



**NEW YORK CITY COUNCIL
COMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

**TESTIMONY OF MARK G. PETERS
COMMISSIONER, NEW YORK CITY DEPARTMENT OF INVESTIGATION**

**CONCERNING THE FISCAL YEAR 2017 PRELIMINARY BUDGET,
MAYOR'S FISCAL YEAR 2016 PRELIMINARY MANAGEMENT REPORT
AND AGENCY OVERSIGHT HEARINGS**

MARCH 7, 2016

Good afternoon Chair Gentile and members of the Committee on Oversight and Investigations. I am Mark G. Peters, Commissioner of the Department of Investigation (“DOI”), and I thank you for the opportunity to address the Committee concerning DOI’s Preliminary Budget for Fiscal Year 2017, as well as the many success we have had over the past year.

DOI’s mandate is codified within Chapter 34 of the City Charter, which states that the DOI commissioner is “authorized and empowered to make any study or investigation...in the best interests of the city, including but not limited to, investigations of the affairs, functions, accounts, methods, personnel or efficiency of any agency.” Indeed, the law as it is written, is proof that a fair and efficient New York City depends on a strong and fully independent mechanism of ongoing and proactive monitoring to ensure corruption is rooted out on every level—from the individual wrongdoer to operational failures that lead to waste and abuse.

Today, DOI’s strategy attacks corruption comprehensively through systemic investigations that lead to high-impact arrests, preventative controls and operational reforms that improve the way the City runs. And we’ve had quite a busy year.

I would like to take this opportunity today to highlight a number of complex investigations which have recently come to fruition – and which help demonstrate the wisdom of the Mayor’s and this Council’s decision last year to commit additional resources to DOI. These investigations, among others, have collectively yielded hundreds of arrests, criminal referrals to prosecutors, and public reports which contain our investigative findings and specific and actionable policy recommendations. And to be clear, these represent the leading edge results of our current strategy. That is to say, these investigations are not strictly “closed cases.” Rather, we will continue to monitor and evaluate the adoption of our recommendations, the effectiveness of the relevant agency’s own corruption prevention measures, and we will continue to apprehend wrongdoers when we find them. Further, the cases I highlight today exemplify the merits of our strategy--in the tangible results we have seen and the change underway, as a result of our work, by a number of agencies.

For example, we have been very active in cases involving the construction industry. Please understand: Whenever there is a construction related fatality or other serious incident, DOI investigators are on-site immediately, shoulder to shoulder with our other law enforcement partners, to evaluate whether criminal conduct is involved and, concurrently, to determine whether construction professionals were doing business within the parameters of their licenses and the law, and with due regard for public safety. Since January 2015, these cases have resulted in nearly 100 arrests, and importantly, have signaled to the industry that we are actively enforcing the full spectrum of laws intended to protect public safety. This includes false filings, a crime which on the surface may appear victimless but which can have serious and tragic consequences. Several specific examples:

- On November 17, 2015, DOI and the Manhattan District Attorney announced the arrest of an engineer on a charge of falsely certifying a safety inspection report for the façade of a Manhattan building where a piece of terracotta fell and killed a two-year-old girl. On that same day,

DOI released a report outlining the findings from an investigation in the wake of that tragic death, which exposed fault on the part of the City's Department of Buildings in its enforcement of basic safety rules intended to prevent such tragedies. As a result of our report, hundreds of additional inspections were conducted and repairs undertaken.

- On February 11 of this year, DOI, again with the Manhattan District Attorney, announced the indictment of five individuals in connection with the gas explosion in the East Village that resulted in two deaths, scores of injuries, and loss of property. The licensed professionals who signed off on the work never actually checked it. Now people are dead and the professionals and others are facing prison. We worked both with the District Attorney to prosecute criminal conduct and with regulators to pull licenses and stop reckless construction professionals from future dangerous jobs. Again, the misconduct that led up to the explosion – including falsified documents and dishonest practices – shows that corrupting the process has real, life-threatening consequences.
- And on August 5th of last year, we arrested two supervisors and their respective companies in connection with the death of a construction worker, a death that resulted due to those supervisors' actions, despite numerous warnings of the dangerous conditions. On the day of the fatality in this criminal case, the work site was a couple of months behind schedule, a truck was on its way to deliver concrete, and there was a rush to finish an excavation. There was no proper shoring of the site, no underpinning, and workers were in a trench when they should not have been. The tragic result: a construction laborer was crushed by thousands of pounds of dirt that should have been held back by shoring.

We expect additional criminal cases of this type before the year is out.

Underscoring our commitment in the area of construction safety, DOI has forged dedicated initiatives with key partners. This includes a Citywide Construction Fraud Task Force with the Manhattan District Attorney's office, which also includes partners from the Metropolitan Transit Authority, the Port Authority, and the City's Business Integrity Commission. In that same spirit, we are currently working with both the Brooklyn DA and, separately, with the Staten Island DA, to set up similar task forces that are specifically tailored to each borough's needs and resources.

I would also like to highlight the outstanding work of DOI's dedicated NYCHA Inspector General. Our NYCHA IG unit, with current staffing of approximately 45, is heavily focused on issues of safety.

- In December 2015, DOI issued a report regarding a Memorandum of Understanding between NYCHA and NYPD. Since 1996, the New York City Police Department ("NYPD") and New York City Housing Authority ("NYCHA") have operated under a joint public safety agreement requiring NYPD to inform NYCHA of arrests of NYCHA residents, or on NYCHA property, so that NYCHA can then take steps to keep dangerous criminals out of public

housing. Based on our investigation, DOI found that the NYPD had failed to comply with this agreement and did not routinely inform NYCHA of arrests, even where they involved sexual assault, gun possession, or narcotics trafficking. In turn, even when informed of such arrests, NYCHA failed to take steps to remove such criminals from public housing and thus protect the overwhelming majority of law-abiding residents. These systemic failures – documented by a DOI review of thousands of files – have contributed to disproportionately high violent crime rates at NYCHA, including a shooting incidence rate that is four times higher than the city as a whole. I am pleased to note that after our Report, both NYCHA and the NYPD have begun to implement a number of procedural improvements to address these deficiencies. I am pleased to note that after our Report, both NYCHA and the NYPD have begun to implement a number of procedural improvements to address these deficiencies. Indeed, in the immediate aftermath of our Report, we watched NYCHA and NYPD staff hold multiple meetings to start responding to these issues.

In addition to security concerns, our work is focused on a number of infrastructure issues that also threaten safety in NYCHA housing.

- On May 6, 2015, DOI issued a report in the wake of the death of a NYCHA worker and the possible role of garbage hoists in that death. While our report ultimately did not find the unsafe hoist caused the fatality, the tragic incident highlighted a systemic threat to the safety of NYCHA employees created by the use and condition of these hoists. Specifically, DOI examined NYCHA's use and maintenance of seven of the 66 garbage hoists used by NYCHA. DOI found an array of unsafe conditions such as a lack of safety mechanisms, poor repair, and an absence of worker training on these antiquated hoists. Following the March 2015 fatality, NYCHA shut down use of its garbage hoists pending further instruction. DOI recommended permanently decommissioning these units and recommends studying alternatives to transport compacted garbage from basements to the street.
- Similarly, in the wake of a more recent death involving an elevator on NYCHA property, we are also investigating whether similar systemic threats involving elevators exist there. We will have more to say on that investigation at its conclusion.

Our NYCHA unit also combats housing fraud, and in 2015 DOI arrested three dozen individuals on housing fraud charges associated with the theft of more than \$1.2 million, protecting these valuable public funds for those who are eligible.

Next, I want to touch on another area in which we have been very aggressive, and that is prevailing wage cases. Prevailing wage cases involve wage theft from construction workers, often new immigrants, and often among those who are least able to defend themselves and their rights. In 2015, DOI's probes into wage theft led to one dozen arrests of contractors and companies and the return of more than \$720,000 to workers whose wages were stolen.

Our work involving social services fraud more broadly resulted in a number of arrests and addressed serious financial fraud vulnerabilities.

- On December 1, 2015, DOI issued a report discussing vulnerabilities uncovered in four separate cases which resulted in the theft of \$2.4 million of public funds. As a result of the theft, we also arrested two current and two former City employees and 23 co-conspirators. The report made a number of specific recommendations, which were sent to the City's Human Resources Administration, and several of which have already led to changes. These investigations began after HRA – which has been a very good partner -- referred suspicious activity to DOI. Subsequently, DOI uncovered fraud and corruption that exploited vulnerabilities in HRA's computerized case management system and benefit issuance procedures, allowing the defendants to fraudulently steer cash assistance and Supplemental Nutritional Assistance Program ("SNAP") benefits (previously known as food stamps) to themselves and to associates who were ineligible to receive them, using Electronic Benefit Transfer ("EBT") cards. In one instance, over \$120,000 of public assistance funds were used to purchase large quantities of the energy drink "Red Bull," which were then "fenced" to smaller retail locations. In another instance, public assistance funds were used to pay for fraudulent rental subsidies to individuals who posed as landlords.

In addition to financial fraud crimes, we look at other aspects of social services corruption including corruption which threatens the health and safety of those in the City's custody and the public at large. Today, I highlight this work in two areas—one involving vendors for the City focused on juvenile delinquents, and the other involving our ongoing Rikers investigation.

- On June 11, 2015, DOI and the Brooklyn DA's office announced the arrest of a Youth Care Worker with Boys Town New York, Inc., a City-contracted vendor that provides non-secure residential placements in Brooklyn and Queens to youths who have been adjudicated as juvenile delinquents and placed in the custody of the City Administration for Children's Services ("ACS"). The staff member was responsible for monitoring the teens' whereabouts and verifying their presence by recording it in a daily log book. He failed to do his job and instead falsified the log book that stated the teenage residents he supervised were present in a Park Slope, Brooklyn residence. In fact, those teens were charged in connection with the rape, assault, and robbery of a woman in Manhattan during the early hours of June 1, after they escaped the Boys Town home without detection. The arrest is part of a broader investigation that DOI opened with our partners at the Brooklyn DA's office into the management of the City's juvenile facilities and the potential failure to properly supervise residents placed there by the courts and ACS, among other systemic issues. It is important to understand that ACS is ultimately responsible for these safety issues. I look forward to updating you on the developments of that investigation – including additional arrests -- in due course.

Additionally, as the Inspector General of the Department of Corrections, we continue our work on Rikers Island, which involves ensuring that both those in

custody and those charged with overseeing their custody are safe. Long an area of focus at DOI, our work as the charter mandated Inspector General for Rikers continues to produce results and spur change. Since 2014, when we began an intensive simultaneous review of several facets of Rikers, 26 DOC staff members have been arrested on an array of charges including contraband smuggling, inmate assaults and false filings. In addition, nearly two dozen staff have been disciplined and more than three dozen inmates have been arrested on various charges including for contraband.

- The 26th DOC staff member to be arrested since 2014 as a result of our investigation was arrested on February 4th on charges of rape and promoting prison contraband into the George R. Vierno Center (“GRVC”) on Rikers Island. DOI’s drug-sniffing dog, Gunner, was positioned at GRVC’s front gate during the 5 a.m. shift change and alerted on the CO as she entered the front gate of GRVC where she was assigned. The CO was searched and although she did not have contraband on her person, the investigation found she had a package of marijuana at her home intended for an inmate at the jail with whom she had a sexual relationship. Under New York State law, inmates cannot consent to sexual relationships inside the jail. Approximately 70 grams of marijuana was found at the defendant’s home. This case involving sex for drugs is but the most recent example of the dangers of corruption in our City’s jails and the connection between the drugs, inappropriate relationships and violence that pervade the system.

In addition to arrests, during our 18-month investigation the Rikers Inspector General has already issued three systemic reports on various issues, most notably the grossly flawed hiring practices that led to more than 30 percent of a recent CO class having red flags such as gang affiliations, felony convictions and failure to pass a basic psychological exam. We have also demonstrated the pervasive problem of contraband smuggling that fuels much of the violence and the past failure to properly administer mental health services. These reports caused concrete reforms, including reforming health delivery services at the jail, installing a drug sniffing dog, and improving the recruitment and screening of potential staff; more reforms will come as our work continues.

The work of reforming Rikers is slow, it is difficult, and it is decidedly not glamorous. After many decades of neglect, we must be prepared to accept that progress will be incremental, but we at DOI will press forward and hold steady on the course, because nothing but sustained, committed and continuous work will lead to an effective turnaround at Rikers.

Another area of law enforcement that DOI monitors is the NYPD. Our most recent reports in this area include our review of the NYPD’s Body-Worn Camera pilot program, which focused on an assessment of activation, policy compliance, access to footage, and retention, and a report on the use of force by officers, which examined trends, reporting, de-escalation and officer training, and discipline as it relates to use of force in the Department. I am extremely pleased that on the same day that we issued our use of force Report, the NYPD announced that, for the first time, it would track use of force by all officers – a key reform called for in our Report. Not only will this reform

give us better information to evaluate the issue, but the very act of tracking force sends an important message about its importance.

In the coming year, we expect to issue detailed reports on several other important policing issues including but not limited to quality of life enforcement and surveillance activities related to political and religious groups. In advance, I appreciate Commissioner Bratton's cooperation with all of this work.

Further, let me also update this Committee on the Office of the Special Commissioner of Investigation for the New York City School District ("SCI"). The unit was created in June of 1990, with a mandate to investigate criminal activity and other wrongdoing occurring within the City school system. The Special Commissioner is a Deputy to the DOI Commissioner. Independent of the City Department of Education ("DOE") and the Chancellor, SCI is authorized to investigate and make recommendations concerning any issue which impacts the integrity of the City's schools. Richard J. Condon, a former New York City Police Commissioner and former New York State Commissioner of the Division of Criminal Justice, has held the position of Special Commissioner of Investigation since July 2002, and he continues to do a tremendous job in service to the city.

In 2015, SCI received a total of **5566** complaints and opened **898** investigations, including **217** involving an allegation of sexual misconduct. SCI also monitored matters being handled by other agencies, usually the NYPD, and opened investigations into **262** of those cases that had been closed by the NYPD and other entities without arrest or disciplinary action.

Before going over our budget numbers, I want to briefly touch on some key statistics from the past year as they relate to the impact of our current strategy. You will recall, from my previous testimony before this body, that I believe we must approach statistics, and particularly arrest statistics, with extreme caution. The statistics tell an aspect of the story, but far from the complete story. However, I understand and respect your concern as an oversight body and the need to evaluate our performance as an agency. I hear those concerns, and I am happy to report that, as an indicator of our current strategy's success, key metrics are up from last year. In Calendar Year 2015, DOI had **569** arrests stemming from more than **1,500** investigations, and over **700** referrals for criminal prosecution. This represents an increase of 83% for arrests year-on-year, and nearly double the number of criminal referrals year-on-year.

As further testament to the success of our strategy to date, DOI has seen its jurisdiction expand to include, as of December 2015, the Inspector General for the NYC Health + Hospitals Corporation. NYC Health + Hospitals is a public benefit corporation that operates 11 hospitals, five skilled nursing facilities, six diagnostic and treatment centers and more than 70 community-based clinics in the City, which serve over 1.4 million New Yorkers annually. The corporation has a staff of more than 35,000 employees and a total budget exceeding \$7 billion a year.

This expansion was prompted by NYC Health + Hospitals Board of

Directors and Dr. Ram Raju, who requested that DOI provide independent and transparent oversight. By terms of the agreement, the City of New York and NYC Health + Hospitals will fund additional resources determined necessary by DOI in order to expand the existing staff to provide the capacity to handle independent, preventative and systemic investigation. Currently, there is a 23-person staff and DOI expects that will more than triple within the next 6 months. We are close to successfully staffing key positions including the IG, Deputy IG, and key senior investigations positions.

NYC Health + Hospitals will continue to cover expenses of the office, including salaries and benefits of employees. Being a part of DOI means the NYC Health + Hospitals OIG will now have the benefit of all of DOI's resources and independent status, including the ability to issue subpoenas and make arrests and the ability to conduct systemic investigations that root out corruption and fraud, and result in lasting reforms. This new office will proactively monitor NYC Health + Hospitals' spending and staffing to prevent, and refer for prosecution, theft and fraud in its many forms.

Finally, our Integrity Monitor program assists City agencies managing large projects, or vendors with integrity issues, to ensure red flags are raised early and corruption vulnerabilities caught sooner rather than later. They act as DOI's eyes and ears and report to DOI. Integrity monitors are more often than not paid for by the vendor, if they have an integrity issue and are contracting with the City. In proactive cases, such as with ECTP, the City's new 911 system, and NYCHA's Bond B, the City will pay for a monitor due to the complexities of a project and the need to monitor it on a daily basis. In the case of proactive monitorship programs, while there may be additional costs to the City on the front-end, they almost invariably will pay for themselves by creating more cost efficiencies in the long run. We currently have 16 active Integrity Monitors reporting to us, with several additional new ones in the pipeline.

Given the breadth and depth of our work, DOI is grateful for the support shown through this preliminary budget, which recognizes that additional resources are necessary to support the larger scale investigations we are undertaking, as well as ongoing improvements in investigative technique, particularly in the digital and technical realm.

DOI's preliminary expense budget for Fiscal Year 2017 is **\$44.2** million consisting of **\$28** million that supports approximately **361** full-time staff positions, and **\$16.2** million for Other Than Personal Services, such as supplies, equipment and space. Included in the **\$28** million for Personal Services is **\$4.5** million Intra-City funding, such as the funding for Memoranda of Understanding with **eight** City agencies that support **67** positions. In addition to the staff comprised in the agency's budget, there are about **261** other staff members who work for us through various arrangements with other City agencies, including at the Office of the Special Commissioner of Investigation for Schools and the Office of the Inspector General for NYCHA. Many of these City agencies have experienced particular corruption issues over the years and have given DOI funding for staff positions to assist in our integrity efforts. We are grateful for this essential support. The wide-ranging work that DOI does, and that I have reported to you today, could not be accomplished without this assistance.

I would also like to touch on the impact of federal forfeiture funds at DOI, as well as update you on an important change in the law in this area. For many years, DOI has worked with prosecutors to ensure that stolen City funds are returned to the City. Federal criminal law also allowed the proceeds of criminal activity to be forfeited to the federal government and shared with investigating agencies to support law enforcement activities. DOI has been a beneficiary of some of those federally-regulated funds and has shared some of them with other City agencies. These forfeiture funds, however, are temporary and finite and can only be used for certain law enforcement-related purposes. They are strictly governed by federal guidelines and cannot be used to fund salaries for permanent staff positions, or otherwise substitute for items the City must fund. These funds have been instrumental in helping DOI improve a number of essential functions not provided for in its budget. In Fiscal Year 2016, DOI dedicated forfeiture funds to support our newly revamped Peace Officer training academy, which graduated 23 new DOI peace officers; our agency-wide training initiative, focused on the continuous development of investigators; and investing in upgrading our information technology infrastructure.

However, in late December 2015, the US Department of Justice (“DOJ”) announced that, effective immediately, all new equitable sharing payments to state and local law enforcement agencies through the federal asset forfeiture program will cease for the foreseeable future. This decision was a result of the passage of the Consolidated Appropriations Act of 2016 (H.R. 2029), which was signed into law on December 18, 2015. The Consolidated Appropriations Act made major rescissions from the federal asset forfeiture fund to pay for other programs. DOJ has expressed hope that such payments will eventually resume but has not set a date by then this is anticipated. As a result, for the foreseeable future, a revenue stream that DOI has substantially relied on to fund OTPS items – such as needed renovations, computers, office equipment, furniture, vehicles and training -- has run dry.

To sum up: For some 142 years and counting, DOI has been called upon to do what no other single City agency can do alone—through our experience, unique expertise and the robust powers afforded to us through the City Charter, assist agencies in minimizing fraud vulnerabilities while maximizing enforcement when corruption does occur.

This strategy remains ambitious and comprehensive, as it leverages DOI’s unique jurisdictional powers to address not only individual wrongdoers, but also structural vulnerabilities which threaten to erode New Yorker’s confidence in government. And with this ambition comes the need for additional resources, from hiring new talent with specialized expertise, to making important purchases in technology and investment in new investigative systems. I am grateful to the members of this Committee and other members of City Council, as well as the Mayor, for the support shown in making additional resources available to us over the past several years.

At this time, I would be happy to take your questions.