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COMMITTEE ON OVERSIGHT AND INVESTIGATIONS

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON OVERSIGHT AND INVESTIGATIONS

February 24, 2020  
Start: 10:11 a.m.  
Recess: 11:59 a.m.

HELD AT: 250 Broadway-Committee Rm, 14th Fl.

B E F O R E: RITCHIE J. TORRES  
Chairperson

COUNCIL MEMBERS:

- DIANA AYALA
- BEN KALLOS
- RORY I. LANCMAN
- KEITH POWERS
- CARLINA RIVERA
- RAFAEL SALAMANCA, JR.
- MARK TREYGER
- KALMAN YEGER

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COMMITTEE ON OVERSIGHT AND INVESTIGATIONS 2

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

Margaret Garnett  
Commissioner of the New York City Department of  
Investigations, DOI

Naftuli Moster  
Activist, Founder and Executive Director of Young  
Advocates for Fair Education, YAFFED

Shana Weishmann  
Parent, Member of Young Advocates for Fair  
Education

2 [gavel]

3 CHAIRPERSON TORRES: Good morning

4 everyone, I'm City Council Member Ritchie Torres, I  
5 chair the Committee on Oversight and Investigations.

6 I will make a few preliminary observations and then  
7 we'll hand, hand it over to the Commissioner. The

8 subject of today's hearing is background

9 investigations. As many of you know the city has a

10 backlog of 5,600 cases which is not only an

11 embarrassment but it is a threat to the integrity of

12 city government and we are reminded... we were reminded

13 what is at stake with the case of David Hay who

14 despite serving as a Deputy Chief of Staff in the

15 largest agency in city government never underwent a

16 background investigation. Now it's important to point

17 out that DOI has made considerable progress toward

18 reducing the pre-existing backlog, it was over... well

19 over 6,000 when the new Commissioner assumed office

20 and there's been real progress toward preventing the

21 emergence of a backlog in the future. What worries me

22 is the proposed timetable for clearing the backlog,

23 36 months to 48 months strikes me as unacceptably

24 long and unacceptable to most New Yorkers. I think we

25 can do better and we should do better and so what I

2 want to hear from DOI is a diagnosis of what went  
3 wrong, why was the background investigation unit  
4 allowed to atrophy from neglect because it's  
5 important to note that the backlog is not an  
6 accident, it was a consequence of neglect, a  
7 consequence of a lack of resources and the lack of  
8 prioritization and then we want to hear DOI's plan  
9 for expeditiously clearing the backlog not only for  
10 the present but also for the future as well. So, with  
11 that said Commissioner Garnett can you raise your  
12 right hand. Do you swear to tell the truth and the  
13 whole truth in your testimony before the City Council  
14 and in response to City Council Member questions?

15 MARGARET GARNETT: I do.

16 CHAIRPERSON TORRES: Thank you.

17 MARGARET GARNETT: Good morning Chair  
18 Torres and members of the Committee on Oversight and  
19 Investigations. My name is Margaret Garnett and I am  
20 the Commissioner of the New York City Department of  
21 Investigation. Thank you for inviting me to address  
22 the Committee on DOI's background investigation  
23 process and provide you with an update on the  
24 background investigation backlog and the steps we are  
25 taking to address it. First, I want to thank the

2 Council for their assistance and support in this  
3 area. Last year, during DOI's budget testimony, I  
4 outlined the serious backlog in background  
5 investigations that I became aware of shortly after  
6 taking office as Commissioner. As part of the effort  
7 to tackle this issue, DOI provided a plan of action  
8 and asked this Committee to help DOI secure 13 extra  
9 personnel lines, with funding for 10 of those lines,  
10 at an estimated cost of \$690,000. As a demonstration  
11 of our commitment to addressing this serious issue,  
12 DOI self-funded the remaining three positions at a  
13 cost of approximately \$180,000. We received that  
14 vital support from this Committee and from the City,  
15 for which we are especially grateful. We have filled  
16 all 13 of those positions and I am confident that the  
17 increased resources will be put to good use. Even  
18 before the new personnel began working, other steps  
19 we have taken have reduced the backlog by more than  
20 1,350 applications over the last seven-and-a-half  
21 months. I want to commend the team of DOI  
22 investigators and supervisors who have been working  
23 diligently to accomplish this. Background  
24 investigations are one part of a complement of  
25 services that city.. that DOI provides to the City

2 that I view as an essential part of the agency's core  
3 mission. Along with the unit that receives and  
4 assesses complaints, and the unit that conducts  
5 background checks of City vendors with contracts  
6 valued at more than \$250,000, background  
7 investigations for sensitive City positions are part  
8 of DOI's frontline anticorruption work. I have made  
9 it a priority to restructure the Backgrounds  
10 Investigation Unit, reduce the backlog, and ensure  
11 that we are maintaining the highest standards of  
12 integrity in the process. This past year has put us  
13 on the right track to accomplish that. DOI conducts  
14 its background investigations per the mandate under  
15 Executive Order 16, which currently applies to a  
16 limited subset of City employees, specifically  
17 employees quote, "to be appointed to or holding  
18 positions of responsibility," end quote. In an effort  
19 to ensure that all such employees receive a  
20 background investigation, the DOI Commissioner  
21 historically has defined certain more specific  
22 categories of employees who must have a background  
23 investigation. The last update to these categories  
24 was made in 2016, and as part of our overall review  
25 of the background investigation process, we are

2 currently evaluating the suitability of the existing  
3 categories. I expect to make some adjustments to  
4 them, which I believe will result in a modest  
5 reduction in the significant amount of background  
6 requests that DOI regularly receives, without  
7 diminishing the effectiveness of our anti-corruption  
8 effort. I will outline the details on those reforms  
9 shortly. DOI's background investigations gather the  
10 facts regarding issues like tax compliance, previous  
11 arrests or convictions, the truthfulness of a  
12 candidate's claimed work history and educational  
13 background, potential conflicts of interest, and,  
14 where legally appropriate, financial vulnerabilities  
15 that could make a candidate particularly susceptible  
16 to bribery or extortion. The focus of a DOI  
17 background investigation is to identify adverse  
18 information that could bear on the suitability of a  
19 candidate to hold a position of public trust. Where  
20 adverse information is identified, we share those  
21 facts with the hiring agency. Ultimately it is the  
22 hiring agency who decides whether the information  
23 merits rescinding a job offer or terminating the  
24 employee. DOI background investigations enhance a  
25 hiring agency's internal hiring process but they do

2 not supplant it, meaning the hiring agency can and  
3 should be conducting its own pre-employment review  
4 that may include reference checks and requiring other  
5 information from a candidate. In all background  
6 investigations, City hiring agencies initiate the  
7 process by notifying DOI of the individuals at their  
8 agency who should be background checked. A full DOI  
9 background investigation typically takes several  
10 months to complete, the vast majority of backgrounds  
11 DOI conducts are completed after the applicant begins  
12 working in their City position. We expedite certain  
13 high-level positions so that the background can be  
14 completed prior to appointment, for example  
15 Commissioner-level positions, judicial appointments,  
16 and at the request of an agency head, certain highly  
17 sensitive positions. DOI's guidelines allows City  
18 agencies up to 30 days from appointment or promotion  
19 to forward a completed background package to DOI.  
20 Ultimately, hiring agencies, not DOI, make the  
21 decision regarding whether to wait for the outcome of  
22 a background investigation before allowing an  
23 employee to begin working. Similarly, the hiring  
24 agency, as the employer, remains responsible for  
25 standard reference checks and other best practices



2 surrounding hiring, particularly if they allow  
3 employees to begin working prior to their DOI  
4 background check being completed. Given the volume of  
5 applicants, it would not be feasible to conduct and  
6 complete all background investigations prior to  
7 commencement of employment for all employees subject  
8 to a background investigation. These realities are  
9 why I was particularly troubled by the scope of the  
10 backlog in DOI's background investigations, and why,  
11 as I will explain shortly, we have moved quickly to  
12 implement our goal of completing all new background  
13 investigations in six months or less. In the early  
14 summer of 2019, we divided the Background  
15 Investigation Unit into two teams: One team  
16 represents a fresh start on our background  
17 investigation role, ensuring that, going forward, we  
18 are meeting our obligations to City agencies in a  
19 timely manner and not adding to the existing backlog.  
20 That team operates with the goal of completing all  
21 new background investigations in less than six  
22 months, with an average time to completion of less  
23 than 120 days. I am proud to say that the staff on  
24 this team has kept us on track with these goals,  
25 completing 766 background investigations since July

2 1<sup>st</sup> of last year in an average of 71 days. A second  
3 team is dedicated to addressing and processing the  
4 background investigations that are part of DOI's  
5 backlog, with a goal of reducing the backlog to zero  
6 as quickly as possible without sacrificing quality.  
7 Since July 1<sup>st</sup> of last year, DOI has closed 1,357  
8 applicant files from the backlog, reducing the  
9 backlog by approximately 20 percent, from  
10 approximately 6,479 on July 1, 2019, to 5,122 as of  
11 last Friday, February 21st. DOI continues to devote  
12 additional resources to background investigations  
13 through a rotation of incoming staff and other  
14 proactive measures. In addition, the influx of new  
15 investigative staff in this year's budget should  
16 continue to have a positive effect on these results.  
17 I believe we are on course to meet the goal that we  
18 discussed with the City Council last year: clearing  
19 the massive backlog within the next four years, if  
20 not much sooner. As I mentioned earlier, DOI is  
21 considering changes to the categories of employees  
22 eligible for a background investigation, which would  
23 reduce the pipeline of background applicants while  
24 ensuring that our background investigation resources  
25 are focused on those employees with significant

2 decision-making or policy-setting authority, or those  
3 with positions that make them particularly vulnerable  
4 to corruption. I believe these revisions will advance  
5 our efforts to conduct background investigations in a  
6 timely manner without creating undue risks in the  
7 background process. I want to stress that even with  
8 the changes I am about to outline, if a hiring agency  
9 requests a background investigation that it believes  
10 is in the public interest, DOI will honor that  
11 request. We will maintain our current balance of some  
12 objective triggers for background investigations and  
13 some subjective triggers for background  
14 investigations. We believe this balance between  
15 objective categories, which are easy for agencies to  
16 apply and provide a measure that is possible for DOI  
17 to audit and spot-check, and subjective categories,  
18 which are targeted to the actual duties of an  
19 employee and allow for the variety of titles and  
20 structures across the huge range of city agencies, is  
21 the best way to capture the universe of City  
22 employees who should be subject to a background  
23 investigation. The first objective threshold is  
24 salary and it's currently set at \$100,000 a year.  
25 After discussion with our experienced supervisors in

2 the Background Unit, we have concluded that this  
3 threshold can be raised to an annual salary of  
4 \$125,000 or more. Currently, that threshold applies  
5 even if a long-time City employee crosses it solely  
6 because of cost-of-living increases. We will make  
7 clear that the salary threshold for a background  
8 investigation for existing City employees is  
9 triggered by an increase in salary only if the raise  
10 is occasioned by a change in duties, title, or  
11 responsibilities. The second objective category  
12 currently is any employee whose civil service title  
13 has an "M" code for "managerial". We intend to raise  
14 that threshold to those managers who are in titles  
15 categorized as Management level 4 or above, which  
16 mirrors the standard used by the Conflicts of  
17 Interest Board to determine who is required to file  
18 an annual financial disclosure report. We will  
19 maintain the existing subjective categories, while  
20 updating the language used to describe those  
21 categories. Those categories are one, employees with  
22 the authority to enter into financial transactions or  
23 agreements on the City's behalf valued at more than  
24 \$10,000; two, employees with the authority to  
25 negotiate or approve contracts of various kinds, or

2 applications for zoning provisions or special  
3 permits; three, employees with administrator-level  
4 access to the city's sensitive IT infrastructure and  
5 systems; and four, any employee whom the Mayor or an  
6 agency head believes should be backgrounded in the  
7 public interest. When these changes are implemented,  
8 DOI will conduct outreach sessions for Human Resource  
9 professionals at City hiring agencies, to walk them  
10 through the changes and provide an opportunity to  
11 share questions, concerns and ideas. We will continue  
12 to evaluate the effectiveness of these categories and  
13 make further adjustments if warranted. Finally, DOI  
14 continues to actively review other options for  
15 responsibly reducing the backlog while also providing  
16 a level of service on current background  
17 investigations that meets our own high standards for  
18 professionalism and excellence. The guiding principle  
19 in evaluating any idea is to maintain and foster the  
20 integrity of the background investigation process.  
21 I'd like to turn now to a background matter that was  
22 raised just before New Year's regarding David Hay, a  
23 now-former DOE official who had been arrested and  
24 charged in Wisconsin with the online sexual  
25 solicitation of a minor, and whose background

2 investigation was part of the approximately 6,000  
3 backlogged background files I inherited when I  
4 arrived at DOI. The process for DOE backgrounds is a  
5 bit different from the other background  
6 investigations that DOI conducts. Specifically, DOI  
7 does not fingerprint DOE employees or conduct a  
8 criminal history check, rather DOE performs those two  
9 assessments for its own employees. State Education  
10 Law and City Regulations require DOE employees to be  
11 fingerprinted prior to beginning their employment.  
12 Additionally, due to the sensitive nature of the  
13 positions, DOE requires immediate notification of all  
14 arrests so they can evaluate whether an employee  
15 poses a danger in their position. Accordingly, DOE  
16 fingerprints their own employees and receives those  
17 arrest notifications directly. For those DOE  
18 employees who are subject to a DOI background check,  
19 DOI focuses on the other relevant information, such  
20 as financial background where applicable, tax  
21 information, and prior employment information, among  
22 other things. When Mr. Hay's matter first came to  
23 light, it was unclear whether a completed background  
24 investigation would have revealed information  
25 relevant to the charges against him. However, an

2 investigation by the Special Commissioner of  
3 Investigation, which oversees DOE matters, has  
4 provided additional detail on this matter.  
5 Specifically, the SCI investigation found that Mr.  
6 Hay misrepresented facts in his background  
7 investigation questionnaire to DOI and to DOE, that  
8 the criminal history check conducted by DOE prior to  
9 his employment did not reveal any criminal charges or  
10 convictions against him; that no information relevant  
11 to his current criminal charges existed in any of the  
12 information sources that a DOI background  
13 investigation would have reviewed; and, finally, that  
14 due to a non-disclosure agreement with a prior  
15 employer, other derogatory information about Mr. Hay  
16 would likely not have been shared with either DOE or  
17 DOI in any event. The fact that this background file  
18 was part of DOI's backlog remains a concern for me;  
19 but in this specific case there is no reason to  
20 conclude that a completed background investigation  
21 would have uncovered prior misconduct, or any facts  
22 related to the current pending charges against Mr.  
23 Hay. Mr. Hay's circumstances illustrate the  
24 challenges for any background investigation process.  
25 Although I believe that DOI's background

2 investigations are thorough and that our  
3 investigators are diligent and talented, no system is  
4 a perfect screen, nor can it be. If an individual  
5 does not have a criminal history or public record  
6 footprint of wrongdoing; if an applicant deliberately  
7 hides relevant facts from a hiring agency or from  
8 DOI; if prior employers refrain from sharing serious  
9 issues about an individual, the task of performing a  
10 complete background investigation is made  
11 immeasurably harder. As I mentioned earlier, DOI is  
12 continuously evaluating our background process to see  
13 if there are other areas open to improvements. We  
14 assessed the Hay situation to see if it illuminated  
15 any broader issues that needed to be addressed. As  
16 part of that review, we identified all backgrounds  
17 pending in the backlog that related to an Assistant  
18 Commissioner-level position or higher and have moved  
19 those backgrounds to the front of the line. Other  
20 than this small adjustment, our top priority remains  
21 working through the backlog from oldest to newest as  
22 expeditiously as possible, consistent with our  
23 standards of professionalism and excellence. At the  
24 same time, the changes we have made to the deployment  
25 of the unit's resources should ensure that a long



2 delay like that in the Hay situation will not recur,  
3 and to the extent any adverse information is  
4 discoverable with reasonable diligence, it is shared  
5 with hiring agencies within six months. In closing, I  
6 remain confident that the changes we have implemented  
7 over the past year within the Background  
8 Investigation Unit are effective steps towards  
9 tackling and eliminating the backlog and meeting our  
10 obligations for the current background investigations  
11 entrusted to us. But we are not resting on the  
12 successes we have had so far. I recognize what is at  
13 stake and share the concern that incomplete  
14 backgrounds pose risks for New York City. I want to  
15 assure this Committee and the public that DOI is  
16 successfully shrinking the massive backlog that had  
17 been growing for years and remains committed to  
18 eliminating it within four years, if not much sooner.  
19 This issue is among my top priorities. Thank you for  
20 your time today and for the opportunity to present  
21 this relevant and important information to this  
22 Committee. I am happy to answer any questions the  
23 Councilmembers have for me on this matter.

24 CHAIRPERSON TORRES: Thank you

25 Commissioner for your testimony. I want to start with

2 Mr. Hay, the, the press coverage has given the  
3 impression that he never underwent a background  
4 check, but your testimony seems to suggest otherwise  
5 so if, if you can clarify just the conflicting  
6 information.

7 MARGARET GARNETT: Sure, I, I think that  
8 sometimes perhaps understandably in the press there's  
9 a conflation between the different things that a  
10 hiring agency does versus the things that DOI does  
11 and in the case of the Department of Education unlike  
12 other agencies in... [cross-talk]

13 CHAIRPERSON TORRES: Yeah... [cross-talk]

14 MARGARET GARNETT: ...city for DOE because  
15 of state rules and the city's laws DOE fingerprints  
16 their own employees and runs a criminal history check  
17 based on those fingerprints before they begin  
18 working. So, in Mr. Hay's case the Department of  
19 Education had fingerprinted him and run a criminal  
20 history check which revealed no prior arrests or  
21 convictions so that portion was completed prior to  
22 him... [cross-talk]

23 CHAIRPERSON TORRES: Did he undergo a DOI  
24 background check?

2 MARGARET GARNETT: So, the... he, he had...  
3 DOI received a file for him when he was promoted to  
4 Deputy Chief of Staff in the late summer of 2017 and  
5 some preliminary steps had been taken on that file  
6 mainly focused on tax compliance, his tax, tax filing  
7 status had been ordered but none of the other steps  
8 had been completed, his file was in the backlog. So,  
9 he had a partial... [cross-talk]

10 CHAIRPERSON TORRES: So, the... [cross-  
11 talk]

12 MARGARET GARNETT: ...I would say a partial  
13 check.

14 CHAIRPERSON TORRES: So, the DOE did  
15 submit his name for a background investigation?

16 MARGARET GARNETT: Yes, they did.

17 CHAIRPERSON TORRES: But DOI failed to  
18 complete the background investigation?

19 MARGARET GARNETT: That's correct.

20 CHAIRPERSON TORRES: Okay. And what was  
21 the... what were the triggers that led him to be... to  
22 undergo... which, which criteria did he meet, objective  
23 criteria did he meet for a background for a  
24 background investigation?

2 MARGARET GARNETT: So, he definitely was  
3 over the salary threshold and I believe probably also  
4 the managerial threshold as well.

5 CHAIRPERSON TORRES: You referenced an  
6 SCI report, is that report public?

7 MARGARET GARNETT: So, I know they've  
8 completed the report and are... [cross-talk]

9 CHAIRPERSON TORRES: Okay... [cross-talk]

10 MARGARET GARNETT: ...sharing it with DOE I  
11 believe today and expect to make it public this week.

12 CHAIRPERSON TORRES: Okay. And you  
13 referenced a nondisclosure agreement?

14 MARGARET GARNETT: That's right, so some  
15 of this has been reported in the press, Mr. Hay was  
16 dismissed or he was... he resigned upon being told that  
17 he would be dismissed from a principal's position at  
18 the Kettle Moraine school district in Wisconsin, the  
19 basis for that was not any allegations of sexual  
20 misconduct it appears but rather that he had failed  
21 to comply with Wisconsin's licensing requirements  
22 for... [cross-talk]

23 CHAIRPERSON TORRES: Yeah... [cross-talk]

24 MARGARET GARNETT: ...administrators as  
25 well as some misuse of a district credit card for

2 personal purposes so he was informed of those  
3 charges, told that he would have a hearing before the  
4 school board which is the way that dismissal of  
5 education employees works in Wisconsin and he elected  
6 to resign prior to that hearing and in connection  
7 with that the... he and the school district had an  
8 agreement, a type of nondisclosure agreement that  
9 said he was resigning and forfeiting his right to a  
10 hearing and in exchange the school district would in  
11 future confirm his title and dates of employment and  
12 salary and, and would provide no other derogatory  
13 information about him.

14 CHAIRPERSON TORRES: How do we know that  
15 he had a nondisclosure agreement, is... was that the  
16 result of DOI's background check or DOE's background  
17 check or...

18 MARGARET GARNETT: No, in the course of  
19 SCI's investigation they've spoken to the officials  
20 at the school district in Wisconsin as well as  
21 submitted a... the equivalent of a New York State FOIL  
22 request for those records.

23 CHAIRPERSON TORRES: So, if, if DOI had  
24 completed its background check would DOI had made  
25 outreach to those same employers?

2 MARGARET GARNETT: So, in all likelihood  
3 we would have not directly spoken to the employer at  
4 Kettle Moraine because typically although DOI  
5 requests information about employers going back ten  
6 years the normal direct contact sort of human to  
7 human contact goes back, our standard is five years  
8 and unless something... [cross-talk]

9 CHAIRPERSON TORRES: And how far back  
10 does that employment date?

11 MARGARET GARNETT: So, that would be  
12 prior... the Kettle Moraine employment I believe that  
13 Mr. Hay left there in 2011 so even if the background  
14 check had been done immediately upon receiving his  
15 file that was in 2017, in all likelihood no one would  
16 have directly contacted Kettle Moraine but even if  
17 they had because of some... you know some bad feeling  
18 about the other information what's clear from SCI's  
19 inquiry is that the school district would not have  
20 provided anything other than his dates of employment  
21 and his title.

22 CHAIRPERSON TORRES: But the, the  
23 district would have confirmed the NDA?

24 MARGARET GARNETT: No.

25 CHAIRPERSON TORRES: No.

2 MARGARET GARNETT: No, the only  
3 information that they would have provided is the  
4 dates of employment, his title and salary.

5 CHAIRPERSON TORRES: But in the course of  
6 the latest investigation SCI did, did find out from  
7 the school district that he did in... have an NDA?

8 MARGARET GARNETT: That's right and in  
9 part they made... they made a FOIL request for the  
10 relevant documents.

11 CHAIRPERSON TORRES: And I guess when  
12 you... when you discover that a perspective employer  
13 has an NDA is that... is that a red flag for DOI?

14 MARGARET GARNETT: Yes, if, if we knew...  
15 [cross-talk]

16 CHAIRPERSON TORRES: Yeah... [cross-talk]

17 MARGARET GARNETT: ...that an... that an  
18 employee had left a previous employment with some  
19 kind of disclosure agreement at a minimum we would go  
20 back to the applicant and ask them hey, you know...  
21 also they're supposed to report that on the  
22 background investigation questionnaire that if they  
23 have left a prior employment upon being told there  
24 were allegations or that they were under  
25 investigation... [cross-talk]

2 CHAIRPERSON TORRES: Does, does, does  
3 your questionnaire specifically inquire about NDAs?

4 MARGARET GARNETT: No, it does not.

5 CHAIRPERSON TORRES: Should it inquire  
6 about NDAs?

7 MARGARET GARNETT: Maybe, we are at... we  
8 are always evaluating the questions and I think we  
9 have a... in the current background investigation  
10 questionnaire there's a very thorough series of  
11 questions about whether you've ever been told you  
12 were under investigation or had allegations against  
13 you in connection with a prior employment which  
14 should capture regardless of the nature of the  
15 agreement that led to your departing that employment,  
16 if you... so, the questions are designed to capture the  
17 full range of situations, they don't now specifically  
18 ask about a nondisclosure agreement, it's a little  
19 bit complicated because those agreements vary  
20 tremendously in terms of at times including a  
21 provision that neither party will reveal the  
22 existence of the agreement. So, what we have chosen  
23 to do is to ask directly about the circumstances of a  
24 person's departure from employment because we don't...  
25 we want to create situations that are designed to



2 incentivize people to be truthful and so it's given  
3 the range of agreements and contractual allegations...  
4 [cross-talk]

5 CHAIRPERSON TORRES: Yeah... [cross-talk]

6 MARGARET GARNETT: ...we have elected not...  
7 [cross-talk]

8 CHAIRPERSON TORRES: ...it, it just seems  
9 to me an NDA is intended to conceal adverse  
10 information... [cross-talk]

11 MARGARET GARNETT: That's... [cross-talk]

12 CHAIRPERSON TORRES: ...and... [cross-talk]

13 MARGARET GARNETT: Yes... [cross-talk]

14 CHAIRPERSON TORRES: ...and, and I  
15 certainly would want to know whether a perspective  
16 employee especially for Deputy Chief of Staff of the  
17 largest city agency had... is the subject of an NDA,  
18 that seems to be pertinent information for an agency  
19 to both ask for and know.

20 MARGARET GARNETT: You know I think  
21 individual agencies could make that decision, I think  
22 from DOI's perspective given the... as I said given the  
23 contractual... varying contractual provisions of those  
24 agreements and the fact that... [cross-talk]

2 CHAIRPERSON TORRES: But, but why, why  
3 should we subordinate what's best for the... for the  
4 integrity of our government to those contractual  
5 agreements, we have a right to ask as a condition of  
6 employment whether a perspective hire has an NDA?

7 MARGARET GARNETT: Yeah, I'd have to give  
8 that some more thought, I'm not sure that I agree  
9 with that.

10 CHAIRPERSON TORRES: Okay, what are...  
11 what... I guess why do you disagree and if you... if you  
12 know... if you want to think about it some more that's...  
13 [cross-talk]

14 MARGARET GARNETT: Yeah, I mean I'd like  
15 to think about it... [cross-talk]

16 CHAIRPERSON TORRES: Okay... [cross-talk]

17 MARGARET GARNETT: ...more, I mean I  
18 certainly understand the concern, as I said I think  
19 we, we have focused on questions that cover the  
20 actual factual circumstances of departure from prior  
21 employment that we think are broad enough to capture  
22 the full range without potentially putting someone in  
23 a position of having to violate a previous  
24 contractual agreement.

2 CHAIRPERSON TORRES: I just want to  
3 acknowledge that Council Member Kallos and Council  
4 Member Yeger have joined us. You, you noted in your  
5 testimony that Mr. Hay had misrepresented facts...

6 MARGARET GARNETT: That's right.

7 CHAIRPERSON TORRES: What facts did he  
8 misrepresent?

9 MARGARET GARNETT: The circumstances of  
10 his departure from the Kettle Moraine school  
11 district.

12 CHAIRPERSON TORRES: Okay and what  
13 specifically did he misrepresent on the claim?

14 MARGARET GARNETT: Well he... in, in a  
15 series of questions both on DOE's applicant forms as  
16 well as his DOI background investigation there's a  
17 series of questions like the questions I've been  
18 referring to about... that ask sort of in every  
19 possible way about the circumstances of departure  
20 from previous employment including whether...  
21 regardless of if it... if it resulted in a termination  
22 or resignation whether you've ever been told that you  
23 are under investigation in connection with a previous  
24 employment or that there are charges against you or

2 disciplinary action and he responded in the negative  
3 for all of those questions which was not truthful.

4 CHAIRPERSON TORRES: And when you fill  
5 out a DOI questionnaire and I'm assuming he  
6 misrepresented the facts in the... in the context of a  
7 DOI questionnaire, is that... [cross-talk]

8 MARGARET GARNETT: Yes.

9 CHAIRPERSON TORRES: Is, is that a... is  
10 that a document that's submitted under oath?

11 MARGARET GARNETT: Yes, we submit the  
12 document under penalty of perjury as well as having a  
13 notary... notarize the document where you have signed  
14 under penalty of perjury.

15 CHAIRPERSON TORRES: So, in your opinion  
16 did he commit perjury?

17 MARGARET GARNETT: Yes.

18 CHAIRPERSON TORRES: Mr. Kevin O'Brien,  
19 the former Chief of Staff for City Hall had  
20 substantiated allegations of sexual misconduct a mere  
21 months before his hire, does DOI inquire if a  
22 perspective employee has substantiated allegations of  
23 sexual misconduct?

24 MARGARET GARNETT: So, we don't typically  
25 ask that specific question unless we have information

2 that suggests that there might be such a thing and  
3 generally speaking our investigators when they speak  
4 to prior employers confirm that they... based on the  
5 information provided by the applicant they confirm  
6 the dates of employment, the title, any other  
7 information about the employment and we ask every  
8 prior employer whether their... the circumstances of  
9 the person's departure and whether the employer is  
10 aware of any adverse information arising out of the  
11 person's employment. In the case of Mr. O'Brien our  
12 investigators were told that he had resigned for a  
13 new opportunity in New York City and that they were  
14 not aware of any adverse information about him.

15 CHAIRPERSON TORRES: Why not ask  
16 specifically, I mean just given the, the national...  
17 why not ask specifically about sexual misconduct, you  
18 know we're looking at a time of backlash against  
19 sexual misconduct, against NDAs, you know why not ask  
20 specifically about it?

21 MARGARET GARNETT: Well I, I, I don't at  
22 all mean to diminish the importance of sexual  
23 harassment in the workplace which I, I take very  
24 seriously at DOI and in general but I do think that  
25 the focus of our background investigations is

2 primarily on corruption vulnerabilities and our  
3 preference is to ask about any adverse information, I  
4 think if we started identifying what are all the  
5 possible things that we might want to know about  
6 before a person is in a position of public trust I  
7 think in, in my experience the more you identify  
8 these five specific things the easier it is to miss  
9 things and our preference has been over time to ask  
10 employers whether they are aware of any adverse  
11 information arising from the person's employment  
12 which I think a fair minded employer should include  
13 in that substantiated allegations of sexual  
14 harassment particularly in the case... the case like  
15 Kevin O'Brien's where we know now it, it was the  
16 cause of his departure from the National Governor's  
17 Association but I don't think that privileging sexual  
18 harassment allegations over the range of other  
19 corruption vulnerabilities that are our primary focus  
20 is, is the way to go.

21 CHAIRPERSON TORRES: Yeah, I, I would  
22 recommend asking just given the sheer... just the  
23 prevalence of sexual harassment in the workplace.  
24 Did, did, did Mr. O'Brien lie to DOI?

2 MARGARET GARNETT: The O'Brien case is a  
3 little bit complicated because of the... some murkiness  
4 surrounding the exact circumstances of his departure  
5 from the National Governor's Association, I think  
6 that a fair reading of his background investigation  
7 questionnaire would lead one to conclude that he was  
8 not truthful.

9 CHAIRPERSON TORRES: Okay. So, what are  
10 the consequences for lying to DOI, failing to tell  
11 the truth to DOI?

12 MARGARET GARNETT: I would say that  
13 there's two possible consequences, one would be  
14 certainly that if we were aware that an applicant had  
15 provided false information or made material omissions  
16 we would immediately notify the hiring agency of our  
17 conclusions, it would be up to them to decide whether  
18 the person would be terminated or otherwise  
19 disciplined and then the second consequence is a  
20 possible... would be a possible criminal referral to...  
21 we would typically make those to the Manhattan  
22 District Attorney's Office for a decision on their  
23 part as to whether they thought the circumstances  
24 merited a criminal charge of perjury for filing a  
25 false instrument.

2 CHAIRPERSON TORRES: Is DOI going to see  
3 to it that Mr. O'Brien suffers those consequences for  
4 lying to the agency or...

5 MARGARET GARNETT: So, I don't want to  
6 talk about criminal referrals in any specific case  
7 but what I can say is that DOI takes that... the matter  
8 of false information on a background... in the  
9 background process very seriously and if we thought  
10 in any case, Mr. O'Brien's or any case that the facts  
11 made out of potential perjury or filing a false  
12 instrument charge we would make that referral likely  
13 to the Manhattan District Attorney's Office.

14 CHAIRPERSON TORRES: Okay, so let's zoom  
15 out and if you can describe just in detail the step  
16 by step process by which DOI conducts background  
17 investigations.

18 MARGARET GARNETT: Sure, so as I said  
19 that the hiring agency initiates the process by  
20 identifying their employees who require a background  
21 investigation and it is generally the responsibility  
22 of the hiring agency to assist the applicant in  
23 gathering all of the relevant documents and putting  
24 those into a package and sending them to DOI. For,  
25 for applicants who need to be background investigated



2 before they can begin the process is a little bit  
3 different in the sense that we often are getting  
4 those things more peace meal, you know notification  
5 that there is such a person, a schedule for when the  
6 documents might come in and so on so that we can  
7 start working right away but for the typical  
8 applicant the hiring agency would work with the  
9 applicant to complete the process of all forms and  
10 send a completed package to DOI and then there is a  
11 long series of sort of data base checks, uniform  
12 accessible places of information that an investigator  
13 would check for all applicants any that were  
14 applicable and those can include some employment  
15 history, education, residence in New York City if  
16 that's required, verifying prior residences, a huge  
17 range of things that can be checked through public  
18 databases, sometimes we start there, all applicants  
19 are fingerprinted and their criminal history is run  
20 through NCIC which is the National Criminal  
21 Information Database, the, the applicant is  
22 interviewed in person by an DOI investigator, that  
23 interview generally consists of going through the  
24 background investigation questionnaire which the  
25 investigator will have reviewed in advance to clarify

2 any conflicting information, ask any follow up  
3 questions, fill in any places that the applicant may  
4 have neglected to fill in and then following those  
5 things there would for many applicants be a series of  
6 efforts on the part of the investigator to do sort of  
7 human to human investigations, speaking with near  
8 term prior employment, there are times depending on  
9 the nature of the employment or the educational  
10 background or residency information where additional  
11 sort of person to person checks might have to be made  
12 and so the investigators would do that, we request  
13 verification of all tax filings even if they're out  
14 of New York State from the federal government and the  
15 relevant state authorities. We check a variety of  
16 other places in New York City and New York State to  
17 determine if the person has unmet financial  
18 obligations so everything from unpaid parking tickets  
19 to tax liens to civil judgments pending. For an  
20 employee who is exempt from the requirements of  
21 SCDEA, which is the Stop Credit Discrimination  
22 Employment Act, we also do a financial work up on  
23 that applicant including credit checks and other  
24 financial checks to identify whether there are  
25 financial vulnerabilities to corruption.

2 CHAIRPERSON TORRES: And in, in your  
3 experience what are the most common bottlenecks that  
4 delay the completion, the timely completion of a  
5 background investigation?

6 MARGARET GARNETT: So, so I would say...  
7 [cross-talk]

8 CHAIRPERSON TORRES: And we've... and we've  
9 been joined by Council Member Keith Powers.

10 MARGARET GARNETT: I would say that maybe  
11 it's best illustrated by sort of a, a... an easy  
12 example of an easy applicant and a difficult  
13 applicant. The easy applicant whose investigation can  
14 typically be completed much more quickly is someone  
15 who has always resided in New York State even better  
16 if they've always resided in New York City who  
17 received all of their education in the United States  
18 at a major educational institution, whose prior  
19 employment is generally with large companies or  
20 government entities and who has limited potential  
21 conflicts of interest so they don't own any companies  
22 and they don't rent out property, they don't have a  
23 spouse or other relatives who are engaged in  
24 businesses that touch the city, that would be a very  
25

2 straightforward application that we would... oh and the  
3 person has no criminal history.

4 CHAIRPERSON TORRES: So, it sounds like  
5 the, the more of a history you have outside New York  
6 City or outside the United States and the fewer... and  
7 the more assets you have the more complicated your  
8 background investigation.

9 MARGARET GARNETT: Yeah, so particularly  
10 challenging things are out of state tax compliance is  
11 particularly challenging, we have... we have measures  
12 in place with the IRS and with the New York State  
13 taxing authorities that allow us to get a relatively  
14 expedited confirmation of tax compliance from those  
15 entities, if someone is a tax filer, you know in  
16 Kansas or Texas or any other state the, the time that  
17 it would take us to get confirmation of their tax  
18 compliance from that state can vary wildly, if a  
19 person's prior employment is generally with smaller  
20 entities, businesses that have... that no longer exist,  
21 smaller nonprofits that may not have robust HR, all  
22 of those things can present challenges. If a person  
23 has a complicated residency history and New York City  
24 residency is part of the requirement for the job that  
25 also can present... [cross-talk]

2 CHAIRPERSON TORRES: So, so what if some  
3 of those challenges prove to be unresolvable like  
4 does the impasse persist or how do you break the  
5 impasse?

6 MARGARET GARNETT: So, one of the things  
7 we have done in the last year which is, is new is to  
8 implement a case review for our background  
9 investigation unit which hadn't... if I understand it  
10 correctly had not really ever occurred in the past,  
11 with a Deputy Commissioner who's Chief of  
12 Investigations running those case reviews to try to  
13 do exactly what you're raising which is identify  
14 okay, so this is a case that is persisting and the  
15 particular roadblocks and to identify what those  
16 roadblocks are, apply some judgment, high level  
17 judgment to the situation to determine whether can  
18 this matter be resolved or are we at a point where  
19 the best service to the agency would be to provide  
20 whatever information we have and inform the agency we  
21 have been unable to confirm X and please let us know  
22 if you'd like us to continue or if you're satisfied  
23 with the information that we've been able to confirm.  
24 So, I think that sort of high-level attention to  
25 identifying cases that are dragging and providing

2 some level of judgment and responsibility to how  
3 we're going to resolve that is another change that we  
4 have made in the last year.

5 CHAIRPERSON TORRES: So, how much of the  
6 backlog can be attributed to the lack of decision  
7 making about how to best break an impasse?

8 MARGARET GARNETT: So, I, I think it's  
9 very hard to identify a single cause, when... at, at  
10 the change... the last change of administration in, in  
11 2014 there were roughly 2,000 open background cases  
12 so it's not really fair to say that those are all  
13 backlog because some might have just been in process  
14 in the normal course but there were approximately  
15 2,000 open background investigations. There... when  
16 there's any new mayoral administration there's a, a,  
17 a burst in hiring and particularly at the high levels  
18 in agencies where many of those folks would be  
19 subject to background investigations so what is clear  
20 is that over the I guess four and a half years from  
21 the summer of 2014 to January of 2019 that the number  
22 of open cases went from about 2,000 to about 6,400  
23 and I think it's a combination... my, my assessment is  
24 that it's a combination of factors. One is resources  
25 that... the resources that were able to reasonably keep

2 up in the waning days of the Bloomberg administration  
3 were not adequate to deal with a burst in the hiring  
4 of a new... that will accompany I think any new mayoral  
5 administration so there were increases in  
6 applications without increases in staff and that...  
7 those problems I think snowballed because it wasn't  
8 only personnel but also sort of systems for keeping  
9 track and order, orderliness and assigning work,  
10 it's... it... I, I'm a parent so I think of it as if like  
11 the systems you might have in place that can manage  
12 your family when you have one child, if you go then  
13 to having three children those same systems and  
14 processes are not going to be adequate for household  
15 management and I think that also happened here that  
16 as, as the volume of applicants increased and the  
17 size of the backlog increased that there weren't  
18 adequate systems and processes in place to address  
19 that and, and the backlog snowballed and I think  
20 there also were some management decisions made about  
21 how old cases would be handled, how difficult cases  
22 as you've identified would be handled and I think  
23 that there was a, a culture and, and this is the hard  
24 thing about background investigations, no one... you  
25 don't get praise when you do it right, right? So, if

2 the background investigations are being done  
3 thoroughly and timely no one is praising you for  
4 that, no, no... you don't get to have a press  
5 conference if you're up to date on background  
6 investigations, it only can... you only get attention  
7 when it goes wrong and so I think because of that  
8 there develops somewhat of a culture of fearfulness  
9 of like let's just not have something go wrong which  
10 can lead to a sense that well we can only get blamed  
11 if something bad happens so let's keep putting the  
12 hard cases to the side, let's let older cases which  
13 will be harder, older cases are much harder to deal  
14 with when you're dealing with old information, let's  
15 just kind of ignore that and then I think overlaid on  
16 top of that is... was a lack of management attention at  
17 the highest levels of the agency to the scope of the  
18 problem, you know I, I think for me I will say it was  
19 a shock to come in and, and learn the true state of  
20 the situation that we had over 6,000 files that had  
21 not been completed.

22 CHAIRPERSON TORRES: In the I guess over  
23 the course of the De Blasio administration there was  
24 a... almost a twofold expansion of DOI's workforce, did  
25



2 any of those new resources go to the background  
3 investigation unit?

4 MARGARET GARNETT: No.

5 CHAIRPERSON TORRES: And so even though  
6 there was an exponential growth in the city's  
7 workforce on a scale of tens of thousands of  
8 employees there was no commensurate increase in the  
9 background investigation unit?

10 MARGARET GARNETT: No, there were very  
11 modest increases in their staffing but not adequate  
12 to deal with the increase in city hiring, no.

13 CHAIRPERSON TORRES: Your testimony  
14 pointed out that there are city agencies that conduct  
15 background investigations of their own, to what  
16 extent are those investigations duplicative of DOI's  
17 on background checks?

18 MARGARET GARNETT: So, the, the only  
19 agency that, that does... so, these things fall on a  
20 couple of different categories. So, for example  
21 Department of Corrections and NYPD that has a  
22 uniformed academy DOI does not conduct the background  
23 checks at all for their uniformed personnel, we only  
24 do their kind of high-level civilian personnel that  
25 would fall within our existing categories. So, they

2 are doing their own, they have robust applicant  
3 investigation units and they handle that themselves,  
4 same is true for the Fire Department as well. Then  
5 there are agencies that send their high-level  
6 personnel to DOI, but they also do a little bit extra  
7 themselves and I would put DOE in that category. As I  
8 mentioned DOE is the only agency that I'm aware of  
9 that fingerprints all of their employees before they  
10 can start working because of state education  
11 regulations and so the criminal... fingerprint and  
12 criminal history portion is completed by DOE and... for  
13 everyone and then they will send to DOI for a normal  
14 DOI background check anyone who falls within the  
15 otherwise affable categories. What other agencies do  
16 in terms of HR function like their normal hiring  
17 processes I think is going to vary widely in terms of  
18 just the kinds of things that any employer would do  
19 hopefully reference checks... [cross-talk]

20 CHAIRPERSON TORRES: And, and does, does  
21 DOI... because obviously DOI is much more expert at  
22 investigations than a run of the mill city agency, do  
23 you have a role in shaping their background  
24 investigations and ensuring uniformity in how  
25

2 agencies conduct their own internal investigations  
3 or...

4 MARGARET GARNETT: So, no I mean and I,  
5 I, I really would not characterize what other  
6 agencies do as investigations, I think that the  
7 agency is responsible for the practices that I would  
8 hope any employer would do; checking references,  
9 asking an applicant for basic information about their  
10 work history, educational history and so on, I don't  
11 believe that other agencies are doing what I would  
12 consider to be an investigation of their applicant's  
13 backgrounds.

14 CHAIRPERSON TORRES: And you said there  
15 are a subset of employees, the vast majority of  
16 employees who do undergo background investigations  
17 can begin their employment before the completion of  
18 their investigation?

19 MARGARET GARNETT: That's right.

20 CHAIRPERSON TORRES: Who's the sub... I  
21 guess who belongs in the subset of employees who, who  
22 have to have a completed background investigation  
23 before commencing employment?

24 MARGARET GARNETT: So, all agency heads  
25 and commissioner level appointments are background

2 checked before they begin, sometimes, sometimes we  
3 are able to do that before the appointment is  
4 publicly announced so it is common that DOI is  
5 informed in confidence for background check purposes  
6 of a pending commissioner level or agency head  
7 appointment and we try to do the background as  
8 quickly as we can. The judicial appointments have to  
9 be... their background check has to be completed before  
10 they can be officially appointed and then there are a  
11 sort of hard to categorize other set of employees  
12 where an agency head which would be the Mayor for  
13 City Hall or commissioner level for other agencies if  
14 they feel that a position is particularly sensitive  
15 so that would range, you know some agency heads want  
16 their Chief Information Security Officer to be  
17 completed before they begin or a General Counsel or a  
18 high level person in City Hall so it... that, that's  
19 kind of a catch all category but if, if an agency  
20 head believes the position is so sensitive that they  
21 would like the person to be cleared before... their  
22 background check to be completed before they begin  
23 they can ask us to do that and we'll make every  
24 effort to accommodate that.

2 CHAIRPERSON TORRES: But there are  
3 certainly employees who have access to sensitive  
4 systems, access to sensitive information who play a  
5 direct role in granting city benefits whether it be  
6 zoning approvals or, or contracts on a scale of  
7 millions of dollars if not more, there are employees  
8 who fit into those categories who are hired well  
9 before the completion of their background check, is  
10 that..

11 MARGARET GARNETT: That's correct and,  
12 and.. [cross-talk]

13 CHAIRPERSON TORRES: Is that a wise.. like  
14 should we strive to live in a world where the  
15 completion of a background check is a pre-condition  
16 for hiring? Is that desirable?

17 MARGARET GARNETT: I think that's a  
18 policy decision that is.. [cross-talk]

19 CHAIRPERSON TORRES: Well I'm asking for  
20 your guidance as.. [cross-talk]

21 MARGARET GARNETT: Yeah.. [cross-talk]

22 CHAIRPERSON TORRES: ...a professional so..

23 MARGARET GARNETT: You know I think the  
24 range of city agencies makes it hard to have a hard  
25 and fast rule, you know take, take the position of a

2 ACCO, Chief Contracting Officer for an agency, you  
3 know there are agencies where the ACCO is routinely  
4 signing off on the initial phases of contracts worth  
5 tens, hundreds of millions of dollars, the contracts  
6 at that level of course do receive, you know a high  
7 level review at other places too, at MOCS, at the  
8 Comptroller, there are agencies where the ACCO has  
9 the same title, maybe similar salary, similar job  
10 description is at an agency where those contracting  
11 scales just nowhere near that so they have the same  
12 authority but we're not talking about the same amount  
13 of money so what we have done generally is to rely on  
14 the agency head's assessment of the sensitivity of  
15 the position, I think, you know one of the, the, the  
16 issue that you're identifying was for me one of the  
17 primary reasons why in assessing the backlog  
18 situation I was not content to just let's keep trying  
19 to get it down as quickly as we can working from  
20 oldest to newest because that was really perpetuating  
21 for some unknown amount of time this circumstance  
22 where we might not be completing a check for when...  
23 till the persons been working for the city for two  
24 years which struck me as just wildly unacceptable.  
25 So, part of what we've done is to at least I know

2 that from July 1<sup>st</sup>, 2019 forward there will be no  
3 background check that we do not provide adverse  
4 information to the hiring agency within six months of  
5 the time that we get the completed packet so maybe  
6 it's, you know seven months after they start at the  
7 most because that is kind of within a standard  
8 probationary period for employment. In many cases as  
9 I said we've been... that teams been hitting an average  
10 day of 71 days to complete so I think in many cases  
11 if there is adverse information, we will be  
12 delivering it to the hiring agency much sooner than  
13 six months.

14 CHAIRPERSON TORRES: Do you think there's  
15 any... well I'll just ask the same question but  
16 slightly different, is there any part... because there  
17 are components of the background investigation  
18 process that are much simpler than others, that are  
19 much more important than others, is there any part of  
20 the background investigation process that should be a  
21 pre-condition for employment even, even if it's not  
22 complete there are some components that are... that can  
23 be simply done and... but that are critically important  
24 and we would want to know the answers to those

2 questions before we have the, the perspective hire  
3 begin employment? Like is there a... [cross-talk]

4 MARGARET GARNETT: So... [cross-talk]

5 CHAIRPERSON TORRES: ...middle ground  
6 between the two extremes?

7 MARGARET GARNETT: You know I think it,  
8 it would be possible that if you wanted to do  
9 something like that it, it would I think not be  
10 extremely difficult to have the fingerprinting and  
11 the criminal records check run before a person begins  
12 employment that would be kind of an obvious idea  
13 where that... the... if the agencies were willing to  
14 partner with us in doing that I think we could  
15 accommodate that. We wouldn't... you know obviously I'm  
16 treating the backlog differently but on a going  
17 forward basis I think that that would be something  
18 that we could do, you know that we could accommodate  
19 it logistically if the agencies were willing to  
20 partner with us in doing that. As I said the agencies  
21 really control the, the pipeline and so I think we  
22 often are not even aware that there's, you know an  
23 opening or an applicant has been selected for a  
24 background check eligible position until they are  
25 actually onboarded at their agency, so that process



2 is really controlled by the hiring agencies, I think...

3 you know I'm certainly willing to consider the...

4 [cross-talk]

5 CHAIRPERSON TORRES: Oh, I'm sorry I want  
6 to... so the agency does not submit the name to you for  
7 a background investigation until after the point of  
8 hiring?

9 MARGARET GARNETT: That's right, yeah.  
10 That's true for every... that's true for every... [cross-  
11 talk]

12 CHAIRPERSON TORRES: So, so even, even if  
13 you had the capacity and the inclination to  
14 investigate the backgrounds of perspective hires  
15 before the point of employment you couldn't do so?

16 MARGARET GARNETT: Right and, and I, I do  
17 not... I mean I, I do not think that we have the  
18 capacity to do a background investigation on every  
19 perspective applicant for a position for, for anyone  
20 who is subject to a background check the, the offer  
21 of employment for someone who... say a commissioner  
22 level is contingent upon successful background and if  
23 you are going to start work beforehand the agencies  
24 are supposed to be informing the person that they are  
25 subject to a background investigation by DOI and that

2 their employment... continued employment will be  
3 contingent on the results of that investigation.

4 CHAIRPERSON TORRES: Remind me, what was  
5 the size of the backlog at it's peak?

6 MARGARET GARNETT: About... approximately  
7 6,400, between 64 and 6,500.

8 CHAIRPERSON TORRES: And it's presently  
9 5,600?

10 MARGARET GARNETT: 51...

11 CHAIRPERSON TORRES: 5,100...

12 MARGARET GARNETT: 5,122 as of last  
13 Friday.

14 CHAIRPERSON TORRES: Its clear to me that  
15 you are... you're dedicated to clearing the backlog but  
16 there's no guarantee that your successor is going to  
17 dedicate the same amount of time and energy, I think  
18 like history is showing us that, that if there's a  
19 lack of resources or even a lack of prioritization or  
20 a lack of efficient systems a backlog could easily  
21 develop and become prohibitive, come... become  
22 overwhelming, should there be and I suspect you're  
23 going to be resistant to this but should there be  
24 legislative mandates, legislative requirements that  
25 background checks are completed within deadlines,

2 most of us have to live in worlds of deadlines why  
3 shouldn't something as critical as background  
4 investigations be subject to statutory deadlines?

5 MARGARET GARNETT: Yeah, I... so, you know  
6 I, I, I would resist a legislative mandate regarding  
7 the backlog because I think that it's... that's... it's  
8 not susceptible to that, it's, it's difficult to... as  
9 you, you know better than I do legislation is kind of  
10 a blunt instrument and I think, I hope the backlog  
11 situation... [cross-talk]

12 CHAIRPERSON TORRES: We think it's  
13 surgical.

14 MARGARET GARNETT: I, I'll just put on my  
15 lawyer hat for a minute, there. So, I think the  
16 backlog is a situation that, that I hope will not  
17 recur whether I'm the Commissioner of DOI or someone  
18 else. I, I'm, I'm not opposed in principle to a  
19 requirement that, you know DOI's... that DOI report to  
20 the hiring agency within six months or less the  
21 results of a background investigation, I, I don't  
22 think that that... you know I think if that's something  
23 that the Committee wants to pursue I don't have any  
24 inherent objection to that. I think that... you know as  
25 I said I, I said last year and, and again today I

2 think that I think the current circumstance is, is  
3 shameful, it, it is a dereliction of DOI's  
4 responsibility to the hiring agencies and to the city  
5 as a whole and you know we're doing everything that  
6 we can to address it, you know I, I have tried to be  
7 realistic in the estimates I've given to the Council,  
8 you know I don't mind saying that my, my personal  
9 goal is that if, if I am not the DOI Commissioner on  
10 January 2<sup>nd</sup> of 2022 that the backlog would be  
11 delivered as zero to the new... whoever the new  
12 Commissioner is so, I, I have great hopes, I... we have  
13 great people in our background investigation working  
14 on this issue, I think they feel a sense of renewal  
15 and I hope tremendous support from me and my  
16 executive team to tackle this problem so I... it is my  
17 fervent hope that I will not be delivering the same  
18 problem to whoever the next Commissioner in DOI is...

19 CHAIRPERSON TORRES: So, you're, you're  
20 confident that you could complete the... clear the  
21 backlog within the next two years?

22 MARGARET GARNETT: I'm hopeful... [cross-  
23 talk]

24 CHAIRPERSON TORRES: Hopeful... [cross-  
25 talk]

2 MARGARET GARNETT: ...I want... I, I... as I  
3 said... [cross-talk]

4 CHAIRPERSON TORRES: Well I guess what,  
5 what kind of resources would be required to translate  
6 hope into an actual commitment?

7 MARGARET GARNETT: So, I think that is  
8 difficult because... it's difficult to assess because  
9 what we have done since last summer in terms of  
10 splitting the... you know starting with this fresh  
11 start idea and splitting the unit into two teams is  
12 that I wanted to make sure that we were giving the  
13 going forward team all the resources that they needed  
14 to be successful in meeting this goal of no  
15 investigation taking longer than six months so right  
16 now I would say there's probably a slight imbalance  
17 in terms of the resources that are devoted to current  
18 versus backlog and as we continue to onboard the 13  
19 new lines and as both teams kind of continue to get  
20 their feet under them what I expect we're going to be  
21 able to do is continue to make additional resources  
22 available to the backlog without sacrificing our  
23 current... our goals for the current background  
24 investigations coming in so, you know I'm hesitant to

2 say oh if we only had another X number of people that  
3 would do the trick because... [cross-talk]

4 CHAIRPERSON TORRES: Okay... [cross-talk]

5 MARGARET GARNETT: ...I, I don't want to...  
6 you know it's complicated in the city with the hiring  
7 rules, its... if you hire people into positions its not  
8 as if... it's, it's, it's not easy or, or maybe even  
9 right when that need is done to say okay, thank you,  
10 you can go now, that's not typically how city  
11 employment works and so I, I'm reluctant to devote  
12 enormous amounts of resources that probably  
13 additional resources could clear up faster, I think  
14 the most responsible thing is to give the  
15 reorganization efforts at least another six months to  
16 really be able to assess do we have the right balance  
17 of resources to each side of this problem and  
18 continue to assess that and move resources around so  
19 I think certain... [cross-talk]

20 CHAIRPERSON TORRES: But why, why do you  
21 need another six... I mean clearly the approach you're  
22 pursuing is working, you've reduced the backlog by  
23 more than 1,000 cases, there's no new backlog when it  
24 comes to... [cross-talk]

25 MARGARET GARNETT: Right... [cross-talk]

2 CHAIRPERSON TORRES: ...cases like, like  
3 you've done the experiment, it... the new approach is  
4 successful why, why do we need six more... six more  
5 months to assess what we know is working?

6 MARGARET GARNETT: Oh, no I, I mean I'm  
7 confident that what we're doing is working, I think  
8 to your question of... [cross-talk]

9 CHAIRPERSON TORRES: Yeah... [cross-talk]

10 MARGARET GARNETT: ...what would be needed  
11 to ensure that that number would be zero in January  
12 of 2022 that's the part that I think is, is hard to  
13 assess right now because I do believe that we will be  
14 able to shift some existing resources to make the  
15 number that we've achieved to date go down faster so  
16 that's why I'm reluctant to say today, well I could  
17 definitely say if we had five more, ten more... [cross-  
18 talk]

19 CHAIRPERSON TORRES: But is... maybe I'm  
20 oversimplifying, is it as simple as what is the  
21 average number of cases that one investigator can  
22 complete within a time frame and take that number  
23 divide it from the backlog and that will tell you the  
24 number of investigators you will need to complete the  
25 backlog.

2 MARGARET GARNETT: Yes, in the... you could  
3 get an estimate by doing that, yeah.

4 CHAIRPERSON TORRES: Again, I'm a  
5 politician not a mathematician but that's the... it  
6 seems straightforward, it's... you know as you have  
7 more investigators your, your capacity to reduce the  
8 backlog is going to increase.

9 MARGARET GARNETT: That's true, yes.

10 CHAIRPERSON TORRES: So, I'm just curious  
11 to know what that number is, how many... how many more  
12 employees would you need to complete the backlog  
13 within a one year time frame, within a time frame and  
14 it could be in a temporary infusion of investigators  
15 who could be reallocated elsewhere once the backlog  
16 is cleared? In your testimony you, you distinguished  
17 objective triggers for background investigations from  
18 subjective triggers and if I remember correctly the  
19 objective triggers included a salary of more than  
20 100,000 which you will increase to 125,000 or  
21 120,000...

22 MARGARET GARNETT: 100... to 125 that's  
23 right.

24 CHAIRPERSON TORRES: A managerial  
25 employee and for a hire, procurement and zoning, IT,



2 access to sensitive systems and then the subjective  
3 trigger is agency discretion...

4 MARGARET GARNETT: No, so I, I would... I  
5 would characterize the objective triggers as being  
6 salary level and the managerial code for... [cross-  
7 talk]

8 CHAIRPERSON TORRES: Okay... [cross-talk]

9 MARGARET GARNETT: ...a civil service title  
10 because those are truly objective, any... [cross-talk]

11 CHAIRPERSON TORRES: Yeah... [cross-talk]

12 MARGARET GARNETT: ...person looking at  
13 your PMS entry which is the city's hiring system  
14 would be able to identify do you fall in one of those  
15 first two categories. The other categories I  
16 characterize them as subjective because they depend  
17 upon an assessment of the employee's actual duties in  
18 practice so... [cross-talk]

19 CHAIRPERSON TORRES: Fair enough... [cross-  
20 talk]

21 MARGARET GARNETT: ...the... sometimes civil  
22 service title and also office title depending on the  
23 agency don't necessarily to an outsider reflect what  
24 the person's actual duties and responsibilities...  
25 [cross-talk]

2 CHAIRPERSON TORRES: Fair enough, yeah...

3 [cross-talk]

4 MARGARET GARNETT: ...are so those  
5 subjective categories which include essentially  
6 ability to bind the city financially of more than  
7 10,000 dollars; contracting authority, zoning  
8 approvals, certain kinds of special permit approvals,  
9 you know and that, that bucket is generally the  
10 ability on your own signature to deliver a valuable  
11 city benefit; administrator level access to sensitive  
12 IT infrastructure or to places where very sensitive  
13 and valuable data is held by the city and then the,  
14 the last category being agency head discretion.

15 CHAIRPERSON TORRES: Do you... do you... do  
16 we know the number of background checks that fall  
17 into each of those categories?

18 MARGARET GARNETT: So, I do not...

19 CHAIRPERSON TORRES: Okay...

20 MARGARET GARNETT: ...mainly because...

21 [cross-talk]

22 CHAIRPERSON TORRES: Do we know the  
23 categories that are generating the highest demand for  
24 background checks at DOI?

25

2 MARGARET GARNETT: No because we don't...  
3 we currently don't separately track which category  
4 because sometimes... again we're dependent on the  
5 agencies for that information... [cross-talk]

6 CHAIRPERSON TORRES: Yeah... [cross-talk]

7 MARGARET GARNETT: ...and many applicants  
8 fall into more than one category so take IT  
9 infrastructure and salary, almost everyone who's  
10 going to have administrator level access to IT  
11 infrastructure given the IT pay scale probably makes  
12 more than 125,000 dollars a year... [cross-talk]

13 CHAIRPERSON TORRES: Yeah... [cross-talk]

14 MARGARET GARNETT: ...maybe not but there  
15 will be significant overlap in those categories, same  
16 thing for, you know agency heads or commissioner  
17 level... [cross-talk]

18 CHAIRPERSON TORRES: But I'm, I'm  
19 wondering in cases... because the backlog is not only a  
20 function of DOI having too few investigators but in  
21 some sense conducting too many investigations, right,  
22 should we focus DOI's minimal... limited resources on,  
23 on the cases that objectively require background  
24 investigations, we all agree I suspect that if you  
25 have a direct role in handing out a city benefit you

2 ought to be subject to a background investigation, if  
3 you have access to sensitive infrastructure you ought  
4 to be subject to a background investigation, if you  
5 have a high level position of power and policy making  
6 you ought to be subject but if you're simply a mid-  
7 level managerial employee who has no special power,  
8 no special access to sensitive infrastructure, no  
9 special role in administering city benefits why  
10 should you have to undergo a DOI background check?

11 MARGARET GARNETT: Well I think that's  
12 one of the primary reasons why that, that... the area...  
13 of the changes I outlined the area that I think is  
14 likely to yield the most distinction or get most  
15 directly at the problem that you've identified is  
16 changing the M code from all, all M coded civil  
17 service titles to M4 or higher, many relatively low  
18 level managers in city government have an M code  
19 civil service title who do not necessarily I think  
20 for many of those have the kinds of discretionary  
21 authority that would suggest a corruption  
22 vulnerability so when we finalize these changes and  
23 roll them out to city agencies we will apply them to  
24 the backlog as well so that we're applying our  
25 current standards to the backlog and I do expect that

2 that will result in, in a one time kind of jump  
3 reduction in the size of the backlog.

4 CHAIRPERSON TORRES: Yeah, because I  
5 think what I want to see is proportionality between  
6 the investigations that DOIs conducting and the  
7 actual need, the actual corruption risk.

8 MARGARET GARNETT: Right.

9 CHAIRPERSON TORRES: And that  
10 relationship can be distorted by a misuse of agency  
11 discretion, right. I'm, I'm wondering which agencies  
12 demand the most background investigations from DOI.

13 MARGARET GARNETT: Well I think the, the  
14 two large... the agencies that are responsible for the  
15 two highest just flat numbers are unsurprisingly two  
16 of the largest agencies in the city Health and  
17 Hospitals and the Department of Education so just on  
18 a flat number not, not proportional to their size, on  
19 flat number those two agencies are responsible for  
20 the highest number of DOI investigations, background  
21 investigations so you know there are some agencies  
22 that... [cross-talk]

23 CHAIRPERSON TORRES: And do those  
24 agencies pay for those background investigations or  
25 does it come at DOI's expense?

2 MARGARET GARNETT: So, Health and  
3 Hospitals does pay... [cross-talk]

4 CHAIRPERSON TORRES: Okay... [cross-talk]

5 MARGARET GARNETT: ...they're a non-mayoral  
6 agency so for non-mayoral agencies... for Health and  
7 Hospitals specifically we have a, a memorandum of an  
8 understanding with them to do their background  
9 investigations and they make a contribution to DOI's  
10 expenses based on that MOU for their employees but  
11 other agencies do not.

12 CHAIRPERSON TORRES: So, I guess should  
13 that be the model that, you know every agency is  
14 entitled to a minimal standard of service from DOI  
15 when it comes to background investigations but if  
16 you're demanding more than the norm, more than what  
17 is minimally required the agency should be expected  
18 to pay for it because if I as an agency had suddenly  
19 decide to, you know subject a whole new class of  
20 employees to DOI investigations that's effectively an  
21 unfunded mandate on your agency that could impede the  
22 overall completion time of... for background  
23 investigations so, so how do we address that unfunded  
24 mandate?

2 MARGARET GARNETT: Well I, I think... my  
3 concern would be that I would not want to financially  
4 disincentivize agency heads so I, I think it is  
5 trick... I share your concern that we want to make sure  
6 that there's a balance between the resources expended  
7 and the anticorruption benefit that we get and, and I  
8 think that's just good fiscal management. I would not  
9 want to create a... you know as an agency head myself I  
10 know every agency head is... wishes they had more  
11 resources and is, is looking around for ways to make  
12 their budgeted money go further so my concern would  
13 be that I would not want to provide a financial  
14 disincentive to agency heads to send people to us to  
15 be backgrounded. To me I think, you know we are as  
16 part of this process as I said in my testimony I'm  
17 trying to evaluate every possible place in the system  
18 that we should be rethinking in order to address this  
19 problem and so one of those has been to look at some  
20 agencies that send, you know entire categories of  
21 certain kinds of employees to us, to me the best way  
22 to address that is through a direct conversation with  
23 those agency heads that hey, you know we... like can we  
24 talk about... [cross-talk]

2 CHAIRPERSON TORRES: Not, not, not...

3 [cross-talk]

4 MARGARET GARNETT: ...this... [cross-talk]

5 CHAIRPERSON TORRES: ...legislation.

6 MARGARET GARNETT: No, I, I, I do not  
7 think... [cross-talk]

8 CHAIRPERSON TORRES: There's a theme  
9 here.

10 MARGARET GARNETT: Right...

11 CHAIRPERSON TORRES: No, no.

12 MARGARET GARNETT: I, I have a healthy  
13 respect for the role of the Council I think, I hope  
14 that that's clear but I think that part of the issue  
15 is that the work that the city does and the work and  
16 structure of each agency just varies so tremendously  
17 that a one size fits all solution is not perfect and  
18 what we're trying to do is to capture... to try to find  
19 a balance where we maximize that... the number of  
20 people who should be backgrounded get into the  
21 pipeline without being overinclusive and ending with  
22 a lot of work that is of little benefit.

23 CHAIRPERSON TORRES: Yeah, yeah, I, I  
24 just want to... and then I'm going to hand it over to  
25 my colleagues, I just want to lay the groundwork for



2 a post-Garnett world in which we can put in place..

3 [cross-talk]

4 MARGARET GARNETT: You, you're ready to..

5 [cross-talk]

6 CHAIRPERSON TORRES: ...rules.. [cross-talk]

7 MARGARET GARNETT: ...be rid of me so

8 quickly?

9 CHAIRPERSON TORRES: No, no not at all

10 but I'm going to be gone at some point, that ensures

11 efficient use of resources and ensures that we are

12 preventing the emergence of a backlog in the future

13 so that's, that's my.. that's what.. and, and I think

14 an overzealous use of agency discretion can easily

15 lead to a backlog without actually mitigating

16 corruption in the city. So, with that said I.. we've

17 been joined by Council Member Salamanca, Council

18 Member Ayala, I know Council Member Kallos has

19 questions.

20 COUNCIL MEMBER KALLOS: Thank you Chair

21 Torres, do Council Members get background checks?

22 MARGARET GARNETT: No, elected officials

23 are not background checked.

24 COUNCIL MEMBER KALLOS: Do you know how

25 many Council Members have served time for corruption?

2 MARGARET GARNETT: Off the top of my head  
3 no.

4 COUNCIL MEMBER KALLOS: Do you think  
5 Council Members should?

6 MARGARET GARNETT: No, I think the voters  
7 are the best check on elected officials, I think  
8 there's a conflict... [cross-talk]

9 COUNCIL MEMBER KALLOS: There's U.S...  
10 [cross-talk]

11 MARGARET GARNETT: ...it would be a...  
12 [cross-talk]

13 COUNCIL MEMBER KALLOS: ...there's, there's  
14 supreme... United States Supreme Court law that  
15 prohibits it, but it was just worth, worth noting.  
16 Chapter... so one thing I'm actually kind of nervous  
17 about is Chair Torres' concern about you leaving so  
18 your predecessor kind of saw DOI Commissioner as a...  
19 as almost a life appointment, in fact chapter 34 of  
20 the Charter, section 801 says that basically you  
21 serve until you're removed and it says quote, "the  
22 Mayor may remove the Commissioner upon filing in the  
23 Office of the Commissioner of Citywide Administrative  
24 Services and serving upon the Commissioner of  
25 Investigation the reasons therefore and allowing such

2 an officer an opportunity to make a public  
3 explanation", the reason I know this because we've  
4 lived through this. Are, are you planning to stay on  
5 for the next administration or are you planning to  
6 hand over a, a... what some Commissioners believe to be  
7 a customary option for them to bring in a new person?

8 MARGARET GARNETT: Can you ask me that in  
9 December of 2021?

10 COUNCIL MEMBER KALLOS: I'm asking now  
11 but you don't have to... but, but would you agree that  
12 chapter 34, section 801 may, may leave the discretion  
13 more in your hands than other Commissioners?

14 MARGARET GARNETT: Yes.

15 COUNCIL MEMBER KALLOS: Okay. Did you get  
16 a background check?

17 MARGARET GARNETT: Yes, I did. I got  
18 three of them actually.

19 COUNCIL MEMBER KALLOS: What were... I, I'm  
20 curious now...

21 MARGARET GARNETT: One by DOI, one by the  
22 Council because I, I'm an advise and consent  
23 appointment so the Council did their own... the Council  
24 staff did their own background check and one by the  
25 Mayor's Office of Appointments.

2 COUNCIL MEMBER KALLOS: Okay, three  
3 background checks. Now would a sealed criminal case  
4 be revealed by NCIC and would it be an automatic  
5 disqualification?

6 MARGARET GARNETT: So, the sealing laws  
7 vary a lot from state to state as to who they apply..  
8 [cross-talk]

9 COUNCIL MEMBER KALLOS: New York State  
10 cases.

11 MARGARET GARNETT: So, in, in New York  
12 State there's a new sealing law as you probably know  
13 that's relatively recent, within the past I think two  
14 years... [cross-talk]

15 COUNCIL MEMBER KALLOS: We, we  
16 automatically seal almost everything very quickly.

17 MARGARET GARNETT: Yeah, so the..  
18 typically in an NCIC report which we refer to as E-  
19 JUSTICE that's a system that it comes, you can see  
20 that there is a sealed conviction but you can't  
21 always see what it is or what it's for because the  
22 New York State sealing law doesn't apply to law  
23 enforcement purposes so anytime there's criminal  
24 history we have our General Counsel and the legal  
25 department assess the circumstances of potential

2 adverse information that relates to criminal history  
3 before we report that to the hiring agency so the  
4 answer is, it depends because we have folks in the  
5 Council's office look at any criminal history  
6 reporting that leaves DOI to make sure that we are  
7 complying with the relevant New York State and New  
8 York City laws.

9 COUNCIL MEMBER KALLOS: So, there are  
10 cases where somebody would have committed a crime, it  
11 would have been sealed and you won't report it to the  
12 hiring agency?

13 MARGARET GARNETT: That's right.

14 COUNCIL MEMBER KALLOS: And, and even if  
15 you do the hiring agency in many cases still has  
16 discretion about whether or not to move forward with  
17 that candidate?

18 MARGARET GARNETT: Yes, the hiring agency  
19 always makes the ultimate decision about whether to  
20 rescind an offer or to terminate an employee.

21 COUNCIL MEMBER KALLOS: This is on topic  
22 because the topic is background checks but it is... it  
23 is something that we've been working on since before  
24 I got elected and... but DOI suggested that one agency  
25 in particular, the Board of Elections, a, a home of

2 rampant patronage and nepotism according to a report  
3 from her agency should do background checks, have  
4 they been submitting background checks to you?

5 MARGARET GARNETT: I am not sure, but I  
6 will check and I... and get back to you, off the top of  
7 my head I'm not sure but I will... [cross-talk]

8 COUNCIL MEMBER KALLOS: Is it possible to  
9 have somebody who is sitting with you in the audience  
10 send a quick email and get an answer for us for  
11 before the end of this hearing?

12 MARGARET GARNETT: We can try.

13 COUNCIL MEMBER KALLOS: Thank you. And  
14 are you the agency handling background checks for  
15 DYCD related to the new state DOHMH requirements for,  
16 for people who have contracts with DYCD who have to  
17 do background checks?

18 MARGARET GARNETT: So, that... it's really  
19 in a... in a somewhat separate category, right now DOI  
20 provides fingerprint services only so the... there are  
21 federal and state laws that require anyone who works  
22 with minors to have a criminal history check so that...  
23 the, the operational management of that issue rests  
24 at either DOHMH or ACS or DOE depending on what type  
25 of program it is, DOI provides the actual

2 fingerprinting and criminal history check services  
3 for child care providers right now through MOU with  
4 DOHMH.

5 COUNCIL MEMBER KALLOS: What is the... what  
6 does your current backlog look like and when will  
7 that be done?

8 MARGARET GARNETT: So, there... right now  
9 the only what I would characterize as a backlog is  
10 time to get... for a child care employee to get an  
11 appointment to come into DOI to be fingerprinted and  
12 as of Friday the next available appointments were in  
13 I believe the second week of March so it's about  
14 three weeks...

15 COUNCIL MEMBER KALLOS: Okay... [cross-  
16 talk]

17 MARGARET GARNETT: ...right now to get an  
18 appointment, once the person has been fingerprinted  
19 and we receive their results which we receive very  
20 quickly, our current timeline is one to two days that  
21 we transmit negative results to DOHMH and then they  
22 take it from there. So, the, the only thing I would  
23 characterize as a backlog is there is some delay in  
24 getting an appointment to come in but right now it's  
25 running at about three weeks so we are actually

2 engaged currently in discussions with DOHMH about how  
3 to make that process more efficient, there are  
4 revisions to the federal and parallel state laws that  
5 are going to now require anyone in that category to  
6 be re-fingerprinted every five years which is an  
7 enormous increase in the task so we have been working  
8 with DOHMH and ACS to try to identify ways that we  
9 can be ready for that and, and make the process more  
10 efficient.

11 COUNCIL MEMBER KALLOS: Thank you.

12 CHAIRPERSON TORRES: Be, before I hand it  
13 to one of my colleagues, I do want to... you know the,  
14 the... do the Commissioners at the BOE undergo DOI  
15 background checks?

16 MARGARET GARNETT: So again, I'm not  
17 sure, they... the, the BOE is a strange... [cross-talk]

18 CHAIRPERSON TORRES: Because BOE... some...  
19 we have a role in confirming BOE Commissioners so...

20 MARGARET GARNETT: Right, the BOE is a...  
21 you know is a very unusual city agency in that the  
22 parties... [cross-talk]

23 CHAIRPERSON TORRES: Yeah... [cross-talk]

24 MARGARET GARNETT: ...have parallel people  
25 that are appointed and so as with elected officials



2 when positions are implicated by the political  
3 process there often are different rules that apply to  
4 that so... but again we'll find the answer and, and let  
5 you know.

6 CHAIRPERSON TORRES: Yeah and just to  
7 correct some confusion, Commissioner Garnett is not  
8 leaving as Commissioner of DOI so... Council Member  
9 Salamanca.

10 COUNCIL MEMBER SALAMANCA: Thank you. I,  
11 I asked the Chair, I, I thought... I thought you were  
12 leaving, I'm sorry. Commissioner I... just a few  
13 questions, what agencies don't get a, a DOI  
14 background check?

15 MARGARET GARNETT: So, the ones that come  
16 to mind immediately are the, the agencies that have  
17 very significant uniform services that go through an  
18 academy handle their own background checks for their  
19 uniform services so Department of Corrections, NYPD,  
20 the Fire Department, they have applicant  
21 investigation units that clear people before they can  
22 enter the academy for their uniform services, DOI  
23 does not conduct those background checks, we do  
24 conduct background checks for civilian positions in  
25 those agencies that would otherwise be subject to

2 that so the General Counsel at the Department of  
3 Corrections is subject to a DOI background check but  
4 a uniformed corrections officer is not.

5 COUNCIL MEMBER SALAMANCA: Okay, are  
6 Council staff required to have a DOI background  
7 check, high level Council staff?

8 MARGARET GARNETT: If they otherwise fall  
9 within the categories then I believe the answer to  
10 that is yes. So, it's not every member of.. it's not  
11 every Council staffer but if they meet the salary  
12 targets or they fall within the discretionary  
13 categories then they would potentially be subject  
14 because they're city employees.

15 COUNCIL MEMBER SALAMANCA: So, we have  
16 for example in our own offices we have Council staff  
17 who make... I guess the threshold is 100,000 or did you  
18 raise that... [cross-talk]

19 MARGARET GARNETT: It's currently  
20 100,000, we intend to revise that to 125.

21 COUNCIL MEMBER SALAMANCA: When will that  
22 take effect do you know?

23 MARGARET GARNETT: I'm, I'm hoping  
24 actually to finalize that this week and send it out  
25 to agency heads.

2 COUNCIL MEMBER SALAMANCA: Alright, so...  
3 because I know some Council Members may have staff  
4 members that are making over 100,000 dollars in their  
5 offices so their subject to DOI?

6 MARGARET GARNETT: Yes, they're... well  
7 they're city employees so they should be background  
8 checked, yes.

9 COUNCIL MEMBER SALAMANCA: Okay. Alright,  
10 how many background... how many investigators do you  
11 currently have that, that are responsible for  
12 background checks?

13 MARGARET GARNETT: So, our current total  
14 staff in the background unit is 41 that includes... we  
15 have two, two of the 41 are people who have been  
16 hired and approved by OMB, they haven't actually  
17 started yet, they should be starting in the next  
18 couple of weeks, that includes supervisors and some  
19 administrative staff so it's... you know roughly I  
20 would say about 22 actual investigators, people  
21 doing... handling the open case load.

22 COUNCIL MEMBER SALAMANCA: Alright, when  
23 an employee at one agency gets a background check and  
24 then they move to another agency does that... do they...

2 does that background check that was originally done  
3 is that sufficient or do you have to do another one?

4 MARGARET GARNETT: So, one of the things  
5 we are exploring to... right, right now under the  
6 current rules that often would trigger a new one, one  
7 of the things we are discussing internally and that  
8 I, I think we are likely to roll out is adopting the  
9 federal standard so if you are a federal government  
10 employee and you get a complete background check it's  
11 good for five years and currently we don't use that  
12 in the city but I think that that is a system we  
13 could apply, we would still allow for discretion for  
14 agency heads that if, if the transfer to a different  
15 agency involves significantly different or additional  
16 responsibilities or duties my recommendation would be  
17 that we redo the background but I think it is  
18 reasonable to have a period of time when a background  
19 would remain active and without requiring a new  
20 check.

21 COUNCIL MEMBER SALAMANCA: So, currently  
22 how... backgrounds, they're, they're good for how long,  
23 for five years that's the policy you have here?

24 MARGARET GARNETT: No, currently in the  
25 city there's no time... there's no... a closed background

2 investigation doesn't stay valuable for any period of  
3 time so currently if a city employee received a  
4 background check for let's say an IT position at the  
5 Department of Corrections and then they moved and had  
6 an IT position at ACS that require... also required a  
7 background the HR department at ACS would likely  
8 resubmit that person to be background checked again.

9 COUNCIL MEMBER SALAMANCA: In 2021 we're  
10 going to have... we're going to have a new Mayor coming  
11 in, that gets... that gets appoint... be sworn in, in  
12 2022, should this new Mayor come in and hire a  
13 Commissioner that was at the prior administration but  
14 left to the private sector and came back, do they  
15 require a, a new background check?

16 MARGARET GARNETT: Yes, they would.

17 COUNCIL MEMBER SALAMANCA: They would,  
18 okay and then my, my final... my, my last two questions  
19 is, what's the cost of a background check, the dollar  
20 amount?

21 MARGARET GARNETT: So, we don't... we don't  
22 calculate that cost at DOI, there is a cost that the  
23 applicant has to pay for their fingerprints so...

24 [cross-talk]

2 COUNCIL MEMBER SALAMANCA: Yes... [cross-  
3 talk]

4 MARGARET GARNETT: ...we get charged by  
5 DCJS and an FBI fee to run folks fingerprints so  
6 there's a fee associated with that, I, I confess I  
7 don't know the exact amount, it's about... somewhere  
8 between 75 and 100 dollars, the applicant pays that,  
9 we typically do that through a payroll deduction but  
10 that just is to cover our cost for running their  
11 fingerprints, we don't charge applicants or agencies  
12 any separate fee that covers the portion of DOI's  
13 budget that goes to background, in my view that's a  
14 service that we are providing the city as a whole, I  
15 don't view it as a agency by agency service. As I  
16 said in my testimony, I think that is an  
17 anticorruption service that we are providing to the  
18 city as a whole so I think it's properly included in  
19 DOI's budget.

20 COUNCIL MEMBER SALAMANCA: Alright, thank  
21 you Commissioner, thank you Mr. Chair.

22 CHAIRPERSON TORRES: Thank you, just a  
23 few follow up questions just the same sort of line of  
24 thinking here about transitions into a new  
25 administration. The... you have a backlog, I think back

2 to the math that we had... back to the math here is  
3 about early 2022 when you'd be able to catch up and  
4 you can correct me if I'm wrong with the current  
5 backlog presumably you're going to have to do a  
6 whole... you or somebody like you is going to have to  
7 do a whole new set of background checks as a new  
8 administration comes in; Deputy Mayors,  
9 Commissioners, ACCOs, senior staff, you name it, do  
10 you have a fear that that would put the backlog in...  
11 clearing the backlog into a different... into jeopardy  
12 and being that you're going to have all these new  
13 senior employees coming in to... potential senior...  
14 coming into the city that will then need... require  
15 their own background checks?

16 MARGARET GARNETT: So, my, my hope is  
17 that if we are able to have the backlog at zero by  
18 the time that new administration turns over that we  
19 will have available the resources that are currently  
20 devoted to the backlog and that... what I would intend  
21 to do if I'm still the DOI Commissioner and my  
22 recommendation to whoever is DOI Commissioner then  
23 would be that to maintain the resource strength in,  
24 in the background unit that we have now that's  
25 devoted both to the backlog and to current because I

2 think those resources are going to be required in  
3 order to deal with what will be the inevitable influx  
4 of new, new files in 2022 because of a new Mayoral  
5 administration but I think that, that knowing that  
6 that circumstance is coming is why it's all the more  
7 important I think to be using this time, this next  
8 two years to be aggressively addressing the backlog  
9 so that those same resources are available in a new  
10 Mayoral administration to ensure that DOI can remain  
11 current with that even knowing there will be a influx  
12 in, in applicants at that time.

13 CHAIRPERSON TORRES: And do we have a  
14 number on... in terms of how many employees we're  
15 talking about, I mean some... potentially a hard thing  
16 to estimate here but that we might be talking about  
17 in terms of a new administration and how many would  
18 it be looking... what would the add on be to the  
19 existing case load?

20 MARGARET GARNETT: So, I'm just going to  
21 look back, I can estimate a little bit that... you know  
22 if you look back at... I don't have all the way back to  
23 2014 here but, you know just as an example in fiscal  
24 2017 so from the summer of 2016 to 2017 so still  
25 about two years into the De Blasio administration we



2 received over 3,600 background files that fiscal  
3 year, in... by fiscal 19 we received 2,400 and I  
4 expect... I hope we'll have a little bit of a... that  
5 will remain stable for the next two years so... as I  
6 don't have the numbers in front of me but I think for  
7 the previous years of fiscal 15 and fiscal 16 it  
8 would have been similar to that high point, 3,600 to  
9 4,000 in those years and then now back to what would  
10 be more consistent historical levels of between 2,000  
11 and 2,,500 in the year.

12 CHAIRPERSON TORRES: Okay and just  
13 clarifying your... the question and then the answer  
14 from earlier, does the... like the Department of  
15 Corrections Commissioner and the NYPD Commissioner do  
16 they get a background check through DOI?

17 MARGARET GARNETT: Yes, they do.

18 CHAIRPERSON TORRES: They do, okay and  
19 are there... just clarifying again, which, which  
20 commissioner level positions would not get a DOI  
21 back... [cross-talk]

22 MARGARET GARNETT: All, all commissioner...  
23 [cross-talk]

24 CHAIRPERSON TORRES: Everybody... [cross-  
25 talk]

2 MARGARET GARNETT: ...level positions...

3 [cross-talk]

4 CHAIRPERSON TORRES: Okay and my final  
5 question, I know there was some... you had mentioned  
6 earlier there's discretion given to Commissioners who  
7 identify employees that they also think should go  
8 through one, I don't know if an ACCO is required to  
9 by law but... [cross-talk]

10 MARGARET GARNETT: An ACCO... well so the  
11 only... [cross-talk]

12 CHAIRPERSON TORRES: Depends on the  
13 salary... [cross-talk]

14 MARGARET GARNETT: ...sort of legal  
15 requirement... [cross-talk]

16 CHAIRPERSON TORRES: Yeah... [cross-talk]

17 MARGARET GARNETT: ...executive order 16 is  
18 very general, it just says that persons in the city  
19 who occupy positions of responsibility and so since  
20 the late 70's DOI Commissioners have issued advisory  
21 memos to agency heads saying these are the people  
22 that I, the DOI Commissioner think occupy positions  
23 of responsibility within the meaning of executive  
24 order 16 so for many years employees who have  
25 contracting authority so they don't just work on

2 contracts but they can actually enter into contracts  
3 on the city's behalf do have to be backgrounded so  
4 that would include every... ACCOs at every city agency.

5 CHAIRPERSON TORRES: Where is that list  
6 published of who... like for the DOI where... of all, all  
7 the employee... the guidance to the administration in  
8 terms of who should be receiving a background check?

9 MARGARET GARNETT: So, I believe it's on  
10 our website but if it's not I'd be happy to provide  
11 you with a copy, the last memo that went to agency  
12 heads was in 2016, I mentioned in my testimony we'll  
13 be... we intend to revise that and I hope to get the  
14 new one out this week so my, my intention and now I  
15 certainly will was to provide a copy of that new memo  
16 to the Committee when it goes out to agency heads.

17 CHAIRPERSON TORRES: Okay, okay, thank  
18 you.

19 MARGARET GARNETT: You're welcome.

20 COUNCIL MEMBER KALLOS: Thank you  
21 Commissioner, I have a few more questions and then..  
22 [cross-talk]

23 MARGARET GARNETT: Sure... [cross-talk]  
24  
25

2 COUNCIL MEMBER KALLOS: ...we'll wrap up.

3 Does, does DOI background investigations include a  
4 review of, of social media?

5 MARGARET GARNETT: Yes, it does, I mean...  
6 well I should clarify that, we, we, we definitely do  
7 a basic internet searching for everyone and if, if  
8 there are public social media posts that would come  
9 within a general google search of the person then we  
10 would take a look at those things, yes.

11 COUNCIL MEMBER KALLOS: Alright and the  
12 process that you have delineated for me, for the  
13 public seems to be at the mercy of and highly  
14 deferential to agencies, right, you rely on agencies  
15 to determine at some level which positions should  
16 trigger a DOI background check and you rely on  
17 agencies to submit names and background files to, to  
18 your agency and I, I expressed concerns earlier about  
19 the, the overuse of agency discretion, what about the  
20 opposite of the problem, what about agencies that  
21 fail to submit names when they should have done so?

22 MARGARET GARNETT: So, one of the reasons  
23 that we have and maintain the objective category...

24 [cross-talk]

25 CHAIRPERSON TORRES: Yeah... [cross-talk]

2 MARGARET GARNETT: ...salary and managerial  
3 level is to provide some means for us to spot check  
4 or sort of audit the agency's compliance and so we do  
5 that periodically and if we become aware, it  
6 sometimes happens, you know we read the newspapers  
7 also and sometimes it will happen that we become  
8 aware through some means that an agency has not  
9 submitted someone who we think should be and then we  
10 contact the agency and direct them to submit.. [cross-  
11 talk]

12 CHAIRPERSON TORRES: So.. [cross-talk]

13 MARGARET GARNETT: ...have the person  
14 submit a background package.

15 CHAIRPERSON TORRES: Are there any  
16 notable cases, examples in which an agency failed to  
17 submit a high-level person or an... a sensitive  
18 position for a background investigation?

19 MARGARET GARNETT: There have been those..  
20 [cross-talk]

21 CHAIRPERSON TORRES: Okay.. [cross-talk]

22 MARGARET GARNETT: ...there have been  
23 situations in... since I have been DOI Commissioner  
24 there, there have been situations where we have had

2 to notify agencies that someone should have been  
3 submitted that was not.

4 CHAIRPERSON TORRES: And what... okay, are  
5 you at liberty to... [cross-talk]

6 MARGARET GARNETT: No, I'd... [cross-talk]

7 CHAIRPERSON TORRES: ...is it confidential...  
8 [cross-talk]

9 MARGARET GARNETT: ...rather not say that  
10 in, in a public... [cross-talk]

11 CHAIRPERSON TORRES: Is, is... [cross-talk]

12 MARGARET GARNETT: ...forum...

13 CHAIRPERSON TORRES: So, what are the  
14 circumstances that lead to that kind of failure, is  
15 it willfulness, is it a failure of due diligence, is...  
16 [cross-talk]

17 MARGARET GARNETT: I think sometimes it's  
18 a mistake on the part of an HR department, someone  
19 has fallen through the cracks, I think that, you know  
20 sometimes when there's a new Commissioner or agency  
21 head and they bring a lot of people with them and  
22 they are, are new to role and bringing in their  
23 people that some of the normal HR processes may not  
24 be followed or be as robust, this is really  
25 speculation on my part. What I can say is there have

2 been instances and when there have, we've notified  
3 the agency head or the agency's HR and directed them  
4 to have a background package submitted for the  
5 person.

6 CHAIRPERSON TORRES: And is... what is the  
7 purpose of the audit, is the purpose of the audit to  
8 identify those who objectively are subject to a  
9 background investigation or those who should be  
10 backgrounded but not... might not fit neatly into the  
11 objective criteria, is that... is it both or is it more  
12 in the former?

13 MARGARET GARNETT: Well it, it is very  
14 difficult for us to audit the subjective categories...  
15 [cross-talk]

16 CHAIRPERSON TORRES: Yeah... [cross-talk]

17 MARGARET GARNETT: ...so whenever we do  
18 spot check we focus on the objective categories which  
19 we can... we can search PMS and, and find out is there  
20 anyone who is over the salary threshold or over the  
21 managerial threshold that we didn't have a background  
22 for, you know it... in our... it has not been our  
23 experience that agencies are deliberately avoiding  
24 the background process although its possible that is  
25 not a takeaway from our experience, I don't think

2 that agencies are deliberately avoiding the  
3 background process, I, I don't think that's a  
4 significant problem.

5 CHAIRPERSON TORRES: Okay, I want to  
6 speak about the... a bit about the contrast between DOI  
7 and SCI, right, the, the governed report famously  
8 established that SCI is singularly responsible for  
9 the DOE and DOI is singularly responsible for the  
10 rest of city government but the exception is  
11 background investigations, DOI handles background  
12 investigations into DOE employees, I mean if, if SCI  
13 is the undisputed inspector general for DOE and if  
14 SCI is responsible for whistle blower investigations  
15 and criminal investigations and you know non-criminal  
16 investigations why, why not leave it to SCI to do the  
17 background checks at DOE, I mean why, why make an, an  
18 arbitrary exception there?

19 MARGARET GARNETT: Yeah, so I... you know I  
20 think why that happened is sort of lost in the mist  
21 of time, I don't know the precise reason, I think  
22 there's no... there's no inherent reason why SCI with  
23 the appropriate amount of, of funding and personnel  
24 lines to do it couldn't perform that function, it...  
25 there's no... there's no magic to it, I think if you



2 have the appropriately experienced people I think  
3 there's some advantage because DOI the volume is so  
4 much greater in terms of citywide that there, there  
5 are efficiencies created from that experience and  
6 just having DOI be the sole place for all relevant  
7 background checks are done, I, I think there's no  
8 inherent reason why that couldn't be the case but..  
9 [cross-talk]

10 CHAIRPERSON TORRES: Do you have a  
11 preference?

12 MARGARET GARNETT: You know I do think  
13 there are efficiencies from having DOI's depth of  
14 experience and just citywide doing them all, you know  
15 I think there's also probably some cost savings by  
16 having everything in one place so just from an  
17 efficiency perspective I think having it housed in a  
18 single place makes a lot of sense, I don't have a  
19 principle basis beyond that to keep it the way it is  
20 versus changing it.

21 CHAIRPERSON TORRES: Good so we've, we've  
22 spoken about reducing the backlog through... with  
23 greater resources, greater prioritization,  
24 restructuring, you know high level review, what, what  
25 about automation, you know our research tells us that

2 the national background investigations bureau has set  
3 out to reduce the backlog through the use of  
4 automation particularly automated record checks, is  
5 DOI planning to automate any part of the process by  
6 which background checks are undertaken?

7 MARGARET GARNETT: So, you know I will  
8 say that we are having conversations with, you know  
9 some vendors who provide various kinds of background  
10 services that can make parts of the process more  
11 efficient, I think those conversations are at an  
12 early stage so I don't want to talk about them too  
13 much in detail here but it is definitely the case  
14 that I and my executive team and our background  
15 supervisors are trying to think as creatively as  
16 possible about whether there are places that we could  
17 through some minimal and merited expense apply some  
18 of these kinds of tools that you're referring to, to  
19 further reduce the backlog so we are exploring those  
20 options and I think that if we find one that we think  
21 makes sense that would make a material difference  
22 without affecting the quality of our work that we  
23 would certainly look to do it.

24 CHAIRPERSON TORRES: And, and I had  
25 someone ask me about the notion of, of having

2 background investigations conducted by a third party,  
3 do you have... do, do you... what are your thoughts on  
4 that?

5 MARGARET GARNETT: So, I, I guess I'd be  
6 reluctant to do... to completely outsource the process  
7 because I do think that we have a tremendous store of  
8 institutional knowledge at DOI, you know I sign my  
9 own name to the background letters, I just would not  
10 feel confident outsourcing that entire process to a  
11 private for profit vendor, I, I don't think that that  
12 makes the most sense, I think we do a... the quality of  
13 the investigations is good, I think we provide a  
14 really good service to the city not withstanding the  
15 backlog and so while I'm certainly open to products  
16 and services that can help us be more efficient and  
17 use the... our budgeted money more efficiently I, I  
18 don't think that outsourcing the entire task is a  
19 good idea.

20 CHAIRPERSON TORRES: I want more clarity  
21 on, on staffing levels, I know you, you mentioned  
22 earlier that the background investigations unit has  
23 been split into two teams, one dedicated to managing  
24 new cases the other dedicated to managing backlog

2 cases, how much staff has been dedicated to managing  
3 new cases?

4 MARGARET GARNETT: So, currently we have...  
5 I'm just going to turn back to my exact numbers, so  
6 right now we have 28 staff in the kind of new cases  
7 unit, that includes supervisors and administrative  
8 staff as well as investigators... [cross-talk]

9 CHAIRPERSON TORRES: And is that a  
10 budgeted or actual number?

11 MARGARET GARNETT: That's the actual  
12 number, we have... [cross-talk]

13 CHAIRPERSON TORRES: Okay... [cross-talk]

14 MARGARET GARNETT: ...one, one of those 28  
15 has been hired and approved by OMB but hasn't  
16 actually started yet but should start in the next  
17 couple of weeks and then currently on the back,  
18 backlog only team is 13 which includes two  
19 supervisors and one admin and investigator... the rest  
20 are investigators and I think as I... as I said earlier  
21 that as... [cross-talk]

22 CHAIRPERSON TORRES: Do you have any  
23 vacancies there?

24 MARGARET GARNETT: No, we have one... also  
25 they have one person who has been hired and through

2 OMB and is just awaiting a start date, so I expect...

3 [cross-talk]

4 CHAIRPERSON TORRES: So, the 13 includes  
5 the one vacancy?

6 MARGARET GARNETT: Yes... [cross-talk]

7 CHAIRPERSON TORRES: Okay... [cross-talk]

8 MARGARET GARNETT: ...and you know I think...  
9 as I said as time goes on I expect that some of the  
10 work of the backlog will be taken on either by the  
11 going forward team either by actually shifting people  
12 over or having them sort of fill in the gaps by  
13 contributing to working on the backlog.

14 CHAIRPERSON TORRES: And what's your  
15 target timetable for resolving new cases?

16 MARGARET GARNETT: For every case to be  
17 resolved within six months or less with an average of  
18 open to close of less than 120 days.

19 CHAIRPERSON TORRES: And what's been the  
20 actual performance?

21 MARGARET GARNETT: So, we currently have  
22 zero cases that have been open more than six months  
23 and the average since July 1 is 71 days.

24 CHAIRPERSON TORRES: Great. So, just I  
25 guess end it on a few notes, one is would love to

2 know the number of resources that would be required  
3 to clear the backlog within a one year timeframe and  
4 within a two year timeframe, you know and, and this  
5 could be sent to us in the form of a letter... [cross-  
6 talk]

7 MARGARET GARNETT: Okay... [cross-talk]

8 CHAIRPERSON TORRES: I, I want DOI to  
9 identify components of the backgrounding process that  
10 can be completed before the point of employment, I  
11 want DOI to... it'd be useful to know which categories  
12 are generating the most cases if they could be  
13 tracking by category and recognizing as you pointed  
14 out that there's overlap and it seems like there was  
15 some receptiveness to deadlines that its reasonable  
16 to expect DOI to report information within a six  
17 month period to agencies, did I understand you  
18 correctly earlier?

19 MARGARET GARNETT: Yes, I, I think that  
20 is reasonable.

21 CHAIRPERSON TORRES: Yeah. And, and then  
22 I'd be curious to know what is DOI's plan for  
23 regulating agency use of agent... you know regulating  
24 agency discretion without eradicating it and then you  
25 know I just want to echo, urge DOI, I think it is

2 worth asking about sexual misconduct and it is worth  
3 asking about NDAs especially given the current  
4 climate in which we live. So, with that said I have  
5 no further questions.

6 MARGARET GARNETT: I, I do have the  
7 answer to Council Member Kallos' question about...  
8 [cross-talk]

9 CHAIRPERSON TORRES: Sure, yeah... [cross-  
10 talk]

11 MARGARET GARNETT: ...the Board of  
12 Elections... [cross-talk]

13 CHAIRPERSON TORRES: Yeah... [cross-talk]

14 MARGARET GARNETT: ...so, we do not  
15 currently background appointees to the Board of  
16 Elections, they are vetted by the Mayor's Office of  
17 Appointments, they do file COIV annual disclosure  
18 forms, but they are not subject to the DOI background  
19 check.

20 CHAIRPERSON TORRES: Should DOI have a  
21 role in backgrounding BOE employees or...

22 MARGARET GARNETT: So, my understanding  
23 is that there's some history there which I'm not  
24 fully up to speed on so I'd, I'd hesitate to commit

2 one way or another without educating myself more  
3 about the history there.

4 CHAIRPERSON TORRES: Okay, Commissioner I  
5 thank you for your testimony.

6 MARGARET GARNETT: Thank you very much.

7 CHAIRPERSON TORRES: Yeah. We're going to  
8 call up the next panel Allison King from the New York  
9 City Bar. Shana Weishmann [sp?] from YAFFED, Naftuli  
10 Moster from YAFFED. What is this? Okay.

11 [off mic dialogue]

12 CHAIRPERSON TORRES: Here? Okay. Sure,  
13 but... two minutes.

14 NAFTULI MOSTER: Okay, I wish the  
15 Commissioner Garnett stayed here because this is  
16 important. On December 18<sup>th</sup> of 2019 the DOI and SCI  
17 released a joint report on their findings of an  
18 investigation into whether Mayor De Blasio or his  
19 team interfered in an investigation as to whether  
20 dozens of yeshiva in New York City are depriving kids  
21 of a substantially equivalent education as was  
22 alleged by 52 yeshiva graduates and parents. The DOI  
23 and SCI reported that they had discovered that  
24 Mayor's... the Mayor's Office and likely the Mayor  
25 himself had indeed interfered in the investigation.



2 According to their report the DOE was ready to  
3 release an interim report on the investigation in the  
4 summer of 2017 that would be two years into the  
5 investigation which is late enough but apparently the  
6 Mayor was threatened he would lose Mayoral control of  
7 the schools if he didn't agree to delay it further  
8 till April of 2018. So, he agreed and instructed the  
9 DOE to hold the report. The DOI, SCI report goes on  
10 to state that his delay did not have an effect on the  
11 outcome of the investigation since the interim report  
12 didn't have much to report on because the DOE had  
13 only managed to visit six yeshiva at that point, that  
14 claim seems ludicrous to me and seemed designed to  
15 protect the Mayor from negative publicity. We can't  
16 ignore the context of this delay. First, the public  
17 would have had great interest and perhaps a strong  
18 reaction to a report that says two years into the  
19 investigation that only six yeshivas under the  
20 investigation allowed the city in. It also seemed  
21 clear that the handful of schools the DOE did get to  
22 visit were not meeting substantial equivalency and we  
23 could assume that those who, who refused to allow  
24 them in weren't meeting minimum standards either.  
25 During that same period the Mayor was going around

2 telling the public at town halls and elsewhere that  
3 the yeshiva have been cooperative and they, they were  
4 already working with the DOE to implement changes yet  
5 in reality most hadn't even allowed inspectors into  
6 the schools. There's also clear evidence that the  
7 delay did cause harm to the investigation and thereby  
8 to tens of thousands of children. When the city  
9 finally did release the report a full year later in  
10 August of 2018 the public responded strongly as, as  
11 did the media. A New York Times editorial came out  
12 and shortly after, after, just weeks later nearly all  
13 yeshiva opened their doors to the investigator so how  
14 can you say that delaying the report didn't impact  
15 the investigation but most glaringly what's missing  
16 from the report is that the deal of the delay was to  
17 release... to wait to release the report till April of  
18 2018, that seems to have a specific aim which is to  
19 allow Senator Simcha Felder to introduce an amendment  
20 to weaken standards for ultra-orthodox yeshivas that  
21 amendment was strategically lumped together with the  
22 state budget which had to pass by April 1<sup>st</sup> of that  
23 year.

24 CHAIRPERSON TORRES: If you can summarize  
25 and... really quick...

2 NAFTULI MOSTER: Sure, we've also learned  
3 that the Mayor himself was not investigated as part  
4 of this investigation which is strange because the  
5 allegation appears to be that he himself was holding  
6 back the report. Furthermore the, the investigation  
7 was started by a whistleblower within the Department  
8 of Education, that seems like an important detail  
9 that the DOI omitted and I think the public deserves  
10 to know. I'll finish with that, that I hope that you  
11 will ask more questions of the DOI, I think you had  
12 said that you were going to hold a hearing together  
13 with Mark Treyger and I look forward to that. Thank  
14 you.

15 CHAIRPERSON TORRES: Thank you.

16 SHANA WEISMANN: Good morning community...  
17 Committee Members and Chair Torres, thank you for  
18 this opportunity to testify before you. My name is  
19 Shana Weishmann and I have a son named Av [sp?], he  
20 is 13 years old in the eighth grade and he attends  
21 yeshiva... Hasidic hider yeshiva. In the past he was  
22 lucky to receive some 90 minutes of basic math and  
23 reading which never amounted to going past the third-  
24 grade level, he now gets none, zero hours, zero  
25 minutes, zero basic secular education. All the

2 education that he currently receives is on Judaic  
3 studies given over in Yiddish. The DOI said that  
4 Mayor De Blasio's interference didn't harm the  
5 investigation well they're wrong because it did, and  
6 you have the proof right here in front of you. Some  
7 offer a paltry suggestion, at home tutoring or  
8 supplemental instruction, my son gets home from  
9 school at seven p.m., seven p.m., there's no time for  
10 supplemental learning anymore like we have been doing  
11 in the past and by supplemental I'm talking basic  
12 math and reading in an attempt to get him to grade  
13 level. Let me... let me remind you of the fact that he  
14 is not getting his basic education needs met in a  
15 school that is getting state money and I have to pay  
16 for that basic right in addition to tuition. Needless  
17 to say, we have not been successful in getting Av up  
18 to grade level in any subject, it is difficult to do  
19 deep learning when there's no stability or  
20 consistency not to mention group and environment  
21 atmosphere or supports. If you think that's not a  
22 problem, then why aren't you offering the same for  
23 your children? I have asked for help on this matter  
24 many, many, many times, I've spoken up at PEP panels,  
25 written to officials, had meetings with the people at

2 the Department of Education, the length of time this  
3 issue has been let rot is just not okay.

4 CHAIRPERSON TORRES: Thank you for your  
5 testimony. Thank you.

6 SHANA WEISMANN: Thank you... [cross-talk]

7 CHAIRPERSON TORRES: This is the final  
8 panel so we will be... thank you everyone for joining  
9 us.

10 [gavel]

11 CHAIRPERSON TORRES: I'm sorry, Council  
12 Member Treyger, I just want to acknowledge that he is  
13 joining us so... okay, great. Did, did I miss anyone?  
14 Do I have to... can we reopen it? We're good, okay  
15 great. Thank you, we're now finally adjourned.

16 [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 that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date

March 5, 2020