

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

3 PUBLIC HEARING:

4 TO EXAMINE NEW YORK STATE'S SYSTEM OF ETHICS
5 OVERSIGHT AND ENFORCEMENT, IDENTIFY IMPROVEMENTS,
6 AND DISCUSS ALTERNATIVE APPROACHES TO ENFORCING
7 ETHICS.

8 Legislative Office Building, 2nd Floor
9 Van Buren Hearing Room A
10 Albany, New York

11 Date: August 25, 2021
12 Time: 10:00 a.m.

13 PRESIDING:

14 Senator Alessandra Biaggi, Chair

15 Senator Liz Krueger, Sponsor

16 PRESENT:

17 Senator Anthony H. Palumbo (RM)

18 Senator Philip M. Boyle

19 Senator Jabari Brisport

20 Senator James F. Gaughran

21 Senator Todd Kaminsky

22 Senator John C. Liu

23 Senator Julia Salazar

24 Senator Toby Ann Stavisky

25 Senator Susan J. Serino

Senator Daniel G. Stec

1	SPEAKERS:	PAGE	QUESTIONS
2	Judge Sanford Berland	16	22
3	Executive Director		
4	Joint Commission on Public Ethics		
5	Julie Garcia	97	99
6	Former Commissioner		
7	Joint Commission on Public Ethics		
8	Senator Louis DiPalma	152	165
9	Chair		
10	Rhode Island Senate Committee on Rules, Government Ethics, and Oversight		
11	Senator Tom Begich	152	165
12	Member		
13	Alaska Legislature Select Committee on Legislative Ethics		
14	Erica Vladimer	194	199
15	Member		
16	Sexual Harassment Working Group		
17	Rachael Fauss	216	228
18	Senior Research Analyst		
19	Reinvent Albany		
20	Evan Davis	216	228
21	Member		
22	Committee to Reform the State Constitution		
23	Edward Murray	216	228
24	Chair		
25	NY City Bar Association's Government Ethics & State Affairs Committee		
26	Jennifer Wilson	253	272
27	Deputy Director		
28	League of Women Voters		
29	Blair Horner	253	272
30	Executive Director		
31	New York Public Interest Research Group		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SPEAKERS (Continued):

PAGE QUESTIONS

Alan Rothstein
Board Member and Co-Chair of the
Policy Committee
Citizens Union

253 272

Susan Lerner
Executive Director
Common Cause New York

253 272

1 SENATOR BIAGGI: [No audio.]

2 And, finally, I want to express my gratitude
3 to Leader Andrea Stewart-Cousins for calling this
4 hearing today, and for her continued commitment to
5 bringing good governance and transparency to Albany.

6 We are here today to examine New York State's
7 system of ethics, oversight, and enforcement; to
8 identify areas of improvement; and to discuss
9 alternative approaches to enforcing ethics within
10 our state government.

11 In the wake of former governor Andrew Cuomo's
12 resignation from our state's highest office, there
13 has never been a more urgent moment to reform our
14 system of ethics.

15 It is significant that we are holding today's
16 hearing just one full day into
17 Governor Kathy Hochul's administration, who just,
18 yesterday, called for a complete overhaul of our
19 state system of ethics oversight.

20 This is the end of a very dark chapter in
21 Albany, and we have an opportunity and a
22 responsibility to set the tone to ensure restoring
23 integrity in New York State government is a top
24 priority.

25 Despite the timeliness of today's hearing, it

1 is no secret to any of us here that Albany has a
2 long history riddled with corruption and abuses of
3 power, and it has long been subject to scrutiny for
4 its failure to implement an effective, ethical
5 oversight regime.

6 The Center for Public Integrity conducted a
7 national state integrity investigation, and gave
8 New York a D minus, citing our state's, quote, lack
9 of transparency that leaves the public, and even
10 many legislators, in the dark about how the
11 government works.

12 While New York leads on many important
13 issues, our progress has often -- has too often been
14 overshadowed by scandals and unethical behavior from
15 our elected officials.

16 Ironically, it is our own state commissions
17 and entities tasked with enforcing our ethics rules
18 that has helped sustain Albany's disappointing
19 reputation.

20 Today's hearing will pay particular attention
21 to the Joint Commission on Public Ethics, or
22 "JCOPE."

23 Established almost 10 years ago as part of
24 the Public Integrity Reform Act of 2011, JCOPE set
25 out to reform the oversight and regulation of ethics

1 and lobbying in New York State.

2 JCOPE was created to restore public trust in
3 government, yet since its creation there has only
4 been rising concern about JCOPE's neutrality and
5 ability to act as an independent body.

6 Throughout this hearing we will take a close
7 look at the source of these concerns.

8 After a year that has been dominated by
9 scandal within the Executive, it is very clear that
10 this moment calls for immediate change and
11 structural reform.

12 The foundation of government is rooted in the
13 trust between those who work in our state
14 institutions and the people we are meant to serve.

15 The absence of transparency and integrity
16 enables lawmakers to make decisions in their best
17 interest and at the expense of the very people they
18 represent.

19 Today we will hear from the executive
20 director of JCOPE, a former JCOPE commissioner,
21 good-government organizations, former legislature --
22 former staff of the legislature and senate ethics
23 chairs from the states of Alaska and Rhode Island,
24 to learn from their perspectives regarding ethics
25 and oversight.

1 The process ahead -- hearings, discussions,
2 and consultation -- form a pathway toward passing
3 much-needed legislation to reform our system of
4 ethics.

5 Senator Krueger has introduced legislation,
6 Senate Bill 855, to amend our Constitution, to
7 abolish JCOPE and the Legislative Ethics Commission,
8 in order to rebuild an entirely new ethic
9 commission.

10 Due to the length of time required to amend
11 the Constitution, I introduced legislation this
12 year, Senate Bill 6964A, designed to reform some of
13 the fundamental flaws within JCOPE, addressing the
14 partisan appointment process, and the commission's
15 minority veto.

16 Unfortunately, the short-term fix only passed
17 in the Senate this past legislative session.

18 During a year when ethics violations by those
19 in some of our highest offices frequently took hold
20 of our attention, it is deeply disappointing that we
21 were unable to pass legislation to address this
22 longstanding problem.

23 Today's hearing acts as an opportunity to
24 strengthen existing legislative solutions, and to
25 identify additional areas of concern that are not

1 addressed.

2 But in order to enact effective reform, we
3 need those with the power to enact change to show up
4 to the table.

5 I would be remiss not to mention the absence
6 of the Inspector General and the Governor's Office
7 of Employer Relations, two ethics bodies responsible
8 for enforcing oversight in government, who were both
9 invited to attend, but declined.

10 A transparent government is a government that
11 works for the people.

12 New Yorkers deserve integrity and
13 transparency from their government, and a government
14 that they can trust works for them, not those in
15 powerful positions.

16 Time and time again, New York legislators
17 have failed to take steps toward meaningful reform,
18 whether out of fear or desire to protect themselves.

19 For the public watching today, don't just
20 listen to what we say; watch what we do and hold us
21 accountable.

22 Acting on our findings today will prove our
23 commitment to the values we claim to hold.

24 Without meaningful transparency and
25 accountability, New York State will never be able to

1 end the cycle of corruption and abuse that plagues
2 Albany, and as a result, we will never reach our
3 highest potential as a state.

4 Thank you.

5 If anybody would like to speak?

6 I recognize [indiscernible].

7 SENATOR PALUMBO: Thank you, Madam Chair.

8 And I would like to thank you for having this
9 hearing today.

10 I'd like to thank Chairwoman Krueger as well,
11 and my fellow members of the ethics committee.

12 This is something that I think has been of
13 significant concern to both parties, both sides of
14 the aisle, and in both houses.

15 I was in the Assembly for seven years before
16 I was in the Senate.

17 So I'm really looking forward to hearing this
18 testimony.

19 It's a bit of a reunion for me today in some
20 respects because, Judge Berland, I tried a case in
21 front of Judge Berland a few years ago --

22 I see him on the Zoom.

23 -- when I was a prosecutor many, many moons
24 ago, with the one witness, Julie Garcia, in
25 Suffolk County.

1 And Miss Garcia -- and I've mentioned this on
2 the floor of the Senate before, and I think what is
3 really important, and this -- present company
4 excluded -- that JCOPE has actually reinforced
5 corruption over the years.

6 It has not reinforced ethics under any
7 circumstances.

8 They have been on the fringe of some real big
9 situations, and ignored them.

10 And that's really what is really -- what was
11 a significant concern, one of their most inexcusable
12 acts, as the Chairwoman mentioned, is the fact that
13 we have a confirmed leak, where the governor's
14 office called about a decision made by a member, who
15 we'll hear from today, in executive session, found
16 nothing.

17 And then the inspector general, appointed by
18 the governor, a former staffer of our former
19 governor, finds no corroboration, and doesn't even
20 make a referral.

21 Now, I get it, that these bodies can't
22 necessarily charge, they can't impanel grand juries,
23 they can't bring a criminal case.

24 But at the end of the day, this is such an
25 important topic, because that is exactly the reason

1 why these bodies -- this body -- or, more
2 specifically, JCOPE, what we're referring to what
3 we're dealing with today, were created; that they
4 were created with much fanfare during a time the
5 Moreland Commission was right around that same time.

6 Right?

7 And once they started to actually uncover
8 some untoward or inappropriate acts, the governor
9 disbanded them.

10 So they actually were moving in a direction
11 that might have actually been fruitful.

12 And with what we've seen over the last even
13 15, 20 years in this capitol has been disgraceful;
14 and, unfortunately, it taints all of us here, those
15 of us who practice proper ethics.

16 I mean, I can't tell you how many people on
17 just rare occasions, but people would come up and
18 say, Oh, yeah, that place is a swamp, it's a dump.

19 That's worse than D.C.

20 And that's unfortunate, because a very select
21 few of people act in that fashion.

22 The rest of us act with dignity and pride.

23 So I'm really glad to be here, and I'm glad
24 that we're doing this and moving forward, because
25 what my concerns are that, there are partisan

1 aspects, to an extent, of political appointees,
2 unelected appointed people, to a body that has this
3 authority, so that we really need to look long and
4 hard at how we're going to fix this, because it's
5 critical.

6 And, in fact, as Senator Biaggi knows/that
7 the Chairwoman knows, she -- on that bill that she
8 proposed, I actually debated that on the floor, and
9 recommended a wonderful idea -- which I thought that
10 was a great idea -- but a better idea was
11 Senator Krueger's bill, because that was truly
12 appointed 50/50.

13 And I'll just close my comments with this:

14 When you think about what happens in other
15 legislative bodies, particularly in Congress,
16 regardless of membership, they're 50/50.

17 Why?

18 Because it avoids political hit jobs; that,
19 both sides, if you can have 3 members on one side,
20 and you can have 432 on the other, and they still
21 get an equal amount on the congressional oversight
22 committees, so -- or commissions.

23 And that's what's important:

24 That we always consider that.

25 That we avoid -- and even though we don't

1 think that these individuals, particularly when
2 appointed, have malice in their heart, at the end of
3 the day, the perfect example is what happened with
4 the leak of an executive.

5 It's a crime to leak what goes on in
6 executive session in JCOPE, and everyone walked.

7 And we had corroboration by the media that
8 there was at least an investigation that should have
9 taken place, and resulted in some founded complaint.

10 So I look forward to the hearing, I thank the
11 Chairwoman, and I yield the rest of my time.

12 Thank you.

13 Thank you, Senator Palumbo.

14 Senator Krueger, would you like to say a few
15 words?

16 Thank you.

17 Hi.

18 I am delighted to be here with my colleagues
19 from both parties to discuss these very critical
20 issues for the future of democracy.

21 And I am so glad to hear my colleague saying
22 this is not a partisan issue.

23 And both parties have endless examples of how
24 members of their own parties did the wrong thing.

25 I've been here in Albany 20 years now, and

1 it's both parties.

2 And it is exactly as Senator Biaggi
3 described, a desperate need for transparency and
4 independence of the entities that are assigned the
5 job of making sure, when issues occur from sexual
6 harassment; to abusive requirements on workers to do
7 non-governmental work; to the wrath against (fill in
8 the blank) for not following an instruction that
9 they knew was a violation of the law, in any way,
10 shape, or form; when there is no way for them to
11 turn to someone and say, This is happening.

12 You have to do something to help me.

13 And we have flunked; we have flunked our
14 democracy, and we have flunked our responsibilities
15 as legislators.

16 So there is a lot of bills here to consider,
17 and I look forward to bringing many of them to the
18 floor.

19 And I also agree -- thank you,
20 Senator Palumbo -- I do think the ultimate solution
21 for JCOPE is to start again, through a
22 constitutional amendment, that makes very explicit,
23 who they are; how we in the legislature or the
24 governor's shop don't have control of them; that
25 everyone will be treated equally and no one will be

1 above the law; no one will be able to wiggle their
2 way out of investigations.

3 That that is what we need to do.

4 But we know, also, that constitutional
5 amendments sometimes take years and years; and so
6 there are statutory fixes we can do now.

7 And I think Kathy Hochul, on day one for
8 herself, made very clear that this was part of her
9 goal, and set of goals, as the new governor.

10 So never let the crisis leading to
11 Andrew Cuomo leaving, and the opportunity for a
12 brand-new governor, Kathy Hochul, to get this right,
13 as far as we can, through cooperation with the
14 governor who will sign important bills.

15 So I'm -- again, I'm delighted that now, on
16 day two of her administration --

17 I think we had the hearing scheduled even
18 before we knew this would be day two of her
19 administration.

20 -- but on day two of her administration,
21 we're here, working together, both parties, to say,
22 there are a bunch of things we can do to get us to
23 our goals through the right laws.

24 And I think we will find a great deal of
25 cooperation from the new executive chamber, which

1 I could not have said a few months ago when we
2 talked about these bills on the floor of the Senate.

3 So I look forward to hearing everyone's
4 testimony.

5 And I know there are people who, when they
6 knew about the hearing, I invited a few to come and
7 testify, and they felt that they couldn't, or they
8 were under some kind of confidentiality rules for
9 themselves.

10 But I know that they're out there also, and
11 that they -- I've urged them to submit things in
12 writing in any way that they legally can, because
13 there are very, very disturbing things that have
14 been going on in this state that we don't all know
15 about, and the public should know about them.

16 So thank you so much, Senator Biaggi.

17 SENATOR BIAGGI: Thank you, Chair Krueger.

18 So without further ado, we are going to begin
19 the hearing, and hear from our first witness,
20 Judge Sanford Berland, who is the executive director
21 of the Joint Commission on Public Ethics, or
22 "JCOPE."

23 JUDGE SANFORD BERLAND: [Audio lost]
24 Ranking Member Palumbo, Senator Boyle,
25 Senator Gaughran, Senator Salazar, members of the

1 committee, I want to thank you for the opportunity
2 to appear before you this morning.

3 I've submitted a more comprehensive written
4 version of my testimony.

5 But in deference to today's long and varied
6 slate of speakers, I will limit my remarks to
7 certain key points.

8 I would also like to thank the committee for
9 permitting me to testify remotely.

10 I just returned, yesterday evening, from a
11 family trip, and so I'm testifying from our New York
12 offices this morning.

13 On behalf of our commissioners, I want to
14 say.

15 That I'm proud to be part of the Joint
16 Commission on Public Ethics, which is New York
17 State's ethics and lobbying regulator.

18 To be clear, however, I'm only speaking today
19 for myself and for our staff.

20 My name is Sanford Berland.

21 I'm the commission's executive director, as
22 the Chair mentioned, a position I assumed only
23 three months ago.

24 Prior to joining JCOPE, I spent several years
25 on the bench as a court of claims judge, sitting as

1 an acting Supreme Court justice.

2 And I also had a long and varied career,
3 starting as a judicial law clerk, in private
4 practice, and in-house with Pfizer, Inc.

5 While I'm still getting up to speed at the
6 commission, I am immediately struck by the expertise
7 and dedication of our extremely professional staff.

8 For a decade now, they've provided steady and
9 capable guidance and direction, ensuring that no
10 state official, employee, or lobbyist can claim
11 ignorance of the laws we administer or their
12 obligation to comply with them, and of the penalties
13 they face should they fail to do so.

14 I understand, of course, that this hearing
15 has been called to explore potential alternative
16 approaches to ethics, oversight, and enforcement,
17 and I'm pleased to be part of that discussion.

18 But in order for there to be a useful
19 appraisal of our achievements, and of our
20 limitations, there has to be an understanding of
21 JCOPE's actual statutory duties and powers.

22 Only against an informed background can there
23 be a realistic assessment of our operational and
24 functional achievements.

25 Under the laws that govern JCOPE, we're

1 charged with administering the state's ethics and
2 lobbying laws.

3 In that capacity, we educate, train, issue
4 advice and guidance; and, yes, we compel compliance
5 with an enforced violations of the law.

6 With over 200,000 state officers and
7 employees under our jurisdiction, as well as members
8 of the legislator and legislative staff, and more
9 than 13,000 individual lobbyists and their clients,
10 we are extremely proud of our record in carrying out
11 our mission.

12 With a staff of only 50 people, we annually
13 process 34,000 financial disclosure statements;
14 issue guidance to thousands of state officials,
15 employees, lobbyists, and clients; administer more
16 than 50,000 reports by lobbyists and their clients;
17 and investigate hundreds of complaints against state
18 officers, lobbyists, and clients.

19 We've modernized the regulation of lobbying,
20 and the infrastructure needed to share key data with
21 the public.

22 While rule-makings and online applications
23 don't generate headlines, they do represent enormous
24 advancements in transparency in government.

25 At the same time, the confidentiality laws

1 that surround our investigations are strict, and the
2 penalties for violating them are severe.

3 I'm not sure we would necessarily choose to
4 operate in this fashion, but the legislature clearly
5 acknowledged that, although much of what we do is in
6 the service of transparency and sunlight, there are
7 phases of our work that should not be made public.

8 Our critics misconstrue the silence that has
9 been imposed upon us as evidence of inaction, and
10 they choose to assume, without basis, that important
11 cases are being ignored.

12 Neither assumption is correct.

13 To attempt to rectify this misperception, the
14 commission just adopted a policy to confirm,
15 publicly, the general status of certain high-profile
16 investigative matters to the extent permitted by the
17 statutes that govern our operations.

18 It has to be remembered that we are not a
19 law enforcement agency per se.

20 We have no criminal enforcement powers or
21 jurisdiction.

22 And so when those entities that do have
23 criminal jurisdiction ask us to stand down, we
24 typically agree, as we believe it is in the public
25 interest for us to do so.

1 When you focus on the fact that our
2 proceedings and penalties are civil, not criminal;
3 that we cannot conduct covert investigations; and,
4 instead, have to notify the target when we start an
5 investigation; and that our total budget last year
6 for everything we do was \$5.6 million as compared
7 with the 100-million-dollar budgets that traditional
8 law enforcement agencies have.

9 It makes a huge difference -- it makes a huge
10 amount of sense that we take an initial backseat to
11 criminal investigations and trials, which typically
12 extend through appeal, and often retrial.

13 Nevertheless, even within those boundaries,
14 and our somewhat cumbersome and necessary
15 procedures, we have moved major cases, including the
16 first ethics action ever against a sitting Assembly
17 member, as well as a series of actions against
18 legislators, for sexual misconduct against their
19 staff.

20 We have also imposed hundreds of thousands of
21 dollars in sanctions against lobbyists for seeking
22 improperly to influence public officials, and for
23 failing to follow the lobbying act's filing
24 requirements.

25 Simply put, we are a complement to

1 traditional law enforcement, not a substitute.

2 As I mentioned, our main functions are to
3 educate, monitor, and guide, and when it is
4 appropriate, to investigate and bring civil
5 enforcement actions.

6 In our view, we do all of these things very,
7 very well despite the constraints within which much
8 of our work must be conducted and the
9 confidentiality rules that we must observe.

10 Again, Madam Chairs, Mr. Ranking Member,
11 members of the committee, I very much appreciate the
12 opportunity to be here today, and I look forward
13 both to your questions and to your suggestions.

14 Thank you very much.

15 SENATOR BIAGGI: Thank you very much,
16 Judge Berland.

17 I think we have probably a series of
18 questions from -- on both sides.

19 So, with that, I would just like to begin on
20 the topic of transparency.

21 And then once I'm finished, I will send it to
22 my ranking member, and then back over to the
23 majority, just for some process protocol today.

24 So you touched on this a little bit in
25 your -- well, not a little bit -- but you touched on

1 this in your testimony, and I just want to go into
2 this a bit.

3 JCOPE operates in a shroud of secrecy.

4 The public does not have access to
5 information about what's being investigated or the
6 status of those investigations.

7 The Substantial Basis Investigation reports
8 and settlement agreements are only made available to
9 the public in cases where enforcement action is
10 taken.

11 So can you please just briefly explain the
12 laws that govern JCOPE's ability to disclose
13 information about its proceedings and
14 investigations?

15 JUDGE SANFORD BERLAND: Yes, there are a
16 series of statutory provisions in Section 94 of the
17 Executive Law which create JCOPE and define our
18 procedures.

19 And those, in the first instance, make it a
20 misdemeanor to disclose information we have
21 collected, and prohibit the disclosure of our
22 procedures or votings, et cetera, when a complaint
23 is received.

24 So in a typical instance:

25 A complaint will come in.

1 If appropriate, a so-called "15-day letter"
2 will issue, calling upon the respondent to respond;
3 to answer the allegations.

4 The next step, if appropriate, within
5 60 days, would be a vote by the commission on
6 whether to commence a Substantial Basis
7 Investigation; and, if appropriate, that will
8 proceed to hearing and determination.

9 Every step along the way, by statute, is
10 deemed to be confidential, including the information
11 that we gather, the fact of the complaint, and the
12 fact that proceedings are taking place.

13 This is not something that JCOPE created.

14 This is statutory.

15 SENATOR BIAGGI: Uh-huh.

16 JUDGE SANFORD BERLAND: This is part of our
17 organic structure.

18 SENATOR BIAGGI: So I think to that --

19 JUDGE SANFORD BERLAND: Most recently, as
20 I said in my testimony, we have, where the fact of a
21 complaint has become public; or if the fact of a
22 proceeding, notwithstanding, our confidentiality has
23 become public, the commissioners have voted to
24 permit us to respond to press inquiries, seeking --

25 SENATOR BIAGGI: -- sure.

1 If you don't mind --

2 JUDGE SANFORD BERLAND: -- information on the
3 pendency of the proceeding.

4 SENATOR BIAGGI: -- sorry.

5 I'm being cognizant of my time.

6 But I appreciate your response to that
7 question, and, then, thank you very much for that.

8 I think, to that point, and in that vein,
9 your testimony also mentioned the recently adopted
10 policy that allows the commission to confirm the
11 general status of certain high-profile matters.

12 So can you just explain the parameters around
13 that disclosure, and what qualifies as a
14 high-profile matter; and what information the
15 commission may disclose, in addition to what I've
16 just -- and what I've just shared, as well as what
17 you've just shared?

18 JUDGE SANFORD BERLAND: Yeah, in substance,
19 where the fact of the complaint to the agency has
20 been made public; for example, the complainant has
21 made a public announcement, whether by press release
22 or other means, that the complaint has been
23 forwarded; or there's been a formal referral from
24 another agency, such as the comptroller, or perhaps
25 from the OAG (the Office of the Attorney General),

1 where it's in the public interest to know whether or
2 not we, in fact, received the complaint, and whether
3 or not a proceeding has been commenced, we have now
4 been authorized -- "we," staff, have been authorized
5 by the commissioners to either confirm the pendency,
6 or to indicate that, in fact, we have not received
7 the complaint, as the case may be.

8 You know, the statutory provisions within
9 which we're operating really don't permit much more
10 disclosure than that.

11 SENATOR BIAGGI: Okay. So, then, to follow
12 up on that, the "Times Union" reported earlier this
13 week that they requested comments on whether three
14 matters were pending before JCOPE, but only received
15 a response on one of those issues.

16 I think that the spokesperson of JCOPE had
17 responded that two matters, that were being
18 requested information for, were not able -- they
19 were not able to comment on because they were not
20 considered public matters, despite the fact that the
21 "Times Union" had possessed already a copy of the
22 complaint made to JCOPE in one of the cases; and,
23 also, the referral that was made to JCOPE in
24 another.

25 So can you provide some more clarity around

1 how JCOPE is really determining whether something is
2 a public matter, and to the rule and the policy that
3 was just created?

4 I think it would be really helpful to have
5 you on the record, addressing whether JCOPE
6 instituted this policy to burnish its own
7 reputation.

8 JUDGE SANFORD BERLAND: I mean, the simple
9 answer is:

10 To the extent some of the matters about
11 inquiry was made did not fit the criteria, we are,
12 and I am unable, at this time to provide further
13 comment.

14 As I said in both my written and my oral
15 testimony, it is a crime, under the statute, under
16 Section 94 of the Executive Law, to disclose,
17 without specific authorization, confidential
18 information.

19 But -- but the judgment made by the
20 commissioners was to respond, in my view --

21 And as I said, I'm not speaking for the
22 commissioners; I'm speaking from staff, in my
23 testimony.

24 -- but in our view, there are instances in
25 which there are misconceptions about whether or not

1 the agency has received and/or is acting on a
2 complaint.

3 And where the judgment is made, not so much
4 that it's in JCOPE's interest, but that it's in the
5 public interest, to know whether or not the agency
6 has received the complaint, and whether or not a
7 matter is pending before us, then the criteria call
8 for the disclosure where it's a confidential matter;
9 that is, the complainant has elected, for example,
10 not to go public with it.

11 And one doesn't have to search very far to
12 see instances in which that might be the case.

13 Whether it's a matter that an individual does
14 not want publicized, for good and sufficient reasons
15 from his or her perspective; or one in which there
16 are other sensitivities, we would not consider that
17 to be a public matter in which it would be in the
18 public interest, in part, because it might deter
19 further complaints of that kind from being brought
20 to our attention.

21 And, again, we're operating within a
22 statutory framework.

23 This is not -- but to come back and answer
24 your question, Madam Chair:

25 The intention is not to burnish our image.

1 I'm not sure how it was burnish our image one
2 way or the other.

3 It's do what we can to serve, in our best
4 judgment, the public interest in such matters.

5 SENATOR BIAGGI: Thank you very much.

6 I'm going to yield my time now to
7 Senator Palumbo.

8 SENATOR PALUMBO: Thank you, Madam Chair.

9 Good morning, Judge Berland.

10 Nice to see you again.

11 JUDGE SANFORD BERLAND: Good morning.

12 Good morning, Senator.

13 Good to see you.

14 SENATOR PALUMBO: So, Your Honor, I just have
15 a few questions on the internal process of handling
16 a complaint.

17 My understanding is, of course, a complaint
18 comes in, there's a preliminary investigation, and
19 then there's a vote to proceed.

20 Is that generally how it happens?

21 Or if you would like to clarify that, would
22 you mind just telling us?

23 JUDGE SANFORD BERLAND: In the more typical
24 case, a complaint, it could be something from our
25 tip line; for example, we have an anonymous tip

1 line.

2 It could be an email.

3 It could be a traditional letter, those still
4 come in.

5 Or it could be a referral.

6 Our enforcement staff makes a preliminary
7 investigation.

8 In some instances, depending upon the nature
9 of the complaint, regarding, for example, state
10 employee, they might reach out to the agency, to
11 find if the agency is acting on it, and what the
12 agency knows about it; perhaps the agency's ethics
13 officer, or their own internal investigative staff.

14 It may be a department that has an inspector
15 general.

16 But they will develop preliminary
17 information.

18 And, if appropriate, a so-called "15-day
19 letter" will go out, to -- to -- whether you
20 describe the individual as a target or the subject
21 or the respondent, calling upon that individual,
22 within 15 days, to answer the charges, or the nature
23 and the substance, of the complaint.

24 Once that is received, the commission will be
25 called upon to vote whether or not to commence

1 what's called a "Substantial Basis Investigation."

2 And if there is a vote in favor of doing
3 that, statute calls for the so-called "scope of
4 investigation" to be ordered at the same time.

5 The investigation is opened simultaneously,
6 which describes how our investigative powers,
7 essentially, civil subpoena powers, and interviews,
8 and so on, will be conducted.

9 And then depending on how that case develops,
10 it may go to hearing before an independent hearing
11 examiner.

12 And if it goes all the way through the
13 process --

14 Very few cases go that far without some sort
15 of resolution being reached along the way.

16 -- then there will be a report from the
17 hearing officer to the commission, and the
18 commission will be asked to decide whether or not it
19 agrees with that the determination.

20 If it's a state employee, a state officer,
21 the commission, if it finds there's a substantial
22 basis, will assess the penalty, depending upon the
23 nature of the statute that's violated.

24 If it's a legislative employee, that final
25 determination will be referred back to the

1 Legislative Ethics Committee.

2 SENATOR PALUMBO: Got it.

3 And, now, in the event that there is no
4 action taken against an individual, is there any
5 manner in which the JCOPE could release the
6 investigative materials to another body, of, say,
7 for example, there was something -- there was no
8 action taken, and there were some commissioners who
9 felt that this should have proceeded further?

10 Is there any sort of additional process; for
11 example, making a referral without a majority vote
12 to someone like a district attorney, attorney
13 general, or an actual law enforcement agency?

14 Is there any manner in which that can be
15 done?

16 JUDGE SANFORD BERLAND: Yes.

17 Under the statute, the commission can vote,
18 same type of voting procedure as in other matters,
19 to refer the matter to a law enforcement entity.

20 That's if there's a determination that it's
21 not within our jurisdiction.

22 But if there is, at any point, in which we
23 uncovered what we believe to be evidence of a
24 violation of another criminal provision, then, yes,
25 we do there have the power to refer.

1 But if your question is whether we have the
2 power to make it public, the answer is, the statute
3 does not permit us to do so.

4 And that's just a judgment that the
5 legislature made when it enacted [indiscernible].

6 SENATOR PALUMBO: Sure.

7 And I think -- my question is really confined
8 to whether or not it can be further referred out
9 with a vote, other than the standard vote.

10 And, of course, you probably gleaned I'm
11 referring to the leak investigation, which is kind
12 of the easiest and most obvious one, that was before
13 your time, of course.

14 And, at that point, there was -- it was
15 ultimately -- the inspector general took it up.

16 But my understanding is all of the governor's
17 appointees voted against a Substantial Basis
18 Investigation, and that just kind of went away.

19 So -- and my concern is that, when there's a
20 vacancy as well on the commission, that's an
21 automatic "no" vote.

22 So when you have a vacancy that isn't filled,
23 it creates a bit of a stalemate.

24 So do you have any suggestions as to how we
25 can remedy that concern that I have?

1 JUDGE SANFORD BERLAND: Let me just take it
2 back a step, if I may, Senator.

3 SENATOR PALUMBO: Sure.

4 JUDGE SANFORD BERLAND: Under the statute,
5 the statute is very specific in Section 9-a about
6 leaks of confidential information from the
7 commission.

8 And this stems from our predecessor agency's
9 controversies.

10 And so the legislature specifically provided
11 that, in the event confidential information that is
12 forbidden to be disclosed, and that would include
13 how commissioners voted, is very specifically to be
14 referred to the inspector general.

15 So in that specific instance, the statute
16 does not-- provide -- at least within the terms of
17 the statute, does not provide us with latitude,
18 JCOPE -- [indiscernible] JCOPE, as the commission,
19 to refer that matter except to the inspector
20 general, which, in that instance, I think this is a
21 matter of public record, was promptly done.

22 So that took place; it took place
23 immediately.

24 There was no hesitation and there was no
25 delay.

1 That was immediately reported on to the
2 Inspector General's Office.

3 The more recent incidents, to the extent they
4 involve commission voting, again, I'm not permitted
5 by the statute to speak to that voting.

6 That would be compounding the violation that
7 occurred in that instance -- allegedly occurred in
8 that instances -- instance.

9 You know, nonetheless, individuals have, to
10 my understanding, publicly, made their own reports,
11 if you will, well into the Office of the Attorney
12 General.

13 That's outside of JCOPE's jurisdiction, but
14 there are no secrets about that aspect of it.

15 In answer to your question, I suppose, you
16 know, if it's deemed that a report to the inspector
17 general is not a sufficient way to deal with those
18 kinds of leaks, that the sanctity of this private,
19 confidential information is to be protected, our
20 referral powers could be expanded.

21 And that restriction, which restricts us to
22 be reporting to the inspector general, could be --
23 could have an alternative, or other appropriative
24 investigative or prosecutorial authority.

25 SENATOR PALUMBO: Excellent.

1 Thank you, Judge.

2 Thank you, Madam Chair.

3 JUDGE SANFORD BERLAND: Thank you.

4 SENATOR BIAGGI: Before we move on, I just
5 want to recognize Senator Stec for joining us today.

6 Thank you for joining us.

7 And next we will hear next from
8 Chair Krueger.

9 SENATOR KRUEGER: Thank you.

10 Thank you, Judge.

11 So following up on several of the questions,
12 I'm confused of the role of the IG versus the role
13 of JCOPE.

14 So JCOPE refers to IG?

15 IG refers to JCOPE?

16 Either direction?

17 Neither direction?

18 How does that work?

19 JUDGE SANFORD BERLAND: Well, the state
20 inspector general is an investigator, and it does
21 have the power, where the inspector general -- in
22 fact, the inspectors general in any of the divisions
23 that have inspectors general, when they identify
24 violations of the Public Officers Law, for example,
25 that fall within our jurisdiction, they can report

1 those matters to us, and we would treat them as
2 complaints.

3 In some instances, there may be matters in
4 agencies, that those agencies have the means to
5 address through their own enforcement powers.

6 If an employee is doing something that
7 violates, for example, Section 73 or 74 of the
8 Public Officers Law, they can take certain
9 employment-related actions against an individual.

10 Often we will work in parallel in matters of
11 that kind, in seeking enforcement of violations of
12 the ethics law.

13 With respect to the state Attorney General,
14 and speaking only to the disclosure provision, we
15 report -- we would -- we are required to report a
16 leak of confidential information, under Section 9-a
17 of the Executive Law, to the state inspector general
18 to investigate.

19 And the state inspector general, of course,
20 has the authority, if the inspector general
21 identifies a violation of the criminal laws, to
22 refer such a violation to the appropriate
23 prosecutorial authority.

24 SENATOR KRUEGER: And JCOPE, basically, is
25 limited in its scope to the Public Officers Law, but

1 IGs -- inspector general has a broader mandate of
2 what they can look at.

3 Is that correct?

4 JUDGE SANFORD BERLAND: In some respects,
5 that's true.

6 I mean, we -- as I said earlier, Madam Chair,
7 in response I think to Senator Palumbo's question,
8 if we -- if we/JCOPE, in the course of an
9 investigation, identify what we believe is or could
10 be a violation, for example, of the penal code, as
11 opposed to a Public Officers Law violation, we -- we
12 are empowered, and we would, refer that to the
13 appropriate prosecutorial authority.

14 But, again, we have enforcement powers
15 under the Public Officers Law that the state
16 inspector general does not necessarily have.

17 So there's a bifurcation, if you will, it's
18 the nature of our state body of laws, between the
19 ethics laws and the penal code, and the powers of
20 the inspector general, which mostly have to do, as
21 far as we're concerned, with investigating.

22 The inspector general will investigate.

23 They may refer a matter back to us --

24 SENATOR KRUEGER: Okay.

25 JUDGE SANFORD BERLAND: -- at that point.

1 SENATOR KRUEGER: Thank you.

2 So Senator Biaggi was asking questions and
3 highlighting confusion out here about, when is
4 something confidential, and when is it available to
5 the public or transparent?

6 And she referenced, I guess, the
7 "Times Union" story, I believe yesterday, and how
8 JCOPE has decided, in three different ways, how to
9 handle three story lines that I think were all known
10 to the public at a certain level.

11 So a fourth one in the press, not in that
12 article, was that, tomorrow, JCOPE is going have a
13 board meeting to discuss how to handle some kind of
14 charges involving state workers working on the book
15 for Andrew Cuomo, on government time.

16 So that's, apparently, public information
17 since it was in the newspaper.

18 What do you think is going to be the question
19 brought to the board tomorrow at JCOPE?

20 And what's -- I know you can't answer the
21 question how will they decide or vote, but can you
22 help me understand what role you're going to play
23 here in this case?

24 Because that seems to be another story line
25 that is part of an investigation that I think is

1 before one or two DAs already.

2 So what's JCOPE's role there?

3 I'm trying to understand what JCOPE's role
4 is, and when does it overlap, or not, with the role
5 of DAs and/or inspector generals?

6 So the two questions sort of tie together.

7 So help me understand what you are doing
8 tomorrow.

9 JUDGE SANFORD BERLAND: Madam Chair, we are
10 able to confirm that the matter is pending.

11 And, frankly, the statute doesn't permit me
12 or any of our commissioners or any of our staff to
13 say any more than that, I mean, very specifically,
14 all those proceedings.

15 And this was a legislative judgment.

16 This is not a matter of our rules or
17 regulations or policy.

18 This is not JCOPE-generated.

19 This is statutory.

20 And this is a judgment that the legislature
21 made when it enacted the statute, and one can
22 imagine reasons why.

23 And, certainly, in the preliminary phases of
24 an investigation, and if there's a determination
25 that, indeed, the claim is without sufficient

1 substance or merit, why that -- why that should
2 remain confidential.

3 But one might draw a different conclusion as
4 well, as a legislator, in framing legislation.

5 But from our perspective, we're simply not
6 permitted to talk about the substance of matters
7 before us.

8 And I do understand the frustration of the
9 press.

10 I understand the frustration of those who
11 have brought complaints before us, who believe those
12 complaints have merit.

13 And I certainly understand the frustration of
14 other arms of government, as well as, perhaps, in
15 some instances, our own frustration, when we see in
16 the press that we're supposedly ignoring something
17 that we're not ignoring, and that we're investing
18 huge resources relative to our resources.

19 You know, again, we have 50 employees.

20 Most of them work on many other matters than
21 investigations.

22 But as a matter of simple necessity, we're
23 handling tens upon tens of thousands of filings
24 every year.

25 We're extremely busy.

1 We have a very limited investigative
2 capability; nonetheless, we conduct many, many
3 investigations.

4 And we can't talk about those.

5 You know, we're maligned.

6 And it's frustrating to me.

7 I took this job because I believe very deeply
8 in the importance of enforcing -- the importance of
9 having and the importance of enforcing meaningful
10 ethics laws.

11 SENATOR KRUEGER: So I appreciate your
12 frustration.

13 JUDGE SANFORD BERLAND: And I was acutely
14 aware of the -- you know, the image that the agency
15 has.

16 And I do think it's not deserved.

17 But, unfortunately, Madam Chair, there's so
18 little that I'm permitted by law to say.

19 And it is frustrating; it's frustrating for
20 all of us.

21 SENATOR PALUMBO: So, again -- I appreciate
22 your frustrations -- I'm not necessarily trying to
23 get you to tell me things you can't tell me because
24 of confidentiality.

25 I'm trying to understand, what's the role of

1 JCOPE?

2 And I used a real example, and maybe I would
3 have been better off with a hypothetical.

4 But since the real example was in the
5 newspaper, I used the real example.

6 So I'll stick with that, even though you're
7 not going to tell me much about that.

8 But the article said that JCOPE could
9 actually require the governor to give back the
10 \$5 million, in some circumstance.

11 Do you -- forget the answer to that question.

12 Do you believe that JCOPE has the authority
13 to collect -- demand and collect financial payment
14 for violations of Public Officers Law?

15 JUDGE SANFORD BERLAND: The statute, the
16 Public Officers Law, Section 74, includes penalties
17 of various kinds.

18 Depending upon the nature of the violation,
19 we can assess fines.

20 We can affect an individual's office or
21 employment.

22 Where there has been a misuse of resources
23 for one's own benefit, we have certain remedies
24 available to us in recouping those.

25 I don't -- I'm reluctant to offer a legal

1 opinion.

2 It's a little bit -- my judicial background,
3 having gone through similar hearings in a different
4 setting.

5 SENATOR KRUEGER: Do you know what --

6 JUDGE SANFORD BERLAND: But I do believe we
7 have a good deal of authority.

8 But these are issues that need to be
9 litigated --

10 SENATOR KRUEGER: So has JCOPE ever been
11 success [simultaneous talking; indiscernible] --

12 JUDGE SANFORD BERLAND: -- among the parties.
13 I don't want to foreclose any penalty.

14 SENATOR KRUEGER: -- has JCOPE
15 successfully --

16 JUDGE SANFORD BERLAND: And I don't want
17 to --

18 I'm sorry.

19 SENATOR KRUEGER: -- ever assigned such a
20 penalty, and received a payment, from any of the
21 cases you've deal with -- or, JCOPE has dealt with?

22 Would this be a first-time situation, or is
23 this actually something that has happened?

24 JUDGE SANFORD BERLAND: I personally am not
25 aware.

1 I can certainly get the answer for you.

2 I'm not aware of any instance in which
3 something of that magnitude has been assessed as a
4 penalty.

5 I do assure you that, in any proceeding -- in
6 any proceeding -- we, as is our obligation, take
7 into account the full measure of the authority given
8 to us under the relevant statute, to assess the
9 appropriate civil penalty, and the appropriate
10 curative penalty, where it's within our power.

11 And we're -- we are to come all the way back
12 to some of the other questions, where criminality
13 that we can't enforce is involved, to make the
14 appropriate referral.

15 SENATOR KRUEGER: Thank you very much.

16 Thank you, Madam Chair.

17 JUDGE SANFORD BERLAND: I hope that's
18 responsive to your question.

19 I can't say that there's any precedent at
20 that level for it.

21 But I'm certainly not going to rule out in an
22 appropriate case --

23 SENATOR BIAGGI: Thank you, Judge Berland.

24 Just one moment, before --

25 JUDGE SANFORD BERLAND: -- consideration of

1 that.

2 SENATOR BIAGGI: -- before we continue,
3 I just want to recognize two of our colleagues who
4 have just joined, Senator Liu and Senator Brisport.

5 And before we hand it over to Senator Boyle,
6 I will just ask, very -- very kindly, that when you
7 respond to the questions, that you are a bit more
8 succinct, because I know that we have time
9 considerations.

10 And I also want to make sure that everyone's
11 questions get asked.

12 And there are a lot of questions.

13 So if you can be as succinct as possible --

14 JUDGE SANFORD BERLAND: I will do my best,
15 Madam Chair.

16 SENATOR BIAGGI: -- please do.

17 Thank you very much.

18 Okay.

19 Senator Boyle.

20 SENATOR BOYLE: Thank you, Madam Chair; and
21 thank you for your leadership on this.

22 Judge Berland, good morning; thank you for
23 your testimony.

24 You did mention the perception of JCOPE, the
25 public perception.

1 And I can tell you that, someone who has been
2 in Albany a long time, my perception is that JCOPE
3 is more interested on -- in who is committing
4 malfeasance rather than what they did.

5 I look at -- you mentioned that JCOPE's
6 actions against a sitting Assembly person.

7 When they're going after a freshman
8 Republican Assembly member, or a majority member of
9 the Assembly, who might be a pain to the leadership,
10 that's fine.

11 But the big ones are cases like the leak.

12 Now, maybe I'm wrong, and I'm reading media
13 reports, to say that, from this leak, neither the
14 governor nor the speaker were ever even questioned;
15 the two obvious people.

16 I'm not an investigator, I've never been a
17 law enforcement official, but I can tell you that
18 the first two people I would speak to were those
19 people.

20 And media reports say that they were not
21 questioned.

22 This is the type of thing I'm talking about.

23 Now, one thing you did mention, JCOPE is
24 allowed to make a criminal referral.

25 Maybe you weren't allowed to question these

1 people for some reason.

2 Was there a criminal referral in the leak
3 investigation?

4 JUDGE SANFORD BERLAND: Senator, thank you.

5 Under Section 9-a of -- subsection 9-a of the
6 Executive Law, when a leak is alleged to have
7 occurred, JCOPE is directed to report that leak to
8 the inspector general, with the expectation, one
9 would think, that the inspector general would then
10 conduct an investigation of it.

11 But the provision says, in the event of a
12 leak, and it's a misdemeanor, JCOPE is required to
13 refer that to the inspector general.

14 At that point it's up to the inspector
15 general to conduct the investigation.

16 It's, essentially, taken out of -- for
17 whatever reason the legislature made that judgment
18 when it passed [indiscernible], that that kind of
19 leak --

20 And I think the precedent for the concern was
21 in our predecessor agency.

22 -- the determination was that, rather than
23 the body trying to investigate itself, that that
24 would be referred out to the inspector general.

25 Then, of course, the inspector general, you

1 know, would have the power, depending upon what came
2 of that investigation, to refer the prosecution of
3 that misdemeanor.

4 We don't -- we/JCOPE, don't prosecute
5 misdemeanors.

6 We don't have a criminal procedure built into
7 what we do with all that a criminal proceeding
8 entails.

9 SENATOR BOYLE: Okay.

10 I appreciate that, Your Honor.

11 I would say that, as I mentioned, rather than
12 JCOPE focusing on who committed the malfeasance,
13 rather than what they did, the same is true with
14 staff and members of JCOPE.

15 I think the last person I remember in my long
16 tenure, that really went after ethics violations on
17 both sides, was Mr. Grandau.

18 And he -- whether it was a speaker, or
19 Republican, Democrat, or whatever, they focused on
20 it.

21 And I think that's what we need to do.

22 Very quickly, I know I have a minute and a
23 half left:

24 What would you do, if could you give one
25 major change, if JCOPE stayed the way it is -- not

1 to say it's going to, but if it did -- what's one
2 major change that you would make to make it truly an
3 ethics commission that fights malfeasance?

4 JUDGE SANFORD BERLAND: I would ask that our
5 enforcement powers and our budget for enforcement,
6 both, be augmented.

7 We have very little fiscal capability in
8 employing enforcement counsel and investigators.

9 And I imagine, you know, that's come about,
10 only been here three months, as a function of the
11 wide array of duties we have, and the fact that
12 investigations are a smaller part.

13 But they can be a bigger part.

14 And if that's the concern, you know, giving
15 us a greater capability in ferreting it out, and
16 having more severe penalties, would be one way to do
17 that.

18 But there are many other things that would be
19 helpful to us.

20 But if you're asking me for the chief one,
21 Senator, that would be one.

22 SENATOR BOYLE: Thank you.

23 SENATOR BIAGGI: I would like to recognize
24 Senator Kaminsky for joining us today.

25 And next we're going to hear from

1 Senator Salazar.

2 SENATOR SALAZAR: Thank you.

3 Thank you, Judge Berland, for your testimony.

4 You were appointed, as you mentioned, to the
5 position of executive director of JCOPE just a few
6 months ago, in April of this year.

7 Would you mind describing for us the process
8 of your appointment to the position?

9 JUDGE SANFORD BERLAND: I applied for the
10 position.

11 I learned it had been posted.

12 Applied for the position.

13 I was interviewed.

14 If that's your question, I hope I'm
15 responding properly, Senator.

16 I was interviewed by what I understood to be,
17 effectively, an interview, or a search committee, or
18 subcommittee, of the commission.

19 And ultimately met -- or, had the opportunity
20 to meet -- and all this was being done virtually
21 because it was during the pandemic -- and ultimately
22 had the opportunity to meet with the full
23 commission.

24 And I understand there were a number of
25 candidates who were being considered for the

1 position.

2 And in a late April meeting of this year
3 I believe the decision was made.

4 And I came on board May 6 --

5 SENATOR SALAZAR: Got it.

6 What --

7 JUDGE SANFORD BERLAND: -- in my current
8 position.

9 SENATOR SALAZAR: -- I see.

10 What training, if any, did you receive upon
11 stepping into the executive director role?

12 JUDGE SANFORD BERLAND: Existing staff
13 provided me with tutorials on the -- and materials
14 on the body of laws that -- which I familiarized
15 myself with during the course of the application and
16 the interview process, administered by the agency,
17 led me through a body of precedent, published
18 decisions, which are available on their website.

19 An introduction to the procedural rules
20 governing the commission's operation, its
21 constituency, it's history.

22 SENATOR SALAZAR: Do the 50 employees on
23 JCOPE's staff, do they receive ongoing training in
24 their roles as well?

25 JUDGE SANFORD BERLAND: Oh, yes.

1 Everyone -- I mean, if you're asking about
2 the mandatory ethics training, yes.

3 I mean, everyone is required, state
4 employees -- certainly every state employee who is
5 required to file a financial disclosure statement
6 has mandatory ethics training.

7 It's -- it's -- during the pandemic, it's
8 been virtual, but it is live.

9 SENATOR SALAZAR: Do --

10 JUDGE SANFORD BERLAND: It's not
11 [indiscernible].

12 And then we have a regular educational
13 program that we administer.

14 And we provide that educational asset across
15 state government.

16 And agencies also have their own educational
17 processes.

18 So we provide that to our staff, and we
19 provide it across the spectrum of state agencies.

20 And that includes a variety of educational
21 programs, with an emphasis, I would say, on ethical
22 training.

23 SENATOR SALAZAR: Would you mind telling us,
24 just to go back to when you sought the position,
25 when you applied, do you remember how you found out

1 that the position was open in the first place?

2 Did you learn this from someone you know?

3 Do you remember the circumstances?

4 JUDGE SANFORD BERLAND: Probably the
5 conversation with the former chair, who's someone
6 I've known in various capacities over the years.

7 SENATOR SALAZAR: Got it.

8 And in your opinion, does JCOPE have the
9 ability, the sufficient resources, adequate
10 resources, to hire experts in cases where additional
11 support is needed, and investigations that might
12 require special expertise, such as a sexual
13 harassment case?

14 JUDGE SANFORD BERLAND: Well, we -- actually,
15 our director of enforcement is a former special
16 victims prosecutor from the Manhattan DA's Office.

17 So we have that expertise in-house.

18 SENATOR SALAZAR: In -- so, perhaps, in a
19 different investigation, an investigation of a
20 different nature than sexual harassment, if you were
21 to determine that the expertise relevant to
22 investigation didn't exist in JCOPE's staff, does
23 JCOPE have sufficient resources to hire, and the
24 ability to bring in somebody else, to assist in the
25 investigation?

1 JUDGE SANFORD BERLAND: We don't.

2 I mean, we're not -- I wish we did.

3 And I pointed out in my written testimony, we
4 don't have, for example, access to forensic
5 accountants.

6 And it would be well, if we had a budget that
7 allowed us, for example, to bring in that kind of
8 expertise on an as-needed basis; and additional
9 staff to work with those kinds of individuals.

10 SENATOR SALAZAR: Thank you, Judge.

11 JUDGE SANFORD BERLAND: You know, I mean,
12 I would have to say that would be extremely useful.

13 And as I mentioned to Senator Palumbo, that,
14 indeed, you know, an augmentation of our
15 investigative and enforcement staff, and
16 augmentation of our powers in that area in which we
17 function, and a corresponding budgetary increase,
18 would all be very useful in advancing the work that
19 we do.

20 SENATOR SALAZAR: Thank you.

21 SENATOR BIAGGI: Very well, and we'll take
22 that under advisement when we go back to our
23 legislative desks.

24 JUDGE SANFORD BERLAND: Thank you.

25 SENATOR BIAGGI: Now we're going to hear from

1 Senator Stec.

2 SENATOR STEC: [Microphone turned off.]

3 Thank you both, Madam Chairs.

4 Good morning, Judge.

5 Thank you for your testimony today.

6 I just have one question.

7 I wanted to follow up on Senator Krueger's
8 question.

9 I apologize if you've answered it.

10 [Audio lost.]

11 JUDGE SANFORD BERLAND: I'm sorry, Senator.

12 I apologize.

13 I'm having -- I don't know if it's my connection --

14 SENATOR STEC: [Microphone turned on.]

15 Is that better, Judge?

16 All right.

17 I'm sorry.

18 That was on my end.

19 Thanks for your testimony --

20 JUDGE SANFORD BERLAND: That's much better.

21 Thank you.

22 SENATOR STEC: -- yep, thank you very much,
23 again, for being here with us today, Judge.

24 I want to follow up --

25 JUDGE SANFORD BERLAND: It's a pleasure.

1 SENATOR STEC: -- on a question that
2 Senator Krueger had asked a moment ago.

3 And maybe if I ask it in a different way,
4 I'll be clear on it.

5 Hypothetically, if a complaint is brought to
6 you, or somebody has financially gained from
7 inappropriate actions or behavior, I think the
8 answer to that line of questioning that you gave
9 earlier was that there were penalties that could
10 be -- and fines that could be invoked.

11 My question is, you know, certainly, if the
12 financial gain is significantly more than any fines
13 or penalties can be invoked, there's an obvious
14 encouragement for the behavior.

15 You know, that if I get a \$5,000 fine for a
16 5-million-dollar book deal, that's not much of a
17 deterrent.

18 So I guess my question is, again,
19 hypothetically:

20 If a financial gain is significant, is there
21 a mechanism for JCOPE to claw back, beyond just a
22 standard fine or penalty, the actual gain itself?

23 JUDGE SANFORD BERLAND: Yeah, yeah, the
24 statute provides -- Section 74, in the "penalty
25 provision" section, subsection 4, does provide for a

1 penalty that includes recoupment of the compensation
2 or benefit received by the individual.

3 SENATOR STEC: Okay.

4 Thank you.

5 And, again, I understand you've only been
6 there a few months, so your own personal experience
7 with JCOPE in these matters is limited.

8 But are you aware of this being employed by
9 JCOPE in the past in other similar circumstances,
10 where they've actually recouped the financial gain
11 itself in the form of a penalty?

12 JUDGE SANFORD BERLAND: We -- we -- we,
13 generally -- I want to be very careful in not
14 disclosing a matter that's confidential.

15 But as a general premise, in the short time
16 I've been here, in making determinations, you know,
17 often, in the context of resolving a matter, where
18 the individual is prepared to accept the
19 consequences of his or her conduct, there is
20 absolutely a goal of titrating the outcome to the
21 loss suffered by the agency or the government or the
22 people of the state, or the benefit gained.

23 There are different ways of measuring that,
24 that may not play out exactly, in terms of
25 recoupment; suspensions from or loss of employment

1 over a period of time, and other sanctions, or a
2 combination of penalties.

3 I will say that I'm not aware of any
4 situation of the magnitude of what was referred to
5 earlier.

6 So I can't say that there's any precedent on
7 that.

8 And there isn't a lot of existing case law,
9 generally, on how these penalties are assessed, and
10 in the precise meaning of that phrase.

11 I know how I would want to approach it, but
12 I think I should not prejudge it.

13 This is something that we may well have to
14 litigate.

15 SENATOR STEC: All right.

16 Thanks, Judge.

17 And then one more quick question, with
18 regards to the discussion earlier about, if you
19 uncover wrongdoing that needs to be acted upon.

20 We were talking about the referral to the
21 inspector general.

22 And I think you phrased it, that you were
23 empowered -- JCOPE was empowered to make this
24 referral.

25 Is it empowered, or is it required, to make

1 that referral?

2 And then, as a follow-up to that, in the case
3 that we were discussing previously, where a referral
4 had been made to the IG, is there ever any
5 follow-up, or do we need to be banging on the IG's
6 door?

7 Or is there -- you know, after a referral is
8 made to the IG, is that it for JCOPE?

9 Or do you ever -- is there a conversation, or
10 closing of the loop, that they've got it and they're
11 working on it?

12 JUDGE SANFORD BERLAND: Senator, the answer
13 to the first part of the question is:

14 Where there's an allegation of a leak from
15 JCOPE, we're required by the statute, by 90 --
16 Executive Law 94, and 9-a, to refer that allegation
17 to the inspector general, we're required to do that.

18 In some instances, the commission -- not
19 involving leaks, but of the matters that we're
20 investigating, the commission has the power to refer
21 what could constitute criminal conduct.

22 It would still be up to the prosecutorial
23 authority to make a judgment to a prosecutorial
24 authority.

25 And -- I'm sorry.

1 I lost the last part of your question.

2 SENATOR STEC: Just, once you've made that
3 referral to the IG --

4 JUDGE SANFORD BERLAND: Ah.

5 SENATOR STEC: -- is there any follow-up?

6 I mean, do you know -- or, is that, it goes
7 into a black hole, and maybe this committee needs to
8 be asking the IG to come and testify?

9 JUDGE SANFORD BERLAND: I don't want to
10 prejudge that question -- the answer to that
11 question.

12 It may be that, ultimately, the committee
13 needs to reexamine that restriction, you know,
14 looking at its history, and taking into account
15 subsequent developments.

16 But I don't want to foreclose other avenues.

17 But I don't think I'm at -- it would be
18 appropriate for me to talk about what may well turn
19 into litigated matters --

20 SENATOR STEC: Thank you, Judge.

21 Thank you, Madam Chair.

22 JUDGE SANFORD BERLAND: -- in this forum.

23 Thank you.

24 SENATOR BIAGGI: Senator Gaughran.

25 SENATOR GAUGHRAN: Thank you, Madam Chair and

1 Senator Krueger, and my colleagues; thank you very
2 much.

3 Judge Berland, I am supportive of
4 Senator Krueger's "constitutional amendment"
5 legislation, because I do think we need to have a
6 totally different framework.

7 But I'm also supportive of the legislation
8 that Senator Biaggi has sponsored because, as you
9 know, constitutional amendments take a while, and
10 sometimes much more difficult to accomplish.

11 In answering Senator Boyle's question, in
12 addition to more funding, and to change the statute
13 to allow you to have enforced higher penalties, do
14 you have any suggestions -- listening to your
15 frustration about not being able to provide certain
16 information, do you have any suggestions as to how
17 we could amend the statute to take away some of that
18 frustration?

19 So is there a way that we can balance the
20 ability of JCOPE to provide more timely information
21 about certain matters; but, at the same time, you
22 know, protecting the ability for people to want to
23 come forward and provide information on a
24 confidential basis?

25 How do we strike that balance, and do you

1 have a suggestion to do that?

2 JUDGE SANFORD BERLAND: Yes.

3 Thank you, Senator.

4 I believe that it would be appropriate to
5 modify the statute so that the commission would have
6 a degree of discretion --

7 This may be an dangerous path to go down in
8 some respects, because, you know, understandably, it
9 may create other frustrations in the media and among
10 individual complainants.

11 -- but where -- the commission, where it
12 would be appropriate, and would not either violate
13 the due-process rights, I'll -- speaking broadly, of
14 the individual who may be the subject of,
15 ultimately, you know, a groundless accusation; or a
16 complainant who is concerned about retribution, so
17 it cuts both ways, where there's a balance that
18 makes sense, to allow us, in the public interest, to
19 be able to announce publicly, or make known, that,
20 yes, we've received a complaint, we're working on
21 it, and it's in this phase, and this is where we
22 stand, in our judgment.

23 I wouldn't want it to be mandatory.

24 You know, investigative bodies, like a
25 district attorney's office, a U.S. attorney's

1 office, the Office of the Attorney General, often
2 want to have a certain amount of confidentiality in
3 their proceedings.

4 We are required to march along in a very
5 specific way, procedurally, from the moment we get a
6 complaint.

7 So I think it would be important for the
8 commission, where it wanted to be proceeding in an
9 investigation, to maintain confidentiality for the
10 sake of the investigation; but also have the
11 discretion, where it would be in the public
12 interest, and not violate the rights of the parties
13 to the proceeding in an inappropriate way, to be
14 able to talk about what we -- what we do and what we
15 are doing, and what we're focusing on.

16 That would be extremely important, I think,
17 in improving public confidence; and, in fact, the
18 ethics laws would be minded and they're being
19 enforced.

20 SENATOR GAUGHRAN: Thank you, Judge.

21 One more question.

22 I know you've only been there a few months,
23 but it sounds like, you know, your summer, and
24 spring, reading has not been a lot of novels; that
25 you've been really digging into opinions and the

1 history of JCOPE.

2 Do you have any suggestions, in terms of us
3 looking at legislation just beyond trying to fix
4 this framework, on other actions we might take?

5 Particularly, which would you suggest we
6 might want to look at, in terms of either banning or
7 limiting outside employment, outside income; whether
8 we're talking about the practice of law; or maybe
9 whether we're talking about a very lucrative book
10 deal somebody enters into, you know, writing about
11 what -- you know, what they have done in their
12 public capacity?

13 JUDGE SANFORD BERLAND: Those are -- I would
14 say that's way above my pay grade.

15 Those kinds of judgments, I think, really
16 need to be made at the legislative level.

17 SENATOR GAUGHRAN: I mean, I recognize that
18 they are our decision.

19 But I'm just looking for your thoughts,
20 because you've made other suggestions, you know,
21 especially considering, you know, you see lots of
22 different matters that have come before you, or have
23 come before JCOPE before; and should we be going
24 beyond just fixing the framework, and looking and
25 making other reforms?

1 JUDGE SANFORD BERLAND: Yeah, I mean, if --
2 Senator, if, you know, [indiscernible] I've looked
3 at, many of, not only JCOPE's decisions, but the
4 decisions of predecessor ethics agencies in the
5 state, and they're in the area of outside
6 employment; post employment, after holding a state
7 position or a state office; or holding honorary
8 positions; and so on; or additional sources of
9 income, there's a very sophisticated and deep body
10 of law that's developed, that's aimed at avoiding
11 ethical conflicts and violations, and, at the same
12 time, you know, not wanting to be punitive in
13 punishing folks for taking the time, and often
14 making financial sacrifices, to work in the public
15 sector.

16 And, you know, if the legislature were to dig
17 in, and if it deemed it appropriate to provide
18 brighter-line standards, that, of course, makes it
19 easier for an ethics agency to examine issues.

20 You know, we don't have discretion in that.

21 We have to enforce the law as it stands.

22 And we do that, and I think we do that very
23 effectively, constantly providing advice and
24 guidance to individuals.

25 I think that part of the system works pretty

1 well.

2 And when there are departures, we've been,
3 I think, extremely effective in rooting those out
4 and dealing with them.

5 But I think bright-line standards, you know,
6 so much of what we do is educating; educating the
7 workforce, educating public officers, on what they
8 can and can't do.

9 And sometimes it's not immediately obvious to
10 individuals, and that's why training is so, so
11 important in this field.

12 And so providing bright-line standards might
13 well be a useful undertaking --

14 SENATOR GAUGHRAN: Thank you very much.

15 JUDGE SANFORD BERLAND: -- in enforcing those
16 laws.

17 Thank you.

18 SENATOR GAUGHRAN: Thank you, Judge.

19 JUDGE SANFORD BERLAND: Thank you very much,
20 Senator.

21 SENATOR BIAGGI: Recognizing Senator Liu.

22 SENATOR LIU: Thank you, Madam Chair.

23 And thank you, Judge Berland, for your
24 testimony.

25 I have had the privilege of serving in the

1 state Senate, now coming up on three years.

2 And --

3 SENATOR KAMINSKY: [Inaudible off-camera
4 comment.]

5 SENATOR LIU: Yeah, three years, Todd.

6 And during this time I've had countless,
7 countless conversations with members of the
8 legislature, members of state agencies, members of
9 the public, members of the fourth estate, about
10 JCOPE.

11 Most people don't know who JCOPE is, or what
12 it is.

13 But the people who do know about it, I have
14 never heard a nice thing said, a commending thing
15 said, about JCOPE.

16 It has an awful, awful reputation, as you
17 yourself have noted.

18 Now, you have served as a judge, a state
19 Supreme Court justice, for years.

20 You were, actually, recently appointed to
21 the -- a high-level court, the Court of Claims; yet
22 you left that to head this agency that is just
23 terrible in pretty much everybody's mind set.

24 My question to you, Judge Berland is, Why?

25 Why did you do this?

1 [Laughter.]

2 SENATOR LIU: I'm inclined to believe that,
3 based on your vast expanse of legal experience and
4 expertise, maybe you thought you could bring some
5 level of wisdom to this terrible agency, and make
6 some changes, or at least suggest some changes.

7 So I guess my question is two parts:

8 Why?

9 And what can you -- do you have any
10 suggestions as to how to reformulate or completely
11 recompose JCOPE?

12 Many of the organizations that will testify
13 following you are calling for the total abolishment
14 of JCOPE, and to replace it with some other
15 better-run and better-organized entity.

16 So what are your ideas on how to do that?

17 Because I'm assuming that that's part of the
18 reason why you left your newly appointed position of
19 a Court of Claims judge to come to lead JCOPE.

20 JUDGE SANFORD BERLAND: Well, I came to
21 JCOPE, Senator -- thank you for the question --
22 because I believe very strongly, both, in the
23 importance of properly enforcing ethical rules upon
24 our state officers, elected officials, state
25 employees; and that we're at a juncture -- I don't

1 want to get too highfalutin in this -- but-- we're
2 at a juncture where there's nothing more critical
3 than improving public confidence in government
4 overall.

5 And I personally believe that JCOPE has an
6 extremely important role to play.

7 It has an image issue.

8 I think that image issue is, in large
9 measure, a function of the fact that we're limited
10 in what we can talk about, both in what we are doing
11 and what we, in many instances, have done.

12 Some of it makes a lot of sense.

13 If somebody comes to us, seeking advice on
14 whether they can take a second job, or whatever,
15 I want them to come to us and seek that advice, and
16 not fall into doing the wrong thing.

17 And the statute says they're protected in
18 those instances.

19 If they do the wrong thing, that's a whole
20 different thing.

21 But if they do the right thing, they should
22 be protected in that.

23 On what are the changes that need to be made
24 [simultaneous talking; indiscernible] --

25 SENATOR LIU: If they don't do the right

1 thing?

2 JUDGE SANFORD BERLAND: -- I think, again, it
3 would be helpful if we could talk more about what
4 we're doing, but without trenching upon important
5 due-process rights, so both sides of the proceedings
6 we handle.

7 I think the commission has done an awful lot
8 that's just not seen by people, and I think there
9 may be unreasonable expectations.

10 If the expectation is for us to be a more
11 aggressive prosecutorial agency, then we need to
12 have the fiscal resources to do it, the staffing to
13 do it, and the jurisdiction and the enforcement
14 powers to do it.

15 SENATOR LIU: All right.

16 Well, thank you, Judge Berland.

17 I just want to point out, before my time is
18 up, that from your opening testimony, to the
19 responses that you have given the committee members,
20 to the responses to my questions, you have -- you
21 basically point out that the biggest problem with
22 JCOPE is a bad PR image, and that maybe its hands
23 are too tied too much by certain laws or
24 regulations.

25 It doesn't seem to me that, you know, just

1 being a fresh face in JCOPE, you being the new
2 executive director for a few week -- a few months,
3 it actually seems like you've been there for years,
4 and now are making excuses for JCOPE, as opposed to
5 trying to figure how better JCOPE can do its job.

6 And, you know, I'm kind of -- I'm looking at
7 some of the testimony that's going to be presented
8 later, because we have advance copies.

9 I think a lot of the arguments that we will
10 hear later on are very credible.

11 And, perhaps, I may humbly suggest that you
12 take a look at those suggestions yourself.

13 Thank you.

14 JUDGE SANFORD BERLAND: Thank you.

15 SENATOR BIAGGI: I would like to recognize
16 Senator Stavisky for joining us today.

17 And, Senator Stavisky, if you have any
18 questions?

19 Do you have any questions?

20 SENATOR STAVISKY: Well, very quickly.

21 SENATOR BIAGGI: I would like to recognize
22 Senator Stavisky.

23 SENATOR STAVISKY: Thank you for your
24 testimony.

25 I was listening to it in the car as I was

1 driving up, and I heard -- maybe I heard
2 incorrectly -- but I think you said there were
3 50 positions staffed at JCOPE?

4 JUDGE SANFORD BERLAND: Senator, yeah, there
5 are 50 employees.

6 SENATOR STAVISKY: And that's not enough to
7 do your job?

8 I promised to make my question very quick and
9 brief and to the point, and that's the question.

10 JUDGE SANFORD BERLAND: 50, and our current
11 budget, is enough to do the job that we are doing.

12 If we're going to be called upon to exercise,
13 and given a greater prosecutorial mandate, and
14 prosecutorial powers, then along with that would
15 come of necessity the resources and the budget to
16 perform that role.

17 Or to respond in part to what Senator Liu had
18 brought up, and I think this is part of your
19 question, I think there's a misconception about what
20 we can do, what we do, and what we should be doing.

21 Our enforcement powers are limited to certain
22 statutes, which provide -- and they're civil
23 penalties; they're not criminal penalties.

24 We can make referrals in certain instances to
25 prosecutorial authorities, but we're at the back end

1 of that because we don't have investigative
2 capabilities that we can apply before a complaint is
3 brought.

4 So we don't have wiretap capability.

5 We don't have confidential informants.

6 We don't have a cadre of people out there
7 looking for those kinds of things.

8 Most of our staff are involved in dealing
9 with enforcement of the lobbying law and the filing
10 requirements, the final disclosure statements that
11 need to be filed, and in the educational functions
12 that we perform.

13 Investigations are a small part of our
14 mandate statutorily, and therefore, operationally,
15 that's how they play out.

16 SENATOR STAVISKY: Thank you.

17 But to follow up on your -- on your -- what
18 you just said --

19 JUDGE SANFORD BERLAND: Yes?

20 SENATOR STAVISKY: -- you need additional
21 staff to do enforcement.

22 Now, I just received an email acknowledgment
23 of my filing of my JCOPE report, which was filed in
24 May.

25 We are now at the end of June.

1 What are the 50 people doing if not
2 enforcement?

3 JUDGE SANFORD BERLAND: If -- if -- Senator,
4 if you're filing, in the first instance, through the
5 LEC (the Legislative Ethics Committee), then they
6 process the disclosures first, and then they're
7 later passed along to JCOPE.

8 So you're filing with them, and then there's
9 a period of time before it comes to us.

10 SENATOR STAVISKY: But what are the 50 people
11 doing?

12 How will increasing the number of people give
13 you better enforcement capabilities?

14 What are these 50 folks doing?

15 JUDGE SANFORD BERLAND: As I said, most of
16 the staff is involved in handling the various steps
17 in dealing with enforcement of the lobbying act's
18 disclosure and filing requirements; the financial
19 disclosure statements that are called for by Public
20 Officers Law 73-a; and the educational work that we
21 do.

22 Our enforcement staff is comparatively small,
23 and it's titrated to match the enforcement mandate
24 that we have in the statute.

25 If those powers are going to be augmented,

1 and I've been asked what my thoughts are about
2 things that could be done to improve our
3 capabilities, and my response is, one thing would
4 be, to give us greater enforcement powers, that is,
5 a greater array of penalties that we can administer;
6 and broaden our ability to enforce various laws,
7 statutorily.

8 And, correspondingly, if we're going have
9 increased responsibilities in that sector of what we
10 do, then we should -- we would need a corresponding
11 increase in our enforcement budget.

12 Everyone at JCOPE is busy all the time.

13 That includes not just our enforcement and
14 investigative staff, but everyone else who is
15 working in the agency.

16 SENATOR STAVISKY: There's a difference
17 between busy and accomplishment, though.

18 Thank you.

19 My time is up.

20 SENATOR BIAGGI: Thank you, Senator Stavisky.

21 So there are no further questions from the
22 other senators, and so I'm going to go back to the
23 questions that I was unable to finish from the
24 beginning.

25 And, Judge Berland, what I'm going to ask you

1 right now is -- are three things:

2 The first is to please go off of script.

3 The second is, in the questions that are
4 yes-or-no, to just please answer "yes" or "no."

5 And the third, I think we've heard enough
6 today from Section 94, 73-a, 74.

7 We don't need a regurgitation of that law
8 anymore.

9 So, let's please begin.

10 When we talk about the criteria for what
11 constitutes "a public matter," is JCOPE willing to
12 publish that criteria?

13 Yes or no.

14 Yes.

15 They're on our website.

16 JUDGE SANFORD BERLAND: Right.

17 Okay.

18 Thank you very much.

19 [Inaudible off-camera comment.]

20 SENATOR BIAGGI: Amazing.

21 Would JCOPE support the statutory changes to
22 give the commission greater discretion in releasing
23 information?

24 JUDGE SANFORD BERLAND: I'm sorry, could
25 you --

1 SENATOR BIAGGI: The legislative proposal --
2 right? -- to increase transparency as well as
3 discretion within JCOPE, is JCOPE supportive of this
4 statutory change?

5 Okay.

6 You can --

7 JUDGE SANFORD BERLAND: We are absolutely
8 supportive of increasing transparency and discretion
9 in being able to disclose matters, yes.

10 SENATOR BIAGGI: Okay.

11 Great.

12 Going to an accountability issue, are you
13 concerned that almost two years after the fact we do
14 not know who allegedly leaked
15 Commissioner Julie Garcia's vote to the governor?

16 Yes or no.

17 JUDGE SANFORD BERLAND: I'm sorry.

18 Could you repeat the question?

19 Is this question, Do we know?

20 SENATOR BIAGGI: Yes, and I'm going to yield
21 back my time.

22 Are you concerned that, two years later, we
23 do not know who allegedly leaked
24 Commissioner Julie Garcia's vote to the governor?

25 Is that concerning to you?

1 Perhaps, unless you know already who did
2 [simultaneous talking; indiscernible] --

3 JUDGE SANFORD BERLAND: I mean,
4 operationally, I don't think it's having any current
5 impact on our operations.

6 It would have been interesting --

7 SENATOR BIAGGI: No, no.

8 I'm not [simultaneous talking;
9 indiscernible] --

10 JUDGE SANFORD BERLAND: -- to know that,
11 I believe.

12 But I wasn't part of the --

13 SENATOR BIAGGI: -- no --

14 JUDGE SANFORD BERLAND: -- operation at the
15 times.

16 SENATOR BIAGGI: -- please answer "yes" or
17 "no" because we are -- our time is running out here.

18 So are you concerned that we, after two
19 years, don't know who made that leak?

20 It's concerning to me as a legislator.

21 I'm sure it's concerning to the legislature
22 as a whole.

23 I would hope it would be concerning to you.

24 JUDGE SANFORD BERLAND: From my perspective,
25 and I've only been with the agency for

1 three months --

2 SENATOR BIAGGI: Wait.

3 Judge Berland --

4 JUDGE SANFORD BERLAND: -- [simultaneous
5 talking; indiscernible] --

6 SENATOR BIAGGI: -- Judge Berland, can we
7 just respect the parameters --

8 JUDGE SANFORD BERLAND: -- [simultaneous
9 talking; indiscernible] --

10 SENATOR BIAGGI: -- that I've set for the
11 time.

12 JUDGE SANFORD BERLAND: -- and it has not had
13 an impact.

14 SENATOR BIAGGI: Would you please mind just
15 answering "yes" or "no"?

16 JUDGE SANFORD BERLAND: I have no objection
17 to finding out.

18 But it's not impacting my day-to-day work, or
19 the -- currently, the work of the agency.

20 SENATOR BIAGGI: So I just want to let the
21 record reflect that I find it very concerning that
22 you do not feel that it is a concern that we don't
23 know who leaked the former commissioner's vote to
24 the governor -- former governor.

25 Do you have confidence in the inspector

1 general's investigation pertaining to this issue?

2 JUDGE SANFORD BERLAND: I've seen the report.

3 I am not privy to what underlies it.

4 It would be inappropriate for me to

5 comment --

6 SENATOR BIAGGI: I actually think it would be

7 very appropriate, considering that you are the head

8 of the ethics commission in our state.

9 And so it's either you do have confidence in

10 the inspector general's investigation or you don't;

11 so it's yes or no.

12 JUDGE SANFORD BERLAND: I -- I can't --

13 SENATOR BIAGGI: I'm going to take a

14 non-answer as a "no."

15 JUDGE SANFORD BERLAND: I can't speak to it.

16 I'm not privy -- I'm just not privy to what

17 underlies it.

18 I think it would be [simultaneous talking;

19 indiscernible] --

20 SENATOR BIAGGI: Well, you just said you

21 read --

22 JUDGE SANFORD BERLAND: -- of me to form an

23 opinion without --

24 SENATOR BIAGGI: -- you read the report.

25 JUDGE SANFORD BERLAND: -- without having

1 more information.

2 SENATOR BIAGGI: But you just said that you
3 read the report.

4 JUDGE SANFORD BERLAND: I read the report.

5 SENATOR BIAGGI: So what additional
6 information do you need?

7 JUDGE SANFORD BERLAND: I don't know what
8 underlies it, Senator.

9 And I typically don't [simultaneous talking;
10 indiscernible] --

11 SENATOR BIAGGI: That doesn't make sense
12 because, usually, a report by the IG is
13 substantiated with a lot of information, as well as
14 corroborating evidence.

15 And so to not have -- I'm going to take a
16 non-answer as a "no," because if you did have
17 confidence, you would say "Yes."

18 Do you believe that the leak concerns raised
19 by Commissioner Garcia were a one-off, or were they
20 part of a broader pattern of behavior at JCOPE?

21 JUDGE SANFORD BERLAND: I -- again --

22 SENATOR BIAGGI: Is it part of the
23 [simultaneous talking; indiscernible] --

24 JUDGE SANFORD BERLAND: -- I was not there at
25 the time.

1 I have not seen evidence --

2 SENATOR BIAGGI: Today.

3 JUDGE SANFORD BERLAND: I have not seen
4 evidence of a pattern of that kind of behavior.

5 It hasn't been called to my attention.

6 Had it been, I have a statutory obligation to
7 report that to the inspector general.

8 SENATOR BIAGGI: Okay.

9 In your experience and understanding, have
10 JCOPE commissioners ever retroactively removed
11 approval for a decision that was made by staff?

12 Is there precedent for that?

13 Yes or no.

14 JUDGE SANFORD BERLAND: I'm not aware of any
15 precedent for that.

16 SENATOR BIAGGI: Okay.

17 And that's with regard -- I'm referring that
18 with regard to the vote that's going to take place
19 tomorrow with regard to the governor's book deal.

20 Just going back to your interviewing process,
21 who interviewed you for the role?

22 JUDGE SANFORD BERLAND: It was so long ago.

23 I think it -- I'm sure it was in 2020.

24 It was a subcommittee of the commission.

25 SENATOR BIAGGI: Okay.

1 It's fine that you don't remember.

2 JUDGE SANFORD BERLAND: I'm sure that -- I'm
3 sure -- I think the then-Chair Mike Rosen.

4 SENATOR BIAGGI: Okay.

5 Thank you.

6 JUDGE SANFORD BERLAND: I don't -- it was
7 four or five commissioners on a screening committee.

8 And then, subsequently, there was a further
9 interview with the full commission.

10 But I don't -- I can't say that all 14, or
11 13, at the time, or 12, whatever the number was at
12 the time, were present.

13 But there was more than one interview, and
14 there may have been three.

15 SENATOR BIAGGI: Got it.

16 Okay.

17 And during the interview process, did you
18 have any conversations with the former governor?

19 JUDGE SANFORD BERLAND: No.

20 SENATOR BIAGGI: Okay.

21 Finally, I do have more questions, but
22 I understand that we may be out of time here:

23 When JCOPE takes confidential votes, who is
24 in the room?

25 And are staff privy to the votes of the

1 commissioners?

2 JUDGE SANFORD BERLAND: Confidential votes
3 are done in an executive session, and certain staff
4 would be present, yes.

5 SENATOR BIAGGI: The commissioners and
6 certain staff.

7 What -- can you define "certain staff"?

8 JUDGE SANFORD BERLAND: Typically --
9 typically, "certain staff" would include executive
10 director, general counsel, deputy general counsel.

11 And depending on the nature of the inquiry,
12 might include director of investigation or
13 investigative staff who are responsible for a
14 particular matter that's being presented in the
15 executive session.

16 If it's a matter now of guidance being voted
17 on, it may be the chief ethics officer who would be
18 present.

19 It would really be specific to the nature of
20 the matter.

21 I don't know if this has come up in my period
22 of time, I can't -- I don't recall any specific
23 instance; I suppose the deputy director of lobbying,
24 if it's a lobbying-related issue that's being
25 addressed, or lobbying-law-related issue that's

1 being addressed, in executive session.

2 But, really, it would be beyond executive
3 director, general counsel, deputy general counsel.

4 It would depend on the nature of the matter
5 that was before the commission at the time of the
6 vote.

7 SENATOR BIAGGI: Okay.

8 And then the final question:

9 Who, in your opinion, or statutorily, or
10 constitutionally, holds JCOPE accountable?

11 JUDGE SANFORD BERLAND: Well, we were
12 established, as I recall, as an independent agency,
13 with the idea that we would be largely free of --

14 SENATOR BIAGGI: Accountability?

15 SENATOR PALUMBO: -- that kind of oversight.

16 So, you know, other than general reviews and
17 oversight, that's exercised by the legislative arm
18 of the government.

19 We can have Article 78 proceedings taken to
20 the judiciary if there's disagreement with how we've
21 come out in a proceeding on the part of the
22 respondent of a subject in an investigative matter,
23 or lobbying-law matter, or determination with
24 respect to whether something is a gift or not.

25 So the judiciary has judicial review over our

1 decision-making in that respect.

2 So -- but, you know, by and large, we're
3 intended to be independent.

4 SENATOR BIAGGI: Uh-huh.

5 Okay.

6 JUDGE SANFORD BERLAND: But, of course,
7 subject to due process, and to -- we're a creature
8 of the legislature, so the legislature has that kind
9 of jurisdiction over the laws that govern us in our
10 operations.

11 SENATOR BIAGGI: Just two final comments to
12 close us out today.

13 The first is that, it was my understanding
14 that JCOPE was not permitted to send the IG
15 confidential information.

16 And so that part of your testimony is a
17 little bit confusing to me.

18 And I think, with regard to what we discussed
19 specifically, when it comes to what can be shared
20 with the public, as well as the press, who obviously
21 plays a significant role in alerting the public, and
22 also notifying the public, and bringing transparency
23 to our government, I would argue that transparency
24 is in the public interest, especially when it comes
25 to ethics.

1 I think it's actually the essence and ethos
2 of ethics.

3 And so to argue otherwise, I think, is not
4 doing justice to the issue of ethics.

5 I think that's probably something that is a
6 widespread belief.

7 So as long as there are no other questions...

8 Anyone have questions?

9 JUDGE SANFORD BERLAND: I do want to clarify
10 one thing, Senator, if I may.

11 The standards for -- that have been adopted
12 by the commission, the four instances in which
13 information, confirmation, can or can't be given or
14 stated on our website, there are separate criteria
15 that the commissioners established and deemed not to
16 be public.

17 So I just want to clarify that in answer to
18 I think it was the first in the series of questions
19 that you asked.

20 I don't have any misunderstanding about that.

21 And that was a judgment of the commissioners.

22 And I'm not -- I don't think it's appropriate
23 for me in my role as executive director to comment
24 on the wisdom or not of their determination in that
25 respect.

1 But that's the bifurcation that they drew.

2 SENATOR BIAGGI: I'm sorry, I don't think
3 that I was clear.

4 What do you -- what is it not appropriate to
5 comment on?

6 JUDGE SANFORD BERLAND: The decision by the
7 commissioners themselves on the standards underlying
8 the four instances that are on the website now,
9 recently published, defining when the commission can
10 confirm whether a matter is pending or a complaint
11 has been received.

12 SENATOR BIAGGI: Okay.

13 I don't want my word to mean nothing, and so
14 I just want to restore my own integrity here.

15 Actually -- excuse me -- I have a follow-up
16 to what you just said --

17 JUDGE SANFORD BERLAND: Sure.

18 SENATOR BIAGGI: -- because it seems -- it
19 seems like we're zigging and zagging between things
20 that are very important to get really clear on.

21 And so I think part of what has been the main
22 criticism of JCOPE is that there is an -- there is
23 an appearance or a perception by the public, by the
24 legislature, by others, by good-government groups,
25 that, essentially, JCOPE is making ad hoc decisions.

1 Right?

2 And so it just -- there -- it doesn't -- it's
3 not very clear what the lines are between staff
4 making decisions and commissioners making decisions.

5 And so, specifically, when we're talking
6 about informal decisions -- right? -- and informal
7 opinions, and also formal opinions, which we know
8 are required by the commissioners, and so you're
9 referring to the website, that you currently made
10 these criteria clear.

11 But can you tell us:

12 What are the criteria?

13 And when is it exactly appropriate for staff
14 to provide an informal opinion?

15 JUDGE SANFORD BERLAND: Yeah, as I said, the
16 commissioners made a judgment, that certain
17 information could be provided.

18 And that's stated on the website what can or
19 can't be --

20 SENATOR BIAGGI: Can you -- can you state
21 them for the record today?

22 JUDGE SANFORD BERLAND: -- and to the
23 extent --

24 I'm sorry, Senator.

25 SENATOR BIAGGI: Can you state them for the

1 record right now?

2 JUDGE SANFORD BERLAND: I'm going to have to
3 pull them up.

4 And, unfortunately, I don't have --

5 I'm getting them.

6 Okay.

7 Shall I read them into the record?

8 SENATOR BIAGGI: Yes, please.

9 JUDGE SANFORD BERLAND: Okay.

10 The following:

11 "The commission may, in its discretion" --

12 Oops, I lost it.

13 -- "publicly acknowledge" --

14 "1. Publicly acknowledge receipt of the
15 complaint.

16 The complaint itself, including the identity
17 of the complainant if it's not public, remains a
18 confidential record and cannot be disclosed;

19 "2. Publicly acknowledge the matter is
20 pending before JCOPE for the duration of the matter;

21 "3. Publicly acknowledge the matter is no
22 longer pending before JCOPE after it has been closed
23 for any reason;

24 "And, 4. Publicly acknowledge if
25 the commission has received a request from

1 law enforcement to defer its inquiry."

2 SENATOR BIAGGI: Okay.

3 JUDGE SANFORD BERLAND: Now, these apply when
4 the existence of a complaint or matter is public.

5 The commission, after considering those
6 factors, may, in its discretion.

7 SENATOR BIAGGI: Yes, you can continue.

8 Is that it?

9 JUDGE SANFORD BERLAND: That's it.

10 SENATOR BIAGGI: Okay.

11 Just to round out this point here:

12 So that is when the public can be made aware
13 of what JCOPE is investigating and/or the contents
14 of, whether or not there's an investigation, a
15 complaint, et cetera.

16 But when it comes to decision-making between
17 staff, which you've identified some staff as
18 director of investigations, general counsel, deputy
19 general counsel, or commissioners, of which there
20 are 14, the difference between decision-making, when
21 it comes to informal opinions and formal opinions,
22 is significant.

23 And so, specifically, it would be helpful for
24 everybody here, as well as the public, to understand
25 what the criteria are between when staff can make a

1 decision and commissioners are then required to make
2 a decision.

3 And even more specifically, when we're
4 thinking about the decision-making around the
5 governor's book, and whether or not he was -- the
6 former governor's book, whether or not he was able
7 to pursue that deal, the decision made by staff
8 seems irregular compared to the gravity and the
9 weight of that decision.

10 So I'm trying to understand the criteria, and
11 that is the last thing I'm going to ask; so please
12 answer it thoroughly.

13 JUDGE SANFORD BERLAND: The statute provides,
14 with respect to -- and I'll sort of put it into the
15 advisory side of what the commission does -- it
16 provides that the commissioners can delegate to
17 staff the rendering of those kinds of opinions.

18 So when somebody comes to us seeking guidance
19 on, for example, a post-employment matter, whether
20 that would violate Section 73 of the statute; or
21 whether they want to engage in an outside activity,
22 which could implicate 73 or Section 74, both of the
23 Public Officers Law, the commission can delegate to
24 staff the power to provide written guidance in those
25 matters.

1 Shortly -- as I was coming on board, the
2 delegation in certain instances was changed.

3 So certain requests from certain state
4 officers would now have to go to the commission
5 before they could be rendered.

6 So if that's what you're asking, Madam Chair,
7 that's the answer.

8 There are delegations in place that have been
9 modified.

10 And those have been in place, in one form or
11 another, I believe, since the inception; or,
12 virtually, since the inception, of the agency.

13 There's just -- there are too many requests
14 of that kind, and the expertise required is quite
15 specialized, as I discussed previously, to be -- as
16 a practical and efficient way done in the first
17 instance by the full commission.

18 So those are handled by staff.

19 The commission always reserves the power, if
20 it wishes, to reverse or change or revise at some
21 point those kinds of determinations.

22 And there's a body of published precedent,
23 advisory opinions, that inform the kind of guidance
24 that's given.

25 So it's rarely -- it's not the sort of thing

1 that is done from scratch.

2 There's typically a body of precedent
3 underlying those kinds of determinations.

4 I'm hoping that's responsive to your
5 question.

6 It's not, just for clarification purposes,
7 geared to who is in the room during the executive
8 session.

9 There may be instances in which a guidance
10 requires the attention of the full commission, and
11 therefore the chief ethics officer would be present
12 in executive session, to explain the fact pattern,
13 and provide a view of what the law and precedent
14 require, one way or the other, in that instance, and
15 to respond to any questions or guidance the
16 commissioners may have.

17 But I hope that's helpful.

18 SENATOR BIAGGI: It's somewhat helpful.

19 I just want to, you know, in response to
20 that, I mean, since details about the governor's --
21 the former governor's book deal became public, JCOPE
22 debated a motion to require that all outside income
23 approvals be made by commissioners.

24 And so that vote failed.

25 All of the former governor's appointees voted

1 against it.

2 And so, clearly, that is something that needs
3 work.

4 And I think that the more transparency that
5 JCOPE can have, I think the better, and I think it
6 actually will mean that, in the time that JCOPE
7 still exists, it will be able to uphold its actual
8 mission of serving the public.

9 So thank you very much for your testimony
10 today.

11 We have to move on to the next panel,
12 unfortunately.

13 But we appreciate your time.

14 JUDGE SANFORD BERLAND: If I may, I just want
15 to thank the Chairs, Ranking Member, all the
16 Senators present, for their attention, and for their
17 very thoughtful questions.

18 And I hope I have been helpful to you in your
19 deliberations as you move forward.

20 And I hope I have provided a useful
21 explanation of what JCOPE does, and how it does it,
22 and what we think would be helpful to us in the work
23 that we do.

24 But I thank you very much for this
25 opportunity; it's very much appreciated.

1 SENATOR BIAGGI: If nothing else, we
2 appreciate your time.

3 Thank you very much.

4 JUDGE SANFORD BERLAND: Thank you.

5 SENATOR BIAGGI: I believe up next we have
6 former JCOPE Commissioner Julie Garcia.

7 Julie, thank you very much for joining us
8 today.

9 JULIE GARCIA: Thank you for having me.

10 SENATOR BIAGGI: You can begin whenever
11 you're ready.

12 JULIE GARCIA: Okay.

13 You know, I didn't come here today to give a
14 long dissertation with regard to my time on JCOPE.

15 When I was invited to participate in this
16 panel, I had first declined, because I have a very
17 busy practice, and time wasn't permitting me to be
18 here today.

19 But, you know, the more I thought about it,
20 I think it's important that I do my part, and see
21 this through.

22 And I wanted to come here today to answer any
23 questions that any of you might have regarding my
24 time on JCOPE, and the leak, and the investigation,
25 or the lack thereof, that the inspector general

1 presumably did.

2 I have my opinion regarding the
3 Inspector General's Office and the investigation.

4 And I just would disagree with the judge's
5 testimony, as far as, the person who leaked
6 information is still sitting inside executive
7 session and voting on very important matters.

8 One of the matters I believe that they voted
9 on, the end of June, was whether or not to refer the
10 leak for criminal investigation.

11 So it's just -- it completely is so
12 counterintuitive, or unreasonable, to think that the
13 person who actually committed the crime might be
14 voting not to have a criminal investigation.

15 Like, I'm sorry, but so many of the things
16 that I've experienced since I disclosed the leak
17 just seemed so elementary to me.

18 Like, not -- there's no gray area, it's not
19 black or white.

20 When the inspector general completely fails
21 to interview people who have direct evidence, who
22 are witnesses -- the governor, Speaker Heastie,
23 Howard Vargas -- none of those people were
24 interviewed.

25 And I didn't know that until the media

1 actually started asking questions.

2 I didn't know that when the inspector general
3 released their report.

4 So I just think that's unfortunate, and
5 I think the writing is on the wall, that either the
6 Inspector General's Office is incompetent or
7 corrupt.

8 There's no way -- and I know that
9 Senator Palumbo is a former prosecutor.

10 There's no way, as part of an investigation
11 of this magnitude or this scope, that the first
12 people you don't interview are the ones that would
13 have direct knowledge.

14 And they didn't do that.

15 And the governor -- the former governor
16 downplayed that; he downplayed it in the media,
17 which is, I suppose, not surprising.

18 So I'm here to answer questions if you have
19 any.

20 SENATOR BIAGGI: Thank you very much.

21 And just for some context into the record,
22 and then I'm going to hand it off to my colleagues,
23 and go last for questions, because I spent a lot of
24 time in our previous session, if you would just give
25 me one moment, just to read this into the record:

1 So in January of 2019, JCOPE considered
2 whether to open an investigation into Joe Percoco's
3 potential misuse of government resources.

4 Shortly after the vote, our witness right
5 now, Julie Garcia, received a call from
6 Carl Heastie's office, relaying that the speaker
7 received a call about her vote from Governor Cuomo.

8 Our current witness was an appointee of
9 Speaker Heastie.

10 And per JCOPE's strict confidentiality rules,
11 the governor should, of course, have had no
12 knowledge of Julie's vote.

13 In fact, it would be, and constitute, a
14 misdemeanor, as Julie just referenced a few moments
15 ago, for someone to disclose such a vote.

16 The incident was reported by Julie to the
17 executive director of JCOPE at the time, Seth Agata.

18 Agata filed a complaint with the IG, who
19 were, allegedly, unable to substantiate the
20 allegations.

21 And so I just wanted to make sure that that
22 was all very clear, and set the stage, before I hand
23 it over to my ranking member, Senator Palumbo, for
24 some questions.

25 SENATOR PALUMBO: Thank you, Madam Chair.

1 Nice to see you, Julie.

2 I don't know if you heard --

3 JULIE GARCIA: Nice to see you, Senator.

4 SENATOR PALUMBO: I don't know if you heard
5 my opening remarks, but I did disclose, not that we
6 were office mates, which we were, but that we did
7 work together many moons ago.

8 So it's nice to see you.

9 And I think, in that regard, because you are
10 going to be rendering some opinions regarding an
11 investigation, so could you just tell us, and
12 elaborate on the record, what your background is,
13 and what your career has led you to -- how your
14 career path led you to JCOPE?

15 JULIE GARCIA: Yes.

16 So I graduated from law school in 1999, and
17 from there I went directly to the Suffolk County
18 District Attorney's Office, where I worked for the
19 Honorable James Catterson, and I was an assistant
20 district attorney in Suffolk County.

21 And then some things happened in my personal
22 life, and I had to come back to the North Country --
23 or, I chose to come back to northern New York, and
24 I worked in the Rensselaer County District
25 Attorney's Office for then-DA Ken Bruno.

1 And then I moved up to Warren County, when
2 I [audio lost] for my nieces after the death of my
3 sister.

4 So from Warren County I went to Essex County.

5 I ended up running for district attorney in
6 Essex County, and I was elected DA in Essex County
7 in 2005.

8 And I served as the elected district attorney
9 in Essex County for four years.

10 I -- and I then was a prosecutor for
11 seven years.

12 I have been doing criminal defense work for
13 13 or 14 years.

14 And in August of 2018 I got a call from
15 Howard Vargas, asking if I was interested to --
16 interested in being appointed to the -- to JCOPE as
17 a commissioner.

18 I accepted that invitation.

19 I was appointed by Speaker Heastie near the
20 end of August 2018.

21 And I served in that capacity until I
22 resigned in October of 2019.

23 SENATOR PALUMBO: And after this -- now back
24 to the specific facts regarding that leak, was your
25 first interaction or first notification that there

1 was a leak, when you received that call from
2 Howard Vargas?

3 JULIE GARCIA: Yes.

4 It's -- I was -- I had left the meeting in
5 Albany.

6 The roads were bad that day, and I was
7 heading back to Warren County.

8 And when Howard sent me the first text
9 message, the roads obviously were not good.

10 I didn't want to pull over.

11 I indicated that I was -- he asked me if
12 I was still at the meeting, if we were in executive
13 session?

14 I said, No.

15 And then I basically told him that I would
16 talk to him when I got back home.

17 And I did, out of curiosity, pull over once
18 I got in Warrensburg, and I contacted -- I contacted
19 Howard, as I recall.

20 SENATOR PALUMBO: And I assume you gave a
21 statement to the inspector general in this regard?

22 JULIE GARCIA: Yes.

23 I was -- after that day on January 29th,
24 I really wasn't sure what to do.

25 I was so taken aback by the information that

1 was provided to me by Howard, and hearing that the
2 governor had told the speaker that he wasn't happy
3 with the way the speaker's commissioners voted, and
4 that they had voted against him, I guess, was the
5 comment that was made.

6 In my conversations with Howard Vargas,
7 I said, I [indiscernible] or deny whether the
8 governor's information is accurate, because I'd be
9 committing a crime.

10 And I'm really upset right now.

11 Basically, I don't know what to say.

12 I just need some time this think about this.

13 And at that point Howard was asking me if it
14 was true.

15 And I said, I can't answer that.

16 I said, I don't even know who
17 Speaker Heastie's appointees are, because I made
18 a -- I purposely never looked to see who appointed
19 any of the commissioners, because I wanted to go
20 into those meetings not knowing who appointed who,
21 to see if I felt that any of the votes in the
22 commission were politically motivated.

23 So I really didn't know who Speaker Heastie's
24 appointees were, other than myself.

25 So I did reach out to Commissioner Yates that

1 evening and told him what happened, and that
2 I wasn't sure what to do, and, you know, this is
3 crazy.

4 And it was a brief conversation with
5 Commissioner Yates.

6 And we agreed that I would sleep on it, and
7 make a decision the next day; I would decide what
8 I'm supposed to do.

9 So I had a meeting the next day in
10 Essex County.

11 And I was driving up to Saranac, and I did
12 reach out to Commissioner Yates, and I said, The
13 only obvious thing I can do is report it to
14 Seth Agata.

15 I'm going to go into my meeting in Saranac.

16 And when I get out, I will contact Seth and
17 let him know.

18 And that's what I did.

19 But to go back to the inspector general's
20 investigation, I found it really strange, first of
21 all, that I reported the conduct immediately.

22 And I never -- I didn't hear from the
23 inspector general right away.

24 So I thought that was a red flag, because
25 I really think it's important, when you're talking

1 about the Joint Commission on Public Ethics, I think
2 if they're -- if that commission's not acting
3 ethically, and someone's committing crimes and
4 leaking information to the former governor,
5 I thought that was a pretty big deal.

6 My interview with the Inspector General's
7 Office was conducted on February 21st.

8 So it was quite some time after -- in my
9 opinion, after the -- after the leak was reported.

10 And when I went in, you know, they did tell
11 me, you know, you probably shouldn't talk to anybody
12 about this.

13 You should probably, you know, just keep it
14 to yourself for now.

15 Which, again, there was another red flag.

16 And, then, when I was in the meeting with the
17 inspector general, they explained to me that my
18 testimony would be under oath and recorded, which
19 I wish now that I would have recorded it as well.

20 But I really did feel, at that time,
21 confident that they would investigate the leak.

22 I thought, in my mind, that the person that
23 actually leaked the information would resign, and it
24 would be the end of it.

25 But that never happened, as we all know.

1 And then when the inspector general's report
2 came out on October 4th of 2019, I just honestly
3 couldn't believe it.

4 I mean, I couldn't believe it, the wording.

5 I'm sure you've all read that report.

6 And if you haven't, I would suggest that you
7 do, because it's ridiculous.

8 Like, I read that report, and I couldn't
9 believe it.

10 It's like, what -- who did you interview?

11 And, of course, at that point, again, I had
12 no idea that they never questioned any of the people
13 who would have had information.

14 And, in my opinion, I believe that that
15 report -- the investigation and the report were
16 intentionally delayed.

17 It took months to receive the report.

18 And to add insult to injury, they then sent
19 an affirmation that we had to sign, saying that we
20 weren't the person that leaked the information.

21 Which again I thought was interesting, and
22 I really held out, and I wasn't going to sign it,
23 until a commissioner said to me, You know, that's
24 going to be their excuse for not issuing a report.

25 They're going to say that they didn't get all

1 of the signed affirmations back.

2 And I thought to myself, "Seriously?"

3 So I did end up signing that, swearing that
4 I wasn't the person that leaked the information.

5 And then, in their report, they gave several
6 recommendations that they thought, you know, would
7 serve JCOPE commissioners, and maybe prevent further
8 leaks from happening.

9 Which, again, I just couldn't believe that
10 that was the way that the IG's Office thought this
11 should be handled.

12 SENATOR PALUMBO: Did you have any
13 interaction with members of the Inspector General's
14 Office after you received the decision?

15 JULIE GARCIA: Not that I recall.

16 SENATOR PALUMBO: Meaning, did you ask them,
17 and say, Well, why did you -- you know, did you --
18 and then -- or, after it was revealed that people
19 weren't -- that they didn't interview Harold Vargas,
20 they didn't interview the governor, they didn't
21 interview the speaker, that -- did you have any
22 further interactions, and ask them why they felt
23 there was no reason to proceed?

24 Or anything along those lines?

25 JULIE GARCIA: No.

1 I figured -- I honestly thought that there
2 would be other people in government that would ask
3 them those questions; that there would be people in
4 government.

5 And I hope that you do invite them to come
6 and testify before your committee.

7 And perhaps their -- perhaps they can explain
8 why they didn't interview people who had direct
9 knowledge, or who had more knowledge about the leak
10 than I did.

11 I mean, basically, if you read their report,
12 you can -- you can draw the conclusion that there's
13 no way they would ever investigate any leak any
14 further than talking to the commissioner that's
15 reporting the leak, like, because they were saying
16 that it was supposition and speculation, and there
17 was no proof, that they couldn't substantiate,
18 whether or not the leak occurred.

19 SENATOR PALUMBO: Do you know if there was
20 any --

21 JULIE GARCIA: So --

22 SENATOR PALUMBO: -- go ahead.

23 I'm sorry.

24 JULIE GARCIA: No, you go ahead.

25 SENATOR PALUMBO: I was just going to say, do

1 you know if they received any phone records, they
2 issued any subpoenas, or they did anything along
3 those lines?

4 JULIE GARCIA: No, I -- yeah, so I went
5 there, thinking they would ask for copies of the
6 text messages or my phone records.

7 No, I don't recall them ever asking for any
8 of that.

9 SENATOR PALUMBO: Do you know if any of the
10 other commissioners or individuals who were in that
11 executive session were also interviewed under oath?

12 JULIE GARCIA: I guess.

13 I know that Commissioner Yates was also
14 interviewed.

15 I believe that the executive director at the
16 time, Seth Agata, was probably interviewed --
17 I believe, yes, that Seth was interviewed.

18 SENATOR PALUMBO: Do you know if everyone in
19 the room was ultimately interviewed under oath, and
20 asked the specific question, whether or not they
21 issued the leak?

22 JULIE GARCIA: No, I don't know that.

23 If they were, they didn't mention it to me.

24 SENATOR PALUMBO: Okay.

25 Thank you, Julie.

1 I may be back for another round, because I'm
2 over time; but, thank you.

3 SENATOR BIAGGI: Thank you very much.

4 I just want to acknowledge Senator Serino has
5 joined us.

6 Thank you, Senator Serino, for joining.

7 And I'm going to pass it over to
8 Chairwoman Krueger.

9 SENATOR KRUEGER: Thank you.

10 Thank you, Julie.

11 I appreciate your being here today.

12 And I also appreciate your talking about not
13 just what did or didn't happen with JCOPE, but also
14 what did or didn't happen with the IG, because I've
15 tried to ask several questions already about the
16 relationship between the two, and who was supposed
17 to do what.

18 And I could not get any satisfactory answers
19 from the first testifier, Judge Berland, who was the
20 executive director.

21 So I guess I'll just ask you:

22 Because of your direct experience with this
23 situation, and what clearly went wrong, do you
24 think -- I know what I think we should do to fix
25 JCOPE -- but do you think we also need to fix the

1 model for the inspector general in the state of New
2 York?

3 And do you have any thoughts about how to do
4 that?

5 JULIE GARCIA: Well, I think when it comes to
6 ethics, reform and fixing, fixing things, you know,
7 [indiscernible] does it need to be fixed?

8 I think it needs to be investigated, because,
9 obviously, if the Inspector General's Office taint
10 this investigation; didn't do an investigation for
11 political reasons, or for whatever their reasons
12 are.

13 And in their -- in the Inspector General's
14 defense, I've not heard what the reason -- what
15 they're reasoning is, as far as not interviewing the
16 governor, the speaker, or Howard Vargas.

17 So, you know, I would like to know what the
18 answer to that question is.

19 And I think as people who are interested in
20 good ethics in government, I think that we have that
21 responsibility to ask those hard questions.

22 We just can't let this -- this kind of
23 conduct continue without asking questions.

24 Why did that happen?

25 Why didn't you interview them?

1 Why didn't you ask for phone records?

2 That's basic Investigation 101.

3 You know, it's -- so I think that there needs
4 to be an investigation of the inspector general's
5 investigation of the JCOPE leak.

6 And I wish that the Attorney General's Office
7 would have been assigned to do the investigation,
8 and not the Inspector General, because, had she,
9 perhaps we wouldn't be here today.

10 I don't know.

11 SENATOR KRUEGER: So I know that -- I think
12 we on the panel, and I know you know, that what
13 I think is a fundamental flaw of JCOPE is that it's
14 designed where any of the leaders of the legislature
15 or the governor have the ability to cancel out an
16 investigation.

17 Right?

18 They can just have their people not vote a
19 certain way.

20 And it turns out, then they leak the
21 information back and forth, which was your
22 experience.

23 I also think a parallel problem is the
24 inspector general reports to a governor who can hire
25 and fire them, so that if a governor doesn't want a

1 story line followed through on, he can tell the
2 inspector general, he or she, "You're either going
3 to tank this," as you put it, "or you're not going
4 to remain as inspector general."

5 And by the way, we've had quite a few
6 inspector generals during Governor Cuomo's term, so
7 I guess a number of them were not necessarily
8 pleasing him.

9 And so it's not really a question for you,
10 I think it's more for us, but I wanted to make sure
11 everybody understood how these two things tie
12 together.

13 And your example is some degree of sort of
14 the perfect storm of all of these things happening
15 together.

16 I also -- it's not a question for you --

17 So thank you for your testimony today.

18 -- but something just I wanted to say to the
19 panel, because the previous speaker kept saying,
20 Well, JCOPE's written this way because you, the
21 legislature, wrote it that way.

22 Well, just for the record, because I was here
23 in 2011 -- I'm not sure how many of you were here --
24 maybe you were here -- we didn't write the
25 legislation.

1 It was a governor's program bill, that was
2 then carried by Senator Silver -- excuse me --
3 Assembly Member Silver and Senator Dean Skelos, the
4 two leaders.

5 So just for the record now, when I say that
6 I think JCOPE was a flawed model that has not done
7 its job, and it was a flawed model created and
8 agreed upon by three people who have all left Albany
9 under more than a cloud of ethics problems, two of
10 whom are actually in jail.

11 So to accept, even just for the record,
12 Madam Chair, the previous testifier's statement that
13 it -- "this is how the legislature wrote it," we
14 didn't write it.

15 Three men who are all now out of government,
16 with serious ethics violations, are the people who
17 wrote this law.

18 So I don't know why anybody is surprised if
19 it's not working.

20 So that's more of a commentary than a
21 question for our guest.

22 So thank you very much for your testimony
23 before us today.

24 Thank you, Madam Chair.

25 SENATOR BIAGGI: Thank you so much.

1 Next we are going to hear from Senator Stec.

2 SENATOR STEC: Thanks, Madam Chair.

3 Good morning, Julie.

4 Can you hear me?

5 Can you hear me, Julie?

6 Okay.

7 Good morning.

8 How are you?

9 JULIE GARCIA: I'm fine.

10 Thank you.

11 SENATOR STEC: Good to see you.

12 Thank you for being with us today.

13 I know you're busy.

14 I'd like to follow up some of the questions
15 that Senator Palumbo was asking just [indiscernible]
16 on the process.

17 I want to make sure I understand a little bit
18 of the timeline and the tick-tock.

19 You mentioned your -- the IG never asked you,
20 at the time of your interview, for your text
21 messages.

22 But has anyone, IG or otherwise, ever asked
23 you for any of those records; text messages,
24 emails, whatnot?

25 And did you preserve them?

1 JULIE GARCIA: Yes, I did preserve them.

2 And I believe "The New York Times" requested
3 them.

4 And I believe "The Times Union" requested the
5 messages.

6 SENATOR STEC: Okay.

7 And then how long did -- was your IG
8 interview?

9 Ten minutes?

10 An hour?

11 And where did it take place?

12 Over the phone, or in person?

13 JULIE GARCIA: It was in person.

14 It was in Albany.

15 And I believe -- I believe I was there for
16 over an hour, but don't hold me to that.

17 SENATOR STEC: Okay.

18 And was it just the one interview?

19 That was the only contact that you had with
20 the IG?

21 Or was there ever any follow-up, either
22 verbally or -- or, you know, electronically?

23 JULIE GARCIA: No, no.

24 There was -- not that I recall.

25 I'm fairly certain they never contacted me

1 again.

2 SENATOR STEC: Okay.

3 All right.

4 And -- now, did -- do you know if all those
5 affirmations were ever signed and returned?

6 You know, it was brought up to you that maybe
7 that would be a reason not to follow through with
8 the report.

9 Do -- do you -- is there any way for you to
10 know, or is it in the report, that they -- are these
11 mentioned in the report?

12 JULIE GARCIA: I believe that the
13 spokesperson for the Inspector General's Office
14 recently was quoted in "The New York Post" regarding
15 the affirmations.

16 I believe he stated that he had -- that they
17 had asked all the commissioners and -- to sign that
18 affirmation.

19 But I'm not sure if everyone signed or not.

20 SENATOR STEC: All right.

21 Now -- now, commissioners.

22 But, now, previously, the judge earlier this
23 morning, you know, we were talking about how this --
24 the mechanics of how these votes go down.

25 They're done in executive session, I suppose,

1 understandably.

2 And one of the questions was:

3 In addition to commissioners, how many, or if
4 there was staff present?

5 And the answer was, that there is some
6 certain staff.

7 Is it -- one, can you confirm, is that the
8 normal procedure for these decisions to be done in
9 executive session?

10 And, typically are there staff members
11 present?

12 And specifically to the meeting that we're
13 talking about, can you recall, was there one staff
14 member, five staff members, present?

15 And then, obviously, the follow-up question
16 is going to be:

17 Do you have any way of knowing if they were
18 asked to sign a similar affirmation?

19 JULIE GARCIA: I'm not sure if they were
20 asked to sign a similar affirmation.

21 But I believe, if my memory serves me
22 correct, there were other people in the room during
23 that executive-session meeting.

24 Yeah.

25 And then after -- I mean, then, after the

1 leak, as I recall, they would go into not just
2 executive session, but like a super-executive
3 session, where everyone was asked to leave the room
4 except for commissioners.

5 SENATOR STEC: All right.

6 Now, I'm not familiar with the legal phrase
7 "super-executive session."

8 I'm being a little funny.

9 JULIE GARCIA: I made that up.

10 SENATOR STEC: Yeah, oh, I'm being a little
11 glib there.

12 But -- all right.

13 So it wouldn't be uncommon for -- and is that
14 normally how all of these would go, though?

15 There would be staff present; and then,
16 perhaps at the end of the meeting, they would get
17 rid of staff, just for commissioners?

18 I mean, is that normal, or was this meeting
19 unusual in any way?

20 JULIE GARCIA: Yeah, that wasn't really
21 normal.

22 The exec -- I'm going to call it the
23 "super-executive session," the executive session
24 where everyone was asked to clear the room, except
25 for, as my memory serves me correct, being maybe --

1 yeah, everyone was asked to clear the room.

2 You know, it's difficult, because I have to
3 be very careful not to say things that I'm going to
4 make -- sort of get myself into trouble for, as far
5 as who was present for certain meetings, because
6 I believe some people -- I'm not sure if it's even
7 okay for me to talk about recusals; who recused
8 themselves and who was present and who was not.

9 You know, I just don't want to --

10 SENATOR STEC: And I certainly --

11 JULIE GARCIA: -- subject [simultaneous
12 talking; indiscernible] --

13 SENATOR STEC: -- yeah, and I don't want to
14 get you in trouble.

15 I don't want to get -- you know, that's not
16 where I'm trying to go.

17 So was this meeting par for the course, as
18 far as meetings go, as far as how it flowed, you
19 know, the executive session, and then the
20 super-executive session?

21 Or was it unusual?

22 Did it stand out to you that, hey, there's
23 something different here?

24 JULIE GARCIA: I think it's fair to say that
25 some meetings were more adversarial than other

1 meetings.

2 And I would say that the meeting on
3 January 29th was probably one of the most
4 adversarial meetings that I had attended during my
5 time on JCOPE.

6 SENATOR STEC: And one real quick last
7 question:

8 In all this, do you believe that this leak,
9 your particular experience, was a one-off?

10 Or either having heard about it before you
11 became a JCOPE commissioner, or during your time, or
12 since, do you see a pat -- you know, do you believe
13 there's a pattern?

14 Or do you think that your situation and this
15 leak we're talking about was a one-off?

16 JULIE GARCIA: Yeah, no.

17 I believe that the pattern of behavior in
18 Albany over the last probably decade, maybe longer,
19 is just -- JCOPE is just another example of what has
20 been going on.

21 So, in my opinion?

22 No, that wasn't the first time that
23 information was leaked.

24 In fact, I would have to believe that people
25 continued to talk about this leak, and the leaker,

1 well after -- well after January 29th.

2 You know, it, just, common sense kind of
3 tells you that.

4 And I know it's speculation, but the lack
5 of -- the lack of accountability; when someone
6 doesn't investigate something, to me that's almost
7 like consciousness of guilt.

8 Like, just do the damn investigation.

9 You know, do the investigation.

10 And at the end of the day, if there's no
11 wrongdoing, then there's no wrongdoing.

12 But when you completely disregard people who
13 had important information, and then issue a report
14 months after, and then those people are questioned
15 about the conduct, what, seven, eight months after
16 the alleged conduct, of course there's a window for
17 them to say, "Well, I don't remember."

18 But I can tell you this:

19 If there was a criminal investigation, and
20 anyone was -- anyone goes in and looks at the
21 testimony that I gave, the sworn testimony, to the
22 inspector general, and also reviews Commissioner
23 Yates' testimony that was under oath, I think that
24 it completely contradicts the comments that were
25 made by the speaker, and what his recollection of --

1 was of what happened on January 29th.

2 I don't understand it.

3 It's -- I mean, to say it's disheartening,
4 I was -- I was appointed by someone to do a job, and
5 I did my job.

6 And then people that had information and knew
7 about the leak did not have my back.

8 So you have to -- I mean, we all understand
9 that there's a reason people don't come forward and
10 talk about what's going on in Albany, because,
11 really, no one has their back.

12 No one's going to stand shoulder to shoulder
13 with them and tell them, you know, I'm going to be
14 there, I'm going to stand there with you, I'm going
15 to back you up on this.

16 And there were certainly people that could
17 have packed backed me up on it.

18 But what happens in government, on the state
19 level, and on the federal level, is when we turn our
20 heads the other way, when we remain silent, we end
21 up with 11 people who are victimized by a government
22 that is abusive, bullying, condescending,
23 threatening to ruin people's careers.

24 I think that this panel, all of you senators,
25 I think most of you have been around long enough,

1 you've seen the Moreland Commission.

2 I'm sure you've listened to what
3 Kathleen Rice has said.

4 This is nothing new.

5 You know, it is nothing new.

6 But because it's been -- there's been no
7 accountability, we have created a government that is
8 completely off the rails.

9 And I'm glad that I'm testifying today, just
10 a day after a new governor was sworn in.

11 And I think that she stands ready to tackle
12 some of these huge issues.

13 But one of the biggest issues I think she has
14 is knowing who she can trust.

15 Like, how do you know who to trust right now?

16 And that is really a sad, sad day for all of
17 us, when we don't know who we can trust.

18 SENATOR STEC: Right.

19 Well, I appreciate your testimony.

20 Thank you, Julie.

21 SENATOR BIAGGI: Next we're going to hear
22 from Senator Salazar.

23 SENATOR SALAZAR: Wow.

24 Thank you, Julie, for your testimony, and for
25 your candor.

1 You know, I'm not sure if this is obvious,
2 but would you mind explaining to us, you know, as --
3 as -- in the most detailed way that you can, what
4 exactly motivated you to resign from your position
5 as a JCOPE commissioner?

6 JULIE GARCIA: I didn't feel that I wanted to
7 be a part of an organization that lacked integrity.

8 I sat inside those meetings long enough to
9 know that there were people inside the commission
10 that were not motivated by reforming ethics or being
11 ethical.

12 So I just didn't want to be associated with
13 it.

14 And when -- I waited, and I questioned even
15 waiting, because it was taking the Inspector
16 General's Office so long to release the report.

17 But I felt I needed to see that through.

18 It was a difficult decision for me to resign
19 from the commission, but it was one that I don't
20 regret; I don't regret leaving.

21 I think that one of the important things that
22 any of us has is our own integrity.

23 And I'm not going to compromise my integrity,
24 and sit inside a commission where I feel that
25 they're doing things that they shouldn't be doing,

1 and especially when I know I'm not the first one to
2 say, Hey, this is wrong, you can't do this.

3 Something's wrong.

4 So that's why I resigned.

5 I mean, you know, I'd be lying if I said
6 I didn't wish that I could be there for some of the
7 voting, but, it is what it is.

8 It was time for me to leave.

9 SENATOR SALAZAR: Absolutely.

10 And were you at any point pressured or
11 compelled to resign by anyone in the governor's
12 administration, by anyone in JCOPE, by any other
13 state employee?

14 JULIE GARCIA: I'm really not able to answer
15 that question because of conversations that went on
16 inside executive sessions that I can't talk about,
17 unfortunately.

18 SENATOR SALAZAR: Thank you.

19 You had mentioned earlier that you wished
20 that you had -- I think you mentioned that you wish
21 you had recorded yourself in your testimony to the
22 inspector general when they interviewed you during
23 their investigation.

24 Do you wish that you had recorded yourself
25 because the IG has been unwilling to provide you

1 with that reporting, or for another reason?

2 JULIE GARCIA: You know, I have not requested
3 the audio of that interview.

4 But a reporter contacted me recently, and he
5 told me that he had it, and he would be happy to
6 share the transcript with me, but that it was
7 heavily redacted.

8 And I told him that I didn't want it, that
9 I didn't need to read it.

10 And, plus, I can imagine, you know, how
11 redacted it is, even though only a portion of my
12 interview would have had to do with anything that
13 was confidential with regard to meetings.

14 So, you know, maybe I should look at it and
15 see what they redacted out, that wouldn't be
16 considered a misdemeanor because it was not
17 something that happened in executive session; just
18 something that I testified to.

19 SENATOR SALAZAR: Okay.

20 Well, thank you again for your courage and
21 your willingness, and for taking the time to
22 testify.

23 JULIE GARCIA: And I thank you, too, for
24 taking the time to do this.

25 It's important.

1 I think we all need to work together if we're
2 going to move our state forward.

3 SENATOR BIAGGI: Thank you very much.

4 Next we're going to hear from Senator Boyle.

5 SENATOR BOYLE: Thank you.

6 And thank you, Julie.

7 I'd just like to associate myself with
8 Senator Salazar's remarks, and thank you for your
9 courage and bravery.

10 Thank you for your service, and doing the
11 right thing.

12 And, also, you're one of the very, very rare
13 people we see in government who resign on principle.

14 And it wasn't anything you did; it was just
15 something you felt was not being handled
16 appropriately and ethically.

17 And I want to thank you for that, and making
18 that sacrifice for us.

19 And we're going to make things better to help
20 people like you, and because of people like you.

21 I just have one quick question.

22 So -- and I think it -- maybe, to think about
23 the fact that the way the ethical structure is set
24 up, these agencies, JCOPE in particular, they're
25 built so a -- the governor in this case, perhaps a

1 former governor, can put people in there that will
2 answer, or not answer, or do things, to protect that
3 individual.

4 Sometimes it's not the governor; sometimes
5 it's other members of the legislature, or whatever;
6 but they're not to look at ethical breaches, but to
7 protect individuals.

8 I would say it seems to me that the former
9 governor's circle kept getting smaller and smaller,
10 and that's where you see the people that have worked
11 there over the years at JCOPE and other agencies who
12 are not doing the right thing, are fewer and fewer,
13 and that circle is smaller and smaller.

14 Thankfully, now, the former governor no
15 longer has that ability.

16 And, hopefully, now we can open things up and
17 pour sunshine in there.

18 I just have to ask you, how did you feel
19 before the vote?

20 I mean, you must have been -- you probably
21 didn't know what was going to happen, the extent of
22 what was going to happen, but you knew it was going
23 to be kind of a controversial vote, to open this
24 investigation against the top aide of the former
25 governor.

1 How did you feel about it just before you
2 voted?

3 Were you thinking about it, and the
4 ramifications that might come down?

5 JULIE GARCIA: You know, to speak in general
6 terms, because I'm not going to confirm or deny
7 that's what we were even voting on that day, because
8 [audio lost].

9 As far as voting goes, you know, there are
10 definitely times that I wish that the voting was
11 public, because I think it's easy to articulate why
12 you're voting in one direction or the other; if
13 you're actually voting your conscious, or you're
14 voting in a way that you can explain ethical
15 ramifications, or why it's a "yes" vote or why it's
16 a "no" vote.

17 So that's one thing, I guess, I've been
18 fortunate with.

19 I've always tried to make decisions with
20 regard to my career, as a prosecutor, as a defense
21 attorney, that are in line with the ethics rules,
22 and what I believe is right in good conduct or bad
23 conduct.

24 You know, to me, in ethics there are some the
25 gray areas, but there are some things that are very

1 black-and-white.

2 Like, there's right and there's wrong, and
3 it's not gray.

4 So I'm fortunate that that's not ever really
5 been a huge problem.

6 I kind of just do what I think is right, and
7 run with it.

8 Even testifying here today, it wasn't
9 something I was looking forward to, but I felt that
10 it was important enough to do it.

11 SENATOR BOYLE: Okay.

12 Thank you.

13 And thank you again.

14 And I know it would probably be a pay cut
15 from your now lucrative practice, but I hope you'll
16 consider again coming into government service.

17 JULIE GARCIA: Oh, thank you.

18 Thanks.

19 SENATOR BIAGGI: Julie, so I just have a few
20 questions before we wrap up, unless there's anybody
21 else, of course, who wants to jump in, in which
22 case, of course, please just let me know.

23 First of all, I just want to say, on behalf
24 of all of us, again, and reiterate what many people
25 have already said, but really, truly, for those who

1 are also not speaking or asking you questions, every
2 single one of us appreciates your candor, your
3 courage, your willingness to do this.

4 I understand the -- it's beyond discomfort,
5 I understand it.

6 And I also appreciate that you took a stand
7 at a time when it was not popular to do so.

8 And it says a lot about your character, and
9 your ethics, and your integrity.

10 And so I hope that you know that, and just
11 understand the incredible gratitude that we all have
12 for you today, because everything that you share
13 with us, and will share with us, and have shared
14 with us, will be used to make this structure
15 transformative as opposed to better.

16 "Better" is just making old things a little
17 bit changed.

18 Transformation is really getting to the root
19 of the cause.

20 And I think that your testimony, and how you
21 have been so honest and open, is going to get us
22 there.

23 So I want you to know that it matters, and
24 has an incredible impact.

25 A lot of the questions that I was going to

1 ask have already been asked.

2 So I just want to get to -- I want to just do
3 it in two buckets.

4 The first is just a few question with regard
5 to the leak, and then the second is just some
6 general feedback on JCOPE.

7 And just be -- I want to be very clear with
8 you, too:

9 If there's anything that you can't answer or
10 don't feel comfortable answering, please don't.

11 We obviously want to make sure that you
12 preserve your confidentiality, and also your
13 responsibility.

14 So just going back to the leak, if you're
15 able to, where was the vote in question, where did
16 it take place, physically?

17 JULIE GARCIA: Where did it take place that
18 day?

19 SENATOR BIAGGI: Yes.

20 JULIE GARCIA: We were in Albany.

21 I was in Albany.

22 Some people -- we don't -- some commissioners
23 don't appear in Albany.

24 Some appear via WebEx.

25 But I was there that day.

1 SENATOR BIAGGI: Got it.

2 Okay.

3 And the only reason, just so you know why I'm
4 asking that question, and it may or may not be
5 relevant, so it's just for my information to figure
6 out, because I am curious whether or not -- well, in
7 terms of the timeline, if the vote took place in
8 Albany, and then the leak happened thereafter,
9 obviously, that matters in terms of the timeline.

10 And, obviously, a leak is a misdemeanor.

11 That if the leak took place in Albany County,
12 then it would probably be reasonable to assume that
13 the Albany County DA could look into this as well.

14 And so I don't know the answer to that, but
15 that is why I am asking that question, just so you
16 have some context for that.

17 And in terms of accountability, that's
18 something that I'm hoping to be helpful with, moving
19 forward.

20 Okay.

21 Two more questions on the topic of the leak.

22 When -- okay.

23 I'm just going to ask you very directly:

24 Did you fear retaliation when you reported
25 the phone call that you received from Speaker

1 Heastie's staff?

2 JULIE GARCIA: No, not at all.

3 I did not fear retaliation.

4 SENATOR BIAGGI: Good.

5 That's very good to hear.

6 And then, on this last question on the topic
7 of leaks, can you describe a little bit for us who
8 really have, frankly, no idea, what goes on inside
9 of JCOPE?

10 Because, even though, of course, we just had
11 the executive director testify, it's just still very
12 unclear.

13 So can you describe a little bit what the
14 culture of JCOPE is like?

15 JULIE GARCIA: I really wasn't there long
16 enough, when you think about the time I was on the
17 commission, and we would only meet once a month.

18 You know, most of the time -- 90 percent of
19 the time that I was there, people were very
20 respectful of one another and of each other's
21 opinions.

22 Obviously, like any organization, everyone
23 didn't always agree.

24 There was, as I said before, some very heated
25 conversations over the months that I was there, on

1 different topics.

2 You know, I have -- I have, and continue to
3 have, a lot of respect for Seth Agata in the way
4 that he handled the leak, which was, he -- I could
5 tell, just by talking to him.

6 Sometimes when you talk to someone, and you
7 give them information, their reaction is very
8 telling.

9 And his reaction was appropriate.

10 His response was appropriate, I would say.

11 SENATOR BIAGGI: Thank you for sharing that,
12 and I'm happy to hear that.

13 Okay.

14 Now, moving on to just, JCOPE's structure,
15 and I think just your opinion on this would be
16 helpful in these different categories within the
17 structure of JCOPE, because, obviously, it will help
18 us to write legislation better, and also to,
19 perhaps, make amendments to legislation that already
20 exist, or create new legislation.

21 But before we get to this point, I just -- to
22 be very clear, I think I know the answer to this,
23 but I just want to hear you say it:

24 Do you believe that the public should have
25 confidence in JCOPE?

1 JULIE GARCIA: I believe that the public
2 should have confidence in all levels of government,
3 every level.

4 And I think it's one of the biggest threats
5 to our state at this point, and to our country.

6 Even when you look at things like COVID, when
7 we don't know who to believe, when we're getting
8 information that is so different from one elected
9 representative to another.

10 So, yes, it's very, very important for -- for
11 maybe not as -- there are obvious reasons why it's
12 important that we be able to trust our elected
13 officials in our government.

14 But there are also some things that we
15 probably don't think of day to day, like when there
16 is abusive behavior, and the impact it's having on
17 someone's mental health; or if they're coming to
18 work and they're being subjected to harassment, and
19 they have to make the decision, "Do I stay or do I
20 go?"

21 How do I feed my family?"

22 I mean, I've seen that on every level.

23 I've seen it on the county level, the state
24 level, it's hard; it's hard for people to make those
25 decisions when, if they don't -- if victims don't

1 know that they have someone who is going to back
2 them up, they're not going to come forward.

3 So I think that the ethics -- the Senate
4 Ethics Commission is making -- taking a step, and
5 you're moving in the right direction.

6 So, yeah, we need to have [audio lost] --

7 SENATOR BIAGGI: Thank you for that.

8 In terms of just the JCOPE commissioners --

9 And you may or may not be able to answer this
10 one, I acknowledge that.

11 -- do you think that the JCOPE commissioners
12 were able to make decisions independently of the
13 people who appointed them?

14 JULIE GARCIA: I don't have any reason --
15 well -- I don't know.

16 You know, I can't get in the heads of other
17 people that are on the commission.

18 You know, one thing that I thought was
19 interesting, right before January 29th, that date
20 when I walked in, it seemed like the commission, the
21 make up commissioners, changed suddenly.

22 People left, and new people were put there.

23 So, why?

24 Like, why did the people that left right
25 before that vote, why did they leave?

1 Because no one's ever given me that answer.

2 I don't know if I've asked the question.

3 I think I've asked that as a side note to
4 some of the commissioners outside of executive
5 session, because I'm new.

6 Like, why did that person leave, and why did
7 this person come in, or these people come in, all of
8 a sudden?

9 SENATOR BIAGGI: That's a very excellent
10 point, and an important question to have answered,
11 actually.

12 So thank you for that.

13 And, again, a question you might not be able
14 to answer, but I just want to preface it with that
15 every time so you're not shocked or surprised:

16 Did you feel at any point, inside or outside
17 of JCOPE, like, someone was trying to influence your
18 vote?

19 JULIE GARCIA: Never.

20 I never felt that anyone was trying to
21 influence my vote.

22 SENATOR BIAGGI: Excellent to hear.

23 And then, during your time at JCOPE, I know
24 that it was a short period of time, in your opinion,
25 what do you believe were the biggest structural

1 impediments to actually being able to carry out your
2 duty, with the obvious exception of what we all know
3 already, of course, about the leak of your vote?

4 JULIE GARCIA: I think that the voting
5 structure I found strange.

6 Like, how many votes you can get to actually
7 carry, you know, to do anything.

8 The voting structure is really -- it's in
9 disrepair.

10 The appointment process, I think we all know
11 the problems that come along with the appointment
12 process.

13 Transparency, of course, is a huge issue.

14 Yeah.

15 SENATOR BIAGGI: Thank you.

16 That's very helpful for us.

17 I'm just going to jump to my last question,
18 because I know I'm out of time, and I want to wrap
19 up here, and also respect your time.

20 I am very clear that you're not able to
21 disclose details, of course, about specific votes,
22 but I think it would be helpful to have your general
23 impression about the "partisan voting" requirements.

24 And you just briefly touched on how to
25 initiate an investigation, which, obviously, it just

1 doesn't work.

2 And just for everybody watching, to be very
3 clear, in order to initiate an investigation, a
4 majority of JCOPE's commissioners must vote in
5 favor; however, that majority must also include at
6 least two members appointed by the party and/or
7 branch of government of the individual in question.

8 So if JCOPE was voting about initiating an
9 investigation into the governor, at least two
10 appointees of the governor would have to vote in
11 favor of initiating an investigation, which,
12 obviously, is troubling.

13 So, again, just final question:

14 Did you find that the "partisan voting"
15 requirement, or the "partisan veto," as it's
16 sometimes called, impacted JCOPE's ability to
17 conduct investigations into potential misconduct?

18 JULIE GARCIA: You know, I really am not
19 comfortable answering that question because I recall
20 certain patterns.

21 I recall more people.

22 Like -- and I would have to go back and see
23 who was appointed by -- who was appointed by whom.

24 And I don't really have a strong recollection
25 of a lot of the things that we voted on.

1 But I think one thing that's interesting is,
2 I think a lot of times the media, and the public,
3 take -- they think that they know what happened
4 inside a meeting, and you really don't, because it's
5 not just a "yes" vote or a "no" vote.

6 Sometimes nothing happens, it's complete
7 gridlock; so there's no "yes" and there's vote --
8 there's no "yes" and there's no "no." It's just in
9 a black hole, which is unfortunate.

10 There should be a way to [audio lost].

11 SENATOR BIAGGI: Interesting.

12 [Indiscernible] I actually am not familiar
13 with that.

14 So if something is gridlocked, then just --
15 what happens with that particular issue?

16 Is it just dead?

17 JULIE GARCIA: [Audio lost] that is a
18 question for someone that is more familiar with how
19 that works.

20 I -- when there's been gridlock, as far as
21 I know, nothing happens.

22 SENATOR BIAGGI: Wow.

23 JULIE GARCIA: It's just [audio lost].

24 SENATOR BIAGGI: Wow.

25 That's really helpful.

1 This has been really excellent, actually.

2 Thank you very much for taking the time.

3 If there's no further questions -- oh, yes.

4 Okay.

5 Senator Stavisky would like to ask the final
6 set of questions, if that's okay with you?

7 SENATOR KRUEGER: It was Senator Serino.

8 SENATOR BIAGGI: Senator Serino, not
9 Senator Stavisky.

10 Senator Serino, final question.

11 And, really, again, thank you very, very
12 much.

13 SENATOR SERINO: And I thank you,
14 Senator Biaggi.

15 I think we both have questions to ask, if
16 that's okay.

17 And, Julie, I have to tell you, I'm sort of
18 blown away by your testimony today.

19 But I think it's everything that we've
20 suspected.

21 You know, so it's just hearing it lined out
22 like this is absolutely jarring.

23 And you're right, we absolutely need an
24 investigation.

25 And it's important that people like you are

1 here talking about this today.

2 And as we talk about cleaning house and
3 putting an ethics body in place that actually works,
4 independence is key.

5 You were appointed by the speaker, but you've
6 been able to maintain your independence.

7 Do you have any suggestions for us on how we
8 could -- how we could find other people that would
9 be more independent?

10 You know, I don't know if you have any
11 suggestions at all, but just listening to you, and
12 I love your independence, and I think that's so
13 critical here.

14 And we actually would have to, I think, going
15 forward, just look for people that are going to do
16 the same thing.

17 JULIE GARCIA: Yeah, you know, I think
18 that -- I think you're right, that it's important
19 for people to speak up, and that's why I'm here,
20 because I believe actions speak louder than words.

21 And we could all talk all day long and throw
22 out those, you know, words that everyone loves to
23 hear, "ethics reform," and "we're going to do great
24 things."

25 But we've already seen that actions and

1 words -- if you're going to say you're going to do
2 it, and then you don't do it, then you've lost the
3 public's trust.

4 So -- you know, and I think it's important
5 that -- it's so important to me to see this panel of
6 Republican and Democratic senators coming together
7 and working on something that's so important to all
8 of us.

9 So I think if you want to recruit more people
10 that are independent, I think it's important that we
11 begin a culture where you're backed up.

12 If you say something, someone's going to back
13 you up, or someone's going to stand with you,
14 someone's going to help you move the ball forward.

15 In this case, I felt like no one was willing
16 to help move the ball forward.

17 And I understand that there is a -- there are
18 politicians who believe that being silent, not just
19 elected officials, but people who are involved in
20 politics, they don't speak up themselves.

21 Like, they watch what is going on, and they
22 look the other way, because they're afraid -- some
23 people are afraid that they're not going to get
24 reelected, or they're going to be unpopular.

25 So, you know, I think -- I think it's

1 important to have people that are independent.

2 And how do you flesh those people out?

3 I don't know.

4 I mean, you look at their resume.

5 You look at their experience.

6 You talk to them about ethics.

7 And, you know, people that have actually
8 proven by their actions that they're going to do the
9 right thing.

10 SENATOR SERINO: Thank you very much, Julie.

11 Thank you for testifying today.

12 This was huge.

13 Thank you; appreciate it.

14 SENATOR BIAGGI: Senator Stavisky.

15 SENATOR STAVISKY: Yes.

16 Incidentally, I think it's pretty clear that
17 the ethics committee today is not looking the other
18 way, and I thank my colleagues for joining us.

19 One quick question, and one perhaps more
20 detailed.

21 As you were testifying, you spoke about
22 votes, and committee meeting, and commission
23 meetings.

24 Was there a stenographer present during these
25 meetings, a court stenographer taking down the

1 testimony?

2 JULIE GARCIA: There was someone in the room
3 compiling minutes.

4 SENATOR STAVISKY: But was there written
5 transcripts available the way -- during our Senate
6 sessions, there is a court -- a stenographer.

7 And then, after a certain period of time, we
8 can download the transcripts and read what happened.

9 JULIE GARCIA: There were minutes provided in
10 the book of executive session, and of the general --
11 the open meeting, that we would all have to vote on
12 and approve --

13 SENATOR STAVISKY: Right.

14 JULIE GARCIA: -- or disapprove.

15 SENATOR STAVISKY: No written transcript,
16 that's what I'm saying, that's available even with
17 redactions?

18 JULIE GARCIA: Not -- I don't think that
19 there's a transcript available for the public.

20 But we were provided with the minutes --

21 SENATOR STAVISKY: Right.

22 JULIE GARCIA: -- prior to meeting.

23 SENATOR STAVISKY: Not the same thing.

24 One other question that I think is one of the
25 issues:

1 How would you ensure that an independent
2 ethics, JCOPE-type commission is constituted so that
3 the appointee has independence from the appointing
4 authority?

5 JULIE GARCIA: You know, I'm not sure I'm the
6 one to answer that question [audio lost].

7 SENATOR STAVISKY: Okay.

8 JULIE GARCIA: [Audio lost] and there has to
9 be accountability in government.

10 SENATOR STAVISKY: That's what I'm saying.

11 JULIE GARCIA: I mean, from what we've all
12 seen over the last decade or so, is that there's no
13 accountability.

14 Justice is not swift.

15 It's not -- it doesn't -- accountability
16 should be quick.

17 People need to know that you have their back.

18 SENATOR STAVISKY: I'm not talking
19 accountability so much as independence from the
20 person who appoints you to the job.

21 JULIE GARCIA: That's just finding the right
22 person, I believe --

23 SENATOR STAVISKY: Okay.

24 JULIE GARCIA: -- being able to flesh out who
25 would be a good person for any particular position.

1 I mean, we do it all the time, we hire
2 people.

3 I think people should be hired based on
4 qualifications.

5 I think that the former administration
6 rewarded people for bad behavior.

7 I mean, I think it was loyalty.

8 Like, people were appointed to high positions
9 if the governor felt that they were going -- if the
10 former governor felt that they would be loyal to
11 him.

12 And we have created a very bad situation for
13 a lot of people.

14 SENATOR STAVISKY: The reason I'm asking the
15 question, to give you an example, is that I chair
16 the Committee on Higher Education.

17 And we have appointees to vote the
18 City University of New York and the State University
19 of New York trustees.

20 And, unfortunately, both the mayor and the
21 previous governor have appointed people who work for
22 them to these boards, and I always found that would
23 be troubling.

24 How do you avoid that situation with the
25 ethics commission?

1 JULIE GARCIA: I'm not sure that I am able to
2 answer that question.

3 SENATOR STAVISKY: Okay.

4 JULIE GARCIA: I definitely think that you
5 all have your work cut out for you.

6 I don't know how you avoid -- avoid being put
7 in that position.

8 I think that we would hope that government is
9 hiring people based on their qualifications and
10 their resume.

11 SENATOR STAVISKY: I didn't mean to blindside
12 you.

13 We thank you for your testimony.

14 Thank you.

15 SENATOR BIAGGI: Julie, I think that
16 concludes our questioning.

17 Thank you so much.

18 Really, thank you.

19 We're very grateful.

20 SENATOR KRUEGER: Thank you.

21 SENATOR BIAGGI: All right.

22 We have our third panel.

23 And after our third panel, just for
24 everyone's awareness, we'll take a quick break so
25 that people can eat, and also get sustenance.

1 In our next panel, we are very excited and
2 lucky to have two senators from two different
3 states.

4 We have Senator Louis DiPalma, who is the
5 chair of the Rhode Island Senate Committee on Rules,
6 Government Ethics, and Oversight;

7 As well as, Senator Tom Begich, who is a
8 member of the Alaska Legislature Select Committee on
9 Legislative Ethics.

10 Thank you both so much for joining us from
11 your respective states.

12 It's very exciting to be able to have you
13 here, and to provide an alternative opinion of
14 what's possible in ethics.

15 So, Senator DiPalma, if you would like to
16 begin, we would really appreciate that.

17 I believe Senator DiPalma has to be
18 unmuted, whoever is in charge of that function.

19 Thank you.

20 SEN. LOUIS DIPALMA: Sorry about that.

21 It's only my fifth Zoom call of the day for
22 work, so I apologize.

23 Sorry about that, Senator.

24 SENATOR BIAGGI: No problem.

25 SEN. LOUIS DIPALMA: Madam Chair Biaggi, it's

1 a pleasure to testify before your Committee on
2 Ethics and Internal Governance.

3 Thank you for inviting me to testify before
4 your committee.

5 I hope I can add some value to the purpose of
6 the hearing, to examine New York State's system of
7 ethics oversight and enforcement, identify
8 improvements, and discuss alternative approaches to
9 enforcing ethics.

10 Just a little bit about myself.

11 I am serving my 7th term, 13th year, in the
12 Rhode Island Senate.

13 We serve two years; two-year terms.

14 I'm currently chair, as you indicated, Senate
15 Rules -- I'm chair of the Senate Committee on Rules,
16 Government Ethics, and Oversight.

17 I'm also the first vice chair of the Senate
18 Committee on Finance, and a member of the Senate
19 Committee on Education.

20 Because we're a part-time legislature, I'm a
21 chief engineer at a defense contractor, where I've
22 been for 38 years, and next week I will start
23 Year 39.

24 With respect to the Senate committee on
25 Senate Rules, Government Ethics, and Oversight, our

1 charge regarding government ethics is as follows:

2 To ensure that the members of the Senate and
3 its staff, and through the key pieces of education,
4 monitoring, and disseminating the opinions of the
5 Rhode Island Ethics -- Commission, which I'll talk
6 to later -- adhere to the highest standards of
7 ethical conduct, respect the public trust, and
8 rights of all persons; be open and accountable and
9 responsive, and avoid the appearance of impropriety,
10 and not use our position for private gain and
11 advantage, as you might expect.

12 So what's the current state of the ethics
13 commission in Rhode Island, which was changed just a
14 few short years ago?

15 As a result of a case brought before the
16 ethics commission some 15-plus years ago, went to
17 the court, and because of this, it was changed.

18 Our ethics commission includes
19 nine Rhode Islanders appointed as follows:

20 Four are appointed directly by the governor,
21 and five who are appointed by the governor, but
22 chosen from lists of nominees from each of the
23 following individuals: the president and minority
24 leader of the Senate; as well as the House speaker,
25 and the majority leader and minority leader.

1 The Rhode Island Constitution explicitly
2 gives the ethics commission the power to investigate
3 violations of code of ethics, and to impose
4 penalties, as provided by law, as well as to remove
5 from office individuals who are not subject to
6 impeachment.

7 Additionally, in state statute, the
8 commission is empowered to issue advisory opinions,
9 investigate allegations of ethics violations, and
10 adjudicate allegations of ethics violations.

11 They also have investigatory powers.

12 The commission has the authority to compel
13 witnesses to appear and/or produce evidence, as well
14 as to take verbal and written testimony therefore.

15 Under adjudication policies, the commission
16 has the authority to conduct hearings and compel
17 witnesses to provide evidence and testimony.

18 If they find a violation has occurred, they
19 have authority to require the violator to cease the
20 violating activity, require the violator to pay a
21 civil fine up to \$25,000 each for violation, plus
22 any pecuniary value of enrichment resulting from
23 violation, and refer the entire record of
24 proceedings to the attorney general, which they have
25 done in the past, and/or remove the violator from

1 office, as I said earlier.

2 In terms of requirements, there's certain
3 requirements of the members of the commission that
4 prohibits them from, as you might expect, holding
5 public office; holding office in a political party;
6 participating and contributing to campaigns;
7 attempting to influence any governmental body,
8 except for themselves, basically; holding elected
9 office within one year prior to appointment;
10 et cetera.

11 The one piece I want -- and I know my time is
12 just about up here -- in 2016, as I mentioned
13 earlier, a joint resolution was introduced by our
14 Senate president at the time, allowing a voter of
15 referendum, which was passed, that once approved,
16 reinstated the ethics commission's power to
17 investigate and prosecute lawmakers for any
18 violations of the state ethics code.

19 And here's the key piece:

20 In 2009, our Rhode Island Supreme Court
21 essentially exempted the official actions of state
22 lawmakers from prosecution by the ethics commission.

23 And that specific case, I will send you some
24 information subsequent to the hearing, Madam Chair,
25 and that goes back to the case of Irons v.

1 Rhode Island Ethics Commission.

2 And at that time, Senator Irons was, in fact,
3 president of the Senate.

4 Thank you.

5 SENATOR BIAGGI: Thank you very much.

6 We will hold on questions until we hear from
7 Senator Begich, if that's okay with you,
8 Senator DiPalma?

9 Okay.

10 SEN. LOUIS DIPALMA: Absolutely.

11 Thank you, Madam Chair.

12 SENATOR BIAGGI: Thank you very much for your
13 testimony.

14 I have a lot of good questions for you.

15 Senator Begich, thank you for joining us from
16 Alaska.

17 We're very excited to have you.

18 SEN. TOM BEGICH: Thank you for having me.

19 For the record, my name is Tom Begich.

20 I'm the state senator for District J, which is downtown
21 Anchorage, Alaska.

22 And I'm in my second term as the state Senate minority
23 leader.

24 I was first elected to the state Senate in
25 2016, and have served on the Select Committee on
Legislative Ethics since the 31st Alaska

1 Legislature in 2019.

2 I want to begin by thank you, Senator Biaggi,
3 for the invitation and the opportunity to present on
4 Alaska's legislative experience.

5 I also want to take a moment to thank both
6 your committee staff and my staff for arranging this
7 opportunity.

8 It's always a value to share experiences
9 across jurisdictions; it better informs us all.

10 And it sounds like you are looking at
11 developing your own process, and so maybe these
12 remarks will be helpful.

13 There are three areas of interest I want to
14 focus on.

15 First, the mechanics of how legislative
16 ethics works in Alaska.

17 We're not only bound by the Legislative
18 Ethics Law in our legislature, but also by
19 disclosure rules from the Alaska Public Offices
20 Commission.

21 Together, these create a reasonably
22 comprehensive set of disclosures and public
23 accountability.

24 Second, I want to discuss the process we use
25 for identifying issues of concern, ensuring we are

1 following the law, exploring the workings of our
2 committee and staff, and how we interpret our
3 statutes.

4 Finally, I want to talk about the challenges
5 we have faced with our ethics law, and the
6 difficulty of enforcing it.

7 Alaska's Select Committee on Legislative
8 Ethics is established under our ethics statute, and
9 is comprised of two senators and two House members
10 representing the majority and minority caucuses, so,
11 four members; as well as five members of the public
12 appointed by the chief justice of our Supreme Court.

13 It should be noticed that in Alaska, justices
14 and judges are appointed through a selection
15 process.

16 They're not elected; that is, that process is
17 enshrined in our Constitution, and allows for an
18 independent Alaska Judicial Council to rate and
19 select judges.

20 So it's a fairly independent, depoliticized
21 judiciary, only subject to retention votes.

22 In our ethics committee there are two
23 subcommittees, a Senate and a House one, each
24 chaired by a public member, as is the overall
25 committee.

1 The subcommittees have jurisdiction over
2 actions within each of the respective bodies, and
3 not the other body.

4 There are alternates appointed for each of
5 the legislative members, but only one alternate for
6 the five public members.

7 Nor can the public members be represented by
8 a majority of one political party or another, and
9 the number of ex-legislators as public members is
10 limited.

11 This is achieved through non-partisan
12 appointees to the committee in addition to those who
13 might have a political affiliation.

14 All of these structural elements are designed
15 to ensure that the ethics committee avoids
16 polarization and politicization; and, thus, is able
17 to functionally enforce the Ethics Act with minimum
18 claims of bias.

19 The act itself governs legislators during
20 their service in office, legislative staff, and the
21 public members of the ethics committee.

22 As with most ethics laws, it identifies a
23 number of areas that we, as legislators, are to be
24 bound by.

25 In written testimony I will provide those to

1 the committee, but it's the usual areas of gifts,
2 and political-purpose use of staff, those kinds of
3 things.

4 Our ethics laws have really emerged from a
5 series of negative actions and undue influence by
6 special interests on our political culture.

7 While always in existence in some forms,
8 special note should be made of significant scandals
9 in the mid-2000s, which led to FBI raids, and a
10 number of legislators and lobbyists convicted of
11 bribery and other ethics violations.

12 So we have a history that we had to address
13 directly.

14 Alongside our ethics law, our Public Offices
15 Commission requires extensive disclosure of
16 financial interests by all candidates and
17 legislatures -- legislators annually.

18 And it includes all coverage of contractual
19 work, other income of yourself, independents, et
20 cetera.

21 It should be noted that there's a presumption
22 that Alaska legislators, as in Rhode Island, won't
23 work outside of their legislative duties.

24 I'm a musician and a consultant around
25 education and health issues.

1 So all of us work within the confines of this
2 law.

3 For public employees, this means giving up
4 their employment, as you may not hold two public
5 positions in Alaska at the same time.

6 It means long absences, it means
7 compassionate employers are necessary, and
8 independent, while thought particularly necessary
9 for a legislative job.

10 Issues of concerns are brought to the ethics
11 committee from any member of the public, and can
12 only be brought against legislators, their staff, or
13 public members of the ethics committee.

14 There are both formal and informal tracks for
15 this.

16 And during the initial report and
17 investigation process, all efforts are confidential
18 unless the accused parties desire otherwise.

19 Informal complaints come in the form of a
20 contact to the ethics office, asking for advice, and
21 possible misconduct under the act, before you might
22 file a formal complaint.

23 And while I may run out of time here, I'm
24 going to continue just to give you an idea of how
25 that process works.

1 Formal complaints, when they're lodged, when
2 directed at a Senate or House member, only those
3 subcommittees may take up the consideration of
4 those, and only in executive session, much like a
5 personnel matter.

6 An initial report, which includes the
7 complaint and any response from the accused party,
8 is presented to the subcommittee, with a
9 recommendation as to whether the complaint merits an
10 investigation.

11 A simple majority of the subcommittee is
12 required, both, for quorum, and to determine if the
13 people will move forward with an investigation,
14 which can be done internally or externally.

15 In an abundance of caution, often, we contact
16 the ethics staff on any question of doubt.

17 Most questions have already been addressed in
18 the past, and become part of a permanent record of
19 reports that are produced on a regular basis.

20 And, finally, I just want to touch on some of
21 the challenges, and I know I'm out of time, but
22 I hope that you will bear with me because I think
23 this leads directly to the issues you're having.

24 We've had to revise these laws continually.

25 And most recently, in 2016, we revised these

1 laws, and there were unintended consequences.

2 My wife works for an education committee, for
3 example -- or, an education nonprofit.

4 Consequently, I was prohibited, under our
5 former ethics law, from even discussing education
6 issues, despite sitting on the education committee,
7 and because -- and despite that being my background
8 as a professional in the field.

9 And so we had to adjust our ethics laws to
10 allow somewhat more flexibility.

11 Also, the issue of misuse, I heard you
12 mention earlier, that there is an issue that may
13 happen, from time to time, of leaking the results of
14 ethics committee investigations.

15 This has, in our past, twice happened in my
16 time, either right before my ethics involvement, and
17 right -- and during the ethics committee.

18 And during that time, it's led to the removal
19 of those folks who have, in fact, been identified as
20 leakers from the ethics committee.

21 So I do apologize for the length of these
22 remarks.

23 I'm hopeful they may be of importance in your
24 deliberations.

25 I will say that they are in writing.

1 I will submit them to your committee and to
2 your staff, and they are more detailed in the
3 writing.

4 And with that, I'm open, and I think, along
5 with the Senator from Rhode Island, for other -- for
6 any questions you may have.

7 SENATOR BIAGGI: Thank you so much, both of
8 you.

9 I'm going to pass the microphone over to my
10 colleagues, and we're going begin with
11 Senator Salazar.

12 But I think to start us, what would be very
13 helpful to be on the record from both of you, would
14 just be to answer this one question:

15 From where each of you sit in Alaska and
16 Rhode Island, respectively, what is your --

17 And we will not take offense to anything that
18 you say, please know that.

19 We are here to make a difference and, really,
20 change and transform the system.

21 -- so what is your perception of how New York
22 handles ethics?

23 Okay.

24 We will not be offended.

25 OFF-CAMERA SPEAKER: They both smirked.

1 SEN. TOM BEGICH: I guess I'll go first, and,
2 you know, we only see what we read.

3 I haven't done in-depth research in your
4 process.

5 But just based on the testimony I listened to
6 this morning, I think that you have a biased system
7 that heavily weights the influence of Senate and
8 House members on your ethics involvement.

9 It appears that your public involvement is
10 not as robust as it could be.

11 And I'm not hearing, at least in the
12 testimony, and what of course I read in the papers,
13 but I'm not hearing that you have a robust system of
14 accountability within that.

15 And I think that it's something that you
16 might learn from our process in Alaska.

17 And it sounds like in -- certainly in
18 Rhode Island, but you now -- Rhode Island now has
19 this conflict of a court decision that, effectively,
20 removes legislators from the ethics jurisdiction.

21 But I think you'd have to look at something
22 that's a significantly more accountable system that
23 seeks a bipartisan compromise.

24 We do not have gridlock on our ethics
25 committee.

1 It does not happen, and that public members
2 are a key component of that.

3 SENATOR BIAGGI: Thank you.

4 SEN. LOUIS DIPALMA: Senator, I have not been
5 privy to your previous conversations, due to, as
6 I indicated, you know, several duty calls for work
7 commitments.

8 I would have liked to have been.

9 So it would be unfair for me to, I'll say,
10 comment one way or the other on that topic.

11 I would like to; I would like to give you an
12 opinion.

13 But, as an engineer, without facts or data, I
14 won't give an opinion.

15 [Laughter.]

16 SENATOR BIAGGI: We appreciate you very much;
17 both of you.

18 Okay.

19 Now we're going to hear from Senator Salazar.
20 And thank you for your honesty, it means a
21 lot.

22 SEN. LOUIS DIPALMA: You're welcome.

23 SENATOR SALAZAR: Yeah, thank you, both, for
24 your testimony.

25 I have one sort of clarifying question,

1 because it -- I think it, you know, indirectly
2 impacts the ethics committee in Alaska.

3 Can the governor, essentially, circumvent the
4 Alaska Judicial Council at all, by appointing a
5 judge who is not among the nominees directly from
6 the Alaska Judicial Council?

7 SEN. TOM BEGICH: That is a superb question.

8 First off, in terms of the ethics committee,
9 the appointees are subject to a two-thirds majority
10 vote of both bodies to be -- public members have to
11 be adopted.

12 The governor has no say in that matter.

13 However, your question gets right to the
14 point of the Supreme Court and the chief justice
15 selection.

16 And the governor twice -- this current
17 governor twice has attempted to reject the
18 appointees that have been provided by the judicial
19 council.

20 In both cases, the governor has been forced
21 to back down by Supreme Court action.

22 The Court -- our Constitution is quite
23 explicit, that only the judicial council can present
24 those -- can present judges to the governor for
25 appointment.

1 The judge [sic] must choose from that list.

2 He's been chastised twice by the
3 Supreme Court Chief Justice in that matter.

4 And both times he has agreed with the
5 decision of the Supreme Court Chief Justice.

6 So, no; the governor's hands are tied. He
7 must choose from those appointees selected by the
8 judicial council.

9 And the council is defined in law by governor
10 appointees, an equal number appointed by the bar
11 association, and then, together, they select a
12 tie-breaking seventh member.

13 SENATOR SALAZAR: Thank you.

14 And, additionally, on the process in Alaska,
15 how does -- the Alaska Public Officers Commission,
16 how does their work, if you could explain for us, is
17 it distinct from the ethics committee's work?

18 How does it supplement the work that you do
19 on the committee?

20 SEN. TOM BEGICH: In two ways -- that's a
21 very good question.

22 Thank you, Senator Salazar, through the
23 Chair.

24 There are two ways that has an impact.

25 The first, the APOC rules (Public Offices

1 Commission rules), and they apply to candidates as
2 well as sitting legislators, they require such an
3 extensive amount of disclosure on an annualized
4 basis, both of income outside of the office, as well
5 as any kind of contributions, and those kinds of
6 things, that they create a separate set of standards
7 that enhance the ability of us to actually follow
8 our ethics statutes.

9 They make us fully aware of it.

10 So that is the -- you know, I would say the
11 primary way that it has an impact.

12 The secondary way that they have impact is,
13 through APOC, you may find that there are ethics
14 violations that have occurred through APOC
15 investigations.

16 That information is provided -- will be
17 provided then to the Legislative Ethics Committee
18 for a pursuit, if indeed that is necessary.

19 I will say that there's a greater capacity
20 within the Legislative Committee for Ethics'
21 investigations, and yet the scope is far more
22 narrower than on the Alaska Public Offices
23 Commission which has actually less capacity, but a
24 far broader scope.

25 So a little bit both problematic with that.

1 But both are -- are -- require us to do
2 annual disclosures.

3 I have to do three disclosures annually, at
4 least, to make sure that I'm meeting both APOC and
5 ethics standards.

6 At most, they have to be completed by the
7 second month of the year.

8 SENATOR SALAZAR: All right.

9 Thank you.

10 SENATOR BIAGGI: Now we'll hear from
11 Senator Boyle.

12 SENATOR BOYLE: Thank you.

13 And thank you, Senators, for your time.

14 I just have a quick question.

15 You both referenced your financial disclosure
16 forms.

17 We have them in Albany, too.

18 And I've always kind of thought it was a joke
19 here because they go in, like, fifty- or
20 hundred-thousand-dollar increments for outside
21 income.

22 You know, we say, well, we have 30 different
23 categories. But if you're making \$9.3 million,
24 that's one of the categories, and 10 million and up.

25 My question to you is: Do you do it by the

1 thousand-dollar, by the five-thousand-dollar,
2 increments in your disclosures?

3 SEN. LOUIS DIPALMA: From a Rhode Island
4 perspective, I would need to check.

5 I think it's just outside employment.

6 I'm not certain there's a dollar amount.

7 I can check while we're -- when
8 Senator Begich -- if I'm saying that correctly --
9 when he speaks, I can -- my -- find out from the
10 disclosures, which we're required to do in April of
11 every year.

12 And I think it's any outside employment.

13 SENATOR BOYLE: Thank you.

14 SEN. TOM BEGICH: And to Senator DiPalma,
15 it's Senator Begich; but, thank you.

16 The -- in Alaska we have arbitrary numbers.

17 If you make -- if it's less than \$1,000,
18 you're not required to report it.

19 Then there's, \$1,000, I believe it's to
20 5,000, and then to 10,000. And then there are
21 larger increments after that.

22 So there -- but it's quite detailed, and it
23 requires any reporting over \$1,000, and so you
24 actually have to fill out.

25 As a contractor, I may have -- on a given

1 year, I could have 12 different client contracts
2 that I have to report on the form.

3 And the form can go to pages and pages and
4 pages. It's quite extensive. Perhaps it's too
5 extensive.

6 And my wife is required to report, or any
7 dependent you know, living in my household is also
8 required to file the same disclosure reports.

9 So I have to report all income -- outside
10 income.

11 I have to report all outside investments.

12 I have to report -- and there's, I think,
13 it's 12 or 13 different pages of reporting I have to
14 do electronically.

15 I have to report assets.

16 I have to report liabilities, with the
17 exception of credit card liability.

18 And so all of those things are required under
19 our law.

20 Any state land holdings, any state contracts,
21 or separate items.

22 A number of us have state contracts because
23 of the nature of the work we may do, or we may be
24 involved in that.

25 So all of those things have to be disclosed

1 for any appearance of conflict of interest.

2 Our laws are quite extensive and quite
3 strict.

4 SENATOR BOYLE: Thank you.

5 SEN. LOUIS DIPALMA: So, Senator, I just --
6 as I promised, I just checked.

7 I stand corrected.

8 It's \$1,000 or more, most income, from an
9 employer annually, for myself, my spouse, or any
10 dependent children.

11 SENATOR BOYLE: Thank you.

12 SENATOR BIAGGI: Excellent.

13 Senator Gaughran.

14 SENATOR GAUGHRAN: Thank you very much.

15 First question is for Senator Begich.

16 You referenced that appointments are made by
17 members of your judiciary.

18 We have a proposed constitutional amendment,
19 that Senator Krueger here is the prime sponsor of,
20 that actually does include some members of the --
21 certain judges making, actually, I think, combined,
22 a majority of the appointments of the new
23 commission.

24 Have there been any issues as it relates to
25 that, you know, including the concept of, is there

1 judicial review that somebody could make of a
2 decision that they didn't like coming out of the
3 commission?

4 And then, you know, if so, how does that, you
5 know, go through the judicial system in Alaska?

6 SEN. TOM BEGICH: That is a very good
7 question.

8 I guess, first, we haven't faced that, to my
9 knowledge.

10 Decisions of the Legislative Ethics
11 Committee, though, I believe are appealable.

12 I'd have to check to see.

13 No one has ever appealed a decision,
14 certainly since my awareness of the committee.
15 Even before I was on it and as a member of the
16 public, I'm not aware of anyone challenging a
17 decision of the ethics committee.

18 So I think that's part of your question.

19 I think the first part of your question,
20 though, was asking about, was there any issue with
21 the appointment -- the judicial appointments?

22 Or was implying, is there an issue
23 [simultaneous talking; indiscernible] --

24 SENATOR GAUGHRAN: Well, maybe just even a
25 feel for the types of people that were appointed by

1 these judges, and the mix, and how [simultaneous
2 talking; indiscernible] --

3 SEN. TOM BEGICH: Yeah, thank you, Senator,
4 and, again, through the Chair.

5 The -- Senator, when the appointments are
6 made by the chief justice, they must come before the
7 legislature for two-thirds approval.

8 That requires super-majority approval of the
9 appointees to start with.

10 So there's been no challenges of any public
11 member, that I'm aware of.

12 We have had public members resign when they
13 believed they had a conflict; or when they were
14 taking on tasks, like wanting to run a political
15 campaign, or something like that, that would then
16 prohibit them from being a member.

17 Our legislative requirements for the public
18 members to sit on the Legislative Ethics Committee
19 are quite strict.

20 SENATOR GAUGHRAN: Thank you.

21 And then, I guess, a final question for both
22 of you:

23 I know, Senator Begich, you said that, in
24 terms of the parameters of outside employment and
25 income, that you cannot be another public employee.

1 Are there any other restrictions in Alaska,
2 and are there any restrictions, Senator DiPalma, in
3 Rhode Island, as it relates to, you know, the
4 setting up parameters of what you can and cannot do
5 in terms of employment or income?

6 SEN. TOM BEGICH: I can just -- you know,
7 ours was resolved by a lawsuit back in the '60s,
8 actually against my father who was a public
9 schoolteacher and a state senator.

10 And the rule is very basic.

11 The -- for officeholders, you cannot hold
12 two public jobs; so you cannot be an employee of the
13 university and a legislator. You have to make a
14 choice between the two.

15 It's very strict. The line is not really
16 debated because it's quite clear.

17 I -- you can have contractual relationships,
18 but there are appearances that -- so maybe that's
19 the one gray area, is that I choose not -- I used to
20 have a lot of contracts with school districts,
21 et cetera. And I canceled all of them when I became
22 a senator because of the appearance.

23 I think some of them I could have retained,
24 but -- because they're -- you're not a direct public
25 employee receiving direct public employee benefits.

1 You're still a private company.

2 But we do have -- like, we have a member of
3 the House majority who is also an electrical
4 contractor, who is contracted to the federal
5 government, and is not prohibited from that.

6 And federal government employment does not
7 prohibit you from the dual state public employment
8 requirement.

9 And so you can do that.

10 And you can be a locally elected official,
11 and serve as staff in the legislature. That's
12 allowed; but that is a rare exception.

13 SENATOR GAUGHRAN: Thank you.

14 SEN. LOUIS DIPALMA: Senator, I'll need to --
15 I took an action to verify that for you, because
16 I want to make sure I give you a factual answer.

17 Think about it in the context of,
18 Rhode Island, not that we're small, but we are a
19 part-time legislature.

20 So we have -- people have -- a majority of
21 folks in the legislature, both in the Senate and the
22 House, have full-time jobs or part-time jobs, some
23 are retired. But the vast majority of us have
24 full-time jobs. Many schoolteachers, some lawyers,
25 et cetera.

1 So the outside employment is an expected
2 piece of just about -- of the 113 legislators we
3 have in Rhode Island.

4 I will verify.

5 And we also have, I should have mentioned
6 earlier, with the speech-and-debate clause, with
7 regards as it relates to -- and participation from
8 an ethics perspective, the class size.

9 So we have ethics training every year.

10 That's been in place for a number of years
11 now, as long as I've been in Senate. And we've had
12 other training over time in other areas.

13 The class size, though, typically, during the
14 training, they'll talk about a class size of 100.

15 If the class that you're in is a class of 100
16 or more, you get an advisory opinion, and they
17 encourage advisory opinions from the ethics
18 commission, you will be an exempt from an issue of
19 conflict of interest.

20 Specifically, teachers, state budget provides
21 funding to school districts for education. Teachers
22 can vote on the annual budget.

23 That is not a conflict of interest, given the
24 class size, greater than 100 of the number of
25 teachers in the state.

1 I will get the specifics for you about
2 restrictions.

3 [Indiscernible] from the federal side of who
4 can participate. But, essentially, are a partisan
5 body. They cannot be -- work for the federal
6 government and be members of the legislature.

7 SENATOR GAUGHRAN: Thank you, Senators.
8 Very helpful.

9 SENATOR BIAGGI: Okay.

10 I think I have the final set of questions
11 here.

12 So I just want to note on the record that the
13 Center for Public Integrity ranks Alaska number one
14 in state integrity, and Rhode Island is number five,
15 I believe.

16 Just to reiterate what I said when we
17 started, New York received the ranking of 31, and we
18 have a D minus.

19 Alaska received a C grade, but they are
20 first. And Rhode Island is fifth place.

21 So, clearly, you are both in states that are
22 doing something much better than us, and that's why
23 you're here, and why we're grateful for everything
24 you've shared.

25 I have questions for both of you.

1 I have one question for Senator Begich, if
2 that's all right. And then we'll move on to
3 Senator DiPalma.

4 I'm really very interested in the appointment
5 process of members of the public.

6 I find that to be particularly unique, and
7 also very clever in a good way, not clever in a bad
8 way.

9 And I am sorry if I missed this, but how long
10 do the members of the public serve?

11 And I know that you went through all of the
12 requirements with Senator Gaughran, my colleague,
13 but I'm just curious about that.

14 And do you find that, with the members of the
15 public, you are able to better handle complaints?

16 I'm assuming the answer is yes, but I just
17 want to hear how that works, in terms of how you
18 receive information, and how you are processing
19 whether or not to move forward with a certain issue.

20 SEN. TOM BEGICH: While I'm generally well
21 informed, I actually have never inquired as to the
22 length of the service of public members.

23 I believe it's five years, but I could be
24 wrong about that.

25 I've asked a staff member to take a look at

1 that, real quick, to see if I can get an answer to
2 you on that.

3 And what was -- I'm sorry -- the second half
4 of the question again?

5 SENATOR BIAGGI: So, I mean, I find,
6 generally -- I'll set it up, and maybe a little bit
7 better:

8 You know, having members of the legislature
9 oversee, of course, ethical issues of colleagues is
10 obviously an area that is particularly open to have
11 bias -- right? -- which I'm assuming is maybe the
12 genesis of the court case in Rhode Island, not
13 knowing more about it.

14 But, regardless, I think it is important, of
15 course, to have these bodies exist.

16 So when you receive complaints, and you
17 receive information about current legislators, do
18 you find that having members of the public on your
19 committee makes your job easier; or does it make it
20 harder because maybe they're not as proficient in
21 some areas of the law?

22 Or maybe they have a particular -- everybody,
23 I guess, has some bias, to some degree, in any area;
24 right?

25 So I'm just curious how that works, because

1 this is one of the questions that actually does keep
2 me up at night: How do we actually have something
3 that is truly independent and free of bias?

4 And I don't know if there's a perfect
5 creation, but it sounds like having members of the
6 public is certainly very close.

7 SEN. TOM BEGICH: So, Senator, I will respond
8 to that.

9 The majority of our two subcommittees, the
10 House subcommittee and the Senate subcommittee, are
11 made up of the public members first.

12 Second, we have prohibition on former
13 legislators, there's a limit. You can only have,
14 I think it's one former legislator in the public
15 body from the public-appointee group.

16 And, third, you cannot have a majority of one
17 party or the other party as the public members.

18 We have a large nonpartisan registration, it
19 appears, so that's relatively easy to meet.

20 And because of the two-thirds criteria, your
21 public members feel quite empowered to speak their
22 own mind, and they chair -- the required bylaw to
23 chair the two subcommittees.

24 So there's -- so that the senators that sit
25 on the Senate subcommittee, two of the five members,

1 offer ideas and thoughts, but we don't control the
2 process. And that I think is critical to its
3 success.

4 So the complaints, I've dealt with a number
5 of complaints of colleagues of mine.

6 And myself and my counterpart from the other
7 party have been -- we've always agreed with the
8 public member recommendations, because it provides
9 us support.

10 It's in executive session, but it provides us
11 the opportunity of support of an opinion, so we're
12 not negotiating, you know, what the implication
13 could be for us.

14 We're talking about, what is the matter of
15 law or the matter of fact here?

16 And so we do go through a two-step process,
17 though.

18 One, that there is a vote whether there
19 should be a further investigation.

20 We have overruled Legislative Ethics
21 Committee staff on a number of occasions, often
22 driven by the public members, to go further into
23 investigation of matters. And, generally, the
24 senators have followed the lead of the public
25 members.

1 So I think it works quite well.

2 The process works quite well.

3 The complaints come to the full body, are
4 referred to the subcommittee. The subcommittees
5 take them up. And then we report back our decision
6 to the full committee.

7 And so I think, generally, it works quite
8 well. Having a majority of members being from the
9 public has served the Legislative Ethics Committee
10 in a relatively non-biased process.

11 Of course there's always bias.

12 SENATOR BIAGGI: Sure.

13 I mean, it sounds incredible, actually.

14 Thank you very much for that.

15 Senator DiPalma, I just have a few questions
16 for you.

17 And the first is with regard to the
18 Rhode Island Ethics Commission, which the Center for
19 Public Integrity noted that "it was an effective
20 body, unlike many of its peer states."

21 I'm sure that they were referring to New York
22 when they were making that comment.

23 And so part of the reason why they made this
24 statement is because the center really lauds the
25 commission's ability to adopt new rules without

1 going to the legislature.

2 Do you agree with that center's assessment?

3 And do you find that to be particularly
4 helpful, or harmful? Is that the right assessment?

5 SEN. LOUIS DIPALMA: Well, I do agree.

6 And that's one of the -- as I mentioned
7 earlier, with regards to a situation that happened
8 in 2004, and it took us until 2016 -- I was only
9 there for seven of the years -- but it took until
10 2016, with a resolution passed -- submitted by the
11 Senate president and lead sponsor on the Senate
12 side, the speaker of the House on the House side, to
13 bring that together.

14 A lot of debate, a lot of dialogue, a lot of
15 discussion, over that time to get there.

16 I do support it.

17 It's, basically, the -- our ethics
18 commission --

19 And I do want to talk about public -- the
20 membership more in a minute.

21 -- had the ability to modify the laws,
22 adjudicate them, and pass fines, and take action
23 based on that.

24 So they are trial -- the legislature and the
25 judiciary and executive branch, from an ethics

1 commission perspective, ethics all built into one.

2 And our members are five-year terms as well,
3 all public, the nine folks that I mentioned earlier.

4 SENATOR BIAGGI: That's really --

5 SEN. TOM BEGICH: [Indiscernible] --

6 SENATOR BIAGGI: Yes, please.

7 SEN. TOM BEGICH: -- Madam Chair, I was wrong
8 about -- my staff has corrected me.

9 All members serve two years.

10 Officers cannot hold the same office for more
11 than two consecutive terms, so you can't be here
12 twice -- more than twice.

13 And you can be reappointed without term
14 limits. And maybe of our members have served for
15 multiple, multiple years -- our public members have
16 served for multiple years.

17 SENATOR BIAGGI: Oh, wow.

18 Okay. That's actually very interesting,
19 especially the non-consecutive terms
20 [indiscernible]. It's very interesting.

21 Thank you for clarifying that.

22 I'm just trying to consolidate this.

23 I think, just for the sake of time,
24 Senator DiPalma, just, finally: Do you think that
25 the ethics commission is really able to effectively

1 hold the governor and their allies accountable?

2 Because, obviously, all the current members
3 of the ethics commission are appointed by the
4 governor, even though some are nominated by the
5 legislative leaders.

6 So how has that played out, in practice, in
7 any kind of accountability of the governor, or even
8 anybody in the executive branch?

9 SEN. LOUIS DIPALMA: So I think it's proven
10 effective. I'd have to go back and think about
11 which cases have been brought before the ethics
12 commission as it might have related to the executive
13 branch in recent years.

14 And I'm sure there's a couple.

15 To say there would be none, I'd lie to you
16 because I don't have the facts [indiscernible] to
17 substantiate that.

18 But I believe it's been effective in doing
19 what it needs to do.

20 The one point I wanted to make with regards
21 to public bodies:

22 With regards to commissions in the state of
23 Rhode Island, and appointed, because the Senate has
24 advice and consent of members appointed by -- put
25 forward by the gubernatorial appointments --

1 Also, we have what we call "quasi-public
2 agencies."

3 -- back in 2004, the Rhode Island citizenry
4 basically said, we want separation of powers.

5 Prior to that, legislators served on various
6 boards and commissions throughout the state.

7 Subsequent to that law being passed, there's
8 not a legislator that can sit on a public board or a
9 commission for which the Senate provides advice and
10 consent.

11 So they are all public members.

12 They used to have the board of education. We
13 would have had a couple of senators and
14 representatives. It doesn't exist anymore, it's
15 non-existent now, for probably upwards of 15 years.

16 So that separation of powers was a big deal.

17 So the committee that I chair, Rules,
18 Government Ethics, and Oversight, made our job much
19 more needed, meaningful, impactful, if we do the
20 right job, because of legislators not sitting on
21 public boards and commissions.

22 SENATOR BIAGGI: Thank you for that.

23 Okay. I promise this is the final question
24 for today for both of you, and there's some
25 sub-questions to it.

1 So when it comes to what you can disclose and
2 confidentiality, which is clearly an issue we're
3 having in our ethics commission in New York, are you
4 able to disclose findings of investigations?

5 And can you confirm publicly whether an
6 investigation is actually happening if there's a
7 member of the press or somebody else who is asking
8 that question, in both of your respective states?

9 SEN. TOM BEGICH: I guess I will go first.

10 And our Legislative Ethics Committee is
11 separate from the Gubernatorial Ethics Act, so it's
12 strictly legislature.

13 And, first, a disclosure of an investigation
14 to the public is not allowed, unless given
15 permission by the investigated person, or by the --
16 it has to be given by the investigated person.

17 And disclosure of the complainant is not
18 allowed without the permission of the complainant.

19 The exception to that is, if we've made a
20 decision, once we've made an actual decision after
21 an investigation, the decisions are disclosed
22 publicly; but the investigation process itself is
23 not.

24 And if the decision is to the affirmative,
25 and we have filed -- we have ruled somebody has

1 violated the law -- the ethics law, then that is
2 disclosed.

3 If they have not violated the ethics law, we
4 don't disclose it, but the legislator that has been
5 investigated or the staff member may bring that up.

6 And many have said, I was investigated, and
7 I've been absolved of any wrongdoing.

8 So that is a choice provided to the
9 defendant, as it were.

10 SENATOR BIAGGI: Thank you.

11 SEN. LOUIS DIPALMA: So, Senator, from a
12 Rhode Island perspective, this answer will be very
13 short.

14 Prior to a few years ago, the committee, as
15 it stands today, on Government Rules -- Rules,
16 Government Ethics, and Oversight, was a committee on
17 rules and oversight.

18 There was no committee in the Senate
19 regarding ethics.

20 It manifested itself -- I'll just
21 respectfully put it this way -- because of the
22 actions -- perceived actions of a senator, that
23 manifested the adding the "ethics" piece to the
24 Committee on Rules, Government Ethics, and
25 Oversight.

1 With that said, we have not had a hearing
2 since the committee was expanded to include ethics,
3 regarding ethical behavior or -- there or not, of a
4 senator.

5 SENATOR BIAGGI: Okay.

6 Well, that's incredibly helpful. And I'm
7 glad that ethics was added to the committee. Glad
8 to hear that.

9 I am very grateful that both of you were able
10 to take the time today.

11 I know the time difference for Alaska is much
12 greater than Rhode Island, but it doesn't
13 necessarily diminish your involve -- both of your
14 involvement, and it actually makes it really
15 meaningful.

16 I am just very grateful that you were able to
17 be here with us today.

18 And I do look forward in the future, any time
19 there is anything New York can do to help either of
20 your roles, please count on us, and call on us, to
21 do that, because we would be happy to help; although
22 I think that New York has learned a lot today from
23 Alaska and Rhode Island.

24 So thank you very, very much.

25 SEN. LOUIS DIPALMA: Madam Chair, thank you.

1 Hopefully, it added value.

2 So thank you.

3 SENATOR BIAGGI: It certainly did, it
4 certainly did.

5 SEN. TOM BEGICH: Thank you, Madam Chair.
6 Thank you for the opportunity.

7 SENATOR KRUEGER: Thank you.

8 SENATOR BIAGGI: Thank you.

9 All right.

10 Well, if it's okay with everybody, I think we
11 would like to take a very quick, maybe 30-minute
12 break, so that we can eat, and get some water, or
13 whatever it is that you choose to drink, and come
14 back in about 30 minutes.

15 So the time right now is 1:34.

16 Let's say 2:04 we will reconvene. Okay?

17 OFF-CAMERA SPEAKER: Perfect.

18 SENATOR BIAGGI: Okay. Thank you very much.

19 [The hearing stands in recess.]

20 [The hearing reconvenes.]

21 SENATOR BIAGGI: Good afternoon.

22 And thank you for joining us back again after
23 our brief lunch break; and thank you for being
24 patient with us so that we could eat.

25 ///

1 I'm grateful for our next witness/panelist,
2 Erica Vladimer, who is a member of the Sexual
3 Harassment Working Group.

4 Erica, we're all very grateful to hear from
5 you today, and look forward to your testimony, and
6 also the question-and-answer portion.

7 Thank you so much for being here.

8 ERICA VLADIMER: Thank you so much for having
9 me.

10 Please, I want you all to continue eating,
11 and also drink water; it's so important.

12 I know how these hearings can be long, and
13 emotionally and mentally exhausting.

14 Good afternoon.

15 As the Senator and Chairwoman said, my name
16 is Erica Vladimer. I am a cofounder of the Sexual
17 Harassment Working Group.

18 We're a workers collective of former State
19 and City legislative staffers, turning their lived
20 experiences of sexual harassment, assault, and
21 retaliation at the hands of elected and appointed
22 officials into advocacy for a harassment-free Albany
23 and a harassment-free New York.

24 It is the Working Group's belief that in
25 order to effectively create policy change, it must

1 start with public input.

2 So I'm deeply grateful that, Chairwoman, you
3 are once again holding a public hearing.

4 We know how powerful those can be, especially
5 with the Harassment-Free New York legislative
6 package that was passed in 2019.

7 At the outset, I do want to say, and
8 emphasize, that there is a need to dismantle,
9 reevaluate, and recreate the entire ethics system.

10 I know much of the conversation has been
11 focused on the Joint Commission on Public Ethics,
12 and rightfully so; but we do need to look at things
13 like the Governor's Office of Employee Relations,
14 the Inspector General's Office, the Legislative
15 Ethics Commission, the Senate and Assembly ethics
16 committees.

17 If we just focus and reform JCOPE, we are not
18 going to have the true independent ethics body that
19 we need to hold elected and appointed officials
20 accountable.

21 I know this firsthand.

22 After I came forward and talked about my
23 experiences with Bob Freeman, former executive
24 director of the New York Committee on Open
25 Government, the Inspector General's Office called me

1 and asked if I would come in and be interviewed.

2 I told them that during my JCOPE interview
3 from my trauma and experience at the hands of former
4 Senator Jeff Klein, I had talked about Bob Freeman,
5 and that it is mentally and emotionally exhausting
6 to continue to have these same conversations, and
7 have to relive things, like the grooming that
8 Bob Freeman put me through.

9 I asked the inspector general's staff to go
10 to JCOPE and get my testimony in their notes. And
11 they said that JCOPE cannot give them that
12 information; that it is confidential. That they can
13 give JCOPE information, but JCOPE cannot give them
14 information.

15 I said I would sign a release waiver,
16 whatever it would take. I just really didn't want
17 to be interviewed again.

18 She said she would call me back, and I never
19 heard from her.

20 I also want to emphasize that we cannot
21 continue to define "power abuse" the same way we
22 have for decades.

23 Discrimination, harassment, assault,
24 retaliation, are all manifestations of power abuse,
25 yet they are not explicitly mentioned in the

1 Public Officers Law, and that leaves too much room
2 for interpretation.

3 Again, I know this firsthand.

4 And you can also read about it in the current
5 Article 78 court case, Klein verse JCOPE.

6 So after JCOPE found my allegations against
7 Klein substantially credible, a hearing officer
8 determined that it doesn't matter, because, in his
9 view, Public Officers Law, Section 74, does not
10 cover what's alleged; and, therefore, he concluded
11 JCOPE doesn't have jurisdiction.

12 And although JCOPE overturned the hearing
13 officer's decision, Klein sued in New York State
14 court, and to have a judge enforce the hearing
15 officer's dismissal.

16 We're still awaiting for a decision from the
17 judge, one that could, in my opinion, set a
18 dangerous precedent for any future harassment case
19 that JCOPE investigates.

20 So we need clear, explicit language that
21 gives any ethics body jurisdiction over these types
22 of power abuse.

23 But we also know that with clear statutory
24 mandates, an ethics system cannot protect its staff
25 if the entities do not hire and appoint people with

1 the necessary expertise.

2 Again, I know this firsthand because, during
3 my first interview with JCOPE, I was really
4 traumatized.

5 I do think that my follow-up testimony and
6 interviews with them were better because of the
7 public hearing that was held in February 2019, where
8 myself and other cofounders of the Working Group
9 talked about their experience being interviewed by
10 JCOPE.

11 But we need to make sure not just staff have
12 the experience and expertise to understand what it
13 means for a harassment or an assault victim to come
14 forward, but also the people who are making
15 decisions.

16 In this case it would be the commissioners of
17 JCOPE.

18 And so ensuring a new ethics system has that
19 requisite experience is, you know, one way to really
20 make sure that we get at the heart of what is
21 necessary, and that is independence.

22 I know the Sexual Harassment Working Group
23 has talked about this time and time again: We need
24 a truly independent ethics accountability system.

25 And the only way to do that is to make sure

1 we have these public hearings, to make sure that we
2 don't have as much political influence as possible,
3 and that includes taking out the judiciary and
4 making certain appointments; and also making sure
5 that there is enough of a fiscal budget for some
6 type of ethics entity to really be able to conduct
7 what is asked of them.

8 So I'm going to stop there.

9 You do have my written testimony, and I want
10 to make sure we have enough time for questions.

11 So, then, thank you so much for having me.

12 I look forward to answering your questions.

13 And listening to future public hearings that
14 you have around ethics in New York State.

15 SENATOR KRUEGER: Thank you very much,
16 Ms. Vladimer.

17 Of course, there's -- people may not know,
18 I got to know you very well over these years, with
19 the very brave things that you have done and come
20 forward, and the group that you have been a leader
21 in, and other women who came forward, and men, to
22 talk about their experiences.

23 And I think you're right, we've taken some
24 bites at the apple of trying to make improvements in
25 our laws, specifically around sexual harassment.

1 But, of course, as we've all seen with the
2 AG's report on Governor Cuomo recently, despite
3 trying to fix laws in the last three, four years,
4 despite some improvement, the exploitation of
5 employees continues.

6 And we have to -- we have to get it right.

7 So I'm just curious --

8 Because you listed all these different
9 entities, and I even remember discussions about,
10 Where should you go? and, What's the right first --
11 What's the right door to go through? and both of us
12 realizing there was no right door to go through.
13 Like, you could try to go to different doors of
14 these different entities, but they were all the
15 wrong places.

16 -- do you think that in a model that actually
17 can and would make sense, we should have multiple
18 different places?

19 Or should we have one centralized place where
20 people can go, that plays a lot of different roles,
21 you know, so that you don't actually have to figure
22 out, Am I a JCOPE case? Am I an inspector general
23 case? Am I a GOER's (Governor's Office of
24 Employment) [sic] place?

25 You know, because I found it, over the years,

1 extraordinarily confusing, even in just trying to
2 help someone know what the right answer is.

3 If you could just tell me, is it your vision
4 that we have one centralized place where all these
5 kinds of cases go, and they have the right people
6 there, under the right instructions, with the right
7 powers?

8 Or that you actually do want to have more
9 explicit roles -- rules about what the role the
10 inspector general is in this situation, or JCOPE, or
11 GOER's, or anybody else?

12 ERICA VLADIMER: Yeah, Senator, I appreciate
13 that question.

14 And, you know, I will be totally honest, I'm
15 not sure right now.

16 I will say the Sexual Harassment Working
17 Group has had multiple conversations, and we ask
18 ourselves the same thing.

19 We have tried to envision and put together
20 what one single entity might look like, and how we
21 can make sure that it is staffed appropriately, and
22 that they can handle all types of power abuse and
23 ethics violations, including harassment and
24 discrimination and retaliation.

25 But we have also had other conversations with

1 other good-government groups and experts and
2 advocates who talk about having a separate entity
3 that works in tandem with a different ethics entity.

4 So I don't know.

5 I think what really needs to happen, which,
6 you know, this public hearing is a really good start
7 about that, is having those conversations, and
8 getting more people involved in them, to see what
9 might work best for New York State.

10 And I know the Working Group wants to
11 continue to have those conversations as well.

12 So I apologize for not really having a hard
13 answer for you, but we're really starting to --
14 trying to figure that out for ourselves, too.

15 SENATOR KRUEGER: Thank you.

16 Thank you.

17 And thank you for all the work you've done
18 that has, I really do believe, helped to wake up so
19 many New Yorkers. And even if no one even meets
20 each other, that the work that you and other earlier
21 members of the Working Group have been doing over
22 the years has strengthened other people to come
23 forward.

24 And that, even if they never -- I know I've
25 told so many people, Go talk to them. Just go talk

1 to the folks from the Working Group. They will give
2 you strength to move forward on your own behalf.

3 And I never know who does or who doesn't
4 follow up with you.

5 But just know I think we're very aware that
6 you all have played an incredibly important role for
7 the state of New York; and we thank you.

8 ERICA VLADIMER: Thank you, Senator.

9 Thank you for always being a partner.

10 SENATOR KRUEGER: Thank you.

11 SENATOR BIAGGI: Senator Liu?

12 SENATOR LIU: Thank you, Madam Chair.

13 Thank you, Erica, for once again appearing
14 before this committee, and for your years of courage
15 and work, along with the rest of the Sexual
16 Harassment Working Group.

17 I think you're absolutely right, that it
18 would be -- it would -- it wouldn't make sense if we
19 just stopped it at JCOPE.

20 We clearly need a strong, independent,
21 sensible, and functional ethics body in the state of
22 New York.

23 And JCOPE, at least as it currently exists
24 and functions, is certainly not that.

25 But we shouldn't stop at that, which is why

1 the Sexual Harassment Working Group has been working
2 with myself and other colleagues here in the Senate
3 and the Assembly to draft and pass additional laws
4 that will strengthen the ethics, and also protect
5 people against harassment in this state.

6 And so we'll continue to do that.

7 Madam Chair, I don't really have much of a
8 question, but I just felt compelled to say
9 "thank you," and to encourage you and the rest of
10 the Working Group to keep doing what you're doing.

11 ERICA VLADIMER: Thank you, Senator.

12 You know we're not going to go away.

13 So I look forward to continuing to work with
14 you, and I know the Working Group does as well.

15 SENATOR LIU: Great.

16 SENATOR BIAGGI: Thank you, Senator Liu.

17 Senator Salazar.

18 SENATOR SALAZAR: Thank you.

19 Thank you, Erica, so much for taking the time
20 to testify today.

21 Earlier we had the opportunity to hear
22 testimony from Judge Berland, the executive director
23 of JCOPE.

24 And I had asked Judge Berland if, in his
25 assessment, JCOPE has the resources to hire experts

1 to provide support and investigations, including
2 investigations where special expertise might be
3 required, such as sexual harassment cases.

4 And his response, in part, was that JCOPE is
5 equipped to handle these cases because their current
6 director of enforcement has previous experience
7 working in a special victims unit.

8 You know, I have my own opinion on -- about
9 that response.

10 But I'm curious how, you know, your -- what
11 your thoughts are when you hear that as, you know,
12 justification for JCOPE perhaps failing to seek
13 additional expertise, or hire someone with more
14 experience working with survivors of sexual
15 harassment and misconduct, based on your experience
16 with JCOPE.

17 ERICA VLADIMER: Yeah, I appreciate that
18 question, Senator.

19 I do not think that having one staffer, even
20 at a director's level, who has experience in one
21 narrow sector of working with survivors is enough to
22 say that they shouldn't be bringing in other
23 experts.

24 You know, I myself personally did not go
25 through the criminal justice process as a result of

1 what I experienced.

2 But I do know some other amazing advocates --
3 survivor advocates who have, including
4 Marissa Hoechstetter and Alison Turkos. And, you
5 know, just knowing them, knowing the work that they
6 do, talking to them about the changes that need to
7 continue to be made in the criminal justice space.

8 There's a reason Marissa Hoechstetter founded
9 Reform the Sex Crimes Unit.

10 We know that prosecutors themselves do not
11 approach these situations as someone who is there as
12 an advocate for survivors; that they approach this
13 with a certain mind frame that essentially comes
14 down to a district attorney.

15 And, frankly, that is not how these types of
16 situations and investigations, especially on an
17 administrative level and in a workplace should be
18 handled.

19 I do think that more could be done to bring
20 in experts and advocates, especially when it comes
21 to workplace harassment and discrimination.

22 And that JCOPE needs the resources, or
23 whatever ethics entity it might be that continues to
24 conduct these investigations, there need to be more
25 adequate resources.

1 But, again, I think something that you
2 referred to, Senator, is that the people in place of
3 spending that funding that they get, they need to be
4 proactive and willing to actually spend that money
5 appropriately.

6 So if the mindset is, we already have the
7 expertise in-house, the extra funding is not going
8 to help. Right?

9 And so it's a matter of making sure that the
10 people who are in those positions of power make the
11 appropriate decisions on behalf of the people who
12 they're supposed to be supporting.

13 SENATOR SALAZAR: Absolutely.

14 Thank you, Erica.

15 SENATOR BIAGGI: The microphone is so fun.

16 I'm very grateful, also, that you are here
17 today. And I echo every single thing that
18 Chairperson Krueger said, as well as
19 Senator Salazar.

20 Your work, and your commitment, and your
21 showing up time and time again, does make a
22 difference, and it's important.

23 And it might not always happen right away,
24 although, in 2019, that was transformational. But
25 there's a lot more to do, and it will happen.

1 And so I think today's testimony, and just
2 showing how many ways in which sexual harassment can
3 show up, sexual harassment is an issue that goes
4 across so many different topics.

5 It's a labor issue.

6 It's a person issue.

7 It's a discrimination issue.

8 It's an ethics issue.

9 Right?

10 There are so many different ways in which
11 someone who experiences sexual harassment, assault,
12 abuse, misconduct, are affected.

13 And so I think it's really meaningful that
14 you have provided testimony today.

15 And I think one of the things that you wrote
16 in your testimony, about how -- similarly to how a
17 company's HR department is designed to protect the
18 company, not the employees, our current ethics
19 system is meant to protect the institution and the
20 powerholders within it, not the staffers or the
21 public.

22 And I think that underscores the primary
23 issue, because you can't trust a system that is so
24 tilted and slanted to, essentially, just protect its
25 survival, even if its survival is, frankly, sick and

1 toxic.

2 So it's important that you put that in there,
3 and I hope that that remains really clear to
4 everybody who is watching; and, also, all of the
5 legislators who are not here and who are here.

6 I just want to go back to a part of your
7 testimony with regard to the Public Officers Law,
8 and your reference to how the way that it's
9 currently written, and whether or not it provides
10 enough coverage for workplace harassment and
11 discrimination cases.

12 So I guess the first question is:

13 You touched on this very briefly, but I want
14 to go a little bit more in depth, and the reason is,
15 because I wrestle sometimes with whether or not we
16 should be including in Public Officers Law, terms
17 like "sexual harassment" or "assault," because they
18 are notably missing.

19 And, obviously, we want to make the right
20 decisions when we amend our laws; but we also want
21 to make sure that the places where we amend our laws
22 for further protection actually mean that there's
23 the right oversight place where this case would go.

24 Right?

25 There's obviously a direct effect of putting

1 these words into the Public Officers Law, because
2 then it goes to JCOPE.

3 So I think the first question is:

4 Do you think that the Public Officers Law, as
5 it's currently written, provides enough coverage for
6 workplace harassment and discrimination cases?

7 And then, just further beyond that, can you
8 speak a little bit more about Senator Klein's
9 attempts to argue that his misconduct does not fall
10 within the purview of JCOPE?

11 ERICA VLADIMER: Sure.

12 Thank you for the question, Senator.

13 To answer your first question: No, I do not
14 think the Public Officers Law, as it is currently
15 written, will -- does anything really to protect
16 staffers from harassment and discrimination and
17 retaliation.

18 One of the things that the independent
19 hearing officer wrote in their decision in the JCOPE
20 case that is, you know, surrounding Klein, was that
21 this one instance does not fall within, you know,
22 Section 74(h)(3), I believe it was, or -(3)(h) --
23 I apologize for not knowing off the top of my
24 head -- and that it should have gone to the division
25 of human rights.

1 And it's not that the hearing officer is
2 wrong in that, but that gets to who we are as
3 individuals.

4 It does not speak to the fact that Klein
5 abused his power as a sitting elected official when
6 he shoved his tongue in the mouth of a staffer.

7 Right?

8 And so I think that there is nothing wrong
9 with having that overlap between where we have
10 certain protections under the human rights law, and
11 violation of the human rights law should be a
12 violation of Public Officers Law.

13 And perhaps maybe that's where -- what the
14 reference can be, but making sure it's as explicit
15 as possible is really, really important.

16 Something else that is being litigated,
17 I guess you could say --

18 At that this point, we're waiting for the
19 Supreme Court judge to render their decision.

20 -- Klein and his attorneys have argued that
21 that specific section of Public Officers Law,
22 74(3)(h), is too broad to be constitutional.

23 And so they are kind of hoping that the judge
24 is just going to strike that clause -- right? --
25 which will put staffers at even more risk than they

1 already are.

2 And so he's making all of these arguments to
3 say that Public Officers Law does not cover the way
4 staffers are treated.

5 And I know I'm preaching to the choir when
6 I say, here, especially to -- you are all, as
7 sitting senators, because you passed the law to
8 close the license to harass people, but time and
9 time again, staff of elected and appointed officials
10 are left behind and they're not provided the same
11 protections.

12 And that is exactly what Klein is trying
13 to argue in court, is that they should not be
14 protected in that way; they're not protected by
15 Public Officers Law.

16 And, frankly, if we continue to allow that to
17 happen, we are going to lose more and more amazing
18 public servants who we need here as New Yorkers.

19 SENATOR BIAGGI: Thank you very much for
20 that.

21 I think that is probably the most compelling
22 case for why the Public Officers Law needs to be
23 amended, and this behavior needs to be covered.

24 So thank you very much.

25 Just notably, for anybody watching who

1 doesn't know, the Public Officers Law, specifically
2 with regard to these issues, mainly refer to issues
3 of finances -- right? -- like bribery or extortion,
4 or anything that's related to those topics.

5 And so it's notably missing that harassment
6 and misconduct is part of it.

7 So thank you very much, Erica.

8 I don't believe that there are any other
9 senators who wish -- yes, there is.

10 Senator Brisport would like to speak, and so
11 he's recognized.

12 And just thank you very much, again.

13 ERICA VLADIMER: Thank you, Senator.

14 SENATOR BRISPORT: Thank you, Madam Chair.

15 And I'm just sneaking in at the end here.

16 But I wanted to -- I want to start by
17 extending what a lot of my fellow colleagues have
18 said, Erica, just a big "thank you" for your
19 testimony, and also deep appreciation, not just for
20 your testimony today, but all the work you've
21 been doing over the previous years with the
22 Sexual Harassment Working Group.

23 My question is just about any additional
24 recommendations that you came up with.

25 I know that, you know, there were time

1 constraints over your original testimony, and we are
2 talking about a very wide scope of changes.

3 So I wanted to extend the opportunity, if
4 there were additional recommendations that the group
5 came up with, that you did not get a chance to share
6 today.

7 ERICA VLADIMER: Oh, gosh, Senator. We
8 certainly do not have enough time to talk about all
9 of the recommendations.

10 The Sexual Harassment Working Group does have
11 a legislative agenda that has six bills on it. And
12 there are some other bills that we are looking to
13 explore, to try and protect staff of elected and
14 appointed officials, as well as workers across all
15 industries.

16 We have also signed on to the New York Bold
17 agenda, and, you know, encourage the new governor,
18 Kathy Hochul, to look to advance that.

19 As well, so you all know, I'll make sure that
20 I send that to you all, so you can see it if you
21 haven't.

22 But one thing I really want to emphasize is
23 that changing laws itself is not enough.

24 If we don't change the culture, the laws are
25 only going to be as good as the paper that they are

1 printed on.

2 We saw this -- right? -- with the former
3 governor, Cuomo, that he signed those 2019 laws.

4 And that, as the AG's report showed, the next
5 day he sexually harassed a state trooper.

6 So he knew what those laws said, and those
7 laws were on the books, and he still sexually
8 harassed.

9 And it's because the culture of Albany is so
10 pervasive, and so severe.

11 I know it's ironic that I used those words
12 because we changed that standard, but I use them
13 intentionally.

14 We have to change the culture.

15 And, yes, changing the laws is a huge part of
16 that, but making sure that any law that we are going
17 to fight for and pass and enact has a level of
18 accountability.

19 It's not enough to say "This is wrong."

20 We need to make sure that we say, "This is
21 what happens when you break this law."

22 And that is why it is so important that we
23 continue to see through accountability; whether it
24 be through administrative process, like having a
25 true independent ethics body that can hold elected

1 and appointed officials accountable, using
2 constitutional authority to conduct and see through
3 an entire impeachment process.

4 The legislature itself sets the example for
5 all other employers.

6 And so I encourage you all to do your best to
7 change the culture within your own offices, and in
8 your chambers, and just across all the state
9 government.

10 SENATOR BRISPORT: Thank you.

11 SENATOR BIAGGI: There we go.

12 I think that concludes our questions, Erica.
13 Thank you so much.

14 The gratitude also extends to the
15 Sexual Harassment Working Group for everything
16 that you all do.

17 ERICA VLADIMER: Thank you all so much.

18 SENATOR KRUEGER: Thank you.

19 Our next panel is:

20 Rachael Fauss, the senior research analyst
21 from Reinvent Albany;

22 Evan Davis, who is a member of the
23 Committee to Reform the State Constitution;

24 And, Ed Murray, the chair of the
25 New York City Bar Association's Government Ethics &

1 State Affairs Committee.

2 We welcome you all, and are looking forward
3 to your testimony.

4 You can begin whenever you're ready.

5 RACHAEL FAUSS: Good afternoon, Senator.

6 I take it I'm first, so I'll go first.

7 Good afternoon.

8 My name is Rachael Fauss, and I'm the senior
9 research analyst for Reinvent Albany. We advocate
10 for more accountable and open New York government.

11 Thank you for holding this important and
12 timely hearing, and inviting us to testify.

13 We're here to make five points today.

14 New York State government has a serious and
15 ongoing corruption problem that goes well beyond the
16 misdeeds of former governor Andrew Cuomo.

17 Second: The Joint Commission on Public
18 Ethics is worse than useless and must be replaced.

19 Third: The legislature must pass a
20 constitutional amendment, replacing JCOPE with an
21 independent agency [audio lost] --

22 SENATOR KRUEGER: We lost you. You're muted.

23 Now you're frozen.

24 SENATOR PALUMBO: Rachel, we lost you.

25 There you go, you're back.

1 RACHAEL FAUSS: Fifth, and in another ethics
2 hearing this fall, we encouraged the legislature to
3 examine policy changes to prevent abuses of power,
4 like those seen with all of Andrew Cuomo's scandals,
5 including the use of state resources for personal
6 gain or favoritism, and influence over state's
7 [indiscernible] without public transparency or
8 legislative and comptroller approval.

9 And further, the comptroller and the attorney
10 general's rules in preventing corruption should also
11 be reviewed.

12 Just, first, on New York's ongoing corruption
13 problem, the scandals involving Andrew Cuomo are
14 only the latest in the sad saga of public officials
15 abusing their power, further fueling cynicism, and
16 damaging the public trust in state government.

17 Barely a year goes by without a massive
18 scandal.

19 Before the recent ones, there was the
20 "Buffalo Billion" bid-rigging scandal in which
21 hundreds of millions of taxpayer dollars were
22 awarded to the governor's donors because of bribery
23 and pay-to-play.

24 Corruption and abuse of power are not
25 victimless crimes. Corruption hurts vulnerable

1 New Yorkers the most.

2 When state funds are awarded and laws passed
3 because of pay-to-play and conflicts of interest,
4 the richest and most powerful are rewarded, not the
5 neediest and most deserving.

6 And this is what leads to our recommendation
7 that the Joint Commission on Public Ethics is worse
8 than useless, and must be replaced.

9 I'll abbreviate my remarks here, but you
10 heard it yourself from Julie Garcia's testimony.

11 If her account is true, which we have no
12 reason to believe it is not, then JCOPE and the IG,
13 which are supposed to enforce the state's ethics
14 laws, instead, reinforced corruption.

15 This is incredibly damaging to our state, and
16 it cannot stand the way it is today.

17 So the question then is: In making --
18 replacing JCOPE, and doing a constitutional
19 amendment, how do we establish an ethics enforcement
20 commission that is truly independent from elected
21 officials and those it regulates?

22 And to that end, Reinvent Albany is working
23 with other advocates and legal experts, like my
24 esteemed co-panelists Evan Davis and Ed Murray, and
25 other watchdogs and organizations, to, hopefully,

1 develop an appointment process for this new
2 independent ethics commission agency. And we think
3 this will build upon the important constitutional
4 amendment proposal from Senator Krueger and
5 Assembly Member Robert Carroll.

6 And consensus is building on a number of
7 principles on how we might be able to do this and
8 make a better nominations process.

9 I'm not going to go through it today in the
10 interest of time, but what Reinvent Albany supports
11 is in my testimony.

12 Second: The legislature has to pass
13 legislation, making fixes to JCOPE, and to better
14 protect its state employees from harassment.

15 Since the Constitution can't be amended till
16 at least November 2023, when the voters could vote
17 on this, there's a number of things that the
18 legislature can do in the meantime.

19 We know that the Senate has passed a number
20 of bills. And we thank Senators Biaggi, Gounardes,
21 Hoylman, and Liu for introducing a number of bills
22 to help with JCOPE's voting structure and
23 transparency, and a number of other issues.

24 We'd also encourage new legislation to be
25 introduced, to increase transparency of financial

1 disclosure statements.

2 We think that the senior agency official
3 statements should be posted online in an open-data
4 format.

5 And I would love to talk more about that
6 proposal. We can talk about that offline.

7 And then, lastly, you know, like I mentioned,
8 there's so much more that can be talked about in
9 another hearing. There's a lot to unpack from the
10 governor's scandals, and we would love to talk about
11 it more.

12 And I think this involves talking more about
13 our state ethics code.

14 We have a lot of concerns about the
15 disclose-and-recuse regime. We don't think it works
16 in New York. We think that bright lines and bans on
17 outside income are far preferable.

18 So thank you again for the opportunity to
19 testify, and I'll hand it over to my colleagues.

20 EVAN DAVIS: I guess I'll go next.

21 It's a little bit repetitive, so I'm not
22 going to go through my prepared testimony.

23 JCOPE is useless. It does more harm than
24 good. Rather than building confidence in
25 government, it weakens confidence in government.

1 And what you've already heard this morning
2 I think amply demonstrates that, and it need not be
3 belabored.

4 In my testimony, we put in eight ways that
5 JCOPE does not live up to its standard of reasonable
6 independence.

7 I want to mention the big four.

8 The first is, that everyone who sits on JCOPE
9 is appointed by a particular public officer.

10 And I want to emphasize what Senator Krueger
11 said.

12 JCOPE was designed by the three men in a
13 room. JCOPE was designed for their purpose.

14 It was not designed, certainly by the
15 legislature, and certainly not by the current
16 legislature.

17 But in any event, they're all appointed by
18 particular people, and the members have much too
19 much come to see themselves as that person's person
20 on JCOPE.

21 And when that happens, independence goes
22 right out the window.

23 You can have -- Senator Stavisky asked about
24 ways you could fix that.

25 But one way is to have a majority of the

1 people appointed by people who are not regulated.

2 That's the way that's used by the Commission
3 of Judicial Conduct, which has worked well.

4 A majority of the members of that commission are
5 appointed by the executive and the legislature,
6 which it obviously does not regulate.

7 Here you can have a majority appointed by the
8 judiciary.

9 And you can also have some joint
10 appointments, with a mechanism, if they fail to be
11 happen as to what -- or, what happens, who gets to
12 make it. But a joint appointment, so the person
13 would not see themselves as the person of a
14 particular individual.

15 So, second, the JCOPE chair is appointed by
16 the governor and serves at the governor's pleasure.

17 That's -- the chair is a powerful position;
18 sets the agenda, organizes the tone, conducts the
19 meetings.

20 And to have that person serve at the
21 governor's pleasure is totally inappropriate.

22 And the third is that, the veto provision,
23 that as few as two of the governor's appointees can
24 veto what the other 12 members of the commission
25 want to do.

1 No other state has anything like that.

2 That's a New York invention to serve the interest,
3 not of the people, but of the leaders who designed
4 the mechanism.

5 And, finally, there is no duty to report.

6 There's a duty to report in state law to the
7 inspector general, but we know from Julie Garcia's
8 testimony how unhelpful and ineffective that is.

9 There should be a duty to report to JCOPE.

10 And I was struck by Julie Garcia emphasizing
11 the need to stand behind those who speak up. Those
12 who report should be supported.

13 You want due process in investigation, but
14 they should be clear that there will be no
15 retaliation, and they should be supported.

16 So in the end, I have to disagree very
17 strongly with Judge Berland.

18 He seems to think that JCOPE's problems are
19 public-relations problems.

20 They're not public-relations problems; they
21 are very serious structural flaws, the design of
22 JCOPE. Its lack of independence, its lack of
23 transparency, its lack of accountability, and those
24 are the problems.

25 It's not just PR.

1 Thank you.

2 ED MURRAY: Good afternoon.

3 Madam Chair, committee members, thank you for
4 the opportunity to testify today.

5 My name is Edward Murray.

6 I'm an attorney, testifying on behalf of the
7 New York City Bar Association's Government Ethics &
8 State Affairs Committee.

9 I was going to talk about all the structural
10 flaws with JCOPE.

11 They have been addressed in great detail
12 already.

13 But, again, the issues with the appointment
14 method, the special voting rules, and transparency
15 problems are, at bottom, structural issues that
16 could be addressed by this legislature.

17 The -- in recent months, the state Senate has
18 taken significant steps to address some of these
19 structural issues by passing S6964A, sponsored by
20 Senator Biaggi.

21 The bill, among other things, brings JCOPE's
22 voting rules into line with agencies such as the
23 Commission on Judicial Conduct and the New York City
24 Conflicts of Interest Board, by requiring that the
25 JCOPE act in all matters by simple majority vote.

1 The bill provides a needed short-term
2 solution until broader, more permanent reforms can
3 be adopted.

4 In this regard, the committee supports
5 constitutional amendment by Senator Krueger and
6 Assemblyman Carroll, to establish a government
7 integrity commission.

8 The proposal includes many important
9 improvements on the existing regime, including
10 empowering the commission to sanction both elected
11 and non-elected officials, and separating out the
12 power to remove commissioners from the power to
13 appoint commissioners.

14 But the appointment method for this new
15 commission is critical for facilitating independent
16 action.

17 As we learned in the recent report on
18 Governor Cuomo by the state attorney general, even
19 the governor's office recognizes that an appointed
20 official cannot effectively investigate their
21 appointing authority.

22 For this reason, the committee has supported
23 an appointment method that mirrors the one used by
24 the state's Commission on Judicial Conduct, whereby
25 the majority of commission members are appointed by

1 someone other than the regulated parties.

2 The committee has also been discussing with
3 other organizations testifying today alternative
4 methods that we hope would achieve similar ends,
5 including a method of joint appointments that
6 Evan Davis mentioned.

7 The organizations have, also, joint
8 appointments in which the appointment power is
9 shared by two or more parties.

10 From these discussions, the organizations
11 have also come to a consensus that a new ethics
12 commission should be a much -- should be much
13 smaller in size than JCOPE, even as small as
14 five commission members, to bring about more
15 accountability for those making the decisions at the
16 ethics commission.

17 The city bar thanks the Senate for holding
18 this oversight hearing, and taking the lead on this
19 difficult but important work of ethics reform.

20 We encourage the Senate to continue this work
21 with the Assembly so that concrete results can be
22 achieved.

23 Thank you.

24 SENATOR KRUEGER: Thank you so much.

25 On this -- first of all, thank you for your

1 support for my constitutional amendment.

2 And, actually, I've worked with Evan on this
3 for several years.

4 Thank you, Evan, for the work you continue to
5 do for the people of New York State on so many
6 issues.

7 For all three of you, this is the same
8 question I asked Erica Vladimir:

9 Do we need to have multiple portals into
10 ethics investigations and complaints for people?

11 You know, if we got JCOPE redone correctly,
12 do we also want to have other portals, where people
13 sometimes would go to GOER's for some set of
14 reasons, sometimes would go to the IG's Office for
15 some set of reasons, sometimes might go to the
16 Human Rights Commission.

17 I'm really trying to get my arms around how
18 we not only design a better system for actually
19 delivering what needs to be delivered, but also,
20 hopefully, clarifies and simplifies so that
21 employees of the State of New York, or others who
22 have had harm done to them by employees of the State
23 of New York, I think should have one place to go.

24 But there might be logic for multiple places.

25 So I would love to know all of your opinions,

1 or any of your opinions.

2 EVAN DAVIS: So I'll speak up.

3 There are misconduct that is not ethical, but
4 either criminal or having to do with the State's
5 procurement processes, where there's been fraudulent
6 bidding or the like.

7 And in those situations, a reformed IG might
8 have a role.

9 But for ethics enforcement, I think it's
10 important to have a single body which can be held
11 accountable for doing the job right, that can apply
12 uniform standards to the executive and the
13 legislature, and that is adequately staffed and
14 adequately funded, and that people know where to go.

15 SENATOR KRUEGER: Thank you.

16 Do either of the other of you have a
17 different opinion?

18 RACHAEL FAUSS: I would say, for
19 Reinvent Albany, we agree on the point that IGs can
20 play a very important role. And they're very
21 standard among government agencies to have an IG to
22 be able to investigate waste, fraud, and abuse.

23 So, you know, it's possible that it could be
24 retained, as long as it's reformed and made much
25 more effective and independent.

1 But, you know, I think the important thing to
2 think about with our ethics [indiscernible] with
3 JCOPE, I mean, they also cover lobbying.

4 That's an important thing.

5 And I think there needs to be, with ethics
6 oversight -- there has to be that nexus of being
7 able to see the flow of money and influence.

8 So I think that's something that, you know,
9 hasn't been talked about as much at this hearing,
10 but having ethics and lobbying oversight in the same
11 place absolutely makes sense.

12 And I just wanted to reference that as an
13 important thing to consider.

14 SENATOR KRUEGER: Thank you.

15 ED MURRAY: Yeah, and if I could just add
16 there, you know, the city bar hasn't looked on -- at
17 an issue of consolidating all these bodies into one
18 central authority.

19 Certainly, there's some beauty to that, that
20 simplicity of that idea.

21 However, I think that could cause some
22 unwieldy bureaucratic entity that is not efficient
23 in fulfilling its mission.

24 I think, bottom, though, with respect to
25 ethics oversight and enforcement, you know, even at

1 this point there's something -- there's the
2 Legislative Ethics Commission and there's the
3 Joint Commission on Ethics.

4 I think consolidating all the entities that
5 are responsible for enforcing the state's ethics law
6 is an important step in ensuring that the mission of
7 is fulfilled here.

8 SENATOR KRUEGER: Actually, I do have a
9 second question.

10 So I've always believed that, even in ethics,
11 where it gets, you know, trickier than, you know,
12 the rules of the road, that there are lines that you
13 are not supposed to cross, and some people don't
14 know the lines.

15 So that a real value is to be able to have
16 things like the ethics trainings, people you can go
17 and talk to and say, you know, I think this was the
18 wrong thing that happened. I'm not sure. Can you
19 walk me through it?

20 Do you all believe that that should also be a
21 role for the same entity, JCOPE?

22 Or is it important that the role of trainer
23 and educator about what the rules are that you can't
24 violate needs to be separate from the investigators
25 and people who are actually perhaps coming down with

1 penalties for you for having violated?

2 I'm just curious what you think works best.

3 ED MURRAY: I'll jump in there.

4 Yeah, I think that can -- I think that can
5 and should be in the same entity; the same entity
6 can fulfill that responsibility.

7 I think it's important that there is one body
8 that's maintaining a uniform application of these --
9 of the ethics rules.

10 And so if there's one entity that's providing
11 advice in one direction, and then there's an
12 enforcement entity that's looking at this in another
13 direction, I think that creates problems.

14 So I think this can all be effectively done
15 within one agency.

16 It's, just, it doesn't seem to be happening
17 as currently structured.

18 SENATOR KRUEGER: Thank you.

19 Thank you, Madam Chair.

20 SENATOR BIAGGI: Senator Palumbo.

21 SENATOR PALUMBO: Thank you, Madam Chair.

22 I'm gonna -- I agree with you, Mr. Murray,
23 and I think that kind of along those lines that we
24 just discussed, it's pretty obvious the overlap and
25 the redundancy between the IG and JCOPE.

1 And the more we get into the weeds, it seems
2 like JCOPE was clearly created for a press release.
3 It was intended to be toothless. And the IG's
4 Office was supposed to be the adequate oversight
5 agency.

6 But we have seen the atrocious failures that
7 they have engaged in, and they don't even have
8 criminal powers. They have to refer as well.

9 So we're referring to a referring agency who
10 can maybe refer, and maybe not.

11 So I think there's almost a dual punting
12 ability, for political reasons, for them to say, You
13 know what? This is a terrible situation for me.
14 That I have to have some real intestinal fortitude
15 to make a decision to go after, for example, the
16 governor.

17 So I'd like to hear what the panel has to say
18 regarding maybe creating one agency. Get rid of
19 JCOPE.

20 The IG's Office is its own animal. I mean,
21 I know many -- I mean, they're obviously nationwide.

22 This one has some real troubles, and needs to
23 be revamped.

24 But how about creating something like a
25 criminal division within the Inspector General's

1 Office.

2 And like Edward, like you, has just said,
3 that maybe, possibly --

4 And I don't know if you know, if you were
5 listening earlier, I mean, I'm a former prosecutor.
6 I've dealt with, you know, hundreds and hundreds of
7 felony complaints and homicides and major cases; so
8 I get it.

9 -- you do need to have an ability to
10 investigate, and maybe impose some sort of a
11 sanction.

12 But, also, I think you might want to have a
13 criminal division because, then, you end up asking
14 Cy Vance to take a case. You end up asking, you
15 know, other district attorneys who are political.
16 And, clearly, you know, they may have an agenda as
17 well to not accept a referral.

18 So how would you feel about putting it all
19 under one roof?

20 That was a long question, but that's really
21 where I'm going.

22 ED MURRAY: Yeah, I'll jump in here.

23 I think providing something -- the ethics
24 commission with criminal jurisdiction is probably
25 not the right step to take at this point.

1 I think there are structures that can be put
2 in place here to ensure that there is more public
3 trust in an agency like the ethics commission.

4 I actually think Judge Berland had an
5 interesting recommendation here in terms of
6 expanding the referral powers of JCOPE with respect
7 to violations of the confidentiality provisions.

8 It does seem problematic, if JCOPE has to
9 refer those violations to the inspector general,
10 particularly if the inspector general is
11 investigating his own or her own appointing
12 authority.

13 So I think that's something, an interesting
14 thing, that the legislature should look at.

15 But in terms of giving the ethics commission
16 criminal jurisdiction, I don't think that's the --
17 I haven't looked into the issue in great detail at
18 this point.

19 I don't think that's a step to take at this
20 point.

21 I think there are other structural issues
22 with regard to voting rules and the appointment
23 method that can bring about more public trust in
24 this agency, and that they'll make the proper
25 criminal referrals at the right time.

1 SENATOR PALUMBO: Very good.

2 And I kind of feel that way in my gut as
3 well. I just wanted to ask that question.

4 Does any of the -- are any of the other
5 panelists interested in commenting?

6 EVAN DAVIS: I think there might be room to
7 increase the power of the AG's official corruption
8 unit.

9 We've gone the route of increasing the AG's
10 criminal jurisdiction in other areas. I think that
11 might be something to look at.

12 SENATOR PALUMBO: And then they can refer
13 directly to them?

14 EVAN DAVIS: Right.

15 RACHAEL FAUSS: And would I add, too, that
16 I think that, you know, something I said in my
17 testimony, is that the state comptroller has an
18 important role here, too.

19 I mean, there's a -- it's standing referral
20 between the comptroller and the attorney general for
21 misuse of state resources.

22 I think that that's something you-all should
23 look at more in an additional hearing, to see --
24 understand how that process is working, because
25 that's yet another oversight mechanism that the

1 State has, that I think it would be good to know,
2 how can that be strengthened?

3 SENATOR PALUMBO: Very good.

4 Thank you.

5 Thank you, Madam Chair.

6 SENATOR BIAGGI: There we go.

7 Senator Gaughran.

8 SENATOR GAUGHRAN: Thank you, Madam Chair.

9 Mr. Davis, when were you speaking, it
10 struck me, do we need to do something -- in addition
11 to replacing JCOPE, and, you know, we have the
12 constitutional amendment, do we need to do something
13 to deal with whistleblower statutes, to make it, you
14 know, so it's concise, it's clear; you know,
15 Julie Garcia would know exactly where to go, she
16 wouldn't even have to think about it, as it relates
17 to, you know, our entire state government?

18 EVAN DAVIS: Well, the constitutional
19 amendment that's been put forward by Senator Krueger
20 strengthens whistleblower protection in the
21 constitution.

22 And I think that makes a lot of sense,
23 because it's so very important that the State stand
24 behind people willing to speak up.

25 Again, not to fail to investigate, but they

1 say, but to be sure that speaking up does not make
2 their life difficult.

3 And I think the standard can be improved, it
4 should be improved, and perhaps even more than what
5 is done in the constitutional amendment. I think
6 it's a very important piece of effective ethics
7 enforcement.

8 SENATOR GAUGHRAN: Improvement. And then
9 maybe also, communicated, you know, very clearly,
10 just like when we do ethics training, sexual
11 harassment training, it's made very clear, you know,
12 there are whistleblower laws, and, you know, you
13 have the right, and I would say in many cases,
14 probably the obligation, to step forward.

15 And I guess --

16 RACHAEL FAUSS: I would --

17 SENATOR GAUGHRAN: Oh, yes, go ahead.

18 RACHAEL FAUSS: Just a note that -- on -- it
19 looks like Senator Liu might not be in the room with
20 you at the moment.

21 But a bill we support, that he has
22 introduced, it's on the Sexual Harassment Working
23 Group agenda, would protect -- better protect
24 legislative and judicial employees under the State's
25 whistleblower protections. It's S1096.

1 That did not pass either house this year, but
2 we would encourage you to do so, because that's a
3 mechanism to protect legislative and judicial
4 employees under the whistleblower statutes.

5 SENATOR GAUGHRAN: Yes, that makes sense.

6 So another question for -- you know, for any
7 that may want to answer, and I have tried to raise
8 this a little bit with Judge Berland, but we ran out
9 of time.

10 We fix JCOPE or replace JCOPE with a new
11 agent -- with a new commission.

12 We make improvements to our disclosure
13 statements.

14 But don't we have to do something else in
15 terms of dealing with this issue, particularly, you
16 know, for the state legislature, with outside
17 income, outside employment, various proposals to ban
18 it outright or to limit, you know, and have real
19 guardrails?

20 I mean, doesn't, ultimately, that
21 [indiscernible] in many cases even a lot more, by
22 stopping these problems from happening in the first
23 place?

24 RACHAEL FAUSS: I did reference in our
25 testimony that we support, in general, it's much

1 more effective to have bans on outside income than a
2 disclose-and-recuse regime, because when you have
3 the disclose-and-recuse regime, you know, you're
4 hoping that it solves the problem by just saying,
5 okay, this person won't vote on this issue.

6 But that conflict is still there.

7 It's easier when you're appointing people to
8 bodies who are serving government, that they don't
9 have other outside interests.

10 It's a much simpler, easier recommendation.

11 And, you know, we, in general, have supported
12 bans on outside income.

13 And I think that could apply also to issues
14 like, you know, governors' book deals.

15 It's easier not to have that conflict, and we
16 far prefer that.

17 SENATOR GAUGHRAN: I mean, that would be --
18 I mean, that would be clear, because if you're
19 writing a book and the book is entirely based on
20 your activities as a public official that you're
21 being paid for, that would seem, to me, should be
22 covered by some sort of a ban on income.

23 Thank you so much.

24 SENATOR BIAGGI: Okay.

25 I'm cursed by the microphone today, so I'm

1 sorry.

2 SENATOR KRUEGER: They're attached.

3 SENATOR BIAGGI: I know, they're attached to
4 this table, unfortunately.

5 Well, thank you all for your testimony.

6 And a lot of the questions that I had have
7 already been answered, so I'm not going to repeat
8 anything that was already asked or said.

9 But I think there are a few important
10 questions that still are left unanswered, or at
11 least we can expand upon.

12 So -- and these are for all of you unless
13 I just ask one of you directly. So please feel free
14 to answer in any order that you wish.

15 Can you explain to the public watching or
16 listening or reading about this hearing today, why
17 the public should care about ethics; why is it so
18 important?

19 And how JCOPE's failures impact the average
20 New Yorker?

21 EVAN DAVIS: So when the public lacks
22 confidence in government, you have a situation where
23 the cooperation and help and mutual support that is
24 supposed to exist between government and the public
25 is gone, and the public will not support government

1 if it lacks trust in government.

2 And that means things that should happen
3 won't happen.

4 Also, corruption means that money is being
5 wasted; that there is fraud, that there are people
6 feathering their pocket with the taxpayers' money,
7 that they are diverting state-board resources to
8 their personal benefit.

9 And the taxpayers have a direct interest in
10 that not happening.

11 And, also, I think it is important for
12 New York State to be able to hold its head high;
13 that we are a state with a strong ethical regime.

14 And right now we have to sink our head and
15 look at the ground because we are a state with a
16 weak, almost non-existent ethical regime.

17 SENATOR BIAGGI: Thank you for that.

18 Yes, Rachel, please.

19 RACHAEL FAUSS: Sure.

20 You know, I think I said this in one way in
21 my testimony, and I'll maybe say it a little bit
22 more -- put a point on it a little bit more, but,
23 you know, it's not as if -- corruption and
24 abuse-of-power issues, it's not as if there are not
25 victims there. And I think it gets it what Evan was

1 saying, is that when state money, when public
2 dollars, are being spent on things because, you
3 know, someone who gave the most campaign
4 contributions, who's the most powerful, and there's
5 conflicts of interest involved there, that's money
6 that doesn't go to other programs.

7 That's money that can't go to important
8 services for people who don't have that kind of
9 access and influence in state government.

10 And I think this gets at the -- you know, it
11 goes beyond ethics, and to issues of campaign
12 finance issues and lobbying disclosure, and all
13 sorts of things.

14 But I think we can't think about corruption
15 in a vacuum. It's not as if that money couldn't be
16 used for much better and different things.

17 And that's, I think, the way I'd say it to
18 you in terms of these issues.

19 I mean, obviously, when you're talking about
20 issues with victims and sexual harassment, it gets
21 it the trust in government.

22 And, you know, I don't want to speak for
23 Erica, but I thought what she said was powerful,
24 that if people don't want to serve in government
25 because they feel that they're going to be harmed,

1 that's eliminating a whole pool of people who will
2 never work for state government, and who will not
3 feel like they can contribute. And I think that's
4 damaging.

5 We want our public institutions to have the
6 best and the brightest, and people who feel like
7 they can make a real difference.

8 And if they feel like they don't want to join
9 government because they don't trust it, that's
10 damaging to our institutions.

11 ED MURRAY: Yeah, my panelists are much more
12 eloquent on this subject than I, but I would just
13 add that the decisions that government makes seeps
14 into the daily lives of everyone, every single day,
15 in so many impactful and meaningful ways,
16 particularly now in the midst of a public health
17 crisis.

18 And it's important that when the government
19 makes a decision about how to address a public
20 health crisis, or any other issue, that they're
21 making decisions that are in the interest of the
22 public, and not in the interest of the person making
23 those decisions.

24 So it extends much more broadly beyond some
25 of the specific cases that we were talking today.

1 And so I think that, fundamentally, we --
2 there has to be trust in government, and so when the
3 decisions are made that impact us, we know that
4 they're made with the public in mind.

5 SENATOR BIAGGI: Thank you so much.

6 I think that extends even to the subway
7 functioning, to getting money out the door when it
8 comes to COVID relief.

9 I think there's so many different ways.

10 And you all just highlighted a lot of them,
11 and it's meaningful.

12 I want to just end my time on the topic of
13 misuse of governmental resources.

14 This is Section 74 of the Public Officers
15 Law.

16 We've heard this section reiterated lots of
17 times today, so I will not repeat it, just for the
18 sake of time.

19 But my question, really, and, Evan, I feel
20 like maybe, perhaps, this is best suited for you,
21 just your assessment of Judge Berland's comments
22 about how JCOPE handled the "misuse of state
23 resource" cases, and what you believe is an
24 appropriate standard to apply to determine whether
25 public resources were used to advance someone's

1 personal interests.

2 I think that would be a really helpful,
3 distinguished moment today.

4 EVAN DAVIS: So the JCOPE training materials
5 indicate that their most common subject of
6 investigation is misuse of public resources.

7 This is a recurring problem.

8 And so, therefore, the way it is handled has
9 great importance, because it's widespread.

10 And it's particularly important how they
11 handle it in the case of the governor, because you
12 have to set the example at the top.

13 And so I think that no matter how they vote
14 tomorrow on whether to rescind their approval of his
15 book, they have to investigate what happened with
16 regard to using of state resources.

17 How were people asked?

18 What was the time involved?

19 Could people in any way realistically say no?

20 And if the charges are sustained, I think
21 that the governor has to refund his compensation,
22 because that's what the law says.

23 I think that if his work, if the ability to
24 use those resources was a substantial factor in his
25 getting that compensation, it has to be refunded.

1 I think if using those resources were
2 practically necessary, given all the other demands
3 on the governor's time, to get the book done now
4 while he is in the middle of his term, that's a
5 reason why it has to be compensated.

6 So I think it's very important they pursue
7 this, they get to the bottom of it, and they look
8 seriously at the recoupment or claw-back remedy
9 which the law provides.

10 I would say it's likely the facts will
11 justify using it.

12 SENATOR BIAGGI: Thank you very much.

13 And if I could just end on one -- I know my
14 time is up here -- but I have one final question,
15 and you may or may not be able to answer this
16 question, and that's okay.

17 But with regard to Section 74 of the Public
18 Officers Law, which, again, is the misuse of
19 government resources, including prohibitions on
20 using public resources for personal interest, how do
21 you think this section applies, or can apply, to
22 sexual harassment cases, if at all?

23 EVAN DAVIS: So a sexual harassment case is,
24 as Erica said, fundamentally, an abuse of power.

25 It's an abuse of power to get a sexual favor.

1 I guess that's the old fashioned phrase, but
2 that's the one that was used.

3 And that's an improper benefit.

4 Now, you're not seeking claw back, but the
5 consequences for that abuse of power should be, in
6 many, many cases, termination.

7 SENATOR BIAGGI: Thank you very much.

8 I don't have any further questions -- oh,
9 yes. We have one more person to ask questions.

10 Senator Stavisky.

11 Thank you all very much for taking the time
12 today. Everything that you've said is very
13 meaningful.

14 SENATOR STAVISKY: Yeah, one quick question
15 on some of the things you said.

16 Incidentally, Evan Davis, we thank you for
17 your service, and it goes back many years, and it's
18 appreciated.

19 You and I have spoken on a number of issues.

20 But you commented on the point I was making
21 that the -- to whom is the person who is being
22 appointed accountable?

23 And you suggested joint approval processes.

24 But, practically, that's very difficult, I've
25 discovered, getting people to agree on a joint

1 appointment.

2 That's my -- the first issue I wanted to
3 raise.

4 Second was, the -- you mentioned the
5 extensive JCOPE, you know, comments on abuse -- on
6 misusing of public property.

7 I was curious the other day, and I took a
8 look at the JCOPE website. And they list, and there
9 are all these cases, where people are abusing public
10 property.

11 How do you suggest -- and they must know it's
12 against the law, but they think they're just not
13 going to get caught, I assume.

14 How would you remedy that?

15 EVAN DAVIS: Well, the best way to remedy
16 that is to catch them, and then people will catch on
17 that they're going to get caught.

18 SENATOR STAVISKY: But there are pages of
19 this on their website, so they haven't caught on.

20 RACHAEL FAUSS: If I could add a point on
21 that, I think -- you know, we've looked through the
22 JCOPE enforcement actions. And it is notable, that
23 when you look at the types of people who have been
24 fined or who have gone through the whole process,
25 it's very often middle managers, lower-level staff

1 members. It is not the senior staff.

2 SENATOR STAVISKY: That's right.

3 RACHAEL FAUSS: It is [audio lost.]

4 SENATOR STAVISKY: I can supply the audio.

5 It's middle management.

6 SENATOR KRUEGER: You're muted again.

7 RACHAEL FAUSS: But, you know, the use of
8 personal resource -- the use of state resources for
9 personal gain.

10 Not everything is about getting dollars
11 kicked back to you. It's not all about that.
12 Sometimes it's returning favors.

13 You know, it's the issue of the governor
14 getting prefer -- trying to get preferential COVID
15 testing.

16 What did he personally get from that?

17 Did he get -- did he get it -- what did he
18 get back from that?

19 Perhaps nothing, other than paying back a
20 favor.

21 So I think we have to think about these
22 things broadly.

23 Misuse of state resources isn't always about,
24 you know, getting that money back to your family or
25 you.

1 And it's -- I think we have to think about
2 these things much broader.

3 EVAN DAVIS: And in terms of joint
4 appointments, I do think you have to have a really
5 strong default, that if they can't agree on the
6 joint appointment, someone else will make the
7 appointment, and they will lose the chance to
8 choose.

9 And I think that fear of losing the chance to
10 choose can work if the consequence is sufficiently
11 unappealing.

12 And we do have joint decision-making, in that
13 the Commission on Judicial Nomination does manage to
14 come out jointly with seven names for the governor
15 to consider, who are Court of Appeals judges. And
16 they have a voting process, and it works.

17 And I think in other instances, it can work.

18 And when you do the two together, let's say
19 the majority leader and the speaker together,
20 I think you would get a really highly qualified
21 person that would really do a great job.

22 ED MURRAY: And I would add in that regard
23 that the -- this new state Public Campaign Finance
24 Board includes joint appointments by the Democratic
25 leaders and the legislature and the Republican

1 leaders in the legislature.

2 And so you kind of expand that idea out to
3 the entire -- an ethics commission, where you do
4 have significant consequences for failing to act
5 where that appointment power devolves to somebody
6 else.

7 I think that combined may provide an
8 improvement upon the existing appointment.

9 SENATOR STAVISKY: Good idea.

10 Thank you.

11 Good idea.

12 SENATOR BIAGGI: Thank you, Senator Krueger.

13 Thank you all very much.

14 I think that concludes our questioning.

15 We've definitely taken away a lot of
16 important information, and very much appreciate all
17 your help, not only today, but always, when it comes
18 to ethics legislation and campaign finance
19 legislation and reforming our constitution, and all
20 the things that will actually make our government
21 strong, and, frankly, let us not be embarrassed of
22 it.

23 So thank you very much.

24 SENATOR KRUEGER: Thank you, all.

25 ///

1 SENATOR BIAGGI: All right. Our next, and
2 our final, panel will consist of:

3 Jennifer Wilson, who's the deputy director of
4 the League of Women Voters;

5 Blair Horner, executive director of the
6 New York Public Interest Research Group, also known
7 as NYPIRG.

8 Rachel Bloom, director of public policy and
9 programs from Citizens Union;

10 And, Susan Lerner, executive director of
11 Common Cause New York.

12 I will acknowledge the fact that Blair Horner
13 has been here all day, waiting to testify.

14 So we appreciate you.

15 We're glad that you're listening, taking it
16 all in, and we appreciate you being in person.

17 You can go in the order that I listed if
18 that's easiest; or, you know, however you so choose.
19 But I think that might be the best way to begin.

20 So thank you all for being here.

21 JENNIFER WILSON: Great.

22 I can start.

23 Thank you, Senator Biaggi, and thank you to
24 all the senators who have stuck it out for this very
25 long and emotional day.

1 I bet you guys are glad you're in air
2 conditioning because it's really hot out.

3 My name is Jennifer Wilson, and I am the
4 deputy director for the League of Women Voters in
5 New York State.

6 And I think my colleagues have really laid
7 out well the reasons we want to reform JCOPE, and,
8 really, New York State ethics as a whole, some of
9 the sort of high-level changes we would like to see
10 across the board.

11 But I would really like to focus on the
12 constitutional amendment put forward by
13 Senator Krueger and Assembly Member Carroll, and
14 just highlight four specific changes we would like
15 to see in the amendment.

16 And, really, these can apply to any sort of
17 ethics reforms, moving forward, and they've sort of
18 been picked up today a little bit, but I think we
19 have a little bit of a different perspective on a
20 few of them.

21 Starting off with the appointment process,
22 I think that the current proposed appointment
23 process is starting to get at the issue of
24 independence. But we would really like to see a
25 very, very independent process that maybe could be a

1 citizen-led commission.

2 We had two senators, the senator of Alaska
3 and the senator of Rhode Island, make some really
4 excellent recommendations of how they do things
5 there.

6 But I don't necessarily think we have come up
7 with the perfect solution yet.

8 But sort of pivoting from the actual
9 appointment process, more to who these appointees
10 are, we would really like to see some sort of
11 mechanism placed to make sure these appointees are
12 as diverse as possible.

13 Certainly, in an agency that's looking at
14 sexual harassment and racial discrimination, we want
15 to have the people who are hearing these cases look
16 like the people that they're serving.

17 So the Independent Redistricting Commission,
18 in their amendment there is a minimum threshold for
19 diversity with regard to ethnicity, race, and
20 gender.

21 We'd really like to see that added to this
22 amendment as well.

23 Moving forward with the amendment, the
24 amendment makes mention of campaign finance, and
25 overseeing campaign finance.

1 And we're a little confused exactly how that
2 would look, especially now that there is the new
3 Public Campaign Finance Board, which works really
4 closely with the Board of Elections to the point
5 they're even sharing office space.

6 The commissioners of the Board of Elections
7 are part of the Campaign Finance Board.

8 So we'd just like to see a little bit more
9 clarity.

10 Are they going to be sending out letters to
11 non-filers?

12 Are they going to have trainings for
13 campaigns on how to file correctly?

14 Are they going to address the really big
15 backlog of non-filers, and bring them into
16 compliance?

17 We would just like to see a little more
18 clarity there.

19 And then our last two points really go hand
20 in hand with regard to funding and supportive
21 administration -- administrative functioning as the
22 new Public Integrity Commission is starting to, if
23 it is passed, how it's going to get up and running.

24 This is something I feel like we see all the
25 time with New York State commissions, not to call

1 back to the Redistricting Commission and the Public
2 Campaign Finance Board, but both of those entities,
3 they had a huge delay in funding, they had a delay
4 in hiring staff, they had a delay in finding office
5 space; and as a result, they've been delayed in
6 actually doing the work that you all charged them
7 with doing, and that's just not acceptable.

8 Certainly, if we're going have this really
9 fantastic, independent unit, we want it to have
10 money, we want it to have staff, and we want it to
11 be ready to hit the ground running as soon as voters
12 were to accept this constitutional amendment.

13 The amendment does make mention to say that
14 there should be funding for this commission.

15 But the Redistricting Commission amendment
16 also said there should be funding for the
17 Independent Redistricting Commission.

18 I'm sure you all remember there was almost a
19 year-long delay. They were almost underfunded by
20 \$200 million. It was kind of a big mess.

21 So we would love to see, as this amendment is
22 being considered, some sort of line-item
23 consideration.

24 Let's give this integrity commission the
25 support that it needs so it can do the work that

1 we're going to be asking it to do.

2 But I do want to end on a positive note,
3 which is, overall, this amendment is a major
4 improvement to what we have in place. Combining
5 JCOPE and the Legislative Ethics Commission into a
6 single entity, to just take care of everything,
7 seems like an excellent step forward.

8 And, overall, the league strongly supports
9 this amendment.

10 So thank you again for holding this hearing.

11 We hope this is the first of many
12 conversations around the topic of ethics reforms.

13 And I look forward to hearing from my fellow
14 testifiers.

15 SENATOR BIAGGI: Thank you, Jennifer.

16 And before we move on to Blair, I just want
17 to correct the record.

18 It's not Rachel Bloom who is joining us
19 today.

20 It is Alan Rothstein, who is a board member
21 and co-chair of the policy committee from
22 Citizens Union.

23 I apologize, Alan.

24 Thank you very much.

25 And, Blair, you may, please.

1 BLAIR HORNER: Sure.

2 Good afternoon.

3 My name is Blair Horner. I'm director of
4 NYPIRG.

5 And thank you, Chair Biaggi, and Senators,
6 for holding the hearing today.

7 I submitted written testimony that you all
8 have.

9 And so, instead of reading the testimony,
10 I'll just read my verbal notes here. And I would
11 like to not cover the exact same things that have
12 been covered already, although I might to some
13 extent, and just focus on something that really
14 hasn't come up.

15 First of all, your timing is impeccable.

16 The stars are aligned in a way not seen in
17 recent memory for a giant step forward on state
18 government ethics in New York.

19 A crisis is a terrible thing to waste, and
20 there can be no doubt New York's ethics enforcement
21 is in crisis.

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

1 Yesterday New York swore in a new governor,
2 and it's in this honeymoon period that new governors
3 are most likely to advance reforms.

4 Governor Hochul has significant challenges:
5 establishing guidance on how to deal with the
6 pandemic, develop a budget for the new fiscal year,
7 staff up, and all that, with an election cycle
8 looming.

9 For the governor to succeed, she will have to
10 deliver the goods for New York. Top among these is
11 how to establish a state government that relies on
12 best practices, enforceable rules, and creates a
13 culture based on professionalism and ethical
14 behavior, all while successfully governing.

15 Senator Biaggi, you, like many others, have
16 been the subject of shockingly unprofessional
17 behaviors by top-ranking state public officials.

18 New Yorkers have seen a rapid coarsening of
19 Albany's political culture, a culture that put a
20 premium on fear in order to govern.

21 That has to stop.

22 There are two important approaches we urge
23 you to follow.

24 First there needs to be independent oversight
25 of ethical behavior in government.

1 The Joint Commission on Public Ethics, the
2 Legislative Ethics Commission, the inspector
3 general, and municipal ethics standards must be
4 dramatically improved.

5 The comptroller's oversight of government
6 contracting must be fully restored.

7 And, second, the executive branch has become
8 too powerful.

9 As you know, the state Constitution grants
10 New York's governor extraordinary powers. And in
11 the hands of an extremely skilled politician, that
12 power can overwhelm the checks and balances
13 necessary to safeguard the state's democracy.

14 As we've seen, using those powers, the
15 governor can install into key positions -- allies
16 into key positions, including in governmental
17 watchdog agencies.

18 A prime example is JCOPE.

19 The first three executive directors all came
20 from the governor's staff when he was attorney
21 general.

22 Both of the governor's book deals, generating
23 \$6 million in combined outside income, were approved
24 by JCOPE staff without going to the full commission.

25 And I'll just mention one other thing in

1 terms of public resources: In both cases, the
2 request from the governor's office for the book deal
3 came from staff working for the governor, issued on
4 letterhead from the governor's office, for private
5 book deals.

6 Under state law, JCOPE's closed-door
7 deliberations are supposed to be secret.

8 But we've already heard from Miss Garcia that
9 isn't the case.

10 I won't go into detail because she did a far
11 better job than I could ever do.

12 But one of the things I thought that was
13 interesting in all of that, was that the governor
14 called the speaker.

15 Of course he should have reported the leak.

16 We have no idea if he did.

17 But the fact that he called the speaker just
18 underscores the fundamental flaw with JCOPE, and the
19 one we've always talked about.

20 It's not really about the staff. It's not --
21 they need revenue. All of the things that the judge
22 talked about, we don't disagree with.

23 But the commission needs to be independent.

24 Another entity that needs to be reformed is
25 the state's inspector general.

1 The inspector general, as you all know, is
2 charged with investigating the leak, and I will end
3 it there.

4 The list goes on, but the root cause is that
5 there is an executive that simply has too much
6 power.

7 And American democracy is supposed to be
8 based on a system of checks and balances to ensure
9 that no one branch dominates the others.

10 At the core of the governor's immense powers
11 is this constitutionally protected power to drive
12 policy decisions through the state budget.

13 The state Constitution has granted the
14 executive the upper hand in budget negotiations.

15 It's become clear that the advantage granted
16 to the executive in the budget process has given the
17 governor the leverage to expand his control more
18 broadly over governmental decision-making.

19 Legislation to change the Constitution is
20 needed to better establish a system of checks and
21 balances, to limit the policy-making authority of
22 the governor.

23 It is that balance, coupled with the
24 establishment of truly independent ethics watchdogs,
25 that will ensure that the executive branch doesn't

1 lose its professional and ethical moorings in the
2 future.

3 New Yorkers are hungry for reform.

4 Please do all you can to use this crisis as
5 an opportunity to overhaul ethics and restore public
6 trust in government.

7 Thank you.

8 Right on schedule.

9 [Laughter.]

10 BLAIR HORNER: Who's next?

11 SENATOR KRUEGER: Susan's next.

12 ALAN ROTHSTEIN: I think it's me, Alan?

13 Should I go?

14 Okay.

15 Hi.

16 Citizens Union appreciates the opportunity --
17 can you hear me?

18 OFF-CAMERA SPEAKER: Yes.

19 ALAN ROTHSTEIN: Great.

20 Citizens Union appreciates the opportunity to
21 testify before you today regarding New York's ethics
22 system, which as you've been discussing, is quite
23 broken and needs a complete reinvention.

24 In our view, the major flaw of the JCOPE
25 framework is the ability of the governor or

1 political party in the legislature to block an
2 investigation.

3 Indeed, if certain appointments are not made,
4 it could be impossible to launch an investigation
5 against a member of a particular political party
6 because not enough commissioners from the party or
7 official would be in place to vote for an
8 investigation.

9 However, there is much more wrong, as we've
10 been discussing.

11 Any effective ethics -- I'm sorry. Let me
12 skip ahead a little bit.

13 Citizens Union has been working with other
14 concerned groups, several of which are here today,
15 to develop a constitutional amendment to replace
16 JCOPE with a far more independent agency, and to
17 make other structural and operational improvements.

18 Much of what we would like to accomplish is
19 in the constitutional amendment we have been
20 discussing, that Senator Krueger and
21 Assembly Member Carroll has sponsored.

22 We applaud you for your leadership on that,
23 Senator Krueger.

24 We recognize the key is -- to a truly
25 independent agency is how -- is in how the

1 commissioners and staff are selected.

2 To that aim, we and others are working to
3 develop a proposal to better enhance that
4 independence.

5 A strong ethics proposal must strive to
6 establish a new commission seen as accountable,
7 whose members are both capable and independent.

8 This involves creating an appointment
9 procedure to achieve those aims.

10 The commission should be much smaller than
11 the current 14-member JCOPE.

12 Means of creating independence include a role
13 for the judicial branch. This branch would provide
14 a different perspective to that of the executive and
15 legislative branches.

16 In addition, judicial conduct is overseen by
17 the state Commission on Judicial Conduct, and so the
18 judges would not be included under the new ethics
19 agency, so they would have some removal from that
20 process, and it wouldn't be appointing people who
21 would then oversee them.

22 A consideration should be given to joint
23 appointments of individual commissioners to avoid
24 having a particular commissioner seen as the one
25 representing a particular official's interests.

1 And one commission member can be appointed by
2 the remaining members to further remove that
3 commissioner from perceived fealty to an individual.

4 We recognize the complexities in designing an
5 independent framework.

6 And it's great that you brought in the
7 expertise of other states into the hearing.

8 We're also going to be looking at those as
9 well.

10 Independence also involves insulating the
11 commissioners from reporting authorities during
12 their term of service.

13 This can be done by assuring they can be
14 terminated only for cause, and not leaving the
15 decision to the officials who appointed them, but,
16 rather, to the commission.

17 In addition, commissioners might be limited
18 to only one perhaps six-year term so that their
19 reappointment would not be a concern.

20 Commissioners, however selected, should have
21 certain qualifications, such as not holding or
22 recently having held elected or party office, and a
23 number of others that have come up today, and they
24 should have expertise in relevant areas.

25 While we believe the constitutional amendment

1 is necessary to fix this broken system, there are
2 legislative changes that would be helpful now; for
3 example, eliminating the blocking provisions -- and
4 I know there's legislation on that-- and allow for
5 more disclosure of investigations and circumstances,
6 balancing the need for confidentiality against the
7 importance of transparency.

8 Citizens Union welcomes today's hearing, and
9 inviting public input as to how to improve the
10 process.

11 And we look forward to additional hearings to
12 explore further how to achieve a real ethics reform
13 across the board, well beyond JCOPE reform, to many
14 of the issues -- all of the issues that have been
15 discussed today.

16 And thank you again for the opportunity.

17 SENATOR KRUEGER: Okay. Susan Lerner.

18 SUSAN LERNER: All right. Bringing up the
19 rear here.

20 Thank you very much for the opportunity to
21 testify.

22 And compliments to all of the senators who
23 have stayed with this important topic.

24 I do want to add my voice to
25 Alan Rothstein's, and note what an excellent idea it

1 is to bring in legislators and knowledgeable
2 individuals from other states, to really expand the
3 discussion with ideas that we here in New York may
4 not have considered, and to learn from experiences
5 in other states.

6 I'm not going to spend any time talking about
7 why JCOPE needs to be abolished and we need to start
8 over. I think that's been made very clear.

9 Some highlights of the entity that I think
10 should be created, it must be independent.

11 And in our written testimony, we do suggest a
12 means of independent appointment that we used a
13 section of the For the People Act, the current
14 pending S-1 in the U.S. Senate, in terms of an
15 appointment process for the FEC, as a jumping-off
16 point for our suggestions.

17 The enforcement power of the new entity is
18 extremely important. It has to have its own
19 subpoena power. It has to be able to bring
20 enforcement actions on its own.

21 And I very much like the suggestion from
22 Evan Davis, that criminal referrals should go
23 directly to the public corruption unit of the AG's
24 Office. I think there is an important role for the
25 AG in our ethics oversight.

1 And we certainly agree with the League of
2 Women Voters in terms of the need for diversity on
3 the new entity, and having that baked into the
4 requirements.

5 We believe that sexual harassment and
6 discrimination are very particularized areas of the
7 law.

8 And while they exist on a continuum of abuse
9 of power, often the considerations are different
10 than the considerations that those who are ethics
11 authorities, or most familiar with ethics, are
12 familiar with.

13 We believe that there should be a separate
14 entity which deals with sexual harassment and
15 discrimination issues because of the particularized
16 nature of the law and behavioral science around it.

17 Conduct which would be considered an ethics
18 violation could also be referred, not only to the
19 sexual harassment entity, but also to an ethics
20 entity.

21 But I would also like to focus, on my
22 remaining time, on things which I believe can be
23 done immediately.

24 And in reviewing my written testimony,
25 I realize I omitted one thing, so I'm going to start

1 with what I have identified in the written
2 testimony, and then add a fourth item.

3 The legislature should immediately take
4 action to rescind any exemption of the review and
5 approval of state contracts from the comptroller's
6 purview.

7 That is an invitation to corruption and
8 misuse of public assets.

9 Quite honestly, we don't believe that those
10 exemptions should have been created.

11 They certainly should be closed now because
12 we have seen them abused over and over again.

13 The attorney general should be given original
14 jurisdiction, without the need for a referral, to
15 investigate public corruption in the legislature and
16 in the executive.

17 That is the case in most states.

18 And our attorney general is hobbled.

19 Now, I know we've had different people as
20 attorney general, but I think that that original
21 jurisdiction is necessary.

22 We suggest a consent-and-reporting system for
23 public employees who are requested to volunteer
24 time, either on politics or outside of their
25 official duties, in order to be sure that that is

1 not abused, recognizing that many employees do want
2 to be politically active on behalf of their boss or
3 other candidates.

4 But we think that a consent-and-reporting
5 system will significantly decrease abuse.

6 And, finally, we believe that there should be
7 a serious discussion about what should be done with
8 campaign funds that are controlled by individuals
9 who are no longer in office, particularly those who
10 have had to resign or have been removed because of
11 misconduct.

12 Right now, the only thing that ends a
13 campaign fund is death. And we think that that is
14 really too long of a string, and is an issue which
15 would be appropriate to look at as part of your
16 consideration.

17 So, thank you.

18 BLAIR HORNER: By the way, sometimes death
19 doesn't stop it.

20 There are political committees that live
21 longer than the original legislator.

22 SENATOR BIAGGI: Wow. That's troubling, in
23 every way.

24 Thank you all very much.

25 So we're going to begin our questioning, and

1 Senator Krueger is going to start us forward.

2 SENATOR KRUEGER: Thank you.

3 I was going to point out what Blair did, and
4 Susan said: Dying doesn't necessarily end your
5 committee or its spending.

6 My predecessor passed with a significant
7 amount in his campaign fund, and it just kept
8 getting spent and spent for years afterwards.

9 So -- but, you know, I do come from
10 New Jersey, where, apparently, you would choose to
11 get buried in certain cities so your political
12 careers could continue.

13 So we'll just leave that alone.

14 Well, you didn't have anyone from New Jersey
15 coming in to do ethics advising to us.

16 And a good reason that you didn't.

17 So, Blair, you were talking about the book
18 deal, and the letters that went back and forth, and
19 that that story line probably is not done, and that
20 there are probably investigations continuing.

21 But I just wanted to highlight, as I was
22 doing some homework for this hearing, I came across
23 something that you and I will remember, and Susan
24 will remember. I don't know how many of us will
25 remember.

1 The original reason that Alan Hevesi actually
2 stepped down as the comptroller for the state of
3 New York was a case, where he was using a state
4 employee to drive his wife to doctors' appointments,
5 and I think the dry cleaners, or errands with the
6 dry cleaners.

7 And a case was brought. And he actually went
8 into court and plead guilty. Got a \$5,000 fine, and
9 the requirement that he could never run for office
10 again.

11 So how do you compare that story line to what
12 we're dealing with right now with this book deal?

13 And what do you think is supposed to happen
14 next, even under existing laws?

15 BLAIR HORNER: Well, I'll just take a -- by
16 the way, there's also the health commissioner,
17 Antonia Novella, also who got sanctioned for having
18 staff picking up her dry cleaning, and stuff, as she
19 was commuting back and forth to Washington, D.C.,
20 where she lived.

21 I mean -- you know, so in terms of the --
22 again, we don't know all of the details of the book
23 deal -- right? -- so that's the problem.

24 And so there -- it starts with the original
25 book deal.

1 There's two book deals.

2 Both times the then-counsels to the governor
3 on, I presume, public dime, write a legal analysis
4 to JCOPE, saying that the governor should be allowed
5 to have a book deal.

6 And it's on stationery that is the exact,
7 the governor's office, in both cases.

8 So there's public resources used for
9 something that, you know, you can't.

10 And then the first book deal certainly didn't
11 have anything to do with him when he was governor.

12 The second one did, but that raises, I think,
13 other questions, which you guys have talked about.

14 So in terms of the use of public resources,
15 I mean, I thought JCOPE was clear in their response,
16 that you weren't allowed to use public resources to
17 do it. And that if the -- if it's found to be the
18 case, that the people that volunteered their time,
19 or were ordered to be there, then, yes, the governor
20 is in the same boat as Alan Hevesi, Antonia Novello,
21 and others who have misused public resources.

22 But it's, you know -- it -- you know, the
23 sense of entitlement throughout the whole thing sort
24 of troubles me. I mean, these are -- we're supposed
25 to all be -- well, I don't want to speak for you

1 guys -- but public service is supposed to be
2 operating on behalf of the public, not looking to
3 enrich themselves.

4 And the executive branch, unlike the
5 legislative branch, is a full-time job.
6 Highest-paid governor in the country is our New York
7 governor.

8 And so the -- those issues, I think, you
9 know, again, we don't know. Right? We don't know
10 what happened.

11 And we'll see, hopefully, JCOPE will do a
12 good job, and set a clear precedent as to what's
13 allowed.

14 But they shouldn't allow book deals, and they
15 shouldn't do it with the staff.

16 That should have to go to the commission.

17 SENATOR KRUEGER: Susan, did you want to add
18 something?

19 SUSAN LERNER: I'm sorry. I'm having a very
20 hard time hearing Blair who was very, very fuzzy.

21 BLAIR HORNER: I have a mask on.

22 [Laughter.]

23 SUSAN LERNER: But there's not just the book
24 deal. Right?

25 I mean, there have been regular reports in

1 the press about: Using state police to move things
2 around, take family members places. There's jumping
3 the line for testing and vaccination for the
4 governor's family.

5 There has really been a steady continuum that
6 has been brought out, and it really highlights the
7 lack of enforcement, because this has been happening
8 continually. It brought down Hevesi.

9 And it's extraordinary to have watched
10 Governor Cuomo use public assets as if they were his
11 personal assistants over a number of years without
12 any consequences.

13 So this is something that certainly needs to
14 be tightened up.

15 BLAIR HORNER: Let me just add one last
16 thing, if you don't mind.

17 This is why you need an independent ethics
18 watchdog.

19 Someone is supposed to call balls and strikes
20 on this thing, and give clear advice, and advice
21 that we all believe. And even if we don't all know
22 what -- how they came to their conclusion, that we
23 trust that they're looking at it independently.

24 And the problem right now, it's a problem for
25 all of you, is that the much-maligned JCOPE nobody

1 believes is operating on the up and up.

2 And so even -- so they should give advice?

3 The new governor has issues. She should get
4 advice from JCOPE?

5 And we should all trust that the new state
6 ethics agency -- that you're going to, hopefully,
7 create -- operates independently and follows the law
8 without fear or favor. And then these kinds of
9 problems go away.

10 SUSAN LERNER: But this might be an area for
11 direct independence and initiative and enforcement
12 by the AG.

13 SENATOR KRUEGER: Okay. Thank you.

14 Thank you all for all your work.

15 I was just the first questioner.

16 SENATOR BIAGGI: Thank you, Senator Krueger.

17 Next we'll hear from Senator Palumbo.

18 SENATOR PALUMBO: Thank you, Senator Biaggi.

19 Good afternoon, everyone.

20 Thanks for hanging in there.

21 We certainly appreciate everything that
22 you've provided.

23 And I have just -- kind of along those lines
24 that we were just discussing, and I don't know --
25 I know you're all very well versed in

1 good-government situations: Do we know if any
2 states have a mandatory reporter statute that would
3 require someone?

4 I mean, the example of the leak is just --
5 I mean, it just doesn't get old. There are so many
6 violations there.

7 When you have now, counsel, who would
8 probably say "it's privileged," but have you
9 counsel, you have the governor, you have the
10 speaker, you have who knows who else, and the
11 leaker, all essentially acting in concert to try and
12 get to Julie Garcia and squeeze her.

13 So, really, the -- probably only the leaker
14 would be responsible, you would think, for violating
15 their oath or their charge as a member of the
16 commission. But everyone else just walks away.

17 So I almost think, do we know of any -- do --
18 what do you think of those -- of creating a
19 mandatory reporter statute, almost like an
20 insider-trading situation, where the people
21 downstream would bear some liability as well?

22 Because then you may get to one person in
23 that chain who really doesn't have the stomach to
24 continue to do this. They may report it. And then
25 the bomb goes off and everybody gets caught, which

1 would be great.

2 SUSAN LERNER: Well, the idea of, you know,
3 collaborative misuse of the information -- right? --
4 you know the information is not -- you're not
5 supposed to have the information.

6 And so if you use it, if you reference it,
7 then you fall under the same violations of the law,
8 I would argue.

9 BLAIR HORNER: I'm not familiar with other
10 states, but I know that, under the state's medical
11 malpractice sort of regimen, that if you're a
12 licensed provider and you observe misconduct, you
13 have to report it or it is misconduct not to report
14 it.

15 SENATOR PALUMBO: On your end, yeah.

16 BLAIR HORNER: So there is a -- there is a
17 sort of statutory regimen, not akin to this, of
18 course. But there is something under New York law
19 that you could look at, that, basically, mandatory
20 whistleblowing.

21 Now, that doesn't necessarily get enforced
22 that much on that side, but it definitely exists,
23 and there is precedent in New York, that I can think
24 of off the top of my head.

25 SENATOR PALUMBO: Sure. I mean, and that's

1 what I was thinking.

2 Even, like, when I was in the DA's Office,
3 you know, teachers, [indiscernible] all these
4 mandatory reporters that need to, obviously, bring
5 these things to light or it's misconduct themselves.

6 Alan, what were you going to say?

7 ALAN ROTHSTEIN: Yeah, I would say, of
8 course, there are legal codes in every state, that
9 lawyers have codes.

10 And this is part of, in fact, the language in
11 Senator Krueger's bill that requires reporting is
12 drawn from the Code of Professional Responsibility,
13 requiring, if you know of misconduct, to report it.

14 SENATOR PALUMBO: Right.

15 Okay. Very good.

16 Thank you.

17 SENATOR BIAGGI: Senator Salazar.

18 SENATOR SALAZAR: Thank you.

19 I have a few questions for, really, anyone on
20 the panel who would like to speak to this, but was
21 going to ask you specifically, Blair: You had
22 mentioned that you have recommendations for
23 reforming the Inspector General's Office.

24 Would you be able to just elaborate a little
25 bit on what you think about that?

1 And, certainly, any thoughts that you have
2 about the IGs, as Julie Garcia testified, you know,
3 conducting an investigation without even
4 interviewing key witnesses, what we've heard about
5 the Inspector General's Office today?

6 BLAIR HORNER: Well, it's sort of a tricky
7 issue.

8 A lot of what we -- New York has had,
9 historically, in the area of oversight hinges really
10 on the individuals. It's really not on the
11 structure.

12 So you have had very aggressive
13 inspector generals in the past.

14 Joe Fish, under Governor Paterson, was
15 extremely aggressive. He even banged the governor,
16 Governor Paterson at the time. So he didn't view
17 his mandate as reporting to the secretary's office,
18 therefore had allegiance to the executive branch.

19 And then I think David Grandau was mentioned
20 before -- I don't remember. It might have been
21 Senator Stec who brought it up. -- as the head of
22 the old lobbying commission, was always straining at
23 the leash to go after the lobbying industry.

24 But -- so how do you create structures?

25 I mean, right now, the inspector general is,

1 essentially, appointed by the governor, reports to
2 the secretary of the governor's office; and therein
3 lies the rub. Right?

4 And so how do you sever the relationships
5 between the appointing authority and the enforcer?

6 So, again, I -- you know, there could be ways
7 that you could sort of structure the statute to make
8 sure.

9 You could have -- one of the things that came
10 up from one of the other states was interesting, was
11 two-thirds votes from both houses to approve various
12 members.

13 That may be a way to go about it, to make
14 sure the legislature is crystal-clear that the
15 person they're picking is somebody who is good.

16 And it's hard to trade, even with a powerful
17 governor, with two-thirds majorities in both houses.

18 It's easier to do it if it's just two
19 leaders.

20 So, you know, again, I think that those --
21 that kind of -- we didn't have a specific
22 recommendation on inspectors general, on how to
23 reform that.

24 We think they have an important role to play,
25 but they should -- the person shouldn't be appointed

1 by the governor and report to the governor, or the
2 secretary to the governor, effectively, the
3 governor, because that creates an inherent conflict
4 of interest.

5 SENATOR SALAZAR: Absolutely.

6 BLAIR HORNER: Others?

7 Sorry, guys. Since I'm sitting here, I don't
8 get to look at you.

9 I guess not.

10 SENATOR SALAZAR: Yeah.

11 Any other comments from anyone else on the
12 panel?

13 BLAIR HORNER: Normally, they're kicking me
14 under the table.

15 SENATOR SALAZAR: Thank you, Blair.

16 SENATOR BIAGGI: Okay.

17 Thank you, Senator Salazar.

18 Next we'll hear from Senator Boyle.

19 SENATOR BOYLE: Thank you.

20 And thank you to the panelists here. Very
21 informative.

22 Just to get back to the idea of, potentially,
23 mandated reporting, there's also the idea of
24 something of a bounty, as they do with tax cases.

25 You know, if there was a staff person, they

1 could get 10 percent of \$5 million, they might be
2 more apt to say, Well, I felt pressured to help with
3 this book, and I think I should have at least
4 5 percent of 10 million.

5 One of the things, it was brought up, I think
6 Susan mentioned the testing, and putting in the
7 front of the line of family members.

8 Of all the things that were outrageous, that
9 was really one that stuck in my craw.

10 I represent Brentwood, New York. And I had
11 constituents wrapped around buildings in the
12 freezing cold, on line, to get tests, to save their
13 families, to protect their families.

14 And, meanwhile, I hear high-level health
15 department officials driving out to the Hamptons to
16 help out the governor's family.

17 I would just ask, in terms of the question --
18 that was my comment -- what can we do to educate?

19 And I know that there's an educational aspect
20 to it. But what I find, and is very concerning to
21 me, is the younger folks.

22 I know they're -- we're talking about people
23 here today who should have known better. They knew
24 what they were doing was wrong and they should be
25 held accountable.

1 But I have young staffers who just simply do
2 not understand the difference of what you can do and
3 what you can't do.

4 This is politics. They don't have to do this
5 in the office. You can't accept this. You can't do
6 that.

7 I would like to see as perhaps a part of this
8 overall change in our ethics criteria, to say, a
9 special thing to teach, or -- in both executive
10 branch and legislative branch, not just young
11 people, new people coming in, to explain, very
12 simply, pros and cons on what you can do and what
13 you can't do.

14 SUSAN LERNER: So my understanding is that is
15 what the ethics -- a portion of what the ethics
16 instruction is supposed to do.

17 You know, I think, clearly, it can be
18 improved. I think there needs to be very specific
19 guidance. There are common situations that come up.

20 But training and the statutes are only half
21 the story, as various of my colleagues have said.

22 This is a cultural thing.

23 That's why I'm suggesting a reporting
24 system -- right? -- a consent-and-reporting system,
25 so that there's a greater consciousness of where you

1 have to pay attention to where the lines are.

2 Some of that just is a culture within an
3 office.

4 And the fact that you stop and say to your
5 younger staffers, you know, "That's not the right
6 thing to do," sets the appropriate tone.

7 We need more elected officials who do that.

8 I've heard some really shocking and upsetting
9 stories about members of the legislature who would
10 stand by while now absent and passed-on abusers
11 abused staff, and say nothing.

12 There is a culture.

13 And a conscious effort on the part of -- and
14 I know the senators on this panel are out there
15 doing that -- is going to make a difference in the
16 long run.

17 SENATOR BOYLE: Thank you.

18 And just to follow up on that, Susan, when
19 you see not only staff for people abusing
20 lower-level staff people, shall we say, but also
21 some staff people using Twitter and all these other
22 accounts to attack staff people, former staff
23 people, and even members of the legislature, how
24 dare they question anything we're doing or you're
25 going to hear about it, and be it canceled, if you

1 will, and we also need to address that type of
2 thing.

3 I'm a little bit [indiscernible] and I think
4 people should be able to say what they want, but not
5 on the government dime, when you're attacking
6 people, and you're getting paid to do it.

7 SUSAN LERNER: Yeah.

8 BLAIR HORNER: By the way, I agree with that.

9 And there's ways you can sort of track when
10 people are doing it, whether or not they're doing it
11 on public time or their own private time.

12 But it will ultimately come down to modeling,
13 and whether or not you guys check on each other.

14 So, for example, when Senator Biaggi was
15 being -- was receiving, you know, direct personal
16 attacks from a high-ranking public official, on the
17 record, the legislature has to push back on that
18 stuff.

19 And so there's all responsibility on all of
20 us to call this kind of stuff out, because it is --
21 once -- particularly with younger staff, they follow
22 the model that they're looking at. They know what
23 the ex -- so often not even unspoken expectations
24 are about how to behave.

25 And so if you have a rough-and-tumble,

1 elbows-out, which is politics -- right? -- sort of
2 approach, people model that.

3 If you go way over the line, people model
4 that.

5 And so, again, I agree on the education side.

6 I think there's ways to sort of track, and
7 maybe make -- looking at the ethical side of using
8 social media, and looking at the time stamps, and
9 all that kind of stuff, to track, and make sure
10 people aren't doing it on public time.

11 I think that's all appropriate.

12 But I also think it's on all of us to call
13 this kind of stuff out.

14 ALAN ROTHSTEIN: You know, if you're a
15 lobbyist, or lobby organization, you have very
16 extensive reporting, including the
17 business-relationship reporting for any business
18 relationship with any state employee for 1,000 or
19 more.

20 So reporting is a -- can be a way to go.

21 And the State has been relatively creative in
22 finding ways of getting information.

23 So that might be an area where we can look
24 further.

25 BLAIR HORNER: Let me mention one quick other

1 thing.

2 In the -- two budgets ago, the governor put
3 in his executive budget, a code of ethics for
4 lobbyists. And, of course, that creates all sorts
5 of constitutional problems.

6 But perhaps a code of ethics for public
7 officials, one that's even stronger than found in
8 Articles -- in Sections 73 and 74, maybe that would
9 be appropriate to help set some guardrails, and make
10 it crystal-clear as to where you can and can't go,
11 in terms of what you say on the record and what you
12 don't say.

13 SENATOR BIAGGI: My microphone is working,
14 and that is a good idea.

15 Thank you, Senator Boyle.

16 We'll hear from Senator Gaughran now.

17 SENATOR GAUGHRAN: Thank you, Madam Chair.

18 We've heard from this panel, and I think many
19 of the panelists before, the real need to make sure
20 that we get independence in the people that will be
21 serving on this commission.

22 I think there's a general consensus that
23 Senator Krueger's constitutional amendment gets
24 there. I think there's some tweaks that have been
25 suggested here and there.

1 But there really hasn't been any discussion
2 today about, what do we do if we get somebody on
3 that commission who is problematic; who has a
4 conflict himself or herself, or, you know, all of a
5 sudden, there are issues?

6 Now, I know under the current JCOPE law, that
7 member may be removed by the appointing authority
8 for specific cause, including, ironically, violation
9 of the confidentiality restrictions.

10 And in Senator Krueger's constitutional
11 amendment, it says, "A member may be removed for
12 cause on application to the Court of Appeals made by
13 a majority vote of the full membership of the
14 commission."

15 Is that -- do we have that right in this
16 constitutional amendment, of which I am a co-sponsor
17 of?

18 SUSAN LERNER: It was very, very difficult to
19 understand.

20 So I know you were talking about the removal
21 process, and whether the process suggested in
22 Senator Krueger's amendment, that would be kicked
23 off by a referral by the Court of Appeals is the
24 appropriate one?

25 Was that the question?

1 SENATOR GAUGHRAN: Well, the way it's written
2 is that, the commission itself would make a referral
3 to the Court of Appeals; it would be a majority of
4 the commission members.

5 I'm sorry. My mic was off.

6 Yeah, so the current -- the proposal in
7 Senator Krueger's amendment is, "A member may be
8 removed for cause on application to the Court of
9 Appeals made by a majority vote of the full members
10 of the commission."

11 Do we have that right here?

12 ALAN ROTHSTEIN: I'm not sure.

13 I might want to look at it to leave it just
14 with the commission.

15 But definitely the commission, rather than
16 the appointing authority.

17 It seems that they're more appropriate, and
18 by majority vote. None of these blocking
19 provisions.

20 SENATOR GAUGHRAN: So you wouldn't -- so just
21 the commission itself could remove a commissioner --

22 ALAN ROTHSTEIN: Right -- I mean, it could
23 [simultaneous talking; indiscernible] --

24 SENATOR GAUGHRAN: -- without going to
25 [simultaneous talking; indiscernible] outside?

1 ALAN ROTHSTEIN: -- I think that's possible.
2 Or the Court of Appeals.

3 I mean, I would have to look at it more
4 carefully, but it should be commission-based,
5 I think.

6 SENATOR KRUEGER: I'm happy to look at
7 that --

8 SENATOR GAUGHRAN: No, I just wanted to get
9 their opinion.

10 I think you may have it right here.

11 SENATOR KRUEGER: [Inaudible.]

12 BLAIR HORNER: Well, and you'll need an
13 enabling statute anyway to go with the
14 constitutional amendment --

15 SENATOR GAUGHRAN: I don't have an
16 alternative --

17 BLAIR HORNER: -- once that passes.

18 SENATOR GAUGHRAN: But thank you very much.
19 And, boy, thank you for coming.

20 I feel like I'm at a real hearing now after
21 all these months. We have a live person.

22 I thank everybody for [inaudible].

23 BLAIR HORNER: Well, some people don't think
24 I'm alive, but it's all right.

25 [Laughter.]

1 SENATOR BIAGGI: Thank you, Senator Gaughran.
2 Senator Palumbo.

3 SENATOR PALUMBO: No, I'm good.

4 SENATOR BIAGGI: You're good? Okay.

5 SENATOR PALUMBO: Thank you, anyway.

6 SENATOR BIAGGI: Excellent.

7 So then myself.

8 I'm just going to close us out here, and I'll
9 do it, hopefully, expeditiously, because you all
10 have spent a lot of time with us, and also a lot of
11 time in your testimony in preparing for this, which
12 we all very much appreciate.

13 Just as a reminder to everybody:

14 We did invite the IG, as well as GOER.

15 They declined to come, but they did provide
16 written testimony, which we do have, and it will be
17 part of the record of this hearing today.

18 And I think that -- what I'm really
19 appreciating is this understanding that the IG needs
20 reform, and the way in which perhaps the IG oversees
21 JCOPE, which later could become a new entity,
22 perhaps needs to be done in a way that is
23 independent.

24 And so I say that not knowing, obviously,
25 what we will ultimately create, hopefully, together.

1 But I think I say that also with the
2 understanding that, and I should not expect this,
3 but -- or assume this, but the expectation that the
4 IG really might not be the best entity to oversee
5 the ethics commission, and maybe it is the
6 AG's Office.

7 So I've learned that now, I think, or at
8 least have opened my mind, because of all of this
9 discussion.

10 And so I just want you to know that it's a
11 lesson that I am just thinking through right now.

12 I think one of the things that was notable,
13 that I just want to share with everybody, from the
14 IG's testimony today, is this -- the last two
15 paragraphs on the first page. And so I'm just going
16 to take this time to just read it because, when we
17 think back to what's happened with Julie Garcia, and
18 the refusal, of course, to find corroboration, these
19 last two paragraphs give me lots of pause, and
20 I think this is really where the next chapter of our
21 work can be.

22 So at the bottom it says:

23 "If a specific matter falls outside of the
24 office's jurisdiction; i.e., a federal or local
25 government agency, the CMU will advise the

1 complainant of such, and will make a referral to the
2 proper entity to review their matter. Some
3 complaints are ultimately determined to be best
4 handled by the executive agency or authority
5 complained of, and are, therefore, referred to those
6 entities to address via existing internal
7 processes."

8 That's obviously problematic.

9 "However, even in these cases, the Office of
10 Inspector General tracks and monitors each referral
11 to ensure that the agency or authority responds in
12 an appropriate manner."

13 I think in one instance that we know of,
14 obviously, the governor's executive chamber not
15 referring Charlotte Bennett's complaint to GOER,
16 that's clearly something that the IG could have
17 looked at, and can still look at, actually, if they
18 are not already.

19 The final paragraph I think, perhaps, is what
20 is really giving me lots of pause, which is that:

21 "The inspector general provides training for
22 state agencies and other organizations, including
23 the New York Prosecutor's Training Institute, and
24 the District Attorney's Association of New York,
25 related to the OIG's authority and state employees'

1 obligation to report fraud, conflicts of interest,
2 criminal activity, and abuse, including workers'
3 compensation and welfare fraud investigation."

4 The think the idea that the IG would be
5 training any of these agencies is deeply concerning
6 to me, just knowing that -- just knowing what has
7 happened with regard to Julie Garcia.

8 So I think what I'm really asking, after that
9 commentary, and with 1 minute and 44 seconds left,
10 is how best do you think we should look at this
11 IG issue?

12 We've talked a lot about it today.

13 I think that there's a really big interest in
14 reforming the IG, and I'm certainly very much open
15 to that.

16 But it seems like we don't want it to be that
17 the person who is selected for the IG role is going
18 to make or break how strong it is, or how
19 independent it is.

20 So what are the guardrails that we can put
21 around this office to make it strong?

22 Because, clearly, this is a very powerful
23 role in our state, and it hasn't been doing its job.

24 And so we have to do better.

25 Anybody can answer.

1 BLAIR HORNER: Oh. Anybody want to say
2 anything, my invisible panel?

3 SUSAN LERNER: Well, I think it's very hard
4 to dispute your points.

5 It is an important entity. I think it does
6 have a specific role.

7 And I echo the comments that others have
8 made, that it should be separate from JCOPE; have
9 its own defined within-agency responsibilities, and
10 not be a referral from JCOPE, or in an oversight
11 capacity, over truly what we hope will be a new
12 truly independent ethics entity.

13 BLAIR HORNER: Yeah, we're still digging on
14 the -- sort of the details on this, because you saw
15 what happened even in Washington, where the former
16 president was firing IGS that -- when he didn't like
17 what they were doing.

18 And so how do you insulate them from
19 political blowback is also an important thing. It's
20 not only do you -- is the appointed process designed
21 in a way to minimize conflicts with the executive,
22 but, also, how do you create a system where they're
23 insulated from, you know, the repercussions of
24 making a tough decision?

25 I mean, it's the same problem sort of with

1 JCOPE, but you have a whole commission sort of
2 infrastructure on top of it, which is supposed to do
3 that.

4 With the IG, it's not the same thing.

5 So we've started to pull the stuff in terms
6 of looking at best practices in other states.

7 There are other IGs in New York. There's
8 one for Medicaid, for example. And they all sort of
9 fall within the office.

10 So it's an important thing to sort of look
11 at, because there's a lot of issues with regard to,
12 you know, taxpayer dollars that we all want to make
13 sure get used efficiently and appropriately.

14 SUSAN LERNER: Absolutely.

15 SENATOR BIAGGI: One follow-up question to
16 that:

17 Do you think that perhaps having -- and it's
18 really hard, because it seems like it's all
19 political -- but having the AG appoint the IG?

20 Does that -- is that too contentious, or does
21 that feel too aggressive?

22 BLAIR HORNER: You know, the tricky part in
23 all of this stuff, as you all know, with why JCOPE
24 is set up the way it is, is because somebody --
25 everybody was afraid of creating a political weapon

1 for their opponent.

2 SENATOR BIAGGI: Right.

3 BLAIR HORNER: So you empower the AG to pick
4 the IG, and what does AG mean again?

5 "Aspiring governor," I think some people say.
6 Right?

7 So how do you --

8 [Laughter.]

9 BLAIR HORNER: So how do you sort of create
10 that system?

11 And, you know, this is where we end up, like,
12 you know, we're very supportive of, you know, you
13 rely on a civil service system.

14 That's why it exists.

15 You reward people that have competence, not
16 political connections.

17 You try to minimize the amount of patronage
18 positions in government, generally.

19 And how do you create structures that are
20 designed for independence, not necessarily a
21 potential tool for somebody.

22 And so, like, with an IG issue, again,
23 I think it may come back to some sort of way to look
24 at how the legislature plays a much more aggressive
25 role in who the person is. And then you have a sort

1 of system in place, where only certain types of
2 people can even be considered, people with --
3 I mean, the woman who is there now is the former
4 head of JCOPE. Right?

5 So -- I mean, so are there things that you
6 can do to sort of narrow the scope of, minimize the
7 conflicts, and have a system in place that almost
8 requires that the person would have to be
9 independent?

10 SENATOR BIAGGI: Sure.

11 Okay. Well, there's definitely lots to think
12 about.

13 We appreciate it, very much.

14 I don't believe that there's any more
15 questions.

16 SENATOR PALUMBO: Can I just make a closing
17 comment?

18 SENATOR BIAGGI: Yes. Senator Palumbo may
19 make a closing comment.

20 SENATOR PALUMBO: Thank you, Madam Chair.

21 And just in that regard, because I think it
22 just kind of hit me, and I really appreciate. This
23 has been very productive, all day, everyone's
24 testimony.

25 But, it almost seems as if, that IG is

1 obviously overseeing state agencies.

2 If we keep it under the umbrella of the
3 governor, it might be smart to make any, even remote
4 conflict with an appointing authority, just like
5 with JCOPE, they obviously have an issue amongst
6 themselves, they automatically need to refer it out
7 to the IG, which we now see was useless on some
8 occasions.

9 In that regard, we override all of that, and
10 if there's any inkling of a conflict, it goes to the
11 AG, a separately elected person, who is a
12 prosecutor, who may have, yes, we know that that is
13 the aspiring governor position for many who want to
14 be there; but, ultimately, they will be tough and
15 fair at least, you would think, and they're
16 completely detached from that umbrella of the
17 legislature and governor.

18 It's a separately elected body, the top
19 prosector. And that may be the way.

20 And this is just my overall comment, not
21 about the day. But I think, on this issue, that
22 would make sense to be the least of all evils.

23 Go ahead, Blair.

24 BLAIR HORNER: I don't know about "least of
25 all evils," but I wouldn't characterize it that way.

1 But maybe the comptroller, because they have
2 the forensics to be able to look at the misuse of
3 tax dollars, which is really what the IGs are
4 looking at. And they have -- since they're the
5 people that are monitoring contracts, and everything
6 else, they may have the authority, and actually the
7 political umph, to do a good job on it.

8 SENATOR KRUEGER: And don't they already have
9 the authority to refer to the AG on criminal-related
10 issues?

11 BLAIR HORNER: The comptroller?

12 SENATOR KRUEGER: The comptroller.

13 BLAIR HORNER: Yes.

14 They did on the book deal.

15 SENATOR KRUEGER: Exactly.

16 So there's some logic to that also for
17 consistency.

18 BLAIR HORNER: Terrific. [Indiscernible.]

19 SENATOR PALUMBO: Thank you.

20 And thank you, Madam Chair, for today.

21 Both Chairs, thank you.

22 SENATOR KRUEGER: Thank you.

23 Thank you, everyone, for participating.

24 SENATOR BIAGGI: Thank you very much.

25 I know. Thank you all for being here and

1 toughing it out with us, and waiting all day.

2 I think this has been incredibly meaningful.

3 So, with that, I just want to say, thank you,
4 and not only to all of the panelists, and all of my
5 colleagues, my co-chair, ranking member, but also
6 all of the staff, my own team, as well as, I see
7 [indiscernible] over there from central staff.

8 We can't do these things without you all, as
9 well as ancillary and additional staff who may be
10 right now invisible to my eye, but you're not
11 invisible to the efforts.

12 So thank you so much; we couldn't do it
13 without you.

14 And we look forward to actually passing
15 meaningful ethics reform and legislation to
16 transform the ever-living you-know-what out of
17 Albany.

18 So we look forward to it.

19 Thank you.

20 (Whereupon, the public hearing held before
21 the New York State Senate Standing Committee on
22 Ethics and Internal Governance concluded, and
23 adjourned.)

24

25