

MEETING MINUTES

July 8, 2015

I. Call to Order & Orders of the Day

Roll Call

PRESENT: Chair Michael Smith, Vice Chair Rolanda Pierre Dixon, and Commission Members Madhavee Vemulapalli, Adrian Gonzales and Chris Peacock

ABSENT: None

STAFF: Investigator/Evaluator Steven Miller, Deputy City Attorney Arlene Silva, Assistant City Clerk Tom Graves and Deputy City Clerk Cecilia McDaniel

OTHER: Noelia Espinola, Court Reporter with Advantage Reporting Services and Quy Dao and Scott Hung Pham, Vietnamese Interpreters with Communicaid

Call to Order

The members of the San José Ethics Commission convened at 5:38 p.m. in Room W-119 of City Hall, 200 E. Santa Clara Street, CA 95113.

Orders of the Day

Action: Upon a motion by Vice Chair Rolanda Pierre Dixon, and seconded by Commissioner Adrian Gonzales and carried unanimously, the Commission approved the adoption of the July 8, 2015 agenda. (5-0)

II. Closed Session - None

III. Hearings

- A. Hearing on Complaint filed by Adam Nguyen on June 5, 2015 against Manh Nguyen alleging violations of the San Jose Municipal Code (Independent Investigator/Evaluator)

Documents Filed: 1) Report from Hanson Bridgett LLP dated July 1, 2015 regarding Adam Nguyen v. Manh Nguyen, Complaint filed June 5, 2015; and 2) Emailed reponse from Complainant Adam Nguyen dated July 7, 2015.

Discussion: Chair Michael Smith summarized the hearing procedures and opened the public hearing. Evaluator Steve Miller summarized the complaint and his recommendations to the Commission. Peter Allen was present to represent Respondent Manh Nguyen and Minh Q. Steven Dovan was present to represent

Complainant Adam Nguyen. Minh Q. Steven Dovan provided testimony. See attached transcript for full discussion and testimony provided at hearing.

Action: Chair Michael Smith moved that the Commission find that there is insufficient cause to conduct a preliminary investigation and that the file in this matter be closed without further action. Commissioner Adrian Gonzales seconded the motion. On a call for the question, the motion carried unanimously. (5-0)

Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed the entire evidence in the record.

Chair Michael Smith	So certified.
Vice Chair Rolanda Pierre Dixon	So certified
Commissioner Madhavee Vemulapalli	So certified
Commissioner Chris Peacock	So certified
Commissioner Adrian Gonzales	So certified

Action: Upon a motion by Vice Chair Rolanda Pierre Dixon, and seconded by Chair Michael Smith and carried unanimously, the Commission moved to direct the City Attorney to draft a Resolution on the Commission's findings, and further, that the Commission authorize the Chair to approve and sign the resolution. (5-0) Chair Michael Smith declared the hearing on this matter closed.

- B. Hearing on Complaint filed by Minh Q. Steven Dovan, Esq., on June 1, 2015 against Manh Nguyen alleging violations of the San Jose Municipal Code (Independent Investigator/Evaluator)

Documents Filed: 1) Report from Hanson Bridgett LLP dated July 1, 2015 regarding Minh Q. Steven Dovan v. Manh Nguyen, Complaint filed June 1, 2015; and 2) Screenshot of website provided by Complainant Minh Q. Steven Dovan.

Discussion: Chair Michael Smith summarized the hearing procedures and opened the public hearing. Evaluator Steve Miller summarized the complaint and his recommendations to the Commission. Peter Allen was present to represent Respondent Manh Nguyen and Complainant Minh Q. Steven Dovan was also present. Minh Q. Steven Dovan, Peter Allen, and Bryan Do provided testimony. See attached transcript for full discussion and testimony provided at hearing.

Action: Chair Michael Smith moved that the Commission find that there is insufficient cause to conduct a preliminary investigation and that the file in this matter be closed. Commissioner Adrian Gonzales seconded the motion. On a call for the question, the motion carried unanimously. (5-0)

Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed the entire evidence in the record.

Chair Michael Smith	So certified
Vice Chair Rolanda Pierre Dixon	So certified

Commissioner Madhavee Vemulapalli	So certified
Commissioner Chris Peacock	So certified
Commissioner Adrian Gonzales	So certified

Action: Upon a motion by Vice Chair Rolanda Pierre Dixon, and seconded by Commissioner Madhavee Vemulapalli and carried, the Commission moved to refer the issue as to whether or not Manh Nguyen led the community to believe that he was a lawyer to the District Attorney's Office for review and possible investigation. (3-2; Opposed: Smith and Gonzales)

Action: Upon a motion by Chair Michael Smith, and seconded by Vice Chair Rolanda Pierre Dixon and carried, the Commission moved to direct the City Attorney to draft a Resolution on the Commission's findings, and further, that the Commission authorize the Chair to approve and sign the resolution. (4-1; Opposed: Gonzales) Chair Michael Smith declared the hearing closed.

- C. Hearing on Complaint filed by Tom Cochran on June 5, 2015 against Manh Nguyen and Manh Nguyen for City Council D4 alleging violations of the San Jose Municipal Code (Independent Investigator/Evaluator)

Documents Filed: 1) Report from Hanson Bridgett LLP dated July 1, 2015 regarding Tom Cochran v. Manh Nguyen, Complaint filed June 5, 2015; and 2) Respondent Manh Nguyen's Response to Report from Hanson Bridgett LLP dated July 1, 2015 regarding Tom Cochran v. Manh Nguyen.

Discussion: Chair Michael Smith summarized the hearing procedures and opened the public hearing. Evaluator Steve Miller summarized the complaint and his recommendations to the Commission. Peter Allen was present to represent Respondent Manh Nguyen and no one was present to represent Complainant Tom Cochran. Peter Allen, Bryan Do, Thomas Nguyen, and Tuan Le provided testimony. See attached transcript for full discussion and testimony provided at hearing.

Action: Chair Michael Smith moved that the Commission find that based upon a preponderance of the evidence presented, that as many as 99 violations of the San Jose Municipal Code section 12.06.910 have occurred. Vice Chair Rolanda Pierre Dixon seconded the motion. On a call for the question, the motion carried unanimously. (5-0)

Chair Michael Smith moved to amend the motion to include a statement that it is the Commission's intent that this finding include any future violations that may be uncovered through subsequent filings of Form 460 and that the Commission will not entertain any additional complaints on this matter pursuant to Section F.2 of Resolution 76954. Vice Chair Rolanda Pierre Dixon seconded the amended motion. On a call for the question, the motion carried unanimously. (5-0)

Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed the entire evidence in the record.

Chair Michael Smith	So certified
Vice Chair Rolanda Pierre Dixon	So certified
Commissioner Madhavee Vemulapalli	So certified
Commissioner Chris Peacock	So certified
Commissioner Adrian Gonzales	So certified

Action: Vice Chair Rolanda Pierre Dixon move that the Commission, based on the facts and circumstances of our findings, including conderation of mitigating factors, fine the Respondents \$10,000. Commissioner Adrian Gonzales seconded the motion. Commissioner Gonzales offered a friendly amendment to the motion to indicate that the fine does not include the Political Reform Act violations which the Commission defers to the FPPC. Vice Chair Rolanda Pierre Dixon accepted the friendly amendment. On a call for the question, the motion carried unanimously. (5-0)

Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed the entire evidence in the record.

Chair Michael Smith	So certified
Vice Chair Rolanda Pierre Dixon	So certified
Commissioner Madhavee Vemulapalli	So certified
Commissioner Chris Peacock	So certified
Commissioner Adrian Gonzales	So certified

Action: Upon a motion by Chair Michael Smith, and seconded by Commissioner Adrian Gonzales and carried unanimously, the Commission moved to direct the City Attorney to draft a Resolution on the Commission's findings, and further, that the Commission authorize the Chair to approve and sign the resolution. (5-0) Chair Michael Smith declared the hearing on this matter closed.

The hearings closed at 8:37 p.m. – the Court Reporter left shortly afterward.

IV. Consent Calendar

- A. Approve the Minutes of May 13, 2015 – Regular Meeting
- B. Approve the Minutes of June 10, 2015 – Regular Meeting

Action: Approval of minutes deferred to the next meeting of the Ethics Commission.

V. Reports – Deferred to next meeting

- A. Chair
- B. City Attorney
 - 1. Legislative update
- C. City Clerk
 - 1. Legislative update
 - 2. Status of compliance with Commission resolutions

3. Status report on filings (Form 700, Campaign Statements, Lobbyists)
 4. Elections update -
Documents Filed: 1) Official Final Results of June 23, 2015 Election from Santa Clara County Registrar of Voters; and 2) Charts of number of vote-by-mail ballots issued and returned for the June 23, 2015 Election.
 5. Status of Clerk's Office move from Wing to Tower
 6. Status of Independent Evaluator contract with Hanson Bridgett
- D. Investigator/Evaluator

VI. Old Business

- A. Discussion, review and possible action to request for revisions to the San Jose Municipal Code and Resolution 76954. (City Clerk)

Documents Filed: 1) Matrix of issues and Commission recommendations of the review of San Jose Municipal Code Title 12 and Resolution 76954; 2) Memorandum from City Clerk Toni Taber to the Ethics Commission dated July 1, 2015 re Review of SJMC Title 12 – Ethics Commission Matrix Items 2 and 4; and 3) Memorandum from City Clerk Toni Taber to the Ethics Commission dated July 1, 2015 re Review of SJMC Title 12 – Ethics Commission Matrix Item 7.

Action: The Commission discussed the matrix with the staff and offered suggested changes. The City Clerk and Deputy City Clerk will work with the Ad Hoc Subcommittee to finalize changes.

- B. Discussion and possible action on Ethics Commission's FY 2015-2016 Work Plan and FY 2014-2015 Annual Report. (Chair)

Documents Filed: 1) Draft FY 2015-2016 Work Plan; and 2) Draft FY 2014-2015 Annual Report.

Action: The Commission reviewed the draft work plan and annual report and offered suggestions. Upon a motion by Chair Michael Smith, and seconded by Commissioner Chris Peacock and carried unanimously, the Commission approved the work plan and annual report with amendments and authorized the Chair to work with staff to make further revisions if needed to finalize for submittal to the Rules and Open Government Committee for approval. (5-0)

- C. Scheduling of special Ethics Commission meeting if needed. (City Clerk)

Action: No action taken.

- D. Discussion and possible action regarding ad hoc Subcommittee on community outreach. (City Clerk)

Action: No action taken.

VII. New Business

- A. Nomination and election of new Ethics Commission Chair and Vice Chair. (City Clerk)

Action: Deferred to the next Ethics Commission meeting.

VIII. Public Comment – None

IX. Future Agenda Items and Adjournment

The next regular meeting is Wednesday, August 12, 2015 at 5:30 p.m. in City Hall, Tower Room 1446, pending coordination of a Special Meeting if needed.

The following agenda items will be discussed at the August 12, 2015 Ethics Commission meeting:

- Gift Ordinance and FAQ
- Nomination and election of officers
- Approval of minutes
- Title 12 Matrix
- Annual Report & Workplan
- Open Government Training

The meeting was adjourned at approximately 9:45 p.m.



MICHAEL SMITH, CHAIR

ATTEST:
ETHICS COMMISSION SECRETARY



TONI J. TABER, CMC
CITY CLERK

Attachment: Transcript of Hearing dated July 8, 2015, Reported by Noelia Espinola, CSR, License Number 8060, Advantage Reporting Services, No. 50021, pages 1 through 149; and Errata Sheet.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Taken On July 8, 2015

CITY OF SAN JOSE ETHICS COMMISSION

PAGE 1 TO PAGE 149

CONDENSED TRANSCRIPT

Advantage Reporting

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San Jose, CA 95125
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CITY OF SAN JOSE
ETHICS COMMISSION

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Date: Wednesday, July 8, 2015
Time: 5:38 p.m.
Location: San Jose City Hall
200 E. Santa Clara Street
Wing - Room 119
San Jose, CA 95113
Reported By: Noelia Espinola, CSR
License Number #8060

#50021

Advantage *ARS* Reporting
Services, LLC

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A P P E A R A N C E S

San Jose Elections Commission: MICHAEL SMITH, Chair
ROLANDA PIERRE-DIXON, Vice-Chair
CHRIS PEACOCK
MADHAVEE VEMULAPALLI
ADRIAN GONZALES

Staff: ARLENE F. SILVA,
Deputy City Attorney

TOM GRAVES,
Assistant City Clerk

CECILIA McDANIEL
Deputy City Clerk

Independent Evaluator: HANSON BRIDGETT, LLP
BY: STEVEN D. MILLER,
Attorney at Law
425 Market Street
26th Floor
San Francisco, CA 94105
(415) 777-3200

The Reporter: ADVANTAGE REPORTING SERVICES
BY: NOELIA ESPINOLA,
CSR #8060
1083 Lincoln Avenue
San Jose, CA 95125
(408) 920-0222

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

CITY OF SAN JOSE
ETHICS COMMISSION

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Date: Wednesday, July 8, 2015
Time: 5:38 p.m.
Location: San Jose City Hall
200 E. Santa Clara Street
Wing - Room 119
San Jose, CA 95113

Reported By: Noelia Espinola, CSR
License Number #8060

#50021

Page 3

1 PROCEEDINGS
2
3 CHAIRMAN SMITH: We have three hearings
4 tonight, and we'll start the first hearing now.
5 It is Wednesday, July 8th, 2015, and this
6 hearing of the City of San Jose Ethics Commission is
7 being held in Room W-119 of San Jose City Hall. All
8 members of the Commission are present.
9 The Commission will conduct a hearing on a
10 complaint filed with the City Clerk on June 5th, 2015,
11 by Adam Nguyen, alleging that Manh Nguyen violated
12 Section 12.08 and other unspecified sections of the San
13 Jose Municipal Code. Specifically, the allegation is
14 that the respondent filed a false family gift report
15 and committed an unspecified violation concerning a
16 "ballot designation worksheet." The City Clerk
17 promptly notified and provided a copy of the complaint
18 to the Independent Evaluator, and the Evaluator
19 notified and provided a copy to the respondent on
20 June 5th, 2015. The Independent Evaluator's Report and
21 Recommendations were submitted to the City Clerk on
22 July 1st, 2015, and copies were then provided to the
23 complainant, respondents and commission members and
24 posted to the city web site with the agenda for
25 tonight's meeting.

Page 2

1 APPEARANCES
2
3
4 San Jose Elections Commission: MICHAEL SMITH, Chair
5 CHRIS PEACOCK
6 MADHAVEE VEMULAPALLI
7 ADRIAN GONZALES
8 Staff: ARLENE F. SILVA,
9 Deputy City Attorney
10 TOM GRAVES,
11 Assistant City Clerk
12 CECILIA McDANIEL
13 Deputy City Clerk
14 Independent Evaluator: HANSON BRIDGETT, LLP
15 BY: STEVEN D. MILLER,
16 Attorney at Law
17 425 Market Street
18 26th Floor
19 San Francisco, CA 94105
20 (415) 777-3200
21 The Reporter: ADVANTAGE REPORTING SERVICES
22 BY: NOELIA ESPINOLA,
23 CSR #8060
24 1083 Lincoln Avenue
25 San Jose, CA 95125
(408) 920-0222

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Page 4

1 It should be noted that this complaint is
2 identical to the three complaints filed by Tuan Ly and
3 others on which the Commission took action at its
4 June 10th, 2015, meeting.
5 I think I'm going to -- okay. Yes. Before
6 we go any longer, does anyone here need translation?
7 We have headphones available if you do.
8 MR. DOVAN: I don't know why, but they're
9 still outside.
10 CHAIRMAN SMITH: Okay. Well, when they show
11 up, it's available.
12 MS. McDANIEL: Susan in the back -- they can
13 check in with her, and they can get an earpiece.
14 CHAIRMAN SMITH: Okay. I am going to skip
15 over, for this one, boilerplate about the Resolution,
16 et cetera. Just to note that this meeting is open to
17 the public. It's electronically recorded, and we have
18 a court reporter to compile a transcript.
19 At this time I would like to have the
20 complainant, Adam Nguyen, and the respondent, Manh
21 Nguyen, or their representatives, identify themselves
22 for the record.
23 And I don't believe either one is here, so
24 we'll move on.
25 Also, for the record --

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 5

1 MR. DOVAN: Mr. Chairman?
2 CHAIRMAN SMITH: Yes.
3 MR. DOVAN: Actually, Mr. Adam Nguyen
4 contacted me and asked me if I could speak a few words
5 for him.
6 CHAIRMAN SMITH: Okay. When we get to that.
7 MR. DOVAN: So I just want to let you know
8 that, in fact, he did ask me to say a few words.
9 That's all.
10 CHAIRMAN SMITH: Okay. I would like to have
11 city staff and representatives of Hanson Bridgett, the
12 Commission's Independent Evaluator, please identify
13 themselves for the record.
14 MS. McDANIEL: Cecilia McDaniel for the City
15 Clerk's office.
16 CHAIRMAN SMITH: Who do we have --
17 MS. SILVA: Deputy City Attorney Arlene
18 Silva.
19 MR. GRAVES: Assistant City Clerk Tom Graves.
20 MR. MILLER: Steven Miller from Hanson
21 Bridgett.
22 CHAIRMAN SMITH: Okay. Those who just came
23 in -- we'll wait a minute.
24 MR. MILLER: We do have a representative from
25 Respondent as well.

Page 6

1 MS. McDANIEL: Peter Allen.
2 CHAIRMAN SMITH: Oh, okay. Thank you.
3 Yeah, if people can turn off their phones,
4 please, so we don't have interruptions.
5 Thank you, Cecilia.
6 Okay. I'm going to wait a minute so people
7 get settled in the back. They're still handing out
8 headsets there.
9 Okay. I believe everybody who has -- are we
10 done with the headsets or the earplugs?
11 UNIDENTIFIED SPEAKER: People still putting
12 them on. She's giving instructions on how to use them.
13 CHAIRMAN SMITH: Okay. Okay. We're going to
14 get going today.
15 Let me just say I'm disappointed that so many
16 people showed up after the meeting had started. We
17 have a lot to do tonight. The interruption. So many
18 people came in late. It's not helpful.
19 Okay. Under the Commission's regulations and
20 procedures, the respondent may submit a written
21 response to the Report and Recommendations. The
22 response may contain legal arguments, a summary of
23 evidence and any mitigating or exculpatory information.
24 As of this time, no response has been
25 received from Respondents. Is there any written

Page 7

1 response? No.
2 UNIDENTIFIED SPEAKER: Do you have a
3 microphone? Too low.
4 MS. McDANIEL: We don't.
5 CHAIRMAN SMITH: I'm sorry. We do not have a
6 microphone. You can come over here if it's easier.
7 MS. McDANIEL: Do you want me to check on
8 that?
9 CHAIRMAN SMITH: I don't know. I'll leave
10 that to staff to decide. I'll try to speak up.
11 The complainant or any other interested party
12 may also submit a brief or written argument.
13 And, again -- oh, we did receive a written
14 statement from Mr. Nguyen, the complainant. And I
15 believe everybody on the Commission has a copy. Should
16 have one at your place. I believe that would have been
17 provided to the respondent also, I believe. Cecilia
18 left, but I believe that's the case.
19 Okay. At this time I'll recognize Steven
20 Miller from the Hanson Bridgett law firm to present the
21 Independent Evaluator's Report and Recommendations.
22 MR. MILLER: Thank you, Chairman Smith. Good
23 evening, Commissioners.
24 So, as you indicated, this is identical to a
25 series of complaints that you considered at your last

Page 8

1 hearing, on June 10th. It simply was filed too late to
2 meet the City's notice requirements to get on that
3 agenda.
4 And so, with that, I think I will just stop.
5 And you have my report in front of you, based on the
6 action you took. I would be happy to take any
7 questions you may have.
8 CHAIRMAN SMITH: Maybe you could just briefly
9 summarize, in a few sentences, what the conclusion --
10 MR. MILLER: Sure.
11 CHAIRMAN SMITH: Why -- what action we took
12 last time and what the basis for it was.
13 MR. MILLER: Sure. I would be happy to.
14 So the complaint checks two boxes, the first
15 alleging that the respondent violated Section 12.08 and
16 the second check in the box that there were just
17 unspecified violations. There is some reference to a
18 ballot designation worksheet but no facts to support
19 what that ballot designation worksheet might be or what
20 the problem might be with such a worksheet.
21 And then as regarding Section 12.08, as was
22 discussed at the June 10th hearing, I think giving the
23 complainant the benefit of the doubt, the allegation is
24 that the family gift report contained false
25 information; in particular, that the respondent had no

2 (Pages 5 to 8)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p style="text-align: center;">Page 9</p> <p>1 spouse and no children when, in fact, he does. The 2 complaint doesn't include a copy of the allegedly false 3 family gift report and so I'm making an assumption even 4 in making that statement. 5 But under Title 12 sufficiency standard, we 6 only investigate complaints at your direction when 7 facts, if proven true, would constitute a violation of 8 Title 12. And in this case, even if the facts are true 9 that the -- that the family gift report contained some 10 false information, that does not constitute a violation 11 of the Municipal Code. 12 As, I think, was also discussed on June 10th, 13 the Political Reform Act requires ten days to file a 14 Form 700 at the time of filing their declaration of 15 candidacy. But the family gift report is not a form 16 that needs to be filed by candidates; rather, it is 17 filed by officeholders and certain city officers and 18 employees once they assume office. And so there was 19 no -- there is no legal requirement that the candidate 20 file that family gift report. And, as such, Title 12 21 does not attach a violation to the allegation even if 22 proven true. 23 And, therefore, our recommendation on 24 June 10th, which you accepted, and our recommendation 25 again tonight would be that you take no further action</p>	<p style="text-align: center;">Page 11</p> <p>1 present a written or oral response. 2 I understand that Mr. Steven Dovan wants to 3 say couple of words. 4 MR. DOVAN: As I indicated a few minutes 5 ago -- 6 CHAIRMAN SMITH: I need to -- 7 8 MINH Q. STEVEN DOVAN, 9 being first duly sworn by the Chairperson to tell the 10 truth, the whole truth and nothing but the truth, 11 testified as follows: 12 13 MR. DOVAN: As I indicated a few minutes ago, 14 Mr. Adam Nguyen -- apparently he is here. I just 15 noticed. 16 Can you stand up, please, Mr. Nguyen. Can 17 you just stand. 18 That's Mr. Adam Nguyen. And, you know, he 19 did contact me and asked me to say a few words for him. 20 I'm not his attorney. Just as the last time, some of 21 the folks asked me to say a few words for them. 22 But apparently -- what he submitted is 23 like -- in some ways related to the information that I 24 had alleged in my complaint. And I think my complaint 25 was -- I'd like to feel that it was quite more detailed</p>
<p style="text-align: center;">Page 10</p> <p>1 and close the file on this matter without investigating 2 further. 3 CHAIRMAN SMITH: Okay. Thank you. 4 MS. SILVA: We did receive an e-mail from 5 Mr. Adam Nguyen. However, the response from the 6 respondent for Manh Nguyen was in relation to another 7 complaint, not for this one. 8 CHAIRMAN SMITH: Right. Thank you. 9 MR. MILLER: Was that sufficiently detailed? 10 CHAIRMAN SMITH: Yes, absolutely. For me, 11 anyway. Any questions before we -- no. Okay. 12 At this time I would call upon the 13 respondent, Manh Nguyen, or his representative, to come 14 forward and present any written or oral response. 15 MR. ALLEN: Unless there are any questions 16 from the Commission, we don't have any response. 17 CHAIRMAN SMITH: Any questions for the 18 respondent? Mr. Peter Allen is here, representing the 19 soon-to-be councilman. 20 Okay. It's on. 21 But if there's questions, I'll ask him to 22 come up. Otherwise, no. 23 Okay. Comments from the complainant. At 24 this time I would call upon the complainant, Adam 25 Nguyen, or his representative, to come forth and</p>	<p style="text-align: center;">Page 12</p> <p>1 than the way that these other people put together their 2 complaint. So it would be considered incorporation of 3 the other -- of Mr. Adam Nguyen's complaint. 4 CHAIRMAN SMITH: Okay. 5 MR. DOVAN: So I will just address that when 6 I address my part. 7 CHAIRMAN SMITH: That's fine. 8 Any questions? 9 If not, okay. Next -- okay. Is there anyone 10 else who would like to speak on this matter? If so, I 11 would ask you to take no more than two minutes. 12 And also I would ask that comments be 13 specific to this complaint and not just a general -- I 14 gave a lot of leeway at the last meeting on the other 15 three complaints, allowing people to basically say 16 whatever they wished about Mr. Adam -- Mr. Manh Nguyen. 17 I would like to keep any comments this time 18 specifically restricted to this complaint, especially 19 since we've already, essentially, dispositioned this 20 complaint previously. 21 So if there is somebody that would like to 22 speak. 23 If not, moving on. 24 Now is the time for the Commission to make 25 its decision. We have the following options. We can</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 13

1 find that further investigation is necessary. If so,
2 we direct the Evaluator to conduct further
3 investigation and report back. We may adopt the
4 Evaluator's report, approve the recommendation against
5 conducting an investigation and close the file in this
6 matter without further action.

7 I'll open the floor to discussion or if
8 someone would like to make a motion. Or I'll make a
9 motion. To speed things along, I'll make a motion.

10 I move that the Ethics Commission find that
11 there is sufficient -- just a second -- insufficient
12 cause to conduct a preliminary investigation and that
13 the file in this matter be closed without further
14 action.

15 COMMISSIONER GONZALES: Second.

16 CHAIRMAN SMITH: Thank you. Any discussion
17 on this motion?

18 As I mentioned, this is the same motion that
19 we made on the other three identical complaints.

20 So, if there's no discussion, all in favor of
21 the motion?

22 (All Commissioners responded Aye.)

23 CHAIRMAN SMITH: Any opposed?

24 (No response.)

25 CHAIRMAN SMITH: Okay. Passes unanimously.

Page 14

1 And upon adoption of the motion, I must ask
2 each commission member to certify that they have heard
3 or read the testimony at the hearing and reviewed all
4 the evidence in the record by affirming "So certified."

5 Commissioner Vemulapalli?

6 COMMISSIONER VEMULAPALLI: So certify.

7 CHAIRMAN SMITH: Commissioner Peacock?

8 COMMISSIONER PEACOCK: So certified.

9 CHAIRMAN SMITH: Commissioner Gonzales?

10 COMMISSIONER GONZALES: So certify.

11 CHAIRMAN SMITH: Commissioner Pierre-Dixon?

12 COMMISSIONER PIERRE-DIXON: So certify.

13 CHAIRMAN SMITH: And me, Commissioner Smith,
14 so certified.

15 Under the Commission's regulations and
16 procedures, the Commission shall issue a decision by
17 resolution. At this time I would entertain a motion
18 directing the City Attorney to draft a resolution of
19 the commission's findings and penalties and authorizing
20 the Chair to approve and sign the resolution.

21 COMMISSIONER PIERRE-DIXON: I would so move.

22 CHAIRMAN SMITH: Thank you. I'll second.

23 Any discussion?

24 And, if not, all in favor?

25 (All Commissioners responded Aye.)

Page 15

1 CHAIRMAN SMITH: Any opposed?

2 (No response.)

3 CHAIRMAN SMITH: Okay. Passes unanimously.

4 And that's it. I'll declare this hearing

5 closed. Thank you.

6 Okay. Now, moving on to the second hearing.

7 Again, I'm going to skip over some of the stuff at the
8 beginning because we just had -- identified the date
9 and the fact that everybody is here and who the staff
10 members are who are here.

11 The Commission will now conduct a hearing on
12 a complaint filed with the City Clerk on June 2nd,
13 2015, by Minh Q. Steven Dovan, alleging that Manh
14 Nguyen violated Sections 12.08, 12.06-910 through -930
15 and other unspecified sections of the San Jose
16 Municipal Code. Specifically, the allegation is that
17 the respondents made a number of false statements in
18 election-related materials and that an officer of a
19 nonprofit corporation impermissibly worked for the
20 respondent's campaign. The City Clerk promptly
21 notified and provided a copy of the complaint to the
22 Independent Evaluator, and the Evaluator notified and
23 provided a copy to the respondent on June 2nd, 2015.
24 The Independent Evaluator's Report and Recommendations
25 were submitted to the City Clerk on July 1st, 2015, and

Page 16

1 copies were then provided to the complainant,
2 respondent and commission members and posted in the
3 city web site with the agenda for tonight's meeting.

4 Again, I note that the -- I'll read this this
5 time. On April 15th, 2015, the City Council adopted
6 Resolution 76954, which establishes the Commission's
7 regulations and procedures pertaining to investigations
8 and hearings. All parties to this proceeding have been
9 provided copies of the Resolution. The regulations and
10 procedures have been adopted to ensure the fair, just
11 and timely resolution of complaints before the
12 Commission.

13 This hearing is open to the public. It is
14 being electronically recorded, and we have a court
15 reporter with us to compile a transcript. The formal
16 rules of evidence do not apply to this hearing, but all
17 testimony will be under oath or affirmation. The
18 complainant will be treated like any other witness in
19 providing evidence. The Chair may compel testimony of
20 the witnesses and may compel the production of relevant
21 documents to the Evaluator by subpoena. Witnesses may
22 be excluded at the direction of the Commission --
23 discretion of the Commission. Commission members may
24 ask questions of witnesses or the Evaluator when
25 recognized by the Chair.

4 (Pages 13 to 16)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 17	Page 19
<p>1 At this time I would like to have the 2 complainant, Steven Dovan, and the respondent, Manh 3 Nguyen, or their representatives, identify themselves 4 for the record. 5 MR. DOVAN: Yes, my name is Minh Steven 6 Dovan. I'm the complainant. 7 CHAIRMAN SMITH: Okay. Thank you. 8 MR. ALLEN: I'm Peter Allen. I'm here for 9 the respondent, Manh Nguyen. 10 CHAIRMAN SMITH: Okay. Thank you. 11 We've already identified city staff who are 12 present here tonight. 13 Again, under the Commission's regulations and 14 procedures, the respondent may submit a written 15 response to the Report and Recommendations. The 16 response may contain legal arguments, a summary of 17 evidence and any mitigating or exculpatory information. 18 As of this time, no response has been 19 received from the respondents. 20 Do you wish to submit anything in writing? 21 MR. ALLEN: Not at this current time, no. 22 CHAIRMAN SMITH: Thank you. 23 The complainant or any interested person may 24 also submit a brief or written argument. 25 Again, at this time no briefs or written</p>	<p>1 of the Municipal Code -- the Municipal Code. 2 There are four allegations in this complaint, 3 and I think I'll go through them one by one, briefly. 4 But, in sum, our conclusion is that none of the four 5 meet that sufficiency standard and that our 6 recommendation, therefore, is that -- we did not 7 conduct an investigation, and our recommendation is 8 that you support that conclusion. In part because of 9 what transpired at the June 10th hearing. 10 After I go through all four, I thought maybe 11 I would very briefly speak to the issue of the 12 Resolution's provisions that allow either the Evaluator 13 or the Commission to refer a matter to another entity 14 for investigation. And I would like the opportunity to 15 briefly share my thoughts as to why I, the Evaluator, 16 am not planning on making such a referral. 17 So the first allegation is, essentially, that 18 the candidate statements filed by the respondent is 19 false in that he said he was a resident of District 4 20 when, in fact, he is not. Title 12 simply does not 21 attach to the issue of residency. There are Election 22 Code provisions setting forth residency requirements. 23 There are San Jose City Charter requirements that 24 candidates and council members be residents of a 25 district in which they are running or serve. But</p>
Page 18	Page 20
<p>1 argument from the complainant or any other interested 2 persons have been received. 3 Did you have anything in writing that you 4 wish to submit in addition to the original complaint, 5 Mr. Dovan? 6 MR. DOVAN: Actually, not in writing. But -- 7 CHAIRMAN SMITH: Well, you'll have an 8 opportunity to make a statement. But this is just to 9 see if there's any -- anything in writing. 10 MR. DOVAN: Yeah, I guess I want to submit 11 this one. Shall I give it to -- 12 CHAIRMAN SMITH: Yeah. Yes, please. And 13 then when it's your turn to make a statement, you can 14 refer to this, if you wish. 15 Okay. At this time I'll recognize Steven 16 Miller from the Hanson Bridgett law firm to present the 17 Independent Evaluator's Report and Recommendations. 18 MR. MILLER: Thank you. Good evening again. 19 So, as I just explained and as you know, our 20 first step when a complaint comes through is to conduct 21 a preliminary evaluation to determine whether there is 22 sufficient cause to conduct an investigation. And 23 "sufficient cause" is defined in the Code and in your 24 Resolution as existing only if a complaint identifies 25 specific facts which, if proven, would be a violation</p>	<p>1 Title 12 simply does not speak to that issue. So, even 2 were the allegation to be true, it would not be a 3 violation of Title 12, although it would be a serious 4 matter in many respects. And so I think it's outside 5 the authority of this Commission to investigate that 6 particular allegation. 7 With regards to the second allegation, the 8 complaint alleges that the respondent claims, in a 9 newspaper article and on his web site and in various 10 other media outlets, that he is a lawyer when, in fact, 11 he is not a lawyer. And the complaint alleges that 12 this is a violation of the provision of Title 12 13 concerning the filing of campaign disclosure 14 statements. But I do not agree that the campaign 15 disclosure statements referenced in Title 12 have to do 16 with the kind of statement as to whether or not one is 17 a lawyer; rather, those campaign disclosure statements 18 are the Form 460s, Form 497s -- which we'll discuss at 19 some time later this evening, no doubt -- but campaign 20 filings of contributions and reporting of expenditures 21 and the like. 22 So, as with the first allegation, falsely 23 holding oneself out as a lawyer may be improper or even 24 illegal. And certainly, as a lawyer, I think it's 25 important that we not do things like that. It is</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 21	Page 23
<p>1 simply not an issue under Title 12 for this Commission 2 to investigate further. Even if true, it would not 3 implicate any provision of that.</p> <p>4 The third allegation is that the president of 5 a nonprofit organization campaigned for the respondent 6 and that, in so doing, violated Title 12's lobbying 7 regulations because the individual did not identify 8 himself as an individual or as a -- instead of the 9 president of his nonprofit corporation.</p> <p>10 And, again, I don't see a provision in 11 Title 12 that this attaches to. Title 12's lobbying 12 regulations do not regulate campaign activities. They 13 regulate lobbying activities.</p> <p>14 Second of all, Title 12's lobbying 15 regulations -- even if they did attach, they regulate 16 lobbyists, not candidates. And, therefore, the person 17 who would conceivably be violating a rule would be the 18 lobbyist, not the candidate.</p> <p>19 And, finally, the rule about nonprofits not 20 engaging in lobbying activities, which is really at the 21 heart of what the complaint alleges -- that is not -- 22 excuse me -- that is not a Title 12 prohibition. 23 That's a prohibition of the Internal Revenue Code 24 regulations attaching to nonprofit corporations and 25 limiting what nonprofit corporations can and cannot do.</p>	<p>1 briefly that it is true that under the Code, you or I 2 actually have the ability to refer a matter to another 3 investigating body when appropriate. Speaking for 4 myself, I think that's a right that would be -- should 5 be exercised quite carefully.</p> <p>6 And I think there is two factors that lead me 7 to conclude that I am not going to refer this matter in 8 my role as Evaluator. One is the nature of the 9 evidence at issue. It would be one thing if there 10 were -- well, maybe I'll just leave it at that. There 11 are some newspaper articles. There are some campaign 12 statements. But I'm not sure that there is the 13 proverbial smoking gun that leads me to think that, you 14 know, if only I could investigate this, surely there 15 would be a violation, but I'm just not the right person 16 to do the investigation. I don't find myself in that 17 situation.</p> <p>18 And the second area in which I think referral 19 to another entity is appropriate is when an 20 investigation actually has commenced, the sufficien-- 21 the preliminary evaluation and the sufficiency 22 threshold is met and the Evaluator is investigating a 23 complaint within your jurisdiction and comes upon some 24 facts that may be, if not proven, at least close to 25 proven by the investigation but just are peripheral to</p>
Page 22	Page 24
<p>1 So, again, this Commission would not be the entity to 2 enforce those rules.</p> <p>3 And so, for all of those reasons, again, even 4 if true, I don't think these -- we found that these 5 allegations don't present a violation of Title 12 that 6 would be within the authority of -- the jurisdiction of 7 this Commission.</p> <p>8 And then the fourth item in the complaint is 9 the filing of the false family gift report, which is 10 the same item as the first hearing you just had and the 11 same as the others that were conducted on June 10th. 12 And for all of those reasons that I just mentioned -- 13 and maybe I won't go through it again, Chairman Smith, 14 unless you would like me to.</p> <p>15 CHAIRMAN SMITH: That's fine.</p> <p>16 MR. MILLER: -- I have reached the same 17 conclusion, that that allegation does not reach the 18 sufficient requirements of Title 12 in that, even if 19 true, it would not be a violation of Title 12.</p> <p>20 And so, for all of those reasons, our 21 conclusion -- our preliminary evaluation is that this 22 complaint does not merit an evaluation -- an 23 investigation. Excuse me.</p> <p>24 And then, finally -- I think our report 25 discusses this a little bit, but I'll just mention</p>	<p>1 the investigation. Under those circumstances, I might 2 also consider referral to an outside entity.</p> <p>3 If a violation of Title 12 also rose to some 4 kind of criminal level such that you would want to 5 refer to the D.A., I might urge referral in those 6 kind -- type of circumstances, after a certain amount 7 of investigation has been done.</p> <p>8 But I do not find either of those two reasons 9 to be present here. But, of course, the Commission may 10 feel differently.</p> <p>11 I think that's it for me. And I'll take any 12 questions you may have.</p> <p>13 CHAIRMAN SMITH: Okay. Thank you.</p> <p>14 Any questions for Mr. Miller?</p> <p>15 COMMISSIONER PIERRE-DIXON: I didn't really 16 hear anything about the residency requirement.</p> <p>17 MR. MILLER: So the residency requirement is 18 a requirement of the city charter. Not of Title 12. 19 That was the first allegation.</p> <p>20 COMMISSIONER PIERRE-DIXON: Right.</p> <p>21 MR. MILLER: And so even if, in fact, the 22 candidate does not live in District 4, that would be a 23 serious matter. You know, San Francisco five or six 24 years ago, sitting member of the Board of Supervisors 25 was jailed for a similar violation. So I don't mean to</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 25	Page 27
<p>1 diminish the seriousness of it. But it's not a 2 Title 12 issue. It's a city charter issue. 3 I think your City Attorney will probably tell 4 you that almost any taxpayer can file a charge with the 5 attorney general to get permission to file a lawsuit 6 seeking to unseat an unqualified member of the Board of 7 Supervisors. But I don't think they would come to the 8 Ethics Commission. 9 COMMISSIONER PIERRE-DIXON: Your feeling is 10 it should not be referred? 11 MR. MILLER: In my view, the candidate's 12 obligations on the candidate statement -- the candidate 13 checked the box. I believe the City Clerk checked that 14 residency with the voter rolls and found that he was 15 registered to vote where he said he lived. 16 The allegation does not strike me as being 17 much more than if I had said, you know, you don't live 18 where you said you live. I mean, there's no -- I 19 didn't see any evidence -- I didn't -- I'm constrained 20 because I'm looking only at the four corners of the 21 complaint because of the sufficiency restrictions. But 22 in the complaint itself I did not see evidence that led 23 me to think that this merited referral to another 24 agency, beyond just the accusation itself. 25 COMMISSIONER PIERRE-DIXON: Uh-huh.</p>	<p>1 candidate information to us, they -- we routinely send 2 that to the Registrar of Voters, just to do a 3 routine -- a routine check only. And we did so in this 4 case as well. 5 COMMISSIONER PEACOCK: You said you did so in 6 this case? 7 MR. GRAVES: We did so. 8 COMMISSIONER PEACOCK: And it checked out? 9 MR. GRAVES: Yes. 10 CHAIRMAN SMITH: Other questions? 11 COMMISSIONER PEACOCK: Question about the 12 "lawyer/not a lawyer" part. So the -- just tell a 13 little bit more about what the candidate's material 14 said and what you learned, if anything, in the process. 15 MR. MILLER: Again, I would be -- because my 16 determination was that the complaint did not reach the 17 sufficiency standard, I did not look beyond the 18 complaint. But the complaint alleges that the 19 respondent claimed in a newspaper article, on his web 20 site and on his radio station that he was a lawyer -- I 21 believe by the use of -- 22 COMMISSIONER PEACOCK: Esquire. 23 MR. MILLER: -- e-s-q, Esquire, at the end of 24 the name -- when, in fact, he is not a lawyer. The 25 complaint alleges that he is not a lawyer. I want to</p>
Page 26	Page 28
<p>1 MR. MILLER: Which is, no doubt, serious. I 2 don't mean to minimize the seriousness of it. 3 CHAIRMAN SMITH: Let me ask a follow-up 4 question. Am I correct that there is no requirement in 5 San Jose that you have lived in -- within a district or 6 within the city for some specific time beforehand? 7 MR. MILLER: I don't -- 8 CHAIRMAN SMITH: As far as I know, you just 9 have to be living there at the time you file. 10 MR. MILLER: That's probably a question for 11 the City Attorney. And I don't know the answer, in any 12 event. 13 MS. SILVA: There is a requirement in the 14 city charter that you have to live within the district 15 that you're going to be running for, I believe, 16 30 days. There's a specific provision in the charter. 17 And there are requirements, when the candidate does 18 file a candidate statement to run, that the City 19 Clerk's office have requirements to check the paperwork 20 that is submitted pursuant to that application to run 21 for office. 22 And so the City Clerk is here to respond to 23 that, as to what they evaluated with regards to the 24 paperwork that was submitted by Mr. Nguyen. 25 MR. GRAVES: When the candidate returns the</p>	<p>1 be very careful. I, sitting here right now, don't know 2 whether or not he is a lawyer. I just know that I -- 3 I -- I know that Title 12 does not proscribe that type 4 of behavior. 5 COMMISSIONER PEACOCK: Right. And does 6 adding "Esquire" to your name automatically mean 7 "lawyer," or can that mean something else? 8 MR. MILLER: Well, again, that would not be a 9 Title 12 question. 10 CHAIRMAN SMITH: As a lawyer. 11 MR. MILLER: As a lawyer, I think "Esquire" 12 means "lawyer." I don't know what else it would mean. 13 COMMISSIONER PIERRE-DIXON: It means 14 "gentleman" in English. But, yes, the term "Esquire" 15 is for attorneys-at-law. 16 CHAIRMAN SMITH: I believe last time there 17 was some testimony -- it may have been under comments 18 of others -- about -- offering at least partial 19 explanations on the matter of the web site and other 20 things that -- I don't know if anybody wanted to bring 21 that forward. If so, they have an opportunity at this 22 time. Well, I won't go into it any further. I'll 23 leave that to the respondent, if they wish to discuss 24 that. 25 So I guess the essence of what you're saying</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 29

1 is that these may well be serious matters -- they may
2 be true; they may well be serious. But, in any case,
3 they don't fall under Title 12, so it's really not our
4 job -- I don't want to even say it that way. It's not
5 within our purview to investigate them.
6 MR. MILLER: That is my decision, yes.
7 CHAIRMAN SMITH: Okay. Thank you.
8 Other questions?
9 Okay. With that, at this time I would call
10 upon the respondent, Manh Nguyen, or his
11 representative, to come forward and present any written
12 or oral response.
13 We would appreciate it if you could limit
14 your comment to five minutes. Do you wish to --
15 MR. ALLEN: Personally, no. But we do have a
16 representative here who might wish to speak to this
17 issue.
18 CHAIRMAN SMITH: If so, come forward.
19 MR. ALLEN: I personally haven't read the
20 evaluator's report.
21 MR. DO: As far as I'm concerned, it stands
22 on its own. However --
23 COMMISSIONER PIERRE-DIXON: You need to be
24 sworn.
25 CHAIRMAN SMITH: If you want to say more,

Page 30

1 then you need to be sworn. First if you could give us
2 your name, please.
3 MR. DO: Bryan Do.
4 CHAIRMAN SMITH: Okay.
5 MR. DO: Bryan Kunh (phonetic) Do.
6 CHAIRMAN SMITH: Thank you.
7
8 BRYAN DO,
9 being first duly sworn by the Chairperson to tell the
10 truth, the whole truth and nothing but the truth,
11 testified as follows:
12
13 CHAIRMAN SMITH: Thank you.
14 MR. DO: Let me sit.
15 CHAIRMAN SMITH: Absolutely.
16 MR. DO: I think what you're referring to is
17 the testimony regarding "Esquire" --
18 COMMISSIONER PEACOCK: Excuse me. Can we get
19 your connection to the campaign. Are you a volunteer?
20 Are you --
21 MR. DO: I volunteer to the campaign.
22 I just want to reiterate what Commissioner
23 Smith had allude earlier, and I just want to get
24 specifically to that example that was comment in the
25 last meeting. I just want to clarify that.

Page 31

1 On the "Esquire," the campaign, to the best
2 of my knowledge, never once claimed that Mr. Manh
3 Nguyen was an attorney. And, in fact, when we do know
4 that there was someone who referred to Mr. Manh Nguyen
5 as an attorney, we have sent correction. I know that
6 the campaign managers, on more than one occasion, have
7 sent to the Mercury News, very early in the primary --
8 I don't remember the exact date, but maybe you
9 remember, Peter.
10 MR. ALLEN: It was in January.
11 MR. DO: Yeah, very early in the campaign.
12 Someone make a mistake, we corrected it. This
13 gentleman from (inaudible).com with the pictures,
14 all -- all the evidence provided by Mr. Steven Dovan.
15 He provided that to you. It come from his web site.
16 He corrected within -- I think he said 24,
17 48 hours, right after that. And the campaign always
18 correct, every time there is an opportunity.
19 Obviously, we don't know every single possible
20 scenario, but when we do know about it, we have
21 corrected.
22 And so the e-mail that we sent to the Mercury
23 News, that is considered evidence. When we -- when
24 we -- someone make a mistake, we send them immediately.
25 And, in this case, this gentleman corrected in December

Page 32

1 of two thousand -- or last year.
2 Well, all the campaign can really do is when
3 someone make mistake, correct it. That's all you can
4 really do. You cannot -- you cannot control what
5 everybody say. But we do -- we do feel that we are
6 responsible for the correction, and we have done so. I
7 know that on more than one occasion I have asked for
8 corrections. So...
9 CHAIRMAN SMITH: Okay. Thank you. Any
10 questions?
11 COMMISSIONER PEACOCK: Just one question,
12 Mr. Do.
13 MR. DO: Yes.
14 COMMISSIONER PEACOCK: I was noticing the
15 candidate's web site today, and there are several
16 sentences in there that are saying he settled in San
17 Jose so he could attend Lincoln Law School and refers
18 to him as a law student. Upon graduating from law
19 school, he clerked for an administrative law judge for
20 the CFTC, later returned to San Jose to work for a law
21 firm. It does not say it is a lawyer. Do you think
22 that when -- why does it push all that --
23 MR. DO: He's a J.D. He's a -- I think --
24 I'm not an expert, but I think there's a couple of
25 attorneys here. He went to law school. He obtained a

8 (Pages 29 to 32)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 33	Page 35
<p>1 J.D., doctor of jurisprudence, but he did not pass the 2 bar. He did not take the bar. Until you do, you're 3 not an attorney. And so he does have a legal 4 background, which is a fair assessment. You're a 5 doctor -- you know, you are, essentially, a doctor of 6 jurisprudence. That makes you, to some degree, 7 educated in the law.</p> <p>8 But he never said that he's a lawyer, which 9 is -- I think from the background that you see on the 10 candidate statement. You see that on his web site. 11 And those are -- those are very clear distinction that 12 we made. We make very clear. We do all this, but 13 we're not a lawyer. And I think people make a mistake 14 assuming that is the case. And you can understand that 15 might be, because you went to law school. People think 16 that you are.</p> <p>17 We sent out corrections. The most important 18 one was the Mercury News and also this gentleman that 19 was here earlier. So whenever member of the media make 20 a mistake, we instantly take corrective steps.</p> <p>21 COMMISSIONER PEACOCK: Did the campaign, as 22 far as you know, ever put out any material that used 23 "Esq.?"</p> <p>24 MR. DO: Absolutely not. Not only the 25 campaign did not; we sent out a correction. I think</p>	<p>1 MR. DOVAN: I think I need a little more than 2 five.</p> <p>3 CHAIRMAN SMITH: Okay. Just one thing -- one 4 thing I would mention. Why we're here -- the decision 5 that we need to make tonight is whether to accept the 6 recommendation to not investigate further or whether we 7 ask the Evaluator to investigate further. So I think 8 the germane point is whether we continue.</p> <p>9 We haven't looked at the facts. So going 10 into detail about the facts of the case aren't going to 11 necessarily matter. It's a matter -- well, that's not 12 the right thing to say.</p> <p>13 I guess keep that in mind. We're not here 14 deciding whether there a violation or not. We're here 15 deciding whether to do further investigation. So if 16 you could let that guide you. I'll be kind, but let's 17 not go on -- let's not go on too long.</p> <p>18 COMMISSIONER PEACOCK: Mr. Chairman, you've 19 always been very judicious. And I know -- I think 20 during the time I've been on this, we've always had a 21 five-minute request. I cannot think of an example of a 22 time when anybody has needed to exceed it, so I would 23 hope that Mr. Do van would be able to do so also.</p> <p>24 MR. DOVAN: Also, I'm speaking on behalf of 25 Mr. Adam Nguyen.</p>
Page 34	Page 36
<p>1 someone accused the campaign of doing so, and it turned 2 out that they were false. Not only we didn't do it but 3 the correction sent out from last year.</p> <p>4 CHAIRMAN SMITH: Thank you.</p> <p>5 Any other questions?</p> <p>6 No. Okay. Thank you.</p> <p>7 Okay. At this time I would call upon the 8 complainant, Mr. Do van, or his representative, to come 9 forward and present a written or oral response. And, 10 again, I would appreciate if you can limit your 11 comments to five minutes.</p> <p>12 Please state your name for the record and --</p> <p>13 MS. McDANIEL: Can you hold on one second? 14 The interpreters are --</p> <p>15 CHAIRMAN SMITH: Wait a second.</p> <p>16 MS. McDANIEL: Okay. We're good.</p> <p>17</p> <p>18 MINH Q. STEVEN DOVAN, 19 being first duly sworn by the Chairperson to tell the 20 truth, the whole truth and nothing but the truth, 21 testified as follows:</p> <p>22</p> <p>23 MR. DOVAN: Am I limited to the five?</p> <p>24 CHAIRMAN SMITH: I would appreciate it if you 25 could.</p>	<p>1 CHAIRMAN SMITH: Tell us what you got to say.</p> <p>2 MR. DOVAN: Okay. Well -- oops. Excuse me. 3 Oh, God. Sorry about that.</p> <p>4 Okay. Well, I've been asked by many people, 5 you know, my motive for filing a complaint, whether or 6 not I was supporting, you know, Mr. Orozco or am I -- I 7 work for the union or whatever. And I made it very 8 clear, I do not know them. I have never interacted 9 with them. I don't support them. I was only concerned 10 about bringing out some issues relating to candidates. 11 That's all.</p> <p>12 The other thing is, at the end of the last 13 session, Mr. Bryan Do, who is present here, was allowed 14 to speak. He was the very last person to speak. And 15 as soon as he opened his mouth, he went on the attack 16 on me. And I'm not a candidate. And if you can 17 recall, I did not have a chance to even have 30 minutes 18 to rebut because you ended the meeting. So I felt it 19 was very unfair, unjust, that this is a hearing that I 20 was assaulted verbally by someone who is in support of 21 Mr. Nguyen. And I don't think that was proper at all, 22 if you can recall the last hearing.</p> <p>23 I'll just cut to the chase. There were four 24 issues that I raised, which Mr. Miller addressed: The 25 lobbying, which I agree. That one, it should be in</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 37

1 terms of like -- the responsibility of the person who
2 is lobbying or campaigning. He should identify himself
3 as an individual rather than, you know, the president
4 of an organization, 501(c)(3). So I agree with that.

5 With regards to the residency, again,
6 Mr. Miller indicated it's not an insignificant issue.
7 Meaning it is significant. A double negative means
8 it's significant. And even though it may not be in the
9 purview or jurisdiction of this Commission, I think you
10 have a duty to show your independence and your
11 fortitude to perhaps refer to the appropriate agency.

12 The other issue was his marital status, which
13 I will gloss over real quickly. He declared on the
14 bankruptcy filings he was separated. He declares with
15 the county recorder's office he was married, husband
16 and wife, with his wife, Mrs. Kim Du Nguyen. But then
17 they transferred to Mrs. Kim Du Nguyen, an unmarried
18 woman. So there's a conflict. There's an
19 inconsistency there. So I think there is some issues
20 with regard to legality.

21 Now, the final issue is the lawyer issue.
22 Now, the point is this. There are people who are
23 strong supporters of Mr. Nguyen. In particular -- I
24 passed out the copy. There's -- here's a colored copy.
25 There's a photocopy. This is a color copy. At his

Page 38

1 kickoff campaign event on January 18th, Sunday,
2 January 18th of this year, he was introduced by a
3 strong supporter of his on stage as an attorney. And I
4 have it on tape. I have a CD of it. I have a CD of
5 it, but I've also got it on the laptop.

6 If you would like to hear it in Vietnamese
7 and have it translated, I can play that. Unless you
8 trust me for it. It's just a few words, like "He's
9 a" -- "he's a lawyer." Would you like to hear that?

10 COMMISSIONER PIERRE-DIXON: Take your word
11 for it.

12 CHAIRMAN SMITH: I'm willing to take your
13 word for it. And I'm glad you explained what this was,
14 because I was going to ask you --

15 MR. DOVAN: What is it? I had a hard time
16 getting that.

17 Anyway, so in front of 1500 people at this
18 kickoff event, he's introduced as "Attorney Manh
19 Nguyen." And Mr. Manh Nguyen says nothing. He does
20 not correct or clarify. Nothing. So silence is an
21 acknowledgment.

22 As an attorney, as a district -- deputy
23 district attorney, you're very familiar with evidence
24 issues, Penal Codes. And that's -- in terms of
25 violation of Penal Code, again, beyond your purview,

Page 39

1 beyond your jurisdiction. But that doesn't mean you
2 don't have a right or you have the independence to say,
3 We should refer this.

4 And the last time we spoke -- I mean, the
5 last time we had a meeting in June -- each one of you
6 brings -- brings to the Commission your own specialty.
7 I don't know if you're a technical person, you're a
8 business person or whatever. But I know
9 Ms. Pierre-Dixon, and I have had matters with her for
10 more than 30 years. I'm a defense attorney; she's a
11 district attorney. She prosecutes; I defend. We're
12 familiar with the Penal Code. Violation, Penal Code.
13 And perjury is one of them.

14 So not just an introduction in front of
15 1500 people on January the 18th of this year. Also --
16 again, I also have it taped, and I downloaded, my
17 computer, laptop. He has another strong supporter who
18 refers to him as a legal scholar. And in terms of
19 "legal scholar," I consulted with a Vietnamese attorney
20 who practiced in Vietnam, in France and in the U.S. for
21 60 years. He's still alive. And he says that term,
22 "legal scholar," applies to a lawyer, a law professor
23 or a judge. So it's even more distinguished than a
24 lawyer.

25 Mr. Nguyen, in June, last month, was

Page 40

1 interviewed for a news story by Robert Handa, a
2 reporter for NBC. He also interviewed me after he
3 interviewed Mr. Nguyen. So I was familiar and I
4 downloaded that piece as well. Mr. Nguyen -- this was
5 last month -- continues to assert -- he didn't say he
6 was a lawyer, but he was a legal scholar, which is even
7 more distinguished.

8 Okay. And then, of course, he --

9 CHAIRMAN SMITH: Excuse me a second.

10 I take it nobody from the Clerk's office is
11 timing?

12 MS. McDANIEL: No.

13 CHAIRMAN SMITH: You're not. Okay.

14 I don't know an exact time, but if you can
15 wrap up, please.

16 MR. DO: That's okay.

17 And then on the form, the ESQ, that was also
18 one of his strongest supporters, who owns the on-line
19 internet media. And you have seen that photo. And I
20 think I passed it out. And it's also part of your
21 package.

22 My question is this -- and, of course, the
23 Mercury News with Eric Kirby, the reporter -- he wrote
24 the story that says Mr. Nguyen is a former attorney.
25 Still, nevertheless, that's the word, "attorney," in

10 (Pages 37 to 40)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 41	Page 43
<p>1 there.</p> <p>2 So my question is, if he can say this or</p> <p>3 deceive his strongest supporters -- his strongest</p> <p>4 supporters in introducing him to the public, in front</p> <p>5 of 1500 people, and play the tape over and over again,</p> <p>6 referring to him as a legal scholar -- in addition, the</p> <p>7 web site that says E-s-q, which Mr. Miller -- and</p> <p>8 this -- this is what attorneys that I myself -- we</p> <p>9 consider that means "attorney." This is to his own</p> <p>10 strong supporters.</p> <p>11 I would like to ask the gentleman from -- the</p> <p>12 man who last time appeared and said it was his fault.</p> <p>13 He took the fall. He fell on the sword. How is it</p> <p>14 that he himself was deceived by Mr. Nguyen? How is the</p> <p>15 gentleman who introduced in front of 1500 people at the</p> <p>16 Unify Center in January of this year introduce him as</p> <p>17 an attorney? And Mr. Nguyen says nothing about it. Or</p> <p>18 the tape of testimonial, Mr. Luong Nguyen, who</p> <p>19 constantly repeats, "Mr. Nguyen is a legal scholar."</p> <p>20 You know, it has to end somewhere, and he has</p> <p>21 to be held accountable. I know people like to</p> <p>22 embellish, whether it be Brian Williams or O'Reilly,</p> <p>23 Bill O'Reilly, or other people. You cannot claim what</p> <p>24 you are not. I am not a medical doctor. I cannot</p> <p>25 claim I'm a medical doctor. I would face severe</p>	<p>1 I would leave it alone.</p> <p>2 So I ask that --</p> <p>3 CHAIRMAN SMITH: I really need you to wrap</p> <p>4 up, please.</p> <p>5 MR. DO: I ask that you please exercise your</p> <p>6 independence, your fortitude, and say, This is beyond</p> <p>7 our jurisdiction, as Mr. Miller indicated, this is</p> <p>8 beyond our purview, but that doesn't mean we cannot</p> <p>9 refer it to the appropriate agency. That's all I'm</p> <p>10 asking. Please.</p> <p>11 And, I appreciate Ms. Pierre-Dixon's</p> <p>12 specialty. And she clearly knows that this is a</p> <p>13 violation of perjury, felony, as well as a misdemeanor</p> <p>14 on the other issue.</p> <p>15 I submit it.</p> <p>16 CHAIRMAN SMITH: Okay. Thank you.</p> <p>17 Any questions?</p> <p>18 COMMISSIONER VEMULAPALLI: One question.</p> <p>19 Does the candidate mention that he's a lawyer in the</p> <p>20 candidate statement?</p> <p>21 MR. DO: I'm sorry.</p> <p>22 COMMISSIONER VEMULAPALLI: Does the candidate</p> <p>23 mention -- Mr. Manh mention that he's a lawyer in the</p> <p>24 candidate statement?</p> <p>25 MR. DO: As I -- I gave the four examples,</p>
<p>Page 42</p> <p>1 consequences.</p> <p>2 And that is why I request -- of all the four</p> <p>3 issues that I presented, this one is very important.</p> <p>4 And each of you, like I said, brings to this</p> <p>5 Commission your own specialty. And, in this case,</p> <p>6 Ms. Pierre-Dixon is a specialist in the law.</p> <p>7 Especially criminal law. Not civil. Criminal law.</p> <p>8 And at the last hearing, if I recall</p> <p>9 correctly, you did entertain a vote because you thought</p> <p>10 perhaps this matter should be referred out because it's</p> <p>11 not within our jurisdiction or purview. And I</p> <p>12 appreciate that acknowledgment. But that doesn't mean</p> <p>13 that you just rubber-stamp and just wash your hands and</p> <p>14 say, That's it. We're not going to do anything about</p> <p>15 it. I think this is severe enough.</p> <p>16 Furthermore, perjury, statute of</p> <p>17 limitation -- is a felony. It's three years.</p> <p>18 In addition, the claiming that you're a</p> <p>19 lawyer when you're not or do not correct anybody for so</p> <p>20 many years -- and I have personally -- I'm a percipient</p> <p>21 witness. When I've heard people refer to Mr. Nguyen,</p> <p>22 in front of Mr. Nguyen, as a lawyer, I immediately</p> <p>23 correct them. I say, Mr. Nguyen is not a lawyer.</p> <p>24 But I did not bring this out until now.</p> <p>25 Because why? Because he ran for office. If he didn't,</p>	<p>Page 44</p> <p>1 and that itself should be adequate.</p> <p>2 Now, if he goes and he puts his neck around</p> <p>3 in the noose by saying, "I'm a lawyer," then he would</p> <p>4 be too foolish. But just because he does not correct</p> <p>5 people, he does not clarify, that itself is like a</p> <p>6 suborn of perjury.</p> <p>7 CHAIRMAN SMITH: I understand that -- I</p> <p>8 understand your answer to be, no, he did not make that</p> <p>9 claim in the candidate statement. He may have -- he</p> <p>10 may have done it elsewhere or implied it elsewhere, but</p> <p>11 the candidate statement made no mention of it anywhere.</p> <p>12 MR. DO: Yes, but that doesn't mean that he</p> <p>13 did not --</p> <p>14 CHAIRMAN SMITH: I understand. I understand.</p> <p>15 But that's the direct answer to the question, right?</p> <p>16 MR. DO: And I know you're referring back to</p> <p>17 Title 12, which I accept, you know. But that doesn't</p> <p>18 mean he don't have the prerogative --</p> <p>19 CHAIRMAN SMITH: As do you, by the way. You</p> <p>20 can make a complaint, rightly, to the bar association,</p> <p>21 District Attorney or whoever else.</p> <p>22 MR. DO: But the Commission --</p> <p>23 CHAIRMAN SMITH: I understand.</p> <p>24 MR. DO: I believe the Commission has more</p> <p>25 credibility.</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 45	Page 47
<p>1 CHAIRMAN SMITH: I understand. 2 Okay. Any other questions? 3 No. Okay. Thank you. 4 At this point I again recognize Steven Miller 5 from Hanson Bridgett. 6 Do you have any additional comments? 7 MR. MILLER: I do not. 8 CHAIRMAN SMITH: Okay. Thank you. 9 Okay. At this point it's time for us to make 10 our decision. Our initial decision, anyway. As I 11 mentioned earlier, we have two options. We can find 12 further investigation is necessary, in which case we 13 direct the Evaluator to conduct further investigation 14 and report back to the Commission. We may also adopt 15 the Evaluator's report, approve the recommendation 16 against conducting an investigation and close the file 17 on this matter without further action. 18 So I'll open the floor to discussion and/or a 19 motion. 20 COMMISSIONER PIERRE-DIXON: I would say, 21 within the confines of those two things, is a matter of 22 closing it. And -- because it doesn't come within our 23 jurisdiction. 24 But I must state at this time I still have 25 very serious concerns about the use of the term</p>	<p>1 CHAIRMAN SMITH: Okay. That passes 2 unanimously. 3 Let me do a certification on that vote, and 4 then we'll talk about possible referral. 5 So Commissioner Vemu- -- oh, let me explain. 6 Upon adoption of the motion, I must ask each commission 7 member to certify that they have heard or read the 8 testimony at the hearing and have reviewed all the 9 evidence in the record by affirming "So certified." 10 Cutting out on me. 11 Commissioner Vemulapalli? 12 COMMISSIONER VEMULAPALLI: So certified. 13 CHAIRMAN SMITH: Commissioner Peacock? 14 COMMISSIONER PEACOCK: So certified. 15 CHAIRMAN SMITH: Commissioner Gonzales? 16 COMMISSIONER GONZALES: So certified. 17 CHAIRMAN SMITH: Commissioner Pierre-Dixon? 18 COMMISSIONER PIERRE-DIXON: So certified. 19 CHAIRMAN SMITH: And me, Commissioner Smith, 20 so certified. 21 Okay. Let me refer to another document here 22 for a minute. Make sure we do this properly. 23 Okay. At any time the Evaluator or the 24 Commission may refer the matter to another government 25 agency or official if the Commission determines that</p>
Page 46	Page 48
<p>1 "Esquire" and putting oneself out there as a lawyer. I 2 think it should be referred, as we reflected in my vote 3 at the last meeting. And there is concerns about 4 residency. And that is, again, serious and, again, 5 felt it that should be referred. 6 CHAIRMAN SMITH: Okay. This -- we don't 7 normally do this in these kind of cases. But, as we 8 did last time, we can certainly consider a possible 9 referral. 10 But on the matter -- if there's no other 11 comments at this point, let me make a motion again. 12 I would move that the Ethics Commission find 13 that there is insufficient cause to conduct a 14 preliminary investigation and that the file on this 15 matter be closed. I'm not saying "without further 16 action" because I'm leaving open the possibility of a 17 referral. 18 So if someone would like to second. 19 COMMISSIONER GONZALES: Second. 20 COMMISSIONER VEMULAPALLI: I support. 21 CHAIRMAN SMITH: Any discussion? 22 Okay. So we'll vote. All in favor? 23 (All Commissioners responded Aye.) 24 CHAIRMAN SMITH: Any opposed? 25 (No response.)</p>	<p>1 the agency or official may more appropriately resolve 2 the allegations in the complaint or enforce the 3 applicable provisions of law. A copy of all 4 information gathered must be sent by the City Clerk's 5 office or City Attorney's office to the agency or 6 official, together with the referral. 7 Is there a motion regarding referrals? 8 COMMISSIONER PIERRE-DIXON: I do have a 9 motion. I think that we should refer the issue as to 10 whether or not he led the community to believe that he 11 was a lawyer, that it should be referred to the 12 District Attorney. 13 CHAIRMAN SMITH: Do we have a second? 14 COMMISSIONER VEMULAPALLI: I second. 15 CHAIRMAN SMITH: Okay. Any discussion? 16 Okay. You wanted to separately -- have, 17 potentially, a second motion on the other matter. 18 COMMISSIONER PIERRE-DIXON: Potentially a 19 second motion. 20 CHAIRMAN SMITH: Discussion on this motion? 21 COMMISSIONER PIERRE-DIXON: My only 22 discussion would be, again, taking into account my 23 history and what I know about the law and looking at 24 the law again today, any benefit derived by an 25 individual who sets himself out as a lawyer when they</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p style="text-align: center;">Page 49</p> <p>1 are not a lawyer is to be examined. It is the 2 responsibility of the District Attorney's office in 3 this county to look at any potential criminal conduct. 4 If, in fact, that does not rise to the level, the case 5 is not an issue. I certainly, over 30 years, did not 6 issue many cases. But it is a case that needs to be 7 looked at, and a decision needs to be made on that 8 level. And that's the reason I'm making the request. 9 CHAIRMAN SMITH: Any other discussion? 10 COMMISSIONER PEACOCK: A question to 11 Commissioner Dixon. I'm going to give two sort of 12 extreme things. I assume there is a difference between 13 me not correcting the record if somebody calls me a 14 lawyer and me showing up at court saying, I am here to 15 represent Mr. Gonzales. 16 COMMISSIONER PIERRE-DIXON: Yes. 17 COMMISSIONER PEACOCK: Do you see this as 18 closer to one end or the other of those? 19 COMMISSIONER PIERRE-DIXON: Actually, looking 20 at what you're talking about today in terms of his web 21 site, I think it's right on that level. Again, that's 22 why I said the D.A. needs to take a look at it. It's 23 not a matter of him walking into court, saying, I'm 24 representing somebody. That's a clear-cut case. But 25 in this case he's derived the benefit by people</p>	<p style="text-align: center;">Page 51</p> <p>1 that something is illegal, I can't refer those matters 2 to law enforcement agencies unless there is sufficient 3 and appropriate evidence, that has been vetted, for me 4 to do so. 5 And I feel like it's a very similar situation 6 here with this Commission, that they're good questions, 7 but the evidence that has been proposed hasn't been 8 vetted. And I don't think it's our job to be referring 9 it when there hasn't been a full-on investigation. 10 So I would oppose a motion to refer it. 11 COMMISSIONER PIERRE-DIXON: I'd like to 12 comment on that. 13 CHAIRMAN SMITH: Sure. 14 COMMISSIONER PIERRE-DIXON: I think it's the 15 responsibility of the D.A.'s office to do that 16 investigation. That's what we do as prosecutors. The 17 bottom line is we receive many, many cases. We have a 18 unit that's specifically assigned to look at political 19 corruption. And reality is oftentimes it does not rise 20 to the level. But that attorney is looking at that and 21 making that decision, based on the facts and 22 circumstances. 23 What we have here is not an investigation. 24 No investigation was done. We're looking at the four 25 corners of the document and deciding, is there enough</p>
<p style="text-align: center;">Page 50</p> <p>1 believing that he has passed the bar, that he is an 2 attorney, by using the term "Esquire." And that needs 3 to be looked at. 4 If, in fact, it was all done without his 5 knowledge, as stated here by a member of his campaign, 6 then he's free and clear. But I think there's enough 7 question here about what actually happened to make me 8 concerned about it. 9 Since it is my profession, I definitely don't 10 want anybody putting themselves out there, deriving 11 benefit for something that they're not entitled to. 12 CHAIRMAN SMITH: Other questions or comments? 13 Yes. Commissioner Gonzales? 14 COMMISSIONER GONZALES: When I consider these 15 four allegations -- and I do think they're very 16 important questions to ask. But going back to 17 procedure, considering that our Evaluator did not find 18 evidence to conduct a full investigation and give a 19 legal opinion, I don't think that these questions have 20 been vetted to be able to refer -- that the evidence 21 presented is eligible for a referral to a law 22 enforcement agency. 23 In my current capacity, I work as a 24 conformance auditor for a government agency. And even 25 at times when I find that there may be a suggestion</p>	<p style="text-align: center;">Page 52</p> <p>1 to go further, and there isn't. 2 But perhaps with the D.A. looking at it, they 3 can make that decision. And if they decide there 4 isn't, and there's insufficient evidence, they could 5 put it on file. And if there is, then they move 6 forward. But that is what the D.A.'s purview is. 7 CHAIRMAN SMITH: I guess I'm -- I'm inclined 8 towards -- I won't say that this shouldn't be looked 9 at, but I'm inclined to agree with Mr. Gonzales. As 10 indicated by the complainant, it puts a certain stature 11 behind it or something if we refer it. And I don't 12 think we want to -- you know, there is nothing to 13 prevent the complainant from contacting the District 14 Attorney's office. There's nothing to prevent 15 Commissioner Pierre-Dixon from contacting the District 16 Attorney's office. And it may well be appropriate. 17 But I'm a little concerned with the fact that 18 there is certain assertions; and then, on the other 19 side, there is -- well, it was a mistake or we 20 corrected it. And that may not be true in all cases. 21 But I just -- I'm just uncomfortable with the level of 22 knowledge that we have and the degree of -- or lack of 23 vetting that has occurred in putting the Ethics 24 Commission stamp on it and saying, We think you ought 25 to look at this.</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 53	Page 55
<p>1 So that's kind of where I'm at. 2 Any other comments? 3 COMMISSIONER PEACOCK: One additional 4 comment. Were you about to -- 5 COMMISSIONER VEMULAPALLI: No. 6 COMMISSIONER PEACOCK: I think we have all 7 seen, in politics and other things, people want to get 8 credit for things. Including the materials I have 9 seen. The campaign wanted to get credit for a certain 10 amount of legal expertise by having gone to law school, 11 having clerked and all of that stuff. 12 The question is, was the line crossed, where 13 the materials said -- basically said "I'm a lawyer"? 14 Or is it "I know a lot about being a lawyer, but 15 I'm" -- 16 But -- you know, and I have great respect for 17 Commissioner Pierre-Dixon and her expertise and her 18 background on that. So I'm inclined to support her 19 motion. But I want to make sure it's done in a way 20 that is not saying -- this is not coming out as Grand 21 Jury, saying, We think there's enough to indict. This 22 is saying, There is some smoke here. Is there some 23 fire -- is there fire behind it or is it just simple 24 political discussion? 25 I want to make sure that the wording of the</p>	<p>1 read again. 2 CHAIRMAN SMITH: The motion, I believe, was 3 simply to refer the matter, being a lawyer or not, to 4 the District Attorney's office. 5 COMMISSIONER PEACOCK: I guess what was the 6 specific -- 7 COMMISSIONER PIERRE-DIXON: I guess the 8 wording I would suggest, we state that we would like 9 the District Attorney's office to investigate whether 10 or not the respondent in this case led the community to 11 believe that he was an attorney-at-law. 12 CHAIRMAN SMITH: Okay. That's certainly 13 consistent with what you said in the motion. 14 Okay. Any other comments or questions? 15 Okay. If not, all in favor of the motion, 16 please raise your hand so we know for sure. 17 (Commissioners Peacock, Pierre-Dixon and 18 Vemulapalli raise their hands.) 19 CHAIRMAN SMITH: And those opposed? 20 (Chairman Smith and Commissioner Gonzales 21 raise their hands.) 22 CHAIRMAN SMITH: So it passes 3 to 2, with 23 Commissioner Smith and Commissioner Gonzales opposed. 24 Okay. You wanted to offer another motion? 25 COMMISSIONER PIERRE-DIXON: The other</p>
Page 54	Page 56
<p>1 motion -- to make it clear that we're not saying we 2 think there's a problem. We're just saying we've heard 3 enough to say, Take a look at it. 4 COMMISSIONER PIERRE-DIXON: And I think that 5 happens on a daily basis in the District Attorney's 6 office. Many, many items. Many things come in, much 7 more serious than this. Life-and-death issues. We 8 have to make a decision, as we've had to in my 30-plus 9 years as an assistant, on those life-and-death issues. 10 There are situations when I came back and said, I'm 11 sorry. This does not meet the standard. This case 12 cannot be issued. This is what D.A.'s purview and job 13 is. 14 So I definitely state, There is some smoke 15 here. We have a concern. They take a look at it, and 16 they make their final decision. 17 CHAIRMAN SMITH: Okay. Any other comments? 18 If not, I think we're ready to vote. It 19 looks like it's going to be a close vote. I have to 20 get so close to talk into it. 21 MR. GRAVES: I don't know who seconded the 22 motion. 23 CHAIRMAN SMITH: Oh, I think Commissioner 24 Vemulapalli. 25 COMMISSIONER PEACOCK: Can we have the motion</p>	<p>1 question and concern I had was around residency 2 requirement. I had some question as to -- I don't know 3 enough to understand what was going on. I read through 4 a lot of this in terms of him moving apartments and 5 moving from one place to the other and then hearing 6 from the City Attorney it was a 30-day requirement. So 7 I felt there was enough smoke there to see whether or 8 not -- I don't feel it strongly on this issue, but 9 certainly it's a very serious one. And that's why I'm 10 asking that we discuss this issue. 11 CHAIRMAN SMITH: Okay. So you wish to make a 12 motion to refer that now to the District Attorney, or 13 who would it be? The -- I'm not sure who. 14 COMMISSIONER PIERRE-DIXON: I thought it was 15 City Attorney. 16 Who would look at that issue? 17 MS. SILVA: Well, the eligibility 18 requirements in the charter is found in Section 404. 19 Basically, what it says: "The person must have been a 20 resident of the city of San Jose and, expecting -- and 21 excepting the mayor, of the district represented by the 22 person as a member, for at least 30 days immediately 23 preceding the last day specified by law for the filing 24 of the nomination papers with the City Clerk for such 25 office or, if appointed, preceding the date of the</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 57

1 person's appointment to fill a vacancy."
2 So if, you know, there were a preliminary
3 review of it and he indicated that he was -- within the
4 30 days, had been -- preceding this, living or at the
5 district in which he was running for, I am not really
6 quite clear as to what the Evaluator --
7 CHAIRMAN SMITH: Can we confirm -- maybe,
8 Tom, you can tell us. When you checked with -- you
9 said you checked with the Registrar of Voters. Was
10 that to see that he was registered in that district at
11 that time, or was the 30-day requirement taken into
12 consideration in making that check?
13 MR. GRAVES: We send all candidates'
14 certificates -- certificates of residency to the
15 Registrar of Voters. When we receive all of their
16 candidate information, we scan it and we send it to the
17 ROV. The ROV specifically checks that document for
18 residency and the 30-day requirement, and they tell us
19 whether or not the candidate meets the residency
20 requirement and is registered at that address. That
21 occurred in this case.
22 CHAIRMAN SMITH: So they do consider the
23 30-day -- I guess that would be, has the person been on
24 their roll as a registered voter within that district
25 for at least 30 days?

Page 58

1 MR. GRAVES: Right. That's how they do it.
2 CHAIRMAN SMITH: Okay. So did we actually --
3 I don't think we actually had a motion.
4 COMMISSIONER PIERRE-DIXON: No, we did not.
5 CHAIRMAN SMITH: I guess you were asking a
6 question?
7 COMMISSIONER PIERRE-DIXON: Yeah, but I was
8 really concerned with the 30 days. So if you're
9 letting us know that, in fact, was looked at, then I
10 will withdraw the motion.
11 CHAIRMAN SMITH: Okay. And in this case I
12 think you were stopped just short of actually making a
13 motion.
14 So -- okay. Okay. With that, I think we --
15 in this case -- let me get my stuff. Let me get my
16 paperwork straight. Okay.
17 Under the Commission's regulations and
18 procedures, the Commission shall issue a decision by
19 resolution. At this time I would entertain a motion
20 directing the City Attorney to draft a resolution of
21 the Commission's findings, penalties and referrals and
22 authorizing the Chair to approve and sign the
23 resolution.
24 Somebody wish to make a motion?
25 So moved.

Page 59

1 Somebody want to second the motion?
2 COMMISSIONER PEACOCK: I'll second.
3 COMMISSIONER PIERRE-DIXON: Second.
4 CHAIRMAN SMITH: We have a tie. Which one of
5 you wants to be --
6 COMMISSIONER PEACOCK: I'll defer to the
7 wiser.
8 CHAIRMAN SMITH: Okay. Commissioner
9 Pierre-Dixon seconded.
10 Any discussion?
11 Okay. If not, all in favor?
12 (Four Commissioners responded Aye.)
13 CHAIRMAN SMITH: Any opposed?
14 (Commissioner Gonzales raises his hand.)
15 CHAIRMAN SMITH: Four to one, with
16 Commissioner Gonzales opposed.
17 And, with that, this hearing is now closed.
18 Now we're ready to move on to the third
19 hearing. Okay. Again, we've gone through the
20 information about the dates and where we are, who is
21 here.
22 So the Commission will conduct a hearing on a
23 complaint filed with the City Clerk on June 5, 2015, by
24 Tom Cochran alleging that Manh Nguyen and the Manh
25 Nguyen for San Jose City Council D4 2015 Committee

Page 60

1 violated Section 12.06.910 of the San Jose Municipal
2 Code. Specifically, the allegation is that the
3 respondent failed to file Form 497s, reporting as late
4 contributions numerous monetary contributions received
5 during the statutorily required "Late Contribution"
6 period immediately preceding the date of the election.
7 The City Clerk promptly notified and provided a copy of
8 the complaint to the Independent Evaluator, and the
9 Evaluator notified and provided a copy to the
10 respondent -- respondents on June 5th, 2015. The
11 Independent Evaluator's Report and Recommendations were
12 submitted to the City Clerk on July 1st, 2015, and
13 copies were then provided to the complainant,
14 respondent and commission members and posted to the
15 city web site with the agenda for tonight's hearing.
16 I'm not going to read over the material
17 describing our process because I've already done that
18 at an earlier hearing.
19 At this time I would like to have the
20 complainant, Tom Cochran, and the respondent --
21 respondents, Manh Nguyen and the Manh Nguyen for San
22 Jose City Council D4 2015 Committee, or their
23 representatives, identify themselves for the record.
24 Is Mr. Cochran or a representative here this
25 evening?

15 (Pages 57 to 60)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 61	Page 63
<p>1 No. Okay. Is someone here -- I guess, 2 Mr. Allen, you're here representing the respondent. 3 MR. ALLEN: Correct. 4 CHAIRMAN SMITH: Okay. And, as I mentioned 5 before, Respondent can submit written response to the 6 Report and Recommendations. 7 In this case we received a response from the 8 Manh Nguyen -- from Manh Nguyen and the Manh Nguyen for 9 San Jose City Council D4 2015 Committee. That really 10 rolls off the tongue. Does everyone have a copy? I 11 know commission members got a copy before the meeting. 12 And, also, the complainant or any other 13 interested person may submit a brief or written 14 argument. 15 And, as of now, no briefs or written 16 arguments from the complainant or other interested 17 parties have been received. Is that correct? 18 MS. McDANIEL: Not from the complainant but 19 the respondent. 20 CHAIRMAN SMITH: Right. The respondent. 21 Okay. At this time I will recognize Steven 22 Miller from Hanson Bridgett to present the Independent 23 Evaluator's Report and Recommendations. 24 MR. MILLER: Thank you. 25 CHAIRMAN SMITH: Do you want this?</p>	<p>1 explain is that under both Title 12 and the Political 2 Reform Act, all candidates periodically file reports 3 disclosing the contributions that they've received. 4 And the normal -- in the normal course of events, those 5 are disclosed by way of what's called a Form 460. And 6 there are prescribed timing requirements for when you 7 file your Form 460s. 8 One of the deadlines for filing the Form 460 9 would fall after an election date such that 10 contributions made in a time period shortly before an 11 election would not be disclosed until after the 12 election. And because the fundamental purpose of both 13 Title 12 and the Political Reform Act is to promote and 14 require transparency and disclosure of contributions, 15 both Title 12 and the Political Reform Act address that 16 gap by defining what's called "late contributions" and 17 imposing a requirement that candidates must disclose 18 late contributions received in that time period before 19 an election but that would not otherwise be disclosed 20 on a Form 460 until later. Those contributions must be 21 reported quickly, as they come in. Either 24 or 22 48 hours, depending on whether it's a monetary 23 contribution or an in-kind contribution. And those are 24 reported by way of what's called a Form 497. 25 Title 12 and Political Reform Act have</p>
Page 62	Page 64
<p>1 MR. MILLER: Only if you would like me to use 2 it. I would prefer not to. 3 COMMISSIONER PIERRE-DIXON: Up to the 4 interpreter. Can you hear him? 5 THE INTERPRETER: I can. 6 CHAIRMAN SMITH: They only complained about 7 me. 8 MR. MILLER: I'm not as mild-mannered as you. 9 I have an "Esquire" after my name. 10 So I beg your indulgence. This is a 11 complicated matter, and I would like to make sure that 12 I'm explaining things clearly and carefully. So feel 13 free to interrupt me if I'm taking too much time. 14 Title 12, particularly Section 12.06.910, 15 requires that candidates file campaign disclosure 16 statements in time and in compliance with both Title 12 17 rules and with the Political Reform Act rules. 18 There are a number of instances in Title 12 19 that fold into Title 12 compliance with the Political 20 Reform Act. So, in other words, a failure to comply 21 with both the Title 12 and the Political Reform Act 22 filing requirements is -- either one of those is a 23 violation of Title 12. And so I think that's the 24 starting place. 25 The second preliminary comment I want to</p>	<p>1 different definitional standards and requirements for 2 when late contributions -- what a late contribution is 3 and when they must be reported. Title 12 -- there is 4 nothing illegal or improper about that. Just the way 5 San Jose has set contribution limits differently than 6 the State. There are just different requirements. 7 Both of them are folded into Title 12. 8 Title 12's specific requirement is that a 9 late contribution is one that is over \$250 and 10 received, essentially, 16 days before the election, 11 which is after the last Form 460 filing deadline. 12 Whereas the Political Reform Act defines a "late 13 contribution" and requires reporting of late 14 contributions that are over a thousand dollars and that 15 are received within 90 days of an election. And all 16 candidates are required to comply with both of those 17 two independent filing requirements. 18 The complaint here filed in June, beginning 19 of June, focuses on the April 7th special election. 20 But it's impossible for us not to have considered the 21 filings for both April 7th election and the June 23rd 22 election because some of the deadlines overlap. And, 23 also, we have the authority under the resolution to 24 investigate where the allegations take us. And so 25 we've looked at the reporting patterns and the</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 65

1 reporting reports for both the April 7th special
2 election and the June 23rd election for Manh Nguyen for
3 Council.

4 And what we find and what I think our report
5 demonstrates is really a systemic and pervasive failure
6 to properly report late contributions, both in a timely
7 manner and even at all, under both the Title 12
8 requirements and the Political Reform Act requirements.
9 And what we've attempted to do in our report and what I
10 think I'll very briefly give you a summary of now is go
11 through, election by election, based on our scrutiny of
12 all the reports filed to date -- discuss the cumulative
13 summary of the Title 12 definition of a "late
14 contribution," as it applies to the April 7th election,
15 as it applies to the June 23rd election, and then the
16 Political Reform Act, as it applies to the April 7th
17 and June 23rd election.

18 And in our report we have given you tables,
19 tried to explain and come at how you would get at these
20 numbers in as many different ways as possible to try to
21 explain it to you. I'm happy to answer specific
22 questions that may come up. And then there is also an
23 exhibit that has all the raw data of all the reporting
24 statements that provide the data for those tables.
25 So a brief summary is that with regards to

Page 66

1 the April 7th election and the Title 12 rule of
2 reporting back late contributions over \$250 filed --
3 received 16 days before the election, the candidate,
4 first of all, filed no late contribution reports prior
5 to the election at all. They were all filed after the
6 election. So the public had no knowledge, before the
7 election, of those contributions. In fact, they were
8 only filed after the complaint was filed and after
9 notice was provided to the respondent that this issue
10 existed.

11 There were 27 late contributions. As I said,
12 none were reported before the election. Those can be
13 grouped or were grouped by the candidate into
14 12 reports that were untimely filed in the amount of
15 \$31,167.50 of contributions that were untimely
16 reported. And that's what Table 1 of your report
17 reflects.

18 With regards to the June 23rd election,
19 again, under Title 12 definition of "late
20 contribution," there are 45 additional late
21 contributions that were reported untimely. I'm going
22 to say "untimely" a lot here, because otherwise I have
23 to say "a late late contribution." But it's a late
24 contribution, the report of which was untimely filed.
25 And those 45 late contributions were in the amount of

Page 67

1 17,754.10 and constitute ten untimely reports. Each
2 one of -- each untimely report would be considered a
3 violation.

4 With regards to the Political Reform Act
5 rules, under April -- under the April 7th election,
6 first I'll point out that we don't know the entire
7 scope yet because the Form 460 deadline is not until
8 June -- July 31st, at which point we'll be able to see
9 all the contributions reported. We'll be able to know
10 which contributions were or were not also reported as
11 late contributions. But based on the filings to date,
12 there were 37 additional late contribution reports that
13 were untimely filed in the amount of \$69,802.50 and 20
14 late contributions that were never reported at all in
15 the amount of \$10,604.

16 And with regards to the June 23rd election,
17 again, with the caveat that we don't know yet until
18 July 30th, there are 40 more untimely late reports in
19 the amount of \$152,662.55 and two late contributions
20 that were never filed at all in the amount of
21 \$1,030.31.

22 So the magnitude of this is significant. A
23 lot of contributions. A lot of untimely reports. And
24 a high dollar value.

25 The reason why the number of contributions

Page 68

1 and the number of reports are not the same is because
2 contributions -- a late contribution -- in-kind
3 contribution must be reported within 48 hours of
4 receipt. The reason for 48 hours is that if it were a
5 monetary contribution, presumably the candidate knows
6 immediately that he got money, so he's got to file a
7 report within 24 hours. But an in-kind contribution --
8 perhaps it takes time for the person making the
9 contribution even to notify the candidate that an
10 in-kind contribution was made. And so the law gives
11 the candidate an extra 24 hours to report.

12 In this particular case, the in-kind
13 contributions are contributions from the candidate's
14 own media company. So presumably he didn't necessarily
15 need that extra 24 hours, but the law gives it to him.
16 He had 48 hours.

17 So I went astray a little bit. The reason
18 why there are multiple contributions in a single
19 report, is that within a 48-hour period one could
20 receive multiple contributions. But you don't file a
21 report for every contribution. Or at least you don't
22 have to. You only have to file within 48 hours. And
23 so on the tables you see, there are shadings that try
24 to explain -- the alternating shading is the reports.
25 So you'll see that there are multiple contributions in

17 (Pages 65 to 68)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 69

1 one report.

2 The other thing I want to explain about the
3 tables -- and then maybe I'll pause for some questions.
4 And also I want to, at some point, have an opportunity
5 to discuss the respondent's brief --

6 COMMISSIONER PEACOCK: Just a quick -- so the
7 shading -- if it's shaded it means what, and if it's
8 not shaded it means what?

9 MR. MILLER: The shadings are the report.
10 So, for instance, on Table 1 you'll see two -- the
11 first two contributions on March 22nd -- one for \$96;
12 one for \$225. Those were both filed in a single report
13 on June 16th.

14 COMMISSIONER PEACOCK: Okay.

15 MR. MILLER: And so that constitutes one late
16 report of two contributions.

17 And the reason why, since -- if you're
18 looking at Table 1, you'll see the first contribution
19 is \$96, and the second is \$225. Those are both less
20 than the \$250 threshold. But the rule is contributions
21 over 250 in the aggregate from the same source. So
22 here are two contributions from Viet (phonetic)
23 Multimedia, LLC, that together exceed \$250, at which
24 point a report needed to be filed. So those two
25 contributions on March 22nd were required to be filed

Page 71

1 attention, for instance, in Table 1 to the
2 contributions -- the contribution date, which is the
3 left column, of April 1st. You'll see that there are a
4 number of April 1st contributions all in one report.
5 But you'll see in the far right column two dates,
6 June 11th and June 16th.

7 And the reason for that is -- and that comes
8 up at various times -- is that on June 11th a candidate
9 filed a report reporting the first two contributions
10 dated April 1st. And then on June 16th, rather than
11 filing a separate new report, the candidate amended the
12 June 11th report to report the June 16 -- to report the
13 additional April 1st contribution.

14 So we have given the candidate a little bit
15 of a benefit of a doubt here. We're considering that
16 one report and, therefore, one violation rather than
17 two separate reports. I think that's unfair. We're
18 not giving him the benefit of the doubt. The truth is
19 that the candidate amended the reports to declare all
20 of those contributions happening on one date.

21 In some instances -- and I have -- and, for
22 instance, if you -- if you look at Table 2, the
23 contributions that are in the left column are reported
24 on June 9th. There are three contributions. And
25 you'll see that the first two were reported on

Page 70

1 by March 24th. And instead they were filed on
2 June 26th.

3 CHAIRMAN SMITH: To clarify, there were
4 other -- if I make sure I'm understanding what you got
5 here. The first two were on the 16th that were shaded.
6 There is also, further down on the table, several
7 others that are on the 16th. Basically, everything on
8 there was either filed on the 11th or the 16th.

9 MR. MILLER: That is correct.

10 CHAIRMAN SMITH: All the shaded ones that say
11 "6-11" were on one report?

12 MR. MILLER: Multiple reports were filed on
13 the same date.

14 CHAIRMAN SMITH: Okay. So there were --
15 okay. It's even more confusing than I thought.

16 MR. MILLER: Yes. I'll add one more
17 confusion to it. Which is --

18 CHAIRMAN SMITH: Thank you.

19 MR. MILLER: -- the candidate not only filed
20 multiple reports on the same date, which is not at all
21 unusual and improper. You have to file contributions
22 over a thousand dollars -- over \$250. So when you
23 reach that threshold, you file a report. One of the
24 things that made our investigation particularly
25 confusing -- and I'll -- I'll point -- I'll direct your

Page 72

1 June 16th, and the third is on June 11th. This is an
2 unusual circumstance. On June 11th the candidate filed
3 a report of a contribution on June 9th in the amount of
4 \$3,729. That was timely. That was not a violation.
5 And the candidate, five days later, amended that report
6 to disclose late contributions that were untimely
7 filed. So that amended report turned what otherwise
8 would have been a timely report into a violation. And
9 that happens also. So there are instances where the
10 candidate -- both of those types of situations.

11 I think it is indisputable that the
12 violations that we have produced -- that we have
13 uncovered and documented occurred. A much more
14 complicated question is what to do about it and what
15 action to take and what -- how to proceed. But I know,
16 Commissioner Smith and Commissioners, you often want to
17 separate out between our presentation of the report and
18 the discussion of what it means. So maybe I'll pause,
19 having summarized those four tables, to see if there
20 are any questions and -- before proceeding.

21 CHAIRMAN SMITH: Yeah. And since we're going
22 to hear from the respondent, I presume it might be good
23 to wait until we heard from the respondent. Then you
24 come back the second time and add some comments about
25 that.

18 (Pages 69 to 72)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 73

1 MR. MILLER: As you wish.
2 CHAIRMAN SMITH: Okay. So any questions on
3 what we've heard so far?
4 Okay.
5 MR. MILLER: Maybe I'll add just one more
6 thing that is worth mentioning, I think. Also,
7 perhaps, for the public best interest. We have been
8 Evaluator for some time, so we do have some
9 institutional memory. I believe this will be the first
10 time you have considered a violation of this nature, of
11 this particular set of facts. Certainly it would be
12 the first time that there has been a violation of this
13 magnitude. But we can't find an example of a late
14 contribution violation to even being considered by the
15 Commission. So this is uncharted territory for all of
16 us. Not uncharted -- how you proceed -- there is no
17 precedence from the Commission itself in terms of how
18 to proceed, although there is lots of FPPC precedent.
19 COMMISSIONER PIERRE-DIXON: Right.
20 CHAIRMAN SMITH: I'll just mention the one
21 thing that -- maybe I should wait until we talk about
22 motions -- is at times we try to get not so much -- I
23 can remember a few years ago we tried to get very
24 specific as to how many violations there were. One
25 violation or two or seven or whatever.

Page 74

1 I tend to think, in this case, because of the
2 separate -- it's almost an impossible task. You can
3 come up with a basis and a number, but three different
4 people can come up with three different bases and three
5 different ways because we've got multiple things on
6 multiple reports.
7 So I think -- I think we're going to end
8 up -- I suspect we're going to end up just saying
9 "numerous."
10 MR. MILLER: So we considered this very
11 question. And we have a compliance specialist who
12 insisted --
13 CHAIRMAN SMITH: Excuse me. Could we silence
14 that. Thank you.
15 MR. MILLER: I think under the law the --
16 each late report constitutes a violation. What makes
17 it complicated is that there is some discretion in how
18 the candidate chose to file his reports. As I've just
19 indicated --
20 CHAIRMAN SMITH: Exactly.
21 MR. MILLER: -- things were bunched together.
22 So I have documented -- our report
23 documents -- I can't even remember the exact number. I
24 think it's 90-something violations. One could have
25 bundled -- not bundled but combined contributions into

Page 75

1 the report such that I think a reasonable number of
2 reports would have been a different number, perhaps in
3 the 70s instead of in the 90s. But I think we made the
4 determination not to base our investigation on what the
5 respondent could have done but what the respondent
6 actually did.
7 CHAIRMAN SMITH: Right. I guess the other
8 question is the fact that, as you pointed out, the
9 460s -- the next round of 460s -- and if you want to
10 look at that -- there might be, potentially, additional
11 numbers added in.
12 MR. MILLER: I would hate to speculate.
13 CHAIRMAN SMITH: Yeah. Well, right, that
14 would need some speculate.
15 Okay. So, if there's no questions, I
16 think -- unless somebody objects, I think it would be
17 best if we moved on to the respondent and complainant
18 and then came back and talk about why did this happen.
19 So at this time I would call the respondent
20 or their representative to come forward and present any
21 written or oral response. And, in this case, because
22 this involves an investigation, I would appreciate it
23 if you would limit your comments to ten minutes.
24 So if you give us your name and raise your
25 right hand.

Page 76

1 MR. ALLEN: My name is Peter Allen, campaign
2 manager for Manh Nguyen for City Council.
3
4 PETER ALLEN,
5 being first duly sworn by the Chairperson to tell the
6 truth, the whole truth and nothing but the truth,
7 testified as follows:
8
9 MR. ALLEN: So I'll be brief and allow the
10 Commission to ask any questions they have. I'll let
11 the brief that we filed speak for itself, for the most
12 part. I do have a couple of things to point out.
13 Just briefly, if this is confusing to your
14 professional Evaluator and it's confusing to the
15 Commission, you can probably imagine how confusing it
16 is to a first-time candidate who doesn't necessarily
17 have the resources to hire a specific person for his
18 staff to follow all of these regulations. And, as
19 Mr. Miller has pointed out in previous issues regarding
20 our campaign, there was some very unique circumstances
21 concerning the in-kind contributions that Mr. Nguyen
22 was making from his business to this campaign.
23 It's not the first time in recent memory that
24 the Commission has heard a complaint that has resulted
25 from insufficient or incorrect guidance on behalf of

19 (Pages 73 to 76)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 77

1 the Clerk's office, and by proxy, the City Attorney's
2 office. I just want to point that out.

3 COURT REPORTER: I need you to slow down.

4 MR. ALLEN: Sorry. I'm in politics. I speak
5 fast.

6 This is not the first time in recent memory
7 that this Commission has heard a complaint that has
8 resulted from insufficient or incorrect guidance on the
9 part of the Clerk's office or, by proxy, the City
10 Attorney's office.

11 The commissioners were present for a meeting
12 that I attended during which multiple -- more than one
13 of you, actually, made the statement that the Clerk's
14 office needed to up the ante, as it were, in terms of
15 their education of candidates and guidance of
16 candidates in the future.

17 I do want to be clear that -- because I think
18 Mr. Miller's verbal comments were a little bit
19 confusing or could have been, I want to make it clear
20 that we have reported every single cash and/or in-kind
21 contribution we have received on the campaign through
22 our regular 460 forms. There are mitigating
23 circumstances to the reasons why the 497 forms were not
24 filed on time, which are detailed in the report that
25 was filed with you or response that was filed with you.

Page 78

1 But I do want to point out that we --

2 CHAIRMAN SMITH: I think maybe you need to
3 slow down again before our court reporter goes nuts.

4 MR. ALLEN: Sorry. You can hear me though,
5 right?

6 Great. Okay. I do want to point -- I'll
7 slow down. I do want to point out that we have made
8 every effort to report every single cash and/or in-kind
9 contribution to our campaign through our regular 460
10 reports. And as you'll see from the response that we
11 submitted to the Commission, to the Evaluator's report,
12 there were numerous mitigating factors that caused us
13 to be delinquent in filing the 497 forms.

14 So I will leave it at that and allow any
15 questions from the Commission. However, I would like
16 to get -- if I can get a point of clarification.
17 Should the Commission find that there was a violation
18 in this matter, will I be able to -- will a
19 representative of the respondent be able to speak to
20 any possible penalty that is assessed prior to that
21 penalty being assessed?

22 CHAIRMAN SMITH: I believe so, yes.

23 MR. ALLEN: Great. I just wanted to reserve
24 that right. But, other than that, I'm open to any
25 questions, and I'll let the rest of the respondents

Page 79

1 speak for themselves.

2 MR. MILLER: Might I make a response?

3 CHAIRMAN SMITH: Sure.

4 MR. MILLER: So Mr. Allen has been -- was
5 extremely cooperative throughout this investigation. I
6 would like to make sure I acknowledge that. But I -- I
7 just don't -- my review of the record does not indicate
8 that the respondent made every effort to report every
9 contribution. Not only were all of the late
10 contributions disclosed after the April 7th election
11 but even after the complaint was filed and a
12 conversation in which I did my very best to communicate
13 the seriousness of the allegations, late contributions
14 continued to be reported late for a series of, you
15 know, 20 -- three weeks of continual untimeliness.

16 So I would have been very happy to write a
17 report that indicated that the respondent took
18 immediate and prompt action to remedy the situation,
19 and I just did not find that to be the case.

20 Mr. Nguyen has a lawyer. Mr. Nguyen has been in
21 contact with the FPPC and received guidance from the
22 City and knows that the rules exist.

23 CHAIRMAN SMITH: Excuse me a second.

24 Can we stop the talking in the back, please.

25 MR. MILLER: So the assertion that he lacks

Page 80

1 the resources as a first-time candidate to comply with
2 the rules, I also would have been prepared to include
3 in my report something to that effect had I thought it
4 accurate.

5 So I do want to respond to those two things.

6 CHAIRMAN SMITH: Okay. Mr. Allen, a couple
7 of questions I've got. See if others have.

8 MR. ALLEN: Sure.

9 CHAIRMAN SMITH: I understood Mr. Miller to
10 say that -- the question of timeliness. But I believe
11 I understood him to say that there were some items that
12 were reported on 460s that should have been reported on
13 497s but weren't reported at all. Not that there were
14 some that were late but some that were never reported;
15 is that correct?

16 MR. ALLEN: At this stage, I cannot -- as I'm
17 not the campaign treasurer or responsible for the
18 filings themselves, all I can say is that to the best
19 of my knowledge, every contribution from the April 7th
20 campaign that would fall under this provision in
21 Title 12 has been reported. In whatever fashion
22 possible, whatever timeliness possible.

23 CHAIRMAN SMITH: I'm sorry. You'll get an
24 opportunity later.

25 MR. ALLEN: As for the June 23rd election, as

20 (Pages 77 to 80)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 81

1 has been noted, our next 460 report is not due until
2 the end of this month for that election. But prior to
3 that -- to the best of my knowledge, every in-kind and
4 cash contribution has been reported as part of our 460
5 reports. Whether or not they were filed as a 497 is a
6 separate matter, which I think this complaint is about.
7 When I say we have made every effort, we have made
8 every effort to disclose them to the best of our
9 ability and best of our knowledge that we had to. Our
10 contention is that we were not clear on the late and/or
11 24-hour, however the Clerk's office chooses to refer to
12 it, on any given day on reporting.

13 CHAIRMAN SMITH: Okay.

14 MR. MILLER: Table 3 documents 20 late
15 contributions for the April 7th election for which
16 Form 460s have been filed. And as of yesterday
17 Form 497s have not ever been filed.

18 CHAIRMAN SMITH: You might want to check
19 that.

20 MR. ALLEN: Actually, that's entirely -- my
21 point was that they have been -- anything that occurred
22 before one of the 460 filings was reported on the 460.
23 I'm not -- I'm not disputing that the 497 hasn't been
24 filed.

25 CHAIRMAN SMITH: Oh, okay. I understood

Page 83

1 these reports. And we felt that we had -- the campaign
2 made the decision, prior to my joining the campaign,
3 not to pursue that route and to go with in-house
4 resources. And --

5 CHAIRMAN SMITH: So there was a campaign
6 treasurer, but a campaign volunteer or something? It
7 wasn't a professional campaign --

8 MR. ALLEN: Correct. And our campaign
9 attorney was also on a volunteer basis. She's a member
10 of the candidate's family.

11 CHAIRMAN SMITH: Okay. Other questions?

12 COMMISSIONER PEACOCK: And I got to say,
13 listening to this, I hope you see the irony of the
14 whole "I'm not a lawyer. But, boy, I sure have a great
15 legal background. Now being said, well, we don't know
16 much about campaign law." So --

17 MR. ALLEN: Of course, yeah.

18 COMMISSIONER PEACOCK: As a campaign
19 strategist, if you have an opponent who said, Well, we
20 didn't quite follow the law, but we couldn't afford a
21 lawyer, how would you -- would you sort of let that
22 slide or would you use that as a criticism of your
23 opponent?

24 MR. ALLEN: I wouldn't want to speculate. It
25 really would depend on the situation and what the

Page 82

1 differently.

2 MR. ALLEN: And if those haven't, we will
3 make every effort to get those done.

4 CHAIRMAN SMITH: My next question regards the
5 -- you know, for the first-time candidate and all that.
6 You're the campaign manager or campaign consultant?
7 I've forgotten.

8 MR. ALLEN: Both. I do both.

9 CHAIRMAN SMITH: Okay. Have you run
10 elections in San Jose before, yourself?

11 MR. ALLEN: I have. But generally campaign
12 finance is something -- I'm the strategist and --
13 particularly a field and media strategist. My
14 expertise is not in campaign finance. And generally I
15 do not offer those kind of services. So I'm not -- I'm
16 not -- while I am generally familiar with the
17 regulations regarding campaign finance, I would not
18 purport to be an expert. So I don't offer those
19 services.

20 CHAIRMAN SMITH: So you're saying, basically,
21 it would involve the campaign treasurer that will bring
22 about --

23 MR. ALLEN: In some cases, you'll have -- if
24 a campaign has the resources, they will hire
25 specifically a consultant to do just that, just to file

Page 84

1 accusation was or what we thought that they did wrong.

2 In this particular case, I tend to be more on
3 the side of benefit of the doubt. And if they were
4 reporting everything accurately in their regular forms,
5 I would give the benefit of the doubt that they just
6 simply -- and looking at the rules itself, it is rather
7 confusing when you consider the PRA -- I'm sorry -- the
8 Political Reform Act and Title 12 and having to justify
9 and reconcile those two requirements. As well as the
10 candidate binder being rather confusing, as you'll
11 probably see from the evidence in terms of -- and the
12 instruction that we received from the Clerk's office
13 being a little confusing.

14 So I would give this campaign the benefit of
15 the doubt. I would like to think that. Under -- in
16 reality, who knows? But that's how I would react.

17 COMMISSIONER PEACOCK: May I say one more
18 thing?

19 CHAIRMAN SMITH: Sure. Go ahead.

20 COMMISSIONER PEACOCK: And, Mr. Miller, if
21 I'm paraphrasing incorrectly, stop me. But I think you
22 basically said this, that the level of the issues, I
23 guess, here is unprecedented as far as the number of
24 contributions not reported, not reported timely. I
25 don't know. What would be your term for it? Unusual?

21 (Pages 81 to 84)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 85

1 MR. MILLER: It certainly is unprecedented
2 with regards to the Commission. I -- the FPPC -- and
3 my report does give some examples of FPPC enforcement
4 actions on violations of late contribution reporting.
5 To my knowledge, they have never considered a series of
6 violations as -- of this magnitude. So I don't think
7 "unprecedented" is an inaccurate term. They're unusual
8 factors but certainly not unprecedented.

9 COMMISSIONER PEACOCK: So whichever. Sort of
10 given the history of, you know, the number of
11 candidates and elections and all that San Jose has had,
12 why should this campaign, I guess, get a pass or why
13 should it be said "Well, it's okay in this case" when
14 everybody else seems to have managed to handle it at
15 least with -- at least nowhere near the scale?

16 MR. ALLEN: Sure. Very good question,
17 Commissioner.

18 I would say that there are very -- I've
19 expressed this to Mr. Miller before. He did not feel
20 it was pertinent to the discussion, whether or not
21 there was a violation. I feel it is pertinent to the
22 violation discussion and to the discussion of any
23 potential penalties if there is a violation found.

24 There is some unique circumstances to our
25 campaign in terms of the fact that, from my

Page 87

1 permitted in San Jose city elections except from the
2 candidate himself. Generally those only come up with
3 independent expenditures. And so multiple times in the
4 binder and verbally we were told we did not have to be
5 concerned with that because they were not an
6 independent expenditure.

7 Now, granted, perhaps the context of that
8 conversation did not include the fact that we were
9 going to take -- the candidate was going to be making
10 substantial in-kind contributions from his own
11 business. However, they were aware -- the office was
12 aware of that. We had discussed it with them.

13 And, again, there was no -- no notice that we
14 can tell that was clear early on. There were no
15 reminders, and there have been no late notices or late
16 fees assessed by either the FPPC or the Clerk's office
17 at this point. We have never received one notice that
18 we're even a day late. And apparently we were able to
19 start earning fines on a daily -- on a daily basis
20 following the reports. So it's surprising to me --
21 granted, I don't want to claim that there was no report
22 on the fact that we didn't file. But, however, there
23 was no notice that we were delinquent. At that time we
24 honestly did not know we were delinquent on filings.

25 COMMISSIONER PEACOCK: And the in-kind

Page 86

1 understanding and from Mr. Miller's previous reports on
2 previous -- in previous hearings about our campaign,
3 San Jose has not seen a candidate seek office who owned
4 and operated, solely, his own media company and was
5 able to then make, basically, unlimited contributions
6 from that company to his own campaign in terms of
7 in-kind support for advertising or other placements on
8 radio or print media. Very unique circumstance. We
9 understood that to be unique. Or the campaign, I
10 should say, understood that to be unique --

11 CHAIRMAN SMITH: Try to keep it slow.

12 MR. ALLEN: The campaign understood those to
13 be very unique circumstances at the time and, as such,
14 did consult with the FPPC regarding whether or not,
15 first of all, those contributions were legal and would
16 be permitted. At that time we did not enter into a
17 discussion with the FPPC regarding what reports and
18 forms had to be filed to -- to -- on those
19 contributions.

20 And we relied on our -- for that on our
21 consultation with the Clerk's office and with the
22 candidate binder that we were presented, which led to
23 some confusion. Primarily because some of these
24 reports fall -- the FPPC reports specifically fall
25 around thousand-dollar contributions, which aren't

Page 88

1 contributions, were they things like advertising?

2 MR. ALLEN: Almost strictly advertising.
3 Occasionally there was some bartering for advertising
4 and other mediums. There was a trade between two
5 businesses. It's a little difficult to go into. But
6 primarily around radio and print advertising.

7 COMMISSIONER PEACOCK: So this is part of
8 some sort of strategy -- I assume you don't wake up one
9 day and say, Hmm, let's put out a radio ad.

10 MR. ALLEN: No, of course.

11 COMMISSIONER PEACOCK: I'm not trying to play
12 "Gotcha" here.

13 Mr. Allen: Of course, of course.

14 COMMISSIONER PEACOCK: My sense is that you
15 would probably be, according to some strategies,
16 planning it out, which makes it a little harder to
17 understand why it would take so long to report it
18 in-kind. It's one thing if somebody pops up and said,
19 "Here. I just gave you this" and then you have to do
20 it. Here, in this case, you sort of know all along
21 you're going to be doing it.

22 MR. ALLEN: Correct. And, Commissioner, I
23 would reiterate that it wasn't -- it was not our
24 intention to deceive or to mislead or to do anything
25 un- -- improper. We simply were not aware that these

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 89

1 reports needed to be filed, when they were required to
2 be filed, and made every effort with every other report
3 that we knew to the best of our knowledge and filed a
4 report then.

5 So we -- we were well aware early on that
6 this was part of our strategy, and we made efforts to
7 make sure that we were following, to the best of our
8 ability, the rules that were laid out.

9 But, again, to answer your first question,
10 very unique circumstances for San Jose. I have
11 certainly never seen something like this in all my time
12 working in local campaigns. (Inaudible) But I haven't
13 seen it before, and I don't expect to see it again
14 anytime soon.

15 CHAIRMAN SMITH: Commissioner Pierre-Dixon?

16 COMMISSIONER PIERRE-DIXON: I already asked
17 my question. But I wanted to know what most of those
18 in-kind contributions were. Same concern, organize
19 them and get together and decide what's going to
20 happen. And you should be able to report in a timely
21 manner. And this is a lot of in-kind contributions.

22 MR. ALLEN: Commissioner, they were not --
23 the campaign does not want to deny that -- the amount
24 or the number of reports that are in question here.
25 Simply that there are very -- we feel, very serious

Page 91

1 the -- of the two -- of the -- of the last regular
2 election to make sure that things were timely filed,
3 completely filed, and that everything looked to be in
4 order. We depend a lot on our staff, but we don't have
5 the kind of staff that we used to have years ago.

6 So -- so, no, we don't instantaneous --

7 CHAIRMAN SMITH: I know you go through and
8 you find errors and -- et cetera. But, basically, I
9 think you're saying that's well after the fact.

10 MR. GRAVES: It is well after the fact.

11 CHAIRMAN SMITH: Okay. That's the key point.

12 MR. GRAVES: It's months after the fact.

13 CHAIRMAN SMITH: Okay. So if there's no
14 other questions --

15 MR. MILLER: If I can add one thing to that.

16 In this particular case, there would have been no way
17 for the City Clerk to know that a 497 should have been
18 filed until the Form 460 was filed.

19 CHAIRMAN SMITH: Correct.

20 MR. MILLER: And in -- with regard to the
21 April 7th election, that would not have been discovered
22 until after the election.

23 CHAIRMAN SMITH: Okay. Thank you.

24 Okay. If there's no other questions, I guess
25 Mr. Do can come up.

Page 90

1 mitigating factors.

2 MR. DO: I can provide some information that
3 he may not be aware of.

4 CHAIRMAN SMITH: You can come up when he's
5 done. Let's do it that way.

6 MR. ALLEN: I can see --

7 CHAIRMAN SMITH: No, it's okay. I don't want
8 to start mix and matching people.

9 MR. ALLEN: Of course.

10 CHAIRMAN SMITH: Is there any other
11 questions?

12 Okay. If not -- actually, this is for the
13 Clerk's office. Mr. Allen brought up a point I hadn't
14 thought about before. I know he talked about perhaps
15 receiving bad advice. The Clerk's office reviews
16 files. Don't you often -- people at your office who do
17 this often notice that forms are missing and notify the
18 candidates that something is missing or late or
19 whatever? That's always been my impression. Do things
20 get looked at, like Form 497 should have been filed?

21 MR. GRAVES: We're receiving most of our
22 political contribution reports on-line now, via a
23 file -- our net file contractor. So we don't
24 instantaneously know when something is amiss. We
25 are -- at this point, even today, doing an audit of

Page 92

1 Thank you. Unless you have something else.

2 MR. ALLEN: Just that -- you know, all things
3 aside, as an individual, it would be great, once
4 something was noticed, whether it was before the
5 election or after the election, to get some sort of
6 notice that you were not compliant so you can avoid
7 accruing more fines and being further not compliant.
8 Just as an individual city resident, that is something
9 that I would like to request.

10 CHAIRMAN SMITH: Okay. Thank you.

11 Okay. Mr. Do, do you want to come up and
12 state your name? I don't have to swear you in because
13 we did that earlier.

14 MR. DO: Bryan Do.

15 CHAIRMAN SMITH: Thank you.

16 MR. DO: Earlier you asked a question, and I
17 think I have maybe more information than Peter because
18 I speak Vietnamese and I can understand. She asked why
19 such incredible amount of in-kind contribution. The
20 reality is because Mr. Manh Nguyen own the radio -- own
21 entirely. So the rule require that even if you have
22 has a news radio, a news program, that report from the
23 Mercury News and endorse Mr. Manh Nguyen, for example,
24 and report that purely as the news, he now has to
25 report it as in-kind contributions. The rule requires

23 (Pages 89 to 92)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 93

1 that for the FPPC, that requirement.
2 So did we plan out, at the last few days, you
3 have X, Y and Z? Nobody can. Because you don't
4 know -- you don't know the news report. So if
5 something happened on -- X happened, we report that.
6 And so now we have -- now you have to play into it.
7 Okay?
8 So was it our ads? No, it was not our ads.
9 It was the news. But because he owns it, the law
10 requires that we put that in entirely. That put us in
11 trouble simply because we cannot predict the news.
12 Nobody can.
13 I do like to comment on -- a response to your
14 question asked. Well, Mr. Manh is somewhat
15 knowledgeable of the law. But just because you're
16 knowledgeable about the law, it doesn't mean that you
17 know every single part of the aspect. And political
18 campaign law is very, very difficult, as I'm sure the
19 City Clerk office can tell you. It is truly -- it is
20 incredibly difficult.
21 I have run for office before. I don't have
22 the kind of resource that Mr. Manh has. But even
23 looking at the binder that was provided by the City --
24 and I know how much resource your office put into it.
25 I don't think you can possibly anticipate every

Page 94

1 scenario. It certainly would be difficult to
2 anticipate -- for the City Clerk's office to anticipate
3 how a regular election is different from -- the day
4 will be different when you have a special election, and
5 the date (inaudible). There's some overlapping. As
6 Mr. Miller said earlier there is some overlapping. It
7 become extremely complicated. Even if you have someone
8 who specializes in this field, which the City
9 Clerk's -- I think it is incredibly difficult.
10 So Mr. Manh -- he may be -- have some
11 knowledge of the law and (inaudible) may be a lawyer
12 who represents. They're not expert on campaign
13 financing.
14 Peter has been on numerous campaigns and so
15 have I. But to this level and this in particular,
16 neither one of us know. I can look at the binder up
17 and down and sideways and follow every rule that there
18 is, Mr. Manh's campaign aside, based on the binders
19 provided to us from the City Clerk. We base -- you
20 know, do the best we can. And not -- and not hide,
21 which is what this rule is about.
22 The spirit of the law is -- you know, why you
23 have all of these rules is to disclose all your
24 contributions. Mr. Manh obviously is not trying to
25 hide the fact that he donate to his campaign. But,

Page 95

1 unfortunately, because of the situation where he own
2 the radio and own the newspaper, now every news report
3 (inaudible) becomes a "Paid for By." And that make
4 things incredibly challenging, and there's no way you
5 can predict the news.
6 CHAIRMAN SMITH: Okay. Any questions for
7 Mr. Do?
8 COMMISSIONER PEACOCK: Just two quick
9 questions. One is, wouldn't you think, though that
10 while being an expert in one part of the law does not
11 mean you're an expert in campaign law, I would think
12 that would make it even more prominent in someone's
13 mind about the importance of understanding the part of
14 law as opposed to somebody who is not a lawyer.
15 MR. DO: Right. We always recognize --
16 Mr. Manh Nguyen recognize important. This is
17 significant. So when he was alerted of it, he is
18 obviously taking corrective action as best as he can.
19 So it's not he's ignoring it. But he followed -- he
20 followed the binder. He wasn't aware that he was
21 violating, you know, the Rule 497.
22 I don't think any of us was even aware that
23 we have a requirement until it was pointed out to us by
24 Mr. Miller. That is what we know. So the thing is,
25 you don't know what you don't know. That's the sad

Page 96

1 part about this. You simply don't know what you don't
2 know. Unless it is on the binder, it is -- and
3 counting all candidate, not just Mr. Manh. We truly
4 believe that we did rely upon the City Clerk. We
5 really do place our trust in the City Clerk office, and
6 there's no other way around it. We can still -- we can
7 talk about some theory that, yes, still responsible.
8 Great. But the reality is, all candidate trust the
9 City Clerk. We have --
10 CHAIRMAN SMITH: I'm -- I'm assuming that
11 perhaps the campaign has learned that it's a good idea
12 to have somebody on the team who is an expert in
13 campaign finance law.
14 Mr. Peacock?
15 MR. DO: Yes.
16 COMMISSIONER PEACOCK: You talked about
17 the -- and I totally understand this -- the inability
18 to predict when his name would show up in a news story.
19 MR. DO: Right.
20 COMMISSIONER PEACOCK: Totally understand
21 that. However, presumably, going into it, you knew
22 that when a news story came out that mentioned him, you
23 would then need to report it, correct? Even if you
24 weren't planning a week in advance there would be a
25 news story on Tuesday about him, did you have a

24 (Pages 93 to 96)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 97	Page 99
<p>1 mechanism for saying, Okay. He was in this story today 2 so, therefore, we have to report it? 3 MR. DO: You know, the way -- the way the 4 media works, isn't scientific. This is not like -- 5 automatically like computerized. You know that you 6 when you become a news story, you automatic- -- you 7 recognize it, and then you -- you know, Mr. Manh then 8 inform his daughter, essentially, and said, Okay. This 9 now become a story. Now we have to recognize it. That 10 program -- it was aired for 15 minutes or 30 minutes or 11 just ten seconds. And his name is mentioned, you know, 12 one time, pop up somewhere, or the campaign regarding 13 it will pop up somewhere. But the program now is -- 14 you know, is (inaudible). You have to find out whether 15 it is ten or fifteen minutes. 16 COMMISSIONER PEACOCK: But did you have any 17 sort of mechanism to say, Okay. He's in a story. We 18 need to go ahead and make that measurement? 19 MR. DO: Yes, afterward. After you recognize 20 that you have an article, then you say, Okay. It is 21 15 minutes, and you write it down and you inform it and 22 you recognize that. That's why you see all these very 23 unusual large contributions. 24 COMMISSIONER PEACOCK: Right. 25 MR. DO: Because we have to recognize that.</p>	<p>1 MR. DO: Right. I don't know the specific 2 one you're looking at. But generally if you happen to 3 have a radio in the morning, at say 6:00 to 8:00, and 4 then repeat the same story in the afternoon, you would 5 have to recognize those individually. You got to -- 6 you got to be honest and recognize those individually, 7 even though it's the same story. But the fact that is 8 X amount of time. 9 And I think we tried to err on being -- on 10 being extra cautious. So you're right. If we mention 11 one time and the rest of the story doesn't mention his 12 name, it's still related. And better to be -- err on 13 that side of the line. 14 CHAIRMAN SMITH: Okay. 15 UNIDENTIFIED SPEAKER: He's not campaign 16 manager. How come he answer -- (inaudible) 17 CHAIRMAN SMITH: Just a second. You're out 18 of order, please. 19 Okay. If there's no other questions, thank 20 you, Mr. Do. 21 MR. DO: Thank you, sir. 22 MR. ALLEN: If I can respond to Mr. Peacock's 23 last question. Real briefly. 24 CHAIRMAN SMITH: Slowly. 25 MR. ALLEN: Just to clarify. As</p>
Page 98	Page 100
<p>1 I think (inaudible) -- did we try to deceive 2 the member of the public that we receive that? 3 Obviously -- obviously, it's not. We recognize that in 4 the 460. We mention that in a very, you know, detailed 5 and -- these are really painstaking. You think about 6 what we go through. There's no intention to defraud or 7 to misrepresent or to somehow hide the fact that he 8 made contributions to his campaign. 9 But we do trust -- and at the end of the day, 10 you know, the rest of -- the next candidate -- I have 11 another candidate run for office. We still have to 12 trust the City Clerk, because we don't have a choice. 13 It's not like you're going to have -- somebody is going 14 to hire an attorney. The amount of money that takes 15 make it absolutely impossible, short of someone putting 16 a million dollars or some incredible sum of his own 17 money on the race. But if you go out and raise money, 18 you cannot afford to hire an expert in this field. 19 CHAIRMAN SMITH: Any other questions? 20 COMMISSIONER VEMULAPALLI: One question. 21 Actually, I see there's multiple transactions on the 22 same day. 23 MR. DO: Yes. 24 COMMISSIONER VEMULAPALLI: That means that 25 many times a news story is taken --</p>	<p>1 commissioners might know who were in attendance, there 2 was a previous complaint that raised the issue of these 3 in-kind contributions regarding Mr. Manh's business -- 4 Mr. Nguyen's business. I apologize. Force of habit. 5 And at the time our campaign actually, at that point, 6 received further clarification as to what needed to be 7 reported and what did not. Up until that point, 8 advertising and anything explicitly campaign-related 9 received a disclaimer -- the appropriate disclaimer. 10 However, there were some news articles that had run 11 regarding the campaign that had mentioned Mr. Nguyen, 12 which we had not at the time attached a disclaimer to 13 because we were under the impression that to the best 14 of our knowledge, we were not required to. 15 However, after the hearing that the 16 Commission had, beyond that meeting -- I believe in 17 March of this year -- we began to notice every single 18 report that appeared in any of Mr. Nguyen's properties, 19 just to be on the safe side, frankly. So if there were 20 some inconsistencies in terms of the report, that might 21 be where it resulted from, that timing. 22 MR. MILLER: Commissioner Peacock, if I may. 23 CHAIRMAN SMITH: Well, I'm almost to you. 24 We're going to give you your chance. 25 MR. MILLER: I just think it's important for</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 101

1 you to understand my thought process. The issue of the
2 nature of the contributions, the in-kind contributions
3 in the form of his advertising, to me it's a little bit
4 of a red herring. This complaint is not alleging that
5 the candidate failed to disclose what should be
6 contributions because he gave money in the form of
7 advertising that he didn't disclose at all. It's
8 purely a question of having decided -- the candidate
9 having decided to disclose an in-kind contribution as a
10 contribution, whether the late contribution reporting
11 rules were complied with.

12 It may be relevant to you in terms of what
13 action you take, the nature of the contribution, but
14 from the point of view from -- from my point of view in
15 determining whether a violation has occurred, the
16 nature of the contribution is irrelevant. The
17 candidate decided it was a contribution that needed to
18 be reported and then did not report it as a late
19 contribution.

20 CHAIRMAN SMITH: Okay. Thank you.

21 There is still no one here representing the
22 complainant. Okay. So we will not have any comments
23 from the complainant.

24 And, with that, we go -- oh, is there anyone
25 else who would like to speak to this point -- who would

Page 103

1 to have evidence so I can explain to you what he lied
2 and what he is not lying. And what is hurting the
3 voter because they putting a lot of lying on the radio.
4 But during the (inaudible) we have no way to recall it.
5 And now, for people to say something, we have no
6 evidence to prove it to you.

7 So now the commissioner have the job to do.
8 Put it into the law. Whatever you say on the radio,
9 TV, please post it in your web site. Can you do that?
10 I think it's in your authority to do that.

11 CHAIRMAN SMITH: Okay. Thank you for your
12 comment.

13 Any question?

14 No. Okay. Anyone else like to speak?

15 Yes.

16 MR. LE: So I -- I can speak --

17 CHAIRMAN SMITH: First of all, if you would
18 give us your name.

19 MR. LE: Sorry. My name, Tuan Le (phonetic).

20 CHAIRMAN SMITH: Okay.

21
22 TUAN LE,
23 being first duly sworn by the Chairperson to tell the
24 truth, the whole truth and nothing but the truth,
25 testified as follows:

Page 102

1 like to speak on this matter? If so, I would request
2 that you specifically speak to this complaint and not
3 in more general terms and that we limit comments to two
4 minutes. So is there anyone who would like to speak?

5 You can come forward. State your name and
6 raise your right hand. Come up here, please. State
7 your name, please.

8 MR. THOMAS NGUYEN: My name is Thomas Nguyen.

9
10 THOMAS NGUYEN,
11 being first duly sworn by the Chairperson to tell the
12 truth, the whole truth and nothing but the truth,
13 testified as follows:

14
15 MR. THOMAS NGUYEN: I just want to comment
16 that everything the people sitting here talk to you,
17 you have no way to verify is correct or not.
18 Therefore, I suggest that the Commission now should
19 bring up the rule to request all the candidate, for any
20 air time, any advertising for the campaign, post on
21 their web site so us, the voter, we will have a chance
22 to have the commissioner verify which wrong and which
23 right and help you investigate and do the right thing
24 for the voter. That's my comment.

25 Because everything Mr. Do said, I would like

Page 104

1
2 CHAIRMAN SMITH: Thank you.

3 MR. LE: So I can speak Vietnamese or
4 somebody translate.

5 CHAIRMAN SMITH: If you wish to speak
6 Vietnamese, we'll have to do a sequential like we did
7 last time.

8 Yes, I've requested two minutes, please.

9 MR. LE: Okay. Two minutes.

10 I'm a constituent in District 4. I'm a
11 constituent of District 4. I come here to give a voice
12 to the constituents of District 4 regarding Mr. Manh
13 Nguyen. He deceive the constituents of District 4 in
14 many ways. He use the radio stations to brainwash the
15 constituents in order to win their votes.

16 If you don't give a precedence -- if this
17 Commission doesn't use this as a precedent in order to
18 criminalize his deception by referring the case to the
19 District Attorney, then that will create a path for
20 others -- other candidates to continue to have this
21 deceive method to bring votes from their constituents.
22 So if the Commission doesn't do anything, that you have
23 that would make your name -- Ethics Commission being
24 not living up to the name. If you not refer this case
25 to the District Attorney, I don't think it's fair for

26 (Pages 101 to 104)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p style="text-align: center;">Page 105</p> <p>1 us to pay taxes for this Commission to run this kind of 2 investigation. That's not being fair. 3 Thank you very much. 4 CHAIRMAN SMITH: Okay. Thank you. 5 Actually, I'd probably do better holding this 6 than putting it in the holder. 7 Okay. Additional comments from the 8 Evaluator? I think specifically you wanted to offer 9 some comments on the response we received from the 10 respondent. 11 MR. MILLER: Well, I think you heard, 12 actually, quite a lot from me this evening. If you 13 would like my comments on the respondent's response, 14 I'm happy to provide it. But only if you find it 15 helpful. 16 CHAIRMAN SMITH: I'd like to hear it. I 17 think I see several other heads shaking yes. 18 MR. MILLER: So I found myself a little 19 confused by this response, in that it seems to focus 20 on -- it refers to multiple versions of a Form 497 when 21 no such multiple versions exist and tries to draw a 22 distinction between a 24-hour late contribution report 23 and a regular late contribution report. It makes 24 statements that are just simply not true about what 25 Title 12 says.</p>	<p style="text-align: center;">Page 107</p> <p>1 CHAIRMAN SMITH: I guess the part that 2 concerned me -- and this isn't -- as was pointed out 3 earlier, this isn't the first time we've heard this 4 during this election season. The problems were being 5 blamed, in part, by incorrect information provided by 6 the Clerk's office. I find that troubling. Again, 7 especially since we've heard that before, with some 8 substantiation. Did you look into that matter at all 9 or address that at all in what you did? 10 MR. MILLER: Yes. So I think it's in our 11 report as well. The candidates receive a candidate 12 handbook, which includes a series -- there is one page 13 that includes a series of relevant dates for candidates 14 to pay attention to. 15 The deadline for filing 497s is nowhere on 16 that schedule. So the concept of late contributions 17 and the requirement to file that is not -- is not 18 included on that date of -- that list of important 19 deadlines. To the extent that's an error, that would 20 be an error of omission, not of commission. 21 It is also true that the candidate handbook 22 includes -- it's a lengthy -- it's about a 700-page 23 binder. It includes a copy of an FPPC manual designed 24 to instruct local -- candidates for local office on 25 compliance with the Political Reform Act rules for</p>
<p style="text-align: center;">Page 106</p> <p>1 I think my just overall comment is that to 2 the extent that this response eliminates the 3 respondent's confusion, it is perhaps helpful to the 4 respondent in terms of saying that it found it 5 difficult to comply with and understand what the rules 6 were. But with regards to specific refutation of what 7 the rules are and how it did or how respondent did or 8 did not comply with Title 12 and Political Reform Act 9 requirements, I find it quite unpersuasive. I'm happy 10 to walk through it in some detail. 11 There is one small mistake which I want to 12 point out, which I do think is quite important. It 13 refers to a comment -- he said that they were not made 14 aware of the rules until I told them on June 16th of 15 the reality of the rules. But, in fact, that 16 conversation happened on June 6th, which I think is -- 17 I think maybe it's just a typo. But at the risk of 18 beating a dead horse, I found it quite significant that 19 beginning on June 6th, the efforts to remedy the 20 violations were intermittent and sporadic and 21 incomplete. And I think the table that the candidate 22 has filed in this response only demonstrates that. 23 So I'm happy to answer specific questions 24 about it. But it just demonstrates a certain lack of 25 sophistication with regards to the rules.</p>	<p style="text-align: center;">Page 108</p> <p>1 local candidates. And it also includes -- the 2 candidate handbook includes -- well, stop there for a 3 second. So the manual -- the FPPC manual that is in 4 the candidate handbook is an out-of-date handbook that 5 includes requirements specific to late contributions 6 that are not the requirements that are currently in the 7 Political Reform Act. 8 Now, the problem is, understandably -- 9 perhaps understandably from the City Clerk's 10 perspective, which I think Tom is about to mention -- 11 is that at the time of the April 7th election, while 12 the Political Reform Act had changed, the FPPC had not 13 yet updated its manual. Although the FPPC manual in 14 the handbook was out of date, it was also the most 15 current manual. But by May the FPPC had issued a new 16 handbook that was on their web site. And even one 17 Googling the FPPC web site would find it. So it is 18 true that the manual in the handbook was both out of 19 date, incorrect, but also the latest version that was 20 available to anyone at the time. I don't know if 21 that's what you were going to say. 22 The handbook given to candidates -- while the 23 FPPC manual was incorrect, it included a copy of a 24 Form 497 that was the up-to-date Form 497 reflecting 25 the latest rules. So I think it is perhaps</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 109

1 understandable that a candidate relying exclusively on
2 that handbook for the totality of its obligations under
3 the election law could have been confused about the
4 Political Reform Act obligations and would not have
5 been affirmatively notified of the Title 12 late
6 contribution reporting requirements.

7 But I guess a question for the Commission is
8 whether that is a sufficient mitigating factor to
9 excuse noncompliance. There are many rules that the
10 candidate handbook doesn't address.

11 CHAIRMAN SMITH: And I believe there was also
12 some reference to direct conversations between the
13 representatives of the campaign and the City Clerk
14 herself. But --

15 MR. MILLER: That I can't speak to.

16 CHAIRMAN SMITH: -- Toni is not here tonight.
17 I know in a previous case we discussed that.

18 Anyway -- okay. Any other questions?

19 COMMISSIONER PEACOCK: Just to follow up and
20 help clarify on your question.

21 So if I'm a candidate and I was dealing with
22 the Clerk's office, I -- I would get a -- I would
23 receive a checklist that didn't have at least one key
24 thing?

25 MR. MILLER: You would receive -- it's a --

Page 110

1 it's a calendar of dates. You know, by March 23rd, do
2 this. By March 27th, do this. By June 1st -- what it
3 doesn't say is that beginning on June 6th, start filing
4 your Form --

5 COMMISSIONER PEACOCK: Right. And then there
6 also was just some misinformation that if I followed it
7 correctly, I would not be in compliance with the law.

8 MR. MILLER: Yes. Although the candidate, in
9 follow-up response discusses going on the internet to
10 try to find the information, and apparently that led
11 them to the wrong information. I think the first hit
12 you get when you Google this is the latest correct
13 rule. But what you said is absolutely correct,
14 Commissioner Peacock.

15 COMMISSIONER PEACOCK: And then at that
16 point, there were -- is it May when the new FPPC --

17 MR. MILLER: I would hate to pin down whether
18 it was May or early June.

19 MS. SILVA: May.

20 MR. MILLER: May.

21 COMMISSIONER PEACOCK: At that point there
22 were only two candidates that would be affected by
23 this, right? The two run-off candidates? So it seems
24 like --

25 MR. MILLER: Beginning April 8th. That is

Page 111

1 correct.

2 COMMISSIONER PEACOCK: Yeah. So it's not a
3 case where you would have had to go find 30 campaigns
4 and say, By the way, this has changed. It's just the
5 case of having to find two and saying, By the way, this
6 information has changed.

7 MR. MILLER: Yes. To be clear, the rules
8 themselves changed in 2013.

9 COMMISSIONER PEACOCK: Right.

10 MR. MILLER: It's just the question of the --
11 the FPPC has a pamphlet --

12 COMMISSIONER PEACOCK: Right.

13 MR. MILLER: -- that was not updated after
14 the 2013. But the rules themselves have been in place
15 since January 2013.

16 COMMISSIONER PEACOCK: Yeah, and my mistake.
17 What I should have said was at one point, go to them
18 and say, Hey, by the way, this pamphlet that is on the
19 web is actually out of date. Here is the one that you
20 should be using.

21 CHAIRMAN SMITH: Tom, you had a comment.

22 MR. GRAVES: The -- yes, the FPPC changed the
23 rules in 2013, but they didn't update the campaign
24 manual until 2015. The manual has a date of March 2015
25 on each page at the lower right-hand corner. But when

Page 112

1 they put it on their web site and when they actually
2 distributed it, I don't know. They don't distribute
3 them in hard form anymore. And, in fact, we weren't
4 even notified that there was a new campaign manual
5 until this came up.

6 So we also -- another point I want to just
7 touch on. In our list of dates to remember, dates to
8 be aware of, we talk about the Form 497. But we also
9 said on that form, This won't affect you if you're a
10 Council candidate because you are -- you are not
11 allowed to accept contributions larger than \$500. The
12 Form 497 is for contributions of a thousand dollars or
13 more.

14 It never occurred to us that we would have a
15 candidate -- I'm not saying -- I'm not implying
16 anything other than saying -- it didn't occur to us
17 that we would have to have a candidate who was going to
18 be giving himself in-kind contributions. So it just
19 hasn't come up before. I don't think it's ever come up
20 before.

21 As far as Manual 2 and the -- and the
22 Form 497 and whether it's been changed or not, Form 497
23 is exactly the same as it was in the old campaign
24 manual except for the excision of the word "late." And
25 in a conversation that I had with the FPPC this

28 (Pages 109 to 112)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 113	Page 115
<p>1 morning, they said the reason they redid the form is 2 because it was called a late contribution report, and 3 they were concerned that when people -- that when 4 candidates or campaigns filed that report, it would 5 seem like they were filing a late report. Not -- and 6 not that they were filing a --</p> <p>7 COMMISSIONER PEACOCK: Late in the process. 8 MR. GRAVES: -- a report about late 9 contribution. So that's why they changed the name. 10 Other than excising that word "late," which 11 is on that form twice, the form itself is exactly the 12 same.</p> <p>13 COMMISSIONER PEACOCK: Thank you. 14 CHAIRMAN SMITH: Other questions? 15 COMMISSIONER VEMULAPALLI: Question for 16 Mr. Miller. 17 So even if it is pointing to that word, FPPC, 18 the limit is the 16 days instead of 90 days? 19 MR. MILLER: In 2013 -- tell me if I'm not 20 answering your question. But January 2013 the 21 Political Reform Act changed the definition of a "late 22 contribution" to one received within the last 16 days, 23 period before the election, to 90 days. That was the 24 change that happened in January of 2013. 25 Does that answer your question?</p>	<p>1 is a district election. The limit for a candidate's 2 contribution from one source is \$500. And so that's as 3 much as you can get anyway. But -- no changes were 4 made to the dollar amount. It was all to the time 5 frame. So that you have Title 12, 16 days before the 6 date of election, and the FPPC is 90 days prior to the 7 election.</p> <p>8 COMMISSIONER VEMULAPALLI: Okay. Thank you. 9 CHAIRMAN SMITH: Other questions? 10 Okay. At this point we're ready for a 11 discussion and action as far as any violations. We 12 have four options. We can find that further 13 investigation is necessary, in which case we direct the 14 Evaluator to conduct further investigation and report 15 back to the Commission. We may find that there is 16 sufficient evidence to establish that no violation has 17 occurred. We may find that there is insufficient 18 evidence to establish that a violation has occurred. 19 Or we may find that, you know, based on a preponderance 20 of the evidence from the entire record of the 21 proceedings, that a violation has occurred. 22 I'll open the floor to discussion or motion. 23 We need to make a finding for each respondent -- in 24 this case, there is two -- there's the candidate and 25 the committee -- for each potential violation. The</p>
Page 114	Page 116
<p>1 COMMISSIONER VEMULAPALLI: Even -- I just 2 want to point out, even if they are following the old 3 information, there are some contributions which can 4 fall within this period. 5 MR. MILLER: That's correct. Because 6 Title 12 continues to follow the 16-day reporting. 7 MS. SILVA: Can I speak to that? 8 MR. MILLER: Sure. 9 MS. SILVA: As you know, they have been 10 indicating that the rules changed in January of 2013 11 from the 16 days prior to the election to 90 days 12 before the election. So the FPPC changed it to 90 days 13 before the election. The Title 12 portion of it 14 remained 16 days. So, essentially, if they followed 15 the 90 days, it would subsume -- take the 16 days as 16 well. But here there was no filing. 17 CHAIRMAN SMITH: But there's a different 18 dollar amount for the 16 and now -- 19 MS. SILVA: It was a different dollar 20 amounts -- the dollar amounts were always the same. 21 From January 2013 to prior, it was always a thousand 22 dollars for the FPPC and ours was \$250. So the dollar 23 amounts didn't change. It was the time frame within 24 which you needed a file a late contribution form. 25 And that's consistent because in our -- this</p>	<p>1 findings may be made by separate motion, one for each 2 respondent and/or potential violation, or we may do it 3 all in one motion. 4 I would just say, to me, it's abundantly 5 clear that there has been numerous violations. I'm not 6 inclined to try to count how many. I don't think it 7 matters. There is just a lot of them. And I think 8 that the real discussion is going to be possible 9 mitigating factors -- possible -- I like the size of 10 that word -- when it comes to penalties. 11 COMMISSIONER PIERRE-DIXON: I think I would 12 agree with that. My only concern would be that we -- 13 by our actions today, we wrap up everything or we come 14 back again once the -- once the reporting period comes 15 and files the reports. 16 CHAIRMAN SMITH: Are there comments or 17 questions? 18 Commissioner Gonzales? 19 COMMISSIONER GONZALES: To start, personally, 20 I do have some empathy for the respondents, having been 21 someone who once ran for City Council. 22 CHAIRMAN SMITH: In another city. 23 COMMISSIONER GONZALES: In another city. Not 24 in San Jose. In the city of Whittier, which is on the 25 eastern border of L.A. County, some years ago.</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 117

1 Fortunately, I didn't have Title 12 to have to go
2 through, making it more complicated with the FPPC. And
3 even then I went through a similar circumstance, where
4 I established a control committee, decided not to raise
5 money and then not realizing that even though I didn't
6 raise money, you still had to file the forms. Got
7 penalized for not doing it over 30 days and had a
8 maximum penalty. And even when I went to the City
9 Clerk to contest it, the principle was that negligence
10 of the law doesn't excuse you from breaking the law.

11 And so, because of this experience, I also
12 think the Commission has the obligation to also enforce
13 the law; but, at the same time, I do have
14 considerations for mitigating factors.

15 I think -- I'll just give my spiel and then
16 have the other commissioners chime in on what they feel
17 about what the end result should be. The -- first and
18 foremost, the respondent representatives came up today
19 and talked about how they didn't know about this
20 esoteric section of Title 12. They didn't have the
21 resources to hire, you know, a campaign specialist.
22 Yet when I look at campaign disclosure statement,
23 Form 460, I mean, the committee has \$38,000 sitting in
24 a fund balance. And I can tell you it will only take a
25 couple of thousand dollars to get some expertise on the

Page 118

1 question that your whole campaign is based off of. So
2 I don't necessarily think that not having the resources
3 is an excuse, either, when you obviously did have the
4 resources to get some professional assistance.

5 And, at the same time, because it is so
6 convoluted, I wouldn't recommend a full penalty. And
7 in considering the options, I went back and looked at
8 the Evaluator's reference to a recent FPPC case. Let
9 me pull it up. One second.

10 CHAIRMAN SMITH: By the way, the -- we're
11 going to -- if we find violations, we'll discuss
12 penalties as a separate step. We're not doing
13 penalties at this point, until we find that there is
14 one or more violations.

15 COMMISSIONER GONZALES: Okay. Well, then,
16 I'll hold that discussion for the second step, then.

17 But overall, because of those reasons, I have
18 sympathy, but at the same time I think that at least
19 the committee should be held accountable for violating
20 the law, negligence not being an excuse for violating
21 the law.

22 CHAIRMAN SMITH: Okay. Thank you.

23 Other comments?

24 COMMISSIONER VEMULAPALLI: I think there is
25 enough evidence for the violation.

Page 119

1 CHAIRMAN SMITH: Okay. Do you want to offer
2 any comment, or you don't have to?

3 COMMISSIONER PEACOCK: Just quickly. I mean,
4 here I think there are some unusual, if not unique,
5 circumstances. There also has been a history. This is
6 not the first time of -- let's just say confusing
7 information from the Clerk's office. So, on the one
8 hand, I think there are some mitigating circumstances.
9 But, at the same time, as you pointed out, there was
10 money to hire lawyers. That seems to me that should be
11 part of what you do, just as a check or anything else.

12 And I think also -- and correct me if I'm
13 wrong, Mr. Miller -- there was a point where it was
14 made clear that regardless of what all the information
15 was for, there is a problem here. And there was not
16 a -- there does not seem to be a significant or fully
17 successful effort to even try to clear things up at
18 that point. So --

19 MR. MILLER: Well, I guess what I reported is
20 that violations continued after that date, whether --
21 the extent of their efforts -- I guess it's hard for me
22 to say for sure. But the violations didn't suddenly
23 stop.

24 COMMISSIONER PEACOCK: You said it better
25 than I did. That's fine.

Page 120

1 So, given all of that, I think definitely
2 there is a -- I think we can make some -- sort of set
3 aside in some mitigating circumstances at some point.
4 But I don't think the campaign is in the clear, at the
5 same time.

6 CHAIRMAN SMITH: Yeah, and I would mention
7 that in the two previous cases that come to mind where
8 we found that perhaps violations were caused, in part,
9 by bad advice, we found violations in those cases. We
10 considered the mitigating factors significant enough
11 that we issued no penalty at all.

12 But -- okay. I guess -- unless somebody else
13 wants to make a motion, I'll make one and see where we
14 go from there. Let me make sure I get it right. So
15 I'm going to look at my cheat sheet.

16 I move that the Ethics Commission finds that
17 based upon a preponderance of the evidence presented,
18 that multiple violations of the San Jose Municipal Code
19 Section 12.06.910, I believe it is -- let me be sure
20 about that -- have occurred. It's -910. Yeah, okay.

21 So that's my motion. And anybody would like
22 to second it?

23 COMMISSIONER PIERRE-DIXON: I would second
24 it.

25 CHAIRMAN SMITH: Okay. Thank you.

30 (Pages 117 to 120)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 121	Page 123
<p>1 Discussion? 2 COMMISSIONER PEACOCK: One -- I get where 3 you're coming from on the multiple part because it is 4 kind of hard to count. But I wonder if is there any 5 way to quantify -- I'll look at the attorneys on 6 this -- is there a way to say the number of 7 contributions or more than or something, just to be -- 8 I know we can't -- because the reporting makes it 9 all -- but is there a way to say X number of 10 contributions --- 11 CHAIRMAN SMITH: Well, there is potentially 12 more that we don't know about yet. 13 MR. MILLER: Well, based on the pattern of 14 reporting that the candidate -- that the respondent put 15 forth, I think we have quantified for you the exact 16 number of untimely reports and nonreporting that could 17 lead to a determination of a specific number of 18 violations if you wanted to consider them that way. 19 And I think that number you can find would be -- in the 20 "Conclusions and Recommendations" is a series of 21 bullets. So there are 22 late contributions that were 22 not reported at all. And there are -- maybe I'm 23 looking at the wrong paragraph. Excuse me. 24 CHAIRMAN SMITH: Are you talking about 25 "Conclusions and Recommendations"?</p>	<p>1 those may be under the mitigating circumstances 2 umbrella. 3 CHAIRMAN SMITH: That we deal with in the 4 penalties. 5 Okay. So let me offer an amended motion. I 6 move that the Ethics Commission find that based upon a 7 preponderance of the evidence presented, that as many 8 as -- is that what we said? -- as many as 99 violations 9 of San Jose Municipal Code Section 12.096.910 have 10 occurred. 11 COMMISSIONER PIERRE-DIXON: I would second 12 that. 13 CHAIRMAN SMITH: Okay. So further 14 discussion? 15 Okay. If not, let's vote. All in favor? 16 (All Commissioners responded Aye.) 17 CHAIRMAN SMITH: Any opposed? 18 (No response.) 19 CHAIRMAN SMITH: Okay. Passes unanimously. 20 We move into the penalty phase. Oh, no. I'm 21 sorry. I've got to do the certification. So I ask 22 each commission member to certify that they have heard 23 or read the testimony at the hearing and reviewed all 24 the evidence in the record by affirming "So certified." 25 Commissioner Vemulapalli?</p>
Page 122	Page 124
<p>1 MR. MILLER: Yes, if you look at Page 19 of 2 our report -- 3 COMMISSIONER VEMULAPALLI: Page 17 or 19? 4 MR. MILLER: -- you'll see that there are 22 5 late contribution reports and under Title 12, 77 6 additional violations formats. So there is a total of 7 99 if you wanted to -- the maximum number of violations 8 you could quantify would be 99. I'm not suggesting 9 that that -- at all that that's what you do. But 10 that's what the data results in. 11 CHAIRMAN SMITH: So 99 plus whatever we don't 12 know about yet. 13 MR. MILLER: Correct. Again, I'm not 14 suggesting that that's what the Commission do, but 15 that's what the numbers add up to. 16 CHAIRMAN SMITH: Okay. I agree. You know, 17 as the maker of the motion, I would be willing to 18 accept a modification. I hate to say 99 because that 19 number is going to change next time we see a 460. But 20 we could say -- 21 COMMISSIONER PEACOCK: Say "as many as" or -- 22 CHAIRMAN SMITH: I don't know. What do 23 you -- do you want to say "as many as"? 24 COMMISSIONER PIERRE-DIXON: Yes. 25 COMMISSIONER PEACOCK: Again, I think some of</p>	<p>1 COMMISSIONER VEMULAPALLI: So certified. 2 CHAIRMAN SMITH: Commissioner Peacock? 3 COMMISSIONER PEACOCK: So certified. 4 CHAIRMAN SMITH: Commissioner Gonzales? 5 COMMISSIONER GONZALES: So certified. 6 CHAIRMAN SMITH: Commissioner Pierre-Dixon? 7 COMMISSIONER PIERRE-DIXON: So certified. 8 CHAIRMAN SMITH: And me, Commissioner Smith, 9 so certified. 10 One of those days I'm going to be running 11 through it and I'm going to forget somebody's name. 12 I'm at that age where those things happen. 13 Okay. Now we move into the penalty phase. 14 If the Commission finds that one or more violations 15 have occurred, it must consider imposing orders or 16 penalties. We have four options. And it's an and/or. 17 We can find mitigating circumstances and take no 18 further action, we can issue a public statement or 19 reprimand, we can require corrective action by a 20 particular deadline and/or impose a civil penalty in 21 accordance with Chapter 12.04 of the San Jose Municipal 22 Code. 23 And I should mention that can include 24 mitigating factors. "Mitigating factors" doesn't mean 25 that it has to be zero. "Mitigating factors" can mean</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 125

1 we would impose a higher penalty.
2 Civil penalties are imposed by resolution of
3 the Commission. Except as otherwise specified in
4 Title 12, the Commission may impose penalties of up to
5 \$5,000 for each violation or three times the amount
6 which a person or respondent failed to report properly
7 or unlawfully contributed, expended, gave or received,
8 whichever is greater. Those are whopping numbers,
9 potentially.
10 The affirmative votes of at least three
11 commission members are required to impose penalties --
12 orders of penalties for a violation. In addition, in
13 order to vote to impose any order or penalty for a
14 violation, every commission member must certify that he
15 or she has heard or read the testimony at the hearing
16 and has reviewed all the evidence in the record.
17 In determining if penalties should be imposed
18 for violations of Title 12 and the amount of such
19 penalties, the Commission shall consider all relevant
20 circumstances surrounding the case, including the
21 following. And there's several...
22 First, the severity of the violation;
23 Second, the presence or absence of any
24 intention to conceal, deceive or mislead;
25 Third, whether the violation was deliberate,

Page 126

1 negligent or inadvertent;
2 Four, whether the violation was an isolated
3 incident or pervasive enough to indicate a pattern of
4 disregard for this Chapter;
5 Five, whether the respondent has a prior
6 record of violations of city law in relation to
7 campaign finance, lobbying, conflicts of interest or
8 governmental ethics;
9 Six, the degree to which the respondent
10 cooperated with the investigation; and
11 Seven, whether or not corrective actions were
12 taken, if appropriate, in accordance with the
13 provisions in this Chapter.
14 Is there a motion regarding orders and
15 penalties relating to the findings? Or we can discuss
16 a little bit. But we'll need a specific motion.
17 The other thing I should mention. The other
18 that was -- question that was raised in the Evaluator's
19 report, which you didn't mention this evening, was the
20 idea that the Clerk has the authority to issue fines
21 for late filings. I think it's \$10 a day or something
22 like that, up to --
23 MR. MILLER: \$10 a day, up to a greater of
24 the amount of the contribution or the -- or a hundred
25 dollars, whichever is greater.

Page 127

1 So, in this particular instance, given the
2 number of --
3 CHAIRMAN SMITH: Number of --
4 MR. MILLER: -- contributions that were not
5 reported, the number could be significant. And I
6 didn't want to -- you know, I work for you all. Not
7 for the City Clerk. But it would seem -- it would seem
8 to me to fall into the category of mitigating
9 circumstance. If the City Clerk is fining the
10 candidate the money -- a bunch of money, that might
11 affect your actions. Or vice versa. I'm not really
12 sure. I think this will also be a matter of first
13 impression with the Commission and how it interacts
14 with the City Clerk's office in this matter.
15 CHAIRMAN SMITH: I think one thing that you
16 suggested is we might want to defer decision on penalty
17 pending what the Clerk does.
18 MR. MILLER: Frankly, I don't know. And
19 that's a question for the city attorney. I don't know
20 to what extent you can direct the City Clerk. The City
21 Clerk's independent of you all. It would seem to be
22 prudent to make sure that the two bodies are acting
23 with knowledge of the other's actions.
24 CHAIRMAN SMITH: Do you have anything to
25 offer?

Page 128

1 MS. SILVA: I want to add something to what
2 you read. I wanted to add something to what you read.
3 Actually -- well, actually, 12.04.120 -- you mentioned
4 this seven factors relating to many campaign
5 contribution violations. But Section B of that says
6 that a candidate or committee failing to file a late
7 contribution report pursuant to Section 12.06.910 shall
8 be required to pay a penalty in an amount imposed by
9 the Commission pursuant to Section 12.04.120 -- which
10 is what Mike read from, 1 through 7 earlier -- but not
11 less than \$1,000. So that's a second portion to
12 consider.
13 CHAIRMAN SMITH: Thank you. I didn't include
14 that. That's never been included in here because this
15 issue has never come up. I didn't remember that that
16 was there.
17 So what you're telling me is that by the
18 Code, we must have a penalty of at least \$1,000 because
19 we find violations of --
20 MS. SILVA: Of late contributions.
21 CHAIRMAN SMITH: -- late contributions.
22 COMMISSIONER GONZALES: What section was
23 that?
24 MS. SILVA: 12.04.120.
25 CHAIRMAN: B.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 129	Page 131
<p>1 MS. SILVA: B as in boy.</p> <p>2 CHAIRMAN SMITH: So that's where we start.</p> <p>3 That's the floor.</p> <p>4 I personally don't think we should go</p> <p>5 anywhere near a number like \$5,000 or three times the</p> <p>6 amount, 99. That strikes me as insanity, for some</p> <p>7 reasons we've already discussed.</p> <p>8 But in thinking about this ahead of time, I</p> <p>9 anticipated that you would find violations. And I was</p> <p>10 thinking something between maybe one and five thousand,</p> <p>11 like 2500 or something, would be an appropriate number.</p> <p>12 But that's just something I'll throw out there.</p> <p>13 If anybody else would like to offer a</p> <p>14 comment.</p> <p>15 MR. ALLEN: Mr. Chair.</p> <p>16 CHAIRMAN SMITH: Oh, yes. I'm sorry. I'm</p> <p>17 sorry. I did promise you an opportunity.</p> <p>18 MR. ALLEN: Thank you. I'll be as brief as</p> <p>19 possible.</p> <p>20 CHAIRMAN SMITH: Quickly identify yourself.</p> <p>21 And promise me you'll speak slowly.</p> <p>22 MR. ALLEN: I will speak very slowly and</p> <p>23 enunciate as much as I can, in my theater voice.</p> <p>24 My name is Peter Allen. I'm the campaign</p> <p>25 manager for Manh Nguyen for San Jose Council D4 2015.</p>	<p>1 through the April election.</p> <p>2 And I just want to point out to your</p> <p>3 comments, Commissioner Gonzales, thank you for bringing</p> <p>4 up your personal experience with the campaign. I think</p> <p>5 that's really relevant to this. As far as the 38K that</p> <p>6 was still in our account on the last report, that</p> <p>7 report was dated June 6th and we had an election to</p> <p>8 win. So that account is actually at zero right now.</p> <p>9 So I just want to make that clear.</p> <p>10 There is a couple of things I wanted to point</p> <p>11 out -- or the campaign wanted to point out, with me as</p> <p>12 the vessel -- with regard to the seven factors that you</p> <p>13 have to consider in making your assessment. And I'll</p> <p>14 just read some really brief comments on those seven</p> <p>15 factors right now.</p> <p>16 Severity of violation, number one. The only</p> <p>17 reports at issue under SJMC Title 12 -- this is from</p> <p>18 our perspective. For the 16 reports during the primary</p> <p>19 and 16 reports during the runoff election, the 90-day</p> <p>20 reporting period falls under the FPFC's jurisdiction.</p> <p>21 While the respondent's campaign failed to timely file a</p> <p>22 series of 24-hour contribution reports, we did not do</p> <p>23 so deliberately or with the intention to conceal or</p> <p>24 mislead the public. We acted under the written and</p> <p>25 oral instructions provided by the City Clerk's office,</p>
Page 130	Page 132
<p>1 First, if I can just thank the Commissioners</p> <p>2 for your time. I know we're here almost three hours</p> <p>3 now, and you're here as volunteers. As a commissioner</p> <p>4 myself, I appreciate the time you're putting into this.</p> <p>5 And as a campaign professional and as a resident in San</p> <p>6 Jose, I appreciate it. So thank you.</p> <p>7 I want to say I appreciate Mr. Miller's</p> <p>8 efforts and time in crafting the reports on all of</p> <p>9 these complaints, Mr. Graves and the Clerk's office for</p> <p>10 their diligence in being here and answering some pretty</p> <p>11 tough questions as well as the City Attorney's office.</p> <p>12 So thank you all for being here.</p> <p>13 Just to clarify a couple of things very</p> <p>14 quickly as far as the timing of the complaint and once</p> <p>15 the campaign was notified of the violations. As we've</p> <p>16 pointed out, these are rather confusing regulations.</p> <p>17 So if there was any delay in terms of our beginning to</p> <p>18 file the late late reports, it was simply that. We</p> <p>19 were struggling to understand what the regulations</p> <p>20 were, which of the contributions applied. And we,</p> <p>21 frankly, wanted to make sure we were getting in</p> <p>22 compliance, given the time for the June election first.</p> <p>23 So we made sure we were looking ahead and making sure</p> <p>24 we would have all the filings done before the June</p> <p>25 election, and then we went back and started going</p>	<p>1 who has been charged with the responsibility of</p> <p>2 providing candidates guidance on city regulations</p> <p>3 regarding campaign process, procedures and rules.</p> <p>4 The City Clerk disseminated written</p> <p>5 guidelines specifically stating that the 24-hour</p> <p>6 reporting applies only to IE committees and does not</p> <p>7 apply to Council committees. This was further</p> <p>8 confirmed via telephone with the City Clerk's office.</p> <p>9 Moreover, at no point in time has the Clerk's office</p> <p>10 contacted the respondent -- the campaign -- to notify</p> <p>11 us or our candidate of any violations regarding the</p> <p>12 24-hour contribution report or to request that the</p> <p>13 report be submitted. We've done that only after being</p> <p>14 notified of this complaint.</p> <p>15 Number two, the presence or absence of any</p> <p>16 intention to conceal, deceive or mislead. As we've</p> <p>17 already pointed out and the evaluating attorney pointed</p> <p>18 out -- I'm trying to make it brief to get us out of</p> <p>19 here at a reasonable hour. I apologize. Number two,</p> <p>20 the presence or absence of any intention to conceal,</p> <p>21 deceive or mislead. The evaluating attorney found no</p> <p>22 evidence to suggest any intent to conceal, deceive or</p> <p>23 mislead the voters.</p> <p>24 Number three, whether the violation was</p> <p>25 deliberate, negligent or inadvertent. The evaluating</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 133

1 attorney found no evidence to suggest that the failure
2 to file the Form 497 was deliberate. He concluded that
3 it was inadvertent or perhaps negligent. Again, the
4 respondent, our campaign, only acted in accordance with
5 the written and oral instructions provided by the City
6 Clerk's office, which provides for specific written
7 guidelines stating that the 24-hour reporting applies
8 only to IE candidates and not to Council committees.
9 And our campaign took further steps to confirm the
10 written instructions via telephone with the Clerk's
11 office.

12 Number four, whether the violation was an
13 isolated incident or pervasive enough to indicate a
14 pattern of disregard for this Chapter. While there are
15 a number of violations found, this is still -- we would
16 still consider this to be one violation of the
17 regulation. Granted, there were many reports that were
18 not filed, but we still consider this to be a
19 first-time violation of this regulation.

20 Number five, whether the respondent has a
21 prior record of violations of city hall -- or city law
22 relating to campaign finance, lobbying, conflicts of
23 interest or governmental ethics. The Ethics Commission
24 monitors compliance with all campaign and ethics
25 ordinances in the San Jose Municipal Code, Title 12.

Page 134

1 I'm sorry. In the Municipal Code. Title 12 of that
2 Code is the governing ordinance covering all of the
3 provisions regarding local campaigns. Determination of
4 whether the respondent complied with lawn sign
5 regulations, which is referenced in the report, falls
6 under the purview of the Ethics Commission. Whether it
7 is implied that the lawn sign violation falls under
8 governmental ethics is for the Ethics Commission to
9 determine.

10 Number six, the degree to which the
11 respondent cooperated with the investigation. The
12 respondent has fully cooperated with the investigation
13 and did take immediate steps to comply after speaking
14 to the evaluating attorney and being made aware of all
15 rules, City and FPPC, regarding the late contribution
16 reports.

17 Number seven, whether or not corrective
18 actions were taken, if appropriate, in accordance with
19 the provisions of this Chapter. The evaluating
20 attorney indicated that the campaign took some
21 corrective actions. The campaign immediately -- in
22 fact, campaign immediately researched the violation
23 raised in the complaint and made every effort to
24 understand the violations at issue and to take
25 corrective actions. The late contribution report

Page 135

1 referenced in the complaint, along with the newly
2 revised Form 497, now titled the 24-hour contribution
3 report, only added to our confusion. Nonetheless, our
4 campaign complied and took corrective actions to the
5 best of our ability.

6 Okay. I apologize again for my rapid speech.
7 Byproduct of my upbringing and wanting to get us out of
8 here.

9 CHAIRMAN SMITH: You should do those
10 television commercials.

11 MR. ALLEN: Right. Well, I can do political
12 disclaimers.

13 CHAIRMAN SMITH: Okay. Okay.

14 MR. ALLEN: Any further questions? I'm happy
15 to answer, but I don't think there will be any more.

16 CHAIRMAN SMITH: I don't believe so.

17 MR. ALLEN: Thanks very much for your time
18 again.

19 CHAIRMAN SMITH: Thank you.

20 Any other discussion or would someone like to
21 make a motion?

22 COMMISSIONER PIERRE-DIXON: I think we have
23 found a violation. I think it's a significant
24 violation. Certainly there should be a fine.

25 Certainly mitigating factors again.

Page 136

1 He spoke on behalf of the campaign, that they
2 were unaware of some of the rules. But, at the same
3 time, sophisticated organization. Worked on campaigns
4 before. You also worked with the FPPC on this very
5 issue. And so I think there needs to be a significant
6 fine. Certainly not the one that is anticipated here.
7 But I was thinking more around 10,000.

8 COMMISSIONER PEACOCK: If we think in terms
9 of a fraction, are we talking about sort of the
10 at-issue violations -- the ones that are more
11 significant? It looks like 99 out of 240. Is that
12 the -- is that the fraction we're looking at?

13 COMMISSIONER PIERRE-DIXON: I sort of looked
14 at all 99. I kind of looked at the whole value of
15 everything that put us well over 300,000 and then tried
16 to figure out what the mitigation would come to. And
17 that put me down around 10,000. Significant enough to
18 hurt but not enough to be over -- that's just my
19 thought process.

20 CHAIRMAN SMITH: Other comments?

21 COMMISSIONER VEMULAPALLI: My thought process
22 is that I see four tables mentioned. So for each table
23 I'm thinking about a thousand. So, total, at least
24 4,000. That was my thought process.

25 CHAIRMAN SMITH: That's in the range I was

34 (Pages 133 to 136)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 137

1 thinking of.
2 Any of the other -- I think, Commissioner
3 Gonzales, you -- you were going to offer some comments
4 on penalties earlier.
5 COMMISSIONER GONZALES: Sure. Going back to
6 the narrative in the report, the Evaluator brings up
7 that the complainant also filed a complaint with FPPC
8 regarding the Political Reform Act time for filing.
9 And so I think that I would defer ruling on that issue
10 to the FPPC since it is more of a state forum, although
11 I understand the Title 12 actually applies it.
12 And so, in my own consideration, I thought to
13 leave that 650 -- or \$222,000 out of my calculation
14 and, rather, focused on the Title 12 late contribution,
15 which was \$48,921.60, maximum penalty being 146.
16 In considering my calculation, I thought --
17 or referenced back to an example of the FPPC ruling
18 that the Evaluator brought up, in which a candidate had
19 two late contributions totaling \$12,500. The FPPC
20 treated it as a single count and fined it \$1500 and --
21 as a 5,000 per count.
22 Thinking of a percentage, that was 30 percent
23 of the maximum penalty of a single count. And although
24 we're dealing with a high volume of reports and
25 violations, because all of these violations were

Page 138

1 stemming from the single company, I counted it as one
2 and just one value, the \$48,000. So originally I was
3 going to recommend a maximum penalty of 146 to use the
4 same percentage of FPPC, 30 percent maximum, which
5 would be \$44,000 penalties. But I see the Commission
6 is recommending something a little less.
7 I do agree on the side of the Commissioner
8 Dixon, though, that I think because of the volume of
9 magnitude, that this should be a -- serious penalties.
10 So I would be inclined to agree with \$10,000.
11 COMMISSIONER PEACOCK: I would also. 10,000.
12 CHAIRMAN SMITH: Okay. Sounds like we got
13 three votes already. Somebody want to make a motion?
14 COMMISSIONER PIERRE-DIXON: I would move that
15 based on the facts and circumstances and our finding,
16 that the fine be assessed at \$10,000.
17 CHAIRMAN SMITH: And that would include
18 consideration of mitigating factors?
19 COMMISSIONER PIERRE-DIXON: That would
20 definitely include consideration of all mitigating
21 factors.
22 CHAIRMAN SMITH: Anybody want to second that?
23 COMMISSIONER GONZALES: Can I make an
24 amendment?
25 CHAIRMAN SMITH: Sure. You can offer a

Page 139

1 suggestion.
2 COMMISSIONER GONZALES: I would like to make
3 a friendly amendment to include the -- in the motion
4 that this is not include the consideration of Political
5 Reform Act violations, which we deferred to the FPPC.
6 COMMISSIONER PIERRE-DIXON: I would accept
7 that friendly amendment.
8 CHAIRMAN SMITH: Okay. So we've got a motion
9 made and seconded.
10 Commissioner Peacock?
11 COMMISSIONER PEACOCK: Just a question. Do
12 we want to -- I'm comfortable with both the amendment
13 and the revision to it. Do we want to make any
14 reference to the City Clerk?
15 CHAIRMAN SMITH: You mean as far as the
16 fines?
17 COMMISSIONER PEACOCK: Right. City Clerk
18 also can do something. Do we want to say -- do we
19 really want to mention that? Do we want to -- the
20 attorney may have some thought.
21 MS. SILVA: It actually falls under the
22 discretion of the City Clerk's office. It's outside
23 the purview within this scope, although it is located,
24 I believe, in Title 12 under 910 --
25 CHAIRMAN SMITH: It's there somewhere.

Page 140

1 MS. SILVA: It's at the end of that section.
2 CHAIRMAN SMITH: I guess my person --
3 MR. GRAVES: 910.
4 MS. SILVA: 910.
5 CHAIRMAN SMITH: And I suspect I may find
6 agreement with my friends here that I would hope that,
7 given a rather substantial fine, that the Clerk
8 wouldn't pile on and -- I'm sorry. Rather substantial
9 penalty, that the Clerk wouldn't pile on any fines. As
10 pointed out, that is certainly the Clerk's discretion.
11 And I don't think the Clerk is -- you know, the Clerk
12 has had that authority for a time. I don't think they
13 have actually fined anybody yet. I'm not sure. I
14 shouldn't say that, probably, because I don't know that
15 for a fact. Anyway --
16 COMMISSIONER PEACOCK: Maybe we should --
17 MR. GRAVES: Michael?
18 CHAIRMAN SMITH: Yes.
19 MR. GRAVES: Excuse me. In 12.06.910E it
20 says the Clerk must fine the delinquent filer. But in
21 the next sentence it says the Clerk may reduce or waive
22 the fine if he or she determines that the late filing
23 was not willful and that enforcement will not further
24 the purposes of this Chapter. I can't speak for what
25 the City Clerk is going to do. But I'm sure that she

REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p style="text-align: center;">Page 141</p> <p>1 will read this with the same intent that I offer it 2 now. 3 CHAIRMAN SMITH: Okay. So, if there's no 4 further discussion, take a vote on the motion. All in 5 favor? 6 (All Commissioners responded Aye.) 7 CHAIRMAN SMITH: Any opposed? 8 (No response.) 9 CHAIRMAN SMITH: Okay. It's unanimous. 10 Okay. As we have done several times this 11 evening, I need to ask each of you to certify that you 12 heard or read the testimony at the hearing and reviewed 13 all the evidence in the record by affirming "So 14 certified." 15 Commissioner Vemulapalli? 16 COMMISSIONER VEMULAPALLI: So certified. 17 CHAIRMAN SMITH: Commissioner Peacock? 18 COMMISSIONER PEACOCK: So certified. 19 CHAIRMAN SMITH: Commissioner Gonzales? 20 COMMISSIONER GONZALES: So certified. 21 CHAIRMAN SMITH: Commissioner Pierre-Dixon? 22 COMMISSIONER PIERRE-DIXON: So certified. 23 CHAIRMAN SMITH: And me, Commissioner Smith, 24 so certified. 25 MS. McDANIEL: Chair, was it seconded by</p>	<p style="text-align: center;">Page 143</p> <p>1 further -- will there be -- you know, what will happen 2 once the Form 460 are filed? I believe the motion said 3 that they're deferring and not taking action on 4 violations under the Political Reform Act. And those 5 would be the sorts of violations that will be revealed 6 in subsequent 460 filings. 7 CHAIRMAN SMITH: Okay. 8 MS. SILVA: So this would preclude the 9 Commission from entertaining any filings. My concern 10 is that if there was a filing -- a complaint filed 11 pursuant to that, has this commission adjudicated on 12 that issue. 13 CHAIRMAN SMITH: I think that was certainly 14 our intent, based on the discussion that we had. This 15 covers everything. And I should -- since we have 16 questions here, I don't -- 17 MS. SILVA: Make a friendly amendment -- to 18 amend the motion. 19 CHAIRMAN SMITH: The motion of violation or 20 the motion of penalty? Or both? 21 While we're at it, there's another question. 22 I'm not sure that -- there were two respondents. The 23 motion on the violation did not -- I think it was very 24 clearly implicit but it was not explicit that that 25 motion covered both -- I guess the question that we --</p>
<p style="text-align: center;">Page 142</p> <p>1 Adrian for the last motion? 2 CHAIRMAN SMITH: Yes. 3 MS. McDANIEL: I just wanted to make sure. 4 CHAIRMAN SMITH: Okay. We're almost there. 5 The last thing is there is a possibility for referral 6 to other agencies essentially taking action here. I 7 don't think we need to consider that. 8 And the last item would be, under the 9 Commission's regulations and procedures, we issue a 10 decision by resolution. And at this time I would 11 entertain a motion directing the City Attorney to draft 12 a resolution of the Commission's findings and penalties 13 and authorizing the Chair to approve and sign the 14 resolution. 15 MS. SILVA: Before you vote -- 16 CHAIRMAN SMITH: Yes. 17 MS. SILVA: -- can I just ask? 18 So I know the Commission is of the 19 understanding that there is still going to be 460 20 filings that is due for July 31st of this year for the 21 election -- from the June election. Does this include 22 or -- 23 MR. MILLER: I certainly think -- our little 24 huddle -- we should clarify. Because -- the City 25 Attorney's concern is what happens to the discovery of</p>	<p style="text-align: center;">Page 144</p> <p>1 maybe that needs to be made more clear, what we did on 2 the penalty. Who is responsible for the penalty? Is 3 it the committee or is it the candidate? I wasn't -- 4 now that I think about it, that wasn't explicitly 5 stated. Or maybe it doesn't matter since -- 6 COMMISSIONER PIERRE-DIXON: I don't know. 7 CHAIRMAN SMITH: I don't know. I guess we 8 don't care -- maybe we don't care who does it. It's 9 between the two of them. 10 Okay. So the question of -- we can have a 11 friendly amendment if we need to really make it 12 absolutely clear that that's why we said "at least" or 13 "as many as." I think it was "as many as." At least 14 in my mind, that included the future stuff. So I see 15 no need. 16 MS. SILVA: I would like it to be clear 17 because my concern is that this Commission might 18 receive a subsequent complaint -- 19 CHAIRMAN SMITH: Right. 20 MS. SILVA: -- that would reopen this issue. 21 CHAIRMAN SMITH: So I made the motion -- did 22 I make the motion on the -- on the -- on the finding of 23 violation? I think it was me. I think it was me, and 24 Commissioner Pierre-Dixon seconded it; is that right? 25 MS. McDANIEL: Finding a violation?</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 145	Page 147
<p>1 CHAIRMAN SMITH: Finding violation. I need 2 to -- 3 MS. McDANIEL: Hold on. 4 CHAIRMAN SMITH: I changed it because -- 5 MS. McDANIEL: Smith made the motion, and 6 Rolanda seconded. 7 CHAIRMAN SMITH: Okay. So I guess we can 8 step back again, and I will amend the motion to include 9 a statement that it is our intent that this finding 10 include any future violations may be uncovered through 11 subsequent filings of Form 460. We would not entertain 12 any additional complaints on this particular matter. 13 MS. SILVA: As it relates to Title 12. 14 CHAIRMAN SMITH: As it relates to Title 12. 15 Do you like that? Do you like that? 16 MR. MILLER: I -- it's not for me to like or 17 dislike. You -- if someone files a complaint, I think 18 the City Clerk could process it, will hand it to me, 19 and I think you can rest assured that I'm not going to 20 devote very much time to investigate or evaluate -- 21 CHAIRMAN SMITH: I think -- I think the -- 22 there is that section in Title 12 that talks about when 23 you don't investigate something and one of them is -- 24 MS. SILVA: It's actually in the resolution. 25 CHAIRMAN SMITH: Oh, the resolution? You</p>	<p>1 COMMISSIONER GONZALES: Okay. 2 COMMISSIONER PEACOCK: You just want to make 3 sure to show -- 4 COMMISSIONER GONZALES: Right. And my 5 understanding -- 6 CHAIRMAN SMITH: I'm guessing that they will 7 cover that matter. 8 Okay. So, if there's no further discussion, 9 we'll vote on the amended motion. All in favor? 10 (All Commissioners responded Aye.) 11 CHAIRMAN SMITH: Any opposed? 12 (No response.) 13 CHAIRMAN SMITH: Okay. So it's unanimous. 14 Now we're back here to the matter of the 15 resolution. So I'll move that we direct the City 16 Attorney to draft a resolution of the Commission's 17 findings and penalties and authorizing the Chair to 18 approve and sign the resolution. 19 If somebody would like to second. 20 COMMISSIONER GONZALES: Second. 21 CHAIRMAN SMITH: Thank you. 22 All in favor? 23 (All Commissioners responded Aye.) 24 CHAIRMAN SMITH: Any opposed? 25 (No response.)</p>
Page 146	Page 148
<p>1 don't even have to -- you don't have to do anything. 2 MR. MILLER: Okay. I'm very good at that. 3 MS. SILVA: So no investigation. It's under 4 Section F of the Resolution Section 6954. "No 5 investigation shall be conducted if a complaint does 6 not contain sufficient facts to demonstrate a potential 7 violation of the law or if identical allegations have 8 already been addressed in a prior investigation." 9 CHAIRMAN SMITH: So this amendment would make 10 that clear, that this -- that future things are 11 included. 12 MS. SILVA: Okay. Consistent with Section F2 13 of Resolution 76954. 14 CHAIRMAN SMITH: Okay. So would that be 15 acceptable to you as a second? 16 COMMISSIONER PIERRE-DIXON: Yes. 17 CHAIRMAN SMITH: Is there discussion on that? 18 Commissioner Gonzales. 19 COMMISSIONER GONZALES: My only concern with 20 regard -- if we assess a single penalty now, perhaps it 21 would discourage respondents from acting timely if 22 there are adjustments being made in their subsequent 23 filings. However, I imagine that the City Clerk still 24 retains the -- 25 CHAIRMAN SMITH: She can still fine them.</p>	<p>1 CHAIRMAN SMITH: Okay. So that passes 2 unanimously. 3 And this hearing is closed. Thank you all. 4 (Whereupon, Item III Hearings concluded at 5 8:37 p.m.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 149

1
2
3
4
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I, NOELIA ESPINOLA, do hereby certify:

That said hearing was taken down by me at the
time and place therein named, and thereafter reduced to
computerized transcription under my direction.

I further certify that I am not interested in
the outcome of this hearing.

Dated: _____

NOELIA ESPINOLA, CSR #8060

A	133:4	adjustments 146:22	aggregate 69:21	83:17,24 85:16
ability 23:2 81:9	acting 127:22	administrative 32:19	ago 11:5,13	86:12 88:2,10
89:8 135:5	146:21	adopt 13:3	24:24 73:23	88:13,22 89:22
able 35:23 50:20	action 4:3 8:6,11	45:14	91:5 116:25	90:6,9,13 92:2
67:8,9 78:18	9:25 13:6,14	adopted 16:5,10	agree 20:14	99:22,25
78:19 86:5	45:17 46:16	adoption 14:1	36:25 37:4	129:15,18,22
87:18 89:20	72:15 79:18	47:6	52:9 116:12	129:24 135:11
absence 125:23	95:18 101:13	Adrian 2:6	122:16 138:7	135:14,17
132:15,20	115:11 124:18	142:1	138:10	allow 19:12 76:9
absolutely 10:10	124:19 142:6	ads 93:8,8	agreement	78:14
30:15 33:24	143:3	advance 96:24	140:6	allowed 36:13
98:15 110:13	actions 85:4	ADVANTAGE	ahead 84:19	112:11
144:12	116:13 126:11	2:18	97:18 129:8	allowing 12:15
abundantly	127:11,23	advertising 86:7	130:23	allude 30:23
116:4	134:18,21,25	88:1,2,3,6	air 102:20	alternating
accept 35:5	135:4	100:8 101:3,7	aired 97:10	68:24
44:17 112:11	activities 21:12	102:20	alerted 95:17	amend 143:18
122:18 139:6	21:13,20	advice 90:15	alive 39:21	145:8
acceptable	ad 88:9	120:9	allegation 3:13	amended 71:11
146:15	Adam 3:11 4:20	affect 112:9	8:23 9:21	71:19 72:5,7
accepted 9:24	5:3 10:5,24	127:11	15:16 19:17	123:5 147:9
account 48:22	11:14,18 12:3	affirmation	20:2,6,7,22	amendment
131:6,8	12:16 35:25	16:17	21:4 22:17	138:24 139:3,7
accountable	add 70:16 72:24	affirmative	24:19 25:16	139:12 143:17
41:21 118:19	73:5 91:15	125:10	60:2	144:11 146:9
accruing 92:7	122:15 128:1,2	affirmatively	allegations 19:2	amiss 90:24
accurate 80:4	added 75:11	109:5	22:5 48:2	amount 24:6
accurately 84:4	135:3	affirming 14:4	50:15 64:24	53:10 66:14,25
accusation	adding 28:6	47:9 123:24	79:13 146:7	67:13,15,19,20
25:24 84:1	addition 18:4	141:13	alleged 11:24	72:3 89:23
accused 34:1	41:6 42:18	afford 83:20	allegedly 9:2	92:19 98:14
acknowledge	125:12	98:18	alleges 20:8,11	99:8 114:18
79:6	additional 45:6	afternoon 99:4	21:21 27:18,25	115:4 125:5,18
acknowledgm...	53:3 66:20	afterward 97:19	alleging 3:11	126:24 128:8
38:21 42:12	67:12 71:13	age 124:12	8:15 15:13	129:6
Act 9:13 62:17	75:10 105:7	agencies 51:2	59:24 101:4	amounts 114:20
62:20,21 63:2	122:6 145:12	142:6	Allen 6:1 10:15	114:20,23
63:13,15,25	address 12:5,6	agency 25:24	10:18 17:8,8	and/or 45:18
64:12 65:8,16	57:20 63:15	37:11 43:9	17:21 29:15,19	77:20 78:8
67:4 84:8	107:9 109:10	47:25 48:1,5	31:10 61:2,3	81:10 116:2
106:8 107:25	addressed 36:24	50:22,24	76:1,1,4,9 77:4	124:16,20
108:7,12 109:4	146:8	agenda 3:24 8:3	78:4,23 79:4	answer 26:11
113:21 137:8	adequate 44:1	16:3 60:15	80:6,8,16,25	44:8,15 65:21
139:5 143:4	adjudicated		81:20 82:2,8	89:9 99:16
acted 131:24	143:11		82:11,23 83:8	106:23 113:25

REPORTER'S TRANSCRIPT OF PROCEEDINGS

135:15	appropriate	assessed 78:20	132:17,21	13:3 44:16
answering	23:3,19 37:11	78:21 87:16	133:1 134:14	45:14 50:16
113:20 130:10	43:9 51:3	138:16	134:20 139:20	54:10 66:2
ante 77:14	52:16 100:9	assessment 33:4	142:11 147:16	72:24 75:18
anticipate 93:25	126:12 129:11	131:13	attorneys 32:25	79:24 115:15
94:2,2	134:18	assigned 51:18	41:8 121:5	116:14 118:7
anticipated	appropriately	assistance 118:4	attorneys-at-l...	130:25 137:5
129:9 136:6	48:1	assistant 2:10	28:15	137:17 145:8
anybody 28:20	approve 13:4	5:19 54:9	Attorney's 48:5	147:14
35:22 42:19	14:20 45:15	association	49:2 52:14,16	background
50:10 120:21	58:22 142:13	44:20	54:5 55:4,9	33:4,9 53:18
129:13 138:22	147:18	assume 9:18	77:1,10 130:11	83:15
140:13	April 16:5 64:19	49:12 88:8	142:25	bad 90:15 120:9
anymore 112:3	64:21 65:1,14	assuming 33:14	attorney-at-law	balance 117:24
anytime 89:14	65:16 66:1	96:10	55:11	ballot 3:16 8:18
anyway 10:11	67:5,5 71:3,4	assumption 9:3	at-issue 136:10	8:19
38:17 45:10	71:10,13 79:10	assured 145:19	audit 90:25	bankruptcy
109:18 115:3	80:19 81:15	astray 68:17	auditor 50:24	37:14
140:15	91:21 108:11	attach 9:21	authority 20:5	bar 33:2,2 44:20
apartments 56:4	110:25 131:1	19:21 21:15	22:6 64:23	50:1
apologize 100:4	area 23:18	attached 100:12	103:10 126:20	bartering 88:3
132:19 135:6	argument 7:12	attaches 21:11	140:12	base 75:4 94:19
apparently	17:24 18:1	attaching 21:24	authorizing	based 8:5 51:21
11:14,22 87:18	61:14	attack 36:15	14:19 58:22	65:11 67:11
110:10	arguments 6:22	attempted 65:9	142:13 147:17	94:18 115:19
appeared 41:12	17:16 61:16	attend 32:17	automatic 97:6	118:1 120:17
100:18	Arlene 2:8 5:17	attendance	automatically	121:13 123:6
applicable 48:3	article 20:9	100:1	28:6 97:5	138:15 143:14
application	27:19 97:20	attended 77:12	available 4:7,11	bases 74:4
26:20	articles 23:11	attention 71:1	108:20	basically 12:15
applied 130:20	100:10	107:14	Avenue 2:19	53:13 56:19
applies 39:22	aside 92:3 94:18	attorney 2:8,14	avoid 92:6	70:7 82:20
65:14,15,16	120:3	5:17 11:20	aware 87:11,12	84:22 86:5
132:6 133:7	asked 5:4 11:19	14:18 25:3,5	88:25 89:5	91:8
137:11	11:21 32:7	26:11 31:3,5	90:3 95:20,22	basis 8:12 54:5
apply 16:16	36:4 89:16	33:3 38:3,18	106:14 112:8	74:3 83:9
132:7	92:16,18 93:14	38:22,23 39:10	134:14	87:19
appointed 56:25	asking 43:10	39:11,19 40:24	Aye 13:22 14:25	beating 106:18
appointment	56:10 58:5	40:25 41:9,17	46:23 59:12	beg 62:10
57:1	aspect 93:17	44:21 48:12	123:16 141:6	began 100:17
appreciate	assaulted 36:20	50:2 51:20	147:10,23	beginning 15:8
29:13 34:10,24	assert 40:5	56:6,12,15		64:18 106:19
42:12 43:11	assertion 79:25	58:20 83:9	B	110:3,25
75:22 130:4,6	assertions 52:18	98:14 104:19	B 128:5,25 129:1	130:17
130:7	assess 146:20	104:25 127:19	back 4:12 6:7	behalf 35:24

76:25 136:1	body 23:3	businesses 88:5	131:11,21	19:24 21:16
behavior 28:4	boilerplate 4:15	Byproduct	132:3,10 133:4	36:10 57:13
believe 4:23 6:9	border 116:25	135:7	133:9,22,24	62:15 63:2,17
7:15,16,17,18	bottom 51:17		134:20,21,22	64:16 77:15,16
25:13 26:15	box 8:16 25:13	C	135:4 136:1	85:11 90:18
27:21 28:16	boxes 8:14	C 2:2 3:1	campaigned	104:20 107:11
44:24 48:10	boy 83:14 129:1	CA 1:21 2:15,20	21:5	107:13,24
55:2,11 73:9	brainwash	calculation	campaigning	108:1,22
78:22 80:10	104:14	137:13,16	37:2	110:22,23
96:4 100:16	breaking 117:10	calendar 110:1	campaigns	113:4 132:2
109:11 120:19	Brian 41:22	call 10:12,24	89:12 94:14	133:8
135:16 139:24	Bridgett 2:13	29:9 34:7	111:3 113:4	candidate's
143:2	5:11,21 7:20	75:19	134:3 136:3	25:11 27:13
believing 50:1	18:16 45:5	called 63:5,16	campaign-rela...	32:15 68:13
benefit 8:23	61:22	63:24 113:2	100:8	83:10 115:1
48:24 49:25	brief 7:12 17:24	calls 49:13	candidacy 9:15	capacity 50:23
50:11 71:15,18	61:13 65:25	campaign 15:20	candidate 9:19	care 144:8,8
84:3,5,14	69:5 76:9,11	20:13,14,17,19	19:18 21:18	careful 28:1
best 31:1 73:7	129:18 131:14	21:12 23:11	24:22 25:12,12	carefully 23:5
75:17 79:12	132:18	30:19,21 31:1	26:17,18,25	62:12
80:18 81:3,8,9	briefly 8:8 19:3	31:6,11,17	27:1 33:10	case 7:18 9:8
89:3,7 94:20	19:11,15 23:1	32:2 33:21,25	36:16 43:19,20	27:4,6 29:2
95:18 100:13	65:10 76:13	34:1 38:1 50:5	43:22,24 44:9	31:25 33:14
135:5	99:23	53:9 62:15	44:11 57:16,19	35:10 42:5
better 99:12	briefs 17:25	76:1,20,22	66:3,13 68:5,9	45:12 49:4,6
105:5 119:24	61:15	77:21 78:9	68:11 70:19	49:24,25 54:11
beyond 25:24	bring 28:20	80:17,20 82:6	71:8,11,14,19	55:10 57:21
27:17 38:25	42:24 82:21	82:6,11,14,17	72:2,5,10	58:11,15 61:7
39:1 43:6,8	102:19 104:21	82:21,24 83:1	74:18 76:16	68:12 74:1
100:16	bringing 36:10	83:2,5,6,7,8,16	80:1 82:5	75:21 79:19
Bill 41:23	131:3	83:18 84:14	84:10 86:3,22	84:2 85:13
binder 84:10	brings 39:6,6	85:12,25 86:2	87:2,9 96:3,8	88:20 91:16
86:22 87:4	42:4 137:6	86:6,9,12	98:10,11 101:5	104:18,24
93:23 94:16	brought 90:13	89:23 93:18	101:8,17	109:17 111:3,5
95:20 96:2	137:18	94:12,18,25	102:19 106:21	115:13,24
107:23	Bryan 30:3,5,8	95:11 96:11,13	107:11,21	118:8 125:20
binders 94:18	36:13 92:14	97:12 98:8	108:2,4 109:1	cases 46:7 49:6
bit 22:25 27:13	bullets 121:21	99:15 100:5,11	109:10,21	51:17 52:20
68:17 71:14	bunch 127:10	102:20 109:13	110:8 112:10	82:23 120:7,9
77:18 101:3	bunched 74:21	111:23 112:4	112:15,17	cash 77:20 78:8
126:16	bundled 74:25	112:23 117:21	115:24 121:14	81:4
blamed 107:5	74:25	117:22 118:1	127:10 128:6	category 127:8
Board 24:24	business 39:8	120:4 126:7	132:11 137:18	cause 13:12
25:6	76:22 87:11	128:4 129:24	144:3	18:22,23 46:13
bodies 127:22	100:3,4	130:5,15 131:4	candidates 9:16	caused 78:12

REPORTER'S TRANSCRIPT OF PROCEEDINGS

120:8	12:4,7 13:16	103:11,17,20	114:12 145:4	15:12,20,25
cautious 99:10	13:23,25 14:7	104:2,5 105:4	changes 115:3	16:3,5 17:11
caveat 67:17	14:9,11,13,22	105:16 107:1	Chapter 124:21	19:23 24:18
CD 38:4,4	15:1,3 17:7,10	109:11,16	126:4,13	25:2,3,13 26:6
Cecilia 2:11	17:22 18:7,12	111:21 113:14	133:14 134:19	26:11,14,18,22
5:14 6:5 7:17	22:13,15 24:13	114:17 115:9	140:24	48:4,5 56:6,15
Center 41:16	26:3,8 27:10	116:16,22	charge 25:4	56:20,24 58:20
certain 9:17	28:10,16 29:7	118:10,22	charged 132:1	59:23,25 60:7
24:6 52:10,18	29:18,25 30:4	119:1 120:6,25	charter 19:23	60:12,15,22
53:9 106:24	30:6,13,15	121:11,24	24:18 25:2	61:9 76:2 77:1
certainly 20:24	32:9 34:4,15	122:11,16,22	26:14,16 56:18	77:9 79:22
46:8 49:5	34:24 35:3,18	123:3,13,17,19	chase 36:23	87:1 91:17
55:12 56:9	36:1 38:12	124:2,4,6,8	cheat 120:15	92:8 93:19,23
73:11 85:1,8	40:9,13 43:3	127:3,15,24	check 4:13 7:7	94:2,8,19 96:4
89:11 94:1	43:16 44:7,14	128:13,21,25	8:16 26:19	96:5,9 98:12
135:24,25	44:19,23 45:1	129:2,16,20	27:3 57:12	108:9 109:13
136:6 140:10	45:8 46:6,21	135:9,13,16,19	81:18 119:11	116:21,22,23
142:23 143:13	46:24 47:1,13	136:20,25	checked 25:13	116:24 117:8
certificates	47:15,17,19	138:12,17,22	25:13 27:8	126:6 127:7,9
57:14,14	48:13,15,20	138:25 139:8	57:8,9	127:14,19,20
certification	49:9 50:12	139:15,25	checklist 109:23	127:20 130:11
47:3 123:21	51:13 52:7	140:2,5,18	checks 8:14	131:25 132:2,4
certified 14:4,8	54:17,23 55:2	141:3,7,9,17	57:17	132:8 133:5,21
14:14 47:9,12	55:12,19,20,22	141:19,21,23	children 9:1	133:21 134:15
47:14,16,18,20	56:11 57:7,22	142:2,4,16	chime 117:16	139:14,17,22
123:24 124:1,3	58:2,5,11 59:4	143:7,13,19	choice 98:12	140:25 142:11
124:5,7,9	59:8,13,15	144:7,19,21	chooses 81:11	142:24 145:18
141:14,16,18	61:4,20,25	145:1,4,7,14	chose 74:18	146:23 147:15
141:20,22,24	62:6 70:3,10	145:21,25	CHRIS 2:5	City's 8:2
certify 14:2,6,10	70:14,18 72:21	146:9,14,17,25	circumstance	civil 42:7 124:20
14:12 47:7	73:2,20 74:13	147:6,11,13,21	72:2 86:8	125:2
123:22 125:14	74:20 75:7,13	147:24 148:1	117:3 127:9	claim 41:23,25
141:11 149:2,6	78:2,22 79:3	Chairperson	circumstances	44:9 87:21
cetera 4:16 91:8	79:23 80:6,9	11:9 30:9	24:1,6 51:22	claimed 27:19
CFTC 32:20	80:23 81:13,18	34:19 76:5	76:20 77:23	31:2
Chair 2:4 14:20	81:25 82:4,9	102:11 103:23	85:24 86:13	claiming 42:18
16:19,25 58:22	82:20 83:5,11	challenging 95:4	89:10 119:5,8	claims 20:8
129:15 141:25	84:19 86:11	chance 36:17	120:3 123:1	Clara 1:20
142:13 147:17	89:15 90:4,7	100:24 102:21	124:17 125:20	clarification
Chairman 3:3	90:10 91:7,11	change 113:24	138:15	78:16 100:6
4:10,14 5:1,2,6	91:13,19,23	114:23 122:19	city 1:7,20 2:8	clarify 30:25
5:10,16,22 6:2	92:10,15 95:6	changed 108:12	2:10,11 3:6,7	38:20 44:5
6:13 7:5,9,22	96:10 98:19	111:4,6,8,22	3:10,16,21,24	70:3 99:25
8:8,11 10:3,8	99:14,17,24	112:22 113:9	5:11,14,17,19	109:20 130:13
10:10,17 11:6	100:23 101:20	113:21 114:10	9:17 14:18	142:24

clear 33:11,12 36:8 50:6 54:1 57:6 77:17,19 81:10 87:14 111:7 116:5 119:14,17 120:4 131:9 144:1,12,16 146:10	54:19,20 closed 13:13 15:5 46:15 59:17 148:3 closer 49:18 closing 45:22 Cochran 59:24 60:20,24 Code 3:13 9:11 15:16 18:23 19:1,1,22 21:23 23:1 38:25 39:12,12 60:2 120:18 123:9 124:22 128:18 133:25 134:1,2 Codes 38:24 color 37:25 colored 37:24 column 71:3,5 71:23 com 31:13 combined 74:25 come 7:6 10:13 10:22,25 25:7 29:11,18 31:15 34:8 45:22 54:6 63:21 65:19,22 72:24 74:3,4 75:20 87:2 90:4 91:25 92:11 99:16 102:5,6 104:11 112:19 112:19 116:13 120:7 128:15 136:16 comes 18:20 23:23 71:7 116:10,14 comfortable 139:12 coming 53:20 121:3	comission 107:20 commenced 23:20 comment 29:14 30:24 51:12 53:4 62:25 93:13 102:15 102:24 103:12 106:1,13 111:21 119:2 129:14 comments 10:23 12:12,17 28:17 34:11 45:6 46:11 50:12 53:2 54:17 55:14 72:24 75:23 77:18 101:22 102:3 105:7,9,13 116:16 118:23 131:3,14 136:20 137:3 commercials 135:10 commission 1:8 2:4 3:6,8,9,23 4:3 7:15 10:16 12:24 13:10 14:2,16 15:11 16:2,12,22,23 16:23 19:13 20:5 21:1 22:1 22:7 24:9 25:8 37:9 39:6 42:5 44:22,24 45:14 46:12 47:6,24 47:25 51:6 52:24 58:18 59:22 60:14 61:11 73:15,17 76:10,15,24 77:7 78:11,15 78:17 85:2	100:16 102:18 104:17,22,23 105:1 109:7 115:15 117:12 120:16 122:14 123:6,22 124:14 125:3,4 125:11,14,19 127:13 128:9 133:23 134:6,8 138:5 142:18 143:9,11 144:17 commissioner 13:15 14:5,6,7 14:8,9,10,11 14:12,13,21 24:15,20 25:9 25:25 27:5,8 27:11,22 28:5 28:13 29:23 30:18,22 32:11 32:14 33:21 35:18 38:10 43:18,22 45:20 46:19,20 47:5 47:11,12,13,14 47:15,16,17,18 47:19 48:8,14 48:18,21 49:10 49:11,16,17,19 50:13,14 51:11 51:14 52:15 53:3,5,6,17 54:4,23,25 55:5,7,20,23 55:23,25 56:14 58:4,7 59:2,3,6 59:8,14,16 62:3 69:6,14 72:16 73:19 83:12,18 84:17 84:20 85:9,17 87:25 88:7,11 88:14,22 89:15	89:16,22 95:8 96:16,20 97:16 97:24 98:20,24 100:22 102:22 103:7 109:19 110:5,14,15,21 111:2,9,12,16 113:7,13,15 114:1 115:8 116:11,18,19 116:23 118:15 118:24 119:3 119:24 120:23 121:2 122:3,21 122:24,25 123:11,25 124:1,2,3,4,5,6 124:7,8 128:22 130:3 131:3 135:22 136:8 136:13,21 137:2,5 138:7 138:11,14,19 138:23 139:2,6 139:10,11,17 140:16 141:15 141:16,17,18 141:19,20,21 141:22,23 144:6,24 146:16,18,19 147:1,2,4,20 commissioners 7:23 13:22 14:25 46:23 55:17 59:12 72:16 77:11 100:1 117:16 123:16 130:1 141:6 147:10 147:23 commission's 5:12 6:19 14:15,19 16:6 17:13 58:17,21
---	---	--	---	---

REPORTER'S TRANSCRIPT OF PROCEEDINGS

142:9,12 147:16 committed 3:15 committee 59:25 60:22 61:9 115:25 117:4 117:23 118:19 128:6 144:3 committees 132:6,7 133:8 communicate 79:12 community 48:10 55:10 company 68:14 86:4,6 138:1 compel 16:19,20 compile 4:18 16:15 complainant 3:23 4:20 7:11 7:14 8:23 10:23,24 16:1 16:18 17:2,6 17:23 18:1 34:8 52:10,13 60:13,20 61:12 61:16,18 75:17 101:22,23 137:7 complained 62:6 complaint 3:10 3:17 4:1 8:14 9:2 10:7 11:24 11:24 12:2,3 12:13,18,20 15:12,21 18:4 18:20,24 19:2 20:8,11 21:21 22:8,22 23:23 25:21,22 27:16 27:18,18,25 36:5 44:20 48:2 59:23 60:8 64:18	66:8 76:24 77:7 79:11 81:6 100:2 101:4 102:2 130:14 132:14 134:23 135:1 137:7 143:10 144:18 145:17 146:5 complaints 4:2 7:25 9:6 12:15 13:19 16:11 130:9 145:12 completely 91:3 compliance 62:16,19 74:11 107:25 110:7 130:22 133:24 compliant 92:6 92:7 complicated 62:11 72:14 74:17 94:7 117:2 complied 101:11 134:4 135:4 comply 62:20 64:16 80:1 106:5,8 134:13 computer 39:17 computerized 97:5 149:5 conceal 125:24 131:23 132:16 132:20,22 conceivably 21:17 concept 107:16 concern 54:15 56:1 89:18 116:12 142:25 143:9 144:17 146:19 concerned 29:21 36:9 50:8	52:17 58:8 87:5 107:2 113:3 concerning 3:15 20:13 76:21 concerns 45:25 46:3 conclude 23:7 concluded 133:2 148:4 conclusion 8:9 19:4,8 22:17 22:21 Conclusions 121:20,25 conduct 3:9 13:2 13:12 15:11 18:20,22 19:7 45:13 46:13 49:3 50:18 59:22 115:14 conducted 22:11 146:5 conducting 13:5 45:16 confines 45:21 confirm 57:7 133:9 confirmed 132:8 conflict 37:18 conflicts 126:7 133:22 conformance 50:24 confused 105:19 109:3 confusing 70:15 70:25 76:13,14 76:15 77:19 84:7,10,13 119:6 130:16 confusion 70:17 86:23 106:3 135:3 connection	30:19 consequences 42:1 consider 24:2 41:9 46:8 50:14 57:22 84:7 121:18 124:15 125:19 128:12 131:13 133:16,18 142:7 consideration 57:12 137:12 138:18,20 139:4 considerations 117:14 considered 7:25 12:2 31:23 64:20 67:2 73:10,14 74:10 85:5 120:10 considering 50:17 71:15 118:7 137:16 consistent 55:13 114:25 146:12 constantly 41:19 constituent 104:10,11 constituents 104:12,13,15 104:21 constitute 9:7,10 67:1 constitutes 69:15 74:16 constrained 25:19 consult 86:14 consultant 82:6 82:25 consultation 86:21 consulted 39:19	contact 11:19 79:21 contacted 5:4 132:10 contacting 52:13 52:15 contain 6:22 17:16 146:6 contained 8:24 9:9 contention 81:10 contest 117:9 context 87:7 continual 79:15 continue 35:8 104:20 continued 79:14 119:20 continues 40:5 114:6 contractor 90:23 contributed 125:7 contribution 60:5 63:23,23 64:2,5,9,13 65:14 66:4,20 66:23,24 67:12 68:2,3,5,7,9,10 68:21 69:18 71:2,13 72:3 73:14 77:21 78:9 79:9 80:19 81:4 85:4 90:22 92:19 101:9,10 101:10,13,16 101:17,19 105:22,23 109:6 113:2,9 113:22 114:24 115:2 122:5 126:24 128:5,7
--	--	---	--	--

131:22 132:12 134:15,25 135:2 137:14 contributions 20:20 60:4,4 63:3,10,14,16 63:18,20 64:2 64:14 65:6 66:2,7,11,15 66:21,25 67:9 67:10,11,14,19 67:23,25 68:2 68:13,13,18,20 68:25 69:11,16 69:20,22,25 70:21 71:2,4,9 71:20,23,24 72:6 74:25 76:21 79:10,13 81:15 84:24 86:5,15,19,25 87:10 88:1 89:18,21 92:25 94:24 97:23 98:8 100:3 101:2,2,6 107:16 108:5 112:11,12,18 114:3 121:7,10 121:21 127:4 128:20,21 130:20 137:19 control 32:4 117:4 conversation 79:12 87:8 106:16 112:25 conversations 109:12 convoluted 118:6 cooperated 126:10 134:11 134:12 cooperative 79:5	copies 3:22 16:1 16:9 60:13 copy 3:17,19 7:15 9:2 15:21 15:23 37:24,24 37:25 48:3 60:7,9 61:10 61:11 107:23 108:23 corner 111:25 corners 25:20 51:25 corporation 15:19 21:9 corporations 21:24,25 correct 26:4 31:18 32:3 38:20 42:19,23 44:4 61:3,17 70:9 80:15 83:8 88:22 91:19 96:23 102:17 110:12 110:13 111:1 114:5 119:12 122:13 corrected 31:12 31:16,21,25 52:20 correcting 49:13 correction 31:5 32:6 33:25 34:3 corrections 32:8 33:17 corrective 33:20 95:18 124:19 126:11 134:17 134:21,25 135:4 correctly 42:9 110:7 corruption 51:19	council 16:5 19:24 59:25 60:22 61:9 65:3 76:2 112:10 116:21 129:25 132:7 133:8 councilman 10:19 count 116:6 121:4 137:20 137:21,23 counted 138:1 counting 96:3 county 37:15 49:3 116:25 couple 11:3 32:24 76:12 80:6 117:25 130:13 131:10 course 24:9 40:8 40:22 63:4 83:17 88:10,13 88:13 90:9 court 4:18 16:14 49:14,23 77:3 78:3 cover 147:7 covered 143:25 covering 134:2 covers 143:15 crafting 130:8 create 104:19 credibility 44:25 credit 53:8,9 criminal 24:4 42:7,7 49:3 criminalize 104:18 criticism 83:22 crossed 53:12 CSR 1:22 2:19 149:11 cumulative 65:12	current 17:21 50:23 108:15 currently 108:6 cut 36:23 Cutting 47:10 <hr/> D <hr/> D 2:13 3:1 daily 54:5 87:19 87:19 data 65:23,24 122:10 date 1:18 15:8 31:8 56:25 60:6 63:9 65:12 67:11 70:13,20 71:2 71:20 94:5 107:18 108:14 108:19 111:19 111:24 115:6 119:20 dated 71:10 131:7 149:10 dates 59:20 71:5 107:13 110:1 112:7,7 daughter 97:8 day 56:23 81:12 87:18 88:9 94:3 98:9,22 126:21,23 days 9:13 26:16 56:22 57:4,25 58:8 64:10,15 66:3 72:5 93:2 113:18,18,22 113:23 114:11 114:11,12,14 114:15,15 115:5,6 117:7 124:10 dead 106:18 deadline 64:11 67:7 107:15	124:20 deadlines 63:8 64:22 107:19 deal 123:3 dealing 109:21 137:24 deceive 41:3 88:24 98:1 104:13,21 125:24 132:16 132:21,22 deceived 41:14 December 31:25 deception 104:18 decide 7:10 52:3 89:19 decided 101:8,9 101:17 117:4 deciding 35:14 35:15 51:25 decision 12:25 14:16 29:6 35:4 45:10,10 49:7 51:21 52:3 54:8,16 58:18 83:2 127:16 142:10 declaration 9:14 declare 15:4 71:19 declared 37:13 declares 37:14 defend 39:11 defense 39:10 defer 59:6 127:16 137:9 deferred 139:5 deferring 143:3 defined 18:23 defines 64:12 defining 63:16 definitely 50:9 54:14 120:1 138:20
---	--	--	--	--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

definition 65:13 66:19 113:21	47:25 140:22	91:21	38:22,23 39:11 44:21 48:12	39:16 40:4
definitional 64:1	determining 101:15 125:17	discovery 142:25	49:2 52:13,15 54:5 55:4,9	draft 14:18 58:20 142:11 147:16
defraud 98:6	devote 145:20	discretion 16:23 74:17 139:22	56:12,21 57:5 57:10,24	draw 105:21
degree 33:6 52:22 126:9 134:10	difference 49:12	140:10	104:10,11,12 104:13,19,25	Du 37:16,17
delay 130:17	different 64:1,6 65:20 74:3,4,5	discuss 20:18 28:23 56:10 65:12 69:5	115:1	due 81:1 142:20
deliberate 125:25 132:25 133:2	75:2 94:3,4 114:17,19	118:11 126:15	Dixon 49:11 138:8	duly 11:9 30:9 34:19 76:5 102:11 103:23
deliberately 131:23	differently 24:10 64:5 82:1	discussed 8:22 9:12 87:12 109:17 129:7	doctor 33:1,5,5 41:24,25	duty 37:10
delinquent 78:13 87:23,24 140:20	difficult 88:5 93:18,20 94:1 94:9 106:5	discusses 22:25 110:9	document 47:21 51:25 57:17	D.A. 24:5 49:22 51:15 52:2,6 54:12
demonstrate 146:6	diligence 130:10	discussion 13:7 13:16,20 14:23	documented 72:13 74:22	D4 59:25 60:22 61:9 129:25
demonstrates 65:5 106:22,24	diminish 25:1	45:18 46:21 48:15,20,22 49:9 53:24	documents 16:21 74:23 81:14	E
deny 89:23	direct 13:2 44:15 45:13 70:25 109:12	59:10 72:18 85:20,22,22 86:17 115:11	doing 21:6 34:1 88:21 90:25 117:7 118:12	E 1:20 2:2,2 3:1 3:1
depend 83:25 91:4	115:13 127:20 147:15	115:22 116:8 118:16 121:1 123:14 135:20	dollar 67:24 114:18,19,20 114:22 115:4	earlier 30:23 33:19 45:11 60:18 92:13,16 94:6 107:3 128:10 137:4
depending 63:22	directing 14:18 58:20 142:11	141:4 143:14 146:17 147:8	dollars 64:14 70:22 98:16 112:12 114:22 117:25 126:25	early 31:7,11 87:14 89:5 110:18
deputy 2:8,11 5:17 38:22	direction 9:6 16:22 149:5	dislike 145:17	doubt 8:23 20:19 26:1 71:15,18 84:3 84:5,15	earning 87:19
derived 48:24 49:25	disappointed 6:15	dispositioned 12:19	donate 94:25	earpiece 4:13
deriving 50:10	disclaimer 100:9 100:9,12	disputing 81:23	double 37:7	easier 7:6
describing 60:17	disclaimers 135:12	disregard 126:4 133:14	doubt 8:23 20:19 26:1 71:15,18 84:3 84:5,15	eastern 116:25
designation 3:16 8:18,19	disclose 63:17 72:6 81:8	disseminated 132:4	Dovan 4:8 5:1,3 5:7 11:2,4,8,13 12:5 15:13 17:2,5,6 18:5,6 18:10 31:14 34:8,18,23 35:1,23,24 36:2 38:15	educated 33:7
designed 107:23	94:23 101:5,7 101:9	distinction 33:11 105:22	downloaded	education 77:15
detail 35:10 106:10	disclosed 63:5 63:11,19 79:10	distinguished 39:23 40:7		effect 80:3
detailed 10:9 11:25 77:24 98:4	disclosing 63:3	distributed 112:2		effort 78:8 79:8 81:7,8 82:3 89:2 119:17 134:23
determination 27:16 75:4 121:17 134:3	disclosure 20:13 20:15,17 62:15 63:14 117:22	district 19:19,25 24:22 26:5,14		efforts 89:6 106:19 119:21 130:8
determine 18:21 134:9	discourage 146:21			either 4:23 19:12 24:8
determines	discovered			

62:22 63:21	enter 86:16	104:23 120:16	51:3,7 52:4	87:6
70:8 87:16	entertain 14:17	123:6 126:8	84:11 103:1,6	expenditures
118:3	42:9 58:19	133:23,23,24	115:16,18,20	20:20 87:3
election 19:21	142:11 145:11	134:6,8,8	118:25 120:17	experience
60:6 63:9,11	entertaining	evaluate 145:20	123:7,24	117:11 131:4
63:12,19 64:10	143:9	evaluated 26:23	125:16 132:22	expert 32:24
64:15,19,21,22	entire 67:6	evaluating	133:1 141:13	82:18 94:12
65:2,2,11,11	115:20	132:17,21,25	exact 31:8 40:14	95:10,11 96:12
65:14,15,17	entirely 81:20	134:14,19	74:23 121:15	98:18
66:1,3,5,6,7,12	92:21 93:10	evaluation 18:21	exactly 74:20	expertise 53:10
66:18 67:5,16	entitled 50:11	22:21,22 23:21	112:23 113:11	53:17 82:14
79:10 80:25	entity 19:13	Evaluator 2:13	examined 49:1	117:25
81:2,15 91:2	22:1 23:19	3:18,18 5:12	example 30:24	explain 47:5
91:21,22 92:5	24:2	13:2 15:22,22	35:21 73:13	63:1 65:19,21
92:5 94:3,4	enunciate	16:21,24 19:12	92:23 137:17	68:24 69:2
107:4 108:11	129:23	19:15 23:8,22	examples 43:25	103:1
109:3 113:23	Eric 40:23	35:7 45:13	85:3	explained 18:19
114:11,12,13	err 99:9,12	47:23 50:17	exceed 35:22	38:13
115:1,6,7	error 107:19,20	57:6 60:8,9	69:23	explaining
130:22,25	errors 91:8	73:8 76:14	excepting 56:21	62:12
131:1,7,19	esoteric 117:20	105:8 115:14	excising 113:10	explanations
142:21,21	especially 12:18	137:6,18	excision 112:24	28:19
elections 2:4	42:7 107:7	evaluator's 3:20	excluded 16:22	explicit 143:24
82:10 85:11	Espinola 1:22	7:21 13:4	exclusively	explicitly 100:8
87:1	2:18 149:2,11	15:24 18:17	109:1	144:4
election-related	Esq 33:23 40:17	29:20 45:15	exculpatory	expressed 85:19
15:18	Esquire 27:22	60:11 61:23	6:23 17:17	extent 106:2
electronically	27:23 28:6,11	78:11 118:8	excuse 21:22	107:19 119:21
4:17 16:14	28:14 30:17	126:18	22:23 30:18	127:20
eligibility 56:17	31:1 46:1 50:2	evening 7:23	36:2 40:9	extra 68:11,15
eligible 50:21	62:9	18:18 20:19	74:13 79:23	99:10
eliminates 106:2	essence 28:25	60:25 105:12	109:9 117:10	extreme 49:12
embellish 41:22	essentially 12:19	126:19 141:11	118:3,20	extremely 79:5
empathy 116:20	19:17 33:5	event 26:12 38:1	121:23 140:19	94:7
employees 9:18	64:10 97:8	38:18	exercise 43:5	e-mail 10:4
ended 36:18	114:14 142:6	events 63:4	exercised 23:5	31:22
endorse 92:23	establish 115:16	everybody 6:9	exhibit 65:23	e-s-q 27:23 41:7
enforce 22:2	115:18	7:15 15:9 32:5	exist 79:22	
48:2 117:12	established	85:14	105:21	F
enforcement	117:4	evidence 6:23	existed 66:10	F 2:8 146:4
50:22 51:2	establishes 16:6	14:4 16:16,19	existing 18:24	face 41:25
85:3 140:23	et 4:16 91:8	17:17 23:9	expect 89:13	fact 5:8 9:1 15:9
engaging 21:20	ethics 1:8 3:6	25:19,22 31:14	expecting 56:20	19:20 20:10
English 28:14	13:10 25:8	31:23 38:23	expended 125:7	24:21 27:24
ensure 16:10	46:12 52:23	47:9 50:18,20	expenditure	31:3 49:4 50:4

REPORTER'S TRANSCRIPT OF PROCEEDINGS

52:17 58:9	22:9 83:10	15:12 19:18	find 13:1,10	71:9,25 73:9
66:7 75:8	far 26:8 29:21	59:23 64:18	23:16 24:8	73:12 76:5,23
85:25 87:8,22	33:22 71:5	65:12 66:2,4,5	45:11 46:12	77:6 86:15
91:9,10,12	73:3 84:23	66:8,8,14,24	50:17,25 65:4	89:9 102:11
94:25 98:7	112:21 115:11	67:13,20 69:12	73:13 78:17	103:17,23
99:7 106:15	130:14 131:5	69:24,25 70:1	79:19 91:8	107:3 110:11
112:3 134:22	139:15	70:8,12,19	97:14 105:14	117:17 119:6
140:15	fashion 80:21	71:9 72:2,7	106:9 107:6	125:22 127:12
factor 109:8	fast 77:5	76:11 77:24,25	108:17 110:10	130:1,22
factors 23:6	fault 41:12	77:25 79:11	111:3,5 115:12	first-time 76:16
78:12 85:8	favor 13:20	81:5,16,17,24	115:15,17,19	80:1 82:5
90:1 116:9	14:24 46:22	86:18 89:1,2,3	118:11,13	133:19
117:14 120:10	55:15 59:11	90:20 91:2,3	121:19 123:6	five 24:23 29:14
124:24,24,25	123:15 141:5	91:18,18	124:17 128:19	34:11,23 35:2
128:4 131:12	147:9,22	106:22 113:4	129:9 140:5	72:5 126:5
131:15 135:25	feel 11:25 24:10	133:18 137:7	finding 115:23	129:10 133:20
138:18,21	32:5 51:5 56:8	143:2,10	138:15 144:22	five-minute
facts 8:18 9:7,8	62:12 85:19,21	filer 140:20	144:25 145:1,9	35:21
18:25 23:24	89:25 117:16	files 90:16	findings 14:19	floor 2:15 13:7
35:9,10 51:21	feeling 25:9	116:15 145:17	58:21 116:1	45:18 115:22
73:11 138:15	fees 87:16	filing 9:14 20:13	126:15 142:12	129:3
146:6	fell 41:13	22:9 36:5	147:17	focus 105:19
failed 60:3 101:5	felony 42:17	56:23 62:22	finds 120:16	focused 137:14
125:6 131:21	43:13	63:8 64:11,17	124:14	focuses 64:19
failing 128:6	felt 36:18 46:5	71:11 78:13	fine 12:7 22:15	fold 62:19
failure 62:20	56:7 83:1	107:15 110:3	119:25 135:24	folded 64:7
65:5 133:1	field 82:13 94:8	113:5,6 114:16	136:6 138:16	folks 11:21
fair 16:10 33:4	98:18	137:8 140:22	140:7,20,22	follow 76:18
104:25 105:2	fifteen 97:15	143:10	146:25	83:20 94:17
fall 29:3 41:13	figure 136:16	filings 20:20	fined 137:20	109:19 114:6
63:9 80:20	file 9:13,20 10:1	37:14 64:21	140:13	followed 95:19
86:24,24 114:4	13:5,13 25:4,5	67:11 80:18	fines 87:19 92:7	95:20 110:6
127:8	26:9,18 45:16	81:22 87:24	126:20 139:16	114:14
falls 131:20	46:14 52:5	126:21 130:24	140:9	following 12:25
134:5,7 139:21	60:3 62:15	142:20 143:6,9	fining 127:9	87:20 89:7
false 3:14 8:24	63:2,7 68:6,20	145:11 146:23	fire 53:23,23	114:2 125:21
9:2,10 15:17	68:22 70:21,23	fill 57:1	firm 7:20 18:16	follows 11:11
19:19 22:9	74:18 82:25	final 37:21	32:21	30:11 34:21
34:2	87:22 90:23,23	54:16	first 3:4 8:14	76:7 102:13
falsely 20:22	107:17 114:24	finally 21:19	11:9 18:20	103:25
familiar 38:23	117:6 128:6	22:24	19:17 20:22	follow-up 26:3
39:12 40:3	130:18 131:21	finance 82:12,14	22:10 24:19	110:9
82:16	133:2	82:17 96:13	30:1,9 34:19	foolish 44:4
family 3:14 8:24	filed 3:10,14 4:2	126:7 133:22	66:4 67:6	Force 100:4
9:3,9,15,20	8:1 9:16,17	financing 94:13	69:11,18 70:5	foremost 117:18

forget 124:11	59:12,15 72:19	10:2 13:1,2,6	given 65:18	59:14,16
forgotten 82:7	115:12 124:16	13:13 21:2	71:14 81:12	116:18,19,23
form 9:14,15	126:2 133:12	28:22 35:6,7	85:10 108:22	118:15 124:4,5
20:18,18 40:17	136:22	35:15 45:12,13	120:1 127:1	128:22 131:3
60:3 63:5,7,8	fourth 22:8	45:17 46:15	130:22 140:7	137:3,5 138:23
63:20,24 64:11	FPPC 73:18	52:1 70:6 92:7	gives 68:10,15	139:2 141:19
67:7 81:16,17	79:21 85:2,3	100:6 115:12	giving 6:12 8:22	141:20 146:18
90:20 91:18	86:14,17,24	115:14 123:13	71:18 112:18	146:19 147:1,4
101:3,6 105:20	87:16 93:1	124:18 132:7	glad 38:13	147:20
108:24,24	107:23 108:3	133:9 135:14	gloss 37:13	good 7:22 18:18
110:4 112:3,8	108:12,13,15	140:23 141:4	go 4:6 19:3,10	34:16 51:6
112:9,12,22,22	108:17,23	143:1 147:8	22:13 28:22	72:22 85:16
113:1,11,11	110:16 111:11	149:6	35:17,17 52:1	96:11 146:2
114:24 117:23	111:22 112:25	Furthermore	65:10 83:3	Google 110:12
133:2 135:2	113:17 114:12	42:16	84:19 88:5	Googling 108:17
143:2 145:11	114:22 115:6	future 77:16	91:7 97:18	Gotcha 88:12
formal 16:15	117:2 118:8	144:14 145:10	98:6,17 101:24	governing 134:2
formats 122:6	134:15 136:4	146:10	111:3,17 117:1	government
former 40:24	137:7,10,17,19	F2 146:12	120:14 129:4	47:24 50:24
forms 77:22,23	138:4 139:5		God 36:3	governmental
78:13 84:4	FPPC's 131:20	G	goes 44:2 78:3	126:8 133:23
86:18 90:17	fraction 136:9	G 3:1	going 4:5,14 6:6	134:8
117:6	136:12	gap 63:16	6:13,14 15:7	graduating
forth 10:25	frame 114:23	gathered 48:4	23:7 26:15	32:18
19:22 121:15	115:5	general 12:13	35:9,10 38:14	Grand 53:20
fortitude 37:11	France 39:20	25:5 102:3	42:14 49:11	granted 87:7,21
43:6	Francisco 2:15	generally 82:11	50:16 54:19	133:17
Fortunately	24:23	82:14,16 87:2	56:3 60:16	Graves 2:9 5:19
117:1	frankly 100:19	99:2	66:21 72:21	5:19 26:25
forum 137:10	127:18 130:21	gentleman 28:14	74:7,8 87:9,9	27:7,9 54:21
forward 10:14	free 50:6 62:13	31:13,25 33:18	88:21 89:19	57:13 58:1
28:21 29:11,18	friendly 139:3,7	41:11,15	96:21 98:13,13	90:21 91:10,12
34:9 52:6	143:17 144:11	germane 35:8	100:24 108:21	111:22 113:8
75:20 102:5	friends 140:6	getting 38:16	110:9 112:17	130:9 140:3,17
found 22:4	front 8:5 38:17	130:21	116:8 118:11	140:19
25:14 56:18	39:14 41:4,15	gift 3:14 8:24	120:15 122:19	great 53:16 78:6
85:23 105:18	42:22	9:3,9,15,20	124:10,11	78:23 83:14
106:4,18 120:8	full 50:18 118:6	22:9	130:25 137:3,5	92:3 96:8
120:9 132:21	fully 119:16	give 18:11 30:1	138:3 140:25	greater 125:8
133:1,15	134:12	49:11 50:18	142:19 145:19	126:23,25
135:23	full-on 51:9	65:10 75:24	Gonzales 2:6	grouped 66:13
four 19:2,4,10	fund 117:24	84:5,14 85:3	13:15 14:9,10	66:13
25:20 36:23	fundamental	100:24 103:18	46:19 47:15,16	guess 18:10
42:2 43:25	63:12	104:11,16	49:15 50:13,14	28:25 35:13
50:15 51:24	further 9:25	117:15	52:9 55:20,23	52:7 55:5,7

REPORTER'S TRANSCRIPT OF PROCEEDINGS

57:23 58:5	happening	help 102:23	identified 15:8	improper 20:23
61:1 75:7	71:20	109:20	17:11	64:4 70:21
84:23 85:12	happens 54:5	helpful 6:18	identifies 18:24	inability 96:17
91:24 107:1	72:9 142:25	105:15 106:3	identify 4:21	inaccurate 85:7
109:7 119:19	happy 8:6,13	herring 101:4	5:12 17:3 21:7	inadvertent
119:21 120:12	65:21 79:16	Hey 111:18	37:2 60:23	126:1 132:25
140:2 143:25	105:14 106:9	hide 94:20,25	129:20	133:3
144:7 145:7	106:23 135:14	98:7	ignoring 95:19	inaudible 31:13
guessing 147:6	hard 38:15	high 67:24	III 148:4	89:12 94:5,11
guidance 76:25	112:3 119:21	137:24	illegal 20:24	95:3 97:14
77:8,15 79:21	121:4	higher 125:1	51:1 64:4	98:1 99:16
132:2	harder 88:16	hire 76:17 82:24	imagine 76:15	103:4
guide 35:16	hate 75:12	98:14,18	146:23	incident 126:3
guidelines 132:5	110:17 122:18	117:21 119:10	immediate	133:13
133:7	headphones 4:7	history 48:23	79:18 134:13	inclined 52:7,9
gun 23:13	heads 105:17	85:10 119:5	immediately	53:18 116:6
	headsets 6:8,10	hit 110:11	31:24 42:22	138:10
	hear 24:16 38:6	Hmm 88:9	56:22 60:6	include 9:2 80:2
H	38:9 62:4	hold 34:13	68:6 134:21,22	87:8 124:23
habit 100:4	72:22 78:4	118:16 145:3	impermissibly	128:13 138:17
hall 1:20 3:7	105:16	holder 105:6	15:19	138:20 139:3,4
133:21	heard 14:2	holding 20:23	implicate 21:3	142:21 145:8
hand 55:16	42:21 47:7	105:5	implicit 143:24	145:10
59:14 75:25	54:2 72:23	honest 99:6	implied 44:10	included 107:18
102:6 119:8	73:3 76:24	honestly 87:24	134:7	108:23 128:14
145:18	77:7 105:11	hope 35:23	implying 112:15	144:14 146:11
Handa 40:1	107:3,7 123:22	83:13 140:6	importance	includes 107:12
handbook	125:15 141:12	horse 106:18	95:13	107:13,22,23
107:12,21	hearing 3:4,6,9	hour 132:19	important 20:25	108:1,2,5
108:2,4,4,14	8:1,22 14:3	hours 31:17	33:17 42:3	including 53:8
108:16,18,22	15:4,6,11	63:22 68:3,4,7	50:16 95:16	125:20
109:2,10	16:13,16 19:9	68:11,15,16,22	100:25 106:12	incomplete
handing 6:7	22:10 36:19,22	130:2	107:18	106:21
handle 85:14	42:8 47:8 56:5	huddle 142:24	impose 124:20	inconsistencies
hands 42:13	59:17,19,22	hundred 126:24	125:1,4,11,13	100:20
55:18,21	60:15,18	hurt 136:18	imposed 125:2	inconsistency
Hanson 2:13	100:15 123:23	hurting 103:2	125:17 128:8	37:19
5:11,20 7:20	125:15 141:12	husband 37:15	imposing 63:17	incorporation
18:16 45:5	148:3 149:3,7		124:15	12:2
61:22	hearings 3:3	I	impossible	incorrect 76:25
happen 75:18	16:8 86:2	idea 96:11	64:20 74:2	77:8 107:5
89:20 99:2	148:4	126:20	98:15	108:19,23
124:12 143:1	heart 21:21	identical 4:2	impression	incorrectly
happened 50:7	held 3:7 41:21	7:24 13:19	90:19 100:13	84:21
93:5,5 106:16	118:19	146:7	127:13	incredible 92:19
113:24				

98:16	37:6	34:14	78:8 81:3 86:7	Jose 1:7,20,21
incredibly 93:20	insisted 74:12	interrupt 62:13	87:10,25 88:18	2:4,20 3:6,7,13
94:9 95:4	instance 69:10	interruption	89:18,21 92:19	15:15 19:23
independence	71:1,22 127:1	6:17	92:25 100:3	26:5 32:17,20
37:10 39:2	instances 62:18	interruptions	101:2,9 112:18	56:20 59:25
43:6	71:21 72:9	6:4	irony 83:13	60:1,22 61:9
independent	instantaneous	interviewed	irrelevant	64:5 82:10
2:13 3:18,20	91:6	40:1,2,3	101:16	85:11 86:3
5:12 7:21	instantaneously	introduce 41:16	isolated 126:2	87:1 89:10
15:22,24 18:17	90:24	introduced 38:2	133:13	116:24 120:18
60:8,11 61:22	instantly 33:20	38:18 41:15	issue 14:16	123:9 124:21
64:17 87:3,6	institutional	introducing	19:11,21 20:1	129:25 130:6
127:21	73:9	41:4	21:1 23:9 25:2	133:25
indicate 79:7	instruct 107:24	introduction	25:2 29:17	judge 32:19
126:3 133:13	instruction	39:14	37:6,12,21,21	39:23
indicated 7:24	84:12	investigate 9:6	43:14 48:9	judicious 35:19
11:4,13 37:6	instructions	20:5 21:2	49:5,6 56:8,10	July 1:18 3:5,22
43:7 52:10	6:12 131:25	23:14 29:5	56:16 58:18	15:25 60:12
57:3 74:19	133:5,10	35:6,7 55:9	66:9 100:2	67:8,18 142:20
79:17 134:20	insufficient	64:24 102:23	101:1 124:18	June 3:10,20 4:4
indicating	13:11 46:13	145:20,23	126:20 128:15	8:1,22 9:12,24
114:10	52:4 76:25	investigating	131:17 134:24	15:12,23 19:9
indict 53:21	77:8 115:17	10:1 23:3,22	136:5 137:9	22:11 39:5,25
indisputable	intent 132:22	investigation	142:9 143:12	59:23 60:10
72:11	141:1 143:14	13:1,3,5,12	144:20	64:18,19,21
individual 21:7	145:9	18:22 19:7,14	issued 54:12	65:2,15,17
21:8 37:3	intention 88:24	22:23 23:16,20	108:15 120:11	66:18 67:8,16
48:25 92:3,8	98:6 125:24	23:25 24:1,7	issues 36:10,24	69:13 70:2
individually	131:23 132:16	35:15 45:12,13	37:19 38:24	71:6,6,8,10,12
99:5,6	132:20	45:16 46:14	42:3 54:7,9	71:12,24 72:1
indulgence	interacted 36:8	50:18 51:9,16	76:19 84:22	72:1,2,3 80:25
62:10	interacts 127:13	51:23,24 70:24	item 22:8,10	106:14,16,19
inform 97:8,21	interest 73:7	75:4,22 79:5	142:8 148:4	110:2,3,18
information	126:7 133:23	105:2 115:13	items 54:6 80:11	130:22,24
6:23 8:25 9:10	interested 7:11	115:14 126:10		131:7 142:21
11:23 17:17	17:23 18:1	134:11,12	J	jurisdiction 22:6
27:1 48:4	61:13,16 149:6	146:3,5,8	jailed 24:25	23:23 37:9
57:16 59:20	intermittent	investigations	January 31:10	39:1 42:11
90:2 92:17	106:20	16:7	38:1,2 39:15	43:7 45:23
107:5 110:10	Internal 21:23	involve 82:21	41:16 111:15	131:20
110:11 111:6	internet 40:19	involves 75:22	113:20,24	jurisprudence
114:3 119:7,14	110:9	in-house 83:3	114:10,21	33:1,6
initial 45:10	interpreter 62:4	in-kind 63:23	job 29:4 51:8	Jury 53:21
insanity 129:6	62:5	68:2,7,10,12	54:12 103:7	justify 84:8
insignificant	interpreters	76:21 77:20	joining 83:2	J.D. 32:23 33:1

REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p>K</p> <p>keep 12:17 35:13 86:11</p> <p>key 91:11 109:23</p> <p>kickoff 38:1,18</p> <p>Kim 37:16,17</p> <p>kind 20:16 24:4 24:6 35:16 46:7 53:1 82:15 91:5 93:22 105:1 121:4 136:14</p> <p>Kirby 40:23</p> <p>knew 89:3 96:21</p> <p>know 4:8 5:7 7:9 11:18 18:19 23:14 24:23 25:17 26:8,11 28:1,2,3,12,20 31:3,5,19,20 32:7 33:5,22 35:19 36:5,6,8 37:3 39:7,8 40:14 41:20,21 44:16,17 48:23 52:12 53:14,16 54:21 55:16 56:2 57:2 58:9 61:11 67:6,9 67:17 72:15 79:15 82:5 83:15 84:25 85:10 87:24 88:20 89:17 90:14,24 91:7 91:17 92:2 93:4,4,17,24 94:16,20,22 95:21,24,25,25 96:1,2 97:3,5,7 97:11,14 98:4 98:10 99:1 100:1 108:20 109:17 110:1</p>	<p>112:2 114:9 115:19 117:19 117:21 121:8 121:12 122:12 122:16,22 127:6,18,19 130:2 140:11 140:14 142:18 143:1 144:6,7</p> <p>knowledge 31:2 50:5 52:22 66:6 80:19 81:3,9 85:5 89:3 94:11 100:14 127:23</p> <p>knowledgeable 93:15,16</p> <p>knows 43:12 68:5 79:22 84:16</p> <p>Kunh 30:5</p> <hr/> <p style="text-align: center;">L</p> <p>lack 52:22. 106:24</p> <p>lacks 79:25</p> <p>laid 89:8</p> <p>laptop 38:5 39:17</p> <p>large 97:23</p> <p>larger 112:11</p> <p>late 6:18 8:1 60:3,5 63:16 63:18 64:2,2,9 64:12,13 65:6 65:13 66:2,4 66:11,19,20,23 66:23,23,25 67:11,12,14,18 67:19 68:2 69:15 72:6 73:13 74:16 79:9,13,14 80:14 81:10,14 85:4 87:15,15</p>	<p>87:18 90:18 101:10,18 105:22,23 107:16 108:5 109:5 112:24 113:2,5,7,8,10 113:21 114:24 121:21 122:5 126:21 128:6 128:20,21 130:18,18 134:15,25 137:14,19 140:22</p> <p>latest 108:19,25 110:12</p> <p>law 2:14 7:20 18:16 32:17,18 32:18,19,20,25 33:7,15 39:22 42:6,7,7 48:3 48:23,24 50:21 51:2 53:10 56:23 68:10,15 74:15 83:16,20 93:9,15,16,18 94:11,22 95:10 95:11,14 96:13 103:8 109:3 110:7 117:10 117:10,13 118:20,21 126:6 133:21 146:7</p> <p>lawn 134:4,7</p> <p>lawsuit 25:5</p> <p>lawyer 20:10,11 20:17,23,24 27:12,20,24,25 28:2,7,10,11 28:12 32:21 33:8,13 37:21 38:9 39:22,24 40:6 42:19,22 42:23 43:19,23</p>	<p>44:3 46:1 48:11,25 49:1 49:14 53:13,14 55:3 79:20 83:14,21 94:11 95:14</p> <p>lawyers 119:10</p> <p>lawyer/not 27:12</p> <p>Le 103:16,19,19 103:22 104:3,9</p> <p>lead 23:6 121:17</p> <p>leads 23:13</p> <p>learned 27:14 96:11</p> <p>leave 7:9 23:10 28:23 43:1 78:14 137:13</p> <p>leaving 46:16</p> <p>led 25:22 48:10 55:10 86:22 110:10</p> <p>leeway 12:14</p> <p>left 7:18 71:3,23</p> <p>legal 6:22 9:19 17:16 33:3 39:18,19,22 40:6 41:6,19 50:19 53:10 83:15 86:15</p> <p>legality 37:20</p> <p>lengthy 107:22</p> <p>letting 58:9</p> <p>let's 35:16,17 88:9 90:5 119:6 123:15</p> <p>level 24:4 49:4,8 49:21 51:20 52:21 84:22 94:15</p> <p>License 1:23</p> <p>lied 103:1</p> <p>life-and-death 54:7,9</p> <p>limit 29:13</p>	<p>34:10 75:23 102:3 113:18 115:1</p> <p>limitation 42:17</p> <p>limited 34:23</p> <p>limiting 21:25</p> <p>limits 64:5</p> <p>Lincoln 2:19 32:17</p> <p>line 51:17 53:12 99:13</p> <p>list 107:18 112:7</p> <p>listening 83:13</p> <p>little 22:25 27:13 35:1 52:17 68:17 71:14 77:18 84:13 88:5,16 101:3 105:18 126:16 138:6 142:23</p> <p>live 24:22 25:17 25:18 26:14</p> <p>lived 25:15 26:5</p> <p>living 26:9 57:4 104:24</p> <p>LLC 69:23</p> <p>LLP 2:13</p> <p>lobbying 21:6 21:11,13,14,20 36:25 37:2 126:7 133:22</p> <p>lobbyist 21:18</p> <p>lobbyists 21:16</p> <p>local 89:12 107:24,24 108:1 134:3</p> <p>located 139:23</p> <p>Location 1:20</p> <p>long 35:17 88:17</p> <p>longer 4:6</p> <p>look 27:17 49:3 49:22 51:18 52:25 54:3,15 56:16 71:22</p>
--	--	---	--	--

75:10 94:16	131:13	42:10 45:17,21	medical 41:24	met 23:22
107:8 117:22	man 41:12	46:10,15 47:24	41:25	method 104:21
120:15 121:5	managed 85:14	48:17 49:23	mediums 88:4	Michael 2:4
122:1	manager 76:2	55:3 62:11	meet 8:2 19:5	140:17
looked 35:9 49:7	82:6 99:16	78:18 81:6	54:11	microphone 7:3
50:3 52:8 58:9	129:25	102:1 107:8	meeting 3:25 4:4	7:6
64:25 90:20	managers 31:6	127:12,14	4:16 6:16	Mike 128:10
91:3 118:7	Manh 3:11 4:20	144:5 145:12	12:14 16:3	mild-mannered
136:13,14	10:6,13 12:16	147:7,14	30:25 36:18	62:8
looking 25:20	15:13 17:2,9	matters 29:1	39:5 46:3	Miller 2:13 5:20
48:23 49:19	29:10 31:2,4	39:9 51:1	61:11 77:11	5:20,24 7:20
51:20,24 52:2	38:18,19 43:23	116:7	100:16	7:22 8:10,13
69:18 84:6	59:24,24 60:21	maximum 117:8	meets 57:19	10:9 18:16,18
93:23 99:2	60:21 61:8,8,8	122:7 137:15	member 14:2	22:16 24:14,17
121:23 130:23	65:2 76:2	137:23 138:3,4	24:24 25:6	24:21 25:11
136:12	92:20,23 93:14	mayor 56:21	33:19 47:7	26:1,7,10
looks 54:19	93:22 94:10,24	McDANIEL	50:5 56:22	27:15,23 28:8
136:11	95:16 96:3	2:11 4:12 5:14	83:9 98:2	28:11 29:6
lot 6:17 12:14	97:7 104:12	5:14 6:1 7:4,7	123:22 125:14	36:24 37:6
53:14 56:4	129:25	34:13,16 40:12	members 3:8,23	41:7 43:7 45:4
66:22 67:23,23	Manh's 94:18	61:18 141:25	15:10 16:2,23	45:7 61:22,24
89:21 91:4	100:3	142:3 144:25	19:24 60:14	62:1,8 69:9,15
103:3 105:12	manner 65:7	145:3,5	61:11 125:11	70:9,12,16,19
116:7	89:21	mean 24:25	memory 73:9	73:1,5 74:10
lots 73:18	manual 107:23	25:18 26:2	76:23 77:6	74:15,21 75:12
low 7:3	108:3,3,13,13	28:6,7,12 39:1	mention 22:25	76:19 79:2,4
lower 111:25	108:15,18,23	39:4 42:12	35:4 43:19,23	79:25 80:9
Luong 41:18	111:24,24	43:8 44:12,18	43:23 44:11	81:14 84:20
Ly 4:2	112:4,21,24	93:16 95:11	73:20 98:4	85:1,19 91:15
lying 103:2,3	March 69:11,25	117:23 119:3	99:10,11	91:20 94:6
L.A 116:25	70:1 100:17	124:24,25	108:10 120:6	95:24 100:22
	110:1,2 111:24	139:15	124:23 126:17	100:25 105:11
	marital 37:12	Meaning 37:7	126:19 139:19	105:18 107:10
M	Market 2:14	means 28:12,13	mentioned	109:15,25
MADHAVEE	married 37:15	37:7 41:9 69:7	13:18 22:12	110:8,17,20,25
2:5	matching 90:8	69:8 72:18	45:11 61:4	111:7,10,13
magnitude	material 27:13	98:24	96:22 97:11	113:16,19
67:22 73:13	33:22 60:16	measurement	100:11 128:3	114:5,8 119:13
85:6 138:9	materials 15:18	97:18	136:22	119:19 121:13
maker 122:17	53:8,13	mechanism 97:1	mentioning 73:6	122:1,4,13
making 9:3,4	matter 10:1	97:17	Mercury 31:7	126:23 127:4
19:16 49:8	12:10 13:6,13	media 20:10	31:22 33:18	127:18 142:23
51:21 57:12	19:13 20:4	33:19 40:19	40:23 92:23	145:16 146:2
58:12 68:8	23:2,7 24:23	68:14 82:13	merit 22:22	Miller's 77:18
76:22 87:9	28:19 35:11,11	86:4,8 97:4	merited 25:23	86:1 130:7
117:2 130:23				

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 165

million 98:16	monetary 60:4	75:17	neck 44:2	23:11 27:19
mind 35:13	63:22 68:5	moving 12:23	need 4:6 11:6	95:2
95:13 120:7	money 68:6	15:6 56:4,5	29:23 30:1	Nguyen 3:11,11
144:14	98:14,17,17	Multimedia	35:1,5 43:3	4:20,21 5:3
Minh 11:8 15:13	101:6 117:5,6	69:23	68:15 75:14	7:14 10:5,6,13
17:5 34:18	119:10 127:10	multiple 68:18	77:3 78:2	10:25 11:14,16
minimize 26:2	127:10	68:20,25 70:12	96:23 97:18	11:18 12:16
minute 5:23 6:6	monitors 133:24	70:20 74:5,6	115:23 126:16	15:14 17:3,9
47:22	month 39:25	77:12 87:3	141:11 142:7	26:24 29:10
minutes 11:4,13	40:5 81:2	98:21 105:20	144:11,15	31:3,4 35:25
12:11 29:14	months 91:12	105:21 120:18	145:1	36:21 37:16,17
34:11 36:17	morning 99:3	121:3	needed 35:22	37:23 38:19,19
75:23 97:10,10	113:1	Municipal 3:13	69:24 77:14	39:25 40:3,4
97:15,21 102:4	motion 13:8,9,9	9:11 15:16	89:1 100:6	40:24 41:14,17
104:8,9	13:17,18,21	19:1,1 60:1	101:17 114:24	41:18,19 42:21
misdemeanor	14:1,17 45:19	120:18 123:9	needs 9:16 49:6	42:22,23 59:24
43:13	46:11 47:6	124:21 133:25	49:7,22 50:2	59:25 60:21,21
misinformation	48:7,9,17,19	134:1	136:5 144:1	61:8,8,8 65:2
110:6	48:20 51:10		negative 37:7	76:2,21 79:20
mislead 88:24	53:19 54:1,22	N	negligence 117:9	79:20 92:20,23
125:24 131:24	54:25 55:2,13	N 2:2 3:1	118:20	95:16 100:11
132:16,21,23	55:15,24 56:12	name 17:5 27:24	negligent 126:1	102:8,8,10,15
misrepresent	58:3,10,13,19	28:6 30:2	132:25 133:3	104:13 129:25
98:7	58:24 59:1	34:12 62:9	neither 94:16	Nguyen's 12:3
missing 90:17	115:22 116:1,3	75:24 76:1	net 90:23	100:4,18
90:18	120:13,21	92:12 96:18	never 31:2 33:8	Noelia 1:22 2:18
mistake 31:12	122:17 123:5	97:11 99:12	36:8 67:14,20	149:2,11
31:24 32:3	126:14,16	102:5,7,8	80:14 85:5	nomination
33:13,20 52:19	135:21 138:13	103:18,19	87:17 89:11	56:24
106:11 111:16	139:3,8 141:4	104:23,24	112:14 128:14	noncompliance
mitigating 6:23	142:1,11 143:2	113:9 124:11	128:15	109:9
17:17 77:22	143:18,19,20	129:24	nevertheless	nonprofit 15:19
78:12 90:1	143:23,25	named 149:4	40:25	21:5,9,24,25
109:8 116:9	144:21,22	narrative 137:6	new 71:11	nonprofits
117:14 119:8	145:5,8 147:9	nature 23:8	108:15 110:16	21:19
120:3,10 123:1	motions 73:22	73:10 101:2,13	112:4	nonreporting
124:17,24,24	 motive 36:5	101:16	newly 135:1	121:16
124:25 127:8	mouth 36:15	NBC 40:2	news 31:7,23	noose 44:3
135:25 138:18	move 4:24 13:10	near 85:15	33:18 40:1,23	normal 63:4,4
138:20	14:21 46:12	129:5	92:22,22,23,24	normally 46:7
mitigation	52:5 59:18	necessarily	93:4,9,11 95:2	note 4:16 16:4
136:16	120:16 123:6	35:11 68:14	95:5 96:18,22	noted 4:1 81:1
mix 90:8	123:20 124:13	76:16 118:2	96:25 97:6	notice 8:2 66:9
modification	138:14 147:15	necessary 13:1	98:25 100:10	87:13,17,23
122:18	moved 58:25	45:12 115:13	newspaper 20:9	90:17 92:6

100:17 noticed 11:15 92:4 notices 87:15 noticing 32:14 notified 3:17,19 15:21,22 60:7 60:9 109:5 112:4 130:15 132:14 notify 68:9 90:17 132:10 number 1:23 15:17 62:18 67:25 68:1 71:4 74:3,23 75:1,2 84:23 85:10 89:24 121:6,9,16,17 121:19 122:7 122:19 127:2,3 127:5 129:5,11 131:16 132:15 132:19,24 133:12,15,20 134:10,17 numbers 65:20 75:11 122:15 125:8 numerous 60:4 74:9 78:12 94:14 116:5 nuts 78:3	98:3,3 118:3 occasion 31:6 32:7 Occasionally 88:3 occur 112:16 occurred 52:23 57:21 72:13 81:21 101:15 112:14 115:17 115:18,21 120:20 123:10 124:15 offer 55:24 82:15,18 105:8 119:1 123:5 127:25 129:13 137:3 138:25 141:1 offering 28:18 office 5:15 9:18 26:19,21 37:15 40:10 42:25 48:5,5 49:2 51:15 52:14,16 54:6 55:4,9 56:25 77:1,2,9 77:10,14 81:11 84:12 86:3,21 87:11,16 90:13 90:15,16 93:19 93:21,24 94:2 96:5 98:11 107:6,24 109:22 119:7 127:14 130:9 130:11 131:25 132:8,9 133:6 133:11 139:22 officeholders 9:17 officer 15:18 officers 9:17 official 47:25 48:1,6	oftentimes 51:19 oh 6:2 7:13 36:3 47:5 54:23 81:25 101:24 123:20 129:16 145:25 okay 4:5,10,14 5:6,10,22 6:2,6 6:9,13,13,19 7:19 10:3,11 10:20,23 12:4 12:9,9 13:25 15:3,6 17:7,10 18:15 24:13 29:7,9 30:4 32:9 34:6,7,16 35:3 36:2,4 40:8,13,16 43:16 45:2,3,8 45:9 46:6,22 47:1,21,23 48:15,16 54:17 55:12,14,15,24 56:11 58:2,11 58:14,14,16 59:8,11,19 61:1,4,21 69:14 70:14,15 73:2,4 75:15 78:6 80:6 81:13,25 82:9 83:11 85:13 90:7,12 91:11 91:13,23,24 92:10,11 93:7 95:6 97:1,8,17 97:20 99:14,19 101:20,22 103:11,14,20 104:9 105:4,7 109:18 115:8 115:10 118:15 118:22 119:1 120:12,20,25 122:16 123:5	123:13,15,19 124:13 135:6 135:13,13 138:12 139:8 141:3,9,10 142:4 143:7 144:10 145:7 146:2,12,14 147:1,8,13 148:1 old 112:23 114:2 omission 107:20 once 9:18 31:2 92:3 116:14,14 116:21 130:14 143:2 ones 70:10 136:10 oneself 20:23 46:1 on-line 40:18 90:22 oops 36:2 open 4:16 13:7 16:13 45:18 46:16 78:24 115:22 opened 36:15 operated 86:4 opinion 50:19 opponent 83:19 83:23 opportunity 18:8 19:14 28:21 31:18 69:4 80:24 129:17 oppose 51:10 opposed 13:23 15:1 46:24 55:19,23 59:13 59:16 95:14 123:17 141:7 147:11,24 options 12:25	45:11 115:12 118:7 124:16 oral 10:14 11:1 29:12 34:9 75:21 131:25 133:5 order 91:4 99:18 104:15,17 125:13,13 orders 124:15 125:12 126:14 ordinance 134:2 ordinances 133:25 organization 21:5 37:4 136:3 organize 89:18 original 18:4 originally 138:2 Orozco 36:6 other's 127:23 ought 52:24 outcome 149:7 outlets 20:10 outside 4:9 20:4 24:2 139:22 out-of-date 108:4 overall 106:1 118:17 overlap 64:22 overlapping 94:5,6 owned 86:3 owns 40:18 93:9 O'Reilly 41:22 41:23 ooo 2:22
O O 3:1 oath 16:17 objects 75:16 obligation 117:12 obligations 25:12 109:2,4 obtained 32:25 obviously 31:19 94:24 95:18				P P 2:2,2 3:1 package 40:21 page 107:12 111:25 122:1,3

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Paid 95:3	72:18	124:13,20	140:2	136:13 138:14
painstaking	pay 105:1	125:1,13	personal 131:4	138:19 139:6
98:5	107:14 128:8	127:16 128:8	personally 29:15	141:21,22
pamphlet	Peacock 2:5	128:18 137:15	29:19 42:20	144:6,24
111:11,18	14:7,8 27:5,8	137:23 138:3	116:19 129:4	146:16
papers 56:24	27:11,22 28:5	140:9 143:20	persons 18:2	Pierre-Dixon's
paperwork	30:18 32:11,14	144:2,2 146:20	person's 57:1	43:11
26:19,24 58:16	33:21 35:18	pending 127:17	perspective	pile 140:8,9
paragraph	47:13,14 49:10	people 6:3,6,11	108:10 131:18	pin 110:17
121:23	49:17 53:3,6	6:16,18 12:1	pertaining 16:7	place 7:16 56:5
paraphrasing	54:25 55:5,17	12:15 33:13,15	pertinent 85:20	62:24 96:5
84:21	59:2,6 69:6,14	36:4 37:22	85:21	111:14 149:4
part 12:6 19:8	83:12,18 84:17	38:17 39:15	pervasive 65:5	placements 86:7
27:12 40:20	84:20 85:9	41:5,15,21,23	126:3 133:13	plan 93:2
76:12 77:9	87:25 88:7,11	42:21 44:5	Peter 6:1 10:18	planning 19:16
81:4 88:7 89:6	88:14 95:8	49:25 53:7	17:8 31:9 76:1	88:16 96:24
93:17 95:10,13	96:14,16,20	74:4 90:8,16	76:4 92:17	play 38:7 41:5
96:1 107:1,5	97:16,24	102:16 103:5	94:14 129:24	88:11 93:6
119:11 120:8	100:22 109:19	113:3	phase 123:20	please 5:12 6:4
121:3	110:5,14,15,21	percent 137:22	124:13	11:16 18:12
partial 28:18	111:2,9,12,16	138:4	phones 6:3	30:2 34:12
particular 8:25	113:7,13 119:3	percentage	phonetic 30:5	40:15 43:4,5
20:6 37:23	119:24 121:2	137:22 138:4	69:22 103:19	43:10 55:16
68:12 73:11	122:21,25	percipient 42:20	photo 40:19	79:24 99:18
84:2 91:16	124:2,3 136:8	period 60:6	photocopy 37:25	102:6,7 103:9
94:15 124:20	138:11 139:10	63:10,18 68:19	pictures 31:13	104:8
127:1 145:12	139:11,17	113:23 114:4	piece 40:4	plus 122:11
particularly	140:16 141:17	116:14 131:20	Pierre-Dixon	point 35:8 37:22
62:14 70:24	141:18 147:2	periodically	2:4 14:11,12	45:4,9 46:11
82:13	Peacock's 99:22	63:2	14:21 24:15,20	67:6,8 69:4,24
parties 16:8	Penal 38:24,25	peripheral	25:9,25 28:13	70:25 76:12
61:17	39:12,12	23:25	29:23 38:10	77:2 78:1,6,7
party 7:11	penalized 117:7	perjury 39:13	39:9 42:6	78:16 81:21
pass 33:1 85:12	penalties 14:19	42:16 43:13	45:20 47:17,18	87:17 90:13,25
passed 37:24	58:21 85:23	44:6	48:8,18,21	91:11 100:5,7
40:20 50:1	116:10 118:12	permission 25:5	49:16,19 51:11	101:14,14,25
passes 13:25	118:13 123:4	permitted 86:16	51:14 52:15	106:12 110:16
15:3 47:1	124:16 125:2,4	87:1	53:17 54:4	110:21 111:17
55:22 123:19	125:11,12,17	person 17:23	55:7,17,25	112:6 114:2
148:1	125:19 126:15	21:16 23:15	56:14 58:4,7	115:10 118:13
path 104:19	137:4 138:5,9	36:14 37:1	59:3,9 62:3	119:13,18
pattern 121:13	142:12 147:17	39:7,8 56:19	73:19 89:15,16	120:3 131:2,10
126:3 133:14	penalty 78:20,21	56:22 57:23	116:11 120:23	131:11 132:9
patterns 64:25	117:8 118:6	61:13 68:8	122:24 123:11	pointed 75:8
pause 69:3	120:11 123:20	76:17 125:6	124:6,7 135:22	76:19 95:23

107:2 119:9 130:16 132:17 132:17 140:10 pointing 113:17 political 9:13 51:18 53:24 62:17,19,21 63:1,13,15,25 64:12 65:8,16 67:4 84:8 90:22 93:17 106:8 107:25 108:7,12 109:4 113:21 135:11 137:8 139:4 143:4 politics 53:7 77:4 pop 97:12,13 pops 88:18 portion 114:13 128:11 possibility 46:16 142:5 possible 31:19 46:8 47:4 65:20 78:20 80:22,22 116:8 116:9 129:19 possibly 93:25 post 102:20 103:9 posted 3:24 16:2 60:14 potential 49:3 85:23 115:25 116:2 146:6 potentially 48:17,18 75:10 121:11 125:9 PRA 84:7 practiced 39:20 precedence 73:17 104:16 precedent 73:18	104:17 preceding 56:23 56:25 57:4 60:6 preclude 143:8 predict 93:11 95:5 96:18 prefer 62:2 preliminary 13:12 18:21 22:21 23:21 46:14 57:2 62:25 prepared 80:2 preponderance 115:19 120:17 123:7 prerogative 44:18 prescribed 63:6 presence 125:23 132:15,20 present 3:8 7:20 10:14 11:1 17:12 18:16 22:5 24:9 29:11 34:9 36:13 61:22 75:20 77:11 presentation 72:17 presented 42:3 50:21 86:22 120:17 123:7 president 21:4,9 37:3 presumably 68:5,14 96:21 presume 72:22 pretty 130:10 prevent 52:13 52:14 previous 76:19 86:1,2,2 100:2 109:17 120:7	previously 12:20 primarily 86:23 88:6 primary 31:7 131:18 principle 117:9 print 86:8 88:6 prior 66:4 78:20 81:2 83:2 114:11,21 115:6 126:5 133:21 146:8 probably 25:3 26:10 76:15 84:11 88:15 105:5 140:14 problem 8:20 54:2 108:8 119:15 problems 107:4 procedure 50:17 procedures 6:20 14:16 16:7,10 17:14 58:18 132:3 142:9 proceed 72:15 73:16,18 proceeding 16:8 72:20 proceedings 1:15 115:21 process 27:14 60:17 101:1 113:7 132:3 136:19,21,24 145:18 produced 72:12 production 16:20 profession 50:9 professional 76:14 83:7 118:4 130:5 professor 39:22 program 92:22	97:10,13 prohibition 21:22,23 prominent 95:12 promise 129:17 129:21 promote 63:13 prompt 79:18 promptly 3:17 15:20 60:7 proper 36:21 properly 47:22 65:6 125:6 properties 100:18 proposed 51:7 proscribe 28:3 prosecutes 39:11 prosecutors 51:16 prove 103:6 proven 9:7,22 18:25 23:24,25 proverbial 23:13 provide 65:24 90:2 105:14 provided 3:17 3:19,22 7:17 15:21,23 16:1 16:9 31:14,15 60:7,9,13 66:9 93:23 94:19 107:5 131:25 133:5 provides 133:6 providing 16:19 132:2 provision 20:12 21:3,10 26:16 80:20 provisions 19:12 19:22 48:3	126:13 134:3 134:19 proxy 77:1,9 prudent 127:22 public 4:17 16:13 41:4 66:6 73:7 98:2 124:18 131:24 pull 118:9 purely 92:24 101:8 purport 82:18 purpose 63:12 purposes 140:24 pursuant 26:20 128:7,9 143:11 pursue 83:3 purview 29:5 37:9 38:25 42:11 43:8 52:6 54:12 134:6 139:23 push 32:22 put 12:1 33:22 52:5 88:9 93:10,10,24 103:8 112:1 121:14 136:15 136:17 puts 44:2 52:10 putting 6:11 46:1 50:10 52:23 98:15 103:3 105:6 130:4 p.m 1:19 148:5
Q				
				quantified 121:15 quantify 121:5 122:8 question 26:4,10 27:11 28:9 32:11 40:22

REPORTER'S TRANSCRIPT OF PROCEEDINGS

41:2 43:18	106:12,18	57:5 58:8 61:9	recommend	referral 19:16
44:15 49:10		65:5 83:25	118:6 138:3	23:18 24:2,5
50:7 53:12	R	96:5 98:5	recommendati...	25:23 46:9,17
56:1,2 58:6	R 2:2 3:1	127:11 131:5	9:23,24 13:4	47:4 48:6
72:14 74:11	race 98:17	131:14 139:19	19:6,7 35:6	50:21 142:5
75:8 80:10	radio 27:20 86:8	144:11	45:15	referrals 48:7
82:4 85:16	88:6,9 92:20	reason 49:8	Recommendat...	58:21
89:9,17,24	92:22 95:2	67:25 68:4,17	3:21 6:21 7:21	referred 25:10
92:16 93:14	99:3 103:3,8	69:17 71:7	15:24 17:15	31:4 42:10
98:20 99:23	104:14	113:1	18:17 60:11	46:2,5 48:11
101:8 103:13	raise 55:16,18	reasonable 75:1	61:6,23 121:20	referring 30:16
109:7,20	55:21 75:24	132:19	121:25	41:6 44:16
111:10 113:15	98:17 102:6	reasons 22:3,12	recommending	51:8 104:18
113:20,25	117:4,6	22:20 24:8	138:6	refers 32:17
118:1 126:18	raised 36:24	77:23 118:17	reconcile 84:9	39:18 105:20
127:19 139:11	100:2 126:18	129:7	record 4:22,25	106:13
143:21,25	134:23	rebut 36:18	5:13 14:4 17:4	reflected 46:2
144:10	raises 59:14	recall 36:17,22	34:12 47:9	reflecting
questions 8:7	ran 42:25	42:8 103:4	49:13 60:23	108:24
10:11,15,17,21	116:21	receipt 68:4	79:7 115:20	reflects 66:17
12:8 16:24	range 136:25	receive 7:13	123:24 125:16	Reform 9:13
24:12,14 27:10	rapid 135:6	10:4 51:17	126:6 133:21	62:17,20,21
29:8 32:10	raw 65:23	57:15 68:20	141:13	63:2,13,15,25
34:5 43:17	reach 22:17	98:2 107:11	recorded 4:17	64:12 65:8,16
45:2 50:12,16	27:16 70:23	109:23,25	16:14	67:4 84:8
50:19 51:6	reached 22:16	144:18	recorder's 37:15	106:8 107:25
55:14 65:22	react 84:16	received 6:25	red 101:4	108:7,12 109:4
69:3 72:20	read 14:3 16:4	17:19 18:2	redid 113:1	113:21 137:8
73:2 75:15	29:19 47:7	60:4 61:7,17	reduce 140:21	139:5 143:4
76:10 78:15,25	55:1 56:3	63:3,18 64:10	reduced 149:4	refutation 106:6
80:7 83:11	60:16 123:23	64:15 66:3	refer 18:14	regard 37:20
90:11 91:14,24	125:15 128:2,2	77:21 79:21	19:13 23:2,7	91:20 131:12
95:6,9 98:19	128:10 131:14	84:12 87:17	24:5 37:11	146:20
99:19 106:23	141:1,12	100:6,9 105:9	39:3 42:21	regarding 8:21
109:18 113:14	ready 54:18	113:22 125:7	43:9 47:21,24	30:17 48:7
115:9 116:17	59:18 115:10	receiving 90:15	48:9 50:20	76:19 82:17
130:11 135:14	real 37:13 99:23	90:21	51:1,10 52:11	86:14,17 97:12
143:16	116:8	recognize 7:19	55:3 56:12	100:3,11
quick 69:6 95:8	reality 51:19	18:15 45:4	81:11 104:24	104:12 126:14
quickly 37:13	84:16 92:20	61:21 95:15,16	reference 8:17	132:3,11 134:3
63:21 119:3	96:8 106:15	97:7,9,19,22	109:12 118:8	134:15 137:8
129:20 130:14	realizing 117:5	97:25 98:3	139:14	regardless
quite 11:25 23:5	really 21:20	99:5,6	referenced	119:14
57:6 83:20	24:15 29:3	recognized	20:15 134:5	regards 20:7
105:12 106:9	32:2,4 43:3	16:25	135:1 137:17	26:23 37:5

65:25 66:18	74:23 112:7	68:3 71:23,25	78:19	residency 19:21
67:4,16 82:4	128:15	77:20 79:14	representatives	19:22 24:16,17
85:2 106:6,25	reminders 87:15	80:12,12,13,14	4:21 5:11 17:3	25:14 37:5
registered 25:15	reopen 144:20	80:21 81:4,22	60:23 109:13	46:4 56:1
57:10,20,24	repeat 99:4	84:24,24 100:7	117:18	57:14,18,19
Registrar 27:2	repeats 41:19	101:18 119:19	represented	resident 19:19
57:9,15	report 3:14,20	121:22 127:5	56:21	56:20 92:8
regular 77:22	6:21 7:21 8:5	reporter 2:18	representing	130:5
78:9 84:4 91:1	8:24 9:3,9,15	4:18 16:15	10:18 49:24	residents 19:24
94:3 105:23	9:20 13:3,4	40:2,23 77:3	61:2 101:21	resolution 4:15
regulate 21:12	15:24 17:15	78:3	represents 94:12	14:17,18,20
21:13,15	18:17 22:9,24	REPORTER'S	reprimand	16:6,9,11
regulation	29:20 45:14,15	1:15	124:19	18:24 58:19,20
133:17,19	60:11 61:6,23	reporting 2:18	request 35:21	58:23 64:23
regulations 6:19	65:4,6,9,18	20:20 60:3	42:2 49:8 92:9	125:2 142:10
14:15 16:7,9	66:16,24 67:2	64:13,25 65:1	102:1,19	142:12,14
17:13 21:7,12	68:7,11,19,21	65:23 66:2	132:12	145:24,25
21:15,24 58:17	69:1,9,12,16	71:9 81:12	requested 104:8	146:4,13
76:18 82:17	69:24 70:11,23	84:4 85:4	require 63:14	147:15,16,18
130:16,19	71:4,9,11,12	101:10 109:6	92:21 124:19	Resolution's
132:2 134:5	71:12,12,16	114:6 116:14	required 60:5	19:12
142:9	72:3,5,7,8,17	121:8,14	64:16 69:25	resolve 48:1
reiterate 30:22	74:16,22 75:1	131:20 132:6	89:1 100:14	resource 93:22
88:23	77:24 78:8,11	133:7	125:11 128:8	93:24
related 11:23	79:8,17 80:3	reports 63:2	requirement	resources 76:17
99:12	81:1 85:3	65:1,12 66:4	9:19 24:16,17	80:1 82:24
relates 145:13	87:21 88:17	66:14 67:1,12	24:18 26:4,13	83:4 117:21
145:14	89:2,4,20	67:18,23 68:1	56:2,6 57:11	118:2,4
relating 36:10	92:22,24,25	68:24 70:12,20	57:18,20 63:17	respect 53:16
126:15 128:4	93:4,5 95:2	71:17,19 74:6	64:8 93:1	respects 20:4
133:22	96:23 97:2	74:18 75:2	95:23 107:17	respond 26:22
relation 10:6	100:18,20	78:10 81:5	requirements	80:5 99:22
126:6	101:18 105:22	83:1 86:1,17	8:2 19:22,23	responded 13:22
relevant 16:20	105:23 107:11	86:24,24 87:20	22:18 26:17,19	14:25 46:23
101:12 107:13	113:2,4,5,8	89:1,24 90:22	56:18 62:22	59:12 123:16
125:19 131:5	115:14 122:2	116:15 121:16	63:6 64:1,6,17	141:6 147:10
relied 86:20	125:6 126:19	122:5 130:8,18	65:8,8 84:9	147:23
rely 96:4	128:7 131:6,7	131:17,18,19	106:9 108:5,6	respondent 3:14
relying 109:1	132:12,13	131:22 133:17	109:6	3:19 4:20 5:25
remained	134:5,25 135:3	134:16 137:24	requires 9:13	6:20 7:17 8:15
114:14	137:6	represent 49:15	62:15 64:13	8:25 10:6,13
remedy 79:18	reported 1:22	representative	92:25 93:10	10:18 15:23
106:19	63:21,24 64:3	5:24 10:13,25	researched	16:2 17:2,9,14
remember 31:8	66:12,16,21	29:11,16 34:8	134:22	19:18 20:8
31:9 73:23	67:9,10,14	60:24 75:20	reserve 78:23	21:5 27:19

REPORTER'S TRANSCRIPT OF PROCEEDINGS

28:23 29:10	99:11 145:19	145:6	San 1:7,20,21	second 8:16
55:10 60:3,10	restricted 12:18	role 23:8	2:4,15,20 3:6,7	13:11,15 14:22
60:14,20 61:2	restrictions	roll 57:24	3:12 15:15	15:6 20:7
61:5,19,20	25:21	rolls 25:14 61:10	19:23 24:23	21:14 23:18
66:9 72:22,23	result 117:17	Room 1:21 3:7	26:5 32:16,20	34:13,15 40:9
75:5,5,17,19	resulted 76:24	rose 24:3	56:20 59:25	46:18,19 48:13
78:19 79:8,17	77:8 100:21	round 75:9	60:1,21 61:9	48:14,17,19
105:10 106:4,7	results 122:10	route 83:3	64:5 82:10	59:1,2,3 62:25
115:23 116:2	retains 146:24	routine 27:3,3	85:11 86:3	69:19 72:24
117:18 121:14	returned 32:20	routinely 27:1	87:1 89:10	79:23 99:17
125:6 126:5,9	returns 26:25	ROV 57:17,17	116:24 120:18	108:3 118:9,16
132:10 133:4	revealed 143:5	rubber-stamp	123:9 124:21	120:22,23
133:20 134:4	Revenue 21:23	42:13	129:25 130:5	123:11 125:23
134:11,12	review 57:3 79:7	rule 21:17,19	133:25	128:11 138:22
respondents	reviewed 14:3	66:1 69:20	Santa 1:20	146:15 147:19
3:23 6:25	47:8 123:23	92:21,25 94:17	saying 28:25	147:20
15:17 17:19	125:16 141:12	94:21 95:21	32:16 44:3	seconded 54:21
60:10,21 78:25	reviews 90:15	102:19 110:13	46:15 49:14,23	59:9 139:9
116:20 143:22	revised 135:2	rules 16:16 22:2	52:24 53:20,21	141:25 144:24
146:21	revision 139:13	62:17,17 67:5	53:22 54:1,2	145:6
respondent's	right 10:8 23:4	79:22 80:2	74:8 82:20	seconds 97:11
15:20 69:5	23:15 24:20	84:6 89:8	91:9 97:1	section 3:12
105:13 106:3	28:1,5 31:17	94:23 101:11	106:4 111:5	8:15,21 56:18
131:21	35:12 39:2	106:5,7,14,15	112:15,16	60:1 62:14
response 6:21	44:15 49:21	106:25 107:25	says 38:19 39:21	117:20 120:19
6:22,24 7:1	58:1 61:20	108:25 109:9	40:24 41:7,17	123:9 128:5,7
10:5,14,16	71:5 73:19	111:7,14,23	56:19 105:25	128:9,22 140:1
11:1 13:24	75:7,13,25	114:10 132:3	128:5 140:20	145:22 146:4,4
15:2 17:15,16	78:5,24 95:15	134:15 136:2	140:21	146:12
17:18 29:12	96:19 97:24	ruling 137:9,17	scale 85:15	sections 3:12
34:9 46:25	99:1,10 102:6	run 26:18,20	scan 57:16	15:14,15
61:5,7 75:21	102:23,23	82:9 93:21	scenario 31:20	see 18:9 21:10
77:25 78:10	110:5,23 111:9	98:11 100:10	94:1	25:19,22 33:9
79:2 93:13	111:12 120:14	105:1	schedule 107:16	33:10 49:17
105:9,13,19	131:8,15	running 19:25	scholar 39:18,19	56:7 57:10
106:2,22 110:9	135:11 139:17	26:15 57:5	39:22 40:6	67:8 68:23,25
123:18 141:8	144:19,24	124:10	41:6,19	69:10,18 71:3
147:12,25	147:4	runoff 131:19	school 32:17,19	71:5,25 72:19
responsibility	rightly 44:20	run-off 110:23	32:25 33:15	78:10 80:7
37:1 49:2	right-hand		53:10	83:13 84:11
51:15 132:1	111:25		scientific 97:4	89:13 90:6
responsible 32:6	rise 49:4 51:19	S	scope 67:7	97:22 98:21
80:17 96:7	risk 106:17	s 2:2 3:1 51:15	139:23	105:17 120:13
144:2	Robert 40:1	52:6 54:12	scrutiny 65:11	122:4,19
rest 78:25 98:10	Rolanda 2:4	sad 95:25	season 107:4	136:22 138:5
		safe 100:19		

144:14	severe 41:25	145:24 146:3	small 106:11	83:11 84:19
seek 86:3	42:15	146:12	Smith 2:4 3:3	86:11 89:15
seeking 25:6	severity 125:22	similar 24:25	4:10,14 5:2,6	90:4,7,10 91:7
seen 40:19 53:7	131:16	51:5 117:3	5:10,16,22 6:2	91:11,13,19,23
53:9 86:3	shaded 69:7,8	simple 53:23	6:13 7:5,9,22	92:10,15 95:6
89:11,13	70:5,10	simply 8:1 19:20	8:8,11 10:3,8	96:10 98:19
send 27:1 31:24	shading 68:24	20:1 21:1 55:3	10:10,17 11:6	99:14,17,24
57:13,16	69:7	84:6 88:25	12:4,7 13:16	100:23 101:20
sense 88:14	shadings 68:23	89:25 93:11	13:23,25 14:7	103:11,17,20
sent 31:5,7,22	69:9	96:1 105:24	14:9,11,13,13	104:2,5 105:4
33:17,25 34:3	shaking 105:17	130:18	14:22 15:1,3	105:16 107:1
48:4	share 19:15	single 31:19	17:7,10,22	109:11,16
sentence 140:21	sheet 120:15	68:18 69:12	18:7,12 22:13	111:21 113:14
sentences 8:9	short 58:12	77:20 78:8	22:15 24:13	114:17 115:9
32:16	98:15	93:17 100:17	26:3,8 27:10	116:16,22
separate 71:11	shortly 63:10	137:20,23	28:10,16 29:7	118:10,22
71:17 72:17	show 4:10 37:10	138:1 146:20	29:18,25 30:4	119:1 120:6,25
74:2 81:6	96:18 147:3	sir 99:21	30:6,13,15,23	121:11,24
116:1 118:12	showed 6:16	sit 30:14	32:9 34:4,15	122:11,16,22
separated 37:14	showing 49:14	site 3:24 16:3	34:24 35:3	123:3,13,17,19
separately 48:16	side 52:19 84:3	20:9 27:20	36:1 38:12	124:2,4,6,8,8
sequential 104:6	99:13 100:19	28:19 31:15	40:9,13 43:3	127:3,15,24
series 7:25 79:14	138:7	32:15 33:10	43:16 44:7,14	128:13,21
85:5 107:12,13	sideways 94:17	41:7 49:21	44:19,23 45:1	129:2,16,20
121:20 131:22	sign 14:20 58:22	60:15 102:21	45:8 46:6,21	135:9,13,16,19
serious 20:3	134:4,7 142:13	103:9 108:16	46:24 47:1,13	136:20,25
24:23 26:1	147:18	108:17 112:1	47:15,17,19,19	138:12,17,22
29:1,2 45:25	significant 37:7	sitting 24:24	48:13,15,20	138:25 139:8
46:4 54:7 56:9	37:8 67:22	28:1 102:16	49:9 50:12	139:15,25
89:25 138:9	95:17 106:18	117:23	51:13 52:7	140:2,5,18
seriousness 25:1	119:16 120:10	situation 23:17	54:17,23 55:2	141:3,7,9,17
26:2 79:13	127:5 135:23	51:5 79:18	55:12,19,20,22	141:19,21,23
serve 19:25	136:5,11,17	83:25 95:1	55:23 56:11	141:23 142:2,4
services 2:18	silence 38:20	situations 54:10	57:7,22 58:2,5	142:16 143:7
82:15,19	74:13	72:10	58:11 59:4,8	143:13,19
session 36:13	Silva 2:8 5:17,18	six 24:23 126:9	59:13,15 61:4	144:7,19,21
set 64:5 73:11	10:4 26:13	134:10	61:20,25 62:6	145:1,4,5,7,14
120:2	56:17 110:19	size 116:9	70:3,10,14,18	145:21,25
sets 48:25	114:7,9,19	SJMC 131:17	72:16,21 73:2	146:9,14,17,25
setting 19:22	128:1,20,24	skip 4:14 15:7	73:20 74:13,20	147:6,11,13,21
settled 6:7 32:16	129:1 139:21	slide 83:22	75:7,13 78:2	147:24 148:1
seven 73:25	140:1,4 142:15	slow 77:3 78:3,7	78:22 79:3,23	smoke 53:22
126:11 128:4	142:17 143:8	86:11	80:6,9,23	54:14 56:7
131:12,14	143:17 144:16	slowly 99:24	81:13,18,25	smoking 23:13
134:17	144:20 145:13	129:21,22	82:4,9,20 83:5	solely 86:4

REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p>somebody 12:21 49:13,24 58:24 59:1 75:16 88:18 95:14 96:12 98:13 104:4 120:12 138:13 147:19 somebody's 124:11 someone's 95:12 somewhat 93:14 soon 36:15 89:14 soon-to-be 10:19 sophisticated 136:3 sophistication 106:25 sorry 7:5 36:3 43:21 54:11 77:4 78:4 80:23 84:7 103:19 123:21 129:16,17 134:1 140:8 sort 49:11 83:21 85:9 88:8,20 92:5 97:17 120:2 136:9,13 sorts 143:5 Sounds 138:12 source 69:21 115:2 speak 5:4 7:10 12:10,22 19:11 20:1 29:16 36:14,14 76:11 77:4 78:19 79:1 92:18 101:25 102:1,2 102:4 103:14 103:16 104:3,5 109:15 114:7 129:21,22 140:24</p>	<p>SPEAKER 6:11 7:2 99:15 speaking 23:3 35:24 134:13 special 64:19 65:1 94:4 specialist 42:6 74:11 117:21 specializes 94:8 specialty 39:6 42:5 43:12 specific 12:13 18:25 26:6,16 55:6 64:8 65:21 73:24 76:17 99:1 106:6,23 108:5 121:17 126:16 133:6 specifically 3:13 12:18 15:16 30:24 51:18 57:17 60:2 82:25 86:24 102:2 105:8 132:5 specified 56:23 125:3 speculate 75:12 75:14 83:24 speech 135:6 speed 13:9 spiel 117:15 spirit 94:22 spoke 39:4 136:1 sporadic 106:20 spouse 9:1 staff 2:8 5:11 7:10 15:9 17:11 76:18 91:4,5 stage 38:3 80:16 stamp 52:24 stand 11:16,17</p>	<p>standard 9:5 19:5 27:17 54:11 standards 64:1 stands 29:21 start 3:4 87:19 90:8 110:3 116:19 129:2 started 6:16 130:25 starting 62:24 state 34:12 45:24 54:14 55:8 64:6 92:12 102:5,6 137:10 stated 50:5 144:5 statement 7:14 9:4 18:8,13 20:16 25:12 26:18 33:10 43:20,24 44:9 44:11 77:13 117:22 124:18 145:9 statements 15:17 19:18 20:14,15,17 23:12 62:16 65:24 105:24 stating 132:5 133:7 station 27:20 stations 104:14 stature 52:10 status 37:12 statute 42:16 statutorily 60:5 stemming 138:1 step 18:20 118:12,16 145:8 steps 33:20 133:9 134:13</p>	<p>Steven 2:13 5:20 7:19 11:2,8 15:13 17:2,5 18:15 31:14 34:18 45:4 61:21 stop 8:4 79:24 84:21 108:2 119:23 stopped 58:12 story 40:1,24 96:18,22,25 97:1,6,9,17 98:25 99:4,7 99:11 straight 58:16 strategies 88:15 strategist 82:12 82:13 83:19 strategy 88:8 89:6 Street 1:20 2:14 strictly 88:2 strike 25:16 strikes 129:6 strong 37:23 38:3 39:17 41:10 strongest 40:18 41:3,3 strongly 56:8 struggling 130:19 student 32:18 stuff 15:7 53:11 58:15 144:14 submit 6:20 7:12 17:14,20 17:24 18:4,10 43:15 61:5,13 submitted 3:21 11:22 15:25 26:20,24 60:12 78:11 132:13 suborn 44:6</p>	<p>subpoena 16:21 subsequent 143:6 144:18 145:11 146:22 substantial 87:10 140:7,8 substantiation 107:8 subsume 114:15 successful 119:17 suddenly 119:22 sufficien 23:20 sufficiency 9:5 19:5 23:21 25:21 27:17 sufficient 13:11 18:22,23 22:18 51:2 109:8 115:16 146:6 sufficiently 10:9 suggest 55:8 102:18 132:22 133:1 suggested 127:16 suggesting 122:8 122:14 suggestion 50:25 139:1 sum 19:4 98:16 summarize 8:9 summarized 72:19 summary 6:22 17:16 65:10,13 65:25 Sunday 38:1 Supervisors 24:24 25:7 support 8:18 19:8 36:9,20 46:20 53:18 86:7 supporter 38:3</p>
---	---	--	---	---

39:17	68:23 69:3	113:19 117:24	128:13 129:18	53:21 54:2,4
supporters	72:19 136:22	telling 128:17	130:1,6,12	54:18,23 58:3
37:23 40:18	take 8:6 9:25	ten 9:13 67:1	131:3 135:19	58:12,14 62:23
41:3,4,10	12:11 24:11	75:23 97:11,15	147:21 148:3	65:4,10 71:17
supporting 36:6	33:2,20 38:10	tend 74:1 84:2	Thanks 135:17	72:11 73:6
sure 8:10,13	38:12 40:10	term 28:14	theater 129:23	74:1,7,7,15,24
23:12 47:22	49:22 54:3,15	39:21 45:25	themselves 87:2	75:1,3,16,16
51:13 53:19,25	64:24 72:15	50:2 84:25	theory 96:7	77:17 78:2
55:16 56:13	87:9 88:17	85:7	thing 23:9 35:3	81:6 84:15,21
62:11 70:4	101:13 114:15	terms 37:1 38:24	35:4,12 36:12	85:6 91:9
79:3,6 80:8	117:24 124:17	39:18 49:20	69:2 73:6,21	92:17 93:25
83:14 84:19	134:13,24	56:4 73:17	84:18 88:18	94:9 95:9,11
85:16 89:7	141:4	77:14 84:11	91:15 95:24	95:22 98:1,5
91:2 93:18	taken 57:11	85:25 86:6	102:23 109:24	99:9 100:25
114:8 119:22	98:25 126:12	100:20 101:12	126:17 127:15	103:10 104:25
120:14,19	134:18 149:3	102:3 106:4	142:5	105:8,11,17
127:12,22	takes 68:8 98:14	130:17 136:8	things 13:9	106:1,12,16,17
130:21,23,23	talk 47:4 54:20	territory 73:15	20:25 28:20	106:21 107:10
137:5 138:25	73:21 75:18	testified 11:11	45:21 49:12	108:10,25
140:13,25	96:7 102:16	30:11 34:21	53:7,8 54:6	110:11 112:19
142:3 143:22	112:8	76:7 102:13	62:12 70:24	116:6,7,11
147:3	talked 90:14	103:25	74:5,21 76:12	117:12,15
surely 23:14	96:16 117:19	testimonial	80:5 88:1	118:2,18,24
surprising 87:20	talking 49:20	41:18	90:19 91:2	119:4,8,12
surrounding	79:24 121:24	testimony 14:3	92:2 95:4	120:1,2,4
125:20	136:9	16:17,19 28:17	119:17 124:12	121:15,19
Susan 4:12	talks 145:22	30:17 47:8	130:13 131:10	122:25 126:21
suspect 74:8	tape 38:4 41:5	123:23 125:15	146:10	127:12,15
140:5	41:18	141:12	think 4:5 8:4,22	129:4 131:4
swear 92:12	taped 39:16	thank 6:2,5 7:22	9:12 11:24	135:15,22,23
sword 41:13	task 74:2	10:3,8 13:16	19:3 20:4,24	136:5,8 137:2
sworn 11:9	taxes 105:1	14:22 15:5	22:4,24 23:4,6	137:9 138:8
29:24 30:1,9	taxpayer 25:4	17:7,10,22	23:13,18 24:11	140:11,12
34:19 76:5	team 96:12	18:18 24:13	25:3,7,23	142:7,23
102:11 103:23	technical 39:7	29:7 30:6,13	28:11 30:16	143:13,23
sympathy	telephone 132:8	32:9 34:4,6	31:16 32:21,23	144:4,13,23,23
118:18	133:10	43:16 45:3,8	32:24 33:9,13	145:17,19,21
systemic 65:5	television	61:24 70:18	33:15,25 35:1	145:21
	135:10	74:14 91:23	35:7,19,21	thinking 129:8
T	tell 11:9 25:3	92:1,10,15	36:21 37:9,19	129:10 136:7
table 66:16	27:12 30:9	99:19,21	40:20 42:15	136:23 137:1
69:10,18 70:6	34:19 36:1	101:20 103:11	46:2 48:9	137:22
71:1,22 81:14	57:8,18 76:5	104:2 105:3,4	49:21 50:6,15	third 21:4 59:18
106:21 136:22	87:14 93:19	113:13 115:8	50:19 51:8,14	72:1 125:25
tables 65:18,24	102:11 103:23	118:22 120:25	52:12,24 53:6	Thomas 102:8,8

REPORTER'S TRANSCRIPT OF PROCEEDINGS

102:10,15	63:18 68:8	64:3,7,8 65:7	translated 38:7	two 8:14 12:11
thought 19:10	72:24 73:8,10	65:13 66:1,19	translation 4:6	23:6 24:8 32:1
42:9 56:14	73:12 75:19	80:21 84:8	transparency	45:11,21 49:11
70:15 80:3	76:23 77:6,24	105:25 106:8	63:14	64:17 67:19
84:1 90:14	86:13,16 87:23	109:5 114:6,13	transpired 19:9	69:10,11,16,22
101:1 136:19	89:11 97:12	115:5 117:1,20	treasurer 80:17	69:24 70:5
136:21,24	99:8,11 100:5	122:5 125:4,18	82:21 83:6	71:5,9,17,25
137:12,16	100:12 102:20	131:17 133:25	treated 16:18	73:25 80:5
139:20	104:7 107:3	134:1 137:11	137:20	84:9 88:4 91:1
thoughts 19:15	108:11,20	137:14 139:24	tried 65:19	95:8 102:3
thousand 32:1	114:23 115:4	145:13,14,22	73:23 99:9	104:8,9 110:22
64:14 70:22	117:13 118:5	titled 135:2	136:15	110:23 111:5
112:12 114:21	118:18 119:6,9	today 6:14 32:15	tries 105:21	115:24 120:7
117:25 129:10	120:5 122:19	48:24 49:20	trouble 93:11	127:22 132:15
136:23	129:8 130:2,4	90:25 97:1	troubling 107:6	132:19 137:19
thousand-dollar	130:8,22 132:9	116:13 117:18	true 9:7,8,22	143:22 144:9
86:25	135:17 136:3	told 87:4 106:14	20:2 21:2 22:4	type 24:6 28:3
three 3:3 4:2	137:8 140:12	Tom 2:9 5:19	22:19 23:1	types 72:10
12:15 13:19	142:10 145:20	57:8 59:24	29:2 52:20	typo 106:17
42:17 71:24	149:4	60:20 108:10	105:24 107:21	
74:3,4,4 79:15	timeliness 80:10	111:21	108:18	U
125:5,10 129:5	80:22	tongue 61:10	truly 93:19 96:3	Uh-huh 25:25
130:2 132:24	timely 16:11	Toni 109:16	trust 38:8 96:5,8	umbrella 123:2
138:13	65:6 72:4,8	tonight 3:4 6:17	98:9,12	un 88:25
threshold 23:22	84:24 89:20	9:25 17:12	truth 11:10,10	unanimous
69:20 70:23	91:2 131:21	35:5 109:16	11:10 30:10,10	141:9 147:13
throw 129:12	146:21	tonight's 3:25	30:10 34:20,20	unanimously
tie 59:4	times 50:25 71:8	16:3 60:15	34:20 71:18	13:25 15:3
time 1:19 4:19	73:22 87:3	total 122:6	76:6,6,6	47:2 123:19
6:24 7:19 8:12	98:25 125:5	136:23	102:12,12,12	148:2
9:14 10:12,24	129:5 141:10	totaling 137:19	103:24,24,24	unaware 136:2
11:20 12:17,24	timing 40:11	totality 109:2	try 7:10 65:20	uncharted 73:15
14:17 16:5	63:6 100:21	totally 96:17,20	68:23 73:22	73:16
17:1,18,21,25	130:14	touch 112:7	86:11 98:1	uncomfortable
18:15 20:19	Title 9:5,8,20	tough 130:11	110:10 116:6	52:21
26:6,9 28:16	19:20 20:1,3	trade 88:4	119:17	uncovered 72:13
28:22 29:9	20:12,15 21:1	transactions	trying 88:11	145:10
31:18 34:7	21:6,11,11,14	98:21	94:24 132:18	understand 11:2
35:20,22 38:15	21:22 22:5,18	transcript 1:15	Tuan 4:2 103:19	33:14 44:7,8
39:4,5 40:14	22:19 24:3,18	4:18 16:15	103:22	44:14,14,23
41:12 45:9,24	25:2 28:3,9	transcription	Tuesday 96:25	45:1 56:3
46:8 47:23	29:3 44:17	149:5	turn 6:3 18:13	88:17 92:18
57:11 58:19	62:14,16,18,19	transferred	turned 34:1 72:7	96:17,20 101:1
60:19 61:21	62:21,23 63:1	37:17	TV 103:9	106:5 130:19
62:13,16 63:10	63:13,15,25	translate 104:4	twice 113:11	134:24 137:11

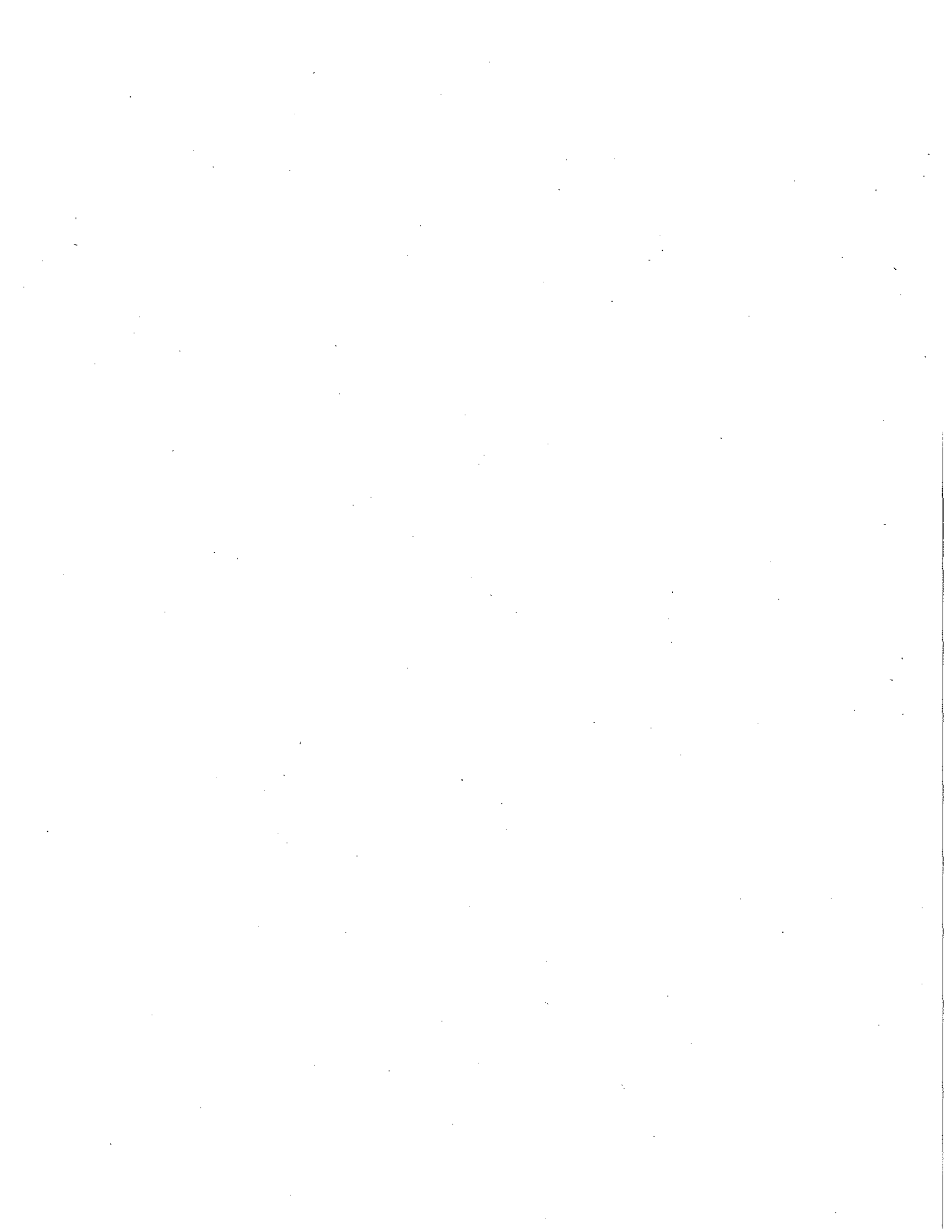
understandable 109:1	67:23 72:6 121:16	105:21	72:12 73:24 74:24 85:4,6	want 5:7 7:7 18:10 24:4
understandably 108:8,9	unusual 70:21 72:2 84:25	vessel 131:12	106:20 115:11 116:5 118:11	27:25 29:4,25 30:22,23,25
understanding 70:4 86:1 95:13 142:19 147:5	85:7 97:23 119:4 upbringing 135:7	vetted 50:20 51:3,8	118:14 119:20 119:22 120:8,9 120:18 121:18 122:6,7 123:8	50:10 52:12 53:7,19,25 59:1 61:25 62:25 69:2,4
understood 80:9 80:11 81:25 86:9,10,12	update 111:23 updated 108:13 111:13	Vice-Chair 2:4 Viet 69:22	124:14 125:18 126:6 128:5,19 129:9 130:15 132:11 133:15	72:16 75:9 77:2,17,19 78:1,6,7 80:5 81:18 83:24
unfair 36:19 71:17	up-to-date 108:24	Vietnamese 38:6 39:19 92:18	133:21 134:24 136:10 137:25 137:25 139:5 143:4,5 145:10	87:21 89:23 90:7 92:11 102:15 106:11 112:6 114:2
unfortunately 95:1	urge 24:5 use 6:12 27:21 45:25 62:1	view 25:11 101:14,14	violated 3:11 8:15 15:14 21:6 60:1	109:7 92:11 102:15 106:11 112:6 114:2 119:1 122:23
UNIDENTIFL.. 6:11 7:2 99:15	83:22 104:14 104:17 138:3	violating 21:17 95:21 118:19 118:20	voice 104:11 129:23	127:6,16 128:1 130:7 131:2,9 138:13,22 139:12,13,18 139:19,19
Unify 41:16	U.S 39:20		volume 137:24 138:8	147:2
union 36:7			volunteer 30:19 30:21 83:6,9	wanted 28:20 48:16 53:9 55:24 78:23 89:17 105:8 121:18 122:7 128:2 130:21 131:10,11 142:3
unique 76:20 85:24 86:8,9 86:10,13 89:10 119:4	V	violation 3:15 9:7,10,21 18:25 20:3,12 22:5,19 23:15 24:3,25 35:14 38:25 39:12 43:13 62:23 67:3 71:16 72:4,8 73:10 73:12,14,25 74:16 78:17 85:21,22,23 101:15 115:16 115:18,21,25 116:2 118:25 125:5,12,14,22 125:25 126:2 131:16 132:24 133:12,16,19 134:7,22 135:23,24 143:19,23 144:23,25 145:1 146:7	volunteers 130:3 vote 25:15 42:9 46:2,22 47:3 54:18,19 123:15 125:13 141:4 142:15 147:9 voter 25:14 57:24 102:21 102:24 103:3 voters 27:2 57:9 57:15 132:23 votes 104:15,21 125:10 138:13	wanting 135:7 wants 11:2 59:5 120:13 wash 42:13 wasn't 83:7 88:23 95:20 144:3,4
unit 51:18	vacancy 57:1 value 67:24 136:14 138:2			
unjust 36:19	various 20:9 71:8			
unlawfully 125:7	Vemu 47:5 Vemulapalli 2:5 14:5,6 43:18 43:22 46:20 47:11,12 48:14 53:5 54:24 55:18 98:20,24 113:15 114:1 115:8 118:24 122:3 123:25 124:1 136:21 141:15,16			
unlimited 86:5	verbal 77:18 verbally 36:20 87:4 verify 102:17,22 versa 127:11 version 108:19 versions 105:20			
unmarried 37:17				
unpersuasive 106:9				
unprecedented 84:23 85:1,7,8				
unproper 88:25				
unqualified 25:6				
unseat 25:6				
unspecified 3:12 3:15 8:17 15:15				
untimeliness 79:15				
untimely 66:14 66:15,21,22,24 67:1,2,13,18				
			W	
			wait 5:23 6:6 34:15 72:23 73:21 waive 140:21 wake 88:8 walk 106:10 walking 49:23	way 12:1 29:4 44:19 53:19 63:5,24 64:4 90:5 91:16 95:4 96:6 97:3 97:3 102:17 103:4 111:4,5

REPORTER'S TRANSCRIPT OF PROCEEDINGS

111:18 118:10	54:2,8 59:19	working 89:12	39:10,21 42:17	#8060 1:23 2:19
121:5,6,9,18	64:25 65:9	works 97:4	42:20 49:5	149:11
ways 11:23	73:3 74:5	worksheet 3:16	54:9 73:23	
65:20 74:5	107:3,7 129:7	8:18,19,20	91:5 116:25	<u>1</u>
104:14	130:15 132:13	worth 73:6	yesterday 81:16	1 66:16 69:10,18
web 3:24 16:3	132:16 139:8	wouldn't 83:24		71:1 128:10
20:9 27:19	whichever 85:9	95:9 118:6	<u>Z</u>	1st 3:22 15:25
28:19 31:15	125:8 126:25	140:8,9	Z 93:3	60:12 71:3,4
32:15 33:10	Whittier 116:24	wrap 40:15 43:3	zero 124:25	71:10,13 110:2
41:7 49:20	whopping 125:8	116:13	131:8	10th 4:4 8:1,22
60:15 102:21	wife 37:16,16	write 79:16		9:12,24 19:9
103:9 108:16	willful 140:23	97:21	<u>\$</u>	22:11
108:17 111:19	Williams 41:22	writing 17:20	\$1,000 128:11	10,000 136:7,17
112:1	willing 38:12	18:3,6,9	128:18	138:11
Wednesday 1:18	122:17	written 6:20,25	\$1,030.31 67:21	1083 2:19
3:5	win 104:15	7:12,13 10:14	\$10 126:21,23	11th 70:8 71:6,8
week 96:24	131:8	11:1 17:14,24	\$10,000 138:10	71:12 72:1,2
weeks 79:15	Wing 1:21	17:25 29:11	138:16	119 1:21
went 32:25	wiser 59:7	34:9 61:5,13	\$10,604 67:15	12 9:5,8,20
33:15 36:15	wish 17:20 18:4	61:15 75:21	\$12,500 137:19	19:20 20:1,3
68:17 117:3,8	18:14 28:23	131:24 132:4	\$1500 137:20	20:12,15 21:1
118:7 130:25	29:14,16 56:11	133:5,6,10	\$152,662.55	21:11,22 22:5
weren't 80:13	58:24 73:1	wrong 84:1	67:19	22:18,19 24:3
96:24 112:3	104:5	102:22 110:11	\$222,000 137:13	24:18 25:2
we'll 3:4 4:24	wished 12:16	119:13 121:23	\$225 69:12,19	28:3,9 29:3
5:23 20:18	withdraw 58:10	wrote 40:23	\$250 64:9 66:2	44:17 62:14,16
46:22 47:4	witness 16:18	W-119 3:7	69:20,23 70:22	62:18,19,21,23
67:8,9 104:6	42:21		114:22	63:1,13,15,25
118:11 126:16	witnesses 16:20	<u>X</u>	\$3,729 72:4	64:3,7 65:7,13
147:9	16:21,24	X 93:3,5 99:8	\$31,167.50	66:1,14,19
we're 6:13 33:13	woman 37:18	121:9	66:15	80:21 84:8
34:16 35:4,13	wonder 121:4		\$38,000 117:23	105:25 106:8
35:14 39:11	word 38:10,13	<u>Y</u>	\$44,000 138:5	109:5 114:6,13
42:14 51:24	40:25 112:24	Y 93:3	\$48,000 138:2	115:5 117:1,20
54:1,2,18	113:10,17	yeah 6:3 18:10	\$48,921.60	122:5 125:4,18
59:18 71:15,17	116:10	18:12 31:11	137:15	131:17 133:25
72:21 74:7,8	wording 53:25	58:7 72:21	\$5,000 125:5	134:1 137:11
87:18 90:21	55:8	75:13 83:17	129:5	137:14 139:24
100:24 115:10	words 5:4,8 11:3	111:2,16 120:6	\$500 112:11	145:13,14,22
118:10,12	11:19,21 38:8	120:20	115:2	12's 21:6,11,14
130:2 136:12	62:20	year 32:1 34:3	\$69,802.50	64:8
137:24 142:4	work 32:20 36:7	38:2 39:15	67:13	12.04 124:21
143:21 147:14	50:23 127:6	41:16 100:17	\$96 69:11,19	12.04.120 128:3
we've 12:19	worked 15:19	142:20		128:9,24
17:11 35:20	136:3,4	years 24:24	<u>#</u>	12.06-910 15:14
			#49881 1:24	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

12.06.910 60:1 62:14 120:19 128:7	16:5 59:23,25 60:10,12,22 61:9 111:24,24 129:25	4,000 136:24 40 67:18 404 56:18 408 2:20	60 39:21 650 137:13 6954 146:4
12.06.910E 140:19	22 121:21 122:4	415 2:16	7
12.08 3:12 8:15 8:21 15:14	22nd 69:11,25 23rd 64:21 65:2	425 2:14 45 66:20,25	7 128:10 7th 64:19,21 65:1,14,16 66:1 67:5 79:10 80:19 81:15 91:21 108:11
12.096.910 123:9	65:15,17 66:18 67:16 80:25 110:1	460 63:5,8,20 64:11 67:7 77:22 78:9	70s 75:3
146 137:15 138:3	24 31:16 63:21 68:7,11,15	81:1,4,22,22 91:18 98:4	700 9:14
15 97:10,21	24th 70:1	117:23 122:19	700-page 107:22
15th 16:5	24-hour 81:11	142:19 143:2,6	76954 16:6 146:13
1500 38:17 39:15 41:5,15	105:22 131:22 132:5,12 133:7 135:2	145:11 460s 20:18 63:7 75:9,9 80:12 81:16	77 122:5 777-3200 2:16
16 64:10 66:3 71:12 113:18 113:22 114:11 114:14,15,18 115:5 131:18 131:19	240 136:11 250 69:21 2500 129:11 26th 2:15 70:2 27 66:11 27th 110:2	48 31:17 63:22 68:3,4,16,22 48-hour 68:19 497 63:24 77:23 78:13 81:5,23 90:20 91:17 95:21 105:20 108:24,24 112:8,12,22,22 133:2 135:2	8
16th 69:13 70:5 70:7,8 71:6,10 72:1 106:14	3	497s 20:18 60:3 80:13 81:17 107:15	8 1:18 8th 3:5 110:25 8:00 99:3 8:37 148:5
16-day 114:6	3 55:22 81:14	108:24,24	9
17 122:3	30 26:16 36:17 39:10 49:5 56:22 57:4,25 58:8 97:10 111:3 117:7 137:22 138:4	112:8,12,22,22 133:2 135:2	9th 71:24 72:3 90 64:15 113:18 113:23 114:11 114:12,15 115:6
17,754.10 67:1	30th 67:18	107:15	90s 75:3
18th 38:1,2 39:15	30-day 56:6 57:11,18,23	5	90-day 131:19 90-something 74:24
19 122:1,3	30-plus 54:8	5 59:23 5th 3:10,20 60:10	910 120:20 139:24 140:3,4
2	300,000 136:15 31st 67:8 142:20 37 67:12 38K 131:5	5,000 137:21 5:38 1:19 501(c)(3) 37:4	920-0222 2:20 930 15:14 94105 2:15 95113 1:21 95125 2:20 99 122:7,8,11,18 123:8 129:6 136:11,14
2 55:22 71:22 112:21	4	6	
2nd 15:12,23	4 19:19 24:22 104:10,11,12 104:13	6th 106:16,19 110:3 131:7 6-11 70:11 6:00 99:3	
20 67:13 79:15 81:14			
200 1:20			
2013 111:8,14 111:15,23 113:19,20,24 114:10,21			
2015 1:18 3:5,10 3:20,22 4:4 15:13,23,25			



Advantage *ARS* *Reporting*

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November 12, 2015

Cecilia McDaniel, Deputy City Clerk

City of San Jose

200 E. Santa Clara Street

San Jose, CA 95113

Re: July 8, 2015 Ethics Commission Hearing

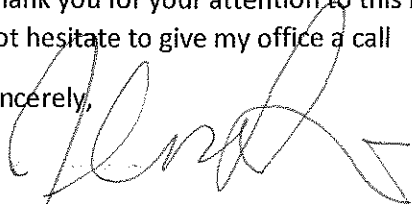
Ms. McDaniel,

Upon review of my transcript of the July 8, 2015 proceedings, I have discovered a speaker identification error in the transcript I prepared.

On pages 40, 43 and 44, the reference to Mr. Do should be changed to Mr. Dovan.

Thank you for your attention to this matter. If you have any questions in regard to the above, please do not hesitate to give my office a call

Sincerely,



Noelia Espinola, CSR 8060

Advantage Reporting Services

