

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

BEFORE THE HONORABLE **GARRETT L. WONG**, JUDGE PRESIDING

DEPARTMENT NUMBER 15

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PEOPLE OF THE STATE OF CALIFORNIA, )

Plaintiff, )

vs. )

ROSS MIRKARIMI, )

Defendant. )

Court No. 12001311

**402 HEARING**

**Volume 2**

Pages 81 - 163

**Reporter's Transcript of Proceedings**

Monday, March 5, 2012

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1 Monday, March 5, 2012

1:37 P.M.

2 AFTERNOON SESSION

3 **THE COURT:** All right. Good afternoon, everyone.

4 **MS. AGUILAR TARCHI:** Good afternoon, Your Honor.

5 **THE COURT:** The record should reflect that both counsel are  
6 present. Or, actually, all the lawyers are present for the  
7 parties.

8 Defendant's appearance will be waived.

9 And Ms. Flores has returned to the witness stand.

10 Ma'am, you're still under oath. Do you understand that?

11 **THE WITNESS:** Yes, I do.

12 **CHRISTINA FLORES,**

13 called as a witness for the People, having been previously duly  
14 sworn, testified further as follows:

15 **THE COURT:** Very well. We'll continue this proceeding.

16 **MS. STIGLICH:** Thank you, Your Honor.

17 **CROSS-EXAMINATION** (RESUMED)

18 **MS. STIGLICH:** Q. Good afternoon, Ms. Flores.

19 **A.** Good afternoon.

20 **Q.** Ms. Flores, I want to just back up a bit.

21 We were here on Friday, correct?

22 **A.** Yes.

23 **Q.** All right. On Friday we talked about -- and I think  
24 Ms. Tarchi had kinda labeled four separate incidents?

25 **A.** Yes.

26 **Q.** That I remember.

27 With respect to what Ms. Aguilar Tarchi described as number  
28 four, as the most recent in time, was that still in February of

1 2008?

2 **A.** Yes, in February, end of February.

3 **Q.** And with respect to that testimony, as you sit here today,  
4 you can't recall what the argument was about?

5 **A.** No.

6 **Q.** Right? Or the particulars thereof?

7 **A.** No.

8 **Q.** With respect to the first situation that you described --

9 **A.** Yes.

10 **Q.** -- number one.

11 Now, you had testified that that was an argument where it's  
12 alleged that Mr. Mirkarimi came over to your house and he was  
13 angry with you?

14 **A.** Yes.

15 **Q.** And that relates to your having left a pair of underwear  
16 over at his house?

17 **A.** Yes.

18 **Q.** And he confronted you with that; isn't that correct?

19 **A.** Yes.

20 **Q.** Now, in that regard you also were angry; isn't that correct?

21 **A.** No.

22 **Q.** You felt -- well, strike that.

23 You were asking him, "Why do you have a problem?"

24 **A.** Yes.

25 **Q.** I'm sorry. I'll try not to talk over you. I got  
26 admonished, and I'm going to make sure that I don't talk over  
27 you. We'll take turns.

28 Because you were asking him, why is there a problem?

1 "If," -- you know, "it was an accident, why is there a problem  
2 if I did leave underwear at your house," correct?

3 **A.** Correct.

4 **Q.** And that's because you believed at that time that you were  
5 in a boyfriend/girlfriend relationship?

6 **A.** It was starting, yes.

7 **Q.** Well, when it had started, he had told you he was coming out  
8 of a relationship with someone else, correct?

9 **A.** Yes.

10 **Q.** And that individual continued to sometimes stay at the house  
11 and leave things at the house; is that correct?

12 **A.** No.

13 **Q.** What did he tell you?

14 **A.** He told me that she moved out and she had her things there,  
15 but because it was a small place that she lived in, she still  
16 had a lot of her things there. He did not tell me she slept  
17 over.

18 **Q.** He asked you if you could be discreet when you first started  
19 dating; is that correct?

20 **A.** That was before we started dating, yes.

21 **Q.** When he confronted you on this occasion, he confronted you,  
22 and he told you that he thought that it wasn't classy of you to  
23 have done that, knowing that the other individual was still  
24 there?

25 **A.** No.

26 **Q.** Now, you had an argument on that occasion, didn't you?

27 **A.** On which occasion?

28 **Q.** On occasion number one that we're talking about.

1     **A.** About the underwear? Yes.

2     **Q.** Correct. Correct.

3             And at times it was a loud argument, correct?

4     **A.** Yes.

5     **Q.** And you engaged with him, as well; isn't that correct?

6     **A.** No.

7             May I explain?

8             **THE COURT:** No.

9             **MS. STIGLICH: Q.** Is it your testimony in any of these  
10 incidents that you engaged, as well?

11     **A.** How so "engaged"? Define that.

12     **Q.** Well, you guys would have arguments, correct?

13     **A.** Yes.

14     **Q.** You would have loud arguments on occasion?

15     **A.** He was louder than I was, but, yes.

16     **Q.** Well, you were loud, too, correct?

17     **A.** I was not as loud as him, no.

18     **Q.** Would you yell at him, as well?

19             **MS. AGUILAR TARCHI:** Vague as to time, Your Honor. Is it  
20 still incident one of November '07?

21             **THE COURT:** Sustained.

22             Rephrase it.

23             **MS. STIGLICH: Q.** Ever. Did you ever yell back at him?

24             **MS. AGUILAR TARCHI:** Objection. Vague as to time, Your  
25 Honor, in light of the testimony. Vague as to time.

26             **THE COURT:** Sustained. I think you need to frame it.

27             **MS. STIGLICH: Q.** Well, Ms. Flores, you described yourself  
28 at different points in time to the inspector as a strong person,

1 correct?

2 A. Yes.

3 Q. Someone who knows self-defense, right?

4 A. Yes.

5 Q. Child of police officers, correct?

6 A. Officer.

7 Q. Officer.

8 A. Yes.

9 Q. Child of a police officer, correct?

10 A. Uh-huh.

11 Q. You were formally married to a police officer?

12 A. Correct.

13 Q. And you explained to them, "I was taught if somebody was  
14 being a bully to get right back in their face," correct?

15 A. I was taught at first not to hit but to yell back and  
16 respond when someone is physically abusive, and if that doesn't  
17 react, then take it further from there.

18 Q. You told the inspectors that you were taught to get back in  
19 someone's face; is that correct?

20 A. I'm not sure if I used those words, but, yes, that sentiment  
21 is correct.

22 Q. Now, with respect to this number one, that was  
23 in approximately November of 2008; is that correct?

24 A. It was in November, yes.

25 **MS. AGUILAR TARCHI:** Objection. Misstates, 2007.

26 **MS. STIGLICH:** Q. I'm sorry. That's just a mistake.

27 November of 2007 --

28 A. Yes.

1 Q. -- is that correct?

2 Okay. And there was nothing physical involved in that  
3 altercation, correct?

4 A. Physically touching me, no.

5 Q. He yelled?

6 A. Yes.

7 Q. Is that your testimony?

8 He was angry?

9 A. He approached me and aggressively marched right at me,  
10 yelling.

11 Q. And then did he leave or did he stay over?

12 A. He did not stay over. He left.

13 Q. And how soon after that did you see him again?

14 A. I don't recall the exact date. I would say probably within  
15 the next week or so.

16 Q. Now, over the period of time after incident one and up to  
17 what you've described here as the second and third and fourth  
18 incidents, those latter three all occurred, according to your  
19 testimony, in February of 2008; is that correct?

20 A. Correct.

21 Q. Now, with respect to just before we leave your own kinda  
22 description of your behavior in these incidents, one, two,  
23 three, and four, do you recall speaking to the inspectors on  
24 January 22nd, 2012?

25 A. Yes.

26 Q. Do you recall indicating that you would fight back and it  
27 would be very long, loud conversations and arguments?

28 A. Yes.



1 Q. You're not a shrinking violet, are you?

2 A. No, no, I'm not.

3 Q. Okay. Now, with respect to what you've described as -- or  
4 what you've been asked to call "incident number two," okay, so  
5 number two, that is also an allegation of a verbal argument that  
6 occurred at his home on this occasion --

7 A. Correct.

8 Q. -- right?

9 And that was a situation where you had -- you believed you  
10 were supposed to be meeting him at his house?

11 A. Yes.

12 Q. He told you you were working -- he was working, correct?

13 A. He was at work, at the office, yes.

14 Q. And you went and checked up on him, didn't you?

15 A. After waiting 45 minutes and having him text that he was at  
16 the office working, I did check up on him.

17 Q. So you drove down there. Did you drive down there?

18 A. Yes.

19 Q. You drove down to City Hall, correct?

20 A. Yes.

21 Q. And you looked and checked to see what lights were on?

22 A. If his light was on and his car was parked where it usually  
23 is. No, it was not.

24 Q. Okay. So you didn't see the lights on and you didn't see  
25 the car, correct?

26 (Reporter interruption)

27 **THE COURT:** Right. We're off the record right now.

28 (Discussion off the record between Court and counsel.)

1           **THE COURT:** Continue, please.

2           **MS. STIGLICH: Q.** So you went down; you checked -- you  
3 checked up to see if he was where you believed he was supposed  
4 to be and he wasn't, correct?

5           **A.** Yes.

6           **Q.** And you were angry?

7           **A.** Yes.

8           **Q.** And you went back to his house?

9           **A.** Yes.

10          **Q.** And on this occasion you confronted him, didn't you?

11          **A.** After we got in the house, yes.

12          **Q.** So you got in the house and you were angry, correct?

13          **A.** Yes.

14          **Q.** You were loud?

15          **A.** No.

16          **Q.** Is that correct?

17                    You called him a liar?

18          **A.** Yes.

19          **Q.** You were following him around the house initially, correct?

20          **A.** I entered in behind him and started telling him what I did.  
21 So I didn't just start following him around the house. I came  
22 in after him.

23          **Q.** You were coming in behind him, complaining to him that he  
24 had lied to you --

25          **A.** Yes.

26          **Q.** -- is that correct?

27                                   (Reporter interruption)

28          **MS. STIGLICH: Q.** You walked in -- I'll try.

1           You walked into the house behind him, and you were upset and  
2           addressing the fact to him that you believed he lied to you?

3           **A.** Yes.

4           **Q.** And he was walking into the house and you continued after  
5           him, expressing anger; is that correct?

6           **A.** Yes.

7           **Q.** And what you've described as the verbal argument happened  
8           when he turned around and then responded to you; is that right?

9           **A.** Correct.

10          **Q.** And, in fact, you told the inspectors that he turned it  
11          around, and then that's when he started talking to me, or he  
12          started getting angry at me about this altercation, correct?

13          **A.** I don't understand the question. Could you rephrase that,  
14          please.

15          **Q.** When you went into the home after him, you were mad,  
16          correct?

17          **A.** Yes.

18          **Q.** You thought he had lied to you?

19          **A.** Yes.

20          **Q.** You thought that was disrespectful?

21          **A.** Yes.

22          **Q.** You thought you were in a relationship with him at the time?

23          **A.** Yes.

24          **Q.** And you felt because you went and you didn't see his lights  
25          or his car that he had lied to you about where he had been?

26          **A.** Yes. This has been numerous times he's done this sort of  
27          thing.

28          **Q.** And you were angry about that?

1     **A.** Yes.

2     **Q.** And you were confronting him about that?

3     **A.** Yes.

4     **Q.** As you confronted him after following him into the  
5 apartment, he turned around then and responded to you; is that  
6 right?

7     **A.** He was responding as he was walking in front of me and then  
8 turned around and continued responding, yes.

9     **Q.** And that's the incident that we've described here as number  
10 two, correct?

11    **A.** Correct.

12    **Q.** And with respect to that -- that argument and the  
13 characterization of it, there was no physical altercation on  
14 that occasion; is that correct?

15    **A.** There was not.

16    **Q.** Now, with respect to incident number three, which is the  
17 incident in which you have alleged that he grabbed your arm.

18    **A.** Yes.

19    **Q.** Now, with respect to incident number three, you have  
20 testified here on Friday that it happened at his house and that,  
21 again, you -- only this time instead of him confronting you with  
22 your underwear, you found a different woman's underwear at his  
23 house; is that right?

24    **A.** The first confrontation was at my house about the underwear.  
25 The second one was at his house, yes.

26    **Q.** And that's because you found a pair of underwear at his  
27 house that didn't belong to you?

28    **A.** Female underwear, yes.

1 Q. And you confronted him with that, didn't you?

2 A. Yes.

3 Q. You testified on Friday you confronted him with that and you  
4 were upset?

5 A. I asked him about it. I held it up and I asked him why  
6 there's a pair of women's underwear here.

7 Q. And did he have a good explanation for you?

8 A. He said they were mine.

9 Q. You got into an argument with him at that point, didn't you?

10 A. They were not mine. Yes.

11 Q. You called him a liar, correct?

12 A. I said, "You're lying. These are not my underwear. I know  
13 my own underwear," yes.

14 Q. And you were upset, again, because you believed he was being  
15 untruthful to you in the relationship, correct?

16 A. Yes.

17 Q. And that it was becoming clear to you that there may be some  
18 other party that he was seeing?

19 A. He was definitely hiding something, yes.

20 Q. And it's your testimony now -- strike that.

21 It's your testimony now that at that point you chose to  
22 leave the apartment, and that is when he is alleged to have  
23 grabbed your arm?

24 A. I said, "I'm leaving." I backed out and turned in the  
25 doorway, and that's when he grabbed my arm.

26 Q. After that, you've testified to, you ended up staying the  
27 night, correct?

28 A. After quite a while of deliberation, yes.

1 Q. Now, when you first -- well, strike that.

2 You first -- this third incident is alleged -- you alleged  
3 on Friday to be February of 2008, correct?

4 A. Yes. After I checked my emails, that's when it came to be  
5 that the arguments were.

6 Q. Now, the first time that you told anybody about this  
7 allegation of physical touching by him to you was in January of  
8 2012, correct?

9 A. To the -- when I made the report -- first, actually, I told  
10 the incident to Tony. That's the first person that actually  
11 heard about the incident.

12 Q. And that was -- well, back up.

13 Prior to this case being publicized -- well, let me back up  
14 further.

15 You heard about this case through friends; is that fair to  
16 say? That's how you first heard about it?

17 A. Yes.

18 Q. Friends of yours that knew you had dated texted you or  
19 emailed you or said "hey," that, you know --

20 A. Lots of them said that he's -- "Did you see what's  
21 happening?"

22 Q. Okay. And at that time you still hadn't told any of them  
23 that there had been this physical interaction between you and  
24 Mr. Mirkarimi, correct?

25 A. I responded, saying I was not surprised because he is very  
26 abusive.

27 Q. So, as I asked, you did not tell any of them that he had  
28 been physically abusive to you; is that correct?

1     **A.** Not specifically that he grabbed my arm, no.

2     **Q.** And, in fact, January 21st before you talked to Tony -- and  
3     who is Tony?

4     **A.** Tony is my ex-husband, Antonio Flores.

5     **Q.** And Antonio Flores is an inspector in the Domestic Violence  
6     Unit here in San Francisco, right?

7     **A.** Yes, he is.

8     **Q.** Okay.

9     **A.** I had also told my boyfriend early on because we had passed  
10    Ross a couple times when he was trying to be sheriff, and they  
11    said that they ended up talking about why you're getting so  
12    crazy when you see him that you're getting shaky.

13           And I said, "Because It still feels really bad about what's  
14    going on."

15           So he had asked me, and I told him the incident about what  
16    happened with my arm, as well as him being very aggressively  
17    charging me when he would yell and his tendency to be that way.

18    **Q.** Ms. Flores, prior to just now, you have never told anyone  
19    affiliated with this case that you related that you had been  
20    allegedly assaulted or grabbed by Mr. Mirkarimi; isn't that  
21    correct?

22    **A.** Before what date?

23    **Q.** Well, you never told -- well, strike that.

24           You never told the inspectors that you talked to in the  
25    first occasion -- you told them, "I had never told  
26    anybody before," right?

27    **A.** Right.

28    **Q.** You told the San Francisco DA inspectors, or investigators,

1 DAI, who talked to you on the second occasion that you had never  
2 told anybody about it before you contacted the news?

3 A. It just -- yeah. I remember now that I did tell my  
4 boyfriend.

5 Q. Your boyfriend was sitting with you when you were  
6 interviewed on January 22nd, 2012, correct?

7 A. And I believe in that he also alleged that I did mention it  
8 to him before.

9 Q. Ms. Flores.

10 A. Uh-huh.

11 Q. He was sitting with you on January 22nd, 2012, when you  
12 spoke to inspectors for the first time?

13 A. Yes.

14 Q. Is that correct?

15 A. Yes.

16 Q. And on that occasion you told them, "I had never told  
17 anybody about physical violence before I called the papers"?

18 A. Yes.

19 Q. And your boyfriend was sitting right there with you --

20 A. Yes.

21 Q. -- correct?

22 So today, now you're saying, "Oh, I told him, too"; is that  
23 right?

24 A. Well, I did tell him in passing, but I didn't think to  
25 mention that. But it was in the police report because I  
26 remember him telling the police officers that she did say that  
27 she did get grabbed.

28 **THE COURT:** I'm sorry. Let's clarify. You referenced "he"



1 and we have "boyfriend," "your boyfriend," "the defendant,"  
2 could be anyone. And then "she," I don't know who you're  
3 referring to.

4 So you're going to have to be clear for the reporter and for  
5 the written record who you're referring to.

6 **THE WITNESS:** Okay.

7 **THE COURT:** So who is "he"?

8 **THE WITNESS:** Bill. Boyfriend is Bill. Ex-husband is Tony.

9 **THE COURT:** Rephrase the question so that I know who the  
10 pronouns are that she's speaking about.

11 **MS. STIGLICH:** Thank you.

12 **Q.** Ms. Flores, did you have a chance to review your audio-taped  
13 interview with the inspectors?

14 **A.** Yes, I did. That was about a week ago that I read it last.

15 **Q.** Would it surprise you that there's nothing in there about  
16 you telling Bill?

17 **A.** No, because I didn't consider that as being something  
18 that -- this boyfriend/girlfriend thing.

19 **Q.** In fact, Bill piped up during your interview, didn't he?

20 **A.** I believe so. That's what -- yeah.

21 **Q.** Because you told the inspectors after December, "I never had  
22 any contact with Mr. Mirkarimi"; isn't that correct?

23 **A.** Not as boyfriend/girlfriend.

24 **Q.** First you told the inspectors, "I didn't have any contact  
25 with him after December of 2008." Is that what you first told  
26 them?

27 **A.** Probably, yes.

28 **Q.** And then Bill chimed in, and Bill corrected you because he

1 said, "Well, yeah, you guys have had contact about Cable Access  
2 or about your TV show"; right?

3 **A.** The Cable Access show, yes, which I thought was a completely  
4 different --

5 **THE COURT:** Stop, stop, stop. You have got to let her  
6 finish, ma'am. Let her finish and then you can answer. Take a  
7 deep breath. Let her finish the sentence, or the question, and  
8 then you answer.

9 **MS. STIGLICH: Q.** So, Ms. Flores, other than Bill making  
10 that comment, you have never mentioned in any recorded document  
11 of this case that you also told Bill prior to going to the  
12 press --

13 **A.** No, I didn't.

14 **Q.** -- are you aware of that?

15 **A.** Sorry.

16 **Q.** You never did; is that correct?

17 **A.** I did not.

18 **Q.** The first time you're telling somebody on record is today?

19 **A.** Yes.

20 **Q.** And when you were first alerted by individuals -- by friends  
21 about the fact this case was going on, it wasn't until you  
22 actually physically saw an *Examiner* article -- and I might have  
23 the paper wrong -- January 21st of 2012; is that correct?

24 **A.** Yes.

25 **Q.** And it was at that time you decided to come forward about  
26 this situation?

27 **A.** Yes. I was letting justice take its course, and I thought  
28 that it would go the way that it usually would go, the wife

1 would say what happened and would come to court and that would  
2 be it.

3 Q. Okay. So you were following the case?

4 A. No. I just assumed that that's what would happen and  
5 that -- you know, I was in Los Angeles. I didn't get the paper,  
6 and no one would continually contact me and update me on what  
7 was going on.

8 Q. So on January 21st of 2012, you contacted two news outlets.

9 A. After seeing the paper, yes.

10 Q. Because you wanted to tell them about your situation?

11 A. Do you want me to tell you how it unfolded?

12 Q. No. I'm just asking you if you contacted two outlets.

13 A. Yes.

14 Q. To tell them about this alleged incident of physical  
15 violence.

16 A. Yes.

17 Q. And you set up an appointment with one, correct?

18 A. One said that Carolyn Tyler would not be in until Monday and  
19 she would call me.

20 The other one said he has someone at 3:30 that would come to  
21 talk with me and set up a place.

22 Q. And after you made those telephone calls, it occurred to  
23 you -- well, strike that.

24 You wanted to give Inspector Flores a heads-up that you were  
25 going on record with the media; is that correct?

26 A. Yes, because he would be involved, being my husband.

27 Q. You weren't calling him to report that you had been  
28 assaulted, right?

1 A. No.

2 Q. And, in fact, over the years you had never given him any  
3 information regarding being assaulted?

4 A. He knew about the verbal violence. He did not know about  
5 the assault.

6 Q. So you never told him, either, about any assaultive  
7 behavior?

8 A. Define "assault."

9 Q. About any physical incident.

10 A. No physical incident, no.

11 Q. And when you spoke to Inspector Flores, he indicated you  
12 shouldn't go to the media, correct?

13 A. The first thing he said is, "Do not go to the media because  
14 they will change what you're trying to say and mix your words  
15 up."

16 Why did you look at the audience then?

17 Q. So, again, I'm focusing on incident three, which is the  
18 alleged physical.

19 After you spoke to Inspector Flores, you did as he  
20 suggested, you went down and made a police report, correct?

21 A. Inspector Flores then said, "What happened?" I told him  
22 what happened. He said, "Let me talk to my boss and see what I  
23 should do about this."

24 He immediately called me back and said that his superior  
25 said to go and report this incident to the police department.

26 Q. So after you hung up with him, you took his advice, and you  
27 went down and made a report with the police department?

28 A. The next morning, yes.

1 Q. And then you gave at least two print media interviews to  
2 various news outlets --

3 A. No, I did not.

4 Q. Did you speak to Rachel Gordon?

5 A. I spoke to people after it came out, and they somehow got a  
6 copy with my name on it. They started calling me.

7 Q. When they called you, you spoke to them?

8 A. I told them what had happened is true, and they asked me  
9 questions specifically about the document, which I told them  
10 what happened.

11 Q. Well, when you spoke to the police inspectors on  
12 January 22nd, 2012, with respect to the alleged physical  
13 interaction, you told them that you didn't know when it had  
14 occurred, correct?

15 A. Correct.

16 Q. You didn't know what it was about -- what the argument was  
17 about?

18 A. Specifically, no.

19 Q. Then you spoke to DA investigators on February 3rd; do you  
20 recall that?

21 A. I don't remember if it was February 3rd, but I did speak to  
22 one investigator, yes.

23 Q. Let me back up for a second.

24 When you spoke to investigators on January 2nd, 2012 -- and  
25 if I get these dates wrong, you --

26 A. Okay. I --

27 Q. Let me back up.

28 A. Okay.

1 Q. You've given two interviews to either inspectors of the  
2 police department or DA investigators, correct?

3 A. Yes.

4 Q. One was January 22nd, right at the beginning of the  
5 disclosure, correct?

6 A. Yes.

7 Q. And one was approximately February 3rd?

8 A. I don't know the date.

9 Q. Okay. But you haven't given any other interviews --

10 A. No.

11 Q. -- other than that? Okay.

12 When you spoke to the investigators on January 22nd, you  
13 didn't know when it had occurred or what the argument was about,  
14 correct?

15 A. Correct.

16 Q. And you brought to that meeting a handful of emails for the  
17 inspectors; isn't that correct?

18 A. I believe two.

19 Q. Are you sure it wasn't more than that?

20 A. It may have been. I said I don't know exactly.

21 Q. Do you recall why you brought them emails?

22 A. I randomly picked out emails from a timeframe to show when I  
23 was dating him. I also brought copies of pictures -- a couple  
24 pictures of the two of us on many different dates.

25 Q. On that first occasion?

26 A. Yes. I brought four and they, I believe, took one or two.

27 They only took a few of each to back up my story. I was not  
28 looking or dissecting all the emails yet.

1 Q. And those are emails that you selected, correct?

2 A. They're ones randomly I took from the timeframe to show how  
3 long.

4 Q. When you spoke to DA investigators -- and I have  
5 February 3rd, but if we can agree it's February 3rd. It's the  
6 second interview. Because I know that you're not sure of the  
7 date.

8 A. I don't know the date. I'm sorry.

9 MS. AGUILAR TARCHI: Yes, February 3rd with Investigator  
10 Kloss.

11 MS. STIGLICH: Q. So when you spoke to Investigator Kloss  
12 on February 3rd, then when you talked about the physical  
13 incident, you told him it was in January of 2008, correct?

14 A. That's what I had believed from putting together the  
15 timeline.

16 Q. Well, you put together a timeline for him, didn't you?

17 A. From the emails that I had. I had many, many emails, so I  
18 brought it down to what I could figure each thing was about.

19 Q. And when you talked to him February 3rd, 2012, you told him  
20 that now you believed the incident had occurred in January of  
21 2008?

22 A. Sometime in January.

23 Q. And that it regarded this conversation about underwear on  
24 top of a --

25 A. The laundry hamper, yes.

26 Q. -- laundry pile?

27 A. I'm sorry, the laundry hamper.

28 Q. Do you recall telling the inspector on that occasion that

1 you and Mr. Mirkarimi had gotten into an argument on that  
2 occasion?

3 **A.** Yes.

4 **Q.** And you described it that: It got hot; it got volatile,  
5 yelling back and forth?

6 **A.** Yes.

7 **Q.** That means you were yelling, too, correct?

8 **A.** I was yelling but not in such an aggressive manner as he  
9 does.

10 **Q.** I see.

11 **A.** We've had many arguments before that didn't -- I mean, we've  
12 disagreed about things.

13 **Q.** There's no question right now. I'm sorry.

14 **A.** Okay.

15 **Q.** So in January when you spoke, you didn't know when or what.

16 In February when you spoke, you thought you knew when; you  
17 thought you knew what, correct; what the argument was about and  
18 when it had occurred?

19 **A.** Yes.

20 **Q.** And then when you testified here on Friday, you said it  
21 occurred in February?

22 **A.** Yes. I looked through the rest of the emails and had a  
23 closer idea of what time it happened.

24 **Q.** Now, you had not -- strike that.

25 You have all your emails from that period, don't you?

26 **A.** Most of them. Towards the end I erased some, I believe.

27 **Q.** Do you recall in February when you spoke to the DA  
28 inspectors or investigators, that you indicated to them that



1 you've never erased your emails from then?

2 **A.** I said, "It's a good thing I never erased my emails," yes.

3 **Q.** Now, with respect to the emails, you have provided in three  
4 different batches emails to the District Attorney's Office,  
5 correct?

6 **A.** Correct.

7 **Q.** The first time in this first interview with inspectors; is  
8 that right?

9 **A.** "Inspectors," you mean, the police department?

10 **Q.** In January. Yes, police department. I'm sorry.

11 **A.** Okay. I brought -- yes, I had some that I threw down at  
12 them when the first police report interview.

13 **Q.** In February when you met with DAI, you brought them a  
14 timeline that you had created, as well as emails, correct?

15 **A.** I'm sorry, "DAI"?

16 **Q.** DAI, DA investigators.

17 **A.** Yes.

18 **Q.** You selected some more emails that you brought along with  
19 the timeline that you created in February, correct?

20 **A.** As well as I could. My emails to him -- he didn't email me  
21 very often. He didn't like things in writing. He would phone  
22 me most -- the majority of the time, or text.

23 **Q.** When you came to court Friday, you provided additional  
24 emails regarding this?

25 **A.** Yes. The last ones that I thought were pertinent to the  
26 case.

27 **Q.** So when you say "were pertinent to the case," do you have  
28 other emails that you have not provided here that are between

1 you and Mr. Mirkarimi?

2 **A.** There's maybe 150 emails, and as the Judge asked if all  
3 those were -- the ones with the little notes on them and  
4 everything, if they're important in the conversation, I put them  
5 in; if they're not -- otherwise, we'd have hundreds of emails.

6 **Q.** So you selected which ones you thought were important?

7 **A.** I thought the ones which had to deal with arguments, yes.

8 **Q.** And no one's asked you to produce all your emails, correct?

9 **A.** No.

10 **Q.** Just the ones that you think are important?

11 **A.** Just the ones that I brought, yeah.

12 **Q.** Now, you say that Mr. Mirkarimi didn't really email that  
13 much; is that right?

14 **A.** No.

15 **Q.** In fact, the emails that you provided by and large start  
16 with you, correct? You started the email chain, and you  
17 provided emails back and forth between the two of you; is that  
18 right?

19 **A.** Yes.

20 **Q.** And with respect to the emails that you have provided over  
21 this period, there is no reference in any of those emails about  
22 physical violence between you and Mr. Mirkarimi; is that  
23 correct?

24 **A.** There's one that I feel is a reference.

25 **Q.** And is that the email that you produced on Friday regarding  
26 the word "bitch"?

27 **A.** No. That's another one. So that would be two, then.

28 **Q.** Which other one are you referring to?

1 **A.** There's one -- may I see the emails that I brought, and I  
2 can give you the --

3 **MS. STIGLICH:** I don't know which one she's referring to.

4 **THE WITNESS:** I can say it. I just don't want to misquote  
5 myself.

6 **MS. AGUILAR TARCHI:** Your Honor, just to expedite matters,  
7 there is -- call it a set of emails that was discovered on  
8 Friday.

9 **MS. STIGLICH: Q.** Are those the ones you're referring to?  
10 It's in that pile?

11 **A.** Yes.

12 **MS. STIGLICH:** May I approach the witness, Your Honor?

13 **THE COURT:** Yes.

14 **THE WITNESS:** It may be mentioned later in the same email.  
15 I know there were two specific things.

16 **MS. AGUILAR TARCHI:** One second.

17 (Discussion off the record between counsel.)

18 **MS. STIGLICH: Q.** All right.

19 **A.** If I could see them, I can tell you.

20 **MS. AGUILAR TARCHI:** You need to mark --

21 **THE WITNESS:** You know what? Actually, I think I have  
22 copies of the last five in here.

23 **MS. AGUILAR TARCHI:** Your Honor, the People would ask that  
24 this be marked as an exhibit.

25 **THE COURT:** Collectively?

26 **MS. AGUILAR TARCHI:** And there is a separate one, only to  
27 expedite, one that madam clerk copied on Friday, dated  
28 February 10, 2008, at 7:58 a.m. That's what prompted a slight

1 break in the proceedings.

2 **THE CLERK:** Marking Defense Exhibit A and B.

3 (Defense Exhibits A and B marked for  
4 identification)

5 **MS. STIGLICH:** Your Honor, may I approach the witness?

6 **THE COURT:** You may.

7 **MS. STIGLICH: Q.** Ms. Flores, I'm handing you what's been  
8 marked Defense Exhibit A. It's a packet of emails, I think  
9 about seven emails.

10 If you can tell me if you recognize the documents in that  
11 packet.

12 **A.** Yes. It's the second one.

13 **Q.** Which email is it in that packet, or is the email in that  
14 packet that you're referring to?

15 **A.** April 2008.

16 Would you like me to read the sentence?

17 **THE COURT:** Ma'am --

18 **THE WITNESS:** I'm sorry.

19 **THE COURT:** Please, unless Ms. Stiglich asks you questions,  
20 don't volunteer anything. Those are the rules here, please.

21 **MS. STIGLICH: Q.** Can I see the packet?

22 **A.** Well, I have to --

23 **Q.** When it's time to answer a question, I'll give it back to  
24 you.

25 **A.** Okay.

26 **Q.** Okay. Is it the April 24th, 2008, that you're referring to,  
27 email?

28 **A.** April 24th, 2008, yes.

1 Q. Okay. What in there are you indicating references physical  
2 violence?

3 A. "It's heartbreaking to me to enjoy intense moments with you  
4 romancing the possibilities of having something more together  
5 when one day you're head over heels and the next it feels shaky  
6 because of my unintended disappointing" --

7 (Reporter interruption)

8 **THE WITNESS:** "One day you are head over heels and then the  
9 next it feels shaky because of my unintended disappointing  
10 behavior."

11 **MS. STIGLICH: Q.** So it's your testimony that this  
12 April 24th email refers back to this now February incident that  
13 you're talking about here?

14 A. He's done that many times besides February and --

15 Q. My question is -- we're talking about a physical incident  
16 that you're alleging.

17 And is it your testimony here that that passage, that piece  
18 of an email that he wrote you, over two months later, that's  
19 your testimony that's what it's referring to?

20 A. It's referring to his rage that he would have many times in  
21 arguments, yes.

22 Q. There's nowhere in this email that talks about physical  
23 violence, correct?

24 A. He does not have it in print, no.

25 Q. There's nowhere in any of these emails where he talks about  
26 rage, correct?

27 A. His unintentional behavior is what he would refer to always  
28 saying that he didn't mean to do it.

1           There's another one that you're referring to, as well, about  
2 being called a "bitch." That's an earlier one.

3       **Q.** Well, that's in February, correct?

4       **A.** Yes.

5       **Q.** And that's when you're alleging you had the argument  
6 regarding -- well, which is it? Is that about spying on him or  
7 about underwear?

8       **MS. AGUILAR TARCHI:** Objection. Argumentative.

9       **THE COURT:** That's overruled.

10       You may answer the question, please.

11       **THE WITNESS:** I'm sorry. Could you repeat the question,  
12 please?

13       **MS. STIGLICH:** **Q.** You indicated -- I had asked you --  
14 strike that -- earlier, if there was anywhere in these emails  
15 that you provided that talks about physical violence, and you  
16 directed us now to two emails: One, this April 24th one where  
17 he references unintended disappointing behavior --

18       **A.** Yes.

19       **Q.** -- and one that we've now called "bitch" email, but that's  
20 not -- it's an email of February 10th, 2008, correct?

21       **A.** Yes.

22       **Q.** And you had an argument, didn't you?

23       **A.** I'm sorry?

24       **Q.** In February you had an argument. You had a series of  
25 arguments, didn't you?

26       **A.** Yes.

27       **Q.** You had a series of arguments about whether or not he was  
28 still in a relationship with his ex-girlfriend?

1 **A.** The first one was not whether or not he was in a  
2 relationship. The first one was about my underwear being left  
3 there and about him saying that I was trying to pull something  
4 on him. That was the argument. That was very confusing to me.

5 **Q.** Because you thought you were in a relationship with him, and  
6 therefore it shouldn't matter if you had underwear at his house,  
7 correct?

8 **A.** That was part of it.

9 **Q.** Now, with respect to this email in April that you're  
10 referring to, his comments are in response to an email from you;  
11 isn't that right?

12 **A.** Yes, where I was breaking up with him.

13 **Q.** Okay. And that was on April 23rd, 2008, correct?

14 **A.** Uh-huh, yes.

15 **Q.** So you sent him an email; he responded to it; is that right?

16 **A.** Yes.

17 **Q.** And your email was that you had a real difficult time  
18 sleeping, "I had the place to myself and no distractions, just a  
19 lot of time to think. I really love you but I am going to have  
20 to end this. I do want more in a relationship than you can  
21 offer me. I crave romance and companionship that you are not  
22 able to give. I need someone that loves me exactly as I am and  
23 lets me know that, someone with a happy outlook that sees all  
24 the really great things that I have to offer. I do care so much  
25 about you, but I need someone who is very caring back. I don't  
26 think that you are unable to do it, just far too busy with your  
27 own interests. Your priorities are you and your job first. I  
28 am emailing this because I don't want to get into an argument

1 with you. It's not because of Louis or Ken. It's because I  
2 deserve more. I wish all the best of luck in your career and a  
3 peaceful and relaxing home for you someday. With much love,  
4 Christina."

5 **A.** Yes.

6 **Q.** That's the email he was responding to, correct?

7 **A.** Correct.

8 **Q.** So nowhere in your email do you say, "I can't be with you  
9 because you rage"; is that right?

10 **A.** No. He knew that from before.

11 **Q.** My question is, there's nowhere in your email that you say,  
12 "I can't be with you because you rage"?

13 **A.** Not in this email, no.

14 **Q.** "I can't be with you because you're physically violent to  
15 me." That's not in your email, either, is it?

16 **A.** Not in this email, no.

17 **Q.** You say you can't be with him because you want more from the  
18 relationship than he's willing to give; is that right?

19 **A.** Yes, and I wanted somebody with a happier outlook.

20 **Q.** I see.

21 And, in fact, when he responded to you, you're interpreting  
22 now that that's the unintended disappointing behavior; is that  
23 right? That's now your interpretation of what he's referring  
24 to, that it refers to physical violence somehow?

25 **A.** It refers to the raging, which I consider also very  
26 physically abusive, even though it wasn't a physical touch.  
27 That's what this court is about, what abuse is, and I believe  
28 being backed into a corner and being scared in my own home is



1 abuse, as well as being grabbed.

2 Q. So, I mean, the lines that you quoted from his email are  
3 just a piece of the email; is that right?

4 A. Yes.

5 Q. And other than that quote that you've interpreted here and  
6 ascribed meaning to, there's nothing in that where he refers to  
7 raging or apologizing for bad behavior; is that right?

8 A. He would never put that in an email.

9 Q. I see.

10 And you responded to this email, didn't you?

11 A. To the -- are you talking about: I started; he responded; I  
12 responded to that?

13 Q. Yes.

14 A. Yes.

15 Q. And you indicated, you know, everything you said is really  
16 nice --

17 **MS. AGUILAR TARCHI:** Vague as to time. May we have a date?

18 **MS. STIGLICH:** These are all April 23rd was the first email  
19 from Ms. Flores. I think she testified to that. April 24th was  
20 his response that she read into the record.

21 Q. April 24th later is your reply to him, correct?

22 A. Yes. And then he has another reply to me on the very top.

23 Q. We will get there.

24 A. Uh-huh.

25 Q. And you indicate then that you guys should have a  
26 conversation in person --

27 A. Yes.

28 Q. -- is that right?

1           And he tries to -- afterwards says, "Okay," and you guys try  
2 to make arrangements to do that?

3 **A.** And to go to a film festival party that I did go to with  
4 him.

5 **Q.** Okay.

6           So, Ms. Flores, the -- would it be fair to say with respect  
7 to your -- there have been a number of breakups and  
8 get-back-togethers with you and Mr. Mirkarimi during this  
9 period?

10 **A.** Yes.

11 **Q.** And by that I mean the period of your relationship, from  
12 June of 2007 until December of 2008.

13 **A.** Yes, the majority of it being up until October, and then  
14 from October till December still together but not as much.

15 **Q.** Okay. Because in February you had a round of emails with  
16 him, saying, "Look, I deserve better." I'm paraphrasing but, "I  
17 deserve better." "I want to move on."

18 **A.** In February? I have it as April.

19 **Q.** Okay. Do you recall having any emails with him in February  
20 about wanting to break it off or move on or deserve more?

21 **A.** I don't have that information with me so I don't know.

22 **Q.** Do you recall having an exchange in April where, again,  
23 we've quoted some of it about breaking up or staying together?

24 **A.** Yes.

25 **Q.** Correct?

26 **A.** I mean, there was very good and there was very bad. He's a  
27 very good person on one hand and then it snaps and then he's  
28 not. So there's definitely love here (indicating).

1 Q. Okay. And then in October of 2008, you email him during  
2 that period and say that you want to be with him?

3 A. I'm sorry? Excuse me?

4 Q. Do you recall emailing him in October and having another  
5 colloquy about being together?

6 It's not in front of you.

7 A. Oh.

8 Q. I'm sorry.

9 A. October, that was probably in the beginning before he told  
10 me about the other woman.

11 Q. Okay. So do you recall during that period you were still in  
12 this "we should be together" kinda phase?

13 A. Yes, before October, yes.

14 Q. And when he told you -- well, strike that.

15 You reached out to him, and because of the other  
16 circumstance with who we now know is Ms. L, the woman of this  
17 proceeding, that you didn't think you guys could or should  
18 continue your relationship?

19 A. I'm sorry. What date are you talking about? Because he  
20 left in October?

21 Q. October, when he got back.

22 A. When he got back?

23 Q. Yes.

24 A. You want what he told me, or I'm supposed to say --

25 Q. My question to you is about email exchanges. Did you have  
26 email exchanges in October -- strike that.

27 At some point in October did you break up for a period of  
28 time?

1 **A.** October he returned from his trip. I had said, "Why is  
2 there radio silence?" I believe I remember sending an email  
3 about that. And no communication is kind of weird. I remember  
4 that.

5 And then he called me over to his house to let me know about  
6 the quoted one night stand and that he supposedly had someone  
7 pregnant.

8 **Q.** And at that point in time, did you break it off?

9 **A.** We had a two-hour conversation about it. There was a lot of  
10 crying going on back and forth. I was in complete shock,  
11 totally did not expect that to be coming out of his mouth.

12 **Q.** Did you break it off?

13 **A.** I remember then saying that I wanted my -- I wanted to  
14 return my stuff and have my things given back to me, and  
15 something stated about, "I don't want to be a part of the  
16 ex-girlfriend graveyard in this house."

17 **Q.** Okay.

18 **A.** I believe that's in here, as well.

19 **Q.** Okay. So you recall in October having email conversations  
20 with Mr. Mirkarimi regarding your relationship ending in a  
21 request from you to get items back?

22 **A.** Yes.

23 **Q.** Okay.

24 **A.** I think --

25 **Q.** And you're referring to October 16th, "I'll give you your  
26 key back when I get the pictures, my green umbrella, tools,  
27 vacuum and clothes back"?

28 **A.** Yes.

1 Q. And the reference, "I do not wish to add them to your  
2 ex-girlfriend graveyard in your home"?

3 A. Yes.

4 Q. So on the 16th you guys had broken up?

5 A. Yes.

6 Q. And that's because he told you that he had had a  
7 relationship. Obviously, if somebody was pregnant, it would  
8 have been during your period of relationship, correct?

9 A. He had had an encounter, not a relationship.

10 Q. Do you recall, then, after October 16th breaking up with  
11 him, reaching out to him at the end of October, wanting to get  
12 back together?

13 A. At that point, yes, because we were talking about having the  
14 test to see if the baby was his or not, which he was not sure  
15 that it was.

16 Q. So after October you reached out and reached out to try to  
17 reunite, correct?

18 A. Yes. Well, we were continuously talking so we talked about  
19 getting back together.

20 Q. And in November, November 14th, roughly, you asked -- you  
21 emailed him, wanting to get together?

22 A. Is that in here? Yes, yes.

23 Q. In November, right?

24 A. The last email, correct, November 10th.

25 Q. And you said, "Let's get together."

26 And he responded, "Well, we can get together but no  
27 expectations" type of thing; is that right?

28 A. Yes. It's a coming together of sorts but no expectations,

1 yes.

2 Q. Now --

3 A. And which was Tuesday.

4 Q. Now, there were exchanges between you about needing to come  
5 to an understanding in this relationship, correct?

6 A. Correct.

7 Q. So now I want to -- we're through November. I just want to  
8 take you to December. Were you in a relationship with him in  
9 December?

10 A. It was not as boyfriend/girlfriend strong as it was before,  
11 but I was still talking to him at least once a week and we did  
12 have a physical encounter, as well.

13 Q. Did you want to be boyfriend/girlfriend with him in  
14 December?

15 A. My gut was saying not to, but you go back sometimes to  
16 things and it doesn't seem right, but, yeah, I was still  
17 flirting back and forth with him.

18 Q. Did you offer to him to raise his child as your own here?

19 A. No.

20 Q. Do you recall having conversations to that effect?

21 A. I had conversations, asked him what he was going to do later  
22 in December. He said that he wanted the child -- at that point  
23 he confessed to me that the second trip that he said was for a  
24 Green trip was actually to go to Venezuela. He said that he  
25 doesn't want his son raised there.

26 (Reporter interruption.)

27 **THE WITNESS:** That he does not want his son raised there, or  
28 his child -- he didn't know it was his son -- raised there, and

1 that it was filthy. And he wanted to bring the woman here, set  
2 her up in an apartment, and keep her as -- and this is his  
3 term -- "baby mama."

4 **MS. STIGLICH:** Q. Ms. Flores.

5 **A.** Yes.

6 **Q.** So in late December he told you he was bringing her here  
7 with the baby; is that correct?

8 **A.** Yes, that he wanted her to have the child.

9 **Q.** And in that, that he was going to help raise the child,  
10 correct?

11 **A.** That he would take a part but not marry her. He wanted to  
12 be like Willie Brown. That was his quote.

13 **Q.** I see.

14 Now, when was the last time you had emailed Mr. Mirkarimi?

15 **A.** I believe it was during Public Access. We were trying to  
16 save the station. So maybe February, March.

17 **Q.** Well, during February and March, you were emailing about an  
18 issue, correct?

19 **A.** About saving the AccessChannel, yes.

20 **Q.** Prior to February and March, when was the last time you had  
21 emailed him anything personal?

22 **A.** I believe it was the very last day of the year, the 29th or  
23 perhaps the 30th, somewhere around there, if not the 1st or 2nd.  
24 It's right -- I don't know the exact date.

25 **THE COURT:** I'm sorry. Is this 2008?

26 **THE WITNESS:** This would be December 2008 at the very end or  
27 the very beginning of 2009.

28 **THE COURT:** Thank you.

1           **MS. STIGLICH: Q.** And is that an email that you provided  
2 here in court?

3           **A.** That one is -- let me think what it was. That was probably  
4 not one of the ones, no.

5           **Q.** And without going into the details of it, what was the topic  
6 of that email?

7           **A.** Well, the topic of that one was talking about the girl that  
8 gave me a call.

9           **Q.** That was you talking about that?

10          **A.** Yes.

11          **Q.** Because after you -- toward the end of your relationship,  
12 you found out that in addition to Ms. Lopez, that he may have  
13 been in a relationship with another woman at the same time as  
14 you, correct?

15          **A.** She called me, yes.

16          **Q.** So you connected -- and you connected with her, didn't you?

17          **A.** Yes, I did. We had drinks at Martuni's.

18          **Q.** And you both kind of swapped Ross stories; is that fair to  
19 say?

20          **A.** Absolutely, yes.

21          **Q.** And in that regard you never told that woman, either, that  
22 you had been physically assaulted?

23          **A.** I told her -- we compared the stories about the verbal  
24 abuse. We didn't talk about further abuses.

25          **Q.** You never told her that you had been physically assaulted?

26          **A.** Not hit or punched, no.

27          **Q.** And do you have that email with you here today?

28          **A.** I do not. We were instructed not to bring any more emails.



1 Q. So you have about -- I think at the beginning of your  
2 testimony -- about a hundred more emails on this topic but you  
3 don't have them here?

4 MS. AGUILAR TARCHI: Objection. Misstates the evidence.  
5 It's about relationship, not on this topic, however vague that  
6 is.

7 MS. STIGLICH: Q. You have about a hundred more emails  
8 about in -- between you and Mr. Mirkarimi that relate to your  
9 relationship?

10 A. Yeah, but a lot of them were very just, you know,  
11 non-important. Like, what time are you picking me up, when I'm  
12 getting back. I mean, I can bring them.

13 Q. Any reason why you didn't bring them?

14 A. Just because of the sheer amount of them. I mean, I thought  
15 that it would be important to have any kind of fights or  
16 disagreements.

17 Q. Okay. So this December email that has not been provided,  
18 you talk about this other woman?

19 A. I talk about the whole relationship. I believe I wrote him  
20 a poem, and it described the whole thing from the beginning all  
21 the way through to the end.

22 Q. And is that a poem where you basically threaten to get him  
23 back?

24 A. I said that it was unwise for him to tell me all the things  
25 that he did and do everything that he did to me in a small town  
26 like San Francisco. And at the end that I know a lot of people  
27 and I'm meeting a lot of people. Yeah. I didn't say I was  
28 going to threaten his life or anything, no.

1 Q. You have threatened him to -- well, what did you threaten to  
2 do?

3 A. I left it open, saying that I had a talk show at that time,  
4 which he knew of, where I interviewed many, many people from the  
5 government in San Francisco, and that wouldn't it be interesting  
6 if any of them ever found out.

7 Q. And, in fact, you told inspectors that you did talk to some  
8 of those political people and made sure that they knew that you  
9 thought he was an asshole.

10 A. Absolutely not.

11 Q. Do you recall talking to the inspectors January 22nd, 2012?

12 A. One inspector.

13 Q. Do you recall telling the inspector that about halfway  
14 through your relationship, you started SF Live where you  
15 interviewed politicians?

16 A. I started SF Live while I was still with Ross.

17 Q. Do you recall telling him about halfway through your  
18 relationship with Ross that you started SF Live?

19 A. I don't remember if I said that in it. I did start it  
20 earlier. It did take off afterwards.

21 Q. Do you recall opining to them that you thought Ross was  
22 scared that you would talk to those people when you'd bring them  
23 in for interviews?

24 A. Yes.

25 Q. Do you recall, "which I did talk to a few of them because  
26 he's an asshole, and I wanted to let them know he is not the  
27 person he is portraying to be."

28 A. Those weren't city officials that I talked to. I talked to

1 other people. I interview more than just city officials.

2 Q. I see.

3 A. I have two shows. Had.

4 Q. Do you recall this colloquy with the inspectors?

5 A. I'm sorry?

6 Q. Do you recall the colloquy that I'm talking to you about  
7 that you had with the inspectors?

8 A. You're saying "inspectors." I spoke with one inspector from  
9 the DA's office, and I talked with the police inspectors. There  
10 were two in the first. So I don't know which you're referring  
11 to.

12 Q. On January 22nd, you talked to San Francisco Police  
13 Inspectors, correct?

14 A. January -- yes. Those were in the police department.

15 Q. And do you recall talking to them about the colloquy that  
16 I've been asking you about?

17 A. I don't remember, but reading it, I believe I did say that  
18 then.

19 Q. With respect to your poem that you described here --

20 A. Uh-huh.

21 Q. -- is it your testimony that in that you reference physical  
22 violence?

23 A. I don't believe I did. I believe I mentioned the yelling  
24 and barking at me, but I don't have the poem in front of me so I  
25 can't say for sure.

26 Q. Do you recall threatening to unwind his political future?

27 A. No, not "unwind your political future." I did not say that.

28 Q. Do you recall telling him, "What to do with the ball in my

1 court. Let us see what happens"?

2 **A.** Yes.

3 **Q.** That was the end of your poem, wasn't it?

4 **A.** I believe that was towards the end. I don't know if that  
5 was the last line.

6 **Q.** And here we are, right?

7 No further questions.

8 **MS. AGUILAR TARCHI:** Objection. I would ask that the  
9 question be stricken. It's self-serving.

10 **THE COURT:** Motion's granted.

11 **MS. AGUILAR TARCHI:** Thank you.

12 **THE COURT:** It's argumentative.

13 All right. Redirect?

14 **MS. AGUILAR TARCHI:** Yes, Your Honor.

15 **REDIRECT EXAMINATION**

16 **MS. AGUILAR TARCHI:** **Q.** Ms. Flores, on Friday you spoke of  
17 four separate incidents that occurred that you regard to be  
18 verbal abuse, and one of the four to be verbal and physical; is  
19 that correct?

20 **A.** Correct.

21 **Q.** Now, and those -- would it be a fair statement that those  
22 four incidents you recall because they go to the -- as you  
23 described, the Dr. Jekyll, Mr. Hyde verbal-physical abuse that  
24 took you by surprise in your relationship?

25 **A.** Yes.

26 **Q.** Now, there were other times, were there not, during the  
27 course of your one-and-a-half-year relationship as boyfriend and  
28 girlfriend that you had, one might characterize, as more routine

1 disagreements?

2 **A.** Absolutely, yes.

3 **Q.** And those are not -- you're not purporting that other  
4 disagreements, lovers' quarrels, arguments -- you're not  
5 suggesting that those were verbal abuse and physical?

6 **A.** No. We could argue very civilly about things that were --  
7 we disagreed, and I'm fine with that. But it only got violent  
8 when he was accused of doing something that he -- I considered  
9 he was lying and found out later from the other girl that it  
10 backed up what my gut feeling was.

11 **MS. STIGLICH:** Objection. Move to strike as to what the  
12 other girlfriend said.

13 **THE COURT:** Sustained. It's hearsay.

14 **MS. AGUILAR TARCHI:** **Q.** What was it specifically that  
15 prompted you -- prior to calling Inspector Flores in  
16 January 2012, what was it upon learning of this incident via  
17 text that prompted you to make calls to some news sources?

18 **A.** There was the report from the friends that said that this  
19 was happening. And I said, "It's not a surprise to me." I was  
20 waiting to see how it would go, you know, figuring it would go  
21 through the jury, go through the court.

22 When I saw that she recanted her story and that she was now  
23 blaming -- or the couple was saying that the city or their  
24 country is ruining -- like that infuriated me. Because I know  
25 what his tendencies are. I've stood at that door, scared to go  
26 out, not to know what was going to go on.

27 **MS. STIGLICH:** I am going to object. Move to strike. It's  
28 nonresponsive.

1           **MS. AGUILAR TARCHI:** Your Honor, the People submit that it  
2 is quite responsive to precisely what her motivations were.  
3 There were suggestions for the last hour and a half of cross on  
4 love poems that provide some motive, perhaps, or vice for lying,  
5 and this refutes that. It's proper redirect.

6           **THE COURT:** Overruled.

7           But you need to focus your questions so that she doesn't end  
8 up giving a narrative.

9           **MS. AGUILAR TARCHI:** Yes, Your Honor.

10          **Q.** Okay. Let's break it up to the point where you said you  
11 were upset about news accounts of something. What is it that  
12 you read that upset you?

13          **A.** Was that she had said these things about him and then all of  
14 a sudden recanted her story and took it back, saying that the  
15 City is pressuring that, and that she said that there's a group  
16 of people trying to come after him and that's why this is going  
17 out of proportion.

18          **Q.** Okay. And with respect to that aspect, was that something  
19 your friends told you, or did you read these suggestions of the  
20 country not being fair? Or where did you learn that?

21          **A.** I read it for the first time on the paper, the *Examiner*  
22 cover, opened the story and heard her -- about making a tape  
23 about this and saying that she was abused, and I felt that she  
24 was bullied into taking her story back.

25          **MS. STIGLICH:** Object. Move to strike.

26          **MS. AGUILAR TARCHI:** Your Honor, again, it's responsive.

27          **THE COURT:** What's the basis?

28          **MS. STIGLICH:** Speculation. Personal knowledge.

1 Foundation.

2 **MS. AGUILAR TARCHI:** It's a lay opinion. It's not -- she's  
3 not saying she heard it.

4 **THE COURT:** Overruled.

5 **MS. AGUILAR TARCHI:** So it remains.

6 **Q.** So what was it about -- you didn't talk to Ms. L directly,  
7 correct?

8 **A.** I've never met her.

9 **Q.** So what was it about your reading what she was stating, the  
10 press accounts, the newspaper you saw open, that made you feel,  
11 in your opinion, that, quote, "she was being bullied"? Why did  
12 you say that? What forms the basis of that opinion of yours?

13 **A.** Because in my experience that sounds like his spin. That  
14 does not sound like her. It felt like she couldn't be brave  
15 enough to stand up and continue with this, and that was what she  
16 was told to say.

17 **Q.** Although you didn't know that personally?

18 **A.** No. That's just from my experience I felt it.

19 **Q.** Now, on cross Ms. Stiglich said, "You're no shrinking  
20 violet." Do you feel you're a strong, independent woman?

21 **A.** Yes, I am.

22 **Q.** And why are you coming forward -- it could be suggested  
23 several years after the fact you come forward and talk about  
24 several instances of verbal abuse and one specifically involving  
25 verbal and grabbing, causing you an injury? Why did you wait  
26 several years to come forward on the -- specifically, as it  
27 relates to the physical abuse?

28 **A.** Because I didn't want to deal with him anymore. I let it

1 go. I didn't want to even see his face anymore. But when it's  
2 in my face and the story is there, and I feel where that woman  
3 was, and I think that next time it will be worse, that I need to  
4 say something.

5 **MS. STIGLICH:** Objection. Move to strike.

6 **MS. AGUILAR TARCHI:** Your Honor, it was responsive.

7 **THE COURT:** It's overruled. She's explaining why she's  
8 waited this length of time to come forward.

9 Very well. Next question, please.

10 **MS. AGUILAR TARCHI:** Yes, Your Honor.

11 **Q.** And you -- the day you spoke to Inspector Flores, you did  
12 not keep the one appointment you had with the news media, nor  
13 did you talk to the other news person that wasn't available  
14 until Monday; is that correct?

15 **A.** Correct.

16 **Q.** And you followed the advice of Inspector Flores, which  
17 you've testified to, and you made a report?

18 **A.** Yes.

19 **Q.** And you told the truth of what you recall happened during  
20 your relationship?

21 **A.** Yes.

22 **Q.** And, um, without giving names, did you -- you indicated you  
23 may have gotten together with a group of female friends where  
24 you talked -- where you personally shared your stories of verbal  
25 abuse --

26 **A.** Yes.

27 **Q.** -- at the hands of the defendant?

28 And without naming names, approximately what month and year



1 was this brunch date with these women?

2 **A.** It was after February, March in time. I don't have the  
3 exact date.

4 **Q.** And during that -- was it brunch?

5 **A.** It was a brunch that was arranged by the woman that was the  
6 other woman that called me.

7 **Q.** The other woman that called you -- we need a timeframe --  
8 called you when? What month and time period are we speaking of?

9 **A.** Well, we met at the end of December. She actually came to  
10 my party, my New Years party, after I met her, and we remained  
11 friends. She said there were two women that she wanted to  
12 introduce me to.

13 **Q.** I'm sorry. I have to ask you when -- who is -- just a first  
14 name at this juncture, the friend that called you, what's her  
15 first name?

16 **MS. STIGLICH:** I'm going to object to relevance.

17 **MS. AGUILAR TARCHI:** Again, there's been some claims that  
18 she's never come forward or shared information, Your Honor. And  
19 I won't belabor this. I'm just trying to get a timeframe.

20 **THE COURT:** All right. Objection's overruled.

21 **MS. AGUILAR TARCHI:** **Q.** I'm talking specifically -- listen  
22 carefully to my question.

23 I'm sorry. I stepped on a cord, Your Honor.

24 If you can recall the month and year when this friend,  
25 female friend, called you.

26 **A.** I believe it was in March of -- January, February, March --  
27 the brunch -- you're talking about the brunch. That was  
28 somewhere around March in 2009.

1 Q. Okay. And she called you for purposes of getting together?

2 A. She said she wanted me to meet two women that worked with  
3 him, yes.

4 Q. All right. And -- and did you meet, you, the woman that set  
5 it up -- did you meet with two other women, so a total of four  
6 of you got together?

7 A. Correct.

8 Q. And during the brunch you talked about your relationship?

9 A. Correct.

10 Q. Just yes or no. Did you share with any of these three other  
11 women that got together at brunch verbal abuse at the hands --  
12 excuse me -- by the defendant Mirkarimi?

13 A. Yes.

14 Q. Did you during this female brunch outing discuss with these  
15 other three women any physical abuse?

16 A. I heard stories they told me but not anything else.

17 **MS. STIGLICH:** Objection. Move to strike.

18 **THE WITNESS:** We compared notes.

19 **THE COURT:** Well --

20 **THE WITNESS:** Sorry.

21 **THE COURT:** -- is it based on hearsay?

22 **MS. STIGLICH:** Correct.

23 **THE COURT:** Sustained.

24 **MS. AGUILAR TARCHI:** Q. So without saying what they told  
25 you, how many -- there were four of you?

26 A. Yes.

27 Q. So of the three other women, how many shared with you  
28 discussions about the defendant?

1 A. All of them.

2 Q. All right. And with respect to you personally, you only  
3 shared verbal abuse stories with them?

4 A. Yes.

5 Q. Why didn't you tell them about the grabbing incident where  
6 he caused a bruise and pushed you into a corner?

7 A. He was very apologetic after it and he never did it again.

8 Q. And when he apologized, did he say he'd never do that again?

9 A. He said, "It was a mistake. I'm sorry."

10 Q. And why did you, Ms. Flores, bring a couple of photos to  
11 that first report you made to the police? Why did you bring  
12 photos of you and the defendant?

13 A. To prove that I had a relationship with him. I didn't want  
14 them to think I just walked in off the street.

15 Q. And those showed photos of you and Mr. Mirkarimi during  
16 happy times?

17 A. Yes. There were happy times, too.

18 Q. All right. And you also, in fact, shared a photo of  
19 yourself with the three other women during this brunch where you  
20 spoke of your verbal abuse?

21 A. Yes.

22 Q. And you spoke of many more emails that you shared,  
23 exchanged, with your boyfriend then, Mr. Mirkarimi, during the  
24 one-and-a-half-year relationship. Is it fair to say they number  
25 over a hundred?

26 A. Probably right around a hundred.

27 Q. And fair to say that in terms of phone conversations with  
28 Mr. Mirkarimi, pleasant ones, how many hundreds of phone calls

1 would you say you had pleasant exchanges over the year and a  
2 half?

3 **A.** I have no way of guessing how many there were. That was two  
4 phones ago. Everything from that phone is gone. But there were  
5 many. We had good times, too.

6 **Q.** And the same question as it relates to any texts. Did you  
7 during happy times during the course of your one-and-a-half-year  
8 relationship also exchange texts and pleasantries?

9 **A.** Yes.

10 **Q.** And you pulled out -- and I think counsel used the words  
11 "three separate batches." You pulled out on three separate  
12 occasions emails, much like the photos, that you felt would be  
13 relevant to the proceedings here in court today?

14 **A.** Yes.

15 **Q.** And the reference "unintended disappointing behavior," it  
16 doesn't say, "when I pushed you and caused a bruise," does it?

17 **A.** No.

18 **Q.** But is it your testimony today that the reference in that  
19 April '08 email where Mirkarimi writes to you about his  
20 "unintended disappointing behavior," end quote, what did you  
21 take that to mean?

22 **A.** About his yelling and raging and charging at me.

23 **Q.** And that was during the episode where he caused the bruise  
24 on your arm?

25 **A.** That was many episodes.

26 **Q.** All right. And in one of the emails -- I think it was  
27 referred to as the "bitch" email -- do you talk to him about how  
28 you're a strong, self-confident woman and that you're not a

1 bitch?

2 **A.** Yes.

3 **Q.** And why are you telling him this? What prompted this email  
4 to him about being "self-confident, powerful, beautiful, strong  
5 woman, and calling me a bitch is unacceptable." What were you  
6 referring to?

7 **A.** I was defending myself because he called me a bitch at one  
8 point and I was flabbergasted because I was not.

9 **Q.** Now --

10 I'm almost done, Your Honor.

11 When you ultimately ended your relationship with the  
12 defendant, Mr. Mirkarimi, did you ever make threats to him --  
13 pardon me. I won't use that word "threats" -- indicate to him  
14 in any way, verbally or through correspondence of any sort, that  
15 you would get back at him because he left you for a woman he got  
16 pregnant?

17 **A.** No. That had nothing to do with that.

18 **Q.** All right. Did he ever tell you after he had, you said on  
19 direct on Friday, this one night stand with a Venezuelan  
20 woman -- did he ever tell you that he wanted to get back with  
21 you, notwithstanding the fact that he had gotten her pregnant?

22 **A.** No. We played. It was a relationship still but it wasn't,  
23 um -- it was kind of just a casual sexual relationship at that  
24 point.

25 **MS. AGUILAR TARCHI:** Thank you, Your Honor. I have nothing  
26 further.

27 Thank you, Ms. Flores.

28 **MS. STIGLICH:** Real briefly, Your Honor.

**RECROSS-EXAMINATION**

1  
2 **MS. STIGLICH: Q.** The motive that you described today is  
3 different than that that you expressed to the inspectors when  
4 you spoke to them on January 22nd, 2012, when you explained your  
5 reasons for coming forward; is that correct?

6 **A.** No.

7 **Q.** On January 22nd, 2012, you told inspectors that  
8 Mr. Mirkarimi told you that Ms. Lopez knew about his  
9 relationship with you, and you told him, I quote, "which I think  
10 is a lie, and that's probably why I'm here, because I don't  
11 think she knew."

12 Do you recall telling the inspectors that?

13 **A.** There's more to that sentence.

14 **MS. STIGLICH:** May I approach the witness?

15 **THE COURT:** Yes.

16 **MS. STIGLICH: Q.** I will show you the transcript marked  
17 January 22nd, 2012. I direct your attention to page 6.

18 **MS. AGUILAR TARCHI:** Lines, counsel?

19 (Discussion off the record between counsel.)

20 **MS. STIGLICH:** Okay.

21 **MS. AGUILAR TARCHI:** And, Your Honor, since -- the People  
22 would request that perhaps the witness begin at page 5, line 20  
23 to put it in context.

24 **MS. STIGLICH:** She shouldn't direct the witness as to what  
25 in context.

26 **MS. AGUILAR TARCHI:** It's just that page 6 starts with a  
27 random line.

28 **THE COURT:** I don't know what counsel requests, but I'm

1 going to ask Ms. Stiglich to ask the question, and if there's an  
2 objection as to something missing, because there is a rule of  
3 completion here, then you may make that objection.

4 **MS. STIGLICH: Q.** Ms. Flores, it's in front of you. Do you  
5 recall making that statement to the inspector?

6 **A.** Where is it in the list on the numbers?

7 **Q.** On page 6 --

8 **A.** Yes.

9 **Q.** Probably about a third of the way down.

10 **A.** Yes.

11 **Q.** Go just a few lines down.

12 Do you see it?

13 **A.** (Views document.)

14 **Q.** Let me know when you've had a chance to review that.

15 **A.** I'm sorry. Let me look at this. "Because I don't think she  
16 knew." I did say that, yes.

17 **MS. STIGLICH:** May I approach the witness, Your Honor?

18 **THE COURT:** You may.

19 **MS. STIGLICH: Q.** So there's no other part to that  
20 sentence. You tell the inspectors, "He" -- Mr. Mirkarimi,  
21 referring to him -- "said that the woman from Venezuela knew  
22 about our relationship and it didn't matter to her."

23 And you go on further and say, "which I think is a lie, and  
24 that's probably why I'm here, because I don't think she knew."

25 That's what you said to the inspectors, correct?

26 **A.** That's not how it meant, though. Maybe -- when I said I --  
27 okay. You can ask me.

28 **Q.** I'm asking what you said, okay?

1 A. Uh-huh.

2 Q. When you subsequently spoke to inspectors on February 3rd --  
3 and I'm kind of calling them all "inspectors."

4 A. Okay.

5 Q. You had a January interview and a February interview.

6 A. Because February was one person.

7 Q. When you spoke to the inspector in February --

8 A. Uh-huh.

9 Q. -- you then told him when Ms. L changed her story that's  
10 when you came forward. And you explained because you know what  
11 it's like to be threatened and scared. And then you told, "I  
12 was the one being bizarre and weird about it."

13 A. Yes.

14 Q. With respect to the email of February 10th -- and I'm sorry  
15 we keep referring to it as the "bitch" email, but we don't have  
16 any other title for it.

17 **THE COURT:** Exhibit B.

18 (Laughter.)

19 **MS. STIGLICH:** Q. Exhibit B.

20 In that email you also refer to -- when you tell him, "Hey,  
21 calling me the 'B' word is unacceptable." You tell him that,  
22 "Every time I see that you're on the same track" -- the two of  
23 you as a couple, that: He derails it with such force you have  
24 no choice but to go, right?

25 A. Yes.

26 Q. And you add, "You become insulting and cold."

27 A. Yes.

28 Q. Not, "You rage like a pit bull," correct? Is that right?



1 A. I didn't say that he raged like a pit bull in that email,  
2 no.

3 Q. Not, "You put your hands on me," correct?

4 MS. AGUILAR TARCHI: Objection. The exhibit speaks for  
5 itself, Your Honor. Argument.

6 THE COURT: She can answer the question. It's either a yes  
7 or a no.

8 MS. STIGLICH: I'm sorry. Did you answer?

9 A. Sorry. Could you ask me that again, please?

10 MS. STIGLICH: Q. "Insulting and cold" is how you described  
11 his behavior?

12 A. Yes, in that email.

13 MS. STIGLICH: Thank you. No further questions.

14 MS. AGUILAR TARCHI: Just a quick one.

15 THE COURT: Well -- all right.

16 MS. AGUILAR TARCHI: Just quickly to explain.

17 FURTHER REDIRECT EXAMINATION

18 MS. AGUILAR TARCHI: Q. Now, when you were speaking to the  
19 inspector, the first interview date of January 22nd, it was  
20 question and answer, right?

21 A. Yes.

22 Q. And the remark -- pardon me.

23 The question that Ms. Stiglich pointed out at page 6 where  
24 you answered "I think is a lie" -- well, I will take it in  
25 context:

26 You said that the woman from Venezuela knew about a  
27 relationship and it didn't matter to her.

28 "Q. Okay.

1 "A. Um, which I think is a lie, and that's  
2 probably why I'm here, because I think she knew"--  
3 Pardon me --

4 "I don't think she knew.

5 "Q. Okay.

6 "A. I think --"

7 And immediately a question is posed:

8 "Q. Have you had any contact with Mr. Mirkarimi  
9 since?"

10 You weren't allowed to complete that statement, "I think."

11 **A.** No. It was cut off by the next question.

12 **Q.** All right.

13 And what is it that you mean or meant by this statement that  
14 was quoted directly, "And that's probably why I'm here, because  
15 I don't think she knew"?

16 **A.** I was under the assumption that she knew about me and that  
17 she didn't care was what was told to me. But I think that this  
18 was just a woman that came in and thought that this was going to  
19 be a wonderful relationship and didn't know about me and the  
20 other woman at the same time as her. So I didn't think she had  
21 the guts to stand up and go through with what's going on.  
22 That's why I'm here.

23 **Q.** I see.

24 So the reference about "don't think that she knew that there  
25 was more than one woman," and that's why that it maybe did  
26 matter to her, but she did not know the full story?

27 **A.** I then believed that she didn't know the whole story.

28 **Q.** Although you never met her?

1     **A.** No.

2           **MS. AGUILAR TARCHI:** I have nothing further.

3                           **FURTHER RECROSS-EXAMINATION**

4           **MS. STIGLICH: Q.** Ms. Flores, you don't know anything about  
5 what happened between he and Ms. L on the day in question here,  
6 do you?

7     **A.** I'm sorry. What day in question?

8     **Q.** You don't have any information about what Ms. L knew or  
9 didn't know, correct?

10    **A.** I'm sorry. I don't know about what she knew about what?

11    **Q.** You have no idea how Ms. L was feeling when you read this  
12 paper, correct?

13    **A.** Just from the same experience I had.

14    **Q.** You have no idea what happened between she and Mr. Mirkarimi  
15 on December 31st, 2011, correct?

16    **A.** Correct.

17           **MS. STIGLICH:** I don't have any further questions.

18           **MS. AGUILAR TARCHI:** Nothing further, Your Honor.

19           **THE COURT:** Thank you.

20           All right. Let's take a five-minute break and we'll collect  
21 our -- or a ten-minute break because I think my reporter needs  
22 it more than we do. And we'll come back for the ruling.

23           Thank you.

24           **MS. AGUILAR TARCHI:** Thank you, Your Honor.

25           **THE COURT:** Ms. Flores, you may step down.

26                           (Witness excused)

27                           (Brief recess.)

28           **THE COURT:** All right. The record should reflect that we're

1 back on the record. We have all counsel present, and the  
2 defendant's appearance is waived. I'll hear arguments. It's  
3 the People's motion to admit evidence in this matter.

4 Ms. Aguilar Tarchi?

5 **MS. AGUILAR TARCHI:** Yes, Your Honor. Thank you.

6 Your Honor, the People did file formal papers to admit  
7 evidence of other acts of domestic violence pursuant to Evidence  
8 Code Section 1109.

9 The specific acts that People seek to admit and that we  
10 submit are proper under this Evidence Code section and by case  
11 law is specifically two separate sets.

12 The incident -- the four incidents of which Ms. Flores  
13 testified to Friday and today, three which were verbal abuse,  
14 and one of which was a combined verbal and physical abuse, where  
15 the physical abuse included the cornering of Ms. Flores in the  
16 hallway of the defendant's apartment where he grabbed her with  
17 one hand with such force her body did go near and against the  
18 wall, that it did cause a bruise which she noticed the following  
19 day, and when the defendant noticed it, as he was seated in her  
20 car and said, "What is that?" specifically referring to the  
21 large bruise that had formed on her right upper arm, Ms. Flores  
22 testified that she said words to the effect, "You did it."

23 And he said words, like, incredulous that he did, and then  
24 he apologized, that he was sorry.

25 This pattern of conduct which shorthand form Ms. Flores said  
26 the behavior of rage, going from Dr. Jekyll, Mr. Hyde-type  
27 behavior, where he would blow up, follow her around like a pit  
28 bull, yelling, subsequently apologizing. The intensity of one

1 of the incidents, the last, she even went so far as to describe  
2 it going from, in her words, "zero to 50."

3 And then she later stated that words she had used to  
4 describe this behavior of going from seemingly a very  
5 normal-type behavior and discussion and attitude to one of  
6 Dr. Jekyll, Mr. Hyde, pit bull.

7 And in one of them, that last incident describing that it  
8 caused her so much fear that she chose to leave and go to her  
9 car in which she thought wasn't the best neighborhood for her to  
10 be going to alone at night, but she preferred that at about  
11 2:00 a.m. in the morning to leave alone than to stay with this  
12 pit bull who made her feel unsafe.

13 We are asking that the Court is well within its bounds to  
14 accept 1109 evidence. The defendant's prior acts of domestic  
15 violence are admissible because it presents a truthful picture  
16 of defendant Mirkarimi's propensity for violence against female  
17 intimate partners.

18 Evidence Code 1109 allows the introduction of evidence of  
19 the defendant's prior acts of domestic violence in a criminal  
20 action, charging defendant with an offense involving domestic  
21 violence.

22 It states in part that in a criminal action in which a  
23 defendant is accused of an offense involving domestic  
24 violence -- and here, of course, he's charged with one count of  
25 domestic battery, Penal Code Section 273.5 -- evidence of the  
26 defendant's commission of other domestic violence is not made  
27 inadmissible by Section 1101 if the evidence is not admissible  
28 pursuant to Section 352.

1           Of course, Evidence Code 352 provides a safeguard against  
2 undue prejudice. The Trial Court, Your Honor, has full  
3 discretion in admitting evidence pursuant to Section 352.

4           However, in applying that section, that balancing test,  
5 "prejudicial" is not synonymous with "damaging."

6           Evidence of prior domestic violence can be charged or  
7 uncharged incidents. The incidents that we speak of, Your  
8 Honor, the four incidents that Ms. Flores alluded to and  
9 described with particulars both Friday afternoon and this  
10 afternoon, as well as the victim, the complaining witness's  
11 statements to her neighbor and to another witness that this is a  
12 not -- pardon me, this is not the first time this is happening.  
13 The first time, as she pointed to a physical bruise on her  
14 arm -- the first time happened in March of last year, meaning  
15 March of 2011.

16           Similarly with Ms. Flores, she described, Your Honor, why a  
17 few years later she stepped forward to come forward and make  
18 public the physical abuse, although she had already shared with  
19 members of her lunch of female friends and others, including her  
20 boyfriend, of verbal abuse.

21           So evidence of prior domestic violence can be charged or  
22 uncharged incidents.

23           In criminal DV cases the California legislature has  
24 determined that policy considerations favor admission of  
25 uncharged domestic violence offenses and outweigh the policy  
26 considerations favoring the exclusion of such evidence.

27           And it cites the seminal case in this case, *People v.*  
28 *Johnson*, 77 Cal.App.4th at page 410, specifically page 420,

1 stating that under this section, 1109, permits the admission of  
2 defendant's other acts of domestic violence for the purpose of  
3 showing a propensity to commit such crimes.

4 We are also submitting that the evidence is proper and not  
5 subject to exclusion even under 352 undue -- alleged undue  
6 prejudice analysis, Your Honor, in that the uncharged acts we  
7 seek to admit, those described by Ms. Flores and Ms. L's, this  
8 happened before, last year in March of 2011, is they're  
9 admissible under Evidence Code 1109 if the uncharged acts are  
10 similar to the charged offenses.

11 Here we know that the prior acts described by Ms. Christina  
12 Marie Flores, and those which will be proffered, what the victim  
13 said to her neighbor, are admissible to show defendant  
14 Mirkarimi's propensity to commit acts of domestic violence. And  
15 the Court doesn't say they have to be broken bones or homicidal  
16 rages. It's prior acts of domestic violence against his  
17 intimate female partners.

18 The legislative history, Your Honor, of 1109 recognizes the  
19 special nature of this section. And I think it's very important  
20 to state the legislative history of the section, quote -- and  
21 this is the Assembly Committee on Public Safety, June 25 of  
22 1996:

23 "The propensity inference is particularly  
24 appropriate in the area of domestic violence because  
25 ongoing violence and abuse is the norm in domestic  
26 violence cases. Not only is there a great likelihood  
27 that any one battering episode is part of a larger  
28 scheme of dominance and control, that scheme usually

1 escalates in frequency and severity. Without the  
2 propensity inference, the escalating nature of  
3 domestic violence is likewise masked. If we fail to  
4 address the very essence of domestic violence, we  
5 will continue to see cases where perpetrators of  
6 domestic violence will beat their intimate partners,  
7 even kill them, and go on to beat or kill the next  
8 intimate partner. Since criminal prosecution is one  
9 of the few factors which may interrupt the escalating  
10 pattern of domestic violence, we must be willing to  
11 look at that pattern during the criminal prosecution  
12 or we will miss the opportunity to address this  
13 problem at all."

14 Thus, Your Honor, in this case the defendant is charged with  
15 inflicting corporal injury, battery, on Ms. L, his wife, an  
16 offense of domestic violence.

17 There's evidence that he committed a prior act against  
18 Ms. L, and the inference by a preponderance that he also  
19 committed acts of physical violence with Ms. Flores.

20 And these prior acts of domestic violence each resulted in a  
21 bruise on the women's arm. Neither of these acts were charged.

22 As stated, Your Honor, with the legislative history,  
23 uncharged acts of prior DV are admissible so long as the acts  
24 are similar to the charged crime and inflicted upon persons  
25 similarly situated as the victim.

26 Ms. Flores was a long-term girlfriend in a  
27 girlfriend/boyfriend relationship, Ms. L in a married  
28 relationship. The injuries are similar. Ms. L's was caused



1 during a pushing -- grabbing, pushing and pulling during a  
2 heated argument, all injuries.

3 The prior acts, Your Honor, were committed, again, against  
4 the former girlfriend and former wife, and just as we argued  
5 with *People v. Johnson*, this is indicative, as the Court said in  
6 *Johnson*, quote, "of cases where perpetrators of this violence  
7 will beat their intimate partners, even kill them, or go on to  
8 kill the next intimate partner."

9 And his behavior, defendant Mirkarimi's behavior, as  
10 described by Ms. Flores, not suggesting that every disagreement  
11 she had with him was unpleasant. That was not her testimony.  
12 But the four incidents were demonstrative of his behavior when  
13 things didn't seem to go his way.

14 And because she's not a shrinking violet, she felt the need,  
15 in her own opinion, perhaps Your Honor had suggested that almost  
16 to come to the aid of a lady she didn't even know. It caused a  
17 visceral impact on her when she read the paper and felt, oh, my  
18 goodness, this lady is -- she was going to allow it to go  
19 forward but she felt, quote, this woman -- let's -- she did not  
20 know her name at this point, but let's call her the victim,  
21 Ms. L. Here she is, let it take its course and let the courts  
22 deal with it.

23 But when she read, far from it, she has recanted, minimized,  
24 accused as part of a larger conspiracy and the country is  
25 against her, that's when Ms. Flores, not for any motive or  
26 scheme to set up a prior boyfriend, but she felt a need to come  
27 forward and say thoroughly what she had been subjected to by  
28 this pit bull behavior on four instances, one of which caused

1 the bruise.

2 So, Your Honor, because of the evidence of defendant's prior  
3 conduct against Ms. Flores, the prior conduct against Ms. L that  
4 she specifically referenced a specific month and year it  
5 happened. It's not the first time this is happening. He needs  
6 help. We need help, that it's completely probative and more  
7 probative than any suggested prejudice that could possibly be  
8 alleged by defense attorney. And the incidents of domestic  
9 violence were relatively recent.

10 We have a case, Your Honor, if it's suggested as to Ms. L  
11 that because we don't have all the particulars of what the  
12 defendant did in March of 2011, the suggestion may be by  
13 defense, it can't come in. It's speculative. It's prejudicial.  
14 She didn't give details about what he did.

15 There's a specific case on point which allows prior -- oh,  
16 thank you -- which allows prior evidence under 1109, propensity  
17 evidence, even if it's not related to the physical abuse. In  
18 one instance the Court felt that the kicking of a dog, an actual  
19 physical kicking of abuse to an animal, by the defendant was  
20 sufficient propensity evidence to be admitted in a court of law  
21 involving violence of an individual. Because, again, to shroud  
22 an accused, who has a right, of course, to their fair trial, but  
23 not to shroud them with this protective cloth of, it never  
24 happened before; it's a crazy woman, type of defense.

25 So the case we wish to cite -- I will have the cite, Your  
26 Honor. But one of the cases -- okay. I will get the cite, Your  
27 Honor. But it did permit testimony concerning prior abuse even  
28 without the particulars.

1           The Court is well within its rights, I'm confident. This  
2 was a 402, Your Honor. The People would certainly narrow the  
3 scope of any testimony to make it appropriate for the jury.  
4 There was much more testimony during the course of Friday and  
5 even today that perhaps the Court may narrow.

6           But we ask the Court to exercise its sound discretion and  
7 appropriate ruling to allow the testimony of Ms. Flores on the  
8 four prior incidents, and the testimony from one, possibly two  
9 witnesses, concerning the reference Ms. L said that it happened  
10 before. And "it" being physical abuse.

11           **THE COURT:** Ms. Stiglich?

12           **MS. STIGLICH:** Your Honor, Mr. Mirkarimi didn't kick a dog.  
13 And I know the case they're referring to. But just by means of  
14 example, kicking a dog is something specific. It's something  
15 you can reply to. Kicking someone's family dog is something  
16 that at least in that Court's estimation constituted an act of  
17 intimidation. So it's not relevant here.

18           What we have here, the People have gone from trying to  
19 introduce this alleged physical act between Ms. Flores and  
20 Mr. Mirkarimi that occurred approximately four years ago and  
21 have referenced this comment that is alleged to be made by Ms. L  
22 in regard to, quote, "It happened before," or words to that  
23 effect.

24           With respect now to Ms. Flores, they're trying to introduce  
25 three instances of verbal violence, and we've called them here  
26 one, two and four, and one act of physical violence which we  
27 deemed number three.

28           In that regard we've had an evidentiary hearing, and I would

1 submit to the Court with respect to Ms. Flores that items one,  
2 two and four quite simply don't meet the definition of domestic  
3 violence that's laid out in 1109 in the statute, and certainly  
4 they would not pass muster under 352 in this instance.

5 1109 was not intended to introduce arguments between couples  
6 or bad relationships. It's the type of evidence that jurors can  
7 use for propensity, and the danger of admitting propensity  
8 evidence, as well, is that it can be misused.

9 So merely stating that they fought about different things on  
10 different occasions, that it was verbal and not physical, Your  
11 Honor, I think vitiates against it, A, because it doesn't meet  
12 the definition set out in the statute which references the  
13 Family Code, that it is an act of domestic violence as  
14 contemplated by 1109.

15 So I want to jump forward to act number three, which is the  
16 alleged physical act. I did brief in my papers really only with  
17 respect to that act. And I think even with respect to what is  
18 alleged, an arm grab and in this case a minor bruise, there is  
19 some question whether or not that conduct actually meets the  
20 definition of "domestic violence." And it's outlined very well  
21 in my brief.

22 But for purposes of argument, it really comes down to a 352  
23 analysis. And, Your Honor, there's six reasons why, or more, it  
24 should not be admitted.

25 One -- and the Court is to consider both passage of time and  
26 corroboration when the Court looks at admission of this type of  
27 testimony.

28 The People have offered no corroboration for Ms. Flores'

1 claims. Ms. Flores herself testified that she didn't tell --  
2 and I'm speaking to item number three -- that until she read  
3 about it in the paper and contacted inspectors, she had not  
4 related this incident of physical violence to anyone, not to  
5 friends that she got together with to complain about  
6 Mr. Mirkarimi's behavior, not to her ex-husband, who's a  
7 long-time Domestic Violence Inspector in San Francisco. She  
8 didn't write about it in her emails. She didn't write about it  
9 in the breakup poem when she broke up with him.

10 So I note there was no corroboration proffered for her  
11 claims. The contemporaneous evidence -- two, the  
12 contemporaneous evidence is presented as inconsistent with her  
13 new allegations.

14 We have emails spanning the whole period in this situation.  
15 All those descriptions that she gave here on the stand are  
16 profoundly inconsistent with characterizations in those emails,  
17 nor do they reference physical violence.

18 Third, her testimony here does not emanate from an  
19 independent source. Ms. Flores herself admits she first told  
20 somebody about this alleged prior conduct only after she read a  
21 newspaper article describing the alleged Lopez incident.

22 So while the prosecution argues both here in court and in  
23 its brief that there are supposed similarities between the  
24 alleged incidents, that's no surprise. Her accusation wasn't  
25 made until after she had already read published newspaper  
26 accounts of the incident.

27 So any similarities between the two really doesn't  
28 necessarily vitiate evidence to this Court admitting it.

1 Courts have long recognized that when a witness in this  
2 context does not come forward until he or she has knowledge of  
3 the charged offense, the probative value of the prior acts  
4 evidence, in this case the 1109 material, is undermined.

5 Four, you have passage of time. In light of the conduct  
6 that was described here, an alleged spontaneous incident with a  
7 different person resulting in a minor bruise, you're talking  
8 about a passage of four years of time. And I think for our  
9 purposes here it renders the incident remote, remote in offering  
10 us some insight or direction into whether or not what  
11 happened -- to inform the Court or the jury what happened  
12 between Mr. Mirkarimi and Ms. Lopez on December 31st, 2011.

13 That's allegedly why we're bringing it in here is they're going  
14 to inform that situation, and I would submit that it doesn't.

15 Fifth, any probative value with respect to her description  
16 of the incident has to be weighed against her vague and changing  
17 descriptions. She spoke to inspectors after not having told  
18 anybody ever. She initially says she can't recall when it  
19 happened, what they were arguing about initially -- and, again,  
20 we have citations to the record in our brief -- which arm was  
21 supposedly grabbed.

22 And in that vague account now we have one statement, "It  
23 happened. I'm not sure."

24 The next statement, "I think it happened in January. On  
25 Friday -- it happened in February."

26 So we have an ever-changing account. We don't have anything  
27 put forth until it comes here to court.

28 Finally, I think what has been shown here is there is a

1 strong motivation to fabricate in this regard. You have a  
2 relationship where it's clear one party is talking about the  
3 other party not wanting to be seen with her, getting dropped off  
4 at the corner, lying about the relationship.

5 You have another party, Ms. Flores, who is consistently  
6 sending emails trying to jump start the relationship and finally  
7 only breaks it off after she's allegedly told by the defendant  
8 that he's going to be starting a family with Ms. L.

9 And at that point in time sends the poem that she described  
10 as in late December, that we talk about where basically -- I  
11 think a reasonable interpretation is she's threatening to get  
12 even with him.

13 So due to the inherent risks and all the comments that we've  
14 made here, this type of conduct should only be admissible and is  
15 only admissible if it has substantial probative value.

16 And I think the Court here has to question whether or not in  
17 fact it does. And if there's any doubt, the evidence should be  
18 excluded. And that, I believe, is supported by case law.

19 So here with respect to incident three, which arguably meets  
20 the definition under 1109, the probative value is minimal or  
21 nonexistent, and there's many reasons to doubt the account, and  
22 her testimony in that regard in total should be excluded under  
23 Evidence Code Section 352.

24 Further, the admission of that testimony creates a  
25 substantial danger of undue prejudice and confusion of the  
26 issues for the jury.

27 First, any time you have an uncharged act, there's always a  
28 danger that the jury may want to punish the defendant for that

1 act. They may want to punish the defendant because the  
2 defendant didn't get charged or didn't get convicted of that  
3 act. So the absence of a conviction increases the likelihood  
4 that the issues can be confused --

5 (Reporter interruption)

6 **MS. STIGLICH:** -- in that the jury has to determine whether  
7 or not in fact the acts occurred.

8 Second, while her account of the incident, Ms. Flores'  
9 account of the incident, is vague, it's arguably stronger than  
10 any admissible evidence that relates to the charged offense  
11 where you have a situation where the evidence of the charged  
12 offense is marginal or weak, the largely prejudicial impact of  
13 the Flores evidence is increased.

14 **THE COURT:** Is it increased? Is that what you said?

15 **MS. STIGLICH:** I'm sorry. The prejudicial impact is  
16 increased.

17 This is coupled with a situation where we may or may not  
18 have the alleged victim in the case at bar testifying at trial.  
19 And you have a danger that Ms. Flores is going to be the  
20 stand-in as a result of that and, again, further confuse and  
21 prejudice the jury.

22 Third, Ms. Flores' testimony relating to this account, her  
23 descriptions are highly inflammatory, and they largely are in  
24 unflattering terms, calling him a pit bull. He rages all the  
25 time because he's very, very volatile.

26 These type of descriptions, if any, increase the chance that  
27 the jury is going to be unable to separate and evaluate that  
28 evidence in a manner that's appropriate and as directed by the



1 judge.

2 And so there is going to be this issue about the jurors  
3 identifying with this offensive character as described by  
4 Ms. Flores and, hence, tending to disbelieve evidence in his  
5 favor.

6 Finally, just with respect to Ms. Flores' testimony, it's  
7 clear that at trial it's -- there is an issue that it could  
8 confuse the jury and is going to necessitate an undue  
9 consumption of time.

10 With respect to Ms. Flores' account while we've been here  
11 the 402 hearing has taken a fair amount of time. At a trial the  
12 defense is going to have to present a substantial amount of  
13 evidence in the form of additional emails of eyewitnesses that  
14 would undermine Ms. Flores' testimony.

15 So given the prosecution's lack in this regard of admissible  
16 evidence at this point, and certainly the strength of the  
17 evidence relating to the charged conduct, the trial would  
18 effectively become an adjudication of the Flores incident and  
19 not an adjudication of what occurred on December 31st, 2011.

20 So, additionally, because that testimony would confuse the  
21 issues and would consume an undue amount of time, it should be  
22 excluded.

23 Now, the rest of the arguments are in my brief, Your Honor,  
24 and I know that you're thorough and you read my brief.

25 What is absent from the People's brief -- and, accordingly,  
26 not responded to adequately. I did in a footnote respond to  
27 it -- is the record as to this alleged act of 1109, or this 1109  
28 uncharged conduct as to Ms. L that the People are now seeking to

1 introduce, they've asked you to introduce conduct because that's  
2 what 1109 is, conduct with respect to some statements that  
3 they've made, "Oh, it's happened before."

4 They have not produced one stich of evidence in this court  
5 with this motion such that we can even consider that request.  
6 They have not brought on a witness. They have not produced  
7 anything -- accompanying this motion, there's not one citation  
8 to a record, not something for you to include, aside from a  
9 vague, "It happened before."

10 Well, what happened before? Did we argue? Did we fight?  
11 Is there a bruise? Is there -- we don't know because they're  
12 asking you to interpret, and they're asking you to interpret  
13 something that's not even before this Court on this record.

14 There is no evidence in the record here that this Court  
15 could conclude that this alleged -- she's indicated this alleged  
16 act, this "it" that happened before, A, meets the definition of  
17 domestic violence under Section 1109; B, is not 352. Is there  
18 corroboration to that incident? We don't know. We don't have  
19 enough information to make that determination.

20 And, accordingly, because on that the People have the burden  
21 of producing evidence in that regard such that you can rule on  
22 this matter. There is none. And they are asking this Court to  
23 speculate and include that evidence here at this trial.

24 We can't address the basic questions with respect to  
25 reliability of that statement because we don't even know what  
26 the statement is, what it means or the surrounding context. And  
27 the People haven't provided any evidence here from which you can  
28 make that determination.

1           So with respect to the matters of Ms. Flores, items one, two  
2 and four, I'd submit to the Court you can always have people  
3 come in and talk about arguments. That's not what 1109 is  
4 about. Those allegations don't meet the basic definition under  
5 1109 of domestic violence.

6           Item number three, for the reasons stated under 352 I  
7 believe should be excluded. The code itself under 1109 requires  
8 corroboration and talks about remoteness of time.

9           Corroboration is lacking, and it is remote in time compared  
10 to this incident and all the other reasons give it cause to be  
11 suspect and should be excluded.

12           And, finally, with respect to Ms. Lopez, quite simply,  
13 there's no record from which we can conclude that it is relevant  
14 or admissible here. People haven't even met their burden to  
15 even have this conversation.

16           Submitted, Your Honor.

17           **MS. AGUILAR TARCHI:** Brief rebuttal, Your Honor, since we do  
18 have the burden.

19           Section 1109 does not articulate a cutoff. And that's,  
20 again, because it does cut off in terms of a time period for  
21 prior incidents of propensity because that is left to the sound  
22 discretion of the Trial Court.

23           **THE COURT:** Well, now, wait a minute. It's ten years under  
24 Section 1109(e).

25           **MS. AGUILAR TARCHI:** And certainly the incidents of which  
26 Ms. Flores testified to are not ten years or older.

27           Finally, there's no independent requirement of  
28 corroboration. Particular case in -- it was a murder case, the

1 *Brown* case. It's 19 -- excuse me. It's a February 2011 case,  
2 192 Cal.App.4th at page 1222.

3 In that case the Court allowed propensity evidence,  
4 statements from a co-worker about the decedent's having been  
5 strangled before during an argument, without specifics, allowing  
6 a statement that the decedent had told a former boyfriend that  
7 she couldn't greet the accused, the defendant that did the  
8 homicide, in public because it would be harmful to her. And  
9 that -- another comment, that the defendant had threatened her  
10 life because she broke off their relationship, and that the  
11 defendant had told the victim she would kill other people --  
12 other people if she dated other persons.

13 So this suggestion that you have to have numerous witnesses  
14 and corroboration is simply not the requirement.

15 The People submit that the priors of propensity, including  
16 that statement of Ms. L, come in on a preponderance of the  
17 evidence.

18 There is enough, Your Honor, to go to the triers of fact.  
19 The Court will read in its instructions a very important  
20 instruction on how to assess the credibility of every witness  
21 that testifies. I think there's -- I didn't count them, but  
22 they number about 15, 16 different factors, some of which  
23 include a witness's -- how they testify on the stand, their  
24 treatment -- how they behave while testifying, any bias or  
25 motive they may have for not telling the truth, how well a  
26 witness testifying may recall facts.

27 So the concern that defense counsel argues would be  
28 prejudicial. The triers of fact will be instructed by Your

1 Honor on how to assess the credibility of each witness that  
2 testifies, and there are also, as the Court well knows, specific  
3 instructions that go to the jury on how they -- um -- deal or  
4 assess propensity evidence.

5 Hypothetically, the same with an expert. If the People call  
6 an expert, the Court has an instruction on how the jury handles  
7 the testimony of the expert.

8 There are guiding rules so that the jury does not commit any  
9 acts of prejudice and understands why the law is what it is, and  
10 they apply the law to the facts that they take as true.

11 So the so-called "danger" of presumed trial within a trial  
12 or a danger of a jury accepting as true would not happen if they  
13 do, in fact, as they will be told, follow the instructions of  
14 the Court.

15 And I'll recall, as it relates to Ms. Lopez's statement,  
16 Ms. Stiglich is correct, the victim, Ms. L, has always been  
17 unwilling, reluctant to come forward, minimizing, accusing --  
18 several reasons.

19 She has chosen not to be interviewed, although she was asked  
20 to give a statement the very day that Ms. Madison made a call to  
21 the Domestic Violence Response Unit. The People, as we would  
22 with other cases -- the Court has already made certain rulings  
23 on the type of -- excuse me -- statements that would come in and  
24 the physical evidence that would come in.

25 So it's no surprise how the People plan to proceed. And,  
26 again, the Court will have instructions on how to handle direct  
27 evidence and circumstantial evidence.

28 If a jury in reviewing, at an appropriate time, statements

1 made by the victim spontaneous about what happened, how he did  
2 this before, "It happened before," as she's pointing to her arm,  
3 they can draw the logical, reasonable inference of what "it" is.

4 And, thus, Your Honor, the People urge the Court based on  
5 the proper authority it has before it, 1109, to allow Ms. Flores  
6 to testify, not in a vacuum because then it would be proffered  
7 that she just made up one incident, but she shows how there was  
8 not only a loving relationship, presumably, between her and the  
9 defendant, or just say what happened on a certain date, not that  
10 he's a bad man but that a certain criminal act or acts occurred.  
11 And that it goes to the case not only of the DV charge, but to  
12 the dissuading.

13 And we'd ask that the Court admit the evidence, Your Honor.

14 **THE COURT:** Anything else?

15 **MS. STIGLICH:** Just three brief comments.

16 One, Your Honor, it's difficult to address case law that's  
17 cited for one proposition in a brief and then a different one in  
18 the courtroom. So with respect to *Brown*, I can't respond to it.  
19 I don't have that case in front of me.

20 Ms. L has said she would testify if the prosecution would  
21 give her immunity, which they have denied to do.

22 And, finally, 1109(d)(3) indicates that subject to a hearing  
23 conducted pursuant to Section 352, which shall include  
24 consideration of any corroboration and remoteness in time.

25 So you do have to consider corroboration. You do have to  
26 consider all the factors that we raised.

27 And for the reasons stated, I would note even in this  
28 colloquy, the People have still not told you what evidence it is

1 that they're presenting. Them telling you is not evidence.  
2 There's no witness, no declaration, no attachment, and they're  
3 telling you, we want to put it in so the jury can speculate on  
4 it and draw inferences. And we're talking about "it" but "it"  
5 is not even before you.

6 This is a hearing at the point where we talk about evidence.  
7 This is a hearing where we look at the evidence. And they've  
8 provided no evidence to support that theory.

9 Submitted, for real.

10 **MS. AGUILAR TARCHI:** Submitted, Your Honor.

11 **THE COURT:** Thank you.

12 All right. Well, the Court appreciates the arguments here.

13 Let me say that CALCRIM instruction 852, evidence of  
14 uncharged domestic violence, takes care of whatever the jury's  
15 going to do.

16 But that's not before the Court. The Court is here to  
17 determine whether the introduction of the four incidents that  
18 have been identified by the parties in this case shall be  
19 admitted.

20 And Evidence Code Section 1109 simply allows the  
21 introduction of evidence of defendant's commission of prior acts  
22 of domestic violence in a criminal action, charging a defendant  
23 with an offense involving domestic violence.

24 And I don't think -- I think the parties here would agree  
25 that this is an offense involving domestic violence. That's  
26 Count 1, violation of Penal Code Section 273.5, as a  
27 misdemeanor.

28 And once I've done that, the code also says that I have to

1 determine whether -- weigh the evidence whether the evidence  
2 should come under Evidence Code Section 352.

3 The prejudice which exclusion of evidence under Section 352  
4 is designed to avoid is not the prejudice or damage to the  
5 defense that naturally flows from relevant, highly probative  
6 evidence. All evidence which tends to prove guilt is  
7 prejudicial or damaging to a defendant's case. Of course, it  
8 makes sense, the stronger the evidence, the more it is  
9 prejudicial.

10 The prejudice referred to in Section 352 applies to evidence  
11 which uniquely tends to evoke the emotional bias against the  
12 defendant as an individual and which has very little effect on  
13 the issues. In applying Section 352, "prejudicial" is not  
14 synonymous with "damaging."

15 And *People v. Poplar* is a decision that reiterates that  
16 comment or remark. That's a 1999 decision, 70 Cal.4th 1129,  
17 1138.

18 The Court will -- has evaluated the corroboration issues and  
19 the remoteness in time. However, Section 352 requires the  
20 exclusion of evidence only when its probative value is  
21 substantially -- and I emphasize "substantially" -- outweighed  
22 by its prejudicial effect.

23 Evidence is substantially more prejudicial than probative  
24 only if, broadly stated, it poses an intolerable risk to the  
25 fairness of the proceedings or the reliability of the outcome.  
26 And that's a case that's cited by defense, *People v. Tran*, 2011  
27 decision, 51 Cal.4th 1040 at 1047.

28 I cannot say in this instance that the evidence I have heard



1 poses an intolerable risk to the fairness of the proceedings or  
2 the reliability of the outcome in this case.

3 Mind you, as an aside, I know that there's some reference to  
4 Ms. L's testimony, but all of that is before the Appellate  
5 Division now. I will reserve ruling on that matter.

6 What I am concerned about is the four incidents that have  
7 been testified to by Ms. Flores over Friday and today.

8 The Court will comment that there were three verbal abuse --  
9 three instances of verbal abuse and one verbal and ultimately a  
10 physical abuse allegation raised by Ms. Flores.

11 The Court will find that the evidence is extremely  
12 probative, showing defendant's propensity for verbal abuse that  
13 would result in rage and violence against an intimate female  
14 partner.

15 The prior incidents of domestic violence were not the sort  
16 to evoke an emotional bias against defendant.

17 The Court, having weighed the evidence as required under  
18 Evidence Code Section 1109 and 352, grants the People's motion  
19 to admit Ms. Flores' testimony as to the four different  
20 incidences that were testified to on Friday and today.

21 And that will be the Court's ruling in this case.

22 With respect to Ms. L's, I think I will reserve a ruling on  
23 that. As I mentioned before, the matter of her testimony or the  
24 statements that have been made on a videotape are still at issue  
25 and before the Appellate Division. The Court is not in a  
26 position now to make a ruling on that.

27 Very well. Let me just go off the record.

28 (Discussion off the record between Court and counsel.)

1           **THE COURT:** Back on the record.

2           All right. So tomorrow we will see each other again at --  
3 let's see. We are to meet the jury at 9:00 o'clock tomorrow  
4 morning. If you could come at 8:30, the parties, so that we can  
5 understand where you're at with respect to further excuses for  
6 the jurors.

7           I did have a number of folks that we excused for hardship  
8 this morning. Somehow I think some of our jurors thought about  
9 it over the weekend and decided that they wanted out, but we'll  
10 have to work through that.

11          So, yes.

12          **THE CLERK:** I gave them a list of the names.

13          **THE COURT:** Oh, you have them. Okay. Good. I'm glad.

14          Yes, ma'am?

15          **MS. AGUILAR TARCHI:** I apologize, Your Honor.

16          Just briefly on an administrative matter, may Ms. Stiglich  
17 and I see the Court for a moment in the back? It would take a  
18 minute. It is relevant.

19          **THE COURT:** Okay.

20          All right. Thank you very much.

21          Thank you to the press. We appreciate you being here.

22                   (Proceedings concluded at 4:09 p.m.)  
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26  
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28

1 State of California )  
2 County of San Francisco )  
3  
4

5 I, Loretta Najera, Official Reporter for the Superior Court  
6 of California, County of San Francisco, do hereby certify:

7 That I was present at the time of the above proceedings;

8 That I took down in machine shorthand notes all proceedings  
9 had and testimony given;

10 That I thereafter transcribed said shorthand notes with the  
11 aid of a computer;

12 That the above and foregoing is a full, true, and correct  
13 transcription of said shorthand notes, and a full, true and  
14 correct transcript of all proceedings had and testimony taken;

15 That I am not a party to the action or related to a party  
16 or counsel;

17 That I have no financial or other interest in the outcome  
18 of the action.  
19  
20

21 Dated: March 7, 2012  
22

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24 Loretta Najera, CSR No. 5153  
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27  
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