

Transcript of the Meeting of the
CHARTER REVISION COMMISSION
held on Wednesday, January 19, 2005
22 Reade Street
Borough of MANHATTAN

AR-TI REPORTING COMPANY, INC.	
305 Madison Avenue	142 Willis Avenue
Suite 449	P.O. BOX 347
New York, N.Y. 10038	Mineola, N.Y. 11501
(212)349-9692	(516)741-5235

Meeting convened at 7:19 p.m.

P R E S E N T

DR. ESTER FUCHS, Chair

COMMISSIONERS:

JENNIFER RAAB

ROBERT ABRAMS

CURTIS ARCHER

STEPHEN FIALA

DALL FORSYTHE

STANLEY GRAYSON

DAVID CHEN

ANTHONY CROWELL

MARY McCORMICK

Also Present:

TERRI MATTHEWS, Executive director

BRIAN GELLER, Analyst

CHAIRPERSON FUCHS: Okay, I'd like to call this meeting of the Charter Revision Commission to session. This is the second of our meetings in which we have members of the administration presenting baseline reports on issues that the Mayor asked us to look into for this Charter Revision Commission. This is a public meeting today, not a hearing, so the public may observe, but they will not have the opportunity to testify, but Commissioners will be asked to ask questions to those who are providing testimony.

Importantly, the next meeting of the Charter Revision Commission will be February 9th at John Jay College at 445 West 59th Street in the multi purpose room, and at that meeting we will have Susan Kupferman, who is the director of the Mayor's Office of Operations and she will testify on issues related to administrative reform and efficiencies in City Government. We will also be scheduling public hearings in which we will be, obviously, asking the public to testify.

For the month of March we will have a public hearing in each of the five boroughs. We also expect to

hear from experts on the three areas we're covering for this Charter Commission set of hearings, and the dates will be announced. They will be available on our website, www.NYC.gov/Charter and you can check that

website for any updates. We will also be sending out any updates for the schedules of meetings and hearings through snail mail and you can sign up as members of the public who want to get information about future Charter events. You can sign up on the signup sheet we're passing around. You can send us your home address or e-mail address, we're compiling an e-mail list in which we will also be sending updates.

You're also welcome to write to the Charter Revision Commission. Our offices are at 2 Lafayette Street on the 14th floor, New York, New York 10007.

The topic of today's meeting is administrative law reform, and we are honored and pleased to have deputy Mayor Carol Robles-Roman, Deputy Mayor for Legal Affairs and counsel to the Mayor, testifying before the Commission today. Deputy Mayor Robles-Roman oversees several city agencies and she also advises the Mayor on legal policy, including matters involving judiciary and the courts, human rights laws,

domestic violence, immigrant affairs and criminal Justice.

Before her appointment to the Bloomberg administration, the Deputy Mayor worked in executive posts in New York State Unified Court System, where she served as special Inspector General for bias matters.

She also oversaw statewide court initiatives to improve access to justice. She also oversaw task forces to reform the New York City Family Court. She was also senior vice president to the Puerto Rico Industrial Development Company and she was a New York State Assistant Attorney General under one of the members of our Charter Revision Commission, the former Attorney General, Bob Abrams.

I guess you know how to pick them, hey, Bob?

COMM. ABRAMS: She's the best.

CHAIRPERSON FUCHS: Carol also has a law degree from New York University and a BA from Fordham University. It's a pleasure to have you testify today.

DEP. MAYOR ROBLES-ROMAN: Thank you, Chair Fuchs and members of the Charter Revision Commission. I want to thank you for having me here this evening to

present this report -- I hope I'm projecting, because we don't have mikes -- to discuss the issue of coordination of the City's criminal justice system.

In terms of introduction, thank you, Chair Fuchs, for presenting my bio. Part of my position I now maintain, I maintain oversight or liaison roles with a number of City agencies, including the Mayor's Judicial Selection Committee, the Office of Administrative Trials and Hearings and the Office of the Criminal Justice

Coordinator. As you so correctly mentioned, in the interests of full disclosure, I had the pleasure of serving as a New York State Assistant Attorney General under the leadership of then Attorney General Bob Abrams.

As you know, when Mayor Bloomberg appointed this Commission, one of the first issues he asked you to review was a proposal put on the ballot by the 2003 Charter Revision Commission concerning the establishment of a Coordinator of Administrative Justice, as well as a Code of Conduct to govern the actions of administrative law judges, often referred to as ALJ's, and hearing officers, as they execute very important public functions and duties.

Indeed, the Mayor and I share the view that the City's administrative tribunals are often the only forums where our citizens have any significant interaction with City Government. The City's Administrative Law Judges and hearing officers represent the face of justice in our City and hence what justice means to a great number of New Yorkers each day.

Now, when crimes are committed in this City, it's critical that New Yorkers can count on the criminal courts to mete out justice fairly and impartially, and when people are injured financially or physically, it's

important they have recourse to a Civil Court that's equally just. Fortunately, for New Yorkers, most New Yorkers never have the occasion to be part of a criminal case or a civil case. But many New Yorkers, unfortunately, may have occasion to be offended, for example, by a rude cab driver or woken up by a noisy club on the corner, or given a parking ticket that they wish to challenge or believe they've been subject to discrimination in violation of the City's Human Rights Law, or inconvenienced by one of literally thousands of everyday problems that affect the quality of life in

this City. And this is what administrative tribunals are for.

And because of the wide array of issues under their umbrella, it is really important that these tribunals continue to resolve disputes fairly, impartially, efficiently and consistently.

Let me talk a little bit about our tribunals. Currently there are about a dozen administrative tribunals or executive branch courts in the New York City Government and they're vital to the orderly functioning of City Government and they hear tens of thousands of matters each year, including, in addition to the ones I mentioned briefly before, issues involving employee discipline, the enforcement of civil

violations, appeals of license denials and the challenges to real estate and commercial tax assessment.

Now, in all, the City tribunals employ well over five hundred lawyers, either as Administrative Law Judges or hearing officers and many of them on a per diem, that's per day basis, and some of these Administrative Law Judges and hearing officers serve at more than one of the City's tribunals. In 2004 alone, the Office of Management and Budget reports that more

than 13 million summonses were processed across the City's tribunals. However, we don't have an exact number as to how many of them were actually adjudicated before an Administrative Law Judge or Hearing Officer.

The cost of running these tribunals exceeds \$23 million annually and the revenue generated from cases in which the City prevails which involves both collections of fees and fines, exceeds \$600 million annually, exclusive of cases involving Real Property or commercial taxes, which can obviously involve billions of dollars. Clearly, the importance and vast scope of the functions of the City's administrative tribunals cannot be understated.

Now, tribunal operations can be governed by either local or State law and sometimes both. Some tribunals are stand alone agencies, like the Office of

Administrative Trials and Hearings, known as OATH, which hears a wide range of cases from a variety of agencies or the Tax Commission and Tax Appeals Tribunal, which hears specialized challenges to commercial property and tax assessment decisions as determined by the Department of Finance. Now, other tribunals are found within

larger agencies, such as the Parking Violations Bureau, more commonly known as the PVB, which resides within the Department of Finance, or the Environmental Control Board, known as the ECB, which resides within the Department of Environmental Protection, which hears a variety of matters, including violations issued by other agencies, such as the Department of Buildings, the Department of Transportation and the Department of Sanitation.

Now, the majority of those tribunals that reside within larger agencies hear cases arising from the regulatory activities of those agencies, such as the tribunals at the Department of Health and Mental Hygiene, which hears cases related to the Health Code violations; the Department of Consumer Affairs, which hears cases on consumer protection and licensing; the Taxi and Limousine Commission, which hears cases concerning taxi driver and medallion holder conduct and the Department of Education, which hears a number of

cases, including those related to special education eligibility.

I want to talk a little bit about prior reform efforts. Over the past 25 years there have been

a number of movements to enhance operations in the tribunals, and undertake reforms, including the creation of OATH as the City's central tribunal; the proposed creation of a New York City tribunal, which would have consolidated several of the City's tribunals into a single tribunal, and most recently, the 2003 Charter Commission's ballot proposal to require coordination of the administrative tribunals and to establish a Code of Conduct to apply expressly to Administrative Law Judges and Hearing Officers. Nonetheless, despite these good intentions, there remains today a lack of standardized operations and exchanges of best practices among the tribunals for the common functions that many of them perform.

Now, one proposal, the first proposal after that, was 1988 Charter Revision Commission's ballot proposal, where OATH was formally codified in the Charter, as a result of the 1988 Charter Commission's ballot proposal, which was adopted by the voters and it established the City's Administrative Procedure Act known as CAPA. The adoption of minimum standards for

the conduct of administrative hearings and the conduct

of OATH as the City's presumptive administrative tribunal were two of CAPA's primary reforms. OATH was initially established by Executive Order in 1979. As the City's independent central tribunal, OATH has the authority to conduct administrative hearings for any Agency, Board or Commission upon request.

The Charter provides that OATH, quote, "Shall conduct adjudicatory hearings for all agencies of the City, unless otherwise provided for by Executive Order, rule, law or pursuant to collective bargaining agreements." By pronouncing OATH as the central tribunal of the City, the Charter Commission appears to have conceived of a more organized and accountable approach to the City's adjudicatory process. Despite a variety of efforts, which I will discuss, an integrated approach to managing or coordinating the tribunals has not been implemented in the City.

After 1988, we have the 1995-1996 New York City Tribunal and General Indebtedness Bill. In December '95 Governor Pataki introduced a bill to establish the New York City Tribunal to replace the ECB, assume jurisdiction of the PVB, and conduct hearings on penalties imposed by the Department of Consumer Affairs and the Department of Health, effectively merging some

of the business tribunals into what some have called a super tribunal.

The New York City Tribunal would have established within the Department of Finance, but with authority independent of the Department and other City agencies to adjudicate fines, penalties and other non-tax matters involving members of the public and City agencies. The tribunal was to be led by a Director/Chief Administrative Law Judge appointed by the Mayor for a five-year term and responsible for appointing all remaining Administrative Law Judges, who were required to be members of the New York State Bar.

Creation of such a tribunal would have put in place safeguards to assure that the civil penalties collected by the tribunal were properly imposed by the agencies issuing the notices of violation. The bill provided that the tribunal issue final administrative decisions and orders rather than recommendation for agency action.

As a companion bill, the General Indebtedness Bill sought to impose a duty on applicants for City contracts, licenses and permits and similar applications to pay their debts to the City. If a business had certain types of outstanding debts to the City and failed to satisfy these debts within 60 days of

written notice by the City, the contracts, licenses and other privileges would have, with certain exceptions, been denied or revoked. The GI Bill was drafted to allow flexibility for the payment precondition to be excused under certain circumstances, or for certain categories of contracts, licenses and permits to be exempted by rule, if deemed in the City's best interests to do so.

The GI Bill was coupled with the Tribunal Bill to provide the public with an impartial and cost-effective hearing process, to assure agency accountability and to enhance the collection of City administrative judgments. Under it, all debts, including outstanding judgments for civil penalties would have been payable up front as part of the licensing process and as a cost of doing business in New York City.

However, in 1996, Governor Pataki vetoed the GI Bill. Later that year, there were negotiations with the Senate to amend the Tribunal Bill to include the GI portion, however the Governor became opposed to this idea, alluding to complaints from small businesses, and potential problems obtaining a home rule message. That measure, which could only be accomplished at the State level, was ultimately not adopted. It should be noted

that these proposals are no longer part of the City's legislative agenda and they're not being pursued by the administration for the same reasons the Governor expressed.

Now, our final reform effort was the 2003 Charter Revision Commission ballot proposal. Now, recognizing the increase in the volume of cases before the City's administrative tribunals, and the fact that despite efforts over the preceding twenty years to foster greater coordination of the City's administrative tribunals, the 2003 Charter Commission placed a question on the ballot in November 2003 asking the voters to consider a proposal to require the coordination of the City's administrative tribunals by a Coordinator of Administrative Justice. The 2003 Charter Commission's report made clear that there is no centralized mechanism to coordinate operational policy and management practices like those that exist in other areas of City Government and that such coordination should be required, specifically the report cited coordination in the area of criminal justice as performed by the Criminal Justice Coordinator, known as CJC, as a model

to follow. The CJC's function is to enhance the effectiveness of the City's law enforcement agencies by coordinating cutting edge operational, administrative,

budget and technological initiatives of the Police Department, the Department of Correction, the Department of Probation, the Department of Juvenile Justice, the Mayor's Office to Combat Domestic Violence, the District Attorneys and the New York State Courts, in addition to working with the New York State Department of Justice and New York State Department of Criminal Justice Services.

Now, consistent with the spirit of the 1988 Charter Commission when it established OATH, the 2003 Commission proposed a Charter amendment to mandate explicitly coordination of the City's administrative tribunals by establishing the new position of Coordinator of Administrative Justice. The coordinator was to perform several functions, including providing policy advice to the Executive branch regarding the establishment of standards for administrative tribunals, oversight of tribunals to monitor adherence to those standards, the design and deployment of management strategies for the tribunals, especially through the use

of technology; budget advice to the Mayor regarding allocation of resources among the tribunals and the establishment of programs for alternative dispute resolution appropriate for each of the tribunals.

The Charter Commission did not intend for

the coordinator to become involved in any way in the adjudication of cases, thus infringing on the independence of day-to-day decision making or management of the tribunals or to exercise any direct authority over the hiring, retention or promotion practices of Administrative Law Judges and Hearing Officers by tribunal Chief Administrative Law Judges. Indeed, the end goal for the coordinator was to simplify procedures and foster greater uniformity among tribunals where appropriate, as well as to modernize operations, all of which the Charter Commission believed were key to fostering a more business and consumer-friendly system of administrative justice for New Yorkers.

At the same time, the proposal would have granted the Mayor explicit authority to issue rules governing the professional conduct of Administrative Law Judges and Hearing Officers. The Charter Commission's

report made clear that Administrative Law Judges and hearing adjudicators are usually lawyers, sometimes they're not, who often have only been minimally trained in the narrow specific areas they are refereeing. The report goes on to say that there is no State or Local Law that binds the City's Hearing Officers to any code of professional conduct or ethics like State Court Judges are required to follow. Indeed, currently, and

at the time the report was written, there are and were no known integrity problems with the City's Administrative Law Judges or Hearing Officers.

However, the report states that, quote, "Subjecting all Administrative Law Judges and Hearing Officers to a uniform Code of Conduct or ethics created exclusively for adjudicators in the City's tribunals would enhance accountability and be a step forward to professionalizing the Administrative Law Judges and hearing courts."

In light of the recent and not so recent bribery and influence pedaling scandals, notably in the Brooklyn State Courts, it is imperative that the public be assured that Administrative Law Judges and Hearing Officers in the City's tribunals are subject to a

uniform standard of conduct.

Now, "Public confidence in Government is the cornerstone of democracy and the rule of law must be respected by those who wield it, not only those who are subject to it, and assuring the public that Administrative Law Judges and Hearing Officers who hear the everyday types of violations that many people contend with at some time or another are bound by a strong code of ethics will help foster truth and faith in Government," end quote.

The Commission also noted that, "The public benefit of this proposal can be significant." With proper policy, planning and oversight concerning tribunal docket management, case resolution time for the public should improve. Additionally, because the design of alternative dispute resolution programs would be required, citizens will be empowered because such programs are geared at giving all parties an equal voice in the process.

It is widely believed among City Government officials and some good Government groups that this proposal would have been approved by the voters had it

not appeared on the ballot at the same time as the proposal concerning non-partisan elections, which received strong opposition. In a recent letter dated November 30th, 2004, Bettina Plevin who is president of the Association of the Bar of the City of New York, wrote to inform Mayor Bloomberg that the Association's Administrative Law and New York City Affairs Committee endorsed the appointment of a Coordinator of Administrative Justice, which they proposed should be referred to as a civil legal justice coordinator, to perform the functions provided for in the 2003 ballot proposal. The letter also states that the absence after standard Code of Conduct governing hearings is a matter

of special concern, where many of the litigants are appearing pro se and are not familiar with the rules of the agency before which they are appearing. We have attached a copy of Ms. Plevin's letter to the staff.

In addition, I am advised that the New York County Lawyer's Association is currently reviewing the concept of a coordinator and will be providing comments on the issue in the near future.

Talking about current efforts. My office recently organized a judicial education and training

retreat with the assistance of the New York State Judicial Institute and several tribunals for 60 supervising Administrative Law Judges and Hearing Officers from nine of the City's tribunals and as far as we know, this training retreat presented the first time in the history of the City that the administrative tribunals have come together for training and for dialogue on technology, ethics and best management practices, and in preparation for the retreat we surveyed the tribunal Chief Administrative Law Judges by asking them questions concerning the use of technology, professional development opportunities for Administrative Law Judges and Hearing Officers and the applicability of professional codes of conduct that Administrative Law Judges or Hearing Officers are

required to follow, including the New York State Code of Judicial Conduct.

Now, the responses and retreat dialogue illustrate that there continues to be great differences between the tribunals, especially in the use of technologies and operational strategies for case and docket management, recording of transcription of

hearings and in dealing with the public, particularly the difficult issue of handling matters with self-represented litigants. There are also differences in the way the tribunals provide for training and continuing legal education, largely due to that CLE courses are not here to bolster the common skills used by Administrative Law Judges and Hearing Officers.

Finally, with respect to a Code of Conduct for Administrative Law Judges and Hearing Officers, with the exception of the clause in Chapter 68 of the Charter, which is a conflict of interest law that applies generally to all public servants, and the New York State Code of Professional Responsibility, which all attorneys are duty bound to follow the State's code of judicial conduct governing State Court Judges or similar code is not followed consistently, if at all, by the various tribunals.

At the end of the retreat it was decided

that two task forces would be established; one to address the issue of technology and best practices and the other to address issues of judicial ethics and conflicts of interest with the aim of developing a common resource guide for the tribunals as well as

future training programs. As my office moves forward to coordinate these task forces, I will keep the Commission apprised of our progress.

From the very beginning the Bloomberg administration has stood for transparency, accountability and the intelligent use of technology to improve the lives of all New Yorkers and these core principles have made for a better, more responsible Government even during these times of fiscal crisis and we think they can do the same for our administrative hearing process. These are quite literally the people's courts, and where New Yorkers are aggrieved by the myriad of quality of life issues that arise so often in this City, they should be able to turn to them to resolve their disputes fairly, impartially, efficiently and consistently, and we owe our constituents nothing less.

Thank you for your time and I'm happy to address any questions you may have.

CHAIRPERSON FUCHS: Thank you, Deputy Mayor.

I would like to ask the Commissioners have they have any questions. Commissioner Fiala?

COMM. FIALA: Madam Deputy Mayor, thank you. That was a great overview. I think we know where you and the Mayor stand, I certainly applaud the Mayor for trying to make Government more transparent and accountable.

If I may, I noted in your testimony and in reading the material provided by staff to this Commission, as well as some of the transcripts from prior Commissions, you spoke directly to the language in the Charter. I'd like to read you something that wasn't addressed in your testimony and ask for your opinion on it, all right?

In your testimony you noted that the Charter sets forth the following: "OATH shall conduct adjudicatory hearings for all agencies of the City, unless otherwise provided for by Executive Order, rule, law or pursuant to collective bargaining agreements." That's Section 1048.

The Charter Revision Commission at that time issued a report in April of 1989 which stated the following: "The purpose of formulating OATH in the Charter is to establish an independent adjudicative body that can be a resource," you used that word in your own

testimony, "to agencies in conducting their adjudications while at the same time establishing an independent," another word you alluded to, "structure outside the agency to provide an unbiased assessment of the matters to be adjudicated."

Now, as a non-attorney in layman's terms, that means to me the following. That the Commission, our predecessors at that time, and they were dealing with much broader areas than we are, they saw OATH as the central authority here to serve as a clearing house, to provide the types of services that you alluded to; best practices, utilizing technology, which from '89 to now has grown exponentially.

It seems to me that the intention of that body at that time with respect to OATH was clear.

The question I have is, is that intent, in your opinion, in practice in reality today? Have we -- there's a lot that the Charter Revision Commissions of the '80s did and between then and now we've had chances to tweak things, we've had more than enough time to look at this area, and I know this is a priority for the Mayor who is trying to make needed reforms here. It seems to me that everyone at that time had the mindset that this would be the type of body that you alluded to in your testimony, and I suspect, Madam Chair, if we

were to ask Mayor Koch who instituted this first by Executive Order, he would probably suggest that as well.

So we know your position, but would you agree or is it your opinion that based on the language and the reports of prior Commissions that was their intent as well?

DEP. MAYOR ROBLES-ROMAN: The Charter that establishes OATH very clearly identifies OATH as an independent agency and clearly what that means is outside of the Mayor's office and obviously for very important reasons, judicial independence and OATH operates as an independent agency, has an independent budget and what they have done and what they do pursuant to the Charter is they are the central resource for all the executive agencies to conduct hearings, and all independent hearings are conducted by OATH that are referred to by the agency.

I think that was the intention of the Charter and that's clearly how it was implemented.

If you compare the language that establishes OATH, for example, to the language that establishes the Criminal Justice Coordinator, there's very clear language there that supposes a number of things that you don't find in the language that establishes OATH and that's in the coordinating function that's -- I don't

want to use the word "oversight," but it's the ability to work across a number of different agencies to institute policy reform, et cetera. So I think that would be my answer to the question in terms of yes, you're correct in terms of the way you've identified OATH as an independent agency and it's proceeding exactly the way the Charter envisioned it.

What we're talking about here in terms of this type of proposal and the reform proposals that have come before it in the past is that there has been no clear directive either in the Charter or anywhere else, quite frankly, to create a Criminal Justice Coordinator model for the tribunals and the OATH language and the legislation that established it in the Charter didn't create that in there as well.

By creating a central tribunal, what they did is they established one tribunal that all the Commissioners can feel very comfortable independently sending their cases to, their disciplinary cases, some of these are extremely controversial, high profile, there will be one coming out tomorrow and they know there will be no influence from anyplace. The judges have set terms, their jobs cannot be tampered with, if

they issue decisions that are not to the liking of me or to you or to anybody else, so in that way they are

independent judges. They are held -- they're one of the few agencies that are actually held to the Judicial Canon of Ethics, in order to continue to send that independent judicial message. But there is no language in the Charter that presupposes that OATH would have any of the coordinating functions that we are talking about here.

Is that to say it couldn't be put in there? Absolutely not, either by Executive Order or by referendum, but to date, that's not the way the language of the Charter reads.

COMM. FIALA: Could I have one followup?

CHAIRPERSON FUCHS: Yes.

COMM. FIALA: I'm of the opinion, this is somewhat counter-intuitive, most of Government -- you talked about Criminal Justice Coordinator, I'll point to education, finance and a host of other areas, have employed this type of model; coordination and accountability, not in this area, they wouldn't interfere in adjudication, but certainly coordination and accountability.

DEP. MAYOR ROBLES-ROMAN: Stand alone?

COMM. FIALA: Having a financial entity, our justice practices, criminal justice coordination, education. I work for the Unified Court System. You

played a critical and important role in helping to make reforms there. The State realized some time ago the need to adopt a coordinating model, one that insures accountability instead of having this loosely configured monster, where you had different things happening when people are entitled to uniform standards, so there is a Code of Conduct, for example.

I was shocked to learn that that doesn't exist here, but that seems to me to be the trend that Government had been moving in for the last couple of decades, to having a coordinating arm, someone that lends accountability. I certainly support this notion, but is my interpretation correct, that much of Government has moved towards that direction?

DEP. MAYOR ROBLES-ROMAN: I think you're absolutely correct.

CHAIRPERSON FUCHS: Commissioner Forsythe?

COMM. FORSYTHE: I have one question. When

I worked in State Government, when the Governor wanted to do something like this, the Governor did it. The Governor did it with an Executive Order and I wonder why the Mayor couldn't create such a position, this coordinator's position, create a standards of judicial conduct for the Administrative Law Judges and do all that by Executive Order? Why is that something that

needs to be done --

DEP. MAYOR ROBLES-ROMAN: As a matter of law that's something the Mayor certainly can, and certainly can consider. This represented a perfect opportunity with this distinguished panel to give us solid, good, sound academic feedback on the idea. It's something that would have a tremendous impact from an access to justice perspective from the perspective of instilling public trust and confidence.

COMM. FORSYTHE: It sounds like a fine idea.

DEP. MAYOR ROBLES-ROMAN: Obviously, getting insight from this body would go a long way in sending that message publicly.

CHAIRPERSON FUCHS: Commissioner Grayson.

COMM. GRAYSON: Deputy Commissioner, as I listen to your presentation, you talked about the 2003

Charter revision recommendation, you seem to be talking about two things: One, the whole idea of consolidation with respect to Administrative Law Judges and various agencies and activities, and a Code of Conduct. And I guess I'm wondering why the two are mutually exclusive. I mean, I could make a hundred arguments why it might be difficult to get varying agencies who have varying areas of which they engage in hearings and varying expertise that is dramatically different, why it may take time to

consolidate all of them, because they're at different levels, different expertise. But it would seem to me no matter what an Administrative Law Judge or Hearing Officer is doing, a consistent set of Code of Conduct ought to be almost a no-brainer for this Government, this administration.

I guess I'm curious why the two had to be coupled and why even in today's conversations do they have to be discussed as going hand in hand?

DEP. MAYOR ROBLES-ROMAN: Well, the 2003 proposal didn't really speak to consolidation. That was really the '95-'96 State Court model that they had proposed and which was later not signed by the Governor.

The 2003 reform proposals were really the idea of the notion of the Coordinator of Administrative Justice, not taking any agencies and putting them together and creating a super chief. That was the '95-'96 proposal that certainly predated our tenure here, so the first proposal, and we still believe it's a strong one for 2003, is the creation of the coordinator of justice, of administrative justice.

Now, the second piece which is the ethics piece, we certainly don't see it or I certainly don't see it as mutually exclusive. It can be, frankly, done, as was correctly raised over here, by Commissioner

Forsythe, it could be done tomorrow. It's a very strong notion that there should be a standard, as you very, very well articulated, one standard, one Code of Conduct for the Administrative Law Judges. It makes it easier for the attorneys appearing before them, for the public and also for the judges themselves and it was one of the issues that when we discussed it at our education and training retreat about two weeks ago, that there were a lot of judges kind of scratching their heads, because a lot of them were operating under the notion -- some of them thought they were bound, some of them thought they

weren't bound, but they were, so it was interesting to see even among these very fine legal minds that it's an intellectual question that's difficult and to solve it is easy.

So clearly this one coordinator -- it would be easy to solve, but to implement would not be so easy, so the Coordinator of Justice would really serve a valuable role, both on the education and training piece as well as the implementation piece and the enforcement piece. That's one of the things I worked on closely with when I was working with the Office of Court Administration working on education and training and the training of judges on the issue of ethics and it sounds like something that's easy to coordinate, but it's not.

It's something that needs to be done continuously, sometimes you need an 800 line, sometimes you need advice right away and you need to have resources available. It's a very intense issue and this presents a very good opportunity for us to implement that in an across-the-board, professional way.

CHAIRPERSON FUCHS: Commissioner Crowell.

COMM. CROWELL: Last year I was counsel to

the Commission. It was very interesting when we did it. We certainly did not see it as separate, that they definitely work hand in hand and also by having a very strong approach to ethics, that's how you achieve the goals of effective coordination and the efficiencies you build in and the integrity of the process and the professionalism in the process and certainly as the Deputy Mayor just spoke about in terms of having the Mayor issue an Executive Order or something, that could certainly be done and you can do it both for the coordination and the ethics piece.

One thing to think about is how much of a hammer you want on the ethics piece in terms of enforcement, and that would need some sort of additional legislation, or if you could do it just through rule with existing authority, but the Charter could certainly grant authority in terms of creating rules expressly for

ALJ's and giving specific enforcement powers.

COMM. GRAYSON: So would the notion be the Code of Conduct would conceivably be different for ALJ's than for regular judicial persons?

COMM. CROWELL: You mean like for State Court Judges?

DEP. MAYOR ROBLES-ROMAN: Absolutely.

COMM. CROWELL: It very well may be, because they do operate in a different arena than a State Court Judge and have different rules of procedure, for instance, and also I think it's very helpful to get a sense of how the two professions, as I'll call them, an ALJ versus a State Court Judge, how they differ and you make rules that really are fashioned for both. In large measure, they'll be the same general principles for both.

COMM. GRAYSON: Could you give an example where a rule or a conduct would be different for an ALJ as opposed to a Judge?

DEP. MAYOR ROBLES-ROMAN: For example, a Judge cannot have, a State Court Judge, the judges that you work with every day, cannot have, let's say, an ex parte conversation, that means a conversation without the other counsel being there. As a matter of law, there is not a similar rule for an Administrative Law

Judge. So if an Administrative Law Judge were to have an ex parte conversation, it would be a question as to whether that would be a violation. I mean, you'd have

to go to the Code of Professional Responsibility for Lawyers and then look at those more generalized provisions to see if this person has done something where they've crossed the line, but that's one example where if you were a Judge, a State Court Judge clearly you cannot have conversations with one of the parties without all the attorneys being there, but for an ALJ, that rule does not necessarily exist.

By giving that example I don't want to suggest that the ALJ's for the City are doing that, but that's one example for you to sort of compare and contrast.

COMM. GRAYSON: And did you see the Code of Conduct differing for some ALJ's versus other ALJ's?

DEP. MAYOR ROBLES-ROMAN: The only place where I would have to think long and hard and I would have to look at sort of legislative history is the issue of per diems versus full time and I would have to think and listen to distinguished folks such as yourselves whether there should be a different Code of Conduct, but off the top of my head that's the only place where I could see a difference. I cannot think of an

intellectual reason or a legal reason or a policy reason

why I would have a different Code of Conduct of judicial conduct for one agency versus another.

CHAIRPERSON FUCHS: Yes, Commissioner.

COMM. CHEN: A comment. I'm a supporter of the 2003 reform proposal. Any time you do administrative justice, it's always good to have a coordinator. I certainly applaud the effort to raise professional standards through training and to mandate Administrative Law Judges and so forth.

I'm concerned, sometimes when you do these things in public, it's not just bribery or influence peddling. These are little cases where citizens at large are being affected in issues of justice.

Take parking violations for example, take violations of garbage, environmental. Thousands of people victimized maybe every day of justice for the small folks. I'm not talking about bribery, I'm talking about judicial laziness. Time and again personal experience tells you, you go to the court, it says, "The police officer observed the traffic. Guilty." You don't even hear. They hear things in garbage, environmental protection, same thing, they haven't done anything.

Personally, I will tell you an example of my

own personal experience. Eldridge street, very difficult to park. On Eldridge there was a two hour parking between Eldridge and Broome Street and Delancey. I parked there one time, I think this is in the fall of 2003. I parked there, there was almost a riot there, I was wondering what happened, it was 10:00, two hour parking sign at 9:00. A bunch of small merchants and residents were complaining, they got a ticket. The ticket in a two-hour parking zone said they expired the time, but they said, "Look, it's two hours. How come I got one hour?"

So I was the one who mediated internal affairs before, I said, "You got to write and complain and file an appeal get the money back, write the letter."

"We don't know how to speak English."

"Well, get somebody who will do it."

Okay, so I parked my car at 10:00, I returned promptly before 12, I got a ticket, too, same violation. So I wrote -- I don't know what happened to them -- I wrote the letter, I took the picture of the sign and my car underneath and three months later, of course, way past whenever they should have responded and they told me, well, your picture does not show the street sign, only the parking sign. Tell me which

camera can take a picture and show the whole block with the street signs on both ends? Then the thing is, you must pay before you appeal. So I paid my 75 bucks and I appealed. I haven't heard from them yet.

In the meantime, I have nothing to prove to them, because I can't take a picture across the street. In my appeal form I said I will give them a videotape. Of course, I never got called to the hearing. In the meantime, the sign is still there, same two-hour parking sign is still there. What do you do from the citizen's angle?

I don't know who else has been victimized from this situation, but from the perspective of administrative justice these are procedural things or lack of not independence, integrity, but maybe everyday day workload, laziness from whoever is circling the wagons, saying, "Dismissed, you're guilty." No argument. You just have to pay the fine. No fair.

Something has to be done.

DEP. MAYOR ROBLES-ROMAN: Obviously, one of the issues that in my professional experience and in my past life has been the issue of what we used to call in the courts customer service and I don't know if the Chief Judge still uses that term and I believe the

City's tribunals have very strong programs within each

of the different agencies of customer service, but they're different, they're not uniform, there's no message and there's no thread that necessarily goes across, and I would say that when the Office of Court Administration was created as that unifying force there were a number of initiatives and reforms that went across the Board that I would like to think that once this position is created that we would mirror and a lot of that involved -- you raised the issues of not speaking English. The New York State Courts really are at the forefront of how you deal with litigants that come in that don't speak the language, and again, a lot of the City agencies, most of the City agencies have those implemented, but we don't have any best practices and I can't go to a computer and give you what our policies are.

The other issue that's very, very important and you raised it also, is the issue of the self-represented individual. They don't have lawyers and there has to be a set protocol in place in terms of how you handle that.

Number one, you never want an ALJ to step

over the line anyway, and they can never breach their canons and start representing the individual, but that being said, there are very set protocols that you can do

in order to assist that individual to make their case, to make sure that they understand their rights and that if a case does not go in their favor what the appellate remedies are internally and then if they do wish to hire a lawyer.

So there are a number of things that we are doing. I don't know if we're doing them across the board, but I think this presents a very exciting opportunity for us to really look at how different agencies across the country are defining access to justice and how you bring that at the administrative tribunal level and, frankly, I don't know if there's any other jurisdiction in the country that's actually done that, which has taken sort of the big picture model and then brought it down to the people's courts, the courts that people, they really use.

COMM. CHEN: One other thing I would like to comment, too. It's wonderful to interview the Administrative Law Judge as to what was, you mentioned

customer satisfaction, but unfortunately in those cases, customers are looked at as defendants, they're not customers, they're defendants, so the satisfaction part, there's really not that much there. So are there any surveys, I would suggest that, in terms of how effective the process has been from the perspective of the

customer, the defendants, how often -- this is from their perspective rather than how are you doing, fine, they prosecute more people, get more success rate, but what about the justice part, what are their voice in documents that reflect their voice, not a big bribery case, of course we have to deal with that, influence peddling, but what about the part that nobody listens?

DEP. MAYOR ROBLES-ROMAN: You're absolutely right. It's one of the issues when I refer to access to justice, it's exactly that. From my perspective I can put on my pointy-headed bureaucrat hat, I see them in terms of standards and goals, "How many cases did you hear, Judge? How many did you dismiss? A plus for both of you."

But then there's the other side, how many interpreters were ordered, people that came in that can't speak English or can't write. In the growing

immigrant communities there are people that don't know how to write, literacy issues. Are there procedures in place when you're confronted with that in your courtroom? There's an automatic procedure that you know you need to follow and it's a matter of course. Again, we have those policies from each tribunal and the question is how could we coordinate that in a uniform way, so you know walking into any City courtroom that

this is what the expectations are. Why, because they've been created, communicated publicly and folks who are supposed to be implementing them are trained accordingly to what those protocols are and they feel them and they understand it's a priority as well as the standards and goals, making sure that you get the A plusses for getting the cases out any type of way.

CHAIRPERSON FUCHS: I think your testimony on this issue is very critical. Customer service is something this Mayor staked his reputation on with the 311 system and the fact is that the kind of coordinator that the Deputy Mayor is talking about would have the ability to do those kinds of surveys. Obviously, each agency could do their own, it's rather inefficient to do

it that way, but if you had a coordinator in place, there could be a way of both finding out what the public's experience is and then communicating it into what the Deputy Mayor was talking about, which is sharing of best practices.

So we have pockets of excellence, but it's not shared broadly, and there is enough that these administrative judicial tribunals have in common that we should be able to think about those things and at least share the things that work and also find out, of course, about what doesn't work and fix it.

So I think your personal testimony is very compelling. Commissioner Archer?

COMM. ARCHER: Thank you, Madam Chair. Deputy Mayor Robles, I guess I also wanted to share an experience and also say that, we have to deal with the adjudication process on a couple of fronts, both professionally and then also my building where I live is co-op, and paying real estate taxes, the whole thing. And so far, customer service for me has not been bad, because I haven't had that, you know, process where things have been, let's say denied, but I do applaud a uniform system in terms of a code of ethics, a Code of

Conduct that may be trying to put in place. But I had I guess an experience similar to yours in terms of parking, and I swear, unless I was like a streetscape architect, I don't know how I could get a camera that could, you know, where the occurred violation is supposed to have taken place and where the car was parked. You just can't get both of them in the same frame there, so, and yet we're asked to produce evidence to show that we were in the right.

But having said that, I want to say, I looked at \$23 million operating budget, \$600 million 2004 in terms of what may have been taken in, and this is not, as you say, not just real estate taxes, because

that's even higher. If, let's say, an Administrative Law Judge is dismissing, dismissing, dismissing, do you look at that a little suspiciously? You know what I'm saying?

DEP. MAYOR ROBLES-ROMAN: In terms of disproportionately dismissing cases?

COMM. ARCHER: Yes. Because you're a nice -- I don't know how many people have gone to the PVB and said, well, "Get that one, he's really, really good,

friendly." Maybe he had a good day, I don't know. But then they said, "Oh, stay away, forget it, there's nothing he'll let go," that type of thing. So I'm just wondering, if you guys then review the cases that they may have been listening to and say, oh, well, they let go entirely too many, you've got to up your number.

DEP. MAYOR ROBLES-ROMAN: Well, I can only speak from City Hall's perspective and that type of analysis doesn't occur. Putting on my State administrative hat, that's also an analysis that never would have crossed our minds, quite frankly, because probably would have been accused of infringing on judicial independence suggesting that a judge was ruling in an inappropriate way, unless there were administrative issues, they were dismissing by 2:00 because they wanted to get out and go to the gym, that's

a different issue, but if they were ruling on the law, one judge has a particular way of interpreting the law, that's what the appointment, that's what the robe is about.

CHAIRPERSON FUCHS: Commissioner Abrams?

COMM. ABRAMS: Deputy Mayor Robles-Roman, thank for coming and sharing your thoughts.

DEP. MAYOR ROBLES-ROMAN: Thank you for hiring me ten years ago.

COMM. ABRAMS: One of my proud alumni.

You know when the 2003 proposal surfaced out of the then Charter Revision Commission, what the editorial board attitude was, public interest groups, was there any opposition to the proposal as it was submitted to the voters?

DEP. MAYOR ROBLES-ROMAN: The quiet opposition that I personally heard at the time were from some business groups that were concerned that the automation would not inure to the favor of business groups and we assured them, in other words, in terms of making sure going Commission to Commission and agency to agency, one of the issues that I personally felt it was important for this coordinator to do was to insure that the data in all the agencies were correct and they were concerned that if that wasn't done correctly that would

inure to the detriment of a lot of the small business owners and we assured them that certainly wasn't the intention.

Another concern was perhaps this was a

revenue-generating proposal that we were going to make them so efficient because they wanted to have a little ATM at City Hall to collect fines and we insured them that wasn't what was the intention of the proposal. So that was the direct feedback I received at the time.

COMM. ABRAMS: Do you recall what newspaper editorial comment was with respect to the proposal? Did they advocate a "yes" vote in support of it?

DEP. MAYOR ROBLES-ROMAN: I can't say that I do. I'm going to ask the former executive director. I don't think anybody --

COMM. CROWELL: I don't think there was anything negative about this proposal to the extent that the editorial boards were not in favor of the referendum generally, it could have been as part of a mention.

DEP. MAYOR ROBLES-ROMAN: But not for this proposal.

COMM. CROWELL: There wasn't anything attacking the substance of the proposal to my recollection.

CHAIRPERSON FUCHS: If you speak to people,

they will tell you everything just was buried under non-partisan elections, quite frankly, and that was

that.

COMM. CROWELL: I was actually in most if not all the editorial board meetings and I think that, you know, they actually favored it behind the scenes, but a lot of the editorial boards weren't coming out in favor of anything just because of the non-partisan elections issue.

CHAIRPERSON FUCHS: Commissioner.

COMM. RAAB: Deputy Mayor, you certainly made a very compelling case for the need for these powers. One question I have is whether some of them don't adhere to your office without an Executive Order or the Charter. But my larger question is, is the only way to get this, once you have the authority through either process, is the only way is to have a separate office called a coordinator? And that question comes from someone who has been a City Commissioner and has dealt with the issue of oversight from that perspective, and even if you think the answer is yes, this is the only way to do it, I would say it's worth thinking through that other side of administrative agencies who have work to do and things to do and then there's yet another oversight agency within the Mayor's office that

becomes very soon in four or five years five more reports to write and six more hearings to attend to and in a Government that's strapped for fiscal resources and wants to focus on service delivery, it can sometimes have another impact.

DEP. MAYOR ROBLES-ROMAN: Commissioner Raab, I think you're right and I appreciate your vast experience in City Government. As you well know, there's never any one way to accomplish anything. We think this proposal that's before you now is probably the best proposal that we have been able to come up with, given the history, quite frankly, it's been tried legislatively and it's been tried other ways and has been already expressed, we can go the Executive Order route or tomorrow I can come out and issue a press release and say I'm the coordinator and I can start doing it.

But that being said when you're talking about a lot of City agencies, very sophisticated issues, when you're dealing with anything dealing with judges, Administrative Law Judges, State Court Judges, you're dealing with very sensitive issues, so to the extent you want to encompass sensitive issues with high-powered, very smart people, it behooves us to do it in a smart way, a coordinated way and in a way where someone is

clearly identified as in charge of overseeing certain mandates and we think this proposal that's before us is the best way to do it.

CHAIRPERSON FUCHS: I can also add to that point, which is, it doesn't mean, assuming for a moment we decide as a Commission or there's an Executive Order that we support this notion of a judicial coordinator, doesn't mean it can't be placed in an existing agency. We might need a new person with these powers and authorities, but there are several places that already exist in City Government that could do this without establishing a vast new bureaucracy.

I think the point that you're making is well taken and we've actually discussed that issue and I'm glad you put that on the table, because just creating a bureaucracy doesn't produce the outcomes.

DEP. MAYOR ROBLES-ROMAN: Bureaucracy, bad.

COMM. RAAB: Wait until Operations comes next week.

CHAIRPERSON FUCHS: So we're careful to hear what you're saying and we think about it in that context. Commissioner McCormick.

COMM. McCORMICK: I find this interesting. Do I understand you saying it would be most helpful from your perspective if this were to be in the Charter, it

would strengthen your position?

DEP. MAYOR ROBLES-ROMAN: I believe that's correct.

COMM. McCORMICK: The other question I have is when you innovate and you do things better, you raise the bar and higher expectations. I think of this City and the remarkable 311 and what that is able to do in terms of providing services. You have in your testimony that there are 13 million summonses issued, so if you think about quality of life, you've had a couple -- I've had about twenty, I mean, we all know what this is about, and we're able on 311, you're able to track any complaint, you're able to track what happens to it.

I would say that because of 311, that you've raised the standard of what we expect in terms of Government accountability and responsiveness and that I would look to what technology could do in this area, because from a citizen's perspective, it is right up there as one of the very few interactions that most of us have with Government and in customer satisfaction, citizen participation, how that works is very important and the sense of equity and fairness and not as a revenue generator really affects people's sense of

Government.

DEP. MAYOR ROBLES-ROMAN: Commissioner, you

raise a very good point in terms of technology and it really is one of the areas that we've chosen to focus on, independent of the Commission's work in terms of what is the bar for these different tribunals and how we can coordinate it and how we can come up with sort of one standard of excellence that we can make sure that each agency who is adjudicating part of that 13 million number can make sure that we know that they're consistently following it.

COMM. McCORMICK: And that from the citizen's perspective, that we can track where these are, that if something happened in 2003 and I appeal and I did this, where is it? So that's from both sides. And 311 has really set a very high standard.

DEP. MAYOR ROBLES-ROMAN: You're absolutely right. You're absolutely right.

CHAIRPERSON FUCHS: Any other questions for the Deputy Mayor?

DEP. MAYOR ROBLES-ROMAN: Thank you.

CHAIRPERSON FUCHS: We thank you so much for

appearing before us today and we hope to be continuing this conversation with you.

DEP. MAYOR ROBLES-ROMAN: Before April 15th.

CHAIRPERSON FUCHS: Right, thank you.

I'd like to now ask Abbe Gluck and Spencer

Fisher to please come and testify before the Charter Revision Commission.

It's my pleasure to introduce Spencer Fisher and Abbe Gluck to the Charter Revision Commission. Spencer Fisher is the Special Counsel to the Charter Commission and Abbe Gluck is the Deputy Special Counsel. They're both senior counsel to the Legal Counsel Division at the New York City Law Department and they have both stellar histories that I could go on and share with you. I'll just provide a single highlight for both of them.

Spencer Fisher was the Acting Special Counsel to the Commissioner and in previous Charter Revision Commissions and I think he knows the entire Charter by heart, so he's already impressed me --

COMM. CROWELL: It's a Bible of sorts for him.

MR. FISHER: I keep it under my pillow.

CHAIRPERSON FUCHS: Abbe Gluck recently joined the Law Department after working both in academia and private practice and she most recently clerked for Justice Ruth Bader Ginsburg on the U.S. Supreme Court, so we're both really pleased to have you working with the Charter Revision Commission. We're personally pleased, I know I can speak for myself as well as the

staff of the Commission, to have you both on board. They'll both be speaking to us today on the history and structure of the City Charter, thank you.

MR. FISHER: I guess you feel like we're going from the here and now to the academic, maybe there's a little bit of that.

As you know, this Commission is charged by State law with review of the entire Charter and in light of this, the Chair and the Executive Director have asked the Law Department to help us for just a moment in taking a step back from the details of the individual proposals to look at the Charter as a whole and how the Charter has gotten here. Now, this is not a full blown academic seminar, we're not going to keep you here all night, although the Chair knows those well, I guess --

CHAIRPERSON FUCHS: Right.

MR. FISHER: So we'll try to be brief.

I'm going to discuss the history of the Charter for a minute and my colleague, Abbe Gluck, will discuss its general organization. We're aware some of the members of this Commission have personal experience with the history of the Charter and with the decisions that have led to it.

Now, the Charter is not a literary work, it doesn't have a unifying plot and theme, it's not a

heart-breaking work of staggering genius, but it does represent the combined actions of several bodies with legislative powers, acting over well over a century. It includes state laws within it, it includes local laws, it includes the proposals of eleven Charter Commissions and a few petitions over the years as well that have made it in there. Because, remember, there are actually four fundamental ways that the Charter can be amended.

It can be amended by a Local Law, either with or without a referendum; it can be amended directly by the State Legislature, that's State law; it can be amended by petition and finally, by the Charter Revision Commission together with the voters. Charter

Commissions can be appointed in several ways, which we don't have to go into here. Obviously, Mayoral Commissions have been the most common in the City's history.

We can speak briefly about the history of the Charter. It's always appropriate to start with an anecdote. Henry Curran was a member of the old Board of Aldermen early in the 20th century. He wrote that at the first meeting of the Board of Aldermen, he mentioned a Charter to another Alderman, and the Alderman replied, "Never mind the Charter. Did you ever see people reading the Charter on the subway?"

He said, well, no, he hadn't.

"Lay off that highbrow stuff," his neighbor responded. "That's for the reformers and the Mayor when he feels like it." He said, "Do you think he'll get elected by reading the Charter?"

Well, actually, I actually think I have read the Charter on the subway, amazingly enough, and we have to read the Charter here, so we might as well discuss its history a little bit.

The Charter, as you probably know,

originates in Colonial Charters of the 17th and 18th centuries and I won't take you through those right now, but those were supplemented and succeeded in the 19th century by charters that were enacted by the State Legislature, and over the course of the 19th century, actually local officials had less and less input in the Charter. We don't have time to describe really the fascinating history of the Charter in the 19 century, but it includes the violence between rival State and City police forces in 1857, after the Republican State Legislature imposed a series of governmental changes upon a Democratic City Government.

Actually, the Charter in that period was about 15 pages long. It's in this little book from 1858, which also contained the Police Act which led to

the rioting and the Charters you have -- it's not bloodstained, though. The Charters you have before you today are something around 300 pages, so times have changed a bit.

The history of the 19th century Charter also includes Boss Tweed's supposed payment of \$600,000 in bribes to State Legislators to obtain the Charter of 1870, and actually I've included in some of the

materials for you a couple of the Thomas Nast cartoons from Harper's Weekly of 1870 during the period of the Charter of 1870 being enacted at the behest of Boss Tweed. I won't dwell on these, but the first cartoon actually shows Senator Tweed appearing, I guess this is sort of -- let's see, this one shows Senator Tweed appearing in the doors of the State Legislature with the Charter of 1870 in his hand, if you can see that. Tweed is dressed as the queen in Hamlet and Hamlet is pleading to her to repent and avoid what is to come.

Anyway, the Legislature did grant him that Charter and actually the next page shows Thomas Nast's vision of City Government under the Charter of 1870 and you can see things like our public schools going to the dogs, city of dust. It actually shows what is now known as the Tweed Courthouse and calls it I think the Diamond Palace, or something like that. So this will just give

you a sense of the sort of colorful history of the Charter that we're all successors to sitting here today.

In any event, after that early period, after the fall of Boss Tweed in 1873, there was a reform Charter passed by the State Legislature. By the way,

this cartoon, you can sort of study it for hours, to understand the history of New York in the 19th century, but in any event, as I was mentioning, in 1873 there was a reform Charter passed in response to the Tweed scandals and there are provisions today that date to that period of time.

In 1882 many of the laws that apply to New York were collected in one act that sort of became a Charter for the City. In general, during the 19th century there were frequent scandals that resulted in the gradual weakening of the City's legislative body and resulted in the growth of the power of the Mayor and other bodies in the City, including the Board of Estimate and Apportionment, which later became the Board of Estimate.

From the time of the 1898 consolidation until today, the history of the Charter represents a set of approaches to a core set of problems that are still with us today. One is the balance between borough autonomy or community autonomy and a centralized City

Government. A second is the balance within the central City Government among the major officials. Generally they included the Mayor, the legislative body and the

Board of Estimate until its demise, and, finally, the balance between Governmental efficiency and accountability. How much time do you spend doing reports and how much time do you spend performing the other business of Government, and to my mind I think those are sort of three of the major tensions that have really dominated the history of the Charter to this day.

Before the Constitutional Home Rule changes of the 1920's, new Charters and the amendments to new Charters were creatures of state legislation. The first Charter of the Consolidated City of New York was enacted by State law in 1897, took effect in 1898. It provided for the new system of boroughs in the City, a two-House Municipal Assembly and a Board of Estimate and Apportionment with a Mayoral majority as well as a Board of Public Improvements. It included a lot of stuff that later was put in City's Administrative Code and if I had it here it wouldn't look like this, it would look much thicker and I didn't want to drag that all around, so I don't have that to show to you.

The Legislature revisited the Charter just a few years later in 1900. There was a Charter Revision

Commission that year because of a series of corruption investigations into the Tammany Hall Mayoralty of Mayor Van Wyck at the time and there was also a growing sentiment for what was called Borough Home Rule at the turn of the century.

The resulting 1901 Charter made extensive changes in the City. It replaced the two-House Municipal Assembly with a one-House Board of Aldermen, and it strengthened the Borough Presidents largely at the expense of the Mayor, gave them power over capital projects, building regulation, powers that they generally do not have today.

The Board of Estimate and Apportionment took its long-standing form essentially in 1901. It included, obviously, the Mayor, the Comptroller, Borough Presidents and the President of the Board of Aldermen, later known as the City Council President. The Board of Estimate, as all of you know, was to go on to be central to city budgets, contracts, land use right until its demise in 1990. This 1901 Charter essentially remained in effect until 1937.

There were later State legislative changes that also increased the power of the Board of Estimate even more, giving them franchising powers, sharing and Local Law powers when those appeared. I've attached

here on the third page of the attachment a chart of the City Government prepared by the 1907 Charter Revision Commission, which did not lead to a change in the Charter, but produced this fabulous chart which shows appointment powers and all of the agencies and you can see the Board of Estimate placed sort of smack in the middle of City Government, where it remained for many decades thereafter. And, really, the story of the City's Charter thereafter is the story of how we got from that Charter to the next one, which is taken from the City's website and is in fact the chart of the current city Government.

After a lot of failed efforts at Charter revision in 1936, the Charter really began to lurch towards the modern form we know in the wake of the resignation of Mayor Jimmy Walker and the election of Mayor LaGuardia. The Charter Commission was appointed by Mayor LaGuardia in 1935 under special State law. It adopted a short form Charter, which is much more similar to the one we know today. It is intended to reflect and still is intended to reflect the fundamental organic structure of City Government, the Administrative Code that was at the same time prepared to deal with the material that was essentially kicked out of the Charter and it also absorbed what used to be called the Code of

Ordinances.

The 1936 Charter created a new City Council that was to be elected by proportional representation at the time and it replaced the old Board of Aldermen. The City Council got somewhat enhanced legislative powers. Proportional representation -- there's no time to go into the politics around the sort of parliamentary system that was set up for proportional representation. It was very controversial in the city. It was appealed by another referendum in 1947. Some people attribute that to the election of Communists and other people perceived to be at the fringes of city politics at the time.

After the 1936 Charter revision, voters -- actually there were about 25 years between Charter Revision Commission proposals, which seems amazing today. In 1961 the voters made further changes to the Charter in response to the proposals of a Commission appointed by Mayor Wagner under the authority of a new law that authorized Mayoral Charter Commissions generally and was the predecessor to the law that authorizes this Commission. There were further revisions adopted by the voters in 1975 in response to a Commission created by the State Legislature and there

were also minor revisions in 1983.

Now, we don't have time here to go through all of the revisions from 1936 and '61 and '75. There is a summary that I provided to you of the major revisions during that period. It seems to me that there were sort of five trends operating during those major revisions. One of them was a strong Board of Estimate throughout those revisions. It had powers of contract, budget, land use, Real Property and even the reserve power to act for the City until 1961. It was undoubtedly the central power of city Government during much of that period. But there was also a gradual increase in Mayoral power, I guess that's sort of the second trend. There was a gradual transfer of functions from Borough Presidents from the Comptroller and from the Board of Estimate to the Mayor throughout that period.

The third trend was a gradual growth of the City Council's role, the Council's role in legislation, in the budget, in its own investigations and in advice and consent for appointments.

A fourth trend, and this is particularly

true of the 1975 Commission, was an increase in process, in bureaucratic process, public process, review processes. In '75 you get provisions like ULURP, the co-terminality provisions, local district service

cabinets as they're called, and, finally, there was a clarification of focussing of the Comptroller's functions to sort of audit and monitor City programs rather than directly implement City programs.

In the 1960's the Charter was changed substantially by a series of Local Laws during the Lindsay era to create the large administrations that consolidated many agencies into a few smaller ones. Those were later broken up in the 1970's, which really takes us into the period of the 1980's, much closer to our own period.

Mayor Koch appointed a Charter Commission at the end of 1986 and there was thought that Commission would tackle the question of what to do about the Board of Estimate, which was then embroiled in a federal litigation involving the one person/one vote rules, because each of the boroughs, as many of you know, had one vote on the Board of Estimate and Staten Island's population in particular was not comparable to those of

the other boroughs. That litigation was delayed because the Supreme Court agreed to hear that case, called *Morris v Board of Estimate*, and so it turned out that what became the 1988 Charter Commission didn't get to review all of the big questions of City Government, but they did do some important things, including codifying

the Campaign Finance Board, the current Conflicts of Interests Law, known as Chapter 68; CAPA the Administrative Procedure Act, the Tax Appeals Tribunal was enacted that year, the rules governing succession to elective office and other issues as well.

It turned out that the '89 Commission was the one that turned out to be charged with the major tasks of reinventing much of the City's Government. As you know, it was chaired by former Corporation Counsel Fritz Schwarz and it responded to the City's loss in 1989, unanimous loss, I think, in *Board of Estimate v Morris*, by abolishing the Board of Estimate which had been central to City Government throughout the 20th century. The powers of the Board of Estimate were redistributed, generally in a manner largely consistent with separation of powers between the executive and

legislative branches, but not totally so.

This required a redrafting of almost every important city process, that included the budget, franchises and concessions, contracting, land use planning, as well as the roles of the Borough Presidents and the City Council President, which had to be delinked from their roles on the Board of Estimate. So as many of you know, it was this Commission that determined essentially the present structure of City Government.

The Procurement Policy Board was created there, Franchise Concession and Review Committee and the current budget and land use process essentially originated there.

In the Giuliani years there were three Charter Commissions and Anthony Crowell was involved in all three of them in various ways. Actually no, two of them, I take it back. The 1998 Commission was appointed in a contentious atmosphere in which the Council was also proposing to hold a referendum that related to Yankee Stadium, if you recall. The 1998 Commission ended up producing only campaign finance changes at the end of the day.

The Mayor appointed another Commission in

1999. It proposed a group of amendments, they were all gathered into one question and that question was defeated by the voters, but it inspired changes that were made by later Commissions, in fact.

In 2001 there was a variety of proposals put before the voters and five questions, which all passed. It codified a number of agencies and offices that existed formerly outside the Charter and you'll now find them in the Charter agencies like the Administration for Children's Services, the Human Rights Commission and also offices in the Mayor's Office, the Office of

Immigrant Affairs the Office to Combat Domestic Violence. We've been talking today about an Administrative Justice Coordinator. If we ended up codifying it in the Charter, it might look very much like the offices that were codified in the 2001 Charter Revision Commission. That Commission enacted provisions relating to gun possession, school crimes and I point that out, that it points out how a Commission acting with voters functions as a substitute legislative body for the City.

The 2001 Commission actually created crimes.

The Commission as fully empowered local legislative body when it acts together with the voters. The Commission also merged functions of other agencies to create what's now known as the Business Integrity Commission, and it also created the Department of Health and Mental Hygiene, then called the Department of Public Health and restructured the Board of Health.

The following year we had another Commission which focused on non-partisan elections and also succession to the Mayoralty and ultimately only proposed a question on succession to the Mayoralty and the voters adopted that proposal, which provided for a quick special election procedure instead of what might have been a more lengthy period that the Public Advocate

could succeed under the current system. Also the historic power of the Public Advocate to preside over the City Council was removed by this Charter revision, at least as a matter of the Charter, which severed a link between the Public Advocate and the City Council President.

Finally, in 2003, as you know, the last Charter Commission proposed three questions concerning non-partisan elections; procurement and a variety of

matters that were collectively called Government administration. Some of those you're going to hear about or have already heard about from staff in other contexts, so I won't go into those here. Those were all defeated, as discussed largely in the controversy over non-partisan elections.

So that's I guess a two minute or ten minute thumbnail sketch of the City's Government, I guess, and if you're not already exhausted by that, I will now turn to Abbe Gluck, who will talk a little bit about the structure of the Charter and if people have any questions, I will try to take them.

MS. GLUCK: I will be brief, I hope you will bear with me for a few minutes.

As Spencer indicated the Charter not Moby Dick, it's not a cohesive literary work and it's very

safe to say that very few people have read it cover to cover, much less tabbed their Charter, so being one of those lucky few, I thought it would be useful for you if I outlined the structure for a few minutes.

Firstly, as many of you know, the Charter is intended to take only the broad organizational strokes

of the City's Government. It leaves the particular details to be filled out in the City's much longer and more detailed Administrative Code, as Spencer mentioned. The Charter does not claim to have a particular structure. It's not divided into different parts, just chapters and sections, but it does make some sense conceptually to conceive of this as roughly divided into three parts. I myself found in preparing for this that this conceptualization is a very good way of understanding and remembering what's in the Charter.

The first part, as I conceive it, contains introduction and chapters on elected officials. The second part concerns the budget, capital projects and key governmental operations, including procurement and the acquisition and disposal by the City of its Real Property.

The third part sets forth the powers and duties of all the City agencies. Now this is not a perfect description of the Charter structure. There are

some chapters scattered throughout that just don't quite seem to belong where they are, but, overall, this is the structure.

Now, I'd like to give you a little detail

about each of these three parts, so you can get a sense of all the topics covered. After all, this Commission is empowered to review the entire Charter, so this overview should be particularly helpful in that regard.

Beginning with what I call part one. The chart essentially begins with a description of the City's elected officials, with individual chapters on the Mayor, the Council and the Public Advocate, the Borough Presidents and the Comptroller. While some of these chapters are more detailed than others, they all have the same basic content. They each set forth the manner in which the official is to be elected, his or her term of office and salary, powers and duties of that official, the conditions for his or her removal and process for succession and the staff and/or deputies to be hired or appointed.

Each of those chapters does, however, have a few provision unique to each chapter that relate in particular to the duties of the specific officials discussed in that chapter. Let me point to just a few by way of example. For instance, the chapter about the

Mayor also discussions the structure of the Mayor's

Office, including, for example, the establishment of a Criminal Justice Coordinator. The chapter about the Council, not surprisingly, also describes the process by which Local Laws are to be enacted, and that chapter also contains one of the most important sections in the Charter, the section that details which Local Laws must be approved by the voters by referendum.

The chapter on Borough Presidents establishes the Borough Boards and defines their duties. The chapter on the Comptroller sets forth the duties and composition of the Audit Committee.

Now, moving on to what I call part two. That part concerns key governmental operations and processes; the budget process, capital projects, dealings in property and procurement, and the like. Looking first to financial matters, the second part of the Charter spells out the two major budgetary processes for the City: The expense budget and the capital budget and then describes how those two budget processes come together in the overall budget process. As a corollary to setting up the budget process, this part of the Charter also sets forth how the City administers its tax structure, by establishing the Tax Commission and the Tribunal for Tax Appeals, which administer and

adjudicate the City's tax system. The process by which the tax rates themselves are fixed is actually set forth later in the Charter in the chapter concerning the Department of Finance.

As another piece of City's financial system, this part of the Charter establishes the Independent Budget Office, and also regulates the City's financial obligations, including the City's debt. Although, as you all know by now, the City's debt is now largely controlled by the Financial Emergency Act and the State Local Finance Law.

Relatedly, the second part of the Charter also establishes the Department of City Planning and the City Planning Commission, the work of which are closely linked to capital projects, and the capital budget. The provisions on City planning also include some key land use provisions, most notably the section setting forth ULURP.

In addition, this second part of the Charter outlines other key Governmental operations, in particular, the processes by which the City may spend money on goods, services or property, and the processes by which the City may raise money, apart from taxes through, for example, the grant by the City of franchises and concessions, or the sale or lease of the

City's real property. Included within that discussion are the specifics of the procurement process, including the role of the Procurement Policy Board in regulating it, the duties of the Franchise and Concession Review Committee, as well as the authority of the City to acquire or dispose of its real property, and the process by which it may do so.

Now, the handout in your packet on the chapters of the Charter specifies which chapters concern which topics, in case any of you want even more detail after this.

Moving on to the third and final part of the Charter, which for the most part concerns city agencies. This is by far the longest part of the Charter. Charter Chapter 16 effectively introduces this third part by setting forth the powers and duties of the heads of Mayoral agencies, and then with some exceptions, each of the following chapters deals with each of the agencies in turn, describing each agency's organization, powers and duties. Now, I obviously won't go through each agency. You can look to the handout for that. But just for example, there are specific separate Charter chapters on defining the organization, powers and duties on the Fire Department, the Department of Buildings, Elections and Voter Assistance, the Department of

Citywide Administrative Services, which includes many provisions concerning the City's administration of its property and personnel. I could go on and on. I'm sure you get the overview. Keep looking to the handout for more.

To make matters even more complicated, also scattered throughout this third part of the Charter are some Chapters that don't really fit into the structural regime I just described, because they don't apply to individual agencies, but rather apply to City Government as a whole. A few examples: Within this third part you'll find a chapters setting forth the City's Administrative Procedure Act, which we already talked about a lot tonight. You'll also find provisions defining term limits on elected officials. There's also a chapter setting forth general provisions that apply to the Charter as a whole, including definitions that apply throughout the Charter and the effective dates of every revision made by a Charter Revision Commission since 1963. There are also provisions on conflicts of interest, which concern ethical standards that apply to former and current public servants, and, finally, there

are provisions on community government which, among other things, establish community districts with Community Boards charged with conducting public outreach

and assisting in the planning of community capital projects.

Now, I know that was a mouthful, but this actually has just been a very general overview. The Charter is a long and complex document and is impossible to summarize in just a few minutes, but I do hope that our presentations have given you a better sense and hopefully a better appreciation of the Charter as a whole.

If you have any questions other than requesting coffee, Spencer and I are open to take that.

CHAIRPERSON FUCHS: Thank you very much. Actually, that was amazing, extremely helpful and very difficult to do, so we really appreciate it. Are there any questions? Commissioner Forsythe.

COMM. FORSYTHE: I do actually have a question, I think it's a general question, but I noticed yes, that this is a big document. I was surprised that this is the short form, but this is 335 pages long. I wondered if Ms. Gluck would estimate from her experience

with the Supreme Court how many pages it would take to print the U.S. Constitution?

COMM. CROWELL: We actually did this a couple of years ago and I will e-mail you the data on that.

COMM. FORSYTHE: What is it, 25 pages, perhaps?

COMM. CROWELL: Less, actually. We actually did a word count of the U.S. Constitution versus the Charter. I get your point.

COMM. FORSYTHE: The general point is that the United States Government is able to describe the boundaries of its Government in twenty pages or less. It takes the City of New York 335 pages to do that, and I'm just curious as to why that's the case and why, what the distinctions between the Charter Local Law, Administrative Code, et cetera are and if there's a philosophy behind?

MR. FISHER: The Charter has gradually expanded -- well after the big contraction of 1936 when they sort of kicked out the material that was placed in the Administrative Code, there were these cartoons in

the election campaign of 1936 that showed the Charter weighs all this amount, you can't pick it up, nobody knows what's in it and as part of the campaign to pass this Charter, this was a big element. It was shortened and you can say the Charter became a pamphlet which was sold by the City, what is now the City Bookstore after that period and it has gradually expanded in recent years.

You know, you can attribute that to the natural expansion of the legislative process and bureaucracy and regulation. The Charter used to have fewer chapters and fewer procedures. I think it's just a natural reflection of some of the changes of our time.

Generally, when people want reforms, they want more pages in the Charter and not fewer and they codify those reforms through more pages. I think that may be just a function of human nature. Now, whether that means that some ambitious Commission should at some point shrink the Charter again by 200 pages, I don't know but I don't think this Commission wants to do that.

COMM. CROWELL: A practical answer, unlike the U.S. Constitution, which can only be changed through very formal mechanisms, the Charter can easily be

changed by Local Law and quite often there would be a small provision in the Charter that could be changed in a larger bill. As Spencer says, cumulatively speaking, it expands. The decisions made by the Legislature as to whether something should go in the Charter or Administrative Code, sometimes things are reflected in both at the same time.

MR. FISHER: In the last several years one or two upstate cities, I believe Albany was one of them, had a very long and old Charter and I believe replaced

it with a Charter that was just a pamphlet. Others have had such thoughts. You could end up getting a very vague and difficult to administer document which could lead to more contention over what the cryptic words mean when you have a very short Charter.

COMM. FORSYTHE: Thank you.

CHAIRPERSON FUCHS: Any other questions?

Then we will thank both Abbe Gluck and Spencer Fisher for providing such an erudite and very impressive summary of very impressive issues.

I just want to take this opportunity now to just remind everybody that the next meeting of the

Charter Commission will be February 9th at John Jay College on 59th Street. There we will be focussing on administrative efficiency and accountability.

The public hearings will be coming up in March and you can receive information through sign-up sheets and remember to check our website -- I feel like a commercial -- www.nyc.gov/charter.

Do we have a motion to adjourn?

COMM. ABRAMS: Moved.

COMM. CROWELL: Second.

CHAIRPERSON FUCHS: We're adjourned.

(Time noted: 8:55 p.m.)

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

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

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

LINDA FISHER,
Shorthand Reporter