

**ELECTIONS COMMISSION**

Meeting Minutes

January 24, 2013

**ROLL CALL**

**PRESENT:** Chair Michael Smith, Vice-Chair Erica Cosgrove, Commission Members Rolanda Pierre-Dixon and Linda Edgeworth (via teleconference)

**ABSENT:** Commission Member Leon Louie

**STAFF:** Investigators/Evaluators Joan Cassman and Steven Miller, Senior Deputy City Attorney Sandra Lee, Acting City Clerk Toni Taber, Deputy City Clerk Cecilia McDaniel

**OTHER:** Noelia Espinola, Court Reporter with Advantage Reporting Services and Linda Tsoi, Translator with Communicaid Inc.

**ORDER OF BUSINESS**

**I. CALL TO ORDER**

The members of the San José Elections Commission convened at 5:42 p.m. in Room W-262 of City Hall, 200 E. Santa Clara Street, CA 95113.

**II. ADOPTION OF THE AGENDA**

Action: Upon a motion by Vice-Chair Erica Cosgrove, and seconded by Commissioner Rolanda Pierre-Dixon, the Commission approved the adoption of the January 24, 2013 agenda.

Roll Call Vote (4-0-1)

Chair Smith	Aye
Vice-Chair Cosgrove	Aye
Commissioner Pierre-Dixon	Aye
Commissioner Edgeworth	Aye
Commissioner Louie	Absent

**III. PUBLIC COMMENT - None**

#### IV. ITEMS SCHEDULED FOR ACTION

- A. Hearing on the following related complaints:
- a. Complaint filed by John Daley on October 10, 2012 alleging violations of the San José Municipal Code by Jimmy Nguyen, candidate for Council District 8. (Independent Investigator/Evaluator)
  - b. Complaint filed by Dennis Hawkins on October 26, 2012 alleging violations of the San José Municipal Code by Crema Coffee Co., et al. (Independent Investigator/Evaluator)
  - c. Complaint filed by Dennis Hawkins on November 16, 2012 (and amended on December 7, 2012) alleging violations of the San José Municipal Code by Friends of Jimmy Nguyen, et al. (Independent Investigator/Evaluator)

Documents Filed: 1) Report Number 1 from Hanson Bridgett LLP dated January 3, 2013 regarding John Daley v. Jimmy Nguyen Complaint filed October 10, 2012; 2) Report Number 2 from Hanson Bridgett LLP dated January 3, 2013 regarding Dennis Hawkins v. Crema Coffee Company, et al. Complaint filed October 26, 2012; 3) Report Number 3 from Hanson Bridgett LLP dated January 3, 2012 regarding Dennis Hawkins v. Friends of Jimmy Nguyen, et al. Complaint filed December 7, 2012 (as amended); 4) Report Exhibits; 5) Report Appendix; 6) Response to Evaluators Report Number 1 from Richard Robinson, Attorney for Respondent Jimmy Nguyen, dated January 8, 2013; 7) Response and Objection to Report Number 3 from Tam Nguyen, Attorney for Respondents Tho Nguyentan and Thien L. Huynh dated January 8, 2013; 8) Supplemental to Report Number 3 from Hanson Bridgett LLP dated January 18, 2013 regarding Dennis Hawkins v. Friends of Jimmy Nguyen, et al. Complaint filed December 7, 2012 (as amended); 9) Memorandum from Richard Doyle, City Attorney, dated January 24, 2012 regarding Response to Evaluator Report No. 3 – Procedural Issues; 10) E-mail from Jimmy Nguyen dated September 15, 2012 thanking Tony Dinh, Tho Nguyentan, Duc Lam and Dung Tran for their help with the space; and 11) Transcript of Hearings dated January 24, 2013, Reported by Noelia Espinola, CSR, License Number 8060, Advantage Reporting Services, No. 41408, pages 1 through 152.

Discussion: Chair Michael Smith summarized the hearing procedures and opened the public hearings. Chair Smith explained to the Commission and members of the public that the three complaints were related so would need to be discussed together. Chair Smith introduced staff and identified which respondents and complainants were present.

Chair Smith gave a briefing of issues 1, 2, 3 and 4B in the John Daley v. Jimmy Nguyen Complaint (Complaint 1) as well as the Dennis Hawkins v. Crema Coffee Company, et al. Complaint (Complaint 2). Investigators/Evaluators Joan Cassman and Steven Miller summarized the Independent Evaluator's Report and Recommendations for issues 1, 2, 3 and 4B in Complaint 1 and the Independent

Evaluator's Report and Recommendations for Complaint 2. After being sworn in by Chair Michael Smith, testimony was presented by Richard Robinson, Attorney for Respondent Jimmy Nguyen. (See transcript for complete testimony.)

The Commission deliberated.

Action: Upon a motion by Commissioner Rolanda Pierre-Dixon, seconded by Vice-Chair Erica Cosgrove, the Commission moved to dismiss issues 1, 2, 3 and 4B in the John Daley v. Jimmy Nguyen Complaint (Complaint 1) as well as the Dennis Hawkins v. Crema Coffee Company, et al. Complaint (Complaint 2) and found that no violation occurred.

Roll Call Vote (4-0-1)

Chair Smith	Aye
Vice-Chair Cosgrove	Aye
Commissioner Pierre-Dixon	Aye
Commissioner Edgeworth	Aye
Commissioner Louie	Absent

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

Chair Smith	So certified
Vice-Chair Cosgrove	So certified
Commissioner Pierre-Dixon	So certified
Commissioner Edgeworth	So certified
Commissioner Louie	Absent

Discussion: Chair Smith gave a briefing of issue 4A in the John Daley v. Jimmy Nguyen Complaint (Complaint 1) as well as the Dennis Hawkins v. Friends of Jimmy Nguyen, et al. Complaint (Complaint 3). Investigators/Evaluators Joan Cassman and Steven Miller summarized the Independent Evaluator's Report and Recommendations for issue 4A in Complaint 1 and the Independent Evaluator's Report and Recommendations for Complaint 3. After being sworn in by Chair Michael Smith, testimony was presented by: Richard Robinson, Attorney for Respondent Jimmy Nguyen; Tam Nguyen, Attorney for Respondents Tho Nguyentan and Thien Huynh; Respondent Ban Van Vu; Respondent Duc Lam; Respondent Tho Nguyentan; and Terry Reilly, Former Chair of the Elections Commission. (See transcript for complete testimony.)

The Commission deliberated.

Action: Upon a motion by Chair Michael Smith, seconded by Vice-Chair Erica Cosgrove, the Commission directed staff to send: (1) a letter to Respondent Jimmy Nguyen and his attorney, Richard Robinson, requesting their presence at the next Elections Commission meeting (currently scheduled for February 13, 2013), along with any additional e-mails sent or received by Respondent Jimmy Nguyen from the group; and (2) a letter to Respondent Tho Nguyentan and his

attorney, Tam Nguyen, requesting their presence at the meeting, along with a list of the people who made various expenditures, what the expenditures were for and the best estimate of the amounts of the expenditures.

Roll Call Vote (4-0-1)

Chair Smith	Aye
Vice-Chair Cosgrove	Aye
Commissioner Pierre-Dixon	Aye
Commissioner Edgeworth	Aye
Commissioner Louie	Absent

B. Hearing on the following complaint:

- a. Complaint filed by Phong Q. Hoang on December 11, 2012 alleging the theft and destruction of campaign signs by Councilmember Rose Herrera and her husband Matt Wahlin. (Independent Investigator/Evaluator)

Documents Filed: 1) Report Number 4 from Hanson Bridgett LLP dated January 3, 2013 regarding Phong Hoang v. Rose Herrera, et al. Complaint filed December 10, 2012; 2) Report Exhibits; 3) Report Appendix; and 4) Transcript of Hearings dated January 24, 2013, Reported by Noelia Espinola, CSR, License Number 8060, Advantage Reporting Services, No. 41408, pages 152 through 166.

Discussion: Chair Michael Smith gave a briefing of the Phong Hoang v. Rose Herrera Complaint (Complaint 4). Investigators/Evaluators Joan Cassman and Steven Miller summarized the Independent Evaluator's Report and Recommendations for Complaint 4. No testimony was heard.

The Commission deliberated.

Action: Upon a motion by Vice-Chair Erica Cosgrove, seconded by Commissioner Pierre-Dixon, the Commission moved to adopt the Evaluator's opinion, approve the recommendation against conducting an investigation, close the file in the matter without further action and ask the City Clerk's Office to alert the complainant and respondent of that fact and to suggest that if the complainant still has concerns, he contact the appropriate law enforcement agencies.

Roll Call Vote (4-0-1)

Chair Smith	Aye
Vice-Chair Cosgrove	Aye
Commissioner Pierre-Dixon	Aye
Commissioner Edgeworth	Aye
Commissioner Louie	Absent

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

Chair Smith	So certified
Vice-Chair Cosgrove	So certified
Commissioner Pierre-Dixon	So certified
Commissioner Edgeworth	So certified
Commissioner Louie	Absent

Action: Upon a motion by Chair Michael Smith, seconded by Commissioner Rolanda Pierre-Dixon, the Commission directed the City Attorney to draft a Resolution of the Commission's findings, and for the Commission to authorize the Chair to approve and sign the Resolution.

Roll Call Vote (4-0-1)

Chair Smith	Aye
Vice-Chair Cosgrove	Aye
Commissioner Pierre-Dixon	Aye
Commissioner Edgeworth	Aye
Commissioner Louie	Absent

**V. MEETING SCHEDULE AND AGENDA ITEMS**

The next Regular Meeting is Wednesday, February 13, 2013.

**The following agenda items will be discussed at the February 13, 2013 Elections Commission meeting:**

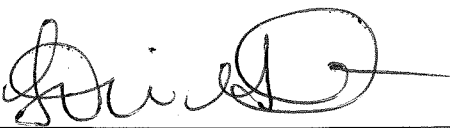
- Continuation of hearings listed under item IV.A.a through IV.A.c above
- Compliance monitoring – Consideration of issues arising from prima facie review of campaign finance and other required disclosures per 2012-13 work plan
- Appoint a subcommittee to work with staff in preparing and revising draft documents and to identify and prioritize areas of concern
- Status of Commission resolutions
- Status of proposed changes to the Gift Ordinance

**VI. ADJOURNMENT**

The meeting was adjourned at approximately 9:12 p.m.

  
\_\_\_\_\_  
MICHAEL SMITH, CHAIR

ATTEST:  
ELECTIONS COMMISSION SECRETARY

  
\_\_\_\_\_  
TONI J. TABER, CMC  
ACTING CITY CLERK

Attachment: Transcript of Hearings dated January 24, 2013, Reported by Noelia Espinola, CSR,  
License Number 8060, Advantage Reporting Services, No. 41408, pages 1 through 166.

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

Taken on January 24, 2013

SAN JOSE ELECTIONS COMMISSION  
SPECIAL MEETING

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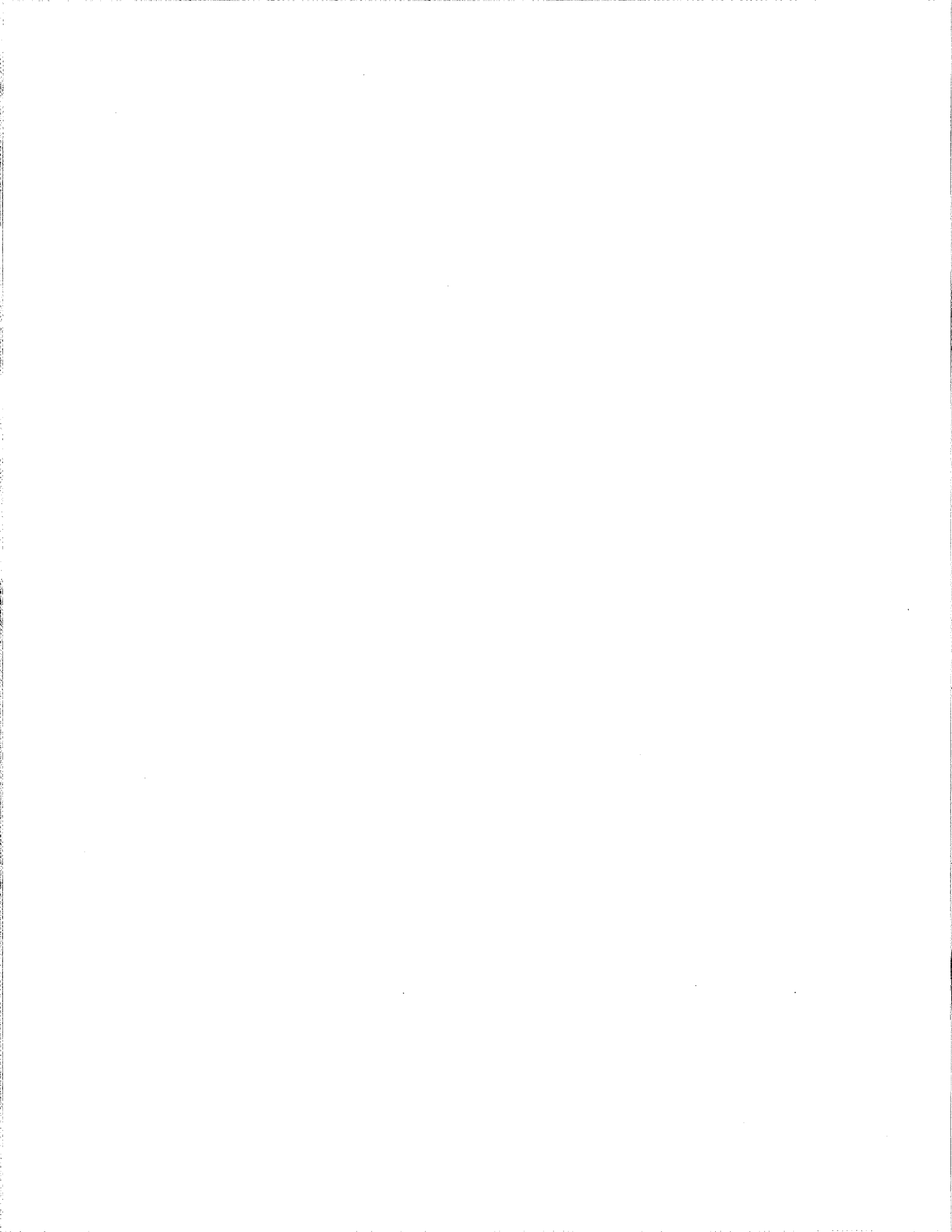
CONDENSED TRANSCRIPT

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p>SAN JOSE ELECTIONS COMMISSION SPECIAL MEETING</p> <p>REPORTER'S TRANSCRIPT OF PROCEEDINGS</p> <p>Date: Thursday, January 24, 2013</p> <p>Time: 5:42 p.m.</p> <p>Location: San Jose City Hall 200 E. Santa Clara Street City Hall Wing - Room W262 San Jose, CA 95113</p> <p>Reported By: Noelia Espinola, CSR License Number #8060</p> <p>#44482</p>	<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 INDEX OF WITNESSES</p> <p>3 Page</p> <p>4</p> <p>5 RICHARD ROBINSON 26</p> <p>6 TAM NGUYEN 65</p> <p>7 BAN VAN VU 95</p> <p>8 DUC LAM 97</p> <p>9 THO NGUYENTAN 99</p> <p>10 TERRY REILLY 128</p> <p>11</p> <p>12 --o0o--</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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2 APPEARANCES

3

4 San Jose Elections MICHAEL SMITH, Chair  
Commission: ERICA COSGROVE, Vice-Chair  
5 ROLANDA PIERRE-DIXON  
LINDA EDGEWORTH (via telephone)

6

7 Staff: SANDRA LEE,  
8 Deputy City Attorney  
9 TONI TABER,  
Acting City Clerk

10

11 CECILIA McDANIEL,  
12 Deputy City Clerk

13 Vietnamese Linda Tsoi  
14 Interpreter:

15

16 The Reporter: ADVANTAGE REPORTING SERVICES  
BY: NOELIA ESPINOLA,  
CSR #8060  
17 1083 Lincoln Avenue  
San Jose, CA 95125  
18 (408) 920-0222

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1 PROCEEDINGS

2

3 CHAIRPERSON SMITH: So I will call the  
4 meeting to order. First we need a motion to adopt the  
5 agenda.

6 VICE-CHAIR COSGROVE: Move that we adopt the  
7 agenda.

8 COMMISSIONER PIERRE-DIXON: Rolanda  
9 Pierre-Dixon. I would second that.

10 CHAIRPERSON SMITH: Thank you. Any  
11 discussion?

12 No. Okay. All in favor?

13 (All Commissioners responded Aye.)

14 CLERK TABER: I need to do --

15 CHAIRPERSON SMITH: Any opposed?

16 CLERK TABER: -- a roll call vote.

17 CHAIRPERSON SMITH: Oh, I'm sorry. Okay.

18 CLERK TABER: Erica Cosgrove?

19 VICE-CHAIR COSGROVE: Aye.

20 CLERK TABER: Linda Edgeworth?

21 COMMISSIONER EDGEWORTH: Aye.

22 CLERK TABER: Rolanda Pierre-Dixon?

23 COMMISSIONER PIERRE-DIXON: Aye.

24 CLERK TABER: And Michael Smith?

25 CHAIRPERSON SMITH: Aye.

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1 Okay. Moving on. Public comments. Is there  
 2 anyone who wishes to speak on an item that is not on  
 3 tonight's agenda?  
 4 Seeing none, we'll move on. And the items  
 5 scheduled for action. We have two hearings tonight.  
 6 We will move into -- the first hearing which is on your  
 7 agenda is Item 4A and then sub "a." No, I'm sorry.  
 8 4A. And then under that there are actually three  
 9 separate complaints that it addresses.  
 10 There's a lot of procedural things that I  
 11 have to cover -- that we have to cover in this meeting.  
 12 Portions of this, I'm going to be reading from some  
 13 notes rather than just speaking extemporaneously.  
 14 But we can get started. It is Thursday,  
 15 January 24th, 2013, and this hearing of the City of San  
 16 Jose Elections Commission is being held in Room W262 of  
 17 San Jose City Hall. All members of the Commission are  
 18 present except for Commissioner Leon Louie.  
 19 Commissioner Linda Edgeworth is joining us by  
 20 teleconference.  
 21 The Commission will hold a combined hearing  
 22 for three interrelated complaints. The first complaint  
 23 was filed on October 10th, 2012, by John Daley alleging  
 24 campaign violations by Jimmy Nguyen. Specifically, the  
 25 allegation is that Jimmy Nguyen has violated city

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1 fundraising limits, improperly received reimbursement  
 2 for candidate filing fees, received unreported in-kind  
 3 donations, and established an unreported campaign  
 4 headquarters and unreported campaign committees.  
 5 The second complaint, filed on October 26th,  
 6 2012, by Dennis Hawkins alleges that Crema Coffee  
 7 Company, LLC; Crema Coffee Fairmont and related  
 8 entities and their owners, Dung Tran, Kim-Dzung Lam,  
 9 Ngoc-Dzung Lam, Duc Lam, have violated Title 12 of the  
 10 San Jose Municipal Code. Specifically, the allegation  
 11 is that the respondents potentially made campaign  
 12 contributions in excess of contribution limits and  
 13 failed to report non-monetary contributions.  
 14 The third complaint was filed on  
 15 November 16th, 2012, and amended on December 7th, 2012,  
 16 by Dennis Hawkins alleging that Friends of Jimmy,  
 17 Friends of Jimmy Nguyen, Friends of Evergreen for  
 18 Public Safety, Tho NguyenTan, John Le, Ban Van Vu,  
 19 Huynh Luong Thien and other -- and/or other unknown  
 20 individuals or entities have violated  
 21 Section 12.06.910(c) of the San Jose Municipal Code.  
 22 Specifically, the allegation is that the respondents  
 23 formed an independent committee without making the  
 24 necessary campaign disclosure statements.  
 25 This hearing is open to the public. It is

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1 being electronically recorded, and we have a court  
 2 reporter with us to compile a transcript.  
 3 At this time I would like to have people  
 4 identify themselves. First of all, are the two  
 5 complainants -- the original complainants, John Daley  
 6 and Dennis Hawkins, here? Is either of them here? No.  
 7 Okay.  
 8 And the respondents. Jimmy Nguyen?  
 9 MR. ROBINSON: Richard Robinson, representing  
 10 Jimmy Nguyen.  
 11 CHAIRPERSON SMITH: Thank you. Dung Tran?  
 12 Kim-Dzung Lam? Ngoc-Dzung Lam? Duc Lam? Tho  
 13 NguyenTan?  
 14 MR. TAM NGUYEN: Yes. The two respondents,  
 15 Tho NguyenTan and Thien Huynh, represented by myself,  
 16 Tam Nguyen, on their behalf.  
 17 CHAIRPERSON SMITH: Okay. Thank you. And  
 18 also Ban Van Vu?  
 19 MR. VU: Yeah, I'm here.  
 20 CHAIRPERSON SMITH: And Huynh Thien.  
 21 MR. TAM NGUYEN: Huynh Thien is the second  
 22 respondent in Item Number -- Number 3.  
 23 CHAIRPERSON SMITH: Yes.  
 24 MR. TAM NGUYEN: He's here.  
 25 CHAIRPERSON SMITH: He's here also. Okay.

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1 Thank you.  
 2 Okay. And then two representatives have also  
 3 identified themselves.  
 4 Also, I'd like to have city staff and  
 5 representatives of Hanson Bridgett, who is our  
 6 Independent Evaluator, please identify themselves for  
 7 the record. City staff?  
 8 CLERK TABER: Toni Taber, acting city clerk.  
 9 MS. LEE: Sandra Lee, city attorney's office.  
 10 CHAIRPERSON SMITH: Okay. And --  
 11 MS. McDANIEL: Cecilia McDaniel, the city  
 12 clerk's office.  
 13 CHAIRPERSON SMITH: Thank you. And from  
 14 Hanson Bridgett?  
 15 MS. CASSMAN: Joan Cassman, Hanson Bridgett.  
 16 MR. MILLER: Steven Miller from Hanson  
 17 Bridgett.  
 18 CHAIRPERSON SMITH: Before we proceed, I  
 19 would like to briefly go over the commission's process  
 20 for handling complaints.  
 21 On November 30, 2010, the City Council  
 22 adopted Resolution 75640, which establishes the  
 23 Commission's regulations and procedures pertaining to  
 24 investigations and hearings. All parties to these  
 25 proceedings have been provided copies of the

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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1 Resolution. The regulations and procedures have been  
 2 adopted in order to ensure the fair, just and timely  
 3 resolution of complaints before the Commission.  
 4 All complaints are to be filed with the City  
 5 Clerk, who acts as Secretary to the Commission. Upon  
 6 receipt of a complaint, the City Clerk notifies and  
 7 provides a copy of the complaint to the Independent  
 8 Evaluator. The City Clerk also notifies the Commission  
 9 members that the complaint has been filed but does not  
 10 provide a copy of complaint to the Commission.  
 11 Upon receipt of the complaint, the Evaluator  
 12 notifies the respondents of the allegations and  
 13 provides the respondents with a complete copy of the  
 14 complaint unless the Evaluator determines that a delay  
 15 is necessary so as to not compromise the investigation.  
 16 In this case, the Evaluator notified the respondent for  
 17 the first complaint on October 12th, 2012; the  
 18 respondents for the second complaint on October 26th,  
 19 2012; and the respondents for the third complaint on  
 20 November 16th, 2012. The third complaint was amended  
 21 on December 7th, 2012, and the corresponding  
 22 respondents were notified on December 10th, 2012.  
 23 The Evaluator reviews every complaint to  
 24 determine whether sufficient cause exists to conduct a  
 25 preliminary investigation. Sufficient cause exists

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1 when a complaint identifies specific facts which, if  
 2 proven, would be a violation of the Municipal Code. If  
 3 sufficient cause is found by the Evaluator, they will  
 4 conduct an investigation. The investigation must  
 5 include an interview with the respondents and may also  
 6 include an interview with the complainant and any  
 7 witnesses as well as the review of documents or other  
 8 evidence.  
 9 When concluded, the Evaluator prepares a  
 10 written Report and Recommendations. The Report  
 11 includes a summary of city law and evidence gathered  
 12 during the investigation, including any exculpatory or  
 13 mitigating information. The Evaluator may consider all  
 14 relevant facts and evidence, including hearsay  
 15 evidence. The Report shall state whether the Evaluator  
 16 concludes that Respondents did or did not violate city  
 17 law. Recommendations may include actions to be taken  
 18 by the Commission or further investigation may be  
 19 conducted by the Evaluator.  
 20 The Report and Recommendations for the three  
 21 complaints were submitted to the City Clerk by Hanson  
 22 Bridgett on January 4th, 2013, and copies were then  
 23 provided to the complainants, respondents and  
 24 Commission members and posted to the city web site with  
 25 the agenda for tonight's hearing. In addition, a

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1 supplement to the Report for the third complaint was  
 2 submitted to the City Clerk by Hanson Bridgett on  
 3 January 18th, 2013, and copies were similarly  
 4 distributed.  
 5 The formal rules of evidence do not apply to  
 6 this hearing, but all testimony will be under oath or  
 7 affirmation. The complainants will be treated like any  
 8 other witnesses in providing evidence. The Chair may  
 9 compel the testimony of witnesses and may compel the  
 10 production of relevant documents to the Evaluator by  
 11 subpoena. The use of subpoena powers may be used as a  
 12 last resort, after good faith efforts to acquire the  
 13 relevant information have failed and upon a finding  
 14 that the information or testimony is essential for a  
 15 determination in the matter. Witnesses may be excluded  
 16 at the discretion of the Commission. Commission  
 17 members may ask questions of witnesses or the Evaluator  
 18 when recognized by the Chair.  
 19 Under the Commission's regulations and  
 20 procedures, the respondents 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  
 24 information. The respondents must deliver the response  
 25 and eight copies to the City Clerk 24 hours in advance

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1 of the Commission hearing, if possible. The  
 2 respondents may appear before the Commission personally  
 3 or be represented by counsel or other persons.  
 4 Richard Robinson submitted a written response  
 5 on behalf of Jimmy Nguyen, who is a respondent for the  
 6 first complaint, on January 18th, 2013. Tam Nguyen  
 7 submitted a response on behalf of Tho NguyenTan and  
 8 Thien Luong Huynh, respondents for the third complaint,  
 9 on January 8th, 2013, and a supplemental response on  
 10 January 23rd, 2013.  
 11 Do all commissioners and staff have copies of  
 12 these responses?  
 13 VICE-CHAIR COSGROVE: Yes.  
 14 COMMISSIONER PIERRE-DIXON: Yes.  
 15 CHAIRPERSON SMITH: Thank you.  
 16 COMMISSIONER EDGEWORTH: Yes.  
 17 CHAIRPERSON SMITH: Have the complainants  
 18 been provided copies of the responses -- or the  
 19 complainants aren't here, so it doesn't matter. I know  
 20 they were provided.  
 21 Do the respondents to the three complaints  
 22 wish to submit any additional written response at this  
 23 time? Nothing else in writing. Okay. Thank you.  
 24 The complainant or any interested party may  
 25 also submit a brief or written argument 24 hours before

REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p style="text-align: center;">Page 13</p> <p>1 the Commission convenes to hear the complaint, if                  2 possible. The brief or written argument must be                  3 simultaneously provided to the respondents. We have                  4 not received any brief or written argument from the                  5 complainants. And since they're not here, I presume                  6 that there will not be any. So we can move on from                  7 that.</p> <p>8 Okay. Moving forward from this point -- I                  9 should mention, this is very unusual. We're doing                  10 three complaints in one hearing. Normally we have one                  11 complaint per hearing, but these first three of the                  12 four complaints are so interrelated that we're doing                  13 them as one hearing to address all three. However, we                  14 are going to break it down into a little -- somewhat                  15 manageable chunks.</p> <p>16 Moving forward, I'm going to break down the                  17 issues and deal first with those allegations for which                  18 the Evaluator's finding is that no violation occurred.                  19 Following this, we will then consider the remaining                  20 issues.</p> <p>21 The first group of issues will consist of the                  22 following. Complaint Number 1, Issue Number 1, coupled                  23 with Complaint Number 2. Both of these address the                  24 Crema Coffee contributions. Complaint Number 1, Issue                  25 Number 2, which is the campaign reimbursement to the</p>	<p style="text-align: center;">Page 15</p> <p>1 Steve to take over.</p> <p>2 So Complaint 1, filed by John Daley. And the                  3 first issue that Mr. Daley, in his complaint,                  4 identified was an issue as to whether there were                  5 alleged violations of the Municipal Code because                  6 contributions from a group of people identified with                  7 and associated with Crema Coffee constituted excess                  8 contributions, to the extent they violated the \$500 per                  9 donor, per election requirement in the Muni Code.</p> <p>10 So, when we received this complaint, we                  11 immediately got in touch with the campaign. And we                  12 were able to have phone discussions with the campaign                  13 representatives and obtain documentation from the                  14 campaign when requested. We also reviewed the forms                  15 that were filed by the campaign. And came to the                  16 conclusion that there were six donations from Crema                  17 Coffee and people associated with Crema Coffee. And                  18 these are outlined in the first Report, at Page 5.                  19 These six donations -- five of them pertained to the                  20 general election. One of them pertained to the primary                  21 election, because that contribution had been given --                  22 donated on May 2nd. So we will only concern ourselves                  23 with the general election. Because the one                  24 contribution in the amount of \$500 obviously was within                  25 the confines of the law.</p>
<p style="text-align: center;">Page 14</p> <p>1 candidate of the filing fee. Complaint Number 1, Issue                  2 Number 3 -- and these issues are taken from the                  3 Report -- the issues are going to be taken from the                  4 Report that was provided by the Evaluator. Complaint                  5 Number 1, Issue Number 3, which was failure of the                  6 candidate to report in-kind contributions. And                  7 Complaint Number 4B, which was failure of the candidate                  8 to report formation of campaign committee.</p> <p>9 This -- after we get through that part of the                  10 hearing, that will be followed by the remaining issues,                  11 which is Complaint Number 1, Issue 4A, coupled with                  12 Complaint Number 3. And both of those address                  13 expenditures by what was referred to in the Report as                  14 "the group."</p> <p>15 The Commission's regulations and procedures                  16 allow for the Independent Evaluator to present the                  17 Report and Recommendations. At this time I'll                  18 recognize either -- is it Steve or Joan? Who is going                  19 to -- Joan Cassman from the Hanson Bridgett law firm to                  20 present the Reports related to Complaint Number 1,                  21 Issues 1, 2 and -- 1, 2, 3 and 4B and Complaint                  22 Number 2.</p> <p>23 MS. CASSMAN: Thank you, Mr. Chair. And good                  24 evening. I am suffering from the end of a cold. So,                  25 to the extent my voice may give out, I will then ask</p>	<p style="text-align: center;">Page 16</p> <p>1 As to the five contributions, we had two                  2 contributions from business entities, one identified as                  3 Crema Coffee Company, LLC; one identified as Crema                  4 Coffee Fairmont; one from Duc Lam; one from Kim-Dzung                  5 Lam; and one from Dung Tran.</p> <p>6 Of these five, it was our responsibility to                  7 gather information to first determine whether the two                  8 businesses were separate and apart, were                  9 distinguishable businesses. And we were able to                  10 identify, from the evidence in your -- in your packet,                  11 that these were two separate business entities. One                  12 was a limited liability company, and the other was a                  13 partnership. The Crema Coffee Fairmont, the                  14 partnership; the Crema Coffee Company, LLC, was a                  15 limited liability company. The Crema Coffee Company,                  16 LLC, has a sole owner, and that is Dung Tran. The                  17 Crema Coffee Company, which is the partnership, had                  18 three equal partners.</p> <p>19 So we were able to determine, once we applied                  20 the aggregation rules, that of these five \$500                  21 contributions, there were two that should be                  22 aggregated: The contribution from Crema Coffee                  23 Company, whose sole owner was Dung Tran, and the                  24 contribution from Dung Tran. Because, in essence, it                  25 was getting two contributions, under the applicable</p>

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<p style="text-align: center;">Page 17</p> <p>1 rules, from the same person. All the other  2 contributions we had determined, based on the evidence  3 before us, to be appropriate.</p> <p>4 What we -- once we came to this conclusion,  5 we got in touch with the campaign and advised the  6 campaign that we had found that there was one \$500  7 contribution that was beyond the limit. And the reason  8 therefor, because both 500 contributions were really  9 attributable to the same person, Dung Tran. And on  10 November 8th the campaign refunded the \$500  11 contribution to Dung Tran. And under the Municipal  12 Code, if there is a swift -- in this case, very  13 swift -- but within a reasonable time, if there is a  14 refund of an excess contribution to the donor or a  15 contribution to the City's general fund in the amount  16 of the excess contribution, then the violation is  17 nullified.</p> <p>18 And so we came to the conclusion, with  19 respect to this first issue in the Daley complaint,  20 that although there had been an excess contribution, it  21 had been remedied by the immediate refund of -- by the  22 campaign of the contribution to the donor who, in  23 essence, had given two \$500 contributions during the  24 general election period.</p> <p>25 So the second Report is the flip side of what</p>	<p style="text-align: center;">Page 19</p> <p>1 be a potential violation of some person who may have  2 given to the campaign in excess of what that person is  3 otherwise authorized to do under the Municipal Code.</p> <p>4 So, at that point, we placed a call to the  5 then City Clerk, Dennis Hawkins. And we also asked  6 that the city attorney, Sandra Lee, who is assigned to  7 the Elections Commission, join in the discussion  8 because we had a procedural issue at that point. We  9 had the procedural issue as to whether a complaint  10 should be filed, an additional complaint to the Daley  11 complaint, to recognize the potential of the violation  12 that we had come across. And that was the potential of  13 a violation from a new respondent. Not the campaign  14 but the Crema Coffee owners and the Crema Coffee  15 entities.</p> <p>16 So we requested the City Clerk to file a new  17 complaint so that we could put the Crema Coffee owners  18 and the entities on notice that our investigation had  19 reached a point where they were no longer a witness  20 that could give us helpful information, but the  21 information they -- we were seeking from them could  22 implicate them in a violation of the Municipal Code.</p> <p>23 So I am just going a bit in detail to explain  24 the evolution. Because a very similar evolution  25 occurred with respect to the third complaint. No</p>
<p style="text-align: center;">Page 18</p> <p>1 I have just explained to you. The second Report  2 describes the same set of facts but addresses this  3 complaint from the vantage point of the donor. Because  4 the Municipal Code makes it a violation for a campaign  5 to receive excess contributions at the same time. It  6 is a violation for a donor to give in excess of what  7 the contribution limit is for any one election period.</p> <p>8 So the two Reports are basically, as I said,  9 opposite sides of the coin. And we -- we reached the  10 same finding, if you will, with respect to the second  11 complaint.</p> <p>12 And I want to take a moment to explain the  13 evolution of the second complaint because it is very  14 similar to the evolution of the third complaint, about  15 which I know we have some concern in this room. As the  16 Independent Evaluator, when we get a complaint and we  17 begin our investigation, we start to put pieces of a  18 puzzle together. And as that -- as the picture  19 develops, we analyze and assess all the time and try to  20 determine whether there are any other issues that might  21 be implicated by the picture that develops before us.  22 And in the case of vetting, this first issue in the  23 Daley complaint, we realized that not only might there  24 be a potential violation by the campaign of receiving  25 an excess contribution but, on the flip side, there may</p>	<p style="text-align: center;">Page 20</p> <p>1 different than the evolution between the first and  2 second complaint. It was the same thought process, the  3 same pattern. It was our uncovering facts that led us  4 to believe that there was perhaps an additional  5 violation that the original complainant had not  6 identified. And that to fully protect people with whom  7 we would be talking and to allow them to understand  8 that we were seeking information from them not only as  9 interested witnesses but potentially as respondents  10 themselves, we had this complaint filed.</p> <p>11 So, Mr. Chairman, I can go -- would you like  12 me to go on, or would you like to stop and deal with  13 the first issue and the second complaint?</p> <p>14 CHAIRPERSON SMITH: Yeah, maybe if there is  15 any questions from commissioners regarding the Crema  16 Coffee issues.</p> <p>17 COMMISSIONER PIERRE-DIXON: No.</p> <p>18 VICE-CHAIR COSGROVE: No.</p> <p>19 MR. MILLER: Mr. Chairman, if I could add one  20 small item which is in addition to the fairness issue  21 that Ms. Cassman just mentioned involving notification  22 to respondents. It's almost a double fairness issue,  23 because under the Code we're not permitted to share the  24 contents of a complaint with witnesses. We can only do  25 that with the respondents. So to tell someone you're</p>

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<p style="text-align: center;">Page 21</p> <p>1 now potentially a respondent to a complaint but we                  2 can't tell you about the complaint would be patently                  3 unfair. So that's the reason why it's extra-helpful to                  4 have that second complaint.                  5 MS. CASSMAN: So it really is for the                  6 protection of those who are -- who become the subject                  7 of the investigation that we, in this case, asked for                  8 the City Clerk to file -- to file a complaint.                  9 CHAIRPERSON SMITH: Okay. Since there's no                  10 questions, you can --                  11 MS. CASSMAN: Should we move on?                  12 CHAIRPERSON SMITH: Commissioner Edgeworth,                  13 did you have a question? Any questions?                  14 COMMISSIONER EDGEWORTH: No. Everything is                  15 clear to me.                  16 CHAIRPERSON SMITH: Okay. Thank you.                  17 Okay. You can go ahead.                  18 MS. CASSMAN: The second and third issues, I                  19 believe, are more straightforward. So let's see. The                  20 second issue -- I've got to go between my Reports here,                  21 as we all do. In the second -- in the second issue to                  22 the Daley -- we're back to the first Report.                  23 CHAIRPERSON SMITH: Right.                  24 MS. CASSMAN: There was an allegation that it                  25 was a violation of the Municipal Code for Jimmy Nguyen,</p>	<p style="text-align: center;">Page 23</p> <p>1 understated.                  2 And what we were able to do with information                  3 made available to us immediately from the campaign --                  4 and the exhibits contained the evidence -- is confirm                  5 that what was done here was to buy one T-shirt for a                  6 small child. And they even gave us the receipt for the                  7 T-shirt. So there was no question in our minds that it                  8 wasn't a number of shirts. There was one T-shirt                  9 bought from Michael's, and the expenditure was                  10 confirmed.                  11 The second expenditure was a \$400                  12 representation that money was spent on flyers, 4,000                  13 flyers. And here again the campaign was able to                  14 provide us with backup receipts evidencing that,                  15 indeed, \$400, in this case, did cover the expenditure                  16 of the flyers.                  17 So, again, with respect to this third                  18 allegation in the Daley complaint, we found no evidence                  19 that there was a violation, and we would suggest that                  20 this allegation as well be dismissed.                  21 CHAIRPERSON SMITH: One quick question. As I                  22 read the Report, it sounded like the \$400 was like an                  23 initial payment for the 4,000 flyers and that there may                  24 have been subsequent payments? Did I understand that                  25 correctly? Was there an additional payment, or was</p>
<p style="text-align: center;">Page 22</p> <p>1 the candidate, to basically -- to have reimbursed                  2 himself from his campaign funds for the filing fee, the                  3 fee that one pays to file, to run for office. And the                  4 general rule is that when personal funds of a candidate                  5 are placed in a campaign fund, any expenditure out of                  6 those campaign funds -- excuse me -- any payment out is                  7 considered an expenditure, and ordinarily the candidate                  8 is not allowed to reimburse him- or herself.                  9 However, there is express statutory exception                  10 for a reimbursement when the reimbursement is to cover                  11 the filing fee to run for election. So we felt that                  12 the law, on its face, adequately completely addresses                  13 this issue.                  14 Any questions?                  15 COMMISSIONER PIERRE-DIXON: No.                  16 CHAIRPERSON SMITH: No.                  17 MS. CASSMAN: Moving to the third allegation                  18 on the failure to report in-kind contributions, here                  19 there were two incidents that Mr. Daley, the                  20 complainant, brought to the attention of the Evaluator.                  21 One was an expenditure of \$9.82 for a shirt from                  22 Michael's in Redwood City. And I think the way it was                  23 represented on the Report, one might have thought that                  24 this expenditure was for more than one T-shirt. And                  25 there was a sense that perhaps the expenditure was</p>	<p style="text-align: center;">Page 24</p> <p>1 that the total payment?                  2 MS. CASSMAN: Might there have been                  3 additional flyers purchased? I don't -- I don't know.                  4 We do know --                  5 CHAIRPERSON SMITH: Okay. I thought I saw                  6 the word -- when I read it this morning, I thought it                  7 said "initial payment," that the \$400 was an initial                  8 payment for 4,000 flyers.                  9 MR. MILLER: In rereading -- in rereading the                  10 Report this morning, I also noticed that. Sharp eyes.                  11 Representative of the campaign is here to correct me if                  12 I'm wrong, I'm sure. But my recollection is that there                  13 was -- it was not an initial payment. That was just a                  14 mistake in our Report. It was the payment for the                  15 goods that they got for the money they spent. And we                  16 had a receipt from the printing company and a                  17 conversation with the printing company confirming that.                  18 MS. CASSMAN: You're right. It does say                  19 "initial payment" for a larger print on the flyers. I                  20 don't think that there was an additional one.                  21 CHAIRPERSON SMITH: Okay. Thank you.                  22 Any other questions?                  23 VICE-CHAIR COSGROVE: No.                  24 COMMISSIONER PIERRE-DIXON: No.                  25 CHAIRPERSON SMITH: Okay. Go ahead.</p>

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1 MS. CASSMAN: Can we jump to 4B. And 4B was  
 2 an allegation in the Daley complaint that Jimmy Nguyen,  
 3 the candidate, had illegally formed this committee.  
 4 We found no evidence to support this  
 5 allegation whatsoever. We -- you know, to the  
 6 contrary, there is a -- substantial evidence that you  
 7 will find -- and I know we referenced in our Reports as  
 8 well as in the exhibits -- indicating that the campaign  
 9 was trying to distance itself from rather than -- from  
 10 this group rather than any activity or, you know,  
 11 desire to form a group.  
 12 CHAIRPERSON SMITH: Okay.  
 13 MS. CASSMAN: So we would suggest that this  
 14 cause of action or this allegation be dismissed as  
 15 well, on the basis of there is no evidence to support  
 16 it.  
 17 CHAIRPERSON SMITH: Okay. So that covers --  
 18 okay. That covers all the ones that you're  
 19 recommending no violation.  
 20 MS. CASSMAN: That's correct.  
 21 CHAIRPERSON SMITH: And so, I guess, no  
 22 further questions, so we can, at this point -- at this  
 23 time I would ask the respondents for Complaint Number 1  
 24 and Number 2 or their representatives to come forward  
 25 and present any written or oral response. Appreciate

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1 if you could limit your comments to five minutes. And  
 2 this should only deal with the aspects of Complaint  
 3 Number 1 and Number 2 that we're recommending there is  
 4 no violation. We'll later get into the other parts of  
 5 it. So --  
 6 MR. ROBINSON: This is Rich Robinson,  
 7 representing Jimmy Nguyen.  
 8 CHAIRPERSON SMITH: If you want to come  
 9 forward -- come forward and raise your right hand.  
 10 MR. ROBINSON: Whatever you need.  
 11 CHAIRPERSON SMITH: Okay. If you would  
 12 please state your name and raise your right hand.  
 13  
 14 RICHARD ROBINSON,  
 15 being first duly sworn by the Chairperson to tell the  
 16 truth, the whole truth and nothing but the truth,  
 17 testified as follows:  
 18  
 19 MR. ROBINSON: Basically, we support the  
 20 recommendations of the Evaluators in 1, 2, 3 and 4B,  
 21 and we would appreciate you acting on it as quickly as  
 22 possible.  
 23 CHAIRPERSON SMITH: Thank you.  
 24 Anything else?  
 25 Okay. We would call on the complainants if

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1 they wish to say anything, but the complainants are not  
 2 here. So move on from that.  
 3 And is there anyone else here who would like  
 4 to speak to these issues, the ones that we're  
 5 recommending -- that the Evaluator is recommending that  
 6 there is no violation?  
 7 Okay. If not, then I guess if you could just  
 8 summarize the recommendation.  
 9 MS. CASSMAN: So our recommendation would be  
 10 to dismiss Allegations 1, 2, 3 and 4B in the Daley  
 11 complaint as well as dismiss Complaint Number 2.  
 12 CHAIRPERSON SMITH: Okay. It's now time for  
 13 the Commission to make its decision. In doing so, we  
 14 have the following options. First of all, we can find  
 15 that further investigation is necessary. If so, we  
 16 would direct the Evaluator to conduct further  
 17 investigations and report back to the Commission.  
 18 Second, we could also find that there is sufficient  
 19 evidence to establish that no violation occurred. If  
 20 so, we make that finding. That's consistent with the  
 21 recommendation that's been made. That's the second  
 22 option. The third option, Commission may find that  
 23 there is insufficient evidence to establish that a  
 24 violation has occurred. If so, we make that finding  
 25 and announce that fact. And, fourth, we could find

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1 that based on the preponderance of the evidence from  
 2 the entire record of the proceedings, that a violation  
 3 has, in fact, occurred -- one or more violations have  
 4 occurred.  
 5 So I'll open the floor to Commission  
 6 discussion at this point. We need to find -- make a  
 7 finding for each respondent for each potential  
 8 violation. And the findings can be made by a separate  
 9 motion, one for each respondent, and/or one for each  
 10 potential violation. Can it all be done in one motion?  
 11 Basically, we could do one motion to cover all  
 12 respondents for all of those issues. That would be  
 13 fine.  
 14 Discussion? Anybody want to make a motion?  
 15 COMMISSIONER PIERRE-DIXON: Well, I think  
 16 it's pretty clear, on the investigation and the  
 17 information that we have from the Evaluator, what  
 18 occurred here. So I would make a motion at this time  
 19 that we dismiss 1, 2, 3 and 4B in the Daley complaint  
 20 as well as Complaint Number 2 and find that no  
 21 violation occurred.  
 22 VICE-CHAIR COSGROVE: I second.  
 23 CHAIRPERSON SMITH: Okay. Thank you.  
 24 Any discussion on the motion?  
 25 Okay. Then take a vote. All in favor?

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1 CLERK TABER: Roll call.  
 2 CHAIRPERSON SMITH: Oh, we do a roll call?  
 3 Oh, because of the -- right. Okay.  
 4 CLERK TABER: Cosgrove?  
 5 VICE-CHAIR COSGROVE: Aye.  
 6 CLERK TABER: Pierre-Dixon?  
 7 COMMISSIONER PIERRE-DIXON: Aye.  
 8 CLERK TABER: Edgeworth?  
 9 COMMISSIONER EDGEWORTH: Aye.  
 10 CLERK TABER: Smith?  
 11 CHAIRPERSON SMITH: Aye.  
 12 CLERK TABER: Unanimous.  
 13 CHAIRPERSON SMITH: Okay. At this point I  
 14 have to ask each Commission member to certify that they  
 15 have heard or read the testimony at the hearing and  
 16 have reviewed all the evidence in the record by  
 17 asserting "so certified."  
 18 Commissioner Edgeworth?  
 19 COMMISSIONER EDGEWORTH: Aye.  
 20 CHAIRPERSON SMITH: No, "so certified."  
 21 COMMISSIONER EDGEWORTH: So certified.  
 22 CHAIRPERSON SMITH: Thank you. Commissioner  
 23 Cosgrove?  
 24 VICE-CHAIR COSGROVE: So certified.  
 25 CHAIRPERSON SMITH: Commissioner

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1 Pierre-Dixon?  
 2 COMMISSIONER PIERRE-DIXON: So certified.  
 3 CHAIRPERSON SMITH: And me, so certified.  
 4 Okay. Now that we've completed this portion  
 5 of the hearing, we'll now proceed and consider the  
 6 remaining issue, which is Complaint Number 1, Issue 4A,  
 7 coupled with Complaint Number 3, both addressing  
 8 expenditures by what is referred to in the Reports as  
 9 "the group." Again, the Commission's regulations and  
 10 procedures allow for the Independent Evaluator present  
 11 the Report and Recommendations. At this point I'll  
 12 recognize Joan Cassman from Hanson Bridgett to present  
 13 her report relating to Complaint Number 1, Issue 4A,  
 14 and Complaint Number 3.  
 15 MS. CASSMAN: Thank you, Mr. Chair and  
 16 Commissioners.  
 17 So this is the second time in which there was  
 18 creep in our investigation. Call it investigatory  
 19 creep. The Daley complaint had alleged that there was  
 20 a failure to report, by the Jimmy Nguyen campaign, the  
 21 cost associated with their campaign headquarters. So  
 22 that's the allegation from which we, the independent  
 23 investigators, began to look at the facts.  
 24 So we did confirm that there was an office,  
 25 and there was an office that had a banner out in the

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1 front that indicated that it was Friends of Jimmy  
 2 Nguyen. And it had several slogans on the front of the  
 3 banner which made it clear that this was an office that  
 4 was supporting the Jimmy Nguyen campaign. We had an  
 5 independent investigator as well as the former City  
 6 Clerk visit the site and confirm that there were Jimmy  
 7 Nguyen materials in the room, that it looked like the  
 8 kind of office that would serve as a campaign office.  
 9 And the reporting forms from the campaign did not have  
 10 any expenditures related to this office.  
 11 So we were able to ascertain, through a  
 12 meeting with the campaign representatives, that they  
 13 did not have a campaign office, that that was not part  
 14 of their campaign strategy, that they had no intention  
 15 from the outset of having a campaign office, that Jimmy  
 16 Nguyen was operating from his car and his home. They  
 17 felt that was sufficient. And they -- this was not  
 18 part of their campaign strategy. They knew that this  
 19 office existed, but they claimed that this was not an  
 20 office that they had planned, that they desired and  
 21 that they supported in any way, shape or form.  
 22 We -- we did try to get information, as it  
 23 came about, as to who rented the premises, who was  
 24 paying for the utilities to support the premises. So,  
 25 as we started to uncover this information, it emerged

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1 that there was a group of people that -- not just one  
 2 but several -- group of people who were financially  
 3 supporting this office. And we made efforts to get in  
 4 touch with this group of people and find out how and  
 5 why and what and what other expenditures may have been  
 6 offered up.  
 7 What we did find was that there was an office  
 8 lease that began on September 15th. It was signed by  
 9 someone other than a person related to the campaign.  
 10 And it was signed by Tho NguyenTan and that the lease  
 11 was a two-and-a-half-month lease, from September 15th  
 12 to November 7. The lease rent was a total lump sum of  
 13 \$990.  
 14 We uncovered that there was Dung Tran, the  
 15 woman who owns -- the sole owner of Crema Coffee, LLC,  
 16 had established water and PG&E accounts to support the  
 17 utilities. And we had found out from Dung Tran, who  
 18 had talked with us, that she established the accounts  
 19 but that -- and she received the bills, but she did not  
 20 pay those bills. And so she gave us names of people  
 21 who had paid the bills.  
 22 So all of a sudden we had more names. So  
 23 here is the puzzle. We're starting to piece together  
 24 that there is a group. And these names are not people  
 25 who are directly associated, to our knowledge, with the



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1 campaign.  
 2 So then, beyond that, we started to  
 3 understand that this was a group that was very  
 4 supportive of the campaign and that was supportive in  
 5 ways other than just this lease, that they -- it  
 6 occurred to us that someone had paid for a banner, that  
 7 there were other costs associated with this particular  
 8 activity. And we were trying to get to the bottom of  
 9 who these people were, what they felt their  
 10 relationship was to the campaign, and who paid for what  
 11 and how much.  
 12 Because the law does say that if there are a  
 13 group of people who coordinate or collectively expend  
 14 more than a thousand dollars, that they become an  
 15 independent expenditure committee that is required to  
 16 file and to register and file expenditure reports. And  
 17 there had been no registration. There had been no  
 18 expenditure reports filed. There was really no  
 19 evidence in the official election record of any group  
 20 supporting Jimmy Nguyen.  
 21 So then we ran into a bit of a problem trying  
 22 to gain some information. And, you know,  
 23 understandably, when we were trying to reach out to  
 24 these -- the people who had been identified as  
 25 supporting the lease or supporting the utilities, there

1 was an initial skepticism -- I am sure I can understand  
 2 that -- as to who we were and why we were doing this.  
 3 We asked the City Clerk and with the help of  
 4 the city attorney to draft a letter that we could  
 5 provide to make clear that we were authorized to serve  
 6 as the Independent Evaluator for the San Jose Elections  
 7 Commission. And this was provided. But there was  
 8 still, I would have to say, some reluctance to offer up  
 9 much information.  
 10 And -- so as -- as a result we had a meeting  
 11 on December 3rd. And at that meeting, after -- there  
 12 was an introduction, and Steve and I explained who we  
 13 were and why we were -- why we were meeting with them  
 14 or what we were looking -- what we were looking to find  
 15 out. We did receive a response from the attorney  
 16 representing two members of the group, who we were  
 17 pleased to see faces and meet with them, that they were  
 18 not -- they were not willing to give us much  
 19 information and respond. They had answered some  
 20 initial questions on an e-mail that we had put out.  
 21 And those questions had led us to desire a little more  
 22 information, and we felt that we needed to probe  
 23 further. And that's what we told them.  
 24 At the same time I want to recognize that by  
 25 the December 3rd meeting, we had determined that this

1 group may be violating the Municipal Code. Were they  
 2 operating as we thought the evidence seemed to  
 3 indicate, as an independent committee without having  
 4 properly registered and filed?  
 5 So, again, we had gone to the City Clerk, and  
 6 we had asked the City Clerk to file a complaint so that  
 7 we could let these people -- and we don't even know if  
 8 we fully identified all of the people in the group, but  
 9 let the people that we -- whose names had risen to the  
 10 surface know that we were interested in talking with  
 11 them. Not simply as a witness but as a potential -- as  
 12 a person who potentially violated the Code. So a  
 13 respondent.  
 14 So you will see -- this is where the two  
 15 Reports -- the third Report discussing the campaign  
 16 office headquarters expenditures and then moving into  
 17 some other activities and expenditures, that it kind of  
 18 blurs a bit. But we -- we did find that there was the  
 19 office and Jimmy's appearance to open the office.  
 20 There was distribution of campaign materials within the  
 21 office. There was a September 9th flyer in an e-mail  
 22 that indicated that this group was putting something  
 23 together that almost looked like official campaign  
 24 material, which could have been taken from the campaign  
 25 web site. And perhaps it was.

1 And then there was an October 7th banquet at  
 2 which these two -- these members of the support group  
 3 were very present and appeared to have contributed to  
 4 some of the activities at the banquet. But the banquet  
 5 really was, according to the campaign, a campaign  
 6 activity. That was their fundraiser. But there were  
 7 members of the group present, distributing --  
 8 distributing various memorabilia and campaign items,  
 9 tote bags.  
 10 And so at this point things start to blur a  
 11 bit.  
 12 And I will let my colleague, Steve, discuss  
 13 with you the legal standard. He loves to teach. So  
 14 he's going to talk to you about the legal standard  
 15 between -- these expenditures are either attributable  
 16 to the campaign because -- if they were made at the  
 17 behest of the candidate -- or they're attributable to  
 18 this independent expenditure committee, which appears  
 19 it was, because with the rent and the utilities alone,  
 20 the thousand dollars has been exceeded. And we know  
 21 that none of these expenditures were reported.  
 22 So we need to determine which camp they fall  
 23 in. And it could be some fall in one camp, as a  
 24 campaign expenditure; some fall in another camp, as an  
 25 independent expenditure. Maybe all fall in one camp or

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1 the other. I don't think so.  
 2 But that's where we are. I mean, we're at a  
 3 place, without having the full puzzle -- all the pieces  
 4 of the puzzle in place, trying to figure out and help  
 5 the Commission determine what violations of the  
 6 Municipal Code actually occurred.  
 7 CHAIRPERSON SMITH: Okay.  
 8 MS. CASSMAN: So would you help us with the  
 9 legal standard to be applied here.  
 10 MR. MILLER: Sure. I'm not going to teach  
 11 anybody anything, but I do think it's helpful. And one  
 12 of the advantages of the rescheduling of tonight's  
 13 hearing is give us all time to reflect and think again  
 14 and read again these Reports.  
 15 So it does seem that it's helpful to keep in  
 16 the front of your minds, Commissioners, two key legal  
 17 rules as you try and understand the complicated story  
 18 that we were faced with as we proceeded through this  
 19 investigation. And the two rules that I think are  
 20 critical for us all to understand together is that --  
 21 the first is the definition of an "independent  
 22 expenditure" and the crucial fact that that definition  
 23 excludes expenditures that were made, quote, at the  
 24 behest of a candidate.  
 25 And the second crucial rule is the provision

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1 in the Muni Code, San Jose Municipal Code, that  
 2 requires -- defines an "independent committee" as a  
 3 group of individuals who make independent expenditures  
 4 totaling more than \$1,000 in a calendar year. And if a  
 5 group of individuals makes such independent  
 6 expenditures over a thousand dollars in a calendar  
 7 year, they have certain obligations. They have to file  
 8 a petition. They have to file disclosure forms  
 9 periodically.  
 10 And these two rules are intertwined.  
 11 Because, as our Report indicates, there is this -- a  
 12 group of -- a group of individuals that likely, in our  
 13 view, satisfies the definition of an "independent  
 14 committee" but which did not file the necessary  
 15 registration papers.  
 16 The big "but" to what I just said is that  
 17 some of the expenditures made by this group of  
 18 individuals might be considered as expenditures made at  
 19 the behest of the candidate. And, if so, they're not  
 20 considered independent expenditures.  
 21 And without those expenditures, based on the  
 22 evidence that we know with hundred percent certainty  
 23 tonight, it's hard to say with a hundred percent  
 24 certainty that without those expenditures, the dollar  
 25 value of the expenditures otherwise made by this group

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1 of individuals exceeds the thousand dollar mark. It  
 2 might. You may find that it does and you might find  
 3 that the preponderance of the evidence indicates that  
 4 it does or that it doesn't or you're not sure. But we  
 5 can't say with a hundred percent certainty that without  
 6 those expenditures.  
 7 And so it's important to distinguish, if  
 8 these expenditures were not made at the behest of the  
 9 candidate, then as -- the flip side of that is then  
 10 it's quite easy to determine that the thousand dollar  
 11 threshold has been reached.  
 12 It's also important to -- for you to  
 13 determine whether these were made or not at the behest  
 14 of the candidate because, if they were, they should  
 15 have been reported by the candidate as contributions to  
 16 the campaign.  
 17 And that's why the two investigations and  
 18 Reports are linked. Because if they're independent  
 19 expenditures, they are the responsibility of this group  
 20 of individuals to report -- to register as an  
 21 independent committee. And if they're not independent  
 22 expenditures but, rather, were made at the behest of  
 23 the candidate, then it should be reported by the  
 24 candidate as contributions.  
 25 It's our belief that they must -- these

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1 expenditures must be one or the other. There is not  
 2 really a choice, that they are unregulated political  
 3 expenditures. They are expenditures, as that term is  
 4 defined. It's only a question whether they are  
 5 independent expenditures or expenditures made at the  
 6 behest of the candidate.  
 7 So, with that, if you would find it helpful,  
 8 we could go through the definition of what it means to  
 9 be made at the behest of the candidate. Because that  
 10 really is the ultimate issue before you.  
 11 I see one commissioner nodding your head, so  
 12 I'll continue until you tell me to stop.  
 13 COMMISSIONER PIERRE-DIXON: Go ahead.  
 14 MR. MILLER: The law on this is a little  
 15 fuzzy. No surprise to anyone who reads the newspaper  
 16 about campaign rules and campaign laws. They're not  
 17 written in a way that contemplates every single fact  
 18 and circumstance that one can imagine. So you have a  
 19 difficult task, to determine whether the evidence  
 20 before you falls cleanly or even, in your opinion, by a  
 21 preponderance of the evidence into one category or  
 22 another.  
 23 So the definition of what is an expenditure  
 24 made at the behest of a candidate is a definition found  
 25 in state law that is incorporated into the Municipal

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1 Code. And it has some aspects of the definition that  
2 are easy to understand and some that are not so easy to  
3 understand.

4 The first aspect is if it's made under -- if  
5 an expenditure is made on the behest of a candidate if  
6 it's made under the control of a candidate or at the  
7 direction of the candidate. And I think we have no  
8 evidence to suggest that any of the types of  
9 expenditures, whether the office or the banquet or  
10 advertisements -- there's no suggestion that the  
11 candidate actively controlled or directed these.

12 Less clear is the part of the definition that  
13 says that a contribution was made at the behest of the  
14 candidate if it's made in cooperation, consultation,  
15 coordination or in concert with -- although it is  
16 important to keep in mind, when you think about those  
17 fuzzy words, that the definition also requires that  
18 that arrangement or coordination be made before the  
19 communication that is funded by the expenditure at  
20 issue was made.

21 So to help you, if that's the right word, in  
22 understanding this term, the definitions also include  
23 some descriptions of two situations in which there is a  
24 presumption that a particular expenditure was made at  
25 the behest of the candidate. And these are

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1 made a contribution to my campaign because you made an  
2 expenditure that was not independent. It was  
3 coordinated because you made it based on information  
4 you learned from me about my campaign plan.

5 So there are facts present here that raise  
6 this presumption. They don't answer the question.  
7 They just raise the presumption.

8 So what we learned is that there was a  
9 meeting between Mr. Robinson, who is present tonight,  
10 the candidate's representative, and members of this  
11 group at which we were told by Mr. Robinson that he  
12 learned that the group wanted to rent campaign  
13 headquarters for the candidate and that he told them,  
14 We don't want campaign headquarters. We're not going  
15 to rent our campaign headquarters. And the group  
16 said -- you know, Fine. We're going to do it anyway.  
17 And based on their knowledge that the -- potentially --  
18 one might reach the conclusion that based on the  
19 knowledge provided them by the campaign that the  
20 campaign was not going to open the campaign  
21 headquarters, this group made expenditures in  
22 connection with -- for political purposes that meet --  
23 otherwise meet the definition of an expenditure but is  
24 not an independent expenditure because it was based on  
25 the knowledge of the campaign's plans.

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1 presumptions. They're not -- that means that you can  
2 have facts that meet that and you find, oh, it doesn't  
3 meet the definition from a common-sense perspective.  
4 You can also find that that presumption existed but  
5 other facts exist to rebut that presumption. It is  
6 very much of a fluid, fuzzy, dynamic definition. But,  
7 nonetheless, the presumptions are there to try to guide  
8 us in understanding.

9 So the first presumption is that -- let me  
10 make sure I'm saying this right. So the first  
11 presumption is that an expenditure is presumed to be  
12 made at the behest of the candidate if it's based on  
13 information about the candidate's campaign needs or  
14 plans provided to the expending party by the candidate  
15 or through an agent of the candidate.

16 And this makes some sense. Because if I'm  
17 the candidate and you want to help me and I say, Hey, I  
18 sure would love ads -- to take out ads in newspapers;  
19 I'm going to take out ads on Monday and Wednesday, but  
20 I can't really afford them on Thursday and Friday; and  
21 you then go out and take ads on Thursday and Saturday  
22 because you know I'm not going to be doing it then,  
23 you're making an expenditure based on information I  
24 provided you about my campaign plans. And the law says  
25 that should be treated -- that's on me. That -- you

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1 There is ample evidence of the candidate's  
2 efforts to distance themselves from that headquarters  
3 and to attempt vigorously to avoid crossing the line  
4 into impermissible coordination. But it's hard to  
5 unring a bell, and -- but, nonetheless, you may find  
6 that that evidence rebuts the presumption, doesn't  
7 rebut the presumption. It is, undeniably, a little bit  
8 of a gray area.

9 Similarly, we --

10 CHAIRPERSON SMITH: Can I ask you a  
11 question --

12 MR. MILLER: Yes, sir.

13 CHAIRPERSON SMITH: -- before the thought  
14 escapes, while we're here?

15 MR. MILLER: Yes.

16 CHAIRPERSON SMITH: Take this scenario.  
17 Would it make a difference in this scenario if Person A  
18 said, We're not going to have a headquarters and we  
19 don't want one as opposed to we're not -- gee, we  
20 really can't -- we really would like to have a  
21 headquarters, but we can't afford it? Those seem to me  
22 like two very different scenarios that both involve  
23 people having knowledge that you're not going to have  
24 headquarters, but maybe one is under the presumption  
25 and maybe one isn't. But I'm not sure.

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1 MR. MILLER: So I don't know that I can  
2 provide you a black-letter answer to your question  
3 based on established case law or established -- what  
4 you say makes sense and one's interpretation of these  
5 regulations often comes down to a common-sense  
6 interpretation of facts and circumstances. Really,  
7 the -- the only real guidance we have on this is the  
8 regulatory language, which doesn't get into those five  
9 points.

10 CHAIRPERSON SMITH: Which is where it gets  
11 muddy?

12 MS. CASSMAN: That's where your discretion  
13 comes in as the Commission. And you have people here  
14 that you could drill down and ask exactly what was --  
15 what was said.

16 COMMISSIONER PIERRE-DIXON: I actually have  
17 one other question too. Is there any possibility that  
18 when you look at the group, that any of them could be  
19 considered separate from one another and, therefore, be  
20 two independent groups acting together and then bring  
21 down the amount of money that was expended?

22 MR. MILLER: That's an interesting question.  
23 It's a great question.

24 Because there was no reporting made, it's a  
25 little hard to know the exact answer. The -- the

1 definition of an "independent committee" is an  
2 individual or a group of individuals. What you're  
3 suggesting is how do we know that there wouldn't be two  
4 groups: Group 1 did this; Group 2 did this?

5 And I guess I would suggest a common-sense  
6 answer to that question, which is, while I think one  
7 could imagine facts and circumstances hypothetically  
8 where that would be the case, the facts that we  
9 uncovered seemed pretty clear to me -- and correct me  
10 if you think I'm wrong -- that the same individuals  
11 show up in relation to all of the different types of  
12 expenditures that we found.

13 Moreover, using the same formal names of  
14 entities that turned out not really to exist with any  
15 formality, like Friends of Jimmy and Friends of  
16 Evergreen For Public Safety -- those names appear on  
17 the lease. They appear on the banner. They appear on  
18 the advertisement. They appear in the invitations for  
19 the banquet. It doesn't appear, in this particular set  
20 of facts and circumstances, that there are --

21 COMMISSIONER PIERRE-DIXON: Two different --

22 MR. MILLER: -- that one might find multiple  
23 independent committees.

24 MS. CASSMAN: It seemed like -- as though  
25 they were acting together. And the e-mails indicate --

1 are being sent to the same people. And there's one  
2 e-mail that talks about "I'm the person in charge."

3 You know, the first time we had an indication  
4 of this actually was in looking at the issue of the  
5 excess contributions regarding Crema Coffee. Because  
6 when we talked to Dung Tran and her family, she  
7 mentioned attending a meeting of a group of people. So  
8 it seemed pretty clear to us -- that was the first hint  
9 we had that there was some activity that, arguably, was  
10 separate from the campaign. And she said that she was  
11 meeting with this group of people and that they had  
12 gotten together to figure out who would assume  
13 responsibility for different expenditures.

14 COMMISSIONER PIERRE-DIXON: And that's where  
15 my question arises, because my concern is that in her  
16 paying for the PG&E and the water and then just doing  
17 the initial setup and then walking away from that, is  
18 that an independent expenditure there, an independent  
19 group, and now this other group then takes over and  
20 moves forward from there? And then the other group --

21 MS. CASSMAN: Right. Well, it seems to me it  
22 was all contributing to a coordinated goal of  
23 supporting an office.

24 MR. MILLER: She did not make the -- open the  
25 PG&E accounts on her own initiative. She was asked to

1 do that. And then --

2 MS. CASSMAN: And then when she received the  
3 bills, she asked members --

4 MR. MILLER: Other people --

5 MS. CASSMAN: -- who could I send this to?  
6 And she was sending it to other people to pay.

7 We didn't have an opportunity to really vet  
8 and drill down into the group.

9 MR. MILLER: But I would suggest that you do  
10 focus on the expenditures relating to the headquarters  
11 office. Because if you find that the -- these  
12 expenditures meet this presumption without any  
13 rebuttal, I think you -- your path is clearer with  
14 regards to Complaint Number 1. The results of finding  
15 that would be -- first of all, with regard to Number 1,  
16 you would have expenditures made at the behest of the  
17 candidate that should have been treated by -- as  
18 contributions but were not.

19 And then with regards to Complaint Number 3,  
20 you then -- first of all, you don't have enough  
21 expenditures to hit the thousand dollar mark unless you  
22 determine that additional expenditures likely, by  
23 preponderance of an evidence -- of the evidence, would  
24 have cost more than a thousand dollars; or you choose  
25 to direct further reporting of expenditures and further

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1 investigation to find out exactly what happened.  
 2 MS. PIERRE-DIXON: Right.  
 3 MR. MILLER: And, on the other hand, if you  
 4 find that the evidence shows that the -- either the  
 5 presumption didn't exist that there was coordinated  
 6 activity or, to the extent there was, the evidence that  
 7 the campaign tried to distance themselves is sufficient  
 8 to rebut that presumption, you then also have a lot  
 9 clearer path forward. It doesn't completely clear you  
 10 up, but it does -- with regards to Investigation  
 11 Number 1, it does suggest that these were not  
 12 expenditures made at the behest of the candidate. And  
 13 you might make a finding accordingly. And that  
 14 similarly, then, you -- it's almost inconceivable that  
 15 the thousand dollar threshold would not have been made,  
 16 which also would indicate, you know, how you want to  
 17 treat the other world of expenditures as well.  
 18 So I would suggest that this office  
 19 expenditure issue is one that you should get clear in  
 20 your minds about and figure out. And we can help you.  
 21 We can talk more about it. And you have  
 22 representatives here who might answer your questions to  
 23 help you understand whether this Presumption A was  
 24 created and, if so, was -- is rebutted. And I think  
 25 that would be a useful exercise.

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1 CHAIRPERSON SMITH: Okay.  
 2 COMMISSIONER EDGEWORTH: Mr. Chairman?  
 3 CHAIRPERSON SMITH: Yes.  
 4 COMMISSIONER EDGEWORTH: I'd like to ask a  
 5 clarifying question on something that was said by the  
 6 Evaluator earlier. Because I think it's important for  
 7 our understanding of how we proceed.  
 8 CHAIRPERSON SMITH: Go ahead.  
 9 COMMISSIONER EDGEWORTH: And I would like  
 10 clarification as to whether -- the implication that  
 11 there's an all-or-nothing issue. If we found a  
 12 violation had been made, we have to attribute it to an  
 13 independent committee or to a violation of the  
 14 reporting of campaign expenditures on the campaign  
 15 itself? Is it an all-or-nothing issue, or can certain  
 16 things be divided out, attributable to one as opposed  
 17 to the other?  
 18 MR. MILLER: So, with regards to a particular  
 19 expenditure, it must be one or the other. An  
 20 expenditure cannot be both independent and made at the  
 21 behest of the candidate.  
 22 However, there are facts before you such that  
 23 making that determination that Expenditure A -- if you  
 24 determine that all the office expenses were independent  
 25 expenditures, that doesn't necessarily mean that the

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1 expenditures for the tote bags handed out at the  
 2 banquet were the same.  
 3 COMMISSIONER EDGEWORTH: Okay. I wanted that  
 4 clarification because I think (inaudible).  
 5 I would like to point out that I think -- one  
 6 of the things that struck me about your evaluation was  
 7 the cost (inaudible). And, you know, we can't really  
 8 determine whether they met the thousand dollar  
 9 threshold. And I would suggest that we -- we know that  
 10 they met the thousand dollar threshold strictly on the  
 11 operational cost and the overhead cost attributed to  
 12 the operation of the office. Was \$990 for the rent for  
 13 the two-month period as well as \$37 for the electricity  
 14 and \$28 for the water. And those total up to over a  
 15 thousand dollars in and of themselves.  
 16 And, as I understand it, when it talks about  
 17 the expenditures contributing to communications, that  
 18 the provisions under Regulation 1825 expressly include  
 19 the amount of expenditures for overhead costs  
 20 attributed to the communication.  
 21 MS. CASSMAN: That is correct if you reach  
 22 the conclusion that the office expenditures and all the  
 23 expenditures related to the office were independent and  
 24 should not be attributable to the campaign.  
 25 COMMISSIONER EDGEWORTH: I understand. I

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1 understand.  
 2 And the other issue is that based on the  
 3 evidence, we know that at least three people spent over  
 4 a hundred dollars and that they provided \$390 for past  
 5 payments to offset the initial lease, which was made to  
 6 a group.  
 7 COMMISSIONER PIERRE-DIXON: I think she's  
 8 talking about the three individuals that helped pay --  
 9 the cash they --  
 10 MS. CASSMAN: The lease.  
 11 COMMISSIONER EDGEWORTH: Well, they met the  
 12 threshold of a hundred-dollar-or-more expenditure as an  
 13 individual or as a group. And the fact that they  
 14 contributed that to the lease that was made out in the  
 15 name of the group, I would suggest meets the criteria  
 16 for independent committee.  
 17 CHAIRPERSON SMITH: I think there was also --  
 18 this is my last question, and I'll let you guys  
 19 continue. I think there was also an inference in the  
 20 Report that perhaps there was a -- what would amount to  
 21 a contribution, that perhaps the office was leased at  
 22 below-market rates. And the difference between the  
 23 \$990, which is, coincidentally, \$10 below a thousand --  
 24 the difference between that and what the going rate for  
 25 that office space might be could perhaps be a non-cash

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1 contribution.  
 2 MR. MILLER: Well, an interesting --  
 3 CHAIRPERSON SMITH: Which would take us even  
 4 higher.  
 5 MR. MILLER: Well, this is an issue where  
 6 there is some guidance. And I can't explain the  
 7 reasons for the guidance, but I can explain to you what  
 8 the rules are. Which is, oddly enough, if the rent is  
 9 counted as an independent expenditure, the rules would  
 10 say that you count what you paid. You paid \$900.  
 11 CHAIRPERSON SMITH: It's only if it's --  
 12 MR. MILLER: If it's a contribution to the  
 13 campaign in kind, you then have to treat -- you then  
 14 have to have an inquiry on whether it is a -- what the  
 15 fair market value was and what the value of the  
 16 contribution was, and you have to look at whether there  
 17 was a discounted rent paid.  
 18 COMMISSIONER PIERRE-DIXON: Right.  
 19 MR. MILLER: One could imagine rules designed  
 20 differently, but that's just the way they are.  
 21 CHAIRPERSON SMITH: Okay. So you want to  
 22 continue.  
 23 MR. MILLER: Only -- as Commissioner  
 24 Edgeworth has properly indicated, I think, if you sort  
 25 of think about -- I think it's hard to think of all of

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1 these things in combination. And trying to create sort  
 2 of a flowchart through this story, it seems to me that,  
 3 first, determining whether these -- a thousand dollar  
 4 threshold was met as an independent expenditure through  
 5 these expenditures associated with the office rental --  
 6 that decision -- from that decision flows four or five  
 7 other decisions. So I'm not sure that you -- do you --  
 8 I mean, we can proceed and wait for your deliberation  
 9 on everything until later or you can focus on that  
 10 issue before proceeding down one of the tributaries  
 11 that flow from that decision.  
 12 COMMISSIONER PIERRE-DIXON: I think we need  
 13 to decide whether or not that's an independent  
 14 expenditure first.  
 15 CHAIRPERSON SMITH: But we can't make that  
 16 decision. We haven't heard from anybody else.  
 17 COMMISSIONER PIERRE-DIXON: Well, we can  
 18 determine -- but we need to start that process.  
 19 MS. CASSMAN: Right. It may be that you  
 20 would like to ask questions. Your opportunity to seek  
 21 some answers --  
 22 CHAIRPERSON SMITH: Well, you're suggesting  
 23 that we defer the rest of your stuff until we've spoken  
 24 to the other people?  
 25 MS. CASSMAN: Well --

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1 MR. ROBINSON: Just on Issue 1.  
 2 COMMISSIONER PIERRE-DIXON: Just on Issue 1.  
 3 MR. MILLER: Yeah, Mr. Robinson here  
 4 obviously has something that he would like to say. I  
 5 think we're suggesting that maybe it would be  
 6 appropriate to hear from him.  
 7 CHAIRPERSON SMITH: Okay. Why don't we do  
 8 that and then come back to you guys.  
 9 Mr. Robinson, I've already sworn you in, sir.  
 10 MR. MILLER: I'm good.  
 11 MR. ROBINSON: And so let me thank the  
 12 Evaluators too. Because we have been through this, and  
 13 they've been very professional in their conduct. And  
 14 we really appreciate them, going forward. This is an  
 15 ordeal for everybody. Everybody who has read my blogs  
 16 know how I feel about ethics investigations, just in  
 17 general. Having said that, they made a very good case  
 18 of how minor this body of law is.  
 19 And what I want to address right now is  
 20 basically the one issue in Evaluation 1 and regarding  
 21 whether or not there was any -- any expenditure made at  
 22 the behest of the Jimmy Nguyen campaign. And I can  
 23 tell you right now there was not. And there is no  
 24 evidence to show that. In fact, all of the evidence is  
 25 antithetical to that.

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1 The reason we had a meeting, in general -- I  
 2 can't even remember what the date of the meeting was,  
 3 as the Evaluators will tell you -- is that there was a  
 4 group of people that wanted to have a campaign  
 5 headquarters. And I said and the campaign said, We  
 6 don't want a campaign headquarters, because it's  
 7 frivolous expense in a City Council campaign. As you  
 8 all know, there is expenditure limits that every City  
 9 Council campaign has. And so you have to spend your  
 10 resources very wisely. And, therefore, there was no  
 11 other campaign that I know of in the city of San Jose  
 12 that would open a headquarters at this point, because  
 13 it's a frivolous expense. You want your campaign  
 14 resources to go to something else.  
 15 And so I made that clear to the group that I  
 16 met with at my particular office. And they indicated  
 17 to me that from their vantage point, they were going to  
 18 go forward with a headquarters no matter what because  
 19 that's what their community needed.  
 20 And at that point I ended the meeting, and I  
 21 said, You're going to have to go get your own  
 22 counsel -- and I'm very happy to see that they finally  
 23 did get counsel -- and you're going to have to proceed  
 24 on your own.  
 25 And from that point on we basically

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<p style="text-align: center;">Page 57</p> <p>1 bifurcated everything. And if you take a look at all  2 of the evidence that we provided, we made a very  3 stringent effort to distance ourselves from whatever  4 independent expenditures may or may not have been made  5 by whatever individuals were involved.  6 And we didn't know -- we, like the  7 Evaluators, don't know who is involved and who is not  8 involved. All we said is that this is inappropriate,  9 and we basically said to please get your own counsel on  10 the repeated times that they contacted our campaign.  11 So that's the statement I would like to make.  12 I would be happy to answer any questions you have  13 regarding any of the incidents that come to mind.  14 COMMISSIONER PIERRE-DIXON: The only other  15 question I have is in reference to the advertisement  16 and whether or not that was at the behest of the  17 candidate. I see that he sends it back and doesn't pay  18 it, but I want to know if you had additional  19 information in reference to do that.  20 MR. ROBINSON: No, we never authorized that,  21 and we would not pay it and we didn't pay it. In fact,  22 the treasurer is the person who paid all the bills,  23 Angela, who's back there. And you can ask her. She  24 was actually the person in charge of paying the bills  25 and authorizing the expenditures. Because we -- the</p>	<p style="text-align: center;">Page 59</p> <p>1 talked to a lot of different groups, including this  2 group, including -- the South Bay Labor Council has  3 also had an independent expenditure. Including the  4 Police Officers' Association, who also have an  5 independent expenditure. So I'd like to go on record  6 as saying that none of those independent expenditures  7 were very helpful to our campaign. None of them. And,  8 in fact, when the candidate loses the ability to put  9 out his own message, you hurt their campaign.  10 And the problem that we have in these  11 expenditure limits, these independent campaigns and the  12 independent expenditures campaign -- and it's not just  13 attributable to the group that is here today -- is that  14 there is no -- the message gets lost from the  15 candidate. And that's what happens during this -- and  16 it's because of the plethora of laws that we sort of  17 now live with -- under in terms of contribution  18 expenditures, but that's a diversion.  19 Jimmy did speak to the group, as he spoke to  20 a lot of other groups. He was invited to speak. He  21 spoke and he left. And that was the total sum of his  22 participation at that particular point.  23 CHAIRPERSON SMITH: As a follow-up to that:  24 I was sort of surprised, given the lengths to which it  25 appears you went to distance yourself from the group,</p>
<p style="text-align: center;">Page 58</p> <p>1 way the campaign was laid out is I was the consultant,  2 she was the treasurer, Jimmy was the candidate, and all  3 financial decisions came through Angela.  4 COMMISSIONER EDGEWORTH: I want to ask  5 Mr. Chairman: I wonder if I might ask some question of  6 the witness.  7 CHAIRPERSON SMITH: Sure. Go ahead.  8 COMMISSIONER EDGEWORTH: I think I -- if I  9 were to have any questions, it would be related to the  10 fact that the candidate went to the grand opening. And  11 also I'm -- with all of the expense of e-mailing,  12 inviting -- this group inviting all the people to the  13 campaign event, participating in the campaign event,  14 which had been arranged in advance of the actual day of  15 the event, and with all the invitations and mailing,  16 I'm curious as to whether there was a sharing of the  17 distribution list for e-mails. And I'm wondering if  18 the distribution list of the candidate's campaign and  19 this group, how they would compare.  20 MR. ROBINSON: We have no idea who they  21 invited. There were -- we know who we invited. We  22 don't know who they invited.  23 But the coordination -- let me tell you,  24 communication is not coordination. And your Evaluators  25 can give you a real legal distinction there. But Jimmy</p>	<p style="text-align: center;">Page 60</p> <p>1 that -- and I know this is a -- a difficult balancing  2 act. But I'm sort of surprised that you didn't tell  3 him, Don't go to that office.  4 MR. ROBINSON: Let me tell you what advice I  5 did give him --  6 CHAIRPERSON SMITH: Because there is two  7 things that sort of trouble me. One is that he was  8 there at the opening of the office and spoke. And the  9 other one is the intersection that occurred relative to  10 the October 7th banquet, where it appears that there  11 was some coordination or something made -- maybe  12 "coordination" isn't the right word. The campaign -- I  13 guess it was an official campaign event. But this  14 group that we're talking about was responsible for the  15 entertainment and was inviting people and -- I'm a  16 little uncomfortable with both of those.  17 MR. ROBINSON: Okay. Let me explain how sort  18 of this works. I have a little brother who used to tag  19 along with me everywhere I went. And I just couldn't  20 control what he did. No matter what I did, I couldn't  21 control him. And I would tell him, It's inappropriate  22 behavior, Bob. You can't do this. Please don't do it.  23 And that's the situation we're in. The  24 community wanted to help. And Jimmy's -- as the  25 candidate, it's not his job to say no. His job is to</p>

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1 say yes. It's my job to say no.  
 2 I was not at the banquet. I heard about this  
 3 later. We sent a letter to the group, saying it was an  
 4 inappropriate activity.  
 5 CHAIRPERSON SMITH: Afterwards?  
 6 MR. ROBINSON: Afterwards, yes. Because I  
 7 didn't know.  
 8 CHAIRPERSON SMITH: You didn't know.  
 9 MR. ROBINSON: So, you know, we did  
 10 everything we possibly could. And, again, we -- in  
 11 every one of our communications -- and I think Angela  
 12 made most of the communications -- we certainly asked  
 13 them to seek legal help, because we know this area is  
 14 complicated.  
 15 And I got to give -- you know, and I want you  
 16 to understand, as the group comes forward, that I'm not  
 17 trying to defend their group or -- they have,  
 18 certainly, competent counsel to do that. But it's a  
 19 different community that's just not used the laws --  
 20 the plethora of laws that exist in the city, state and  
 21 nation that we live when it comes to elections. And  
 22 it's a new community that is just emerging as a power  
 23 in our community. And it's more out of naivete, I  
 24 would believe, than intention. But that's basically  
 25 what is happening.

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1 CHAIRPERSON SMITH: What about the -- you  
 2 mentioned the dinner. What about the office opening?  
 3 Were you aware that he was going to speak at the office  
 4 opening beforehand? Did you advise him to go or not  
 5 go?  
 6 MR. ROBINSON: What I -- I did advise him  
 7 beforehand that he could speak at independent  
 8 expenditure events so long as there was no  
 9 coordination. And I gave him that legal advice.  
 10 I found out after the fact that he went to  
 11 this particular independent organization. But I had  
 12 previously given him specific instructions regarding  
 13 what he could say and what he could not say, what  
 14 coordination was and what coordination was not. And  
 15 so, when he spoke to this group, he was doing it under  
 16 that auspices, as he would any other group, whether he  
 17 was invited to a home.  
 18 And the second thing I would say is, you  
 19 know, he was unaware and I'm unaware -- and I think  
 20 even the Evaluators are unaware -- what the scope of  
 21 the group is. Obviously, the headquarters was in one  
 22 place where he went and spoke. But we were unaware who  
 23 in the community was part of this group.  
 24 COMMISSIONER EDGEWORTH: Mr. Chairman?  
 25 CHAIRPERSON SMITH: Yes.

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1 COMMISSIONER EDGEWORTH: If I might go back  
 2 to the banquet for a moment.  
 3 CHAIRPERSON SMITH: Sure.  
 4 COMMISSIONER EDGEWORTH: While, Mr. Robinson,  
 5 you may not have known and may not have attended the  
 6 banquet, the very fact that the group in mind was the  
 7 entertainment and actually facilitated the opening  
 8 ceremony would -- would make me understand that there  
 9 was advanced planning and advanced coordination with  
 10 that, with a campaign committee. Because I'm sure he  
 11 didn't show up and say, We're going to have the opening  
 12 ceremony.  
 13 In addition, the presentation of the tote  
 14 bags and all the other materials at that banquet is a  
 15 part of those expenditures, it occurred to me, because  
 16 of the advanced planning that would have had to take  
 17 place.  
 18 MR. ROBINSON: Well, let me just answer that.  
 19 Again, we are not aware of who the individuals were  
 20 that were involved in the other -- other group. And so  
 21 we have no knowledge of that. I know that Angela was  
 22 the treasurer, and the dinner was put together as a  
 23 part of our campaign. How all of those arrangements  
 24 were made, I do not know.  
 25 But I do know that we did not coordinate

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1 knowingly with anybody regarding that fundraiser and  
 2 that when we found out that members of the committee --  
 3 or that materials were distributed that were not ours,  
 4 we did everything in our power to let folks know that  
 5 it was inappropriate behavior.  
 6 CHAIRPERSON SMITH: Okay. Any other  
 7 questions for Mr. Robinson?  
 8 COMMISSIONER PIERRE-DIXON: No.  
 9 CHAIRPERSON SMITH: Okay. Thank you.  
 10 MR. ROBINSON: Okay. And I would just like  
 11 to say one thing. I would really appreciate -- and I  
 12 think this would make your life a whole lot easier --  
 13 if you would accept Recommendation 1.  
 14 MR. TAM NGUYEN: Okay. May I be heard on  
 15 that, please?  
 16 CHAIRPERSON SMITH: Just one second.  
 17 Do we want to hear other witnesses and then  
 18 go back to the Evaluator?  
 19 MS. PIERRE-DIXON: No, I (unintelligible).  
 20 CHAIRPERSON SMITH: Okay. Mr. Nguyen, you  
 21 want to come forward and identify yourself and raise  
 22 your right hand, please.  
 23  
 24  
 25



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1 TAM NGUYEN,  
 2 being first duly sworn by the Chairperson to tell the  
 3 truth, the whole truth and nothing but the truth,  
 4 testified as follows:  
 5  
 6 MR. TAM NGUYEN: My name is Tam Nguyen,  
 7 T-a-m, N-g-u-y-e-n. I know it's not my turn, but when  
 8 I listen to the presentation I thought the Commission  
 9 should know the truth. That's why I come forward, to  
 10 provide you with proof to show otherwise, that counsel  
 11 and other people were not informed.  
 12 In fact, September 15 --  
 13 CLERK TABER: Hold on just a second.  
 14 (Discussion off the written record.)  
 15 MR. TAM NGUYEN: Like I said at the  
 16 beginning, Jimmy wrote a thank-you in a memo to  
 17 committee. "Hi, Mr. Tony and Tho. Thank you very much  
 18 for the work you" -- "and help today with the space.  
 19 Please accept my apologies for the extra trouble that I  
 20 caused. The unit is a beautiful unit and in a prime  
 21 location. Many people are excited for it already. I  
 22 greatly appreciate your help in finding this spot and  
 23 for all the other work you have done for me. Have a  
 24 relaxing weekend."  
 25 That is the thank-you note from Jimmy Nguyen.

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1 Apparently a lot of things that he did not tell his  
 2 counsel or the investigator.  
 3 But, more than that, in fact, the memo from  
 4 Jimmy campaign, try to distance themselves to this  
 5 group, was more than a month later, after this open of  
 6 the place.  
 7 And let me tell you the reason why that memo.  
 8 Because they demand all the money from that event.  
 9 This group refused. And that was a problem that  
 10 apparently --  
 11 CHAIRPERSON SMITH: Excuse me a second.  
 12 You're speaking of the office opening event? When you  
 13 say "the event," which event --  
 14 MR. TAM NGUYEN: The banquet event.  
 15 CHAIRPERSON SMITH: Okay. Because this  
 16 e-mail that you just read to us is on September 15th.  
 17 MR. TAM NGUYEN: The lease.  
 18 CHAIRPERSON SMITH: Which is referring to the  
 19 opening of the office.  
 20 MR. TAM NGUYEN: Yes. That shows the full  
 21 coordination and thank-you for the work done for Jimmy  
 22 Nguyen.  
 23 But I'm trying to explain my part. Let me  
 24 make myself clear. If any proof or explanation that  
 25 Jimmy try to distance himself from this space, from

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1 this lease or from this group, it occurred a month  
 2 later, after the dispute between the two group about  
 3 the fundraising event. But, other than that, it's been  
 4 full cooperation, with his knowledge and support. And  
 5 that document -- I did not know that it was to come in  
 6 at this moment, but that will show otherwise. Show you  
 7 many other thing that apparently the investigator were  
 8 not informed or were not really prepared for that. But  
 9 I think that's the truth, explained to you, how Jimmy  
 10 and he supported, in full coordination. Include the  
 11 lease.  
 12 COMMISSIONER PIERRE-DIXON: The one question  
 13 I have -- we have an Independent Evaluator here that  
 14 asked for all information that you had available at the  
 15 time that you began this initial investigation. Why is  
 16 this appearing at this time?  
 17 MR. TAM NGUYEN: I just came to -- as of this  
 18 very last minute. In fact, I was preparing my brief.  
 19 That's -- so I did not know as part of the exhibit. If  
 20 this had happened before, I would have part of my  
 21 brief. But because the issue arose today, I listen and  
 22 thought it's about time that I should speak and provide  
 23 you with the fact of the truth.  
 24 MR. MILLER: If I may, Commissioners. We  
 25 never asked Mr. Nguyen or his clients for copies of all

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1 the communications that they had with the candidate.  
 2 To the contrary, we asked the candidate for that  
 3 information and were not provided by the candidate with  
 4 this e-mail.  
 5 MR. ROBINSON: Can I see the e-mail.  
 6 Because --  
 7 MR. MILLER: This is the first time we're  
 8 seeing this.  
 9 MR. ROBINSON: So this is September 15th.  
 10 What -- I'm not --  
 11 CHAIRPERSON SMITH: Excuse me. I think the  
 12 office opening was September 15th.  
 13 MS. CASSMAN: No, the signing of the lease  
 14 was September 15th.  
 15 MR. ROBINSON: September 15th was the signing  
 16 of the lease?  
 17 CHAIRPERSON SMITH: And then when was the  
 18 office opening?  
 19 MR. MILLER: About a week later.  
 20 MS. CASSMAN: A week later. September 23rd.  
 21 MR. ROBINSON: So this is 1:32 a.m. on  
 22 September 15th, so this would be early in the morning  
 23 on September 15th, before the lease was signed; is that  
 24 correct?  
 25 CHAIRPERSON SMITH: If this is correct, yes.

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<p style="text-align: center;">Page 69</p> <p>1 MR. ROBINSON: So this would be before the 2 lease was signed. 3 Let me tell you exactly how the operation 4 works -- 5 COMMISSIONER PIERRE-DIXON: If we can have 6 silence at this time, because there's a lot of 7 recording going on. You can talk later. You'll get 8 the opportunity. 9 MR. ROBINSON: The decision whether or not to 10 open an office was not the candidate's. It was the 11 campaign. The campaign is a separate entity. We made 12 the decision not to open a campaign headquarters. 13 And I informed -- I don't know exactly 14 remember when I informed those folks. Jimmy was 15 concerned about this group opening a campaign 16 headquarters after I told him that we were not holding 17 it. So that's why the meeting -- 18 CHAIRPERSON SMITH: I think the Report said 19 it was on or about September 12th -- 20 COMMISSIONER PIERRE-DIXON: There -- 21 CHAIRPERSON SMITH: -- that -- your meeting 22 where you said, We're not going to open a campaign 23 headquarters? 24 MR. ROBINSON: Exactly. So I don't know 25 why --</p>	<p style="text-align: center;">Page 71</p> <p>1 really occurred and who gave what -- anyone permission 2 to do. You know, the memo is not really clear in terms 3 of what space and when and where. But if we use common 4 sense, we see who is on this memo. It seems that -- 5 I'm going to say, you've done this work for me. Which 6 then brings into question whether or not they've gone 7 over the amount in terms of an independent expenditure. 8 CHAIRPERSON SMITH: Commissioner Edgeworth, 9 did you get a copy? I think they were sending you a 10 copy. 11 MS. McDANIEL: I'm e-mailing her a copy. She 12 should have it right now. 13 CHAIRPERSON SMITH: Okay. You should it on 14 e-mail. The e-mail -- 15 COMMISSIONER EDGEWORTH: Can you ask me that 16 again? I couldn't hear you. 17 CHAIRPERSON SMITH: Did you get the e-mail 18 that has a copy of this e-mail we're discussing 19 attached? 20 MS. McDANIEL: I just sent it. 21 CHAIRPERSON SMITH: She just sent it. 22 COMMISSIONER EDGEWORTH: No. 23 CHAIRPERSON SMITH: Well, you might look for 24 it. I guess it's worth noting -- and since she doesn't 25 have it yet -- this e-mail is from --</p>
<p style="text-align: center;">Page 70</p> <p>1 CHAIRPERSON SMITH: So this would be after 2 that. 3 MR. ROBINSON: I have no idea. 4 CHAIRPERSON SMITH: This is two and a half 5 days after you had told him. 6 COMMISSIONER PIERRE-DIXON: Uh-huh. 7 MR. ROBINSON: But, at the end of the day, 8 the -- I don't even know -- I'll have to take a look at 9 this. 10 COMMISSIONER PIERRE-DIXON: You can keep that 11 copy. 12 MR. ROBINSON: I'll have to ask my client. 13 COMMISSIONER PIERRE-DIXON: Okay. 14 CHAIRPERSON SMITH: Okay. Thank you. Let's 15 see. We're totally out of whack here. How do we want 16 to proceed? I think maybe we -- do we want to go back 17 to the Evaluators? 18 COMMISSIONER PIERRE-DIXON: Yes. I think the 19 main question that I was trying to get to with this 20 discussion was whether or not there's an independent 21 expenditure. And if you can answer that. Take them 22 out of this scenario and then dig deeper into the other 23 part. I thought that would be a way to go. Now we're 24 shown a memo that no one had any knowledge of, which 25 now somehow muddies the waters in terms of what has</p>	<p style="text-align: center;">Page 72</p> <p>1 COMMISSIONER EDGEWORTH: When did she send 2 it? 3 CHAIRPERSON SMITH: Cecilia sent it to you a 4 couple of minutes ago. I don't know how long it takes 5 for e-mail to get from here to Armenia. 6 MR. ROBINSON: I'll be happy to go. But I 7 would just like to point out to the Commission that it 8 doesn't make much difference because the lease wasn't 9 signed until the 16th. But I will certainly check with 10 my client as to what he meant by this e-mail. 11 Obviously -- that question needs to be answered for 12 you. 13 CHAIRPERSON SMITH: Since you don't have it, 14 let me just -- and maybe for the record, this is an 15 e-mail from Jimmy Nguyen -- which Mr. Tam Nguyen just 16 read to us. It's from Jimmy Nguyen to Tony Din, who 17 is, I believe, the landlord -- 18 MR. MILLER: Correct. 19 CHAIRPERSON SMITH: -- of the office in 20 question and Tho NguyenTan, who is leader of the group. 21 And copies to -- okay -- at Crema -- 22 MS. CASSMAN: Crema Coffee. 23 CHAIRPERSON SMITH: People at Crema Coffee. 24 A name which I don't recognize. And -- 25 VICE-CHAIR COSGROVE: Dung Tran.</p>

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1 CHAIRPERSON SMITH: Dung Tran again. Except  
 2 for this one name which I don't recognize, I don't  
 3 think it's the same people. Okay. So --  
 4 MS. LEE: Mr. Chair?  
 5 CHAIRPERSON SMITH: Yes.  
 6 MS. LEE: Could I suggest, since the issue  
 7 really is, with respect to all of the expenditures,  
 8 whether they're contributions to the campaign or  
 9 whether they're independent expenditures, that we go  
 10 ahead and hear from all of the respondents who want to  
 11 address the Commission.  
 12 CHAIRPERSON SMITH: Before we go back to --  
 13 MS. LEE: Yes. Unless --  
 14 MS. CASSMAN: It was in the Report. I think  
 15 we kind of covered it. And I think it was  
 16 inconclusive.  
 17 CHAIRPERSON SMITH: Right.  
 18 MS. CASSMAN: Because we didn't have all of  
 19 the information. And I'm hoping that what you can do,  
 20 through the presence of these people, is get more  
 21 information from them --  
 22 CHAIRPERSON SMITH: Okay.  
 23 MS. CASSMAN: -- that would help elucidate --  
 24 CHAIRPERSON SMITH: It's unfortunate that the  
 25 candidate isn't here also.

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1 MR. ROBINSON: He had another appointment.  
 2 So we will -- I will make sure that he is here at the  
 3 next --  
 4 CHAIRPERSON SMITH: We don't know how this is  
 5 going to go. There may or may not be a next.  
 6 Okay. So I guess this --  
 7 MS. McDANIEL: I just wanted to make it clear  
 8 that we do have an interpreter here, a Vietnamese  
 9 interpreter. So, if you need assistance or need  
 10 clarification, she is here for you, as we're getting  
 11 feedback from you guys.  
 12 MR. ROBINSON: Again, I should -- we should  
 13 go on the record and ask that this not be entered into  
 14 any kind of evidence towards my client whatsoever,  
 15 because we haven't had time to evaluate it. And the  
 16 contents are really nebulous, going forward.  
 17 VICE-CHAIR COSGROVE: I just have a question  
 18 about that. I'm just unclear as to how we could do  
 19 that. I mean, when we're presented with something that  
 20 we have -- that really would be an important piece of  
 21 evidence were it's authenticated, it's going to be very  
 22 hard to ignore it, quite frankly.  
 23 MR. ROBINSON: I'm just talking about a due  
 24 process issue here. We'd be happy to come back -- we'd  
 25 be happy to come back to respond. But the idea is

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1 that -- if you're going to make your decision now, then  
 2 I ask you not to use this as any evidence towards  
 3 anything my client may or may not have done.  
 4 COMMISSIONER PIERRE-DIXON: I understand.  
 5 MR. TAM NGUYEN: May I respond briefly. In  
 6 fact, the rule -- Resolution 7564 specifically say we  
 7 cannot apply the law -- the Evidence Code. We could  
 8 allow the first people to come up (unintelligible.)  
 9 CHAIRPERSON SMITH: But we could still apply  
 10 the basic principle of fairness if we only got one side  
 11 of the story, because -- anyway -- okay. So I guess we  
 12 would -- we should proceed.  
 13 COMMISSIONER EDGEWORTH: Mr. Chairman?  
 14 CHAIRPERSON SMITH: Yes.  
 15 COMMISSIONER EDGEWORTH: I want to confirm  
 16 that I do have the e-mail, and I've read it.  
 17 CHAIRPERSON SMITH: Okay. Thank you.  
 18 Okay. I guess Mr. Nguyen, if you want to  
 19 speak at this time, since we kind of digressed and are  
 20 taking --  
 21 MR. TAM NGUYEN: On which issue, Your Honor?  
 22 CHAIRPERSON SMITH: On the issue of this  
 23 complaint. The -- the Complaint Number 3. Complaint  
 24 Number 1, Item 4A, and Complaint Number 3, the matter  
 25 of the independent committee and the headquarters and

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1 all of this stuff we've been discussing.  
 2 MR. TAM NGUYEN: Sure. Thank you. I wonder,  
 3 how much time would the commissioner allow me?  
 4 CHAIRPERSON SMITH: Well, normally I try to  
 5 keep it to ten minutes. It depends on how many people  
 6 wish to speak and -- et cetera.  
 7 MR. TAM NGUYEN: Yeah, I would like your  
 8 patience.  
 9 CHAIRPERSON SMITH: We previously -- yes,  
 10 I've sworn you in previously, so I don't need to do  
 11 that again.  
 12 MR. TAM NGUYEN: I try to be very brief as  
 13 possible. Because -- due to the magnanimity [sic] of the  
 14 situation and complexity of it, I would ask the  
 15 Commission to allow me time.  
 16 Before I start, in fact -- I have served the  
 17 Commission before, so I really appreciate the time of  
 18 citizen. I served on the mayor committee, on Mayor  
 19 McEnery a long time ago, and library commission. So I  
 20 understand frustration and dedication. But I also  
 21 believe, particularly the citizen who volunteer their  
 22 time, they would want the worthy and the cause and  
 23 the -- the honor of the work should be returned fairly.  
 24 CHAIRPERSON SMITH: That's right.  
 25 MR. TAM NGUYEN: They should not be subjected

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1 to anything that is unfair, unethical, or otherwise.  
2 Therefore, on that basis, I really want the Commission,  
3 as the citizen of San Jose, to give my clients and  
4 myself the chance of being heard and be considered the  
5 same.

6 At this time, I would like the Commission to  
7 address and request the city attorney to address the  
8 issue -- the first issue that the investigator  
9 deferred, which is the unsigned -- the issue of  
10 validity of the complaint.

11 CHAIRPERSON SMITH: You have a memo? Did --  
12 has he been given a copy of the memo?

13 MS. LEE: I believe the memo is in the back  
14 of the room. I don't know if Mr. Nguyen picked up --

15 MR. TAM NGUYEN: Which memo?

16 MS. LEE: I put in writing the City's -- it's  
17 right here. I'm happy to address that.

18 CHAIRPERSON SMITH: Maybe you can summarize  
19 it verbally.

20 MS. LEE: Sure.

21 MR. TAM NGUYEN: Please.

22 MS. LEE: So, looking at the council  
23 resolution that governs the Elections Commission's  
24 procedures, it's -- it's very clear that the City  
25 Clerk's duty, upon receipt of a complaint where the

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1 that the -- the investigator shall act on it, on an  
2 invalid complaint.

3 MS. LEE: No, it says the Evaluator shall  
4 review every complaint. And it doesn't authorize the  
5 Evaluator to not investigate or review a complaint  
6 merely because it's unsigned.

7 MR. TAM NGUYEN: And then the Evaluator --  
8 after review of the complaint, what should the  
9 Evaluator do? Should they advise back to Commission  
10 whether the complaint is followed by the law, which is  
11 signed or not?

12 CHAIRPERSON SMITH: No. I don't think so.

13 MS. LEE: No, the Evaluator's responsibility  
14 then is to go determine whether an investigation is  
15 warranted or not. So the procedures of the Commission  
16 are really to try to arrive at a substantive resolution  
17 of the complaint, and the fact that it's unsigned is  
18 really a technical defect. And that doesn't impact the  
19 validity of a complaint or the legitimacy of an  
20 investigation that might ensue.

21 VICE-CHAIR COSGROVE: Could I just add that  
22 there is even a separate procedure for anonymous  
23 complaints, which could also be considered valid by  
24 this commission. And I was one of the people who  
25 helped create that option. So the lack of signing on a

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1 complainant is identified and there are specific  
2 factual allegations that are therein, that the City  
3 Clerk must forward that complaint on to the City  
4 Evaluator.

5 The Resolution is also clear that the  
6 Evaluator shall review every complaint to determine  
7 whether, you know, the Evaluator should proceed with an  
8 investigation. There is no discretion in there to  
9 dismiss a complaint out of hand, for the City Clerk to  
10 refuse to send it on to the Evaluator, or for the  
11 Evaluator to determine not to review the complaint  
12 merely because the complaint is unsigned. The  
13 important part of the complaint is that it set forth  
14 sufficient facts and that the complainant be  
15 identified. So the fact that a complaint is unsigned  
16 has, really, no consequence. And where an amended copy  
17 is filed and is signed, that would remedy any technical  
18 defect in that original complaint.

19 CHAIRPERSON SMITH: Okay. So our advice from  
20 our counsel is that there is no problem.

21 MR. TAM NGUYEN: Unsigned complaint is still  
22 valid?

23 CHAIRPERSON SMITH: Yes.

24 MR. TAM NGUYEN: I agree, Counsel, that it --  
25 it requires City Clerk to forward. But it doesn't say

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1 non-anonymous complaint is rendered kind of less of an  
2 important detail, given that there is also the option  
3 for citizens to make anonymous complaints, even though  
4 that has to be done under certain procedures.

5 So, from the perspective of the Commission,  
6 the goal is we want the public to be able to make  
7 complaints, and we want to give the benefit of the  
8 doubt to the public that complaints will be, at the  
9 very least, reviewed to see if they're valid. So we  
10 don't -- we're not trying to discourage the public from  
11 submitting complaints by looking for reasons not to  
12 consider complaints. We want to be a forum for the  
13 public to bring complaints if they have concerns about  
14 ethics and elections in the city.

15 MR. TAM NGUYEN: Yes, but you investigate  
16 people for violating detail, minute, of the Code,  
17 including 1,000, 1,001 or \$999. In fact, if that is  
18 the case, why the Code say the complaint must be filed,  
19 in fact, at the bottom -- in fact, the purpose, to  
20 provide fair, honest and transparency required the  
21 verification "I certify, under penalty of perjury under  
22 the law of the State of California." That is true. If  
23 you say, I take your word, welcome people, to  
24 cooperate, to support. But, on the other hand, you  
25 don't want people to file frivolous complaint and get

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<p style="text-align: center;">Page 81</p> <p>1 away with accusing innocent people.</p> <p>2 CHAIRPERSON SMITH: I can tell you that</p> <p>3 people have filed frivolous complaints, accusing</p> <p>4 innocent people, and then signed them. And we've</p> <p>5 investigated them and we've issued reports and we've</p> <p>6 had hearings.</p> <p>7 MR. TAM NGUYEN: And that is the</p> <p>8 verification requirement of the law written, not</p> <p>9 just --</p> <p>10 CHAIRPERSON SMITH: We need to move on. We</p> <p>11 had advice from our counsel. We've decided what we</p> <p>12 were going to do. We're going to proceed.</p> <p>13 But I will make one brief comment, and that</p> <p>14 is, the things that -- the violations that are accused</p> <p>15 are matters of the law. The business of signing this</p> <p>16 complaint is an internal procedure. It's not -- it's</p> <p>17 not law. People aren't going to get fined or go to</p> <p>18 jail for violating 75640. There is no penalties</p> <p>19 involved in violating 75640.</p> <p>20 MR. TAM NGUYEN: I respectfully disrespect</p> <p>21 because it --</p> <p>22 CHAIRPERSON SMITH: Can we move on, please.</p> <p>23 MR. TAM NGUYEN: It subject people to</p> <p>24 financial penalty. And that is in violation of</p> <p>25 constitutional law, when people deprived of their</p>	<p style="text-align: center;">Page 83</p> <p>1 And the -- the failure to sign, which I</p> <p>2 should mention normally would be caught by the City</p> <p>3 Clerk's office. If they got an unsigned complaint from</p> <p>4 somebody, they would notice it and they would contact</p> <p>5 the person and say, Please, would you come in and sign</p> <p>6 it. In this case it was filed by the Clerk's office,</p> <p>7 and so it got missed. But be that as it may.</p> <p>8 We -- it was -- also, it was correct. And</p> <p>9 even if the original wasn't signed, there was an</p> <p>10 amendment. It was corrected. The important -- the</p> <p>11 most important thing here is not whether some form was</p> <p>12 signed. It's was the law violated. And, if it was,</p> <p>13 who's responsible? And that's what we're here for.</p> <p>14 We're not here to decide whether some form should have</p> <p>15 been signed.</p> <p>16 So now, please, let's move on.</p> <p>17 MR. TAM NGUYEN: That is important. Why is</p> <p>18 it in the law? Why is it in the form? With that I</p> <p>19 move on.</p> <p>20 CHAIRPERSON SMITH: Thank you.</p> <p>21 MR. TAM NGUYEN: The second point is -- now,</p> <p>22 the Code -- very clearly. San Jose Municipal Code,</p> <p>23 Section 12.04.080 say, "A complaint filed with the</p> <p>24 Commission may be investigated only if the complaint</p> <p>25 identifies the specific alleged violation."</p>
<p style="text-align: center;">Page 82</p> <p>1 property.</p> <p>2 COMMISSIONER PIERRE-DIXON: I think the</p> <p>3 reality is more in terms of what the complaint is and</p> <p>4 what was done that gave rise to such a complaint. And</p> <p>5 that's what we really have to discuss today. That is</p> <p>6 what leads to someone who is being fined, et cetera,</p> <p>7 and that is the important thing we need to look at is</p> <p>8 whether or not there is a violation here. And when a</p> <p>9 person files a complaint and says the violation is</p> <p>10 based on this area of the law that was violated and</p> <p>11 it's clear enough that there is a violation, the</p> <p>12 Evaluator has got to look at it, do their investigation</p> <p>13 and then come back to us with an idea of what we need</p> <p>14 to do.</p> <p>15 MR. TAM NGUYEN: Let me just be sure to</p> <p>16 understand the Commission today. On the record, adopt</p> <p>17 the explanation that the complaint, unsigned, in</p> <p>18 violation of their own city laws, and the Commission</p> <p>19 rule still valid?</p> <p>20 COMMISSIONER PIERRE-DIXON: It's not city --</p> <p>21 okay.</p> <p>22 CHAIRPERSON SMITH: We're not going to have a</p> <p>23 debate. We shouldn't be debating with you, first of</p> <p>24 all. And we won't do that anymore. Me included. It's</p> <p>25 not city law.</p>	<p style="text-align: center;">Page 84</p> <p>1 CHAIRPERSON SMITH: Is somebody keeping track</p> <p>2 of time?</p> <p>3 CLERK TABER: Yes. Eighteen seconds.</p> <p>4 CHAIRPERSON SMITH: Okay.</p> <p>5 MR. TAM NGUYEN: And -- my 15 seconds --</p> <p>6 contain sufficient fact to warrant a full</p> <p>7 investigation. I submit, this defective complaint,</p> <p>8 invalid complaint. Did not provide a single fact,</p> <p>9 which is second problem. And the Evaluator did not</p> <p>10 follow the rule --</p> <p>11 CHAIRPERSON SMITH: Mr. Nguyen. Excuse me.</p> <p>12 I believe the ten minutes -- I'm going to cut you off</p> <p>13 at ten minutes unless you have -- unless you have</p> <p>14 information to offer relative to was there a violation</p> <p>15 and, if so, who was responsible. If you're going to</p> <p>16 continue to attack whether this is a valid complaint</p> <p>17 and whether this is a valid investigation, I'm going</p> <p>18 to -- I'm going to impose the ten-minute limit that we</p> <p>19 already said.</p> <p>20 We have determined that we are going to go</p> <p>21 forward with this complaint. So you either may -- so I</p> <p>22 would invite you to testify if you have information to</p> <p>23 offer relative to the validity -- I mean, not</p> <p>24 validity -- relative to the complaint. Was there a</p> <p>25 violation? Was there not a violation? And, if so, if</p>

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1 there was, who's responsible? So, if you have any of  
 2 that to offer, I encourage you to continue.  
 3 MR. TAM NGUYEN: I request -- the Commission  
 4 is the Commission to investigate the ethical activity.  
 5 Therefore, the unethical is happened, that the  
 6 complaint, as provided --  
 7 CHAIRPERSON SMITH: Okay.  
 8 MR. TAM NGUYEN: -- is -- contain no  
 9 sufficient fact to --  
 10 CHAIRPERSON SMITH: Just a second. Just a  
 11 second. I said I wasn't going debate or anything.  
 12 COMMISSIONER PIERRE-DIXON: The attorney --  
 13 CHAIRPERSON SMITH: Do I need to ask for  
 14 someone to come and remove him if he refuses to cede  
 15 the floor?  
 16 You told us at the last meeting that you  
 17 filed a complaint with regard to how this complaint was  
 18 processed. I don't know if -- I haven't seen it  
 19 because, as I told you last time, we are not allowed to  
 20 see complaints until -- until they are evaluated and  
 21 they're reported back to us and there's a hearing.  
 22 That complaint, which I assume covers the substance of  
 23 your comments here -- I don't know because I haven't  
 24 seen it, but I assume it does -- that has been referred  
 25 to outside counsel. It is being investigated. We will

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1 have a hearing on that subject. So if, in fact, your  
 2 argument about this is all improper, incorrect,  
 3 invalid -- if -- if those are correct, there will be a  
 4 hearing and that will be decided. But not tonight.  
 5 MR. TAM NGUYEN: Thank you.  
 6 CHAIRPERSON SMITH: What we're here tonight  
 7 is, was there a violation of the law regarding  
 8 independent -- regarding campaign contributions and  
 9 independent expenditures. And, if so, who is  
 10 responsible?  
 11 MR. TAM NGUYEN: Thank you.  
 12 CHAIRPERSON SMITH: Now, do you have  
 13 something to offer relative to that?  
 14 MR. TAM NGUYEN: Yes. With that new  
 15 information, I appreciate very much. Had I known that,  
 16 I would have --  
 17 CHAIRPERSON SMITH: We told you when you  
 18 submitted that complaint that it would -- it would be  
 19 evaluated and would come back to us. I thought we made  
 20 that clear when you brought it. Maybe there was a  
 21 misunderstanding. That will be the subject of a  
 22 hearing. Whatever is in your complaint --  
 23 MR. TAM NGUYEN: I'm sorry. I wasn't  
 24 informed of the city attorney really give the advice on  
 25 that issue already. I wasn't aware of that. Thank

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1 you.  
 2 CHAIRPERSON SMITH: Let me just ask the  
 3 question of staff: Per procedure, the Evaluator for  
 4 this complaint should have contacted the complainant to  
 5 notify them, I believe. Is that right? Isn't that  
 6 right? They notify the respondent, which in this case  
 7 would be our Evaluators. Or has it not been referred  
 8 yet?  
 9 MR. MILLER: We're in the same boat.  
 10 CHAIRPERSON SMITH: You're in the same boat.  
 11 MS. LEE: I don't think we should really get  
 12 into a discussion of it. But the procedure is really  
 13 that the Evaluator would notify the respondents --  
 14 CHAIRPERSON SMITH: Respondents.  
 15 MS. LEE: -- after they've had a chance to  
 16 review it. Depending on whether they determined  
 17 whether an investigation is warranted.  
 18 CHAIRPERSON SMITH: Okay. Okay. So --  
 19 anyway, so I have --  
 20 MR. TAM NGUYEN: I be happy to move on very  
 21 briefly. Because -- in fact, this what -- I know that  
 22 you read all the Report. You have exhibits. They are  
 23 lengthy and they are complicated.  
 24 COMMISSIONER PIERRE-DIXON: Yes.  
 25 MR. TAM NGUYEN: The bottom line is, this

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1 man -- he spent -- he donate \$28.49.  
 2 VICE-CHAIR COSGROVE: Excuse me. Because we  
 3 have somebody participating by phone, could you please  
 4 say the name of the person you're referring to.  
 5 MR. TAM NGUYEN: His name is Ban Vu, B-a-n,  
 6 V-u. He was named in the first and the second --  
 7 VICE-CHAIR COSGROVE: I have only 28 --  
 8 MR. TAM NGUYEN: That's okay. And my client,  
 9 Mr. Tho NguyenTan and Huynh Thien, all together, with  
 10 all the people who tried to do good part as a citizen,  
 11 who understood the law a little bit differently, that  
 12 if one individual pay and help out less than \$1,000,  
 13 that would be good for the candidate. That would be  
 14 good for the City. And good citizen. Without knowing  
 15 anything.  
 16 But, in fact, they been work in conjunction  
 17 full-time with the candidate, including the -- I  
 18 (unintelligible), but last was the e-mail, as one of  
 19 the many other proof of coordination, including Jimmy  
 20 Nguyen attending the -- the room, Jimmy attending the  
 21 banquet and many other events. That way too -- many  
 22 too complicated to go into.  
 23 The bottom line is, these simple folks try to  
 24 do their best, with a good heart, without knowing any  
 25 better, misunderstanding of the law. Try to comply but

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1 not quite there yet.  
 2 And one thing for sure. They -- they were  
 3 not just people on the street doing their own without  
 4 any involvement or without any coordination from Jimmy,  
 5 because that's where the main is the support.  
 6 So the last one piece that I want to provide  
 7 you was one of those proof -- and I think had Jimmy  
 8 coordinate fully with the investigators, with all the  
 9 correspondence -- and I think (unintelligible) come to  
 10 encourage -- you would find these simple folks were not  
 11 that seasoned or qualified or well trained to be and to  
 12 act as a major contributor outside of Jimmy campaign  
 13 and contribute to a large amount.  
 14 But, anyway, in overall, I thought -- because  
 15 the totaled expenditure, including the \$999 for the  
 16 lease -- majority is for the deposit -- the \$37, the  
 17 20, total of \$1,055. With that and the guidance  
 18 provide with the legal circumstances -- this is their  
 19 first time. They inexperience. Out of the good heart  
 20 intend. And they never bias again. I would -- I would  
 21 urge the Commission to accept that situation as an --  
 22 in the totality and rule either, if you find that --  
 23 that e-mail from Jimmy Nguyen, together with all the  
 24 evidence, to show that, hey, most of that expenditure  
 25 should have been -- belong to Jimmy campaign, then

1 these people true. They would not qualify.  
 2 But, on the other hand, if you were to the  
 3 contrary, find them to be, then I ask of you compassion  
 4 to give them the chance to -- so next time there  
 5 wouldn't be scare away. They continue to work with the  
 6 city activity and to do it the right way next time, by  
 7 appropriate remedy and wanting to. But, with that, I  
 8 submit my apology for being -- because I wasn't aware  
 9 of the --  
 10 COMMISSIONER PIERRE-DIXON: I just have one  
 11 question in reference to the statement that was made  
 12 about the fundraising. Was there some agreement to  
 13 split the profits from this fundraising between the two  
 14 groups? That I did not understand.  
 15 MR. TAM NGUYEN: I -- from my  
 16 understanding -- what the fundraising for? The  
 17 fundraising -- even though Jimmy Nguyen was not the  
 18 organizer. It was -- some just attended -- attended  
 19 that Jimmy -- in fact, I went there myself as a  
 20 community citizen. I go there to attend. And I pay my  
 21 \$35 toward my meal.  
 22 But, from my understanding, the whole purpose  
 23 was toward -- for Jimmy campaign. I don't know the  
 24 complexity and money go where and when. But, from my  
 25 understanding, there was some discussion after that

1 event, that the campaign ask, Where did go the money?  
 2 And there was a discussion.  
 3 But I think in the future, this people and  
 4 Jimmy people should cooperate and explain to the  
 5 investigator commission the whole story, and then you  
 6 will have better inform.  
 7 CHAIRPERSON SMITH: I guess I would be -- one  
 8 thing that -- how do I say? -- bothers me a little: I  
 9 understand what you're saying about an unfamiliarity  
 10 with the law, et cetera. But I'm struck by the  
 11 difference between the reactions when it was found and  
 12 reported that there was an -- due to aggregation rules,  
 13 that there was an excess contribution to the campaign  
 14 of \$500. The \$500 was returned that day. When the  
 15 members of the group were notified that it looked like  
 16 there was a violation of campaign rules, rather than  
 17 making an effort to correct that which had been done,  
 18 it seems to me that there basically has been a  
 19 stonewalling and a -- you know, walking out of  
 20 meetings, not answering questions. This -- this -- I  
 21 have trouble reconciling that with the idea of people  
 22 who have stumbled into something and want to do good.  
 23 If they wanted to do good, I would think they would  
 24 want to correct that which was wrong rather than  
 25 pushing back and fighting and saying, We're being

1 persecuted.  
 2 MR. TAM NGUYEN: May I respond? That was  
 3 not -- these two gentleman would say it was my  
 4 decision. But the problem is, as a counselor  
 5 (unintelligible) counsel out of their ethical rule,  
 6 they cannot talk. That was my -- the reason -- we  
 7 misguided, even though in front of you, because I  
 8 wasn't aware that there's a different  
 9 (unintelligible) -- but because of my belief at that  
 10 time. Looking back, I may be wrong now. At that time,  
 11 that's my strongest belief. This is ethical  
 12 commission, and we act on the law. Work are very  
 13 critical men of the law. Because the law should follow  
 14 anybody complain. Assembly -- any facts to support the  
 15 investigation in the first place and ask them to  
 16 address that. I ask them to -- to -- to do that, but  
 17 they refuse. Therefore, I cannot (unintelligible). In  
 18 fact, my statement to -- because I remember. I cannot  
 19 allow myself, my client, to be a co-violation of this  
 20 unlawful act. Because if we further work with you,  
 21 then we be coordinating. I have no to explain to  
 22 myself. And that was the basis why we couldn't do  
 23 anything. Not that we stumble. Not that we don't want  
 24 to cooperate. Because if we did that, I got to explain  
 25 myself later on.

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1 CHAIRPERSON SMITH: Okay.  
 2 COMMISSIONER PIERRE-DIXON: I understand what  
 3 he's saying.  
 4 CHAIRPERSON SMITH: Okay. Any other  
 5 questions?  
 6 COMMISSIONER EDGEWORTH: Mr. -- Mr. Chairman?  
 7 CHAIRPERSON SMITH: Yes.  
 8 COMMISSIONER EDGEWORTH: I didn't -- this  
 9 dialogue is a little troubling on several fronts.  
 10 Because as I read all the evidence and as I see e-mail  
 11 traffic and as I read through the Report of the  
 12 investigator's findings during interviews, a lot of  
 13 people involved are very -- have been apparently very,  
 14 very careful about trying to manipulate to make sure  
 15 that they are not in violation, (Inaudible) whether I  
 16 can spend more money or not. And the whole issue of  
 17 this -- the campaign material under fictitious names,  
 18 naming organizations, several of them, three or four  
 19 names. And there seems to be some (inaudible) or at  
 20 least some -- some manipulation of the system to  
 21 satisfy certain objectives and certain personal  
 22 interests in playing this game and wanting to support a  
 23 candidacy on -- it seems, apparently, on both sides  
 24 now. And I'm a little concerned about the claim of  
 25 innocence of these people didn't know what they were

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1 doing. Because apparently there's a lot of  
 2 conversation that demonstrated -- at least to a  
 3 certain extent -- even a faulty understanding; they  
 4 understood something.  
 5 COMMISSIONER PIERRE-DIXON: I think my  
 6 problem with the issue is that we do not have all the  
 7 facts. And in order to make a decision, one has to  
 8 have all the facts. And the facts have to be provided  
 9 by those parties that are involved. And it has not  
 10 been done at this point.  
 11 MS. LEE: Mr. Chair, I --  
 12 CHAIRPERSON SMITH: Yes.  
 13 MS. LEE: I would just suggest that before  
 14 the Commission gets into a discussion --  
 15 CHAIRPERSON SMITH: Yes. I was just going to  
 16 do that myself.  
 17 MS. LEE: -- that we see if there are any  
 18 other respondents that would like to speak.  
 19 CHAIRPERSON SMITH: Yes. Yes.  
 20 Okay. So any questions of Mr. Nguyen?  
 21 COMMISSIONER PIERRE-DIXON: No.  
 22 CHAIRPERSON SMITH: Okay. Thank you.  
 23 We will -- I have a request here to speak by  
 24 two other people. I don't know if you still want to.  
 25 But Ban Vu and John Le wanted to speak. Do any of you

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1 want to -- raise your right hand and --  
 2 COMMISSIONER PIERRE-DIXON: Is his attorney  
 3 giving him permission to talk at this point? Is he  
 4 representing him at this point?  
 5 CHAIRPERSON SMITH: Okay.  
 6  
 7 BAN VAN VU,  
 8 being first duly sworn by the Chairperson to tell the  
 9 truth, the whole truth and nothing but the truth,  
 10 testified as follows:  
 11  
 12 MR. VU: I can read it because I'm not speak  
 13 English real good. Okay.  
 14 COMMISSIONER PIERRE-DIXON: We have an  
 15 interpreter.  
 16 CLERK TABER: We have an interpreter.  
 17 MR. VU: I can see if you can understand. I  
 18 think so.  
 19 I did receive the one letter from Cassman,  
 20 right, ask me about \$28. I -- ask me the three  
 21 questions. I answer her three questions.  
 22 I have -- the first question. I have no -- I  
 23 have like no payment and have no document or activity  
 24 with -- except I just pay \$28.48 for water. I don't  
 25 know nothing, because I come over there and I see

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1 that -- I go to restroom or whatever. I see the bill  
 2 over there. And I say what can I do for them.  
 3 Okay. They said, Okay. Why don't you --  
 4 appreciate you coming, helping Jimmy Nguyen. I said  
 5 what can I do to help them.  
 6 Said, Okay. I see the -- I have \$28. Can  
 7 you sign it?  
 8 I said, Okay. That's easy. \$28. I have  
 9 \$28.  
 10 They said, No problem.  
 11 I sign it. I sign it.  
 12 And then, until the -- her ask me the --  
 13 cooperation. That's all. I sign -- I answer her three  
 14 questions. I said, I no -- I have no correspondence  
 15 between me and Jimmy Nguyen at all. I do not -- I do  
 16 not have a -- post any document related, in any cause,  
 17 Jimmy Nguyen, Friend of Jimmy Nguyen or Friend of the  
 18 Public at all. I just come and help. But now I get  
 19 \$28, and I get a lot of letter and come and report  
 20 whatever. (Unintelligible).  
 21 Okay. That's all.  
 22 CHAIRPERSON SMITH: Okay. Thank you. Any  
 23 questions of Mr. Vu?  
 24 COMMISSIONER PIERRE-DIXON: No.  
 25 MR. VU: No. I try to help. That's all.



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1 CHAIRPERSON SMITH: Thank you, Mr. Vu.  
 2 MR. VU: I came to help.  
 3 CHAIRPERSON SMITH:  
 4 John Le? That's you? Okay. Raise your  
 5 right hand --  
 6 MR. MILLER: This is not Mr. Le. This is  
 7 Mr. Lam.  
 8 CHAIRPERSON SMITH: Oh, I'm sorry. Okay.  
 9 John Le is not here. This says "John" --  
 10 MR. LAM: No, I speak for him.  
 11 CHAIRPERSON SMITH: Okay. So you're Duc Lam.  
 12 MR. LAM: Duc Lam, yes.  
 13 CHAIRPERSON SMITH: Okay. Raise your right  
 14 hand.  
 15  
 16 DUC LAM,  
 17 being first duly sworn by the Chairperson to tell the  
 18 truth, the whole truth and nothing but the truth,  
 19 testified as follows:  
 20  
 21 MR. LAM: He already speak for himself.  
 22 What's your name, Ms.?  
 23 COMMISSIONER PIERRE-DIXON: Rolanda  
 24 Pierre-Dixon.  
 25 MR. LAM: Rolanda?

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1 COMMISSIONER PIERRE-DIXON: Uh-huh.  
 2 MR. LAM: Ms. Rolanda talks about couple,  
 3 independent, work together. So I come here because  
 4 him. He's the one who signed by himself. No one tell  
 5 him. So he independent. Okay. No coordination at  
 6 all. And he never had -- e-mail list, you cannot find  
 7 his name in there. And, Cassman, you can look on to  
 8 it.  
 9 And second guy, John Le, the guy who signed  
 10 for PG&E. And that guy is never seen in that list. So  
 11 there's no connection between that guy and this group.  
 12 So that's -- I wanted to go back to your --  
 13 COMMISSIONER PIERRE-DIXON: All right.  
 14 CHAIRPERSON SMITH: Except they were, I  
 15 believe, asked by someone in the group to make these  
 16 payments. So there was that connection.  
 17 MR. LAM: That's connection to that.  
 18 CHAIRPERSON SMITH: Someone asked Mr. Vu to  
 19 pay \$28? He volunteered to --  
 20 MR. VU: Nobody asked me. I volunteer to pay  
 21 \$28.  
 22 CHAIRPERSON SMITH: Okay. But you  
 23 volunteered to someone who was part of this group, I  
 24 assume?  
 25 MR. VU: I just volunteer myself.

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1 CHAIRPERSON SMITH: No, but, I mean, you gave  
 2 the \$28 to someone.  
 3 MR. LAM: No, he signed by himself.  
 4 MR. VU: I signed by myself.  
 5 MR. LAM: That's why I heard she said.  
 6 COMMISSIONER PIERRE-DIXON: Okay. I  
 7 understand.  
 8 MR. LAM: That's all I have.  
 9 COMMISSIONER PIERRE-DIXON: Anyone else?  
 10 CHAIRPERSON SMITH: Mr. Nguyen, are your  
 11 two -- are Mr. NguyenTan and Mr. Thien willing to  
 12 speak?  
 13 MR. NGUYENTAN: You want me to speak?  
 14 CHAIRPERSON SMITH: If you would, please.  
 15 State your name and raise your hand.  
 16 MR. NGUYENTAN: My name is Tho NguyenTan.  
 17  
 18 THO NGUYENTAN,  
 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:  
 22  
 23 CHAIRPERSON SMITH: Thank you. If you would  
 24 be seated.  
 25 Do you have anything you would like to say

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1 before we ask you any questions?  
 2 MR. NGUYENTAN: I want to say something about  
 3 the procedure for the investigation. The first thing,  
 4 I had received a phone call from Mr. Miller on  
 5 November 15th. And on that date I don't know who is  
 6 it. And I told him, Send me e-mail and what you want  
 7 to do it.  
 8 And after that, on the -- and after that, the  
 9 same day, on November 15, he send me e-mail. But on  
 10 the e-mail he want to investigate me -- investigate me.  
 11 But then, after that day, I -- I answer him,  
 12 I don't know who are you. I want -- he want to tell  
 13 me, calling for the Dennis Hawkins to confirm --  
 14 confirm with who am I. And she can to investigate me.  
 15 Okay?  
 16 And after that the Cassman send me the  
 17 letter. Two days later, on November -- November 17th.  
 18 But the file on the -- no, the postmark on the November  
 19 16th. After one day he investigate me first. That  
 20 actually not right.  
 21 And also on the Cassman send me on  
 22 November 17th. And -- but the file complaint postmark  
 23 on the November 16th. The postmark from Dennis  
 24 Hawkins, the file postmark on the City Clerk on the  
 25 November 16th. But he send me only that but no

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1 signature. But I'm very confusing. I don't know that.  
 2 I ask my lawyer, Mr. Tam Nguyen, to help me  
 3 about what the procedure, right or not right. But with  
 4 my thing -- anything, even the letter, you still have  
 5 to sign. But no sign, no specific, that I don't want  
 6 to -- but I still tell my lawyer, and he tell me, Okay.  
 7 Answer the question -- all the question that Cassman  
 8 show me. Six question. I answer that. I still  
 9 cooperate. How come in the Report it says no  
 10 cooperate? That not right.  
 11 And also Robinson, he tell me -- he say,  
 12 Hello. I know who is he. Who is he? I don't know  
 13 him. I never know him. I never met him. Why he say  
 14 like that?  
 15 And all the Report say like that too. That  
 16 very lie. I don't want to do the liar way. Because  
 17 when he -- he come here. I don't know. He say, Hello.  
 18 I'm Rich Robinson. Oh, you are Rich Robinson? I never  
 19 meet him before. How come on the Report it say like  
 20 that? Now something wrong.  
 21 But the second thing, you know, if we do  
 22 something when we support Jimmy Nguyen -- because we  
 23 have individual. Individual, you're the same -- the  
 24 same way to help -- to support Jimmy Nguyen. And  
 25 individual like me, independent to pay like this, to

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1 pay like that, the other one pay for -- like him, pay  
 2 for utilities or gas. Or we pay the rent. But we  
 3 don't have -- we sign the check but not my name -- or  
 4 not my money. Money from my friend, my -- you know, we  
 5 pay for \$990 for the rent, right? Lease the office.  
 6 Right? But not from my money. You know, from the  
 7 other one, Mi Loi (phonetic), my friend, 300. From Dr.  
 8 Vun (phonetic), 300. From my wife, 390.  
 9 That -- I -- I help -- I help to support  
 10 Jimmy Nguyen because I have office. I can print out  
 11 the -- I write out the flyer. I print out, you know,  
 12 the flyer like this or the -- sometimes, you know --  
 13 that I give -- I give him free. But if I buy the ink  
 14 and paper to do it, buy the -- let me -- and not even  
 15 up to 200. That I tell you it.  
 16 We only support him to help the Vietnamese  
 17 community. We help Vietnamese people to vote for him.  
 18 And we use, you know, the Friend of Jimmy Nguyen,  
 19 something like that, same slogan.  
 20 And we think that -- we don't make -- we  
 21 don't -- you know, we don't spend a lot of money.  
 22 Yeah. We don't -- we don't think -- we don't register  
 23 for the IE, independent expenditure. I think like  
 24 that.  
 25 But even -- we are group, not a -- a friend,

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1 not group. You know, if the individual, the friend,  
 2 help him like this, like that, and we -- we say  
 3 something -- oh, okay. He pay this. The other one pay  
 4 that. That's it. But everyone like that. Okay?  
 5 I want to, you know, give you information to  
 6 all of you like this, to know that the first thing  
 7 everyone do to help support him. And also we -- we  
 8 were very upset about this. Because, you know, I  
 9 think, you know, the Cassman and Mr. Miller, the  
 10 lawyer, they know procedure. But when I read the  
 11 code -- Election -- you know, Election Commission code  
 12 from your -- you know, City give me the link. I read  
 13 it. I see -- you know, both of them do wrong way. Do  
 14 wrong way. No sign. No signature on the form there.  
 15 No specific. Still they investigate me.  
 16 That's it.  
 17 CHAIRPERSON SMITH: Okay. We have some  
 18 questions.  
 19 MR. NGUYENTAN: Okay.  
 20 CHAIRPERSON SMITH: Does anybody -- I have a  
 21 few. Does anybody -- I'll let you guys go first.  
 22 COMMISSIONER PIERRE-DIXON: No.  
 23 VICE-CHAIR COSGROVE: I would like somebody  
 24 else to go first. I need to collect my thoughts.  
 25 CHAIRPERSON SMITH: Okay. Do I understand

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1 you correctly that you say you never met Mr. Robinson  
 2 before this evening?  
 3 MR. NGUYENTAN: Yes.  
 4 CHAIRPERSON SMITH: Did anyone from the  
 5 campaign tell you that they were not planning to open  
 6 an office?  
 7 MR. NGUYENTAN: Nobody say me like that. No,  
 8 only Jimmy, when he want me to rent of the office --  
 9 you know, to run the -- you know, for them to have  
 10 something to help the Vietnamese community to have  
 11 different people -- to help them vote for them, that we  
 12 need to office. Consider, you know, my lawyer,  
 13 Jimmy -- Tam Nguyen, he send e-mail. He send to me to  
 14 thank you me. Mr. Jimmy.  
 15 CHAIRPERSON SMITH: Who suggested that there  
 16 be an office?  
 17 VICE-CHAIR COSGROVE: Who asked -- who asked  
 18 you --  
 19 MR. NGUYENTAN: Oh, ask me. I know. I know  
 20 that.  
 21 CHAIRPERSON SMITH: I thought you just -- I  
 22 thought I just heard you say that he asked you.  
 23 VICE-CHAIR COSGROVE: Jimmy asked you to open  
 24 an office?  
 25 MR. NGUYENTAN: No, he sent me the letter

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1 to -- e-mail to thank-you me. But I don't remember --  
 2 but I need to know that. I need to have office to run  
 3 to help him.  
 4 VICE-CHAIR COSGROVE: Sorry. It was your  
 5 idea --  
 6 MR. NGUYENTAN: The idea --  
 7 VICE-CHAIR COSGROVE: -- by yourself, to open  
 8 an office?  
 9 MR. NGUYENTAN: Maybe I -- yeah, maybe I  
 10 forget. I want to say truth. I don't want to mix them  
 11 or mislead you --  
 12 VICE-CHAIR COSGROVE: You're not sure?  
 13 MR. NGUYENTAN: I'm not sure. I'm not sure.  
 14 I don't remember that.  
 15 But also I contact with Tony -- Tony Din,  
 16 Tony Din, to -- because he is my friend too. And he  
 17 wants to help me. He want no free. But I say, Okay.  
 18 No free. I give you some money. But how much, total?  
 19 He said 990.  
 20 CHAIRPERSON SMITH: Now, what about the --  
 21 well, I'll get to that in a minute.  
 22 There was an e-mail -- you were saying this  
 23 wasn't an organized group or something to that effect.  
 24 MR. NGUYENTAN: Because, you know --  
 25 CHAIRPERSON SMITH: Just a second. Let me

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1 ask you a specific question. But there was an e-mail  
 2 among the exhibits that -- when the treasurer of the  
 3 campaign, whose name briefly escapes me --  
 4 MR. NGUYENTAN: Angela.  
 5 CHAIRPERSON SMITH: Angela. That she had  
 6 e-mailed the Crema Coffee people about something, and  
 7 you sent her an e-mail back that said that you were the  
 8 leader of the group and that all further communication  
 9 should go through you. And I believe it used the word  
 10 "group" and you identified yourself as the leader. Is  
 11 that not correct?  
 12 MR. NGUYENTAN: Okay. I want to answer like  
 13 that. I got upset with her e-mail to send to you. You  
 14 either send member to send the independent individual  
 15 like me. But on the -- on the -- my friend -- that  
 16 means he's from the group, right? We -- we -- somebody  
 17 cannot speak English well; they cannot do it. They  
 18 don't have a lot of time like me.  
 19 But I tell her, Why you send to you? Don't  
 20 send to me. Because I get (unintelligible) from my  
 21 group. That's the reason. Not -- I'm saying I'm not  
 22 the leader. I'm not the leader.  
 23 CHAIRPERSON SMITH: But you did still use the  
 24 word "group"?  
 25 MR. NGUYENTAN: Yeah.

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1 CHAIRPERSON SMITH: You just called it your  
 2 group.  
 3 MR. NGUYENTAN: The group. Many -- like many  
 4 people, many friends. The same way to help to him.  
 5 But we don't organize the group. We don't  
 6 have a computer. We don't have a president. We don't  
 7 have a chairman. We don't have a treasury. We don't  
 8 have a secretary. No, nobody have it. Nobody any  
 9 position. We don't -- we don't have to divide with you  
 10 like this. No, nobody -- everyone the same. Everyone  
 11 the same as a member. Everyone is an individual.  
 12 CHAIRPERSON SMITH: The other thing that  
 13 concerns me is this banquet on October 7th, I believe  
 14 it was.  
 15 MR. NGUYENTAN: Yes.  
 16 CHAIRPERSON SMITH: As I understand it from  
 17 the Report, Mr. Robinson and Mr. Nguyen indicated that  
 18 this was a campaign report -- I mean, a campaign --  
 19 MR. NGUYENTAN: Fundraising, yes.  
 20 CHAIRPERSON SMITH: But you were involved in  
 21 arranging the ceremony, and you were sending out  
 22 invitations. How do you view it? Do you view it as a  
 23 campaign event or do you view it -- I saw some e-mails  
 24 that made it sound like it was your event.  
 25 MR. NGUYENTAN: Yeah, I want to say anything

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1 honestly and true. Because of -- you know, I told you  
 2 on the -- you say "group" but only friend. Everyone  
 3 the same. No chairman. No -- no like that. No  
 4 computer. No computer. And that no organizer. That  
 5 don't mean -- we do send the -- the only friend believe  
 6 me. They believe me about -- maybe my knowledge,  
 7 about -- believe me about the English. Can speak a  
 8 little bit better than them. For example, like that.  
 9 And they pick me. I can organize like this. We got  
 10 the -- we invite -- we write out, you know, invitation  
 11 by Vietnamese language to send on the Vietnamese  
 12 people, to invite them to the fundraising --  
 13 fundraising in the October 7th.  
 14 CHAIRPERSON SMITH: Did someone ask you to  
 15 send out invitations?  
 16 MR. NGUYENTAN: No, we do it by myself.  
 17 CHAIRPERSON SMITH: You knew that this event  
 18 was --  
 19 MR. NGUYENTAN: I know how to do it.  
 20 CHAIRPERSON SMITH: And you would --  
 21 MR. NGUYENTAN: I help a lot of the candidate  
 22 before. Not only Jimmy Nguyen here.  
 23 VICE-CHAIR COSGROVE: Other candidates.  
 24 MR. NGUYENTAN: I help a lot more. I -- you  
 25 know Van Tran, Assembly, in the California. Van Tran.

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1 Ran them before, yes. From 2004. I do the -- I do run  
 2 many, many fundraisers for him -- for him before.  
 3 CHAIRPERSON SMITH: But you were apparently  
 4 also involved in organizing this ceremony also --  
 5 MR. NGUYENTAN: I explain like that only.  
 6 No, I don't organize for any group like this, like  
 7 that. But I know something. I explain to help the  
 8 people, to have attended like that before.  
 9 CHAIRPERSON SMITH: But I thought there was  
 10 an e-mail where you -- it indicated that you were --  
 11 some of your friends had organized the opening  
 12 ceremony -- which I think it was called the traditional  
 13 ceremony or something like that.  
 14 MR. NGUYENTAN: My traditional culture, when  
 15 we do the -- there are different ways, you know --  
 16 CHAIRPERSON SMITH: Okay. So it's a --  
 17 MR. NGUYENTAN: In the -- in the compare --  
 18 in the -- everything is different. We have organized  
 19 many. You know, for example, there's festival or the  
 20 black -- in the Vietnamese -- you know, after --  
 21 CHAIRPERSON SMITH: So this is a specific  
 22 ceremony?  
 23 MR. NGUYENTAN: Yeah, like that. You know,  
 24 we do many times. We do many things like that. We  
 25 all -- we all organize like that.

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1 CHAIRPERSON SMITH: Did someone from the  
 2 campaign ask you --  
 3 MR. NGUYENTAN: No, no campaign. I told only  
 4 ceremony. Traditional ceremony and all of the other  
 5 events for the festival, for the graduation or the --  
 6 for the -- the other association, like formal prisoner.  
 7 Association like that. Formal prisoner. Association.  
 8 Yeah, we go in jail, in the -- for political jail.  
 9 Either before the 1975.  
 10 CHAIRPERSON SMITH: One more clarification,  
 11 and then I think you have a question.  
 12 So this was a campaign event. You organized  
 13 this ceremony at the beginning of that, as you have  
 14 done other places, you indicated. Did anyone from the  
 15 campaign know that you were going to do that, or were  
 16 they surprised that this ceremony just happened?  
 17 MR. NGUYENTAN: Oh, no, no, no. If you say  
 18 the ceremony, no, not like that. A grand opening. Not  
 19 the ceremony. When we have the office, right? We want  
 20 to invite the people, come to know that my office here.  
 21 My group -- you know, okay. Let's do -- to run -- to  
 22 have the Jimmy -- when people vote, Vietnamese vote, I  
 23 invite the people to come in so look like the grand  
 24 opening.  
 25 CHAIRPERSON SMITH: Right.

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1 VICE-CHAIR COSGROVE: So right now you're  
 2 talking about the grand opening of the office on South  
 3 White Road?  
 4 MR. NGUYENTAN: Office. Yes. Right.  
 5 CHAIRPERSON SMITH: I've been referring to  
 6 the banquet. I'm sorry.  
 7 VICE-CHAIR COSGROVE: He's been talking about  
 8 the banquet in October --  
 9 MR. NGUYENTAN: Oh, the banquet different.  
 10 CHAIRPERSON SMITH: Oh, okay.  
 11 VICE-CHAIR COSGROVE: -- at the Golden  
 12 Palace --  
 13 MR. NGUYENTAN: No, no. The banquet -- the  
 14 banquet on October 7, right?  
 15 CHAIRPERSON SMITH: Right. You organized a  
 16 traditional ceremony at the beginning of -- I guess I  
 17 used the word "opening."  
 18 MR. NGUYENTAN: Right.  
 19 CHAIRPERSON SMITH: At the beginning of that  
 20 banquet.  
 21 MR. NGUYENTAN: Yes.  
 22 CHAIRPERSON SMITH: Did anyone from the  
 23 campaign ask you to do that?  
 24 MR. NGUYENTAN: Yes, yes. Everyone -- with  
 25 my culture, every event do like that.

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1 VICE-CHAIR COSGROVE: No, but he's asking,  
 2 did anyone from Jimmy Nguyen's campaign, either Jimmy  
 3 Nguyen or Mr. Robinson or the accountant, Angela, or  
 4 anyone else who was part of Jimmy Nguyen's campaign,  
 5 did any of them ask you to organize any part of this  
 6 banquet?  
 7 MR. NGUYENTAN: No.  
 8 VICE-CHAIR COSGROVE: The banquet was a  
 9 fundraiser for the Jimmy Nguyen campaign?  
 10 MR. NGUYENTAN: Yeah, I know. Yes.  
 11 VICE-CHAIR COSGROVE: But you are saying that  
 12 you just --  
 13 MR. NGUYENTAN: We organize for the  
 14 traditional -- the referred part, referring the --  
 15 VICE-CHAIR COSGROVE: -- did it on the -- but  
 16 you're saying you did it independently from the Jimmy  
 17 Nguyen campaign?  
 18 MR. NGUYENTAN: No, we cooperate with him.  
 19 VICE-CHAIR COSGROVE: You did cooperate with  
 20 them?  
 21 MR. NGUYENTAN: Yes.  
 22 VICE-CHAIR COSGROVE: So they asked you to do  
 23 things --  
 24 MR. NGUYENTAN: No, I do it by myself.  
 25 Because I -- I organize like that. The first part

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1 either ceremony, traditional. You know, the national  
 2 anthem like that for America, from the my Vietnam.  
 3 Something like that. And also the -- introduce to --  
 4 some people come in from the organize, from the  
 5 association, from the -- like that.  
 6 CHAIRPERSON SMITH: Somebody must have known  
 7 you were going to do that, though.  
 8 COMMISSIONER EDGEWORTH: Mr. Chairman?  
 9 CHAIRPERSON SMITH: Yes.  
 10 MR. NGUYENTAN: We do that many times like  
 11 that, you know.  
 12 CHAIRPERSON SMITH: Okay. Commissioner  
 13 Edgeworth?  
 14 COMMISSIONER EDGEWORTH: Well, I would like  
 15 to ask a couple of questions, please.  
 16 CHAIRPERSON SMITH: Okay.  
 17 COMMISSIONER EDGEWORTH: I'm a little  
 18 confused because I'm looking at your e-mail in response  
 19 to the treasurer of the committee. And you indicate  
 20 that you -- and you actually indicate under your name  
 21 that you are the official representative of the  
 22 independent expenditure committee. And this was an  
 23 e-mail on October 9th.  
 24 MR. NGUYENTAN: I understand that. I have  
 25 e-mail that. I say -- I say that right. But because

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1 the Angela treasury in the Jimmy campaign, the only  
 2 way -- you know, the border -- Yun Chun (phonetic) many  
 3 times. Because he not -- she not, you know, in charge  
 4 for that. But all the time Angela send him -- send all  
 5 the e-mail. That's the reason that Yun Chun send to me  
 6 and let me know. Or call me for what happened like  
 7 this, like that. That's the reason I directly to  
 8 send -- to send e-mail to the Angela and tell, Anything  
 9 you want, talk to me. I'm officially representative.  
 10 But not the leader. Okay? But not leader. I told you  
 11 like that. Because nobody can organize like that.  
 12 Nobody -- maybe don't understand like that. Nobody can  
 13 make anything like that. That's the reason.  
 14 CHAIRPERSON SMITH: Okay. Commissioner  
 15 Edgeworth, you --  
 16 COMMISSIONER EDGEWORTH: My question is a  
 17 little different. My question is, at what point did  
 18 you acknowledge or decide that this group that you've  
 19 been talking about was an independent expenditure  
 20 committee?  
 21 MR. NGUYENTAN: Oh, yeah. Okay. I answered  
 22 you. Okay.  
 23 COMMISSIONER EDGEWORTH: This was the  
 24 first -- this was the first time you called yourself an  
 25 independent committee.

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1 MR. NGUYENTAN: Okay. Because -- but I  
 2 answered before. Because of the knowledge -- my  
 3 friend, right? They need me help with something,  
 4 organize for the events like this, and I do the part  
 5 like this and do the part (unintelligible). And also  
 6 maybe I can speak English more better than them. But  
 7 not good but maybe the -- better than all my friends.  
 8 COMMISSIONER PIERRE-DIXON: The question is,  
 9 though, how did you know and what did you mean by the  
 10 term "independent expenditure"?  
 11 MR. NGUYENTAN: Oh, that mean -- because, you  
 12 know, Angela told me the name -- the name IE. That  
 13 I'm -- before I don't know -- I know nothing about that  
 14 word. I know nothing about IE, independent  
 15 expenditure. But she always -- Angela always tell me  
 16 like that. If you do that, you are IE. You are IE.  
 17 I say, "Okay. I am IE," because I very upset  
 18 with her.  
 19 COMMISSIONER PIERRE-DIXON: I see what you're  
 20 saying.  
 21 COMMISSIONER EDGEWORTH: I have another  
 22 question. In this same e-mail, you talk about the  
 23 banquet being "our independent expenditure event." And  
 24 that's in capital letters. And you're claiming in this  
 25 that the banquet was your event of the independent

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1 committee.  
 2 MR. NGUYENTAN: Okay. The reason why,  
 3 because -- you know, when I send the receipt from the  
 4 Thang Bom weekly, the magazine, to the Angela to let  
 5 her pay for the 420, something like that. I don't  
 6 remember exactly. Right? But that included 100 for  
 7 the other previously -- the fundraising from  
 8 September 8, something like that. Okay? And then on  
 9 the letter from Jimmy, Vietnamese language -- you know,  
 10 look like -- you know, the open letter. Okay? To --  
 11 to the Vietnamese people. That the reason -- but the  
 12 Thang Bom new magazine, they know me and they said to  
 13 me. And I said to her -- I tell them -- I tell her,  
 14 Pay. But she say she don't pay. She never pay. These  
 15 are not from me. These are from the other -- previous  
 16 fundraising, September 9, 8, something like that. And  
 17 the letter -- open letter from Jimmy Nguyen. Okay?  
 18 And that's the reason I tell him -- I tell her like  
 19 that. Okay? The fundraising -- I do all the money.  
 20 She took it. She took all the money from the  
 21 fundraiser.  
 22 CHAIRPERSON SMITH: The October 8th  
 23 fundraiser?  
 24 MR. NGUYENTAN: October 7th.  
 25 CHAIRPERSON SMITH: CLERK TABER asked me to

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<p style="text-align: center;">Page 117</p> <p>1 remind you, if you're having difficulty -- if we're                  2 having difficulty with communication, you could use the                  3 interpreter if that would be easier for you in                  4 answering questions.                  5 MR. NGUYENTAN: That's okay.                  6 CHAIRPERSON SMITH: You have the option.                  7 Let me follow up on that about the                  8 advertisement.                  9 COMMISSIONER EDGEWORTH: Well, I also want                  10 a -- one more comment about the follow-up letter and                  11 response, in which the treasurer refuses -- that it was                  12 an independent city event on the next day, on the                  13 10th (inaudible) campaign committee event. So there                  14 seemed to be a disagreement between you and the                  15 treasurer as to who event was actually -- who actually                  16 arranged the event. Whose event was it?                  17 MR. NGUYENTAN: The event means that we do                  18 only -- you know, that I organize for the event. I do                  19 the first part. And, after that, you know, a lot of                  20 people come -- come up, say, you know, any -- officer                  21 from here. Mayor (unintelligible) and chairman,                  22 president in the -- Northern California Vietnamese,                  23 some people association. That's the reason -- but the                  24 money -- we let Yun Chun take the money on. And then                  25 Yun Chun do the paperwork and send to the Angela.</p>	<p style="text-align: center;">Page 119</p> <p>1 MR. NGUYENTAN: But I know all the item                  2 there. The first item, one hundred, is from the                  3 advertising for the -- before the raising, like                  4 previous raising, on the September 8th. From the                  5 (unintelligible).                  6 CHAIRPERSON SMITH: What's September 8th?                  7 You mean October 8th?                  8 MR. NGUYENTAN: Yeah, we have the other one.                  9 We have the other one, before that.                  10 CHAIRPERSON SMITH: Have we ever seen that                  11 ad --                  12 MR. NGUYENTAN: We have many fundraisers.                  13 Not only me. Before the one month, before the two                  14 months, we have more raising.                  15 CHAIRPERSON SMITH: Okay. So, if I                  16 understand you correctly, you have no idea who placed                  17 these advertisements on that magazine?                  18 MR. NGUYENTAN: Yes.                  19 CHAIRPERSON SMITH: But they sent you the                  20 bill because they know you?                  21 MR. NGUYENTAN: Yes.                  22 CHAIRPERSON SMITH: And the campaign                  23 obviously said it wasn't them, because they said they                  24 wouldn't pay the bill.                  25 MR. NGUYENTAN: Yeah. I don't know why --</p>
<p style="text-align: center;">Page 118</p> <p>1 That's -- you know.                  2 CHAIRPERSON SMITH: So --                  3 MR. NGUYENTAN: And she told me -- Angela                  4 tell me that Jimmy come back.                  5 CHAIRPERSON SMITH: So you're saying that                  6 you -- someone --                  7 MR. NGUYENTAN: Yun Chun.                  8 CHAIRPERSON SMITH: Which is part of your                  9 group. Someone in your group actually collected the                  10 money and then passed it on to Jimmy Nguyen?                  11 MR. NGUYENTAN: Yeah.                  12 CHAIRPERSON SMITH: Okay. If I could go back                  13 to the newspaper ad that you sent to them and asked                  14 them to pay and Angela said no. Who actually placed                  15 that ad?                  16 MR. NGUYENTAN: Who actually paid what?                  17 CHAIRPERSON SMITH: Who actually asked the                  18 magazine to run that advertisement?                  19 MR. NGUYENTAN: I do not know.                  20 CHAIRPERSON SMITH: It wasn't you?                  21 MR. NGUYENTAN: That -- I told you. That                  22 magazine, Thang Bom magazine, they send me letter.                  23 They send me the receipt. Because they know me. But I                  24 don't know who do it.                  25 CHAIRPERSON SMITH: Okay. So you --</p>	<p style="text-align: center;">Page 120</p> <p>1 what she thinking about.                  2 CHAIRPERSON SMITH: So we don't know who                  3 actually placed the ad, and we have never actually seen                  4 the ad.                  5 Okay. The other question that I was                  6 wondering: There were at least a couple of occasions,                  7 I believe, and e-mails as well as maybe even -- I think                  8 Mr. Robinson said he told you -- that you were advised                  9 that you were perhaps running into trouble with the law                  10 regarding independent expenditures and you should --                  11 you should hire legal counsel --                  12 MR. NGUYENTAN: I don't --                  13 CHAIRPERSON SMITH: -- to help guide you                  14 through that. I believe that was in one of the                  15 e-mails --                  16 MR. NGUYENTAN: No.                  17 CHAIRPERSON SMITH: But you never did until                  18 we filed -- until a complaint was filed. Is that                  19 correct? You never followed that advice, to get -- to                  20 find someone to help you understand the law and to make                  21 sure that you weren't running afoul of the law?                  22 MR. NGUYENTAN: No, I don't know that before.                  23 Only after Mr. Miller tell me like that. I ask him --                  24 and many confusing I ask my lawyer, Tam Nguyen. That's                  25 the only thing.</p>

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1 CHAIRPERSON SMITH: But you had no contact  
 2 with him during the September-October time frame?  
 3 MR. NGUYENTAN: No, nothing. Nothing. I  
 4 don't -- I do nothing.  
 5 CHAIRPERSON SMITH: Or any other legal  
 6 counsel?  
 7 MR. NGUYENTAN: No. I have no...  
 8 CHAIRPERSON SMITH: At that point in time,  
 9 were you familiar at all with the requirements of the  
 10 Municipal Code or the state law regarding an  
 11 independent committee?  
 12 MR. NGUYENTAN: No. No. After Mr. Miller  
 13 send me like that or from you or City Clerk send me --  
 14 go through the mail like that. After that, I look at  
 15 that. I open the mail and look at that, and I read it.  
 16 CHAIRPERSON SMITH: So, prior to that time,  
 17 prior to the complaint, you had -- you're telling us  
 18 you had no knowledge of the city law or the state law  
 19 regarding campaign contributions and independent  
 20 committees?  
 21 MR. NGUYENTAN: No. Yeah, I don't know that.  
 22 CHAIRPERSON SMITH: And -- and when you were  
 23 advised that you should get legal counsel to help you  
 24 understand them, you don't remember that or --  
 25 MR. NGUYENTAN: No, no. I never -- I never

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1 do that. I never --  
 2 CHAIRPERSON SMITH: Well, we've seen e-mails  
 3 that were sent to you. I believe there was an e-mail  
 4 from Angela that said -- I believe. Am I -- do you  
 5 remember -- does anybody else remember that?  
 6 MR. MILLER: It's in Exhibit Q in the list of  
 7 exhibits.  
 8 CHAIRPERSON SMITH: Okay. Okay. But, in any  
 9 event, you didn't hire counsel until --  
 10 MR. NGUYENTAN: I told you -- okay? -- one  
 11 more time, and you don't ask me again. Never I know  
 12 that before. Okay?  
 13 CHAIRPERSON SMITH: I understand.  
 14 MR. NGUYENTAN: Until this case. I told you  
 15 before, many year -- maybe ten year, you know, ten  
 16 years ago. I have a lot of candidate. But this the  
 17 first time I get in trouble like this.  
 18 CHAIRPERSON SMITH: Okay.  
 19 MR. NGUYENTAN: I do -- I help Mr. Van Tran  
 20 five, six times to open fundraising like this in  
 21 Sacramento, in here, and the Southern California too.  
 22 Sacramento many, many, many times. From 2004, when he  
 23 become the Assembly.  
 24 CHAIRPERSON SMITH: Okay.  
 25 MR. NGUYENTAN: You know, until now. This is

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1 the first time I got in trouble with this. I have a  
 2 lot of headache. Have a headache. Because we do like  
 3 this.  
 4 CHAIRPERSON SMITH: Okay.  
 5 MR. NGUYENTAN: I don't spend a lot of money.  
 6 Only something happen. You know, flyer, in paper, do  
 7 printout for him to help him. Nobody -- that's it.  
 8 It -- remember, it -- you know, it's like him.  
 9 Something now like \$75, 100, something like that.  
 10 COMMISSIONER PIERRE-DIXON: Okay.  
 11 MR. NGUYENTAN: Not too much. But we have  
 12 headache.  
 13 CHAIRPERSON SMITH: Any other questions?  
 14 MR. NGUYENTAN: Big headache.  
 15 MR. MILLER: Can I suggest questions through  
 16 you or ask questions directly?  
 17 CHAIRPERSON SMITH: Let me ask the city  
 18 attorney.  
 19 MS. LEE: I would say through the chair.  
 20 MR. MILLER: One thing that is very  
 21 interesting to me that I would appreciate learning more  
 22 about are the witness' knowledge of other expenditures  
 23 referenced in our Reports. There were tote bags.  
 24 There were banners. There were pens. There were  
 25 badges. There were flyers. And we wished we would

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1 have the opportunity to discuss the source of money for  
 2 those expenditures with this witness, had we had a  
 3 chance to speak with him.  
 4 CHAIRPERSON SMITH: You're speaking of the  
 5 expenditures or the items that were handed out at the  
 6 October 8th banquet as well as items that were  
 7 available in the office?  
 8 MR. MILLER: And the banner.  
 9 MR. NGUYENTAN: I understand what you want to  
 10 know.  
 11 CHAIRPERSON SMITH: You --  
 12 MR. NGUYENTAN: But I cannot -- I -- you  
 13 know, myself, I pay like that only.  
 14 But that I tell you. Many friends -- but I  
 15 don't remember who paid this, who paid that. But -- I  
 16 know, hundred percent, each one, they have paid. You  
 17 know, I don't know exactly who either pay for this one  
 18 or the other one. But I know, hundred percent,  
 19 everyone pay. This one pay for this; the other one pay  
 20 for that. For example, Mr. Tam Nguyen paid for the  
 21 banner. He paid for the utility. The other pay for --  
 22 MR. VU: Water.  
 23 MR. NGUYENTAN: For example -- I'm going to  
 24 say example. The table. Something like that. Nobody  
 25 in the group -- nobody -- we don't have organized.

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1 CHAIRPERSON SMITH: Did you keep any -- did  
 2 you or anyone else keep any records of who paid for  
 3 what and how much?  
 4 MR. NGUYENTAN: Nothing. I'm sorry. Because  
 5 I think very simple. It's very simple. The people  
 6 help. Okay. Pay like this. The other one who help  
 7 pay like that. That's it. We don't record that. We  
 8 don't -- you know, we never -- we think very simple  
 9 when we have the -- and support Jimmy Nguyen. We do  
 10 think very simple.  
 11 CHAIRPERSON SMITH: Okay.  
 12 MR. NGUYENTAN: That's very trouble for like  
 13 that.  
 14 CHAIRPERSON SMITH: Did you have anything  
 15 else you wanted to discuss?  
 16 MR. MILLER: In addition to knowing the  
 17 source of the payment, someone -- the materials, the  
 18 tote bag, the badges, the pens, were close but not  
 19 identical to similar campaign materials produced by the  
 20 campaign. And wondering if the witness knows either  
 21 the circumstances under which these materials were  
 22 produced or designed and whether they were done in kind  
 23 of coordination with the campaign.  
 24 MR. NGUYENTAN: We -- yeah. We don't have a  
 25 lot. You know, the campaign sign. That's from the --

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1 Jimmy Nguyen, he give us. Campaign sign. Right?  
 2 Campaign sign on the -- lawn sign, right?  
 3 VICE-CHAIR COSGROVE: Lawn sign?  
 4 MR. NGUYENTAN: Lawn sign, right.  
 5 VICE-CHAIR COSGROVE: So you got those from  
 6 Jimmy Nguyen?  
 7 MR. NGUYENTAN: No. Or yeah. He give them  
 8 me. They give them, yeah. He give me.  
 9 And the banner, my friend pay. But I don't  
 10 know -- he pay like this. I told you.  
 11 VICE-CHAIR COSGROVE: So these other items,  
 12 like tote bags --  
 13 MR. NGUYENTAN: Only -- we have the flyer and  
 14 invitation; I do. I did myself.  
 15 CHAIRPERSON SMITH: What about the tote bags  
 16 and pens and --  
 17 MS. CASSMAN: Did they come from the  
 18 campaign? Do you know?  
 19 MR. NGUYENTAN: No. No. The pen, the bag,  
 20 somebody had them like that. Somebody have. I don't  
 21 know exactly. I don't remember the name, all of them.  
 22 I'm sure very true. I never lie that one. I told you  
 23 very, very true.  
 24 CHAIRPERSON SMITH: Okay.  
 25 MR. NGUYENTAN: But we do very simple. We

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1 think very simple. We do that. Okay. Have --  
 2 everyone have money, pay like this, pay like that.  
 3 Simple only. Maximum about 300, 400. That's it.  
 4 Nobody pay more than that. Because nobody have money.  
 5 We only -- we send them -- you know, my time  
 6 to help him, really. We go somewhere, we go to the --  
 7 many event -- Vietnamese community event to introduce  
 8 him or go to the -- you know, knock the door, flyers,  
 9 like that. We go to, you know, put the lawn sign on  
 10 the house. That's it. We don't -- we don't spend a  
 11 lot of money. We don't have money to spend.  
 12 CHAIRPERSON SMITH: Okay. Okay. I think --  
 13 MR. NGUYENTAN: That's enough? Okay. Thank  
 14 you.  
 15 CHAIRPERSON SMITH: Okay. Now, let's see.  
 16 Is Mr. -- oh, you're -- I guess he's gone. Mr. Nguyen  
 17 Tam.  
 18 MR. NGUYENTAN: Yes. I am.  
 19 CHAIRPERSON SMITH: So this is --  
 20 MR. NGUYENTAN: Nguyen Tam, he gone. He  
 21 left.  
 22 CHAIRPERSON SMITH: Okay. He's gone. Yeah,  
 23 I know -- he's gone. So is there anyone else?  
 24 I think basically we've heard from everyone  
 25 who is still here. Shall we get back to --

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1 COURT REPORTER: Can we take a break?  
 2 CHAIRPERSON SMITH: Sure. Yeah. Five  
 3 minutes.  
 4 (Brief recess.)  
 5 CHAIRPERSON SMITH: Okay. We're ready to go,  
 6 I believe.  
 7 Okay. I've had a request from a member of  
 8 the public to speak before we -- and I'll go back to  
 9 the Evaluators and try to pick up where we left off, if  
 10 we can see where we were. Terry Riley. You want to --  
 11 do you want to say something? You got to do the  
 12 whole --  
 13 MR. RILEY: Do I?  
 14 CHAIRPERSON SMITH: Yes, you do. Identify  
 15 yourself, please.  
 16 MR. REILLY: Terry Reilly, former chair of  
 17 this Commission.  
 18  
 19 TERRY REILLY,  
 20 being first duly sworn by the Chairperson to tell the  
 21 truth, the whole truth and nothing but the truth,  
 22 testified as follows:  
 23  
 24 MR. REILLY: Usually there is a little bit of  
 25 public comment. How do you feel about what's going on



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1 here? It's interesting that the City of San Jose is  
 2 required by law to provide campaign materials in five  
 3 different languages -- Chinese, English, Vietnamese,  
 4 Spanish and Tagalog -- when all the campaign  
 5 statements, when you go -- it's required by law, yet,  
 6 you know, not enough outreach may be done in some of  
 7 these communities. And I would like the Commission to  
 8 consider, when you're coming back in February, in terms  
 9 of your work plan -- I know counsel has been pushing a  
 10 couple of ideas on you, but -- maybe a little bit more  
 11 proactive approach to some of these emerging  
 12 communities in the political field when you get a  
 13 candidate that is running from a community that may not  
 14 have -- you know, know the rules. Because they're all  
 15 written in English or they don't really know.  
 16 But my concern, it would be nice to have the  
 17 city go out to these communities that -- you can kind  
 18 of guess something like this might happen. You know,  
 19 my family is in the Filipino community, believe it or  
 20 not. You know, they got a Filipino candidate; they're  
 21 going to go nuts. But they don't know the rules. They  
 22 just don't know the rules. And I think you're hearing  
 23 a lot of well-meaning people coming out and doing it.  
 24 So I -- something to avoid this happening in  
 25 the future. I think a little proactive measure

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1 might -- might be good. It might be good. In their  
 2 languages. We give them ballots and campaign stuff in  
 3 their languages, but yet we expect them to know all the  
 4 other minutia. So it may avoid having to go through  
 5 this, maybe.  
 6 CHAIRPERSON SMITH: Thank you.  
 7 Back to the Evaluators. Where were we? We  
 8 were at the point where we needed to decide whether  
 9 there were independent expenditures.  
 10 MR. MILLER: Yeah, I think we -- we pretty  
 11 much -- I sort of stopped -- we talked about the rental  
 12 expense, but we have conducted an inquiry that has gone  
 13 beyond that. I don't know that --  
 14 MS. CASSMAN: So I --  
 15 CHAIRPERSON SMITH: You have nothing else to  
 16 say.  
 17 MS. CASSMAN: The concern here is -- I think  
 18 it's been well said, that you have a group of people  
 19 who -- who didn't understand the rules. And what they  
 20 did understand was wrong. I mean, I did get a sense  
 21 that what they thought was -- even if they were working  
 22 together as some kind of an ill-defined group, so long  
 23 as no one person spent more than a thousand dollars,  
 24 they were -- nothing that needed to be recognized and  
 25 registered or reported under the law. So -- so they

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1 were operating under a false impression or  
 2 understanding of the law.  
 3 And you have a campaign who I believe was  
 4 trying -- trying to follow the law. We definitely had  
 5 a campaign consultant who understood the law and was  
 6 trying to communicate with the campaign candidate what  
 7 that candidate should and shouldn't do. But the  
 8 candidate, at the same time, needed and wanted the  
 9 support he was getting from this group.  
 10 So -- you know, there is intention -- he was  
 11 trying to, I think, abide by the direction and  
 12 instruction of his consultant. But, nevertheless, this  
 13 is the community in which he was a part and the  
 14 community that wanted to support him.  
 15 So I know he said to us -- he found it very  
 16 hard -- and we understood that, and I think we  
 17 reflected that in our Report. His ambivalence, trying  
 18 to understand what the rules were, but at the same time  
 19 telling people who wanted to support him to stay away.  
 20 MR. MILLER: To be clear: I think also our  
 21 Report indicates that there were members of these --  
 22 this group that we spoke to who struck us as being  
 23 folks who may have the -- a well-meaning but misplaced  
 24 understanding of the rules. But there were also folks  
 25 we spoke to who were sophisticated, educated people who

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1 seemingly did know the landscape in which they were  
 2 operating.  
 3 MS. CASSMAN: You know, our -- what you  
 4 experienced tonight was very much what we experienced  
 5 for the last two months, trying to get at the facts. I  
 6 mean, you got a microcosm of it in the last two hours.  
 7 And -- you know, I -- I am not sure that any more  
 8 fact-finding is going to help us. It may just spin  
 9 wheels and spend more resources than the City needs to  
 10 spend in order to reach a goal. If our goal is to  
 11 educate and inform and make clear to the community that  
 12 that -- the behavior we think we understand took place  
 13 is not within the confines of the law. And that if, in  
 14 fact, they're going to participate in the San Jose  
 15 election activity, they need to become familiar with  
 16 and abide by the Municipal Code rules.  
 17 And how do we get there? Because I think  
 18 that's really where we want to be. You know, imposing  
 19 fines -- I -- as your Evaluator, that's -- it's your  
 20 ultimate decision. I find it difficult when we still  
 21 have facts -- we haven't flushed out all the facts, and  
 22 we don't have, yet, a clear picture of the puzzle. So  
 23 I think it's hard to impose fines under that  
 24 circumstance.  
 25 At the same time, as the Evaluator, I can

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1 tell you I am feeling like we didn't get the  
 2 cooperation I had hoped from the group. And I'm not  
 3 sure we got the full picture of the campaign.  
 4 VICE-CHAIR COSGROVE: That's what it feels  
 5 like to me.  
 6 COMMISSIONER EDGEWORTH: Mr. Chairman?  
 7 CHAIRPERSON SMITH: Yes. Commissioner  
 8 Edgeworth.  
 9 COMMISSIONER EDGEWORTH: I -- I think we're  
 10 all sensitive to the misunderstanding of the people who  
 11 may not have understood the rules. I agree with the  
 12 Evaluator that some of those people did understand the  
 13 rules and used them.  
 14 I think the hole that is missing for me, is  
 15 clearly we don't have the candidate before us, and it  
 16 seems to me that much of this is based on his personal  
 17 relationships. And the thank-you memo regarding  
 18 finding the space and all you've done for me gives me  
 19 some concern. And I think that we would be remiss on  
 20 not pursuing more information from the candidate and  
 21 based on his personal knowledge and his personal  
 22 relationship with the people he was dealing with. And  
 23 that's a missing piece, to me.  
 24 There seems to be a chasm between the  
 25 campaign committee and what the treasurer was trying to

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1 impress on this group. And -- which I -- the tone of  
 2 the e-mail traffic gives some credibility, to me, to  
 3 her intent.  
 4 But clearly there seems to be a gap in  
 5 communication between the candidate and the committee,  
 6 especially the treasurer. So my impression -- that's a  
 7 missing piece, to me.  
 8 COMMISSIONER PIERRE-DIXON: I would agree  
 9 with that.  
 10 CHAIRPERSON SMITH: There is two things  
 11 that -- I think there's clearly some violations. It's  
 12 a matter of what exactly are they and who exactly is  
 13 responsible. I'm troubled -- and both the Evaluator  
 14 and Commissioner Edgeworth alluded to it. I'm troubled  
 15 by the fact that it appears that the -- I guess  
 16 professional staff, the campaign treasurer and the  
 17 campaign consultant, were pushing away, keeping the law  
 18 in mind and trying to separate the candidate and the  
 19 committee from the group and that the candidate maybe  
 20 was -- you know, like with this e-mail, was a big  
 21 surprise tonight to Mr. Robinson, and maybe the  
 22 candidate wasn't quite walking that same line.  
 23 On the other hand, I'm -- I'm bothered -- I'm  
 24 still bothered -- and maybe it doesn't matter where we  
 25 are. I'm still bothered by the fact that I really

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1 don't think we got much cooperation from the group.  
 2 Perhaps due to misunderstandings about the validity of  
 3 the complaint and perhaps not. But I think there's --  
 4 I think there's missing information on both sides that  
 5 makes it difficult.  
 6 One option we could consider would be -- I  
 7 hate to do this. I mean, we dragged this on for when  
 8 the original complaint was filed in October. So it's  
 9 been three months. The meter is running. We have  
 10 another complaint being evaluated elsewhere that's  
 11 still going. But it's hard to make any kind of a real  
 12 determination -- factual determination without a little  
 13 more information. So I'm thinking one thing we could  
 14 do is continue this until the February meeting and ask  
 15 for two things. That would be for the candidate  
 16 himself to show up and answer some questions about his  
 17 interactions with the group. And the second one would  
 18 be for Mr. NguyenTan to canvass his friends and come up  
 19 with as good a list as he can of who spent how much for  
 20 what.  
 21 You indicated that -- that you have no  
 22 records. But I think -- in order for us to really  
 23 determine the magnitude of the expenditures and such, I  
 24 think we really need a better picture of just what was  
 25 spent.

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1 I think those two things could be done. I  
 2 don't think that would require the Evaluator do  
 3 anything else, necessarily.  
 4 MS. CASSMAN: I agree.  
 5 CHAIRPERSON SMITH: And I think it might give  
 6 us more information that we would feel more comfortable  
 7 coming to a conclusion. So if there's anybody else  
 8 that has got some thoughts, either here or on the  
 9 phone, I'd be happy to hear them.  
 10 VICE-CHAIR COSGROVE: I think a simple list  
 11 from the members of the group -- just handwritten,  
 12 even -- you know, that says, I think I spent \$30 for  
 13 the water bill. I think I spent \$50 on the banner.  
 14 You know, just a rough accounting, even if people don't  
 15 have receipts, just to know who spent what,  
 16 approximately. Cash. Whatever. Just write it down.  
 17 Then we have more information to know, was it closer to  
 18 just a thousand dollars or more and...  
 19 Again, the -- I think -- if I could just say,  
 20 the goal of the Commission is not to get people in  
 21 trouble. I know it feels like that when you're asked  
 22 to meet with lawyers and explain what happened. The  
 23 goal is to enforce the campaign laws for the City so  
 24 that it's fair to everyone who runs in the elections.  
 25 So a lot of times people just make mistakes.

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1 Because the laws are hard to comply with. And, as you  
 2 saw with Crema Coffee, they made a mistake. Dung Tran,  
 3 I think, just contributed twice. Check was returned.  
 4 It's over. No one is in trouble.  
 5 So that should be the mentality. That's my  
 6 mentality. I can't speak for everybody. The goal is  
 7 not to get people in trouble, persecute, cause  
 8 problems. The goal is, let's have fair elections in  
 9 our city.  
 10 So that's really all it is. We're just  
 11 looking for more information, to see if any big  
 12 mistakes were made. And also we want more information  
 13 from the campaign, to see -- all right. Was the  
 14 candidate, you know, talking out of the -- both sides  
 15 of his mouth or something? That's how I feel about why  
 16 we would want more information. Could we then get the  
 17 facts? Could we then decide, were any big mistakes  
 18 made? And, if so, how do we fix it?  
 19 That's kind of where I -- my goal would be.  
 20 CHAIRPERSON SMITH: And I think, in kind of  
 21 looking ahead, once we understand all of that, maybe --  
 22 since we're on this effort that Mr. Reilly alluded to  
 23 earlier with our work plan, maybe we can learn some  
 24 things from that, that there is some things in the  
 25 regulations that we can make better so that these kind

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1 of things don't happen again. Or maybe outreach -- as  
 2 well as outreach.  
 3 The key, to me, is -- hearing from the  
 4 candidate is, is it independent or is it coordinated as  
 5 a campaign contribution? Based on -- based on what I  
 6 read coming in here to this meeting tonight from the  
 7 Evaluator's Reports and the various responses, before  
 8 the testimony, before seeing that e-mail, I was pretty  
 9 well convinced in my head that these were independent  
 10 expenditures and that maybe they didn't do a very good  
 11 job of it, but the campaign tried to keep it  
 12 independent and so it was independent expenditures.  
 13 And I felt a little uncomfortable with the committee  
 14 because the candidate showed up at the office opening  
 15 and the candidate -- and the group was involved and the  
 16 traditional ceremony at the opening of the banquet, but  
 17 you couldn't prove anything.  
 18 But now I'm really up in the air. That's why  
 19 I would like part -- part of why I would like more  
 20 information. Because I just don't know what to do.  
 21 COMMISSIONER EDGEWORTH: The issue of the  
 22 space that was arranged and the thank-you e-mail  
 23 concerns me because it almost sounds as though the  
 24 candidate had hoped they would find space for him. I  
 25 think we have to find out more about that thank-you and

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1 what --  
 2 CHAIRPERSON SMITH: Yes.  
 3 COMMISSIONER EDGEWORTH: That's one area.  
 4 The other area, too, is if there was  
 5 fundraising done, then we can speak internally, through  
 6 the City Clerk's office, to find out whether the  
 7 campaign -- I mean, fundraising received -- document  
 8 (inaudible) had been reported.  
 9 CHAIRPERSON SMITH: You mean the expenditures  
 10 associated with the banquet?  
 11 COMMISSIONER EDGEWORTH: Yeah. (Inaudible)  
 12 that they weren't (inaudible) a committee, but sole  
 13 benefit is from the receipt of contributions at the  
 14 fundraisers.  
 15 CHAIRPERSON SMITH: We can certainly look at  
 16 the 460 as far as expenditures for the banquet. That's  
 17 a good point.  
 18 But -- and I think -- going back to what I  
 19 originally proposed, which was get the candidate here  
 20 and ask for a rough accounting. As elaborated on by  
 21 Commissioner Cosgrove, I think maybe we could also ask  
 22 the candidate if he has any other e-mails that he --  
 23 because what he gave us -- he gave us a stack of  
 24 e-mails that thick (indicating) that he received, but I  
 25 don't believe he gave us any e-mails that he sent. And

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1 now we've got one that he sent.  
 2 MS. CASSMAN: And that he said that he didn't  
 3 open and he didn't read.  
 4 CHAIRPERSON SMITH: There may be others. So  
 5 I don't know. Are we kind of in agreement, though?  
 6 COMMISSIONER PIERRE-DIXON: I think so. I  
 7 think that we -- I think we're only -- I hate to say  
 8 this, but I think we're only halfway through this  
 9 process and that if the individuals from the community  
 10 are now understanding that something occurred that  
 11 should not have occurred, they should be forthcoming in  
 12 telling us what was spent and by whom and what their  
 13 understanding was in terms of this group in relation to  
 14 the campaign and then have the actual campaign  
 15 individual in here, who is also an attorney, to explain  
 16 what he understood when he was requesting these items  
 17 from the community.  
 18 CHAIRPERSON SMITH: Yeah.  
 19 COMMISSIONER EDGEWORTH: And we could maybe  
 20 ask to bring receipts of what they purchased.  
 21 COMMISSIONER PIERRE-DIXON: If they have  
 22 them.  
 23 CHAIRPERSON SMITH: If we are kind of in a  
 24 consensus to do this, do we need a motion to make it  
 25 official or --

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<p style="text-align: center;">Page 141</p> <p>1 MS. LEE: I guess we have a motion to  2 continue the hearing to a further date at this point,  3 because the Commission is not --  4 CHAIRPERSON SMITH: I think continue the  5 hearing but then with those specific requests.  6 VICE-CHAIR COSGROVE: How do we make the  7 request?  8 CHAIRPERSON SMITH: Do we need a motion to --  9 VICE-CHAIR COSGROVE: To ask the -- would we  10 be asking the Evaluator/Investigator --  11 COMMISSIONER PIERRE-DIXON: Yes.  12 VICE-CHAIR COSGROVE: -- to ask for these  13 additional items from both --  14 CHAIRPERSON SMITH: I guess that would be  15 more appropriate, for them to do it and not us.  16 VICE-CHAIR COSGROVE: -- from Jimmy Nguyen,  17 or from -- or can it come from us?  18 COMMISSIONER PIERRE-DIXON: It needs to come  19 from the Evaluator.  20 COMMISSIONER EDGEWORTH: Mr. Chairman?  21 CHAIRPERSON SMITH: Yes?  22 COMMISSIONER EDGEWORTH: Could we word a  23 motion reflecting the recommendation of the Evaluator  24 in terms of directing them to provide -- you know,  25 provide additional information for our review?</p>	<p style="text-align: center;">Page 143</p> <p>1 MS. CASSMAN: I promised Mr. Robinson I would  2 call him tomorrow, when he left. I will do that. I'm  3 thinking if there's follow-through for a motion of the  4 Commission, now it's in the Commission's court to say,  5 This is -- this is what we are directing.  6 CHAIRPERSON SMITH: Yeah.  7 COMMISSIONER PIERRE-DIXON: I just have a --  8 I just have a slight problem with that. In looking at  9 our Report, when the recommendation is made where  10 you're -- based on you made these conclusions and then  11 suggest there's not enough information, what you need  12 to do -- I don't like to have open-ended things that  13 are not completed. I think if you're making a  14 recommendation, then the recommendation needs to be  15 followed through. And the recommendation says that you  16 would like to have -- tell us that you need the further  17 documentation. And I think that needs to be completed  18 by you guys.  19 MS. CASSMAN: Okay. We wrote those  20 recommendations before the meeting occurred.  21 CHAIRPERSON SMITH: We can reject the  22 recommendation and replace it with something else.  23 COMMISSIONER PIERRE-DIXON: I'm sure.  24 MS. CASSMAN: In -- what we're doing -- we're  25 proceeding to get more information, but the motion is</p>
<p style="text-align: center;">Page 142</p> <p>1 CHAIRPERSON SMITH: We could. Although I  2 think what we're -- from what we've learned tonight,  3 it's not going to be that -- they were very specific.  4 It was -- I don't think we're going to get that level  5 of specificity. I think -- but -- yeah, it would be  6 that plus there's a couple of other things. We want  7 some information from the candidate as well. Should  8 we -- should we refer this to the Evaluator to get the  9 information, or should it come directly to us?  10 MS. CASSMAN: I was wondering if it would be  11 appropriate -- because I know this is an odd situation;  12 we never faced it before -- if there was a letter from  13 the chairman saying that they passed the motion to  14 continue the matter, and then the letter would go to  15 Jimmy Nguyen, candidate, saying, We are requesting your  16 presence at our next regular meeting. We continued  17 your hearing.  18 And then a letter from the chair --  19 CHAIRPERSON SMITH: To Mr. NguyenTan?  20 MS. CASSMAN: I think to your attorney.  21 Although your attorney is not here representing you.  22 CHAIRPERSON SMITH: We could do that. You're  23 concerned because of the other --  24 MS. CASSMAN: Well, I'm not sure we need --  25 CHAIRPERSON SMITH: Or we don't --</p>	<p style="text-align: center;">Page 144</p> <p>1 coming from the Commission and the chair. And I'm kind  2 of thinking they're tired of hearing from us. I  3 think --  4 VICE-CHAIR COSGROVE: I am too. I --  5 CHAIRPERSON SMITH: I would defer to staff as  6 to what you guys think you should do.  7 CLERK TABER: What about the letter coming  8 from the acting City Clerk rather than the chair? That  9 way we don't have to worry about his signature. We can  10 draft the letter -- he can still give us the feedback,  11 but we can then sign it and send it right away.  12 MS. CASSMAN: I think that would be fine.  13 Just be sure you sign the letter.  14 CLERK TABER: I love signing my name.  15 MR. MILLER: And maybe ask them to come to  16 the next meeting. Also, having the opportunity to  17 speak with these people has been constructive. And  18 just --  19 CHAIRPERSON SMITH: Not just a list --  20 MR. MILLER: One round of a letter and a  21 written response might be sufficient, but it might be  22 helpful to speak to them also.  23 CHAIRPERSON SMITH: So what you're suggesting  24 is that we request the candidate's presence plus  25 additional e-mails. And the respondents or at least a</p>

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<p style="text-align: center;">Page 145</p> <p>1 representative of the group -- Mr. NguyenTan, probably.                  2 And the best list of expenditures that he can pull                  3 together from the group and attend the meeting.                  4 MS. CASSMAN: Right.                  5 CHAIRPERSON SMITH: When is the next --                  6 MS. CASSMAN: I'm hesitating. That letter                  7 will go to your attorney, who -- I'm assuming you're                  8 still represented by your attorney even though he's not                  9 here.                  10 CHAIRPERSON SMITH: So the -- the next                  11 meeting is three weeks from yesterday? Is that right?                  12 It's the 13th?                  13 CLERK TABER: Yeah.                  14 CHAIRPERSON SMITH: So is that enough time                  15 to --                  16 CLERK TABER: I can draft the letter                  17 tomorrow. If not tomorrow, on Monday.                  18 CHAIRPERSON SMITH: Okay, then. So you'll                  19 have it to me to look at? Okay.                  20 MS. CASSMAN: We were wondering if the City                  21 Clerk should also send a letter to Dung Tran, who might                  22 have information too.                  23 CHAIRPERSON SMITH: To who?                  24 MS. CASSMAN: Dung Tran.                  25 CHAIRPERSON SMITH: Oh.</p>	<p style="text-align: center;">Page 147</p> <p>1 CHAIRPERSON SMITH: Okay. Let me -- let me                  2 try to make the motion. I can make a motion, can't I?                  3 Sure. Just like anybody.                  4 Okay. So I would move that we direct the                  5 City Clerk to send a memo to the candidate -- I guess                  6 and his attorney or whatever, the candidate -- the                  7 campaign, requesting his presence at the next meeting,                  8 along with any additional e-mails either -- e-mails                  9 either sent by him to the group or received from him --                  10 received by him from the group and a letter to go to                  11 Mr. NguyenTan or his lawyer, requesting his presence at                  12 the next meeting, along with a list of people who made                  13 various expenditures and the best estimate he can                  14 provide of how much those expenditures were -- you                  15 know, who the people were, what the expenditure was for                  16 and the rough amount. And if you can capture all of                  17 that, you're better than I.                  18 COMMISSIONER PIERRE-DIXON: They need to                  19 provide us with an explanation for this e-mail that we                  20 got tonight. And I know his attorney --                  21 CHAIRPERSON SMITH: Oh, that's for the --                  22 from the candidate. Yes, that would be part of it.                  23 That would be -- that's one of the primary reasons for                  24 asking him to be here.                  25 That was the motion. Do we have a second?</p>
<p style="text-align: center;">Page 146</p> <p>1 MR. MILLER: I thought I heard him say that                  2 there were a number of expenses that were recorded and                  3 kept track of by Ms. Tran.                  4 CHAIRPERSON SMITH: Oh, okay. Sure.                  5 CLERK TABER: Do we have her contact?                  6 MR. MILLER: She's a respondent to one of the                  7 complaints.                  8 CLERK TABER: She's on 2.                  9 COMMISSIONER EDGEWORTH: I think he also gave                  10 us some names of people who bought specific things,                  11 like who paid for the banner and who paid for, you                  12 know, the tote bags or whatever.                  13 CHAIRPERSON SMITH: I'm not sure if those --                  14 yeah, I'm not sure if those were actual statements of                  15 fact or if those were hypotheticals.                  16 MS. CASSMAN: I think they were examples.                  17 CHAIRPERSON SMITH: I think they may have                  18 been hypothetical examples. But still we don't need                  19 all those people there, but that's the kind of                  20 information we're looking for.                  21 So do we need -- if we're going to do that, a                  22 letter from CLERK TABER that I review before it goes                  23 out, do we need a motion?                  24 MS. LEE: Yes. We should have a motion                  25 giving that direction to the City Clerk.</p>	<p style="text-align: center;">Page 148</p> <p>1 VICE-CHAIR COSGROVE: I second.                  2 CHAIRPERSON SMITH: Thank you.                  3 MR. VU: I have a question.                  4 CHAIRPERSON SMITH: Yes.                  5 MR. VU: Do I have to come, or am I done?                  6 CHAIRPERSON SMITH: I don't think you need to                  7 come back. We understand your involvement.                  8 MS. LEE: Mr. Chair, we also had the letter                  9 to Dung Tran about requesting her presence as well.                  10 CHAIRPERSON SMITH: Okay. There was some                  11 discussion about whether that was necessary or not,                  12 though.                  13 MS. LEE: Did the chair want to make that                  14 part of the motion or not?                  15 CHAIRPERSON SMITH: Well, I'm not sure.                  16 COMMISSIONER PIERRE-DIXON: No.                  17 CHAIRPERSON SMITH: I guess -- maybe I --                  18 maybe we can amend the motion to say -- we could                  19 consider amending it to say Mr. NguyenTan and anyone                  20 else who has critical information on expenditures,                  21 without naming names, because it wasn't clear to me.                  22 MR. NGUYENTAN: You can send it directly to                  23 me -- okay? -- if need to send.                  24 MS. CASSMAN: Send it directly to me.                  25 CHAIRPERSON SMITH: We probably ought to copy</p>

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1 his attorney.  
 2 CLERK TABER: I will.  
 3 CHAIRPERSON SMITH: Is that okay, to amend it  
 4 as I just did?  
 5 COMMISSIONER EDGEWORTH: Mr. Chairman, I'm a  
 6 little concerned. It sounds as though we're excusing  
 7 the candidate from actually appearing.  
 8 CHAIRPERSON SMITH: Oh, no, no.  
 9 MS. COSGROVE: We're asking the candidate to  
 10 appear.  
 11 CHAIRPERSON SMITH: We want the candidate  
 12 here himself in person.  
 13 COMMISSIONER EDGEWORTH: Okay. The other  
 14 thing is, too, I'm a little concerned. You asked for  
 15 correspondence received from (inaudible) -- all the  
 16 same e-mail you got before. And, basically, I think we  
 17 want his personal correspondence, not just those that  
 18 were distributed to him as part of a mass mailing.  
 19 CHAIRPERSON SMITH: Yeah, I meant -- if I  
 20 didn't say it, I meant to say additional, beyond the  
 21 ones we already had. We don't have any that he  
 22 originated. We want all of those that he originated to  
 23 this group or anyone in the group.  
 24 CLERK TABER: Do you want me to repeat back  
 25 what I have?

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1 CHAIRPERSON SMITH: Good.  
 2 CLERK TABER: "Staff directed to send a  
 3 letter to the candidate and his attorney, requesting  
 4 his presence the next meeting along with any additional  
 5 e-mails sent or received by him from the group in a  
 6 letter to Mr. Nguyentan and his attorney and anyone  
 7 else who has information on expenditures, requesting  
 8 their presence at the meeting, along with a list of the  
 9 people who made various expenditures and the best  
 10 estimate of what the expenditures were for, the rough  
 11 amount and who spent it."  
 12 CHAIRPERSON SMITH: That sounds good.  
 13 CLERK TABER: I'll word it better for the  
 14 record.  
 15 CHAIRPERSON SMITH: What was that?  
 16 COMMISSIONER EDGEWORTH: Also any  
 17 correspondence that the candidate sent out.  
 18 CLERK TABER: Right. I have that.  
 19 CHAIRPERSON: I think --  
 20 CLERK TABER: I may have spoke too quickly.  
 21 CHAIRPERSON SMITH: She said it.  
 22 COMMISSIONER EDGEWORTH: Okay.  
 23 CHAIRPERSON SMITH: I think it's to the group  
 24 and/or individuals within the group, because there may  
 25 be -- you know, because the group is so amorphous.

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1 Anyway. Okay. So that's the motion. Any  
 2 discussion?  
 3 Okay. All in favor?  
 4 (All Commissioners responded Aye.)  
 5 CHAIRPERSON SMITH: Oh, I'm sorry. We'll  
 6 have to do roll call.  
 7 CLERK TABER: Cosgrove?  
 8 VICE-CHAIR COSGROVE: Aye.  
 9 CLERK TABER: Pierre-Dixon?  
 10 COMMISSIONER PIERRE-DIXON: Aye.  
 11 CLERK TABER: Edgeworth?  
 12 COMMISSIONER EDGEWORTH: Aye.  
 13 CLERK TABER: Smith?  
 14 CHAIRPERSON SMITH: Aye.  
 15 Okay. Now, so I think with that we can  
 16 continue this, but we still have one more complaint.  
 17 We can get through it pretty quickly, because it's  
 18 basically to dismiss. You don't need to stay unless  
 19 you want to hear this.  
 20 Now, we're going to do -- we're going to  
 21 request all this -- before -- we're going to request  
 22 all of this for the February 13th meeting, which is  
 23 going to cause us a problem with our work planning  
 24 stuff. But we'll deal with that.  
 25 CLERK TABER: We'll deal with that.

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1 MR. NGUYENTAN: Thank you.  
 2 MR. VU: Thank you very much.  
 3 CHAIRPERSON SMITH: Okay. The fourth  
 4 complaint -- and I just need to find -- I'm looking for  
 5 my -- here. I got it.  
 6 Okay. We're ready to go. I'm going to skip  
 7 over some of this.  
 8 COMMISSIONER PIERRE-DIXON: See you  
 9 February 13th.  
 10 MR. NGUYENTAN: One more time?  
 11 COMMISSIONER PIERRE-DIXON: Come on in.  
 12 MR. NGUYENTAN: I'm tired, man.  
 13 CHAIRPERSON SMITH: Okay. The Commission  
 14 will now conduct a hearing on the complaint filed by --  
 15 filed on December 10th, 2012, by Phong Hoang alleging  
 16 campaign violations by Council Member Rose Herrera and  
 17 Matt Wahlin. Specifically, the allegation is that Matt  
 18 Wahlin stole and destroyed campaign signs of Jimmy  
 19 Nguyen, who was running against Mr. Wahlin's wife,  
 20 Council Member Herrera. This hearing is open to the  
 21 public. It is being electronically recorded, and we  
 22 have a court reporter with us to compile a transcript.  
 23 I don't -- well, the complainant -- neither  
 24 the complainant nor the respondent is here, so I don't  
 25 need to ask anybody to identify themselves. And since

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1 none of them are here, I probably don't need to talk  
 2 about the regulation.  
 3 Do -- I don't need to do all the boilerplate  
 4 stuff, do I? If the public were here, I would. Since  
 5 it's just us guys -- except -- there is one member of  
 6 the public.  
 7 UNIDENTIFIED VOICE: Do you want me to leave?  
 8 CHAIRPERSON SMITH: Would you like to hear me  
 9 to read boilerplate?  
 10 UNIDENTIFIED VOICE: No.  
 11 CHAIRPERSON SMITH: Okay. Let's see. Okay.  
 12 In this case, the -- I indicated the complaint was  
 13 received on December 10th. Council Member Herrera was  
 14 notified on December 13th and Mr. Wahlin -- is it  
 15 "Wahlin"? Is that the correct pronunciation? -- on  
 16 December 21st.  
 17 As we know, the Evaluator reviews complaints  
 18 to determine whether sufficient cause exists to conduct  
 19 a preliminary investigation. And in this case the  
 20 Report and Recommendations were submitted to the City  
 21 Clerk by Hanson Bridgett, our Evaluator, on  
 22 January 4th, 2013. And copies were then provided to  
 23 the complainant, respondents and Commission members and  
 24 were also posted on the city web site with the agenda  
 25 for tonight's meeting.

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1 Okay. Report of the Independent Evaluator.  
 2 You can briefly tell us.  
 3 MR. MILLER: We'll be very brief. As you  
 4 just described, our first job is to read the complaint  
 5 and see if it meets the requirements, that it alleged  
 6 facts sufficient that, if true, would constitute a  
 7 violation of Title 12.  
 8 And, as our Report indicates, there are no  
 9 provisions in Title 12 that cover the conduct at issue,  
 10 improper removal of campaign signs. And we've  
 11 conferred with the city attorney to double-check our  
 12 conclusion in that regard, and she's concurred.  
 13 And so we think that even if the facts were  
 14 true, it would not constitute a violation within the  
 15 purview of our authority and of the Commission's. And  
 16 so we think that there is not sufficient cause for us  
 17 to even conduct an investigation. And we recommend  
 18 that you, therefore, dismiss the complaint.  
 19 COMMISSIONER PIERRE-DIXON: My question  
 20 before we dismiss is, who should this be referred to?  
 21 Because, obviously, the conduct is improper.  
 22 CHAIRPERSON SMITH: It was already reported  
 23 to the police, I believe. I believe --  
 24 COMMISSIONER PIERRE-DIXON: I have no idea.  
 25 I haven't seen that in here.

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1 MS. LEE: In the, yeah, the news reports, it  
 2 appears that it's been reported to the police.  
 3 CHAIRPERSON SMITH: Good point. If we got  
 4 the Report -- I believe the Report -- the complaint  
 5 itself had the news articles attached. And I believe  
 6 they mentioned --  
 7 COMMISSIONER PIERRE-DIXON: I thought he made  
 8 a complaint.  
 9 VICE-CHAIR COSGROVE: But he filed -- Hoang  
 10 filed a police report against his unknown assailants,  
 11 because he says he was attacked.  
 12 CHAIRPERSON SMITH: Right. Let's see.  
 13 VICE-CHAIR COSGROVE: "Asked why he didn't  
 14 report the illegal fines to the City's Code Enforcement  
 15 Department, Wahlin said he didn't think it would be  
 16 acted on before next week's election." So...  
 17 CHAIRPERSON SMITH: Yeah, I don't see any --  
 18 I guess it is that --  
 19 VICE-CHAIR COSGROVE: Yeah, I do remember  
 20 Dennis explaining that this -- these kinds of issues  
 21 with campaign signs are handled by the city Code  
 22 Enforcement Division and not by the Elections  
 23 Commission.  
 24 But I also recall that in our list of issues  
 25 that we think we should address, it's -- as a

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1 Commission, we think that there should be possibly some  
 2 way for -- we had a recommendation possibly from the  
 3 City Clerk or from a prior meeting of our Commission  
 4 that we wanted to explore the possibility of whether  
 5 some changes might need to be made so that complaints  
 6 about campaign signs would be able to be addressed by  
 7 the Elections Commission. I think it's on our to-do  
 8 list to look into that.  
 9 CHAIRPERSON SMITH: That's right.  
 10 COMMISSIONER PIERRE-DIXON: My concern is  
 11 we're here to make sure the public has answers when  
 12 they make complaints. I don't think sending a response  
 13 that this isn't covered by the Commission is a response  
 14 for this kind of activity. The person needs to be  
 15 informed where they could make the legitimate complaint  
 16 and have it taken care of. And that's my fear. We  
 17 dismiss when we say it isn't in our purview and leave  
 18 the citizen hanging.  
 19 CHAIRPERSON SMITH: You're saying -- rather I  
 20 think if I understand you correctly, you're saying  
 21 rather than us referring it, we can tell the  
 22 respondent, This is --  
 23 COMMISSIONER PIERRE-DIXON: Well, somebody  
 24 needs to tell them other than saying them a note  
 25 saying, We're not going to act on it. That I would not

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1 approve of.  
 2 VICE-CHAIR COSGROVE: No. I agree. I think  
 3 it would be frustrating to bring this kind of complaint  
 4 forward and to tell them, Sorry. It's not in our  
 5 jurisdiction. I don't know what to tell you.  
 6 CHAIRPERSON SMITH: Yes?  
 7 CLERK TABER: Our normal -- when we normally  
 8 get signed complaints, we do inform the people that --  
 9 before they formally file an Elections Commission  
 10 complaint, we normally inform them that Code  
 11 Enforcement handles it. We will not just forward them  
 12 to Code Enforcement. We will often get their  
 13 information and we will send it to Code Enforcement  
 14 ourselves. And we follow up on many of them. So the  
 15 City Clerk's office and the Code Enforcement office,  
 16 during the election season, are in constant contact  
 17 with each other. So, regarding signs, they're not  
 18 just -- we don't just say, It's out of our hands.  
 19 COMMISSIONER PIERRE-DIXON: What happened  
 20 here?  
 21 CLERK TABER: This is not a Code enforcement  
 22 violation.  
 23 CHAIRPERSON SMITH: Code Enforcement deals  
 24 with putting a sign in a place where it shouldn't be.  
 25 CLERK TABER: Right.

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1 CHAIRPERSON SMITH: This is a case where  
 2 somebody stole a sign. I think it's a police matter,  
 3 isn't it?  
 4 MS. CASSMAN: This is an alleged crime.  
 5 CHAIRPERSON SMITH: An alleged crime. That's  
 6 the way it's written. He said they stole his signs and  
 7 destroyed them.  
 8 MS. CASSMAN: And it sounds like there were  
 9 police.  
 10 CHAIRPERSON SMITH: There were police on the  
 11 other case, because they --  
 12 COMMISSIONER PIERRE-DIXON: On the other  
 13 side.  
 14 CHAIRPERSON SMITH: Yeah.  
 15 COMMISSIONER PIERRE-DIXON: Mr. Wahlin  
 16 complained that he was beaten up and roughed up.  
 17 CHAIRPERSON SMITH: So they were asked to  
 18 look -- the police were asked to look into the incident  
 19 from the perspective of Mr. Wahlin rather than -- so I  
 20 guess an appropriate response might be to tell the  
 21 respondent -- if we decide this isn't -- if we agree  
 22 with the Recommendation and close it, then an action  
 23 might be -- what do -- well, I'm getting ahead of  
 24 myself. When we have a complaint and we -- we close it  
 25 without action because it's not within our purview,

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1 what -- do we send something to the complainant?  
 2 MS. LEE: We do a Resolution, and it's sent  
 3 to both the complainant and the respondent.  
 4 CHAIRPERSON SMITH: Oh, it's a Resolution.  
 5 So there's no letter or anything? It's just a  
 6 Resolution?  
 7 CLERK TABER: A cover letter with the  
 8 Resolution.  
 9 CHAIRPERSON SMITH: Oh, okay. So we -- there  
 10 could be a Resolution, and the cover letter could  
 11 say -- you know -- as indicated in the Resolution, this  
 12 isn't within our purview. If you feel that follow-up  
 13 action is needed, you should contact the San Jose  
 14 Police because it's a criminal matter -- potentially a  
 15 criminal matter. And would that be a --  
 16 CLERK TABER: That would be a legal question.  
 17 MS. LEE: I mean, we could say something if  
 18 this -- this is --  
 19 CHAIRPERSON SMITH: We thought -- we could  
 20 say "the proper authorities" and not say who they are?  
 21 It's not us. That's all we know for sure.  
 22 MS. LEE: Law enforcement agency.  
 23 COMMISSIONER PIERRE-DIXON: Law enforcement  
 24 agency.  
 25 CHAIRPERSON SMITH: We can do that.

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1 Anyway -- okay. We got the Recommendation.  
 2 At this point we got the same four options -- no,  
 3 two -- we got two options this time. Two options we  
 4 got are the Commission may find that further  
 5 investigation is necessary. If so, we direct the  
 6 Evaluator to conduct further investigation and report  
 7 back. Or we may adopt the Evaluator's Report, approve  
 8 the recommendation against conducting an investigation  
 9 and close the file without further action. Based on  
 10 the discussion we've had here, that seems to be the  
 11 consensus of what we want to do.  
 12 The only question is, do we want to somehow  
 13 follow up beyond just saying it's not ours? So maybe  
 14 what we want to do -- I guess -- could we have a  
 15 recommendation that says adopt the Evaluator's Report,  
 16 approve the recommendation against conducting an  
 17 evaluation, close the file without further action,  
 18 beyond telling the complainant that this should be  
 19 referred to appropriate law enforcement authorities or  
 20 something like that? Or telling them if they are still  
 21 concerned, they should do that? Could that all be part  
 22 of the same motion, or should it be a separate motion  
 23 or what?  
 24 MS. LEE: It can all be part of the same  
 25 motion.



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1 COMMISSIONER EDGEWORTH: Can I ask a  
 2 question?  
 3 CHAIRPERSON SMITH: Sure.  
 4 COMMISSIONER EDGEWORTH: Does Code  
 5 Enforcement deal with removal as well as posting?  
 6 COMMISSIONER PIERRE-DIXON: If they leave it  
 7 up after the campaign, they do.  
 8 CHAIRPERSON SMITH: Right.  
 9 COMMISSIONER PIERRE-DIXON: But nothing about  
 10 people stealing the signs, I don't think.  
 11 CHAIRPERSON SMITH: Yeah, this is --  
 12 COMMISSIONER EDGEWORTH: If we're talking  
 13 about removal of posters, I mean, do they have  
 14 restriction over that?  
 15 COMMISSIONER PIERRE-DIXON: I think they do,  
 16 if you leave it up past the time of the campaign. Then  
 17 they can come to you and say, This is still --  
 18 CHAIRPERSON SMITH: This is the one case.  
 19 They govern where you can put them and they govern when  
 20 you got to take them down, but they don't govern what  
 21 you do if somebody steals them.  
 22 Okay. So somebody want to make a motion?  
 23 COMMISSIONER EDGEWORTH: (Inaudible.)  
 24 CHAIRPERSON SMITH: Just a second. You're  
 25 breaking up. Can you start again? We didn't hear any

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1 of that.  
 2 COMMISSIONER EDGEWORTH: (Inaudible.)  
 3 CHAIRPERSON SMITH: We still --  
 4 VICE-CHAIR COSGROVE: We can't hear you.  
 5 CHAIRPERSON SMITH: We can't -- we can't make  
 6 out anything you're saying.  
 7 COMMISSIONER EDGEWORTH: (Inaudible.)  
 8 CHAIRPERSON SMITH: I don't know what to  
 9 suggest.  
 10 COMMISSIONER PIERRE-DIXON: Erica was going  
 11 to make a motion.  
 12 VICE-CHAIR COSGROVE: I move that --  
 13 CHAIRPERSON SMITH: I think we need to make a  
 14 motion.  
 15 VICE-CHAIR COSGROVE: I move that we accept  
 16 the recommendation of the Evaluators and that -- and  
 17 find that there's no cause to conduct an investigation.  
 18 CHAIRMAN SMITH: And we close the file.  
 19 VICE-CHAIR COSGROVE: And we adopt the  
 20 Evaluator's opinion, approve the recommendation against  
 21 conducting an investigation, close the file in this  
 22 matter without further action and ask the City Clerk's  
 23 office to alert the complainant and respondent of that  
 24 fact and to suggest that if they still have concerns,  
 25 they contact appropriate law enforcement agencies about

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1 the alleged theft of the sign.  
 2 CHAIRPERSON SMITH: I couldn't have said it  
 3 better myself.  
 4 COMMISSIONER PIERRE-DIXON: I second that  
 5 motion.  
 6 CHAIRPERSON SMITH: Okay. Any discussion?  
 7 Okay. You want to --  
 8 CLERK TABER: Cosgrove?  
 9 VICE-CHAIR COSGROVE: Aye.  
 10 CLERK TABER: Pierre-Dixon?  
 11 COMMISSIONER PIERRE-DIXON: Aye.  
 12 CLERK TABER: Edgeworth?  
 13 COMMISSIONER EDGEWORTH: Aye.  
 14 CLERK TABER: Smith?  
 15 CHAIRPERSON SMITH: Aye.  
 16 That we heard. Whatever was wrong with your  
 17 connection cleared up.  
 18 Okay. Now, we have two more things to do  
 19 quickly.  
 20 CLERK TABER: So certify?  
 21 CHAIRPERSON SMITH: We have to do the  
 22 certification of -- which is -- ask each Commission  
 23 member to certify that you have heard or read the  
 24 testimony of the hearing and have reviewed all of the  
 25 evidence in the record by affirming "so certified."

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1 Commissioner Cosgrove?  
 2 VICE-CHAIR COSGROVE: So certified.  
 3 CHAIRPERSON SMITH: Commissioner  
 4 Pierre-Dixon?  
 5 COMMISSIONER PIERRE-DIXON: So certified.  
 6 CHAIRPERSON SMITH: Commissioner Edgeworth?  
 7 COMMISSIONER EDGEWORTH: So certified.  
 8 CHAIRPERSON SMITH: And me, Commissioner  
 9 Smith, so certify.  
 10 Okay. At this time I would entertain a  
 11 motion that the Commission direct the city attorney to  
 12 draft a Resolution of the Commission's findings and the  
 13 Commission authorize the chair to approve and sign the  
 14 Resolution.  
 15 COMMISSIONER PIERRE-DIXON: So moved.  
 16 VICE-CHAIR COSGROVE: So moved.  
 17 CHAIRPERSON SMITH: Second?  
 18 COMMISSIONER PIERRE-DIXON: Second.  
 19 CHAIRPERSON SMITH: Rolanda second.  
 20 Okay. All in -- oh, roll call.  
 21 CLERK TABER: Cosgrove?  
 22 VICE-CHAIR COSGROVE: Aye.  
 23 CLERK TABER: Pierre-Dixon?  
 24 COMMISSIONER PIERRE-DIXON: Aye.  
 25 CLERK TABER: Edgeworth?

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1 COMMISSIONER EDGEWORTH: Aye.  
2 CLERK TABER: Smith?  
3 CHAIRPERSON SMITH: Aye.  
4 Okay. Now, before we disappear, that hearing  
5 has ended, and you don't need to take anything more.  
6 (Whereupon, the meeting was adjourned at  
7 9:09 p.m.)  
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1  
2 I, NOELIA ESPINOLA, do hereby certify:  
3 That prior to being examined, the witnesses  
4 named in the foregoing meeting were duly sworn to  
5 testify as to the truth, the whole truth, and nothing  
6 but the truth;  
7 That said meeting was taken down by me at the  
8 time and place therein named, and thereafter reduced to  
9 computerized transcription under my direction.  
10 I further certify that I am not interested in  
11 the outcome of this meeting.  
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Dated: \_\_\_\_\_  
NOELIA ESPINOLA, CSR #8060

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