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

PUBLIC HEARING:

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

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

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

PRESIDING:

Senator Alessandra Biaggi, Chair

Senator Liz Krueger, Sponsor

PRESENT:

Senator Anthony H. Palumbo (RM)

Senator Philip M. Boyle

Senator Jabari Brisport

Senator James F. Gaughran

Senator Todd Kaminsky

Senator John C. Liu

Senator Julia Salazar

Senator Toby Ann Stavisky

Senator Susan J. Serino

Senator Daniel G. Stec

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SENATOR BIAGGI: [No audio.]

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

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

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

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

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

Despite the timeliness of today's hearing, it

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

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

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

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

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

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

and lobbying in New York State.

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

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

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

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

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

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

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

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

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

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

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

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

addressed.

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

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

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

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

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

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

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

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

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

Thank you.

If anybody would like to speak?

I recognize [indiscernible].

SENATOR PALUMBO: Thank you, Madam Chair.

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

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

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

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

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

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

I see him on the Zoom.

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

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

It has not reinforced ethics under any circumstances.

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

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

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

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

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

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

Right?

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

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

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

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

That's worse than D.C.

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

The rest of us act with dignity and pride.

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

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

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

And I'll just close my comments with this:

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

Why?

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

And that's what's important:

That we always consider that.

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

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

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

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

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

Thank you.

Thank you, Senator Palumbo.

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

Thank you.

Hi.

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

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

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

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

it's both parties.

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

You have to do something to help me.

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

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

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

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

That that is what we need to do.

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

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

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

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

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

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

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

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

So I look forward to hearing everyone's testimony.

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

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

So thank you so much, Senator Biaggi.

SENATOR BIAGGI: Thank you, Chair Krueger.

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

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

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

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

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

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

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

On behalf of our commissioners, I want to say.

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

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

My name is Sanford Berland.

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

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

an acting Supreme Court justice.

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

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

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

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

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

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

Under the laws that govern JCOPE, we're

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

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

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

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

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

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

At the same time, the confidentiality laws

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

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

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

Neither assumption is correct.

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

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

We have no criminal enforcement powers or jurisdiction.

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

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

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

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

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

Simply put, we are a complement to

traditional law enforcement, not a substitute.

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

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

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

Thank you very much.

SENATOR BIAGGI: Thank you very much, Judge Berland.

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

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

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

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

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

JCOPE operates in a shroud of secrecy.

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

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

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

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

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

So in a typical instance:

A complaint will come in.

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

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

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

This is not something that JCOPE created.

This is statutory.

SENATOR BIAGGI: Uh-huh.

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

SENATOR BIAGGI: So I think to that --

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

SENATOR BIAGGI: -- sure.

If you don't mind --

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

SENATOR BIAGGI: -- sorry.

I'm being cognizant of my time.

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

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

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

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

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

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

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

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

So can you provide some more clarity around

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The intention is not to burnish our image.

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

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

SENATOR BIAGGI: Thank you very much.

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

SENATOR PALUMBO: Thank you, Madam Chair.

Good morning, Judge Berland.

Nice to see you again.

JUDGE SANFORD BERLAND: Good morning.

Good morning, Senator.

Good to see you.

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

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

Is that generally how it happens?

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

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

line.

It could be an email.

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

Or it could be a referral.

Our enforcement staff makes a preliminary investigation.

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

It may be a department that has an inspector general.

But they will develop preliminary information.

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

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

what's called a "Substantial Basis Investigation."

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

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

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

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

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

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

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

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

Legislative Ethics Committee.

SENATOR PALUMBO: Got it.

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

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

Is there any manner in which that can be done?

JUDGE SANFORD BERLAND: Yes.

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

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

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

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

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

SENATOR PALUMBO: Sure.

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

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

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

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

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

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

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

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

SENATOR PALUMBO: Sure.

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

And this stems from our predecessor agency's controversies.

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

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

So that took place; it took place immediately.

There was no hesitation and there was no delay.

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

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

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

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

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

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

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

SENATOR PALUMBO: Excellent.

Thank you, Judge.

Thank you, Madam Chair.

JUDGE SANFORD BERLAND: Thank you.

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

Thank you for joining us.

And next we will hear next from Chair Krueger.

SENATOR KRUEGER: Thank you.

Thank you, Judge.

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

So JCOPE refers to IG?

IG refers to JCOPE?

Either direction?

Neither direction?

How does that work?

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

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

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

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

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

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

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

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

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

Is that correct?

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

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

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

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

The inspector general will investigate.

They may refer a matter back to us --

SENATOR KRUEGER: Okay.

JUDGE SANFORD BERLAND: -- at that point.

SENATOR KRUEGER: Thank you.

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

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

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

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

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

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

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

before one or two DAs already.

So what's JCOPE's role there?

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

So the two questions sort of tie together.

So help me understand what you are doing tomorrow.

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

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

And this was a legislative judgment.

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

This is not JCOPE-generated.

This is statutory.

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

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

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

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

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

And I do understand the frustration of the press.

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

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

You know, again, we have 50 employees.

Most of them work on many other matters than investigations.

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

We're extremely busy.

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

And we can't talk about those.

You know, we're maligned.

And it's frustrating to me.

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

SENATOR KRUEGER: So I appreciate your frustration.

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

And I do think it's not deserved.

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

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

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

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

JCOPE?

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

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

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

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

Do you -- forget the answer to that question.

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

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

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

We can affect an individual's office or employment.

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

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

opinion.

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

SENATOR KRUEGER: Do you know what --

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

But these are issues that need to be litigated --

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

JUDGE SANFORD BERLAND: -- among the parties.

I don't want to foreclose any penalty.

SENATOR KRUEGER: -- has JCOPE successfully --

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

I'm sorry.

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

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

JUDGE SANFORD BERLAND: I personally am not aware.

I can certainly get the answer for you.

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

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

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

SENATOR KRUEGER: Thank you very much.

Thank you, Madam Chair.

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

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

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

SENATOR BIAGGI: Thank you, Judge Berland.

Just one moment, before --

JUDGE SANFORD BERLAND: -- consideration of

that.

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

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

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

And there are a lot of questions.

So if you can be as succinct as possible --

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

SENATOR BIAGGI: -- please do.

Thank you very much.

Okay.

Senator Boyle.

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

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

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

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

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

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

But the big ones are cases like the leak.

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

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

And media reports say that they were not questioned.

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

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

Maybe you weren't allowed to question these

people for some reason.

Was there a criminal referral in the leak investigation?

JUDGE SANFORD BERLAND: Senator, thank you.

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

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

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

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

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

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

Then, of course, the inspector general, you

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

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

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

SENATOR BOYLE: Okay.

I appreciate that, Your Honor.

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

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

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

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

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

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

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

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

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

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

But they can be a bigger part.

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

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

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

SENATOR BOYLE: Thank you.

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

And next we're going to hear from

Senator Salazar.

SENATOR SALAZAR: Thank you.

Thank you, Judge Berland, for your testimony.

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

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

JUDGE SANFORD BERLAND: I applied for the position.

I learned it had been posted.

Applied for the position.

I was interviewed.

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

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

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

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

position.

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

And I came on board May 6 --

SENATOR SALAZAR: Got it.

What --

JUDGE SANFORD BERLAND: -- in my current position.

SENATOR SALAZAR: -- I see.

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

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

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

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

JUDGE SANFORD BERLAND: Oh, yes.

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

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

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

SENATOR SALAZAR: Do --

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

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

And we provide that educational asset across state government.

And agencies also have their own educational processes.

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

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

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

that the position was open in the first place?

Did you learn this from someone you know?

Do you remember the circumstances?

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

SENATOR SALAZAR: Got it.

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

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

So we have that expertise in-house.

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

JUDGE SANFORD BERLAND: We don't.

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

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

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

SENATOR SALAZAR: Thank you, Judge.

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

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

SENATOR SALAZAR: Thank you.

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

JUDGE SANFORD BERLAND: Thank you.

SENATOR BIAGGI: Now we're going to hear from

Senator Stec.

SENATOR STEC: [Microphone turned off.]

Thank you both, Madam Chairs.

Good morning, Judge.

Thank you for your testimony today.

I just have one question.

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

I apologize if you've answered it.

[Audio lost.]

JUDGE SANFORD BERLAND: I'm sorry, Senator.

I apologize.

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

SENATOR STEC: [Microphone turned on.]

Is that better, Judge?

All right.

I'm sorry.

That was on my end.

Thanks for your testimony --

JUDGE SANFORD BERLAND: That's much better.

Thank you.

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

I want to follow up --

JUDGE SANFORD BERLAND: It's a pleasure.

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

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

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

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

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

So I guess my question is, again, hypothetically:

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

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

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

SENATOR STEC: Okay.

Thank you.

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

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

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

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

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

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

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

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

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

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

This is something that we may well have to litigate.

SENATOR STEC: All right.

Thanks, Judge.

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

We were talking about the referral to the inspector general.

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

Is it empowered, or is it required, to make

that referral?

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

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

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

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

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

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

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

And -- I'm sorry.

I lost the last part of your question.

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

JUDGE SANFORD BERLAND: Ah.

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

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

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

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

But I don't want to foreclose other avenues.

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

SENATOR STEC: Thank you, Judge.

Thank you, Madam Chair.

JUDGE SANFORD BERLAND: -- in this forum.

Thank you.

SENATOR BIAGGI: Senator Gaughran.

SENATOR GAUGHRAN: Thank you, Madam Chair and

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

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

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

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

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

How do we strike that balance, and do you

have a suggestion to do that?

JUDGE SANFORD BERLAND: Yes.

Thank you, Senator.

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

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

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

I wouldn't want it to be mandatory.

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

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

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

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

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

SENATOR GAUGHRAN: Thank you, Judge.

One more question.

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

history of JCOPE.

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

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

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

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

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

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

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

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

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

We have to enforce the law as it stands.

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

I think that part of the system works pretty

well.

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

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

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

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

SENATOR GAUGHRAN: Thank you very much.

JUDGE SANFORD BERLAND: -- in enforcing those laws.

Thank you.

SENATOR GAUGHRAN: Thank you, Judge.

JUDGE SANFORD BERLAND: Thank you very much, Senator.

SENATOR BIAGGI: Recognizing Senator Liu.

SENATOR LIU: Thank you, Madam Chair.

And thank you, Judge Berland, for your testimony.

I have had the privilege of serving in the

state Senate, now coming up on three years.

And --

SENATOR KAMINSKY: [Inaudible off-camera comment.]

SENATOR LIU: Yeah, three years, Todd.

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

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

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

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

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

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

My question to you, Judge Berland is, Why?

Why did you do this?

[Laughter.]

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

So I guess my question is two parts:

Why?

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

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

So what are your ideas on how to do that?

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

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

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

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

It has an image issue.

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

Some of it makes a lot of sense.

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

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

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

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

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

SENATOR LIU: If they don't do the right

thing?

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

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

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

SENATOR LIU: All right.

Well, thank you, Judge Berland.

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

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

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

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

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

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

Thank you.

JUDGE SANFORD BERLAND: Thank you.

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

And, Senator Stavisky, if you have any questions?

Do you have any questions?

SENATOR STAVISKY: Well, very quickly.

SENATOR BIAGGI: I would like to recognize Senator Stavisky.

SENATOR STAVISKY: Thank you for your testimony.

I was listening to it in the car as I was

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

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

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

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

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

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

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

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

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

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

So we don't have wiretap capability.

We don't have confidential informants.

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

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

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

SENATOR STAVISKY: Thank you.

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

JUDGE SANFORD BERLAND: Yes?

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

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

We are now at the end of June.

What are the 50 people doing if not enforcement?

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

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

SENATOR STAVISKY: But what are the 50 people doing?

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

What are these 50 folks doing?

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

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

If those powers are going to be augmented,

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

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

Everyone at JCOPE is busy all the time.

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

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

Thank you.

My time is up.

SENATOR BIAGGI: Thank you, Senator Stavisky.

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

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

right now is -- are three things:

The first is to please go off of script.

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

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

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

So, let's please begin.

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

Yes or no.

Yes.

They're on our website.

JUDGE SANFORD BERLAND: Right.

Okay.

Thank you very much.

[Inaudible off-camera comment.]

SENATOR BIAGGI: Amazing.

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

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

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

Okay.

You can --

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

SENATOR BIAGGI: Okay.

Great.

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

Yes or no.

JUDGE SANFORD BERLAND: I'm sorry.

Could you repeat the question?

Is this question, Do we know?

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

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

Is that concerning to you?

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

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

It would have been interesting --

SENATOR BIAGGI: No, no.

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

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

But I wasn't part of the --

SENATOR BIAGGI: -- no --

JUDGE SANFORD BERLAND: -- operation at the times.

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

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

It's concerning to me as a legislator.

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

I would hope it would be concerning to you.

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

three months --

SENATOR BIAGGI: Wait.

Judge Berland --

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

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

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

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

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

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

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

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

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

Do you have confidence in the inspector

general's investigation pertaining to this issue?

JUDGE SANFORD BERLAND: I've seen the report.

I am not privy to what underlies it.

It would be inappropriate for me to comment --

SENATOR BIAGGI: I actually think it would be very appropriate, considering that you are the head of the ethics commission in our state.

And so it's either you do have confidence in the inspector general's investigation or you don't; so it's yes or no.

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

SENATOR BIAGGI: I'm going to take a non-answer as a "no."

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

I'm not privy -- I'm just not privy to what underlies it.

I think it would be [simultaneous talking; indiscernible] --

SENATOR BIAGGI: Well, you just said you read --

JUDGE SANFORD BERLAND: -- of me to form an opinion without --

SENATOR BIAGGI: -- you read the report.

JUDGE SANFORD BERLAND: -- without having

more information.

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

JUDGE SANFORD BERLAND: I read the report.

SENATOR BIAGGI: So what additional information do you need?

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

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

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

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

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

JUDGE SANFORD BERLAND: I -- again --

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

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

I have not seen evidence --

SENATOR BIAGGI: Today.

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

It hasn't been called to my attention.

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

SENATOR BIAGGI: Okay.

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

Is there precedent for that?

Yes or no.

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

SENATOR BIAGGI: Okay.

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

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

JUDGE SANFORD BERLAND: It was so long ago.

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

It was a subcommittee of the commission.

SENATOR BIAGGI: Okay.

It's fine that you don't remember.

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

SENATOR BIAGGI: Okay.

Thank you.

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

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

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

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

SENATOR BIAGGI: Got it.

Okay.

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

JUDGE SANFORD BERLAND: No.

SENATOR BIAGGI: Okay.

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

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

And are staff privy to the votes of the

commissioners?

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

SENATOR BIAGGI: The commissioners and certain staff.

What -- can you define "certain staff"?

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

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

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

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

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

being addressed, in executive session.

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

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

SENATOR BIAGGI: Okay.

And then the final question:

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

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

SENATOR BIAGGI: Accountability?

SENATOR PALUMBO: -- that kind of oversight.

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

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

So the judiciary has judicial review over our

decision-making in that respect.

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

SENATOR BIAGGI: Uh-huh.

Okay.

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

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

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

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

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

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

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

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

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

Anyone have questions?

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

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

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

I don't have any misunderstanding about that.

And that was a judgment of the commissioners.

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

But that's the bifurcation that they drew.

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

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

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

SENATOR BIAGGI: Okay.

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

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

JUDGE SANFORD BERLAND: Sure.

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

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

Right?

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

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

But can you tell us:

What are the criteria?

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

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

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

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

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

I'm sorry, Senator.

SENATOR BIAGGI: Can you state them for the

record right now?

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

And, unfortunately, I don't have --

I'm getting them.

Okay.

Shall I read them into the record?

SENATOR BIAGGI: Yes, please.

JUDGE SANFORD BERLAND: Okay.

The following:

"The commission may, in its discretion" --

Oops, I lost it.

-- "publicly acknowledge" --

"1. Publicly acknowledge receipt of the complaint.

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

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

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

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

law enforcement to defer its inquiry."

SENATOR BIAGGI: Okay.

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

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

SENATOR BIAGGI: Yes, you can continue.

Is that it?

JUDGE SANFORD BERLAND: That's it.

SENATOR BIAGGI: Okay.

Just to round out this point here:

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

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

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

decision and commissioners are then required to make a decision.

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

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

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

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

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

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

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

There are delegations in place that have been modified.

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

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

So those are handled by staff.

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

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

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

that is done from scratch.

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

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

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

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

But I hope that's helpful.

SENATOR BIAGGI: It's somewhat helpful.

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

And so that vote failed.

All of the former governor's appointees voted

against it.

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

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

So thank you very much for your testimony today.

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

But we appreciate your time.

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

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

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

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

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

Thank you very much.

JUDGE SANFORD BERLAND: Thank you.

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

Julie, thank you very much for joining us today.

JULIE GARCIA: Thank you for having me.

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

JULIE GARCIA: Okay.

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

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

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

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

presumably did.

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

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

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

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

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

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

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

And I didn't know that until the media

actually started asking questions.

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

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

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

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

And they didn't do that.

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

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

SENATOR BIAGGI: Thank you very much.

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

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

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

Our current witness was an appointee of Speaker Heastie.

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

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

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

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

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

SENATOR PALUMBO: Thank you, Madam Chair.

Nice to see you, Julie.

I don't know if you heard --

JULIE GARCIA: Nice to see you, Senator.

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

So it's nice to see you.

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

JULIE GARCIA: Yes.

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

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

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

So from Warren County I went to Essex County.

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

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

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

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

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

I accepted that invitation.

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

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

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

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

JULIE GARCIA: Yes.

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

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

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

I didn't want to pull over.

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

I said, No.

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

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

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

JULIE GARCIA: Yes.

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

I was so taken aback by the information that

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

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

And I'm really upset right now.

Basically, I don't know what to say.

I just need some time this think about this.

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

And I said, I can't answer that.

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

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

So I did reach out to Commissioner Yates that

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

And it was a brief conversation with Commissioner Yates.

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

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

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

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

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

And that's what I did.

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

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

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

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

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

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

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

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

Which, again, there was another red flag.

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

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

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

But that never happened, as we all know.

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

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

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

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

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

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

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

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

It took months to receive the report.

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

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

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

of the signed affirmations back.

And I thought to myself, "Seriously?"

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

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

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

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

JULIE GARCIA: Not that I recall.

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

Or anything along those lines?

JULIE GARCIA: No.

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

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

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

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

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

JULIE GARCIA: So --

SENATOR PALUMBO: -- go ahead.

I'm sorry.

JULIE GARCIA: No, you go ahead.

SENATOR PALUMBO: I was just going to say, do

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

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

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

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

JULIE GARCIA: I guess.

I know that Commissioner Yates was also interviewed.

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

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

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

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

SENATOR PALUMBO: Okay.

Thank you, Julie.

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

SENATOR BIAGGI: Thank you very much.

I just want to acknowledge Senator Serino has joined us.

Thank you, Senator Serino, for joining.

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

SENATOR KRUEGER: Thank you.

Thank you, Julie.

I appreciate your being here today.

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

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

So I guess I'll just ask you:

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

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

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

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

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

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

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

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

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

Why did that happen?

Why didn't you interview them?

Why didn't you ask for phone records?

That's basic Investigation 101.

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

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

I don't know.

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

Right?

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

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

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

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

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

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

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

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

So thank you for your testimony today.

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

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

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

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

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

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

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

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

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

Thank you, Madam Chair.

SENATOR BIAGGI: Thank you so much.

Next we are going to hear from Senator Stec.

SENATOR STEC: Thanks, Madam Chair.

Good morning, Julie.

Can you hear me?

Can you hear me, Julie?

Okay.

Good morning.

How are you?

JULIE GARCIA: I'm fine.

Thank you.

SENATOR STEC: Good to see you.

Thank you for being with us today.

I know you're busy.

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

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

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

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

And did you preserve them?

JULIE GARCIA: Yes, I did preserve them.

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

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

SENATOR STEC: Okay.

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

Ten minutes?

An hour?

And where did it take place?

Over the phone, or in person?

JULIE GARCIA: It was in person.

It was in Albany.

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

SENATOR STEC: Okay.

And was it just the one interview?

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

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

JULIE GARCIA: No, no.

There was -- not that I recall.

I'm fairly certain they never contacted me

again.

SENATOR STEC: Okay.

All right.

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

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

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

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

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

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

SENATOR STEC: All right.

Now -- now, commissioners.

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

They're done in executive session, I suppose,

understandably.

And one of the questions was:

In addition to commissioners, how many, or if there was staff present?

And the answer was, that there is some certain staff.

Is it -- one, can you confirm, is that the normal procedure for these decisions to be done in executive session?

And, typically are there staff members present?

And specifically to the meeting that we're talking about, can you recall, was there one staff member, five staff members, present?

And then, obviously, the follow-up question is going to be:

Do you have any way of knowing if they were asked to sign a similar affirmation?

JULIE GARCIA: I'm not sure if they were asked to sign a similar affirmation.

But I believe, if my memory serves me correct, there were other people in the room during that executive-session meeting.

Yeah.

And then after -- I mean, then, after the

leak, as I recall, they would go into not just executive session, but like a super-executive session, where everyone was asked to leave the room except for commissioners.

SENATOR STEC: All right.

Now, I'm not familiar with the legal phrase "super-executive session."

I'm being a little funny.

JULIE GARCIA: I made that up.

SENATOR STEC: Yeah, oh, I'm being a little glib there.

But -- all right.

So it wouldn't be uncommon for -- and is that normally how all of these would go, though?

There would be staff present; and then, perhaps at the end of the meeting, they would get rid of staff, just for commissioners?

I mean, is that normal, or was this meeting unusual in any way?

JULIE GARCIA: Yeah, that wasn't really normal.

The exec -- I'm going to call it the "super-executive session," the executive session where everyone was asked to clear the room, except for, as my memory serves me correct, being maybe --

yeah, everyone was asked to clear the room.

You know, it's difficult, because I have to be very careful not to say things that I'm going to make -- sort of get myself into trouble for, as far as who was present for certain meetings, because I believe some people -- I'm not sure if it's even okay for me to talk about recusals; who recused themselves and who was present and who was not.

You know, I just don't want to --

SENATOR STEC: And I certainly --

JULIE GARCIA: -- subject [simultaneous talking; indiscernible] --

SENATOR STEC: -- yeah, and I don't want to get you in trouble.

I don't want to get -- you know, that's not where I'm trying to go.

So was this meeting par for the course, as far as meetings go, as far as how it flowed, you know, the executive session, and then the super-executive session?

Or was it unusual?

Did it stand out to you that, hey, there's something different here?

JULIE GARCIA: I think it's fair to say that some meetings were more adversarial than other

meetings.

And I would say that the meeting on January 29th was probably one of the most adversarial meetings that I had attended during my time on JCOPE.

SENATOR STEC: And one real quick last question:

In all this, do you believe that this leak, your particular experience, was a one-off?

Or either having heard about it before you became a JCOPE commissioner, or during your time, or since, do you see a pat -- you know, do you believe there's a pattern?

Or do you think that your situation and this leak we're talking about was a one-off?

JULIE GARCIA: Yeah, no.

I believe that the pattern of behavior in Albany over the last probably decade, maybe longer, is just -- JCOPE is just another example of what has been going on.

So, in my opinion?

No, that wasn't the first time that information was leaked.

In fact, I would have to believe that people continued to talk about this leak, and the leaker,

well after -- well after January 29th.

You know, it, just, common sense kind of tells you that.

And I know it's speculation, but the lack of -- the lack of accountability; when someone doesn't investigate something, to me that's almost like consciousness of guilt.

Like, just do the damn investigation.

You know, do the investigation.

And at the end of the day, if there's no wrongdoing, then there's no wrongdoing.

But when you completely disregard people who had important information, and then issue a report months after, and then those people are questioned about the conduct, what, seven, eight months after the alleged conduct, of course there's a window for them to say, "Well, I don't remember."

But I can tell you this:

If there was a criminal investigation, and anyone was -- anyone goes in and looks at the testimony that I gave, the sworn testimony, to the inspector general, and also reviews Commissioner Yates' testimony that was under oath, I think that it completely contradicts the comments that were made by the speaker, and what his recollection of --

was of what happened on January 29th.

I don't understand it.

It's -- I mean, to say it's disheartening, I was -- I was appointed by someone to do a job, and I did my job.

And then people that had information and knew about the leak did not have my back.

So you have to -- I mean, we all understand that there's a reason people don't come forward and talk about what's going on in Albany, because, really, no one has their back.

No one's going to stand shoulder to shoulder with them and tell them, you know, I'm going to be there, I'm going to stand there with you, I'm going to back you up on this.

And there were certainly people that could have packed backed me up on it.

But what happens in government, on the state level, and on the federal level, is when we turn our heads the other way, when we remain silent, we end up with 11 people who are victimized by a government that is abusive, bullying, condescending, threatening to ruin people's careers.

I think that this panel, all of you senators, I think most of you have been around long enough,

you've seen the Moreland Commission.

I'm sure you've listened to what Kathleen Rice has said.

This is nothing new.

You know, it is nothing new.

But because it's been -- there's been no accountability, we have created a government that is completely off the rails.

And I'm glad that I'm testifying today, just a day after a new governor was sworn in.

And I think that she stands ready to tackle some of these huge issues.

But one of the biggest issues I think she has is knowing who she can trust.

Like, how do you know who to trust right now?

And that is really a sad, sad day for all of us, when we don't know who we can trust.

SENATOR STEC: Right.

Well, I appreciate your testimony.

Thank you, Julie.

SENATOR BIAGGI: Next we're going to hear from Senator Salazar.

SENATOR SALAZAR: Wow.

Thank you, Julie, for your testimony, and for your candor.

You know, I'm not sure if this is obvious, but would you mind explaining to us, you know, as -- as -- in the most detailed way that you can, what exactly motivated you to resign from your position as a JCOPE commissioner?

JULIE GARCIA: I didn't feel that I wanted to be a part of an organization that lacked integrity.

I sat inside those meetings long enough to know that there were people inside the commission that were not motivated by reforming ethics or being ethical.

So I just didn't want to be associated with it.

And when -- I waited, and I questioned even waiting, because it was taking the Inspector General's Office so long to release the report.

But I felt I needed to see that through.

It was a difficult decision for me to resign from the commission, but it was one that I don't regret; I don't regret leaving.

I think that one of the important things that any of us has is our own integrity.

And I'm not going to compromise my integrity, and sit inside a commission where I feel that they're doing things that they shouldn't be doing,

and especially when I know I'm not the first one to say, Hey, this is wrong, you can't do this.

Something's wrong.

So that's why I resigned.

I mean, you know, I'd be lying if I said I didn't wish that I could be there for some of the voting, but, it is what it is.

It was time for me to leave.

SENATOR SALAZAR: Absolutely.

And were you at any point pressured or compelled to resign by anyone in the governor's administration, by anyone in JCOPE, by any other state employee?

JULIE GARCIA: I'm really not able to answer that question because of conversations that went on inside executive sessions that I can't talk about, unfortunately.

SENATOR SALAZAR: Thank you.

You had mentioned earlier that you wished that you had -- I think you mentioned that you wish you had recorded yourself in your testimony to the inspector general when they interviewed you during their investigation.

Do you wish that you had recorded yourself because the IG has been unwilling to provide you

with that reporting, or for another reason?

JULIE GARCIA: You know, I have not requested the audio of that interview.

But a reporter contacted me recently, and he told me that he had it, and he would be happy to share the transcript with me, but that it was heavily redacted.

And I told him that I didn't want it, that I didn't need to read it.

And, plus, I can imagine, you know, how redacted it is, even though only a portion of my interview would have had to do with anything that was confidential with regard to meetings.

So, you know, maybe I should look at it and see what they redacted out, that wouldn't be considered a misdemeanor because it was not something that happened in executive session; just something that I testified to.

SENATOR SALAZAR: Okay.

Well, thank you again for your courage and your willingness, and for taking the time to testify.

JULIE GARCIA: And I thank you, too, for taking the time to do this.

It's important.

I think we all need to work together if we're going to move our state forward.

SENATOR BIAGGI: Thank you very much.

Next we're going to hear from Senator Boyle.

SENATOR BOYLE: Thank you.

And thank you, Julie.

I'd just like to associate myself with Senator Salazar's remarks, and thank you for your courage and bravery.

Thank you for your service, and doing the right thing.

And, also, you're one of the very, very rare people we see in government who resign on principle.

And it wasn't anything you did; it was just something you felt was not being handled appropriately and ethically.

And I want to thank you for that, and making that sacrifice for us.

And we're going to make things better to help people like you, and because of people like you.

I just have one quick question.

So -- and I think it -- maybe, to think about the fact that the way the ethical structure is set up, these agencies, JCOPE in particular, they're built so a -- the governor in this case, perhaps a

former governor, can put people in there that will answer, or not answer, or do things, to protect that individual.

Sometimes it's not the governor; sometimes it's other members of the legislature, or whatever; but they're not to look at ethical breaches, but to protect individuals.

I would say it seems to me that the former governor's circle kept getting smaller and smaller, and that's where you see the people that have worked there over the years at JCOPE and other agencies who are not doing the right thing, are fewer and fewer, and that circle is smaller and smaller.

Thankfully, now, the former governor no longer has that ability.

And, hopefully, now we can open things up and pour sunshine in there.

I just have to ask you, how did you feel before the vote?

I mean, you must have been -- you probably didn't know what was going to happen, the extent of what was going to happen, but you knew it was going to be kind of a controversial vote, to open this investigation against the top aide of the former governor.

How did you feel about it just before you voted?

Were you thinking about it, and the ramifications that might come down?

JULIE GARCIA: You know, to speak in general terms, because I'm not going to confirm or deny that's what we were even voting on that day, because [audio lost].

As far as voting goes, you know, there are definitely times that I wish that the voting was public, because I think it's easy to articulate why you're voting in one direction or the other; if you're actually voting your conscious, or you're voting in a way that you can explain ethical ramifications, or why it's a "yes" vote or why it's a "no" vote.

So that's one thing, I guess, I've been fortunate with.

I've always tried to make decisions with regard to my career, as a prosecutor, as a defense attorney, that are in line with the ethics rules, and what I believe is right in good conduct or bad conduct.

You know, to me, in ethics there are some the gray areas, but there are some things that are very

black-and-white.

Like, there's right and there's wrong, and it's not gray.

So I'm fortunate that that's not ever really been a huge problem.

I kind of just do what I think is right, and run with it.

Even testifying here today, it wasn't something I was looking forward to, but I felt that it was important enough to do it.

SENATOR BOYLE: Okay.

Thank you.

And thank you again.

And I know it would probably be a pay cut from your now lucrative practice, but I hope you'll consider again coming into government service.

JULIE GARCIA: Oh, thank you.

Thanks.

SENATOR BIAGGI: Julie, so I just have a few questions before we wrap up, unless there's anybody else, of course, who wants to jump in, in which case, of course, please just let me know.

First of all, I just want to say, on behalf of all of us, again, and reiterate what many people have already said, but really, truly, for those who

are also not speaking or asking you questions, every single one of us appreciates your candor, your courage, your willingness to do this.

I understand the -- it's beyond discomfort, I understand it.

And I also appreciate that you took a stand at a time when it was not popular to do so.

And it says a lot about your character, and your ethics, and your integrity.

And so I hope that you know that, and just understand the incredible gratitude that we all have for you today, because everything that you share with us, and will share with us, and have shared with us, will be used to make this structure transformative as opposed to better.

"Better" is just making old things a little bit changed.

Transformation is really getting to the root of the cause.

And I think that your testimony, and how you have been so honest and open, is going to get us there.

So I want you to know that it matters, and has an incredible impact.

A lot of the questions that I was going to

ask have already been asked.

So I just want to get to -- I want to just do it in two buckets.

The first is just a few question with regard to the leak, and then the second is just some general feedback on JCOPE.

And just be -- I want to be very clear with you, too:

If there's anything that you can't answer or don't feel comfortable answering, please don't.

We obviously want to make sure that you preserve your confidentiality, and also your responsibility.

So just going back to the leak, if you're able to, where was the vote in question, where did it take place, physically?

JULIE GARCIA: Where did it take place that day?

SENATOR BIAGGI: Yes.

JULIE GARCIA: We were in Albany.

I was in Albany.

Some people -- we don't -- some commissioners don't appear in Albany.

Some appear via WebEx.

But I was there that day.

SENATOR BIAGGI: Got it.

Okay.

And the only reason, just so you know why I'm asking that question, and it may or may not be relevant, so it's just for my information to figure out, because I am curious whether or not -- well, in terms of the timeline, if the vote took place in Albany, and then the leak happened thereafter, obviously, that matters in terms of the timeline.

And, obviously, a leak is a misdemeanor.

That if the leak took place in Albany County, then it would probably be reasonable to assume that the Albany County DA could look into this as well.

And so I don't know the answer to that, but that is why I am asking that question, just so you have some context for that.

And in terms of accountability, that's something that I'm hoping to be helpful with, moving forward.

Okay.

Two more questions on the topic of the leak.

When -- okay.

I'm just going to ask you very directly:

Did you fear retaliation when you reported the phone call that you received from Speaker

Heastie's staff?

JULIE GARCIA: No, not at all.

I did not fear retaliation.

SENATOR BIAGGI: Good.

That's very good to hear.

And then, on this last question on the topic of leaks, can you describe a little bit for us who really have, frankly, no idea, what goes on inside of JCOPE?

Because, even though, of course, we just had the executive director testify, it's just still very unclear.

So can you describe a little bit what the culture of JCOPE is like?

JULIE GARCIA: I really wasn't there long enough, when you think about the time I was on the commission, and we would only meet once a month.

You know, most of the time -- 90 percent of the time that I was there, people were very respectful of one another and of each other's opinions.

Obviously, like any organization, everyone didn't always agree.

There was, as I said before, some very heated conversations over the months that I was there, on

different topics.

You know, I have -- I have, and continue to have, a lot of respect for Seth Agata in the way that he handled the leak, which was, he -- I could tell, just by talking to him.

Sometimes when you talk to someone, and you give them information, their reaction is very telling.

And his reaction was appropriate.

His response was appropriate, I would say.

SENATOR BIAGGI: Thank you for sharing that, and I'm happy to hear that.

Okay.

Now, moving on to just, JCOPE's structure, and I think just your opinion on this would be helpful in these different categories within the structure of JCOPE, because, obviously, it will help us to write legislation better, and also to, perhaps, make amendments to legislation that already exist, or create new legislation.

But before we get to this point, I just -- to be very clear, I think I know the answer to this, but I just want to hear you say it:

Do you believe that the public should have confidence in JCOPE?

JULIE GARCIA: I believe that the public should have confidence in all levels of government, every level.

And I think it's one of the biggest threats to our state at this point, and to our country.

Even when you look at things like COVID, when we don't know who to believe, when we're getting information that is so different from one elected representative to another.

So, yes, it's very, very important for -- for maybe not as -- there are obvious reasons why it's important that we be able to trust our elected officials in our government.

But there are also some things that we probably don't think of day to day, like when there is abusive behavior, and the impact it's having on someone's mental health; or if they're coming to work and they're being subjected to harassment, and they have to make the decision, "Do I stay or do I go?

How do I feed my family?"

I mean, I've seen that on every level.

I've seen it on the county level, the state level, it's hard; it's hard for people to make those decisions when, if they don't -- if victims don't

know that they have someone who is going to back them up, they're not going to come forward.

So I think that the ethics -- the Senate Ethics Commission is making -- taking a step, and you're moving in the right direction.

So, yeah, we need to have [audio lost] --

SENATOR BIAGGI: Thank you for that.

In terms of just the JCOPE commissioners --

And you may or may not able to answer this one, I acknowledge that.

-- do you think that the JCOPE commissioners were able to make decisions independently of the people who appointed them?

JULIE GARCIA: I don't have any reason -- well -- I don't know.

You know, I can't get in the heads of other people that are on the commission.

You know, one thing that I thought was interesting, right before January 29th, that date when I walked in, it seemed like the commission, the make up commissioners, changed suddenly.

People left, and new people were put there.

So, why?

Like, why did the people that left right before that vote, why did they leave?

Because no one's ever given me that answer.

I don't know if I've asked the question.

I think I've asked that as a side note to some of the commissioners outside of executive session, because I'm new.

Like, why did that person leave, and why did this person come in, or these people come in, all of a sudden?

SENATOR BIAGGI: That's a very excellent point, and an important question to have answered, actually.

So thank you for that.

And, again, a question you might not be able to answer, but I just want to preface it with that every time so you're not shocked or surprised:

Did you feel at any point, inside or outside of JCOPE, like, someone was trying to influence your vote?

JULIE GARCIA: Never.

I never felt that anyone was trying to influence my vote.

SENATOR BIAGGI: Excellent to hear.

And then, during your time at JCOPE, I know that it was a short period of time, in your opinion, what do you believe were the biggest structural

impediments to actually being able to carry out your duty, with the obvious exception of what we all know already, of course, about the leak of your vote?

JULIE GARCIA: I think that the voting structure I found strange.

Like, how many votes you can get to actually carry, you know, to do anything.

The voting structure is really -- it's in disrepair.

The appointment process, I think we all know the problems that come along with the appointment process.

Transparency, of course, is a huge issue.

Yeah.

SENATOR BIAGGI: Thank you.

That's very helpful for us.

I'm just going to jump to my last question, because I know I'm out of time, and I want to wrap up here, and also respect your time.

I am very clear that you're not able to disclose details, of course, about specific votes, but I think it would be helpful to have your general impression about the "partisan voting" requirements.

And you just briefly touched on how to initiate an investigation, which, obviously, it just

doesn't work.

And just for everybody watching, to be very clear, in order to initiate an investigation, a majority of JCOPE's commissioners must vote in favor; however, that majority must also include at least two members appointed by the party and/or branch of government of the individual in question.

So if JCOPE was voting about initiating an investigation into the governor, at least two appointees of the governor would have to vote in favor of initiating an investigation, which, obviously, is troubling.

So, again, just final question:

Did you find that the "partisan voting" requirement, or the "partisan veto," as it's sometimes called, impacted JCOPE's ability to conduct investigations into potential misconduct?

JULIE GARCIA: You know, I really am not comfortable answering that question because I recall certain patterns.

I recall more people.

Like -- and I would have to go back and see who was appointed by -- who was appointed by whom.

And I don't really have a strong recollection of a lot of the things that we voted on.

But I think one thing that's interesting is, I think a lot of times the media, and the public, take -- they think that they know what happened inside a meeting, and you really don't, because it's not just a "yes" vote or a "no" vote.

Sometimes nothing happens, it's complete gridlock; so there's no "yes" and there's vote -- there's no "yes" and there's no "no." It's just in a black hole, which is unfortunate.

There should be a way to [audio lost].

SENATOR BIAGGI: Interesting.

[Indiscernible] I actually am not familiar with that.

So if something is gridlocked, then just -- what happens with that particular issue?

Is it just dead?

JULIE GARCIA: [Audio lost] that is a question for someone that is more familiar with how that works.

I -- when there's been gridlock, as far as I know, nothing happens.

SENATOR BIAGGI: Wow.

JULIE GARCIA: It's just [audio lost].

SENATOR BIAGGI: Wow.

That's really helpful.

This has been really excellent, actually.

Thank you very much for taking the time.

If there's no further questions -- oh, yes.

Okay.

Senator Stavisky would like to ask the final set of questions, if that's okay with you?

SENATOR KRUEGER: It was Senator Serino.

SENATOR BIAGGI: Senator Serino, not Senator Stavisky.

Senator Serino, final question.

And, really, again, thank you very, very much.

SENATOR SERINO: And I thank you, Senator Biaggi.

I think we both have questions to ask, if that's okay.

And, Julie, I have to tell you, I'm sort of blown away by your testimony today.

But I think it's everything that we've suspected.

You know, so it's just hearing it lined out like this is absolutely jarring.

And you're right, we absolutely need an investigation.

And it's important that people like you are

here talking about this today.

And as we talk about cleaning house and putting an ethics body in place that actually works, independence is key.

You were appointed by the speaker, but you've been able to maintain your independence.

Do you have any suggestions for us on how we could -- how we could find other people that would be more independent?

You know, I don't know if you have any suggestions at all, but just listening to you, and I love your independence, and I think that's so critical here.

And we actually would have to, I think, going forward, just look for people that are going to do the same thing.

JULIE GARCIA: Yeah, you know, I think that -- I think you're right, that it's important for people to speak up, and that's why I'm here, because I believe actions speak louder than words.

And we could all talk all day long and throw out those, you know, words that everyone loves to hear, "ethics reform," and "we're going to do great things."

But we've already seen that actions and

words -- if you're going to say you're going to do it, and then you don't do it, then you've lost the public's trust.

So -- you know, and I think it's important that -- it's so important to me to see this panel of Republican and Democratic senators coming together and working on something that's so important to all of us.

So I think if you want to recruit more people that are independent, I think it's important that we begin a culture where you're backed up.

If you say something, someone's going to back you up, or someone's going to stand with you, someone's going to help you move the ball forward.

In this case, I felt like no one was willing to help move the ball forward.

And I understand that there is a -- there are politicians who believe that being silent, not just elected officials, but people who are involved in politics, they don't speak up themselves.

Like, they watch what is going on, and they look the other way, because they're afraid -- some people are afraid that they're not going to get reelected, or they're going to be unpopular.

So, you know, I think -- I think it's

important to have people that are independent.

And how do you flesh those people out?

I don't know.

I mean, you look at their resume.

You look at their experience.

You talk to them about ethics.

And, you know, people that have actually proven by their actions that they're going to do the right thing.

SENATOR SERINO: Thank you very much, Julie.

Thank you for testifying today.

This was huge.

Thank you; appreciate it.

SENATOR BIAGGI: Senator Stavisky.

SENATOR STAVISKY: Yes.

Incidentally, I think it's pretty clear that the ethics committee today is not looking the other way, and I thank my colleagues for joining us.

One quick question, and one perhaps more detailed.

As you were testifying, you spoke about votes, and committee meeting, and commission meetings.

Was there a stenographer present during these meetings, a court stenographer taking down the

testimony?

JULIE GARCIA: There was someone in the room compiling minutes.

SENATOR STAVISKY: But was there written transcripts available the way -- during our Senate sessions, there is a court -- a stenographer.

And then, after a certain period of time, we can download the transcripts and read what happened.

JULIE GARCIA: There were minutes provided in the book of executive session, and of the general -- the open meeting, that we would all have to vote on and approve --

SENATOR STAVISKY: Right.

JULIE GARCIA: -- or disapprove.

SENATOR STAVISKY: No written transcript, that's what I'm saying, that's available even with redactions?

JULIE GARCIA: Not -- I don't think that there's a transcript available for the public.

But we were provided with the minutes --

SENATOR STAVISKY: Right.

JULIE GARCIA: -- prior to meeting.

SENATOR STAVISKY: Not the same thing.

One other question that I think is one of the issues:

How would you ensure that an independent ethics, JCOPE-type commission is constituted so that the appointee has independence from the appointing authority?

JULIE GARCIA: You know, I'm not sure I'm the one to answer that question [audio lost].

SENATOR STAVISKY: Okay.

JULIE GARCIA: [Audio lost] and there has to be accountability in government.

SENATOR STAVISKY: That's what I'm saying.

JULIE GARCIA: I mean, from what we've all seen over the last decade or so, is that there's no accountability.

Justice is not swift.

It's not -- it doesn't -- accountability should be quick.

People need to know that you have their back.

SENATOR STAVISKY: I'm not talking accountability so much as independence from the person who appoints you to the job.

JULIE GARCIA: That's just finding the right person, I believe --

SENATOR STAVISKY: Okay.

JULIE GARCIA: -- being able to flesh out who would be a good person for any particular position.

I mean, we do it all the time, we hire people.

I think people should be hired based on qualifications.

I think that the former administration rewarded people for bad behavior.

I mean, I think it was loyalty.

Like, people were appointed to high positions if the governor felt that they were going -- if the former governor felt that they would be loyal to him.

And we have created a very bad situation for a lot of people.

SENATOR STAVISKY: The reason I'm asking the question, to give you an example, is that I chair the Committee on Higher Education.

And we have appointees to vote the City University of New York and the State University of New York trustees.

And, unfortunately, both the mayor and the previous governor have appointed people who work for them to these boards, and I always found that would be troubling.

How do you avoid that situation with the ethics commission?

JULIE GARCIA: I'm not sure that I am able to answer that question.

SENATOR STAVISKY: Okay.

JULIE GARCIA: I definitely think that you all have your work cut out for you.

I don't know how you avoid -- avoid being put in that position.

I think that we would hope that government is hiring people based on their qualifications and their resume.

SENATOR STAVISKY: I didn't mean to blindside you.

We thank you for your testimony.

Thank you.

SENATOR BIAGGI: Julie, I think that concludes our questioning.

Thank you so much.

Really, thank you.

We're very grateful.

SENATOR KRUEGER: Thank you.

SENATOR BIAGGI: All right.

We have our third panel.

And after our third panel, just for everyone's awareness, we'll take a quick break so that people can eat, and also get sustenance.

In our next panel, we are very excited and lucky to have two senators from two different states.

We have Senator Louis DiPalma, who is the chair of the Rhode Island Senate Committee on Rules, Government Ethics, and Oversight;

As well as, Senator Tom Begich, who is a member of the Alaska Legislature Select Committee on Legislative Ethics.

Thank you both so much for joining us from your respective states.

It's very exciting to be able to have you here, and to provide an alternative opinion of what's possible in ethics.

So, Senator DiPalma, if you would like to begin, we would really appreciate that.

I believe Senator DiPalma has to be unmuted, whoever is in charge of that function.

Thank you.

SEN. LOUIS DIPALMA: Sorry about that.

It's only my fifth Zoom call of the day for work, so I apologize.

Sorry about that, Senator.

SENATOR BIAGGI: No problem.

SEN. LOUIS DIPALMA: Madam Chair Biaggi, it's

a pleasure to testify before your Committee on Ethics and Internal Governance.

Thank you for inviting me to testify before your committee.

I hope I can add some value to the purpose of the hearing, to examine New York State's system of ethics oversight and enforcement, identify improvements, and discuss alternative approaches to enforcing ethics.

Just a little bit about myself.

I am serving my 7th term, 13th year, in the Rhode Island Senate.

We serve two years; two-year terms.

I'm currently chair, as you indicated, Senate Rules -- I'm chair of the Senate Committee on Rules, Government Ethics, and Oversight.

I'm also the first vice chair of the Senate Committee on Finance, and a member of the Senate Committee on Education.

Because we're a part-time legislature, I'm a chief engineer at a defense contractor, where I've been for 38 years, and next week I will start Year 39.

With respect to the Senate committee on Senate Rules, Government Ethics, and Oversight, our

charge regarding government ethics is as follows:

To ensure that the members of the Senate and its staff, and through the key pieces of education, monitoring, and disseminating the opinions of the Rhode Island Ethics -- Commission, which I'll talk to later -- adhere to the highest standards of ethical conduct, respect the public trust, and rights of all persons; be open and accountable and responsive, and avoid the appearance of impropriety, and not use our position for private gain and advantage, as you might expect.

So what's the current state of the ethics commission in Rhode Island, which was changed just a few short years ago?

As a result of a case brought before the ethics commission some 15-plus years ago, went to the court, and because of this, it was changed.

Our ethics commission includes nine Rhode Islanders appointed as follows:

Four are appointed directly by the governor, and five who are appointed by the governor, but chosen from lists of nominees from each of the following individuals: the president and minority leader of the Senate; as well as the House speaker, and the majority leader and minority leader.

The Rhode Island Constitution explicitly gives the ethics commission the power to investigate violations of code of ethics, and to impose penalties, as provided by law, as well as to remove from office individuals who are not subject to impeachment.

Additionally, in state statute, the commission is empowered to issue advisory opinions, investigate allegations of ethics violations, and adjudicate allegations of ethics violations.

They also have investigatory powers.

The commission has the authority to compel witnesses to appear and/or produce evidence, as well as to take verbal and written testimony therefore.

Under adjudication policies, the commission has the authority to conduct hearings and compel witnesses to provide evidence and testimony.

If they find a violation has occurred, they have authority to require the violator to cease the violating activity, require the violator to pay a civil fine up to $25,000 each for violation, plus any pecuniary value of enrichment resulting from violation, and refer the entire record of proceedings to the attorney general, which they have done in the past, and/or remove the violator from

office, as I said earlier.

In terms of requirements, there's certain requirements of the members of the commission that prohibits them from, as you might expect, holding public office; holding office in a political party; participating and contributing to campaigns; attempting to influence any governmental body, except for themselves, basically; holding elected office within one year prior to appointment; et cetera.

The one piece I want -- and I know my time is just about up here -- in 2016, as I mentioned earlier, a joint resolution was introduced by our Senate president at the time, allowing a voter of referendum, which was passed, that once approved, reinstated the ethics commission's power to investigate and prosecute lawmakers for any violations of the state ethics code.

And here's the key piece:

In 2009, our Rhode Island Supreme Court essentially exempted the official actions of state lawmakers from prosecution by the ethics commission.

And that specific case, I will send you some information subsequent to the hearing, Madam Chair, and that goes back to the case of Irons v.

Rhode Island Ethics Commission.

And at that time, Senator Irons was, in fact, president of the Senate.

Thank you.

SENATOR BIAGGI: Thank you very much.

We will hold on questions until we hear from Senator Begich, if that's okay with you, Senator DiPalma?

Okay.

SEN. LOUIS DIPALMA: Absolutely.

Thank you, Madam Chair.

SENATOR BIAGGI: Thank you very much for your testimony.

I have a lot of good questions for you.

Senator Begich, thank you for joining us from Alaska.

We're very excited to have you.

SEN. TOM BEGICH: Thank you for having me.

For the record, my name is Tom Begich. I'm the state senator for District J, which is downtown Anchorage, Alaska. And I'm in my second term as the state Senate minority leader.

I was first elected to the state Senate in 2016, and have served on the Select Committee on Legislative Ethics since the 31st Alaska

Legislature in 2019.

I want to begin by thank you, Senator Biaggi, for the invitation and the opportunity to present on Alaska's legislative experience.

I also want to take a moment to thank both your committee staff and my staff for arranging this opportunity.

It's always a value to share experiences across jurisdictions; it better informs us all.

And it sounds like you are looking at developing your own process, and so maybe these remarks will be helpful.

There are three areas of interest I want to focus on.

First, the mechanics of how legislative ethics works in Alaska.

We're not only bound by the Legislative Ethics Law in our legislature, but also by disclosure rules from the Alaska Public Offices Commission.

Together, these create a reasonably comprehensive set of disclosures and public accountability.

Second, I want to discuss the process we use for identifying issues of concern, ensuring we are

following the law, exploring the workings of our committee and staff, and how we interpret our statutes.

Finally, I want to talk about the challenges we have faced with our ethics law, and the difficulty of enforcing it.

Alaska's Select Committee on Legislative Ethics is established under our ethics statute, and is comprised of two senators and two House members representing the majority and minority caucuses, so, four members; as well as five members of the public appointed by the chief justice of our Supreme Court.

It should be noticed that in Alaska, justices and judges are appointed through a selection process.

They're not elected; that is, that process is enshrined in our Constitution, and allows for an independent Alaska Judicial Council to rate and select judges.

So it's a fairly independent, depoliticized judiciary, only subject to retention votes.

In our ethics committee there are two subcommittees, a Senate and a House one, each chaired by a public member, as is the overall committee.

The subcommittees have jurisdiction over actions within each of the respective bodies, and not the other body.

There are alternates appointed for each of the legislative members, but only one alternate for the five public members.

Nor can the public members be represented by a majority of one political party or another, and the number of ex-legislators as public members is limited.

This is achieved through non-partisan appointees to the committee in addition to those who might have a political affiliation.

All of these structural elements are designed to ensure that the ethics committee avoids polorization and politicization; and, thus, is able to functionally enforce the Ethics Act with minimum claims of bias.

The act itself governs legislators during their service in office, legislative staff, and the public members of the ethics committee.

As with most ethics laws, it identifies a number of areas that we, as legislators, are to be bound by.

In written testimony I will provide those to

the committee, but it's the usual areas of gifts, and political-purpose use of staff, those kinds of things.

Our ethics laws have really emerged from a series of negative actions and undue influence by special interests on our political culture.

While always in existence in some forms, special note should be made of significant scandals in the mid-2000s, which led to FBI raids, and a number of legislators and lobbyists convicted of bribery and other ethics violations.

So we have a history that we had to address directly.

Alongside our ethics law, our Public Offices Commission requires extensive disclosure of financial interests by all candidates and legislatures -- legislators annually.

And it includes all coverage of contractual work, other income of yourself, independents, et cetera.

It should be noted that there's a presumption that Alaska legislators, as in Rhode Island, won't work outside of their legislative duties.

I'm a musician and a consultant around education and health issues.

So all of us work within the confines of this law.

For public employees, this means giving up their employment, as you may not hold two public positions in Alaska at the same time.

It means long absences, it means compassionate employers are necessary, and independent, while thought particularly necessary for a legislative job.

Issues of concerns are brought to the ethics committee from any member of the public, and can only be brought against legislators, their staff, or public members of the ethics committee.

There are both formal and informal tracks for this.

And during the initial report and investigation process, all efforts are confidential unless the accused parties desire otherwise.

Informal complaints come in the form of a contact to the ethics office, asking for advice, and possible misconduct under the act, before you might file a formal complaint.

And while I may run out of time here, I'm going to continue just to give you an idea of how that process works.

Formal complaints, when they're lodged, when directed at a Senate or House member, only those subcommittees may take up the consideration of those, and only in executive session, much like a personnel matter.

An initial report, which includes the complaint and any response from the accused party, is presented to the subcommittee, with a recommendation as to whether the complaint merits an investigation.

A simple majority of the subcommittee is required, both, for quorum, and to determine if the people will move forward with an investigation, which can be done internally or externally.

In an abundance of caution, often, we contact the ethics staff on any question of doubt.

Most questions have already been addressed in the past, and become part of a permanent record of reports that are produced on a regular basis.

And, finally, I just want to touch on some of the challenges, and I know I'm out of time, but I hope that you will bear with me because I think this leads directly to the issues you're having.

We've had to revise these laws continually.

And most recently, in 2016, we revised these

laws, and there were unintended consequences.

My wife works for an education committee, for example -- or, an education nonprofit.

Consequently, I was prohibited, under our former ethics law, from even discussing education issues, despite sitting on the education committee, and because -- and despite that being my background as a professional in the field.

And so we had to adjust our ethics laws to allow somewhat more flexibility.

Also, the issue of misuse, I heard you mention earlier, that there is an issue that may happen, from time to time, of leaking the results of ethics committee investigations.

This has, in our past, twice happened in my time, either right before my ethics involvement, and right -- and during the ethics committee.

And during that time, it's led to the removal of those folks who have, in fact, been identified as leakers from the ethics committee.

So I do apologize for the length of these remarks.

I'm hopeful they may be of importance in your deliberations.

I will say that they are in writing.

I will submit them to your committee and to your staff, and they are more detailed in the writing.

And with that, I'm open, and I think, along with the Senator from Rhode Island, for other -- for any questions you may have.

SENATOR BIAGGI: Thank you so much, both of you.

I'm going to pass the microphone over to my colleagues, and we're going begin with Senator Salazar.

But I think to start us, what would be very helpful to be on the record from both of you, would just be to answer this one question:

From where each of you sit in Alaska and Rhode Island, respectively, what is your --

And we will not take offense to anything that you say, please know that.

We are here to make a difference and, really, change and transform the system.

-- so what is your perception of how New York handles ethics?

Okay.

We will not be offended.

OFF-CAMERA SPEAKER: They both smirked.

SEN. TOM BEGICH: I guess I'll go first, and, you know, we only see what we read.

I haven't done in-depth research in your process.

But just based on the testimony I listened to this morning, I think that you have a biased system that heavily weights the influence of Senate and House members on your ethics involvement.

It appears that your public involvement is not as robust as it could be.

And I'm not hearing, at least in the testimony, and what of course I read in the papers, but I'm not hearing that you have a robust system of accountability within that.

And I think that it's something that you might learn from our process in Alaska.

And it sounds like in -- certainly in Rhode Island, but you now -- Rhode Island now has this conflict of a court decision that, effectively, removes legislators from the ethics jurisdiction.

But I think you'd have to look at something that's a significantly more accountable system that seeks a bipartisan compromise.

We do not have gridlock on our ethics committee.

It does not happen, and that public members are a key component of that.

SENATOR BIAGGI: Thank you.

SEN. LOUIS DIPALMA: Senator, I have not been privy to your previous conversations, due to, as I indicated, you know, several duty calls for work commitments.

I would have liked to have been.

So it would be unfair for me to, I'll say, comment one way or the other on that topic.

I would like to; I would like to give you an opinion.

But, as an engineer, without facts or data, I won't give an opinion.

[Laughter.]

SENATOR BIAGGI: We appreciate you very much; both of you.

Okay.

Now we're going to hear from Senator Salazar.

And thank you for your honesty, it means a lot.

SEN. LOUIS DIPALMA: You're welcome.

SENATOR SALAZAR: Yeah, thank you, both, for your testimony.

I have one sort of clarifying question,

because it -- I think it, you know, indirectly impacts the ethics committee in Alaska.

Can the governor, essentially, circumvent the Alaska Judicial Council at all, by appointing a judge who is not among the nominees directly from the Alaska Judicial Council?

SEN. TOM BEGICH: That is a superb question.

First off, in terms of the ethics committee, the appointees are subject to a two-thirds majority vote of both bodies to be -- public members have to be adopted.

The governor has no say in that matter.

However, your question gets right to the point of the Supreme Court and the chief justice selection.

And the governor twice -- this current governor twice has attempted to reject the appointees that have been provided by the judicial council.

In both cases, the governor has been forced to back down by Supreme Court action.

The Court -- our Constitution is quite explicit, that only the judicial council can present those -- can present judges to the governor for appointment.

The judge [sic] must choose from that list.

He's been chastised twice by the Supreme Court Chief Justice in that matter.

And both times he has agreed with the decision of the Supreme Court Chief Justice.

So, no; the governor's hands are tied. He must choose from those appointees selected by the judicial council.

And the council is defined in law by governor appointees, an equal number appointed by the bar association, and then, together, they select a tie-breaking seventh member.

SENATOR SALAZAR: Thank you.

And, additionally, on the process in Alaska, how does -- the Alaska Public Officers Commission, how does their work, if you could explain for us, is it distinct from the ethics committee's work?

How does it supplement the work that you do on the committee?

SEN. TOM BEGICH: In two ways -- that's a very good question.

Thank you, Senator Salazar, through the Chair.

There are two ways that has an impact.

The first, the APOC rules (Public Offices

Commission rules), and they apply to candidates as well as sitting legislators, they require such an extensive amount of disclosure on an annualized basis, both of income outside of the office, as well as any kind of contributions, and those kinds of things, that they create a separate set of standards that enhance the ability of us to actually follow our ethics statutes.

They make us fully aware of it.

So that is the -- you know, I would say the primary way that it has an impact.

The secondary way that they have impact is, through APOC, you may find that there are ethics violations that have occurred through APOC investigations.

That information is provided -- will be provided then to the Legislative Ethics Committee for a pursuit, if indeed that is necessary.

I will say that there's a greater capacity within the Legislative Committee for Ethics' investigations, and yet the scope is far more narrower than on the Alaska Public Offices Commission which has actually less capacity, but a far broader scope.

So a little bit both problematic with that.

But both are -- are -- require us to do annual disclosures.

I have to do three disclosures annually, at least, to make sure that I'm meeting both APOC and ethics standards.

At most, they have to be completed by the second month of the year.

SENATOR SALAZAR: All right.

Thank you.

SENATOR BIAGGI: Now we'll hear from Senator Boyle.

SENATOR BOYLE: Thank you.

And thank you, Senators, for your time.

I just have a quick question.

You both referenced your financial disclosure forms.

We have them in Albany, too.

And I've always kind of thought it was a joke here because they go in, like, fifty- or hundred-thousand-dollar increments for outside income.

You know, we say, well, we have 30 different categories. But if you're making $9.3 million, that's one of the categories, and 10 million and up.

My question to you is: Do you do it by the

thousand-dollar, by the five-thousand-dollar, increments in your disclosures?

SEN. LOUIS DIPALMA: From a Rhode Island perspective, I would need to check.

I think it's just outside employment.

I'm not certain there's a dollar amount.

I can check while we're -- when Senator Begich -- if I'm saying that correctly -- when he speaks, I can -- my -- find out from the disclosures, which we're required to do in April of every year.

And I think it's any outside employment.

SENATOR BOYLE: Thank you.

SEN. TOM BEGICH: And to Senator DiPalma, it's Senator Begich; but, thank you.

The -- in Alaska we have arbitrary numbers.

If you make -- if it's less than $1,000, you're not required to report it.

Then there's, $1,000, I believe it's to 5,000, and then to 10,000. And then there are larger increments after that.

So there -- but it's quite detailed, and it requires any reporting over $1,000, and so you actually have to fill out.

As a contractor, I may have -- on a given

year, I could have 12 different client contracts that I have to report on the form.

And the form can go to pages and pages and pages. It's quite extensive. Perhaps it's too extensive.

And my wife is required to report, or any dependent you know, living in my household is also required to file the same disclosure reports.

So I have to report all income -- outside income.

I have to report all outside investments.

I have to report -- and there's, I think, it's 12 or 13 different pages of reporting I have to do electronically.

I have to report assets.

I have to report liabilities, with the exception of credit card liability.

And so all of those things are required under our law.

Any state land holdings, any state contracts, or separate items.

A number of us have state contracts because of the nature of the work we may do, or we may be involved in that.

So all of those things have to be disclosed

for any appearance of conflict of interest.

Our laws are quite extensive and quite strict.

SENATOR BOYLE: Thank you.

SEN. LOUIS DIPALMA: So, Senator, I just -- as I promised, I just checked.

I stand corrected.

It's $1,000 or more, most income, from an employer annually, for myself, my spouse, or any dependent children.

SENATOR BOYLE: Thank you.

SENATOR BIAGGI: Excellent.

Senator Gaughran.

SENATOR GAUGHRAN: Thank you very much.

First question is for Senator Begich.

You referenced that appointments are made by members of your judiciary.

We have a proposed constitutional amendment, that Senator Krueger here is the prime sponsor of, that actually does include some members of the -- certain judges making, actually, I think, combined, a majority of the appointments of the new commission.

Have there been any issues as it relates to that, you know, including the concept of, is there

judicial review that somebody could make of a decision that they didn't like coming out of the commission?

And then, you know, if so, how does that, you know, go through the judicial system in Alaska?

SEN. TOM BEGICH: That is a very good question.

I guess, first, we haven't faced that, to my knowledge.

Decisions of the Legislative Ethics Committee, though, I believe are appealable.

I'd have to check to see.

No one has ever appealed a decision, certainly since my awareness of the committee. Even before I was on it and as a member of the public, I'm not aware of anyone challenging a decision of the ethics committee.

So I think that's part of your question.

I think the first part of your question, though, was asking about, was there any issue with the appointment -- the judicial appointments?

Or was implying, is there an issue [simultaneous talking; indiscernible] --

SENATOR GAUGHRAN: Well, maybe just even a feel for the types of people that were appointed by

these judges, and the mix, and how [simultaneous talking; indiscernible] --

SEN. TOM BEGICH: Yeah, thank you, Senator, and, again, through the Chair.

The -- Senator, when the appointments are made by the chief justice, they must come before the legislature for two-thirds approval.

That requires super-majority approval of the appointees to start with.

So there's been no challenges of any public member, that I'm aware of.

We have had public members resign when they believed they had a conflict; or when they were taking on tasks, like wanting to run a political campaign, or something like that, that would then prohibit them from being a member.

Our legislative requirements for the public members to sit on the Legislative Ethics Committee are quite strict.

SENATOR GAUGHRAN: Thank you.

And then, I guess, a final question for both of you:

I know, Senator Begich, you said that, in terms of the parameters of outside employment and income, that you cannot be another public employee.

Are there any other restrictions in Alaska, and are there any restrictions, Senator DiPalma, in Rhode Island, as it relates to, you know, the setting up parameters of what you can and cannot do in terms of employment or income?

SEN. TOM BEGICH: I can just -- you know, ours was resolved by a lawsuit back in the '60s, actually against my father who was a public schoolteacher and a state senator.

And the rule is very basic.

The -- for officeholders, you cannot hold two public jobs; so you cannot be an employee of the university and a legislator. You have to make a choice between the two.

It's very strict. The line is not really debated because it's quite clear.

I -- you can have contractual relationships, but there are appearances that -- so maybe that's the one gray area, is that I choose not -- I used to have a lot of contracts with school districts, et cetera. And I canceled all of them when I became a senator because of the appearance.

I think some of them I could have retained, but -- because they're -- you're not a direct public employee receiving direct public employee benefits.

You're still a private company.

But we do have -- like, we have a member of the House majority who is also an electrical contractor, who is contracted to the federal government, and is not prohibited from that.

And federal government employment does not prohibit you from the dual state public employment requirement.

And so you can do that.

And you can be a locally elected official, and serve as staff in the legislature. That's allowed; but that is a rare exception.

SENATOR GAUGHRAN: Thank you.

SEN. LOUIS DIPALMA: Senator, I'll need to -- I took an action to verify that for you, because I want to make sure I give you a factual answer.

Think about it in the context of, Rhode Island, not that we're small, but we are a part-time legislature.

So we have -- people have -- a majority of folks in the legislature, both in the Senate and the House, have full-time jobs or part-time jobs, some are retired. But the vast majority of us have full-time jobs. Many schoolteachers, some lawyers, et cetera.

So the outside employment is an expected piece of just about -- of the 113 legislators we have in Rhode Island.

I will verify.

And we also have, I should have mentioned earlier, with the speech-and-debate clause, with regards as it relates to -- and participation from an ethics perspective, the class size.

So we have ethics training every year.

That's been in place for a number of years now, as long as I've been in Senate. And we've had other training over time in other areas.

The class size, though, typically, during the training, they'll talk about a class size of 100.

If the class that you're in is a class of 100 or more, you get an advisory opinion, and they encourage advisory opinions from the ethics commission, you will be an exempt from an issue of conflict of interest.

Specifically, teachers, state budget provides funding to school districts for education. Teachers can vote on the annual budget.

That is not a conflict of interest, given the class size, greater than 100 of the number of teachers in the state.

I will get the specifics for you about restrictions.

[Indiscernible] from the federal side of who can participate. But, essentially, are a partisan body. They cannot be -- work for the federal government and be members of the legislature.

SENATOR GAUGHRAN: Thank you, Senators.

Very helpful.

SENATOR BIAGGI: Okay.

I think I have the final set of questions here.

So I just want to note on the record that the Center for Public Integrity ranks Alaska number one in state integrity, and Rhode Island is number five, I believe.

Just to reiterate what I said when we started, New York received the ranking of 31, and we have a D minus.

Alaska received a C grade, but they are first. And Rhode Island is fifth place.

So, clearly, you are both in states that are doing something much better than us, and that's why you're here, and why we're grateful for everything you've shared.

I have questions for both of you.

I have one question for Senator Begich, if that's all right. And then we'll move on to Senator DiPalma.

I'm really very interested in the appointment process of members of the public.

I find that to be particularly unique, and also very clever in a good way, not clever in a bad way.

And I am sorry if I missed this, but how long do the members of the public serve?

And I know that you went through all of the requirements with Senator Gaughran, my colleague, but I'm just curious about that.

And do you find that, with the members of the public, you are able to better handle complaints?

I'm assuming the answer is yes, but I just want to hear how that works, in terms of how you receive information, and how you are processing whether or not to move forward with a certain issue.

SEN. TOM BEGICH: While I'm generally well informed, I actually have never inquired as to the length of the service of public members.

I believe it's five years, but I could be wrong about that.

I've asked a staff member to take a look at

that, real quick, to see if I can get an answer to you on that.

And what was -- I'm sorry -- the second half of the question again?

SENATOR BIAGGI: So, I mean, I find, generally -- I'll set it up, and maybe a little bit better:

You know, having members of the legislature oversee, of course, ethical issues of colleagues is obviously an area that is particularly open to have bias -- right? -- which I'm assuming is maybe the genesis of the court case in Rhode Island, not knowing more about it.

But, regardless, I think it is important, of course, to have these bodies exist.

So when you receive complaints, and you receive information about current legislators, do you find that having members of the public on your committee makes your job easier; or does it make it harder because maybe they're not as proficient in some areas of the law?

Or maybe they have a particular -- everybody, I guess, has some bias, to some degree, in any area; right?

So I'm just curious how that works, because

this is one of the questions that actually does keep me up at night: How do we actually have something that is truly independent and free of bias?

And I don't know if there's a perfect creation, but it sounds like having members of the public is certainly very close.

SEN. TOM BEGICH: So, Senator, I will respond to that.

The majority of our two subcommittees, the House subcommittee and the Senate subcommittee, are made up of the public members first.

Second, we have prohibition on former legislators, there's a limit. You can only have, I think it's one former legislator in the public body from the public-appointee group.

And, third, you cannot have a majority of one party or the other party as the public members.

We have a large nonpartisan registration, it appears, so that's relatively easy to meet.

And because of the two-thirds criteria, your public members feel quite empowered to speak their own mind, and they chair -- the required bylaw to chair the two subcommittees.

So there's -- so that the senators that sit on the Senate subcommittee, two of the five members,

offer ideas and thoughts, but we don't control the process. And that I think is critical to its success.

So the complaints, I've dealt with a number of complaints of colleagues of mine.

And myself and my counterpart from the other party have been -- we've always agreed with the public member recommendations, because it provides us support.

It's in executive session, but it provides us the opportunity of support of an opinion, so we're not negotiating, you know, what the implication could be for us.

We're talking about, what is the matter of law or the matter of fact here?

And so we do go through a two-step process, though.

One, that there is a vote whether there should be a further investigation.

We have overruled Legislative Ethics Committee staff on a number of occasions, often driven by the public members, to go further into investigation of matters. And, generally, the senators have followed the lead of the public members.

So I think it works quite well.

The process works quite well.

The complaints come to the full body, are referred to the subcommittee. The subcommittees take them up. And then we report back our decision to the full committee.

And so I think, generally, it works quite well. Having a majority of members being from the public has served the Legislative Ethics Committee in a relatively non-biased process.

Of course there's always bias.

SENATOR BIAGGI: Sure.

I mean, it sounds incredible, actually.

Thank you very much for that.

Senator DiPalma, I just have a few questions for you.

And the first is with regard to the Rhode Island Ethics Commission, which the Center for Public Integrity noted that "it was an effective body, unlike many of its peer states."

I'm sure that they were referring to New York when they were making that comment.

And so part of the reason why they made this statement is because the center really lauds the commission's ability to adopt new rules without

going to the legislature.

Do you agree with that center's assessment?

And do you find that to be particularly helpful, or harmful? Is that the right assessment?

SEN. LOUIS DIPALMA: Well, I do agree.

And that's one of the -- as I mentioned earlier, with regards to a situation that happened in 2004, and it took us until 2016 -- I was only there for seven of the years -- but it took until 2016, with a resolution passed -- submitted by the Senate president and lead sponsor on the Senate side, the speaker of the House on the House side, to bring that together.

A lot of debate, a lot of dialogue, a lot of discussion, over that time to get there.

I do support it.

It's, basically, the -- our ethics commission --

And I do want to talk about public -- the membership more in a minute.

-- had the ability to modify the laws, adjudicate them, and pass fines, and take action based on that.

So they are trial -- the legislature and the judiciary and executive branch, from an ethics

commission perspective, ethics all built into one.

And our members are five-year terms as well, all public, the nine folks that I mentioned earlier.

SENATOR BIAGGI: That's really --

SEN. TOM BEGICH: [Indiscernible] --

SENATOR BIAGGI: Yes, please.

SEN. TOM BEGICH: -- Madam Chair, I was wrong about -- my staff has corrected me.

All members serve two years.

Officers cannot hold the same office for more than two consecutive terms, so you can't be here twice -- more than twice.

And you can be reappointed without term limits. And maybe of our members have served for multiple, multiple years -- our public members have served for multiple years.

SENATOR BIAGGI: Oh, wow.

Okay. That's actually very interesting, especially the non-consecutive terms [indiscernible]. It's very interesting.

Thank you for clarifying that.

I'm just trying to consolidate this.

I think, just for the sake of time, Senator DiPalma, just, finally: Do you think that the ethics commission is really able to effectively

hold the governor and their allies accountable?

Because, obviously, all the current members of the ethics commission are appointed by the governor, even though some are nominated by the legislative leaders.

So how has that played out, in practice, in any kind of accountability of the governor, or even anybody in the executive branch?

SEN. LOUIS DIPALMA: So I think it's proven effective. I'd have to go back and think about which cases have been brought before the ethics commission as it might have related to the executive branch in recent years.

And I'm sure there's a couple.

To say there would be none, I'd lie to you because I don't have the facts [indiscernible] to substantiate that.

But I believe it's been effective in doing what it needs to do.

The one point I wanted to make with regards to public bodies:

With regards to commissions in the state of Rhode Island, and appointed, because the Senate has advice and consent of members appointed by -- put forward by the gubinatorial appointments --

Also, we have what we call "quasi-public agencies."

-- back in 2004, the Rhode Island citizenry basically said, we want separation of powers.

Prior to that, legislators served on various boards and commissions throughout the state.

Subsequent to that law being passed, there's not a legislator that can sit on a public board or a commission for which the Senate provides advice and consent.

So they are all public members.

They used to have the board of education. We would have had a couple of senators and representatives. It doesn't exist anymore, it's non-existent now, for probably upwards of 15 years.

So that separation of powers was a big deal.

So the committee that I chair, Rules, Government Ethics, and Oversight, made our job much more needed, meaningful, impactful, if we do the right job, because of legislators not sitting on public boards and commissions.

SENATOR BIAGGI: Thank you for that.

Okay. I promise this is the final question for today for both of you, and there's some sub-questions to it.

So when it comes to what you can disclose and confidentiality, which is clearly an issue we're having in our ethics commission in New York, are you able to disclose findings of investigations?

And can you confirm publicly whether an investigation is actually happening if there's a member of the press or somebody else who is asking that question, in both of your respective states?

SEN. TOM BEGICH: I guess I will go first.

And our Legislative Ethics Committee is separate from the Gubernatorial Ethics Act, so it's strictly legislature.

And, first, a disclosure of an investigation to the public is not allowed, unless given permission by the investigated person, or by the -- it has to be given by the investigated person.

And disclosure of the complainant is not allowed without the permission of the complainant.

The exception to that is, if we've made a decision, once we've made an actual decision after an investigation, the decisions are disclosed publicly; but the investigation process itself is not.

And if the decision is to the affirmative, and we have filed -- we have ruled somebody has

violated the law -- the ethics law, then that is disclosed.

If they have not violated the ethics law, we don't disclose it, but the legislator that has been investigated or the staff member may bring that up.

And many have said, I was investigated, and I've been absolved of any wrongdoing.

So that is a choice provided to the defendant, as it were.

SENATOR BIAGGI: Thank you.

SEN. LOUIS DIPALMA: So, Senator, from a Rhode Island perspective, this answer will be very short.

Prior to a few years ago, the committee, as it stands today, on Government Rules -- Rules, Government Ethics, and Oversight, was a committee on rules and oversight.

There was no committee in the Senate regarding ethics.

It manifested itself -- I'll just respectfully put it this way -- because of the actions -- perceived actions of a senator, that manifested the adding the "ethics" piece to the Committee on Rules, Government Ethics, and Oversight.

With that said, we have not had a hearing since the committee was expanded to include ethics, regarding ethical behavior or -- there or not, of a senator.

SENATOR BIAGGI: Okay.

Well, that's incredibly helpful. And I'm glad that ethics was added to the committee. Glad to hear that.

I am very grateful that both of you were able to take the time today.

I know the time difference for Alaska is much greater than Rhode Island, but it doesn't necessarily diminish your involve -- both of your involvement, and it actually makes it really meaningful.

I am just very grateful that you were able to be here with us today.

And I do look forward in the future, any time there is anything New York can do to help either of your roles, please count on us, and call on us, to do that, because we would be happy to help; although I think that New York has learned a lot today from Alaska and Rhode Island.

So thank you very, very much.

SEN. LOUIS DIPALMA: Madam Chair, thank you.

Hopefully, it added value.

So thank you.

SENATOR BIAGGI: It certainly did, it certainly did.

SEN. TOM BEGICH: Thank you, Madam Chair.

Thank you for the opportunity.

SENATOR KRUEGER: Thank you.

SENATOR BIAGGI: Thank you.

All right.

Well, if it's okay with everybody, I think we would like to take a very quick, maybe 30-minute break, so that we can eat, and get some water, or whatever it is that you choose to drink, and come back in about 30 minutes.

So the time right now is 1:34.

Let's say 2:04 we will reconvene. Okay?

OFF-CAMERA SPEAKER: Perfect.

SENATOR BIAGGI: Okay. Thank you very much.

[The hearing stands in recess.]

[The hearing reconvenes.]

SENATOR BIAGGI: Good afternoon.

And thank you for joining us back again after our brief lunch break; and thank you for being patient with us so that we could eat.

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I'm grateful for our next witness/panelist, Erica Vladimer, who is a member of the Sexual Harassment Working Group.

Erica, we're all very grateful to hear from you today, and look forward to your testimony, and also the question-and-answer portion.

Thank you so much for being here.

ERICA VLADIMER: Thank you so much for having me.

Please, I want you all to continue eating, and also drink water; it's so important.

I know how these hearings can be long, and emotionally and mentally exhausting.

Good afternoon.

As the Senator and Chairwoman said, my name is Erica Vladimer. I am a cofounder of the Sexual Harassment Working Group.

We're a workers collective of former State and City legislative staffers, turning their lived experiences of sexual harassment, assault, and retaliation at the hands of elected and appointed officials into advocacy for a harassment-free Albany and a harassment-free New York.

It is the Working Group's belief that in order to effectively create policy change, it must

start with public input.

So I'm deeply grateful that, Chairwoman, you are once again holding a public hearing.

We know how powerful those can be, especially with the Harassment-Free New York legislative package that was passed in 2019.

At the outset, I do want to say, and emphasize, that there is a need to dismantle, reevaluate, and recreate the entire ethics system.

I know much of the conversation has been focused on the Joint Commission on Public Ethics, and rightfully so; but we do need to look at things like the Governor's Office of Employee Relations, the Inspector General's Office, the Legislative Ethics Commission, the Senate and Assembly ethics committees.

If we just focus and reform JCOPE, we are not going to have the true independent ethics body that we need to hold elected and appointed officials accountable.

I know this firsthand.

After I came forward and talked about my experiences with Bob Freeman, former executive director of the New York Committee on Open Government, the Inspector General's Office called me

and asked if I would come in and be interviewed.

I told them that during my JCOPE interview from my trauma and experience at the hands of former Senator Jeff Klein, I had talked about Bob Freeman, and that it is mentally and emotionally exhausting to continue to have these same conversations, and have to relive things, like the grooming that Bob Freeman put me through.

I asked the inspector general's staff to go to JCOPE and get my testimony in their notes. And they said that JCOPE cannot give them that information; that it is confidential. That they can give JCOPE information, but JCOPE cannot give them information.

I said I would sign a release waiver, whatever it would take. I just really didn't want to be interviewed again.

She said she would call me back, and I never heard from her.

I also want to emphasize that we cannot continue to define "power abuse" the same way we have for decades.

Discrimination, harassment, assault, retaliation, are all manifestations of power abuse, yet they are not explicitly mentioned in the

Public Officers Law, and that leaves too much room for interpretation.

Again, I know this firsthand.

And you can also read about it in the current Article 78 court case, Klein verse JCOPE.

So after JCOPE found my allegations against Klein substantially credible, a hearing officer determined that it doesn't matter, because, in his view, Public Officers Law, Section 74, does not cover what's alleged; and, therefore, he concluded JCOPE doesn't have jurisdiction.

And although JCOPE overturned the hearing officer's decision, Klein sued in New York State court, and to have a judge enforce the hearing officer's dismissal.

We're still awaiting for a decision from the judge, one that could, in my opinion, set a dangerous precedent for any future harassment case that JCOPE investigates.

So we need clear, explicit language that gives any ethics body jurisdiction over these types of power abuse.

But we also know that with clear statutory mandates, an ethics system cannot protect its staff if the entities do not hire and appoint people with

the necessary expertise.

Again, I know this firsthand because, during my first interview with JCOPE, I was really traumatized.

I do think that my follow-up testimony and interviews with them were better because of the public hearing that was held in February 2019, where myself and other cofounders of the Working Group talked about their experience being interviewed by JCOPE.

But we need to make sure not just staff have the experience and expertise to understand what it means for a harassment or an assault victim to come forward, but also the people who are making decisions.

In this case it would be the commissioners of JCOPE.

And so ensuring a new ethics system has that requisite experience is, you know, one way to really make sure that we get at the heart of what is necessary, and that is independence.

I know the Sexual Harassment Working Group has talked about this time and time again: We need a truly independent ethics accountability system.

And the only way to do that is to make sure

we have these public hearings, to make sure that we don't have as much political influence as possible, and that includes taking out the judiciary and making certain appointments; and also making sure that there is enough of a fiscal budget for some type of ethics entity to really be able to conduct what is asked of them.

So I'm going to stop there.

You do have my written testimony, and I want to make sure we have enough time for questions.

So, then, thank you so much for having me.

I look forward to answering your questions.

And listening to future public hearings that you have around ethics in New York State.

SENATOR KRUEGER: Thank you very much, Ms. Vladimer.

Of course, there's -- people may not know, I got to know you very well over these years, with the very brave things that you have done and come forward, and the group that you have been a leader in, and other women who came forward, and men, to talk about their experiences.

And I think you're right, we've taken some bites at the apple of trying to make improvements in our laws, specifically around sexual harassment.

But, of course, as we've all seen with the AG's report on Governor Cuomo recently, despite trying to fix laws in the last three, four years, despite some improvement, the exploitation of employees continues.

And we have to -- we have to get it right.

So I'm just curious --

Because you listed all these different entities, and I even remember discussions about, Where should you go? and, What's the right first -- What's the right door to go through? and both of us realizing there was no right door to go through. Like, you could try to go to different doors of these different entities, but they were all the wrong places.

-- do you think that in a model that actually can and would make sense, we should have multiple different places?

Or should we have one centralized place where people can go, that plays a lot of different roles, you know, so that you don't actually have to figure out, Am I a JCOPE case? Am I an inspector general case? Am I a GOER's (Governor's Office of Employment) [sic] place?

You know, because I found it, over the years,

extraordinarily confusing, even in just trying to help someone know what the right answer is.

If you could just tell me, is it your vision that we have one centralized place where all these kinds of cases go, and they have the right people there, under the right instructions, with the right powers?

Or that you actually do want to have more explicit roles -- rules about what the role the inspector general is in this situation, or JCOPE, or GOER's, or anybody else?

ERICA VLADIMER: Yeah, Senator, I appreciate that question.

And, you know, I will be totally honest, I'm not sure right now.

I will say the Sexual Harassment Working Group has had multiple conversations, and we ask ourselves the same thing.

We have tried to envision and put together what one single entity might look like, and how we can make sure that it is staffed appropriately, and that they can handle all types of power abuse and ethics violations, including harassment and discrimination and retaliation.

But we have also had other conversations with

other good-government groups and experts and advocates who talk about having a separate entity that works in tandem with a different ethics entity.

So I don't know.

I think what really needs to happen, which, you know, this public hearing is a really good start about that, is having those conversations, and getting more people involved in them, to see what might work best for New York State.

And I know the Working Group wants to continue to have those conversations as well.

So I apologize for not really having a hard answer for you, but we're really starting to -- trying to figure that out for ourselves, too.

SENATOR KRUEGER: Thank you.

Thank you.

And thank you for all the work you've done that has, I really do believe, helped to wake up so many New Yorkers. And even if no one even meets each other, that the work that you and other earlier members of the Working Group have been doing over the years has strengthened other people to come forward.

And that, even if they never -- I know I've told so many people, Go talk to them. Just go talk

to the folks from the Working Group. They will give you strength to move forward on your own behalf.

And I never know who does or who doesn't follow up with you.

But just know I think we're very aware that you all have played an incredibly important role for the state of New York; and we thank you.

ERICA VLADIMER: Thank you, Senator.

Thank you for always being a partner.

SENATOR KRUEGER: Thank you.

SENATOR BIAGGI: Senator Liu?

SENATOR LIU: Thank you, Madam Chair.

Thank you, Erica, for once again appearing before this committee, and for your years of courage and work, along with the rest of the Sexual Harassment Working Group.

I think you're absolutely right, that it would be -- it would -- it wouldn't make sense if we just stopped it at JCOPE.

We clearly need a strong, independent, sensible, and functional ethics body in the state of New York.

And JCOPE, at least as it currently exists and functions, is certainly not that.

But we shouldn't stop at that, which is why

the Sexual Harassment Working Group has been working with myself and other colleagues here in the Senate and the Assembly to draft and pass additional laws that will strengthen the ethics, and also protect people against harassment in this state.

And so we'll continue to do that.

Madam Chair, I don't really have much of a question, but I just felt compelled to say "thank you," and to encourage you and the rest of the Working Group to keep doing what you're doing.

ERICA VLADIMER: Thank you, Senator.

You know we're not going to go away.

So I look forward to continuing to work with you, and I know the Working Group does as well.

SENATOR LIU: Great.

SENATOR BIAGGI: Thank you, Senator Liu.

Senator Salazar.

SENATOR SALAZAR: Thank you.

Thank you, Erica, so much for taking the time to testify today.

Earlier we had the opportunity to hear testimony from Judge Berland, the executive director of JCOPE.

And I had asked Judge Berland if, in his assessment, JCOPE has the resources to hire experts

to provide support and investigations, including investigations where special expertise might be required, such as sexual harassment cases.

And his response, in part, was that JCOPE is equipped to handle these cases because their current director of enforcement has previous experience working in a special victims unit.

You know, I have my own opinion on -- about that response.

But I'm curious how, you know, your -- what your thoughts are when you hear that as, you know, justification for JCOPE perhaps failing to seek additional expertise, or hire someone with more experience working with survivors of sexual harassment and misconduct, based on your experience with JCOPE.

ERICA VLADIMER: Yeah, I appreciate that question, Senator.

I do not think that having one staffer, even at a director's level, who has experience in one narrow sector of working with survivors is enough to say that they shouldn't be bringing in other experts.

You know, I myself personally did not go through the criminal justice process as a result of

what I experienced.

But I do know some other amazing advocates -- survivor advocates who have, including Marissa Hoechstetter and Alison Turkos. And, you know, just knowing them, knowing the work that they do, talking to them about the changes that need to continue to be made in the criminal justice space.

There's a reason Marissa Hoechstetter founded Reform the Sex Crimes Unit.

We know that prosecutors themselves do not approach these situations as someone who is there as an advocate for survivors; that they approach this with a certain mind frame that essentially comes down to a district attorney.

And, frankly, that is not how these types of situations and investigations, especially on an administrative level and in a workplace should be handled.

I do think that more could be done to bring in experts and advocates, especially when it comes to workplace harassment and discrimination.

And that JCOPE needs the resources, or whatever ethics entity it might be that continues to conduct these investigations, there need to be more adequate resources.

But, again, I think something that you referred to, Senator, is that the people in place of spending that funding that they get, they need to be proactive and willing to actually spend that money appropriately.

So if the mindset is, we already have the expertise in-house, the extra funding is not going to help. Right?

And so it's a matter of making sure that the people who are in those positions of power make the appropriate decisions on behalf of the people who they're supposed to be supporting.

SENATOR SALAZAR: Absolutely.

Thank you, Erica.

SENATOR BIAGGI: The microphone is so fun.

I'm very grateful, also, that you are here today. And I echo every single thing that Chairperson Krueger said, as well as Senator Salazar.

Your work, and your commitment, and your showing up time and time again, does make a difference, and it's important.

And it might not always happen right away, although, in 2019, that was transformational. But there's a lot more to do, and it will happen.

And so I think today's testimony, and just showing how many ways in which sexual harassment can show up, sexual harassment is an issue that goes across so many different topics.

It's a labor issue.

It's a person issue.

It's a discrimination issue.

It's an ethics issue.

Right?

There are so many different ways in which someone who experiences sexual harassment, assault, abuse, misconduct, are affected.

And so I think it's really meaningful that you have provided testimony today.

And I think one of the things that you wrote in your testimony, about how -- similarly to how a company's HR department is designed to protect the company, not the employees, our current ethics system is meant to protect the institution and the powerholders within it, not the staffers or the public.

And I think that underscores the primary issue, because you can't trust a system that is so tilted and slanted to, essentially, just protect its survival, even if its survival is, frankly, sick and

toxic.

So it's important that you put that in there, and I hope that that remains really clear to everybody who is watching; and, also, all of the legislators who are not here and who are here.

I just want to go back to a part of your testimony with regard to the Public Officers Law, and your reference to how the way that it's currently written, and whether or not it provides enough coverage for workplace harassment and discrimination cases.

So I guess the first question is:

You touched on this very briefly, but I want to go a little bit more in depth, and the reason is, because I wrestle sometimes with whether or not we should be including in Public Officers Law, terms like "sexual harassment" or "assault," because they are notably missing.

And, obviously, we want to make the right decisions when we amend our laws; but we also want to make sure that the places where we amend our laws for further protection actually mean that there's the right oversight place where this case would go.

Right?

There's obviously a direct effect of putting

these words into the Public Officers Law, because then it goes to JCOPE.

So I think the first question is:

Do you think that the Public Officers Law, as it's currently written, provides enough coverage for workplace harassment and discrimination cases?

And then, just further beyond that, can you speak a little bit more about Senator Klein's attempts to argue that his misconduct does not fall within the purview of JCOPE?

ERICA VLADIMER: Sure.

Thank you for the question, Senator.

To answer your first question: No, I do not think the Public Officers Law, as it is currently written, will -- does anything really to protect staffers from harassment and discrimination and retaliation.

One of the things that the independent hearing officer wrote in their decision in the JCOPE case that is, you know, surrounding Klein, was that this one instance does not fall within, you know, Section 74(h)(3), I believe it was, or -(3)(h) -- I apologize for not knowing off the top of my head -- and that it should have gone to the division of human rights.

And it's not that the hearing officer is wrong in that, but that gets to who we are as individuals.

It does not speak to the fact that Klein abused his power as a sitting elected official when he shoved his tongue in the mouth of a staffer.

Right?

And so I think that there is nothing wrong with having that overlap between where we have certain protections under the human rights law, and violation of the human rights law should be a violation of Public Officers Law.

And perhaps maybe that's where -- what the reference can be, but making sure it's as explicit as possible is really, really important.

Something else that is being litigated, I guess you could say --

At that this point, we're waiting for the Supreme Court judge to render their decision.

-- Klein and his attorneys have argued that that specific section of Public Officers Law, 74(3)(h), is too broad to be constitutional.

And so they are kind of hoping that the judge is just going to strike that clause -- right? -- which will put staffers at even more risk than they

already are.

And so he's making all of these arguments to say that Public Officers Law does not cover the way staffers are treated.

And I know I'm preaching to the choir when I say, here, especially to -- you are all, as sitting senators, because you passed the law to close the license to harass people, but time and time again, staff of elected and appointed officials are left behind and they're not provided the same protections.

And that is exactly what Klein is trying to argue in court, is that they should not be protected in that way; they're not protected by Public Officers Law.

And, frankly, if we continue to allow that to happen, we are going to lose more and more amazing public servants who we need here as New Yorkers.

SENATOR BIAGGI: Thank you very much for that.

I think that is probably the most compelling case for why the Public Officers Law needs to be amended, and this behavior needs to be covered.

So thank you very much.

Just notably, for anybody watching who

doesn't know, the Public Officers Law, specifically with regard to these issues, mainly refer to issues of finances -- right? -- like bribery or extortion, or anything that's related to those topics.

And so it's notably missing that harassment and misconduct is part of it.

So thank you very much, Erica.

I don't believe that there are any other senators who wish -- yes, there is.

Senator Brisport would like to speak, and so he's recognized.

And just thank you very much, again.

ERICA VLADIMER: Thank you, Senator.

SENATOR BRISPORT: Thank you, Madam Chair.

And I'm just sneaking in at the end here.

But I wanted to -- I want to start by extending what a lot of my fellow colleagues have said, Erica, just a big "thank you" for your testimony, and also deep appreciation, not just for your testimony today, but all the work you've been doing over the previous years with the Sexual Harassment Working Group.

My question is just about any additional recommendations that you came up with.

I know that, you know, there were time

constraints over your original testimony, and we are talking about a very wide scope of changes.

So I wanted to extend the opportunity, if there were additional recommendations that the group came up with, that you did not get a chance to share today.

ERICA VLADIMER: Oh, gosh, Senator. We certainly do not have enough time to talk about all of the recommendations.

The Sexual Harassment Working Group does have a legislative agenda that has six bills on it. And there are some other bills that we are looking to explore, to try and protect staff of elected and appointed officials, as well as workers across all industries.

We have also signed on to the New York Bold agenda, and, you know, encourage the new governor, Kathy Hochul, to look to advance that.

As well, so you all know, I'll make sure that I send that to you all, so you can see it if you haven't.

But one thing I really want to emphasize is that changing laws itself is not enough.

If we don't change the culture, the laws are only going to be as good as the paper that they are

printed on.

We saw this -- right? -- with the former governor, Cuomo, that he signed those 2019 laws.

And that, as the AG's report showed, the next day he sexually harassed a state trooper.

So he knew what those laws said, and those laws were on the books, and he still sexually harassed.

And it's because the culture of Albany is so pervasive, and so severe.

I know it's ironic that I used those words because we changed that standard, but I use them intentionally.

We have to change the culture.

And, yes, changing the laws is a huge part of that, but making sure that any law that we are going to fight for and pass and enact has a level of accountability.

It's not enough to say "This is wrong."

We need to make sure that we say, "This is what happens when you break this law."

And that is why it is so important that we continue to see through accountability; whether it be through administrative process, like having a true independent ethics body that can hold elected

and appointed officials accountable, using constitutional authority to conduct and see through an entire impeachment process.

The legislature itself sets the example for all other employers.

And so I encourage you all to do your best to change the culture within your own offices, and in your chambers, and just across all the state government.

SENATOR BRISPORT: Thank you.

SENATOR BIAGGI: There we go.

I think that concludes our questions, Erica.

Thank you so much.

The gratitude also extends to the Sexual Harassment Working Group for everything that you all do.

ERICA VLADIMER: Thank you all so much.

SENATOR KRUEGER: Thank you.

Our next panel is:

Rachael Fauss, the senior research analyst from Reinvent Albany;

Evan Davis, who is a member of the Committee to Reform the State Constitution;

And, Ed Murray, the chair of the New York City Bar Association's Government Ethics &

State Affairs Committee.

We welcome you all, and are looking forward to your testimony.

You can begin whenever you're ready.

RACHAEL FAUSS: Good afternoon, Senator.

I take it I'm first, so I'll go first.

Good afternoon.

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

Thank you for holding this important and timely hearing, and inviting us to testify.

We're here to make five points today.

New York State government has a serious and ongoing corruption problem that goes well beyond the misdeeds of former governor Andrew Cuomo.

Second: The Joint Commission on Public Ethics is worse than useless and must be replaced.

Third: The legislature must pass a constitutional amendment, replacing JCOPE with an independent agency [audio lost] --

SENATOR KRUEGER: We lost you. You're muted.

Now you're frozen.

SENATOR PALUMBO: Rachel, we lost you.

There you go, you're back.

RACHAEL FAUSS: Fifth, and in another ethics hearing this fall, we encouraged the legislature to examine policy changes to prevent abuses of power, like those seen with all of Andrew Cuomo's scandals, including the use of state resources for personal gain or favoritism, and influence over state's [indiscernible] without public transparency or legislative and comptroller approval.

And further, the comptroller and the attorney general's rules in preventing corruption should also be reviewed.

Just, first, on New York's ongoing corruption problem, the scandals involving Andrew Cuomo are only the latest in the sad saga of public officials abusing their power, further fueling cynicism, and damaging the public trust in state government.

Barely a year goes by without a massive scandal.

Before the recent ones, there was the "Buffalo Billion" bid-rigging scandal in which hundreds of millions of taxpayer dollars were awarded to the governor's donors because of bribery and pay-to-play.

Corruption and abuse of power are not victimless crimes. Corruption hurts vulnerable

New Yorkers the most.

When state funds are awarded and laws passed because of pay-to-play and conflicts of interest, the richest and most powerful are rewarded, not the neediest and most deserving.

And this is what leads to our recommendation that the Joint Commission on Public Ethics is worse than useless, and must be replaced.

I'll abbreviate my remarks here, but you heard it yourself from Julie Garcia's testimony.

If her account is true, which we have no reason to believe it is not, then JCOPE and the IG, which are supposed to enforce the state's ethics laws, instead, reinforced corruption.

This is incredibly damaging to our state, and it cannot stand the way it is today.

So the question then is: In making -- replacing JCOPE, and doing a constitutional amendment, how do we establish an ethics enforcement commission that is truly independent from elected officials and those it regulates?

And to that end, Reinvent Albany is working with other advocates and legal experts, like my esteemed co-panelists Evan Davis and Ed Murray, and other watchdogs and organizations, to, hopefully,

develop an appointment process for this new independent ethics commission agency. And we think this will build upon the important constitutional amendment proposal from Senator Krueger and Assembly Member Robert Carroll.

And consensus is building on a number of principles on how we might be able to do this and make a better nominations process.

I'm not going to go through it today in the interest of time, but what Reinvent Albany supports is in my testimony.

Second: The legislature has to pass legislation, making fixes to JCOPE, and to better protect its state employees from harassment.

Since the Constitution can't be amended till at least November 2023, when the voters could vote on this, there's a number of things that the legislature can do in the meantime.

We know that the Senate has passed a number of bills. And we thank Senators Biaggi, Gounardes, Hoylman, and Liu for introducing a number of bills to help with JCOPE's voting structure and transparency, and a number of other issues.

We'd also encourage new legislation to be introduced, to increase transparency of financial

disclosure statements.

We think that the senior agency official statements should be posted online in an open-data format.

And I would love to talk more about that proposal. We can talk about that offline.

And then, lastly, you know, like I mentioned, there's so much more that can be talked about in another hearing. There's a lot to unpack from the governor's scandals, and we would love to talk about it more.

And I think this involves talking more about our state ethics code.

We have a lot of concerns about the disclose-and-recuse regime. We don't think it works in New York. We think that bright lines and bans on outside income are far preferrable.

So thank you again for the opportunity to testify, and I'll hand it over to my colleagues.

EVAN DAVIS: I guess I'll go next.

It's a little bit repetitive, so I'm not going to go through my prepared testimony.

JCOPE is useless. It does more harm than good. Rather than building confidence in government, it weakens confidence in government.

And what you've already heard this morning I think amply demonstrates that, and it need not be belabored.

In my testimony, we put in eight ways that JCOPE does not live up to its standard of reasonable independence.

I want to mention the big four.

The first is, that everyone who sits on JCOPE is appointed by a particular public officer.

And I want to emphasize what Senator Krueger said.

JCOPE was designed by the three men in a room. JCOPE was designed for their purpose.

It was not designed, certainly by the legislature, and certainly not by the current legislature.

But in any event, they're all appointed by particular people, and the members have much too much come to see themselves as that person's person on JCOPE.

And when that happens, independence goes right out the window.

You can have -- Senator Stavisky asked about ways you could fix that.

But one way is to have a majority of the

people appointed by people who are not regulated.

That's the way that's used by the Commission of Judicial Conduct, which has worked well. A majority of the members of that commission are appointed by the executive and the legislature, which it obviously does not regulate.

Here you can have a majority appointed by the judiciary.

And you can also have some joint appointments, with a mechanism, if they fail to be happen as to what -- or, what happens, who gets to make it. But a joint appointment, so the person would not see themselves as the person of a particular individual.

So, second, the JCOPE chair is appointed by the governor and serves at the governor's pleasure.

That's -- the chair is a powerful position; sets the agenda, organizes the tone, conducts the meetings.

And to have that person serve at the governor's pleasure is totally inappropriate.

And the third is that, the veto provision, that as few as two of the governor's appointees can veto what the other 12 members of the commission want to do.

No other state has anything like that. That's a New York invention to serve the interest, not of the people, but of the leaders who designed the mechanism.

And, finally, there is no duty to report.

There's a duty to report in state law to the inspector general, but we know from Julie Garcia's testimony how unhelpful and ineffective that is.

There should be a duty to report to JCOPE.

And I was struck by Julie Garcia emphasizing the need to stand behind those who speak up. Those who report should be supported.

You want due process in investigation, but they should be clear that there will be no retaliation, and they should be supported.

So in the end, I have to disagree very strongly with Judge Berland.

He seems to think that JCOPE's problems are public-relations problems.

They're not public-relations problems; they are very serious structural flaws, the design of JCOPE. Its lack of independence, its lack of transparency, its lack of accountability, and those are the problems.

It's not just PR.

Thank you.

ED MURRAY: Good afternoon.

Madam Chair, committee members, thank you for the opportunity to testify today.

My name is Edward Murray.

I'm an attorney, testifying on behalf of the New York City Bar Association's Government Ethics & State Affairs Committee.

I was going to talk about all the structural flaws with JCOPE.

They have been addressed in great detail already.

But, again, the issues with the appointment method, the special voting rules, and transparency problems are, at bottom, structural issues that could be addressed by this legislature.

The -- in recent months, the state Senate has taken significant steps to address some of these structural issues by passing S6964A, sponsored by Senator Biaggi.

The bill, among other things, brings JCOPE's voting rules into line with agencies such as the Commission on Judicial Conduct and the New York City Conflicts of Interest Board, by requiring that the JCOPE act in all matters by simple majority vote.

The bill provides a needed short-term solution until broader, more permanent reforms can be adopted.

In this regard, the committee supports constitutional amendment by Senator Krueger and Assemblyman Carroll, to establish a government integrity commission.

The proposal includes many important improvements on the existing regime, including empowering the commission to sanction both elected and non-elected officials, and separating out the power to remove commissioners from the power to appoint commissioners.

But the appointment method for this new commission is critical for facilitating independent action.

As we learned in the recent report on Governor Cuomo by the state attorney general, even the governor's office recognizes that an appointed official cannot effectively investigate their appointing authority.

For this reason, the committee has supported an appointment method that mirrors the one used by the state's Commission on Judicial Conduct, whereby the majority of commission members are appointed by

someone other than the regulated parties.

The committee has also been discussing with other organizations testifying today alternative methods that we hope would achieve similar ends, including a method of joint appointments that Evan Davis mentioned.

The organizations have, also, joint appointments in which the appointment power is shared by two or more parties.

From these discussions, the organizations have also come to a consensus that a new ethics commission should be a much -- should be much smaller in size than JCOPE, even as small as five commission members, to bring about more accountability for those making the decisions at the ethics commission.

The city bar thanks the Senate for holding this oversight hearing, and taking the lead on this difficult but important work of ethics reform.

We encourage the Senate to continue this work with the Assembly so that concrete results can be achieved.

Thank you.

SENATOR KRUEGER: Thank you so much.

On this -- first of all, thank you for your

support for my constitutional amendment.

And, actually, I've worked with Evan on this for several years.

Thank you, Evan, for the work you continue to do for the people of New York State on so many issues.

For all three of you, this is the same question I asked Erica Vladimir:

Do we need to have multiple portals into ethics investigations and complaints for people?

You know, if we got JCOPE redone correctly, do we also want to have other portals, where people sometimes would go to GOER's for some set of reasons, sometimes would go to the IG's Office for some set of reasons, sometimes might go to the Human Rights Commission.

I'm really trying to get my arms around how we not only design a better system for actually delivering what needs to be delivered, but also, hopefully, clarifies and simplifies so that employees of the State of New York, or others who have had harm done to them by employees of the State of New York, I think should have one place to go.

But there might be logic for multiple places.

So I would love to know all of your opinions,

or any of your opinions.

EVAN DAVIS: So I'll speak up.

There are misconduct that is not ethical, but either criminal or having to do with the State's procurement processes, where there's been fraudulent bidding or the like.

And in those situations, a reformed IG might have a role.

But for ethics enforcement, I think it's important to have a single body which can be held accountable for doing the job right, that can apply uniform standards to the executive and the legislature, and that is adequately staffed and adequately funded, and that people know where to go.

SENATOR KRUEGER: Thank you.

Do either of the other of you have a different opinion?

RACHAEL FAUSS: I would say, for Reinvent Albany, we agree on the point that IGs can play a very important role. And they're very standard among government agencies to have an IG to be able to investigate waste, fraud, and abuse.

So, you know, it's possible that it could be retained, as long as it's reformed and made much more effective and independent.

But, you know, I think the important thing to think about with our ethics [indiscernible] with JCOPE, I mean, they also cover lobbying.

That's an important thing.

And I think there needs to be, with ethics oversight -- there has to be that nexus of being able to see the flow of money and influence.

So I think that's something that, you know, hasn't been talked about as much at this hearing, but having ethics and lobbying oversight in the same place absolutely makes sense.

And I just wanted to reference that as an important thing to consider.

SENATOR KRUEGER: Thank you.

ED MURRAY: Yeah, and if I could just add there, you know, the city bar hasn't looked on -- at an issue of consolidating all these bodies into one central authority.

Certainly, there's some beauty to that, that simplicity of that idea.

However, I think that could cause some unwieldy bureaucratic entity that is not efficient in fulfilling its mission.

I think, bottom, though, with respect to ethics oversight and enforcement, you know, even at

this point there's something -- there's the Legislative Ethics Commission and there's the Joint Commission on Ethics.

I think consolidating all the entities that are responsible for enforcing the state's ethics law is an important step in ensuring that the mission of is fulfilled here.

SENATOR KRUEGER: Actually, I do have a second question.

So I've always believed that, even in ethics, where it gets, you know, trickier than, you know, the rules of the road, that there are lines that you are not supposed to cross, and some people don't know the lines.

So that a real value is to be able to have things like the ethics trainings, people you can go and talk to and say, you know, I think this was the wrong thing that happened. I'm not sure. Can you walk me through it?

Do you all believe that that should also be a role for the same entity, JCOPE?

Or is it important that the role of trainer and educator about what the rules are that you can't violate needs to be separate from the investigators and people who are actually perhaps coming down with

penalties for you for having violated?

I'm just curious what you think works best.

ED MURRAY: I'll jump in there.

Yeah, I think that can -- I think that can and should be in the same entity; the same entity can fulfill that responsibility.

I think it's important that there is one body that's maintaining a uniform application of these -- of the ethics rules.

And so if there's one entity that's providing advice in one direction, and then there's an enforcement entity that's looking at this in another direction, I think that creates problems.

So I think this can all be effectively done within one agency.

It's, just, it doesn't seem to be happening as currently structured.

SENATOR KRUEGER: Thank you.

Thank you, Madam Chair.

SENATOR BIAGGI: Senator Palumbo.

SENATOR PALUMBO: Thank you, Madam Chair.

I'm gonna -- I agree with you, Mr. Murray, and I think that kind of along those lines that we just discussed, it's pretty obvious the overlap and the redundancy between the IG and JCOPE.

And the more we get into the weeds, it seems like JCOPE was clearly created for a press release. It was intended to be toothless. And the IG's Office was supposed to be the adequate oversight agency.

But we have seen the atrocious failures that they have engaged in, and they don't even have criminal powers. They have to refer as well.

So we're referring to a referring agency who can maybe refer, and maybe not.

So I think there's almost a dual punting ability, for political reasons, for them to say, You know what? This is a terrible situation for me. That I have to have some real intestinal fortitude to make a decision to go after, for example, the governor.

So I'd like to hear what the panel has to say regarding maybe creating one agency. Get rid of JCOPE.

The IG's Office is its own animal. I mean, I know many -- I mean, they're obviously nationwide.

This one has some real troubles, and needs to be revamped.

But how about creating something like a criminal division within the Inspector General's

Office.

And like Edward, like you, has just said, that maybe, possibly --

And I don't know if you know, if you were listening earlier, I mean, I'm a former prosecutor. I've dealt with, you know, hundreds and hundreds of felony complaints and homicides and major cases; so I get it.

-- you do need to have an ability to investigate, and maybe impose some sort of a sanction.

But, also, I think you might want to have a criminal division because, then, you end up asking Cy Vance to take a case. You end up asking, you know, other district attorneys who are political. And, clearly, you know, they may have an agenda as well to not accept a referral.

So how would you feel about putting it all under one roof?

That was a long question, but that's really where I'm going.

ED MURRAY: Yeah, I'll jump in here.

I think providing something -- the ethics commission with criminal jurisdiction is probably not the right step to take at this point.

I think there are structures that can be put in place here to ensure that there is more public trust in an agency like the ethics commission.

I actually think Judge Berland had an interesting recommendation here in terms of expanding the referral powers of JCOPE with respect to violations of the confidentiality provisions.

It does seem problematic, if JCOPE has to refer those violations to the inspector general, particularly if the inspector general is investigating his own or her own appointing authority.

So I think that's something, an interesting thing, that the legislature should look at.

But in terms of giving the ethics commission criminal jurisdiction, I don't think that's the -- I haven't looked into the issue in great detail at this point.

I don't think that's a step to take at this point.

I think there are other structural issues with regard to voting rules and the appointment method that can bring about more public trust in this agency, and that they'll make the proper criminal referrals at the right time.

SENATOR PALUMBO: Very good.

And I kind of feel that way in my gut as well. I just wanted to ask that question.

Does any of the -- are any of the other panelists interested in commenting?

EVAN DAVIS: I think there might be room to increase the power of the AG's official corruption unit.

We've gone the route of increasing the AG's criminal jurisdiction in other areas. I think that might be something to look at.

SENATOR PALUMBO: And then they can refer directly to them?

EVAN DAVIS: Right.

RACHAEL FAUSS: And would I add, too, that I think that, you know, something I said in my testimony, is that the state comptroller has an important role here, too.

I mean, there's a -- it's standing referral between the comptroller and the attorney general for misuse of state resources.

I think that that's something you-all should look at more in an additional hearing, to see -- understand how that process is working, because that's yet another oversight mechanism that the

State has, that I think it would be good to know, how can that be strengthened?

SENATOR PALUMBO: Very good.

Thank you.

Thank you, Madam Chair.

SENATOR BIAGGI: There we go.

Senator Gaughran.

SENATOR GAUGHRAN: Thank you, Madam Chair.

Mr. Davis, when were you speaking, it struck me, do we need to do something -- in addition to replacing JCOPE, and, you know, we have the constitutional amendment, do we need to do something to deal with whistleblower statutes, to make it, you know, so it's concise, it's clear; you know, Julie Garcia would know exactly where to go, she wouldn't even have to think about it, as it relates to, you know, our entire state government?

EVAN DAVIS: Well, the constitutional amendment that's been put forward by Senator Krueger strengthens whistleblower protection in the constitution.

And I think that makes a lot of sense, because it's so very important that the State stand behind people willing to speak up.

Again, not to fail to investigate, but they

say, but to be sure that speaking up does not make their life difficult.

And I think the standard can be improved, it should be improved, and perhaps even more than what is done in the constitutional amendment. I think it's a very important piece of effective ethics enforcement.

SENATOR GAUGHRAN: Improvement. And then maybe also, communicated, you know, very clearly, just like when we do ethics training, sexual harassment training, it's made very clear, you know, there are whistleblower laws, and, you know, you have the right, and I would say in many cases, probably the obligation, to step forward.

And I guess --

RACHAEL FAUSS: I would --

SENATOR GAUGHRAN: Oh, yes, go ahead.

RACHAEL FAUSS: Just a note that -- on -- it looks like Senator Liu might not be in the room with you at the moment.

But a bill we support, that he has introduced, it's on the Sexual Harassment Working Group agenda, would protect -- better protect legislative and judicial employees under the State's whistleblower protections. It's S1096.

That did not pass either house this year, but we would encourage you to do so, because that's a mechanism to protect legislative and judicial employees under the whistleblower statutes.

SENATOR GAUGHRAN: Yes, that makes sense.

So another question for -- you know, for any that may want to answer, and I have tried to raise this a little bit with Judge Berland, but we ran out of time.

We fix JCOPE or replace JCOPE with a new agent -- with a new commission.

We make improvements to our disclosure statements.

But don't we have to do something else in terms of dealing with this issue, particularly, you know, for the state legislature, with outside income, outside employment, various proposals to ban it outright or to limit, you know, and have real guardrails?

I mean, doesn't, ultimately, that [indiscernible] in many cases even a lot more, by stopping these problems from happening in the first place?

RACHAEL FAUSS: I did reference in our testimony that we support, in general, it's much

more effective to have bans on outside income than a disclose-and-recuse regime, because when you have the disclose-and-recuse regime, you know, you're hoping that it solves the problem by just saying, okay, this person won't vote on this issue.

But that conflict is still there.

It's easier when you're appointing people to bodies who are serving government, that they don't have other outside interests.

It's a much simpler, easier recommendation.

And, you know, we, in general, have supported bans on outside income.

And I think that could apply also to issues like, you know, governors' book deals.

It's easier not to have that conflict, and we far prefer that.

SENATOR GAUGHRAN: I mean, that would be -- I mean, that would be clear, because if you're writing a book and the book is entirely based on your activities as a public official that you're being paid for, that would seem, to me, should be covered by some sort of a ban on income.

Thank you so much.

SENATOR BIAGGI: Okay.

I'm cursed by the microphone today, so I'm

sorry.

SENATOR KRUEGER: They're attached.

SENATOR BIAGGI: I know, they're attached to this table, unfortunately.

Well, thank you all for your testimony.

And a lot of the questions that I had have already been answered, so I'm not going to repeat anything that was already asked or said.

But I think there are a few important questions that still are left unanswered, or at least we can expand upon.

So -- and these are for all of you unless I just ask one of you directly. So please feel free to answer in any order that you wish.

Can you explain to the public watching or listening or reading about this hearing today, why the public should care about ethics; why is it so important?

And how JCOPE's failures impact the average New Yorker?

EVAN DAVIS: So when the public lacks confidence in government, you have a situation where the cooperation and help and mutual support that is supposed to exist between government and the public is gone, and the public will not support government

if it lacks trust in government.

And that means things that should happen won't happen.

Also, corruption means that money is being wasted; that there is fraud, that there are people feathering their pocket with the taxpayers' money, that they are diverting state-board resources to their personal benefit.

And the taxpayers have a direct interest in that not happening.

And, also, I think it is important for New York State to be able to hold its head high; that we are a state with a strong ethical regime.

And right now we have to sink our head and look at the ground because we are a state with a weak, almost non-existent ethical regime.

SENATOR BIAGGI: Thank you for that.

Yes, Rachel, please.

RACHAEL FAUSS: Sure.

You know, I think I said this in one way in my testimony, and I'll maybe say it a little bit more -- put a point on it a little bit more, but, you know, it's not as if -- corruption and abuse-of-power issues, it's not as if there are not victims there. And I think it gets it what Evan was

saying, is that when state money, when public dollars, are being spent on things because, you know, someone who gave the most campaign contributions, who's the most powerful, and there's conflicts of interest involved there, that's money that doesn't go to other programs.

That's money that can't go to important services for people who don't have that kind of access and influence in state government.

And I think this gets at the -- you know, it goes beyond ethics, and to issues of campaign finance issues and lobbying disclosure, and all sorts of things.

But I think we can't think about corruption in a vacuum. It's not as if that money couldn't be used for much better and different things.

And that's, I think, the way I'd say it to you in terms of these issues.

I mean, obviously, when you're talking about issues with victims and sexual harassment, it gets it the trust in government.

And, you know, I don't want to speak for Erica, but I thought what she said was powerful, that if people don't want to serve in government because they feel that they're going to be harmed,

that's eliminating a whole pool of people who will never work for state government, and who will not feel like they can contribute. And I think that's damaging.

We want our public institutions to have the best and the brightest, and people who feel like they can make a real difference.

And if they feel like they don't want to join government because they don't trust it, that's damaging to our institutions.

ED MURRAY: Yeah, my panelists are much more eloquent on this subject than I, but I would just add that the decisions that government makes seeps into the daily lives of everyone, every single day, in so many impactful and meaningful ways, particularly now in the midst of a public health crisis.

And it's important that when the government makes a decision about how to address a public health crisis, or any other issue, that they're making decisions that are in the interest of the public, and not in the interest of the person making those decisions.

So it extends much more broadly beyond some of the specific cases that we were talking today.

And so I think that, fundamentally, we -- there has to be trust in government, and so when the decisions are made that impact us, we know that they're made with the public in mind.

SENATOR BIAGGI: Thank you so much.

I think that extends even to the subway functioning, to getting money out the door when it comes to COVID relief.

I think there's so many different ways.

And you all just highlighted a lot of them, and it's meaningful.

I want to just end my time on the topic of misuse of governmental resources.

This is Section 74 of the Public Officers Law.

We've heard this section reiterated lots of times today, so I will not repeat it, just for the sake of time.

But my question, really, and, Evan, I feel like maybe, perhaps, this is best suited for you, just your assessment of Judge Berland's comments about how JCOPE handled the "misuse of state resource" cases, and what you believe is an appropriate standard to apply to determine whether public resources were used to advance someone's

personal interests.

I think that would be a really helpful, distinguished moment today.

EVAN DAVIS: So the JCOPE training materials indicate that their most common subject of investigation is misuse of public resources.

This is a recurring problem.

And so, therefore, the way it is handled has great importance, because it's widespread.

And it's particularly important how they handle it in the case of the governor, because you have to set the example at the top.

And so I think that no matter how they vote tomorrow on whether to rescind their approval of his book, they have to investigate what happened with regard to using of state resources.

How were people asked?

What was the time involved?

Could people in any way realistically say no?

And if the charges are sustained, I think that the governor has to refund his compensation, because that's what the law says.

I think that if his work, if the ability to use those resources was a substantial factor in his getting that compensation, it has to be refunded.

I think if using those resources were practically necessary, given all the other demands on the governor's time, to get the book done now while he is in the middle of his term, that's a reason why it has to be compensated.

So I think it's very important they pursue this, they get to the bottom of it, and they look seriously at the recoupment or claw-back remedy which the law provides.

I would say it's likely the facts will justify using it.

SENATOR BIAGGI: Thank you very much.

And if I could just end on one -- I know my time is up here -- but I have one final question, and you may or may not be able to answer this question, and that's okay.

But with regard to Section 74 of the Public Officers Law, which, again, is the misuse of government resources, including prohibitions on using public resources for personal interest, how do you think this section applies, or can apply, to sexual harassment cases, if at all?

EVAN DAVIS: So a sexual harassment case is, as Erica said, fundamentally, an abuse of power.

It's an abuse of power to get a sexual favor.

I guess that's the old fashioned phrase, but that's the one that was used.

And that's an improper benefit.

Now, you're not seeking claw back, but the consequences for that abuse of power should be, in many, many cases, termination.

SENATOR BIAGGI: Thank you very much.

I don't have any further questions -- oh, yes. We have one more person to ask questions.

Senator Stavisky.

Thank you all very much for taking the time today. Everything that you've said is very meaningful.

SENATOR STAVISKY: Yeah, one quick question on some of the things you said.

Incidentally, Evan Davis, we thank you for your service, and it goes back many years, and it's appreciated.

You and I have spoken on a number of issues.

But you commented on the point I was making that the -- to whom is the person who is being appointed accountable?

And you suggested joint approval processes.

But, practically, that's very difficult, I've discovered, getting people to agree on a joint

appointment.

That's my -- the first issue I wanted to raise.

Second was, the -- you mentioned the extensive JCOPE, you know, comments on abuse -- on misusing of public property.

I was curious the other day, and I took a look at the JCOPE website. And they list, and there are all these cases, where people are abusing public property.

How do you suggest -- and they must know it's against the law, but they think they're just not going to get caught, I assume.

How would you remedy that?

EVAN DAVIS: Well, the best way to remedy that is to catch them, and then people will catch on that they're going to get caught.

SENATOR STAVISKY: But there are pages of this on their website, so they haven't caught on.

RACHAEL FAUSS: If I could add a point on that, I think -- you know, we've looked through the JCOPE enforcement actions. And it is notable, that when you look at the types of people who have been fined or who have gone through the whole process, it's very often middle managers, lower-level staff

members. It is not the senior staff.

SENATOR STAVISKY: That's right.

RACHAEL FAUSS: It is [audio lost.]

SENATOR STAVISKY: I can supply the audio. It's middle management.

SENATOR KRUEGER: You're muted again.

RACHAEL FAUSS: But, you know, the use of personal resource -- the use of state resources for personal gain.

Not everything is about getting dollars kicked back to you. It's not all about that. Sometimes it's returning favors.

You know, it's the issue of the governor getting prefer -- trying to get preferential COVID testing.

What did he personally get from that?

Did he get -- did he get it -- what did he get back from that?

Perhaps nothing, other than paying back a favor.

So I think we have to think about these things broadly.

Misuse of state resources isn't always about, you know, getting that money back to your family or you.

And it's -- I think we have to think about these things much broader.

EVAN DAVIS: And in terms of joint appointments, I do think you have to have a really strong default, that if they can't agree on the joint appointment, someone else will make the appointment, and they will lose the chance to choose.

And I think that fear of losing the chance to choose can work if the consequence is sufficiently unappealing.

And we do have join decision-making, in that the Commission on Judicial Nomination does manage to come out jointly with seven names for the governor to consider, who are Court of Appeals judges. And they have a voting process, and it works.

And I think in other instances, it can work.

And when you do the two together, let's say the majority leader and the speaker together, I think you would get a really highly qualified person that would really do a great job.

ED MURRAY: And I would add in that regard that the -- this new state Public Campaign Finance Board includes joint appointments by the Democratic leaders and the legislature and the Republican

leaders in the legislature.

And so you kind of expand that idea out to the entire -- an ethics commission, where you do have significant consequences for failing to act where that appointment power devolves to somebody else.

I think that combined may provide an improvement upon the existing appointment.

SENATOR STAVISKY: Good idea.

Thank you.

Good idea.

SENATOR BIAGGI: Thank you, Senator Krueger.

Thank you all very much.

I think that concludes our questioning.

We've definitely taken away a lot of important information, and very much appreciate all your help, not only today, but always, when it comes to ethics legislation and campaign finance legislation and reforming our constitution, and all the things that will actually make our government strong, and, frankly, let us not be embarrassed of it.

So thank you very much.

SENATOR KRUEGER: Thank you, all.

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SENATOR BIAGGI: All right. Our next, and our final, panel will consist of:

Jennifer Wilson, who's the deputy director of the League of Women Voters;

Blair Horner, executive director of the New York Public Interest Research Group, also known as NYPIRG.

Rachel Bloom, director of public policy and programs from Citizens Union;

And, Susan Lerner, executive director of Common Cause New York.

I will acknowledge the fact that Blair Horner has been here all day, waiting to testify.

So we appreciate you.

We're glad that you're listening, taking it all in, and we appreciate you being in person.

You can go in the order that I listed if that's easiest; or, you know, however you so choose. But I think that might be the best way to begin.

So thank you all for being here.

JENNIFER WILSON: Great.

I can start.

Thank you, Senator Biaggi, and thank you to all the senators who have stuck it out for this very long and emotional day.

I bet you guys are glad you're in air conditioning because it's really hot out.

My name is Jennifer Wilson, and I am the deputy director for the League of Women Voters in New York State.

And I think my colleagues have really laid out well the reasons we want to reform JCOPE, and, really, New York State ethics as a whole, some of the sort of high-level changes we would like to see across the board.

But I would really like to focus on the constitutional amendment put forward by Senator Krueger and Assembly Member Carroll, and just highlight four specific changes we would like to see in the amendment.

And, really, these can apply to any sort of ethics reforms, moving forward, and they've sort of been picked up today a little bit, but I think we have a little bit of a different perspective on a few of them.

Starting off with the appointment process, I think that the current proposed appointment process is starting to get at the issue of independence. But we would really like to see a very, very independent process that maybe could be a

citizen-led commission.

We had two senators, the senator of Alaska and the senator of Rhode Island, make some really excellent recommendations of how they do things there.

But I don't necessarily think we have come up with the perfect solution yet.

But sort of pivoting from the actual appointment process, more to who these appointees are, we would really like to see some sort of mechanism placed to make sure these appointees are as diverse as possible.

Certainly, in an agency that's looking at sexual harassment and racial discrimination, we want to have the people who are hearing these cases look like the people that they're serving.

So the Independent Redistricting Commission, in their amendment there is a minimum threshold for diversity with regard to ethnicity, race, and gender.

We'd really like to see that added to this amendment as well.

Moving forward with the amendment, the amendment makes mention of campaign finance, and overseeing campaign finance.

And we're a little confused exactly how that would look, especially now that there is the new Public Campaign Finance Board, which works really closely with the Board of Elections to the point they're even sharing office space.

The commissioners of the Board of Elections are part of the Campaign Finance Board.

So we'd just like to see a little bit more clarity.

Are they going to be sending out letters to non-filers?

Are they going to have trainings for campaigns on how to file correctly?

Are they going to address the really big backlog of non-filers, and bring them into compliance?

We would just like to see a little more clarity there.

And then our last two points really go hand in hand with regard to funding and supportive administration -- administrative functioning as the new Public Integrity Commission is starting to, if it is passed, how it's going to get up and running.

This is something I feel like we see all the time with New York State commissions, not to call

back to the Redistricting Commission and the Public Campaign Finance Board, but both of those entities, they had a huge delay in funding, they had a delay in hiring staff, they had a delay in finding office space; and as a result, they've been delayed in actually doing the work that you all charged them with doing, and that's just not acceptable.

Certainly, if we're going have this really fantastic, independent unit, we want it to have money, we want it to have staff, and we want it to be ready to hit the ground running as soon as voters were to accept this constitutional amendment.

The amendment does make mention to say that there should be funding for this commission.

But the Redistricting Commission amendment also said there should be funding for the Independent Redistricting Commission.

I'm sure you all remember there was almost a year-long delay. They were almost underfunded by $200 million. It was kind of a big mess.

So we would love to see, as this amendment is being considered, some sort of line-item consideration.

Let's give this integrity commission the support that it needs so it can do the work that

we're going to be asking it to do.

But I do want to end on a positive note, which is, overall, this amendment is a major improvement to what we have in place. Combining JCOPE and the Legislative Ethics Commission into a single entity, to just take care of everything, seems like an excellent step forward.

And, overall, the league strongly supports this amendment.

So thank you again for holding this hearing.

We hope this is the first of many conversations around the topic of ethics reforms.

And I look forward to hearing from my fellow testifiers.

SENATOR BIAGGI: Thank you, Jennifer.

And before we move on to Blair, I just want to correct the record.

It's not Rachel Bloom who is joining us today.

It is Alan Rothstein, who is a board member and co-chair of the policy committee from Citizens Union.

I apologize, Alan.

Thank you very much.

And, Blair, you may, please.

BLAIR HORNER: Sure.

Good afternoon.

My name is Blair Horner. I'm director of NYPIRG.

And thank you, Chair Biaggi, and Senators, for holding the hearing today.

I submitted written testimony that you all have.

And so, instead of reading the testimony, I'll just read my verbal notes here. And I would like to not cover the exact same things that have been covered already, although I might to some extent, and just focus on something that really hasn't come up.

First of all, your timing is impeccable.

The stars are aligned in a way not seen in recent memory for a giant step forward on state government ethics in New York.

A crisis is a terrible thing to waste, and there can be no doubt New York's ethics enforcement is in crisis.

The State's failure to establish and maintain clear ethical guide rails has contributed to its long history of scandals and eroded the public trust in state government.

Yesterday New York swore in a new governor, and it's in this honeymoon period that new governors are most likely to advance reforms.

Governor Hochul has significant challenges: establishing guidance on how to deal with the pandemic, develop a budget for the new fiscal year, staff up, and all that, with an election cycle looming.

For the governor to succeed, she will have to deliver the goods for New York. Top among these is how to establish a state government that relies on best practices, enforceable rules, and creates a culture based on professionalism and ethical behavior, all while successfully governing.

Senator Biaggi, you, like many others, have been the subject of shockingly unprofessional behaviors by top-ranking state public officials.

New Yorkers have seen a rapid coarsening of Albany's political culture, a culture that put a premium on fear in order to govern.

That has to stop.

There are two important approaches we urge you to follow.

First there needs to be independent oversight of ethical behavior in government.

The Joint Commission on Public Ethics, the Legislative Ethics Commission, the inspector general, and municipal ethics standards must be dramatically improved.

The comptroller's oversight of government contracting must be fully restored.

And, second, the executive branch has become too powerful.

As you know, the state Constitution grants New York's governor extraordinary powers. And in the hands of an extremely skilled politician, that power can overwhelm the checks and balances necessary to safeguard the state's democracy.

As we've seen, using those powers, the governor can install into key positions -- allies into key positions, including in governmental watchdog agencies.

A prime example is JCOPE.

The first three executive directors all came from the governor's staff when he was attorney general.

Both of the governor's book deals, generating $6 million in combined outside income, were approved by JCOPE staff without going to the full commission.

And I'll just mention one other thing in

terms of public resources: In both cases, the request from the governor's office for the book deal came from staff working for the governor, issued on letterhead from the governor's office, for private book deals.

Under state law, JCOPE's closed-door deliberations are supposed to be secret.

But we've already heard from Miss Garcia that isn't the case.

I won't go into detail because she did a far better job than I could ever do.

But one of the things I thought that was interesting in all of that, was that the governor called the speaker.

Of course he should have reported the leak.

We have no idea if he did.

But the fact that he called the speaker just underscores the fundamental flaw with JCOPE, and the one we've always talked about.

It's not really about the staff. It's not -- they need revenue. All of the things that the judge talked about, we don't disagree with.

But the commission needs to be independent.

Another entity that needs to be reformed is the state's inspector general.

The inspector general, as you all know, is charged with investigating the leak, and I will end it there.

The list goes on, but the root cause is that there is an executive that simply has too much power.

And American democracy is supposed to be based on a system of checks and balances to ensure that no one branch dominates the others.

At the core of the governor's immense powers is this constitutionally protected power to drive policy decisions through the state budget.

The state Constitution has granted the executive the upper hand in budget negotiations.

It's become clear that the advantage granted to the executive in the budget process has given the governor the leverage to expand his control more broadly over governmental decision-making.

Legislation to change the Constitution is needed to better establish a system of checks and balances, to limit the policy-making authority of the governor.

It is that balance, coupled with the establishment of truly independent ethics watchdogs, that will ensure that the executive branch doesn't

lose its professional and ethical moorings in the future.

New Yorkers are hungry for reform.

Please do all you can to use this crisis as an opportunity to overhaul ethics and restore public trust in government.

Thank you.

Right on schedule.

[Laughter.]

BLAIR HORNER: Who's next?

SENATOR KRUEGER: Susan's next.

ALAN ROTHSTEIN: I think it's me, Alan?

Should I go?

Okay.

Hi.

Citizens Union appreciates the opportunity -- can you hear me?

OFF-CAMERA SPEAKER: Yes.

ALAN ROTHSTEIN: Great.

Citizens Union appreciates the opportunity to testify before you today regarding New York's ethics system, which as you've been discussing, is quite broken and needs a complete reinvention.

In our view, the major flaw of the JCOPE framework is the ability of the governor or

political party in the legislature to block an investigation.

Indeed, if certain appointments are not made, it could be impossible to launch an investigation against a member of a particular political party because not enough commissioners from the party or official would be in place to vote for an investigation.

However, there is much more wrong, as we've been discussing.

Any effective ethics -- I'm sorry. Let me skip ahead a little bit.

Citizens Union has been working with other concerned groups, several of which are here today, to develop a constitutional amendment to replace JCOPE with a far more independent agency, and to make other structural and operational improvements.

Much of what we would like to accomplish is in the constitutional amendment we have been discussing, that Senator Krueger and Assembly Member Carroll has sponsored.

We applaud you for your leadership on that, Senator Krueger.

We recognize the key is -- to a truly independent agency is how -- is in how the

commissioners and staff are selected.

To that aim, we and others are working to develop a proposal to better enhance that independence.

A strong ethics proposal must strive to establish a new commission seen as accountable, whose members are both capable and independent.

This involves creating an appointment procedure to achieve those aims.

The commission should be much smaller than the current 14-member JCOPE.

Means of creating independence include a role for the judicial branch. This branch would provide a different perspective to that of the executive and legislative branches.

In addition, judicial conduct is overseen by the state Commission on Judicial Conduct, and so the judges would not be included under the new ethics agency, so they would have some removal from that process, and it wouldn't be appointing people who would then oversee them.

A consideration should be given to joint appointments of individual commissioners to avoid having a particular commissioner seen as the one representing a particular official's interests.

And one commission member can be appointed by the remaining members to further remove that commissioner from perceived fealty to an individual.

We recognize the complexities in designing an independent framework.

And it's great that you brought in the expertise of other states into the hearing.

We're also going to be looking at those as well.

Independence also involves insulating the commissioners from reporting authorities during their term of service.

This can be done by assuring they can be terminated only for cause, and not leaving the decision to the officials who appointed them, but, rather, to the commission.

In addition, commissioners might be limited to only one perhaps six-year term so that their reappointment would not be a concern.

Commissioners, however selected, should have certain qualifications, such as not holding or recently having held elected or party office, and a number of others that have come up today, and they should have expertise in relevant areas.

While we believe the constitutional amendment

is necessary to fix this broken system, there are legislative changes that would be helpful now; for example, eliminating the blocking provisions -- and I know there's legislation on that-- and allow for more disclosure of investigations and circumstances, balancing the need for confidentiality against the importance of transparency.

Citizens Union welcomes today's hearing, and inviting public input as to how to improve the process.

And we look forward to additional hearings to explore further how to achieve a real ethics reform across the board, well beyond JCOPE reform, to many of the issues -- all of the issues that have been discussed today.

And thank you again for the opportunity.

SENATOR KRUEGER: Okay. Susan Lerner.

SUSAN LERNER: All right. Bringing up the rear here.

Thank you very much for the opportunity to testify.

And compliments to all of the senators who have stayed with this important topic.

I do want to add my voice to Alan Rothstein's, and note what an excellent idea it

is to bring in legislators and knowledgeable individuals from other states, to really expand the discussion with ideas that we here in New York may not have considered, and to learn from experiences in other states.

I'm not going to spend any time talking about why JCOPE needs to be abolished and we need to start over. I think that's been made very clear.

Some highlights of the entity that I think should be created, it must be independent.

And in our written testimony, we do suggest a means of independent appointment that we used a section of the For the People Act, the current pending S-1 in the U.S. Senate, in terms of an appointment process for the FEC, as a jumping-off point for our suggestions.

The enforcement power of the new entity is extremely important. It has to have its own subpoena power. It has to be able to bring enforcement actions on its own.

And I very much like the suggestion from Evan Davis, that criminal referrals should go directly to the public corruption unit of the AG's Office. I think there is an important role for the AG in our ethics oversight.

And we certainly agree with the League of Women Voters in terms of the need for diversity on the new entity, and having that baked into the requirements.

We believe that sexual harassment and discrimination are very particularized areas of the law.

And while they exist on a continuum of abuse of power, often the considerations are different than the considerations that those who are ethics authorities, or most familiar with ethics, are familiar with.

We believe that there should be a separate entity which deals with sexual harassment and discrimination issues because of the particularized nature of the law and behavioral science around it.

Conduct which would be considered an ethics violation could also be referred, not only to the sexual harassment entity, but also to an ethics entity.

But I would also like to focus, on my remaining time, on things which I believe can be done immediately.

And in reviewing my written testimony, I realize I omitted one thing, so I'm going to start

with what I have identified in the written testimony, and then add a fourth item.

The legislature should immediately take action to rescind any exemption of the review and approval of state contracts from the comptroller's purview.

That is an invitation to corruption and misuse of public assets.

Quite honestly, we don't believe that those exemptions should have been created.

They certainly should be closed now because we have seen them abused over and over again.

The attorney general should be given original jurisdiction, without the need for a referral, to investigate public corruption in the legislature and in the executive.

That is the case in most states.

And our attorney general is hobbled.

Now, I know we've had different people as attorney general, but I think that that original jurisdiction is necessary.

We suggest a consent-and-reporting system for public employees who are requested to volunteer time, either on politics or outside of their official duties, in order to be sure that that is

not abused, recognizing that many employees do want to be politically active on behalf of their boss or other candidates.

But we think that a consent-and-reporting system will significantly decrease abuse.

And, finally, we believe that there should be a serious discussion about what should be done with campaign funds that are controlled by individuals who are no longer in office, particularly those who have had to resign or have been removed because of misconduct.

Right now, the only thing that ends a campaign fund is death. And we think that that is really too long of a string, and is an issue which would be appropriate to look at as part of your consideration.

So, thank you.

BLAIR HORNER: By the way, sometimes death doesn't stop it.

There are political committees that live longer than the original legislator.

SENATOR BIAGGI: Wow. That's troubling, in every way.

Thank you all very much.

So we're going to begin our questioning, and

Senator Krueger is going to start us forward.

SENATOR KRUEGER: Thank you.

I was going to point out what Blair did, and Susan said: Dying doesn't necessarily end your committee or its spending.

My predecessor passed with a significant amount in his campaign fund, and it just kept getting spent and spent for years afterwards.

So -- but, you know, I do come from New Jersey, where, apparently, you would choose to get buried in certain cities so your political careers could continue.

So we'll just leave that alone.

Well, you didn't have anyone from New Jersey coming in to do ethics advising to us.

And a good reason that you didn't.

So, Blair, you were talking about the book deal, and the letters that went back and forth, and that that story line probably is not done, and that there are probably investigations continuing.

But I just wanted to highlight, as I was doing some homework for this hearing, I came across something that you and I will remember, and Susan will remember. I don't know how many of us will remember.

The original reason that Alan Hevesi actually stepped down as the comptroller for the state of New York was a case, where he was using a state employee to drive his wife to doctors' appointments, and I think the dry cleaners, or errands with the dry cleaners.

And a case was brought. And he actually went into court and plead guilty. Got a $5,000 fine, and the requirement that he could never run for office again.

So how do you compare that story line to what we're dealing with right now with this book deal?

And what do you think is supposed to happen next, even under existing laws?

BLAIR HORNER: Well, I'll just take a -- by the way, there's also the health commissioner, Antonia Novella, also who got sanctioned for having staff picking up her dry cleaning, and stuff, as she was commuting back and forth to Washington, D.C., where she lived.

I mean -- you know, so in terms of the -- again, we don't know all of the details of the book deal -- right? -- so that's the problem.

And so there -- it starts with the original book deal.

There's two book deals.

Both times the then-counsels to the governor on, I presume, public dime, write a legal analysis to JCOPE, saying that the governor should be allowed to have a book deal.

And it's on stationery that is the exact, the governor's office, in both cases.

So there's public resources used for something that, you know, you can't.

And then the first book deal certainly didn't have anything to do with him when he was governor.

The second one did, but that raises, I think, other questions, which you guys have talked about.

So in terms of the use of public resources, I mean, I thought JCOPE was clear in their response, that you weren't allowed to use public resources to do it. And that if the -- if it's found to be the case, that the people that volunteered their time, or were ordered to be there, then, yes, the governor is in the same boat as Alan Hevesi, Antonia Novello, and others who have misused public resources.

But it's, you know -- it -- you know, the sense of entitlement throughout the whole thing sort of troubles me. I mean, these are -- we're supposed to all be -- well, I don't want to speak for you

guys -- but public service is supposed to be operating on behalf of the public, not looking to enrich themselves.

And the executive branch, unlike the legislative branch, is a full-time job. Highest-paid governor in the country is our New York governor.

And so the -- those issues, I think, you know, again, we don't know. Right? We don't know what happened.

And we'll see, hopefully, JCOPE will do a good job, and set a clear precedent as to what's allowed.

But they shouldn't allow book deals, and they shouldn't do it with the staff.

That should have to go to the commission.

SENATOR KRUEGER: Susan, did you want to add something?

SUSAN LERNER: I'm sorry. I'm having a very hard time hearing Blair who was very, very fuzzy.

BLAIR HORNER: I have a mask on.

[Laughter.]

SUSAN LERNER: But there's not just the book deal. Right?

I mean, there have been regular reports in

the press about: Using state police to move things around, take family members places. There's jumping the line for testing and vaccination for the governor's family.

There has really been a steady continuum that has been brought out, and it really highlights the lack of enforcement, because this has been happening continually. It brought down Hevesi.

And it's extraordinary to have watched Governor Cuomo use public assets as if they were his personal assistants over a number of years without any consequences.

So this is something that certainly needs to be tightened up.

BLAIR HORNER: Let me just add one last thing, if you don't mind.

This is why you need an independent ethics watchdog.

Someone is supposed to call balls and strikes on this thing, and give clear advice, and advice that we all believe. And even if we don't all know what -- how they came to their conclusion, that we trust that they're looking at it independently.

And the problem right now, it's a problem for all of you, is that the much-maligned JCOPE nobody

believes is operating on the up and up.

And so even -- so they should give advice?

The new governor has issues. She should get advice from JCOPE?

And we should all trust that the new state ethics agency -- that you're going to, hopefully, create -- operates independently and follows the law without fear or favor. And then these kinds of problems go away.

SUSAN LERNER: But this might be an area for direct independence and initiative and enforcement by the AG.

SENATOR KRUEGER: Okay. Thank you.

Thank you all for all your work.

I was just the first questioner.

SENATOR BIAGGI: Thank you, Senator Krueger.

Next we'll hear from Senator Palumbo.

SENATOR PALUMBO: Thank you, Senator Biaggi.

Good afternoon, everyone.

Thanks for hanging in there.

We certainly appreciate everything that you've provided.

And I have just -- kind of along those lines that we were just discussing, and I don't know -- I know you're all very well versed in

good-government situations: Do we know if any states have a mandatory reporter statute that would require someone?

I mean, the example of the leak is just -- I mean, it just doesn't get old. There are so many violations there.

When you have now, counsel, who would probably say "it's privileged," but have you counsel, you have the governor, you have the speaker, you have who knows who else, and the leaker, all essentially acting in concert to try and get to Julie Garcia and squeeze her.

So, really, the -- probably only the leaker would be responsible, you would think, for violating their oath or their charge as a member of the commission. But everyone else just walks away.

So I almost think, do we know of any -- do -- what do you think of those -- of creating a mandatory reporter statute, almost like an insider-trading situation, where the people downstream would bear some liability as well?

Because then you may get to one person in that chain who really doesn't have the stomach to continue to do this. They may report it. And then the bomb goes off and everybody gets caught, which

would be great.

SUSAN LERNER: Well, the idea of, you know, collaborative misuse of the information -- right? -- you know the information is not -- you're not supposed to have the information.

And so if you use it, if you reference it, then you fall under the same violations of the law, I would argue.

BLAIR HORNER: I'm not familiar with other states, but I know that, under the state's medical malpractice sort of regimen, that if you're a licensed provider and you observe misconduct, you have to report it or it is misconduct not to report it.

SENATOR PALUMBO: On your end, yeah.

BLAIR HORNER: So there is a -- there is a sort of statutory regimen, not akin to this, of course. But there is something under New York law that you could look at, that, basically, mandatory whistleblowing.

Now, that doesn't necessarily get enforced that much on that side, but it definitely exists, and there is precedent in New York, that I can think of off the top of my head.

SENATOR PALUMBO: Sure. I mean, and that's

what I was thinking.

Even, like, when I was in the DA's Office, you know, teachers, [indiscernible] all these mandatory reporters that need to, obviously, bring these things to light or it's misconduct themselves.

Alan, what were you going to say?

ALAN ROTHSTEIN: Yeah, I would say, of course, there are legal codes in every state, that lawyers have codes.

And this is part of, in fact, the language in Senator Krueger's bill that requires reporting is drawn from the Code of Professional Responsibility, requiring, if you know of misconduct, to report it.

SENATOR PALUMBO: Right.

Okay. Very good.

Thank you.

SENATOR BIAGGI: Senator Salazar.

SENATOR SALAZAR: Thank you.

I have a few questions for, really, anyone on the panel who would like to speak to this, but was going to ask you specifically, Blair: You had mentioned that you have recommendations for reforming the Inspector General's Office.

Would you be able to just elaborate a little bit on what you think about that?

And, certainly, any thoughts that you have about the IGs, as Julie Garcia testified, you know, conducting an investigation without even interviewing key witnesses, what we've heard about the Inspector General's Office today?

BLAIR HORNER: Well, it's sort of a tricky issue.

A lot of what we -- New York has had, historically, in the area of oversight hinges really on the individuals. It's really not on the structure.

So you have had very aggressive inspector generals in the past.

Joe Fish, under Governor Paterson, was extremely aggressive. He even banged the governor, Governor Paterson at the time. So he didn't view his mandate as reporting to the secretary's office, therefore had allegiance to the executive branch.

And then I think David Grandau was mentioned before -- I don't remember. It might have been Senator Stec who brought it up. -- as the head of the old lobbying commission, was always straining at the leash to go after the lobbying industry.

But -- so how do you create structures?

I mean, right now, the inspector general is,

essentially, appointed by the governor, reports to the secretary of the governor's office; and therein lies the rub. Right?

And so how do you sever the relationships between the appointing authority and the enforcer?

So, again, I -- you know, there could be ways that you could sort of structure the statute to make sure.

You could have -- one of the things that came up from one of the other states was interesting, was two-thirds votes from both houses to approve various members.

That may be a way to go about it, to make sure the legislature is crystal-clear that the person they're picking is somebody who is good.

And it's hard to trade, even with a powerful governor, with two-thirds majorities in both houses.

It's easier to do it if it's just two leaders.

So, you know, again, I think that those -- that kind of -- we didn't have a specific recommendation on inspectors general, on how to reform that.

We think they have an important role to play, but they should -- the person shouldn't be appointed

by the governor and report to the governor, or the secretary to the governor, effectively, the governor, because that creates an inherent conflict of interest.

SENATOR SALAZAR: Absolutely.

BLAIR HORNER: Others?

Sorry, guys. Since I'm sitting here, I don't get to look at you.

I guess not.

SENATOR SALAZAR: Yeah.

Any other comments from anyone else on the panel?

BLAIR HORNER: Normally, they're kicking me under the table.

SENATOR SALAZAR: Thank you, Blair.

SENATOR BIAGGI: Okay.

Thank you, Senator Salazar.

Next we'll hear from Senator Boyle.

SENATOR BOYLE: Thank you.

And thank you to the panelists here. Very informative.

Just to get back to the idea of, potentially, mandated reporting, there's also the idea of something of a bounty, as they do with tax cases.

You know, if there was a staff person, they

could get 10 percent of $5 million, they might be more apt to say, Well, I felt pressured to help with this book, and I think I should have at least 5 percent of 10 million.

One of the things, it was brought up, I think Susan mentioned the testing, and putting in the front of the line of family members.

Of all the things that were outrageous, that was really one that stuck in my craw.

I represent Brentwood, New York. And I had constituents wrapped around buildings in the freezing cold, on line, to get tests, to save their families, to protect their families.

And, meanwhile, I hear high-level health department officials driving out to the Hamptons to help out the governor's family.

I would just ask, in terms of the question -- that was my comment -- what can we do to educate?

And I know that there's an educational aspect to it. But what I find, and is very concerning to me, is the younger folks.

I know they're -- we're talking about people here today who should have known better. They knew what they were doing was wrong and they should be held accountable.

But I have young staffers who just simply do not understand the difference of what you can do and what you can't do.

This is politics. They don't have to do this in the office. You can't accept this. You can't do that.

I would like to see as perhaps a part of this overall change in our ethics criteria, to say, a special thing to teach, or -- in both executive branch and legislative branch, not just young people, new people coming in, to explain, very simply, pros and cons on what you can do and what you can't do.

SUSAN LERNER: So my understanding is that is what the ethics -- a portion of what the ethics instruction is supposed to do.

You know, I think, clearly, it can be improved. I think there needs to be very specific guidance. There are common situations that come up.

But training and the statutes are only half the story, as various of my colleagues have said.

This is a cultural thing.

That's why I'm suggesting a reporting system -- right? -- a consent-and-reporting system, so that there's a greater consciousness of where you

have to pay attention to where the lines are.

Some of that just is a culture within an office.

And the fact that you stop and say to your younger staffers, you know, "That's not the right thing to do," sets the appropriate tone.

We need more elected officials who do that.

I've heard some really shocking and upsetting stories about members of the legislature who would stand by while now absent and passed-on abusers abused staff, and say nothing.

There is a culture.

And a conscious effort on the part of -- and I know the senators on this panel are out there doing that -- is going to make a difference in the long run.

SENATOR BOYLE: Thank you.

And just to follow up on that, Susan, when you see not only staff for people abusing lower-level staff people, shall we say, but also some staff people using Twitter and all these other accounts to attack staff people, former staff people, and even members of the legislature, how dare they question anything we're doing or you're going to hear about it, and be it canceled, if you

will, and we also need to address that type of thing.

I'm a little bit [indiscernible] and I think people should be able to say what they want, but not on the government dime, when you're attacking people, and you're getting paid to do it.

SUSAN LERNER: Yeah.

BLAIR HORNER: By the way, I agree with that.

And there's ways you can sort of track when people are doing it, whether or not they're doing it on public time or their own private time.

But it will ultimately come down to modeling, and whether or not you guys check on each other.

So, for example, when Senator Biaggi was being -- was receiving, you know, direct personal attacks from a high-ranking public official, on the record, the legislature has to push back on that stuff.

And so there's all responsibility on all of us to call this kind of stuff out, because it is -- once -- particularly with younger staff, they follow the model that they're looking at. They know what the ex -- so often not even unspoken expectations are about how to behave.

And so if you have a rough-and-tumble,

elbows-out, which is politics -- right? -- sort of approach, people model that.

If you go way over the line, people model that.

And so, again, I agree on the education side.

I think there's ways to sort of track, and maybe make -- looking at the ethical side of using social media, and looking at the time stamps, and all that kind of stuff, to track, and make sure people aren't doing it on public time.

I think that's all appropriate.

But I also think it's on all of us to call this kind of stuff out.

ALAN ROTHSTEIN: You know, if you're a lobbyist, or lobby organization, you have very extensive reporting, including the business-relationship reporting for any business relationship with any state employee for 1,000 or more.

So reporting is a -- can be a way to go.

And the State has been relatively creative in finding ways of getting information.

So that might be an area where we can look further.

BLAIR HORNER: Let me mention one quick other

thing.

In the -- two budgets ago, the governor put in his executive budget, a code of ethics for lobbyists. And, of course, that creates all sorts of constitutional problems.

But perhaps a code of ethics for public officials, one that's even stronger than found in Articles -- in Sections 73 and 74, maybe that would be appropriate to help set some guardrails, and make it crystal-clear as to where you can and can't go, in terms of what you say on the record and what you don't say.

SENATOR BIAGGI: My microphone is working, and that is a good idea.

Thank you, Senator Boyle.

We'll hear from Senator Gaughran now.

SENATOR GAUGHRAN: Thank you, Madam Chair.

We've heard from this panel, and I think many of the panelists before, the real need to make sure that we get independence in the people that will be serving on this commission.

I think there's a general consensus that Senator Krueger's constitutional amendment gets there. I think there's some tweaks that have been suggested here and there.

But there really hasn't been any discussion today about, what do we do if we get somebody on that commission who is problematic; who has a conflict himself or herself, or, you know, all of a sudden, there are issues?

Now, I know under the current JCOPE law, that member may be removed by the appointing authority for specific cause, including, ironically, violation of the confidentiality restrictions.

And in Senator Krueger's constitutional amendment, it says, "A member may be removed for cause on application to the Court of Appeals made by a majority vote of the full membership of the commission."

Is that -- do we have that right in this constitutional amendment, of which I am a co-sponsor of?

SUSAN LERNER: It was very, very difficult to understand.

So I know you were talking about the removal process, and whether the process suggested in Senator Krueger's amendment, that would be kicked off by a referral by the Court of Appeals is the appropriate one?

Was that the question?

SENATOR GAUGHRAN: Well, the way it's written is that, the commission itself would make a referral to the Court of Appeals; it would be a majority of the commission members.

I'm sorry. My mic was off.

Yeah, so the current -- the proposal in Senator Krueger's amendment is, "A member may be removed for cause on application to the Court of Appeals made by a majority vote of the full members of the commission."

Do we have that right here?

ALAN ROTHSTEIN: I'm not sure.

I might want to look at it to leave it just with the commission.

But definitely the commission, rather than the appointing authority.

It seems that they're more appropriate, and by majority vote. None of these blocking provisions.

SENATOR GAUGHRAN: So you wouldn't -- so just the commission itself could remove a commissioner --

ALAN ROTHSTEIN: Right -- I mean, it could [simultaneous talking; indiscernible] --

SENATOR GAUGHRAN: -- without going to [simultaneous talking; indiscernible] outside?

ALAN ROTHSTEIN: -- I think that's possible. Or the Court of Appeals.

I mean, I would have to look at it more carefully, but it should be commission-based, I think.

SENATOR KRUEGER: I'm happy to look at that --

SENATOR GAUGHRAN: No, I just wanted to get their opinion.

I think you may have it right here.

SENATOR KRUEGER: [Inaudible.]

BLAIR HORNER: Well, and you'll need an enabling statute anyway to go with the constitutional amendment --

SENATOR GAUGHRAN: I don't have an alternative --

BLAIR HORNER: -- once that passes.

SENATOR GAUGHRAN: But thank you very much.

And, boy, thank you for coming.

I feel like I'm at a real hearing now after all these months. We have a live person.

I thank everybody for [inaudible].

BLAIR HORNER: Well, some people don't think I'm alive, but it's all right.

[Laughter.]

SENATOR BIAGGI: Thank you, Senator Gaughran.

Senator Palumbo.

SENATOR PALUMBO: No, I'm good.

SENATOR BIAGGI: You're good? Okay.

SENATOR PALUMBO: Thank you, anyway.

SENATOR BIAGGI: Excellent.

So then myself.

I'm just going to close us out here, and I'll do it, hopefully, expeditiously, because you all have spent a lot of time with us, and also a lot of time in your testimony in preparing for this, which we all very much appreciate.

Just as a reminder to everybody:

We did invite the IG, as well as GOER.

They declined to come, but they did provide written testimony, which we do have, and it will be part of the record of this hearing today.

And I think that -- what I'm really appreciating is this understanding that the IG needs reform, and the way in which perhaps the IG oversees JCOPE, which later could become a new entity, perhaps needs to be done in a way that is independent.

And so I say that not knowing, obviously, what we will ultimately create, hopefully, together.

But I think I say that also with the understanding that, and I should not expect this, but -- or assume this, but the expectation that the IG really might not be the best entity to oversee the ethics commission, and maybe it is the AG's Office.

So I've learned that now, I think, or at least have opened my mind, because of all of this discussion.

And so I just want you to know that it's a lesson that I am just thinking through right now.

I think one of the things that was notable, that I just want to share with everybody, from the IG's testimony today, is this -- the last two paragraphs on the first page. And so I'm just going to take this time to just read it because, when we think back to what's happened with Julie Garcia, and the refusal, of course, to find corroboration, these last two paragraphs give me lots of pause, and I think this is really where the next chapter of our work can be.

So at the bottom it says:

"If a specific matter falls outside of the office's jurisdiction; i.e., a federal or local government agency, the CMU will advise the

complainant of such, and will make a referral to the proper entity to review their matter. Some complaints are ultimately determined to be best handled by the executive agency or authority complained of, and are, therefore, referred to those entities to address via existing internal processes."

That's obviously problematic.

"However, even in these cases, the Office of Inspector General tracks and monitors each referral to ensure that the agency or authority responds in an appropriate manner."

I think in one instance that we know of, obviously, the governor's executive chamber not referring Charlotte Bennett's complaint to GOER, that's clearly something that the IG could have looked at, and can still look at, actually, if they are not already.

The final paragraph I think, perhaps, is what is really giving me lots of pause, which is that:

"The inspector general provides training for state agencies and other organizations, including the New York Prosecutor's Training Institute, and the District Attorney's Association of New York, related to the OIG's authority and state employees'

obligation to report fraud, conflicts of interest, criminal activity, and abuse, including workers' compensation and welfare fraud investigation."

The think the idea that the IG would be training any of these agencies is deeply concerning to me, just knowing that -- just knowing what has happened with regard to Julie Garcia.

So I think what I'm really asking, after that commentary, and with 1 minute and 44 seconds left, is how best do you think we should look at this IG issue?

We've talked a lot about it today.

I think that there's a really big interest in reforming the IG, and I'm certainly very much open to that.

But it seems like we don't want it to be that the person who is selected for the IG role is going to make or break how strong it is, or how independent it is.

So what are the guardrails that we can put around this office to make it strong?

Because, clearly, this is a very powerful role in our state, and it hasn't been doing its job.

And so we have to do better.

Anybody can answer.

BLAIR HORNER: Oh. Anybody want to say anything, my invisible panel?

SUSAN LERNER: Well, I think it's very hard to dispute your points.

It is an important entity. I think it does have a specific role.

And I echo the comments that others have made, that it should be separate from JCOPE; have its own defined within-agency responsibilities, and not be a referral from JCOPE, or in an oversight capacity, over truly what we hope will be a new truly independent ethics entity.

BLAIR HORNER: Yeah, we're still digging on the -- sort of the details on this, because you saw what happened even in Washington, where the former president was firing IGs that -- when he didn't like what they were doing.

And so how do you insulate them from political blowback is also an important thing. It's not only do you -- is the appointed process designed in a way to minimize conflicts with the executive, but, also, how do you create a system where they're insulated from, you know, the repercussions of making a tough decision?

I mean, it's the same problem sort of with

JCOPE, but you have a whole commission sort of infrastructure on top of it, which is supposed to do that.

With the IG, it's not the same thing.

So we've started to pull the stuff in terms of looking at best practices in other states.

There are other IGs in New York. There's one for Medicaid, for example. And they all sort of fall within the office.

So it's an important thing to sort of look at, because there's a lot of issues with regard to, you know, taxpayer dollars that we all want to make sure get used efficiently and appropriately.

SUSAN LERNER: Absolutely.

SENATOR BIAGGI: One follow-up question to that:

Do you think that perhaps having -- and it's really hard, because it seems like it's all political -- but having the AG appoint the IG?

Does that -- is that too contentious, or does that feel too aggressive?

BLAIR HORNER: You know, the tricky part in all of this stuff, as you all know, with why JCOPE is set up the way it is, is because somebody -- everybody was afraid of creating a political weapon

for their opponent.

SENATOR BIAGGI: Right.

BLAIR HORNER: So you empower the AG to pick the IG, and what does AG mean again?

"Aspiring governor," I think some people say. Right?

So how do you --

[Laughter.]

BLAIR HORNER: So how do you sort of create that system?

And, you know, this is where we end up, like, you know, we're very supportive of, you know, you rely on a civil service system.

That's why it exists.

You reward people that have competence, not political connections.

You try to minimize the amount of patronage positions in government, generally.

And how do you create structures that are designed for independence, not necessarily a potential tool for somebody.

And so, like, with an IG issue, again, I think it may come back to some sort of way to look at how the legislature plays a much more aggressive role in who the person is. And then you have a sort

of system in place, where only certain types of people can even be considered, people with -- I mean, the woman who is there now is the former head of JCOPE. Right?

So -- I mean, so are there things that you can do to sort of narrow the scope of, minimize the conflicts, and have a system in place that almost requires that the person would have to be independent?

SENATOR BIAGGI: Sure.

Okay. Well, there's definitely lots to think about.

We appreciate it, very much.

I don't believe that there's any more questions.

SENATOR PALUMBO: Can I just make a closing comment?

SENATOR BIAGGI: Yes. Senator Palumbo may make a closing comment.

SENATOR PALUMBO: Thank you, Madam Chair.

And just in that regard, because I think it just kind of hit me, and I really appreciate. This has been very productive, all day, everyone's testimony.

But, it almost seems as if, that IG is

obviously overseeing state agencies.

If we keep it under the umbrella of the governor, it might be smart to make any, even remote conflict with an appointing authority, just like with JCOPE, they obviously have an issue amongst themselves, they automatically need to refer it out to the IG, which we now see was useless on some occasions.

In that regard, we override all of that, and if there's any inkling of a conflict, it goes to the AG, a separately elected person, who is a prosecutor, who may have, yes, we know that that is the aspiring governor position for many who want to be there; but, ultimately, they will be tough and fair at least, you would think, and they're completely detached from that umbrella of the legislature and governor.

It's a separately elected body, the top prosector. And that may be the way.

And this is just my overall comment, not about the day. But I think, on this issue, that would make sense to be the least of all evils.

Go ahead, Blair.

BLAIR HORNER: I don't know about "least of all evils," but I wouldn't characterize it that way.

But maybe the comptroller, because they have the forensics to be able to look at the misuse of tax dollars, which is really what the IGs are looking at. And they have -- since they're the people that are monitoring contracts, and everything else, they may have the authority, and actually the political umph, to do a good job on it.

SENATOR KRUEGER: And don't they already have the authority to refer to the AG on criminal-related issues?

BLAIR HORNER: The comptroller?

SENATOR KRUEGER: The comptroller.

BLAIR HORNER: Yes.

They did on the book deal.

SENATOR KRUEGER: Exactly.

So there's some logic to that also for consistency.

BLAIR HORNER: Terrific. [Indiscernible.]

SENATOR PALUMBO: Thank you.

And thank you, Madam Chair, for today.

Both Chairs, thank you.

SENATOR KRUEGER: Thank you.

Thank you, everyone, for participating.

SENATOR BIAGGI: Thank you very much.

I know. Thank you all for being here and

toughing it out with us, and waiting all day.

I think this has been incredibly meaningful.

So, with that, I just want to say, thank you, and not only to all of the panelists, and all of my colleagues, my co-chair, ranking member, but also all of the staff, my own team, as well as, I see [indiscernible] over there from central staff.

We can't do these things without you all, as well as ancillary and additional staff who may be right now invisible to my eye, but you're not invisible to the efforts.

So thank you so much; we couldn't do it without you.

And we look forward to actually passing meaningful ethics reform and legislation to transform the ever-living you-know-what out of Albany.

So we look forward to it.

Thank you.

(Whereupon, the public hearing held before the New York State Senate Standing Committee on Ethics and Internal Governance concluded, and adjourned.)