

BEFORE THE ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
STATE OF CALIFORNIA

In the Matter of Charges Against
ROSS MIRKARIMI,
Sheriff, City and County of San Francisco

City and County of San Francisco
Special Meeting of the Ethics Commission
Thursday, July 19, 2012 - 5:02 p.m.
Volume VII (Pages 1200-1415)

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1 BE IT REMEMBERED that on Thursday, July 19,
2 2012, commencing at the hour of 5:02 p.m. thereof, at
3 CITY HALL, 1 Dr. Carlton B. Goodlett Place, Room 400,
4 San Francisco, California, before me, MARLENE PUAOI, a
5 Certified Shorthand Reporter in and for the State of
6 California, the following proceedings were had of
7 record.

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5 ---o0o---

6 Commissioners Present

7 Benedict Y. Hur, Commission Chairman
8 Jamienne S. Studley
9 Beverly Hayon
10 Dorothy S. Liu
11 Paul A. Renne

10 Staff Present

11 John St. Croix, Executive Director
12 Catherine Argumedo, Legal Analyst/Ethics Investigator
13 Mabel Ng, Deputy Executive Director

13 Also Present

14 Ines S. Swaney, Certified Spanish Interpreter

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3 P R O C E E D I N G S

4 COMMISSIONER HUR: Good afternoon. Welcome to the
5 continued meeting of the San Francisco Ethics Commission
6 relating to the official misconduct proceedings against
7 Ross Mirkarimi. We'll begin by taking the roll.

8 (Roll taken)

9 COMMISSIONER HUR: All commissioners being present,
10 when we last left off yesterday evening, we were hearing
11 the testimony of Eliana Lopez with the examination
12 conducted by Mr. Keith. Our plan is to proceed with
13 that examination.

14 Can the staff please bring Ms. Lopez and her
15 attorney into the hearing room.

16 While that's happening, just a reminder, any
17 disruptions, we're going to have to ask the sheriff to
18 remove anybody who makes noises that are inappropriate,
19 any distraction. We're going to have to -- I'm asking
20 him now to please remove somebody even without direction
21 from -- from me. We're trying to pay attention to the
22 testimony. You're free to do whatever you deem
23 necessary in light of what we're trying to accomplish
24 here.

25 And we thank the public for your cooperation in

1 that. Obviously, the testimony is sensitive, and we're
2 really trying to pay close attention, so thanks in
3 advance for your cooperation.

4 I will ask the attorneys the same question I asked
5 yesterday evening, whether there are additional seats
6 that you had reserved that you're no longer using. If
7 that's the case, please let the sheriff know, and we can
8 allow a few more people in. If you're still waiting for
9 others, we understand you need to reserve your seats.

10 MR. KOPP: I think we only need a total of five, so
11 if there's still ten reserved, we can release five.

12 COMMISSIONER HUR: Okay. So I guess you can
13 release five seats.

14 Ms. Lopez, let me remind you that you are still
15 under oath. Do you understand that?

16 THE WITNESS: I understand.

17 COMMISSIONER HUR: And same for the interpreter.
18 You understand you're still under oath?

19 THE INTERPRETER: Yes, I understand.

20 COMMISSIONER HUR: Thank you.

21 Mr. Keith, please proceed.

22 MR. KEITH: Thank you.

23 ---o0o---

24 CROSS-EXAMINATION BY MR. KEITH (Resumed)

25 MR. KEITH: Q. Good evening, Ms. Lopez.

1 A. Good evening.

2 Q. Have you communicated with your husband's
3 attorneys, Mr. Kopp or Mr. Waggoner, at any time before
4 tonight?

5 A. I just give him a little bag and say hello and
6 I bring a present for him from Venezuela --

7 Q. Okay.

8 A. -- because I think they are doing a great job.
9 Both of you. I have one for you too.

10 Q. Have you had any conversations with them about
11 the events of December 31st or anything that happened
12 after that with regard to the police investigation of
13 that incident?

14 A. No.

15 Q. Did you share a draft of your declaration with
16 your husband's attorneys?

17 A. No.

18 Q. And you recall being directed by the chair of
19 the commission not to discuss your testimony with anyone
20 after leaving the witness chair last night?

21 A. Yes.

22 Q. Have you discussed your testimony with anyone
23 since leaving the witness chair last night?

24 A. No.

25 Q. Ms. Lopez, last night, when we left off, I had

1 asked you about whether you'd made a statement to your
2 husband on December 31st along the lines of "Please
3 stop. Look at what you're doing to our son. Do you
4 know what this is going to do to him? Please stop for
5 our son."

6 And then you mentioned that there were -- that the
7 first time that you told your husband to stop was in the
8 minivan. Do you recall that testimony?

9 A. Sí. Yes. I'm sorry.

10 Q. That's okay. What was your husband doing to
11 you in the family minivan that led you to tell him to
12 stop?

13 A. He grabbed my arm.

14 Q. How long did he hold on to your arm?

15 A. He grabbed my arm, and I said, "Stop!" It was
16 one second. How much take -- you can take the time.
17 "Stop!"

18 MR. KOPP: I think the record should reflect that
19 the witness moved her right arm suddenly across her
20 torso.

21 COMMISSIONER HUR: The record should so reflect.

22 MR. KEITH: Q. Were you a danger to your son at
23 the time that your husband grabbed your arm?

24 A. [Through the interpreter] Whether I was a
25 danger?

1 MR. KEITH: Q. Yes.

2 A. [In English] No.

3 Q. Do you think that your husband needed to
4 defend your son from you?

5 A. I don't think so.

6 Q. You got an injury from your husband on
7 December 31st?

8 A. I got a bruise.

9 Q. Is that an injury?

10 A. I'm not a doctor. I can say I got a bruise.

11 Q. Okay. But you don't know whether that's an
12 injury?

13 A. No, I don't.

14 MR. KOPP: Objection, relevance.

15 MR. KEITH: Okay.

16 COMMISSIONER HUR: The answer's in.

17 MR. KEITH: Q. Now, there was a second time on the
18 31st that you told your husband to stop that you
19 mentioned last night. Do you recall that testimony?

20 A. Yes.

21 Q. Okay. Where were you the second time you told
22 your husband to stop on December 31st?

23 A. In the kitchen of my house.

24 Q. And at that point, did you say to your husband
25 something along the lines of "Please stop. Look at what

1 you're doing to our son. Do you know what this is going
2 to do to him? Please stop for our son"?

3 A. In the kitchen, he was apologizing, and I
4 didn't want to talk with him. So I said, "Stop! Do not
5 talk to me."

6 And at that point was around 1:00 p.m. Theo was
7 hungry. Theo was sleepy. I was hungry. I was angry
8 because I have to cook and make the lunch late, at
9 1:00, when it's already nap time. And he was trying to
10 apologize, so I just say, "Stop! Let me cook and make
11 the things I have to do and deal with Theo."

12 Q. On December 31st, did you tell your husband,
13 "Look at what you're doing to our son"?

14 A. No.

15 Q. Did you tell your husband, "Do you know what
16 this is going to do to him?"

17 A. No.

18 Q. Did you tell your husband, "Please stop for
19 our son"?

20 A. No.

21 Q. Now, why were you concerned -- or actually,
22 let me step back for a minute.

23 Were you at all concerned about the effect of -- of
24 your husband's behavior on December 31st on your son?

25 A. I do not like to fight in front of my son, so

1 I was trying to avoid and -- avoid anything, and I -- of
2 course, I was so angry he grabbed my arm in front of my
3 son.

4 Q. Why did that concern you?

5 A. Not only that. The profanity, I think, was
6 worst for me.

7 Q. Why did the profanity concern you with regard
8 to your son?

9 A. Because it's not right to say that kind of
10 things in front of my son.

11 Q. Are you concerned --

12 A. I don't say any bad words in front of him.

13 Q. Are you concerned about the effects of that
14 kind of behavior on your son?

15 A. Yes.

16 Q. And were you concerned about a negative effect
17 on your son of your husband using force on you in the
18 presence of your son?

19 A. Absolutely. That is wrong.

20 Q. Were you concerned about your son growing up
21 in an abusive environment?

22 MR. KOPP: Objection, relevance.

23 COMMISSIONER HUR: Counsel, what is it going to?

24 MR. KEITH: This is going to the witness's state of
25 mind and what her state of mind was on the 31st with

1 regard to the situation with her husband. It's part of
2 our claim that the witness had an awareness that she was
3 being abused and that after the communications that
4 we've been going over over the past couple of nights,
5 that changed.

6 COMMISSIONER HUR: Okay. We'll allow this
7 question. Overruled.

8 THE WITNESS: Can you repeat the question?

9 MR. KEITH: Q. You were concerned about your son
10 growing up in an abusive environment?

11 A. I think an abusive environment is when that
12 kind of things happen every day or every week. I will
13 never be -- I will never let my son have that kind of
14 experience. But of course, if that happened one time,
15 it's an -- [Through the interpreter] it's a warning
16 signal [In English] that you have to pay attention, and
17 it's why I was mad of him.

18 Q. Did you tell Callie Williams that you were
19 concerned about your son growing up in an abusive
20 environment?

21 A. I think -- to Callie Williams, you said?

22 Q. Yes.

23 A. Can you repeat the question? I'm sorry.

24 Q. Did you tell Callie Williams that you were
25 concerned about your son growing up in an abusive

1 environment?

2 A. Yes.

3 Q. And when you said that to Callie Williams,
4 were you referring to your own home?

5 A. She was telling me about her father, who was
6 an abuser of her mother and hurt her mother. And he
7 was -- they have a -- she described like a horrible
8 domestic violence, and that affect her. She was telling
9 me her own ex- -- telling me her own experience. And I
10 said, "Of course, I do not want my son growing up in
11 that kind of environment."

12 But she was talking about her own experience,
13 because she -- I think she grew up in a domestic
14 violence house. And her father -- she described that
15 her father --

16 COMMISSIONER HUR: Ms. Lopez --

17 THE WITNESS: I'm sorry.

18 COMMISSIONER HUR: I'm going to stop you right
19 there.

20 THE WITNESS: I'm sorry.

21 COMMISSIONER HUR: I think you're starting to
22 become nonresponsive to the question, and I -- I don't
23 think we need to go into the details --

24 THE WITNESS: Okay.

25 COMMISSIONER HUR: -- of that.

1 So I think you have your answer.

2 THE WITNESS: Yes.

3 COMMISSIONER HUR: Let's move on.

4 MR. KEITH: Q. And when you told your husband to
5 stop in the kitchen, what happened after that?

6 A. He moved to the other -- another room.

7 Q. How soon after he came into the house did you
8 tell him to stop? Oh. How soon after your husband came
9 into the house did you tell him, "Stop"?

10 A. Immediately. He came inside, and I say, "Do
11 not talk to me" and "Stop."

12 Q. Did you continue to argue with your husband
13 inside your home?

14 A. No, I just said that.

15 Q. Didn't you tell Callie Williams that the
16 argument with your husband continued inside your home?

17 A. No.

18 Q. Didn't you tell Ivory Madison that the fight
19 with your husband continued inside your home?

20 A. No. I --

21 Q. You never --

22 A. I told them exactly what the scene I already
23 told you right now.

24 Q. Okay. So did your -- did your husband push
25 and pull and grab you inside your home?

1 A. Never.

2 Q. Okay. Didn't you tell Ms. Madison and
3 Ms. Williams that your husband continued to physically
4 abuse you in your home?

5 A. No.

6 Q. Ms. Lopez, your testimony is that you never
7 ran out of the house screaming on December 31st?

8 A. Yes.

9 Q. Okay. Now, after the fight with your husband
10 on December 31st, did you send a text message to Abe
11 Mertens?

12 A. December 31st?

13 Q. Yes.

14 A. Yes.

15 Q. Okay. And that message said, "Hello. Where
16 are you guys?"

17 A. Yes.

18 Q. How long after the fight with your husband
19 ended did you send that message to Mr. Mertens?

20 A. I think that was around 1:00 when I started to
21 make Theo's lunch. And I was hungry and then I -- we
22 ate, Theo and me, because I didn't want to cook for
23 Ross. And then we finished and I tried to put him down,
24 and he didn't want because we passed all the schedule.

25 And then I took him to Alamo Square Park, and when

1 I was walking up the -- the park, I text them because I
2 was alone with Theo; maybe they can bring Grace to play
3 in the Alamo Square Park. And I think that was around
4 2:00 or 3:00 because I was in the park between -- until
5 maybe 4:00 p.m.

6 Q. Ms. Lopez, I asked you how long after the
7 fight ended that you texted Mr. Mertens, and I think --

8 A. And I am telling you the things I was doing,
9 so I was not checking exactly. Maybe you have the
10 record.

11 Q. So you don't know how long after the fight
12 ended --

13 A. No, we went to the -- we drive to have lunch.
14 We came back, and then I make lunch, I feed him. Maybe
15 he went to the bathroom. And I tried to put him down.
16 Maybe that took one hour, one hour and a half.

17 Q. So it was an hour to an hour and a half after
18 the fight ended that you called -- that you texted
19 Mr. Mertens?

20 A. Yes, when we were walking to -- to Alamo
21 Square Park.

22 Q. Now, on January 1st --

23 A. This is yours? Oh, okay. Sorry.

24 Q. On January 1st, you went over to Ivory
25 Madison's home?

1 A. January 1st?

2 Q. Yes.

3 A. Yes.

4 Q. And you told Ivory Madison what your husband
5 did on December 31st?

6 A. Yes.

7 Q. Did you tell Ivory Madison the truth about
8 what happened on December 31st?

9 A. Yes.

10 Q. Had your husband ever been physically violent
11 with you earlier in 2011, before December 31st?

12 A. No, this is the first time.

13 Q. Now, you told Ivory Madison that your
14 husband's violent act toward you on December 31st was
15 the second time he was physically violent toward you in
16 2011, didn't you?

17 MR. KOPP: Objection, that misstates the testimony
18 and the evidence in the case.

19 COMMISSIONER HUR: Sorry. I didn't quite hear the
20 objection.

21 MR. KOPP: Objection, that misstates the testimony
22 and the evidence in the case.

23 COMMISSIONER HUR: Overruled.

24 THE WITNESS: Can you repeat the question?

25 MR. KEITH: Q. You told Ivory Madison that your

1 husband's violent act on December 31st, 2011, was the
2 second time he was physically violent toward you in
3 2011?

4 A. No.

5 Q. You told Callie Williams that your husband's
6 violent act toward you on December 31st was the second
7 time he was physically violent toward you in 2011?

8 A. No.

9 Q. And you told Callie Williams the first time he
10 was physically violent with you was in March of 2011?

11 A. I was referring to the first time we fight
12 about -- and we bring the situation about divorce. I
13 was referring to that.

14 Q. So are you -- is it your testimony that you
15 did not tell Callie Williams that that first violent
16 incident was in March 2011?

17 A. I didn't say that, yes.

18 Q. Now, ma'am, you made a video that day at Ivory
19 Madison's home?

20 A. Yes.

21 Q. In the videotape you made that day, you
22 pointed to your bruise, and you said, "This is the
23 second time this is happening."

24 A. Yes.

25 Q. Was anything you said in your video

1 untruthful?

2 A. No.

3 Q. Now, later in the day, you sent Ivory Madison
4 an e-mail, on the 1st?

5 A. I don't remember.

6 MR. KEITH: So for the commission, I'm going to go
7 to Exhibit 48.

8 Q. And Ms. Lopez, you do have some exhibit
9 binders in front of you that are tabbed. Exhibit --
10 they're rather large. Exhibit 48 is in the larger
11 binder.

12 Now, Ms. Lopez --

13 If I can approach the witness?

14 COMMISSIONER HUR: Yes.

15 THE WITNESS: Thank you.

16 MR. KEITH: Q. So Ms. Lopez, while the
17 commissioners are getting their binders, I'll ask you to
18 take a look at that e-mail that's Exhibit 48, and then
19 I'll have a couple of questions for you.

20 A. Mm-hmm.

21 Q. Does looking at Exhibit 48 refresh your memory
22 about whether you sent an e-mail to Ivory Madison later
23 that day, on the 1st?

24 A. Yes.

25 Q. And this is a copy of that e-mail?

1 A. Yes.

2 Q. Okay. Now, you reference in the e-mail -- you
3 ask Ivory Madison to send -- send you the information
4 from -- from the therapist.

5 A. Mm-hmm.

6 Q. Had Ivory Madison offered to get some
7 information for you?

8 A. Yes.

9 Q. You also mention that -- there's a line here
10 that says, "Looks like Ross in doing research too." I
11 assume that means "Looks like Ross is doing research
12 too." It's just a typo?

13 A. Oh, yes.

14 Q. Okay. What -- what was your husband doing on
15 January 1st with regard to what had happened on
16 December 31st?

17 A. At the end of the day on December 31st, we
18 had a conversation, and I told him, "This cannot happen.
19 This is wrong."

20 And I was telling him, "We need therapy,
21 counseling." I was telling him that -- I was telling
22 him that for the last year. "And I think this is an
23 important moment, and you have to realize that we need
24 help."

25 And he said, "You are right."

1 He realized that that was wrong, and he took it
2 very seriously. And he told me, "I'm going to looking
3 for someone."

4 And I say, "I'm going to looking for someone too."

5 Q. You mentioned that --

6 A. So -- I'm sorry. I'm sorry. So when I said
7 "Ross [is] doing research too," it's like I think he was
8 in the computer, looking for information. I thought
9 that.

10 Q. Ms. Lopez, you men- -- you mentioned that you
11 had been suggesting to your husband for the past year --
12 I don't want to put words in your mouth.

13 Were you asking him for the past year to start
14 therapy with you?

15 A. Yes.

16 Q. Why?

17 A. Because when I move here, the only reason when
18 I move here was because I met him and I want to have a
19 family with him. And it was very hard for me to leave
20 my hometown, my career.

21 But I want to do it because I decide that when --
22 in the moment when I decide to have a baby, I want to
23 spend with him at least the first two years, so when I
24 came here, for him the home birth was not even an idea.
25 And I said, "I want a home birth because that is the

1 safest and that is the best for our son."

2 So I was very committed to do the best thing for my
3 son. But after three years, you want to go back to
4 work. So to work for me is to be an actress. And
5 English is my second language. So be working in
6 San Francisco as an actress, I couldn't find anyplace.
7 It's not any TV station for work or -- so I was trying
8 to looking for things to do here as an actress, and I
9 didn't really find.

10 So I made a movie in 2000 -- between 2010 and 2011,
11 so I traveled -- no, no, I'm explaining you --

12 Q. This is not the question I asked.

13 A. -- why I'm looking for therapy.

14 Q. Why you're --

15 A. It's not one -- just one word. So I will try
16 to short it. Let me finish a little bit.

17 COMMISSIONER HUR: Yeah, why don't you stop your
18 answer.

19 Mr. Keith, you feel you've gotten the answer you
20 want?

21 MR. KEITH: No, I feel like we're a couple years
22 before the answer.

23 THE WITNESS: Well, explaining how to get -- why
24 you need therapy?

25 COMMISSIONER HUR: Hold on, Ms. Lopez. I'm sorry.

1 Please.

2 Okay. We're going to stop the answer there. Ask
3 another direct question, and if --

4 Again, your -- the counsel for the sheriff will
5 have an opportunity to ask you questions as well.

6 MR. KEITH: Okay.

7 THE WITNESS: Okay.

8 COMMISSIONER HUR: Thank you.

9 MR. KEITH: Q. Ms. Lopez, did you -- when -- when
10 you had been asking your husband to go to couples
11 therapy for the past year, was that -- was that because
12 you thought that there were -- there were problems with
13 how your family worked out problems, worked out
14 disputes?

15 A. No.

16 Q. When you -- when you decided to start asking
17 your husband to go to therapy, was it because you
18 thought that you had faults that you had to have fixed?

19 A. You have what? No.

20 Q. When you --

21 A. Well, I don't know. Maybe I will discover
22 that through doing therapy, but I think I don't.

23 Q. Ms. Lopez, the question is what -- is what led
24 you to want to get therapy and to ask your husband to go
25 into therapy for the past year. And I -- was it

1 something about his behavior that you found troubling
2 that made you want to have your husband go to therapy?

3 A. I think he has an irrational fear to lose us
4 each time I have to travel to Venezuela to work. I
5 think he -- how he grew up, without his father, and he
6 really had -- that hurts him, and was around the same
7 age like Theo his mom took him away.

8 I think he always feel that I'm going to take Theo
9 away from him, and he's -- that is the line he told me,
10 "You just want to take Theo away from me."

11 "No, I'm not your mom, so you have to go to therapy
12 to realize that I will never take Theo away from you."

13 Q. Did that irrational fear that you saw in your
14 husband lead to negative consequences for your family?

15 A. I think he's always scared. And I think that
16 is very sensitive for him, to lose Theo. And when that
17 day I just ignored that and give him my back, he reacted
18 in a very negative way, and that was wrong.

19 Q. And --

20 A. I turned my back to him and ignored he's here
21 and when he was talking to me, and I think it's why he
22 grabbed my arm.

23 Q. Okay. And that's --

24 A. And I think that is -- well, obviously, I'm
25 here because -- and Theo cannot see his father. He is

1 apart of his father. This is a disaster for our family.

2 Q. Ms. Lopez --

3 A. I cannot even touch my husband.

4 Q. Ms. Lopez --

5 A. It's a disaster.

6 Q. -- I'd like to ask my question.

7 A. I'm sorry. Well, you asked me if that fear

8 has horrible consequences? Yes, this is a disaster.

9 Q. Ms. Lopez, I asked you if that -- if that

10 irrational fear on the part of your husband of losing

11 you and Theo had negative consequences for your family.

12 Did it or did it not?

13 A. We are apart. That is horrible, yes.

14 Q. Okay. Was it affect- -- before

15 December 31st, did it have negative consequences, your

16 husband's behavior towards you?

17 A. No.

18 Q. So your husband's behavior toward you before

19 December 31st was acceptable to you?

20 A. Yes.

21 Q. You had no complaints about his behavior

22 toward you before December 31st?

23 MR. KOPP: Objection, relevance.

24 COMMISSIONER HUR: Sustained.

25 MR. KEITH: Q. Now, were there -- in this research

1 that your husband is doing on January 1st about
2 possible resources to go to, were there any names that
3 he suggested to you?

4 A. No.

5 Q. Okay. Now, your husband took you to a trip --
6 on a trip to Monterey on January 2nd and 3rd?

7 A. Yes.

8 Q. And as of January 2nd, did you understand that
9 you were in an abusive relationship with your husband?

10 MS. CANNY: Excuse me.

11 MR. KOPP: I'm sorry?

12 MS. CANNY: Assumes facts not in evidence.

13 THE WITNESS: Can you repeat that question, please?

14 COMMISSIONER HUR: Ms. Canny --

15 MS. CANNY: I'm sorry.

16 COMMISSIONER HUR: -- I appreciate that you need to
17 be here, but that's not acceptable. Okay?

18 MS. CANNY: Okay. The problem is, Your Honor, that
19 Shep was distracted, and I think --

20 COMMISSIONER HUR: Ms. Canny, I really don't --
21 don't want to hear it.

22 Can we have the question read back, please?

23 (Record read as follows:

24 "Q And as of January 2nd, did you
25 understand that you were in an abusive

1 relationship with your husband?")

2 MR. KOPP: Yeah, that does assume facts not in
3 evidence.

4 MR. KEITH: It's a question about the witness's
5 understanding.

6 COMMISSIONER HUR: Ask a foundational question.
7 That's sustained.

8 MR. KEITH: Q. As of January 2nd, did you feel
9 that you were in an abusive relationship with your
10 husband?

11 A. Of course no.

12 Q. As of January 2nd, did you understand that
13 your husband's behavior was a serious problem for you
14 and Theo?

15 A. No.

16 Q. You and Ivory Madison sent several e-mails
17 back and forth to each other during that trip to
18 Monterey on January 2nd and 3rd; is that correct?

19 A. Yes.

20 Q. I'd like to show you Exhibit 50. And I
21 actually have a copy so that you don't have to flip to
22 it.

23 A. Thank you.

24 Q. Now, Ms. Lopez, Exhibit 50 is a four-page
25 exhibit. The first page is a response to an e-mail that

1 you wrote, and then the next three pages show the full
2 e-mail that Ms. Madison wrote to you.

3 A. Yes.

4 Q. Okay. And so if you'd look at the -- if you'd
5 turn past the first page to the second page, you'll see
6 the beginning of a longer e-mail from Ms. Madison to you
7 that's dated Monday, January 2nd, 2012, at 10:59 a.m.
8 Do you see that?

9 A. Yes.

10 Q. Okay. And you in fact received that e-mail
11 from Ms. Madison while you were in Monterey?

12 A. Yes.

13 Q. And you responded to that e-mail?

14 A. Yes.

15 Q. Okay. And the response to that e-mail is the
16 first page of Exhibit 50. You see that? That's an
17 e-mail that you sent January 2nd, 2012, at 11:18 a.m.

18 A. Yes.

19 Q. Okay. Now, what's the first line of the
20 e-mail that you wrote to Ivory Madison?

21 A. "I am agree with everything."

22 Q. Okay. And by that, you meant you agreed with
23 everything that she wrote to you?

24 A. Do you want I explain what I mean with that?

25 Q. Okay. Well, you wrote, "I am agree with

1 everything." Do you -- did you -- do you mean you
2 agree --

3 A. Yes, in her e-mail, she said --

4 Q. Ms. Lopez, I haven't finished my question.

5 A. Ah.

6 Q. As of January 2nd, when you wrote this, did
7 you agree with everything that she wrote to you?

8 A. She said in her e-mail, "you have to call" --
9 I don't remember in which line it is, but I know that
10 she said that you have to call the police, to just take
11 Theo and run into -- I think she took that running out,
12 outside, from this e-mail.

13 ". . . just take Theo and run into a neighbor's
14 house or down the street or lock yourself in the car, or
15 in the same room with him, even if he's calmed down,
16 whatever is needed) every time there is an incident."

17 There --

18 Q. Ms. Lopez --

19 A. No, no.

20 Q. -- you may have misunderstood my question. I
21 only asked you if when you wrote this on
22 January 2nd --

23 A. No, I -- I said --

24 Q. -- you were saying that you agreed with
25 everything.

1 A. I was agree -- if that happened, I agree I
2 have to call the police. That was that I wrote, "I am
3 agree with everything." Of course, if this happened, I
4 have to call the police.

5 Q. Okay.

6 A. That means, "I am agree with everything."

7 Q. Now -- okay. Now, you -- in this e-mail that
8 you wrote back to Ivory Madison on January 2nd, did
9 you tell her to stop contacting people to look for help
10 for you?

11 A. Oh, no. I thought she was not using my name.
12 She told me everything was confidential.

13 Q. Now, you were aware that -- as of January 2nd,
14 you were aware that the situation with your husband was
15 serious?

16 A. On Jan- --

17 MR. KOPP: Objection, that's vague.

18 COMMISSIONER HUR: Ms. Lopez, do you understand the
19 question?

20 THE WITNESS: Can you repeat the question?

21 COMMISSIONER HUR: Sustained.

22 MR. KEITH: Q. Did you -- in this e-mail that
23 Ivory Madison sent to you, she said that your situation
24 was serious.

25 MR. KOPP: Well, there's no question pending.

1 COMMISSIONER HUR: That's not a question.

2 MR. KEITH: Q. Ms. Lopez, did you understand this
3 e-mail to include Ivory Madison advising you that your
4 situation was serious?

5 A. Yes. She sent me this e-mail on
6 January 2nd, yes. So -- but that was not our
7 conversation on January 1st.

8 Q. I understand.

9 A. Okay.

10 Q. Now, in this e-mail, Ivory Madison advised you
11 to call the police every time that -- that there was
12 improper behavior by your husband toward you.

13 A. If she advised me that?

14 Q. Yes. Did -- how do you interpret this e-mail
15 to -- what advice do you interpret her to be providing
16 to you regarding calling the police in response to your
17 husband's behavior?

18 A. Yes. I think on January 2nd, after she
19 talked with so many people about this case, she changed
20 to now start to telling me -- I think she start a plan
21 to convince me to call the police, and this e-mail is
22 the first step.

23 Q. So in this e-mail, Ivory Madison is advising
24 you to call the police in response to your husband's
25 behavior?

1 A. In this e-mail, January 2nd, after she
2 talked with so many people, yes.

3 Q. Okay.

4 A. That was not our conversation on
5 January 1st.

6 Q. There's no question pending.

7 A. I was finishing my answer.

8 Q. As of January 2nd, do you realize that your
9 husband was controlling and withholding about money?

10 MR. KOPP: Objection, relevance.

11 COMMISSIONER HUR: Counsel, what's the relevance of
12 this?

13 MR. KEITH: It's -- it goes to the power and
14 control issues that are referenced in Ms. Lemon's
15 declaration.

16 COMMISSIONER HUR: I think we sustained most of
17 these objections to these -- these facts from Madison
18 and Mertens.

19 Is there any -- I'm inclined to sustain the
20 objection. Is there any opposing view from the
21 commissioners?

22 Sustained.

23 MR. KEITH: Q. Now, there's another e-mail that
24 you sent to Ivory Madison while you were on your trip on
25 January 3rd. It's Exhibit 51. I have a copy for you.

1 A. It's not this one?

2 Q. It's not that one.

3 A. Okay. I'm sorry. Thank you.

4 Q. Now, Ms. Lopez, is Exhibit 51 an e-mail that
5 you sent to Ms. Madison on January 3rd at 2:45 p.m?

6 A. Yes.

7 Q. Okay. And one of the things that you mention
8 in the e-mail is that "The Aquarium was so nice and Ross
9 fed us regularly without complain."

10 A. Yes.

11 Q. Why did you write to Ms. Madison that Ross fed
12 you regularly without complaint?

13 MR. KOPP: Objection, relevance.

14 COMMISSIONER HUR: I'll allow that question.
15 Overruled.

16 THE WITNESS: Every person has been working with
17 Ross knows that Ross just takes coffee in the morning
18 and work until late and can be working for three hours
19 without to eat, and he never stop for eat.

20 And I -- I'm completely different. I have to
21 have -- I need to have breakfast, a snack, lunch, a
22 snack, and dinner, as Theo. And for him, in the
23 beginning, it was very hard. Like I told him, "If you
24 are just going to take coffee, anyway you have to sit
25 down, not with a computer, and sit down in the chair and

1 have breakfast with us. And if you are at home, even if
2 you don't want to eat, please sit down and have lunch
3 with us as a family."

4 That is family stuff. I know he grew up without
5 that kind of role, but that was not my case, and I want
6 to teach Theo that case. So if we are traveling, I'm
7 not in my kitchen, so I cannot run to the kitchen and
8 pick the things that I want. So he -- I told him,
9 "Okay. We are going to Monterey Bay. You know then how
10 I am, and Theo. So we are going to stop every two
11 hours, and we have to eat."

12 And he did. And actually, he enjoyed it.

13 MR. KEITH: Q. And that made you -- and that made
14 you happy as well?

15 A. Absolutely.

16 Q. And you -- was it un- -- and it was unusual
17 enough for you to mention to Ms. Madison when you wrote
18 to her?

19 A. After -- after the campaign that he was just
20 working like 30 hours per day, I think it was great.

21 Q. And then it says "without" -- "without
22 complain" at the end. I assume you meant "without
23 complaint."

24 A. Because he always want to do something else
25 instead to eat.

1 Q. Okay. So he would sometimes complain --

2 A. When I say ---

3 Q. -- when you insisted on eating?

4 A. Yes. He preferred to keep walking or playing
5 instead to go to eat.

6 Q. Okay. And in fact, you told Ivory Madison
7 that your husband regularly insisted that he control the
8 food that you and Theo ate in your household?

9 MR. KOPP: Objection, relevance.

10 COMMISSIONER HUR: Sustained.

11 MR. KEITH: Q. When you got back to San Francisco
12 on January 3rd, did your husband leave the house? I'm
13 sorry. Let me -- let me rephrase that question.

14 So on January 3rd, you returned from Monterey to
15 San Francisco?

16 A. Yes.

17 Q. Okay. About what time of day did you get
18 back, back to your home?

19 A. Let me see if I make -- if I cook for Theo.
20 Yes, I think for dinnertime, maybe around 6:00, 7:00. I
21 don't know.

22 Q. And did your husband go out that evening?

23 A. Yes. I think he has a meeting.

24 Q. Okay. And about what time did he leave -- did
25 he leave your home?

1 A. Immediately. We just arrived, and I remember
2 he was a little late for his meeting.

3 Q. What time did your husband return that -- that
4 night of the 3rd?

5 A. I do not remember.

6 Q. Now, you went over to Ivory Madison's house on
7 the morning of January 4th?

8 A. If I went to see Ivory on January 4th? Yes.

9 Q. And as of January 4th, did you have some
10 concerns about what -- what would happen if you were to
11 call the police regarding what your husband did on
12 December 31st?

13 A. To call the police was never my idea.

14 Q. I --

15 A. I was not thinking to calling the police.

16 Q. I -- I'd asked you a little different
17 question.

18 A. Okay.

19 Q. The question is did you have concerns about
20 what would happen if you called the police?

21 A. How I already said, to call the police was not
22 my idea. I was not thinking of that, of calling the
23 police, so I couldn't be thinking what could happen if I
24 called the police.

25 Q. Did that issue come up in your conversation

1 with Ms. Madison on January 4th, calling the police?

2 A. Of course. That was the -- it's why she was
3 calling me. Her plan was to convince me to call the
4 police, and she brought all these new plans about the
5 police.

6 MR. KEITH: I'll move to strike as nonresponsive
7 and speculative.

8 THE WITNESS: Repeat your question?

9 COMMISSIONER HUR: Can I have the question back,
10 please?

11 (Record read as follows:

12 "Q Did that issue come up in your
13 conversation with Ms. Madison on January
14 4th, calling the police?")

15 COMMISSIONER HUR: And the answer? I'm sorry. And
16 the answer too?

17 (Record read as follows:

18 "A Of course. That was the -- it's
19 why she was calling me. Her plan was to
20 convince me to call the police, and she
21 brought all these new plans about the
22 police.")

23 COMMISSIONER HUR: Strike everything after "Of
24 course."

25 MR. KEITH: Q. Now, as of January 4th, did you

1 have any knowledge about what happens in the state of
2 California if somebody calls the police about a domestic
3 violence incident?

4 A. No.

5 Q. And did Ms. Madison offer to try to find out
6 for you what would happen if somebody were to call in a
7 domestic violence complaint to the police?

8 A. When she brought the idea to call the police,
9 and it was not my idea, I was asking questions like,
10 "Why? What could happen?"

11 Of course. Yes, I was asking questions. But your
12 question was?

13 Q. Okay. Did Ms. Madison offer --

14 A. She offered? Yes. Yes.

15 Q. She offered to --

16 A. The answer is "yes."

17 Q. Okay. Thank you.

18 A. She -- I want to finish my --

19 Yes, she offered to help me and she offered to
20 looking for all the information as a lawyer.

21 Q. I -- okay.

22 A. I finish.

23 Q. Now, in your declaration, you describe a
24 conversation with Ivory Madison in which she -- she
25 comes up with a plan to have Phil Bronstein call the

1 chief of police and the district attorney to have a
2 meeting at her house.

3 A. Yes.

4 Q. And the thing that you -- one of the things
5 you write in your declaration -- and by the way, if
6 you -- would you like to have a copy of your declaration
7 right now?

8 MR. KOPP: Well, I think this is the portion they
9 objected to and that we agreed to accept the objection,
10 so --

11 COMMISSIONER HUR: Is that true, Mr. Keith?

12 MR. KOPP: Yeah, it's paragraph 12, line --

13 MR. KEITH: Not the next part that I'm going to ask
14 about.

15 MR. KOPP: Lines 10 through 12. They objected and
16 we accepted the objection.

17 MR. KEITH: The --

18 COMMISSIONER HUR: I thought paragraph 12 was
19 stricken completely.

20 MR. KEITH: I'm actually giving her her declaration
21 to ask about paragraph 13, a portion that was not
22 stricken.

23 COMMISSIONER HUR: Okay. I mean, I think you can
24 show her her declaration.

25 Is there an objection to showing her the

1 declaration?

2 MR. KOPP: No.

3 MR. KEITH: No, I just want to make it available to
4 her so that she -- the witness has it.

5 COMMISSIONER HUR: Okay. That's fine.

6 MR. KEITH: Okay.

7 Q. So in paragraph 13 of your declaration, you
8 wrote -- and this is in reference to the January 4th
9 conversation -- "I asked Ivory questions, trying to show
10 her that her plan was maybe good for a comic book, but
11 not for real life."

12 Do you see that?

13 A. Yes.

14 Q. Okay. On January 4th, did you actually
15 reference a comic book when you spoke with Ms. Madison?

16 A. Yes, and also I said a movie. I said "comic
17 book" and I said, "This is not a movie," because she was
18 offering, "You can move here. I have friends that they
19 have -- rich friends. They have empty house and they
20 will love to let you live there."

21 And I remember clearly saying, "Okay. That's good
22 for a comic book or for a movie, but I'm not going to
23 put myself or Theo in that situation."

24 Q. Now, you were at Ms. Madison's home for about
25 an hour on the morning of January 4th?

1 A. Mm-hmm. Yes.

2 Q. And during the time that you were at
3 Ms. Madison's home on the morning of the 4th, did your
4 phone ring, your cell phone?

5 A. Yes.

6 Q. Okay. And was there -- was it a call from
7 your husband?

8 A. Yes.

9 Q. And did you answer that call?

10 A. No.

11 Q. Did he leave a voicemail message?

12 A. I don't remember.

13 Q. Okay. Now --

14 A. Maybe he did. He always -- he always -- he
15 always leave messages.

16 Q. Okay. Do you remember whether he left a
17 message for you that morning?

18 A. "Where are you? Hi, dear. Where are you?"
19 Something like that.

20 Q. Okay. Ms. Lopez, I want to -- I want to step
21 back and make sure that -- well, I don't want to know
22 what your husband usually -- whether he usually leaves a
23 certain type of message.

24 A. But I'm sure that message was, "Hi,
25 sweetheart. Where are you?"

1 Q. Do you actually recall for a fact that the
2 message that your husband left for you on the morning of
3 January 4th was, "Hi, sweetheart. Where are you?"

4 A. Yes, because this is how we call each other,
5 and always say, "Hi, dear."

6 Q. Okay. So you're positive that was the content
7 of the voicemail --

8 A. Yes.

9 Q. -- message he left you?

10 Now, you were here for the testimony -- or let me
11 step back for a moment.

12 You watched the testimony that Linnette Peralta
13 Haynes gave last night from a different room; is that
14 correct?

15 A. Part of this. Part of that.

16 Q. Okay. About what time did you start watching
17 Ms. Peralta Haynes's testimony last night?

18 A. We came to that room. We were trying to
19 looking for online, trying to connect. Maybe that took
20 20 minutes. Then we were like talking, deciding, so
21 maybe that took another ten minutes. And then I went
22 down maybe 5:30.

23 Q. So you started to --

24 A. She had started to testify at 5:00. Right?

25 Q. I just want to know your recollection,

1 Ms. Lopez, of when you started --

2 A. Well, I -- everything started -- I -- was
3 there --

4 Q. Ms. Lopez, you need to let me finish my
5 question.

6 I just want to know your recollection of what time
7 you started watching Ms. Peralta Haynes's testimony.

8 A. I don't know. I don't have a watch.

9 Q. How long did you watch Ms. Peralta Haynes's
10 testimony?

11 A. Until the break, when she was breast-feeding.

12 Q. Okay. Did you watch her testimony after the
13 break?

14 A. I come back downstairs at some point, and
15 maybe I saw the final part, and just before the
16 commissioners -- I couldn't hear the commissioners'
17 asking the questions.

18 Q. Did anybody describe to you the content of
19 Ms. Peralta Haynes's testimony?

20 THE INTERPRETER: Describe the content?

21 MR. KEITH: Yes.

22 THE WITNESS: I read her declaration online.

23 MR. KEITH: Q. I mean her testimony before the
24 commission last night. Did anybody tell you about it?
25 Did anybody tell you what she said?

1 A. No, I was trying to looking for that, but in
2 my iPad, I cannot see it.

3 Q. Okay. Now, there's an exhibit that's already
4 in the -- in the record, and I'm not going to ask you to
5 look at it. It shows three text messages that you sent
6 to Linnette Peralta Haynes at 10:55 and 10:56 a.m. on
7 the morning of January 4th.

8 A. Mm-hmm. Yes.

9 Q. Do you still have those text messages on your
10 phone?

11 A. No.

12 Q. When did you -- do you still have the phone
13 that you had at that time?

14 A. No.

15 Q. Okay. Did you get a new phone?

16 A. Yes.

17 Q. Oh, about when did you do that?

18 A. I think it's each year you can -- with AT&T,
19 you can upgrade your cell phone. And I think that
20 happened exactly in January. And I upgrade my cell
21 phone because if you don't do that, you have to wait
22 another year.

23 Q. So you got a new phone in January?

24 A. Yes.

25 Q. Okay.

1 A. Well, I'm not sure it was January or February.

2 Q. Did you hear how Linnette Peralta Haynes -- or

3 did you hear Linnette Peralta Haynes's testimony last

4 night about what those text messages said?

5 A. The first three ones?

6 Q. Yes.

7 A. Are you talking about the first three ones?

8 Yes.

9 Q. Okay. What were those text messages about

10 that you sent to Linnette Peralta Haynes?

11 A. I do not remember exactly, but after Ivory

12 told me all this about, "You can accuse him of domestic

13 violence. That's what Phil Bronstein did with Sharon

14 Stone so he got the custody."

15 And she brought all this about the police and she

16 also brought these persons -- she want to bring all

17 these persons at her home. And I was asking all the

18 questions, and she was repeating, "You have to accuse

19 him of domestic violence."

20 Q. Ms. Lopez, I'm asking you --

21 A. No, no, no.

22 MR. KEITH: Commissioners --

23 THE WITNESS: It's -- it's why I called her.

24 MR. KEITH: -- I know that it's traditional to wait

25 until the witness finishes answering to move to strike,

1 but I --

2 COMMISSIONER HUR: Okay. Let's --

3 MR. KEITH: -- I don't want to take all night to do
4 this.

5 COMMISSIONER HUR: Okay. Let's hold on one second.
6 Can I have the question back, please?

7 (Record read as follows:

8 "Q Okay. What were those text
9 messages about that you sent to Linnette
10 Peralta Haynes?")

11 COMMISSIONER HUR: Overruled, Counsel. You asked
12 for this.

13 Please finish.

14 MR. KEITH: Q. All right. Continue, Ms. Lopez.

15 A. So she brought all this new whole world about
16 domestic violence that I do not have idea about, and she
17 brought all this new world about to call the police, and
18 she brought all this new world about accusing Ross of
19 domestic violence so that is the right way so to get
20 custody. She was giving me legal advice how to get the
21 custody of Theo.

22 So the only person I know is domestic violence
23 advocate is Linnette, so I told Ivory I -- actually, I
24 was trying to leave Ivory home for maybe half an hour,
25 but she was, "We have to do it. We have to do it. We

1 have to do it."

2 So I -- the only way I could escape from her house
3 was saying, "Okay. I have to call my dad, really. I
4 have an appointment. I have to call him."

5 And when I came back home, I called Linnette, and I
6 said, "What do you think about this?"

7 First -- I called her at first, I think. She
8 didn't answer, so I text her. "This is the situation.
9 This happened. I have a person telling me this. I want
10 your opinion about this."

11 Q. Had you ever spoken to Linnette Peralta Haynes
12 before this date about the details of your marriage with
13 your husband?

14 A. No, never.

15 Q. And then you had a call with Linnette Peralta
16 Haynes a little later that morning, around 11:18. Do
17 you recall that?

18 A. Yes.

19 Q. And what did you talk about in that call with
20 Ms. Peralta Haynes?

21 A. I told her I was talking with my lawyer and
22 her plan was accuse Ross of domestic violence, and I
23 want to hear from her if she considered this domestic
24 violence. And my principal concern was about if we end
25 in a divorce, I will gain custody.

1 It's not that I will gain custody. It's that I
2 just don't want to lose Theo. I don't want someone
3 kicking me out of the country and taking my son as
4 thousands of Latin Americans have gone through in these
5 years. So that was my principal concern, and I called
6 and I talked with her about that.

7 Also, I remember she said, "We have a case now of
8 an immigrant that she doesn't have any papers and they
9 are in a dispute."

10 And she brought all this information. I was asking
11 for information.

12 Q. From Linnette Peralta Haynes?

13 A. Yes.

14 Q. And did you tell Linnette Peralta Haynes
15 about -- or did you discuss calling the police with her?

16 A. Oh, thank you.

17 No. I told her that my lawyer wanted to do that
18 and she wants to accuse Ross of domestic violence, and I
19 wanted to hear her opinion about that.

20 Q. And what was Ms. Peralta Haynes's --

21 A. And if she considered that domestic violence.

22 Q. What was Ms. Peralta Haynes's opinion of that
23 advice that you should call the police?

24 A. I think she said everything was confidential.

25 Q. Linnette Peralta Haynes told you that

1 everything that you said to your lawyer was
2 confidential?

3 A. That we were talking, yes.

4 Q. Okay.

5 A. She told me, "I am an advocate of domestic
6 violence, and everything we are going to talk is
7 confidential."

8 And then I said, "Well, I just want your opinion
9 about the situation."

10 Q. What else did Linnette Peralta Haynes talk
11 about with regard to calling the police in that
12 telephone call?

13 A. I think I was very clear with Linnette that
14 I -- well, you know, actually, if I recall, I -- we
15 didn't talk about the police. I mentioned that my
16 lawyer was thinking about that. And I didn't expect she
17 act by herself.

18 Q. I'm sorry. I didn't?

19 A. I didn't expect that my lawyer were -- could
20 act by herself and call the police by herself. I --
21 yes, I thought that was my decision if I really want to
22 make this a big deal. That was not my intention, I
23 think.

24 Q. Was that something you told Ms. Haynes in the
25 phonecall that you had with her?

1 A. No, no, I am explaining you --

2 Q. Okay.

3 A. -- that I was not talking about call the
4 police because I was asking her if -- if this is
5 domestic violence and what she thinks about all this.

6 Q. Okay. So Ms. Lopez, I -- I really want to get
7 at what you said to Ms. Peralta Haynes and what she said
8 to you, not the many things that may have happened in
9 the background that led to one person saying something.

10 A. Uh-huh.

11 Q. Okay? So --

12 A. Do you want to repeat the 40 minutes? How
13 much time we have?

14 Q. No, I'm going to --

15 Are you ready for my question?

16 A. Yes.

17 COMMISSIONER HUR: Hold on one second.

18 Ms. Canny, I mean, I'm noticing you because you're
19 in the front row. I really -- we're really trying to
20 get through this testimony. We're trying to pay
21 attention. I really do not want to hear you or,
22 frankly, anybody have disruptions -- okay? -- when these
23 questions are being asked. So please, help us here.

24 MR. KEITH: Q. So Ms. Lopez, did you tell
25 Ms. Peralta Haynes that your lawyer was thinking about

1 calling the police to report the December 31st
2 incident with your husband?

3 A. No, I didn't say that.

4 Q. Okay. So you never asked her any advice with
5 regard to that -- to that possibility of --

6 A. No.

7 Q. -- your lawyer calling the police?

8 A. What I told her that is, "My lawyer is
9 suggesting. Her plan is" -- her plan is like her advice
10 is -- I thought that was her advice, not her --
11 actually, her plan -- was accuse Ross of domestic
12 violence.

13 Q. Okay. So you told Ms. Peralta Haynes that
14 your lawyer was advising you to accuse your husband of
15 domestic violence?

16 A. Mm-hmm.

17 Q. "Yes"?

18 A. Yes.

19 Q. Okay. What was Ms. Peralta Haynes's response
20 to that?

21 A. I think she was asking me questions about if I
22 was afraid of Ross, how is the incident, and I told her
23 frank- -- actually, it's that what I was looking for is
24 for therapy, and I asked her for a therapist, for
25 counseling, because actually, I think that is the first

1 step, that when you go through a problem, you look for
2 professionals that can help you.

3 Q. Did Ms. Peralta Haynes say anything to you
4 about what she thought of your lawyer's advice to call
5 the police in that telephone call?

6 A. Actually, I remember that our conversation was
7 more about what kind of counseling and if I was feeling
8 safe and which ones could be my next step about looking
9 for counseling, for therapy.

10 And actually, I think I was -- we were talking
11 about she was looking for a referral for family
12 counseling.

13 COMMISSIONER HUR: Ms. Lopez, I'm going to
14 interrupt you here. I think this process is going to be
15 faster for you and I think it's going to be more
16 efficient for us if you listen very carefully to the
17 question and answer --

18 THE WITNESS: Okay. I will listen, then.

19 COMMISSIONER HUR: -- only the question.

20 THE WITNESS: Okay.

21 COMMISSIONER HUR: Yeah. And I understand there
22 are things you may want to say, and like I said, the
23 sheriff's counsel will have an opportunity to examine
24 you.

25 THE WITNESS: Okay.

1 COMMISSIONER HUR: But Mr. Keith is entitled to
2 answers to his questions and answers only to those
3 questions. So if you could help us in that regard --

4 THE WITNESS: Okay.

5 COMMISSIONER HUR: -- we'd appreciate it. Thank
6 you.

7 THE WITNESS: I will be shorter.

8 MR. KEITH: If I could have the court reporter read
9 back the question?

10 Thank you.

11 (Record read as follows:

12 "Q Did Ms. Peralta Haynes say
13 anything to you about what she thought of
14 your lawyer's advice to call the police in
15 that telephone call?")

16 THE WITNESS: No.

17 MR. KEITH: Q. Now, Ms. Lopez, I'm going to ask
18 you to look at another exhibit. It's an exhibit that's
19 already been marked. I'll bring you a copy. It's
20 Exhibit 80. Or it's -- actually, it's a text message
21 from a very long exhibit that's entitled Exhibit 80, and
22 it's just a single message for you to look at.

23 A. Okay.

24 MR. KEITH: And for the benefit of the commission
25 and counsel, this is Exhibit 80, and it is a text

1 message of January 4th, 2012, at 12:03 p.m. It's also
2 reflected on Exhibit 83 if the commission wants to go to
3 that, but I've got the copy of the actual text message
4 from Exhibit 80. So again, it's a text message from
5 Sheriff Mirkarimi to Ms. Lopez, January 4th, 2012, at
6 12:03 p.m.

7 Q. So Ms. Lopez, do you see the text message on
8 the bottom there that's below the date January 4th,
9 2012, 12:03 p.m.?

10 A. Yes, "Left you" --

11 Q. That text message from your husband to you
12 reads, "Left you a vm but didn't hear back. What
13 happened?"

14 A. A voice message. Voice message.

15 Q. Okay. So you understand the "vm" here to mean
16 "voicemail" or "voice message"?

17 A. Yes, voice message.

18 Q. Okay. Earlier, you testified that the -- you
19 testified about the content of the message that your
20 husband left you. Does seeing this change your
21 testimony at all?

22 A. No, it's completely consistent.

23 Q. Okay.

24 A. I say he left -- he left a voice message and
25 he say he left.

1 Q. Oh, I'm sorry, Ms. Lopez. Earlier, you
2 testified about the content of the voicemail message
3 that your husband left you, along the lines of, "Hello
4 sweetie. Where are you? How are you?"
5 A. Yes.
6 Q. Okay. After seeing this portion of Exhibit 80
7 that I just put in front of you --
8 A. But I --
9 Q. -- is that still your recollection of -- of
10 what the voicemail message was that your husband sent
11 you?
12 A. Of course.
13 Q. Okay.
14 A. He left a voicemail message to me, and I
15 didn't respond.
16 Q. So Ms. Lopez, I'm now going to show you
17 another exhibit that's in evidence. It's Exhibit 57.
18 It's another text message.
19 And for the benefit of the commission --
20 A. Yeah.
21 Q. -- this is a text message, January -- it's
22 also shown on Exhibit 83 -- a text message of January
23 4th, 2012, at 12:24 p.m. from Ms. Lopez to Ms. Madison.
24 And I can bring you a copy, Ms. Lopez.
25 A. Thank you.

1 Q. So Ms. Lopez, this text message, is this a
2 text message that you sent to Ms. Madison?

3 A. Yes.

4 Q. It reads, "Hello Ivory. I'm not going to call
5 the police. I'm going to open a record with my doctor."
6 Why did you send that text message at 12:24 p.m.?

7 A. I was -- after I left Ivory, I talked with
8 Linnette. I talked with my dad, I think. And then I
9 was doing other things at home and I totally forgot to
10 go back to Ivory.

11 So she -- she text me at 11:45 that she finished
12 her calls, and -- "Turns out my call is at 12:30" --
13 that she had an appointment by phone at 12:30, something
14 like that, by phone. And then I remember I didn't get
15 back to Ivory. So I said I want just to let her know
16 that I'm not going to call the police.

17 Q. And that was after you spoke with your father
18 and with Ms. Peralta Haynes?

19 A. Yes.

20 Q. Okay. Did you speak with Ms. Peralta Haynes
21 before your father that day?

22 A. I do not remember.

23 Q. Did you definitely speak with your father that
24 morning?

25 A. I -- actually, I think I did.

1 Q. Okay. Now, in your declaration, at paragraph
2 13, you write that you responded to Ivory, and I'm
3 quoting, "very briefly, and not as nicely as usual,
4 because I realized that Ivory was calling Ross's enemies
5 against my wishes."

6 What -- what brought you to the realization that as
7 of 12:24 on the 4th Ms. Madison was calling your
8 husband's enemies against your wishes?

9 A. In our conversation on January 4th, when she
10 was trying to convince me to call the police and she
11 said, "We can -- we can bring -- we can bring the
12 district attorney here, Phil Bronstein, the chief
13 police."

14 She also mentioned Kamala Harris and she also
15 mentioned Gavin Newsom, so -- as her friends and someone
16 who is going to help to do everything against Ross.
17 So -- and also, she was repeating in our conversation on
18 January 4th, and it's why I was -- the only way I
19 could get out of her house was saying that I have to
20 call my dad is because she was telling me, "Screw him."

21 At that moment, actually, I didn't know what that
22 means. But looks to me so suspicious that she, knowing
23 how hard we were working, even me, campaigning with
24 Ross, without any money, she was calling Ross's
25 political enemies.

1 And everybody knows, even me, that I was not really
2 involved. I was helping just giving papers and telling
3 the people, "Vote for the sheriff," but even me, I know
4 that Gavin Newsom, Kamala Harris, they were supporting
5 the other candidate and they were putting a lot of money
6 against Ross. So what I'm going to think? I --
7 immediately, I realized I cannot trust her.

8 And also was something that was very -- a shock to
9 me, when I was leaving, I was in pajamas because I
10 was -- on January 4th, I was preparing Theo for the
11 school and Ross took Theo to his school, and I was in
12 pajamas. When she called me, I went to her house in
13 pajamas. I love to be in pajamas, by the way.

14 And she told me, "Don't" -- and she told me that in
15 front of Abe Mertens. "Don't take a shower. Don't make
16 up. Don't do anything. Look that" -- and that was
17 another new word for me that day. "Disvelished"?

18 THE INTERPRETER: "Disheveled"?

19 THE WITNESS: -- "disheveled as you can."

20 So -- okay. "Go to talk with your daddy" -- that
21 was the only way I could left her house --

22 COMMISSIONER HUR: Ms. Lopez --

23 THE WITNESS: -- "but don't do anything."

24 COMMISSIONER HUR: Ms. Lopez, I'm going to actually
25 stop you. This is not --

1 THE WITNESS: Sorry.

2 COMMISSIONER HUR: -- an answer to Mr. Keith's
3 question.

4 Mr. Keith, please proceed.

5 MR. KEITH: Q. Ms. Lopez, earlier, you mentioned
6 that Ms. Madison was advising you to call the police.

7 A. That was what I told Linnette.

8 Q. Okay. But then in your declaration, you say
9 you realized that she was actually calling your
10 husband's political enemies against your wishes.

11 A. Yes.

12 Q. What -- what new information did you get --

13 A. But I didn't --

14 Q. Please listen to my question.

15 What new information did you get around that time
16 that Ms. Madison was out there calling your husband's
17 political enemies?

18 MR. KOPP: That's asked and answered.

19 COMMISSIONER HUR: Mr. Keith, I mean, the last time
20 you asked that question, you got a very -- I think you
21 got a pretty detailed answer. What are you --

22 MR. KEITH: I don't think I got an answer to the
23 question I -- that I asked. That's why I'm asking the
24 question in this way.

25 MR. KOPP: I'll withdraw the objection.

1 COMMISSIONER HUR: Okay.

2 Ms. Lopez, please proceed with your answer.

3 THE WITNESS: Would you repeat the question,
4 please?

5 I feel the same. Don't worry.

6 MR. KEITH: If the court reporter could read back
7 the question.

8 (Record read as follows:

9 "Q What new information did you get
10 around that time that Ms. Madison was out
11 there calling your husband's political
12 enemies?")

13 THE WITNESS: I think you are trying to make --
14 when I talked with Linnette, I was having a conversation
15 with Linnette about her opinion. When I was talking
16 with Ivory, I was talking with her and realizing the
17 things that she was doing, but I didn't share that with
18 Linnette.

19 Also, I didn't -- and also I talked with my dad,
20 and my conversation with my dad was not about that. It
21 was about other things, father-daughter relationship.
22 With Linnette, domestic violence advocate information.
23 Ivory, she wants to call the police and call the
24 political enemies.

25 So it was absolutely three different conversations,

1 and I didn't told Linnette all the information about
2 Phil Bronstein or Kamala Harris, Gavin Newsom, all this.
3 I didn't share that with Linnette.

4 MR. KEITH: Q. Okay. Now, do you think that Ivory
5 Madison was trying to get your husband politically?

6 A. Well, a person who said, "Screw him. I have a
7 lot of friends ready to help. You just need to make a
8 decision," what that means?

9 Q. Do you think it was Ivory Madison's goal to
10 ruin your husband politically?

11 MR. KOPP: I have to object, relevance.

12 MR. KEITH: Ms. Lopez has made it relevant through
13 her declaration.

14 COMMISSIONER HUR: Overruled.

15 THE WITNESS: I do not think that, because on
16 January 1st, that was not her plan.

17 MR. KEITH: Q. But on January 4th, it was her
18 plan, you thought?

19 A. She was telling me, "Screw him." That is not
20 "Let's work on your marriage" or something positive.

21 Q. Was Ivory Madison donating the maximum amount
22 allowed by law to your husband's campaign part of her
23 conspiracy to get him?

24 MR. KOPP: Objection, that's argumentative.

25 COMMISSIONER HUR: Sustained.

1 MR. KEITH: Q. Ivory Madison hosted a fundraiser
2 for your husband's campaign?

3 MR. KOPP: Objection. That's not a question.

4 COMMISSIONER HUR: Mr. Keith, please phrase it as a
5 question.

6 MR. KEITH: Q. Did Ivory Madison and Abe Mertens
7 host a fundraiser for your husband's campaign?

8 A. We put her name in the card, but she didn't do
9 anything.

10 Q. She donated money to the campaign?

11 A. She told me that, yes, but I don't have any
12 proof about that.

13 Q. Okay. Now, you spoke to Callie Williams a
14 little later on January 4th.

15 A. Yes.

16 Q. Did you tell any lies to Callie Williams when
17 you spoke to her on January 4th?

18 A. I don't think so.

19 Q. Okay. Your husband came out while you were
20 talking with Callie Williams?

21 A. Yes.

22 Q. Okay. You were on the back porch?

23 A. Yes.

24 Q. Okay. You told Callie Williams that you
25 thought your husband was scared that you were talking

1 about what happened on December 31st?

2 A. I do not recall saying that. I think --

3 Q. So you didn't say that?

4 A. Yes, maybe I said something like that.

5 Q. Okay. And did Callie Williams tell you that
6 you were brave not to keep quiet about what happened
7 with your husband on December 31st?

8 A. I think that is in her declaration. That
9 was -- that were not her words that day.

10 Q. Okay. So you -- so she didn't -- it's your
11 testimony that she did not say that to you?

12 A. I do not recall she's saying that.

13 Q. Okay. Do you recall that she definitely did
14 not say it?

15 A. I do not recall she's saying that.

16 Q. Okay. Do you remember one way or the other?

17 A. Saying again? Say again the words?

18 Q. I'm trying to find out if you just don't
19 remember whether she said it or if your testimony is
20 that she definitely did not say that.

21 A. I do not remember she said what you said that
22 I don't remember what you said already.

23 Q. Okay. That you were brave not to keep quiet
24 about this incident?

25 A. I do not remember she's saying that.

1 Q. Okay. Is Callie Williams part of a conspiracy
2 against your husband?

3 MR. KOPP: Objection, argumentative.

4 MR. KEITH: Q. Do you think Callie Williams is out
5 to get your husband?

6 MR. KOPP: Objection, calls for speculation.

7 COMMISSIONER HUR: Sustained.

8 MR. KEITH: Q. Do you have any information about
9 Callie Williams that would suggest that she has a
10 vendetta against your husband?

11 A. If something suggest to me about Callie
12 Williams?

13 Q. Do you have any -- do you know any facts about
14 Callie Williams --

15 A. Well, yes --

16 Q. -- that would indicate to you --

17 A. -- actually, I have some --

18 Q. Ma'am, let me finish my question.

19 Do you have any facts --

20 COMMISSIONER HUR: Mr. Keith, let's --

21 MR. KEITH: Okay.

22 Q. Do you have any facts about Callie Williams
23 that would indicate that she has a vendetta against your
24 husband?

25 A. I know she was not happy with Ross. I know

1 she told me that she -- he was not helping her or
2 something like that. I think she -- she's always doing
3 remodelations. I don't know if she has permit for that
4 or not. But she's always doing that.

5 And something happened between Ross and her that
6 she looks like she put money and Ross was not agree with
7 that money and he didn't want to pay, something like
8 that. And she brought that that day in the back yard
9 porch. And she said, "I'm not happy with Ross."

10 Q. She said that during that conversation --

11 A. Yes.

12 Q. -- in which you discussed with her --

13 A. Yes, and she brought that about the money.

14 Q. Okay.

15 A. Finish, please.

16 Q. Okay. You did discuss with Callie Williams
17 what your husband did on December 31st?

18 A. Yes.

19 Q. Now, in your declaration, you testified that
20 you went to speak with Callie Williams because
21 Ms. Madison had advised you to talk to Callie Williams.

22 A. Yes.

23 Q. Okay. And you spoke with Callie Williams
24 around 1:00 in the afternoon?

25 A. Yes.

1 Q. That was after you sent the text message to
2 Ivory Madison?

3 A. I do not recall, but I think yes.

4 Q. Okay. So Ms. Lopez, if you thought that Ivory
5 Madison was calling your husband's political enemies,
6 why did you follow her advice and talk to Callie
7 Williams?

8 A. Oh, because at this point, I didn't know she
9 was -- no, I did -- at this -- at that point, I knew she
10 was -- she was using -- I do not remember if at that
11 point I knew she was using our names. When I found
12 out -- maybe I knew at that point that she was using our
13 names on January 4th.

14 But I understood she will never call the police
15 without my consent, so I -- I was -- I was trying to be
16 clear on January 4th, I do not want to call the
17 police. I want to call a therapist. This is that my
18 e-mails are about, therapy.

19 Q. So when you decided to go out and talk to
20 Callie Williams, at that point in time, did you think
21 that Ivory Madison was out there calling your political
22 enemies without your -- your husband's political enemies
23 without your consent or did you think that Ivory Madison
24 wasn't going to call anybody without your consent?

25 A. You are right. I acted very stupid. I think

1 we were -- for me, saying, "We are not going to call the
2 police," I'm not going to call the police, so that plan
3 doesn't work, so let's go back to the first plan, who
4 was in case Ross doesn't want to do therapy with me and
5 finally we end in a divorce, she will help me with the
6 custody.

7 So for that thing, she told me, "Do you think
8 Callie Williams heard something about the fight?"

9 And I say, "I know she was there."

10 In her declaration, she said she was not there on
11 December 31st. But in her e-mail to me, and also that
12 day, she told me, "I didn't hear anything."

13 And I say, "Sure you didn't hear when I say 'Stop'?
14 Because I think I was very loud."

15 "No, I didn't hear anything."

16 Okay.

17 Q. So when you went out to talk to Callie
18 Williams, did you think that at that time Ivory Madison
19 was calling your husband's political enemies?

20 A. Well, she did in the morning, and I was --

21 You know what? For that moment, I completely
22 forget the -- the video. I was really very naive and
23 believing Ivory and believing that she will never do --
24 do -- do -- do anything against my wishes, and I want
25 just to go back to the first plan.

1 Q. So when you went out to talk with Callie
2 Williams, you didn't think that Ivory Madison was
3 calling your husband's political enemies?

4 A. No, I already knew that. But I -- I didn't
5 think -- if I don't decide to call the police, she will
6 never do anything. Nobody can do anything.

7 Q. Okay. Now, was there any other -- well, let
8 me step back for a minute.

9 Why were you surprised that Callie Williams
10 wouldn't be able to hear what happened on
11 December 31st?

12 A. You have to go to our home. I can hear her
13 dog snoring. I can hear she watching the TV. Everybody
14 goes -- and we live in a Victorian house that it doesn't
15 have any isolation, so all the people has been in my
16 house, we hear -- they say, "You have an elephant up
17 there?"

18 And it's she walking. And I never called the
19 police or complained to her, because it's not her fault.
20 So I can hear her dog snoring. I can hear everything
21 she does. So of course, I thought she heard me saying
22 "Stop!" Because for me, I think I was very loud.

23 Q. So you thought that she heard you say just a
24 single, shouted word, "Stop"?

25 A. Yes.

1 Q. Okay.

2 COMMISSIONER HUR: Mr. Keith, we're about at your
3 time estimate. Or I guess it wasn't really your time
4 estimate; it was my -- my imposed time estimate.

5 How are you doing, though, on --

6 MR. KEITH: I think -- I think I'm moving along. I
7 think that -- I mean, I -- it's hard to tell how much
8 longer it's going to take. I'm well -- I'm far more
9 than halfway done, I can say that much. But I don't
10 know whether I'm two-thirds done or three-quarters done.
11 I'm giving the best estimate I can.

12 COMMISSIONER HUR: Okay. Well, you did say two and
13 a half at the -- yesterday. I think we're going to hold
14 you to that.

15 You know, I understand you should get a little bit
16 of leeway because I know that you and the witness have
17 not been communicating that well on certain issues and
18 you've gotten some answers that you didn't ask for, but
19 I mean, I don't think you should expect to go another
20 hour.

21 MR. KEITH: Oh, I don't think it'll take another
22 hour.

23 COMMISSIONER HUR: Yeah. Well, I'm saying I think
24 you should plan to wrap up in 30.

25 MR. KEITH: I think it's going to take longer than

1 that. I'll go as fast as I can --

2 COMMISSIONER HUR: You'll go -- I mean, we have a
3 lot of discretion as to how much testimony --

4 MR. KEITH: Okay.

5 COMMISSIONER HUR: -- and we've heard a lot. I
6 mean, if you've got -- don't save your very best for
7 last if you don't think you can make it. You may not
8 get there.

9 MR. KEITH: Okay.

10 Q. Now, Ms. Madison -- I'm sorry.

11 Ms. Lopez, what time on December -- on
12 January 4th did you find out that there was a police
13 investigation of what your husband did to you on
14 December 31st?

15 A. On January 4th? Around 3:30.

16 Q. Okay. And was that -- and was that when Ivory
17 Madison told you?

18 A. Yes.

19 Q. Okay. Did you have any inkling before
20 3:30 that there was an open police investigation?

21 A. As a good friend and as a good lawyer, she
22 wait three hours to let me know that she opened an
23 investigation. I think she was really taking care of
24 me.

25 MR. KEITH: I'll move to strike that response.

1 COMMISSIONER HUR: Sustained.

2 Ms. Lopez, you need to answer these questions.

3 THE WITNESS: Okay.

4 No.

5 MR. KEITH: Q. Okay. And were you on the phone
6 with Linnette Peralta Haynes when you found out from
7 Ms. Madison that there was a police investigation?

8 A. No.

9 Q. Okay. How long after you found out that there
10 was a police investigation did you get a call from
11 Ms. Peralta Haynes?

12 A. I cannot tell you how long.

13 Q. Okay.

14 A. We -- I don't know. Maybe 10, 15 minutes.

15 Q. Okay. And where were you when Ms. Peralta
16 Haynes called?

17 A. In the stairs of Ivory Madison's house.

18 Q. Okay. Interior stairs?

19 A. Interior, yes.

20 Q. Okay. And how long did you speak with
21 Ms. Peralta Haynes before handing the phone to
22 Ms. Madison?

23 A. I do not remember, but I just was so
24 panicking. And I said to her, "My neighbor called the
25 police."

1 And I was -- when I hand the phone to Ivory, I was
2 trying to -- someone is speaking English maybe could
3 explain better that I do not want the police involved.

4 Q. So you don't know how long --

5 A. So I just say, "Help me, help me. Talk with
6 this. She -- she called the police."

7 Q. So you don't know how long you were talking
8 with Ms. Peralta Haynes before you handed the phone to
9 Ms. Madison?

10 A. How long was talking who with who?

11 Q. With Ms. Peralta Haynes before you handed the
12 phone to Ms. Madison.

13 A. How long I was talking with Ms. Peralta
14 Haynes? How long takes to say -- 30 seconds, one
15 minute.

16 Q. Okay. And what did you hear Ivory Madison say
17 to Ms. Peralta Haynes?

18 A. I really was trying to pay attention, but I
19 couldn't understand anything Ivory said, I was so
20 shaking.

21 Q. Okay. After Ivory Madison handed the phone
22 back to you, what did you do?

23 A. I do not remember exactly why I -- what I told
24 Linnette. I think I told her, "Call Ross. Let her
25 know -- let him know what is happening." And "Goodbye."

1 Q. Okay. And did you tell Ivory Madison that you
2 were concerned for your husband's career at that time?

3 A. She was still repeating, "Screw him" and "Why
4 you are trying to protect him?"

5 So I said, "I do not want to screw him. He's a
6 great politician."

7 Q. Did you ask --

8 A. "How I'm going to destroy him?"

9 Q. Did you ask Ivory Madison to tell the police
10 that she made a mistake?

11 A. I told her -- I do not recall exactly what I
12 said because I was almost crying.

13 Q. Okay. Did you -- did you tell her not to
14 cooperate with the police?

15 A. I remember saying, "You don't have my
16 permission to do this. I trust you. I trust you."

17 Q. Okay. Now, I want to look -- I want to go
18 over some -- some e-mails that you sent -- and text
19 messages that you sent that afternoon.

20 I want to give you Exhibit 58. So this is an
21 e-mail message that you sent to Ms. Madison at 4:14 on
22 January 4th?

23 A. Yes.

24 Q. Okay. Now, phone records that are already in
25 evidence, our Exhibit 83, show that before you sent this

1 message to Ms. Madison at 4:14, you had a call with
2 Linnette Peralta Haynes that began at 3:56 p.m. and
3 lasted 15 minutes, 36 seconds.

4 In that phonecall with Ms. Peralta Haynes, did you
5 discuss sending an e-mail to Ivory Madison?

6 A. When I left Ivory Madison's house, I was so
7 shaken that I couldn't find my car. So I was walking on
8 Hayes Street through City Hall, and I was just calling
9 Ross, calling Linnette, calling Ross, calling Linnette,
10 and then I called and she answered. And when I was
11 talking with her, and say, "Oh, my gosh. She had a
12 video. Goodbye. Goodbye. I have to call you back."

13 And then I wrote an e-mail like "you don't mess
14 this" -- this e-mail, "I really hope you respect my
15 feelings."

16 Q. So you don't remember having a phonecall with
17 Linnette Peralta Haynes that lasted 15 minutes, 36
18 seconds, before sending this e-mail to Ms. Madison?

19 A. Yes, that -- that phonecall, the 15 minutes
20 when I was talking with her, I just realized that the
21 video was in -- she had a video. So I closed the
22 conversation and I wrote this.

23 Q. Okay. So in the phonecall with Ms. Peralta
24 Haynes, did you discuss sending this e-mail to
25 Ms. Madison?

1 A. No.

2 Q. Okay. And I'd like you to look at another
3 exhibit, Exhibit 59. And the phone records show that
4 you had another call with Linnette Peralta Haynes at
5 4:14 p.m. that lasted one minute, 20 seconds, and then
6 this e-mail that's Exhibit 59 was sent at 4:16 p.m.,
7 right after that call.

8 A. Mm-hmm. Yes.

9 Q. Did you discuss sending this e-mail with
10 Linnette Peralta Haynes?

11 A. No. No, actually, I wrote this e-mail around
12 11:00, but I didn't send it because I think she will
13 respect me. So --

14 Q. Okay.

15 A. That was already wrote in my --

16 Q. Okay.

17 A. -- in my phone.

18 Q. Now, when you wrote Ms. Madison, "I have been
19 calling social workers, therapists and lawyers," had you
20 in fact been calling -- calling other lawyers the
21 morning of January 4th?

22 A. No.

23 Q. Okay. And did you write this e-mail before or
24 after you spoke with Linnette Peralta Haynes that
25 morning?

1 A. I wrote this e-mail around 11:00 p.m.

2 Q. Okay.

3 A. 11:00 a.m.

4 Q. Okay.

5 A. And that was the nice way to tell Ivory, "I
6 don't need your help anymore."

7 Q. Did you write this e-mail before or after you
8 spoke with Linnette Peralta Haynes in the morning for 40
9 minutes?

10 A. I do not remember.

11 Q. Okay. Now, when you spoke with Linnette
12 Peralta Haynes, did you discuss your husband's
13 childhood?

14 A. I mentioned that.

15 Q. Okay. Now, in either of the calls that
16 were -- that you had with Linnette Peralta Haynes in the
17 4:00 o'clock to 4:15 time frame, did you share your
18 feelings with Ms. Haynes about the fact that there was
19 now a police investigation of what your husband had done
20 to you on the 31st?

21 A. Whether I spoke with Linnette?

22 Q. I'll ask it a different way.

23 A. Yes, please rephrase. Yeah.

24 Q. In these phonecalls with Ms. Peralta Haynes
25 around 4:00 and 4:15 in the afternoon, did you ask her

1 for advice about how to stop the police investigation?

2 A. The only thing I remember -- I -- I do not
3 remember what we were talking about. I just remember
4 maybe saying, "How this could happen? Oh, my gosh!
5 What we are going to do? This is a disaster! How she
6 could do that?"

7 So when you are panicking, this is the kind of
8 things you said. You -- you cannot be -- you feel
9 betrayed. I was feeling very betrayed, and I was so --

10 Q. Did you --

11 A. -- angry.

12 Q. Did you discuss with Ms. -- with Ms. Peralta
13 Haynes what you should do with regard to telling
14 Ms. Madison what you wanted her to do?

15 A. I do not remember anything I -- I think --

16 Q. Okay.

17 A. -- I remember saying, "What is going to happen
18 now?"

19 Q. Now, you had some other calls with Ivory
20 Madison and Abe Mertens that afternoon?

21 A. Yes.

22 Q. Okay. And in those calls, the purpose of your
23 calls to them was to -- was to tell them not to share
24 any of the information that you had given to
25 Ms. Madison; is that correct?

1 A. They don't any of them have my permission to
2 disclose all the conversations that we had.

3 Q. Okay. And that's why you made the calls to
4 them?

5 A. Absolutely.

6 Q. Okay. And where were you when you had those
7 calls with Linnette Peralta Haynes between 4:00 and
8 4:15?

9 A. I walked from Ivory's house to City Hall. I
10 wait in Ross's office in the second floor. He was not
11 there; it was his staff. And then I walk out to meet
12 Ross, and then I walk back to my home. So almost all
13 that time I was in the street, walking.

14 Q. Okay. So when you first got to City Hall, you
15 first went up to the second floor without having met
16 your husband first?

17 A. Yes.

18 Q. Okay. And did you finally connect with your
19 husband by phone when you were here in City Hall or when
20 you were downstairs, out -- outside?

21 A. I was sit down in his -- outside of the City
22 Hall. I'm sorry. Outside of his office in the second
23 floor in the City Hall --

24 Q. Okay. And --

25 A. -- when I connect by phone. You are talking

1 by phone. Right?

2 Q. Yes.

3 A. Okay.

4 Q. And how long after that did you see him in
5 person?

6 A. He was in -- I don't know where. In one
7 event. And he was walking to come here to another event
8 he had at 4:30, so he was walking, coming here, and I
9 met him. How long it could take? Maybe seven minutes
10 walk together. He came from Hayes and I walk outside
11 and we find each other in Hayes -- Hayes or Grove. I
12 don't remember which one is.

13 Q. Okay. Now, Ms. Lopez, in -- you had sever- --
14 you had more calls with Linnette Peralta Haynes later
15 that afternoon?

16 A. She was the only person I was talking with.

17 Q. As well as your husband?

18 A. And my husband, yes.

19 Q. Okay. And when you spoke with your husband,
20 did you tell him about the video that you made?

21 A. When?

22 Q. When you spoke with your husband that
23 afternoon on January 4th, did you tell him about the
24 video that you made?

25 MR. KOPP: Objection, that's vague as to time.

1 COMMISSIONER HUR: Do you understand the question,
2 Ms. Lopez?

3 THE WITNESS: If I talk to him in the street and I
4 tell -- I told him about the video?

5 MR. KEITH: Q. Yes.

6 A. I do not remember if I told him in the video
7 at that point. I really think I told him at home,
8 later, around 7:00 p.m.

9 Q. Okay. Okay. Did you tell -- you did tell
10 him, though, that there was a police investigation?

11 A. Yes.

12 Q. Okay. So Ms. Mad- -- Ms. -- I'm going to show
13 you another text message. It's part of Exhibit 80.

14 And for the benefit of the commission, this is a
15 text message, it's not an -- it's not shown on
16 Exhibit -- I'm sorry. I apologize. It is shown on
17 Exhibit 83. It's January 4th, 2012, 5:51 p.m., text
18 message from Ms. Lopez to her husband.

19 So I'm going to show you this message on the
20 overhead, Ms. Lopez. It reads, "You have to call
21 hennessey and stop this before something happen. Ivory
22 is giving the investigators everything. Use your
23 power."

24 When you wrote, "Use your power," what power were
25 you referring to?

1 A. If you are a supervisor and you've just become
2 a sheriff, do something.

3 Q. Okay. Now, you had -- you had a -- you did
4 send your -- another text to your husband at 6:05 that
5 evening. It's in evidence. In fact, it's on the lower
6 part of the page that I just handed you. It says,
7 "Don't write any other thing. Answer Linnette call.
8 She has some advices."

9 Did Ms. Peralta Haynes advise you not to write
10 anything about what was going on?

11 A. I think this is -- tell me which time.

12 Q. This is a message that was sent at 6:05.

13 A. I recall to -- because that was from my
14 brother in Venezuela. He said, "You should close the
15 Face-" -- I told him what was happening, and he told me,
16 "Close the Facebook page. Don't write anything and
17 don't talk anymore by phone because maybe they are
18 listening."

19 Q. And so you sent this text message in response
20 to getting that call from -- to getting that advice from
21 your brother?

22 A. Yes. And --

23 Q. Okay. Did you actually speak with your
24 brother on the phone?

25 A. I don't remember if I did by phone or through

1 Skype, but I got that from my brother.

2 Q. Okay.

3 A. And also, I was talking with Linnette, and
4 Linnette said, "I have to talk with Ross and he's not
5 answering my -- my phonecalls."

6 So I text him, "Answer Linnette calls."

7 Q. Did you send this text while you were talking
8 with your brother?

9 A. You know, I do not remember. I -- at that
10 point, I was already with Theo, because I pick him up at
11 5:30, so we were already at home. Maybe I was in Skype.

12 Q. I'm -- what I'm trying to figure out is did
13 your brother give you the advice and then, immediately
14 after that, you sent the text?

15 A. Yes. Yes, and actually, we didn't talk
16 anymore because we were like so scared that someone is
17 listening, someone is the Big Brother around. And
18 watching all this, he was right.

19 Q. Okay. Were you on the phone with anybody else
20 on your cell phone while you were talking with your
21 brother on Skype?

22 A. No. The only people I was talking with was
23 Linnette, Ross, and that's all.

24 Q. Okay. My question was a little different. It
25 was when you were talking with your brother on Skype,

1 were you talking with somebody else at the same time on
2 your cell phone? Did you have two conversations going
3 on at once?

4 MR. KOPP: Asked and answered.

5 COMMISSIONER HUR: It was asked. I'm not sure it's
6 been answered.

7 But I mean, if this is the way you're going to
8 spend your time, Mr. Keith, I'm not inclined to give you
9 a lot more.

10 You can answer the question.

11 THE WITNESS: Usually, what I do, and how I talk
12 with my family every day, we open the computer and they
13 are there. So they see Theo playing and they can
14 entertain Theo so I can cook.

15 The computer is open and they are there, so I can
16 be walking, talking by phone, and they can be playing
17 with Theo so I can --

18 MR. KEITH: Q. Ms. Lopez, I think you may have
19 misunderstood my question. When you had this call with
20 your brother on Skype --

21 A. Yes.

22 Q. -- did you have another conversation going on
23 on your cell phone at the same time?

24 A. You know, this time was so busy. I was
25 calling Linnette, calling Ross, calling back, talking

1 with my brother, taking care of Theo. So I don't know
2 if -- actually, so many times, "Okay. Goodbye. Ross is
3 calling."

4 "Okay. Uh-huh."

5 "Ross. Ross is calling right now."

6 "No, Linnette is calling. No, bad," or whatever.
7 Whoo!

8 So I do not remember. Of course, I think I did.

9 And I was feeding my son, cooking for my son --

10 Q. Okay.

11 A. -- doing everything at the same time. I do
12 not remember exactly if I was --

13 I was panicking also. I was betrayed.

14 Q. Okay. Now, Ms. Lopez, did you release a
15 statement to the press on January 5th to the effect
16 that what was happening to your husband was wrong? Did
17 you make a public press release on that date?

18 A. On January 5th?

19 Q. Yes.

20 A. Here or in Venezuela?

21 Q. Here.

22 A. I think we got lawyers the same January 4th,
23 and they advised, "Do not talk with anybody."

24 Q. Ms. Lopez, I'm not -- I'm not asking that.
25 That's not the answer to my question.

1 The question that I asked you was did you make a
2 release to the press, just making a statement, that
3 "What is happening here is wrong. I have absolutely no
4 complaint against my husband. My husband has never been
5 abusive to me. Ross and I are committed to our
6 marriage, our son, and our family" on or around
7 January 5th or 6th?

8 A. On January 5th, yes, we did that.

9 Q. Okay.

10 A. Through our lawyers.

11 Q. Okay.

12 A. But I didn't have a communication or give any
13 interview.

14 Q. Okay.

15 A. That was January 5th or 6th?

16 Q. I'm just asking, do you have a recollection?

17 A. No.

18 MR. KEITH: Okay. I'm going to approach the
19 witness and show her a document to refresh her
20 recollection. I'm happy to give it to the commission as
21 well.

22 COMMISSIONER HUR: Just show it to opposing
23 counsel.

24 MR. KEITH: Okay.

25 COMMISSIONER HUR: Is there an objection?

1 Hold on. Hold on, Mr. Keith.

2 Is there an objection to showing her the document
3 to refresh?

4 MR. KOPP: No.

5 MR. KEITH: Q. Ms. Lopez, if you could just review
6 that document and let me know whether it refreshes your
7 recollection as to whether you made this release on
8 January 5th or 6th.

9 THE INTERPRETER: The dates again?

10 MR. KEITH: January 5th or 6th.

11 THE WITNESS: And what is your question?

12 MR. KEITH: Q. Does this document refresh your
13 recollection as to whether you made a press release on
14 January 5th or 6th?

15 A. Yes.

16 Q. Okay. And you did?

17 A. Yes.

18 Q. Okay. And --

19 COMMISSIONER HUR: When? The 5th? Is that what
20 we've established?

21 THE WITNESS: Yes, now I remember. They closed --

22 COMMISSIONER HUR: Okay. That's -- that's fine.
23 Thank you.

24 THE WITNESS: Okay.

25 COMMISSIONER HUR: I just was confused.

1 THE WITNESS: Thank you.

2 MR. KEITH: Q. Okay. So there was a release on
3 the 5th? There was a release on the 5th?

4 A. Yes.

5 Q. Okay. And did Jim Stearns assist in that
6 release?

7 A. I wrote this with my lawyer, and then they --
8 I think they check everything and they were agree.

9 Q. Jim Stearns was agreed?

10 A. I was not present. I think --

11 MR. KOPP: Objection, relevance.

12 THE WITNESS: Yeah.

13 MR. KEITH: Okay.

14 COMMISSIONER HUR: Sustained.

15 MR. KEITH: The relevance is going to become clear
16 in just a moment. I have to lay a foundation to get
17 there.

18 COMMISSIONER HUR: Well --

19 MR. KEITH: Q. Okay. Did Mr. Stearns work on your
20 husband's campaign for sheriff?

21 A. Yes.

22 Q. Okay. And was he -- was he involved in
23 getting this release out to the press?

24 A. I think he was trying to help Ross, but I made
25 this with my attorney.

1 Q. Okay.

2 MR. KOPP: Well, there's -- it sounds like there's
3 no personal knowledge, so I'll move to strike the
4 answer.

5 COMMISSIONER HUR: I think it's clear. Her lack of
6 personal knowledge is apparent to the commission.

7 MR. KEITH: Okay.

8 Q. Was Linnette Peralta Haynes involved in
9 getting the statement out to the press?

10 A. Well, I think you have my phone records, but I
11 think after this day, we didn't talk too much again, and
12 actually, I don't have any other -- I don't have any
13 contact with her because she was in a high-risk
14 pregnancy and all this was so stressful for her.

15 Q. So the police called you on January 5th.
16 Correct?

17 A. Yes.

18 Q. Okay. And you told the police that your
19 neighbor was nuts and your neighbor was broke and she
20 was trying to get attention. Correct?

21 A. Broke, yeah.

22 Q. Okay. You never said to the police that your
23 neighbor was your attorney, did you?

24 A. At that moment? No.

25 Q. No, not on that call on the 5th with the

1 police.

2 A. No. On that call, I did not.

3 Q. In fact, you told the police to contact your
4 attorney, who at that time was Cheryl Wallace?

5 A. Yes.

6 Q. Okay. And Cheryl Wallace shared office space
7 with the attorney -- with your husband's first attorney,
8 Robert Waggener?

9 A. Yes. I think so, yes.

10 Q. Okay. And you gave an interview to a
11 Venezuelan radio station on January 17th?

12 A. Yes.

13 Q. Okay. You were asked in that interview what
14 your relationship was with Ivory Madison?

15 A. Yes.

16 Q. You said that Ivory Madison was a friend?

17 A. Yes.

18 Q. You said that Ivory Madison was a neighbor?

19 A. Yes.

20 Q. And in that January 17th interview, you
21 never referred to Ivory Madison as your lawyer?

22 A. That is correct.

23 Q. Okay. Now, after Ms. Wallace, you got a new
24 attorney, Ms. Canny. Correct?

25 A. Yes.

1 Q. Now, did you direct your attorney to go to the
2 criminal court to try and keep the video from being used
3 against your husband in his case?

4 MR. KOPP: Objection. That appears to infringe
5 upon attorney-client communications.

6 MR. KEITH: It's a direction to an attorney; it's
7 not a request for legal advice.

8 COMMISSIONER HUR: Ms. Canny, you're her attorney.
9 I'll allow you to speak on it if you want to.

10 MS. CANNY: I think it's privileged.

11 COMMISSIONER HUR: I think you're right.

12 Sustained.

13 MR. KEITH: Now, I -- the -- I think the privilege
14 is waived if you look at paragraph 23 of Ms. Lopez's
15 declaration. And I should say paragraph 24 as well.

16 COMMISSIONER HUR: What part of 24 are you relying
17 upon?

18 MR. KEITH: It says, "Ross was not ever involved in
19 my efforts to assert my right to claim the attorney
20 client privilege to my conversation with Ivory as well
21 as my right to control the dissemination of the video."

22 I mean, perhaps I can explore the basis for that.

23 MR. KOPP: That was all --

24 COMMISSIONER HUR: That was -- I thought that
25 was -- I thought you agreed to strike that from the

1 declaration. I don't think it's --

2 MR. KOPP: That's right. They objected --

3 MR. KEITH: It's still a basis to claim waiver.

4 MR. KOPP: -- and we accepted it.

5 MR. KEITH: It may not be in, but it's been
6 disclosed.

7 COMMISSIONER HUR: No, we're not going to do a
8 waiver of attorney-client privilege over this. No.

9 Is there any dissenting view from the commission?

10 MR. KEITH: Q. Did you meet with your husband's
11 first attorney, Mr. Waggener?

12 A. In the inaugural, we were all together, yes.

13 Q. No, your husband's first criminal attorney,
14 Robert Waggener.

15 MR. KOPP: Objection, relevance.

16 COMMISSIONER HUR: Sustained.

17 MR. KEITH: Q. Did you provide your husband's
18 attorneys with information about Ivory Madison?

19 MR. KOPP: Objection, relevance.

20 MR. KEITH: I want to -- I'm -- I can explain the
21 relevance if the commission wants to hear argument.

22 COMMISSIONER HUR: Okay. Briefly.

23 MR. KEITH: One of the claims in this case has been
24 that the sheriff -- that one of the elements, one of the
25 acts that fell below the standard of decency was the way

1 that he treated a complaining witness in this case.

2 And I'm entitled, I think, to explore the extent to
3 which his attorneys, who acted on his behalf, were
4 trying to get negative information about Ivory Madison.

5 MR. KOPP: Well, this is going to implicate all
6 kinds of attorney-client privileges.

7 MR. KEITH: There is no attorney-client privilege
8 as between Ms. Lopez and Sheriff Mirkarimi.

9 MR. KOPP: How does he know there wasn't a joint
10 defense agreement here?

11 COMMISSIONER HUR: I'm going to sustain the
12 objection because I don't -- your proffer to me is far
13 removed from the foundation of the question.

14 MR. KEITH: Q. Ms. Lopez, at any time during the
15 defense of your husband's criminal case, did you meet
16 with people who were not attorneys and provide them --
17 provide them with information about Ivory Madison?

18 MR. KOPP: Objection, relevance.

19 COMMISSIONER HUR: That one, I'll allow.
20 Overruled.

21 THE WITNESS: What was the question? I'm sorry.

22 MR. KEITH: Q. During the defense of your
23 husband's criminal case, did you meet with people who
24 weren't attorneys and give them information about Ivory
25 Madison?

1 MS. CANNY: Your Honor -- sir, could I interpose an
2 objection on this? Because I think it is privileged.
3 If I can approach you and explain, I don't know what
4 he's getting at.

5 COMMISSIONER HUR: So you're saying that
6 communications with non-attorneys are going to be
7 covered by the attorney-client privilege?

8 MS. CANNY: Yes. Yes, Your Honor, a work product.
9 I can go up and explain to you if you want, sir.

10 MR. KEITH: I can rephrase the question. I think
11 Ms. Canny is trying to get at attorney investigators, so
12 I can -- I can try to exclude that.

13 COMMISSIONER HUR: Is that right?

14 MS. CANNY: Yes, sir.

15 COMMISSIONER HUR: Okay. Thank you for working
16 that out.

17 MR. KEITH: Q. Now, Ms. Lopez, during the defense
18 of your husband's criminal case, did you give
19 information about Ivory Madison to political
20 consultants?

21 A. From Ivory Madison?

22 Q. Did you give information about Ivory Madison
23 to political consultants?

24 MR. KOPP: I'm sorry. I'm -- I'm going to
25 interpose a relevance objection to this entire line of

1 questioning, because whatever this witness did, unless
2 it can be tied to the sheriff, it just doesn't seem to
3 have any relevance to the inquiry, so --

4 COMMISSIONER HUR: Mr. Keith, I mean, I presume
5 when you -- when you say you're going to be able to
6 make -- get to relevance that you are going to be able
7 to tie it to the sheriff. Is that -- I mean, is that --

8 MR. KEITH: I think the inference -- I think -- I
9 think a legitimate inference can be drawn. I mean,
10 given the attorney-client privilege, it's -- I can't
11 explore whether there's a -- there were conversations
12 that went from person to attorney to attorney to person,
13 but I certainly can argue the inference if I establish
14 these facts.

15 COMMISSIONER HUR: Okay. Let's get the consultant
16 question out and let's see what the answer is. But
17 you're -- we're about to cut you off.

18 MR. KEITH: I'm close to being finished, very
19 close.

20 THE WITNESS: Let me see if I understand.

21 Do you want to know if I talk with the consultants?
22 Ross's consultants? If I gave information?

23 MR. KEITH: Q. About Ivory Madison to your
24 husband's political consultants during the defense of
25 his criminal case.

1 A. I -- I was always talking with Cheryl, with my
2 attorney. I saw -- are you referring to Jim? What is
3 the name of the consultant?

4 MR. KOPP: Well, then, objection. The question
5 seems to be vague.

6 MR. KEITH: The witness may have a hard time
7 understanding.

8 THE WITNESS: No, I understand. I don't know which
9 consulting.

10 MR. KEITH: Q. Okay. Any. Any of them.

11 A. Well, I hope Ross had more consultants, but we
12 didn't -- we don't have money for -- even during the
13 campaign, we didn't have any consulting, so that's
14 Jim --

15 COMMISSIONER HUR: Ms. Lopez, is that a "no"? Are
16 you saying "no"?

17 THE WITNESS: Yeah, no.

18 COMMISSIONER HUR: Okay.

19 MR. KEITH: Q. Now, Ms. Lopez, there's still a
20 stay-away order in effect against your husband?

21 MR. KOPP: Objection, relevance.

22 COMMISSIONER HUR: Sustained.

23 MR. KEITH: Q. Ms. Lopez, do you have any plans to
24 testify at the Hall of Justice tomorrow regarding the
25 stay-away order against your husband before you go back

1 to Venezuela?

2 MR. KOPP: Objection, relevance.

3 COMMISSIONER HUR: Sustained.

4 MR. KEITH: Nothing further.

5 COMMISSIONER HUR: Thank you.

6 MR. KOPP: May I make a suggestion? We need a
7 break?

8 Okay. Well, we need a break, but what I was going
9 to suggest -- and maybe you want to think about it -- is
10 I'd like to just reserve any redirect. I assume the
11 commissioners may have some questions, and what I might
12 want to ask -- I don't want to be duplicative.

13 If I can reserve mine -- mine will be brief --
14 until after the commissioners have gotten their answers,
15 I think that might be more efficient.

16 COMMISSIONER HUR: Mr. Keith?

17 MR. KEITH: As long as I'll get a chance to do
18 recross after the redirect, that's fine.

19 COMMISSIONER HUR: What do the commissioners think?

20 COMMISSIONER RENNE: I'd prefer that we ask our
21 questions after the attorneys have completed.

22 COMMISSIONER HUR: That's generally my preference
23 too. Let's --

24 Ms. Lopez, how are you doing? Do you need a break?
25 How -- or -- and if not, how much longer do you think

1 you could go before a break?

2 THE WITNESS: I think we all of us are in the same
3 situation. So as shorter as this -- I'm -- I'm open
4 whatever is better for all of you.

5 COMMISSIONER HUR: Okay. Thank you.

6 How about our court reporter?

7 Okay. Let's -- let's take a break.

8 THE WITNESS: Okay.

9 COMMISSIONER HUR: Can we be back at 7:15? 7:20.
10 Let's call it 7:20. Thank you.

11 (Recess taken from 7:07 p.m. to 7:22 p.m.)

12 COMMISSIONER HUR: Okay. And we're back in
13 session, although we are missing our witness.

14 Counsel, while we're waiting, my plan for the rest
15 of the evening is we finish Ms. Lopez, we go to the
16 Flores testimony, the rebuttal exhibits, Lemon
17 declaration, sheriff's request for impeachment
18 testimony, and then we want to talk to you about what --
19 what evidentiary findings and briefing you would like in
20 advance of August 16th.

21 Please. Ms. Lopez, you understand that you're
22 still under oath?

23 THE WITNESS: Yes.

24 COMMISSIONER HUR: Thank you. And the same for the
25 interpreter.

1 THE WITNESS: Thank you.

2 MR. KOPP: May I proceed?

3 COMMISSIONER HUR: Mr. Kopp, please.

4 MR. KOPP: Thank you.

5 ---o0o---

6 REDIRECT EXAMINATION BY MR. KOPP

7 MR. KOPP: Q. Good evening, Ms. Lopez.

8 A. Good evening.

9 Q. Have you had a chance to read the declaration
10 that Ivory Madison submitted for these proceedings?

11 A. Yes.

12 Q. And did you see in her declaration what she
13 said about the conversation that the two of you had
14 January 1st?

15 A. Yes.

16 Q. Okay. Are the things that Ms. Madison said
17 that you said during that conversation accurate? Are
18 they true?

19 A. No, it's a lot of misunderstanding.

20 Q. Okay. Now, you remember where Ms. Madison
21 wrote in the declaration that you told her that after
22 you and Ross and Theo returned to your house that,
23 inside the apartment, Ross was pushing and pulling and
24 grabbing you? Do you remember that?

25 A. Yes.

1 Q. Okay. And you already testified that when you
2 were grabbed the one time in the car, you had a bruise
3 on your arm. Correct?

4 A. Yes.

5 Q. Okay. Now, if Ross was pushing and pulling
6 and grabbing you inside your apartment, as Ms. Madison
7 claims, wouldn't you have had a few more bruises?

8 MR. KEITH: Objection, argumentative.

9 COMMISSIONER HUR: Overruled.

10 THE WITNESS: I'm sure, because I bruise really
11 easily. I don't have any bruise right now because --
12 but just Theo playing with me, I get bruised.

13 MR. KOPP: Q. Okay. Did Ross ever push or pull or
14 grab you inside your house that day, on December 31st?

15 A. No, not that day and never. Never.

16 Q. Okay. Now, you went over to Ms. Madison's
17 house, and that -- that was also on January 1st, when
18 you made that video. Correct?

19 A. Yes.

20 Q. And before you made the video, you had had
21 some conversation with Ms. Madison; is that right?

22 A. Yes.

23 Q. Okay. And what kinds of things did
24 Ms. Madison tell you on January 1st about what might
25 happen if you and Ross did not stay together and if

1 there was a divorce and a custody dispute?

2 A. She said that I was right to feel concerned
3 about my immigration status. It's a lot of immigrant
4 women who are deportable for so many reasons, and
5 they -- the government takes the kids. Also, she told
6 me he's an American citizen. Imagine if he goes to a
7 lawyer -- and also thanks God that didn't happen, and it
8 was not Ross who was accusing me of domestic violence,
9 because I could be deportable immediately and they will
10 take Theo, and who knows when.

11 Q. And when you started -- when -- how was it
12 that -- that you made the video? Whose suggestion was
13 that? Was that yours or was that Ms. Madison's?

14 A. I have a TV producer in Venezuela, like a
15 little company. So at home, I have a lot of cameras,
16 and actually, I record myself all the time to send
17 castings to Venezuela, to Miami, to Mexico. So if I
18 want to record myself, I could do it at my home, by
19 myself. I do it all the time.

20 When I was with her, she told me, "You have to
21 record this. You need an evidence. And I will keep
22 this evidence."

23 And how I say in the video, this is just in case
24 Ross tried to take Theo away from me, if we doesn't go
25 to therapy, if this happen again. Who knows? He get

1 mad and he decide, "I want just Theo for me."

2 I -- I am covered because I can be deportable.

3 Q. Okay. And on the video, you --

4 A. And at that moment -- excuse me. At that
5 moment, I didn't have a green card yet.

6 Q. Okay. And on the video, you do appear to be
7 upset, either crying or you'd been crying; is that -- is
8 that right?

9 A. Yes.

10 Q. Now, were you crying about what had happened
11 between you and -- between you and Ross in that incident
12 when he grabbed you or were you crying about all these
13 possibilities about what might happen that Ms. Madison
14 had just explained to you?

15 A. If you see the video, I start the video upset.
16 Of course, I was angry for so many reasons. But the
17 moment when I start to cry is when I talk about Theo.
18 That is the point that made me cry in the video, when I
19 said he can take away Theo from me. That is exactly --
20 if you see the video clearly, it's that moment when I
21 feel that emotion came.

22 Q. Okay. And as you sit here today, do you
23 regret ever making the video?

24 A. Absolutely.

25 Q. Why?

1 MR. KEITH: Objection, relevance.

2 COMMISSIONER HUR: Overruled.

3 MR. KOPP: I'm going to withdraw the question,
4 actually.

5 COMMISSIONER HUR: Okay.

6 MR. KOPP: Q. Now, you were just questioned for
7 quite a long time about conversations that you had with
8 Ms. -- with Linnette Peralta Haynes and then also
9 talking to your husband on January 4th. Right?

10 A. Yes.

11 Q. And did Sheriff Mirkarimi, did your husband,
12 ever tell you not to talk to the police or anybody else
13 about this incident?

14 A. No.

15 Q. As a matter of fact, when he learned that you
16 had made a video, what was his reaction?

17 A. He was sit down on the floor.

18 Q. Did -- did he talk about whether or not there
19 was anything he could do to stop some investigation that
20 might be underway?

21 A. No, he's -- he even didn't want to answer the
22 phone. He was completely dismoralized and just sit
23 down.

24 Q. And in fact when you suggested, "Hey, call
25 Sheriff" -- ex-Sheriff Hennessey or Sheriff Hennessey;

1 he was still sheriff at that time -- "or call somebody.
2 Use your power to do something," he told you that he
3 could not and would not. Right?

4 MR. KEITH: Objection, leading.

5 COMMISSIONER HUR: Sustained.

6 MR. KOPP: Q. What was his response when you said,
7 "Call Sheriff Hennessey" or somebody else to try to stop
8 this?

9 A. He said no, he cannot do it. He cannot do
10 anything.

11 Q. Okay.

12 A. Also in fact, that day, after, even in the
13 street, first in the street, he was just sit down and
14 people was passing around us. And he didn't say
15 anything.

16 And I said, "Okay. We have to think, Ross. We
17 have to do something. I believe we can do something.
18 This is wrong. So she doesn't have my permission to do
19 this. I thought this was confidential."

20 And that night, when I said -- when Linnette was
21 calling me and calling him and he didn't answer, she
22 called me, and I say, "Okay. He doesn't want to do
23 anything. He's just sit down, doing nothing, so please
24 talk with him."

25 And she say, "Okay. You have to go somewhere."

1 So I told him, "Okay. You have to react. Take the
2 phone. We need lawyers. I'm going to put everything
3 together, and we are going to sleep in Pat -- Pat
4 house."

5 And it was me who was pulling everything together,
6 taking care of Theo. It was me who was pushing him.
7 And actually, I remember when he was arrest, we were
8 here in the -- the sheriff office, and we were walking
9 outside, and was a lot of press out there. And where's
10 the sheriff's staff -- staff next to us, and Ross was
11 panicked because he was so sad.

12 And I stopped him. It was me who took him. I
13 said, "You won the election. Stay strong. We will win
14 this."

15 So that picture, that is completely wrong.

16 Q. Which picture?

17 A. That I'm -- Linnette is telling me what to do.
18 The only person who told me the wrong thing that I did
19 was Ivory making the video.

20 But actually, at home, he is the person who is
21 afraid I leave him. He is the person who is afraid I
22 can take Theo away from him. He is the person who is --
23 because I know that he knows how I am.

24 MR. KOPP: Okay. Thank you. I don't have anything
25 further.

1 COMMISSIONER HUR: Redirect, Mr. Keith?

2 MR. KEITH: No, no redirect.

3 COMMISSIONER HUR: Questions from the commissioners

4 for Ms. Lopez?

5 Commissioner Liu.

6 Can you see each other?

7 THE WITNESS: Yes, I can. Thank you.

8 COMMISSIONER LIU: Good evening, Ms. Lopez.

9 THE WITNESS: Good evening.

10 COMMISSIONER LIU: So I think earlier tonight, you

11 testified that the video was truthful.

12 THE WITNESS: Yes.

13 COMMISSIONER LIU: Is that correct?

14 THE WITNESS: It was. It is.

15 COMMISSIONER LIU: Okay. So in the video, you say

16 that this is the second time this is happening. What

17 were you referring to?

18 THE WITNESS: This is the second time that we talk

19 about divorce, and it's so hard for us. Well, it's so

20 hard for me.

21 And actually, the first time this happened was the

22 moment when he -- I think that was really his mistake

23 and that was really the wrong thing he did, put the fear

24 inside me, saying that he would fight to gain custody.

25 And --

1 COMMISSIONER LIU: Okay. So let me stop you there.

2 So I think in the video, you were pointing to your
3 bruise when you said this is the second time it's
4 happening. So are you saying that you were not
5 referring to your bruise when you said this is the
6 second time it's happening?

7 THE WITNESS: I was pointing to my bruise in that
8 moment? I don't think so.

9 COMMISSIONER LIU: I thought you were, but you go
10 ahead and answer.

11 THE WITNESS: I said -- I said, "This is the second
12 time this is happening," and I remember that, and I was
13 referring to our fight and my fear that he -- he would
14 take Theo away from me.

15 COMMISSIONER LIU: Okay.

16 THE WITNESS: And that is what I said in the video.

17 COMMISSIONER LIU: Okay. And so in the video, you
18 also say that you are going to use it just in case he
19 was going to take Theo away from you, and you were going
20 to use it because he said that he was very powerful and
21 could do that.

22 So did Sheriff Mirkarimi say that he was very
23 powerful?

24 THE WITNESS: Yeah. I -- how I said before, he
25 never used that words. It was not his statement. It

1 was my conclusion.

2 For example, I can said -- I can say I think Peter
3 Keith attacked me and was rude. That is my conclusion.
4 And maybe some people will agree with me. But if you
5 take out of context and you say, "He attack you. He
6 jumped over you," no. Actually, he didn't.

7 COMMISSIONER LIU: So let me stop you there.

8 THE WITNESS: So it's my conclusion.

9 COMMISSIONER LIU: Okay. So what did Sheriff
10 Mirkarimi say that led you to the conclusion that he
11 believed he was very powerful?

12 THE WITNESS: Well, we had a long conversation, and
13 he told me that he would fight to gain custody and he
14 will use being American.

15 And the divorce are not happy and are not easy, and
16 when you talk about that, usually you are angry and
17 you -- I think we both regret to say a lot of things at
18 that point.

19 COMMISSIONER LIU: And when did that conversation
20 take place when Sheriff Mirkarimi said that he would
21 fight to gain custody because he was American?

22 THE WITNESS: In March 2011.

23 COMMISSIONER LIU: In March of 2011?

24 THE WITNESS: It was our first -- the first time we
25 brought that situation.

1 COMMISSIONER LIU: Okay. Did he say it again on
2 December 31st, 2011, during the fight you had with him
3 then?

4 THE WITNESS: No.

5 COMMISSIONER LIU: Okay. Thank you.

6 COMMISSIONER HUR: Commissioner Hayon.

7 COMMISSIONER HAYON: Bienvenida, Señora Lopez.

8 THE WITNESS: Hi. Gracias.

9 (Exchange in Spanish)

10 MR. KOPP: We waive the reporter.

11 THE REPORTER: The court reporter is authorized by
12 the State of California and licensed by the State of
13 California to report only in the official language of
14 the courts, which is English.

15 COMMISSIONER HAYON: I'll translate for you.

16 THE REPORTER: Thank you.

17 (Exchange in Spanish)

18 THE WITNESS: When my beautiful city was even more
19 beautiful.

20 COMMISSIONER HAYON: So do you want me to translate
21 that?

22 So welcome. Welcome, and if I could, I would ask
23 all the questions in Spanish --

24 THE WITNESS: Thank you.

25 COMMISSIONER HAYON: -- for your ease; however, so

1 that everyone can understand, it's probably better that
2 I do it in English.

3 And I wanted to add that, you know, I lived in
4 Caracas for a certain period of time, but back in the
5 '70s, when Caracas was a fabulous city --

6 THE WITNESS: It is.

7 COMMISSIONER HAYON: -- and I enjoyed my stay there
8 very much.

9 THE WITNESS: Thank you.

10 COMMISSIONER HAYON: So I have a number of
11 questions for you.

12 My first question is in January, when all of these
13 events took place -- December 31st, January -- how
14 long had you lived in this country, in San Francisco?

15 THE WITNESS: Three years, around three years.

16 COMMISSIONER HAYON: Three years?

17 THE WITNESS: Yes. Actually, I moved to
18 San Francisco December 12, 2008.

19 COMMISSIONER HAYON: Okay.

20 THE WITNESS: So I was exactly three years in
21 December.

22 COMMISSIONER HAYON: Okay. So you have said that
23 you turned to Ivory Madison in this troubling moment
24 because she was your friend and neighbor.

25 THE WITNESS: Mm-hmm.

1 COMMISSIONER HAYON: Is that correct?

2 THE WITNESS: Mm-hmm. Yes.

3 COMMISSIONER HAYON: Now, but did you have other
4 friends to whom you could have turned, particularly
5 Spanish-speaking friends? Had you formed friendships
6 with people, formed a community here in San Francisco in
7 those three years or were you isolated?

8 THE WITNESS: No. Actually, I'm not like very
9 social, but I have few friends, Spanish-speakers.

10 Also, in my class I was teaching on Saturdays -- I
11 create a class for toddlers to share my acting skills
12 with Theo and other kids. And then I build a friendship
13 with at least three of their mothers, of the mothers in
14 my group, and I talk with them regularly. And I have
15 another friend from Colombia here in San Francisco that
16 I talk all the time.

17 And also my best friends from all my life, one
18 lives in London and the other one is living now in
19 Mexico, and we talk all the time too.

20 COMMISSIONER HAYON: Yet you did not turn to any of
21 these friends to discuss your domestic violence
22 incident. Why is that?

23 THE WITNESS: Actually, in December 31st, I had a
24 long conversation with my dad, and then I talked with my
25 brother and then I talked with my mom, and I didn't

1 mention anything like that. And I didn't talk with them
2 or any friend because I thought it was not relevant to
3 talk with them about this.

4 COMMISSIONER HAYON: Why did you feel it was
5 relevant to talk to your neighbor, Ivory Madison?

6 THE WITNESS: I remember that I -- she called me
7 December 21st in front of Ross, and she said, "Can you
8 come tomorrow at 9:00 a.m. so we can plan our goals for
9 the new year? For the new year?"

10 And I said, "Ross, can you take care of Theo
11 tomorrow at 9:00 a.m.?"

12 "Yes, I can."

13 "Okay. Yes, I will be there."

14 And how I was mad with Ross, I said, "Perfect. He
15 goes to the park and I go to -- to see her."

16 COMMISSIONER HAYON: When you went to see her --

17 THE WITNESS: That was the conversation
18 December 31st. We planned for the next day. The next
19 day, January 1st, I went to her home, and she start to
20 talk about she is in therapy and she mentioned, "My
21 therapy -- my therapist told me that I have anger
22 issues."

23 And I thought, Hmm. Really? Anger issues. And
24 you have therapist. "Do you know, I think I would like
25 the number of your therapist, because I want to share

1 this with you and I want your professional opinion about
2 this. I have this problem with Ross."

3 And that was the way how I start the conversation
4 with, and I remember clear -- clearly when she mentioned
5 that, I said, "That is really interesting, and I really
6 need your professional opinion about this."

7 But when I said "professional opinion," it's not as
8 a writer. It's about lawyer. Because she's always
9 repeating me she's a lawyer.

10 COMMISSIONER HAYON: Did she understand what you
11 meant by that when you said professional experience? I
12 mean, did she understand and did you make it very clear
13 that you were seeking official legal counsel? Did you
14 actually say those words?

15 THE WITNESS: I said it, and she respond -- her
16 response was, "Of course I will help you. I have been
17 in court so many times. I know how it works."

18 When she --

19 COMMISSIONER HAYON: I'm going to stop you right
20 there.

21 THE WITNESS: Okay. I'm sorry.

22 COMMISSIONER HAYON: So it's one thing to say, "I
23 will help you." It's another thing to say, "I will act
24 as your attorney." Did she ever say that she would act
25 as your legal counsel, as your lawyer?

1 THE WITNESS: She said, "I will take care of you.
2 This is confidential. We need to make evidence. I will
3 keep the evidence. We have our office. And" Ross is an
4 -- "and Abe is an attorney. I have been in court so
5 many times."

6 She represent -- she has been telling me for so
7 many times she's a lawyer, using that words. "I am a
8 lawyer."

9 COMMISSIONER HAYON: So --

10 THE WITNESS: She didn't use --

11 COMMISSIONER HAYON: -- in this conversation, is it
12 possible that at that point there could have been either
13 language issues or some kind of cultural
14 misunderstanding in terms of what she heard from you and
15 what you heard from her? Is that a possibility?

16 THE WITNESS: It is.

17 COMMISSIONER HAYON: Do you have any understanding
18 of why she might have been so upset or concerned, I
19 should say, for your situation after you described this
20 incident to her? Can you understand that she would have
21 been very worried about you or very concerned for your
22 safety?

23 I mean, because you say -- you seem surprised in
24 some of your comments about her reaction and her desire
25 to call the police --

1 THE WITNESS: Mm-hmm.

2 COMMISSIONER HAYON: -- about all of these events.

3 THE WITNESS: Yes. On January 1st, she was not
4 concerned about my safety. She said, "I'm so sorry this
5 is hap- -- this happened to you. You don't deserve
6 this."

7 And I say, "Of course I don't deserve this. I
8 think this is wrong. And this is a warning call."

9 And I was very clear with Ross about that, and we
10 made the decision to -- I think, finally, he understood
11 that we need to -- therapy and we needed counseling.
12 And she offered to looking for counseling on
13 January 1st.

14 She would -- she switched from January 1st to
15 January 4th to all this "You have to call the police.
16 Screw him."

17 And it was not -- even in January 4th, she was
18 not afraid of my safety at all. She was not concerned
19 about my safety. I -- I was there. I walk around and
20 go -- actually, I talk with all the people I wanted. So
21 she was not afraid. She was trying to -- the words that
22 she used, "Screw him."

23 COMMISSIONER HAYON: Now, you've made various
24 references to that term. It's an idiomatic expression
25 in English, and often doesn't mean something really

1 horrible. It's just like "You take care of yourself;
2 don't worry about him." You know?

3 THE WITNESS: Yeah.

4 COMMISSIONER HAYON: "Screw him." I don't know.
5 You make it sound as if you felt that she had ulterior
6 meanings to that. We don't know. Do we?

7 THE WITNESS: Well, as a family, I cannot talk
8 about -- that way to my husband, to my son, to my
9 father, to my brother. We --

10 COMMISSIONER HAYON: But your husband, even if
11 you're in the middle of a potential divorce, you
12 wouldn't think of him that way?

13 THE WITNESS: I was so angry because he could think
14 in that way in March 2011 and he put that fear that he
15 will fight against me.

16 But in December 31st and right now, I think in
17 our heart, I will never -- what we were looking for is
18 like the best for Theo, and this is always I repeat that
19 to him. And on December 31st, I told him, "If we are
20 not happy, if you cannot understand me, if this is too
21 much for you, we can do a divorce in a nice way. Good
22 for you, good for me."

23 COMMISSIONER HAYON: In terms of domestic violence
24 in our society and particularly in San Francisco, which
25 is a very progressive city in terms of how we deal with

1 a lot of women's rights issues, were you aware of our
2 attitudes? And also in terms of legalities, you know,
3 if I'm a neighbor and I know that some kind of domestic
4 violence has taken place, I don't need your permission
5 to call the police.

6 So I'm surprised that you would think that about
7 Ivory Madison's attitude or even anybody else's attitude
8 about what you had clearly described as a domestic
9 violence incident, and that would possibly be of great
10 concern to whomever you told.

11 THE WITNESS: It is why I called Linnette, because
12 I was thinking, Maybe I'm not getting that this is
13 domestic violence.

14 So I called her, and she explained me that domestic
15 violence is a lot of things. A grab my arm is not
16 domestic violence. Domestic violence implies abuse,
17 implies verbally abuse, implies a lot of other things.
18 So she checked with me, and I said not any of that
19 happened.

20 So just an isolate incident, when actually the
21 bruise -- I helped to make the bruise because I pulled
22 my arm away because for me that he touched me is an un-
23 -- is not acceptable.

24 COMMISSIONER HAYON: But you didn't -- it sounds to
25 me as if you didn't include that information about

1 pulling your arm away when you were first telling your
2 neighbor and friend, Ivory Madison, about the incident,
3 nor when you told Callie Williams, your upstairs
4 neighbor, about the incident. And then, of course, you
5 called Linnette Peralta.

6 So you were -- you were actually telling a lot of
7 people about something that sounded very troubling and
8 perhaps criminal. Perhaps -- did you not understand
9 that? And that there was the potential for this
10 information to be relayed or to get out of your hands
11 and be relayed to the police?

12 THE WITNESS: No, I didn't.

13 COMMISSIONER HAYON: You never thought that that
14 could happen?

15 THE WITNESS: I never thought -- I never thought --
16 I was so naive. I never thought --

17 COMMISSIONER HAYON: And particularly with the
18 video? I mean, you did participate in that video.

19 THE WITNESS: Well, yes, when I -- when she told
20 me, "You need evidence to protect yourself because Ross
21 just got elected sheriff. So if he really wants -- you
22 are not working. If he doesn't want to give you any
23 money, how you are going to pay lawyers? If he wants to
24 say you did something, you are completely deportable.
25 So this is an old boys' network, so" --

1 COMMISSIONER HAYON: I know you were talking about
2 that.

3 THE WITNESS: Yeah.

4 COMMISSIONER HAYON: And I understand your panic
5 and your fear.

6 Is there any chance, would you say, that you
7 exaggerated the extent of this incident when you were
8 describing it to these various individuals so that they
9 may have gotten an impression that it was a far more
10 serious incident than perhaps you have said since then?

11 THE WITNESS: I remember that I -- I told Ivory and
12 also I told Callie that, in my heart, I didn't want to
13 divorce Ross. In my heart, I feel -- I actually say in
14 one e-mail, I think he's a victim of his circumstances.
15 He was a little boy --

16 COMMISSIONER HAYON: Okay. We don't need to.

17 THE WITNESS: Yes.

18 COMMISSIONER HAYON: We don't need to hear that.

19 THE WITNESS: So I -- I -- I understand that and I
20 understand his irrational fear, and as a mother and as a
21 wife, I should support him. So my first step is what we
22 can --

23 COMMISSIONER HAYON: So you should support your
24 husband even -- even if he grabs your arm and creates an
25 injury in an incident like that?

1 THE WITNESS: Maybe if I am scared that he can take
2 Theo away from me and he ignored my fear, maybe I would
3 do the same thing, I think.

4 COMMISSIONER HAYON: Thank you.

5 COMMISSIONER HUR: Commissioner Studley?
6 Commissioner Renne?

7 COMMISSIONER RENNE: Good evening, Ms. Lopez.

8 THE WITNESS: Good evening.

9 COMMISSIONER RENNE: I'll try to be brief because
10 you've had a long, long session here, but I was unclear
11 from the answers that you gave to -- just now.

12 What was the reason you went down on January 1st
13 to meet with Ivory Madison? You were the one who set up
14 the appointment that you were going to come and meet
15 with her, did you not?

16 THE WITNESS: No, no. She called me on
17 December 31st, and I -- we have the call in the
18 records. She called me. She said, "We are here making
19 cookies, and I want to talk with you about our goals.
20 Do you want to come over? Do you want to come right
21 now?"

22 And that night, Ross was in bed, watching a movie
23 with Theo, so I said, "Okay. This is not a good moment
24 for you."

25 And Ross was not really too happy with them. We

1 decide try to push them away a little bit, because we
2 had another incident who was so bad for Ross's image
3 that they did, and I know he didn't want to see them.
4 So I said, "This is not a good moment, so let's plan for
5 tomorrow."

6 And she said, "Okay. I will be here January 1st,
7 at 9:00 a.m. Can you come over?"

8 "Yes."

9 COMMISSIONER RENNE: So it's your testimony that
10 the motivating force to go down there or go down and
11 speak with her was Ivory rather than yours?

12 THE WITNESS: She invited me to talk about the
13 goals in the new year.

14 COMMISSIONER RENNE: And at some point in time when
15 you got down there, you started relating to her what had
16 happened on December 31st?

17 THE WITNESS: Yes. I brought --

18 COMMISSIONER RENNE: And -- and I take it that you
19 told her about Ross taking you to lunch, you and Theo to
20 lunch, and then getting angry and turning around and
21 what you have testified to. Right? Is that what you
22 told Ivory?

23 THE WITNESS: Yes. On January 1st, I came to her
24 home, I brought the New Year's card. Abe took Gracie
25 for a walk, I don't know where.

1 And I was talking with her, and she start like --
2 COMMISSIONER RENNE: No. No, but I'm asking what
3 you told her.

4 THE WITNESS: But yes, that I told her, "I want
5 your opinion about this."

6 COMMISSIONER RENNE: All right. So you asked her
7 for her opinion. In the course of that, did you tell
8 her that you had been audio-recording the words that
9 were being spoken in the car?

10 THE WITNESS: Yes.

11 COMMISSIONER RENNE: And was that a true statement?

12 THE WITNESS: It is true. It was true.

13 COMMISSIONER RENNE: And did you ever -- do you
14 still have that recording?

15 THE WITNESS: No.

16 COMMISSIONER RENNE: What did you do with it?

17 THE WITNESS: I record him and he knows that. I
18 record him in the car. So I said, "I want you to listen
19 to yourself later."

20 And then we came home. And I said, "Do you want to
21 listen" -- when we were just talking like we need to do
22 therapy, I said, "Do you want to listen to yourself?"

23 COMMISSIONER RENNE: Now, was that the time --

24 THE WITNESS: On December 31st.

25 COMMISSIONER RENNE: -- the first time you asked

1 him?

2 THE WITNESS: The first time?

3 COMMISSIONER RENNE: You -- you seem to have said
4 that in the car you played it for him, but now you're
5 saying you played it for him in the house.

6 THE WITNESS: No, no, no. In the car, I didn't
7 play him. I record him.

8 COMMISSIONER RENNE: Right.

9 THE WITNESS: I'm sign -- I was recording him, and
10 I said, "Recording. I want you to listen to yourself."

11 COMMISSIONER RENNE: Right.

12 THE WITNESS: And when we were at home, I said, "Do
13 you want to listen?"

14 "No." Of course, no, blah-blah-blah.

15 And I delete it. And then we start to talk, and he
16 was saying again, "You are going to take Theo away from
17 me."

18 And I say, "Okay. I'm going to record you again,
19 because this is completely -- I'm not going to take Theo
20 away from anybody."

21 COMMISSIONER RENNE: And -- and --

22 THE WITNESS: And then I delete it -- I don't know.
23 I don't remember at what point I delete it.

24 COMMISSIONER RENNE: Didn't you tell Ivory Madison
25 that the reason why you were recording was that you

1 could use it if you got into some kind of a custody
2 fight with -- with Ross?

3 THE WITNESS: No. Actually, she told me, "You have
4 to keep that as an evidence as well."

5 COMMISSIONER RENNE: Now, when you made the video,
6 you intended that to be maintained so that if Ross
7 threatened to take your son away from you, that you
8 could use that in court. Right?

9 THE WITNESS: The video?

10 COMMISSIONER RENNE: Yes.

11 THE WITNESS: To use it in case he take away --
12 Theo away from me.

13 COMMISSIONER RENNE: Yeah. So that you -- the idea
14 was that you could use it in court?

15 THE WITNESS: If we get in a nasty divorce, yes.

16 COMMISSIONER RENNE: And -- and so you understood
17 that whatever you were going to say on the video had to
18 be the absolute truth?

19 THE WITNESS: Yes.

20 COMMISSIONER RENNE: And the words that you used
21 were not words that Ivory Madison gave to you. They
22 were your words, were they not?

23 THE WITNESS: She also told me a lot of different
24 things that I really didn't get it. I didn't understand
25 what she said. But she used the words "Say that he push

1 you and pulling" and all that thing.

2 And when I was talking, I was saying that didn't
3 happen. I'm not going to say that; I'm going to say the
4 truth. This happened yesterday.

5 COMMISSIONER RENNE: And what you said on the tape
6 was the truth?

7 THE WITNESS: Yes. He grabbed my arm, yes.

8 COMMISSIONER RENNE: Was it your -- strike that.
9 Had you on prior occasions consulted and talked
10 with Ivory about your relationship with Ross?

11 THE WITNESS: As friends?

12 COMMISSIONER RENNE: Yes.

13 THE WITNESS: She shared with me things about --
14 even Abe shared me with things about Ivory, and I
15 shared, of course.

16 COMMISSIONER RENNE: I'm not asking what she shared
17 with you.

18 THE WITNESS: Yes, of course.

19 COMMISSIONER RENNE: I'm asking did you share with
20 her over time incidents relating to your relationship
21 with Ross?

22 THE WITNESS: Yes.

23 COMMISSIONER RENNE: And those incidents -- strike
24 that.

25 How frequently did you do that, say in the 12

1 months prior to December 31?

2 THE WITNESS: Yes. If you check the e-mails, they
3 are in a period of a year. So that means -- I was
4 checking yesterday. That means that is around one or
5 two e-mails.

6 Most of them are March, when we were back and forth
7 with e-mails because she suggest we look for a cleaner
8 together so maybe could be cheaper, a person who comes
9 few hours to my home, few hours to her home. So most of
10 the e-mails are in March, like I -- I didn't count it,
11 but most them are like two or three each month, per
12 month. So that means that we talked -- we see each
13 other every Saturday, but it was not that I was visiting
14 her or --

15 Actually, on December, after she helped Ross with
16 money, I remember I told Ross, "I think we should start
17 to be nicer with them because they look like they're
18 trying to be with us. She is calling me all the time."

19 And I was checking records and I have a lot of
20 calls from her and I didn't answer. So it's not like we
21 were talking every day or once per week. It's like
22 two -- twice per month.

23 COMMISSIONER RENNE: Ms. Lopez, I'm not asking
24 about --

25 THE WITNESS: How often?

1 COMMISSIONER RENNE: -- only e-mails. I'm just
2 saying that when you had -- you met with Ivory from time
3 to time and discussed with her problems that you were
4 having in your relationship with Ross.

5 THE WITNESS: The only problems I shared with her
6 are the problems in the e-mails.

7 COMMISSIONER RENNE: The problems when?

8 THE INTERPRETER: In the e-mails.

9 THE WITNESS: In the e-mails.

10 COMMISSIONER RENNE: All right.

11 THE WITNESS: The only information I shared with
12 her.

13 COMMISSIONER RENNE: And you say in the e-mails,
14 maybe it's two or three times a month?

15 THE WITNESS: Yes.

16 COMMISSIONER RENNE: All right. And in any of
17 those occasions when you were sharing these problems
18 with her, did you tell her you were sharing them with
19 her because she was an attorney?

20 THE WITNESS: No. At that point, no.

21 COMMISSIONER RENNE: It was because she was a --
22 you considered her a friend?

23 THE WITNESS: She was my friend, yeah.

24 COMMISSIONER RENNE: And she considered you a
25 friend.

1 THE WITNESS: Yes.

2 COMMISSIONER RENNE: Right?

3 THE WITNESS: Yes.

4 COMMISSIONER RENNE: And in a sense, on
5 December 31st, your discussion with her, which you say
6 was initiated by her --

7 THE WITNESS: Mm-hmm.

8 COMMISSIONER RENNE: -- was not a conversation
9 where you had gone to her and said, "Here. I want you
10 to hire -- I want to hire you as my lawyer and tell you
11 about an incident."

12 THE WITNESS: No, I didn't use that. Actually, I
13 didn't pay Ivory how the same way I didn't pay Paula.

14 MS. CANNY: That's great.

15 COMMISSIONER RENNE: Now, on January 4th, you had a
16 discussion or you texted Ms. Haynes because you wanted
17 to talk to her about the December 31st incident; isn't
18 that correct?

19 THE WITNESS: To Linnette, yes.

20 COMMISSIONER RENNE: And you were fairly persistent
21 in trying to reach Ms. Haynes for that purpose, were you
22 not?

23 THE WITNESS: Yes, I want to realize if that was
24 really domestic violence.

25 COMMISSIONER RENNE: Now, had you ever prior to the

1 time that you were texting -- texting her about this --
2 had you ever spoken with Ms. Haynes about any of your
3 personal problems in your relationship with Mr. -- with
4 Ross?

5 THE WITNESS: No, maybe just comments during the
6 campaign like Ross's needs, Ross's -- everybody gets
7 sick and nobody can follow his rhythm. These kind of
8 things.

9 COMMISSIONER RENNE: And you then had a -- I think
10 it was close to a 40-minute conversation with
11 Ms. Haynes. And in that conversation, did you describe
12 to her what had happened on December 31st?

13 THE WITNESS: Yes.

14 COMMISSIONER RENNE: And what if any response did
15 she give to you when you told her that, those facts?

16 THE WITNESS: What was her respond?

17 COMMISSIONER RENNE: What did she say in response?

18 THE WITNESS: She said -- she was asking me more
19 questions about -- and she was explaining me domestic
20 violence is not just one thing, it's a lot of things.
21 So you have to -- to -- to know you are in a domestic
22 violence situation implied a lot of different things, so
23 just one isolate thing, maybe it's not.

24 However, that doesn't mean that is right. That is
25 wrong. And you need to -- to be very serious and to

1 take this very serious and we need to take Ross to
2 counseling, because he has to realize that is wrong.

3 COMMISSIONER RENNE: And at the end of that
4 conversation, did you ask her to do anything to assist
5 you?

6 THE WITNESS: If I ask her for assistance?

7 COMMISSIONER RENNE: Yes.

8 THE WITNESS: No, I asked her for if she has some
9 referrals, like could be a private, not a public. She
10 recommended La Casa de Las Madres, and I -- then she
11 called me again and said, "Well, no, that is public, and
12 Ross is the sheriff, so maybe that is not a good idea.
13 Maybe we need something private to pro- -- to help to
14 the privacy."

15 And she also call me later and say, "I've been
16 thinking maybe you need a family, not just couple. You
17 need something family, with the family."

18 COMMISSIONER RENNE: I'm not sure I understood the
19 first thing you said. She said -- she suggested doing
20 what? Going to --

21 THE WITNESS: Suggested --

22 COMMISSIONER RENNE: -- a therapist?

23 THE WITNESS: Recommending the therapist?

24 COMMISSIONER RENNE: Yes.

25 THE WITNESS: Yes.

1 COMMISSIONER RENNE: And then she said maybe it
2 should be private?

3 THE WITNESS: It's better for a family. Oh, yes.
4 She recommended La Casa de Las Madres.

5 COMMISSIONER RENNE: Right.

6 THE WITNESS: And then we say, "Well, but that is
7 something public and we want to keep this private."

8 COMMISSIONER RENNE: All right. And was she the
9 one who suggested that maybe you should keep it private
10 rather than going public?

11 THE WITNESS: I do not want anybody knows my
12 things. I didn't want to be exposed in this way.

13 COMMISSIONER RENNE: No, my question was --

14 THE WITNESS: And at that point, I was --

15 COMMISSIONER RENNE: -- did she -- was she the one
16 who suggested rather than going to La Casa to go
17 private?

18 THE WITNESS: I think it was a conversation --

19 COMMISSIONER RENNE: Okay.

20 THE WITNESS: -- between both of us.

21 COMMISSIONER RENNE: All right. But you don't
22 recall --

23 THE WITNESS: I really don't recall. Maybe it was
24 me.

25 COMMISSIONER RENNE: -- whether you were the one --

1 THE WITNESS: Maybe it was both.

2 COMMISSIONER RENNE: Okay.

3 THE WITNESS: Of course I don't want. But she said

4 that is public and that is for everybody, and I -- I

5 don't want that.

6 COMMISSIONER RENNE: Now, at that time, when you

7 had this conversation with Ms. Haynes, had you told Ross

8 that you had discussed the incident with --

9 THE WITNESS: With someone?

10 COMMISSIONER RENNE: -- your neighbor?

11 THE WITNESS: Oh. I told him on January 4th in

12 the afternoon, when I met him in the street around

13 4:00 or 5:00, 4:30, 5:00.

14 COMMISSIONER RENNE: But before that --

15 THE WITNESS: No.

16 COMMISSIONER RENNE: -- had you ever advised him

17 that you told -- in fact told two of your neighbors on

18 January 1st about the incident?

19 THE WITNESS: If I told Ross?

20 COMMISSIONER RENNE: Did you tell Ross that at any

21 time --

22 THE WITNESS: No.

23 COMMISSIONER RENNE: -- till this time you say you

24 met him on the street?

25 Now, you had a conversation with Ms. Haynes where

1 you put --

2 THE WITNESS: Where I put?

3 COMMISSIONER RENNE: -- where you put your neighbor
4 on the telephone. Correct?

5 THE WITNESS: Oh, yes.

6 COMMISSIONER RENNE: All right. And why did you do
7 that?

8 THE WITNESS: Because I thought Ivory was not
9 understanding me, what I was trying to say, so I said --
10 Linnette knew the incident because I explained that to
11 her. And I told her, "Ivory called the police. So tell
12 her this is not what I want. Help me."

13 COMMISSIONER RENNE: And this -- in this second
14 conversation with Ms. Haynes was the first time that you
15 found out that the police had been informed?

16 THE WITNESS: Yes. Like five -- five minutes
17 before.

18 COMMISSIONER RENNE: And you had learned that from
19 Ivory?

20 THE WITNESS: Yes. She found me in the street and
21 she said, "Eliana, you are going to kill me. I called
22 the police."

23 No, actually, she said, "I just called the police,
24 and the police is coming your way."

25 It was not actually until I read her declaration

1 that she knew she opened the investigation at noon.

2 COMMISSIONER RENNE: Now, you had a series of --
3 following that conversation, you had a series of
4 conversations with Ms. Haynes on the afternoon of
5 January 4th.

6 THE WITNESS: Mm-hmm.

7 COMMISSIONER RENNE: Were these -- what was the
8 substance of those conversations?

9 THE WITNESS: Yes. After -- after I knew about
10 Ivory calling the police, I was so -- I felt betrayed.
11 I felt that I betrayed Ross. I was just -- what is
12 going to happen with Theo? I was panicking.

13 COMMISSIONER RENNE: So you were obviously and
14 understandably very upset that this matter was now
15 possibly going to become a matter of public knowledge.
16 Correct?

17 THE WITNESS: Yes.

18 COMMISSIONER RENNE: Is it fair to say that all the
19 conversations that you had with Ms. Haynes from that
20 point on on January 4th were primarily talking about
21 "How can we sort of stop this from blowing up?"

22 THE WITNESS: Actually, at that point, with
23 Linnette, no. I was just talking -- I was saying, "What
24 is going to happen? How she could do this? She told me
25 this is confidential."

1 Then when I was walking to Ross at the City Hall, I
2 realized, oh, my gosh, the video. So I was -- actually,
3 at some point I was walking through the City Hall. No,
4 I have to go back to Ivory. No. What I'm going to do.
5 So go back. I was just completely -- I didn't know what
6 to do.

7 COMMISSIONER RENNE: But all I'm talking about
8 focusing is on your conversations --

9 THE WITNESS: It was actually exactly the same
10 thing.

11 COMMISSIONER RENNE: -- where -- there were a
12 number of with Ms. Haynes on -- some of which were on
13 January 4th, some of which were initiated by you, and
14 some of which were initiated by her.

15 And I'm saying is it fair to say the substance of
16 them was trying to figure out how you could deal with
17 this problem?

18 THE WITNESS: I think we start to think what we are
19 going to do --

20 COMMISSIONER RENNE: Yes.

21 THE WITNESS: -- around 7:00 p.m. --

22 COMMISSIONER RENNE: Yes.

23 THE WITNESS: -- when we said -- and she said
24 Ross -- she called me, and she said, "Ross is not
25 answering and both of you need a lawyer."

1 And I said, "Oh, my gosh. Of course. That is what
2 we need, a lawyer."

3 COMMISSIONER RENNE: Okay.

4 THE WITNESS: I -- I was -- before 7:00 p.m., was
5 just "How this could happen? How I could trust it? How
6 she could do this?"

7 "Call Ross. Did you get Ross? Call him." I'm
8 walking in the street.

9 "Did you get him? Did you -- okay, Ross is not" --
10 that was then.

11 COMMISSIONER RENNE: And I would direct your
12 attention to the Exhibit 80, which counsel asked you
13 about.

14 THE WITNESS: Mm-hmm.

15 COMMISSIONER RENNE: I think you have a copy, and
16 if you would look at the --

17 THE WITNESS: Oh, I gave you that back. Right?

18 MR. KEITH: I'm happy to try and locate the
19 particular message.

20 COMMISSIONER RENNE: Would you? It's the one the
21 January 4th, the 6:01 p.m.

22 THE WITNESS: If you read it, I know what you are
23 talking about. Thank you.

24 COMMISSIONER RENNE: You see where you text, "Don't
25 write any other thing. Answer Linnette call. She has

1 some advices."

2 And you were asked about that. What specific
3 advices did you -- or were you referring to when you
4 said that?

5 THE WITNESS: I think was about lawyers. Or she
6 was trying to reach him, so how she could not reach him,
7 she was calling me. But at this point, I was already
8 with Theo, so I was not able to talk too much.

9 COMMISSIONER RENNE: Is it your testimony that the
10 advices that you're referring to were Ms. Haynes
11 suggesting that you needed lawyers?

12 THE WITNESS: Yes.

13 COMMISSIONER RENNE: That's the advice?

14 THE WITNESS: I think so. I think she was trying
15 to say -- to tell me, "I am trying to call him and he is
16 not answering."

17 So I text him, please answer Linnette because she
18 has to talk with you.

19 COMMISSIONER RENNE: And what was the reason why
20 you were telling Ross "Don't write any other thing"?

21 THE WITNESS: Because after this, how I already
22 said, I think at that moment I was in Skype with my
23 brother and I was like -- in Skype with my brother, and
24 he said, "Close the Facebook page because, after this,
25 you don't know what the people can write or say. So

1 close the Facebook. Don't talk about anything. Don't
2 write anything."

3 So I was -- and how I know Ross doesn't answer,
4 never answer the phone and he connect through text
5 messages, I said, "Don't write any. . . thing."

6 "Don't write any other thing."

7 COMMISSIONER RENNE: Well, if you --

8 THE WITNESS: Clearly, he didn't follow my advice.

9 COMMISSIONER RENNE: Now, you think that your
10 conversation with your brother was before you sent this
11 message about "Don't write any . . . thing"?

12 THE WITNESS: I am clearly remember my brother
13 telling me, "You have to shut down the Facebook page and
14 be careful what you say and what you talk because you
15 never know what this is going to be like, this" --

16 COMMISSIONER RENNE: As far as the timing of that
17 call, though, would it be -- would it refresh your
18 recollection if you --

19 THE WITNESS: Mm-hmm --

20 COMMISSIONER RENNE: -- looked at a document dated
21 January 5th, the next day, at 4:15, where you text,
22 "You have to close the comments" in your text -- "in
23 your Facebook" --

24 THE WITNESS: Mm-hmm.

25 COMMISSIONER RENNE: -- "so no one can make a

1 comment. Our phone maybe are already be checked"?

2 Wasn't that the message you sent following the
3 conversation with your brother?

4 THE WITNESS: Yes, because he didn't close
5 anything.

6 COMMISSIONER RENNE: And that was the day later?

7 THE WITNESS: Yes.

8 COMMISSIONER RENNE: I have no further questions.

9 THE WITNESS: And maybe two days later he didn't
10 still close the Facebook.

11 COMMISSIONER RENNE: Thank you, Ms. Lopez.

12 COMMISSIONER HUR: Commissioner Studley, do you
13 have any questions?

14 COMMISSIONER STUDLEY: No.

15 COMMISSIONER HUR: I have no questions.

16 The -- Ms. Lopez, thank you for flying all the way
17 out here. We appreciate you being here.

18 Ms. Canny, thank you for helping arrange this.

19 MS. CANNY: Thank you.

20 COMMISSIONER HUR: The witness is excused.

21 THE WITNESS: Thank you so much.

22 COMMISSIONER HUR: We are going to take a short
23 break for the court reporter, and we're also going to do
24 a little rearranging, so let's -- let's get back here at
25 8:25.

1 (Recess taken from 8:18 p.m. to 8:28 p.m.)

2 COMMISSIONER HUR: Okay. We are back in session.
3 The next thing on the agenda is the objections to the
4 Flores testimony.

5 Mr. Kopp, will you be making those objections for
6 the sheriff?

7 MR. KOPP: Yes, and there's an overarching
8 relevance declaration, and that's based on the fact that
9 we don't think any of this, what we see to be tangential
10 evidence regarding expert opinion on domestic violence,
11 is necessary.

12 There is a specific 352 objection that this will be
13 an undue consumption of time for everybody and a waste
14 of resources, and if this objection -- or excuse me, if
15 this transcript or transcripts of testimony is admitted,
16 it will likely necessitate us offering at least one
17 additional declaration from a witness that we have not
18 thought we would need as part of the record.

19 So, you know, I understand the mayor has made
20 numerous objections to other issues that we proposed
21 because they think under 352 it's a waste of time, and
22 that's what we think about Ms. Flores's transcripts.

23 COMMISSIONER HUR: Any questions for Mr. Kopp from
24 the commissioners?

25 Ms. Kaiser, would you like to respond to those

1 objections?

2 MS. KAISER: Sure. You know, we don't see the
3 undue-consumption-of-time argument because we submitted
4 this transcript and testimony within days of when the
5 fact-witness declarations were submitted. We indicated
6 that we were submitting it in lieu of, you know, a
7 declaration because it was already testimony that had
8 been cross-examined on this issue. So it's our position
9 that it's too late now to say, "Oh, you know, if you let
10 it in, we want to do some cross or we want to have a
11 rebuttal witness or this opens a whole new door."

12 If that was going to be the objection or if that
13 was going to be the approach, it should have happened
14 back when we were making those decisions about how to
15 schedule this hearing. So that's our position on time.

16 In terms of relevance of the issues, there are a
17 couple of things. One is you, know, we're hearing a lot
18 these last two days this was an incident, but it wasn't
19 real domestic violence. I mean, that's a new defense
20 we're hearing. And the power and control wheel and the
21 cycle of violence are, you know, the key indicators of
22 whether or not an event fits within a pattern of
23 domestic violence. And in order to make that
24 evaluation, you need information about the rest of the
25 relationship and prior incidents and behavior patterns,

1 so it's relevant for that purpose.

2 The other thing it's relevant to is as rebuttal
3 evidence because the sheriff testified during his
4 testimony that he had never physically harmed a woman
5 before and that he had never bruised a woman before.
6 And I believe -- I have the transcript somewhere very
7 nearby if you would like me to get it, but I think he
8 may also have been asked if he'd ever blocked anyone
9 from leaving before. And, you know, this, this Flores
10 testimony, goes to all of those questions and is
11 rebuttal evidence.

12 COMMISSIONER HUR: Mr. Kopp, are you contesting
13 that there was an act of domestic violence that occurred
14 on December 31st, 2011?

15 MR. KOPP: Well, again, I think it depends on how
16 you define the term. My position is now and has been
17 that this -- what occurred does not need to have a label
18 put on it, that what needs to be done here is you need
19 to determine whether what he did, the act of grabbing
20 his wife by the arm and leaving a bruise, is official
21 misconduct under the charter, and I think that there's
22 been, in my opinion, an undue focus on that term,
23 "domestic violence."

24 COMMISSIONER HUR: Are you unable to answer my
25 question "yes" or "no"?

1 MR. KOPP: I answered it as best as I can. I think
2 that it could be characterized as a domestic violence
3 incident, yes. But I -- to me, that just is immaterial
4 to the question you have to decide.

5 COMMISSIONER HUR: I guess here -- here's where I
6 come down on this. I mean, in my view, I think I always
7 understood that the domestic violence was not being
8 really challenged, that there was an incident of
9 domestic violence that occurred on the 31st.

10 If it's not being challenged, to me, Flores is 352.
11 It's more prejudicial than probative. I don't -- I
12 don't particularly see the point. If it's being
13 challenged, though, I think Ms. Kaiser's got a point. I
14 mean, if you're going to contest -- you can't have your
15 cake and eat it too. If you're going to contest that
16 this was an act of domestic violence --

17 MR. KOPP: That it was not?

18 COMMISSIONER HUR: That it was. If you're going to
19 say it was not --

20 MR. KOPP: Oh, if I'm going to contest that, yes.

21 COMMISSIONER HUR: -- then I think she's entitled
22 to present evidence to support her claim because her
23 view is that if there was domestic violence, that's
24 official misconduct and that if there -- and I think her
25 view is also if it wasn't domestic violence, then it's

1 possible that the commission could deem that to be some
2 lesser degree of harm that would go into our
3 determination.

4 MR. KOPP: Well, I can tell you that you are not
5 going to hear from me that this was not domestic
6 violence. I'm going to be focusing on the actual act
7 itself, and not the label.

8 COMMISSIONER HUR: Sure. I understand. I
9 understand.

10 MR. KOPP: Okay. So --

11 COMMISSIONER HUR: I welcome the views of my fellow
12 commissioners.

13 COMMISSIONER RENNE: Well, as I understand -- as I
14 understand what you're saying is that assuming the
15 events happened, as there appears to be very little
16 dispute over what happened, that you're saying whether
17 you call it "domestic violence" or anything else, it's
18 not an act which rises to the level of official
19 misconduct.

20 MR. KOPP: Absolutely.

21 Sorry I couldn't answer your question that easily.

22 COMMISSIONER HUR: Any other questions for Mr. Kopp
23 before we allow Ms. Kaiser a rebuttal?

24 COMMISSIONER LIU: Well, I guess going to
25 Commissioner Renne's point, do you mean the facts that

1 are not disputed in terms of the incident in the car,
2 but is there a dispute -- I suppose there is a dispute I
3 thought I was hearing in some way about whether there
4 was pushing, pulling, other -- other acts that took
5 place on that same date.

6 MR. KOPP: Yeah, the allegation that something
7 physical occurred inside the house, that is in dispute.

8 COMMISSIONER LIU: So if we just take the incident
9 in the car, is it your position that that was an act of
10 domestic violence? I know you don't want to put a label
11 on it, but are you -- I don't know.

12 Are you answering the question of whether you're
13 contesting it or not?

14 MR. KOPP: I'm not going to argue this was -- that
15 one specific incident was not an act of domestic
16 violence because, to me, that's just not the important
17 question here. So I wish I could help by saying this is
18 our position, it is or it is not. But -- but I cannot
19 because I just don't think the label is significant.
20 But I'm not going to say that was not domestic violence.
21 No, I'm not going to say that.

22 COMMISSIONER LIU: You wouldn't stipulate that it
23 was?

24 MR. KOPP: No.

25 COMMISSIONER HUR: Any other questions for

1 Mr. Kopp?

2 Ms. Kaiser.

3 MS. KAISER: I frankly think that even if Mr. Kopp
4 would stipulate to the term "domestic violence" that
5 that wouldn't make our evidence irrelevant or cumulative
6 because it's not really the term that controls; it's the
7 act that we're trying to show and the significance of
8 the act. We believe that the act is a true act of
9 domestic violence that's placed within, properly
10 understood within, the context that has been supplied by
11 Nancy Lemon and again by Linnette Peralta Haynes.

12 So I have to agree with Mr. Kopp that whether or
13 not we'll both agree to say those two words and leave it
14 at that and have you decide with no content, neither one
15 of us really wants that. We want you to understand and
16 explore the significance of the acts, and in order to do
17 that, we, I believe, are permitted to submit this
18 relevant evidence and it is probative.

19 COMMISSIONER HUR: Okay. But if -- but if -- what
20 fact in dispute are you using Ms. Flores's testimony to
21 help prove?

22 MS. KAISER: We are trying to prove that this was
23 not an insignificant --

24 COMMISSIONER HUR: Okay. Don't -- I don't want
25 sort of descriptive words. I want what fact, the actual

1 piece of evidence, the thing that happened that will
2 help -- that Flores will help us decide.

3 MR. KEITH: Well, it will help you -- it will help
4 you determine whether or not the act was more likely
5 just a grab and an indignant pull-away or whether the
6 act was more likely in fact a grab and a push against
7 the wall.

8 If I can't attach significance, I can at least
9 point you to that factual dispute. And I believe the
10 dispute is very significant. It happens within a
11 context. But we have various descriptions of what
12 happened, one minimizing and one that's ours.

13 COMMISSIONER HUR: Any questions for Ms. Kaiser?

14 Okay. And my view is that in light of argument of
15 counsel and in light of the fact that we're not a jury,
16 I -- though I think it's very close and would -- do not
17 think it's particularly relevant, in light of the
18 representations of counsel, I'd be inclined to let it in
19 for the purpose of -- to the extent it's relevant to
20 helping us determine the severity of the conduct on
21 December 31st, 2011, and to the extent it impeaches
22 the sheriff's testimony. I don't recall that testimony
23 specifically, but we'll let you argue it.

24 At least that's my view, and I welcome the view of
25 my fellow commissioners on it.

1 COMMISSIONER RENNE: Well, I -- I would be inclined
2 to agree with you, Mr. Chairman, but I would caution the
3 city attorney, when you file your proposed findings of
4 fact and conclusions of law, if that's the form they're
5 going to be in, and you're relying on any portion of the
6 Flores declar- -- the Flores testimony, you point
7 specifically to that part so that we can decide whether
8 or not it truly is relevant, because there are many
9 portions -- I've read the testimony. There are many
10 portions of it that I think have nothing to do with this
11 case, and particularly the allegations that there was
12 some prior occasion with Mirkarimi with the -- with
13 Ms. Flores.

14 I will tell you now I think that shouldn't be in at
15 all. So don't -- if you cite me that for some reliance
16 on a finding of fact, you're going to have a tough time
17 convincing me.

18 COMMISSIONER HUR: Commissioner Studley.

19 COMMISSIONER STUDLEY: And I would agree with both
20 of you about letting it in on a limited basis. I think
21 the background on domestic violence and the analysis is
22 helpful relative to some of the pattern in Ms. Lopez's
23 testimony as well.

24 COMMISSIONER HUR: Ms. Kaiser, we're ruling your
25 way.

1 MR. KEITH: Okay. I will be quiet.

2 COMMISSIONER HUR: Okay. Okay. So that -- is
3 there any dissenting view from the commissioners?

4 Okay. Next item is -- are the evidentiary -- the
5 rebuttal exhibits from the sheriff. Mr. Kopp, do you
6 have any objections to them?

7 MR. KOPP: I need to pull them up because I don't
8 have a hard copy of what they want to put in.

9 COMMISSIONER HUR: Okay.

10 MR. KEITH: While Mr. Kopp is pulling that up, we
11 actually -- we conferred during the break and I raised
12 an issue of a portion of the Callie Williams declaration
13 that had previously been excluded and said, well, in
14 light of Ms. Lopez's testimony that I thought it was a
15 prior inconsistent statement that could now come in.

16 I spoke with Mr. Kopp. He has no objection. So I
17 just wanted to -- if that's acceptable to the
18 commission.

19 COMMISSIONER HUR: Sure. No objection, I say --

20 MR. KEITH: Okay.

21 COMMISSIONER HUR: -- you can do it.

22 MR. KEITH: Okay. So that the portion of that
23 is -- I mean, I don't even need to read it, but it's on
24 paragraph 9, page 3, line 7, beginning with "Eliana told
25 me" and then through the end of that paragraph which

1 ends on line 11 with the words "with her."

2 COMMISSIONER HUR: Any objection from the
3 commissioners? Okay.

4 MR. EMBLIDGE: Seven through 11.

5 MR. KEITH: Yes, beginning with "Eliana told me."

6 COMMISSIONER HUR: Do we have that? Great. Thank
7 you.

8 Mr. Kopp, have you found the exhibits?

9 MR. KOPP: Yes, I have.

10 COMMISSIONER HUR: Do you have any objection to 84
11 through 87?

12 MR. KOPP: Well, I think I had previously -- I just
13 want to make sure that the police report that we
14 discussed yesterday is not included.

15 COMMISSIONER HUR: I think it is in that list.

16 MR. KOPP: I had made a hearsay objection. I
17 understood that to be sustained last night.

18 COMMISSIONER HUR: I don't think we addressed it.

19 MR. KOPP: No? Do you have a different
20 recollection, Mr. Keith?

21 MR. KEITH: No, we did not address it. We
22 discussed it, but we didn't settle it.

23 COMMISSIONER HUR: Yeah. I think we got rid of --
24 or we said no rebuttal testimony from Becker.

25 MR. KOPP: Okay. Well, I do have hearsay testimony

1 on this.

2 COMMISSIONER HUR: Okay. Which -- which ones do
3 you have an objection to? And are there any you're
4 stipulating to?

5 MR. KOPP: Yes, 85, the incident report, hearsay.

6 COMMISSIONER HUR: Okay.

7 MR. KOPP: And then 87, relevance. And I'm happy
8 to expand upon that, because --

9 COMMISSIONER HUR: Well, let's -- you may have to,
10 but I don't think you will.

11 Okay. So do I understand 84 and 86 are in by
12 stipulation?

13 MR. KOPP: Yes.

14 COMMISSIONER HUR: Okay. Let's take 85 first. I
15 think it is hearsay, isn't it, Mr. Keith? If you don't
16 have the officer to bring it in?

17 MR. KEITH: It does fall within the evidence code
18 exemption, Evidence Code 1280, for -- it's an analogy to
19 the business records exception, but it is for writings
20 made by and within the scope of duty of a public
21 employee about an act, condition, or event.

22 This fits the bill. It's an incident report about
23 the acts and events that occurred when they arrested
24 Sheriff Mirkarimi and had a discussion about the guns,
25 and under the case law, this provision applies to

1 incident reports and they come in in administrative
2 cases. I have a copy from an administrative practice
3 book with a whole bunch of case cites which I'm happy to
4 supply to opposing counsel and the commission, but it
5 should come in under that exception.

6 COMMISSIONER HUR: You could have submitted
7 Becker's declaration instead of Daniele's. Right? We
8 gave you the option, as I recall.

9 MR. KEITH: That's right.

10 COMMISSIONER HUR: And you chose Daniele.

11 MR. KEITH: Yes.

12 COMMISSIONER HUR: You know, I really don't see
13 Becker's report as being anything new. I think it's
14 cumulative. And I think we gave you the choice and you
15 made your election, so I would be inclined -- plus I
16 have not heard of police reports being able to come in
17 under these kinds of circumstances.

18 So I open it up to my fellow commissioners, but I'd
19 be inclined to sustain the objection to 85.

20 COMMISSIONER STUDLEY: Can I ask Mr. Keith a
21 question?

22 COMMISSIONER HUR: Yes, of course.

23 COMMISSIONER STUDLEY: Can you indicate to us what
24 is different about -- what we would learn that is
25 different from what the -- the affidavit that we already

1 have, the declaration that we already have from the
2 other officer?

3 MR. KEITH: No.

4 COMMISSIONER STUDLEY: From the information that we
5 have?

6 MR. KEITH: It's correct. I mean, the chairman
7 mentioned it was cumulative. That's true. It's
8 consistent, and when you have a credibility battle, you
9 want to get in as many witness statements on the facts
10 as you can, and that's why we're submitting it. So I
11 think, I mean, the sheriff had testimony one way, we had
12 testimony this way, but there's nothing new.

13 COMMISSIONER STUDLEY: The only thing that inclines
14 me to ask or to have sympathy for this in light of what
15 you've pointed out is the fact that it has been -- that
16 we know that there is an issue about it raised by the
17 sheriff's testimony.

18 But I defer to your greater knowledge of that.

19 COMMISSIONER HUR: That may be a mistake.

20 Any other views as to this from the commissioners
21 about whether this should be admitted?

22 Okay. Then 85 should be excluded.

23 Eighty-seven. Eighty-seven is a video of
24 Mr. Waggoner talking to some -- to a reporter. I have a
25 very hard time seeing the relevance of that, Mr. Keith.

1 MR. KEITH: Well, the reason the video is offered
2 is because as, you know, we've argued and as I've argued
3 earlier tonight that there's been a pattern of basically
4 mistreatment of a reporting witness by a law enforcement
5 official, and it's continuing. And this is basically
6 belittling and making fun of the reporting witness, a
7 witness who correctly reported a crime that the sheriff
8 admitted committing.

9 And the idea that he'd have his lawyers, you know,
10 going to a news agency and basically making fun of her
11 and saying she's not credible because she's written a
12 comic book is -- I think that's not -- that's not decent
13 and it's not the right thing to do, and so I think
14 that's -- that's why it's relevant to the conduct
15 charge. It's --

16 COMMISSIONER HUR: Okay. Any questions for
17 Mr. Keith?

18 Mr. Kopp, we'll give you an opportunity to say
19 something.

20 MR. KOPP: Well, last night, after the testimony of
21 Ms. Peralta Haynes, I said some things about
22 Ms. Madison's credibility out there to some reporters,
23 so maybe that's going to be No. 88 or 89, next in order.

24 I mean, you know, the mayor is out there, permitted
25 to make comments about his view of Sheriff Mirkarimi's

1 actions, but we're supposed to fight with one hand
2 behind our back? I don't think so. This isn't the
3 playground here. So I think it's -- well, I don't want
4 to say what I really think about this, but I don't think
5 that there's any way that this is relevant to what
6 you've got to decide, and I think we are perfectly
7 permitted to comment on credibility of witnesses.
8 There's a credibility context here.

9 COMMISSIONER HUR: I would be inclined to sustain
10 the objection to 87.

11 Any dissenting view from my fellow commissioners?

12 Okay. That will be excluded.

13 Okay. Moving along to Nancy Lemon. Unlike
14 Ms. Lopez's declaration, you all were less successful in
15 narrowing the scope of your disputes, unless I've
16 misread it.

17 MR. KOPP: No, but I didn't mean to give you the
18 impression that you're going to have to go through this
19 paragraph by paragraph. We have an overarching
20 relevance objection because, to repeat myself, we don't
21 think that a domestic violence expert is needed to
22 understand this situation and make a decision.

23 I am aware from the past comments that some of you
24 have made that I'm probably in the minority here with
25 that view, but I make it for our record. And so really,

1 the -- they agreed to take out those paragraphs that I
2 alluded to, 185 to 190 inclusive, and so other than the
3 overarching relevance objection, really the only
4 outstanding point that's in dispute is the bullet point
5 No. 6, or vi.

6 COMMISSIONER HUR: Okay. Well, I took your
7 relevance objection seriously and actually went through
8 this thing paragraph by paragraph to determine what I
9 thought was relevant. I mean, should I have not done
10 that? Are you saying --

11 MR. KOPP: I'm very sorry. I -- my -- our
12 relevance objection is not to specific individualized
13 paragraphs, but to -- to the expert opinion.

14 COMMISSIONER HUR: I don't know what that means.
15 Does that mean you're objecting on relevance or you're
16 not?

17 MR. KOPP: Yes, we are.

18 COMMISSIONER HUR: Okay. Here is my view of what
19 should be stricken in light of the relevance objection:
20 64 to 75, 82 to 87, 95, 96, 128, 135, 139, 142, 146 to
21 150, and 152 to 184.

22 So Ms. Kaiser --

23 MS. KAISER: Okay.

24 COMMISSIONER HUR: -- you're welcome to --

25 MS. KAISER: Okay.

1 COMMISSIONER HUR: -- address them.

2 MS. KAISER: I really thought I was -- I'm sorry.
3 I thought I was directed to deal with the paragraph
4 objections that opposing counsel was going to raise, and
5 so I apologize that I'm going to be a little off the
6 cuff, but I am happy to do this. I'm just less prepared
7 than I would otherwise have been, and I apologize.

8 All right. So 64 through 75 appears to be about
9 the relationship between firearms and domestic violence,
10 about batterer's intervention programs, and about a
11 prominent batterer's intervention program in the
12 San Francisco jail and the San Francisco Sheriff's
13 Department. This is offered as background information
14 the same way that the preceding paragraphs to this point
15 have been offered.

16 There is a clear relationship, I think, between --
17 and the expert believes -- between firearms and domestic
18 violence. There is an issue in dispute about the
19 sheriff's relinquishment of his firearms when under a
20 domestic violence protective order. It seems to me that
21 this is relevant explanatory information about the
22 significance that that issue may have, and it also seems
23 to me the sheriff is participating now in a batterer's
24 intervention program and that the principles and
25 importance of those programs are relevant in terms of

1 the fact that his conviction and his sentence are the
2 basis of one of the misconduct charges.

3 And so the fact that he is under three years'
4 probation and is mandated to attend this sort of course
5 makes this information relevant to understanding the
6 components of his sentence that we believe are important
7 to determining whether or not it's consistent with
8 professional standards.

9 COMMISSIONER HUR: Okay. I thought that we had
10 instructed you all to give us Lemon testimony that
11 speaks to the credibility of Ms. Lopez, because that
12 is -- that was the basis for it in -- I don't remember
13 what it was -- that Brown case. And that's what I
14 understood we were going to rely on Ms. Lemon for.

15 Whether or not someone who is legally authorized to
16 have weapons as the sheriff of the county has them, I
17 think, to me is not particularly helpful or probative,
18 and I'm not sure it will be helpful to whatever
19 additional bodies have to review this record.

20 And I'm cognizant that this record is already huge,
21 and I want it to be -- I understand we've erred on the
22 side of letting things in, but I think we do want to
23 draw some line and limit this record to what is truly
24 relevant or at least reasonably related to relevant
25 information.

1 MS. KAISER: Commissioner Hur, does that mean that
2 you're not intending on transmitting the full record of
3 everything the parties have submitted?

4 COMMISSIONER HUR: No, the whole thing will go.
5 The whole thing will go.

6 MS. KAISER: Okay.

7 COMMISSIONER HUR: We will have -- we will -- but I
8 expect that whoever reviews this will rely in part on
9 what we determined is relevant, so --

10 MS. KAISER: I don't know.

11 COMMISSIONER HUR: Okay.

12 MS. KAISER: You know, I assume that all of the
13 decisions that you make will be taken as recommendations
14 by the final decision-makers. Does that mean they won't
15 read the rest? I don't know.

16 COMMISSIONER HUR: I'm not really understanding
17 your point, Ms. Kaiser.

18 MS. KAISER: Well, I guess I'm just -- I'm curious
19 about the desire to limit a page number when the papers
20 are going anyway. So I'm trying to understand so that I
21 can address -- not -- not to critique, but simply to
22 address that concern and to address it better, i need to
23 understand it.

24 COMMISSIONER HUR: Ms. Liu?

25 COMMISSIONER LIU: Well, I think that what we're

1 trying to do here is figure out what our factual
2 findings are going to be based on. That's the point of
3 determining what's relevant, not just what record is
4 going up to the Board of Supervisors. It's -- you know,
5 when we make factual findings, what are we relying on?
6 And we're only going to rely on the evidence that we've
7 admitted. Right?

8 MS. KAISER: I understand that. Yes.

9 COMMISSIONER LIU: So I think that's the point of
10 all of these meetings we've been having to determine
11 admissibility of evidence.

12 COMMISSIONER HUR: And we expect you to follow our
13 rulings, and when you submit your findings of fact that
14 have citations, we expect that you'll be citing things
15 that we deemed to be relevant whether or not another
16 body who reviews our work agrees or disagrees with that
17 viewpoint.

18 MS. KAISER: Absolutely. I understand all of those
19 concerns. I was simply wondering about the desire to
20 shorten for the sake of shortening.

21 COMMISSIONER HUR: I'm not --

22 MS. KAISER: That's all I was asking about. I
23 completely understand the purpose for the rulings and
24 the reason why they're important for the findings of
25 fact and conclusions of law.

1 May I address your point about credibility in the
2 Brown case, because -- well, may I?

3 COMMISSIONER HUR: Do -- do any commissioners have
4 questions for Ms. Kaiser or comments about those
5 paragraphs?

6 Okay. Please, proceed.

7 MS. KAISER: Okay. You may remember that I ended
8 our conversation last time saying I hope you won't be
9 mad at me if I come back and don't represent each
10 person's views perfectly because I'm hearing a panoply
11 of views among the commissioners.

12 I did hear you very clearly say, Commissioner Hur,
13 and I did not ignore your focus on the credibility of
14 the victim as the main point of this declaration, but I
15 also heard Commissioner Liu say, "Isn't this important,
16 for us to determine what conduct constitutes an act of
17 domestic violence?" I heard her ask if it was important
18 for helping the commission determine whether Sheriff
19 Mirkarimi pleaded guilty to a crime of domestic
20 violence.

21 Commissioner Studley was concerned that there be
22 information about the nature of domestic violence and
23 background about how to interpret certain elements or
24 actions within the context of domestic violence.

25 Commissioner Liu said that it was important or that it

1 may be important to under- -- the facts that are
2 discussed may be important to understand how the
3 behaviors may affect the domestic violence or why a
4 witness would recant. Those were two separate things.

5 Commissioner Renne wanted to know whether the acts
6 fit the definition of domestic violence as the expert
7 describes it, whether or not it's the legal definition.

8 So I heard many different views about why this
9 might be relevant that included victim credibility, but
10 also exceeded it, and that is why in my view, when --
11 and frankly, you know, I addressed the objections that
12 Mr. Kopp raised, which were to those limited paragraphs
13 and to bullet point vi. You know, and it was my view in
14 the first place that given the panoply of reasons the
15 commissioners said it might be relevant that most of the
16 declaration was relevant.

17 COMMISSIONER HUR: What is -- I thought you were
18 going to address *Brown*.

19 MS. KAISER: Okay. *Brown* is indeed a case that
20 talks about in that case, in that setting, the expert
21 declaration went to helping the court understand the
22 reason why the victim would have recanted, but there are
23 many other cases about using domestic violence experts,
24 and they're not limited to victim credibility.

25 If you would like me to bring in a series of case

1 cites that show that it's really just the Evidence Code
2 801 analysis that can include any reason why an expert
3 would have more knowledge that would be helpful to the
4 finders of fact, then I'm happy to do that. And it's
5 true that Brown did focus on that, but it didn't limit
6 the inquiry to that.

7 COMMISSIONER HUR: And of all the things that you
8 mentioned, I don't think paragraphs 64 to 75 go to that,
9 my fellow commissioners' objections or concerns about
10 Ms. Lemon's testimony. I mean, the paragraphs that talk
11 about -- that Ms. Lemon -- in which Ms. Lemon talks
12 about the indications of domestic violence, the effect
13 it has on victims, how victims react are all prior to
14 these paragraphs. So I would -- I would recommend that
15 we strike 64 to 75.

16 Are there dissenting views from --

17 COMMISSIONER LIU: No, I was actually just going to
18 say that I had made a list, and it was very similar to
19 your list, of the paragraphs to exclude. Even based --
20 you know, given the concerns that I had before, I was
21 still going to exclude pretty much all of the same
22 paragraphs that you were talking about. So I completely
23 agree with your approach.

24 COMMISSIONER HUR: Paragraphs 82 through 87.

25 COMMISSIONER RENNE: What are the paragraphs? I'm

1 sorry.

2 COMMISSIONER HUR: Eighty-two through 87.

3 COMMISSIONER RENNE: Thank you.

4 MS. KAISER: I'm sorry. What did you just strike
5 just --

6 COMMISSIONER HUR: Sixty-four to 75.

7 MS. KAISER: Thank you.

8 And -- I'm sorry -- what paragraphs are we
9 discussing now?

10 COMMISSIONER HUR: Eighty-two to 87.

11 MS. KAISER: Thank you.

12 COMMISSIONER HUR: You know, I agree that the --
13 what happened with the guns has become relevant. I'm
14 not just -- it's not clear to me what an expert in
15 domestic violence should be saying about them.

16 He -- the sheriff obviously was allowed by law to
17 carry these guns, and her conclusions appear to be the
18 types of conclusions that I wouldn't expect an expert in
19 domestic violence to make. So that's my -- that's why I
20 agree with the relevance objection.

21 Of course, Mr. Kopp, if I have that wrong or if --

22 MR. KOPP: You're doing fine.

23 COMMISSIONER RENNE: Mr. Chairman, paragraph 87 is
24 really a different -- it may be excluded, but certainly
25 not -- it doesn't necessarily relate to the guns in the

1 previous paragraph.

2 COMMISSIONER HUR: That is -- that is true. This
3 appears to me to be essentially legal conclusions.

4 COMMISSIONER RENNE: I agree with you. It should
5 be probably excluded because it's a legal conclusion;
6 however, I suppose expert witnesses are entitled to give
7 legal conclusions even though they may be wrong.

8 MS. KAISER: Well, Ms. Lemon teaches domestic
9 violence law and wrote the textbook on domestic violence
10 law. And, boy, if there's anything she's qualified to
11 opine on, it's what domestic violence law is. And you
12 may feel that you don't need the help. But she's
13 certainly qualified, I believe, to offer that opinion.

14 COMMISSIONER HUR: Any objection from the
15 commissioners to striking 82 to 87?

16 COMMISSIONER RENNE: I would keep 87 in.

17 COMMISSIONER HUR: Any other views?

18 I could live with that.

19 COMMISSIONER STUDLEY: I'd agree with that.

20 COMMISSIONER HUR: Okay. So 82 to 86 would be
21 stricken.

22 Mr. Kopp, I'm tired of carrying your relevance
23 objection that I apparently took more seriously than you
24 did.

25 MR. KOPP: Well, I -- you've heard my view.

1 COMMISSIONER HUR: So I'm going to let you --

2 MR. KOPP: Well, I'll focus on the paragraphs that
3 you've already raised unless you want me to go somewhere
4 else.

5 COMMISSIONER HUR: No, no, no. Just the ones I've
6 raised would be good.

7 MR. KOPP: Okay. So we're at 95.

8 MR. EMBLIDGE: Yes.

9 MR. KOPP: Yeah. I think a bunch of this was
10 already stricken in the various declarations. Maybe it
11 was out of Ms. Madison's declaration. I think the
12 determination was already made that this was not
13 relevant.

14 COMMISSIONER HUR: Ms. Kaiser?

15 MS. KAISER: Well, I think I gave you case law last
16 time explaining that our expert can rely on hearsay,
17 which I believe was actually one of the bases and
18 perhaps the sole basis -- I don't remember perfectly --
19 for striking this information last time.

20 But it's relevant for the same reasons that the
21 Flores testimony is relevant. It's relevant because it
22 goes to understanding the likelihood of whether it was a
23 more severe incident on December 31st, including all
24 the factual aspects of the incident, or whether it
25 wasn't.

1 You heard Ms. Peralta Haynes testify yesterday that
2 in her opinion, the incident must have been less
3 significant because there were no indications of
4 economic abuse or emotional abuse or verbal abuse, and
5 here is our expert looking at other statements that she
6 considers reliable that she believes are evidence that
7 it is more likely that this is domestic violence that is
8 more severe. That's the relevance.

9 COMMISSIONER HUR: Okay. Any questions for
10 Ms. Kaiser?

11 This does rely on paragraphs that were stricken
12 from Ms. Madison's declaration, which is why I recommend
13 that we strike it from the Lemon declaration. Is there
14 any dissenting view from my fellow commissioners?

15 Okay. Ninety-six, I think, is the same, basically
16 the same.

17 MR. KOPP: Yes.

18 COMMISSIONER HUR: So I would strike 96, too, for
19 that same reason.

20 MS. KAISER: May I speak to just that one point?
21 Which is as a matter of law, there is not a problem with
22 the expert relying on evidence that was proffered but
23 not admitted. An expert may rely on other things beyond
24 admitted evidence.

25 COMMISSIONER HUR: But it's not very helpful to us

1 if she relies on evidence which we specifically said is
2 not relevant or helpful to us, so I would strike 96.

3 One twenty-eight?

4 MR. KOPP: It's the same issue. This was all
5 stricken.

6 COMMISSIONER HUR: Ms. Kaiser?

7 MS. KAISER: You made those relevance
8 determinations, to the extent they were relevance rather
9 than hearsay determinations, before you had the benefit
10 of this expert explanation of why these facts or
11 assertions are indeed relevant to an analysis of the
12 events on December 31st.

13 It may be that didn't change your mind, but the
14 mere fact that you struck them before doesn't mean that
15 you still must strike them now.

16 COMMISSIONER RENNE: Well, but Ms. Kaiser, don't we
17 have to accept that the facts set forth in paragraph 128
18 are true? And we have no evidence that supports that,
19 that they are in fact true.

20 MS. KAISER: You are entitled as the fact-finder to
21 make a determination of whether or not you believe that
22 it is reasonable of the expert to rely on these reports.
23 It doesn't -- she doesn't -- the fact that she relies on
24 them does not make the evidence true if you admit her
25 report. It's still within your judgment to decide what

1 weight to give things after you see her analysis and the
2 reason why she includes them.

3 COMMISSIONER RENNE: Well, the difficulty I'm
4 having with that argument is it's one thing to say an
5 expert can rely on hearsay, can rely on other materials,
6 but where we have -- where there is no evidence in the
7 record and the expert says these facts, and if these
8 facts are not true, you know, then we could -- I suppose
9 you want us to reject the expert just because that
10 paragraph -- just -- it seems to me it's a back-door way
11 of putting in things that are not in the record.

12 MS. KAISER: I find -- you're seeing my hands
13 raised in sort of difficulty, I guess, because the law
14 does allow an expert to use their own expert judgment
15 and experience to decide what is the proper basis of
16 their own expert opinion.

17 Now, in the judicial context -- right? -- when
18 judges make legal determinations or juries make legal
19 determinations, we have all sorts of rules about what
20 it's appropriate to rely on. One of the rules we have,
21 though, is that experts are special. Experts use their
22 own judgment about -- in terms of their own field.

23 Even if this isn't something a judge would
24 necessarily say, "Oh, yes, this is a proper basis for my
25 decision," an expert uses their own discipline to

1 determine "This makes sense when we're doing our
2 analysis," and I think that what we are seeing is in the
3 context of a domestic violence expert, there's a --
4 there's an almost required reliance on hearsay, where,
5 particularly in proceedings like this, the story that
6 started here may change and there may be reasons for
7 that.

8 COMMISSIONER RENNE: But we -- we ruled that
9 this -- these factual statements were irrelevant to the
10 issue that we've got to decide. And so therefore, I
11 mean, I just can't conceive -- I mean, I've tried a lot
12 of cases, and I can't conceive of a judge saying, "I've
13 decided that these facts are irrelevant to the issue
14 I've got to decide" and then some expert can come in and
15 say, "I relied on these facts in forming my opinion that
16 you should reach x." I mean, I --

17 COMMISSIONER HUR: Commissioner Studley?

18 COMMISSIONER STUDLEY: The way I'm looking at it,
19 we decided that it was not relevant to our findings
20 whether what was in the Mertens declaration, as referred
21 to here, was relevant to what we were doing, whether --
22 you know, I'll just refer to the things in this, you
23 know, the names on a bank account or where the child
24 slept were not elements that were going to relate to
25 what we have to find. But we may feel that we have to

1 make a judgment about the nature and consequences of
2 domestic violence or what was going on in this
3 situation.

4 So I feel as though I could come to a different
5 conclusion about whether I wanted that in, whether it
6 was relevant as a factual matter in the context of the
7 Mertens declaration, but come to a different result here
8 about whether I want to understand what goes on in
9 domestic violence and how that might affect the victim
10 or alleged victims -- I'm not going to get into that
11 issue -- might -- whether that might affect the nature
12 of the testimony by the individual about what went on.

13 In short, I would be with Ms. Kaiser.

14 COMMISSIONER RENNE: But Commissioner Studley, the
15 thing is that Mr. Kopp --

16 COMMISSIONER HUR: Microphone.

17 MS. KAISER: Microphone.

18 COMMISSIONER RENNE: I'm sorry.

19 Mr. Kopp, if this evidence were to come in as part
20 of your expert, he would have a right to try and prove
21 that those facts are untrue to undercut your expert.
22 Right? So that I guess another reason why I'm reluctant
23 to join Commissioner Studley in letting it in is to say
24 I don't want to open up this hearing to all these
25 peripheral issues that we've decided are not relevant to

1 what we have to decide.

2 And in order -- so that if your expert is going to
3 rely on this information, Mr. Kopp, I think,
4 legitimately could say to us, "Well, commissioners,
5 you've got to give me a chance to show that those facts
6 are untrue."

7 MS. KAISER: And I would respond that he did have
8 that opportunity. He had that opportunity -- he has the
9 opportunity and forwent the opportunity to cross-examine
10 Ms. Lemon and make those points regardless of your
11 ruling. He knew that that was a possibility, that you
12 might decide that it was relevant in terms of how the
13 expert reached her conclusion, and decided that he
14 didn't want to cross-examine her even then.

15 COMMISSIONER HUR: It would be difficult, I think,
16 for your opponent to anticipate cross-examining on a
17 subject that we excluded. So I -- I'm with Commissioner
18 Renne here.

19 I think the whole point of Dr. Lemon is to help us,
20 the fact-finder, determine whether there was official
21 misconduct, and if the facts on which that expert relies
22 are not facts that we deem relevant, I think it's
23 difficult to find those paragraphs -- it would be
24 inconsistent, I think, for us to find those paragraphs
25 helpful in our determination if we thought the

1 underlying facts were not.

2 COMMISSIONER STUDLEY: And it's possible that what
3 the understanding that I need is in her more general
4 description of the nature and elements of domestic
5 violence, and if it troubles the rest of you, that, I
6 will -- A, I may be in the minority; and B, I'm not
7 trying to prove that these things are true, and I don't
8 think she is either.

9 She's saying if we thought these things were going
10 on, then it would fit into a certain pattern. But I
11 understand what you're saying.

12 COMMISSIONER HUR: Okay. And I do think it is
13 addressed extensively in the rest of her declaration.

14 Okay. One thirty-five.

15 COMMISSIONER RENNE: What was that ruling on 128?

16 COMMISSIONER HUR: That it would be stricken.

17 MS. KAISER: I'd like to remind the commission that
18 even Mr. Kopp said at a prior point when you were making
19 evidentiary rulings about fact witnesses that
20 information did not need to be admitted into evidence
21 for an expert to rely on it, that that was a separate
22 question. And I think as a matter of law, that is
23 simply the case, but I will not belabor the issue.

24 COMMISSIONER HUR: Mr. Kopp, 135?

25 MR. KOPP: Well, I think -- and honestly, I don't

1 have the Williams declaration before me with the
2 portions that were struck, so I'm not sure if part of
3 this was not in evidence, but I don't have any
4 particular comments on this paragraph.

5 COMMISSIONER HUR: I think my -- what I thought was
6 the relevance problem is that we struck paragraph 4. I
7 think -- I actually think that the first two sentences
8 relying on paragraph 3 are -- maybe might be okay.

9 Ms. Kaiser, do you have a response with respect to
10 paragraph 135?

11 MS. KAISER: I mean, I guess I would say that even
12 the part you want to strike is consistent with what
13 Ms. Lopez was just testifying to about the ease with
14 which sound traveled, but I don't -- you know, I don't
15 have strong feelings about it.

16 COMMISSIONER HUR: Okay. I would recommend we
17 strike lines 23 through 25 of paragraph 135.

18 Is there any dissenting view from the
19 commissioners?

20 One thirty-nine. Ms. Kaiser?

21 MS. KAISER: I don't think that Mr. Kopp has an
22 objection because this is actually the portion of the
23 Williams declaration that was just readmitted by
24 agreement of counsel.

25 COMMISSIONER HUR: Ah. Great. Okay. One

1 thirty-nine is in.

2 One forty-two relies on paragraph 13. Is that in
3 by stipulation also?

4 MR. KOPP: Well, was that admitted?

5 COMMISSIONER HUR: It wasn't previously. I don't
6 know whether that was part of your stipulation.

7 MR. KOPP: No, that's not part of the stipulation.

8 COMMISSIONER HUR: Okay. Ms. Kaiser, I mean, I'll
9 grant you your standing objection on --

10 MS. KAISER: That's fine.

11 COMMISSIONER HUR: -- evidence being unadmitted.

12 MS. KAISER: I have nothing new to say about it.

13 COMMISSIONER HUR: Okay. Is there any objection
14 from the commissioners to excluding 142, which relies on
15 paragraph 13 of Williams, which was excluded from
16 evidence?

17 Okay. That will be excluded. I think I said 146
18 to 150, but I think in light of us having admitted
19 Flores that those -- those probably should come in.
20 Ms. Kaiser, I trust you agree.

21 MS. KAISER: Yes.

22 COMMISSIONER HUR: Mr. Kopp?

23 MR. KOPP: I will submit. I don't have any
24 argument on them.

25 COMMISSIONER HUR: Okay. I do not think we should

1 strike 146 to 150, unless there's a dissenting view from
2 commissioners.

3 Okay. I also had -- I had 152 to 184, which I know
4 is a big chunk, and again, this -- this seemed to relate
5 more to events that occurred after what we're concerned
6 about. But I open it up for argument from Mr. Kopp and
7 Ms. Kaiser and also for my fellow commissioners to
8 express their views.

9 MR. KOPP: Well, my only comment is that this goes
10 along with my objection to that bullet point that still
11 I don't think has been ruled upon as Sheriff Mirkarimi's
12 post-December 31st to January 13th statements or
13 January 4th statements. I just don't see the
14 relevance.

15 MS. KAISER: I'd like to address the two portions
16 that are encompassed here separately.

17 COMMISSIONER HUR: Okay.

18 MS. KAISER: The first one is Ms. Lopez's
19 statements to the media, although not 151.

20 One fifty-two through 157, it's true that these are
21 comments that are made after the fact, but so is this
22 testimony that you just heard today, and it goes to the
23 victim's credibility and signs that she is recanting and
24 typical signs of how she's describing things that
25 suggest that the testimony you heard today was a

1 recantation rather than finally getting to the truth.
2 So I think that this is relevant for the direct point in
3 Brown, the core relevant point, actually.

4 COMMISSIONER HUR: I find that compelling. I --
5 MS. KAISER: Okay.

6 COMMISSIONER HUR: I would overrule that --
7 MS. KAISER: Okay.

8 COMMISSIONER HUR: -- objection.
9 Wait. Hold on.

10 Views from the other commissioners? Any dissenting
11 view? I think it's tangential, but it's along those
12 same lines.

13 Okay.

14 COMMISSIONER LIU: You're talking about 151 to 157?
15 COMMISSIONER HUR: Right.

16 COMMISSIONER LIU: Okay. Yeah, I would agree.
17 COMMISSIONER HUR: Okay.

18 COMMISSIONER LIU: Yeah.

19 MS. KAISER: And in terms of the next batch,
20 through -- 158 through 180, this goes directly to what
21 Commissioner Liu was talking about last time, about
22 whether or not these are indications that Sheriff
23 Mirkarimi is an unreformed batterer at this point, has
24 not fully rehabilitated himself, if indeed he was a
25 batterer in the first place.

1 This is important and it's relevant as rebuttal
2 evidence more than anything else at this point, because
3 you heard the sheriff come in and testify -- after you
4 gave me these instructions, you heard him come in and
5 testify that he -- that there's a new professional
6 standard that he can help set as a chief law enforcement
7 officer by modeling the power of personal redemption.

8 And frankly, that may be true. That may be a
9 valuable standard that a chief law enforcement officer
10 could model. We don't dispute that. What we do dispute
11 is whether or not he is ready to model it. Now, I
12 agree -- I know what you're thinking. You're thinking
13 what does that have to do with whether he committed
14 official misconduct in the first place?

15 And maybe it has nothing to do with it. I mean, I
16 think it's a bit of a jury nullification defense, like
17 "I did it, but I'm better now." But if you're going to
18 entertain that line of thought or that argument or be
19 sympathetic to it, then I think that this evidence needs
20 to come in.

21 COMMISSIONER HUR: Commissioner Liu.

22 COMMISSIONER LIU: So Ms. Kaiser --

23 MS. KAISER: Yeah.

24 COMMISSIONER LIU: -- so what I wanted to say for
25 the record is that I did talk about these paragraphs at

1 the last meeting when we discussed Dr. Lemon's
2 declaration, but what I actually said was I did not
3 think that it was relevant for us to determine whether
4 Sheriff Mirkarimi's actions after the incident were
5 actions consistent with that of an unreformed batterer.

6 I don't think that we're here to determine whether
7 he's acting like an unreformed batterer, and we're only
8 here to determine whether the conduct that did -- what
9 conduct took place and whether that conduct rose --
10 whether those actions rose to the level of official
11 misconduct. So I want to make the record clear that
12 that was my position and still is.

13 MS. KAISER: If I -- you're right. I should
14 address that. I got a little in love with my own
15 rebuttal argument for a moment there, which I do think
16 is a good argument.

17 But to go back to your point, I think that it's
18 relevant in the same sense that some of the other
19 element -- evidence that you are striking is relevant.
20 It goes to the likelihood, again, that this is a true
21 domestic violence relationship. His conduct before the
22 event is relevant to try and figure that out and his
23 conduct and statements after the event are also relevant
24 to trying to figure that out. It's the same rationale.
25 It's just, you know, a different period in time.

1 COMMISSIONER HUR: And Ms. Kaiser, I can certainly
2 assure you that to me, whether or not he is reformed --
3 those arguments, I -- you are correct that I think
4 they're irrelevant. So, you know, maybe that might
5 assuage your fears as to whether or not this is going to
6 help us or not, at least in my view.

7 MS. KAISER: I would ask, then, that that
8 testimony -- and I'm happy to identify it -- that it be
9 stricken because if it stays in the record but my
10 rebuttal evidence is excluded, a different
11 decision-maker could come to a different conclusion.

12 COMMISSIONER HUR: I think you've -- did you object
13 to it at the time?

14 MS. KAISER: No.

15 COMMISSIONER HUR: Then it's in.

16 Any dissenting views from my fellow commissioners
17 as to 158 to 184?

18 COMMISSIONER LIU: Well, actually, I guess 159,
19 that evidence has already come in, the content of 159
20 about the inauguration speech.

21 COMMISSIONER HUR: Okay. That's true.

22 COMMISSIONER LIU: So that should -- we should be
23 consistent.

24 COMMISSIONER HUR: Okay. Thank you. I think
25 that's right.

1 Any -- and I definitely welcome -- welcome being
2 corrected, so if there are others I've missed --

3 MS. KAISER: I believe that the apology to
4 Ms. Madison in court is also already in. That's in
5 paragraph 161. And 162 is also already in as an
6 exhibit. One sixty-three is the same.

7 Is 164 not in?

8 MR. KEITH: No.

9 COMMISSIONER HUR: Okay. One -- so we've got
10 one -- you've identified 161, 162, 163.

11 MS. KAISER: Yes, and 159. I don't know if we've
12 already --

13 COMMISSIONER HUR: Yeah, 159, mm-hmm.

14 MS. KAISER: You were done with that.

15 So then 158 is out, 160 is out, and then we go to
16 164 is out. I'm just -- I'm not actually trying to
17 strike my own testimony here, but I'm just trying to
18 keep track of what --

19 COMMISSIONER HUR: Okay. I mean, if there are
20 others where you find -- I mean, yes, if there are
21 others as you're going through them where you feel we've
22 already relied on the testimony, I think we should
23 reconsider that.

24 MS. KAISER: Well, 166 is a prior inconsistent
25 statement because it's inconsistent with Sheriff

1 Mirkarimi's testimony that he was seeking couples
2 counseling.

3 COMMISSIONER HUR: I'd be inclined to exclude that.
4 I think it's -- using an expert as rebuttal testimony,
5 I -- I don't think is going to be helpful to us.

6 MS. KAISER: I'm just -- it's my -- it seems to me
7 that the commission is concerned about the opinion being
8 based on admissible evidence, and that is admissible
9 evidence because it's a prior inconsistent statement.

10 None of the evidence -- none of the expert's
11 opinion is being offered as fact evidence. It's being
12 offered as an opinion about the situation based on the
13 indicators that the expert considers reliable. So I'm
14 not saying that -- just like all the rest of it, this is
15 not being offered for -- as factual evidence. It's
16 being offered as the basis of an opinion, and it is a
17 basis of an opinion that is founded on admissible
18 evidence in this proceeding.

19 COMMISSIONER HUR: Is the March 19th press
20 conference in evidence? Ms. Kaiser?

21 MS. KAISER: That's a good question. I just --
22 you're talking about 164 and 165?

23 COMMISSIONER HUR: Yeah.

24 MS. KAISER: My understanding is that it is not.

25 COMMISSIONER HUR: Okay. I mean, you

1 cross-examined him. Did you use it with him?

2 MR. KEITH: We did not.

3 COMMISSIONER HUR: Okay. I think that should stay
4 out.

5 Are there any other paragraphs where you -- where
6 Ms. Lemon is relying on admitted evidence?

7 MS. KAISER: When you say so that should be out, do
8 you mean 164 or and 165 or are you speaking of 166?

9 COMMISSIONER HUR: One sixty-six too.

10 MS. KAISER: Okay.

11 COMMISSIONER HUR: Is there a dissenting view from
12 the commission?

13 MS. KAISER: Paragraph 184 relies on Sheriff
14 Mirkarimi's declaration.

15 COMMISSIONER HUR: That's a good point. I think
16 that should be in.

17 Okay. So I know that was terribly confusing for
18 our staff. Mr. Emblidge has gotten it. We're lucky to
19 have him.

20 MS. KAISER: I'm sorry.

21 COMMISSIONER HUR: I figured when you said 184 and
22 184 was the last paragraph, that meant that you had
23 covered all of them.

24 MS. KAISER: But he was doing 152 to 180.

25 MR. KEITH: Oh, no. No. Oh, no, you're right.

1 MS. KAISER: We're confused. Can we just clarify?
2 MR. KEITH: The objection was through 180, and I
3 was skipping ahead to 184.
4 COMMISSIONER HUR: I'm sorry?
5 MR. KEITH: The range we were looking at ended,
6 actually, at --
7 COMMISSIONER HUR: At 180.
8 MR. KEITH: I think at 180, so we're past the range
9 or did it end higher?
10 MR. EMBLIDGE: One eighty-four.
11 MS. KAISER: My understanding was that you said 152
12 to 180 and 184?
13 COMMISSIONER HUR: No.
14 MS. KAISER: Was that incorrect?
15 COMMISSIONER HUR: No, it's 152 to 1- --
16 MS. KAISER: Okay.
17 COMMISSIONER HUR: I think we're at 158 --
18 MS. KAISER: Okay.
19 COMMISSIONER HUR: -- to 184.
20 MS. KAISER: Okay.
21 COMMISSIONER HUR: But then we -- there were
22 interim ones we admitted, 159 --
23 Mr. Emblidge, maybe I should defer to you.
24 MR. EMBLIDGE: I believe right now you're
25 considering striking 158, 160, and 164 to 183. So

1 leaving in 159, 161, 162, 163, and 184.

2 COMMISSIONER HUR: That sounds right. Okay.

3 Mr. Kopp, you had an objection to bullet point vii
4 on page 3?

5 MR. KOPP: Yes.

6 COMMISSIONER HUR: What's your argument?

7 MR. KOPP: Vii, they excepted it, so that should go
8 out.

9 COMMISSIONER HUR: Okay.

10 MR. KOPP: So vi.

11 COMMISSIONER HUR: Vi.

12 MR. KOPP: Relevance. I don't think I can really
13 expand further than I have.

14 COMMISSIONER HUR: Ms. Kaiser?

15 MS. KAISER: I can't expand further on that point,
16 either, but I did want to make clear for the record that
17 the fact that we agreed to remove some portions of the
18 Lemon declaration did not mean that we agreed with the
19 objection. We were simply trying to implement the
20 commission's rulings.

21 So to the extent that we stipulated with Mr. Kopp,
22 we did so at your direction, not out of our voluntary
23 sense that it was irrelevant or unfounded.

24 COMMISSIONER HUR: Okay. Does the commission have
25 a view as to bullet point vi?

1 COMMISSIONER LIU: That's the statement about the
2 unreformed batterer, the opinion about the unreformed
3 batterer? I don't think it's relevant to what we're
4 tasked to do here, so I would be inclined to exclude it.

5 COMMISSIONER HUR: I would agree with that.

6 Any dissenting view?

7 Did any of the commissioners -- there were a number
8 of paragraphs that I reviewed and thought were relevant
9 and should be in, so I only identified the ones that I
10 thought were not. Did any of the commissioners have
11 different paragraphs that they thought should be
12 excluded that we have not addressed that you'd like to
13 address?

14 Okay. So we will of course issue our usual summary
15 that will have these objections identified and give the
16 parties an opportunity to --

17 MS. KAISER: If I may sort of put an asterisk up
18 there, we were moving pretty quickly through a fairly
19 large amount of text, and I would like the ability to
20 bring something to the commission's attention if I made
21 a mistake based on the hastiness. Based on -- for
22 example, whether there was something in evidence that I
23 didn't spot.

24 COMMISSIONER HUR: Are you arguing the sheriff's
25 request for rebuttal testimony?

1 MS. KAISER: Yes, I am.

2 COMMISSIONER HUR: Okay. I was going to say you
3 could maybe do it doing that, but I understand you will
4 be occupied. You know, I have no objection to that if
5 by the next meeting you find something that you missed.

6 MS. KAISER: Thank you.

7 COMMISSIONER HUR: Any dissenting view?

8 Okay. Okay. Mr. Kopp or Mr. Waggoner, the
9 sheriff's request for impeachment testimony?

10 MR. KOPP: Well, I hope that I communicated our
11 concerns adequately in the written request. It's my
12 view that if we were not permitted the chance to
13 subpoena these witnesses that might be able to show that
14 the mayor did not testify truthfully under oath, I think
15 that there is going to be a -- a cloud, for lack of a
16 better term, over the entire proceedings and not just
17 here, in going to the board.

18 I mean, when the mayor -- the mayor has stated his
19 belief under oath that he had a civic duty to do this,
20 and he's doing this for no other purpose. If that's the
21 case, there should be no need for false testimony. If
22 there was false testimony, that raises a big question in
23 my view about what are the true motivations behind the
24 bringing of these official charges of misconduct, and I
25 don't think it's -- it solves a problem to say that this

1 is impeachment on a collateral issue.

2 I mean, the mayor has said on numerous occasions
3 that he's doing this because he thinks it's the right
4 thing to do and that -- and that we have these high
5 standards of official misconduct and the sheriff has
6 fallen below them. I think everybody could agree that
7 testifying truthfully under oath is -- that's what we
8 expect of public officials, and if you don't do that,
9 that falls below those very same standards of good
10 conduct. And if the mayor fell below here, we ought --
11 we ought to be able to show that.

12 COMMISSIONER HUR: Ms. Kaiser?

13 MS. KAISER: I think this is just an invitation to
14 a sideshow. I think you've noticed that one of the
15 sheriff's defenses has been pointing fingers at the
16 mayor. But if you look at it -- I mean, that may be a
17 good strategy with the public, but as a legal matter, if
18 you look at it analytically, it really doesn't matter,
19 frankly, what the mayor's motivations were.

20 The charter cares whether the official committed
21 official misconduct. The charging authority is the
22 mayor, but the way to test the allegations of official
23 misconduct is with this hearing, it's with the
24 witnesses, it's with the evidence. The charter doesn't
25 care if the mayor was hasty. The charter doesn't care

1 if the mayor's best friends are bitter enemies with the
2 person charged. And in fact, it doesn't matter as a
3 matter of law whether or not the charging official was
4 dishonest in some way, because the test of the truth
5 isn't with the intention of the charging authority. The
6 test of the truth is this hearing.

7 So I think that the reason the mayor's testimony
8 was relevant is because it showed -- it showed his
9 interpretation of what "official misconduct" meant under
10 the charter that he was charged to implement. But
11 whether he did it well or poorly, truthfully or falsely,
12 that's for you to determine with this hearing, not by
13 bringing collateral witnesses to argue about whether the
14 mayor testified truthfully.

15 Now, I would be doing my client a huge disservice
16 if I did not tell you straight out that I believe if we
17 had this hearing, it would be quite apparent that the
18 mayor did testify truthfully. So far, we only have, you
19 know, a war of media articles, and the only people
20 saying the mayor testified untruthfully are the people
21 who have no knowledge. The people who do have knowledge
22 confirm what the mayor testified to.

23 This is a tempest in a teapot. It's an attempt to
24 distract. It's completely irrelevant. It would be a
25 huge waste of time. But, you know, it's certainly

1 within the commission's discretion to conduct this
2 further mini-trial.

3 COMMISSIONER HUR: Questions for Ms. Kaiser or
4 Mr. Kopp?

5 COMMISSIONER STUDLEY: Comment, but not a question.

6 COMMISSIONER HUR: Okay. Please. Your comments.

7 COMMISSIONER STUDLEY: Whenever. My view on this
8 one is that the very purpose of the Ethics Commission
9 is -- and our role here is to take -- and why the voters
10 created this multistep process is to take this out of
11 the realm of motivation and politics and put the five of
12 us -- to interpose us between two entities who are by
13 their nature political.

14 And I -- I didn't need to hear anything from the
15 mayor. It is before us. As I mentioned to the public
16 when they said, "Why don't you just drop this? You're
17 wasting time and money," it was that voters said we have
18 to do this. And I think the reason that we have to do
19 this is for the very reasons that you've just heard, is
20 so that we can independently, regardless of how it got
21 here, make the determinations that -- we build the
22 record and make a recommendation, and then it goes to
23 another political body with an extremely high standard,
24 just because the voters were looking for us to be -- I
25 don't have the perfect word -- a bridge, a separation,

1 and as independent-as-they-can-find body to do this. So
2 I do not think we need to inquire in any of that.

3 COMMISSIONER HUR: I agree with you, Commissioner
4 Studley, but I do want to say one thing. I consider
5 very seriously any allegation that someone came before
6 us and did not testify truthfully.

7 COMMISSIONER STUDLEY: Absolutely.

8 COMMISSIONER HUR: This does not work unless we
9 have truthful testimony by people who are sworn under
10 penalty of perjury. So I'm not diminishing in any way
11 the seriousness of a perjury allegation.

12 The other thing is that the Ethics Commission could
13 not adjudicate perjury. That is a matter for the D.A.
14 It's a criminal -- it's a criminal action, and not
15 something that we can decide.

16 What's relevant to us is whether or not the
17 testimony would help us decide whether official
18 misconduct occurred, and in my view, the issue is too
19 collateral for it to merit additional testimony in light
20 of all the time we have spent on this, our efforts to
21 get a record that is complete, but also is as free as
22 possible from issues that really are not material to our
23 determination of official misconduct.

24 COMMISSIONER STUDLEY: I appreciate that, what you
25 said about perjury and the need for people to take their

1 oath here completely seriously. I didn't mean to --

2 COMMISSIONER HUR: I know you didn't.

3 COMMISSIONER STUDLEY: -- minimize any of that, so
4 I appreciate your saying that and I agree.

5 MR. KOPP: Well, I want -- I don't want to cut off
6 any of the commissioners if they want to say something,
7 but --

8 COMMISSIONER HUR: Mr. Kopp.

9 MR. KOPP: I'd appreciate if the D.A. wasn't out
10 there saying, "Well, I'm going to let the Ethics
11 Commission deal with it," because that's been -- and I
12 know it's not on the record, but I read the papers and I
13 know that's what he said.

14 But I agree with you that you could not make a
15 finding that a criminal offense occurred, true, but you
16 could make a factual determination about whether or not
17 a witness testified falsely under oath, and in my view,
18 that could impact your decision on whether or not you
19 ought to make a recommendation to the board for removal.

20 COMMISSIONER HUR: Mr. Kopp, had you objected to
21 the mayor's declaration, I would have been inclined to
22 sustain it. I mean, he only testified because he put in
23 a declaration and you agreed to cross-examine him. And
24 I'm not going to -- I mean, it may have been very
25 effective, and -- but it's -- just because he testified

1 about it doesn't mean that it's material to our decision
2 about whether your client committed official misconduct.

3 MR. KOPP: See, the reason why I disagree with that
4 opinion is essentially the mayor is the prosecutor here.
5 He's the chief accuser. In any other context, in a
6 criminal context, when the accuser is biased, when the
7 person bringing the charges -- for example, a D.A., a
8 city attorney, an attorney general -- if they are
9 biased, that bias can be elicited and they can be
10 recused from further prosecution in the case.

11 We don't have that remedy here. Our remedy is to
12 try to expose it if it exists, and there's no other way
13 for us to do this.

14 COMMISSIONER HUR: I certainly understand your
15 position. I guess I just don't think that even if it is
16 shown that he was -- even if your proffer is correct,
17 I'm just finding it hard to determine -- hard to see how
18 that would be something material to our decision about
19 official misconduct. But I -- I hear your arguments.

20 Any questions or further comments from the
21 commissioners?

22 Commissioner Liu.

23 COMMISSIONER LIU: Well, I mean, I do recognize
24 that determining credibility is paramount and
25 fundamental to this contested evidentiary proceeding,

1 but I also recognize another fundamental principle is
2 that impeachment shouldn't be allowed when it's aimed at
3 discrediting testimony that is just not material to what
4 we have to decide, and so I am having a hard time seeing
5 how either issue, whether the mayor asked a supervisor
6 her opinion of, you know, how he should handle Sheriff
7 Mirkarimi's position or number two, the issue of whether
8 the mayor authorized offering Sheriff Mirkarimi a
9 lower-ranking position -- I have a hard time seeing how
10 either of these issues tend to prove or disprove whether
11 the sheriff engaged in acts on December 31st that
12 would rise to the level of official misconduct.

13 So I am also inclined to agree with my colleagues,
14 the Chair and Commissioner Studley, in not allowing four
15 additional witnesses to testify and to prolong this
16 hearing on collateral matters.

17 MR. KOPP: Well, I'm -- I don't know if you want a
18 response or not, but I could respond if you wanted a
19 response.

20 COMMISSIONER HUR: Commissioner Liu, I'll leave it
21 to you.

22 COMMISSIONER LIU: No, not really.

23 MR. WAGGONER: May I be heard on this?

24 COMMISSIONER HUR: Commissioner Renne?

25 COMMISSIONER RENNE: I mean, also, I went back and

1 took a look at the transcript, the portions of the
2 transcript where the question -- the two questions that
3 are at issue were raised, and there were objections to
4 their admissibility as being immaterial, and I think we
5 may have been too lax in letting it come in because I
6 share the view that's been expressed here that
7 regardless of what the answer would be, even if we took
8 the testimony that you want to put in, I'm sure it isn't
9 going to be clear-cut one way or the other, based upon
10 the stories that appear in the newspaper, denials,
11 and -- and it's not going to be clear-cut.

12 But even if we did, it has nothing to do with
13 whether or not there was a violation which constitutes
14 official misconduct. It has nothing to do with that.
15 It's a totally separate matter, and if you want to
16 pursue it somewhere else, fine.

17 MR. KOPP: Yield.

18 COMMISSIONER HUR: Mr. Waggoner.

19 MR. WAGGONER: Thank you, Commissioners.

20 I respectfully would disagree with that and this is
21 why: The mayor has argued that his suspension of the
22 sheriff was discretionary. It was an exercise of his
23 discretion. And respectfully, the phrase "rise to the
24 level of official misconduct," that implies that there's
25 a definition, a clear definition, of what official

1 misconduct is or is not.

2 However, that's not the case, and the mayor has
3 conceded it's a discretionary decision, so there is no
4 real definition of what is official misconduct. It's,
5 as the mayor has cited several times, conduct that falls
6 below a standard of decency, good faith, and right
7 action. That is a discretionary -- determining what
8 fits into that, into those parameters or not, is a
9 discretionary decision.

10 So the mayor's discretion is at issue. You have to
11 decide did the mayor exercise his discretion in a
12 reasonable manner when he determined -- when he
13 suspended the sheriff. Is the mayor's idea of what he
14 thinks is official misconduct -- is that reasonable?
15 Did he exercise his discretion reasonably? His
16 credibility, his truthfulness, go to whether or not
17 exercised his discretion in a reasonable manner.

18 So that -- and if the shoe were on the other foot,
19 if the mayor had alleged that the sheriff was not
20 truthful, as he has -- you know, they brought forward --
21 proffered Flores's transcripts, you allowed that in,
22 allowed many other kinds of impeachment evidence in
23 against the sheriff. Now there's credible evidence that
24 the mayor was not truthful as to who he talked to about
25 the -- about the suspension, about the alleged official

1 misconduct. All that goes to his discretion, the
2 exercise of his discretion, you know.

3 So the claim that -- contrary to Ms. Kaiser's claim
4 that it doesn't matter whether or not -- effectively,
5 whether or not the mayor perjured himself, of course it
6 matters to your determination. Of course. Of course it
7 matters whether any witness comes before you and lies.
8 That matters to whether or not you find official
9 misconduct or make that recommendation.

10 Again, it's about the mayor's exercise of his
11 discretion and whether or not he was truthful. And as
12 Mr. Kopp said, he's the charging official. If the
13 charging official lies under oath, what does that say
14 about this entire proceeding? And you determined that
15 well, we don't care. That's not relevant to whether or
16 not what the sheriff did -- again, the definition is so
17 broad there is no -- what can rise to the level of
18 official misconduct? Well, what rises below it? We
19 don't know. We don't know. Only the mayor knows. And
20 that's why --

21 COMMISSIONER HUR: Mr. Waggoner, we need to try to
22 determine that. I agree with you that it's confusing.
23 However, with respect to the sheriff, I mean, the
24 sheriff and the mayor are in different positions. The
25 sheriff's testimony is clearly relevant to whether or

1 not official misconduct occurred here.

2 So we're talking about, in my mind, vastly
3 different types of testimony. And frankly, the weight I
4 give to the sheriff's testimony and efforts to impeach
5 it are, in my mind, much more critical to whatever the
6 mayor had to say, because even if the mayor had the
7 worst motives to bring this for the sheriff, if the
8 conduct does rise to the level of official misconduct, I
9 think we're obligated under the charter to find official
10 misconduct occurred; whereas, on the flip side, if he
11 had the perfect -- if he had the purest of motives, but
12 the conduct does not rise to the level of official
13 misconduct, it's totally irrelevant whether or not he
14 thought he was doing the right thing at the time.

15 MR. WAGGONER: I don't understand how you can
16 determine what rises to the level or falls below the
17 level of official misconduct without knowing -- without
18 some parameters of what that decision is, and that goes
19 to the mayor's discretion.

20 COMMISSIONER STUDLEY: I was with you right up to
21 the part where you said it's going to be a hard
22 decision, but I -- but the mayor's view, the mayor's
23 individual view, as he testified -- not the legal view
24 that will be put before us by the attorneys who stand in
25 the prosecutorial role. Their view does matter, as does

1 yours. But we are not here to evaluate the exercise of
2 discretion. I disagree with you completely on that.

3 We are here to find a very specific question about
4 whether this is official misconduct. That is not an
5 easy question. I wish it were. But the mayor's
6 motivation for bringing this charge is not on my mind
7 and I don't think will be part of our determination.

8 MR. WAGGONER: So is it then irrelevant whether or
9 not the mayor lied under oath?

10 COMMISSIONER STUDLEY: That is a separate question
11 from the facts that we have to find about whether there
12 was official misconduct. I think Commissioner Hur said
13 it very well.

14 COMMISSIONER HUR: Yeah, I think I addressed that
15 at the beginning. We take seriously any allegation that
16 there was perjury.

17 MR. WAGGONER: Then why -- why wouldn't you hear
18 from witnesses testimony as to that issue?

19 COMMISSIONER HUR: Counsel --

20 MR. WAGGONER: If you're taking it seriously,
21 why -- why not hear from witnesses who could provide --
22 who could shed light on that?

23 COMMISSIONER HUR: Counsel, I think we've addressed
24 this several times, and I -- I don't think we need to
25 address it again.

1 Are there other comments from the commissioners on
2 this issue?

3 Okay. The request for impeachment testimony is
4 denied.

5 The last thing we need to talk about is what the
6 commission needs in advance of August 16th so that we
7 can make a recommendation to the board on that day. One
8 thing that I think would be very helpful is a document
9 that is findings of fact. And here is my idea, and I
10 welcome input from everybody on this.

11 The mayor -- the sheriff has identified the
12 paragraphs that he disputes. That's paragraphs 6
13 through 8 of the charges, 19 through 24, 26, and 30.

14 That was -- do I have that correctly, Mr. Kopp, 6
15 through 8 --

16 MR. KOPP: Actually, Mr. Waggoner handles this,
17 so --

18 COMMISSIONER HUR: -- 19 through 24, 26 and 30.

19 All of the other paragraphs are stipulated to, so I
20 don't see any need to -- to have factual findings on
21 those. They are as -- they are conceded as true as
22 stated in the charges. Therefore, I think the focus of
23 the parties should be on evidence that supports or does
24 not support 6 through 8, 19 through 24, 26, and 30.

25 Now, I am -- I'm guessing that you probably want to

1 identify -- especially the sheriff would want to
2 identify a few additional facts that he thinks have been
3 established that are in favor of the defense, and I
4 imagine the mayor may want to as well.

5 So my thought is that each of you have five
6 additional facts that you can identify and then put
7 supporting evidence for, and my thought is then you
8 submit that -- you exchange so that the other side can
9 put the facts -- put the citations to the record that
10 they think dispute that fact or they can say they
11 stipulate to that fact.

12 Does that make sense? Or have we -- have we lost
13 you?

14 MR. KOPP: No, I'm following.

15 MS. KAISER: I would have -- I haven't yet had the
16 opportunity, and I don't think Mr. Keith has, either, to
17 sit down and parse through the amended charges in those
18 paragraphs, and so I'm -- I'm concerned about agreeing
19 to a number that, you know, may turn out to be arbitrary
20 or something that we can't work within.

21 COMMISSIONER HUR: Okay. Well, here's my concern.
22 I mean, these are your charges. Presumably, you put in
23 there everything that you think we need to -- if we
24 found everything in your charges to be true, that you
25 think we should find that official misconduct occurred.

1 So I am concerned if -- frankly, if there would be
2 more than five additional facts that you would need in
3 order to prove your case, given that you were the one
4 who put forth these amended charges.

5 MS. KAISER: Well, two things --

6 COMMISSIONER HUR: Secondly -- wait.

7 MS. KAISER: Oh, I'm sorry.

8 COMMISSIONER HUR: Secondly, it's -- you have to
9 realize that we are not one judge. We cannot -- I
10 cannot -- none of us can go back and make these
11 decisions ourselves and then give you a document that
12 provides you with the answers.

13 We need to decide each of these facts, and that
14 could -- it's just not going to be feasible for us to
15 receive 40 different stipulated -- 40 different facts
16 and try to decide each one of them, so it has to be
17 limited.

18 MS. KAISER: I completely understand and agree with
19 and share that concern. I'm not trying to create, you
20 know, a free-for-all by any means. But I can -- I guess
21 I do want to let you know a few things from our
22 perspective.

23 One is we followed the charter's direction -- which
24 was unclear, frankly -- that we needed to file written
25 charges. It didn't say that it needed to be a

1 particular kind, that it needed to be more -- much more
2 complete beyond noticed pleading, and I can tell you for
3 a fact as a person who is doing it that if that was the
4 standard that applied, I was not aware of it.

5 COMMISSIONER HUR: But you filed a bill of
6 particulars.

7 MS. KAISER: We filed more specific written
8 charges, setting out the different counts separately.
9 We didn't -- well, you understand what I'm saying.

10 You know, I can tell you what our understanding was
11 and what we believed that we were guided by. We didn't
12 understand if it was the case that there's a separate
13 pleading standard that we needed to meet. It wasn't
14 clear at that time, and I think that's understandable
15 given the vagaries of the charter that we're all
16 struggling with and the novelty of this procedure.

17 So I just want to put again my little asterisk
18 there to say that it is possible that there are key
19 factual issues that we may want to address that you're
20 not going to find already in a sentence.

21 COMMISSIONER HUR: Which is why I'm recommending
22 that we give you five additional facts. Frankly, I'm
23 also not particularly moved if you haven't studied the
24 paragraphs that the sheriff identified because you were
25 included on this. And I mean, your lack of preparation

1 is not particularly moving.

2 So is that acceptable, five additional facts?

3 MR. WAGGONER: Yes, that's fine.

4 MR. KEITH: And Commissioners, I would add this:

5 Each of the counts has one paragraph that basically
6 summarizes "And here's what you should draw from these
7 other facts," and I think that I certainly wouldn't want
8 to lose the opportunity to have those paragraphs be part
9 of our proposed findings.

10 I know the other side didn't identify them. I'm
11 positive they dispute them. But I would certainly want
12 those -- I would want the leeway to be able to sort of
13 have a sort of summing up, factual-finding paragraph as
14 to each of the counts. Though those hadn't been
15 identified as disputed, it seems like it might be
16 helpful.

17 COMMISSIONER HUR: Any objection from the sheriff?

18 MR. KOPP: No.

19 COMMISSIONER HUR: Okay. I think that's -- I think
20 that's fine.

21 Okay. The other thing that I think would be
22 helpful, and I have created a visual because it was so
23 confusing I couldn't think of any other way to try to
24 explain it.

25 Mr. Emblidge, may I give this to you?

1 Yes, for the overhead. And I have copies for you
2 all. Okay. Thank you.

3 Okay. Here is my problem, and you can focus just
4 on the top part. Can you see the colors there? The
5 "(1)" and the "(2)" are in red.

6 MR. KOPP: Yes.

7 MR. KEITH: Yes.

8 COMMISSIONER HUR: To me, this provision is
9 susceptible to two primary interpretations. What I've
10 called "Option 1" is one that I think was identified in
11 the mayor's amended charges. But the idea would be that
12 "wrongful conduct," following (1), and "conduct that
13 falls below," which follows No. (2), would modify
14 "official misconduct means."

15 In my mind, the import of -- if we were to read it
16 this way, then No. (2) has little, if any, relationship
17 to the official's -- the duties of the official. Do you
18 all understand why I would think that?

19 MR. KEITH: Yeah. I mean, there may be a nexus
20 there, but it's not based on the official duties.

21 COMMISSIONER HUR: Right. Right.

22 Okay. So then if you could put Option 2 up, the
23 other way of reading this is if the -- if (1) and (2)
24 modify that -- that first part of the paragraph that
25 ends with "including." Now, under that reading,

1 "conduct that falls below the standard of decency, good
2 faith and right action" would have to relate to the
3 duties of the office. Obviously, the red and the colon
4 are what I put in. Those weren't there in the original
5 text.

6 So something that certainly would help me is
7 briefing on which one of these is the right way to read
8 this provision.

9 COMMISSIONER STUDLEY: I just want to thank you for
10 bringing that forward as clearly as you did. I've been
11 struggling with the same question since I read the
12 charter provision, so I think that is a very critical
13 issue and would appreciate briefing on it as well.

14 COMMISSIONER HUR: Did the parties follow this?

15 MR. KOPP: Yes.

16 MR. KEITH: Yes.

17 MS. KAISER: Mm-hmm.

18 COMMISSIONER HUR: Okay.

19 MR. WAGGONER: That's fine.

20 MR. KOPP: I think --

21 COMMISSIONER HUR: And Mr. Kopp, if you're going to
22 say you briefed it, you didn't. Not this. I went back
23 and checked.

24 I need to know why -- I mean, I assume you're going
25 to think Option 2 is right.

1 MR. KOPP: You're right.

2 COMMISSIONER HUR: But I need to know why not just
3 with sort of vague -- vague sort of assertions of, you
4 know, what you think is the right thing, but I want it
5 parsed and I want to know why you think your view makes
6 the most sense because there's not a lot of precedent
7 out there for us to decide it.

8 And the same for the mayor. I assume you're going
9 to -- you think Option 1 is right, and I want a clear --
10 as clear as you can, whatever precedent you can find to
11 help us figure out whether Option 1 or Option 2 is the
12 right way to go.

13 MR. KOPP: We'll do it. I mean, the fact that you
14 have to ask the question, in our view, means you have to
15 construe it in the light that's most favorable to the
16 sheriff, to the accused, but we'll --

17 COMMISSIONER HUR: You can make that argument. I
18 understand.

19 Okay. Beyond that, I -- I think I would be open if
20 you wanted to argue other issues in briefing, but to me,
21 that is the primary one. How many pages do you think
22 you need to make that point?

23 MR. KOPP: That particular point?

24 COMMISSIONER HUR: Yes.

25 MR. KOPP: Ten or less.

1 COMMISSIONER HUR: Ten? Does that sound --

2 MS. KAISER: You simply want the abstract legal
3 briefing? You don't want any sort of application of the
4 facts in the case?

5 COMMISSIONER HUR: I don't think that is going -- I
6 mean, I don't think -- well, okay.

7 Here is what else I was envisioning on the 16th. I
8 think it would be helpful if we had 30-minute -- excuse
9 me -- 30- to 45-minute closing arguments from you all to
10 tie the evidence together for us. So in the briefing, I
11 don't really think we need -- we need to see it. If you
12 want to brief it, I guess I wouldn't object if you all
13 agree, but what I think I need briefing on is this
14 issue, Option 1 or Option 2.

15 Are there other issues the commissioners would like
16 briefing on?

17 Commissioner Liu.

18 COMMISSIONER LIU: Not other issues, but I would be
19 interested in two particular points on this same issue.

20 If you could brief any legislative history on that
21 charter amendment that included the second prong, that,
22 I would really be interested in seeing, and then brief
23 the issue that was raised in the prior *Mazzola* case
24 under the previous charter and whether you think that --
25 which option -- which way that cuts for you all on which

1 option.

2 MS. KAISER: What do you mean by "the issue . .
3 .raised in . . . *Mazzola*"? Because the parties have
4 very different views of what that case was even about.

5 COMMISSIONER LIU: Well, because I think in the
6 *Mazzola* case, it does adopt -- I mean, it takes one of
7 these standards. I think the charter adopts the
8 standard that was in the *Mazzola* case, at least at the
9 first prong, and so I would like briefing on which way
10 that would cut.

11 MS. KAISER: I -- honestly, the mayor doesn't
12 necessarily agree with you about that because the
13 *Mazzola* case cites a number of different legal
14 authorities in searching for its summary description of
15 official misconduct that it needs in the case before it.
16 And the charter language comes from one of the
17 authorities that *Mazzola* looked at. It's not a holding
18 in *Mazzola*. And so --

19 COMMISSIONER LIU: So that's -- so that's the issue
20 I'm struggling with. So that's what I would like
21 briefing on is all I'm saying.

22 MS. KAISER: Okay.

23 COMMISSIONER HUR: I would address *Mazzola* and how
24 *Mazzola* impacts whether Option 1 or Option 2.

25 COMMISSIONER LIU: Yes. Thank you.

1 MS. KAISER: Absolutely. I just -- I wanted to
2 make sure I hit the right point.

3 COMMISSIONER HUR: Anything else from the
4 commissioners?

5 Okay. So 15 pages? Is that --

6 MS. KAISER: For the whole brief?

7 COMMISSIONER HUR: Yeah.

8 MS. KAISER: No. I mean, there are additional
9 issues that I believe are important to put before the
10 commission, and we've never had an opportunity to brief
11 our understanding of the elements of the case. Even
12 if -- sort of regardless of whether you split it into
13 Option 1 or Option 2, there are elements within the A or
14 the B that I would like to be able to brief and put
15 before the commission.

16 I don't think it's clear, as I said last time, what
17 the duties of office are. Right? So to say that the
18 duties of office applies to both isn't -- you know, it
19 doesn't help us determine what you can properly consider
20 to be the duties of office. So I'd like to be able to
21 address issues like that.

22 COMMISSIONER HUR: So what does that mean? How
23 many pages do you want?

24 MS. KAISER: I would like to be able to submit up
25 to 30 pages. I will not waste them. If I don't need

1 them, I won't use them. But I think it's more efficient
2 to be able to raise the issues than to have to come back
3 and ask your permission and explain why the issues merit
4 the extra pages.

5 COMMISSIONER HUR: Is there an objection from the
6 sheriff?

7 MR. KOPP: Yes.

8 COMMISSIONER HUR: You can be heard.

9 MR. KOPP: Well, I'm just -- I mean, the mere fact
10 that you need to do all this work to justify the case, I
11 think, speaks volumes. I think, you know, if you want
12 to give them more than ten pages, 15 should be
13 sufficient. I know that we can do it in 15.

14 MR. WAGGONER: Their opening brief was 27 pages
15 long.

16 COMMISSIONER HUR: Commissioners?

17 COMMISSIONER RENNE: Well, I don't have any strong
18 feelings about limiting the -- either party. If they
19 want to waste more paper because they think we need more
20 education, I'm happy to get it. So I don't -- I would
21 not strongly urge a page limitation. But obviously,
22 if -- our time is limited.

23 COMMISSIONER STUDLEY: I'm actually probably closer
24 to Commissioner Renne on this. If there -- if it helps
25 to lay it out and be clear about it, that's preferable

1 to me than trying to -- to sort of have a guide as we
2 also hear closing argument. Were the bids 15 and 30?

3 COMMISSIONER HUR: It appears.

4 COMMISSIONER STUDLEY: So perhaps you might like to
5 offer a number somewhere in between. We don't get to do
6 much of that.

7 COMMISSIONER HUR: That's true. Any other views
8 from the commissioners?

9 Okay. In light of that, I would say 25 will do it.
10 You'll get 25. As long as you brief the legal issues
11 we've discussed, if you think it would be helpful for us
12 to have other application of law to facts, I think
13 that's fine. You probably could do that within 25
14 pages.

15 I want to talk about timing. The one thing I
16 definitely want is an exchange of your respective
17 findings of fact, so that you have a column for sort of
18 your rebuttal position. I probably should have made
19 another visual for what I wanted this to look like.

20 But if you can imagine a column of fact, and it has
21 just verbatim the fact that is in the charge and then
22 your five additional facts; column two, the evidence
23 that you're relying upon; and then a blank column three
24 for the other side to put in either that they agree or
25 they disagree and the citations for the competing

1 evidence. Does that make sense? It's kind of like a
2 summary judgment motion.

3 And so whatever we do with the schedule, I want to
4 give you guys an opportunity to exchange those in
5 soft-copy format so that what we get is one document
6 that has all of the facts and the parties' respective
7 views in columnar format. Does that make sense?

8 MS. KAISER: Sure.

9 COMMISSIONER HUR: Okay. So when -- when can you
10 have those done and when can you exchange them so that
11 we have them by at least August 10th?

12 MR. KEITH: Commissioners, I just need to step out
13 for half a minute. I'll be right back.

14 COMMISSIONER HUR: Okay.

15 MR. KEITH: We can exchange on August 6th.

16 COMMISSIONER HUR: You can exchange on August 6th
17 and we will have the document on August 10th --

18 MR. KEITH: Okay.

19 COMMISSIONER HUR: -- and we'll have both briefs on
20 August 10th as well.

21 MR. KEITH: Okay.

22 COMMISSIONER HUR: And if you could submit it to
23 Mr. Emblidge both in .pdf and soft copy, that would be
24 great.

25 MR. KEITH: On?

1 COMMISSIONER HUR: On the 10th.

2 MR. KEITH: On the findings or the briefs?

3 COMMISSIONER HUR: I'm sorry. The findings.

4 MR. KEITH: The findings. Okay.

5 COMMISSIONER HUR: Thank you.

6 And so what we hope to hear on the 16th is
7 essentially your closing argument and whatever response
8 you have to the briefs that you all exchange on the
9 10th.

10 Make sense?

11 MR. KOPP: Yes.

12 MR. KEITH: So do you envision for closing
13 argument -- I mean, there's a whole set of the facts of
14 what happened. Right? I mean, the more traditional
15 trial closing argument.

16 COMMISSIONER HUR: Yeah.

17 MR. KEITH: But then there's kind of the law, which
18 is more like an appellate argument.

19 Does the commission have any preference for whether
20 they want to handle those two issues separately?

21 COMMISSIONER HUR: That's a good point. I hadn't
22 envisioned them being treated separately. I had not
23 envisioned them being treated separately, so I would say
24 you treat them together. You argue your -- you argue
25 your points together. I would foc- -- I guess here's

1 what I'd say.

2 I would focus on the facts, and I understand it's
3 hard because there are two different standards you would
4 have to be applying it to, but I think there will be
5 opportunity for us to ask you specific questions about
6 the law, and, you know, we'll have your briefing. So I
7 guess I leave it up to you. My personal opinion,
8 probably a little bit weight -- weighted more heavily to
9 the facts, but I'll leave it up to you all.

10 MR. KEITH: So it would be a format where we'd
11 deliver our closing argument on both and then there'd be
12 follow-up questioning. And would the follow-up
13 questioning be on the facts as well as the law?

14 COMMISSIONER HUR: Yeah. Yes. Sometime during the
15 day, I guarantee you will get follow-up questioning
16 on -- on the law.

17 MR. KEITH: Okay.

18 COMMISSIONER HUR: Mr. Keith, you're the plaintiff,
19 you're the claimant. I'm not exactly sure what you are,
20 but you're going first, so if you want to reserve a
21 little bit of time for rebuttal at the end, that's okay
22 with me.

23 MR. KEITH: We'll know by August 16th.

24 COMMISSIONER HUR: Okay. Good. Anything --

25 Does that plan sound acceptable to the commission?

1 Okay. Great. Anything else from the parties?

2 MR. KOPP: No.

3 MR. KEITH: No.

4 COMMISSIONER HUR: Okay. Then the meeting is
5 adjourned.

6 (Proceedings adjourned at 10:20 p.m.)

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CERTIFICATE OF REPORTER

I hereby certify that the foregoing proceedings in the within-entitled cause took place at the time and place herein stated and were reported by me, MARLENE PUAOI, a Certified Shorthand Reporter and disinterested person, and were thereafter transcribed into typewriting;

And I further certify that I am not of counsel or attorney for either or any of the parties nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my signature this 25th day of July 2012.



MARLENE PUAOI, CSR, RPR
California CSR No. 7370