

LA COMMISSION D'ENQUÊTE SUR L'OCTROI
ET LA GESTION DES CONTRATS PUBLICS
DANS L'INDUSTRIE DE LA CONSTRUCTION

SOUS LA PRÉSIDENCE DE
L'HONORABLE FRANCE CHARBONNEAU, J.C.S., présidente
M. RENAUD LACHANCE, commissaire

AUDIENCE TENUE AU
500, BOUL. RENÉ-LÉVESQUE OUEST
MONTRÉAL (QUÉBEC)

LE 7 OCTOBRE 2014

VOLUME 244

ODETTE GAGNON et ROSA FANIZZI
Sténographes officielles

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COMPARUTIONS

POUR LA COMMISSION :

Me SONIA LeBEL,
Me DAVID DROUIN-LÊ

INTERVENANTS :

Me BENOIT BOUCHER pour la Procureure générale du
Québec
Me MÉLISSA CHARLES pour l'Association de la
construction du Québec
Me ROXANE GALARNEAU pour l'Association des
constructeurs de routes et grands travaux du Québec
Me PIERRE POULIN pour le Directeur des poursuites
criminelles et pénales

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214P-2131 : Présentation faite par le témoin Rose
Gill Hearn

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1 L'AN DEUX MILLE QUATORZE (2014), ce septième (7e)
2 jour du mois d'octobre,

3
4 (09:34:24)

5 PRÉLIMINAIRES

6

7 LA PRÉSIDENTE :

8 Good day, Madam. Est-ce que les avocats peuvent
9 s'identifier, s'il vous plaît?

10 Me SONIA LeBEL :

11 Alors, bonjour, Madame la Présidente, Monsieur le
12 Commissaire. Sonia LeBel pour la Commission.

13 Me DAVID DROUIN-LÊ :

14 Et David Drouin-Lê.

15 LA GREFFIÈRE :

16 Pardon?

17 Me DAVID DROUIN-LÊ :

18 Drouin-Lê, D-R-O-U-I-N-L-Ê.

19 Me BENOIT BOUCHER :

20 Monsieur, Madame, bonjour. Benoit Boucher pour la
21 Procureure générale du Québec.

22 Me MÉLISSA CHARLES :

23 Bon matin. Mélissa Charles pour l'Association de la
24 construction du Québec.

25

1 Me ROXANE GALARNEAU :

2 Bonjour. Roxane Galarneau pour l'Association des
3 constructeurs de routes et grands travaux du
4 Québec.

5 Me PIERRE POULIN :

6 Et bonjour. Pierre Poulin pour le Directeur des
7 poursuites criminelles et pénales.

8 THE CLERK:

9 Please stand up, Madam, for the "assermentation".

10

11

12

1 IN THE YEAR TWO THOUSAND FOURTEEN (2014), this
2 seventh (7th) day of October,

3

4 APPEARED:

5

6 ROSE GILL HEARN, attorney

7

8 WHOM, having made a solemn declaration, doth depose
9 and say as follows:

10

11 EXAMINED BY Me SONIA LeBEL:

12 Q. [1] Merci. Welcome Madame Gill Hearn.

13 A. Thank you.

14 Q. [2] You will testify as the former commissioner of
15 the DOI, isn't that right?

16 A. Yes.

17 Q. [3] Okay. The DOI is the Department of
18 Investigation of the City of New York.

19 A. Yes.

20 Q. [4] You attended that post for how many years?

21 A. I was the investigation's commissioner for the City
22 of New York for twelve (12) years, from January of
23 two thousand and two (2002) through December of two
24 thousand and thirteen (2013).

25 Q. [5] Okay. Could you tell us a little bit about your

1 background, what led to that position.

2 A. I was a federal prosecutor for ten (10) years in
3 the Office of the United States Attorney for the
4 Southern District of New York. There, I did, among
5 other types of cases, violent gang, securities
6 fraud and major crimes cases and the last four of
7 the ten (10) years there I worked at the US
8 Attorney's Office, which is part of the Department
9 of Justice, of course. I was deputy chief for the
10 criminal division. That office is an office that
11 interacts with many law enforcement agencies in New
12 York City, including the Department of
13 Investigation.

14 When Mayor Bloomberg was elected as Mayor-
15 elect Bloomberg, I applied for and then was made
16 his appointee for the New York City commissioner of
17 investigation position, that is the position that,
18 by law, must also have a full consent and vote of
19 our legislative branch, the New York City Council.

20 Q. [6] Okay. So you were appointed at the DOI about
21 two thousand and two (2002), is that right?

22 A. Yes.

23 Q. [7] Okay. Could you explain to us, just give us an
24 overview of the City of New York, just for us to
25 understand how it works and to compare it, maybe to

1 enable us to compare it to the province of Québec.

2 A. Yes. And I have a slide...

3 Q. [8] Yes.

4 A. ... that you can...

5 Q. [9] On présenterait, Madame Blanchette, la City of
6 New York organization's chart, I'm sorry this
7 morning, that's the second slide you have on the...
8 Perfect. So it's going to help you, maybe, tell us
9 about New York City and the way it's organized
10 administratively.

11 A. Yes. So, as you can see, it's a very large city
12 government. It enjoys a great deal of autonomy with
13 respect to the things it controls: public safety,
14 infrastructure, social services, prison system.
15 Forty-two percent (42%) of the population of New
16 York State, approximately, lives in New York City
17 and, so, the City has a great deal of autonomy over
18 these sorts of things - the water system, roads and
19 bridges, waste management and several aspects,
20 various aspects of public education. The public
21 services in New York City are provided through
22 dozens of mayoral agencies and non mayoral
23 agencies.

24 Of the mayoral agencies, there are
25 approximately forty (40) mayoral agencies. Right

1 now, New York City reports having approximately
2 three hundred and twenty-five thousand (325,000)
3 municipal employees and it, New York City has a
4 population now approximately of eight point four
5 million (8.4 M) people which, I believe, is
6 slightly larger than the Province of Québec.

7 New York City's budget in the last two
8 years has ranged between seventy (70) to
9 approximately seventy-four billion dollars (\$74 B)
10 and our capital budget, in New York City, is more
11 than six billion dollars (\$6 B) and New York City
12 has an oversight agency of all of city government,
13 the department that the prosecutor, as mentioned,
14 which is the New York City Department of
15 Investigation. And that's where I was the
16 commissioner for twelve (12) years and I was the
17 longest serving commissioner of that department.

18 Q. [10] So, like you said, New York City enjoys a lot
19 of autonomy in a lot of departments through its
20 agencies on a lot of questions or matters that
21 regard the City, compare to the State, I would say.

22 A. Well, certainly I can speak to the City. DOI has a
23 broad jurisdictional mandate pursuant to charter
24 and executive order authority. DOI has oversight of
25 city employees and any city dollars that run

1 through or are administered by a city programme,
2 city contracts, city vendors, so any touch point to
3 city personnel, city programmes, city agencies,
4 city elected officials or city tax dollar
5 recipients through the form of contracts or
6 programmes all would fall within the Department of
7 Investigation's jurisdictional purview.

8 Q. [11] Okay. Can you talk to us about the creation of
9 the DOI please, just the history of that.

10 A. Yes. As is the case with many anti-corruption
11 departments throughout the country and throughout
12 the world, the Department of investigation was born
13 as a result of a scandal and the scandal took place
14 in the eighteen seventies (1870) and it involved a
15 political clubhouse machine run by Boss Tweed and
16 he, along with the mayor, our finance commissioner
17 who was known as the chamberlain, and the
18 comptroller, meaning the officials who held the
19 purse strings in government were all in
20 collaboration with one another to, among other
21 things, inflate the costs of contracts by which
22 they would skim a profit for themselves and they
23 did that purportedly on construction projects that
24 included the building of our iconic Brooklyn
25 Bridge. In addition, they built a testament to

1 themselves, a courthouse...

2 Q. [12] Yes, we have a nice slide about that that we
3 can show. Show the picture of the courthouse,
4 Madame Blanchette, s'il vous plaît.

5 A. So this was another construction project that was
6 undertaken. This is a very, very palatial
7 courthouse that they built and of course, this
8 reportedly was also the subject of that skim, the
9 kickbacks that I talked about a moment ago. This
10 building stands still proud in New York City. Mayor
11 Bloomberg turned it into a working government
12 office by converting it into the headquarters for
13 the New York City Department of Education and last
14 year, I held an anti-corruption conference in this
15 building at the, with the permission of the New
16 York City Chancellor. We convened, with several
17 cities and other experts to talk about ways to
18 eradicate corruption in the Tweed courthouse.

19 Q. [13] Gives it a lot of meaning.

20 A. Yes, yes, that was the intention.

21 Q. [14] Yes. So following that scandal, the DOI was
22 put in place, the DOI, the version of the
23 eighteenth hundred (1800). What was it supposed to
24 do back then?

25 A. Well, it was an agency that was to audit the books

1 and records of city government, that is where the
2 problem emanated originally with the Tweed ring and
3 so, it was originally known as the department of
4 accounts and it was there to serve as an external
5 auditor over city government's books and records
6 and finances.

7 Q. [15] So over that length of time the DOI evolved.
8 We've got to talk about the structure. But what is
9 the budget of the DOI compared to the budget of the
10 city of New York?

11 A. Well I told you but budget of the city of New York
12 already. The budget of DOI has ranged from, during
13 my ten (10) year, it was on average approximately
14 twenty million dollars (\$20 M). My understanding
15 from public information is that it might be a bit
16 higher now because of the creation of a new
17 Inspector General's office at the department. So
18 roughly about twenty million dollars (\$20 M) during
19 my ten (10) year and that's on average.

20 Q. [16] How many people work for the DOI full time?

21 A. It ranges, you know, over the years that I was
22 there, the lines or people assigned to the
23 department range from the mid two hundreds (200)
24 through about three hundred (300). There're also
25 approximately sixty (60) people who oversee the

1 department of education in a unit called the
2 Special Commissioner for Investigations' Office and
3 there were another forty (40) or so people who had
4 oversight of the New York City housing authority.
5 We then also had a couple of other people detailed
6 to DOI through memoranda of understanding. So
7 approximately three hundred (300) people
8 altogether.

9 Q. [17] Just explain to me, or give me an example of
10 what type of employees you have, what type of
11 people, officials that are working for the DOI?

12 A. Certainly. We have investigators, we have lawyers,
13 many of whom are former prosecutors, we have
14 computer forensic specialists, we have a squad of
15 NYPD detectives, we have analysts and
16 administrative personnel.

17 Q. [18] O.K. The investigators are under your
18 authority as the commissioner, direct authority?

19 A. Yes, absolutely.

20 Q. [19] O.K. Are you allowed to make arrests? Are you,
21 do you have the full power of a police officer I
22 would say?

23 A. Yes, under certain circumstances, the peace
24 officers at DOI can make arrests.

25 Q. [20] O.K. You talked about the jurisdiction of the

1 DOI. So basically anybody who has a link with the
2 city could be under your jurisdiction or the DOI's
3 jurisdiction, is that right?

4 A. Yes, a criminal investigation could go in any
5 direction along those lines if there's a touch
6 point to a city agency employee or city dollars.

7 Q. [21] O.K. Just maybe to give us a broad overview,
8 what type of acts could you cover as a DOI? What
9 type of acts do you investigate?

10 A. Well, we investigate bribery and the kinds of cases
11 that can take place when city employees interact
12 with members of the public, we investigate public
13 officials if they are city public officials, if
14 they are misusing their office and we have had
15 several cases involving public officials who were
16 improperly looking for things from a developer for
17 example and we also conduct cases that involve
18 construction and infrastructure projects to make
19 sure that organized crime and other sorts of
20 illegal activity have not permeated some of the
21 large infrastructure projects.

22 Q. [22] O.K. What is your mandate exactly? It's larger
23 than just corruption, isn't it?

24 A. Yes, it's fraud ways and corruption. We also
25 investigated conflicts of interest, administrative

1 violations, and in some circumstances, disciplinary
2 violations, we investigated vendors, we
3 investigated non-profits that were administering
4 programmes. So, it is criminal and non-criminal, on
5 a broad spectrum.

6 Q. [23] So, the way you act or what you target; you
7 just don't target prosecutions, I mean, the way you
8 target the problem?

9 A. Absolutely. The methodology would be, first, to
10 find the facts, and to investigate all of the
11 facts. And then, with respect with what to do with
12 those facts, it might be a criminal referral to a
13 prosecutor's office, because I should point out the
14 DOI does not have prosecution powers; it has to
15 make a referral to one of the eight area
16 prosecutors that we have. But, after finding the
17 facts, we might also make a referral to the
18 Conflict of interest Board, for them to take a look
19 at and adjudicate the matter, and determine whether
20 or not the employee should be fined under our
21 Conflict of interest rules. We might also refer the
22 facts to the Commissioner of the employee's
23 department, for some sort of disciplinary or
24 administrative action. We might also talk with an
25 Agency about better internal controls that they

1 need to implement, and ways in which they need to
2 change either programmes or procedures. We may also
3 deal with a contractor or a sub-contractor, if the
4 problem arose in connection with a particular
5 contract. So there's all sorts of solutions that
6 might be applied once we collect the facts.

7 Q. [24] O.K. Do you have the ability not to refer for
8 prosecution if you want to, even if the facts could
9 lead to prosecution? Could you decide not to do it
10 if it's not the best way to attack the problem? Do
11 you have that ability, that power?

12 A. I suppose so. But I... Nothing comes to mind at the
13 moment, that would relate to that kind of a fact
14 pattern. I think that if we were to conduct an
15 investigation and find serious criminal wrong-doing
16 among the evidence that we collected, that it would
17 be very typical to make a criminal referral. But
18 that doesn't mean that we just make the criminal
19 referral. In addition to the criminal referral, we
20 might also make administrator procedural
21 changes,...

22 Q. [25] To combine it with other actions.

23 A. ... combine it with other actions, whether it would
24 be with an Agency or with a programme or with a
25 contractor. We certainly don't just make criminal

1 referral. We're far more about just putting the
2 handcuffs on people. We've very much about fixing
3 city government because, as a law-enforcement
4 agency, we're also part of city government. So we
5 care about the Agencies in that work-chart running
6 smoothly going forward.

7 Q. [26] 'Cause what could you say about that one-way
8 solution like to always to enforce and prosecute?
9 Do you think it's the solution to that kind of
10 problem?

11 A. It's just not the way DOI proceeded. And I think
12 that we were very successful in applying a holistic
13 approach to what we did, and I frankly can't
14 imagine things where we could just make a criminal
15 referral and do nothing else. I think that we'd
16 went far beyond that. The personal at DOI are city
17 government experts; they know these departments
18 extremely well, their units know the departments,
19 and so, they're really, they're in the best
20 position to both investigate a problem, but then
21 also offer other administration solutions and
22 suggestions.

23 Q. [27] To prevent the... basically, to prevent the
24 problem from happening again?

25 A. It's all about better services, and prevention

1 going forward. Absolutely.

2 Q. [28] O.K. Can you give us some examples of matters
3 that were investigated by the DOI, just to
4 illustrate a little bit what you were just talking
5 about?

6 A. So you're interested in some of the cases that we
7 did?

8 Q. [29] Yes.

9 A. So we conducted an investigation of a large IT
10 project, computer project. It was the Citytime
11 case, where the city was building a new computer
12 system to merge all of the very disparate payroll
13 systems that it had. The billings for the city went
14 above seven hundred billion (700 B) at some point.
15 It was a path that was going on for many many
16 years. Questions and concerns were raised by
17 various people: the controller, the media, et
18 caetera. DOI opened up an investigation, and this
19 is a matter of public record, conducted a lot of
20 audit work internally, following the money trail,
21 and found shell companies and bogus payments that
22 were being made and siphoned away from the project.
23 And, to make a long story short, we made a criminal
24 referral there to the U.S. Attorney's office, which
25 opened up an investigation, and ultimately

1 conducted a prosecution that resulted in, I
2 believe, eight convictions, criminal convictions,
3 with some very serious jail sentences of up to
4 twenty (20) years. And the city was able to recover
5 approximately five hundred million dollars (\$500 M)
6 to the city's coffers. So it was a serious case,
7 but with a serious successful outcome, as a result
8 of the investigation and the prosecution. So that's
9 one case as an example.

10 We had another case, where a developer was
11 seeking a parcel of valuable waterfront property to
12 develop, and two individuals began to tell him that
13 he could get the valuable parcel of property, if he
14 did things for them. And one of the two individuals
15 involved in that particular case was a City council
16 member. And, in essence, the scheme involved the
17 Council member offering to use his position, to
18 influence the award, in exchange for the developer
19 providing the councilman valuable property and
20 cash. The developer came forward, and this is also
21 a matter of public record, and cooperated, and wore
22 undercover wires for us, and collected evidence
23 that was obviously very strong and very
24 extraordinary.

25 And again, to make a long story short, that

1 councilman was charged and convicted, and sentenced
2 to just under five years in jail. Of course, he was
3 stripped of his public office as well, and the
4 scheme was stopped.

5 And that was the case that we did with the
6 FBI, because often DOI will work with in a
7 collaborative way with other law enforcement
8 agencies, and that was the case, it was prosecuted
9 in the Eastern District, US attorney's office.

10 So, that was a public official, a city
11 public official case where there was a parcel of
12 city land at issue, and a developer who came
13 forward because he knew the DOI would be able to
14 help him and help with the situation, which of
15 course is exactly what they did. I could probably
16 give you a few more examples.

17 Q. [30] Let's talk about your powers, investigative
18 powers, maybe that could help us understand also.
19 Do you have the power to wiretap? You just talked
20 about a wiretap, a...

21 A. Well, the ability to engage in a wiretap is not one
22 that DOI can do unilaterally, no. I didn't mean to
23 suggest that. A wiretap has to be the result of
24 Court process. So, the US attorney's office in that
25 particular case would have applied to the Court

1 with the requisite cause being shown for that
2 particular wiretap, and wiretaps are subject to and
3 guided by very vigorous laws and regulations that
4 the prosecutor has to follow, in conjunction with
5 and working with the investigative agencies by way
6 of showing the Court what kinds of criminal
7 activity is taking place using a particular
8 telephone.

9 So, we work on wiretaps but we don't have
10 the ability to just engage in the wiretap
11 unilaterally, we have to go through the same Court
12 process, of course.

13 Q. [31] But you could ask for them, I mean, go through
14 the process, but you're able to ask, as an
15 investigative agency, you are able to ask for the
16 too?

17 A. Correct. But in addition, the reference that I made
18 to a wire was that the developer wore an undercover
19 wire device and interacted with the individuals who
20 were the suspects in the case. That is something
21 that DOI can do unilaterally, and did quite often,
22 both consensually recorded telephone calls to
23 individuals under investigation, and also wearing
24 either audio or audio/video wire equipment to
25 capture evidence in undercover scenarios.

1 (09:55:46)

2 LA PRÉSIDENTE :

3 Q. [32] Tell me, I didn't get, do you have among your
4 team, or did you had among you team, police
5 officers?

6 A. There is a squad of NYPD detectives assigned to the
7 Department of investigation. They are approximately
8 fifteen (15) to twenty (20) people. There is an
9 inspector, several deputy inspectors and a dozen
10 (12) or so NYPD detectives who are detailed to DOI.
11 The same is true of our district attorney's
12 offices, the NYPD details detectives to the
13 district attorney's offices. The purpose of those
14 details is to help our respective offices with
15 investigation.

16 And so, yes, there is a squad of NYPD
17 detectives at DOI, as I said, it ranges between
18 fifteen (15) and twenty (20) people at any given
19 time. They're part of the two hundred and fifty
20 (250) to three hundred (300) or so personnel at the
21 department, but they are members of the NYPD, they
22 work for the NYPD, but they are on assignment to
23 DOI, to assist DOI with cases.

24 The other investigators, the other two
25 hundred and fifty (250) plus investigators all work

1 for DOI, they're DOI employees, they report
2 directly to the DOI commissioner with no second or
3 dual report or responsibility.

4 Me SONIA LeBEL :

5 Q. [33] Okay. How does it work for the NYPD that are
6 detailed to the DOI? Do they report under the
7 authority of the commissioner for the work for the
8 DOI?

9 A. Yes. They're situated physically at DOI, so they
10 have a place right at DOI, that's where they report
11 every single day on a full time basis. And they
12 work with the other investigators and inspectors
13 general within the department. They are, as I said,
14 on detail to DOI, and work on our cases, and work
15 with our colleagues, but they are members of the
16 NYPD and have their own reports back to the NYPD as
17 well.

18 Q. [34] Okay. Why... was it always the case, that DOI
19 had investigators or police officers detailed to
20 its... under its authority?

21 A. Two separate questions. DOI has always had
22 investigators and has always had, you know, the
23 inspectors general and the other personnel that I
24 mentioned. The DOI has always had an NYPD squad,
25 going back as far as I know. That has been the

1 tradition for decades. I don't know exactly when it
2 started that NYPD had a detail assigned to it, but
3 it goes back a long, long way, meaning many
4 decades.

5 But DOI is, in and of itself, if you take
6 out the NYPD squad, is a separate mayoral agency
7 within city government, with hundreds of employees
8 of its own, and it is supplemented by the skills
9 and the access to data and so forth that those NYPD
10 detectives have and they're terrific and they're
11 called upon to work on some serious cases, on
12 undercover cases, executing search warrants and
13 other details like that.

14 Q. [35] Do you find that important that while they're
15 detailed to the DOI that they answer under the
16 authority of the Commissioner?

17 A. I can't imagine DOI without that NYPD's squad,
18 certainly, as it relates to the people who were
19 there during my tenure, they were absolutely
20 tremendous and I just enjoyed working with them so
21 tremendously and, but they are in addition to the
22 main corpus of DOI.

23 So, great people all, great auditors, great
24 investigators, great analysts, computer forensic
25 folks and investigators of every variety

1 supplemented by the squad. And they all just work
2 together hand in hand and do a tremendously
3 valuable job but the point being that ninety
4 percent (90%) of the department reports directly to
5 the commissioner, DOI Commissioner, and they are
6 employees of DOI and that group, at the NYPD squad,
7 are full time present at DOI, full time working
8 with DOI, adding value but they are absolutely
9 members of the NYPD and they are sent to DOI as
10 part of that detail by the Police Commissioner and,
11 so, they have that dual status, as it were.

12 Q. [36] And it's a plus-value, like you said, the DOI
13 can draw from that pool of experience and knowledge
14 that could be critical to your work.

15 A. Absolutely. So during the course of investigations,
16 there may be databases or information that was
17 obtainable from the NYPD's vast databases and so
18 the access to the NYPD through the squad for
19 investigative information about people, places,
20 data that they have in their records was absolutely
21 invaluable and another big plus to having them
22 there.

23 Q. [37] Okay. Let's talk about the DOI's investigative
24 powers per se. I mean, you have the power, you have
25 the right to examine, copy, seize any documents

1 prepared or update, held by any city entity.

2 Explain to us what are your powers and how does it
3 work on a day-to-day basis.

4 A. Well, on a day-to-day basis, the DOI is probably
5 out in the field, going into city departments,
6 talking to people, examining records. The DOI has
7 the power to look at city databases that it has
8 access to. It has the power to take files and
9 records from departments. DOI has the power to go
10 into city offices and to meet, to talk to people
11 and, so, it has access to physical premises, paper,
12 documents, files and to city databases and that's
13 without subpoena. That is just part of the
14 heartland of the power the DOI has and it's also
15 one of the advantages that DOI doesn't have to
16 issue subpoenas for that kind of city records and
17 for that kind of city property.

18 What's the benefit to that? The benefit to
19 that is that when we're conducting an
20 investigation, if you have to overtly issue a
21 subpoena, than somebody is going to know perhaps
22 what you're doing and what you're looking at. DOI
23 can remain covert, as it were, for a longer period
24 of time by virtue of that access that it has to
25 city materials.

1 Q. [38] So, if I'm a city employee, you could come
2 into my office anytime and look at my documents
3 that are property of the city?

4 A. There are probably some limitations under the law.
5 We can't go through personal matters and personal
6 items and there might be some materials in your
7 desk that are personal so I don't want to overstate
8 it because there are some limitations.

9 Q. [39] No, but anything that is work related?

10 A. Anything that is city property, however, is subject
11 to access by DOI.

12 (10:03:16)

13 LA PRÉSIDENTE :

14 Q. [40] So I understand that you may go without delay?

15 A. Without delay?

16 Q. [41] Without giving them any delay?

17 A. Yes, theoretically, we could come in without
18 announcement.

19 Me SONIA LeBEL:

20 Q. [42] Prior notice.

21 A. Without an announcement.

22 LA PRÉSIDENTE :

23 Q. [43] But, practically, do you give them a delay or
24 not?

25 Me SONIA LeBEL :

1 Q. [44] A notice.

2 A. It depends on the circumstances. It would be, we
3 had scenarios with both. It could be that we need
4 to speak to, maybe not the subject of the
5 investigation but somebody else, maybe an assistant
6 commissioner, maybe the HR director "Could you give
7 us these files?" or someone who is a point of
8 contact, maybe in the General Counsel's office. So
9 it may be that there are conversations where we are
10 obtaining files from departments without just going
11 in and taking it but upon request from various
12 officials who were there to facilitate our needs.

13 LA PRÉSIDENTE :

14 Q. [45] And do I also understand that you don't need,
15 since you're not, your goal is not necessarily to
16 prosecute, you don't need a judicial authorization
17 before?

18 A. Well, our goal may in fact be to prosecute, you
19 know, again, it depends on the facts. With respect
20 to whether or not we need a search warrant is what
21 you're, I'm sure, referring to, the answer is that
22 in some circumstances we may need a search warrant
23 and prosecutors sometimes feel more comfortable
24 getting a search warrant, even for obtaining
25 documents from a city office. So, as I've

1 mentioned, there may be some limited circumstances
2 where DOI should and has gotten a search warrant to
3 look at maybe a notebook or look in the drawers,
4 the desk drawers of an employee because there might
5 be some expectations of privacy that the law would
6 recognize with respect to some of that material and
7 so, where there's a mix of private and an
8 expectation of privacy, the cases recognize that
9 sometimes search warrants are necessary but there
10 are other circumstances where materials, city
11 materials, city files, city computers, city
12 databases, are not subject to search warrant and
13 DOI may look at them, may take them, may examine
14 them without a search warrant.

15 Q. [46] And what would be the basis to get a search
16 warrant, the motive?

17 A. Well, we, for example, did a case many years ago
18 involving some city employees and this is a matter
19 of public record, at the finance department who
20 were engaging in criminal activity through their
21 jobs as tax assessors, and DOI, working with the
22 U.S. Attorney's Office, and I believe the FBI,
23 obtained search warrants at the end of that case of
24 city offices to make sure that all of the relevant
25 material was collected for examination. And so

1 there, the prosecutor went to court and got search
2 warrant or search warrants in that case just to
3 make sure that all of the relevant evidence was
4 obtained from the desks and books and papers of the
5 individuals who were being arrested.

6 10:06:32

7 Me SONIA LeBEL :

8 Q. [47] So I understand you have, from what you said,
9 I understand that you have, as an investigative
10 department, the ability to apply for a search
11 warrant if needed to. Are the employees aware of
12 the fact that city property, I mean DOI, could go
13 in the office and examine city property. Are
14 they... What... How are they informed of that fact
15 when they get to get a job at the city of New York?

16 A. Yes, they do know that and they know it in a
17 variety of ways. There is, first of all,
18 information that comes on the computer every day
19 and should be in all offices that says « you do not
20 have an expectation of privacy. The city computer
21 that you're about to work on is city property and
22 it is subject to inspection...

23 Q. [48] So be aware of that.

24 A. ... So be aware of that. » In addition, I believe
25 that most employees are informed about their rights

1 and their obligations and about DOI when they are
2 hired and they are given paperwork that discusses
3 the rights and obligations and they're made aware
4 of what DOI is and what DOI does. And then, DOI
5 does corruption prevention lecture in all city
6 agencies and that's a programme that we started
7 methodically in two thousand and two (2002) and it
8 grew over the years to five or six hundred (500-
9 600) lectures each year being done by the
10 investigators and inspector's general at DOI in
11 every single city agency, both providing literature
12 to people and verbally explaining to people what
13 their rights and obligations are. So one of the
14 things that, you know, I definitely tried to do,
15 was to saturate what we're talking about in terms
16 of the information about DOI as much as possible.

17 DOI has a very robust website which was
18 developed over the years and it's excellent.
19 Employees' rights and obligations are on the
20 website, there's an ethics' quiz on the website.
21 All press releases about arrests are on the
22 website. City employees also get access to the
23 Conflict of Interest Board opinions and learn about
24 what happened with fellow employees. So there's all
25 kinds of ways that employees are notified and get

1 the message about their rights and their
2 obligations and the do's and the don't's and the
3 Conflict of Interest Board also does prevention and
4 awareness lectures as well.

5 Q. [49] O.K. So what are the employees' obligation
6 regarding questioning by the DOI? Are they
7 obligated to answer any questions that DOI ask?

8 A. Yes, DOI may ask or interview city employees...

9 Q. [50] Without subpoena like you said.

10 A. ... without subpoena, may ask them questions about
11 their city related procedures, what they might have
12 been doing in connection with any given matter as
13 long as it is job related, city related, the DOI
14 can ask questions of city employees.

15 Q. [51] What is the consequence for an employee to
16 refuse to answer the DOI on any, on a matter that
17 they should answer?

18 A. Well, I mean, you know, that's a little complicated
19 and there are a lot of different scenarios. There's
20 a fifth amendment privilege against answering
21 questions that one feels may incriminate them and
22 that is absolutely something that a city employee
23 may do. A city employee may, on the other hand,
24 answer the questions and then DOI is free to
25 evaluate that information from an evidentiary stand

1 point.

2 Q. [52] And what happens if he flags the fifth
3 amendment and doesn't want to answer because it
4 could incriminate him? Do you have any further
5 steps that you could take to get the answer from
6 that person?

7 A. Well, we... DOI could either rest on the person's
8 invocation of the fifth amendment and chose to do
9 nothing further as it relates to that particular
10 interview and go on with this investigation.
11 Alternatively, under some circumstances, city
12 employees or city vendors could be compelled to
13 answer the question and in compelling someone to
14 answer a question, they are receiving use immunity
15 DOI that is would confer use immunity on the
16 person...

17 Q. [53] Regarding the answer?

18 A. ... regarding the answer in connection with
19 compelling the answer.

20 Q. [54] That's why you have to chose the appropriate
21 tool to...

22 A. That's correct. This is strategy matter.

23 Q. [55] O.K. So that could lead to termination of the
24 contract of the city employee in a worst case
25 scenario, if a city employee refuses to answer and

1 doesn't invoke the fifth (5e) amendment, that could
2 lead to termination of his contract, isn't it?

3 A. Well, the...

4 Q. [56] That's kind of death penalty for an employee.

5 A. ... the bull refusal to answer questions may, you
6 know, may or may not, you know, result in those
7 sorts of consequences. The overall outcome of an
8 investigation, on the other hand, could result in
9 either loss of a contract, or loss of employment,
10 or loss of liberty if someone is arrested, or a
11 fine by the Conflict of Interest Board, or
12 disciplinary action by the department that the
13 employee works for.

14 LA PRÉSIDENTE :

15 Q. [57] That is if the person is compelled to answer
16 and still refuse to answer, even though immunity is
17 given to him?

18 A. I am not sure and would have to refrain from giving
19 you an absolute answer on that particular scenario,
20 that is where a city employee refuses to answer a
21 question; DOI compels the person, confers the use
22 of immunity but they still refuse to answer the
23 question nonetheless. It's something that I would
24 have to, back at the time, obviously, confer with
25 General council at DOI, and maybe even the

1 Corporation Council, the law department on, and so
2 far as what could be done under that kind of
3 circumstance. And that particular fact pattern and
4 instance of that doesn't come to mind.

5 Me SONIA LeBEL :

6 Q. [58] O.K. Could you talk to us about... I'm jumping
7 a little bit here, a bid rigging case, that... Do
8 you have any examples that you could give us, that
9 the DOI investigated, in bid rigging, that comes to
10 mind?

11 A. You know, there are all kinds of cases that
12 involved construction projects, that we did. We
13 have done cases that involve fraudulent WBE, WBE,
14 schemes, minority and business enterprise type
15 schemes, where construction companies were
16 pretending to have those measures in place, where
17 in fact, it was a scheme and phony. We had
18 construction cases where the construction company
19 and/or its sub-contractors were inflating the
20 invoices that were being put in to city government.
21 We had overtime schemes, where construction
22 companies were pretending that hours were worked
23 that were not worked. We had organized crime
24 presence on site over the course of time, where we
25 would have to expel, that sort of thing, trucks and

1 others that were not supposed to be on site. And we
2 had cases that involved shoddy material or sub-
3 standard material: that is material that was not
4 pursuing to the specifications in the city
5 contract, that was being used at the site to cut
6 corners, to cut costs.

7 So, yes, there's collusion, there's bid
8 rigging, there are inflated costs, there's
9 programmatic fraud like the MBE type of cases that
10 I talked about. We also are constantly vigilant and
11 have cases involving prevailing wage, not paying
12 the proper legally mandated prevailing wage to
13 workers at construction sites. So, I think that
14 pretty much covers the gamma of types of criminal
15 activity that we see on construction sites.

16 Q. [59] O.K. You just talked about the way DOI could
17 have a certain power over employees of the city;
18 what about the vendors or the contractors that have
19 a contract with the city? What are your
20 investigative powers regarding them?

21 A. Well, any vendor that has a contract with the city,
22 that has a contract with the city. There's a
23 provision in the city contract that says that the
24 contractor must cooperate with the Department Of
25 Investigation, when called upon to do so. And...

1 Q. [60] It's within the contract, built-in the
2 contract?

3 A. It's built-in to the contract. It's a contract
4 provision. And it's one that we triggered, when we
5 needed to, and did so with some regularity, when we
6 were investigating contractors and contracts that
7 were under way. And, to the extend that a
8 contractor might have said : « Well, we don't have
9 to cooperate with DOI. We don't have to give you
10 our books and records. We don't have to show you
11 whatever it is that relates to the contract that
12 DOI wants to see. »; we would cite and invoke the
13 cooperation clause in the contract, and inform them
14 that, indeed, they did have to cooperate with DOI
15 without a subpoena, and provide us with the city
16 books and records, the city related materials....

17 Q. [61] Without a subpoena?

18 A. ... that we wanted to see.

19 Q. [62] O.K. Is this described at length in the
20 provision, or are you just like mentioning that
21 they should collaborate with you? How does it work
22 in the contract, this provision?

23 A. The actual language: is that what you're asking me
24 about?

25 Q. [63] Yes. In general, yes.

1 A. I don't remember the actual language, but we call
2 it the « cooperation clause », the « must-cooperate
3 clause ». So it was quite clear...

4 Q. [64] What it meant.

5 A. ... that a company would have to cooperate with
6 DOI. It was quite clear.

7 Q. [65] O.K. What it meant. O.K. What is the
8 consequences if they still refuse to provide you
9 with the information that you asked under that
10 provision?

11 A. Again, I don't recall that ever happening. But we
12 would certainly do a number of things. We would get
13 with our city partners at the Mayor's office of
14 contract services; we would talk with the Agency
15 that has the contract. So, for example, the
16 Department of Transportation. An we would consult
17 with our Corporation Council's Office, which is our
18 law department.

19 So, we would tell the lawyers with the City
20 that there was non-compliance with the clause, we
21 would tell the central contract office that there
22 was non-compliance with this clause, and we would
23 tell the city agency that had the project that
24 there was non-compliance with the clause. And among
25 those three, you know, generally you would get what

1 you... they would then be in touch with the vendor.
2 The have their own ways of controlling the
3 situation and their own oversight of the situation,
4 respectively. And we would typically work with them
5 in unison to get what we needed.

6 I suppose, a less-case scenario would be we
7 could call a prosecutor and maybe get a search
8 warrant. Or we could issue our own subpoena if we
9 needed to. But typically, we didn't need to because
10 of the cooperation clause.

11 Q. [66] Do you remember if there was a penalty
12 provision for non-complying with the clause built
13 in the contract?

14 A. I don't remember, but obviously, taking it to its
15 most extreme, I suppose that non-compliance could
16 be termination of the contract. Now, that's not
17 easy when you're talking about a big contract.

18 Q. [67] There's consequences, but that could be...

19 A. Well, it's not easy when you're talking about a big
20 contract, because of the disruption to the flow of
21 goods and services. So, you know, a vendor that is
22 building a bridge or a vendor that is providing,
23 you know, daycare to an entire community, that
24 doesn't want to cooperate with us, it's not a
25 simple matter for DOI to say, "well, break the

1 contract", and then the bridge is only half built
2 or suddenly hundreds of children and families are
3 going to be out of daycare centres that they rely
4 upon.

5 So, these were not simple matters. Again,
6 there was a collaboration with the New York City
7 system, with the contract office, the law
8 department and the agency that had the contract, in
9 addition to DOI with its enforcement powers that
10 could really, I think, apply the necessary pressure
11 and action, and bring it to bear, and get what we
12 needed for the most part. And if we needed to
13 involve prosecutors, of course, and subpoenas, of
14 course, we would.

15 Q. [68] I've ask the question just to illustrate with
16 you that it's not always black and white, and you
17 could always wish to pull the plug on a contract,
18 if I may say so, but they are consequences and
19 balances to be taken into account when you act in
20 that type of matter?

21 A. Yes. I think that's right. I mean, you're asking me
22 for the most extreme case, but let me just add that
23 for the most part, among the requests that would be
24 made by DOI and the city agencies, these things
25 worked out, we got what we needed. You know,

1 problems were solved.

2 And you know, the goal was always to not
3 disrupt goods and services. If a company was
4 completely corrupt and was corrupting a contract,
5 we wouldn't hesitate to take the position that that
6 contract needs to be ended. But for the most part,
7 you know, a problem might have been containable, or
8 one that we could excise and continue to have the
9 goods and services take place in an interrupted
10 way.

11 It was always, I felt personally a great
12 deal of pressure when we had vendor cases or
13 contract cases exactly for that reason. We had
14 cases that involved, as I mentioned, it's a real
15 scenario, daycare and programmes for senior
16 citizens, and programmes for the disabled, you
17 know, the building of important water filtration
18 plants, and tunnels and bridges. And it's not so
19 easy to make the decision that well, we'll break
20 the contract, and now, you know, suddenly the City
21 will have to scramble for another vendor, and that
22 will cost the taxpayers money. And so, we worked...

23 Q. [69] Cost, delay...

24 A. ... we worked mightily behind the scenes to come up
25 with solutions to deal with the problem but keep

1 going with the project.

2 Q. [70] So, like you said, this is the worst-case
3 scenario, but DOI's goal is to work to find a
4 solution and to get the services going and the
5 contract being completed?

6 A. Absolutely. And that is also speaking to the
7 uniqueness of DOI. That is not something that other
8 law enforcement agencies do or can do, and that's
9 not a slight to them, it's just not what they do.
10 It is what DOI does, both investigate the
11 wrongdoing, but also works closely with the City to
12 make sure that our projects can go forward and that
13 goods and services to the people of New York were
14 as uninterrupted as possible.

15 Q. [71] We'll talk a little bit about the VENDEX
16 system, but the fact, not complying with the
17 provisions we just talked about could be a black
18 mark in the VENDEX system for the next contract,
19 couldn't it?

20 A. Well, I mean, certainly, if there were issues with
21 comply, with cooperation with the City, whether
22 that be DOI or the agency doing the contract, that
23 could come up in a performance evaluation review,
24 and those are going to be looked at the next time
25 that vendor comes through with a bid, sure.

1 Q. [72] Okay. Among the powers that you have, the DOI
2 may attend without prior notice all internal
3 meetings held by municipal entities. Could you
4 explain to me what is the purpose of that, what is
5 the use of that? To drop in on a meeting?

6 A. Yes. I don't know how many drop-ins there actually
7 were, but maybe a better example is that an
8 inspector general or a member of his or her squad
9 may go over to a department and go to the HR
10 department and say "I need the files of this, this
11 and this person and, please, may I take them now."
12 or over to the Housing Agency and may pull the
13 Section 8 files, Section 8 being a housing
14 programme, a federal housing programme administered
15 by the city so somebody, an inspector general from
16 DOI may go over and pull certain files, housing
17 files, from the Housing department and so they
18 probably don't call in all circumstances in advance
19 to say that they are going over to get those files
20 so that's probably the best example of a drop-in,
21 as you phrased it.

22 I don't know how many meetings in progress
23 they just drop in on, you know, maybe, but I think,
24 for the most part, that probably means that they
25 don't have to call and make an appointment to go

1 over...

2 Q. [73] Prior notice.

3 A. ... and get a file. And, also, the inspectors
4 general and their staffs, and every time I say
5 that, I mean the entire unit, they want to be
6 visible, you know, they want to be seen, they want
7 people at the departments that they oversee to know
8 them, to, you know, keep people alert that DOI has
9 a presence and, of course, that DOI is there for
10 employees to call if they want to call DOI "Oh!"
11 you know "I see Mr. so-and-so from time to time,
12 I'm going to call him because I think I have to
13 give him a tip or a complaint about something that
14 is going on." so the physical presence that you are
15 referring to is also, you know, to solidify the
16 relationship and the flow of information and to
17 create some deterrents and to make whistleblowers
18 comfortable that there is somebody to call.

19 Q. [74] Okay. What about you have power to comply
20 people to attend as witnesses? How does that work
21 basically? When you issue a subpoena, in front of
22 whom the witness are coming to testify? Who
23 examines them?

24 A. Well, it would be, in all likelihood, the scenario
25 is typically the person is asked to come down to

1 the DOI offices and would be met with two or three
2 perhaps DOI personnel, typically one of the
3 investigative attorneys. Many of the inspectors
4 general are attorneys themselves, by the way, and
5 so, typically, somebody would be met at DOI by an
6 investigative attorney and maybe one or two of the
7 investigators who are also working on the case.

8 Q. [75] Okay. What is, okay, what is the
9 commissioner's duty? I'm going to a more general
10 point then we'll come back in more details with
11 your powers a little later but what are the, in
12 general, the commissioner's duties?

13 A. Well, the commissioner is responsible for the
14 smooth performance of the department. The
15 commissioner is responsible for insuring that the
16 cases get opened that need to get opened, that
17 cases are moved along, that city departments are
18 apprised of the matters that were investigated, the
19 outcomes so that they can take the proper remedial
20 action. The commissioner testifies before the City
21 Council at least once, sometimes more than once,
22 for budgetary purposes each year and so the
23 commissioner is overall responsible for the
24 investigative activity of the department.

25 Q. [76] Does the DOI or the commissioner have the duty

1 to report to the public and give public record or
2 report of its actions?

3 A. Yes. The Department of Investigation does a
4 tremendous amount of reporting to the public for a
5 couple of reasons. One, we just want people to know
6 that there is a department within city government
7 that is overseeing the public taxpayers' money and
8 is there to call if someone is being asked for a
9 bribe and the like. We also want the public to know
10 about our case outcomes so that there is
11 deterrence, so that there is awareness, so that
12 more people will call us. So there's a tremendous
13 amount of information that is put out by the
14 department every week through press releases and
15 the continual update of the website.

16 The public testimony that the commissioner
17 gives on budget is really an overview of the
18 activity of the office for that time frame and, in
19 addition, I did an annual report at the end of the
20 fiscal year and at the end of the calendar year so
21 the end of June, at the end of December, we did a
22 compendium report of the activities for that
23 particular time period, wrapping it all up so that
24 people wouldn't have to look at individual press
25 releases to understand the data, all the arrests

1 that were done, all the cases that were closed, all
2 the remedial reforms that agencies were asked to
3 do, all the number of people who called us and
4 other indicators or measures of our productivity
5 were put out twice a year in those reports.

6 So my philosophy, when I got to DOI, was I
7 wanted to make the department visible, I wanted to
8 elevate the department because the people don't
9 know who we are, they're not going to call us and
10 if they don't know who we are, maybe they're not
11 going to be as fearful as they should be about
12 staying away from illegal activity.

13 Q. [77] Okay. Do you find that having people call you
14 is very important in your work, in the work of DOI?

15 A. I can't think of anything more important and we
16 really worked on that and increase by thousands
17 each year the number of people who are calling DOI
18 with tips or complaints. Now they may not all be
19 relevant to DOI, in which case we will refer them
20 to other departments but increasing the number of
21 people calling us meant that we were increasing the
22 visibility of the department and we had a greater
23 pool of people who were feeling comfortable about
24 calling us or who knew to call us or who knew that
25 they were obligated to call us and so, yes, that

1 flow of communication into the department was a
2 life blood of the agency.

3 Q. [78] And now the information is crucial to you
4 work, I guess?

5 A. Absolutely and from those tips and complaints, we
6 open up many many of the cases that we do.

7 Q. [79] O.K. Like we said a little earlier, DOI's
8 jurisdiction covers all municipal entities
9 including the city agencies but also the elected
10 officials of the city. So typically you get a good
11 thing of the mayor or councilman or any type of
12 elected official. So I imagine that the
13 independence of the DOI regarding the city of New
14 York or the mayor's office is really important,
15 isn't it?

16 A. Ugh, ugh.

17 Q. [80] Could we talk about that a little bit please?

18 A. DOI is an external agency, it's not part of any of
19 the agencies that we oversee, that you saw on the
20 hardboard chart so we are an external oversight
21 model. The DOI commissioner, as of nineteen eighty-
22 nine (1989) is on one hand appointed by the mayor
23 but on the other hand, must be confirmed by a vote
24 of the full city council after a hearing and during
25 that hearing, the council is free to ask questions

1 of the appointee about priorities background,
2 independence, et cetera. And so, that is one
3 indicia of the independence of the DOI commissioner
4 and it is unique to the DOI commissioner. The other
5 commissioners do not go through that city council
6 confirmation process.

7 The second indicia of independence that is
8 built in structurally to the office is that the
9 mayor may not summarily dismiss the DOI
10 commissioner. So if the mayor is perhaps unhappy
11 with a particular case, where it's going, the mayor
12 may not just lop off the head of the DOI
13 commissioner but rather, he or she would have to
14 file what are his significant reasons for wanting
15 to fire the DOI commissioner. He must put them in
16 writing and the DOI commissioner must have an
17 opportunity to respond. I didn't test that, that
18 didn't happen to me but I imagine that in New York,
19 that would be a big public hearing of what was
20 going on.

21 So those two provisions together, one that
22 the mayor has to have his selection approved by the
23 council and two that the mayor may not just
24 summarily dismiss the DOI commissioner are two
25 indicia of the independence of the office meaning

1 the people of New York didn't want the commissioner
2 of investigation to be a crony, they wanted the DOI
3 commissioner to be subject to the full vote of the
4 council members who represent the entire city and
5 they didn't want the DOI commissioner to just be
6 dismissed summarily and quietly by the mayor
7 including if there was some investigation going on
8 that might be making the mayor uncomfortable. And
9 so, those are two unique features to the DOI
10 commissioner.

11 Q. [81] You talked about nineteen eighty-nine (1989).
12 What was the situation prior to that date, that
13 year?

14 A. Prior to the charter revision commission of
15 nineteen eighty-nine (1989) which then enacted
16 those two features that I just talked about, the
17 DOI commissioner was a mayoral appointee like the
18 other commissioners and did not have those two
19 features and the...

20 Q. [82] And could be removed by the mayor without any
21 noise I would say?

22 A. Yes, and what happened was, in the late eighties
23 (80s), there were a series of corruption scandals
24 that touched a number of city departments and so
25 the late eighties (80s) was a time in New York city

1 government where, you know, almost every day in the
2 newspapers, we were seeing the next hit of scandals
3 that were rocking the city government at the time
4 and so some changes were made to address that
5 atmosphere.

6 Q. [83] Any particular event or just this atmosphere
7 that needed to strengthen again the (inaudible) of
8 the DOI commissioner?

9 A. Was there any particular scandal going on?

10 Q. [84] Yes, between the mayor and the commissioner of
11 the DOI at that time, not (inaudible).

12 A. No, no, I don't think that the problems were
13 between the mayor and DOI.

14 Q. [85] It was more like concerns?

15 A. The problems were in the city agencies.

16 Q. [86] O.K.

17 A. There were a number of city agencies that were
18 experiencing corruption like the Parking
19 Violations' Bureau and once, you know, some of
20 these scandals started to break, one right after
21 the other, a lot of people said why do we have so
22 much corruption in city government? What's going
23 on? Who do we have to address that and what are the
24 components of DOI? And so the other thing that
25 happened in nineteen eighty-six (1986), Mayor Ed

1 Koch signed an executive order pulling out what
2 were internal IGs in some city agencies, pulled
3 them out and put them under DOI. And so, in
4 addition to DOI, you had city agencies that had
5 their own investigative units headed by an
6 inspector general and this executive order that
7 Mayor Koch signed pulled those people and resources
8 out of those departments and put them under DOI, so
9 DOI grew in size as a result of that and so we no
10 longer had the internal separate inspectors'
11 general in the departments. Everybody went under
12 DOI with now one external investigative agency at
13 DOI.

14 Q. [87] Was that creating problems the fact that they
15 were independent from the DOI before nineteen
16 eighty-six (1986)?

17 A. Well, all I can tell you is that the system was
18 viewed by Mayor Koch to be part of the problem, not
19 the solution. And, so, while I don't have any
20 particulars, the structure of having an internal IG
21 meant that the Inspector General reported to the
22 Commissioner of that department where the problem
23 was occurring. The Commissioner, and maybe other
24 staff members, know what the docket was, perhaps of
25 the IG, the internal IG. The Commissioner could set

1 the budget and resources for that IG. So it was
2 just deemed to be better, to take it all out and
3 put it under DOI and have it be external. Why?
4 Impartial, objective, confidential if it's at DOI.

5 Q. [88] So they're still there? You still have
6 inspectors general in every agency, now?

7 A. DOI is a network of Inspectors General. And so,
8 there is someone at DOI who is the Inspector
9 General for all of the mayoral agencies. And those
10 are our units at DOI, the Inspector General Units
11 or squads, and they have the auditors, the lawyers,
12 the analysts, the forensic people, the computer-
13 forensic folks are all part of the system at DOI,
14 that has oversight of all the agencies on the org
15 chart that I provided you earlier.

16 Q. [89] O.K. Does every Inspector General has his own
17 team, or they draw from the pool of the DOI?

18 A. Every Inspector General has his or her own team of
19 dedicated staff members. But, in addition, there
20 are central units: central legal units, the
21 computer forensic unit is a central unit, and
22 there's a central audit unit. And so, a particular
23 squad may be handling most cases on their own, but
24 may need from time to time assistance from the
25 computer-forensic unit, from the legal unit, from

1 the audit unit. And then, folks from these units
2 will support and join particular cases or
3 particular tasks.

4 Q. [90] O.K. What powers to the Mayor and the
5 Municipal council hold over the DOI commissioner?
6 Are they allowed to ask you for special
7 investigations?

8 A. I wouldn't label that as a power. The Mayor and the
9 City council may ask DOI to conduct any
10 investigation that they deem necessary. DOI would
11 then do that, presumably, and would do it in the
12 same independent and confidential way that it
13 conducts all of its investigations.

14 Q. [91] O.K. So you talked about the independence
15 indicia that are built in the structure of the
16 commissioner, or the way the commissioner is
17 appointed or removed. But, on a day-to-day basis,
18 maybe not day-to-day, but... What is the
19 relationship between the mayor, the mayor office
20 and DOI? Do you have the duty to report? Do you
21 have the duty to inform? How does it work, about
22 the investigation that your are leading?

23 A. Well, in addition of the structural features that
24 are intended to build in independence that I talked
25 about earlier, I can speak to my ten (10) year...

1 Q. [92] Yes.

2 A. ... at DOI only. The DOI commissioner has a direct
3 report to the mayor, not to a deputy mayor, not to
4 a commissioner, because the DOI may be called upon
5 to investigate anybody through to including a
6 deputy mayor, a commissioner or anybody in a
7 particular agency. Indeed, the DOI commissioner may
8 be called upon to investigate the mayor as well.

9 But you asked about day-to-day. For the
10 most part, the DOI commissioner reports to the
11 mayor directly, so as to avoid having a subordinate
12 role to the others. Now, with respect to my
13 relationship, or the way Mayor Bloomberg and I
14 conducted ourselves, and this is, I think, being a
15 tried and true methodology; we had an arm's length
16 relationship. I didn't know the mayor before I took
17 the job. We discussed, in advance of my
18 appointment, that the department would be run in a
19 apolitical manner. He never asked me what my party
20 affiliation was. We never talked about it, because
21 it just didn't matter. So, I ran the department in
22 a apolitical manner. We opened up cases that needed
23 to be opened, regardless of who was involved,
24 without fear or favor. We went where the evidence
25 took us, and the chips were going to fall wherever

1 they may. And that's the way we handled it.

2 I didn't discuss investigations with the
3 mayor routinely, and would tell him, by way of a
4 phone call or a meeting, would tell him when
5 something significant was about to happen, like
6 we're about to arrest eight people from department
7 X, and, you know, you'll be asked about this at the
8 press conference, so here are the facts, things
9 like that. So, he wanted to know about significant
10 matters.

11 Q. [93] When (inaudible).

12 A. Certainly we had thousands of cases opened at any
13 given time, that we, you know, did not discuss. But
14 significant matters, so that he would not be blind-
15 sighted, I would call him about and tell him about,
16 in advance of that becoming something that was
17 public.

18 Q. [94] When it was imminent to be...

19 A. Yes. That's right.

20 LA PRÉSIDENTE :

21 Q. [95] How long in advance would you tell him?

22 A. Sometimes not long, because if there was a sealed
23 indictment, or other, you know, sealed search
24 warrants and the like, I would sometimes wait until
25 the night before or the morning of that unsealing

1 activity.

2 Me SONIA LeBEL :

3 Q. [96] Like you said, the purpose of that is not to
4 inform the mayor, as make him aware of what he
5 could be asked in a press conference, and not for
6 him to know what's going on in his own city, is
7 that it?

8 A. That's correct. The mayor has to manage. The mayor
9 has to manage the city, and if I'm about to... DOI
10 is about to, with the prosecutor's office, you
11 know, arrest, you know, all the members of a
12 particular unit, that unit, that department, that
13 commissioner is going to have to continue. And you
14 know, that is a process that's going to rock, you
15 know, an agency.

16 And so, we had a ranking official from one
17 of the Housing department get arrested a couple of
18 years ago, and I called that commissioner, and I
19 called the deputy mayor over that department, and I
20 called the mayor, because they were going to face
21 the press, not just the press, but they were also
22 going to have to face the people in that
23 department. What are we going to do? Someone just
24 got arrested, what's it about? All kinds of, you
25 know, concern and uncertainty, you know, could

1 happen.

2 And so, one had to both deliver the bad
3 news, but also help control the smooth flow of how
4 departments and the mayor would manage. And so, by
5 providing them with information about the facts,
6 when it was appropriate to do so, was very helpful
7 to them for purposes of managing through those
8 crises.

9 Q. [97] Okay. What was your position or the position
10 of the commissioner regarding press conferences of
11 DOI's activities? Would you attend some or would
12 you think the commissioner should attend some, like
13 the mayor does?

14 A. Well, the DOI commissioner, as DOI commissioner, I
15 attended press conferences, you know, with some
16 frequency, when we were announcing results of
17 cases. Many of those press conferences took place
18 at the prosecutor's office in conjunction with the
19 unsealing of an indictment. Some of them took place
20 at the offices of DOI.

21 So, the press conferences that I tended to
22 go to were the ones that were about the DOI outcome
23 activities. The mayor of the city of New York, I
24 think, does press practically every day, certainly
25 multiple times a week, and that's separate from

1 DOI.

2 We did very few joint press conferences
3 with the mayor. We did, in fact I think I only did
4 maybe two. One was the CityTime case that I just
5 talked about a few minutes ago, because of the
6 massive size of the fraud. In that case, the mayor
7 joined me and Preen Bharara, the US attorney at
8 that particular conference. Why? Because it should
9 be for the mayor to talk about, you know, what was
10 going to happen with this project. We certainly
11 could talk about the investigation. Mr. Bharara
12 could certainly talk about the criminal charges.
13 But the mayor, I think, felt that he had to discuss
14 the program overall, this is a citywide IT project
15 after all. And so, he attended that conference with
16 us.

17 And then, in the beginning of my tenure,
18 when DOI arrested, I think it was nineteen (19)
19 building inspectors, and I believe eighteen (18)
20 tax assessors, so that many employees from the
21 buildings department, and that many employees from
22 the finance department in a very brief period of
23 time. I believe that the mayor asked me to attend a
24 conference with him, with the Finance Commissioner
25 and with the Buildings Commissioner. And he was a

1 new mayor, and I believe he said basically, he has
2 zero tolerance for corruption, this is what's going
3 to happen, this is the commissioner who is going to
4 be addressing it, but these are the other two
5 commissioners of the department who now are going
6 to be remediating, and you know, inculcating better
7 systems, better internal controls and a better
8 culture. And so, he wanted, you know, it to be sort
9 of a holistic message, zero tolerance, we have an
10 enforcement department, but our other departments
11 are really going to try and, you know, best effort
12 possible, fix some of these situations going
13 forward.

14 Q. [98] Okay. As for the inspectors general, what are
15 their working relationship with the senior
16 management of all the agencies that they oversee?
17 Do they have the same type of relationship? Do they
18 have any obligations regarding the senior
19 management, to report or to inform them?

20 A. No. The inspectors general at DOI report to the DOI
21 commissioner solely and exclusively. There is no
22 dual report to the commissioner of the other
23 department.

24 Q. [99] That was the purpose of pulling them out of
25 the...

1 A. Yes, that's right. The inspectors general do not...
2 they're not supposed to talk about confidential
3 matters, confidential investigations with anybody
4 at the departments that they're overseeing. Let me
5 hasten to add that there may be in fact a need and
6 a utility to speaking to senior staff, maybe the
7 commissioner, maybe the general counsel, because it
8 may be that DOI needs to be in touch in order to be
9 addressing whatever the problem is. And so, it may
10 be the DOI would take senior staff into their
11 confidence in a purposeful way, and so that can
12 sometimes happen.

13 In addition, again, as you said, there's a
14 lot of gray, it's holistic. We want to have a good
15 relationship with the commissioners that we oversee
16 because we want them to call us, we want them to
17 feel comfortable calling us. When they have a
18 problem, we want them to think, "Hum, let me call
19 the inspector general", if it's appropriate, not
20 every problem needs us, but we want to develop a
21 comfortable relationship, a good working
22 relationship. It just can't cross over into being
23 too much of a palsy-walsy kind of a relationship.
24 It can't become too close, it can't become too
25 buddy-buddy and so an IG is not supposed to be, you

1 know, feeling too friendly with the commissioner of
2 the departments that he oversees, that he loses his
3 objectivity or her objectivity and so there's a
4 line that needs to be walked, it's that arm's
5 length line where, yes, certainly, there should be
6 discussions because, after all, that commissioner
7 has to run that large department with her many
8 problems, many complexities and we are there to
9 help. But, on the other hand, it can't cross the
10 line to being too close.

11 Q. [100] How do you balance the zero tolerance with
12 your discretion not to bring the matters to the
13 prosecutor... the prosecution?

14 A. How do we balance zero tolerance with what? I'm
15 sorry?

16 Q. [101] The zero tolerance with your discretion not
17 to bring the matters to the prosecutor.

18 A. Well, hum... as I said, if during the course of an
19 investigation we feel that the evidence that we
20 collected does not make out the elements of a crime
21 then, and it's very clear that it does not, then
22 we're likely not going to make a criminal referral.
23 We don't make criminal referrals under
24 circumstances where we do not feel that we have
25 made out the elements of a crime just for the sake

1 of a release that was not the practice, as far as I
2 know. But when we assemble evidence that indeed did
3 make out the elements of a crime in a material way,
4 typically, we would make that referral. Yes.

5 (10:48:39)

6 Me SONIA LeBEL:

7 Q. [102] Let's talk about, you just talked, we talked
8 about the complaint about the fact that the
9 information that was coming from employees, the
10 hotline, I would call it, the fact that you were
11 very present and made people at ease to come to
12 talk to the DOI is very important to you, this
13 information. What about protection of the
14 whistleblowers? Can we talk about that for a while?

15 A. Certainly. So early on in my tenure we opened up
16 the website to be able to receive complaints
17 online. We have a telephone hotline, we have the
18 corruption prevention lecture programme which
19 encourages people to come forward, city employees.
20 Now, many city employees are going to be afraid of
21 retaliation. "If I report the corruption to DOI and
22 something happens, I'm going to get into trouble,
23 they're going to be angry at me at my department."
24 And so, by law, in New York, there's a
25 Whistleblower Protection Statute that, in essence,

1 has as a framework the fact that if a whistleblower
2 feels that he or she was retaliated against for
3 reporting the wrongdoing to the DOI, DOI will open
4 up that retaliation as a separate case.

5 And if DOI finds that indeed there was some
6 adverse personnel action taken against the employee
7 that was the result of retaliation for the employee
8 coming forward to DOI about something, then the DOI
9 commissioner would inform the commissioner of that
10 employee, the retaliated against employee's
11 department, and would say reverse the adverse
12 personnel action, right the wrong that was done to
13 the whistleblower, in other words. And it would be
14 for the commissioner of that department to reverse
15 the adverse personnel action.

16 The Statute further says that if that
17 commissioner does not right the wrong, that the
18 mayor would then, I'm sorry, that the DOI
19 commissioner would then go to the mayor and would
20 inform the mayor, that the mayor has to direct the
21 commissioner to reverse the retaliation. So that's
22 the whistleblower protection.

23 When I got to DOI, whistleblower cases were
24 being done throughout the IGs, that was offices
25 that was absolutely fine, but I felt that

1 protecting whistleblowers was so important that I
2 centralized the investigation of whistleblower
3 cases under my General Counsel's Office and so the
4 General Counsel's Office certainly worked with the
5 IG offices in collecting the facts and so forth but
6 they were all brought under the auspices of the
7 General Counsel's Office because if I was going to
8 see a pattern of city agencies retaliating against
9 employees, that meant that I was going to be
10 pressing commissioners of departments to reverse
11 those circumstances and to inculcate a better
12 environment for whistleblowers to be able to come
13 forward and that meant that I was going to be
14 pressing commissioners of departments to reverse
15 those circumstances and to inculcate a better
16 environment for whistleblowers to be able to come
17 forward and those sort of circumstances might mean
18 that I'm talking to the mayor because that's what
19 the Statute talks about and so I wanted these cases
20 to be given a high degree of priority and
21 centralization for communication purposes and so I
22 put them under the General Counsel's Office.

23 And you know the fact is that with a city
24 as large as New York is, three hundred thousand
25 (300,000) employees, we actually didn't have that

1 many whistleblower retaliation findings as you may
2 think or even allegations. Why is that? Well, we
3 believed that it was because commissioners and
4 city... you know everybody from the commissioner on
5 down, I keep saying commissioners because that's
6 who I might be talking to, but most people knew in
7 city government that you can't retaliate against
8 someone who reports corruption to DOI because of
9 the whistleblower law and that, if you do
10 retaliate, you're going to be investigated by DOI
11 and that there are powerful outcomes if you're
12 found to have been in violation of that particular
13 protection.

14 Q. [103] But on the other hand, does the employee have
15 the obligation to report corruption if they see it?

16 A. Indeed.

17 Q. [104] So the whistleblower law is a quid pro quo to
18 that. I mean, you have the obligation to report but
19 we're still going to protect you if there's,
20 something happens to you if you do it?

21 A. We call it the carrot and the stick.

22 Q. [105] Yes.

23 A. The... The whistleblower law protected you when you
24 came forward if you felt you were retaliated
25 against but in New York, city employees who know of

1 corruption must report it to DOI. It's considered
2 to be part of your job to report corruption. You
3 can't just stick your head in the sand and say, « I
4 know everybody in my unit is taking bribes but you
5 know I'm not going to do anything about that. I'm
6 not going to report it. » And so, the city
7 government laws require city employees to come
8 forward when they know about corruption and if they
9 don't, they can be penalized for that through to
10 including termination as being the ultimate penalty
11 for that.

12 (10:54:25)

13 LA PRÉSIDENTE :

14 Q. [106] And though they did not participate to any of
15 it?

16 A. Correct.

17 Me SONIA LeBEL :

18 Q. [107] Just the fact to... the failure to report
19 could have consequences?

20 A. Yes.

21 Q. [108] Okay You think it's effective that type of
22 measure?

23 A. Very.

24 Q. [109] Very. When, how... I guess the employees are
25 well informed of that measure from the get going,

1 like you said, you have a preventive role, you give
2 lectures, of those the types of information that
3 are given in the lectures to the employees?

4 A. Absolutely, a central focus of the lectures.

5 Q. [110] Okay. You talked about the fact that you give
6 many lectures a year. Could you explain to us how
7 it works and what type of people get the lectures.
8 Well, the employees obviously, the contractors, do
9 they get to get lectures from the DOI? Explain to
10 us how it works and the advantages of that, please?

11 A. Again, the first slide that you saw was the city
12 org chart with all of the (inaudible) agencies
13 under it. We have inspector's general units that
14 are covering all those city agencies. It became the
15 responsibility for each unit to conduct corruption
16 prevention lectures in their departments, the
17 departments that they oversaw and so it was for
18 them to decide how to best manage how to do that,
19 whether it was getting a whole unit together from
20 department X or doing a lecture at the incoming
21 class of the department of corrections or
22 sanitation where you were going to have several
23 hundred people in the room. So they could do it
24 however, best they felt they could do it to cover
25 as many people as possible each year. It's a

1 sprawling city obviously, three hundred thousand
2 (300,000) employees, DOI is very outnumbered with
3 its three hundred (300) or so people. But, so we
4 look for smart ways to try and do these lectures to
5 as many people as possible including when they
6 might be convening as a group.

7 And so, it was up to them to do that and I
8 instituted comstep, which is a management tool that
9 was developed by the NYPD in the early nineties
10 (90s). A lot of city agencies developed comstep
11 programs and mine was certainly one of them where
12 each week, I would do a deep dive review of one IG
13 office at a time. The other IGs and executives
14 would come and the IG that was under review of one
15 IG office at a time. The other IGs and executives
16 would come and the IG that was under a constat that
17 day, under constat review that particular week
18 would have to, among other things, talk about their
19 opened cases, their closed cases, and would have to
20 report on how many lectures that they had done.

21 And so, I kept track of the number of
22 lectures. We took attendance, and so we were
23 tracking the numbers. And so, each week, I should
24 know, you know, where the numbers were, and I could
25 make sure that we were continuing to do a

1 sufficient and robust number of those lectures.

2 What was the tension, if you can call a
3 tension, it's really a resource tension. The same
4 folks who were doing the lectures also had to do
5 the investigations. And so, it was a question of
6 managing time and resources, of course. And we had
7 a couple of additional analysts who supported the
8 offices, but also conducting the lectures for an IG
9 office. So we had a couple of people who helped out
10 with the lectures, just to keep, you know, that
11 momentum going, but also giving some relief to the
12 IG offices that might be very very busy with opened
13 investigations.

14 Q. [111] I know my question is going to sound obvious,
15 what about those lectures and prevention? Would you
16 think it's effective, in fact?

17 A. Each time we did a lecture, I was told by the IGs
18 we always got a spike in calls, from the people in
19 that department. We do know that some of the most
20 significant cases that we did - one comes to mind
21 in particular, involving a New York State Assembly
22 women - came directly from tips from those
23 lectures. So yes, we saw the numbers go up in calls
24 to the department coming out of those lectures. And
25 then, overall, the number of tips and complaints to

1 the department during my ten (10) year, then the
2 lectures we started at, I think about two hundred
3 (200) in two thousand and two (2002), and by the
4 end of my ten (10) year, we were doing five to six
5 hundred (600) a year, we were receiving thousands
6 of additional calls each year at the department.
7 And so, is one source of the additional calls to
8 the department, the lectures, absolutely.

9 And then we had particular anecdotal
10 evidence that the lectures were effective. We did a
11 lecture at one of the Housing departments, and one
12 of the individuals who was sitting in the group at
13 that lecture than knew to come forward, and spoke
14 to the individual who had done that lecture. And
15 this is a matter of public record; that led us to a
16 case that ended up involving a New York State
17 Assembly woman who was shaking down someone by
18 offering to use her office to get something that he
19 wanted, a developer, in exchange for him building
20 her a house worth a half a million dollars
21 (\$0.5 M), and she didn't get the house. She went to
22 jail instead, because the developer ended up
23 cooperating with DOI, and we did a video/audio
24 undercover with that particular cooperating
25 individual. And the whole thing came from a tip at

1 a corruption lecture. A New York State Assembly
2 women went to jail, lost her position.

3 Q. [112] Okay. So it raises awareness of what type of
4 acts could be corruption, I guess...

5 A. Absolutely.

6 Q. [113] ... within the employees?.

7 A. Yes.

8 Q. [114] Are they mandatory for some type of... Are
9 they mandatory, those lectures...

10 A. Yes.

11 Q. [115] ... for the employees?

12 A. Yes.

13 Q. [116] Yes? Okay. Are they mandatory for the vendors
14 or contractors that contract with the city?

15 A. Yes. Great point. So, after we implemented this
16 program at the city agencies, which is the«
17 heartland of what we oversee, we increased and
18 radiated out from there, the programme to include
19 non-profit vendors, non-profit organizations that
20 were providing services through social programmes,
21 and vendors of the community. And I can tell you
22 that I personally conducted a lecture, so to speak,
23 before the Buildings Trade folks last year; I was
24 asked to come and speak to a group of individuals
25 from the Building Trades, and did so. And so, we

1 ended up reaching out to and doing lectures with
2 certain groups of vendors, as many as possible, and
3 all non-profit vendors, I believe, receive training
4 now every single year, which includes a DOI
5 component.

6 Q. [117] Okay. So if I want to apply for a contract or
7 submit for a contract with the city, I have to
8 first attend a lecture from the DOI?

9 A. It doesn't quite work like that.

10 Q. [118] Okay. How does it work on the...

11 A. Well, DOI would arrange to have a lecture be done
12 by certain groups of vendors, and we would often
13 work with the Mayor's Office of Contract services
14 to pull them together. And we would ask them to
15 come in for the training. It didn't happen as soon
16 as you got the contract.

17 Q. [119] Okay. But the goal is to make sure that
18 everybody gets the information?

19 A. That's right.

20 Q. [120] Okay. How do you build those lectures? I
21 mean, typically? I guess, they must be tailored for
22 a particular agency, but in general, how do you
23 build those lectures? How do you know what to say?

24 A. Well, what we certainly include is introducing
25 ourselves and the department to the group, to

1 telling them about the whistleblower protections,
2 to telling them about their obligation to report
3 corruption, to telling them what the particular
4 pitfalls are in their department. It is tailored,
5 you know, to the department, for the most part. And
6 telling people, you know, the top conflict of
7 interests violations to stay away from. And to
8 informing them about the hotline, the website, and
9 the quiz, and all the other outreaches to the
10 department of investigation that people could do.
11 There might be some talk about anecdotes from the
12 past, you know, past corruption situations at that
13 particular department.

14 Q. [121] So, of examples of past investigations...

15 A. Yes.

16 Q. [122] ... to highlight corruption or ethics, or
17 integrity problems?

18 A. That's right. And so, it's both training,
19 education, awareness, and you know, it's intended
20 to be informational.

21 Q. [123] Okay. What is the Policy and Procedure
22 Recommendation programme? What is that?

23 A. We call it the PPR programme. When DOI investigates
24 a case involving a city employee or a city process,
25 or a city programme, we may take certain actions

1 including referral for prosecution, referral to the
2 (inaudible) board, referrals for administrative
3 penalties of the individuals. But we may see, have
4 seen, during the investigation, the fact that there
5 were weak controls in place that allowed the
6 corruption, the fraud or the waste to happen.

7 And so, it was our goal as a city agency,
8 and again, this is not something that other law
9 enforcement agencies do, it's not their job to do.
10 As a city agency, we cared about that. We didn't
11 want to just move on to the next case, knowing that
12 we were leaving behind, you know, for example, one
13 person who had three different procedures that
14 should be broken into multiple... over multiple
15 people for checks and balance purposes. So, we
16 would want to stay behind with the agency and tell
17 them why the fraud happened, and give them our
18 suggestion or recommendation to add a close to
19 vulnerability gaps, and sort of clean up and
20 remediate the problem. And we were doing that,
21 obviously, and we were doing it verbally, and you
22 know, longevity had its benefits in terms of my
23 tenure at DOI.

24 A couple of years in to my tenure, I was
25 signing off on a number of arrests that were taking

1 place, that related to a particular type of fraud,
2 and I said to my colleagues, "Why are we seeing
3 this again? This is exactly like the same ten (10)
4 cases that we did last year and the ten (10) or
5 eleven (11) cases like this that we did the year
6 before. Didn't we tell the agencies involved here
7 how to fix this, so that these individuals couldn't
8 engage in this kind of a ripoff?" "Well, yes we
9 did, Commissioner. You know, I talked to Assistant
10 Commissioner so and so, but he then retired. Or I
11 spoke to so and so, but then he was transferred. Or
12 yes I did spoke to so and so, it didn't, you know,
13 take root, I guess."

14 And so, we were having these great verbal
15 conversations, but I decided that that wasn't
16 enough, that we needed to write up our
17 recommendations that emanated from these cases,
18 served those on the department and give the
19 department thirty (30) days to get back to us with
20 either an understanding that they would correct the
21 problem with our suggestion or with their own
22 suggestion, if they had a different suggestion as
23 to how to address the problem.

24 But I wanted these information points about
25 corruption vulnerabilities to be written down,

1 served on the department, and then tracked. And so,
2 we began to do that. I hired someone whose full
3 time job it was to track all of them, throughout
4 all the IG offices.

5 And again, to mention Compstat, that weekly
6 meeting that I held, one of the other indicators
7 that I probed on would be, "How are you doing with
8 your PPRs; how many have not been responded to by
9 your department?" You know, "Not all of them have
10 been responded to, or two are pending, but here's
11 why they're pending, they're working it out." Or
12 "This department is very late with, you know,
13 fifteen (15) of them." "Okay, then it's time to
14 turn up the attention, turn up the level of
15 attention and focus on the fact that that
16 department was falling behind in correcting
17 vulnerabilities."

18 So, we tracked this, and the only way to
19 track it was to first write them down, serve them
20 on the department and make sure that these great
21 verbal conversations weren't just going into the
22 air, with the great busyness of city government
23 being what it is, I didn't think that that was
24 effective enough.

25 And it turns out that formalizing the

1 policy and procedure recommendation programme was
2 the right thing to do, because I think by the end
3 of my tenure, something like three thousand (3000)
4 of these fixes throughout city government were
5 implemented.

6 Q. [124] And you were able to do a follow-up on them?

7 A. Well, by implemented, I mean...

8 Q. [125] By tracking...

9 A. That was, that includes the follow-up...

10 Q. [126] The follow-up. Okay.

11 A. ... that they were implementing.

12 Q. [127] Maybe one last question before the morning
13 break, if I may. We talked about the whistleblower
14 regarding city employees. What about regarding the
15 employee of a contractor that has a contract with
16 the City? If I'm working for a contractor that has
17 a contract with the City of New York and I notice
18 something within my company that could be
19 damageable or at least concerns the City of new
20 York in that contract in particular, if I come
21 forward to the DOI, am I protected also?

22 A. It's a fairly new provision in the law. I believe
23 it's about a year old. I think that that is a
24 expansion of the protection that happened last
25 year, approximately last year. And so, yes, there

1 is now a whistleblower protection under certain
2 circumstances for employees of City vendors.

3 Q. [128] Okay. Is that, to your knowledge, has that
4 been tested? Has that been effective also?

5 A. No, again, it was a fairly new provision toward the
6 end of my tenure, so I don't have a lot of data and
7 deliverables from that at the tip of my tongue.

8 Q. [129] Okay. Thank you. On pourrait peut-être
9 prendre la pause, Madame la Présidente.

10 UPON RECESS

11 UPON RESUMING

12 _____

13 (11:50:30)

14 THE CLERK:

15 You are under the same oath, Madam.

16 A. Yes, thank you.

17 THE CLERK:

18 Thank you.

19 Me SONIA LeBEL:

20 Q. [130] Okay. Maybe we could just briefly come back
21 to one point that we discussed before the break. We
22 were talking about the case of an employee invoking
23 the Fifth Amendment to a question that the DOI
24 addressed to him and when you triggered the
25 immunity, he still refused to answer, you said that

1 no example came to mind that one case happened but
2 you have an example to give, in fact.

3 A. Yes. I believe that your question had to do with...

4 Q. [131] What are the consequences?

5 A. What would happen if a city employee refused to
6 answer a question by invoking his Fifth Amendment
7 privilege under circumstances where DOI then
8 compelled the answer by conferring use immunity on
9 the employee and then the employee still refused to
10 answer the question, we did have a case involving
11 that scenario. It was a firefighter who continued
12 to refuse, even though he had been immunized and he
13 was terminated. There is an executive order that
14 permits the employee, that permits the city to
15 penalize the employee through to including
16 termination and, in that particular case, the
17 employee litigated the matter and the court upheld
18 the termination for his continued referral, his
19 continued refusal to answer the question, even
20 subsequent to having immunity conferred upon him.

21 Q. [132] Okay. Thank you.

22 A. Certainly.

23 Q. [133] So, I'm jumping again to another topic. Talk
24 to me about the gift policy of New York City. Is
25 that pretty severe, to your knowledge?

1 A. It is, yes. I mean, we have a Conflict of Interest
2 Board which is really a fantastic part of the
3 municipal integrity system in New York. There's a
4 rule that prohibits city employees from taking
5 gifts valued at fifty dollars (\$50) or more from
6 anyone who the employee knows is doing business
7 with the city. In addition, by taking a gift, a
8 city employee taking a gift, in addition to running
9 the risk of violating that conflict of interest
10 rule, may also find themselves under criminal
11 investigation because we have some penal law
12 provisions such as receiving an unlawful gratuity
13 and so you can have a scenario where an employee, a
14 city employee, takes something of value and runs
15 afoul of the city's conflict rules and may even be
16 arrested for taking that particular item, depending
17 on what it is and what the circumstances are.

18 So, every year, I think in the beginning of
19 December, around the holiday time, no less than the
20 mayor, the chairperson of the Conflict of Interest
21 Board and the DOI commissioner, at least this was
22 for the twelve (12) years that I was there, we
23 jointly wrote and signed a letter that went to
24 every single city employee in their pay cheque
25 reminding them that the holidays are coming up and

1 to be, just reminded that taking things from people
2 may be in the spirit of the season, but that there
3 were rules and the rules were laid out again,
4 everybody was reminded to be careful, particularly
5 at that time of the year. That's in addition to all
6 the other training that we already talked about.

7 Q. [134] Okay. Receiving a gratuity, I mean, just the
8 fact of receiving something and not having to give
9 back something in return, just the fact of
10 receiving something was an infraction to the code?

11 A. Are you talking about the penal law?

12 Q. [135] Yes, the penal law.

13 A. It would depend on the facts and circumstances.

14 Q. [136] Okay.

15 A. I mean, it's a case by case analysis, but receiving
16 an unlawful gratuity on the part of a city official
17 is... can be a crime.

18 Q. [137] It can be a crime.

19 LA PRÉSIDENTE :

20 Q. [138] Okay. Can you tell us what are the
21 circumstances in which somebody can accept a gift
22 under fifty dollars (\$50)?

23 A. Well, you know, the city prefers employees not, you
24 know, push the limit to the fifty dollars (\$50),
25 you know. The city generally takes the position

1 that accepting nothing is best and, quite famously,
2 there are a lot of employees who would even say, "I
3 don't even take a cup of coffee." Certainly, a cup
4 of coffee probably wouldn't be a problem, you know,
5 but it's better not to test that fifty dollar (\$50)
6 range by taking anything and, so common sense has
7 to apply, good judgement has to apply. But taking
8 things that are valued at, I guess your question is
9 getting a thirty (30) or forty dollars (\$40) or
10 forty-five dollars (\$45) is probably not a good
11 practice.

12 Me SONIA LeBEL:

13 Q. [139] But you don't have any example that comes to
14 mind that that would be acceptable in a case for a
15 public civil servant to accept such a gift, even if
16 it's under the fifty dollar (\$50) limit?

17 A. Well, I do because, from time to time, we literally
18 did have people saying, "Well, I go to meetings
19 with vendors and there's coffee and there's a plate
20 of donuts or whatever it is, a I allowed to take
21 one...

22 Q. [140] And it's free.

23 A. ... or do I refuse?" you know and that, I mean,
24 that sort of truly demenimous kind of situation is
25 fine. I think that Judge Charbonneau's question is

1 more, you know, are there scenarios where people
2 took things that are just under the fifty dollars
3 (\$50) more tangible than...

4 LA PRÉSIDENTE :

5 Q. [141] Even a lunch? Even a lunch from a contractor?

6 A. Yes.

7 Q. [142] In a municipal...

8 A. It can violate the rule.

9 Q. [143] Yes?

10 A. Absolutely, it can. Yes.

11 Q. [144] Okay. So...

12 A. Depending on the facts and circumstances, yes.

13 Q. [145] Do you have any written regulation...

14 A. Well, the written regulation is the rule. It's
15 codified in the conflict of interest rules and then
16 the Conflict of Interest Board issues advisory
17 opinions and they issue written opinions when they
18 adjudicate cases and so there is a plethora of
19 information produced in writing by the Conflict of
20 Interest Board that would give any employee so many
21 examples of where this became a problem that I
22 think that our city employees are really lucky to
23 have that kind of, you know, body of written
24 knowledge. To the extent that you and your
25 Commission are interest in a couple of examples,

1 I'll be happy to follow-up with the prosecutor and
2 provide you with a few.

3 Q. [146] Thank you.

4 Me SONIA LeBEL :

5 Q. [147] Thank you.

6 A. Sure.

7 Q. [148] Okay. Let's talk about the Mayor's Office of
8 Contract Services. What is that exactly, what you
9 call the MOCS, I guess, within the city?
10 A. Yes. I think that it is a terrific department that
11 is the central contracting office for all city
12 contracts. So what do we mean by that? Well, there
13 are dozens of city agencies. They can't all just go
14 ahead and do their own procedures and do their own
15 contracts. They all have to go through the Mayor's
16 Office of Contract Services in a central way. This
17 is to the benefit of the city being able to get
18 best prices because of course, we're one city going
19 through one agency. We want to be able to buy
20 things in bulk and get, you know, better deals for
21 the city taxpayer.

22 In addition, what this means is that the
23 contract terms are uniform so we don't have forty
24 (40) different agencies doing forty (40) different,
25 you know, documents, where maybe we're not

1 protecting ourselves, you know, in one place but,
2 you know, it's a good document and in another
3 place... So terms and conditions for contracts are
4 centralized. The Corporation Counsels' office law
5 department works very closely with the Mayor's
6 Office of Contract Services to make sure that the
7 city has the best provisions for itself and that
8 they're uniformed throughout all the departments
9 and then, of course, with that many contracts that
10 the city is doing, billions of dollars, we get, you
11 know, best and fair prices, you know, by
12 centralizing it, and then of course, just for data
13 and informational purposes, to be able to go to one
14 department MOCS and get information about a
15 contract rather than having to go to different
16 departments for that information, is tremendously
17 helpful.

18 Q. [149] And I guess that this department acquires
19 better knowledge because it's centralized on the
20 contractors or the business you're doing contracts
21 with, the city does contracts with?

22 A. Yes, that's right, and you know the other thing,
23 the benefit of having MOC is that MOC makes sure
24 that New York contracts are themselves being
25 lawfully implemented with the right kinds of

1 features that the law requires in New York.

2 Q. [150] They became the experts for contracting?

3 A. Absolutely, they're the experts. And they are the
4 repository of all the contract information.

5 Q. [151] Okay.

6 A. It's a very important department.

7 Q. [152] Okay. What about Vendex, the database that
8 they manage? What is that exactly?

9 A. The Vendex database?

10 Q. [153] Okay.

11 A. Is a database that contains, as you can expect,
12 information about our New York City contracts, the
13 size, the dollar amount, the type of contract
14 involved, the goods and services, the awardee, the
15 contractor. It really is all of the indicators and
16 information points that relate to all city
17 contracts in one database.

18 Q. [154] Okay. The database con... The information
19 that is in that Vendex database, how is it
20 gathered, how is it poured into the system? How do
21 you get the information?

22 A. Well, each vendor fills out a vendor questionnaire
23 form which is a lengthy form that calls for a wide
24 variety of information from each vendor, including
25 information about the company itself, the

1 principles, the affiliates of that company, the
2 finances of the company, past experience of other
3 contracts worked on, and there is an integrity
4 portion of the form as well and so, the form
5 contains a lot of questions that the city will take
6 in and put into the Vendex database and the
7 contract, the reputative awardee of a contract will
8 be vetted so to speak, using the information on
9 that form and then of course, the city does its own
10 checking for financial ware with all, past
11 performance and integrity.

12 Q. [155] Is there a limit for the con... is for every
13 contract or is it like a hundred thousand dollar
14 (\$100,000) limit I guess that you have to fill the
15 questionnaire or is it for every contract that you
16 seek with the city that you have to fill up that
17 questionnaire?

18 A. The questionnaire may have to be filled out by
19 every employee. The hundred thousand dollar
20 (\$100,000) threshold that you refer to I believe
21 has to do with when DOI has to do a vendor name
22 check on the regulative awarded meaning that DOI
23 has to do the integrity checks that it does for
24 contracts of a hundred thousand dollars (\$100,000)
25 and above.

1 For contracts below that, DOI is not called
2 upon to do its integrity checks on those vendors.
3 But your question was, do vendors who have, you
4 know, a seventy-five thousand dollar (\$75,000)
5 contract have to fill out that form? I'm not a
6 hundred per cent (100%) sure, but I think so.

7 Q. [156] Okay. What is the use of that information of
8 that database regarding awarding of contracts by
9 the agency?

10 A. By the agency...

11 Q. [157] Do they use that Vendex, do they use Vendex?
12 I

13 A. By the Agency?

14 Q. [158] Do you use that Vendex? They use Vendex? I
15 mean, if I apply; I'm a contractor applying and I'm
16 the lowest bidder, I guess, I mean, the Agency is
17 going to check my record in the Vendex database?
18 How do they use that information?

19 A. Well, the city will certainly check Vendex to see
20 if it's done any business with this vendor before.
21 It will look at, you know, performance evaluations,
22 to see if the vendor has done a good job. On the
23 other hand, it will look for cautions, to see if
24 the vendor has had any problems. So it certainly
25 becomes a repository of information for the city.

1 But it's also a central place, where all the
2 contract information resides, so that the city's
3 contract information is not with the department of
4 transportation, with the department of corrections,
5 and all over the place. It's centrally there for
6 everybody to draw upon, to know who we have
7 contracts with right now, in the universal sense,
8 and then, you know, to your point, you can look at
9 that database as you look to do contracts in the
10 future, because it's just a tremendous source of
11 information.

12 Q. [159] Then again, we're going to explore the grey
13 zone. But could it mean, at the outset, that the
14 contract could, would not be awarded, if I find
15 anything; I'm an Agency and I find anything of
16 great matter, of great concern in the Vendex
17 database, could I refuse to award the contract to
18 the lowest bidder?

19 A. Well, in many situations, the low bid, the contract
20 will go the lowest responsible bidder. But...

21 Q. [160] Responsible is very important.

22 A. Accent on responsible. By responsible, we mean that
23 the city agencies are permitted to do a vet for
24 responsibility. The city will look at the finances
25 of the company. If it's bankrupt in three states

1 and it's about to be bankrupt in New York, that
2 could be a problem. If it owes fines and taxes all
3 over the place, that could be a problem. If it's
4 been violated for safety reasons on many different
5 sites, that could be a problem. If it has a track
6 record of negative performance on similar types of
7 contracts, that could be a problem. If it has a
8 criminal or integrity problem, the CFOs under
9 indictment or, you know, the project manager was
10 convicted, or there is an open investigation that
11 relates to the company, that could be a problem.
12 Any one or all of these factors can result in the
13 city feeling that the contractor is not responsible
14 for this particular contract, at that particular
15 moment in time.

16 Q. [161] It could choose now to award the contract at
17 worst case?

18 A. And so there could be a non-responsibility finding
19 made against the company.

20 Q. [162] Is that what you call the vendor name check,
21 that DOI performs?

22 A. No, we call that VNC, vendor name check.

23 Q. [163] Okay.

24 A. The purpose of doing a vendor name check is to add
25 to the mix of information about whether or not the

1 vendor is a responsible vendor or is a non-
2 responsible vendor; that's the connection.

3 Q. [164] It's all for the same purpose?

4 A. Yes. It's all flowing to the same...

5 Q. [165] Okay.

6 A. ... outcome, which is the determination of whether
7 or not the putative of awarded is the, not just
8 lowest bidder, but the low and responsible bidder.

9 Q. [166] Okay. So what is a vendor name check exactly?
10 It's performed by the DOI?

11 A. So, the Vendex process I just described, it's a big
12 document that contains questions about finances,
13 past performance on contracts. The city wants to
14 know whether or not you have the wherewithal to
15 paint the Brooklyn Bridge, you know, or are you a
16 mom and papa operation, and there's no way that
17 you'll be able to do that, or you failed to
18 finished the job in three other cities, whatever it
19 might be.

20 So, the agency that is doing the contract
21 has to do a vet of you are as a company, whether
22 you have the capability of performing the company.
23 And they're also going to look at your finances, to
24 make sure that you're solid enough to be able to
25 finish this project for the city of New York.

1 There is a list of, or a sub-set of
2 questions in the Vendex form, which are considered
3 the integrity questions. And so, DOI get the
4 answers to those questions, and for every putative
5 awarded contractor. Then, we have a unit, had a
6 unit called the Vendex unit, that would then do
7 those checks, to see if our databases have anything
8 negative that relates to the company, the
9 principals of the company, or the affiliates. So
10 we're checking them in our databases. If we see
11 nothing, we send the response back into the central
12 Vendex system, that we have nothing. Or we have
13 something big or something small or something in
14 between to report back and discuss with the
15 department. So we do the vendor name check portion
16 of the larger Vendex process.

17 Q. [167] Okay. Typically, in one year, the city...

18 A. I keep saying « we »; I mean DOI.

19 Q. [168] Typically, in one year, New York City awards
20 many many contracts. Am I mistaken to think that
21 the number of contracts that are denied, performing
22 vetting or declaring a company the lowest bidder
23 not responsible, is very low?

24 A. Well, according to public records, eighteen (18)
25 companies were deemed non-responsible in twenty

1 eleven (2011). And twelve companies redeemed non-
2 responsible in twenty twelve (2012). When you
3 compare that to the thousands of contracts that the
4 City of New York does, I would say that that's a
5 low number. But is that the number of companies
6 that had issues? No, it is not. Because, in between
7 a company merging as the putative awarded and being
8 found non-responsible, one of the few found non-
9 responsible, are vendors with other issues. But the
10 other issues may be issues that are resolvable, so
11 you have some taxes, you have a fine, you have, you
12 know, something like that that is unpaid, get it
13 paid. Or other things that are curable or
14 addressable, and if cured, if addressed and
15 satisfied, then you remove that possible taint and
16 you can move forward with the process.

17 There are other circumstances where there
18 is a criminal case that pursuant to the scene, and
19 suddenly someone may be under investigation. And
20 we'll want to monitor, an IPSIG, an Independent
21 Private Inspector General to be hired to monitor
22 the project in real time and closely and be eyes
23 and ears for DOI.

24 And with the comfort level that we have a
25 monitor that's going to continue to monitor that

1 infrastructure project or that IT project, or the
2 bus service contract services, whatever it might
3 be, with a monitor everyone in the city feels that
4 the contract, that the vendor, event though it's
5 one with a problem, with that kind of close
6 scrutiny, can perform the contract with both
7 sufficient wherewithal and integrity to get the job
8 done.

9 And don't forget, we want to have as many
10 people in the bid pool as possible. That was a
11 policy that New York adopted, we want to have as
12 many people in the bid pool as possible, so we
13 allow anybody to bid who wishes to bid on a
14 contract.

15 Q. [169] So, you don't debar per say, you don't put
16 anybody on a black list and prevent them to bid?

17 A. There's no debarment in the city per say. It's case
18 by case.

19 (12:10:30)

20 LA PRÉSIDENTE :

21 Q. [170] Even though they have not paid their taxes?

22 A. There's no debarment, even if you have not paid
23 your taxes, you can still bid on a contract. That's
24 going to come out during the vetting process, and
25 you know, you might have a problem being awarded

1 the contract, but you can still bid, there's no
2 debarment.

3 And you know, the policy behind that is
4 that the city wants to have as many people in the
5 bid pool as possible, and as I said, there are some
6 problems the companies have that are addressable,
7 and then they can continue to do the contract once
8 they have addressed whatever those issues might be.
9 There are some problems that are absolutely not
10 addressable. You know, usually those are serious
11 criminal, you know, problems in nature.

12 But short of that, there might be problems
13 that a company has had, where with a monitor we
14 could all feel comfortable that the contract can go
15 forward with that particular vendor, as long as the
16 monitor continues to be satisfied, that the vendor
17 is not engaging in illegal activity, is not
18 permitting illegal activity to take place on the
19 contract, and is billing the City properly, is not
20 engaging in any overbilling. That kind of scrutiny,
21 day-to-day, can give the City a lot of comfort in
22 allowing a vendor to go forward with a contract,
23 where it's important to be able to do.

24 Now, we might put a monitor on a contract
25 in the middle of the contract. So, for example, the

1 contract for the city's street lights came under
2 scrutiny years ago, as the result of a criminal
3 investigation. And we monitored those contracts in
4 the middle of the term of the contract until the
5 end of those contracts, because we couldn't just
6 turn the lights out in New York City.

7 So, we needed to take the steps that we
8 needed to take to address the problems, there were
9 some people who were removed. But we brought a
10 monitor in to make sure that the kind of criminal
11 activity that was under investigation, and this is
12 a matter of public record, that was under
13 investigation did not continue to play out for the
14 duration of the contract.

15 So, that's the kind of thing that a monitor
16 can do. And of course, the company pays for that
17 monitoring, so it's not coming from the City tax
18 dollars. If the company has a problem and if the
19 company wants to continue to do the contract, and
20 if the City really needs that vendor to stay in
21 place to avoid disruption of services or to avoid
22 the building... something that we're in the middle
23 of building, then the vendor takes on the
24 obligation of the monitor and agrees to pay the
25 bill of the monitor, but it's DOI who the monitor

1 reports to. And so, they really are under our
2 umbrella, and they service our eyes and ears.

3 Me SONIA LeBEL :

4 Q. [171] Okay. If at the... when you bid and you're
5 the lowest bidder, if at the vetting point of the
6 process you find a problem that would require a
7 monitor, I understand how you... the dialogue is
8 with the contractor or the business, because you
9 say, if you don't agree with the monitor, you don't
10 get the contract, basically. But how does it work
11 in the middle of the contract? How do you impose a
12 monitor on a contractor, in the middle of the
13 contract?

14 A. Well...

15 Q. [172] Is there a provision in the contract that
16 says that if there's a problem, you could go to
17 that...

18 A. Well, yes. I mean, if some problem erupts, you
19 know, on the vendor's side in the middle of a
20 contract, the City, you know, absolutely can
21 analyse all of its rights to terminate the contract
22 on integrity grounds or on, you know, for other
23 performance-related reasons. So, occasionally, you
24 know, I don't want to make it seem as if this
25 happens a lot, but occasionally problems do come up

1 with vendors mid-contract. And the City absolutely,
2 you know, in conjunction with the law department,
3 would with vendors mid-contract and the city,
4 absolutely, in conjunction with the law department,
5 would be able to assess all of its potential
6 routes, including terminating the contract. And so
7 that's when DOI will be called in to assess the
8 gravity of the problem, determine whether or not
9 the contract can go forward with a monitor.

10 Those conversations are also, of course,
11 being held with the agency that has the contract
12 and with the representatives of the company and,
13 usually, their attorneys. And so what I'm saying is
14 that there are scenarios where all parties agreed,
15 mid-contract, that rather than break the contract,
16 which the vendor often doesn't want to do, the City
17 sometimes feels it can't do because it's in the
18 middle of something, that with a monitor, everybody
19 can feel comfortable that the contract can proceed
20 with that particular vendor, even though the vendor
21 is experiencing an issue.

22 Q. [173] Okay. The monitor that, those are called
23 IPSIG, Independent Private Sector Inspector
24 General, is that it?

25 A. Yes.

1 Q. [174] They come from the private sector in fact?

2 A. Uh, huh.

3 Q. [175] Okay. Why is that? Why aren't they in house?

4 A. Well, DOI doesn't necessarily have the resources to
5 dispatch, you know, the number of people who might
6 be necessary to focus on just one contract. We have
7 to continue to oversee all of city government and I
8 showed you the org chart before. So these are
9 projects that require an immediate and sometimes
10 significant deployment of resources that just do
11 not exist at the department of investigation and so
12 that's why we hire the folks who have the same
13 kinds of skills that we do in the private sector.

14 So, for example, firms that have forensic
15 auditors, engineers, former prosecutors, former
16 detectives, law enforcement officials, former
17 environmental officials, whatever the case may be.
18 So subject matter experts and people who have law
19 enforcement and investigative expertise as a mix
20 form some of the firms or the kinds of skills that
21 are out there in the private sector in various
22 firms, Toby Thatcher's firm being one of them, Mr.
23 Thatcher will be testifying this afternoon, who, we
24 know, can handle that kind of an assignment and can
25 report back to us with skill and make sure that

1 things continue to run smoothly.

2 Q. [176] So it allows you to target the particular
3 expertise that you need in the problem that may
4 arise in the vetting.

5 A. That's correct.

6 Q. [177] Okay. You said, and that's very important,
7 that when a monitor is imposed, I would say imposed
8 because you tell the company, I mean, you either
9 get a monitor or you don't get the contract, that's
10 the way to do business with the city, when it's
11 imposed on a company for a particular contract,
12 they pay the bill.

13 A. Yes.

14 Q. [178] That's very important.

15 A. That's correct.

16 Q. [179] Okay. But DOI has the authority over the
17 monitor.

18 A. Correct.

19 Q. [180] Is there another way to use those monitors to
20 oversee bigger projects maybe and that the city
21 pays or DOI pays for the bill?

22 A. There are a couple of circumstances where the City
23 of New York decided to monitor certain projects and
24 pay for the monitorship itself, meaning not impose
25 it on the contractors. The first one that I'm

1 familiar with had to do with the clean-up of the
2 World Trade Center Ground Zero subsequent to the
3 September eleven (11) attacks. I became
4 commissioner in the beginning of two thousand and
5 two (2002) and, literally down the block from DOI,
6 was Ground Zero which was still quite literally
7 smoldering with the flames coming out, the debris
8 was a multistorey situation and I think you might
9 have a slide that shows this.

10 Q. [181] Yes. Est-ce qu'on peut montrer la dernier...

11 A. And so the sixteen (16) or so acres of Ground Zero
12 was divided into four quadrants for purposes of the
13 clean-up with the construction manager being
14 assigned, four construction managers being assigned
15 to each of the quadrants respectively and then each
16 construction managers, of course, had many, many
17 other subcontractors working for them on their
18 particular quadrant.

19 Mayor Giuliani, I'm told, wanted to avoid
20 fraud, waste and corruption under those sorts of
21 emergency circumstances. Some of these contractors
22 were working without a contract because the mayor
23 and the city just wanted the clean-up to commence
24 immediately and so many, many people under chaotic
25 circumstances, without contracts, the city, I think

1 wisely, decided, "We don't want to have insult
2 added to this injury and so we want to make sure
3 that when we're billed for these services, that it
4 was accurate billing." So, again, nobody had done
5 anything wrong per se.

6 Q. [182] It was preventive.

7 A. It was preventive and, so four monitors were
8 brought in to oversee the work of the four
9 construction management firms and that was an
10 example, that disaster recovery example of a
11 circumstance where uniquely the city pay the bill
12 for the monitors. There was a second...

13 Q. [183] In... Just... If I just may... In that
14 particular case, do you know if it was really
15 effective in preventing any criminal activities or
16 if the presence of the monitors was effective in
17 fact?

18 A. It was. The monitors had a physical presence at the
19 site so they were tracking the number of employees
20 going on the site, the number of cranes, the amount
21 of equipment, all of which would end up in the
22 billing and so they had a physical presence on the
23 site and they had an audit responsibility and we
24 were able to compare what was done with what we
25 were being billed as a city and as a matter of

1 public record and (inaudible), one of the DA's
2 offices in an unrelated organized crime case,
3 indicated that one of the organized crime figures
4 apparently was complaining about the scrutiny of
5 the monitors at Ground Zero in the sense that he
6 was saying we can't get away with the same kind of
7 schemes that we would normally get away with at a
8 site and at a situation like this. So we consider
9 that music to our ears and a real success marker
10 for the monitors.

11 Q. [184] Thank you. If we go back just a little bit, I
12 mean, we talked about private firms. How are they
13 selected, how DOI chooses which firm they're going
14 to do business with? We talked about targeting
15 expertise, but in the more general sense, how do
16 you select those firms?

17 A. Under non-emergency circumstances is the answer.
18 DOI maintains a list of monitors who are ready to
19 go on literally the drop of a phone call. So, we
20 take solicita... We do solicitations periodically.
21 One can apply, a firm can apply to become a monitor
22 whenever they wish. There is a form that has to be
23 filled out by the firm. This information is located
24 on DOI's website as is the form. The forms are sent
25 in, were sent in to the General Counsel's Office

1 and reviewed. Interviews would be done of the
2 monitor firm and the subject matter expertise is
3 what we were requiring to be described and if a
4 firm demonstrated that it had subject matter
5 expertise and investigative expertise in
6 environmental work, in IT work, in construction
7 work or in other kinds of services, then that firm
8 would be put on the list that was maintained for
9 potential monitors. And then when a problem happens
10 with, you know, a construction contract or a
11 situation like this, at the ready, there was a list
12 of firms.

13 Q. [185] So you go to the list.

14 A. So you didn't have to scramble at that point to try
15 and think of, you know, who can we call? You go to
16 the list at the ready and then we would take bids
17 from a number of the firms on the list for each
18 engagement. We would ask them to give us a bid as
19 to how they would handle this monitorship, they
20 would write up their proposal and write up their
21 price and then a team would engage in the selection
22 of the firm that we felt had the best expertise at
23 the best price.

24 Q. [186] Is that overseen by the DOI or by the...

25 A. Yes, absolutely.

1 Q. [187] Okay.

2 (12:23:12)

3 LA PRÉSIDENTE :

4 Q. [188] So do I understand that you don't have a
5 black list but you have an excellency list?

6 A. We have a monitor list, but we do not have a
7 department list, that's correct.

8 Me SONIA LeBEL :

9 Q. [189] Okay. So you were about to give another
10 example of a monitor, on the oversee of a project,
11 and how the particular problem...

12 A. Right. Yes. So I guess because my experience early
13 on was informed by the oversight of the Ground Zero
14 monitors. A couple of years later, the City of New
15 York was putting shovels in the ground on a brand
16 new water filtration project that was going to be a
17 very, very expensive upwards of, you know, billion
18 dollar project. So a lot of money was going to be
19 spent on this project which was going to involve
20 removing a golf course in one of our boroughs,
21 building a very sophisticated water filtration
22 plant underneath the golf course and then putting
23 the park back. So lots of money, complexity, and
24 this was all pursuant to a judicial consent decree.
25 So there were milestones and time deadlines that

1 were being imposed from a court with penalties for
2 non-compliance with those penalties and deadlines.
3 So a real mix of potential corruption opportunities
4 and vulnerabilities, and I just decided that,
5 rather than, you know, waiting for there to be
6 indictments coming from this project, potentially,
7 and waiting for there to be fraud ways and abuse
8 potentially, that with the World Trade Center
9 experience in mind, even though it's not obviously
10 the same sort of circumstance, the proactivity of
11 having a large, you know, billion dollar operation
12 monitored is what came to mind for me.

13 And so, I asked the City to set aside some
14 money for a monitor to be put on this project,
15 which would help move it along. It would help with
16 the Court deadlines, and just provide the City with
17 a tremendous amount of information about how it was
18 going, and including, you know, because we were
19 answerable to the public, the media and the Court.
20 And so, that's what we did. The City agreed that it
21 would be a wise expenditure of a relatively small
22 amount of money to watch over this very large
23 project. And so we put a monitor in place for that.
24 Same thing: physical presence at the site. They
25 kept trucks out that were not supposed to be there,

1 that had illegal ties. They scrutinized invoices
2 and they, in fact, uncovered some illegal activity
3 that blossomed into some criminal referrals, and
4 related to a number of things that involved safety.
5 And so, we think that it was a wise use of
6 proactive resources, and it was quite successful.

7 Q. [190] Okay. So, typically, the use of a monitor or
8 NIPSIG, first of all comes up when there's the
9 problem at the vetting process, for one contract in
10 particular, and, in the examples you gave, when you
11 think that the size of the project could be
12 potentially problematic and bring some problem, you
13 choose to have it monitored and that's the City who
14 pays. Is that it?

15 A. That's right. That's right.

16 Q. [191] Why does the City does not choose... I
17 understand that the City has chosen not to do it on
18 a regular basis, or to have a monitor on every type
19 of project. I know the Port authority who uses a
20 monitor more frequently. Why does the City choose
21 not to do it, like, that frequently?

22 A. Well, it's a resource issue. I mean, you know, so
23 to put a monitor on every project would cost the
24 company, you know, whatever the price of the
25 monitorship is. And so, the City doesn't do that,

1 just for flexibly and automatically in every single
2 case. The City, you know, felt that because there
3 was a cost to the monitorship, that there would
4 really need to be a good cause for imposing a
5 monitor on a company, or there would really need to
6 be good cause for the City to give money for a
7 monitor, as it chose to at the World Trade Center.
8 So it really is a cost and a resource issue.

9 Q. [192] Okay. Would you say, typically, well, how
10 many monitors a year you would say that are used by
11 DOI, in both cases?

12 A. Well, the proactive version was a handful, you
13 know, as I mentioned. With respect to cases that
14 had a monitors over the years, you know, it
15 averages, you know, maybe somewhere between eight
16 and twelve (12) contracts were being monitored at
17 any given time.

18 Q. [193] And the goal is always to permit the City to
19 do its business? And that's why you chose not to
20 debar, to pull the trigger on the contracts, and
21 still find a way to be able to go through the
22 services.

23 A. That's exactly right.

24 Q. [194] Okay. We talked about the fact that you
25 served as a Commissioner until two thousand and

1 thirteen (2013), which is last year. What are you
2 doing, right now?

3 A. Well, I am doing a couple of things. The first is
4 that I am a principal at Bloomberg Associates, in
5 charge of the municipal integrity practice. I mean,
6 Bloomberg Associates is a venture that was formed
7 this year by Mayor Bloomberg. It's a philanthropic
8 venture wherein he took a number of his
9 commissioners, pulled them together with a number
10 of other managers, and we are giving philanthropic
11 advise and guidance to cities on the same kinds of
12 urban issues that we face and dealt with in New
13 York City. And so, we're engaging with other U.S.
14 and international mayors from around the world, who
15 would like to hear from Bloomberg Associates'
16 experts how to tackle a transportation problem, a
17 social service problem, a municipal integrity or
18 transparency problem, et caetera. There are eight
19 different disciplines.

20 And so, in the main, I'm working at
21 Bloomberg Associates and I'm working with a number
22 of cities, including Mexico City, which is just
23 making tremendous strides as it relates to
24 transparency, which we're very pleased about.

25 And I'm also the chairperson of the

1 Campaign Finance Board in the City of New York,
2 which is the agency in New York City that provides
3 transparency and integrity in City elections and is
4 considered the model in the country for bringing
5 fairness and equality as much as possible to City
6 elections and accountability and auditing to City
7 elections. So, I'm very proud, I'm pleased to be
8 chair of the CFP as of this year, and I'm learning
9 the nitty-gritty of that department.

10 Q. [195] Thank you. Ça complète les questions que
11 j'avais, Madame la Présidente, pour madame Gill
12 Hearn. Je sais que ma collègue avait quelques
13 questions à lui poser. Si on peut permettre de le
14 faire, ça pourrait permettre de libérer madame, qui
15 a un avion. Merci.

16 LA GREFFIÈRE :
17 Est-ce que vous déposez...

18 Me SONIA LeBEL :
19 Oui, je vais vous demander de déposer le PowerPoint
20 sous la cote 214, vous allez m'aider.

21 LA GREFFIÈRE :
22 214P-2131.

23 Me SONIA LeBEL :
24 2131.

25 LA GREFFIÈRE :

1 La présentation de madame.

2 Me SONIA LeBEL :

3 Voilà.

4 (12:30:37)

5

6 214P-2131 : Présentation faite par le témoin Rose
7 Gill Hearn

8

9 Me SONIA LeBEL :

10 Je vous ai mentionné, Madame la Présidente, qu'il y
11 aura d'autres documents qui seront déposés sous la
12 cote de madame Gill Hearn, qui vont nous aider, la
13 Commission, à avoir un peu plus de détail sur la
14 façon dont le Department of Investigation
15 travaille, ce sera fait dans un moment ultérieur,
16 si vous permettez.

17 LA PRÉSIDENTE :

18 Q. [196] Another party will interrogate you.

19 A. Yes.

20 CONTRE-INTERROGÉE PAR Me MARIE MELISSA CHARLES :

21 Madame la Présidente, Monsieur le Commissaire,
22 bonjour.

23 Q. [197] My name is Melissa Charles and I am
24 representing ACQ, which is Québec Construction
25 Association. My question regarding... well, in

1 fact, one topic, which is the whistleblowing law
2 that you were talking about earlier in your
3 testimony.

4 A. Yes.

5 Q. [198] So, I have a few questions, I won't be long.
6 In fact, well, actually, I have two questions for
7 you. My first question is, I understand that all
8 employees have the obligation to report corruption
9 to the commissioner, and you explained the process,
10 how to report it. Can you tell us what are the
11 sanctions when the employee does not report it?

12 A. Well, if the employee is... if it's determined and
13 established that an employee failed to report
14 material corruption, serious corruption
15 intentionally, that employee can be disciplined,
16 meaning fined or even terminated.

17 Q. [199] That's it? There's nothing else, like
18 sanctions, like fees to pay and...

19 A. Yes. Fees to pay is a potential outcome. That's
20 what I meant by fines.

21 Q. [200] Okay. Can you tell us what is about... how
22 much it could be, the fines?

23 A. It would depend on the seriousness of the
24 circumstance, so you know, there's a range of
25 outcomes that could be imposed.

1 Q. [201] Okay. Okay. Thank you, I understand. And I
2 understand that the whistleblowing law has a
3 purpose, and the purpose is insure the protection
4 of the whistleblowers when they report corruption?
5 Is that correct?

6 A. Yes.

7 Q. [202] Okay. How can you insure that protection if
8 they may face sanctions when they not provide you
9 with the requested information?

10 A. I'm not following.

11 Q. [203] Okay. I want to know what is... how do you
12 insure that the protection, the protection of the
13 whistleblower law, how do you insure that you
14 provide the protection to the whistleblowers when
15 they decide to not report corruption?

16 LA PRÉSIDENTE :

17 A whistleblower, then, I don't understand either
18 your question.

19 Me MARIE MELISSA CHARLES :

20 Q. [204] Well, I mean, how do you deal...

21 LA PRÉSIDENTE :

22 If they don't whistleblow...

23 Me MARIE MELISSA CHARLES :

24 Q. [205] How do you deal with the protection and...
25 the protection and sanctions? Because, the purpose

1 of the law is to protect the whistleblowing... the
2 whistleblowers, but they may face sanctions if they
3 don't report it. So, how do you insure that
4 protection to them?

5 A. Well, again, I'm not seeing the connection between
6 the two that you're making, but maybe I'll just say
7 this and perhaps this is responsive and helpful to
8 you, I hope.

9 Q. [206] Okay, go ahead.

10 A. So, City employees have an affirmative obligation
11 to report corruption that they know about. If they
12 decide to just stick their head in the sand and not
13 do that, and it's established that they refused or
14 chose not to report corruption, then they can be
15 sanctioned, even terminated.

16 On the other hand, a whistleblower who
17 comes forward and reports the corruption, if he or
18 she is then retaliated against, they can tell us
19 that they're retaliated against and DOI will
20 investigate the alleged retaliation. If we
21 establish that the employee was retaliated against,
22 then we step in and we take action vis-à-vis the
23 department that engaged in the retaliatory
24 behaviour.

25 Q. [207] Okay.

1 A. So, those are the two circumstances.

2 Q. [208] Okay. Okay, I understand. Okay, I have no
3 further questions, Your Honour. Thank you.

4 LA PRÉSIDENTE :

5 Q. [209] Thank you very much, Madam Hearn. Your
6 testimony has been more than helpful.

7 A. Thank you.

8 Q. [210] Thank you very much.

9 A. Pleasure.

10 UPON RECESS

11 _____

1 UPON RESUMING

2 (14:04:38)

3 Me SONIA LeBEL:

4 Could you stand up please, Mr. Thacher, we are
5 going to swear you in.

6

7 IN THE YEAR TWO THOUSAND FOURTEEN (2014), this
8 seventh (7th) day of October,

9

10 PERSONALLY CAME AND APPEARED:

11

12 THOMAS D. THACHER II, CEO of Thacher Associates LLC

13

14 WHOM, having made a solemn declaration, doth depose
15 and say as follows:

16

17 LA PRÉSIDENTE :

18 Welcome, Mr. Thacher.

19

20 EXAMINED BY Me SONIA LeBEL:

21 Q. [211] So, good afternoon, Mr. Thacher. Could you
22 just tell us a little bit more about your current
23 occupation, please?

24 A. Certainly. Thacher Associates is a fifty-five-
25 person (55) firm that is comprised of attorneys,

1 forensic auditors, forensic engineers,
2 investigators, loss prevention specialists and
3 analysts who manage a database on the construction
4 industry. We are... we specialize in providing
5 three services to public agencies and to those
6 working in the construction industry. We conduct
7 construction industry investigations and audits.
8 Secondly, we design monitoring and compliance
9 programs for agencies and for construction
10 companies and owners. And finally, we provide
11 integrity monitoring services to public and private
12 agencies and owners, and firms who manage and
13 procure construction goods and services.

14 Q. [212] So that is your current occupation. You're
15 called as a witness this afternoon to talk to us
16 about particularly three initiatives that relate
17 more to our mandate, starting in nineteen eighty-
18 five (1985). Could you tell us what led to that
19 before nineteen eighty-five (1985)? What were you
20 doing? What was your profession...

21 A. Sure.

22 Q. [213] ... occupation before nineteen eighty-five
23 (1985)?

24 A. Prior to nineteen eighty-five (1985), I...
25 following graduation from the law school I served

1 as a law clerk to a... Honourable Hugh R. Jones who
2 was a... one of seven judges on New York State's
3 highest Appellate Court. And then, I went to the
4 Manhattan District Attorney's office as an
5 assistant district attorney. Then, I joined a firm
6 doing corporate litigation. And in nineteen eighty-
7 four (1984), desiring to return to public service,
8 I took an appointment as an assistant deputy
9 attorney general for New York State organised crime
10 task force.

11 Q. [214] Okay. Could you please describe to me and
12 identify the three initiatives that we are talking
13 about, that... one of the started in nineteen
14 eighty-five (1985) and we are going... you are
15 going have to testify in length to help us with our
16 mandate.

17 A. Of course. The three initiatives are, one... the
18 first one was from nineteen eighty-five (1985) to
19 nineteen ninety (1990); the second initiative, from
20 nineteen ninety (1990) to nineteen ninety-six
21 (1996), and the third, from nineteen ninety-six
22 (1996) to the present.

23 Q. [215] So...

24 A. Now, the first one in eighty-five (85) to ninety
25 (90), I served as the executive director of the

1 Construction Industry Strike Force. This was a
2 hundred-person (100) strike force that had two
3 mandates. On the one hand, it was conduct a massive
4 prosecutorial assault on corruption and
5 racketeering in New York City's construction
6 industry. On the other hand, it was to undertake a
7 study of why is this industry so corrupted, so
8 vulnerable to corruption, and racketeering, and
9 what can we do to address that and reduce to amount
10 of corruption and racketeering affecting our public
11 and private construction industries.

12 That... that appointment ended in nineteen
13 ninety (1990) when we delivered a report to the
14 governor which made a detailed assessment of the
15 state of the industry and made recommendations as
16 to how to address the problems noted in the
17 detailed assessment.

18 Q. [216] So, we'll get into that. What about nineteen
19 ninety (1990)? What did you do after that?

20 A. Nineteen ninety (1990), the report that was
21 released in nineteen ninety (1990) was in the same
22 year that there was created a public agency called
23 the New York City School Construction Authority. It
24 was given one billion dollars (\$1 G) a year to
25 rebuild the entire New York City infrastructure for

1 over five years. At that point, I was asked to put
2 the ideas that were in this report that was
3 released in nineteen ninety (1990) into the
4 operations of this billion-dollar (\$1 G) a year
5 public works program. And that... so, that's what I
6 did form nineteen ninety-six (1996) as the vice-
7 president and inspector general of the New York
8 City School Construction Authority. That was a
9 fifty-person (50) office. It was comprised of
10 attorneys, investigators, forensic engineers,
11 forensic auditors, loss prevention specialists and
12 analysts, a familiar theme to what I've been doing
13 for the last eighteen (18), twenty (20) years,
14 thirty (30) years. All these disciplines are
15 critical to attacking and controlling and
16 addressing corruption and racketeering in the
17 construction industry.

18 Q. [217] So what about nineteen ninety-six (1996)?

19 A. In nineteen ninety-six (1996), I conferred with
20 Thacher Associates, to take the ideas that had been
21 proposed in the original report that we had
22 implemented into the School construction authority
23 inspector general programme, and to make those
24 available to public agencies, in and far remove
25 from New York City, as well as private sector

1 owners and operators in the construction industry,
2 and to develop new strategies for assuring
3 integrity and compliance in the construction
4 industry operations. And we've been doing that
5 since, over the last eighteen (18) years, since
6 nineteen ninety-six (1996).

7 Q. [218] O.K. So let's go back in time. Nineteen
8 eighty-five (1985). Let's look at the Construction
9 Industry Strike Force for a moment. What was the
10 mandate that you had, back then?

11 A. In nineteen eighty-five (1985), New York City was
12 gripped by revelation after revelation of the mob
13 corruption racketeers, controlling our industry.
14 There was, in eighty-four (84) and eighty-five
15 (85), a series of indictments handed down by the
16 then United States Attorney, Rudolph Giuliani, in
17 which he detailed the degree to which organized
18 crime controlled industries, unions, politicians;
19 it was a very frightening scene, that was laid out
20 in these indictments.

21 At the same time, the media put enormous
22 focus on mob control of this industry. In June of
23 nineteen eighty-five (1985), the three dailies in
24 New York City - the New York Post, the New York
25 Times, the New York Daily News - all called for

1 Governor Cuomo - Mario Cuomo, the father of the
2 present Governor, Andrew Cuomo - then Governor
3 Mario Cuomo to appoint a special prosecutor to
4 eradicate the mob's control of the construction
5 industry. And, at that point, the Governor Cuomo
6 wrote to the mayor, and I quote a letter that he
7 wrote:

8 We must break the back of corruption
9 in the city's massive construction
10 industry. Price fixing, job extortion,
11 kick-backs and organized crime,
12 infiltration and control of legitimate
13 businesses can not and will not be
14 tolerated in the great city of the
15 greatest state of America.

16 That was the letter from the Governor to the mayor,
17 in June of nineteen eighty-five (1985).

18 So what did the Governor do, being called
19 upon to appoint a special prosecutor? He didn't
20 quite do that, because that model, he noted, had
21 failed. Too often, when there is an enormous crime
22 problem, governments response is to create a
23 special prosecutor and put resources into that
24 special prosecutor, without taking advantage of the
25 other resources that already are in place.

1 An example that I can cite is in, back in
2 the seventies, in New York City, there was a major
3 police corruption scandal. And the reaction of then
4 Governor Rockefeller, was to appoint a special
5 prosecutor that would eradicate police corruption.
6 Instead of marshaling existing resources and
7 knowledge into that fight, it actually
8 fractionalized it. New York City has five district
9 attorneys. Each one of those was suddenly divested
10 and pushed out of the business of going after
11 police corruption. They all took the position well
12 if you're the special prosecutor, you do it on your
13 own, because they had no jurisdiction anymore. As a
14 result, it minimized and reduced the focus on it.

15 Governor Cuomo, called on to create a
16 special prosecutor, created the Construction
17 Industry Strike Force, and he gave that strike
18 force, without any need for legislation, one of the
19 brilliant is that we don't need legislator
20 responses to generate the solutions. What he did is
21 he took two of the best offices focused on
22 corruption and racketeering.

23 Q. [219] Already existing, I guess?

24 A. Pardon me?

25 Q. [220] Offices that already existed?

1 A. They already existed. The Manhattan district
2 attorney's office and there, one of the most
3 prominent prosecutors and his era, Robert
4 Morgenthau, and the New York State Organized Crime
5 Task Force. And he gave them millions of dollars
6 and he said : « Use that to hire investigators,
7 engineers, law prosecutors and analysts, and detail
8 them into the strike force. ». So this new strike
9 force had the powers and jurisdiction of both of
10 those offices, without any legislation, just a lot
11 more resources. Then I became the first executive
12 director of that strike force.

13 The strike force's mandate was to go and
14 launch investigations and prosecutions. And that we
15 did. We had massive amounts of investigations, we'd
16 be running wire taps, undercover construction
17 companies, managing informants. We made a number of
18 cases in the construction industry, significant
19 cases. But the more important and useful, and I
20 think significant, and long-lasting contribution of
21 that strike force came in the second mandate that
22 the governor gave us. I remember being... I didn't
23 know him that well before hand, and I remember
24 being so impressed, sitting in his office. And he
25 said : « Toby, we can never prosecute this problem

1 away. Prosecutions are after the fact solutions.
2 They don't solve the problem. I want to know why is
3 this industry so corrupt? What is it that makes it
4 so vulnerable to corruption and racketeering? And I
5 want to know what we can do, through non-law
6 enforcement strategies, to address this problem.
7 Because law enforcement alone, although it's
8 terribly important, will not solve the problem. And
9 so, the strike force went forward on two different
10 tracks simultaneously.

11 One: investigations and prosecutions and
12 simultaneously, an analytic exercise to discover
13 what, to discuss and discover and analyze why is
14 this industry so corrupt and what can we do about
15 it.

16 Q. [221] So could you tell me about the methodology
17 that was used for this phase, the analytical phase
18 of the mandate you had?

19 A. Certainly. We recognized that this wasn't a law
20 enforcement exercise, the analytic, the analysis of
21 what the problems are and so we brought, for the
22 five years that we spent working on this project,
23 we brought together a group of analysts and
24 researchers and studies the whole history of the
25 construction industry back going, not just in New

1 York but going and determining has this been a
2 problem in construction generally and then, so as
3 to determine why, we brought in academicians, we
4 brought in people who were involved in the
5 industry. We brought in regulators, we brought in
6 prosecutors, we brought in analysts. We had the
7 Cornell School of Labour Economics, we had a group
8 of students who were Masters' Degree students, who
9 came and developed road papers with the information
10 that we were developing, that got incorporated into
11 our study, we had the Columbia history department,
12 detailed students from their history department,
13 Masters' Degree students. They contributed.

14 And then we would have sessions where these
15 were private confidential sessions and we would
16 call into a room in the New York City Bar
17 Association and say that we would have all of these
18 different players and stakeholders in the industry,
19 whether they be company owners, regulators and
20 prosecutors, and lawyers representing union
21 officials, union members and we would say, okay,
22 after we've had a dissertation on, we've divided
23 the industry in corruption, racketeering, in a
24 number of different areas, one of them, say, was
25 labour racketeering. So we would go through a

1 dissertation of how labour racketeering we see it
2 operating in New York City and then turned to each
3 member of the group and I would say, Commissioner
4 Lachance, your governor Cuomo, or your mayor Koch,
5 and you can do anything you want, there are no
6 fiscal constraints. Do not say that I couldn't
7 afford it. There are no political constraints.
8 Don't say the unions wouldn't let me or the
9 Democrats wouldn't let me or the Republicans.
10 There're no constraints. There's only one
11 constraint; the reforms you recommend and that you
12 can put in place have to make the industry better
13 because I can stop corruption in any institution,
14 any industry by putting controls in it but I will
15 at the same time, can kill that industry or that
16 organization. If you put so many controls on it,
17 you can kill the ability of that organization to
18 deliver the goods or services that it's in the
19 business of doing whether it be a public agency or
20 private. So there must be effective controls that
21 are business oriented and not just punishment and
22 crime oriented.

23 And so we went around the room and people
24 would make recommendations for labour racketeering
25 reform or we had a session on fraud in public

1 instruction or on private cartelisation on certain
2 industries and bid rigging and so forth. This we
3 did for the five years and drawing on the insights
4 that came out of these sessions that we had and all
5 the research and all the analysis, we presented a
6 report to the governor that was published that same
7 year by NYU Press in nineteen ninety (1990) and
8 that is, this report, Madame la Présidente, I'm
9 very honored you have it. That's, and it's
10 Corruption and Racketeering in the New York City
11 Construction Industry.

12 Q. [222] Talk to us a bit about the report. How is it
13 divided and what does it talk about?

14 A. As I described earlier, the... it was really
15 divided as a two different parts. The first part
16 analyzed the whole history of corruption. We found
17 a report from a state legislative hearing in
18 nineteen twenty (1920) that described the state of
19 construction in the building, and I think it was
20 the Tweed Courthouse I think that this may have
21 been talked about by commissioner Gill Hearn...

22 Q. [223] Yes.

23 A. ... and it described what was going on and if you
24 didn't know the date that it was written, you'd
25 think it was written in nineteen eighty-five (1985)

1 when we were doing the research. The problems of
2 the vulnerability of the construction industry have
3 created a systemic vulnerability that is exploited
4 again and again everywhere. So we found, we studied
5 the history and documented the many, many, many
6 cases and the entire first chapter of our book
7 details pages and pages of showing how all of these
8 different criminal enterprises operated and how
9 they fed on the industry and what they had done to
10 decimate the industry.

11 One of the ironies that we must point out,
12 New York City construction industry, we like to
13 think is one of the best in the world. We have, if
14 you look at some of the buildings that have gone
15 up, and the magnificent public and private
16 buildings, it's extraordinary. The problem is that
17 it is grossly overpriced because of this corruption
18 and racketeering. There is a massive mob tax, a
19 massive corruption tax on every single building.
20 The cost always get passed onto the public whether
21 be in taxes or in rents but every time that there
22 is a bid rigging and the price goes up or that
23 there is some substitution of material, all of
24 these contribute to the cost to the owner, the
25 builder and that owner/builder doesn't pocket those

1 losses, passes them on to whomever the ultimate
2 user is.

3 If it's a public building, a bridge, a
4 school, a tunnel, a road, those are going to get
5 passed on to the taxpayer. If it's a corporate
6 building going up, it's going to get passed on to
7 the tenants who, ultimately, pay for the rents for
8 those buildings.

9 So, the first part, as I said, gave the
10 history of corruption and racketeering in the
11 construction and then it went into an explanation
12 of why is this industry so vulnerable? And then on
13 the second part of the report, we addressed, we
14 came up with a number of recommendations about how
15 to address and minimize the vulnerability to
16 corruption and racketeering. The report, as I say,
17 was issued in nineteen ninety and was published by
18 NYU Press.

19 Q. [224] Okay. Could you just briefly describe for us
20 the degree of corruption and racketeering that you
21 found out and that's described in the report. I
22 guess it was massive, like you said?

23 A. It was massive, it was extraordinary, it was
24 longstanding and the dollars were huge. The first
25 chapter, as I said, goes through story after story

1 because there's always the cry from those who are
2 being painted as being part of a corrupt industry.
3 You can't judge the whole industry by that case or
4 this case, that doesn't speak for all of us. But
5 when you put the whole picture together and say
6 "Yes, you can." it doesn't mean everybody in the
7 industry is corrupt.

8 It doesn't mean that they are bad people
9 who go on to construction. There are reasons and
10 that's what we went into why there is so much
11 corruption and racketeering. But these cases made
12 clear that it is pervasive, that its breadth is
13 enormous and its depth is enormous and the amount
14 of money that is stolen and fed and the cost of
15 which is passed on to the public at large was huge.

16 Without going into all of the cases that
17 are laid out, there was massive amounts of
18 extortion and bribery. Extortion and bribery are
19 really two sides of the same coin. It occurs
20 whenever, in an industry, an individual or an
21 entity has control of some critical component
22 without which you can't succeed. So, the, and we'll
23 get into the susceptibility later, but think of the
24 construction industry and how many critical
25 components there are.

1 Q. [225] Workforce.

2 A. Pardon me?

3 Q. [226] The workforce is one of them.

4 A. The workforce, labor unions. What's the most
5 critical component in construction? It's labor. And
6 what corrupt actors? The mob. The mob, it
7 gravitates to business, to industries where there
8 are critical components that they can control.

9 So, I think it was Carlo Gambino who said
10 "I can't own every pizza parlor in the United
11 States but if I control the importation of cheese,
12 I can control every pizza parlor in the United
13 States." and think about that in the construction
14 industry. If I can control labor, I can control the
15 entire industry. I can use that control to decide
16 who gets what contracts and who doesn't. I can then
17 take over and create bid rigging clubs. I can
18 punish those that I don't want in the industry and
19 that's their, that sets up extortion and bribery.

20 If I am a labor official, I can come and I
21 can say "Madam Prosecutor, your company, I am going
22 to enforce every letter of the law, dot on every I
23 and cross on every t and make life miserable for
24 you if you do not give me a payoff from your
25 company." On the other hand...

1 Q. [227] So you are going to create delay for me so
2 it's going to cost...

3 A. I can absolutely cripple your ability to perform
4 and you will go out of business or, that's an
5 extortion, I'm extorting you. On the same token,
6 you can come to me and say "Mr. Labor Official, I
7 will give you fifty thousand (50,000) a month if
8 you relieve me of these various things that I
9 otherwise in the collective bargaining agreement I
10 have to comply with. If you give me good workers,
11 if you do this, that and the other thing." These
12 are how bribery occurs and it's the same thing
13 bribery and extortion.

14 Inspectional services, think of an
15 inspector. You can't move forward unless this
16 inspector signs off on it. That's a critical
17 component. I can commend a bribe, I can extort
18 money and, as we're going to talk about in
19 susceptibility, the high cost of delay in
20 construction is, makes a terribly powerful weapon
21 if you have that critical component and control of
22 it. If I can delay a construction project, I have
23 enormous power to hurt you so that we... I remember
24 studying in nineteen eighty-five (1985), at that
25 point construction loans cost as much as fifteen

1 percent (15%) so if you take a hundred million
2 dollar (\$100 M) construction loan figuring that
3 there's a two hundred (200) day work year, and it's
4 at fifteen percent (15%), if I delay this project
5 one day, that cost the owner seventy-five thousand
6 dollars (\$75,000). That means that it is well worth
7 my while to pay somebody twenty-five dollars
8 (\$25,000) just to avoid that one-day delay.

9 Imagine how that spreads out across a whole
10 project when you're building a road, a bridge, a
11 school, a highway. There's so much leverage that
12 labor officials, inspectional services, politicians
13 who have to give approvals or zoning, they're
14 even... we have minority coalitions in New York
15 doing a significant amount, where they say, "We're
16 going to shut down your company and this project
17 unless you hire our group." It's a major problem
18 in...

19 So, that's extortion and fraud. You asked
20 for the other things that are documented in here,
21 the fraud, inflated invoices and substituted
22 materials, and invoicing for goods and services not
23 delivered. Massive amounts of that. And we'll talk
24 about susceptibility , why, why is it so easy? Why
25 is it done?

1 Theft. This is something that people don't
2 really think about, but the Association of General
3 Contractors, back when we were writing this book in
4 eighty-two ('82), estimated that one billion
5 dollars (\$1B) worth of construction goods were
6 stolen off of construction sites a year in the
7 United States. It's a massive amount that we
8 document in here. Just some examples of thefts that
9 cause huge, huge losses, all of which gets passed
10 on, all of which is absorbed because the project
11 has to go on, a delay is too costly. All of which
12 ends up being absorbed by the public.

13 Bid-rigging. Many, many instances of how
14 bid-rigging occurs. It could be the mob itself that
15 puts it together, you're going to have the famous
16 concrete conspiracy in New York City, where Local
17 6A, the cement and concrete workers supply the
18 workers for the concrete contractors. One had to
19 give a certain kickback to the business agent of
20 Local 6A, if you pour any concrete in Manhattan and
21 only certain members of the club were allowed to do
22 it.

23 Anybody else who tried to come into that
24 club, that bid-rigging club, was... got no workers.
25 They got no workers. They got bad workers. They

1 were told, "Stay out, go out to Bronx, go to the
2 Queens, you're not allowed in Manhattan." Those,
3 there, then, grew a club of concrete contractors,
4 they can raise their prices, they rotated the
5 contracts. Today, it would be Madame la
6 présidente's case, then it was (inaudible), then it
7 was (inaudible), then we would rotate it, and the
8 prices went up, and up, and up, to the point where
9 the Javits Convention Centre was built in New York
10 City with... at a price of concrete that was three
11 times the estimate. And it was put out three
12 different times. Finally, they gave up.

13 The first time, it came up so much higher
14 than the estimate, they threw out the bids and bid
15 again. It came back even higher. Threw them out,
16 came back again even higher. They gave up and
17 awarded the contract. That's the power of these
18 bid-rigging clubs that can exist.

19 Sometimes, it's collusion from within. We
20 had a situation with the School Construction
21 Authority, where a procurement officer was sitting
22 in the bid room, collecting the bids as they came
23 in, and it was a club that was working with him, he
24 would change the number, or insert the number. So,
25 after he read them all out, he would take the bid

1 of the one who, in the club, was to win that day,
2 and read out a number that was lower than any other
3 on the list that he had read out, and then he'd
4 later fill in that number. That created a cartel of
5 companies bid-rigging. The prices went up, and up,
6 and up, because then they...

7 So, you have industry-created cartels, you
8 have corrupt racketeering-created cartels, but
9 they're massive amounts of bid-rigging problems.

10 Q. [228] So, you just talked about the fact that this,
11 the construction industry is very vulnerable to
12 corruption. Could you tell me why?

13 A. The way in which we sort of measure an industry's
14 vulnerability to being taken over by corrupt and
15 racketeering predators is we measure it by
16 racketeering susceptibility and racketeering
17 potential. And as we have discussed, there is huge
18 racketeering susceptibility and potential in the
19 construction industry.

20 Racketeering susceptibility is, are there a
21 lot of means and incentives, is there a lot of
22 opportunities and incentives to act corruptly in
23 this industry? Are there means by which to do it?
24 And so, that if you... and we can discuss, there
25 are many, many means and opportunities to act

1 corruptly in the construction, in any construction
2 industry, not New York, just New York or Quebec,
3 but anywhere and everywhere.

4 Racketeering potential measures on the
5 other hand how profitable is it. If you have, if
6 it's easy to act corruptly in an industry, but you
7 really can't get that much out of it of value,
8 financial and non-financial or monetary, then it
9 won't likely be high degrees of corruption or
10 racketeering. In the construction industry, there's
11 a high degree of susceptibility and there's a high
12 degree of potential.

13 Q. [229] Could you explain the reasons for that, that
14 you found out in your study?

15 A. When we talk about the susceptibility, how easy is
16 it, are there means and opportunity, we've just
17 touched on some of them. Think about how easy it is
18 if you control labour. It's so easy to pull money
19 out, illicit money. The high cost of delay we
20 talked about, there's so many incentives to make
21 payoffs for... to speed up a project or to prevent
22 delay.

23 The fragility... think how many parties
24 that are on a major construction project. You've
25 got a big building going up. You've got maybe

1 thirteen (13) to twenty-five (25) different trades
2 there. You may have sixty (60) companies operating.
3 You may have a thousand (1000) workers like we had
4 at the Ground Zero cleanup. You have all of these
5 players operating and it's a very fragile operation
6 and it's very much out of sight. No one person can
7 see everything that is going on. It is so easy to
8 have corruption operate in there. And there... is
9 so easy to inflate bills. And I can give many
10 examples but... they're written in here. There are
11 things that are built in the construction industry
12 that make it very, very easy, and high incentives,
13 to act corruptly.

14 I think... take one of the examples at the
15 Ground Zero cleanup, and you'll see this on
16 everyone of your major projects, say, major road or
17 bridge. There... when equipment is put on a
18 project, you pay... and a contractor rents some
19 huge crane - they don't have the cranes, all of
20 them - so they rent a crane, and the owner or the
21 government, the Department of Transportation, will
22 pay that contractor, reimburse it for its rental of
23 the crane. That's how it operates. The crane, you
24 reimburse it at different rates. If it's in... if
25 it's operating, you pay this much an hour. If it's

1 in stand-by, you still have to pay for it because
2 the contractor has to get this huge crane from
3 Texas, or some place, it gets here and he's going
4 to pay the rent for the whole period it's here. If
5 it's in operation, you pay this much. If it's in
6 stand-by, it's that much, and if it's in... if it's
7 in a repair mode, you pay less.

8 Now, at Ground Zero, when we had these
9 cranes working around the clock, cleaning up, who
10 was to say, a year later when you are looking at
11 this invoice, whether that... those six... those
12 six cranes that were there costing millions of
13 dollars in the end, which state they were in. Were
14 they operational? Stand-by? Or in repair? How do
15 you capture all that information? And that's just
16 one little example.

17 Much of construction, because it's done in
18 a seriatim way, is covered up, so that the
19 electrician has to come in and do things before the
20 drywall can be done. The drywall has to do it
21 before the paint person can... put their piece on.
22 The finishing has to be done after all of that.
23 Much of it is covered up. So how do you know the
24 pipes behind the wall, the wiring behind the
25 wall... All of these create enormous opportunities

1 and that's why there is so much corruption. The
2 potential is obviously very, very lucrative.

3 Financially, it's easy... there is so much
4 money, you take a hundred million-dollar (\$100 M)
5 project and take a one-percent (1%) skim, just one
6 percent (1%), and you got a million dollars (\$1 M)
7 of illicit profits taken. There's a... you know,
8 we've talked about how easy it is to generate...
9 You can generate cash so easily. And the generation
10 of cash is what feeds so much of the corruption and
11 racketeering, for politicians, for corrupt labour
12 officials, for bid-rigging clubs, to payoff
13 inspectors, cash is king and it's easy to generate
14 on a construction site.

15 And one reason that there is a lot of
16 desire for mobsters to go into construction is
17 because of the non-monetary rewards. Think about
18 the number of instances where you have a mobster
19 being declared because of the enormous amount of
20 cash the can generate illicitly and give to our
21 philanthropic organisations, to the American Cancer
22 Society, to the Mesothelioma Society and they
23 become man of the year. And now they become a
24 very... and they become very significant
25 philanthropic souls, these mobsters. And they

1 get... have the ability to be able to... these are
2 not... just the cash, they can get stature. They
3 buy huge boats that can be used to entertain the
4 politicians and the movers and shakers and society.
5 Then, they become very, very significant players in
6 society. And these are common crooks who use the
7 illicitly gotten goods to... and cash to exalt
8 themselves. I think there was a... it was Jimmy
9 Hoffa who controlled the teamsters union and was a
10 clear mobster. And it was said of him that he used
11 his underworld connections to advance his
12 activities in the upper world. And he used his
13 upper world connections to advance his activities
14 in the underworld. And that's... that's a terribly
15 powerful potential that comes out of... So we talk
16 about racketeering potential. It isn't just
17 monetary gains. It's what can... is it... it there
18 really going to be things that I can get out of
19 being... corrupting this industry that are going to
20 make it worth my while to do it. And...

21 Q. [230] So...

22 A. ... that's what we...

23 Q. [231] ... this is for the industry in general. But
24 if we focus a little bit more on the public
25 construction industry, what could you tell us about

1 that?

2 A. Well, there...

3 Q. [232] Regarding the same criteria.

4 A. In terms of susceptibility and potential?

5 Q. [233] Yes, exactly.

6 A. The public sector probably has more racketeering
7 susceptibility and potential than in any other
8 because... There's a lot of reasons. I think much
9 of the public sector is driven entirely by, and
10 almost a slavish adherence to this low bid has to
11 get the contract. And the low bid award, if it is
12 done without an analysis of is this really the low
13 bid; number 1. And number 2, is this the best
14 contractor who really get the award, or do we just
15 give it to whoever puts in the lowest number.

16 And we have a company that is cheating on
17 its labor. So it's costs are going to be less than
18 other contractors. We end up with a system where he
19 who cheats best gets the most contracts, 'cause
20 they can reduce their costs, they can put in the
21 lowest numbers, and they will get all the public
22 contracts. And it drives the good contractors out.
23 The good contractors say, "I'm not going to cheat.
24 Therefore, I can't reduce my cost. Therefore, I
25 can't win and I stop bidding into that world. I'm

1 going to leave that for the bottom feeders." And
2 that's we end up building our public works.

3 There's also... there's bid... low bid
4 allows for an enormous amount of fraud, in the
5 manipulation of bids. If five of us here are
6 competitors and we submit bids, and it comes in to
7 a committee. That committee will have to level the
8 bids. 'Cause we have to make sure that all five of
9 our bids are apples to apples. It may be that I've
10 left out a piece of what I should have put into the
11 bid, so that's why my bid is lower. So we've got to
12 make sure that all the bids are leveled and they
13 are the same. There is so much opportunity there
14 for manipulation. So if I want Abco Electric to get
15 this contract, and I'm looking at six bids from
16 electrical companies, I can manipulate things so
17 that Abco, even if it came in the highest, in the
18 end, becomes the lowest. Unless you have real
19 controls and oversight of the leveling process, but
20 that happens in public construction.

21 In private sector, it is much more let's
22 pick the best company; cost is one factor, but so
23 too is experience, performance, integrity and all
24 of those should be in. We do have to give in the
25 public sector, and it's not uncommon, the low bid,

1 but there need to be more factors put in place, and
2 we'll talk about the integrity component, how one
3 goes about doing that when you get into the reals
4 forums.

5 Q. **[234]** And there needs to be more ways to be able a
6 contract, even in the public sector, maybe more
7 cost effective or quality oriented.

8 A. Absolutely.

9 Q. **[235]** Okay. So...This rule shouldn't apply at all
10 cost. I'm sorry, Madam.

11 LA PRÉSIDENTE :

12 No, no, it's all right.

13 Q. **[236]** Do I understand that you will come back in
14 what is preferable than to the low bid, the lowest
15 bid?

16 Me SONIA LeBEL :

17 Q. **[237]** Do you have an opinion on that, if there's
18 other ways that should...

19 A. We... I'm not sure that we did have that in what we
20 had talked about, but I can say that there are
21 some... I think that a number of contracts can be
22 awarded through the RFP prices, Request For
23 Proposals, rather than just the bidding. And in the
24 Request For Proposals, you will lay out to the
25 potential competitors for this work: these are the

1 criteria that we're going to use in selecting.
2 Price will have seventy percent (70 %) or sixty
3 (60) or twenty percent (20 %), whatever you want.
4 Experience will have this, this that, and the
5 other. And this is a common form of being able to
6 avoid using the low bid. It may be that whoever...
7 You put that out for the project manager, the one
8 who's going to manage it within an RFP, and then
9 they use the low bid. I think that you are...
10 there's something called job order contracting,
11 which is another way or awarding contracts, where
12 you're getting a great deal of work, and you... I
13 think it'll get too complicated to get into that.

14 I think that the real protection that we
15 can develop around low bid procurement is in the
16 integrity, the prequalification, and the bedding,
17 of which we really need to talk about, because the
18 mere for having a prequalification will do nothing
19 to help you, if it isn't done right. Indeed, it'll
20 only add cost, add time and drive, and shrink the
21 number of firms that are involved. Downright, it
22 does weed out the firms that are likely to put in a
23 low number, which, in the end, is very rarely the
24 number that they ultimately are paid, because of
25 change orders, and...

1 Q. **[238]** Extras.

2 A. ... and all of the games that can be played, to
3 increase to value. So that there are ways that you
4 can, if you have a low bid, and you are more
5 stranger in how you handle the change order
6 process, which often gets absolutely corrupted,
7 then, the low bid becomes more meaningful. Than you
8 can reform the process by which contractors getting
9 it, because they just put in a ridiculously low
10 number; but if it's too low, the Agency will throw
11 it out. But oftentimes, it's put in with the
12 intention of change ordering up to some higher
13 level. And again, that takes good contractors, and
14 they don't go into that the world. They say, "We're
15 going to leave that to the bottom feeders."

16 Q. **[239]** So you just talked about the low bid
17 contracting. What about the public agency staff
18 experience?

19 A. They, another reason that leaves the susceptibility
20 of potential is that so often our public agencies
21 are outmatched in terms of staffing with those whom
22 they are supposed to be evaluating and then
23 managing in the public construction work so that
24 the salaries of engineers on public construction
25 projects for the agencies is often a fraction of

1 what it is of the companies that are working for
2 them. The experience that they have is often much
3 less and we see that because of the lack of really,
4 really quality staff in a lot of public agencies,
5 they're moved around and if you don't have
6 continuity in the management of a project, it's
7 easy for the contractors to manipulate the process.
8 If for the first quarter of two thousand and
9 fourteen (2014) we have this person in control but
10 this is a superstar and there's a problem over here
11 in the agency, they move him over here and they put
12 in somebody else, there is a lack of continuity,
13 quality control goes away and it's... this
14 imbalance, we need to raise the salaries of our own
15 staff so that the ones who are working in the
16 agencies. We need to be more rigorous in how we vet
17 them in their experience.

18 Subcontrac... excuse me, outsourcing can be
19 an effective tool but it is almost always abused by
20 public agencies. You just solve the problem, I
21 don't have enough staff, I'll just outsource it. So
22 often times, you end up, we found, public agencies
23 outsourcing quality control to which is the most
24 critical. We got to make sure that we're getting
25 what we're paying for both in terms of meeting

1 specs, as of in meeting quality, as of being put in
2 on time, that's quality control. From the agency,
3 it has to be exercised and if we outsource that to
4 be doing exercise in quality control on outsource
5 other functions, you end up with the agency really
6 has no idea of what's going on and it's all
7 outsource entities. So the outsourcing can be a
8 real problem.

9 The agencies are often, public agencies,
10 are behind schedule so they issue bids before they
11 have complete design. That's a prescription for
12 disaster. If I'm building a bridge, I'm building a
13 school, I'm building a tunnel, I'm building a road,
14 if I don't have complete designs, and now I put it
15 out to bid because I've got a schedule, I've got to
16 get this done, the politicians are pushing me, I
17 have to get this awards, time is everything. What
18 happens? The contrac... the bids come in on plans
19 and specs that aren't complete and it's just
20 setting up change orders. The bid will come in at
21 this level and then the designs get perfected and
22 they get enhanced and now there's a change, "oh!
23 you didn't have that in there before", or this
24 conflicts with what you put in, what I bid on and
25 the price goes up, up, up.

1 We have very rarely in the public sector
2 exercised any real scrutiny on firms after they've
3 completed a job. We should be the debarring firms
4 that are poor performers. We should be getting them
5 out of the mix or at least making sure that they
6 take steps to improve what their mistakes... to
7 improve on what they had done before. We don't do
8 that. There should be an evaluation system. In the
9 private sector, this is done all the time. If you
10 screw up on a private job, that owner, that builder
11 will not use you again and the public sector, you
12 can get used again and again and again no matter
13 how bad the job you've done.

14 Q. **[240]** If you get to be the lowest bidder?

15 A. Just be the lowest bidder.

16 Q. **[241]** Exactly. What about independent estimates.
17 What did you find out about that?

18 A. Independent estimates is another one. If you don't
19 have valuable and really carefully thought out
20 independent estimates, in the public sector, often
21 times there's not more, more often than not, does
22 not, you have no idea whether the bids you're
23 getting are in the realm of what you should be
24 paying. None whatsoever. And if those estimates are
25 just, let's take a look at what we have paid over

1 the last five years, average it out and say that's
2 what the cost should be per square foot of cabling
3 here, and that cabling worked over the last five
4 years has all been done by...

5 Q. **[242]** Bid rigging.

6 A. ... big rigging and incompetent people, your price
7 is going to be up here, the price... And I'll give
8 you a good example, it happened in the private
9 sector. There was a cartel of interior contractors
10 in New York City. And they did beautiful work
11 because often times, the fact that they're crooks,
12 doesn't mean they do bad work unfortunately. So,
13 sometimes you want to do business with this
14 company. It is frankly the best or it may have
15 equivalent that nobody else has especially in the
16 heavy construction world. They may be crooks but
17 they're good contractors. How do we deal with that?
18 We'll get into that with the monitors. But they, in
19 this case, that, the scheme work where people
20 (inaudible) and this happens in the public sector,
21 an owner's rep., a project manager, who's going to
22 help manage it. They hire a construction manager
23 who then bids out all the trade work. If the
24 project manager or the owner's rep. as it was in
25 this case is corrupt and working with this club of

1 contractors that there was in the interior
2 renovation world, and so there was a company
3 structure tone and there was an owner's rep. called
4 Bennis & Reissman.

5 So Bennis & Reissman worked for the Sony
6 Corp. building their headquarters. Bennis & Reisman
7 went and worked to put together a budget. That
8 budget was twenty percent (20%) inflated. They
9 ranged for Structure Tone to get the contract.
10 Structure Tone would take the bids from the trade
11 contractors, inflate them by twenty percent (20%).
12 In the end, the job was done. It came in on time; a
13 magnificent, beautiful building. Anybody going to
14 New York go the the Sony headquarters and Robert
15 Morgenthau, the District Attorney, stood up and
16 said: "That..." and detailed and had a grand jury
17 find that this was twenty percent (20%) inflated.
18 But everybody declared victory. It came in on
19 budget. The budget was over... inflated by twenty
20 percent (20%), of course it came in on budget. It
21 was twenty percent (20%) of naked fraud and
22 everybody popped the champagne and said, "We got a
23 beautiful building. We didn't pay a penny more than
24 we had budgeted this for." This happens again an
25 again, and most prevalent in the public

1 contracting.

2 Q. **[243]** What about the speed... the fact that
3 politics of public construction puts an emphasis on
4 speed of delivery? What did you find out about
5 that?

6 A. Well, so often, what is driving a public job will
7 be the commissioner of the Department of
8 Transportation, Department of Education, or
9 whatever it may be, is having to deliver a public
10 works project and he or she is going to be
11 evaluated by how quickly they get it done, not by
12 whether or not there was any corruption or not. So,
13 the push is not so much on the cost, because as
14 everybody knows the public works project can go up,
15 everybody expects it to go up, and it's almost self
16 fulfilling prophecy. The push is to get it done.
17 Not so in the private sector. The private sector,
18 you are very concerned about the bottom line. But
19 the public sector, your concern is about getting
20 that job done and being able to make the mayor,
21 make the prime minister, make whatever it may be...

22 Q. **[244]** Cut the ribbon.

23 A. ... able to say and declare victory. And victory
24 isn't declared by not having corruption, it's by
25 getting that bridge open, that school open, that

1 tunnel done or whatever it might be.

2 Q. **[245]** Okay. So, you know about the mandate of our
3 Commission. Could you... could you tell us maybe
4 what you think is more relevant that you learned,
5 that could be applied to our mandate.

6 A. In terms of the recommendations...

7 Q. **[246]** And the lessons learned, yes...

8 A. The recommendations we made.

9 Q. **[247]** ... from the (inaudible) of supply. And I
10 emphasize the fact that it was in nineteen eighty-
11 five (1985).

12 A. Well, let me first talk about... the
13 recommendations we made in that...

14 Q. **[248]** Just to pull some out.

15 A. ... in this... in this...

16 Q. **[249]** That's what we are doing, yes.

17 A. ... one had one premise that really ran through all
18 of them. And that premise is that if public
19 agencies are procuring a managing construction
20 services and really want to protect themselves from
21 the vulnerability they have to corruption and
22 racketeering in this industry, they cannot rely on
23 prosecutors and regulators and legislators to
24 protect them. They have only themselves to rely on.
25 They must build in to their own operations and

1 their own staff, the systems and the methodology
2 and the controls that will assure that there is
3 what we call... there are controls and... that
4 assure that there is transparency and audit ability
5 on every single transaction that is vulnerable to
6 be manipulated. So, they must adopt these controls.
7 This is a business problem they've got. It's not a
8 crime problem. There may be criminals that are
9 absolutely acting... predatory practices
10 destroying, but it's not a crime problem, it's a
11 business problem for them so solve. Let the
12 prosecutors deal with the crime problem. But they
13 have to protect themselves. And what do they do?

14 Q. **[250]** And we have to keep...

15 A. What should they do?

16 Q. **[251]** ... the industry viable, like you said, that
17 the first get go. So you have to find a solution
18 that keeps...

19 A. It's a business problem, has to work for the
20 business, it cannot be. So first, you've got to do
21 a risk assessment and say, "Where in my operation
22 are the things that I do to buy and procure and
23 manage construction services most vulnerable? Where
24 are they?" Obviously, and how we go about
25 soliciting bids. Who are we going to identify to

1 solicit bids from? How are we going to evaluate
2 those bids? Our construction contracts and award
3 process, our change order process, our requisition
4 process, all of these are where the real
5 manipulation can take place. So, having done that,
6 you have to put controls and procedures in place
7 around these to create the audit ability and
8 transparency. And, they have to be controls that
9 work, not muscle bound, and make it so nothing gets
10 done. And that can be done. And they must
11 constantly, the agency must constantly, monitor
12 "Are our controls being complied with by our own
13 staff and by the community of contractors we deal
14 with?" Having a great set of controls is useless if
15 you're not monitoring compliance with those
16 controls.

17 Q. **[252]** Explain to me, Mr. Thacher, why you think
18 that too many controls could be a problem, also.

19 A. If you put controls in a way...

20 Q. **[253]** What you found out.

21 A. ... of getting the job done, number 1, they won't
22 be followed. Because, if I am an engineer and I am
23 in charge of getting a project done, then there's
24 all these controls that prevent me from getting it
25 done. I don't get bonus, I don't get recognized

1 because there was no corruption in my thing, I got
2 to get it done by a date certain or else, I am
3 going get fired. So, I will start ignoring them.
4 And everybody will say, "I understand, don't worry
5 about it." Because, you can't follow controls that
6 will prevent you from getting the job done. So,
7 what builds a culture of, "we don't really need to
8 follow the controls. We understand why you didn't
9 follow them.". And once you have that, you have a
10 culture of, "I don't have to follow, I'll just do
11 what's best. Every time I confront a problem,
12 forget what the controls are."

13 Q. **[254]** So you start ignoring them entirely all the
14 time?

15 A. You ignore them entirely. The other is, that you
16 actually ironically: controls can create and set
17 off to pay off somebody. So if I have so many
18 controls in place, I will pay off somebody to help
19 me, to let me avoid those controls. If there you
20 have somebody in inspections that have to be
21 signed-off to make sure something happened,
22 somebody's signature that have to be put onto a
23 document before somebody can move forward, people
24 will payoff, to just to get that signature. And
25 you're perversely creating more susceptibility and

1 potential by controls, than you are solving the
2 problem. But the good controls, which create
3 auditability and transparency, that's what it's all
4 about.

5 Q. [255] So what do you mean by that?

6 A. Auditability and transparency is pretty simple. It
7 means that, when one of these decisions are made,
8 in who do we bring in as bidders, who do we
9 evaluate the bidders, the bids, how do we pay
10 change orders, that every one of those transactions
11 is... why it was done; it's very transparent. And
12 that there is documentation of the why. So that, if
13 we have four bids and we give to other than the low
14 bidder or four bids and we, in the bid leveling,
15 take the lowest bid and it suddenly becomes the
16 third lowest, we document that. So that, two years
17 later, I can come back and say, "This is exactly
18 what happened. I understand. It's transparent, what
19 happened, and there's auditability that comes out
20 of that transparency."

21 If you do that on all of these, you will do
22 an enormous amount to reduce the vulnerability to
23 corruption and racketeering. And that's what we
24 have done in this monitoring, which we're going to
25 be getting to in a minute.

1 Q. **[256]** So, could you tell us about the key
2 recommendations of the final report, that you think
3 that they are the most important?

4 A. Yes. There was, I think, several of them. There's
5 pages and pages of them, and that write down to
6 what code reforms should be and so forth. But the
7 big ones are: we're to have prequalification is
8 number one. It's absolutely critical that we keep
9 the bad actors out of the pool of contractors. It's
10 too late once they're in and are effective. It's
11 the old bad apple rotting out from the barrel,
12 cause rot to the old barrel of apples. Having said
13 that, we'll talk about how we implement at the
14 School of Construction Authority, because a badly
15 operated or too stringent or a prequalification
16 program that isn't focused on what we're trying to
17 do, it's to increase the pool of contractors,
18 rather than to keep shrinking it down by punishing
19 firms that have had some issues. It ends up, pre-
20 qualification, actually, exacerbating the problem.

21 Q. **[257]** So what you mean is it... I know we're going
22 to get into that, but you mean it can't be just
23 black and white, it can't be a punishing tool, that
24 system.

25 A. No. Our job ahead, right now, here, because it is

1 important and then we can come back, or I'll get
2 lost, and you'll get lost, we'll all spin around,
3 but... When we... Ultimately, we're going to get to
4 the third model of the School of Construction
5 Authority, or Office of Inspector General, we had
6 an opportunity to take all these recommendations
7 and put them in place.

8 Q. **[258]** But as a general matter, I mean, about the...

9 A. As a general matter, what we said was the
10 screening, it has to be about a building a
11 qualified pool of contractors.

12 Q. **[259]** And not...

13 A. If we...

14 Q. **[260]** ... putting people out at all cost.

15 A. If we just... black and white and we stick and
16 we... and if you had a problem, and you're out.

17 Q. **[261]** You're out.

18 A. And it's a punishment. It will not work. The
19 punishment to the prosecutors and other regulators,
20 as a Agency that's procuring, or an Agency that's
21 supporting the procurement of construction
22 services, there are many strategies that we can
23 use, like monitors that can keep alive good
24 companies that have gone on a stray. A bad actor
25 has... Now, there's some companies that are so bad

1 they should disappear from the face of the earth.
2 But there are many companies that are employing
3 lots of workers who have no, have done nothing
4 wrong, that do good work, that had a project
5 manager who was engaged in a vicious set of
6 extortion activity with respect to subcontractors,
7 who was paying off a politician, or was engaged in
8 something, and it was a... It results in a very
9 significant prosecution. That company did bad.
10 Should that company, now, be...

11 Should we loose the benefit of that
12 company, if we can get rid of an excise from the
13 company the management that was bad, the players
14 that were bad, and that company can document that
15 it has put in place integrity controls, that it has
16 built a whole culture of integrity, by having a
17 Code of business ethics and training, integrity
18 controls, and somebody monitoring compliance. It's
19 not just, "I've done it. Don't worry. Trust me."
20 You have somebody independent that is actually
21 documenting that this has happened with this
22 company. We can get that company back into the fold
23 and have them working on public contracts, with
24 more oversight. And, if we have that company pay for
25 that monitoring, it costs the public nothing and

1 we'll talk about in a minute, the School
2 Construction Authority, how that actually went into
3 play and if there's any one recommendation that I
4 would want to leave this Commission with it's the
5 use of monitors as an absolutely critical path to a
6 reform initiative that some of which cost the
7 public nothing. They're magnificent. Say hi! as a
8 monitor so...

9 Q. **[262]** So what about the promotion of union
10 democracy. What did you mean by that?

11 A. As we've already described, labor is the critical
12 component in the industry and labor in our states
13 is controlled by the labor unions. So that I gather
14 I don't that much that you have it different as a
15 construction commission but we have unions and if
16 the u... what the coin edge, the labor racketeers
17 use is, "I will not enforce certain requirements
18 that you have, Mr. contractor, if you give me a
19 bribe" or "I will enforce to a extraordinarily
20 stringent degree, to the point where I'm going to
21 make life miserable and maybe put you out of
22 business, unless you give me an extortion payment."

23 Q. **[263]** So you basically sell out your workers?

24 A. And what they're doing is they're selling out their
25 workers. They're using and they're saying, "I won't

1 enforce the rights that the workers that I'm hired
2 to protect. I won't enforce the rights that I'm
3 supposed to be protecting if you pay me money." Who
4 ends up losing? The workers. Why do the workers
5 keep then returning corrupt actors to run their
6 unions? Jimmy Hoffa, it was known for years, the
7 Local 282 and the Teamsters which controlled all
8 the trucking, everything that moved in the United
9 States and Canada, all the trucks, Jimmy Hoffa and
10 the Teamsters union controlled that and they were
11 totally mobbed up. Why did they keep returning
12 them? Because of the coercion and the criminality
13 that existed and the undemocratic process inside
14 unions.

15 What we have recommended and what has
16 worked to a great degree because it has happened,
17 is democratize the unions, restore the unions to
18 the point where they are actually working on behalf
19 of the workers, not on behalf of the corrupt
20 business agents and owners who are elected to
21 manage them. And that we've done again through
22 monitors.

23 Courts have put on when racketeering
24 investigations and indictments are being leveled
25 against a union, the solution has been to enter

1 into a consent decree and say well, you consent to
2 take on a monitor who will come in and look at how
3 we do our elections, look at how we are managing
4 our work force practices and report back to the
5 court, so you have somebody independent in there.
6 The key again and again and again on monitors, they
7 must be independent, meaning they must have some
8 external reporting, not to the entity they are
9 monitoring, whether it be a union or a contractor
10 and their function must be to assure that ethics
11 and integrity is governing the operations of that
12 entity. And that, it works and we'll talk about...
13 We have...

14 Q. **[264]** So we already talked about the need to
15 simplify regulations. What about the extension of
16 protection for the whistleblower? We talked about
17 it this morning and then...

18 A. The whistleblowers are critical. Most of the public
19 sector the kind of, when you're talking about bid
20 rigging clubs, when you're talking about people
21 inside public agencies, most people don't like to
22 see other people engage in criminal contact. They
23 really don't like it. It's not that everybody in
24 the industry is corrupt. It really offends them.
25 But there's no way to really do anything about it.

1 If you report it and it comes out that you reported
2 it, you're blackballed and your life's going to be
3 miserable and over. What we need to do is to set up
4 mechanisms where people aware of bad doings by
5 fellow employees or others, have a way to report it
6 without getting retaliation against them.

7 Hotlines is one of the great solutions to
8 having, anonymous hotlines I can call in, you have
9 to have somebody answer during those calls,
10 somebody answering who knows how to separate the
11 weed from the chaff because you get a lot of crazy
12 calls or people just trying to smear somebody else,
13 but if I can go home at night and call an 800
14 number, not give my name and report things that I
15 have been seeing on a job, you'll... we'll get
16 reports and we get reports, when we have effective
17 hotlines and good signage around the site, a
18 construction site, that the department of
19 transportation cares deeply about fraud, waste and
20 abuse. If you see any indication, please call this
21 number, confidential, 24/7, and you have a
22 mechanism by which then people can talk about
23 things that they really don't like. Whistleblowers
24 who come forward are prepared to testify, need to
25 be protected from losing their job and getting

1 retaliated against.

2 Q. **[265]** What about tightening and administrative
3 sanctions against non-complaining employees. What
4 do you think about that?

5 A. Yes, that was a... and we can get down at us
6 getting a little bit more of the ways, but we have
7 situations where individuals have sold out and used
8 their public position to make an enormous amount of
9 illegal money and then they retire and take huge
10 pensions. We recommended that there be consequences
11 for those individuals to lose their pensions, more
12 at least a piece or some formula for a few, for the
13 last five years, it's proven we're engaged in this
14 activity. Those five years take out of the formula
15 by which their pension is determined.

16 But there seemed to be something offensive
17 about having a person who sold out their public
18 obligation for ten years and ran a racketeering
19 enterprise out of their inspectional services and
20 were taking kickbacks and making a great deal of
21 money and then the investigation starts and they
22 quickly retire and they've got a huge pension. That
23 we thought was wrong and it needed to be dealt
24 with.

25 Q. **[266]** Okay. I think the rest we talked about

1 because you're talking about the prequalification
2 system in debarring competent companies and the
3 hotlines. So before maybe we go into the fact that
4 the nineteen ninety (1990) had the chance to test
5 those strategies with the SCA, maybe we could take
6 a short break here, and continue after that.

7 A. So we'll get into the recommendations after the
8 break, okay.

9 Q. **[267]** Yes.

10 UPON RECESS

11 UPON RESUMING

12 _____

13 (15:39:10)

14 Me SONIA LeBEL:

15 Q. **[268]** So, as we said before the break, Mr. Thacher,
16 the report of the SCIF was filed... was delivered
17 in nineteen ninety (1990). After that, you had a
18 chance to test many of those strategies that were
19 written in the report and that you contributed to
20 find with the School Construction Authority. Could
21 you talk to us about that, please?

22 A. Sure.

23 Q. **[269]** Your experience in that?

24 A. Sure. In the very same year that this report came
25 out, there was created in New York City a School

1 Construction Authority. And that was because
2 Governor Mario Cuomo at that point faced a
3 particularly tragic manifestation of what the
4 corruption and racketeering had done to one public
5 agency in... with a large capital program, and
6 that's the Board of Education of New York. The
7 Board of Education of New York had, I think, one
8 thousand one hundred (1100) buildings at that
9 point. It was... there were in the most deplorable
10 condition. There was terrible overcrowding. There
11 kids being taught in converted toilets and
12 bathrooms. The gymnasiums were partitioned off to
13 create classrooms. There was dripping asbestos.
14 There was coal-fired furnace buildings, heated
15 buildings from the nineteenth century. There was...
16 it was just deplorable. And that was
17 notwithstanding billions having been spent on the
18 Board of Education on public works programs that
19 went nowhere. It took years to build a school. The
20 building was shoddy work. They were overpriced.

21 And so in nineteen ninety (1990), the
22 Governor created the School Construction Authority.
23 And it gave it a billion dollars (\$1 G) a year for
24 the next five years to rebuild the New York City
25 school system. And he said: "This has to succeed."

1 And it was a... you may recall that nineteen ninety
2 (1990) was a recession. There was no construction
3 work going out. So, this was the only dollars that
4 were going out. From all over the country, people
5 were... and firms were saying: "This is billion
6 dollars going out in a recession." It was an
7 extraordinary opportunity.

8 Q. **[270]** Very effective too.

9 A. Pardon me?

10 Q. **[271]** Very... a big power of attraction for...

11 A. And there was... the good, the bad and the ugly,
12 all wanted a piece of this billion dollars (\$1 G).
13 And so, the trustees said that they wanted a brand
14 new corruption control. They could not have this
15 fail the way every other significant public
16 construction program had. It had to succeed and it
17 could not be derailed by corruption and
18 racketeering. So, they said: "Toby, would you put
19 the ideas of this book into the operations of the
20 School Construction Authority? And we will... we'll
21 fund and give you whatever political support you
22 need."

23 It was, I thought, not a real promise, to
24 be honest. I didn't think anybody had the courage
25 to really do what we thought it was going to take

1 to do it. And so it was that with a colleague, I
2 designed what... and we designed what we thought
3 was a dream machine. If it was our billion dollars
4 (\$1 G), public dollars, what would we do with it?
5 How would we protect it? And we came up with a
6 model. And we went in. I remember we went to... and
7 there was two trustees who were real visionaries
8 and they had the courage to do what they did do.
9 There was a fellow named Sandy Frucher and another
10 one, Norman Steisel, who were the two trustees. And
11 they called us in the boardroom of Lazard Frères,
12 the big investment firm, and we sat there and said:
13 "Okay, we'll do it if you do the following."

14 First and foremost, we had to decide should
15 this engine of reform be external to the SCA or
16 internal. Most of my colleagues out of law
17 enforcement had said, "It must be external or you
18 will get coopted and controlled by the agency that
19 you are trying to protect. And they'll cut your
20 budget, they'll cut your resources. They'll freeze
21 you out." In the end, we decided it had to be
22 internal because if you want to be an engine of
23 reform, as I said earlier, you have to work
24 internally. The public agencies have to themselves
25 put in place that which will protect them. Put the

1 procedures. Put the policies. Hire the personnel.
2 Do things in a way that creates the transparency
3 and the auditability on all of these transactions
4 we said are vulnerable to being exploited and
5 manipulated. It had to come from within.

6 And, so, we went to... the first thing we
7 said was: " I'll take the job, but I have to be
8 within." There's a public benefit corporation, so
9 it was a corporation, but it was a public
10 corporation and funded entirely with city dollars.
11 And as I said, a billion dollars a year. And the
12 first thing I said was, "I have to have the highest
13 title in this corporation, other than the
14 president."

15 Q. [272] Why?

16 A. Because there's... I said, "I have to have the
17 highest title and I have to have the highest
18 salary." And the reason is not greed or ego, that I
19 have to be an important person. If you're the
20 trustees, if the head of a public agency wants to
21 make integrity important, you have to speak to
22 everybody in the authority and everybody outside,
23 and integrity is as important as design, as
24 construction, as human resources, as legal.
25 Integrity is just as important. And so, I became a

1 vice-president and inspector general.

2 The other thing we said was, "No, we won't
3 take it unless we have this power. Nobody can even
4 bid on this billion dollars (\$1B) a year unless I
5 sign off on them, and we're going to do an
6 integrity vetting. And nobody can get a contract
7 unless I sign off on him, because we're going to do
8 a second integrity vetting, terribly important."
9 The vetting of a contractor is a snapshot at a
10 point in time. So, that what we... if we approve a
11 contractor on October six (6) of two thousand and
12 fourteen (2014), in November of two thousand and
13 fourteen (2014), never mind March of two thousand
14 and fifteen (2015), many many things could have
15 happened. It doesn't have to be as lengthy, but you
16 must also look at the integrity every time a
17 contract is awarded.

18 So, that was the next condition. We have to
19 be able to... nobody can bid unless we approve
20 them, and nobody can get a contract.

21 The other thing we said, some of the other
22 things we said was, "We must have law enforcement
23 powers." I said, "How are we going to get that,
24 we're not going to go to the legislature." I said,
25 "Nothing that we're asking for takes any laws. It

1 only takes you having the courage to do it. Give me
2 two hundred and fifty thousand dollars (\$250,000)
3 and I will go to the district attorney of New York
4 and I will give that to him, and he can detail his
5 resources to the inspector general of the School
6 Construction Authority. Give me another two hundred
7 and fifty thousand (\$250,000) and we'll go to the
8 Organized Crime Task Force, the two players, the
9 two agencies that have been part of the strike
10 force. And they will detail into the School
11 Construction Authority office of the Inspector
12 General."

13 Q. **[273]** So, they will bring in the power with them?

14 A. That brings their powers. Now, I don't control it.
15 They still control their staff, they don't... And
16 of course, the trustees said, "Prosecutor's office
17 are not for sale, you can't go in and just buy
18 assistant district attorneys and deputy attorney
19 generals." I said, "We're not buying them, we're
20 giving them an opportunity, that is an
21 extraordinary opportunity. If you are a prosecutor
22 inside a billion dollar (\$1B) a year agency, think
23 of the ways in which you can make cases and get
24 information, instead of subpoenas and this, and
25 that, the records are all there. They have to

1 cooperate with the IG by contract, terribly
2 important." Everything we did was not with the
3 power of the legislature or executive orders, it
4 was all what any contracting agency can do.

5 So, that, we said we need those law
6 enforcement powers. They also gave us the authority
7 to go to the New York State police and two hundred
8 and fifty thousand dollars (\$250,000) for them.
9 It's three quarters (3/4) of a million dollars
10 (\$1M) they were prepared to commit for that. We
11 never did this New York State police, but we did go
12 to the Manhattan district attorney's office and to
13 the Organized Crime Task Force and wrote them
14 checks for two hundred and fifty thousand dollars
15 (\$250,000) and they detailed personnel to the
16 inspector general's office.

17 Q. **[274]** You gave them the budget to detail the people
18 in your...

19 A. Right.

20 Q. **[275]** Okay.

21 A. We increased their budget with a check, which they
22 can then use to hire investigators...

23 Q. **[276]** More people?

24 A. ... engineers, whatever and detail them to us.
25 Again, no legislation, just money. Not just money,

1 but just money. Then, we said, "The president
2 cannot have a cabinet meeting without I or a
3 designee present."

4 Q. [277] What is the purpose of that?

5 A. The purpose of that is that if we're really
6 bringing about reform, and we have, we're doing law
7 enforcement investigations, we must take what we
8 learn in the criminal investigations and build that
9 into the operations of the authority, so that if we
10 are doing a bid-rigging, like the case,
11 investigation, like the one I described before,
12 where there was a person at the procurement
13 department who was taking bribes to manipulate the
14 bids, we were doing that investigation.

15 Because I was at the cabinet meeting, I
16 could say, you know, "We're doing a study of the
17 procurement process and the investigation is going
18 on, I can't tell anybody about the investigation,
19 but we think that there's some significant
20 weaknesses in the operation, and that's what the
21 IG's role is..."

22 Q. [278] So, you could draw from the investigation to
23 prevent the problem?

24 A. So, we then said, "Let's put a camera, because what
25 they were doing was changing the bid form right

1 there in the bid room, let's put a camera up on the
2 wall, and we can see what's going on." I didn't
3 tell them that we knew what he was doing in a
4 criminal investigation. And so, we did that, and
5 that actually have stop that practice, and also it
6 enhanced the criminal investigation. Why? Because
7 on a wiretap they started talking about it, "We
8 can't do this anymore because they got a camera
9 there." And by the way, that camera, because nobody
10 was going to sit and look at that tape, was just a
11 blinking camera with a red light blinking on it.
12 There was no film in it.

13 But that was something that we could no,
14 because we're at the cabinet meeting, we can bring
15 the insides that our investigations are generating
16 into the operations, to reform things. So that I
17 even had an analyst. Every one of our cases are
18 investigation, had an analyst whose job it was, as
19 part of the investigation, to determine what went
20 wrong here. What about our policies and procedures,
21 allowed this to happen? What facilitated it? And
22 what do we need to do to change this, so that it
23 can never happen again? That came back, and now
24 with the operational add-on, the vice-president
25 add-on, I could go in and make sure that that

1 happened.

2 Once again, this was all created by
3 trustees without any legislated power. Any
4 commissioner could do this. Any head of a
5 department could do this.

6 Q. [279] But you could do all that because we were
7 internal, because had you been external to the SCA,
8 you couldn't have been that active inside.

9 A. Absolutely. It must be and it goes back to the
10 concept that if you want to protect yourself, you
11 have only yourself to rely on. Get the resources
12 around you, and that can allow you to determine
13 where your vulnerabilities are, put the controls in
14 place, and monitor those controls. So, that's, we
15 did that, and there was a bunch, a group of other
16 requests we made, and they said : « Do it. ». I was
17 amazed. I remember, at the time that we were put in
18 place, and we said : « Okay, we'll do it. », the
19 head of construction was ready to quit. And he
20 said: « You're turning over the most magnificent
21 public construction program in our country now to a
22 prosecutor. It's a terrible idea. ». Within a year
23 and a half, they wouldn't do business without that
24 pre-qualification program in place.

25 But the day that we took it, I remember the

1 terror, we said : « How are we going to vet these
2 firms? ». We hadn't the first idea how to do it.
3 And so, we set out to figure out how do you vet.
4 I'm in nineteen ninety-one (1991), at the end of
5 our second year, we'd vetted three thousand (3,000)
6 firms. And this was for integrity. And we debarred,
7 by the time I left in ninety-six (96), two hundred
8 and twenty-six (226) firms.

9 And the process... We worked on that
10 process, and the concept is that, instead of
11 spending an enormous amount of time and effort on
12 doing investigations of a company, who knows better
13 about that than Thacher Associates, then Bobby
14 Thacher. So design a questionnaire that ask every
15 question, but only the questions that have to be
16 asked, to generate the information on the base of
17 which you can determine do I want to do business
18 with Thacher Associates, and then have Thacher
19 under penalty of perjury swear to the answers.
20 Then, all the SCA IGs had to do was to verify the
21 information, because in theory, everything that I
22 needed to know about this company that wanted to
23 bid to the SCA was in this package of answers, of
24 questions and answers. And all I needed to do was
25 to verify the information.

1 And it became... And it had to be a
2 streamline process. This can not be a telephone
3 book of information. Remember, we're trying to
4 attract and build a big pool of contractors, rather
5 than...

6 Q. **[280]** Driving away.

7 A. ... literally shrinking it. Yes.

8 Q. **[281]** Yes.

9 A. So this process has to attract people. It had to
10 get people to say : « This is no longer going to be
11 a bottom feeding agency, the way the Board of Ed
12 had. They're going to screen out the bad ones. And
13 so, that's what the pre-qualification program was
14 about. But we... So, the... We put together this
15 pre-qualification program. We had a group of
16 analysts. They became very very expert in putting
17 together metrics, Because anybody can go on Google
18 and this and that, and look, and that doesn't tell
19 you much. What you need to do is to know which
20 databases to go in which order, so we put together
21 protocols for how you go and look at various
22 agencies. There's an enormous amount of public
23 information that's out there. We took every media,
24 article, we took every indictment, every press
25 release, we put them into a database, so that we

1 can look in that to see if there was any
2 information about a company.

3 And then, we asked questions, of course,
4 that... « Have you even been under investigation?
5 Have you ever had this and that? ». Based on that,
6 we went forward on our pre-qualification program.

7 Q. **[282]** That's the screening process?

8 A. Pardon me?

9 Q. **[283]** That's part of the screening process?

10 A. That's the screening process.

11 Q. **[284]** O.K. What about...

12 A. And...

13 Q. **[285]** Go on. You said certification; what about
14 that?

15 A. Well, the certification process... The
16 certification process is a situation which comes up
17 and it's a terribly valuable one that I recommend
18 that the Commission consider. Oftentimes, when
19 vetting a firm, there'll be information that comes
20 up; a newspaper article says : « This company is
21 controlled by this person », or « This company has
22 been doing this and that with this politician. »,
23 and there's something in a newspaper article. Or
24 there's some allegation, and a Commission.

25 But it isn't a proof, there's nothing

1 better than an allegation. And you can't debar or
2 tell somebody they can't be pre-qualified for that
3 reason, because it's... And you can't make them
4 prove a negative. So what do you do? And we came up
5 with the solution of a certification. And this came
6 out of the first best case; the best example of
7 this is the best way to describe the certification
8 process. There was a company called Cappa
9 Renovations. That Cappa Renovations had been one of
10 the worst companies that had ever touched the
11 school for the Board of Education before the SCA
12 came into business. Every project was over budget,
13 delayed, unsatisfactory work product. But again and
14 again, as we said earlier, they were allowed to
15 bid. They got the low bid. They got another
16 contract. And they continued to fail to perform.

17 Nobody had, but everybody suspected,
18 enormous payoffs and corruption between... the
19 relationship between them and the Board. Finally,
20 after a decade and a half of this, they... the
21 Board of Ed debarred, rarely done, the firm Cappa
22 Renovations. Now, the SCA is born. One of the first
23 firms to come to us is called BQE Contracting. We
24 looked at BQE Contracting and it is owned by the
25 wife of Tony Cappa. It has an address that looks

1 very similar to Cappa Renovations. Everything about
2 it smacked of Cappa Renovations. It had a former
3 Board of Education employee as one of the owners.
4 It had a terrible smell to it.

5 On the other hand, you can't visit the sins
6 of a husband on a wife. Their lawyers had carefully
7 crafted it. So the financing of it had nothing to
8 do with Tony Cappa or Cappa Renovations. And we had
9 to decided quickly. The SCA said: "There was a bid
10 on the table." They had to do it. They said: "Look,
11 we need this quickly. We don't care. If you are
12 going to bounce them, that's fine. We'll go to the
13 next low bidder. But we have to know tomorrow."
14 What we did is we used the certification and we
15 called them in. And it was a very simple document,
16 that you didn't even have to be a lawyer to craft.
17 And it said: "This certification..." and it said,
18 "Whereas the School Construction Authority is
19 deeply concerned about the integrity of the firms
20 that it contract with, whereas the School
21 Construction Authority has deep concerns that BQE
22 Contracting is an alter ego of Cappa Renovations,
23 whereas the principals of Cappa, BQE, are prepared
24 to swear that this is not the case, and to make
25 certain representations to induce the School

1 Construction Authority to award a contract," the
2 magic words, "to induce the award of a contract,
3 the principals make the following representations:
4 Tony Cappa never has, never will and does not now
5 have anything to do with BQE Contracting." The
6 three principals came in. They signed it...

7 Q. **[286]** That was on an agreement? It said... this is
8 an agreement?

9 A. Agreement; it's a certification they made with a
10 language that, "We give you this certification to
11 induce you to award a contract." Half way through
12 the project, there was a roofing contract of five
13 million dollars (\$5 M). Two and a half million
14 dollars (\$2.5 M) of work had been completed and had
15 been completed to the satisfaction - lots of
16 troubles but - to the satisfaction of project
17 manager and was approved for pay off... for
18 payment. A million dollars (\$1 M) had been paid. It
19 was a million and a half (1.5 M) delta and the
20 project went south. It stopped performing. And it's
21 just like they always did, the subcontractors were
22 not getting paid. The bricklayers weren't...
23 Various subcontractors weren't getting paid...

24 Q. **[287]** The same MO was emerging.

25 A. And the same MO was emerging. And what normally

1 happens at that point, you throw them off and
2 that's a long protracted proceeding. You go to the
3 surety who writes a bond saying "In the event that
4 problems arise, we will give you a replacement
5 contractor." That's a long process because the
6 surety always says: "No, it was the School
7 Construction Authority's fault." So you go back and
8 forth. And the project and the Clara Barton High
9 School would have not gotten its new roof. Kids
10 would not have had a classroom. We were in a
11 dilemma. I sent some investigators out and talked
12 to the subcontractors to ask them, "Have you ever
13 heard of Tony Cappa?" They said, "Of course." "Can
14 you prove it?" "I have faxes from Greece, where
15 he's dealing with the subcontracts we signed." "Can
16 we see them?" They gave them to us.

17 The next day, we had officers of our... of
18 the IG's office, escort them off the site. Said:
19 "You can pick up your stuff but you're off the
20 site." he said: " You can't do that." I said: "You
21 are terminated. You lied to us in this
22 certification." "What certification?" "Here. You
23 promised Tony Cappa, we are going to prove that he
24 didn't..." And they said, "Well, give us the
25 million and a half (1.5 M) for the work that we

1 performed, that... has already been approved for
2 payment." "No." They sued us, wrongful termination,
3 and for at least the million and a half (1.5 M)
4 that we had done. The Court... and they moved for
5 some rejudgement, which means, there is no need to
6 have a trial, this is clear. The judge said: "Not
7 at all. If the SCA can prove that at the time you
8 signed that certification, you knew it was a lie.
9 You fraudulently induced this public authority to
10 enter into a contract. The public authority that
11 can void the contract, they get back all the
12 benefits they gave to you and get to keep the
13 benefits they got." So we would not only... didn't
14 have to pay them a million and a half (1.5 M), we
15 could get back the million (1 M) we paid them, even
16 though we got a half a roof job.

17 Meanwhile, we called in a replacement
18 contractor, two days after we terminated them, for
19 a great deal more money than was left in the
20 contract. They finished the job. But we had that
21 million and a half (1.5 M) that was... that hadn't
22 been paid. And so, they finished it under budget,
23 on time, with enough extra dollars that we could
24 get some widow replacement done.

25 This simple little certification, this

1 little document gave a business solution to what
2 was in effect a crime problem. And it's how
3 authorities, it's just an example, you can build
4 things into your contracts that solve the problems,
5 without going to a legislator, regulator,
6 prosecutor, that when they did get prosecuted. We
7 prosecuted them for lying, and Tony Cappa ended up
8 going to jail on that. But the point is...

9 Q. **[288]** That was not the goal?

10 A. It was a win-win-win, and it goes back to our
11 mandate as the inspector general of the School
12 Construction Authority, it was to get schools built
13 on time and to get quality schools built on time
14 within budget, not to catch bad guys. We used law
15 enforcement strategies and methodologies to pursue
16 and to find out what was going on, and so that we
17 could design reforms. But our purpose was to get
18 schools done on time within budget. And this is an
19 example of using this simple contract.

20 Another example. A very very big problem in
21 public construction is the Prevailing Wage Statute.
22 In the public construction world, unlike the
23 private, you have to pay a certain... the
24 prevailing rate of wage, which turns out to be the
25 union scale. I don't believe it's the same in

1 Québec, but you have to pay their union, so you
2 have to pay this rate.

3 What happens is, very often, and always
4 with the school contractors before the SCA, the
5 contractors bid the work, they aren't paying their
6 workers the prevailing wage, so they have a much
7 lower cost than somebody who's complying with the
8 law. They win the contracts, and then they beat out
9 the honest contractors. So, there's a race to the
10 bottom. Whoever can cheat the best gets the most
11 contracts.

12 This was a big problem. We said, "We saw as
13 the IG as something that really affected the
14 integrity of our programme." Because you ended up,
15 if you didn't enforce the prevailing wage law, you
16 ended up with contractors, the lesser contractors,
17 you ended up with workers who weren't as good.
18 Union workers are better than untrained. They're
19 skilled, they've been trained, they've gone through
20 apprenticeship programmes. They're better than
21 undocumented illegals who are happy to work for ten
22 dollars (\$10) an hour because that's better than no
23 dollars an hour. So, they will come any day, all
24 day long and work on your project.

25 And so, we felt it was terribly important

1 to enforce Prevailing Wage Statutes. Now, how do
2 you do that? It's a crime to not do that, but we're
3 not investigators, at this point take away our law
4 enforcement side. An agency doesn't have to have
5 any law enforcement powers to do what we did. What
6 we did was we said, "In the contract, you must pay
7 the prevailing rate of wage, or you must pay union
8 scale. So, that's the law, I mean, why is that such
9 a big thing?" And then, we said, "This is a
10 material term of the contract."

11 Q. **[289]** Yes.

12 A. And then, we said, "If you breach this material
13 term, not only must you cure by paying the workers
14 that you underpaid, but you must also reimburse the
15 School Construction Authority what it has paid to
16 investigate this breach." Then, we put out a
17 request for proposals to all sorts of accounting
18 and firms like what we are now, and said, "We're
19 looking for investigative audit firms that can do
20 prevailing wage investigations." And we selected
21 six of them. And we put them on the shelf, we said,
22 "Maybe you get a contract, maybe you don't. But if
23 we have any prevailing wage contracts
24 investigations to do, we'll pick one of you. The
25 rates are all established." Then, we went and look

1 for what were obvious prevailing wage violators.
2 They're easy to find.

3 And when we would take a
4 PricewaterhouseCoopers off the shelf, because they
5 were one of the firms, and we said, "Go get this
6 firm." So, they would go out and they would
7 document it. Now, why do we need to have these
8 firms? Nobody has the resources to do this in-
9 house. It is hard to make a prevailing wage case.
10 Why? You have to talk to workers. These workers
11 live not... they're live in outer places, they're
12 oftentimes immigrants, they don't speak the
13 language that most of the investigators have.
14 They're hard to develop, these cases. And they've
15 got to prove what they've been paid.

16 And the cheating is, there's any number of
17 different ways. One of the most common ways was, on
18 Friday afternoon payday, the workers would come to
19 the trailer, they would be given a check, which was
20 the right amount for what they were supposed to be
21 paid, told to endorse the check. They would endorse
22 it, and they say, "Give me check back, and here's
23 your cash for the week."

24 Q. **[290]** A lesser amount?

25 A. Pardon? For a much lesser amount. They would take

1 that check, the contractor, to a check-cashing
2 operation, and get it cashed. No only do they cheat
3 the...

4 Q. **[291]** You have a paper trail.

5 A. ... worker, but he's generated a great deal of cash
6 that he can use to bribe people, he's got tax
7 fraud, he's got everything.

8 Q. **[292]** And you have a paper trail that kind of prove
9 that you pay the right wage?

10 A. Totally perfect paper trail. "Of course, I paid
11 these workers what I should, here's a cancelled
12 check with the worker's signature." So, how do
13 you... these are not easy cases to make. So, we get
14 Pricewaterhouse, they go out, they make the case,
15 they interview everybody. We do things like send
16 out letters to every worker, to say, "This is what
17 you should have been paid, were you paid this? If
18 not, please call this number. You can see us after
19 hours, we'll come to your home." Lots a different
20 ways to do it. And we built a prevailing wage case.
21 Then, we call the company in, and we say, "Company,
22 you've been violating your material breach.". We
23 can't say we've been validating the Prevailing Wage
24 Statute because under New York law, only the
25 Controller of the City of New York can enforce the

1 Prevailing Wage Statute. We can't treat it as a
2 criminal case, because only DA can prosecute.

3 So we do it as a contract case. You
4 isolated your contractual obligation to pay the
5 prevailing wage. Now you must pay the workers and
6 you must pay this hundred and ninety thousand
7 dollar (\$190,000) bill from Price Waterhouse
8 Coopers. And they say : « What? I've never heard of
9 them. I didn't contract with them. I'm not going
10 to... Sew me. I'm not going to pay it. ».

11 I say I'm not going to sew you and I don't
12 have to sew you, because your obligation to pay
13 comes out of the construction contract. I'm going
14 to deduct nineteen thousand dollars (\$19,000) a
15 month for the next ten (10) months. So it doesn't
16 cripple you. Because again, my job is to get
17 schools built, not to penalize them to the point
18 where they can't succeed.

19 And, in that way, we were able to put
20 together an enormous number of prevailing wage
21 cases. And perversely, I remember, there was a
22 point where the papers were writing the biggest
23 violators of prevailing wage occur at the School of
24 Construction Authority, and the reason was because
25 more enforcement actions had been brought there

1 than at any other agency.

2 Q. **[293]** They were just known.

3 A. So we actually brought sort of the scrutiny on
4 ourselves. But it was an extra-ordinarily
5 effective. And it's a win-win; the public gets the
6 benefit of good workers, those who cheat are no
7 longer going to be continuing to enter into our
8 fold, they know we're coming after them. So the
9 cloudy contractors, the law-abiding contractors can
10 now come back in and win contracts. And all of this
11 is done without any cost to the public, without any
12 legislation. It's all done from a contract.

13 Q. **[294]** That's one of the key, I guess, to keep it at
14 a contracting level, because it's all consensual,
15 then. You signed, you agreed, now you have to
16 comply.

17 A. Exactly. And you can put many many things. We have
18 fair and ethical business practices. Most public
19 agencies have these very complicated, lengthy; they
20 think they've thought of every single way in which
21 to wrap a contractor up in knots. But what they
22 don't have is real ethical commitments in the
23 contract. We have fair and ethical business
24 practices. It says : « During the life of this
25 contract, I will not, on this project or any other

1 project, do any of the following things. », and it
2 will be : « falsify business record, I will not pay
3 a bribe to an inspector, I will not do a political
4 contribution that is illegal. I will not do all
5 sort of things. ». They don't have a problem
6 signing that. It's all... Of course, I'll sign
7 that. And it says : « In the event that I breach
8 any of these, this will be a material term. You
9 have the right to terminate me and you can put
10 sanctions in there. ».

11 Suddenly, you have an ability to, just out
12 of a contract, - forget the pre-qualification
13 process done by somebody else -, out of your own
14 contract, you have control and leverage to work
15 with that firm. You probably don't want to bar or
16 throw them out and terminate them. That's cutting
17 off your nose despite your face. But you do want
18 the leverage to be able to say: okay, we're not
19 going to terminate you if you take on a monitor.
20 And that monitor is going to look at what you do
21 from here on out, and report back to me, and you're
22 going to pay for it, and we'll talk about that
23 next.

24 Q. [295] Go ahead.

25 A. Right. You didn't get to ask the question.

1 Q. [296] No. You took the question away from me.

2 R

3 A. Probably the most effective monitor... tool, and
4 this is the one that I most recommend that the
5 Commission considers use, is something called
6 integrity monitors. There's two kinds of integrity
7 monitors. At the SCA, Office Inspector General, we
8 just dealt with the first kind, and that's called
9 an imposed monitor. An imposed monitor, it has a
10 real mouthful of a name. In the book, we call it a
11 investigative audit firm, but that has disappeared.
12 And, for why, we're going to call it a private
13 Inspector General, that you have to take on a
14 private Inspector General that the acronym PIG
15 didn't really work, so we came up with another
16 thing, and it's called an IPSIG. An IPSIG is an
17 Independent Private Sector Inspector General.

18 Now, an Inspector General's function is to
19 prevent fraud ways and abuses from infecting an
20 organization. So that many, I don't know if in
21 Canada or in Québec, you have Inspectors General
22 working, but I know that Commissioner Gill Hearn
23 has talked about the IG or Inspector General
24 programme in New York. It's in all federal, in
25 state and local agencies in the United States, have

1 Inspectors General.

2 Q. **[297]** Those are the public ones...

3 A. Those are the public ones.

4 Q. **[298]** ... within the Agencies?

5 A. Now, this concept is to take a private sector firm.

6 Private sector is an independent, private sector

7 IG. And if a firm... And then to impose it on a

8 company, as a condition of getting a contract. The

9 first one of those was the E.W. Howell. And I will

10 explain this very brief story. Nothing is breaf...

11 Q. **[299]** No. Nothing.

12 A. E.W. Howell, we did a pre-qualification, approved

13 them. They were doing a contract of forty million

14 dollars (\$40 M), at the School Construction

15 Authority. Two years later, they submitted another

16 bid. We did our vetting, and this is an example of

17 why you need to continually vet, not just lye on a

18 pre-qualification vetting. And we found that an

19 investigation had opened up by the Medic-Aid fraud

20 prosecutor, and that they were investigating E.W.

21 Howell for paying kickbacks to Franklin General

22 Hospital to get work. So, there was a hospital work

23 that they were doing and there was kickbacks and

24 they were under investigation. And we said: "My

25 God! What are we going to do?"

1 Q. [300] Because they are not found guilty of anything
2 yet.

3 A. No. No. And this is scuttlebutt. I... what is going
4 on in the grand jury is secret. But we had heard
5 about this, and this is one of the ways of a
6 prequalification form, we call them in and say:
7 "Have you been called before a grand jury?" They
8 can't lie. They have to tell me yes. "Yes." Okay,
9 now we got a problem. We know that there is a good
10 possibility they are going to get indicted. And
11 because of our relations with law enforcement, we
12 were able to say: "Yes, it looks like it is going
13 to happen." They are thirty million-dollar (\$30 M)
14 bid. The next lower bidder is thirty-four (34),
15 four million-dollar (\$4 M) delta. We've got them
16 doing a project. If we debar them and don't give
17 them this contract, what are we going to do about
18 the contract we've got in place? They had, at that
19 point, gotten rid of everybody. They came in and
20 said: "You know, this is... There were some
21 problems. We hope we are going to be able to
22 convince the US Attorney..." or "the Medicaid fraud
23 prosecutor not to indict us. They absolutely are
24 going to indict. We think our principals, or the
25 players who were principals of the company, they

1 are gone, they've been gone for a year. And we've
2 done all these great things to make the company
3 clean. Please, let us have the contract."

4 What we said to them at this point, "We'll
5 let you have the contract if you hire an IPSIG. You
6 have to hire the IPSIG. I'll give you the IPSIG.
7 That IPSIG is going to be a firm that has the
8 following disciplines; attorneys, investigators,
9 auditors, engineers, loss prevention specialists.
10 That firm is going to come into your firm. You're
11 going to pay them. It's going to design a code of
12 business ethics with you, if you don't have one
13 now. It's going to put controls in place to make
14 sure that all of the various transactions that are
15 vulnerable to manipulation, bid solicitation... you
16 are vetting of your own subcontractors, bid
17 solicitation, bid award, payments, change orders,
18 all... you have good controls in place. And it's
19 going to monitor your compliance with those
20 controls. And then, it's going to report to me,
21 back to the IG.

22 Q. **[301]** It's open book with the IPSIG for the
23 company.

24 A. Yes.

25 Q. **[302]** It's open book. Okay.

1 A. They... Oh, no, they don't get to see... different
2 models occur...

3 Q. **[303]** It depends on the situation.

4 A. Sometimes, some agencies allow the company to see
5 the report given by the IPSIG.

6 Q. **[304]** No, no, I mean, for the IPSIG within the
7 company. The company has to be open with the IPSIG.

8 A. Oh! Yes, yes.

9 Q. **[305]** That's what I mean.

10 A. And by the way, they're not there as a cop. They
11 are not a cop trying to catch them. They are trying
12 to build integrity.

13 Q. **[306]** And help them.

14 A. Build a culture of integrity in this company.
15 Because I want at the end... and every public
16 agency wants a... companies that have integrity.
17 There is an infusion of integrity in this company;
18 that's the culture. And the IPSIG can help do that.
19 And it's independent. So, it's not somebody who is
20 their accountant or their lawyer, who you know is
21 going to say: "Yep, everything's fine now."

22 Q. **[307]** And just to go back a little bit, like you
23 said, the goal is not to punish or to kill
24 companies, or to cripple the industry. The goal is
25 to make it more sane.

1 A. Exactly.

2 Q. **[308]** Cleaner. Okay.

3 A. And, there are firms that should be debarred for
4 ever and a day. But that is not most firms. Most
5 firms are capable of being rehabilitated. And the
6 prequalification programme should not be used as
7 one that is to...

8 Q. **[309]** To punish.

9 A. ... to put a punishment on a firm that has done
10 something wrong. There should be a prosight "Is it
11 capable of reforming itself with the help of an
12 independent entity that will report to me?" It must
13 have independence. That's why that I and IPSIG is
14 absolutely important.

15 LA PRÉSIDENTE:

16 Q. **[310]** Do you ever experience if one person among
17 the IPSIG firms was himself corrupted?

18 A. I've not seen corrupt but have in deed seen where
19 there has not been sufficient vigilance on the
20 independence, that they are really acting more as
21 an advocate for the firm. Why? Because if they act
22 as an advocate, they can extend their period of
23 monitorship. So that if a company... one of the
24 situations if, the School Construction Authority...
25 E.W. Howell now is doing well. Now, E.W. Howell

1 bids a job for the New York City Department of
2 Sanitation to build a building. And Sanitation
3 says: "Well, I see that you had these principals
4 and they are in jail right now. Well, don't worry
5 about that, we've got a monitorship programme and
6 we are doing great things, and those guys are gone.
7 And come and see... and can I bring my monitor in
8 to talk to you. And they'll convince you, the
9 Department of Sanitation, it'll be Rose Gill Hearn,
10 because it would be her IG. Come and let me..."

11 And, at that point, the IPSIG has to be
12 very careful not to be an advocate. They can be a
13 fact reporter. So the answer to the question: I
14 haven't yet seen where there's been corruption. And
15 you always ask the question: who's checking the
16 checker? I mean how many times do you have to
17 keep... but if you have that independence and
18 they're reporting back to the IG, the IG is getting
19 those reports. The IG is talking to them. If the IG
20 is any good at all, they'll know whether or not
21 this company... this IPSIG is doing their job, is
22 being independent. They'll see those reports and
23 say, "That makes sense." Because when we do a
24 report to a company and we do... we advocate the
25 report gets shared, unless we find criminal

1 activity because, once again, we think that it's
2 useful for the company. So, we will put a matrix
3 together of compliance and say, "Here are the most
4 critical controls that we measured compliance with.
5 In the first month, there was only eighteen percent
6 (18%) compliance. In the fifth month, they were up
7 to twenty-eight percent (28%)." And then... this is
8 the kind of thing that the company and the board of
9 directors and the audit committee all like to see.
10 And it gets them thinking the way the should. I
11 don't like to have a report that they are not
12 allowed to see, but some... it depends on the
13 agency but the concept is the same: independent,
14 looking at instilling controls, monitoring
15 compliance with those controls, reporting back to
16 the public authority and being paid for by them.
17 And this way, when we did this, E.W. Howell was a
18 win, win, win. E.W. Howell had we debarred them,
19 had we... said you are (inaudible) that's all they
20 did, was public construction; a hundred-year (100)
21 old firm with lots and lots of employees who would
22 have gone out of business. And the public...
23 because all they did was public work, public
24 construction agencies would have lost a good firm.
25 They've done a lot of work over a hundred (100)

1 years. It was quality work. The Authority would
2 have lost four million dollars (\$4 M). Employees
3 would have lost work. And we would have had a heck
4 of a problem dealing with this contract that they
5 were already in, because we are not going to
6 terminate them on that. So, this was a win, win,
7 win. And it is something that I absolutely
8 recommend we put together. It doesn't take
9 legislation. It doesn't... it just takes
10 creativeness. It takes putting together a process
11 by which you qualify IPSIGs, and they do need to be
12 qualified.

13 You ought to be very careful that they're
14 independent. You'll often have the accounting firm
15 of a company saying, "I'll be the monitor." No.
16 They've already been compromised. They can't have
17 worked beforehand, and they can't work after
18 because, otherwise, they can be compromised. If...
19 and that seems... I even had the situation, E.W.
20 Howell was an example. So good was the monitor that
21 the company said, "Can we keep the monitor?" when
22 it was over, "We think he's done a terrific job in
23 making us good corporate citizens." And the answer
24 had to be no. Why? Because, even though I trust
25 that monitor like I would trust myself, and I know

1 that he was not compromised, it's perfectly
2 possible that, if during the life of that
3 monitorship, the company says to the monitor,
4 "Look, work with me on this and I'm going to keep
5 you on board as my integrity consultant for years
6 to come," you can start compromising them. They
7 have to truly be independent or it falls apart. And
8 many of the monitors put in place on the financial
9 scandals, and the banks in the United States have
10 gotten into terrible trouble on that front. The
11 selection process has to be very good.

12 Governor Christie in New Jersey appointed a
13 fellow named Ashcroft to... as a former Attorney
14 General and a close friend and political ally to a
15 monitorship that was hundreds of millions, and got
16 terribly criticized which undercut the credibility
17 of the whole monitorship programme. Why? Because
18 people said, "Oh! It's just people giving out..."
19 It would be prosecutors giving, because generally
20 the monitors are former prosecutors, and it's...
21 generally, Inspectors General are former
22 prosecutors or people out of the law enforcement
23 world. So, it's just the old boys network. They're
24 giving out work to their buddies in the Inspector
25 General world. So, you've got to really have a good

1 programme, where you are measuring and establishing
2 quality of IPSIGs; they have to have the right
3 resources, they have to have the right experience,
4 and they have to have no relationship with the
5 company.

6 I would recommend that... the Commission a
7 web site called the International Association of
8 Independent Private Sector Inspectors General,
9 AIIPSIG, the AIIPSIG.com. And there is a code of
10 ethics for IPSIGs that were developed. This is a
11 trade group for the IPSIG community. But the very
12 simple concept is that there is... you can, without
13 any external legislator or other enablement, do it
14 internally yourself.

15 Private sectors are doing this all the
16 time, now. So that we've been working for a lot of
17 private developers and companies, and they have
18 this problem: « I want to do what this... This is
19 the best contract for New York. But they've done
20 terrible, terrible things. But they do the best
21 excavation work. They're mobbed-up, they got this,
22 they got that problem; we want to put them to
23 business; would you be the monitor? ». And we do
24 it.

25 Q. [311] So, from your experience with the SCA, and

1 you got to, like you said at the beginning of your
2 testimony, to build your dream machine and
3 implement some strategies; you found that they were
4 successful at the outset of that?

5 A. Yes.

6 Q. **[312]** Okay. And then, you went on after that to
7 found your firm...

8 A. Yes.

9 Q. **[313]** ... of IPSIG. So that's what you do,
10 basically. Would you just explain?

11 A. Yes. That's the third that...

12 Q. **[314]** That's the third that...

13 A. That's the third initiative that I did, ...

14 Q. **[315]** Yes.

15 A. ... it has a lot of experiences that you could bear
16 on here. We, in nineteen ninety-six (1996), we had
17 sort of what we call the trifecta. We had, in the
18 month of March nineteen ninety-six (1996), three
19 things happened to the office of Inspector General
20 School of Construction Authority.

21 The first was that the Kennedy School at
22 Harvard University did a study founded by the
23 National Institute of Justice, saying this
24 programme has been so effective that it should be
25 adopted by the Federal government Inspector General

1 programme.

2 Q. **[316]** The one you built?

3 A. The one we built at the...

4 Q. **[317]** SCA.

5 A. SCA, School of Construction Authority. That same
6 month, Diana Enriquez, a financial reporter for the
7 New York Times, wrote a full page of the business
8 section on what they called the Thacher model, and
9 said the private sector should be adopting this
10 programme that's been so effective in the public
11 sector. And that very same month, Sixty minutes of
12 CBS News did a piece called « The mob builds its
13 own courthouse », in which it described how firms
14 that we had debarred from building schools were all
15 working building the federal courthouse in downtown
16 Manhattan.

17 So, these three things start to generate :
18 « Can we hire you to do the strategies? ». And we
19 said : « No, we work for the government. ». And so,
20 we set up a company, and that's what we've been
21 doing. And I can probably... I know there's a lot,
22 but I can jump right to...

23 Q. **[318]** Yes.

24 A. ... one piece that we didn't discover. We do three
25 things, I said at the beginning.

1 Q. **[319]** Yes.

2 A. We do investigations and audits in the construction
3 world. We do set up compliance programs for
4 companies and for agencies. And the third, we do
5 monitoring. I've described the monitoring of an
6 IPSIG, an imposed monitor. And those come out in
7 the procurement world, mostly. I want to do
8 business, I'll let you do business, but I have
9 these concerns. I will disqualify you unless you
10 take on a monitor. And if you take on the monitor,
11 that reports to me that you paid for, I'll let you
12 bid and be awarded a contract.

13 Q. **[320]** That's a classic use?

14 A. That's what we just talked about, ...

15 Q. **[321]** Yes.

16 A. ... the IPSIG. That "morph" into another kind of
17 monitorship, that's been extraordinarily
18 successful, and I would also recommend that the
19 Commission consider, and that's called...

20 Q. **[322]** The Project Integrity Monitor?

21 A. ... the Project Integrity Monitor.

22 Q. **[323]** Yes.

23 A. Where is the IPSIG is imposed on a company to put
24 together for that company a Code of business
25 ethics, a set of internal controls, and then

1 monitor compliance with it, often runs a hot line
2 there, does other things, training. A Project
3 Integrity Monitor is taken on by an owner, a public
4 agency, to be the project integrity monitor for the
5 whole project. Generally, it should be a big
6 project, a big road project, a big bridge project,
7 a big... Small little projects, it doesn't make
8 sense, because it cost money.

9 But, if done right, and once again, it's
10 the same disciplines, the same times of (inaudible)
11 or IPSIGs as can be a project integrity monitor,
12 what they do is exactly the same thing. They come
13 in and look at this project and say: "Where are the
14 risks of this project going sideways, as a result
15 of integrity breaches?"

16 Q. **[324]** To do that, though, the agency doesn't need
17 to have a smell of a problem just to do that. This
18 is the size of the project that would command such
19 a...

20 A. It is because...

21 Q. **[325]** ... such a thing.

22 A. It's not because an... initially, agencies used to
23 think as companies used to think. "Well, this is a
24 sign that I think there's something wrong here. So
25 I can't do that. It's embarrassing." People would

1 say: "Oh! You need a monitor." It's because of the
2 vulnerability and...

3 Q. **[326]** The potential.

4 A. ... susceptibility and potential of racketeering.
5 It's going to happen on a project. And even with an
6 IPSIG, it's going to happen; even with a project
7 integrity control monitor, it's going to happen.
8 But these programmes, if they are done right, they
9 prevent, but they are also designed to detect
10 things that do get through and to fix them in
11 real time. So, it's a prevention, detection and
12 remediation programme. It's all three. And you're
13 never going to stop it in its tracks. I will never
14 say that there won't be a dime of corruption on a
15 project, if we have a project integrity monitor on
16 it, but I will tell you that there will be very
17 minimal, and that which does happen, will get
18 detected. And if it gets detected, we'll come up
19 with solutions.

20 We never, as the inspector general of the
21 SCA, found a problem and then said, "Because we
22 were internal, we wanted to make sure those
23 problems got fixed." We brought them to the
24 president "Here is the problem and here is the
25 solution." Because to just give a problem, as a

1 prosecutor does, saying: "You got a problem over
2 here," is really no help. You need to come up with
3 a solution at the time that you present the
4 problem.

5 Q. **[327]** So we talked about this morning with
6 Commissioner... Former Commissioner Hearn, about
7 the DIO using either IPSIG or project integrity
8 monitor on some cases. Talk to us about the Port
9 Authority...

10 A. Sure.

11 Q. **[328]** ... adopting that... those practices, please.

12 A. The Port Authority, well...

13 Q. **[329]** What is that? Just explain the Port Authority
14 briefly, just for us.

15 A. Sure. The Port Authority of New York and New Jersey
16 is a bi... a two-state agency that was created by
17 Congress, because it's... and it was by a compact.
18 And the Port Authority of New York and New Jersey
19 is responsible for all of the roads in an about New
20 York and New Jersey. So, we have the bridges going
21 across the Hudson River, all of the tunnels going
22 underneath the Hudson River, all of the subways
23 going in Manhattan, all of the trains going back
24 and forth between New York and New Jersey. It's a
25 massive, massive programme, and it's a huge

1 construction programme. And, of course, it was the
2 Port Authority that had the World Trade Center, and
3 owned the World Trade Center, that was the two...
4 Tower 1 and 2, that were decimated with the
5 terrorist attack on 9/11. And so the cleanup of
6 Ground Zero was on the Port Authority's site. And
7 that was one of the first really big public uses of
8 the project integrity monitor. And it's a terrific
9 example of how these are valuable.

10 We were put... the City took that Port
11 Authority site, divided it into four quadrants. We
12 had thousands of workers descend on that site. At
13 first, we were looking for bodies to... looking to
14 save lives and then looking for bodies. Then, we
15 had to clean up the site. And there were thousands
16 of workers, hundreds of companies. And the
17 opportunity to fraud was massive. Plus, it was all
18 on a time and material basis.

19 Time and material means "I can't tell you
20 how much it's going to cost to go in and find
21 bodies and to clean it up. I have no idea." "Good,
22 keep track of your time. Bill us for your time.
23 We'll give you that plus a profit in overhead, on
24 top. Tell us what equipment you had to rent, buy or
25 use, and we'll pay... reimburse you for that with

1 profit in overhead, on top." Now, you have hundreds
2 of firms, thousands of workers, how do you tell
3 whether a contractor was actually honest in its
4 submission of a bill, saying that "I had seventeen
5 (17) workers on the site that day," when in fact,
6 they only had thirteen (13)? And there are hundreds
7 of those firms. We had to come up with systems by
8 which we could do that and we did that.

9 And the... that programme that was, I
10 think, it was nine hundred (900) in the cleanup...
11 I'm sure that the Commissioner Hearn... Gill Hearn
12 gave the right number. But there was not a single
13 scandal in one of the most corruption prone
14 projects. There was even a wiretap, the... District
15 Attorney Morgenthau was running, in which they
16 overheard mobsters saying, "Whatever you do, don't
17 go near that fucking Ground Zero because they have
18 monitors all over it." And that was perhaps one of
19 the most satisfying moments, where we saw the
20 monitorship works. The bad guys are saying "Stay
21 away!"

22 Q. [330] I have to say you didn't use the same quote
23 as Rose...

24 A. She didn't say that?

25 Q. [331] No, not that way.

1 A. I'm sorry. But that was on the quote. And the
2 cost... I mean we were paid at... in that
3 engagement more than I could ever imagine for a
4 single engagement. It was six million dollars
5 (\$6 M). We documented, documented, sixteen million
6 dollars (\$16 M) worth of savings, either in terms
7 of flowbacks...

8 Q. **[332]** So, the monitors, they pay for themselves, I
9 mean, just by the (inaudible)

10 A. They paid for themselves. And that doesn't measure
11 the fraud we prevented from happening. It's just
12 the documented... of what we said, "Don't pay this
13 bill," or "You overpaid this, get it back." And
14 that was...

15 Q. **[333]** This is just what you caught.

16 A. ... sixteen million (16 M) against six. And there's
17 lost of fraud that didn't occur because they
18 knew... stay away from that blank site. And this
19 monitorship programme, it works, the project
20 integrity monitor. It's been used by the Port
21 Authority in the whole rebuilding of Ground Zero
22 now. And there's multibillion-dollar projects, a
23 huge Transportation Center, the Freedom Tower being
24 built, the Security Facility. And public agencies
25 are using project integrity monitors now all over.

1 Q. **[334]** Are they able to document every time the
2 benefits of doing that, just in dollars?

3 A. It's always as easy. I wish it were because...
4 because so much of it is prevented losses.

5 Q. **[335]** Yes.

6 A. How much do you say? How do I measure what didn't
7 happen?

8 Q. **[336]** What I... what didn't happen because I was
9 there.

10 A. But, still, the answer is sometimes yes and
11 sometimes no. Another one that we... that was very
12 successful... and it's generally where it's most
13 easy, is when you have crises that you're
14 responding to and the construction controls are
15 minimal. So, after the hurricane Sandy, where New
16 York City was just wiped out, and there were people
17 out of their homes; Mayor Bloomberg put together a
18 wrap and repair program and he said, "I'm going to
19 get people back into their homes. Not repair them
20 all. It's going to be just enough to get them back
21 in their homes, to get heat, electricity operating
22 in their homes." And he just sent masses of
23 contractors out and paid them. And we all knew
24 there would be massive fraud in that. And sometimes
25 you have to accept a certain... when lives are at

1 stake. And... but we were the integrity monitor on
2 that. And that one, again, there was a six million-
3 dollar (\$6 M) fee that we got in that over only
4 four months. It shows you how massive the team was.
5 Twenty-four seven, we had people out there. That
6 was twenty-six million (26 M) that we...

7 Now, that's still under negotiations,
8 because they're negotiating with all the
9 contractors who had tried to cheat. So, I don't
10 know what ultimately will be the savings because
11 they're never going to get a hundred cents on the
12 dollar in these negotiations, as they say, "We're
13 not going to pay this because the monitor said
14 blah-blah-blah..." And they're going to come back
15 and, either they go in a lawsuit or they settle it,
16 and it'll be a settlement, I'm sure. But we had
17 massive savings in that.

18 So, sometimes, you can really measure it.
19 Sometimes, you can't. But you have so many of these
20 projects that... where now you have subway lines
21 being done, Governor Christie New Jersey, all of
22 the Sandy repair work there is being done by
23 monitors, integrity monitor there. The United
24 Nations is redoing the secretariat; we're doing the
25 integrity monitoring there. There are public works

1 projects that... And this is really a programme
2 that works and it reduces the amount - doesn't stop
3 it but it has detection - reduces the amount of
4 fraud ways and abuse, corruption and racketeering.
5 It does not totally stop it, but it has detection
6 methodologies. You don't wait for three or four
7 years later when an audit finds a problem. We find
8 it realtime. And we fix it realtime. And I would
9 really seriously recommend that the Commission
10 consider impose monitorship, otherwise known as
11 IPSIGs, and project integrity monitors.

12 Q. **[337]** Am I right to think that the Port Authority
13 uses integrity monitors (inaudible) under your
14 programme more frequently than the City of New
15 York? Or...

16 A. I would say...

17 Q. **[338]** ... more often, I would say.

18 A. I would say yes. The Port... the project integrity
19 monitor...

20 Q. **[339]** Yes.

21 A. ... absolutely, yes.

22 Q. **[340]** Not the IPSIG.

23 A. Yes. The MTA uses them also very, very widely. The
24 Metropolitan Transit Authority which has, you know,
25 all of the transportation systems that the Port

1 Authority doesn't, the internal subway systems and
2 so forth.

3 Q. **[341]** So, do you have an idea why the Port
4 Authority is more prone to use that programme than
5 the City of New York or you have no idea why?

6 A. Well, Rose Gill Hearn is now on the way to the
7 airport. I can say the Port Authority is more
8 enlightened than the City of New York, but I think
9 it does take the... There's a political see change
10 in this. You really... it's outsourcing, to some
11 extent the control of integrity and... of integrity
12 breaches to the private sector. And it takes an
13 enlightened mind to say, "Wow! Can that really
14 work?" But it has worked, and it does work, and the
15 Port Authority, I think, probably because they had
16 the ground zero experience, they had the building,
17 but there's a...

18 Q. **[342]** And they were satisfied with that?

19 A. ... commissioner or the head of the entire Port
20 Authority Capital Construction at ground zero, had
21 a lecture, said: « And this is remarkable, because
22 normally, the integrity model you think it'd be
23 somebody that the head of the program wouldn't want
24 to see, it's like having another auditor on the
25 side. This is nothing but going to be a problem to

1 me. ». That, Steve Plaid, said at a public forum,
2 that he would never build again without build again
3 without an Integrity Monitor. And it was
4 magnificent. We've been in the hall when he said
5 that...

6 Q. [343] So he's sold to the concept?

7 A. And that's so. I think it works. There's other
8 measurements.

9 Q. [344] Yes, there is, but maybe just to wrap it up.
10 I'd like... I gather from your testimony that those
11 strategies like, they turned out to be very
12 effective, when you applied them. Why do you
13 think... Do you think the private sector would
14 benefits from that also? Just briefly, just to...

15 A. Not only would they, but they have. And I think,
16 for the Commission's advocacy in terms of the
17 validation of it, the government takes on
18 programmes, oftentimes, that are costly, that are
19 not really useful to the bottom line, and they're
20 never adopted by the private sector. The Integrity
21 Monitor, Project Integrity Monitor, as well as the
22 IPSIG, have, in a very very big way, been adopted
23 by the private sector, going back to that New York
24 Times article saying: « This is a model that
25 private sector should consider. ».

1 So that you have any number of different
2 examples. The Yankees built the new Yankee Stadium
3 with a Project Integrity Monitor; we were the
4 Project Integrity Monitor. Bank of America built
5 its new headquarters; we were the Project Integrity
6 Monitor. Canadian Imperial Bank of Commerce, CIBC,
7 built its headquarters; we were the Integrity,
8 Project Integrity Monitor. IAC, Barry Diller, built
9 its headquarters; we were the Project Integrity
10 Monitor. There are any, AOL Time Warner Center, if
11 you ever go in New York, right in the middle of
12 fifty-ninth (59e) Street; we're the Project
13 Integrity Monitor. It's... private sector doesn't
14 do this...

15 Q. **[345]** If?

16 A. ... unless it works on their bottom line. And they
17 have done it. So this works. And the validation of
18 it working is made clear by the use of private
19 sector, in the... are buying into the Project
20 Integrity Monitor Model.

21 Q. **[346]** Thank you. Do you have any questions? I think
22 that...

23 LA PRÉSIDENTE :

24 Est-ce que les parties ont des questions à poser?

25 Non.

1 Mister Thacher, we want to thank you
2 greatly for your very useful testimony, and we also
3 want to thank Mrs. Hearn, as well as you, because
4 we know this has been time-consuming for you, and
5 we are very grateful that you take of your time and
6 came here in Canada to tell us about your, what
7 seems to be, success story.

8 A. Thank you, thank you very much. Honored to have
9 been invited.

10

11 AJOURNEMENT

12

1 CERTIFICATE

2

3 We, the undersigned, **ODETTE GAGNON** and **ROSA FANIZZI**
4 Official Court Reporters, do hereby certify under
5 our oath of office, is a true and faithful
6 transcript of the evidence in the above mentioned
7 case as taken by numerical recording, to the best
8 of the quality of said recording.

9

10 AND WE HAVE SIGNED:

11

12

13

14

15 _____

16 **ODETTE GAGNON**

17

18

19

20

21 _____

22 **ROSA FANIZZI**