

ETHICS COMMISSION MEETING - SHERIFF ROSS MIRKARIMI

1 BEFORE THE ETHICS COMMISSION
2 CITY AND COUNTY OF SAN FRANCISCO
3 STATE OF CALIFORNIA
4

5 In the Matter of ROSS MIRKARIMI

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9 City and County of San Francisco

10 Special Meeting of the Ethics Commission

11 Monday, April 23, 2012 - 4:30 p.m.

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20 Reported by: Jeannette Samoulides, CSR #5254
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1 BE IT REMEMBERED that, on Monday, the 23rd day
2 of April, 2012, commencing at the hour of 4:30 o'clock
3 p.m. thereof, at the CITY HALL, 1 Dr. Carlton B. Goodlett
4 Place, Room 400, San Francisco, California, before me,
5 JEANNETTE SAMOULIDES, a Certified Shorthand Reporter, for
6 the State of California, the following proceedings were
7 had

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9 APPEARANCES OF COUNSEL

10 For Sheriff Ross Mirkarimi

11 LAW OFFICES OF SHEPARD S. KOPP
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13 Los Angeles, California 90064
14 BY: SHEPARD S. KOPP, Attorney at Law

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19 BY: DAVID P. WAGGONER, Attorney at Law

20 For the City and County of San Francisco

21 Office Of The City Attorney
22 1390 Market Street, Fifth Floor
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24 By: Peter J. Keith, Deputy City Attorney
25 By: Sherri Sokeland Kaiser, Deputy City Attorney

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1 Commissioners Present

2 Benedict Y. Hur, Commissioner Chairman
3 Jamienne S. Studley
4 Beverly Hayon
5 Dorthy S. Liu
6 Paul A. Renne

7 Staff Present

8 John St. Croix, Executive Director
9 Catherine Argumedo, Legal Analyst/Ethics Investigator
10 Mabel Ng

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1 Sheriff Ross Mirkarimi

April 23, 2012

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

4 COMMISSIONER HUR: I'd like to call this
5 special meeting of the Ethics Committee to order.

6 We'll first take the roll.

7 (Roll call taken.)

8 COMMISSIONER HUR: I'd like to also introduce
9 counsel for the Ethics Commission in this matter.

10 Scott Emblidge, of the firm of Moscone,
11 Emblidge & Sater sitting in the front there.

12 Before we begin, Mr. Renne has an announcement
13 he would like to make.

14 COMMISSIONER RENNE: Yes. In the spirit of
15 full disclosure, I want to say that I -- the record will
16 show I was appointed as an Ethics Commissioner on
17 February 8th of this year. Prior to the time that I
18 would be subject to the restrictions, insofar as campaign
19 contributions, in late October, early November I was
20 asked to make a political contribution to
21 Sheriff Mirkarimi's opponent, Chris Cunnie, and I made a
22 contribution, as I recall, of about a hundred dollars.

23 I assure the sheriff and his attorneys and the
24 mayor's attorneys that the fact that I may have made that
25 contribution -- and I will say I've never met Mr. Cunnie

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1 either before or after that time -- and -- but that the
2 fact that I made that contribution, I approach this
3 hearing totally with an open mind with no preconceived
4 notions one way or another as to where this hearing
5 should come out.

6 COMMISSIONER HUR: Thank you, Mr. Renne.

7 Couple procedural matters before we begin.

8 Public comment in this matter will occur at the
9 end of the hearing and will be limited to two minutes per
10 person. When we get there I'll provide these
11 instructions again, but we would like people to just line
12 up four or five at a time, and then when the fifth
13 speaker has finished giving public comment, five more can
14 then line up. This is to ensure an orderly process and
15 to make sure that we comply with all building
16 regulations.

17 So the item agenda is the official misconduct
18 proceeding that are now before us.

19 I would invite the attorneys for the mayor and
20 the sheriff to please come up and state appearances.

21 MR. KEITH: Good afternoon, Commissioners.

22 Peter Keith, Deputy City Attorney, along with my
23 colleague Sherri Kaiser, Deputy City Attorney, on behalf
24 of the mayor.

25 MR. KOPP: Good afternoon, Commissioners. My

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1 name is Shepard Kopp, and along with David Waggoner, my
2 co-counsel, I have the honor to represent
3 Sheriff Mirkarimi.

4 COMMISSIONER HUR: Thank you, counsel.

5 Mr. Keith, I understand that you, an hour or so
6 ago, circulated a memo. I trust that counsel for the
7 sheriff has received this memo?

8 MR. KEITH: We did send it to him.

9 MR. KOPP: We have it.

10 COMMISSIONER HUR: Okay. Thank you.

11 Given that we just received it, I'm not sure
12 all the commissioners had a chance to review it, and I
13 know that no copies have been made available to the
14 public because we just got it, but we will make it
15 available on the website as soon as we can.

16 The Ethics Commission staff has put forth a
17 memo suggesting procedures that would govern this
18 official misconduct hearing.

19 I'd like to ask my fellow commissioners whether
20 it makes sense to first hear from the parties on their
21 views before we conduct our deliberations about how the
22 procedure should be implemented.

23 Any objection to that?

24 COMMISSIONER HAYON: Makes sense.

25 COMMISSIONER STUDLEY: No.

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1 COMMISSIONER HUR: Okay.

2 So, Mr. Keith, perhaps we can first hear your
3 views on the procedural memo that was -- the Commission
4 has put together and your views on what was set forth
5 therein.

6 MR. KEITH: Thank you, Commissioner.

7 The mayor's goal in these proceedings is to
8 make sure that there's a full and fair proceeding in
9 which the Commission is going to have an opportunity and
10 the public is going to have an opportunity to hear all
11 the evidence that's relevant to the determination of
12 official misconduct in this matter. And we've made our
13 proposals in that spirit and our response to the
14 executive director's thoughtful memo in that spirit.

15 One thing that's become clear over the past
16 week with regard to the sheriff's public statements in
17 various media outlets is that this -- the determinations
18 that the Commission is going to make here and the
19 recommendation that it's going to forward to the Board of
20 Supervisors is going to involve the resolution of
21 credibility disputes, it's going to involve hostile
22 witnesses, it's going to involve a lot of witnesses who
23 don't work for the city, and so who really can't be
24 compelled to sit down and draft up a written declaration.

25 So I think what -- what our feeling is on the

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1 side of the mayor is that a live hearing is going to
2 better serve the goals of the Commission in determining
3 the facts of what happened here. There's -- there's
4 nothing like having a live witness subject to both direct
5 examination and cross-examination in order to weigh that
6 person's credibility based on their demeanor, based on
7 issues that may come to light in the course of other
8 witnesses' testimony.

9 And so our proposal to the Commission, which we
10 submitted in our memo and I'm happy to summarize here, is
11 really directed toward a live hearing.

12 There is a lot of commissions in the City and
13 County of San Francisco that conduct live hearings on
14 matters like this, from the Police Commission that
15 conducts matters related to police discipline, to the
16 Civil Service Commission that addresses matters under its
17 jurisdiction. They hear live testimony. They have
18 something of a mini trial, and that's what we think is
19 going to best serve the goal of ascertaining the truth
20 here and making a complete factual record to forward to
21 the Board.

22 COMMISSIONER HUR: Do you have any objection to
23 first submitting briefs to outline the legal issues, and
24 to put forth your factual evidence so that we can
25 determine where the actual factual disputes are before

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1 entertaining any live testimony?

2 MR. KEITH: We would -- we would be able to
3 summarize the facts in our case for the Commission. I
4 think it's unlikely that we would be able to get,
5 essentially, sworn declarations from a lot of these
6 witnesses, but we would certainly summarize what we
7 expect their testimony to be if the Commission thinks
8 that that would be helpful in making the determination
9 whether a live hearing would be helpful.

10 COMMISSIONER HUR: I presume that there are
11 some witnesses that are within the mayor's -- they're
12 able to obtain a declaration. Is that --

13 MR. KEITH: Oh, certainly. I mean, any city
14 employee could certainly be -- execute a declaration.

15 Our concern is more with the folks who aren't
16 city employees, who we don't necessarily have that power
17 over. We could ask them to. They might in fact do it.
18 But I have a feeling that the cross-examination of those
19 witnesses would be so long and arduous and the redirect
20 of those witnesses would be so long and arduous that it
21 would be more considerate of the witness' time, on both
22 sides, to simply call the witness in and have them
23 testify live.

24 Again, the submission of declarations involves
25 a lot of effort, and we would ask them to do that if

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1 that's the Commission's decision, but we don't think that
2 it's helpful -- that it's fair to the witnesses or that
3 it's the most helpful way for the Commission to reach its
4 decision.

5 COMMISSIONER HUR: Mr. Keith, a few questions
6 and then I'll open it up to my fellow commissioners as
7 well, and then we'll hear from Mr. Kopp and perhaps again
8 from you.

9 The mayor has suspended the sheriff without
10 pay; is that correct?

11 MR. KEITH: That's correct.

12 COMMISSIONER HUR: And so presumably he did so
13 on the basis of known facts. In other words, the
14 complaint was not filed as mere allega -- as notice
15 pleading. This was -- the mayor had in his possession
16 facts that formed the basis of the allegations, or at
17 least in the mayor's view that's -- that's what he has,
18 correct?

19 MR. KEITH: He absolutely did. And what he
20 didn't have and what he still doesn't have are documents
21 that would help resolve some of the credibility disputes
22 that we expect to arise. Documents like telephone
23 records. For example, telephone records of the various
24 communications on January 4th that the mayor has alleged
25 constitute witness dissuasion.

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1 Those telephone records will tell us which
2 witness called which witness when, and it will help us
3 map out the communications that happened in the course of
4 that day that the mayor contends gives rise to witness
5 dissuasion. And so the mayor doesn't have evidence like
6 that.

7 What the mayor did have was statements from
8 some of the people involved in the communications that
9 certainly, in his mind, gave him probable cause to feel
10 that this official misconduct had occurred.

11 COMMISSIONER HUR: And of those people he spoke
12 to or from whom he obtained evidence, those people would
13 be able to submit declarations?

14 MR. KEITH: Some of them are independent
15 witnesses. They are cooperating with us, but there's
16 a -- there's a difference between having a short
17 interview and sitting down and writing a declaration
18 under penalty of perjury. I can't say whether those
19 witnesses would be willing to cooperate with us. We
20 certainly can't compel them to.

21 COMMISSIONER HUR: So your view is that you had
22 enough to put together probable cause charges, based on
23 these statements, but you're not sure that you would be
24 able to get them to submit sworn declarations to the same
25 effect?

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1 MR. KEITH: The process of drafting a sworn
2 declaration and having the witness go through it and make
3 sure that everything was just so --

4 COMMISSIONER HUR: I'm aware of the process.

5 MR. KEITH: It's long and difficult and not all
6 witnesses may be willing to do it.

7 COMMISSIONER HUR: Other than the person you
8 identified in your memo, Miss Haynes, is there anyone
9 that you contemplate being unable -- anyone else who you
10 think you need testimony from who you do not, at this
11 point, anticipate getting a declaration from?

12 MR. KEITH: Sheriff Mirkarimi would be one.

13 COMMISSIONER HUR: Anybody else?

14 MR. KEITH: Eliana Lopez would be another.

15 COMMISSIONER HUR: And we'll talk about that.

16 As far as Miss Lopez goes, what is the basis
17 for being able to compel her testimony?

18 MR. KEITH: Well, the subject matter of her
19 testimony would be relevant to a matter that the -- that
20 is under consideration by the Ethics Commission.

21 So we would think that a subpoena to her under
22 the Charter would be proper.

23 COMMISSIONER HUR: Anybody else?

24 MR. KEITH: Let me look at my witness list.

25 (Examination of documents.)

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1 There are three other witnesses who -- at
2 least three other witnesses who are independent
3 witnesses, who have cooperated with us. We would -- we
4 would hope that they would show up, but we would likely
5 want to subpoena them in order to ensure that they appear
6 before the Commission.

7 COMMISSIONER HUR: Who are they?

8 MR. KEITH: Abe Mertens, Ivory Madison, and
9 Kali Williams.

10 COMMISSIONER HUR: I'm sorry, the first one
11 was?

12 MR. KEITH: Abe Mertens.

13 COMMISSIONER HUR: Abe Mertens.

14 Other questions from the Commissioners for
15 Mr. Keith at this time?

16 COMMISSIONER RENNE: Mr. Keith, I just -- I
17 think one question. That is, how did you -- I read the
18 memo very quickly. But how did you perceive this live
19 hearing to proceed? Sort of like a trial, that you would
20 submit trial briefs -- each side would submit trial
21 briefs outlining what you intended to prove, and then
22 you'd put your evidence in, and then close -- submit
23 closing briefs as you would in court, and we would act on
24 that record that you put before us? Is that what you had
25 in mind?

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1 MR. KEITH: That's -- that's our best guide. I
2 mean, I think in the sense that the other administrative
3 agencies proceed in a similar way, like my reference to
4 the police commission, for example.

5 COMMISSIONER RENNE: Have you discussed this at
6 all with Mr. Kopp?

7 MR. KEITH: No.

8 COMMISSIONER RENNE: Okay.

9 COMMISSIONER HUR: Other questions from the
10 Commissioners?

11 Commissioner Liu?

12 COMMISSIONER LIU: Mr. Keith, so the complaint
13 or the charging document does contain several factual
14 allegations.

15 So is it your view, then, that we would have to
16 find each allegation to be true in order to sustain the
17 charge of official misconduct?

18 MR. KEITH: The Commission would -- well, the
19 Commission, number one, would make a recommendation. The
20 Charter doesn't specify whether there could be multiple
21 recommendations, whether there could be a majority and a
22 dissent. It doesn't prohibit that.

23 My assumption would be that the Charter -- that
24 the Commission would make findings of fact, that where
25 there are credibility disputes, they would make

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1 credibility findings.

2 And then as to each charge, if any one charge
3 is sustained, then the official misconduct has occurred,
4 and that's ultimately a decision for the Board of
5 Supervisors to make. But we would envision the Ethics
6 Commission making a finding as to each charge.

7 COMMISSIONER LIU: But the alleg -- as to the
8 specific factual allegations in the complaint or the
9 charging document, would we have to resolve any
10 credibility -- credibility issues in your favor and find
11 the allegations to be true in order to recommend that the
12 charge of official misconduct be sustained? Is that what
13 you're saying?

14 MR. KEITH: I think as -- yes. As to most
15 of -- as to most, if not all, of the charges there will
16 be credibility disputes, and there will be factual
17 disputes as to, for example, the effect of probation on
18 the sheriff's ability to perform the duties of the office
19 of sheriff with regard to probation.

20 I mean, I don't expect the other side to agree
21 that he's rendered unable to perform those duties or that
22 even if he is, that that renders him unable to perform
23 the duties of office.

24 So I expect there to be disputes even on issues
25 that are, I guess, less driven by, I guess, a swearing

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1 contest than other issues.

2 COMMISSIONER LIU: So you would envision
3 calling witnesses on that point as well, on just the
4 discharge of duties, what it entails?

5 MR. KEITH: That's correct.

6 COMMISSIONER LIU: I see.

7 MR. KEITH: There might -- there may be some
8 areas where we would be able to stipulate with the other
9 side as to the facts, but I have a feeling that those
10 stipulations would really be confined to very dry
11 historical facts. And I doubt that we would be able to
12 stipulate to issues related to the ability to perform
13 duties and fitness for office.

14 COMMISSIONER LIU: Okay.

15 COMMISSIONER HUR: Commissioner Hayon?

16 COMMISSIONER HAYON: As the only nonattorney in
17 this group here, if we were not to have an evidentiary
18 hearing with live witnesses, what would that alternative
19 look like? Would it simply be a matter of going through
20 written documents as a group?

21 MR. KEITH: Well --

22 COMMISSIONER HAYON: Reading them publicly?
23 What would that look like?

24 MR. KEITH: Well, I think that what the
25 executive director proposed in his memorandum was that

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1 each side would essentially submit in writing what their
2 friendly witnesses would be expected to say if they were
3 here live.

4 That works to some extent, but I think that a
5 lot of the records that we may be looking at, telephone
6 records, for example, they're not -- it's not
7 self-evident, necessarily, what's going on if you just
8 look at a page of telephone numbers.

9 And those are kinds of records that I think
10 could use interpretation, that where -- say a witness
11 says, "I had two telephone calls with this individual in
12 the afternoon," to try to -- we might want to have that
13 record in front of us while we're having the witness
14 answer questions so we can try to ascertain which of
15 those -- which of the entries in the telephone record
16 correspond to those calls. Things like that are very
17 difficult to do when one is sitting alone reviewing a
18 declaration.

19 COMMISSIONER HUR: Commissioner Studley?

20 COMMISSIONER STUDLEY: Following up on
21 Commissioner Hayon's question.

22 The staff recommendation was that we brief the
23 issues and then the Commission make a determination
24 whether it was necessary to have live witness testimony
25 and as to what players.

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1 How would your recommended procedure differ in
2 terms of the briefing and the time that it would take?
3 I'm asking for us, but I also think it might be of value
4 for them --

5 MR. KEITH: Certainly.

6 COMMISSIONER STUDLEY: -- to understand those
7 consequences.

8 MR. KEITH: Our proposal would be that the
9 Commission take briefing immediately on three issues.

10 The first issue being, what the standard of
11 proof is, which is one of the bullet points in the
12 executive director's memo.

13 The second issue would be, essentially, a
14 proposal for rules and procedures that would govern this
15 live hearing. What would this mini trial look like.

16 And we don't need to start from scratch with
17 that. Other commissions like, for example, the Police
18 Commission, have a set of procedures that govern hearings
19 and also provide for pretrial disclosure -- or I should
20 say prehearing disclosure of evidence from one -- from
21 one side to the other.

22 So that's -- those would be matters one and two
23 to brief.

24 The third issue that we would request immediate
25 briefing on, and this is one that's raised in my memo

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1 that hasn't come up yet, is the issue of whether
2 Sheriff Mirkarimi is going to make a claim that he has an
3 entitlement to a hearing that's closed from the public.

4 Commissioner Mirkarimi is a peace officer, and
5 under Penal Code Section 832.7 and under the Copley Press
6 decision of the California Supreme Court, there's a
7 potential argument that he could make that he's entitled
8 to a closed hearing on -- essentially as a peace officer
9 and this being a personnel matter.

10 We disagree, but we think that it's incumbent
11 to raise this issue at the very beginning, because we
12 don't want to put all the work into this decision and
13 have it be undone by some procedural defect at the
14 outset.

15 So we would want -- if Commissioner Mirkarimi
16 is not going to waive an entitlement to a closed hearing,
17 we would want that issue to be briefed immediately as
18 well.

19 COMMISSIONER HUR: Do you object to briefing
20 the other legal issues that are set forth in the
21 commission staff memo?

22 MR. KEITH: I think --

23 COMMISSIONER HUR: Those seem to be, sort of,
24 precursor issues as well.

25 MR. KEITH: Well, let me put it this way. We

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1 just briefed them to the superior court, so we could
2 brief it, but I think that -- I think that briefing on
3 these issues makes a lot more sense in the context of the
4 facts as they're going to come in. Because, for example,
5 when you're considering the official duty -- what
6 constitutes an official duty, when is somebody who's
7 elected sheriff on duty, it's important to have the facts
8 of what that individual is doing between the time of
9 election and being sworn into office.

10 It's important to have the facts of what that
11 individual's job duties are going to be when he gets into
12 office.

13 It's important to know what codes of conduct
14 apply to law enforcement officers where an act that
15 happens, perhaps before somebody starts in a position,
16 whether it's as the head of the Sheriff's Department or
17 just a deputy sheriff, whether that conduct that occurs
18 before they take the position can effectively disqualify
19 them from performing the duties of office effectively.

20 So I think that these legal questions could be
21 answered in the abstract. And if the Commission directs
22 us to, we certainly will. But I think that they're going
23 -- these are tough issues. And I think it's better for
24 the Commission to be able to grapple with them in a
25 context of real facts and evidence that we would get.

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1 COMMISSIONER HUR: So then you would propose
2 significant post-trial briefing after the evidence is
3 heard?

4 MR. KEITH: Certainly as well as propose
5 findings of fact.

6 COMMISSIONER HUR: Commissioner Studley?

7 COMMISSIONER STUDLEY: The staff memos, in
8 speaking about the need for examination of witnesses,
9 seem to anticipate the possibility that it be
10 case-by-case, that the Commission could determine which
11 witnesses we felt a need to see in person and what
12 testimony we could handle on the papers, propose them,
13 argumentation.

14 Do you agree with that or do you see this as
15 more of an all-or-nothing presentation of the witnesses,
16 leaving aside those as to which there's complete
17 agreement about what the offer of proof would be and the
18 acceptance.

19 MR. KEITH: Well, I think as a practical matter
20 once we start dealing with particular witnesses and the
21 need for live testimony for particular witnesses, that
22 that exception will end up swallowing the rule. I
23 think -- I think there's going to -- it's going to --
24 we're going to have a situation where you'll want to hear
25 live testimony from most, if not all, of the witnesses or

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1 each side will want to cross-examine each declarant for
2 the other side.

3 So I think that it's better to just make the
4 witnesses go through this process once, and I think it's
5 also better for the Commission to be able to do it once,
6 because often with declarations there's more questions
7 that are -- that seem unanswered than seem answered.

8 So I actually think it would be more efficient
9 for the Commission to simply take the live evidence.
10 There may be some witnesses where the two sides can agree
11 on, on fairly uncontroversial matters, and to the extent
12 we can do that we'll make every effort to do that.

13 We don't want to call someone in here to give
14 testimony on, essentially, an uncontested matter. I
15 think under those circumstances it's fine.

16 But for the witnesses that I mentioned earlier,
17 the independent witnesses, I think there's no question
18 that they're going to be subject to extensive
19 cross-examination. That's going to require redirect on
20 our part, fill in the blanks.

21 So I think ultimately we all save ourselves and
22 the witnesses a lot of trouble. Because remember, these
23 witnesses, they don't work for the city. They didn't
24 ask -- they didn't ask, you know, to be called as
25 witnesses. They didn't ask to write declarations. To

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1 the extent that they're cooperating with us, they're
2 cooperating out of a sense of duty, and I think we owe it
3 to them to not make this burden on them so heavy.

4 COMMISSIONER HUR: Mr. Keith, we can -- we'll
5 talk about this with Mr. Kopp, but the burden of
6 submitting a declaration, I think, pales in comparison to
7 the burden of actually having to testify in a proceeding
8 like this. So anybody -- if anybody can, you know,
9 submit a declaration and not have to testify, I think
10 they would likely agree the burden would be much less
11 than having to testify in lieu of a declaration.

12 MR. KEITH: Oh, I agree. And if -- for those
13 witnesses that we think it would end with just the
14 declaration, where it's uncontroversial
15 cross-examination, is it necessary, we have no problem
16 submitting -- submitting just declarations for those
17 witnesses.

18 COMMISSIONER HUR: Does the mayor dispute that
19 he has a burden of proof here?

20 MR. KEITH: No.

21 COMMISSIONER HUR: What about timing? When
22 would you anticipate being ready to call witnesses if
23 live testimony were permitted?

24 MR. KEITH: Well, that depends on the outcome
25 of a lot of proceedings that are going on right now.

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1 What we detail in our memo are several
2 instances of hostile witnesses and noncooperation on the
3 part of the sheriff.

4 This has forced us to use the mayor's subpoena
5 power to get documents.

6 It's forced us to go to court to get orders to
7 get people to comply with subpoenas.

8 And also to go to court to get an order to
9 release evidence from the criminal court.

10 So assuming all those chips fall into place and
11 nobody makes any objection, which frankly is an
12 assumption that I doubt would ever happen. I -- we
13 expect to be fought every inch of the way on these
14 things.

15 Assuming that that -- that those court dates
16 came and the subpoena dates came and we got that evidence
17 without objection, we'd be ready to proceed in June, but
18 I very much doubt that that's going to happen.

19 COMMISSIONER HUR: Any other questions for
20 Mr. Keith at this time?

21 Thank you, Mr. Keith.

22 MR. KEITH: Thank you.

23 COMMISSIONER HUR: Mr. Kopp?

24 MR. KOPP: Thank you, Mr. Chairperson.

25 COMMISSIONER HUR: So I don't know when you got

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1 this memo, but have you had an opportunity to review it?

2 MR. KOPP: I have.

3 COMMISSIONER HUR: And what are your views on
4 the procedural schedule outlined by the Commission -- the
5 post-procedural schedule outlined by the Commission, and
6 the response --

7 MR. KOPP: Well, if I could I'd like to preface
8 my remarks that I think at the outset we need to make our
9 objection known and plain to any of these proceedings
10 occurring. Because the mere fact that we're here to try
11 to figure out the rules by which this process is going to
12 work demonstrates the constitutional infirmity of the
13 proceedings and we object.

14 We object to the Commission doing anything
15 other than dismissing the written charges of misconduct
16 and bringing the proceedings to a halt.

17 Now, having said that, I think I'm enough of a
18 political realist to realize that we're going to have to
19 go forward with the proceedings.

20 I don't think that we have a fixed-in-stone
21 position as to the proper order to do things. I can tell
22 you that until we understand what the mayor's evidence is
23 or what his proposed evidence is, there is no way that we
24 can formulate what our response to witnesses or testimony
25 would be.

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1 We have the same information that you have, the
2 written charges of official misconduct. But what I think
3 I just heard Mr. Keith say is, we don't have the evidence
4 to support those charges. The charges were brought
5 before the evidence was in the mayor's possession.

6 So we need to know what they are going to
7 present before we can figure out how to respond. That's
8 number one.

9 No. 2, we urgently need clarification from this
10 Commission as to whether or not Sheriff Mirkarimi is
11 required by law to cooperate with this, quote,
12 "investigation," unquote, that the city attorney has
13 embarked upon.

14 And as Mr. Waggoner and I wrote in our letter
15 to the Commission, and I trust everybody received a copy
16 of that --

17 COMMISSIONER HUR: Which letter are you
18 referring to?

19 MR. KOPP: We transmitted a letter to
20 Mr. St. Croix this morning with numerous attachments. I
21 assumed it had been delivered, and I apologize if it has
22 not, and we will rectify that at the earliest
23 opportunity.

24 Let me try to summarize the contents of the
25 letter. The city attorney has been trying for a week or

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1 more to get Sheriff Mirkarimi to turn over his lawyers'
2 files from the criminal case, to sit down for an
3 interrogation, all under the authority of a -- an alleged
4 unbounded city attorney right to investigate.

5 Now, the Charter provisions that I have looked
6 at indicate that if there is an alleged violation of the
7 San Francisco Campaign and Governmental Conduct Code, a
8 complaint may be made to this Commission, and it is this
9 Commission that decides to initiate the investigation,
10 and the city attorney may participate in that
11 investigation.

12 I don't see anything in the Charter or any
13 other statutes that permit the city attorney to go out
14 and start their own investigation. We need clarification
15 on that issue immediately and urgently.

16 Because it seems to us that we'd be fighting
17 with one hand tied behind our back if they can go out and
18 prepare whatever they need to prepare to proceed with
19 this proceeding before you all have even promulgated
20 rules of procedure that will hopefully proceed in an
21 orderly fashion.

22 Now, I did want to address one point that
23 Mr. Keith made. We do not intend to argue that these
24 proceedings need to be private. In deed, we think they
25 should be public, because I think at the end of the day

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1 there's a lot of innuendo and talk about the sheriff
2 dissuading people.

3 The mayor's written charges say he may have
4 tried to get someone to dissuade a witness. I want
5 everyone to mark my words. When this is all done, it's
6 going to be crystal clear the mayor -- that the sheriff
7 did no such thing, and we want that to be known to the
8 public of San Francisco.

9 Now --

10 COMMISSIONER HUR: Let me just stop you there.

11 So there's no dispute that Penal Code Section
12 832.7 should not apply in these proceedings to the extent
13 that it would otherwise require them being confidential?

14 MR. KOPP: Correct.

15 Now, with respect to briefing schedules both
16 prior to the taking of testimony, whether it's by way of
17 declaration or by live witnesses, I could answer that
18 almost all the questions that the Commission raised in
19 the memo right here, I could tell you what we think the
20 burden of proof should be. I could tell you what
21 evidence we think you should rely on and go all the way
22 down the list, if you'd like me to do that.

23 We do have an interest in accelerating the
24 proceedings as quickly as possible, because we think the
25 longer this drags on, it's not only detrimental to

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1 Sheriff Mirkarimi, but it's detrimental to the city.

2 So we are not in favor of lengthy briefing
3 schedules, pretrial, post trial.

4 I think Mr. Keith is perfectly able to get up
5 here and argue at the conclusion of this process why he
6 thinks they proved the charges for the mayor, and we can
7 certainly do the same orally. I don't think this all
8 needs to be set forth in written fashion. Of course, if
9 the Commission thinks that would be beneficial, we will
10 certainly cooperate.

11 COMMISSIONER HUR: If the Commission did want
12 written briefs on the issues set forth in the Commission
13 memo, how quickly would you want -- would you want a
14 system where -- or procedure where the mayor would go
15 first, submit an opening brief, and then you would
16 respond? Would you prefer simultaneous briefing?

17 MR. KOPP: The -- the former would be
18 preferable. Just as it would be preferable to us that
19 they disclose what the evidence is that they intend to
20 rely on, so that we can prepare to respond.

21 I think it's got to be -- I mean, to me this is
22 somewhat akin to a criminal prosecution in a sense. And
23 one of the reasons why I made my objection earlier to
24 these proceedings is, in a criminal case if a defendant
25 was hauled into court and a judge told him, "You've been

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1 charged with a crime by the D.A. over here, now we're
2 going to figure out what the rules are and what the
3 standard of proof is," I don't think anybody would be
4 happy there.

5 We think it's essential that they tell us what
6 they intend to prove so that we can respond and have
7 notice.

8 Notice is the hallmark of due process, and
9 that's what we're trying to make sure happens here.

10 COMMISSIONER HUR: So what would -- sensitive
11 to the fact that you would like the proceedings to go as
12 quickly as due process allows, what would that briefing
13 schedule look like in your mind if you could set it -- if
14 you could set it?

15 MR. KOPP: Well, I think it's dependent on when
16 the mayor thinks that he's got all the evidence that he's
17 going to need to present.

18 In terms of the legal issues, the legal
19 questions that are raised in the Commission's memo, as I
20 said, I think that we could receive their memo as soon as
21 it was prepared and respond within a week or so to
22 whatever they file -- certainly on the legal questions,
23 the standard of proof.

24 One point that's not on here is whether or not
25 the Commission has to vote unanimously to recommend

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1 removal or the sustaining of charges. We firmly believe
2 that that should be a requirement.

3 We analogize these proceedings to the existing
4 system under the Government Code Sections 3060 through
5 3075. Under that state scheme, the accused official
6 enjoys all the protections that he would under a criminal
7 indictment, and we think that those concepts should be
8 imported into this proceeding.

9 COMMISSIONER HUR: If the brief included
10 responding to the factual statements, how much -- how
11 would that change your time frame, if at all?

12 MR. KOPP: It would significantly extend it.
13 Because until we see what their -- what their facts are,
14 we can't really begin -- I mean, we have a general sense
15 of what they're going to try to prove and how we're going
16 to try to mete it, but, you know, the dove is in the
17 details.

18 So maybe there's something out there that we
19 don't know about. It's awfully hard for me to tell you
20 we would need 30 days or 21 days. It would be -- we
21 would need significantly longer than a week if this was
22 going to address factual issues.

23 COMMISSIONER HUR: What is -- do you have a
24 position on the need for live testimony?

25 MR. KOPP: I think it's probably going to be

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1 unavoidable for at least a couple of witnesses. I'm not
2 necessarily opposed to having declarations submitted for
3 those who can and will submit them. And then if either
4 side thinks, well, we have a dispute of fact on this one
5 particular issue, we would like to call the declarant to
6 cross-examine them on that issue, submit that, the
7 Commission makes its rulings as to whether or not we can
8 or can't do that and go forward that way.

9 But I -- I think there are a couple of points
10 that are probably going to be straight credibility calls
11 that are going to require observing the demeanor of a
12 witness.

13 COMMISSIONER HUR: Do you have a position on
14 whether Miss Lopez can be compelled to testify by the
15 mayor?

16 MR. KOPP: I think that that's dependent on
17 whether or not the city attorney investigation is duly
18 authorized, and that's -- that's one of the reasons why I
19 think we need the Commission to weigh in on this.

20 I know that the city attorney has been out
21 there serving subpoenas and requesting documents, and
22 it's not all clear to me whether or not that that is
23 legally authorized.

24 COMMISSIONER HUR: Let me ask the question a
25 different way.

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1 Do you intend to rely on Miss Lopez's
2 testimony?

3 MR. KOPP: We haven't made that determination
4 yet, and probably won't be in a position to give you that
5 answer for quite some time.

6 COMMISSIONER HUR: As of now, I think the mayor
7 identified the witnesses that he would intend to rely on
8 at this point.

9 At this point who would the sheriff intend to
10 rely upon?

11 MR. KOPP: Well, I think I'd like to reserve
12 that, if I may. We have identified a potential universe
13 of about six to eight witnesses that we think we are
14 likely to either submit declarations or call as
15 witnesses. Sheriff Mirkarimi, obviously, being No. 1 on
16 that list.

17 You know, I think Miss Peralta Haynes is likely
18 on our list, assuming she's willing to cooperate and can
19 be called as a witness.

20 COMMISSIONER HUR: And, you know, I don't think
21 we'd hold you to this as sort of the final -- final list,
22 but are there others that currently are --

23 MR. KOPP: Well, there are. And one of the
24 things that I wanted to bring up for the Commission is,
25 I'd like to know if there's going to be some process by

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1 which the Commission can take into account historical
2 facts not related to this case? That is, what has
3 happened in the past when other officials, sheriffs or
4 any other type of officials, have been accused in some
5 way, not in these type of proceedings, with having
6 committed misconduct? Because I think that can inform
7 the Commission's decision as to whether or not it's
8 appropriate to recommend that these charges be sustained.

9 So it would be akin to requesting that you take
10 judicial notice of certain historical facts.

11 And one of the things that we may want to do is
12 call witnesses -- a witness or witnesses to testify about
13 the fact that there are law enforcement officers in this
14 city right now serving who have suffered misdemeanor or
15 criminal convictions. That the mere fact of a
16 misdemeanor criminal conviction in and of itself does not
17 likely impair someone's ability to perform the duties and
18 functions of a peace officer.

19 So those are -- without identifying the
20 specific people, those are some of the -- I guess you
21 would call them nonfact witnesses that we could
22 conceivably be calling to this proceeding.

23 COMMISSIONER HUR: So that's -- I mean, this is
24 not -- that's not really expert testimony. That's, what,
25 sort of -- what would that be intended to prove?

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1 MR. KOPP: To demonstrate that whatever the
2 mayor's charges are, even if any of them are true -- and
3 I think we will probably arrive at a stipulation on one
4 or two less contested issues. For example, the fact that
5 there was a guilty plea entered to a misdemeanor, we're
6 probably going to be able to stipulate to that fact.

7 But I don't think it would be necessarily -- it
8 could be characterized as expert testimony, but it could
9 be testimony from a law enforcement officer's personal
10 experience that that fact in and of itself doesn't
11 necessarily rise to the level of official misconduct and
12 is not related to their duties as a law enforcement
13 officer.

14 COMMISSIONER HUR: Other than the legal issue
15 of whether or not the Commission needs to vote
16 unanimously in order for it to make a recommendation to
17 the Board, are there other legal issues that are in
18 addition to the ones identified by the Commission staff
19 that you think should be briefed?

20 MR. KOPP: Aside from the one issue that I
21 mentioned a couple times now that we need clarification
22 on whether or not the city attorney investigation is duly
23 authorized by law, I cannot think of any other legal
24 issues that we need to raise. We -- strike that. There
25 is one question I'd like answered.

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1 We would like, as part of our briefing, to make
2 an argument that the charges -- even if everything is
3 believed in the charges and you assume the truth of
4 everything that's in the mayor's charges, that it still
5 doesn't make a case out for official misconduct. And so
6 this would be in the nature of a demur.

7 We would like to know whether or not we have
8 the ability to bring such a motion. Because we're just
9 making it up as we go along.

10 COMMISSIONER HUR: Would you be -- so assume
11 for the sake of argument that we have a procedure whereby
12 the mayor briefs legal issues, you have a week or so to
13 respond.

14 Would you at that time be prepared with that
15 brief to submit the arguments for your motion to dismiss
16 or demur?

17 MR. KOPP: Yes. I think we've largely briefed
18 them in connection with the proceedings in the superior
19 court. So I think that we have sufficient time.

20 COMMISSIONER HUR: And then as far as timing of
21 witness testimony, and I know your position -- it sounds
22 like it depends on when you get certain information from
23 the mayor, but when -- if live testimony were to be
24 heard, when do you think you would be prepared to present
25 that and to cross-examine witnesses?

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1 MR. KOPP: Well, there are two potential
2 witnesses that have some conflicts with dates, but I
3 would think certainly within 60 days, which sounds to me
4 like it's going to take close to that long to get to that
5 point probably. I'd like to be prepared within 30 days.

6 COMMISSIONER HUR: Other questions for Mr. Kopp
7 from the Commissioners?

8 COMMISSIONER LIU: Mr. Kopp, you had mentioned
9 that you'd be prepared right now to go through the list
10 and express your views on the standard of proof and so
11 on?

12 MR. KOPP: Yes.

13 COMMISSIONER LIU: I think it would be helpful
14 to specifically prepare to do that.

15 MR. KOPP: Sure. I'll be happy to do that.

16 So I'm addressing Page 2 of the memo prepared
17 by the Commission.

18 On the legal questions, we believe the
19 applicable standard of proof here should be beyond a
20 reasonable doubt. That is, before any Commissioner can
21 vote to make a recommendation to the Board of Supervisors
22 that they should sustain any of these charges, each
23 Commissioner should have to be persuaded beyond a
24 reasonable doubt.

25 The reason for that, and, again, I'm terribly

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1 sorry that you didn't receive our memo, but there is a
2 state scheme in place for removal of officers for
3 official misconduct, and it tracks all the criminal
4 procedure protections. So I think that standard of proof
5 should be imported into this proceeding. So that's the
6 reason for that standard.

7 COMMISSIONER LIU: Excuse me, you're saying
8 that the scheme set forth for removing officers --

9 MR. KOPP: Yes.

10 COMMISSIONER LIU: -- is beyond a reasonable
11 doubt?

12 MR. KOPP: Yes, that is true. And that is
13 under Government Code Sections 3060 to 3075, and there
14 are cases that discuss those, which we'd be happy to
15 provide to the Commission.

16 Essentially, they proceed -- the D.A. would
17 bring the charges. You'd go to a grand jury, get an
18 indictment, and then trial would proceed as if on a
19 criminal indictment.

20 I don't want to move on if there are any other
21 questions on that.

22 Hearing none, on the second bullet point, "On
23 what type of evidence may the Commission rely?"

24 I think there's probably going to be some
25 proposed hearsay testimony that we will likely object to.

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1 Without getting into, you know, whether the Evidence Code
2 should be relaxed or not -- we're not necessarily opposed
3 to declarations. There may be declarations that we're
4 not going to have a problem with, we don't feel the need
5 to cross-examine the declarant, but I think there is
6 going to be the need for some live testimony.

7 The answer to the third question is no. The --
8 in our view the law is clear, that any conduct engaged in
9 by Sheriff Mirkarimi prior to the time that he assumed
10 the office of sheriff cannot be the basis for a finding
11 of official misconduct.

12 That has been the law in this state since the
13 Mazzola decision came down. As a matter of fact, the
14 city attorney's office themselves have stated that that
15 is the law in memos they've submitted to the Commission
16 previously. That it's got to be conduct that occurs
17 while in office.

18 Now, I realize they've decided to take a
19 different view of the matter given the facts of this
20 case, but we believe that that answer has already been
21 answered by the Appellate Court in this state.

22 COMMISSIONER RENNE: Judge Kahn rejected that
23 argument, didn't he?

24 MR. KOPP: He did.

25 COMMISSIONER RENNE: Yes.

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1 MR. KOPP: Well --

2 COMMISSIONER RENNE: He said -- he said you can
3 come back to him after we've acted.

4 MR. KOPP: He -- I want to be fair. I think
5 that he characterized the focus of the opinion as dealing
6 with another issue, but I think that the basis of his
7 decision in rejecting our petition for writ of mandate
8 was because he thought that the administrative procedure
9 had to play out first.

10 So, No. 4, "Does 'official misconduct' under
11 the Charter require that the alleged misconduct relate to
12 the Sheriff's duties?"

13 I think that's unequivocally a yes.

14 And, "If so, does the conduct alleged relate to
15 Sheriff (sic) Mirkarimi's duties as Sheriff?"

16 And our position is the answer is quite clearly
17 no.

18 And whether or not -- the question whether or
19 not the guilty plea itself to the misdemeanor charge of
20 false imprisonment, is that sufficient to sustain a
21 finding of official misconduct? The answer to that
22 question is no.

23 The effect of whatever occurred is tethered in
24 time to the date that this action occurred, which was
25 January 1st, or most charitably January 4th. Although,

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1 as I mentioned, I think that these allegations of
2 dissuasion will be seen to be groundless.

3 So, the mere fact that a guilty plea was
4 entered at some point in time after he assumed the office
5 of sheriff, we think has no significance for the
6 Commission.

7 COMMISSIONER HUR: Obviously, were you to brief
8 that, we would want, you know, the factual and legal
9 basis behind that. But thank you for sharing that.

10 MR. KOPP: Understood.

11 COMMISSIONER HUR: Any other questions for
12 Mr. Kopp?

13 COMMISSIONER RENNE: I have some questions.

14 First, I just want to understand about the city
15 attorney's investigation -- current investigation on
16 behalf of the mayor.

17 Putting aside the question whether the sheriff
18 has any obligation to cooperate, putting that question
19 aside, is it your position that having filed the charges
20 and preparing for a hearing before the Ethics Commission
21 that the city Attorney does not have a right to do an
22 internal investigation?

23 MR. KOPP: Not at all, sir.

24 We think that if the Commission promulgates
25 rules of procedure that are fair to both sides, we'd be

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1 happy to have them investigate 'til the cows come home.

2 Because, quite honestly, there's nothing to fear here.

3 We just want to make sure that the law is
4 followed. And the authority we've been given as to --
5 they aren't giving us the authority, we're doing this on
6 behalf of the mayor. They're saying that they are
7 authorized, the city attorney's authorized, to
8 investigate under provisions of the San Francisco
9 Campaign and Governmental Conduct Code.

10 COMMISSIONER RENNE: But other than trying to
11 or seek to interview the sheriff, are there other things
12 they're doing that you say violates sort of fair play?

13 MR. KOPP: Well, whatever I tell you is going
14 to be on information and belief.

15 COMMISSIONER RENNE: Sure.

16 MR. KOPP: I heard they're out serving
17 subpoenas and going to court and trying to compel
18 witnesses to cooperate with them.

19 I don't have standing to raise any objection
20 about what they're doing there. Whoever they're
21 harassing, that person can come into court and raise
22 their own objection.

23 COMMISSIONER RENNE: Right.

24 MR. KOPP: We just feel like we're -- we've got
25 one hand tied behind our back. If you decide this is

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1 what's going to be permissible, you get compulsory
2 process, you get some limited discovery, you can request
3 documents from the other side, you either get or you
4 don't get a chance to interview the other side's
5 witnesses. I mean, personally, I don't think this should
6 be like a civil trial where there's a whole discovery
7 process. But whatever the rules are, they ought to apply
8 to both sides.

9 COMMISSIONER RENNE: So are you suggesting that
10 you'd like to see the Commission give some rules that
11 will say if the city attorney is using subpoena power to
12 investigate, we ought to exercise our subpoena power to
13 allow you to take testimony or do whatever you want for
14 purposes of discovery?

15 MR. KOPP: Absolutely. I think what's sauce
16 for the goose is sauce for the gander.

17 COMMISSIONER RENNE: Okay. Let me go back,
18 because I'm sympathetic with your concern about timing,
19 because obviously the longer this gets dragged out, the
20 person who's being most prejudiced is the sheriff,
21 obviously.

22 MR. KOPP: I agree.

23 COMMISSIONER RENNE: The city is being
24 prejudiced, but he has the most prejudice being imposed
25 on him.

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1 I'd like know from you, if you had your
2 druthers -- putting aside your objections as to whether
3 we should be doing this at all, but if you had your
4 druthers and know you've got to put up with it, tell me
5 how you would like to see it done to be the most speedy
6 and the fairest to both sides?

7 MR. KOPP: I'd like to obtain at the earliest
8 time, from the mayor, a list of witnesses and what their
9 proposed testimony would be.

10 COMMISSIONER RENNE: Sort of a summary of what
11 he intends -- what he intends to prove?

12 MR. KOPP: Exactly.

13 COMMISSIONER RENNE: Okay.

14 MR. KOPP: I'd like the Commission to decide
15 before we begin what the burden of proof is going to be,
16 whether or not it needs to be a unanimous vote, as we
17 contend, and what types of evidence will be admissible.

18 And I think that's really all we need to know
19 to go forward. If we know what they're going to put
20 forward before you and we know what the rules are going
21 to be, then we'll get ready and we will be prepared at
22 the earliest possible time.

23 COMMISSIONER RENNE: What difference does it
24 make for purposes of your speed whether or not we tell
25 you whether we're going to have to act unanimously?

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1 MR. KOPP: It's probably just for our peace of
2 mind actually. In terms of speed, you're right.

3 COMMISSIONER RENNE: Yeah.

4 MR. KOPP: That's not going to change the way
5 that we prepare the case.

6 COMMISSIONER RENNE: Right.

7 MR. KOPP: So if the Commission feels it needs
8 more time to think on those issues, that's okay.

9 COMMISSIONER RENNE: And how long after the
10 city attorney has provided you with this list of
11 witnesses and a summary of its case, how much time would
12 you need to prepare and get ready to go to trial and to
13 provide the city attorney with your summary of what you
14 intend to prove?

15 MR. KOPP: I would say 30 to 40 days after
16 that.

17 COMMISSIONER RENNE: Okay.

18 MR. KOPP: My best estimate.

19 COMMISSIONER HUR: And in the witness list and
20 subjects of testimony, are you anticipating something
21 like what would be submitted prior to a civil superior
22 court trial? Is that sort of the level of detail that
23 you were anticipating?

24 MR. KOPP: I -- you know, I don't think it has
25 to be that detailed. Who the witness is -- if they want

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1 to give us more detail, great. But if there are taped
2 statements, we'd like to know -- we'd like to see them.
3 If it's just a summary of what their anticipated
4 testimony would be, that would be okay.

5 We just need to know where -- the critical
6 facts that these witnesses will provide for you all so
7 that we can determine how to mete that evidence.

8 COMMISSIONER HUR: Other questions from the
9 Commissioners?

10 COMMISSIONER RENNE: Nothing else.

11 COMMISSIONER HUR: Thank you, Mr. Kopp.

12 Mr. Keith, I think we probably have some
13 follow-up for you as well.

14 Following Mr. Renne's line, do you have any
15 objection to providing the information that Mr. Kopp just
16 outlined?

17 MR. KEITH: No.

18 COMMISSIONER HUR: How soon could you do that?

19 MR. KEITH: We can certainly provide a one or
20 two sentence summary of each witness, at least fact
21 witnesses. There are a couple of witnesses regarding law
22 enforcement practices that we're still -- we're still
23 finalizing who those individuals are going to be. But
24 certainly once we get them, we'd be happy to provide
25 those. I mean -- yeah. We haven't been asked.

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1 COMMISSIONER RENNE: What does one, two
2 sentences -- one or two sentences, what does that mean?
3 I mean, is it -- it's got to be detailed enough so that
4 they understand the thrust of the testimony.

5 MR. KEITH: Oh, it will be.

6 COMMISSIONER HUR: So -- so how soon?

7 MR. KEITH: As to the fact witnesses, we can
8 supply that within a week.

9 COMMISSIONER HUR: And as to the
10 police-procedure witnesses?

11 MR. KEITH: I'd say about two weeks.

12 One point that I want to --

13 COMMISSIONER HUR: Sorry. Let's get -- see if
14 there are other questions first.

15 As far as the legal issues, when could you have
16 those briefed? Same time?

17 MR. KEITH: Let me think for a moment.

18 Yes. It would be -- yes. We could brief the
19 legal issues, I'd say -- it depends -- again, the ones
20 that we referenced before, we could brief immediately,
21 meeting the standard of proof and the procedures for a
22 hearing.

23 These other issues -- but we are capable of
24 briefing immediately all the issues on the bullet-point
25 list, but, again, I question how effective that would be

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1 for the Commission. If I could give an example of sort
2 of how facts interact with the law here.

3 There's an allegation that before the sheriff
4 was in office, he told his wife he was very powerful and
5 could take custody of her child. It's our contention
6 that he was referring to the power conferred by the
7 office of sheriff. Well, that act occurred before he was
8 in office. And if that's been alleged, then the argument
9 goes that it's not quite so simple as to say anything you
10 do before January 8th can be construed as being in
11 office.

12 So I think that these issues are better dealt
13 with based on a factual record than in the abstract, but
14 we can deal with them essentially based on the
15 allegations in the charges, if the Commission wishes to.

16 But a point that I would want to make would be,
17 that the Commission has a responsibility under the
18 Charter to collect the full record. And making
19 preliminary legal rulings about what things may fall
20 outside the scope of official misconduct is going to
21 prevent the Commission from hearing facts that should be
22 part of that full record that gets transmitted to the
23 Board of Supervisors.

24 So I think it would be -- I think it would be
25 an interesting, and probably educational, exercise to

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1 brief these legal issues in advance, but I would caution
2 the Commission against saying that certain types of
3 allegations just simply are off-limits so we're not going
4 to take testimony.

5 COMMISSIONER HUR: I appreciate your position
6 on that.

7 But you could -- you could, if asked, brief
8 those issues identified by the Commission, whatever
9 issues that were raised in your brief, and the two other
10 issues identified by Mr. Kopp within a week?

11 MR. KEITH: I'm sorry, the two other issues
12 being?

13 COMMISSIONER HUR: Mr. Kopp identified two
14 issues.

15 He identified the issue of what the procedure
16 should be for conducting investigations in this -- in
17 this matter.

18 Were you -- were you -- you were here, right?

19 MR. KEITH: No, no, I didn't -- I understood
20 the issue that he referenced to be -- to be the standard
21 of proof and what type of evidence would be brought forth
22 in the proceedings.

23 COMMISSIONER HUR: No, those are the issues
24 that the staff raised.

25 MR. KEITH: Right.

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1 So he's raising the issue about whether the
2 city attorney can conduct an investigation of city
3 employee ethics?

4 COMMISSIONER HUR: His issue was should the
5 Commission put forth procedures that govern how --
6 whatever limited discovery happens here, should occur?

7 MR. KEITH: Oh, certainly. We would consider
8 that to be part of what we propose to brief. Include not
9 just the live-hearing procedure, but procedures for
10 disclosures in advance of the hearing.

11 COMMISSIONER HUR: And the other issue that he
12 mentioned was whether the Commission needs to unanimously
13 recommend to the Board -- whether its decision has to be
14 unanimous.

15 MR. KEITH: Yeah, we likewise consider that to
16 be part of the procedure.

17 COMMISSIONER HUR: And do you have a position
18 on that as you stand right -- as you stand here?

19 MR. KEITH: No. The only -- our position is
20 that the only duty the Charter imposes on the Commission
21 is to make our recommendation. There's no statement that
22 it's unanimous, that it need be unanimous.

23 And as we said before, there's no limitation on
24 whether there could be a majority and a dissent. So we
25 don't think it needs to be unanimous.

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1 COMMISSIONER HUR: Other questions for
2 Mr. Keith from the commissioners?

3 Commissioner Liu?

4 COMMISSIONER LIU: Mr. Keith, Mr. Kopp had
5 raised the issue of possibly bringing in evidence of
6 historical facts, or I think the way I heard it was
7 similarly-situated law enforcement officers who also had
8 pled guilty to misdemeanors or who had had misdemeanors.

9 Do you have a position on that, on other
10 situations coming into play?

11 MR. KEITH: Well, I think that if it's going to
12 come in through an expert on law enforcement best
13 practices, if they can -- if they can find an expert on
14 law enforcement best practices, who can say, oh, officers
15 can commit a misdemeanor and still be effective police
16 officers, we wouldn't -- we wouldn't object to that kind
17 of testimony. We'd certainly contest it, but we wouldn't
18 -- we think it's fine.

19 But as to specific -- I don't know if Mr. Kopp
20 may have been referring to specific past city
21 individuals, essentially saying that this prosecution --
22 this present set of charges is somehow improperly
23 motivated, and we think that the evidence is absolutely
24 inadmissible for that purpose.

25 COMMISSIONER LIU: Okay, thank you.

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1 COMMISSIONER HUR: Any questions for Mr. Keith?

2 MR. KEITH: There is one matter regarding
3 timing that I wanted to bring to the Commission's
4 attention.

5 COMMISSIONER HUR: Please.

6 MR. KEITH: As mentioned in our memo, if
7 cooperation is not forthcoming from the sheriff, and we
8 don't expect it to be, the mayor is going to amend the
9 charges to charge him with breach of a present official
10 duty to cooperate in an investigation.

11 COMMISSIONER RENNE: I mean, if I understand
12 what you're saying, you're saying that you having charged
13 him with a -- suspended him and charged him with official
14 misconduct, that it's a violation -- if at the present
15 time you want to talk to him and he won't talk to you,
16 that's a violation of his duties?

17 MR. KEITH: Absolutely. If a deputy sheriff in
18 Sheriff Mirkarimi's department had committed some act of
19 misconduct and Sheriff Mirkarimi suspended him, and then
20 told him to come in and talk to him about what happened
21 and provide truthful information about that, and that
22 deputy refused, that deputy would be fired immediately
23 and it would be lawful.

24 COMMISSIONER RENNE: It's not an elected
25 official, though, is it?

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1 MR. KEITH: It doesn't matter. Every employee
2 has a duty in the City and County of San Francisco to
3 cooperate with an investigation to account for their
4 conduct.

5 COMMISSIONER RENNE: Okay.

6 COMMISSIONER HUR: Other than Mr. Mirkarimi's
7 testimony, the sheriff's testimony that you're seeking
8 from him, is there other discovery that or other reasons
9 why you -- that could affect the timing that we've
10 discussed that are -- that -- that would elongate the
11 procedure in your mind?

12 MR. KEITH: Well, if Sheriff Mirkarimi were to
13 provide us with the documents we requested, which
14 essentially was --

15 COMMISSIONER HUR: Aside from Mr. Mirkarimi's
16 cooperation --

17 MR. KEITH: Okay.

18 COMMISSIONER HUR: -- what else do you feel you
19 need to have this heard on a timely basis?

20 MR. KEITH: We need to get the videotape from
21 the -- the videotape statement of Ms. Lopez from the Hall
22 of Justice, from the court. We have a motion pending for
23 that purpose.

24 COMMISSIONER HUR: Okay. But that's not Mr. --
25 that's not the sheriff's -- the sheriff has no

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1 involvement in that.

2 MR. KEITH: We've served him with a motion. He
3 may or may not object to it.

4 COMMISSIONER HUR: Okay. What else?

5 MR. KEITH: The next --

6 COMMISSIONER HUR: Please, for those in the
7 audience, if we could -- everybody will have a chance to
8 give public comment, but for now we would really like to
9 hear from the attorneys.

10 MR. KEITH: The next item -- the next item --
11 the other item that's pending is a motion for an order to
12 compel Ms. Haynes to testify. That item is set for a
13 hearing on May 1st.

14 We have some outstanding subpoenas for
15 telephone records that are set to be responded to on May
16 4th.

17 And these are those matters that I referenced
18 earlier where if everything goes as planned and there's
19 no objections, then we should have the evidence and
20 hopefully the testimony soon thereafter.

21 COMMISSIONER HUR: Any other questions?

22 COMMISSIONER RENNE: What are the documents
23 that you're seeking to get from the sheriff?

24 MR. KEITH: The documents that he obtained in
25 criminal discovery from the police department and the

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1 district attorney, which would include the same telephone
2 records that we're obtaining -- that we're trying to
3 obtain by mayoral subpoena right now.

4 It would include the videotape of Miss Lopez's
5 statement, and it would include whatever other materials.
6 For example, notes of the district attorney regarding
7 conversations with witnesses that were disclosed pursuant
8 to Brady.

9 COMMISSIONER HUR: Anything else for Mr. Keith?
10 Thank you, sir.

11 MR. KEITH: Thank you.

12 COMMISSIONER HUR: Mr. Kopp, I have a couple
13 more follow-up questions for you based on what Mr. Keith
14 just said. I'm not sure if my fellow commissioners do.

15 With respect to their request to interview the
16 sheriff, I think you've already said that you're
17 objecting to that?

18 MR. KOPP: Well, let me clarify. And we are
19 going to make sure that you all have what we think is the
20 applicable law on this later this evening or sometime
21 early tomorrow. Again, my apologies, we did e-mail a
22 letter to Mr. St. Croix laying this out.

23 COMMISSIONER HUR: So Mr. St. Croix was
24 traveling all day.

25 MR. KOPP: Okay.

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1 COMMISSIONER HUR: So that's probably why --

2 MR. KOPP: Understandable.

3 COMMISSIONER HUR: -- we didn't get it.

4 MR. KOPP: And maybe if we're going to be
5 submitting things by e-mail, maybe there will be a way to
6 get individual e-mails to make sure that you have all the
7 material. But that's a topic for another day.

8 We want clarification as to whether or not they
9 can do what they're trying to do. That's all. Because
10 our reading of the Government Code section and the
11 Charter says that the Ethics Commission starts the
12 investigation when they get a complaint.

13 Sheriff Mirkarimi wants to cooperate with
14 whatever legal duty he has, but we have a real problem
15 with the authority that they are claiming. And under my
16 reading of the Charter -- that's why we requested a
17 written opinion from you, actually, as to whether or not
18 he has a duty to cooperate with this investigation.

19 If you tell us he does, then he's going to
20 cooperate. But it's just -- so I'm not sure if I
21 answered your question, but...

22 But the fact that they then come forward and
23 have threatened, not only right here but in a letter to
24 us, that if you -- if you don't cooperate immediately
25 we're going to amend the written charges of official

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1 misconduct and add your failure to cooperate to those
2 charges. I mean, to me that's really beyond the pale.

3 We have a legitimate legal question here that
4 needs to be straightened out. We're not going to be
5 bullied into doing things their way because they say
6 that's the way it's done.

7 UNKNOWN PERSON FROM AUDIENCE: Here, here.

8 COMMISSIONER HUR: Any other questions for
9 Mr. Kopp?

10 COMMISSIONER RENNE: Mr. Keith responded on the
11 documents that he said he wanted, which appear to be
12 documents that came into the sheriff's possession as a
13 result of the criminal proceeding, that they weren't
14 documents that were generated by him but were generated
15 by the district attorney's office; is that right?

16 MR. KOPP: Well, that's part of it. But they
17 requested, I believe, five separate categories of
18 documents. Whatever he got from the D.A. through the
19 criminal case, whatever his attorneys produced to the
20 D.A., which raises all kinds of privilege issues, his own
21 cell phone records, text message records, and if they're
22 not reproducible, he's got to somehow get them into a
23 reproducible form.

24 Their request goes much further than what
25 Mr. Keith explained.

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1 COMMISSIONER RENNE: How would material turned
2 over to the district attorney by the sheriff's attorney,
3 how does that have a privilege?

4 MR. KOPP: I misspoke. And thank you for
5 raising that.

6 I think they wanted documents prepared in the
7 course of the criminal proceedings, not necessarily
8 everything that had been produced.

9 And -- we have the letter. We can provide it
10 to you so you can see exactly what they're asking.

11 And all we want is clarification on this issue.

12 If you think he's got to cooperate and turn it
13 over, we'll do it.

14 COMMISSIONER LIU: Is that the issue that you
15 briefed in that memo this morning?

16 MR. KOPP: Yes, it was a letter. We raised it
17 and we requested a written opinion under the Charter code
18 section that says that people can ask the Ethics
19 Commission for a written opinion on these issues.

20 COMMISSIONER HUR: Mr. Keith, you received this
21 letter this morning?

22 MR. KEITH: Yes.

23 COMMISSIONER HUR: Okay.

24 MR. KOPP: I can give you the code sections,
25 but I think it would probably be better to just have it

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1 distributed.

2 COMMISSIONER RENNE: One of the difficulties,
3 Mr. Kopp, is that everything that this Commission does
4 has to be done in open session. And so when you say you
5 want an opinion from us, it isn't like you issued to a
6 judge and asked the judge to give you an opinion. We
7 have to -- we have to then schedule a meeting so that we
8 can decide how we want to respond to it.

9 MR. KOPP: I understand.

10 COMMISSIONER RENNE: Which -- and I know you
11 don't want to delay proceedings. That's what my -- I
12 think that's probably my number one goal here is to try
13 and set this up so that we can get fairness to both sides
14 but get it done in an expeditious fashion.

15 MR. KOPP: I concur.

16 COMMISSIONER HUR: Any other questions for
17 Mr. Kopp?

18 Thank you, sir.

19 So having heard both sides, I think my
20 inclination would be to have the parties brief the legal
21 issues, because I think we can get that more
22 expeditiously. I think it will help us potentially --
23 potentially narrow the issues, but that more importantly
24 ensure that we have the appropriate procedure in place to
25 have a hearing.

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1 My concern with -- having heard the parties, my
2 concern with detailed factual testimony in the briefs is
3 the -- is that while I think it would be helpful, I do
4 have some concern that the timing may not be -- the
5 additional time may not be worth the added benefit.

6 So I think that's -- you know, that's kind of
7 where I'm sitting right now.

8 It seems to me that the -- that the parties are
9 in agreement that they could provide witness lists and
10 summary of testimony relatively soon, which I think would
11 be advantageous for both sides.

12 And so I think we should strongly consider
13 requiring them to do so.

14 Thoughts by other Commissioners on what this
15 procedure should look like?

16 MR. EMBLIDGE: Commissioner Hur, if I may?

17 COMMISSIONER HUR: Yes.

18 MR. EMBLIDGE: It makes more sense for the
19 Commission to take public comment on his item before
20 reaching any final decisions, since it is an agenda item.

21 COMMISSIONER HUR: Yeah. I -- my thought was
22 we would deliberate, take public comment, and then to the
23 extent that we need to make any final determination, we
24 would do so after that.

25 MR. EMBLIDGE: Yes, that's fine. I just didn't

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1 want the Commission to go down the road of making a
2 decision before taking public comment.

3 COMMISSIONER HUR: Thank you.

4 COMMISSIONER LIU: So you're saying to brief
5 the legal issues but not the factual issues that have
6 been outlined in the memo?

7 COMMISSIONER HUR: Yes.

8 COMMISSIONER LIU: Just the pure legal
9 question?

10 COMMISSIONER HUR: The legal questions that
11 were identified in the memo and have been identified by
12 the parties.

13 COMMISSIONER HAYON: And they both said that
14 they're prepared to do that quickly?

15 COMMISSIONER HUR: Yeah. It sounds like --

16 COMMISSIONER HAYON: Fairly quickly.

17 COMMISSIONER HUR: It sounds like the mayor can
18 do that, submit their brief within a week.

19 Any response from the -- from the sheriff would
20 come about a week after, and therein would be included
21 any other arguments the sheriff had for why the matter
22 should be dismissed.

23 I think at that point we would likely build in
24 some reply time, but again, it sounds like that entire
25 briefing could be done quickly.

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1 COMMISSIONER RENNE: Well, I don't have any
2 objection to briefing legal issues, but I think that
3 going forward in combination should be the city
4 attorney -- the mayor presenting this summary of the
5 factual issues that it intends to prove, the facts it
6 intends to prove, which I think Mr. Keith said could
7 probably be supplied within two weeks, and that --

8 COMMISSIONER HUR: I think he said one week for
9 most witnesses.

10 COMMISSIONER RENNE: Well, he said two weeks
11 for the police --

12 COMMISSIONER HUR: Right.

13 COMMISSIONER RENNE: -- law enforcement --

14 COMMISSIONER HUR: Law enforcement.

15 COMMISSIONER RENNE: So I was giving him the
16 outside. He said that he would provide the factual
17 summary of what he would intend to prove in support of
18 the legal arguments that they're making in their brief,
19 and that maybe two weeks after you get that you would
20 provide the city attorney for the mayor a summary of the
21 evidence that you intend to prove in opposition to the
22 mayor's action, so that after we made -- made our -- our
23 determination on the legal questions, assuming we do make
24 them, we would be in a position to move forward very
25 quickly with the hearing to the extent that we decide we

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1 need it, based upon the information that's been provided
2 by the two sides.

3 COMMISSIONER HUR: I agree with that.

4 COMMISSIONER LIU: I agree as well, and then at
5 that point we would make a determination about the live
6 testimony, and how much is needed, and which witnesses we
7 would want to see. At that point I think we definitely
8 need to figure that out, once we get the list of -- once
9 we see, also, the list of witnesses that they don't agree
10 on that they think we need to resolve credibility issues
11 for.

12 COMMISSIONER HUR: Yes, I think -- I think
13 it's -- in my mind I still would like to reserve that
14 question, but I think by that point we certainly would
15 need to decide, you know.

16 And in addition to having the exchange of
17 witness lists and subject-matter testimony, I also think
18 any stipulated facts should be -- should be agreed upon
19 or shortly thereafter. Because then you will have seen
20 what the other side intends to rely upon, and Mr. Kopp
21 suggested there would be at least some facts that could
22 be stipulated to, and I think we would want to know that
23 as soon thereafter as possible.

24 COMMISSIONER RENNE: I mean, I've got to say I
25 looked at the -- what I will call the written charges of

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1 official misconduct, and when you get down to -- starting
2 with Paragraph No. 8 through about 15, most of them look
3 like they would not be disputed by either side. That
4 they seem to be factual, historical statements. I would
5 think that that kind of thing we can get out of the way
6 when the dispute arises over some of the allegations and
7 whether or not the evidence supports the allegations.

8 COMMISSIONER HUR: Now --

9 COMMISSIONER HAYON: The timing on this would
10 be, then, what? Two weeks from now we would hear from
11 the city -- from Mr. Keith.

12 UNKNOWN PERSON FROM AUDIENCE: Speak into the
13 mic.

14 COMMISSIONER HAYON: Sorry about that.

15 So I'm just asking about the timing on that.

16 So that based on what's been said, two weeks
17 from now we would first hear from Mr. Keith and the
18 mayor's representatives on what they intend to prove, is
19 that right, and then that would be followed by hearing
20 from Mr. Kopp --

21 COMMISSIONER HUR: Right.

22 COMMISSIONER HAYON: -- a response which would
23 be at a later date; is that correct?

24 COMMISSIONER HUR: Yes. So they would submit
25 in writing a witness list with a summary of each witness'

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1 likely testimony, and we would get a copy of that, and
2 then Mr. Kopp and his team would respond to that and
3 provide their list of witnesses and testimony and the
4 subject matter of testimony.

5 I wonder -- one of the legal and procedural
6 issues that concerns me and that may slow down the
7 process is the issue that I think -- it sounds like was
8 raised in Mr. Kopp's letter of today.

9 Mr. Kopp, is there anything -- do you feel that
10 you need to brief that in any more detail beyond what was
11 in the letter? I obviously haven't seen the letter, so I
12 make no comment on whether it's -- it provides the type
13 of detail.

14 And the reason I ask is because if you are --
15 if you're comfortable with the mayor simply providing a
16 letter of brief response to that, then perhaps we would
17 have some ability to resolve that potentially -- first
18 principles issue faster.

19 MR. KOPP: That would be preferable. And I
20 think that we set forth on what we believe will be
21 applicable law sufficiently. So I think we'd be -- may I
22 just have a moment.

23 (Discussion off the record.)

24 MR. KOPP: I just want to make sure that
25 Mr. Keith can understand our position, because we

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1 certainly want to have an opportunity for him to respond.

2 But I think we've set it forth adequately in
3 the letter, because we think that for them to
4 investigate, a complaint has to be brought to the
5 Commission, and the Commission itself decides whether or
6 not it's going to investigate it by reference Charter
7 Appendix at Section C3.699-13.

8 And so I think that we set forth the legal
9 issues sufficiently, but I want to make sure counsel
10 understands them and can respond.

11 COMMISSIONER HUR: Mr. Keith?

12 MR. KEITH: What I understand is that -- from
13 the letter is that it was a request for a legal opinion
14 that was -- that -- from what I can tell, I guess more
15 inquisitive than stating a position, but we're happy to
16 state our position on whether the procedures that
17 Mr. Kopp discussed need to happen before the city
18 attorney can investigate possible misconduct.

19 COMMISSIONER HUR: Mr. St. Croix, do you have
20 any thoughts on procedurally -- Commission procedure wise
21 whether -- if this is a formal request for an opinion,
22 what, if anything, is the Commission staff's role?

23 MR. ST. CROIX: Well, the opinion comes from
24 the Commissioners. The other Commissioners can empower
25 you as the chair to act on their behalf and make a

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1 judgment accordingly.

2 COMMISSIONER HUR: But would we -- would we get
3 a -- would the staff provide a memo of some sort to -- is
4 that a staff issue? Is that a counsel issue?

5 MR. ST. CROIX: No, that's why you have
6 counsel.

7 COMMISSIONER HUR: Okay.

8 MR. KOPP: If I could assist.

9 COMMISSIONER HUR: Yes.

10 MR. KOPP: I did try to identify the provision
11 that says that any person can request that you issue a
12 written opinion, and then the Commission does -- is
13 required to issue that opinion within a certain time
14 period. I think it's 21 days, but that could be
15 extended.

16 COMMISSIONER RENNE: What section are you --
17 what section are you referring to?

18 MR. KOPP: It's Charter Appendix Section
19 C3.699-13.

20 COMMISSIONER HUR: So, Mr. St. Croix, if this
21 -- if a response were to be submitted under this -- if a
22 response were to be submitted by the mayor, you're saying
23 that we would need our counsel to advise us on -- we
24 would obviously look at briefs and come to our views, but
25 would the -- would our counsel be the entity responsible

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1 for making a recommendation, not the Ethics Commission?

2 MR. ST. CROIX: No, no, no. You would be
3 responsible.

4 COMMISSIONER HUR: We're responsible for making
5 the decision.

6 MR. ST. CROIX: Right.

7 COMMISSIONER HUR: But who is responsible for
8 --

9 MR. ST. CROIX: Counsel is there to advise you
10 as you reach a decision.

11 COMMISSIONER HUR: So even in a manner where
12 they are -- even for an issue where they are -- where the
13 sheriff is asking for a formal opinion as to whether they
14 need to comply with an ethics issue, okay. I just want
15 to make sure I understand.

16 MR. EMBLIDGE: Commissioner, certainly I would
17 consult with Mr. St. Croix and together we could provide
18 you with the advice. But I agree, if it's a matter of
19 legal analysis, I would help provide that.

20 To that end, would it be appropriate for me to
21 ask a question on this issue?

22 COMMISSIONER HUR: Yes, please.

23 MR. EMBLIDGE: If I understand the issue -- but
24 I guess this is a question for Mr. Keith.

25 Is there is a city process, either through the

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1 city attorney's office or the mayor's office, that is
2 going on right now that involves discovery intended to be
3 used in this proceeding; is that correct?

4 MR. KEITH: I would say there's three different
5 things going on that involve ways to gather evidence for
6 this proceeding.

7 One is simple. I guess, just investigation,
8 going out and asking people to voluntarily cooperate.
9 That's happening.

10 The other thing that's happening is that the
11 mayor is issuing subpoenas under the mayor's subpoena
12 power through the Charter. That's another way we're
13 getting evidence.

14 And then the third way that we're getting
15 evidence is by requesting that elected officers and
16 employees of the city cooperate with our investigation,
17 and that's where we're requesting the cooperation of the
18 sheriff. And that's under a provision of the
19 San Francisco Campaign and Governmental Conduct Code that
20 imposes a duty on all employees and officers, including
21 elected officers, to, you know, cooperate and assist with
22 the city attorney investigation of potential violations
23 of the Campaign and Government Conduct Code. It's 3.240
24 of the Campaign and Government -- excuse me, of the
25 Campaign and Governmental Conduct Code.

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1 MR. EMBLIDGE: Regarding the subpoenas, is
2 there a reason you are issuing them as mayor subpoenas
3 rather than coming to the Commission to request a
4 subpoena?

5 MR. KEITH: The mayor has independent authority
6 to subpoena.

7 COMMISSIONER RENNE: May I ask Mr. Kopp a
8 question?

9 COMMISSIONER HUR: Please.

10 COMMISSIONER RENNE: Took me awhile to find it,
11 but you're moving under 3.699-12, request for an issuance
12 of opinion, and what you're -- under A, it says, "Any
13 person may request the commission to issue a written
14 opinion with respect to that person's duties under
15 provisions of this charter or any ordinance relating to
16 campaign finance, conflicts of interest, lobbying or
17 governmental ethics."

18 That's the section -- that's the section you're
19 relying on in asking us to decide whether or not he, the
20 sheriff, has a duty to cooperate under these
21 circumstances with the city attorney's investigation?

22 MR. KOPP: That's correct.

23 COMMISSIONER HUR: Okay. So I think it would
24 be helpful for us to -- maybe I'll try to summarize what
25 I understand are -- what we've discussed, and then we'll

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1 hear public comment, and then we can discuss some more.

2 But within one week, so I'm looking at a
3 calendar here, that would be April 30th, we would expect
4 the mayor's brief on the legal issues that were outlined
5 in the Commission staff memo and that were identified by
6 counsel.

7 At the same time, we would expect a response to
8 the sheriff's letter brief that was sent to you today and
9 that we will take a look at as well.

10 Within two weeks, that would be Monday, May
11 9th, the sheriff would respond to the mayor's brief
12 discussing legal issues that were identified in the
13 Commission staff memo, identified by counsel, and would
14 include any legal bases to dismiss or demur to the
15 charges.

16 (Sotto voce discussion between Commissioner
17 Studley and Commissioner Hur.)

18 COMMISSIONER HUR: Thank you.

19 The Monday -- the first Monday in May is
20 actually May 7, not May 9.

21 In addition, on May 9th, the mayor would be in
22 a position of providing the -- I'm sorry, May 7th.

23 Monday, May 7th, the mayor would be in a
24 position to identify the witnesses on which he intends to
25 rely and the subject matter of the testimony to be given.

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1 One week after that, May 14th, the mayor would
2 respond to the -- to the opposition brief of the sheriff.

3 And on May 21st, the sheriff would serve on the
4 mayor and on the Commission the list of witnesses and
5 expected testimony for the witnesses on which the sheriff
6 intends to rely.

7 The Commission is currently scheduled to meet
8 on May 29th.

9 Counsel, are you available on that day if we
10 were to have argument about any legal issues and further
11 discuss when testimony would be heard, if at all?

12 COMMISSIONER RENNE: Is that a special --

13 COMMISSIONER HUR: No, it's a regularly
14 scheduled meeting, Tuesday, the 29th.

15 MR. KEITH: Counsel for the mayor are
16 available.

17 MR. KOPP: May I ask, would that be in the
18 afternoon or around the same time as this meeting?

19 COMMISSIONER HUR: I think the meeting is
20 currently scheduled for 5:30.

21 MR. KOPP: Then counsel for sheriff would be
22 available.

23 COMMISSIONER HUR: And at that point I think
24 the Commission would, having reviewed the briefs, having
25 reviewed the evidence, be in a position to hopefully

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1 decide when and if further testimony would be required
2 and in what form.

3 But given what we've heard and the views of the
4 Commission and the attorneys, that does seem like about
5 the fastest we can go while providing each side with an
6 opportunity to be heard.

7 Are there any objections from the parties to
8 that schedule, if we were to adopt it?

9 MR. KEITH: I just want to alert the Commission
10 we may need -- that counsel for the mayor may need to
11 provide rebuttal witnesses in response, and we can let
12 the Commission know at the May 29th hearing or in
13 advance.

14 COMMISSIONER HUR: Why don't you identify any
15 rebuttal witnesses by the 25th of May.

16 MR. KEITH: That would be the previous Friday?

17 COMMISSIONER HUR: Yes.

18 MR. KEITH: Okay.

19 COMMISSIONER HUR: Mr. Renne, you have a
20 question?

21 COMMISSIONER RENNE: Mr. Keith, while we have
22 you up here, and I address this to both you and Mr. Kopp,
23 going along with the schedule that was suggested, would
24 it be possible for you when you submit your summary --
25 witness list and summary of testimony, list those

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1 witnesses who you believe you could present by
2 declaration as opposed to needing live testimony or where
3 you believe that you might have stipulations that you can
4 use declarations in place of live testimony, and I ask
5 Mr. Kopp if he could do the same thing with his, which
6 would assist us then when we look at it and say, well,
7 here's where you say these are witnesses we need live and
8 we can then make our determination.

9 MR. KEITH: I propose that we would do that in
10 the week of the 21st after we've each seen each other's
11 witness list and I think we'll be in a good position to
12 know what issues could be done by stipulation.

13 So, maybe, if we were to submit suggestions to
14 the Commission with regard to stipulations by Friday, the
15 25th, that probably would work well for us.

16 COMMISSIONER RENNE: Is that all right with
17 you, Mr. Kopp?

18 MR. KOPP: Yes.

19 COMMISSIONER RENNE: All right.

20 MR. KOPP: Yes. That would be fine.

21 COMMISSIONER HUR: A couple other procedural
22 issues about briefs and timing.

23 Page length. Do the parties have any objection
24 to 25 pages opening briefs -- no more than 25 pages
25 opening briefs, no more than 25 pages response briefs,

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1 and no more than 10 page reply brief?

2 MR. KOPP: We have no objection to those
3 lengths.

4 COMMISSIONER HUR: Okay. And maybe you could
5 just stay up here, Mr. Kopp. There are a few other
6 things we need to --

7 Mr. Keith, do you have a view?

8 MR. KEITH: I think if we're going -- if we're
9 going to be briefing the issues of live-hearing
10 procedures and burden of proof, in addition to the legal
11 issues outlined in the executive director's memo, I think
12 we'll need more than 25 pages. I think something closer
13 to 35 pages for the opening briefs.

14 COMMISSIONER HUR: Any -- Mr. Kopp, do you have
15 a view?

16 MR. KOPP: Yes, I do. Brevity is the soul of
17 wit. So I --

18 COMMISSIONER STUDLEY: While that is true with
19 regard to wit, if I may, there are so many separate
20 issues that I, for one, would want people -- want both
21 parties to have the room to explain to us the standard
22 and their view on it. And I think we would be disserved
23 if that was too truncated.

24 MR. KOPP: We're not going to object if they
25 want 35 pages. I'll doubt we'll use 35. But if you want

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1 to extend them that extra 10 pages, then we have no
2 objection.

3 COMMISSIONER RENNE: We won't decide it by the
4 weight of the paper.

5 COMMISSIONER HUR: Right. Yeah. I encourage
6 both parties to use their pages wisely.

7 Okay. So then 35, 35, 10.

8 Is that acceptable?

9 MR. KOPP: Yes.

10 MR. KEITH: Yes.

11 COMMISSIONER HUR: Service of briefs --

12 Mr. Keith, if you wouldn't mind, maybe you could just
13 stay up here so we can address these issues.

14 I assume there's no problem with e-mail service
15 on each other?

16 MR. KOPP: Actually, for us it's preferable if
17 we could just serve by e-mail. I think it's worked
18 fairly well up to this point in connection with the writ
19 proceedings.

20 MR. KEITH: That's fine with us.

21 COMMISSIONER HUR: Okay. So I would suggest
22 service by e-mail on each other, on Mr. St. Croix,
23 Miss Ng, and Mr. Emblidge.

24 MR. KOPP: I agree.

25 COMMISSIONER HUR: Does that make sense?

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1 And let's -- 5 p.m. service deadline?

2 MR. KEITH: Okay.

3 MR. KOPP: Yes.

4 COMMISSIONER HUR: The staff memo also outlined
5 a procedure and what would be discussed at oral argument
6 after briefing.

7 Is there any objection to the parties being
8 prepared at that time to discuss factual stipulations? I
9 hope -- I presume not in light of what you told Mr. Renne
10 about -- that you would work it out -- work out whatever
11 stipulation you could after the 21st?

12 MR. KOPP: We have no objection.

13 MR. KEITH: That's fine.

14 COMMISSIONER HUR: And that you would be
15 prepared to discuss the availability of any witnesses
16 that you intend to call --

17 MR. KEITH: Yes.

18 COMMISSIONER HUR: -- at that time on the 29th?

19 MR. KEITH: Yes.

20 MR. KOPP: Yes.

21 COMMISSIONER HUR: Probably also helpful at
22 that time for you to be prepared to -- if there are
23 objections to witnesses, for example, if one of you
24 decide a witness is not relevant or for some other reason
25 should not be called, I think it'd be helpful if you were

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1 prepared to argue that on the 29th as well.

2 Is that acceptable?

3 MR. KOPP: Yes.

4 MR. KEITH: Yes. But, again, given the shorter
5 descriptions of the witness testimony that we might
6 receive from each other, I would want to reserve the
7 ability to object later during the live hearing as well.

8 COMMISSIONER HUR: So, certainly if you were
9 objecting to a question, I understand. But I would think
10 this would be -- I'm not sure we would consider excluding
11 a witness entirely after they had agreed to come and --
12 so I would hope if you had an objection to a witness
13 entirely, that you would raise it on the 29th.

14 MR. KEITH: Certainly, if we can discern -- if
15 we can discern the scope of the testimony and make the
16 objection based on the information we're given, we'll do
17 that.

18 COMMISSIONER HUR: Okay.

19 Any other questions for the attorneys while we
20 have them up here?

21 Okay. Thank you, gentlemen. If nothing
22 further, then perhaps we should take public comments.

23 So, again, before we start the public comment,
24 the comment will be limited to two minutes per person.
25 There is a clock on the podium that counts down from two

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1 minutes.

2 In addition, there are two dings. The first
3 indicates that there are 30 seconds left. The second one
4 indicates that time is up.

5 And I apologize in advance. I have no
6 intent -- I'm not intending to be rude here, but because
7 of the number of people, we would like to -- I'm going to
8 bang the gavel and instruct that the microphone be turned
9 off after the two minutes are up so that we can provide
10 everyone with a fair opportunity to make their public
11 comment.

12 Finally, I would like to say that the public
13 comment is not evidence. So you have every right to give
14 your comment, but we will not be considering as evidence
15 in adjudicating the matter the public comment that is
16 provided here, but we look forward to your comments.

17 Mr. Shaw.

18 ---oo---

19 PUBLIC COMMENT BY PATRICK MONETTE-SHAW

20 MR. SHAW: Good evening, Commissioners. I'm
21 Patrick Monette-Shaw.

22 Larry Bush's www.cityreport.com has a very
23 interesting post about your collective performance posted
24 on his site currently. You should read it.
25 Because after all, you have cherry-picked which cases you

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1 will hear and which cases you will dismiss.

2 You'll remember that the grand jury cited you
3 in the sleeping watchdog report. You had dismissed 18
4 previous official misconduct cases with no hearings.

5 Then you heard the Jewelle Gomez case, and you
6 referred her official misconduct to the mayor, who did
7 nothing.

8 I believe you have four referrals from four
9 sitting supervisors involving official misconduct in the
10 Parkmerced case. You've been cherry-picking cases.

11 It's interesting that Mr. Kopp mentions Section
12 C3.669-13. You'll recall that John St. Croix used that
13 repeatedly against me in my two Sunshine complaints that
14 found official misconduct against John St. Croix himself,
15 and for eight months this body has refused to schedule a
16 public hearing on the official misconduct cases that the
17 Sunshine task force referred you in my case.

18 Mr. Wildermuth's Chronicle article this morning
19 notes Judy Nadler as saying that it's important to
20 remember this is a hearing on ethics, not on law.

21 I've not heard one comment out of this body
22 about ethical issues or ethical reasoning in many months
23 I've monitored your Commission hearings. Are you
24 suddenly going to be taking a course in ethical
25 reasoning?

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1 Thank you.

2 ---oo---

3 PUBLIC COMMENT BY ERNESTINE WATERS WEISS

4 MS. WEISS: Good evening everyone. My name is
5 Ernestine Waters Weiss, an activist in the city, and I am
6 here completely to tell you that I'm here in the interest
7 of justice, not prejudice toward any side at all.

8 As far as misconduct is concerned, Willie Brown
9 was a great -- was a mayor and a grandfather at the age
10 of 68 when he had a child illegitimately, out of wedlock,
11 and not even a slap on the wrist.

12 Gavin Newsom had an affair with a married woman
13 who was the wife of his chief of staff, Alex Tourk. Not
14 a slap on the wrist. This is nonsense, completely.

15 I was a victim -- I was a victim of abuse in my
16 first marriage when my husband shoved me, punched me,
17 when I had an infant child in my arms. That's abuse.
18 Pinching somebody on their arm doesn't mean a thing.
19 Because if you look at me, I will have a bruise. So that
20 is not evidence of any misconduct.

21 As far as I'm concerned, this is really
22 ridiculous, and you, when you go over all this, should
23 measure it very sensibly, that this is not an issue of
24 misconduct. This is an issue where the man was not even
25 in office at the time, shouldn't be judged prematurely by

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1 the media with mob hysteria. So they're crucifying him
2 before he even gets a chance to defend himself. This is
3 not justice, and I assure you, this is a very serious
4 matter. This is where a man's life hangs in the balance
5 and you should take it seriously and dismiss this
6 completely, because it's out of bounds.

7 Thank you.

8 ---oo---

9 PUBLIC COMMENT BY PETER WARFIELD

10 MR. WARFIELD: Thank you. I'm Peter Warfield,
11 Executive Director of Library Users Association, and
12 there is here, unfortunately, a gross disparity in
13 so-called justice.

14 This Commission dismissed 18 cases without even
15 having a hearing in -- I believe it was seven years. The
16 civil grand jury called this a sleeping watchdog.

17 Then when a library commission president
18 violated the Sunshine Ordinance as found unanimously by
19 the Sunshine Ordinance Task Force, and the case came
20 before you for enforcement, you issued a letter to the
21 mayor recommending that Jewelle Gomez, the president of
22 that commission, be sacked.

23 What did the mayor do? Nothing. Nothing at
24 all that was publicly visible.

25 What happened? Nothing happened.

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1 Jewelle Gomez was reelected by her mayorally
2 (phonetic) appointed fellow commissioners as president
3 earlier this year, and they didn't even have another
4 nominee to vote for.

5 I'll read you from your own letter of July
6 18th, 2011. The Commission violated -- was said to have
7 violated Sunshine Ordinance Section 67.15 (a) and 67.13
8 for willful failure to allow public comment at a Library
9 Commission meeting.

10 The Ethics Commission determined that the
11 Library Commission president, Jewelle Gomez, willfully
12 violated the public testimony requirements of Sunshine
13 Ordinance Section 67.15 when she shouted down a member of
14 the public.

15 The Ethics Commission also determined that
16 Ms. Gomez's actions fell below the standards appropriate
17 for a public official.

18 And at the bottom of this letter, the
19 Commission voted to recommend that you consider taking
20 steps to remove Ms. Gomez from her appointed office in
21 light of her actions.

22 This is not equal justice.

23 COMMISSIONER HUR: Thank you.

24 ---oo---

25 PUBLIC COMMENT BY PEDRO FERNANDEZ

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1 MR. FERNANDEZ: Good afternoon, ladies and
2 gentlemen. My name is Pedro Fernandez. I'm a former
3 San Francisco policeman. I spent eight honorable years
4 with the SFPD. I'm an investigative reporter and
5 syndicated radio talk show host, as well as a licensed
6 California private investigator.

7 I'm sort of miffed at the fact that
8 Sheriff Mirkarimi has been taken off his job without pay.
9 Because, you know, when I look at the instances of what's
10 called the pepper-spray cop, where the cop -- a sergeant
11 of a police college bureau up north sprayed those sitting
12 demonstrators, he's still getting paid. The chancellor
13 just resigned last week. He's still getting paid.

14 Let me take you back to the case of the
15 San Francisco fire chief, when she hit her husband over
16 the head, not once but twice, with a glass.

17 UNKNOWN PERSON FROM AUDIENCE: That's right.
18 Yes.

19 MR. FERNANDEZ: Okay. And it was reported on a
20 911 tape where the husband said, "I think my children are
21 in danger."

22 Okay. What did Gavin Newsom say? "It's a
23 family matter. Let the family discuss it. Let the
24 family discuss it. It's a family matter."

25 Well, guess what, had the shoe been on the

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1 other foot and had a man hit a woman over the head with a
2 glass bottle twice, okay, he would have been booked. I
3 can tell you from my law enforcement career, he would
4 have been booked. Hands down.

5 I think this is a political witch-hunt. I
6 think that Ross Mirkarimi was the only progressive
7 candidate on the -- that won election this past time on
8 the -- at the election. I think because of that he's
9 being solely targeted by the mayor's office and by
10 different bureaucrats in the City and County of
11 San Francisco.

12 It's a waste of time. It's a waste of
13 taxpayers' money, and is ruining this man's life. He
14 hasn't seen his wife since January.

15 As a policeman, I saw a lady stab her husband
16 in the face with a knife, okay, and she got back with her
17 husband within a month. Stabbed him in the face. The
18 district attorney' office allowed them to go back
19 together after a month. This man's been separated from
20 his family for four months.

21 This is an injustice. And if you people sit
22 here and even consider misconduct charges against him,
23 you should be considering misconduct charges against the
24 mayor.

25 UNKNOWN PERSON FROM AUDIENCE: Yeah, right.

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PUBLIC COMMENT BY DAVID PILPEL

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MR. PILPEL: Good evening, David Pilpel.

4

Couple of points. I think the procedures that you laid out are fair. I'm sure they'll be memorialized in writing and available by tomorrow hopefully, and that we'll consider incorporating them into regulations later if they work out in this proceeding.

9

You may also want to address font size, margins, and line spacing for the briefs. It may seem trivial to some, but it may actually be material in this instance.

13

I'm a bit concerned about the reference to the Police Officer Bill of Rights Penal Code 832.7. I'm interested in early briefing on that to see if that creates a problem for a closed hearing or not.

17

I would note that this really is a 15.105 hearing. So it's a hearing in recommendation of this body on suspension and removal for official misconduct. It's not an ethics complaint or investigation, so I'm not clear if C3.699-13 applies with respect to seeking formal advice. I think that only relates to government ethics laws and not this Charter provision. So I think you need to look carefully at whether you can render that sort of advice and what an officer is bound to in that instance.

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1 I hope that you'll post all the documents that
2 have been received to date, and those that are coming
3 from both sides, on the web, and that there'll be a
4 public file maintained at the Ethics Commission that
5 anyone can inspect during regular business hours of all
6 of these items.

7 And just finally, I would hope that both sides
8 address not just the Joe Mazzola case, but Bill Maher
9 incident in the early '90s, and whether the mayor needed
10 to take action there, because it certainly has
11 application to other city officers and conduct that they
12 may engage in now or in the future.

13 Thank you.

14 ---oo---

15 PUBLIC COMMENT BY UNKNOWN PERSON FROM AUDIENCE

16 UNKNOWN PERSON FROM AUDIENCE: Hi. Good
17 afternoon, Commissioners.

18 Sheriff Ross Mirkarimi was democratically
19 elected. Now the mayor is using character-assassination
20 rights, I believe, to try and illegally remove a
21 democratically-elected official. This is known as a coup
22 d'état, and sometimes it's hard to see a historical event
23 when we're sitting in the middle of it. It's important
24 that we be aware what may be going on.

25 The sheriff is one of the highest officials in

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1 this county and it's important.

2 You commissioners, just like the rest of us,
3 sit here and are victims of the same media lies every
4 day. So it's hard -- I realize your job is hard for you
5 to now pull your head out of what you see on the T.V.
6 every day and make an honest evaluation.

7 But it's important that you try and do this and
8 understand the historical period you're in where you may
9 be witnessing an actual illegal coup d'état of a sheriff
10 in the City and County of San Francisco.

11 Thank you.

12 ---oo---

13 PUBLIC COMMENT BY BARBARA TENGERI

14 MS. TENGERI: I'm Barbara Tengeri.

15 On March 27th and April 3rd, 2012, I spoke with
16 the Board of Supervisors about equitable justice. I
17 presented my case and stated my arguments on suspended
18 Sheriff Mirkarimi.

19 His case is in contrast to Judge Dennis
20 Hayaschi's wife, a sitting State Assemblywoman Mary
21 Hayaschi, who was allegedly a thief, and a sitting
22 Alameda County Board of Supervisor, Nadia Lockyer, and I
23 don't need to tell you all what she has done. But I will
24 say that her admission she is -- through her admission
25 she is a drug and alcoholic dependent, featured in a sex

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1 tape and physical fight, and so on and so forth. Most
2 important, she e-mailed him in prison -- when court she
3 quickly denied it.

4 My focus, as I see it, is Ross Mirkarimi's
5 wife, Eliana Lopez-Mirkarimi. It is imperative
6 Mrs. Mirkarimi is summons (sic), whether in person or via
7 satellite live, to state her side of what took place
8 between her and her husband inside their own home. There
9 were no other witnesses. No other adults.

10 Prior -- this all happened prior to his sworn
11 in as sheriff. The fact is there were no other adults.
12 The Commission -- Ethics Commission and the Board of
13 Supervisors cannot go forward and make any decisions, any
14 final decisions, without Mrs. Mirkarimi's input.

15 Any decisions rendered are ruled unacceptable
16 in the court of law and you Ethics Commissioners are
17 indeed the court of law, because it is you -- you -- if
18 you do not summons Mrs. Mirkarimi, it would be
19 characterized as miscarriage of justice.

20 ---oo---

21 PUBLIC COMMENT BY SULI WANGALI (phonetic)

22 MR. WANGALI: My name is Suli Wangali
23 (phonetic). I'm a active -- an activist in the City and
24 County of San Francisco and a founding member of a major
25 nonprofit organization in the city.

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1 I've been active in the city for a long long
2 time, and I've worked with Ross. I've known Ross -- part
3 of the work that we do in the nonprofit organization in
4 the city.

5 I was -- the issues that I want to raise is,
6 frankly, can the Ethic Commission be ethical? Can you be
7 fair enough knowing that how you got to be on the board
8 of the Ethic Commissions?

9 We as a voter, we as people in this city, who
10 work in this city, and love this city, and care about
11 this city, and care about the issues that are concerning
12 any illegal activities, we want you to know that we love
13 this man. And this man have been in the trenches working
14 on Sixth Street, in the Mission, in downtown, on many
15 many issues with the community.

16 Can you be fair? Right now, I doubt it. Right
17 now, I doubt it.

18 Mr. Kopp's raised the issue about previous
19 misconduct. Yes. Gavin Newsom, Mayor Willie Brown,
20 chief -- Fire Chief White, all these issues in the people
21 minds. Can he gets (sic) the same treatment as they did?
22 What's with this man that, you know, everybody is going
23 berserk about it?

24 The other issue is election. Who was
25 supporting who in the election? Who was -- Mayor Ed Lee

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1 was supporting? Mr. Herrera was supporting? Is there
2 some sort of a things behind the scene? All these issues
3 in our mind, please be fair and take it into
4 consideration.

5 Thank you.

6 ---oOo---

7 PUBLIC COMMENT BY BRENDA BARROS

8 MS. BARROS: Hi, my name is Brenda Barros, and
9 so I'm here in support of Ross and his family. That's
10 what I'm here for.

11 I worked very hard to get his man elected as
12 mayor -- I mean, as sheriff. He should have been the
13 mayor, but elected sheriff. I wish he had run for mayor.

14 So for you guys to try to just reverse that
15 over this -- because this is a witch-hunt, pure and
16 simple witch-hunt. The mayor's guy didn't win. He needs
17 to just admit his guy didn't win and let the people of
18 San Francisco and the people who are in the jails, who
19 are going the suffer the most from Ross not being where
20 he's supposed to be, suffer.

21 So I hope you really take this into
22 consideration and don't let yourself be swayed because
23 you are appointed to this office by the mayor. Because
24 you were put in here to be honest, and you were put in
25 here to be fair, and it should not matter who put you

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1 here. It's about fairness.

2 ---oo---

3 PUBLIC COMMENT BY FRANCISCO LA COSTA

4 MR. LA COSTA: My name is Francis La Costa, and
5 I've known Mr. Ross Mirkarimi for a long, long time.
6 I've heard nothing about ethics in all the deliberations
7 and all the questions that you've asked, the attorneys
8 here as if this is a Perry Mason type of operation.

9 I cast my vote. So did many constituents. And
10 what I'm here to state categorically is that
11 San Franciscans want the highest standards.

12 From one side I've heard comments that are
13 despicable, as if someone is the gestapo. This in
14 San Francisco? You Ethics Commission have had many
15 reports written about you, as have been stated today by
16 those that monitor you. So do I. We monitor the
17 deliberations very, very carefully.

18 I know something about it having worked for
19 Sixth Army (phonetic) as their last congressional
20 liaison. I know something about Freedom of Information
21 Act and your deliberations.

22 What you have to do now is be ethical. To
23 which, many constituents have come here and said to your
24 face I doubt you can be ethical.

25 Thank you very much.

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PUBLIC COMMENT BY ARCHBISHOP FRANZO KING

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ARCHBISHOP KING: My name is Franzo King. I'm
Archbishop of the St. John Coletrane African Orthodox
Church.

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I came without prepared words, but a heart
that's true to the realness of what this community in
San Francisco feels concerning Mr. Ross Mirkarimi. And I
think it's time that the city come together and close
ranks to deal with issues that are pending that are so
much more important than something that I feel has been
overstaged.

13

14

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Ross Mirkarimi, I understand, as a provider for
his family has been crippled. If it is in fact the
city's design to protect his wife and his child, then I
would think that they would be more concerned about him
being able to do that financially.

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There is a -- it's a historical time for us
with the reentry of prisoners back into the city. I
think Sheriff Ross Mirkarimi has expressed his desire to
be and his able ability to be able to aid in the success
of that program. I think that there's monies that need
to be diverted in other areas other than to continue to
persecute a man that -- who has demonstrated as a
supervisor and in his campaigning for the office of

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1 sheriff that he is capable and able to represent the
2 hearts and the feelings of the citizens of this city.

3 I would also say that there is a sentiment
4 within the streets of San Francisco and the people that
5 are the heart of San Francisco, that are not so
6 discouraged that he would not do a good job, but they're
7 kind of feeling that there is a great love for a sheriff
8 that has been to jail, one that has known what it is to
9 fall and get up again, one that knows how important that
10 phone call is, and how important that it is that that
11 place and that institution remain with the dignity that
12 we have --

13 COMMISSIONER HUR: Thank you, Reverend.

14 ARCHBISHOP KING: -- seen that this man can do.

15 And I want to thank you Commissioners too for
16 your diligent consideration of these things. And we
17 trust that God, his truth will claim all victories in the
18 final analysis. God bless you.

19 UNKNOWN PERSON FROM AUDIENCE: Amen. Amen.

20 Amen.

21 ---oOo---

22 PUBLIC COMMENT BY PASTOR LYNN GAVIN

23 PASTOR GAVIN: Good evening, Commissioners. My
24 name Pastor Lynn Gavin.

25 Today we are here to experience how the one

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1 person who controlled the media choreographed maneuvers
2 orchestrated to distract and to save the public.

3 At its center is an assault on our democracy.
4 With due diligence and vigor, three of the highest
5 elected officials in the city -- Mayor Lee, District
6 Attorney Gascon, and City Attorney Dennis José Herrera --
7 have pursued Mirkarimi tenaciously. Simultaneously, they
8 have ignored my case, Sunshine Case No. 11048, that found
9 Supervisors Eric Mar, Malia Cohen, Board President David
10 Chiu, and Supervisor Scott Wiener in violation of
11 official misconduct because all four of them have broken
12 the law. This case was there before the Mirkarimis case.

13 Furthermore, there needs to be an investigation
14 as to why Supervisor Carmen Chu asked Parkmerced
15 developers for \$50,000 for a crosswalk in her district
16 which she did not disclose. She did not recuse herself
17 from the vote on that project. That was clearly a
18 conflict of interest.

19 The people of Parkmerced deserve to have their
20 case be pursued as tenaciously as this one, because we
21 are entitled to equal protection under the law. This
22 case is going to court, and I will pursue it with every
23 spirit in my body.

24 I implore you to not succumb to political
25 pressure and not be used. You are intelligent human

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1 beings and thank you.

2 ---oo---

3 PUBLIC COMMENT BY TONY VASMERE (phonetic)

4 MR. VASMERE: My name is Tony Vasmere
5 (phonetic). I'm here to support Sheriff Mirkarimi and
6 his family.

7 I came to San Francisco because I believed the
8 city is a city of diversity, city of foreigners, city of
9 justice, but all I see is a city of injustice and
10 corruption. You guys should dismiss this charge. Let
11 the man continue doing his job.

12 Suspension without pay is unfair and cruel.
13 He's got family. He needs to be able to pay.

14 So the whole thing is just a sham. It is
15 politically motivated. You guys should drop these
16 charges and let the man continue doing his job.

17 Sheriff Mirkarimi is one of the best
18 politicians in San Francisco. He fights for
19 San Francisco. He fights for San Francisco values. This
20 is the type of politician we need in San Francisco.

21 I support victims of domestic violence. The
22 victim is not saying that she was abused. She is
23 supporting her husband. The D.A. dropped all the three
24 charges, and he charged a new -- made a new charge of
25 false imprisonment. It's a shame. You guys should not

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1 allow this to continue.

2 And it's very unfortunate that we are in this
3 situation right now. This man got a lot of support in
4 San Francisco. Even if you remove him from his job, he
5 still has a lot of influence in San Francisco with his
6 constituents and people who voted for him. They are
7 passionate about this man. He's a hard-working man.
8 This man loves the people of San Francisco. He loves
9 this city. You guys are doing wrong.

10 ---oo---

11 PUBLIC COMMENT BY KEVIN BABCOCK

12 MR. BABCOCK: Good evening, Commissioners.
13 Thank you for your time. I'm Kevin Babcock, an
14 eight-year resident of District 10. I'm not politically
15 affiliated with the mayor or with Mr. Mirkarimi.

16 I think it would benefit the public if this
17 were to be a speedy process, and I think the schedule
18 that you've outlined sounds like it would be very good
19 for that. So thank you.

20 I would say that it's up to the Commission to
21 decide how it's going to make a decision, whether it be
22 unanimous vote, majority vote, or a consensus. I think
23 that's really a matter of the Commission to decide.

24 And the remainder of my comments will be
25 directed towards the definition of official misconduct.

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1 So the City Charter says official misconduct is
2 any wrongful behavior in relation to the duties of an
3 office of a public official -- willful, wrongful
4 behavior.

5 As a top law enforcement official, one needs to
6 know right from wrong, to know and enforce the law, and
7 also to exercise discretion in situations where the law
8 may be unclear.

9 Now, an unfortunate example of that might be at
10 UC Davis where some unarmed professors were sprayed with
11 pepper spray. I would say that anyone who knowingly and
12 willfully violates a federal, state, county, or city
13 statute doesn't have the level of impeccable moral
14 character that's necessary to exercise that kind of
15 judgment as a top law enforcement official.

16 So, now I recognize that Mr. Mirkarimi has many
17 years of service to the city. I thank him for that. But
18 I don't believe that he's fit as our top law enforcement
19 official because of this character-judgment issue. I
20 think he'll have a chance to rehabilitate himself, but if
21 in fact he admits to breaking the law of California, then
22 he has violated the official misconduct statute of the
23 City Charter.

24 Thank you.

25 ---oo---

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1 PUBLIC COMMENT BY TAMMY BRYANT

2 MS. BRYANT: Good evening, my name is Tammy
3 Bryant, and I didn't come here prepared to testify,
4 because I didn't know we would have that chance. So I'm
5 grateful, and thank you for being here.

6 I am here to support Sheriff Mirkarimi, and to
7 urge you to dismiss these charges for the glaring lack of
8 evidence that any official misconduct had occurred.

9 I stand before you as the mother of three, who
10 survived domestic violence two decades ago. I know what
11 domestic violence is. I am a constituent who worked
12 closely with Sheriff Mirkarimi for seven years in our
13 community, and with his leadership we significantly
14 reduced the incidence of youth homicides and the violence
15 because of the way he fought for programs that would help
16 serve our community. And there was a tangible difference
17 going out and not having to step over dead bodies of kids
18 every day in our streets, and this is the kind of leader
19 that Sheriff Mirkarimi is. I believe in him for public
20 safety.

21 As a person I find him to be a gentle soul with
22 a tender heart towards his community, towards his
23 constituents, but especially towards his wife and child.

24 I have had the honor of speaking to his wife in
25 her native Spanish and fully believe her assertion that

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1 no domestic violence occurred, and resent those that seek
2 to infantilize and marginalize her as if she has no
3 voice, as if she is nothing. She has been reduced to
4 nothing by these proceedings, and I think we need to
5 honor Miss Eliana Lopez and we need to honor what she
6 said.

7 Having survived domestic violence, I know what
8 it is, and I am confident that they're both truthfully
9 speaking, that no -- that Sheriff Mirkarimi is in fact
10 factually innocent and no domestic violence occurred.

11 This case is based on an after-the-fact hearsay
12 statement that was fabricated for a potential custody
13 battle.

14 I urge you to reject wasting tax dollars and
15 dismiss this. Let our democratically-elected sheriff do
16 his job. Our kids are senselessly dying on our streets.
17 That is where our priorities need to be. We need him on
18 the job right now. We are losing children while limited
19 public resources are wasted on this travesty.

20 With realignment and reentry and
21 rehabilitation, he is the sheriff that we need, and we
22 need him yesterday. Please stop wasting time.

23 Thank you.

24 ---oo---

25 PUBLIC COMMENT BY CHRISTINA DIEDOARDO

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1 MS. DiEDOARDO: Good evening. My name is
2 Christina DiEdoardo, and I'm a criminal defense attorney
3 in solo practice. And it's certainly been a very
4 educational evening for me, and I thank you all for that.

5 I would like to just make three points in
6 regards to what's been said today and some of the other
7 comments that have been made.

8 I would submit to you that if in the past the
9 Commission has, perhaps, not been as active as it should
10 have been with regard to some of the incidents that have
11 been brought up, that's not a reason for it to be in
12 dereliction of its duty right now. Obviously, like any
13 other adjudicated body, you have to resolve each and
14 every case as it comes to you.

15 And I don't believe this is something where the
16 allegations against the sheriff can be judged
17 against some -- allegations against another individual.

18 The second thing I would like to point out, is
19 that this case did not come about because of a whim of
20 the mayor's office. It came about because the sheriff
21 pled guilty in a criminal trial, actually to avoid going
22 through a criminal trial.

23 Obviously, he had the option, as everybody else
24 in this country does, to proceed forward and go to trial
25 if he wanted to take that chance, and he could have been

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1 completely exonerated. He chose not to do that.

2 With those two ideas in mind, I would therefore
3 strongly request and recommend that you follow the
4 procedure that sunlight is the best of disinfectants, and
5 provide for as much live testimony so that this cloud can
6 be removed both from the city and the sheriff can
7 determine if he's allowed to remain in office or he'll be
8 removed from it.

9 Thank you.

10 ---oo---

11 PUBLIC COMMENT BY UNKNOWN PERSON FROM AUDIENCE

12 UNKNOWN PERSON FROM AUDIENCE: Good evening,
13 Commissioners.

14 My first time before y'all. Though I was on
15 way my up there before this whole incident happened
16 because of -- I heard about your insignificant value
17 because of the committee I was trying to get some
18 satisfaction from, the Sunshine. We never made it to
19 y'all because I heard it was insignificant anyway. But I
20 am here totally supporting Ross Mirkarimi.

21 Ross Mirkarimi from the Western Addition is the
22 best supervisor we ever had. Let me also say,
23 unconstitutional -- I'm up here -- unorthodox, because
24 I'm part of the media. I'm the only black media here at
25 silly hall. I call it "silly hall," y'all, because I've

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1 been here. I seen a lot of things happen at silly hall.
2 And this -- right what we're doing right here is silly,
3 y'all.

4 Because one thing someone mentioned before, our
5 mayors and other things have had sex, intercourses, but
6 you didn't think that was -- you didn't feel that that
7 was getting people out of office. But here the mayor --
8 I mean, supervisor perhaps was having difficulties in his
9 family, but yet you and whoever force is behind all of
10 this is trying to create something that's really not
11 there.

12 The thing about it is, we had a sheriff that
13 was on point to help the people that was unserved here,
14 and forces -- let me just say something here. My name is
15 Ace, oooh, and I've been on this case. Some of you
16 people out there don't want me in your face. But it's no
17 mystery, just check the history. I'm just working on a
18 case involved in a lot of conspiracy.

19 Now, let me just say one thing. Without a
20 doubt, Ross Mirkarimi is the best man we -- supervisor we
21 had in our district and moved up to the sheriffs, going
22 to be able to help the third-world people.

23 Now, think about it, if it had been Joe Blow or
24 somebody else that he might have sex or something, y'all
25 would have had no problem with it.

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1 But what is the issue here where the city and
2 county could accept mayors having sex but yet a person is
3 involved with something in his family, you criticize him
4 like this.

5 Another thing, I don't understand why the press
6 just putting all this dirt on my buddy Ross, won't come
7 forth. I can do that because Ross is a good guy. I can
8 do that.

9 COMMISSIONER HUR: Are there any additional
10 comments?

11 ---oo---

12 PUBLIC COMMENT BY MAUREEN DAGGETT

13 MS. DAGGETT: Hello. My name's Maureen
14 Daggett. I'm been in San Francisco all my life. I went
15 to Robert Louis Stevenson. I went to A.P. Giannini. I
16 went to Lowell High School.

17 UNKNOWN PERSON FROM AUDIENCE: Louder.

18 MS. DAGGETT: I went to San Francisco State. I
19 went to graduate school here. I've been teaching in
20 preschools. I've been on the Board of Directors for
21 Urban School. I worked all over this city with children
22 in Head Start. I was one of the early founders after
23 EOC.

24 I care about these -- all kinds of issues, and
25 I really care about Ross. You know, my son is a friend

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1 of his. They -- they are families together. I know from
2 my son that he's a good family man. My son is really
3 careful with his family. He has a Venezuelan wife as
4 well. And I know what those tensions can be about,
5 wanting to, you know, go see your family in Venezuela,
6 and how things work about that.

7 I know Ross is a good man, and he's done so
8 much for our city. He's who we voted for. He got more
9 votes than the mayor, and we want to keep him.

10 ---oo---

11 PUBLIC COMMENT BY SHAREN HEWITT

12 MS. HEWITT: Good afternoon, Commissioners. My
13 name is Sharen Hewitt. I'm the Executive Director of the
14 CLAER Project, a project committed to responding to
15 victims of homicide and violence.

16 I'm here today to commend you for your due
17 diligence, and I would hope that we do not inadvertently
18 perpetuate our own collective misconduct.

19 I'm saying today I am coming back off several
20 homicides that have happened in my community. And I
21 would appeal to you that we not continue to perpetuate
22 this, and that we bring closure to this as expeditiously
23 as possible.

24 We need Sheriff Mirkarimi back in his position.
25 We collectively as a city have an opportunity to mitigate

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1 the violence, to end the continued recidivism, but we
2 need leadership to do that. We need leadership at a
3 physically lean time.

4 I would ask you to consider the following: In
5 the continuance or the extension of this continued
6 inquiry regarding his legitimate place back at City Hall
7 or 850, how much money are we spending? I'm a taxpayer.
8 I want to know how much money we have collectively spent
9 on this case. Let's end it.

10 Let's bring those rare resources back home
11 under the leadership so deservingly under Ross Mirkarimi.

12 Thank you.

13 ---oo---

14 PUBLIC COMMENT BY JOSÉ MORALES

15 MR. MORALES: Hi. My name is José Morales, and
16 I'm a member of the San Francisco Tenants Union, Senior
17 Action Network, and I'm proud to also be a member of
18 Tenants Together that now is 50 million tenants together
19 fighting against injustice, especially evictions and
20 foreclosures. And I'm here to defend Ross Mirkarimi, my
21 friend. I admire him.

22 I read one time in newspaper that he was
23 walking on sidewalk around the city and all of a sudden
24 he discovered -- somebody was assaulting a person. And
25 he defended that person from being assaulted, you know.

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1 So that person that you see is strong and, oh,
2 what he did, don't forget, was just squeeze her -- wife's
3 arm (indicating). He awfully strong, but that didn't --
4 his intention was not to hurt her.

5 And you have heard and read in the paper that
6 he did that and it was not his intention to hurt his
7 wife. He was just a little bit nervous and he made a
8 little mistake.

9 As a matter of fact, this same problem had
10 been happening in the City of San Francisco to other
11 officials that did worse betraying their wives, and --
12 like Willie Brown sign the 10 -- the 10 points of law
13 that he would -- the ten commandments of the tenants, and
14 he did not comply with one single commandment or
15 promises. That is outrageous. That is really unethical.

16 But he is one of the best supervisors, most
17 progressive, and you should defend me -- defend him. If
18 you don't, you will not be representing our city.

19 Thank you.

20 ---oo---

21 PUBLIC COMMENT BY TERRY ANDERS

22 MR. ANDERS: Commissioners, I'm Terry Anders of
23 Anders and Anders Foundation. I'm a union community
24 organizer.

25 I've known Ross Mirkarimi many, many years. He

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1 was one of the founding people to help create the Reentry
2 Council. He speaks highly and often about the local job
3 issues that help create jobs for disadvantaged
4 neighborhoods.

5 I remember him being a supervisor in District
6 5, and going over there to Ella Hill Hutch where they had
7 some youth boxing matches and the supervisor then was
8 there.

9 But what I really want to talk about is how the
10 character assassination of a newspaper has vilified this
11 person here every day, every day.

12 It was news. Distorted news, but it was news.
13 What sells. "I got the news here. I got the news here.
14 Look at it here. Look at it here." Sensationalism,
15 yellow journalism.

16 I took a course in journalism, so I know what
17 yellow journalism is. Very distasteful, very ugly.

18 Took him away from his family. How could you
19 do that? And you sat in judgment. And you sat in
20 judgment.

21 It should be dismissed before it even gets to
22 go any further. But would you have the courage to do
23 that? Would you have the courage to do that? You
24 talking about ethics. We're talking about law. Or are
25 we talking about personalities?

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1

---oo---

2

PUBLIC COMMENT BY MINDY KENER

3

MS. KENER: Good evening, Commissioners. I am
a community activist. My name is Mindy Kener.

5

I'm here to give Sheriff Mirkarimi my complete
support. I would like him to go back to work immediately
to the job he was elected for.

8

As a mother and a woman, I've had long-term
relationships. Stuff happens.

10

There's a young child, upset, get into an
argument, things get heated, stuff happens. That's not
misconduct, misconduct to me. That's real-life issues
that we all have to deal with in today's relationships.

14

Enough is enough. I really truly believe
Sheriff Mirkarimi needs to go back to work. We need him.
There's many people coming out for realignment, something
that he has always been a part of.

18

Thank you.

19

---oo---

20

PUBLIC COMMENT BY BOB ALAVI (phonetic)

21

MR. ALAVI: Thank you, Commissioners, for
giving me this opportunity to be here and at least pour
two minutes of my heart out to you.

24

My name is Bob Alavi (phonetic). I was born and
raised in Tehran, Iran. I've been a very long time

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1 California resident since the 1960s.

2 I would like to bring to your attention one
3 point that no one has mentioned. Universal Declaration
4 of Human Rights is only 32 sentences. It's not 35 pages
5 to go in a brief. If you read that, this man and his
6 family have been violated of every single one of those 32
7 stipulations. That's Universal Declaration of Human
8 Rights, and it doesn't belong to our state department to
9 take to North Korea, Russia, Miramar (phonetic), China,
10 and such and such.

11 The other point that I'd like to bring, is
12 Mayor Ed Lee suspended Sheriff Mirkarimi on the New
13 Year's Day, on the Persian New Year's Day, and lot of
14 people have called that a racist move. To support that,
15 they have stated he would have never done it to a black.
16 He wouldn't have dared do it to a black on Martin Luther
17 King Day, to a Jew on Rosh Hashanah, or Chinese on
18 Chinese New Year.

19 Again, there are -- every bit of this thing is
20 very appalling. I know it's a hot potato that has been
21 passed down to you to cover up for the city officials who
22 have brewed it -- who have brewed this witch-hunt so far.
23 You have the power and authority to terminate it now.
24 You don't need to wait for the rest of the process in
25 view of the -- all the contradictions in the city.

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1 Thank you very much.

2 ---oo---

3 PUBLIC COMMENT BY PAUL MELBOSTAD

4 MR. MELBOSTAD: Good evening, Commissioners.

5 My name is Paul Melbostad. I served on this Commission
6 for eight years, actually longer than any other
7 commissioner in the history of the Commission.

8 And my interest in this proceeding is the
9 integrity of the Commission.

10 I'm proud to say that during the eight years I
11 was on the Commission, never -- while we would sometimes
12 have disagreements among commissioners about the facts,
13 would have vigorous debates with the city attorney about
14 the law, never did I feel that the process was
15 compromised because of the politics of the party
16 complaining or party complained of.

17 And specifically what I want to make sure of in
18 this proceeding is that the same legal standard is
19 applied, that the city attorney has advised the
20 Commission must be applied in every single case where
21 there's been a complaint of official misconduct in the
22 history of the Commission. And that is, and I read from
23 a memo by City Attorney Buck Delventhal, who was the
24 chief deputy to City Attorney Louise Renne. And this was
25 in a case where the Commissioners were unanimous in their

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1 findings of the facts, but we were advised that we could
2 take no action unless we found a violation of a Charter
3 or city ordinances relating to campaign finance,
4 lobbying, conflicts of interest, or governmental ethics
5 has been violated.

6 Under these circumstances, the regulations make
7 clear that no further action shall be taken on a
8 complaint unless a specific violation of a specific
9 ordinance or Charter provision that the Ethics Commission
10 enforces has been found.

11 Thank you.

12 ---oo---

13 PUBLIC COMMENT BY ARIS ED LEE (phonetic)

14 MR. LEE: Good evening, Commissioners. My name
15 is Aris Ed Lee (phonetic). I'm a former inmate of this
16 County Jail. I'm now reformed. And I'm a pastor. I'm
17 District 5 resident. As you can see, I'm an
18 African-American male. I'm a father. All those things
19 represent a justice clause that we fight every day.

20 But I want to stand here and ask for the ethics
21 of the San Francisco Police Department of the hiring of
22 people that destroy evidence, doing drug use. The former
23 lady -- I forgot her name, what her position was, but she
24 took the cocaine and snorted it -- snorted up the
25 evidence and nothing happened to her. Even Gavin Newsom

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1 was a coke snorter.

2 UNKNOWN PERSON FROM AUDIENCE: Yeah.

3 MR. LEE: He said that he was going to go to an
4 out-patient rehab. He wasn't going inside, but he said
5 he could do it outside. And now he's the lieutenant
6 governor. We're spending wasteful money on this thing
7 here.

8 Every day as people came up here before me to
9 say that we're dealing with homicides in our streets, in
10 our community. I don't know what you deal with and where
11 you stay (sic) at, but we have actual mothers and fathers
12 who are losing their children in these streets of
13 San Francisco. There's been no ethics on finding justice
14 for those families. Unsolved homicides for over 20
15 years, that's ethics. Let's bring the police department
16 to this Commission on their ethics on finding justice for
17 families.

18 ---oo---

19 PUBLIC COMMENT BY LARRY HAYNES

20 MR. HAYNES: How you doing. My name's Larry
21 Haynes. I'm working for change.

22 Ross Mirkarimi has been very instrumental and
23 very positive in our Western Addition area. And I'd like
24 to see him get back to work. And he's been very
25 responsive to our needs in our community.

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1 I think he's very honest. I know him
2 personally, his family. And I think this is kind of like
3 an injustice, is politically motivated. But any rate, he
4 needs to get back to work. He's a good guy. He does
5 good work.

6 Thank you.

7 ---oo---

8 PUBLIC COMMENT BY MERLE EASTON

9 MS. EASTON: Hello. My name is Merle Easton.
10 I've been a resident of District 5 for -- I don't know,
11 25 years or so.

12 And before Ross was our supervisor there, I was
13 a victim of street violence. I was attacked in front of
14 my house at 7 a.m., my face broken in two places, and the
15 police were not very interested in this affair. However,
16 after Ross came in as supervisor, he got into -- the
17 police doing community policing and coordinated work with
18 all the departments, and I have not had any problem
19 since.

20 And I think that Ross needs to get back to work
21 so that people who are doing things like the person that
22 did to me can be given the resources to turn their life
23 around and not be attacking other people.

24 And I think that the ethics are in the
25 criminal -- excuse me. Thank you.

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1

---oo---

2

PUBLIC COMMENT BY MOIRA O'BRIEN

3

MS. O'BRIEN: Hi, good evening. I wasn't
expecting to get up here and speak, but I hear that you
won't be taking public comment on this as you go forward?

6

COMMISSIONER HUR: This is the public comment.

7

8

9

10

MR. O'BRIEN: All right. My name's Moira
O'Brien. I am a native San Franciscan. I've worked with
Ross on a number of campaigns. I've known him since
1995.

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I find him to be an incredibly upstanding
citizen. He's been a great service to this city. He's
been a part of many great changes and -- that have
protected marginalized folks. He was greatly involved
when he was a supervisor in his district. When I had
encountered violence against women, I was able to count
on Ross for counsel and support. I've known him
personally, but mostly professionally, and I believe that
you're really doing a disservice to the city. He was
duly elected. I don't feel that this is due process.

I really didn't quite understand what the city
attorney's office was trying to say. And they didn't
really seem to be present in this proceeding.

But I feel that he was elected to office.
You're withholding his pay. There is really no great

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1 reason for this. You're expending a lot of city
2 resources, trashing this man's good character, and I find
3 that you're doing a disservice to the voters of
4 San Francisco.

5 UNKNOWN PERSON FROM AUDIENCE: Here, here.

6 ---oo---

7 PUBLIC COMMENT BY ROSARIO CERVANTES

8 MS. CERVANTES: Hi. My name is Rosario
9 Cervantes, and I met Ross back in 2007 when I was
10 tutoring for John Swett and we were fighting to keep the
11 school open. And Ross was really a strong advocate for
12 us.

13 And I'm also a board member of Coleman
14 Advocates, and we stand for family and children. And
15 I've known Ross for many years, and he's very committed
16 to the people. He's committed to this District 5, and
17 now he's committed as sheriff, and I voted for him and I
18 want him to do his job.

19 Thank you.

20 ---oo---

21 PUBLIC COMMENT BY PAULA MOHAMMED

22 MS. MOHAMMED: Good evening to all the
23 Commissioners and everyone in the audience. My name is
24 Paula Mohammed, and I'm here on behalf Mr. Ross
25 Mirkarimi.

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1 I've sat here and I've listened to everything
2 that everyone has had to say on behalf of him. And we as
3 the people, when we elected him we knew exactly the type
4 of person that we were putting in office, which is
5 Mr. Mirkarimi. I don't -- my children were all born in
6 the Western Addition. I have eight children. In all the
7 years of living in the Western Addition, I've never seen
8 a supervisor or any elected official get out in the
9 streets and do the things that he's done.

10 I think he's the best thing that could have
11 happened to the Western Addition. He is definitely a
12 people's person.

13 I feel that he has gone through enough pain and
14 suffering. He should be allowed to return back to work
15 with pay. To suspend him is one thing, but to suspend
16 him without pay, that's a totally different thing. He
17 has a family. He has a child to support.

18 And one thing I'm asking the Commission to
19 please do, and that is to have his wife return and be
20 here to be able to give her testimony, because she is the
21 only person that can actually tell you guys what you want
22 to know and what you want to hear. Everything else is
23 just stipulations on what someone else said. Unless you
24 get it directly from her, then I personally don't feel
25 that there is a case. I think it's a waste of taxpayers

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1 money. And that's all I have to say.

2 ---oo---

3 PUBLIC COMMENT BY MICHAEL TONG

4 MR. TONG: Good evening, Commissioners. My
5 name's Michael Tong. I'm a San Francisco city resident.
6 Thank you for letting me speak. Thank you for your work.

7 I know you have a hard job ahead of you. I've
8 heard that you're treading some unknown waters here, and
9 to the point where you can, I'd like to ask you to
10 consider reestablishing Sheriff Mirkarimi's pay. He's
11 been suspended without pay for the last several months.
12 It's -- there's a lot of finance -- financial loss here.

13 It's kind of ironic. I heard the Peace Officer
14 Bill of Rights mentioned, and if you as a peace officer
15 had been involved in an officer-involved shooting, he
16 would be on admin leave pending the outcome of the
17 investigation. So any consideration you could give to
18 that would be a greatly appreciated.

19 Thank you very much.

20 ---oo---

21 PUBLIC COMMENT BY BEVERLY UPTON

22 MS. UPTON: Good evening, Commissioners.
23 Beverly Upton, San Francisco Domestic Violence
24 Consortium.

25 Family violence is San Francisco's number one

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1 reported crime.

2 I help chair the Family Violence Council for
3 the City of San Francisco.

4 I've had the pleasure and honor of being on the
5 advisory committee of many of the sheriff's department's
6 intervention programs.

7 I also have started to serve on the Realignment
8 Committee.

9 The world is watching. The world is watching.

10 My concern is that victims are watching,
11 victims who cannot come out of their homes and talk.
12 Victims who are not here today to talk about what they're
13 facing, and my other concern is that abusers are
14 watching. We do not want to embolden abusers.

15 San Francisco's domestic violence related
16 homicide rate is down by 80 percent over the last 10
17 years. We used to lose 12 to 15 women a year, sometimes
18 their children as well, and I am so proud to be a part of
19 San Francisco's partnership with the community that has
20 reduced the homicide rate to one or two tragedies,
21 absolute tragedies, a year. But the statistics bear us
22 out. We are headed in the right direction. The world is
23 watching. They need our leadership.

24 Thank you.

25 ---oo---

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1 PUBLIC COMMENT BY DARRELL HUNTER

2 MR. HUNTER: Hello, Commission. My name is
3 Darrell Hunter, and I was born and raised in the 5th
4 District, the district Ross Mirkarimi represented.

5 And I don't really know him personally, but I
6 have seen his work in the community. And for a
7 supervisor, I can say he was active in the community and
8 what was going on in the community. And I had nothing
9 but -- nothing bad to say about him, per se, as a
10 supervisor.

11 But I would like to also just bring up to y'all
12 attention that the people who made the decision why we're
13 here today for this man here, Mr. Mirkarimi, is Ed Lee
14 made the decision to suspend him without pay, and
15 basically terminate his election -- being elected by the
16 voters of San Francisco to be the sheriff.

17 And I just want to say that Ed Lee also hired
18 Greg Suhr as the chief of police in the middle of a
19 police-corruption scandal, and -- where officers
20 committed felonies, perjury, stealing evidence, and all
21 sorts of things. Those are felonies. Nothing was done
22 by Ed Lee, other than appointing Greg Suhr as the chief
23 of police, who was demoted as deputy chief to captain and
24 was pulled to be the chief of police.

25 So it's a lot of issues going on pertaining to

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1 law enforcement, and I personally believe that it is a
2 waste of money what's going on here. The man was elected
3 by the people, and the people who are making these
4 decisions while we are here are several. Greg Suhr, who
5 he appointed, was the police who brought the evidence to
6 Gascon who was the police chief, now the D.A. So think
7 about ethics in that when you go forward to make your
8 decision.

9 Thank you.

10 COMMISSIONER HUR: I want to thank the public
11 for your comments.

12 We are a five member volunteer body, and we --
13 and Mr. Emblidge is also volunteering his time pro bono,
14 and I think I speak for the Commission when I say we are
15 committed to having a just and fair process, and look
16 forward to the parties' cooperation in that endeavor.

17 Commissioners, any further comments or
18 questions for the parties in light of the public comment?

19 I have a couple.

20 So could Mr. Kopp and Mr. Keith please come
21 forward.

22 (Attorneys comply.)

23 COMMISSIONER HUR: Regarding the briefing, and,
24 again, an ministerial issue, I assume the parties have
25 no problem with double spaced 12 point font for your

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1 briefs, that you would -- is that fair?

2 MR. KOPP: We agree to that format.

3 MR. KEITH: We'll submit them just like court.

4 COMMISSIONER HUR: Okay, great.

5 As far as the -- as far as the schedule, I want
6 to make sure that we build in sufficient time for meeting
7 and conferring about stipulations and rebuttal
8 disclosures of witnesses.

9 I know that, Mr. Keith, you said that for the
10 majority of your witnesses you could identify them in a
11 week.

12 Is that right?

13 MR. KEITH: Yes, the fact witnesses.

14 COMMISSIONER HUR: Can you -- could you provide
15 all of them within 10 days?

16 MR. KEITH: Unfortunately, I have a bench trial
17 coming up next week, so I think I -- I think we'll need
18 the full two weeks.

19 COMMISSIONER HUR: You'll need the full two
20 weeks to identify the police -- potential
21 police-misconduct witnesses that you're anticipating?

22 MR. KEITH: That's correct.

23 COMMISSIONER HUR: What if we had you disclose
24 the fact witnesses in a week, the additional couple
25 witnesses, police-misconduct witnesses you identified the

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1 week after, and then gave Mr. Kopp 10 days from there to
2 identify his witnesses?

3 MR. KEITH: So we'd split up the witness
4 disclosures with the fact witnesses being in one week and
5 the remaining witnesses in two weeks?

6 COMMISSIONER HUR: The remaining witnesses in
7 two weeks, and then, Mr. Kopp, I don't know if you're
8 intending to identify any quasi expert or expert-type
9 witnesses?

10 MR. KOPP: It's going to depend on how we
11 perceive the nature of their proposed testimony, but we
12 could certainly respond with our witness list within 10
13 days of disclosure of their fact witnesses.

14 And then if they give us this police expert or
15 experts, I'm not quite sure who the witness will be, I
16 would think that we could probably respond within 10
17 days. I'd rather say 14 days just to be sure on that
18 one, because that may -- if we think we need to respond,
19 it may require finding such an expert witness.

20 COMMISSIONER HUR: That's a fair point.

21 I mean, do the parties think that would -- that
22 would help? In other words, at that point then, the fact
23 witnesses would be disclosed earlier, and you would
24 then -- if I'm calculating it correctly -- likely have
25 about 10 days from the disclosure of the sheriff's fact

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1 witnesses to meet and confer about fact stipulations and
2 the like?

3 Or is the schedule that we outlined before you
4 think sufficient time to meet and confer on those issues?

5 MR. KEITH: I think more time is better. So I
6 think the revised schedule would work better.

7 COMMISSIONER HUR: Mr. Kopp, do you have a
8 view?

9 MR. KOPP: The revised schedule as proposed
10 would work for us.

11 COMMISSIONER HUR: Okay. Commissioners, any
12 objections? So I think the way that would look then is,
13 the mayor would disclose fact witnesses on April 30th.
14 He would disclose any expert-type witnesses on May 7.

15 The sheriff would provide his list of fact
16 witnesses on -- is Wednesday, May 9th, enough time? So
17 that would be -- so from the 30th to the 9th? We can do
18 the 10th. I mean, it's a matter of a day here.

19 MR. KOPP: We prefer the 10th, please.

20 COMMISSIONER HUR: Okay. So the 10th for fact
21 witnesses.

22 The mayor would then have until -- I'm sorry,
23 then the -- the sheriff would have until May 17th to
24 respond to any expert witnesses that were disclosed by
25 the mayor.

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1 MR. KOPP: That's fine.

2 COMMISSIONER HUR: Does that sound reasonable
3 to the parties?

4 MR. KOPP: Yes.

5 MR. KEITH: Yes.

6 COMMISSIONER HUR: And then we would expect
7 stipulations and rebuttal witnesses on the -- we said the
8 25th, I believe. So that would then give you eight days
9 to meaningfully figure out to what extent you can agree
10 on issues and what we'll have to look at in terms of
11 evidentiary matters.

12 Is that acceptable to the Commission? Are
13 there thoughts on revisions to that?

14 Okay. Do the parties have anything else that
15 they would like to raise with us at this time?

16 MR. KEITH: I think one of the public
17 commenters suggested a single memo laying out all the
18 deadlines and the subject matters that we're supposed to
19 brief as set tonight would be helpful, and it would
20 certainly be helpful to us.

21 MR. KOPP: Agreed. I've been writing these
22 dates down, but I assume they're going to be available in
23 written form at some point.

24 COMMISSIONER HUR: We will do our best to get
25 that out, but I hope that -- you guys have -- you know,

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1 you have teams. It looks like you have others that are
2 here and have gotten the dates, so we won't delay you in
3 getting started on whatever you need to do. But we will
4 endeavor to get that out as soon as we can.

5 Commissioners, anything -- anything further?

6 COMMISSIONER RENNE: Do we need it in the form
7 of a motion to adopt that schedule?

8 COMMISSIONER HUR: My understanding is it's --
9 that's not necessary.

10 Mr. Emblidge?

11 MR. EMBLIDGE: One suggestion is if the -- if
12 the Commission so desired, could it delegate, perhaps to
13 the Commission president, the ability to modify the
14 schedule between now and when we next come back in case
15 the need arises? Because the Commission won't be meeting
16 again, should something come up in the mean time. I just
17 raise that as a suggestion.

18 COMMISSIONER HUR: Do the parties -- do the
19 parties have an objection to that?

20 MR. KOPP: I'm sorry, I missed the first part
21 of that. Delegating the power to modify the schedule
22 just to the chairperson? I don't think we have an
23 objection to that.

24 MR. KEITH: The mayor has no objection.

25 COMMISSIONER HUR: Would that require a vote?

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1 MR. ST. CROIX: I actually think you have
2 already have that authority.

3 COMMISSIONER HUR: Oh.

4 MR. KOPP: Congratulations.

5 COMMISSIONER HUR: Great.

6 Okay. I think that's a good suggestion,
7 Mr. Emblidge.

8 Okay. If there's nothing else from the
9 parties, that being the only item on the agenda --

10 MR. ST. CROIX: You know what, let's avoid all
11 kinds of future unpleasantness --

12 COMMISSIONER STUDLEY: Yes.

13 MR. ST. CROIX: -- and make a motion to empower
14 the chair to make adjustments to the schedule and
15 rulings, according to this, in consultation with the --

16 COMMISSIONER HUR: Is there such a motion?

17 COMMISSIONER STUDLEY: Yes, I would move that
18 we either confirm or grant you that authority to make
19 motions and otherwise manage the process during the --
20 this part of the proceedings. I think that would be very
21 helpful to all concerned.

22 COMMISSIONER RENNE: And I'll second the
23 motion.

24 COMMISSIONER HUR: All in favor --

25 COMMISSIONER STUDLEY: No. Public comment on a

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1 motion now.

2 COMMISSIONER HUR: Public comment on the
3 motion?

4 MR. PILPEL: David Pilpel. I just suggested it
5 in the form of a motion so that the authority is clear
6 going forward. So I think that makes sense and I
7 encourage you to pass the motion.

8 Thank you, bye.

9 MR. WARFIELD: Peter Warfield. As long as
10 you're trying to do things formally and properly, I think
11 it would be better to have a very clear motion.

12 I thought you were discussing the schedule and
13 had come up with a list of dates and actions on either
14 side, and now all of a sudden we seem to have some kind
15 of an empowering of the chair to take certain actions.

16 So I'm not at all clear what that aspect is or
17 what exactly you're voting on. So I think it would be
18 useful to state the motion clearly as to what you're
19 voting on.

20 Thank you.

21 COMMISSIONER HUR: Any other -- Mr. St. Croix?

22 MR. ST. CROIX: So I suggest you make a motion
23 to empower the chair, in consultation with the interested
24 parties, to make adjustments to the schedule that's been
25 laid out for tonight.

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1 COMMISSIONER HUR: I think that motion has been
2 made --

3 MR. ST. CROIX: Yeah.

4 COMMISSIONER HUR: -- and seconded.

5 And so the purpose of the motion was not to
6 change the schedule, but if the parties had -- sometimes
7 in these sorts of things issues come up where dates have
8 to be modified slightly, and rather than slow down the
9 process by requiring the entire body to meet over a
10 routine administerial matter, this would allow the chair
11 to handle those and allow the process to move smoothly
12 and as quickly as due process will allow.

13 COMMISSIONER STUDLEY: I understood the
14 question -- I think the motion is clear.

15 I think the question that we got, although we
16 don't usually respond directly, is where did the schedule
17 come from since the schedule has been adopted by
18 agreement with parties and was not adopted by motion? We
19 are being more formal about the -- your authority than we
20 were about the terms of the schedule.

21 And I think if that's the proper procedural
22 step, it would just help to clarify the weight that the
23 schedule has and why you were proceeding as you did,
24 and -- either after voting on the motion or before it.

25 COMMISSIONER HUR: So what are -- I'm not sure

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1 I follow what you're suggesting we do.

2 COMMISSIONER STUDLEY: I was simply suggesting
3 that you clarify why the schedule can be put into place
4 without a motion because its source of authority is
5 different from what we're voting on now.

6 I'm just saying that we don't need to vote on
7 it.

8 COMMISSIONER HUR: Yeah.

9 COMMISSIONER STUDLEY: I think you -- I think
10 you said it, but it wasn't --

11 COMMISSIONER HUR: Okay.

12 Yeah. Well, to be perfectly crystal clear, the
13 Commission does not need to vote on implementing a
14 procedural schedule. So that is why the Commission did
15 not vote on it.

16 The agreement that we discussed with the
17 parties is the procedural schedule. There was no
18 objection from the Commission, so that is the schedule
19 that will govern going forward, absent an administrative
20 request for some modification, if there is good cause or
21 something like that.

22 So with that, all in favor of the motion that
23 was put forth by Mr. St. Croix.

24 (Commission all responded aye.)

25 COMMISSIONER HUR: Any opposed?

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1 The motion passes.

2 Thank you all for your patient participation in
3 this. The meeting is adjourned.

4 (Whereupon the hearing recessed at

5 7:25 o'clock p.m. to be reconvened,

6 Tuesday, May 29, 2012, at 5:30 o'clock p.m.)

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ETHICS COMMISSION MEETING - SHERIFF ROSS MIRKARIMI

I, the undersigned, a Certified Shorthand
Reporter in the State of California, hereby certify that
said proceeding was taken at the time and place therein
stated; that the comments by the public were reported by
me to the best of my ability, a disinterested person, and
was thereafter transcribed under my direction into
typewriting; that the foregoing is a full, complete, and
true record of the said testimony.

9 I further certify that I am not of counsel or
10 attorney for either or any of the parties in the
11 foregoing proceedings, or in any way interested in the
12 outcome of the cause named in said caption.

14 Date: May 3, 2012

Jeannette Samoilides

~~JEANNETTE SAMOULIDES~~, CSR #5254