

2-16-1989

Transcript of the February 16, 1989 Meeting of the New York City Charter Revision Commission

New York City Charter Revision Commission

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/trager>

Recommended Citation

New York City Charter Revision Commission, "Transcript of the February 16, 1989 Meeting of the New York City Charter Revision Commission" (1989). *David G. Trager Papers from the NYC Charter Revision Commissions: Dec. 1986-Nov. 1988 & Dec. 1988-Nov. 1989*. 31.

<https://brooklynworks.brooklaw.edu/trager/31>

This Article is brought to you for free and open access by the Special Collections at BrooklynWorks. It has been accepted for inclusion in David G. Trager Papers from the NYC Charter Revision Commissions: Dec. 1986-Nov. 1988 & Dec. 1988-Nov. 1989 by an authorized administrator of BrooklynWorks.

MR. SCHWARZ: ... although people should feel free to be natural to it.

Our main function this morning -- also, does anyone in the audience need a sign interpreter? Apparently not. Our main function today is to spend some time talking about the planned six subject matter hearings that are going to start very shortly.

You've all got the outlines that Eric and the others prepared and sent around. I think you can see that there is an interrelationship among the subjects. Obviously, they're not perfect divisions, and we will come at an issue of land use, for example, the issues of land use, in more than one of the hearings. But I think that's desirable. We'll see them from different perspectives.

I think the most useful thing to do would really be to just throw open for discussion ideas that people have on the topics in general, on the brief outlines that are under each topic as to what we plan to cover.

In general, as you can see, we planned lengthy presentations. These are five or six hours. It's going to be very, very filled with data, an introduction in every case. Then, people who have been actually involved hands-on with the subjects, and people who perhaps can step away a little bit and think about the various

subjects. So I just throw it open for discussion from any of the commissioners on thoughts they have in general, and then perhaps we'll bring it more a direct way to each of the subjects.

Without having general comments, maybe we'd start by talking about the local voice in government, which is the first hearing on the 28th of February. And Eric, I'm going to you and Frank and Gretchen, if she's here, to talk a little bit under the headings. But as you can see, we're going to start out with a summary of the charter framework and the operation of the present system of community governance and decentralization of service delivery.

You also understand that we are trying, in these hearings, the first six hearings, to have hands-on people, other than the elected officials, and then we plan to have then two full days of hearings when the elected officials can come in at the end and give their perspectives on all the subjects and we can sort of integrate the things that we've been looking at in a separate way in the hearings with the elected officials.

Everybody should know, of course, that this not the only work that this commission has, the only data this commission has in front of it. There was an enormous amount of staff work done last time, first-rate papers

that were distributed which I've been reading, and I certainly urge the new commissioners to get a chance to read.

Eric, why don't you then take this one, the local voice in government, talk a bit about the kinds of witnesses you're going to have come in, and then throw it open for discussion. And then we'll do the same with each of the others.

MR. LANE: Just to remind you, the proces of the hearing is to hold a very structured hearing. In other words, we will be asking and we will have lists of questions that we will be asking of the witnesses, and what we're trying to do is going to be to get a description of the process as it presently exists, and we're trying to discourage people from offering their views of whether it's good or bad or anything like that, that will be conclusions for the commission to draw, based on all of the research and the options and the transcripts which evolve in the end.

So the intent is to have a very structured hearing where we can ask a series of witnesses, and you can ask a series of witnesses, questions about a particular procedural aspect of the governmental function that they're going to be there talking about.

So if you take the local voice in government hearing as an example, the idea would be first, we would

put into the record a presentation by a staff member of what the law, or description of how the law says the process should work. In local voice in government, we would be talking about both command decentralization, which is the process by which community boards interrelate with governmental agencies in varying ways to checks, and to monitor services and ask for services in their particular community board areas.

We would start, as I said, with a description of how it was intended to work, and then we would bring in on the first panel, for example, a series of government officials who are in various agencies, such as sanitation or HRA or health who are charged with responsibility for overseeing command decentralization and ask them a series of questions about what they do, and not ask them, do they think they do a good job or similar types of things, but what it is that they do.

We have some ideas, obviously, of what some of the agencies do and don't do, and it would relate to both their job with regard to command decentralization, land use, budgeting. We'd be looking at all of these issues with regard to the local voice. We are going to have members from various community boards from throughout the city talk to us about what their role is, whether it be the director of a budget committee of a community board

or whether it be the district manager or someone who's had experience in land use.

And what we're going to try to do is get a picture, a varied picture, of the community board and local voice processes in the city through the mouths and of the various participants in the process. And then our final part of what we're going to do on this particular one is, there has been a great deal of study and writing in the area of local voice in government and we're going to have some of the more well-known scholars in the field come in and just talk about local voice in government issues at the end of the day. And the framework for this, or the methodology that we're using, is similar throughout all of these hearings.

MR. SCHWARZ: Amy.

MS. BETANZOS: Yes. From where we -- make sure that there is some discussion on co-terminality and boundaries of community boards.

MR. LANE: Yes. That's part of the discussion. It's also part of our research beyond this as well.

MR. SCHWARZ: I know there was a lot of discussion of that in the last commission.

MS. BETANZOS: That's one of my favorite topics.

MR. MURRAY: Precisely the same question, co-terminality.

MR. GOURDINE: Will some or all of the material be supplied to the commission in advance in order to formulate intelligent ...

MR. SCHWARZ: That's a good question, Si. A, the answer is yes. B, the how. We're planning to have available briefings for the commissioners and we'll probably, Eric, sit up on two different days when people can come into the office for a briefing in much more detail about exactly who's coming in, and so forth. Then, as far as written materials, Eric, I believe our expectation is that we will have some written material before each hearing.

MR. LANE: I would suggest, particularly for those that are not really familiar of the details of the government process and decision making, that you refer to the briefing book. We know we sent it all to the new members. You'll get an outline of it, and if you can avail yourself of our briefing time, or if you want us to get together with you, we would be happy to do it. But the materials will basically be an outline of what -- it will be sort of an elaboration of this, and who the witnesses are ...

MR. SCHWARZ: I was going to say that. It will help sort of get your intellectual juices go to have a list of the actual witnesses before the hearing.

MR. LANE: Also, we're going to have a book of documents because we're going to be making references to documents with the witnesses, so each of you will have a book of the documents that we'll be referring to, for example with the budget, with the land use decision making, and in some instances where we really think it's necessary. For example, in land use, we're going to have a glossary of terms that you're going to be hearing.

MR. SCHWARZ: Okay, so let's do the same sort of review and everybody jump in on the next one, the contracting and procurement. And please, everybody like -- where Amy has the particular interest in being sure a particular item is covered, please do that for every one of these.

MR. LANE: The contracting follows the same format. The only slight difference is that the descriptions are going to be put into the record and verbally offered to the commission before each of the panels, rather, than in the beginning, and that's because of the complexity, that we'd like to have the process description closer to each of the panel discussions.

And then basically, we're going to look at source selection and contract approval. Source selection relating to a number of questions. Do you get value from always using the lowest responsible bidder? Should you be permitted negotiated competition, competitive negotiated contracts? Those types of questions that we started to look at last year.

Oversight and performance evaluation speaks for itself. Dispute resolution and debarment is a sort of subspecialty. One of the questions that we'll be asking, for example, in that case, relates to, if debarment is the only punishment for a violating contractor, is that too severe? Meaning that it's not used enough because it's too severe, or people are being too severely punished, and therefore, we're blocking people who otherwise might want to participate in the system from doing it because we only have this one punishment.

So that type of question. And the processes of debarment we'll be looking at. And again, we're going to step away a little and get maybe some people that have a little distance from the system to talk about other types of systems in other places or model systems and the like.

MR. SCHWARZ: Yes, Nat.

MR. LEVENTHAL: I'm sorry, I'm one step behind, but could I ask if in our prior subject, local voice, we're going to include method of selection of community board members and the extent to which they represent community interests, etc.?

MR. LANE: Yes.

MR. LEVENTHAL: That's on the agenda?

MR. SCHWARZ: Yes. We're trying to start with, how do things work? But, of course, the ultimate question we're asking is, what's the structure? And in terms of structure, how are they selected, what do they cover, and what are their powers? So, those are our ultimate questions.

But it seemed to me the philosophy of these hearings is that you can answer those ultimate questions much better if you have a solid grounding in how things should work. But we should keep in mind it's those ultimate questions that are really ours.

MR. GOURDINE: Just one question with respect to the contracting and procurement, will that include a discussion or analysis of the Richmond versus Gross in affirmative action case? Does that come into that area at all? And will this commission be looking to examine whether the contracting procedures that exist in the city

are what we think they ought to be and make an analysis as to what the relation ...

MR. LANE: We started to undertake last year a study of that issue. I'm not sure that it will come out at the hearing, but it is definitely a part of our research agenda. We don't have a set-aside program in the city, so we don't have a Richmond problem. But we are looking at it.

MR. GOURDINE: What I was suggesting, I know we don't, but would that be within the mandate of the commission to ultimately make a recommendation that perhaps we should?

MR. LANE: Yes. And it's part of our research. It's part of the research effort.

MR. RICHLAND: When we talk about contracting, are you just talking about the purchase of goods and services?

MR. LANE: No. We're just looking at --

MR. RICHLAND: Are you just limiting it to that? Are you dealing with all of the various massive contracts that are entered into by the city in connection with redevelopment, in connection with a variety of matters that are not ordinarily considered in ordinary terms as being contracting?

MR. SCHWARZ: Well, we're going to have, I think on your point of redevelopment, Bernie, there's going to be. The land use --

MR. RICHLAND: Of course.

MR. SCHWARZ: -- is a whole subject, and I think ultimately, perhaps, the most important and complex subject that we're going to deal with. And I would think that land use decisions are going to be more concentrated under the land use decision making section, which is the next day. But I assume, on goods and services, that we're going to be including the major social service kind of contracts, and not just pens and pencils and how they are dealt with. And I suppose we will want to ask the question, is there any reason to treat them the same or differently?

MR. LANE: We're also going to be looking at public construction, which is the third of the things that the city basically contracts for, goods, services, and construction. We may not just in the contract. We may be looking at some of the budget part.

MR. MURRAY: On that, will you also concentrate a little bit on the impact of the WICs law?

MR. LANE: We had not intended to.

MR. SCHWARZ: I mean, Arch, we have to remember, we're sitting, not as a legislature, but

ultimately as a city constitutional body. And so, while I suppose something like the WICs law peripherally comes in, it's not within the mandate and power of New York City.

MURRAY: It has an impact, but we don't have the power.

MR. MAURO: The way it comes in in the ordinary contracting process is that, given the constraints of the WICs law, what will come out is the move within the city to move more project managers as a way to get some of the advantages without changing the law.

MR. RICHLAND: It's not just the WICs law. It's the prevailing rate of wage law that has a whole complex fact-finding aspect.

MR. LANE: Now on the third panel, the third day, the March 2nd hearing on land use decision making, because of the complexity of this issue, what we've chosen really to do here is to use, at least in the morning part of the session -- well, we've broken the day down into basically two topics. One topic is development, private development in the city. And the second topic is the undesired land uses.

With regard to the development topic, what we've decided to do is to use a case model, and the case we've chosen to look at is the Union Square special district and the Zeckendorf Towers, which involves a

number of issues that have been brought to our attention as issues of some significance. Among those issues is a request there for zoning changes in the zoning map and text. There is a precertification process issue that comes up in the case. There is the environmental impact --

MR. RICHLAND: Precertification of what?

MR. LANE: The application for the zoning changes and for the building, the development. There are environmental impact questions that arise. There are timing issues. There are bargaining issues, both for density bargaining issues and amenities bargaining issues. There are some capital budget issues that come up in the issue. There are some SRO issues that come up. And there's the redevelopment of a park, which is the capital budget issue that plays out.

And there are three community boards involvement, I believe, or maybe more, some of which were in favor of it, some which vehemently opposed it, and some which moderately opposed the project. So you get to look at the dynamic of a private developer coming in, asking for a change of not building as of right, asking for a change in the zoning law, and then go into the process for arriving at the decision that some change is permissible and will be granted, and how you get from point A to point

B here with all of the decisional levels. So we think it's a good example.

The developer has expressed an interest in the participating and describing part of the process, and we are going to ask the appropriate community and representatives, elected officials, and the executive branch officials, and I think we're going to put together a very good panel on this.

Now the afternoon session will basically be a panel without a case study. People will bring their own anecdote or case studies with them, in a sense, about how we cite undesired land uses in the city. And you're going to see a variety of concerns expressed from groups that have been well-organized in trying to block them, to groups that feel that they're dumped on them. And we're going to try and get some understanding in this panel about how the city decision making process is made and how communities respond.

For example, one of the things that we're trying to look at is, how much of the process has planning behind it, how much of the process is driven by the location of city-owned property in itself. So these are the kinds of things that we hope to, not only adduce from this panel, but of course, in the rest of our research

when we ultimately give you a series of proposals, alternatives and rationalizations for each of them.

MR. SCHWARZ: Let me just throw out a question for the group. I mean, obviously, the problem of how a government decides upon where to put and whether to put the undesirable uses, is a terribly important issue. I mean, you can be torn between dictatorship and pumping things into a community, and inability to get anything done.

So it's very important to have a structure that balances those two. And what we're trying to do is to learn more about how the process works so our minds can be informed when we come down to considering those structure questions.

Do we think -- and probably, this is a question we shouldn't answer today, but we should all just think about. As a commissioner, are we going to want to try and discuss the implications at a hearing, or are we going to want to let these series of hearings, which are all very compressed within two or three weeks, all get into our heads before we begin to discuss the implications of what we're hearing?

And I think, just to answer my own question, we probably don't want to make that choice. We probably want to do a little bit of a discussion as we go along and

people would say, as I hear this, it surely shows to me that we have more of a risk of inability to decide than we do of dictatorship. And yet, we know that we want to ultimately make those evaluations after we've heard how the whole process works. But just throwing it open for discussion as the commissioners begin go think about this, how would you want to try and draw the implications of what you're hearing, and when? Yes, Si.

MR. GOURDINE: I think some reaction to what is presented that would probably be useful, is it could stimulate further presentation and make a more complete record for that ultimate time when we have to make our deliberations.

MR. SCHWARZ: I think that's sort of right. Not extensive, but some. And maybe, Eric, these are very long days and we have in each case roughly six hours of testimony and then reserve two hours to hear from the public on the subjects. But we may want to have a means of a little discussion among the commission between those two. I know we're trying to squeeze more out of an already busy day, but I think the way Si put it is desirable.

MR. LANE: Well, it's really a question of, we certainly could do a little at the end of the day before the public or right after the public, since it's a

public discussion we're going to have. You might want to take a half hour. But I would say that if we do this, we ought to decide, because we've notified people that at four o'clock, the public can start talking. And so, people are waiting here all day.

MR. SCHWARZ: What's your experience? I mean, we haven't done hearings of this kind, but are we likely to have scores of people who want to pitch in and talk about local voice in government?

: Yes.

MR. SCHWARZ: But fewer for contracting, or what's --

MR. LANE: Well, that's true. But when you have two hours, you don't need score of people to fill two hours. So I would suggest to you that I would assume that we would get two hours worth of comment, and in fact, probably in some instances, go over. Because our policy has been not to turn people down. Now if there is a long line that's going to be four more hours and we have to schedule another hearing, so I mean, you can do it anyway you want. But I would suggest they will fill two hours.

MR. SCHWARZ: Of course, there are ways in which by asking a question, the commission can in effect say, well, why, to Mr. Witness, or Mrs. Witness, why don't ou draw the inference such and such from what I've just

heard? And that's a way in which you can in effect begin a discussion by way of a thinking.

MR. LANE: I think that you can find the time to do this in between. I think the public would probably like to hear that kind of discussion going on publicly. So if you wanted to take a half hour, we probably can. But then you would have to be prepared to stay later and not cut anyone off from their opportunity of participating in the process.

MR. SCHWARZ: I mean, I kind of like the idea coming out of this dialogue of maybe spending half an hour between the end of the prepared stuff and the beginning of the free-form to have a little discussion among the commissioners about the tentative implications of what they've heard.

MR. MAURO: So, Eric, why don't we go on to --

MR. LANE: Frank is going to do the next three of these.

MR. MAURO: The next one is sort of the hardest to do, as opposed to the other five, which sort of created themselves as essential processes of the government. This is a way of looking at the government that our chairman suggested, and we then have faced the job of trying to figure out how to do it effectively.

MR. SCHWARZ: Is that a fancy way of saying it's a stupid idea but ...

MR. MAURO: It's a great idea, but it's hard. It's harder than the others. It isn't as simple.

MR. SCHWARZ: The time for discussion is not yet complex.

MR. MAURO: It's almost a separation of powers issue. The idea was to get at the role that independently elected officials play that goes beyond the narrow nature of what they do in contracting or what they do in franchising, but the tension created in the system between an executive branch, headed by an elected official, but a large bureaucracy that runs most of the operations of government, and the variety of independent elected officials who play a role of ventilating the system, keeping an eye on the system, providing representation and more geographically decentralized and in other ways.

The basic approach we came up with for organizing this is to look both at budgetary oversight and representation and programatic oversight, to try to look at both of those. And the first one is a little easier than the second. The programatic oversight panel is a little harder to pull together because it's more diffuse in terms of what goes on.

But in terms of the budgetary oversight and representation, we're going to try to begin with people currently involved, or previously involved in the system, in doing staff work for elected officials in the budgetary process. And I think we've got the beginnings of the right mix of people to do that.

After that group of people who will speak about the roles of elected officials from the elected officials' perspective, we decided to do a case study of an experiment with a formal oversight mechanism for the Council and the Board of Estimate, separate from the finance committee staffs. And that was the Goodman Commission's effort to create an independent legislative office of budget review, reporting to both the Council and the Board of Estimate, but different than a front line budget staff.

And we will look at New York's experience with that, then we will look at comparable offices which are separate from the finance committee staffs that have become institutionalized, to try to look at the factors that led to that.

At least two of those, the congressional budget office and the Suffolk County Legislature's legislative budget review office, are of the same generation in creation of the legislative office of budget

review, came out of the same movement. Whereas the California office of legislative analysts is much older and has served as the model of these other efforts, was in fact, the model for the congressional budget office.

Then we'll move on to programatic oversight and we will attempt to look at the information flows available to the independent elected officials, how useful they are, the mayor's management report, the annual report, other required plans and reports, and how they are in effect used. And we're going to try to put together a panel that has both representation from the executive branch as well as the Council and Board of Estimate members to get a discussion going on the nature of programatic oversight today in the system. And we're still trying to finalize exactly how we would structure that.

Then the last panel, which will be shorter than the others, looks at an aspect of this, which is the information record of the oversight. Once the event is done, of say, programatic oversight hearings, what comes out of that? What's the record? How is that record used? And how is it available both to the public and to elected officials? And doing that both in a New York City sense, but also looking at some of the comparisons, say,

with congressional oversight hearings, how the records are created and how the records are used.

MR. LANE: Availability of transcripts, for example?

MR. SCHWARZ: Like transcripts which aren't available for three years after hearings are held. I have an interest in this, both as a matter of theory, that if you don't have oversight, you really don't have control. I mean, for all the structures you may have about who initially decides, if there is no capacity, desire, will, ability, to check up on what happens, you really do not have a complete process.

And my own experience was that the New York City government has many processes for making decisions and very few that really work for determining whether those decisions are being carried out. Now other people who serve in government may have a different perspective on that. Nat may have felt that he was oversighted to death.

LEVENTHAL: No. Except by you.

MR. SCHWARZ: But whether or not one has that view as to the facts, certainly, one wants to know as a matter of governmental theory, what is built in by way of oversight capacity.

Bernie, you look as if you had either a question --

MR. RICHLAND: And the difference between what appears in a charter provision and what actually happens. One of the greatest difficulties I had at a time when the structuring of the budget was an elaborate procedure beginning with departmental estimates and hearings on departmental estimates, I have never been able to get a member of the City Council who was under the charter authorized to come to the meetings at which departmental estimates would be discussed by the Office of Management and Budget. I've never been able to get anyone to go to such a proceeding. You can lead a horse to water, but you can't make him drink.

MR. SCHWARZ: I think the potential departure between what's on paper and what's actually done is absolutely vital. And of course, that's why we're going to be studying under this one the falling into disuse of the sensible proposal that was in the 1975 charter of the legislative office of the budget review. I mean, that can only be a good idea in theory. I mean, how can you want anything other than a legislative branch which has capacity to understand, to initiate on the budget side? So it was put in the charter and then it fell into

disuse. Why? Are they ways in which a similar thing could be guaranteed to actually happen.

MR. RICHLAND: I guess the answer is that most people are frightened by numbers. They like words. They --

(FIVE-MINUTE GAP ON TAPE)

: ... you expect to be totally open-ended?

MR. MAURO: No, they don't. I think that the last panel will be relatively short, maybe 45 minutes, and the programatic oversight perhaps an hour and a half, and the budget oversight, say finishing at one.

MR. SCHWARZ: Frank, I know that you are in touch with the Carey Commission and I know they have some strong views that the way the city in effect manages itself through budget lines is a way of stultification and deprives managers of initiative.

Now that is a little more an internal executive branch issue, but I think it relates as well to this general subject. I know you're in touch with them, and I think arguably, Frank or his head staff person would want to come in and give those views, which I found very interesting. They don't take very long to hear, but it was a perspective, which coming from th business community and how a very successful corporation has been managed, and contrasting that with what they see as overmanagement

through budget line management, depriving agencies of initiative. I thought it was an interesting perspective that's worth hearing by the whole group. Okay.

Franchising.

MR. MAURO: This is a lot more mundane, but it's a very complicated field. In effect, it's one of the biggest issues here that we will try to get out to the opening panel, is the fact that there are a variety of types of permissions which seem very similar to each other that have different names and are granted by different processes.

So what we will try to get out in the opening session is, what are the types of permissions, and what's the difference among franchises, concessions, licenses, permits, and what are the different processes by which they are issued? We will also cover how they relate to the ULAR process -- franchising is covered by the ULAR process -- and what the result is of really having two complicated processes tiered together.

Then this gets to something Bernie raised earlier, is that these various permissions amount to contracts, but an issue is the fact that while the charter would appear to require all contracts to be registered, the practice is that only procurement contracts are registered. So we'll get to the relationship --

MR. RICHLAND: Or service contracts.

MR. MAURO: Or procurement of goods, services and construction are registered. But all three types are procurement, but not other types of contracts. So we'll get to that a little here, not in as global a way as Bernie said earlier, but the issue should come up.

The second panel deals with the professional staff work that's done for the political decision making body on franchisees. And the issue here is, the relative role of a central staff, such as the Bureau of Franchises, which takes a public rights of way perspective of cross functions, and the role of the functional staff, such as the Department of Transportation for bus franchises. And for some franchises, the Council, by local law, has established a process that brings more than one department into it.

So, for example, for franchises for sidewalk cafes, there is a formal role for the Department of Transportation, Department of Consumer Affairs, Department of City Planning, and the Bureau of Franchises, all contributing staff work to it. And we'll look at how that currently functions. We won't get into the proposals that have been made for changing the system, but you can ask your own questions about the current system. But we'll just to get out what are the roles of the different

professional staffs in support for the political decision makers.

MR. SCHWARZ: Could you, Frank, on any one of these, but let's take franchises. I think the commission ought to know how many agenda items there are with respect, let's say, to franchises for the Board of Estimate for a given year or given period. I mean, an issue for us is certainly going to be a workload of the various bodies, and are central bodies being asked to do more than they reasonably should, and thereby, being deprived of the ability to spend enough time on the most important matters?

MR. MAURO: Contracting is where that should probably really be done, because that's the most magnitude. The quantity of franchises is much smaller than the quantity of the other decisions. The other thing we have to do here for concessions, which don't go through the Board of Estimate, will go through a body that does have elected official representation called the concession reviews committee, has looked at their agendas also.

MR. LEVENTHAL: That's not under the charter, is it?

MR. MAURO: No. But what we're going to try to get to is, what are the distinctions? The issue is, what makes something a concession? What we'll try to get

out here is the grayness of the lines, and we will ask the experts what the definitional distinctions are.

MR. SCHWARZ: Si.

MR. GOURDINE: Will we get any sense with respect to these franchises of the relative input of various agencies into the process so that -- you mentioned that there might be several different agencies involved. Will we get a sense of how they're weighted and what the influence is. Will that come out of this?

MR. MAURO: Maybe the question can bring that out. I mean, the people will be there who we and you can ask that. So that's something that we can try to get out. I don't know how scientific the participants can be as to what their -- because it's hard to tell in practice what the relative influence is, the formal process. But in terms of whether or not in reality, somebody really dominates it, I think is a behavioral thing that we can try to get at. But what people say won't necessarily be completely accurate, but we should ask about it.

MR. GOURDINE: I guess I wasn't necessarily getting at what they say, but in terms of looking at the structure, if there are certain intervention points, we might be able to infer that if someone intervenes at A point, that person may or may not be more influential in the process of that agency.

MR. SCHWARZ: Okay.

MR. MAURO: Then the role of elected official in this decision making process, followed by the franchisees -- spelled wrong. There's a typo there. It should be an extra "e" on franchisee and licensee -- having in some franchisees to talk about the process from their perspective, and finishing up with people who have studied the franchising process.

MR. SCHWARZ: Nat.

MR. LEVENTHAL: The question which really applies to all the panels for every subject but is sort of highlighted by panel five on this subject, how are we going to select, by what process and what criteria we're going to select the limited number of people who appear before us. Because these subjects are incredibly broad. You could have seven people arrayed before us and they could all have a particular ax to grind in the worst case, or just a particular point of view that may or may not represent the world out there. So, by what process, and who's going to make the decisions and who's actually going to spend all this ...

MR. MAURO: For example, on the role of elected officials, we will try to get someone from each of the prime elected officials' perspectives on this, which are the Council, or even to take another --

MR. LEVENTHAL: I'd rather you took ... a little tougher.

MR. MAURO: The way we were going to do that in this particular case was by the advice of the people who have studied the system extensively for suggestions as to franchisees who have a fair perspective on the system and they found to be good sources of understanding without using the opportunity to represent a vested position. But it is hard.

MR. SCHWARZ: I mean, my instruction was that we have to have balance and fair-minded people. Are we going to be perfect? I'm sure we're not. I'm sure we're going to always have to pull away and say, are we getting the full picture? And I'm sure, in no given presentation are we going to be able to.

Now, we have the blessing that, in a way we come at the same subjects from different directions. That's one answer. I think the other thing is, through our questioning, as we sense something being from a narrow perspective, we have to help draw that out. But I think the fairest answer is to recognize that we cannot be perfect in our selection of witnesses.

MR. LANE: I just want to say, for example, with regard to the land use, take the Union Square project. I mean, there are people that thing that we will

be putting on the record an example of a project that went very well for the system, that everybody acted a role that was sensible and came up with a well-designed improvement to the city. There will be other people who are going to say that, no, it's too gross, and a number of types of issues.

So what we try to do always is to get that kind of balance and try to think -- when we ask everyone, for example, is this an aberration which we don't want -- none of these examples we are using are going -- they're intended to be pathologies. It's not like a hypothetical in a law school case book where you say, this is the worst thing. How could you do it better? We're not trying to put that on the record. We're trying to put as best we can how things actually happened, and we can make our own conclusions. But the examples we're choosing are not intended to be the most extreme, either good or bad.

MR. SCHWARZ: I suppose, just thinking out loud Nat, also that the opportunity for the public to comment -- I mean, presumably, the public commenters are going to include experienced people who have strong reactions, and I suspect we're going to get in that public comment some help on the perspective as well.

MR. LANE: And just one other point, on some of the panel what we're doing to make sure that this

happens is having three people tell their story. So let's say we have three members of local boards talking about land use, budgeting, and service decentralization. But they're only talking about their own board's perspective. Then we have in the background of that, three or four more people from different kinds of local boards --

(BEGIN SIDE B)

MR. MAURO: The time on the overview panel is two hours, not three hours. And this will be a very mechanical walk through the process, this panel. We've invited three people from the Office of Management and Budget who have primary operating responsibility for the mechanics of the system. Not the political decision makers, but the mechanics of the system, in expense budgeting, capital budgeting, and revenue.

And we are going to have in your notebooks selection of the documents that track the system through, and by a series of questions of answers, these OMB officials with us will walk through the budget process. For some of you, it will be something you know extremely well, but it was felt that it was necessary to lay the foundation for the record.

The second panel will look at the agency role in the preparation and implementatin of the budget, agency interaction with OMB with constituencies with the

executive. And the last panel will focus specifically on capital projects.

Now budgeting is in effect being covered at three hearings. Because at the local voice hearing we will be doing the concession board role on the budget. At the oversight and representation hearing, we will be looking at the role of the independently elected officials in the budget process. And at this hearing on budgeting, we will be looking at the process more from the perspective of the executive branch entities involved.

MR. SCHWARZ: Frank, you ought to be sure and have the perspective of former officials as well as current officials sprinkled throughout this ...

MR. MAURO: We do. In fact, on the agency role, one of the speakers is a former commissioner ...

MR. LEVENTHAL: Well, I would like to suggest that we have former OMB officials, too. I think that would be extremely helpful.

MR. SCHWARZ: Mixing with the current. Sure.

Frank, I was a little unclear on something you said, your very last comment. On the budget, vital to our analysis ultimately, is how the other branches of government, the other entities of government, intersect with the executive branch. And I had thought the budget

hearing was going to include that. Now are you saying it's not and that's going to be --

MR. MAURO: That will be done at the oversight and representation is we're going to have people from the various elected officials prospectus at that hearing. What we realized when putting this together it will be redundant to do it again. Similar, it would have been redundant to do the Community Board rule in the budgeting processing.

MR. SCHWARZ: All right, so we've gone through the outline of the group of hearings, and you have all kicked in with questions.

What other more general comments are there?
Nat?

MR. LEVENTHAL: Could you just review with us what would happen next? I forget exactly -- after these hearings take place. By what process -- because obviously not everybody here will be at every hearing, and by what process do you see this moving toward what direction?

MR. SCHWARZ: Well, Nat, we have two other hearings scheduled, which are those day long hearings where we've invited every elected official in the city, and those are in April --

MR. LANE: Fourth and sixth.

MR. SCHWARZ: Okay. I think the best answer to your question, Nat, is to say that we don't know, and I think the right thing to do is going to depend in part on what has happened in the United States Supreme Court.

But with that reservation, the logical next steps would be to, after having done this basic groundwork, to start talking about the structure questions, and we're beginning to get our ideas and the ideas of responsible people involved with the city in either government or not government on how the structure can best be designed to accomodate the needs of the city, so first, I think we can't now decide what we're going to be doing in the end of April and I think it would be foolish to decide that.

But in general, the drift would be to go from these series of six, seven, eight hearings designed to make us all feel comfortable with how things work to talking about how might they work. Are we perfectly satisfied with the way things are being done in the city and therefore all we should be addressing are minor tinkering?

Do we think that major structural changes are necessary?

And we have to keep in mind of the United States Supreme Court decision on that. That's not

necessarily going to control us, but it's certainly going to be guidance that we are going to be interested in.

MR. LANE: Fritz, the hearings aren't as you know the only research that we're doing that. We're going to have a lot of quantitative studies done, and we're going to look at other issues that are not as either usefully brought at hearings or susceptible to hearings, so we are going to be presenting a lot of materials to you through April.

MR. SCHWARZ: Would it be worthwhile, Eric, in terms of the prior materials, to have an index that is just a little more than a barebones index distributed to everybody.

MR. LANE: Of the materials that we have?
Yes.

MR. SCHWARZ: I think that people would find that useful. I'm sure if you've got a perfect memory of everything you received a year or two ago, but it might help to have another shot at it.

MR. GRIBETZ: May I make a suggestion.

MR. SCHWARZ: All right.

MR. LANE: We have a nine hundred page document on the voting rights act. With thirty-three opinions.

MR. SCHWARZ: You'll have to save it for the meeting.

MR. LANE: No, you have that whole collection but we're putting it together for you, in its fullness but we'll do that.

MS. ALVAREZ: Maybe you covered this at the other hearing, but to the extent that some of us went through two years of hearings and discussions and that on the magical day when we were grappling with the toughest questions, the Supreme Court decided to do this. It's a little bit disconcerting to feel that we are starting all over again. There's value to this.

But from my perspective, I almost wanted to pick up where we left off on that day -- and also to provide those who were not here through the process with the benefit of what were the alternatives that we had pondered.

It seems to me that as we -- there's always value to reviewing the basics, but there's value if we can use what we gained from those two years.

If we reached a certain point and there are some real tough issues that we were coming to terms with, why can't we just use that as the point of departure for looking at this -- I'm a little concerned about being too academic about stuff when we've been ...

MR. SCHWARZ: I think, to me this is the exact opposite of being academic, and indeed I personally

feel much more comfortable in addressing the ultimate questions of governmental structure.

If I feel that I and every other member of the Commission at least reasonably well understand how it actually works -- it's one thing to sit around and talk about theory or to have some person come in and say in my opinion, here's how things should work.

I think we're going to make much sounder and more credible decisions if we go through the process of saying how do they actually work first.

So in my own view this is the right way to develop something.

Also we have four new Commissioners who need the -- even if this were duplicative of what had previously been done -- and I don't think it is -- I think basically previously the method of analysis was to start out by sort of saying what should be done, and I think the right way to work is to say how does it work and therefore what should be done?

And then finally, we all should have in mind the prior analysis. I, for example, have read all of the transcripts and proposals and I found those extremely enlightening in terms of beginning to think about the issues, and Sy and Mario, you all should do the same

thing. It was very useful to hear the dialogue on the various proposals that were being made.

So for a lot of reasons, I think we are usefully going to be getting basic data before we march back in with all our focus on the ultimate questions. Now that doesn't mean -- and one of the reasons why I thought this little half hour of discussion -- for example, in the budget -- after the budget discussion has happened it seems to me a very useful dialogue among the Commissioners can occur which begins to tentatively wrestle with those ultimate questions.

MS. ALVAREZ: I guess I'm concerned that we'er going to have a very compressed time frame. We're going to jump from reviewing how do things work -- I don't know if we really have -- there are so many different views of how things work, whether that will be -- I'm a little concerned about dropping off where we left off. To me it seems as if we're starting anew, and it took us two years to get to a point where we were still struggling with some important questions.

We don't have that much time. What happens -- whatever the Supreme Court decides for us to suddenly then -- what do we do then? Do we just sort of dust off the old proposals and say you've heard how things work and

this is where you were the last time, and now let's come up with ...

MR. SCHWARZ: That certainly would not be what I would anticipate doing. I don't intend to, in my own view, just dust off the old proposals.

It seems to me we are a new Commission and there's this anomaly of having eleven of you hold-overs and four of us new -- but we are a new Commission and I think we ought to try and look at all the best ideas, including the ideas made last time, but not start with a premise that that's the right way to go.

MR. LANE: I just would add that I think it was at least the staff's view last time that this type of fact-finding hearing would have been very useful, but that we were unable to do it giving the strictures of time imposed by the Court's one year and that type of thing, so from our own point of view, we know a lot about this, but we think it's going to be valuable for an educational purpose for ourselves in trying to formulate whether or not even those proposals of last year -- the nuances of whether they made sense and things like that.

MR. SCHWARZ: Also, in terms of ultimate credibility, I want to go back to my own experience in running the church committee about the intelligence agencies, where there was a strong debate as to whether

the right thing to do was to start out with a lot of wise people like Clark Clifford coming in and saying here's how the CIA ought to be reformed and former Attorney Generals coming in and saying well, you know, the FBI just needs a little tinkering with and so forth.

Or whether we ought to do highly fact-based analysis and then let the right results in a way flow from the facts, and I felt very, very strongly that the latter was the way to go, and I'm absolutely convinced it was. Now this is different in the sense that we're not an investigating agency, and we're not trying to investigate scandals and therefore say because of such and such a scandal, there should be such and such a change.

But I do believe a body like ours has a lot more credibility as well as will in fact be wiser if we have gone through the exercise that we're talking about here.

Now, I think to bring the two points together, the best way to do that is if we're talking about land use for example, which is I think the really hardest questions, for the Commissioners in their questioning or in that dialogue period to say, you know -- well, as I hear this, it's why I think we really need a vastly changed structure or, as I hear this, shouldn't we believe that these difficult questions are being thrown

into the hopper in about the right way, and it seems to me we're all strong-willed people and such interventions are going to be useful, they're going to make the day more interesting also.

MR. LEVENTHAL: I think you know I raised a similar question last time about what the status of our proposals was, and I think what Aida and I and I'm sure others are concerned about is that we not get the feeling our efforts to reach whatever conclusions tentatively we reach and we have all changed our mind since then -- we're not in vain.

I think one way to do that -- I assume you'd have no objection -- would be if we wanted to, if a particular witness was there at the hearing, would there be anything wrong in us saying well, by the way, last year we thought that this might be a direction to go in -- what do you think of that?

MR. SCHWARZ: Yes, I think there'd not only be nothing wrong, but there'd everything right about it.

MR. LEVENTHAL: Okay. And in fact, when we wanted to, we could elicit testimony about the very proposals we came up --

MR. SCHWARZ: Sure.

MR. LEVENTHAL: -- if we feel they're still valid.

MR. SCHWARZ: Sure -- that's okay. Sure.

MR. RICHLAND: This is not a continuation of the Commission on which you and I served, Aida. It is a new Charter Revision Commission that has a two year term, and we have to deal with it in that way.

And I don't think that we ought to deal with it in such a way as to regard the new members, so to speak, as though they were of lesser importance. This is a completely new Charter Revision Commission to address the question of revising the Charter.

Our situation really is no different than it was when we started, and we didn't regard ourselves as the continuation of the Goodman Commission.

MR. SCHWARZ: I think Nat's point really brings it together quite properly, that of course we are going to be thinking about and talking about where we ultimately should come out as we go through trying to master what goes on, and the two flow together.

The one thing I feel strongly about is that it would not be right either to the new Commissioners or in my opinion to the process in the first place, to just start by debating the question -- should there be a Board of Estimate or not, or is the City Council providing the right oversight and if not, how should it be changed. We all may have ideas bubbling in our heads on those.

But I want to know whether you feel, after that dialogue, that we're going to be approaching the subject in a useful way.

MS. ALVAREZ: I thin it's a very useful way. I guess the piece that's still missing for me -- and again, maybe this was covered at the last meeting -- I'm assuming that the new members have had the benefit of knowing what proposals were on the table when we left off and because I do think that that was two years of work and those conclusions were reached as a result of a somewhat similar process -- not exactly -- and I think it would help them in terms of -- Nat said the way you frame your questions, it's important to have that carry over into the new dialogue.

MR. SCHWARZ: One thing, maybe this picks up, Judah, let me ... thought --

MR. GRIBETZ: Before you tell me -- I'm going to interrupt -- before you tell me that I have total recall of all -- proposals, I was about --

MR. SCHWARZ: I don't remember -- did I say that?

MR. GRIBETZ: Well, I thought that as part of the indexing suggestion that you made of the materials, it might be useful to pick up on Aida's thoughts and with the remote prospect in mind that Si and Mario may not read the

entire transcript of the last two years -- that perhaps the staff could summarize the proposals that came about and that might be useful.

MR. SCHWARZ: Yes. I think that's a good idea and maybe --

MR. GRIBETZ: I'm sure you were about to say that.

MR. SCHWARZ: No, I was actually going to go one step a little further and ... back to something that we had anticipated doing and then I said hold up on it, let's get back on the idea of distributing to the members the menu of alternatives and then adding Judah's idea, including some specificity on the proposals that were previously made.

MS. ALVAREZ: I think that would be really helpful.

MR. PAREDES: I am grateful that you are concerned about reading the materials. I will try, but it certainly will help immensely if we have no assistance from the staff on this matter.

My personal concern would be the volume of reading material we're going to receive, in addition to the testimonies and the public hearings is so overwhelming that we need a mechanism by the staff here that will assist us to keeping track of the major questions that are

coming out of the hearings -- or we might lose a lot of important information.

I'm sure you have already raised the question of how to summarize and highlight the major questions that are coming out of how the government works and functions and what is valuable for us to continue to research or to go back or to consult, etc.

That is an important question to me, in addition to having the background material that Aida was mentioning. I think it's very important, although I have briefing book.

MR. SCHWARZ: I think the menu coupled with the summary of the varying positions -- and you've got to remember the spectrum of positions was quite wide -- but the varying positions of things that were proposed, and I think you've added another useful thing, which is so that people don't just look upon this as a menu where every issue is at equal weight -- some focus on what the key questions are. Now that's all useful.

MR. PAREDES: And I'd also have to really thank you and your staff and the outlines that you have prepared for us are excellent. The staff is doing a fantastic job, at least it's assisting me a great deal being a new member here.

MR. SCHWARZ: I think what they've done is terrific and we have hired a lot of terrific new people within the last month.

All right, Arch -- what have you got to say for yourself?

MR. MURRAY: I think what has been proposed is an excellent way of putting together two pieces of work.

MR. SCHWARZ: Okay. Any other comments? All right, any other business more general than what we've talked about?

Okay. Eric, Why don't you put those dates out.

MR. LANE: For members of the Commission that want to be briefed about the specifics of the hearing themselves, and this would be particularly for members who are going to attend the hearings -- for those of you who don't, we'll come around with the transcripts and everything else later -- we have two days in mind -- February 23 and February 24 at our offices at 11 Park Place, 6th Room -- 1616 -- at 12:00 noon -- twelve to two -- on the twenty-third we'd like to do local voice, the first three, local voice contracting and land use, and the (INAUDIBLE CROSS TALK) do same thing ...

MR. SCHWARZ: Now you've got those, Eric, both at twelve to two, and two different days -- the

twenty-third and the twenty-fourth -- to cover the hearings that are to be on the -- (INAUDIBLE CROSS TALK) because they're coming up very quickly, and then we'll create another day for the second hearings. Now, the only question I have -- and you remember last time I said having read the transcripts I never want to allow the Commission to discuss when the next meeting's going to be because it's obviously chaotic -- but violating that rule, and not changing the days of the twenty-third and the twenty-fourth -- but is there anybody who would be able to come on one of those two days if the meeting were at the end of the day as opposed to both options being in the middle of the day.

MR. LANE: For people that want to understand what we're going to at the first three hearings -- what questions we're going to be asking, what we're trying to draw out, what questions they might be interested in --

MR. SCHWARZ: It's taking today's discussion and enabling it to be vastly expanded in preparation for -- is there anybody who thinks they wish to come for a briefing who could come at the end of the day but could not come in the middle of the day?

MR. PAREDES: I would like to, but I will be out of the country.

MR. SCHWARZ: Okay, so there's nobody here who would like to have either one of those changed to five or six or seven in the evening.

MR. MURRAY: I'm sure Eric will serve lunch and it'll be very convenient -- particularly for you knowing where your office is -- it's across the street.

MR. SCHWARZ: Okay, is there any other business anybody has?

MR. RICHLAND: When is the next Commission meeting, apart from these information sessions?

MR. SCHWARZ: Have we set one? It hasn't yet been set.

Okay, do I hear a motion to adjourn.

MR. LEVENTHAL: So moved.

MR. SCHWARZ: Okay, thank you all.