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

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

City and County of San Francisco
Special Meeting of the Ethics Commission
Tuesday, May 29, 2012 - 5:30 p.m.

VOLUME II
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Reported by: Jeannette Samoulides, CSR #5254

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1 BE IT REMEMBERED that, on Tuesday, the 29th day
2 of May, 2012, commencing at the hour of 5:30 o'clock p.m.
3 thereof, at CITY HALL, 1 Dr. Carlton B. Goodlett Place,
4 Room 400, San Francisco, California, before me, JEANNETTE
5 SAMOULIDES, a Certified Shorthand Reporter, for the State
6 of California, the following proceedings were had

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8 APPEARANCES OF COUNSEL

9 For Sheriff Ross Mirkarimi

10 LAW OFFICES OF SHEPARD S. KOPP
11 11355 W. Olympic Boulevard, Suite 300
12 Los Angeles, California 90064
13 BY: SHEPARD S. KOPP, Attorney at Law

14 - and -

15 LAW OFFICES OF DAVID P. WAGGONER
16 2251 Market Street, Suite B
17 San Francisco, California 94114
18 BY: DAVID P. WAGGONER, Attorney at Law

19 For the City and County of San Francisco

20 Office Of The City Attorney
21 1390 Market Street, Fifth Floor
22 San Francisco, California 94102
23 BY: PETER J. KEITH, Deputy City Attorney
24 BY: SHERRI SOKELAND KAISER, Deputy City Attorney

25 For the Ethics Commission Board

MOSCONE, EMBLIDGE & SATER, LLP
220 Montgomery Street, Suite 2100
San Francisco, California 94104
BY: G. SCOTT EMBLIDGE, Attorney at Law

----oOo----

1 Commissioners Present

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

7 Staff Present

8 John St. Croix, Executive Director
9 Garrett Chatfield, Legal Analyst/Ethics Investigator
10 Mabel Ng, Deputy Executive Director

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1 Sheriff Ross Mirkarimi

May 29, 2012

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P R O C E E D I N G S

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COMMISSIONER HUR: Good evening. I would like to call to order this special meeting of the San Francisco Ethics Commission, the continued hearing, the official misconduct proceedings relating to Sheriff Ross Mirkarimi.

9

We'll start by taking the roll.

10

(Roll taken.)

11

COMMISSIONER HUR: Over the course of the

12

last --

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(Sheriff Ross Mirkarimi entered the hearing proceedings.)

14

15

(Audience interruption of proceedings.)

16

MR. MIRKARIMI: Thank you. I understand

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there's a couple other rooms. I want to say thank you to the other people in the other rooms. I cannot tell you on behalf of me and my family how grateful we are. Thank you very much.

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COMMISSIONER HUR: During the course of last

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month --

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(Audience interruption of proceedings.)

24

COMMISSIONER HUR: There will definitely be an

25

opportunity for public comment, and we welcome your

1 views, but if the crowd could please allow us to conduct
2 our business, we'd appreciate it. Thank you.

3 Over the course of the last month the parties
4 have submitted a number of briefs, and we want -- on
5 behalf of the Commission, want to thank the parties for
6 their diligent efforts in doing so and in complying with
7 our deadlines. I think much of the information that was
8 provided was very helpful.

9 There are a number of things we need to address
10 tonight. So the procedure that I would propose, subject
11 to the views of my fellow Commissioners and the parties,
12 is that I will introduce an issue that was previously
13 briefed, invite comments from the Commissioners, and if
14 the Commissioners have any questions for the parties or
15 any party wishes to be heard on the matter after hearing
16 the Commission discussion, we will invite you to do so.

17 Is that acceptable to the Commission?

18 COMMISSIONER HAYON: Yes, fine.

19 COMMISSIONER RENNE: Fine.

20 COMMISSIONER STUDLEY: Fine.

21 COMMISSIONER HUR: Any objection to the parties
22 on that?

23 MR. KEITH: No.

24 MR. KOPP: No.

25 COMMISSIONER HUR: Okay.

1 Because I think a lot flows from the
2 Commission's decision on whether live testimony should be
3 heard, I think we should start with that issue.

4 We had asked for briefing the parties' views on
5 whether the Commission should act just based on written
6 declarations or should also consider live testimony under
7 oath.

8 My view after reading the papers and hearing
9 the parties, is that I do think some live testimony would
10 be helpful for the Commission in making its evaluation
11 and in reviewing the evidence.

12 I welcome other views from my fellow
13 Commissioners on whether that should be the case.

14 Commissioner Studley.

15 COMMISSIONER STUDLEY: Can you describe how we
16 would narrow the witnesses and the testimony to the
17 issues that are appropriately before us?

18 COMMISSIONER HUR: In my view, I do think that
19 some narrowing is going to be required. So I -- my
20 thought was to get into the discussion of specifically
21 which witnesses we would see a little bit later after we
22 discuss some of the other preliminary issues. But I
23 certainly share your concern about the breadth of the
24 witness lists.

25 Commissioner Hayon.

1 COMMISSIONER HAYON: My question is: Is it all
2 -- do we have to decide that it's all live testimony or
3 all declaration or can we have a combination of the two?

4 COMMISSIONER HUR: I was envisioning a hybrid
5 where some -- where some evidence could still come in
6 through declaration, as we previously had discussed, but
7 that for certain individuals live testimony would likely
8 be helpful to us.

9 COMMISSIONER HAYON: And to piggyback on what
10 Commissioner Studley just asked, I mean, there is a very
11 long list of witnesses were we to ask all of those
12 witnesses to participate in this hearing, and it seems to
13 me that -- that wouldn't be necessary. It would be great
14 if we could narrow the list to really those that are
15 truly relevant to the case at hand.

16 COMMISSIONER HUR: I concur with that.

17 COMMISSIONER LIU: I would agree with that and
18 also just narrow it to where we think that we have
19 credibility determinations to make. I think that's the
20 only area where we really need some limited live
21 testimony.

22 UNKNOWN PERSON IN AUDIENCE: Can you speak into
23 the mic, please.

24 We can't hear you.

25 COMMISSIONER LIU: Thank you for reminding me

1 to speak into the mic.

2 I was commenting that I do agree that some live
3 testimony would be necessary, but only limited to those
4 areas where we would need to make a credibility
5 determination and certainly not the lengthy list that
6 we've seen. I think we can narrow the issues.

7 COMMISSIONER HUR: Would any party like to be
8 heard on this issue?

9 MR. KOPP: Yes.

10 Good afternoon or early evening. Shepard Kopp,
11 again, on behalf of Sheriff Mirkarimi, with my co-counsel
12 David Waggoner.

13 In our view, the proposed witness list that's
14 been given to you by the mayor is excessively lengthy.
15 We believe that many of those witnesses are irrelevant to
16 the determinations that you're going to need to make.

17 And also in our view, the only two witnesses
18 that definitely should be testifying live are Mayor Lee
19 and Sheriff Mirkarimi. We think all the other witnesses
20 could be handled by declaration, subject to the other
21 party insisting on cross-examination, and if you decide
22 that you need to hear them.

23 COMMISSIONER HUR: Mr. Kopp, I think that
24 issue, the -- like I said, the specific issue of who we
25 hear from will be addressed later.

1 So this really is limited to the question of
2 should we have some live testimony.

3 MR. KOPP: Right.

4 COMMISSIONER HUR: And it sounds like you're
5 amenable to that. And I know the mayor wanted some live
6 testimony as well, so I don't expect any dispute from the
7 parties on this.

8 MR. KOPP: Yes.

9 UNKNOWN PERSON IN AUDIENCE: Speak louder,
10 please.

11 COMMISSIONER HUR: So we -- because there are
12 so many decisions to be made tonight, I'm also proposing
13 that we take one vote at the end addressing all of the
14 issues, particularly when -- when it sounds like there's
15 unanimity on an issue.

16 Is there any dissent to the view that we should
17 entertain some live testimony at a hearing?

18 Okay. Then moving on to the next issue, the
19 standard of proof to be used.

20 The sheriff has proposed a preponderance of the
21 -- I'm sorry, beyond a reasonable doubt standard. The
22 mayor has proposed a preponderance of the evidence
23 standard.

24 In light of the briefing and the relevant
25 authorities, it appears to me that a preponderance of the

1 evidence standard is most appropriate here.

2 Beyond a reasonable doubt seems to be something
3 that would apply in a criminal matter, and I -- I
4 personally do not see any legal basis for applying it
5 here in our Commission proceedings.

6 Again, welcome the views of my fellow
7 Commissioners on this.

8 Commissioner Renne.

9 COMMISSIONER RENNE: The only question I have
10 is, on issues of fact which may go to the question of
11 whether or not the sheriff committed some criminal
12 offense, other than the one to which he pleaded guilty, I
13 wonder if there might not be a requirement of some higher
14 standard of proof that the -- that the mayor has got to
15 establish that in fact those criminal offenses occurred?

16 I agree that overall that certainly on the
17 question of our recommendation and other decisions that
18 may be made in the case, a preponderance of evidence
19 seems the appropriate standard.

20 I'm just troubled by if in fact the mayor is
21 relying on acts which he claims were criminal acts, then
22 I -- I question whether or not the mayor doesn't have to
23 prove some -- by some higher standard than merely a
24 preponderance of evidence.

25 It's just -- I don't have a firm position on

1 it, but it is a concern I have that there are -- there
2 are some issues which clearly seem to be appropriately a
3 preponderance of evidence, but if there is going to be a
4 reliance on criminal conduct other than that which the
5 sheriff pleaded guilty, I have some reservations.

6 COMMISSIONER HUR: Commissioner Renne, I share
7 your concern, and the way I reconcile it is this: We are
8 not tasked with finding whether or not Mr. Mirkarimi
9 committed crimes to which he has not pled.

10 We're tasked with making factual findings about
11 whether certain actions were committed and whether those
12 actions constitute official misconduct.

13 So in my view, I agree with you that if we were
14 trying to determine whether he committed crimes, that the
15 reasonable doubt standard would apply. But at least to
16 me, in light of our task, I find no legal basis to use a
17 higher standard than preponderance.

18 Any other views from the Commissioners?

19 COMMISSIONER LIU: No, I'm in agreement. I
20 think that we're not called upon to determine whether
21 certain crimes were committed. We're called upon to
22 determine the facts of what happened and then to
23 determine whether it constitutes official misconduct, and
24 I do think that in a civil proceeding a preponderance of
25 the evidence standard is most appropriate, especially

1 given that that's the standard we normally use at the
2 Commission.

3 COMMISSIONER HUR: Commissioner Studley.

4 COMMISSIONER STUDLEY: And I would just add
5 that I agree with that.

6 Since we are not making any findings with the
7 consequences that would attend to a criminal finding,
8 we're making recommendations to the Supervisors, I think
9 that's an appropriate standard.

10 Moreover, we have the option, when we get to
11 the point of developing our recommendations, of
12 indicating if they meet an even higher standard or level
13 of certainty, if we want to, when we think that the facts
14 warrant.

15 So I think for all those reasons this seems
16 appropriate, but -- it's a fair question, but I think
17 that our job is a little bit different.

18 COMMISSIONER HUR: Commissioner Renne.

19 COMMISSIONER RENNE: I just -- I agree with you
20 when you say we're only fact finders. And if we weren't
21 required to make a recommendation to the Board of
22 Supervisors, I would be in complete agreement. But if
23 our recommendation is going to be predicated on a finding
24 that the sheriff committed some act of official
25 misconduct beyond that to which he pleaded guilty, then I

1 -- is where I have my concern. And I reserve that, I
2 think, as we go along. I just raise it.

3 COMMISSIONER HUR: Would either party like to
4 address this issue?

5 MR. KOPP: Yes, please.

6 COMMISSIONER HUR: Mr. Kopp.

7 MR. KOPP: As the Commissioners have hopefully
8 gleaned from the filings that we've submitted --

9 UNKNOWN PERSONS IN AUDIENCE: Louder.

10 There are some of us who are disabled with
11 hearing losses.

12 MR. KOPP: I'm sorry, I can hear myself, that's
13 why I thought I was transmitting.

14 UNKNOWN PERSON IN AUDIENCE: Can you please
15 speak in the microphone.

16 MR. KOPP: How's this?

17 UNKNOWN PERSON IN AUDIENCE: Perfect.

18 MR. KOPP: As the Commissioners have probably
19 gleaned from our filings, we see these removal
20 proceedings as distinctly different from any other
21 determination you might routinely make for some other
22 nonelected public official, and since the only published
23 appellate decision that we can find on a Charter-removal
24 proceeding is the Mazzola case, and since in that case
25 the Supervisors at that time got it wrong and were

1 reversed, we look to the state code which has that higher
2 burden of proof.

3 And we think particularly in front of a
4 Commission like ethics, the highest level of due process
5 should be extended to an elected official, and that is
6 why we believe that's the appropriate standard, because
7 we certainly don't want to have a situation where the
8 determination is made that the sheriff was not accorded
9 that high level and any determination you make or the
10 Board of Supervisors makes down the road winds up getting
11 reversed.

12 COMMISSIONER HUR: Thank you.

13 MS. KAISER: Good evening, Commissioners.

14 I just wanted to address Commissioner Renne's
15 concern and point out that the elements that we need to
16 prove here under the Charter, there are two prongs to the
17 definition, and neither one of them is really the
18 definition of a criminal offense.

19 First of all, it can be wrongful behavior
20 that's willful by a public officer in relation to the
21 duties of his or her office. That does not state a
22 crime. And it could be that a crime satisfies that
23 definition, but we're not here in urging a finding of
24 misconduct to prove any sort of criminal behavior.

25 We know from Sheriff Mirkarimi's guilty plea

1 that he did commit a crime. But that's the only way in
2 which the commission of a crime, and the plea and the
3 sentence that flowed from it, really play in.

4 We do allege other things that perhaps are
5 crimes, could be considered crimes, but those would be
6 the subject of a separate proceeding, by separate fact
7 finders, under a separate burden of proof if indeed that
8 were even an option given the fact that many of the facts
9 and circumstances were already adjudicated in criminal
10 court and resolved by the guilty plea.

11 So I just want to make clear that it may be
12 that some of the other conduct could be considered
13 criminal. As I understand it, that's not an uncommon
14 situation before the Commission. And nonetheless, you do
15 not act as criminal fact finders, you act as an
16 administrative tribunal applying the preponderance of the
17 evidence standard to the civil infraction that goes along
18 with or accompanies the criminal offense.

19 COMMISSIONER HUR: Any questions from the
20 Commissioners of either party?

21 Miss Kaiser, would you like to address
22 Mr. Kopp's points with respect to Mazzola and the state
23 code?

24 MS. KAISER: Absolutely.

25 As we make clear in our briefing, it's our

1 position that the Charter controls this proceeding, not
2 the Mazzola case. The Mazzola case was not -- and the
3 decision was not rendered with the benefit of the current
4 definition of official misconduct that's in the Charter,
5 nor did it say what the definition of official misconduct
6 had to be in the Charter. It's true that it referred to
7 a definition from Black's Law Dictionary, which the city
8 ended up adopting, the voters ended up adopting as part
9 of the definition of official misconduct, but any laws,
10 limitation, other holding, other discussion in the
11 context of that case actually has no application here.

12 And the reason why is that in the Mazzola case
13 what was at issue was not as has been discussed here, the
14 timing of the misconduct. What was at issue was the
15 relationship between the alleged misconduct and the
16 officer's position as an airport commissioner.

17 And what happened in that case was Airport
18 Commissioner Mazzola, who was also a union official, and
19 had been a union official when he was appointed, and at
20 some point his union, along with many other unions in the
21 city, went out on strike, and he recommended the strike
22 but did nothing in his official capacity as airport
23 commissioner.

24 And the Mazzola (sic) court ultimately held
25 that there was no relationship between his actions as a

1 union official and his actions as an airport commissioner
2 that would be sufficient to merit his removal.

3 So when it was emphasizing in office, it was
4 emphasizing the relationship or the connection, and the
5 mayor agrees there must be a relationship. But that case
6 has absolutely nothing to do with the timing of the
7 misconduct.

8 Moving on to the second question, which is:
9 How does this relate to the government code and to the
10 state removal proceedings.

11 Actually, if you look at the government code
12 you will notice that there are two different procedures
13 for removal. One of which is the procedure that the
14 sheriff has been talking a lot about, and it's called
15 removal other than by impeachment, and it does have a
16 process for an indictment by a grand jury and a trial and
17 all of that.

18 The other set of provisions, however, is about
19 impeachment. And those procedures are actually what this
20 procedure much more closely resembles.

21 The assembly brings to the Senate a charge, an
22 impeachment of an elected state official. The Senate
23 holds a trial, and the Senate then votes by two-thirds of
24 its members whether or not to remove the statewide
25 elected official. That sounds like this procedure. It

1 does not sound like this grand jury indictment, et
2 cetera.

3 And in any event, as -- as I think is most
4 important here, what really controls is not this law
5 under the state code or that law under the state code or
6 some other law in some other state altogether, what
7 really controls is the Charter in this case. And to the
8 extent that there are holes in the Charter, that really
9 can't be filled any other way. Maybe there's a debate
10 about what to import, but we didn't really find anything
11 like that.

12 We thought it was perfectly clear given the
13 Charter language, and the standard procedures of the
14 Commission, and, you know, the way that these sorts of
15 inquiries are routinely run, that it's not mysterious at
16 all and we don't need to go afield and borrow an entirely
17 different set of principles and procedures.

18 COMMISSIONER HUR: Thank you, Miss Kaiser. You
19 answered my question.

20 MS. KAISER: Thank you.

21 COMMISSIONER HUR: I don't know if others have
22 questions.

23 The next item that I would like us to consider
24 and address is the type of evidence to be considered.

25 The sheriff has suggested that we consider only

1 admissible evidence.

2 The mayor has proposed that we more or less
3 follow the Administrative Procedure Act, which does allow
4 some hearsay evidence to be considered.

5 My view on this is that I am concerned with the
6 use of excessive hearsay in a case like this. But that
7 said, it's hard in a situation where you have
8 adjudicators who are not a jury. I think the risk of
9 some hearsay is not as high as it would be in the case of
10 a jury.

11 So I come out -- my view is that I think we
12 should allow some hearsay evidence. I don't think we
13 should rely strictly on the rules of evidence, but I
14 personally would caution the parties that we're not going
15 to -- I, at least for one, would not be persuaded by --
16 if the only evidence on a matter was hearsay evidence,
17 but I welcome the views from my fellow Commissioners.

18 COMMISSIONER HAYON: My question would be where
19 do we draw the line? If we're going to have some hearsay
20 evidence, are we going to decide on a case-by-case
21 basis --

22 UNKNOWN PERSON IN AUDIENCE: Speak into the
23 mic, please.

24 Mic, mic, mic.

25 COMMISSIONER STUDLEY: Would you repeat the

1 question?

2 COMMISSIONER HUR: I think -- go ahead,
3 Commissioner Hayon.

4 COMMISSIONER HAYON: Sorry.

5 My question is: Where do we draw the line on
6 hearsay evidence that is to be admitted? Will we decide
7 on a case-by-case basis as it comes up?

8 COMMISSIONER HUR: I -- any other Commissioners
9 have views on that?

10 COMMISSIONER RENNE: Well, having spent my life
11 as a litigator, and am familiar with the hearsay rules, I
12 think I find myself very close to the chairman's position
13 that I would be reluctant to make any decision which
14 relies primarily upon hearsay, and would be -- and would
15 caution the parties that, at least from my point of view,
16 I would try to exclude as much hearsay as possible, and
17 realizing that it will have little or no influence on my
18 decision.

19 But I don't think -- I don't think you could,
20 probably, do it any other way than on a case-by-case
21 basis when they either offer it by affidavit or offer it
22 by live testimony and an objection is made by one side or
23 the other, that we would rule on it at that point.

24 COMMISSIONER HUR: I agree with that.

25 COMMISSIONER LIU: I do too.

1 I think it does have to be taken on a
2 case-by-case basis. We wouldn't otherwise be able to
3 just rule in a vacuum or exclude all -- you know, all
4 types of evidence in a vacuum.

5 And I agree with my fellow Commissioners that
6 I'd give, probably, little weight to something that's
7 presented only as hearsay evidence, but we can deal with
8 that on a case-by-case basis as the evidence comes in or
9 is offered.

10 COMMISSIONER STUDLEY: Fine.

11 COMMISSIONER HUR: Would either party like to
12 be heard on this matter?

13 MR. KOPP: No.

14 MS. KAISER: No, thank you.

15 COMMISSIONER HUR: The next item I'd like to
16 address is the issue of unanimity.

17 We've reviewed the briefing by both parties.
18 In my view, I just don't see the authority for requiring
19 unanimity, particularly in light of the fact that the
20 Charter specifically states what percentage of the Board
21 of Supervisors is required to vote in favor of removal
22 and is silent on what vote the Commissioners need to
23 take. I think our standard rules on Commission action
24 should apply here.

25 So in my view, a majority vote would be

1 sufficient to make a recommendation to the Board.

2 I welcome the views of my fellow Commissioners.

3 COMMISSIONER STUDLEY: I agree completely. I
4 think we're unanimous.

5 COMMISSIONER HUR: Would either party like to
6 be heard on this point?

7 MR. KOPP: Just briefly.

8 COMMISSIONER HUR: Yes, Mr. Kopp.

9 MR. KOPP: Yes, just to preserve our record.
10 I know we submitted our papers, but we do
11 object to the Commission making its recommendation on
12 anything less than a unanimous vote.

13 We disagree with the mayor's position that the
14 Commission is somehow in an inferior position to the
15 Board of Supervisors. While it's true that the Board
16 will ultimately decide and must vote by a super majority,
17 we believe that they will probably take your
18 recommendation and give it great weight.

19 And so that's one of the reasons why, along
20 with the burden of proof that we have proposed, we
21 believe your vote should be unanimous on the
22 recommendation.

23 COMMISSIONER RENNE: Don't you think that
24 they'd give us -- give a greater weight if it's unanimous
25 than they would to a majority vote?

1 MR. KOPP: Likely so.

2 COMMISSIONER RENNE: Right.

3 COMMISSIONER HUR: Thank you, Mr. Kopp.

4 Miss Kaiser, it's gone your way. I'm not sure
5 what there is to say.

6 MS. KAISER: I would just like to make a brief
7 observation, also for the record.

8 That you're sitting here as a quasi-judicial
9 body, not as a jury, and a panel of multiple judges, even
10 in a criminal matter, reaches its decision by a simple
11 majority vote. There's nothing untoward or improper
12 about that.

13 COMMISSIONER HUR: The next issue I would like
14 to address is the specific witnesses that we would need
15 to hear from.

16 Now this -- I expect some discussion and
17 probably I expect this to be addressed by both parties.

18 My initial reaction to seeing the mayor's list
19 was that I thought it was -- I thought there were far too
20 many people on that list.

21 Upon seeing the sheriff's response, I was
22 mostly in agreement until I saw that the sheriff listed
23 17 witnesses himself.

24 So, Mr. Kopp, earlier you said that you really
25 only think there are two witnesses that need to be --

1 that need to testify.

2 So are you saying that -- so I shouldn't take
3 the fact that you listed many of the same individuals as
4 an indication that you are -- you don't object to those
5 witnesses testifying?

6 MR. KOPP: Yes.

7 COMMISSIONER HUR: Do I have that correct?

8 MR. KOPP: Just so we're clear, we listed the
9 witnesses out of an abundance of caution. We believe
10 that many, if not -- most of the witnesses proposed by
11 the mayor would only have irrelevant evidence to offer,
12 and we likely will not call most of the witnesses that we
13 listed, and we certainly think that declarations would
14 suffice for all but one of them. That's where we stand.

15 COMMISSIONER HUR: To the extent that live
16 testimony is required -- I guess we decided that. We
17 have more or less decided that.

18 Here are the people from the list that I think
19 we definitely should hear from.

20 The sheriff, Mayor Lee, Miss Lopez,
21 Miss Madison, Miss Haynes, Mr. Mertens, and
22 Mr. Hennessey.

23 I think the last -- the last few people are
24 people who I could see potentially coming in by
25 declaration if they must testify.

1 Here's how I'd like to proceed with this. I
2 welcome the views of my fellow Commissioners on, first,
3 whether there are folks I mentioned who we think there's
4 no need to hear testimony from.

5 Secondly, if there are people that I omitted
6 from the list from whom you would like to hear testimony
7 from.

8 And then I'd invite the parties to address the
9 same points.

10 Certainly when the parties address this, I
11 would like to hear for any witness for whom you think we
12 need testimony and who is not on the list that we
13 ultimately discuss, I want to know what charge that
14 testimony would relate to.

15 So let me open up it to my fellow
16 Commissioners.

17 Anybody on the list who you think is either --
18 we don't need to hear testimony from or at least it's an
19 open question that we should reserve until later?

20 Commissioner Renne.

21 COMMISSIONER RENNE: When you went through this
22 list and said the witnesses who you thought we possibly
23 should receive testimony from, were you referring to live
24 testimony or testimony either by declaration subject to
25 cross-examination or both?

1 COMMISSIONER HUR: It was a combined list. I
2 think -- in my view, I think the individuals who I would
3 want to hear live would be the sheriff, the mayor, and
4 Miss Lopez if she is -- if she is available to testify.
5 Others I think could come in by declaration.

6 Now, if a declaration is submitted, I think we
7 probably need to open up that witness to
8 cross-examination by the other side.

9 So it's not necessarily the case in my mind, at
10 least, that a witness who submits a declaration would not
11 appear. I think they likely would appear if there was
12 any controversy as to their testimony.

13 COMMISSIONER RENNE: And I wonder if I could
14 ask a question of the city attorney and the sheriff's
15 counsel, if they know the answer.

16 When the charges were filed and there was a
17 preliminary hearing, wasn't there live testimony and
18 wasn't a transcript prepared of that testimony?

19 MR. KEITH: Commissioner Renne, Peter Keith for
20 the mayor.

21 Are you referring to the criminal charges?

22 COMMISSIONER RENNE: Yes.

23 MR. KEITH: I believe there was not a
24 preliminary hearing on the criminal charges. There was a
25 whole set -- there was a whole set of various proceedings

1 in criminal court. I don't think they included a
2 preliminary hearing. I may be incorrect on that point.

3 MR. KOPP: I may be -- I may be able to shed
4 some light on this. Because it was not a felony
5 proceeding, there was no preliminary hearing where
6 witnesses would have to show probable cause.

7 My understanding is that there was some
8 pretrial hearings, but I think that there was limited
9 live testimony at those hearings.

10 MR. KEITH: Mr. Kopp is correct.

11 COMMISSIONER RENNE: Do you know who did
12 present live testimony at those -- at those hearings?

13 MR. KEITH: I know that Ms. Flores did,
14 Ms. Christina Flores, on our list of witnesses. In
15 that -- in that regard, we propose simply submitting the
16 transcript of that testimony.

17 I believe Ms. Lopez may have testified
18 extremely briefly during those hearings on a narrow
19 issue. But generally speaking, I don't think there was
20 any testimony --

21 UNKNOWN PERSON IN AUDIENCE: Could you speak
22 up, sir.

23 MR. KEITH: Generally speaking, I don't think
24 there was any testimony --

25 COMMISSIONER STUDLEY: Is that not working?

1 MR. KEITH: Generally speaking, I don't think
2 there was any testimony on the merits during -- during
3 these proceedings in the criminal action.

4 COMMISSIONER RENNE: All right. Thank you.

5 COMMISSIONER HUR: Other views of the
6 Commissioners on this issue?

7 Perhaps we should invite the parties to address
8 this. I welcome either side to come up first.

9 Mr. Keith.

10 MR. KEITH: Thank you, Commissioner or
11 Chairman.

12 The -- I think from our standpoint we don't
13 want to have so many witnesses, and I think by
14 stipulation we may be able to eliminate a few of them on
15 background matters, and we've been working toward doing
16 that.

17 Our other proposal would be to, essentially,
18 speed along the proceedings by proceeding by declaration.
19 So rather than having a ruling from the Commission that
20 we simply don't want to hear this witness, perhaps --
21 perhaps what we would like to see would be that witness
22 simply testifying by declaration, and then there be an
23 opportunity to cross-examine, but perhaps a time limit on
24 cross-examination so that we could move things along and
25 stay focused.

1 There were -- there was one witness, I think,
2 that we would want to add that probably would need to
3 come for live testimony. That would be Ms. Williams.

4 She was another one of the people who Ms. Lopez
5 spoke with on the 4th and observed her demeanor on that
6 date.

7 COMMISSIONER HUR: Let me just stop you right
8 there, Mr. Keith.

9 So are you saying, that other than
10 Miss Williams, you agree that the only people who we need
11 to hear from live are the sheriff, the mayor, and
12 Miss Lopez?

13 MR. KEITH: I think -- if I recall, I think
14 Mr. Mertens and Sheriff Hennessey were also on that list.

15 From our -- from the mayor's standpoint, our
16 interest is in getting this testimony before the
17 Commission. Even if it's just by declaration, we would
18 like to get that testimony before the Commission.

19 We don't want to lose the opportunity, for
20 example, to get Chief Still's testimony, the chief of the
21 Adult Probation Department, to talk about how a three
22 year term of probation will affect the sheriff's ability
23 to perform his duties and how it might create a conflict
24 for him.

25 COMMISSIONER HUR: And, Mr. Keith, I appreciate

1 your concern with respect to --

2 UNKNOWN PERSON IN AUDIENCE: Come on.

3 COMMISSIONER HUR: I appreciate your concern
4 with respect to witnesses appearing by declaration, and I
5 think we should address that, but I want to focus on live
6 witnesses right now.

7 UNKNOWN PERSON IN AUDIENCE: Thank you.

8 COMMISSIONER HUR: So you're saying that the
9 people who you think we need to see live are: Michael
10 Hennessey, the mayor, Miss Lopez, Mr. Mertens, and
11 Miss Williams.

12 Do I have that correct?

13 MR. KEITH: Yes, with the exception that I'm
14 not sure the Commission does need to hear from
15 Sheriff Hennessey.

16 COMMISSIONER HUR: I thought you just said we
17 did.

18 MR. KEITH: No, no, I was trying to fill out
19 the list.

20 COMMISSIONER HUR: Okay.

21 MR. KEITH: If we were -- if we were really
22 trying to winnow it down and select those critical
23 witnesses, he probably would not be on the list.

24 COMMISSIONER HUR: Okay.

25 MR. KEITH: We do have our subject-matter

1 experts, but that's more of the declaration issue.

2 COMMISSIONER HUR: Right. This is just
3 percipient-witness testimony.

4 MR. KEITH: Yes.

5 COMMISSIONER HUR: Okay. So what is
6 Miss Williams going to offer to us that's relevant to any
7 of the charges?

8 MR. KEITH: Well, we expect Ms. Madison's
9 credibility to be attacked with regard -- with regard to
10 her recounting what Eliana Lopez told her.

11 Eliana Lopez in fact told a consistent story to
12 Ms. Williams that tends to corroborate the credibility of
13 Ms. Madison, and I think the fact that Ms. Williams is
14 telling both of these witnesses a similar story
15 corroborates Miss Madison's story.

16 Moreover, Callie Williams is one of the -- is
17 one of the witnesses who was part of a -- part of the
18 targeted dissuasion efforts. And so it's important that
19 her testimony be heard on that matter.

20 COMMISSIONER HUR: Okay. Let me start with the
21 second basis.

22 What is she going to say that's related to the
23 dissuasion allegations?

24 MR. KEITH: She received either e-mails or text
25 messages from Ms. Lopez, around 7:00 o'clock on January

1 4th, telling her, "Don't go to the police. What I told
2 you earlier was confidential," which was very different
3 from the conversation that she had with Ms. Lopez at
4 1 p.m.

5 COMMISSIONER HUR: And what is the connection
6 between those statements and the allegations against
7 Sheriff Mirkarimi?

8 MR. KEITH: That Sheriff Mirkarimi encouraged
9 Ms. Lopez to dissuade Ms. Williams.

10 COMMISSIONER HUR: So --

11 UNKNOWN PERSON IN AUDIENCE: Hearsay.

12 (Interruption from the audience.)

13 COMMISSIONER HUR: Please. We really welcome
14 the public here, and I know many of you waited a long
15 time to get in. You will have your opportunity to speak.
16 But if you could please allow us to go through our
17 proceedings, I truly would appreciate it.

18 And you have -- you have a witness that's going
19 to make that connection between suggesting that the
20 sheriff encouraged Miss Lopez to dissuade other
21 witnesses?

22 MR. KEITH: It would be the inference that
23 would be drawn from the fact that Ms. Lopez so
24 dramatically changed her position between speaking with
25 Ms. Williams at 1:00 o'clock on January 4th and then 7:00

1 o'clock that night.

2 When she spoke with Ms. Williams at 1:00
3 o'clock, she was expressing a fear for her safety. She
4 told Ms. Williams that she was glad that Ms. Williams
5 would be able to hear her if she screamed.

6 And then in that -- and then when evening
7 rolled around, her views -- Ms. Lopez's expressions
8 toward Ms. Williams had changed completely.

9 During the intervening time there were numerous
10 communications between the sheriff and Ms. Lopez. We
11 expect to hear Mr. Mertens testify to getting a call from
12 Ms. Lopez to try to dissuade him from cooperating with
13 the police, and he heard Sheriff Mirkarimi in the
14 background.

15 We would say that the Commission should infer
16 from that that Sheriff Mirkarimi was aware of these
17 dissuasion efforts and participated in them.

18 COMMISSIONER HUR: Any other questions for
19 Mr. Keith with respect to Miss Williams' testimony?

20 Okay. Thank you, Mr. Keith.

21 What I'm going to do is invite Mr. Kopp or
22 Mr. Waggoner to address the live-witness issue and then
23 we'll deal with the declaration issue.

24 MR. KOPP: Well, I think that we would concur
25 with what Chairperson Hur has just stated about the

1 universe of witnesses that might possibly be needed live;
2 that is, the sheriff, Mayor Lee, Miss Lopez,
3 Miss Madison, Miss Haynes, Mr. Mertens, and possibly
4 Sheriff Hennessey.

5 I don't think that --

6 UNKNOWN PERSON IN AUDIENCE: Talk into the mic.

7 MR. KOPP: I don't think that live testimony by
8 other witnesses would serve any purpose.

9 But I would like to respond to something that
10 Mr. Keith just said, if I may.

11 This red herring of witness dissuasion has
12 consumed an incredible amount of time and effort and
13 energy, and it doesn't -- shouldn't have no (sic) place
14 here, because what Mr. Keith just told you isn't true.

15 Mr. Mertens was interviewed by the police and
16 when asked, "Did it sound like the sheriff was feeding
17 his wife lines to tell you, to try to dissuade you?"

18 The response was, "No. Sounded like he was on
19 another phone call altogether."

20 So this has been a complete waste of time in an
21 effort to publicly tar the sheriff with something that is
22 not just unprovable, it's false.

23 UNKNOWN PERSON IN AUDIENCE: Known hearsay.

24 COMMISSIONER HUR: Mr. Kopp, can I invite you
25 back up?

1 MR. KOPP: Yes.

2 COMMISSIONER HUR: Now, the list that you
3 provided of witnesses who you think we need live
4 testimony from was longer than the list that I provided,
5 and I apologize if I was unclear.

6 As -- I think what we need -- who we need live
7 are -- I put together a list of three witnesses who we
8 would need live. The mayor, the sheriff, and Miss Lopez.

9 Counsel for the mayor has added Mr. Mertens as
10 someone he'd like to have testimony live and
11 Miss Williams.

12 So who -- I want to address Linnette Haynes who
13 was on your list and Ivory Madison who was also on your
14 list.

15 Do you think that we need to hear from
16 Miss Haynes live?

17 MR. KOPP: I'm not sure that I could answer
18 that question right here. It depends. We are hopeful
19 that Miss Haynes will at least provide a declaration.

20 We know that she has been concerned about some
21 of the efforts that the mayor has gone to, to try to
22 interview her, subpoena her records, et cetera.

23 I am hopeful that we'll be able to obtain a
24 declaration to provide you.

25 I think that depending on what the Commission

1 thinks of such a declaration, you probably will be in the
2 best position to evaluate whether or not you need to hear
3 from her live.

4 COMMISSIONER HUR: Okay. And Miss Madison?

5 MR. KOPP: We're not going to offer testimony
6 by Miss Madison.

7 If the mayor submits a declaration from
8 Miss Madison, we'll make the decision after we see the
9 declaration as to whether we want to request that she
10 appear for cross-examination.

11 I'm not going to tell you right now that we
12 think she's a necessary live witness.

13 COMMISSIONER HUR: Okay. So anybody who is on
14 your witness list you actually don't intend to call,
15 except for the sheriff? Is that --

16 MR. KOPP: We believe that the essential live
17 witnesses are the sheriff and the mayor. Everybody else
18 is subject to whatever information is provided in their
19 declaration.

20 As far as the mayor's witnesses go, we may
21 receive declarations and agree that we don't need to
22 cross-examine and we can argue our case based on what's
23 in the declaration.

24 So that's why I'm not trying to evade your
25 question. I'm just telling you I can't necessarily

1 answer it before I see the contents of their proposed
2 testimony.

3 COMMISSIONER HUR: I understand. It was
4 somewhat -- and I understand you clarified. But when you
5 list that many people on your list as affirmative
6 witnesses, it does create some confusion here. But I
7 think I get it now.

8 MR. KOPP: I apologize.

9 MR. KEITH: Is Miss Lopez going to testify?

10 MR. KOPP: Well, we hope to have her testify.
11 As some of you may be aware, she is in her native
12 country. Her father has cancer. And that's an
13 open-ended question.

14 Even if she remains there, we are hopeful that
15 we could make arrangements for her to testify remotely
16 via Skype or Facetime or some -- some other form of
17 communication.

18 We would like to have her testimony, whether
19 it's live or by video, but there are family
20 considerations that are going to come first.

21 COMMISSIONER HUR: Okay. Any other questions
22 for Mr. Kopp?

23 Mr. Kopp, one other question for you.

24 What is your position on the relevance of
25 Callie Williams?

1 MR. KOPP: Probably no relevance.

2 COMMISSIONER HUR: How is she different from
3 Miss Madison, if at all?

4 MR. KOPP: You know, I'm not even sure that
5 Miss Madison has necessarily relevant testimony.

6 The sheriff has already stated publicly, and
7 he'll say under oath, that he grabbed his wife's arm in a
8 domestic argument.

9 And that's, I think, the substance of what
10 Miss Madison and Miss Williams would tell you that
11 Miss Lopez told them about this argument where he grabbed
12 her arm.

13 So I'm not convinced that they have anything
14 that you would need to hear.

15 COMMISSIONER HUR: Thank you.

16 COMMISSIONER RENNE: Mr. Kopp, before you
17 leave.

18 COMMISSIONER HUR: Maybe you should stay up
19 here.

20 COMMISSIONER RENNE: In view of what you just
21 said, have you asked the city attorney if we stipulate to
22 those facts that you just said, will the city attorney
23 agree that there's no need to put on witnesses who
24 presumably are primarily going to testify to what
25 Miss Lopez told them happened?

1 MR. KOPP: Not in so many words.

2 But just to give you a sense of what's
3 happened, I believe it was last Monday or Tuesday,
4 Mr. Keith and Miss Kaiser sent us a fairly lengthy
5 proposed stipulation, and we looked that over and gave
6 them our response -- end of last week?

7 MR. KEITH: Friday.

8 MR. KOPP: And that fact was included. I
9 didn't say, "Now that we agree to stipulate to this, will
10 you agree that we don't -- the Commission doesn't need to
11 hear from Miss Madison or Miss Williams?"

12 So we haven't flushed it out to that extent
13 yet.

14 I'm not going to leave.

15 COMMISSIONER HUR: I'm sure you'll be back up
16 here again.

17 MR. KOPP: Just in case.

18 COMMISSIONER HUR: Mr. Keith, if you could -- I
19 think we should take up the issue of witnesses by
20 declaration.

21 I appreciate that declarations are less
22 burdensome for -- for the fact finders than live
23 testimony. That said, I'm still concerned that -- I
24 don't want a situation where because it's just
25 declarations, the parties can submit whatever they want

1 regardless of whether it's relevant.

2 I would like -- even if you intend to -- even
3 if your view is that some of these people should come in
4 by declaration, I'd like to know who on the list you
5 would like to come in by declaration and why they're
6 relevant to our proceedings.

7 MR. KEITH: Actually, Commissioner, one of the
8 benefits of this process of the back and forth regarding
9 witness lists and the briefing, is that, you know, we
10 came to the realization that with a volunteer commission
11 we can't have a three week, eight-hour-a-day hearing.
12 It's impossible.

13 So, from our standpoint what is -- what we're
14 proposing is essentially do everybody by declaration,
15 even those witnesses who we put in should be live because
16 we expected there to be cross-examination. If they don't
17 want to cross-examine Ivory Madison, then that's fine.
18 We're happy to just put in her declaration.

19 We'll put in declarations for everyone, subject
20 to a right of cross-examination.

21 COMMISSIONER HUR: Mr. Kopp -- Mr. Keith, you
22 can just stay.

23 Do you object to that? Setting aside whether
24 or not the Commission will allow the parties to submit
25 declarations from whoever they want, are you comfortable

1 with the procedure of direct examination going in by
2 declaration and cross-examination live?

3 MR. KOPP: I'm comfortable with the procedure,
4 yes.

5 I'm not comfortable with the idea that they're
6 going to give us 25 declarations and we're probably going
7 to have relevance objections to 22 of those.

8 I think that's unfair, not just to the
9 Commission but to us. I think that all the subject
10 matter -- well, I'll stick to the fact witnesses, if
11 you'd like me to.

12 But there are many of these witnesses that we
13 just don't think are going to offer information that's
14 relevant, and then I'm not sure how the procedure would
15 work. We'd have to submit something in writing
16 explaining why we don't think that their testimony is
17 relevant?

18 COMMISSIONER HUR: Okay. I think we're getting
19 a little bit ahead of ourselves. I mean --

20 MR. KOPP: Okay.

21 COMMISSIONER HUR: -- I understand your
22 concern, but -- and then I'll give you a chance to
23 address that.

24 Is there any objection from the Commissioners
25 to have a procedure whereby direct examination comes in

1 by declaration and cross-examination is done live? I
2 think that's something that we had initially talked about
3 last time.

4 COMMISSIONER LIU: I have no objection to that.
5 I think it would streamline the proceedings given our
6 limited capacity as a volunteer commission, and I know
7 that everybody wants this to move along, and we certainly
8 don't want this to drag out.

9 But I do have the same concern about narrowing
10 the witness list so that it's not everybody under the
11 sun, so that we're not pouring through 50 declarations
12 trying to figure out the relevance.

13 COMMISSIONER HUR: Okay. Commissioner Studley.

14 COMMISSIONER STUDLEY: And I have a -- I don't
15 know if this will arise, but I'm wondering if there might
16 be circumstances in which we might have questions about
17 the declaration but the sheriff does not have
18 cross-examination from their perspective, and I wonder
19 what we would do under those circumstances, how we
20 would -- since we have the ability to ask questions as
21 well when there's live testimony, whether we could get
22 clarification on a declaration if the sheriff's counsel
23 did not seek to weigh in?

24 COMMISSIONER HUR: I think that's -- I think
25 that's a good point, and I think that could be

1 addressed -- I mean, we could subpoena the witness if we
2 independently thought that we needed to examine them and
3 the parties had not indicated that they would appear
4 live.

5 COMMISSIONER STUDLEY: As I say, I have no idea
6 if that will happen, but I don't want us to be left
7 without the ability to clarify simply because the sheriff
8 did not want to pursue that particular offer of proof.

9 COMMISSIONER HUR: And are the parties in
10 agreement that anybody who appears by declaration but
11 does not appear for cross-examination, that their
12 testimony would be disregarded?

13 MR. KEITH: Yes.

14 MR. KOPP: No, we are not.

15 If the Commission is going to take hearsay
16 outside of the parameters of the California Evidence
17 Code, I think the wiser course is to accept declarations
18 and give them whatever weight you think they're worth.
19 Because I can also envision a scenario, not to get too
20 lawyerly here, where they're going to try to bring in
21 some evidence subject to an exception to the hearsay
22 rule, and under the Evidence Code we could then bring in
23 hearsay evidence to undermine that evidence.

24 So I think the better course is, if there's a
25 witness who submits a declaration and does not appear for

1 cross, for whatever reason, you accept it and you give it
2 what weight you think it deserves.

3 COMMISSIONER HUR: Which is probably not going
4 to be very much.

5 MR. KOPP: Well, it may not. But as I
6 mentioned, we don't know what's going to happen with
7 Miss Lopez. If she is un -- if we can't work out
8 something where she can, at least, testify remotely, we
9 may want to have a declaration.

10 COMMISSIONER HUR: Thank you.

11 Any further comments from the Commissioners
12 about the procedure whereby we would examine or have live
13 witness testimony?

14 COMMISSIONER RENNE: Mr. Keith, did I
15 understand you to say that it's your intention to submit
16 a declaration on behalf of -- putting aside those who
17 might come live, but that everybody else on your list you
18 intend to submit declarations?

19 MR. KEITH: We would submit a declaration for
20 the mayor, for every current city employee, and every
21 independent witness, that is not -- a witness who's not
22 affiliated with the city, who will agree to do it.
23 There -- and we will do our best and work with them as
24 best we can to accomplish that.

25 There is one witness -- well, at least one

1 witness who's hostile to us, Miss Haynes. I don't expect
2 that we'd be able to get a declaration from her. We
3 would want to probably subpoena her for live testimony.

4 COMMISSIONER HUR: Okay. So let's go through
5 your witness list, then, because I -- I want to hear why
6 we need to hear at all from some of these people.

7 So why do we need -- what is Inspector Becker's
8 testimony going -- going to be and to what charge in your
9 charging document is it related to?

10 MR. KEITH: Well, both Inspector Becker and
11 Daniele were the Domestic Violence Unit investigators
12 on -- on the case. So they served the function of
13 collecting evidence.

14 They would testify -- they did personally
15 observe Eliana Lopez. They'd testify as to her demeanor
16 when they observed her.

17 They observed Ms. Madison. They interviewed
18 her.

19 They interviewed Mr. Mertens.

20 COMMISSIONER HUR: But if we're going to hear
21 from these people, why do we need to hear from -- if
22 we're going to hear from Miss Madison, Miss Lopez, and
23 Mr. Mertens, why do we need to hear the same testimony
24 from Inspectors Becker and Daniele?

25 MR. KEITH: Oh, we would -- we would attempt to

1 limit their testimony to those things such as simply
2 their observations of the demeanor of Ms. Lopez and just
3 a summary of what they did in the course of the
4 investigation.

5 COMMISSIONER HUR: And how is that --

6 MR. KEITH: It wouldn't be to --

7 COMMISSIONER HUR: How is Miss Lopez's demeanor
8 going to help us decide whether or not official
9 misconduct has occurred?

10 MR. KEITH: Because it pertains to the witness
11 dissuasion count. It also pertains to what happened
12 between her and the sheriff.

13 The sheriff has maintained that there was a
14 single grabbing of her arm in order to protect his son
15 from his wife. That -- and we disagree. We don't think
16 that the facts -- the facts match that.

17 It's -- the facts were different as Ms. Lopez
18 told Ms. Madison and Ms. Williams. It was a much more
19 serious conflict between her and the sheriff.

20 And so every piece of evidence that we can get
21 that bears on Ms. Lopez's demeanor, and her mental state,
22 and the credibility -- and the credibility of her
23 statements at different times is relevant to the
24 determination about what happened between the sheriff and
25 Ms. Lopez.

1 COMMISSIONER HUR: Why -- in what event would
2 we need -- would we need both Mr. Becker and
3 Inspector Daniele?

4 MR. KEITH: We may not. We may be able to go
5 with just one of them.

6 COMMISSIONER HUR: Okay. Well, if you had to
7 choose one of them, who would it be?

8 MR. KEITH: You know, without looking a great
9 detail into the chron, I can't say, but we can -- we can
10 go with one of them. We can -- we can select the one
11 that has the most information about the conduct of the
12 investigation and the observations of Ms. Lopez and
13 others.

14 COMMISSIONER HUR: So you're in agreement that
15 at least one of these witnesses should be removed from
16 the list?

17 MR. KEITH: Could be, yes.

18 COMMISSIONER HUR: This may be time consuming,
19 but I think it's important for the Commission to reach
20 resolution on this. So for each witness I'm going to
21 solicit views of the Commissioners and also Mr. Kopp's
22 views so that we can sort of deal with them one at a
23 time.

24 Are there views from the Commissioners on
25 Inspectors Becker and Daniele?

1 COMMISSIONER RENNE: I shared your observations
2 and wondered why we need either of them. I'm not
3 necessarily convinced with what I've heard, but it's up
4 to the city.

5 COMMISSIONER HUR: Commissioner Renne, you're
6 not convinced that we need --

7 COMMISSIONER RENNE: Either of them.

8 COMMISSIONER HUR: Either?

9 COMMISSIONER RENNE: Either of the two
10 inspectors.

11 COMMISSIONER HUR: Other comments from the
12 Commissioners on these inspectors?

13 Mr. Kopp, would you like to address?

14 MR. KOPP: Well you're going to probably get
15 tired of hearing me say that witness is irrelevant.
16 Those two witnesses are certainly going to be irrelevant.

17 COMMISSIONER HUR: Commissioner Hayon.

18 COMMISSIONER HAYON: I have a question that
19 goes back to what you were discussing earlier about both
20 sides stipulate -- agreeing to stipulate to the events
21 that occurred.

22 And if that happens, then do we really need
23 either of these two inspectors? If everyone stipulates
24 or agrees to the events that occurred, do we really need
25 to hear from the inspectors? Doesn't that eliminate a

1 whole series of witnesses that we would have to either
2 get their declarations or listen to them live?

3 MR. KEITH: I think that if we did agree, that
4 would. But I think that the parties do disagree about
5 what -- about what happened.

6 COMMISSIONER HAYON: Okay. So we're not going
7 to come to an agreement where you both stipulate to the
8 events that occurred?

9 MR. KEITH: We might be able --

10 COMMISSIONER HAYON: It sounded as if -- if
11 that was a possibility.

12 MR. KEITH: I think we can come to an agreement
13 that maybe facts A, B, and C occurred, but beyond that we
14 would disagree.

15 COMMISSIONER HUR: You know, I don't see how
16 these two inspectors are relevant. I mean, I would need
17 to hear more as to how Miss Lopez's demeanor would be
18 probative of whether or not there was dissuasion by the
19 sheriff.

20 MR. KEITH: I mean, one of the other things
21 that the inspectors observed was Ms. Lopez -- was
22 Ms. Madison taking calls contemporaneously from Ms. Lopez
23 and overhearing that conversation.

24 So, hearing -- hearing the conversation where
25 Ms. Lopez was actively trying to dissuade Ms. Madison

1 from cooperating with the police and hearing Ms. Lo --
2 hearing Ms. Madison's account of that call
3 contemporaneously to it happening, which again tends to
4 show that dissuasion is occurring.

5 COMMISSIONER LIU: But Ms. Madison would
6 testify as to that --

7 COMMISSIONER HUR: Exactly.

8 COMMISSIONER LIU: -- right?

9 MR. KEITH: She would. But, again, we expect
10 her credibility to be attacked, and so this would
11 corroborate her credibility as well.

12 COMMISSIONER LIU: I see.

13 MR. KEITH: In addition, the observation of the
14 call coming in from Ms. Haynes as the inspectors were
15 coming to the house, Ms. Madison was getting off the
16 phone having just spoken with Ms. Haynes, who was trying
17 to dissuade her from cooperating. So, again, that's an
18 observation that they made that tends to support the
19 credibility of Ms. Madison's testimony.

20 COMMISSIONER HUR: Commissioner Hayon, do
21 you -- is there something you wanted to say?

22 COMMISSIONER HAYON: No, I'm fine.

23 COMMISSIONER HUR: Commissioner Studley.

24 COMMISSIONER STUDLEY: I actually thought it
25 was a reasonable balance to have one of these officers

1 provide a declaration.

2 I think the fact that we have this many
3 questions means that there may be something, and I'd
4 rather have it than argue afterward that we didn't have
5 before us what we ought to, or have better testimony
6 available by declaration than what we are -- find we are
7 able to get and find ourselves later backtracking.

8 UNKNOWN PERSON IN AUDIENCE: Excuse me, could
9 you please speak up. We can't hear you.

10 COMMISSIONER STUDLEY: I apologize. I thought
11 I was, and I think all of us are hearing the feedback as
12 though we are. I apologize for that.

13 My comment was -- we're also trying to speak to
14 the person to whom we're responding.

15 I'll repeat what I said. I think that the
16 earlier suggestion that you made that the city select one
17 of the two officers and that we get the declaration from
18 one officer, given the number of questions that we have
19 about it and the issues that might possibly arise, seems
20 like a reasonable balance to me.

21 I certainly think it's a fair question, that we
22 may not need it, but -- and there are plenty of other
23 witnesses that I think by stipulation we will not need,
24 but this one might be helpful.

25 And, again, we can give it whatever weight we

1 feel it deserves once we see it.

2 COMMISSIONER LIU: Yes.

3 COMMISSIONER HUR: Commission Hayon.

4 COMMISSIONER HAYON: I agree with
5 Commissioner Studley. I was kind of thinking that.
6 These are inspectors who apparently have experience with
7 many cases of domestic violence.

8 UNKNOWN PERSON IN AUDIENCE: Would all of you
9 please speak up, not just one person. We can't hear you
10 back here.

11 COMMISSIONER HAYON: Well, maybe there's
12 something -- maybe there's a problem with the microphone.

13 COMMISSIONER STUDLEY: Mr. Chair, I wonder if
14 it's possible to turn up the system? It's as loud as it
15 can be?

16 UNKNOWN PERSON IN AUDIENCE: Talk into the
17 microphone.

18 (Audience interruption.)

19 COMMISSIONER STUDLEY: What I just asked was
20 whether it was possible to turn up the volume and the
21 staff is seeing whether they have controls that would
22 allow us to do that.

23 COMMISSIONER HUR: We will do our best, but
24 please -- let's try not to have interruptions and allow
25 this process to --

1 UNKNOWN PERSON IN AUDIENCE: Speak up.

2 COMMISSIONER HUR: -- play out as efficiently
3 as we can.

4 Commissioner Hayon.

5 COMMISSIONER HAYON: Basically I'm in agreement
6 with Commissioner Studley. I think it would be probably
7 worthwhile to have one of these inspectors speak to their
8 experience.

9 COMMISSIONER HUR: Any objection to that?

10 Okay. So Mr. Keith you're going to -- you're
11 going to be able to remove one of either Inspector Becker
12 or Inspector Daniele?

13 MR. KEITH: I'll pick one.

14 COMMISSIONER HUR: Jan Dempsey?

15 MR. KEITH: She's testifying as to only
16 background matters. I expect that these are facts that
17 we appear to be on track to stipulating to. Even if we
18 couldn't reach a stipulation, her declaration will be
19 very short.

20 COMMISSIONER HUR: But what would it be
21 relevant to?

22 MR. KEITH: It would be relevant to the sheriff
23 performing official duties of office in the interim
24 between the election and being sworn into office on
25 January 8th.

1 COMMISSIONER HUR: Mr. Kopp, I mean, do we have
2 to have a discussion about this or is there -- can you
3 stipulate to that?

4 MR. KOPP: I think that we already offered to
5 stipulate to pretty much every fact that this person
6 would testify to.

7 We might dispute the characterization of them
8 as official duties of the sheriff, but I think we can
9 probably work out the language.

10 COMMISSIONER HUR: Okay.

11 COMMISSIONER RENNE: Isn't the sheriff the best
12 person to testify to what he did during that time period?
13 Why do we need --

14 UNKNOWN PERSON IN AUDIENCE: Yes.

15 COMMISSIONER RENNE: Why do we need somebody to
16 come in here?

17 MR. KOPP: Yes, and he will.

18 MR. KEITH: From our standpoint, we have no --
19 today we've had no ability to get the sheriff to testify
20 about facts related to the case. We have to get the
21 witnesses so we can get --

22 UNKNOWN PERSON IN AUDIENCE: Not fair.

23 (Audience interruption.)

24 COMMISSIONER HUR: We are trying -- we're
25 trying very hard to hold an orderly proceeding here. And

1 I appreciate that there are vehement views of many people
2 in the public. And, again, I encourage you to share
3 those views during public comment, but, please, this is
4 not the time. Thank you.

5 Mr. Keith.

6 MR. KEITH: So the -- because we don't have
7 access to the sheriff, we have access to the witnesses --
8 to the other individuals who were at the meetings --

9 UNKNOWN PERSON IN AUDIENCE: Speak into the
10 mic, please.

11 MR. KEITH: We have access to the other
12 individuals who were at the meetings, so we would propose
13 to use them. We don't know what the sheriff's testimony
14 on this point will be.

15 COMMISSIONER HUR: Okay. Well, I think -- I
16 think we should -- we expect you guys to reach a
17 stipulation on Jan Dempsey. We don't expect to see a
18 declaration from the undersheriff, retired Undersheriff
19 Jan Dempsey.

20 Christina Flores?

21 MR. KEITH: This is the -- this was the prior
22 victim of domestic violence from Sheriff Mirkarimi. Her
23 testimony --

24 (Audience interruption.)

25 COMMISSIONER HUR: I apologize, Mr. Keith, but

1 please proceed.

2 MR. KEITH: That's okay. I'm used to it.

3 The testimony that she gave in the -- she gave
4 sworn testimony in the criminal action and was subject to
5 cross-examination in the criminal action. We would
6 simply attach the transcripts of that.

7 It's well established under the Evidence Code
8 that the testimony of prior intimate partners of persons
9 accused of domestic violence is relevant to determining
10 whether domestic violence occurred and also to
11 establishing the kinds of power relationships that occur
12 in domestic violence relationships that would lead to
13 things like witnesses recanting their stories. And so
14 her testimony is relevant for that reason. We don't
15 think she needs to be called live because she's already
16 been through direct and cross-examination.

17 COMMISSIONER HUR: Mr. Kopp?

18 MR. KOPP: Sure.

19 This witness personifies the mayor's attempt to
20 turn this into a circus.

21 UNKNOWN PERSON IN AUDIENCE: Thank you.

22 MR. KOPP: Prior testimony under Evidence Code
23 Section 1109 is relevant only where the incident is in
24 dispute and it is not.

25 I'll repeat. Sheriff Mirkarimi said he grabbed

1 his wife's arm during an argument and he will repeat that
2 statement under oath to you all.

3 So Miss Flores would have nothing to add
4 here --

5 UNKNOWN PERSON IN AUDIENCE: Really.

6 MR. KOPP: -- other than to create a bigger
7 spectacle out of this thing than it already is. That's
8 No. 1.

9 No. 2, this witness was not fully
10 cross-examined during the criminal trial, and as a matter
11 of fact, if you somehow decided that you wanted to hear
12 from her, then we're going to need her live --

13 UNKNOWN PERSON IN AUDIENCE: Yes.

14 MR. KOPP: -- because there's plenty more
15 questions that she'll be asked that she was not asked
16 previously.

17 UNKNOWN PERSON IN AUDIENCE: Yes.

18 MR. KOPP: I don't think that needs to happen.
19 I don't think we need a mini trial. That is -- doesn't
20 signify anything, and I think that should be the last
21 that we hear of Miss Flores.

22 UNKNOWN PERSON IN AUDIENCE: Thank you. Yes.

23 COMMISSIONER HUR: Views of the Commissioners?
24 Commissioner Renne.

25 COMMISSIONER RENNE: Well, I find myself, I

1 guess, in a view that at this point I'm not prepared to
2 say that that testimony would be admissible, but I can
3 only make that decision, I guess, when and if he
4 introduces the transcript.

5 But it seems to me, it should be limited to the
6 transcript, and at that point I'd -- I'd be prepared to
7 make a decision.

8 COMMISSIONER HUR: I have not heard anything
9 about this witness that makes me think that she would be
10 relevant here. If the underlying charges -- the
11 underlying actions are not disputed -- you know, there
12 are lots of witnesses from whom I think we can hear very
13 important testimony from, but to me this is not one of
14 them.

15 MR. KEITH: Commissioner, the underlying acts
16 are disputed. I apologize if I haven't been clear about
17 that, but the extent of the abuse is far greater than
18 what Sheriff Mirkarimi has admitted to, and we dispute
19 that. And this is a witness who has testimony relevant
20 to that.

21 COMMISSIONER HUR: Okay. Let me stop you
22 there.

23 So other than -- I want to set aside the
24 witness dissuasion and that part of the charges.

25 Other than the grabbing of the arm and the

1 bruising of the arm, what other actions are you alleging
2 took place that constitute official misconduct against
3 Miss Lopez.

4 MR. KEITH: Well, I think it's relevant in
5 assessing the -- whether official misconduct occurred to
6 assess the level of abuse that occurred.

7 COMMISSIONER HUR: But what other abuse are you
8 talking about?

9 MR. KEITH: There was pushing and pulling --
10 (Audience interruption.)

11 MR. KEITH: There was pushing and pulling of
12 Miss Lopez in the house.

13 There was a threat to Ms. Lopez that
14 Sheriff Mirkarimi would use his power in a custody
15 dispute if she tried to divorce him.

16 There were attempts to control her, to control
17 what she ate, to control the amount of money that she got
18 --

19 COMMISSIONER HUR: This is going to come in
20 through which witness?

21 MR. KEITH: This is going to come in --
22 (Audience interruption.)

23 UNKNOWN PERSON IN AUDIENCE: Stop disrespecting
24 Lopez.

25 MR. KEITH: This is going to come in through

1 correspondence that Ms. Lopez sent to Ms. Madison.

2 This is going to come through in conversations
3 that Ms. Lopez had with Ms. Williams. And if Ms. Lopez
4 does appear and tries to testify contrary to this, these
5 will be admissible as prior inconsistent statements by
6 Ms. Lopez.

7 COMMISSIONER HUR: Other views from the
8 Commissioners on Miss Flores?

9 COMMISSIONER LIU: Well, I think it would be
10 fine to take a look at the transcript and give it what
11 weight we think. And then beyond that, I don't know.
12 We'd have to take a look if there is any probative value
13 beyond that maybe as a -- you know, if there's any value
14 as a rebuttal witness for any reason, but right now I
15 can't think of -- I can't see a reason how it really ties
16 in --

17 COMMISSIONER HUR: I am concerned --

18 COMMISSIONER STUDLEY: -- to the official
19 misconduct.

20 COMMISSIONER HUR: Sorry, Commissioner.

21 COMMISSIONER LIU: That's all.

22 COMMISSIONER HUR: I am concerned that if we
23 allow the transcript in and consider it as evidence, it
24 seems difficult for me to figure out how Mr. Kopp would
25 not have a right to cross-examine that witness.

1 And so, I think if we consider it at all, we
2 need to at least have some basis for why we think it's
3 relevant. And I'm not sure that we would be able to base
4 our decision just on the transcript.

5 MR. KEITH: One of the other -- one of the
6 other witnesses we have is Nancy Lemon, who is a
7 recognized expert in domestic violence.

8 And her testimony would be that it is relevant
9 whether there have been past instances of domestic abuse,
10 because people -- because abusers repeat. The
11 relationships follow similar patterns. And if there is
12 past evidence of this, again, it tends to show that it's
13 happening here. And that evidence would come in through
14 the declaration of Miss Lemon.

15 I mean, I think the time for a lot of these
16 evidentiary objections, whether relevance or other
17 grounds, is more after these declarations are submitted
18 rather than before, as we try to sort of winnow the
19 witnesses based on, sort of, going down the list now
20 without seeing what testimony they're actually offering
21 under oath.

22 COMMISSIONER HUR: I mean, I see your point to
23 some extent, Mr. Keith. I guess my concern is that, you
24 know, I still don't want to get 18 declarations, because
25 to me several of these people are clearly irrelevant, and

1 perhaps for people that are on the line, I can
2 understand, we can defer the decision.

3 But I, at least, disagree that we want to sort
4 of defer the decision of all these.

5 MR. KEITH: Again, that's not -- I mean, it's
6 what -- it's what we would -- it's what we would prefer.
7 If the Commission wants to do otherwise, that's
8 understandable.

9 We're doing our best to essentially go through
10 the list and take people out who can be taken out. See
11 who has facts that could be stipulated to, and that's a
12 work in progress. And certainly, there may be a witness
13 in here who has -- who has testimony that only takes a
14 two-page declaration.

15 COMMISSIONER HUR: Right.

16 MR. KEITH: We don't want to waste the time of
17 the Commission, but if maybe the witness just has a
18 little bit of relevant testimony, we'll get it in and
19 then we'll be done with it.

20 COMMISSIONER HUR: Okay.

21 MR. KEITH: What I don't want to do is
22 foreclose the chance for a witness who just has a small
23 amount of relevant information, to be able to put that
24 information in.

25 COMMISSIONER HUR: Thank you.

1 Commissioner Studley.

2 COMMISSIONER STUDLEY: I'm just wondering if we
3 might be able to get a complete picture of this if we set
4 this one aside, because it is one of the more complicated
5 ones. Go through the rest of the proposed witnesses, see
6 how many are in contention. We may be able to narrow the
7 list substantially if it's a weight and burden issue.

8 And as to this one, because the offer is of an
9 existing transcript and it wouldn't take time to develop
10 the initial offer, we -- we might not need to get to it
11 early in this round of decisions.

12 What I'm thinking is, that once we have the
13 sworn testimony of Sheriff Mirkarimi and potentially of
14 Ms. Lopez, we may not need this alternative source of
15 information, and that might help us focus on the matter
16 --

17 (Audience interruption.)

18 COMMISSIONER STUDLEY: And I do wish the
19 audience would let us proceed. Like it or not, let us
20 proceed quietly. This is hard enough.

21 COMMISSIONER HUR: Thank you,
22 Commissioner Studley.

23 Any objection to that proposal? I think that
24 makes -- that makes sense.

25 Okay. Let's move on to Kathy Gorwood.

1 MR. KEITH: We may be able to stipulate to her
2 facts, and if not it would be --

3 COMMISSIONER STUDLEY: Microphone.

4 MR. KEITH: -- a very short declaration.

5 COMMISSIONER STUDLEY: Microphone.

6 MR. KEITH: I'm sorry.

7 We may be able to stipulate to Captain
8 Gorwood's participation.

9 COMMISSIONER HUR: Why is it even relevant that
10 she took possession of Sheriff Mirkarimi's firearms on
11 January 14th?

12 MR. KEITH: Because it's pertinent to the
13 degree to which Sheriff Mirkarimi was cooperating in an
14 investigation by another law enforcement agency.

15 Law enforcement officers are bound to cooperate
16 in investigations done by whatever law enforcement
17 agency. This was an instance where -- and this relates
18 to whether Sheriff Mirkarimi's conduct fell below the
19 standards expected of a chief law enforcement officer.

20 UNKNOWN PERSON IN AUDIENCE: What are the
21 standards of the mayor's office?

22 MR. KEITH: The standards that are expected of
23 a chief law enforcement officer is that he will be fully
24 forthcoming and will respect the investigation conducted
25 by another law enforcement agency.

1 Sheriff Mirkarimi agreed with Inspectors Becker
2 and Daniele that he would turn over his firearms to them
3 in the course of the investigation.

4 What then happened was -- through a series of
5 communications, Sheriff Mirkarimi turned over his guns to
6 a subordinate in his own department. So that you had a
7 sheriff who had someone in his own department taking
8 possession of his weapons and keeping them under his
9 control as opposed to being with the appropriate law
10 enforcement --

11 (Audience interruption.)

12 COMMISSIONER HUR: What charge did this --

13 (Audience interruption.)

14 COMMISSIONER HUR: You know what, let's take a
15 short recess.

16 (Short recess.)

17 COMMISSIONER HUR: We are now back in session.

18 I understand the sheriff's deputy is now in the
19 room and has an announcement.

20 DEPUTY SHERIFF: Folks, just as a reminder, for
21 general meeting purposes we like people to refrain from
22 speaking so the meeting goes smoothly. We'd appreciate
23 if you'd let people finish what they have to say.

24 Thank you.

25 COMMISSIONER HUR: Thank you.

1 Before we adjourned we were discussing
2 Captain Kathy Gorwood, and I believe that Mr. Keith was
3 in the middle of his remarks.

4 MR. KEITH: Yes, Commissioner.

5 The other aspect of why the issue of what
6 happened with Sheriff Mirkarimi's firearms is relevant --
7 I've just spoken about the fact that a law enforcement
8 executive is expected to cooperate with an investigation
9 by another law enforcement agency.

10 It's also a problem of an individual who's a
11 batterer having access to his own weapons.

12 And, again, this is something that Nancy Lemon,
13 our expert on domestic violence, can testify to is
14 classic batterer behavior.

15 COMMISSIONER HUR: Mr. Keith, which of the
16 charges in the charging document does this -- does this
17 testimony relate to?

18 MR. KEITH: That Sheriff Mirkarimi abused his
19 wife. I mean, that aspect of the firearm --

20 COMMISSIONER HUR: Whether he turned over his
21 firearms on January 14th is relevant to whether he abused
22 his wife?

23 MR. KEITH: It is. And the reason why it's
24 relevant is because batterers behave in a certain way.

25 COMMISSIONER HUR: Okay.

1 MR. KEITH: This is the source of Ms. Lemon's
2 testimony in the criminal action and we expect to present
3 it here. Is that, this type of behavior of a batterer
4 trying to keep control of an individual, trying to keep
5 control of his own firearms within his own agency is
6 classic batterer behavior.

7 That is -- that is why the testimony is
8 relevant.

9 COMMISSIONER HUR: Thank you. I think I
10 understand your position.

11 Comments from the Commissioners?

12 I mean, to me not only do I find this testimony
13 irrelevant, I don't -- it seems that it would -- I mean,
14 it would be -- it's such a minor witness in any event
15 that I can't see why we need to hear from this person,
16 how this person is at all probative to the matters that
17 we have at hand, but I welcome the views of my fellow
18 Commissioners on this particular witness.

19 COMMISSIONER RENNE: I agree.

20 COMMISSIONER HUR: Any opposing views with
21 respect to Miss Gorwood?

22 Okay.

23 Miss Haynes we've discussed.

24 Paul Henderson? Why do we need to hear from
25 Mr. Henderson?

1 MR. KEITH: Mr. Henderson is responsible for
2 coordinating different criminal justice agencies within
3 the city. He would be able to testify about the role of
4 the sheriff, having to make decisions on discretionary
5 budget matters, and to work with other agencies within
6 the city, and how the existence of -- of a probation
7 sentence for the sheriff affects his ability to
8 participate in those discussions.

9 COMMISSIONER HUR: And what charge is that
10 relevant to?

11 MR. KEITH: That's relevant to -- to whether
12 the sheriff's conduct fell below the standard that's
13 expected of chiefs of law enforcement agencies, which is
14 to not put themselves in a position of making decisions
15 that will -- that will affect them in their personal
16 position.

17 Sheriff Mirkarimi is going to be on probation
18 for three years. He's, therefore, going to be making a
19 decision in matters that -- decisions on matters that
20 affect him. There's lots of coordination matters
21 where -- where the sheriff has to make decisions on
22 what's going to happen with offenders, whether they're
23 going to be incarcerated, whether they're going to be
24 subject to something like house arrest. These agencies
25 have to work together on these decisions.

1 And the concern here is Sheriff Mirkarimi's
2 ability to make these decisions impartially is going to
3 be compromised.

4 Paul Henderson's testimony goes to what are the
5 actual -- what are the actual ways that a sheriff has to
6 interact with other law enforcement agencies in the city,
7 and it lays a foundation for the expert testimony that's
8 going to come in from the experts on the sheriff's
9 ability to discharge his responsibilities in that regard.

10 COMMISSIONER HUR: So that very well may be.
11 What I don't quite follow is how his ability to perform
12 the job relates to whether he committed official
13 misconduct.

14 I mean, there very well may be an argument that
15 he would be handicapped in his ability to perform his job
16 because of the events that occurred, but I don't think
17 that's before us. I don't think that's a basis for us to
18 find that he should be -- that we should make a
19 recommendation with respect to official misconduct.

20 So --

21 (Audience interruption.)

22 COMMISSIONER HUR: Please.

23 So at least from my point of view, I don't
24 think -- any evidence you intend to offer about whether
25 he's going to be able to perform his job going forward is

1 something that is not relevant to our task.

2 MR. KEITH: Well --

3 COMMISSIONER HUR: Again, I welcome your
4 response and the views of my fellow Commissioners.

5 MR. KEITH: Well, we disagree. The reason why
6 we disagree is because there's a question of what kind of
7 misconduct is related to the duties of the office of
8 sheriff. The sheriff has to do a lot of different things
9 within the city and within law enforcement.

10 If he's going to engage in conduct with his
11 wife that has the ultimate consequence of affecting his
12 ability to perform those duties that relates -- that
13 demonstrates a nexus with the office that he's
14 performing, and it also shows that he -- that his -- he's
15 engaging in behavior that affects his adequacy as a chief
16 law enforcement officer, and that -- that falls below the
17 standard of conduct under the second prong of the
18 official misconduct test regarding the standards of
19 decency that we expect -- and good conduct that we expect
20 our officials to engage in, for him to engage in that
21 kind of behavior that so affects his ability to perform
22 in office.

23 COMMISSIONER HUR: Commissioners, any views
24 with respect to Paul Henderson?

25 Commissioner Liu.

1 COMMISSIONER LIU: Well, I do think that if the
2 sheriff is taking the position that the misconduct has to
3 relate to something going forward with his official
4 duties, then this evidence potentially would be relevant.

5 If I understand, Mr. Keith, you're trying to
6 demonstrate what the relationship or the nexus is between
7 the alleged misconduct and his performance of duties
8 going forward as sheriff. And I thought I understood the
9 sheriff's position to be that the mayor has to establish
10 that connection.

11 So if that's the case, then I do think this
12 would be relevant if, as Mr. Keith is saying, this
13 witness is supposed to testify about how the alleged --
14 how alleged misconduct or off-duty behavior potentially
15 could affect someone in a sheriff's position and how it
16 relates to his official duties. So I do see the
17 relevance there.

18 COMMISSIONER HUR: Mr. Kopp, would you like to
19 address that point?

20 MR. KOPP: Please.

21 I think the problem is, is that this is a very
22 expansive reading of what the duties are of the sheriff
23 of San Francisco. And I understand why the mayor wants
24 to expand those duties so that they could bring in a
25 parade of expensive expert witnesses in an attempt to

1 bury you and us.

2 The problem is, the duties of the sheriff of
3 San Francisco are limited. Run the jail and execute
4 lawful court orders. Not much else.

5 So all this extra aspirational goals, while
6 they may be very virtuous, aren't core duties of the
7 sheriff. And for that reason, this witness, as well as
8 almost all the other expert witnesses offered by the
9 mayor, are irrelevant.

10 COMMISSIONER LIU: So can you -- is there no
11 stipulation about what the sheriff's duties are?

12 MR. KOPP: We don't need to stipulate. They're
13 in the Charter.

14 COMMISSIONER LIU: So are you having a
15 fundamental disagreement with Mr. Keith about what the
16 duties are, if I understand what you just said?

17 MR. KOPP: I suppose so. I read the Charter,
18 and I'm going to repeat it when we get the argument on
19 this, and it's -- I believe it's 6.102, but I have to go
20 back and check. But there are about four or five duties
21 that are explicitly spelled out in the Charter, and I'll
22 give them to you in just a moment. Only those. Nothing
23 more.

24 COMMISSIONER LIU: Mr. Keith, can you respond
25 to that, please?

1 MR. KEITH: Oh, well, certainly the scope of
2 the duties of the sheriff are disputed. Not only are
3 those duties in the Charter, they're also contained under
4 state law because the sheriff is at once an officer of
5 the city and county, but he's also a state officer. He
6 has several duties imposed on him under state law.

7 With the recent realignment that's passed at
8 the state level, there's lot of more discretion that
9 sheriffs have locally with regard to offenders that are
10 being sent back to this jurisdiction, and there's a lot
11 of policy decisions that the sheriff is charged with
12 making, budget decisions that the sheriff is charged with
13 making, and it's our position that if the sheriff's
14 ability to perform those duties is affected, in addition
15 to his core duties, all of those duties are important
16 that he be able to perform well.

17 I mean, the sheriff is an elected official
18 who -- who's expected to meet more than the minimum
19 standard of performing just -- just these -- the duties
20 that are set out in the Charter.

21 So we -- we differ very much on that point.

22 COMMISSIONER HUR: And I apologize if I'm just
23 missing the import of this, but I still can't -- I don't
24 understand why -- whether he can perform his job going
25 forward is relevant to whether he engaged in wrongful

1 behavior relating to the duties of his or her office,
2 willful in character, including any failure, refusal, or
3 neglect of an officer to perform -- meaning it's
4 already hap -- you know, whether he can perform any duty
5 enjoined on him by law -- to perform.

6 What am I -- what am I -- what am I missing?

7 MR. KEITH: Okay. The portion of the Charter
8 that you just cited is the first prong of the official
9 misconduct test.

10 This conduct we consider to be more relevant to
11 the second prong of the official misconduct test, which
12 is the standard --

13 COMMISSIONER HUR: I see.

14 MR. KEITH: -- falling below the standards.

15 And then the question is, if the person who's
16 elected to an office takes actions that disable him from
17 effectively performing the duties of that office, then
18 that is something that falls below the right conduct
19 that's required under the second prong.

20 COMMISSIONER HUR: Okay. Let's talk about the
21 second prong, because I have a -- perhaps a disagreement
22 with both parties as to what this is supposed to mean.

23 But this refers to the standard of decency,
24 good faith, and right action, impliedly required of all
25 public officers and including any violation of a specific

1 conflict of interest or governmental ethics law.

2 So I don't see this as one standard for the
3 sheriff, one standard for the mayor, one standard for the
4 Board of Supervisors. This is one standard for all
5 public officials.

6 UNKNOWN PERSON IN AUDIENCE: That's right.

7 COMMISSIONER HUR: So I don't see why it's --
8 which to me makes Mr. Henderson's testimony all the more
9 irrelevant. I mean --

10 MR. KEITH: The argument from us would be that
11 each public official is under a duty to perform the
12 duties of office to the best of their ability. That
13 they're expected to do that. And so you have to look at,
14 well, what are that official's duties of office and how
15 is their ability to perform those duties affected? And
16 that is something that goes official by official.

17 The standard is the same. We still expect all
18 of our officials to be able to perform the duties of
19 office. But then the question is: Well, what does the
20 sheriff have to perform?

21 COMMISSIONER HUR: Commissioner Studley.

22 COMMISSIONER STUDLEY: Can you explain the
23 handicap or limitation that you think potentially affects
24 the sheriff's ability to carry out the duties of his
25 office --

1 MR. KEITH: I --

2 COMMISSIONER STUDLEY: -- as related to this?

3 MR. KEITH: I'm going to defer to my colleague
4 on that, because -- because she is more --

5 COMMISSIONER STUDLEY: Fine.

6 MR. KEITH: She came prepared to speak to these
7 sorts of issues that relate more to the expert testimony
8 about the duties of office.

9 COMMISSIONER STUDLEY: Thank you.

10 MS. KAISER: Commissioners, first of all, I'd
11 like to back up to the legal point that you were just
12 making about there only being one standard of conduct for
13 all public officials.

14 Actually, under the well-established law in
15 California, these sorts of conduct codes of, you know,
16 professional conduct, conduct unbecoming an officer,
17 immoral conduct, I mean, it's formulated in many ways.
18 But the Supreme Court has always upheld these against
19 vagueness challenges, by saying it isn't a one size fits
20 all conduct requirement. It's a conduct that's specific
21 to the office that the person holds or the profession
22 that the person practices.

23 So there are, under this established law,
24 interpreting these sorts of conduct clauses in terms of
25 vagueness challenges, which is being raised here.

1 COMMISSIONER HUR: Miss Kaiser, but a vagueness
2 challenge is not the subject of our discussion right now.
3 And I understand -- I've read your papers. I understand
4 your position on that.

5 If, for example, there is for attorneys or
6 doctors or any other profession a standard of care and a
7 promulgated rule requiring that they fall not below the
8 conduct for lawyers or for doctors or for accountants,
9 then they are held to that standard.

10 My point here is, aside from the vagueness
11 challenge, this appears to refer to a standard for public
12 officials. Public officials being the relevant body of
13 individuals, not that you can extrapolate from the fact
14 that, yes, these standards when applied specifically to a
15 profession are -- can be used, but that this is -- this
16 is referring to a specific profession. That is,
17 public-elected officials.

18 MS. KAISER: The mayor would disagree with
19 that, Mr. Chairman. There is a different standard of
20 conduct imposed on a chief law enforcement officer that
21 is not the same standard of conduct that is imposed on an
22 elected dog catcher for, you know, the very other end of
23 the spectrum.

24 (Audience interruption.)

25 MS. KAISER: Mr. Mirkarimi did not run for a

1 job that was devoid of these extra responsibilities of a
2 law enforcement officer. He is both elected, and a chief
3 law enforcement officer, and a chief jailer, and a
4 department head who will have to deal with many other
5 department heads.

6 Not every elected public official has that
7 constellation of duties, and we do have experts coming
8 prepared to explain what it is that is inherent in a
9 sheriff's job, as a correctional official, as a law
10 enforcement official, as a department head that sets
11 forth the standards of conduct for that particular
12 position.

13 COMMISSIONER HUR: Thank you.

14 Questions for Miss Kaiser or comments from the
15 Commissioners?

16 COMMISSIONER STUDLEY: I'm going to try my
17 question again.

18 What is the offer of proof that you're making
19 about what stands in the way of the sheriff's ability to
20 carry out the duties of the office going forward?

21 For example, is it time? That he will have
22 time that has to be committed toward probation acts or is
23 it something else? I'm just trying to focus this on what
24 you're saying the -- I'm calling it handicap, what's the
25 limitation under which you believe he would suffer, that

1 he would have to follow that would impinge on carrying
2 out the duties of office? I think it relates to several
3 different witnesses and to a number of the expert
4 witnesses.

5 MS. KAISER: Yes, it does Commissioner.

6 I'm not prepared to give you a complete list
7 today.

8 COMMISSIONER STUDLEY: Just an example.

9 MS. KAISER: But for example, a sheriff has to
10 work in harmony and have credibility with other
11 department heads in the criminal justice system.

12 This sheriff would both be on probation and
13 negotiating policy decisions and important, you know,
14 determinations about reentry with the chief of the Adult
15 Probation Department, whose staff member would be
16 supervising this sheriff and be -- it creates incredible
17 conflicts of interest.

18 It also creates difficulties for other city
19 officials in figuring out how to proceed, whether they
20 could have confidence in this sheriff or not, whether he
21 will, going forward, continue to obey the professional
22 standards that he's already once broken.

23 So conflict of interest is one problem.

24 Another problem is the morale of the office.

25 Being an example of how best to imprison people is going

1 to be very difficult once you've been convicted of
2 unlawfully imprisoning one's own spouse.

3 So a lot of this has to do with the effect of
4 the sheriff's actions on the perceptions of his peers and
5 their ability to work with him as a professional going
6 forward. And there are many duties of the sheriff's
7 office that are affected by his particular conduct and by
8 the sentence that was imposed on him. These are not
9 unconnected items.

10 Like, for example, there's a case -- there are
11 a number of cases in California law about the effect of
12 being convicted of possession of marijuana on one's
13 ability to practice one's profession.

14 Invariably for law enforcement officers, for
15 correctional officers, these people are being terminated
16 and the courts are upholding the termination because
17 there is a relationship between that criminal act and
18 their duties.

19 At the same time, a real estate broker, the
20 court says there's not a clear connection between that
21 profession and that crime.

22 So we are trying to show that the acts here
23 that are being alleged are in relation to the sheriff's
24 duties and are in relation to the standards of conduct
25 for a chief law enforcement official.

1 COMMISSIONER HUR: Commissioner Hayon.

2 COMMISSIONER HAYON: While I appreciate your
3 explanation and your comments, and I do think that
4 perception is very important in a law enforcement
5 officer -- it's certainly someone who runs a law
6 enforcement agency -- I think the question,
7 Commissioner Hur, would be which witness would be most
8 appropriate to sort of lay that groundwork.

9 I mean, there are several witnesses on these
10 lists, expert witnesses or this particular individual
11 Paul Henderson, that we don't need to hear from all of
12 them, but perhaps hearing from one who can talk about,
13 you know, the value of -- or the conflict inherent in
14 someone who has been convicted or pled guilty to
15 something, who is also a law enforcement officer. It
16 would be valuable to hear how that is problematic. But I
17 don't know that we need a whole list of people to talk
18 about that.

19 So the question is who's most appropriate.

20 We also have Sheriff -- former
21 Sheriff Hennessey on the witness list. Perhaps he's
22 someone that can address some of that. I don't know.
23 But I think that there are just too many people who kind
24 of fill that category. So maybe we could just come up
25 with one individual who answers those questions.

1 MS. KAISER: If I may, I'd like to explain why
2 the different individuals are on the list. That might
3 help you deliberate about what would be most important.

4 COMMISSIONER HUR: Why don't you answer that
5 question first, though.

6 MS. KAISER: Yes.

7 COMMISSIONER HUR: If you had to choose one of
8 these witnesses who would testify about the effect that
9 the sheriff's actions would have on his ability to
10 perform his duties going forward, who would that witness
11 be?

12 MS. KAISER: Well, as we understand it and as
13 we've presented it, it's really a two-pronged question.

14 We need to present the factual basis of what
15 the San Francisco sheriff does, and then we would need to
16 present expert testimony about how those duties are
17 affected. And we have presented it as though there are
18 several facets to the sheriff's duties, which we believe,
19 but we are happy to follow your direction in terms of
20 winnowing them down.

21 So it's hard to say, given the many different
22 duties and given both the factual and the opinion
23 testimony that's needed, that we can locate that in one
24 particular person.

25 The intent was to offer Mr. Henderson, to offer

1 Acting Sheriff Vicki Hennessy to talk about the current
2 responsibilities of the sheriff, and in particular to
3 offer Chief Wendy Still to talk about the particular
4 relationship between the sheriff's department and
5 probation. We think that that's probative.

6 If you wish for us to narrow down the approach
7 to the question and not focus on cooperation with other
8 city agencies or not focus on the efforts of the
9 probation department and the sheriff's department in
10 tandem and why those are now, essentially, polluted or
11 why it is that just inside the sheriff's department there
12 are innumerable conflicts with the sheriff's duties,
13 we're happy to limit that.

14 But there's no one person who can testify to
15 all of these things. And we do believe they're all
16 relevant and they're all important and they're all worth
17 hearing. And even if the Commission finds it to be
18 overkill, we don't know what the Board of Supervisors is
19 ultimately going to conclude when they review the record.
20 And we would ask that the Commission err on the side of
21 overinclusiveness for that reason.

22 Even if you don't want to hear testimony, even
23 if, you know, you want to bypass this witness, we would
24 like the opportunity to get this important testimony into
25 the record. We do think it's relevant. We do think that

1 there are decision makers who would like to consider it.

2 COMMISSIONER HUR: Other questions for
3 Miss Kaiser?

4 I must say that I am -- I think all of these
5 witnesses who are talking about the mayor's (sic)
6 impairment -- or alleged impairment to perform the duties
7 going forward are not relevant to what we are tasked to
8 do, which I think is a narrow fact-finding investigation
9 as to whether conduct that has already occurred is
10 official misconduct. And getting testimony about the
11 relationship among various agencies, getting testimony
12 about, you know, the duties of the sheriff and whether he
13 can perform them or not, I don't -- I don't see the
14 relevance.

15 It appears there is disagreement among the
16 Commissioners about that. And if there is, I think we
17 should discuss it, because I think it would -- it greatly
18 affects the scope of testimony.

19 COMMISSIONER RENNE: Well, as I read the
20 briefs, I believe that the mayor was proposing to
21 introduce this evidence because of the argument being
22 made that the misconduct, if it occurred, was not in
23 relation or was not connected with his duties as sheriff.
24 And that what -- what the mayor, at least, argues in his
25 brief is that -- and concedes, that there should be some

1 relationship. And cites a number of California cases of
2 law enforcement personnel who were terminated because of,
3 for example, speeding violations, and the court talked
4 about the fact that a law enforcement official has a
5 special set of duties, that a violation of the law,
6 which -- might not affect a non-law enforcement officer.

7 And that's what I understand this testimony is
8 in for is to say -- to rebut the argument being made by
9 the sheriff that these acts, if they occurred, do not --
10 are not related to his duties; and, therefore, he
11 can't -- he does not fall under the grounds of being
12 suspended or put out of office because of, quote,
13 "official misconduct."

14 But I do think I agree with the statement that
15 it seems to me you ought to be able to put that in by a
16 single declaration, or two at most, setting forth what
17 they are, and I think there's fair grounds of
18 cross-examination as to whether or not the conclusions
19 reached are correct. That the mere fact that somebody is
20 on probation or the mere fact that somebody may have
21 pleaded guilty to false imprisonment somehow or other
22 disables him or her from operating as a sheriff.

23 MS. KAISER: Absolutely, Commissioner. There's
24 no question that we carry the burden of proof on that
25 point, and that just by saying it that doesn't make it

1 so.

2 We to -- we want the opportunity to bring the
3 testimony. We want the opportunity to give you the
4 materials to reach an informed conclusion about whether
5 the allegations are right or wrong. Just saying that
6 they're right doesn't make it so.

7 But the other problem that we have is a problem
8 that you all discussed a little bit earlier, which is
9 avoiding the problem of hearsay, and making sure that our
10 testimony is well-founded in personal knowledge for the
11 fact witnesses and in expertise for the expert witnesses.

12 If we only have one witness, we will not be
13 able to have a witness who satisfies the Evidence Code,
14 and who meets the highest standard of presentation that
15 you would like to see. And that's part of the reason why
16 we've been very -- we admit it. We've been very
17 thorough, but we think it's good. We think we're trying
18 to give you a thorough, solid, sound record on which to
19 base your decision, and that's -- that's been the impetus
20 for creating these lists. It's not an attempt to snow
21 you.

22 COMMISSIONER HUR: And I appreciate that,
23 Miss Kaiser. And I certainly would not suggest that you
24 are, you know, trying to -- to drown us in paper or
25 anything like that.

1 But this procedure does contemplate a hearing
2 taking place as soon as five days after the official
3 charges. And I think one of the reasons that's
4 contemplated is because the elected official is suspended
5 without pay during the time that the Ethics Commission
6 and the Board adjudicate the matter.

7 So I find it hard -- to me, I find it hard to
8 believe that we need to have witnesses sort of talk about
9 every single element of how the sheriff can do his -- can
10 or cannot do his work when this is something that we
11 should be able to do, at least in the first instance,
12 within five days of charges.

13 Commission Studley.

14 COMMISSIONER STUDLEY: Yes, I found
15 Commissioner Renne's comments about the issue that this
16 might go to, to be convincing.

17 I also see this as very different from the
18 testimony of Ms. Flores, which does run the risk of
19 taking us into very distracting and unproductive terrain
20 if we don't really need it.

21 I think while I'd like to have as few of them
22 as we really need, I think that -- I, for one, and others
23 may disagree, would be more open to receiving these
24 declarations, allowing the sheriff's representatives to
25 counter or investigate them, to narrow as much as

1 possible by their stipulations beforehand, and not to
2 delay in order to get a lot of them.

3 So it may be necessary to be selective if our
4 scheduling says this is when we are ready to go forward,
5 because, for a variety of reasons, it's only fair for us
6 to move toward resolution on this. So I wouldn't delay
7 for the purpose of securing more of these kinds of offers
8 of declara -- these declarations.

9 But on balance, I would narrow rather than
10 exclude altogether. I think there are some points that
11 might be -- that are important to understanding whether
12 they fit the definition in the first place. And my own
13 effort would be to try and slim the list and schedule
14 things so that we move forward and the city can pick the
15 ones that are the most valuable or execute them so that
16 we can stay on track.

17 COMMISSIONER HUR: Okay. So it sounds like,
18 having heard from all the Commissioners on this witness,
19 that we think Paul Henderson -- the majority think that
20 Paul Henderson should come in or be permitted, at least,
21 to submit a declaration.

22 Michael Hennessey.

23 Michael Hennessey was on the list of
24 individuals that we had identified at the beginning. So
25 I don't think there's a dispute about him.

1 Acting Sheriff Vicki Hennessey -- unless the
2 parties want to be heard on Michael Hennessey?

3 MR. KEITH: We can get a declaration from
4 Acting Sheriff Hennessey. I don't know -- I don't think
5 we can -- we certainly can't compel a retired sheriff to
6 give us a declaration.

7 The point of the testimony is to just lay out
8 the duties of what a sheriff does, and we can get that
9 just as easily from Sheriff Hennessey. So we can drop
10 Michael Hennessey from our list.

11 COMMISSIONER HUR: Okay. I'm sorry, you can
12 drop Michael Hennessey?

13 MR. KEITH: We can drop Michael Hennessey from
14 our list and just use Vicki Hennessey for that testimony.

15 COMMISSIONER HUR: Mr. Kopp?

16 MR. KOPP: Yes. I expect that we would
17 probably want to at least submit a declaration from
18 Michael Hennessey, probably addressing different points,
19 such as -- one would be the fact that many many deputy
20 sheriffs have suffered criminal convictions during his
21 32-year tenure, and that was not seen to be official
22 misconduct that required those deputies to be terminated.

23 So that's one point that I don't think the
24 major intended to introduce. And I think that retired
25 Sheriff Michael Hennessey may be able to offer other

1 pieces of fact information that would help the Commission
2 in reaching its decision. We haven't obtained one at
3 this point, but we think we can obtain one from him.

4 COMMISSIONER HUR: Okay. And, Mr. Keith, you
5 indicate in your witness list that you expect him to
6 testify about communications with the sheriff, which I
7 can see coming in.

8 Would you -- would you rather have Michael
9 Hennessey than Acting Sheriff Vicki Hennessy if their
10 testimony would otherwise be overlapping and Michael
11 Hennessey has -- is going to speak to statements made by
12 Mr. Mirkarimi?

13 MR. KEITH: I think given the burden of
14 preparing a declaration, I feel -- I feel that it's more
15 appropriate to place that on somebody who's currently
16 working as sheriff as opposed to somebody who's retired.
17 So we would just use Vicki Hennessy.

18 (Audience interruption.)

19 COMMISSIONER HUR: Please. We were having a
20 pretty good run there of silence. If we could keep that
21 up. That'd be great. I know it's -- I know it's a
22 long -- a long night.

23 Commissioners -- Commissioners' views on Vicki
24 Hennessy? Is there an objection to hearing from
25 Miss Hennessy? Do we think we need her testimony?

1 COMMISSIONER LIU: I'm sorry, Mr. Keith, did
2 you say her testimony would or would not overlap with
3 Michael Hennessey's testimony?

4 MR. KEITH: My concern is our being able to get
5 a declaration from the retired sheriff.

6 COMMISSIONER LIU: I see.

7 UNKNOWN PERSON IN AUDIENCE: They're both
8 retired.

9 COMMISSIONER STUDLEY: Mr. Chair, is your
10 objective to choose one or the other? I'm not sure what
11 question is on the table.

12 COMMISSIONER HUR: My question is whether we
13 need Acting Sheriff Vicki Hennessey.

14 It sounds like -- I mean, Michael Hennessey was
15 listed as an expert witness by the sheriff, and we can
16 address that later, but, I mean, if he's -- if he's going
17 to be testifying, do we need what sounds like overlapping
18 testimony from Vicki Hennessey, whether or not you can get
19 a declaration from Michael Hennessey?

20 MR. KEITH: On that point, we didn't list the
21 retired sheriff as a witness who's going to testify to
22 every responsibility of the sheriff's department. We
23 listed him as a witness who's going to testify to
24 transition and as to statements that Sheriff Mirkarimi
25 made to him.

1 COMMISSIONER HUR: Surely he could, though. I
2 mean, he was sheriff for a long time.

3 MR. KEITH: He could. But, again, getting a
4 declaration from a retired -- from a retired city
5 employee is not always easy.

6 COMMISSIONER HUR: Mr. Keith, I'm sorry, you
7 started off by saying you were going to be able to submit
8 a declaration for all your witnesses, and that's what you
9 wanted to do is proceed by written declaration.

10 MR. KEITH: Yes.

11 COMMISSIONER HUR: Mr. Hennessey is listed as a
12 witness on your witness list.

13 MR. KEITH: That's right. We --

14 COMMISSIONER HUR: And you intend to submit a
15 declaration with respect to some testimony, some matters,
16 right? I mean, otherwise how would you get him in if
17 your intention was to submit declarations for all your
18 witnesses and he's on your witness list?

19 MR. KEITH: I clarified earlier that we can
20 submit a declaration from the mayor, all current city
21 employees, and those witnesses who are no longer with the
22 city who are willing to do it.

23 From our part, we would rather use a current
24 city employee if they're going to be put to the burden of
25 preparing a declaration and submitting testimony.

1 That's --

2 COMMISSIONER HUR: I see.

3 MR. KEITH: That's a preference in that regard.

4 MS. KAISER: If I may add, an important reason
5 to have Vicki Hennessy, just from the expert perspective
6 which you can see is part of --

7 COMMISSIONER HUR: Use the mic, please. Thank
8 you.

9 MS. KAISER: I'm sorry.

10 Part of the importance of Vicki Hennessy is
11 from -- from just the expert view, is that the experts
12 will be working with her as the current sheriff to
13 understand, you know, what they will be giving their
14 opinion about.

15 And so her testimony will serve as a foundation
16 for a number of the experts. And we can coordinate that
17 with the acting sheriff in a way that we cannot
18 coordinate with a retired sheriff.

19 COMMISSIONER HUR: Commissioner Studley.

20 COMMISSIONER STUDLEY: Mr. Chair, are you
21 trying to have one or the other? Would it be a problem
22 if the city offers a declaration from the acting sheriff
23 and the sheriff offers a declaration from the retired
24 sheriff?

25 COMMISSIONER HUR: I don't think it would

1 necessarily be a problem, but what I'm trying -- the
2 exercise that I think we're going through here is to try
3 to narrow down redundant witnesses or witnesses who are
4 irrelevant.

5 And I -- to me these two are redundant
6 witnesses. So I guess what I'm saying is, I would be in
7 favor of excluding Vicki Hennessey, because I think her
8 testimony is going to be redundant to what we are going
9 to hear from Michael Hennessey.

10 And if the mayor needs to have Michael
11 Hennessey come in -- he's probably going to be here,
12 anyway, in light of what we've heard from the sheriff, I
13 think we could save time and effort by actually having
14 only one witness testify about these issues.

15 But, if other Commissioners disagree and we
16 think we should have a declaration from both, I can see
17 that view as well. So maybe we should --

18 COMMISSIONER HAYON: Do we have to decide that
19 right now?

20 COMMISSIONER HUR: Well, I think with what
21 we're trying to do, I think we should.

22 COMMISSIONER HAYON: I know what we're trying
23 to do.

24 COMMISSIONER HUR: I think we should, yes.

25 COMMISSIONER HAYON: Okay.

1 COMMISSIONER HUR: I think we should decide
2 whether or not someone is going to come in by declaration
3 or not. Because otherwise --

4 COMMISSIONER HAYON: Well, I agree with that.

5 But we may find -- we're trying to narrow down
6 the list of witnesses and that's fine. And I think the
7 fewer the better. But we may find that in the course of
8 hearing witnesses, there's some additional information
9 that we're going to need, and we may want to call in a
10 witness that we didn't initially think we needed. That's
11 all I'm saying.

12 So can we make that decision further down the
13 line if we feel that there's information lacking?

14 MR. WAGGONER: Commissioners, if I may be heard
15 on this question?

16 COMMISSIONER HUR: Yes, Mr. Waggoner.

17 MR. WAGGONER: David Waggoner for
18 Sheriff Mirkarimi.

19 So as to Acting Sheriff Vicki Hennessy, Vicki
20 Hennessy was a political appointee of Mayor Lee. So, you
21 know, to the -- to the issue of whether they're
22 redundant, Michael Hennessey can provide testimony that
23 actually relates to the charges.

24 It's not at all clear, and it hasn't all been
25 -- it's not at all clear how Vicki Hennessy -- her

1 testimony is in any way relevant to the charges.

2 On Page 4 of the mayor's list of fact
3 witnesses, under Vicki Hennessy it says that she'd
4 testify about the role of the sheriff.

5 The role of the sheriff, again, as the
6 conversation we just had about Paul Henderson, that's not
7 relevant to the actual charges.

8 And if I may also say, as to the actual
9 charges, there are no actual counts. It's nine pages of
10 a narrative statement. There's no counts.

11 So we would request, respectfully, the
12 production of a bill of particulars as to what exactly
13 the charges are, so that we can actually defend against
14 them, and so that the mayor and the city attorney can say
15 exactly what charge -- which charge each of these
16 witnesses allegedly would testify to.

17 COMMISSIONER HUR: On Vicki Hennessy, I'm fine
18 with the suggestion of Commissioner Hayon, you know, that
19 the -- that the prejudice of having Vicki Hennessy is not
20 high, I don't think, in some respects, if she's going to
21 testify on the matters that are listed here.

22 And I, for one, agree with Mr. Waggoner. I
23 don't think it's relevant, but I'm in the minority on
24 that.

25 So I think if the mayor wants to submit a

1 declaration for Vicki Hennessy, we should allow it, and
2 we can evaluate further if we need additional testimony.

3 Is there any objection to that?

4 Commissioner Studley.

5 COMMISSIONER STUDLEY: No objection.

6 I'd rather have both, because I think it would help me
7 understand what the differences were than to have one and
8 guess what the other would say or argue about what the
9 other one would say. I think it might illuminate the
10 differences if there are -- if there turn out to be any
11 between the two of them.

12 COMMISSIONER HUR: Okay.

13 Next is Lieutenant Michael -- Michele Jean
14 and/or Inspector John Keane.

15 So is that really an and/or or is that an or?

16 MR. KEITH: We don't need to call either of
17 them.

18 COMMISSIONER HUR: Okay.

19 Next is Mayor Ed Lee. I think we've discussed
20 him.

21 Eliana Lopez, we've discussed her.

22 Ivory Madison, we've discussed her.

23 Abraham Mertens, I think we've discussed him.

24 The sheriff, we have discussed him.

25 Chief Wendy Still, so I guess we're on No. 16.

1 Mr. Keith or Miss Kaiser, why do we need to
2 hear from --

3 MS. KAISER: We need to hear from Chief Still
4 to provide a factual basis about how it is that the
5 sheriff's department interacts with the probation
6 department, but also particularly how the probation
7 department interacts with the probationers, which is not
8 something that, you know, most officials of another ilk
9 will be able to speak to.

10 I think it's through that that some of the
11 conflicts that are inherent in this situation and the
12 relationships between the sentence and the sheriff's
13 duties will become crystallized. And, again, we just
14 need to put in the fact foundation for that. We can't
15 just tell you it is so without providing testimony that
16 it is so.

17 I'd also like to point out, by the way, I'm
18 sure you've noticed Wendy Still shows up both on our fact
19 witness list and on our expert witness list. She is
20 testifying in two entirely different capacities. I'm
21 happy to address that when we get to discussing experts,
22 if you wish.

23 COMMISSIONER HUR: Okay. Thank you.

24 Commissioners, views on Wendy Still?

25 COMMISSIONER RENNE: Was it your intention to

1 present her testimony by declaration?

2 MS. KAISER: Yes. We're happy to provide
3 everyone's testimony by declaration who will cooperate
4 with our efforts.

5 And if I can just make the point, that by doing
6 this by declaration we are really shouldering the burden
7 of the witness list. We are asking you to review the
8 declarations, but we will, on your schedule, do what we
9 need to do to get the declarations ready for your review.

10 And we do believe that it will be easier to
11 make some of these decisions once you've seen the
12 testimony and understand why it's being offered, than it
13 is to do before you've seen it.

14 So I really think that the burden of doing that
15 and including more witnesses is going to fall on our
16 shoulders more than yours, and we're willing to shoulder
17 that burden to get you the evidentiary record.

18 COMMISSIONER HUR: And I do appreciate that.

19 I think for me the concern is, regardless of
20 the work that's required to get the declaration, I think
21 most declarants, to the extent we're going to really be
22 valuing their testimony, are going to be cross-examined.

23 So, you know, I think that -- I don't want to
24 be falsely -- not falsely persuaded, but I don't want to
25 be persuaded that this is going to really reduce the

1 burden if -- if we're going to have to hear from all of
2 these people live in order to truly evaluate the written
3 declaration.

4 MS. KAISER: I think my response to that would
5 be, that at the point that you see the opening
6 declaration you can still put the witness aside. You can
7 still decide that witness is irrelevant and does not need
8 to be subject to cross-examination or part of the live
9 hearing. One does not inexorably follow.

10 I think this procedure that you're going
11 through right now can be repeated or maybe done best on
12 the basis of the actual declarations to see what the
13 witness really does offer and how it fits in.

14 COMMISSIONER HUR: Mr. Kopp or Mr. Waggoner, do
15 you have -- what do you think about that procedure?

16 MR. KOPP: Well, you know, in theory, that
17 sounds fine. That doesn't address our concern that
18 witnesses, such as this Chief Wendy Still, are irrelevant
19 to the inquiry.

20 And she's -- in our view, she's not going to
21 add anything to your task of determining what the facts
22 are, what Sheriff Mirkarimi did, and whether or not that
23 was official misconduct. I just think this is -- they're
24 ranging very, very far afield.

25 So I suspect if you allow them to put in a

1 declaration, we will be objecting to its admission in its
2 entirety. You know, as far as the procedure goes, that's
3 probably better than bringing the witness in, putting
4 them on the stand, and having us object on a
5 question-by-question basis.

6 COMMISSIONER HUR: Thank you.

7 So then I think our task tonight, then, should
8 be to eliminate those witnesses who we truly feel are
9 irrelevant and from whom a declaration is very -- not
10 likely or very unlikely to provide us with relevant
11 information.

12 To the extent that we think it's a close call
13 or that there's disagreement, I think we should invite
14 the declaration and evaluate the declaration once we
15 receive them.

16 Do the Commissioners have views as to where
17 Wendy Still falls on that spectrum?

18 COMMISSIONER LIU: Well, to me it seems that
19 she is, again, in that category of the pool of people we
20 have just been discussing about whether it relates to his
21 job duties or not, whether a charge of misconduct would
22 relate to his job duties. And I think I understand the
23 mayor wanting to, perhaps, also expand on that a little
24 bit, but I think that's generally the category that I see
25 it in, about how it relates to the job duties.

1 So, I mean, I would think that that's probative
2 given the sheriff's position that the charge of
3 misconduct must relate to the job duties.

4 COMMISSIONER HUR: Okay. Any other dissenting
5 views to that?

6 Okay. So the excluded fact witnesses, then,
7 are either Inspector Becker or Inspector Daniele.

8 COMMISSIONER LIU: I think they were going to
9 stipulate.

10 COMMISSIONER HUR: Right.

11 COMMISSIONER STUDLEY: Stipulation.

12 COMMISSIONER HUR: Jan Dempsey, we expect a
13 stipulation from the parties.

14 Captain Kathy Gorwood would be excluded.

15 COMMISSIONER HAYON: And Christina Flores.

16 COMMISSIONER HUR: Christina Flores, I think we
17 deferred, and Michele Jean and Inspector John Keane.

18 The others, to the extent that we think they
19 should -- to the extent they would like to submit a
20 declaration, we'll review the declaration and make
21 evidentiary objections at that time.

22 Expert witnesses?

23 Who will address the experts for the mayor?

24 Miss Kaiser. This is a lot of experts for this
25 issue.

1 Based on a -- I know you submitted this prior
2 to some of the briefing.

3 Has anybody become unnecessary in light of
4 recent briefing and your investigation or do you still
5 intend to call these experts?

6 MS. KAISER: We would still intend to call
7 these experts, and I can do a brief explanation of why if
8 that would be helpful?

9 COMMISSIONER HUR: Yes, please.

10 MS. KAISER: Okay. Mr. Gennaco, the first
11 witness -- you know, to go to Sheriff Mirkarimi's point
12 that there have been many other law enforcement officers
13 in the sheriff's department who have been disciplined but
14 not terminated on the basis of criminal conduct,
15 Mr. Gennaco is an expert in discipline at the L.A.
16 sheriff's office and with law enforcement nationwide,
17 actually, as a consulting expert.

18 So he could speak to that very issue. And he
19 could speak to how it is that the sheriff should be
20 treated under his own disciplinary system, essentially.
21 So he's being offered for that purpose.

22 Chief Lansdowne is the chief of police in
23 San Diego. He's being offered as a chief law enforcement
24 officer, and particularly a chief law enforcement officer
25 who teaches an ethics course at the professional

1 association for law enforcement executives on law
2 enforcement ethics for chiefs.

3 I think his testimony is going to be very
4 germane to the standard of conduct expected of a chief
5 law enforcement officer, and he has the expertise to give
6 it.

7 COMMISSIONER HUR: Okay. We've heard about
8 Miss Lemon from Mr. Keith earlier.

9 MS. KAISER: Actually, may I just add one thing
10 about Miss Lemon?

11 COMMISSIONER HUR: Sure.

12 MS. KAISER: She is a nationwide domestic
13 violence expert, and she's here, actually -- she's on
14 this list because she can offer important testimony about
15 was this really just about a pinch on the arm? Was this
16 really just about a decision to turn the van around and
17 not go to the restaurant? Or is this something more
18 significant?

19 Again, these proceedings are not about a plea
20 deal. These proceedings are about the actual conduct and
21 what the conduct means in terms of the public official,
22 the acts of the public official, and the relationship
23 between those acts and the public official's position.

24 So it's our position that we need to be able to
25 explain his conduct and what it means and what it

1 entails. And Miss Lemon, by the way, was being offered
2 in the criminal case, would have gone and served at trial
3 for that exact same purpose, to show that there is more
4 content than what Sheriff Mirkarimi so far has been
5 willing to admit.

6 We think she's important for that reason.

7 COMMISSIONER HUR: Okay. We heard about Wendy
8 Still.

9 Elizabeth Tarchi is an Assistant D.A.

10 And what expertise would she be offering us?

11 MS. KAISER: She is not coming -- although she
12 was the prosecutor, actually, in Sheriff Mirkarimi's
13 case, and that case remains ongoing as long as he's on
14 probation and being supervised, she is not coming to
15 speak to the specifics of his case.

16 She's coming as the chief domestic violence
17 prosecutor in the D.A.'s office to help you understand
18 what that plea deal meant, and what the sentence means,
19 and what it doesn't mean, that they dropped the other
20 charges.

21 You have seen in the briefing some assertions
22 that, well, the other charges, the other facts now are
23 conclusively not proven, they've been set aside. That's
24 actually not what the plea deal means.

25 And, again, it goes to our ability to show you

1 what the actual conduct was and that the conclusion of
2 the criminal proceedings is not something that binds you,
3 and also to make sure that you don't misunderstand what
4 its import is, as many civil lawyers or other volunteers
5 don't necessarily know. Myself included. I've been
6 getting an education.

7 And if I may speak to Chief Still on the expert
8 list, please, just briefly.

9 COMMISSIONER HUR: Yes.

10 MS. KAISER: She is not coming, actually, as an
11 expert on the probation issues. Chief Still ran
12 California prisons for several decades, and she's coming
13 in to speak about the special responsibilities and duties
14 inherent in running a system that locks people up, and
15 how Sheriff Mirkarimi's conduct affects that particular
16 responsibility.

17 UNKNOWN PERSON IN AUDIENCE: Oh my God.

18 COMMISSIONER HUR: Please.

19 COMMISSIONER STUDLEY: And there's one more.

20 COMMISSIONER HUR: Beverly Upton.

21 MS. KAISER: Yes. Beverly Upton can speak to
22 the damage that the sheriff has done in terms of the
23 community relations between law enforcement and the many
24 nonprofit -- the many nonprofit agencies that have worked
25 really tirelessly, frankly, on this issue and worked

1 tirelessly with many city agencies, particularly in the
2 wake of a truly brutal and horrifying murder a number of
3 years ago that catalyzed the community both in terms of
4 the government and the private agencies to work together.

5 UNKNOWN PERSON IN AUDIENCE: Oh my gosh.

6 COMMISSIONER HUR: I'm sorry. I'm sorry to
7 interrupt you, Miss Kaiser.

8 Please, you know, we are trying to get this
9 done. If you guys could please keep quiet and let the
10 pleadings go forward, you really would help all of us.

11 Thank you.

12 MS. KAISER: We take the position that one of
13 the sheriff's duties is to work effectively with the
14 community on an issue of great importance to the
15 community, and we believe that his ability to do that is
16 significantly impaired by his domestic violence. And
17 Ms. Upton is being offered as an opinion witness to speak
18 to that and she has the firsthand expertise to do that.

19 COMMISSIONER HUR: Commissioner Studley.

20 COMMISSIONER STUDLEY: I have a question about
21 Expert No. 5, Ms. Aguilar Tarchi, as to whether someone
22 who has a -- has played a part in the actual proceedings
23 up to this point can -- can appropriately serve as an
24 expert on the issues that are being offered?

25 You folks who do this all the time, I think,

1 know better what the expert standard appropriately would
2 be.

3 I'm not sure whether that applies to
4 Chief Still. It seems more specific as to the
5 prosecutor.

6 COMMISSIONER HUR: Mr. Kopp, would you like to
7 address Commissioner Studley's question?

8 MR. KOPP: Well, actually, if it's okay I'd
9 like to express our objections to these witnesses, and
10 I'll certainly get to that particular witness because I
11 think that's only one of many who may have already
12 demonstrated that they're an interested participant here.

13 Maybe I should start going backwards.
14 Miss Upton was a vocal critic during the criminal
15 prosecution, and if I'm not mistaken when we were here
16 last month, she came up and gave public comment against
17 Sheriff Mirkarimi. So how anybody thinks that this type
18 of a biased witness should be allowed in a proceeding
19 such as this is beyond me.

20 Miss Aguilar Tarchi, and I apologize if I'm
21 saying the name wrong, she was the prosecutor on the
22 criminal case, and she's going to come up here and
23 educate people about how dismissal of charges doesn't
24 mean anything? They're still true?

25 COMMISSIONER HUR: Mr. Kopp, so I understand

1 your objection to whether the witness is useful and has
2 evidence that's not going to be completely impeached by
3 the fact that she was involved.

4 Is there a legal basis to exclude her on that
5 grounds?

6 MR. KOPP: Which proposed expert --

7 COMMISSIONER HUR: Aguilar Tarchi.

8 MR. KOPP: -- Miss Aguilar Tarchi?

9 COMMISSIONER HUR: Does the fact that she was
10 the prosecutor, as a legal matter, mean that she must be
11 excluded as an expert?

12 MR. KOPP: There's no probative value to her
13 proposed testimony, domestic violence prosecutions and
14 how these cases are resolved. How is that relevant to
15 the determination that you've got to make as to what the
16 conduct was and whether or not it was official
17 misconduct?

18 How the criminal case was resolved is
19 irrelevant to the inquiry. You can determine the facts,
20 and then you can decide whether or not this was official
21 misconduct.

22 So, yes, there is a legal objection to that
23 witness' testimony.

24 COMMISSIONER LIU: Well, Mr. Kopp, will you be
25 arguing the effect of the plea deal or what it means to

1 have -- certain charges have been dropped? Are you going
2 to be arguing any of that?

3 MR. KOPP: What we intend to argue is that the
4 misdemeanor charge upon which Sheriff Mirkarimi was
5 convicted in and of itself does not constitute official
6 misconduct.

7 We don't intend to argue the effect of the
8 dismissal of the other charges.

9 We -- with respect to the incident that was
10 underlying for the criminal prosecution, we intend to
11 argue that grabbing his wife's arm during this argument
12 also wasn't official misconduct and that's it. And
13 that's what this inquiry should be about.

14 COMMISSIONER HUR: I mean, to be fair, your
15 briefing, if I'm recalling correctly, did suggest that --
16 try to suggest that the dismissal of the other charges
17 means that there was -- that they didn't occur.

18 MR. KOPP: Well --

19 COMMISSIONER HUR: But that's -- I'm not
20 hearing that from you right now?

21 MR. KOPP: Correct. And to the extent -- we
22 did not mean to suggest that.

23 We don't -- we do not argue that the dismissal
24 of the other charges means that nothing happened. I
25 think that we'll be able to prove that what happened is

1 what I've been telling you all along, but we don't intend
2 to argue the legal effect of the dismissal of the other
3 charges, that's correct.

4 COMMISSIONER HUR: Miss Kaiser, in light of
5 that statement, and I can understand your confusion
6 prior, does that -- does that obviate the need to have
7 Miss Aguilar Tarchi?

8 MS. KAISER: I'm sorry, I think this is the
9 only microphone that's working.

10 If we can reach appropriate stipulations with
11 opposing counsel, I think that might obviate the need.
12 As you've noticed, what he says in his briefing and what
13 he's saying right now to the Commission are different.
14 If we can nail him down in a stipulation, and it could be
15 either we don't agree or we do agree, but at least the
16 subject matter would be firm, then we may be able to
17 forgo Ms. Tarchi.

18 What I'm concerned about, though, is this sort
19 of repeated assertion that what's at issue here is a
20 guilty plea to a misdemeanor. That is actually not
21 what's at issue here.

22 What's at issue is the wrongful behavior, not
23 the guilty plea. The guilty plea is an admission of
24 criminal guilt, but it is not an element of official
25 misconduct and shouldn't be mistaken for the true ambit

1 of the inquiry here.

2 We want to get to the behavior, and we can't
3 agree to be limited to what Sheriff Mirkarimi was willing
4 to admit to.

5 COMMISSIONER HUR: And I don't think anybody is
6 suggesting that you would be. And what I took your
7 initial argument to be was that you needed this because
8 the sheriff was suggesting that the dismissal of the
9 other charges was actually probative evidence that
10 they didn't -- they didn't occur.

11 But if that's -- I mean, and he's stipulated to
12 this in open court or open session in front of the public
13 that that's not what he's going to say, why do we still
14 need Miss Tarchi, assuming you could get a written
15 stipulation on that?

16 MS. KAISER: We need Miss Tarchi to also
17 explain that false imprisonment, as a matter of law, is
18 not coextensive with turning a van around from going to
19 the restaurant to going home. That that would not
20 satisfy false imprisonment. Yet the parties stipulated
21 that there was a factual basis to that charge.

22 So there's a discrepancy between what
23 Sheriff Mirkarimi is saying and what legally can possibly
24 be supported by his plea deal.

25 We would like to have that in -- please

1 understand this in the context. That the only statements
2 of Sheriff Mirkarimi's that we've had access to are the
3 statements in the media. We don't have stipulations. We
4 don't have an interview of Sheriff Mirkarimi to look at.
5 He won't talk to us.

6 UNKNOWN PERSON IN AUDIENCE: Good.

7 (Audience interruption.)

8 MS. KAISER: We need to be able to bring
9 witnesses who are responsive to the arguments we've heard
10 him make elsewhere.

11 If he's going to change those arguments or
12 those positions or explain them more fully before the
13 Commission, we're prepared to respond to that. And if
14 that means we don't need to bring a witness, we're
15 prepared not to do that.

16 But right now we're not in a position, frankly,
17 where we can give that up, because we don't know what it
18 is that we're going to encounter.

19 COMMISSIONER RENNE: Could I ask you one
20 question of clarification?

21 Isn't it your position that the guilty plea to
22 false imprisonment standing alone is sufficient grounds
23 for the mayor to have acted finding official misconduct
24 and suspending the mayor (sic)?

25 MS. KAISER: Suspending the sheriff.

1 COMMISSIONER RENNE: Thank you. It's getting
2 late.

3 UNKNOWN PERSON IN AUDIENCE: You said it right.

4 COMMISSIONER RENNE: Isn't that one of your
5 positions that that standing alone is sufficient, and
6 then you say, but if it isn't -- assuming it isn't we
7 want to be able to prove the rest of it?

8 MS. KAISER: Yes, we do believe that standing
9 alone, at least the conduct that was adjudicated in the
10 context of a man filling the office of sheriff and being
11 sheriff elect and being a member of the Board of
12 Supervisors, we do think that that's sufficient to state
13 a cause of action for official misconduct and to lead to
14 his removal. It's not that that is insufficient somehow.
15 It's that -- that our case is not limited to that.

16 And we also don't agree with the position that
17 it is somehow without content that -- for example, the
18 argument that it's not a crime of moral turpitude really
19 relies on a Ninth Circuit case about whether it's even
20 possible to commit without moral turpitude for purposes
21 of deportation. Because an offense that can be a crime
22 of moral turpitude can lead to deportation in some cases.

23 Now, the very fact that it's possible to have
24 committed it without moral turpitude, isn't very relevant
25 in this case where what's at issue is the actual

1 behavior. And that actual behavior, frankly, under the
2 case law is an act of moral turpitude.

3 What we don't want to do is be hemmed into
4 these sort of formalistic arguments. We always want to
5 be able to present you with the actual conduct that is
6 the basis of the charges, not an empty form.

7 COMMISSIONER HUR: Thank you.

8 COMMISSIONER STUDLEY: Perhaps --

9 COMMISSIONER HUR: Commissioner Studley.

10 COMMISSIONER STUDLEY: Starting in the
11 affirmative, speaking only for myself, I would find it
12 helpful to hear from the first and/or the second expert
13 witness, because I do feel that we will each be asked to
14 determine something about the standard of decency, good
15 faith, and right action required of public officials, and
16 it appears to me that this testimony would be helpful to
17 me.

18 If Ms. Lemon, Professor Lemon, is the primary
19 domestic violence witness, that that is a witness from
20 whom I would like to hear.

21 I think the issues related to
22 Ms. Aguilar Tarchi, whether or not there's a legal answer
23 about whether she could be an expert for us, I think the
24 best evidence is what we will get from the fact witnesses
25 themselves, and I'd be prepared to put that one aside

1 unless and until we feel that we have a question that
2 that would help address, if that's permissible.

3 And that for me would leave whether there's
4 something that Chief Still would add, and I think the
5 comment about Ms. Upton as an expert witness is
6 well-taken.

7 COMMISSIONER HUR: Which --

8 COMMISSIONER STUDLEY: The sheriff's comment.

9 COMMISSIONER HUR: Okay. So in your view you
10 would hear from Experts 1 and 2?

11 COMMISSIONER STUDLEY: And -- 1 and/or 2 if the
12 mayor really thinks they speak to different issues.

13 COMMISSIONER HUR: Okay.

14 COMMISSIONER STUDLEY: I see there's some
15 effort to say that they have somewhat different focuses
16 in what they would be speaking to.

17 COMMISSIONER HUR: Okay. So one or two, three.

18 COMMISSIONER STUDLEY: No. 3.

19 COMMISSIONER HUR: And that's --

20 COMMISSIONER STUDLEY: I haven't responded as
21 to four; five, not now; and six, no.

22 And I've also wondered, I don't know the
23 answer, whether we have the authority to page limit
24 declarations, just in terms of providing some clarity of
25 manageability. You would know better. You and the other

1 litigators would know better whether that's an
2 appropriate procedural --

3 COMMISSIONER HUR: So one thing --

4 COMMISSIONER STUDLEY: -- standard.

5 COMMISSIONER HUR: Thank you,
6 Commissioner Studley. And I echo a lot of your views on
7 this.

8 One bigger concern, though, that I have with
9 experts over percipient witnesses, is that experts
10 typically are paid by the party. And if we defer ruling
11 on experts who we think are not relevant, that will lead
12 to the defense having to, in all likelihood, at least as
13 a protective measure, hire experts to offer testimony on
14 the same issue.

15 So I, for one, am less willing to delay the
16 decision about the relevance of a witness when it comes
17 to an expert than I am when it comes to a percipient
18 witness.

19 I share your view on Miss Aguilar Tarchi. I
20 don't -- I don't think we need her now.

21 Same with Miss Upton.

22 To me, Chief Still is duplicative to
23 Chief Lansdowne.

24 Chief Lansdowne's experience seems more
25 relevant to what we're dealing with, which is a local

1 issue rather than a CDC or state issue.

2 So as of now, my view would be at most we hear
3 from one, two, and three, but, again, I welcome the views
4 of my fellow Commissioners.

5 COMMISSIONER RENNE: Well, I would like to
6 know -- generally speaking when you have an expert
7 witness, you list what opinions that expert is going to
8 express so that the other side can prepare itself to --
9 with counter.

10 And I haven't heard that from you as to any of
11 these experts that we're talking about, not Miss Upton
12 and the others who I agree that I don't think we need to
13 hear from, but I would like to know what specific
14 opinions are you going to ask these experts to provide to
15 the Commission and how do the opinions, say, of this
16 first expert, Gennaco, how does that opinion differ or
17 how does it -- how is it different from what you're going
18 to get from Chief Lansdowne and from Wendy Still?

19 So why isn't one of them sufficient? And tell
20 us what the opinions are and we can decide whether or not
21 they really help us at all in reaching a -- preparing a
22 hearing record and sending it on down to the Board of
23 Supervisors.

24 MS. KAISER: Thank you, Commissioner.

25 The witnesses are sort of based at or aimed at

1 just particular subject matters.

2 The first one is aimed at law enforcement
3 discipline and the consistency of treatment between this
4 law enforcement officer and other law enforcement
5 officers who committed crimes.

6 The second witness is about being a chief law
7 enforcement officer and the ethical considerations that
8 go with that.

9 The third one, domestic violence.

10 The fourth one, not running a statewide prison
11 so much as what it means to administer the jail, to be in
12 charge of an entire jail apparatus. And it's analogous
13 to a criminal prison. It's just at a local level. So
14 she can bring us that expertise.

15 So we're giving just a number of topics that
16 relate centrally to the sheriff's duties.

17 COMMISSIONER RENNE: But how are any of those
18 opinions relevant to the issues in this case?

19 UNKNOWN PERSON IN AUDIENCE: Right, right.
20 Good question. Very good question.

21 MS. KAISER: They are going to support the
22 standards of professional conduct associated with the
23 position of sheriff in all of those regards.

24 Again, it's a multifaceted position. There are
25 many different responsibilities.

1 The second prong of the official misconduct
2 definition goes to the standard of professional conduct,
3 and we've assembled a list of peers of the sheriff's who
4 can speak to those conduct requirements from the position
5 of being a peer of the sheriff, and that is the legal
6 test associated with the definition of a right conduct
7 standard.

8 In terms -- I do want -- I do want to respond
9 to your question about why haven't we provided a list of
10 opinions that these experts have.

11 Frankly, part of that has to do with the very
12 tight schedule we've faced since the last hearing, you
13 know, a month ago, where we briefed all the substantive
14 issues and other investigative issues as well, put
15 together all of our fact witnesses, and found and listed
16 for you all of our experts.

17 I have not had time yet to work extensively
18 with each expert to find out what their opinions are.
19 It's not actually a matter of I have a list of opinions
20 for them. It's a matter of they have a list of opinions
21 for me. And I needed to know that they had the
22 qualifications and that they were willing to participate.

23 That's more or less what I can tell you right
24 now. And our attempt to indicate the subject matter was
25 a way to signal to the sheriff, who we believe also did

1 have a rebuttal deadline, what the subject matter areas
2 of the witnesses would be.

3 COMMISSIONER HUR: Thank you, Miss Kaiser.

4 Other questions for Miss Kaiser on the experts?

5 Mr. Kopp, I would -- I would invite your
6 response particularly on the -- on the first -- first few
7 witnesses that we've discussed.

8 MR. KOPP: Well, sure. But what I just heard
9 was that the mayor is proposing these expert witnesses
10 without knowing what their opinions would be.

11 How am I supposed to respond in any meaningful
12 fashion to that?

13 COMMISSIONER HUR: Well, you can respond to
14 whether the topics -- what I'm -- what I'm curious about,
15 whether the topics are -- even merit expert testimony at
16 all?

17 MR. KOPP: No.

18 COMMISSIONER HUR: So you need to explain that,
19 which is what we're asking you.

20 MR. KOPP: I'm sorry.

21 No, I do not think that they merit exploration,
22 because, again, I don't think it goes to the core inquiry
23 here, was the conduct of Sheriff Mirkarimi related to his
24 official duties, which are narrow.

25 So I don't think that a witness who has

1 expertise in whatever happens in Los Angeles is going to
2 help this Commission arrive at a recommendation.

3 I don't think that this chief in San Diego is
4 going to offer anything that's going to help your
5 determination.

6 I certainly don't think the domestic violence
7 expert has anything to offer.

8 I understood the mayor to just argue that this
9 witness is going to be able to tell you that there was
10 more conduct -- more domestic violence conduct committed
11 by Sheriff Mirkarimi than he was willing to admit to.

12 So, apparently, she's some sort of clairvoyant
13 as well as being an expert witness. I -- that's just not
14 going to help the inquiry. It's a fact inquiry. It
15 shouldn't be an opinion inquiry.

16 UNKNOWN PERSON IN AUDIENCE: Yeah.

17 MR. KOPP: I don't know if I answered your
18 questions on those three witnesses. I'd be happy to try
19 and add.

20 COMMISSIONER HUR: Do the Commissioners have
21 questions of Mr. Kopp about any of the other witnesses or
22 the three that were identified?

23 Thank you.

24 MS. KAISER: I'm sorry, may I just speak
25 briefly to the issue of Beverly Upton, or would you like

1 not to hear about that?

2 COMMISSIONER HUR: I don't have any questions
3 about her, but if the other Commissioners do, then I
4 would invite them to -- I don't think so.

5 MS. KAISER: Thank you.

6 UNKNOWN PERSON IN AUDIENCE: Sit down.

7 (Audience interruption.)

8 COMMISSIONER HUR: Please.

9 COMMISSIONER STUDLEY: Excuse me.

10 COMMISSIONER HUR: That is exceptionally rude,
11 and, you know -- is there an officer outside?

12 (Sheriff's Deputy entered the meeting room.)

13 COMMISSIONER STUDLEY: That's the one.

14 COMMISSIONER HUR: Yeah. If you could stay,
15 and if there are people who are making rude comments
16 during our attempt to conduct these proceedings, if you
17 could instruct them to leave, I would appreciate that.

18 SHERIFF DEPUTY: I will do that.

19 COMMISSIONER HUR: Thank you.

20 SHERIFF DEPUTY: Quick reminder, as we just
21 heard whoever is on the microphone please try to restrain
22 from comment.

23 Thank you.

24 COMMISSIONER HUR: Are the Commissioners in
25 agreement that we do not need Beverly Upton?

1 COMMISSIONER STUDLEY: Yes.

2 COMMISSIONER HAYON: Yes.

3 COMMISSIONER LIU: Yes.

4 COMMISSIONER RENNE: Yes.

5 COMMISSIONER HUR: Are the Commissioners in
6 agreement that we do not need Elizabeth Tarchi?

7 COMMISSIONER LIU: Yes.

8 COMMISSIONER STUDLEY: Yes.

9 COMMISSIONER HAYON: (Witness nods head.)

10 COMMISSIONER RENNE: Yes.

11 COMMISSIONER HUR: What about
12 Chief Wendy Still?

13 COMMISSIONER HAYON: I'm in agreement that we
14 don't need her.

15 COMMISSIONER HUR: As an expert?

16 COMMISSIONER HAYON: As an expert.

17 COMMISSIONER HUR: Any --

18 COMMISSIONER RENNE: No.

19 COMMISSIONER HUR: -- dissent?

20 COMMISSIONER LIU: No. I mean, it sounds like
21 we're going to hear about running the jail system here
22 anyway. So I don't think we need Chief Still for that.

23 COMMISSIONER HUR: Do we think we need Nancy
24 Lemon with respect to domestic violence?

25 COMMISSIONER HAYON: Well, I would like to hear

1 from her.

2 COMMISSIONER STUDLEY: Yeah, so would I.

3 COMMISSIONER RENNE: You would what?

4 COMMISSIONER HAYON: I would like to hear from
5 her.

6 COMMISSIONER LIU: Yes, I would as well.

7 And I would also like to hear from either
8 Expert No. 1 or 2 for the reasons articulated by
9 Commissioner Studley.

10 COMMISSIONER HAYON: I agree. One or two. Not
11 both.

12 COMMISSIONER LIU: Right.

13 COMMISSIONER HUR: I agree with that as well.

14 Among the two -- well, maybe we can ask
15 Miss Kaiser.

16 Miss Kaiser, if we were to exclude one or two,
17 do you have a preference given that it appears that they
18 are somewhat duplicative?

19 MS. KAISER: I would like to be able to explore
20 with the witnesses who has a better foundation to give
21 you nonhearsay --

22 COMMISSIONER HUR: Well, it's an expert.

23 MS. KAISER: -- solid -- I understand.

24 But -- but opinions based on solid expertise
25 and experience. I don't know -- I would like to have a

1 witness who can speak to both of those topics, and I
2 don't know which one would be better qualified to do
3 that.

4 COMMISSIONER HUR: Okay.

5 COMMISSIONER STUDLEY: I would find that
6 acceptable, to let the city choose.

7 COMMISSIONER HAYON: Uh-huh.

8 COMMISSIONER HUR: Any objection?

9 COMMISSIONER HAYON: No.

10 COMMISSIONER HUR: We should make sure to have
11 a timeline for when those disclosures are made, but I
12 find that acceptable as well.

13 Okay. Next we have the sheriff's list of
14 experts, which just includes --

15 MR. ST. CROIX: Mr. Chairman, there is two
16 additional expert witnesses on the mayor's list under tab
17 14.

18 COMMISSIONER HUR: The supplemental list.

19 Thank you.

20 MS. KAISER: If I may go right ahead and offer,
21 I'm happy to reserve Mr. Sinclair as a potential rebuttal
22 witness. He also is responsive to arguments that have
23 been circulating about rehabilitation and accountability
24 and things like that. He can speak to that, but until
25 those arguments are made, I'm happy to put him aside.

1 COMMISSIONER HUR: Mr. Kopp?

2 MR. KOPP: I'm sorry, which witness was this?

3 MS. KAISER: Hamish Sinclair.

4 MR. KOPP: You know, I don't have before me the
5 proposed testimony, but -- I'm going to let Mr. Waggoner
6 speak.

7 COMMISSIONER HUR: Okay. Mr. Waggoner.

8 MR. WAGGONER: We object to Mr. Sinclair's
9 testimony in any fashion, certainly as an expert.
10 Mr. Sinclair actually made public statements in -- that
11 were very harshly critical of Sheriff Mirkarimi, similar
12 to Miss Upton and Miss Tarchi.

13 Mr. Sinclair has already offered his opinion as
14 to the underlying issues in this case, and on that basis
15 we would respectfully request that he not be included as
16 an expert or otherwise.

17 COMMISSIONER HUR: Mr. Waggoner, so will you
18 agree, then, that you are not going to be offering
19 affirmative expert testimony on the subjects listed under
20 Hamish Sinclair --

21 MR. WAGGONER: That's correct.

22 COMMISSIONER HUR: -- on the mayor's
23 supplemental list?

24 Okay. Well, then I guess there would be no
25 need for rebuttal if there was no offered testimony on

1 that subject.

2 MS. KAISER: We're concerned about
3 Sheriff Mirkarimi's own self-description as fully
4 rehabilitated, fully having accepted accountability,
5 being, you know -- coming to you from the perspective of
6 restorative justice, having already traversed that
7 process.

8 We don't agree with those statements. We've
9 heard them, again, in the media. We don't know if we
10 will confront them in the case, and that's why I would
11 like to -- I'm not comfortable saying the issue won't
12 come up. It may not come up with an affirmative expert
13 on their side, but we may need expert testimony to rebut
14 some of the sheriff's own testimony based on what he said
15 to the media.

16 COMMISSIONER HUR: Comments, views from the
17 Commissioners with respect to Mr. Sinclair?

18 MS. KAISER: May I -- I'm sorry, may I also
19 just make one overarching point, which is: Normally
20 experts come to cases with backgrounds. They don't
21 promise to be neutral observers. Some people in this
22 particular case have very strong opinions.

23 Whether or not their bias generally goes to the
24 weight that you give their opinion, it is not -- usually
25 just in civil practice, the normal process is to

1 determine whether they have sufficient expertise to be
2 heard, but then whether or not you believe they are
3 biased or unable to evaluate the issues clearly would go
4 to the weight of their testimony.

5 I just wanted to clarify that that's standard
6 practice. It may not be what the Commission decides to
7 do here.

8 COMMISSIONER HUR: Comments from the
9 Commissioners with respect to Mr. Sinclair?

10 Miss Kaiser, these -- Mr. Sinclair was offered
11 as a supplemental subject-matter expert. So that means
12 that was based on seeing the expert disclosures -- or the
13 witness disclosure, right, of the mayor?

14 MS. KAISER: (Shakes head.)

15 COMMISSIONER HUR: No?

16 MS. KAISER: No. I believe the timing was
17 such that our -- well, certainly our expert disclosure
18 predated their expert disclosure. The only reason it's
19 supplemental, actually, is not in response to anything we
20 saw from the sheriff. It had to do with the very short
21 timeline we were working on, and just difficulties in
22 reaching witnesses, and, you know, making sure that they
23 would be qualified and would speak to the issues. It was
24 simply an administrative difficulty, and that was the
25 case both for Mr. Sinclair and for Sheriff Smith.

1 COMMISSIONER HUR: I, for one, do not see the
2 relevance of Mr. Sinclair. I don't -- I don't see how
3 this is going to help us make our decision.

4 Is there any dissenting viewpoint?

5 Commissioner Liu.

6 COMMISSIONER LIU: No, I mean, I would agree
7 with you. Because I think -- I mean, we're here to
8 determine the facts as they happen and how that relates
9 to his job duties possibly, or not, and not necessarily
10 to determine his conduct -- his post-sentencing conduct.

11 So I would agree that we don't need to hear
12 from this expert.

13 COMMISSIONER HUR: Sheriff Smith.

14 Miss Kaiser, would you like to speak to
15 Sheriff Laurie Smith?

16 MS. KAISER: We believe that she is also
17 expert, at this time not on discipline and not just on
18 chief law enforcement ethics, but she'd be able to speak
19 to the duties and the relationships of a Bay Area sheriff
20 in a large municipality and what it takes to serve in
21 that role.

22 Again, it's a different focus. These all go to
23 the duties of the sheriff. I do not believe that any of
24 these, frankly, are duplicative, but to the extent that
25 you would like us to narrow down the list, we'll do what

1 we can to combine.

2 I think the most that I can say is perhaps we
3 should put her on the list with the one or two, and maybe
4 she should be one or two or three, and we can talk to
5 that group of witnesses and see who can best represent
6 the positions we'd like to offer.

7 COMMISSIONER HUR: I have no objection to that.

8 COMMISSIONER LIU: That's fine.

9 COMMISSIONER STUDLEY: Fine.

10 COMMISSIONER RENNE: Fine.

11 MS. KAISER: Thank you.

12 COMMISSIONER HUR: Is there an objection to the
13 sheriff's one expert? Miss Kaiser or Mr. Keith?

14 MR. WAGGONER: We object to Sheriff Laurie
15 Smith.

16 Can we be heard on that issue?

17 COMMISSIONER HUR: Yes.

18 MR. WAGGONER: So at this point, if my notes
19 are correct, the Commission has approved receiving
20 testimony in the form of declarations from
21 Chief Lansdowne, Mr. Gennaco, Mr. Henderson, Vicki
22 Hennessy --

23 COMMISSIONER HUR: Mr. Waggoner, can we
24 limit -- we're past the percipient witnesses. We're
25 talking about the expert witnesses right now.

1 And what we've agreed is that the mayor may
2 call one of the three witnesses: Gennaco, Lansdowne, or
3 Smith.

4 MR. WAGGONER: Shouldn't Henderson be included
5 in that group?

6 COMMISSIONER HUR: Henderson is a percipient
7 witness to whom we have invited a declaration.

8 MR. WAGGONER: I'm not sure what percipient
9 facts that Mr. Henderson -- I don't think that's been
10 stated this evening, what percipient facts he would
11 testify to. And in fact, Commissioner, with all due
12 respect, you opposed including a declaration from
13 Mr. Henderson.

14 COMMISSIONER HUR: I did. And I was -- the
15 Commission, as a group, decided that we would get a
16 declaration from him, and that the time for objecting to
17 that has passed. We -- we went through that and -- we
18 haven't made an ultimate determination as to whether
19 Mr. Henderson's testimony will come in, but we will get a
20 declaration from him.

21 Do you have an objection to the sheriff's
22 experts and this procedure of choosing one, two, or
23 three?

24 MR. WAGGONER: Yes. We object to any of them,
25 to choosing even one. They're all -- they're not

1 relevant.

2 As Commissioner Renne mentioned earlier when
3 asked what the opinion would be, the city attorney was
4 not able to say what that would be. So on that basis and
5 on the basis of relevance, we would continue to maintain
6 an objection to any of those witnesses.

7 COMMISSIONER HUR: So you have an expert on the
8 standard of care. You have Michael Hennessey, right? So
9 you don't think you need him either?

10 MR. WAGGONER: Respectfully, Commissioner,
11 we're prepared to tell you right now what exactly
12 Mr. Hennessey's -- Sheriff Hennessey's opinion would be
13 on the underlying issues --

14 COMMISSIONER HUR: Okay.

15 MR. WAGGONER: -- as opposed to --

16 COMMISSIONER HUR: It sounds like it would
17 relate to the standard of care and whether -- what
18 conduct falls below the standard of care, I would
19 presume, in light of --

20 MR. WAGGONER: It would relate to the
21 San Francisco Sheriff's Department specifically. The
22 exact department at issue in this case.

23 COMMISSIONER HUR: Okay. So my -- my point is
24 that sounds like everyone is in agreement that we need a
25 standard-of-care expert. Both parties have proposed

1 them.

2 I think if -- certainly, if you have one, I
3 think the mayor's entitled to have one. Whether there
4 are specific objections to the opinions that are offered,
5 I think we can deal with that once we know what the
6 opinions are.

7 But I, for one, think that we will need a
8 subject matter standard-of-care expert, and the mayor and
9 you should be allowed to have one.

10 Does the mayor have any objection to
11 Mr. Hennessey, particularly in light of what we just
12 discussed?

13 MS. KAISER: No, not at all. I mean, we would
14 just ask that all experts' opinions be disclosed by
15 declaration the same way as other witnesses, you know, so
16 that we can all fully prepare for each other's cases.

17 And I'd just like to clarify, since I feel as
18 though I'm being misquoted, it is not that I have no idea
19 what these experts will say. It's that I am not coming
20 with a list of opinions to disclose.

21 Obviously, I have plenty of idea what they will
22 say based on my preliminary conversations. It's just
23 that on this short timeline we're not able yet to do this
24 sort of expert disclosure that you would normally see at
25 the end of civil litigation.

1 COMMISSIONER HUR: Commissioner Studley.

2 COMMISSIONER STUDLEY: Mr. Waggoner asked
3 specifically to speak to Chief Smith and -- do I have
4 that title right? And while the Chair has just --
5 Sheriff Smith. While the Chair has just indicated the
6 view, which I share, about each side having a
7 standard-of-care expert, I'd like to know now whether you
8 have specific objections to Sheriff Smith, because that
9 may go to whether she should be one of the three?

10 Let's hear those now if you have a specific
11 objection to her, as opposed to a general one as to a
12 standard-of-care expert. I say that because I don't want
13 the mayor to choose among three and then learn later that
14 you had specific reasons that she would not be
15 appropriate, that might not apply to the other two.

16 MR. WAGGONER: Thank you, Commissioner.

17 So just to review and make sure I have this
18 clear, we're talking about Michael Gennaco,
19 Chief Lansdowne, and Sheriff Smith. And the question is:
20 Do we have specific objections to Smith?

21 COMMISSIONER STUDLEY: Right. Since that was
22 your request when you stood up.

23 MR. WAGGONER: It was -- I stood up to make an
24 objection to Sheriff Smith, a general objection.

25 As to specifically, there's nothing -- nothing

1 the city attorney has said that goes to what exactly --
2 which charge specifically. And, again, I make that
3 point, which I hope that we'll come back to since there
4 are no specific counts in the charges. There's paragraph
5 after paragraph, but there's no specific charges.

6 So that's a very specific objection as to
7 Sheriff Smith. It's not been at all -- we don't know at
8 all what specifically Sheriff Smith -- what that
9 testimony -- what her testimony will cover.

10 COMMISSIONER STUDLEY: Wouldn't that apply
11 equally to Gennaco and --

12 COMMISSIONER LIU: Lansdowne.

13 COMMISSIONER STUDLEY: -- Lansdowne?

14 COMMISSIONER HUR: Lansdowne.

15 MR. WAGGONER: Yes, it would.

16 COMMISSIONER STUDLEY: Okay. My question is --
17 I think we've heard you on that point.

18 Do you have any specific objections to
19 Sheriff Smith as distinct from your broad objection to an
20 expert on the standard of care?

21 MR. WAGGONER: No, Commissioner. Thank you.

22 COMMISSIONER STUDLEY: Thank you.

23 COMMISSIONER HUR: The next item that we need
24 to address is timing.

25 It appears that we do have rooms available for

1 testimony on June 19th, from 6 p.m. on, and June 29th,
2 from 8:00 a.m. to 6 p.m.

3 Mr. St. Croix, I don't know if we have any
4 additional information about other available dates.

5 MR. ST. CROIX: Friday, July 20th.

6 COMMISSIONER HUR: And Friday, July 20th.

7 MR. ST. CROIX: From 12:30 until to 6:30.

8 COMMISSIONER HUR: From 12:30 until to 6:30.

9 MR. ST. CROIX: I'm sorry.

10 COMMISSIONER HUR: Go ahead.

11 MR. ST. CROIX: Were you going to go over the
12 sheriff's witness list?

13 COMMISSIONER HUR: No. Because the sheriff
14 said that he didn't need -- he wouldn't -- there were
15 only two witnesses that he would want and his witness
16 list was --

17 MR. ST. CROIX: All right. Sorry.

18 COMMISSIONER HUR: -- defensive.

19 Can the parties -- Mr. Kopp, Miss Kaiser, and
20 Mr. Keith -- are those dates -- are you available --

21 COMMISSIONER STUDLEY: He seems troubled. He
22 seems troubled.

23 I have the same question as Mr. St. Croix. I
24 just -- go ahead.

25 COMMISSIONER HUR: Okay.

1 COMMISSIONER STUDLEY: I can't tell if Mr. Kopp
2 is --

3 COMMISSIONER HUR: Mr. Kopp, am I correct that
4 we don't need to go through your witness list because
5 your witness list was defensive and we have addressed all
6 the witnesses that you think need to be called?

7 MR. KOPP: Yes. I don't think we need to go
8 through our witness list at this time.

9 COMMISSIONER HUR: Thank you.

10 COMMISSIONER STUDLEY: Thank you.

11 MR. KEITH: Commissioners, I just want to
12 clarify because this affects how we prepare for the
13 hearing. I mean --

14 COMMISSIONER STUDLEY: Microphone.

15 MR. KEITH: I'm sorry. Sorry.

16 I just want to clarify because this affects how
17 we prepare for the hearing, whether the sheriff is
18 essentially dropping all of their fact witnesses? I
19 mean, whatever they're going to do, we just want to have
20 a clean understanding of it. I don't understand it right
21 now.

22 COMMISSIONER HUR: They have said that they're
23 going to perhaps get a declaration from Mr. Hennessey,
24 who is also listed as their expert.

25 I presume you will offer a declaration of the

1 sheriff, and you also had Miss Lopez on your list?

2 MR. KOPP: Yes, we do. And we hope to offer
3 her testimony live or remotely. We certainly intend to
4 submit a declaration from her.

5 COMMISSIONER HUR: Okay. Miss Haynes?

6 MR. KOPP: We hope to be able -- I'm not -- I
7 can't tell you right now that we can submit a
8 declaration, but we hope to at least be able to submit a
9 declaration and ideally have her testimony live if you
10 wanted to hear from her.

11 COMMISSIONER HUR: Okay. Does that answer your
12 question?

13 Is there anybody else, Mr. Kopp, who you intend
14 to offer affirmative evidence from?

15 MR. KOPP: Well, I think that we're not going
16 to foreclose the idea of submitting declarations from the
17 other witnesses on our list, but as you just stated, we
18 are in a defensive posture here. It's going to depend on
19 what the declaration from the mayor says.

20 COMMISSIONER HUR: Okay. Well, you're not
21 going to offer testimony -- my understanding was, you're
22 not offering testimony or going to seek a declaration
23 from anyone who we've excluded, because we only went over
24 the mayor's list. Many of those people were redundant to
25 people on your list.

1 The decisions we made about people who are
2 excluded are going to apply equally to your list and to
3 their list.

4 MR. KOPP: Well, then -- then I think we should
5 go over them, because I did not understand that to be the
6 Commission's decision, so...

7 COMMISSIONER HUR: Okay. Do you intend to call
8 Art Agnos?

9 MR. WAGGONER: Respectfully, Commissioners, I
10 would request a -- just a few-minute recess before we go
11 into our witness list.

12 COMMISSIONER HUR: Okay. We will take five
13 minutes.

14 MR. WAGGONER: Thank you.

15 (Short recess.)

16 COMMISSIONER HUR: Okay. We are back in
17 session. If people could please take their seats.

18 Mr. Waggoner, you were going to address the
19 sheriff's witnesses.

20 I will say that I'm a little surprised, because
21 when Mr. Kopp stood up I recall him pretty clearly saying
22 that he only needed two witnesses, the mayor and the
23 sheriff, and that the other witnesses were there simply
24 as a defensive measure. So that is sort of the color
25 with which I'm viewing any discussion -- further

1 discussion about the witnesses on the defendants.

2 MR. WAGGONER: If I may, Commissioner, let me
3 clarify that.

4 I think, actually, you misunderstood Mr. Kopp.
5 We believe that -- the distinction is between live
6 witness testimony and declarations, and that's what
7 Mr. Kopp's comments were referring to.

8 That we believe -- it's our position that in
9 terms of live witness testimony, the only two essential
10 witnesses are the sheriff and the mayor. All other
11 witness testimony could be submitted via declaration.
12 That's what Mr. Kopp intended to convey.

13 COMMISSIONER HUR: Okay. Please proceed.

14 MR. WAGGONER: As to Mr -- former Mayor Art
15 Agnos?

16 COMMISSIONER HUR: Yes, why do we need to hear
17 from former Mayor Agnos?

18 MR. WAGGONER: So Mr. -- excuse me, Mayor Agnos
19 is expected to testify such that -- his testimony would
20 be relevant because it will impeach Mayor Lee's and it
21 will also demonstrate the mayor's bias.

22 Specifically, he will testify to specific
23 conversations he had with Mayor Lee immediately prior to
24 the mayor's suspension of the sheriff.

25 COMMISSIONER HUR: And this will relate to

1 what? Why the mayor suspended the sheriff?

2 MR. WAGGONER: Again, it will -- Mayor Agnos'
3 testimony is expected to impeach the mayor's credibility.

4 COMMISSIONER HUR: Meaning that there was
5 another reason why he suspended the sheriff besides the
6 stated charges?

7 MR. WAGGONER: Yes.

8 COMMISSIONER HUR: Okay. Commissioners' views
9 on testimony of Mr. Agnos?

10 Miss Kaiser or Mr. Keith, would you like to --

11 MR. KEITH: My understanding of the thrust of
12 Mayor Agnos' testimony would be that he told Mayor Lee
13 not to suspend Sheriff Mirkarimi and the mayor decided
14 otherwise. And I don't see how that testimony is
15 relevant to the issue of official misconduct.

16 And I should add, one of the arguments that's
17 been raised in much of the briefing from the sheriff is
18 that this is essentially a political prosecution.

19 And one of the reasons that we have identified
20 so many expert witnesses and talk about practice issues
21 and professional-standards issues, is to defeat that kind
22 of claim, to show that on the merits the conduct didn't
23 meet that standard.

24 And what I'm gathering from the relevance that
25 was just described of the Art Agnos testimony, is that

1 that's a line that the sheriff is going to pursue. And
2 so we don't feel that that's ever been an appropriate
3 sort -- set of arguments. He either committed official
4 misconduct or he didn't. The mayor is not on trial for
5 his decision to suspend the sheriff.

6 COMMISSIONER HUR: Comments from the
7 Commissioners or questions for the other party?

8 COMMISSIONER LIU: Well, Mr. Waggoner, is that
9 correct what -- how Mr. Keith characterized what former
10 Mayor Agnos would testify to?

11 MR. WAGGONER: I believe I've already stated
12 what former Mayor Agnos would testify to, and that his
13 testimony would impeach the credibility of Mayor Lee
14 vis-a-vis the testimony regarding the conversations that
15 he had with Mayor Lee.

16 COMMISSIONER HUR: What would he say? What is
17 this other reason?

18 MR. WAGGONER: Mr. -- excuse me, Mayor Agnos
19 told the mayor, Mayor Lee, to talk to Eliana Lopez
20 directly. Mayor Lee declined to do so.

21 Mayor Agnos also asked if Mayor Lee had spoken
22 to any other mayor about his intention to suspend the
23 sheriff, and Mayor Lee indicated that he had not.

24 At a minimum, that is extremely relevant to the
25 mayor's suspension of the sheriff in terms of his

1 motivations, his lack of reviewing any evidence, or even
2 contacting Eliana Lopez in this case before he suspended
3 the sheriff.

4 COMMISSIONER HUR: I thought --

5 MR. WAGGONER: Also, I would add respectfully,
6 Commissioners, as a former mayor we could have also
7 called Mayor Agnos just as the city attorney has called a
8 number of sheriffs, retired sheriffs, or other
9 individuals. We could have called Mayor Agnos as an
10 expert witness on what constitutes official misconduct
11 and when a mayor should suspend another elected official.

12 So I should just add that as well.

13 COMMISSIONER RENNE: Mr. Waggoner, assuming
14 that the mayor testifies consistent with what you say
15 Mayor Agnos is going to testify, there's no need for
16 Mr. Agnos -- Mayor Agnos to come in and say anything,
17 because it doesn't go to attack credibility. It just
18 says the same thing.

19 Is that right?

20 MR. WAGGONER: It says the same thing as what?

21 COMMISSIONER RENNE: As what -- if he agrees --
22 if you ask him, "Didn't you tell Mayor Agnos when he came
23 in, didn't you tell him that you hadn't consulted with
24 anybody? Didn't you" -- he says yes, nothing that
25 Mayor Agnos is saying goes to impeach credibility.

1 MR. WAGGONER: Well, without having heard the
2 mayor's case-in-chief, you know -- sure, I can state at
3 the outset that every witness that the sheriff would call
4 would be to rebut the mayor's case-in-chief, but I think
5 that goes without saying.

6 I think the question here is what is the
7 relevance of former Mayor Art Agnos' testimony? And I'm
8 presuming that Mayor Lee is not going to take the stand
9 before you and say that he refused to or declined to talk
10 to any other mayor about the suspension --

11 COMMISSIONER HUR: But you could ask him on
12 cross-examination, is, I think, Mr. Renne's point.

13 MR. WAGGONER: Yes, that is correct.

14 COMMISSIONER HUR: Commissioner Studley.

15 COMMISSIONER STUDLEY: I don't see that the
16 mayor's motivation or state of mind has any part in what
17 we're about here. We have -- it's for that very reason
18 that the people passed this initiative to have -- give us
19 the job of determining whether official misconduct took
20 place, and we can say "yes" or "no," but the motivation
21 behind it -- this line puzzles me. So maybe some of you
22 see something else.

23 COMMISSIONER HUR: To me -- I mean, I am
24 less -- I see your point, although I'm additionally
25 persuaded that we don't need Mayor Agnos, because I

1 haven't heard any reason -- anything that he's going to
2 say about a different reason for why the suspension
3 happened, which is what I thought you said he was going
4 to say in my earlier question.

5 MR. WAGGONER: Respectfully, Commissioners, the
6 city attorney attacked the sheriff for saying or
7 suggesting that all of this was political.

8 It's not the city attorney's role to determine
9 what the defense of the sheriff is or what an appropriate
10 defense is or which witnesses the sheriff should be able
11 to call. That's not the city attorney's call and,
12 respectfully, the sheriff is entitled to put on as
13 vigorous a defense as he can against the charges.

14 Mayor Agnos is a former mayor of San Francisco.
15 He surely knows a little bit about what -- the
16 responsibilities of a mayor with regard to the suspension
17 of public officials with -- and he spoke directly to
18 Mayor Lee immediately before Mayor Lee suspended the
19 sheriff, on this exact issue.

20 So if the city attorney can have witnesses come
21 in who have no -- nothing -- nothing to offer except some
22 roundabout opinion on what the responsibility of a
23 sheriff in some other part of California is, and they
24 have no percipient knowledge at all or, for example,
25 Mr. Henderson has no knowledge at all as to any of the

1 underlying facts of this case, and he can come in, but we
2 are suggesting that Mr. Agnos be permitted to testify by
3 declaration and -- but somehow even though he spoke to
4 the mayor that that's not relevant, I respectfully
5 disagree.

6 COMMISSIONER HUR: Thank you.

7 Commissioners, does anybody here think that we
8 should receive a declaration from Mayor Agnos?

9 No?

10 COMMISSIONER LIU: No, not -- not for the
11 purpose -- not from what we've heard tonight. I don't
12 think it's useful.

13 COMMISSIONER HUR: Phil Bronstein.

14 Why do we need to hear from Phil Bronstein?

15 MR. WAGGONER: Between January 1st and January
16 4th, Phil Bronstein spoke with Ivory Madison regarding
17 the underlying facts of this case. Phil Bronstein's
18 testimony is relevant to Ivory Madison's credibility and
19 relevant to what Ivory Madison actually said to
20 Mr. Bronstein regarding the underlying facts of the case.

21 COMMISSIONER HUR: So he told -- she told
22 something different to Mr. Bronstein than -- I guess
23 that's hard to compare what -- but are you expecting
24 her -- are you expecting to elicit testimony from him
25 that she said something different than what you expect

1 her to testify about?

2 MR. WAGGONER: Yes.

3 COMMISSIONER HUR: What -- what differences are
4 you intending to elicit?

5 MR. WAGGONER: I have not had a chance -- we've
6 not been able to talk to Mr. Bronstein directly. So as
7 to what --

8 COMMISSIONER HUR: So then how do you know that
9 it's going to be inconsistent?

10 MR. WAGGONER: Because Mr. Bronstein has told
11 others that the only thing that he talked to Ivory
12 Madison about was whether Madison could get phone numbers
13 of three individuals, and we believe that the testimony
14 between the two will conflict.

15 Moreover, Mr. Bronstein also is a former editor
16 of the San Francisco Chronicle, and, again, goes to the
17 political nature of this case, which is certainly -- we
18 absolutely believe that on a factual basis alone, the
19 facts stand for themselves, but to ignore the politics of
20 this case, to ignore the political reality, to ignore the
21 fact that Agnos or Bronstein were key players in this
22 case and to not allow their testimony is -- would be a
23 great injustice.

24 UNKNOWN PERSON IN AUDIENCE: That's right.

25 MR. WAGGONER: And if I may go back to former

1 Mayor Art Agnos.

2 If you're not going to allow us to provide a
3 declaration outright, I would respectfully request that
4 you at least permit us to call him as a rebuttal witness
5 in the event that -- based on what Mayor Lee -- based on
6 Mayor Lee's testimony.

7 COMMISSIONER HUR: I think we can reserve that
8 decision, but I wouldn't preclude that.

9 MR. WAGGONER: Thank you.

10 COMMISSIONER HUR: Mr. Bronstein, do the
11 Commissioners have views on Mr. Bronstein?

12 You know, I am -- I am sensitive and cognizant
13 that the sheriff is trying to put on a defense here, and
14 I don't want to hamper the defense of the case, but I am
15 really having a hard time, in light of what I've heard,
16 seeing how Phil Bronstein is going to have anything
17 that's probative to what we're trying to decide.

18 I mean, you guys were up here saying that this
19 should not be about politics, which I agree with, and so
20 I'm having a hard time seeing -- seeing the relevance.

21 COMMISSIONER RENNE: Well, I want to make clear
22 that regardless of what we say about Mayor Agnos or
23 Mr. Bronstein, if when the live testimony of the mayor or
24 anyone else you think would be rebutted by somebody who's
25 on your witness list or isn't on your witness list, I

1 think I, for one, would say certainly you've got a right
2 to call them if it goes to rebut it.

3 I think the question we're asking now is: In
4 your affirmative case, in the case that you're making
5 affirmatively, not attacking the mayor's case, but the
6 affirmative case as to why we should not recommend to the
7 Board of Supervisors that it go the way the mayor's
8 decided, those -- those are the witnesses I want to know
9 about tonight as to whether or not they're going to be
10 called.

11 You clearly can have the right to call somebody
12 in rebuttal if you elicit testimony that is inconsistent
13 with what you know they're going to say.

14 COMMISSIONER HUR: And that it's probative to
15 the charges.

16 COMMISSIONER RENNE: Yeah.

17 COMMISSIONER HUR: Is there any -- any of the
18 Commissioners think that we should take a declaration
19 from Phil Bronstein?

20 COMMISSIONER RENNE: Not what I've heard.

21 COMMISSIONER LIU: Yeah.

22 COMMISSIONER HUR: Not based on what we heard.
23 Leni De Leon?

24 MR. WAGGONER: Leni De Leon has worked with
25 Eliana Lopez, and Eliana Lopez -- the son of Eliana Lopez

1 and Sheriff Mirkarimi for some period of time as a day
2 care provider for their son.

3 On -- Leni De Leon had interactions -- many
4 interactions with Eliana Lopez between January 1st and
5 January 5th, 2012.

6 Leni De Leon would testify as to Eliana Lopez,
7 her demeanor, her state of mind, her -- you know, the --
8 so I'll leave it at that.

9 COMMISSIONER HUR: Commissioners, views?

10 It seems to me that based on the breadth that
11 we allowed for the mayor with respect to perceptions of
12 key witnesses in or around the time of the incident, that
13 we should at least take a declaration from Miss De Leon.

14 COMMISSIONER STUDLEY: I agree.

15 COMMISSIONER LIU: (Nods head.)

16 COMMISSIONER HAYON: (Nods head.)

17 COMMISSIONER RENNE: (Nods head.)

18 COMMISSIONER HUR: Any objection? Okay.

19 Miss Haynes, we don't have to discuss.

20 Mr. Keane was on the mayor's list and we
21 decided we didn't need to hear from Mr. --

22 COMMISSIONER HAYON: What about Jan Dempsey?

23 COMMISSIONER HUR: Jan Dempsey we decided we
24 didn't need to hear from --

25 COMMISSIONER STUDLEY: No.

1 COMMISSIONER HUR: -- because you guys were
2 going to work out a stipulation.

3 Is that still the case?

4 MR. WAGGONER: I would only add that Jan
5 Dempsey's testimony by declaration would be relevant or
6 is relevant and would be valuable in your deliberations
7 because Jan Dempsey is a retired undersheriff, could
8 testify that Sheriff Mirkarimi, prior to taking the oath
9 of office, was not performing the duties of sheriff, and
10 was -- despite what the city attorney has alleged in
11 their briefing.

12 COMMISSIONER HUR: Okay. Obviously you're not
13 going to object to them bringing in Dempsey if you guys
14 can't reach a stipulation. And I think they would be
15 hard-pressed to object to you doing the same.

16 MR. WAGGONER: Understood, thank you.

17 COMMISSIONER HUR: I will try to speak more
18 into the mic. Unfortunately, I've been talking a lot and
19 that's part of the problem.

20 Miss Haynes we've discussed.

21 Mr. Keane, do you have any need for Mr. Keane
22 in light of the discussion we had?

23 MR. WAGGONER: No, thank you.

24 COMMISSIONER HUR: Mr. Lee, Miss Lopez,
25 Miss Madison, Mr. Mertens, I don't think we need to

1 discuss them.

2 Nancy Miller.

3 Why do we need to hear from Nancy Miller?

4 MS. KAISER: Nancy Miller is interim executive
5 officer of the San Francisco Local Agency Formation
6 Commission or LAFCo.

7 Miss Miller is expected to testify by
8 declaration as to her knowledge of Sheriff Mirkarimi's
9 presence at a LAFCo event on January 4th, 2012.

10 COMMISSIONER HUR: But why is that relevant to
11 what we're trying to decide?

12 MR. WAGGONER: Because the mayor has alleged
13 that on that date the sheriff was engaged in witness
14 dissuasion and encouraging others to destroy evidence.

15 Miss Miller can testify that in fact, at least
16 for some period of time on the 4th, Sheriff Mirkarimi was
17 present at that event.

18 COMMISSIONER HUR: Is she going to be able to
19 identify specific times?

20 MR. WAGGONER: Yes.

21 COMMISSIONER HUR: Commissioners, views on
22 Miss Miller?

23 COMMISSIONER STUDLEY: I -- in anticipation of
24 that offer, I can see how that would cover the whole time
25 frame, but I think your earlier point about letting the

1 defense put on the defense that they want, I wouldn't
2 object to receiving that for whatever weight it might
3 have.

4 COMMISSIONER HUR: All right. I agree.

5 COMMISSIONER RENNE: Agreed.

6 COMMISSIONER LIU: Yeah.

7 COMMISSIONER HUR: Mr. Mirkarimi, I think we
8 can skip.

9 Miss Nieves?

10 MR. WAGGONER: Commissioners, we would only
11 call Miss Nieves as a -- possibly as a rebuttal witness
12 to -- if Flores or Miss Lemon is permitted to testify.

13 COMMISSIONER HUR: Okay. So I see your point
14 with Flores. Lemon is an expert.

15 Why does -- why does Nieves rebut Lemon?

16 MR. WAGGONER: My understanding from the city
17 attorney's comments earlier, is that Miss Lemon would
18 testify that there must have been some other conduct at
19 issue or some other instances of -- that would qualify as
20 official misconduct regarding how the sheriff has
21 interacted or interacts with other people in his life.

22 Evelyn Nieves lived with the sheriff for
23 several years and could provide testimony to the
24 contrary.

25 COMMISSIONER HUR: Okay. Miss Kaiser, you want

1 to be heard on this?

2 MS. KAISER: Miss Lemon is not going to be
3 providing testimony about other acts of misconduct.
4 She's going to be providing testimony about the nature of
5 domestic violence, and specifically the facts that are
6 elicited in this case and how they do or do not relate to
7 what is known about domestic violence.

8 We do think that Miss Nieves should not be a
9 rebuttal witness to an expert. Rather, the expert should
10 testify on the basis of all of the facts that are
11 elicited. And for that reason we would have no objection
12 to Miss Nieves putting in a declaration, and that should
13 be a part of what Miss Lemon opines about, is why would
14 you see it here and not there, for example.

15 MR. WAGGONER: If I may, Commissioners.

16 Consistent with Commissioner Renne's point
17 earlier, which -- thank you for the clarification. It
18 makes perfect sense in terms of rebuttal witnesses.

19 I would just -- we would withdraw Evelyn Nieves
20 as a witness for our case-of-chief, and just reserve the
21 right to call her as a rebuttal witness if that becomes
22 necessary.

23 COMMISSIONER HUR: Okay. Thank you.

24 Lydia Stiglich.

25 MR. WAGGONER: The same applies to Lydia

1 Stiglich, unless -- we would only call Miss Stiglich as a
2 rebuttal witness possibly.

3 COMMISSIONER HUR: So Miss Stiglich --
4 Miss Stiglich would waive the privilege and testify?

5 MR. WAGGONER: I can't -- obviously, I can't
6 comment on whether Ms. Stiglich would waive the privilege
7 at this point.

8 COMMISSIONER HUR: What -- okay. Well, you're
9 withdrawing her as an affirmative witness, right?

10 Emen Tekin?

11 MR. WAGGONER: Similar to Leni De Leon and
12 Nancy Miller, Emen Tekin would be a witness who would
13 testify as to Eliana Lopez's demeanor, state of mind, et
14 cetera, on December 31st, 2011.

15 Mr. Tekin is -- works at a restaurant that
16 Miss Lopez went to on the evening of December 31st and
17 could provide testimony as to Eliana Lopez on that date.

18 COMMISSIONER HUR: Views of the Commissioners
19 on Mr. Tekin?

20 COMMISSIONER LIU: I think we should allow it
21 for the same reasons that we're allowing Leni De Leon.

22 COMMISSIONER HUR: I agree with that.

23 Any dissenting views?

24 Callie Williams.

25 Now, when we talked about Callie Williams,

1 there was an objection to Callie Williams providing any
2 testimony.

3 So has that view now changed?

4 MR. WAGGONER: In light of the conversations
5 and everything else this evening, no, that's not changed.

6 COMMISSIONER HUR: Okay. So you do not intend
7 to call Callie Williams as an affirmative witness?

8 MR. WAGGONER: No.

9 COMMISSIONER HUR: Of course, if she ends up
10 here, you can cross-examine her or if she submits a
11 declaration.

12 Andrea Wright?

13 MR. WAGGONER: Andrea Wright is
14 Sheriff Mirkarimi's probation officer, and we would only
15 call her as a rebuttal witness.

16 COMMISSIONER HUR: Okay. Thank you,
17 Mr. Waggoner.

18 Just to recap, Art Agnos, the Commission
19 decided we would not need a declaration.

20 Same with Phil Bronstein.

21 Jan Dempsey, we expect the parties to reach a
22 stipulation on.

23 John Keane, withdrawn.

24 Evelyn Nieves is withdrawn.

25 Lydia Stiglich was withdrawn.

1 Callie Williams was withdrawn.

2 And Andrea Wright was withdrawn.

3 Of course, these witnesses are subject to
4 potentially being called as rebuttal witnesses if their
5 testimony would rebut and -- and would be probative.

6 Any --

7 COMMISSIONER STUDLEY: Mr. Chair, I think you
8 may have said, but Nancy Miller is a yes?

9 COMMISSIONER HUR: I just said the noes.

10 COMMISSIONER STUDLEY: Okay.

11 COMMISSIONER HUR: Everyone else is in.

12 COMMISSIONER STUDLEY: Okay. That's why I
13 didn't hear it, then.

14 COMMISSIONER HUR: Did I get that correctly,
15 Mr. Waggoner?

16 MR. WAGGONER: You did as to the noes.

17 COMMISSIONER HUR: Okay. Thank you.

18 And everybody else is a yes.

19 Okay. Anything else with respect to your
20 witnesses, Mr. Waggoner?

21 MR. WAGGONER: No, thank you.

22 COMMISSIONER HUR: I would like to next address
23 scheduling.

24 I think, like all the Commissioners have said
25 at the outset, we want this to proceed as quickly as we

1 reasonably can proceed.

2 We're volunteers, but we're trying to open up
3 our schedules so that it works and we can get this done
4 in an efficient and fair manner.

5 So, we are -- we do have a room and
6 availability on the 19th of June to begin the evidentiary
7 proceeding.

8 Is counsel available on that date in the
9 evening? We -- I think we initially had a limitation on
10 start time, but I wanted to double check with the
11 Commissioners.

12 What time are the Commissioners available on
13 that day?

14 COMMISSIONER STUDLEY: I believe I had
15 initially indicated that I wasn't available 'til 6:00,
16 and I could be available at our usual starting time of
17 5:30 or even 5:00, if that's helpful.

18 COMMISSIONER HUR: Okay. Are the other
19 Commissioners available starting at 5:00?

20 COMMISSIONER HAYON: Yes.

21 COMMISSIONER RENNE: (Nods head.)

22 COMMISSIONER LIU: (Nods head.)

23 COMMISSIONER HUR: Okay. Let's hear from the
24 parties.

25 MR. WAGGONER: Respectfully, Commissioners, at

1 the outset June 19th is a full month away from this
2 evening. As Commissioner Hur mentioned earlier, the
3 Charter anticipates these proceedings beginning within
4 five days of the filing of the charges of official
5 misconduct.

6 COMMISSIONER STUDLEY: No, it says --

7 COMMISSIONER HUR: I didn't say that and that's
8 not what it says. That it could start as soon as five
9 days after.

10 MR. WAGGONER: As soon --

11 COMMISSIONER STUDLEY: No less than five days.

12 MR. WAGGONER: Thank you for the correction.

13 In any event, five days -- no sooner than five
14 days, and then there's no -- there's no end date.

15 But as Commissioner Hur mentioned earlier, and
16 I thought the import of your comments were, that these
17 proceedings and this process should be carried out with
18 the greatest expediency, because for a number of other
19 reasons -- among other reasons, the sheriff -- the mayor
20 suspended the sheriff without pay.

21 This is all dragging -- this whole process
22 requires a tremendous amount of time and effort. We
23 would respectfully request this matter being heard much
24 sooner than the 19th.

25 And I understand the Director's identification

1 of a time that a hearing room is available, but we'd be
2 willing to go to any room in City Hall to have this
3 matter heard. And rather than having it heard one
4 hearing on the 19th, another one 10 days later on the
5 29th, and then the next date is July 20th, these hearings
6 could easily -- we could easily take up three to five or
7 more separate hearings.

8 I'd respectfully request, for the benefit of
9 all parties, that rather than having a date here, and a
10 date a month later, and another date a month after that,
11 taking this all possibly through the rest of the year,
12 that we pick one week -- everybody get out their
13 calendars and pick one week and identify three to five
14 days back-to-back where this whole matter can be heard
15 and dispensed with in an expedient time frame.

16 COMMISSIONER HUR: Mr. Waggoner, two points in
17 response.

18 One is that, unfortunately, we cannot hold this
19 meeting anywhere in City Hall. We're required to hold it
20 in a room equipped for T.V. So that's not within our
21 control. So there are only so many rooms that have that
22 capability. So we are limited by that.

23 As far as your request for consecutive dates, I
24 would love to have consecutive dates. I am -- we just
25 cannot -- I don't think there's availability where we're

1 all available on consecutive dates that's going to be
2 sooner than June 19th. If there is, I would certainly
3 welcome that possibility.

4 How early can you start or would you like to
5 start?

6 MR. WAGGONER: We can start immediately.
7 Meaning this week, and next week, or the week after. But
8 certainly there's no need for us to wait a full month,
9 two, three months later.

10 COMMISSIONER STUDLEY: Three weeks. Three
11 weeks.

12 MR. WAGGONER: This case --

13 COMMISSIONER STUDLEY: Three weeks from today.

14 MR. WAGGONER: We're already -- from the
15 sheriff's point of view, he was suspended already months
16 ago. This case has been going on since January. You
17 know, at what point is enough enough? You know --

18 COMMISSIONER HUR: Mr. Waggoner --

19 MR. WAGGONER: -- there's no statutory or
20 deadline in the Charter that says this -- these
21 proceedings have to be wrapped up by a certain date?

22 COMMISSIONER HUR: Mr. Waggoner, you've
23 answered my question. Thank you.

24 Okay. I do not think that we could -- I think
25 the 19th is, unfortunately, the earliest we're going to

1 be able to do this.

2 And we -- you know, Commissioner St. Croix
3 has -- has looked at the schedules of the Commissioners
4 too. You know, we have full-time jobs. And so we're
5 just not going to be able to do that.

6 As far -- and in addition, we need to see these
7 declarations. I mean, your side has made objections, and
8 has agreed that to the extent these declarations don't
9 have relevant evidence, you want us to exclude them, and
10 I think -- I think you're right that we should be able to
11 examine them, but that has to happen before we actually
12 take testimony.

13 So three weeks -- I mean, frankly, three weeks
14 is very soon after now if you're contemplating a
15 proceeding where you're taking evidence and evaluating
16 declarations.

17 So I appreciate your objection and, you know,
18 you should make your record.

19 MR. WAGGONER: And if -- and if it were the
20 19th, 20th, and 21st, that would -- that would be great.

21 And I apologize. I did get it wrong and thank
22 you for the correction Commissioner Studley. It is three
23 weeks out and not a month.

24 I just -- if there's any way possible to have
25 these hearings as quickly as possible, given the concerns

1 that you've raised, that is our strong preference, and
2 we'll clear our calendars to make that happen, and the
3 witnesses.

4 COMMISSIONER HUR: In other words, you can
5 commit to your witnesses being available on whatever
6 dates we pick?

7 MR. WAGGONER: We would do our utmost to make
8 that happen, Commissioner. Thank you.

9 COMMISSIONER HUR: Let's hear --

10 COMMISSIONER STUDLEY: I wonder -- I wonder if
11 this is something that we can do tonight or whether it
12 hinges on the staff determining whether there are any
13 hearing rooms available --

14 COMMISSIONER HUR: So I understand that in a
15 pinch --

16 COMMISSIONER STUDLEY: -- sooner than the July
17 date.

18 COMMISSIONER HUR: -- in a pinch that we
19 could -- we could get -- potentially get Room 263 on some
20 dates. We can set tentative schedules now and hope to
21 work out the room, but I am -- I'm concerned about
22 waiting to set dates. I think we need to do that.

23 So let's hear from the mayor.

24 MR. KEITH: So we're available on all three of
25 the dates selected by the Commission.

1 Our concern is that we be able to submit the
2 declarations, get the request for cross-examination, and
3 any objections to admissibility so that we can then get
4 our witnesses together and get them -- get them to the
5 hearings, those that need to appear.

6 I mean, we have -- our witnesses have a whole
7 patchwork of availability. I mean, there certainly -- on
8 any given date I'm sure we could find three or four who
9 can come.

10 COMMISSIONER HUR: Uh-huh.

11 MR. KEITH: My concern is that we just have a
12 process where each side submits the declarations of their
13 -- of the witnesses to support their side, and the other
14 side gets to request cross-examination, and then there's
15 rulings from the Board on which witnesses' declarations
16 are going to be accepted, which ones are not, and then we
17 can get the witnesses in.

18 So I just want to make sure that the scheduling
19 is sort of -- is part of a larger process of exchanging
20 declarations, cross-examination, and frankly also making
21 subpoena requests to the Commission so that we can get --
22 so that we can get independent witnesses into the
23 hearing.

24 COMMISSIONER HUR: Okay.

25 MR. ST. CROIX: Mr. Chairman?

1 COMMISSIONER HUR: Yes.

2 MR. ST. CROIX: A scenario that may be
3 palatable to moving this along is, we have that first --
4 or the next installment of this hearing, as you stated,
5 on the 19th, that evening at 5:00 o'clock 'til however
6 late we go. There's an Ethics Commission monthly meeting
7 the following Monday. We can devote --

8 COMMISSIONER STUDLEY: I am not here on the
9 25th.

10 MR. ST. CROIX: Okay.

11 COMMISSIONER STUDLEY: I chair -- and I -- I
12 would clear the deck for almost anything else, but I
13 Chair a federal commission --

14 MR. ST. CROIX: Okay.

15 COMMISSIONER STUDLEY: -- that meets on the
16 25th and 26th, unfortunately.

17 MR. ST. CROIX: So we have the other hearing on
18 the 29th, which is 10 days after the 19th. I will try to
19 isolate a couple of nights between those two, if it's
20 humanly possible, or right after those two.

21 COMMISSIONER HUR: Okay. Are there dates where
22 the parties or the Commissioners between the 19th and the
23 29th, where there's evening unavailability? Or maybe I
24 should say it the other way.

25 Are there -- are there days on which there is

1 evening availability between the 19th and the 29th of
2 June?

3 COMMISSIONER STUDLEY: This is June 19th and
4 29th?

5 COMMISSIONER HUR: Yes.

6 So Commissioner Studley's identified the 25th
7 and 26th.

8 COMMISSIONER STUDLEY: I hate to do this --

9 COMMISSIONER HAYON: Is unavailable.

10 COMMISSIONER HUR: Is unavailable.

11 COMMISSIONER STUDLEY: And I expect to be away
12 the 27th. I could do the 28th, and we're scheduled to
13 meet on the 29th.

14 COMMISSIONER HUR: Okay. So the 28th.

15 COMMISSIONER HAYON: What about --

16 COMMISSIONER STUDLEY: And I could meet on the
17 20th and 21st.

18 COMMISSIONER HAYON: 20th and 21st?

19 COMMISSIONER HUR: 20th and 21st.

20 Any problems with the 20th or 21st?

21 COMMISSIONER HAYON: Fine.

22 COMMISSIONER RENNE: (Nods head.)

23 COMMISSIONER LIU: I could make myself
24 available.

25 COMMISSIONER HUR: Okay. So 20th, 21st, and

1 28th in the evening.

2 Any objection to --

3 COMMISSIONER STUDLEY: And we're scheduled to
4 meet all day on the 29th?

5 COMMISSIONER HUR: We have all day on the 29th
6 available as of now.

7 Any objection from the parties to any of the
8 dates we have discussed?

9 MR. KEITH: I just think that with the need to
10 send out subpoenas and make rulings on the declarations
11 and tell witnesses to get here, we'll need to know --
12 we'll probably only find out those things on the 19th.
13 So it might be very hard to get a witness in on the 20th
14 or 21st if we're only finding out about -- if we're only
15 getting a ruling on the 19th.

16 I mean, we don't have a problem with having
17 these hearings close together, but the problem might be
18 having so many days in a row immediately.

19 COMMISSIONER HUR: Mr. Waggoner?

20 MR. WAGGONER: As to any rulings that need to
21 happen on the admissibility or testimony, we would
22 certainly -- we're certainly fine with how we proceeded
23 up until now, which is having the Chair make the
24 decisions on the -- those matters.

25 COMMISSIONER HUR: Even the admissibility of

1 evidence?

2 MR. WAGGONER: Yes, thank you.

3 COMMISSIONER HUR: Why don't I solicit the
4 mayor's view on that.

5 MR. KEITH: I think on a lot of these
6 evidentiary questions there may be differences of opinion
7 within -- within the Commission, and so it's probably --
8 I think we probably need to have them -- the decisions
9 made at a hearing. I mean, of course there are always
10 issues that are somewhat easy, but it's really hard to
11 sort out the easy ones from the difficult ones.

12 COMMISSIONER HUR: Okay. I think if there's a
13 dispute among the parties, I don't -- I don't even think
14 it's worth bringing it up with the Commission, because I
15 think we would need a stipulation on that sort of
16 delegation.

17 Okay. Here is what I propose. I propose that
18 we have Mr. St. Croix look at those dates to see if we
19 can get hearing rooms.

20 I would expect both parties to do their utmost
21 to make sure we have witnesses. And I know for the mayor
22 that is a -- somewhat of a bigger burden because you go
23 first, but there are witnesses to whom we have said we
24 expect live testimony.

25 I think there are a number of witnesses who we

1 expect declarations, and that we don't -- you know, we
2 don't expect to exclude declarations from -- from many
3 people. So perhaps plan accordingly and be prepared to
4 have those witnesses testify earlier on.

5 Okay. So, now let's work back from the 19th as
6 to deadlines for submissions.

7 Are the parties prepared to submit declarations
8 on June 5th?

9 MS. KAISER: June 5th?

10 COMMISSIONER HUR: June 5th, one week from
11 today.

12 MR. KEITH: So on fact witnesses I think we'll
13 need two weeks to get all the fact witness declarations
14 in, and another issue is that there hasn't been any
15 discovery.

16 UNKNOWN PERSON IN AUDIENCE: Use a mic, please.

17 MR. KEITH: Sorry about that.

18 Another issue is that there hasn't been any
19 discovery in the case.

20 The sheriff still has documents that we don't
21 have, things like telephone records that he obtained in
22 the criminal action. We're doing our utmost through the
23 courts to get those. We're doing our very best to get
24 them as quickly as we can, but we are at a disadvantage
25 compared to the sheriff with regard to crucial

1 information like that that can resolve some of these
2 credibility disputes.

3 And so I understand the Commission's desire to
4 move very quickly, but I think that -- I think that we
5 really need two weeks to get the fact witness
6 declarations in and to get some of these things that we
7 have been unable to get from the sheriff.

8 COMMISSIONER HUR: What about -- so experts you
9 think you can earlier?

10 MR. KEITH: No. I think -- we would normally
11 expect to do our expert declarations based on the facts
12 that have come out through discovery.

13 We don't want our experts to be offering
14 opinions when the facts aren't in. So we could do the
15 experts very shortly after that.

16 COMMISSIONER HUR: Okay. Do you have a view,
17 Mr. Kopp?

18 MR. KOPP: For our part, we'd be prepared to
19 submit fact witness declarations in one week, on June
20 5th. Actually, we could probably submit all of our
21 declarations on June 5th.

22 COMMISSIONER HUR: Okay. Mr. Keith, I mean,
23 many of these people whom you're submitting a declaration
24 from are city employees.

25 MR. KEITH: Yes.

1 COMMISSIONER HUR: And I know your
2 investigation has -- obviously you did some investigation
3 beforehand and perhaps it's continuing.

4 From whom could you get a declaration by June
5 5th?

6 MR. KEITH: It's not -- it's not a matter of
7 who. It's more a matter of how many and just trying to
8 get in touch with people in this very short time frame.

9 I do have a couple of witnesses who aren't
10 available this week. Who aren't available within that
11 time frame or that entire time frame. So really, I think
12 we could get a lot of them but we couldn't get all of
13 them. It's, again, not a matter of who. It's really a
14 matter of how many and schedules.

15 COMMISSIONER HUR: What about June 8th, would
16 that be doable? It's kind of a compromise.

17 MR. KEITH: Yes.

18 COMMISSIONER HUR: Okay. So --

19 MR. KEITH: For fact witnesses.

20 COMMISSIONER HUR: Let's have fact witness
21 declarations by June 8th.

22 Any objections to fact witnesses, can we get by
23 the 13th?

24 MR. KOPP: Yes.

25 COMMISSIONER HUR: Is that doable?

1 MR. KEITH: And could we also have the request
2 for cross-examination be due --

3 COMMISSIONER HUR: Yes.

4 MR. KEITH: -- at that time?

5 COMMISSIONER HUR: Okay. On the 19th we will
6 convene and discuss admissibility.

7 I think the mayor should be prepared to call
8 witnesses. I'm not sure we'll get to it, but -- but I
9 think you should be prepared to call a witness on the
10 19th.

11 MR. KEITH: How many?

12 COMMISSIONER HUR: Why don't you have two --
13 two ready.

14 MR. KEITH: Okay.

15 COMMISSIONER HUR: And if we get beyond that,
16 we'll understand and we'll recess.

17 MR. KEITH: We'll do our best.

18 COMMISSIONER HUR: Okay. Thank you.

19 With respect to experts, when do the parties
20 propose having -- and for -- having an expert declaration
21 ready to go?

22 MR. KOPP: Well, we have fewer experts, so we
23 can propose to get a declaration certainly before the
24 19th, possibly as soon as the 13th.

25 MR. KEITH: Sorry.

1 COMMISSIONER HUR: Would the 15th work? You're
2 going to get -- hold on. You're going to get -- yeah,
3 how about the 15th?

4 MR. KEITH: I think that will work, yeah.

5 COMMISSIONER HUR: Okay. So to recap just so
6 we're all clear, June 8th will be the deadline for
7 submitting any fact witness declarations on which a party
8 intends to rely.

9 June 13th will be the date for objections to
10 fact witness declarations, and those objections should
11 identify specific paragraphs to which the party's
12 objecting. That is also going to be the date for
13 identifying which witnesses the party would like to
14 cross-examine.

15 June 19th -- I'm sorry, June 15th is going to
16 be the date when we receive expert declarations -- can we
17 receive objections on the 18th? That really does not
18 give us much time to view that.

19 MR. KEITH: I wonder if with the experts,
20 perhaps, the Commission can just reserve the rulings for
21 later. Because I know there may be a lot of questions
22 about relevance that really -- that goes to a lot of the
23 legal issues. So it might make sense to reserve ruling
24 on the -- on the experts.

25 COMMISSIONER HUR: We could reserve ruling, but

1 we want to get the objections.

2 Is the 18th doable?

3 MR. KOPP: Well, I anticipate that we're going
4 to have the majority of the objections. So I'd like more
5 time than the weekend, the 16th and 17th.

6 As a matter of fact, we -- if there'd be a way
7 for the Commission to hold off on admissibility of expert
8 witness testimony until sometime after the 19th, that
9 might be the best way to go. Perhaps we could --

10 COMMISSIONER HUR: How about -- how about you
11 guys make objections to evidence by the 20th, and then
12 we'll rule on it sometime thereafter whenever we can
13 meet, but hopefully before the 29th.

14 Is that acceptable?

15 MR. KOPP: Yes.

16 COMMISSIONER HUR: Okay. Same -- same request
17 that objections to experts be paragraph specific.

18 I'm going to -- I'm going to assume that
19 experts are going to be cross-examined. But if either
20 party feels the need to have a separate disclosure of
21 your intent to cross-examine an expert, let me know.

22 Do you want to have that separate?

23 MR. KEITH: Yes. I mean, they may not --

24 COMMISSIONER HUR: Okay.

25 MR. KEITH: -- want to cross at all, so...

1 COMMISSIONER HUR: Okay. So on the 20th,
2 please also identify whether you intend to cross-examine
3 the opposing party's expert.

4 Okay. Are there -- Mr. Keith had mentioned
5 discovery.

6 Today is the 30th of May. What discovery,
7 other than these witness statements, do the parties
8 believe they need to proceed, to begin the hearing -- the
9 taking of evidence on June 19th?

10 MR. KOPP: We don't think we need anything. We
11 think that this case should have been prepared for
12 presentation prior to the filing of the written charges
13 of official misconduct.

14 I actually went and did some historical
15 research today to find out that in the Mazzola case the
16 trial commenced 14 days after the filing of the written
17 charges of official misconduct and that's because the
18 case was prepared prior to Mayor Moscone bringing those
19 charges. That's what should have been done here. It
20 apparently wasn't done, but I don't think that the
21 commission needs to countenance that lack of preparation
22 by forcing discovery on us.

23 We've already got a significant burden in front
24 of us to prepare for the 19th. We don't need to
25 complicate that by having discovery, in our opinion.

1 COMMISSIONER HUR: Mr. Keith?

2 MR. KEITH: Well, I think this goes back to an
3 issue that we raised at the last hearing, which pertains
4 to the duty of an elected official to cooperate with an
5 investigation.

6 In the normal investigation, these materials
7 would normally have been -- they would have been provided
8 to us. They would have been given to us by the employee,
9 or -- and if the employee didn't want to cooperate, they
10 would resign.

11 So that's typically how these things go. This
12 one has not gone that way.

13 So we've been going to the courts, and from our
14 standpoint what we need most significantly are the
15 telephone records that the sheriff obtained during
16 discovery in the criminal action.

17 We've got a court action on file for that, but
18 our hearing isn't until June 5th. So we're on a very
19 tight timeline. So what -- what I would like to do is
20 get discovery of those telephone records.

21 MR. KOPP: Well --

22 COMMISSIONER HUR: Okay. Hold on. Before
23 we -- before Mr. Kopp speaks.

24 So that's -- the telephone records is what you
25 want. Otherwise, you are -- you are prepared to go to

1 the evidentiary hearing based on the witness statements?

2 MR. KEITH: The telephone records and then
3 whatever was, quote/unquote -- I guess they used the term
4 "discovered" in the criminal action. It's just a bunch
5 of information that the D.A. hands to the criminal
6 defendant. We would -- I mean, it should be a packet of
7 information that they have. They shouldn't have to
8 search their records. It's there.

9 We'd like to get that because that's going to
10 contain notes of interviews with various witnesses. It's
11 impeachment material that they have that we don't get --
12 that we don't have.

13 COMMISSIONER HUR: So you're talking about the
14 materials the prosecutor turned over to the sheriff
15 during the criminal action?

16 MR. KEITH: Yes.

17 COMMISSIONER HUR: Okay. And this is going to
18 be heard by the Superior Court on the 5th, both issues?

19 MR. KEITH: No, only the telephone records will
20 be heard by the Superior Court.

21 COMMISSIONER HUR: Have you requested the Brady
22 materials?

23 MR. KEITH: I'm sorry. I -- I -- we have also
24 moved for enforcement of a subpoena for the materials
25 obtained in discovery. It slipped my mind, and --

1 COMMISSIONER HUR: No problem.

2 MR. KEITH: -- that is happening the 5th.

3 COMMISSIONER HUR: That's set for the 5th as
4 well?

5 MR. KEITH: Yes.

6 COMMISSIONER HUR: Okay. Mr. Kopp, sorry I
7 interrupted you when you wanted to speak.

8 MR. KOPP: We have made an offer to disclose
9 some phone records to the mayor in order to -- these all
10 go to this allegation of witness dissuasion. We offered
11 to disclose more than just phone records in an effort to
12 narrow the focus of this inquiry. We have not had a
13 response on that yet.

14 But, no, we don't agree that just because
15 charges of official misconduct were filed that means the
16 sheriff has to hand over every phone call he's ever made
17 within a two-week period. And I -- we're also not aware
18 of anything that would require the defendant in a
19 criminal action to then disclose the discovery he
20 received to the mayor in this type of a proceeding.

21 And I note that the mayor has not gone and
22 served subpoenas on the D.A. for this material. So -- I
23 mean, I don't think that the mayor -- that the sheriff is
24 under any duty to turn this information over. And as I
25 said before, I think they should have been ready to prove

1 the charges up when the charges were filed.

2 So I don't think there needs to be any
3 additional discovery.

4 COMMISSIONER HUR: My view on this is that if
5 the court -- the Superior Court is going adjudicate this
6 issue on June 5th, the parties can make the court aware
7 of our proceedings. I would in sort of -- I think it's
8 prudent that we, the Commission, not make a ruling on a
9 subpoena that was not issued by the Commission relating
10 to matters that are about to be adjudicated by the state
11 court.

12 I welcome the views of my fellow commissioners
13 and the parties for that view.

14 MR. KOPP: I concur.

15 MR. KEITH: There can be discovery in this
16 proceeding going on alongside whatever proceedings are
17 happening in Superior Court.

18 So I don't think that there's a barrier to the
19 Commission essentially saying we're going to have
20 discovery rules. Each side submit a discovery request.

21 I would also note, sometimes the Superior Court
22 order is -- it may -- the court may issue an order on
23 June 5th. It may continue the matter. It may order the
24 parties to meet and confer further. There may be an
25 appeal from the other side, which would effectively

1 deprive us of ever having the evidence at all given the
2 timetable that we're looking at.

3 So, I mean, these are my concerns with -- with
4 just going along with the Superior Court track. Even if
5 we sort of, quote/unquote, win the motion, an appeal
6 essentially deprives us of the evidence. Or even 10 days
7 to comply with the order deprives us of the evidence.

8 COMMISSIONER HUR: I welcome the views of the
9 commissioners.

10 COMMISSIONER LIU: I mean, I agree that since
11 the Superior Court is already handling this matter, I
12 don't think we should -- we should rule on it.

13 COMMISSIONER RENNE: (Nods head.)

14 COMMISSIONER HUR: Any dissenting views to
15 that?

16 Yeah, I agree. I think -- I think we should
17 let the Superior Court action play its course.

18 And, you know, as far as -- as far as the
19 mayor's decision to use the mayor's subpoena power to get
20 documents, it's not clear to me that we, the Commission,
21 have the power to enforce that subpoena in any event.

22 So that's where we are on that issue.

23 There were a number of legal issues that the
24 parties briefed, and I, for one, very much appreciate the
25 briefing of those issues.

1 I think deferring, though, the final decision
2 and perhaps even further discussion on issues like
3 whether the plea is sufficient in and of itself or other
4 legal issues that we asked you to brief, that we should
5 defer those until after we hear the evidence.

6 Are the parties -- is the Commission in
7 agreement with that?

8 COMMISSIONER LIU: (Nods head.)

9 COMMISSIONER STUDLEY: Yes.

10 COMMISSIONER HAYON: Yes.

11 COMMISSIONER RENNE: (Nods head.)

12 COMMISSIONER HUR: Okay. Anything that we have
13 not addressed that the parties think that we need to
14 address tonight?

15 MR. KEITH: One matter would be the day by
16 which we should inform the Commission that we would like
17 the Commission to issue subpoenas for witness testimony.

18 COMMISSIONER HUR: I suppose you can make that
19 request. I certainly wouldn't limit your ability to make
20 such a request after the court rules on the issue.

21 I will say that I am --

22 MR. KEITH: I'm sorry, I may have misspoken --
23 I may have misunderstood something.

24 I meant for the Commission to issue subpoenas
25 to witnesses that it wishes to --

1 COMMISSIONER HUR: Oh, I'm sorry.

2 MR. KEITH: -- testify at the hearing.

3 COMMISSIONER HUR: Yeah, yeah.

4 Okay. So you are going to identify the
5 witnesses and then object by the 13th.

6 So I welcome views from the commissioners.

7 My concern is that we likely would want to
8 issue a subpoena 10 days in advance, which means we would
9 be issuing subpoenas for witnesses whom we may not need.

10 At least one thing that I've done in the past,
11 in civil matters, is you issue the subpoena, the subpoena
12 is for on call. The attorney -- the parties and the
13 Commission agree that witnesses will just be on 24 hours'
14 advance notice of when they will appear based on what the
15 available dates are and that we don't have to subpoena
16 them for a specific date within that time period.

17 MR. KEITH: I just know that when the
18 Commission issues subpoenas, it does it under its own
19 authority. So we don't have a problem with being able to
20 come to the Commission multiple times to ask for
21 subpoenas, but I just want to make sure that we know what
22 the rule is.

23 COMMISSIONER HUR: Maybe I should defer --
24 let's get views from the commissioners, if there are any
25 thoughts on that.

1 COMMISSIONER RENNE: Well, I thought your
2 ten-days' suggestion, it may be a little difficult to do
3 it because they may not identify who the witness is that
4 they need to get subpoenas.

5 Can we have an agreement from -- at least from
6 the city, that to the extent that a witness who's coming
7 live is a city employee, that there isn't a need to get a
8 subpoena issued?

9 MR. KEITH: Yes. I mean, we'll do our very
10 best with scheduling, but no, no subpoena will be
11 necessary.

12 COMMISSIONER HUR: Okay. So we're only talking
13 about the witnesses that either party doesn't have
14 control over --

15 MR. KEITH: Yes.

16 COMMISSIONER HUR: -- essentially?

17 This is a question for Mr. St. Croix or
18 Mr. Emblidge, do -- are our subpoenas effective if issued
19 within -- within 10 days?

20 In other words, typically -- at least in my
21 experience, typically a subpoena has -- has a reasonable
22 time requirement and that's often interpreted to be 10
23 days. So if a witness did not appear, we might -- we
24 might have an issue if we issued the subpoena too late.

25 MR. ST. CROIX: I don't know that there's any

1 standard that governs us, but we generally leave lead
2 time in when we do them, so we never had an issue with
3 that. They're usually about two weeks in advance.

4 MR. EMBLIDGE: My understanding is the same as
5 yours, a reasonable time requirement.

6 COMMISSIONER HUR: Uh-huh (affirmative).

7 Maybe I should ask you this. Mr. Keith, for
8 any of the witnesses who you -- who you intend to call, I
9 mean, do you expect any of them to be hostile in the
10 sense that they -- there's likely to be a challenge to a
11 subpoena based on timeliness?

12 MR. KEITH: Well, Ms. Lopez, of course --

13 COMMISSIONER STUDLEY: Microphone.

14 MR. KEITH: I'm sorry.

15 Ms. Lopez, but with her being in Venezuela, I
16 don't see us being able to serve her.

17 Miss Haynes, and, I mean, the other -- the
18 other witnesses, we can -- we can telephone them of
19 course, but I think from our perspective we would like to
20 be able to subpoena them to ensure that they show up.
21 That would be Madison, Mertens, Williams.

22 COMMISSIONER HUR: Okay. So, I mean, it sounds
23 like from your list, Lopez and Haynes are two that may
24 not -- okay. Why don't we do this.

25 Why don't you make a request for subpoenas by

1 the 13th.

2 And are the parties -- and I'll ask the
3 commissioners too. Are the parties in agreement that the
4 Chair can actually -- does the Chair need to sign a
5 subpoena to issue forth from the Commission?

6 MR. ST. CROIX: No.

7 COMMISSIONER HUR: Okay. Good.

8 So if the parties would agree to delegate
9 authority to the Chair to approve subpoenas being issued,
10 then I think we can get that out very soon thereafter.

11 Is that acceptable?

12 MR. KOPP: Yes.

13 MR. KEITH: Yes.

14 COMMISSIONER HUR: Okay. So by the 13th you'll
15 let us know who you want us to subpoena, we will get
16 those out, and notice them maybe for the latter end if we
17 have to, but -- okay.

18 Anything else?

19 MR. KOPP: No.

20 COMMISSIONER HUR: Mr. Keith?

21 MR. KEITH: Mr. Waggoner had made a request,
22 essentially, for a bill of particulars. That's
23 something -- I mean, we're happy to file charges that
24 look more like counts if -- for him to deal with that, to
25 sort of file an amended set of charges: Count 1, Count

1 2, Count 3. We can -- we can do that shortly.
2 Essentially provide them with the notice that they're
3 complaining that they don't have.

4 COMMISSIONER HUR: Okay. When can you do that
5 by?

6 MR. KEITH: By the end of this week.

7 COMMISSIONER HUR: Is that acceptable,
8 Mr. Kopp?

9 MR. KOPP: Yes.

10 COMMISSIONER HUR: Great, thank you.

11 MR. WAGGONER: I would only add for the record,
12 however, that that doesn't clear -- cure the defect of
13 not having filed specific charges at the outset, and we
14 certainly -- I just make that for the record.

15 COMMISSIONER HUR: Your objection is noted.
16 Thank you.

17 Mr. Emblidge or the commissioners, anything
18 else that we need to address tonight?

19 Okay. Then we will take public comment.

20 Public comment will be limited to two minutes.
21 I will leave it to the officers to identify where people
22 should stand.

23 (Discussion off the record.)

24 COMMISSIONER HUR: Okay. Again, public comment
25 due to the number of people commenting will be limited to

1 two minutes.

2 I'm going to instruct the Commission staff to
3 turn off the microphone at the end of two minutes. You
4 will get a 30-second warning. That's the first ring.

5 After the second ring, the microphone is going
6 to go off and we're going to invite the next speaker up.

7 As a preliminary matter, I want to thank
8 everyone here for their patience in waiting for us to get
9 to this point and we welcome the first speaker.

10 Thank you.

11 ---oOo---

12 PUBLIC COMMENT BY PAULETTE BROWN

13 MS. BROWN: Okay. My name is Paulette Brown.

14 (Audience interruption.)

15 COMMISSIONER HUR: I'm sorry, Miss Brown.

16 Let's reset her time.

17 Please proceed.

18 MS. BROWN: Hi. My name is Paulette Brown, and
19 I'm a mother who lost her child to homicide on the
20 streets of San Francisco, and I'm here to -- I'm not --
21 I'm here to say why are we spending our tax dollars on
22 something like this when we have all our children being
23 murdered in the street, and -- can I use the overhead --
24 young men that are being murdered in the streets of
25 San Francisco and still no justice, still no money, still

1 nothing. We can use this money to solve our cases.

2 My son's case has been for six years. He's
3 still laying up there in the graveyard with no -- with --
4 a cold case. And I say this because I've been here
5 before concerning the fire chief when she -- I'm bringing
6 this up. I have nothing against these people, but she --
7 I mean, Ross was there when my son was murdered. So I
8 support him in that way, because he's been there when all
9 of our children have been laying in that street.

10 But here you have the fire chief that --
11 that -- that beat her husband. And nobody's done
12 anything about it. Where's the standards? Where's the
13 standards for that?

14 Here you have -- I have nothing against this
15 man either, Michael Marcums. He murdered his father.
16 He murdered his father. So -- and he still was the
17 assistant sheriff, the assistant sheriff. Where's the
18 standards for that?

19 And not only that, in jail he wasn't a model
20 prisoner, but he came out of jail -- prison, and still
21 became the assistant sheriff.

22 So what do we do about this? I mean, this same
23 stuff -- we're getting this same stuff with our own
24 children. I mean, where's the standards for this? What
25 do we do? And I -- when murder happens, I have something

1 to say about it. I have nothing against this man, but he
2 murdered his father. That's domestic violence. That's
3 elder abuse.

4 COMMISSIONER HUR: Thank you, Miss Brown.

5 ---oOo---

6 PUBLIC COMMENT BY PAUL COURIER

7 MR. COURIER: Good evening. My name is Paul
8 Courier. I was on the candidate -- I was a candidate for
9 mayor in 2011. I was on the ballot. I came in dead
10 last, but I still was on the ballot, and I stuck it all
11 the way through.

12 And on the night of the election I asked to see
13 how the votes were counted in San Francisco. As a
14 candidate, I wanted to see. No one can see. It's done
15 in secret. The count of the vote is rigged in this city.

16 Mayor Ed Lee's running an organized crime deal
17 here in San Francisco. I talked about it on the
18 campaign.

19 We have four supervisors in Sunshine Case 11048
20 who have been charged with misdemeanors in the
21 supervisors' chambers on May 24th, 2011, when they
22 fraudulently passed the Parkmerced Development Project.
23 They violated the Brown Act. They violated the Public
24 Records Act.

25 I'm a longtime friend of Chris Cunnie. I'm a

1 longtime friend of Ross Mirkarimi, because I used to be a
2 San Francisco Green. I supported Chris Cunnie in the
3 election last year, and I support Ross Mirkarimi now.

4 I've changed my position and I'll tell you why.
5 Because Ross Mirkarimi has a sense of integrity. He may
6 have an ego the size of the Rock of Gibraltar, but he has
7 a sense of integrity. And he doesn't stand for organized
8 crime. And the reason -- the reason the Sunshine Case
9 11048 -- you can Google it. Anybody in San Francisco can
10 Google it. I put it on my tumbler. This is so
11 important.

12 On March 14th it was referred to you as the
13 Ethics Commission and the district attorney for
14 enforcement and you blocked the case. You blocked the
15 case, and a case that was filed one week later against
16 the sheriff was put forward. You're out of order and
17 you're violating the civil rights of all the people at
18 Parkmerced.

19 ----oOo----

20 PUBLIC COMMENT BY ANTONIO

21 MR. ANTONIO: Good evening. My name's Antonio.
22 I got permission to call sheriff Ross.

23 I am a little bit disappointed the fact that
24 you did not allow Phil Bronstein -- he have an article
25 say that the neighbor, Ivory Madison, called Phil

1 Bronstein, then is the editor of San Francisco Chronicle.
2 So she called him to report that there is a crime between
3 Ross and his wife, but she didn't call the police, right,
4 after four days. So what was the motivation of that?

5 It's also important to find out who are the
6 people behind the scenes orchestrating this conspiracy?
7 Based on the evidence that I have here, Ross got 38,000
8 plus votes, Ed Lee got 36,000 plus votes, Dennis Herrera
9 got 12,000 plus votes.

10 Ross is more viable to be the mayor of
11 San Francisco. That's why they want to get rid of him,
12 and this is wrong.

13 Dianne Feinstein, she endorsed Chris Cunnie,
14 Kamela Harris, Gavin Newsom, all these people support
15 Chris Cunnie establishment. They don't want Ross because
16 he has a different political view. So this is all
17 politics. And I feel that this ethics board -- you guys
18 are tainted. I think -- I'm not assuming that you guys
19 are going to make a decision against Ross, but I would
20 like to see the Board of Supervisors make better
21 decisions.

22 I was a victim of domestic violence, assault
23 with deadly weapon. I have police report and all -- all
24 the documentation, but the system didn't help me. This
25 case, you got to throw it out. Throw the case out. I

1 got this --

2 COMMISSIONER HUR: Thank you, sir.

3 MR. ANTONIO: Excuse me, could you pass this?

4 ---oOo---

5 PUBLIC COMMENT BY PATRICK MONETTE-SHAW

6 MR. MONETTE-SHAW: Good evening, Commissioners.

7 I'm Patrick Monette-Shaw. You've seen me before.

8 I've asked you over and over what happened to
9 my referral to this Ethics Commission over Mr. John
10 St. Croix and Miss Tonia Lediju in the controller's
11 office. Well, I just found out from Mr. Chatfield that
12 my cases have been transferred to the San Jose City
13 Attorney.

14 This body has a member appointed to it by the
15 mayor. Whichever one of you it is who was appointed by
16 the mayor should recuse yourself in the Mirkarimi
17 hearing, and you might consider transferring this case.
18 You might transfer this case to San Jose where it belongs
19 because you are all implicated by not being able to hold
20 a fair hearing.

21 In fact, today, Larry Bush, proprietor of
22 citireport.com, came out with an article online posted at
23 www.citi, with an i, c-i-t-i, report.com, in which he
24 notes that Mr. Mirkarimi's lawyers submitted several
25 exhibits, and the second one shows Mr. Mirkarimi is being

1 treated and held to a different standard than other city
2 officials, but it ties directly to Mayor Ed Lee.

3 The city attorney, for his part, explains he
4 took no action on several other cases of official
5 misconduct that may include the 25 that you have
6 dismissed without any public hearings whatsoever.

7 There is no difference in those other cases and
8 the case with Mr. Mirkarimi, because it seems like the
9 mayor is playing by his own rules and that you are
10 facilitating him playing by his rules and making them up
11 as he goes along.

12 ---oOo---

13 PUBLIC COMMENT BY BARBARA TENGERRI

14 MS. TENGERRI: My name is Barbara Tengerrri.

15 I was struck by an unknown source who took a
16 survey showing 62 percent support Mayor Edwin Lee. I
17 question the integrity of the unknown source and the
18 integrity on the outcome of the survey. For example, who
19 were members of the sampling and who conducted the
20 survey? We need a name and we need to know who took part
21 in the survey. For example, was it -- was it confined to
22 a small group opposed to suspended Sheriff Ross Mirkarimi
23 or was a survey spread out to include a mixture of
24 San Franciscans?

25 No one is perfect, and that includes Mayor Lee.

1 How many of you have as much as used a curse word to
2 someone you are involved with and the pain of the heart
3 was so hurtful because the curse word used came from
4 someone you love? In other words, the heart was -- was
5 more affected than the curse word. No physical pain was
6 inflicted, just a curse word.

7 You should interview either in person or by
8 satellite the wife of suspended Sheriff Mirkarimi, who
9 was voted by San Franciscans at a higher percentage than
10 Mayor Lee.

11 I presume you viewed the tape recording of the
12 wife who was inflicted more with the pain of the heart,
13 not the small bruise she sustained, that disappeared
14 before he was inaugurated. I urge you to interview the
15 loving wife, Eliana Lopez-Mirkarimi, before deciding on a
16 recommendation to the Board of Supervisors on suspended
17 Sheriff Mirkarimi.

18 ---oOo---

19 PUBLIC COMMENT BY PASTOR LYNN GAVIN

20 PASTOR GAVIN: Good evening, Commissioners --
21 good evening, Commissioners and ladies and gentleman in
22 the audience. I'm submitting this CD as public -- for my
23 public comments here.

24 My name is Pastor Gavin, and it is my case
25 11048 that I believe that has been long overdue and I

1 have been denied justice, a delay and denial in justice
2 here by the political family of San Francisco.

3 In the memory of Edgar Mevers, Shirley
4 Chisholm, Dr. Martin Luther King, President Lyndon Baines
5 Johnson, former attorney -- U.S. Attorney Robert
6 Fitzgerald Kennedy, and on behalf of my mother and
7 father, may they rest in peace, Mr. and Mrs. Gavin, the
8 city of San Francisco, the Ethics office, Mr. St. Croix,
9 City Attorney Dennis Herrera, Five Aces, also District
10 Attorney George Gascon, and Mayor Ed Lee have done me a
11 grave injustice. They have violated my rights under the
12 Americans with Disabilities Act. They have violated my
13 federal rights under -- being a woman and being a black
14 woman here in the United States.

15 I am appalled at this misjustice. My case is
16 much older than the case of Ross Mirkarimi. I should be
17 here in the chambers with you against the four
18 supervisors -- Supervisors Mar, Cohen, Scott, and Wiener.

19 If they -- if this case is recommended to go
20 before the Board, and if the four supervisors who have a
21 Sunshine Violation 11048, I myself will file a complaint
22 with the California State Bar because it is a conflict of
23 interest for them to pass judgment on Ross Mirkarimi when
24 they have committed a misdemeanor. They have broken a
25 state law. They are in violation, and I am appalled and

1 outraged that they are not in here tonight.

2 ----oOo----

3 PUBLIC COMMENT BY TRACY GRIFFIN

4 MS. GRIFFIN: Good evening, Commissioners. My
5 name is Tracy Griffin, and I feel that the sheriff has
6 been singled out, and I also feel that it's a double
7 standing (sic) including bias.

8 They have been -- it has -- in the past there's
9 been 25 previous official misconduct cases referred to
10 the Sunshine Task Force, which was discussed by the
11 Ethics Committee, which is yourself, however it had not
12 included a public hearing. So I just feel that the rules
13 should not apply to one person, but the rules should be
14 across the board. And if you want to reprimand one
15 person, then it should apply to all.

16 And thanks for listening and please make an
17 honest, fair decision as you see fit.

18 Thank you.

19 ----oOo----

20 PUBLIC COMMENT BY VIVIAN IMPERIALLE (phonetic)

21 MS. IMPERIALLE: Good evening. My name is
22 Vivian Imperiale. I'm a city employee speaking as a
23 private citizen on my own time.

24 Your focus is on ethics. So it should concern
25 you that something unethical is in process, the disparate

1 treatment of two city employees.

2 Ross inadvertently bruised his wife's arm and
3 immediately apologized. On the other hand, our fire
4 chief acted with malice aforethought twice, both when she
5 assaulted her husband and later when she defied a court
6 order to pay spousal support. Her behavior was morally
7 reprehensible. Yet there have been no repercussions from
8 City Hall. It is unethical for Ross to be treated so
9 differently.

10 You are in the position to introduce fairness,
11 to put things back in perspective when they have been
12 blown way out of proportion. To punish this man beyond
13 redemption is unbecoming of a civilized society. It is
14 a fundamentally flawed system when a man of this caliber
15 is condemned.

16 Take a moment to look at this man sitting
17 before you. Look at him not as a case number, not as an
18 assignment, but as a man, a brilliant, worthy man with a
19 demonstrated dedication to serving our city.

20 Take another look at Ross. He is a good man.

21 ---oOo---

22 PUBLIC COMMENT BY BERNIE SHOWDEN (phonetic)

23 MR. SHOWDEN: Thank you. I'm Bernie Showden
24 (phonetic).

25 I raise the point that the agreement that Ross

1 signed was probably under duress with the stipulation
2 that all parties would abide by it. Given the absence of
3 Mayor Agnos, who affirmed my supposition, it is likely
4 that Mayor Lee and the city attorney have broken that
5 agreement. Therefore, the agreement is impugned given
6 that you have a different case.

7 Second, on the question of priorities by the
8 district attorney, the Sunshine Ordinance Task Force
9 unanimously agreed that four Board of Supervisors acted
10 egregiously, in violation of due process continuously,
11 and asked that the district attorney take the case
12 against them. But that was held to be a secondary
13 priority to pursuing Ross Mirkarimi. There is something
14 very wrong with that.

15 I serve with Ross as a friend and colleague on
16 San Francisco Tomorrow's Board (sic), while he served
17 honorably as an officer of the court in Terrance
18 Hallinan's district attorney's office. If that doesn't
19 prove integrity, I don't know what does.

20 Thank you.

21 ---oOo---

22 PUBLIC COMMENT BY ALTOSA (phonetic)

23 MS. ALTOSA: Hi. My name is Altosa (phonetic),
24 and I know Ross for seven years because I have done some
25 reports and interview him for my T.V.

1 And during all these years I saw him working
2 really hard when he was a supervisor in City Hall. I saw
3 him that he was till 10:00, 11:00 o'clock taking care of
4 people's problem, him and volunteers. And I also saw him
5 how hard -- how hard he was working when he wants to get
6 (sic) as a sheriff of San Francisco.

7 He always help everybody who needed help. He
8 helped us to stand for freedom and women's right in Iran.
9 He was a gentle man. He's a great man. And I don't
10 think that if somebody has a problem that we don't even
11 know the nature of the problem with his wife, and in a
12 marriage (unintelligible) they get angry and somebody
13 grabs somebody's hand, you know, that categorize him as
14 abuser, a danger to society, a person that doesn't
15 deserve his job.

16 And, you know, I married for 20 years. A lot
17 of times I have said things to my husband in the heat of
18 the moment that I don't believe, and I'm angry, I tell
19 him. It doesn't mean that somebody would take that
20 against me for the rest of my life and ruin my career.

21 And some people do get bruised easier than the
22 others. If I hit my hand right here (indicating), I get
23 bruised and my friends too. Just because somebody grabs
24 it doesn't mean that he beat the person. It doesn't mean
25 that he abuses the person.

1 And as she says, he stop immediately after she
2 ask him to stop. And that was just a fight to me, a
3 family fight. Had nothing to do with his capacity to his
4 hard work to be a sheriff.

5 And I came to this country because I believe in
6 justice. My children are American Persian because they
7 believe in justice in this country, and I do not -- do
8 not think that somebody that has a problem with his wife,
9 grabbing, needs to be losing his job.

10 COMMISSIONER HUR: Thank you, ma'am.

11 ----oOo---

12 PUBLIC COMMENT BY PASTOR ROLAND GORDON

13 PASTOR GORDON: Honorable Commissioners, I'm
14 Roland Gordon, pastor now for some 34 years of the
15 Ingleside Presbyterian Church.

16 I'm here as an American citizen speaking up for
17 justice where I perceive a gross injustice is occurring
18 against an honorable, rational, proven, sincere, and
19 committed servant of the people of San Francisco, former
20 supervisor Ross Mirkarimi, who was duly democratically
21 elected sheriff of San Francisco with more than 70,000
22 first place rank choice votes yet summarily removed by
23 our Honorable Mayor Ed Lee with allegations of official
24 misconduct before even taking office.

25 Sheriff Mirkarimi was taken -- has taken

1 responsibility for his actions in what should have been a
2 private disagreement between a husband and his wife,
3 which occurs in most marriages. He undoubtedly will be a
4 better husband and person as a result of the experience
5 with so many eyes now watching his every action.

6 It would have been somewhat of a challenge for
7 me to be here if Ross -- if Mrs. Mirkarimi had received a
8 black eye or broken nose or ribs or busted-up lip or
9 tooth knocked out and had not forgiven her husband or not
10 spoken out in support of him. But for a bruise on her
11 arm and words said in anger to be classified as official
12 misconduct and hundreds of thousands of taxpayers'
13 dollars wasted, and the larger threat of our democracy of
14 majority vote ruled potentially undermined, I strongly
15 urge this injustice be stopped.

16 I humbly appeal to this Commission, our
17 honorable Board of Supervisors, and even our Honorable
18 Mayor Ed Lee who I grew to respect. And, in fact, wrote
19 and encouraged him to change his position and run for
20 mayor. I appeal to you all now for the good and unity
21 and harmony and future of our great city. That you
22 exercise mercy, forgiveness, healing, and support for our
23 duly democratically elected brother and servant of the
24 people, Sheriff Ross Mirkarimi, and let him be allowed to
25 take his rightful office so he can get busy doing the

1 outstanding work he was elected to perform and we know he
2 will do.

3 ----oOo----

4 PUBLIC COMMENT BY UNKNOWN PERSON FROM AUDIENCE

5 UNKNOWN PERSON FROM AUDIENCE: I just want to
6 thank you for allowing me to come and say something.

7 I always in my lifetime I try to stay out of
8 politics and religion, but unfortunately I couldn't keep
9 quiet. The last three, four months I'm looking with T.V.
10 what's going on with Mr. Mirkarimi. I never even met the
11 gentleman. This is the first time I even met.

12 The problem comes here -- something happen in
13 the house between a wife and a husband. I want to know
14 which one of you guys didn't have the same problems in
15 your life. Everybody have argument with their wives,
16 their kids. I've done it too.

17 So we do get angry once in awhile. We always
18 hurt the most closest person to us. So I don't think a
19 specialist could come and say here that because he grab
20 something that it means this and that. That doesn't mean
21 anything because the expert wasn't there. There was two
22 people in that room there. It was Mr. Mirkarimi and his
23 wife. Nobody knows what happened.

24 So even D.A.'s office -- I mean, I'm sorry, the
25 city attorney saying Mrs. Lopez -- they want to know what

1 Mrs. Lopez said, maybe they should read this. Mrs. Lopez
2 was on this case. This case is politics. And my point
3 is, it's got to be the district attorney and the judge
4 who created that.

5 I've personally been dragged into court for 25
6 years. I lost 600 acres in Clayton, and I've been
7 sleeping in a garage with two kids. Enough with the
8 injustice. And I appreciate it.

9 I don't think you guys or even the mayor has
10 anything to do with this thing. There's more power above
11 telling what the mayor's and you guys do.

12 Thank you very much.

13 ---oOo---

14 PUBLIC COMMENT BY EMIL LAWRENCE

15 MR. LAWRENCE: Commissioners, good evening.
16 Thank you for letting me speak this evening after all the
17 other speakers.

18 For the record, my name is Emil Lawrence. I've
19 spoken before this Commission several times in the past.
20 I've been a citizen and resident of the county for 44
21 years, a citizen of this country all my live.

22 What I see right now taking place is one of the
23 biggest waste of times I've ever seen. We live in a city
24 with over 1,000 unsolved murders, yet the district
25 attorney has time to prosecute a man that bruised his

1 wife's arm in an argument.

2 You tell me which one of you have the perfect
3 marriage out there? Throw the first stone. You don't
4 have a case here. I don't even know what you're voting
5 on to tell you the truth. You don't have any suspects
6 because they won't come forward and admit it. It's over.

7 Yet, you didn't prosecute a previous mayor. We
8 used to have a mayor that came into San Francisco picking
9 up hookers in his limousine, bringing them to City Hall
10 at his board meetings. I didn't any Ethics Commission
11 involved in that one. We had a gigolo mayor, adultery on
12 campaign night. No investigation there. He came forward
13 and said it was drug abuse, and then they handed 10- to
14 18,000 to her. No investigation there.

15 Now we have Ross. He's being investigated for
16 arguing with his wife. That's the biggest joke you can
17 imagine.

18 If you look back at the history of this city,
19 you look at all the cases here that you haven't looked
20 at, and now you're exploding and expanding on this one,
21 in the biggest deficit in San Francisco's history?

22 You have prosecutors wasting hours and hours
23 looking for depositions on so-called expert witnesses
24 they're going to find in the phone book. Who's an expert
25 witness on San Francisco? You tell me.

1 I thank you for your time.

2 ----oOo----

3 PUBLIC COMMENT BY UNKNOWN PERSON FROM AUDIENCE

4 UNKNOWN PERSON FROM AUDIENCE: Hello. What I
5 want to say is that I was here last time and I'm going
6 to, you know, reiterate the same message I gave last
7 time, that this is unnecessary. It is a waste of
8 taxpayers' money.

9 Ross should be in the jails working with the
10 people in the jails, making their lives better, and from
11 what I know from people that are working the jails right
12 now, it's a damn mess.

13 And it needs to be fixed. And it's a mess
14 because the right person is not running it. The people
15 said who they wanted. You guys need to let him go back
16 to work and do his job.

17 They say they're doing this to help Eliana and
18 his son. All they're doing is hurting them. Nothing
19 I've seen has helped her or him.

20 So you need to reverse this, make the right
21 decision. Let the man go back to work and do his job.

22 Mayor Lee's guy lost. And I'll say that again.
23 Mayor Lee's guy lost. He's a sore loser, but he needs to
24 let it go so that the people in the jails get what they
25 need, and Ross can take care of his family.

1 Mayor Ed Lee has one ounce of integrity left, he will end
2 this charade and give this city our sheriff back.

3 I thank you very much.

4 ---oOo---

5 PUBLIC COMMENT BY MATTIE SCOTT

6 MS. SCOTT: Good evening, Commissioners, and
7 thank you so much for allowing us to have this public
8 speaking at such a late hour. Thank all of you for your
9 hard work.

10 My name is Mattie Scott. I'm the cofounder of
11 The Healing Circle for the Soul Support Group, and I am
12 here to support Sheriff Mirkarimi, because I lost a son
13 to senseless gun violence in 1996 and his case remains
14 unsolved. This is him here with his son (indicating),
15 the last time he was with his son, who died. My son was
16 killed the day before his sixth birthday. So he doesn't
17 have his father.

18 Little Theo has his father, but he doesn't have
19 his father. And in the Healing Circle we're about
20 keeping families together, not tearing them apart.
21 There's enough families being torn apart here in
22 San Francisco, and I must say thank you to
23 Sheriff Mirkarimi because he has been on the scene.

24 You fail to look at his record. When homicides
25 happen in our neighborhood at 2:00 o'clock in the

1 morning, do you know who meets us there?

2 Sheriff Mirkarimi.

3 When homicides happen anywhere in the Western
4 Addition, he's always there.

5 When there's a funeral, he's there.

6 When there's a community meeting, he's there.

7 He's there walking the neighborhoods at the
8 Farmers' Market talking to us. He's a public servant.
9 He's bigger than a public servant, and I'm here to say
10 that we spend too much money and tax dollars on
11 unnecessary things like this, when we could be spending
12 it on unsolved homicide cases. We have over thousands of
13 unsolved homicide cases and I'm one of them.

14 So I'm asking the mayor and the city and you
15 all to let's do the right thing. Hurt people, hurt
16 people and heal people, heal people. Let's get in the
17 healing business and start healing the city.

18 Thank you.

19 ----oOo----

20 PUBLIC COMMENT BY JO ELIAS-JACKSON

21 MS. ELIAS-JACKSON: Good evening,
22 Commissioners. My name is Jo Elias-Jackson. I'm a
23 native San Franciscan. I'm an elected delegate to the
24 Democratic National Convention, and a candidate to the
25 Democratic County Central Committee.

1 My support for Sheriff Mirkarimi is very
2 selfish. I want the people of San Francisco who can't
3 speak for themselves to get the attention
4 Sheriff Mirkarimi was elected for.

5 I am beseeching you to get back to the basics
6 and use your god-given common sense, fairness,
7 objectivity, and ethics. I ask that you not be swayed or
8 biased by predatory acts and the power of the position of
9 mayor, but upon the preponderance of the evidence.
10 Please recommend the sheriff to be unsuspended (sic)
11 without pay and returned to sheriff as elected by the
12 majority of San Franciscans.

13 Again, thank you for all you do. And I thank
14 you in advance for your ethical analysis and submit you
15 will deliberate with the highest ethical standards.
16 Please do not stack the decks against him, and, again,
17 thank you for what you do.

18 God bless.

19 ---oOo---

20 PUBLIC COMMENT BY LARRY HAYNES

21 MR. HAYNES: How you doing? My name's Larry
22 Haynes, and I'm a hundred percent supportive of Ross.

23 I'm from District 5. He was the supervisor
24 there. And he's always been very supportive of our
25 group, especially brown and black people and Chinese

1 also.

2 I think it's a complete fiasco, and a total
3 waste of time doing this. And he needs to be back in the
4 office of sheriff where he can do the most good. This is
5 a fiasco, and it's politically motivated. I believe
6 that.

7 Thank you.

8 ---oOo---

9 PUBLIC COMMENT BY ALEX IMAYOR (phonetic)

10 MR. IMAYOR: Good evening ladies and gentlemen,
11 board members of the Ethics Committee. My name's Alex
12 Imayor (phonetic).

13 I have been in San Francisco since 1965.
14 Beside the incredible beauty of this amazing city, the
15 one thing that makes me the most proud to live here is
16 because it is the most liberal city in the world. Where
17 we respect diversity and embrace the amazing rainbow of
18 all the communities that call San Francisco their home.

19 Today, though, is one of the saddest moments in
20 modern history, compared only to the day when we lost,
21 probably, one of the best mayors we ever had in George
22 Moscone, a mayor who defended the will of the people in
23 San Francisco. And today, opposite to his memory, we
24 have a mayor who is selling his heart and soul to the
25 half (sic) and powerful of San Francisco. Shame on you

1 Mayor Lee. It cannot be any more obvious that your
2 intentions are pure political.

3 You are spending the city's money and resources
4 to try to get rid of one elected sheriff, Ross Mirkarimi.
5 Shame on you, Mr. Lee, for having a double face when it
6 comes to giving it to the inference of Rosa Park, Tricky
7 Willie, and their circus of followers. We're always
8 trying to (unintelligible) San Francisco after this is
9 all said -- it won't surprise me if in this same room we
10 will have a hearing to penalize you, Mayor Lee, for the
11 injustice and criminal act you're trying to commit.

12 That is why I'm appealing to you members of the
13 Ethics Committee not to -- under pressure that the
14 so-called powerful influence are putting upon you.
15 Remember that the decision you make in this hearing will
16 follow you all your career life. Do not become a Pontius
17 Pilate to Lee, Park, or Tricky Willie and to others and
18 give into their distorted campaign.

19 Let's not turn this hearing into another chain
20 of event in the America's democratic history like when we
21 lost our President Al Gore.

22 Thank you very much.

23 ---oOo---

24 PUBLIC COMMENT BY BRUSON PIPOUR (phonetic)

25 MR. PIPOUR: I -- I'm Bruson Pipour (phonetic),

1 and I just wanted to mention a couple of little notes
2 that was -- nobody mention that.

3 No. 1, Ross Mirkarimi was sheriff. Ross
4 Mirkarimi was suspended on the Iranian new year, New
5 Year's Eve, which is March 20th, 21st.

6 No. 2, if Sheriff Ross Mirkarimi loses his job,
7 that means that liberal people cannot act in political
8 circle in San Francisco, which is really, really bad
9 thing to happen.

10 And last and most important of all, you are
11 using all this money on electricity and everything and
12 manpower for something that is not really important, and
13 I don't know why politically they're attacking Ross
14 Mirkarimi.

15 Thank you.

16 ----oOo---

17 PUBLIC COMMENT BY UNKNOWN PERSON FROM AUDIENCE

18 UNKNOWN PERSON FROM AUDIENCE: I'll try to be
19 as quick as possible. I've been knowing Ed Lee for over
20 20 years and I've been knowing Ross Mirkarimi for about
21 -- almost the same amount of time.

22 My question is to all y'all, whoo, whoo, whoo,
23 who's in control right here in San Francisco? Then the
24 other thing is, my name is Ace and I've been on this
25 case. And some of those people out there don't want me

1 in your face, but it's no mystery. All you got to do is
2 check your history. I'm working on a case that involve a
3 lot of this conspiracy.

4 Now, the thing about it is, here at City Hall,
5 ooh, it gets silly y'all. What you say here in City
6 Hall, it gets so damn silly y'all. Right here at City
7 Hall, you get so silly y'all.

8 You know what, because I'm telling y'all
9 because I see it all. And what I saw might be against
10 the law. Like what you're doing right here.

11 Now -- and what I heard, ooh, sound so absurd.
12 But the thing I want to tell y'all that one thing's for
13 sure, Ed Lee he knows me. We worked together when he was
14 with the HRC. And it's no mystery, if you ask Ed Lee,
15 he'll say Ace is just working on a conspiracy.

16 But ladies and gentleman on a real tip, Ross
17 has so much integrity, so much respect, not only in the
18 Western Addition but all over the city, and if you would
19 take the polls of the community and the voters you would
20 see that something is going on here in this milk (sic).
21 It's nasty.

22 Here at City Hall the whole world is looking at
23 us, here in San Francisco. It's a spectacle right here,
24 right here at City Hall. It gets so silly y'all. Right
25 here at City Hall, I'm telling y'all.

1 ordinances relating to campaign finance, lobbying,
2 conflicts of interest, or governmental ethics has been
3 violated.

4 If the Commission does not find such a
5 violation, no further action shall be taken on the
6 complaint."

7 Thank you. I hope you will continue to serve
8 as admirably as you have tonight.

9 ---oOo---

10 PUBLIC COMMENT BY SYLVIA ALVAREZ-LYNCH

11 MS. ALVAREZ-LYNCH: Good evening. My name is
12 Sylvia Alvarez-Lynch.

13 I think I don't need to clarify your
14 jurisdiction more so than a past commissioner on the
15 Ethics Commission. Those parameters were quite clear.
16 Obviously, this is out of that parameter range. And if
17 that isn't clear, maybe we can reference him again if you
18 need to call him.

19 I am here not only because I feel that you
20 should give Mayor Ed Lee and the rest of the people that
21 are trying to perpetrate a political coup an opportunity
22 to save face and throw this case out now.

23 Not only that, I think we need to honor the men
24 and women who died to preserve our right to vote, and
25 clearly our votes mean nothing to the mayor and those in

1 power, which are greed, corporations who have an interest
2 in getting out Ross Mirkarimi from the political scene.

3 It has long been said that politics in
4 San Francisco is a blood sport. That we know going in.
5 But never has anyone lowered their standards at such a
6 point to sacrifice a family. That is intolerable, and
7 you as a Commission should have the integrity and respect
8 for a man who has had a long history in San Francisco to
9 defend its impoverished and neglected.

10 And therefore, I'm asking you, do the mayor a
11 favor. Give him the opportunity to save face and throw
12 it out now.

13 ---oOo---

14 PUBLIC COMMENT BY PIERRE LAMONT PEGARON (phonetic)

15 MR. PEGARON: Hi. How you guys doing this
16 evening? Outstanding job, by the way. My name's Pierre
17 Lamont Pegaron (phonetic). I live in the Western
18 Addition, District 5, where Ross has ruled for years.

19 I would just like to say a quick few things.
20 You know, we all have our little problems and our issues
21 and things of that nature, but one thing about this guy
22 back here (indicating), he got your back. Whenever I
23 come to City Hall, he never had a closed-door policy.
24 "You come see me. Whatcha need? We'll help to take care
25 of you. We'll look out for you."

1 He's always been there for his constituents.

2 So unfortunately we got to judge this man on some
3 personal issues, you know, because my girl tried to jump
4 out the car the other day and I snatched her back in. I
5 didn't want her falling out and getting hit by another
6 car or something like that happening.

7 But we've got to look at his record, man. He
8 fought hard to make District 5, you know, a safe place.

9 You know, and another thing I really don't
10 understand is, you got police officers out there, they're
11 not elected. You got bus drivers out there, they're not
12 elected. It's an elected official and he gets suspended
13 without pay when you give cops and bus drivers suspended
14 with pay. I don't understand that. I really don't
15 understand that.

16 How could you try to just kill this man. I
17 don't understand it. But he's strong. He's going to
18 make it. He's going to be okay. I'll promise you that.
19 He's going to be okay. Because he's got our back. We
20 got his back. And, you know, I can tell you that.

21 You know, he was sworn in and he did his job.
22 He did his job in District 5 for the African-Americans.
23 And that community, there was a lot of murders, and I'm
24 sure you all know that. He stopped that by just being
25 out there talking to them, by just implicating

1 programs -- you know, implementing programs that would
2 give these African-Americans something to do once they
3 got out of jail, instead of being out there on the
4 corner. I'll give you a job working in the city. You
5 pay your restitution and you pay your child support, but
6 you got a damn job. You doing good. They took off on
7 that. That's why we need him down there in the sheriff's
8 department. That's why we need him.

9 ---oOo---

10 PUBLIC COMMENT BY VALERIE TULIER

11 MS. TULIER: Good evening. My name is Valerie
12 Tulier, and I'm here representing the Latino Democratic
13 Club.

14 Ross Mirkarimi won the election for sheriff
15 with 53 percent of the vote. Our entire system of
16 government proceeds from the will of the people as
17 expressed through orderly, monitored, and validated
18 elections.

19 When one elected official's action has the
20 result of voiding an election of another, that elected
21 official's action must be addressed. A wrong that is
22 equally fundamental to our democracy. To do otherwise
23 sacrifices our democracy too cheaply.

24 Many members of the Latino community in
25 San Francisco are within a generation of mass

1 disenfranchisement. These memories of disenfranchisement
2 arise from experiences abroad and undemocratic regimes or
3 from experiences in the United States where Latinos were
4 and are systematically denied democracy.

5 The suspension of Sheriff Mirkarimi stir those
6 painful memories, and this process to suspend him began
7 with disenfranchising a Latina and tearing her family
8 apart.

9 We, the San Francisco Latino Democratic Club,
10 ask you reinstate Sheriff Mirkarimi, and further we urge
11 you to create a diversion in lieu of conviction program
12 that is consistent with San Francisco's values of
13 alternatives to incarceration and of respecting the
14 dignity every person -- of every person who enters the
15 criminal justice system.

16 This is excerpts of a four-page letter written
17 and has been submitted to you by the Latino Democratic
18 Club.

19 And I want to thank you Commissioners tonight.
20 You have been very fair and very just, and we appreciate
21 that in the public's eyes.

22 And I also want to let you know that I too am a
23 former commissioner on the Commission on the Status of
24 Women, and I understand what is DV and what is not DV.
25 And guess what? This is not DV.

1 Thank you very much.

2 ---oOo---

3 PUBLIC COMMENT BY ALICIA MARIGOMIS (phonetic)

4 MS. MARIGOMIS: Hello. My name is Alicia
5 Marigomis (phonetic).

6 I'm here today to ask that you immediately
7 reinstate Ross Mirkarimi. I hope that we all take a
8 moment to observe the fact that this follows -- this
9 hearing today follows the Memorial Day weekend.

10 Democracy, the power of the vote, is
11 fundamental to this country, and that is what wars have
12 been fought over.

13 Another thing that's fundamental to this
14 country is the freedom from invasion in our everyday
15 lives by government, freedom from government.

16 I struggle to understand how an Ethics
17 Commission -- or how to put it -- what price, what crime
18 justifies invalidating the votes of 53 percent of
19 San Franciscans.

20 This is a Commission that typically looks at
21 election law, and that is, from my perspective, what
22 happens here. We have a basic issue of democracy at
23 stake. If we are going to be here litigating a plea
24 bargained, admitted conduct, and unconvicted (sic)
25 conduct, where is our standard going to be for anything

1 that comes forward in the future? What precedent are we
2 setting? What conduct in our everyday lives will you be
3 referencing in the future?

4 If we're going to lower the standard as to what
5 will be the basis for invalidating an election, it must
6 be a strong case, something that -- where we're going to
7 be litigating everyday activities as the basis for
8 invalidating an election of a sheriff simply cannot be a
9 precedent worth setting.

10 Thank you. And I, again, am also a member of
11 the San Francisco Latino Democratic Club, and I hope that
12 you will take our public comment very seriously and the
13 public comment of everyone here.

14 Thank you.

15 ----oOo----

16 PUBLIC COMMENT BY RICHARD STONE

17 MR. STONE: Hi. Good evening. My name is
18 Richard Stone. I'm a member -- I'm a proud member of the
19 San Francisco Green Party, and also I've served for Ross
20 before in the past, when he was elected his first term as
21 supervisor.

22 And I must say that with all the -- with all
23 the principal endeavors that I've seen, even dating back
24 before he was elected, such as -- such as being able to
25 get the Environmental Impact Report that actually

1 stopped, you know, the building of a nuclear power plant,
2 all the way, you know, up to the time that I worked with
3 him with the -- with the formation of, you know, really
4 sane (sic) laws for medical marijuana.

5 And then most importantly, I think in terms of
6 the community policing and all of the great
7 accomplishments that he has brought to the criminal
8 justice community, I think it's a real crime that --
9 that -- that for something that I think that is just --
10 that is not so, you know, serious in nature that would
11 be -- that it would be stretched to the limits of -- that
12 it has, you know, been really brought to this point, I
13 really think that he should be reinstated with -- you
14 know, with back pay.

15 And I just -- even though it's really sad to
16 have to actually go through this process, I'm really glad
17 that -- that the journey towards having -- having actual
18 due process has actually come a little bit farther than I
19 thought it would. I really commend you guys on your
20 efforts, and I really hope that in the ensuing sessions
21 that not only will due process, you know, take hold, but
22 justice will also be served and Ross will be exonerated.

23 Thank you.

24 ----oOo----

25 PUBLIC COMMENT BY UNKNOWN PERSON FROM AUDIENCE

1 UNKNOWN PERSON FROM AUDIENCE: Commissioners,
2 thank you for hearing my remarks.

3 I'm here today because I'm upset that you
4 didn't do your duty last month and stop this debacle.
5 The sheriff is being railroaded by an unscrupulous mayor
6 squandering public funds for his own aggrandizement.

7 The mayor is claiming official misconduct but
8 hasn't cited a single specific conflict of interest or
9 governmental ethics law that has been violated. That
10 should be enough for you to vote immediately to recommend
11 the reinstatement of the sheriff.

12 The law is quite clear on this point. To claim
13 official misconduct the mayor must show either the
14 sheriff did something a sheriff shouldn't do or didn't do
15 something a sheriff should do or did something to violate
16 a specific conflict of interest or government ethics law.
17 None of the above applies.

18 Instead, Mr. Keith is using this proceeding to
19 produce a telenovela at public expense. If he wants to
20 produce a telenovela, he should get private funding and
21 hire an actress with a green card.

22 For the effort the mayor has put into this, you
23 would think the ballots were found floating in the bay
24 instead of going into the hopper, the counting machines.
25 That didn't happen. We didn't hear the sheriff shaking

1 down fast food restaurants for bribes either.

2 Mr. Mirkarimi has suffered big time for arm
3 grabbing. That has nothing to do with official
4 misconduct. Nothing. You have only one ethical choice.
5 Vote immediately to recommend the reinstatement of the
6 sheriff. Don't waste any more time with this chatter
7 about witnesses. Don't indulge Mr. Keith's absurd
8 fantasies. Do your job now, please.

9 Thank you.

10 ---oOo---

11 PUBLIC COMMENT BY LAUREL NIECE (phonetic)

12 MS. NIECE: Good evening, Commissioners. My
13 name is Laurel Niece. I want to thank you for giving me
14 the opportunity to speak tonight.

15 I'm hear today because I strongly believe that
16 the Ethics Commission has a duty to the voters of this
17 city to uphold the will of the people who democratically
18 elected Ross Mirkarimi to the office of sheriff.

19 The country is watching what you do here.
20 Undoing an election of the people is an extremely serious
21 matter.

22 The suspension of our sheriff didn't happen
23 because he engaged in official misconduct. Our sheriff
24 was suspended without pay due to political pressure. The
25 same political pressure that has victimized his wife,

1 Eliana Lopez, and has had a traumatic impact on his young
2 son, Theo.

3 I ask the Commission to recommend that the
4 charge of official misconduct be dropped and give us back
5 our sheriff.

6 Thank you.

7 I also want to submit to the Commission a
8 resolution that was passed by the Bernal Heights
9 Democratic Club in support of Ross Mirkarimi and opposing
10 his removal from office.

11 The Bernal Heights Democratic Club opposes the
12 removal of Sheriff Ross Mirkarimi from office as proposed
13 by Mayor Ed Lee for the alleged misconduct. Requests the
14 mayor reinstate Sheriff Mirkarimi in the interest of
15 justice, and what is best for the City and County of
16 San Francisco. Encourages the members of the Ethics
17 Commission and the Board of Supervisors to oppose the
18 removal of the duly-elected sheriff.

19 ---oOo---

20 PUBLIC COMMENT BY BRIAN WEBSTER

21 MR. WEBSTER: Thank you, Commissioners and
22 deputies for your service and the opportunity to speak.

23 My name's Brian Webster. I'm a community
24 organizer and marketing professional. I work with the
25 business, labor, and community organizations. I've lived

1 and worked in San Francisco for over 25 years.

2 I support the sheriff. I support the mayor.

3 And I support the D.A. As to whether the charges should
4 be sustained, this situation is all about politics. It's
5 not about the law. The situation has turned into a
6 political witch-hunt and that is clear and obvious to the
7 people of San Francisco.

8 Common sense says that there was no case
9 against Ross, but politics says there was.

10 Ross got indicted and San Francisco got a black
11 eye.

12 The mayor suspended Ross and San Francisco got
13 another black eye.

14 The city and this administration should back
15 off and stop shooting itself in the foot. It's said that
16 what's at issue here is wrongful behavior. The
17 witch-hunt against Ross is wrongful behavior. It would
18 be unethical to not let our elected sheriff go back to
19 work. Please, please stop wasting our time, money, city
20 resources on this witch-hunt.

21 Thank you. Thank you very much.

22 ---oOo---

23 PUBLIC COMMENT BY ROSARIO CERVANTES

24 MS. CERVANTES: Good evening, Commissioners.

25 My name is Rosario Cervantes, and I represent myself as a

1 community and neighborhood activist, and I live in
2 Excelsior District 11.

3 We live -- we live in a world full of gray
4 area, and people choose to live in the black and white
5 and accuse Ross of domestic violence.

6 The mayor's role appears to be retribution.
7 Punishment that is considered to be morally right and
8 fully deserving. I really disagree with how the mayor is
9 handling this whole matter.

10 Restorative justice is a theory of justice that
11 emphasizes repairing of the harm caused or revealed by
12 criminal behavior. It is best accomplished through
13 cooperative processes that include all stakeholders.

14 Three principles form the foundation for
15 restorative justice.

16 Justice requires that we work to restore those
17 who have been injured.

18 Two, those most directly involved and affected
19 by crime should have the opportunity to participate fully
20 in the response if they wish.

21 And the government's role is to preserve a just
22 public order, and the community is to build and maintain
23 a just peace, not to destroy a person, not to destroy his
24 career, or also destroy the remnants of his marriage and
25 separate him from his wife and child.

1 We've got to open our minds and be open and
2 live in those gray areas. There are circumstances that
3 sometimes are beyond our control.

4 I voted for a man who has experience to be a
5 sheriff. He's worked on legislation to give reentry to
6 criminals, to bring them back into society. He has the
7 commitment and the know-how. If anything, Ross is a
8 workaholic. We need his dedication and commitment.

9 I ask you to stop spending our taxpayers' money
10 with furthering this court. I ask each and every one of
11 you here at this Ethics Commission to do what is right,
12 not what -- not what the mayor and D.A. Gascon wants.
13 Theirs is a power issue, and I believe this is unethical.
14 Stop the attacks on his personal life. Ross is our
15 sheriff. I voted and I want my vote to count.

16 Thank you.

17 ---oOo---

18 PUBLIC COMMENT BY LAURIE LEDERMAN (phonetic)

19 MS. LEDERMAN: Good evening, Commissioners. My
20 name is Laurie Lederman. For the last 37 years I've
21 lived in San Francisco.

22 I am proud to support Ross Mirkarimi for his
23 outstanding work as a supervisor in District 5, for his
24 tireless leadership on local law enforcement issues, for
25 his courage, and is the duly-elected sheriff of this city

1 who should be returned to duty immediately and made whole
2 for the losses associated with being wrongfully suspended
3 without pay.

4 I'm distressed by the miscarriage of justice
5 and the public assault that has been waged on
6 Sheriff Mirkarimi by the district attorney, the mayor,
7 and the mainstream media, all of whom have shown a total
8 disregard for the well-being of Eliana Lopez and their
9 son, Theo, in the unprecedented zeal to destroy
10 Sheriff Mirkarimi's ability to survive not only as a
11 public official, but as a human being. They have
12 trampled on his rights, the wishes of his family, and
13 along now with the city attorney's office, they're
14 abusing much needed tax dollars of San Francisco
15 residents with these manufactured charges before you.

16 I want to speak to you in terms of the
17 substantive issue, which is not -- which is whether or
18 not Mr. Mirkarimi has engaged in misconduct that would
19 warrant permanently removing him from office.

20 I've spent 27 years as a union representative
21 advocating for working people in a variety of workplaces,
22 and I would say absolutely the issues in this case simply
23 don't come close to warranting termination of employment.
24 This is such an obvious example of the mayor making a
25 political decision and then taking the city -- tasking

1 the city attorney's office with developing a case after
2 the fact.

3 Nothing that is alleged to have occurred took
4 place during the course of Mr. Mirkarimi's duties as
5 sheriff. All of the allegations deal with matters
6 entirely and exclusively off the job, out of the
7 workplace, with no relationship to his duties as sheriff.

8 He has already been fully punished under the
9 law and treated to a persistent public humiliation of a
10 greater proportion than I can recall in my 37 years in
11 this city.

12 It is your opportunity and your obligation to
13 rise above this circus, to exercise reason, to rescue due
14 process, and to restore Ross Mirkarimi to his rightful
15 position as sheriff of San Francisco.

16 ---oOo---

17 PUBLIC COMMENT BY DENNIS MOSCOFFY (phonetic)

18 MR. MOSCOFFY: Well, good evening,
19 Commissioners. My name Dennis Moscoffy (phonetic), and I
20 was born and raised in San Francisco. I'm a father of
21 three children, and I'm in District 5. Lori is my
22 partner, my wife, and my best friend.

23 I too spent decades working as both a union
24 worker in San Francisco, in the newspapers, in the press
25 room, and also as a representative. And I have never

1 seen, even in the most egregious management attack on
2 workers, this kind of assault that has gone on from the
3 mayor and this Republican D.A. that we got from Arizona,
4 and, of course, the city attorney now who's a friend of
5 mine, but I'm ashamed of him and I've told him so and
6 I've written, because what this is, is a public lynching.

7 Now, you guys, I'm concerned about, are going
8 to be used to make this somehow something that you then
9 shift to the Board of Supervisors, and the Board of
10 Supervisors in an election year has to then decide, gee,
11 do I sacrifice my future relationship with the mayor, or
12 my future career, or do I do what's right?

13 Nothing in this case, nothing in the New Year's
14 incident rises to the level of a crime. Yes, he pled
15 guilty to false imprisonment in a deal. Yes, he's copped
16 to it. He's explained it. He was guilty of whatever
17 happened.

18 But that kind of incident does not rise to the
19 level of official domestic violence. There's no history.
20 There's no pattern. There was no killing of public
21 officials. There was no burning of buildings. There was
22 no theft. There was no falsifying addresses to get
23 elected. There was a family argument over the custody of
24 Theo.

25 And a real problem, and I don't know about you

1 guys, but I went through something like that, and I felt
2 real pain when I thought I was going to lose the custody
3 of my children.

4 I just want you to recognize that you're going
5 to be used, and I think you're being used by our mayor.
6 I want you to recognize that and pass on to the Board of
7 Supervisors the recommendation --

8 COMMISSIONER HUR: Thank you, sir.

9 I invite the next speaker to come up. Thank
10 you.

11 ---oOo---

12 PUBLIC COMMENT BY UNKNOWN PERSON FROM AUDIENCE

13 UNKNOWN PERSON FROM AUDIENCE: Hello, good
14 evening. Thank you for giving me the opportunity to
15 express my feelings. Sorry if I'm feeling a little
16 nervous -- nervous.

17 I feel sad today, because I see good people
18 right in the front of my eyes, and what is happening
19 right now, this is turning into a circle (sic), and what
20 I'm asking you is please do not be part of this circle
21 (sic). I think there's better things to do in
22 San Francisco and all over the United States.

23 What you doing right now, you're destroying
24 this good man's life. You're tearing his family apart.
25 You've -- you say -- I been hearing about criminal,

1 violent. What we're doing to him it's a violent crime,
2 destroying a family, destroying this good man's career.

3 Please, I'm asking you, do not be part of the
4 circle (sic) and sorry I feel nervous.

5 God bless. Thank you.

6 ---oOo---

7 PUBLIC COMMENT BY ERIC BROOKS

8 MR. BROOKS: Good evening, Commissioners. My
9 name is Eric Brooks. I've been a grassroots organizer
10 for environmental and social justice in San Francisco for
11 18 years. So I know the vagaries of City Hall pretty
12 well.

13 I'm here to ask you at the earliest possible
14 opportunity to send a strong message to the Board of
15 Supervisors that it should at the earliest opportunity
16 reinstate Ross Mirkarimi as the duly-elected sheriff of
17 San Francisco.

18 I'm happy to report that I'm also Green -- S.F.
19 Green Party and even though Ross left the Green Party to
20 become a democratic, we had the wisdom to realize when a
21 serious breach of democracy was taking place, and we put
22 a statement up on our website in support of returning
23 Sheriff Mirkarimi to office. I would encourage you to
24 look at that statement. It's powerful. It's at
25 sfgreenparty.org.

1 On the case itself, let's just refocus. We're
2 talking about a misdemeanor case in which the court
3 already decided that the remedy to this is family
4 counseling, okay. This does not by any stretch of the
5 imagination rise to the level of removing somebody from
6 office. That's just absurd.

7 And I watched this hearing today, and what I
8 saw from the mayor's attorneys was an attempt to take a
9 very large, industrial-sized pot of messy spaghetti and
10 throw it at the wall to see what would stick.

11 UNKNOWN PERSON IN AUDIENCE: Exactly.

12 MR. BROOKS: In my 18 years in San Francisco, I
13 have never been so appalled by the behavior of public
14 officials as I have with that display. And, please, your
15 job as Ethics commissioners is to consider the politics
16 here. That's what you do when you address campaigns, is
17 look at politics.

18 If you go with this nonsense, what's going --
19 who's going to be next? When the progressives get a
20 mayor in, what's that mayor going to do to the moderates?
21 This is -- could really open up a ridiculous can of worms
22 and you need to turn it back.

23 ---oOo---

24 PUBLIC COMMENT BY TRACY BROWN

25 MS. BROWN: Hi. My name's Tracy Brown, and I

1 just wanted to thank you guys for giving me the
2 opportunity to speak, although I had to leave and come
3 back.

4 It's hard for someone like me with four kids to
5 come out this late at night and actually speak at 11:00
6 o'clock at night, and there's a lot of other people who
7 would love to be here and voice what they think.

8 I actually worked on Sheriff Mirkarimi's
9 campaign, and it was a great campaign, and we were
10 successful in getting him elected.

11 And so when he did win, all of the kids that I
12 worked with, my own three kids, who are eligible voters,
13 they said, "Finally, mom, you won an election," because
14 I've worked on progressive campaigns all of my adult
15 life, because it's my value and it's also a San Francisco
16 value. Restorative justice is a San Francisco value.
17 Harm reduction, the way we deal with homeless, those are
18 San Francisco values.

19 And so the way we deal with this is also a
20 San Francisco value. And so this is -- I'm glad it's
21 coming before you. I'm very pleased with how the
22 discussion went today. I have faith in our system. I do
23 have to say that.

24 Ross has been there for the people. He has
25 heard our voices. I don't have to explain all of that.

1 But what I do want to say, is there was some
2 voice that was not heard in all of this, and that's
3 Eliana's voice. And as a woman, I have to say that if
4 this was my family put, you know, on trial, I would be
5 devastated.

6 And I hope that you as people who support
7 women, as people whose agencies support women, that you
8 will look at what she is going through, and hear her
9 voice, and allow her voice to immerge in all of this.

10 You've heard a lot about Ross, and I love Ross,
11 but you haven't heard about Eliana, and you haven't heard
12 about how she feels, and you haven't heard from her, and
13 lot of people haven't heard from her.

14 And also Linnette Peralta Haynes who's been on
15 the witness list, she's -- she's pregnant -- she just
16 delivered a baby. I doubt that she'll be able to come
17 in. So please remove her from the list. But you should
18 listen to the voice of women. I feel our voice is being
19 lost here.

20 ---oOo---

21 PUBLIC COMMENT BY MARIA YEM (phonetic)

22 MS. YEM: Good evening, Commissioners. My
23 name's Maria Yem (phonetic).

24 And as they say, it's about who you know in
25 City Hall. And this evening that important person that I

1 know in City Hall happened to be my union member, who is
2 the custodian here, who happened to have some extra fried
3 chicken because we didn't have dinner tonight. And bless
4 his heart.

5 I'm actually -- more seriously, I want to say
6 that for me being here standing with Ross, it's as simple
7 as the three R's.

8 And in this case, those three R's are
9 redemption, restorative justice, and reunification of
10 family.

11 Redemption is a much more positive and
12 proactive quality. And I think it's something that I
13 used to think San Francisco was all about, right? Since
14 we all are human. We all have our flaws.

15 I always have thought that it's those that -- a
16 person's worth, actually, is doubled when you know that
17 there's been a challenge, a moment of shame that they've
18 had to face, and then make amends. I think that makes
19 for a much wiser and much stronger individual and also
20 much more compassionate. That's something that we will
21 all need at some point.

22 And then in terms of restorative justice, it's
23 been explained a little earlier tonight, but let's
24 restore peace with our justice, not just punishment.
25 Punishment in itself will only begin -- will continue the

1 cycle of violence.

2 I also went to speak on the importance of
3 family. And that's without question. I personally do
4 not know of one family that is without some form of
5 dysfunction. You may be different, but I know that
6 families must work hard and sacrifice to have family
7 unity just amongst themselves, but consider when an
8 obtrusive, overbearing outside entity plays havoc on the
9 family. I also --

10 COMMISSIONER HUR: Thank you. Thank you,
11 ma'am.

12 ---oOo---

13 PUBLIC COMMENT BY EDWARD GAZOVSKY (phonetic)

14 MR. GAZOVSKY: Good evening. Edward Gazovsky.

15 I'd just like to speak briefly about the
16 politics and political assassination.

17 I believe Eliana was the victim of a scam and a
18 sting operation. She was lured into making this video,
19 which hasn't been mentioned. And when that video was
20 obtained by Madison, the call went to Philip Bronstein.
21 And Philip Bronstein -- that was Day 1.

22 And Day 2, Philip Bronstein had lunch with
23 Willie Brown. So Willie Brown -- and they talked about
24 the Annenberg position.

25 On Day 3, Madison talked with Bronstein again.

1 I believe at this point the decision was made
2 that they should call the police -- that she should call
3 the police. And that is where the -- it went from there.

4 Then it -- our district attorney ends up with
5 tainted evidence. And he has to strike a deal to get it
6 out, which was done properly.

7 Then it passes on to the mayor. And then --
8 and here, again, I believe we have the influence of
9 Willie Brown. Where they were at supper with their wives
10 and they went into the men's room and Willie said, you
11 have to pull -- you have to dismiss the mayor (sic), and
12 all of this has deprived the people of a decent sheriff
13 who is a champion of the people.

14 ---oOo---

15 PUBLIC COMMENT BY UNKNOWN PERSON FROM AUDIENCE

16 UNKNOWN PERSON FROM AUDIENCE: Good evening. I
17 just want to tell you all that I respect how difficult
18 this decision is going to be for all of you to make. But
19 it's clear that there's only one thing on the table here.
20 Was there official misconduct?

21 I hear a lot of people making accusations, you
22 know, that have not been founded. I want to say one
23 thing. If a man loses his job because he makes a
24 mistake, it's a poor, poor day in America when the cycle
25 of abuse is continued by depriving a man his ability to

1 provide for his family.

2 ----oOo----

3 PUBLIC COMMENT BY SHERRY ZIN

4 MS. ZIN: Hi. Good evening. My name's Sherry
5 Zin. I work at San Francisco General, and I've been a
6 proud civil servant for 18 years.

7 My first meeting with Ross was when I hear,
8 "Hey, wait for me you guys." We were marching down the
9 road, and I don't even remember what we were marching
10 for, but I turned around and there's Ross, "Wait for me.
11 I want in on this action." That's the first time I ever
12 met. I thought, wow, what a great guy.

13 For the past 18 years he's, like, really showed
14 me what an ethical, humane person is, and he's really
15 taught me that lesson.

16 Just last week when I was talking to him and I
17 said, "Wow, Ross, you know, if that's what you did, then
18 I am so guilty of false imprisoning somebody, you know."
19 My son, we had many many fights on the way to the mall
20 over tennis shoes, and I turned that car around and went
21 home. I like to call myself a good parent for that.

22 But when I told that story, what did Ross do?
23 He said, "No, Sherry, this isn't a laughing matter. What
24 I did was wrong. I'm never going to forgive myself for
25 that. I owe it to my wife and to my child and to

1 San Francisco to set it straight. Not to treat this like
2 it's a laughing matter. To take this as serious as I
3 can."

4 Now, this is a true ethical person. That's
5 true humility right here (indicating). How do we not let
6 somebody like that be our sheriff?

7 I'm also a bargaining team member. From the
8 city's side we heard over and over and over, it's the
9 city's will for you guys to have to pay for Prop C.
10 Well, again, it's the city's will to have Ross Mirkarimi
11 be our sheriff.

12 Please, let it be the city's will, give us our
13 sheriff back. And most of all, give Theo his daddy back.

14 UNKNOWN PERSON IN AUDIENCE: Yes.

15 ----oOo----

16 PUBLIC COMMENT BY RICK HAUPTMAN

17 MR. HAUPTMAN: Hello, Commissioners. My name
18 is Rick Hauptman. I served for 10 years on the
19 San Francisco Relocation Appeals Board under three
20 different mayors, four years as its president. I realize
21 what a lofty decision you have in front of you.

22 I worked on these similar matters of
23 displacement for 10 years, as I mentioned.

24 I am the past president for political of the
25 Harry Milk LGBT Democratic Club.

1 I have been a member and an officer of the
2 local chapter of the Nationalization Organization for
3 Women for the past 39 years.

4 I'm currently on the Equity Advisory Committee
5 of the Human Rights Commission.

6 I've known Ross Mirkarimi for more than 30
7 years, and I've known Eliana Lopez since she moved here.
8 And I was there for the baby shower and the birth of
9 Theo.

10 Your position right now, it's so -- it's such
11 overreach. It's so beyond the pale of what a commission
12 or board should be doing.

13 UNKNOWN PERSON FROM AUDIENCE: Here, here,
14 right.

15 MR. HAUPTMAN: It's political payback.

16 And one thing I'm taken by tonight is, since
17 I've been involved in San Francisco politics for 39
18 years, but I still apologize for my Brooklyn, New York
19 accent, the folks in this room -- gay, Latino, the labor
20 council, SEIU 1021, seniors and disabled people like
21 me -- they were all here tonight. They've been here for
22 five hours like you have, and they're pretty much unified
23 in saying this is overreach beyond anything one could
24 imagine. And I hope that you take that into account when
25 you look into your heart and your souls, and please

1 turn --

2 ----oOo----

3 PUBLIC COMMENT BY JOSEPH LAMBERT

4 MR. LAMBERT: Hello, Commissioners. I'll be
5 very brief. It's been a long afternoon, a long night.
6 My name is Joseph Lambert.

7 My wife and I are long-time citizens of
8 San Francisco. We've been small business owners for 27
9 plus years. I consider ourselves very civic minded. I
10 even at one time had aspirations for politics. I got an
11 undergraduate degree from San Francisco State, but seeing
12 what's going on in this city, with this particular case,
13 really is nauseating. It's the same that's going on
14 through the country right now with the right wing trying
15 to steal the next election that's coming up.

16 I would ask you and plea with you to do what is
17 right to reinstate this man to his job. I am very upset
18 by the fact that when I vote, I don't want someone to
19 disenfranchise my vote as has been done in the last
20 case -- excuse me, with the second term of George Bush
21 when the U.S. Supreme Court -- excuse me, was that -- the
22 people's vote was set aside and was appointed by the U.S.
23 Supreme Court. And I know in San Francisco they have a
24 saying about this is a city that knows how -- knows how.

25 I know on a social level -- I mean, it's very

1 liberal. But politically speaking, what is happening in
2 this particular situation with the hijacking of
3 Sheriff Ross Mirkarimi's career is akin to what -- the
4 same old back-room politics has happened before.

5 So politically speaking, San Francisco is not
6 progressive and you have the allusion of being a
7 progressive-minded city.

8 So I'm just urging you to do what is right, to
9 recommend that this man be reinstated to the job of
10 sheriff and let the people decide. We're the ones who
11 voted for him to be sheriff. Let him run his term, and
12 if we're not satisfied, then we'll know what to do.

13 Thank you for listening to me.

14 ---oOo---

15 PUBLIC COMMENT BY REBECCA SALAVETA (phonetic)

16 MS. SALAVETA: Good evening. My name is
17 Rebecca Salaveta (phonetic). And I'm here to support
18 this gentleman right here. You guys have family, right,
19 like everybody have family? Hope it (unintelligible) and
20 work because what we do in this country is horrible. We
21 see a lot of police kill, like, people and we don't do
22 nothing.

23 And because this man he just holding his arm
24 for his wife, you guys judging him like nothing. Like he
25 doesn't have, like, values. He has a lot of values. And

1 he's sitting here and he put (sic) face and you guys look
2 at him like how sad he is, because his family is not
3 here. Right? We have to touch our heart and we see
4 what's going on in this country and touch, like --
5 everybody else heart -- in T.V. right now looking at us,
6 like, spending five hours, spending our taxes here, and
7 we don't do nothing just, like, judging him like he's
8 doing the big deal in this little thing, like, it's just
9 fighting wife and husband.

10 I don't think it's right to be here spending
11 time and do, like, nothing important. We have more
12 important things to do, like, for example our economy is
13 horrible. If we don't focus on that -- and those two
14 people say, like, we do a crime and they try to look in
15 his records on the phone. Come on, let's do something
16 else better and don't wasting time because time is
17 precious.

18 ----oOo----

19 PUBLIC COMMENT BY TAMMY BRIAN

20 MS. BRIAN: Good evening. My name is Tammy
21 Brian, and I want to thank you all for being here. I'm a
22 constituent in District 5 and worked with Ross Mirkarimi
23 for seven years as supervisor.

24 And I just want to make a note that it's been
25 unanimous, the support for him. You had people in the

1 overflow. I don't know if you're aware, and I just want
2 you to know that this room was filled up and the room was
3 filled up in overflow, if not two rooms.

4 There's a lot of people -- we are speaking for
5 people who can't be here. And I'm going to speak for one
6 of them. I'm going to read his statement.

7 He's Professor Mike Whitty. He's an adjunct
8 professor at USF and he's a professor of ethics.

9 "Dear Commissioners,

10 As a professor of ethics, sound
11 judgment must include the basic principle of
12 law, making the punishment fit the crime.
13 Taking job and career for a misdemeanor
14 unrelated to job performance is
15 disproportionate. Having taught ethics and
16 labor relations, I believe this obvious fact
17 in this case should result in the Ethics
18 Commission declaring there are no grounds
19 for dismissal from public office.

20 In addition, the lack of balance and
21 journalistic integrity in the media has
22 poisoned the well of community understanding
23 and judgment making any truly fair hearings
24 doubtful by taking the job and career of a
25 public servant and setting a bad flavor

1 precedent."

2 Again, that's Professor Mike Whitty from USF.

3 Thank you.

4 ---oOo---

5 PUBLIC COMMENT BY LARRY ADMENA (phonetic)

6 MR. ADMENA: Hi. My name is Larry Admena
7 (phonetic). I'm probably the first all black person who
8 ran for mayor -- gay mayor -- black gay who ran for mayor
9 in 1989. I know Mayor Brown is going to get award for
10 doing a great achievement for LGBT, but as the president
11 said we could get married today, if you're not a good
12 Ethic Committee -- you know, I never wanted children.
13 And it scares me that what you would do to a great man
14 like this in a city like San Francisco.

15 The world is looking. You going to make
16 everything that we've ever stood for look terrible. You
17 know, by one little incident on a New Year's -- that's
18 like Thanksgiving -- I mean, like Halloween and
19 Thanksgiving, what do you do, you get drunk. You do
20 something on New Year's Eve, and, you know, I'm going to
21 cool off community against violence. I graduate this
22 month in June.

23 Violence is a cycle. This is not a cycle. It
24 is repetitive and over. So this is not a cycle. And,
25 you know, if you're going to make this world a better

1 place, world peace for everyone, we need to do the right
2 thing here in San Francisco.

3 I represent the medical marijuana community,
4 people on SSI, we have 108 people on Medicare in this
5 city, and 112 on our SSI. We have 800,000 people in the
6 city, 230 people on SSI. You are really harming elders,
7 seeing as LGBT is our future, depends on here. And if
8 you don't do the ethical and the right thing, we have no
9 justice.

10 You know, it's time to move forward like our
11 president say, not backwards. You know, all the bad
12 things, women couldn't vote 270 years ago. You would
13 have been burned as witches. We don't want you all to --
14 we don't want our people to think that we didn't know who
15 you are behind your heads.

16 Thank you. Move this ahead.

17 ---oOo---

18 PUBLIC COMMENT BY GERI LUKOWITZ (phonetic)

19 MS. LUKOWITZ: Hi. My name is Geri Lukowitz
20 (phonetic), and I'm a member of SCIU.

21 I'm here to let you know that four years ago I
22 was laid off my job. I haven't been able to work any
23 place. The union did, actually, hire me temporary right
24 now. But I'm listening to these lawyers. I'm seeing
25 what she's doing up there. I know what it cost to keep

1 all this going. And we had a contract that we were
2 trying to get more money or keep our insurance and
3 everything not too Long ago and I'm seeing all this money
4 for something that I don't understand. It's like a
5 circus. And it's just like it's going and going.

6 This should be done. And you're going to go
7 through another month, two months. It's going be -- the
8 money -- you're saying we don't have no money for the
9 people that's working for us.

10 A lot of people are not working. Some people
11 been laid off. Some people been cut down on their pay.
12 Luckily we're able to keep our insurance. We didn't have
13 to pay this year. And then maybe in 1914 (sic), is it,
14 you get a raise? And then we have to pay into our
15 retirement. And we're not barely making it, but all this
16 going on here. Paying them a lot of money.

17 I mean, I just don't understand it all. I
18 hope -- I know you have a hard job and I understand that
19 it's very difficult. But seeing all this going on, it's
20 like a circus. And it's just wasting money that
21 people -- we fought to get for everybody that's working
22 in the city. And we're not getting it and it's going
23 here. For what?

24 So I thank you very much and I hope you do the
25 right thing.

1 COMMISSIONER HUR: Thank you all very much.
2 It's obviously been a long night, but I thank all of you
3 that have been here, and the lawyers for their advocacy,
4 and the court reporter who has worked very long with very
5 little break.

6 Before we adjourn, we need to do two things.
7 First I want to give Commissioner Studley a chance to
8 speak.

9 COMMISSIONER STUDLEY: I want to thank everyone
10 as well, and thank you for your respectful comments.

11 Because it's so confusing, I just wanted to
12 explain that we are here, we have this job because the
13 voters passed an initiative that created this process.

14 It says when a certain thing happens that the
15 mayor is entitled to do, that it created the checks and
16 balances that the Ethics Commission has this
17 responsibility to assemble a record and make a
18 recommendation.

19 We believe we don't have a choice to cut that
20 short. We have to do what the voters at another time, by
21 initiative, created. So I think the one thing that we
22 would all be unanimous about is that we are all willing
23 to do the right thing here, but we have to go through the
24 steps to figure out what the right thing is for us to do.

25 But I just want people to know that we can't

1 walk away from this. This too, just like an election, is
2 a voter-passed initiative by a set of our fellow citizens
3 of some years ago who thought that this was the best way
4 to protect the city and county. That's all.

5 COMMISSIONER HUR: Thank you.

6 We need to make a motion to pass the decisions
7 that we made this evening. I'm not going to recount them
8 all. But what we'll do tomorrow is issue a -- assuming
9 the motion passes, we will issue a press release that
10 fully explains the decisions that were made.

11 Is there a motion to a adopt the decisions that
12 the Ethics Commission made throughout the course of
13 tonight's meeting?

14 COMMISSIONER STUDLEY: So moved.

15 COMMISSIONER RENNE: Second.

16 COMMISSIONER HUR: All in favor?

17 COMMISSIONER STUDLEY: Aye.

18 COMMISSIONER HAYON: Aye.

19 COMMISSIONER RENNE: Aye.

20 COMMISSIONER LIU: Aye.

21 COMMISSIONER HUR: Opposed?

22 Hearing none, the motion passes.

23 Okay. Is there a motion to adjourn?

24 COMMISSIONER STUDLEY: So moved.

25 UNKNOWN PERSON IN AUDIENCE: So moved.

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COMMISSIONER HUR: Second?

COMMISSIONER LIU: Second.

COMMISSIONER HUR: All in favor?

(Commissioners and audience replied "aye.")

COMMISSIONER HUR: Meeting adjourned.

(Whereupon the meeting recessed at

11:30 o'clock p.m. to be reconvened,

Tuesday, June 19, 2012, at 5:00 o'clock p.m.)

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

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

14
15 Date: June 14, 2012

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18 _____
19 JEANNETTE SAMOULIDES, CSR #5254
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