

1 BEFORE THE NEW YORK STATE SENATE
2 STANDING COMMITTEE ON ETHICS AND INTERNAL GOVERNANCE

3 PUBLIC HEARING:

4 TO DISCUSS NEW YORK STATE'S SYSTEM OF
5 ETHICS OVERSIGHT AND ENFORCEMENT
6

7
8 Senate Hearing Room
9 250 Broadway
10 New York, New York

11
12 Date: December 9, 2021
13 Time: 10:00 a.m.

14 PRESIDING:

15 SENATOR ALESSANDRA BIAGGI
16 Chair

17 SENATOR LIZ KRUEGER
18 Co-Sponsor

19 PRESENT:

20 SENATOR GEORGE BORRELLO

21 SENATOR PHIL BOYLE

22 SENATOR BRAD HOYLMAN

23 SENATOR ANTHONY PALUMBO
24
25

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1 SENATOR BIAGGI: Okay.

2 All right. Good morning, everybody.

3 I am State Senator Alessandra Biaggi, as well
4 as the chairwoman of the Senate Committee on Ethics
5 and Internal Governance.

6 And I would like to thank everybody who is
7 participating today and present today for being here
8 in our second of the ethics hearings this year.

9 I want to acknowledge and thank
10 Senator Liz Krueger for co-chairing today's hearing,
11 as well as members of the Senate Ethics Committee,
12 including Ranking Member Senator Palumbo, who will
13 be here shortly; and my colleagues Senator Boyle and
14 Borrello for joining us today.

15 I would also like to express my gratitude to
16 leader and -- excuse me -- to the leader of the
17 Senate Majority Conference, Andrea Stewart-Cousins,
18 for supporting, and continuing to support, the
19 Ethics Committee, and calling this hearing today.

20 We are here, as I mentioned, for our second
21 hearing of the year; specifically, to examine
22 New York's system of ethics, oversight, and
23 enforcement, to identify areas of needed
24 improvement, and to discuss alternative approaches
25 to enforcing ethics within our state government,

1 something that I think many people are interested in
2 across the state.

3 Earlier this year the committee convened for
4 a hearing just a few days into the new executive
5 administration, examining the role of the Joint
6 Commission on Public Ethics, or, "JCOPE," as we all
7 refer to it, and its failure to serve as an
8 independent ethics body.

9 We heard directly from the executive director
10 of JCOPE, Sanford Berland; former JCOPE Commissioner
11 Director Julie Garcia; and various good-government
12 groups.

13 We were also joined by legislators from
14 Alaska and Rhode Island who outlined effective
15 systems of ethics oversight within our own
16 governments.

17 The testimony from our first hearing
18 identified key areas for improvement within JCOPE,
19 and subsequent legislative solutions to reform the
20 commission, and to restructure an entirely new
21 ethics oversight body, which we hope to do through
22 Senator Krueger's bill.

23 The purpose of today's hearing is to examine
24 the work of government agencies and offices beyond
25 JCOPE who are tasked with ethics and anticorruption

1 work in New York, and to identify areas of
2 improvement and legislative solutions within these
3 bodies.

4 This hearing will also discuss
5 Governor Kathy Hochul's new transparency and ethics
6 policies, and identify additional areas for reform
7 from the executive.

8 During today's hearing, we are joined by
9 representatives of Comptroller Thomas DiNapoli's
10 office, Nelson Sheingold, counsel to the
11 New York State Comptroller; and Terri Crowley,
12 executive deputy comptroller for operations.

13 We will also hear from good-government
14 groups, and California State Senator Scott Wiener
15 who chairs the California Senate Legislative Ethics
16 Committee.

17 And many of you might know him because of his
18 work also in housing across the state of California.

19 Before we begin, it's very important just to
20 take a note of the offices that are absent from
21 today's hearings.

22 And let the record reflect that the committee
23 invited the new chair of JCOPE, Jose Nieves, to
24 testify, who was appointed by Governor Hochul to
25 replace Commissioner James Dering.

1 Additionally, we invited the principal
2 representatives from the inspector general's office;
3 governor's office of employer relations, or also
4 referred to as "GOER"; the Legislative Ethics
5 Commission; and the office of the attorney general.

6 Several have declined to attend in person;
7 but, also, several have also submitted written
8 testimony, which we will include when we have our
9 report at the end.

10 As the chair of this committee, and as a
11 legislator that is deeply committed to reforming
12 government oversight and accountability, I would be
13 remiss not to share my disappointment, of course, in
14 the absence of those who are not here today.

15 And I hope that the -- in the future, we will
16 be able to come together, to learn, to work
17 together, and to be able to really take the task of
18 transforming our government, to make sure that the
19 systems that surround us are actually systems that
20 can withstand accountability and anticorruption
21 work, and really make sure that the state of
22 New York is no longer considered a place where
23 corruption, unfortunately, lives and thrives.

24 To transform this culture, I think that
25 having an increased amount of transparency in

1 government is essential, and to be collaborative as
2 well.

3 So I just highlight those things because it
4 is an important part of moving forward.

5 And so let's hope, for the future, that we
6 are able it to partner.

7 Without meaningful transparency and
8 accountability, New York State will never reach its
9 highest potential.

10 And I think that New York State is one of the
11 greatest places on earth, and deserves the absolute
12 best.

13 And so with new leadership at the helm, we
14 are going to, hopefully, use this opportunity to
15 enact real change next year.

16 And I look forward very much to working with
17 everybody beyond not only today, but in this
18 upcoming legislative session.

19 And so with that, I will hand it to my
20 co-chair, if she would like to say a few words
21 before we begin with our first panel.

22 SENATOR KRUEGER: Thank you very much.

23 I have to say, I think that Senator Biaggi
24 pretty much said it all.

25 I think the one thing I would add, well, when

1 you talk about ethics in government, you sometimes
2 default to the problem corruption.

3 But I would also argue, just looking at the
4 number of different agencies in the state of
5 New York who might have a role here, you become
6 aware of how there is great confusion out there as
7 to, who is instructing whom, who does one report to
8 if one has a problem.

9 And, if you get conflicting information from
10 different entities, what do you do with that?

11 So I would also argue that it's critical, if
12 we want to accomplish the goals that Senator Biaggi
13 just laid out, that we also ensure that there is a
14 strong educational component of any entity that is
15 responsible for ethics in the state of New York,
16 because I fundamentally believe, after 20 years in
17 government, almost no one runs for elected office
18 with a goal of becoming corrupt. Almost no one
19 takes a job in government because their goal is
20 corruption.

21 They slip and slide off the road over the
22 course of years.

23 They crossed lines because they didn't know
24 the lines existed.

25 They crossed lines because they felt forced

1 into situations that they didn't know who to talk to
2 to resolve the issue.

3 So my goal, also, in improving the models we
4 use in New York State, to assure the people of
5 New York State that we have an ethical and fair
6 government, is that we make sure everyone has access
7 to the information they need before they ever get to
8 that point where they're making a decision that may
9 put them across legal lines or moral lines; because
10 I think it is so, so important that we make it
11 extremely clear to anyone who is taking jobs in
12 government, or who is doing business with
13 government, that we all know what the rules are and
14 that we're going to be held accountable to them.

15 So it's not just those in government.

16 I mean, JCOPE has an important role, that
17 I believe they fail, in evaluating and educating
18 lobbyists as well, who have a very unique role in
19 government, and are often part of the problems when
20 they blow up, but rarely are held to account.

21 So I look forward to our continuing efforts
22 through hearings and through legislative change.

23 Thank you, Senator Biaggi.

24 SENATOR BIAGGI: Thank you, Senator Krueger.

25 Would Senators Borrello or Boyle like to say

1 a few words?

2 Okay.

3 SENATOR BORRELLO: Thank you.

4 First of all, I would like to say thank you
5 very much for calling this hearing, Chairman Biaggi.

6 Thank you for being here; and also
7 Chairman Krueger.

8 I'm a member of the Finance Committee, and
9 certainly enjoy serving on that committee.

10 I would say that, you know, we have a crisis
11 when it comes to ethics in New York State, and
12 corruption is, unfortunately, baked into the system.

13 The biggest problem with it is a lack of
14 transparency.

15 And, quite frankly, our former governor
16 certainly ran roughshod over the legislature and the
17 people of New York State with the way he controlled
18 JCOPE.

19 You know, there's no greater example of that
20 than the fact that they actually approved that book
21 deal, that we now know was a disaster and a lie; and
22 on top of that, he was rewarded handsomely for it.

23 So we need to take a good look at this
24 situation.

25 Where are we going to improve ethics, and

1 how?

2 How are we going to ensure the people of
3 New York have confidence that their government
4 serves them, and that it is an open, transparent
5 system.

6 We don't have that right now.

7 Ethics is just only a part of the problem,
8 but it's certainly something that we need to start
9 with.

10 So I'm glad to be here and discuss this, and
11 I appreciate the conversation.

12 Thank you.

13 SENATOR BOYLE: And thank you,
14 Senator Biaggi, for holding these hearings, and
15 Senator Krueger.

16 I was fortunate to take part in the Albany
17 hearings, and learned a lot.

18 And I hope to look forward to learning a lot
19 more from our panelists today.

20 I think one of the problems, and you all
21 touched on it, is the fact that, in Albany, it's
22 really not so much the malfeasance that is done;
23 but, who's doing it, whether they're going to be
24 held accountable by ethics.

25 So when we look to replace JCOPE, or whatever

1 we're going to do, the next [indiscernible] -- I've
2 been in the legislature 27 years, so I've seen
3 several different iterations of this -- we're going
4 to get it right this time with your leadership.

5 And thank you so much.

6 SENATOR BIAGGI: Thank you both so much.

7 And with that, we can begin with our first
8 panel.

9 We will be joined remotely by
10 Nelson Sheingold, who is counsel to the
11 New York State Comptroller; and, Terri Crowley,
12 executive deputy comptroller for operations.

13 And we're very grateful to have the office of
14 the state comptroller here with us here today.

15 Thank you both so much for joining us
16 remotely, and we look forward to hearing your
17 testimony.

18 NELSON SHEINGOLD: Thank you very much,
19 Senator Biaggi, and thank you for inviting us; and
20 thank you, Senator Krueger, Senator Borrello,
21 Senator Boyle, and all of the distinguished
22 committee members.

23 I thank you on behalf of
24 Comptroller DiNapoli.

25 My name, as Senator Biaggi said, is

1 Nelson Sheingold, and I have the privilege of
2 serving as counsel to State Comptroller
3 Tom DiNapoli.

4 I'm joined today by Terri Crowley, our
5 executive deputy comptroller, who heads our office
6 of operations.

7 New Yorkers have seen way too many scandals
8 involving public officials in recent years.

9 The activities of those who abuse their
10 office compel us to take all possible measures to
11 restore public confidence in our government.

12 This can only be accomplished through
13 enhanced transparency and accountability.

14 Under the state constitution, our state law,
15 the state comptroller's office is the independent
16 watchdog of taxpayer funds, and an integral
17 component in the fight against public corruption,
18 fraud, waste, and abuse.

19 Comptroller DiNapoli has been, and will
20 always continue to be, committed to maximizing the
21 authority and resources of this office to combat
22 corruption, and eliminate waste, fraud, and abuse of
23 public funds.

24 In the fight against public corruption, we
25 work with law enforcement at all levels of

1 government, in all 62 counties of the state, with
2 all of our U.S. attorneys' offices, the attorney
3 general, the state police, the FBI, and numerous
4 other federal, state, and local agencies, to
5 aggressively root out public corruption and fraud.

6 This work has, thus far, resulted in over
7 250 arrests, and the ordered recovery of over
8 \$78 million since the inception of
9 Comptroller DiNapoli's anticorruption initiative.

10 But fraud detection is simply not enough.

11 Through the hundreds of audits of state and
12 local governments and public authorities we conduct
13 every year, we proactively identify deficiencies in
14 internal control gaps, and make recommendations to
15 improve efficiency, and prevent fraud before it
16 occurs, and before there's any misexpenditure [sic]
17 of taxpayer funds.

18 The comptroller's duty to audit state
19 payments, and the authority to review and approve
20 state contracts before they take effect, are a core
21 function of the comptroller's office, and vital
22 checks on waste, fraud, abuse, and corruption.

23 For 2021, cumulatively, through October of
24 this year, the comptroller's office has already
25 approved over 14,000 contracts valued at over

1 \$163 billion, and has approved nearly 171 million
2 payments worth more than 174 1/2 billion dollars.

3 At the same time, this office has rejected
4 over 1300 contracts and related transactions, valued
5 at over \$5.4 billion, and nearly 218,000 payments
6 valued at nearly \$262 million, primarily due to
7 errors, improprieties, or lack of sufficient
8 supporting documentation.

9 Our independent oversight of state contracts
10 is an essential check and balance, and critical in
11 providing assurance that public funds are being
12 appropriately spent.

13 Unfortunately, over the last decade, through
14 the state budget and legislation, our
15 contract-approval authority has been chipped away
16 at.

17 Now, a common justification for voiding our
18 review rests on the supposed delay in the
19 procurement process.

20 This is simply unpersuasive.

21 Actually, on average, our review of contracts
22 takes less than a week. And when it takes us
23 additional time to exam a proposed contract, and ask
24 appropriate question, it's for a very good reason;
25 namely, to fulfill our job, to ensure that public

1 moneys are appropriately spent.

2 We urge the legislature to eliminate any
3 further circumventions of our approval authority,
4 whether it be in the budget or through proposed
5 legislative action, and to restore that authority
6 that has been taken away over the last decade.

7 On this note, Senator Reichlin-Melnick
8 recently introduced a bill which would restore much
9 of our contract approval authority, which is pending
10 before you.

11 Comptroller DiNapoli also believes that
12 transparency is critical, and we've taken action to
13 back that up.

14 The comptroller's "Open Book New York"
15 website contains information on over 190,000 state
16 contracts; the ability to search payments dating
17 back to 2012; detailed revenue, spending, debt, tax
18 limit, balance sheets, and property tax information
19 for our over 3100 local governments in New York,
20 dating back to '07. It has financial information
21 for more than 500 state and local public
22 authorities, also stating back to '07; and other
23 related budgetary and financial information about
24 state agencies to educate the public.

25 More specifically, in October we launched a

1 publicly accessible dashboard to track certain
2 federal COVID funding, and state relief programs, so
3 New Yorkers can monitor the spending of these funds
4 in the state. This includes funds for excluded
5 workers, child-care services, emergency rental and
6 homeowner assistance, and small-business recovery.

7 Additionally, our fiscal-stress monitoring
8 system provides an early warning to local government
9 and their citizens regarding the financial state of
10 their local governments which they live in.

11 Our audit reports that I mentioned earlier
12 are all publicly posted on our website for citizens
13 to review and use in making informed decisions as
14 they participate in their government.

15 In closing: Comptroller DiNapoli has been,
16 and remains, committed to using his office, and
17 partnering with the legislature and executive, to
18 promote accountability and transparency in
19 government at every level.

20 And I look forward, as does Ms. Crowley, to
21 answering any questions the panel may have.

22 Thank you.

23 SENATOR BIAGGI: Thank you very much for your
24 testimony.

25 I will ask questions last.

1 And so, if Chairwoman Krueger would like to
2 begin, I'm happy to start with her, of course, and
3 then we'll go back and forth with questioning.

4 But thank you very much.

5 NELSON SHEINGOLD: Thank you.

6 SENATOR KRUEGER: Thank you both for
7 attending, and giving us a chance to review your
8 testimony and think of additional concerns.

9 So you referenced the contracts that the
10 State of New York does, which are billions and
11 billions of dollars a year, and the important role
12 that the comptroller's office plays in both
13 reviewing and auditing.

14 Can you help me understand, because I think
15 lots of legislators don't necessarily, what role we
16 can and cannot play in this process?

17 Because it is my understanding that we are
18 not allowed to attempt to influence who gets what
19 contracts in the state of New York.

20 But it's also true that it's very common that
21 a business that might be in our district contacts us
22 and says, We're trying to do business with the State
23 of New York, and we wonder whether you can be
24 helpful?

25 So help me understand where being helpful

1 stops, and crossing a line into attempting to
2 influence the outcome of who gets a contract starts.

3 NELSON SHEINGOLD: Thank you,
4 Senator Krueger.

5 Well, as you're aware, the legislature is
6 exempt from the procurement lobbying laws that would
7 directly apply to the vendors, or potential vendors,
8 or sometimes losing vendors, frankly, who have
9 contracts before the State.

10 So that would not apply as it would to some
11 other people who reach out to us.

12 The key, from our perspective, is we do our
13 reviews independently.

14 As you know, our reviews, just like our
15 audits, are conducted by career civil servants who
16 apply objective standards, to make sure what's
17 before us comports with the law that applies to that
18 particular contract; whether it requires competitive
19 bidding, the process that was used to secure that,
20 and whether the prices are reasonable.

21 So we will not be, and are not, influenced as
22 to when it can cross the line, you know, crossing to
23 areas of legislative ethics; and then, at worst, as,
24 unfortunately, we have seen in some past scandals,
25 outright corruption.

1 So, and there are obviously criminal laws and
2 other laws that would limit that.

3 But once again, from our perspective, when we
4 look at a contract, and our career, very
5 experienced, very good, frankly, civil servant to
6 look at it, we're going to look at it objectively,
7 and we're going to look at what comes in from the
8 agency, and do our own review.

9 SENATOR KRUEGER: So I could call you and
10 say, "I really like this group, I hope they can get
11 a contract," that wouldn't be crossing the line?

12 NELSON SHEINGOLD: Once again, everything
13 would be that specific, Senator.

14 Like I said, and maybe this is something that
15 warrants a review, but under the procurement
16 lobbying laws that would apply, the legislature is
17 not included.

18 So that would not be a per se violation like
19 it would, say, if some vendor or chamber of
20 commerce, or I can make up a million hypotheticals,
21 would, where we couldn't look at it, and we would
22 say, You have to go to the agency contact.

23 So that's, once again, the legal standard.

24 [Simultaneous talking.]

25 NELSON SHEINGOLD: Yes, please go ahead.

1 TERRI CROWLEY: I can say, from an
2 operational perspective, what we would say to anyone
3 who calls, we simply say the status of a contract.

4 We don't -- we make it clear that we are
5 independent, whether it is a member, a lobbyist,
6 another group.

7 And what our main objective is, we can tell
8 you the status of the contract, and that's pretty
9 much the extent of it.

10 SENATOR KRUEGER: Got it.

11 And so we know that a registered lobbyist can
12 talk to you about their client's application for a
13 contract; right? That's true?

14 NELSON SHEINGOLD: Correct. You're right.

15 TERRI CROWLEY: Yes.

16 NELSON SHEINGOLD: Correct.

17 SENATOR KRUEGER: And can a registered
18 lobbyist for a client contact a legislator and ask
19 them to get involved? Is that a conflict of
20 anything?

21 NELSON SHEINGOLD: Once again, I -- you know,
22 I'm going to not feign expertise in the lobbying
23 law.

24 But, from our perspective, obviously, if they
25 contacted us, that would be absolutely in a

1 restricted period and we would not converse with
2 them.

3 The restrictions on conversations between
4 lobbyists and the legislature, I would not fully
5 opine on.

6 SENATOR KRUEGER: So I think there are a
7 couple of holes in the law that we need to address.

8 But let me ask the reverse question.

9 Give me an example of a case of corruption in
10 contracting that the comptroller's office got
11 themselves involved in.

12 You know, what was the -- give me -- you
13 don't have to name the names, but just give me an
14 example of what actually happened, that made you
15 realize that there was a violation of law here that
16 you needed to insert yourself into in some way.

17 NELSON SHEINGOLD: First, if I could just
18 spare a little bit, Senator Krueger, when we look at
19 contracts that come in, and I mentioned some
20 improprieties before, the primary thing we're
21 looking at, once again, does it comply with the law?
22 And to use a technical legal phrase, whether it
23 looks kosher coming in. That's the primary, and we
24 will look at it.

25 And I can think of examples, and it's hard

1 not to mention it, of ones that did not come here,
2 which I can't believe we wouldn't have tracked and
3 we wouldn't have flagged if they did.

4 The ultimate example being the whole
5 situation with the Buffalo Billion and
6 Alain Kaloyeros, which, on its face, is incredibly,
7 incredibly tailored when it comes in.

8 So, if it did come in; and, unfortunately, it
9 didn't under current law.

10 So it's very easy to pick, once again,
11 situations like that.

12 As I said before, we reject thousands of
13 contracts every year, based on different
14 improprieties, and others.

15 And, also, and I want to point out one other
16 thing, in addition to what we may or may not catch
17 coming in that may be fraudulent, the very fact that
18 our review is there serves as a deterrent because
19 they know it's coming here.

20 And, in fact, and I take this as a mark of
21 honor, we've had agencies tell us, and I've had
22 vendors mention that agencies have said, Oh, I can't
23 do that, or, Don't put in that clause, because the
24 comptroller's office will never, ever approve that.

25 As you know, we also serve, as we look at bid

1 protests that come in, and we grant them, you know,
2 several every year, where the agency is approved,
3 the target-bid protest comes to us, and we'll say,
4 No, that wasn't kosher.

5 So I can think of many examples of that off
6 the top of my head.

7 But, unfortunately, a lot doesn't come to us
8 anymore.

9 SENATOR KRUEGER: And it's great that you
10 referenced the Buffalo Billions example, with the,
11 sort of, I was going to say offshore contracting,
12 but it wasn't offshore, you know, creating entities
13 within a different state agency.

14 Does the comptroller's office have specific
15 language that you think we need to put into
16 legislation to prevent that from happening, and
17 prevent people from being able to skip the
18 comptroller's process?

19 NELSON SHEINGOLD: Yeah, well, first of
20 all, I think what needs to happen is,
21 Senator Reichlin-Melnick's bill needs a good look
22 at, because, once again, that would restore us back
23 to where we were in 2011, where we had much, much,
24 much more robust review over SUNY contracts,
25 CUNY contracts, and OGS centralized contracts, which

1 encompass billions of dollars and thousands of
2 contracts every year.

3 So that would be the perfect first step to
4 start and restore what was lost.

5 But then, going forward, it's -- we would say
6 it's imperative to stop any further erosion,
7 especially once it's restored.

8 This has been an erosion over time, starting
9 with the big chip-away in 2011 and 2012 that I just
10 mentioned. But, in every year's budget, there seems
11 to be another part where we're not withstood and
12 avoided.

13 So just to make sure it doesn't get slipped
14 into the budget, that's not incorporating a
15 language, and allow us to review it, both as an
16 active review-and-oversight system; but, also, as a
17 very effective deterrent.

18 TERRI CROWLEY: Yeah, and I would just like
19 to add one thing.

20 A lot of our authority rests with Section 112
21 of the state finance law.

22 And you will see, as Nelson said, in this
23 past budget alone, probably at least a dozen
24 examples, you know, there's an appropriation, not
25 withstanding Section 112 of the state finance law.

1 So every time that happens, we're taken out
2 of the review.

3 So I -- to Nelson's point, I think what we
4 would hope and recommend that you would -- you know,
5 that the legislature would be very careful when
6 inserting that language, because, again, it takes us
7 out.

8 We were taken out of billions of dollars in
9 this past budget. And it happens over and over and
10 over again. So....

11 SENATOR KRUEGER: That's excellent to keep
12 track of.

13 What about contracting through public
14 authorities; is your role different when the
15 contracts go through an authority?

16 NELSON SHEINGOLD: Yes. Under the public
17 authorities law our role is different.

18 For a contract to be called by this office,
19 it has to be over a million dollars. It can either
20 involve a noncompetitive process or state money.

21 So, obviously, it's a much, much, much higher
22 threshold, and we have to call for it to review it.

23 Now, I will note there is a bill pending in
24 the Assembly, which would require public
25 [indiscernible] -- that's a program bill

1 Comptroller DiNapoli -- that would require public
2 authorities to promulgate guidelines, and internal
3 procurement guidelines, that are consistent with the
4 guidelines that apply to state agencies under
5 Section 163 of the state finance law. It would hem
6 them closer because, right now, it's completely
7 inconsistent. They can come up with their own
8 rules. And they could come up by a new resolution
9 with a -- a resolution to avoid competitive bidding.

10 So it is a higher standard than it would be
11 with state contracting, even before the 2011
12 chip-away.

13 SENATOR KRUEGER: Great.

14 I don't want to monopolize, so I'm passing it
15 back to you, Senator Biaggi.

16 Thank you very much.

17 SENATOR BIAGGI: Thank you, Senator Krueger.

18 Those were excellent questions.

19 I just want to knowledge that we've been
20 joined today by Ranking Member Senator Palumbo.

21 Welcome. We're happy to have you.

22 And I would like it to just hand it over to
23 my colleagues; so, please.

24 SENATOR PALUMBO: Thank you, Madam Chair.

25 And thank you today for coming.

1 And this is obviously something that's of
2 great significance to all of us. I know we've been
3 talking about this for years.

4 So I'm just certainly pleased.

5 I've read through the testimony. And if
6 I have any further questions, of course I'll jump
7 in.

8 But I do certainly appreciate Senator Biaggi
9 and Senator Krueger, the two chairwomen, for moving
10 this ball forward, because this is something that
11 we've all been critically concerned about.

12 And we certainly appreciate your input.

13 So, thank you.

14 SENATOR BIAGGI: Thank you.

15 And, yes, please, Senator Borrello has a few
16 questions.

17 SENATOR BORRELLO: Thank you.

18 First of all, thank you both for appearing
19 today; appreciate it.

20 I will say that Comptroller DiNapoli
21 certainly has the utmost respect of myself and many
22 others I would say on both sides of the aisle, and
23 you've done a great job in that office.

24 I sit on -- I am the ranking member of the
25 Procurement and Contracts Committee, which

1 Senator Reichlin-Melnick is the chair of, and I'm
2 glad to hear there's legislation to try and restore
3 your oversight of all these contracts.

4 My concerns lie with the shockingly
5 increasing number of contracts that have been
6 awarded to companies outside of New York State.
7 That seems to have ramped up in the last several
8 years, particularly under our former governor.

9 And my concerns are, a number of things.

10 First of all, I don't think New York State
11 taxpayer dollars should be going to companies out of
12 state.

13 Yes, it's a lot cheaper to go out of
14 New York State, but that's because, largely, it's
15 too expensive to do business in New York State. And
16 I don't think our taxpayer dollars should be going
17 in that manner to save money in that way.

18 But my question to you is:

19 When it comes to oversight of those
20 companies, I have heard concerns that, quite
21 frankly, it's difficult to understand the different
22 state laws, and the lack of being able to fairly
23 assess those contracts for companies that don't
24 operate under New York State laws. That's a
25 challenge.

1 So could you speak to that, and the ability
2 for you to be able to root out corruption, and also
3 being a proper oversight?

4 NELSON SHEINGOLD: Thank you, and
5 I appreciate your kind words about our office and
6 Comptroller DiNapoli's work.

7 Yes, you know, obviously, we cannot act to
8 determine where contracts are let, and what vendors.
9 That's limited by New York State law. We can only
10 apply New York State law when we do our contract
11 review.

12 But to your question, when you have
13 out-of-state entities -- and, particularly, now I'm
14 putting on my hat of investigations I have been
15 conducting for the last, you know, in fact, 27 years
16 of my life -- it presents some logistical challenges
17 when you have allegations of particularly
18 corruption.

19 They're out-of-state, sometimes not
20 susceptible to administrative subpoena process,
21 witnesses are not, you know, to be brought around
22 the corner.

23 So in the corruption-investigation sense, it
24 absolutely could present some challenges.

25 You know, contract review, when we do our

1 initial contract review, it's subject to authority.
2 You know, that's more of a paper we're looking at,
3 the documentation, we're asking documentation. We
4 could hold back our approval, when the legislature
5 has given us that authority, before we get certain
6 documentation.

7 So we have leverage in that situation.

8 But, definitely, especially when you have an
9 allegation of corruption, it could absolutely
10 present some logistical and practical and legal
11 hurdles.

12 SENATOR PALUMBO: Thank you.

13 Actually, I have a bill that did pass
14 procurement and contracts this past year, to,
15 essentially, give in-state contractors a last look,
16 so that they can match the lowest responsible bid of
17 an out-of-state contractor.

18 So in addition to that, I think being a
19 better use and more responsible use of taxpayer
20 money, in essence, would also give you a slightly
21 easier job in being able to review those contracts
22 and root out corruption.

23 Would you agree?

24 NELSON SHEINGOLD: You know, once again,
25 especially in the corruption arena, like I said,

1 there are definitely hurdles when it's out-of-state
2 or out-of-country vendors.

3 SENATOR PALUMBO: Great.

4 Well, and as far as -- thank you.

5 And as far as the oversight that you are
6 currently -- this bill that Senator Reichlin-Melnick
7 has, how would that improve -- in your opinion, how
8 would that improve your ability to, you know, expand
9 your oversight?

10 NELSON SHEINGOLD: Once again, it would
11 restore what's been taken away over the last decade.

12 So, for example, if you look at the state
13 procurement rules, before you even get --
14 competitive bidding process, first, you have to see
15 if there's a preferred source available; then you
16 look at the centralized contract; and then you get
17 to competitive bidding.

18 Well, once again, back in 2011, by statute,
19 our review of centralized contracts was taken away.

20 Now, we were able, through an MOU, to get
21 some of it back. But once again, that's by a mere
22 MOU.

23 So you're talking the second step in the flow
24 chart that was statutorily removed from our
25 oversight authority.

1 And then you see what was taken away in terms
2 of SUNY and CUNY. Like Ms. Crowley said, we're
3 talking billions of dollars that flow through that
4 don't come before us.

5 So I think it would be a marked improvement
6 in oversight and protection.

7 And as I said in response to
8 Senator Krueger's question, we also can't, you know,
9 be -- forget about the deterrent effect, and the
10 check effect, it has on all state agencies and
11 vendors.

12 SENATOR PALUMBO: Could you give me the
13 percentage of what contracts, under the changes that
14 were made in the last decade, what percentage of
15 dollars, overall, that you are not overseeing at the
16 moment because of the current situation?

17 NELSON SHEINGOLD: I don't have that number
18 off the top of my head.

19 TERRI CROWLEY: Well, I could tell that we
20 looked at -- went from 2011 to when the MOU took
21 effect, it was close to \$3 billion of contracts that
22 were done without -- outside our review.

23 And just to underscore what Nelson said too,
24 an MOU, yes, it's better than having no authority,
25 but it's administrative, and it could be gone, you

1 know, if someone decides they don't want it in
2 effect anymore.

3 So that's why we believe it's absolutely
4 essential that our authority be restored
5 statutorily.

6 SENATOR PALUMBO: All right.

7 Thank you very much.

8 NELSON SHEINGOLD: Thank you.

9 SENATOR BIAGGI: Thank you.

10 And so now we will hear from Senator Boyle.

11 And, again, just as a reminder, I will be
12 asking questions last.

13 SENATOR BOYLE: Thank you, Senator.

14 And thank you for appearing, and I share my
15 colleague's sentiments about Comptroller DiNapoli
16 being the gold standard in terms of ethics in state
17 government.

18 I've known Tom many, many years, and there's
19 never been a hint of any scandal whatsoever. Truly
20 amazing.

21 Just to go back to Senator Krueger's remarks
22 about a legislator getting involved, I'll give you
23 an example.

24 Say a constituent company of mine writes in,
25 Hey, we're bidding on widgets for the New York State

1 government.

2 And we would typically write a letter, Please
3 give, you know, the Smith Widget Company your utmost
4 consideration in this.

5 You know?

6 Is it -- would there -- any be problem with
7 that?

8 Or -- I mean, I just -- I mean, obviously,
9 there's going to be no underhanded stuff in the
10 legislator's office, I'm getting paid for it.

11 But would that be -- pass the smell test, in
12 your opinion, Counselor?

13 NELSON SHEINGOLD: Once again, under the
14 procurement lobbying law, that's a legal
15 correspondence. It wouldn't fall within the rubric
16 of the prohibitions of that statute. But, you know,
17 once again, to emphasize, you know, what Terri said,
18 we are going to look at it objectively.

19 We have to -- and I think this is an
20 overarching theme when this committee and
21 New Yorkers look at ethics and ethics reform -- you,
22 me, both, actual lack of conflict of interest, and
23 actual independence, and the perception of such.

24 I mean, we are very, very, very cognizant of
25 that fact.

1 So we will receive anything that comes to us
2 legally. We will put in the procurement record
3 because we're above board. And then we will do our
4 robust, independent, and objective review of that
5 contract, because the only way we restore public
6 confidence is actual independence and the perception
7 of independence.

8 SENATOR BOYLE: All right. Thank you.

9 And one further question.

10 So I believe in your remarks you said that
11 the review of a contract typically takes less than a
12 week by the comptroller's office.

13 And I remember, our former governor, when
14 they created the -- when they passed the 2011 laws,
15 the big thing was, Oh, the contracts go to the
16 comptroller's office, and months, years, later
17 they're still looking at it, and it slows everything
18 down.

19 So any way that you can work with the
20 committee and the legislature for language, to make
21 sure that that is not the case, and is not even the
22 perception of the case, that they're not -- things
23 are not being slowed down, so you can rightfully
24 review these contracts to -- for ethics concerns?

25 Okay?

1 NELSON SHEINGOLD: Yes, thank you.

2 And we will gladly work with the legislature,
3 to look at procurement reform.

4 And once again, on average, statistically,
5 over the last few years, a contract stays here, an
6 average, including the ones that last longer,
7 5.8 days.

8 So I give a little fudge on it. It's
9 actually well less than a week.

10 And I want to again emphasize, ones that stay
11 here longer, not that they're necessarily corrupt or
12 infirmed, but there's a reason for it, because we're
13 going to ask the appropriate questions.

14 You know, oversight, and checks and balances,
15 are not built for speed; but quite the opposite.

16 But we will gladly work with the legislature,
17 to reach a balance, and make sure that we have
18 appropriate oversight of functioning. Absolutely.

19 TERRI CROWLEY: And I would just like to also
20 just quickly underscore too, those contracts that
21 are with us longer, keep in mind, some of our
22 contracts are hundreds of millions of dollars,
23 billions of dollars.

24 So, you know, it would be highly unlikely we
25 could review a billion-dollar contract in 5.8 days.

1 But we are, you know, mostly under the time
2 that we're given.

3 So it's, just -- you know, when you're
4 looking at 14,000 contracts, and thinking, you know,
5 the average is 5.8 days, that's a pretty good
6 standard, at least in our book. So....

7 SENATOR BOYLE: Thank you.

8 NELSON SHEINGOLD: Thank you.

9 SENATOR BIAGGI: Thank you very much.

10 I would like to acknowledge that we have been
11 joined by my colleague, Senator Hoylman.

12 Thank you, and welcome.

13 Senator Hoylman, we are on the comptroller
14 panel right now.

15 And so, if I may --

16 And, of course, if you have questions,
17 Senator Hoylman, just let me know.

18 -- I wanted to just ask a series of questions
19 in different topics; so I just want to outline the
20 different areas:

21 The first one being, your referral authority,
22 a little bit about auditing.

23 And then two questions about
24 sexual harassment, workplace discrimination, and the
25 inspector general.

1 And so I just want to begin with your
2 referral authority, because it's something we heard
3 I think a lot about last year. And I think for a
4 lot of New Yorkers, it was the first time maybe they
5 had heard about that authority.

6 And so, under Executive Law, Section 63.3 --
7 right? -- the comptroller's office has the authority
8 to make a referral to the attorney general to
9 investigate potential indictable offenses in
10 violation of the law.

11 So could you please explain the circumstances
12 where the comptroller may make such a referral, and
13 the process that your office follows to determine if
14 the referral is actually deemed appropriate?

15 NELSON SHEINGOLD: Absolutely, Senator.

16 So as you articulate, Section 63.3 provides
17 us with blanket authority to make a criminal
18 referral within -- with any subject matter that
19 falls within our general authority.

20 So, once again, if it's something that
21 doesn't fall within the comptroller's authority,
22 then we can't make a referral.

23 If it's something that falls within our
24 authority, and we deem it to be potentially
25 criminal, we could vest the attorney general's

1 office with jurisdiction; and, in fact, we have, on
2 many, many, many occasions.

3 Of course, the latest and most notable being
4 in regard to the book deal, which is in the paper.

5 But that's just one of dozens and dozens of
6 occasions where we have made referrals, at least
7 over the -- over a decade I've been in the office.

8 And in terms of when we make the referral and
9 the process, it could come up in different ways.

10 So as I said earlier in my prepared remarks,
11 we've done, you know, our work, our anticorruption
12 initiative and the comptroller's strategic priority
13 to root out corruption, has resulted in over
14 250 public corruption and public-forward arrests.
15 We do those with local DAs, DAG, the U.S. Attorney.

16 So, generally, when we find a case of actual
17 fraud; or potential fraud, I should say, we'll
18 determine, you know, who is the most suitable law
19 enforcement agency to work with. Sometimes it's the
20 AG. Sometimes a local DA. It's, very often,
21 case-specific.

22 Sometimes, in fact, very frequently, we'll
23 actually get a reach-out from a state or a local
24 authority, saying, Hey, we're hearing something
25 about this. Can you look?

1 You know, and as the watchdog of the public
2 fisc, we'll go in, we'll look. And when it
3 obviously comes from a law enforcement authority,
4 that's who we're going to work with, going forward.

5 So it's very fact-specific and
6 fact-dependent.

7 But as you said, Senator Biaggi, we have the
8 authority to refer to the attorney general's office,
9 when appropriate, so long as it's something related
10 to our inherent powers.

11 SENATOR BIAGGI: Okay. That's very helpful.

12 And so -- so you're -- one of the things that
13 you mentioned was that, if it's not within your
14 authority, then you can't, of course, refer it.

15 So are there instances when an issue is not
16 within your referral authority, but then you can --
17 do you have the power to reach out to the entity or
18 the authority that actually does have the authority
19 to make that referral, for lack of better words, so
20 that -- to make sure that that issue is actually in
21 the right place?

22 NELSON SHEINGOLD: Absolutely. In fact, we
23 do that every single day.

24 So Comptroller DiNapoli has established a
25 hotline and Internet portal for the public to report

1 fraud.

2 We get over 4,000 fraud complaints, or
3 potential fraud complaints, I guess I should say, or
4 allegations, every year.

5 If it's not within our authority, we don't
6 just sit on it. We will send it to who we believe
7 to be the appropriate authority, or authorities, to
8 look at it, to make sure that it ends up in
9 somebody's hands so they can actually do something
10 with it. And if there's any truth -- allegations,
11 they could be addressed.

12 SENATOR BIAGGI: That's very helpful to know.

13 So going back to the referral authority with
14 regard to the attorney general, is this done through
15 an MOU, or is there a different set of powers that
16 you are -- that you have vested?

17 And in your referral authority in each,
18 whether it is a DA's office or a U.S. attorney's
19 office, is it necessary to have an MOU; or is it
20 simply just by the power that is delineated in the
21 statute?

22 NELSON SHEINGOLD: The latter; it's by the
23 power delineated in the statute.

24 So for the attorney general, because, under
25 New York State law and the state constitution, the

1 attorney general doesn't have original jurisdiction
2 over the vast majority of crimes.

3 They require, as you said, Senator Biaggi, to
4 get a referral from us or another relative agency.

5 So, in that, so, lateral, like the book deal
6 letter that has been published in the press, as you
7 know, it's a good example. And they all pretty much
8 look like that.

9 Now, unlike the AG's office, DAs,
10 U.S. attorneys, and the other investigative bodies,
11 they don't require a formal referral.

12 So, frankly, a lot of times it's just a phone
13 call to deal with it, because they already have
14 jurisdiction to investigate; whereas, the AG needs
15 something in writing, under Court of Appeals
16 decision, from the comptroller, vesting them with
17 that authority under Section 63.3.

18 SENATOR BIAGGI: Okay. That is very helpful
19 to understand.

20 And so where it is -- where there's no formal
21 referral process, does the comptroller's office keep
22 a record of all of the outreach that it makes to
23 these various other agencies?

24 NELSON SHEINGOLD: Well, we track -- we
25 obviously track cases that come in in complaints.

1 Like I said, a lot are just a phone call from a DA's
2 office.

3 SENATOR BIAGGI: Okay.

4 NELSON SHEINGOLD: So the results in the
5 case, obviously, you know, we'll keep records.

6 SENATOR BIAGGI: Got it.

7 NELSON SHEINGOLD: There's different levels
8 of formality, depending on the nature of the
9 referral, the reach-out, and the like.

10 You know, and I should also point out,
11 Senator Biaggi, and I would be remiss if I didn't,
12 Comptroller DiNapoli has established a process, that
13 when we're doing the hundreds of audits I referred
14 to earlier, be it of a local government, a state
15 agency, operations, any part of this agency, if we
16 even get a hint of fraud, we'll take a look at it
17 and see if there's potential fraud there.

18 If there is, we'll tease it out, we'll see if
19 there's fraud there. And if we do determine there's
20 fraud, we'll make an active reach-out to whatever
21 relevant agency is out there that's appropriate to
22 address the situation.

23 So we're both proactive and reactive when it
24 comes to fraud, given the vast gambit of this
25 office's power.

1 SENATOR BIAGGI: That's very good to hear.

2 One final question under the "referral
3 authority" category.

4 Do you think that your office would benefit
5 from greater or broader referral authority?

6 Is that something you know, you've discussed
7 internally, or even to the public?

8 Is there something that the legislature can
9 do to give the -- besides, of course,
10 Senator Reichlin-Melnick's bill, which I think is an
11 excellent bill -- but that's a separate issue for
12 contracting; this is more about your referral
13 authority -- is there something that we can do to
14 make sure that you are, basically, capturing all of
15 these issues within your net?

16 NELSON SHEINGOLD: As you said,
17 Senator Biaggi, I think Senator Reichlin-Melnick's
18 bill, and I guess I should say, the preventing the
19 further erosion of our [indiscernible] approval
20 authority, goes a long way to making sure you
21 increase what's coming through here, so we can
22 actively look and make sure there's not fraud.

23 But in term of our improving our referral
24 authority, right now it is very robust and related
25 to our power.

1 So, obviously, we would discuss it
2 internally. And if we have any ideas, we will
3 circle back, absolutely, with the legislature and
4 let you know.

5 But we have ample authority to refer right
6 now, and to work with, frankly, any other agency
7 that's joining us in the commitment to fight fraud.

8 SENATOR BIAGGI: That is very good to hear.

9 Thank you for that.

10 So, now, just moving on -- auditing category
11 of questioning:

12 And I really have to just also say that I am
13 very grateful to the comptroller's office, who
14 helped my district during the beginning of the
15 pandemic, deal with a very important, pressing issue
16 in the city of Mount Vernon, and did it really, not
17 only with excellence, but also swiftly.

18 And I believe it was one of the first times
19 that there was a virtual component to doing audits,
20 and it was still done on time, and it was still done
21 in a way that was comprehensive. And it was very
22 meaningful to ensure that the city of Mount Vernon
23 could actually function, because it wasn't,
24 unfortunately. And that was, obviously, a very big
25 problem.

1 And so, just, thank you very much for that.

2 And so I think, under that category, can you
3 just explain a little bit how your office approaches
4 your auditing responsibilities, and how you
5 prioritize audits that come in?

6 Because I am sure that you receive a lot of
7 them, and it would be helpful to understand how
8 you're triaging them.

9 NELSON SHEINGOLD: Absolutely, Senator.

10 So we employ, generally, a risk-based
11 approach.

12 We employ that throughout the gambit of our
13 audit authority, be it on payment audits --
14 [indiscernible] contract comes under our approval
15 authority -- payment audits, local government
16 audits, or state audits, because you've got to
17 address where the problems are first.

18 So if we see a potential risk, which could
19 come from citizen complaints; it could come from our
20 fiscal monitoring system, that says, Look, there's a
21 real problem, and it's been out in the municipality.

22 It can come from the citizens coming to us.

23 It can come from the legislature reaching out
24 to us, and said, Hey, you've got to look here.

25 And, obviously, so we're going to employ that

1 risk-based methodology to determine where our assets
2 are most needed to remediate a problem, and find out
3 what's going on, and answer these questions.

4 Of course, in addition to that, on the local
5 level, we try to make sure that municipalities don't
6 escape audits for a long time, because, even if
7 there's not smoke, it's always good to go in,
8 because, like I said before, we're trying to shore
9 up things to prevent or to minimize waste, fraud,
10 and abuse.

11 So it's more than, like I said, fraud; it's
12 waste also. And, you know, I try not to lose sight
13 of that.

14 So it's a risk-based approach.

15 It's a universal approach, as we go through
16 every year and categorize what we do.

17 And that's how we try to direct our
18 resources.

19 TERRI CROWLEY: And I would just also like to
20 add, from an operational perspective, which are the
21 divisions that I oversee, we are auditing every
22 single day. We are processing, you know, thousands
23 and thousands of payments.

24 And as Nelson said, we have put in, and
25 proudly to say, some pretty advanced data analytics

1 and risk-based procedures. But it's -- you know,
2 there's multiple levels of audits.

3 But just to, you know, underscore, every
4 single day we are auditing, and, you know,
5 determining, you know, are payments legitimate? are
6 the people that are getting them are those that are
7 supposed to?

8 So it's -- it's here, it's here, it's -- you
9 know. And then the bigger ones that we do
10 programmatically.

11 SENATOR BIAGGI: That makes sense.

12 And so let's say, for example, in the audit
13 there is corrective action that is suggested, and
14 you give that to the town, municipality, whatever
15 entity it is, and it's not followed.

16 Is there anything that your office can do as
17 a result of the audit not -- the audit
18 recommendations not being followed?

19 Can you go back and audit again?

20 Can you, again, refer it to any other entity
21 or agency?

22 How does that work?

23 NELSON SHEINGOLD: So, in general, with our
24 programmatic audits, our performance audits in
25 localities and state agencies, we have very little,

1 if any, coercive authority to make them adhere to a
2 corrective-action plan.

3 What we do is, we can make recommendation,
4 and also very important, as I said earlier, we
5 publicize it; it's on our website. We'll put -- we
6 put out our audit, it's available to the general
7 public. We put out our recommendations.

8 If the agency or municipality replies, we
9 don't hide that. We attach it too, and then we'll
10 put our response to that.

11 We absolutely do follow up audits, and we
12 post those online too. And we'll put out there,
13 what are they following, what have they
14 administratively fixed, and the like.

15 So a lot of it is by, frankly, sunlight.

16 We get it out there, we tell the public, and
17 we urge; and, hopefully, we facilitate citizens
18 getting involved.

19 And we've had many instances where you see in
20 the press, where a citizen said, Hey, the
21 comptroller pointed this out. What are you doing?

22 So it's where we can make -- in those case,
23 we can make recommendations, and -- for improvement,
24 and, hopefully, educate, and arm and fuel, the
25 public to take action.

1 SENATOR BIAGGI: That makes sense.

2 So then it -- would it fall within the
3 governor's purview to require compliance?

4 Do you know who the proper power is?

5 Because, in the instance of Mount Vernon,
6 that was just one example.

7 In order to address a comptroller, or others,
8 who are perhaps not doing the job that they've been
9 elected to do, which is different, of course, than
10 appointed, it makes the accountability different,
11 the executive was the only person that could,
12 essentially, if necessary, remove the comptroller
13 from office.

14 And so is it only the governor, and we just
15 have to wait and see if the governor will do
16 something like that?

17 NELSON SHEINGOLD: You know, it depends on
18 what the nature of the audit is.

19 So if it's a state agency under the
20 executive's control, obviously, the governor has
21 authority to take action.

22 In most cases, putting Mount Vernon aside for
23 a second, the governor doesn't have authority to do
24 anything to localities, and it falls to the local
25 boards and the local governing structure to take

1 appropriate action to, you know, remediate the
2 issues that we pointed out.

3 So it -- really, you have to look at who --
4 you know, once again, who runs the municipality, who
5 runs the state agency.

6 Obviously, we have constitutionally-protected
7 home rule in New York. So we vest our
8 municipalities with independent authorities in terms
9 of governance, in most instances.

10 SENATOR BIAGGI: Okay. That's very helpful.

11 And just one final question in this category,
12 and then we'll move on to the last one. I know my
13 time is kind of ticking down here.

14 In terms of whether it's feedback or guidance
15 or brute force --

16 And I use that last term very intentionally,
17 because I really have in mind the former
18 administration who sometimes used entities of
19 government as retaliatory tools.

20 Do -- is the comptroller's office receiving
21 feedback from the governor's office or from the
22 executive branch regularly about who to do audits
23 on?

24 Obviously, you mentioned that there's a broad
25 range of people who are coming to you, there's a

1 hotline.

2 So, obviously, it's -- not that it's narrowed
3 and only a few exclusive people can do this.

4 But I'm just curious about this one aspect,
5 and I specifically am, because the comptroller's
6 office is in a very unique position, I think, than
7 almost any other office.

8 You have a power that is, in some ways, so
9 removed from the governor's branch of -- of just the
10 chamber and the agencies, that it allows you to
11 actually do your job, as opposed to other agencies
12 or entities, like a JCOPE, which is obviously very
13 different.

14 And so I'm just wondering how you go about
15 that, or how you would go about that, or if you've
16 had experience, where a governor or a member of a
17 governor's team has said, "Well, we need you to do
18 this because," and the reason is very much not the
19 reason why you would do an audit; and what you would
20 do in that kind of situation, if that were to come
21 across your desk.

22 NELSON SHEINGOLD: Well, you know, once
23 again, it's hard to answer in a hypothetical.

24 I will tell you, as you pointed out, one of
25 the virtues, or the main virtue, of the structure of

1 the comptroller's office in New York is that
2 Comptroller DiNapoli is an independently elected
3 constitutional officer, which is much -- as you
4 said, Senator Biaggi, is much different than many
5 other states and many other agencies.

6 So we don't have to follow the governor's
7 direction, or anybody's direction, frankly, except
8 for the taxpayers.

9 So we will absolutely interact with state
10 agencies.

11 We do not take a combative approach, that is
12 not Comptroller DiNapoli's style, because, frankly,
13 that's not good government.

14 We will work with agencies, and Terri can
15 attest to this. If there's something that needs to
16 be done in the public interest, be it on contracts,
17 we will work, how do we do this legally? who do we
18 do this efficiently? and the like.

19 We won't be bullied, and we haven't been
20 bullied. We won't be directed.

21 We'll do our job under the constitution,
22 independently, where we need to go.

23 But, once again, good government is
24 collaboration.

25 As Senator Krueger said before, there are

1 many agencies looking at this problem.

2 We shouldn't be antagonistic to each other.

3 When there's a problem and it's of public
4 interest, we can work together, using our authority,
5 to try and fix it.

6 SENATOR BIAGGI: I agree.

7 TERRI CROWLEY: And, Senator, I think too,
8 just, it's almost the opposite the way it works.

9 I think every agency understands, and
10 expects, we are going to audit you.

11 If you're making a payment, we are going to
12 audit you, because that's what we -- that's one of
13 our main focuses.

14 But to Nelson's point, and to
15 Senator Krueger's point, even with regard to
16 contract oversight, much to, you know, what some
17 people would argue, our goal is to get to "yes."

18 We want to -- we work with agencies to --
19 because we understand that the contracts that
20 they're trying to execute, for the most part, you
21 know, and there have been some exceptions, is to
22 provide essential goods and services.

23 So we want to get to "yes," but we want to
24 get to "yes" in a legal, ethical, and correct way.

25 So -- but, you know, again, to the thing with

1 the agencies, I -- agencies expect, we are going to
2 audit them, every single day.

3 SENATOR BIAGGI: That is good to hear.

4 Thank you for that.

5 I'm going to go to the second-to-last
6 question because the last question is a little bit
7 longer, and my time is ticking down here.

8 So in terms of the category of sexual
9 harassment, workplace discrimination:

10 Does the comptroller's office have to approve
11 any settlements that are made by state entities or
12 by legal services contracts, for example, in a
13 sexual harassment case, or settlement?

14 And, if so, how does your office review those
15 settlements or contracts?

16 NELSON SHEINGOLD: Unlike the city
17 comptroller's office, which has to approve
18 settlements under state law, the state comptroller's
19 office does not approve a legal settlement in a
20 lawsuit.

21 That's within the purview of the attorney
22 general's office, which, obviously, New York is also
23 a separate constitutional actor.

24 So we will process the payment, and do what
25 needs to mechanically be done.

1 But the actual authority, under New York
2 State law, to enter into a settlement in the course
3 of a lawsuit, be it in the court of claims, or 1983
4 action alike, is vested directly in the attorney
5 general's office.

6 SENATOR BIAGGI: So is that a unique function
7 of New York State?

8 Do other states do it like that?

9 Do you know?

10 Or is that just something that has originated
11 through law, and that's just the way it's been, and
12 it might be better to be under your purview?

13 The reason I say that is really because,
14 sometimes it becomes -- because things are spread
15 out, it becomes confusing, even to someone like
16 myself who is paying attention and really in the
17 weeds on the details.

18 And so I'm just curious if that's the best
19 place for it, and if other states do it like that.

20 NELSON SHEINGOLD: Yeah, I'm not -- I'm not
21 familiar with the practice across the country, what
22 other states do at this. I'm only really familiar
23 with the way of New York.

24 SENATOR BIAGGI: Okay.

25 NELSON SHEINGOLD: Does it? So I can't,

1 unfortunately, provide you with information on that.

2 In New York, as I said before, we do have an
3 independent attorney general as the chief legal
4 officer of the state.

5 So I think there's good reason where the
6 chief legal officer of the state would sign off on a
7 legal -- a legal settlement.

8 But --

9 SENATOR BIAGGI: That makes sense.

10 NELSON SHEINGOLD: -- it's the only structure
11 that I've been familiar with.

12 SENATOR BIAGGI: No problem. I will have to
13 follow up myself on that one.

14 Okay. And, then, just the final question is
15 with regard to the inspector general.

16 So in the previous administration there were
17 a lot of different concerns that were raised about
18 the independence and the transparency of the office
19 of the inspector general.

20 And in New York, the inspector general
21 reports directly to the secretary to the governor.

22 On the federal level, agency inspectors
23 generals are required to report to both, Congress,
24 as well as to the head of their agency.

25 And so I have introduced legislation that is

1 very similar to the federal model, requiring the
2 inspector general to report both to the legislature
3 and to the secretary to the governor.

4 But it has also been proposed that the
5 inspector general could report to a third party; the
6 third party being the office of the state
7 comptroller.

8 And so this might be a new idea for you, and
9 you might need to take some time to think about it,
10 and I definitely give you the opportunity to do
11 that.

12 But, if you have any thoughts about that,
13 today, or later, I would really appreciate
14 discussing that with you, because one of the ways in
15 which our former ethics complaints and violations of
16 contracts and behaviors really fell through the
17 cracks was because of the one-track reporting; from
18 the agencies to the inspector general, and then the
19 inspector general to the secretary to the governor;
20 and whether or not the secretary to the governor
21 wanted to allow that complaint to proceed.

22 There was really nobody else that could have
23 any say in that process, which is highly
24 problematic.

25 So if you have any thoughts now, I would love

1 to hear that. If not, I would love to also talk to
2 you about this another time.

3 NELSON SHEINGOLD: Yes, and I would have to
4 take a look at that proposal, and we would have to
5 get back to you.

6 You know, I will make some thoughts, because
7 I can't help myself. But, I don't know.

8 I'm actually -- I've been in the
9 comptroller's office 11 years now.

10 Prior to that, I served as chief counsel for
11 the state inspector general, under the most
12 independent inspector general, as far as I'm
13 concerned, the state has ever seen, Joe Fish.

14 And one insight I got from that experience,
15 that I'll just throw out there, is you need two
16 components for effective oversight, be it the IG, or
17 anyone.

18 You need a system that works, of course, and
19 that is not so inherently flawed that even good
20 people can't make it work. But just as important,
21 you need people who want to be independent, because
22 you can have a somewhat flawed system, and a good
23 person -- and by "a good person," somebody trying to
24 do the public good, who wants to be independent --
25 can make some good out of it.

1 You can have the greatest system on earth.
2 And if you have somebody who doesn't want to be
3 independent, it's just empty words on a piece of
4 paper.

5 So in terms of, anybody, you need a system
6 that enhances, facilitates, independence; and then
7 you need people who want to be independent running
8 that entity and doing the work.

9 SENATOR BIAGGI: I agree.

10 Thank you very much.

11 And, Senator Hoylman, if you have any -- do
12 you have any questions?

13 SENATOR HOYLMAN: Yes.

14 SENATOR BIAGGI: Oh, great.

15 SENATOR HOYLMAN: Sure. Why not?

16 SENATOR BIAGGI: So I will hand it over to
17 Senator Hoylman.

18 SENATOR HOYLMAN: Good morning.

19 I don't know if you can hear me?

20 Yes.

21 Good morning.

22 I just -- you know, the news of the morning
23 regarding the current situation at SUNY, and the
24 resignation proffered by the chancellor,
25 Jim Malatras, raises the issue of the blurring of

1 the lines of supposed independent state agencies.

2 In this situation, by most accounts, we had a
3 chancellor, and I guess previously, a president, and
4 I think at one point he was president of the
5 Rockefeller Institute, another SUNY institution, who
6 is working, in effect, as an arm of the governor's
7 policy team, both political and policy, I would
8 argue.

9 What is the concern there, or is there one?

10 I mean, I believe that SUNY needs to be a
11 resource for policymakers.

12 But in this case, it seemed to have gone
13 overboard, where the -- his office seemed to be a
14 wholly-owned subsidiary of the executive.

15 And I think we saw that play out in the
16 attorney general's report.

17 But those of us who have witnessed the
18 collaboration between the SUNY chancellor, and in
19 his previous roles with the governor, particularly
20 when it came to statewide policymaking, always
21 seemed unusual at the time.

22 Should we be building a wall between SUNY and
23 the governor's office?

24 NELSON SHEINGOLD: You know, it's obviously a
25 very general question, and a very important

1 question.

2 And Comptroller DiNapoli actually was
3 interviewed yesterday by Alan Chartock, and talked a
4 little bit about this. So if you haven't heard it,
5 you know, I would -- I think it's a good place to go
6 to get the comptroller's thoughts on this.

7 But it's always been a question, at least in
8 the years that I've been in state government, about
9 how independent all of these boards -- not just
10 SUNY, all the authority boards and the like --
11 should be; and how do you guarantee independence
12 when the appointing authority, you know, once again,
13 is dominated by one branch?

14 Like, once again, one example I would give,
15 moving away from SUNY a second, is, if you look at
16 our ethics bodies in this state, where, you know, my
17 27 years in government, I'm on my third one already.

18 In the latest iteration, it took away the
19 comptroller and the AG's ability to have a
20 nomination to that body, just to spread out, and to
21 disburse who these people are appointed by, and
22 maybe help a little with the control.

23 So I think that this is an issue that needs
24 to be looked at, probably for each individual
25 authority, its mission, and the like.

1 But, once again, it also -- as I just said in
2 relation -- last question, it also, frankly, comes
3 back to people; it comes people -- it comes back to
4 people in the executive, it comes back to people who
5 are appointed to these various bodies.

6 SENATOR HOYLMAN: So that -- so the sheer
7 number of gubernatorial-controlled appointees can
8 make that difference on things like the board of
9 trustees of SUNY, and other so-called "independent"
10 authorities and agencies?

11 NELSON SHEINGOLD: You know, I think that's
12 clearly a concern, at least as a matter of
13 perception, at a minimum. And I think it's
14 something, as the legislature has, worth further
15 examination.

16 SENATOR HOYLMAN: Thank you.

17 NELSON SHEINGOLD: Thank you.

18 SENATOR BIAGGI: Thank you, Senator Hoylman.
19 Are there any further questions?

20 No?

21 Okay.

22 SENATOR PALUMBO: Just a couple.

23 SENATOR BIAGGI: Yes, okay.

24 Senator Palumbo, please.

25 SENATOR PALUMBO: I just -- I just wanted to

1 just make a general comment, that, you know -- and
2 I do appreciate you folks coming, and I do
3 appreciate the fact that you do work with
4 municipalities.

5 There was an audit in my district on
6 Fishers Island, which actually is, you know, almost
7 England. It's about two miles off the coast of
8 Connecticut and 11 miles from New York.

9 But that's, basically -- and it's a small
10 municipality that had some real hiccups, because it
11 was, kind of -- only about 300 full-time residents.

12 And the comptroller worked with them, because
13 there were some real errors that were made. And it
14 wasn't with a heavy hand that he came in to really
15 try and to hurt someone.

16 You said, Look, folks. This is how you
17 really do this, and you made some huge mistakes
18 here.

19 And they were very receptive, of course.

20 And I just wanted to say that I do appreciate
21 that.

22 And the comments that you were making
23 regarding your audit authority are absolutely true,
24 and you do great work, and as does
25 Comptroller DiNapoli, as I think we all

1 collectively have said at least once.

2 You know, he certainly is a non-partisan, and
3 very, very -- has a -- is a man of high integrity.

4 So we do appreciate the work that you do.

5 But that's all, just a quick comment.

6 But, thank you.

7 NELSON SHEINGOLD: Thank you very much.

8 SENATOR BIAGGI: Thank you, Senator Palumbo.

9 So before we conclude, I just want to say,
10 thank you again for being here today to answer our
11 questions.

12 I certainly learned a great deal about what
13 we can do. And, also, I hope that the public also
14 learned about what you do on a daily basis.

15 And I want to just commend you as being the
16 only government entity that is here today; but we
17 look forward to that number growing with your
18 influence, and, hopefully, your experience here
19 today.

20 So thank you very much for joining us.

21 NELSON SHEINGOLD: And thank you very much
22 for inviting us.

23 TERRI CROWLEY: Yeah, thanks for the
24 opportunity.

25 SENATOR BIAGGI: Thank you.

1 Very good.

2 All right. Our next panel will actually be
3 several of our good-government groups, and so we're
4 going to jump to Panel 3 before we jump to Panel 2.

5 And so we are going to hear from
6 Blair Horner, Ben Weinberg, and Rachael Fauss.

7 So please come up, and get ready to give your
8 testimony.

9 RACHAEL FAUSS: Good morning.

10 My colleagues have been very kind to say
11 I should go first.

12 Can you hear me okay?

13 Well, my testimony should no longer say
14 "good afternoon" because it's actually the morning.

15 So, good morning, Senator Biaggi, and other
16 members of the Senate Ethics and Internal Governance
17 Committee.

18 My name is Rachael Fauss, and I'm the senior
19 research analyst for Reinvent Albany. We advocate
20 for open and accountable New York State government.

21 And thank you for holding this important,
22 timely hearing, and we appreciate very much that
23 you're continuing the conversation from August, and
24 taking a comprehensive look at our ethics oversight,
25 by inviting other branches of government to testify,

1 like the state comptroller.

2 And I just have to say, having --ed to the
3 testimony of the comptroller, I think it's so
4 important, and I think -- I can't remember hearing
5 where the comptroller's office ever talked about
6 their oversight powers, especially around ethics.
7 So I think this is new ground, and it was very
8 interesting and important.

9 So, thank you.

10 First, we'd like to reiterate our point from
11 the August testimony, that New York State has a
12 serious and ongoing corruption problem. And the
13 Joint Commission On Public Ethics is worse than
14 useless and must be replaced.

15 But, obviously, this is not the entire
16 subject of today's hearing, so we're going to focus
17 on some of the other agencies, like the AG and
18 comptroller.

19 Some of the recommendations we have discussed
20 already, but I'll highlight some of the things that
21 Reinvent Albany supports.

22 We think the Senate should consider amending
23 Section 3 of the Executive Law -- this is on the
24 referrals -- in particular, to remove the
25 requirement that the AG -- to the governor after the

1 governor makes referral, asking the AG to
2 investigate the executive chamber.

3 The law has a weekly report that the AGs
4 must make.

5 The governor -- former Governor Cuomo waived
6 this for the referral that was made -- AG, but the
7 law requires it.

8 So I think that's something you should take a
9 look at.

10 And as discussed, we think that you should
11 examine broadening the comptroller's referral
12 authority.

13 The Senate should also seek more information
14 about the use and limitations of the standing
15 agreement between the AG and the comptroller to
16 criminally prosecute corruption.

17 And some of the discussion today I think was
18 very interesting, and so you've begun that already.

19 The AG's office should prioritize and be
20 provided additional budgetary resources, if
21 necessary, to improve internal and external
22 databases, including the New York Open Government
23 website, and the Charities Bureau Registry.

24 These databases are important for the public,
25 legislature, journalists, to connect the dots on the

1 flow of money in state government.

2 The legislature should conduct an oversight
3 hearing on the AG Charities Bureau, to determine
4 whether it has adequate funding and technology, as
5 discussed previously.

6 I think that nonprofits constitute 18 percent
7 of the state's workforce. And there's a few, in
8 particular, that we think the AG is well equipped to
9 oversee, like the SUNY Research Foundation and the
10 many SUNY-affiliated charities that own public
11 property. And we view these dozens of
12 state-chartered entities as having among the highest
13 corruption risk of any part of state government; in
14 particular, as we saw with the Buffalo Billions
15 scandal.

16 And, lastly, we think the Senate should hold
17 a hearing, assessing the role of the AG's Public
18 Integrity Bureau.

19 So at our last count, it had only a dozen
20 attorneys fighting corruption across the array of
21 state and local governments.

22 We understand you invited the AG to testify,
23 and they did not come. But, you know, these are
24 some questions, hopefully, that you can have them
25 answer in some form.

1 Regarding the comptroller, we support the
2 preaudit authority of the comptroller being restored
3 in law for state contracts.

4 Obviously, we support the Reichlin-Melnick
5 bill that was referenced by the comptroller's
6 office.

7 And just would draw your attention, also, to
8 the Procurement Integrity Act of 2018.

9 This was I think a program, though, of the
10 comptroller's. It's something that I think you
11 could look at for potential language.

12 And I just notice -- just note that, in
13 addition to the 2011 actions that took place, and
14 then the erosion of the powers through the budget
15 for specific appropriations, executive orders also
16 have very frequently removed the comptroller's
17 authority under Sections 112 and 163 of the state
18 finance law.

19 And, you know, I know the Senate took some
20 action on executive orders earlier this year, but
21 it's something I think you should look at a little
22 bit more in terms of your powers to potentially
23 rescind ones that may be an overreach.

24 The comptroller should also be given
25 oversight of more public authority contracts, as was

1 discussed.

2 And we think that it's important to look at
3 the OSC's potential oversight of use of forfeiture
4 funds by local law enforcement agencies. This is
5 another area of potential corruption risk.

6 And look into national best practices around
7 transparency of settlements that are approved by
8 state comptrollers, including for sexual harassment
9 cases.

10 On the IG, we support considering additional
11 qualifications for the position of inspector
12 general, to create more independence, such as bars
13 on current government officials, lobbyists, vendors,
14 et cetera, from serving as IG, and believe the
15 legislature should consider requiring Senate
16 confirmation of this position.

17 And I know you mentioned your bill,
18 Senator Biaggi. Haven't had a chance to read it
19 just yet, but I look forward to reviewing it.

20 On the Authorities Budget Office, this is
21 another area where they are a small agency that
22 oversee more than 600 public authorities, and do
23 work on ethics policies and conflicts of interest.

24 Right now they have a skeleton crew of
25 only twelve, and we support budget -- raising their

1 budget to \$5 million.

2 And the last recommendation I have is, the
3 legislature should look into creating a
4 doing-business database.

5 Ideally, this would be linked to campaign
6 finance reform as well, for limitations on
7 contributions from vendors. But this is something
8 that you could even consider doing outside of the
9 realm of campaign finance, just as a way to help
10 you, again, connect the dots and follow the trail
11 of money through state government.

12 Thank you for your time.

13 I appreciate the hearing.

14 BLAIR HORNER: Good morning. My name is
15 Blair Horner. I'm executive director of NYPIRG.

16 Thank you, Senators Biaggi, Krueger, Hoylman,
17 Palumbo, Borrello, Boyle, for all being here this
18 morning, and wearing a mask, to talk to us.

19 The ongoing fallout from the previous
20 administration is added -- mounting pile of evidence
21 that New York's ethics enforcement is in crisis.

22 The State's failure to establish and maintain
23 clear ethical guardrails and independent oversight
24 has contributed to the long history of scandals and
25 eroded the public trust in state government.

1 The most recent disclosures by the
2 attorney general of sworn depositions of the former
3 governor and his top aides revealed shockingly
4 unprofessional behaviors by top-ranking state public
5 officials.

6 That has to stop.

7 NYPIRG strongly believes that the
8 Joint Commission On Public Ethics and the
9 Legislative Ethics Commission should be replaced
10 with an independent ethics enforcement agency that
11 would monitor and enforce ethics for the executive
12 and legislative branches.

13 The flaws recently revealed were mirrored by
14 predecessor agencies; namely, they relied on
15 commissions in which the members were directly
16 appointed by the political leadership of the state.

17 That obvious and inherent conflict of
18 interest undermined the agencies and fueled public
19 cynicism, and they didn't work.

20 The fundamental problem is that JCOPE's basic
21 commission structure is flawed.

22 The fact that the members are directly
23 appointed by the state's elected leaders severely
24 undermines its independence and accountability.

25 Regarding the Legislative Ethics Commission,

1 including legislators on the panel destroys its
2 independence.

3 Having the regulator sit on a commission that
4 regulates legislative and -- executive ethics is an
5 obvious flaw.

6 How best to reform?

7 Well, one model is New York State's
8 Commission on Judicial Conduct.

9 The commission is established under the state
10 constitution, which helps limit political pressures
11 on decision-making.

12 Under this model, and this legislation
13 introduced by Senator Krueger, most of the
14 appointments to the new ethics commission would come
15 from the courts, thus reducing -- thus, giving it
16 sufficient independence.

17 But a constitutional amendment takes time.

18 We recommend that you consider legislation
19 that, while relying on bipartisanship, uses
20 randomness in the appointment process.

21 You can read it in our testimony; I go into
22 more detail.

23 The recommendation proposes that you replace
24 the appointment processes for both JCOPE and the
25 Legislative Ethics Commission.

1 We use the selection process from the
2 California Redistricting Commission as inspiration.

3 By the way, we also agree with OSC having its
4 powers restored and enhanced.

5 There is a reason why the comptroller is a
6 separately elected official, and that's their job.
7 And when you erode their authority, it leads to, at
8 least indirectly, corruption.

9 We also urge that you establish a code of
10 conduct that makes clear that government officials
11 are the servants of the public and must behave in a
12 professional manner.

13 In our testimony, we cite the European
14 Council's language as an example.

15 And as you know, since the IG is chosen by,
16 and effectively reports to the governor, and
17 according to the former top lawyer -- former
18 governor, the person has a conflict of interest in
19 terms of investigating the governor's office.

20 Of course, that's just her opinion.

21 The current IG views her role differently.
22 And as you heard from Nelson earlier, Joe Fish
23 viewed his job differently as well.

24 But we shouldn't have to rely on just the
25 luck of having good people in positions. Structures

1 need to be put in place.

2 But the direct selection of the IG by the
3 governor, requiring the IG to report -- governor's
4 office, undermines independence.

5 A review of best practices nationwide shows
6 that New York's law falls far short of what the
7 public should expect.

8 The nation's Association of Inspectors
9 General offers model legislation to establish
10 IG offices.

11 We urge you to review that model, and
12 implement measures to enhance New York's IG's
13 independence.

14 Government officials are public servants;
15 they're not royalty or dictators. They are charged
16 with serving the needs of the public.

17 In order for the public to have confidence
18 that their tax dollars are being used appropriately,
19 and that their public servants are behaving
20 ethically and professionally, there must be
21 independent oversight of all public servants, even
22 the governor.

23 Accountability is the key to maintaining
24 public trust in democracy.

25 State ethics agencies and inspectors general

1 are central to maintaining that accountability.

2 The public expects government officials to be
3 held accountable for effective government, and to
4 eliminate fraud, waste, abuse, corruption, illegal
5 acts.

6 And please act to make these goals a legal
7 reality.

8 Thank you for the opportunity to testify.

9 Ben.

10 BEN WEINBERG: Thank you.

11 Good morning, Chair Biaggi, and members of
12 the Senate Ethics Committee.

13 My name is Ben Weinberg, and I am the
14 director of public policy at Citizens Union.

15 Citizens Union is a nonpartisan
16 good-government group dedicated to making democracy
17 work for all New Yorkers.

18 For over 120 years, we serve as civic
19 watchdog, combating corruption and fighting for
20 political reform.

21 And we thank you for giving us the
22 opportunity to speak before you this morning.

23 Our previous testimony back in August before,
24 this committee focused on the major flaws of JCOPE,
25 and the need to replace it with a constitutionally

1 established independent ethics agency.

2 We won't go into that today, but we hope the
3 legislature would push for such a solution, and make
4 other structural and operational improvements to
5 enforcement.

6 Today we would like to recommend several
7 other measures that could improve the system of
8 ethics oversight in New York.

9 JCOPE clearly is not the only agency tasked
10 with keeping our government clean.

11 Other relevant agencies were mentioned today:
12 the AG, the Legislative Ethics Committee, the IG, as
13 well as the board of elections, including its chief
14 enforcement officer.

15 So I'll start by something that Rachael
16 mentioned before, which is empowering the attorney
17 general to independently initiate investigations,
18 and prosecute cases involving public corruption.

19 The current state law does not permit the AG
20 to start investigations into ethics violations or
21 public corruption without a direction, request, or
22 permission of the governor or state agency head.

23 Citizens Union, many other groups,
24 attorney general, throughout the years have been
25 stressing that those structural flaws prevent

1 enforcement of the laws that are on the books, and
2 allow for troubling ethical scandals that have
3 rocked Albany for decades.

4 In fact, the Attorney General Leticia's
5 investigation into former Governor Cuomo, that has
6 exposed so many disturbing details, would not have
7 been conducted if it wasn't for a referral made by
8 the former governor. And if it weren't for a unique
9 political situation that, quote/unquote, forced the
10 former governor into making this referral, the
11 public would have not known about the scope of
12 misconduct exposed in this investigation.

13 This case only stresses the need for the
14 AG to be able to begin investigations on their own
15 accord.

16 And we recommend the legislature to amend the
17 Executive Law to extend the authority in that
18 manner.

19 Restore the state comptroller authority to
20 review state contracts before they are executed.

21 This was mentioned by my colleagues, and by
22 the office of the state comptroller, so I won't
23 repeat that.

24 I will just say, we support restoring that
25 power through state law.

1 3. Replacing the Legislative Ethics

2 Commission with an independent body.

3 Blair touched on that.

4 But the Legislative Ethics Commission suffers
5 from the same problem as JCOPE. Its leaders are
6 appointed by the same people that it is the -- the
7 commission is meant to oversee.

8 An independent state ethics watchdog with the
9 power to address ethical issues in the legislature
10 most likely requires amending the state
11 constitution.

12 This newly formed body should replace both
13 JCOPE and the LEC. And a constitutional amendment
14 sponsored by Senator Krueger and
15 Assemblymember Carroll accomplishes that, and we
16 applaud them for their leadership on this issue.

17 A few other -- several legal solutions that
18 would strengthen the prevention and misconduct, and
19 could assist with the work of oversight agencies:

20 The first is, improving the public
21 accountability of state spending, and reducing the
22 nonspecific funding in the budget.

23 A significant portion of funds set out in
24 every annual budget has really real no criteria for
25 spending, no indication of who controls funding

1 decisions, and, later, reporting requirements.

2 In 2019, which we checked -- that was the
3 last time we checked, that we found \$12 billion of
4 these nonspecific opaque funds in the proposed
5 budgets.

6 This invites for misuse and corruption, and
7 makes it hard for oversight and enforcement bodies
8 to identify and investigate misconduct.

9 We recommend a series of reforms for the
10 budget process laid out in our written testimony,
11 including publicly posting comprehensive information
12 regarding the distribution of nonspecific lump-sum
13 funds, including detailed purposes, criteria for
14 spending decisions, requested spending, and other
15 accommodations.

16 Creating a doing-business database to track
17 entities, Rachael mentioned that.

18 We support it wholeheartedly, including
19 setting restrictions on donations from people who
20 appear on that database, including lobbyists.

21 And I would also like to point out that
22 donation bundling by lobbyists and other fundraising
23 intermediates should also be restricted.

24 There are several bills that address
25 different parts of this problem, including

1 Senator Myrie's bill that passed the Senate, and is
2 co-sponsored by Chair Biaggi and other members of
3 this committee.

4 I'm running out of time, so I'll just mention
5 a couple of other things that would help prevention
6 of misconduct.

7 The first one is, significantly limiting
8 outside compensation by state legislator.

9 The 2018 Special Compensation Commission
10 recommended a model based on the congressional
11 model, with a cap on legislative base salary, on
12 income earned from outside -- sorry -- on outside
13 income.

14 Although, as we all know -- probably know,
15 this was eventually revoked by Supreme Court.

16 The legislature should adopt those
17 recommendations.

18 Outside income limitations are really
19 standard ethics practices, and they do help to
20 maintain a clean and transparent government.

21 I think I will end here.

22 Thank you for the commission for -- for the
23 committee convening today's hearing, as well as the
24 August one; and for inviting us to provide public
25 inputs on how to improve ethics oversight.

1 SENATOR BIAGGI: Thank you all very much.

2 I again learned something new just through
3 your testimonies. So that is very helpful, and also
4 the purpose of these hearings.

5 And so just to begin questioning,
6 Senator Krueger, and then it will be
7 Senator Borrello. And if Senator Hoylman has any
8 questions. And then Palumbo, and Boyle.

9 SENATOR KRUEGER: Thank you, all three of
10 you.

11 I think I have worked with all of your
12 organizations over the years.

13 So when you were testifying [indiscernible],
14 I have another bill that I hadn't thought about in
15 the ethics framework, but I wanted to ask you what
16 you thought about it.

17 It was a bill I put in fairly late in
18 session, which would say that lobbyists and
19 employees of the governor couldn't be made trustees
20 of independent state boards.

21 And at the time, I did it because I was
22 thinking of naming it the Larry Schwartz Bill.

23 But it struck me that we claim we have all of
24 these independent authorities and boards.

25 I mean, obviously, the SUNY chancellor is the

1 newest example of the question.

2 But that there is perhaps something wrong
3 with the concept that governors can fill them with
4 the people who already work for him, or her, excuse
5 me. We finally have a "her," so I have to make sure
6 I'm gender-careful here.

7 But, also, why would we allow lobbyists to be
8 on our boards?

9 Isn't there something fundamentally in
10 conflict with the goal?

11 So I hadn't actually run that by anybody.

12 I just put the bill in and thought, I'm not
13 going to get this through Governor Cuomo, but I'll
14 stick it in to be irritating.

15 So what do you think?

16 BLAIR HORNER: Great idea.

17 RACHAEL FAUSS: I've taken a look at the MTA
18 in particular, as, you know, part of my role in
19 Reinvent Albany. And, you know, we support, you
20 know, at a minimum, that state vendors shouldn't be,
21 or people who deal -- who work for companies that
22 are vending with the State shouldn't be, on those
23 bodies, or people who have, you know, reported that
24 they lobby that same entity.

25 I mean, it's basic -- it's basic

1 conflicts-of-interest issues.

2 I think when you have this
3 disclose-and-recuse regime, where someone will
4 disclose -- you know, in theory, disclose, and then
5 recuse themselves, you know, you have to ask the
6 question: Why is this person serving on the board
7 in the first place if they're going have to keep
8 recusing themselves from making those decisions?

9 So, you know, yes, I think we -- at a
10 minimum, if people have direct conflicts before that
11 agency, they most certainly should not be serving on
12 it.

13 And you can go further than that, as your
14 bill -- it sounds like your bill does.

15 BLAIR HORNER: I mean, in a sense, you know,
16 it's leverage. Right?

17 So if you have -- somebody has their hooks
18 into you, and they appoint you to some entity, then
19 you do what they want.

20 And that's not the point of the entity in the
21 first place.

22 All of these boards are supposed to be
23 created as political insulation from the winds --
24 you know, the political winds of the day, and
25 they're supposed to have expertise, and they're

1 supposed to be independent.

2 And so I think you're on the right path.

3 I mean, when we talk about -- and even in
4 your bill on replacing JCOPE, it's all these
5 belt-and-suspenders about how you can't be a
6 lobbyist, you can't be former elected official, you
7 can't be, you know, the third cousin of any of these
8 people.

9 I mean, that's the way we should go.

10 There's 20 million people in the state.

11 I'm sure we can come up with enough
12 independent people to sit on these boards, or maybe
13 we should get rid of them, the boards,
14 [indiscernible], in some cases.

15 SENATOR KRUEGER: Ben, did you have
16 something --

17 BLAIR HORNER: I'll just add, the public
18 campaign finance board, you know, one of the newest
19 independent boards, or semi-independent boards, that
20 were established does have a limitation on
21 lobbyists, as well as, if I remember correctly,
22 party officials, former party officials, which is
23 the same situation that would cause a conflict of
24 interest. And it should be expanded to other boards
25 as well.

1 SENATOR KRUEGER: So I've also been doing
2 some work with Zelnor Myrie and our elections
3 committee, and what a radical notion.

4 It turns out you can be an election
5 commissioner and be running for something at the
6 same time.

7 And I was like, excuse me?

8 That can't possibly be the case.

9 But apparently it is.

10 So we're trying to fix that through another
11 set of laws.

12 BLAIR HORNER: Typically, it has an
13 advice-and-consent authority as well.

14 And so, I mean, if you and the House start
15 making the standard to the executive, that no one
16 goes on these boards if they have these problems,
17 you could certainly push back.

18 SENATOR KRUEGER: Larry, you mentioned -- and
19 I had not heard of this before, the "code of
20 conduct" concept.

21 BLAIR HORNER: Yes.

22 SENATOR KRUEGER: So would that have legal
23 standing if you violated it, or is it more a --

24 BLAIR HORNER: Yes.

25 SENATOR KRUEGER: -- here, we all know what

1 the rules of the road are?

2 BLAIR HORNER: The state has Section 74 of
3 the Public Officers Law, which is sort of a code of
4 ethics now.

5 The -- one of the things that's been shocking
6 to me, and it's, you know, sort of, in my opinion,
7 an example of the growing toxicity of public
8 service, is the way sometimes people behave:
9 screaming, ranting, raving, yelling, cursing out
10 public officials in public.

11 I mean, that kind of stuff shouldn't exist
12 as -- if you're a public servant. Imagine if you
13 had a butler that did that? You would never hire
14 that person to be your butler.

15 So I think, you know, the idea of adding to
16 the conduct -- the appropriate conduct that we
17 expect from public officials, one that, again, it
18 attracts the council in Europe language -- that was
19 the only one could I find, but there may be
20 others -- would be, I think, a clear indication,
21 that when people are asked to behave a certain way,
22 that they have an opportunity to push back and say,
23 It's not appropriate, I can't do that.

24 So, yes, it would be part of the Public
25 Officers Law.

1 SENATOR KRUEGER: Okay. Thank you.

2 Thank you, all of you.

3 SENATOR BIAGGI: Thank you, Senator Krueger.
4 Senator Borrello.

5 SENATOR BORRELLO: Thank you, Madam Chair.
6 First of all, thank you all for being here;
7 I appreciate it.

8 Time is somewhat limited, but I will -- so
9 I'm going to kind of focus a little bit on
10 Mr. Horner's request.

11 I think we all can agree, number one, that,
12 you know, everything is broken when it comes to
13 JCOPE, and everything, it needs to be replaced.

14 My concern really is about preserving not
15 just the independence, but also the bipartisan
16 manner in which this is done.

17 You mentioned following the Commission on
18 Judicial Conduct.

19 And that you -- are you suggesting that
20 judges would appoint members to an ethics commission
21 to oversee elected officials?

22 BLAIR HORNER: Essentially, yes.

23 The way that the joint commission -- I'm
24 sorry -- the Commission on Judicial Conduct's
25 commission is appointed is by the executive and

1 legislative branches. So those individuals are not
2 being -- are not picking the people that are
3 regulating them.

4 And so in a mirror-image way, this is
5 Senator Krueger's bill, the majority would be
6 appointed by the courts.

7 Hawaii has this enshrined in their state
8 constitution. They have a special court for ethics.
9 And from that entity comes the ethical -- their
10 commission equivalence in Hawaii.

11 SENATOR BORRELLO: Well, and I understand if
12 the idea is a mirror image. But it's not an exact
13 mirror image, because we would be talking about
14 judges that -- aren't elected judges appointed by
15 the governor now picking who would sit on this
16 board?

17 How would you structure that to ensure that
18 these -- the unintended consequence isn't to create,
19 essentially, a ripe environment for partisan
20 political attacks?

21 BLAIR HORNER: Senator, you are pointing out
22 the obvious weakness in the proposal.

23 It is clearly -- I mean, you know, we're --
24 I think if there needs to be a hearing on the
25 independence of the judiciary, maybe we all should

1 have it.

2 But on a sort of a technical level, they are
3 not regulated -- the judicial branch is not
4 regulated by the state's ethics laws of the state
5 ethic -- Public Officers Law in this manner by the
6 new JCOPE.

7 And so the way that we -- Senator Krueger's
8 bill attempts to deal with it, and the way that we
9 would propose to see it, is that you would strictly
10 narrow the types of people that could be appointed,
11 and you have a public process for how that would
12 happen, so that if there are people that are -- had
13 their hooks placed into them indirectly through the
14 courts, from the governor, that there would be a way
15 for that to be made public and to challenge it.

16 I mean, the hard part is, as you can all know
17 this, is someone has to, at the end of the day, pick
18 these people.

19 And how do you do that, and how do you
20 insulate it as much as possible?

21 So the judicial branch is not technically,
22 you know, under the scope of JCOPE, or its
23 replacement agency.

24 And so that's how we view it -- and we agree
25 with Senator Krueger -- that's how we viewed a way

1 to deal with the problem, was to have the extra
2 entity make those choices.

3 SENATOR BORRELLO: Yeah, and I agree.

4 But, ultimately, it's the voters that are the
5 ultimate judge on ethical behavior. They should
6 certainly want to remove anyone from office that
7 isn't, you know, performing ethically and doing the
8 job of being a public servant.

9 As you pointed out, we are public servants.

10 And we certainly went 18 months with a
11 governor that considered himself a dictator. And,
12 unfortunately, we handed him the reins, and the keys
13 to the car, for those 18 months, pretty much,
14 exclusively.

15 So, you know, with that being said, I want to
16 go back -- idea of, who do we have that has a clear
17 understanding?

18 I mean, you can pull people off the street if
19 you want. Right?

20 But, ultimately, you can get someone who has
21 a clear understanding of the issue, and how to
22 address it ethically.

23 And I don't see judges, who -- by the way,
24 who -- I think there's a number of issues. That
25 those that are unelected, those that have very long

1 terms, 14 years and plus, and then, ultimately,
2 those whose salaries are controlled by the
3 legislature and the executive.

4 So I don't think that's the solution.

5 Quite frankly, I think more of a transparent
6 public process, even if those folks are elected
7 officials, or not, ultimately, there needs to be
8 some accountability, and not just this, like we see
9 with JCOPE, where we just snap -- they snap their
10 fingers and, all of sudden, we hear something from
11 them without really having any open, transparent
12 meetings.

13 And even the case of JCOPE, you know, we
14 didn't have a representative from the Senate
15 Majority until, what, March of 2021, which,
16 effectively, gave the governor control over that
17 process for the longest time.

18 So it's definitely broken, but, so far,
19 I haven't seen a solution that kind of creates what
20 you're trying to imagine here without someone having
21 influence.

22 BLAIR HORNER: Senator, you and I can
23 continue this conversation in January when the
24 legislation starts -- whatever legislation starts to
25 cook up, cooks up.

1 But I -- look, I agree, I understand your
2 point. I've heard it from members. You know,
3 I understand it.

4 And, in the short term, as I mentioned in the
5 testimony, even if you were to move to a
6 constitutional amendment, however it ultimately
7 played out to be stronger, you still have to deal
8 with, what do you from now until then?

9 And -- because, at the fastest, that's
10 three years.

11 And I think the public wants, and deserves,
12 a new ethics agency pronto.

13 And we go through that as well, some
14 suggestions on that, where that does rely, more or
15 less, it sounds like, on the kinds of ideas that you
16 have.

17 SENATOR BORRELLO: Great.

18 SENATOR KRUEGER: I'm happy to talk to you
19 about my constitutional amendment, which you may or
20 may not have already looked at. And I am also happy
21 to talk about amendments of it.

22 But it was retired judges, not current
23 judges.

24 SENATOR BORRELLO: Okay, okay.

25 SENATOR KRUEGER: So it wouldn't be a

1 question of, you know, we're paying their salary,
2 and they have some expectation --

3 BLAIR HORNER: What she says.

4 SENATOR KRUEGER: -- or, we have some
5 expectation of their not being independent.

6 They're folks who were already judges.

7 SENATOR BORRELLO: Certainly happy to have
8 that conversation with you.

9 SENATOR KRUEGER: Great.

10 SENATOR BORRELLO: Thank you.

11 And thank you all for being here.

12 SENATOR BIAGGI: Thank you.

13 And Senator Hoylman.

14 SENATOR HOYLMAN: Yes, just following up on
15 that issue of judicial independence, I just wanted
16 to mention that the New York State Commission on
17 Judicial Nomination, which recently put forward a
18 slate of candidates for the current governor to
19 choose from for the court of appeals, is,
20 essentially, dominated by the governor, in
21 conjunction with the Office of Court Administration,
22 the chief judge.

23 So we as legislators have to look at that.

24 You know, years of collaboration, and much of
25 it well meaning, between the executive and the OCA,

1 to somehow foster greater independence on the part
2 of the highest levels of the judiciary from the
3 executive.

4 It's something that my committee on the
5 judiciary is looking at, in terms of refining that
6 commission, and then working, perhaps downward, to
7 foster greater independence between the judiciary
8 and the governor.

9 BLAIR HORNER: I mean, you know, it's been
10 said, you know, crisis, you know, offers
11 opportunities.

12 And the crisis that we've now had to go
13 through for the last four months does create
14 opportunities to revisit issues, and I think
15 independence is central, generally.

16 I mean, this is outside -- your issues are
17 outside of my -- our area of expertise, but
18 certainly agree with you, conceptually.

19 SENATOR BIAGGI: Thank you.

20 And Senator Palumbo.

21 SENATOR PALUMBO: Thank you, Madam Chair.

22 Thank you all for coming.

23 And those are very good points that
24 Senator Hoylman brought up as well.

25 And as we heard from the comptroller, I think

1 it also comes down to, of course, we can make a very
2 good system, but it's those involved. Right?

3 I mean, you kind of -- Rachael, we kind of
4 reinvented Albany, you know, a couple months ago --
5 right? -- because the person we were dealing with,
6 you know, was a narcissist.

7 But, you know, at the end of the day, when it
8 comes to JCOPE, and how about something like, we
9 have -- because you can't grieve a judge.

10 Judges aren't really -- the Commission on
11 Judicial Conduct, it enforces any untoward conduct
12 by a judge.

13 And a lot of it is pretty obvious, because
14 they're not political, they're not partisan. And
15 I think that's what the rub is.

16 Senator Borrello mentioned it as well.

17 Because we're trying to figure out, we are
18 political people inherently.

19 So, clearly, you know, we want to avoid,
20 obviously, political hit-jobs, or something that is
21 really unethical on the other side, by an ethics
22 body.

23 So how about the creation of a body -- and
24 I've actually advocated for Senator Krueger's bill
25 on the floor of the Senate.

1 I think that's really one of the smarter
2 fixes, or smartest, that we can think of in a
3 regular basis.

4 But how about a committee, similar -- bar
5 association, that would make a referral then --
6 appellate division, who can, ultimately, issue a
7 binding decision, like happens with lawyers.

8 So what say you?

9 And reconcile that however you would like,
10 any way you can.

11 BLAIR HORNER: I won't speak for my
12 colleagues, but I've heard, you know, "the trusted
13 source"; you know, you rely on the trusted source to
14 figure things out.

15 And then the question is: Well, who is the
16 trusted source?

17 So the state bar, for example, lobbies the
18 legislature. So that's tricky.

19 I've heard about, well, how about the deans
20 of law schools?

21 And that's also tricky, because all the law
22 schools are in universities that lobby the
23 government, and they sometimes get gigantic
24 government contracts.

25 And so -- you know, and so that's a conflict.

1 Right?

2 So you end up with these sort of, you know --
3 at least in my mind, end up with these sort of
4 Rube Goldberg sort of structures that are relatively
5 complicated, that rely on transparency standards for
6 who is eligible, and to the greatest extent
7 possible, some sort of filter, so that, you know,
8 it's hard to rig it.

9 There's enough people looking at it that
10 don't have a stake in the outcome.

11 So -- but I -- you know, the bar, I mean,
12 obviously, is a, you know, reputable organization.
13 I don't think there's anything wrong with that. But
14 they do have business before the government, and
15 they do, often, are lobbyists.

16 And so when it comes to JCOPE, or the new
17 JCOPE, that regulates the lobbying industry too.

18 And so that issue creates tension.

19 SENATOR PALUMBO: Sure, sure.

20 And when you think about what happened with
21 the governor -- Rachael, were you about to say
22 something?

23 RACHAEL FAUSS: Yeah, yeah.

24 SENATOR PALUMBO: I'm sorry. Go ahead.

25 RACHAEL FAUSS: I know, just on the

1 discussion of, what do we do? what do we replace
2 JCOPE with? I mean, these are not easy questions.
3 And, obviously, this is something we've been
4 wrestling with for a long time.

5 But I think, you know, there's a few things
6 to look at.

7 I mean, there's the, who is appointed; who is
8 eligible to be appointed? as Blair noted, and many
9 of you did as well.

10 You know, I know that the hearing that you
11 had in August was fascinating about the Legislative
12 Ethics Commissions and, you know, Alaska and other
13 states, where there's public members.

14 So, you know, there are -- yes, there are
15 people who are regulated, but maybe they're not the
16 balance of the commission. Maybe they're the
17 minority of the commission.

18 You know, there's redistricting commission
19 models across the country, where you have a pool of
20 people, who, anyone can apply to become a
21 commissioner, and then there are criteria for who
22 can serve. And then those people can be selected,
23 you know, either randomly, or perhaps by, you know,
24 different parts of government.

25 So there's -- there are a lot of different

1 mechanisms to diffuse any one regulated entity from
2 controlling the process.

3 And I think that that's really looking at how
4 to put those together in a way that makes the most
5 independent process, is really important.

6 And these are some of the things that we have
7 been looking at and considering.

8 And I just wanted to, you know, mention that
9 there are lots of different models for independent
10 ethics oversight.

11 I think, unfortunately, none of them exist in
12 New York now, other than, you know, some on the sort
13 of judicial level.

14 But just from our perspective, you know --
15 you know, retired judges might be one thing.

16 But, you know, the judiciary itself, yes,
17 they're not regulated, but we don't view them as
18 necessarily independent of the governor.

19 And I just would like to, you know, put that
20 as, you know, a concern that we've had.

21 And then when you think about retired judges,
22 you have to think about, potentially, you know, age,
23 diversity, representing the state is potentially an
24 issue too.

25 So those are just some of the considerations

1 that we've been thinking about in terms of
2 independent ethics oversight that I wanted to share.

3 SENATOR PALUMBO: Sure. And that almost
4 overlaps with the same issues with the IG.

5 Is there a public integrity bureau in the
6 attorney general's office?

7 And no appointed IG, who actually had no
8 teeth anyway, they can't even impanel a grand jury.

9 So what are they there for, other than it
10 almost seems like political patronage is what it was
11 looking like, when you have a leak of a confidential
12 executive committee decision, or executive decision,
13 on JCOPE, and it ends in, what, a week, or whatever
14 it was.

15 And that's -- that is such -- it's a flagrant
16 violation of law, but they absolutely were
17 terrified, I think, of the executive at that point,
18 and retaliation --

19 BLAIR HORNER: Well, I thought --

20 SENATOR PALUMBO: -- because that was his
21 message.

22 BLAIR HORNER: -- I thought the AG's
23 deposition sort of helped fill in some of the blanks
24 on that, where the former top lawyer -- governor,
25 Linda Lacewell, was saying that the IG is not

1 allowed, under the law, to investigate the governor
2 or the governor's top aides.

3 And so that I think might be the rationale as
4 to why the AG -- the IG did not follow up on the
5 JCOPE complaint, because -- which I agree should be
6 in the slam-dunk category.

7 You would ask the person who called the
8 speaker, and say, How did you find out? And why
9 didn't anyone on your staff tell anybody that you
10 got contacted?

11 They didn't do that.

12 SENATOR PALUMBO: Phone records and text
13 messages. It took a couple hours to put it
14 together.

15 BLAIR HORNER: And then the IG is the only
16 person who can look into. Right? And then the IG
17 is, supposedly, not allowed to do anything.

18 And by the way, again, the current IG, as
19 I understand it, does not view the world that way,
20 and as Nelson Sheingold mentioned in his testimony.
21 Joe Fish didn't either.

22 You can ask former Governor Paterson about
23 that.

24 So, you know, Fish was very aggressive, even
25 with a weak system.

1 SENATOR PALUMBO: Sure. And that's where we
2 need to make the system -- you don't need to have
3 that one particular person who is maybe willing to
4 push the envelope, to go after the governor.
5 I guess that happened in Governor Paterson's
6 administration.

7 BLAIR HORNER: That's right.

8 SENATOR PALUMBO: You need a system that is,
9 obviously, as good as it can be, and I think maybe
10 even combining those.

11 You know, one last comment. I'm sorry.
12 I know I'm a little over time.

13 But, just generally, would you -- do you have
14 any comments regarding combining JCOPE, legislative
15 ethics, the whole shooting match, into one body?

16 RACHAEL FAUSS: We certainly support having
17 one entity that makes the rules for ethical conduct.

18 I think the issue of advisory opinions coming
19 from both bodies, and which one are you supposed to
20 follow, is an obvious problem.

21 So, you know, absolutely.

22 And I think that gets at the issue of people
23 who are -- should not be regulating themselves.

24 So....

25 SENATOR PALUMBO: Very good. Thank you.

1 BLAIR HORNER: Again, Senator Krueger's bill
2 sort of does that, but it doesn't deal with the IG.

3 And so, you know, IGs -- I mean, that's a
4 great question.

5 I'm sort of thinking about, well, why would
6 you need a separate IG if you had what we wanted?

7 Probably not.

8 But the IG, you know, when you look at it,
9 sort of the national level, again, I just suggest
10 you guys take a look at the Association of
11 Inspectors General, which is this national trade
12 association. You know, they sort of view their
13 world a little bit differently, have different tools
14 to do the investigations.

15 But I certainly, just thinking about it,
16 I wouldn't think that that necessarily precludes it
17 from being in the -- you know, an agency -- a real
18 ethics agency that was independent.

19 SENATOR PALUMBO: Sure. A division of the
20 IG, even.

21 BLAIR HORNER: You may not need it, that's
22 right, if you had the tools to do it.

23 So, I'll stop.

24 SENATOR PALUMBO: Thank you all.

25 BLAIR HORNER: Sure.

1 SENATOR BIAGGI: Thank you.

2 Senator Boyle.

3 SENATOR BOYLE: Thank you, Madam Chair.

4 And thank you -- panelists for sharing your
5 expertise.

6 And thank you, regarding the inspector
7 general, in particular. I think that's a crazy
8 system that needs to be really overhauled.

9 I do want to reference Senator Krueger's
10 earlier comment about the election commissioner.

11 I would like to look at that bill, because
12 I thought election commissioners could not run for
13 office.

14 As a matter of fact, we had a case in
15 Suffolk County where Senator Palumbo and I both
16 reside, where our election commissioner tried to run
17 for the state Senate, and was booted off the ballot
18 when they found out he was taking an unpaid leave,
19 or whatever it was.

20 But the courts did not agree.

21 And so I did not think election commissioners
22 could run, but we could get -- bottom of that.

23 They definitely should not be allowed to run.

24 [Simultaneous talking.]

25 SENATOR BOYLE: And my other -- just a

1 comment -- if you want to weigh in, fine --
2 regarding the New York State Attorney General's
3 referral -- the need for a referral.

4 I think it's a crazy system that they -- he
5 or she that are in that position cannot start their
6 own investigation.

7 I would harken back, I held a press
8 conference in -- last August regarding a serial
9 killing in my district, Gilgo Beach, or, the
10 "Long Island Serial Killer," you may not have heard
11 about it. Ten -- between 10 and 16 bodies found
12 along the beach.

13 The early parts of that investigation, the
14 then-Suffolk County Police Chief James Burke kicked
15 the FBI out of the investigation.

16 No one -- it didn't make any sense to anybody
17 why you would kick the FBI out of a serial-killing
18 investigation.

19 He -- Burke subsequently went to jail, as did
20 our former district attorney, his top aide.

21 It's not a good situation. It was not a good
22 situation in Suffolk County.

23 I held a press conference, asking for the
24 attorney general to do an investigation --
25 [indiscernible] an investigation of the early

1 investigation of the serial killing.

2 She -- her office was very responsive. They
3 called back, said, We would love to, but we need a
4 referral.

5 So was the governor going to do it?

6 Was the comptroller -- the comptroller, he
7 said, That's not really my area.

8 So a clear case of potential corruption in a
9 police department, from the chief, and the district
10 attorney, and the higher ups, and the attorney
11 general could not look into it because she did not
12 have a referral.

13 A perfect example of why this system does not
14 work.

15 Thank you, Chair.

16 SENATOR BIAGGI: Thank you.

17 BLAIR HORNER: I'll just mention one quick
18 thing on the -- just, elected officials.

19 The head of JCOPE initially was an elected
20 official. Janet DiFiore was the elected DA from
21 Westchester.

22 And so, there, I mean, you're regulating the
23 lobbying industry?

24 So there's a lot of things to sort of clean
25 up.

1 Good point.

2 Just, FYI.

3 SENATOR BIAGGI: Thank you.

4 I have a few questions, so please bear with
5 me. And, again, thank you so much for being here.

6 I think the theme, and I think it's important
7 to focus on this theme, instead of another theme
8 which I'll mention, which is, that the theme I think
9 is that a lot of what we have created does not work,
10 full stop, period.

11 And so we're trying to either decide if we
12 need new systems or to transform what's in the
13 system already.

14 And I think it's important to have that be
15 the theme with a lot of what we are dealing with,
16 because -- and, Blair, you mentioned it -- JCOPE
17 doesn't work.

18 There's all these different entities, and
19 people are confused. And it's, frankly, really
20 intentionally designed to lead people down a road
21 that might not end anywhere, might get stalled,
22 might take years to review, and it's really not
23 actually ethical in the essence of it.

24 And so just taking it back to where we are
25 today, which is with a new governor:

1 Governor Hochul has a series of reforms that
2 she has mentioned. It's her transparency platform.

3 And so there are a few of them.

4 Agency transparency plans. Ethics training
5 for employees. FOIL becoming a more expedited
6 process. And then, personal recusal from certain
7 entities.

8 And so just from a general stance on this
9 issue, what is your assessment of these measures?

10 And, are there any additional steps beyond
11 what the governor has identified that would you like
12 to see, perhaps as a prelude -- State of the State
13 coming up?

14 RACHAEL FAUSS: I can certainly speak to the
15 agency transparency plans. I've looked at a number
16 of them.

17 You know, I think they were an important, you
18 know, first step, to at least get them on the record
19 about what their intentions are.

20 And it's -- most of it is just compliance
21 with existing law. You know, there's been a lack of
22 compliance, in particular, on -- in open data.

23 I would just highlight that, you know, the --
24 there has been an executive order in place since
25 2013, and most state agencies are not fully

1 complying with that.

2 You know, I think the governor's directive to
3 agencies to produce these agency plans had a number
4 of areas that they could look at. You know,
5 retention schedules, FOIL, open-meetings law, open
6 data; but didn't necessarily mandate that they
7 address all of those issues.

8 And it's -- there's not necessarily a kind of
9 thought that it's going to be an ongoing process.

10 You know, we would like to see agency
11 transparency plans published annually, and updated
12 and, you know, actual metrics for how the agencies
13 are going to be working towards that.

14 You know, the MTA's, to their credit, they
15 actually put in some metrics about how they're going
16 to be, you know, complying with the law.

17 You know, there was a new law the legislature
18 passed, the MTA Open Data Law, that we supported.
19 And they specifically said about when they were
20 going to be complying with it, and the steps they
21 were going to take.

22 So, you know, I think the transparency plans
23 were a good first step, but there is certainly more
24 that can be done to institutionalize them, and make
25 them not just be, you know, a one-off effort.

1 And, hopefully, the governor will be looking
2 at that as an option.

3 BLAIR HORNER: Just [indiscernible].

4 Well, you know, I think, since the
5 governor -- the current governor doesn't have to
6 sort of defend the previous governor, she's already
7 taken some good first steps in terms of executive
8 orders. There's more she can do.

9 As the comptroller's office mentioned, they
10 put out a dashboard, to track federal money that's
11 coming in under the -- you know, the various federal
12 bailout programs due to COVID.

13 And, well, why not a dashboard for all
14 spending -- right? -- that somebody could
15 understand. And you wouldn't have to rely on, you
16 know, necessarily, you know, the various core staff
17 to tell you what's in the budget. Or Senator
18 Krueger.

19 And so -- and on the recusal issue, the --
20 you know, I think it was great the governor put it
21 out publicly, but it relies really on the internal
22 subordinate lawyers monitoring it, which is a
23 terrible position for them to be in. And doesn't
24 really -- now, completely understandable, given that
25 you have this car crash called "JCOPE." But that,

1 technically, should be the way it works.

2 You want to have a recusal process, and
3 you're asking for an opinion, you go -- this
4 independent agency, and they bless it, and you make
5 it public, and then it's, like, okay, well, those
6 guys are watching it; not the people who work for
7 me.

8 So I think, you know, there's limits to what
9 you can do with executive power.

10 I just want to echo Rachael's point.

11 You know, New York City has this whole sort
12 of metric system, where there's an annual report
13 that comes out, that monitors how spending is done,
14 and whether or not the agencies are meeting
15 performance standards.

16 You really use that at the state level.

17 It's hard to know, really, what's going on.
18 And sometimes things get circumvented under
19 New York State law.

20 Sorry, I digress.

21 There's -- it's supposed to be an independent
22 evaluation of the state's tobacco control program;
23 and yet, you know, they haven't put out a report
24 since 2017. They're always under pressure from the
25 executive to sort of, you know, play ball.

1 And so it's not independent. Right?

2 So there's -- there are so many things that
3 are happening in state government.

4 Let me just stop there.

5 The current governor, though, must have -- be
6 overwhelmed with all the incoming.

7 And so I have a million ideas, but whether or
8 not she can pick and choose the best ones, I guess,
9 would be up to her.

10 But just to react to your point, on her
11 executive actions, a dashboard on spending, DOB
12 could do that. And, metrics, the agencies
13 presumably have that, and they can publish that.

14 And so there's things I think she can do with
15 her executive power to go even beyond what she's
16 done so far.

17 So, more. We want more.

18 SENATOR BIAGGI: Ben, did you have any --

19 BEN WEINBERG: No. I think [simultaneous
20 talking; indiscernible] --

21 SENATOR BIAGGI: Okay.

22 That's actually very helpful.

23 I think that a lot of what we do every day
24 could be better served by having metrics and
25 databases. And I think you're right, to expand it

1 beyond just COVID, because there really is no way to
2 track a lot of, besides, of course, downloading
3 Senator Krueger's mind into a jump drive, which
4 I wish that we could do because my life would be
5 much easier.

6 BLAIR HORNER: We would need more than one
7 thumb drive, though.

8 SENATOR BIAGGI: But it makes it very hard,
9 even --

10 [Simultaneous talking.]

11 SENATOR BIAGGI: -- but, true, you have a set
12 of knowledge.

13 But having an ability to even be able to say,
14 well, we put money into the budget for this program,
15 and how many people did it serve? And what was the
16 amount that we actually spent? And what have we
17 actually not spent, and what's left over, and where
18 does it go? And what should we not actually
19 allocate next year?

20 It's very common sense, and yet -- and a lot
21 of businesses do it. And I know, actually, mayors
22 across other cities do it, like in Boston.

23 But we do need to bring it to the state of
24 New York, because it also allows us, as legislators,
25 to do our job better, and we can redirect funds, and

1 also understand where there is lots of pitfalls.

2 So I don't mean to belabor the point, but
3 it's really something I've become almost obsessed
4 with. And I really am glad that it's coming up
5 several times today.

6 We talked a lot about the inspector general,
7 and so inspector general reform is clearly a very
8 important theme of this hearing.

9 And, of course, I mentioned the bill that
10 I had introduced, with a different reporting
11 structure.

12 Also, Governor Hochul has mentioned that she
13 is rethinking the appointment process of the
14 inspector general, which is, of course, appointed by
15 the governor.

16 And so I think, you know, beyond what we've
17 already discussed today, which is the bill that
18 allows for the legislature to have a role, as well
19 as the secretary to the governor, and, potentially,
20 the comptroller, is there anything beyond these
21 structural changes, with regard -- IG, in the
22 appointment process that you would like to see for
23 the inspector general, that is missing from the
24 bill, or that we maybe have overlooked?

25 RACHAEL FAUSS: Well, I have yet to review

1 your bill, so apologies.

2 SENATOR BIAGGI: That's okay.

3 BLAIR HORNER: But I said it in my testimony,
4 you know, bars on the types of people who can serve.

5 That's not in there.

6 I think that's crucial, in addition to sort
7 of a, you know, reporting to more than just the
8 executive. So....

9 SENATOR BIAGGI: Right.

10 BLAIR HORNER: Yeah, I mean, an active
11 advice-and-consent process, either by the Senate or
12 by both houses, is, I think, you know, a way to sort
13 of deal with it; plus, as Rachael just mentioned, a
14 restriction on the type of people that can be
15 advanced.

16 SENATOR BIAGGI: Right.

17 Okay. I think that makes lots of sense.

18 I think also a theme of the IG's office,
19 specifically, is this lack of transparency, which is
20 why I'm disappointed that they're not here today,
21 because having a hearing allows us to talk to them
22 and to understand:

23 What do you do?

24 What is going on in there?

25 What's backed up?

1 What are things that you want the legislature
2 to have help on?

3 So I hope that that changes in the future.

4 But what the Hochul Administration has done
5 is pledged to release all of the findings of the
6 future and past investigations by the IG office,
7 dating back to 2020.

8 And I think the "Times Union" mentioned that,
9 basically, what this means is that there is a
10 three-year gap -- last known action taken by the
11 inspector general under Governor Cuomo.

12 Do you see this as being a concern?

13 Are there additional steps that the IG's
14 office can take to increase accountability, but also
15 transparency?

16 And -- because releasing reports is one
17 thing, and that should be a given.

18 But what else can they do proactively without
19 the legislature and our legislation requiring them
20 to do it?

21 RACHAEL FAUSS: I don't know if they do an
22 annual report, but I think a lot of agencies do -- a
23 lot of oversight agencies do. I mean, JCOPE
24 actually does.

25 But, you know, I think something that we've

1 noted with a lot of agencies, where we, you know,
2 submit complaints, is they kind of go into this
3 black box and you have no idea where they go.

4 It's like, okay, well, we made a complaint --
5 board of elections, or we made a complaint to JCOPE.

6 And, you know, just even having aggregate
7 data about how many complaints are received; how
8 many, you know, metrics, again, as you were saying,
9 about the office's performance, that could be
10 helpful.

11 So, maybe, I think looking at annual
12 reporting requirements could be interesting,
13 perhaps.

14 SENATOR BIAGGI: I think that's a great idea.

15 BLAIR HORNER: I think the model legislation
16 is worth looking at.

17 I mean, just by the sheer volume of what the
18 model legislation, as compared to this sort of
19 three-paragraph version in New York.

20 By the way, there are other inspectors
21 general too. I mean, you have the MTA, you have
22 Medicaid.

23 And so there should be some way to sort of
24 look at this sort of holistically.

25 And so I -- I mean, I just suggest that you

1 take a look at the tenure of Joe Fish.

2 I mean, here's a guy who made it work, in our
3 opinion, and he is very, very aggressive. And he
4 had the sort of structure that currently exists, and
5 yet pumped out, I don't know, scores of reports.
6 And he was very influential in looking at some of
7 the pay-to-play activities around "casinos"
8 decisions back in 2010, I guess it was.

9 SENATOR BIAGGI: Right.

10 Okay. That's helpful.

11 SENATOR KRUEGER: [Inaudible.]

12 SENATOR BIAGGI: Yes, please,
13 Senator Krueger.

14 SENATOR KRUEGER: Was there a statute change
15 around the IG between then and now?

16 BLAIR HORNER: I don't recall there being
17 one?

18 SENATOR KRUEGER: Or it's just different
19 interpretation about what the job description --

20 BLAIR HORNER: Well, to Governor Paterson's
21 credit, I presume. Right?

22 I mean I met with Fish when he first started,
23 and he had been involved in, I guess, the commission
24 dealing with Serpico back in the day.

25 I mean, he was a guy late in his career. He

1 was not going to be pushed around. No one was going
2 have their hooks into him.

3 And he's, like, I'm not ending my career in
4 this job, and then not doing what I'm supposed to
5 do.

6 So he just stood up -- pressure, as far as
7 I could tell.

8 SENATOR BIAGGI: I think that that's a good
9 influence on all of us.

10 Okay. I'm going to skip over, just because a
11 lot of what my questions are on the IG were regard
12 with the bill, so we'll talk about that, hopefully,
13 afterwards, and I'm sure there will be some
14 amendments that can make it better.

15 Let's just see.

16 Okay. I think there's just two final
17 questions, under the "attorney general" category.

18 So the AG runs something called "New York
19 Open Government," which is fascinating, if you take
20 a look at it, but it exists. And it's really,
21 essentially, this data aggregation for all of the
22 data that is released publicly by New York State
23 agencies.

24 For those who are watching, who don't know,
25 you should definitely check that out.

1 Can you talk about your experience with
2 open -- with this Open Government database, and
3 whether it's actually useful at all?

4 I know it hasn't been updated for years.

5 So what is your experience working with this
6 database?

7 What should we be doing with this database,
8 and how can we actually use it?

9 BLAIR HORNER: Let me just mention one quick
10 thing.

11 I worked -- this idea came from
12 then-Attorney General Andrew Cuomo --

13 SENATOR BIAGGI: That's -- oh, yes. I forgot
14 to mention that irony.

15 BLAIR HORNER: -- and I headed it up.

16 So I can tell you, it was a brutal experience
17 just getting access -- information that was publicly
18 available.

19 The idea was to have one-stop shopping. The
20 problem -- and then it evolved over time.

21 And once it got past these sort of
22 technical -- like, I'm like Koko the gorilla when it
23 comes to technology. Right? So in the beginning
24 I dealt with that part, and then somebody else dealt
25 with it, and I went back to working at NYPIRG.

1 The problem is, always, you're relying on the
2 state agencies to get you the data. And I don't
3 know what the status is in terms of their resources.
4 But that is always going to be the problem because
5 they don't have any independent authority currently
6 to collect the data or require that the data be even
7 accurate.

8 SENATOR BIAGGI: Right.

9 BLAIR HORNER: But it was supposed to be
10 one-stop shopping, and so you can look at, you know,
11 charities' information, contract information,
12 campaign contributions. The sort of the backbone of
13 it was really the -- sort of the legislative side to
14 it, the bills.

15 And so -- and then from there it was
16 lobbyists, campaign contributions. Then you looked
17 at contracts, and, et cetera.

18 And so it was -- so, yeah, I mean, I use it.

19 But it is only as useful as the agency has
20 resources for it, and the accuracy and
21 up-to-datedness of the data that it collects.

22 BEN WEINBERG: I'll just add, you know, in
23 many cases, it is more useful than how the agency
24 presents the same data.

25 The state board of elections is the most

1 obvious situation, where their public database of
2 contributions is almost impossible to navigate
3 through. And the AG system is just more
4 user-friendly.

5 But as Blair mentions, really, I think a more
6 comprehensive solution for that is a
7 legislative-solution model like New York City has,
8 where, you know, the Open Data Law in New York City
9 mandates that all agencies send, you know, a variety
10 of databases directly to one hub.

11 And that is, honestly, I think revolutionized
12 the way that the data is seen and tracked in
13 New York City. And that helps us in good-government
14 groups, that helps the press, and that helps other
15 watchdogs.

16 RACHAEL FAUSS: I just would reiterate, we
17 think there's a lot of potential with the -- this
18 database and for one-stop shopping, as Blair said,
19 because, you know, if you're trying to connect the
20 dots on state spending, the best way to do it is to
21 search one place.

22 You know, say there's a state vendor and
23 you've got a concern about them, you just search one
24 place and get all the information about, you know,
25 what contracts do they have, what campaign

1 contributions are they making, what bills are they
2 lobbying on, et cetera.

3 That's -- that should -- it should be easier
4 for the public and the legislators to connect the
5 dots, and the potential is really there.

6 And I think that, you know, the exercise of
7 the AG's office doing that, and -- is really
8 important because it kind of points out the flaws in
9 the data. Like Ben said, the board of elections
10 data is bad.

11 The AG has made it more user-friendly. But
12 there's also, you know, data-integrity issues,
13 where, you know, in some places, looking at the
14 campaign contribution data, you will find the same
15 vendor spelled four different ways.

16 IBM Corp. IBM Corp. IBM.

17 It's just -- it's kind of maddening, and
18 I think it's something that I -- not a lot --
19 you know, very much in the weeds, but it's kind of
20 crucial to integrity, and anticorruption efforts, as
21 if -- if your data is terrible, it's going to be
22 harder to -- you know, for the enforcement agencies
23 to do their job. So....

24 SENATOR BIAGGI: Right.

25 That's pretty remarkable, actually.

1 And just for the record, because, you know,
2 being candid, obviously, most important, I did not
3 even know that this database existed until recently.

4 And it's actually something that I have been
5 talking about. But to see that it exists, so that
6 the infrastructure is at least there, and that we
7 can deal with what we've got and make it better, is
8 really, frankly, very promising to me. And do
9 I think it would be very useful to a lot of
10 legislators, as well as the public.

11 So this is something that I'm really excited
12 to work on, which sounds so silly, but it really,
13 I think, can transform the way we actually work and
14 make decisions. And that's the whole point at the
15 end of the day.

16 I believe that that is all of the questions
17 that I -- oh, I actually have one final question.

18 Apologies.

19 You had mentioned this, but I just want to
20 get this on the record very clearly, when we were
21 talking about the inspector general's powers, and
22 who they may investigate.

23 And so, Linda Lacewell, the former
24 DFS superintendent and aide to Governor Cuomo --

25 BLAIR HORNER: The minister of defense.

1 SENATOR BIAGGI: -- among other things --
2 What's that?

3 BLAIR HORNER: The minister of defense, as
4 you may recall.

5 SENATOR BIAGGI: Yeah, minister of defense,
6 amongst other -- yes, that's a really nice way to
7 put it.

8 Thank you for doing that for me.
9 I appreciate that. I had a loss of words there.

10 -- she had testified in the AG's
11 investigation, that the inspector general is legally
12 prohibited from investigating both the governor and
13 the secretary -- governor.

14 And so just to make it very clear on the
15 record, for the three of you:

16 Do you believe that the inspector general may
17 investigate the governor or the secretary --
18 governor should the need arise?

19 And do you believe it would be a conflict of
20 interest for the inspector general to investigate
21 the person who appoints them?

22 Two separate questions.

23 RACHAEL FAUSS: I haven't looked at those
24 particular legal issues, but, obviously, if all that
25 is true, that is a massive problem, because that's

1 their job.

2 So, you know, I would assume that the
3 person -- you know, Linda Lacewell's statement is
4 accurate. And I think that -- it's alarming and
5 extremely troubling.

6 And, obviously, your legislation to look at
7 the IG and fix it, I mean, that's perhaps something
8 to look at, and make sure it's addressed in that.

9 BEN WEINBERG: I'm not a lawyer, nor a
10 counsel on this issue.

11 I would hope that that statement was made
12 after the legal counsel telling her that that is the
13 situation.

14 But as Rachael said, if that is the case, it
15 makes the whole position quite redundant and
16 pointless.

17 BLAIR HORNER: Well, I mean, there's a logic
18 to it. Right?

19 She reports -- people, in the case of the
20 inspector general, so how can she investigate them?

21 Now, again, as we mentioned before, Joe Fish
22 did, and the current IG says she can.

23 So it may not be a legal issue as much as the
24 way it's set up that creates this inherent.

25 And by the way, it's also convenient, because

1 it might have been a convenient legal interpretation
2 to keep the IG from following up on the book leak in
3 JCOPE, just, coincidentally.

4 So I -- you know, I think that -- what the
5 law is, it certainly seems fuzzy enough that you
6 guys recommend we clean up. But I think the whole
7 issue of having the IG report -- secretary,
8 effectively, the governor, is a fundamental flaw.

9 SENATOR BIAGGI: Yep. I happen to agree.

10 Thank you all so much.

11 As always, we really appreciate the time that
12 you take, the care that you take, and also, really,
13 the dedication to ethics, and to supporting us, in
14 making sure that we do our jobs as best as possible.

15 So I have a lot of hope for the 2022
16 legislative session, and I look forward to working
17 with you all.

18 BLAIR HORNER: One month.

19 SENATOR BIAGGI: One month. Exactly.

20 Happy holidays.

21 Thank you so much.

22 SENATOR KRUEGER: Thank you.

23 SENATOR BIAGGI: All right.

24 All right. So next up will be, actually, a
25 virtual panel, and we will be hearing from a

1 legislator from California, Scott Wiener, and also
2 his legislative counsel, which is the person who
3 serves on -- excuse me -- serves as legislative
4 counsel to the ethics committee that he also serves
5 on as well.

6 And it's noon, so that's about right.

7 Okay. Why don't we take just a 15-minute --
8 10- to 15-minute break.

9 Let's take a five-minute break for the
10 restroom, and come back at 12:20.

11 Thank you.

12 Okay. So we're not going to take a break.

13 I'm glad that the -- this is so fun.

14 Okay. That's great.

15 I'm glad that....

16 Okay. Whenever you're ready.

17 CA SENATOR SCOTT WIENER: We're ready?

18 SENATOR BIAGGI: Yes. Good morning to you,
19 and good afternoon to us, because -- since you're
20 three hours behind.

21 I'm very grateful for you to join us today.

22 And, also, just before we begin, are we
23 waiting for your counsel, Erin Peth?

24 CA SENATOR SCOTT WIENER: No, she's here.

25 SENATOR BIAGGI: She's there?

1 Okay, great. That's wonderful.

2 All right. Well, thank you very much for
3 joining us. We're really grateful to have you.

4 I often joke in New York, no matter what
5 we're doing, California seems to lap us, unless
6 Senator Hoylman seems to be on to what's going on in
7 California, and then also gives a lot of
8 competition.

9 So I know you have a nice -- a good friend
10 here as well.

11 But we're really grateful that you joined us,
12 to share what's going on in California, especially
13 because your ethics rating in your state is actually
14 much higher than New York's.

15 So we look forward to hearing your testimony,
16 and also engaging in some dialogue afterwards.

17 CA SENATOR SCOTT WIENER: Great.

18 Thank you, Madam Chair, and committee
19 members. And hello to my friend and law school
20 classmate, Senator Hoylman.

21 So I'm Scott Wiener. I have the honor of
22 serving on the California State Senate, representing
23 San Francisco and the northern part of San Mateo
24 County. I've been in the Senate since 2016.

25 I serve as chair of our Senate Legislative

1 Ethics Committee, and I also chair our housing
2 committee.

3 So thank you for inviting me today.

4 I will be focusing on our Senate ethics
5 requirements.

6 I'm also joined by Erin Peth, who is the
7 chief counsel to our committee on legislative
8 ethics. And before joining the Senate, Ms. Peth was
9 the executive director of California's Fair
10 Political Practices Commission (FPPC), which is our
11 statewide ethics agency with broad oversight over
12 government ethics issues, as well as campaign
13 finance issues.

14 So Ms. Peth is very expert in these issues,
15 and will be able to help out with -- if there are
16 some questions that I can't answer. She has very,
17 very broad knowledge.

18 So California has a robust set of ethics
19 requirements for government officials. We have a
20 layered approach to our ethics rules. Some are in
21 our state constitution, and statute and regulations
22 issued by the FPPC, and internal agency rules.

23 The Senate, we have adopted specific internal
24 ethics rules to cover all of our staff members, and
25 those provisions are contained in our standing rules

1 and in our Senate Standards of Conduct.

2 That calls for the creation of a legislative
3 ethics committee, which is comprised of
4 six senators, at least two have to be from each
5 party, and the chair and vice chair can't be from
6 the same party. The two leaders are president
7 pro tem and the minority leader are ex officio
8 members.

9 We receive complaints related to members or
10 staff. We review those complaints.

11 Sometimes we hold public hearings.

12 Sometimes a public hearing is not warranted,
13 and we can issue anything ranging from a warning or
14 admonition, to stripping a member of various rights
15 or privileges, a reprimand, a censure, and,
16 potentially, expulsion.

17 If the respondent is a member of our staff,
18 then we transmit our findings to the rules committee
19 for appropriate action.

20 We, also, California law and our standards
21 require all senators and staff to attend a
22 comprehensive ethics training once every two years.

23 Also, each senator is required to have an
24 individual review session with Ms. Peth every
25 two years; so, one-on-ones, in addition to the

1 larger group trainings.

2 I know there has been some concern in
3 New York about leaks from ethics hearings, as
4 I understand it.

5 We have very, very strict rules for our
6 ethics committee about not disclosing information.
7 And any member who discloses information is subject
8 to discipline.

9 So we take confidentiality very seriously,
10 and our members have respected it.

11 Our ethics committee work very, very well
12 together in a bipartisan nature.

13 I'm a liberal Democrat from San Francisco.
14 My -- our vice chair is a very conservative
15 Republican from Bakersfield. And the two of us
16 really work hand in glove in overseeing the
17 committee, and we talk regularly. And it's been a
18 good bipartisan, often consensus-driven, committee,
19 which is really important in the ethics arena.

20 The standard of conduct in the Senate
21 would -- it contains 12 standards, and they were
22 adopted in 2014 after three different senators faced
23 criminal prosecution in that year for separate
24 incidents.

25 It was not best year for the California State

1 Senate, 2014; but we've moved past it, and we did
2 adopt these very detailed rules.

3 The standards really have two fundamental
4 principles:

5 The first is, that holding public office is a
6 public trust;

7 And the second, is that trust is eroded by
8 actions that appear to place the official's private
9 interests over public interests.

10 The standards are very clear that appearance
11 is also important, even if a rule hasn't been
12 violated.

13 And I think we all know that in public
14 service, that, you know, appearance of propriety is
15 quite important.

16 The standards establishes zero-tolerance
17 policy for unethical behavior, and also create a
18 duty to report violations.

19 The standards strive to have all senators and
20 staff be independent and impartial, and to make
21 decisions through the established process of
22 government, and not to use public office, of course,
23 to obtain personal benefits.

24 So, again, thank you for the opportunity
25 today, and Ms. Peth and I are happy to answer any

1 questions that you may have.

2 SENATOR BIAGGI: Thank you very much,
3 Senator, and we're going start with Senator Hoylman.

4 And, really, I just appreciate also your --
5 the words that you mentioned about your working
6 across the aisle.

7 I think it is needed probably more than ever,
8 and it's a really good inspiration to those of us in
9 New York; so, I want to give you credit for that.

10 Senator Hoylman.

11 SENATOR HOYLMAN: Hello, Senator Wiener.

12 CA SENATOR SCOTT WIENER: Hello, Senator.

13 SENATOR HOYLMAN: It's good to see you.

14 You know, we went to law school together many
15 years ago, and I try to emulate Senator Wiener from
16 the East Coast. He's kind of like my West Coast
17 counterpart, except he's much taller, and represents
18 a lot more people. I think you have a million
19 constituents, I think, the last time I checked.
20 Your districts are very large out there. But we've
21 worked together on a lot of legislation.

22 But I wanted to ask you about outside income,
23 and whether that is an issue in California.

24 Does the California State Legislature allow
25 your members to have part-time jobs outside of their

1 legislative duties?

2 CA SENATOR SCOTT WIENER: I think under
3 limited circumstances. But Ms. Peth actually could
4 probably comment on that in a more detailed way.

5 I take the approach, I don't allow myself to
6 have any outside income, period, even if it's
7 allowed.

8 But there are -- you know, it is allowed
9 under certain circumstances.

10 SENATOR HOYLMAN: I was just wondering if
11 that's something the legislature has looked to
12 address.

13 I've carried legislation for a number of
14 years that would, essentially, limit it to things
15 like teaching courses; essentially, no more than
16 around 10 percent of your base income, modeled after
17 the United States Congress which has strict rules
18 around that.

19 Also, my legislation would prohibit the
20 practice of law by members, because I felt, like,
21 you know, you can't have both a duty to your client
22 and a duty to your constituents, particularly when
23 one is privileged.

24 Do -- are -- is the practice of law -- and,
25 again, if your counsel is there -- is the practice

1 of law permitted by legislation?

2 CA SENATOR SCOTT WIENER: It is, but Ms. Peth
3 can elaborate further.

4 I think we have -- I think we're fairly
5 permissive.

6 SENATOR HOYLMAN: Got it.

7 Has it led to --

8 CA SENATOR SCOTT WIENER: Ms. Peth can
9 comment further.

10 ERIN PETH, ESQ.: Yes, so to echo what
11 Senator Wiener was saying, it is allowable for our
12 members to have outside employment.

13 As a practical matter, we do have a full-time
14 legislature in California, and I think, you know,
15 they are, obviously, incredibly busy people.

16 So we do -- but we do have some members who
17 are members of the bar, who have retained, you know,
18 some sort of position in a law firm.

19 We obviously do have conflicts-of-interest
20 provisions.

21 So those outside sources of income could
22 arise in a conflict-of-interest situation, depending
23 on what decisions the members are involved in.

24 SENATOR HOYLMAN: Thank you.

25 No, that's interesting.

1 I wanted to know if New York was an outlier
2 in that regard.

3 It sounds like --

4 CA SENATOR SCOTT WIENER: I have a feeling
5 that -- I mean, so many state legislatures are
6 part-time. There is the whole other issue of, you
7 know, especially large states, like Texas, that have
8 part-time legislature. And you're forcing people to
9 have outside employment, and that can create a
10 conflict.

11 SENATOR HOYLMAN: Right.

12 And that's the problem I think a lot of our
13 colleagues, you know, we're all under economic
14 pressure at home.

15 Our salaries are reflective of, you know,
16 I think more of a part-time legislature, on some
17 respects, than a full-time legislature. And so our
18 members who are lawyers, and who have private
19 employment, you know, need that supplemental income.

20 I wish that, in New York State, we could do
21 what the city council has done here, which is have
22 an independent commission, fully, that sets our
23 salaries, rather than make it subject to political
24 horse-trading, which is, I think, sadly what's
25 happened in New York for decades. And even in the

1 last iteration of an attempt at a commission for a
2 salary, we ended up, Senator Wiener, and like
3 lawsuits, and some sort of halfway approach, where
4 the legislators were afforded a salary, but only
5 partially. And I think there may still be an appeal
6 around that issue.

7 So it's -- like, to a finer point, which
8 is -- a finer -- to drill down on that, how are your
9 salaries set in California?

10 CA SENATOR SCOTT WIENER: Yeah. So we have a
11 citizens commission, I can't remember the formal
12 name, that sets salaries for legislators and for our
13 statewide constitutional officers, like governor,
14 attorney general, et cetera. And once a year there
15 is a cost-of-living adjustment.

16 And so we just -- we get a memo, to your --
17 saying, there's no increase, or you're going to get
18 a 2 percent increase, or whatever the case may be,
19 and, there can be shenanigans.

20 Our last -- when Governor Schwarzenegger was
21 governor, they -- he got the citizens commission to
22 take a wrecking ball to legislative salaries during
23 the last recession, and to really take a big whack
24 in reducing those salaries. That was just a
25 political attack by Governor Schwarzenegger.

1 But, that aside, I think it works reasonably
2 well.

3 SENATOR HOYLMAN: Thank you.

4 Senator Biaggi, I think it's something we
5 should --

6 SENATOR BIAGGI: I agree.

7 SENATOR HOYLMAN: -- we should look at, to
8 really, fully, remove the pressure of outside income
9 on our members who, all in all, are trying to do the
10 right thing and provide for their families.

11 But there's -- it's a very expensive state,
12 and particularly city, to live in.

13 CA SENATOR SCOTT WIENER: I think it's --
14 I think it's incredibly important.

15 When I first moved to San Francisco in 1997,
16 the San Francisco Board of Supervisors, which is
17 more than a full-time job, given the intensity of
18 this great city, they made \$24,000 a year, and only
19 the voters could set the salary.

20 And so voters, at one point, finally raised
21 it to 36,000.

22 But, ultimately, the solution is a -- the
23 charter amendment to transfer it -- a civil service
24 commission, and so the board now actually gets a
25 real salary.

1 SENATOR HOYLMAN: Good seeing you, Scott.

2 CA SENATOR SCOTT WIENER: You too, you too.

3 SENATOR BIAGGI: Thank you, Senator Hoylman.

4 And, actually, I could not agree more with
5 that approach, and I think we should do something
6 about it; so we must.

7 Senator Borrello, please.

8 SENATOR BORRELLO: Thank you, Chairman --
9 Chairwoman. Excuse me.

10 It's the mask, I promise.

11 [Laughter.]

12 SENATOR BORRELLO: Senator Wiener, thank you
13 very much for coming on and speaking with us. We
14 appreciate it very much.

15 I thought it interesting that you pointed out
16 that you are co-chair of this ethics commission; is
17 that correct?

18 CA SENATOR SCOTT WIENER: No. I'm the chair,
19 and then my Republican colleague is vice chair; but
20 we operate together.

21 SENATOR BORRELLO: Right.

22 So -- and you said that you're obviously a
23 liberal Democrat and he's a conservative Republican.

24 CA SENATOR SCOTT WIENER: "She."

25 SENATOR BORRELLO: She, she. Excuse me.

1 And that this is really worked very well in
2 that model.

3 And that -- so, you know, Chairwoman Biaggi
4 mentioned that California is far and above New York
5 as far as ethical standards.

6 So would you attribute the bipartisan nature
7 of your commission as being pivotal to that, you
8 know, based on what you said?

9 CA SENATOR SCOTT WIENER: Well, I'll be
10 honest, our legislative ethics committee had not
11 been constituted for several years, because I don't
12 know if it was because there weren't complaints
13 coming in, or what the reason was. But -- and it
14 was only about a year ago, or earlier this year,
15 that our Senate leader reconstituted the committee.

16 So if we're good on ethics, and we try hard,
17 that did predate the reconstitution of the ethics
18 committee.

19 So I don't think that that bipartisanship is
20 the reason that we have the culture that we have.

21 I think we have strong ethics rules, which
22 is -- and laws, which is probably I think the most
23 fundamental issue.

24 But having had -- there have been -- and
25 I can't get into the details because it's

1 confidential -- you know, complaints that come in,
2 it has been really helpful to have that bipartisan
3 working relationship in the ethics context.

4 I try to have it in other contexts as well,
5 and sometimes it works, sometimes it doesn't.

6 But on the ethics front, I think, you know,
7 we have tried hard for it to work.

8 But I also think that it has to do with,
9 also, like the personalities of who is on the
10 committee from both sides, because we can, you know,
11 imagine situations where, for example, certain
12 members of Congress, you know, that we all know, we
13 might not want to have on that kind of committee.

14 And we -- you know, so having the right
15 personalities of people who really are willing to
16 set aside partisanship in the ethics context, and
17 really just look at the facts, and try to work
18 together, because it does build confidence. Right?

19 If you have a unanimous consensus that this
20 was a violation, or this wasn't a violation; or it
21 was a violation but it was minor, so it just
22 warrants a private, you know, admonishment letter;
23 or this is so significant, it, you know, needs a
24 public hearing, and -- if do you that unanimously,
25 it's very powerful, and it builds confidence in the

1 result.

2 SENATOR BORRELLO: Okay. Thank you.

3 With that being said, then, you've got
4 yourself, you've got a bipartisan membership in this
5 commission. They're elected officials, they're
6 sitting legislators.

7 And what's the overall makeup of your state
8 legislature, like, Republican versus Democrat?

9 CA SENATOR SCOTT WIENER: We have, in both
10 houses, more than 75 percent Democratic members.

11 So in the Senate it's 31 out of 40 are
12 Democrats. In the Assembly it's -- is it 60, or 61?

13 We've had some resignations recently, and
14 some -- not for ethics reasons -- and we have some
15 vacancies. But there were, I think, 61 in the
16 Assembly.

17 So it's a strong majority.

18 It's -- we have, on our ethics committee,
19 it's four Democrats and two Republicans, in
20 addition -- two ex officios who are our two leaders.

21 And it requires a two-thirds vote for us to
22 take action as well.

23 So, yeah.

24 SENATOR BORRELLO: So despite having super
25 majorities in both houses, you still have what would

1 be considered a balanced ethics commission, based on
2 that, and that seems to have worked well for you?

3 CA SENATOR SCOTT WIENER: Yeah -- yeah,
4 the -- yes, it does work well.

5 SENATOR BORRELLO: Great.

6 Just one final question, and I know my time
7 is almost up.

8 Do you have an actual vehicle to remove an
9 elected official within your law?

10 I mean, I think one of the troubling issues,
11 and I'm speaking more as a former local government
12 official, that there's just no -- there's no vehicle
13 to remove an elected official, except for the
14 governor.

15 CA SENATOR SCOTT WIENER: We have the power
16 in our constitution, each house determines the
17 qualifications of members, and if someone is to be
18 seated. And we have the power to expel a member if
19 we deem it appropriate. And, obviously, that's an
20 extreme power, but we do have the power.

21 I don't think that power exists -- well, in
22 local government, it just depends on the charter of
23 the city. But each house of the legislature does
24 have that power.

25 SENATOR BORRELLO: So since you have that

1 power, would you consider that, basically, the teeth
2 in your ethics commission, or at least some of it?

3 CA SENATOR SCOTT WIENER: I mean, that would
4 be more than teeth. It's pretty nuclear. And, you
5 know, obviously, under extreme circumstances, it can
6 absolutely be warranted.

7 But we also, you know, even issuing a letter
8 of admonishment, or finding, if it's made public,
9 which we have the power to make it public, can be
10 very powerful. You know, obviously, no one wants
11 that kind of letter to be issued.

12 SENATOR BORRELLO: Yeah.

13 CA SENATOR SCOTT WIENER: But we can also
14 take away rights and privileges. We could --
15 I think we can take away someone's office, or
16 someone's staff.

17 Ms. Peth will correct me if I'm wrong.

18 We can say, strip someone, or maybe the rules
19 committee, but the body has the power to strip
20 someone of their committee assignments, for example;
21 or perhaps to say, you can't introduce legislation
22 this year.

23 So we have pretty broad powers short of
24 expelling someone, to create strong incentives not
25 to mess up.

1 SENATOR BORRELLO: Great. Thank you very
2 much.

3 Thank you.

4 SENATOR BIAGGI: Senator Palumbo.

5 SENATOR PALUMBO: Thank you, Madam Chair.
6 Senator Wiener, nice to see you.

7 CA SENATOR SCOTT WIENER: You too.

8 SENATOR PALUMBO: By way of follow up:
9 What are the, almost like, the practical
10 aspects of, for example, a very serious violation,
11 and now your committee determines that someone needs
12 to be removed?

13 Does that then go -- full Senate?

14 CA SENATOR SCOTT WIENER: Yeah. So any kind
15 of action, like, certainly, expelling a member,
16 removing someone from committees, I think, you know,
17 maybe saying a person can't introduce legislation,
18 I think that would -- we would refer that -- and
19 Ms. Peth will correct me if I'm wrong -- rules
20 committee. And then it would probably go for --
21 floor for a full vote of the Senate.

22 Ms. Peth, am I being accurate there?

23 ERIN PETH, ESQ.: Yes, that's correct.

24 CA SENATOR SCOTT WIENER: Yeah.

25 SENATOR PALUMBO: Okay. Thank you.

1 And is there any sort of an appellate process
2 that they can -- you know, that it can be -- if the
3 member objects, of course, to expulsion, they
4 probably would, is there any further, if you want to
5 call it "due process," or, that's it, they're done,
6 pack it up?

7 CA SENATOR SCOTT WIENER: I don't think so.

8 I think our constitution, and this is
9 similar -- U.S. Constitution, that's full power in
10 each house of the legislature to determine the
11 qualifications, et cetera, of members.

12 And so that would be I think not -- not
13 justiciable in the courts. I think the courts would
14 likely find that it's co-equal branch of government,
15 and there's no -- Senator, I will say that I found
16 this out on a personal level, when I was running for
17 reelection last year.

18 Initially, a former state senator had
19 announced he was going to -- in San Francisco was
20 going to run against me.

21 He was clearly and unequivocally termed
22 out -- had termed out 20 years before. There was no
23 argument that he was not termed out.

24 And so I thought, okay, well, if he files to
25 run, we'll just, you know, make sure -- you know,

1 we'll file an objection -- secretary of state, or do
2 something, to keep him off the ballot.

3 And multiple lawyers advised us, very smart
4 lawyers, that a court was very unlikely to take
5 action; that it was ministerial action to put him on
6 the ballot. And it would be up to the Senate, if he
7 were to win, to decide not to seat him.

8 So this is really all within the ambit of
9 each house of the legislature.

10 I don't know what the New York constitution
11 says, but ours is very similar to the federal
12 Constitution.

13 SENATOR PALUMBO: That's interesting.

14 And you said, so he's termed out.

15 You have term limits in the Senate in
16 California?

17 CA SENATOR SCOTT WIENER: We have term limits
18 in the legislature.

19 It used to be, it was horrible, it was
20 six years in the Assembly, eight years in the
21 Senate.

22 And so in the Assembly, in particular, you
23 would have speakers who would either have had
24 six months under their belt, or were about to be
25 termed out.

1 It was reformed about 12 years ago, that we
2 can do 12 years either in one house or divided
3 between two houses.

4 So we have a 12-year term limit.

5 So that's three 4-year terms in the Senate,
6 or six 2-year terms in the Assembly.

7 I don't recommend term limits. So....

8 SENATOR PALUMBO: Well, thank you, Senator.

9 And the use of the word "justiciable," it
10 sounds like you paid attention in law school.

11 I know Senator Hoylman is not here. So, you
12 know, we're going to quiz him as well.

13 But, well done.

14 But thank you again.

15 Enjoy the holidays.

16 We appreciate you coming.

17 CA SENATOR SCOTT WIENER: Thank you. You
18 too.

19 SENATOR BIAGGI: Thank you.

20 Senator Boyle.

21 SENATOR BOYLE: Thank you, Madam Chair.

22 Thank you, Senator, for joining us.

23 And also kudos to California, if you said
24 that you didn't need the ethics committee because
25 there were no complaints for a few years.

1 We would have it every few weeks, I think, so
2 that would never work for us.

3 Just to get back to your idea of expelling or
4 reprimanding or punishing members of the
5 legislature, can you or your counsel give any
6 examples recently of anybody recently kicked out, or
7 at least censured, or something, or...?

8 CA SENATOR SCOTT WIENER: Well, since I'm in
9 my -- I'm about five years in, it hasn't happened.

10 There's was -- we had -- we had a period
11 about three years ago where we had some sexual
12 harassment problems in both houses. One of my
13 colleagues, actually my seatmate, ultimately
14 resigned. There were a few resignations in the
15 Assembly. And I know there had been talk about
16 potential severe actions, up to and including
17 expulsion. Nothing formal, it was just talk about
18 it.

19 But, ultimately, the members at issue
20 resigned, and so that became moot.

21 But as far as I can recall, there have not
22 been any censure or expulsion motions.

23 I know, in 2014, before I was there, we --
24 actually, it was two -- three senators resigned: two
25 for corruption, one because he was found not to live

1 in his district.

2 I actually think he was treated unfairly. It
3 was a bad situation.

4 But the other two were straight up
5 corruption, including one from San Francisco who was
6 involved with like gun-running, and things like
7 that. It was really a bizarre situation.

8 So they would have been expelled --
9 I believe, would have been expelled; but ultimately
10 resigned, and went to prison --

11 SENATOR BOYLE: Wow.

12 CA SENATOR SCOTT WIENER: -- those two.

13 SENATOR BOYLE: Well, very good.

14 Thank you.

15 CA SENATOR SCOTT WIENER: The third one was
16 ultimately, down the road, I think, pardoned by
17 [indiscernible].

18 SENATOR BOYLE: Well, we have similar
19 problems in New York, but mostly in the governor's
20 mansion as opposed to the legislature. So....

21 But thank you for joining us, Senator.

22 SENATOR BIAGGI: Thank you so much.

23 I just have a few questions, just to kind of
24 bow -- put a bow on today's questioning with you,
25 because you've answered a lot of them.

1 And I'm going to ask you the question that
2 I asked also the members of the Senate from Alaska
3 and Rhode Island when we had our last hearing.

4 And the reason I'm going to ask this question
5 is because of this very undercurrent in New York.

6 New York ranks 31st when it comes to
7 ethics, and just overall corruption and transparency
8 efforts; whereas California ranks second.

9 So, really, hats off to all of you for that.

10 And so, from your vantage point in
11 California, what is your perception of how New York
12 handles ethics?

13 And please be as honest as possible, and the
14 reason I say that, it's not really not a joke, even
15 though it's almost laughable just how absurd it is.

16 But we want to be able to understand how the
17 rest of the country and the world views us, and so
18 it's important that you be as honest as you
19 absolutely can be with us. No offense will be
20 taken.

21 CA SENATOR SCOTT WIENER: So I grew up in
22 New Jersey, in the southern part of the state. And
23 I know New Jersey has a certain reputation. I don't
24 know where New Jersey currently ranks on that list.

25 But -- so -- no, I don't -- and I don't

1 perceive New York to be in that category.

2 I actually, you know, my perception, which is
3 really based on the news -- obviously, I'm not
4 personally involved -- is, you know, I saw,
5 obviously, everything that happened with your former
6 governor, and not just the issues that caused him to
7 resign, but just sort of the way he seemed to move
8 in the world, which is -- would not make me happy if
9 our governor did that.

10 SENATOR BIAGGI: Yep.

11 CA SENATOR SCOTT WIENER: But -- and then the
12 speaker of the Assembly, you know, I saw that.

13 But I never attributed that to --
14 I couldn't -- I had no way of knowing if that was a
15 broader issue, or it was just like a few -- you
16 know, there's always going to be people who act in
17 inappropriate ways even in the best of systems.

18 And, ultimately, the system caught up with
19 them, and they left.

20 So I really don't have a perception one way
21 or the other.

22 I would say if I did, but I don't.

23 SENATOR BIAGGI: I appreciate that. That
24 means a great deal.

25 Okay. So just two more questions.

1 So your committee -- you mentioned this, that
2 your committee is tasked with developing the
3 standards of conduct for all the senators, Senate
4 officers, and also employees.

5 Can you just share a little bit more about
6 that work, and just how often your committee revises
7 the standards, and do you find that this process is
8 effective?

9 We have some role in some of those kinds of
10 issues. But a lot of what we are dealing with, when
11 it comes to ethics in New York, specifically with
12 members and legislative officers, is from a section
13 of our law and statute, Section 74 of the Public
14 Officers Law.

15 So this is a little bit different.

16 So I'm just wondering about the process.

17 CA SENATOR SCOTT WIENER: Yeah, so we --
18 these standards were adopted, I think it was in
19 2014, or thereabouts, and so they're still pretty
20 fresh. They're not like, you know, 50-year-old
21 standards.

22 I -- we -- I know that, in going through some
23 recent processes in the committee, we noticed that
24 there was some language that needed to be tightened
25 up a little bit.

1 And so I know we were looking at potentially
2 just making some things clearer, because, you know,
3 until you start implementing standards, sometimes
4 you don't know if they have been drafted, you know,
5 as tightly as they could be.

6 I don't think we're planning any significant
7 or substantive changes at the moment.

8 Again, these are only seven years old and
9 they seem to be working well.

10 But I think we -- you know, I mean, if we
11 ever see a gap, or something, that, you know, we
12 didn't anticipate, we wouldn't hesitate to take a
13 look and to propose modifications.

14 SENATOR BIAGGI: Would you be able to modify
15 them -- well, that's actually much better.

16 Would you be able to modify them at any time,
17 or does it have to be a certain time of year?

18 CA SENATOR SCOTT WIENER: No, it's at any
19 time the committee could propose a modification to
20 the full Senate, and then it would just be voted on
21 by the full Senate.

22 SENATOR BIAGGI: Okay. That makes sense.

23 And then, in terms of the other house,
24 obviously there's the Senate, and the --

25 Is it called "the House" in California, or

1 the Assembly?

2 CA SENATOR SCOTT WIENER: It's Assembly.

3 SENATOR BIAGGI: It's the Assembly. Okay.

4 -- so in the Assembly, do you have standards
5 that are mirroring each other?

6 And the reason -- let me just share the
7 reason why I asked this question.

8 Because, obviously, these are two separate
9 houses with two different types of bodies, and so
10 we're very much aware of that.

11 But in New York, our rules are -- for --
12 certain rules are different. And so what that leads
13 to in New York is a little bit of confusion as to,
14 if you're a staff member, as opposed, you know, in
15 one house versus the other house, it might be a
16 different process. Where do I go? Who do I talk
17 to?

18 It becomes a little confusing.

19 So, just, can you walk us through that; is
20 there a similarity?

21 CA SENATOR SCOTT WIENER: So we do -- we do
22 have, for example, we have joint rules of the
23 legislature, which mostly govern the legislative
24 process and calendar so the two houses are in sync.

25 And then each house has its own rules, and

1 the Assembly have their own standards of conduct.

2 One area where we have worked together is
3 around workplace conduct, and, like, this was
4 created -- a workplace conduct unit was created
5 after the sexual harassment situations that
6 I mentioned a few years ago. So in that area we
7 have worked together.

8 But perhaps Ms. Peth can comment further on
9 those issues.

10 ERIN PETH, ESQ.: Yes, so the Assembly does
11 have their own ethics and their own standing rules,
12 and so they're pretty similar to our standards of
13 conduct in the Senate.

14 But we have, actually, as we talked about
15 today, pulled those standards of conduct out in a
16 separate sort of stand-alone document.

17 But I would say, overall, the rules are
18 pretty similar.

19 But I understand what you are saying about
20 confusion. You know, we do have staff members, I'm
21 sure you do in New York also, that switch between
22 the houses.

23 So I think keeping the rules as consistent as
24 possible is helpful.

25 We also have many Assembly members who then

1 are ultimately elected to the Senate.

2 So we do try to work together, to make sure
3 we're staying consistent.

4 And in my capacity as chief counsel -- ethics
5 committee, there's a staff member on the Assembly
6 side who has the same -- basically, the same
7 position. I work really closely with him as well,
8 so that we make sure we're staying consistent in our
9 advice, so that we, you know, sort of minimize, as
10 you said, confusion by the members and staff.

11 We want to make sure the houses sort of have
12 the same advice and counsel coming out as well.

13 SENATOR BIAGGI: [Simultaneous talking.]

14 Go ahead.

15 CA SENATOR SCOTT WIENER: One thing I will
16 just add, that is probably a California-specific
17 issue that will become, hopefully, less of an issue,
18 is that, historically, before the current iteration
19 of term limits, so, preterm limits, and then when we
20 had separate term limits for each house, the
21 senators were overwhelmingly former Assembly
22 members; served in the Assembly, and then moved --
23 got elected to the Senate.

24 And so, as a result, the Assembly does a lot
25 of initial training of new members, in terms of all

1 the way the house works, the, you know, ethics,
2 everything else, that you need to know as a new
3 member of the legislature, and like pitfalls, and,
4 you know, don't talk about -- you know, legislation
5 when you're having a fundraiser, or all these things
6 that someone can easily, if they don't have strong
7 training, could have a lapse.

8 And so because the Senate historically was
9 overwhelmingly former Assembly members, the Senate
10 had less training because the members were already,
11 you know, experienced Assembly members.

12 With the change -- 12-year term limit, where
13 you can be in one house, we have more and more
14 senators, like myself, who never served in the
15 Assembly, who went right from local government, or
16 from no office at all, to being a senator.

17 And so we've sort of recognized recently that
18 we're going to have to -- we need to have more
19 training because we have more and more senators who
20 have no previous legislative experience.

21 And so we're going to be making -- our pro
22 tem has indicated that we're going to ramp that up.

23 SENATOR BIAGGI: That sounds, actually, quite
24 important, and I agree with that.

25 And I think when it comes to training,

1 I think as much as you can possibly get to be very
2 clear about the boundaries is essential.

3 And so -- and we have the same kind of
4 dynamic in New York, with a lot of people who have
5 not served in government, who are now in government,
6 and really just need maybe a little more help.

7 Just two more questions, but going back --
8 workplace conduct unit that you said that you
9 created, what is the makeup of that?

10 And, also, did you have to create it by
11 legislation? by rule? by regulation?

12 CA SENATOR SCOTT WIENER: That was created --
13 well, we did a few things.

14 The legislature used to be exempt from
15 retaliation claims.

16 We removed -- we legislated to -- we
17 legislated the elimination of that exemption.

18 In addition, I believe it was by rule that we
19 created the workplace conduct unit.

20 Ms. Peth is nodding her head.

21 I'm trying to dredge my memory back.

22 That unit is not comprised of members. That
23 is -- there is -- it's made up of staff, and there's
24 an outside person. But Ms. Peth perhaps can
25 describe it.

1 ERIN PETH, ESQ.: Yeah, I'm happy to.

2 CA SENATOR SCOTT WIENER: We were trying to
3 create a safe place for people, you know,
4 particularly in the sexual harassment context, to be
5 able to come forward and make a complaint.

6 SENATOR BIAGGI: That's great.

7 ERIN PETH, ESQ.: Yes, and so kind of echoing
8 what we said earlier, there was a lot of -- during
9 sort of the "Me Too" movement a few years ago, there
10 was a lot of criticism that the Senate and the
11 Assembly were handling those kinds of complaints and
12 allegations in different ways.

13 And so the houses worked together to create
14 that workplace conduct unit.

15 It's actually located in the office of the
16 legislative counsel, which is a -- basically, the
17 legislature's lawyers. So they created a separate
18 unit within that office of legislative counsel, and
19 they staff it with lawyers and investigators who
20 basically do the preliminary, you know, review and
21 the investigations. And then it goes to, I believe,
22 and I would have to -- I -- we can provide this to
23 you, but I believe that there -- the California
24 Supreme Court Chief Justice appoints people to then
25 review -- review the reports that are produced by

1 the investigators and the lawyers. And then it goes
2 back -- House to actually figure out, you know
3 whether -- you know, if the allegations are proven
4 true, what is going to be the results?

5 You know, so that goes back to what
6 Senator Wiener was saying earlier, in terms of the
7 House still having control over obviously employees,
8 but also members, in terms of what type of
9 discipline would be appropriate.

10 But I'm happy to follow up with more detail
11 on how those appointments happen, if that's helpful.

12 SENATOR BIAGGI: I would love that, actually,
13 because it's an interesting, and I think --
14 "interesting" is not the right adjective.

15 It's a smart way to handle those kinds of
16 issues.

17 And the fact that it goes -- chief judge is
18 actually another check on what is happening
19 internally, because I think a lot of the criticism
20 in New York as well, is that, when things are
21 handled internally, then how could you be impartial
22 if you have to make a decision about a colleague or
23 somebody else. But having that extra check is
24 important, and then bringing it back.

25 So I know it's a challenging way to set it

1 up, but I would like to actually have more
2 information about that. That would be really,
3 really great.

4 This last question -- and, frankly, if you
5 can't answer it, that's totally fine -- but this is
6 something I think that is -- it's important to me
7 for the reason of just coming out of a cycle that we
8 repeat and repeat and repeat, because of elections,
9 because of dynamics. And it's, basically -- and
10 it's more of like an ethical question as opposed to
11 legislative ethics.

12 And so I know, Senator Wiener, you had
13 mentioned, just, you want to be very focused on
14 those questions. And so, again, it's okay if you
15 cannot answer this.

16 But, in the legislature, in the Senate, are
17 the legislative budgets equal across both houses?

18 Meaning, if you have -- obviously, you have
19 Republican colleagues, and so they get a budget to
20 set up an office, they get a budget to set up staff.
21 And then, of course, you know, as -- you know, the
22 other party, the Democratic party, gets the same
23 kind of thing.

24 Do both parties, no matter whether you're in
25 the majority or the minority, get the same budget?

1 The reason I say this is because there is
2 just a sense of fairness, I think, that goes into
3 this, that it kind of -- it goes back and forth, at
4 least in New York -- right? -- the majority has a
5 larger budget, presumably because there's more
6 people and you need more staff, of course, to run
7 the Senate, which makes sense.

8 But when it comes to the individual members,
9 I'm just wondering what California does, and if you
10 have an imbalance or the same.

11 CA SENATOR SCOTT WIENER: The two houses are
12 very different.

13 The Assembly, each member gets a pot of
14 money, and so they can hire fewer staff at higher
15 salaries, or more staff at lower salaries, for
16 example. And it's up -- speaker.

17 So even among Democrats, like different
18 people may get different pots of money.

19 The Senate is much more regimented.

20 So when I came in, it was, like, if you were
21 a senator that represents more than one county, you
22 get 12 staffers, with very regimented slots of what
23 those are, ranging from chief of staff, down to like
24 a legislative aide or an administrative assistant.

25 And if you represent one county, you got 10.

1 Over time, you know, you might get different
2 staffers for different reasons.

3 But I think it's a little more regimented in
4 the Senate.

5 I believe Democrats and Republicans get the
6 same staffing in the Senate, I believe.

7 You know, their -- yeah -- I mean -- and, of
8 course, our budget, in general, is bigger because
9 we're a much bigger caucus.

10 But the Republicans also have, you know --
11 you know, minority staff on each committee, and --
12 or they may have one consultant who handles multiple
13 committees.

14 You know, we have, at this point, a declining
15 number of Republicans. So some of my Republican
16 colleagues have complained to me that they serve on
17 so many committees, because they're stretched to
18 different committee.

19 SENATOR BIAGGI: Sure.

20 CA SENATOR SCOTT WIENER: But, yeah.

21 SENATOR BIAGGI: Okay. That's very helpful.

22 Yes, I know it used to be us.

23 We were -- oh, yes, yes. Please, yes,
24 Senator Boyle.

25 And thank you for answering that question.

1 CA SENATOR SCOTT WIENER: And I do have to,
2 unfortunately, run in a minute.

3 SENATOR BIAGGI: I know, two minutes.

4 CA SENATOR SCOTT WIENER: But I can do one
5 more question.

6 SENATOR BOYLE: Very quickly, Senator; and
7 thank you very much.

8 And thank you, Madam Chair, for bringing that
9 up.

10 This is an issue, before I was elected to the
11 state legislature many years ago, I served on
12 Capitol Hill as a congressional staffer for
13 five years. And whether you were the most senior
14 Republican or Democrat, or minor, everyone had the
15 exact same amount for staff. Central staff was
16 different, obviously; but for the different offices
17 in Congress.

18 And I believe that we had a court case in
19 New York State. I believe our colleague,
20 Senator Krueger, when she was in the minority,
21 was -- with our late colleagues, Tom Kerwin, the
22 Assemblyman, to try and get equal staffing at equal
23 amounts.

24 SENATOR KRUEGER: We sued.

25 SENATOR BOYLE: You sued/they sued. They

1 lost.

2 And I believe -- I believe, in some of the
3 testimony, there was to say that, Well, if the
4 speaker said that a Republican had one dollar for
5 their staff, would that be acceptable?

6 The judge said, Yes, because, you know, it's
7 a different thing. We're not getting involved with
8 [indiscernible] a judicial thing.

9 But I do hope the state legislature looks at
10 that, for fairness and equity.

11 And I congratulate you for mentioning that.

12 SENATOR BIAGGI: Thank you very much.

13 And, Senator Wiener, thank you so much for
14 spending time with us.

15 And, Erin, the same for you; we appreciate
16 it.

17 And I really do look forward to working with
18 both of you, hopefully, in the future, not just
19 ethics, but, of course, on other things.

20 So thank you very much for taking the time.

21 CA SENATOR SCOTT WIENER: Yes.

22 And congratulations to New York for, as you
23 said, lapping us on safe consumption sites.

24 We're jealous in San Francisco because we
25 needed to do it for so long.

1 But you all beat us to the punch.

2 Congratulations.

3 SENATOR BIAGGI: Thanks very much.

4 Have a good rest of your day, and happy
5 holidays.

6 CA SENATOR SCOTT WIENER: Happy holidays.

7 ERIN PETH, ESQ.: Thank you.

8 SENATOR BIAGGI: Thank you.

9 Okay. So we're just going to take a
10 10-minute break before our final panel of the day.

11 We actually added on someone from the
12 judicial conduct panel -- commission, rather.
13 Excuse me.

14 Yes, just 10 minutes, and we'll come back.

15 So, 1:10, we'll return.

16 (A recess was taken.)

17 (The hearing resumes.)

18 SENATOR BIAGGI: Okay, wonderful. Welcome
19 back, everyone.

20 We are on our final panel of the day, and
21 we're very, very grateful to be joined by
22 Robert Tembeckjian, who is from the Judicial Conduct
23 Commission, to hear about what the commission does,
24 of course, and, also, some of the ways in which it
25 works.

1 And we're very grateful that you're here
2 today, of course.

3 I'm a member of the Judiciary Committee, but
4 we also have with us, of course, the chair of the
5 Judiciary Committee here too, Senator Hoylman.

6 And so, with that, we give you the floor to
7 please share your testimony.

8 ROBERT H. TEMBECKJIAN: Thank you.
9 I appreciate that very much.

10 I wanted to just make a couple of points,
11 before we get to questions, on the significance of
12 the independence -- the structural independence of
13 any new commission or ethics entity that you
14 propose, and some of the other considerations that
15 should go into the structure of a robust ethics
16 enforcement entity.

17 And I do that from the experience of having
18 been an ethics enforcement officer for the judiciary
19 for more than 40 years, and I've been the
20 administrator of the commission since 2003.

21 Structural independence is critical.

22 We are created in the state constitution, and
23 the commission itself is a body of 11 members, 4 of
24 whom must be judges, 5 of whom are lawyers, 2 of
25 whom are laypeople. And that balance in membership

1 is very significant.

2 The judiciary does not control the
3 investigation and enforcement of discipline against
4 judges, but it does have a participating role and
5 voice, so that decisions are not made without the
6 input of people who understand something about what
7 judges do and what they experience in the
8 day-to-day.

9 At the same time, it is, I think, especially
10 important that there be non-lawyer members, because
11 so much of what government does, especially in the
12 field of ethics enforcement, is aimed at bolstering
13 public confidence and the integrity of our form of
14 government.

15 The public has a way of viewing judicial
16 misconduct differently and from a different
17 perspective than lawyers and judges do.

18 And it might not surprise you that judges and
19 lawyers are among the least likely to make
20 complaints about judges, because it's their world
21 and it's their livelihood.

22 Bringing laypeople -- conversation is very
23 important perspective to keep mindful of as you're
24 crafting the way forward in New York for ethics
25 enforcement in the future.

1 Within the structure, not only because we're
2 in the constitution, but the structure of the
3 commission itself, means that no one appointing
4 authority controls the body.

5 There are six different appointing
6 authorities.

7 The governor appoints four members, the
8 chief judge of the state appoints three, and the
9 four leaders of the legislature each appoints one.
10 And none of them designates the chair or chief
11 executive officer.

12 The commission itself elects its own chair
13 for a two-year term. And then they retain an
14 administrator who serves as the chief executive
15 officer, and, under statute, is responsible for the
16 day-to-day operation of the agency.

17 And that is extremely important because, in
18 other states, where the chief judge, for example,
19 chooses the chief executive officer of judicial
20 enforcement, if the Judicial Conduct Commission is
21 upsetting the court system or the chief judge, let's
22 say, by being too effective or too aggressive or too
23 robust, they serve at the pleasure of the chief and
24 they can be dismissed.

25 As we've seen in other context, if you are

1 running afoul of the governor, and the governor
2 appoints you as either the chair or the chief
3 executive officer, the governor can make a change,
4 and effective enforcement, essentially, is going to
5 be shadowed by the fear of losing your job for doing
6 it effectively.

7 So I would urge that any legislation that you
8 craft or constitutional amendment take care for
9 that.

10 And, secondly, most significantly, if --
11 if -- even the most perfect constitutional or
12 legislative structure is going to be ineffective if
13 it's not well funded; if it doesn't have the
14 resources to do its job. And if the resources are
15 going to be controlled by some entity that has a
16 stake in the game, that's going to present problems.

17 As my friends, Senator Krueger and
18 Senator Hoylman, well know, for the last 10 years,
19 the division of budget, in its submission of the
20 executive budget -- legislature, which includes my
21 commission's budget, has, essentially, frozen us
22 out. They keep us flat year after year after year.

23 The decision was made some time ago for our
24 budget to be submitted separate from the judiciary
25 so that they couldn't control our operations by

1 controlling the purse strings.

2 But if you don't have a governor who is -- to
3 the subject, and a division of budget that,
4 essentially, keeps you flat because they consider
5 you, despite the constitutional separation, as an
6 executive branch operation, which we are not, it
7 forces me to come -- legislature year after year to
8 ask for the funding that we need.

9 And I've been very fortunate with this
10 representation, that the legislature has been
11 responsive. But it shouldn't have to come to that,
12 really.

13 I'd like to see a system, and I think this is
14 reflected in the constitutional amendment that
15 Senator Krueger has proposed, by which the ethics
16 enforcement entity submits its budget requests to
17 you directly, without the filter of the governor.
18 And then you decide, as the legislative body and the
19 representative of all of the people, what that
20 effective or appropriate level of funding should be.

21 I'd like to see that for our own commission
22 too.

23 And I must say that, in recent weeks, I have
24 suggested that -- staff of the new governor. And,
25 lo and behold, unlike the previous 10 years, they

1 actually seem to be attentive -- subject.

2 And I have some hope that, this year, when
3 the executive budget comes out, it reflects this
4 respect for the independence of the commission and
5 the constitutional independence of this body, and
6 the importance of ethics enforcement.

7 I certainly hope that that's the case.

8 Two more points that I think are really
9 significant.

10 One is transparency.

11 Whatever the structure is, there must be,
12 I think, a public window into what the work that the
13 ethics commission or body is doing.

14 If the public can't see that ethics are being
15 enforced, they're not going to believe that it's
16 happening, even if, at the end of a long inquiry,
17 there is some discipline imposed.

18 Under the law in New York, which is in the
19 minority of states, judicial discipline only becomes
20 public at the end of the process.

21 In most states, once the body formally
22 charges a judge with misconduct, the matter becomes
23 public, in the same way that a grand jury
24 investigation is private, confidential, but once
25 charges are preferred or indictment is returned, the

1 matter becomes public, and so forth.

2 There have been over the years, you know,
3 some discussion about changing that.

4 Even without that, we contribute --
5 transparency of our operation by putting on our
6 website virtually everything.

7 We have disciplined 903 judges in the last
8 40 years. Every single one of those decisions is on
9 our website. The records on which those decisions
10 are made are available -- public.

11 We have all of our rules, internal and
12 external, published on the website.

13 All of our press releases are on there. Of
14 course, those are public documents anyway.

15 We have a code of ethics that we've adopted
16 in addition to what's in the Public Officers Law.
17 That's available on our website.

18 Judges can see/the affected body can see,
19 what it is we do, how we do it. And lawyers that
20 represent them when they do get into trouble, will
21 appreciate and understand how the commission works,
22 because our website is so full. I mean, I think
23 it's fair to say that it is probably the most
24 comprehensive website of its type around the
25 country, in terms of judicial disciplinary

1 enforcement, and probably, compared to other ethics
2 entities in New York State, it's a cut above.

3 And, lastly, and most significantly, is to
4 build in, I think, a regular, required "training and
5 education" component.

6 Judges are required to attend education and
7 training programs after they are elected or
8 appointed to new office or elevated from lower court
9 to higher court.

10 The Office of Court Administration makes
11 education training programs available throughout the
12 year for all levels of the court system, including
13 all of the different categories of judge: county
14 court judge, Supreme Court, and so forth.

15 The Judicial Institute, which is designed to
16 put these programs on, makes it a point to include
17 at least two ethics components to every training of
18 newly elected or newly appointed judges, one of
19 which is presented by representatives of the
20 Judicial Conduct Commission.

21 We tell judges not only how we operate and
22 how we're structured, but how to avoid getting into
23 trouble, and avoid having to see me on any occasion,
24 other than the training and education that welcomes
25 them -- bench.

1 I know there are regular training and
2 education programs and seminars that the legislature
3 runs.

4 I think the executive branch really needs to
5 do the same.

6 It's not just being able to go online and
7 sort of check off the box of an online program; but
8 to actually have structured programs that deal with
9 the specific ethical areas that legislators or
10 executive branch employees, as we do for the
11 judiciary, are likely to get in trouble for, so that
12 they can avoid them.

13 And I think it's one of the most effective
14 roles that we play.

15 I would rather scare them straight to stay
16 away from me during their tenure on the bench, than
17 to wait until they get into trouble before they
18 first come to appreciate exactly what it is that we
19 do, and the powerful disciplines that we can impose.

20 As you know, the commission can impose public
21 admonition, public censure, removal from office for
22 egregious misbehavior, retirement for medical or
23 physical -- mental or physical disability.

24 We also can privately caution for minor
25 violations, and that's an important factor to build

1 in. There are -- not every violation of an ethics
2 code requires public discipline in the opprobrium of
3 the public.

4 There is a place for private warnings to,
5 "Don't do it again. Be a better public servant."

6 We don't have the power to suspend, and
7 that's something that we've also discussed at
8 various times with the legislature.

9 So having an appropriate range of disciplines
10 that can be imposed is also, I think, very, very
11 significant.

12 And I'm aware, from having observed your
13 first hearing in Albany, and watching a little bit
14 on video today, that, certainly, this group of
15 senators certainly seems to be aware of and
16 sensitive to these general subjects.

17 You can tell from the questions that you have
18 been asking, and the areas that you want to cover,
19 with the other witnesses.

20 I hope you are able to persuade the balance
21 of your colleagues to be as attentive to these
22 issues as certainly all of you have been.

23 And I appreciate your having me here, to be
24 able to share some of my experiences, and,
25 certainly, to answer whatever questions you might

1 have.

2 SENATOR BIAGGI: Thank you so much.

3 ROBERT H. TEMBECKJIAN: And maybe,
4 Senator Biaggi, to show that it's nothing to be
5 afraid of for other entities to come before this
6 body and speak to them.

7 SENATOR BIAGGI: That's right. That is
8 exactly right.

9 If that could be the theme of this hearing,
10 I would put it right at the top.

11 So, thank you for saying that.

12 We'll start with Senator Krueger, and thank
13 you for your testimony.

14 ROBERT H. TEMBECKJIAN: Thank you.

15 SENATOR KRUEGER: So thank you, Robert, for
16 actually volunteering to come, as opposed to being
17 worried about coming to talk to us today.

18 ROBERT H. TEMBECKJIAN: Well, I've had
19 experience in speaking before you, and I know it's
20 nothing to be afraid of.

21 It's actually what we call "good government."

22 SENATOR KRUEGER: That's right, we do call it
23 "good government."

24 And I always -- we've gotten to know each
25 other over the years because of your budgets

1 [indiscernible] with the previous governor.

2 But, also, I don't know if you remember, but
3 the very first time I think I talked to was because
4 the building I lived in was in a legal dispute
5 with -- between tenants, and a judge, in open court,
6 called out to people, "How many people here haven't
7 gotten a raise in 14 years? I haven't."

8 "Senator Krueger?"

9 I said, "I haven't either."

10 Because that was true.

11 And then continued on about, Why would you go
12 to work if you don't get paid?

13 ROBERT H. TEMBECKJIAN: Right.

14 SENATOR KRUEGER: And so then I asked her in
15 open court, "Are you going to recuse yourself now
16 that you've done this?"

17 She said, "Of course not."

18 And then I didn't know what to do with that,
19 because I'm not a lawyer. I just knew the words
20 "recuse yourself."

21 ROBERT H. TEMBECKJIAN: Well, you might
22 remember that we publicly censured a judge from
23 Western New York, who had urged other judges not to
24 preside over cases in which the lawyers were members
25 of the legislature; effectively, trying to freeze

1 the legislature out of court until they mandated a
2 pay raise for judges.

3 And he eventually apologized, and
4 acknowledged that what he did was improper. But he
5 was, nevertheless, publicly censored for it, in part
6 because we have, I think, a robust enforcement
7 mechanism for the judiciary, that we could certainly
8 use for the executive, and perhaps the legislature
9 too.

10 SENATOR KRUEGER: Right.

11 So that was a real lesson for me, because
12 then I -- again, I wasn't the lawyer. I was a --
13 just somebody in the case.

14 And I asked my lawyer, "Will you file with
15 the commission?"

16 And the lawyer didn't want to, because
17 lawyers don't necessarily want to be seen as
18 troublemakers with judges, which is, I think, one
19 issue.

20 But then I learned what the commission did,
21 and how valuable it is.

22 So it seems to me, it's critically important,
23 and it's such a good model, for looking at how we
24 deal with other ethics issues, because of exactly
25 what you just said to us.

1 You know, and we've talked about, you know, a
2 JCOPE proposal, or alternative to JCOPE proposal,
3 and the importance of independence, the importance
4 of transparency, the importance of it being an
5 educational and a training function as well, to
6 prevent people from making mistakes and crossing
7 lines, and just what you just described.

8 I've always found it fascinating, we elect
9 people judges, and then we just assume they would
10 know what to do.

11 How ridiculous. Right?

12 They knew how to run for judge.

13 ROBERT H. TEMBECKJIAN: Yes, they did.

14 SENATOR KRUEGER: But it doesn't mean they
15 know how to be a judge.

16 ROBERT H. TEMBECKJIAN: Right.

17 SENATOR KRUEGER: And, so, all these
18 functions are so important.

19 So I just think it's very valuable, as the
20 committee continues to look at what we're trying do,
21 that we look at the language in your statute that
22 created you, and take some of the really important
23 models there, including your point that you have
24 your own code of conduct that you built in.

25 ROBERT H. TEMBECKJIAN: Yes.

1 For our commission members, that's right.

2 SENATOR KRUEGER: Okay.

3 And so judges can actually be found to have
4 failed to sort of stand up under your code of
5 conduct.

6 ROBERT H. TEMBECKJIAN: Oh, well, there is a
7 code of judicial conduct which is mandatory and must
8 be observed by all judges. That's based on the
9 American Bar Association model, code of judicial
10 conduct. And it's that code that we impose on
11 judges.

12 But for our own commission members, we have
13 adopted an additional code of conduct that's more
14 stringent than what is in the Public Officers Law,
15 in part because we want to impress on the public
16 that this is a body that is [sic] above reproach.

17 That it's not satisfied only to adhere to the
18 more generalized ethics mandates of the Public
19 Officers Law, but recognizing that there are
20 peculiar responsibilities to a judicial enforcement
21 entity that require language that wasn't in the
22 Public Officers Law.

23 And so we adopted that for our own members,
24 and it's another way, I think, of impressing on the
25 judiciary and the public that we take our

1 responsibilities seriously enough to impose
2 additional burdens on ourselves.

3 And this is on a commission membership, by
4 the way. As you know, the commission members all
5 serve without compensation. It's volunteer work.
6 But they're all, you know, highly civically-minded,
7 and understand the importance of what it is that
8 they're doing.

9 SENATOR KRUEGER: You know, I just want to
10 say, I think that is such a great model for us to
11 think about, even just for elected officials, and
12 for people who work for the executive, a code of
13 conduct.

14 I often explain to people that I actually
15 think elected officials should be held to a higher
16 standard than the rest of the people of
17 New York State, because no one put a gun in our
18 heads and said, You have to serve as elected
19 officials.

20 We went out there and asked people to vote
21 for us, to give us the power to decide the laws
22 they're going to live under.

23 So it's always seemed to me that that then
24 obligates us to a higher standard of following the
25 laws because we're writing the laws.

1 And so I think the concept of a -- and we all
2 know, we take an oath of office, and it's one
3 sentence, about upholding the Constitution.

4 And I'm not going to test anyone, but would
5 I flunk if someone gave me a constitutional test to
6 find out how much of it I knew that I was trying to
7 uphold.

8 ROBERT H. TEMBECKJIAN: Right?

9 SENATOR KRUEGER: Right?

10 So, you know, actually having a code that we
11 all have to actually read and think about, and sign
12 off on, I think also would be a really valuable idea
13 for us.

14 So I appreciate that as well.

15 ROBERT H. TEMBECKJIAN: And we certainly feel
16 the same way about the judiciary.

17 In fact, the court of appeals, in upholding
18 some of our removal decisions, has commented
19 specifically on the importance of holding judges to
20 a higher standard than that of the marketplace,
21 certainly, because if the public is going have
22 confidence in our system of government, it has to
23 believe that the people who arbit our disputes are
24 and appear to be fair and impartial and independent,
25 and also accountable for when they transgress.

1 And if that doesn't happen, then our entire
2 social structure is going to collapse, and the way
3 we settle our disputes will move from the courtrooms
4 and civilized discourse into the streets.

5 And it's one of the things that distinguishes
6 the American form of government from so many others,
7 it's that -- is that we have structures and forms,
8 we have purposely, you know, divided government, so
9 that there are separate and independent branches.

10 And although not everybody necessarily
11 respects and appreciates that, you know, those of us
12 on the enforcement end at least try to live up to
13 that high standard.

14 And I think, in my experience, although, as
15 I've said, you know, we've disciplined over
16 900 judges in 40 years, which is more than 20 a
17 year, the vast majority of judges in New York State,
18 3400 of them, are capable, honorable, honest,
19 hard-working people who try to get it right.

20 And the public needs to know that, for those
21 relative few who get it wrong, there is going to be
22 recourse. And that's what we try to accomplish.

23 And I think, as I heard from some of your
24 witnesses earlier this morning, they seem to think
25 that we do a fairly good job of it.

1 SENATOR KRUEGER: And just one more question,
2 if I might, because you listened to the testimony of
3 other people, some of the discussion.

4 So are there lessons from your work, with
5 having your own inspectors doing these kinds of
6 cases, when we're looking at trying to make
7 improvements in our model of inspector general?

8 I mean, is there just sort of protocols of
9 how you handle these investigations, that you feel,
10 like, you know, you figured it out over 40 years,
11 not you personally, but the commission, and that
12 perhaps we're not giving the right instructions to
13 our inspector general?

14 ROBERT H. TEMBECKJIAN: Well, one of the
15 distinctions between the inspector general model and
16 the commission model is that, while the inspector
17 general can decide what to investigate and what not,
18 as the relative equivalent of the judiciary, I don't
19 have that authority.

20 I have to make a recommendation to an
21 11-member body, which means that I need to persuade
22 them that there is basis here to investigate a
23 complaint. But it also means that I can't tank one;
24 that I can't -- you know, I can't sort of look the
25 other way perhaps because the complaint is against

1 my employer, or the person to whom I'm supposed to
2 report.

3 A system that is designed that way, without
4 accountability, without some check and balance, is
5 one that's likely to fail, or likely to pick on what
6 we call "low-hanging fruit," the easy cases.

7 But when the complaints are against those who
8 are in authority, they're more likely to turn the
9 other way, particularly if they serve at the
10 pleasure of the person against whom the complaint
11 might be made.

12 Even if the inspector general -- and
13 I have -- and I make no comment on the integrity of
14 the people who have held this position. I happen to
15 know some from the past and I have the highest
16 regard for them.

17 One in the past that I know, investigated a
18 complaint against the governor that appointed her.
19 That was some years ago.

20 But even if every decision of an inspector
21 general is honest, and would stand up to public
22 scrutiny, if the structure is as it currently is,
23 the public is not going to believe that a complaint
24 against the governor, or the secretary to the
25 governor, or anyone on the governor's staff, or

1 anyone close to the governor, or a commissioner that
2 the governor appointed, is going to get robust
3 scrutiny.

4 The only way that you can convince the public
5 that high officials are being held accountable is to
6 hold them accountable, and to show that you've done
7 it.

8 And when was the last time that a
9 commissioner appointed by a governor, or a governor,
10 or someone on the governor's staff, was actually
11 reproached by the inspector general?

12 It doesn't happen.

13 It just doesn't happen.

14 Now, maybe they're all behaving appropriately
15 all the time and there's no ethical transgression.

16 I think the record of the last two years has
17 shown that that would not hold up to scrutiny, that
18 statement.

19 But, even assuming that it was, the structure
20 is not one that promotes confidence that the
21 watchdog is actually watching.

22 SENATOR KRUEGER: Thank you.

23 Thank you.

24 SENATOR BIAGGI: Okay.

25 So, Senator Palumbo.

1 SENATOR PALUMBO: Thank you, Madam Chair.

2 How are you?

3 ROBERT H. TEMBECKJIAN: I'm very well, thank
4 you, Senator.

5 Nice to see you again.

6 SENATOR PALUMBO: Nice to see you as well.

7 You know, it's solidifying in my head,
8 I think, what this right model is, and you are
9 obviously a representative of that.

10 I think, incrementally, we're getting there
11 in the legislature. We're certainly not there yet,
12 but the education and training seems to be the
13 point.

14 And that almost segues into the upstate judge
15 who said don't preside over any legislator.

16 ROBERT H. TEMBECKJIAN: Right.

17 SENATOR PALUMBO: Since you have, and you may
18 have seen that we had Senator Wiener from California
19 on, the chair of their ethics committee, and they
20 have, various levels of punishment, and that, from
21 the public's point of view, seems to be critical.

22 Because -- and I just -- of course, I'm
23 making kind of general comments, but I will have a
24 question, or maybe if you want to just expound upon
25 it.

1 That that judge, yes, he said, well, I said
2 maybe it was improper and inappropriate for me to
3 say that. I apologize. I was in a bad mood that
4 day. You know, the dog, whatever, got lost, but you
5 still censured him.

6 ROBERT H. TEMBECKJIAN: Yes.

7 SENATOR PALUMBO: And that's almost a really
8 important point, in my opinion.

9 I'm a former prosecutor. I'm the son of a
10 homicide detective. When I got my -- I came right
11 out of law school, went -- DA's office. Actually
12 worked right around the corner for a little bit for
13 [indiscernible]. And he said, You've got to have
14 compassion.

15 Like, there's a balance there.

16 But I think, from the public standpoint, you
17 don't either just hammer someone. You can say,
18 Look, yeah, it was wrong, and, yeah, you apologized,
19 but you should know better.

20 ROBERT H. TEMBECKJIAN: Right.

21 SENATOR PALUMBO: And your training tells you
22 you can't say things like that. And don't take the
23 position if you're not going take it seriously
24 enough to control your mouth.

25 So I think that is a very important aspect of

1 it.

2 And then, when we have, and this is really --
3 let me ask just one quick question before I get to
4 my second point.

5 It's just a majority vote of the commission
6 renders the punishment? Or is it, basically,
7 deliberated upon, and then they come out with
8 something?

9 How does that work; what's the process?

10 ROBERT H. TEMBECKJIAN: Well, we have a
11 couple of different levels of quorum-and-vote
12 requirement.

13 This will be in stark contrast to the way
14 JCOPE is currently organized, but, to authorize an
15 investigation, it takes a simple majority of the
16 commission members, without regard to whether judge
17 members are for or against the investigation.

18 And, the commission has the statutory
19 authority to delegate to a panel of at least three
20 members the authority to investigation.

21 So as opposed to JCOPE, where two out of the
22 dozen or so commission members can thwart an
23 investigation, on our 11-member commission, 2 of
24 them can actually authorize one.

25 Now, what we have done as a practical matter

1 over the years, is to make sure that every
2 commission member gets every complaint that comes
3 in. And that's between 1500 and 2,000 a year.

4 And every commission member votes on every
5 complaint.

6 But it's a simple majority that's required to
7 authorize investigation, in order to -- so that's
8 six out of eleven.

9 In order to publicly discipline a judge, it
10 requires a quorum of eight members, so at least
11 eight have to be present and participating. But it
12 still requires six votes to discipline. So it's a
13 majority of the whole number regardless of however
14 many were actually participating in the case.

15 And sometimes, you know, a member is going to
16 be disqualified from a matter because they know the
17 individuals involved, or there is some other
18 disqualifying interest.

19 But it's a simple majority to investigate,
20 and an absolute majority to publicly discipline.
21 And that's worked very well over the years.

22 SENATOR PALUMBO: It almost seems like you
23 would rather have more investigations, because it's
24 simply an investigation, than less.

25 Because, with that JCOPE example, with the

1 leak, that it was just suppressed and squashed, that
2 it just was so flagrant and offensive to everyone.

3 That's something that I think we're dealing
4 with at this point: It's just the public
5 perception, is that whatever we do isn't going to
6 fix anything anyway. It will be the same old, same
7 old.

8 And that's what we're looking to avoid.

9 ROBERT H. TEMBECKJIAN: Well, I think that's
10 exactly right. Investigation is not discipline.
11 It's not a finding of wrongdoing. It is a
12 collection of the facts in order to determine
13 whether or not somebody has violated the rules and
14 should be punished for it.

15 And the majority of our investigations result
16 in no action against the judge.

17 We -- I mean, we might -- we discipline
18 20 judges a year, but we investigate 150 complaints,
19 200 complaints. We do initial inquiries on about
20 four or five hundred out of the 1500 or 2,000 that
21 we get.

22 As you might imagine, a lot of the complaints
23 we get are just from people who are unhappy that
24 they lost, and they blame the judge, and it's not
25 really ethical misconduct.

1 And in that way, we actually protect the
2 independence of the judiciary, because we absorb a
3 lot of the anger of the litigating public that went
4 to court and lost, and who can't believe that on the
5 merits they lost, so the judge must be corrupt.

6 We absorb that criticism so it's not directed
7 at the judiciary.

8 We explain to each complainant why their
9 complaint was dismissed; or, in the cases where we
10 take action, what prompted us to take action.

11 And I would say that the nicest letters that
12 we get, although there aren't all that many of them
13 every year --

14 SENATOR PALUMBO: I know your pain. We all
15 know your pain.

16 ROBERT H. TEMBECKJIAN: -- are from
17 complainants who say, Thank you. I appreciate that
18 you looked at it, and you have explained to me why
19 the judge didn't do anything wrong. And I feel
20 satisfied that at least I was heard.

21 And that's an important function that ethics
22 enforcement entities play.

23 It's not just that they get the bad guys who
24 did it wrong and who deserve to be disciplined, but
25 it helps to underscore for the public that there's

1 actually somebody out there paying attention to
2 their grievances, and explaining to them why, well,
3 in this case, it really doesn't amount to something
4 that should lead -- criticism or the discipline of a
5 public official.

6 SENATOR PALUMBO: Sure, sure.

7 And just, lastly, do you -- can you issue
8 subpoenas?

9 ROBERT H. TEMBECKJIAN: Yes. The commission
10 can issue subpoenas in our statute. As the
11 administrator I can issue subpoenas.

12 And when we refer a matter to a disciplinary
13 hearing, which my staff presents the case against
14 the judge and the judge defends, the hearing officer
15 can issue trial subpoenas.

16 So subpoena power obviously is extremely
17 important, not only to compel testimony, but to
18 collect documents, because a lot of our cases, and a
19 lot of yours, would, essentially, be
20 document-driven; memoranda that are made, disclosure
21 statements that are filed that might not be complete
22 or accurate.

23 There's all kinds of documentation in these
24 cases. And without the authority to get those
25 records, no investigation could really be thorough,

1 or comprehensive.

2 SENATOR PALUMBO: Exactly. And I think
3 that's probably an extremely important point that,
4 even with JCOPE, they couldn't even authorize a
5 subpoena to ultimately get into, you know, for
6 example, the leak information.

7 That's an easy one. That should take you
8 about 20 minutes to figure out how to solve that
9 one. And it was [simultaneous talking;
10 indiscernible] --

11 ROBERT H. TEMBECKJIAN: Well, yeah, I mean,
12 I think anybody watching would have known who needed
13 to be interviewed by the investigators.

14 And to say, as I've heard, that, well, the IG
15 or JCOPE, you know, the IG can't investigate the
16 governor.

17 But interviewing the governor about someone
18 else's misconduct is not investigating the governor.

19 If the allegation is that someone from JCOPE
20 leaked to the governor, you ask the person who got
21 the call, "Who made the call?"

22 You're not in trouble for having picked up
23 the phone, but the person that dialed is.

24 So it wouldn't have been investigating the
25 governor, to ask him, Who called you and told you

1 what the JCOPE confidential vote was?

2 SENATOR PALUMBO: Sure.

3 ROBERT H. TEMBECKJIAN: And we all know it
4 didn't happen.

5 SENATOR PALUMBO: Right.

6 Thank you, and happy holidays.

7 Thank you for coming.

8 ROBERT H. TEMBECKJIAN: Thank you. Same to
9 you. Thank you.

10 SENATOR BIAGGI: Thank you.

11 Senator Hoylman.

12 SENATOR HOYLMAN: Thank you, Madam Chair.

13 And thank you for this hearing, for the
14 second hearing, really important, and an important
15 time to do this.

16 I want to ask you a few questions.

17 So the makeup of your commission is, between
18 the governor and the chief judge, seven
19 appointments?

20 ROBERT H. TEMBECKJIAN: Correct.

21 SENATOR HOYLMAN: And which is a majority of
22 the 11 appointees. The members of the legislature,
23 each conference only has one appointee.

24 So not unlike JCOPE, to some extent, or the
25 commission on judicial appointments, between the

1 governor and OCA, they have controlling authority.

2 Any concern about that?

3 ROBERT H. TEMBECKJIAN: Well, it hasn't been
4 a problem for us, and I think it's because there
5 have been -- there are two other built-in
6 safeguards.

7 One is, that the appointing authorities make
8 their appointments for four-year terms, and they're
9 staggered.

10 So no appointing authority can appoint more
11 than one member in any given year. It would take
12 four years for there to be a complete turnover.
13 When a new governor, for example, comes in, and if
14 the new governor is inclined to turn over
15 employees -- or, members from the predecessor, it
16 would take four years to effect that kind of change.

17 SENATOR HOYLMAN: Well, we've seen a
18 three-term governor who ended up having almost total
19 control over --

20 ROBERT H. TEMBECKJIAN: Right.

21 SENATOR HOYLMAN: -- [simultaneous talking]
22 commissions, authorities, and [simultaneous
23 talking] --

24 ROBERT H. TEMBECKJIAN: Well, with us,
25 because --

1 [Simultaneous talking.]

2 ROBERT H. TEMBECKJIAN: -- because the
3 governor appoints only four out of the eleven,
4 doesn't appoint the chair and doesn't appoint the
5 chief executive officer, it takes a while to change
6 the orientation, let's say, if there is going to be
7 some view that the commission needs to change
8 because a governor wants to get it under his or her
9 control.

10 SENATOR HOYLMAN: And on the other side of
11 the coin, it's going to take a while to untangle,
12 you know, control if it's vested for, you know,
13 12 years, or something approaching that.

14 ROBERT H. TEMBECKJIAN: Well, that might be
15 so.

16 But our experience over 40 years has been
17 that governors have come and gone.

18 Chief judges and legislative-appointing
19 authorities have come and gone.

20 But in 45 years, since the commission was
21 first a temporary entity, and then codified in the
22 state constitution, I'm only the second chief
23 executive officer.

24 We have had enormous success I think, in
25 part, because we have had stability.

1 The day-to-day operation of the entity is by
2 professionals whose work is in this highly
3 specialized field of judicial ethics enforcement.

4 It's not subject -- easy whim of one or two
5 appointing authorities to change.

6 And because our budget is not controlled by
7 the judiciary, the chief judge can't make that
8 effect, or have that effect.

9 And because the governor appoints only four
10 out of eleven, doesn't appoint the chair, the chief
11 executive officer, the governor doesn't have that
12 power either.

13 The way that we can be inhibited is by
14 budgetary constraint.

15 And that's where you and I, and
16 Senator Krueger and I, have our annual conversation
17 about the division of budget, you know, essentially,
18 trying to freeze us out. Not out of malice.
19 I think it's just because that's the way they
20 operate.

21 Their mandate is "no."

22 Say no.

23 Say no, say no, say no.

24 And ours is, we have a constitutional role to
25 play, you can't do this on a pittance.

1 It requires attorneys, investigators,
2 administrative staff. It requires physical
3 structure.

4 SENATOR HOYLMAN: Well, on that note -- on
5 that note, what is, I agree, the resource question
6 goes -- heart of your ability to be independent.

7 ROBERT H. TEMBECKJIAN: Right.

8 SENATOR HOYLMAN: What is the preview that
9 Senator Krueger is going to be receiving in the
10 [indiscernible] year?

11 ROBERT H. TEMBECKJIAN: Well, our current
12 budget, after years of division of budget
13 recommending flat, and your adding to it, we're at
14 about 6.5 million. And I'm asking for just under
15 7.2.

16 We are authorized to have 50 full-time
17 employees, but we only have the funding now for 43.

18 I'd like to get that up.

19 And a couple years ago we were down to 38.
20 But because of the additional funding that you
21 provided, we were able to incrementally get that up
22 to 43.

23 We run a statewide operation. We've have
24 three offices. There are 3400 judges spread out
25 through over 1200 courts in New York State. It's

1 physically challenging.

2 And in the last two years, year and a half,
3 we have spent a lot of resources on an electronic
4 virtual mode of operating because of COVID.

5 And I think that we will probably stick with
6 that even after the COVID experience is far enough
7 behind us, to be able to go back to work without
8 masks and in greater proximity to one another.

9 But it takes money to do that.

10 SENATOR HOYLMAN: Yeah, I went to your
11 website again. Yeah, I do look at it.

12 ROBERT H. TEMBECKJIAN: I know you do.

13 I can tell by the questions you're asking me
14 here.

15 SENATOR HOYLMAN: By the way, you need to
16 update the new minority leader for the Senate. It
17 still lists John Flanagan.

18 But --

19 ROBERT H. TEMBECKJIAN: Well, but the
20 appointee was made by Senator Flanagan.

21 SENATOR HOYLMAN: Oh. So you wouldn't change
22 that?

23 ROBERT H. TEMBECKJIAN: Right, until the next
24 appointment. So his term is up, and then the new --

25 SENATOR HOYLMAN: It's still, even though --

1 okay.

2 ROBERT H. TEMBECKJIAN: -- yeah.

3 SENATOR HOYLMAN: -- okay. That's
4 interesting.

5 ROBERT H. TEMBECKJIAN: He is an appointee of
6 Senator Flanagan. And I think it was --

7 SENATOR HOYLMAN: So he remains. And the new
8 appointee doesn't --

9 ROBERT H. TEMBECKJIAN: Correct. Right.

10 SENATOR HOYLMAN: Okay.

11 ROBERT H. TEMBECKJIAN: When the appointing
12 authority changes, the members that that appointing
13 authority put on, don't. They serve four-year
14 terms --

15 SENATOR HOYLMAN: They serve four. Okay.
16 That's a good point.

17 ROBERT H. TEMBECKJIAN: -- under the
18 constitution, which is another protection.

19 SENATOR HOYLMAN: Thank you.

20 So in terms of transparency, do you think
21 that the public should be entitled to the
22 transcripts of your hearings?

23 ROBERT H. TEMBECKJIAN: Oh, well, if the --
24 if a public discipline has been imposed, the public
25 is entitled to it.

1 SENATOR HOYLMAN: But what if a public
2 discipline isn't imposed?

3 ROBERT H. TEMBECKJIAN: If a public
4 discipline is not imposed --

5 SENATOR HOYLMAN: Why should it be in a black
6 box?

7 I mean, it's like every other -- there are so
8 many analogies of where hearings, whether they're
9 decided for or against the defendant are made
10 public.

11 Why in this case are they protected?

12 And certainly legislators would be subject to
13 that kind of scrutiny.

14 ROBERT H. TEMBECKJIAN: Right. And you know
15 that I agree with you.

16 The -- we have proposed, in fact, when
17 Judith Kay was the chief judge, she actually -- she
18 actually proposed, legislation that would have made
19 commission proceedings public at the point that a
20 judge is formally served with charges, which means
21 that the transcript of the proceeding, whatever the
22 result, would be public.

23 That's a matter for the legislature.

24 The legislature did not adopt that
25 legislation when Judge Kay proposed it.

1 And although there are, you know, periodic
2 discussions about reviving it, it really hasn't
3 picked up any traction since.

4 SENATOR HOYLMAN: Well, look in 2022, I think
5 we're going to be looking to revive that.

6 ROBERT H. TEMBECKJIAN: Well, that would be
7 very interesting.

8 And as long as you're going to be doing that,
9 let me recommend something else for us, that would
10 actually also be apropos for a legislative or
11 executive ethics, which is that resignation from
12 office under investigation should not end the
13 inquiry by the body.

14 If you have engaged in ethical misconduct,
15 and it would ordinarily or otherwise deserve public
16 discipline, you shouldn't be able to avoid it by
17 leaving office.

18 Under current law, we have only 120 days
19 after a judge resigns to impose discipline, but the
20 only discipline we can impose under law in that case
21 is removal from office; the reason being, that
22 removal under the constitution also bars you from
23 ever being a judge again.

24 But if you have done something censurable or
25 admonishable, why should you be able to evade the

1 consequences of that by resigning and thwarting the
2 body because we lose jurisdiction at that point.

3 SENATOR HOYLMAN: Particularly if that
4 investigation might lead to exposure, an
5 understanding, of criminal misconduct.

6 ROBERT H. TEMBECKJIAN: Well, yes, we do have
7 the authority to make referrals, and we often do, to
8 district attorneys or U.S. attorneys. But that's
9 not a public act.

10 And if they don't take action, then the
11 public is never going to know.

12 And the same is true, by the way, of
13 referrals that we make -- attorney grievance
14 committees, because there are occasions when we come
15 across what appears to be misconduct by lawyers.

16 We don't have jurisdiction over them. We
17 refer them to the grievance committees. Those
18 proceedings are confidential. And sometimes they go
19 into, you know, the black hole of disciplinary space
20 and nobody knows what happened, least of all the
21 clients who might be adversely affected by a lawyer
22 who should be disciplined.

23 SENATOR HOYLMAN: Well, thank you for your
24 excellent work.

25 Thank you, Madam Chair.

1 ROBERT H. TEMBECKJIAN: Thank you.

2 SENATOR BIAGGI: Thank you very much.

3 And just one comment from Senator Palumbo,
4 and then I will close this out.

5 SENATOR PALUMBO: Yes, thank you.

6 I just want to follow up on
7 Chairman Hoylman's comments regarding disclosing.

8 Did you say that was -- that the legislation
9 was to disclose from Judge Kay at the time of the
10 complaint or time of finding?

11 ROBERT H. TEMBECKJIAN: Not the original
12 complaint. At the time that the commission
13 authorizes formal disciplinary charges against the
14 judge.

15 So it would be after investigation, but
16 before discipline; not the initial complaint.

17 I think there would potentially be great
18 damage to the judiciary to unfairly sully a judge
19 simply by making public the filing of a complaint,
20 which could be politically motivated, it could be
21 personally motivated.

22 In the same way that a grand jury
23 investigation is confidential, commission
24 complaints, or -- to the commission, and our
25 investigations, I think must be confidential, and

1 also to protect the integrity of the investigation.

2 I mean, we don't necessarily want everybody
3 knowing when we're investigating, so that we can be
4 assured of getting honest and fair responses to our
5 inquiries not coached by people who know we're
6 coming, necessarily.

7 But if the commission, as a responsible body,
8 concludes at the end of an investigation that
9 there's reason to believe that misconduct has
10 occurred, but can't impose discipline until the
11 judge is charged and has a trial, that should -- in
12 my view, that should be public just like an
13 indictment is public.

14 SENATOR PALUMBO: Sure. And that was exactly
15 what jumped out at me, because you mentioned earlier
16 that attorneys, similar to appointees by the
17 governor, are afraid to come forward and actually
18 say something.

19 So if you know that a judge upstate, for
20 example, that you practice in front of on a weekly
21 basis or more, you're not going to really give that
22 judge up because, if it doesn't go -- if he's not
23 removed or she is not removed, you have a big
24 problem now.

25 ROBERT H. TEMBECKJIAN: And that's exactly

1 right.

2 SENATOR PALUMBO: And that's why I think that
3 would be -- and I'm sure we'll debate this. I'm on
4 the judiciary committee with the chairman as well,
5 that as those come through, that I think there's got
6 to be that threshold first; otherwise, your
7 investigation will -- can be spoiled.

8 ROBERT H. TEMBECKJIAN: Well, you know, there
9 are any number of times in a year when we'll get a
10 phone call from a lawyer who will say, I've seen
11 misconduct I think by a judge, but is there a way
12 that I can report it without being the complainant?

13 And the fact that, under law, our commission
14 has the authority to investigate or initiate
15 complaints on its own motion, it doesn't have to be
16 a third-party complaint that we get from someone
17 else, is also a very important structural feature
18 that should be built into any ethics enforcement
19 operation, so that I can take that information from
20 the lawyer on the telephone, reduce it in writing,
21 present it -- commission, and say, This individual
22 indicated to us what certainly seems to be
23 misconduct if it's true, but is afraid to be the
24 complainant.

25 So I'm asking the commission to authorize

1 inquiry on its own, and it will do so.

2 And then, under our statute, I reduce the
3 complaint itself in writing so that, when it's
4 presented to the judge, the judge will know the
5 four corners of what he or she is being accused of.

6 But that's a very important feature: to give
7 the investigating body some responsible way of
8 initiating investigations on its own.

9 SENATOR PALUMBO: Which is perfectly relevant
10 to us with, you know, hostile work environments,
11 sexual harassment, and so forth.

12 So I think that makes sense.

13 ROBERT H. TEMBECKJIAN: Well, I think so.

14 SENATOR PALUMBO: Thank you again.

15 And now, that's it; so, now, happy holidays,
16 again.

17 Thank you.

18 ROBERT H. TEMBECKJIAN: That's okay.

19 SENATOR BIAGGI: Thank you.

20 I have just have a few follow-up questions,
21 and they're kind of themed, that draw the line
22 through what you're doing and the commission to
23 JCOPE. And I think there's a lot of different
24 threads that I've learned.

25 I think the first thing, with regard to the

1 complaints initially not being public, one of the
2 things that happened in the last, you know, six to
3 eight months was that the governor -- former
4 governor threatened to release all of the complaints
5 from JCOPE that people made about legislators, as a
6 threat, which is absurd and, also, completely
7 unprofessional.

8 But I think it makes me wonder, and also
9 think about, the differences between how complaints
10 are made, and you just touched on a really
11 significant piece.

12 But, also, when a complaint is made, is that
13 judge notified that a complaint has been made
14 against them?

15 Because in -- I mean, who knows what happens
16 in JCOPE -- quite literally, who knows what happens
17 in JCOPE. I don't even think the people sometimes
18 inside know what's going on there.

19 But the reality is, there is some kind
20 notification that's kind of lacking in our current
21 ethical structure that we hope to take apart.

22 But as it stands, my understanding is that
23 it's really inconsistent.

24 So are the complaint -- are the complaints
25 made public -- not made public -- people, but --

1 person who the complaint is being made against?

2 ROBERT H. TEMBECKJIAN: Not necessarily.

3 We're not required to advise a judge of every
4 complaint against him or her that has come in, and
5 there are a couple of important reasons I think why
6 that's significant, and why I wouldn't want to
7 change that.

8 First, if the complaint is true and we're
9 going to investigate it, we don't necessarily want
10 the target, so to speak, or the subject of the
11 inquiry, to be able to influence witnesses before
12 we've had a chance to talk to them; or to create or
13 to lose documents before we've had a chance to
14 collect them.

15 But, secondly, and I think more
16 significantly, particularly for the judiciary, every
17 time a judge is going to run for reelection, or be
18 up for appointment, they have to fill out a waiver
19 of confidentiality as to any complaints about which
20 they are aware. They have to fill out a form.

21 In fact, we actually removed a judge from
22 office, and it was held by the court of appeals,
23 because, on an application to the governor -- this
24 is back when Pataki was the governor -- he
25 omitted -- he answered falsely the question, "Have

1 you ever been the subject of an investigation by an
2 ethics body?" when, at that very time, he was under
3 investigation by the commission.

4 And when that came to light, the nomination
5 was withdrawn, and, obviously, the judge/he was
6 ultimately removed from office for lying on an
7 affidavit or on a sworn form to the governor.

8 But more often than not, since the majority
9 of our complaints are dismissed without action
10 against the judge, if the judge knows about 20 or
11 30 complaints that have been made over the course of
12 a 10-year term, and then is applying for a new
13 position, or is filling out a screening committee
14 affidavit for endorsement for reelection, they're
15 going have to disclose all of those frivolous
16 complaints because they knew about them; whereas we
17 won't reveal them, and we might provide a letter --
18 judge that says, you know, You have never been under
19 investigation by the commission. You have never
20 been found to be in violation of the rules.

21 But if the judge knows about it, they're
22 going have to disclose it.

23 And think about the havoc that you can create
24 by papering a judge with complaints so that you can
25 sully their reputation for when they run for

1 reelection.

2 We actually had -- one of the saddest
3 situations that I ever came across in all these
4 years involved a judge many years ago in
5 Tompkins County, who was running for reelection.
6 And it doesn't matter which political party the
7 judge was running for. The chair of the opposing
8 party sent a letter of complaint -- commission about
9 that judge, which was ultimately dismissed because
10 it was a frivolous complaint, but made public four
11 days before the election. Over the weekend, a
12 complaint has been made -- judicial conduct
13 commission against Judge So-And-So, and they're
14 looking into it.

15 Well, yeah, we look at every complaint that
16 we get, but we didn't investigate that one.

17 But between Saturday, when this was
18 disseminated locally, and Tuesday's election, the
19 incumbent lost because of mischief, of malicious
20 mischief, I think, by a political party leader of
21 the other side.

22 So I'm not comfortable with the notion that
23 any complaint against a judge should be disclosed,
24 unless there has been some level of verification
25 that it is true.

1 SENATOR BIAGGI: So can I just distinguish
2 something, because I think you bring back some
3 unfortunate memories for some of us from 2016, when
4 things are just made public, and then it really
5 does -- it has an incredible -- can incredible
6 impact about just -- about anything.

7 But if you have one investigation -- and
8 I agree with everything you've said, actually.

9 And I'm wondering if there's a distinguishing
10 factor between that one complaint that's made, and
11 then -- point that you had made about the example
12 of, like, well, if this person had like 20 to 30 --
13 if there is an instance where a judge has 20 or 30,
14 or 15, or even 5 feels like a lot, to be honest, and
15 there is a consistent pattern of what is being
16 complained about from a different person, although,
17 in many instances, it could be, again, an attorney
18 that, because you -- that person wants to be
19 anonymous, and the body decides to do this
20 investigation on their own, you might not know who
21 it is, if it's the same person over and over again,
22 obviously, that's a different situation, but the
23 point being, if the person has a similar track of,
24 like, hey, this is kind of a theme going on here,
25 does the body then look closer?

1 Like, what do you do in that kind of
2 instance?

3 ROBERT H. TEMBECKJIAN: We try to evaluate
4 each complaint on its own merits. But we are
5 certainly aware of cumulative complaints against the
6 same judge.

7 But we also do, I think, a very important
8 analysis of the nature of the court, the nature of
9 the complaints.

10 I mean, as an example, nobody who goes into
11 family court is ever happy, unless it's a simple
12 adoption and they walk out with their child.

13 Nobody is happy coming out of family court,
14 no matter who wins or loses.

15 And family court judges have, I think,
16 probably the most difficult job in the Unified Court
17 System, and everybody is going to complain against
18 them, because --

19 SENATOR KRUEGER: Now they have blogs, where
20 they put their complaints on the blog.

21 ROBERT H. TEMBECKJIAN: I know. We've seen
22 it.

23 SENATOR KRUEGER: I've had that where
24 constituents would be, you know, We all hate this
25 judge. They didn't give you full custody.

1 You know?

2 ROBERT H. TEMBECKJIAN: Right. Right.

3 -- so we try to do that kind of analysis.

4 The same thing with a criminal court judge,
5 who -- you know, who might be known as a tough
6 sentencer; or, conversely, you know, a lenient
7 sentencer.

8 So there's always somebody.

9 Police unions or district attorneys might
10 complain about the lenient sentencing judge, and
11 defendants and the families of defendants might
12 complain against the tough-sentencing judge.

13 We try to avoid investigating anybody for
14 calling the cases as they see them, unless there is
15 some element of misconduct involved, so that, if a
16 judge is a tough sentencer or a lenient sentencer,
17 but it's within the law, and they're abiding by the
18 law, they're following the law, that's not a matter
19 of ethical wrongdoing, and it shouldn't -- it
20 shouldn't impact our decision on whether to
21 investigate a new complaint against that a judge for
22 being a tough or a lenient sentencer.

23 On the other hand, if we have had numerous
24 complaints about a judge's irascibility on the
25 bench, and they seem to be coming from sources that

1 have no connection to one another, it tends to lend
2 some credence -- latest complaint, and we might be
3 inclined to investigate it and then do our own
4 observation, by going to court, sitting in the
5 spectator section on random days to see what's going
6 on.

7 And, nowadays, we can actually order the
8 audio of a court proceeding, and hear whether the
9 judge was acting intemperately, using fowl language,
10 yelling unnecessarily, you know, flying off the
11 handle, and so forth.

12 And I must say that the advent of audio
13 recordings in the courts has had two effects.

14 It has demonstrated for us that, often,
15 complaints of judge's inappropriate demeanor are not
16 substantiated when we actually hear the audio.

17 But I also think the fact that they're being
18 recorded tends to serve as a check on their
19 demeanor, and the decorum of the court is preserved.

20 And so that's a good thing.

21 The tapes actually help the judges, but
22 I think their behavior is moderated because they
23 know they're being recorded.

24 SENATOR BIAGGI: Makes sense.

25 That makes a lot of sense.

1 Okay.

2 Just three questions that are really short.

3 The first one is, inside of the commission,
4 do you have jurisdiction to look at all of the
5 judges in New York?

6 And I ask this specifically because, and this
7 was a bill that Senator Hoylman had had, about how
8 ICE agents can come in court. And when we realized
9 that OCA set these rules, that, basically, they were
10 not allowing ICE agents in court, it didn't actually
11 go down -- town and municipal level.

12 And so it creates this imbalance of, like,
13 how are the rules even applied if OCA can't tell
14 municipal judges what to do, and, like, where are we
15 going here?

16 So do all the judges fit within the purview
17 of the commission?

18 ROBERT H. TEMBECKJIAN: Yes.

19 We have authority over all of the judges in
20 the Unified Court System.

21 If your judgeship is created in the
22 constitution, we have authority over you. That's
23 from the town and village courts, all the way up to
24 the Court of Appeals.

25 SENATOR BIAGGI: That's very good to know.

1 Okay. Thank you for that.

2 In terms of the referrals database --
3 referrals -- not database, but in terms of the
4 referrals that you make that are not perhaps within
5 your purview -- right? --

6 The comptroller's office made some similar
7 comments about that -- right? -- something might not
8 fall within their purview, they're going to send it
9 out.

10 -- I seem to think that there is -- that
11 there's an importance about the tracking of this.

12 It might seem just like administer -- just an
13 administer -- excuse me -- an administrative detail
14 that's annoying and you don't want to deal with
15 that. But somewhere along the way, you would
16 probably want to know where this thing originated
17 from, and who sent it where it was going.

18 And so is there -- you had mentioned the same
19 kind of process.

20 Does the commission also do that, or is
21 there -- do that, meaning, to be specific: keep a
22 database or not?

23 ROBERT H. TEMBECKJIAN: No, we don't have a
24 database of that, although we do have a record of
25 every -- I should say, we don't have a separate

1 database for the complaints that we have referred,
2 but we do have a master database --

3 SENATOR BIAGGI: Got it.

4 ROBERT H. TEMBECKJIAN: -- of all of our
5 complaints, including the dispositions, so that
6 I can -- within that, manipulate the fields, to be
7 able to determine how many referrals we've made in a
8 given year. And we report those in our annual
9 report.

10 The ones that we ask for follow-up on are
11 complaints that we referred that might involve the
12 judge.

13 So let's say there's an administrative issue
14 that we become aware of involving a judge. We refer
15 that -- Office of Court Administration, and we ask
16 them to report to us on what the result was.

17 And they will tell us:

18 We sat down with the judge, we gave her
19 education and training.

20 We gave him a copy of the manual.

21 Et cetera, et cetera.

22 If we are referring anything else over
23 individuals over whom we have no authority, we have
24 not, except out of curiosity, asked for follow-up.

25 With the grievance committees, because they

1 regard the commission as the complainant when we
2 make a referral, they will tell us, ultimately, the
3 result of their inquiry.

4 And that's how I know that a lot of the
5 complaints that we send over there don't result in
6 disciplining of attorneys, because they regard us as
7 the complainant, and then they notify us that the
8 complaint was dismissed, or there was no action
9 taken against that individual.

10 But -- so that's the degree to which we do
11 that:

12 We follow up if it's a judge.

13 If it's to a grievance committee, they will
14 tell us what the result is because they regard to us
15 as the complainant.

16 And if it's anyone else, they're not obliged
17 to tell us, and we don't ask.

18 SENATOR BIAGGI: Right.

19 Okay. It makes lots of sense to me.

20 Final question, and then I believe that we
21 are concluding for the day.

22 When you mentioned that there's this
23 gradation of what you can do -- right? -- from --
24 with everything but suspension -- censoring,
25 removing, people can retire -- and then there was

1 also the private conversations or private --

2 ROBERT H. TEMBECKJIAN: A private caution.

3 SENATOR BIAGGI: -- private caution --

4 right? -- for like some minor violation --

5 ROBERT H. TEMBECKJIAN: Right.

6 SENATOR BIAGGI: -- suspension seems to fall

7 within the middle -- right? -- of those two

8 extremes.

9 ROBERT H. TEMBECKJIAN: Right.

10 SENATOR BIAGGI: And so can you just give
11 like one example on each side of, like, what is an
12 example -- what is a private minor violation; how
13 can people think about that?

14 And then, also, because suspension is not
15 part of this repertoire, if suspension were to fit
16 in, what is an example of why somebody would be
17 suspended?

18 One example on each.

19 ROBERT H. TEMBECKJIAN: In terms of a private
20 caution, let's say one of the rules of conduct is
21 that a judge is required to file an annual statement
22 of financial disclosure.

23 And if they're late, they get a notice to
24 cure, which gives them 30 days to file. And if they
25 don't, then there's a notice of delinquency.

1 It's required for the ethics commission to
2 refer that to us.

3 And if the judge was -- and we've had this
4 situation -- the judge filed late because he was
5 hospitalized, or because the judge's spouse was in
6 hospice care, and there were a couple -- we send
7 them a private letter.

8 And, of course, only upon their actually
9 filing, so they correct the violation. But there's
10 no suggestion that they were withholding information
11 or not reporting income.

12 You know, we look at the compassionate view,
13 and conclude that that's really -- that's not a
14 public discipline. There's a reasonable explanation
15 for why the judge was late.

16 Or, judges are expected to, you know, respect
17 and comply with the law. And that means, among
18 other things, in town and village court, as
19 elsewhere, before someone testifies, you've got to
20 give them an oath. And sometimes the judge forgets
21 to give the oath, because it's sort of an informal
22 setting, even though it's a court proceeding. But
23 it's not a habit, and no rights were affected.

24 And so we'll just sort of privately remind
25 the judge, Remember to administer the oath before

1 you take a statement from the witnesses.

2 On the opposite side, where suspension --
3 suspension is, you know, there is some behavior that
4 is worse than a censure, but not really quite
5 removable, particularly if the judge acknowledges or
6 recognizes the wrongdoing and is making some effort
7 to improve.

8 So let's say we -- you know, we had a case
9 some years ago of a judge who was using a court
10 staff -- we had a couple of cases of this type -- a
11 judge who was using court staff to do personal
12 chores for the judge beyond the norm.

13 I mean, we're not talking about calling to
14 make a reservation at a restaurant.

15 But having, you know, a staff member pick up
16 the judge's dry cleaning, or do some -- type the
17 resume for the judge's spouse, or watch the judge's
18 child in court after school or in chambers after
19 school on more than an emergency basis.

20 We had another judge who had used her staff
21 to produce material for the judge's religious
22 institution, for a retreat that was -- a religious
23 retreat. And they felt coerced to do it because
24 they owe their job -- judge. And if the judge says,
25 you know, My religious institution is having a

1 retreat, and I want to you make these booklets for
2 me, and, you know, I would like you to attend if
3 you'd like to attend, you kind of can't say no.

4 That's a serious violation.

5 But, in both instances, the judge
6 acknowledged, when confronted by the commission,
7 "That I really shouldn't have done that, it was
8 really wrong, and I will never do that again,"
9 I would have recommended suspension if we had that
10 authority.

11 But because the judge was contrite, and
12 otherwise was making an effort, the commission and
13 I agreed that censure was the right result.

14 So it's out there for other judges to know
15 you can't do this, and there is a consequence.

16 No judge likes to be censured.

17 You might be relieved that you weren't
18 removed. But the opprobrium of your colleagues and
19 the public disgrace is not something that any judge,
20 or any public official, is going to welcome or brush
21 off. And so it was a tough hit.

22 But that's the kind of thing where I think
23 suspension would have been an appropriate result:

24 Give them time to really reflect on what they
25 did, and when they come back, they'll be better.

1 SENATOR BIAGGI: I think that makes a lot of
2 sense, actually.

3 So I think we have a lot of work to do after
4 today.

5 Thank you so much for your testimony, for
6 showing up today.

7 I certainly learned a lot about what your
8 commission does, and also how it can parallel track
9 what we do when we build our new ethics body.

10 And, also, just how you go about certain
11 things, I think, is very enlightening to how we can
12 also internally do a lot of things as well.

13 So thank you very much.

14 ROBERT H. TEMBECKJIAN: Well, I'm glad to be
15 of help.

16 And I hope when I see you all at budget time,
17 it's with a smile on my face instead of a hat in my
18 hand.

19 [Laughter.]

20 ROBERT H. TEMBECKJIAN: Thank you very much.

21 SENATOR BIAGGI: Thank you.

22 And that concludes our hearing.

23 So thank you all for joining.

24 Thank you for attending, asking questions,
25 and participating.

1 I really do look forward to this becoming
2 legislation, and, hopefully, the law.

3 So, let's -- to onwards and really positive
4 things in the future.

5 Thank you.

6 (Whereupon, at approximately 2:00 p.m.,
7 the public hearing held before the New York State
8 Senate Standing Committee on Ethics and Internal
9 Governance concluded, and adjourned.)

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