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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 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 *L* in New York City, and she was able

1 to obtain a successful guilty verdict. Ms. Lynch was  
2 appointed by President Clinton as United States Attorney for  
3 the Eastern District of New York and served until 2001. She  
4 then left the office, went into a very, very distinguished  
5 career in private practice, and luckily for us she answered  
6 the call from President Barack Obama to return as United  
7 States Attorney for the Eastern District of New York, this  
8 time in 2010 when she took the oath of office. Her  
9 jurisdiction involves cases in Brooklyn, Queens and Staten  
10 Island, as well as Nassau and Suffolk Counties on Long  
11 Island. She supervises a staff of approximately 170  
12 attorneys and 150 support personnel. Please join me in  
13 welcoming the Eastern District of New York, United States  
14 Attorney, the Honorable Loretta Lynch.

15 MS. LYNCH: Thank you and good evening, Chairman  
16 Fitzpatrick, Chairman Rice, Chairman Williams. Thank you so  
17 much for this opportunity to speak not just to you but to  
18 the other distinguished members of this Commission, many of  
19 whom I count as friends, colleagues, mentors, all of whom I  
20 applaud for your undertaking of this enterprise. This is an  
21 important work, in fact, reviewing our State's public  
22 corruption apparatus to determine where should you place  
23 more leverage, where should you place more deterrent<sup>ce</sup>, what  
24 should you do to combat the culture of corruption that seems  
25 to be prevalent all around us. And we are all hopeful that

1 this Commission's efforts will lead to a greater  
2 understanding on the part of the public and the policy  
3 makers regarding the nature and the scope of the problem of  
4 public corruption. But I would also add that just as  
5 important a role for this Commission will be to serve as a  
6 mechanism to engage the public as participants in the  
7 efforts to stop corruption before it begins.

8 Now, as the United States Attorney for the Eastern  
9 District of New York, I am honored to lead an office with a  
10 long tradition of fighting public corruption, an office that  
11 has brought many of the leading ~~faces~~ <sup>cases</sup> of our times, from  
12 Abscam, one of the first public corruption cases to utilize  
13 undercover agents and secret tapes and the prosecutions of  
14 Congressman Mario Biaggi, Party Leader Meade Esposito, and  
15 Nassau County Political Boss Joe Margiotta in the '80s, to  
16 the bribery prosecutions of New York City building  
17 inspectors and the Town of Brookhaven corruption of the <sup>cases</sup>  
18 '90s, to the more recent prosecutions of City Councilman  
19 Angel Rodriguez, Nassau County Legislator Roger Corbin and  
20 scores of city inspectors for taking bribes, to the current  
21 cases involving bribery and extortion at all levels of state  
22 and city governments. Our cases have highlighted the many  
23 and varied ways that public officials have sold their  
24 offices and their honor for pocketfuls of cash.

25 Our current cases continue our rich tradition of

1 protecting the public fisc and attempting to safeguard the  
2 public's faith in the political system. That faith,  
3 however, cannot help but be shaken by the latest chapters <sup>of</sup> in  
4 self-interest and double dealing that our office and those  
5 of our colleagues have uncovered. In recent months, in the  
6 Eastern District of New York alone, we have convicted the  
7 former majority leader of the ~~United States~~ <sup>New York state</sup> Senate, and we  
8 are prosecuting a state assemblyman, whose family has served  
9 in the state legislature since the 1970s. We have convicted  
10 nine officials and contractors of the New York City  
11 Department of Housing, Preservation and Development,  
12 including the assistant commissioner who oversaw HPD's  
13 construction programs.

14 These cases, present and former, show more than the  
15 corruption ~~that~~ <sup>from</sup> has seeped ~~into~~ the corner offices of the  
16 state capital and city hall. They highlight weaknesses and  
17 oversight and accountability that allow corruption and  
18 provide guidance, however, for those of us looking at these  
19 issues and insight on principles that we submit can be  
20 effective countermeasures as you consider your work.

21 Based on our experience, we have identified certain  
22 core principles that can act as effective countermeasures to  
23 a culture of corruption. First and foremost, rules that  
24 hold politicians accountable for the fiscal decisions that  
25 they make with tax payer monies and require their

1 acknowledgment of their responsibilities to certify  
2 appropriate use. Second, truly transparent financial  
3 disclosure on the part of politicians, along with the  
4 beneficiaries of their largesse. Third, a strong legal  
5 framework to allow the investigation and prosecution of  
6 corruption matters. Fourth, a clear sentencing structure to  
7 enhance the deterrent effect. And fifth, but no less  
8 important, a commitment from all stakeholders, including but  
9 not limited to, law enforcement, the public, the media and  
10 other public officials to report wrongdoing when and where  
11 they see it.

12 Now, working in conjunction with our valued law  
13 enforcement partners, we have brought several cases recently  
14 that highlight the pervasive problem of corruption by  
15 elected and appointed officials. Now, I, like Preet, like  
16 <sup>cy</sup>~~DA~~ Vance, like all of you around this table, are extremely  
17 proud of the work done by our teams in this area, but I  
18 can't help but be saddened by the fact of so many cases we  
19 have seen over the past few years. Now, I'm saddened, not  
20 so much by the fall of individuals who could have done so  
21 much good, because they in fact brought this on themselves  
22 with their choices. I am most saddened for their  
23 constituents, many of whom are from historically  
24 underrepresented community, who place their faith in their  
25 elected officials and believe in the promises of a new day

1 and a brighter tomorrow because their present-day  
2 circumstances are challenged and they see their future as  
3 shattered.

4 Just last year, as was mentioned, former State Senate  
5 Majority Leader Pedro Espada was convicted of stealing funds  
6 from Soundview Health Clinic, a federally funded clinic he  
7 operated in the Bronx. And as is common in so many of these  
8 cases, this case was so much more than double dealing and  
9 theft. It was in fact a betrayal of the trust of the people  
10 of the Soundview neighborhood and all of his districts, an  
11 economically challenged area of the Bronx desperately in  
12 need of both quality healthcare and someone to represent  
13 their interests in Albany. The tragedy of this case is that  
14 in Pedro Espada they had neither. The citizens of the Bronx  
15 trusted Espada with their votes and with their health. The  
16 federal government trusted him with over one million dollars  
17 in funding to take care of some of the neediest citizens  
18 among us. But instead of using that money to make sure that  
19 medical personnel were paid, that the clinic had needed  
20 medical supplies, Espada created a scheme to divert those  
21 funds to <sup>his own use</sup> exposed his lavish lifestyle. Instead of  
22 medicines, the money went for luxury cars, extravagant  
23 dinners, vacations, parties, spa treatments, to name just a  
24 few items. Espada was recently sentenced to five years  
25 incarceration this past June for both his theft conviction



1 as well as his federal tax crimes.

2 Now, there were extraordinary challenges in building  
3 a case against Espada, which many of you at the table will  
4 be well familiar with. Now, they no doubt played a role in  
5 his ability to avoid his prosecution over the years, but  
6 they do provide insight into the things that <sup>can</sup> ~~could~~ be  
7 focused upon as you encounter these issues. Espada  
8 controlled Soundview throughout the government's  
9 investigation. The Soundview employees, who relied on him  
10 for their livelihood, refused to cooperate with, and in many  
11 cases, obstructed the government's investigation.  
12 Soundview's Board of Directors was packed with friends,  
13 relatives and others, whose only qualification appeared to  
14 be loyalty to Espada. They also worked to impede the  
15 investigation. Further, many of the schemes were complex  
16 and hidden behind layers of rubber-stamp approvals by the  
17 board and the shifting ownership arrangements of shell  
18 corporations. Our team spent more than a year sifting  
19 through tens of thousands of documents and nearly one  
20 terabyte of data and interviewed hundreds of witnesses to  
21 uncover Espada's <sup>criminal</sup> schemes.

22 Earlier this year, former State Senator Shirley  
23 Huntley was sent to prison for her role in stealing funds  
24 from a non-profit organization that she established. She  
25 funded a group called Parents Information Network (or PIN)

1 ostensibly to help educate and assist parents of New York  
2 City public school children in her neighborhood in Southeast  
3 Queens. As anyone who's ever tried to gave navigate the  
4 waters of the New York City public school system,  
5 particularly regarding any issues of special needs and  
6 safety, you know that this assistance is vital. But Huntley  
7 was able to steer New York funds <sup>to</sup> ~~from~~ her non-profit through  
8 the member item process. Instead of providing this  
9 assistance to the parents, the organization was used as a  
10 vehicle for Huntley to funnel money, over \$80,000, to  
11 herself and her family, and this was not the only  
12 educational non-profit that she <sup>abused</sup> ~~used~~. Two other women, an  
13 aide and niece of Ms. Huntley, operated a non-profit called  
14 Parent~~s~~ Workshop. Its stated purpose was also to assist  
15 parents in Southeast Queens in securing quality education  
16 for their children, and instead, it became just another  
17 means for Shirley Huntley to funnel New York money, tax  
18 payer money, through this organization to herself and her  
19 family.

20 And in fact, when the New York State Attorney  
21 General's Office was investigating this organization,  
22 Huntley assisted and aided her niece in obstructing this  
23 investigation and falsifying documents, ultimately pleading  
24 guilty to the obstruction case brought by <sup>our</sup> ~~her~~ partners in  
25 the New York State Attorney General's Office.

1           Hardly the finest hours for Espada, Huntley or the  
2 New York State Legislature. Yet both cases, we submit to  
3 you, illustrate certain weaknesses in both the oversight of  
4 non-profit agencies as well as the New York State member  
5 item process. In both cases, the boards of the non-profits  
6 were packed with the cronies of the corrupt politicians and  
7 had neither the expertise to run the organization nor the  
8 will to override their political patron. The audit  
9 function, properly supposed to be independent, was so  
10 lacking as to be virtually nonexistent, and the member item  
11 funds were distributed with no requirement that the  
12 sponsoring members certify that those funds were in fact  
13 used for their stated purpose.

14           We see similar themes in the public information  
15 regarding our pending cases against Assemblyman William  
16 Boyland and State Senator John Sampson. Boyland, as <sup>we</sup>~~you~~  
17 know, is charged of soliciting over a quarter of a million  
18 dollars in bribes to support certain real estate development  
19 projects and was captured on undercover recordings. He has  
20 also been charged with submitting over 65 thousand dollars  
21 worth of fraudulent per diem and travel vouchers, claiming  
22 to be in Albany on official business on days when he was  
23 not, including when he was actually meeting with the  
24 undercover agents soliciting bribes. Boyland also allegedly  
25 used a non-profit organization, this one charged with

1 wrongdoing, rendering them significantly less effective.

2           Now, my office, like Preet<sup>1</sup>, like DA Vance, like so  
3 many of you are, is committed to vigorously investigating  
4 and prosecuting public corruption using all the  
5 investigative tools at our disposal. We have a long history  
6 of utilizing undercover agents, cooperating witnesses,  
7 wiretaps and other audio and video recordings. We undertake  
8 extensive document review that may shed light on corrupt  
9 activities, and we will continue to use these tools to root  
10 out bad actors and bring their crimes to light.

11           But it must be stressed, particularly here,  
12 particularly before this group, we are not alone in this  
13 fight, nor can we be. We cannot prosecute our way out of  
14 this problem. It is not just for prosecutors and law  
15 enforcement agents to ferret out wrongdoing. We all have a  
16 role to play in promoting transparency and accountability on  
17 the part of our public officials. The public must demand  
18 more accountability and actual honest services. The media  
19 must remain vigilant in its scrutiny. And public officials  
20 who see wrongdoing must not turn a blind eye and let  
21 corruption continue. And it is to be hoped that this body  
22 can recommend substantive changes that will work to prevent  
23 the next major public corruption case.

24           We know that this Commission will focus on the  
25 specifics of the proposed changes that will seek to do just

1 that. And we note for your consideration certain areas of  
2 vulnerability that have been highlighted by the cases that  
3 we have investigated. We have seen circumstances where the  
4 outside auditors are unfamiliar with the non-profit  
5 structure or even manipulated or deceived by corrupt board  
6 members. Similarly, we have seen circumstances where  
7 non-profit board are themselves ill equipped to resist a  
8 corrupt member or politician. The truly independent audit  
9 of non-profit agencies by qualified auditors could yield  
10 both evidence of corruption as well as serve as a deterrent  
11 to those who would seek to manipulate their funding stream  
12 for corrupt purposes.

13 A review of both audit and board membership  
14 requirements could indeed be a useful step. We have also  
15 seen circumstances where our review of vendors used by  
16 organizations that receive member item funds, as well as our  
17 review of the employees and the salaries of those employees,  
18 of those organizations have revealed evidence of corruption,  
19 and we note that greater oversight and transparency in those  
20 areas could yield both evidence of corruption as well as  
21 serve as a deterrent effect.

22 Members of the Commission, I am often asked to  
23 describe the greatest difference that I see in law  
24 enforcement priorities between my current time as United  
25 States Attorney and my prior appointment, and of course,

1 without a doubt, as any New Yorker knows, it is the  
2 expansion of the department's national security practice to  
3 encompass the goals of not just prosecuting terrorism but  
4 preventing the next terrorist event. And although we have  
5 not had the same fatal catalyst in this area, we must  
6 similarly expand our focus in the public corruption arena to  
7 prevent corruption before it occurs.

8 My office remains committed to the important work of  
9 rooting out corrupt public officials. We support this  
10 Commission as it seeks to fashion rules and remedies that  
11 will not only enhance prosecutions but will also provide  
12 earlier detection of corruption and ultimately better  
13 deterrence. Public officials who have engaged in corruption  
14 have not only broken the law, they have broken faith with  
15 the public. Their actions siphon off tax payer dollars,  
16 they deprive citizens of vital services, and they destroy  
17 public trust in our political system.

18 I commend you for undertaking this task, and I  
19 greatly appreciate the opportunity to provide information to  
20 this Moreland Act Commission in your efforts to focus on real  
21 solutions to this intractable problem and to restore the  
22 public trust. Thank you for your time and attention this  
23 evening.

24 MR. FITZPATRICK: Thank you very much, *Madam US*  
~~District~~  
25 Attorney. Any questions from the commissioners? Yes?

1 MR. JAVDAN: I would just ask the same question I  
2 asked before, is there anything that, you know, you think is  
3 perhaps not illegal or that's a challenge for you under  
4 state law that would be helpful for you in federal law that  
5 surprises you?

6 MS. LYNCH: Well, I have to echo the comments of my  
7 colleague, Preet Bharara, ~~in~~ that often for us the greatest  
8 difficulty is obtaining information, and certainly it can be  
9 surprising sometimes to learn that certain things that we  
10 think should be publicly available information are not. And  
11 I think for all of us who are engaged in law enforcement in  
12 general, greater transparency is certainly a goal. I think  
13 I would have to leave it to for you to design the specifics  
14 of what you would change, but I do think that's a very  
15 important area.

16 Similarly, I should note that, as I indicated, many  
17 of the ~~abuses~~ <sup>cases</sup> we have seen involve abuse of the member item  
18 process, and I will tell you, as a prosecutor, it is also  
19 often surprising that the person who is in charge of  
20 dispensing such largesse home organizations does not seem to  
21 have a corresponding requirement to certify that those funds  
22 have been appropriately used. It's our understanding that  
23 the organizations who receive money under the member item  
24 process do ~~pass the~~ <sup>themselves have to</sup> certify through the pass-through agency,  
25 for example, to the Department of Education in the case of

1 Ms. Huntley and others, that they, the organization, have  
2 carried out their mandate. But those organizations, as we  
3 have seen, are often sadly under the thumb of corrupt  
4 politicians. These certifications can't be relied upon.  
5 And certainly, if someone is in charge of or has the  
6 ability, and I would submit, the grave responsibility of  
7 helping to allocate tax payer money to help citizens, many  
8 of whom are in grave need of these services, they should be  
9 prepared to provide information about how that money was  
10 used.

11 But in terms of specifics, I would of course leave it  
12 to this Commission to look at those issues and come up with  
13 specific solutions.

14 MR. FITZPATRICK: Gerry?

15 MR. MOLLEN: US Attorney Lynch, is there any  
16 provision in federal law, I think this topic has been  
17 mentioned by both US Attorneys, is there any provision in  
18 federal law that would require one public official to report  
19 corrupt misconduct when observed by another public official?

20 MS. LYNCH: There is no specific statute that  
21 imposes <sup>a</sup>the requirement, frankly, on anyone to report  
22 misconduct. There are certain employment related statutes  
23 that impose obligations and duties and handling and possibly  
24 some OSHA or environmental ones, <sup>so</sup> I would have to withdraw  
25 all of that. But certainly there is no requirement that it



1 be reported by a politician. But certainly I think that we  
2 have to encourage that it be done. Part of the problem with  
3 any organizational corruption, particularly systemic  
4 corruption that has existed over the years, is ~~that~~ people  
5 who were not involved in it suffer in several ways, as I  
6 mentioned. They ~~target~~ <sup>are tarred with</sup> the same rush, and people view them  
7 as corrupt when, in fact, many of our leaders are trying to  
8 do the right thing. But so many, <sup>simply</sup> don't want to get involved,  
9 and in many ways, they're simply trying not to get drawn  
10 into a negative situation or problem. So that's not the  
11 problem. But I do think there's room for public officials  
12 who observe these wrongdoings, who hear these conversations  
13 to step up and provide information.

14 MR. FITZPATRICK: Anybody else? Any other  
15 questions? Madam US Attorney, thank you for the eloquence  
16 of your words, and thank you for your suggestions, and most  
17 of all, thank you for answering our President's call and  
18 coming back <sup>into</sup> ~~to the~~ public service. The citizens of New York  
19 are very lucky that you said yes.

20 MS. LYNCH: Thank you so much for your time  
21 tonight.

✓ 22 MR. FITZPATRICK: Our next speaker is the District  
23 Attorney of Manhattan, our host DA, if you will. DA Cy  
24 Vance started out his career in the Manhattan DA's office,  
25 as I think about 90 percent of this Commission did, working

1 for Bob Morgenthau. DA Vance handled all kinds of cases  
2 when he was in the office and, sadly for New York, he moved  
3 to Seattle, but luckily he decided to return and he became  
4 the New York County District Attorney on January the 1st,  
5 2010. Cy was so impressive to his 61 other elected DA's  
6 throughout the state that last year we made him president of  
7 our association, and his service was nothing short of  
8 outstanding. I could tell you about all the bureaus that  
9 he's created. A lot of them have to do with white collar  
10 crime prosecution. He also had the foresight to create a  
11 blue ribbon panel dealing with issues of white collar crime  
12 that, naturally, include public corruption.

13 Cy is joined by Chief Assistant Dan Alonzo. I have  
14 known Dan through my association with Cy and through my  
15 association with the DA's Association. He is nothing short  
16 of outstanding in his service of the people of New York.  
17 There isn't a DA in the State of New York, including Cy,  
18 that doesn't feel he can pick up the phone, talk to Dan and  
19 get some incredibly sound advice. He's had a distinguished  
20 career and he's won numerous awards, many of them having to  
21 do with his professional integrity as an attorney. He's  
22 also been involved in numerous public corruption  
23 prosecutions and was very, very instrumental in helping Cy  
24 draft the white collar crime task force report. So DA Vance  
25 and Chief ADA <sup>Dan</sup> Alonzo, we welcome you both, and I will turn

1 it over to you, DA Vance. Thank you very much for being  
2 here.

3 MR. VANCE: Chairman Fitzpatrick, Chairman Rice and  
4 Chairman Williams, I am honored and I appreciate ~~even~~ being  
5 asked to ~~participate~~ <sup>participate</sup> ~~with~~ <sup>with</sup> Chief Dan Alonzo, and I also just want  
6 to thank all of you on the Commission for your service,  
7 taking the time out from your professional lives and  
8 personal obligations to do the important work that you are  
9 doing, and I think all of New York owes you a debt of  
10 gratitude. As Bill Fitzpatrick said, between July <sup>20</sup>12 and  
11 this past year, I served ~~as~~ a one-year term as president for  
12 the District Attorney's Association for the State, and in  
13 that capacity, last October I formed the New York State  
14 White Collar Crime Task Force.

15 The task force is co-chaired by District Attorney  
16 Frank Sedito, who is a Commission member of yours, and my  
17 Chief Assistant, Dan Alonzo, who is with me today and who  
18 may be able to assist in answering questions about specifics  
19 of the task force's recommendations.

20 Now, the purpose of this task force was to have a  
21 thoughtful group of lawyers study our fraud and corruption  
22 laws from top to bottom, not thinking politics but thinking  
23 substance, to come up with a set of recommendations that  
24 could be considered by the legislature in its 2014 session.  
25 The task force <sup>now</sup> ~~is~~ <sup>was</sup> not made up exclusively of district

1 attorneys. To the contrary, I <sup>broader</sup> brought in the membership to  
2 make sure it ~~is~~ <sup>ed</sup> reflective of views of a number of lawyers  
3 outside law enforcement, the private practice, the bench and  
4 academics, and the recommendations of that task force were  
5 unanimously adopted by the board of directors of the DA's  
6 Association this past July and we will be publically  
7 presenting the findings of the task force and releasing its  
8 full report next week.

9 In the meantime, I am pleased to give you a summary  
10 of our task force's recommendations in the public corruption  
11 ~~arena~~ <sup>area</sup>, including procedural reforms that <sup>are</sup> we believe are  
12 absolutely crucial to the effective enforcement of the law.  
13 Before I turn to several of the task force's specific  
14 recommendations, I would like to address why we are  
15 recommending these laws to the state.

16 As you just heard from my colleagues, the US  
17 Attorneys for the Southern and Eastern Districts, and as  
18 everyone in New York government knows well, the FBI and  
19 federal prosecutors have been remarkably successful in  
20 policing and prosecuting our ~~public~~ <sup>corrupt</sup> officials. <sup>And</sup> That success  
21 has led some to suggest that New York does not need criminal  
22 law reform in the area of political corruption. Some ask  
23 why do we need to do anything at all when federal  
24 authorities are doing such a good job. The answer, I  
25 believe, is pretty straightforward. Reliance on the federal

1 government to safeguard state and law integrity, I believe,  
 2 is risk~~ing~~<sup>y</sup> public policy, and I also think it's inherently  
 3 ~~intention~~<sup>tension</sup> with the federal system of sovereign states.

4 Now to be sure, and let me be clear, in terms of  
 5 ~~public~~<sup>corruption</sup> enforcement, the US Attorneys and United States  
 6 Attorney General, to say nothing of the FBI, are ~~clearly~~<sup>today</sup> and  
 7 actively engaged in rooting out this New York problem. And  
 8 let me also be clear, I have nothing but the greatest  
 9 admiration for my colleagues in the Eastern and Southern  
 10 District~~s~~ and their incredibly talented staffs, as well as  
 11 the federal law enforcement agencies involved. But there is  
 12 nothing in federal law or politics that requires that they  
 13 continue to be so involved in the future. So why, in a  
 14 government that ~~states promising~~<sup>gives primacy</sup> of police power, would New  
 15 York ~~see~~<sup>cede</sup> this area to the federal government of limited  
 16 powers whose future resources and attention may be diverted  
 17 to different priorities.

18 Now, we all know that some high level government  
 19 officials and many low level ones do, on occasion, ~~so~~ wind  
 20 up in our state courts. Alan Hevesi, who was described  
 21 earlier, and also Ms. Huntley. But these successes, a  
 22 fraction of our federal counterparts, came about, I believe,  
 23 in spite of the state system, not because of it. Criminal  
 24 prosecution may ~~be~~ not be the answer to all of our society's  
 25 problems, but any system of corruption enforcement is doomed

1 without effective criminal sanctions. It is simply time to  
2 stop handcuffing state prosecutors and allow them to do the  
3 jobs that they should be doing to root out political  
4 corruption.

5         And to this end, the task force made seven  
6 recommendations that most closely relate to the problem  
7 before this Commission. Two are procedural and five are  
8 substantive, and I have submitted to the Chairs my written  
9 testimony, which I hope will be of use to you. But in my  
10 oral testimony, I will only address three of those seven  
11 recommendations. Two are procedural and one substantive.

12         First, New York should eliminate automatic  
13 transactional immunity. Federal grand juries may use  
14 hearsay without limitation, but state grand juries are  
15 generally required to hear from each person who has personal  
16 knowledge of the events at issue. And under New York  
17 current law, which is unique, by the way, in the country and  
18 not required by any supreme court precedent, every witness  
19 before a state grand jury automatically receives full  
20 transactional immunity about anything to do with the matters  
21 about which they testify, which means that they can never be  
22 prosecuted in state court for matters about which they  
23 testify in response to questions. The results, I think,  
24 have been abysmal for New York in two ways. First, there  
25 have been numerous miscarriages of justice. In the violent

1 crime area, for example, in one case, where a supposed  
 2 witness who had, unbeknownst to the prosecutor, actually  
 3 committed the murder was called before the grand jury and  
 4 thereby absolutely absolved of all liability. In white  
 5 collar crime, an executive whose <sup>business</sup> company had been victimized  
 6 was called before a grand jury to describe the company's  
 7 operations and to testify about a possible extortion.  
 8 Subsequently, a different prosecutor began investigating  
 9 that same executive for tax fraud connected to the company,  
 10 but because the executive had been asked about the company's  
 11 operations by the first prosecutor, the case against him was  
 12 dismissed and the prosecution barred.

13 <sup>begin</sup> Now, cases like these, Commission members, have been  
 14 regional <sup>current</sup> over the years, but they pale in comparison to the  
 15 criminal law's second fatal flaw, the chilling effect on  
 16 investigations and prosecutions of all kinds and,  
 17 particularly, of corruption. Now, prosecutors are  
 18 understandably reluctant to call the very people who know  
 19 about corruption for fear of giving them a pass for all of  
 20 their transgressions <sup>1025</sup> as a result of transactional immunity, to <sup>over</sup>  
 21 say nothing about the credibility ~~of~~ issues that a witness  
 22 must face at trial, having been granted full immunity from  
 23 prosecution. I believe <sup>and</sup> that all 62 of the District  
 24 Attorneys in New York State agree that it would be much more  
 25 sensible for New York to adopt the federal use immunity

1 rule, used in the majority of states, which in practice has  
2 a much less chilling effect on corruption investigations.

3 In 1982, state prosecutors, supported by the first  
4 Governor Cuomo, former Attorney General Robert Abrams, and  
5 every major editorial board in the state tried and failed to  
6 get this law changed, and I believe it is time to try again  
7 and to succeed.

8 Second, New York should amend the accomplice  
9 corroboration requirement. You <sup>heard</sup> ~~hear~~ US Attorney Bharara  
10 talk about what he thought was the biggest obstacle in these  
11 investigations, and what did he say? It was getting at the  
12 evidence. The lifeblood of prosecutions of sophisticated  
13 crime, which corruption typically is, is the use of *informants +*  
14 accomplices who are in the best position to supply that  
15 evidence and information about the inner workings of  
16 criminal enterprises. But in New York, even when  
17 co-conspirators switch governments, to use the famous words  
18 of Sandy *Gravano* ~~the~~ *Ny's accomplice* US corroboration rule makes it  
19 impossible to prosecute others without independent  
20 corroborating evidence.

21 Now, this is a sensible <sup>rule in</sup> concept and one that even I'm  
22 sure federal prosecutors follow in practice, but its  
23 interpretation in New York makes it a poison pill in  
24 corruption investigations. ~~Several~~ <sup>Federal</sup> prosecutors often  
25 corroborate the testimony of one corroborator with another.



*But*  
1 In New York, even nine cooperators corroborating the tenth  
2 is not enough. The evidence must be independent. So how  
3 about using a tape to prove your case? Maybe, but it had  
4 better be non-accomplice that vouchers for its authenticity  
5 or it won't be admissible. These ~~accomplice corroboration~~ *hyper-technical hurdles*  
6 ~~rules~~ have no place in a system that is serious about  
7 cleaning up its government.

8 Corrupt public officials continue to reap the benefit  
9 of New York State's outdated and overly restrictive law.  
10 Although, clearly, accomplice testimony deserves sharper  
11 scrutiny at trial, it's not necessarily untrustworthy. With  
12 proper safeguards *such as an instruction* and selection from the trial court on the  
13 inherent dangers on accomplice testimony, such factors, I  
14 believe, ought to be for the jury to weigh in assessing  
15 credibility. A cell mate who committed assault and is  
16 called as a prosecution witness should not be presumed more  
17 trustworthy, as he is under current law, than a  
18 self-confessed accomplice to a forgery.

19 I recommend, therefore, that New York amend, but not  
20 eliminate, the accomplice corroboration requirement of CPL  
21 Section 60.22 to allow cross corroboration by a separate  
22 accomplice.

23 Third, and finally in my testimony before you orally,  
24 New York should amend its public servant bribery law.  
25 Although New York ~~State's~~ *public* bribery law, by its terms, is

1 violated when a bribe is merely offered or solicited, ~~the~~ <sup>it</sup>  
 2 ~~paradox~~ <sup>paradoxically</sup> also requires an elicit, I am quoting, agreement or  
 3 understanding, end quote, <sup>from</sup> ~~in~~ the statute, between the bribe  
 4 giver and the bribery receiver in order for the crime to be  
 5 complete. This exacting element is not required under New  
 6 York's other bribery laws, including ~~public~~ <sup>labor</sup> bribery, sports  
 7 bribery and commercial bribery and the ~~less~~ <sup>laws</sup> of most other  
 8 jurisdictions, which are subject to the less exacting  
 9 standards and requirements of an intent to influence the  
 10 recipient of the bribe.

11 As it stands, therefore, those who bribe public  
 12 officials in New York are less likely to be prosecuted than  
 13 those who bribe boxers who ~~throw~~ <sup>throw</sup> the match. The task  
 14 force's proposal would align New York's public bribery law  
 15 with these other bribery laws. The task force, therefore,  
 16 recommends replacing the agreement or understanding  
 17 requirement in New York's bribery law with a requirement of  
 18 an intent to influence the public servant. This would  
 19 legislatively overrule the Court of Appeals decision ~~of~~ <sup>in</sup>  
 20 People V Bactron of 1992.

21 I would like to conclude by quoting from ~~the~~ <sup>9</sup> the 1987  
 22 article from the New York Times that followed the New York  
 23 City ~~Corruption~~ <sup>corruption</sup> scandals of the mid 1980's. That article  
 24 reported, among other things, that, quote, "half a dozen  
 25 district attorneys said local officials they believe to be

1 corrupt have gone un-prosecuted because New York laws make  
 2 it too difficult, more difficult than in other states, to  
 3 bring corruption cases." That was in 1987, 26 years ago.  
 4 And ladies and gentlemen, things have only gotten worse. So  
 5 thank you for the chance to give my thoughts this evening,  
 6 and Dan Alonzo <sup>or I would</sup> will be happy to answer the Commission's  
 7 questions.

*very much COMMISSIONERS, any*

8 MR. FITZPATRICK: Thank you, DA Vance. Let me  
 9 start, <sup>sy</sup> with the thing that's troubled a lot of us when we  
 10 have been discussing this. The <sup>legislature,</sup> legislator, ~~for a~~  
 11 hypothetical, who takes a campaign contribution and then  
 12 introduces some obscure piece of legislation, such as tax  
 13 abatement or some other type of thing, that only applies to  
 14 the contributor, absent, <sup>as you know</sup> ~~you know~~, a <sup>tape</sup> recording of an  
 15 agreement or an informant or some other type of evidence  
 16 that isn't very likely to appear, is there anything  
 17 prosecutors can do about something like that, other than  
 18 what an average citizen would do, <sup>namely</sup> ~~maybe~~ shake their heads <sup>+ say</sup>  
 19 ~~that you can't~~ <sup>you</sup> be serious that this is legal?

*Vance:*

*Dan, you answer that for the Task Force*

20 MR. ALONZO: First of all, thank you, Bill, ~~and chair~~  
 21 Fitzpatrick, for having me tonight. I appreciate it. I  
 22 think, like every other corruption case, it turns so  
 23 explicitly on the facts, and under the current law you would  
 24 have to have an agreement or understanding, even under the  
 25 task force's proposal in the case of a campaign

1 contribution, you would have to have an agreement or  
 2 understanding. Campaign contributions, there's nothing  
 3 special about them, they are benefits under current law so  
 4 they can be a bribe, but you still have to have the  
 5 evidence. So I think just a mere campaign contribution and  
 6 action that benefits <sup>Re</sup> a contributor would not <sup>necessarily</sup> be actionable  
 7 under current law.

8 MR. FITZPATRICK: Any other commissioners have  
 9 questions for DA Vance or Dan? Nancy? *Professor*

10 MS. HOPPOCK: <sup>Dan</sup> ~~This question is for Dan Alonzo.~~ You  
 11 have been both a state and federal prosecutor, so you're  
 12 aware of the tools available to federal prosecutors and have  
 13 looked at and I know considered the tools available to state  
 14 prosecutors in the penal code. Does your team have the same  
 15 statute, when you contrast it to what the feds have in the  
 16 mail and wire fraud statutes? *the US Code*

17 MR. ALONZO: In a word no. I think your question  
 18 is do we have an equivalent to <sup>federal</sup> mail and wire fraud, which is  
 19 a key tool that the US Attorneys you ~~have~~ <sup>have</sup> heard from used in  
 20 their prosecutions, not the only tool of course, but the  
 21 value of the mail and wire fraud laws ~~are~~ <sup>is that they are</sup> they are so  
 22 broad and they encompass schemes that can <sup>span</sup> ~~expand~~ several  
 23 years, and they can encompass lots of corrupt behavior, not  
 24 just bribes, but kickbacks, illegal gifts and conversations  
 25 that don't necessarily go anywhere but they're kind of

1 corrupt, and every sort of vast piece of information,  
2 without the requirement that you have an independent  
3 accomplice, being able to call witnesses to the grand jury  
4 without granting them absolution for everything they have  
5 done, and all sorts of other tools - <sup>which</sup> if you're interested, I  
6 can talk about - that federal prosecutors have that state  
7 prosecutors don't, or better said, hurtles that we state  
8 prosecutors face that federal prosecutors do not face.

9           So I think New York could use a scheme crime. We  
10 have proposed, in the task force, an undisclosed self  
11 dealing law, which deals with course of conduct. That's one  
12 way to do it. In 2010 DA Vance and then Senator  
13 Schneiderman proposed a scheme law, similar to federal mail  
14 and wire fraud. There are a lot of ways to do it. But a  
15 scheme law, I believe, would be crucial to combatting public  
16 corruption in New York.

17           MR. FITZPATRICK: Thank you, Nancy. Anyone else?  
18 Anyone? Any questions? Cy, first of all, I have to  
19 compliment you on the very, very diplomatic way that you  
20 told Preet and Loretta that we want a piece of the action  
21 too, <sup>I thought that was -</sup> but most importantly, thank you for your leadership on  
22 this issue. You are relatively new as the elected  
23 prosecutor, but man, <sup>oh man,</sup> you hit the ground running, and this is  
24 incredible. And just like all DAs, I hope myself included,  
25 you surround yourself with great people like Danny. So

1 thank you both very, very much.

2 MR. VANCE: Thank you.

3 MR. ALONZO: Thank you.

4 MR. FITZPATRICK: I appreciate it. /

5 MS. CALCATERRA: I would like to invite up  
6 Councilman Eric Ulrich.

7 MR. ULRICH: Good evening, Chairpersons Rice,  
8 Fitzpatrick and Williams, and distinguished members of the  
9 Moreland Commission to Investigate Public Corruption. My  
10 name is Eric Ulrich. I am a member of the New York City  
11 Council, representing the 32nd Council District in Queens  
12 County. I was elected in a nonpartisan special election in  
13 2009 and was reelected in a November general election of  
14 that same year. I was also the republican candidate for New  
15 York State Senate in District 15 in 2012. And someone who  
16 has run for both public and party office at the state and  
17 local level, I greatly appreciate the opportunity to share  
18 with you my thoughts on the inherent corruption and the  
19 appearance of such corruption and political campaigns and  
20 elections in the State of New York.

21 We all know that over the past several years New  
22 Yorkers have had to endure some of the worst public  
23 corruption scandals in recent memory. These accounts,  
24 widely reported in almost every media outlet, have caused  
25 irreparable harm to what former Mayor Ed Koch once called