

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON RULES, PRIVILEGES AND ELECTIONS

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February 25, 2020

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B E F O R E: KAREN KOSLOWITZ
Chairperson

COUNCIL MEMBERS: Adrienne E. Adams
Margaret S. Chin
Corey D. Johnson
Rory I. Lancman
Steven Matteo
Deborah L. Rose
Ritchie J. Torres
Mark Treyger

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

Nisha Agarwal, New York City Conflict of
Interest Board

Wayne Hawley, New York City Conflict of
Interest Board

2 (pause) (gavel)

3 SERGEANT-AT-ARMS: Quiet, please.

4 CHAIRPERSON KOSLOWITZ: Calling the
5 Committee on Rules, Privileges and Elections to
6 order. Good morning, good afternoon, and welcome to
7 the Committee on Rules, Privileges and Elections. My
8 name is Karen Koslowitz, and I am Chair of this
9 committee. Before we begin this hearing I would like
10 to introduce the Council Members of the committee who
11 have joined us today. Our Speaker Corey Johnson,
12 Minority Leader Steven Matteo, Council Member
13 Margaret Chin, Council Member Ritchie Torres, and I
14 know we're going to be joined by others shortly. I
15 would also like to acknowledge Rules Committee
16 Counsel Lance Paldivi (sp?). Did I say it right?
17 Yay. (laughter) And the staff members of the
18 Council's Investigative Unit Chuck Davis, Chief
19 Compliance Officer and Andre Johnson-Brown, Alicia
20 Vassel and Julius Caranda investigators. Today, the
21 Rules Committee will consider the nominations of
22 Nisha Agarwal and Wayne Hawley to the New York City
23 Conflict of Interest Board. Mayor de Blasio submitted
24 their names for the Council's advice and consent on
25 January 31, 2020. The Conflicts of Interest Board is

2 the entity that serves to provide clear guidance to
3 public employees regarding the Conflict of Interest
4 Laws. Codified and made New York City Charters
5 Chapter 68, which lays out the type of conduct
6 prohibited by public servants. The board is tasked
7 with achieving this goal through training, education
8 and the issuance and publication of advisory opinions
9 relating to conduct that may violate the City's
10 Conflict of Interest Law. The Board also adopts
11 rules to implement and interpret the provisions of
12 the Conflict of Interest Law. It reviews and makes
13 decisions on alleged conflict violations and has the
14 power to impose fines of up to \$25,000 per violation
15 and suspension or dismissal of that city employee
16 when deemed appropriate. The Board also collects and
17 reviews financial disclosure report. (coughs) The
18 Board consists of five members who are appointed by
19 the Mayor with the advice and consent of the City
20 Council. The Mayor must also designate one of these
21 members as Chair of the Board. The Charter states
22 that these members should be chosen for their
23 independence, integrity, civic commitment and high
24 ethical standards. Board members serve a six-year
25 term, and are prohibited from serving more than two

2 consecutive six-year terms. Pursuant to the New York
3 City Charter Section 26002, these Board members are
4 mandated to meet at least once per month and are
5 prohibited from holding public office, seeking
6 election to any public office, being a public
7 employee in any jurisdiction, holding (coughs)
8 political party office or appearing as a lobbyist
9 before the City pursuant to Charter 2602 Board
10 members are entitled to receive compensation in the
11 amount of \$250 for each calendar day that they
12 perform work for the Board. The Chair is entitled to
13 receive \$275 per day of service. I will now call on
14 our Speaker for his opening statement.

15 SPEAKER JOHNSON: Thank you, Madam Chair.
16 Good afternoon. I want to thank Chair Koslowitz for
17 holding this hearing and for giving me a few moments
18 to speak before we hear from Ms. Agarwal and Mr.
19 Hawley, and they are to very fine people. So, I am—I
20 have tough questions for them, but they are two very
21 fine people who I know and who I respect, and who I
22 think have shown a deep commitment and deep integrity
23 in their service to New York City, and as you said,
24 Madam Chair, the Conflicts of Interest Board is one
25 of the most important roles in city government, and

2 it helps to ensure that our city's employees uphold
3 the public's trust. COIB provides ethics training,
4 education and guidance around Conflict of Interest
5 Laws. Today's hearing is an opportunity to speak
6 with these two nominees about the critical issues
7 facing COIB including case backlogs, delays in
8 proceedings, and ensuring the alignment of staff
9 guidance with the views of the appointed COIB
10 members, which is one thing I want to get into.

11 Wayne Hawley spent many years as the General Counsel
12 of COIB and was an extraordinarily fair arbiter of
13 Conflict of Interest Laws. I think everyone could
14 say that whether you got a yes, a no, a maybe, don't
15 do that, you always felt like Wayne was being fair,
16 and doing it with deep integrity. I had a positive
17 working relationship with Wayne, and I remember his
18 careful attention to the unique role of Council
19 Members as elected officials and city employees
20 subject to Chapter 68 of the City's Charter. Ms.
21 Agarwal, I am really glad Nisha to see you up there
22 and we have had the opportunity to speak before and
23 work together, and you have just done so much for our
24 city these last few years, and I'm just so happy to
25 see you up there given some of the challenges that

2 you face. That makes me very happy to see you. I'm
3 impressed with your record of advocacy and service
4 especially for immigrants in our city during this
5 difficult time. I want to thank you both for being
6 here today, and I look forward to your testimony, and
7 I will have some questions at the appropriate time.

8 CHAIRPERSON KOSLOWITZ: Today we have
9 with us (coughs) Nisha Agra-Agarwal. I that right?
10 And Wayne Hawley, two candidates who are up for
11 appointment by the Mayor to C-O-I-B. Nisha Agarwal
12 is a resident of Brooklyn. If the Council gives its
13 advice and consent, she will be appointed to the
14 Board immediately filling the position of currently
15 held by Erica Thomas and serve the remainder of the
16 six-year term, which will expire on March 31, 2022
17 and Wayne Hawley is a resident of Manhattan. If the
18 Council gives it advice and consent, he will be
19 appointed to the board for a term beginning on April
20 1, 2020 succeeding Richard Briffault and will server
21 for a six-year term, which will expire on March 31st,
22 2026. We're going to have sworn in right now.

23 LEGAL COUNSEL: Will you please both
24 raise your right hands. Oh, that's certainly good

2 enough. Do you swear to tell the truth, the whole
3 truth and nothing but the truth?

4 WAYNE HAWLEY: [off mic] I do.

5 NISHA AGARWAL: [off mic] I do.

6 LEGAL COUNSEL: Thank you.

7 CHAIRPERSON KOSLOWITZ: Do you wish to
8 make statements?

9 NISHA AGARWAL: Hello. Thank you. Can
10 you hear me.

11 CHAIRPERSON KOSLOWITZ: Yes.

12 NISHA AGARWAL: Okay. Thank you for the
13 opportunity to appear before all of you today. I'm
14 Nisha Agarwal, and I am honored to be nominated by
15 Mayor de Blasio for the Conflicts of Interest Board.
16 For 15 years, my whole career, I have dedicated my
17 life to public service and to non-profit
18 organizations in New York City working to ensure that
19 our city is fair, equitable and just. I have been
20 the privilege for working—serving with Senior
21 Advisor—as a Senior Advisor to the Deputy Mayor on
22 Democracy NYC focusing with communities in New York
23 City to register, vote and have them heard on the
24 issues that they really care about. Prior to that, I
25 was chosen by Mayor de Blasio to serve as the

2 Commissioner of Immigrant Affairs, and in that role
3 we created IDNYC, a municipal ID available to all New
4 Yorkers that one million people signed up in the
5 first year alone. I would be honored to join the
6 Conflicts of Interest Board and work with city
7 employees and ultimately all of the residents of New
8 York City to ensure the highest integrity, ethics and
9 fairness for all. Thank you for your consideration,
10 and I will be happy to answer any questions.

11 COREY JOHNSON: You did a fabulous job a
12 MOIA Commissioner.

13 WAYNE HAWLEY: Good afternoon Chair
14 Koslowitz, Mr. Speaker and members of the committee.
15 My name is Wayne Hawley. I appreciate the
16 opportunity to appear before you today as a nominee
17 of Mayor de Blasio for appointment to the Conflicts
18 of Interest Board. I have a short statement, and
19 then, of course, will try my best to answer any
20 questions you may have. First, by way of personal
21 background, my wife and I moved to the city just over
22 41 years ago, and we've lived here ever since. Our
23 two children were born here, grew up and live here
24 today. So New York is my home. I care about this
25 great city and its people. I also care about the

2 city's government and the public servants who staff
3 this government. During my 18 years as a member of
4 the staff of the Conflicts of Interest Board one of
5 my great experiences was talking to many thousands of
6 the city's workforce from elected officials and
7 agency heads to teachers, police officers, and many
8 others. The range of important services that these
9 people provide is staggering, and I had a lesson in
10 the prominent role that city government plays in the
11 life of the city. I also came to an appreciation of
12 the hard work and dedication of so many of my fellow
13 public servants. At the same time, I came to
14 appreciate when an outside role of this tiny city
15 agency the COIB with its five board members and two
16 dozen employees could and indeed does have in a city
17 of 8-1/2 million people, and a municipal workforce
18 over 300,000. The COIB I came to understand is both
19 a symbol of and one of the drivers of the commitment
20 of city government to put service to the public
21 first, that is to the principle that public service
22 is a public trust. If confirmed by the Council, I
23 will have the opportunity to return to the COIB this
24 time as a board member to advance its mission of
25 helping to promote the public's trust and its city

2 government. In that role, I would be mindful of my
3 own obligation in interpreting the laws that the
4 board is charged to administer to put the public
5 interest first. I look forward to that
6 responsibility.

7 CHAIRPERSON KOSLOWITZ: Thank you. I—I
8 just—I just want to mention we've been joined by
9 Council Member Adams and Council Member Treyger, and
10 I'm going to ask the Speaker to ask questions.

11 SPEAKER JOHNSON: Thank you, Madam Chair.
12 This question is for both of the nominees before us
13 today. The Conflicts of Interest Law, as you both
14 have mentioned and as we've mentioned in our openings
15 help to strengthen public-public confidence and trust
16 in New York City's public servants. It is important
17 that city employees are trained, understand and abide
18 by these laws, and I think COIB does actually a
19 really good job at doing that, and they're applied
20 equally to all city employees. However, elected
21 officials play a unique role in the system and that
22 we are both city employees and advocates for our
23 communities with certain political responsibilities,
24 which changes our role than the average city
25 employee. Can you please describe how you view

2 elected officials as being the same as and different
3 from city employees with respect to application of
4 Chapter 68, and Wayne you can go first, and then
5 we'll hear from Nisha.

6 WAYNE HAWLEY: Well, I am—I do believe
7 that all elected officials are due certain respect
8 for that position. You're unique. Nobody elected me.
9 You're representatives of the people. I think it's 64
10 people in the city of New York stand as the city's
11 elected official. Now, that said, the—the Charter
12 didn't make it a determination to carve out any
13 elected officials from the application of the law
14 other than the—the exception with respect to certain
15 enforcement matters involving the Council. So, I'd
16 contrast that say with the federal government for
17 better or for worse, and I'm not going to make any
18 opinions on the topic, but the federal government is
19 in essence carved the president out from the Ethics
20 Law. So, the, um, the Ethics Law, the Annual
21 Disclosure Law, as you know, to allow me if you like
22 that annual forum. It does apply, they do apply to
23 elected officials, but the board is mindful of the
24 responsibility, and certainly, certainly the
25 distinction between the political activities of

2 elected officials, and their governmental
3 responsibilities, which are different, and which are
4 considered differently. But we live in a real world
5 and—but we also—we're not called upon in any given
6 circumstance to look at it and say: How does that
7 feel to me? Because ultimately that becomes then a
8 rule of person and not of law. The Charter—the
9 Charter provisions and the rules that the board
10 adopts all the law, we've got to look to that, but we
11 certainly will and should and in my experience have
12 tried to—tried to interpret that with—with reason and
13 common sense.

14 SPEAKER JOHNSON: I'm not sure I would
15 agree with that, and that's part of my concern today,
16 but I want to hear from Ms. Agarwal.

17 NISHA AGARWAL: So, um, I am—am—have not
18 been a board member. So, I don't have knowledge, but
19 IT city employees across the board are very
20 important, and what we—what I will do if I'm selected
21 to be the board member is talk to other board members
22 and—and talk to elected officials and talk to staff
23 and—and figure out the appropriate solutions.

24 SPEAKER JOHNSON: Thank you. You know, I
25 know that you're not allowed to speak about

2 individual cases. It would be inappropriate. So,
3 we're going to talk about things in sort of a general
4 way. I'm going to bring up, you know, a hypothetical
5 case that I think potentially existed in the past,
6 and you can speak hypothetically about it because I
7 don't think you were part of a potential case that
8 went along these lines, but again I think it shows
9 sort of how I don't entirely understand how COIB
10 makes, how COIB makes certain decisions. So, the
11 Grammys came to New York City, and we're very proud
12 to have the Grammys come to New York City. The Mayor
13 of the City of New York spent years and years and
14 years trying to get the Grammys to come from Los
15 Angeles to the City of New York, and the Mayor of the
16 City New York I think should be at the Grammys to
17 actually showcase the city of New York, and what the
18 city of New York stands for and what we do. It's my
19 understanding that there was guidance that was given
20 that the Mayor or the City of New York could not
21 attend the Grammy Awards. That COIB found that to be
22 inappropriate. I-I-I-- Literally, I'm sort of
23 speechless. I can't even think of how either the
24 staff or the board members at COIB would think that
25 somehow it would be inappropriate for the Mayor of

2 the City of New York, whose administration worked for
3 years to get the Grammys to come here how somehow
4 it's a violation of the City Charter or inappropriate
5 in any way for the Mayor not to come here. Now, you
6 don't have to speak about that case specifically
7 because you weren't involved in it, but it shows to
8 me a lack of understanding about the real world about
9 elected officials especially for the Mayor of the
10 City of New York. Now, I think some of this comes
11 out of a case related to former Governor Patterson
12 and tickets to a baseball game, and how that impacted
13 how these things are viewed, but I'm not sure the
14 board or COIB itself has fully figured out how to
15 handle these things in a nuanced contextual way when
16 it comes to elected officials, and that's an example
17 I give because I've heard many other examples like
18 this. I've had personal examples where I've gotten
19 guidance that I'm not sure looks at the context of
20 what we do as elected officials and COIB has a lot of
21 power when it comes to if someone violates the law,
22 you know, they should probably—something should come
23 down hard on them for violating the public trust, but
24 we all need to be extraordinarily careful about these
25 things, and sometimes it feels like the guidance of

2 COIB isn't careful. The guidance of COIB feels
3 reactionary sometimes. So, I want to understand
4 number one, in the context of the question that I
5 asked what you think about what I just said, and
6 separate what-how you view this type of thing as it
7 relates to like-I think elected officials should be
8 giving free tickets to baseball games. That's not
9 what I'm saying. I don't think elected officials
10 should being wined and dined by people. There are
11 laws in place for that, but on certain events,
12 cultural institutions, big events where an elected
13 official played a role in help making it happen, I
14 don't really see that COIB is always sees the
15 difference on those things, and I want to hear your
16 thoughts and opinions.

17 WAYNE HAWLEY: Maybe out of kindness to
18 my fellow nominee, I'll-I'll take this first, and
19 wisely and unwisely. It's a terrific question, and
20 I mean that sincerely. That's a-that's a standard
21 line. It suggested we might say to stall for time,
22 but no I really-I really did mean it's a terrific-
23 terrific question. Because the thing I thought about
24 in the past in front of that during the time I was at
25 the board, and, in fact, was one of the drafters,

2 it's not a primary drafter. I can't remember now of
3 the opinion that—that cited it having been motivated
4 by the experience of the tennis, (sic) and—and what
5 the board did in the opinion is try to find a rule,
6 and let me—let me back up for a minute because I
7 think I'm going to—I'm going to be in danger of
8 giving too long and too wonky of an answer, but one
9 of my—one of the things I used say and some of my
10 fellow staff members they heard this stuff before:
11 You know what the law is, and I know the law pretty
12 well. Maybe I'm a little rusty for a few years, but
13 I know it pretty well, but you always want to sit
14 back and say: Gosh, this has got to be okay, or on
15 the other hand you say: Gosh, this can't be okay.

16 SPEAKER JOHNSON: Yes.

17 WAYNE HAWLEY: And you—and you think
18 those things, and then you look because you—we're—
19 we're not making this stuff up, and we can't—we can't
20 on every case say, this is how I feel about it
21 because whose—whose eyes if the staff member is
22 taking a phone call, if the executive director is
23 that one board member, there have got to be some kind
24 of rules. So, you say I think this is okay, but what
25 do the rules say? And if the rule says it really

2 isn't okay, even though it feels like it ought to be
3 okay, you're in a tough spot, and then maybe you go
4 do something about the rule and maybe you got to say
5 no in that circumstance even though it feels like it
6 ought to be okay. and then the converse is true. If
7 it's secret (sic) well it's got to be okay. You work
8 to try to figure out a way it's okay, but every once
9 in a while you can't figure out a way anyhow. That's
10 the point. We want to—we want to be mindful of the
11 law, but we also want to be mindful of common sense.
12 Now on that matter you—you spoke about, I was
13 involved in the drafting the opinion. The opinion
14 reflects a lot of thought that went into this.
15 Perfect? Boy, I sure think not because I'm not sure
16 which of us is perfect, but it looked to—it didn't
17 actually look to the executive branch as I remember.
18 It looked to some pretty careful thinking that had
19 been done by the Legislative Ethics Body in Albany,
20 which hadn't been the most active body, but they
21 seemed to be pretty clear thinking on this one, and
22 it gave us a standard because we—the board was
23 struggling on, and we know in your life you get
24 invited to a million things, and some of you are
25 saying gosh, I'd rather be home tonight than have to

2 go to my fourth chicken dinner, right? On the other
3 hand, I trust you do like chicken dinners because I
4 know that's the want of an elected official. I used
5 to live next door to Stan Michaels for many years,
6 and Stanley love them thank goodness because he had
7 to go to them, and we know what that life is like,
8 but the Board wrote an opinion. If the opinion and
9 the judgment of the current board needs tweaking to
10 reflect some of the realities that you suggests Mr.
11 Speaker, that--that conceivably could happen, but I--
12 but I certainly can't commit myself to that--

13 SPEAKER JOHNSON: No, I'm not saying
14 that.

15 WAYNE HAWLEY: --but I can commit myself
16 to an open mind--

17 SPEAKER JOHNSON: Yes and--and what you're
18 really talking about is just to be nuanced.

19 WAYNE HAWLEY: It's that--it's that--it's
20 that small kind of event where the person, and we've
21 had this conversation. It's reflective of the
22 opinion where the person is not playing some kind of
23 a ceremonial role. They're not throwing out the first
24 pitch, but they're there showing the colors of the
25 city and--and--and how do you handle the showing the

2 colors, and—and some of the stuff is contextual when
3 you had a couple hundred comps and not certainly all
4 elected officials by any means, but a couple hundred
5 comps in the tennis this is a pretty pricy ticket.
6 You begin to wonder—you understand kind of what the
7 context is.

8 SPEAKER JOHNSON: Yes, I agree. I think—
9 Wayne, I agree with everything you just said. I
10 think that's a really nuanced look at these things,
11 and I agree with how you handled it. Nisha.

12 NISHA AGARWAL: So, I don't have the
13 knowledge that Wayne does so I can't say anything for
14 a specific issue, but I would be happy if I joined
15 the Board to get information and assess it when I
16 have more information, and I think that's very
17 important. So, what you are talking about as a
18 Commissioner I went to lots of fancy things, and
19 often we went to the board directly to find out if
20 that's okay or not, and in other cases we were doing
21 it for—it was fine for us to go, and so we—we will
22 think about that when I'm on the Board.

23 SPEAKER JOHNSON: Thank you. Mr. Hawley,
24 since you left COIB it appears from what I've heard
25 from multiple people that sometimes the staff at COIB

2 are making decisions without always informing the
3 appointed board members, of COIB about this guidance.
4 What level of communication should the staff have
5 with COIB members when drawing lines about what is
6 permissible for city employees including Council
7 Members when they call for guidance?

8 WAYNE HAWLEY: I think it's a--there isn't
9 a hard and fast rule. It's a sensible and tricky
10 thing. I myself in the time I was at the board
11 certainly heard from a few board members a few times
12 about guidance I had given that I hadn't informed the
13 board about whether it was their view that I should
14 have checked with them in advance or at least given a
15 heads-up after the fact. On the other hand they
16 certainly didn't want to hear from me thousands of
17 times a year. It's a--it's a relationship that
18 develops with time. I think and doubt. You know,
19 it's like--it's like anybody with a boss, you know,
20 what you--what you feel like you've got to take to the
21 boss and what you think you don't. Particularly in
22 this case it's a part-time boss and the best analogy
23 is probably a not-for-profit organization, which has
24 got a part-time board because I--I will be--I will not
25 be taking phone calls from elected officials with any

2 frequency I hope. It is a staff driven place, and—and
3 that relationship develops but, you know, I'm—I
4 suggest that when—and I think an awful lot of the
5 time when it's a hot issue, and it's—there are
6 routine matters involving elected officials. There
7 are routine matters involving high ranking officials
8 that don't—the board doesn't want to have a heads up,
9 doesn't need a heads up, but at the margin it's tough
10 and it's that when in doubt, you check in.

11 SPEAKER JOHNSON: Nisha, how would you
12 coordinated with COIB staff to make sure they're
13 offering guidance in line with your interpretations?

14 NISHA AGARWAL: Yeah, so I would work
15 with the Board, the staff directly on issues like the
16 education work. I've found that that has been very
17 valuable and I enjoy working with communities on
18 education about ethics and the conflicts of interest
19 work in general, and then any other issues that I
20 have thoughts, I will talk to the other board members
21 and then I will respond accordingly.

22 SPEAKER JOHNSON: Thank you. I want to
23 turn it back to Chair Koslowitz. I want to thank you
24 both for being here. I think you both are sterling
25 nominees with independence, with integrity who have

2 served our city well. I am grateful that the mayor
3 nominated both of you. This is not an easy job.
4 It's not easy for the board members. It's not easy
5 for the staff either. I think they have a difficult
6 job. I just want to make sure that we are being
7 thoughtful and contextual and in the real world when
8 we are contemplating these type of decisions, and I
9 think you both are people that would do that, and so
10 I am grateful that you're here to testify today, and
11 I hopefully look forward to you serving the city for
12 many years to come long past my time in the City
13 Council making good decisions for city employees and
14 for the public to ensure that we're holding—we're
15 upholding the values of integrity as government
16 servants here in this great city. So, thank you both
17 very much.

18 NISHA AGARWAL: Thank you very much.

19 WAYNE HAWLEY: Thank you, Mr. Speaker.

20 SPEAKER JOHNSON: Thank you. I'm going
21 to turn it back to Chair Koslowitz.

22 CHAIRPERSON KOSLOWITZ: (coughs) Ms.
23 Agarwal, upon appointment is it your intention to
24 abide by the prohibitions set forth in Conflicts of
25 Interest Board Opinion, Case Number 2020-111

2 concerning your spouse's political fundraising
3 activities and your position on the Board of
4 Directors of Take Root Justice.

5 NISHA AGARWAL: Yes. In fact I have
6 already talked to the board, and have advisory
7 opinion on both of those issues. So, for the
8 fundraising that my husband was involved they gave me
9 a list of activities that I cannot be involved, and I
10 follow that properly, and then then the same with
11 Take Root Justice. I won't use the letterhead. I
12 won't use my title or position on—on working with the
13 board on Take Root, and I will recuse myself with any
14 conversations that the board has with Take Root. So,
15 I have that information fully, and will be—will
16 follow that in the future as well.

17 CHAIRPERSON KOSLOWITZ: You served as the
18 Commissioner of the Mayor's Office of Immigrant
19 Affairs, and as the Senior Advisor to a deputy mayor.
20 If you are confirmed, how will you ensure that your
21 impartiality when working on matters involving the
22 Mayor and your former colleagues?

23 NISHA AGARWAL: Yeah. So, I think many
24 of you know that I'm pretty independent by nature and
25 I feel the same will be true when select—if I get to

2 join the board, and when I work and when I'm on the
3 board the answers and what I do will be unfairly--will
4 be fairly and complete on the issues not based on any
5 employee, that's in before us.

6 CHAIRPERSON KOSLOWITZ: Thank you. Mr.
7 Hawley, (coughs) in March of 2015, you provided
8 testimony to the City Council in which you stated
9 that COIB's budgeting process at the time was in and
10 of itself a seeming conflict of interest. Does that
11 remain your view and if so, how would you recommend
12 protecting the independence of COIB?

13 WAYNE HAWLEY: Thank you for that
14 question. I--it--that--that answer probably was given
15 up when the question of independent budget or
16 sometimes referred to as guaranteed budget, but
17 that's probably a misnomer. It came up. The--the--the
18 conflict issue was this and that is that the concern
19 that the public might perceive fairly or not I might
20 add that the--there's something unseemly about the
21 board's budget being set by the--by elected and
22 appointed officials who might well have matters
23 pending before the board, and--and that might--that
24 might color the public's perception of the
25 independence of the board and--and I think I noted in

2 my testimony and certainly the board has noted -has-
3 has noted this over I think the past two decades when
4 it's called for some form of budget protection that
5 similar small agencies who have a similar sort of
6 watch dot rule, the Campaign Finance Board,
7 Independent Budget Office do have forms of budget
8 protection. The question has been raised before a
9 few Charter Revision Commissions. It hasn't gotten
10 to the ballot or passed yet, but it's a thing that I
11 still think is worth serious thought. I believe the
12 Board is still supportive of the notion of some form
13 of budget protection not because, and the question
14 has been raised often so I'll emphasize this here,
15 not because we've had budget problems, there's been
16 threats of cuts, and we-the board has never certainly
17 said-suggested it should be immune from cuts if and
18 when we hit hard times and-and there's got to be cuts
19 across the board, any-any regimens it certainly
20 suggests the board should share the pain, but some
21 form or protection to remove the-just the possibility
22 of a-of a perception of lack of independence I think
23 is well worth considering. I'd be supportive of it.

24 CHAIRPERSON KOSLOWITZ: Thank you. I'd
25 like to call on my colleague Council Member Torres.

2 COUNCIL MEMBER TORRES: Thank you for
3 your testimony. I—I'm not going to pretend to be an
4 expert on—on the workings of COIB, but I want to just
5 convey my honest feeling. I have this visceral
6 skepticism that COIB is a fair broker because it
7 seems to me COIB is can be extraordinarily tough on
8 rank and file city employees, and it seems to me
9 you're much tougher on the legislature than you are
10 on the executive, right? that the mayor was under
11 investigation for campaign for One New York was
12 never fined. I had a colleague who was recently—
13 received a pretty draconian fine, \$5,000. Can you
14 address this perception that I have that COIB as an
15 institution is just much tougher on the Legislature,
16 the City Council than you seem to be on the
17 executive.

18 WAYNE HAWLEY: I'm not sure I can,
19 Council Member fairly other than to say I sat
20 through, you know, a board meeting a month that is 12
21 board meetings a year for 18 years, and I saw the
22 board going about its duty seriously, and without—
23 without any appearance in mine—to my view of favor.
24 Now. let me—let me add a couple of things that may
25 help here. The—the very wise, I think the very wise

2 charter provisions that protect the confidentiality
3 of matters that come before the board do tend I think
4 in instances in questions like these, which are good
5 questions to raise a concern because people don't see
6 the deliberations any more than people see the
7 deliberations in the U.S. Supreme Court, not to put
8 the board on that level, but the Charter I think to
9 protect the reputation interests of people who are
10 asking a question who come and ask a question if that
11 question is not confidential, or the initial stages
12 of a--of an investigation where nothing has been
13 proved yet. That stuff I think is wisely kept
14 confidential, but the Board because of that unlike
15 this body that meets in public for discussions and
16 held public, this meeting is public, the Board's
17 matters are required by law to be immune from the
18 Open Meetings Law to be confidential for good reason,
19 and it--I think it for better or for worse, and I
20 think--I think the balance is struck right in terms of
21 what ought to be confidential, but I don't think it
22 necessarily always does the Board a lot of--serves the
23 Board well in terms of skepticisms that people may
24 have. Now, look, I'll add another matter, which may
25 not--which may not be totally satisfactory, but--but

2 there's--there are 51 Council Members and only one
3 Mayor. So, if a--if a--the odds are assuming
4 everything else were equal, maybe a Council Member
5 would be more likely to have the matter where they
6 slipped up before the board be because there's 51
7 people, but and I don't want to comment on any
8 particular--

9 COUNCIL MEMBER TORRES: Has COIB ever
10 found wrongdoing on the part of a mayor?

11 WAYNE HAWLEY: A mayor has never been
12 fined.

13 COUNCIL MEMBER TORRES: Never in the
14 history?

15 WAYNE HAWLEY: Not since 1990. No, 20--30
16 years.

17 COUNCIL MEMBER TORRES: A long time.

18 WAYNE HAWLEY: It is 30 years. That is
19 absolutely right.

20 COUNCIL MEMBER TORRES: Is it because our
21 mayors are infallible and--?

22 WAYNE HAWLEY: I don't think so.

23 COUNCIL MEMBER TORRES: Normally When DOI
24 conducts an investigation, and I understand that DOI
25 conducts investigations. It will publish those

2 investigations so that the public can see the
3 findings. I did not see the closing memo relating to
4 the Campaign for One New York until April of 2019
5 when it was leaked in the press. Why was that memo
6 not made public much earlier?

7 WAYNE HAWLEY: Yeah, I-I have absolutely
8 no idea, and-and-and I got to say that-that--

9 COUNCIL MEMBER TORRES: But doesn't that
10 convey the impression that there's an attempt to and
11 I'm not ascribing nefarious motivations to COIB, but
12 it creates the sense if you're the Mayor you're
13 protected, but if you're an everyday person then
14 you're going to be publicly shamed and humiliated and
15 pilloried.

16 WAYNE HAWLEY: I don't want to suggest
17 that the Board disassociates itself from DOI or has
18 anything other than good working relationship with
19 DOI, but that report is-is-is not the Board's report,
20 and we expect to end the-the investigative reports of
21 DOI, which are in the-the number is many, many times
22 the number of reports that involve board matters. If
23 they give the board a hundred reports a year, they
24 must do another thousand or two a year regarding non-
25 conflicts matters of all kinds, and I have and I

2 don't think the Board has any great sense of when DOI
3 and under what conditions and what schedule and what
4 terms make things like public. So, I-I-I beg
5 ignorance and I think frankly the question might be
6 better addressed to DOI. I honestly don't know. I
7 never did know what the-what the policy practice,
8 rules, procedures and the like are with respect to
9 the public release of DOI reports. .

10 COUNCIL MEMBER TORRES: Well, I guess
11 what's confusing to me is DOI investigated whether
12 the Mayor opened an not-for-profit that solicited
13 contributions from those who do business with the
14 city. DOI substantiated those findings and then COIB,
15 if I remember correctly, found that that was not a
16 violation of Conflict of Interest Law. If that was
17 your legal opinion, what was the point of the
18 investigation?

19 WAYNE HAWLEY: Even if I had been at the
20 board when that happened, I don't believe if there is
21 anything like-well, let me-let me back up. I don't
22 want to suggest that anything did or did not happen
23 at the Board that wasn't public because the Board
24 can't even acknowledge whether it's concerning a
25 matter or not, but it's not-it's not uncommon in my

2 experience for matters to come to the Board after
3 investigations from DOI because after all that's what
4 we're looking for was not just an allegation.

5 COUNCIL MEMBER TORRES: Who prompts
6 those? It's it DOI that prompts those investigations
7 or is it COIB?

8 WAYNE HAWLEY: On occasion yes, but in
9 the main they're generated by the COIB, yes, and, um,
10 and they're--

11 COUNCIL MEMBER TORRES: I guess if
12 there's a lack of clarity about the law then why
13 initiate the investigation in the first place?

14 WAYNE HAWLEY: Well, there may not--there
15 may not be clarity about the facts. That's the
16 primary issue, and the facts that you can prove
17 because we're talking about administrative hearings
18 where one side has an opportunity to present its case
19 and the other side has an opportunity to present its
20 case so you've got to have evidence, and--and if you--
21 if you've got the evidence, then you can go forward,
22 but if you don't have the evidence, you might--. I'm
23 not talking about any particular case now. You might
24 have a--you might have what clearly is a wonderful
25 case, but you can't get anybody to back up that

2 allegation that might have been in the press
3 recently.

4 WAYNE HAWLEY: According to what I've
5 read in the press, is DOI did substantiate the
6 allegations, but-but COIB found that those
7 allegations were not a violation of law.

8 SPEAKER JOHNSON: I don't think I can add
9 anything to-to, um, what I've answered. If I-if I
10 knew what happened I couldn't tell you because it
11 would be confidential

12 SPEAKER JOHNSON: And then can you
13 explain to me the practice of private warning
14 letters? Because I receive emails every so often
15 about a city employee committing some wrongdoing
16 being publicly humiliated and fined. I think in the
17 case of Campaign for One New York there was a private
18 warning letter instead of as public shaming. What's
19 your criteria? How do you decide when to use a
20 private warning letter as opposed to a public report?

21 WAYNE HAWLEY: The-the Board, if I'm
22 right and-and you'd have to-and all these numbers are
23 in the-in the Board's Annual Report, but I think the
24 numbers are in the range of 50 to 100 private warning
25 letters a year, maybe a little lower than that, but

2 whatever the number is, the Board does that for a
3 variety of reasons, and I want to characterize it in
4 any given case, but it-it-it may be a case where any
5 violation wasn't that clear, but it wants to give
6 some kind of heads-up to the public servant involved
7 about a concern, and-and not to suggest that that
8 that is the case in any-in any one particular case,
9 but sometimes the matters seem to be on the, um, the
10 de minimis side, any violation is a minor one, and
11 rather than spend resources and where there doesn't
12 appear to be a reason to have a public document, and
13 the main reason for a public document is not to
14 embarrass or humiliate anybody. The reason the
15 findings and violation are public is to educate.
16 There may be no educational value in some of these,
17 but so all I'm trying to suggest is there are a
18 variety of factors and they vary from case to case
19 what goes into a private warning letter, and-and
20 believe me, probably that's going to be our hardest
21 job as-as board members thinking about--

22 SPEAKER JOHNSON: I-I feel like there
23 still needs to be more clarity about when-when is it
24 proper to use a private warning letter and when is it
25 proper to publish a report? Because when you use a

2 private warning letter for someone like the Mayor, it
3 creates the perception that you're protecting a
4 powerful elected official rather than treating
5 everyone equally.

6 WAYNE HAWLEY: Well, and—and—and I—I
7 appreciate that, and that goes back in part to my—my
8 observation before that the confidential requirements
9 of the Charter, which I wholeheartedly support, but
10 don't always serve the Board as well as they might in
11 terms of public perception because the board has to
12 necessarily remain private. Now whether—whether it
13 might make some sense that there be some kind of
14 publication of the kinds of things that the board
15 thinks about when it—when it does a private warning
16 letter. Perhaps that would be a useful thing to
17 help—to help and—and all the board would want to do
18 id to promote when I can consistent with law promote
19 confidence. So that might be a thing to think about.
20 The factors would be I think a range and some would
21 apply clearly to some cases and not at all to others,
22 and vice versa. It might make some sense.

23 NISHA AGARWAL: And if this makes sense
24 when we joined the Board we can look at the
25 information again to find out what's going on. It's

2 not meant to be—we don't have the information, at
3 least I don't starting today, but we can look at
4 again and then report back.

5 SPEAKER JOHNSON: Like it can be
6 confusing at times because I think COIB has rules and
7 your rules are different from your advisory opinions,
8 which are different from your private memos and it's
9 not clear, you know, which—what is binding and what
10 is not binding. I think every so often—I remember
11 the, you know, we had a—a dispute with COIB around
12 social media, what were the proper uses of social
13 media, and I found that conversation between the two
14 institutions to be far more confusing than
15 clarifying, and so I think often there is a lack of
16 clarity about what—what the rules are. I want to—how
17 do you come to decide, and this is a hard question to
18 answer in the abstract, but how do you come to decide
19 the fines? Obviously, if someone engages in behavior
20 that's fraudulent or corrupt there should be no
21 tolerance, but there is behavior that's wrong and
22 there should be some accountability, but it's not
23 corrupt, it's not fraudulent, it's not criminal, and
24 yet the fines seem pretty draconian. \$5,000 fines,
25 \$10,000 fines. You know, we're City Council members

2 with six figure salaries, but even we cannot easily
3 absorb some of the—the fines that you impose. I
4 guess what are your thoughts on—the nature of the
5 fines? Do you—I—I just have—I find them to be
6 draconian at times. I don't necessarily find them to
7 be proportional to the offense. I know that's a hard
8 question to answer in the abstract, but if there's
9 some openness to examining whether the fines are
10 proportional.

11 NISHA AGARWAL: I think as board members
12 we can look at that again, and explore I think what
13 I—the limited knowledge that I know is that fines are
14 decided by the Board, and then taken to the
15 Enforcement Unit, and that precedent will play a role
16 on that, and as a new board member I will want to—we
17 look at that stuff again. (sic)

18 SPEAKER JOHNSON: Well, I—I guess I want
19 to know, you're—you have the authority to issue fines
20 up to \$25,000?

21 WAYNE HAWLEY: Yes, and in fact, sometime
22 in the last decade and I can't be any more specific
23 than that, that that amount was set. It had been at
24 \$10,000 so the—it was either the Council or the
25

2 Charter Revision Commission raised it from 10 to 25.

3 So, yes, that's—that's the limit there.

4 SPEAKER JOHNSON: But that's all the law
5 says is that you have the authority to issue and the
6 rest is up to your discretion?

7 WAYNE HAWLEY: It is and I think it's
8 instructive and—and we thought about this question.
9 It may be a question that come up in advance of a
10 hearing, but about—about what the Board thinks about
11 and as my fellow nominee said, the Board is guided by
12 precedent and in just about every case you'll see and
13 certainly in any contested case you see citations to
14 earlier cases. It looks to similar cases and tries to
15 base its—the fine that it's imposing or it's agreed
16 to by settlement on precedent, but no two cases are
17 exactly alike. So, you—the Board said—may say: Hey,
18 this one seems a little bit more serious maybe
19 because we warned this person about this before or we
20 might—and I'll tell you another one, which may help
21 you with respect—I think it's a concern I've often
22 heard and I—I don't think it's always misplaced,
23 about low level people being hit too hard but there
24 are plenty of cases where the Board looks at it and
25 says look this is a case where we're going to impose

2 a \$2 or \$3,000 fine, and this person in desperate
3 economic shape, and understand that—that we may get a
4 case that involves a variety of issues not just
5 conflicts issues, and maybe somebody has lost their
6 job because of it, and not a decision by the board
7 but a decision by the agency. The person's got no—
8 got no worth, no apparent immediate prospects for
9 income. We might have—might have otherwise imposed a
10 \$2.000 fine, but the Board waives the fine because
11 there is just no ability to pay there. So there is—
12 there is understanding about individual
13 circumstances. Look, I'll tell you one category of
14 person, and if we were ever a target of this we'd be
15 hit a little bit harder, but the Board has in past
16 cases said hey we had to hit a lawyer a little bit
17 harder because they got to know better. They can
18 read the law, and if you pass the Bar you've got to
19 be able to read the law, and maybe—so, there's a
20 little tweak there. There's a tweak if you've been
21 advised about this kind of conduct before, and—and
22 some conduct is just more egregious than others, and—
23 and some things would—some things wouldn't occur to
24 you to be wrong if you—if you didn't know about the
25 law, and not everybody does know about the law.

2 Things just don't seem morally wrong and that is a
3 little bit of a got you element, and you have to
4 impose a fine for that, which you wouldn't impose the
5 same level of fine on somebody who did something that
6 you could ask you, you know, your friend in middle
7 school whether that's seem okay or not, and they
8 would say no. It's common sense that can't be okay.
9 So, these—those are the kind of factors that go in,
10 and—and the Board, the Board thinks about that an—
11 and—and both aggravating and mitigating circumstances
12 that things are often reflected in these public
13 dispositions.

14 SPEAKER JOHNSON: I appreciate just your
15 grappling with my questions.

16 WAYNE HAWLEY: Look, and over long with
17 my apologies. I should—I should shut up. it's
18 pretty long.

19 SPEAKER JOHNSON: Yeah, but no, perfect.
20 I think you. Thank you both for answering the
21 question. Thank you.

22 CHAIRPERSON KOSLOWITZ: [off mic] Council
23 Member Treyger.

24 COUNCIL MEMBER TREYGER: Thank you, Chair
25 Koslowitz. I guess I have one quick just clarifying

2 question and one statement I'd like to share. Just
3 for my clarifying question, is like when I had a
4 question for COIB, I looked up website to get the
5 contact number because I don't know it by heart.
6 Because I think it's a good thing and, um, I called
7 the general number and folks were responsive and I-I-
8 I appreciated the quick turnaround. Is that standard
9 for everyone if for example the Mayor needed an
10 opinion from COIB does he also call the general
11 number? Is there a standard process, procedure in
12 place to contact COIB to get an opinion and a
13 statement?

14 WAYNE HAWLEY: The, um, interestingly
15 enough I'm reminded that I didn't take this call,
16 but, one of my colleagues when I was at the board or
17 maybe I heard this after I left, and I can't remember
18 which, was-was the attorney who staffs that everyday.
19 So, really taking thigs so you're on call, and-and
20 gets a call from a deputy mayor: Hello, this is-I'm
21 not going to mention.

22 COUNCIL MEMBER TREYGER: Yeah.

23 WAYNE HAWLEY: It happens, it happens.
24 Now, I'm not going to mention any names here, but-but
25 in contrast there were three of four members of the

2 Council some current some former who either had my
3 direct dial and/or my cell phone, personal cell
4 phone, personal cell phone and he called me, and--and
5 that was fine because 300,000 people didn't do it.
6 Now, the--the--I took a lot of calls under three
7 mayors. I talked to a lot of counsels to the Mayor
8 and lots of counsels to the Speaker about matters
9 involving the Speaker and/or others, but I never
10 talked to a mayor, and I don't think--and I don't
11 think any of the staff did either, and I don't think
12 I ever talked to a Speaker at least over the phone.
13 You know, generally I deal with the Council. So, um,
14 the answer is staff members are here, and I don't
15 want to say anything to completely undercut them but
16 I think it would not be unusual for a Council Member
17 to ask for and get a direct line to somebody so he or
18 she could make the call. On the other hand, some
19 Council Members I think are completely happy. I'm
20 glad to hear you got good service--

21 COUNCIL MEMBER TREYGER: I did.

22 WAYNE HAWLEY: --from that--from that call
23 in, and it may depend upon the nature of the--of the
24 matter frankly.

2 COUNCIL MEMBER TREYGER: Yes, it was just
3 a clarifying question whether there is a single point
4 of entry, and as a former teacher I think your answer
5 is there are multiple points of entry to get an
6 opinion, and that was just my-my question, and just
7 my statement I'd like to share is that I had an
8 excellent, excellent experience with Ms. Argawal in
9 her role as Commissioner of MOIA, and coming from
10 Mark Treyger that says a lot about government as
11 well. (laughter) I-she took the time to meet with me
12 to discuss an issue very important to me personally,
13 professionally and to my community and to many
14 communities across New York City the issue of
15 increasing language access at poll sites across New
16 York because many voters were intimidated and turned
17 away because they spoke language other than English
18 at poll sites, and she took the time to meet with me
19 and my staff, responded. We set things in motion,
20 which now I think things-I see daylight at the end of
21 the tunnel, and I just-I could not ask for more from
22 city leaders who would be very responsive, patient,
23 take the time and deliver results for the people of
24 New York City. So, I proudly certainly support your
25 nomination.

2 NISHA AGARWAL: Thank you.

3 COUNCIL MEMBER TREYGER: Absolutely. I
4 thank the Chair for her time. (coughing)

5 CHAIRPERSON KOSLOWITZ: [off mic] Council
6 Member Adams.

7 COUNCIL MEMBER ADAMS: Thank you, Madam
8 Chair and thank you both and congratulations on your
9 nominations. I'm just going to ask a couple of
10 questions. Mr. Hawley with reference to my colleague
11 Council Member Torres' line of questioning regarding
12 an instance with our colleague, it seemed to take a
13 really long time to resolve from a COIB standpoint,
14 and investigatory standpoint as—as me as a layperson
15 as well. What is the statute of limitations for, or
16 if any for COIB?

17 WAYNE HAWLEY: There is no standard of
18 limit—of limitations.

19 COUNCIL MEMBER ADAMS: Do you think there
20 should be?

21 WAYNE HAWLEY: In my experience I don't.
22 let me explain. The—the time between an action and—
23 and the ultimate if there is to be an ultimate
24 resolution a public resolution by the board, probably
25 turns on three main factors. The first is when the

2 board gets the matter before it whether by complaint
3 or by press report. Sometimes there's a considerable
4 delay between the time it happens, and the board
5 hears about it or anybody hears about it for whatever
6 reason. It's not—it's not public, it's not
7 publicized. Nobody complains so the media delay
8 before the board gets it. Then the matter goes to
9 investigation if the board determines that it should
10 be investigated, and DOI has been I think pretty darn
11 timely, but a year is not an unusual amount of time
12 for a matter to take to be investigated and reported
13 back. Often quicker, sometimes shorter. They do a
14 good job, but there's another block of time on
15 whatever delay, if any, there might have been at the
16 beginning, and then finally there's the due process
17 and it's not a matter of we've got this complaint,
18 we've got the investigation from DOI. We think
19 you're guilty and we're fining you X amount of
20 dollars, because that's not due process. So it would
21 be notices and opportunity to be heard, right to
22 counsel, sometimes a hearing and that can—that can
23 drag on in some part depending upon aggressively it's
24 being litigated, and—and you could easily see another
25 year or two there in the—in the hard fought case. Is

2 it perfect? No, but I think—I think given the—given
3 the absolute legitimate requirement of due process as
4 a government agency found by federal and state
5 constitutions you have that process—and—and hopefully
6 a just result comes out at the end. So, that's why
7 things may take longer. In my experience and this
8 goes back to the statute of limitations question, I
9 haven't seen cases where there seemed to be in my—in
10 my experience, I haven't seen cases where there seems
11 to be any particular prejudice to the person who's
12 under investigation for that delay. More likely,
13 the—the passage of time makes it harder to gather
14 evidence. So, it's harder to prosecute the case, but
15 I still think it's worth—worth it particularly in
16 that case that gets uncovered after—after a certain
17 number of years to be able to say let's look into
18 this to see if there really is something here rather
19 than to say we've just got to fold our hand because
20 the statute of limitations is passed particularly on
21 relatively important matters. I think old minor
22 matters the board is going to say that's five years
23 ago, that's eight years ago. Who really cares about
24 that one, but matters of some importance, a matter
25 that comes to its attention late, it ought to be able

2 to bring that case ability. So I personally wouldn't
3 advocate for a statute of limitations.

4 NISHA AGARWAL: And I—I don't know as
5 much as Wayne does on the details, but when I am
6 selected as board member I will research that and
7 develop my own thoughts.

8 COUNCIL MEMBER ADAMS: Thank you. Mr.
9 Hawley, you've been with COIB for a long time and now
10 it looks like you'll be coming back to COIB if all
11 goes well. What's—it's an extreme from where I stand
12 and from what I've been able to glean it is an
13 extremely difficult not so happy place to be a lot of
14 the times because the matters that are involved
15 they're very sensitive and can affect someone's life,
16 someone's livelihood in many different capacities.
17 So, in your estimation what are let's say the top two
18 things that COIB does really, really well and maybe
19 the top two things that may need some tweaking?

20 WAYNE HAWLEY: You want me to go first?

21 NISHA AGARWAL: Yeah, that's okay.

22 WAYNE HAWLEY: Yeah let me—let me. It's
23 probably a fairer question for me because I've got
24 the advantage or disadvantage. I've been here a long
25 time and—and probably, and this is maybe the benefit

2 of having one person who's been on the inside for a
3 long time, and another person who has dealt with
4 COIB, but is a consumer and not as an insider. It's
5 happy to—it's a nice balance to have somebody with a
6 new perspective. So, I may be a little myopic and
7 maybe a little—just a little bit too close to the—the
8 subject, but and I'm going to repeat a little bit
9 what I said earlier. I think the—the thing it doesn't
10 do as well as it might is explain itself because of
11 the Charter Revision—the Charter requirement of
12 confidentiality. So, so much stuff is done and
13 necessarily has to be done behind closed doors, and I
14 think the board could do, and I'm not quite sure how.
15 That's why maybe fresh blood is a good thing do a
16 better job of explaining how it thinks about this,
17 and since they are tough and I hope they're happy and
18 pleasant because I'm looking forward to because it's
19 not a very big per diem and—and we—and we only get it
20 once a month, and—and so—and I say that not to make
21 light of the—because these are tough calls, and—and
22 they're tough calls from high ranking people, they're
23 tough calls for the average city employee, and—and a
24 physical pyramid, there's 64 elected officials and
25 100,000 teachers, right. So there's the numbers of

2 there at the base. There's more matters involving
3 the low ranking and those are important whoever is
4 coming to the board whether for advice of whether on
5 enforcement matters. So think hard about, and we'll
6 think hard about them, and I look forward if we
7 confirm to that—that mostly happy but serious
8 responsibility.

9 COUNCIL MEMBER ADAMS: Thank you very
10 much and that specific question for you Ms. Argawal.
11 Can you describe—it's on a different track because
12 Mr. Hawley did have the advantage with that last
13 question. Can you describe any of your prior
14 interactions with the board particularly during your
15 employment with the Mayor's Office?

16 NISHA AGARWAL: Yes. So, I have worked
17 with the Board prior in six years doing things like
18 getting the information about it's either letterhead,
19 borrowing and hiring individuals, needs that deciding
20 to join a different board. So, I have worked with
21 the board consistently as a consumer, if you will,
22 and I'm excited to join as a board member on that
23 perspective.

2 COUNCIL MEMBER ADAMS: Okay, so with
3 regard to the hiring were you involved with the
4 hiring process for the OIA Campaign Director?

5 NISHA AGARWAL: Yes, I was.

6 COUNCIL MEMBER ADAMS: Okay, was that
7 position publicly posted?

8 NISHA AGARWAL: Yes, it was.

9 COUNCIL MEMBER ADAMS: And in your
10 estimation was there a competitive interview process
11 involved--

12 NISHA AGARWAL: Yes.

13 COUNCIL MEMBER ADAMS: --in filling this
14 position? Can you explain that a little bit?

15 NISHA AGARWAL: So as a Commissioner, I
16 had to fire and hire everyone, and with members who
17 hired or fired any of them we had to go to the Board.
18 We did that, and we got their opinions, and that was
19 the--the result.

20 COUNCIL MEMBER ADAMS: Did you in your
21 estimation find any--any particular or any type of
22 conflict that might have presented itself in that
23 hiring process?

24 NISHA AGARWAL: So, um, I can't share
25 much on that, but the board was approved of hiring

2 that campaign individual, and I felt that the board
3 felt good on that.

4 COUNCIL MEMBER ADAMS: Okay. I was just
5 trying to get your opinion not the board over. How
6 did you feel about it?

7 NISHA AGARWAL: I guess my opinions share
8 with the Board because the Board agrees when
9 somebody is good or they don't because of ethics
10 violations, and then I don't. So, I would—if the
11 Board chose not to hire someone, I would not add that
12 person. We would move onto the next candidate.

13 COUNCIL MEMBER ADAMS: Okay, and—and my
14 last question is what are you looking forward to in
15 this position in accomplishing as—as a COIB Member?

16 NISHA AGARWAL: Yeah, so, um, I have been
17 working at the city for six years, and prior to that
18 I was working with non-profit communities, but
19 working with city employees consistently, and working
20 with city employees they are working hard doing good
21 work, and I think most of them want to do a good job,
22 and I'm excited to be—to—to work with them on those
23 issues and on education, training and doing all of
24 that kind of stuff. I'm passionate about it and I'd
25 be very excited to do that as a board member.

2 COUNCIL MEMBER ADAMS: Okay. I can't ask
3 you the same thing because we're coming back and it's
4 a-it's a rewind. So, thank you very much for your
5 testimony. Thank you both.

6 NISHA AGARWAL: Thank you.

7 CHAIRPERSON KOSLOWITZ: [off mic] Council
8 Member Cohan.

9 COUNCIL MEMBER COHEN: Thank you, Chair.
10 Good afternoon. I, too, like Council Treyger I've
11 had positive experiences with both of you. I
12 particularly enjoyed when Wayne would come to the
13 Members Lounge and give us a little do's and don'ts.
14 I thought those talks were always very interesting. I
15 am not an expert on what COIB does, but I'm
16 interested in--so I thought it was important that I
17 come down. Could you talk a little bit about the
18 statutory rule making that exists differentiating
19 between elected officials, appointees, and civil
20 servants how--how--with how the rules apply to those
21 three classes of city employees or how you think it
22 should apply?

23 WAYNE HAWLEY: Well, the, um--I'm going to
24 repeat a little bit of what I said earlier, but I'll
25 make it quick. The--the--with virtually no exceptions

2 and I won't go into the wonkiness of a very slight
3 and I think very-not very important exceptions. The-
4 the statute that is in Charter and the rules was
5 likewise at the force of law, don't distinguish
6 between elected and appointed officials or-or rank
7 and file staff. The-there's a category called public
8 servants and we're all public servants. Slightly
9 different rules for part-timers and members of boards
10 of commissions, community board members, but full-
11 timers, the same rules throughout. Now, and the
12 Speaker asked a few of these questions about
13 understanding the special circumstances of elected
14 and the board lives in the real world, but the law
15 applies equally to all the board has and I think will
16 continue to apply those rules with reason and common
17 sense because the law is the law the same for-for all
18 categories of public servants, unlike as I mentioned
19 earlier the President of the United States. He's not
20 subject to the ethics.

21 COUNCIL MEMBER COHEN: Apparently.

22 (laughs)

23 WAYNE HAWLEY: But-but by law actually,
24 and that-and that maybe-maybe people think that ought
25 to change. Who knows.

2 COUNCIL MEMBER COHEN: Did you want to--?

3 NISHA AGARWAL: No, I—I mean I—I know
4 much less than Wayne does and I will, if I'm selected
5 will find out information and talk to Wayne. (sic)

6 COUNCIL MEMBER COHEN: Really this is
7 what brought me down here, though and luckily I've
8 stayed on the good side of COIB. You know, as we're
9 heading into the last quartet here I feel like I'd
10 like to stay out of trouble, but I conceptually feel
11 like there just is a difference, and I don't want to
12 be treated special, and I don't think anybody here.
13 You know, I didn't get to hear what the Speaker had
14 to say, but I don't—I don't think that anybody is
15 asking to be treated differently, but there is
16 something—I have—unlike, you know, you or you know,
17 other than Karen and Adrienne, I have 160,000 bosses
18 and when am I acting with them in my government
19 capacity and when is it political or, you know, or,
20 you know, I always, you know, we do good by doing
21 well or visa versa in terms of, you know, when I help
22 a constituent, you know, what if they remember that,
23 and they voted for me just because I did my
24 government job like it is not easy and—and the lines
25 are not clear or as clear as I feel like they could

2 be or should be and, you know, I like my colleagues
3 we want to stay on the right side of the rules, but I
4 think that there's--there's a lack of understanding
5 and, you know, I understand that you didn't write the
6 Charter, but I'm asking you to be cognizant of this
7 as you, you know, as you do your job that there is--
8 there is something about it I think that doesn't
9 quite make sense that, you know, I'm an elected
10 official. I'm not a government--you know, I'm not just
11 a government official. I'm an elected government
12 official, and--and for me just trying to always make
13 sure that I'm on the right side of that line really
14 requires I think a greater conscientiousness than it
15 does I think for, you know, for the school teacher
16 for--like the lines are not as bright.

17 WAYNE HAWLEY: I agree with you
18 completely because you've got a--you've got at least a
19 two-part job, the political hat and the public
20 servant hat, but I'll also offer this, and--and--and
21 this may relate to a question that Council Member
22 Treyger asked about access to the board. You all
23 have one particular advantage over probably half of
24 the public servants of the city. This is and this is
25 a low bar I know, but you've heard of the Conflicts

2 of Interest Board, and accomplishes the law. That's
3 a start and that's and that's important and the Board
4 takes it seriously in its education issue, which is
5 very good, but it does have barrier overcome, but on
6 a much more concrete basis you've got—I've always had
7 here—I know you've got—yet again, you can't get rid
8 of the guy. You've got Jim Karas back here as your
9 General Counsel. You've got—you're well served by
10 lawyers and central staff. You're well served by
11 your own staff, and there are people on the end, and
12 you're certainly welcome to call yourself, but people
13 can communicate with the board and they don't always
14 have to go through—it was a pretty user-friendly but
15 maybe not everybody wants to do it. The routine
16 attorney of the day so this chance to call in. We're
17 there to serve. Prevention is what the board is
18 interested in, and the board, you know, call us we'll
19 talk to you. It's a—it's a--

20 COUNCIL MEMBER COHEN: Well, let—let me
21 just follow up. I mean if you say that you agree
22 with me and you recognize that do you think that—if
23 you were a legislator and there was an opportunity to
24 make a legislative change, do you think that the one

2 might be appropriate or—and get—in your experience
3 have thought to yourself that--

4 WAYNE HAWLEY: There ought to be a
5 difference in the law?

6 COUNCIL MEMBER COHEN: Yes.

7 WAYNE HAWLEY: No, not in my experience--

8 COUNCIL MEMBER COHEN: So, the--

9 WAYNE HAWLEY: But I—but I think the law
10 can and should be interpreted with reason and common
11 sense, and I think in the main that's worked out.

12 COUNCIL MEMBER COHEN: But I guess I'm—so,
13 you think the law should be interpreted differently
14 for elected officials but not--?

15 WAYNE HAWLEY: No, no, I think it should
16 be interpreted for reason and common sense for
17 everybody, and—and yes, yes I understand that
18 sometimes—I don't—I don't want to sound corny, but
19 with great, you know, with great--

20 COUNCIL MEMBER COHEN: When—when I try to
21 do my job I try to, you know, when I'm creating great
22 laws at the city part of what you want is that they
23 should be easily followed, and I really feel like
24 that there are, you know, and again you said that
25 there are 64. The other 5 are the DAs, 64?

2 WAYNE HAWLEY: They are yep.

3 COUNCIL MEMBER COHEN: I wasn't—I didn't—
4 I understand it's a very tiny universe of people and—
5 -

6 WAYNE HAWLEY: Yes, but it's—look as you
7 said it yourself and I said earlier, you're the only
8 ones who weren't picked by some person. You're the
9 only ones who were picked by the people. You know,
10 you are different.

11 COUNCIL MEMBER COHEN: I think that—I—I,
12 you know, I do feel like that we sort of are saying
13 the same thing, but we're coming to if you think that
14 the job is different in its nature, then it's unique
15 that there are 64 people who work for the City of New
16 York who are elected versus appointed or versus hired
17 through civil service, and that that being elected is
18 uniquely political, but you know, I'm an elected
19 official, I don't like being called a politician, but
20 people call me a politician all the time. Like it
21 is—it—it—it is I come sort of like I feel with a
22 strike really so much closer to the line than most
23 city employees and I don't want to be close to the
24 line. That's, you know, that's not what the people
25 elected me to do, and also not to spend a lot of time

2 like oh, you know, is this a COIB thing? Is this that
3 a COIB thing? I am concerned. Again, you're not
4 going to change the rules, but I'm really trying to
5 impress upon you that there, you know, of the 64
6 elected officials, that there really is something
7 uniquely different about how we're hired, and who,
8 you know, who we answer to that I think requires
9 consideration from the Board when, you know, and
10 again I would strongly encourage if someone who is
11 elected does something wrong that, you know, I'm not
12 asking you to go soft on them, but, you know, when
13 it's—there are not the bright lines and when it's a
14 soft line, it's hard to—to navigate and I think that
15 that's something I wish that there were brighter
16 lines.

17 NISHA AGARWAL: I will agree in the sense
18 that we could work on education, and I talked about
19 that before, education, trainings more, and we can
20 talk to the staff about that, and then as a board
21 members, we can talk to legislative bodies, the
22 staff, the commission. We can—we can explore this
23 idea because I do agree that all city employees
24 including elected officials need to be on the
25 positive side and not worry, and they don't have to

2 think about COIB all the time. I agree that that's
3 not what you should be—the first thing that you're
4 thinking about. So, if there are concerns, we would
5 love to—I would love to hear that as a member.

6 COUNCIL MEMBER COHEN: I think you
7 understand where I'm coming from, and again, I think
8 highly of both of you. So, I appreciate your time
9 and thank you, Chair for indulging me.

10 CHAIRPERSON KOSLOWITZ: [off mic] With
11 that, we have with us —[on mic] two people that want
12 to speak. This meeting is going to be recessed until
13 we will vote on February (coughs) excuse me—27th,
14 this communing Thursday, and with that, this [gavel]
15 this meeting is adjourned.

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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 6, 2020