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PUBLIC HEARING ON THE MORELAND COMMISSION
TO INVESTIGATE PUBLIC CORRUPTION.

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One Pace Plaza
New York, New York

September 17, 2013
6:05 P.M.

Reported By:
Stefanie Krut

1 A P P E A R A N C E S :

2 COMMISSIONERS PRESENT:

3 Kathleen Rice - Co-Chair
4 Milton Williams, Jr. - Co-Chair
5 William Fitzpatrick - Co-Chair
6 Joanne Mahoney
7 Eric Corngold
8 Makau Mutua
9 Derek Champagne
10 Patrick Barrett
11 Nancy Hoppock
12 Seymour James
13 Gerald Mollen
14 Betty Weinberg Ellerin
15 Kathleen Hogan
16 David Javdan
17 Benito Romano
18 Kristy Sprague
19 Richard Briffault
20 P. David Soares
21 Peter Zimroth
22 Robert Johnson
23 Barbara Bartoletti - Special Advisor
24 Regina Calcaterra - Executive
25 Director

1 The public frustration and anger with corruption has reached
2 the breaking point, and the Governor recognized that. The
3 citizens of New York are fed up with seeing the taxes on
4 their hard-earned money used as political spoils. In our
5 troubled economy, they are no longer willing to tolerate the
6 specter of political payoffs, triumph of their trust and
7 their sweat equity in the competitive effort for simple
8 success in business cannot be determined by who made the
9 biggest campaign contribution. They want a fair shake, a
10 fair chance. They simply want, as was said 150 years ago,
11 about 200 miles from here, when a graveyard was being
12 consecrated, they want a government of the People, by the
13 People and for the People. Is that really too much to ask
14 for? That's what Governor Cuomo has charged us to do, and
15 that's what we fully intend to do; to complete his vision of
16 restoring the political trust of the People in their own
17 government.

✓ 18 Now let me have the pleasure of introducing a great
19 American who has done as much to restore that integrity as
20 any other New Yorker. I suspect that sometimes our first
21 speaker must feel like Diogenes walking through the halls of
22 Albany with a lantern looking for an honest man. On May
23 15th of 2009 our President and First Staff nominated Preet
24 Bharara to become the United States Attorney for the
25 Southern District of New York. Mr. Bharara's nomination was

1 unanimously confirmed by the US Senate on August the 7th,
2 2009, and he was sworn in on August the 13th, 2009. Under
3 his supervision, the office has remained at the forefront of
4 prosecuting corruption, not only in New York City, but
5 throughout the State. Notable public corruption defendants
6 include New York State Senators Malcolm Smith, Carl Kruger,
7 Vincent Leibell and Ira Monserate; New York City
8 Assemblymen, Eric Stevenson and Nelson Castro; and New York
9 City Councilmen, Larry Seabrook and Dan Halloran. The
10 office has also prosecuted more than 500 members and
11 associations who are associated with various gangs
12 throughout the Southern District of New York. It is my
13 great pleasure, and I welcome you very, very much, to
14 introduce Preet Bharara, the United States Attorney.

15 MR. BHARARA: Thank you very much. Chairman
16 Fitzpatrick, Rice, and Williams, distinguished members of
17 the Moreland Commission, US Attorney Lynch, US Attorney
18 Vance, and members of the public, it is a real privilege to
19 be here today. I have never testified in a forum like this
20 before, and I must admit I feel kind of outnumbered, but
21 when the Commission reached out to me, I leapt at the
22 chance, because you are engaged in an effort that is dear to
23 my heart, not just as a prosecutor, but as a New Yorker. As
24 I have made clear to the Commission, I pledge the
25 cooperation and assistance of my office with the

1 I want to report briefly on one development in that
2 regard, as it potentially raises an issue for this
3 Commission's consideration. Our primary mission is to
4 address and to undue injustice. In the public corruption
5 context, a galling injustice that sticks in the craw of
6 every thinking New Yorker, is the almost inviable right of
7 even the most corrupt elected official, even after being
8 convicted by a jury and jailed by a judge, to draw a
9 publically funded pension until his dying day. That error
10 of state law, partially fixed a couple of years ago, must
11 succumb to common sense. The common sense principle is a
12 simple one. Convicted politicians should not grow old
13 comfortably cushioned by a pension paid for by the very
14 people they betrayed in office.

15 So my office has adopted a new set of policies.
16 First, going forward, we will seek appropriate fines to take
17 into account the money a corrupt official might derive from
18 a publically funded pension so that the punishment fits the
19 crime and so that we can take the profit out of that crime.
20 Second, for those defendants previously convicted and who
21 have failed to satisfy the financial obligations imposed by
22 sentencing, we will consider federal civil forfeiture
23 actions against their pensions to satisfy criminal
24 judgments. And finally, in pending and in future cases, to
25 the extent that any public official has intentionally

1 accrued while engaging in criminal conduct, we will use this
2 federal forfeiture law to claw back an appropriate dollar
3 amount commensurate with that pension, where appropriate.
4 In that vein, we have today filed bills of particulars in
5 two pending corruption cases, the United States versus
6 Malcolm Smith, et al, and United States versus Eric
7 Stevenson, et al, giving notice of our intent to go after
8 the pensions of elected officials convicted of corruption
9 charges.

10 If there is a way for state law to be further
11 modified to accomplish this end with respect to politicians
12 elected prior to 2011, the Commission should consider it,
13 because I think New Yorkers would welcome it. In the
14 meantime, we will pursue this strategy that I have just
15 outlined.

16 As for other issues for the Commission to consider,
17 given the collective experience and expertise of new
18 members, it seems a bit presumptuous for someone like me to
19 offer any advice or counsel, but in the few minutes I have
20 this evening, let me just make three quick observations
21 based on some of our experiences in the US Attorney's Office
22 in the Southern District of New York.

23 First, when District Attorney Rice last month said
24 the Commission would follow the money, New Yorkers had
25 reason to cheer, but it is harder for us to do that when the

1 money trails are purposely hidden. When every state or
2 local official today has a lawyer or accountant and they
3 lawfully withhold the details of that work, prosecutors
4 naturally face substantial challenges, and that's why God
5 made the subpoena. And it is heartening to see its
6 appropriately aggressive use to track the flow of money in
7 politics, so please keep asking those questions you referred
8 to in your opening.

9 Second, public hearings are important and policy
10 proposals are important also, but so are hard nosed
11 investigations and prosecutions, which I hope will be a
12 primary, rather than a tertiary, focus of this esteemed
13 Commission. Nothing shines a light brighter or focuses the
14 public's anger better than the actual arrest and conviction
15 of a corrupt politician. It was a wave of prosecutions that
16 reportedly spurred this Commission's creation in the first
17 place, and worthy prosecutions, I believe, will ratify the
18 importance of your ongoing work and rally support for your
19 ultimate recommendations. As the Commission does its deep
20 dive, my office stands ready to prosecute any appropriate
21 case that you may refer, especially given our track record
22 of success, our access to resources, our tough penalty
23 provisions and our reputation for nonpartisanship, same as
24 the reputation of the Eastern District of New York led by
25 Loretta Lynch.

1 Third, sometimes when dealing with big crime
2 problems, it is important not to overlook the small things.
3 The overlooking of seemingly small things can, over time,
4 breed a dangerous disrespect for the rule of law. As with
5 every category of criminal conduct, too often it is the
6 accumulation of small and seemingly minor things, minor
7 violations that lead to widespread lawlessness. That is the
8 essential insight of the broken window's theory, famously
9 posited by James P. Wilson, and there seems to be a bit of
10 that going on with our campaign finance laws here in New
11 York, unfortunately. Take the case of campaign free files.
12 State election law requires every reticent political
13 committee that receives or spends any money in connection
14 with an election to file a sworn statement with the New York
15 State Board of Elections. These filings require just the
16 most basic information about contributions received and
17 expenditures incurred by the committee. While a relatively
18 basic requirement designed to ensure some level of
19 transparency in state elections, this counts for more than
20 100 campaign committees didn't even bother to file the
21 statement. And what was the consequence? A nominal fine,
22 which in many cases may be impossible to enforce because the
23 committees often disband after most elections. The
24 Commission might do well to begin by focusing on the broken
25 windows all around.

1 Ultimately, the members of this Commission have, as
2 has already been said many times, an absolutely daunting
3 mission. It is your town's amidst high hopes to hold public
4 officials to account, to expose obscure errors of greed and
5 to restore faith in our government. That is a tall order.
6 At the end of the day and all things, toughness and
7 independence will payoff. When people understand that no
8 one is immune from appropriate investigation or inquiry,
9 whether the majority or in the minority, whether in the
10 upper chamber or in the lower, whether in the legislative or
11 in the executive branch, then there will be a measure of
12 respect and fear and perhaps even deterrence. That is true
13 for the prosecutor's office, and it is also true for the
14 Moreland Commission.

15 Of course, as I have said before, public corruption
16 in New York is more than a prosecutor's problem. No one
17 prosecutor can fix it. No one Commission can fix it either.
18 The public and the press have a role to play also, and this
19 Commission, with a bigger bully pulpit than any individual
20 prosecutor or politician, can encourage public engagement.
21 So to repeat a longstanding comment of investigative
22 journalists, I think they have become a dying breed,
23 although there are still a few extraordinary practitioners,
24 some of who I think are here and watching this evening. But
25 with each press outlet that closes or downsizes,

1 opportunities to ferret out fraud and waste and abuse are
2 lost, and that is too bad because, as Edward R. Murrow once
3 observed, quote, "a nation of sheep will beget a government
4 of wolves." But maybe the ranks of investigative
5 journalists will be fortified. Maybe those with purpose in
6 the capital of New York, an infusion of staff and resources
7 will mean more Albany upgrading, maybe Jeff Bezos' purchase
8 of the Washington Post and his recorded interest in
9 rejuvenating a story history of eye popping investigations
10 will prove contagious, and maybe fresh new outlets whose
11 editors are bent on doubling down on political
12 investigations, will provide grist for commissions like this
13 one. We shall see.

14 Meanwhile, in cooperation and coordination with the
15 important work of this Commission, we will continue to
16 prosecute those who perpetuate, continue to perpetuate a
17 show me the money culture in Albany. Thank you very much.

18 MR. FITZPATRICK: Any questions from the
19 Commissioners or staff? Derek?

20 MR. CHAMPAGNE: Thank you. Thank you for coming
21 out tonight, United States Attorney. You spoke about, just
22 a moment ago, the show me the money culture in Albany, and I
23 know you have referenced that in the past. If our
24 Commission ultimately concluded that this culture is
25 essentially unchecked and unfettered by the State Board of

1 Elections and we determine that the agency is further
2 underfunded and understaffed, subject to political
3 manipulation and rampant resources to investigate this
4 conduct, as we have discussed, which essentially requires,
5 unfortunately, federal agencies to get involved, such as
6 yourself, would you have an opinion or a thought as far as
7 could we or should we recommend the Department of Justice
8 open a pattern and practice investigation into the culture?

9 MR. BHARARA: I have certainly said many times that
10 the culture in various institutions is a problem. That
11 culture matters. Perhaps it's premature to make any
12 ultimate conclusion about things because this is the opening
13 ceremony of your Commission. Certainly there is a role for
14 the federal government to play, and I think, you know, I and
15 Loretta Lynch and others have played that role in going
16 after particular cases of corruption and in cases where it's
17 more systemic, we have a role to play there as well. With
18 respect to your mentioning of a pattern and practice suit by
19 the Department of Justice, I am not at this moment aware of
20 the circumstances from which that has been done in the
21 context like this one. Generally speaking, that's the kind
22 of thing the federal government gets involved in when you
23 are talking about a civil or constitutional rights
24 violation, and that's something that certainly the
25 Department of Justice doesn't shy away from, when it's

1 expenditures and about income, because people can have other
2 jobs when they are still in the legislature is something
3 that's surprising sometimes, and if it challenges the people
4 like us, and all of you as well, and there are other states
5 that report more transparency, so it would be sometimes
6 surprising that in an open democracy, in a system that
7 America is supposed, where some others are considered to be
8 good and where public affairs are supposed to be out in the
9 open and not in the back room, that there is so much secrecy
10 surrounding basic things, basic transactions. That probably
11 wouldn't be -

12 MR. JAVDAN: Thank you.

13 MR. FITZPATRICK: I just want to note also that DA
14 Vance is going to be addressing New York State law in that
15 area in a few moments. Anymore questions? Barbara?

16 MS. BARTOLETTI: Thank you again for being here
17 tonight. You talked about changing of the law where, in
18 regards to pensions. We also know that many of the elected
19 officials who then go on to be indicted and go on trial also
20 use their campaign committee funds to fund their legal fees.
21 Is that something that you would recommend that either needs
22 to be changed? And is that something that you have looked
23 at in the course of your indicting and prosecuting these
24 elected officials that jumps out at you as a problem?

25 MR. BHARARA: I have no formal opinion on that

1 because there is a lot of secrecy and a lot of things that
2 shroud where that money goes. And I think if there was a
3 better accounting of where that money goes and what time
4 period and how it matches with other actions that are
5 engaged in by public officials, that would help enormously
6 as well.

7 MR. FITZPATRICK: Anyone else? Again, thank you
8 very, very much. We know you have another engagement. You
9 are very kind to share your time with us, and it's very
10 comforting to know that the right man is in charge in the
11 Southern District.

12 MR. BHARARA: Thank you very much.

✓ 13 MR. FITZPATRICK: We are very fortunate tonight to
14 have, as our second speaker, another legendary name in law
15 enforcement in the State of New York. Our speaker Loretta
16 Lynch had a storied career as a litigator in the Eastern
17 District of New York, United States Attorney's Office.
18 While in the Long Island office, Loretta prosecuted white
19 collar crimes, public corruption cases, and she was the lead
20 prosecutor in a series of trials involving allegations of
21 public corruption in the Long Island Town of Brookhaven.
22 Ms. Lynch also served as the Chief Assistant where she was a
23 member of the trial team in the United States versus Volpe,
24 a five weeks civil rights case that was extremely troubling
25 to most of the citizens ^{of} in New York City, and she was able