

CITY COUNCIL
CITY OF NEW YORK

-----X

TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON GOVERNMENTAL OPERATIONS

-----X

January 20, 2012
Start: 11:10 a.m.
Recess: 12:29 p.m.

HELD AT: Council Chambers
City Hall

B E F O R E:
GALE A. BREWER
Chairperson

COUNCIL MEMBERS:
Inez E. Dickens
Erik Martin Dilan
Domenic M. Recchia, Jr.
Peter F. Vallone, Jr.

A P P E A R A N C E S (CONTINUED)

Marjorie Landa
Deputy Commissioner for Legal Affairs
NYC Department of Investigation

David Koenigsberg
Partner
Menz, Bonner, Komar and Koenigsberg LLP

Neil Getnick
Managing Partner
Getnick and Getnick LLP

CHAIRPERSON BREWER: Good morning.

I'm Gale Brewer. I'm City council Member for the West Side, but also Chair of Governmental Operations. I'm delighted to be here today to talk about the False Claims Act, which I think was first introduced by Council Member Yesky [phonetic] in 2005—now the head of the Taxi and Limousine Commission. So we're having an oversight on this topic, the New York City False Claims Act. As I indicated, it was enacted by the Council in 2005 and modeled after the Federal Queencom [phonetic] Statute. The City False Claims Act is a tool for uncovering fraud against the city by enabling private individuals to bring lawsuits to recover treble damages three times the false claims submitted to the city. Today's hearing will examine the usage and efficacy of the city's False Claims Act since its enactment and seek to determine whether the law, which is set to expire on June 2012, should be renewed. In May 2005, the Council passed Local Law 53, which created this act. This act, like the federal False Claims Act it was modeled after is tended to protect and enhance the public coffers and save

1 taxpayer's money by uncovering fraud against the
2 city and by rewarding whistleblowers who bring
3 forth information about fraudulent claims.

4 Pursuant to the law, anyone who makes a knowingly
5 false claim or false statement that involves
6 payment or demand for payment from the city or
7 which deprives it of revenues in some way is
8 liable to the city for three times the amount of
9 the damages caused by the false claim and a civil
10 penalty of between 5,000 and 15,000 for each false
11 claim. In addition, the city's False Claims Act
12 seeks to encourage whistleblowers to uncover and
13 report fraud by enabling private individuals to
14 submit to the city proposed civil complaints
15 containing allegations of fraudulent activity and
16 rewarding them with between 10 and 30 percent of
17 any proceeds recovered by the city. In 2007
18 however, interesting enough probably based on
19 David Yesky's good work, the New York City
20 Legislature enacted the New York State False
21 Claims Act. Under the State False Claims Act
22 either the New York State Attorney General or a
23 local government, like us, may bring a lawsuit
24 based on false claims against the state or local
25

1
2 government. Like the Federal False Claims Act and
3 City False Claims Act, those found to have
4 defrauded the state or local government are liable
5 for treble damages plus a civil penalty. The
6 state False Claims Act also allows private
7 individuals to file actions on behalf of the state
8 and local government and to recover a percentage
9 of the proceeds of the case. Today the Committee
10 will examine the extent to which the city False
11 Claims Act has been used since its enactment in
12 2005 and how effective it has been as a tool for
13 uncovering fraud against the city. We will seek
14 information about the types of cases filed by the
15 corporal counsel under the city False Claims Act
16 and the outcome of those cases. We will seek to
17 determine the impact that the enactment of the
18 state False Claims Act has had on the usefulness
19 and appeal of the city False Claims Act to
20 potential whistleblowers. Finally, as the city
21 False Claims Act is set to expire this June, the
22 Committee will explore whether the law should be
23 renewed and if so, whether there are reforms that
24 should be adopted in order to enhance its usage
25 and efficacy. I want to thank Council Member

1
2 Dilan and always thank Seth Grossman, who is
3 attorney to the Committee and Tym Matusov, who is
4 the policy analyst and Will Colgrove from my
5 office. We'd be glad to have the speakers join us
6 at the podium. I believe from the Department of
7 Investigation, Marjorie Landa—thank you very much
8 for being with us today. It's on the back... Yeah -
9 - on the stem or the base. Thank you, Eric. Very
10 high tech.

11 MARJORIE LANDA: Very high tech.
12 I'm very high tech. Good morning, Chairperson
13 Brewer, Council Member Dilan and Committee Members
14 for the Governmental Operations Committee. I'm
15 Marjorie Landa. I'm the Deputy Commissioner for
16 Legal Affairs at the Department of Investigation,
17 and I want to thank you for giving the Department
18 of Investigation the opportunity to testify about
19 the importance of extending the city's False
20 Claims Act. DOI supports the continuation of this
21 law because it plays a vital role in helping to
22 prevent the city from being defrauded by
23 unscrupulous individuals. Under the city's False
24 Claims Act, people may bring evidence of false
25 claims for city funds to the attention of city

1
2 authorities and may receive a percentage of any
3 financial recovery to the city based on the
4 information they supply. DOI's experience with
5 the law in the six years since its enactment has
6 demonstrated that the law has functioned in the
7 way it was intended by both contributing to
8 financial recoveries to the city and by assisting
9 and thwarting misconduct and criminal conduct.
10 Under the city's False Claims Act, people who
11 believe they have evidence of false claims for
12 city funds are able to submit to the city a
13 proposed civil complaint along with all material
14 evidence in support of that complaint. The
15 proposed civil complaint must be submitted first
16 to DOI so that DOI has the opportunity to evaluate
17 whether the allegations suggest potential criminal
18 conduct and require further investigation and/or
19 that it is already the subject of a pending DOI
20 investigation. Where DOI determines that the
21 allegations and the proposed civil complaint do
22 not warrant further investigation and/or are not
23 the subject of a pending investigation, DOI
24 forwards the complaint to the law department and
25 informs it of DOI's determination. The majority

1
2 of the proposed civil complaints DOI has received
3 that fall in this category are referred to the law
4 department within a week or less after they come
5 to DOI. Where DOI determines that alleged
6 criminal conduct does warrant further
7 investigation or is already the subject of a
8 pending investigation and where DOI therefore
9 determines that the commencement of a civil
10 enforcement action by the city law department
11 would interfere with or jeopardize such
12 investigation, DOI promptly notifies the law
13 department of this determination.

14 Since the city's False Claims Act
15 went into effect in 2006 through the end of 2011
16 DOI received a total of 52 submissions under the
17 city's law; 22 of the 52 submissions were received
18 in the first four years after the law was enacted;
19 30 submissions were made in the past 2 years;
20 thus, there has been an increase in the number of
21 complaints filed with the city. In evaluating a
22 submission, DOI interviews the complainant and
23 relevant city employees and reviews the documents
24 submitted by the complainant and other relevant
25 records. As will be discussed in more detail, DOI

1
2 has opened six False Claims Act submissions for
3 investigation so far; four based on claims it
4 received in 2011, one based on a 2010 claim and
5 one based on a claim received in 2009. As you can
6 see from a summary chart that I provided with my
7 testimony, DOI received five submissions in 2005,
8 nine in 2007, three in 2008, five in 2009, ten in
9 2010 and twenty in 2011. So that's a total of 52.
10 As reflected in this chart of those 52 submissions
11 received between 2006 and 2011, 31 concerned
12 Medicare and Medicaid claims. In addition to
13 being commenced under the city's False Claims Act,
14 these Medicare and Medicaid proposed civil
15 complaints were generally also brought under the
16 federal False Claims Act and other state and local
17 false claims statutes in jurisdictions across the
18 United States. In the main, they were made
19 against pharmaceutical companies, healthcare
20 providers and medical goods suppliers and they can
21 a range of fraud allegations such as off label
22 marketing, overcharges and kickbacks. Thus far,
23 DOI has determined that none of these Medicare and
24 Medicaid proposed civil complaints allegations of
25 misconduct that either warranted further

1
2 investigation by DOI or that were already the
3 subject of a pending DOI investigation. Based on
4 the statutory scheme underling the Medicare and
5 Medicaid programs, criminal and civil
6 investigations and prosecutions of Medicare and
7 Medicaid fraud allegations are generally handled
8 by state and federal authorities. Indeed, the
9 Department of Justice had already been alerted to
10 most of the 31 Medicare and Medicaid cases prior
11 to DOI's receipt of the proposed civil complaints
12 because they had filed under the federal False
13 Claims Act along with the city's False Claims Act.
14 The remaining 21 submissions made under the city's
15 False Claims Act dealt with a broad array of city
16 activity, including construction, the purchase of
17 goods, city taxes and fees, environmental
18 compliance, housing and the provision of social
19 services. After careful review, 15 proposed civil
20 complaints were determined not to have been
21 appropriate for investigation by DOI for a variety
22 of reasons including because the allegations did
23 not describe criminal conduct, but rather
24 described disputes over contract interpretation or
25 statutory requirements and because of central

1
2 facts alleged were not accurate. DOI determined
3 that the facts alleged in six of the proposed
4 civil complaints constituted conduct that
5 warranted further investigation or that was
6 already the subject of an ongoing DOI
7 investigation. In several of these six cases, the
8 receipt of a proposed civil complaint was the
9 first notice that DOI had of the alleged
10 misconduct and potential loss to the city funds.
11 In these situations where the submission of a
12 proposed civil complaint was the first notice to
13 the city of the allegations, the city would not
14 necessarily have ever been made aware of the
15 misconduct that is the subject matter of these
16 complaints without the existence of the city's
17 False Claims Act. Significantly, DOI's ability to
18 promptly conduct an investigation in these cases
19 has already resulted in positive outcomes to the
20 city in the form of a recovery of funds and a
21 significant alteration of practices; thus
22 demonstrating how vital the first notice to DOI
23 under the city's False Claims Act is to the city.
24 In some of the six False Claims Act cases that DOI
25 opened for investigation, DOI was already involved

1
2 in investigations related to the claims that were
3 the subject matter of the proposed civil
4 complaints at the time the proposed civil
5 complaints were received. In those cases, the
6 city's False Claims Act requirement of first
7 service on DOI was critical to preserving the
8 confidentiality of ongoing criminal
9 investigations. While these matters involve False
10 Claims Act cases that under CO and investigations
11 that are currently open and ongoing and so they
12 cannot be specifically identified; it can be
13 reported that there have been multiple arrests and
14 convictions in one of these cases that may have
15 been jeopardizes absent the requirement that
16 proposed civil complaints be served on DOI. As of
17 today three of the six False Claims Act cases that
18 DOI opened for investigation or already had opened
19 for investigation at the time the proposed civil
20 complaints were filed have been closed, and DOI's
21 findings have been referred to the law department
22 for whatever action it deems appropriate. The
23 other three cases remain open for investigation
24 and possible prosecutions. In connection with the
25 six cases that DOI opened for investigation or

1
2 already had opened for investigation at the time
3 the proposed civil complaint was received, there
4 have so far been multiple arrests and convictions,
5 the recovery of money for the city and the
6 cessation of unlawful and improper practices. All
7 of these positive results were enhanced by and in
8 some instances entirely made possible by the
9 city's False Claims Act. Accordingly, DOI opposes
10 allowing the city's False Claims Act to sunset.
11 Although since the time that the city's False
12 Claims Act was enacted, the state also enacted a
13 False Claims Act that covers false claims against
14 the city, the state law does not provide for first
15 notice of proposed civil complaints to DOI. As
16 mentioned earlier, this notice requirement has
17 been instrumental in ensuring the positive
18 outcomes the city has achieved in certain cases
19 because it allowed early action by DOI. The
20 experience DOI has had with the False Claims Act
21 has demonstrated that the law has succeeded in
22 achieving the city's goals. We have particularly
23 seen these results in the last few years as the
24 existence of the city's law became more widely
25 known and the number of complaints filed has

1
2 correspondingly increased. We urge the Council to
3 take all necessary steps to see that the law
4 continues in its present form, so that the city
5 can continue to identify and prevent wrongful
6 conduct and successfully recover funds lost to the
7 city. Thank you for giving me the opportunity to
8 speak to you today. Please let me know if you
9 have any questions.

10 CHAIRPERSON BREWER: Thank you very
11 much, and we've been joined by Council Member
12 Vallone and Council Member Recchia, who have not
13 stopped talking since they arrived. We love them
14 both. We love them both. I do think I'm going to
15 take your testimony and I am going to frame it for
16 former Council member David Yesky. He will be
17 very pleased by your testimony. I have a couple
18 of questions and they my colleagues might. How do
19 you do—first of all, the good news is I think that
20 there are more cases than—in other words, either
21 the word is getting out or there's more
22 unfortunately opportunities to be a whistleblower.
23 I don't know how you want to look at it, but how
24 do you do education for the contractors and people
25 doing business and so on? How do the

1
2 whistleblowers know that there is or that they
3 could file under the city's law? In other words,
4 how do you do the education?

5 MARJORIE LANDA: My guess is that
6 at the end of the day the best education is going
7 to be the publicity some of these cases have when
8 they become public, particularly the cases that
9 are filed under the state and the federal law,
10 those as well as the city law, those are under
11 seal, and also, where you have a DOI investigation
12 and we're working with the prosecutor's office,
13 those are also going to be confidential, so none
14 of these things become public until the point when
15 they become public, so that means a relator
16 [phonetic] gets the money. That's going to be the
17 best publicity we could ever have for the statute.

18 In addition I do know that Council
19 Member Yesky while he was still on the Council did
20 some affirmative outreach to educate at least the
21 city workforce, and I'm not sure more. I think we
22 have the full false claims statute on DOI's
23 website, so if you're somebody who is concerned
24 about misconduct in city government, one would
25 anticipate you go to DOI's website, and might look

1
2 around. You'll see it right there. It explains
3 the provisions that would allow relator [phonetic]
4 to recover some money that might encourage a few
5 people to come forward who might otherwise not-

6 CHAIRPERSON BREWER: [Interposing]

7 I know we always hear about the federal law
8 because of the Department of Defense, you know,
9 Medicaid, we hear constantly about the opportunity
10 to come forward, and you know, it's a very risky-I
11 would think it takes a lot of courage to do it.
12 So how do you also-I mean, I assume you follow the
13 same procedures in terms of protection of the
14 whistleblowers-even in the situation where no
15 criteria is found to be able to proceed-

16 MARJORIE LANDA: [Interposing]

17 Yeah. Absolutely.

18 CHAIRPERSON BREWER: Just for my
19 own understanding, how does the protection of the
20 whistleblower take place, so I understand?

21 MARJORIE LANDA: Well, while the
22 matter is at DOI they are certainly covered by all
23 of the protections-

24 [crosstalk]

25 MARJORIE LANDA: --our complainants

1
2 and the law does protect complainants from
3 retaliation—actually, I don't know if there's a
4 specific here. The state and federal law do. I'd
5 have to take another look, but I assume we put
6 that into the city law because that is a real
7 concern. City employees to the extent that they
8 actually had a complaint would also be protected
9 because there's obviously a whistleblower law that
10 protects—

11 CHAIRPERSON BREWER: [Interposing]
12 I'm not so worried about them because there is a
13 law, but outside contractors—

14 MARJORIE LANDA: Right, and those
15 really come where you do have the multiple
16 complaints under the various jurisdictions, so for
17 sure there are very clear protections in the
18 federal and state law. And again, that has not
19 been triggers, so I can't point you to the actual
20 portion in our statute, but since we patterned it
21 on the federal statute, I would be surprised if we
22 didn't have something that—

23 [crosstalk]

24 CHAIRPERSON BREWER: Obviously you
25 haven't gotten any complaints about retaliation—

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[crosstalk]

MARJORIE LANDA: No, we have not.

We have not.

CHAIRPERSON BREWER: If you did,
then it would be a different situation.

MARJORIE LANDA: Right, and that
absolutely and part of the reason is while matters
are at DOI they are treated covertly and
confidentially, so people have that comfort, but
every whistleblower knows if they're going to try
to claim under a false claims statute, of course
their identities and what they've done will be
public, so you're right in being concerned that
that's a risk anyone takes who comes forward.

CHAIRPERSON BREWER: I know you're
not able to be specific, but can you give any kind
of number as to how much you have recovered from
the cases that you have brought forward and how
much just generally they have been settled for?

MARJORIE LANDA: I can't give you a
number in part because there are things that are
matters still under seal, so any answer I give you
would not be accurate, but I anticipate there will
be a point where it will be a matter of public

1
2 knowledge. It just isn't not now. This is partly
3 a function of the fact that we've gotten so many
4 complaints in the last couple of years, so really,
5 what we've been working on is fairly recent, and
6 that's why I'm in this odd position of only being
7 able to talk to you very generally about this.

8 CHAIRPERSON BREWER: And why do you
9 think the number has increased so much? I mean,
10 it's quite impressive.

11 MARJORIE LANDA: You know, I'm not
12 sure. I would like to think it's that people have
13 recognized that the laws out there, it - - takes a
14 while for the plaintiff's bar [phonetic] to figure
15 it out and individuals to figure it out. That's
16 the best I can guess. We're not doing any more or
17 less publicity than we always did.

18 CHAIRPERSON BREWER: Now I think
19 according to counsel to the Committee, the number
20 that you give is larger than—which is a good thing
21 because it means the law is being effective—than
22 what's in the annual report. Are you aware of
23 that?

24 MARJORIE LANDA: The law
25 department's numbers I haven't tried to reconcile

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

them—

[crosstalk]

MARJORIE LANDA: --but their numbers may not—I know when we compared numbers they're somewhat apples and oranges to the - - we count. They have larger numbers than we do in some respects because they're counting in complaints they get under federal and state law as well that have city concerns. We don't necessarily see those, if they're not really DOI matters. The bulk of those I believe from the law department are Medicaid/Medicare claims. And so they have larger numbers, otherwise they have smaller numbers than we do because we've had complaints come in that were ultimately withdrawn as whistleblower complaints, but we've kept looking at as DOI matters.

CHAIRPERSON BREWER: Okay, it might make sense to try to reconcile them, so that the public understand the apples and oranges.

MARJORIE LANDA: It actually—I could, but I'd have to give you names - - preparation for the testimony, I went through every one of our complaints and theirs and we know

1
2 where the discrepancies come in, and we know where
3 they all are.

4 CHAIRPERSON BREWER: Alright, well
5 that's good to know. In terms of the
6 coordination, could you be more specific 'cause
7 when the state law was enacted I think we should
8 give the Council credit and give you credit for
9 doing a good job and Council Member Yesky would
10 love the credit--former Council Member Yesky, but
11 the question is, how do you coordinate with the
12 state law now that it exists?

13 MARJORIE LANDA: Really the law
14 department coordinates with the attorney general
15 because that's where the nexus is; it's between
16 the attorney general and the law department on the
17 civil complaint side. DOI has its own
18 relationship with the attorney general, but it's
19 outside of the False Claims Act. We're not really
20 written into that--the state statute in the way
21 that the city law department is.

22 CHAIRPERSON BREWER: I have more--
23 Council Member Dilan that would like a quick
24 question. Thank you.

25 COUNCIL MEMBER DILAN: Thank you,

1
2 Chair Brewer and my question I believe was
3 originally asked by Council Member Brewer and I
4 believed answered and that was in terms of the
5 amount of the recovery, so I'll skip that, unless
6 you can talk about cases that already have been
7 closed and dealt with, but I would assume by your
8 answer, you probably can't, so if you can, you can
9 elaborate. If not, then I will accept your past
10 answer. Just looking at some of the data that I
11 see in the chart of our committee reports, there
12 seems to be an uptick in claims over the past two
13 calendar years, and just by taking a layman's look
14 at it, it would appear that the downturn of the
15 economy may have attributed to more attempts to
16 commit fraud and thus more claims. From your
17 position what do you attribute the uptick in the
18 past two years to?

19 MARJORIE LANDA: I have assumed
20 since DOI's—the number of complaints coming into
21 DOI I think has remained—it's increased over the
22 years, but with our outreach, but has not had the
23 same proportionate increase as the complaints
24 under the False Claims Act that is something
25 specific about the False Claims Act—either people

1
2 are more aware of it because the statue's been in
3 existence now for a while. I'm not aware of any
4 other reason that the number has increased. DOI's
5 anecdotal information doesn't show a great uptick
6 in complaints we see as an agency.

7 COUNCIL MEMBER DILAN: And the
8 numbers are low, I'll grant that maybe you don't
9 have the benefit of seeing the chart that I'm
10 looking at, but it shows 100% increase in claims
11 from 2009 to 2010 and 100% increase from 2010 to
12 2011, so essentially a 200% increase since 2008,
13 so that was the first thing that jumped off the
14 page.

15 MARJORIE LANDA: It jumped out at
16 us because we—you can see that chart I think
17 you're looking at is the one that we prepared, and
18 you know, we had years where we had very few
19 complaints, and as you can see from the detail
20 that the bulk of them were Medicaid/Medicare
21 complaints, so they were things that ended up not
22 being of interest and that was for many, many
23 years, and then as you correctly note in 2010 we
24 got a doubling in the number of complaints and
25 then it doubled again, so we've definitely taken

1
2 notice of that. I don't know—as I said, I don't
3 really a cause for it other than it's taken awhile
4 perhaps for the plaintiff's bar to know that this
5 statute is around because most of these complaints
6 do come in with an attorney.

7 COUNCIL MEMBER DILAN: I'm not
8 sure, Madam Chair, if the law department intends
9 to testify today. They may, they may not. I'm
10 not sure, but I noticed in our briefing report and
11 I guess you can answer as best you can, there
12 seems to be very few claims that were initiated by
13 the law department in terms of recovery, in terms
14 of Medicaid because the city basically would
15 expend funds and not receive any fiscal
16 compensation back for the initiation of the
17 complaint. Do you have any opinion on an
18 amendment of the state statute that would allow
19 city - - initiated cases to be—have some sort of
20 fiscal reward to the city for initiation?

21 MARJORIE LANDA: You know, I don't,
22 but it's not something that we've looked at or
23 considered before.

24 COUNCIL MEMBER DILAN: - - it's
25 only fair if the individual has the right make a

1
2 claim with the state on a false claim, I would
3 think the city would thus be entitled to the same
4 percentage.

5 MARJORIE LANDA: - -

6 COUNCIL MEMBER DILAN: - - statute,
7 but again, I'm asking only opinion.

8 MARJORIE LANDA: Yeah, but it's not
9 a question that I've considered or we've
10 considered as an agency, so it's certainly what
11 you say has an internal logic to it, and more
12 recoveries for the city in my opinion is only a
13 good thing.

14 COUNCIL MEMBER DILAN: Madam Chair,
15 I would recommend if you think it's acceptable
16 that that be part of the Committee's state agenda,
17 which we should be submitting to the state - - .
18 Aside from that, I think all my other questions
19 would have been more appropriate for the law
20 department, so I'll stop here, but I'd also let
21 you know, Madam Chair, that there are some private
22 law firms that are running private ads on the
23 radio in terms of citizens to file complaints. I
24 was wondering why and now I see the financial
25 incentive why those law firms bring that up, but

1
2 it is also a form of outreach, so I think it's
3 great, and should we as a Committee decide to
4 renew, I would gladly be a sponsor for your
5 information, Madam Chair. Thank you.

6 CHAIRPERSON BREWER: Are there any
7 particular types of cases that you believe are
8 more appropriate to be brought under the city than
9 the state law?

10 MARJORIE LANDA: From DOI's
11 perspective a case that's alleging criminal
12 conduct would be more appropriate to bring under
13 the city law because we do have this avenue to
14 have this come through the Department of
15 Investigation first so that it is a matter that
16 doesn't slowly get resolved as a civil complaint,
17 if there really are criminal--there's criminal
18 conduct that has been engaged in.

19 CHAIRPERSON BREWER: Okay. And do
20 you--I mean, I think we're picking up a little bit
21 about what Council Member Dilan is stating, we'll
22 have to see whether we can recover what - - is
23 ours and not just the states as another
24 discussion. We had mentioned that yesterday,
25 Council Member, when we were briefing on this

1
2 topic. I couldn't agree with you more, but the
3 question is, how do we encourage people--'cause I
4 notice in your testimony understandably--I don't
5 know if it's the attorneys involved or the
6 plaintiffs--the issue is where do you file, city,
7 state or federal? I guess in some cases people
8 will do whatever they think will benefit them the
9 most. So how do you encourage people to file with
10 the city I guess would be my question.

11 MARJORIE LANDA: With most
12 attorneys we're seeing now, they're filing in all
13 three places.

14 CHAIRPERSON BREWER: I would
15 imagine they do.

16 MARJORIE LANDA: You know, belt and
17 suspenders and chewing gum, I think. It's any
18 possible way they can make sure they're going to
19 be covered maximally and that only works to the
20 city's advantage because they include the city in
21 the claims. We have to get notice and that works
22 well, I believe.

23 [crosstalk]

24 CHAIRPERSON BREWER: It works well
25 for you to be included?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MARJORIE LANDA: Absolutely.

CHAIRPERSON BREWER: Okay, so that's one reason you think it's a good law is that that should be continued is that that obviously if it wasn't there then we wouldn't know what was going on? Is that the point that you didn't make directly in your testimony, but that is sort of what you're saying too.

MARJORIE LANDA: Well, that is the case because in some of the situations that I've recounted where we have had some successful outcomes, one in particular I can think of was in fact filed state and federal, all three jurisdictions had some involvement and interest, but the city thus far has been the one who has managed to recover funds, and this is one that is still under seal, so I can't speak about it anymore.

CHAIRPERSON BREWER: [Interposing] Well, that's interesting 'cause we wouldn't have guessed that in advance. Okay. And what's the sort of—maybe you don't know yet, but what's the average length of time of review of a proposed complaint before—you know, how long does it take

1
2 before notifying a private individual of the
3 city's determination of whether to pursue a case,
4 how long does it take? I know there were I think
5 15-

6 MARJORIE LANDA: [Interposing]

7 Right. There are statutory requirements so that
8 the relator needs to get periodic notice of the
9 status so they will know first that DOI has
10 received it, they'll know it's at the law
11 department and then they'll be told about just in
12 terms of status that it's under review, that it's
13 still pending, or that the city has determined to
14 commence an action. All those things are required
15 in the statute with the set number of days.

16 CHAIRPERSON BREWER: So the 15 that
17 you mentioned that were closed because there
18 wasn't enough information that took a year, two
19 years? I mean, just generally the time period.

20 MARJORIE LANDA: DOI's
21 investigations can be very quick, you got a
22 complainant in, you hear from them within a few
23 days, you look at the documents, you realize this
24 really a contract dispute; it's not an allegation
25 of real misconduct. It can go over very quickly.

1
2 Other matters, I can think of one that came in
3 that was an ongoing investigation with federal
4 authorities that had been going on for a while; it
5 continued for quite a while before it was in the
6 position to reach a resolution, so there's no-

7 CHAIRPERSON BREWER: [Interposing]

8 It depends.

9 MARJORIE LANDA: It depends is the
10 answer.

11 CHAIRPERSON BREWER: I know you
12 mentioned that it should be extended; you're
13 supportive. Are there any reforms that you think
14 could be made with an extension?

15 MARJORIE LANDA: I think we're very
16 pleased with the way it's functioning-

17 CHAIRPERSON BREWER: Oh, Mr. Yesky
18 is going to be so happy. And do you think that
19 the coordination that goes on with the state and
20 the federal is something that is also going well?

21 MARJORIE LANDA: It is-

22 CHAIRPERSON BREWER: [Interposing]
23 - - office and wherever you're working with on the
24 federal level.

25 MARJORIE LANDA: For DOI I can say

1
2 I can't speak for the law department, for DOI,
3 it's gone quite well and I believe that the law
4 department has constant communications with the
5 attorney general as well through the state
6 statute. I've certainly heard about a number of
7 them in any event, but for DOI as I've said we've
8 got ongoing relationships with the attorney
9 general and the federal authorities and so that we
10 are—we work very well with them.

11 CHAIRPERSON BREWER: - - did
12 mention that there were—I have to say I think
13 being a whistleblower is like I said earlier a
14 very courageous act and the individuals who come
15 forward and it hasn't been determined to be
16 something that can be followed up on for whatever
17 reason, do you think that it needs to be explained
18 even though it's on your website more to
19 individuals or do you think those people have the
20 best intentions in the world and there just wasn't
21 correct information to be able to pursue those
22 chases? In other words, do you think we need to
23 clarify what it is we're looking for or do you
24 think that's already clear?

25 MARJORIE LANDA: I think it's

1
2 fairly clear. I think people have a wide range of
3 understanding about things and what would make an
4 appropriate complaint, and also recognize that
5 even if DOI says, we don't think this is a matter
6 for our investigation, it may well be a very good
7 complaint of the city to bring to recover funds.
8 It's just not something that DOI would
9 investigate. We have a particular jurisdiction
10 and we will give to the law department obviously
11 anything that is a civil matter. They're
12 resolving civil disputes over contracts and a
13 variety of other matters every day, so just
14 because it's not a DOI matter doesn't mean it's
15 not a really good matter for the city to be
16 resolving.

17 CHAIRPERSON BREWER: And you
18 mentioned obviously Medicaid is one we hear about
19 constantly—are there other - - environment. I
20 know you can't be specific as to some of the other
21 areas. Are there again—how does it work if you
22 could help me again with the Medicaid issue?
23 Obviously, the state is you know—I want to follow—
24 we will follow up on Council Member Dilan's issue
25 about—'cause we have a Medicaid bill in the city

1
2 of New York that's in the billions as you know. I
3 think anytime somebody defrauds us, they're
4 obviously defrauding the taxpayers, state, city
5 and federal to be honest with you. Are other
6 jurisdictions involved in other financial matters?
7 In other words, Medicaid is clear, three
8 jurisdictions involved et cetera, but are there
9 other recovery situations—I guess this may be law
10 department in addition where there would be a
11 division of where the funding might go? I'm just
12 trying to think about this money issue as opposed
13 to criminal. There are two issues. We want to
14 get rid of the problem and we want to get money
15 for it. So on the money front that may not be as
16 much of an expertise, but how do they get divided
17 up if one finds that one is created an act of...?

18 MARJORIE LANDA: I think this is
19 the sort of thing that the law department deals
20 with quite a bit because they're constantly
21 recovering funds in a variety of areas that are
22 for programs that are state, federal and city
23 funded and they have some way of apportioning them
24 I assume, but I'm really speaking out of my
25 expertise now.

1
2 CHAIRPERSON BREWER: - - unable to
3 testify today. Alright, any other questions? - -
4 else? Thank you very much, and I appreciate it,
5 and as I indicated, former Council Member Yesky
6 will be very pleased. We really appreciate the
7 work you put into this.

8 MARJORIE LANDA: Thank you very
9 much, and I really thank the members of the
10 Committee and particularly for your interest in
11 this because I think this was a good bill and it
12 is helpful to the city.

13 CHAIRPERSON BREWER: Thank you very
14 much. We'd like to call David Koenigsberg
15 [phonetic] and Neil Getnick [phonetic] please to
16 the podium. [pause] Go ahead whenever you wish,
17 whoever would like to go first.

18 DAVID KOENIGSBERG: I actually do
19 have copies - - . I don't know if you want to
20 hand it up or...

21 CHAIRPERSON BREWER: The sergeant
22 at arms will. Thank you.

23 DAVID KOENIGSBERG: Good morning.
24 My name is David Koenigsberg. I want to thank
25 Chairman Brewer and Council Members Dilan and

1
2 Recchia for inviting us to come speak and for this
3 opportunity. I'm a partner in the law firm of
4 Menz, Bonner, Komar and Koenigsberg New York and
5 I've been litigating False Claims Act cases since
6 1990 and in fact, the first case I did was with
7 Neil way back when I was an assistant U.S.
8 attorney in the southern district of New York on
9 behalf of the federal government and since 1999,
10 I've been in private practice representing
11 whistleblowers in - - False Claims Act cases.
12 I'm pleased to come and give you my thoughts about
13 the renewal of the New York City False Claims Act,
14 but I also want to say at the outset that I've not
15 had a case under the New York City statute, mostly
16 because the opportunity hasn't presented itself.
17 Most of the cases that come our way are healthcare
18 fraud that involved Medicare and Medicaid, but I
19 always have my eye out for a case where the city
20 alone is a victim. When the New York City Act was
21 passed in 2005, I was encouraged that the city did
22 so. It sent an important signal to persons and
23 entities doing business with the city and persons
24 who have information about schemes to cheat the
25 city of money had a powerful incentive to come

1 forward and report that information. Chairman
2 Brewer, your comment about the courage of the
3 whistleblowers is well noted, and they do take a
4 lot of risk when they come forward, and the
5 monetary incentive is very important because
6 people risk termination of employment, ostracism,
7 inability if they have been fired, difficulties in
8 finding a new job if they have been a
9 whistleblower, so it's very important to have
10 provided that incentive. And the other thing is
11 that having a - - statute provides a deterrence to
12 the people doing business with the city to make
13 sure that they do the right thing. I think that's
14 important. Everybody talks about the recoveries
15 for whistleblowers, but I think also there is a
16 deterrent effect, which saves the government a lot
17 of money; however, when I reviewed the law - -
18 past I was not certain how effective it would be.
19 Unlike the federal statute, the law did not permit
20 a relator to file a case directly in court at the
21 outset. Instead, the relator had to give the city
22 the opportunity to review the complaint and
23 relator's information and if the court counsel did
24 not want to take the case, the relator could not
25

1
2 proceed unless the corporation counsel authorized
3 the relator to do so. While this was appropriate—
4 certainly, it's appropriate to provide the city
5 the opportunity to screen a case; it also gave the
6 corporation counsel a powerful role as a
7 gatekeeper - - does not exist in the federal
8 statute. In addition, the inability of the
9 relator to begin an action right away by filing
10 the case in court under seal as is the procedure
11 under the federal law, it creates the potential
12 for later case to be subsequently dismissed on
13 statute of limitations grounds. Sometimes people
14 come to us and there may be a short time frame.
15 If you don't get - - statute of limitations, so
16 from a - - point of view, that's an important
17 consideration. In 2007 when New York State passed
18 its own False Claims Act, it was clear that the
19 city's action two years earlier gave substantial
20 impetus to that. The state Act as you permits a
21 whistleblower to file a case on behalf of the
22 state government and/or local governments
23 including the city. In my view, the statute—New
24 York State statute overlaps the scope of the
25 city's law and the statute of limitations problem

1
2 that may arise, it's not an issue since the
3 relator files the case in state court under seal
4 and then serves it on the attorney general, who in
5 turn, notifies the city law department that the
6 city is an alleged victim in the case. But the
7 state statute does not give the New York attorney
8 general or the city a veto over a case if they
9 state or city does not wish to pursue the
10 relator's claims. If the state or city declines a
11 case, relators have the right to pursue their case
12 on their own, and unlike the city law, it permits
13 the relator - - alone, which only permits the
14 city--the relator the - - only with the court
15 counsel's blessing. As I've stated the passage of
16 the New York False Claims Act in 2005 provided
17 powerful impetus for the passage of the state law
18 two years later and was extremely important in the
19 evolution of false claims act laws in states and
20 other jurisdictions around the country. In my
21 personal view in light of the overlapping coverage
22 of the state statute, there is a case being made
23 that the city's law in its present form is
24 unnecessary. The provisions of the state law
25 adequately permit a relator to file a case on

1
2 behalf of the city to recover monies obtained from
3 the city by means of false statements or records.
4 I would suggest that the laws to be renewed, it
5 should be amended and I can't say how 'cause I
6 know there's issues with state and city law here
7 to permit the relator to have direct access to the
8 courthouse and to decide whether to proceed with
9 the case when the Corp Counsel has declined to
10 intervene. If those changes are not made as a
11 petitioner as a practitioner, I would see little
12 reason to file a case under the New York City law
13 when the New York State law is available as an
14 option. Thank you for the opportunity to share my
15 views with the Committee, and I'm available for
16 any questions you may have.

17 CHAIRPERSON BREWER: Thank you very
18 much.

19 NEIL GETNICK: Good morning,
20 Chairperson Brewer. I'm very pleased to be here.
21 Members of the Committee on Governmental
22 Operations, Counsel Grossman and staff. I'm Neil
23 Getnick, the managing partner of Getnick and
24 Getnick LLP. I'm also the chairperson of
25 Taxpayers Against Fraud, which is the leading

1 national advocacy organization for the False
2 Claims Act and other whistleblower laws with
3 citizen provisions, but I'm hearing and testifying
4 here today in my individual capacity. This
5 statute enlists private citizens as sources of
6 information about fraud and empowers their
7 attorneys as Special Assistant Corporation Counsel
8 helping the city to recover defrauded funds and
9 for their efforts, private parties are entitled to
10 receive up to 30% of the recovery as an award.
11 I've been asked to testify about the efficacy of
12 the act, whether it should be extended and
13 recommended changes, and I'll do so, but first I
14 do want to acknowledge David Koenigsberg, who I'm
15 very, very proud of to sit alongside. In our
16 first major case filed as a firm, which I think,
17 David, was at the time the largest recovery under
18 the federal False Claims Act. It was a \$182
19 million recovery in 1997 in the southern district
20 of New York. David was the assistant U.S.
21 attorney on that case, and it really was a great
22 example of a public/private partnership and also a
23 friendship that I'm happy we share today, and we
24 didn't know we'd be sitting side by side, so thank
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

you for that opportunity.

CHAIRPERSON BREWER: We'll take a photograph.

NEIL GETNICK: Okay. You are actually taking a photograph. You know, I really want to start out by just saying this is a time to celebrate the passage of this law, which was passed in 2005. Chairperson Brewer as you pointed out, David Yesky was the principle sponsor of the bill. I note that Council Member Recchia, who was here earlier, was also one of the original post-sponsors, but the purpose right from the beginning was to enact legislation that was modeled on the federal False Claims Act to enhance the city's ability to recover the substantial costs incurred in protecting taxpayers against such fraud, and I'm very proud that I was able to play a part alongside Council Member Yesky in the drafting of the bill, testifying at the hearing as well as being present for the signing ceremony. I think that it's important to recognize that this was groundbreaking legislation. You know, sometimes it's just sort of hard to take the long view of what are we accomplishing day in, day out, but

1
2 this Committee and this Council passed
3 groundbreaking legislation that set the stage for
4 the enactment of the New York State False Claims
5 Act and it was the New York State legislature
6 which followed that lead two years later that has
7 now provided New York State with the most robust
8 law in the nation. The history goes way back. I
9 mean it goes back to President Lincoln. It's
10 known as the Lincoln Law. He saw what was going
11 on—the same thing that is going on today was going
12 on in the 1860s with the feds contractors not
13 giving government a fair shake and so he called
14 for the passage of this law, and it's worked
15 extraordinarily well, and it's also somewhat
16 fitting that this is the timing of today's hearing
17 because next week, the DOJ, the Department of
18 Justice, will be holding a 25th Anniversary
19 celebratory event marking the passage of the 1986
20 amendments that defined the modern federal False
21 Claims Act. All of this is built on the principle
22 of empowering citizens who have unique knowledge
23 of fraud on the government to bring suit through
24 their counsel in the form of public/private
25 partnership with government to recover stolen

1
2 taxpayer funds. That's quite exception for the
3 opportunity of private citizens to join with our
4 government hand in hand to protect taxpayers. In
5 the federal case, it's treble damages plus
6 attorneys' fees and expenses and \$11,000 per
7 claim, and it's worked extraordinarily well, and
8 it's worth mentioning that because it's analogous
9 to what has happened already and the future
10 potential for the city law. For one thing, it's
11 returned \$15 in recovered funds for every dollar
12 the government has invested in enforced and the
13 recoveries have been more than \$30 billion since
14 1986. Picking up on your point, Council Member
15 Dilan, in terms of what's happened more recently,
16 in the last year alone--so \$30 billion over 25
17 years--in the last year alone, more than \$3 billion
18 was recovered and Taxpayers Against Fraud predicts
19 that in the year ahead based on the cases that are
20 lined up, more than double and perhaps, triple
21 that amount will be recovered this year alone.

22 So how do you look at the New York
23 City False Claims Act with all these other laws
24 out there and we talked about the state law and to
25 what extent it may have surpassed it to some

1
2 extent. I don't think that's the way to look at
3 it. I see it as part of rich, legislative
4 tapestry that has interlocking whistleblower laws
5 with citizen initiative provisions that together
6 make for a very powerful and synergistic
7 combination. You have the federal False Claims
8 Act, you have state False Claims Acts, including
9 the New York State law, which is the most robust
10 such law in the nation, you now have the SCC and
11 SFPC Securities Exchange Committee-Commission, and
12 rather the - - Futures Trading Commission
13 whistleblower laws. And then you have the IRS
14 whistleblower law as well.

15 One of the cases that Counsel Landa
16 was referring to was one of ours. It was a case
17 against GlaxoSmithKline. It was a Medicaid case,
18 and when we filed it, we filed it under the
19 federal law in Boston in the U.S. Attorney's
20 Office there, but using supplemental jurisdiction
21 also doing that pursuant to state False Claims
22 Acts and the New York City False Claims Act as
23 well as the Chicago... And the case was enormously
24 successful. It was brought in at the end of last
25 year. It was a \$750 million recover global, 600

1
2 million civil, \$150 million criminal fine, and
3 there was a specific share back to New York State
4 of 21 million—I'll be very specific--
5 \$21,123,039.35, and a significant portion of that
6 was on behalf of New York City. So while it's
7 true that the city may not have literally
8 participated in that case because of the fact of
9 the pass through phenomenon that the recovery is
10 passing through to the state and so it defers to
11 the state to pursue such matters. It is very,
12 very helpful to have these multiple approaches to
13 go after these frauds. What I was referring to is
14 that as Counsel Landa pointed out, typically what
15 will happen is the city will decline under the
16 city law because whatever is recovered is going to
17 pass through to the state and there's an
18 expenditure.

19 I'm going to maybe sort of
20 interrupt my remarks because I'm very intrigued by
21 the question that you raised, Council Member
22 Dilan, about whether something can be done to
23 incentivize the city to be able to do work in this
24 area because there are resources that it has to
25 add, but it doesn't make sense to do that if it's

1
2 all cost and no benefit. One thing that occurs to
3 me, and I think we need to give some more through
4 to it—I have not thought about it until you asked
5 your question earlier this morning—is that adding
6 a provision to the statute that would make the
7 city's expenditures on enforcement recoverable,
8 and so we can ask ourselves, is there a precedent
9 for that? Yes, there's a precedent for it and
10 it's already built into the False Claims Act
11 statutes. It says that when a private citizen
12 initiates a case, they're entitled their share
13 plus attorneys' fees and expenses, and therefore,
14 by analogy, it would seem to me that the
15 government could include a provision that would
16 allow the government to recover their share of its
17 expenses as well. It seems only appropriate in a
18 fraud matter if the government has to expend
19 resources that it should be compensated for that
20 and not be at a net loss. Now if you were to do
21 that—I should point out—you'll be on the leading
22 edge again. I don't think that any such provision
23 has been included in a False Claims Act law to
24 date or any of the other whistleblower laws I made
25 mention of, but I think it's certainly something

1
2 worth considering and it would be valuable from
3 the standpoint that if DOI is going to be involved
4 in such cases, if corporate counsel is going to be
5 in such cases to be able to have a source of
6 potential recovery for those expenditures.

7 To some extent, and it's been
8 mentioned already this morning, the New York City
9 FCA has been subsumed to some extent by the state
10 FCA because the state FCA takes into account all
11 governmental levels—state, county, town, city and
12 village. That doesn't mean that the city law has
13 outlived its usage. For one thing, the statute of
14 limitations by virtue of the fact of its earlier
15 passage reaches back further in time than the
16 state law. And the existence of the act also
17 provides a vehicle for the New York City
18 government to cherry pick, which cases in which it
19 wishes to involve itself. So here are examples—
20 let's say there is a significant municipal
21 corruption case. You want court counsel and DOI
22 to retain the option of joining that case rather
23 than being pushed to the side because it was filed
24 elsewhere. Let's say there's a significant rip
25 off of city government by corrupt contractors.

1
2 Again, you want Corp Counsel and DOI to retain
3 that option there as well.

4 So what type of recommended changes
5 might we consider? Well, there have been changes.
6 That's not a criticism of the 2005 act. When it
7 was passed in 2005, it was state of the art, but
8 there have been a series of changes that have
9 taken place across the board. In the federal act,
10 there were the 2010 Fraud Enforcement Recover Act
11 and the 2011 Patient Protection and Affordable
12 Care Act amendments, but really interestingly, we
13 don't have to look any farther than New York State
14 because the 2010 amendments of the Fraud
15 Enforcement and Recovery Act in New York State
16 created the most robust False Claims Act in the
17 country—more than any other state and frankly,
18 more than the federal law this time.

19 Interestingly, when this is now debated in
20 Congress, people look to the state act New York as
21 a model. I'm not going to speak about that in
22 detail, but I will submit in writing some of the
23 more nuanced aspects of that, but it speaks to
24 improvements in the area of public disclosure, in
25 the clarification of pleading standards, broader

1 anti-retaliation provisions across - - industries
2 as opposed to individual companies that protect
3 whistleblowers and also—and this is something that
4 I really think you need to give some attention to—
5 the lifting of the tax bar [phonetic]. Typically,
6 false claims acts have excluded tax cases. New
7 York State in 2010 lifted that bar, and that has
8 really changed the landscape. Right now New York
9 City had and has the traditional tax bar. It is
10 something that you might wish to consider doing as
11 well. I could tell you that over the years it's
12 been very interesting being a private
13 practitioner. Had someone come to us before 2005
14 and said, I have a case that involved New York
15 City, and we'd tell them, well, there's no means
16 to pursue that or if someone came to us before
17 2007, and said, I have a case that involves New
18 York State, and we said, there's no means to
19 pursue it. And now there are. I can tell you
20 there are people who come. They want to pursue
21 tax cases, so it is really something that it's
22 real and worthwhile I think from a point of
23 consideration. David raised a very interesting
24 point—one that usually I speak with great fervor
25

1
2 about—and that’s the right to proceed if the
3 government declines, and I think he is correct. I
4 think the statute would be improved by giving
5 relators and their counsel the right to proceed if
6 the case was not declined. The fact of the matter
7 is, it’s probably less of an imperative now in New
8 York City by virtue of the fact that you have the
9 overlapping state statute, so if someone were to
10 file simultaneous actions in New York State and
11 New York City, they would likely retain the option
12 to continue working the case from the state
13 perspective which would overlap with the city.
14 You had asked a question, Chairperson Brewer,
15 earlier about the choice of law and as Counsel
16 Landa pointed out, the laws are just not mutually
17 exclusive - - , so the best approach both in terms
18 of prudence and also efficacy is to file across
19 the board and not only does that provide
20 supplemental jurisdiction. I just want to go back
21 to one last point, and that is taking full
22 advantage of this public/private partnership.
23 What it allows is for the various synergies to
24 develop and the various governmental units that
25 can work on these things, and one of the real

1
2 problems in existing law enforcement and more
3 generally I think in life - - in government is
4 that not everyone plays well in the sandbox
5 together and we're very fortunate in New York.
6 DOI in particular has been able to reach out and
7 take full advantage of the Manhattan and other
8 local district attorney's offices, the southern
9 district of New York, eastern district of New
10 York, and we've seen these really rich and
11 powerful cases that have been developed with those
12 overlapping resources, and what we're seeing now
13 is the ability to also have that type of
14 relationship with the state AG. The state AG not
15 only has its Medicaid fraud control unit, but last
16 year, created a taxpayer protection unit to
17 specifically work on False Claims Act cases that
18 are not Medicaid related. You also now have the
19 Securities and Exchange Commission also becoming
20 involved. So there's lots of opportunity for the
21 city to be working alongside and for private
22 citizens to be working alongside each other and
23 creating these very powerful teams. So I just
24 want to conclude by saying I think this is a real
25 point of pride in addition to hopefully extending

1
2 the legislation. I think everyone should take a
3 moment just to compliment themselves and the City
4 Council and its foresight in passing this law back
5 in 2005. It's still valuable. It should be
6 expanded. I think it would benefit by being
7 conformed with the New York State FCA to take
8 advantage of the legislative improvements that
9 have developed over time. I want to thank the
10 Committee for the opportunity to appear and really
11 for your taking a serious examination in
12 determining whether and how best to extend this
13 law.

14 CHAIRPERSON BREWER: Thank you
15 both. I can see why you both get along with each
16 other, and it's really an honor and a pleasure to
17 have you testifying and also to have put so much
18 of your professional and personal lives into this
19 discussion because it certainly helps government
20 and it's a huge asset to all of us that you put
21 the time in, not just now, but in the past. So I
22 thank you 'cause I know it's a lot of time
23 involved. I really appreciate it. I just have a
24 question which is do you think that the increase
25 in numbers that was brought to our attention by

1
2 DOI, is that based on good education, is it based
3 on the fact that people are realizing this is
4 something is to their benefit? It was a pretty
5 hefty number in terms of the numbers of cases that
6 have grown in the city's law, so I'm just
7 wondering why you think that took place, and will
8 there be more? I appreciate all you're saying and
9 we will certainly take everything under
10 consideration, but I was just please that the
11 numbers were increasing.

12 NEIL GETNICK: Well, I like that
13 question because it gives me a chance to quote my
14 dad. It's Getnick and Getnick. My dad is the
15 first Getnick and I'm the second Getnick. He's
16 passed on, whenever I quote him I feel very good.
17 Dad used to say, "Nothing succeeds like success."
18 That was really true of the False Claims Act. As
19 the act proves successful and as these recoveries
20 are made, people understand that these
21 opportunities are before them, and really
22 something very major has happened at least during
23 my lifetime. I actually had the interesting
24 experience of meeting at the end of last week with
25 Ralph Nader, who is a mentor of mine, together

1
2 with my daughter. Remember Ralph Nader actually
3 was involved in the consumer movement before he
4 ran for president. A lot of people have forgotten
5 that—

6 CHAIRPERSON BREWER: [Interposing]
7 I worked with Mark Green. How could I not know
8 it?

9 NEIL GETNICK: Well, yes. Very,
10 very true. And we were talking about the fact
11 that there was a conference held back in the early
12 '70s on whistleblowers and it was like a horror
13 story account of people who literally had martyred
14 themselves figuratively—not really literally—
15 figuratively to bring these matters forward
16 without any standing whatsoever. Their careers
17 were ruined. Their lives were ruined and they
18 basically had one day in DC - - everyone say, you
19 know, we really appreciate what you're doing. Go
20 home now. The metric has changed. People
21 literally now can sort of look at this and say, I
22 may never work in my company again, even though
23 their entry into retaliation laws. I may never
24 work in my industry again, even though there's
25 protections at least on the books, but practically

1
2 speaking when you come in and no one will talk you
3 and no one will interact with you, it's just a
4 very, very difficult thing. And they can do the
5 math and say, you know what? It may still provide
6 worthwhile. And so, what I think you're seeing is
7 that there are better laws. They allow for
8 greater opportunities and there are larger
9 recoveries that people can look to and the
10 combination of those things along with the
11 education that goes along with it I think is
12 encouraging these cases, and you're seeing it in
13 the numbers.

14 CHAIRPERSON BREWER: Thank you.

15 Council Member Dilan?

16 COUNCIL MEMBER DILAN: First, I'd
17 like to thank both of you gentleman for coming in
18 to testify on the subject and just wanted an
19 opinion. We have testimony in writing from the
20 law department about 17 cases that remain open and
21 ongoing consideration and just an opinion on how
22 those cases would be affected should the statute
23 expire?

24 DAVID KOENIGSBERG: Well, I did
25 read the statement from the City Council and—from

1
2 the law department I mean—and I was stricken by
3 the comment to the extent that there are cases
4 that are—that were not parallel with the federal
5 state filing that they would be possibly
6 jeopardized because there would be no authority to
7 pursue them once the statute—if the statute
8 expired. So I think that's a very significant
9 consideration, and that's part of my having been
10 on the government's side of handling these cases,
11 I know some of the obstacles that is—you know, the
12 DOI you have when you're trying to sort out the
13 facts and make a determination whether you should
14 proceed or not and you're not always—I don't want
15 to be critical of anyone, but there are
16 bureaucracies that have a vested interest in the
17 pogroms that they administer and sometimes they
18 don't want to be shown up that they were maybe
19 through no fault of their own, but they were
20 cheated and they somehow didn't catch it before it
21 had to come through the - - whistleblowers, so
22 sometimes I experienced when I was an assistant
23 U.S. attorney some reluctance on the part of the
24 agencies to support our investigation. So that's
25 why I feel that it really needs to be—you have to

1
2 be able to provide the relator the opportunity to
3 put a marker down right away that they can go
4 forward if the agency doesn't—if the city doesn't
5 proceed for whatever reason. I do think that's a
6 serious concern.

7 COUNCIL MEMBER DILAN: I agree with
8 your assessment that should the law department
9 decide not to pursue that an individual should
10 have the right to pursue in court, so I just want
11 that to be noted for the Chair for the record;
12 however, I do believe that the city statute should
13 remain because I think they're wrong [phonetic],
14 and I can think of a certain case in recent
15 history that involved a payroll contractor—I'm not
16 certain that the state may have had the interest
17 in recovery. That one case could lead to
18 potentially the recovery of several hundred
19 millions of dollars. I'll leave it broad there
20 'cause that may still be under investigation and I
21 think the Chair may know what I'm alluding to, but
22 you know, certainly I would like the city and the
23 appropriate city agencies to still be able to
24 pursue that, which is why I was concerned about
25 the 17 remaining open cases, and it certainly

1
2 could hamper that if this statute weren't to
3 remain in effect, so I do believe it's necessary
4 that it continues 'cause as we know in history
5 unfortunately, these type of things tend to repeat
6 themselves and if god forbid, this statute weren't
7 around and the city didn't have the authority to
8 do so, and even though legally the state will be
9 able to pursue it, everybody in my opinion—and I'm
10 not a lawyer—but everybody I think interprets the
11 law differently or has different priorities or
12 motivations that would give another entity a
13 chance to seek their own priorities. So that's
14 just my opinion. Mr. Getnick, I wanted to just
15 have a brief discussion about the numbers and the
16 trends that we spoke of earlier. My gut feeling
17 tells me it's got to be the economy. I just feel
18 that people are unfortunately under tremendous
19 economic duress and that unfortunately leads them
20 to some bad decisions; thus, the uptick in
21 complaints because there are people that certainly
22 witness what is going on and certainly reporting
23 it, and I hope that's all it is, but with this
24 tool out there, which would seem to be a deterrent
25 on fraud, your opinion as to why you think the

1
2 numbers are going up if this is actually a
3 deterrent, which I believe it is?

4 NEIL GETNICK: Well, I agree with
5 you and I think that the big difference, which I
6 alluded to before is that there is an avenue that
7 simply was not accessible in the past. You know,
8 I mentioned the GlaxoSmithKline case, and whenever
9 I do that, I sort of feel like I'm falling into a
10 trap. I shouldn't call it the GSK case; it's
11 really the Cheryl Eckhard [phonetic] case. United
12 States as related by Cheryl Eckhard, and she was
13 our whistleblower on that case. It's really
14 interesting because there was a whole debate when
15 the FCC whistleblower law was being considered
16 whether having a law like that would cause people
17 to bypass their company internal reporting systems
18 and just go for the big bucks. She ended up being
19 the recipient of the single largest whistleblower
20 award in U.S. history, so of course people
21 question her motivation. Why did she do this? Is
22 it just a way of seeing dollar signs and going
23 after it? Part of the answer to your question,
24 and it's interesting to know her history. She had
25 won the President's Award in her company for

1
2 passion and urgency because she did her job so
3 well. She was the head of quality assurance,
4 quality control in connection with a major audit
5 of the largest pharmaceutical plant in the world
6 for GSK, and she then discovered that the plant
7 had failed. All of its systems had failed—water
8 system, the product, the manufacturing system, the
9 quality control systems, the air [phonetic]
10 systems—they all failed. And the plant was
11 spewing out defective product, but she couldn't
12 get the company to shut down to remediate that.
13 So what did she do? She reported it to her
14 immediate superior within the plant. That person
15 was interested in production, so she went back to
16 the states 'cause this was a plant in Puerto Rico.
17 She went back to the states. She reported it to
18 the home office, and while she was literally
19 writing up the report, she was told that she was
20 being terminated for being redundant—the same
21 person who had been given this award three months
22 earlier suddenly had become redundant, which is
23 sort of comical because the one thing that people
24 didn't want was the single person in the company
25 who was going to do something about this, as

1
2 opposed to the redundancy of everyone doing the
3 same thing. And after she left, did she come to
4 us? No. She actually sought access to the CEO
5 and then when she couldn't gain access there to
6 the general counsel, and the general counsel
7 referred her to compliance counsel and she sat
8 with compliance counsel and explained to them what
9 the problem, and ultimately, they found her
10 grounds to be unsubstantiated, and she told them
11 in what now is a recorded session, look, either
12 you're going to do this, or I'm going to go to the
13 government and do something about it. My next
14 stop is the FDA, so did she next come to us? No.
15 She didn't come to us. She went to the FDA and
16 gave them those facts and two weeks later, there
17 was a search warrant executed and the rest is
18 history in the largest recovery of drug product
19 and an ultimate shut down of the plant, and then
20 the dollar recovery that followed. But the bottom
21 line is that absent access to this law, that's
22 where it would have ended. That's where it would
23 have ended, but ultimately because she was able to
24 take advantage of the law, not only did she do
25 well for herself, but she became the guidepost to

1
2 the government when they delivered GSK a million
3 and a half pages of documents that she and our
4 team at our law firm that sifted through that,
5 organized it to allow the government to make the
6 best case, and then at the end of the day, the
7 result is there for all to see. So that's a long
8 answer to say that within our bar which now is
9 about 375 attorneys across the nation, we become
10 more and more aware of those things. We become
11 more and more encouraged about those things, and
12 when people come to see us, we tell them that,
13 this is a reasonable decision to make as opposed
14 to what I was saying to the chairperson a little
15 bit earlier, when people came to us before, there
16 was a city false claims act, and you have to say,
17 unless you want to do it simply for the public
18 good, we have to tell you that there's nothing in
19 it for you other than aggravation. So I think
20 that's a big part of it. I also think that to the
21 extent that people frankly, are increasingly upset
22 about the gridlock they see in government and the
23 fact that everyone is talking the talk, but few
24 people are walking the walk. It's a citizen
25 initiative. People want to do something about

1
2 that. I want to say one last thing about that.
3 Two things we take for granted—I think we take
4 this law for granted at this point. As I said
5 before, we shouldn't. Things we take for granted—
6 I just want to talk about DOI for a moment. DOI
7 has been around so long that everyone just sort of
8 thinks of it as a fixture, if you will. But you
9 have to understand that the DOI is just this
10 amazing, amazing phenomenon that we have in New
11 York City, and there really isn't anything like it
12 historically or from a contemporary standpoint.
13 What David was speaking about a moment ago is the
14 problem that we have when we do federal cases.
15 The federal agencies are very protective of their
16 turf. We come up with a case with a half billion
17 dollar fraud, there's someone saying, we paid out
18 a half billion dollars that we shouldn't have paid
19 out. Maybe we're not so interested in doing that
20 case. We'll get it right going forward. New York
21 has a real protection against that because between
22 DOI and its inspector general system, there is
23 this very robust extraordinarily—to use the word
24 competent is to do a disservice; it goes well
25 beyond that—just extraordinary, talented group of

1
2 people who know what to do and how to get it done
3 and who do get it done and don't allow these
4 things to get pushed to the side because it's
5 built into our governmental structure, and I just
6 maybe take a moment in saying that one of the
7 reasons this law works so well is that someone had
8 the foresight more than a hundred years ago to
9 create that agency and it continues to be so
10 effective today.

11 CHAIRPERSON BREWER: Thank you very
12 much, and I hope you will take that back to - - .

13 DAVID KOENISBERG: I just wanted to
14 follow up on a comment that Neil made about the
15 incentive for the city to pursue these cases, and
16 in fact—I don't mean to step on you—the New York
17 State statute does provide for reimbursement of
18 attorney's fees to the state and the local
19 government. It is in Section 190-7. So it does
20 actually provide for that, so certainly that would
21 be something that should be put into this city law
22 as well--if there is recovery that they can
23 recover the cost of investigation and attorneys'
24 fees.

25 NEIL GETNICK: So as you can see,

1
2 David is not only a colleague and a friend, but
3 also a mentor.

4 DAVID KOENIGSBERG: Hardly, Neil.

5 CHAIRPERSON BREWER: Where do you
6 see the future growth of cases? Obviously
7 Medicaid is one, but are there other areas where
8 you think there would be a growth in cases? Not
9 that we're looking for them, but unfortunately
10 they may appear.

11 NEIL GETNICK: Absolutely. I think
12 that the wave of the... You know, it's very
13 interesting. In 1992, I gave an interview to the
14 corporate crime reporter, and said that we were
15 going to be creating within our law firm a private
16 economic crime unit to concentrate on healthcare
17 fraud cases, and everyone sort of scratched their
18 heads and said, that's so odd because this is a
19 defense, military procurement fraud statute. And
20 we began doing those cases very shortly
21 thereafter. We filed our first one in 1993.
22 That's the one that David and I were talking about
23 earlier, and now when people think of the statute,
24 they primarily think of it as a healthcare fraud
25 statute, but it's not. It's a statute that

1
2 attacks any type of fraud on government, and what
3 you're going to see in my view nationwide and also
4 in the state and likely in the city is the next
5 wave of cases, which are going to be non-Medicaid
6 and non-healthcare fraud cases, particularly as a
7 result of the financial fraud crisis that we have
8 been exposed to. You've begun to see that this
9 year or rather last year with the southern
10 district of New York filing a case involving
11 mortgage fraud. You're going to see more of that
12 with the creation of a specific unit in the New
13 York State AG under Randy Fox [phonetic], which is
14 a taxpayer protection unit, and you know, I
15 mentioned DOI. You could literally go down each
16 IG and what they do, and there is that potential
17 case. I walked in and I see NYCHA is in this
18 building, so that's the New York City Housing
19 Authority. If someone has got a plumbing contract
20 to the New York City Housing Authority and is
21 cheating the government, that's a false claims act
22 case potentially. If someone has an elevator
23 contract in the Housing Authority and they're not
24 going about doing that in an honest way, that's a
25 potential false claims act case. Why do I mention

1
2 that? Because I know that there have been monitor
3 ships in that area in the past as a result of
4 corrupt activity--

5 CHAIRPERSON BREWER: [Interposing]
6 We know.

7 NEIL GETNICK: --before there was a
8 false claims act. So all of these things give
9 rise to potential cases, and it's also very
10 important that for people who work for these
11 companies--see, this is the real thing--they go in
12 and they want to do an honest day's work for an
13 honest day's pay, and they're getting directed to
14 engage in this type of systemic fraud for them to
15 know that ultimately a culture of fraud doesn't
16 prevail and that there is an avenue for them to
17 stand up and do the right thing and at the end,
18 not be punished. So I think it's a very, very
19 broad array of opportunities going forward, and as
20 people become more educated about it, you're going
21 to see broader cases as well. The Medicaid
22 phenomenon I think is just to some extent because
23 the first round of cases that were filed were
24 filed with supplemental jurisdiction so because
25 under the federal filings, you have mostly

1
2 healthcare fraud cases having been filed between
3 2005 and 2010. Those were the cases that were
4 finding their way derivatively [phonetic] to under
5 the city's false claims act, but that's already
6 beginning to change and I think it will continue
7 to change in the future, which is why it's so
8 important to extend it.

9 CHAIRPERSON BREWER: I want to
10 thank you both very much for your testimony. I
11 can't tell you again how much we appreciate the
12 time that you put into it, and we will keep you
13 updated as I know you have been in the past, so
14 thank you. Thank you both very much. I just want
15 to add for the record that a letter that was
16 referenced earlier from the Corporation Counsel of
17 the City of New York dated January 19th, 2012 and
18 it will be part of the record. Thank you all very
19 much. I want to make it clear. I want to thank
20 Council Member Dilan for hanging in here, and for
21 all of his good questions, and say that we will
22 take everything into consideration. The good news
23 is we didn't really know going into this hearing.
24 Sometimes we know exactly what we're going in for;
25 we know what we're coming out for; and we can

1
2 write the script, but we couldn't this time. So
3 it's really helpful and a good example of open
4 government, public input and changes as a result,
5 and so I want to thank you all very much.

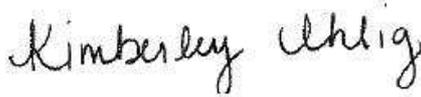
6 NEIL GETNICK: Thank you.

7 CHAIRPERSON BREWER: This hearing
8 is--

C E R T I F I C A T E

I, Kimberley Uhlig certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature _____



Date _____ 2/13/12 _____