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COMMITTEE ON RULES, PRIVILEGES AND ELECTIONS 1

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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July 27, 2021
Start: 11:18 a.m.
Recess: 12:37 p.m.

HELD AT: COUNCIL CHAMBERS-CITY HALL

B E F O R E: Karen Koslowitz,
Chairperson

COUNCIL MEMBERS:

- Speaker Corey Johnson
- Adrienne E. Adams
- Margaret S. Chin
- Corey D. Johnson
- Steven Matteo
- Keith Powers
- Deborah L. Rose
- Mark Treyger
- Paul A. Vallone

2
3 A P P E A R A N C E S

4 Jacques Jiha
5 Director of the New York City Mayor's Office of
6 Management and Budget

7 Kenneth Godiner
8 First Deputy Director for the Mayor's Office of
9 Management and Budget

10 Georgia Pestana
11 Nomination through Appointment to the Position of
12 Corporation Counsel
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2 SERGEANT AT ARMS: Test, test, test, today's
3 Committee on Rules and Privileges and Elections.
4 Today's date is July 27, 2021, and this is being
5 recorded by Sakeem Bradley.

6 CHAIRPERSON KOSLOWITZ: [GAVEL] The meeting of
7 Rules, Privileges and Elections is now called to
8 order. I would also – wait, I don't have my glasses.

9 Good morning and welcome to the Committee on
10 Rules, Privileges and Elections. My name is Karen
11 Koslowitz and I am Chair of the Committee. Before we
12 begin this hearing, I would like to introduce the
13 Council Members of the Committee who have joined us
14 today.

15 Our Speaker Corey Johnson, Minority Leader
16 Steven Matteo, Council Member Margaret Chin and
17 Council Member Debbie Rose and we will be joined by
18 others shortly. Council Member Brad Lander has
19 joined us, not on the Committee but he has joined us.

20 I would also like to acknowledge Rules Committee
21 Counsel Lance Polivy and the staff members of the
22 Council's investigative unit. Chuck Davis, Chief
23 Compliance Officer and Investigators Andre Johnson-
24 Brown, Alycia Vassell, Desiree Robinson and Ramos
25 Kbdon.

2 Today, the Rules Committee will consider the
3 nomination of Georgia Pestana through appointment to
4 the position of Corporation Counsel. This is the
5 first time a Corporation Counsel nominee has been
6 before the Council for our advice and consent after
7 the 2019 Charter Revision Commission made this
8 recommendation and it was ratified by the city
9 electorate. If the Council gives the advice and
10 consent Ms. Pestana will fill the vacancy for
11 Corporation Counsel and serve an indefinite term at a
12 salary of -

13 UNIDENTIFIED: Hold on, hold on, hold on.

14 Pestana.

15 CHAIRPERSON KOSLOWITZ: Pestana?

16 UNIDENTIFIED: Hmm, hmm.

17 CHAIRPERSON KOSLOWITZ: I am sorry Pestana.

18 \$248,000- \$243,000 - it says here Chuck, confirm the
19 exact amount.

20 UNIDENTIFIED: [INAUDIBLE 6:13].

21 CHAIRPERSON KOSLOWITZ: It's okay? Okay, I just
22 want to - we've been joined by Council Members Keith
23 Powers and Adrienne Adams.

24 The New York City Charter designates the
25 Corporation Counsel as the attorney and Council for

2 the city and all city agencies. The Corporation
3 Counsel and by extension the Law Department is
4 granted the power to conduct all of the law business
5 of the city. Further, the Corporation Counsel shall
6 have the right to bring or defend any legal action in
7 local, state or federal courts. The Law Department
8 is comprised of approximately 1,000 attorney's who
9 specialize in all of the types of law that maybe
10 necessary to conduct the legal business of the city.

11 The Law Department includes specialists in a
12 multitude of field of litigation: land; youth;
13 ethics; professional responsibility; contract
14 administrative law; juvenile delinquency and
15 legislative interpretation; just to name a few. They
16 represent the city elected officials and city
17 agencies with any and all legal issues they may
18 confront.

19 The Mayor must submit the name of a nominee for
20 Corporation Counsel within 60 days of the vacancy to
21 the City Council for its advice and consent. I want
22 to welcome our candidate and raise your right hand
23 please to be sworn in.

2 COMMITTEE COUNSEL: Ms. Pestana, do you swear to
3 tell the truth, the whole truth and nothing but the
4 truth?

5 GEORGIA PESTANA: I do.

6 CHAIRPERSON KOSLOWITZ: Do you wish to make an
7 opening statement?

8 GEORGIA PESTANA: Yes, I do. I was wondering.

9 CHAIRPERSON KOSLOWITZ: Okay.

10 GEORGIA PESTANA: Good morning Chair Koslowitz,
11 Speaker Johnson and distinguished members of the
12 Rules, Privileges and Elections Committee. It is a
13 pleasure to come before you to introduce myself and
14 answer your questions relating to my nomination for
15 appointment as New York City's 80th Corporation
16 Counsel.

17 Having worked at the Law Department for more than
18 33 years, words can't do justice to how honored I am
19 to be before you for consideration for this
20 appointment. As the Mayor and others have noted
21 since my nomination, I am the first woman and the
22 first Latina to be nominated to be in office with
23 such a long history.

24 The significance of those facts is humbling but
25 to my knowledge, I would also be the first attorney

2 who progressed through the ranks of the Law
3 Department and was then selected to be Corporation
4 Counsel, subject of course to your consideration.

5 I believe my training and experience over 33 plus
6 years as an attorney representing the city, its
7 officials, including the Council and its members and
8 municipal employees in a wide variety of matters,
9 more than qualifies me to hold the position of
10 Corporation Counsel. Everything that I have learned
11 from my exceptional colleagues and supervisors as
12 well as from my clients in multiple administrations
13 and agencies and for my interactions with a variety
14 of elected officials and their staffs has shaped the
15 lawyer that I am today.

16 In my first days at the Law Department, my first
17 supervisor took care to explain that my obligation is
18 to the city as a whole and that I should always keep
19 in mind that while it is nice to win, my job is to
20 receive the right results.

21 Throughout my career, that has been the guiding
22 principle of my work. Sometime it is really
23 difficult to know what the right result is and as I
24 progressed through the ranks at the Law Department,
25 it became harder and harder as the issues became more

2 complex. Often involving competing legitimate
3 interests. In all cases, it has been vitally
4 important to listen to my clients, while I know or I
5 can learn the law, my clients know the facts and the
6 problems close up and are critically important to the
7 analysis and defining the solution.

8 At the same time, the Law Department has more
9 distance than our clients from issues presented and
10 has less invested in defending the way things are, so
11 that we can offer a more dispassionate assessment of
12 problems and proposed solutions. Throughout my
13 career, I have done my best on behalf of the City of
14 New York and in furtherance of the rule of law. My
15 history and experience has prepared me well for the
16 role of Corporation Counsel. I respectfully request
17 that you give me the opportunity to serve as the
18 Chief Legal Officer of the City of New York. I am
19 happy to answer any questions you have. Thank you.

20 CHAIRPERSON KOSLOWITZ: Thank you. I now want to
21 recognize the Speaker who may wish to make an opening
22 statement and ask you some questions.

23 SPEAKER JOHNSON: Thank you Chair Koslowitz.
24 Good morning Ms. Pestana. Thank you for joining us
25 today. I want to commend you on your impressive

2 background and thank you for your decades of service
3 for the city that we all love.

4 As you know, we are here today as the Chair said,
5 because I called for a Charter Revision Commission in
6 2019 and the Commission recommended that the
7 Corporation Counsel come before the City Council for
8 its advice and consent. One of the reasons for this
9 change and practice is that the Corporation Counsel
10 is charged with serving as the lawyer for the city as
11 a whole. However, since the 1989 Charter made the
12 Counsel the Mayor's co-equal branch in government,
13 there have been times when it has not seemed like the
14 Law Department has given sufficient attention to the
15 Counsel and other independently elected officials
16 when their interests differed from the legal
17 positions of the Mayor.

18 To start back before you were in Executive
19 Positions at the Law Department, during the Giuliani
20 Administration, many thought he used the Law
21 Department to abuse his powers, especially whenever
22 the first amendment was involved. He went after
23 those who said and displayed things he found
24 offensive and he used the Law Department to do it
25

2 when there was very little support and a lot of
3 opposition from other city elected officials.

4 Then continuing under Mayor Bloomberg, there were
5 several instances of the Law Department arguing that
6 the Counsel and by extension the city was preempted
7 from acting in a given area by state law. There were
8 also instances where the Law Department supported a
9 mayoral position that the city lacked home rule
10 authority to act in areas where the city had acted
11 for decades around taxi and medallions. In fact, in
12 the case about the prevailing wage law, the Law
13 Department argued Mayor Bloomberg's position and
14 chose not to defend a dually enacted city law.

15 Then when Mayor Bloomberg left office, the Law
16 Department reversed itself and supported the new
17 mayor's position stating that "the administration now
18 agrees with the Counsel and interveners that the
19 prevailing wage law is not preempted. This was the
20 exact opposite position from when the Law Department
21 took orders from the Mayor to sue the Counsel,
22 attempting to overturn a dually enacted city law.

23 This type of legal flipflopping undermines public
24 confidence in the Law Departments ability to make
25 decisions about the legal position of the city in a

2 thoughtful and impartial manner. Fortunately, we
3 have had fewer of those instances recently but there
4 have still been instances we feel like the Counsel
5 has been treated less like a client of the Law
6 Department and more like an afterthought.

7 Let me give you some examples. We have received
8 drafts of briefs on important cases regarding the
9 Counsel and city powers merely hours before comments
10 are due. And told by the Law Department, we have a
11 few hours to get them in or we would not be included.

12 We are not properly notified when City Council
13 Members are sued. And recently, we're only notified
14 that a Council Member was named as it offended in a
15 case that had been filed months earlier. The Law
16 Department did not give us the courtesy of telling us
17 that a Council Member was being sued. In briefs
18 involving claims against the Mayor and Council
19 Members, the arguments defending the Mayor routinely
20 are the focus of the vast majority of briefs with a
21 short section about the Council only included at the
22 very end of those briefs.

23 The Law Department has refused to make persuasive
24 legal arguments to defend city laws if the arguments
25 are critical of the NYPD. The Counsel has learned

2 about important court opinions in some of our major
3 cases by reading about them in the press, instead of
4 receiving them promptly from the Law Department who
5 is supposed to be acting as the City Council's
6 lawyers as well.

7 If the Corporation Counsel is to fill their
8 Charter Mandate as the lawyer for the entire city,
9 the Counsel cannot be treated like this. Mayoral
10 agencies may not want to be closely involved in cases
11 that seem more routine and given you role and working
12 with executive agency lawyers, that maybe justifiable
13 at times but that is not the case with the separate
14 and co-legal branch of government. Our staff here at
15 the City Council take litigation on behalf of the
16 Counsel and our members with a high level of
17 seriousness. The high level of seriousness that it
18 requires.

19 To be sure, there are divisions of the Law
20 Department who work amazingly well with our lawyers
21 and consult very closely with them. They even have
22 drafted briefs together and I want to point that out.
23 I don't want to paint with a brown brush. We would
24 like that to become the norm when issues of
25

2 importance to the Counsel, including our legislative
3 powers are at stake.

4 So, I am really glad you were here today. We
5 want to make sure that all of city government sees
6 the Corporation Counsel as their lawyer and I know
7 some of my colleagues will explore many of these
8 issues further but I want to jump right in with some
9 questions if that's okay.

10 GEORGIA PESTANA: Sure.

11 SPEAKER JOHNSON: Thank you. So, the first
12 question I have is about amicus briefs. The Law
13 Department has prevented the City Council from filing
14 amicus briefs advancing arguments that a spouse
15 positions opposing those of the Mayor. Why is the
16 Law Department the correct actor to determine whether
17 the Council can file such a brief. Don't you think
18 that the Law Department will always have a conflict
19 because the Law Department will never want to allow
20 the Council to file a brief in opposition to your
21 legal arguments in support of the Mayor?

22 GEORGIA PESTANA: The issue [CLEARS THROAT]
23 excuse me. The issue of amicus briefs has been a
24 contentious one between the Law Department and the
25 Council.

2 The Law Department under the Charter is the cheap
3 legal officer of the city and in litigation, the city
4 must speak with one voice. When the Council as a
5 body wishes to put in opposition to a position that
6 the city is taking in litigation, the city is not
7 speaking with one voice and in the past, that has
8 been an issue. When the concern, however, goes to
9 the powers of the Council or the scope of its
10 authority, I agree that that is an appropriate time
11 for the Council to be given either party status or
12 amicus status.

13 I think it's a different question when it's an
14 individual Council Member or a group of Council
15 Members. Not the Council as a body. I think that
16 individual Council Members have as much a right as
17 anyone else to propose submission of amicus brief on
18 their own behalf and that of their constituents
19 because they are not trying to speak on behalf of the
20 city. I know that's a grey line sometimes but that
21 is the way I see it.

22 SPEAKER JOHNSON: I understand what you are
23 saying but you know again, the Corporation Counsel is
24 supposed to be the lawyer for the entire city and
25 when the Corporation Counsel determines that the

2 Councils position should not be represented in a way,
3 it doesn't feel like you are or the Corporation
4 Counsel whoever it may be, really take our role
5 seriously as a separate and co-legal branch of
6 government.

7 GEORGIA PESTANA: My very strong preference is to
8 resolve those disagreements between the co-legal
9 branches of government in intergovernmental
10 discussions either among the principals or we work,
11 as you noted in most instances, work closely and well
12 with Council's legal staff to try to work it out
13 amongst ourselves so that and come up with a path
14 forward that maybe not everybody loves but everybody
15 can live with. That is my - I believe that the
16 Council is as much of a client as the Administration
17 as are the other elected officials and my strong
18 preference is that my clients get a long and figure
19 out a path forward. I think everybody is looking for
20 what's best for the City of New York. And it's very
21 difficult but I think we should always make that
22 effort and not have battling briefs in a court of law
23 because the courts aren't in a particularly good
24 position to decide these issues either.

2 SPEAKER JOHNSON: I just don't think that's been
3 the case in the past. I understand what you are
4 saying and that's your strong preference but I don't
5 think that the Council has been treated that way by
6 the Corporations Counsel's office, when it comes to
7 making sure that our views are represented if there
8 is some different nuance and opinion.

9 So, you are making a commitment to have those
10 conversations in a serious way with Council Members
11 and with the body.

12 GEORGIA PESTANA: I am and this is not the right
13 forum to talk about particular cases that you
14 mentioned in your opening but I would be happy to
15 speak with your staff about those particular matters
16 separately in a private conversation.

17 SPEAKER JOHNSON: Do you think it is ever
18 appropriate for the Law Department to argue that the
19 city was preempted? That the city threw its local
20 legislative body is precluded by state or federal law
21 from legislating on a certain manner. I am talking
22 about from passing a dually enacted local law when
23 there is a colorable argument that the city has such
24 a power?

2 GEORGIA PESTANA: So, there is a strong
3 presumption that duly enacted laws are valid and
4 there are some exceptions to that principle and if a
5 local law is reasonably defensible, then that is the
6 action. I really don't like the phrase colorable
7 argument. In my mind, that's okay, it passes the lap
8 test. I don't think that's the standard any of us
9 want our legislation to be held to. So, again, my
10 preference is to try to - if there are concerns about
11 preemption, those should be thrashed out before the
12 law comes before the body for a vote to try to put us
13 in the strongest defensible position as possible. So
14 that the law actually gets to take effect. We don't
15 want you to pass a law you don't want to pass a law
16 that will be struck down. Colorable makes me a
17 little - it's not strong enough.

18 SPEAKER JOHNSON: Okay, I mean, in the case of
19 the Living Wage Legislation that I mentioned in my
20 opening statement, if once Mayor de Blasio assumed
21 office, the Corporation Counsel's office was able to
22 see the merit in the Council's legal position that
23 the city have the authority to legislate in the area
24 of living wages. How could the Law Department have
25

2 justified arguing through less city power in the same
3 exact case under the previous mayor?

4 GEORGIA PESTANA: I can't speak to that case
5 where the decisions and arguments that were made by
6 my predecessors. I wasn't involved in the decision
7 making or the argument, so I can't really speak to
8 that.

9 SPEAKER JOHNSON: But I am speaking generally.
10 If you could think generally about, doesn't go to the
11 credibility of the Law Department if just two years
12 earlier or three years earlier, that the Law
13 Department was stating publicly and through legal
14 briefs that the city did not have this power and then
15 just a couple years later, the city said, nope, you
16 do have the power.

17 I mean, doesn't that go to the credibility of the
18 Law Department?

19 GEORGIA PESTANA: It is harmful to the
20 credibility of the Law Department. That would break
21 my heart, yes.

22 SPEAKER JOHNSON: So, we shouldn't be -

23 GEORGIA PESTANA: We shouldn't be doing that. We
24 shouldn't be flipflopping. I would want to avoid
25 that and find another solution and preferably, it is

2 the solution before we get to that place where we're
3 challenging duly enacted law or anyone is challenging
4 duly enacted law. That we should be able to come
5 together and defend it.

6 SPEAKER JOHNSON: And I just want to read
7 something. A well known Columbia Law Professor and a
8 Former City Official Richard Briffault, who was on
9 the Conflict of Interest Board. Stated about the
10 Bloomberg Administrations legal legacy that, "There
11 may be a conflict between the immediate political and
12 policy needs of any mayoral administration with a
13 willingness to use whatever legal tools are at hand,
14 including state preemption to advance its goals in
15 the long-term interest of the city in being to chart
16 its own destiny with less interference from the
17 state."

18 So, my question after reading that statement is,
19 how can you assure us that any future consideration
20 of arguing preemption against a local law will center
21 on the best long-term interests of the city in being
22 able to chart its own destiny?

23 GEORGIA PESTANA: I think that is an excellent
24 principle to uphold. We are all interested in the
25 best long-term interest of the city. No one wants to

2 see or argue that the city is curtailed in a way that
3 is not a hard and fast conclusion.

4 SPEAKER JOHNSON: Thank you. Do you think it is
5 ever appropriate for the Law Department to argue that
6 the city lacks home rule authority to act in a
7 certain area when again, there is a - maybe I should
8 use the language, a colorable argument that the state
9 legislature cannot act without a home rule request
10 from the city?

11 GEORGIA PESTANA: I don't feel it is appropriate
12 for me to make sweeping statements with out sort of
13 the actual facts in front of me but I'm - I would not
14 as we just in sort of this prior exchange, I would
15 not be in favor of making any arguments that would
16 diminish the city's powers and prerogatives.

17 SPEAKER JOHNSON: Okay.

18 GEORGIA PESTANA: I can say that generally but I
19 can't speak to any particular matter without sort of
20 the whole -

21 SPEAKER JOHNSON: Well, to give a specific
22 instance that I hope you can speak to and his talk on
23 the legal legacy of Mayor Bloomberg, Professor
24 Briffault, you I just mentioned a few moments ago
25 said, "A particularly striking feature of the

2 Bloomberg Administration's approach to home rule is
3 the attempt to blunt home rule by invoking state law
4 and on at least one occasion, actually securing the
5 state law to limit the scope of the city's legal
6 authority. He gave the example of the Law Department
7 backing the mayor and giving back decades of city
8 authority over taxi cab medallions. How can giving
9 up city regulations of its streets and transportation
10 possibly serve the city in the long-term? And if the
11 city had for decades considered the issuance of taxi
12 medallions, a matter of local control, how could the
13 Law Department at least not have tried to defend the
14 city's authority there?

15 GEORGIA PESTANA: Again, I am not familiar with
16 the facts and the background of that particular
17 matter. I can only say that I don't believe that we
18 should — the Law Department should be taking action
19 or making arguments that would diminish the city's
20 power and prerogatives.

21 SPEAKER JOHNSON: Okay, many of the questions
22 that I think members have and that the body has, have
23 concerned the independence of the Law Department from
24 the Mayor. How can you assure the City Council, just
25 the Attorney General of the United States is supposed

2 to be independent from whoever the president is, the
3 Corporation Counsel is again supposed to act as the
4 lawyer for the entire city, not just for the Mayor of
5 the City of New York.

6 How can you assure the City Council and the
7 public, that the Law Department under your
8 leadership, will be neutral? As lawyers for the city
9 when there are disputes between the legal positions
10 of the mayor and non-mayoral city entities.

11 GEORGIA PESTANA: So, my client - I think we
12 began this with my client is the city. It's not the
13 mayor by himself and it's not the Council by itself,
14 it's the city and my strong preference is that we
15 work these things out. I do not - it's always a
16 struggle to balance the legitimate competing
17 interests of all of your clients when we have you
18 know the Mayor, the Council, sometimes the
19 Comptroller, sometimes Borough Presidents. There is
20 a lot of interest to balance and I want the Law
21 Department to be the neutral. To try to balance
22 those interests and be the person that or the entity
23 that tries to find a solution that is in the - that
24 ultimately we can say is in the best interest of the
25 city. Meets the interests of everyone. Is that

2 going to be possible 100 percent of the time?

3 Probably not but we need to try and I think the Law
4 Department would be a good neutral in those
5 situations. I think the referendum that made this
6 position subject to advice and consent at the
7 credibility of the Law Department and their ability
8 to do that. So, I for one think it's a good thing.

9 SPEAKER JOHNSON: Okay, how can you assure us
10 that what happened with the Law Department during the
11 Giuliani years will not happen under your watch? One
12 specific example that I mentioned in my opening
13 statement that I would like you to address was when
14 the Corporation Counsel stood next to then Mayor
15 Giuliani and said that he had the right to stop duly
16 appropriated funds from flowing through the Brooklyn
17 Museum because he found they are offensive. This was
18 contrary to the position taken by the Brooklyn
19 Borough President, the City Council Speaker, the
20 Public Advocate, the City's CIGS, a former
21 Corporation Counsel who represented the city's
22 cultural groups and virtually every first amendment
23 expert in the City of New York.

24 It also ended up being contrary to the position
25 of the federal courts. To quote the Victor Kovner,

2 Former Corporation Counsel, who I am sure you know.

3 He gave this quote before the 2019 Charter Revision

4 Commission on the Law Departments position. In that

5 case, he said, "I have to say it was not the finest

6 moment for the Law Department." How do we ensure

7 that the Law Department does not in the future take a

8 legally infirm position that is adverse to every

9 involved city official other than the Mayor, because

10 the Mayor wants the Law Department and the

11 Corporation Counsel to take that position?

12 GEORGIA PESTANA: I have to agree with Victor

13 Kovner, it was not the Law Departments finest hour.

14 What I can say to you forward going that my

15 commitment as a lawyer and a lawyer for the city for

16 over 30 years, has been to the rule of law and we

17 look at the law and we apply it evenly and with the

18 weight of precedent and the arguments that are in the

19 best interest of our clients. I have a commitment to

20 the rule of law.

21 SPEAKER JOHNSON: And just a final question on

22 this and then I'll turn it back to the Chair. And

23 can you really just say to us uhm, you know

24 steadfastly that the Council Speaker and the Public

25 Advocate should have been prohibited from filing

2 their amicus brief in the Brooklyn Museum case? If
3 Michael Hess had been asked and denied permission?
4 Because without his permission, they had no right to
5 be heard.

6 What I am saying is to get back to that earlier
7 point that I made, the then City Council Speaker and
8 the then Public Advocate, wanted to file an amicus
9 brief and they were denied the ability to do so. Do
10 you think that that is appropriate?

11 GEORGIA PESTANA: I would have to go back and see
12 the purpose of the brief, if they were arguing that
13 there is some impact on the scope of their authority
14 and powers. Certainly, the Council and the Speaker –
15 and the Public Advocate I am sorry, should have been
16 given amicus status again. It really depends on what
17 the goal and what's being challenged and the
18 substance.

19 It's hard to sort of do it in a vacuum but if it
20 goes to the powers and the scope of your authority,
21 as public officials, I would say yes you get to file
22 it.

23 SPEAKER JOHNSON: So, the Council ended up filing
24 the brief and I believe the Corporation Counsel's
25 office was not in favor of the Council doing that.

2 Again, it showed that conflict between the Law
3 Department you know taking into consideration other
4 nonmayoral entities being able to have their voices
5 heard on a very important and public matter.

6 I really appreciate you being here today. I
7 really want to thank you for your decades of service
8 to the City of New York. I think your nomination is
9 exciting and I am grateful to everything that you've
10 done. I do think that again, there have been many
11 instances, not just many years ago but even in recent
12 years of the staff at the Law Department, some staff
13 at the Law Department. I think not really working
14 with the Council well. Some staff has worked really
15 well with us and other staff, treats us as an
16 afterthought. Does not give us the proper time and
17 consideration when legal issues are arising related
18 to the City Council. Giving us just a few hours'
19 notice to get in very serious legal documents that
20 are necessary. Not informing us when there is
21 potential litigation or there is - not potential,
22 when there is actual litigation against a Council
23 Member or the City Council. I would like to change
24 that. I would like to you know, improve the
25 relationship between the Law Department and the

2 Council for the future. Institutionally, I think
3 it's important both for the Law Department and for
4 the City Council to have a working relationship where
5 it doesn't seem - where it doesn't feel like, for
6 whoever the Speaker is or whoever individual Council
7 Members are, whoever the Lawyers are that work here
8 at the City Council. The City Council is an
9 afterthought. That you know that ultimately notice
10 gets sent to the Mayor.

11 What we're told often is, oh sorry we didn't tell
12 you that. We told the Mayor's office, we thought
13 they were going to tell you. That is not the
14 response but that's what we hear quite often.

15 GEORGIA PESTANA: I definitely agree with you
16 that this is a relationship that could use some
17 building and even the staff of the divisions that
18 most commonly work with the Council. The
19 Administrative and regulatory litigation division
20 that works on defending a lot of your cases as well
21 as legal counsel, I know work closely with the
22 agency.

23 The lawyers and other divisions that aren't so
24 used to the relationship, they need to be trained up
25 and recognized that the Council is also our client

2 and an important one and we can work on that. I
3 also, with your permission, would like to speak to
4 your staff more about the particular instances that
5 you raised so that we can understand and – we can
6 both understand what happened there.

7 SPEAKER JOHNSON: That will be great. I would
8 appreciate that. Thank you for being here today. I
9 want to turn it back to you Madam Chair. Thank you
10 very much.

11 CHAIRPERSON KOSLOWITZ: Thank you. I would now
12 like to recognize our Minority Leader Steven Matteo.

13 STEVEN MATTEO: Thank you Madam Chair. Good
14 morning and welcome.

15 GEORGIA PESTANA: Thank you.

16 STEVEN MATTEO: I have some questions for you.
17 So, given the definition of associated persons in the
18 Conflict of Interest Law, do you agree that you are
19 associated with the Senior Attorney at the Law
20 Department?

21 GEORGIA PESTANA: Yes, I am.

22 STEVEN MATTEO: And how are you associated with
23 the person?

24 GEORGIA PESTANA: We live together.

25 STEVEN MATTEO: I'm sorry?

2 GEORGIA PESTANA: We live together.

3 STEVEN MATTEO: Have you ever recused yourself
4 from any matter involving this person's employment in
5 2015 when you first became Assistant Corporation
6 Counsel?

7 GEORGIA PESTANA: I have been - 2015 - no, when I
8 came onto the Executive staff in 2013 I recused
9 myself from all, well, all matters that he works on.

10 STEVEN MATTEO: In 2013 you said?

11 GEORGIA PESTANA: 2013 is when I got onto the
12 Executive staff and that's when the supervisory
13 relationship - at least theoretically started.

14 STEVEN MATTEO: So, how was that done? Was it
15 written documentation? Was it signed by a
16 supervisor?

17 GEORGIA PESTANA: It was done by me telling
18 Michael Cardoza who was the Corporation Counsel at
19 the time who had promoted me. He was aware of the
20 relationship but then we set up a system where at
21 that point, the division that he works in was
22 overseen by a different Executive Koerner. So, it
23 would not have come up later on when that division -
24 I don't know I can't remember, it might have been
25 2015, 2016, came under me when Lynn left. Then we

2 set up a firewall basically, a recusal that any
3 matter that he works on goes to the managing attorney
4 Merial Kurdufan(SP?). So, I don't even know when
5 they are communicating. It just happens.

6 STEVEN MATTEO: So, there was a process set up
7 but was it written? Was there documentation or
8 signed by anybody?

9 GEORGIA PESTANA: It was not written, no.

10 STEVEN MATTEO: Okay, so what about in 2019 or
11 2021 when you became Acting Counsel?

12 GEORGIA PESTANA: It's been the same process. He
13 continues to - when Executive staff eyes are needed
14 on something he is working on, he goes to Merial.

15 STEVEN MATTEO: So, you consulted the Law
16 Department at this Counsel? Would that be fair to
17 say?

18 GEORGIA PESTANA: Uh, no, we did not. It was we
19 just continued the same practice that we had
20 initiated back in 2015. That practice continued.

21 STEVEN MATTEO: So, did you consult Koide(SP?) at
22 all?

23 GEORGIA PESTANA: We consulted Koide recently and
24 the advice they gave was you know, as long as we kept
25

2 in place the system that we put in place, it was
3 okay.

4 STEVEN MATTEO: So, when did you get that answer
5 from Koide? Was that written?

6 GEORGIA PESTANA: Yes, that was Friday. This
7 past Friday.

8 STEVEN MATTEO: Friday. So, why didn't you get
9 that back in 2019 or 2021?

10 GEORGIA PESTANA: Honestly it didn't occur to me
11 to ask for that advisory opinion. It was the process
12 that we had put in place years earlier and it just
13 continued. Should I have been more vigilant? Yes.

14 STEVEN MATTEO: So, you said you received it last
15 Friday.

16 GEORGIA PESTANA: I got it on Friday, yeah.

17 STEVEN MATTEO: And when did you contact them or
18 request?

19 GEORGIA PESTANA: Uh, Friday.

20 STEVEN MATTEO: You got it the same day?

21 GEORGIA PESTANA: Yeah, now I am thinking, was it
22 Thursday or Friday? It was Thursday or Friday but
23 yes, I sent them a letter and then they sent it back
24 late that night.

2 STEVEN MATTEO: And that, you have that in
3 writing?

4 GEORGIA PESTANA: Yes.

5 STEVEN MATTEO: Okay. Do you ever supervise or
6 make supervisory decisions regarding employment
7 including firing, hiring, promotion, demotion, salary
8 discipline?

9 GEORGIA PESTANA: No.

10 STEVEN MATTEO: What about supervise any
11 litigation matters from 2013 to the present?

12 GEORGIA PESTANA: No.

13 STEVEN MATTEO: Meeting about litigation matters
14 from 2013 to the present?

15 GEORGIA PESTANA: Not that I recall.

16 STEVEN MATTEO: Okay, so switching gears, in
17 2019, uhm, did you have a conversation with Mayor de
18 Blasio about your interest in serving as Corp
19 Counsel?

20 GEORGIA PESTANA: In 2019, after Zach announced
21 that he was retiring, we had conversations -

22 STEVEN MATTEO: I'm sorry, I couldn't hear you.

23 GEORGIA PESTANA: I'm sorry.

24 STEVEN MATTEO: The mask and everything.
25

2 GEORGIA PESTANA: In 2019, after Zach said that
3 he was going to retire, the Mayor and I did speak
4 about my interest in remaining at the Law Department,
5 what I wanted to do. What I wanted to do next after
6 I left the Law Department. We had a conversation of
7 that nature.

8 STEVEN MATTEO: So, you know we asked some
9 prehearing questions that the Committee sent you in
10 advance. Being asked why you were offered the
11 position of Corp Counsel?

12 GEORGIA PESTANA: No, I was not.

13 STEVEN MATTEO: No, I'm sorry, no what?

14 GEORGIA PESTANA: No, I was not offered the
15 position before now.

16 STEVEN MATTEO: Okay but you had a conversation
17 about it?

18 GEORGIA PESTANA: We did talk about the position
19 yes.

20 STEVEN MATTEO: Uhm, just why didn't you disclose
21 the conversation then in the Pre-Council hearing?
22 Pre-Council questions?

23 GEORGIA PESTANA: I can't -

24 STEVEN MATTEO: Why didn't you disclose the
25 conversation in the pre-Council -

2 GEORGIA PESTANA: The pre-Council question was
3 whether I had ever been offered the position and I
4 have not been offered the position.

5 STEVEN MATTEO: Okay so, just clearly, you had
6 the conversation.

7 GEORGIA PESTANA: We talked and it was a couple
8 of like freewheeling conversations.

9 STEVEN MATTEO: Okay. For me, just circling
10 back, so going back to the Koide issue in retrospect,
11 would have done it differently and ask Koide for a
12 formal opinion or letter when you first you know had
13 that supervisory position and then later when you
14 became Acting Corp Counsel? Would you have done this
15 differently?

16 GEORGIA PESTANA: Yes. I would have requested
17 the letters earlier, yes.

18 STEVEN MATTEO: Okay, okay, thank you. Thank you
19 Chair.

20 CHAIRPERSON KOSLOWITZ: The Council has
21 experienced a number of issue with the Law Department
22 related to basic client services which the Speaker
23 alluded to before. If confirmed, do you commit to
24 create a new mandatory training or to refine existing
25 program on the following topics and please answer

2 after I ask about each one? Will you add training
3 for Law Department attorneys – I left – I left my
4 glasses at home. Instructing them to inform the
5 appropriate City Council attorney's that an action
6 has been filed in which a duly enacted city law is
7 challenged or a Council Member, the Council or a
8 Council staffer is named as a party in their official
9 capacity.

10 GEORGIA PESTANA: Yes, we do currently have a
11 system when a Council law is challenged. We notify
12 the Chief of our Legal Counsel Division; Stephen
13 Louis and he alerts the Council and links up the
14 lawyers that are going to work together from the
15 Council in our office. With respect to notifying
16 Counsel that a member of the Council has been sued in
17 their official capacity. We usually find out from
18 the Council Member but we can close that loop and
19 make sure that Counsel Legal staff is also aware.
20 But we can add that to the training, if that's a
21 question about adding it to training, yes.

22 CHAIRPERSON KOSLOWITZ: Will you add training for
23 Law Department Attorney's instructing them to
24 promptly send all things over in City Council cases
25 to the appropriate City Council attorney's?

2 GEORGIA PESTANA: I think we can do that for the
3 Council because you are not sued all that often. So,
4 we can arrange that and thankfully and that we can do
5 that if they want to see every piece of paper.
6 Sometimes they don't. Whatever they want on
7 litigation would be fine.

8 CHAIRPERSON KOSLOWITZ: Okay, I mean, I've been
9 here 22 years in capacity and I have never had to
10 deal with the Corporation Counsel but I don't even
11 know anybody that is in the Corporation Counsel.
12 It's like everybody keeps to themselves and isn't a
13 part of the rest of -

14 GEORGIA PESTANA: The Corporation -

15 CHAIRPERSON KOSLOWITZ: The institution.

16 GEORGIA PESTANA: Sorry. Our lawyers primarily
17 work with your lawyers. Occasionally we meet with
18 the Council Members themselves but it's really mostly
19 lawyer to lawyer.

20 CHAIRPERSON KOSLOWITZ: Will you have training
21 for Law Department attorney's instructing them to
22 send any letter or stipulation to the appropriate
23 City Council attorney's before sending it or filing
24 it with the court?

2 GEORGIA PESTANA: I will instruct our lawyers and
3 train them that they should have conversations with
4 City Council legal staff to find out how much they
5 want us to send them. Sometimes it's just a lot,
6 that's not really relevant or useful but if they want
7 to see it, that's fine. So, we can ensure that there
8 is that conversation that happens upfront on the
9 case.

10 CHAIRPERSON KOSLOWITZ: Were you aware training
11 for Law Department attorneys instructing them to
12 provide drafts of briefs to the appropriate City
13 Council? Attorneys for comments? At least three
14 business days before they are due with the exception
15 of reply briefs?

16 GEORGIA PESTANA: Uh, that's hard. Uh, our
17 attorneys are usually when it's a case of substance
18 that's important to the Council, our attorneys are
19 generally working closely drafting and preparing the
20 arguments together. So, the arguments in the briefs
21 are not going to be a surprise but three business
22 days before they're due, I just you know, don't think
23 that that is something that I can commit that we
24 would always be able to do. Timelines and pressure
25 of work sometimes doesn't allow for the three days

2 but I can say we would give you as much time as we
3 possibly can.

4 CHAIRPERSON KOSLOWITZ: I mean, I would say with
5 1,000 attorneys working for Corporation Counsel,
6 three days doesn't seem so hard.

7 GEORGIA PESTANA: Well, sometimes you only have
8 five days all together and we have 80,000 cases.

9 CHAIRPERSON KOSLOWITZ: Will you have training
10 for junior law department attorneys to describe the
11 basic functions and structure of city government,
12 including that the City Council is the legislative
13 branch of government and is co-equal to the Mayor?

14 GEORGIA PESTANA: We have a terrific training
15 program on the structure of city government that is
16 presented at least once a year. We can look at it
17 and see if it needs freshening but we have been
18 delivering that training at least annually for a long
19 time now.

20 CHAIRPERSON KOSLOWITZ: Okay, thank you and I'm
21 going to open it up now to my colleagues. Council
22 Member Powers.

23 COUNCIL MEMBER POWERS: Thank you. Thank you
24 Chair and thank you for being here today.

25 GEORGIA PESTANA: Thank you.

2 COUNCIL MEMBER POWERS: Congratulations on your
3 nomination. Just some quick questions. One, is I
4 wanted to follow up with a question the Speaker had
5 which was about the role of the Council filing amicus
6 briefs and also, I think your response had noted
7 perhaps there are instances where an individual
8 Council Member might, you might think that was a
9 reasonable – reasonable for an individual Council
10 Member to file an amicus brief being that they are
11 not representing the agency or the body here. They
12 are representing themselves and their Committee.

13 I just want to clarify that since it's an issue
14 that's come up in the past in this Council and in
15 previous Council's, which is the role of individual
16 Council Members. I just wanted to maybe you could
17 restate your opinion, just so I could hear that again
18 on what that individual role or what the role, where
19 you think amicus briefs from either the City Council
20 or from individual members would be appropriate.

21 GEORGIA PESTANA: So for individual members I
22 would say that or have said that if they want to
23 submit an amicus brief for or against a position
24 that's advanced by the city in litigation, we would
25 just like any party, but you know both parties get to

2 decide whether they are going to tell the court. No,
3 don't take it but it would be evaluated as a proposal
4 to submit amicus like anybody else. So, do you have
5 something useful to say that the court should hear
6 and will it delay the proceeding.

7 So, or you could say, I need two weeks to submit
8 the amicus brief that could delay things. And it
9 might be, well, we could do it in one week but my, my
10 view is that that is a different situation than the
11 Council as a body.

12 COUNCIL MEMBER POWERS: So, a conflict where the
13 Council Member, the Council as a body wanted to file
14 - decided to file an amicus brief on an issue that we
15 feel is important. The Mayor has a disagreement or a
16 direct conflict or a challenging decision of the
17 executive. You would find that to be a conflict
18 between them?

19 GEORGIA PESTANA: If it went to - yes, if it was
20 a dispute or a disagreement with the Administration,
21 that went to the powers of the Council, then we would
22 authorize the Council - depending, we might take the
23 Council's side against the Mayor. That's possible
24 too and then the other side would be authorized to
25 get, retain outside counsel.

2 COUNCIL MEMBER POWERS: Are there instances in
3 your – I think 33-year career, where the Law
4 Department has sided with the Council against the
5 Mayor?

6 GEORGIA PESTANA: Uhm, most of my 33-years, I
7 wasn't on the Executive staff, so in the last uh,
8 lets see eight or nine years, I can't really think of
9 any. There is not a lot of mayor versus Council
10 cases in that time period either.

11 COUNCIL MEMBER POWERS: Sure. I think the
12 Speakers questions earlier though were trying to make
13 a point that it often feels like we are left to –
14 sort of left in conflicts in moments where or left to
15 the you know, the Law Department sides with the Mayor
16 on these instances where there might be – there is a
17 conflict.

18 Just moving on though, we had recently seen a
19 number of affirmative cases at the state level for
20 instance with the opioids, the opioid crisis where
21 there was you know huge settlements and in just light
22 of that, I was thinking about that earlier and
23 thinking, are there areas where you think the city
24 would benefit from taking affirmative litigation?
25 And when do you think that's important or practical?

2 GEORGIA PESTANA: Uhm, the city does take a lot
3 of affirmative litigation and we created a small unit
4 called the impact litigation unit a few years ago
5 that it dedicated to brining, well for a long time,
6 we were dedicated to bringing cases challenging some
7 Trump Administration initiatives. One of the cases
8 or two of the cases that we brought are against the
9 opioid manufacturers and distributors and we're part
10 of the settlements that were announced. The amounts
11 aren't calculated yet because it's a complicated
12 allocation formula.

13 So, we are involved in that and we are - also
14 have been exploring more cases under the city's
15 Consumer Protection Law. Because that's a valuable
16 tool. So, yes.

17 COUNCIL MEMBER POWERS: Got it.

18 GEORGIA PESTANA: That is something that we are
19 very interested in doing and if the Council has ideas
20 on more litigation we can bring, love to hear them.

21 COUNCIL MEMBER POWERS: Got it and what do you
22 feel is the most important part of your office?
23 You've been there for a long time. I assume you've
24 worked in different parts of the office, what do you
25

2 feel is the most important function of the Law
3 Department?

4 GEORGIA PESTANA: I think I got to this a little
5 bit in the discussion with the Speaker. I think we
6 could be an honest broker sometimes and that because
7 we have so many clients with different powers and
8 authorities and interests, that if we can convince
9 you all that we are indeed a neutral. I think that
10 that is a role that we can play in helping to achieve
11 consensus and figure out a way forward for the city
12 in some areas that maybe people have disagreements
13 on.

14 So I think that is a very important role and I
15 would love to play it more.

16 COUNCIL MEMBER POWERS: Got it. I'll just ask
17 two more questions out of respect for colleagues
18 time. Just settling claims against the city, can you
19 just give us some sense of your approach to that? I
20 think the different administrations have different
21 approaches to that. Giuliani versus Bloomberg, so
22 forth and so on. Is there a particular approach?

23 GEORGIA PESTANA: The Charter gives the authority
24 to settle cases for money. The money cases to the
25 Law Department, the Corporation Counsel and the

2 Comptroller together. So, we are litigating the case
3 and at some point realize sometimes early, sometimes
4 late that this is a really – a settlement is in the
5 best interest of the city and we go to the
6 Comptroller's office with our proposal as to how the
7 case ought to be settled.

8 That relationship actually works well and there
9 is always a respectful give and take on the amounts
10 and the negotiation of it. So, I don't think that I
11 would change that at all.

12 COUNCIL MEMBER POWERS: And just my final
13 question, are there areas that you see right now
14 where you would think about expanding the power or
15 changing the power role or doing something different
16 than your predecessors when it comes to this role and
17 how it functions, how it works?

18 GEORGIA PESTANA: Well, from the discussions that
19 the Speaker raised, I think that there is some
20 repairs that need to be made to the relationship and
21 a restoration of our credibility and to give you all
22 a better sense that we're your lawyers too. We take
23 that role very seriously and I thought and I think
24 that the maybe the lawyers on the ground feel that

2 more. But I think that that is an important, it
3 would be important for me to invest time in that.

4 COUNCIL MEMBER POWERS: Thank you for taking time
5 and I will hand it back to the Chair. Thanks to
6 Chair Koslowitz.

7 GEORGIA PESTANA: Thank you.

8 CHAIRPERSON KOSLOWITZ: Council Member Chin.

9 COUNCIL MEMBER CHIN: Thank you. Thank you
10 Chair. Congratulations for your nomination.

11 GEORGIA PESTANA: Thank you.

12 COUNCIL MEMBER CHIN: And I think looking at your
13 - you know resume is very impressive record.
14 Especially of your work in the Corp Counsel, in the
15 Law Department.

16 My question is that, following your conversation
17 with our speaker, I mean, we do look forward to sort
18 of really working more closely together between the
19 City Council and the Law Department because of our
20 legislative role and one of the things that I wanted
21 to ask is that, how many staff? Are there a number
22 of staff that are dedicated to work with the Council
23 on our legislation? Because one of the concerns I
24 have is that frustration is that often times
25 everything waits till the last minute. You know, the

2 legislation that we're working on and then like we
3 have to uhm, what's it called? Where the final
4 negotiation? Lay it on the table, the desk and it's
5 like always last minute. And like, I remember there
6 were legislation that I had to wait, stayed up until
7 past midnight to get if finally you know settled.

8 So, I guess my question to you is that since,
9 well, you said it earlier, I mean, the Corp Counsel
10 is the Chief you know legal officer for the whole
11 city and Council is part of the city. And so, I hope
12 to see that closer working relationship that will
13 help facilitate you know, passage of law that are
14 important to our constituent, to our city. That we
15 really work closely on that and not like have the
16 frustration and everything waiting to the last
17 minute.

18 So, I am asking to see if you could make a
19 commitment to really working closely with Council
20 Legal staff and to make sure that we get legislation
21 done on time. I know that there are a lot of issues
22 that have to be you know dealt with. Make sure that
23 it's you know that we don't get sued on it or all
24 those issues that comes up. But in terms of timing
25

2 wise, there's got to be a better way of dealing with
3 it.

4 GEORGIA PESTANA: Thank you Council Member Chin.
5 I totally agree, there's got to be a better way to
6 deal with it. We have a Legal Council division that
7 is a little over maybe between 20 and 25 lawyers when
8 they are fully staffed and they share your
9 frustration that things come at the last minute and
10 sometimes there's a lot of things that need to be
11 worked out. And there is an aging deadline and
12 everybody is frustrated and talking past each other.

13 So, I, we would love to work out a better way
14 where there is loaner lien time before sort of okay,
15 this is what's going to age and the legal staff, our
16 office and Counsel work together to take care of any
17 problems and consult with the Council Members. So
18 that it's not a mad crush and nobody is up until
19 midnight or past midnight hoping that it gets done.
20 So, yes, we need to figure out a better way.

21 COUNCIL MEMBER CHIN: So, I guess you will make
22 that commitment under your leadership that this will
23 definitely improve, right?

24 GEORGIA PESTANA: I'll do my part. I hope the
25 Council does their part. How's that?

2 COUNCIL MEMBER CHIN: Well, we're looking forward
3 to improving that working relationship. Thank you.

4 GEORGIA PESTANA: Okay.

5 COUNCIL MEMBER CHIN: Thank you Chair.

6 CHAIRPERSON KOSLOWITZ: Council Member Adams.

7 COUNCIL MEMBER ADAMS: Thank you Madam Chair.
8 Good afternoon.

9 GEORGIA PESTANA: Good afternoon.

10 COUNCIL MEMBER ADAMS: Ms. Pestana, it's very
11 nice to see you in person.

12 GEORGIA PESTANA: It's good to see you too.

13 COUNCIL MEMBER ADAMS: And congratulations on
14 your nomination. We're so happy to have you give
15 your testimony here to this body today.

16 Along the same lines as my colleagues have asked,
17 I just have two questions for you. The first one has
18 to do with you being the leader of the entire Law
19 Department and of course, we know that change, with
20 change, always comes a little bit of resistance.

21 So, with your commitment to making your non-
22 mayoral clients more balanced when it comes to the
23 Law Department, how much resistance do you foresee
24 within the Department of making that become a
25 reality?

2 GEORGIA PESTANA: I don't foresee a resistance.
3 I think that the lawyers at the Law Department are
4 like me, that they really are there because they want
5 to do the best for the city and they really do think
6 of their client as the city and not so much the Mayor
7 or the Council or the Borough President. But it's
8 okay, what is it for the city? So, I don't expect
9 resistance.

10 I think it's partly and I am sorry, I don't
11 remember who raised it but I think probably the
12 Speaker, making sure that the conversation is ongoing
13 and that the voices of the Council are included and
14 heard. Particularly on initiatives that are
15 important.

16 COUNCIL MEMBER ADAMS: Okay, thank you and my
17 last question has to do with your prehearing response
18 to question nine. And the question was, if there is
19 a dispute regarding a litigation tactic or suggested
20 revisions to a brief to be filed on behalf of the
21 City Council, a City Council Member or any other
22 nonmayoral city entity between the relevant city
23 attorneys on behalf of the agency and the Assistant
24 Corporation Counsel handling - I'm sorry, and the
25 Assistant Corporation Counsel's handling the case,

2 how do you think such as dispute should be resolved?

3 And your response was a little vague. I would like

4 for you to expand on your thought a little bit with

5 regard to the answer to that question. You state

6 that you try very hard to resolve disagreements

7 through thoughtful and respectful discussion and can

8 usually come up with a satisfactory path forward.

9 But I would like for you to expand on that thought a

10 little bit more.

11 GEORGIA PESTANA: So, it begins at the staff

12 level. The attorneys handling the matter and the

13 Council – and the Council at the Council staff trying

14 to work out the differences and the disagreements and

15 slowly it rises up I guess in both – at both the

16 Council and at the Law Department and ultimately it

17 would – no agreement could be reached ultimately, it

18 would come to me and as the Chief Legal Officer, I

19 would be called upon to make the decision as to which

20 way we would go but I you know have to take into

21 account the concerns of my clients because as I said

22 before, the client knows the operations and what is

23 most important to them.

24 So, it's important to listen and try to address

25 the concerns as best we can before we take the step

2 forward but ultimately, it is the obligation of the
3 Corporation Counsel to make the decision.

4 COUNCIL MEMBER ADAMS: Okay, thank you. Think I
5 just extracted what I needed to hear, is that you
6 would take the lead on that?

7 GEORGIA PESTANA: Oh yeah, it's got to be me.

8 COUNCIL MEMBER ADAMS: Yeah, yeah. Thank you
9 very much for your testimony today. Thank you.
10 Thank you Chair.

11 CHAIRPERSON KOSLOWITZ: Council Member Rose.

12 COUNCIL MEMBER ROSE: Thank you Chair and I too
13 want to offer my congratulations on your nomination.

14 GEORGIA PESTANA: Thank you.

15 COUNCIL MEMBER ROSE: I have some sort of process
16 questions. Are there a backlog of cases that the Law
17 Department has and how long does it take for a case
18 to actually get litigated like from the time it's
19 filed until the time of settlement?

20 GEORGIA PESTANA: So, not every case is the same
21 and we all know that this past year has been a little
22 strange, so the courts were not moving as quickly so,
23 we'll pay for that in the coming years but in the
24 ordinary times, in state court, it's not unusual for
25

2 a case to be five, eight, ten years old before it
3 comes to conclusion.

4 In the federal courts, it moves much faster,
5 usually you know two years three maybe to the
6 conclusion and by the conclusion, I mean that's a
7 case that's fully litigated not necessarily settled.
8 Earlier settlements is some - if we see a case that
9 needs to be settled or we decide settlement is the
10 right result here, we try to do that as early as
11 possible to avoid you know delay in spinning the
12 wheels and growing a backlog.

13 COUNCIL MEMBER ROSE: Is there anything that you
14 can do internally to expedite these cases, so that it
15 doesn't - that timeframe can be reduced? Is it
16 matter a staffing? Is it a matter of you know?

17 GEORGIA PESTANA: It's I think a few different
18 things and one thing that did come out of the
19 pandemic is that we started meeting regularly with
20 uhm, the Chief, the Deputy Chief Administrative Judge
21 in New York to come up with a mediation program that
22 might fast track the resolution of some cases. So,
23 you know, we had since the courts weren't fully
24 operational. They were operational for the entire
25 time but people couldn't come in. That was a

2 productive thing for us to work on with them. So, we
3 need to partner more with the court system to find
4 things like that that would help eliminate some of
5 the delays.

6 GEORGIA PESTANA: And uhm, in terms of lawsuits
7 that are filed against the city by a set of repeat
8 multiple lawsuits that you've had to litigate against
9 the same person. I'm speaking primarily about police
10 officers that come before you that have had multiple
11 lawsuits.

12 Is there some sort of process that they are
13 looked at, so that the city isn't you know constantly
14 you know being held liable for the actions of repeat
15 police officers who find themselves you know being
16 sued?

17 GEORGIA PESTANA: Yes, we have a risk management
18 unit that is - that looks at things like that. Looks
19 to see if there are repeat defendants or even
20 patterns that are arising in particular precincts or
21 something like that and we had weekly - that risk
22 unit meets weekly with the NYPD's risk unit and flags
23 these individuals. As well as any trends that we see
24 from the incoming cases to the police department and
25 they have an early intervention unit that also sort

2 of digs deeper to see sort of, we just have the piece
3 that involves litigation. They have access to more
4 and can dig a little deeper and see what's going on
5 there and try to take some action.

6 COUNCIL MEMBER ROSE: And my last question.
7 Could you just tell me what your feelings are about
8 qualified immunity and the Law Department?

9 GEORGIA PESTANA: It's hard to answer a question
10 like that in the abstract. Qualified immunity is not
11 uhm, I mean, I think is a little bit misunderstood in
12 terms of how useful it is in a typical police
13 excessive force case. It's rarely granted. So, I
14 just can't answer that in the abstract. I am sorry.

15 COUNCIL MEMBER ROSE: Okay, well thank you so
16 much.

17 CHAIRPERSON KOSLOWITZ: Council Member Lander.

18 COUNCIL MEMBER LANDER: Thank you very much Chair
19 Koslowitz and I just want to thank you for this
20 hearing at all and I want to praise both the Speaker
21 and the members of the Council staff who made sure
22 that this got on the 2019 Charter Revision
23 Commission. I think being able to do Advice and
24 Consent with Corporation Counsel is a really good
25 step forward for the Council and for the city. So,

2 thanks to you and to the Council and the team and the
3 Speaker.

4 Ms. Pestana it's great to see you here this
5 morning. Congratulations on your nomination.
6 Obviously the Law Department is a place of great
7 esteem. You know, I count myself fortunate to have
8 learned from for Swartz and Victor Kovner and Zach
9 and Jim Johnson. So, it's and just even listing
10 them, it's all men. It's great to have your
11 nomination and as you say, it's great to see someone
12 whose really spent their whole career working you
13 know in the city legal position. So,
14 congratulations.

15 I am enthusiastic about your nomination. It
16 seems to me there is sort of two different kinds of
17 issues at stake here. One is, are you appropriate to
18 lead the Law Department? About which to me it's
19 pretty open and shut question that you're you know
20 qualified and have the integrity and wisdom and
21 experience to lead the Law Department and that's kind
22 of our you know the main part of our Advice and
23 Consent function. Then there are these questions
24 about how to understand the relationship and role on
25 which we might have some disagreements. You know I

2 have enormous esteem for Fritz and Victor and Jim and
3 Zach but I have disagree with some of them on these
4 issues.

5 So, that's a somewhat separate question. So, I
6 am going to continue asking a couple of these
7 questions about the role but just so you know, from
8 my point of view, they really are not questions about
9 your qualifications to lead the Department. So, I am
10 looking forward to voting yes on your nomination even
11 if we don't agree on a few of the matters of sort of
12 how to understand the role and in some individual
13 cases.

14 GEORGIA PESTANA: Thank you.

15 COUNCIL MEMBER LANDER: And I - I guess I will
16 say, it seems to me - I mean I appreciate everything
17 you've said about working hard to bring parties
18 together and trying hard to represent the city and I
19 have no doubt you will do that. It does also seem to
20 me just realistically, any Corporation Counsel who
21 has been nominated by the Mayor, who is working very
22 closely with the Mayor, who you know, when the city
23 is sued it's generally the Mayor's name on the brief.
24 You know is going to have a leaning toward the
25 Mayor's point of view and I don't even really have a

2 problem with that. It just seems realistic to me to
3 understand that when different parties within the
4 city might have legitimate points of view. We need
5 some way of kind of figuring out how to resolve that
6 and I really like that the first instinct will be
7 alright, let's try to get people together and let's
8 bring lawyers to the table and see if we can't
9 resolve it. But sometimes politics makes that
10 impossible or at least extra challenging and that's
11 okay. I mean these are, there is a legal point of
12 view for the city and then it's a political - we
13 elect these officers independently and so, they may
14 have a different judgement. I guess that does on
15 something like the situation of the amicus brief,
16 make we wonder why the simpler answer isn't to say,
17 okay, first, I am going to try hard to bring people
18 to the table to show why the legal matters reflect a
19 common position to explain why it would be better.
20 If the Mayor and the Council shared the point of
21 view. But if at the end of the day in a lawsuit, the
22 Council, let's say by resolution. I hear that you
23 say it's different for an individual member but let's
24 say the Council feels strongly on a particular suit.
25 The city is being sued or there's some point of view;

2 you know I don't want to use a particular lawsuit
3 because then we'll wind up in a situation but it's
4 you know like the one that occasion, the most recent
5 disagreement. And the Council by resolution say, you
6 know, we authorize an amicus brief because we have a
7 different point of view than the Mayor does and
8 you've tried to bring people together. Expressed why
9 from a legal point of view it would be better but if
10 politically, ultimately, the Council were by
11 resolution to say, we have a different point of view.

12 I guess there is two questions here because it
13 seems to me it is reasonable for the Corporation
14 Counsel in that case to say, we are going to
15 represent the Mayor's point of view as the city's
16 point of view. It's the mayor's name whose named on
17 the lawsuit let's say and so, but it just seems to me
18 it would then be more straight forward to say okay,
19 because there couldn't be resolution here, we deem it
20 appropriate for the Council to go ahead and proceed
21 and give a little leeway to do it.

22 And it feels to me like that would almost make
23 you a more trusted broker of the city's legal
24 position. With an understanding that sometimes
25

2 politics will make it hard for parties to all come
3 together around it.

4 GEORGIA PESTANA: Yeah, I do find it hard to
5 discuss these things in the abstract. My strong
6 feeling is that because we are putting in a brief or
7 a position on behalf of the city and not the Mayor's
8 position. Although it's informed by the Mayor's
9 position but should be informed by the position of
10 the other branches of government. That I would be
11 hard pressed at that point and but there could be a
12 situation where I thought you know the Council's -
13 there's something unique about the Council's role or
14 Council's view that the court should hear it.

15 I will leave open that possibility but I think
16 for the most part, I would say that the Law
17 Department has to take the position on behalf of the
18 city having tried to be the honest broker in the room
19 and gotten everybody's point of view and come to a
20 legal position on behalf of the city. That's the
21 position that we put forward.

22 COUNCIL MEMBER LANDER: And we want that
23 inclination. I have to say I wouldn't be happier if
24 you gave an answer, which was okay, the Corporation
25 Counsel is the Mayor's lawyer and everyone else

2 should get their own. That's not what the Charter
3 says. It would not be how the city was best served.
4 So, the goal of bringing people together to represent
5 the city's point of view, I think is important and
6 admirable and I'm glad it's your first set of
7 instincts.

8 And I will actually just maybe say, I think you
9 have given useful advice to future counsel, so that
10 when they see a need to do that they will want to
11 articulate a rationale for why the Council's power or
12 role is implicated and not just, we have a different
13 political point of view or a different legal point of
14 view on this - on this issue.

15 So, I'm not going to push any further. To me it
16 seems like there's just ease of tension here. That's
17 it's really understanding. You know, it's worth
18 being realistic about. It is the job to be the
19 city's lawyer. I appreciate all the ways you've
20 outlined that you plan to do that and then sometimes
21 parties are going to make that impossible and in the
22 cases of those conflicts, it's understandable. At
23 least if the other parties are going to think that
24 Corporation Counsel leans towards the Mayor. Whether
25 Corporation Counsel actually does or doesn't. And

2 this helps having Advice and Consent hearing is in
3 the direction of having us all feel that way. But
4 you know that's just a uhm, a political reality.

5 So, I think it's - anyway, I appreciate your
6 answer. I will take that advice under advisement in
7 the future if it ever become necessary and that you
8 are leaving some room open for that possibility and
9 that you will consider it even while you have the
10 strong inclination to try to bring people together
11 under a shared and common position.

12 In that vein, you know I had the experience; a
13 very positive experience around what became known as
14 the dangerous vehicle abatement program law of
15 actually being able to work together with both the
16 Council attorney's from the office of general counsel
17 and attorney's from the Law Department as well as
18 Department of Transportation and the Sheriff and
19 agencies. That was a situation where everyone had a
20 shared goal of doing something more about the city's
21 most reckless drivers that were real legal issues
22 about how we could do that in a way that we would
23 feel confident. Would withstand court challenge and
24 would be appropriate. And there was a willingness to
25 all sit down together in a way that I think is not

2 reasonable or practical for every bill that the
3 Council is pursuing. I think our normal process will
4 proceed at the volume we are doing it but in that
5 case, there was a willingness on the part of the
6 Council's attorney's, Speakers office, our office,
7 the agencies and the Law Department. And it really
8 produced an excellent process, in which we reached
9 something that there was a full agreement on, on
10 moving through in the past and the Mayor signed it.

11 So, I don't know if you see in opportunities like
12 that you know to find ways to work you know, to kind
13 of you know in the ways that the Speaker and others
14 have talked about here to takes steps forward that
15 enable us to work together in productive ways.

16 GEORGIA PESTANA: I think that that's a beautiful
17 example of how we want to work with the Council going
18 forward and I do think you are right, it's not
19 necessary in every bill. Some things are straight
20 forward but I do think that something like that would
21 address the issue that Council Member Chin raised,
22 that sometimes it's a mad scramble at the end. Had
23 there been sort of the conversation when there are -
24 when it's a complicated bill and we all know where we
25 want to get to but there is dispute or trouble in

2 figuring out the best legal way to get there. I
3 think that that would be an excellent tool that the
4 example that you provided for eliminating some of the
5 problems that – and that Council Member Chin was
6 alluding to. In terms of the aging deadline is
7 coming in. We've got a mess on our hands.

8 COUNCIL MEMBER LANDER: Thank you and yeah, I
9 found that process very instructive. Like the Chair,
10 on the one hand, I have the good fortune to have
11 known some Corporation Counsel's but I haven't that
12 directly myself worked with Law Department attorney's
13 in the job because we work with the attorney's here
14 and that was you know, helped a lot on that
15 particular bill but also helped eliminate for me the
16 broader process.

17 My last question sort of builds on that but also
18 brings in Council Member Powers questions about claim
19 settlements in which case you know this particular
20 role for the Office of the Comptroller. In that
21 situation, as I understand it, you know there had been
22 some prior not disputes but less aligned around kind
23 of getting to shared point of view and the
24 Comptroller, the current Comptroller hired some new
25 staff to help advise him. Who had experience in

2 claim settlement and that that actually then sort of
3 helped at least as the story has been told to me,
4 uhm, you know the different sets of people have good
5 dialogue. And I think there is a challenge, whether
6 it's for Council Members or for other Comptroller
7 Borough President, other officer holders. Where on
8 the one hand the Corporation Counsel is our lawyer
9 and we want to work together and take that advice.
10 And on the other hand for understandable reasons, we
11 hire our own attorney's too to give us advice on our
12 own points of view and that's obviously true. There
13 is a great staff of lawyers at the City Council who
14 advise us. It's true for the Comptroller and the
15 claims function or other functions.

16 So, you know, I guess, how would you encourage
17 other you know elected officials other than the Mayor
18 who are going to be engaging legal counsel to help
19 advise them in the functioning of their duties to
20 think about that role? What they are looking for?
21 What kind of advise we want and then how to you know,
22 you know that set up then there is going to be two
23 sets of lawyers. So, maybe they will agree sometimes
24 and maybe they won't agree sometimes and how you
25 know, how would encourage us to proceed in hiring

2 people for those positions? And then approaching the
3 challenge of sort of reaching a common point of view?

4 GEORGIA PESTANA: Yeah, I am pretty sure that
5 there is lot of lawyer jokes about lawyers inability
6 to reach an agreement on most things but the – what's
7 most important for I think the lawyers at any of the
8 elected's offices, as well as at our agencies, is a
9 willingness to collaborate and have an exchange of
10 ideas. I have found that the legal staff at the
11 Council and at the Comptrollers office and at other
12 elected officials offices are really thoughtful,
13 topnotch and have good contributions to make and are
14 very valuable to get in on the ground floor when
15 we're talking about these things, so that about
16 complicated issues or trying to resolve, how do we
17 get to the goal here.

18 So, collaboration and a willingness to hear and
19 work with other lawyers and not you know, I know best
20 kind of attitude is really what I look for.

21 COUNCIL MEMBER LANDER: I appreciate that and I
22 think it's a good, you know to me, it's all these
23 things are true. We've got independently elected
24 officials. That's good for having a wide diversity
25 of representation. They need good advice and

2 thoughtful approach and people who can advise them
3 and then of course, we want to try our best on behalf
4 of the city that we all have the sacred duty to
5 represent. To try to figure out how to collaborate
6 as much as we possibly can and get to that common
7 position.

8 So, thank you for answering our questions today.
9 I have no doubt you'll be an outstanding Corporation
10 Counsel. I have no doubt there actually will be
11 sometimes we disagree on matters and that the thing
12 that this will help us do is navigate that
13 productively and as much as we can, in the best
14 interest of the city.

15 So, thank you very much. Good luck to you.

16 GEORGIA PESTANA: Thank you. Good luck to you.

17 COUNCIL MEMBER LANDER: Thank you and thank you
18 to the Chair and my colleagues.

19 CHAIRPERSON KOSLOWITZ: Thank you. Since there
20 are no other people from the public that signed up to
21 testify or ask questions, we want to thank you Ms.
22 Pestana and everyone who participated in today's
23 hearing.

24 We will now recess today's hearing and we convene
25 on Thursday July 29th at 11 a.m. for a vote on Ms.

2 Pestana's confirmation. The July 27, 2021, meeting
3 of the Committee on Rules, Privileges and Elections
4 now stands in recess. Thank you.

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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 August 03, 2021