

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

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**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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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 I 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 concerned 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 could  
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 woman - 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 Mayer'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 demeritous 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 (7<sup>th</sup>) 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 lose 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 Toby  
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 fixation them  
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

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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:

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**ODETTE GAGNON**

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**ROSA FANIZZI**