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# Transcript of the January 20, 1989 Meeting of the New York City Charter Revision Commission

New York City Charter Revision Commission

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SHWARZ: Well, I'm Fritz Schwartz. Why don't we go around the room and actually first introduce to the audience the Commissioners, and then the two people from the staff that are here on the platform.

Judah Gribetz, who was in the prior Commission and Amy Betanzos, who was in the prior Commission. Sy Gourdine, a great former City Commissioner, now the maven of the subways and potentially great athlete. David Trager, former Commissioner. Mario Paredes, who is one of the new Commissioners, who I guess is going to be here later. Joe Sullivan can't be here. He and I have discussed today's agenda. He also is one of the new Commissioners. Our ex-journalist, Fred W. Friendly --

FRIENDLY: Who lives in the Bronx.

SCHWARZ: Who lives in the Bronx. Arch was with us this morning and had to go to another meeting. Bernie Richland, on the former Commission. Terry Molloy, on the former Commission. Nat Leventhal, our Secretary, who will make sure that he carries out those duties as discussed.

LEVENTHAL: Awesome duty.

SCHWARZ: Frank Mauro, Eric Lane, our counsel. We don't have an enormous agenda for today. I thought I'd make a couple of remarks about where we're going and then we would spend some time talking about where we might go in the next six weeks, which I think is a fair target to

decide today and then we can focus in six weeks where we go after six weeks.

I'm obviously very, very pleased and honored to have the chance to work on these problems for the city, for the people of the city, to work with this distinguished group of colleagues on the kind of issue that comes along really once in a generation or less often than that.

We have a chance to focus on how this city can best be governed to do the best for our people over a very long period of time. In that connection, it really is important that we don't think of our work as what's going to happen in the next 30 days, what's going to happen in the next four years, but we think of our work as trying to build something that will be good, both for the short term and for the long term, and those ought to come together but our job is to think deeply about where this city ought to go.

And the values are sort of the obvious values of this country -- the democratic values, the representational values, to have an effective government, to have a balanced government, balanced between the needs, the special needs of local areas, the special needs of boroughs and balanced with the need of the central demands of this huge city -- a controlled government -- those are

really all obvious values that are ingrained in our minds, ingrained in the country. The task is to see how they fit together.

The prior Commission, it seems to me, is owed a great vote of thanks for the first rate things having to do with the controllability, the accountability, of government that were proposed and then overwhelmingly adopted by the voters last November, in a turnout which was truly impressive, and I think the turnout had a lot to do with the educational job that this Commission and people aligned with it did.

Eleven of us are holdovers, four of us are new, and I hope we can do as well as we approach the question of the structure of the city government as the prior commission did on those items going to accountability and control.

What to do in the next six weeks, in the next two months. Obviously there is a choice. We could choose to do nothing. We could choose to simply wait for the United States Supreme Court to come down with its decision in the Morris case.

However, to choose to do nothing would be to make a choice, to tie our hands as far as the option of taking action this year.



We by no means want to decide now that we should take action this year, and by action of course that means recommend this year, but equally we don't want to tie our hands to prevent us from making recommendations if that seems either necessary, as it could, depending on what the Court says, or appropriate.

So if the first judgement is that we ought not to tie our hands, then the next question is well, how should we occupy our time over the next six weeks, two months?

Now, on that I have very, very strong view that it would be inappropriate for lots of reasons to start out, in effect, at the top -- to start out in effect -- and I mean by at the top, to start out by debating what should the structure of the government be. That's the ultimate question.

But for two reasons I don't think that's the right way to start.

Reason number one is that it would be prudent to be informed by the United States Supreme Court whether we're for sure going to be able to wait for the Court -- that's something again we don't have to decide today, but certainly if we can, it would be prudent before we reach the ultimate questions -- what should the structure of the government be -- indeed, should we recommend any changes in the structure of the government.

It would be prudent to wait and see what the Supreme Court says.

The second reason why I don't believe it's appropriate for us to start by debating the ultimate questions of how the government should be structured is that I think any rational body, in informing themselves and in demonstrating to the people who must ultimately judge their work, will do better if they'd started from the bottom instead of from the top. And what do I mean by the bottom?

I mean starting by exploring what actually goes on in government and making sure we really understand. Take, for example, land use or budgeting. We really understand how that has worked, how it is working, how it can work comparing to other institutions, to really understand from the ground up the facts. And I think if we do that we will be better informed and we will be more likely to make sensible judgements.

If that fundamental decision is correct -- first, that we should begin to prepare ourselves, second, we should prepare ourselves by working with the facts instead of with the ultimate conclusion -- what are the things we should be exploring?

I'd like to put some suggestions on the table, maybe have Eric elaborate on those a little bit and then

discuss whether they're the right subjects and how we would organize the hearings so as best to inform ourselves.

In my own mind, I see two kinds of subjects that I think we should be exploring.

One kind of subject is characterized by the subject matter, the kind of action that the government takes, and there I would put things like land use, budgeting, contracting -- really understanding how those are done, how they can be done, and get the facts fully in mind.

Then the other broad heading that I would use would be sort of how governments work, and there I would put things like oversight, there I would put things like the tension between local and central. There's obviously some overlap, for example, when you're talking about land use you obviously are going to be talking about the tension between local and central, but I think you can also have a separate descreet hearing in which we are finding out what is there that makes the localities in this city either heard or not heard adequately.

So those would be the broad headings of types of hearings that I think are appropriate.

Let me turn to you, Eric, and if you could briefly elaborate a bit on the subject matters that we've

been talking about as possible items to explore in daylong hearings, and if you could talk a little bit about your thoughts on how we would organize these hearings to make them most informative to the members and to the public, and then I think we should just open for discussion on this program of the next two months or so.

LANE: Well --

LEVENTHAL: I have just one question -- Fritz, prior to the time that the Supreme Court granted ... unexpectedly in some people's minds --

SCHWARZ: You're giving yourself a pat on the back for every predicted (INAUDIBLE CROSS TALK) Bernie and I think we're the only (INAUDIBLE CROSS TALK).

LEVENTHAL: We had debated and deliberated on some of the issues and there was put forward some proposals, not necessarily representing a consensus of views by any means, but how are we going to deal with the status of those particular things, just so it's clear, because there was some attention given them, as I recall.

SCHWARZ: First, I think maybe it's worthwhile pointing out that there are four of us who are completely new and who have not gone through any educational process on this Commission as opposed to in our lives, and I think particularly for those four, it would be quite inappropriate to start debating specific proposals, and that's an additional reason to the two I gave.



When comes the time to debate specific proposals, it seems to me that those matters and the elaborations on them that some members put out, are ones that should be among the things we should consider, but I don't think they have any greater standing than any other idea which anybody develops during the course of our work. They were thoughtful, first thoughts, but there are other thoughts that can come from all quarters, including our own brains as we sit down and hear the evidence.

I think we should not, in my judgement, rule out any possible matter for consideration. I've read all the voting rights opinions and I think they're all well-done on both sides.

It seems to me they can be summarized in two sentences, which are, first, there is a voting rights problem with respect to the alternative that was being focused on, but second, there will be voting rights issues with respect to whatever we end up proposing, and therefore I think we should not at the outset rule out anything, but rather consider all possible alternatives, and of course we're going to have to be guided by what the Supreme Court also says.

Q: Thank you.

SCHWARZ: Yeah, Eric.



RICHLAND: I'd like to say a word at the outset. I want to express my personal happiness at the appointment of our new Chairman, who knows the ... and shows of city government as only a former corporation counsel can really know. (LAUGHTER, CROSSTALK)

SHWARZ: Bernie, I appreciate --

FRIENDLY: That's the shortest speech ever made. (LAUGHTER)

SCHWARZ: I do appreciate these comments, of course --

GRIBETZ: -- making a mistake (LAUGHTER)

SCHWARZ: I move that we hear Eric. (LAUGHTER)

MOLLOY: Nothing has changed.

SCHWARZ: We should say that corporation counsels don't always agree on everything, but that is -- I do appreciate the comment completely.

LANE: I have trepidation now -- can we start? What we've tentatively decided to do to prepare for this possibility is -- as you can imagine, we have a tremendous amount of work to do in a very short time, if we are to maintain the option which is only an option, of putting something on the ballot this year.

And so from a staff organizational point of view, what we're doing is on the research side we are dividing basically -- we've staffed up and we're

continuing in the process of staffing and I know some of you have gotten letters from us about looking for new staff members -- we're staffing and we're breaking the staffing basically into groups, so we're sort of decentralizing the staffing operation to some extent, and each group will have a range of attorneys, senior and junior, political scientists and quantitative analysts, number crunchers.

And each of them will take several subjects and will develop factual basic test principles, test options, a number of options, for ultimate consideration for the Commission.

And this will be done over the next several months.

During this period of time, and we haven't quite fixed on the dates -- each of these groups will be holding public hearings, and the types of public hearings will be somewhat different than the types of public hearings we've held in the past because they'll be more legislative in nature.

Because we would like to do is to call experts in certain areas representing as many varied sides of any issue that we can identify, and try to develop a record along the lines that Fritz suggested of how our processes work, how they really work, how they work in other places,

what's good about the way some of our processes work, what are the criticisms of the process, so we'd like to do that in a more controlled setting where we can invite a variety of people.

But then of course, because we have this limited period of time and we also feel obligated to allow the general public to speak, each of these hearings would end with a couple of hours of opportunity for anybody who wants in the audience to make a statement on the record, to have that opportunity.

Now, each group probably within its areas of responsibility, would hold two hearings, and more of the detail about that will come later.

We are going to keep transcripts of those hearings and I know -- we've talked about whether all of the members should have to or could possibly go to all of them, and we don't think that's a possibility, so what we would suggest is, unless you want to go to all of them -- of course you're more than welcome -- and we're not having them in conflicting timeslots -- but what we would suggest is go to the ones you're the most interested in, and we will have transcripts and records of every other one of them so that you can see them.

RICHLAND: Can I interrupt you for one minute in connection with the transcripts?

Unless there is a stenographer present, the recorded transcripts of what happened in the last Charter Commission were very strange, because you got the impression that the most active participant in the discussions was somebody named inaudible.

ERIC: We're going to have a stenographer present. We've already decided to have the stenographer present for all of these hearings. So we are going to do that.

Now, for both prior members who are continuing and new members prior to the hearings we will be in contact with all of you and we would like to brief all of you on either (A) the hearings you're interested in or secondly, on any of the subjects that we're looking at. We would like to spend as much time with you, the staff, as possible to brief you on what we're doing, but particularly if you're going to come to a particularly and you want to, as you will, want to be involved in it and do question it, I think it would be for everyone's benefit and for the efficiencies of what we're doing for you, we'll come over to your offices or if it's several of you we can meet in our offices and brief you on what we think we should be trying to get out of the hearing.

And we're also going to schedule a Commission Meeting somewhat several weeks prior to the hearing dates



to give you a lot more detail about what those hearings are going to be anyway.

Also, during this period of time, since again, we're looking at a very short schedule, we're going to have a very small opportunity or smaller opportunity than we would on a two year schedule, to continue our educational campaigns and our educational drive.

We have made one substantial change on the staff and staffing, because of this short time and because of some inefficiencies that I think occurred with some of our split staff structure last year, we have collapsed the community relation staff into the communication staff with Gretchen Dykstra now running both of them, and they are going to be making a very active attempt to, on a regular basis, informing all groups of the public, what we're doing.

In fact, we're having parallel meetings with a number of community groups, paralleling the issues that we're looking at as the Commission is looking at, so if we're looking at contracting and we have a big hearing on contracting where a number of people that do contracting with the city come and the like.

We're also, at the same time, going to be holding smaller hearings all throughout the city, just meetings I think would probably be a better thing to call



them, trying to reach groups that do contracting with the city who might not want to appear at the public hearing and the type.

But rather than have a shotgun approach, as we have in the past, to all of the community, generally what we're trying to do is to identify all parts of the community that are going to have a real interest in Charter changes, and really make sure that we get to them and to maximize our resources.

So that's basically our plan for the next six weeks.

I would like to just, particularly for you that served on the prior Commission, I'd just like to note several things for you.

We are in the process of putting together for publications some 16 or maybe it's 12 volumes of the works of the last Commission.

I've sent all of you the most important ones already, which is the report -- some of you have responded -- I know Bernie has -- which are the report of what we did over the last two years, and the reviser's notes, which are basically the drafting notes and they will be published very shortly.

Thereafter, we intend to publish, for example, Jerry Benjamin's papers on the legislature. We intend to

publish the whole public discussion on the Voting Rights Act, all of the documents -- they're all public documents anyway.

What we're trying to do is compile what we've received and to make a full and as broad a record as we can and we're almost finished with that, so that's what you'll be seeing shortly.

SCHWARZ: Okay. I think we have some proposed dates, by the way.

I read all the transcripts ... Commission and one thing that's clear to me is that we're never going to have a perfect date for everybody, and I'm hardly a dictatorial person and in fact, my style, as those of you who know me know, is to try and draw everybody in and then reach our best collective judgement.

But on dates, I think we should just pick dates and not spend the time trying to discuss dates because they're never perfect for everybody. Give enough advance notice.

Let's do dates. (INAUDIBLE CROSS TALK) And before the end of the meeting, we'll read out what it looks like for the dates.

I'd like to throw it open for discussion now on -- anybody who wants to comment on the question of should we be doing preparatory work, do so, although I think I've

talked to all of you and everybody agrees that's the appropriate thing to do.

So what I'd be interested in comments on are subject matters that we should be exploring and kinds of witnesses that you want to hear.

Fred?

FRIENDLY: I have a suggestion. If you watch legislatures in Albany or in Washington, often before they legislate they look at how the system works -- whether it's a bad series of hearings such as Senator McCarthy or a good series of hearings such as the Truman ones of the war years -- they were educational.

I read with interest the actions of the Board of Estimate for the City Council and the Mayor of the Planning Board about this hotel on 44th Street or 45th Street -- what's the name of that ...?

: (INAUDIBLE CROSS TALK)

FRIENDLY: Macloben -- and as I read it, as somebody who spent a couple of years of his life talking about city government, I found myself not understanding how --

SCHWARZ: Fred, move the mike closer to you.

FRIENDLY: I'm not used to this approach.

RICHLAND: This is going to be Mr. Inaudible in the record.

FRIENDLY: But as I read about this hotel and the city's decision that they couldn't build for four years, and then they did build -- it's eleven stories up there -- and I heard about the Board of Estimate's role in this and the City Council's role in this, and the Mayor of the Planning Commission, and I couldn't make any sense out of it.

And I think without one moment trying to judge whether that was not right or wrong, that would be a very good little picture for us to study, for those of us who were not in the city government, to understand how it works and doesn't work, because it defies my imagination to understand how all that could have happened.

SCHWARZ: Well, I think, Fred, what you're saying is a principle which I believe to be correct, that facts and case studies are often much more revealing than general opinions.

I know when I ran the investigation of the FBI and the CIA, we had a big debate on the Committee -- should we bring in experts or should we get facts -- and I strongly fought for getting facts, and I believe that's the way to go.

And Eric, that's what you plan to do.

LANE: One of the things we're doing is looking at those types of situations.



The only concern you have when you do that, if you can't do hundreds of them, in a sense, is that sometimes you get so lost in the facts of a particular abberation that you end up wanting to reform an entire system based on one case, so we have to connect that particular situation with the larger --

FRIENDLY: Mine is not to reform that so much (INAUDIBLE CROSS TALK) process.

I think what we lacked doing in our previous Commission ... the wonderful job of the staff was exemplary -- I think what we lacked doing was process for those of us who had never been in city government, of how the city government worked.

I'd like to hear how each department of the city did its job during that -- not to judge them, but just to understand the process.

SHWARZ: We're looking at budget, taking ... one year of the budget and how those decisions were made, when they were made, what preparation there was or was there a local input or not, was it proposed from on high.

TRAGER: I was going to say then I agree with what ... just said but then it raises the issue which I've discussed with you.

I think there was a big omission that we could not get sort of fact-based discussions of the process and



how things worked, but the reality of it -- and this is my concern about these public hearings -- is bringing people down.

Unfortunately, the reality is that they're truly knowledgeable and they are still involved in the system, even though they could separate themselves in their own minds in terms of giving their views of how improvements could be made in the system -- the fact of the matter is because of their lawyers who they represent, their clients, they may not be able to discuss or feel free to discuss in public their concerns, what they think could be improved, and that's equally true of those who are presently in the city government, or former members, who have probably the best insight into the process and how it can be reformed.

And so I would like to bring up at the risk of upsetting the public that may be present about the notions of open government -- the question that came up the last time around -- and asked that it be revisited, at least to the extent that in your hearings that I don't think there is any requirement that it be a formal meeting or a discussion -- that we be able to hear the Commission because I think it's important from people who are knowledgeable, who obviously are in positions where they can't speak publicly because for any number of reasons,

who could make a real contribution to our knoweldge of the system.

SCHWARZ: Let me make a general reaction to that, and then Eric may make a further specific comment.

It's important, I think, in response, to think about those things which absolutely, without question, must be public and those things where I think there's a debateable question -- be absolutely, I believe, deliberations among this body must be published.

It seems to me instinctively also that it would be inappropriate to have current office holders ask to appear in private. I think whatever they want to say they ought to say in public.

FRIENDLY: You mean elected officers.

SHWARZ: Exactly. Now --

FRIENDLY: I agree with you.

SHWARZ Now, where you have a staff person who might believe that they're not free to speak frankly -- at least I think that's something which merits separate attention than the other two categories.

FRIENDLY: I agree with you.

RICHLAND: Well, you have the problem of the open meetings (INAUDIBLE CROSS TALK) can't do (INAUDIBLE CROSS TALK) except on a one to one relationship, and that you could always do by talking to people.

LANE: That's incorrect. We are affirmably allowed under the Municipal Home Rule Law, just contemplate exactly what you're discussing, Dean Trager, to hold private hearings. And in fact, we had intended, if we had not suspended our decision last year, we had some people who had contacted us about some of the issues that we had discussed and we were fully intending to use that power if you decided that that was the way to go, but that is an affirmative power of this Commission under the state law intended for the exact purpose that you're discussing and I present .. problem.

SCHWARZ: I would think (INAUDIBLE) but I think there are also -- if you hypothetically assume first that discussions among the Commission are always public, second, that elected officials cannot be allowed to come forward and bear their breast in private, but that possibly other persons could -- something that at least I want to explore.

And again, hypothetically, if one did go that way, I think one would also want to develop means of making a public record of the sort of communications that were received.

I mean, after all, the only interest one's trying to protect is in effect a whistleblower who otherwise might not be willing to come forward. That's an interest which is recognized as a legitimate interest.

But I think, assuming hypothetically one went down that road, you'd also want to have some way of making a record of the kind of information which was received -- I'm thinking out loud.

TRAGER: I think that's very doable. I think after -- a record could be made that there were witnesses presented various positions that have really ... specific facts, so it's not identical. The position can be presented to the public and other people can come forward and say that that person didn't know what they were talking about.

LANE: Yeah.

RICHLAND: Well, you know, the problem we have -- what we have to consider is this -- we are a public body engaged in public business, and the public is entitled to know what we're doing. And it's as simple as all that.

TRAGER: Yes, I think it would require that notion extends that if Fritz or you were talking to the Mayor, that the public has to be present to hear the discussions about your opinions about how matters should be handled.

I think no one accepts such an extreme view as you do, Bernie.

SCHWARZ: Well, I think where we should leave this subject is the law is the most important thing. We have to fully understand the law.

If the law says you cannot do such a thing, then you cannot do such a thing.

If the law says you can, even in those circumstances, one has to be very cautious and build in safeguards that allow for public analysis of any such communication.

So, okay, we've had a question about how we get the evidence, we've had a comment about how to develop the evidence, and let's have some more discussion of those sorts of things.

GRIBETZ:: I interrupted in that.

LEVENTHAL: Well, I would just say something about those of those areas, if I may.

First of all, with respect to the kinds of people and the kinds of things that we want to say in private, I don't think it'd be limited to whistleblowers. I think you could be a staff person and have specific opinions -- not giving factual testimony about who did what to whom -- but just opinions about how certain things work that you would prefer to make privately rather than publicly, which would not rise to the level of knowledge of wrongdoing or something, so --



SCHWARZ: I used whistleblowing --

LEVENTHAL: Okay, in the general sense -- okay. Secondly, I think it would be a good idea to do case studies, but I would not agree, Fred, taking an issue which is currently controversial and undoubtedly other people will be looking into, and giving this Commission the responsibility of doing that because if we do that, I think that's all we'll do for the next six months realistically.

I think if we were to look at a case study, I would recommend we do something where all the lessons to be learned are there, but others have already established what happened, so we are not the fact-gatherers, the investigatory body, but we are learning from that process so I don't think the Mac Law for that reason would be useful for us to get involved in, but I think the concept of a case study would be terrific. That's all I wanted to say.

SCHWARZ: What comments are there on subject matters of the hearings?

We've talked more about processing connection with the hearings. What comments are there about subject matters?

MOLLOY: Before we get off the process, Fred opened up a door of something that has disturbed me,

probably because I haven't been in city government, I'm not a lawyer and I don't understand as much as many of the people who have been in it all their life.

But I think that concentrating on the process of government under structure, on the rules and regulations and on the things that make it happen, is good, and I would like to see that.

But I'd like the case study kind of thing, and I agree, it doesn't have to be anything that's politically hot right now, but I think that if I could find out not so much just how the process is supposed to work, and how it's written and all the things that govern it, but what really happens.

In other words, a very bottoms up approach. This is a government of the people, by the people and for the people at all stages of government, and therefore, if we find out what all of these rules and regulations and processes -- what is the end result?

The end result in the Mac Law is there's a couple of things there -- the twenty percent that didn't happen and a lot of things. That's one very good case that Fred said.

So I don't really care as much and I want to know about the structure and the rules and regulations as to how it happens. It's somewhat like the famous safety

net -- if we had looked to see what holes were in the safety net and how it really hit people, and what happened because of that, I think we'd be better off.

So I'd like to see us go both ways -- how we were purely and look at the process -- how it's supposed to work -- but then I think some case studies as to how it does work and what the end result is -- would be helpful to somebody like me.

SCHWARZ: I think that's what we want to achieve. I mean, take the budget. You can read in the piece of paper what's meant to happen, and the inputs that are meant to come in -- do they really come in?

FRIENDLY: In the case I referred to, what fascinated me, ... we have all the system of checks and balances, which is why we have the Board of Estimate and the City Council.

And yet the end of that tragedy of errors, everybody said we goofed, we made a mistake.

Well, to citizen Friendly, I don't understand why the checks and balances didn't work. I don't understand -- there's still, in my mind, having sat in for two years now, a blurred line between the responsibilities of the Board of Estimate and the City Council and the Mayor and so if I had to do a lecture, and I should be able to do that, about how this city works, I don't think I'd do very well at it.

And I'm ashamed of that, and I think the reason I'm ashamed of it is that we never really have to test this against real events. It was always a lot of hipurpolly and exposition and it was like a civics class, but what's it like to watch what the Truman Committee watched as mistakes happened -- how did that happen? And I heard what you say and I respect what you say. You're much more experienced.

But I find myself wanting to be better informed about how little pictures work, so I'm going to keep bringing you back, Mr. Chairman, to that word, process.

SCHWARZ: Fred, I don't think you and Nat are in disagreement and indeed, it's because of my instinct that people make better decisions when they know the facts that I want to start with the facts, and what we're now doing is going beyond that sort of obvious principle to how do we make it, how do we inform ourselves.

Now, Sy, you're our new member here. You've got to put in your two cents here.

GOULDINE: I'm not sure that I do right away. But there's nothing wrong with learning, too.

I accept what I consider the obvious premise. I want to learn as much as I can. The question to me is how you got information best disseminated so that we're in a position, after we know what is, to determine what ought to be.



And for a very, very new member, I'm sitting here and trying to grapple with just how that information comes in.

SCHWARZ: Okay. Yeah, Nat?

LEVENTHAL: Just a personal opinion. I felt that for those of us who were on the Commission last time where we could use the most extra knowledge information, etc. and where I think we were all, as a group, least satisfied with even the tentative conclusions that some of us had reached in a very preliminary way, if that's enough caution.

Wasn't ...

: Yes.

LEVENTHAL: I felt many of us have been in government for a long time and I just felt after that process, I still didn't know what was right, and I expressed that.

SCHWARZ: Well, I think there are lots of reasons for that.

First, it's the (INAUDIBLE) issue. Second, when we think about budget, we're all kind of informed by going back to 1789 and thinking about -- or 1688 -- and thinking about two hundred years or more of experience.

When we think about land use decisions, we don't have that same kind of instinctive understanding of where things ought to come out.



I agree with Nat. I think that's the hardest issue.

RICHLAND: Let me address myself to what was said. Fred is talking about the Mac Law situation, and according to the newspapers there was an unexpected or unpublicized result of an enactment of a local law by the New York City Council.

And the thrust of all the newspaper articles is that it wasn't the fault of the City Council. The City Council presumably didn't know what it was doing, but it was the Mayor's fault.

And to anyone who isn't inside government, it is a confusing picture, but the reality is a little different.

During the time that I was Chief of the Opinions and Legislation Section of the Corporation Council's office, from 1943 to 1958, every Council bill that was duly enacted into law was drafted by me or by one of the people working in my division. That's the way it works and very often the individual Council members haven't the slightest idea of what it's all about, and that's the reality -- to the extent to which it is the reality today I am not certain.

But that's why Fred Friendly is confused by the newspaper reaction to something that was enacted by City Council.

TRAGER: I don't want to argue with you. You started to ask about subject matters.

I was going to make a preliminary comment, and then a suggestion.

Ironically, Nat's foresight in predicting what the Supreme Court would do I think in the end operated to a great benefit to the work of the Commission in that we were so focused initially on the whole question of basic structure that we really didn't have time to focus on the issues that we ultimately did, and I have a feeling that had the Supreme Court denied the ... we never would have gotten to some very good issues, which we eventually did.

There's one that we preliminary way back -- had a discussion, which I think relates to the ultimate issue of structure, but again, to me, it is a very important one which I would hope we could focus on and that was I think an earlier discussion -- I think you originally raised it -- the whole question of the set-up of the Community Boards.

And we started to have a very interesting discussion, the whole notion that in the present Charter that the districts coincide and then you raised the point that maybe that's not really what these communities need and we shouldn't worry about equal size but really a way of giving people an effective voice.

It's something that in my mind is really important, relates ultimately how I might feel on the broader issues, an area I really think we should spend some time on.

As a way of getting local involvement in government, a voice without paralyzing government.

SCHWARZ: I thought we should spend a whole day really on that subject -- the subject of local involvement, and then maybe discuss the tension between local involvement and the other value of getting something done.

RICHLAND: But see, there again, if we view it in those kind of patterns, we miss something.

What has always bothered me about local participation in the decisions of government is the extent to which the local Boards are under the scrutiny of the press and of the general public.

SCHWARZ: You mean the extent to which they're not or the extent to which they are.

RICHLAND: They're not -- that's right -- and this is something that bothered me. And it bothered me when I was General Counsel to the Goodman Charter Revision Commission, because I was afraid that something funny might be going on, and I'm sure something funny probably is going on in various places.

And when you deal with land use -- land in New York City is the wealth of the city -- and when you have someone who has a significant role in determining significant land uses, I'm worried when that's not available to the public.

FRIENDLY: So you agree it's an important issue that we should look at?

SCHWARZ: In some ways, I think we're going to get more than one shot at some of these issues. I just wrote down three subjects of hearings, all of which are going to impart focus on this very subject.

If we have a day on land use, obviously part of that is going to be how do the localities contribute.

If we have a day on oversight, part of that is going to be well, do they serve an oversight function and is there oversight of them.

And if we have a day, as I think we should, on the tension between local and central, and come at it again.

So these don't fall into perfect, separable categories.

TRAGER: I agree with all that, but the point that was made here is local government as a means of empowering people who would not otherwise have access to the system, which is a little different than their being upset by a new building project.



SCHWARZ: Sure.

TRAGER: It's really as a mechanism to get them into the system.

LEVENTHAL: Were there other -- David quite correctly raises at least one issue we talked about in the prior Commission that we sort of put off and maybe said we would do again if we were to be reconstituted.

I seem to remember there might have been other such issues, and I wonder how they are figuring in. I don't remember what they are, but I'm wondering how they are figuring -- if someone has kept track of those that we said we would also address at this time.

LANE: That issue that you're discussing, as I recall, came in the context of Commissioner Batonzo's response to the question of whether or not Council District should be concommadant with -- co-terminal with community Board districts, so that's clearly something that we're going to also discuss in terms of the Council.

BETANZOS: But it really went beyond that. It went beyond that. I really went to local input ... decision making -- how it was done.

They also talked about co-terminality which was a very important part of the decision.

LANE: And that's certainly something we're going to talk about, and representation generally.



The only other issue -- we have a category of issues which we call sort of a catch-all category, which we'll sort of distribute to you as we go along, which are issues that we had agreed -- the issues that we've put off, that flowed from our decision about suspending the study of the Board of Estimate, had to do with (A) the community Boards, the whole idea of planning, their involvement in it, size of the Council itself, whether we should make smaller districts, question some of your ideas, David Trager, with regard to putting some competition within the -- representing different voices within the Council, some structural questions --

TRAGER: (INAUDIBLE CROSS TALK)

LANE: No, no, I'm responding to Nat now. I'm responding to Nat.

He said what other issues did we hold over -- I know what the Commission ... we definitely are going to examine --

(END OF SIDE A)

(BEGINNING OF SIDE B)

BETANZOS: -- appeals, too, how come people who are upset at any contract be able to --

LANE: All of those aspects -- the idea of the Commissioner having to have a hearing each month, but they all come as part of the study of those processes, so we're

going to begin again with all of them and re-examine a lot of them, and I think all these issues -- but we have kept a list of everything we've told people.

BETANZOS: I would hope ... issue ... how can people who are not in government have a voice in what's happening.

LANE: One of the themes that Fritz has stressed with us in just initial meetings is this whole question of the voice -- how you make sure in such a diverse city that people have -- and diverse in numerous ways -- racially diverse, economically diverse -- how you make sure you're hearing the views of these people, and I think you said that in your introductory -- and it's something we're going to pay careful attention to.

BETANZOS: Well, I'm very pleased at these broad categories that Fritz said -- all right, he said, they do cover things, but hopefully that we will take into consideration things that we've talked about today because I think they're important thoughts about those broad categories.

SCHWARZ: The fact-finding part is just the beginning of our thinking, because there are going to be terrible tensions and conflicts between values, and how we put them together is going to be the art, after we're fully informed.

Frank, I think you had something.

MAURO: Yeah. There were some specific things where the Commission actually -- the last Commission specifically said this needs more work and deferred it and they are relatively small issues within broader rubriks of the things Fritz talked about, but some of the specific ones that were consciously put off for additional work -- there were some personnel issues including the issue of the Charter specificity on the number of Deputy Commissioners in each agency, and some other personnel issues dealing with the relationship of the Department of Personnel and Civil Service Commission were put off.

Initial study and discussion was held that a motion I think by you to table for further study was the issue of the responsibility of the corporation Council to the independently elected officials.

Within the discussion of internal control, there was a belief that some additional staff work needed to be done on the role of the inspector's general, their relationship to the DOI versus the Commissioner of the Agency -- one which is really part of contracting but was on our published agenda, and then we couldn't finish last year -- was the issue of public construction was put off together with contracting. That's really -- a subset of that relates to budget.

And one thing which the last Commission did at the very end, and I don't know if this Commission will want to keep an eye on it -- when it made its decision on campaign finance, the sentiment of the entire Commission was that while it was not taking action on the specific issues that it considered, that if a Commission was reappointed, that it should monitor the decision and determine if any corrective action needed to be taken later.

I would say of all the issues, that's the one that doesn't fit into our current structure.

SCHWARZ: Yeah, Judah?

GRIBETZ: What Frank just said was an introduction to a point that I was bound to make, but was not within the format of the advice you were seeking, Fritz, and I thought I would raise it before we left.

I would like to think, at least I do, and wonder if it would be appropriate for all of us to take advantage of the unique situation we're in.

We are a Charter Revision Commission reappointed after the voters just enacted previous recommendations of the Charter Revision Commission, and I wonder if we should devote some of our resources to see how the will of the public is implemented by whatever administration is in power.



SCHWARZ: I think that's a good thought on how we do that and how (INAUDIBLE CROSS TALK)

GRIBETZ: Some portion of our time should be devoted to that. I'm sure that amongst the confusion that even informed citizens have, when they are directed to existing portions of the Charter and Administrative Code, some of which are rhetoric without any flesh to them or implementation, and some probably are the products of prior Charter Revisions Commissions, so perhaps we should take advantage of our unique situation and look towards implementation of what the public has done.

SCHWARZ: This sort of an oblique comment on that. All the lawyers here know of Chief Justice Marshall in McCulloch against Maryland, says in interpreting the U.S. Constitution, we must never forget it's a Constitution we are expounding, and by that he meant it was a document designed to grow and change through the ages, and that bore on how it was interpreted.

Of course we have, in the New York City Charter, just the opposite. We have a highly detailed this thick code and maybe that's appropriate, given the different nature of the two governments.

Maybe it's inappropriate and we should seek as a matter of simplification to come up with a Constitution instead of a code. That's an issue I think we all have to think about.



TRAGER: It was debated.

SCHWARZ: Last time?

TRAGER: Yes.

SCHWARZ: With what thoughts, David?

TRAGER: Well, my thought is it should be a code, and there's a reason for the code and there's a history beyond the code.

And we're not adopting a Constitution.

SCHWARZ: Yeah.

TRAGER: But we can (INAUDIBLE)

SCHWARZ: Which is?

TRAGER: I mean I think Judah's point is somewhat different than which I would agree.

The code that we did adopt -- I'd like to know, if anything, what is going to be done to implement it.

LANE: We're starting that, and I think that's a good suggestion.

SCHWARZ: How are you doing that?

LANE: Well, we're a little bit randomly forgetting the public financing campaign thing, where we're collecting the opinions and I'm sure Frank is staying on top with respect to the Administrative Procedure Act -- we're talking with the Corporations Council on a regular basis -- we're trying to grab the first group of rules that are coming.

We already see a new emergency rule by the Department of Consumer Affairs -- I don't know if it's a question but certainly not the type of situation we had thought about, so we're trying to follow up on that.

The Ethics Commission hasn't been -- I don't think it's been created yet.

SCHWARZ: What's the effective date of the new Ethics Commission?

FRIENDLY: The Conflict of Interest Commission.

LANE: The Conflict of Interest Commission -- I made a mistake. (INAUDIBLE CROSS TALK)

MAURO: It has to be in place by July 1st, and the new rules take effect next January 1st, but once the new Commission is in place, it assumes the responsibilities of the existing Commission until the new rules come into effect, so there's a number of transitions.

LANE: The first thing they're supposed to do as you'll recall is to review the prior opinions of the (INAUDIBLE)

SCHWARZ: Judah?

GRIBETZ: I'm sure that before memories faded, it would be quite easy for our staff to prepare a checklist for us of that which is needed to implement what the voters voted on in November.

LANE: We're also drafting the legislation.

SCHWARZ: So you're asking for that, Judah?  
Let's do it.

GRIBETZ: Yes. Well, you're not the only one around the table that operates by consensus, so I just threw it out as a suggestion, but now we've got two of us.

SCHWARZ: Good.

MOLLOY: That's a consensus.

LANE: We also are drafting the implementing legislation on the tax thing and on the Appellate  
(INAUDIBLE)

SCHWARZ: Okay, why don't you give the dates, Eric, that we had in mind, for first the next Commission meeting, which is designed to talk about in much more detail the specific hearings, and then the hearing dates.

LANE: The next Commission meeting will be on February 16, which is a Thursday from nine to noon, and I'm not sure if we have chosen a location yet. We have not chosen a location.

SCHWARZ: We have chosen that we're not always going to meet in New York County. Other than that, we haven't chosen the location.

LANE: We have not chosen the location yet, but we know we're not always going to meet in New York County and we don't know if we're going to do it the next time or not?

TRAGER: What's wrong the Brooklyn ...

LANE: We've used it wonderfully before. And then our tentative schedule for the hearings -- and again, you'll choose yourself which ones you want to attend -- it's not anticipated that everyone will attend every one, but if you wish to of course, you're more than welcome to -- they're all from ten to six. We haven't chosen a spot yet.

FRIENDLY: What do you call these?

LANE: These are the hearings.

SCHWARZ: Fact-gathering hearings, or information development hearings.

LANE: I'll give you the dates -- the twenty-eighth of February.

RICHLAND: The twenty-eighth.

TRAGER: Is that the first of them?

LANE: That's the first of them.

RICHLAND: Twenty-eighth -- and what are the times?

LANE: Ten to six.

RICHLAND: Ten to what?

LANE: Six p.m.

RICHLAND: Oh, my God.

SCHWARZ: Bernie, the --

TRAGER: What are the subjects?

LANE: We don't know the subjects yet. We're just going to give you the dates and we'll work this all through.

We know the group of subjects -- we don't know which one is assigned each day.

March first is the second one. March second is the third one.

RICHLAND: Wait a minute. March --

LANE: I'll go over it again. The twenty-eighth --

RICHLAND: Wait a minute -- the twenty-eight of February --

LANE: The first of March.

RICHLAND: And then March first.

LANE: And then March second.

RICHLAND: Immediately following the twenty-eighth of --

LANE: That's right, and then March second comes right after --

RICHLAND: That's also from nine to six.

GROUP: Ten to six.

RICHLAND: Good God.

LANE: Let me give you the rest, and then you can have one large Good God.

GRIBETZ: You're a veteran. You're doing that.



LANE: March ninth, March fourteenth --

RICHLAND: March ninth (INAUDIBLE) March --

LANE: March fourteenth, March fifteenth and April fourth.

I'll repeat them again, backwards -- no. February twenty-eight, March first, March second, March ninth, March fourteenth, March fifteenth, and April fourth, and we will give you the topics, the locations, in as near the future as we can, as long as you have the dates, and then we will arrange for those of you who want to attend certain ones, to brief you.

And then again, the public meeting, the next public meeting, which is --

BETANZOS: Eric, excuse me, you will not forget that we're dealing with the five boroughs.

LANE: I won't forget that.

SCHWARZ: Oh no, Amy. I feel very strongly that we should visit the islands in the winter.

BETANZOS: Thank you. I agree.

LANE: We're all islands. And a public meeting is February sixteenth.

RICHLAND: February --

LANE: Sixteenth -- you already wrote that down.

MOLLOY: What time is that?

LANE: Nine to twelve. So I've given you eight dates.

RICHLAND: So we've got all --

LANE: This is our short term --

RIENDLY: Are there are many other meeting dates?

LANE: Not yet set up -- hopefully we'll get a decision of the Court.

SCHWARZ: Now Eric will --

RICHLAND: Now, the others you say, are information --

SCHWARZ: Yes, on the subjects we mentioned ...

RICHLAND: I see.

SCHWARZ: Now, let's assume one of those hearings is on budget.

I believe what Eric's plan is -- I'm confident Eric's plan is -- to --

: (INAUDIBLE) now is --

SCHWARZ: Right. When he's made a tentative view of who the witnesses are and what the let's say case studies will be, to then consult with all of us and say you know, here are my ideas and what other ideas do you have.

FRIENDLY: I'll (INAUDIBLE) I never dreamed that this Commission would be in existence now. My calendar, like all your calendars, is flooded.

I'm going to be in 20, 25 cities in the next six months of my life. I can't change any of that.

The fact that I'm not able to go to these, I wouldn't want to be read by anyone as lack of interest -- it's just impossible for me to do that.

I told that the Mayor when I was asked to do this. I want you to understand --

SCHWARZ: No, Bernie -- and we're going to -- we don't expect -- Fred -- we don't expect everybody to come to all of these.

We're going to find a way -- I'm planning to come to all of them, but we're going to find a way to try and capsulize and to make available the information to read.

And we'll take among each other and help inform each other.

And then, as Eric says, emphasize the issues that one happens to be particularly interested in, and there's some overlap between the subjects, too, so you'll catch the drift in probably more than one hearing.

FRIENDLY: And you're going to do papers on them, too, aren't you?

SCHWARZ: Yes. David. Okay. Any other comments? All right, I guess we ought to adjourn.

Do we need a motion to adjourn? (INAUDIBLE  
CROSS TALK)

(END OF MEETING)

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