

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON RULES,
PRIVILEGES AND ELECTIONS

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March 6, 2014
Start: 10:52 a.m.
Recess: 12:04 p.m.

HELD AT: Council Chambers
City Hall

B E F O R E: Brad S. Lander
Chairperson

COUNCIL MEMBERS:

Ydanis A. Rodriguez
Deborah S. Rose
Margaret S. Chin
Mark Levine
Daniel Garodnick
Vincent M. Ignizio
Vincent Gentile
Inez Dickens
Jumaane Williams
Raphael Espinal

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

Richard Briffault
Conflicts of Interest Board Nominee

Fernando Bohorquez
Conflicts of Interest Board Nominee

Mark Davies
Executive Director of Conflicts of Interest
Board

2 CHAIRPERSON LANDER: Good morning.

3 Pleased to call this meeting of the City Council's
4 Committee on Rules, Privileges and Elections to
5 order. I am City Council Member Brad Lander, and
6 we're joined this morning by the Speaker, Melissa
7 Mark-Viverito, by Council Members Jumaane Williams
8 from Brooklyn, Vinnie Ignizio from Staten Island,
9 Debbie Rose from Staten Island, Raphael Espinal from
10 Brooklyn, Dan Garodnick from Manhattan, Inez Dickens
11 from Manhattan, and Margaret Chin from Manhattan, and
12 I'd also like to acknowledge the Committee's attorney
13 Amonte [phonetic] LeBoeuf. For this morning we're
14 considering two nominees from the Mayor to the
15 Conflicts of Interests Board in a letter dated
16 January 30th, 2014, Mayor Bill de Blasio formerly
17 submitted the names of Richard Briffault and Fernando
18 Bohorquez. Good morning and welcome to both of you.
19 To the Council of the City of New York, requesting
20 the Council's advice and consent regarding the
21 appointment of these two candidates to the New York
22 City Conflicts of Interests Board, and this morning
23 the Council will conduct a hearing, ask some
24 questions, and consider whether to give these
25 candidates our advice and consent. I'll note we're

2 not planning to vote at the end of the hearing this
3 morning. We'll do questions and we will schedule a
4 committee vote most likely next Wednesday morning
5 prior to our stated meeting next Wednesday. So let
6 me first introduce the candidates and we'll swear
7 them in and then I'll say just a little bit about the
8 Conflicts of Interest Board and what it does and then
9 they'll give their opening statements. We have with
10 us today Richard Briffault and Fernando Bohorquez, as
11 I said. Richard Birffault is a resident of
12 Manhattan, and if the Council gives its advice and
13 consent would be appointed and designated by the
14 Mayor as Chair of the Board, filling the vacant
15 position formerly held by Nicholas Scapetta
16 [phonetic] and serving a six year term, which would
17 expire on March 31st, 2020. Fernando Bohorquez is a
18 resident of Brooklyn, and if the Council gives its
19 advice and consent will be appointed to fill the seat
20 of former board member Burton Leeman [phonetic] and
21 would serve the remainder of that six year term which
22 will expire on March 31st, 2018. They'll each of
23 course, give introductory opening statements, explain
24 themselves a little more. Council Members have in
25 front of them a packet which includes both the

2 written answers that they've provided to questions,
3 as well as some background information, and in the
4 case of Mr. Briffault, a thick binder of news
5 clippings that are on the desk in front of us. So let
6 ask first that we swear in both candidates. So I'll
7 ask you to raise your right hand and be sworn in, and
8 then I'll talk a little more about the Conflicts of
9 Interest Board.

10 COUNSEL: Good morning. Do you swear or
11 affirm to tell the truth, the whole truth and nothing
12 but the truth, so help you? Thank you.

13 CHAIRPERSON LANDER: So just before you
14 give your opening statements for the committee and
15 members of the public, let me very briefly explain
16 the functions of the Conflicts of Interest Board.
17 COIB is the entity that serves to provide clear
18 guidance to public employees regarding New York
19 City's conflict of interest code which lays out the
20 type of conduct which is prohibited and allowed by
21 public servants. The board achieves this through
22 training, education, and the issuance of publication
23 of advisory opinions related to proposed future
24 conduct. The board also adopts rules to implement
25 and interpret the provision of New York City's

2 conflicts of interest law. It reviews and makes
3 decisions on alleged conflict violations and has the
4 power to impose fines of up to 25,000 dollars per
5 violation and suspension or dismissal of that city
6 employee when deemed appropriate. The board also
7 collects and reviews financial disclosure reports.
8 The board consists of five members who appointed by
9 the Mayor with the advice and consent of the Council.
10 The Mayor must also designate one of these members as
11 the Chair. The charter states these members should b
12 chosen for their independence, integrity, civic
13 commitment and high ethical standards. Board members
14 serve a six year term and are prohibited from serving
15 more than two consecutive six year terms by the
16 charter. These board members are mandated to meet at
17 least once per month. They're prohibited from
18 holding public office, seeking election to public
19 office, being a public employee in any jurisdiction,
20 holding political party office or appearing a
21 lobbyist before the city pursuant to the charter.
22 Board member are entitle to receive compensation in
23 the amount of 250 dollars per each calendar day that
24 they perform work for the board, and the Chair is
25 entitled to receive 275 dollars a day, because that

2 extra 25 dollars is needed to help wrangle the
3 others, I guess. And I'll just say in addition to
4 those formal remarks, that I know that for Council
5 Members the--COIB looks at all public employees in
6 the city and answers questions for members of the
7 Administration, but I know for members of the
8 Council, we've been able to reach out to the COIB and
9 counsel have been able to reach out to the COIB to
10 get guidance on a wide range of questions, the kind
11 that just come up every day. You get an invitation
12 from this or that nonprofit organization that has
13 this or that relationship to the city, and I know
14 that the sta--the board in general and also the
15 staff, some of whom are here, have been a strong
16 resource to the Council and to the city in helping
17 make sure that we abide by our very good and strong
18 conflicts of interest law and navigate the questions
19 that come up to make sure that we're really above
20 board. So it is an essential agency for making sure
21 that New York City's government meets very high
22 standards of integrity that are absolutely essential
23 for the public that we do our best to hold to. So
24 it's an important office and we appreciate your
25 nomination. So what we would like to do now is ask

2 each of you, and we'll, you know, to give your
3 opening statement and then members of the Committee
4 will ask you some questions following up. So, Mr.
5 Briffault, let me ask you to kick us off.

6 RICHARD BRIFFAULT: Great, thank you.
7 Thank you very much. Speaker Mark-Viverito, Chair
8 Lander and members of the committee, I want to thank
9 you very much for the opportunity to appear before
10 you today concerning my nomination by Mayor de Blasio
11 to be a member of the New York City Conflicts of
12 Interest Board. I was deeply honored and gratified
13 by the Mayor's decision to nominate me to the COIB
14 because it gives me the opportunity to serve the city
15 that I love in the position where I believe I can
16 make a real contribution to its government and it's
17 people. I am a life long New Yorker. I was born
18 here, went to public elementary, public junior high
19 school and public high school here. I attended
20 college here. I've lived and worked here almost my
21 entire life and have raised and I'm still raising my
22 two children here. I am committed to the city and
23 look forward to the opportunity of giving back
24 something to it. For most of my working life I have
25 taught at Columbia Law School where my principle

2 areas of research and study have been local
3 governments, particularly New York City and the laws
4 governing the political process and public integrity.

5 I truly believe that public service is a public
6 trust. The rules that protect the public's interest
7 in a fair and honest government not only that trust,
8 they also lead to a more effective government and
9 promote the public's confidence in government. To
10 have an impact of course, these rules need to be
11 actively and thoughtfully applied, interpreted and
12 enforced. I look forward to joining with the rest of
13 the board in undertaking this task. I hope that
14 through my service on the board, I can make my
15 contribution to the honest government that New
16 Yorkers deserve. Thank you for your time, and I'd be
17 happy to take any questions you may have.

18 CHAIRPERSON LANDER: Thanks. Let's have-
19 -we'll take both opening statements first, and then
20 we can do questions for both of you.

21 FERNANDO BOHORQUEZ: Speaker Mark-
22 Viverito, Chairman Lander, members of the committee,
23 good morning. My name is Fernando Bohorquez. I am
24 honored to be here before you today to be nominated
25 by Mayor de Blasio to serve on the Conflicts of

2 Interest Board of the City of New York, subject to
3 advice and consent of the City Council. Although I
4 was not born in New York, I like millions of my
5 fellow citizens have come to make it my home. I came
6 here almost 20 years ago to Tribeca to go to law
7 school. I honed my professional career in Midtown
8 Manhattan. I married my wife in the shadows of the
9 Brooklyn Bridge, and I now raise two beautiful young
10 boys in Park Slope, one of them halfway through his
11 first year of PS321. And as a New Yorker, I have
12 tremendous respect for the public servants, the
13 public officials that serve our city day in and day
14 out. One of the most critical roles of the board as
15 its Executive Director Mark Davis has put it, is to
16 help guide those public officials and to keep them
17 honest. I firmly wish to serve on the board because I
18 believe in its mission, the mission of building the
19 public trust in those that serve and govern the
20 citizens of New York. The bedrock of our city
21 government is trust, the trust of the people placed
22 in those that serve. The mission of the board is
23 nothing less than preserving that public trust,
24 promoting the public's confidence in those that
25 govern them, and preserving the integrity of our

2 system of governments by enforcing those rules when
3 they are broken. As an attorney with a history in
4 commitment to public service, as a citizen who cares
5 deeply about our democratic process, and as a parent
6 who raised--is raising and educating his children in
7 the city's public schools, service on the board
8 presents a unique and unparalleled opportunity for me
9 not only to give back but to make a positive impact
10 on many of the things that matter to me most. I will
11 bring to the board my good judgment, forged in the
12 fires of litigations both large and small, my decade
13 plus experience as an attorney and partner at Baker
14 Hostetler [phonetic], firm that maintains and has
15 instilled in me the highest ethical standards of
16 conduct, my perspective providing practical counsel
17 to businesses both big and small, and my unwavering
18 commitment to the public interest as demonstrated by
19 my various and varied board in community service, and
20 finally, I will bring to bear the point of view of a
21 first generation Columbian immigrant's son,
22 hardworking, enthusiastic and with the tenacious
23 resolve to learn and excel through experience. Thank
24 you for your time, and I appreciate your

2 consideration, and I am happy to address any
3 questions that the committee might have.

4 CHAIRPERSON LANDER: Thank you both for
5 those opening statements. I have one or two specific
6 questions for each of you and then I'll throw it up--
7 -throw it out to members of the committee to ask
8 questions, but I wanted to before I get to the
9 individual questions for each of you, if you would
10 just give an example of, you know, an ethical
11 dilemma, sort of the kind of substance that the COIB
12 gets, something that you faced in your careers or
13 your work life or your academic work, you know, that
14 you feel helps us understand how you approach these
15 challenges, something that, you know, came to you
16 that you had to grapple with in your own professional
17 life, obviously without revealing any
18 confidentialities, you know, and how you grappled
19 with it, what you thought was at stake and how you
20 approached the issues. So, just get a flavor of how
21 you think about conflicts issues and would look to
22 apply your service to the board.

23 RICHARD BRIFFAULT: I'm happy to say I
24 haven't actually had very many difficulties like
25 that, but I think sometimes as an academic you chair

2 committees you're involved in personnel decisions,
3 you get confidential information about people that
4 you--it's confidential and yet it's relevant to the
5 kinds of deliberations that the committee has to
6 enter into. You have to be very careful about how
7 you use it. You have to be transparent to the person
8 who provided the information. You have to find out
9 how they would want it to be used, how they don't
10 want it to be used, and in some sense try and find
11 ways of sort of counseling them about the
12 consequences of something without--and sort of
13 abiding by the rules of being consistent, but also
14 taking into account the very specifics of the case.
15 So I can't really give you a specific how it was
16 resolved, but I've been involved in handling type--I
17 have chaired our junior faculty meeting which
18 involves promotions and tenure, and so sort of you're
19 working back and forth speaking on behalf of the
20 candidate but also on behalf of the whole faculty in
21 trying to resolve issues and trying to be fair to
22 both sides at once. There's no specific moment where
23 I resolved this or not, but listening out both sides,
24 understanding what both side's concerns are, being as

2 transparent as you could be consistent with
3 confidentiality and trying to be consistent.

4 FERNANDO BOHORQUEZ: As an attorney, I'm
5 bound by various ethical rules of conduct, codes of
6 responsibility, subject to disciplinary rules. I
7 apply those rules and parameters to my daily
8 practice. We have conflicts of interest rules that
9 apply in representing current clients and concurring
10 clients. We have conflicts of interest rules that
11 apply when you have a past client and a present
12 client. We even have conflict of interest rules when
13 you're dealing with a currently client and you're
14 trying to bring in another client, and all those
15 rules, they stem from the same basic fountain of
16 ethics that I think the rules on the ethics on the
17 committee that we deal with in the COIB stem from,
18 that is placing another's interest above your own. So
19 I've had many situations where we have had a
20 potential new client come in, but when we're dealing
21 with the interest of recurrent client, we cannot take
22 that case. In addition to that, there are ethics that
23 apply in the practice of law, for instance, the duty
24 to bring only meritorious claims, the duty of candor
25 to the court, the duty of fairness to your opposing

2 counsel, to your adversary. I've had several,
3 numerous conversations with clients that they did not
4 want to have, they did not want to hear when I
5 discovered a document or a piece of testimony that
6 was not favorable to our case. But because of my duty
7 to the court, because of my ethical obligations, I
8 had to have a very difficult conversation with a
9 client to say that we have to produce this document.
10 We have to reveal it. And the cards will fall where
11 they may--where they may lay. The bottom line is that
12 in any ethical dilemma you always start with the
13 facts. You take the facts wherever they may go, and
14 then you apply the law faithfully and you go wherever
15 the law may take you. That is the essence of good
16 counsel, and that's the kind of way I want to handle
17 the issues, similar issues that may arise if I were
18 to be confirmed to the board.

19 CHAIRPERSON LANDER: Thank you both. So,
20 Mr. Briffault, you have a couple of existing
21 engagement, you know, all of which inspired in some
22 ways by the same goals of good government and ethics.
23 Your employment as a professor at Columbia University
24 School of Law, which is obviously law school works on
25 these issues, but also engages in different kinds of

2 dealings with the city. As Vice Chair of Citizen's
3 Union which is obviously a Good Government
4 Organization concerned with many of these things, but
5 also--so I know on both of those you sought advice
6 from the very Conflicts of Interest Board, and I
7 wonder if you could just characterize what they said
8 and your intention to abide by the opinion that you
9 received.

10 RICHARD BRIFFAULT: Well, sure. Yes,
11 these are obviously both organizations that do many
12 things, but on occasion might be doing business with
13 the city or in the case of Columbia or would be
14 advocating for legal changes or advocating concerning
15 public policy issues with respect to the city. With
16 both, it's--the advice is, and I will certainly
17 follow it, that of course, if anything were to come
18 before the board involving either of these
19 organizations, I would recuse myself. I suspect
20 that's not going to happen frequently with Columbia,
21 but you never know. But I would be happy--I would be
22 happy to recuse myself from those. With respect to
23 Citizen's Union, I am actually beginning
24 conversations within the board there. Citizen's
25 Union is actually two organizations that are joined

2 at the hip, but there is the 501 C4 organization
3 which is the more of the public education and
4 advocacy organization on the--more of an advocacy
5 organization 501C3 which is more of a public
6 education and is less directly involved in advocacy
7 and in elections, and although I'm Vice Chair of the
8 one, but I'm going to probably switch over to the
9 other board to reduce my involvement of things that
10 involve the advocacy before the city and as well as
11 the appearance of being involved in the more advocacy
12 oriented groups. So, and of course, if anything that
13 does involve them comes before the board on either
14 arm of it, I would not participate.

15 CHAIRPERSON LANDER: I'll just note for
16 the record that's Conflicts of Interest Board case
17 number 2014 138, which you were saying you'll--

18 RICHARD BRIFFAULT: [interposing] Yeah,
19 exactly, yes.

20 CHAIRPERSON LANDER: Super. Thank you.
21 The other issue in your case is your, the position
22 you served as Commissioner to the Moreland [phonetic]
23 Commission, which from a substance point of view is
24 obviously all about public integrity but the charter
25 provides quite specifically that a member of the

2 Conflicts of Interest Board can't serve in any other
3 public office and it's my understanding that you'll
4 be resigning as the Commissioner--

5 RICHARD BRIFFAULT: [interposing] Yes,
6 that's right.

7 CHAIRPERSON LANDER: of the Moreland
8 Commission.

9 RICHARD BRIFFAULT: Yes, and we looked
10 into this. I discovered a good lawyer that we--that
11 I am and other people involved are that the city
12 charter does not actually define public office, so
13 there's been a little bit of back and forth among
14 COIB staff, the council staff, the law department and
15 myself, but I think in the end it seemed to be that
16 as in many things involving ethics, the best thing to
17 stay with the appearance, is to think about the
18 appearance as well as the actual rule if the rule is
19 uncertain and so I will be resigning probably as of
20 the end of the month.

21 CHAIRPERSON LANDER: Okay, which we
22 appreciate, and I think we recognized in talking
23 about it, obviously, that's precisely a commission
24 for the purpose of public integrity.

25 RICHARD BRIFFAULT: Right, right.

2 CHAIRPERSON LANDER: So, the likelihood of
3 a specific conflict may be slim but we appreciate.
4 We try to live by the charter here and the council
5 and we appreciate your working with us to do so. So,
6 thank you. Mr. Bohorquez, you also sought advice
7 from the Conflicts of Interest Board case number 2014
8 176 concerning your potential political and non-
9 political fund raising activities based on fund
10 raising that you've done in the past and may do in
11 the future, would you do the same characterizing, you
12 know, what you've done and what you--how you read the
13 opinion and your intentions to follow it in the
14 future.

15 FERNANDO BOHORQUEZ: Well, the letter, I
16 believe it's in your packet, February 27th. It, like
17 all the work product that I've read so far from the
18 board from Wayne Hauley [phonetic] the general
19 counsel, very eloquently and comprehensively lays out
20 the basic framework of the law that applies here, and
21 the gist of it with respect to political fund raising
22 activities is that I cannot, if I were to serve on
23 the board, I could not solicit funds from anyone for
24 any candidate seeking city office, period. I also
25 could not engage in any political fund raising

2 concerning a city, a sitting city official, who's
3 seeking other office, state or federal. With respect
4 to my non-political activity, those organizations, if
5 any of those organizations were to have a matter
6 before the board, I would likely have to recuse
7 myself from that matter, but given the nature of the
8 organizations that I work with, it's very unlikely.

9 CHAIRPERSON LANDER: And I'll just ask one
10 last question and then open it up, and it's a follow
11 up on this, because I, you know, I looked at the COIB
12 letter and I think you've described it accurately and
13 it's good to know you've committed to follow it. I
14 can imagine fund raising for state or federal
15 candidates which would technically comply with the
16 COIB letter, which has been provided, but which might
17 present conflict with different kinds of points of
18 view in city elections. So sometimes city candidates
19 run against state or federal candidates, and I--the
20 way the opinion reads, it looks to me like you could
21 fund raise for one of the other, you know, a
22 candidate running against a city candidate or
23 sometimes there are substantive issues that we're
24 facing in terms of lobbying between, you know, we go
25 lobby in Albany for things, and sometimes we're happy

2 with what Albany gives us and sometimes we're not
3 happy with what Albany gives us, and people may say,
4 "I'm unhappy with an Albany member because of
5 something they did in relationship to the city and I
6 want to throw that bum out." And this opinion would
7 allow you to fundraise for or against those
8 candidates and I wonder how you would approach that
9 set of issues where it wouldn't be a technical
10 conflict according to COIB, but it might present a
11 political conflict and you could imagine someone
12 related to that issue coming to COIB seeking an
13 opinion even about use of resources in that exact
14 same election in some way.

15 FERNANDO BOHORQUEZ: Thank you for that
16 question. I'm happy to address it. I think first and
17 foremost, I have no present intention at this time in
18 raising funds for any state or federal candidates, so
19 that is a hypothetical. Second, if such a
20 circumstance would arise, I would address it on a
21 case by case basis and the first thing I would do is
22 I would seek the wise council of COIB and its staff,
23 and I would defer to their judgment, and if in the
24 situation where even after I sought council from the
25 COIB staff and they said it was okay to raise funds

2 for x candidate, there may be situations like you're
3 laying would I would have to consider extenuating
4 circumstances and I would address them at that time,
5 and I would represent to you that I would take it on
6 a case by case basis and I would heir on the side of
7 caution.

8 CHAIRPERSON LANDER: Alright. I'll think
9 there'll be some follow-up on this from members of
10 the committee. So let me stop with opening questions
11 and see whether members of the committee have any
12 questions that they would like to ask. Okay. Let's--
13 sure. We'll start with Council Member Garodnick.

14 COUNCIL MEMBER GARODNICK: Thank you very
15 much and gentleman, thank you for your testimony.
16 Let me just follow up on that last comment about the
17 case by case process, because it seems to me that if
18 you have a letter from the Conflicts of Interest
19 Board which sets forth the parameters, going back to
20 them to ask them about the appropriateness of one
21 thing or another would basically fall within the
22 confines of what we already know to be the rules as
23 to political activities by a member of the Conflicts
24 of Interest Board. Can you say a little bit more
25 about what would be the factors or what would be a

2 circumstance in which a case by case evaluation would
3 yield a determination by you that it was not
4 appropriate for you to be doing political fundraising
5 even while it was consistent with the law as per that
6 opinion?

7 FERNANDO BOHORQUEZ: I'd like first just
8 to add the abundance of caution, I would always seek
9 counsel from board just in case, just to make sure I
10 had my I's dotted and my T's crossed. But to get
11 directly to your point, I could see an extenuating
12 circumstance that I would have to take into account
13 where there may be an appearance. There might be an
14 appearance issue that may raise an appearance of
15 conflict of my service on the board, and if that
16 would be the case, then I would certainly take that
17 factor into account and whether or not to raise money
18 for a particular candidate because I full understand
19 that even though technically under the law I may be
20 able to raise money for x, y or z candidate, the
21 board also deals with appearances, and I don't--I
22 would not want to take any action that could create
23 some sort of appearance of partiality for any
24 particular race or candidate.

2 COUNCIL MEMBER GARODNICK: okay. I
3 appreciate that, but what I hear you say is that you
4 don't believe that there is necessarily and inherent
5 appearance problem for fundraising within the
6 confines of the letter opinion that you got from
7 COIB, but you would evaluate it on an instance by
8 instance basis, is that?

9 FERNANDO BOHORQUEZ: That's a fair
10 summary, thank you.

11 COUNCIL MEMBER GARODNICK: Can you--we saw
12 from some of the information that the council to the
13 committee pulled up that there was, that Mayor de
14 Blasio disclosed the various folks who had house
15 parties and things like that for him and we noted
16 that you were on that list of supporters. That is
17 not a requirement of a candidate that they post on
18 their website a list of house parties held and by
19 whom. In fact, I think there's some questions within
20 the law as to whether or not hosting a house party
21 even makes you an intermediary under New York City
22 campaign finance law, but put that aside for the
23 moment. Can you share with us--we know from public
24 records your direct contributions to political
25 candidates. We also know that your law firm lists you

2 as somebody who actively participates in the
3 political process. Can you share with this committee
4 other events that you have hosted for other political
5 candidates that we have a sense as to what level of
6 political engagement we are talking about here? Again,
7 put aside your direct contributions. Just tell us
8 about the events and for whom, and let's just--we
9 could just go to this most recent election season if
10 any.

11 FERNANDO BOHORQUEZ: Sure. Would you
12 like me to start with the Mayor?

13 COUNCIL MEMBER GARODNICK: We know that
14 one, so you can leave it alone, but go ahead. Start
15 wherever else.

16 FERNANDO BOHORQUEZ: I've also been
17 engaged in helped organize events for I believe
18 Congressman Jefferies. I've been on host committees
19 and helped organize events for President Obama, and
20 also been involved on host committees for events for
21 Congresswoman Nydia Valasquez [phonetic]. I believe I
22 was also on the host committee for an event for
23 Senator Gustavo Rivera. Those are the ones that
24 immediately come to mind. In all instances I was one
25 of many. There were several hosts.

2 COUNCIL MEMBER GARODNICK: So you weren't
3 the sole host for any of them, you were just on a
4 host committee?

5 FERNANDO BOHORQUEZ: No, it's a host
6 committee.

7 COUNCIL MEMBER GARODNICK: Tell us why our
8 constituents shouldn't be concerned about the
9 appearance that we're talking about on the continued
10 potential fundraising for state or federal candidates
11 who are not city office holders presently, why
12 shouldn't we be concerned about that in your view, as
13 a member of the board?

14 CHAIRPERSON LANDER: Can I just maybe add
15 to this question? I just, you know, I had sort of
16 offered the hypothetical, but in all three of those--
17 in three of the cases that you mentioned,
18 Congresswoman Valasquez, Council Member Jeffries,
19 well I'm not necessarily yet State Senator Rivera,
20 there in two of those cases were city council
21 candidates in the election against them and in the
22 case of Rivera, at least there's news reports of
23 rumors of the possibility of city council candidate
24 that would be in that race. So just it flags the
25 general issue.

FERNANDO BOHORQUEZ: Start with this.

I've built my career on a cornerstone of integrity. I take all my commitments and obligations with serious gravity. If I were to be all public service it's inherently requires the public trust for all its public servants, even a part time public servants who are on the board. The duty of loyalty of any public servant is first and foremost to the public. If I were to serve on the board, my first and foremost obligation would be to the city of New York and its citizens. My first and foremost obligation would be to independently advance the mission of the board to independently analyze, administer and enforce the conflicts of interest rules. That's independent of the Mayor's office, independent of the city council, and independent of any government agency. Now, with specifically with respect to fundraising for other candidates, I would apply all the lessons I have learned as an attorney and as a fiduciary for various boards, I start with the facts and I go to the law, and in a situation where anyone comes before the board, be it the Mayor or anyone else, that's what would be my guiding principle. My guiding principle would be the facts and the law, and I wouldn't part

2 in any way. So I think if you think that your
3 constituents may have some concerns with someone who
4 has been engaged in the political process of sitting
5 on a board, I think the response is that this also an
6 individual that takes very very seriously his
7 obligations and commitments, who takes very very
8 seriously the mission of the board as being an
9 independent body, and I would never do anything that
10 would come close to the line of compromising that
11 mission.

12 COUNCIL MEMBER GARODNICK: I appreciate
13 that. And just to be clear, it's not about past, at
14 least for me, not about past involvement in the
15 political process, that would be a bar to no
16 candidate I would think for almost any position. It
17 really is the question about the potential for
18 ongoing activity while serving in this particularly
19 sensitive position. So that's just to make it clear
20 to you and to anybody who is watching that that is,
21 that is the concern as opposed to the past
22 involvement.

23 CHAIRPERSON LANDER: And just since I
24 threw some examples in, let me add my, you know, add
25 my voice to that. I only meant the examples as sort

2 of evidence of the potential of the future
3 hypothetical.

4 COUNCIL MEMBER GARODNICK: So let me just
5 ask one last question and you can start and then we
6 can go back to Professor Briffault. For both of you,
7 changes to Conflict of Interest laws, are there any
8 as you sit here today things that you think should be
9 made that should be on the horizon that are
10 presenting a problem or that there's an opportunity
11 that we need to be correcting here?

12 FERNANDO BOHORQUEZ: As I sit here today,
13 I have not come up with any changes or reforms I
14 would propose. I know that there were several that
15 were proposed back in 2002 that were adopted and I
16 think they were wise changes. But off the top of my
17 mind as I sit here today, I do not have any.

18 RICHARD BRIFFAULT: I think I would need
19 more experience to see the board in operation, see
20 the kinds of problems and unresolved questions that
21 are coming up. Right now, all I would stress is that
22 we amend the charter to define public office. Half
23 serious, half facetious. But other than that I
24 haven't had the experience yet that would lead me to
25

2 think about what kind of changes would be
3 appropriate.

4 COUNCIL MEMBER GARODNICK: Thank you
5 both.

6 CHAIRPERSON LANDER: Council Member
7 Williams?

8 COUNCIL MEMBER WILLIAMS: Thank you, Mr.
9 Chair. Thank you both for coming, accepting I guess
10 the nomination and testifying. My first question--a
11 lot of my questions will be for both of you. But I
12 have a bill, this kind of piggy backs on what Council
13 Member Garodnick was saying, that's trying to push
14 forward, basically changing the COIB so that some
15 people other than the Mayor appointed, right now I
16 believe it's an entire Mayoral appointee, I want to
17 give one to the Comptroller and one to the Public
18 Advocate. I just wanted to hear your opinion on that.

19 FERNANDO BOHORQUEZ: Want to take that one
20 first?

21 RICHARD BRIFFAULT: I'll do this one
22 speaking as an academic, I think, rather than as a
23 nominee. I can see both sides of that. That's my
24 job. On the one hand I see the argument that for some
25 organization that has to oversee the entire city and

2 all the aspects of its government, you might want a
3 broaden the nominating powers. On the other hand, the
4 bigger a body gets, the more unwieldy it gets and the
5 more there's a danger that the members will be seen
6 as representing the comptrollers interest or
7 representing the public advocates interest, something
8 like that, hypothetically. I mean--

9 COUNCIL MEMBER WILLIAMS: [interposing]
10 Sorry, just for clari--it wouldn't increase, it would
11 be--remain five, so it'd be three, one and one.

12 RICHARD BRIFFAULT: Gotcha. There's still
13 the problem if you look at something like JCO
14 [phonetic] the Albany equivalent although in some
15 ways given the difference and history ability, I'm
16 not sure I want to use equivalent, but the one that
17 holds a similar kind of function there. There is a
18 lot of concern that to the extent that you have
19 different nominating authorities, the different
20 members will more likely see themselves as
21 representatives of the nominating authority rather
22 than serving the city as a whole. So I--you know,
23 this is the kind of policy judgment that luckily I
24 don't have to make, but I can certainly see both
25 sides of it.

2 FERNANDO BOHORQUEZ: I think I'm always
3 open to any creative idea that could help the
4 efficiency and ethics of government. I don't have any
5 informed opinion one way or another on your proposal,
6 but what I do to become more informed is maybe look
7 at other boards that have circumstances where it's
8 not only the Mayor who appoints nominees and see what
9 was the rationale for why that board went that route
10 and allowed more than the Mayor and other like the
11 City Council to appoint individuals and see if that
12 rationale would apply to COIB.

13 COUNCIL MEMBER WILLIAMS: Thank you. And
14 Mr. Bohorquez, am I pronouncing that--

15 FERNANDO BOHORQUEZ: [interposing] Pretty
16 good.

17 COUNCIL MEMBER WILLIAMS: How do you
18 pronounce it?

19 FERNANDO BOHORQUEZ: Bohorquez.

20 COUNCIL MEMBER WILLIAMS: Bohoroquez,
21 alright. They jack my name up all the time.

22 FERNANDO BOHORQUEZ: Yeah, I can see--

23 COUNCIL MEMBER WILLIAMS: [interposing]
24 Yeah. They do--

2 FERNANDO BOHORQUEZ: [interposing] Yeah,
3 Williams--

4 COUNCIL MEMBER WILLIAMS: [interposing]
5 Williams good.

6 FERNANDO BOHORQUEZ: Williams is very
7 tough.

8 COUNCIL MEMBER WILLIAMS: So and I also
9 have a couple question for you. And the fundraiser--
10 some of it's fundraising related. I don't want to be
11 unfair because we don't--I don't think anybody's--I'm
12 sure everybody does their part in political
13 participation and contribution, fundraising, you just
14 have a particular history when it comes to
15 fundraising. My question, I just wanted to be clear
16 that the court or the way it is now, you cannot
17 fundraise for anybody running for the city office, is
18 that correct?

19 FERNANDO BOHORQUEZ: That is correct.

20 COUNCIL MEMBER WILLIAMS: But you can
21 support someone running against someone for city
22 office?

23 FERNANDO BOHORQUEZ: No, I cannot. I
24 cannot raise any money for any candidate for any city
25 office.

2 COUNCIL MEMBER WILLIAMS: Okay. So you
3 can't--once it's a campaign, the city office, you
4 can't run whether it's a candidate--it's an incumbent
5 or a challenger.

6 FERNANDO BOHORQUEZ: Correct. That is my
7 understanding.

8 COUNCIL MEMBER WILLIAMS: I just wanted to
9 hear what you thought about--you understand the
10 reasons why we will not want someone to be able to
11 fundraise for someone running for City Council? And
12 the examples that were given, do you think those
13 reasons seem--are still valid if someone--if someone
14 is a city council member now running for a state
15 office or the examples that were given, is that still
16 a valid reason why you perhaps would be asked not to
17 if that were the case?

18 FERNANDO BOHORQUEZ: Well, if I
19 understand the question correctly, you're asking me
20 whether the reasons for prohibition on raising funds
21 for city candidates and a prohibition on raising
22 funds for city candidates running for other office,
23 if that rationale applies to state and federal races-

24 -

2 COUNCIL MEMBER WILLIAMS: [interposing]

3 Yes, yes.

4 FERNANDO BOHORQUEZ: is that your
5 question? I do think they're different. I think that
6 when you're dealing with a candidate for city office
7 or a sitting city candidate running for other office,
8 that brings to bear directly potential conflicts of
9 interest because they all fall within the purview of
10 the COIB board. So in those situations there is a
11 direct conflict. With respect to state and federal
12 candidates, it's not so much it's a direct conflict,
13 but there could be the potential that there may be
14 some appearance of partiality. So to me, they're two
15 different issues. One is a clear prohibition and a
16 clear policy reason for why there's a prohibition.
17 The other is more of a judgment call, case by case
18 basis that you have to consider the extenuating
19 circumstances of the situation.

20 COUNCIL MEMBER WILLIAMS: Thank you. And
21 I was actually impressed by the amount of
22 participation you've done. I'm a little biased
23 because a lot of them are things that I agree with,
24 but in general do you think you'll be--do you believe
25 you would be required to recuse yourself from

2 decisions of the board that involves some of the
3 partners and organizations you've been involved like
4 Pearldef [phonetic] fund for modern carts, American
5 Constitution Society, anything like that?

6 FERNANDO BOHORQUEZ: I believe in the
7 letter from COIB laid out and I would absolutely seek
8 their guidance if such a situation were to rise, is
9 that if an organization of which I am a board member
10 had some business before the board, I would seek
11 counsel from the agency, I mean from the staff and I
12 would likely have to recuse myself.

13 COUNCIL MEMBER WILLIAMS: There's been a
14 lot of indication this involvement with the Mayor,
15 including campaign contributions, fundraisers, pro-
16 bono work when you're a public advocate such as
17 drafting the Amecus [phonetic] brief regarding stop
18 and frisk. I'm not recusing myself from this
19 question. Do you have any additional business work
20 or personal dealings with the Mayor?

21 CHAIRPERSON LANDER: Did you seek advice
22 from COIB?

23 COUNCIL MEMBER WILLIAMS: I did not. The
24 judgment call, I mean--

25 FERNANDO BOHORQUEZ: The answer is no.

2 COUNCIL MEMBER WILLIAMS: Okay. And then
3 Mr. Briffault--this was just a follow-up. I think
4 they asked you about Vice Chair of Citizen's Union,
5 do you think you'd be able to make decisions that are
6 in the best interest of the board if something comes
7 up that is in conflict with the Citizen Union
8 President?

9 RICHARD BRIFFAULT: Absolutely. I mean,
10 there are sort of two kinds of things, one would be
11 Citizen's Union itself, and of course, I wouldn't
12 participate in anything where Citizen's Union was
13 itself a participant in the proceeding. It's true
14 they take positions on certain issues, so I don't--I
15 would see--I have no problem addressing an issue
16 where they've spoken about it, but I would be guided
17 by the law, by the rules, by the persons of the
18 board, not by the Citizen's Union position. I have
19 been on the board and lost votes, and so not every
20 position of Citizen's Union is my position but beyond
21 that I think I can say, you know, I can separate the
22 two functions.

23 COUNCIL MEMBER WILLIAMS: And I have two
24 questions that I'd like both of you to answer. First,
25

2 you believe the board has a duty to show deference to
3 the policy decisions of the Administration?

4 RICHARD BRIFFAULT: No. I think the board
5 is an independent body. I think it has a kind of a
6 duty to hear the Administration out as it has a duty
7 to hear out the Council, the Comptroller or anybody
8 else and give--think about the merits of what they're
9 saying, but no, no special deference.

10 FERNANDO BOHORQUEZ: I agree. I don't
11 think there's any deference if anything we're--the
12 body is an independent body.

13 COUNCIL MEMBER WILLIAMS: And if you
14 encounter situations where the board has always done
15 things a certain way and this is the culture of it,
16 this is what everybody does, but you believe it
17 violates the Conflicts of Interest code, how would
18 you handle that situation?

19 RICHARD BRIFFAULT: I'd first want to find
20 out how the board came to its current position. In
21 other words, if on its face it looks like there's a
22 conflict, I would want to talk to the relevant
23 people, find out how did this position arise, whether
24 it's in a reg or and advisory opinion, or the facts,
25 what's been the precedent, how long has this been

2 adhered to and what are the arguments for it, and
3 think about it. If I'm ultimately not persuaded by
4 that I would want to reopen it, and obviously would
5 turn on an entire board, but I would--sometimes
6 things on their face seem to be inconsistent, but if
7 you sort of explore and go into the how it got there,
8 you see why it might actually be consistent with the
9 underlying policies. But so the first thing I'd want
10 to do is find out what's the history behind this
11 rule, or what's the history behind this practice and
12 see if the explanation for that sort of jives with
13 the policies and the letter and as well as the spirit
14 of the law. But if it doesn't, then I would want to
15 reopen it.

16 FERNANDO BOHORQUEZ: I would apply a
17 similar approach. I think--learned that sometimes
18 things on your face you're not entirely sure what the
19 motivation was behind a particular policy or
20 particular procedure and the situations, if it--if
21 there's something about it that bothers you in any
22 way, then you have to follow the facts. Like I said,
23 really, you have to find out why it was adopted that
24 way, why is promulgated that way. I would approach
25 the general counsel. I would approach the staff to

2 get the background, to get the explanation for why we
3 arrived at that point, and if at that point if the
4 explanation is still not acceptable for me, then I
5 would raise it with the whole board

6 COUNCIL MEMBER WILLIAMS: Thank you. I
7 think both of you are very impressive, obviously,
8 with the background. So I thank you for coming here
9 today. Thank you, Mr. Chair. I apologize, I will
10 have to leave shortly for a Land Use hearing.

11 FERNANDO BOHORQUEZ: Thank you.

12 CHAIRPERSON LANDER: Thank you, Council
13 Member. I have Council Members Dickens, Chin--oh,
14 okay. I'm going to promote the folks who are on Land
15 Use. You're on Land Use? Alright. So Council Member
16 Dickens and then Council Member Ignizio.

17 COUNCIL MEMBER DICKENS: Thank you,
18 Chair, and good morning and thank you to both of the
19 candidates. Mr. Bohorquez, I have a question for you
20 concerning the Fund for Modern Courts.

21 FERNANDO BOHORQUEZ: Yes.

22 COUNCIL MEMBER DICKENS: You serve--you
23 still serve as a director, on the board of directors?

24 FERNANDO BOHORQUEZ: I am on the board of
25 the directors, yes.

2 COUNCIL MEMBER DICKENS: And I know, you
3 know, some of the work that they've done. Individual
4 board members might raise funds for judicial
5 candidates. Do you anticipate that you might be
6 interested at any time in doing that, and if so, do
7 you think that that would put you in direct conflict
8 with the laws and rules of COIB?

9 FERNANDO BOHORQUEZ: So the question is
10 whether I have a current intention to raise funds for
11 judi--

12 COUNCIL MEMBER DICKENS: [interposing]
13 And have you raised any funds?

14 FERNANDO BOHORQUEZ: judicial candidates?
15 I do not believe I've ever raised funds for judicial
16 candidates for city court.

17 COUNCIL MEMBER DICKENS: Have you ever
18 contributed?

19 FERNANDO BOHORQUEZ: I may have
20 contributed to a city court race, but I have no
21 present intention of doing so at this time.

22 COUNCIL MEMBER DICKENS: Do you feel that
23 if you decided you wanted to either raise monies for
24 a judicial candidate or to contribute, do you think
25 that that would put you in direct conflict with COIB?

2 FERNANDO BOHORQUEZ: If that situation
3 would arise, the circumstance would arise, I would
4 consult the board and the agency and review the
5 rules. I believe that I have a prohibition against
6 raising any money for a city court judge. That to
7 me, is clear, but I would definitely seek the wise
8 counsel.

9 COUNCIL MEMBER DICKENS: Supreme Court
10 though.

11 FERNANDO BOHORQUEZ: Pardon?

12 COUNCIL MEMBER DICKENS: Supreme Court?

13 FERNANDO BOHORQUEZ: Well, I would seek
14 the counsel of the board and the agency and if
15 applying the rules, if I can't do it I would not do
16 it. Plain and simple.

17 COUNCIL MEMBER DICKENS: I was reading
18 the summary of the COIB letter to you, and I
19 understand that you cannot raise funds for a city
20 elected official, is that correct?

21 FERNANDO BOHORQUEZ: Correct.

22 COUNCIL MEMBER DICKENS: Alright, but
23 there is a loop hole that allows you to raise funds
24 for federal or state candidates, is that correct?

25

2 FERNANDO BOHORQUEZ: Under the rules
3 there--I am allowed to raise money. It appears that
4 I'm allowed to raise money technically for federal
5 and state candidates. That is correct, unless it's a
6 sitting city official seeking federal or state
7 office.

8 COUNCIL MEMBER DICKENS: Now, what about
9 if it's a city, state or federal that's currently a
10 member of one of the governing ag--government levels,
11 state and fed, that's running for a city office, is
12 that allowed?

13 FERNANDO BOHORQUEZ: Well, again, that's a
14 clear prohibition. Any candidate for any city office
15 cannot be involved in raising any funds from anyone.

16 COUNCIL MEMBER DICKENS: Now, can--I know
17 this is old, but can you please tell me what, because
18 I see that you're the managing partner at B and H,
19 and at one point you had a vendex [phonetic] number
20 and a contract with the city of New York from 2004.

21 FERNANDO BOHORQUEZ: I'm not aware. Can
22 you explain what that is, that's--

23 COUNCIL MEMBER DICKENS: [interposing]
24 Well, I was reading--

25 FERNANDO BOHORQUEZ: 2004.

2 COUNCIL MEMBER DICKENS: I was reading in
3 this. It's according to the--and I'm quoting from
4 this.

5 FERNANDO BOHORQUEZ: Okay.

6 COUNCIL MEMBER DICKENS: According to the
7 Council background investigation that in your
8 position as managing partner with B and H which
9 comprised of a comprehensive business record search
10 which included a New York City vendor information
11 vendex database search pertaining to being the only
12 resulting report related to a 7,770 dollars and 89
13 cent contract that B and H had with the New York City
14 Law Department.

15 FERNANDO BOHORQUEZ: Ten years ago I was--

16 COUNCIL MEMBER DICKENS: [interposing]
17 No, I'm not--no, I'm just saying that that was--I
18 said old.

19 FERNANDO BOHORQUEZ: Okay.

20 COUNCIL MEMBER DICKENS: That B and H
21 had.

22 FERNANDO BOHORQUEZ: Okay.

23 COUNCIL MEMBER DICKENS: And you're
24 continuing as a managing partner. Do you anticipate
25

2 that you, that B and H might again be interested in
3 entering into any New York City contract?

4 FERNANDO BOHORQUEZ: Let me just clarify
5 one point. I am not the managing partner of my firm,
6 no. I would like to be, perhaps, and perhaps one day
7 I may, but I am not the managing partner of my firm,
8 and in 2004 I was a third year associate. I do not
9 know the circumstances of that contract. This is the
10 first I've ever heard about it. Like I said, I was
11 very young associate at the time. That said, do I
12 anticipate or know of the firm having any business
13 with the city now? No. Do I know if the firm is
14 intending to do any business with the city in the
15 future, I do not know.

16 COUNCIL MEMBER DICKENS: Alright. Thank
17 you. Thank you, Chair for the questions. May I be--
18 I'd like to be excused to go to Land Use.

19 CHAIRPERSON LANDER: Sure. I don't control
20 you. We're not--as I said earlier we're not going to
21 vote at the end of this hearing. We'll vote next
22 Wednesday. So and I'll just note for the record
23 because we do, just so you know, we do, you know, we
24 have our staff do a kind of thorough compliance and
25 investigation and background check and so that we

2 looked at all the places you've been employed and in
3 2004/2005 Baker Haustetler [phonetic] had a 7,700
4 dollar and 89 cent contract with the law department.
5 That just came up in the vendex search and there was
6 no adverse information reported. We just look at
7 every potential conflict.

8 FERNANDO BOHORQUEZ: Understood.

9 CHAIRPERSON LANDER: Okay. Thank you,
10 Council Member. Council Member Ignizio followed by
11 Council Member Chin.

12 COUNCIL MEMBER IGNIZIO: I'll be very
13 brief, and thank you. Thank you both. Clearly you
14 both have resumes which are consistent with what we
15 would want in a DOI Commissioner and a member of the
16 board and some of my concerns--and first, I want to
17 have you know that many of my council members
18 utilized COIB very frequently. We call them just to-
19 -it's always easier to call and say, hey, and I want
20 to thank Mark Davies and Wayne who was here and the
21 whole agency. As small as it is there's an enormous
22 amount of work and I think you're going to see that
23 should you be appointed. I want to associate myself
24 with the comments of Dan Garodnick with regards to
25 you, sir, and regards to the fund raising. My own

2 opinion is I think my advice is to, for whatever it's
3 worth, is to take a proactive approach and say you
4 will personally refrain from having any type of
5 fundraising be it federal, state or city for the
6 length of your term. I think that puts the issue out
7 of the concern of this committee, which it clearly
8 is, and that just about every member has raised it.
9 I wanted to speak to you about something that I'm
10 always concerned about. Whenever an investigatory
11 body comes before us, be it DOI, COIB, the issue of
12 leaks. A person being under investigation or a
13 person being under the eye or whatever, always seems
14 to find itself in the newspapers and it's always been
15 an issue that has bothered me and that, you know, we
16 see that this person is being looked at by DOI for x,
17 sources say. Or COIB is looking into this, sources
18 say, and I think it does irreparable harm to the
19 person's reputation without even having an accusation
20 or charge being brought forward. How would you and
21 your capacity should you be confirmed, ensure that
22 this is not the case?

23 RICHARD BRIFFAULT: First, I would agree
24 with you that confidentiality is absolutely crucial
25 for processes like this that not only is somebody

2 innocent until proven guilty. It's beyond that. I
3 mean it's where the whole process involves often
4 gathering confidential information and the
5 willingness of people to provide information in
6 confidence turns on knowing that it will be kept in
7 confidence. So, I couldn't agree with you more about
8 the absolute top priority of that. I would be very
9 troubled if something--I mean, you know, sometimes
10 the person under investigation may have reasons for
11 wanting to be the source of a leak, but the key thing
12 would be finding out whether any of that information--
13 -any of that came from within the organization. I
14 would be extremely troubled if that occurred. I'm--I
15 haven't had direct involvement with the organization
16 whole now so I don't have any sense that this has
17 been a problem.

18 COUNCIL MEMBER IGNIZIO: Yeah, I'm not
19 assuming. We'll be clear, I'm not saying that does
20 come out of COIB but I'm just talking about the
21 overall protection of people's confidentiality.

22 FERNANDO BOHORQUEZ: Well, I mean, I
23 think--I'm assuming that it's already a high
24 priority, but I would certainly make it clear that
25 it's a high priority for me and that, you know, you

2 really have to be as tight as a drum in term of
3 information. These are--that's the sort of things
4 that you talk about. I know that I already have a
5 sense that the staff is very tight about this.
6 There's some talk about whether I might want to go to
7 a meeting before I'm officially on the board, and
8 well I've got to sign a confidentiality agreement.
9 They're very, very careful about that. My impression
10 is that it's been built into the, you know, just the
11 procedures of the board to do that. If there was a
12 leak, I would look into finding out where it came
13 from, who was the source and what within the bounds
14 of the law and the rules governing public employees
15 can be done about it. I would take it very seriously.

16 FERNANDO BOHORQUEZ: Just echo Professor
17 Briffault's comments. I agree with you a 100 percent.
18 The whole purpose of providing a safe harbor for
19 public officials to reach out to COIB to get advice
20 on an issue to give them a safe place, to have an
21 area of space where they can raise an issue and get a
22 confidential advice on what they can and cannot do.
23 And violating a confidential in that process
24 frustrates the entire purpose. Similarly with
25 investigations, if there's a complaint it's

2 confidential. Confidentiality of the investigations
3 must be paramount, and I'm not aware of any leaks
4 from the board.

5 COUNCIL MEMBER IGNIZIO: There's none. And
6 I thank you. But I just like to put those things on
7 the record, 'cause as well I do the same with DOI. I
8 want to speak to the fact that this is a great agency
9 that you are, you know, trying to be a part of and
10 one that I believe needs increased resources, and I
11 hope we will have your help with that as well. It's a
12 very small agency. They do a lot with a very small
13 budget and I think we need to work together better to
14 ensure that both the enforcement arm and the
15 education arm has the resources it needs to provide
16 to the 300,000 employees. Thank you very much, Mr.
17 Chairman.

18 CHAIRPERSON LANDER: Thank you. We've been
19 joined by Mark Levine who's a member of this
20 Committee. Council Member from Manhattan. I
21 recognize Council Member Chin.

22 COUNCIL MEMBER CHIN: Thank you, Chair.
23 Thank you for coming in today and I wanted to first
24 start with Mr. Bohorquez.

25 FERNANDO BOHORQUEZ: Yes.

2 COUNCIL MEMBER CHIN: A question for you.
3 I know that on your law firm's website it really
4 talks about highlighting, you know, your duties and
5 responsibit--especially on, you know, mentoring the
6 next generation of leaders of color and supporting
7 progressive political candidates and so my question
8 to you is that do you see serving on the Conflicts of
9 Interest Board help advance, you know, your goals? I
10 mean, with all the questions that was put forth to
11 you, I mean there might be other, you know, positions
12 on board that you might serve on that maybe won't
13 have so much limitation. So the fact that you want
14 to serve on this board, do you see that by serving on
15 it that you are doing something to sort of support
16 your principles, support your goals?

17 FERNANDO BOHORQUEZ: I do. I mean, I can
18 answer that with a story. As a young associate at
19 Baker, we had a Christmas party where I was having a
20 drink with one of our mail room guys. His name was
21 Raberma [phonetic] and he approached me and we were
22 talking and he's telling me about his similar past.
23 Like my father, he came here from another country and
24 started his own family. And he told me, he said,
25 "Fernando, seeing you as an associate, as an attorney

2 in this firm, it make me feel like maybe I have an
3 opportunity for my children to maybe become a lawyer
4 at a firm." He said, "I'm going to bring my son in on
5 Monday and I'm going to introduce him to you and say
6 look at this young gentleman. His skin is brown like
7 yours. His parents are from another country just like
8 yours, and he speaks horrible Spanish just like you.
9 But look at him, he's a lawyer, and son, maybe one
10 day you can be a lawyer too." And I think for young
11 people of color they can't be who they can't see. So
12 if I can play my small role in being a role model to
13 the students that I mentor, to the young lawyers that
14 I mentor, that if you work hard, that you contribute,
15 that you can achieve and get to a place that you can
16 have real impact on the city and I think it
17 absolutely furthers my goals of trying to help young
18 people advance.

19 COUNCIL MEMBER CHIN: Well do you also see
20 that by serving on the board that you will still be
21 able to continue doing some of the activities of
22 support for organizations or political candidates,
23 that you'll be able to still continue to do that.
24 You're not just going to all the sudden just stop
25

2 doing that. I mean, you're talking about a six year
3 period serving on the board.

4 FERNANDO BOHORQUEZ: Oh, absolutely. I
5 think like many of the members of the committee we
6 all have a lot of commitments and we all have a lot
7 of time balancing that we do, and over the last 10/15
8 years or so I've developed a keen skill set in time
9 management, in making time to do the things that
10 matter to me most. I intend to continue to be active
11 in the nonprofit organizations that I serve on, but
12 obviously when it comes to political activities,
13 those are necessarily going to be--those are
14 necessarily going to be dictated by the new paradigm
15 that I now or hopefully will be in. I wouldn't do
16 anything that would every compromise the appearance
17 of the board, and I would take that into account if I
18 were to ever engage, which I have no present
19 intention of doing now, if I ever were to engage in
20 any fundraising in the future.

21 COUNCIL MEMBER CHIN: Okay. Professor
22 Briffault, I guess the question also can go to both
23 of you. What I'm trying to get at is that from your
24 opening statement, right, and I also firmly believe
25 that, you know, public service, it's a noble cause.

2 So by you serving on the Conflicts of Interest Board
3 how can you help sort of advance that? And not just-
4 -I mean, education and training for elected official
5 it's important, but it's once a year, or if we have
6 questions we ask, but how do you sort of help by your
7 position on this board to really maybe take a more
8 proactive approach, to really help set the standard
9 or like so that people are more conscious about
10 conflict of interest and how they conduct themselves.
11 So how do you see your role on this board to help
12 facilitate that when you were talking about the whole
13 importance of public trust and all that?

14 RICHARD BRIFFAULT: Well, obviously, the
15 key thing and you've already mentioned this and I
16 won't spend more time on it, is educational training
17 and making sure people know what--not only what the
18 rules are but why those rules are there, what kinds
19 of problems they're addressing, what a conflict of
20 interest is and why it's a problem, why the fact that
21 you're somebody involved in the city government
22 whether elected or appointed in some important
23 position but you also have some outside activities
24 and maybe you're--in the course of it you're doing
25 something in your public position that also is

2 benefitting your private position, why that's a
3 problem. It's not necessarily prohibited all
4 situations, but why at least it's a problem, why it
5 might involve a misuse of the public's resources and
6 why it might be seen by other people as a problem,
7 and I think that's really the heart of it, is that
8 when we say public office of public trust, it means
9 people are in government, elected, appointed or under
10 other capacities to serve the public and people all--
11 everybody has outside activities legitimately. You
12 know, we all have complete lives, and just being
13 careful that when you are in the public, doing things
14 for the public you're not also inappropriately
15 serving your private side. I think the part that
16 matters is it could be a loss of public resources,
17 tax payer dollars or public power. It's a distra--at
18 the very least it's a distraction if not an improper
19 diversion, and then if it gets out and other people
20 see it, it can be very demoralizing to the public, to
21 the officials who aren't doing that and to the public
22 as a whole, and I think--the reason I think it's so
23 important for effective government is that, again,
24 its making sure that the attention and the resources
25 of the public is focused on the needs of the public

2 and that the trust of the public is not jeopardized
3 by when people hear of episodes of misconduct, or if
4 they do hear of it that it's followed up by recog--
5 but that episode is going to be fined or sanctioned
6 in some way. And that's why I think it matters, and
7 that's why--I mean, and that's just I think it's
8 proactive. I mean, I'm not an investigator, but I
9 think maybe I'll just stick with active, which is to
10 say that when these issues come up you got to show
11 that it's taken seriously and that there's somebody's
12 got to be--it's a watchdog function, that somebody's
13 really guarding the public's resources and making
14 sure the public's resources is being used for the
15 public's benefit and that it's seen to be doing that.
16 That's I think--that to me is why it's important.

17 FERNANDO BOHORQUEZ: In terms of an active
18 or proactive approach, I think based on my experience
19 in the private sector and working in public interest
20 organizations, and I think the board begins from this
21 presumption is that people tend to want to do the
22 right thing, and public officials want to do right by
23 their citizens, and I think that when you begin with
24 that assumption, that means that education and
25 training is permanent, and I think that if you lay

2 out the reasons and the policies behind some of these
3 rules and you do it in a way that is clear and is in
4 layman's terms like I've seen so far that the board
5 does, that to me is critical, and if there was one
6 area where I would focus on maybe working with the
7 board to improve, although everything I've seen is
8 that it does a great job, it really be on
9 communication and training and educating public
10 officials so they understand the reason and the basis
11 for why we have these rules and why they're applied
12 they're way they are.

13 COUNCIL MEMBER CHIN: Yeah, I think that
14 is important. I know that what's also helpful
15 periodically we do get updates from the Conflicts of
16 Interest Board on cases that they resolve, that you
17 know, certain fines was leveed, you know, all of the
18 sudden you would get a message or email on your
19 Blackberry and that's like a constant reminder, which
20 I think is helpful, but I thank you for your service
21 and I thank you for the answers. Thank you, Chair.

22 CHAIRPERSON LANDER: Thank you Council
23 Member Chin. Council Member Williams and then Council
24 Member Levine.

2 COUNCIL MEMBER WILLIAMS: I thank you
3 very much. Thank you for the opportunity. I was
4 trying to clarify with the fundraising. So an
5 example of a sitting Council Member who's running for
6 state office, can you support any one of those
7 candidates in that race?

8 FERNANDO BOHORQUEZ: City Council Member
9 running for a state or federal office?

10 COUNCIL MEMBER WILLIAMS: Yeah.

11 FERNANDO BOHORQUEZ: The rules prohibit me
12 from raising funds for the city council candidate,
13 sitting city council.

14 COUNCIL MEMBER WILLIAMS: But you can
15 raise funds for the opponent?

16 FERNANDO BOHORQUEZ: Technically, yes.

17 COUNCIL MEMBER WILLIAMS: Okay.

18 FERNANDO BOHORQUEZ: Well, that's my
19 understanding and of course I would run it by the
20 board and the staff first, but that's what it appears
21 to be under the letter that I received.

22 COUNCIL MEMBER WILLIAMS: If that's the
23 case, that actually is very concerning, because the
24 reason you wouldn't be able to raise for the sitting
25 councilman, I think might apply to the person going

2 against them. That seems to be an unfair advantage in
3 that particular situation. So I don't know if you
4 have any response for that, but that is--

5 FERNANDO BOHORQUEZ: [interposing] Well,
6 I, like I said earlier, I think they're two different
7 concerns, right. The first concern with respect to
8 the city Council Member, the sitting city council
9 member seeking office, that is a direct conflict,
10 because a city council member falls under the purview
11 of the board. With respect to the individual be it an
12 incumbent state or federal candidate or another
13 individual with those ties to the city who's running
14 for state or federal, that is not a--it is my
15 understanding a direct conflict, but there may be
16 extenuating circumstances that I would take into
17 account when considering whether to or not to raise
18 or contribute funds to that candidate.

19 COUNCIL MEMBER WILLIAMS: Which to me
20 makes sense particularly if it's a completely state
21 with no one sitting Council Member or, you know, a
22 city, but in this case that I'm saying which it seems
23 to be more of a hybrid--

24 FERNANDO BOHORQUEZ: [interposing] Right.
25

2 COUNCIL MEMBER WILLIAMS: It seems to me
3 that you then still have influence on whether that
4 person remains a Council Member or not, or is
5 effective, or could be effective, something they did
6 on the council, but the mere fact that you can't
7 raise money for them, but you can raise money for
8 their opponent. That seems--there's still to be some
9 kind of issue there with me, and just in general, and
10 I think some of my colleagues share some hesitation
11 there, but thank you for addressing that.

12 FERNANDO BOHORQUEZ: Thank you.

13 CHAIRPERSON LANDER: I mean, let me just
14 follow up a little more, and I know we've spent a lot
15 of time on it, but I--and I appreciate all the
16 answers that you've given, and I don't think anyone,
17 you know, you've got a great track record of
18 integrity, public service, and full disclosure every
19 one of the candidates that you've raised for I raised
20 for as well, so it's--but, you know, I'm just
21 imagining a situation where, you know, that city
22 council candidate, I mean that city council member
23 loses, stays in the city council and at some future
24 point comes before the COIB and feels like they then
25 have someone who was against them, you know, on the

2 board that they're seeking guidance from. You know,
3 and it could even be more narrow that that council
4 candidate, that Council Member could seek COIB
5 guidance during the election about something related
6 to the election. So, I, you know, those are--I guess
7 maybe what I would ask if you would think about, you
8 don't have to give an answer here today, but I think
9 you said that in any case where you were going to be
10 active in fund raising at any level you would first
11 seek COIB--

12 FERNANDO BOHORQUEZ: [interposing] Of
13 course.

14 CHAIRPERSON LANDER: advice, and I mean,
15 if I guess if you would think about whether in a
16 situation, you know, whether you would expand the set
17 of things, you would just blanket say you're not
18 going to do to include a race that had a city public
19 official, whether an elected official or a staffer,
20 you know, anyone that was under the COIB jurisdiction
21 in the race, which is clearly above and beyond what's
22 required by the COIB letter, but I think would
23 address at least some of the concerns. Let me just
24 ask you to think about that.

2 FERNANDO BOHORQUEZ: Okay. I will
3 definitely take it into consideration, of course.

4 CHAIRPERSON LANDER: Thank you. Council
5 Member Levine for our final questions.

6 COUNCIL MEMBER LEVINE: Save the best for
7 last. Thank you, Mr. Chairman. Thank you both for
8 coming in here. Mr. Briffault, I want to note that
9 among your many qualifications for the office is the
10 fact that you've lived in the seventh council
11 district for three decades or more, so you clearly
12 bring a unique perspective to this position, which I
13 will very much value.

14 CHAIRPERSON LANDER: I resisted touting
15 Mr. Bohorquez's residence of Park Slope and now I
16 feel required to do so.

17 COUNCIL MEMBER LEVINE: Okay.

18 CHAIRPERSON LANDER: Because Park Slope is
19 in competition with the Upper West Side for who is
20 the more good government neighborhood, and so--

21 COUNCIL MEMBER LEVINE: Neck and neck.
22 Neck and neck, no doubt. Mr. Bohorquez, I just
23 wanted to follow up on this line of questioning.
24 Forgive me if I'm redundant. Anything that's been
25 discussed just stop me.

2 FERNANDO BOHORQUEZ: [interposing] Of
3 course.

4 COUNCIL MEMBER LEVINE: I read here it
5 says that you've been involved in organizing,
6 supporting efforts for minority progressive
7 candidates at the city, state and national level,
8 what you've been talking about in the last couple of
9 questions, admirable work for sure. Organizing,
10 supporting sounds like it's more than just
11 fundraising and when we were responding to questions
12 on fundraising, do you view such restrictions also
13 applying to providing informal strategic advice,
14 organizing volunteers or another way being involved
15 in these campaigns?

16 FERNANDO BOHORQUEZ: Well, definitely with
17 respect to fundraising it's clear, that's governed by
18 the rules and I would run all those issues by the
19 board, and I think by extension any involvement with
20 any political candidate or any elected official. I
21 would also take pause and make sure I discuss with
22 the board and the staff to ensure that not only am I
23 following the letter but also the spirit of the law.
24 So, yes, I would make sure that in all political
25 activity that if I were to be on the board that I

2 engage in, I would approach it with the utmost
3 caution and deference.

4 COUNCIL MEMBER LEVINE: Fair enough. And
5 am I right to understand that if it's a candidate
6 who's not currently in the city council or under
7 jurisdiction or running for an office that would be
8 under the jurisdiction of the COIB such as a congress
9 person who's running for governor, that that, you
10 would not feel there would be any relevant conflict
11 there in such a race?

12 FERNANDO BOHORQUEZ: Where it is a
13 congress person running for statewide office?

14 COUNCIL MEMBER LEVINE: For example where
15 they were neither currently or running for an office
16 that would be under COIB jurisdiction.

17 FERNANDO BOHORQUEZ: I don't think there
18 is a direct conflict or a direct concern under the
19 rules, but again, I would always heir on the side of
20 caution and seek wise counsel from the board and the
21 staff to make sure that not only is this letter of
22 the law being applied correctly, but also the spirit,
23 'cause I don't want to raise any issues that could
24 cause any problems along those lines.

2 COUNCIL MEMBER LEVINE: Great. I look
3 forward to one of your meetings being done off site
4 in Morningside Heights at a good restaurant up there.
5 Maybe we'll alternate with Park Slope.

6 FERNANDO BOHORQUEZ: Thank you.

7 COUNCIL MEMBER LEVINE: Thank you.

8 CHAIRPERSON LANDER: I'll have to run a
9 background check on the restaurant. Thank you guys
10 both for your diligent answers to our questions, both
11 in writing and here today. I think the
12 thoughtfulness that you've both given to the broad
13 set of ethics and conflict guidelines reflects very
14 positively on both of you. So let me thank you for
15 your answers and dismiss you from this panel. Now,
16 Mark, you filled out a card, is that--would you--do
17 you have a something on the record that you would
18 like to--yeah, you guys can stay there. Go ahead and
19 state your name. We have to--you know.

20 MARK DAVIES: I'm Mark Davies, Executive
21 Director New York Conflicts of Interest Board. Just
22 one point. I just note that it is not uncommon for
23 ethics laws to prohibit ethics board members from
24 having--being engaged in any political activity,
25 including fundraising. In other words, they can write

2 a check, but they can't be involved. So that
3 actually is not an uncommon prohibition and that's
4 something I don't know if the council wants to
5 consider that in the future, but that's not an
6 uncommon.

7 CHAIRPERSON LANDER: That's not a rule
8 that currently applies, it's under they New York
9 City--

10 MARK DAVIES: [interposing] It is not--

11 CHAIRPERSON LANDER: Conflicts of Interest
12 Board law--

13 MARK DAVIES: [interposing] in the City.

14 CHAIRPERSON LANDER: [interposing] but if
15 we're concerned here rather than just drilling Mr.
16 Bohorquez, we could pass a law that says members of
17 the COIB can't engage in fundraising.

18 MARK DAVIES: yeah.

19 CHAIRPERSON LANDER: That they could write
20 checks but that they couldn't fund--

21 MARK DAVIES: Right, and that's not an
22 uncommon prohibition in ethics laws around the
23 country. That's all I had.

24 CHAIRPERSON LANDER: Alright. That's very
25 helpful. Thank you. Good. Alright. Thank you both

2 very much. As I say, we will reconvene the committee
3 in all likelihood--did we notice a meeting yet? No.
4 Okay, but we'll likely notice a meeting next
5 Wednesday. This is all of them. Yeah, so good.
6 Thanks very much. This hearing's adjourned.

7 [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify there is no relation to any of the parties to this action by blood or marriage, and that there is no interest in the outcome of this matter.



Date 04/02/2014