

8 But, when we gave this same training embedded
9 in a nanny training, something that they could gain
10 a certificate in, along with other -- other skills,
11 like, how to communicate with your employer,
12 nutrition for children, social-emotional
13 development, and, then, your home is a work --
14 someone -- your home is -- your home is someone's
15 workplace, and knowing your rights, that was
16 something that they could utilize later; they then
17 knew that they could go and ask for a contract, to
18 make sure that they weren't agreeing to signing away
19 their overtime rights.

20 And then understanding, what does sexual
21 harassment look like?

22 It could look like, and these are, you know,
23 stories from our workers:

24 The man of the house walking around in a
25 towel, wanting to hold, like, a meeting with them,

1 and making them feel, like, extremely uncomfortable,
2 day after day.

3 It could look like someone trying to
4 physically advance on somebody.

5 It could look like, saying no, and then also
6 being threatened with your life, because you said
7 "no," and because you told the wife.

8 It runs an entire -- you know, it's a
9 spectrum, and this is what we needed for domestic
10 workers to understand, and they're beginning to
11 understand, that no one should ever be doing
12 anything that makes you feel uncomfortable,
13 regardless of how pervasive or egregious that is.

14 So I think what -- so, yeah, what we actually
15 did was, we held sexual-harassment trainings in
16 conjunction with the commission on human rights, so
17 that they got to meet the people who could possibly
18 help them, right, in a safe space.

19 We've held other sexual-harassment trainings
20 with self-defense classes, so that they could go
21 home with something that makes them feel a little
22 bit more empowered.

23 We showed them the websites.

24 We have been in communication with, actually,
25 the division of human rights, around the -- the new

1 requirements.

2 And, most importantly, we're in constant
3 conversation with, and building up, worker leaders,
4 to understand: How are these rights affecting their
5 lives? What are the barriers?

6 They are the experts, so we need to build
7 space for them to voice their expertise, and
8 actually creating the space for them to talk to the
9 other decision-makers directly. Right? They're --
10 I'm not always the conduit.

11 SENATOR BIAGGI: That's incredibly helpful,
12 and very illuminating.

13 And I have two -- one question, and one
14 comment, just to share information.

15 Do you think that it would be helpful for us
16 to do -- and I mean, "us," in our individual
17 capacities, 'cause, you know, one of the ways that
18 we communicate with our constituents, is we are able
19 to send mailings, home.

20 Now, you know, there's lots of information to
21 send, but perhaps this is one of those areas where
22 I feel like there's not much communication shared.
23 Right?

24 So, it's -- it's a two-way street, so that,
25 we know that -- and that doesn't -- that's not to

1 say that our constituents are not domestic workers.

2 But what I'm saying is that, we can have an
3 information that's sent home, that says, Are you --
4 do you employ a domestic worker, or are you a
5 domestic worker?

6 And have a flip-card, right, that we have --
7 that we ask either our Senate communications or the
8 Assembly communications to create for us, to send
9 home, to say:

10 Here's what you need to know about this
11 industry, and the rights that these people have.

12 Or, if you're a worker, this is where you
13 need to go.

14 Because, one of the things I know for sure,
15 is that, you know, one of the reasons we know, as --
16 as citizens, is: You have the right to remain
17 silent. Anything you say can be -- right?

18 We know that because it's become -- it's like
19 pop culture, almost.

20 But so much of what we need to know has to be
21 almost turned into that.

22 And so the fact that you're walking around
23 with these (indiscernible) cards is so important.

24 And to create -- to create more communication
25 around it from all the different areas that can

1 possibly be pulled on to share this information is
2 an important way to get this information out.

3 But I want to know if you think that that's a
4 helpful mechanism that we can do, separate and
5 distinct from legislation?

6 MARISSA SENTENO: Yeah, so it is a helpful
7 mechanism.

8 I think, for domestic workers, we are
9 understanding that it's everyone's responsibility to
10 ensure enforcement of our rights: it's workers, it's
11 government, and it's employers.

12 And we are responsible for workers
13 understanding how to enforce their rights.

14 We would like help to -- for employers to
15 understand that they are also, in part --

16 SENATOR BIAGGI: That's wonderful to hear.

17 So -- but -- so what I'm asking then from
18 both you is, would you help us to create what that
19 communication would look like, so we don't get it
20 wrong --

21 MARISSA SENTENO: Certainly.

22 SENATOR BIAGGI: -- and we can send that into
23 our districts?

24 MARISSA SENTENO: We have a -- you want to
25 tell them?

1 DANIELA CONTRERAS: No, go ahead.

2 MARISSA SENTENO: Okay, all right.

3 Hand in Hand is our sister organization that
4 employ -- that organizes employers, specifically.
5 They have a nice kind of hub in Brooklyn,
6 themselves, and they've been doing some really great
7 outreach. They have some great, like, pamphlets
8 and -- and booklets.

9 So I would love to be able to, like, connect
10 to you all with them.

11 And then they are also, like, all of us in
12 communication together, because, when workers
13 themselves, like, when they put their stamp of
14 approval on it, you're, like, okay, that's going to
15 fly.

16 SENATOR BIAGGI: Right, that's right.

17 That's wonderful.

18 And I'm going to take you the up on that.

19 Are you familiar with the Workplace Project?

20 MARISSA SENTENO: Yes. They are an affiliate
21 of ours.

22 SENATOR BIAGGI: They are?

23 MARISSA SENTENO: Uh-huh.

24 SENATOR BIAGGI: Oh, okay.

25 Jennifer Gordon, who their -- is the

1 professor from Fordham Law School, was my
2 immigration law professor. So, her work in this
3 area has been --

4 MARISSA SENTENO: Yes.

5 SENATOR BIAGGI: -- transformational.

6 MARISSA SENTENO: Yes, absolutely.

7 SENATOR BIAGGI: And I'm glad that you're
8 working all together, but not surprising at all.

9 MARISSA SENTENO: Yes.

10 SENATOR BIAGGI: Thank you.

11 MARISSA SENTENO: Thank you.

12 ASSEMBLYMAN CRESPO: Thank you both for your
13 testimony.

14 Daniela, (speaking Spanish).

15 For those of you who are
16 bilingually-challenged, I just said, she's amazing.

17 I'm really taken aback on this, on a couple
18 of fronts.

19 Number one: I grew up in a household, a
20 family, where most of my aunts worked as domestic
21 workers; some of them still do. And, we've heard
22 their stories, nothing to the extent of which you
23 shared.

24 But I could imagine, you know, how common
25 those stories must be.

1 And, what's really interesting, we've talked
2 a lot all day about the intersectionality of all of
3 these different categories that can impact a
4 particular victim; so whether it's race, gender,
5 sexual orientation... you name it.

6 In your cases, also, that added dilemma of
7 status, and the fact that that can be used.

8 We currently have legislation on the floor,
9 on third reading, to protect undocumented workers
10 from being threatened with referrals to ICE by
11 employers.

12 We have another bill that arises out of your
13 efforts, I believe years ago, with the bill of
14 rights, and working with Keith Wright, at the time
15 was the chair of the Labor Committee.

16 And there's a bill on third reading now, that
17 would also lower the threshold for eligibility for
18 domestic workers to get disability benefits.

19 And we're going to continue to go down this
20 field.

21 You -- on the labor front of your industry
22 there's is a lot of work to be done.

23 And we -- you have my commitment to dive into
24 these issues, and to be a partner every step of the
25 way as we strengthen that.

1 But just sort of keeping a focus on sexual
2 harassment and complaints:

3 So, how many domestic workers are there in
4 the state of New York, that you're aware of?

5 MARISSA SENTENO: So the last best guess,
6 which is from research in 2010, which isn't good
7 enough, it's 200,000, 250,000, domestic workers.

8 Now, we believe that to be much higher
9 because Hand in Hand actually did a more recent
10 survey of how many employers of domestic workers
11 there are. And that number was much higher. It was
12 around 2 million.

13 So, we're looking at --

14 ASSEMBLYMAN CRESPO: So somewhere between
15 200,000 and 2 million.

16 MARISSA SENTENO: Yeah, 2 million, exactly.

17 ASSEMBLYMAN CRESPO: And, the vast majority
18 of them don't have an agency intermediary?

19 In other words --

20 MARISSA SENTENO: No.

21 ASSEMBLYMAN CRESPO: -- these are individuals
22 who make direct arrangements with the owners of the
23 household --

24 MARISSA SENTENO: Right.

25 ASSEMBLYMAN CRESPO: -- for, whatever that

1 service.

2 MARISSA SENTENO: These are direct employees
3 of -- right, who would be like the household itself.

4 ASSEMBLYMAN CRESPO: So for -- for legal
5 purposes, they are considered independent
6 contractors?

7 MARISSA SENTENO: No, they are -- they are
8 employees.

9 ASSEMBLYMAN CRESPO: Employees?

10 MARISSA SENTENO: Yes.

11 That's a very common misconception, and so
12 many workers themselves get misclassified because of
13 it, but they are employees.

14 So, child-care workers, almost all,
15 exclusively, employees.

16 Caregivers, also employees.

17 House cleaners, mostly all of them are
18 employees, except for the situations where they
19 themselves are running their own, like, cleaning
20 business. And they are also particularly vulnerable
21 because of that sort of, like, misunderstanding and
22 gray area, even amongst themselves.

23 ASSEMBLYMAN CRESPO: So if you are a
24 cleaner -- house cleaner, but you work -- you get
25 assigned a job, and you could be assigned to

1 different households, on a given schedule, because
2 another individual is running an actual cleaning
3 business, you're an employee of the business, in
4 that case, not the household you're cleaning?

5 MARISSA SENTENO: Right. If there is like
6 a -- sometimes they call them, like, "scheduler" --

7 ASSEMBLYMAN CRESPO: Yes.

8 MARISSA SENTENO: -- and of that business.

9 By and large, though, they're -- they're --
10 most house cleaners are direct employees of, like --
11 they make that arrangement with the -- with the
12 employer, with the homeowner.

13 ASSEMBLYMAN CRESPO: So --

14 MARISSA SENTENO: (Indiscernible
15 cross-talking) --

16 ASSEMBLYMAN CRESPO: -- right now, the remedy
17 for filing a case would be the division of human
18 rights?

19 MARISSA SENTENO: Division of human rights.

20 And then, currently, if you live in New York
21 City, the commission on human rights.

22 ASSEMBLYMAN CRESPO: And then, in cases
23 you've seen, we've talked a lot about this current
24 standard of "severe or pervasive," how does a
25 domestic worker, how do you, Daniela, if you would

1 have brought that case forward, prove any of what
2 happened?

3 DANIELA CONTRERAS: I wouldn't have any
4 proof. Just my word.

5 ASSEMBLYMAN CRESPO: There's no co-worker to
6 go to the witness? There's no --

7 DANIELA CONTRERAS: I had the baby, but, he
8 was a 3-year-old. So, no one else.

9 ASSEMBLYMAN CRESPO: I'm just curious, did
10 you ever confront --

11 DANIELA CONTRERAS: No.

12 ASSEMBLYMAN CRESPO: -- his wife?

13 DANIELA CONTRERAS: Never.

14 Never went back, did not care -- well, it's
15 not that I didn't care. I was afraid. My status
16 was one thing. Language was another.

17 And, what was I supposed to do?

18 ASSEMBLYMAN CRESPO: Right, right.

19 MARISSA SENTENO: I know of two instances
20 where workers have confronted the other partner.

21 One was met with very severe aggression.

22 The other was met with severe retaliation,
23 like, blacklisting the worker.

24 And, yes, you're right, it is very difficult
25 to prove, because they're the only people in the

1 house.

2 ASSEMBLYMAN CRESPO: Again, I'm really
3 interested in following up, and having more
4 conversations, and figuring out how we can work
5 together, through the committee, to do more work
6 around protections for -- you know, just, in
7 general.

8 MARISSA SENTENO: Absolutely.

9 ASSEMBLYMAN CRESPO: But I really want to
10 commend you, the work you are describing, and what
11 you are doing, to empower colleagues in this field,
12 is remarkable.

13 (Speaking Spanish.)

14 Thank you for doing that.

15 Assemblywoman Simotas.

16 ASSEMBLYWOMAN SIMOTAS: Marissa, Daniela,
17 thank you for opening our eyes.

18 I understand that harassment, any kind of
19 harassment, especially sexual harassment, it's about
20 a power dynamic. It's about, an employer, or
21 somebody who's a supervisor, who is in a position of
22 power, who is taking advantage of an employee,
23 because, sometimes, because they can.

24 And, I think your testimony today, very
25 pointed testimony, really highlights that.

1 Daniela, you really established that with
2 your example of what happened to you; that, you were
3 taken advantage of, just because, you were
4 somebody -- there was somebody who felt that they
5 were in power over you.

6 With that, you know, I agree with you,
7 Marissa, that we have to take steps and provide
8 resources, to allow people, especially when they're
9 economically disadvantaged, to come forward.

10 So, in addition to changing our statute of
11 limitations to extending the time, what other
12 resources can we as a state provide to workers who
13 may not have the economic ability to just quit their
14 job and move on, and, you know, find a lawyer or
15 file a complaint?

16 What can we do?

17 MARISSA SENTENO: So funding for legal-aid
18 services, especially those that deal with the most
19 vulnerable workplace populations.

20 I have been working with day laborers and
21 domestic workers for over 15-plus years. It is the
22 hardest thing to find legal advocates, lawyers, that
23 specialize in worker-rights protections, and then
24 also have experience in harassment itself.

25 So funding more money into those really key

1 legal services, service providers, and then also the
2 community-based groups that specialize in working
3 with the most vulnerable workplace populations, like
4 domestic workers, is really key.

5 Mental-health services as well.

6 I know that New York City is trying to kind
7 of expand, but we know that, you know, domestic
8 workers are statewide. Right?

9 I worked in Westchester for many years.

10 And so we see that, New York City workers, we
11 can at least get to the park and talk to them.

12 Workers in Westchester, Long Island, and then
13 further up north, so much more isolated.

14 So the onus is on us to really be able to get
15 out into a lot of different types of communities,
16 and to be able to provide, you know, mental-health
17 services, health services itself, to just women of
18 color, low-wage workers.

19 And then emergency-housing funding for
20 especially domestic workers who are live-in.

21 I don't know how many times I've had workers
22 just result homeless because of what happened on the
23 job.

24 That's a really big factor for women coming
25 forward in the domestic workplace.

1 And then thinking about, really, like, how to
2 create a framework of support, because the one
3 avenue, enforcement, needs to do its thing. But
4 then there also needs to be the support for workers
5 to be able to heal and move on, as well as kind of
6 rebuild their career opportunities, and move on from
7 that.

8 And then -- so we do part of that through the
9 organizing, but we know that we are severely
10 lacking. Right?

11 For the few cases that come forward with
12 sexual harassment, like, it breaks my -- it doesn't
13 just break my heart, but it makes you weary, trying
14 to provide things that, you know, I got to like pull
15 out of thin air, or something.

16 And that shouldn't really be the case, at
17 all.

18 And if there were like a statewide, also,
19 like guide of resources, like, verified resources,
20 around, like, where do people go for different types
21 of situations.

22 You know, oftentimes we work in this, like,
23 loose network of, like, who do I know, like, I can
24 call when I have a certain type of issue?

25 But that really shouldn't be the case either.

1 Right?

2 It should be more formalized, so that we can
3 have like a better connected network system for the
4 most vulnerable workers.

5 ASSEMBLYWOMAN SIMOTAS: And I have one more
6 question.

7 Clearly, many domestic workers may not --
8 English might not be their primary language.

9 How do we make it easier for domestic workers
10 to report problems when they face them?

11 Obviously, we have to educate them about the
12 law. But maybe putting them -- maybe the State
13 actually advertising, or putting notices in
14 foreign-language newspapers.

15 I'm just thinking outside of the box.

16 I mean, we really have to make them feel
17 comfortable with reporting these incidences.

18 Do you have any thoughts on that?

19 MARISSA SENTENO: Yeah, that's why we've
20 invested worker leaders.

21 I mean, Daniela was my first cohort of worker
22 leader. Like, she came part-time, learning about
23 her rights. Is bilingual.

24 I've had teams of, like, four or five who
25 will, spoke between them, like, eight different

1 languages.

2 So when we invest in community members who
3 are really motivated to be liaisons, navigators,
4 within the community, they themselves have -- you
5 know, increase the language capacity for, like, our
6 small entity. And then you'd be surprised how many
7 people they can talk to.

8 This past year I've had a team of three,
9 between, like, four different languages. And they
10 spoke into over 1,000 workers in this, you know,
11 past summer.

12 And that's -- for us, was quite -- quite an
13 influx of contacts. But then we're able to bring
14 forward 100-plus -- no, 150-plus cases, when,
15 before, it was, like, you know, five cases.

16 So I know that when we invest in people in
17 the community, that can go out into the community
18 and have like the language access themselves.

19 And then of the materials that we use, it's
20 always, we have them -- we actually utilize the City
21 a lot.

22 I would commend the City in being able to
23 provide us a lot of access to different languages,
24 in -- and they have like a really excellent, like,
25 bill-of-rights booklet.

1 If you haven't seen it, track it down.

2 It's really good, because it starts the
3 conversation, and then it's in -- and it's in many
4 languages.

5 ASSEMBLYWOMAN SIMOTAS: And just so that
6 I can clarify the record, our first step has to be,
7 to make sure that our state human rights law covers
8 domestic workers.

9 MARISSA SENTENO: Absolutely.

10 ASSEMBLYWOMAN SIMOTAS: And places of
11 employment that, you know, could just be one person,
12 or two people, like, not -- it doesn't have to be
13 more than four. Correct?

14 MARISSA SENTENO: Uh-huh. Absolutely.

15 ASSEMBLYWOMAN SIMOTAS: Thank you very much.

16 MARISSA SENTENO: Thank you.

17 ASSEMBLYMAN CRESPO: Assemblywoman Niou.

18 ASSEMBLYWOMAN NIOU: Hi. Thank you so much
19 for your testimony.

20 I think that it was really, really powerful
21 to hear.

22 And I -- I -- I agree with Chair Biaggi,
23 because there are so many incidences, that it's,
24 like, you can't even count them.

25 You can't even count them; it happens to

1 women daily.

2 And your testimony really, I think, shined a
3 light on that.

4 And I just want to clarify, I don't think
5 that anyone meant to say anything like -- that might
6 sound like that, but, you don't have to confront
7 anyone. You don't -- you don't have to do anything.

8 You don't have to do anything that you're
9 uncomfortable with.

10 I just wanted to clarify that for folks,
11 because, I think that so many of us go through so
12 many situations, where it's enough to just get out
13 of a situation safely, and to walk away unscathed.

14 I don't -- I just want to clarify that,
15 there's nothing wrong with how anybody reacts to any
16 situation that is sexually violent, or, violent, in
17 any circumstance.

18 I -- I -- I know that there's a lot of laws
19 on the books.

20 We just also talked about taxi drivers, we
21 talked about bus drivers, we've talked about
22 hospital personnel, and, folks who assault or harass
23 these folks, they have a particular protection, you
24 know, because we all know that -- and I remember
25 working on this with Assemblymember Ron Kim, that,

1 you know, taxi drivers, they're put in the specific
2 situation, just like domestic workers are.

3 Taxi drivers, though, are put in specific
4 situation where they have the drive people anywhere,
5 and they have a roll of cash on them. So people
6 will assault them, to get the money, or, you know,
7 they think that they can just drive them somewhere,
8 and then they'll put them in a dark place, or
9 something, and do something to them.

10 But most of these are -- protections are --
11 I've just kind of realized in my head, that many of
12 them are regarding men, positions that -- you know,
13 that they deserve these special protections
14 because -- and -- and the higher protection, because
15 of the position that they're in, they're public
16 employees, like, if they're working for the MTA,
17 et cetera.

18 But, what if there is something that is also
19 protecting domestic workers like that, is that
20 something that would be helpful, to say that
21 they're -- it's a felony to attack your -- your
22 employee?

23 I don't know.

24 MARISSA SENTENO: That would be great. I'm
25 like...

1 I would say, first of all, because we're a
2 member organization, that's something that we would
3 ask specifically, like, our members: What would it
4 take for them to feel protected? What would it
5 take?

6 We do know that, what it takes for them to
7 feel a little bit more -- the power differential is
8 so high, so, for them to feel a little bit more of a
9 level playing field, is that, when there are
10 contracts.

11 And so, you know, we would love to put
12 forward that notice of rights, and, contracts be
13 mandated for domestic workers and employers, because
14 at least, that way, there is, first of all, a level
15 of understanding between the two, and it needs to be
16 in the language that the workers themselves speak.

17 This all goes to, also, agency employee --
18 employee -- ack, sorry -- employment agencies --
19 it's been a long day -- as well, so that people --
20 what happens is, especially for employment agencies,
21 for newly-arrived immigrant communities, it's sort
22 of, like, where they go to first, and then are
23 shipped off into these far-away suburbs, where they
24 may not have contact with other people outside of
25 their specific community for, like, several years,

1 until they've built up enough capital for
2 themselves, to kind of, like, move on to different
3 jobs.

4 And then for -- between domestic
5 worker-employer unit, the household, contracts help
6 them have a better understanding.

7 ASSEMBLYWOMAN NIOU: That's great.

8 I mean, I think that what you just said is so
9 key.

10 Like, if you want to ask your members, like,
11 if there's anything that you think that would be --
12 you know, "How would you feel safe?" I think that's
13 a great question.

14 And I would love to be able to hear --

15 MARISSA SENTENO: Sure.

16 ASSEMBLYWOMAN NIOU: -- the answers for that
17 question, because I think that, you know -- I don't
18 want to hear these testimonies again. I don't want
19 to hear -- I don't want to hear this.

20 MARISSA SENTENO: We're designing a survey
21 for New York City domestic worker, employers. We're
22 hoping to launch it this fall, training workers this
23 summer, to be surveyors themselves.

24 And, yeah, and these are the things that we
25 asked them. Like, what will it take for you to

1 feel, heard, respected, and honored at your work?

2 And so, actually, I'll go back to the survey
3 and see if there's something of that component.

4 ASSEMBLYWOMAN NIOU: That would be great.
5 I love it.

6 Thank you so much.

7 ASSEMBLYMAN CRESPO: Two more questions.

8 Do you have an app?

9 DANIELA CONTRERAS: An app?

10 MARISSA SENTENO: Okay, so we don't have --
11 we have a Facebook. All of the "grams," right,
12 Twitters.

13 We also an app for portable benefits. It's
14 called "Alia." And that's specific to trying to
15 address how house care -- house cleaners themselves
16 are not able to gain access to certain types of
17 benefits.

18 But, an app for, like, worker rights, the
19 last one I saw was like the -- has you all heard
20 about the (indiscernible) app?

21 So I'm not sure if -- like, what -- what
22 you're getting at.

23 ASSEMBLYMAN CRESPO: And do you provide, or
24 do you also assist, domestic workers with template
25 contracts?

1 MARISSA SENTENO: Yeah, we do have template
2 contracts.

3 We would love for that to be something the
4 State could help provide template contracts for the
5 different, like, work sectors, so that employers had
6 like a trusted place to go, some guidance.

7 And, you all would be like a trusted entity,
8 and be, like, okay, if I have a house cleaner, this
9 is what a general contract should look like.

10 Currently, our contracts are mostly geared
11 towards nannies.

12 ASSEMBLYMAN CRESPO: Okay. There's a lot
13 more questions, but we'll do a follow-up.

14 I appreciate your time and your testimony.
15 Thank you.

16 MARISSA SENTENO: Thank you.

17 DANIELA CONTRERAS: Thank you.

18 SENATOR BIAGGI: Thank you so much.

19 Next we are going to hear from
20 Cynthia Lowney, Marie Tooker, and Christine Reardon.

21 ASSEMBLYMAN CRESPO: Thank you. You can
22 begin.

23 CYNTHIA LOWNEY, ESQ.: Okay.

24 My name is Cynthia Lowney.

25 I'd like to say thank you, good evening, and

1 I'm glad that you waited to hear what we had to say.

2 Good evening, as I said, Senators,
3 Assemblymembers, staffers, and all.

4 Thank you for holding and attending this
5 joint New York State Senate and Assembly public
6 hearing to examine sexual harassment in the
7 workplace.

8 I believe that both the definition and the
9 venue should be extended and broadened.

10 "Sexual" should also include gender and
11 racial harassment, and "workplace" should include
12 interviews, social and/or work-related events,
13 volunteer work, et cetera.

14 Hostile work environments need to be
15 eradicated by the compliance and the enforcement of
16 rules, regulations, and laws that are already in
17 existence, in a timely manner, and refined by
18 updates when necessary.

19 "Sexual harassment" can be defined in a
20 myriad of ways.

21 The usual definitions includes unwanted or
22 unwelcomed sexual remarks or physical advances in a
23 workplace or other professional and social
24 situations.

25 It includes:

1 Making offensive remarks about women in
2 general, as well as offensive suggestions and/or
3 photos;

4 Giving gifts of a sexual nature;

5 Repeatedly asking another to socialize when
6 given a negative response, especially if it's a
7 supervisor;

8 Verbal abuse of a sexual nature, touching,
9 grabbing, repeatedly too close, or brushing up
10 against a person by a superior, even from another
11 area or unit, a co-worker, a client, a customer;

12 Sexual pranks, teasing, singing love songs in
13 the workplace, telling events of jokes of a sexual
14 nature, innuendos, in person, by e-mail, phone, or
15 other social media.

16 People need to know the definition, and that
17 is precisely why education and training are
18 imperative, and not just in the workplace.

19 Unwelcomed conduct unreasonably interferes
20 with and/or intimidates one to do work performance,
21 and, it can create an unhealthy, hostile, or abusive
22 work environment.

23 Giving promotions, awards, training, or other
24 job benefits to another who reluctantly accepts, or,
25 may even want unwelcomed activity if that means you

1 get a promotion, anything like this of a sexual
2 nature is wrong.

3 And, notably, the harasser can be of the
4 gender, race, or religion.

5 Education.

6 One needs to know the definition of "sexual
7 harassment," which I believe needs to be expanded to
8 the gender, racial, and harassment of people because
9 of their religion, so that others can better
10 understand the entire component involved.

11 We must the expand the definition, and
12 acknowledge a behavior, give it a name, so that
13 people know, understand, and accept it as
14 egregiously wrong; not just something like, "Oh,
15 what a nice outfit you're wearing," or, "You look
16 great today," which a lot of people have
17 sarcastically, or perhaps they believe, has to do
18 with sexual harassment, when there are no added
19 actions or motions.

20 False accusations are yet another problem
21 that must be addressed.

22 Because of a lack of education on topics or a
23 misunderstanding, one might file a complaint that is
24 inappropriate or false.

25 The target can also have longstanding

1 negative effects as to his or her career.

2 When so few know what it is, how can
3 businesses, organizations, and government entities
4 instill effective policies?

5 Similarly, without education, how would
6 parents, relatives, teachers, coaches, mentors,
7 neighbors, and all, know what could and should be
8 done, or what should be reported?

9 Why don't people speak out?

10 "Those who are aggrieved keep silent for fear
11 of retaliation: firing, being blackballed," as
12 Anita Hill said in 1991, when asked why she had not
13 come forward about the sexual harassment towards her
14 by Clarence Thomas, when she was subpoenaed for
15 testimony during his U.S. Supreme Court hearing.
16 "Was some of a kind of subliminal repercussions,
17 being labeled as a 'rat,' 'a snitch,' failing to
18 adhere to the 'boys' club' mantra, or being denied
19 promotions."

20 For sure, Professor Anita Hill was
21 criticized.

22 In her career, while successful in some
23 limited ways, was negatively affected, while
24 Clarence Thomas is still a U.S. Supreme Court judge.

25 Former New York State Governor Mario Cuomo

1 had an executive order issued in the early 1990s,
2 that forbid New York State employees from acting,
3 ignoring, encouraging, condoning, excusing, sexual
4 harassment.

5 That executive order did not curtail the
6 rampant gender and racial discrimination that
7 persisted in the New York State Department of Labor.

8 My specific reason for submitting
9 this testimony is because, after I heard
10 Professor Anita Hill's testimony in 1991, I was a
11 New York State Department of Labor administrative
12 law judge in Brooklyn, New York.

13 I was one of 21 administrative law judges
14 hired in '91 to '92, because the New York State
15 Department of Labor was required to hire women and
16 minorities, since over 90 percent of the judges were
17 White males.

18 From the onset, the instances of gender,
19 racial, and sexual harassment and discrimination
20 were rampant.

21 When we attended a training session in
22 Albany, New York, in December 1991, it was the first
23 time, after working since March of that year, that
24 the ALJs had a social interaction after the daytime
25 courses.

1 It was then that we realized the illegal
2 behavior was beyond outrageous, as there was a
3 hospitality room; a bedroom converted to an
4 opportunity to have liquor and speak with the other
5 ALJs, including supervisors and the executive
6 director, all of whom were White males.

7 Within moments, we witnessed one of only
8 three ALJs hired prior to our hiring, kissing a few
9 supervisory judges and posing for photos with them.

10 Most of us were newer ALJs, and we left
11 quietly without saying anything to those who
12 remained.

13 We then began to relay what other gender,
14 racial, and religious harassment and discrimination
15 had occurred to us in our isolated cubicles.

16 Because most of us had a 30-minute lunch
17 period, and had to travel from under the
18 Brooklyn Bridge, on a van, to downtown Brooklyn to
19 obtain our lunch, our conversations were extremely
20 limited, since we wrote appellate divisions.

21 I had public contact because I was one of two
22 ALJs chosen to do special hearings, since I had been
23 an ALJ at another New York State entity prior to
24 going to the department of labor.

25 When we arrived back at work the following

1 workday, which was a Monday, we were somewhat
2 shocked, but totally dismayed, to see photos of the
3 female ALJ, and the supervisors kissing her, posted
4 by our main mailboxes.

5 Subsequently, armed with knowledge that there
6 was a serious problem, we contacted our union, the
7 Public Employees Federation, and spoke with our
8 representative.

9 All of we new hires were provisional, and the
10 New York State Department of Labor would not give us
11 a test; therefore, most were afraid to file a
12 grievance or complaint.

13 Fear of losing a job was prominent; however,
14 without civil-service protection, and being on
15 probation, even if hired by a test, allowed these
16 few White males in a powerful position to persist
17 with their antics of harassment and/or
18 discrimination, and what we later learned was their
19 way to encourage us to leave our jobs.

20 When a few of us contacted the employee
21 assistance program and/or the office of equal
22 opportunity at the department of labor, an explosion
23 of interrogations, and more retaliation, occurred.

24 The EAP counselor I consulted violated my
25 privacy by reporting what I said to the OEO office

1 without asking for my permission, or telling me that
2 she did so.

3 Another ALJ went to OEO about racial and
4 gender discrimination against her.

5 When the chief ALJ got a message from OEO
6 that a female ALJ had complained, and he wanted to
7 talk to him, I was called into his office because he
8 assumed that I was the one that went to OEO, and he
9 interrogated me for over an hour, without a witness
10 for me, while he had a witness.

11 When I asked for union representation, he
12 told, that if I wanted to leave his office, he would
13 write me up for insubordination.

14 I stayed.

15 While I filed a PEF grievance about unfair
16 and unequal treatment, and won a \$1,000 award, the
17 rampant treatment and retaliation I suffered was
18 outrageous.

19 On one occasion, the chief ALJ and executive
20 director insisted that I stay after work for them to
21 review 25 of my cases at once.

22 The norm was, for a senior ALJ, to review one
23 at a time, and simply send back any recommendation
24 or changes.

25 Before my one-year anniversary at the job,

1 and, without even one formal review of my work,
2 I was terminated, along with the minority female who
3 had gone to OEO.

4 It was blatant retaliation, and was a message
5 to all others that, if they dared to report
6 anything, they too would lose their positions.

7 Even though I won the grievance, the DOL
8 never investigated my complaint that violated the
9 PEF contract.

10 Both the other ALJ and I filed outside
11 complaints of harassment, discrimination, and/or
12 retaliation.

13 I filed my complaint with the U.S. EEOC
14 because I did not want a New York State entity
15 reviewing a sister-brother unit.

16 Unfortunately, the EEOC transferred my case
17 to the State Division of Human Rights in New York,
18 without consulting me or obtaining my permission,
19 because EEOC's backlog at that time was 10 years.

20 That's not a typo.

21 And that was in 1992.

22 I contacted our family friend,
23 Senator John Markey, who was able to have our
24 immediate termination letter revised to include
25 two weeks' notice.

1 The governor's office was notified, and his
2 governor's office of employee relations was notified
3 as well.

4 However, while Senator Markey's office had
5 intended to assist us more vigorously, he was
6 hospitalized to undergo emergency surgery, and, we
7 were just without work.

8 A New York State DOL attorney from Buffalo
9 interviewed me in the summer of 1992, and
10 recommended that I be reinstated; she told me so.

11 However, the chief judge did not make that
12 recommendation; I was not reinstated.

13 After months of no job prospects as an
14 attorney, I was hired by the PEF regional director,
15 Bob Jackson, now a New York State Senator, to fill
16 in as a union rep for a woman on maternity leave.

17 A PEF union grievance was filed on behalf of
18 other ALJs, since none would dare sign their name on
19 it for fear of termination.

20 And when the test was given, both the other
21 ALG who was terminated the same day as me, and I,
22 both scored 100, and we were ranked Number 1.

23 But Number 27, a White male, was hired.

24 Because I was a single mother of two, unable
25 to obtain a position with sufficient income, I had

1 to cash in any pension moneys that I had in the
2 New York State Retirement System.

3 I had an income execution order for child
4 support because of non-compliance after a divorce,
5 but it was unenforceable, since I was able to
6 hire -- unable to hire a person to determine the
7 whereabouts of my children's father after he left
8 New York State.

9 My financial woes continued because of the
10 State Division of Human Rights' backlog. Their move
11 to another location, and letters not to contact
12 them, because they were busy with other cases.

13 My probable-cause hearing that was supposed
14 to occur in 90 days, according to the executive law
15 in New York State, took 4 years.

16 I had the probable-cause hearing in 1996,
17 along with the other ALJ who was terminated the same
18 day as me in April of '92.

19 I won my hearing, and the DOL appealed it.

20 I won the appeal, which meant that it
21 would -- I would be entitled to a public hearing,
22 or, I could proceed in federal court.

23 Both the other ALJ, and many others that were
24 subsequently fired before the test results had come
25 out, we could not get an attorney to represent us on

1 any kind of a contingency. They wanted \$10,000 from
2 each of us. And I was making way under 40,000 at
3 the time. And like I said, I had two kids.

4 I could not afford that substantial retainer
5 for a private attorney, and, therefore, I could go
6 to federal court.

7 No not-for-profit would take my case because
8 they knew backlogs meant lots of paperwork, lots of
9 time; no money.

10 I had a rely on the State Division of Human
11 Rights. They would only represent my complaint, but
12 not me personally, whatever that meant.

13 I never had a public hearing for several more
14 years. All that while I took what I called
15 "survival jobs," and, often, that meant two or
16 three jobs at a time, including many without
17 medical, dental, prescription, optical benefits, or
18 vacation, sick, personal days, and some with
19 minimum-wage salaries.

20 At the same time, I had to hope for a
21 hearing; but, instead, attended various conferences
22 with the State Division of Human Rights, on little
23 notice to my employers for a day off from work,
24 often without pay, because the positions were
25 temporary, provisional, 1099, or seasonal, and

1 travel to State Division of Human Rights' offices in
2 Harlem, Hauppauge, Brooklyn, and The Bronx.

3 Neither the attorney for the DOL, nor the
4 attorney for the State Division of Human Rights
5 considered my loss of work every time they
6 postponed, failed, agreed to adjournments, or they
7 failed to produce documents or were unprepared.

8 Even presiding ALJ -- even ALJ -- I'm sorry.

9 Even presiding ALJ demands that the DOL be
10 prepared and show up with files was ignored.

11 Most corporations, not-for-profits, and
12 others enter into negotiations when it's a case of
13 the State Division of Human Rights, because they
14 want to expedite all and reduce legal fees, costs,
15 et cetera.

16 Government entities do not consider costs,
17 since attorneys who handle the cases do not suffer
18 any consequence if they lose a case, and they don't
19 get a raise if they win.

20 The incentive to work earnestly sometime
21 lands in the laps of those who would agree to serial
22 adjournments by their adversaries.

23 Accountability as to timeliness,
24 sufficiencies, was not a priority. In fact, I never
25 met -- in all those years, 15 years in the end, I

1 never met the general counsel or the commissioners
2 that were appointed over that entire experience.

3 My public hearing took 38 days of testimony
4 over 18 months.

5 Both the DOL and State Division of Human
6 Rights' attorneys were required to file briefs, but
7 neither of them ever did that.

8 The State Division of Human Rights' attorney
9 failed to file a brief after several months of
10 extensions, and work was done by me most of the
11 time.

12 She notified both the ALJ, who presided over
13 the hearing, and me, the Friday before the brief was
14 due on that following Monday, after months of
15 extensions, ergo, I put together a brief, without a
16 library, on 48 hours' notice, hoping the ALJ would
17 accept it.

18 The DOL attorney who was at the hearing for
19 those 18 months left the DOL, and another attorney
20 not familiar with the case, allegedly, filed a
21 brief, but I never got a copy of it.

22 15 years later, after I filed my 1992
23 complaint, I received --

24 And by the way, there was a typo there. It
25 should say '92, not '96.

1 -- I received a winning recommendation for
2 back pay, minus what I did make, plus 9 percent
3 interest, 50,000 in compensatory damages, and
4 immediate reinstatement.

5 That would have been almost 500,000 for those
6 15 years.

7 Both the DOA and, shockingly, the State
8 Division of Human Rights, objected to my win.

9 I anticipated that the DOL would object;
10 however, it was beyond astonishing that the
11 State Division of Human Rights objected.

12 Since the attorney had not been prepared,
13 I did almost all the questions to the various
14 witnesses whose names I gave to her.

15 I had to Xerox all for her when she received
16 papers from the DOL at a hearing, while she got her
17 lunch.

18 Apparently, her boss, the general counsel,
19 Gina Lopez Summer, was undergoing New York State
20 confirmation to become a New York State Court of
21 Claims judge when that decision came out, and the
22 award, as given, would have publicly exposed the
23 inefficiency at the State Division of Human Rights
24 under her supervision, and that would have caused,
25 you know, major harm, stress, et cetera, to her, but

1 it also cost me lots of that as well.

2 Taxpayers would have been outraged if they
3 saw the amounts of money that I won, based on a
4 9 percent interest rate for the difference in the
5 salaries that I made and the salaries that I would
6 have had, to say nothing about pension again.

7 A new commissioner was appointed, and that
8 meant more delays.

9 Gina Lopez Summer was approved by the
10 New York State Senate, and the new commissioner
11 handed me a decision and order, that included
12 \$100,000 in compensatory damages, but only one year
13 of back pay, plus interest, because I was a
14 provisional appointee.

15 She did not consider that I took, passed, and
16 scored Number 1 on the civil service exam, and was
17 never interviewed or hired, and that an associate
18 commissioner at the New York State Department of
19 Labor testified at my hearing, that they skipped
20 over the several of us, the terminated judges,
21 because they thought they could do so.

22 Bottom line:

23 After an appeal, I got zero, because the
24 New York State Department of Labor hired outside
25 counsel and filed two affidavits:

1 One, that the person who accepted service
2 from my process server, with me by his side, was not
3 authorized to accept the papers, which was not true;

4 And, two, that the only place to serve legal
5 papers was in Albany, as indicated by an internal
6 memo, albeit not available to the public.

7 Suggestions and recommendations that I would
8 give:

9 1. Expand the definition of "sexual
10 harassment" to include gender, racial, and religious
11 harassment and discrimination.

12 2. Mandate education, beginning in
13 elementary and high schools, with resources and
14 teachers who are well trained in those areas,
15 because workplace harassment, discrimination, is the
16 result of one's environment: their home, their
17 family, their school, their neighborhood; religious,
18 social, and ethnic background; plus, TV social
19 media, et cetera.

20 For sure, the double check mark of hiring
21 only those who fit two categories of
22 underrepresented groups eliminates hiring those of
23 certain genders, ethnic, religious, and/or racial
24 backgrounds, who need to find others with whom they
25 can have trust, confide in, et cetera.

1 3. Provide training, education, for parents,
2 families, workers who may not be organized of
3 their -- I'm sorry -- may not be cognizant of their
4 own prejudices, behavior, and its effect on others.

5 We must go to the sources that is the root of
6 the problem.

7 4. The current rules, regulations, and law
8 must be complied with, and enforced timely, by not
9 just corporations who often settle with
10 non-disclosure agreements, thereby allowing the
11 predators to remain in their jobs, while the person
12 reporting is giving money, and may not realize that
13 explaining why they left a position is, in essence,
14 not true, when an employer agrees that the reason
15 for leaving is something other than the egregious
16 behavior, or that their career is ruined because
17 they did report; but, also, by way of government
18 entities, not-for-profits, per diems, household
19 workers, store clerks, waiters, waitresses, actors,
20 actresses, tutors, coaches, and more.

21 Justice delayed is justice denied.

22 5. Discussing the issue goes back centuries.
23 Professor Anita Hill; U.S. Supreme Court
24 Judge Ruth Bader Ginsburg, who graduated, top of her
25 class; couldn't get a job as a lawyer. Go teach.

1 The Women's Rights movement of the '60s, and
2 the #MeToo movement, and instilled hope in women
3 that we would be treated equally and with dignity;
4 not harassment and discrimination.

5 Women had their hopes up when they fought for
6 the right to vote, the right to own property, to
7 make their own medical decisions, without their
8 husbands' decisions; to attend military, medical,
9 law, and business schools, without prejudice against
10 them; to enter predominantly male fields as
11 firefighters, police, pilots, FBI agents, judges,
12 electricians, plumbers, rabbi, minister, priest, and
13 more, to be promoted to levels consistent with those
14 who have been met with equal pay, for promotions
15 given to men with equal education, experience.

16 The norm has been, and still is, in many
17 areas, that women and minorities must have superior
18 credentials to attain positions and salaries that
19 are equal that of White males.

20 Neither New York State, nor New York City,
21 has had a female governor or mayor.

22 No female has been elected as a
23 U.S. President.

24 However, African-American men have all
25 attained those positions.

1 Weekend news is headed by a plethora of women
2 and minority hosts. Only recently have women and
3 minorities appeared more frequently during the week.

4 Women have, and still do, put up with lots.

5 Hillary Rodham Clinton was considered too old
6 to be president of the United States, but
7 Bernie Sanders and Donald Trump were older. Nobody
8 cared about their age.

9 Many, even women, do not see through the eyes
10 of harassment and discrimination.

11 Hearings and legislation are two initial
12 steps.

13 The momentum must continue through education,
14 training, compliance, and enforcement in a timely
15 manner, if all serious about eradicating harassment
16 and discrimination.

17 Justice delayed is justice denied.

18 And I'd just like to end with:

19 I graduated from NYU in the top 10 percent of
20 my class. Went on to get a master's degree, with a
21 fellowship.

22 Worked for a year, then went to law school,
23 and a scholarship to Buffalo, but transferred
24 because I was married at the time.

25 Went to Rutgers, where Ruth Bader Ginsberg

1 had set up clinics for lawyers. And I graduated
2 with a current U.S. Senator, she was in my class.

3 I have to say that, all of these years, of
4 the 15 years of waiting and hoping for justice, and
5 then losing and saying, as a former varsity player,
6 from elementary school through college, "suck it up
7 and move forward," you can't suck it up and move
8 forward.

9 Retaliation is there forever, especially with
10 government contracts.

11 Thank god for Tisch James, changing the thing
12 of "name your salary," because when I was a
13 chancellor of the rep, a federal law clerk, all the
14 different jobs I had, even if they were temporary,
15 or any of the jobs, an ALJ for the City part-time,
16 representing people with different things, or being
17 a volunteer, I didn't have to list salary anymore,
18 because she passed that for New York City.

19 That needs to be passed, forever, everywhere.

20 The other thing is, the retaliation continues
21 on government applications, especially, "Have you
22 ever been terminated?"

23 You have to tell the truth.

24 And then you tell the truth, and then you're
25 out there: You're the rat, you're the

1 (indiscernible). Oh, we can't touch that one.

2 I'm now 70 years old, and I've been asked on
3 interviews --

4 When I score 100 and I get Number 1, and
5 I know who to call in Albany, to say, Am I going to
6 be interviewed if I'm Number 1?

7 Unless they're veterans, you don't have to
8 interview me.

9 -- and so I'm getting more interviews, and
10 what's the question?

11 You've got a lot of shaky background here.

12 Why do you have so many jobs?

13 It's called "survival."

14 My most recent job was two years. I worked
15 two years for a president of the bus drivers' union.

16 They were doing 100th anniversary for their
17 union. I knew the president from community
18 activity.

19 I did that for two years.

20 The day he had open-heart surgery, which was
21 an emergency, one of his officers came in and said,
22 We don't need you because he's not here.

23 And then it's another gap.

24 Okay?

25 So, just so you get the picture.

1 I hope it helps somebody else, because
2 I could tell my family, they've lived this story.

3 My daughters had to make college choices
4 based on my low income.

5 Yeah, there's financial aid.

6 My daughter got into Boston College, her
7 first choice. Financial aid was 3,000 of a loan.

8 She couldn't go there.

9 She ended up going to Binghamton, ended
10 loving it.

11 My other daughter had national merit, she
12 could pick and choose where she went. But she
13 wanted to go to law school.

14 And she had to go to work first, but that
15 kills any financial aid, because now you worked.

16 So, it's really -- it has repercussions for
17 everybody.

18 And, right now, my house is in foreclosure.
19 I was hit with "Sandy" storm.

20 It's not "Queen for a Day," an old show they
21 used to have, but, I just can't win.

22 And I said, I'm gonna just come and tell it,
23 and it is what it is.

24 Prior to this, I wouldn't want it to go
25 public.

1 And when we had this problem back in '92, as
2 a coalition, I know the union said, Come on, all of
3 you go together.

4 But all we could see is, "The Daily News,"
5 "15 judges, knocked out."

6 And we just thought it would ruin our
7 reputation.

8 Well, mine is ruined.

9 And, at 17, I worked as a telephone operator.

10 Joined VISTA for a year. And from VISTA,
11 I met other people that were in college. I took a
12 year off. And they told me about financial aid.

13 I put myself through school.

14 I have a mother that was a high school
15 dropout, and pregnant at 15, married at 16, and
16 4 kids by 23.

17 And I'm telling you, I am the first female in
18 my family that even graduated college.

19 And now look at me.

20 But, thank you.

21 I'm sorry, I took up more than my 10 minutes,
22 but, sorry.

23 MARIE GUERRERA TOOKER: That's okay.

24 Hi. I would say good morning, but that was
25 at 10:00 this morning.

1 But since I've been here now, very long time,
2 I --

3 [Laughter.]

4 MARIE GUERRERA TOOKER: -- have witnessed
5 remarkable, wonderful people.

6 You, this Assembly, for the first time
7 ever --

8 I have spoken at the Moreland Commission,
9 county legislation, town board meetings. Thrown out
10 of meetings.

11 -- I have never seen the most compassionate,
12 caring, loving, giving group of government Senators
13 and Assembly.

14 I -- you're a beacon of hope, and I am so
15 grateful, so grateful.

16 It was a pleasure to be here all that time,
17 to see you act, and, with all this wonder,
18 I just -- I'm in awe.

19 And I'm -- I know now, that New York has a
20 chance. We have a chance.

21 Even though I'm not happy with the Governor,
22 because the Governor has covered up many crimes in
23 my case, and I have caught him taking campaign
24 contributions, not doing good things, covering
25 things up, I know that we have a chance now, by

1 being in this room today with all of you.

2 So I am very grateful.

3 So thank you, with all of my heart, and God
4 bless all of you.

5 I didn't fully write my speech about my life
6 because it said not to talk about your life.

7 But I -- I wrote that I am a victim of the
8 "Suffolk Crime Family."

9 And just last Friday, our presiding officer,
10 legislative, Duane Gregory, actually described the
11 "Suffolk Crime Family" as "the Sopranos," publicly.

12 And as you know, Suffolk County has an
13 indicted DA, the chief of police was convicted, the
14 Nassau County supervisor -- executive was convicted.

15 We're having all of these corrupt players,
16 bad actors, being caught.

17 So there is hope.

18 But with women like me, who are
19 whistle-blowers, retaliation is out of control.

20 I'm already marked as this crazy woman, who
21 speaks out. And anything I do, I'm targeted,
22 especially law enforcement.

23 Whenever I go for help, I mean, I've gone
24 from, them killing my animals, to putting me in --
25 falsely, in jail, to beating me up in front of my

1 children, to being undressed from a federal judge.

2 So I experienced a lot, and all because
3 I chose to build my dream that I had since I was a
4 little girl, to take care of orphans and
5 underprivileged children. And I had this beautiful
6 134-acre farm, that became worth \$100 million, and
7 I chose not to sell. I chose to follow my dream.

8 And the powers to be wanted this beautiful
9 piece of land, and they came to get me.

10 And my father, unfortunately, was the ring
11 man. He was the ring man that brought all the
12 wolves to me, who paid bribes, kickbacks, favors to
13 all these powerful people, and they took me down,
14 and they tried to destroy my life.

15 But the most important that they didn't do,
16 that they tried to steal my children.

17 And most women today, that are like me, they
18 lose their children.

19 So God had mercy on me, I did not lose my
20 children.

21 But that's why I have the strength to carry
22 on, to help women like me, who do lose their
23 children, which is the most horrific thing that
24 people are not aware of.

25 When you talk like I do, and speak like I do,

1 and tell on them, your children are targeted, and
2 they come for your children.

3 And, you're not -- you -- you're
4 dysfunctional. It's a hidden disability, that
5 you're just -- can't function.

6 So harassment just doesn't come on a sexual
7 level. It comes in all forms, and it's -- could be
8 in your own backyard.

9 I call it "war of the land."

10 134-acre farm, I had war in my own backyard.

11 So, I just wanted to start with that.

12 So I want to -- harassment comes in many
13 forms, but the most horrific nightmare of torment is
14 the hidden ones; the hidden sexual comments, the
15 hidden groping, the hidden kiss, the hidden terror
16 to shut you up when you whistle-blow on them.

17 Like Senator Graham said, "When they want to
18 silence you, they kill your cat or puncture your
19 tires."

20 Well, with harassment, they do more than
21 that. They degrade you to a level where you become
22 dysfunctional.

23 Men instill fear in you, belittle you, so you
24 are so beaten down, you just want to crawl under a
25 rock and hope it stops.

1 Reality is, it never stops, when you're a
2 strong mother like me who was a threat to the
3 establishment.

4 Harassment continues until you are so broken,
5 you just cannot back -- get back up.

6 We are in such a state of fear to lose our
7 children and home, we bow down to the abuser, and he
8 gets away to abuse the next victim.

9 It is not always just one man harassing you
10 or asking you for a date or making sexual moves on
11 you. Many times it is more than one.

12 For instance, when the police are called to
13 your home, and, instead of them helping you, they're
14 making fun of you, making sexual remarks, to a
15 level, you just give up, while the police are
16 protecting the person you are calling for help from.

17 You are so beaten down, the crimes against
18 you are diminished, and the women (sic) is usually
19 in more danger, because it becomes known to the
20 world that she has no protection.

21 Today, I am forever grateful that the tide is
22 changing, and this new administration is finally
23 putting their foot down and protecting women.

24 Let's face it, God made women beautiful, and
25 men sometimes just cannot help themselves.

1 I would have to say, by experience, most
2 women in their lifetime have been harassed more than
3 once, and they usually just deal with it at that
4 moment in time.

5 The word "harassment" is not strong enough to
6 describe the hidden terror that everyday women,
7 single mommies, drug-addicted women, and women who
8 are at their lowest, who are abused by the system,
9 especially by law enforcement and judges.

10 It's men out there that have a political
11 agenda, to degrade you, to gain power, and to get
12 benefits from harassing women, like stealing your
13 children, or stealing your home, or allowing to
14 continue to sell drugs and traffic women.

15 These men who are protected by the corruption
16 that has plagued our country are out of control,
17 need be prosecuted to the fullest, to send a message
18 that women must be protected from the bully.

19 Local police would solicit prostitution, and
20 make a drug-addict woman in the streets give him a,
21 and I -- I'll say it, but it's a little crude,
22 blowjob to get off an arrest.

23 The police would then take the drugs from the
24 prostitute and sell them.

25 The cops got sexually aroused, and then made

1 money.

2 This is one example of hidden evil that women
3 suffer in the hands of silent harassment.

4 In today's world, sexuality is exploited,
5 unbridled, seductive, and considered glamorous in
6 the media, more and more predominant than ever in
7 history.

8 In the olden days, women did not have fake
9 nails or cosmetic surgery. Women were just natural,
10 working hard to survive, milking a cow or planting
11 corn.

12 Women are so discriminated against throughout
13 history, and are still not fully protected today.

14 Although women have come a long way, there
15 are categories of women under the new laws who are
16 still not protected.

17 "Workplace" needs to be changed to "anywhere
18 women are harassed."

19 "Sexual harassment" needs to be changed to
20 "any form of degrading a woman," especially when it
21 happens from law enforcement or judges.

22 Without hesitation, judges, if they harass a
23 woman, need to be impeached.

24 So you ask, what we should do?

25 The first step is to take a good look at the

1 judiciary. Enough is enough with the corrupt judge.

2 I want to speak on behalf of what I witnessed
3 with women, especially the ones who cannot speak for
4 themselves, because they died.

5 Her name was Danielle (ph.), who I met in the
6 dark, in my driveway, on property I own, that was
7 under siege by drug deals and prostitution, fully
8 protected by law enforcement.

9 I asked her what she was doing in my
10 driveway, and she started crying. She told me she
11 had two sons, and had to leave them and her home
12 because her husband was abusing her and had
13 protection by someone powerful.

14 She became a drug addict and lived in the
15 streets, and serviced the police to survive.

16 How does a mommy lose her two sons, walk the
17 streets, homeless, in today's world?

18 Why?

19 Because law enforcement and the court system
20 protected the abusive man.

21 I believe Danielle was killed in the streets
22 with a hotshot because -- because the police -- by
23 the police, because she was giving me evidence and
24 telling on powerful people.

25 I spent my life as a philanthropist, helping

1 the poor. I probably saved over 1,000 people.

2 Many people have come to me to tell me their
3 stories. That's why I'm such a threat to the
4 establishment.

5 Other women who came to me, like Bianca, who
6 overdosed and died.

7 She was giving me evidence of law enforcement
8 selling drugs and running the prostitution ring on
9 the east end of Long Island.

10 Five days before she died, she reached out to
11 me and was afraid for her life.

12 I could not save her, because the men were
13 too powerful, and I had nowhere to go to help her,
14 because it was the local authorities that were
15 involved.

16 The workplace is not always in a building.
17 It could be in a hay field, on a farm, or in the
18 police station, or right in a courtroom filled with
19 men before a sadistic judge, a theatrical play,
20 where the script has been written way before you got
21 to the podium.

22 These judges and attorneys already colluded
23 and marked you to be a target of their sick,
24 sadistic actions of terrorizing women, so they can
25 steal your children and home.

1 Our God-given rights have been plagued with
2 corruption on every level of government, and
3 completely ignored by society.

4 Congratulations to all who were elected
5 during the 100-year anniversary of women's rights.

6 I pray to God that you protect all women, and
7 bring hope to the women who are still suffering,
8 oppressed, and change the laws to add the hidden
9 harassment to the target of women that are abused in
10 their own backyard, in the police department, or in
11 the courtroom.

12 In my experience, when a sick, sadistic judge
13 wants to punish you, and steal a 134-acre farm that
14 was slated for a philanthropic endeavor to protect
15 children and veterans, they abuse you and degrade
16 you, instill fear in you, to shut you up, so you
17 cannot defend yourself in a court of law.

18 When the act is so horrific, the average
19 person cannot believe that a federal judge, like
20 Judge Grossman, can be so sadistic, and say in a
21 room filled with men --

22 And I was going to do this, but, you guys are
23 just so wonderful.

24 -- "Take your sweater off for a second, and
25 hang out."

1 "Take your sweater off for a second and hang
2 out (demonstrating)."

3 We all know what a "second" is, and "hanging
4 out" means to protrude, to stick out.

5 No woman should ever experience this kind of
6 harassment by a judge, leaving her no protection as
7 he degrades you as a woman, using his powerful
8 position to instill fear in you, and to shut you up
9 so you cannot defend yourself.

10 I would never go back in his courtroom after
11 what he did to me.

12 Women need to be protected from men in power,
13 and Judge Grossman needs to be impeached,
14 immediately.

15 I was lucky, this abuse is on audio.

16 Many women like me will never get protected,
17 because it is covered up by other judges and law
18 enforcement.

19 So my question to this Committee is: Who
20 will sponsor a petition of remonstrance to have
21 judges impeached if they sexually harass a woman in
22 a court of law, and to change the laws to protect
23 women from men with powerful positions who have
24 immunity?

25 Immunity needs to be taken out of the

1 equation.

2 Thank you so much for allowing me to speak
3 today on behalf of all women who suffer in the hands
4 of powerful men who are protected by our corrupt
5 system.

6 And I hope and pray the laws are changed to
7 protect us, and the future of women's rights, so
8 men, like Judge Grossman, lose their powerful
9 position, and never hurt mommies like me again.

10 Thank you.

11 CHRISTINE REARDON: Good evening, and thank
12 you, everybody, Assemblymembers, for allowing me to
13 speak.

14 My name is Christine Reardon.

15 My issue has to do with my former employer,
16 the MTA.

17 I began my career at the MTA, Long Island
18 Railroad, in 1983, and worked there for 27-plus
19 years in various positions, including the manager of
20 benefits administration.

21 In 2005 I opted to exercise my seniority,
22 passed qualified -- qualification exams over a
23 one-year period, and became a crew dispatcher.

24 I opted to make this career move due to the
25 pressure I was under as a manager; the inflexibility

1 of my managerial schedule, and to better facilitate
2 the IVF process my husband, Dennis, (motioning) and
3 I were involved in.

4 After four years, struggling to achieve
5 pregnancy, I gave birth to our beautiful daughter,
6 Chavon (ph.) Faith (indicating), on April 8, 2010.

7 I remained on maternity leave until August,
8 when I returned as crew dispatcher. I was assigned
9 a male trainee, who made a verbal threat against me
10 on October 8, 2010.

11 I immediately reported this threat.

12 But due to the manager's inappropriate
13 handling of the harassment, I went over their heads,
14 to their supervisor, in an attempt to have the
15 threat appropriately addressed.

16 My manager's retaliation for doing so
17 included harassment, bullying, and filing false
18 charges against me.

19 My research, with the assistance of my shift
20 supervisor, to challenge those charges prompted my
21 managers to collude in misrepresenting my job
22 performance.

23 And when I chose to go to trial to refute
24 those charges, those same managers sandbagged me
25 with unspecified accusations.

1 They refused to reveal to me the details of
2 those charges, and they threatened me with loss of
3 pension, loss of my husband's pension, and physical
4 arrest, if I did not sign a scrolled one-sentence
5 resignation that very day.

6 I was terrified.

7 And under such unexpected and unwarranted
8 threats, I resigned under the most mental duress
9 I have ever experienced.

10 The writing was on the wall.

11 I had seen how the managers operated in the
12 past, and I feared further retaliation.

13 Despite a verbal assurance that my
14 resignation that very day would not impact my
15 receiving my pension and other benefits, I was later
16 threatened with pension loss, and illegally denied
17 payment of accrued vacation time.

18 My husband and I were devastated, and fearful
19 to challenge the juggernaut of collusion and
20 retaliation.

21 This is the typical bureaucratic bullying
22 endemic at the MTA.

23 Three months later I was contacted by the MTA
24 Office of the Inspector General, asked if I would
25 serve as a witness to colleagues' complaints about

1 the misogynistic work culture, replete with sexism,
2 racism, threats, pornography, and retaliation.

3 The MTA OIG was given my name as someone who
4 experienced the same treatment that they were
5 bringing to the OIG's attention.

6 I didn't call the MTA OIG; they called me.

7 We were elated to have an opportunity to
8 reveal what happened to me to a State entity, and
9 that could provide me with a fair and full
10 investigation, and offer protection from further
11 retaliation from the railroad.

12 The MTA Office of Inspector General did
13 nothing of the kind.

14 This 8-year runaround by that agency
15 includes:

16 An initial promise-of-protection agreement,
17 which they reneged on only two days later;

18 An initial investigation, with as many as
19 12 other witnesses, that the MTA OIG decided to
20 forgo.

21 A re-engagement with the MTA OIG, only after
22 we reached out to numerous elected officials and an
23 MTA board member, to request a review by the MTA
24 OIG.

25 That initial re-engagement and interview was

1 also discounted, until we garnered the support of
2 Congressman Pete King.

3 Suddenly, the MTA OIG expressed an interest,
4 prompted by the Congressman's advocacy.

5 Finally, the MTA OIG agreed to interview
6 witnesses we had proposed, and we were again once
7 hopeful. But another year went by, with little or
8 no movement, and with us doing all the heavy
9 lifting, and continuing to seek out elected
10 officials to highlight the injustice of what was
11 done to me.

12 More than four years after targeting me for
13 exposing the harassment that I and my colleagues
14 were subjected to, the MTA OIG was still stalling,
15 and ineffectively investigating my case.

16 We decided to reach to our witnesses, to
17 compile statements of what they had told the
18 MTA OIG, which included their assertion that I did
19 nothing wrong, and did not deserve the treatment
20 I received, which, in essence, was constructive
21 termination, as well as their testifying to the type
22 of harassment and abuse of women that this forum is
23 addressing.

24 We deemed this outreach to our witnesses
25 necessary, since none of our witnesses were asked to

1 sign statements at the time of the interviews.

2 Can you see the plot thickening?

3 Does it sound familiar?

4 This was years before the #MeToo movement
5 served as a catalyst for where we now find
6 ourselves.

7 Time is up.

8 Only one week after the last testimony was
9 received by Congressman King and sent to the OIG,
10 suddenly, there was movement.

11 Coincidence?

12 After four years of being discounted, lied
13 to, and misled, the lead investigator at the
14 inspector general's office, in a series of phone
15 conversations, all of which are documented,
16 discussed the investigation, his findings,
17 reiterated the demands we were seeking, and told us
18 that the railroad was willing to negotiate a
19 settlement in close accord with all items of
20 compensation that I had been seeking since I was
21 bullied out of my job.

22 Well, here I am, still waiting all these
23 years later.

24 All I have received has been denial of any
25 compensation, reversal of what I was told, and a

1 fallacious formal report, which I was told would not
2 be necessary, which we (indicating) had to push for
3 when the railroad reneged on what the MTA assured us
4 would occur.

5 That formal report was compiled after the
6 MTA OIG met with the railroad, and colluded to
7 produce a false, biased, and misleading tome, which
8 did not, by any interpretation, represent what I had
9 been told.

10 Despite the MTA OIG assuring us that we would
11 be part of the process of investigation, and that we
12 would be permitted to review and comment on the
13 report before it was finalized, that never occurred.

14 Once again, I was silenced and misled.

15 All parties involved know that what they did,
16 in collusion to continue this attack on me, this
17 could have been resolved eight years ago when the
18 MTA OIG contacted me to be a witness to what was
19 done to me and my colleagues.

20 When the MTA OIG and the railroad colluded to
21 circle the trains, they derailed justice, and many
22 representatives of the state government, who
23 promised us an unbiased venue, were at the controls.

24 On February 19, 2015, a 14-minute
25 conversation with the special counsel for the OIG,

1 assuring us that the railroad was willing to end
2 this debacle with a fair settlement, well, that
3 should be evidence enough.

4 In that conversation, he assured us that the
5 settlement would be swift; that we would not have to
6 re-present our case; that entities don't settle
7 unless there was good cause to do so; that the
8 settlement would be close, if not exactly, in line
9 with all my demands for appropriate compensation to
10 be made whole, all of which were discussed in
11 detail.

12 When my husband, Dennis, asked the special
13 counsel what his report stated that would induce the
14 railroad to offer a settlement, he kindly told us
15 that a formal settlement was not necessary, because
16 I didn't need to be mentioned in such a document,
17 and didn't need my name dragged through the mud.

18 What a guy, what compassion, to spare me any
19 more emotional pain.

20 What a crock.

21 His only desire was to stall us until we went
22 away, and to spare the MTA OIG and the railroad from
23 any further scandal.

24 What are they waiting for?

25 For my story to be on the evening news?

1 Can they hear me now?

2 Additionally, we started to engage with the
3 Governor's representatives in October 2014 when we
4 began to see the writing on the wall.

5 Our novice experience and our naïveté in this
6 theater of the absurd led us to believe that, with
7 the spotlight of Governor Cuomo's purview, we would
8 be treated fairly.

9 As the outspoken defender of women rights in
10 New York, and as he was approaching his second run
11 for governor, we thought someone would be
12 interested, and they were, but only in leading us
13 along, and then dropping any involvement, as we
14 pursued each representative.

15 There initial cordial engagement morphed into
16 no return phone calls, e-mails, or any other type of
17 response, despite their assurances of their concern.

18 Now, four years later, and after working our
19 way up from the basement of Governor Cuomo's
20 hierarchy, to the penthouse offices of Lieutenant
21 Governor Hochul, and a number of well-known and
22 outspoken administrative officials, all supposed
23 women's advocates and cheerleaders, they have
24 continued to delay and deny me a venue to be fairly
25 heard.

1 Fortunately, we have copious files of all our
2 e-mail conversations, and irrefutable documentation
3 of all our phone conversations, conferences, and
4 refusals to follow up on their assurances of the
5 Governor's concern.

6 Conversely, our recent contact, one of the
7 Governor's counsels and spokesperson, has referred
8 my case to a third entity.

9 In fairness, we are respecting the integrity
10 and confidentiality of that process until it is
11 completed.

12 We will comply with our recent engagement
13 with this investigative agency, as we have done with
14 agencies and individuals; all those agencies, often
15 to our detriment, who are mandated to adhere to a
16 code of ethics, that have fallen woefully short
17 throughout this nine-year attack on me.

18 Our faith has often been misplaced, but we
19 will go through this process with the hope that they
20 have spiritual awakening, and finally provide fair
21 treatment and long-delayed justice.

22 As the former U.S. attorney general for the
23 Southern District of New York, Preet Bharara, is
24 fond of saying, "Stay tuned."

25 We may have been naive, but we were

1 persistent, consistent, and, although jaded, have
2 steadfastly advocated to be heard treated -- and to
3 be heard and treated fairly.

4 And this summary is my short version.

5 Thank you for this opportunity for review.

6 And the bottom line is:

7 This is not an employment issue as the MTA
8 would like to spin it.

9 This is an issue of a state agency colluding
10 with another state entity to silence a woman who was
11 harassed and threatened, and robbed of her 27-year
12 career.

13 The shell game is over.

14 They keep shifting responsibility back and
15 forth between the MTA OIG, the Long Island Railroad,
16 the MTA board, and the Governor's representatives,
17 and they should all be held accountable for this
18 miscarriage of justice by our governor, the champion
19 of women's rights.

20 The support of my family, and our belief that
21 God is always watching, are the only things that
22 have sustained me these last eight years.

23 I very much appreciate your time and concern,
24 and look forward to a continuing dialogue with
25 concerned individuals.

1 Thank you.

2 DENNIS REARDON: She has some suggestions.

3 CHRISTINE REARDON: I also do have some
4 suggestions, if I may.

5 Transparency, and allowing individuals who
6 are the victims of harassment, to be privy to the
7 investigation, and the statements made by those who
8 are covering up their egregious behaviors to protect
9 themselves, in real-time.

10 Victims should not be forced to wait several
11 years, and never hear the rebuttal and fallacious
12 rhetoric during the process of investigation, and
13 not after the case is closed.

14 Victims should be informed about anyone and
15 everyone participating in the investigation, and
16 should be given the opportunity to have their
17 witnesses accompany them to those meetings.

18 Also, remove the protection that the MTA
19 Inspector General's Office has in running their own
20 investigation, when they are so, so incredibly
21 devoid of integrity.

22 The New York State Inspector General does not
23 have legal authority over the MTA Office of
24 Inspector General.

25 And, obviously, to increase the number of

1 women in lead positions on these boards.

2 We are buoyed by the fact that, presently,
3 our attorney general, as well as the New York State
4 Inspector General, are women with extensive
5 experience in investigations.

6 Any individual given the authority to protect
7 the victims of the kind of abuses we are here to
8 discuss, should be independent from influence by any
9 elected official or lobbyist with deep pockets, or
10 connected to the deeply entrenched "old boys' club"
11 culture, and needs to be thoroughly vetted prior to
12 their appointments.

13 The standard excuse of confidentiality, and
14 ongoing investigation, is an often-used ploy to
15 avoid accountability and transparency.

16 "Confidential" is a euphemism for
17 clandestine, covert, cunning, calculated collusion
18 to cover up rather than expose.

19 Harassment and abuse of women grows like
20 bacteria when kept in the dark.

21 And as you cast a spotlight on the deeply
22 entrenched agency and bureaucratic shell game,
23 prepare yourself for finger-pointing and denial.

24 Don't give up out of frustration and
25 exhaustion.

1 That is what the railroad and the MTA OIG
2 hoped we would do, but we have not.

3 Thank you so much for this opportunity to
4 bring to light my story of the abuse that I was
5 subjected to for confronting the harassment of women
6 in my office.

7 Thank you.

8 SENATOR BIAGGI: Thank you all for sharing
9 your stories with us this evening, and thank you for
10 staying here until such a late hour, and being so
11 patient to do so.

12 DENNIS REARDON: May I interject something?

13 SENATOR BIAGGI: Oh, you may.

14 DENNIS REARDON: You know, when I walked in
15 here, I was told by friends of mine, "You're walking
16 in with a pork-chop suit into the lion's den."

17 But I didn't experience that.

18 SENATOR BIAGGI: Thank you.

19 DENNIS REARDON: I experienced warmth,
20 courtesy.

21 I've had some phone calls with some of the
22 people here, and they couldn't have been any more
23 engaging or gracious.

24 And to get M&Ms and popcorn, on top of it,
25 for my daughter, you're a winner, and I appreciate

1 it.

2 But I came in, and I can't really identify,
3 obviously, with the perilousness that these ladies
4 have felt in their lives, but I've witnessed it,
5 I've stood on the outside.

6 And as a man, unable to protect my family,
7 I feel a different sense of powerlessness.

8 I respect this gentleman on the panel.

9 I wish that there were more men in the room.

10 I guess it was kind of perceived that this
11 was woman's issue, and it certainly is. But the men
12 in their lives who watch them suffer, for 8 years,
13 and how it prevented us from moving on with our
14 childhood-planning plans.

15 Without going into details, Christine
16 mentioned the IVF process, we had more plans to
17 continue.

18 But with harassment, and a constant threat of
19 losing your livelihood, and being attacked in the
20 media, which is what they did, where are we to go?

21 I worked in the field as a substance-abuse
22 counselor, among other jobs, and I saw the
23 powerlessness of women who were abused by men who
24 were out of control. Borderline personalities,
25 sociopaths; "anti-social personalities" as they call

1 them now, because we can't call them "sociopaths,"
2 because that's what they are.

3 And I saw women suffer for years and years
4 and years.

5 And then come to the rooms to get help, and
6 be victimized by men in the rooms, who still weren't
7 really turning their lives around, but were using
8 that center of safety to victimize women.

9 It is atrocious, it is obnoxious.

10 What's going to change?

11 Severe punishment, censure.

12 40 years ago, in an early social-work course
13 I took, the professor who was a disabled gentleman,
14 who could barely talk, gave the most amazing
15 lectures, and people stood in awe.

16 We still need to stand in awe of everybody
17 who's been disabled or disempowered or beaten up,
18 and clear up the lens. The lens of this
19 misogynistic culture is unbelievable.

20 Men have to clear it up as much as the women
21 who confront it.

22 It's not their responsibility; it's our
23 responsibility, as fathers and brothers.

24 I'm the father of four girls, I'm the brother
25 of three young women, and I would never accept this

1 in my life.

2 I'm six-foot-four. You're not going to abuse
3 me, you're not going to harass me, you're not going
4 to threaten me, but you can do that to the women in
5 this room, until men in the workplace, who are
6 courageous enough to stand up and say, Stop it.

7 Those sex-counter groups, the harassment
8 groups, who runs it?

9 Guys who are really not very aggressive and
10 don't confront people.

11 Don't confront anybody.

12 I'm sorry, if you feel guilty, there's a
13 room -- they say in the rooms of AA, "If it doesn't
14 apply, let it fly. And if it does, you better
15 duck."

16 Duck, but come back and get healthy.

17 If you're not going to get healthy, and the
18 men aren't doing it, it's our responsibility as men.

19 I'm so glad to be here.

20 I'm so honored to be the husband of a wife
21 who is proud and courageous, but was intimidated and
22 threatened in a place, there were all men in that
23 office.

24 And when I suggested I would go in and
25 perhaps address it in a slightly inappropriate way,

1 I was suggested that they would fire me, and I would
2 be taken out in handcuffs.

3 I deferred to what everyone said.

4 I've been in recovery, by the grace of God,
5 for 38 years, and I've learned how to control my
6 behaviors, and know I can only change what I do.

7 That's why we're here.

8 We fought this for 8 years, all the way up to
9 the Governor's people.

10 And now we're here with you.

11 Thank God you gave us this opportunity.

12 CHRISTINE REARDON: Thank you.

13 DENNIS REARDON: And I pray for you and the
14 men in your lives that could maybe start to step to
15 the plate for a change.

16 Thank you.

17 CHRISTINE REARDON: Thank you.

18 CYNTHIA LOWNEY, ESQ.: And I would also like
19 to add that I have been to many, many meetings,
20 public meetings. And I know that they usually go on
21 long and long, and usually there's nobody left at
22 the end.

23 So I want to thank all of you for staying,
24 because it's been long, and it's been very hard for
25 all of us to listen to things that we can't change.

1 We're sitting there, it's like reliving our
2 problem through other people.

3 It's really been torture in a way, but thank
4 you for being so compassionate without being
5 patronistic, maternalistic, or some -- you know,
6 giving some kind of phoney responses, because that's
7 what they do a lot.

8 And by the way, that's the thing they really
9 do at transportation: they're gonna you this and
10 give you that, but they're just yessing people, and
11 nothing gets done.

12 I really get the sense you're going to take
13 it all in and do something.

14 So thank you very much.

15 ASSEMBLYWOMAN SIMOTAS: Thank you so much.

16 And it's important that society clears the
17 lens; not men, not women, but our entire society.

18 Thank you so very much.

19 ASSEMBLYMAN CRESPO: A couple of quick
20 comments.

21 Appreciate the mention on the "salary history
22 ban" practice, the legislation that then-public
23 advocate Tisch James forwarded to city counsel.

24 It's a piece of legislation that I carry in
25 the state, and we are looking forward to passing

1 that bill this year again, and seeing it law.

2 And I appreciate all of your comments in
3 regards to the work of all of my colleagues here.

4 And I must say, I appreciate your candor, as
5 a husband, as a man, willing to say that we all need
6 to do better.

7 I will say that many of our colleagues in the
8 State Legislature, many of the men that were here
9 earlier, chairs of committees, that have been a part
10 of these conversations for years, advocating for
11 change and for these issues to be addressed.

12 It's been stated over and over, these
13 hearings have taken too long, but, we're here to do
14 the best we can.

15 And we poured, not only our political and/or
16 our legislative time towards addressing these issues
17 the right way, but I think, in a moral sense, how
18 could we not want to hear these stories, and care
19 deeply about the impacts.

20 Again, we're all family members; we all have
21 daughters, we all have sisters, moms, and other
22 women in our lives, that matter.

23 And, we need to make sure that we create an
24 environment, and as many of you have stated, not
25 just in the workplace, but around the workplace,

1 where sexual harassment is just not accepted, and
2 not occurring. And where it does, that we have
3 policies to address it.

4 So we really appreciate your testimony, and
5 also the fact that you've made recommendations that
6 we can review, and take a look at.

7 And it's not lost on us, that we have to also
8 go back to other agencies that are not maybe
9 governed by some of our legislation.

10 But the judiciary is one that we also need to
11 take a deeper dive into, what the practice is
12 within.

13 So, really appreciate all your testimony.

14 DENNIS REARDON: Can I just share one more
15 piece that was glossed over, because we were both so
16 nervous?

17 Journalists are one of the most powerful
18 advocates in our country, the media.

19 Unfortunately, when people who are doing this
20 do not have the super-ego with a conscience to look
21 what they've done, they only understand,
22 unfortunately, severe censure and punishment that's
23 effective and carried through.

24 There are a number of journalists, in all the
25 newspapers, male and female, all ethnicities, who

1 are starting to really address and put people's feet
2 the fire.

3 That's, unfortunately, what many of them
4 need, but thank God we have it, because, with that
5 spotlight on things, they squirm. It's like putting
6 a magnifying glass, when you were a kid, on the poor
7 ant, which we shouldn't do anymore, but I did as a
8 kid.

9 When that spotlight is put on these people,
10 they squirm, they point fingers, and they throw each
11 other under the bus.

12 We need more buses, and we need more
13 magnifying glasses, and I'm glad you're here to do
14 that for us.

15 Thank you.

16 SENATOR BIAGGI: Thank you.

17 So as I began to say before, I hear you, and
18 I understand, when you discuss and say, and really
19 underscore, the abusive system that our government
20 has created, and has a resistance to dismantling.

21 One of the reasons we're here is to do that.

22 And one of the reasons why I ran for this
23 seat was exactly the reason that you're describing,
24 because, for too many years, the people in my
25 district were not put first.

1 And the entire point of public service is to
2 serve people, not to serve ourselves.

3 And similarly situated, when I ran for the
4 seat that I ran for, I was threatened, and I was
5 told that my life would be over, and my career would
6 be over, and I was crazy, and I would never win.
7 And, oh, my goodness, what are you doing?

8 And, along the journey, to this very moment,
9 was attempted to be silenced.

10 And I think that one of the most interesting,
11 and really spectacular characteristics of human
12 beings, is resilience.

13 And each and every one of you demonstrates
14 that.

15 And, it's important to not stay silent, and
16 that when you see something that doesn't seem right
17 or doesn't look right, you speak up and you speak
18 out, no matter who tells you not to.

19 And I'm grateful that we have your testimony
20 today.

21 I think that it's not lost on me that we
22 started this day with one of my questions being:

23 Well, who does the MTA and the judiciary
24 report to? Who's overseeing those two bodies?

25 It seems curious that they're not under the

1 purview of GOER.

2 But I think that these are the exact types of
3 opportunities that couldn't have happened before.

4 And, because we are in a transformational
5 moment of government and leadership, and because we
6 are moving away from silencing people, even if
7 there's still a strong attempt to silence people who
8 speak up, this space that we've created, this space
9 that our leadership has allowed us to create, is
10 very special, it's very important.

11 And we are, and my -- (indiscernible) will
12 just speak for myself, I am committed to making sure
13 that the change does happen, even if it's just inch
14 by inch.

15 So thank you so much.

16 We hear you, and we appreciate all of your
17 recommendations, and the things that you've said to
18 us today.

19 MARIE GUERRERA TOOKER: Thank you.

20 God bless all of you.

21 Thank you so much.

22 CYNTHIA LOWNEY, ESQ.: Wait, are they done?

23 MARIE GUERRERA TOOKER: Yep.

24 CYNTHIA LOWNEY, ESQ.: Is that it?

25 I thought the others would ask a question.

1 MARIE GUERRERA TOOKER: Nobody's going to ask
2 us anything.

3 SENATOR BIAGGI: Councilwoman
4 Helen Rosenthal.

5 ASSEMBLYMAN CRESPO: Just stretching.

6 HELEN ROSENTHAL: Keep stretching. You're
7 knocking it out of the ballpark here.

8 I'm sure you're -- I'm feeling emotional, and
9 I'm sure you're feeling emotional as well.

10 This has been a hell of a day, just
11 phenomenal testimony.

12 Good afternoon.

13 My name is Helen Rosenthal. I represent the
14 Upper West Side in the New York City Council.

15 I'm Chair of the Committee on Women and
16 Gender Equity. And, I often say that the real title
17 of the committee should be, that it is the Committee
18 of Men's Bad Behavior.

19 And, I'm hoping to work myself out of a
20 committee.

21 I thank you so much, to Chairs Biaggi and
22 Crespo and Walker, for convening the hearing on
23 sexual harassment in the workplace, and for staying.

24 And, Senator Niou and Assemblymembers Simotas
25 and Simon, thank you for staying.

1 There are a lot of people who are watching
2 this, they might not be in the room, and they're
3 noticing that you're still here. And, it means a
4 lot to the public.

5 Today's hearing, in fact, gives the public
6 another opportunity to hear directly from harassment
7 survivors about the real-life impact of current
8 laws, or the lack of current laws, so that the
9 failures of the current system can be brought to
10 light, and addressed through legislation.

11 It also gives the public an opportunity to
12 hear from government officials responsible for
13 addressing sexual harassment in the workplace,
14 whether it's in government or the private sector.

15 Your joint hearing in Albany in February, the
16 first state-level public hearing on workplace sexual
17 harassment since 1992, revealed the necessary -- the
18 necessity of comprehensive systemic improvements to
19 workplace culture.

20 Sorry.

21 I commend you for this second hearing.

22 I heard elected officials ask the
23 administration, good, commonsense questions about
24 accountability, the need for trauma-informed
25 investigations, and as well as process, numbers, and

1 transparency.

2 And I heard you asking about, how complaints
3 are accommodated during an investigation.

4 You dug into the details; your questions were
5 thorough, smart, probing, rigorous, and spot-on.

6 And I have to say I was disappointed, when
7 the administration looked at you, in particular,
8 Senator Biaggi, like you had three heads.

9 And I just want to remind you, that you have
10 one head, and the person sitting here had three
11 heads.

12 SENATOR BIAGGI: Thank you.

13 HELEN ROSENTHAL: I didn't say that out loud,
14 I thought it. But I didn't say it out loud.

15 The public is very grateful to each of you
16 for persisting, and I support you.

17 The personal, professional, and societal
18 effects of sexual harassment and discrimination in
19 the workplace are staggering.

20 Harassers interrupt the lives of survivors.
21 They stand in the way of their ability to earn a
22 living, and rise professionally. They intimidate,
23 coerce, manipulate; they attempt to strip away
24 survivors' dignity.

25 And due to the longstanding pervasiveness and

1 culture of silence around discriminatory workplace
2 behavior, we can never fully know the number of
3 women who have been driven from jobs because of
4 sexual harassment, or the pain and suffering that
5 harassers have inflicted, or the talent, the sheer
6 talent, that has been drained from workplaces and
7 industries.

8 Thanks to the brave voices of so many
9 survivors and advocates who are challenging the
10 status quo, we are on the way to eradicating this
11 toxic culture.

12 Sunlight is the best disinfectant.

13 We owe these survivors not only gratitude,
14 but action.

15 As the State considers reforms on sexual
16 harassment, they should look at New York City as a
17 model. We have led the way in establishing
18 sexual-harassment practices and policies.

19 Last spring I was proud to play a leading
20 role in the passage of the Stop Sexual Harassment
21 Act in New York City.

22 The act requires enhanced training for all
23 public- and private-sector employees;

24 Provides recourse for people who have been
25 harassed and discriminated against, through

1 establishing a trauma-informed statute of
2 limitations;

3 And increases transparency and accountability
4 with city government, the largest employer in the
5 five boroughs.

6 And we are moving forward with a second
7 hearing in June, to review additional legislation.

8 Since 2009, New York City has applied a
9 standard that sexual harassment exists, under City
10 Human Rights Law, when an individual is "treated
11 less well than other employees because of gender,"
12 and the conduct complained -- sorry, and the conduct
13 complained of, consists of more than "petty slights
14 or trivial inconveniences."

15 We rightly codified this more protective
16 standard into law, and, as a result, workers in
17 New York City enjoy far greater protections against
18 sexual harassment than workers elsewhere in New York
19 State.

20 Your slate of legislation, which will provide
21 these protections across the state, is now under
22 consideration.

23 And I will proudly introduce a resolution in
24 the city council next week, supporting all of your
25 bills, and chief among these is Assembly Bill 7083

1 and Senate Bills 3817, which will finally remove the
2 current "severe or pervasive" legal standard for
3 demonstrating discrimination under State Human
4 Rights Law.

5 Thank you for that.

6 This burdensome standard clearly impedes
7 employees experiencing harassment from bringing
8 claims forward, and must be changed.

9 And you heard from the City Commission on
10 Human Rights today, talking about that commonsense
11 change, and the fact that it had only a positive
12 effect on the workforce.

13 My resolution also supports your legislation,
14 which will strengthen protections for workers;

15 Extend the statute of limitations for filing
16 a discrimination complaint;

17 Amend the State Constitution to expand
18 protected classes, and increase language access.

19 While it's essential that the State pass
20 these bills, doing so does not mean our work will be
21 over.

22 New York must continue to lead on this issue.

23 We must ensure that survivors know their
24 rights, that bystanders know how to intervene when
25 they see sexual harassment, and that harassers know

1 that the days in which they could operate with
2 impunity are over.

3 As elected and public officials, we must
4 clearly draw the line against what has been
5 tolerated for so long.

6 Ending sexual harassment and discrimination
7 is fundamentally a social-justice issue, in which an
8 injury to one is an injury to all.

9 This issue demands the same persistent energy
10 and attention given to the Reproductive Health Act,
11 to rent reform, and speed cameras in school zones.

12 Thank you again for the opportunity to
13 testify, and thank you for bringing the experts who
14 testified today.

15 I learned so much from them, and it has
16 informed my work, going forward.

17 I thank you for that, and I'm happy to answer
18 any questions you might have.

19 ASSEMBLYMAN CRESPO: Councilwoman, thank you
20 for being patient, and your testimony, and also for
21 your leadership.

22 I think it's become abundantly clear that the
23 City standards that you all have set forward really
24 should be our standard.

25 And, we look forward to working to pass our

1 colleague's legislation to do the same statewide.

2 I'm really curious, though, do you have an
3 early indication of what some of those additional
4 pieces you may consider in June, are?

5 HELEN ROSENTHAL: Uh-huh.

6 ASSEMBLYMAN CRESPO: Are those being
7 formulated, or do you have already have a sense of
8 proposals that have been put out?

9 HELEN ROSENTHAL: We've learned from the
10 reporting requirements that we put on the City, that
11 they weren't clear enough.

12 So it's remarkable how you think, in the
13 wording, you're getting something right. But, then,
14 when it comes to rule-making, perhaps what we get
15 out of the analysis isn't what we should get.

16 For example, we passed a bill, requiring that
17 all government workers be given an opportunity to
18 fill out a climate survey about sexual harassment.

19 That was done, and we have the results of
20 that survey.

21 And it is, even for somebody like me who
22 loves to dig down into the weeds, I looked at the
23 result and my head was spinning.

24 There's no way to really understand what the
25 findings tell us.

1 So we have another piece of legislation that
2 calls for better analysis, more agency-specific
3 analysis, and more meaningful findings, rather than
4 just a regurgitation of answers to questions.

5 That's one.

6 There were some others.

7 We're looking at requiring agencies to be
8 very clear about accommodations, and there being
9 some sort of recording -- reporting requirement,
10 perhaps even in the climate survey, for making sure
11 that people are given accommodations; that they are
12 interviewed by someone who is -- has trauma-informed
13 investigative skills.

14 You know, we always talk about these EEO
15 officers, and how they're trained, and they're so
16 expert.

17 Are they?

18 What -- I mean, are they trained?

19 This is a new era, where we're changing the
20 culture and calling out sexual harassment.

21 The same old training manual does not apply.

22 Our understanding of trauma is so much more
23 advanced now.

24 We know now that, you know, someone's story
25 might change three times over the course of three

1 days, and that is normal, right, not to be
2 dismissed.

3 So -- and I would add to that, that some of
4 the things we learned won't necessarily result in
5 more legislation.

6 But, I will be calling for activists to
7 engage in making sure that the sexual -- the
8 anti-sexual harassment laws that are supposed to be
9 posted in restaurants, for example, we should be
10 going out and checking the restaurants; are they
11 posted?

12 You know, there's so much more work to be
13 done. We're just scratching the surface.

14 I appreciate the question, Assemblyman.

15 SENATOR BIAGGI: I just briefly want to
16 comment on my incredible amount of gratitude for you
17 waiting here, Councilwoman, and for sharing your
18 testimony, and for also reminding all of us about,
19 just, when it feels wrong, it's wrong.

20 And that is an important thing, sometimes,
21 because the work that we do, and the individuals we
22 interact with, obviously, are not always
23 forthcoming.

24 And so that was really very important and
25 helpful.

1 I also just want to say thank you for your
2 expedient response to so much of what's going on in
3 the city council.

4 And it's all different types of behavior.

5 And I think one of the most important things
6 is that, you set a tone that is, from where we are
7 in the state, it's hard to meet, but we're reaching
8 to catch up.

9 And I think that it also allows for some
10 people maybe who wouldn't be as brave to come
11 forward or to speak up, or wouldn't want to speak
12 up, to do that.

13 And I think, the last thing I'll say, is
14 that, what has, you know, transpired in the city
15 council is not such a foreign thing. It's in every
16 workplace.

17 HELEN ROSENTHAL: Yes.

18 SENATOR BIAGGI: But what is really
19 interesting, and what has been really important for
20 us, at least for myself, in the state, is that
21 there's isn't just one definition, or one
22 consequence, or one outcome, of harassment or sexual
23 harassment in the -- or discrimination, in
24 workplace.

25 It's a scale.

1 So, it really just solidifies, at least for
2 me, that the "severe or pervasive" standard is so
3 out of touch with where we are culturally, and that,
4 you know, not every act is a 10, but not every act
5 is a 1.

6 And so there's this scale that the law has to
7 adjust with.

8 And I am very much in appreciation of your
9 willingness to put a resolution to the city council,
10 for myself, and Assemblywoman Simotas's bill,
11 because it is the better-off bill.

12 It will change so many people's lives, and,
13 we'll just make all of these workplaces that are not
14 as safe, safer.

15 So thank you so much.

16 HELEN ROSENTHAL: Thank you.

17 It doesn't happen unless people like you lead
18 the charge. Right?

19 Hasn't happened prior to your being in
20 office, tells you something.

21 And -- yeah.

22 ASSEMBLYWOMAN SIMOTAS: Councilwoman, thank
23 you for your leadership on this issue.

24 2009, it was 10 years ago. It's about time
25 that the State caught up to what the City did, what

1 the City did all that time ago.

2 I have a question about sexual-harassment
3 policies and -- for you.

4 Does the City require updates to those
5 policies on a regular basis?

6 HELEN ROSENTHAL: Update to the policy, or
7 update to the complainant, which was another issue
8 that was raised today?

9 ASSEMBLYWOMAN SIMOTAS: I know, with respect
10 to the Assembly, we just went through a renewed
11 version of renewing our policy.

12 I know, because I worked on it extensively.

13 And the one thing that we were able to do is,
14 provide additional examples of what "offensive," you
15 know, "harassing behavior" is.

16 One example, that actually we heard today
17 during testimony, is when you're asked repeatedly
18 for social interaction, and whether you're
19 approached in person or with social media.

20 And I thought it was important to update the
21 Assembly's policy, just as we're going through
22 training, for our own members, but also for staff,
23 for people to understand that that's inappropriate,
24 and can constitute harassment.

25 And it's my belief that, not only state

1 agencies, but all agencies, should be looking at
2 these policies regularly, at least, you know, every
3 two years, potentially, every year, because you hear
4 about certain situations that -- examples, that,
5 sometimes, you know, you put a policy in place,
6 some -- a lot of us are lawyers here -- you read the
7 explanation, and you think you understand, but it's
8 different when somebody explains or gives you an
9 example, because, then, you can really understand
10 that, and understand whether you've observed that
11 behavior, or you might have done it yourself.

12 So, again, that's why I would love for you to
13 go back and look at whether the City requires
14 updates -- regular updates to the policy; where,
15 I know for the fact the State doesn't.

16 But I would welcome if you would do that for
17 the City as well.

18 HELEN ROSENTHAL: Yeah, I'm going back to my
19 office now, so I'll be submitting that idea.

20 And, you know, it's so interesting, and you
21 brought this out, you know, as lawyers, I guess, or
22 as legislators, we can make these directives, but we
23 can't write the rules.

24 I mean, that really is the administration's
25 job to do the actual writing of the rules.

1 And we -- you know, I like the idea of
2 updates, because, if they're public, then it forces
3 them to say, very publicly: Here's what the rules
4 are, here's the date.

5 So that, then, as legislators, in our
6 oversight capacity, we can say, That's not good
7 enough.

8 Thank you.

9 ASSEMBLYWOMAN SIMOTAS: Thank you.

10 SENATOR BIAGGI: Thank you so much.

11 Up next is Black Women's Blueprint, Decrim
12 New York, and Kingsborough Community College.

13 If any of these groups are still here, you
14 are second-to-last, and we are so grateful for you.

15 Oh, and New York City Anti-Violence Project
16 as well.

17 LEEJA CARTER, Ph.D.: Good evening.

18 My name is Dr. Leeja Carter. I'm here on
19 behalf of Black Women's Blueprint.

20 Founded in 2008, Black Women's Blueprint
21 works to place Black women and girls' lives and
22 struggles squarely within the context of larger
23 racial-justice concerns, and is committed to
24 building movements where gender matters in
25 social-justice organizing, so that all members of

1 Black communities achieve social, political, and
2 economic equity.

3 We are the conveners of the Black Women's
4 Truth and Reconciliation Commission held three years
5 ago at the United Nations, as well as the March for
6 Black Women, which was held right outside this very
7 room in 2018.

8 With recent federal administration's threats
9 to make vital cuts to anti-rape, anti-battery, and
10 anti-stalking service programs, guaranteed by the
11 Violence Against Women Act, we are running out of
12 places to turn to for safety and justice.

13 New York must be on the front lines of
14 protecting the rights of its most marginalized
15 residents.

16 Women and girls in our communities are under
17 siege. We need policymakers to listen to them, and
18 we need to institute mechanisms for public
19 involvement and oversight over any and all gender-
20 and racial-equity efforts.

21 The #MeToo movement has created a necessary
22 conversation on sexual harassment in the workplace;
23 however, women of color, especially immigrant women
24 of color, and those working in lower-paying jobs,
25 are often left out of the conversation.

1 Women working in the food-service industry,
2 blue-collar jobs, and factories are often
3 overlooked, further marginalizing their experiences.

4 It's time that we centered the experiences of
5 those -- of our most marginal women, making their
6 lives, needs, and experiences visible.

7 As women continue to report, seek support,
8 and ways to address workplace cultures that violate
9 their most basic rights, we have to dismantle the
10 misogyny and patriarchy that lives between our
11 sheets, sits at the counter and bars of our
12 neighborhood businesses, lurks in our parks, and
13 violates women that walk through them day and night.

14 To where do we run when offices and
15 restaurants foster a culture of harassment and
16 violation?

17 There is risk in bystander intervention, and
18 innocent bystanders also fear for their lives in
19 those moments of advocacy.

20 We must center community and systematic
21 accountability for the protection of our women.

22 Regarding prevention, recognizing that few
23 resources exist that are culturally relevant and
24 focus on preventing harassment and sexual assault
25 before it occurs, we developed innovative programs

1 focused on identifying and preventing sexual
2 violence before it occurs.

3 Our Institute for Gender and Culture delivers
4 prevention education and curricula based on an
5 understanding of the complex interplay between the
6 individual, relational, social, cultural,
7 environmental, historical, and persistent structural
8 factors that influence the spectrum of
9 discrimination, oppression, and violence that impact
10 people's lives.

11 We specialize in liberatory bystander
12 intervention models, transformative and healing
13 models, as well as asset-based
14 community-accountability models.

15 Using proven effective pedagogy and
16 methodologies, our institute works to equip people,
17 groups, and organizations with the framework for
18 developing strategies anchored in civil and human
19 rights as key points for intervention.

20 We are grateful to you all for calling this
21 hearing, to give further light and conversation and
22 hope to creating the necessary change that benefits
23 women in our state.

24 Thank you.

25 DR. RED WASHBURN: Good evening, everyone.

1 I want to thank you for listening to my
2 testimony.

3 In particular, I am grateful for
4 Assemblymember Simon's points about higher
5 education, Assemblymember Quart's points on
6 retaliation, Assemblymember Gottfried's and
7 Assemblymember Niou's points on GENDA and trans
8 issues.

9 I want to clarify that I am not representing
10 Kingsborough; but, rather, testifying about my
11 experience of gender-based violence there as an
12 employee.

13 My name is Dr. Red Washburn. I am a
14 transgender, non-conforming, and non-binary
15 associate professor of English, and the director of
16 Women and Gender Studies at Kingsborough Community
17 College.

18 The concentration, the first of its kind in
19 CUNY, is celebrating its 25th anniversary this year,
20 together with the 50th anniversary of Stonewall.

21 I want to underscore that, while we're
22 talking about sexual harassment, it also has
23 important implications for transgender,
24 non-conforming, and non-binary people in terms of
25 both sexual harassment, harassment in general, and

1 gender identity-based issues.

2 Six months after I came out as trans at work,
3 by requesting a name, gender, and pronoun change,
4 and sharing that I was getting top surgery,
5 Kingsborough's administration announced it was
6 defunding women and gender studies.

7 I suspected that I would face transphobia, so
8 I waited until after tenure to come out on campus as
9 trans.

10 It turned out that my suspicions were
11 correct.

12 I filed a complaint regarding my concerns as
13 an employee. I filed with the New York City
14 Commission on Human Rights, and I did that in
15 November. I'm still going through that slow process
16 while the harassment and retaliation is ongoing.

17 However, I also feel that I must speak out as
18 a citizen of the city, regarding the harm being done
19 to our students, your children, and to our precious
20 higher-education system.

21 As I have fought for students to have access
22 to women and gender studies, the administration has
23 increased its harassment and retaliation, not only
24 against me, but against our students, and against
25 women and gender studies programs.

1 Kingsborough's administration has
2 discriminated against me during my transition,
3 public safety. Ordered me to come in for an
4 investigation when I was on annual leave, and on
5 post-surgical bedrest.

6 The administration would not update my name
7 in its system, its directory, and its course
8 offerings.

9 It switched my teaching schedule one day
10 before the fall semester.

11 It repurposed the women and gender studies
12 office the first week of fall classes; changed the
13 locks the week after my revision surgery, just
14 before the spring semester started; and put all the
15 women and gender studies archives and my belongings
16 in storage.

17 It recently blocked me from making curricular
18 decisions as a director.

19 I still don't have a suitable office.

20 They temporarily put me in a storage office
21 next to a high-voltage, "Danger, Keep Out," closet
22 that made me break out in hives.

23 Harassment based on gender identity or
24 disability, and retaliation for complaints of
25 discrimination, runs contrary to New York law and

1 CUNY regulations.

2 And these actions ignored my surgeon's and
3 therapist directives.

4 Kingsborough still has me listed under my
5 deadname, and calls me by my deadname, my former
6 name, publicly as well.

7 Earlier this year, New York State passed the
8 Gender Expression Non-Discrimination Act after a
9 nearly two-decade battle led by trans advocates.

10 Last year, New York City Council passed bills
11 to create non-binary birth certificates, and educate
12 business owners on requirements for all-gender
13 restrooms.

14 Two years ago, CUNY issued a statement to
15 project -- to protect transgender and
16 gender non-conforming students.

17 Despite the anti-trans sentiments and
18 regressive policies of our federal administration,
19 New York City has taken bold steps to protect trans
20 New Yorkers, and yet Kingsborough has fallen out of
21 step with these protection, both in CUNY and in
22 New York, administratively.

23 The non-discrimination law is excellent, and
24 key; however, an order to get justice and support
25 with reporting, we need these bills under discussion

1 to pass today.

2 The sustained harassment has caused me, my
3 students, and the women and gender studies program
4 much harm. It created the need for me to take sick
5 leave in the fall, and get a second revision surgery
6 this winter.

7 Not even a month post op, there's a
8 likelihood that I will require yet another, a third
9 procedure, in the late spring.

10 At this political juncture of #MeToo,
11 Times Up, Black Lives Matter, Trans Lives Matter,
12 and sanctuary campus movements, women and gender
13 studies, and I would argue, other area-based
14 studies, is more relevant than ever.

15 Community-college students deserve women and
16 gender studies for the pleasure of learning, for
17 opportunities to transfer, and for access to work.

18 And the shrinking academic opportunities
19 connected to social justice for LGBTQ and women
20 students, the majority of whom are working-class
21 students of color, at this moment, is
22 unconscionable.

23 I am not alone here.

24 The Association of American University
25 Professors issued a report on gender and gender

1 studies.

2 We have received the overwhelming support
3 from across the CUNYs, from women and gender studies
4 faculty and students; the National Women Studies
5 Association; and other prominent faculty across the
6 nation, in the form of letters, petitions, lectures,
7 and roundtables, among forthcoming events tied to
8 NWSA's Gender Studies Under Fire.

9 The institutional transphobia, coupled with
10 Kingsborough's sexist devaluing of women and gender
11 studies, elucidates that the college administration
12 has created a hostile environment for LGBTQ students
13 who are both interested in these issues, along with
14 multiculturalism and diversity, and trying to live
15 their truths.

16 It is neither a safe place for gender
17 non-conforming and trans faculty to work, nor LGBTQ
18 and WGS students to learn.

19 Thank you for hearing my testimony.

20 Today's hearings have given me much hope for
21 women, trans, and queer survivors of violence to
22 receive the justice that we all deserve, and to heal
23 in this process.

24 I'm honored to be a part of it.

25 Thank you.

1 AUDACIA RAY: Good evening.

2 My name is Audacia Ray, and I'm the director
3 of community organizing and public advocacy of the
4 New York City Anti-Violence Project.

5 AVP is an almost 40-year-old organization
6 that provides services, legal services, counseling
7 services, all which are free, to LGBTQ survivors of
8 hate, intimate-partner, and sexual violence.

9 And, I also serve as a founding steering
10 committee member of Decrim New York, which is a
11 coalition to decriminalize, decarcerate, and
12 destigmatize sex work in New York.

13 I am a queer woman, and, I'm a former sex
14 worker. I am a survivor of sexual and
15 intimate-partner violence, so I have skin in the
16 game of all these things.

17 And, today, I am going to testify a little
18 bit about the impacts of workplace sexual harassment
19 on people in the sex trades, especially people who
20 identify as LGBTQ.

21 AVP and, of course, Decrim New York, are very
22 clear that sex work is work, and that people who
23 participate in the sex trades are doing so to meet
24 their economic and survival needs.

25 I also acknowledge that all labor under

1 capitalism is exploitation, and sex trades are part
2 of that.

3 Sexual harassment and violence in the sex
4 trades show up in ways that are both unique to the
5 industry and familiar to other workers.

6 A lot of the stuff I've heard today about
7 domestic workers, about people in the modeling
8 industry, and lots of other industries, sound
9 really, really familiar to me as a former sex
10 worker.

11 And, so, because of this widespread
12 employment discrimination for LGBTQ people, LGBTQ
13 communities disproportionately engage in sex work
14 for survival. And this is particularly true for
15 trans and GNC people.

16 AVP's report, "Individual Struggles,
17 Widespread Injustice," which my colleague Briana
18 will talk about more extensively, found that
19 22 percent of trans and gender non-conforming people
20 who were survey respondents were unemployed, and
21 this is in New York City, over the past two years.
22 The survey was done in 2016-2017, so it's very
23 recent.

24 And that rate, 22 percent, is more than
25 5 times higher than the unemployment rate in

1 New York City.

2 And so, as a result, lots of TGNC people
3 engage in sex work to survive.

4 Another report to cite, "Meaningful Work,"
5 which is co-published by the National Center for
6 Trans Equality, and also the Red Umbrella Project,
7 an organization I used to run, found that 40 percent
8 of Black trans people self-report having engaged in
9 the sex trades.

10 And, finally, the Urban Justice -- or, the
11 Urban Institute report, "Surviving the Streets of
12 New York," found that LGBTQ youth in New York
13 participate in the sex trade at 7 to 8 times the
14 rate of their peers.

15 We know that LGBTQ people participate in the
16 sex trades by choice, circumstance, and coercion,
17 but because the sex trades are criminalized and
18 stigmatized, people who experience discrimination,
19 labor exploitation, and sexual violence on their
20 jobs, and because of their jobs, have little
21 recourse.

22 People in the sex trades are really skilled
23 at negotiating boundaries, and communicating was
24 acceptable to them in the context of the exchange of
25 sexual labor for money.

1 However, because criminalization, in
2 combination with other factors, that make workers
3 vulnerable, like immigration status, race, and
4 gender identity, people in the sex trades can't
5 safely report the harassment that happens in their
6 workplaces.

7 Criminalization really flattens the
8 understanding of what qualifies as harassment and
9 discrimination in a workplace where people are
10 trading sex or selling a fantasy of sex.

11 When management in a massage parlor pressures
12 workers to (indiscernible) sex acts that they don't
13 want to perform in order to maintain their
14 employment, that is harassment.

15 When a dancer is told she cannot get a shift
16 in the strip club she works in because she's Black,
17 and there's already a Black dancer scheduled for
18 that shift, that is discrimination.

19 And when an independent escort consents to
20 meet a client in his hotel room for an hour, and he
21 removes the condom they agreed on, that is violence.

22 I'm going to briefly share an experience of
23 harassment that I experienced. There were a lot to
24 choose from.

25 So, I chose this one, because it is about me

1 being a sex worker, but it's also -- takes place in
2 a space that was, essentially, kind of a workspace
3 to me, and so that felt significant.

4 And I also want to say that, there is a lot
5 of harassment that happens on the job, but there's
6 also harassment that happens as a result of being
7 any kind of visible sex worker.

8 So, for me, while I was a graduate student at
9 Columbia, I was doing sex work to support myself.

10 And, although I was already an actress at the
11 time, I wanted to keep my identity as a sex worker
12 private at school, because I felt like it could do
13 bad things for me.

14 One of my fellow students had connected the
15 dots. I was very public online. I had, you know,
16 like, ads as a sex worker, and had done porn.

17 And so he connected that identity to my
18 identity on campus, and started printing out copies
19 of my ads and photographs of me, and information
20 about me from the Internet, and spreading them
21 around campus. And, also, tracked my schedule.

22 So he would, like, walk by and drop a bunch
23 of papers, printouts, of my sex work, around campus
24 and near me where I was studying.

25 And it created a really terrifying

1 environment for me.

2 And in order for me to be able to get any
3 recourse for it, I would have had to tell people
4 that I was a sex worker.

5 So I didn't.

6 And, I went to campus much less. I ended up
7 going part-time. It took me much longer to finish
8 my degree.

9 And I just felt like I had -- I had no
10 recourse.

11 And, you know, and I'm fairly privileged.
12 I'm White, I'm sis gender. I was going to school at
13 Columbia.

14 And I just felt like I had no way to push
15 back against this.

16 And that harassment really impacted my health
17 and well-being while it was going on.

18 And I also in that, want to make a call back
19 to some of the earlier conversation around the
20 statute of limitations, because this -- you know,
21 this has come up a couple of times today, and, I was
22 thinking about this in the context of being an
23 activist, and having a feminist consciousness.

24 And I know that, at the time, I felt, like,
25 this is bad, but it's not that bad. And, also, that

1 it felt, like, well, it is -- it just -- it is what
2 it is. And, this is just -- this is just this thing
3 that I've accepted, that might be part of this
4 career, or this work, that I'm doing.

5 And so, if that's true for me, while I was
6 also very much engaged, an activist, it's definitely
7 true for lots of folks who can't quite name, even to
8 themselves, what is happening to them.

9 And so it's really important to expand that
10 statute of limitations, because it often takes a
11 long time for people to even understand what's going
12 on, and name it to themselves, much less to figure
13 out, okay, I'm going to report this and start
14 talking to other people about it.

15 So that's something, that I just really
16 wanted to underscore that.

17 So, of course, there are lots of experiences
18 like mine, and much worse, in the sex industry.

19 And I want to end by saying:

20 That criminalizing the whole sex industry
21 does not help workers in my situation, or in other
22 situations.

23 And, you know, ensuring that these bills that
24 are under discussion can create pathways to
25 reporting harassment, and receiving support for

1 people in the sex trades, is important.

2 AVP and Decrim NY advocate that the
3 sexual-harassment workgroup's entire legislative
4 agenda pass.

5 But the State also must pass legislation that
6 decriminalizes sex work, because that will help
7 ensure that sex work is recognized as work.

8 A lot of other workers that talked today,
9 there's no question that their work is work.

10 And there is still that question for people
11 in the sex trades, and, decriminalizing it would
12 help to resolve some of that.

13 So, in general, in order for
14 sexual-harassment legislation to work, it has to
15 work for every member of the workforce, and that
16 that has to include people in the sex trades, and
17 people who work in informal labor, and people who
18 are marginalized by being LGBTQ, by being immigrant,
19 and being survivors.

20 Thank you.

21 BRIANA SILBERBERG: Hi.

22 Thank you for having us all here today.

23 My name is Briana Silberberg. I'm a
24 community organizer at AVP. I'm a transgender
25 woman.

1 Very appreciative, and glad to have the
2 opportunity to speak to everyone today.

3 As Audacia mentioned, we have this report
4 out, "Individual Struggles, Widespread Injustice:
5 Trans and Gender Non-Conforming People's Experience
6 of Systemic Employment Discrimination in New York
7 City."

8 I've included a copy of it for everyone with
9 my testimony, so you can go through it and read it
10 at your leisure and pleasure, afterwards or during.

11 What we wanted to go over in this is that, in
12 our work, and through the report, AVP has noticed a
13 few trends about how sexual harassment uniquely
14 affects transgender, gender non-conforming, and
15 non-binary (TGNCNB) communities, in ways that we
16 find very disturbing, that warrant the attention of
17 the Legislature.

18 And we want to make it clear also that,
19 TGNCNB people experience both, you know, sexual
20 harassment and harassment based on our gender
21 identities. And that these forms of harassment are
22 not the same thing, and that we have to be cognizant
23 of that when we're considering these issues.

24 So, often we hear solely about these issues,
25 and discrimination, solely from the perspective of

1 the hiring process.

2 I wanted to share with you today some of the
3 things that we have in the report, about on-the-job
4 harassment for TGNCNB people in the workplace, and
5 touching on just not harassment, but also the
6 reporting piece, and what factors contribute to, if
7 people are reporting, and also why they might not,
8 in cases that they don't.

9 So when it comes to harassment in the
10 workplace, what we're seeing is that --

11 And we had 118 TGNCNB respondents in this,
12 and as Audacia said, this was collected between 2016
13 and 2017.

14 -- so of our respondents:

15 33 percent of them reported that they
16 received unwanted sexual comments in the workplace.

17 65 percent of the respondents said that they
18 were outed as TGNCNB to at least one person in the
19 workplace, 81 percent through an in-person
20 disclosure.

21 But 63 percent of our respondents, who said
22 they were not out to anyone at work as TGNCNB, said
23 that they did so because of barriers that they felt
24 were in their way.

25 56 percent of those who were not out at work

1 said that they cited fear of discrimination as their
2 main barrier as to why they were not coming out.

3 About half of respondents listed uncertainty
4 of co-workers, supervisor, responses. No desire to
5 disclose. Anxiety and isolation as contributing
6 factors there.

7 When it came to folks's (sic) experiences
8 with human resources, what we were seeing were, of
9 the respondents who were employed in workplaces that
10 HR departments, 76 percent did not actually report a
11 discriminatory incident to HR.

12 And although the number of respondents who
13 reported was very small, it was only 13 of those
14 respondents, 77 percent of the discrimination
15 reported to HR departments did not end, and
16 77 percent of respondents felt that HR responses
17 were inadequate.

18 And we were seeing a lot of listed reasons
19 from people, why they weren't reporting.

20 Some of the things that people told us were,
21 and these are quotes:

22 HR is actively transphobic.

23 HR is useless, and is way less sensitive or
24 competent than my co-workers or supervisors. The
25 last place I would go with a sensitive issue. So

1 far removed from my actual workplace.

2 HR will tell others, without my knowledge or
3 consent, and I don't want to deal with that or be
4 outed (indiscernible).

5 I don't want people to think I am difficult
6 to have around, or a problem, or someone who they
7 want to have stressed out about as a result of my
8 gender.

9 I was too traumatized.

10 My supervisor instructed me not to tell HR.

11 When it came also to issues where people were
12 factoring in supervisor respondent -- responses, of
13 our respondents who actually had a supervisor, and
14 were in a workplace where that was a part of it,
15 42 percent reported incidence of discrimination to
16 the supervisor.

17 However, of the 58 percent of people who did
18 not report it to their supervisor, 46 percent of
19 those respondents cited they are not -- they did not
20 do so because of complaints they had about their
21 supervisor.

22 When respondents were reporting to their
23 super -- reported to their supervisor, the
24 most-often reported follow up was a meeting or
25 mediation with the involved parties.

1 24 percent of respondents said they were
2 retaliated against for reporting an incident.
3 Reporting incidents did not lead to resolution.

4 71 percent of respondents continued to be
5 subjected to discrimination after reporting.

6 And 76 percent did not feel that their
7 supervisor's response was adequate.

8 When it came to other ways that people dealt
9 with these issues, only 32 percent of respondents
10 chose to directly confront the person or persons in
11 the workplace who discriminated against them.

12 After this conversation, 52 percent of
13 respondents said the discriminatory incidents
14 continued at the rate, and, 28 percent, that
15 discrimination got worse.

16 Only 4 percent of respondents filed a claim
17 with an outside agency, such as New York City's
18 Human Resources Administration or the New York City
19 Commission on Human Rights; although, in recent
20 years, the City has made efforts to increase
21 reporting through public-education efforts.

22 13 percent of respondents consulted a lawyer
23 about the discrimination they experienced. Of
24 those, about two-thirds had their cases taken on,
25 while the remaining third were informed that there

1 wasn't enough evidence.

2 And what we saw was that, 10 percent of
3 respondents worked in a job, such as sex work, in
4 which they did not have legal protections or
5 recourse in any case.

6 This situation is obviously untenable, it's
7 intolerable.

8 The TGNCNB communities deserve to have
9 comprehensive and helpful resources to prevent and
10 combat the harassment that we're experiencing.

11 I would ask that the Legislature pay
12 particular attention, not just to the levels of
13 discrimination reported, but also, again, how hard
14 it is for, especially marginalized communities, to
15 even report incidents of harassment and
16 discrimination.

17 It needs to be made easier and less onerous
18 for people who have suffered harm, and have
19 documented the ways that they've dealt with and
20 experienced harassment; otherwise, it's hard to see
21 how things get better.

22 And, you know, we at AVP do support the bills
23 that are in discussion. We think that they go a
24 long way to helping with these issues.

25 I would say that, there are questions that we

1 see, and some of these, you know, talk about
2 reporting to the police and to law enforcement.

3 From my work, and from we've seen, that the
4 police, especially TGNCNB communities, and other
5 marginalized communities, are part of the problem
6 for a lot of folks. And that is something that is
7 difficult for us.

8 That being said, we do support these bills,
9 and we would be happy to see their passage.

10 Thank you again for your time.

11 I hope that these hearings help you in
12 creating structures and systems that better protect
13 the folks that experience the most harm.

14 And, it's been over 11 1/2 hours --

15 [Laughter.]

16 BRIANA SILBERBERG: -- and I (indiscernible)
17 you for going through all of this, and, it's quite
18 impressive.

19 SENATOR BIAGGI: Thank you.

20 ASSEMBLYMAN CRESPO: Yeah, we've surpassed
21 the timing of the last one.

22 ASSEMBLYWOMAN SIMOTAS: Thank you all for
23 staying here in this late hour, and for your
24 testimony.

25 I have a, I guess, a simple question.

1 What can we do to make it easier for the
2 LGBTQ community to report these incidents?

3 How can we make the process more sensitive to
4 your communities' real specific issues?

5 AUDACIA RAY: I mean, New York City is doing
6 some of this fairly well. The City Commission on
7 Human Rights has now a trans community liaison, who
8 is actually a former AVP employee, and she's, to our
9 knowledge, one of the first trans women of color
10 who's a City employee at that level.

11 And I think that that has been very helpful.

12 Like, seeing our community as reflected in
13 the bodies that are supposed to be accountable,
14 I think is very, very helpful, and that also creates
15 jobs for folks in our community.

16 So -- so that's -- that's really important.

17 And, you know -- I mean, like Briana
18 mentioned some of the stuff about our problems with
19 police.

20 And so we also want to caution that, just --
21 just installing faces of people who look like us in
22 positions of power doesn't fix all the things. And,
23 also, just doing trainings for folks doesn't
24 necessarily fix all the things.

25 So -- so it is like a complicated and slow

1 process, but, that is a place to start.

2 BRIANA SILBERBERG: And what I would just add
3 is, and I think this relates to things we heard in
4 other testimonies, I think there's a reason that the
5 #MeToo movement launched, and took a lot of momentum
6 in, say, 2017, and not 1996, is that, the more and
7 more that affected peoples are given resources, and
8 have positions of power where it's harder for
9 retaliation to take such an extreme effect, and
10 where people have more access to recourse and
11 resources, in the case they do have something to
12 report, that it empowers communities.

13 And so I think that, you know, as Audacia
14 mentioned, the unemployment rate for TGNCNB people,
15 at least as we found it in our report, is five times
16 higher than that of the general population in the
17 city.

18 I think, for a lot of folks, the lack of
19 access to resources, the fear of retaliation, is
20 just really compounded by the fact that they don't
21 think they can get another job, if they have a job
22 where reporting something, you know.

23 So, the more and more that folks are secure,
24 and have a steady access to resources, and know
25 that, you know, retaliation won't be as extreme as

1 their fears are, and as reality has shown them it
2 will be, then reporting could increase.

3 AUDACIA RAY: And, also, just the speed of
4 the process.

5 I mean, you know, like, Red has now been in
6 this process since last November.

7 And lots of our data that Briana showed,
8 shows that, that folks don't report because they
9 don't think anything's gonna change.

10 And, if we -- we can't show that -- that
11 things will shift, or that their complaints will
12 actually be moved forward and taken seriously, it's
13 just this -- it's a very traumatic process of having
14 to tell your story over and over again, and, have
15 these awful meetings, and have lawyers send you
16 terrible documents, rejecting your claims, and, you
17 know, all that is terrible. And lots of folks feel,
18 like, why bother?

19 ASSEMBLYWOMAN SIMOTAS: And I have one more
20 follow-up question, because I am uniquely familiar
21 at how long these processes can take at times.

22 Do you feel that you've been updated during
23 the process that you're going through, Doctor?

24 DR. RED WASHBURN: Are you talking about with
25 regard to the CCHR?

1 ASSEMBLYWOMAN SIMOTAS: Yes.

2 DR. RED WASHBURN: I have received no
3 communication from them.

4 I have a private lawyer who's assisting me in
5 it, who's updated me on, for instance, adding
6 additional claims of retaliation through this whole
7 process, because, when I filed the complaint, it
8 worsened tremendously, if you can believe it.

9 So, no, I've received no communication
10 whatsoever from CCHR.

11 I did receive one statement that my lawyer
12 passed on, that was the CUNY response.

13 ASSEMBLYWOMAN SIMOTAS: In your ideal
14 situation -- because I've heard this complaint, and
15 we've heard this complaint, from multiple employees
16 who have gone through some kind of investigation,
17 some kind of process.

18 Ideally, how much communication would you
19 receive, and at what point: every month? every two
20 months? every -- after every real substantial phase
21 of the investigation?

22 Would you have any recommendation that we can
23 adopt, or maybe legislate?

24 Because, it is a constant complaint that we
25 hear from employees, that they just don't know where

1 their cases are. And that's just, cruel.

2 DR. RED WASHBURN: I mean, I don't know this
3 area that well, but I've heard one response since
4 November.

5 And, you know, obviously, this occurred
6 before then. It took me several months to heal, and
7 then find a lawyer who would actually represent me
8 at a reasonable, you know, price.

9 So I would say, you know, definitely, the
10 process has to be expedited. I don't know how long
11 that is.

12 I think even waiting 30 days is very long,
13 when, like, you know, in my case, for instance,
14 like, they moved me to an office, that makes me
15 break out in hives. I haven't had an office all
16 semester.

17 So, like, you know, if you have to wait that
18 long, it's, like, the consequences are not just for
19 me as an individual. They impact my students, my
20 colleagues, a number of people.

21 So, 30 days seems very long for me.

22 I would say -- I don't even know if it's
23 feasible, but I would say, a minimum, two weeks.

24 ASSEMBLYWOMAN SIMOTAS: Thank you.

25 SENATOR BIAGGI: Assemblywoman Niou.

1 ASSEMBLYWOMAN NIOU: I have a couple
2 questions for each of you, if that's okay.

3 But, Red, how -- how long were you at
4 Kingsborough?

5 DR. RED WASHBURN: I've been at Kingsborough
6 since 2011.

7 ASSEMBLYWOMAN NIOU: So it's like a pretty
8 long time, and, you're obviously valuable enough for
9 them to give you tenure.

10 DR. RED WASHBURN: (Nods head.)

11 This process didn't start until after
12 I received tenure. I didn't expose myself until
13 after tenure.

14 ASSEMBLYWOMAN NIOU: So it was really obvious
15 the difference in treatment?

16 DR. RED WASHBURN: I mean, I've taught at
17 7 institutions for 17 years, and at Kingsborough
18 since 2011, and I've never had a problem.

19 ASSEMBLYWOMAN NIOU: Uhm, I'm speechless.

20 Do you have any advice for the State on how
21 we can weed out the systemic discrimination against
22 TNG -- TGNC folks, and, how my best friend likes to
23 say, gender smoothees (ph.)?

24 DR. RED WASHBURN: I mean, I would defer to
25 the folks doing this work, AVP, the Black Women's

1 Blueprint project.

2 But I would just say, definitely, expediting
3 the process, making it more available.

4 I don't have a background in law at all, you
5 know, so, this whole process, I had to learn.

6 And --

7 ASSEMBLYWOMAN NIOU: You also had --

8 DR. RED WASHBURN: -- it took a long time --

9 ASSEMBLYWOMAN NIOU: -- had a hard time
10 finding somebody to represent you?

11 DR. RED WASHBURN: -- yeah.

12 I got someone through Lambda Legal, through
13 their network, but it took a long time, because
14 I tried to work with the union, for instance.

15 But, there's nothing under CUNY that I can do
16 with regard to gender identity.

17 So, that process took a while, because I had
18 to go through the union first.

19 So I would say, you know, definitely
20 knowledge, and accountability. Really expediting
21 the process, and making legal help available.

22 But, I don't know, I mean, I think the issue
23 is really prevention, not just dealing with what's
24 happening, but how to prevent it.

25 And, obviously, as an educator, I'm biased.

1 I think that knowledge is really important in that
2 process.

3 ASSEMBLYWOMAN NIOU: Can you tell me more
4 about the union situation?

5 DR. RED WASHBURN: I had the union intervene.
6 I had top surgery July 31st.

7 I had the union intervene a couple days
8 before my top surgery, about which Kingsborough
9 knew, because I had to notify my department and HR,
10 even though I was on annual leave, because I'm still
11 expected to answer certain requests, and, also, to
12 check in regarding scheduling, and a number of other
13 issues.

14 So, I contacted the union, and they
15 intervened because, public safety called me in for
16 an investigation, that was unidentified for much of
17 the threats.

18 Then they told me it was some alleged flyer
19 campaign.

20 So I had to have the union intervene because,
21 I had told them, public safety, that I was unable to
22 come to campus because -- I was actually teaching at
23 Vassar, and I was on annual leave. And then
24 I was -- I had drains in my body.

25 And then the union sent another e-mail,

1 because public safety contacted me again, demanding
2 that I come in.

3 And then, after that, the union intervened
4 and said, that I was not coming in, for all of these
5 reasons, and that they should communicate directly
6 with the union.

7 Public safety said that they would delay the
8 case until September.

9 And, at that point, I had gotten a private
10 lawyer.

11 So I asked the union to -- like, you have to
12 pick the union or the lawyer, and I went with the
13 lawyer, because the lawyer, actually, was advocating
14 for gender identity (indiscernible) issues, and the
15 union didn't have anything.

16 So they really just intervened in terms of
17 correspondence while I was in recovery.

18 ASSEMBLYWOMAN NIOU: When you said that "they
19 didn't have anything," what did that -- what does
20 that mean; what were you indicating?

21 DR. RED WASHBURN: They told me that I did
22 not have a discrimination case, one, and -- as an
23 employee.

24 And then, two, that there wasn't any language
25 regarding gender identity.

1 ASSEMBLYWOMAN NIOU: Did you guys want to
2 follow up on the questions that I had asked, since
3 Red had deferred to you guys?

4 LEEJA CARTER, Ph.D.: Yeah, I did, one thing
5 from what Red has shared.

6 I'm also a professor at Long Island
7 University Brooklyn. And so there's been a number
8 of things that have come up throughout the day that
9 I've -- unfortunately, I've seen, I've experienced
10 as well.

11 But, particular to Red's experiences, that --
12 one thing that I've -- I've experienced myself
13 personally, but also I've seen, is that, when we're
14 talking about sexual harassment, oftentimes, I think
15 the ways in which harassment and sexual harassment
16 survive, particularly with marginalized groups, is
17 that, one, it survives in silence, but it also
18 survives in these -- in an -- this broader
19 harassment condition. Right?

20 And, so, it's not someone groping you, it's
21 not someone touching you, or unwanted advances.

22 It's someone -- I had someone stand outside
23 of my classroom, and listen to what I was teaching,
24 for a semester, to make me uncomfortable. Right?

25 It's -- the unfortunate experience with Red,

1 having your -- not having an office. Right?

2 So these are ways in which a department, and
3 a university, is making someone (indiscernible) feel
4 uncomfortable, right, by not doing what is the
5 naming, right, of sexual harassment.

6 So, therefore, when you go to your union, and
7 to HR, they can say, There's nothing -- you know,
8 there's nothing we can do.

9 Because they found a way, a savvy way, of
10 harassing without harassing, for what actually its
11 named for.

12 And there's nothing to protect individuals in
13 that respect for true harassment, and in a way that
14 creates the worst of toxic workplace environments.

15 Right?

16 And so that's kind of another area that
17 really needs to be talked about, and addressed, in
18 addition to, then, how it's brought to HR.

19 In my experience, and what I've seen with
20 others, is that, you know, the interest of HR is the
21 interest of the institution, or the company, which
22 is why many people will say, "I'm not going HR,"
23 because all they're going to do is try to figure out
24 a way to keep it in-house, and to, you know, make
25 everything okay.

1 Right?

2 So, really, it's trying to create some type
3 of compromise, not in a way of really getting
4 justice for the person who has been victimized.

5 So, individuals, just so you know, I'm just
6 not going put myself through that, because,
7 actually, I'm not getting justice. It's just
8 keeping the peace.

9 ASSEMBLYWOMAN NIOU: And I would liken it to
10 some of the tenant-harassment stuff that happens.
11 Right?

12 So like -- folks, like, you know, some
13 landlords will make it so it's unbearable for
14 tenants.

15 They're going in to fix another apartment
16 next door, and the noise is so crazy that, like,
17 literally, people are forced to move out.

18 Or, in this case, quit, or, in this case, you
19 know, try to make it so that it's almost, like,
20 unbearable for you to be there.

21 And I think that that -- I mean, there's --
22 it's hard to define that.

23 And I really appreciated Briana's testimony
24 because of that one line, you know: Both sexual
25 harassment and harassment based on our gender

1 identities, and that these forms of harassment are
2 not the same thing.

3 You know, these are -- that's very, very
4 profound, and, also, really helps us to really be
5 able to put things into words.

6 So thank you so much for that as well.

7 Briana, did you have something you wanted to
8 add on that, or...?

9 BRIANA SILBERBERG: Not particularly that
10 comes to mind in the moment.

11 And -- no.

12 But I -- I support everything that was just
13 shared, and think that -- as you say, that, you
14 know, we have figure out something to get around the
15 way that people obfuscate the way that they find
16 ways to harass people.

17 ASSEMBLYWOMAN NIOU: And I really appreciate,
18 also, in the study that you passed out, the
19 recommendations that you guys have put forth.

20 You know, MWBE's, you know, workforce
21 programs, all of these things should have some --
22 some, I guess, considerations for prioritizing TGNC,
23 owners, et cetera, because I think that that's very,
24 very important.

25 Thank you for those recommendations.

1 I mean, I've been kind of thinking about what
2 else we can do to change these things systemically.

3 And, the discrimination is so deep and
4 systemic, that -- I mean, when we're talking about,
5 say, for example -- when we're talking about sex
6 work, when we're talking about even people, like,
7 walking on the street, there's -- there's, you know,
8 crimination (sic) when -- I mean, when there isn't
9 a crime.

10 I do want to bring up about decrim, I wanted
11 to talk a little bit about that, if that's okay with
12 you?

13 AUDACIA RAY: Yeah, sure.

14 ASSEMBLYWOMAN NIOU: So, you know, one of the
15 most painful group of stories I've had to hear in
16 my -- in my time working on the state level, has
17 been from -- from women, and TGNC people, who have
18 been victimized, and -- and -- and hurt, when they
19 were, you know, either walking on the street, or
20 working, physically abused, and unable to report or
21 too scared to report.

22 I think I told you this personally, but, a
23 person -- when I was still working in Ron's office,
24 actually, I was his chief of staff at the time, a
25 woman had walked into our office, and, she,

1 literally, had her head beat in on the side, so
2 hard, that her eye was coming out of her head. And
3 she was not going to go the hospital, and she was
4 not going to report, and she was not going to say
5 anything, to anybody, because she -- she was afraid
6 for her grandson, that her grandson would have
7 nowhere to go. And that she was afraid to go to
8 jail, because, if she reported it, people told her
9 that she would be seen as the criminal.

10 Could you -- could you just -- I mean, just
11 for the record, tell us about why it's so important
12 that folks be able to report in these situations.

13 AUDACIA RAY: Yeah, I mean, today I was
14 really struck by hearing all of the testimonies that
15 folks -- you know, there are lots of reasons why
16 people don't report.

17 And, for all of the workers who spoke today,
18 there -- you know, there are lots of reasons that
19 they don't report, or that it takes a while, and all
20 those things, but, that their -- their jobs are
21 legal.

22 And, when you work in an illegal industry, or
23 when you're criminalized for being profiled for
24 being a sex worker, it makes recourse absolutely
25 impossible.

1 And it's -- and it's not just like you can't
2 report violence that's happened against you.

3 But, like, you're talking about, you don't go
4 to the hospital.

5 And, you know, I mean, like there was an
6 incident last summer in Jackson Heights, where a
7 trans Latino woman was stabbed in a clearly
8 anti-trans moment. And she didn't go to the
9 hospital. She was stabbed.

10 And -- and it was because she is a sex
11 worker. Was not doing sex work at the time, but had
12 previous arrests.

13 And, yeah, and she turned to community to get
14 help with a stab wound.

15 And -- so it -- it's just -- it's really
16 impossible for folks to make a way forward with
17 their lives when you're criminalized, for being who
18 you are, for trying to survive.

19 And so that's -- that's a really important
20 piece of why we're pursuing decriminalization of sex
21 work, so people can have access.

22 And, of course, you know, everything we've
23 heard today, like, the access you have, you know,
24 has a lot of problems with it, so -- so it's not
25 like promising a perfect thing.

1 But, knowing that you don't have access at
2 all, is deadly.

3 ASSEMBLYWOMAN NIOU: Thank you, guys.

4 ASSEMBLYMAN CRESPO: Assemblywoman Simon.

5 ASSEMBLYWOMAN SIMON: Yeah, thank you.

6 I'll be brief.

7 You know, Dr. Washburn, I once had a case
8 against the College of Staten Island, for a man with
9 a disability. And it was exactly the same kind of
10 harassment; the changing of the schedule, the moving
11 the office... all of that stuff.

12 And, you know, we've heard it about in other
13 situations.

14 I think it really just goes to, you know, the
15 intimidation, and the sort of
16 messing-with-your-brain kind of thing, that is the
17 essence of this harassment, and this misuse of
18 power.

19 And I'm really sorry to hear that that is
20 still going on in the CUNY system.

21 And I wish you the best with all of this.

22 I -- you know, Dr. Carter, I -- you have a
23 paragraph about misogyny in the workplace, which
24 I think is very powerful, and also very poetic.

25 And one of the things you talk about is

1 accountability.

2 And this a question that I come back to
3 often, and that is, you know, what does
4 accountability feel like, right, what does it look
5 like?

6 People can lose their jobs, they can be
7 disciplined. Elected officials can be -- you can
8 lose an election. Right?

9 But, beyond certain things that are pretty
10 obvious, what does accountability look like, and how
11 do we legislate that?

12 How do we, you know, put that into policy in
13 a way that actually works, that makes people who
14 have been victimized feel that there's
15 accountability, and actually is severe enough to
16 cause a change in behavior?

17 And it's something I struggle with, because
18 you used that word a lot, "accountability," but
19 I don't know that we all necessarily know what we're
20 talking about.

21 And I'm curious, if, you know, you can -- if
22 you have ideas about that, from your work, or your
23 experience, that you could share?

24 LEEJA CARTER, Ph.D.: That's a great question
25 for tenant night.

1 ASSEMBLYWOMAN SIMON: Sorry.

2 LEEJA CARTER, Ph.D.: You're fine, you're
3 fine.

4 So, I'm going to position it into a very
5 specific context, just because, I think to try to
6 speak broad won't -- it just won't be helpful.

7 So, right now, BWB, we're doing a lot of work
8 on trauma-informed care and cultural competence with
9 medical practitioners.

10 Essentially, when you go to the OB/GYN, or
11 any medical practitioner, are they trauma-informed?

12 And, the things that they say or do, do they
13 understand, might they understand, that they could
14 re-traumatize someone, or traumatize someone?

15 What does that mean; right?

16 And so just within the context of health-care
17 professionals, because we had -- we've had -- we
18 have talked about that today, what would an
19 accountability model like?

20 I think some of that is kind of what someone
21 said earlier, I can't remember who it was, was,
22 like, mandating certain forms of training.

23 And if those forms of training haven't been
24 done, then -- then -- then there's something that
25 happens with that individual's license, or, if they

1 have a private practice, then their practice comes
2 under review in some way, shape, or form.

3 So that could be a mechanism for
4 accountability.

5 Accountability can also be things that are
6 tied to ethics, right, like, that being a part of
7 your culture of ethics.

8 So we've -- we've had conversation around
9 background checks for health-care providers. Right?

10 That should just happen. Right?

11 That's a mechanism for their board being able
12 to say, that we think that this person, in order to
13 work with human beings, they've -- you know, they
14 have a clear record. Right?

15 And then if something were to happen, and
16 they were to commit a crime, or some form of
17 misconduct, in some way, shape, or form, then
18 there's a very specific set of consequences that
19 happen, that there isn't wiggle room to kind of
20 waver on.

21 Right?

22 So I think that's another reason why we see
23 some of the things that happen, especially in the
24 health-care industry.

25 That, if a doctor were to do something that

1 is inappropriate, then, essentially, a jury of his
2 peers could say, Well, I know this person. And, you
3 know, maybe we'll just talk to this individual, or
4 we'll have him do a training, instead of saying,
5 Well, actually, what happens when you do this, this
6 is the consequence regardless of who this person is.
7 Whether they've been in industry for 30 years, or
8 they're early-career professional, this is what
9 happens to you.

10 Right?

11 So I think that there should be some very
12 concrete consequences for actions that are
13 inappropriate, or, violates, you know, patients'
14 rights, and as well as training, that health
15 professionals, or anyone, has to go through every
16 three years, or every two years, in order for them
17 to kind of, just -- you know, a basic form of ethics
18 when it comes to what they engage in.

19 Another thing, which might be a little bit
20 off-tangent, but I think on-tangent, is that some of
21 the training should be around allyship.

22 And, so, accountability is also, like, how do
23 you intervene in certain situations?

24 And one thing that I've seen, just in
25 teaching students, being a teacher, right, is that,

1 if we send a student out to an internship site, and,
2 their supervisor is engaging in poor behavior, then
3 that student is learning that poor behavior. And
4 then they're going to become a professional that
5 thinks that's okay.

6 Right?

7 And so, we have to start early in exposing
8 our, you know, next generation. Like, what does
9 good -- "what is allyship?"

10 Right?

11 How -- what does it mean to be an ally,
12 especially for men?

13 Right?

14 What is allyship?

15 What is professional?

16 What is trauma-informed care?

17 And then, how do you, when you're in a
18 setting, that maybe the culture doesn't align with
19 that, what do you do?

20 What are your resources?

21 Who can you turn to?

22 And then who can you process with after that?

23 Because, when you engage in advocacy or an
24 intervention, intervening in some way, it's going to
25 be hard on you as well, which is why you might see

1 people who don't intervene.

2 So it's not just intervening, but the
3 assistance that you might need afterwards.

4 So it's kind of a complex answer I just threw
5 out at you, but, that's -- that's the answer.

6 [Laughter.]

7 ASSEMBLYWOMAN SIMON: Thank you, I appreciate
8 it.

9 LEEJA CARTER, Ph.D.: You're welcome.

10 ASSEMBLYMAN CRESPO: One quick question.

11 You mentioned in your testimony, you have
12 curriculum for...?

13 LEEJA CARTER, Ph.D.: Bystander intervention.

14 ASSEMBLYMAN CRESPO: Yes.

15 Where is that being used?

16 LEEJA CARTER, Ph.D.: So, that curriculum, we
17 are the technical-assistance providers to all of the
18 180 HBCUs.

19 And so we use that bystander -- it's called
20 "Bystander Mixtape intervention," with those college
21 campuses.

22 And we also do do that bystander intervention
23 with non-HBCU colleges and universities as well.

24 But it's used on university and college
25 campuses.

1 SENATOR BIAGGI: One quick comment.

2 Thank you so much for what you've all shared.

3 It's really disturbing, and very upsetting,
4 to be totally candid and honest with you.

5 And I think that one of the things that was
6 said earlier, I don't know remember now by whom,
7 but -- oh, maybe it was by Dr. Washburn, but, the
8 idea of, like, don't report because you don't think
9 things will change.

10 This is -- this is like the poison of
11 cynicism in all of the systems. Right?

12 And it's -- the only way I can make sense of
13 it, analogously, even though I know it's, like, oh,
14 yes, of course report, reporting, by the way,
15 I believe is a privilege.

16 So I know that, I know what comes with that,
17 and I get it, I really get it, I really, really do.

18 But the analogy that I can draw is, like, the
19 opposite of a similarly evil type of energy, which
20 is jealousy. Right?

21 Like, when you feel jealous towards -- or,
22 I'll just say, I'll speak for myself.

23 When I feel somebody has something, or is
24 doing something, that I feel jealous of, my instinct
25 is to reject that person, right, or, like, push that

1 person away.

2 When, like, the reality is, if you
3 acknowledge, like, "why am I jealous?" I'm jealous
4 because that person has something that I want, and
5 therefore, I should probably ask that person
6 questions about how they got to that place or did
7 that thing.

8 And so it's like transforming that idea.

9 And so the same thing with cynicism, it's
10 like transforming what it means, and trying to think
11 about it in a different way.

12 Like, "don't report because things won't
13 change," is a story that people in positions of
14 power want to keep going, and people in positions
15 who don't want you to disrupt or, like, undermine
16 the way it's always gone, or -- or will say, oh,
17 this is problem, or you're a problem, or, you know,
18 it wasn't really that bad, it wasn't really that
19 bad.

20 Well, you are the -- we are all the judges
21 of what's bad and what's good.

22 And I just think that, you know, the more and
23 more that we can dispel the cynicism, and we can
24 make it so it's not that case, we should do it.

25 But, to dispel something like this, it's

1 about reporting.

2 And I acknowledge that reporting is a
3 privilege, so it starts with where we began here.

4 So, I just wanted to share that, because,
5 I think that -- I feel like one of my jobs, or one
6 of -- part of my role, is to inject, or un --
7 I should say, un -- to help to unlearn some of the
8 bad stories that the world has told us, that are
9 not -- they're not real unless we continue to make
10 them real.

11 AUDACIA RAY: Yeah, to speak to that a little
12 bit, I think it's also important to talk about what
13 reporting actually is and what it means.

14 SENATOR BIAGGI: Uh-huh, yes.

15 AUDACIA RAY: Because that's something I saw
16 a lot, like, in the -- I don't know, one of the last
17 rounds of Internet outcry about -- you know, about
18 reporting, and people -- and telling stories about
19 why they didn't report.

20 And when that started happening, I was, like,
21 okay, but we need to actually talk about "what it
22 is" when you report.

23 So, at the Anti-Violence Project, we operate
24 a 24/7 hotline for LGBTQ survivors of violence.

25 And calling the hotline is reporting.

1 Reporting doesn't necessarily mean, like,
2 walking into a police precinct and laying out your
3 horrible story.

4 It can be finding a peer or finding a
5 community-based organization, and talking to them
6 about your options.

7 SENATOR BIAGGI: Hmm.

8 AUDACIA RAY: So, like -- like, with the
9 hotline, you know, we gather annual data about
10 people reporting on hate violence and sexual
11 violence and intimate-partner violence.

12 I've talked a lot about hate violence this
13 week, so this number is in any head.

14 But, of the people who call us to talk about
15 hate violence, two-thirds of them are calling to
16 report, to be heard, and to get support around
17 safety planning.

18 So, they're not calling with the intention of
19 saying, like, I'm reporting, and I want to take this
20 to the top. But they want to be heard, they want to
21 be acknowledged, and they want to make a plan.

22 And so, yes, like, figuring out, like, what
23 is the proper government way to do the thing, and,
24 like, reports, and, like, hold someone accountable,
25 get them to, like, get fired or lose their license,

1 or -- you know, whatever, like that can be a thing,
2 but, also, figuring out your options.

3 SENATOR BIAGGI: So can I just share
4 something with you?

5 AUDACIA RAY: Sure.

6 SENATOR BIAGGI: Because I think this is like
7 another remarkable moment of this day.

8 Similar to what the young women before you
9 had testified and shown to me, what you just did
10 right now, actually, was you took -- you just
11 unearthed another blind spot of mine, and I think
12 that that is actually so incredible.

13 Because, to redefine what reporting means --

14 And I am an extremist by nature, so I go
15 from, like, zero to 100 on everything. It's like
16 all or nothing, that's it.

17 But, that's not really -- like, the world is
18 not that way. There's gray areas.

19 -- and so for you to say, though, that
20 reporting can just be sharing it with someone, to
21 say, like, how do I -- how can I be safe?

22 You don't need to have -- it's not a
23 privilege. We shouldn't have to have a privilege to
24 do that. But we need to understand where to call,
25 or who to tell, or, where can I go to be safe?

1 That just kind of blew my mind a little bit,
2 even though that probably is so obvious to you.

3 So, thank you, because I think that I needed
4 to hear that.

5 ASSEMBLYWOMAN NIOU: And can I just add one
6 thing?

7 SENATOR BIAGGI: Yes.

8 ASSEMBLYWOMAN NIOU: So I just wanted to add
9 about, you know, the woman who came into our office,
10 because, she didn't think that we were a government
11 agency, or anything like that. She didn't realize
12 who we were. She just knew us as "10-A."

13 And this is, like, a little bit of a thing
14 between Alessandra and I. She's, like, oh, it was,
15 like, Are you 10-A?

16 Because, everybody in the Flushing community
17 did not know us as, like -- it was just, like, word
18 of mouth, 10-A gets things done. 10-A can fix all
19 the problems. "10-A."

20 And so we were just "10-A."

21 And -- and so, when she came in, you know,
22 it's so important to create space.

23 And I just wanted to put that out, it's
24 really about creating space.

25 And I -- I think that that's something that

1 we need to do on all different levels, to be able to
2 make things change systemically. It's about
3 creating space, and making sure that there's
4 different voices that can be heard in those spaces.

5 And it's so important, like Alessandra said,
6 what you just said was so important, because of that
7 reason.

8 People do just need to have a space to be
9 able to have somebody tell them that what they
10 experienced was even real.

11 And, so -- you had something (indicating)?

12 LEEJA CARTER, Ph.D.: It sounds like "10-A"
13 was also familiar to her, and culturally aligned.

14 ASSEMBLYWOMAN NIOU: Yeah.

15 Yes, 100.

16 And, I just also wanted to briefly touch on a
17 case, particularly in Flushing. You know, people
18 talked about it a little bit.

19 But, Yang Song was a sex worker in Flushing.
20 And when she did try to report something that
21 happened to her, she was stalked, harassed,
22 intimidated, and, killed.

23 And so I just wanted to, you know, say that,
24 you know, sometimes, when we're talking about a
25 system that is a privileged system, it doesn't

1 necessarily make it so that it's even safe for
2 anybody -- not everybody is safe in those systems.

3 And so, you know, it's just something to
4 acknowledge, and something to also work on, because
5 that does happen, all the time.

6 And when -- when, say, for example, you're
7 walking down the street and, all of a sudden, just
8 because you look a certain way, or dress a certain
9 way, and you get arrested for something you didn't
10 even do, you know, then, why would you go to the
11 police to report that?

12 So, just want to put that out there for
13 folks.

14 ASSEMBLYWOMAN SIMON: I actually have a
15 follow-up.

16 So -- your comment about reporting being just
17 calling someone, one of the things that I know that
18 Assemblywoman Simotas and I have talked about, is
19 that, under the Assembly policy, for example, that
20 we are all mandated reporters.

21 So if some person comes to you, and wants
22 advice, and doesn't want to report, but needs to
23 talk, and seeks you out, we have to report it.

24 And that's not something that person wants,
25 or may not want, because then they're put into this

1 process, right, and that process then turns along
2 and demands that there's some invest -- there's
3 investigation, et cetera.

4 And -- so it's something we've struggled with
5 because, sometimes what people need is an "office
6 grandma" that can just listen, and give them advice,
7 and maybe that advice is, yeah, it's okay to report
8 and go through this process.

9 I'm just curious, given your experience, if
10 you have any guidance with regard to that?

11 AUDACIA RAY: I mean, I'm not a social
12 worker, I'm not a mandated reporter.

13 People tell me terrible things all the time,
14 that I don't have to tell anyone if I don't want to.

15 I mean, I think, like, someone says about,
16 oh, it's about consent, and -- and informing folks
17 about what -- you know -- so the folks I know who
18 are mandated reporters have a practice of saying,
19 Before you go further, I need to tell you this, that
20 I'm mandated to report this.

21 And then you can make a decision about what
22 to do with that, and they can be steered in a
23 different direction.

24 So -- so I think that's really important,
25 that the person knows that, because -- because it

1 can feel like a violation, you know.

2 And that's a thing, and particularly in
3 workplaces, and the way that human resources'
4 regulations and, you know, workplace policies work,
5 like, you do sometimes have to run it up the chain,
6 and that can feel like a violation to someone who's
7 just starting to talk it out and explore their
8 options.

9 And -- and that -- that's also why, like,
10 hotlines exist. You know, I mean, people can call
11 AVP and call anonymously. You know, we do ask for a
12 variety of data from folks, but they don't have to
13 give it.

14 It's -- you know, it's a New York
15 City-focused service because, once folks call, we
16 try to connect them with in-person services.

17 But, it's about exploring options, and that's
18 really important, because sometimes folks want to
19 talk right after something has happened to them, but
20 aren't ready to take action. And that talking is
21 the action, and that has to be enough for that
22 moment.

23 ASSEMBLYWOMAN SIMON: Thank you.

24 SENATOR BIAGGI: Thank you all so much.

25 We appreciate you waiting this long, and

1 staying and answering all of our questions.

2 It really, actually, was an incredibly
3 valuable aspect of this day.

4 Thank you.

5 Our last, and final, individuals to hear
6 testimony from, are from the Restaurant Opportunity
7 Center of New York.

8 Thank you.

9 I thought it was you.

10 Thank you.

11 Wow.

12 Before you begin, I just want to share
13 something with you.

14 One of the most important voices that we
15 wanted to hear from were individuals in the
16 restaurant industry.

17 And, so, I'm so glad that you stayed.

18 VERONICA AVILA: Yeah.

19 Yeah, we started the day with ten, but,
20 unfortunately, obviously, if your wage is dependent
21 on tips, Friday night before a three-day weekend is
22 prime-money time.

23 So we -- maybe we wanted to start with
24 Yasmine (ph.), who's one of the members that was
25 able to stay. But she'll be reading a testimony of

1 a woman that was here, but had to go.

2 And then I think you have copies of the rest,
3 so you can read them.

4 SENATOR BIAGGI: Thank you for sharing that,
5 because I think that that actually -- again, another
6 blind spot, had that knowledge been on top of our
7 mind, perhaps we would have put you up sooner on the
8 list.

9 But that's really -- I'm grateful that you
10 just said that.

11 Thank you.

12 YASMIN (ph.): Hi. Good evening, everyone.

13 Thank you so much for listening to the
14 testimony of a fellow worker.

15 I too worked have in this industry as well,
16 and so it's an honor to use my voice to speak for
17 someone else.

18 Her name is Gemma Rossi.

19 "Thank you, Assemblymembers and Senators, for
20 giving me this opportunity to share my comments on
21 sexual harassment and "One Fair Wage."

22 "My name is Gemma Rossi, and I live in
23 Brooklyn.

24 "I'm a member of the Restaurant Opportunity
25 Center of New York, and I've work in the restaurant

1 industry for 15 years, nearly half of my life, and
2 I spent most of that time as a tipped worker.

3 "My first job was a coat-check attendant at a
4 bar. I was 18.

5 "Since then, I have gone on to work as a
6 hostess, bartender, server, barrista, and manager.

7 "I like the work that I do. I love the fast
8 pace of working in restaurants. I enjoy the
9 camaraderie amongst the team, and I like working
10 with people of different ages and backgrounds.

11 "Though there's a lot I enjoy about working
12 in the restaurant industry, depending on tips to
13 make ends meet causes me to endure constant
14 harassment.

15 "Us servers rely on guests, co-workers, and
16 management to earn tips, and that means they all
17 have a layer of power over us.

18 "I entered the industry when I was 18. It
19 was one of my first jobs, and sexual harassment was
20 the norm.

21 "Throughout my career in the industry, I have
22 been pressured for dates, pressured for my phone
23 number, and received inappropriate texts.

24 "I have endured deliberate inappropriate
25 touching, and I've been repeatedly instructed by

1 management to dress sexy.

2 "I worked in one restaurant that strictly
3 hired women. They wanted us to have what they
4 called "a certain look." Servers were told to wear
5 more makeup and tight, revealing clothing.

6 "And when you're worked in a fast-paced
7 environment, moving a lot, and constantly having to
8 bend over, this attracts a lot of inappropriate
9 behavior.

10 "This was also a restaurant where the owner's
11 friends constantly came in, and professionally
12 went" -- "professionalism" -- excuse me -- "went out
13 of the window. There were no boundaries.

14 "If I was told something inappropriate, I had
15 to either, engage, or run the risk of having them
16 tell the owners I had a bad attitude.

17 "The job went beyond giving good service, but
18 for the sake of my livelihood, I had to set my pride
19 side and just deal with it.

20 "I was there for over four years, until
21 I couldn't deal with it anymore.

22 "But this is not an exception, this is the
23 norm.

24 "When I was younger, an owner of a restaurant
25 I worked at was really inappropriate. He'd just

1 walked up to you and massage you. And he'd also go
2 into gruesome detail about his love life. He was so
3 erratic, that he'd go from screaming at you, to
4 trying to give you a fur coat. It was really
5 uncomfortable. He was explosive and unapproachable,
6 unless he was approaching a member of his female
7 staff to make an advance.

8 "But it's not just guests, and management,
9 that take advantage of our dependence on tips; it's
10 co-workers too.

11 "Relying on tips means you have to stay good
12 with the kitchen. You rely on them to be able to
13 give good service. You have to deal with sexualized
14 greetings, and comments, and a response, you just
15 have to giggle, because you need them to move things
16 quickly for you, so you can give food out to guests.

17 "You do what you have in order to earn a tip.

18 "When I was in those moments of experiencing
19 harassment, I never considered approaching
20 management. I just dealt with it.

21 "Approaching management felt like something
22 that would backfire, especially when harassment is
23 coming from management.

24 "How do you rationalize going to them for a
25 solution?

1 "I knew that attempting to address harassment
2 can mean receiving a smaller tip, or no tip, or some
3 sort of retaliation action. You're labeled as being
4 weak, or not cut out for the job or being able to
5 deal with the public.

6 "I've seen workers that address harassment
7 given less lucrative schedules and sections, which
8 directly impacts how much you earn from tips.

9 "Management and owners help foster situations
10 that drive sales. They try to create an environment
11 that sells, and a sexualized environment is how many
12 people think sales are created, and, unfortunately,
13 servers are left to grapple with how to respond to
14 this environment.

15 "In tipped roles, sexual harassment is a
16 normal part of the job. For a long time, I didn't
17 even have any consciousness of it.

18 "I entered the industry when I was so young.

19 "I quickly understood that tolerating
20 inappropriate behavior was the name of the game: it
21 was expected of me. And if I couldn't handle it,
22 then this industry wasn't for me.

23 "I thought, well, I guess this is what
24 I signed up for. And because it was my first job, a
25 tip job, it shaped my norms.

1 "Being constantly harassed, it's what
2 I expected, and, normally, I didn't think twice when
3 having to navigate a situation that made me
4 uncomfortable.

5 "I recently also started working as a writing
6 tutor, and the difference in treatment is
7 astounding. Women aren't afraid to speak out.

8 "Sometimes, when I see what people complain
9 about, it's shocking to me what others' threshold
10 is. Sometimes my reaction is, Really? Come on.

11 "But that just stems from this behavior being
12 so normalized so early on for me.

13 "Being dependent on tips leaves this
14 largely-women workforce vulnerable to experiencing
15 sexual harassment at work by anyone that has any
16 influence over your capacity to earn a tip.

17 "My income is directly connected to how
18 willing I am to give in to an advance. There's a
19 literal transaction attached to it.

20 "If I didn't have that burden, if I didn't
21 have to solely depend on tips, if I knew I had a
22 base wage I could depend on, regardless of shift or
23 section, it would free me, and a lot of people, from
24 having to tolerate harassment at work.

25 "Thank you for your time.

1 "I hope that you help us make New York the
2 eighth "One Fair Wage" state, because a dependence
3 on tips leaves us tipped workers dangerously
4 vulnerable to experiencing sexual harassment in the
5 workplace."

6 VERONICA AVILA: So I thought maybe it would
7 be -- has anyone ever worked at a restaurant, can
8 I ask?

9 You have. Okay.

10 Okay, so there's some familiarity with -- we
11 use a lot of jargon. I'm just noting that we use
12 "section" a lot in a lot of these testimonies.

13 So, just for people that haven't worked in
14 the industry, "section" is, essentially, the floor
15 plan, and it's the way the restaurant's cut up.

16 So sometimes you can have a great section;
17 that's all the tables by the window. Or you can
18 have a bad one; that's every table by the bathroom.

19 So that's sort of the difference in, you
20 know, the potential of income.

21 So that's what we say when we refer to
22 "sections."

23 I just sort of realized that they all have
24 that jargon.

25 So my name is Veronica Avilia, and I work

1 with the Restaurant Opportunities Center of
2 New York.

3 We're a restaurant workers' center that
4 engages workers, consumers, and employers, to try to
5 improve restaurant-industry standards.

6 I've also myself worked in the restaurant
7 industry.

8 So here in New York, we have about 400,000
9 restaurant workers, most of which are actually in
10 the restaurant industry.

11 The restaurant industry is one of the state's
12 largest private-sector employers, and, it's massive.
13 And it's also one of the industries that, again,
14 houses the most tipped workers.

15 And tipped workers are allowed to be paid a
16 subminimum wage, which, in New York, ranges between
17 7.50 and 10 dollars an hour.

18 So that means that, for tipped workers, most
19 of whom are people of color; 60 percent of whom are
20 women, and about a third of which are immigrants,
21 they're dependent on tips to make ends meet.

22 And so, you know, one of the things that we
23 know, is that, obviously, sexual harassment is a
24 societal problem, and it's, obviously, undeniably
25 felt in every sector.

1 But given our experience and our
2 conversations with workers and our research, we know
3 that a dependence on tips really gravely exacerbates
4 tipped workers' vulnerability to sexual harassment
5 in the workplace.

6 One thing that's been repeated a lot today,
7 is that sexual harassment is a manifestation of
8 power relations.

9 And we know that the power balance that is
10 created by the subminimum-wage system is evident, in
11 the fact that so many facets of the tipped workers'
12 income and experience from, you know, how much they
13 earn, whether they're hired or fired, are completely
14 dependent on their relations with and interactions
15 with guests.

16 But it's really a triangulated power
17 imbalance.

18 Gemma's testimony sort of highlights this,
19 that tipped workers are dependent on employers to
20 provide them with the opportunity to earn tips.

21 They rely on employers providing them the
22 most-lucrative sections and the most-lucrative
23 shifts.

24 They also depend on their co-workers to push
25 out food correctly and promptly.

1 And they, of course, actually, obviously,
2 rely on the guests to leave a tip.

3 And one thing that's really important to note
4 about tips is that they're relatively arbitrary.

5 There's a bunch of research out there that
6 shows that the amount of tip you receive can be
7 influenced by how many times you touch a guest, by
8 whether or not you're wearing red lipstick, and by
9 the color of your skin. Workers of color are known
10 to receive less in tips.

11 So, given that dynamic, it's not particularly
12 surprising that the Center for American Progress
13 indicates that, the accommodation in food-services
14 industry, which is where most tipped workers fit, is
15 consistently the largest source of EEOC
16 sexual-harassment claims.

17 And I would say today, that we've actually
18 heard a thread of restaurants being pervasive
19 sexual-harassment sites. We've heard it in the
20 beginning, we heard it in domestic-worker testimony.

21 It's something that we know, and it's
22 something that was so great to hear reflected in
23 other people's testimony as well.

24 So, recently, ROC actually conducted a survey
25 of over 100 restaurant workers in tipped occupations

1 in New York.

2 We found that 80 percent of restaurant
3 workers in New York experienced unwanted sexual
4 harassment at work, and over half reported that this
5 was a weekly, or daily, occurrence.

6 So, one of the things about being a tipped
7 worker is that your wage, your income, fluctuates
8 weekly. It can depend on someone's mood, it can
9 depend on the weather, it can depend on whether it's
10 a busy or a slow day, if it's sunny.

11 So, it's particularly shocking to know that,
12 quite frankly, for over half of tipped workers in
13 this state, the only thing that they can depend on
14 weekly, and daily, is an occurrence of sexual
15 harassment.

16 And we -- you know, it's, quite frankly, a
17 privilege to be in this role, where part of my work
18 is to get to those community with restaurant
19 workers.

20 And in doing that, we, obviously, get to know
21 people's stories, and we carry that with them.

22 There's a young woman who is a member of ROC,
23 who also shared a similar story, that her first job
24 was in the restaurant industry.

25 And so she was a server, and her supervisor

1 took it upon himself to initiate her into the
2 industry.

3 And so, when she began work, he told her
4 that, every day, that, at the end of the shift, that
5 he was going to tell her a dirty joke, because she
6 needed to get used to the industry.

7 And, so, the only thing that -- Mersa (ph.)
8 could depend on, was not, you know -- she didn't
9 have a stable wage, but she always knew that, at the
10 end of the shift, her supervisor was going to
11 whisper in her ear a dirty joke.

12 And that's, you know, quite shocking, when we
13 know that 60 percent of women, at some point in
14 their lives, have worked in the restaurant industry.

15 This is what young women are entering; this
16 is the experience that they have, this is what's
17 shaping their norms in workplace.

18 We also conducted a larger study with a
19 partner, Forward Together, that surveyed
20 700 restaurant workers across 39 states on the
21 issues of sexual harassment in the workplace.

22 And we found that it's incredibly widespread,
23 it's felt by all genders. And that the power
24 dynamics and the highly sexualized environments of
25 restaurants impact every major workplace

1 relationships.

2 Restaurant workers reported high levels of
3 harassing behaviors from management, co-workers, and
4 customers.

5 The majority, again, also reported that
6 sexual harassment was an uncomfortable aspect of
7 work life, and reported experiencing scary or
8 unwanted sexual behavior.

9 And so when we looked at the data from the
10 seven states that have no subminimum wage, and
11 compare that to the states that do have a subminimum
12 wage, we found that tipped workers in the states
13 with no subminimum wage --

14 There's a massive typo there if you're
15 reading the testimony.

16 -- experienced half the rate of sexual
17 harassment.

18 But the study also found that workers in
19 states with a subminimum wage were also three times
20 more likely to be told to dress sexier than workers
21 in states with no subminimum wage.

22 You know, oftentimes, because you are relying
23 on tips, in places like New York, management will
24 give what they think is a brilliant advice, to help
25 you boost your tips, right, and that advice tends to

1 be: Dress sexier, wear tighter clothing, change
2 your appearance, so that people are more likely to
3 give you tips.

4 And so, you know, we found that these
5 instances of sexual harassment that workers face,
6 not only impact them, in terms of, you know, being
7 traumatic experiences, but they also increase
8 turnover, and cause really sluggish career
9 advancement for women.

10 So many women are forced to cope with these
11 experiences by leaving their place of employment.

12 One thing that Gemma's testimony highlights
13 is the norm: When people say, if you can't hack it,
14 just go find another job. Or, you should take it as
15 a compliment.

16 So people are really forced to repress what
17 they feel, what they're going through.

18 You know, there was actually a really
19 high-profile case that happened shortly after the
20 reemergence of #MeToo.

21 There's an owner of the restaurant called
22 The Spotted Pig, which is an acclaimed New York
23 restaurant, was found to be rampantly sexually
24 harassing his workforce. Allowing guests that
25 visited this off-hours floor, which employees

1 disturbingly dubbed "the rape room," to abuse staff
2 as well. The owner was known to send inappropriate
3 texts, grope women, force himself on them.

4 One woman even shared a story of having to
5 kneel down to collect glasses on a low shelf, and
6 the owner grabbed her head and pushed it towards his
7 groin.

8 The workers that came forward were, namely,
9 women; they were, namely, servers; and they reported
10 that the owner instilled fear in workers by
11 proclaiming that he would blacklist them if they
12 came forward.

13 And these weren't empty threats.

14 The workers actually stated that they saw the
15 owner blacklist and harass employees that stood up
16 to him.

17 And it was even reported that the co-owner
18 told women, when they brought these claims forward,
19 that they should either leave or get used to it,
20 which is something that women, quite frankly, hear a
21 lot in this industry.

22 So the women silently endured public
23 humiliation and instances of grave sexual violence,
24 because they fear financial repercussions of coming
25 forward.

1 The owner, obviously, yielded a tremendous
2 power over them, and their financial well-being.

3 You know, to sort of add to that, the EEOC
4 finds that workers who experience sexual harassment
5 in the workplace don't report harassing behavior or
6 file a complaint because they fear disbelief of
7 their claim, or inaction, or professional
8 retaliation.

9 We also -- you know, one of the reports that
10 we mentioned, that we didn't share, so we should
11 probably e-mail copies of that, we found that women
12 that experienced sexual harassment were also
13 compelled to quit their jobs. About a third
14 reported that they felt compelled to leave their job
15 as a result of sexual harassment.

16 And we know, at large, that women that
17 experience harassment in the workplace are found to
18 be 6 1/2 more times likely to leave their jobs than
19 those who don't.

20 So, you know, just to reiterate:

21 We find that a dependence on tips helps breed
22 sexual harassment in restaurants, and it keeps
23 tipped workers; in particular, women, in a constant
24 state of career stagnation, and economic precarity,
25 in a culture where the customer is always right, in

1 a country that really professes that the country --
2 or, the customer's always right.

3 In order to address the intense prevalence,
4 and the extreme normalization of sexual harassment
5 in this industry, we stand by having to adopt what
6 we call "One Fair Wage."

7 So that's, essentially, a measure that says,
8 that tipped workers would gradually, gradually, over
9 the span of five of years, move up to earn the full
10 minimum wage, with tips on top.

11 So it would shifts tips to be a staple of
12 income, to really be a reward for good service.

13 You know, we think that this would diffuse a
14 lot of the points of vulnerability that women face.

15 It clearly would not eliminate societal
16 sexual harassment, but it would enable tipped
17 workers to stand up to abuse, if they wouldn't have
18 to fear retaliation, in terms of having shifts
19 changed or sections changed, because they would have
20 a stable base income.

21 So, we also think that this would really
22 break through the normalization of sexual harassment
23 in the industry.

24 And, it's not something we made up in
25 extract. There are, quite frankly, seven states

1 that have what we call "One Fair Wage."

2 So, Alaska; California, again a leader;
3 Washington, Oregon, Minnesota, Montana, and Nevada
4 currently have phased in "One Fair Wage" for tipped
5 workers.

6 So, you know, we think that tipped workers
7 deserve to have an industry -- the industry move
8 away from a tiered wage structure that really leaves
9 them vulnerable to experiencing sexual harassment.

10 You know, we thank you so much, for those of
11 you that have sponsored legislation that's moving in
12 the Senate and the House.

13 This summer, we were actually hopeful -- or,
14 last summer, actually, we were hopeful that maybe we
15 would make some progress, that "One Fair Wage" would
16 be enacted.

17 There was a series of hearings that happened
18 across the state, where, you know, tons of tipped
19 workers came out in support, and some not in
20 support, of "One Fair Wage."

21 And we thought that, you know, when the
22 Governor broached the subject, he said that he
23 wanted to address an inequity in the wage system,
24 and it's been almost a year, and we've heard
25 nothing.

1 So we definitely thank you, for those of you
2 have stepped up in leadership, and have sort of
3 responded in the face inaction.

4 And we think that "One Fair Wage" is one way
5 that women in the restaurant industry, workers in
6 the restaurant industry, wouldn't have to grapple
7 with all the sexual harassment that they do now.

8 ASSEMBLYMAN CRESPO: Great.

9 First of all, thank you.

10 And you deserve a lot of kudos for sticking
11 it out to the end, and appreciate the sacrifices
12 your team made, in waiting.

13 A few questions.

14 The conversation around "One Fair Wage," the
15 impact it has to the industry, and all of that, can
16 be looked at from a number of lenses.

17 And when we've often talked about it, it has
18 been mostly under the premise of just labor
19 practice, and, wage-theft issues that arise from it,
20 in that context.

21 But trying to put this lens of harassment in
22 the workplace, and in this industry in particular,
23 is -- so let me follow a train of thought, and
24 forgive me if I'm wrong about some of this. I did
25 work in a restaurant, but I hardly remember what

1 I even made when I worked there. I don't -- you
2 know, it's just all a blur.

3 If you worked in a -- as a tipped employee,
4 the employer still has a responsibility to make you
5 whole to the minimum wage. Correct?

6 So if you're working a shift, or -- for
7 that -- for that pay period, but you didn't make --
8 people were just stingy for those days, whatever was
9 going on, your tips did not make you whole, and the
10 employer has to fill that gap.

11 So, in other words, no tipped employee is
12 making less than minimum wage, or should not be,
13 unless it's a wage-theft issue.

14 Correct?

15 VERONICA AVILA: In theory, yes.

16 But the wage system is so complex, and I can
17 go into that, but I feel like that --

18 ASSEMBLYMAN CRESPO: No, no, right, right,
19 okay.

20 But in theory, they're supposed to?

21 VERONICA AVILA: In theory.

22 ASSEMBLYMAN CRESPO: And in any situation
23 where you're not, now you're getting into wage-theft
24 violations --

25 VERONICA AVILA: Yes.

1 ASSEMBLYMAN CRESPO: -- that would have to be
2 investigated and dealt with.

3 And we've done some things to try to address
4 wage theft.

5 Let's say that you eliminate the tipped wage.
6 You now go to making minimum, plus whatever you make
7 in tips.

8 But a lot of the dynamics that you've
9 described would still seem to exist, where the shift
10 determinations, the section determination.

11 The impetus for somebody, if I'm working at a
12 restaurant, I want to maximize my earnings no matter
13 what. Whether I'm making the minimum or not, I'm
14 not aiming for the minimum. I'm aiming for as much
15 as I can make.

16 Which still leaves that pressure point for
17 someone, an employee to maybe want to go above and
18 beyond, to try to earn more, and/or put up with
19 whatever harassment by the supervisor, because you
20 want that right section where you're gonna maximize
21 that income.

22 So there's still -- some of those dynamics
23 would still exist, not -- or not?

24 VERONICA AVILA: I mean, you know, we have
25 one testimony, she had to leave as well, where she

1 writes that, "I was so happy when I didn't have to
2 deal with any of this."

3 And I don't know that there are many people
4 out there that would say, I would put my self-esteem
5 my dignity, my body, out there on the line to get
6 more.

7 I mean, I think people are used to doing it
8 because, since the history of the restaurant work,
9 there's always been a tipped occupation.

10 So I don't necessarily agree with that, also
11 because we have done research to show that, in
12 states that do have "One Fair Wage," that people
13 experience half the rates of sexual harassment.

14 And part of that is, you are emboldened to
15 address it. Like, you don't have to give your phone
16 number. You don't have to flirt with someone who's
17 disgusting, and who wants to just act like you're
18 their girlfriend for the night.

19 ASSEMBLYMAN CRESPO: No, I completely agree
20 with you.

21 And I guess what concerns me is that, in
22 terms of talking about where we are with policy,
23 what -- where we are with oversight, and where we
24 are with enforcement, none of those situ --
25 conditions that are prevailing in this industry, and

1 I understand how the tip dynamic can exacerbate
2 that, but I'm -- but none of those things should be
3 able to exist as it is.

4 So even if we weren't discussing the tip
5 structure, even if we were just saying, in this
6 industry, this is happening, none of those
7 descriptions, the employer who suggests that you
8 need to dress sexy in order to do this, or, somebody
9 who is creating a hostile work environment, or
10 forcing you to listen to crude -- I mean, a lot of
11 that is captured by existing regulations around
12 harassment in the workplace.

13 And -- so I guess my other questions is:
14 Does ROC have a position on policies to strengthen
15 sexual-harassment protections in the restaurant
16 industry now, whether or not the tip structure is
17 addressed?

18 VERONICA AVILA: So we, fundamentally, think
19 that passing "One Fair Wage" is one way to really
20 get at the crux of the issue.

21 We've done a number of sexual harassment
22 trainings.

23 We've been around since 9/11.

24 So we've done a number of sexual harassment
25 trainings, often in partnership with different

1 government agencies. We go into restaurants, we do
2 them. But it doesn't get at the heart of the issue.

3 And so that's why we're sort of pushing this
4 as a way that we think it can be addressed.

5 And I think, to the point of enforcement, the
6 subminimum-wage system is so complex, it's so
7 confusing, it puts the burden on workers to prove
8 that they've made enough money.

9 And so when you're already in this strange
10 power dynamic, where you're, like, concerned about
11 given the opportunity to maybe earn tips, you're not
12 going to come forward with issues.

13 And so the Governor actually, recently,
14 released the report that found, that about
15 \$35 million in lost wages and tips were recovered.
16 And the highest -- the way that people stole the
17 most money were through violations of the subminimum
18 wage.

19 And when we did the hearing last summer,
20 there was an attorney that pulled up case records
21 from both, you know, New York, and one of the
22 "One Fair Wage" states, and found that the cases
23 that were brought forward on --

24 You know, there's still laws that govern
25 tips. Right? Like, who gets to be a part of the

1 tip pool.

2 -- but that, clearly, there was much less
3 litigation in the restaurant industry in these
4 "One Fair Wage" states, because there wasn't a
5 confusing system.

6 And, quite frankly, sometimes people are
7 super-well intentioned. They're great employers,
8 but it's confusing, even for employers.

9 And so we think that phasing it out, not even
10 (indiscernible) it from one day to the next, but
11 phasing it out for this industry, would also in --
12 decrease liability for employers. It would put them
13 in a position where they don't have to get in
14 trouble, or get into, like, ridiculous lawsuits.

15 We have had workers, you know, once -- that
16 person that was gonna speak today, that's also a
17 restaurant workers, does have a story of living in
18 Minnesota, that's a "One Fair Wage" state, and then
19 moving to New York, and immediately experiencing a
20 case of wage theft, but, it was unintentional.

21 But it's because the system is so complex,
22 and the burden is on workers to come forward and
23 show that they haven't made enough money.

24 So I hear you, but we, fundamentally, do
25 believe, just based on our experience of working in

1 the industry, and dealing with a bunch of restaurant
2 workers across the country that face these issues,
3 that phasing out the subminimum wage is one thing
4 that would really get at a lot of what restaurant
5 workers are facing; in particular, women.

6 ASSEMBLYMAN CRESPO: The dynamics of
7 reporting, currently, in a restaurant setting, and,
8 obviously, reporting a supervisor, or filing a
9 complaint against the management, compared to
10 addressing the harassment by a patron, what is that
11 experience like?

12 And, I don't know if, anecdotally, or you
13 guys --

14 (Indiscernible cross-talking)

15 VERONICA AVILA: Comparing the -- or,
16 addressing harassment from management --

17 (Indiscernible cross-talking)

18 ASSEMBLYMAN CRESPO: So I could imagine --
19 I mean, look, we've heard, in almost every industry,
20 there have been challenges with coming forward, with
21 filing complaints, and having those looked at and
22 addressed appropriately.

23 How much more difficult, or what has been the
24 dynamics, dealing with, when you report to a
25 supervisor or the manager at the restaurant, look,

1 the guy at Table 10 is being completely rude and
2 disrespectful, or saying things that are
3 inappropriate. I refuse to, you know, serve that
4 table?

5 What does that look like for most of the
6 folks that are --

7 (Indiscernible cross-talking)

8 VERONICA AVILA: I mean, I don't know if
9 Gemma kept it in her testimony, but one thing
10 that she says is that, owners create environments
11 that drive sales, and sometimes those are
12 hyper-sexualized environments.

13 And one thing that does happen, is that, when
14 you have an instance with a guest -- you know, we've
15 had this happen, where you have an instance with a
16 guest, it's a regular, you tell the manager. The
17 manager -- you don't want to lose your regular,
18 right, so you just sort of let it slide.

19 You know, she tells the story of, sometimes
20 the manager is friends with the people that are
21 coming in, so you can't really address it, because
22 they are -- they're dependent on that business.

23 And she can't -- she feels like she has to
24 engage, she feels like she has to engage, because
25 she's also waiting for that tip.

1 So I think even to the point --

2 Go ahead.

3 YASMIN (ph.): I've just been listening to
4 you, share (indiscernible).

5 I think what's maybe not being said so
6 specifically, is the culture of the environment of
7 the job itself.

8 The culture of the environment of the job is
9 sexualized, so -- like you were sharing just now.

10 So you're, basically, complaining about
11 something being wet, but you're in a fish bowl. You
12 know what I mean?

13 Like, it's -- that's what it is: a fish bowl
14 has water, it's going be wet.

15 So you're in an environment, a restaurant,
16 that is creating an atmosphere in which everything
17 is overtly sexualized, because that is the -- what
18 is pushed to push sales.

19 So if you are -- and everyone wants to do
20 well at their job, no matter what their job is.
21 That's just a fundamental thing about being human,
22 and working. You want to do your best. Right?

23 So you're not, in that particular cultural
24 environment, going to speak out to your boss and
25 say, You know, this particular guy here in Table 4

1 is saying such and such to me.

2 Because, you already learned that, if you do
3 speak out, then you're going to get a shift that's
4 less desirable, and, you're also not going be taken
5 as somebody that wants to do their job well, because
6 you are complaining about a guest.

7 You're complaining -- I mean, most places
8 don't even call them "customers." They say "our
9 guests," "our friends."

10 That's the language that we use in
11 restaurants.

12 So it's -- so, therefore, that's passed on to
13 the employees as well, that this is what you're
14 supposed to do.

15 "One Fair Wage" would be so useful because,
16 what's -- Gemma doesn't speak about this, but,
17 fellow workers, fellow comrades, fellow people that
18 I work and support, are parents, are single moms.

19 So, when you are working on tips alone as
20 your basic foundation of economics and financial
21 security, you're automatically insecure, because
22 tips fluctuate, like she just shared earlier, based
23 on weather, based on customers, based on, anything.
24 Right?

25 So, it's difficult to plan ahead and to plan

1 for your financial security for your family, if
2 you're based on tips, if that's what you're dealing
3 with.

4 A wage that you know, okay, I'm going get
5 paid, this amount, every time, then I can begin the
6 opportunity to plan ahead.

7 Which is what we encourage all citizens to
8 do, to think ahead to -- ROC does that, actually.

9 As a member, I was asked to take on, and I'm
10 grateful I did, financial literacy classes, that
11 helped me understand how I can save better.

12 You know, I worked in this industry.

13 I had the fortune of working this industry,
14 and being in school. So I had an opportunity to
15 have other opportunities afforded to me, so I didn't
16 have to stay in the industry.

17 But I still remember what that was like.

18 And, you know, to be quite frank, I did not
19 have to raise a child as a student.

20 But people are raising families in a city
21 that's increasingly becoming more expensive for
22 those of us that have jobs that have set wages, and
23 other avenues in which we don't have to depend on
24 the kindness of strangers, like it's a plague. You
25 know, we're "Streetcar Desire." Like, this is

1 people's lives.

2 "One Fair Wage" would be about equality, and
3 it would make it so that you can impact working
4 families across the state, so that they're able to
5 then take care of themselves and their families.

6 And it should not be something that we have
7 to rely upon others to do for us.

8 So, it's such an interesting issue.

9 If you shift this one thing, it affects so
10 many things in so many positive directions.

11 ASSEMBLYMAN CRESPO: I don't -- let me --
12 I think earlier I made a question that may have been
13 misunderstood, and I don't want that to happen here.

14 I'm not -- I'm not expressing these questions
15 out of a position on whether or not "One Fair Wage"
16 should pass or not, or -- 'cause -- and my committee
17 is going to have to work on this as well.

18 I'm really just trying not to lose focus of
19 fact that, you're right, these positions, and this
20 industry, is hyper-sexualized. The perception of a
21 young, innocent, female waitress is there for me to,
22 you know, whatever, as a patron.

23 And some of these are, particularly, what
24 bartenders go through as well.

25 So, I guess, acknowledging that, is that

1 I don't want to lose sight of the fact that none of
2 those wage issues will completely eliminate, nor
3 should they prevent us from strengthening
4 protections in the workplace, how reporting is done,
5 how enforcement is done, within this industry.

6 And -- and -- so I -- that's the reason why
7 I'm asking, because I think, representing workers in
8 the industry, I would love to hear some of your
9 recommendations for strengthening those protections,
10 whether or not the tip issue gets addressed.

11 And I'm -- again, I don't -- I'm not losing
12 sight of the fact that changing that structure could
13 have a tremendous impact on the numbers, based on
14 the data you provided.

15 But it's really that I don't want to lose
16 sight of the fact that we can do more now, without
17 waiting on a solution to the other policy issue,
18 wage issue, to say, the harassment that is happening
19 shouldn't be happening to begin with, it shouldn't
20 be happening now.

21 And, I just don't want to lose sight of that
22 in this industry.

23 One last question.

24 Earlier today we heard about the Fair Food
25 campaign, and the approach that the farmworkers

1 used, where, you know, they use their bargaining
2 power, and all of that.

3 Have -- has -- have you guys considered that
4 approach, and/or are any major restaurant chains or
5 major players in this industry agreed to come
6 forward and work with you, and say, proactively, You
7 know what? We will set a standard of paying a
8 minimum wage.

9 Are there any examples of that already?

10 And are they trying to change the dynamics
11 outside of policy, but by practice?

12 VERONICA AVILA: So, two things.

13 I would say that, like, you know, we agree
14 with most of the recommendations that people have
15 provided today.

16 But we want, on record, to say that we think
17 that "One Fair Wage" would a way to really diffuse
18 the power dynamic that people grapple with.

19 I mean, customers also know, there's also
20 research on this, they know that their tip wields
21 power over you, right, so they carry that into the
22 space.

23 And this work has existed, as a job, since
24 the early 1800s. And since the early 1800s, people
25 have been fighting to not have to be paid a

1 subminimum wage.

2 And so I think, you know, every time there's
3 an increase to the minimum wage, tipped workers are
4 told to wait, restaurant workers told to wait; wait
5 their turn, wait till next time, let's strengthen
6 enforcement.

7 And I think we're in a moment where, like,
8 it's just not enough anymore.

9 It's -- we want a holistic change, right, but
10 we think, for us, "One Fair Wage" is a central piece
11 of the puzzle, and these other things would be
12 supports.

13 So to the other question of restaurants, we
14 do actually have an employer roundtable that's
15 called RAISE. It's a wonderful acronym, that
16 I don't remember what it stands for.

17 So, it's a network of employers that are
18 trying to promote this high road to profitability.
19 And they do things, like, you know, offer benefits,
20 that they don't have to. They do something that's
21 above the law.

22 And so here in New York we have about
23 60 partners.

24 So, for example, Danny Myers (ph.) is a
25 partner.

1 You know, Andrew Tarlow's group, the
2 Marlow Collective, is a partner.

3 Even small restaurants, like a new restaurant
4 that just opened in January, named (indiscernible),
5 right, they are also partners.

6 So we are trying to have an informal network
7 that does promote the sustainable pathway to
8 profitability.

9 But one thing that we know, is that the
10 industry has to make this change together. It has
11 to make this change together.

12 If you have one person that's out there doing
13 above and beyond, it does -- you know, it does give
14 others that are following the subminimum wage a
15 competitive advantage.

16 And so, when we think about this, we think
17 that it has to be legislated. It has to be
18 legislated, because the industry has to make this
19 change together.

20 SENATOR BIAGGI: I have one question, and
21 then I think that's all of the questions, unless
22 anybody -- (looking around) -- okay. Very good.

23 So have you -- actually, let me ask it this
24 way: Has the mandated department of labor policy on
25 sexual-harassment training, and having sexual

1 harassment policies, changed anything about the
2 daily harassment that you endure?

3 VERONICA AVILA: I would say no, no.

4 SENATOR BIAGGI: I thought that that would be
5 the answer, but I just want to make sure that I'm
6 not missing anything.

7 Thank you so much, and thank you for waiting,
8 and providing all of this testimony.

9 And I think that that concludes --

10 ASSEMBLYMAN CRESPO: I mean, unless we want
11 to, like, stall till midnight, and say -- no, I'm
12 just kidding. I'm kidding, I'm kidding.

13 VERONICA AVILA: Thank you.

14 YASMIN (ph.): Thank you; thank you so much
15 listening.

16 ASSEMBLYMAN CRESPO: And for those of us that
17 remain, if we could just give a round of applause to
18 the staff that had stayed in the room and worked
19 everything.

20 [Applause.]

21 SENATOR BIAGGI: Thank you all so much.

22

23 (Whereupon, the joint public hearing
24 concluded, and adjourned.)

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