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CITY OF JACKSONVILLE
CHARTER REVISION COMMISSION
MEETING

Proceedings held on Thursday, January 28,
2010, commencing at 9:00 a.m., City Hall, Council
Chambers, 1st Floor, Jacksonville, Florida, before
Diane M. Tropa, a Notary Public in and for the State
of Florida at Large.

PRESENT:

- WYMAN DUGGAN, Chair.
- MARY O'BRIEN, Vice Chair.
- ED AUSTIN, Commission Member.
- JIM CATLETT, Commission Member.
- WILLIAM CATLIN, Commission Member.
- TERESA EICHNER, Commission Member.
- ROBERT FLOWERS, SR., Commission Member.
- BEVERLY GARVIN, Commission Member.
- MECHELLE HERRINGTON, Commission Member.
- ALI KORMAN, Commission Member.
- JEANNE MILLER, Commission Member.
- GARY OLIVERAS, Commission Member.
- CURTIS THOMPSON, Commission Member.
- GEOFF YOUNGBLOOD, Commission Member.

ALSO PRESENT:

- STEVE ROHAN, Office of General Counsel.
- JEFF CLEMENTS, Research Division.

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P R O C E E D I N G S

January 28, 2010 9:00 a.m.

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THE CHAIRMAN: Good morning. I hope everyone is doing well.

Let's take a roll call. Let's start with Commissioner --

MR. THOMPSON: Curtis Thompson.

MR. OLIVERAS: Gary Oliveras.

MR. FLOWERS: Robert Flowers.

MS. EICHNER: Teresa Eichner.

MR. CATLETT: Jim Catlett.

MS. O'BRIEN: Mary O'Brien.

THE CHAIRMAN: Wyman Duggan.

MR. AUSTIN: Ed Austin.

MR. CATLIN: Billy Catlin.

MS. GARVIN: Beverly Garvin.

MS. MILLER: Jeanne Miller.

MR. YOUNGBLOOD: Geoff Youngblood.

THE CHAIRMAN: Thank you, Commissioners.

As a reminder, please turn all cell phones to silent or vibrate.

And we will begin with the Pledge of Allegiance and a moment of silence.

(Recitation of the Pledge of Allegiance.)

1 THE CHAIRMAN: Commissioners, in the
2 interest of time, I'm going to move right to our
3 first speaker as she has a flight to catch back
4 home to New Orleans this morning and must leave
5 the chambers by 10:30 at the latest. So without
6 further ado, Ms. Jacobs, if you would come to
7 the podium, I'll introduce you while you're
8 coming up.

9 (Ms. Leslie Jacobs approaches the podium.)

10 THE CHAIRMAN: Our first speaker is Leslie
11 Jacobs. She is a business executive who has
12 been engaged in education reform for more than
13 20 years. She's a native of New Orleans and
14 began as a business partner with an elementary
15 school, served as an elected member of the
16 New Orleans School Board, and then 12 years of
17 the Louisiana Board of Elementary and Secondary
18 Education, appointed by a Republican governor
19 and reappointed by a Democratic governor.

20 She is considered the architect of
21 Louisiana's accountability reform and was
22 instrumental in creating the Recovery School
23 District and has been very involved in efforts
24 to build successful schools in New Orleans
25 post-Katrina. She recently founded Educate Now,

1 a nonprofit organization dedicated to the
2 effective and sustainable reforms of New Orleans
3 public schools.

4 It's my great pleasure to bring Ms. Jacobs
5 before you. Several of us on the commission had
6 the pleasure of hearing her speak to the chamber
7 leadership trip to New Orleans three or four
8 years ago. She was one of the most compelling
9 speakers we heard. And she can tell us about
10 the Recovery School District with data now,
11 which at the time, since it was new, she did not
12 have.

13 Ms. Jacobs, before you begin, I would ask
14 that you state your name and address for the
15 record, and our court reporter will swear you
16 in.

17 MS. JACOBS: Okay. Leslie Jacobs,
18 6038 St. Charles Avenue, New Orleans, Louisiana
19 70118.

20 THE REPORTER: Would you raise your right
21 hand for me, please.

22 MS. JACOBS: (Complies.)

23 THE REPORTER: Do you affirm that the
24 testimony you're about to give will be the
25 truth, the whole truth, and nothing by the truth

1 so help you God?

2 MS. JACOBS: I do.

3 THE REPORTER: Thank you.

4 THE CHAIRMAN: And we have hard copies of
5 your presentation in our packets here in front
6 of us, and you should also be able to -- can you
7 see it on the monitor --

8 MS. JACOBS: Uh-huh.

9 THE CHAIRMAN: -- in front of you?

10 MS. JACOBS: Uh-huh.

11 THE CHAIRMAN: And you understand -- Jeff,
12 does she know how to scroll forward?

13 MS. JACOBS: Uh-huh.

14 THE CHAIRMAN: Okay. Thank you.
15 Take it away.

16 MS. JACOBS: Okay. What I thought I would
17 do is present for about 30 minutes and then
18 leave about an hour for questions, if that
19 works.

20 A little bit of the landscape, New Orleans,
21 I think, arguably was the worst school district
22 in the United States before Katrina. In fact,
23 Detroit keeps referring to, "We don't want to
24 become New Orleans."

25 It was the largest school district,

1 academically bankrupt. It was the worst
2 performing in the state. Sixty-three percent of
3 the schools were failing. Valedictorian of one
4 of the high schools -- we have a graduation exit
5 exam probably similar to your FCAT -- and she
6 could not graduate, walk across the stage
7 because she took the test six times in math
8 between sophomore year and senior year and could
9 not pass it. But she was the number one
10 student, had straight As on her report card on
11 high level math, and you can pass our exit exam
12 without knowing algebra.

13 Morally bankrupt, the FBI actually opened
14 an office to investigate the rampant corruption
15 inside the district office, over 28 convictions
16 now, including a woman who was the president of
17 the school board.

18 Financially bankrupt, they never did their
19 Y2K conversion correctly. So from December of
20 1999 onward until Katrina, they never had an
21 end-of-month nor an end-of-year closeout.

22 So the context of the state action -- I
23 know y'all are looking at, you know, the state
24 of your schools. I did spend a little bit of
25 time -- please, I'm not an expert in any way,

1 but it does very much appear that the
2 Jacksonville schools, given your demographics,
3 are pretty mediocre. You know, you're not in
4 the situation New Orleans was in, but you should
5 be a much more high performing school district
6 given your demographics. And I'll show you
7 New Orleans demographics in a minute.

8 When we were looking at what to do -- I had
9 been on the New Orleans School Board. And I
10 will tell you, systemic incompetence is much
11 harder to fix than corruption, and New Orleans
12 had both. We had probably, I think, close to
13 10 superintendents over a 10-, 11-year period.
14 I mean, there was constant churning. So when
15 you look at mayoral interventions, the challenge
16 they face is they inherit the culture. They
17 inherit the people, the contracts, the culture
18 and then they attempt, by bringing in reformers,
19 to change it, but it is a harder current to swim
20 upstream. I didn't think we could fix the
21 school district. It was that broken.

22 What Louisiana did is tied into our school
23 accountability model. We just said, "You know
24 what" -- a district, you give them so much time
25 to fix failing schools, but at the end of the

1 day, their failure to act means they don't
2 believe that those children and that school can
3 be a passing school. And so we -- is this not
4 loud enough? Sorry.

5 And so we did a different model. We
6 decided to take the failing schools away from
7 the school district, and it was really modeled
8 after Chapter 11 bankruptcy. So when we took
9 that school away from the school district and
10 put it into the Recovery School District -- and
11 I just have to emphasize, this is recovery from
12 academic failure and wasn't in existence before
13 Katrina.

14 In taking it away, you strip the school
15 from that school board. And in doing that, the
16 local policies go away, the collective
17 bargaining agreement goes away, the people go
18 away, though they have the right to be
19 interviewed and kept if the new operator of that
20 school so chooses. And so out comes the
21 building, the students, and the money and a
22 fresh start.

23 So before Katrina hit, we had five schools
24 in the Recovery School District. In
25 New Orleans, they were all charter. Today, not

1 only is the Recovery School District operating
2 in New Orleans, it has taken some schools away
3 from other parishes in the State of Louisiana --
4 counties in the State of Louisiana. In
5 New Orleans, we took over all but 17 of their
6 schools, and the schools they kept were
7 primarily selective admission schools.

8 So a real quick landscape today: Kids are
9 still returning. We have 38,000 kids. We had
10 65,000 kids before Katrina hit. And unlike --
11 or, I guess, like Jacksonville, our metropolitan
12 area is number -- Louisiana is number one or two
13 in the nation of percent of kids going to
14 nonpublic schools, and it is particularly high
15 in our region. So the public schools -- we have
16 a very strong Catholic school system and
17 nonpublic school system. So they're probably --
18 again, those are regional.

19 But we have 38,000 kids now in public
20 schools in New Orleans. The state, through the
21 Recovery School District and other ways, has
22 33 traditional schools that are running and 39
23 charters. The Orleans Parish School Board of
24 the 16 -- the 17, but one is a little
25 alternative -- the 16 schools they now kept,

1 twelve of them are charters and four of them are
2 operated.

3 To give you an idea of pre-Katrina, there
4 was about 125 -- or 120 schools. We needed to
5 close schools. We hadn't shut our schools as
6 our population declined.

7 (Ms. Korman enters the proceedings.)

8 MS. JACOBS: And there were three
9 charters. So, I mean, this charter movement
10 happened post-Katrina.

11 But today 61 percent of all students in
12 New Orleans are at charter schools. It's the
13 highest percentage in the country. And that's
14 only going to go -- next year, I estimate, when
15 schools open in August or July of 2011, we will
16 be 70 percent chartered because a lot of those
17 traditional schools in the Recovery School
18 District are being handed over to charter
19 operators or are phasing out and charter
20 operators are taking over their students.

21 We are a system of schools versus a school
22 system. When Paul Vallas was looking at
23 leaving, I wrote an op-ed to the paper because
24 in the past whenever the superintendent left,
25 you had churning. The new superintendent comes

1 in, brings in their programs, their philosophy,
2 and schools would just be battered around in
3 those changes.

4 Now, when Paul Vallas leaves, he -- this
5 year only is educating 30 percent of the kids.
6 Next year it will be way down. So his leaving
7 will not impact all of those other schools with
8 the change of curriculum or anything because
9 they have that autonomy as charter schools.

10 But it's a really -- it's a huge mind-set.
11 I mean, you just can't go knock on the
12 superintendent's door or the school board's door
13 and say, "I'd like you to put this dropout
14 prevention program in." If you want every
15 school in the city to have that dropout
16 prevention, you would have to go door by door in
17 charter school and convince them to do it
18 because the charters have control over their
19 time, people, and money curriculum. It is not
20 anybody making that decision for them.

21 So we are the most market-driven system in
22 the United States. So every single school is a
23 school of choice. Kids are not assigned to a
24 school. There are not any mandated attendance
25 zones, but schools must provide the

1 transportation if the student lives more than a
2 mile away.

3 There's competition for employees. Schools
4 set their own salary and benefit schedules, work
5 conditions, hours of operations, employee
6 protection. It's really employer at-will, more
7 like the private sector. Charters are exempt
8 from the tenure law and the collective
9 bargaining agreement. The board did not renew
10 it after Katrina because they were down to four
11 schools, and so they didn't renew it.

12 Service providers compete for business for
13 the charter schools. Again, our central office
14 was so dysfunctional that schools really viewed
15 them as a key obstacle and never part of the
16 solution. They couldn't -- you called central
17 office, and it went into some deep hole.

18 Now if they don't like the service that a
19 provider is giving them, they go to another
20 one. So they don't like the transportation,
21 they hire a different bus company. They don't
22 like the food service, they hire somebody else
23 to provide it.

24 There is total transparency because every
25 school -- again, charter schools are public

1 schools, so they're all taking the state test.
2 They're all part of the state accountability
3 model. They're subject to the Open Meetings
4 Law.

5 And this is a huge one, money follows the
6 kid. So 98 cents -- I think here the admin fee
7 is 5 percent. In Louisiana, it's 2. And so
8 98 cents of every dollar follows that child. If
9 the school loses enrollment, then they lose
10 money. It is not -- we call it "co-opetition"
11 it's because it's a movement, so there isn't
12 this hard core competition. I mean, schools are
13 absolutely helping one another, but at the same
14 time, there is bragging rights. You know, who
15 is the highest performing school, and how are
16 they doing? So I think it's a terrific
17 environment myself, but then I come from the
18 private sector.

19 I messed up this slide. It should be
20 10/1/09, and the number of students should be
21 38,000. The rest of the data is correct. But
22 when I get through the results, because the
23 results are pretty compelling -- the reason I
24 show you this demographic slide is because when
25 I start telling this story in Louisiana, "Oh,

1 well, you got -- your poor kids went away. Oh,
2 you're not as minority as you were." Well,
3 that's really not true.

4 We have a harder student population
5 post-Katrina because what you can't measure is
6 mental health. You have just tremendous mental
7 health needs of the trauma these youngsters went
8 through from Katrina. And every educator -- I
9 mean, when schools opened back in January of
10 2006, educators felt, many of them, that you
11 almost had to teach kids how to play again.
12 They had been so traumatized.

13 But we are -- what I don't have on here is
14 our English language learners went probably from
15 zero to two percent. So we are still very
16 minority, and we are poorer. It's a poorer
17 population that is back, not a more affluent
18 one.

19 But our results are compelling. In
20 Louisiana -- this is probably most important
21 slide -- we take -- we have tests from grades 3
22 through 11. There are five performance levels
23 on the test. Our tests are aligned to NAEP, so
24 basic in Louisiana is like basic on NAEP for the
25 most part. But we can take that and -- and we

1 assign points to the performance levels. And we
2 can roll that up at a school, and that gives us
3 a school performance score. And we can roll it
4 up at the district. That gives us a district
5 performance score. This is the district
6 performance score compared really to the state
7 performance score.

8 As you can see, since Katrina, we've really
9 grown, and this understates our growth because
10 we didn't have a school year in '05-'06. And I
11 would argue, we really didn't have a school year
12 in '06-'07 because when we opened up in '06, we
13 didn't have books, teachers, and buildings
14 still. So this was really two full years of
15 education reform, maybe two-and-a-half from
16 the '06-'07 school year.

17 When you break it down, we have high-stakes
18 tests, promotional tests. How are kids doing on
19 promotional tests? So I was the leader of
20 getting this in statewide, and I used to laugh
21 that I had to remote start my car because it was
22 so opposed in New Orleans versus the rest of the
23 state. And one reason is they weren't teaching
24 kids, so parents were very angry. The backlash
25 against the high-stakes testing has really now

1 gone -- is starting to go away as they can see
2 their students can pass that test if they are
3 given quality teaching. Surprise.

4 Basic and above, which is a higher standard
5 than our promotional standard, as can you see,
6 we're getting really good gains, particularly at
7 the eighth grade.

8 From 1999 to 2005, if you look at that
9 eighth grade English, the Orleans Parish School
10 Board grew from 23 percent at basic to
11 26 percent at basic. From really 2006 to 2009,
12 we grew from 26 to 42 percent.

13 It's huge growth. I mean, we were just --
14 our eighth grade was just -- and I know part of
15 what you're looking at is your dropout rate.
16 Our eighth grade was just where we -- I mean,
17 middle school is where we lost all our kids.
18 They didn't drop out then. They mentally
19 dropped out. They dropped out later. But we
20 were really warehousing children in these large
21 middle schools.

22 Senior graduation rates, I can't give you
23 the whole graduation rate because you really
24 have to track that by cohort for the NGA,
25 National Governors Association, data, and all

1 our schools have opened up again. I mean, we
2 have -- it's going to be a couple of years
3 before we really have data because of the
4 churning of the population, but we can track the
5 senior graduation rates.

6 So what percent of your entering seniors
7 graduate? I thought this was the most offensive
8 data when I was on the State Board of
9 Education. In Orleans Parish, 21 out of 100
10 seniors did not graduate. I mean, they got them
11 to senior year, and they couldn't get them over
12 the finish line. We're up to 89 percent. We
13 have a 10-point gain. I still think that is
14 offensive, but it's a lot better than 79, and I
15 am hoping this year it gets higher.
16 Interesting, when you start measuring these
17 things, people do better. Isn't that
18 interesting.

19 Turning around failing schools. So we
20 had -- only 37 percent of our schools were not
21 failing pre-Katrina. We're now up to 58 percent
22 of them not failing. No standard has changed.
23 It's the same definition of failing the same
24 tests at the same grade level, and this year it
25 will go higher.

1 So I'm doing it out of order. I'll skip it
2 when it comes.

3 But when you poll New Orleanians, which
4 people have done -- so on the Katrina
5 anniversary, a statewide group called
6 New Orleanians, and one of the questions was,
7 "What's better since Katrina?" Total open-ended
8 question. One in four residents said,
9 "Schools." When you ask voters do they approve
10 of -- one of these questions -- I would say the
11 State took the schools over against -- over the
12 objections of the residents of Orleans Parish.

13 But today when you poll voters and you
14 say, "Do you want the schools returned to the
15 Orleans Parish School Board in a year or two,
16 three to five, or never," the number one answer
17 is never. If you take three to five and you
18 combine it with never, it's, I think, 65 percent
19 of voters because there will be a discussion
20 this year as to the return of schools.

21 People do not want the schools returned, so
22 there is an 80 to 85 percent support rate for
23 charters and for converting more schools to
24 charters. And we are -- our demographics of the
25 city are right back to where they were

1 pre-Katrina in terms of percent of voters that
2 are African-American, Caucasian, and other.

3 The charters are significantly
4 outperforming your traditional schools. Of the
5 schools that reopened in 2006 -- and why am I
6 using this data? Because originally when we did
7 the Recovery School District, we said, "You know
8 what, we're going to take this school away from
9 the school district if it's been failing for
10 five years, but we just don't want to tolerate
11 failure anywhere. So RSD -- if we put you
12 inside that Recovery School District and the
13 school is still failing at the end of four
14 years, you then have to do something. You
15 return it to the local. You shut it down. You
16 get another manager. But we just cannot let
17 these schools continue to fail our kids."

18 Well, of the schools that reopened in 2006,
19 27 of the 30 charters are one star higher. One
20 star means you're not failing. And of those
21 three, they're all within five points now of not
22 being failing. On the other hand, only five of
23 the 21 traditional schools are one star or
24 higher. I mean, this success is being driven by
25 the charter schools, and the people on the

1 street know it.

2 There are some exceptional schools
3 developing, and I'll call it -- because I know
4 y'all approved a KIPP. Congratulations. That's
5 a phenomenal operator. But we have some other
6 homegrown ones that are developing into
7 KIPP-like quality. Again, we call
8 this "co-opetition." There really is a
9 movement.

10 I don't -- you know, everybody focuses on
11 governance, and I believe it's very important.
12 Obviously, this whole model focused on
13 governance. But part of that change in
14 governance is how you change expectations. The
15 fact is is when that valedictorian did not pass
16 the graduation exit exam, there was not a
17 Civil Rights march. There wasn't a string of
18 business leaders up there saying -- demanding
19 changes in our high schools. There was
20 deafening silence. And so people had so become
21 expected that we were going to have terrible
22 schools and there was nothing else to -- and
23 long ago I was a history major -- and revolution
24 actually happens on rising expectations. When
25 you are truly oppressed, you don't revolt.

1 And so part of the challenge here when I
2 look at your demographics is there should just
3 be more outrage over the performance of your
4 schools, and there's not. And the question you
5 need to ask yourselves, I believe, as a
6 commission is, "Why isn't there? What external
7 pressure needs to apply to these schools and
8 your school board?"

9 The reason we took over these schools is we
10 tied them into accountability, and we began --
11 we didn't begin this way. I mean, we began
12 thinking, "We'll give you assistance. We'll
13 give you help. Schools will get better." We
14 gave Orleans Parish distinguished educators. We
15 gave them extra pots of federal money we went
16 and applied for. We tried assistance, and they
17 went nowhere, absolutely nowhere.

18 There is a particular school -- that's a
19 great story -- it's Sophie B. Wright. If any of
20 you have been in New Orleans, it's uptown. It's
21 on St. Charles -- it's near St. Charles Avenue.
22 It was a terribly failed middle school. Our
23 local paper chronicled it because it was one of
24 these schools that we gave a \$15 million grant
25 to New Orleans for middle schools to improve,

1 and it went nowhere.

2 That same school leader is now running that
3 school as a charter. It is one of the top
4 performing charters. And I pulled her into a
5 focus group to say, "Okay. What is the
6 difference?" The differences were huge. For
7 her, every time a superintendent came in, it was
8 a change of curriculum. They had no say-so over
9 the curriculum. It was done to them, not with
10 them.

11 Discipline, she's never expelled a kid, but
12 it's a choice. So when that child is now acting
13 up, she calls the parent in and says, "If you
14 want your kid here, these are our rules." And I
15 said to her, I said, "But, Sharon, you could
16 have done that with the school board." And she
17 rolled her eyes and said, "Right. They would
18 have called the area superintendent. They would
19 have called their school board. They would have
20 done something. It wasn't worth the fight. I
21 would have been overruled."

22 So she's gotten control of the culture of
23 her school, and she's gotten her faculty by.
24 And the biggest change has been teachers because
25 she -- while the majority of the teachers at

1 that school were there pre-Katrina, she's
2 basically said, "This is where we're going.
3 These are our sets of expectations. And if you
4 don't sign off on this, then go work at another
5 school. It's your choice."

6 So when you're looking at the governance
7 change, I would also urge you to think
8 through, "Why are your schools so mediocre, and
9 what needs to change in that dynamic to drive
10 reform?" Because I'll get to there, charters
11 are not always good. I mean, there can be lousy
12 charters.

13 So questions for Jacksonville, "Why are
14 your schools performing poorly?" We had
15 systemic incompetence. We had bad board
16 governance. And I was telling Wyman that we
17 went from an all district school board, you
18 know, citywide. We tried districts. The
19 business community and civic community actually
20 in partnership with the union tried to put
21 together a slate to take over the school board
22 because we had the embarrassment of two school
23 board members getting into a fistfight on TV.

24 I worked to elect good board members for
25 12 years. I was part of a reform board, and I

1 will tell you, nothing changed. It just did not
2 move. So a question is: Do you need a fresh
3 start versus the ability to redirect the flow?
4 If what you need is redirecting the flow, I
5 believe that mayoral accountability can be very
6 impactful. I think that coming up with ways to
7 change board governance can be very impactful.
8 But if what you need is a fresh start, you need,
9 I believe, more -- maybe in combination with
10 those changes, a way to give schools that fresh
11 start. And that's what the Recovery School
12 District did.

13 I would have told you the union was not the
14 problem. It would not have hit my top three,
15 but there is not a single school -- I was
16 recently, for a period of time, harboring
17 mayoral delusions. I just got out of the
18 mayor's race in New Orleans. But one of the
19 candidates was looking at returning the schools
20 to the Orleans Parish School Board, and all
21 these former principals who are now charter
22 leaders were just coming to me in droves because
23 nobody wanted to go back to the constraints of
24 the collective bargaining agreement because what
25 it does is it allows two or three really bad

1 teachers to mess up the culture of the school.
2 It wasn't that there were large numbers. It's
3 that they were so destructive, and they couldn't
4 get them out of the school building.

5 So do you need to reconstitute the
6 schools? Do you need to come up and say, "When
7 a school has been low performing at a certain
8 level, we want District -- you to go renegotiate
9 the collective bargaining agreement," which some
10 cities have done now, to say when the school
11 hits a certain threshold, those rules go away?
12 And some cities or districts are making that
13 part of their Race to the Top application.

14 Time urgency. So there's the Indianapolis
15 model to consider, which I have been very
16 impressed with from afar. That gave their mayor
17 the right to charter schools. And the mayor
18 didn't take over failing schools. The mayor
19 started from scratch. So if you take a KIPP,
20 KIPP will not take over a failing school. KIPP
21 builds one grade at a time. And a lot of your
22 high quality charter operators like to build one
23 grade at a time.

24 If you had another chartering authority and
25 some ability for them to play in with the

1 facilities, you could build, in essence, a
2 competitive model, and that can work because all
3 of a sudden if -- it's -- I can't stress the
4 changing expectations.

5 When we take a school that's all poor and
6 in New Orleans all black and these kids are
7 outperforming now some of the selective
8 admission schools, you look at folks who say,
9 "So what's your excuse for not doing it?" I
10 mean, you have to have examples. It's not the
11 kids. It's the adults failing to provide for
12 the kids. I mean, this is an adult failure.
13 It's not a kid failure.

14 But if you don't have that time urgency or
15 politically you can't take a bolder step to look
16 to say, "How can your mayor become an
17 authorizer" -- and there are some models of that
18 inside the country.

19 Talent, at the end of the day, the quality
20 schools, who is that school leader? Who are the
21 teachers in the building? What is the culture
22 of that school? Is the talent here in
23 Jacksonville? Do you need to go get it?

24 I will tell you, Tony Amato, who came to us
25 from New York and then Hartford as a

1 superintendent, told me that we had the lowest
2 level of teacher quality he had ever seen as
3 well as school principalship, and I think he was
4 absolutely right. I mean, I used to get letters
5 from teachers that couldn't write, and I'm
6 thinking, "How could they teach?"

7 So what is New Orleans relevance to
8 Jacksonville? So if you look at a mayoral
9 takeover, I would argue that charters are
10 definitely part of the strategy there in any big
11 city that have made charters part of their
12 strategy. You have the Indianapolis, where,
13 again, you have chartering authority. You have
14 the RSD model where you really take over a
15 school, not a district, and start with a
16 clean -- you know, a do-over of that school,
17 although you start with a much larger student
18 population than if you start from scratch. You
19 can do some combination.

20 But what New Orleans really has to teach, I
21 think, is how do you do chartering well. So
22 what are the key ingredients to have quality
23 charter schools? Because you can start with the
24 CREDO study that was done in Stanford that said,
25 "For the most part, charter schools do not

1 outperform traditional schools." Louisiana was
2 one of five states noted where charters are
3 outperforming traditional schools. If you don't
4 have quality chartering standards, you will have
5 really yucky charter schools, and you'll have
6 gone down that path and not have improved
7 educational outcomes for children.

8 So what Louisiana set up is -- we required
9 the chartering authority to have NACSA, National
10 Association of Charter School Authorizers, use
11 the NACSA standards. And SBE -- the State Board
12 of Education even went much further and said,
13 "NACSA, will you conduct the charter review
14 process for us?" It was wonderful because
15 (inaudible) depoliticized it.

16 So the president of the school board, who
17 ended up going to jail, had submitted a charter
18 proposal. She was a former principal. It
19 looked great. But we happened to know that she
20 should not be given the school, and through the
21 NACSA process, that came out. And so it gave
22 cover to not giving a school to
23 politically-connected people.

24 The first year only six of 44 applicants
25 were accepted after Katrina. I mean, we've been

1 very picky as to how we have gone about this.
2 There has to be very strong accountability. So
3 one of the ways we changed that whole mind-set
4 is when we gave a group a charter, we said, "By
5 year three, you have to hit a certain benchmark,
6 and by year five, you can no longer be failing.
7 But we will judge you after year four. So you
8 can no longer be failing at the end of four
9 years."

10 So the reason I was looking at those
11 schools in 2006 is there's three years of data.
12 So this school year, if those three charters
13 don't get to the number they need to get to,
14 their charter will not be renewed. So there is
15 pressure to perform. And, personally, I'm very
16 happy by that because schools are getting it
17 done, and Louisiana is now starting to
18 incrementally raise the definition of "failing
19 schools," so they will continue to be under
20 pressure.

21 Incubation. KIPP is an anomaly. It is the
22 only real charter management organization that
23 is national. Almost all of them operate in a
24 footprint because they need to expand the
25 charters where their key staff are. And so part

1 of our problem that first year is there wasn't
2 the inventory of quality charter operators. So
3 we actually had a nonprofit, New Schools for
4 New Orleans, go out and get major grant money,
5 and they invested in incubation.

6 So there are two CMOs, Charter Management
7 Operators, homegrown in New Orleans that will be
8 taking over failing schools from the RSD this
9 year. So Paul Vallas, beginning -- that is one
10 reason that charter percentage is going to jump
11 so much. Paul Vallas is turning over four
12 elementary schools that he could not turn around
13 to these charter operators. But the difference
14 is they've had a whole year.

15 I mean, \$250,000 grant that hired the
16 school leader in advance. That school leader
17 has been out looking for the best faculty he or
18 she could find. They have their whole plan of
19 what they're going in, so they're walking --
20 they've been working with the neighborhood and
21 the community. So they have a whole plan
22 walking into that school of how they will turn
23 it around, which in traditional public schools,
24 principals are given keys to the schools with
25 not real planning time.

1 I know of almost no districts that
2 say, "You know what, we're going to put you in
3 as principal of a failing school, but here's a
4 year off. Go build a business model. Go build
5 a plan. Go research it. Go put your team
6 together. How are you going to turn around that
7 failing school? But it's not cheap."

8 Human capital. So I can't underestimate
9 school leadership. And, in fact, Ed Week just
10 came out with some article that, you know, it's
11 school leadership. It's just very important.

12 What's the quality of your principalship?
13 And if it's not strong, how will you improve
14 it? We went out and recruited new leaders for
15 new schools to groom future leaders, but we've
16 also been doing national recruitment. And a
17 charter school leader needs to be stronger than
18 a traditional school.

19 If you have a mediocre school principal,
20 they will perform better in a traditional
21 environment than in a charter environment, in my
22 opinion, because a charter environment doesn't
23 have the same supports. They're not only
24 responsible for the academic, they're
25 responsible for the nonacademic functions in a

1 charter school. They have no central office to
2 shore them up. So charter schools need stronger
3 leadership.

4 Education quality. Teach for America and
5 Teach NOLA, which is really the new teacher
6 project, I put 2.5. I think it's 1.2, but I
7 didn't want to be accused of exaggeration. I
8 think they're now educating one in two students
9 in New Orleans.

10 Has there been some pushback of people
11 saying, you know, "They're not native. They
12 don't know our culture"? There's been some
13 pushback, but not by parents. It's by, you
14 know, former union members, et cetera.

15 But we did a Louisiana -- Duncan --
16 Secretary of Education Duncan has highlighted
17 Louisiana. We did -- we have a way of judging
18 the effectiveness of teacher preparation where
19 we look at graduates of teacher preparation
20 programs, and then how did their students do in
21 the classroom in a value added model and roll it
22 back up to the institution that prepared that
23 cohort of teachers.

24 Teach for America outperforms all but one
25 of our universities in the State of Louisiana in

1 terms of how their -- what you're comparing is
2 how do those first year teachers do to teachers
3 with -- who are certified with two or more years
4 of experience, and TFA teachers were gap
5 closers. So for us, we're very lucky. This
6 reform has made New Orleans hot. I mean, we're
7 a place to be, and we're being able to attract
8 some incredible talent, which is driving these
9 reforms.

10 Replacing central office. If you -- again,
11 we had nonprofits from teacher recruitment;
12 special ed, which is still a challenge; charter
13 incubation advocacy. Another key ingredient in
14 any reform you're going to do -- I mean, when
15 you look at New York, Bloomberg had a lot of
16 this. You look at New Orleans, we had a lot of
17 it. Chicago has had a lot of it. It's
18 foundation investment. They bring intellectual
19 capital. They bring -- for us, they brought
20 seed investment for startup in human capital,
21 but they also become an outside pressure point.

22 It's amazing what schools will do for grant
23 money that they'll do for no other reason. So
24 part of it is, is there an incentive pool to put
25 together to incent changed behavior in addition

1 to a stick. And for us, probably the most
2 wonderful unintended consequence, which may not
3 be relevant for Jacksonville but was hugely
4 relevant for New Orleans, is we have reengaged
5 the public in public education.

6 In New Orleans, middle and upper income
7 people did not send their kids to public schools
8 unless they were the handful of selective
9 admission schools, but now they're also serving
10 on charter boards. If you wanted to pull a room
11 in with the most authentic diversity, just get
12 all your charter board members. It's every
13 neighborhood. It's every ethnicity. It's every
14 walk of life. We have a former king of
15 carnivals serving with a former Acorn
16 organizer.

17 I mean, it's just fascinating watching that
18 real authentic dynamic, such that we had a
19 millage renewal, and for first time it was
20 approved by greater margins in the white
21 community than in the black community. I mean,
22 there's an engagement that wasn't going on in
23 New Orleans. So our challenges -- and I know
24 high schools are (inaudible) for you. High
25 schools are harder to find high quality charter

1 operators, and you're probably going to have to
2 home grow them. I've been out in the country
3 recruiting, and I have not had a lot of
4 success.

5 We have public school choice, which I --
6 again, that market mechanism, I call it, you
7 need managed excessive space. If you only have
8 enough spaces for the kids, you don't have
9 choice. You have first come/first serve.

10 So, by design, we have more spaces than we
11 have kids so that if a parent doesn't like a
12 school, there is another school to go to. But
13 parents need assistance because this has been a
14 sede change. What amount of money follows the
15 child is real important if you're the school
16 that ends up with the special needs kid or need
17 for alternative ed.

18 Special ed, there's a real economy of
19 scales challenge for us because there are
20 certain exceptionalities where you do need to
21 pull them because of equipment and expertise in
22 teaching. So having all visually-impaired kids,
23 each one at a different school, is not a very
24 efficient way to provide those services. And
25 then we're still working on the long-term

1 governance.

2 So, with that, I'll open it up for
3 questions.

4 THE CHAIRMAN: Thank you, Ms. Jacobs.

5 First, we distributed the article that you
6 asked us to distribute to all the
7 commissioners. Commissioners, you have it in
8 your packet.

9 Do you want to address this briefly?

10 MS. JACOBS: Oh, that's just a commentary
11 that Paul Vallas and I -- that was printed by
12 Ed Week in the context of Race to the Top
13 because a lot of the Race to the Top was really
14 modeled after what was done in New Orleans.

15 I mean, Duncan was very impressed by
16 New Orleans. And Duncan and Paul Vallas go back
17 to their Chicago days together where Duncan
18 worked under Paul Vallas. But really I think
19 most of the stuff in that article was covered in
20 my presentation.

21 THE CHAIRMAN: Okay. And also you said at
22 the beginning of your presentation that you
23 thought, given our demographics, we had a pretty
24 mediocre school outcome.

25 MS. JACOBS: Uh-huh.

1 THE CHAIRMAN: We learned from one of our
2 previous presenters, Mr. Tilson, that our
3 graduation rate is only 65 percent, which puts
4 us pretty much at the bottom of the state for
5 the 40 largest school districts across all
6 racial and economic groups. I just wanted to
7 know if you wanted to share any insight as to
8 why you think we're fairly mediocre given our
9 demographics.

10 MS. JACOBS: I mean, I can't tell you why
11 in terms of what is the school district not
12 doing that they should do. But when you
13 disaggregate that data by demographics, you're
14 the lowest performing in graduation rate in
15 almost all categories, but you're not doing a
16 whole lot better in your -- I looked at reading
17 scores at elementary school students, and not
18 doing a whole lot better there. I mean, the
19 problem isn't just at the high school. It will
20 manifest itself at the high school, but the
21 problem begins much lower than there.

22 I mean, again, for New Orleans to be the
23 lowest performing with our degree of urban
24 poverty and minority -- but you don't have the
25 same degree of issues. You're not anywhere near

1 as poor. You're more evenly, you know, split in
2 terms of your racial demographics.

3 When we break New Orleans up by demographic
4 group, we are higher performing than we look as
5 a district. You're just the opposite. You look
6 better from afar because people who have more
7 poor kids and more minorities are actually
8 outperforming you. And when you break it up by
9 demographic group, you are doing worse.

10 THE CHAIRMAN: Thank you.

11 Commissioners.

12 Commissioner Catlett.

13 MR. CATLETT: Well, first, thank you for
14 that presentation. That was informative and yet
15 to the point, and I really appreciate the time
16 that you put in getting this organized.

17 We are studying at the moment whether to
18 have an appointed public school board or an
19 elected school board. Your information centers
20 around mostly charter schools and having each
21 school develop its own curriculum, as I
22 understand it. What is your thoughts on
23 appointed versus elected?

24 MS. JACOBS: To me -- if there is need for
25 hard decisions, elected officials don't like to

1 lead, okay, and I'm going to say that across the
2 board, you know. So if there's a need for hard
3 decisions to improve what's going on in
4 Jacksonville schools -- do you need to close
5 some schools? Do you need to really negotiate
6 the work rules of the collective bargaining
7 agreement? Do you need to bring in much -- you
8 know, go -- really bring in some higher quality
9 school leaders and teachers in a way that some
10 people might be upset -- it is very hard for an
11 elected board to have that type of backbone, and
12 that's not Jacksonville. That's everywhere,
13 okay, because elected officials hate to have
14 enemies.

15 So I just ran for mayor, and I was called
16 divisive. And when you really polled-in and
17 focus grouped it, the white community
18 overwhelmingly supported the takeover. The
19 black community was divided even though a
20 majority of African-Americans supported it. You
21 had a hard core 35 percent that had opposed this
22 from the get-go. But they are very loud in
23 their opposition, and that's what elected
24 officials hear. And so most elected officials
25 don't want to say, "You know what, I'm going to

1 do this, and I know I'm going to have 35 percent
2 of the people who are going to be angry at me
3 for life." They're not going to have that
4 backbone because they don't like enemies, any of
5 them.

6 And so my pushback to y'all is what mayoral
7 control or mayoral appointed boards will do is,
8 number one, they tend to have more staying
9 power. Whenever a reform is first put in,
10 people are angry. So when I was on the
11 New Orleans School Board, the most depressing
12 night of my life was when I read these college
13 essays for a scholarship that the teachers union
14 was offering, and I had the kids' transcripts
15 which had straight As.

16 I had these essays. I'm an insurance
17 executive. I could not have hired these
18 youngsters to be my receptionist. They
19 didn't -- they couldn't write. They couldn't
20 have noun-verb agreement. They couldn't have
21 any sentence structure much less the ability to
22 convey in any persuasive way a thought.

23 They were given the essay in advance. They
24 walked in on a single sheet of paper, but their
25 transcripts had straight As, so they didn't even

1 think to get it proofed. I mean, my kids, when
2 writing college essays, had them proofed 15
3 times.

4 I went to the school board. I got those
5 essays from the union, blacked out the kids'
6 names, got a facilitator, brought all my school
7 board members together in a way that we didn't
8 violate the Open Meetings Law and said, "How can
9 we look at ourselves in the mirror? This is our
10 end product. We are so shortchanging these
11 youngsters. You know, we're telling them
12 they're doing "A" work, and they are
13 illiterate. Let's redevelop our high schools."
14 I could get no one to do anything because there
15 is such a fear of action from an elected
16 official.

17 I could get them to agree that we wouldn't
18 want to send our enemy's children to these
19 schools, but I couldn't get them to
20 reconstitute, redevelop, whatever you want to
21 say. And that's really what framed the
22 accountability model when I went up to the state
23 board which was before No Child Left Behind
24 happened. We had put in accountability.

25 So the reason to go for an appointed board

1 is the mayor then takes the arrows, and the
2 mayor is usually able to withstand them better
3 because it's an issue and not the issue that
4 people look at in the mayor.

5 (Ms. Herrington enters the proceedings.)

6 MR. CATLETT: Thank you.

7 THE CHAIRMAN: Commissioner Miller.

8 MS. MILLER: Through the Chair, thank you
9 very much, Ms. Jacobs, for making this trip and
10 coming to present.

11 I have two or three questions that, of
12 course, are different, but on items that you
13 touched on.

14 One, you mentioned Race to the Top a few
15 different times, and that the -- that Secretary
16 Duncan's Race to the Top program is based in
17 part at least on the New Orleans model.

18 MS. JACOBS: Uh-huh.

19 MS. MILLER: And, with that, you also
20 mentioned, I think, a little bit earlier that
21 some school districts around the United States
22 are making this concept a part of their Race to
23 the Top application; is that right --

24 MS. JACOBS: Or states, yeah.

25 MS. MILLER: -- or states --

1 MS. JACOBS: Uh-huh.

2 MS. MILLER: -- because it's the state
3 who's applying.

4 Would you go into a little bit more
5 detail? Who is doing that? Who has done that
6 that you're aware of? And what does their model
7 look like?

8 MS. JACOBS: Okay.

9 MS. MILLER: Because, to my knowledge, I
10 don't know that Florida is proposing that, but
11 it's certainly a possibility.

12 MS. JACOBS: I haven't -- so I was -- I
13 haven't paid as much attention because I was in
14 the middle of the mayor's race. So is it
15 Kentucky? There's a number of states,
16 Indiana -- I'm not going to get the states
17 right. There are a number of states that have
18 modified state laws to allow them now to take
19 over failing schools, okay, at the state level.
20 That is a huge leverage point because the threat
21 of taking over the schools will force change of
22 local school boards' behavior even if you don't
23 take over the schools. So I know that has
24 happened.

25 The second thing Duncan is promoting is to

1 charter failing schools, all right. And I just
2 want to say one thing to the gentleman there, I
3 wouldn't want to say the impact of charters is
4 curriculum. It's far greater than that. I
5 guess I assumed a knowledge of charters with
6 this group I maybe not should have.

7 So chartering the schools is a big piece of
8 Race to the Top, or closing them now and
9 reopening them under different management is
10 another tool in Race to the Top. But Race to
11 the Top really want states to focus on their
12 lowest performing schools and do dramatic change
13 to them. So it's in that area that, I think, a
14 lot was modeled after New Orleans.

15 MS. MILLER: And, through the Chair, the
16 second area I have a question on is --

17 MS. JACOBS: Excuse me. Could I get some
18 water?

19 THE CHAIRMAN: Yes, ma'am.

20 MS. JACOBS: That would be great.

21 Thank you.

22 Okay. Go ahead.

23 MS. MILLER: The -- Commissioner Catlett
24 had mentioned that this commission is
25 considering appointed versus elected and looking

1 at a governance model, but I -- personally, I
2 believe our scope and our charge is broader than
3 that because that's one option.

4 We have, as you described it, a fairly
5 mediocre school district at best. So how do we
6 as a community and as city encourage and ensure
7 and -- that our children have a better public
8 education experience for our city? And if that
9 is through charter -- what are options in that
10 if there's a hybrid board? That's, in my
11 opinion, what our charge is. It's larger than
12 just an appointed versus an elected model.

13 Two of the arguments that have come about
14 in that conversation, however, have been that
15 there will be -- it's sort of become a rallying
16 cry for those who are interested in maintaining
17 the status quo at all costs is that there will
18 be a fundamental disenfranchisement of the voter
19 and particularly of the minority community
20 and -- if we changed anything other than the
21 existing system.

22 You mentioned that in the experience with
23 the RSD, with the Reform School District, in
24 New Orleans that there has been actually a
25 reengagement of the community, particularly in

1 the minority community. So I would like you to
2 talk about that, if you don't mind. How has
3 that community come together? You explained two
4 very diverging groups coming together, working
5 together. If you could describe that a little
6 bit more and how that's come about and --

7 MS. JACOBS: And I don't want to overstate
8 my case, so let me be clear.

9 I want to deal with the big picture because
10 New Orleans -- so our mayor has an incredibly
11 low approval rating right now. I think major
12 leaders that were there in Katrina all have
13 untreated posttraumatic stress, and they have
14 all gone crazy. Seriously, I mean, there has
15 been fallout -- y'all probably thought that
16 we -- I think every surrounding parish now has
17 like somebody in jail.

18 There are still people in the minority
19 community angry that we took over the schools
20 and that we disenfranchised them, and I don't
21 think anything we say or do will change that.
22 They are a minority. They are a vocal
23 minority. But if you poll the residents of
24 New Orleans, New Orleans doesn't want mayoral
25 control. Their problem is they don't know what

1 they want. I could have told you this for
2 years.

3 If you ask the question, "Abolish the
4 school board," black, white, off the charts, but
5 then pause, nobody agrees with what they want to
6 replace it with. They don't want mayoral
7 control. They don't want gubernatorial
8 control. They don't want an appointed board.
9 But they don't like this board. So that's part
10 of what we're working with right now is where
11 can we find some consensus.

12 What I would say is if the changes you do
13 improve student achievement, the public will go
14 along. To do change for change sake in a manner
15 that won't improve student achievement, you're
16 not getting anywhere. And so where we have
17 reengaged -- if you poll in New Orleans, the
18 parents give things now the highest approval
19 rating. So what you have in New Orleans is some
20 self-anointed advocates who don't have kids in
21 public schools still complaining about it, but
22 parents are not.

23 I don't know if I answered you, but
24 that's --

25 MS. MILLER: I think so.

1 MS. JACOBS: Okay.

2 MS. MILLER: Finally, through the Chair,
3 you mentioned that you were part of what you
4 described as a reform board prior to your
5 activity --

6 MS. JACOBS: 1993 to '96.

7 MS. MILLER: So in that capacity, were you
8 an elected official --

9 MS. JACOBS: I was.

10 MS. MILLER: -- representing the,
11 quote-unquote business community?

12 I mean, that is what has been --

13 MS. JACOBS: I was an elected official. My
14 district was majority African-American. I was
15 elected on President Clinton's election day and
16 ran against a very respectable African-American
17 in the runoff. So while I came from the
18 business community, I represented my
19 constituents.

20 I was considered a good board member. I
21 would tell you, it's the worst job I ever had.
22 I accomplished nothing. I stopped bad things
23 from happening. That's all I was able to do.
24 The inertia at the board level to frame issues,
25 to take risk -- let's say -- when we did

1 accountability at the state level -- this might
2 be a better example.

3 We were going to phase in school
4 accountability. It was before No Child Left
5 Behind. And in the law, we said, Districts,
6 you need to identify your lowest performing
7 schools -- I forget 10 percent, 20 percent --
8 and start working on them.

9 Well, Orleans Parish School Board refused
10 to do that because they said they couldn't
11 identify, and the State hasn't set the standards
12 for them because they didn't want to have to
13 come in and tell the school they were low
14 performing.

15 So if I had been successful -- and I
16 wasn't -- to get a school in each district
17 redeveloped, what would have happened is the
18 media would have gone and found the parent and
19 teacher who was really upset with it. They
20 would have had them all on TV. You go three
21 years later, and if we had redeveloped seven
22 schools -- let's just say that three were really
23 successful, three were the same, and one was
24 worse -- they would profile the school that was
25 worse in a heartbeat.

1 Your whole risk-reward quotient was off.
2 In other words, if I took the risk of reform --
3 the way it happens right now -- and I'll take
4 your school board -- they're not doing very good
5 job, and there's not a lot of public pressure on
6 them. Should they get very risk taking behavior
7 of, "You know what, we're going to shut all
8 these schools and we're going to start them over
9 again and we're going to do -- you know, really
10 look for top level school leaders. And you know
11 what, we're going to allow some of that decision
12 making to be at the school site, give that
13 principal the authority to hire and fire their
14 teachers so they can control their culture."
15 That will be real controversial. So now they're
16 going to be in the spotlight of controversy
17 where right now they're kind of happy there is
18 no controversy.

19 So as you're looking at reform -- that's
20 where I'm getting at -- you have to create heat
21 because in the absence of heat, they won't
22 change. So that heat can be -- we're going to
23 go to an appointed board, that heat can be
24 shining a really big spotlight on the lack of
25 achievement and setting measurable performance

1 goals that you expect the school board to get to
2 that are realistic -- you know, school change
3 doesn't happen overnight -- and you hold them
4 accountable for it.

5 So if everybody here is focused on the
6 graduation rate, as we are nationally, I mean,
7 you can change that pretty darn quick. I
8 chaired the high school redesign for the state
9 of Louisiana. I mean, there are some things you
10 can do pretty darn quick that you could start
11 tracking that dropout rate by grade and know
12 that you're having impact. But if they're not
13 willing to take the steps necessary because they
14 don't want to rock the boat because they're
15 elected officials, then a mayoral appointed or
16 some form of appointed board typically has more
17 backbone.

18 THE CHAIRMAN: Commissioner Oliveras.

19 MR. OLIVERAS: Thank you, Mr. Chairman.

20 Thank you for coming and making the trip
21 out here today.

22 I've got a couple of sort of mundane
23 questions, just structural type things.

24 I was able to pull up the -- it's called
25 the flow chart of the New Orleans schools, and

1 it's got what looks to be six districts.

2 MS. JACOBS: No.

3 MR. OLIVERAS: And that got me thinking,
4 how do you control cost when it comes to, you
5 know, facilities and supplies, those types of
6 things with that many different entities doing
7 the same business essentially?

8 MS. JACOBS: Okay. So I didn't -- I took
9 out my structure slide, so bear with me. You
10 don't have six districts. What you really have
11 is you have two entities. You have what I'm
12 going to call the State, and you have the
13 Orleans Parish School Board. Both of them can
14 operate schools, and both of them can charter
15 schools. And what that -- that's from the Cowen
16 Institute. What they did is took some of the
17 large CMOs and grouped those schools together,
18 but they had individual charter contracts, okay,
19 so they can keep one school and lose another
20 depending upon the performance.

21 Economies of scale is grossly
22 overestimated. When I looked at school budgets,
23 typically 80 to 85 percent of the money is
24 payroll and payroll related, and that is driven
25 by (inaudible) account. So the difference in

1 New Orleans is the schools get facilities. They
2 get the right to occupy them, but they all pay
3 into the bond debt.

4 So they are traditionally -- you know, just
5 like a traditional public school, you get the
6 facility and the district gets the money and
7 pays into the bond debt, the money follows the
8 kid, but they have to pay -- every child in the
9 Recovery School District pays \$326 a kid towards
10 the bond debt.

11 Transportation is probably the biggest
12 issue for economies of scale. Pre-Katrina our
13 Regional Transit Authority, public
14 transportation, kids got bus tickets. There was
15 a lot of fighting, and there were real issues.
16 And so when we came back after Katrina, the
17 decision was made not to use the RTA, but to use
18 buses. Well, when you're in a city of choice,
19 schools are getting kids from all over, so our
20 transportation costs are very high. That's
21 where we're out, and it's not because of the
22 different schools. It's because it's a choice
23 district.

24 I mean, if they all went under one thing --
25 and where the different schools come in is thus

1 far the schools are saying, "We'd rather have
2 the higher cost. We don't want to transport our
3 kids with other schools because we like the
4 control it has on our culture."

5 Schools get to set their own hours of
6 operation and own calendar, so you have -- I
7 mean, like KIPP, you have a tremendous amount of
8 extended day and extended year going on. So
9 that's really the true economy of scale;
10 otherwise, it's pennies on the dollar, I mean, at
11 most. It's just a nonissue. Only
12 transportation is an issue.

13 MR. OLIVERAS: Thank you.

14 One other question, student mobility is an
15 issue here in Jacksonville. As a matter of
16 fact, I --

17 MS. JACOBS: I think in every urban area,
18 it's an issue.

19 MR. OLIVERAS: -- I have a niece that's an
20 elementary school teacher at one of our
21 challenged neighborhoods, and she tells me, you
22 know, Uncle, I've got kids that come in at the
23 first of the month and leave at the end of the
24 month all year long.

25 With this many different charter schools,

1 recovery district schools, the curriculum is a
2 question for me. Is there an issue with
3 continuity if a high mobility student leaves
4 school A and goes to school B because of, you
5 know, family issues?

6 MS. JACOBS: Well, the first thing is,
7 because it's a school of choice, if the child
8 moves, they don't have to change schools, and
9 the school provides transportation, so you have
10 less mobility, okay. I mean, that's first
11 thing. So if I'm living in one neighborhood and
12 I move and I like the school I'm going to, I
13 don't change schools. Now, that works probably
14 third, fourth grade on up.

15 Parents of young elementary students
16 overwhelmingly don't want their kid on the bus
17 that long, but they're doing it. Partly they
18 have no choice. And we have certain
19 neighborhoods that don't have school buildings
20 yet. I mean, we -- you know, that -- I mean,
21 you don't have -- you have one school structure
22 and then some modulars, for example, in the
23 Lower Ninth Ward.

24 So what we've done is -- yes, there is
25 different curriculum, but the sequencing is the

1 same. So because our -- Louisiana has
2 developed -- has adopted a set of content
3 standards and -- oh, gosh, I'm forgetting what
4 they are called. But within those content
5 standards, what are the learning objectives by
6 grade, and there is some sequencing. So there
7 will be some differences, but the sequencing is
8 the same.

9 And, again, when people ask me those
10 questions, I just go back to the academic
11 results. They're just increasing so strongly,
12 and I think they will continue. So it could be
13 a problem if the parent viewed it as a problem.
14 They didn't have to change schools.

15 MR. OLIVERAS: Thank you.

16 THE CHAIRMAN: Commissioner Austin.

17 MR. AUSTIN: I'd like to add my thanks to
18 you for coming down and sharing with us this
19 morning.

20 On the school board, is it -- in
21 New Orleans -- or what -- was it salary? And if
22 so or not, do you think that's a factor in the
23 quality of the people you get?

24 MS. JACOBS: It wasn't salary.

25 You got \$800 a month, health insurance.

1 It's not salary. It's supposed to be a
2 part-time job. I have to tell you, I'm a bad
3 person to ask because I think part of the reason
4 that you don't have competition for these school
5 board seats is it's a really yucky job, okay. I
6 mean, people don't want to serve on school
7 boards. I mean, you get parents calling you.

8 I mean, understand, the electorate thinks
9 as a school board member, you can go fix their
10 school. If you're a good school board member,
11 your main job is to hire and fire the
12 superintendent and to pay attention to the
13 finances. And you're not supposed to go meddle
14 in what's going on in that school, but parents
15 call you all day long, and you hear these sob
16 stories and you can't do anything about it.

17 You have -- I mean, y'all are thinking this
18 is urban. You can go to some real affluent
19 districts, and they have nobody willing to
20 serve. And some districts have taken the
21 four-year term and moved it down to two to try
22 and get people to serve. And then you're asking
23 them to seek election, which having been an
24 elected official, I mean, that's a different
25 degree of work than being appointed to

1 something.

2 So I don't think salary has to do with it,
3 and I'd be very leery of hoping to attract a
4 board because of the salary. I don't quite know
5 who you'd get in that, but probably not who you
6 want.

7 THE CHAIRMAN: Commissioner Youngblood.

8 MR. YOUNGBLOOD: Through the Chair, thank
9 you so much for coming. I appreciate the
10 information you have been able to share with
11 us.

12 Outside of a natural disaster and political
13 corruption within the school board, do you feel
14 you would have been as successful with the
15 charter school program just based purely on the
16 education and the failing schools?

17 MS. JACOBS: Actually, Katrina made it more
18 challenging because overnight we got them all.
19 The plan was to grow it much more slowly, so we
20 had five charter schools operating in
21 New Orleans in the Recovery School District the
22 day Katrina hit.

23 The challenge with charters is you can't do
24 them overnight. They're a slow growth model.
25 And so I believe we would have ended up here

1 without Katrina. It just would have been a lot
2 slower. And when we hit the tipping point, I
3 didn't know. But at some point when you have 20
4 or 30 very high performing charters taking all
5 poor and minority kids and knocking it out of
6 the ballpark and all the traditional schools are
7 doing really badly, you create public pressure
8 for change.

9 And that was my original plan. I did not
10 foresee Katrina doing the -- the levies breaking
11 because we were more of a man-made event than a
12 wind event. The wind hit Mississippi. And
13 that's partly why we did the Ed Week article
14 because people nationally just say, "Oh, well,
15 that's Katrina." And my argument back is, "No."
16 I mean, this was put in place before Katrina.
17 You know, Katrina was preparation meeting
18 opportunity.

19 But I believe that focusing on your lowest
20 performing schools requires guts and new
21 strategies.

22 MR. YOUNGBLOOD: Had New Orleans looked at
23 a voucher program at all?

24 MS. JACOBS: We have one now under Bobby
25 Jindal. There are 1200 kids, I believe, with

1 vouchers. It began with K, 1, 2, and 3.

2 Vouchers won't solve Jacksonville's problem
3 because there aren't enough nonpublics. When
4 you have 120,000 kids, you don't have capacity
5 for the nonpublic schools to absorb those kids.
6 So vouchers could be part of a strategy, but
7 they will never fix it.

8 MR. YOUNGBLOOD: And in New Orleans --

9 MS. JACOBS: And, by the way, they don't
10 ever want to take your high school kids. They
11 want to start with the early elementary and keep
12 them going all the way through. And they're not
13 going to take your special needs and a whole
14 bunch of other issues.

15 MR. YOUNGBLOOD: In New Orleans, budget per
16 student, what are you spending per student, and
17 what is the school board budget?

18 MS. JACOBS: Well, again, we don't have a
19 school board budget. You have a school's
20 budget. What we're spending per kid, I can't
21 answer. The state MFP is actually New Orleans'
22 mess right now. We look at local wealth, and we
23 look at local wealth in our formula by -- per
24 kid. And with the dropping of the student
25 population, we went from a poor district to a

1 wealthy district, but the money didn't change.
2 So we're about -- I think if you include the
3 bond debt in there, we're about -- on the state
4 and local funds, excluding federal, I think
5 we're about \$7,500 a kid.

6 I don't know federal because, again, that's
7 all messed up right now. Like, we got no
8 stimulus money because of the hold harmless in
9 Title 1.

10 MR. YOUNGBLOOD: And this will be my final
11 question for you.

12 In Louisiana, did the state legislature --
13 were they able to give some relief and allow a
14 little bit more sovereignty for New Orleans to
15 make some decisions since they were in the
16 despair with the natural disaster? Was there
17 any State help where they basically
18 said, "Listen, from the top side, we can't help
19 you, but internally we know you need help.
20 We'll give you more sovereignty to do so"?

21 MS. JACOBS: No. The Recovery School
22 District legislation, which applies statewide,
23 gets tremendous sovereignty. I mean, you get
24 the buildings, the kids, and the money.

25 If you are -- operate so -- the traditional

1 schools Paul Vallas operates are still under
2 Bulletin -- what is it -- 714 or whatever, which
3 is our state bulletin that says how schools
4 operate.

5 Charter schools are exempt from that
6 bulletin, but they have to follow certain things
7 in law. So charter schools don't have tenure.
8 They don't have -- they can have a higher
9 percentage of noncertified teachers. They don't
10 have to have a principal that has principal
11 licensure. So they have some flexibility that
12 applies for charters throughout the state. So,
13 no, there wasn't something specifically done for
14 New Orleans.

15 MR. YOUNGBLOOD: Okay. That does bring
16 about another question. How did you deal with
17 the educational unions or teachers unions,
18 then? Because that sounds like it's a pretty
19 big rub.

20 MS. JACOBS: Well, that's what I'm trying
21 to say. When a school is taken from the school
22 district and put into the Recovery School
23 District, it is stripped because it's -- the
24 collective bargaining agreement is an agreement
25 between the union and that local school board.

1 When you take the school from the local school
2 board, it is no longer subject to that
3 collective bargaining agreement. It also wasn't
4 subject to, I guess, the school board's policies
5 which were yea high. It starts anew, afresh,
6 and all of that is stripped. That's what I'm
7 trying to say. It's truly a brand new start.
8 You have an empty building, the responsibility
9 to educate the students, and the money. And we
10 gave it to a different operator.

11 MR. YOUNGBLOOD: So essentially what we've
12 done in the charter school and what you have
13 done in the charter school system in New Orleans
14 could be done with greater accountability and
15 also removing some of the restrictions that
16 the --

17 MS. JACOBS: Well, it was --

18 MR. YOUNGBLOOD: -- teachers unions have on
19 the teachers and so forth?

20 MS. JACOBS: I mean, that's the whole
21 point. So the whole point --

22 MR. YOUNGBLOOD: But can it be done without
23 a charter school program?

24 MS. JACOBS: So, for example, you could
25 have a university-run program, which we do, and

1 in there, that isn't technically a charter.
2 It's a contract school. I mean, so the heart of
3 the Recovery School District legislation is to
4 say, "School district, you have shown by years
5 of failure you cannot turn this school around.
6 We are taking the school from you, and we're
7 going to have somebody else run it." And it's
8 their responsibility to turn it around. In
9 taking that school, we have freed it up, and,
10 "New operator, you start it."

11 Now, the conditions the new operator has to
12 operate on, if they are a charter, they have
13 more freedom than a traditional school because
14 charters statewide have more freedom. If they
15 are a charter, inside that charter contract, we
16 put very strong accountability measures, that
17 you have to hit a certain benchmark by year
18 three, an improvement at that school or your
19 charter was revoked, and you have to hit another
20 benchmark at year five to get renewed.

21 MR. YOUNGBLOOD: Well, as you stated
22 earlier, there's been some difficulty also. Not
23 all charter schools that -- have worked, but
24 they are working there and -- thankfully, and in
25 your community. What other options would we

1 have, though, so we don't reinvent the wheel and
2 come up with the potential of the failing
3 charter school system here? So what are other
4 options?

5 MS. JACOBS: Well -- and that's why, to
6 me -- I think charters are -- can be a very
7 valuable piece of the solution, but they're a
8 slow build, okay. I mean, you cannot tomorrow
9 go get high quality charter operators to run a
10 120,000-student system. I mean, we are a
11 year -- we're going into year five in
12 New Orleans. We have 38,000 kids, okay.

13 So part of your solution has to be to fix
14 the system, all right, and in fixing the
15 system -- I don't know enough to tell you why
16 it's broken, okay. I mean, I'm just not here.
17 I don't have that knowledge. But I will tell
18 you, traditionally in urban school districts,
19 it's going to be broken: One, because you have
20 teachers that shouldn't be at schools still at
21 schools because of union protectionism. You're
22 going to have an elected board unwilling to make
23 very hard decisions about shuttering schools,
24 restarting schools, recruiting talent, putting
25 in some real strong accountability measures to

1 certain people.

2 You're going to have probably too much
3 money spent in central office. I mean, one of
4 the things I've never been able to document but
5 it gets to the question on economies of scale, I
6 don't think central office has economies of
7 scales that people think it does. I mean, what
8 happens if every single person in central office
9 is gone and you move those people to the school
10 site? What is fascinating that what happens,
11 because that's what happens in the charter
12 environment, is your ratio of adult to kid
13 changes, changes the whole atmosphere.

14 Okay. The business manager is there
15 instead of this large accounting department.
16 You know, the maintenance people are there
17 instead of roaming around. They get to know the
18 kids. So you just have more adults at the site,
19 and that's part of the culture change.

20 MR. YOUNGBLOOD: Thank you.

21 THE CHAIRMAN: Commissioner Thompson.

22 MR. THOMPSON: Through the Chair,
23 Ms. Jacobs, I was just concerned about when a
24 school fails in Louisiana, does the State take
25 over the school if it fails five times?

1 MS. JACOBS: Yes. Right now if a school
2 has been failing for five or more years, the
3 State is doing one of two things. It's either
4 taking it inside the Recovery School District,
5 or it's entering into a Memorandum of
6 Understanding with the local district. And
7 that's where the pressure of having the Recovery
8 School District as a choice is pressuring the
9 local school district to make changes. So
10 changes the school boards were unwilling to
11 make, they're now willing to make if it means
12 they get to keep that school versus it going
13 into the Recovery School District.

14 MR. THOMPSON: Okay. If a child attended a
15 school that's Hispanic, can he just transfer on
16 his own because the school is failing to a
17 better school?

18 MS. JACOBS: Yeah. With No Child Left
19 Behind, kids in failing schools have had choice
20 well before the State action.

21 A problem you have, for example, in
22 New Orleans is there was no choice because
23 all -- I mean, you're just choosing between one
24 failing school and another. Where you have the
25 chronic failure and the concentration of

1 failure, choice really isn't work because it's
2 just a choice between one failing school and
3 another.

4 MR. THOMPSON: Got it. Thank you.

5 What comes to my mind is that here in
6 Jacksonville -- Duval, if a kid's going to a
7 failing school, he can go to another school
8 that's passing the FCAT test. Well, how do you
9 get the failing school to improve if kids
10 continue to transfer to other schools?

11 MS. JACOBS: Well, I guess one is, are they
12 exercising their choice? And two, if that's
13 happening, then you should have a lower
14 population count at the failing school. Maybe
15 you can shut it down, disperse those kids, and
16 then redeploy that facility for a start-up of a
17 high-performing school. And that gets into the
18 type of decision-making elected boards are
19 reluctant to do.

20 MR. THOMPSON: Thank you.

21 It just happened that here there's been
22 several schools that continuously has failed and
23 that process continues on and --

24 MS. JACOBS: Right. And school board --
25 again, I don't know the geography here, but I'm

1 certain -- you probably have some schools with
2 low enrollment. And they oftentimes can be some
3 of your low-performing schools if parents are
4 exercising choice. I mean, one of the things is
5 you actually shut that school down, you disperse
6 the kids, and that frees up a facility who you
7 then bring in to start in that slow build, a
8 high-quality charter operator or a high-quality
9 traditional.

10 I mean, if you, you know, recruit a
11 top-notch principal, put in -- allow that
12 principal to control, to pick their own staff,
13 and to have some flexibility in those work
14 rules -- and I think it can work well in
15 traditional as well as charter.

16 MR. THOMPSON: Thank you.

17 THE CHAIRMAN: Commissioner Garvin.

18 MS. GARVIN: Through the Chair, thank you
19 so much for being here.

20 I have a couple of questions, and I'm not
21 sure -- a couple of things you said, that the
22 schools that are stripped out and put into the
23 Recovery, not all of them are turned into
24 charter schools, correct, some of them stay in
25 the district?

1 MS. JACOBS: So what happened is, again,
2 that first year, we didn't pick a number of
3 charter applicants. So what happened is the
4 first year the majority that opened were
5 traditional. And what's happening is every year
6 there are more charters and fewer kids in the
7 traditional. So Vallas -- Paul Vallas is
8 converting some of these schools over time as we
9 get quality operators from traditional to
10 charter.

11 So this year Paul Vallas -- there are
12 38,000 thousand kids. Paul Vallas has --
13 roughly 12,000 of those kids are in traditional
14 schools. Next year that number will go down to
15 under 10-. The follow year it will probably go
16 down to under 8-.

17 MS. GARVIN: And another question, talking
18 about schools and performing -- and I certainly
19 think putting in high-quality principals,
20 leaders, and teachers are going to make a
21 difference. But one of the arguments that you
22 hear constantly is it's not the teachers; it's
23 the environment; it's the home environment; the
24 kids, the support they get at home and, you
25 know, therefore. What is your answer to that?

1 MS. JACOBS: Okay. So I'll upset a lot of
2 people with my answer.

3 I reject the blame game. I am so fed up
4 with that blame game. This is a blame game.
5 Put them all in a circle. It just goes around.
6 It's the parents. It's the poverty. It's the
7 neighborhood. It's the kids. It's the
8 teacher. It's the teachers union. It's the
9 principal. It's the superintendent. It's the
10 board. It's the kid. Nobody owns it, okay.

11 MS. GARVIN: Right.

12 MS. JACOBS: When the charters were so
13 outperforming the traditional schools -- I wish
14 I had taped this. This was probably the most
15 exhilarating day I've had in educational reform
16 in 20 years. I pulled in a group of folks that
17 had worked in both the traditional and charter
18 schools in New Orleans, you know, it had that
19 respect. And then I said, "Help me understand
20 why the charters are doing so much better." It
21 was a two-hour conversation, and in that
22 conversation, there was not one word of blame.
23 There was only ownership.

24 I was listening to Doris Hicks who has MLK,
25 which is in the Lower Ninth Ward, which is where

1 President Obama went. Instead of blaming -- you
2 know, "The district's pulling my teachers out
3 for professional development, and I don't like
4 this (inaudible)." She said, "You know, if
5 we're not reaching a kid, the faculty comes
6 together and we talk about what do we have to do
7 differently for that child. That's ownership.
8 If the kid isn't showing up for school, I'll go
9 drive to the house and go talk to that parent,
10 "Why isn't your kid in school?" There's
11 ownership.

12 So that's why I show that demographic
13 slide. These are more challenged kids than we
14 had before Katrina. They are performing so much
15 better academically. It wasn't their fault, and
16 it wasn't their family's fault. And it wasn't
17 their neighborhood's fault. It was the failure
18 of the adults in the school to take ownership
19 and deliver.

20 MS. GARVIN: Thank you.

21 MS. JACOBS: And I obviously said that
22 speech before.

23 MS. GARVIN: Thank you. I appreciate
24 that.

25 And I just have one more question. A lot

1 of the reading that I've done lately on the
2 school -- the different school districts,
3 particularly New York and Chicago which are
4 areas that you talked about where the mayor has
5 taken over, is that the statistics are showing
6 different because they manipulate -- for lack of
7 a better word, they're manipulating the
8 figures. They're taking graduation rates and
9 taking kids out of it and -- can you help us on
10 that?

11 MS. JACOBS: Not a lot. I read similar
12 stories. From what I can tell, because I ask
13 people -- national people who have been up
14 there, New York, you have real improvement.

15 Now, again, that's partly why I said in
16 Louisiana, none of the rules have changed.
17 New York -- I mean, part of the challenge in
18 looking at these districts as the test changed
19 with NCLB, some of them lowered the standards,
20 or, you know, there's been other types of
21 changes. That's why, to me, looking at them
22 relative to their states are good. Dropout rate
23 is manipulatable or used to be. A lot of states
24 are taking that common definition out of the
25 NGA, but test scores aren't as much. So I

1 really looked at test scores more than other
2 things.

3 New York has really had improvement, true
4 improvement, I think. Chicago, I'm not as
5 clear. I'm not as clear. I don't -- governance
6 is a tool to empower. Governance alone will not
7 turn around schools. And, moreover, when you
8 look at New York and Chicago, I mean, geez, some
9 of the schools -- schools in New Orleans are a
10 rounding era. I mean, those districts are so
11 huge. But governance -- you would -- a change
12 of governance and powers, if it's done well, but
13 it doesn't deliver.

14 Just like charters, you can have -- you can
15 give that freedom and autonomy to a group of
16 people, and if it's not the right set of people,
17 you have a worse school than if you had a
18 traditional school because they don't know what
19 to do with that freedom and autonomy.

20 If you have an appointed board, then bad
21 people are appointed. You probably don't have
22 anything better than an elected board. So
23 you -- again, it gets down to who are the
24 people? What are they willing to do? Why is it
25 not working? But I would challenge y'all as a

1 commission to say, "You need to shake up the
2 status quo here." Now, how you choose to do it,
3 I am not going to advise because I don't have
4 enough knowledge of the history and the
5 specifics of Jacksonville.

6 THE CHAIRMAN: Ms. Jacobs, it's 10:16 just
7 for your knowledge.

8 MS. JACOBS: I'm okay. I'm kind of
9 watching it.

10 THE CHAIRMAN: Commissioner Eichner.

11 MS. JACOBS: I have till 10:30.

12 MS. EICHNER: Can you tell us a little bit
13 about how the RSD was formed? You said it was
14 pre-Katrina. So what did the State go through
15 to create that?

16 MS. JACOBS: Sure.

17 The biggest challenge was we had to create
18 a constitutional amendment because we -- to
19 allow our local -- to allow our State Board of
20 Education to get the school financing money,
21 okay. That was a constitutional amendment which
22 in Louisiana is a two-thirds vote of the
23 legislature, and then it has to vote the
24 people -- approved by the people.

25 The rest was a simple statute. And what

1 the statute basically said -- before Katrina and
2 applies now and it's now back in place.
3 Katrina -- we changed it some -- is that, if a
4 school has been failing for four or more
5 consecutive years, the State Board of Education
6 has the right, but not the obligation, to take
7 over that school.

8 And so what the State Board of Education
9 did before Katrina is it did an RFP of the
10 schools that met that criteria, and if a quality
11 charter applicant applied, they gave it. So
12 that's where those five schools came from.

13 Post-Katrina, a different superintendent,
14 he's much more aggressive. So any school that
15 meets that criteria has either been taken into
16 the RSD, or they've negotiated an MOU with the
17 local school district to require significant
18 changes in the operation of that school.

19 MS. EICHNER: Okay. So the RSD is really
20 set up to reform education for the whole state
21 of Louisiana?

22 MS. JACOBS: It's a statewide vehicle, and
23 it's focus is attaching at the school. It does
24 not attach at the district. It attaches at the
25 school.

1 MS. EICHNER: Okay. And so how is the
2 interaction between the mayor's office and the
3 school district with the RSD? And how is the
4 RSD -- who is the RSD? I mean, what's the
5 makeup of that?

6 MS. JACOBS: Okay. So outside of
7 New Orleans, RSD has very few schools in any one
8 city, okay. In New Orleans, the RSD has the
9 preponderance of the schools. The mayor in
10 New Orleans has never been engaged in education,
11 okay. So one of the challenges we have in
12 New Orleans is the world in the United States is
13 used to someone speaking for schools.

14 As I say to charters, if the mayor needs
15 to -- if we need to evacuate for a hurricane, he
16 doesn't want to call 85 charter school leaders
17 in. He wants to call a person in who then
18 communicates to schools.

19 Right now Paul Vallas has stepped into that
20 role somewhat, but our long-term governance
21 model needs to answer it because there is a
22 problem there. I mean, you now are having
23 fights between the New Orleans Parish School
24 Board and Recovery School District staff, and
25 legislators are getting in the middle. So we

1 have to -- the public wants to bring it all back
2 local. It just can't define what local means
3 right now. We're working on that because they
4 don't want it back to the school board, and they
5 don't want the mayor to have it. So I don't
6 know how -- we have to figure that out.

7 MS. EICHNER: Thank you.

8 THE CHAIRMAN: Commissioners, I have nobody
9 else in the queue.

10 Any more comments or questions?

11 COMMISSION MEMBERS: (No response.)

12 THE CHAIRMAN: Ms. Jacobs --

13 MS. JACOBS: Well, great. Thank y'all very
14 much.

15 THE CHAIRMAN: -- thank you very much.
16 Godspeed.

17 Commissioners, our next speaker is Phillip
18 Claypool. He is the executive director and
19 General Counsel of the Florida Commission on
20 Ethics.

21 Welcome.

22 MR. CLAYPOOL: Good morning.

23 THE CHAIRMAN: Good morning.

24 MR. CLAYPOOL: And fortunately or
25 unfortunately for you, I don't have to catch a

1 plane. So I'm at liberty to talk about ethics
2 as long as you want to hear me.

3 THE CHAIRMAN: Thank you for accommodating
4 a shift on the -- in the speaking order to
5 accommodate Ms. Jacobs.

6 MR. CLAYPOOL: Sure.

7 THE CHAIRMAN: I apologize. I do not have
8 a formal bio for you. So if there's any
9 background information about yourself you would
10 like for us to know, please go ahead and share
11 that.

12 MR. CLAYPOOL: No. Really there's not much
13 to my career. I graduated from Purdue
14 University majoring in philosophy, taking in
15 ethics, I guess, in that sense and went to FSU
16 for law school, stayed in Tallahassee, got a job
17 in 1976 with this tiny, little government agency
18 called the Florida Commission on Ethics, and now
19 I'm the executive director and General Counsel.

20 THE CHAIRMAN: Before you begin, our court
21 reporter will swear you in.

22 MR. CLAYPOOL: Okay.

23 THE CHAIRMAN: Name and address for the
24 record, please.

25 MR. CLAYPOOL: Phillip Claypool, 3600

1 Maclay Boulevard, Tallahassee, Florida.

2 THE REPORTER: Would you raise your right
3 hand for me, please.

4 MR. CLAYPOOL: (Complies.)

5 THE REPORTER: Do you affirm that the
6 testimony you're about to give will be the
7 truth, the whole truth, and nothing by the truth
8 so help you God?

9 MR. CLAYPOOL: I do.

10 THE REPORTER: Thank you.

11 THE CHAIRMAN: Please proceed. And I will
12 issue you a cup as well --

13 MR. CLAYPOOL: Okay.

14 THE CHAIRMAN: -- so you can get some water
15 if you need to.

16 Mr. Clements.

17 MR. CLAYPOOL: Thanks.

18 Commissioner Miller asked me to come and
19 talk about what the Florida -- the State
20 Commission on Ethics does, how we're set up, how
21 we're organized, what we do, how we function.
22 And I'll talk also briefly about what the state
23 ethics laws do, so you have got a general idea
24 of what there is in the way of -- at the state
25 level because, as I understand it, you're trying

1 to see what, if anything, to do in the way local
2 ethics, particularly in the context of the
3 charter.

4 In Florida, there was an outgrowth of the
5 Watergate scandal and some other problems with
6 the Florida cabinet actually. Governor Askew
7 and some people put together the legislative
8 initiative to create a Florida Commission on
9 Ethics in 1974. This happened pretty much
10 around the country too. A lot of other states
11 were looking at that because they were also
12 having local corruption ethics-type problems.
13 And one of the models that came out of that was
14 the idea of a citizen board or commission that
15 had jurisdiction to enforce ethics laws and at
16 the same time decriminalizing what may have been
17 criminal statutes on the books at the time that
18 dealt with ethics.

19 So in Florida, we had, starting -- and I'll
20 bore you with some constitutional law here.

21 Starting in the 1967 constitution revision,
22 there was a provision in the constitution that
23 mandated the legislature adopt a code of ethics
24 for public officers and employees. They did,
25 and that was changed and modified up until 1974

1 to the point where, I think, starting in 1970
2 that Code of Ethics carried criminal penalties.
3 So it was enforced by the state attorneys
4 through a criminal prosecution.

5 The feeling, as I understand it -- and this
6 predates my service with the commission. But as
7 I understand it, the feeling was that the
8 prosecutors were not inclined to want to go
9 after ethics cases partly on political reasons,
10 partly because of the difficulty of getting
11 prosecutions, and partly because it was only a
12 misdemeanor penalty.

13 So in 1974, a nine-member commission was
14 created, a commission on ethics, and the Code of
15 Ethics was decriminalized. So from that point
16 until now, it's only carried civil penalties, a
17 fine, censure, reprimand, loss of employment,
18 loss of public office, those kinds of things,
19 but no jail time.

20 Then because -- partly because the Code of
21 Ethics with respect to how the Ethics Commission
22 investigated legislators handled investigations
23 of legislators which was basically if Ethics
24 Commission found there was no probable cause to
25 believe there was a violation, then that file

1 remained secret. A lot of people were upset
2 about that. And Governor Askew proposed,
3 through the Sunshine Amendment, which is
4 Article 2, Section 8, Florida Constitution --
5 which you will see on your screens here in part
6 anyway. And part of that deals with financial
7 disclosure, and part of it also deals with the
8 process of how should the State handle
9 investigations of alleged ethics violations.

10 And the constitutional provision starts off
11 saying, "A public office is a public trust."
12 What that does is that simple sentence basically
13 reiterates the common law which says that a
14 public officer is given a set of duties and
15 operates -- exercises those duties just like a
16 trustee would over a trust. The people, the
17 people of the state, the people of the city, you
18 know, whoever the constituents are, are the
19 beneficiaries of that trust. And the trustee
20 only has those powers temporarily while he or
21 she is in office. Those powers then continue on
22 to the next trustee. And so the idea is -- is
23 that the governmental power is not to be used
24 for personal benefit but rather for the benefit
25 of the majority of the people. It's in our

1 constitution.

2 Along with that is Subsection F which says,
3 "There shall be an independent commission to
4 conduct investigations and make public reports
5 on all complaints concerning breach of public
6 trust by public officers or employees not within
7 the jurisdiction of the JQC," which basically
8 means other than judges.

9 So constitutionally then starting in 1977,
10 the constitutions mandated that there be a body
11 at the state level that has the authority to
12 investigate these kinds of complaints, and it
13 says, "concerning breach of public trust," so it
14 uses, you know, that broader constitutional
15 language. It doesn't say violations of the Code
16 of Ethics or anything like that.

17 And it says, "There shall be an independent
18 commission." Now, we don't know exactly what an
19 independent commission is, but the constitution
20 says it will be independent, and I think the
21 framers -- the folks who wrote that into the
22 constitution felt that was important because
23 otherwise if you have got an Ethics Commission
24 that's directly under the thumb of the governor
25 or the legislature, for example, you're --

1 number one, you're not going to have an unbiased
2 decision. And number two, even if it is an
3 unbiased decision, nobody is going to believe it
4 because just practically speaking, the general
5 public is going to think that the decisions are
6 going to be dictated by whoever is directing the
7 commission.

8 So what we have now by statute to implement
9 the constitution is a nine-member commission.
10 Nobody gets paid. They're all volunteers, like
11 you're volunteering, right, spending their time,
12 you know, studying the files, reading up on all
13 this paper, evaluating the cases, rendering the
14 opinions, and they are balanced by political
15 party, again, to try to get as much independence
16 as possible. And in order to give their
17 decisions as much respect as possible, the
18 commission is balanced so that five members are
19 appointed by the governor, two by the speaker,
20 and two by the president of the Senate. So
21 you've got a balance by the executive branch
22 versus the legislative branch there basically.

23 And then there's a political party balance
24 too because no more than three of the governor's
25 appointees can be from one party, and each of

1 the legislative appointees have to be from the
2 two different parties. So you've got a five --
3 right now actually we have four Democrats, four
4 Republicans, and one Independent on the
5 commission, but it could never be more than five
6 of one party and four of the other.

7 And I don't know, part of it may be because
8 of that, but I think it may be just because the
9 appointees that we have gotten to serve on the
10 commission take an oath, and they take their
11 position seriously. But in 30-some years I've
12 worked for the commission -- almost 34 years
13 now -- I've never seen a decision come down on
14 party lines. Something nobody really thinks
15 about because you look at Washington and you see
16 the Ethics Committee in the Senate and you can
17 pretty much predict how the vote's going to come
18 down by looking at who's on the committee and
19 the same in the house.

20 In Florida, we just don't have that. I
21 think that's marvelous, and I think it goes --
22 it tells folks that the process should have as
23 much credibility as you can have out of this
24 process. The commissioners are appointed to
25 two-year terms, and they can only serve for two

1 more year term- -- excuse me, one additional
2 term, two more years. We have a staff of 22
3 people in Tallahassee. Those are the paid
4 employees, including myself. Most of them are
5 attorneys and investigators.

6 The primary roles of the commission are to
7 investigate complaints of violations of the
8 ethics laws, render advisory opinions to people
9 so that they can comply with those laws, and in
10 addition, the financial disclosure statements
11 that everybody files, our office handles those
12 as well. So we're the ones who keep track of
13 the list of people who have to file annually.
14 We're the ones who assess fines for the people
15 who are late getting their financial disclosure
16 filings in as well.

17 The standards of conduct are adopted by the
18 legislature -- they're in Part 3 of Chapter
19 112 -- basically to try to maintain the respect
20 of people in their government, make sure that
21 public officials and employees' duties are
22 performed impartially, prevent the use of public
23 office and public position for private gain, and
24 at the same time to try to avoid unnecessary
25 barriers to public service so that the laws

1 aren't interpreted so strictly as to limit
2 people from serving in office in public
3 employment unnecessarily.

4 So let me just sort of run through -- real
5 quickly through the standards in the state law
6 so you've got an idea of what is
7 out there.

8 They take basically two forms:
9 prohibitions, which are the thou shalt not
10 engage in this kind of conduct. And then
11 there's disclosures as well. So the main kinds
12 of prohibitions in our state ethics code are --
13 relate to gifts. Certain gifts you cannot
14 accept.

15 There's a prohibition against the corrupt
16 misuse of official position. Another
17 prohibition against the use of -- I want to say
18 inside information, information that's gained
19 through the use of your public position that's
20 not available to the members of the general
21 public and that's used or disclosed for your
22 benefit or the benefit of another.

23 There are prohibitions against doing
24 business with your own agency. If you're an
25 officer or employee of a governmental unit,

1 generally speaking, although there are some
2 exceptions, you're not supposed to sell any
3 goods or services to that particular agency.

4 There's limits on conflicting employment
5 and contractual relationships. If you've got
6 a job moonlighting -- you know, a public
7 employee -- that cannot conflict with the duties
8 and responsibilities they have with their
9 governmental agency.

10 Just for example, nepotism law -- or
11 actually the antinepotism law as part of the
12 Code of Ethics, that talks about hiring your
13 relatives or promoting them or advancing them
14 within your agency.

15 And then voting conflicts also are -- is a
16 subject in the ethics code for boards, like
17 this, where they take action by -- as a
18 collegial body by a vote of the members. That
19 statute addresses the question of what do you do
20 when you have a conflict of interest with
21 respect to the subject matter and upcoming
22 vote.

23 Disclosure requirements, the disclosure of
24 financial interest, you know, we have in Florida
25 two tiers of financial disclosure. Elected

1 constitutional officers file what's called full
2 and public disclosure of their financial
3 interest. They have to list their assets worth
4 over a thousand, their liabilities worth over a
5 thousand, the value of those, and then state
6 their sources and amounts of the income worth
7 over \$1,000 or give us a copy of their most
8 recent 1040. .

9 The lower tier, which applies to, I want to
10 say, most municipalities -- not here in
11 Jacksonville because y'all are a consolidated
12 government, so basically you're treated as --
13 your elected officials are treated as county
14 officials here, but in other municipalities the
15 elected officials and then the employees, both
16 at the state and local level as well as
17 appointed board members, the lower tier of
18 disclosure, which does not require you to
19 disclose any amounts, it just requires the
20 disclosure of major assets, major liabilities,
21 major sources of income.

22 There's also a disclosure of clients
23 represented before agencies at your level of
24 government that has to be made on a quarterly
25 basis, and there are certain gift disclosures

1 that have to be made as well.

2 I've basically gone over this, and I'm
3 trying to get out of here and let you all out as
4 soon as possible.

5 One note: For people who have to file
6 financial disclosure, the form's due by July 1.
7 We send out reminder notices and tell them if
8 it's not in by September 1, they're fined a fine
9 of \$25 a day that caps at \$1,500.

10 So that -- actually, that -- when we moved
11 to that system, we went from about 92 percent
12 compliance statewide to 98 percent compliance,
13 so -- and, again, we're not trying to raise
14 money, just trying to get the forms in by doing
15 that.

16 Gifts I'll just talk generally about. The
17 two standards that are applicable to all public
18 officers and employees in Florida, one is
19 basically a bribery standard. You can't accept
20 something if it's based on the understanding
21 that your official duties will be influenced by
22 that gift.

23 And the other prohibits public officers and
24 employees from accepting anything of value if
25 they know or with the exercise of reasonable

1 care should know that it's being given to them
2 in order to influence them in the discharge of
3 their public duties.

4 Then, those standards, along with a
5 disclosure of gifts worth over a hundred
6 dollars, was basic Florida law up until 1989.
7 Elected officials had to report gifts they
8 received over a hundred dollars, and the State
9 Attorney in Tallahassee brought a series of
10 prosecutions against quite a few members of the
11 legislature who had been taking trips that were
12 paid for by lobbyists.

13 Their understanding was that a trip was not
14 really a gift and it didn't have to be reported
15 if it was valued at over a hundred dollars. The
16 State attorney said, no, that's not right, and
17 the courts and the District Court of Appeals
18 said it should have been disclosed.

19 In light of basically a year's worth of bad
20 publicity on the legislature, they revamped the
21 state law and said, first of all, well, we're
22 not going to allow folks to take -- well, we're
23 not going to allow ourselves to take a gift
24 worth over a hundred dollars from a lobbyist
25 anymore. Okay? It's prohibited. If it's from

1 a lobbyist, it's prohibited.

2 People said, well, then they'll just have
3 their partner give it or their employer give
4 it. So the legislature read the law and said,
5 okay, there's a group of people we're not going
6 to accept gifts worth over a hundred dollars
7 from. That includes not only lobbyists, but
8 their partners, their firms, their employers,
9 their principals, as well as political
10 committees and CCEs. No gifts from those people
11 worth over a hundred dollars.

12 And then they said, well, because this is
13 good for members of the legislature, we think
14 everybody else out there ought to have the same
15 standard, and so they applied it to anybody that
16 has to file a financial disclosure statement,
17 which is basically your elected constitutional
18 officers, high appointed officials, and a number
19 of state and local employees. Not everybody,
20 but anybody who has to file financial disclosure
21 should know that they're subject to these more
22 difficult gift laws.

23 In addition, there's a gift disclosure
24 that's part of this. If the gift is not
25 prohibited and it's not from a relative,

1 basically you need to disclose the gift on a
2 quarterly basis if that's worth over a hundred
3 dollars.

4 The following year, Governor Chiles said a
5 hundred dollars is too high a limit. We need to
6 drop that to 25 and the legislature said, no, we
7 don't, but I'll tell you what we'll do. We'll
8 make the lobbyist or their principal disclose
9 that gift if it's between 25 or a hundred.

10 Since then, beginning in 2005, the
11 legislature has adopted a policy for itself and
12 for executive branch officials that basically
13 says you can't accept anything from a lobbyist
14 or the principal of a lobbyist.

15 If you're in the legislature and it's a
16 registered legislative lobbyist, you can't take
17 any expenditure from them or their client. And
18 in the executive branch -- governor cabinet
19 members, for example -- they can't take anything
20 from a registered executive branch lobbyist or
21 their clients.

22 That body of law does not apply at the
23 local level. So at the local level, gifts are
24 handled by the law that was first adopted in
25 1990 that I was talking about.

1 Another prohibition in this gift law, folks
2 cannot -- again, disclosure filers cannot
3 solicit a gift from any lobbyist, and a lobbyist
4 is someone who lobbies their agency, who's paid
5 to influence their governmental decision-making
6 or that of their agency.

7 So you cannot solicit a gift from a
8 lobbyist or their principal or a partner of the
9 firm of the lobbyist if it's for your personal
10 benefit or the personal benefit of another
11 financial disclosure filer.

12 We talked about the other standards there,
13 and -- so basically when we teach this, we talk
14 about the standards and the analysis that people
15 have to do. I won't go into too much detail,
16 but basically this is the sheet that talks about
17 the standards that are applicable (indicating).

18 You know, is it a bribe? Was it given to
19 influence? If neither one of those is the case,
20 then I'm good. But if I'm a financial
21 disclosure filer, I need to go on and do a
22 little more difficult analysis -- and I think
23 this may be up on your screens now.

24 So financial disclosure -- this actually
25 works pretty well. It just takes a long time to

1 go through it. I'm not going to go through it
2 with y'all, but basically it's a pretty
3 convoluted process. So folks who file financial
4 disclosure should be asking themselves, is this
5 a gift -- you know, first of all, is it a gift?
6 Did I pay for it? Did I provide equal or
7 greater consideration for what it is I'm
8 receiving? Because if I didn't, then it's most
9 likely going to be deemed a gift the way that
10 term's defined under the law.

11 And now that it's a gift, I have to figure
12 out is it worth over a hundred dollars because I
13 might not be able to take it, depending on who
14 it's from, or I might have to report it.

15 So that's what we give to actually help
16 people through that process. And I've helped
17 you enough with that.

18 The other standard that we see a lot about
19 is -- at the local government level is on voting
20 conflicts of interest.

21 Again, the City Commission, County
22 Commission, City Council, Planning and Zoning
23 Boards, you know, they all take action by vote
24 of their members. And the question is, you
25 know, what do they do in the event they have a

1 conflict of interest and how does the law define
2 those conflicts?

3 And, again, trying not keep you any longer
4 than necessary -- I'll be happy to respond to
5 any questions, but let me just sort of gloss
6 over that to let you know that that's there.

7 And, again, we talked to them about, you
8 know, who is covered by the law. When do you
9 have a conflict that is addressed by the law.
10 For example, just because the measure concerns
11 somebody who is a campaign donor, the law
12 doesn't address that, so you don't have a
13 conflict that would keep you from dealing with
14 that issue if it's a donor that's in front of
15 you.

16 On the other hand, certain relatives would
17 be one; your employer would be a problem. If it
18 inures to your gain, certainly you would have a
19 voting conflict as well.

20 Again, kind of skipping through a lot of
21 this because it's in much more detail than you
22 need to know --

23 Getting over to the prohibited conflicts of
24 interest that I mentioned briefly earlier on.

25 Again, doing business with your own agency is --

1 if you have that kind of a situation, you need
2 to run it by the ethics officer or whoever in
3 your agency is responsible for handling that or
4 give us a call. I mean, we're perfectly happy
5 to help anybody out and walk them through what
6 the prohibition may be and what might be
7 permitted.

8 For example, sealed competitive bidding.
9 If the business is being transacted by a sealed
10 bid, a public official has a right to actually
11 submit a bid under the state law and -- but as
12 long as certain safeguards and disclosures are
13 made.

14 I mentioned also conflicting employment and
15 contractual relationships. These deal, again,
16 with employment with businesses that are doing
17 business with your agency or may be regulated by
18 your agency. If you have that kind of a
19 situation, you as a public officer or employee
20 need to kind of run it up the flagpole and see
21 who -- whether or not you're going to be in
22 trouble if you continue on with this outside
23 employment, for example.

24 And, again, the rest of this sort of goes
25 into more of the teaching stuff that I've done.

1 A lot of this --

2 There's some problems in Broward County and
3 Palm Beach County that you may have read
4 about -- I don't know -- in the last couple of
5 years, so I did a training session for the
6 Hollywood City Commission and the West Palm
7 Beach City Commission. That's where a lot of
8 this is from.

9 That was four hours of real good dialogue
10 with the elected officials of the City, talking
11 about the problems that they face, the issues
12 they may see, problems with, you know,
13 subordinates in government and how the ethics
14 laws interrelate with all of that.

15 One of the biggest standards that we have
16 to apply is a statute that says to public
17 officers and employees you cannot corruptly use
18 your official position to get a special
19 privilege or benefit for yourself or another
20 person.

21 It requires that we be able to find that
22 there's wrongful intent there, meaning that the
23 official was on notice or should have been on
24 notice that their conduct was wrongful, and it
25 requires that the person have acted

1 intentionally to benefit themselves or another
2 person.

3 Negligence, for example, is not a corrupt
4 misuse of public position, and so people can
5 overspend their budgets; we don't care. You
6 don't have to be the most efficient bureaucratic
7 government. That's not an ethics issue, but it
8 becomes ethical at the point when we start
9 looking to see if there was some corrupt action
10 for personal benefit there.

11 And, again, the other standard about use of
12 inside information, I believe it's going to be
13 up there soon too.

14 I sort of have one last thought. For the
15 groups that I was talking to, we went through
16 and pulled clips from newspapers over the last
17 few years and tried to white out the names and
18 so forth, but it's an amazing number of
19 headlines.

20 What I tell these people when I lecture to
21 them -- trying not to lecture -- is after all --
22 after looking at all of these standards and you
23 understand what the law says, you've got to
24 understand one more thing when you serve in
25 public office or take a position of public

1 employment, and that is that the people care
2 what happens in government, and the newspapers
3 care because people care.

4 And so all of these headlines are written
5 about situations that may not necessarily have
6 been an ethics violation, but it's something
7 that the newspapers thought that a lot of
8 constituents there would probably think was
9 wrongful conduct.

10 And so the final test that I suggest is --
11 for people is, if you're in doubt about what to
12 do, just ask yourself: How would I feel if I
13 woke up tomorrow morning and saw this on the
14 front page of the Times-Union, you know? If
15 it's okay, then that's a pretty good test. But
16 if I'm wavering a little bit, then maybe I need
17 to give this another thought before I take
18 action.

19 These clips will go on and on. You're
20 welcome to read them if you want, but I'm happy
21 to address any questions that you have.

22 You know, I mean, my sense as a lawyer is
23 that the city charter is like the constitution
24 of government. And so my pitch as an ethics guy
25 is that, just like Florida's constitution does

1 address ethics, you know, if it's important --
2 and I think it is important; it's important to
3 all the voters out there -- then something in
4 the constitution of that government probably
5 ought to at least address ethics.

6 And like your earlier speaker, I'm not
7 familiar enough with the setup here to really
8 advise you as to how that -- what format it
9 should take, but again, just like the Florida
10 Constitution says, ethics is important enough
11 that we're going to have certain standards and
12 we're going to have -- we're going to have a
13 body. It doesn't have to be the State Ethics
14 Commission. It could be the Commission on
15 Public Trust or it could be the Elections
16 Commission, if we give them -- but it's going to
17 be -- it's going to have the authority to
18 investigate and it's going to be independent.

19 Now, again, doesn't say independent how,
20 and I've got to say our budget -- we get line
21 items in the legislative budget just like
22 everybody else in state government, so I've got
23 to go talk -- I've got to answer for how our
24 money is spent and try to ask for more if we
25 need it. You know, we're not independent that

1 way.

2 Somebody appoints our members. They're not
3 independently elected. There's no ethics czar
4 that's sort of designated in the constitution or
5 something that appoints the members of the
6 commission. They're done by the governor and
7 it's done by the legislative leadership.

8 So they're not totally independent that
9 way. But, again, the way we're set up under the
10 constitution, I -- you know, I believe what the
11 people of Florida have is a body that's
12 independent enough and has enough resources that
13 when it investigates a situation and says
14 there's no violation, that that result should be
15 deemed credible by the people of Florida.

16 Now, I know it's not going to be by
17 everybody. And I talk to those people regularly
18 and I see them on blogs as well, you know,
19 but -- and if you don't like our commission,
20 still there's room for something like that in
21 government that's an independent body that can
22 call it the way it should be called by
23 independent people, you know, people like you,
24 volunteers, maybe, serving in government, just
25 because they think it's the right thing to do.

1 Now I'll step down off my soapbox here and
2 take any questions.

3 THE CHAIRMAN: Thank you, Mr. Claypool.
4 Commissioner Catlett.

5 MR. CATLETT: Well, I have to admit I have
6 several. One of the things that's had me a
7 little confused -- and if you could help here, I
8 would really appreciate it.

9 Do all of these state ethics laws that you
10 went through with us just now, do those apply to
11 local governments and local appointed officials?

12 MR. CLAYPOOL: Yes, they do.

13 MR. CATLETT: Okay.

14 MR. CLAYPOOL: The ethics code is the
15 floor -- what's in Chapter 112, adopted by the
16 legislature, is the floor as far as ethics
17 standards go. It's not the ceiling. So local
18 governments are free, and in some cases other
19 state agencies are free to adopt more
20 restrictive standards if they want.

21 MR. CATLETT: But if you found someone
22 locally that was not filing their lobbyist forms
23 on time as an example, do the fines that you
24 showed us earlier apply to that?

25 MR. CLAYPOOL: No. Our jurisdiction is

1 over the state -- is defined by the legislature
2 and the law, and that's only as far as lobbyists
3 of the state executive branch go.

4 We would need a separate law in order to
5 enforce local government lobbying regulations.
6 There are tons of them out there. Every
7 municipality in Broward County requires the
8 registration of lobbyists, the County does.
9 Just, for example, Miami-Dade has their own
10 setup.

11 So, I mean, there are a lot of local
12 governments that do that, but as far as how
13 that's enforced, we don't have the legal
14 authority or the jurisdiction, in other words,
15 to get into that.

16 MR. CATLETT: Another thing that confused
17 me, on your appointments for your commission,
18 you said this is done by political party, if I
19 understood what you said.

20 MR. CLAYPOOL: Right.

21 MR. CATLETT: At the same time, it said so
22 many were by the governor and so many were by
23 the different legislator. If they're in
24 different parties, how is it possible that it's
25 done by political party if they're all in the

1 same party?

2 MR. CLAYPOOL: The law says the Senate
3 president gets to make two appointments, and so
4 this summer President Atwater will have two
5 vacancies to fill on the Ethics Commission.

6 One of those -- both of them cannot be from
7 the same party. He's going to have to do one R,
8 one D or one R, one Independent. He cannot
9 appoint two Rs. And back when the Democrats
10 ruled the roost, you know, they couldn't do that
11 either. Same with the Speaker of the House.
12 And the governor has five, and he's got to
13 balance it by three and two, or again, as he has
14 currently, he's got two Rs, two Ds, and one
15 Independent.

16 MR. CATLETT: Okay. That -- I appreciate
17 your clarifying that for me, and I'll probably
18 have some other questions later.

19 MR. CLAYPOOL: That's fine. And, again,
20 you may adjourn. I'll be happy to stick around
21 and answer questions in the hall. Sometimes
22 people have questions they don't want to raise
23 necessarily as part of the group effort, and so
24 I'll be happy to respond to those as well.

25 MR. CATLETT: Thank you, Mr. Chairman.

1 THE CHAIRMAN: Commissioners, I have nobody
2 else in the queue.

3 Sorry. Commissioner Miller.

4 MS. MILLER: Through the Chair. Thank you,
5 Mr. Claypool for coming. You -- I know it's a
6 busy time for you with the legislature and
7 getting ready to defend your budget with the
8 legislature. I had some questions about how the
9 commission operates in terms of when there is a
10 violation.

11 First I have a question about the scope of
12 the applicability of the laws, building on what
13 Commissioner Catlett asked, and then I have a
14 question about how the commission operates when
15 you're in the midst of an investigation and the
16 procedural rules that the commission uses when
17 hearing a case and making a determination. I
18 think that's important.

19 But first I'd like to clarify something --
20 Commissioner Catlett asked about the scope. The
21 rules -- the ethics laws, other than the
22 lobbying law that I think you mentioned and the
23 law specific to the legislature, the gift laws
24 apply to local government position.

25 So -- and this may be an appropriate

1 question for Mr. Rohan as well.

2 It's my understanding that the same laws
3 apply to, say, the appointed members of our
4 electric -- our utility, and the appointed
5 members of our Aviation Authority, and the
6 appointed members of our Port Authority and the
7 appointed -- or the elected members of the
8 school board, the superintendent, and the
9 sheriff.

10 I just want to make sure that the same --
11 there are certain -- all these laws apply to
12 those bodies as well; is that correct?

13 MR. ROHAN: Let me frame the question as I
14 understand it and then give it to Director
15 Claypool.

16 Certain laws apply to all public employees
17 and officials and certain laws apply to only
18 those who are financial disclosers. So
19 depending on what the specific law is in
20 Chapter 112 would determine as to whether it
21 applies to them, and all those laws in
22 Chapter 112 make it clear whether the Ethics
23 Commission -- the State Ethics Commission has
24 jurisdiction over it.

25 So now let me let the director comment on

1 that.

2 MS. MILLER: Through the Chair to
3 Mr. Rohan. I just want to make sure, so do the
4 financial disclosure laws apply to our
5 independent authorities, the constitutional
6 officers, the school board members?

7 MR. ROHAN: It applies to those
8 authorities -- this is a very complex -- why
9 this whole area of ethics is extraordinarily
10 complex and difficult for everybody.

11 It applies to those that are enumerated in
12 the state law. In other words, not every
13 commission. There are a lot of advisory boards
14 that are not covered. Only specified boards
15 that have an obligation to make financial
16 disclosure.

17 On the other hand, even if they're not
18 obligated to make financial disclosure, they
19 still can't do business with their agency and
20 things like that.

21 MS. MILLER: Okay. Eventually,
22 Mr. Chairman, I'm going to ask Mr. Rohan to
23 submit a legal memorandum on -- just helping us
24 understand that because it's important, I think,
25 in terms of the question, so --

1 MR. CLAYPOOL: I can answer with respect to
2 your constitutional officers and the school
3 board members. They're treated as if they were
4 elected constitutional officers for purposes of
5 the constitution. So they file full disclosure.

6 They're in that group that has to list
7 their assets and their liabilities and their net
8 worth and any sources of income over a thousand
9 and give amounts and/or do their tax return.

10 As far as the JEA, for example, I have to
11 say I can find out with a phone call whether
12 they do or not. Generally speaking, what we
13 have is a list of the most significant local
14 level boards. For a long time -- this is more
15 than you wanted to know probably, but it
16 explains how we got where we are.

17 For a long time, every local government
18 board had to file financial disclosure unless it
19 was solely advisory. So we got to the point
20 where we were in a -- the municipality, we
21 created a tennis board and it would have the
22 authority to determine what hours the tennis
23 courts are going to be open.

24 We go, well, that's not advisory. You
25 folks have to file financial disclosure.

1 Well, that -- after years of seeing that
2 and years of running that system, it became
3 apparent that the State wasn't getting anything
4 for that value. There's no point in having
5 those people file.

6 So we went through the list of -- just a
7 stack of boards all around the state that had to
8 file and tried to figure out which were the most
9 significant.

10 So now Planning and Zoning Boards have to
11 file and Retirement Boards have to file. So now
12 the law, instead of saying everybody files
13 unless you're advisory, the law says certain
14 boards have to file and then it gives a local
15 option. So it says the entity that's creating
16 this board, if it wants, because the legislature
17 doesn't know what all is going to be created --
18 if the local government says -- the City says
19 this is an important board, we want these people
20 to file financial disclosure and be subject to
21 the more detailed gift law, they can do that in
22 the enabling legislation.

23 So we've got quite a few boards around the
24 state that are created that are done that way as
25 a matter of local option. And I just -- right

1 now, I don't know, you know, where the JEA lands
2 or the -- is it the Airport Authority? I can't
3 remember. And I don't know what the other
4 independent authorities are here. But if
5 anybody really cares, I can make a phone call
6 right after the meeting and get my disclosure
7 coordinator. She will tell me off the top of
8 her head.

9 MS. MILLER: Thank you.

10 MR. CLAYPOOL: Now, as far as procedures --

11 MS. MILLER: Yes. I appreciate that
12 question. I think Mr. Rohan can probably tell
13 us, or if you can I think that would be helpful,
14 because one of the questions we've been asked to
15 consider is the scope and reach of a local
16 ethics law and how that would apply to other --
17 to maybe some of the boards.

18 And so I think we need to know what laws
19 apply first before we start thinking about
20 extending that reach. So we can talk offline
21 about how we can do that.

22 As far as -- I'd like to get to the
23 procedures, but first I'd like to -- we spoke
24 briefly before this meeting about the budget,
25 and I think you mentioned that the commission on

1 ethics is already -- like so many State
2 agencies, you've already cut through the fat.
3 You're down into bone and muscle right now in
4 terms of budget and staff, but you did mention
5 you have 22 staff members.

6 What is the budget for the commission on
7 ethics and the staff members? How are they
8 deployed? How many do you use for financial
9 disclosure? How many do you use for
10 investigations --

11 MR. CLAYPOOL: Okay. We have -- the budget
12 overall is 2.2 million. That's within our
13 authority to disburse. Part of our budget goes
14 to the Division of Administrative Hearings
15 because the administrative law judges over there
16 hear our cases. They are funded by the State
17 agencies that are the user agencies, so that's
18 part of our budget as well.

19 Staffwise, we have five attorneys,
20 including myself. We have six investigators.
21 We have four individuals in the financial
22 disclosure section. And the remainder are
23 secretarial, clerical, administrative folks,
24 including two half-time clerk positions.

25 MS. MILLER: Does the commission have

1 subpoena power? When we get into the legal
2 procedural rules, do you follow the rules of
3 administrative procedure or do you follow the
4 rules of civil procedure, evidentiary rules?

5 When the commission -- maybe you can take
6 us through start to finish, when the commission
7 decides that it's going to either, A,
8 investigate is it a probable cause
9 determination, what laws apply --

10 And what I'm trying to get at is the laws
11 that apply, the procedures that would apply if
12 you were to actually go through a process of
13 assessing a fine or making a determination that
14 there's been violation.

15 MR. CLAYPOOL: All right.

16 MS. MILLER: Thank you.

17 MR. CLAYPOOL: Basically, it's a three-step
18 process, and so all of you would be considered
19 public officers. So -- let's hope not, but
20 assume the Ethics Commission gets a complaint
21 against one of you.

22 The first thing we do is evaluate the
23 complaint for what we call legal sufficiency.
24 We look at it and say, assuming all these facts
25 are true, is there a possible violation of any

1 of the ethics laws here or not?

2 Because if there's no possible violation,
3 then there's no point in investigating it
4 because even if we prove it's true, you're still
5 not going to have any violation of a law that's
6 within the jurisdiction of the commission.

7 About 50 percent of the complaints we get
8 are thrown out at that stage. Citizens
9 complain. They complain about matters that
10 would not violate the ethics laws. They're mad,
11 they're upset and -- you know, whatever, but
12 they don't understand the law.

13 You know, we try to educate and talk to
14 complainants over the phone and all of that as
15 much as possible. Everything we have is
16 available on our website.

17 But that statistic -- actually, the last
18 time I ran the stats for the Florida Bar and for
19 the Department of Business and Professional
20 Regulation is very similar. Actually, our
21 statistics all the way through the process are
22 similar. About half of the bar complaints
23 against lawyers are thrown out, again, without
24 even an investigation for the same reason.

25 If it looks like there's a possible

1 violation there, then as executive director I
2 have the authority to order an investigation.
3 If it looks like there's not, then you'll have a
4 staff recommendation to the commission that says
5 we recommend you dismiss this without
6 investigation.

7 The commission, as the body, is the final
8 decision maker on any complaint. And so if the
9 decision is we're not going to investigate;
10 we're going to dismiss, the commission has to
11 vote to do that. And, of course, the commission
12 can say, no, we disagree with Mr. Claypool. We
13 think, you know, we ought to take a look at this
14 situation and do an investigation of it.

15 Now, of the 50 percent of the cases we have
16 that are investigated -- one of the attorneys is
17 assigned to marshal the case through and help
18 the investigator with any legalities. We assign
19 one or in some cases two investigators,
20 depending on the complexity of the case, to go
21 out and talk to the witnesses, including the
22 public official, of course.

23 We'll ask for both sides of the story, from
24 the complainant and the public official. We'll
25 talk to the witnesses, we'll try to gather the

1 relevant documentation, and put that all in a
2 written report the goes to the commission.

3 The second stage is the decision of is
4 there probable cause to believe there's been a
5 violation of any of these laws or is there no
6 probable cause. If there's not probable cause,
7 it's dismissed.

8 If there's probable cause, then that's the
9 equivalent decision of the State Attorney
10 deciding to charge somebody in an information or
11 a grand jury deciding to charge somebody in an
12 indictment. We find that there's probable cause
13 where there's a violation.

14 The -- procedurally, at that point, I don't
15 think the law requires us to allow any sort of
16 due process because this is just leading up to
17 the charge, but what the commission does is send
18 a copy of the investigative report to the public
19 official. And the letter says, if you think we
20 left something out, let us know. If you think
21 there's something -- more information out there
22 that bears on this, let us know, because this is
23 the document, this is the investigation that the
24 commission is going to make its decision on.

25 A copy of the report also goes to our

1 prosecutor, which, under the commission rules,
2 is called the commission advocate. These are
3 folks usually from the Attorney General's office
4 who handle the prosecution of cases, and they
5 serve as kind of an independent check.

6 They're not on the staff of the commission;
7 they're actually paid for out of our budget, so
8 we pay for two attorneys and a paralegal in
9 Attorney General's Office who are dedicated to
10 prosecuting ethics cases. That's what they do.
11 That's their job.

12 At the probable cause stage, they make a
13 written recommendation, they analyze the facts,
14 they look at the law, they make a recommendation
15 as to whether or not there's probable cause.
16 And the public official gets a copy of that too.

17 The public official, then, along with the
18 commission advocate, come to the meeting, and
19 both are able to address the commission. It's
20 not an investigatory proceeding. There's no
21 witnesses or anything. It's on the basis of the
22 written investigation that's done, and then
23 they're entitled to argue to the commission
24 whether there's probable cause or not.

25 Out of the complaints that are

1 investigated, roughly half of those are no
2 probable cause and those are dismissed.

3 And let's see. Confidentiality.
4 Complaints that come into our office are
5 confidential by law. We cannot reveal the
6 existence or contents of a complaint.

7 Once the complaint is dismissed for legal
8 insufficiency at that first stage, then the file
9 becomes open and the press is free to look at
10 it, read our analysis and second-guess us if
11 they want. That rarely happens, but it's open.
12 It's a public record. Citizens can request
13 copies of it.

14 Same with probable cause. Because the
15 constitution says the commission has got to make
16 a public report on all of these complaints, we
17 don't keep anything secret.

18 Under the public records law, once you get
19 to the probable cause decision and the decision
20 is either a probable cause violation or no
21 probable cause, confidentiality is lifted and
22 all of our records are available for the public
23 to come and second guess. It's transparent in
24 that sense. And they do.

25 Now, I have to say that the general gripe

1 is despite the fact that our processes are
2 confidential in our hands, the federal courts
3 have ruled that the State cannot keep other
4 people from disclosing information about ethics
5 complaints.

6 So what you will see -- say this very
7 candidly -- somebody will file a complaint
8 against a public official with us and they'll
9 file a press conference and give a copy of that
10 complaint to the press. First Amendment right
11 to do that; they can do that.

12 If the press calls the Ethics Commission,
13 we say we neither confirm nor deny. Here's the
14 next commission meeting. Things will become
15 public on this day. Keep checking. We may --
16 if we have something, we may resolve it. Keep
17 checking back with us.

18 But the public official is free to comment
19 on it, the complainant is free to comment on
20 it. We're the only folks who are muzzled by the
21 law that way.

22 But, again, ultimately it all becomes
23 public. So when the commission says to this
24 complaint there's nothing to it, it's all there
25 for people to come in and second guess. So

1 that's -- you know, we're aware of that and all
2 my investigators know that, and that, I think,
3 contributes to the quality of the product as
4 well.

5 If the commission finds probable cause, we
6 are an agency that's bound by the State
7 Administrative Procedures Act. At that point,
8 Chapter 120 kicks into gear for us just like it
9 does for the Department of Children and
10 Families, whomever.

11 We're making a decision that affects the
12 substantial interests of this public official or
13 public employee and therefore we have to give
14 all the due process that the Administrative
15 Procedure Act requires.

16 Basically, what that means is the case will
17 be tried in front of an administrative law judge
18 from the Division of Administrative Hearings.
19 The administrative law -- and the prosecutor is
20 the commission advocate who's from the Attorney
21 General's Office, typically.

22 The public official is entitled to be
23 defended by counsel at that hearing. If the
24 administrative law judge enters a written
25 recommended order as to whether or not there's a

1 violation and what facts are found by the judge,
2 that goes to the commission and then there's
3 another proceeding before the commission where
4 the commission reviews that and says -- and the
5 review is kind of like an appeals court looks at
6 a lower court decision. They don't retry -- the
7 commission doesn't retry the case or
8 second-guess how the evidence is evaluated. All
9 the commission can do basically is say the
10 administrative law judge made an error on the
11 law or made an error on the facts, a technical
12 legal error or not.

13 So basically if the ALJ finds there's a
14 violation, typically the commission is going to
15 find there's a violation too.

16 If there -- a violation is found, then the
17 commission has no power to penalize anybody.
18 The reason for that was that -- the feeling was
19 the commission consists only of appointed
20 officials and should not have the authority to
21 render a penalty just because of that. That
22 ultimate decision needs to be made by our
23 elected officials.

24 So currently -- of course, for legislators
25 the constitution says that Senators judge the

1 conduct of their own members and the Senate is
2 the only body that can penalize a Senator, and
3 the House is the only body that can penalize the
4 House. Same for employees of the House and
5 Senate.

6 But for basically everybody else -- and
7 this particularly means local government
8 people--- the commission makes a discipline
9 recommendation to the governor and then the
10 governor decides whether or not to comply with
11 that recommendation, and the governor has the
12 authority to impose a penalty.

13 Penalties can be as simple as censure and
14 reprimand. They can range up to a \$10,000 fine
15 or civil penalty per violation. They can also
16 include restitution of pecuniary benefits
17 received because of the violation. So not only
18 do you get fined but whatever you made as a
19 profit on this unethical transaction needs to be
20 coughed back up too.

21 As well as the governor has the authority
22 then to remove folks from office for violations
23 of the ethics laws.

24 If we find a violation, the official can
25 appeal that to a district court of appeal and

1 then ultimately, if possible, to the Florida
2 Supreme Court.

3 And that is more than probably anybody
4 really wanted to know about the process, but
5 there is a lot of due process at that end of our
6 proceeding.

7 MS. MILLER: And through the chairman, it's
8 exactly, I think, what I was asking for. And I
9 think for many people who are nonlawyers, it's
10 very informative to understand that there is an
11 existing process. It's cumbersome, but it's
12 cumbersome for a reason, to ensure that all
13 parties' rights are protected.

14 Let me back up. So your commission has --
15 the advocates are employed by the Attorney
16 General's office, right?

17 MR. CLAYPOOL: Usually. We have a contract
18 for two full-time attorneys that do our work.
19 Occasionally the AG will have a conflict. Just
20 had that example in December.

21 We had a complaint against the AG himself
22 for alleging -- misuse of State planes for
23 travel for personal purposes. We had also a
24 complaint against the CFO, who is his opponent
25 in the upcoming election, it appears, and so we

1 weren't going to let him -- his folks in on
2 that. There's no way they could do that.

3 And we had a complaint against the
4 lieutenant governor, who during our process
5 announced that he was going to be running for
6 AG. So you'd have these Assistant AGs
7 potentially prosecuting their boss.

8 Nobody would believe -- even I wouldn't
9 believe that they could be totally impartial and
10 unbiased in that situation.

11 So we went and found a former prosecutor
12 who's in private practice, contracted with him,
13 and he put his neck on the line to basically say
14 yes, if there's probable cause I will prosecute
15 these things here and I'll give you my
16 recommendation on the law and all of that. My
17 reputation, as far as the statewide press goes,
18 is now out there for everybody too. Pretty
19 courageous act in those cases.

20 MS. MILLER: Generally speaking --

21 MR. CLAYPOOL: In the usual case, the AG
22 doesn't have a conflict.

23 MS. MILLER: Do you pay the AG's office for
24 those? You said you have a contract with them?

25 MR. CLAYPOOL: We contract with them.

1 MS. MILLER: Okay. You have a contract.

2 So you're paying them for a certain amount
3 of money?

4 MR. CLAYPOOL: Right.

5 MS. MILLER: And then you said you pay a
6 certain amount of money to the Division of
7 Administrative --

8 MR. CLAYPOOL: We pay -- this last budget
9 it was 311,000 to the AG's office for contract.
10 That's for the attorneys, paralegal,
11 investigative sort of overhead, discovery. They
12 have got to do -- there's travel and all kinds
13 of stuff for that, and then there's a percentage
14 for overhead that we pay, you know, part of
15 their office space.

16 For the Division of Administrative
17 Hearings, that varies according to the amount of
18 hearing time that the ALJs have used in the
19 prior year. They add up all the State agencies
20 for how much time their cases took and then
21 divide their total tab for all their ALJs by the
22 number of hours that were used and bill each
23 agency accordingly.

24 Ours was, I think, \$54,000 for that.

25 MS. MILLER: And then regarding your

1 familiarity -- and I understand you may have
2 limited knowledge of local ethics boards that
3 there has been in each -- for those communities
4 that have a local ethics commission or boards or
5 what have you, they have decided that -- the
6 appropriate role. They may come up with their
7 own ethics codes or have a different role.

8 Do you ever hear -- or do you ever function
9 or serve as kind of like the body that might
10 conduct the hearings and the investigations for
11 a local ethics code?

12 MR. CLAYPOOL: We -- I've talked about this
13 with some folks at the League of Cities on
14 occasion and a number of people from all around
15 about how to do that.

16 I think we need legislative authority to do
17 that. We need a change in the law to enable us
18 to plug into that kind of process, and then, you
19 know, have the payment come from the local
20 government at whatever the rate might be would
21 be an option anyway.

22 MS. MILLER: Are you familiar with any
23 local government bodies that have either, A,
24 subpoena power authority; or B, this -- that
25 actually go through conducting the hearings and

1 making these determinations on local ethical --
2 MR. CLAYPOOL: Miami-Dade does their own
3 work. Their ethics commission, Commission on
4 Ethics and Public Trust down there investigates
5 complaints. They have staff attorneys. They've
6 got a budget that's about the same as mine, I
7 think, and -- but I'm not sure exactly how much
8 is included in that because Miami-Dade also has
9 a very independent inspector general and --
10 who's name escapes me at the moment, but that
11 seems to be a fairly effective scheme down
12 there.

13 There's some issue in terms of possible
14 overlap with them. They can't enforce the state
15 law, for example. We can't enforce the local
16 Miami-Dade ethics provisions, but sometimes the
17 same situation comes up.

18 So, for example, you may have a complaint
19 against -- one was against the City of Miami
20 chief of police who had the use of a Lexus SUV
21 for a year and didn't declare it as a gift.
22 Miami-Dade looked at that and said we think
23 under our standards it was a gift.

24 We got a complaint also about that. Under
25 state law, it appears that was a gift as well.

1 And then it's a matter of -- I think my
2 commission takes into consideration what's gone
3 on at the local level if you're talking about
4 that same person in terms of how they think the
5 outcome of our case should be, violation or not
6 a violation, but in terms of what penalty they
7 might recommend, they've already been sanctioned
8 by the local government entity. Or, for
9 example, at the other end -- well, let me back
10 up a little bit.

11 I visualize -- corrupt conduct in its worst
12 form is criminal. The ethics standards that
13 we're dealing with primarily are things that are
14 less than criminal but still not proper.

15 These are things that people think involve
16 conflicts of interest. They're self-dealing
17 potentially. There's other things. They're not
18 bribery. There's not, you know, theft of
19 services necessarily under the federal law, so
20 it's not a crime and it shouldn't be punished as
21 such.

22 These are ethics standards that are
23 enforced civilly. They're not punished by jail
24 or prison, for example. But at the upper end
25 there, there's an overlap because certainly if

1 somebody gets a gift it's also a bribe. If they
2 didn't disclose it, it's an ethics violation,
3 but it may be a criminal violation.

4 We work pretty regularly with the criminal
5 law authorities, with some of the State
6 Attorneys' Offices, the FDLE, the Department of
7 Law Enforcement at the state level, occasionally
8 sheriffs' offices and the like to -- where we
9 may be involved in looking at the same
10 situation.

11 We want to make sure we're not tramping on
12 other people's feet while we're doing that. So
13 in some of those cases too you will see where
14 the individual has gone through a criminal
15 prosecution; tried; found guilty; sentenced;
16 fined; sent to prison, and then the Ethics
17 Commission looks at that and they may say -- and
18 have in the past -- well, this is sort of a
19 lesser included offense, if you will. There's
20 really no point in piling under these
21 circumstances, you know, for us to just say,
22 and we recommend the full penalty and everything
23 else. That will happen on occasion as well.

24 MS. MILLER: I have a question about the
25 scope and the jurisdiction of the commission on

1 ethics. You went through -- generally,
2 Chapter 112 requirements the prohibition -- do
3 you have -- does the Commission on Ethics have
4 authority to look into whistle-blower
5 protection, procurement contract issues, ethics
6 campaign, ethics lobbying issues?

7 I guess some lobbying issues if it's within
8 112, but there's a question about the scope of
9 authority -- an appropriate scope of authority
10 for whatever it is for your commission or even
11 for a local commission, so . . .

12 I'm trying to understand, is it limited to
13 those laws that are outlined in 112?

14 MR. CLAYPOOL: Basically, that's what a
15 breach of public trust is, you know, a violation
16 of some standard of ethical conduct geared at
17 public officers and employees.

18 So that's generically what we would look
19 at. We do not do campaign finance. That's the
20 Elections Commission.

21 Campaign ethics, you know, if it's just --
22 well, the ethics laws apply to candidates
23 because they have to file financial disclosure
24 when they qualify, and there are gift law
25 ramifications to that as well and there's one or

1 two provisions that talk about candidates, for
2 example, not accepting something of value if
3 they know it was intended to influence a
4 (inaudible) of official duties.

5 So if you've got someone who's purely a
6 candidate, not an incumbent, then our
7 jurisdiction would be limited to those specific
8 matters. And other than that -- you know,
9 again, we talked about the local lobbying
10 stuff. That's not in our jurisdiction. At the
11 State level, the legislature runs the lobbying
12 registration and disclosure requirements for
13 legislative lobbyists and we do it for the
14 executive branch lobbyists.

15 MS. MILLER: Thank you.

16 THE CHAIRMAN: Commissioner Youngblood.

17 MR. YOUNGBLOOD: Through the Chair, thank
18 you, Mr. Claypool. Appreciate you coming.

19 The Commission on Ethics for the state of
20 Florida, you said they do have subpoena power?

21 MR. CLAYPOOL: Yes, we do.

22 MR. YOUNGBLOOD: And why is that not a
23 function of the Attorney General?

24 MR. CLAYPOOL: The system is set up --
25 because the commission is the independent body,

1 and it's the commission's investigation, so that
2 preliminarily -- it's our stuff. The Attorney
3 General, I think -- I mean, I would argue
4 this -- is susceptible to the appearance that
5 what they're doing or not doing is based on
6 political consequences.

7 Now, when we do the investigation, like I
8 said, the report goes to the Assistant AG and
9 they're free to come back and say, wait, I think
10 you need to look a little more into this aspect
11 or that. And if I look at that and agree, then
12 we'll do that if I think it's relevant.

13 MR. YOUNGBLOOD: It just seems as if it's
14 an ethical issue and it's not a legal issue, it
15 seems to be far-reaching to have subpoena power.

16 And would you recommend in the event that
17 we do put back the original ethics, is it
18 redundant to the current state ethics?

19 MR. CLAYPOOL: It's redundant to the extent
20 that you have a local government body doing the
21 same work that the state body does, redundant
22 and confusing.

23 But, again, the way the system exists now,
24 the state standards are the floor, and if local
25 jurisdictions feel like their officers and

1 employees should be held to a higher standard,
2 then that jurisdiction is free to adopt those
3 standards and then provide for enforcement.

4 Which, again, I've talked to lots of people
5 over the years about how do we do this. How --
6 can you get the State Ethics Commission involved
7 in investigating? Do we have to do it
8 ourselves? Does it have to be a crime? Does
9 the State Attorney here have to do it? You
10 know, is it going to be only a misdemeanor? Is
11 it just --

12 Like Miami-Dade, I think the maximum they
13 can assess is \$500. That's it. If you have
14 somebody -- for some people -- a very limited
15 number of people, fortunately, but for some
16 people that's just the cost of doing business.
17 I'm sorry. And they will willingly risk a
18 potential complaint and a \$500 fine. I mean,
19 that's nothing.

20 So in terms of coming up with a
21 jurisdictional stand- -- well, standards and
22 then a mechanism for enforcing those, nobody --
23 there's nothing perfect. You know, I mean,
24 there's a lot of different sort of trials out
25 there, I think.

1 And, again, Broward County is looking at
2 this. Palm Beach County is looking at it right
3 now. I think Orange County did a couple years
4 ago, look at it, and then -- a lot of times
5 the -- I think the issue, which is one we don't
6 have jurisdiction over, is people see that
7 elected officials are getting campaign
8 contributions from interests -- corporate
9 interests, for example, who are doing business
10 with the county or they're, you know, big
11 developers regulated intensely by the county and
12 yet they're bankrolling the candidacies of these
13 public officials.

14 And so I've seen several places move to try
15 to make that unethical at a local level, and I
16 don't frankly know how that works out under the
17 law, whether the state election laws are it and
18 local jurisdictions can't modify that in terms
19 of limiting who you can get money from and so
20 forth.

21 But I know that's an issue, for example,
22 and I'm not saying that's an issue or a problem
23 here, but it's just something that I see
24 repeatedly where citizens get upset because they
25 see all this money going, you know, into the

1 campaign coffers and they feel like they're just
2 buying candidates that way, they're buying their
3 elected officials through the ballot box. Well,
4 that's -- again, that's not our business.

5 MR. YOUNGBLOOD: Should a local ethics
6 office has subpoena power also?

7 MR. CLAYPOOL: It depends on, I think, how
8 you envision them and their role. I would step
9 back and say, you know, do we want a body
10 that -- kind of like the state organization, has
11 independent investigative authority, that will
12 be the best kind of body we can make so that the
13 people of our city will -- when this group of
14 people speak, they will be believed. You know,
15 they've got credibility.

16 And in order to do that and investigate all
17 of that, you know, then subpoena power, if --
18 lawfully, if that can be given -- and that's
19 Mr. Rohan's municipal law question; out of my
20 range -- then -- that's one of the things that
21 people criticize the ethics process for. It's
22 like, well, yeah, you can go talk to them, but
23 you can't put them under oath and you can't
24 subpoena any records and stuff, so how do we
25 know you really got to the bottom of that?

1 That's sort of one aspect.

2 Another thing I've seen -- and I'm not
3 advocating this, but at the other range of
4 things, Broward County has a completely
5 voluntary set of standards for candidates.

6 It's a pledge and they say, you know, we'll
7 engage in good campaign practices and we'll be
8 fair during our campaigns and we won't slander
9 our opponents. I don't know exactly what all is
10 in there, but it's a voluntary pledge.

11 Well, why do candidates take this pledge?
12 They take it because if they don't, it will be
13 reported in the paper and all of a sudden they
14 stand to lose votes because of that. So now
15 they've taken the pledge. They're going to be
16 fair campaign practitioners.

17 What's to enforce that? In Broward,
18 there's no real enforcement mechanism, but
19 there's a group of citizens -- and, again, this
20 is part of the whole pledge package -- there's a
21 group of citizens who sit on a committee that
22 evaluate complaints of violations of these
23 campaign ethics standards the people have
24 voluntarily entered into.

25 These are volunteer people from the

1 community sitting on this board. Very thankless
2 job, as I understand, you know, who have got to
3 say, no, you crossed the line in this. They
4 have no power to fine, they have no power to
5 enforce. All they have is the power of their
6 collective decision-making to say, no, we think
7 you crossed the line in this case.

8 At which point, how is that effective?
9 Well, you can argue whether it's effective or
10 not, but if I'm running, I'm going to tell you
11 that I'm going to try to stay away from those
12 lines, if possible, because I don't want to be
13 subject to that. I want to campaign as hard as
14 I can. I want to get my people out there as
15 much as possible, but I really want to -- I
16 don't need that kind of publicity.

17 And yet, by having a volunteer board of
18 people who have the courage to stand up and do
19 this, they deserve the credibility to say, no,
20 it doesn't violate our code, your pledge, and
21 here's why.

22 And that, I think, is a service to the
23 community as well.

24 MR. YOUNGBLOOD: As I understand it, the
25 local commission is not afforded the ability to

1 look into the independent authorities, as I
2 understand it. I think that question was raised
3 earlier.

4 In the event that we afford the local
5 Ethics Commission the opportunity to put the
6 ethics as it originally was stated in the
7 original charter, should we be afforded, then,
8 the opportunity to look into the independent
9 authorities?

10 MR. CLAYPOOL: How much money do they have
11 to spend and how much regulatory authority do
12 they have?

13 MR. YOUNGBLOOD: A lot, but they have their
14 own boards that work for them and their own
15 departments, their own budgets and their own
16 requirements that they are held accountable to,
17 so should it have the autonomy or the
18 far-reaching ability to reach into those
19 independent authorities to hold them
20 accountable?

21 MR. CLAYPOOL: Well, if they don't, who
22 does? I mean, again, you know, if government
23 didn't have any money to spend and it didn't
24 have much ability to regulate, we wouldn't be
25 worried about ethics because -- or the campaign

1 funding issues or any of that kind of stuff
2 because it just wouldn't matter.

3 It's when government grows to the point
4 where they've got, you know, millions and
5 millions and millions of dollars to spend on
6 contracts and the public wants to know where did
7 that money go and what do we get for our tax
8 dollars, and the public officials are going to
9 say, well, am I going to be held accountable?
10 You know, who makes the appointment to the
11 boards, to the authorities? I mean, at some
12 level there's accountability in there.

13 MR. YOUNGBLOOD: Just the size of the
14 structure seems almost impossible,
15 insurmountable to have the ability to set up a
16 local office that reaches into the size and the
17 scope that they deal with to understand their
18 business model and, in turn, to enforce some
19 ethics code when you don't really have a grasp
20 on how they operate. It seems very difficult,
21 the amount of money that they spend, just
22 enforcing internally.

23 MR. CLAYPOOL: It depends on what the code
24 is. I mean, if the code is going to be as
25 extensive as 112, as we went through here --

1 there's a lot in the way of education that this
2 group would have to do, there's a lot of
3 potential violations out there that could be --

4 If it's more narrowly focused, if it's to
5 enhance a standard here and there, then you've
6 got a much narrower focus and fewer
7 responsibilities and less work to be done.

8 MR. YOUNGBLOOD: Understand me, I'm all for
9 ethics. I think it's great to have the ability
10 to have a true watch dog, as Carla Miller has
11 stated many times. It's a great opportunity,
12 but I have to look at the fiscal aspect of it,
13 what is it going to cost?

14 If I say yes to it and you're going to tell
15 me it's, you know, just millions and millions of
16 dollars -- you just told us your budget. Now,
17 if the State's going to forward us some of that
18 money to in turn pay for a local commission,
19 great, I'm all for it. But now if we're looking
20 at coming out of our budget, now I have to look
21 at it a little closer. How far should we go?
22 How much money will it cost?

23 I guess I have greater questions than you
24 have answers for because it's such a broad
25 question.

1 MR. CLAYPOOL: Right.

2 I have -- what did I say -- \$2.2 million,
3 something like that, to cover the whole state.
4 Miami-Dade has more. But Miami-Dade, I have to
5 say, their -- my understanding is their
6 inspector general there does have the authority
7 go out to the port, for example, and look at
8 contracts and stuff out there.

9 And from the press I've seen over many
10 decades from operations like that, there are a
11 lot of questions unanswered and there are a lot
12 of dollars that nobody knows where they went.

13 One of the -- and that's a concern of
14 criminal authorities too in -- when Governor
15 Bush got elected, one of the first things he did
16 was create a public corruption study group. I
17 was privileged to serve on that as -- along with
18 my chair representing the Ethics Commission.

19 We had folks from U.S. Attorney's offices,
20 State Attorney's Offices, FDLE, the CFO -- I
21 can't remember who else was in there --
22 basically looking at government corruption in
23 Florida and what legal weapons did the State
24 have to combat that.

25 And one of the problems that I heard from

1 the statewide prosecutor's office and the State
2 Attorney down in Miami-Dade was that they didn't
3 feel like they had effective statutory authority
4 to get into a lot of situations -- and they
5 rattled off a number of them -- where millions
6 of dollars had been spent and nobody could say
7 where the deliverables were.

8 I mean, one of them involved just, you
9 know, planting I've forgotten how many palm
10 trees down a boulevard. And a third of them,
11 something like that, got planted. But all the
12 money got paid out by the county. Where did it
13 go, you know?

14 There's a lot of citizen frustration there,
15 I think, still knocking on the doors of the
16 criminal authorities at various levels saying
17 what are we getting for our money?

18 You know, my solution for that was a
19 lawyer's solution, which is do it by contract.
20 If you write the contracts good enough, then
21 somebody will come back in and they'll be able
22 to tell. And if you haven't gotten the
23 deliverables, you don't pay. And if you haven't
24 gotten the deliverables, they can sue and you
25 don't have to pay because you've got a breach of

1 contract.

2 But, again, you know, it's the taxpayers'
3 money and they're saying, where is it going and
4 what are we getting for our buck? So, I mean,
5 it's up to -- well, you-all with all you're
6 getting paid to do this to try to come up with
7 some idea, I think, of how to best get there.

8 And it won't be -- I don't think you will
9 come up with a perfect solution because I
10 haven't seen one, but in terms of maybe
11 advancing the goal -- you know, at least another
12 first down or something, you know, toward that
13 goal would be -- would help a lot of people out
14 there, I think.

15 MR. YOUNGBLOOD: So you would recommend to
16 put it back in as it originally was stated?

17 MR. CLAYPOOL: I think to have someone look
18 over their shoulders, whether it's an inspector
19 general or an ethics group that has the ability
20 to investigate or somebody -- if folks know that
21 there are checks and balances that way, they're
22 much less likely to engage in that kind of
23 conduct.

24 MR. YOUNGBLOOD: Thank you.

25 THE CHAIRMAN: Commissioner Catlett.

1 MR. CATLETT: So how many of these cases
2 that you investigate were reported to be having
3 probable cause to go further over an annual --

4 MR. CLAYPOOL: I'd say about 75 percent.
5 We average about 250 complaints a year, so --

6 MR. CATLETT: And what is the maximum
7 penalty that can be levied for those complaints
8 if there's probable cause?

9 MR. CLAYPOOL: Well, if a violation is
10 found -- again, which is, you know, that step
11 beyond probable cause, after the trial.

12 If a violation is found, penalties could be
13 \$10,000 per violation, public censure and
14 reprimand -- it could be all of the above --
15 restitution of benefits received because of the
16 violation, and removal from position.

17 MR. CATLETT: Okay. So what you are
18 saying, then, is of the 75 percent of 200 -- is
19 that what it is?

20 MR. CLAYPOOL: Yeah, 250 average.

21 MR. CATLETT: That would be, what, a
22 hundred and -- I'm not awake enough to do that
23 math.

24 MR. CLAYPOOL: A hundred and eighty-five.

25 MR. CATLETT: And so we would divide that

1 into 2 million. What is it costing us as
2 taxpayers to accomplish that?

3 MR. CLAYPOOL: Well, I don't know. I would
4 have to pull out the numbers. But I would argue
5 that that's not the final number you want. What
6 you really want is how many people are complying
7 with these standards.

8 What you want -- just like financial
9 disclosure when I said earlier, we started at
10 92 percent timely filing. Now we're up to
11 98 percent. What you want is people to comply,
12 and so a large part of our budget is -- the main
13 part of our function is actually education,
14 because we have people on the phones every day,
15 people writing letters, replying to e-mails.

16 We used to have the money to do an annual
17 day-and-a-half conference on ethics, usually
18 down in Central Florida, but we've had them over
19 here too over the years, where local officials
20 can come and we talk about our process, the
21 ethics codes, what the standards are they've got
22 to comply with, what the standards are out there
23 for their subordinate employees.

24 So, to me, that's really what we want. I
25 mean, I'd be happy if I felt like we were

1 getting good complaints in and there were no
2 violations.

3 I think to some extent what we have seen
4 is -- because we have city attorneys who have
5 been doing this for years all over the state --
6 I've got, you know, city attorneys -- I can't
7 tell you how many people come up to me and say,
8 like Commissioner Miller, from time to time, I
9 talk to so-and-so on your staff whenever I have
10 a question. When I've got an ethics issue,
11 that's the person I go to. That's virtually
12 every city around the state and the counties and
13 the universities and the State departments too.

14 So, to me, that's what the organization
15 does. The complaints is a significant part
16 because if we couldn't do that, I think there
17 would be a lot more, you know, yawns and ho-hums
18 when we started talking about ethics. There's
19 got to be some sanction there too.

20 MR. CATLETT: Of course we're looking at
21 what things should or should not be done by the
22 local ethics group, and so we're trying to talk
23 about -- as Mr. Youngblood mentioned --
24 budgetary. I mean, yours is funded by the State
25 and it varies depending on their revenues and

1 their interests and what you're doing.

2 And the same thing is true here locally.
3 And although you were not involved in it, we had
4 a long, drawn-out budget process that went down
5 to pennies. You know, we're looking at --
6 we're facing the opportunity to add a
7 bureaucracy here, and that's my biggest concern
8 is what it's going to cost us as taxpayers to
9 accomplish setting up a local replica of the
10 State ethics --

11 MR. CLAYPOOL: Well, I mean, if that's what
12 you want to do. I'm not -- again, I'm not
13 advocating duplicating what our function is.

14 And, again, from what I've heard out
15 there -- I can't remember if it was Broward or
16 Palm Beach County -- there was a big push there
17 for dedicated revenue funding. They were going
18 to do an add-on percentage to each contract that
19 was going to go to fund this office.

20 For some areas of the state, that may be
21 more appropriate than others. And I'm not
22 saying whether it's appropriate down there or
23 not, but, you know, if the voters are saying we
24 need this and we need something that's
25 independent and has credibility and that's --

1 who's not subject to the will of the body that's
2 going to be investigated by it, then that's one
3 of the things that would make it more
4 independent.

5 I'm here to say I think you can do it and
6 have it credibly independent without a dedicated
7 source of funding. You know, I mean, I'm a
8 taxpayer too and I'm not advocating this --
9 well, I'm not advocating anything for your
10 particular situation here, but I would say as a
11 taxpayer it's important to me that I'm getting
12 value for my money and that I know where this is
13 going. And I don't get to vote on all of this
14 stuff, and so -- you know, just like defense
15 spending, I don't get to say I think this
16 weapons program sucks, but some other state
17 senator gets it. And so I don't get to say, you
18 know, I'm not going to pay .0015 of my state --
19 of my U.S. income taxes because I disagree with
20 that part.

21 We're all in this together, but we're all
22 in a position where the taxpayers have to
23 believe that government is acting in their best
24 interest, that a public office is a public
25 trust, and these are trustees acting for the

1 interest of the majority of people while
2 observing the rights of the minority, which I
3 think is pretty much the best characterization
4 I've heard of American government.

5 THE CHAIRMAN: Commissioner Eichner.

6 MS. EICHNER: Well, I've done a good bit of
7 research on the Inspector General's Office in
8 Miami-Dade, and the way that they're set up and
9 the way that they're funded is that one half of
10 one percent holdback on every county or city
11 contract, I think is how it's set up. So they
12 have got a pretty significant budget because
13 they have a lot of construction going on.

14 I think that one of the ways that we may be
15 able to approach ethics and putting it back into
16 the charter, it -- I think the setup and the way
17 that it is now through an ordinance might be the
18 most appropriate in putting it back into the
19 charter and having the charter create the
20 commission and how that -- the membership of
21 that board is put together.

22 I don't necessarily know that subpoena
23 power should be a part of that. I don't have
24 all the answers to all the specifics, but one of
25 the concerns that I have when we talk about

1 ethics is that we got an Ethics Commission by
2 ordinance of the City Council. We could do away
3 with the Ethics Commission by ordinance of City
4 Council.

5 So my concern about whether or not this
6 should go back into the charter is just based on
7 should we have an Ethics Commission. And if we
8 all agree that we should, then we create an
9 Ethics Commission in the charter and we leave
10 all the details of who gets what power, who has
11 it, all of those things up to a legislative body
12 to decide through ordinance.

13 That's my observation on this process.

14 THE CHAIRMAN: Commissioner Miller.

15 MS. MILLER: Through the Chair, this is
16 more -- we can conclude our discussion with
17 Mr. Claypool. If someone has a question for
18 him, I can wait -- reserve my time, but I have
19 more of a comment along the lines of
20 Commissioner Eichner, who I tend to agree with,
21 that we should have some presence of the Ethics
22 Commission and ethics code in the charter.

23 But as we discussed in the last meeting,
24 less may be more in terms of our constitution,
25 and then allowing the -- our strong mayor form

1 of government and the City Council to define
2 that and et cetera.

3 I did -- but I think that the -- in order
4 to be the most effective -- if we have --
5 hopefully, if -- if we got nothing else out of
6 this conversation, we know now that there are a
7 set of rules and laws that govern all public
8 employees.

9 Depending on your level of responsibility
10 and authority, how you're appointed or even your
11 ability to disburse funds or authorize the
12 procurement of funds, you have to file certain
13 financial disclosures.

14 It would be helpful if we could -- you
15 offered this earlier, Mr. Claypool -- to get a
16 listing of everyone -- and we can provide you
17 with a list of all the independent authorities
18 and other offices in -- that are part of the
19 consolidated government.

20 It would be helpful to know in each of
21 those authorities who has to file a financial
22 disclosure because as you -- as we heard, a
23 different set of rules attaches when you have to
24 file a financial disclosure. And depending on
25 the kind of financial disclosure, even another

1 set of rules attaches, another set of
2 restrictions.

3 So what we have is -- Mr. Rohan and
4 Mr. Claypool noted -- it's a complicated system
5 depending on your level of authority and how you
6 came into it and your ability to execute,
7 essentially, part of the sovereign power.

8 So, with that, if we're going to have an
9 effective local law, then those local laws
10 should be specifically tailored to complement or
11 to -- I guess complement what's already there.
12 We don't want it to conflict with it because we
13 know state law will govern, but I think that
14 what we have learned also is probably the most
15 important role -- and I know this from
16 experience over and over again with your
17 office -- is that education -- if we think about
18 the "ates" -- educate, facilitate, cooperate --
19 that is the most important role because if no
20 one is calling or if most of the -- you know,
21 complaints are unfounded, then that's probably a
22 win, right? I mean, if we're doing that, and
23 that -- hopefully that's through education.

24 So that -- I would like to ask Mr. Rohan,
25 when he gets back, to help us define that,

1 understanding who has the financial disclosure
2 obligation will be a part of that, and then for
3 Mr. Rohan to kind of help us understand which
4 laws apply to which of our agencies.

5 That might help this commission better
6 decide what we're going to do.

7 That's just commentary.

8 MR. CLAYPOOL: Mr. Chairman, just briefly,
9 up until -- unfortunately, the timing is not
10 good. Up until November, you could go online at
11 our website and see a list of everybody who's
12 supposed to be and what agency they're from --
13 who's supposed to be filing financial
14 disclosure.

15 But we had to -- we had to take that down
16 because we're compiling a list for next year, so
17 unfortunately we can't do that. But
18 generally -- but typically, you know, the forms
19 go out in May for local government people from
20 the supervisor's office and for the elected
21 constitutional people from our office.

22 Starting, then June 1, folks can go online
23 and see who has to file, whether the form was
24 received, what date the form was received. All
25 that information is out there. But we'll just

1 have to reconstitute the database and see what
2 we've got.

3 MS. MILLER: Mr. Rohan just informed me
4 that Ms. Miller has the list.

5 Is that correct? Do you have a list of --

6 MS. C. MILLER: (Nods head.)

7 MS. MILLER: -- everyone, even within the
8 independent authorities and --

9 Okay. So we can get that list. And then
10 Mr. Rohan can use that list to tell us which
11 laws will apply -- maybe working with Ms. Miller
12 to -- which laws already apply to all of our
13 employees, appointed, other -- other officials.
14 That might be helpful.

15 Thank you.

16 THE CHAIRMAN: Commissioners, I have nobody
17 else in the queue. Any more questions or
18 comments for Director Claypool?

19 COMMISSION MEMBERS: (No response.)

20 THE CHAIRMAN: Okay. Director Claypool,
21 thank you very much for making the trip and for
22 accommodating our slight rescheduling of your
23 order today. We very much appreciate it. We
24 appreciate your insight into this process for
25 us.

1 MR. CLAYPOOL: I'm always happy to talk
2 about this stuff and go on and on at length.

3 Thank you very much.

4 THE CHAIRMAN: Commissioners, we have ten
5 minutes left. We have to be out of here
6 promptly at noon due to Planning Commission
7 being in these chambers today.

8 I had anticipated that, at a minimum --
9 well, let's go ahead and do this because I think
10 we can get this done in ten minutes.

11 You have before you the proposed charter
12 amendment dealing with the financial impact
13 statement that we voted to approve last time as
14 put into formal language by Mr. Rohan. We did
15 vote on this concept last time, so I don't
16 anticipate we would take another vote on it
17 today, other than to ask if any commissioners,
18 having had a chance to review it, have any
19 questions of Mr. Rohan or Vice Chair O'Brien?

20 If anybody wants to take a minute or two to
21 read it, that's fine, but I'm not seeing any
22 questions or comments, so unless somebody -- we
23 have already voted on it, so unless somebody has
24 a concern or comment, we're going to just treat
25 it as final language to present to the council

1 in our report.

2 COMMISSION MEMBERS: (No response.)

3 THE CHAIRMAN: Okay. Thank you.

4 Again, moving on, we have the language from
5 Mr. Rohan addressing the revisions to the
6 veto -- the mayor's veto and the override of the
7 same relating to line item appropriations.

8 Again, we took a vote on this at our last
9 meeting and approved it. So, again, unless
10 there are any comments, questions for Mr. Rohan
11 or Commissioner Miller --

12 MS. MILLER: I'm fine --

13 THE CHAIRMAN: This is your motion.

14 Okay. Then I will treat this as final
15 language for our report.

16 Thank you.

17 And then moving to Commissioner Oliveras'
18 strategic plan concept, you have before you two
19 different versions, and I will ask Mr. Rohan, if
20 he's ready, to summarize the differences between
21 the two proposals.

22 MR. ROHAN: Thank you, Mr. Chairman.

23 The short form is along the line -- and it
24 was framed based on Mayor Austin -- Commissioner
25 Austin's comments, which simply simplifies it.

1 It puts in the charter a direction for the mayor
2 to create a strategic plan.

3 He has six months -- he or she has six
4 months to do that, and it encourages the mayor
5 who to meet with to build public consensus and
6 community consensus with and just leaves it to
7 the mayor and doesn't require any committee
8 action or a vote of any committee.

9 It will be up to the mayor to decide
10 whether to create a committee, whether to seek
11 to talk to these people independently, but it
12 directs the mayor to prepare a strategic plan.

13 That's the short form.

14 The long form is more in the line of the
15 comments that we got. Commissioner Oliveras'
16 first presentation of it, along with the
17 comments of various commissioners, I added
18 that. This incorporates virtually all the
19 comments that we had at the last commission
20 meeting.

21 It leaves the decision on the strategic
22 plan to be made by the mayor. It allows 90 days
23 to start, requests that it be completed in a
24 year, and it includes all of the managing
25 directors and everybody as people who can be on

1 the committee.

2 Since there will be no vote formally of the
3 strategic plan, it was felt that there should be
4 no limitation on who should be around the table
5 because the mayor can get input from all of
6 them.

7 Ultimately, what I would foresee would be
8 the mayor throwing either -- getting input at
9 first and then preparing a strategic plan and
10 then developing consensus with the committee on
11 it, but there would actually be no vote and it
12 would ultimately be the mayor.

13 So that's the difference. The long form
14 creates a committee structure; the short form
15 just encourages the mayor to get input from
16 everybody.

17 Thank you.

18 THE CHAIRMAN: Commissioners --
19 Commissioner Oliveras, I see you in the queue.

20 As a threshold question, do we want to
21 table this for our next meeting? Because I
22 certainly don't want to cut off any debate or
23 any expression of views.

24 Commissioner Oliveras, what is your
25 preference on that?

1 MR. OLIVERAS: Thank you, Mr. Chairman.

2 I -- my thought was -- and I appreciate
3 Mr. Rohan and his shop getting this together for
4 us.

5 I will tell you my -- my instinct is to go
6 with the short form version of this because it
7 allows -- it gives the mayor the necessary
8 latitude that he needs to get this done. It
9 doesn't put him in a box, it doesn't constrain
10 him; it allows this process to work.

11 And I just -- and I'm not trying to
12 pressure for a vote today, but I don't -- if
13 there isn't any opposition to this, I would
14 encourage us to move on the short form, the
15 short version of the strategic plan.

16 THE CHAIRMAN: Commissioners, your thoughts
17 on Commissioner Oliveras' proposal.

18 MR. FLOWERS: (Inaudible.)

19 MS. O'BRIEN: Second.

20 THE CHAIRMAN: Okay. We have a motion and
21 second to take up the language of the short form
22 today.

23 Any further discussion?

24 COMMISSION MEMBERS: (No response.)

25 THE CHAIRMAN: Okay. All in favor of

1 voting on it today.

2 COMMISSION MEMBERS: Aye.

3 THE CHAIRMAN: Opposed.

4 COMMISSION MEMBERS: (No response.)

5 THE CHAIRMAN: Okay. Motion and -- let's
6 go ahead and vote on the proposal itself.

7 All in favor of the proposed short form of
8 the strategic plan say aye.

9 COMMISSION MEMBERS: Aye.

10 THE CHAIRMAN: Opposed.

11 COMMISSION MEMBERS: (No response.)

12 THE CHAIRMAN: Mr. Clements will treat that
13 as unanimous, and I will incorporate this as the
14 final language for the report.

15 Thank you, Commissioner Oliveras, for your
16 leadership on this.

17 Thank you, Mr. Rohan.

18 Commissioner Catlett, would you like to
19 report on your staggering conclusions?

20 MR. CATLETT: The conclusions are, in fact,
21 staggering. After a great deal of work with
22 Mr. Rohan and Jerry Holland and our incoming
23 council president to be, Mr. Webb, the problem
24 is that it costs a great deal of money to have
25 an election every two years.

1 That's not to say it may not be worth it,
2 but it is to say that a large part of my
3 concerns were addressed by Councilman Webb's
4 bill that passed with a healthy margin in the
5 City Council to move the elections to the fall
6 of next year.

7 And that will be voted on, of course, on
8 this ballot coming up, so we'll know for sure,
9 but if his -- if his recommendation and the
10 action of the council is approved by the voters,
11 that allays a lot of my concerns about having
12 people who know nothing about a billion-dollar
13 budget suddenly making decisions.

14 Yesterday again I mentioned this to
15 Councilman Webb. He said he's still very
16 interested in staggering and after this next
17 election comes up, plans to take that up
18 additionally.

19 So this memo states where we are today.
20 I'd like to pass this information to the council
21 through the commission, along with the chart, so
22 that they have the benefit of the work that
23 Mr. Holland and Mr. Rohan have done in
24 organizing this, and then at a later time they
25 can a make decision on whether they want to

1 change the election cycle to accommodate
2 eliminating having such a turnover, but at least
3 we will have sent them the chart and the
4 information that ties to it.

5 So I'd like to recommend that the
6 commission take this as a part of its
7 recommendation, this report, and send it to the
8 council so that they can pick it up and look at
9 it and determine if that's what they'd like to
10 do.

11 THE CHAIRMAN: Is there a second?

12 MR. FLOWERS: Second.

13 THE CHAIRMAN: We have a motion and
14 second. Any discussion on Mr. Catlett's
15 proposal?

16 COMMISSION MEMBERS: (No response.)

17 THE CHAIRMAN: Just to clarify, we would
18 not be taking a position as a commission on any
19 method of staggering?

20 MR. CATLETT: Right.

21 THE CHAIRMAN: It's simply providing the
22 data and analysis.

23 Any discussion?

24 COMMISSION MEMBERS: (No response.)

25 THE CHAIRMAN: All in favor say aye.

1 COMMISSION MEMBERS: Aye.

2 THE CHAIRMAN: Opposed.

3 COMMISSION MEMBERS: (No response.)

4 THE CHAIRMAN: Mr. Clements will treat that
5 as unanimous.

6 MR. CATLETT: Thank you, Mr. Chairman.

7 THE CHAIRMAN: Thank you, Commissioner
8 Catlett. I appreciate it.

9 Thank you, Mr. Rohan.

10 We have a very short period of time, but
11 given the importance of the most recent handout
12 from Mr. Rohan, I would ask him to describe that
13 briefly. And also, I hope you have copies
14 available for the press.

15 MR. ROHAN: Thank you, Mr. Chairman.

16 I think I can summarize it very briefly,
17 that in 1934, when the Jacksonville
18 constitutional -- consolidation amendment was
19 established in our state constitution, it was
20 contemplated at that time that the citizens of
21 Jacksonville -- the legislature and the citizens
22 of Jacksonville could create a charter
23 government that was unlike any other charter
24 government in the state, and regardless of
25 legislative or statutory or constitutional

1 limitations could create a government for the
2 city of Jacksonville, consolidated city, that
3 was unlike any other government in the state.

4 Based on that 1934 amendment to the
5 constitution, the Jacksonville -- Jacksonville
6 was consolidated in 1967/'68. Thereafter -- and
7 our current system, our current charter was
8 established.

9 Thereafter, there was a series of events
10 that took place. The constitution was amended
11 in 1968, the constitution of the state of
12 Florida. The constitution was amended again to
13 create a judicial branch. Article V, which
14 completely controlled the judicial system -- up
15 until that time, the local governments could
16 actually control a good portion of the judicial
17 system and it was contemplated that the City of
18 Jacksonville could control its judicial system
19 prior to 1968.

20 Thereafter, you had the school board
21 constitutional amendment be placed in there.
22 And then recently, in the 2000s, we had the Cook
23 case which determined the issue of term limits
24 in our city charter, in our consolidated
25 government charter.

1 In the Cook case, a unanimous First
2 District Court of Appeal, three to zero, voted
3 that the charter controlled and that the
4 citizens of Jacksonville could create term
5 limits in the charter to control the elected
6 officials here.

7 That case was accepted by the Florida
8 Supreme Court, and in a four-to-three decision
9 the court determined, no, the constitution
10 controlled on the qualifications of candidates
11 for these constitutional officers and therefore
12 the local governments were not authorized to
13 pass additional qualifications, like term
14 limits, that were inconsistent with the
15 qualifications in the constitution.

16 So what we have, then, is a charter that
17 contemplated a very, very strong local
18 government and a very powerful charter for the
19 city of Jacksonville. Our constitutional
20 provision, the Jacksonville consolidation
21 amendment, the -- and our charter was
22 contemplated to be extraordinarily powerful for
23 the citizens of Jacksonville.

24 Changes took place in the constitution and
25 with the Cook case, and so therefore you have

1 very intelligent, distinguished, and respected
2 people on both sides of the fence thinking, yes,
3 it still controls with regard to school boards
4 and others who would say it does not.

5 Neither the General Counsel, nor I, nor
6 Mr. Rinaman or the school board is ultimately
7 going to make that decision. That decision will
8 ultimately be made by a court of competent
9 jurisdiction. It will at least go to the First
10 District Court of Appeal and will eventually,
11 probably, go to the Supreme Court. That's how
12 big that decision is.

13 So, therefore, to give you some guidance,
14 our advice is, the most certain way of amending
15 the charter is to first start with the state
16 constitution, have the state constitution
17 amended so that counties can make a decision for
18 themselves as to whether they want to have
19 elected or appointed school boards.

20 Once that's accomplished, then certainly
21 our county would be in a position to have a
22 referendum to take that vote.

23 Short of that, if this commission deems it
24 still appropriate to try and amend the charter
25 either through state legislative action or

1 through referendum, then you can reasonably
2 expect a very strong challenge -- you have heard
3 the witnesses before you, you have heard the
4 public discussion on this subject. You will
5 expect a legal challenge on that issue, and that
6 will be ultimately decided by the courts.

7 And given the Cook case, we can expect that
8 to be, at the least, a very difficult case. But
9 given the last Supreme Court decision, four to
10 three, on that subject, there's no assurance
11 which way the courts are going to rule on the
12 subject. So you should consider it primarily
13 based on a policy consideration. If it's legal
14 issues, those legal issues will be determined at
15 a future time.

16 And they will not be determined until such
17 time as this matter would actually go on the
18 ballot. We do not expect that anybody would
19 have the authority to file a lawsuit and to
20 prevent you from recommending or prevent the
21 City Council from considering the issue of
22 appointed school boards. Only when something
23 would be put on the ballot would that then be
24 right for determination by a court of competent
25 jurisdiction.

1 Be happy to answer any questions.

2 THE CHAIRMAN: Thank you, Mr. Rohan.

3 Commissioner Miller, I see you in the
4 queue, but we're five after and, as I said, we
5 have to be out of here by one o'clock for
6 Planning Commission. What I would suggest is
7 that we spend a week digesting this opinion and
8 come back and be prepared to talk about it next
9 week.

10 MS. MILLER: Just one quick procedural
11 question to Mr. Rohan?

12 THE CHAIRMAN: Yes.

13 MS. MILLER: So this is not a binding legal
14 opinion; is that correct?

15 MR. ROHAN: That's correct.

16 MS. MILLER: And it appears that the
17 General Counsel's Office has concluded that it
18 either doesn't have authority or won't make that
19 determination; is that right?

20 MR. ROHAN: That's correct.

21 The reason primarily is that such a
22 decision would impact third parties and would
23 not be binding on third parties. It's only
24 binding on the government and would not be
25 binding on the individual school board members.

1 And matters like this, just like matters of
2 referenda, usually need to be decided by the
3 courts because ultimately, even with a binding
4 legal opinion, it would ultimately be decided by
5 the courts.

6 MS. MILLER: So as a matter of just -- this
7 is a legal analysis and some policy
8 recommendations?

9 MR. ROHAN: This is a legal -- yes. That's
10 a correct statement.

11 MS. MILLER: So it's policy advice?

12 MR. ROHAN: Well, hardly.

13 Our policy advice is simply that if you
14 want to go forward, our best recommendation is
15 to go for the state constitutional amendment
16 first, and then --

17 MS. MILLER: Just clarifying. Just clarify
18 that this is not a binding legal opinion and
19 it's providing a legal analysis with some kind
20 of advice?

21 MR. ROHAN: That's correct.

22 THE CHAIRMAN: All right. Thank you,
23 Commissioners.

24 Thank you to all the commissioners who took
25 the lead on these items that we approved today.

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C E R T I F I C A T E

STATE OF FLORIDA:

COUNTY OF DUVAL :

I, Diane M. Tropa, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 1st day of February, 2010.

Diane M. Tropa