

BOARD OF ETHICS HEARING PANEL  
TUESDAY, APRIL 18, 2017, 9 A.M.  
ART PICK COUNCIL CHAMBER

MINUTES

PRESENT: Chair Tucker and Members Ford, Macias, Wright, Nelson and Alternate Stahovich

ABSENT: None

STAFF PRESENT: Colleen Nicol and Robert Hansen

Chair Tucker convened the meeting at 9 a.m.

PUBLIC COMMENT

There was no one present wishing to speak.

HEARING

Chair Tucker convened the hearing for the Code of Ethics complaint filed by Jason Hunter against Councilmember Perry. Complainant Jason Hunter and Councilmember Jim Perry were both present. The City Clerk administered the oath.

Jason Hunter noted that he had requested subpoena of City Council documents, minutes, and audio of any relevant discussions, not only the July 22, 2014, meeting. He further requests subpoenas for appearance of the entire City Council, former City Manager Scott Barber, and former City Attorney Gregory Priamos. Further, he objects to the redactions to the report on the investigation of Councilmember Davis and is uncomfortable with the pressure on the City Attorney by elected officials as the Board's legal advisor.

Chair Tucker responded that requests for subpoenas or waiver of privilege by the City Council will not be considered until the panel commences deliberation. The closed session subpoenas have already been ruled upon by the City Council and rejected. As to the redactions in the Davis investigative report, the hearing today concerns the accusations of violations of the Brown Act and Code of Ethics. The panel will not be retrying the underlying controversy so the redactions do not appear to be relevant. The pressure on the City Attorney as counsel to the hearing panel was discussed previously and the City Attorney will remain legal counsel to the Board and hearing panels.

Mr. Hunter and Councilmember Perry presented opening statements.

Chair Tucker granted Mr. Hunter 45 minutes to present his evidence. Mr. Hunter proceeded, including calling Councilmember Perry as a witness. During the presentation, Mr. Hunter requested replay of a portion of a meeting video. The request was denied. During the hearing, Member Wright objected to introduction of evidence in a form not

submitted with the original complaint. The objection was noted and the hearing proceeded. Councilmember Perry was excused as a witness.

Following discussion and without formal motion, Mr. Hunter was granted an additional 30 minutes to present evidence with Member Wright voting no.

Mr. Hunter proceeded with and concluded his presentation of evidence. Councilmember Perry presented his evidence.

Mr. Hunter and Councilmember Perry presented closing statements.

**PANEL DELIBERATION**

Chair Tucker asked for motions, if any, on Mr. Hunter's requests for subpoena of closed session minutes and relevant parties. No motion was made or entertained.

Following discussion, it was moved by Chair Tucker and seconded by Member Wright finding no violation of the Code of Ethics and Conduct by Councilmember Perry in the complaint filed by Mr. Hunter. Motion carried unanimously.

The panel adjourned at 11:36 a.m.

Respectfully submitted,

  
\_\_\_\_\_  
COLLEEN J. NICOL  
City Clerk

TRANSCRIPTION OF  
BOARD OF ETHICS - HEARING PANEL  
APRIL 18, 2017

IN RE: HUNTER v. PERRY

Transcribed by:  
Christine Aiello  
Job No. J0571285



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WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	DIRE
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J. Perry	21
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11 E X H I B I T S

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NO.	DESCRIPTION	EVID.
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Complainant's:	
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None offered.	
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Respondent's:	
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None offered.	
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## PROCEEDINGS

(On the record - 09:01:35 a.m.)

3 CHAIRMAN TUCKER: It is 9:00 a.m. We will  
4 call to order the hearing panel board of ethics to  
5 order. This meeting is to hear the complaint of Jason  
6 Hunter against Councilman Jim Perry alleging a  
7 violation of the Code of Ethics and Conduct occurring  
8 on or about July 22, 2014. Because the allegation of  
9 the violation of the Code of Ethics and Conduct  
10 occurred prior to the adoption of the Riverside  
11 Municipal Code Chapter 2.78, the applicable Code of  
12 Ethics and Conduct will be applied to the allegations  
13 of misconduct shall be city council resolution number  
14 22461, repealing resolution number 22318. Specifically  
15 the complaint alleges conduct in violation of Chapter  
16 II, Section D-1, that the actions of the public  
17 official created distrust of the local government.

18 The chair will then, will call for any public  
19 comments limited to items on the agenda.

20 Are there any public comments?

21 MS. NICOL: There are no requests to speak.

22 CHAIRMAN TUCKER: Okay. Is the complainant  
23 present? Walking in the back.

24 Is the public official present? Okay.

25 Witness -- do you have any witnesses?

1 COUNCILMEMBER PERRY: I don't.

2 CHAIRMAN TUCKER: Okay. The city clerk --

3 Is the complainant present? Do you have any  
4 witnesses?

5 MR. HUNTER: Just Mr. Perry.

6 CHAIRMAN TUCKER: Okay. Will you please, both  
7 of you please stand? The city clerk will now  
8 administer the oath.

9 MEMBER WRIGHT: Mr. Chairman.

10 CHAIRMAN TUCKER: Yes.

11 MEMBER WRIGHT: Just a question and  
12 potentially an objection. Is -- is the respondent a  
13 witness for the complainant? And is that not in  
14 abrogation of one's constitutional rights against  
15 self-incrimination?

16 MR. HANSEN: Would you like me to address  
17 that, chair?

18 CHAIRMAN TUCKER: Yes.

19 MR. HANSEN: First of all, this is not a  
20 criminal proceeding, therefore self-incrimination does  
21 not apply. Secondly, this is a quasi-judicial  
22 proceeding in the civil context. And in the civil  
23 context, opposing parties can be called as -- as  
24 witnesses by an opposing party. So under the Rules of  
25 Civil Procedure, opposing witness -- parties can be

1 called and -- and cross-examined.

2 Because they are considered hostile, they may  
3 -- leading questions may be -- may be asked. But as  
4 the body knows, the formal Rules of Evidence do not  
5 apply.

6 MEMBER WRIGHT: Then a follow-up question if I  
7 may. Does the -- does the lack of a witness list  
8 provided to the hearing panel constitute any problem in  
9 calling the respondent?

10 MR. HANSEN: Again, since the Code of Civil  
11 Procedure provides -- provides for the calling of an  
12 adverse party in a party's case in chief, one is  
13 presumed, if they are a party, to know that they may be  
14 examined at the hearing. And therefore, typically  
15 opposing parties are not contained on the witness list.

16 MEMBER WRIGHT: Okay, thank you.

17 CHAIRMAN TUCKER: Any other questions for the  
18 panel? At this time the clerk will enter -- will do  
19 the oath.

20 MS. NICOL: Please raise your right hand. Do  
21 you promise to swear that -- do you promise to tell the  
22 truth, the whole truth, and nothing but the truth so  
23 help you God?

24 MR. HUNTER: Yes.

25 COUNCILMEMBER PERRY: I do.

1 (The parties are duly sworn according to law)

2 CHAIRMAN TUCKER: Thank you. Since this  
3 complainant -- complaint arises out of allegations of  
4 misconduct pursuant to resolution number 22461, we will  
5 dispense with the requirement that the hearing panel  
6 determine that the complaint complies with the  
7 requirements of Riverside Municipal Code Chapter 2.78.

16 MR. HUNTER: Good morning. Jason Hunter, Ward  
17 1. I have some objections from a technical perspective  
18 on -- on how this meeting is going forward. I think  
19 first, I think it's very biassing to the complainant  
20 who needs to present the evidence to make a  
21 preponderance of evidence case to ask for either  
22 documents or subpoenas after I've tried to make my  
23 case. It should be done beforehand.

24 I think that there's a -- there's a --  
25 there's a bias to try to get these. And I understand

1 why. It's perfectly -- perfectly logical to get these  
2 hearings conducted as quickly as possible and -- and --  
3 and -- and -- and use up as little time as possible  
4 of -- of everyone's busy schedule, but I'm not sure  
5 that actually is fair to someone trying to actually  
6 prove a case or make a case. It should be done  
7 beforehand so you know what the evidence is. It's fair  
8 to the -- the complainant and more fair sometimes, I  
9 would imagine, to the respondent as well.

10 So I'm obviously going to make a request to  
11 subpoena the city council documents, meaning the  
12 minutes or audio of any relevant discussions of the  
13 Soubirous and Davis investigations, and that includes  
14 not just July 14th, 2014 -- or July 22nd, 2014, but all  
15 discussions that were had. Not -- I don't want the  
16 whole closed session audiotape of -- of 1- of  
17 particular dates, I just want the relevant portions  
18 that dealt with Davis -- Davis and Soubirous, some of  
19 which still exist, by the way, because we haven't gone  
20 past the two years statute of limitations on some of  
21 those discussions that were had, because the settlement  
22 talks in Soubirous and Davis didn't happen until 2015  
23 or 2016. I think 2015 actually.

24 So and I would obviously -- obviously want to  
25 subpoena witnesses I'd like to have at my disposal, all

1 the city council, former city manager Scott Barber,  
2 former city attorney, Greg Priamos, and all relevant  
3 parties to -- to the -- to the procedure. Not so much  
4 to retry the case, but to -- to determine how decisions  
5 were made to conduct investigations in secret and then  
6 to hold a public kangaroo court, okay?

7 So nothing I object to particularly for this  
8 proceeding. And some of you were -- were -- were privy  
9 to previous proceedings where this is a new issue. As  
10 I object to the redactions that have occurred in -- in  
11 the Davis investigation that was, you know,  
12 subsequently added to the record of evidence before  
13 this proceeding here today. None of that should be  
14 redacted. And do you know why I know none of it should  
15 be redacted? Because none of it was redacted on -- on  
16 the Soubirous case, but somehow all of it has been  
17 redacted to protect the guilty on the Davis case.

18 You can't see the names of the people sending  
19 out the correspondence, some of which are not even  
20 employees. I know they're not because I've seen some  
21 of these documents before. They were councilmembers  
22 and the mayor, and their names should absolutely  
23 positively not be redacted from the documents you  
24 received and that I received.

25 I'll restate some of my previous objections

1 as well. I'm still very uncomfortable with the  
2 pressure that will be put on the city attorney to  
3 advise you. I think he's done a very good job for the  
4 record to date, but I think there's going to be an  
5 increasing amount of pressure as these proceedings go  
6 forward on the city attorney by electeds who are his  
7 boss to rule against me, myself, the complainant, okay?

8 It's really as much to protect me as it is  
9 your counsel, which is why that option is available to  
10 you under the rules of the ethics procedures. I think  
11 I'll -- I'll save everything else for -- for my opening  
12 argument. Thank you very much.

13 CHAIRMAN TUCKER: Okay, thank you.

14 At this time the respondent shall have five  
15 minutes to address the hearing panel concerning any  
16 technical or procedural issues. Again, if there is a  
17 request for subpoenas or to ask the city council to  
18 waive any privileges, it shall be deferred until the  
19 time of deliberations.

20 COUNCILMEMBER PERRY: I have none at this time.

21 CHAIRMAN TUCKER: Thank you very much.

22 Is this the appropriate time for me to  
23 respond to the technical issues?

24 MR. HANSEN: It is, chair.

25 CHAIRMAN TUCKER: Huh?

1                   MR. HANSEN: Now is the appropriate time.

2                   CHAIRMAN TUCKER: Now is the appropriate time,  
3                   okay. First of all, due to the bias against request  
4                   post presentation of the evidence, the -- the panel has  
5                   been very clear that this is the procedure that we  
6                   intended to follow. It is part of the panel's hearing  
7                   procedures, therefore we will not consider any subpoena  
8                   requests or other privileges -- waive of privileges  
9                   until such time that we are deliberating.

10                  Relative to the subpoenas, first of all --  
11                  hang on one second. I -- there we go. On the  
12                  subpoenas, relative to the closed sessions, I believe  
13                  that has already been brought to the attention of the  
14                  city council and -- and has been ruled upon. In terms  
15                  of the other relevant parties, we will take that up at  
16                  a later time. |

17                  Regarding the redactions in the Davis case,  
18                  as I look at this complaint, this is a complaint  
19                  investigation held regarding the findings of an  
20                  investigation of Councilman Mike Soubirous. It is an  
21                  investigation -- as you look at the second page of  
22                  this, it is an investigation of whether or not there  
23                  was a violation of the Brown Act by -- on --

24                  Huh?

25                  MS. NICOL: (Indiscernible).

1                   CHAIRMAN TUCKER: I know, yes. I know, yes.  
2                   And that this is a hearing about the  
3 violation of the Brown Act and a violation of the  
4 ethics code. This is not a hearing where we are going  
5 to retry or reconvene or -- or issue -- deal with the  
6 issues that involved the controversies that took place  
7 at that time. Therefore the redactions in the Davis  
8 case do not appear relevant at -- at this point in  
9 time.

10                  Item number four, which is pressure on the  
11 city attorney to be counsel to the hearing panel, this  
12 has also been discussed previously as you noted, and  
13 the city attorney is our representative, and we will  
14 continue that way.

15                  At this time the complainant shall now have  
16 five minutes. Let's see, we just did that! All  
17 technical issues will be resolved. We did that. The  
18 complainant will now make their opening statement, and  
19 you shall have a total of 15 minutes to make both your  
20 opening and closing statement and are responsible for  
21 keeping track of your time and apportioning it  
22 appropriately.

23                  You may now proceed with 15 minutes, your  
24 opening statements.

25                  MR. HUNTER: Hello. Good morning. Jason

1 Hunter, Ward 1 once again. We're here today to discuss  
2 my complaint that was made about four months ago about  
3 actions that took place two and a half years ago. And  
4 what were -- was the basis for my complaint and what do  
5 I hope to prove here today? And I -- and I hope  
6 actually to prove it beyond a reasonable doubt. I  
7 don't even think -- I mean I only have to prove it by  
8 preponderance of evidence, but I don't think that's  
9 what I have.

10 I think I have beyond-a-reasonable-doubt  
11 evidence that what transpired during those hearings  
12 violated, not only the Brown Act, but also violated  
13 existing city policy in bypassing our existing Code of  
14 Ethics in order to create a policy out of thin air  
15 which violated the defendants at the time, Councilman  
16 Soubirous's and Councilman Davis's due process rights.

17 And here's how I think I'm going to go about  
18 doing it. So it's important to know what I'm asking  
19 for and -- and sort of how I'm going to get there. So  
20 here's what we're going to do, I'm going to lay it out  
21 really simply and we're going to go over the Brown Act  
22 violations first and then we're going to go over the --  
23 the -- the policy violations secondly.

24 And I think once we have violations of policy  
25 and we have violations of law, we have a breach of the

1       ethics code even under the old code. I think most  
2       reasonable people could agree to that, once you're  
3       violating your own policies and violating the law, you  
4       violated the ethics code in the -- the relevant  
5       sections that I've mentioned in my complaint, okay?

6                   So what we'll be presenting for you today,  
7       either through cross-examine -- or examination of the  
8       witness or through the evidence that I've previously  
9       submitted, will be the dates that decisions were made  
10      in closed session. We will present -- be presenting  
11      the minutes that were approved by Councilman Perry,  
12      which do not show any reportable actions taken out of  
13      closed session, okay? That, in and of itself, will be  
14      a Brown Act violation.

15                  I will also be showing you that the  
16      discussions, themselves, as to hiring investigators and  
17      then having an open kangaroo court trial was never  
18      covered under the Brown Act to begin with. And I think  
19      we could actually get fairly substantial evidence as to  
20      that by be -- by -- by subpoenaing at some point in  
21      time Councilman Davis and Councilman Soubirous because  
22      they could actually talk about what happened in closed  
23      session because they're allowed to if it was never  
24      confidential information to begin with, and I think  
25      that's what they both say and I think that's what they

1 both said during the hearings on July 22nd, 2014, which  
2 is pretty compelling evidence given that we have two  
3 settlement agreements agreeing to apologies and public  
4 monies being disbursed by our city council.

5               Okay. So that's the Brown Act stuff. And  
6 I'll -- and I'll go through some of the things like  
7 electeds or not, employees, that can't be used as an  
8 excuse. There was no credible existing pending  
9 litigation, which is what Mr. Councilman Perry is going  
10 to claim. That's not an excuse, and I'll tell you as  
11 to why that's not an excuse. And then we'll get to the  
12 actual process and the due process.

13               And really the only complaint, and this is  
14 very, very, very important, because there's going to be  
15 a lot of misdirection in the video and some of the  
16 evidence as to why did we go about holding this  
17 kangaroo court. And what we're going to hear is, well,  
18 we needed to investigate by state law. And what's  
19 going to be left out from -- from that equation is  
20 going to be, the only thing that really needed to be  
21 investigated was whether this was a hostile workforce  
22 environment situation.

23               And -- and that of course means, was the  
24 person being discriminated upon -- based upon race,  
25 sex, religion. We're going to go through the city

1 policies, and we're going to see all that. And in  
2 fact, we're going to -- I'm going to use the  
3 investigator's own words to -- to prove to you guys  
4 that that was dismissed immediately upon the submittal  
5 of the complaint.

6 At that point in time there was no duty to  
7 investigate, and it should have been, the rest of it  
8 should have either been referred to the -- as a Code of  
9 Ethics complaint, which is how every other 407  
10 complaint in the past had been adjudicated, okay, by  
11 the public against officials; or if someone thought,  
12 well, gees, these are misdemeanors, under the -- the  
13 city code, it should have been referred once again to  
14 the district attorney by the complaining public  
15 bureaucrat, okay?

16 Which you could do, it's your right just like  
17 any other member of the public; but that's not what  
18 happened, okay? What happened was we had a couple of  
19 guys, I think, who had -- the -- the ring leaders on  
20 staff and a couple of guys on council who decided they  
21 were going to embarrass two public officials who were,  
22 in my opinion, doing their job and asking questions.

23 And under 407 of the charter, they're allowed  
24 to ask questions. There's nothing wrong with asking  
25 questions, but people felt like their toes were being

1 stepped on, and so they decided to have this  
2 investigation in this complaint done in secret. And  
3 I'll show you with evidence how it was done in the past  
4 against Councilman Davis with the fire trucks incident.  
5 And hopefully you've had a chance to read into that  
6 with the investigators.

7 All that in the past was all done in closed  
8 session. And only when the council adjudicated and  
9 made their decision and -- and publicly humiliated  
10 Councilman Davis was it ever released from closed  
11 session that something was -- had even been -- been  
12 done. This time Councilman Davis was a little bit  
13 smarter and so was Councilman Soubirous. They released  
14 everything to the press.

15 And that's the only way that we, the public,  
16 were able to intervene, find out what was going on, and  
17 that forced the city's hands to have an open discussion  
18 of the investigation and the process. And -- and --  
19 and hence and thereafter have a vote to not vote on  
20 anything. In fact, even at that hearing Councilman  
21 Davis says, we voted prior to coming into the meeting  
22 on what we were going to do here today.

23 And where is that in the minutes?  
24 Conspicuously absent once again, just like the  
25 decisions to investigate were absent -- were absent as

1 well. So we had a council that was not complying with  
2 the law, okay? We have a staff that was not complying  
3 with the law. But this -- council can't hide behind  
4 the staff because the council hires the staff, okay?

5 And there is no, under the current ethics  
6 policy, way to charge staff with ethics violations. So  
7 hence the council must want to be held accountable --  
8 accountable for staff's actions. That's the only thing  
9 I can be left with. Because it's been mentioned for  
10 years that the -- the public would like to bring those  
11 actions against staff, but never any action by our city  
12 council.

13 So as I said, there's not preponderance of  
14 evidence here of what happened was absolutely wrong as  
15 to process and absolutely wrong as to the Brown Act.  
16 We're going to -- I'm going to read for you the  
17 settlement agreements or at least the relevant parts of  
18 the settlement agreements where the public apologies  
19 were issued. We have beyond a reasonable doubt  
20 evidence against all councilmembers and the mayor who  
21 participated in these events.

22 And I look forward to presenting this  
23 evidence to you today. Thank you.

24 CHAIRMAN TUCKER: Thank you. Just a point of  
25 order here, I -- I was using the clock up there,

1 because the clock on my computer is like two to three  
2 minutes difference. Which -- which is the official  
3 clock we're using?

4 MS. NICOL: I -- I'm using this one here, but  
5 I -- I -- I did it at nine minutes.

6 CHAIRMAN TUCKER: That's what I have.

7 MS. NICOL: Okay. So nine minutes then.

8 CHAIRMAN TUCKER: Okay. Nine -- nine minutes  
9 remaining?

10 MS. NICOL: Nine --

11 CHAIRMAN TUCKER: Or nine minutes --

12 MS. NICOL: -- minutes used.

13 CHAIRMAN TUCKER: -- used?

14 MS. NICOL: Six minutes --

15 CHAIRMAN TUCKER: Right.

16 MS NICOL: -- remaining.

17 CHAIRMAN TUCKER: Okay. Is it -- are we going  
18 to use -- because I have 9:23 on here. What does --  
19 what does that one say?

20 MS. NICOL: This is this computer here --

21 CHAIRMAN TUCKER: Okay.

22 MS. NICOL: -- and the other. So it doesn't  
23 matter which one you use, they're both keeping good  
24 time.

25 CHAIRMAN TUCKER: Okay.

1 MS. NICOL: So --

2 CHAIRMAN TUCKER: Okay.

3 MS. NICOL: -- although they don't match.

4 So --

5 CHAIRMAN TUCKER: Right.

6 MS. NICOL: -- it remains that he was at nine  
7 minutes with six remaining.

8 CHAIRMAN TUCKER: Six minutes remaining,  
9 correct?

10 All right. At this time, following the  
11 complainant's opening statement, the public official  
12 may make an opening statement or defer making an  
13 opening statement until after the completion of the  
14 complainant's presentation of evidence. The public  
15 official shall have a total of 15 minutes to make both  
16 their opening and closing statement and is responsible  
17 for keeping time.

18 Councilman Perry, do you have an opening  
19 statement?

20 COUNCILMEMBER PERRY: Yes. And I'll be brief.

21 It isn't going to take 15 minutes. It's just going to  
22 take a few short moments. There were a lot of  
23 generalities there. This -- there was this complaint,  
24 council did hear it. I will say that it was an issue  
25 that was before the city council and it was agendized

1 as a closed session item and noticed as anticipated  
2 litigation. It was handled that way throughout the  
3 entire investigation.

4 Beyond that the only thing I will say is  
5 Mr. Hunter does have the burden of proof. This isn't a  
6 burden of proof on the city -- city council today.  
7 This is a burden of proof on me. So when he makes his  
8 case today, he's going to have to demonstrate that I've  
9 done something wrong or I've failed to act. And that  
10 falls on his shoulders and his shoulders alone.

11 And with that, I have nothing further for you  
12 at this point.

13 CHAIRMAN TUCKER: Thank you.

14 The complainant shall now present their  
15 evidence. And I would, a couple of items before you,  
16 start! First, this is a complaint against Councilman  
17 Perry, and that is what we will be hearing today.  
18 Secondly, I am making a -- in the absence of -- of any  
19 clear directions, as the chair, I am limiting your time  
20 to 45 minutes. At 40 minutes the panel will review and  
21 decide whether additional time shall be granted, but at  
22 the start we will assume that -- that both of you have  
23 45 minutes to present your evidence.

24 Mr. Hunter, you may begin.

25 MR. HUNTER: Thank you. I'd object to that.

1 I'd like to know under what authority does the chair  
2 have to limit evidence, time to present evidence.  
3 Could you please cite me in your rules where it says  
4 you have that power?

5 CHAIRMAN TUCKER: Well, again, as I pointed  
6 out, in the absence of any clear designation that I --  
7 that -- that the chair does not have the final  
8 authority, I am -- and if -- and if you listen  
9 carefully, I indicated that there would be 45 minutes  
10 with an opportunity for the panel to extend your time  
11 if necessary. This simply provides us all with a  
12 guideline.

13 MR. HUNTER: Okay, thank you. I'd like to  
14 first call Councilman Perry if I could and then get  
15 into the production of my evidence. And I'd like to  
16 reserve the right to call him back at a later time if I  
17 could, please.

18 CHAIRMAN TUCKER: Okay.

19 MR. HUNTER: Thank you.

20 DIRECT EXAMINATION

21 BY MR. HUNTER:

22 Q Councilman Perry, I have before me the  
23 minutes from April 1st, 2014, and April 22nd, 2014. If  
24 you'd take a look at them, please.

25 CHAIRMAN TUCKER: Mr. Hunter, on -- to

1 benefit the hearing panel, would you also make sure  
2 that you refer to the page number?

3 MR. HUNTER: Oh, this is -- this is just  
4 for -- this won't be introduced as part of the evidence  
5 later. This is just official minutes of the City of  
6 Riverside. I've given him a copy of the official  
7 minutes of the --

8 CHAIRMAN TUCKER: Okay.

9 MR. HUNTER: -- City of Riverside. And if --  
10 if we'd like to, we can --

11 MEMBER WRIGHT: I'd -- I'd -- I'd like to  
12 raise an objection. If it's not in the documents that  
13 have been given to the hearing panel, it's not  
14 admissible.

15 CHAIRMAN TUCKER: That -- that is part of our  
16 rules.

17 MR. HUNTER: Okay. Given to the panel was a  
18 video -- was a video. We can play the video of -- of  
19 what transpired on April 1st.

20 MEMBER WRIGHT: You -- you don't have the  
21 minutes in our substantial pile of papers?

22 MR. HUNTER: Are -- are you -- I mean, I guess  
23 what I'm saying is, if we're disputing the -- the  
24 factual accuracy of what I'm going to have Mr. --

25 MEMBER WRIGHT: The factual accuracy that the

1 hearing panel relies on is the documents that were  
2 provided to us --

3 MR. HUNTER: Okay.

4 MEMBER WRIGHT: -- in advance.

5 MR. HUNTER: That's fine. Well, let's --

6 MEMBER WRIGHT: What page number?

7 MR. HUNTER: Let's -- let's -- let's queue the  
8 video then for April 1st --

9 MEMBER WRIGHT: I object.

10 MR. HUNTER: -- 2014.

11 MEMBER WRIGHT: This is out of the range of --

12 MR. HUNTER: That was in the --

13 MEMBER WRIGHT: -- material presentation.

14 MR. HUNTER: That was in the evidence package  
15 that was submitted to this -- this -- this ethics  
16 panel. | |

17 CHAIRMAN TUCKER: The -- I believe that we do  
18 not have the capacity to queue to any specific item.

19 Is that correct?

20 MS. NICOL: It would be a lengthy process to  
21 find the portion of the video. This has been described  
22 in your last meeting. Mr. Hunter was present.

23 MR. HUNTER: Uh-huh.

24 MS. NICOL: That we need to know in advance if  
25 he wishes to play video or audio and -- and the spot on

1 the video or audio. We had a conversation with him  
2 this morning requesting the same thing. He did not  
3 provide any instances where he would like to replay or  
4 the spot in the audio or video that he would like to be  
5 replayed.

6 CHAIRMAN TUCKER: I believe at --

7 MR. HUNTER: That is incorrect.

8 CHAIRMAN TUCKER: I --

9 MR. HUNTER: And --

10 CHAIRMAN TUCKER: -- believe at our previous  
11 meetings that it was very clearly stated the opinion of  
12 the panel that any evidence that was to be presented  
13 would be the -- the responsibility of the complainant  
14 to make sure that all of that material was provided.  
15 Specifically the reason that we did the transcription  
16 and the highlighting of the transcription was to allow  
17 you to be able to quickly point to the items to be  
18 presented.

19 Therefore the request to queue the video --  
20 video is denied.

21 MR. HUNTER: Okay. I would like to actually  
22 talk to the -- the phone call I had with the  
23 city clerk today, which was, were the -- would -- would  
24 there be any incidences where I would need to put the  
25 video on display for the ethics panel here today. And

1 I said, only if the records that I'm producing as part  
2 of my cross-examination are going to be called into  
3 question. These are not -- these are not evidence  
4 where I had to subpoena or I got a witness statement.

5 These are material -- these are material  
6 facts of -- of -- of proceedings that happened, which  
7 they're very easily found, public records, which back  
8 up the audio that has already been submitted to this  
9 panel. Now, we can queue -- we can hear that audio,  
10 okay? And -- and -- and you only need to hear very  
11 brief parts of it, which are that the city -- the city  
12 attorney is going to report that there were no items --  
13 actions taken out of closed session. That's the only  
14 part you need to hear. It's probably all of five  
15 seconds at the very end of the meeting. It happens at  
16 the end of the meeting. It happens at the end of every  
17 meeting.

18 CHAIRMAN TUCKER: If you had intended to  
19 introduce this information, how -- what -- what is the  
20 rationale for not including it in -- in the 900 pages  
21 of -- of material that we have?

22 MR. HUNTER: It's a part of the audio record.  
23 It is included. It's on your audio CD.

24 CHAIRMAN TUCKER: But we were very clear that  
25 we intended for the complainant to -- to specify

1 specific areas that we were to look at, not to give us  
2 seven, eight hours of something that we did not know  
3 where to look.

4 MR. HUNTER: That's correct for the July 2nd,  
5 2014 hearing, which was about two and a half, three  
6 hours in -- in length. The rest of them, I believe we  
7 discussed this at length, was that there was very  
8 little in the rest of the audio that was presented as  
9 part of the evidence that needed -- that would take  
10 very -- very long to -- to go over.

11 CHAIRMAN TUCKER: Okay. I have three members  
12 of the panel that wish to speak. We'll start with  
13 Keith.

14 MEMBER NELSON: I -- I was under the  
15 impression we took a continuance to do transcripts.  
16 Are these not in those transcripts?

17 MR. HUNTER: No. We only voted to -- to -- to  
18 transcribe the occurrences of July 22nd, 2014, because  
19 that was the most relevant material available.

20 MR. HANSEN: And, chair, if I might correct,  
21 this hearing panel has not convened previously.

22 CHAIRMAN TUCKER: Uh-huh.

23 MR. HANSEN: The actions of which you speak  
24 were the actions of other hearing panels. Although  
25 Mr. Hunter was the complainant in those hearings as

1 well, for this hearing, today is the first day it's  
2 convened, and this panel, as a body, has not made any  
3 requests or made any rulings other than what was made  
4 today by the chair.

5 CHAIRMAN TUCKER: And clarify that then for  
6 me. Does that mean that -- that we -- we can -- we  
7 need to rule on -- on what is being presented to us now  
8 and -- and not refer to our participation in previous  
9 panels?

10 MR. HANSEN: That is correct. You need to  
11 come to this panel with an open and clear mind and  
12 judge based upon the evidence presented during this  
13 hearing as to whether or not there has been a violation  
14 of the ethics code, not what you may have gleaned from  
15 participation in other hearing panels.

16 CHAIRMAN TUCKER: Very good. Thank you.

17 Champagne, you're next.

18 MEMBER FORD: I would like to thank Jason for  
19 coming forward today. From how I perceive it, I think  
20 he just wants to show Councilman Perry the minutes, but  
21 I don't -- I think he's just laying -- laying out his  
22 case. I think we need to give him time to sort of  
23 figure out how he wants to put his case together.

24 So I don't think there's any malice, I don't  
25 think there's a point being made. I think he's just

1 showing you the minutes, and then he's going to  
2 eventually lead into his case. So I don't want to --  
3 this -- I think this process can be sort of  
4 overwhelming and this is sort of his first time and I  
5 don't want us to kind of come out like wolves at him.  
6 I think let's just give him some time and sit back, I  
7 don't -- and just present those minutes to the  
8 councilmember.

9 CHAIRMAN TUCKER: Okay, thank you.

10 Jeff.

11 MEMBER WRIGHT: Rule nine is very clear in  
12 our -- in -- in our guidelines for hearing rules and  
13 procedures that all evidence, including witness  
14 information, must be introduced by the respondent at  
15 the hearing and it must be filed in the clerk's office  
16 no later than 20 calendar days. To now have other  
17 paper that becomes part of the -- part of the work of  
18 this body is to prejudice our work, and I object to it.

19 Unless we, as a -- as a hearing panel,  
20 majority of the hearing panel find by majority vote  
21 that the discovery of that evidence came to the  
22 awareness of the proponent after the filing of the  
23 complaint, which is clearly not the case.

24 MEMBER FORD: But it's not new evidence and we  
25 have the audio and it's available to the public. So I

1 think we're just kind of getting a little into the --

2 CHAIRMAN TUCKER: Okay.

3 MEMBER FORD: -- weeds right now.

4 CHAIRMAN TUCKER: I understand.

5 Keith, you're next.

6 MEMBER NELSON: It's my understanding that  
7 right now you're not presenting those documents as  
8 evidence.

9 MR. HUNTER: That's correct.

10 MEMBER NELSON: You're cross-examining  
11 Councilman Perry --

12 MR. HUNTER: That's correct.

13 MEMBER NELSON: -- so that he can either  
14 verify or say your document is false.

15 MR. HUNTER: That's correct.

16 MEMBER NELSON: Okay, thank you!

17 CHAIRMAN TUCKER: Deborah.

18 MEMBER MACIAS: And -- and I agree, it was  
19 part of our packet we had. If -- if it's -- even  
20 though it's not in writing, it was presented to us.  
21 And I think that we're kind of wasting time arguing  
22 that point. We just need to get it, listen to what he  
23 has to say. And it was part of our packet, everybody  
24 should have gotten it, regardless of whether it's in  
25 writing or not.

1                   And we did not agree to -- to transcribe that  
2 particular minutes. So I -- I think we need to move  
3 on. Let's hear it and hear what everyone has to say  
4 and then make a decision based on that.

5                   CHAIRMAN TUCKER: Okay, thank you.

6                   Champagne, you're now -- your name is up  
7 again. Did you already make your comment?

8                   All right. In light of the fact there  
9 appears to be a consensus that you should proceed,  
10 Member Jeff's objection is -- is noted. We will  
11 proceed with the hearing.

12                  MR. HUNTER: Thank you. And the only reason  
13 I -- I do it this way is I think it's going to save  
14 time overall. I really do.

15 BY MR. HUNTER:

16                  Q     So, Councilman Perry, before you, I -- I gave  
17 you a document, could you just read the title of it,  
18 please?

19                  A     It is the city council, successor agency to  
20 the develop -- redevelopment agency, and housing  
21 authority minutes dated April 1st, 2014.

22                  Q     And on there is there a section that talks  
23 about a closed session?

24                  A     Yes, there is.

25                  Q     And could you read what's under the closed

1 sessions? And this is, once again, I'm not sure if I  
2 heard you, was there a date on that memo?

3 A Yes, April 1st, 2014.

4 Q Sorry. Could you read what was -- what is  
5 said under the -- under the closed session?

6 A It says, city attorney report on closed  
7 sessions. The city attorney announced that there were  
8 no reportable actions taken on the closed sessions held  
9 earlier in the day.

10 Q Okay.

11 MR. HUNTER: I'd like to present to -- to  
12 Councilman Perry next the approval of the minutes.

13 CHAIRMAN TUCKER: Point of note, I started  
14 your 45 minutes at 9:37, after our question and -- and  
15 discussion.

16 MR. HUNTER: Okay, thank you.

17 BY MR. HUNTER:

18 Q Could you read the title of that document?

19 A It's the city council, housing authority, and  
20 successor agency to redevelopment agency minutes and  
21 it's dated Tuesday, April 8th, 2014.

22 Q Could you read the -- the section under  
23 the -- the -- the title of the minutes?

24 A The minutes of the city council meeting of  
25 April 1st, 2014, were approved as presented.

1           Q    And do -- do you see your name on the -- on  
2 the -- on the right-hand side of that document?

3           A    Yes, I do.

4           Q    And did you approve those minutes on  
5 April 8th?

6           A    Yes.

7           Q    Okay, thank you. Councilman Perry, could you  
8 read the title of the next document I've handed to you?

9           A    City council and successor agency to  
10 redevelopment agency minutes, and it says Tuesday,  
11 April 22nd, 2014.

12          Q    And could you read what it said under the  
13 closed session report by the city attorney?

14          A    It says, city attorney report on closed  
15 sessions. The city attorney announced there were no  
16 reportable actions taken on the closed sessions held  
17 earlier in the day.

18          Q    Okay. And once again, Councilman Perry,  
19 could you read the title of that document, please?

20          A    City council meeting -- or I'm sorry, city  
21 council minutes, Tuesday, May 6th, 2014.

22          Q    And could you read what is under the section  
23 called minutes?

24          A    Minutes --

25          Q    The --

1           A -- of the city council meeting of April 22nd  
2 and 29th, 2014, were approved as presented.

3           Q And did you vote on those, approving those  
4 minutes, Councilman Perry?

5           A Yes.

6           Q Thank you. And, Councilman Perry, could you  
7 read the title of that document I just gave you?

8           A City council and successor agency to  
9 redevelopment agency minutes, Tuesday, June 24th, 2014.

10          Q And could you read what is held under closed  
11 session for that -- that date?

12          A There's nothing there about closed session.

13          Q Oh, is it -- I'm sorry.

14          MR. HUNTER: You know what, I'll skip that  
15 document for now because it looks like I handed him the  
16 wrong document. |

17 BY MR. HUNTER:

18          Q So we're going to have before us, Councilman  
19 Perry, and just and you've read, I imagine, some of the  
20 record, and we're going to be talking about the  
21 transcript from July 22nd, 2014, and as well as the  
22 investigative reports that state the council voted on  
23 April 1st, 2014, and April -- and April 22nd, 2014, to  
24 conduct investigations into the hearings -- into the  
25 actions of Councilman Davis and Councilman Soubirous.

1           I guess my question is, if that is true,  
2 unless you're -- you're denying that that happened, why  
3 did you vote to approve minutes where you -- you took  
4 action as a council and did not report it out of closed  
5 session?

6           A    Well, I wouldn't be able to answer your  
7 question because it requires that I relay information  
8 or discussion that is protected from the disclosure of  
9 the attorney-client closed session privilege.

10          Q    If you violated the Brown Act, you do not  
11 have a privilege to disclose -- to not disclose. It is  
12 a Brown Act violation per se to not report reportable  
13 actions out of closed session. All actions taken by  
14 the council -- by -- by the council are reportable.  
15 There are no non-reportable actions out of closed  
16 session under the Brown Act. Would you like to restate  
17 that, your answer?

18          A    That is your opinion. I'll restate --  
19 restate my answer. I wouldn't be able to answer your  
20 question because it requires that I relay information  
21 or discussion that is protected disclosure by  
22 attorney-client closed session privilege.

23          Q    Did you participate in a vote to hire  
24 investigators and to hold a open trial, hire  
25 investigators towards Councilman Davis and Councilman

1 Soubirous? Question number one.

2 A And again my answer would be, I wouldn't be  
3 able to answer your question because it requires that I  
4 relay information or discussion that is protected  
5 disclosure by attorney-client closed session privilege.

6 Q Now, do you -- do you understand, Councilman  
7 Perry, that perhaps even yourself, I'll have to check  
8 the testimony, but certainly several of your colleagues  
9 on July 22nd, 2014, admitted, not just on July 14th,  
10 but also to the Press Enterprise, which is part of the  
11 exhibits here, that the council held votes on April 1st  
12 and April 22nd, 2014, to hire an investigation towards  
13 the -- the matters of Soubirous and Davis. You are  
14 aware of that?

15 A Yes.

16 Q Okay. So you're -- what you're saying is you  
17 refuse to answer even though it seems every one of your  
18 colleagues admits they held a vote? You're -- you're  
19 saying you can't answer whether you -- you participated  
20 in that vote? You were at the meetings, correct?

21 A Yes, I participated in the vote, but the  
22 discussion -- this is -- you're basing a Brown  
23 violation, this is your opinion.

24 Q Okay.

25 MR. HUNTER: Like I said, we'll -- we'll --

1 we'll conclude on this matter, because we'll be  
2 discussing -- I'll be introducing as evidence the Brown  
3 Act and we'll talk about whether it's a Brown Act  
4 violation to vote on something and then not release  
5 what that vote was immediately to the public there  
6 afterwards. Thank you very much.

7 BY MR. HUNTER:

8 Q Okay. Now, onto the second. And that will  
9 conclude our, for now anyway, our -- our discussion of  
10 Brown Act violations. Actually one more. When actions  
11 are taken out of closed session these days with  
12 attorney Gary Geuss, are all actions reported  
13 immediately out of closed session and then put into the  
14 minutes?

15 A Those that are reportable.

16 Q Are there any non-reportable votes to your  
17 knowledge that wouldn't be reported out of closed  
18 session?

19 A Not that I recall.

20 Q Okay. So second question is, I'd like to  
21 give you a copy of our ethics policy.

22 MR. HUNTER: We're going to switch to that  
23 real quick.

24 CHAIRMAN TUCKER: Are you referring us also to  
25 a particular page?

1                   MR. HUNTER: Yes, I am. Sorry.

2                   CHAIRMAN TUCKER: And that would be?

3                   MR. HUNTER: Sorry, yes, I am. Let me grab it  
4 real quick. Here it is. I'm sorry, it's right -- it's  
5 right in front of me. And the --

6                   CHAIRMAN TUCKER: The number at the bottom.

7                   MR. HUNTER: And the -- I don't know if yours  
8 are numbered the same way that mine are, but do you see  
9 a number of 00324 at the beginning of the ethics policy  
10 page?

11                  CHAIRMAN TUCKER: Do you have a number at the  
12 bottom of the page?

13                  MR. HUNTER: Oh, like one, two, three, four,  
14 five?

15                  CHAIRMAN TUCKER: Yeah.

16                  MR. HUNTER: If we could go to page number --  
17 page number six -- to page number six, please.

18                  CHAIRMAN TUCKER: Page number six in the -- in  
19 the code? There's a small -- there's a small -- it  
20 says, for instance, I happen to be looking at page 194.

21                  MR. HUNTER: Perhaps. I don't have it in  
22 front of me anymore, but it -- it's -- I've got it  
23 memorized. It's -- he's got the page right in front of  
24 him.

25                  CHAIRMAN TUCKER: Well, until -- until you --

1                   MR. HUNTER: Oh, sorry.

2                   CHAIRMAN TUCKER: -- you can direct us to  
3 specifically what we're looking at, it's difficult for  
4 us to follow.

5                   MR. HUNTER: Okay.

6                   CHAIRMAN TUCKER: Because we're relying  
7 upon -- on the documents that were sent to us.

8                   MR. HUNTER: Let's see here. If you don't  
9 mind, I'm just going to borrow that for just one second  
10 back from Mr. Perry.

11                  CHAIRMAN TUCKER: Sure.

12                  MR. HUNTER: Sorry. So it would be page six  
13 and it would be number four, particularly where it  
14 begins, complaints from members of the public. Does  
15 everybody see that, where I'm referencing to?

16                  CHAIRMAN TUCKER: Again, I -- I can't --

17                  MEMBER WRIGHT: There's a footer at the bottom  
18 of the page, it says page ending number.

19                  MR. HUNTER: This is what I have.

20                  MEMBER WRIGHT: A footer at the very bottom of  
21 our docket.

22                  MR. HUNTER: I've got a 00329.

23                  MEMBER WRIGHT: Well, we've got 1,038 pages of  
24 your material all numbered sequentially. Having --  
25 being on the same page would be very helpful.

1 MR. HUNTER: Okay. Hold on.

2 MEMBER FORD: Jason, are you referring to --  
3 I -- I know where you're at. You're on page six,  
4 resolution --

5 MR. HUNTER: Yes.

6 MEMBER FORD: -- number --

7 MR. HUNTER: 22 --

8 MEMBER FORD: -- 22318. That's --

9 MR. HUNTER: Yes.

10 MEMBER FORD: -- part of that 48-page packet  
11 he submitted initially. That might not be a part of  
12 this last packet. I'm --

13 MEMBER WRIGHT: It actually is part of the --

14 MEMBER FORD: Okay.

15 MEMBER WRIGHT: -- sequential numbering.

16 MEMBER FORD: Okay.

17 MR. HUNTER: I've got a copy of what went to  
18 the actual panels as part of this case.

19 CHAIRMAN TUCKER: And we need -- and we need  
20 you to use -- follow that.

21 MR. HUNTER: All right.

22 CHAIRMAN TUCKER: Champagne, you indicated you  
23 knew where he is -- is on this. What page number?

24 MEMBER FORD: I'm on my iPhone. So --

25 CHAIRMAN TUCKER: But the evidence should

1 still tell you at the --

2 MEMBER FORD: Uh-huh.

3 CHAIRMAN TUCKER: -- bottom what the page  
4 number is.

5 MEMBER FORD: It's 00329.

6 MR. HUNTER: That's -- that's what I just  
7 said, I believe.

8 CHAIRMAN TUCKER: I don't have a 00329. My --  
9 my document starts with page 50.

10 MEMBER: (Indiscernible).

11 CHAIRMAN TUCKER: I don't know if that's the  
12 first portion, but he's -- he's -- he's referring to  
13 the Code of Ethics, and I just need to know where it  
14 starts in this pile of material that I have.

15 MEMBER FORD: Why don't you go to the bottom  
16 of page 17.

17 CHAIRMAN TUCKER: Page 17?

18 MEMBER FORD: Uh-huh.

19 CHAIRMAN TUCKER: Okay. In this material  
20 here.

21 MEMBER FORD: (Indiscernible) page numbers.

22 CHAIRMAN TUCKER: Here.

23 MEMBER FORD: (Indiscernible) same copy  
24 (indiscernible).

25 CHAIRMAN TUCKER: Okay.

1                   MR. HUNTER: Okay, thank you.

2                   CHAIRMAN TUCKER: We're with you now.

3                   MR. HUNTER: And if you could look at number  
4 four, please. And it begins with complaints from  
5 members. And then I'll begin my question.

6 BY MR. HUNTER:

7                   Q        Mr. Perry, are you familiar with what public  
8 comment is as part of the public meeting?

9                   A        Yes.

10                  Q        And could you explain to me who from the  
11 public can come up and speak during those -- those --  
12 those portions of the meeting?

13                  A        Anyone.

14                  Q        Okay. So would an elected official be able  
15 to speak during public comment?

16                  A        Yes.

17                  Q        Would an employee be able to speak during  
18 public comment?

19                  A        Yes.

20                  Q        Okay. So to -- to your knowledge, a member  
21 of the public is pretty much anyone who is here in, you  
22 know, in the United States, I don't even know if it's  
23 legally or illegally, but certainly legally, correct,  
24 could come up and speak during public comment?

25                  A        Anyone can speak during public comment.

1           Q     Could you read number four, please, from the  
2 complaint I just gave you, which is highlighted?

3           A     Just the highlighted section?

4           Q     Just the highlighted section, please.

5           A     Complaints from members of the public  
6 regarding elected or appointed officials shall be  
7 submitted on the complaint form available from the city  
8 clerk.

9           Q     Okay, thank you very much. Now, to your  
10 knowledge, Sergio Diaz is a member of the public,  
11 correct?

12          A     Yes.

13          Q     Scott Barber is a member of the public?

14          A     Yes.

15          Q     Okay. So would you tell me, once the  
16 investigator, and we're going to cover this later,  
17 decided that there was no hostile workforce claim, why  
18 staff wasn't told to file a -- an ethics complaint as  
19 they are members of the public? Could you -- could you  
20 explain that, that reasoning?

21          A     You're -- you're -- you're going to have to  
22 repeat the question.

23          Q     Could -- could you -- now, if -- if -- if the  
24 folks who filed these complaints that led to this Davis  
25 and Soubirous investigations and the -- and the

1 Soubirous hearing are members of the public, why were  
2 they not directed by the council to file ethics  
3 complaints once it was initially determined that --  
4 that there was no hostile workforce environment  
5 existing?

6 A Well, I'm not trying to be difficult here,  
7 but I wouldn't be able to answer your question because  
8 it requires that I relay information or discussion that  
9 is protected from the disclosure of the city  
10 attorney-client closed session privilege. I don't have  
11 the ability to waive that. I -- I don't have the  
12 ability. I think that requires the council --

13 Q Okay.

14 A -- counsel.

15 MR. HUNTER: I'd like to -- this is also in  
16 your evidence package, and it's -- it's entitled, Code  
17 of Ethics complaints. It's a summary document of all  
18 Code of Ethics complaints from 2006 to  
19 20-and-maybe-even-15 as filed by the public. If I  
20 could give that to Mr. Perry. And trust me, I'm  
21 looking for the number that --

22 CHAIRMAN TUCKER: Number 119.

23 MR. HUNTER: Okay. 119, thank you.

24 BY MR. HUNTER:

25 Q Could you read on page, I believe it's, two

1 or three, there's a -- there's a section on  
2 administration and -- or violation of section 407?  
3 Could you read the complaints to the -- to the ethics  
4 panel here?

5 A I'm not --

6 Q The part that's been --

7 A -- sure what you're asking.

8 Q The part that's been highlighted.

9 A Well, it says charter 407 -- 407,  
10 interference with administrative services.

11 MR. HUNTER: Does -- does -- does the ethics  
12 panel see that? I believe it's on page two or three.

13 CHAIRMAN TUCKER: No.

14 BY MR. HUNTER:

15 Q And the complaint -- and the complaint was  
16 filed by who, Councilman Perry?

17 A This was dated 8/30/2010 by Deborah Wong,  
18 Michael Dunn, and Mary Figueroa.

19 Q And -- and could you read the complaint --  
20 the -- the complaint with the date and the description  
21 of it for the complaint below that?

22 A 9/27/10, (indiscernible) charter 407,  
23 interference with administrative services.

24 Q Okay. So in the past, would you state that  
25 if there were complaints made against charter

1 violations or policy violations by members of the  
2 public, they were always referred to the ethics process  
3 to be adjudicated?

4 A That I don't know, I wasn't on the council  
5 then.

6 Q But there's certainly a record of it, of --  
7 of similar complaints filed by the public going to --  
8 through the ethics process, correct?

9 A Well, it says Code of Ethics complaint, but  
10 it doesn't say where it's going.

11 Q Well, but --

12 MR. HUNTER: And for the record, for the --  
13 for the -- and -- and we can go over this during  
14 evidence as well, that's the official summary from the  
15 city clerk of all Code of Ethics complaints since the  
16 inception of the policy. So those are, in fact, Code  
17 of Ethics complaints. Those are, in fact, 407  
18 violations that were alleged by members of the public,  
19 which were adjudicated through the Code of Ethics  
20 process, not a separate process. Thank you.

21 And I have one more thing to introduce to  
22 Councilman Perry, and then -- and then we'll be done  
23 with Councilman Perry.

24 BY MR. HUNTER:

25 Q Councilman Perry, could you read the title of

1 that document? And that's also been provided to you.

2 A It's a city -- it's a city council  
3 memorandum.

4 Q Yeah. And -- and under the subject, could  
5 you read that?

6 A Hearing on investigation of complaints  
7 against Councilmember Mike Soubirous and administrative  
8 interference and harassment.

9 MR. HUNTER: Okay. And this was provided as  
10 part of my original complaint, all right? So this  
11 would be in the original complaint package. And I  
12 think it's also in the evidence package as well, but --

13 CHAIRMAN TUCKER: Councilman Perry, is there a  
14 page -- excuse me -- a page number on the bottom of  
15 that? Right at the very, very bottom.

16 COUNCILMEMBER PERRY: No, no, there isn't.

17 MR. HANSEN: The documents presented for the  
18 witness to read from are not Bates stamped as they are  
19 in the packet.

20 CHAIRMAN TUCKER: They are -- they are in the  
21 packet? Okay.

22 MR. HUNTER: If -- if I could, I think you can  
23 get this just verbally, and I'm just going to have him  
24 read verbatim from the document.

25 BY MR. HUNTER:

1 Q Could you read the -- the issue at hand on --  
2 on that document, please?

3 A The issue at hand?

4 Q Actually -- actually the date first, please,  
5 the date of the document.

6 A July 22nd, 2014.

7 Q And underneath the subject, it says the --  
8 the word issue. Could you read the issue, please?

9 A The issue presented for city council  
10 consideration is whether to take any action as against  
11 Councilmember Mike Soubirous based upon the results of  
12 the investigation in response to a complaint to the  
13 administrative interference -- interference and  
14 harassment made by city manager and chief of police.

15 Q Okay. And could you read under the  
16 recommendation by -- and -- and could you read who is  
17 the memo from, please?

18 A It's from Mayor William R. Bailey, III; Mayor  
19 Pro Tem Steven K. Adams, and incoming Mayor Pro Tem  
20 James Perry.

21 Q So -- so you participated in the actual  
22 production of this document, right?

23 A I signed this document.

24 Q Okay. So could you read the -- the  
25 recommendation now to the city council on that date?

1           A    That the city council conduct a hearing to  
2 consider the results of the investigation of the  
3 complaints and any information submitted in response  
4 thereto by Councilman Soubirous and to take whatever  
5 action if -- if any that the city council deems  
6 appropriate.

7           Q    Now, on July 22nd, 2014, Councilman Davis is  
8 on the record as saying that the council took a vote  
9 prior to coming into the meeting on the adjudication of  
10 this claim; is that correct?

11          A    You'd have to show me some documentation of  
12 that.

13          Q    Okay. We -- and we'll get to that in the  
14 evidence later.

15          A    Yeah.

16          Q    Let's go to the very back of that -- that  
17 memo, the very last, right before fiscal impact where  
18 it says, after careful consideration. And could you  
19 read that statement to me? Second -- second page.

20          A    Where on the second page?

21          Q    On about halfway down it says, after careful  
22 consideration.

23          A    And you want me to --

24          Q    Just read verbatim, please. Okay.

25          A    And what do you want me to read verbatim?

1           Q     It says, after careful consideration and  
2     deliberation concerning these facts.

3           A     And how far do you want me to read?

4           Q     All the way down to the last bullet point,  
5     please. It won't be that long.

6           A     After consideration -- after careful  
7     consideration deliberation concerning -- concerning the  
8     facts, conclusions, and recommendations set forth in  
9     the report as well as consideration of any information  
10    and/or response provided by Councilmember Soubirous,  
11    the city council may consider any of the following in  
12    response thereto: Take no action, public censure,  
13    removal from committee chairmanship, removal from  
14    standing committee assignments, removal from mayor pro  
15    tem rotation, removal from regional organization  
16    assignments, referral to Riverside County district  
17    attorney's office for investigation as to whether or  
18    not a crime has been committed for violation of charter  
19    section 407.

20           Q     Okay. And to your knowledge, what authority  
21    did the council to -- have to take those disciplinary  
22    actions under Councilman Soubirous?

23           A     We didn't take any action.

24           Q     But you're -- you're recommending it here.  
25    It's part of your report. It's --

1 A It --

2 Q -- actions that you -- you -- it says here  
3 the city council may consider any of the following in  
4 response to. So you may not have taken action, but you  
5 were deliberating taking action; is that correct?

6 A There was no deliberation on taking action.

7 Q We've all seen the -- the video.

8 A I -- I understand it, there was -- there was  
9 a hearing, but as far as any of these actions, none of  
10 these were discussed.

11 Q But as part -- as part of the record for the  
12 hearing is of course this memo. So whether or not you  
13 verbally discussed it doesn't mean you weren't  
14 considering it. The memo specifically states, city  
15 council may consider any of the following in response  
16 thereto, correct?

17 A These are proposed considerations.

18 Q Okay. So you're proposing disciplinary  
19 action against Councilman Soubirous. Once again, based  
20 upon what authority did you make these recommendations?

21 A We didn't.

22 Q Okay. So there was no authority.

23 A No.

24 Q I just --

25 A Repeat -- repeat your question one more time.

1 Q Was there any authority to take these actions  
2 under any existing council-approved document?

3 A It would have required action by the council  
4 at the end of that hearing. No action was taken.

5 Q Okay. So there was no authority. Now  
6 secondly, was there any authority or did you previously  
7 deliberate in open session the process by which you  
8 would come to perhaps imposing these disciplinary  
9 actions?

10 A In open session?

11 Q Yes.

12 A No.

13 Q So we create -- so are -- are you saying you  
14 created this process as you kind of went along?

15 A I didn't create it, no.

16 Q Or did you -- did you participate -- did you  
17 participate in the creation of this process to  
18 investigate and -- and try Councilman Soubirous and  
19 then investigate Councilman Davis?

20 A Once again your asking for attorney-client  
21 privilege -- privilege information. I don't have the  
22 authority to waive that.

23 Q Well, you did vote. You already admitted  
24 that you voted on it.

25 A There was a vote taken that day, yes.

1           Q     So I guess we can assume that you voted on  
2     some sort of information as to the investigation and  
3     then the trial of Councilman Soubirous and the  
4     investigation of Councilman Davis, correct?

5           A     There was a hearing for Councilman Soubirous.

6           Q     Okay.

7           CHAIRMAN TUCKER: You have approximately  
8     22 minutes left of the --

9           MR. HUNTER: Sure.

10          CHAIRMAN TUCKER: -- 45 --

11          BY MR. HUNTER:

12          Q     So --

13          CHAIRMAN TUCKER: -- minutes allocated.

14          MR. HUNTER: Okay. So let's -- let's -- let's  
15     continue with this.

16          BY MR. HUNTER:

17          Q     So these actions that you have proposed here  
18     along with Mayor William Bailey and Mayor Steve -- or  
19     Mayor Pro Tem Steve Adams, these actions, were these --  
20     these were things that you proposed personally along  
21     with the other two, or was it a full council decision?  
22     It looks like your -- just your name is on it, so would  
23     you say that the three of you collaborated in producing  
24     these actions that you were going to take against  
25     Mr. -- Mr. Soubirous?

1           A    We took no plan to take action against  
2 anyone.

3           Q    Uh-huh.

4           A    These were -- depending on how -- how that  
5 hearing would transpire, these would be -- these are  
6 proposed actions that could be taken.

7           Q    And -- and so you --

8           A    No action was taken.

9           Q    And just to reiterate for the -- for the  
10 ethics panel again, from what authority did you draw  
11 those proposed disciplinary actions? There must be  
12 some authority for you to -- if you are going to impose  
13 discipline, you must have some authority to impose  
14 discipline, correct?

15          A    Based on a vote of the entire city council,  
16 that did not happen.

17          Q    Okay. So let me -- I -- could you restate  
18 that one more time, Councilmember Perry?

19          A    We took no action against Councilmember  
20 Soubirous.

21          Q    But you certainly proposed a process and then  
22 discipline -- discipline.

23          A    This is a proposed process.

24          Q    Okay. So you proposed a process, and you  
25 proposed disciplinary actions. You have yet to

1 provide, I assume there is none, that's why we have yet  
2 to see it --

3 A And once again there was no disciplinary  
4 action taken.

5 Q But you --

6 A This isn't recommending a disciplinary  
7 action. It is proposed.

8 Q Did you hold a hearing of Councilman  
9 Soubirous?

10 A Yes.

11 Q Under what authority did the council have to  
12 set a hearing for Councilman Soubirous?

13 A It was based on complaints that we had  
14 received. And once again I wouldn't be able to -- be  
15 able to answer your question because it requires  
16 information that I relay -- or discussion that is  
17 protected by -- by a disclosure of an attorney -- an  
18 attorney-client closed session privilege.

19 Q Do you -- do you remember to the best of your  
20 recollection whether a hostile workforce environment  
21 was ever substantiated in the case of Councilman Davis  
22 or Councilman Soubirous?

23 A No.

24 Q Okay.

25 A And we're -- and we're getting into two

1 different -- I thought we were focusing on one, not the  
2 other. I --

3 Q Sure. And we're --

4 A -- (indiscernible) here.

5 Q -- going to come right back to it in a  
6 second. There was a reason for the question. So that  
7 left the only allegations to be adjudicated whether or  
8 not charter violations occurred or -- or even in the  
9 case of Councilman Soubirous, I believe there were  
10 Brown Act violations as well, correct?

11 A There was a hearing based on the totality of  
12 the circumstances. That hearing took place, and no  
13 action was taken.

14 Q And we just read from a document that states  
15 from the past, members of the public who brought  
16 charter violations or even, you know, violations of  
17 state law, consistently a hundred percent of the -- the  
18 cases under the -- were brought under the -- the ethics  
19 code and adjudicated by the ethics adjudicating body,  
20 correct?

21 A I didn't look at all of them to be honest  
22 with you.

23 MR. HUNTER: Well, for -- for the record, and  
24 I guess this will be part of the evidence as well, that  
25 is a complete totality of all ethics complaints brought

1 by the public citing administrative interference or  
2 other charter violations -- violations.

3 Thank you, Mr. Perry. That will be all.

4 And -- and, Mr. Hansen, if I could have my  
5 documents back, please.

6 So during this -- this part of the hearing,  
7 I'd like to introduce, start introducing my evidence if  
8 I could, please. And I admit it's going to be a little  
9 bit difficult because I -- I wasn't totally -- I think  
10 I -- I -- I may have different documents with -- with  
11 numbers on the bottom of them than -- than you do,  
12 which is kind of unfortunate. If I have similar  
13 documents, I'll try to -- to read them into the record  
14 for you.

15 CHAIRMAN TUCKER: Do you have the packet that  
16 was submitted to us?

17 MR. HUNTER: Yes, I do.

18 CHAIRMAN TUCKER: That's the one we need for  
19 you to refer to whenever possible.

20 MR. HUNTER: So I'd first like to read into  
21 the record or at least address for the record the  
22 transcript of the Riverside city council meeting  
23 July 22nd, 2014. Is it page 883, I hope.

24 MEMBER FORD: Uh-huh.

25 MR. HANSEN: Yeah.

1                   MR. HUNTER: Is that -- that correct?

2                   CHAIRMAN TUCKER: That is correct. It  
3 actually begins on page 884.

4                   MR. HUNTER: Thank you.

5                   CHAIRMAN TUCKER: You've highlighted some  
6 portions of that.

7                   MR. HUNTER: Yes. I'd like to start off with  
8 page -- to page 885, please. And I'd like to read a  
9 few -- and I'll -- and as I go through the sections, I  
10 believe they're all highlighted for you anyway, I  
11 believe, so as I go through them, I'm going to provide  
12 the relevance of these different sections and why I've  
13 highlighted for them.

14                  All right. So the first thing it says, the  
15 intent of this meeting is to ensure transparency within  
16 city government and afford all parties the rights and  
17 fair treatment they deserve -- deserve resulting in  
18 accountability for all parties. I thought that -- for  
19 all parties involved. I thought that was relevant,  
20 because how can you ensure transparency in city  
21 governments if you're not revealing to the public, as  
22 part of the minutes I just discussed with Councilman  
23 Perry, that you're taking votes to conduct  
24 investigations and appropriate -- and appropriate --  
25 not just to conduct the investigation, but appropriate

1 city money towards those investigations violating -- in  
2 violating the Brown Act. I just, I find that to be  
3 kind of ironic.

4 The next statement says, upon receiving a  
5 hostile work environment complaint, evidence of a  
6 potential violation of the city charter for  
7 administrative interference, the mayor and mayor pro  
8 tem called the closed session to review the evidence  
9 and expose -- exposure to -- to litigation. This  
10 closed session led the city council unanimously with  
11 counsel, and I believe that's counsel as in, not city  
12 council, but actually advisement of a lawyer,  
13 authorizing the mayor pro tem to hire an investigative  
14 reporter as required by state and -- law and city  
15 policy.

16 Now, once again we have an admission by the  
17 mayor of our city that a vote took place. And -- and  
18 we can prove that it was on April 1st, with -- with  
19 subject to evidence -- evidence, that was never  
20 recorded in the minutes that Mr. Perry, Councilman  
21 Perry approved, okay? Now, councilman -- now Mayor  
22 Bailey of course is correct that the city did have a  
23 duty to review a complaint about hostile workforce  
24 environment, but he is absolutely leading everyone on  
25 into saying that it would then roll over into

1 investigating all complaints, which would be a  
2 complaint into administrative interference or Brown Act  
3 violations.

4 That would have been done through a separate  
5 process. The process would have been bifurcated if it  
6 had been anyone in the city besides a few of the  
7 bureaucrats. Everyone else would have had to go  
8 through the Code of Ethics to launch their complaint.  
9 And we know that because we've seen a comprehensive  
10 list from the city clerk showing the exact same  
11 complaint being made in the past, and it was directed  
12 to the Code of Ethics.

13 Okay. So what Mayor Bailey is saying there  
14 is giving -- is kind of -- is bedeviling to some extent  
15 because he tends to misdirect and say we had to  
16 investigate all claims. That is not -- absolutely  
17 positively untrue. Only the hostile workforce  
18 environment -- environment, which was quickly dismissed  
19 by the investigator needing to be investigated.

20 Okay. So if we go to page 886, we are here  
21 today to review the findings of the investigation  
22 reported by Mr. Gumpert, listen to response by  
23 Councilman Soubirous, encourage the public to comment,  
24 allow the council to ask questions, discuss,  
25 deliberate, and take -- take action if so desired,

1       okay?

2               Now, no action was taken, that is correct,  
3       but certainly it was on the table to take action for  
4       which I keep coming back to, where was the authority  
5       for the city council to take such actions, to which I  
6       cannot find any. Mr. Perry has not presented any. It  
7       is not a burden incumbent upon me to present -- to  
8       provide proof of a negative. It's impossible. It  
9       would be incumbent upon the defendant to prove where  
10      the authority came from.

11       Once again, when you deliberate as part of an  
12      ethics body, you make the rules first, and then you  
13      adjudicate the process. And why do you do that? You  
14      do that because you make -- need to make sure that no  
15      one's due process is violated by making up a new  
16      procedure every time depending on who's the defendant  
17      and who's the complainant. That ensures fairness in  
18      the process. And fairness in the process is part of  
19      the process, okay?

20               So Mr. Soubirous's rights to due process were  
21      violated. In fact, I think when we read the closed  
22      session, the reports out of closed session as part of  
23      the settlements with Councilman Soubirous, the -- it --  
24      it -- the city attorney states that councilman -- that  
25      Councilman Soubirous's due process rights

1 unfortunately, you know, may have been compromised,  
2 okay? So that's very relevant.

3 And you see the next line down they even say,  
4 nor will there be cross-examination, a  
5 cross-examination of witnesses. Why is that important?  
6 Well, Councilman Soubirous, as Councilman Davis will  
7 point out later in this complaint or -- or in this --  
8 this hearing minutes, was not just accused of, you  
9 know, you can say administrative -- you know,  
10 interference and administrative -- administrative  
11 service or whatever you want to hear or even maybe  
12 potentially violating the Brown Act; those are  
13 misdemeanors under our charter and state law. Those  
14 will be prosecuted with -- with -- with enough evidence  
15 by the district attorney.

16 So why would he not be afforded the right to  
17 cross-examine witnesses that were brought before him at  
18 his -- at his show trial, at his -- it's -- it's  
19 absolutely absurd.

20 Okay. I'd like to go to the next sentence  
21 of -- or paragraph down where it says, first off to  
22 where it is the intent and desire of this city council  
23 to conduct its business in an orderly and a fair manner  
24 in whereas there are certain basic rights of due  
25 process and opportunity to address equity -- issues

1 with equity, fairness, and equal protection of the law.  
2 I think I just addressed that, is that there was no due  
3 process afforded Councilman Soubirous here.

4 And why -- why is that? Because the council  
5 created this process, as Mr. Perry cannot once again  
6 provide any documentation that there was any process  
7 that was created beforehand to run one of these show  
8 trials. It was created out of thin air. That, in  
9 itself, violated Councilman Soubirous's rights to due  
10 process, because if you were allowed to do that, you  
11 could create different rules for every single case  
12 brought before you.

13 Okay. Now, let's go to page 888, please. It  
14 says and highlighted, the mayor and city council shall  
15 publicly share substantive information which they may  
16 have received from sources outside the public  
17 decision-making process that is relevant to a matter  
18 under consideration by the city council. Okay. This  
19 is I believe once again Mr. -- Mayor Bailey talking  
20 about they're required to share information when you're  
21 making a decision-making process, but for some reason,  
22 Councilman Perry, as part of his defense, would have  
23 you believe that the process by which they created this  
24 kangaroo court and hired an investigator did not have  
25 to be shared with the public.

1                   And if you think about it -- I always say,  
2 sometimes the proof is in the pudding, okay? The fact  
3 that there was an actual hearing with all the documents  
4 that was part of the investigation done in open session  
5 per se disqualifies it as ever having been allowed to  
6 have been discussed in closed session, right?

7                   So what -- what is Mr. Perry's defense?

8                   Mr. Perry's defense is, well, you know, there was  
9 potential litigation here. Well, wait a second. Was  
10 there less potential litigation once all those  
11 documents were presented to the public as part of a  
12 show trial? Well, of course there was more. So how  
13 were -- were the discussions ever held in closed  
14 session as to the process to begin with?

15                  Since when, under the Brown Act, can you  
16 discuss a<sup>1</sup> process as to how you bring forth<sup>1</sup> an  
17 investigation in a hearing of councilmembers.  
18 Councilmembers under the Brown Act are not considered  
19 employees. They have no private interest -- privacy  
20 interest under the Brown Act, okay?

21                  And going forward here I'd like to get to, I  
22 think this is really the real meat of the issue here,  
23 let's get into Councilman Davis's statements, because I  
24 think Councilman Davis does an excellent job of really  
25 discussing all of the problems of what happened on

1 July -- in July 20th -- July 22nd, 2014, and all dates  
2 there beforehand.

3 Councilman Davis, on page 891, I have to make  
4 a disclosure with violation of the law and ask for  
5 information for that violation of the law and then  
6 unfortunately charge every member of this council in a  
7 violation of the Brown Act. This is an elected  
8 representative of the people. And if we can't get  
9 access to those records, we need to subpoena Councilman  
10 Davis and Councilman Soubirous, but particularly  
11 Councilman Davis.

12 Under the State of California laws, under the  
13 Brown Act, the Ralph M. Brown Act, further on page 892,  
14 I cannot participate in this because it would be a  
15 violation of law, sir. Further on page 893, I call for  
16 a vote of the council of whether or not I can speak  
17 that we did, in fact, violate the Brown Act when we did  
18 it and how we did it before we proceed. This is  
19 allowed under our emergency clause.

20 To which point, Mayor Bailey and we'll  
21 discuss mayor -- Mayor Bailey's adjudication says,  
22 we're going to recess the meeting if that's -- if  
23 that's what you want to do. That's on page 894. This  
24 is even after Councilman Melendrez says, I will second  
25 that motion to recess the meeting, obviously getting

1 very uncomfortable as to what the -- how the  
2 proceedings were -- were going down.

3 Councilman Melendrez says on page 895, I  
4 think there are a lot of important issues that we need  
5 to discuss before we proceed. So what Councilman  
6 Melendrez is saying there is, we need to put together a  
7 process before we continue with this investigation and  
8 this hearing, okay? It's precisely what he's saying.

9 Let's skip over to page 897. Mayor Bailey at  
10 the very bottom of the -- the page. He says, Mark  
11 Meyerhoff, our special counsel, who will further  
12 explain the duty to investigate and answer your  
13 question as to why we are here today; Leonard Gumpert,  
14 who will present the summary of the findings;  
15 Councilman Soubirous will then provide -- be provided  
16 an opportunity to respond. So that's giving you the  
17 process. Once again to which I say, where was the  
18 authority or when was the process ever created if it  
19 wasn't created in closed session, which we for some  
20 reason are not being given access to.

21 Okay. So Mr. Meyerhoff goes on to say,  
22 claims of -- at the very bottom of the page on 898,  
23 claims of hostile workforce environment under  
24 California government code as part of the Fair  
25 Employment Housing Act, section 12940 of the government

1 code, employers, including the city, are required to  
2 conduct fair, prompt, and thorough investigations in  
3 claims of hostile work environment, okay? And that's  
4 true.

5 The investigator also reviewed allegations  
6 that the city charter was violated specifically under  
7 section 407. The council is here today to publicly --  
8 publicly deliberate on the issue and whether any action  
9 should be taken as a part of this investigation. So  
10 Mr. Meyerhoff knew precisely what was supposed to  
11 happen that day, okay, go through the process and then  
12 perhaps take an action. Because no action was taken  
13 does not mean that it could not have been taken.

14 The conclusion I reached on page 900, the  
15 conclusion I reached basically as to all of the  
16 allegations is that it would be undue speculation that  
17 Councilman Soubirous had committed any of the  
18 violations that were alleged against him. Okay. That  
19 summarizes the entire -- and that's probably as much of  
20 the investigation, itself, that I want to go into.

21 MEMBER: (Indiscernible).

22 CHAIRMAN TUCKER: You've been at this  
23 approximately 40 minutes. How much more time do you  
24 think you need?

25 MR. HUNTER: Probably 30 minutes.

1                   CHAIRMAN TUCKER: Does the hearing panel wish  
2 to grant Mr. Hunter an additional 30 minutes?

3                   MEMBER: (Indiscernible).

4                   CHAIRMAN TUCKER: Yes, please vote.

5                   MEMBER FORD: I would like to know, do you  
6 plan on going through this transcript for the next  
7 30 minutes, or do you feel like there's pertinent  
8 information or pieces that you need to kind of connect?

9                   MR. HUNTER: My -- my -- my strategy is to  
10 just, I'm going to go through the relevant. And it's  
11 only what's highlighted. I'm not going to go  
12 through -- a giant portion of this transcript is not  
13 highlighted, yeah.

14                  CHAIRMAN TUCKER: I requested -- my -- my  
15 question was, how much time do you need to conclude  
16 your evidence.

17                  MR. HUNTER: Thirty minutes.

18                  CHAIRMAN TUCKER: Does that help, Champagne?  
19 Okay.

20                  MEMBER FORD: And it's going to be 30 minutes  
21 of this transcript?

22                  MR. HUNTER: No.

23                  MEMBER FORD: No?

24                  MR. HUNTER: No.

25                  MEMBER FORD: No.

1                   MR. HUNTER: It will be this transcript and  
2 then tying it back to the other evidence I've already  
3 presented. And -- and -- and basically backing up  
4 Councilman Davis's statements with actual documents  
5 that prove what he's saying is indeed correct.

6                   CHAIRMAN TUCKER: Please vote.

7                   MS. NICOL: The voting machine was set up  
8 incorrectly, so I apologize, but I'm going to clear the  
9 vote and ask you to vote one more time.

10                  CHAIRMAN TUCKER: Has everybody voted?

11 Mr. Nelson.

12                  MS. NICOL: Member Nelson. Motion carries  
13 with (indiscernible).

14                  CHAIRMAN TUCKER: Motion carries. You have  
15 30 minutes. It is now 10:23, that means 10:53 if I add  
16 correctly. So you may begin.

17                  MR. HUNTER: Yes. Let's skip forward for the  
18 sake of brevity here. Let's go to much further on in  
19 the meeting. Because at that point in time I believe  
20 the investigator actually goes into the allegations,  
21 and -- and that is not as important to me. I'm more  
22 interested in the process.

23                  So let's go to page 913 of the transcript,  
24 please. And I'll read, there were four kinds of  
25 allegations alleged. This is towards the bottom of the

1 page. One allegation was that it appeared that there  
2 had been a Brown Act violation. Now, the Brown Act  
3 requires that generally the council conduct its  
4 business publicly as a group and that they not have  
5 secret votes on various matters. Boy, that's kind of  
6 telling; isn't it?

7 This is the -- the city's investigator  
8 telling the council they cannot have secret votes on  
9 various matters, but yet I've already provided evidence  
10 in the form of audio -- audio and also as part of  
11 testimony that secret votes absolutely positively took  
12 place on April 1st and April 22nd to conduct  
13 investigations into councilmen that were never reported  
14 out of the closed session. So if you have any  
15 questions as to whether that violates the law, I think  
16 Mr. Gumpert just answered that for you.

17 Now, and since there is definitely no public  
18 record of any vote being taken through February 14th on  
19 the -- on the issue of armed guards, there may have  
20 been a Brown Act violation. And all he's saying is  
21 that -- I guess this goes to the merits of -- of -- of  
22 -- of the investigation, is that you needed a -- there  
23 has to be a public record of every vote taken, whether  
24 it's open or closed.

25 Okay. And his disposition on that was later

1 on the page, it says, there's been no secret vote that  
2 I could see and therefore no Brown Act violations.  
3 Now, of course the reverse of that would be, if there  
4 were secret votes, those would be Brown Act violations.

5 All right. Secondly, I've already discussed  
6 the 407 alleged violation. That's -- that's to the  
7 merits of the claim once again. It's just speculation.  
8 There was an allegation that there had been ethics  
9 violations as well on these grounds. And therefore my  
10 conclusion was that there's no likely ethics  
11 violations.

12 So I ask you, why is an investigator being  
13 hired by the council to review whether ethics  
14 violations occurred when that is the sole job under our  
15 -- our city council of the ethics adjudicating bodies.  
16 If that isn't an admission that they bypassed the  
17 process, itself, I don't know what would be.

18 So the claim was made that there was a  
19 hostile work environment later on the page. The  
20 harassment or hostility has to be based on race,  
21 religion, something like that. Under the technical  
22 requirements of the city's and the state's  
23 anti-harassment laws, there was no hostile work  
24 environment.

25 And if you went into -- this is the only time

1 maybe I'll delve into some of the -- the aspects of the  
2 claim, but if you go into any of that part of the  
3 investigation, you'll never see in any of the evidence  
4 that was presented before you, any claim against Davis  
5 or Soubirous that would be substantiated as a hostile  
6 workforce environment, because nobody ever says, hey,  
7 you discriminated against me because I'm a man or  
8 because I'm white or because I'm Catholic, okay?

9                   So the -- the investigator is telling you,  
10 well, that was -- and that was the only requirement to  
11 investigate, was just that one little section. And if  
12 I had been allowed to subpoena, and what I could  
13 subpoena for you is an actual, another claim that I  
14 made against the city, it's very relevant, back in  
15 2012, I believe, where I made allegations of --  
16 whistleblower allegations against the city, and the  
17 city pigeonholed me into signing -- basically  
18 completing a form for a hostile workforce environment,  
19 to which I said, I don't have a hostile workforce  
20 environment here, but I can't get a copy of that report  
21 because I need to -- to be subpoenaed. The city, you  
22 know, the city will not give it to me, okay?

23                   And you'd see that once they coerced me,  
24 (indiscernible) into filling out this nonsensical form  
25 in order to get them to complete any investigation,

1       they went and basically conducted a hostile workforce  
2       environment investigation asking people, well, does  
3       Jason discriminate against because he was white or he's  
4       male or because he's, you know -- you know, this, that,  
5       or the other, all these protected classes; and they  
6       never investigated any of my claims towards  
7       retaliation -- retaliation and harassment. They only  
8       investigated the claims as to hostile workforce  
9       environment.

10           So why is it that when I made my complaints,  
11       they dropped all investigation once it went beyond the  
12       hostile workforce environment? And you could see that  
13       if we could subpoena that shall that report which is  
14       being held secret from the city, but when Scott Barber,  
15       the city manager, or Sergio Diaz or any of the  
16       protected few make the same exact complaints, okay,  
17       hostile workforce environment and then interference --  
18       interference with either the charter or -- or the  
19       policies, they get a completely different outcome and  
20       investigation. That's bologna.

21           Okay. So let's continue with the  
22       transcripts. And let's get on to page 924. And this,  
23       I believe, is Councilman Davis -- oh, sorry, sorry,  
24       this is Councilman Soubirous. And he says, I do want  
25       to say that I believe this is nothing but an attempt by

1 you, Mr. Bailey, to smear me, my reputation, my voice  
2 as a councilmember representing the people of my ward  
3 in greater Riverside. You know that I'm up for  
4 reelection in June of 2015, and everything -- and  
5 you're doing everything in your power to discredit me  
6 and make me look bad to the public.

7 You've spent thousands of tax -- taxpayer  
8 dollars to do this. I did not request this hearing.  
9 Why would I request it when the vote has already been  
10 taken from what I've been told? This goes back to the  
11 vote that was taken right before they stepped into  
12 those chambers that was never reported in the minutes  
13 that already decided that Councilman Soubirous was not  
14 guilty or going to be sustained on any of the  
15 violation.

16 | And Councilman Soubirous | rightly asks, what  
17 source of authority are we following regarding the  
18 terms and conditions set forth in my participation and  
19 limitations imposed upon me in this hearing? I cannot  
20 ask clarifying questions. I cannot bring witnesses. I  
21 can't present evidence. I'm not entitled to due  
22 process. How is this a fair hearing or trial? There's  
23 no lawful base -- basis for this hearing, no authority,  
24 authority under the city's charter, rules of procedure,  
25 order of business, not even under the Code of Ethics,

1 which we've failed to follow that procedure.

2                   Okay. This is a city councilman, elected  
3 representative of the people, making the same  
4 allegations I'm making before you today, okay, whom the  
5 city settled with monetarily and issued him a public  
6 apology. This investigation and subsequent -- this is  
7 on the next page, 926 -- is in direct conflict with  
8 city charter chapter 202, which is the Code of Ethics  
9 and Conduct. Our city's Code of Ethics and Conduct  
10 statement, it's the mechanism for all council conduct.

11                   So what's the source of authority to conduct  
12 this hearing? What source of authority did you follow  
13 to conduct secret meetings to plot, plan, and execute  
14 this investigation? Well, he's talking about what  
15 happened in closed session. Well, why didn't the city  
16 charge him with discussing things that you can? The  
17 city could have said, like, Mr. Soubirous, why are you  
18 talking about things that happened in closed session,  
19 we're going to take you to court and sue you; but they  
20 didn't, did they? In fact, they settled with him  
21 instead, okay?

22                   If you discuss confidential information  
23 outside of closed session, which is what Mr. Perry  
24 is -- is -- is claiming the privilege on here, then you  
25 can be sued in a court of law, but that action never

1 took place. What is the authority -- and this is --  
2 Councilman Soubirous is ex law enforcement. Who would  
3 know due protection processes better than an ex  
4 California Highway Patrolman who was at, who did -- who  
5 served I think a 30-year career.

6 What is the source of authority to prevent me  
7 from cross-examining, questioning evidence, bringing  
8 witness, and a censure violating my due process right?  
9 What charter or chapter or source of authority. This  
10 is -- this is kind of repetitive. I cannot find it  
11 under charter where any of the councilmembers can sit  
12 in judgment of me.

13 Now, this goes to, and let me -- we'll  
14 discuss this, here we go, you denied me of my basic  
15 rights granted to me like any other citizen in this  
16 country and noncitizens, it's guaranteed me -- to me by  
17 the Constitution of the United States. I swore down  
18 here to uphold the Constitution of the United States in  
19 the State of California, and I've done it.

20 My crime so far is I've been doing my job.  
21 This is nothing more than a political witch hunt  
22 orchestrated by our mayor in collusion with willing  
23 staff, all while spending taxpayer money to achieve  
24 their own agenda. I am truly disappointed in you, sir,  
25 in that you would sanction such -- such a process. So

1 he's saying once again you've created an illegitimate  
2 process out of thin air.

3 And we'll discuss the next page when the  
4 mayor is in here. I guess we can skip that for now.  
5 Let's go to page 929. It goes to motive. You have  
6 used taxpayer dollars to fund your desire to remove me  
7 from the seat, you have been the driving force to push  
8 this investigation from the start, use city staff, use  
9 city -- city resources, public funds to accomplish your  
10 goal.

11 That's given a very clear word in the  
12 California Code of Civil Procedure, that's  
13 misappropriation of public funds, all right? Once  
14 again, I don't know how that wouldn't violate our Code  
15 of Ethics if Mr. Soubirous's allegations are correct.

16 Sir, you are killing my ability to rightfully  
17 hold any staff accountable, which is my obligation as a  
18 policymaker and as a city councilmember. You have  
19 failed the people of the city and you have failed to  
20 follow the charter -- city charter or ethics and  
21 conduct code and our order of rules and business.

22 Now, he's directing -- directing that to the  
23 mayor, but I think rightfully so he could be addressing  
24 it to everyone on that council at that point in time  
25 who allowed this matter to go forward and -- and -- and

1 did not speak up against it.

2 I don't need to go too much more into motive,  
3 so let's go to -- let's go to page 932. You  
4 orchestrated a wonderful plan, secret meetings, closed  
5 session all in violation of the State's Brown Act. Now  
6 we've heard Councilman Davis state that already, now  
7 we've got councilman on the record -- Soubirous on the  
8 record stating that as well. But that's two-sevenths  
9 of the council with Councilman Melendrez also on the  
10 record by this point in time with being incredibly  
11 uncomfortable with how the process has proceeded to  
12 that point -- point in time.

13 This is something that happened that you  
14 didn't plan for, that silly little councilman would be  
15 investigated behind -- behind closed doors all out of  
16 public view. He made a public statement that he was  
17 being investigated. Suddenly the secret meetings  
18 slowed down, the reports began to -- to see the light  
19 of day and the people investigating the investigation  
20 became known.

21 So what Mr. Soubirous is saying there is that  
22 if he hadn't leaked this information to the Press  
23 Enterprise and caused a general, you know, buzz in the  
24 community that the council would have continued to try  
25 to try this like they did previously with Councilman

1 Davis in 2012 with the fire truck incident in secret  
2 until they had reached their deliberation and  
3 sanctioned him all being done in secret.

4 And what Councilman Soubirous is saying is by  
5 releasing the information to the press, he forced the  
6 city to admit we weren't complying with the Brown Act  
7 and now we've got to have an open public meeting, and  
8 that's why it occurred. In my opinion that's the only  
9 reason it occurred. It occurred because they were  
10 outed as having been doing something totally illegal,  
11 and now the press was on it.

12 Page 933, this is about the process. This is  
13 Councilman Soubirous saying, am I ever going to get a  
14 copy of this report? Nope. Am I ever going to find  
15 out who filed this claim against me, these four people?  
16 Nope. Does that sound like due process? Okay.

17 Next page. So if I had to keep this -- this  
18 behind closed doors because it was private that I would  
19 never ever, ever know how -- ever get to know who and  
20 have a copy of the report, how did it become public?  
21 This is where I say the proof is in the pudding. Once  
22 it became public, it never -- it proves it never should  
23 have been discussed behind closed doors, okay?

24 And if it could be made public, then why did  
25 we do this behind closed doors? You can't have it both

1 ways. It doesn't work. Councilman Soubirous  
2 understands that logic, okay?

3 Now back into page 936, don't use the city's  
4 money and resources to do it, that's a crime. And  
5 don't violate the Brown Act by having closed door  
6 sessions on something that we should -- should have  
7 been doing out in front of the open in front of the  
8 public. Our city charter says so. It says at all  
9 cases and all times err on the side of openness and  
10 transparency.

11 Do you recall that after the third closed  
12 session of deliberating about my guilt or innocence --  
13 third closed session of deliberations.

14 CHAIRMAN TUCKER: You have eight minutes  
15 remaining in your 30.

16 MR. HUNTER: I said, well -- oh, what was it,  
17 I can't tell you. You have to wait until we announce  
18 it at our meeting. I was never told there was going to  
19 be a hearing or trial (indiscernible).

20 Mayor Bailey, page 938, that was the will of  
21 the council to conduct closed sessions to vote in the  
22 closed session to bring this to a public hearing and it  
23 was the unanimous vote to bring this to a public  
24 hearing for transparency purposes. Bologna, okay?

25 That's just an excuse. There was -- it was brought to

1 a public hearing because they were forced by the Press  
2 Enterprise to release the reports of the investigation.

3 Mr. Davis goes on, I think. And a lot of  
4 that and hopefully you read the -- the highlighted  
5 parts. I don't have a lot of time. A lot of this is  
6 repetitive, so I don't want to beat a horse to death,  
7 okay? He goes on to state the exact same things  
8 Councilman Soubirous just said again and again and  
9 again. He talks about that we only follow the rules  
10 when it's convenient to do so.

11 So let's get back -- you know, I don't even  
12 know if I have to go in -- I think I've -- I've --  
13 I've -- I've gone into the -- the great gist of the --  
14 the transcript. And I think I've explained what the  
15 motive is. I think we'll go to -- well, what -- what  
16 were the end results? And the end results were in the  
17 minutes of the council discussing the outcome of --  
18 now, as part of the evidence, after evidence do I get a  
19 closing statement just for point of order?

20 CHAIRMAN TUCKER: You still have six minutes  
21 remaining on that portion of your --

22 MR. HUNTER: And do I get a closing statement?  
23 I can't remember. I do actually.

24 CHAIRMAN TUCKER: Yes, you get a closing  
25 statement, and you have six minutes of your

1 remaining -- of your 15.

2 MR. HUNTER: So I'd like to go into the -- the  
3 actual what was said by the -- by the city.

4 CHAIRMAN TUCKER: You right now have five and  
5 a half minutes to conclude your evidence.

6 MR. HUNTER: I'm looking for the -- the actual  
7 minutes, the city council meetings. I'm sorry, I've  
8 got a lot of papers up here. Oh, here we go. On  
9 February 3rd, 2016, on Councilman Soubirous. The  
10 council minutes, and I don't have time to really --  
11 to -- to get the number. I don't have a number. This  
12 is in once again the package I got from Councilman --  
13 Councilman -- from Councilman Perry, himself, okay,  
14 it's his defense.

15 He includes those minutes and it says, city  
16 attorney Geuss reported that in closed session the city  
17 council approved by a vote of six in favor and none  
18 opposed with the Councilmember Bernard absent, the  
19 request of Councilman Soubirous for reimbursement of  
20 attorney fees related to an investigation of him, and  
21 further the city council makes the following statement:  
22 We regret the actions taken with regard to the  
23 investigation of Councilman Mike Soubirous.

24 That includes the process of discussing the  
25 matter in closed session yet hearing the matter

1 publicly, denying the councilmember a right to rebut  
2 the witnesses. We regret any damages to Councilman  
3 Soubirous's reputation and sincerely hope this -- this  
4 can move the council forward in the spirit of  
5 cooperation, okay?

6 And that's to Councilman Soubirous.

7 Councilman Davis has a very similar thing that was read  
8 at the council meeting where he was, I believe \$40,000  
9 he was awarded where it says, the City of Riverside and  
10 the city council will publicly acknowledge that no  
11 charges were ever filed or brought against Councilman  
12 Davis with regard to the offense of 2014. The city  
13 council regrets these events took place and hopes to  
14 put them behind us and move forward in the spirit of  
15 cooperation.

16 If that's not an admission that something  
17 seriously, seriously failed here, I don't know what  
18 would be. And so if I had additional time, we'd go  
19 into -- and I guess you can ask your legal counsel  
20 about this, but you'll find that no disclosure under  
21 the Brown Act of any reportable action is a violation  
22 of the Brown Act, okay?

23 We could go into the city's harassment  
24 policies, which are all -- all have been included in  
25 here for you to read where you'll see that the only

1       thing that they were required to investigate outside of  
2       the ethics process, itself, was the hostile workforce  
3       environment claim. And you would see that even Gumpert  
4       admits that that was dismissed immediately out of hand.

5                   So --

6                   CHAIRMAN TUCKER: Three minutes left.

7                   MR. HUNTER: Sure. Discussed. Discussed. I  
8       think I've introduced all the evidence I need. I think  
9       I can make my statements in probably the wrap-up  
10      portion of it. I'm not going to go into the Brown Act  
11      stuff on here. It's been provided for you. I think  
12      you can ask the city attorney for additional advice on  
13      that as to whether those were Brown Act violations.  
14      You've seen all the minutes. You've seen all the  
15      relevant minutes. You've seen it, yeah.

16                  And with that I think I -- I rest my case as  
17      to the evidence. Thank you.

18                  CHAIRMAN TUCKER: Thank you very much.

19                  MR. HUNTER: Yeah, I did it under 30 minutes.

20                  CHAIRMAN TUCKER: Yeah, you've got two minutes  
21      left. Do you want them?

22                  MR. HUNTER: No.

23                  CHAIRMAN TUCKER: All right. Councilman  
24      Perry, you may now make your opening statement and  
25      present any evidence that -- that you have. I granted

1 70 minutes to the complainant, so you have 70 minutes.

2 MEMBER PERRY: I won't be here 70 minutes,  
3 trust me. This is only going to take a few minutes.  
4 Lots of things have been said. I don't have any  
5 physical evidence to bring in here. I will just say  
6 that yes, there were closed session discussions. And  
7 every one of those was properly noticed; every single  
8 one of them had an attorney that was present, the same  
9 attorney who was a member in good standing and no  
10 issues; and we were given advice and direction.

11 I was asked about a couple closed sessions  
12 that I read into the record. Yes, there's --  
13 there's -- there's closed sessions that take place  
14 every week. There was no real discussion on what was  
15 covered during those closed session items, the -- the  
16 two in particular that were mentioned.

17 There was -- there's been lots of talk on who  
18 said what and who did what. There was opinions by  
19 councilmembers. I think you need to keep in mind,  
20 those are opinions. There are no legal opinions behind  
21 any of those. Those are opinions. Everybody has their  
22 right to an opinion. And those were, you know, a  
23 couple councilmembers had -- had their own, and they  
24 should be regarded as such.

25 I don't think there was a Brown Act

1 violation. There were talks of settlements. Yes,  
2 we -- we did have settlements. We wanted -- this thing  
3 needed to get over with. We needed to go on in  
4 governing the city and taking the -- the old feelings  
5 that were present and moving forward with city  
6 government for the good of this community.

7 And nowhere in the settlements will you see  
8 anything -- anything worded in there about ethics or  
9 closed session violations. It's my contention that  
10 didn't happen. And there is a lots of -- a lot has  
11 been said here and a lot of this second -- secondhand  
12 information and almost all of it is hearsay evidence.  
13 None of it is direct.

14 Unfortunately Mr. Hunter was never inside  
15 this room. He never acknowledged having conversations  
16 with anybody in that room to where they -- they got  
17 information directly on -- on what was or wasn't  
18 discussed. The hearing was exactly what it was for, it  
19 was to bring finality to the charges that were brought.  
20 We also had -- there was some labor issue, labor law  
21 issues that were brought in there which also  
22 incorporates the need for closed session items. So we  
23 did have that in there.

24 And closed session items is not something new  
25 to the City of Riverside. It is not something the City

1 of Riverside has invented for the sake of having  
2 discussions, but it's to get frank advice from your  
3 attorneys. And that is also regarded by the -- the  
4 U.S. Supreme Court has upheld the need for closed  
5 session items. So with that, I -- I think I'm going to  
6 leave it as where it's at right now and we can move on  
7 with the hearing. So I thank you for your time.

8 CHAIRMAN TUCKER: Just a minute.

9 (Indiscernible).

10 MS. NICOL: (Indiscernible).

11 CHAIRMAN TUCKER: We're going to -- I was  
12 going to do this in -- in a few minutes, but we're  
13 going to take a comfort break of five minutes.

14 (Off the record - 10:47:18 a.m.)

15 (On the record - 10:53:14 a.m.)

16 CHAIRMAN TUCKER: We'll call this meeting back  
17 to order.

18 At this time, Mr. Hunter, you have six  
19 minutes to -- for your closing statements.

20 MR. HUNTER: Hi there. Jason Hunter once  
21 again. Closing statements. I'd like to thank you for  
22 hearing this today. I feel like I've brought actual  
23 evidence to provide the preponderance of evidence. I  
24 need to provide, not beyond a reasonable doubt, once  
25 again a preponderance of the evidence. I've had

1 evidence versus my counterparty. Councilman Perry  
2 brought nothing, nothing to -- to refute the fact that  
3 we know, via the record and via what I introduced in  
4 cross and introduced as part of minutes that were on  
5 audio tape you can review if you'd like, that  
6 Councilman Perry participated on votes on April 1st and  
7 April 22nd that were never recorded into the minutes he  
8 voted upon and accepted them.

9                   We also know or suspect under what Councilman  
10 Davis said and Councilman Soubirous have said at the  
11 hearing that there was another vote, okay? He says, I  
12 must profess and we have already deliberated this,  
13 folks, behind closed doors to conclusion. Each one of  
14 us took a vote of exactly how we felt after we  
15 deliberated on charter section 407. We are in  
16 violation of the Brown Act. We have no authority to do  
17 what we did, but we did occur.

18                   And this happened right just previous to the  
19 hearing. So another Brown Act violation occurred on  
20 July 22nd, 2014, if we're to believe Councilman Davis,  
21 who's on the record at a city council meeting saying  
22 this. He's saying he broke the law and so did all my  
23 colleagues with the exception of Councilman Soubirous,  
24 and I will submit -- I will submit myself to the  
25 process because we did do it.

1           God, how much more damning of evidence do you  
2 need as to Brown Act violations that votes occurred,  
3 Mr. Perry approved those -- those -- those minutes, and  
4 in -- in doing so violated sections of the Brown Act?  
5 And the Brown Act says, and I'll read it for you  
6 because I've got some time here, section 49957.1 of the  
7 Brown Act, okay, which is also in your record, it says,  
8 it's page 59, it says, the legislative body of any  
9 local agency shall publicly report on any action taken  
10 in closed session and the voter abstention on that  
11 action of every member present.

12           Okay. We know it was never reported for  
13 those three dates. And then secondly it says, after  
14 the closed session, the legislative body shall  
15 reconvene in open session prior to the adjournment and  
16 shall make any disclosures required under the previous  
17 section I just read. So that means it has to be  
18 immediate. They can't wait four years to report out of  
19 closed session, they have to do it at that, and we've  
20 seen those minutes, okay?

21           And if you don't believe the cross I had,  
22 Mr. Perry didn't dispute that any of those records were  
23 real, then you just listen to the audio, all right?  
24 You can see that those votes were never taken. So I  
25 once again, as far as the Brown Act violations goes, so

1 that's the first part, that -- that the votes were  
2 never recorded and he voted on -- on them, which is a  
3 violation of the law.

4 The second thing is, once again the proof is  
5 in the pudding. If this whole thing was confidential  
6 and was subject to exception under the Brown Act  
7 because of potential litigation, why was the entire  
8 file then released to the public, no names redacted --  
9 redacted of which you've seen a copy on the Soubirous  
10 report, okay, and a public show trial had? What, was  
11 there less potential for litigation after releasing all  
12 the documents and had that show trial?

13 I would submit that the only threat of  
14 litigation came about because the city violated  
15 Mr. Soubirous and was planning on violating Mr. Davis's  
16 rights, and they were trying to keep this as secret as  
17 possible like they had done to Paul Davis previously in  
18 2012. And they got away with it once, so they got a  
19 little bolder and tried it again. This time it didn't  
20 work.

21 The proof is in the pudding on that Brown Act  
22 violation. They could not have released that  
23 investigation if there was threat of -- of liability  
24 and they thought that was going to be in their corner  
25 when this went to trial, okay? It's -- it's

1       nonsensical. You've heard Councilman Soubirous on the  
2 record, what I read to you today, talking about the  
3 same conundrum the -- the city finds itself in.

4           And it's the same conundrum that's with a --  
5 that was -- I read to you the -- the actual settlement  
6 agreements that the city more or less admitted to.  
7 That's actual evidence. That's evidence.

8 Preponderance. Once again, I don't need beyond a  
9 reasonable doubt.

10          Mr. Perry has offered no evidence, zero. And  
11 we still have the right to subpoena Councilman Davis  
12 and Councilman Soubirous and some of the other  
13 documents I've requested as well including the -- the  
14 claim of retaliation harassment I lodged back in 2012.  
15 And we can still go after all the closed session audio  
16 that still exists that hasn't been thrown away by the  
17 city clerk under the two-year policy. We can get all  
18 of that, okay, and -- and -- and come -- we can come to  
19 beyond -- beyond a reasonable doubt, but I've got  
20 preponderance of evidence.

21           Okay. And so as to the process, once again I  
22 showed you the ethics process. I've included in the  
23 package the harassment pack -- package. I've -- I've  
24 admitted, and so has the investigator, not -- hired by  
25 the city. That's not an opinion. I guess it's the

1 investigator's opinion who was hired by the city,  
2 right? He wouldn't be biased anyway.

3 He's saying, listen, there was no hostile  
4 workforce environment claim here. We dismissed that  
5 immediately, okay? Greg Priamos would have known, our  
6 former city attorney, that there was no hostile  
7 workforce environment claim. They threw that in there  
8 because they wanted to compel the -- the rest of this  
9 investigation, that they just kind of summarily threw  
10 in there the 407 claims, the Brown Act claims, the  
11 retaliation, you know, intimidation, harassment claims.

12 That should have all been brought through  
13 our -- through our ethics process because those  
14 bureaucrats are members of the public like the rest of  
15 us. So what do I want? I want to sustain on all my  
16 accounts under the applicable -- |applicable ethics  
17 section, and I'd like a referral to the Bar Association  
18 on Greg Priamos to report that he continually violated  
19 the Brown Act by not reporting out of closed session.

20 CHAIRMAN TUCKER: Okay. At this time,  
21 Councilman Perry, you have (indiscernible).

22 COUNCILMEMBER PERRY: All right. I won't be long.  
23 Once again, you know, there's -- there's talk about me  
24 not bringing evidence in here. The -- the confusion is  
25 that I don't have the burden of proof. You know, I --

1 I've done nothing wrong in this case. I have  
2 testified. A lot of the testimony that's been brought  
3 up here today is hearsay probably at best and based on  
4 conclusions on portions of reports.

5 And again, yes, councilmembers have opinions  
6 and they express them in open -- in open meetings, but  
7 again those are open -- those are opinions. There's --  
8 there's no legal opinions behind them. We don't have a  
9 court, we don't have an attorney telling us what was  
10 right -- what was right and what was wrong.

11 Once again, we were -- we had the direction  
12 of the -- of the -- of our city attorney. All of the  
13 closed session meetings were properly noticed as  
14 anticipated litigation. We followed the necessary  
15 guidelines that was needed for that. Now, there is  
16 lots of meetings that take place. Again, a couple of  
17 meetings have been mentioned, but there was really no  
18 substance of what those meetings are.

19 There's a lot of conjecture that -- that  
20 you're being asked to make decisions on. You know, in  
21 essence you're taking 1,000 pages probably and he wants  
22 you to throw it against the wall in hopes that one of  
23 those pages is going to stick. This -- you know,  
24 fortunately this thing has, we've moved beyond it.  
25 This is kind of resurfacing, I guess, to a -- to a

1 certain extent; but this council has moved forward and  
2 this council is working well together and -- and things  
3 are taking place.

4 So I think I will leave it at that. I thank  
5 each and every one of you for your time and your  
6 patience, and I have nothing further for you. Thank  
7 you.

8 CHAIRMAN TUCKER: Thank you.

9 Now we've reached the time for  
10 (indiscernible). It would help if I turn my mic on,  
11 huh? Upon the conclusion of closing statements, the  
12 chair shall facilitate deliberations, is that at this  
13 point that the hearing panel shall discuss anywhere by  
14 the parties for the issuance of subpoenas or waiver of  
15 privileges. If by a four to five vote the hearing  
16 panel is in favor of requesting the city council to  
17 issue subpoenas or waive privileges, the city clerk  
18 shall agendize the request for a city council meeting  
19 that meets all state and local noticing requirements.

20 The chair shall then continue the hearing to  
21 a date certain in consultation with the city clerk. If  
22 no date certain can be agreed to, then the chair shall  
23 adjourn the meeting, and the city clerk will renoteice  
24 the meeting for some future date in compliance with all  
25 state and local noticing agreements. The complainant

1 has asked to subpoena the closed session minutes of the  
2 city council, and he has subpoenaed -- he -- he  
3 requests a subpoena of interviews with relevant  
4 parties. Open for discussion on this item.

5 Keith.

6 MEMBER NELSON: In my opinion the only way we  
7 can decide if there was a Brown Act violation is if any  
8 type of vote occurred in the closed session, so at  
9 minimum we need some type of report of whether it's the  
10 minutes or -- or a summarization of whether or not  
11 votes occurred that were not reported back in open  
12 session.

13 CHAIRMAN TUCKER: Okay. Hearing no other  
14 comments. Is a motion -- a motion is --

15 MR. HANSEN: Chair.

16 CHAIRMAN TUCKER: -- appropriate at this point  
17 in time.

18 MR. HANSEN: Chair, if I may?

19 CHAIRMAN TUCKER: Sure.

20 MR. HANSEN: A request was agendized for the  
21 city council and the city council did consider a  
22 request to waive its closed session privilege and the  
23 city council voted not to waive that privilege, that  
24 would include closed session materials.

25 CHAIRMAN TUCKER: Therefore to request it a

1 second time would be redundant?

2 MR. HANSEN: Do you really think the city  
3 council will change its mind on that issue?

4 CHAIRMAN TUCKER: I'm just asking the  
5 question.

6 All right. Any further comments, thoughts?  
7 A motion is in order to -- upon the request by the  
8 complainant to subpoena certain documents, specifically  
9 the closed session minutes of the city council. I  
10 believe this is something we simply can't not do. Is  
11 that right? We need to -- we must take an action upon  
12 the request.

13 MR. HANSEN: If -- if no motion is made, then  
14 it fails.

15 CHAIRMAN TUCKER: No action. It fails -- it  
16 fails due to lack of a motion, correct?

17 MR. HANSEN: Correct.

18 CHAIRMAN TUCKER: Seeing no motion, this  
19 request fails. We do not have a four to five vote to  
20 issue subpoenas. We will then conduct our  
21 deliberations on the merits of the complaint based upon  
22 the evidence presented at the hearing.

23 MR. HUNTER: (Indiscernible).

24 CHAIRMAN TUCKER: I -- I mentioned both of  
25 them. You -- you asked for subpoena on relevant

1 parties' testimonies; is that correct?

2 MR. HUNTER: I this I so.

3 CHAIRMAN TUCKER: I -- I -- that -- I was  
4 clear on that, I believe.

5 Okay. Hit your buttons if you wish to speak.

6 Deborah.

7 MEMBER MACIAS: All green, it's green now,  
8 okay. So I -- I -- I want to make sure I am completely  
9 clear. Your complaint is that they held a closed  
10 session against the Brown Act, that they should not  
11 have held it to begin with and -- and subsequent  
12 investigations; that's what this --

13 MR. HUNTER: Yes.

14 MEMBER MACIAS: -- whole thing is about,  
15 correct?

16 MR. HUNTER: Well, they can hold closed  
17 sessions. The council can hold closed sessions, but  
18 they -- they can't for the purposes of developing a --  
19 or of calling for an investigation and then developing  
20 a process by which to try one of its own members.

21 And then secondly, that's -- that's complaint  
22 issue one. Issue two is, is that they took these  
23 votes, as was admitted to by even the mayor, Councilman  
24 Steve Adams at the time. The majority of the council  
25 admitted that these votes took place. It was all in

1 the record, in the transcript, and also in the Press  
2 Enterprise articles. And that these votes were never  
3 recorded as part of the minutes. That's complaint  
4 number two.

5 And complaint number three is that they  
6 invented a process which lacked any due process or any  
7 authority whatsoever to conduct it. Whether that was  
8 done in closed session or -- or open session, it  
9 doesn't matter. You -- we had a process already called  
10 the Code of Ethics complaint that was completely just  
11 thrown away because of the nature of who the  
12 complainants were.

13 You know, and the -- and the thing with  
14 the -- the -- the difference with you could call Paul  
15 Davis or -- or Mike Soubirous, and if they believe that  
16 what they did was violated -- in violation of the Brown  
17 Act; the difference between taking their actual  
18 testimony as a witness and getting a copy of the  
19 minutes is that they can talk openly about all of that.  
20 They don't need the council's permission, which is what  
21 you'd need to get the audio evidence.

22 CHAIRMAN TUCKER: The question was fairly  
23 direct.

24 MR. HUNTER: I'm sorry.

25 MEMBER MACIAS: Yeah. And I -- everything

1 you're --

2 MR. HUNTER: I rambled a little bit there.

3 MEMBER MACIAS: Yeah.

4 CHAIRMAN TUCKER: Yes, you did.

5 MEMBER MACIAS: And -- and in consideration of  
6 everything you said, I don't see any of that on the  
7 complaint. I mean, I'm just seeing that there were,  
8 regarding both investigations and the closed session.

9 That's what the basis of this complaint is.

10 CHAIRMAN TUCKER: Correct.

11 MEMBER MACIAS: Okay. And if I'm looking  
12 correctly at the transcripts or the -- yeah, the  
13 transcript from the -- the council meeting on page 953  
14 where Councilman Davis specifically said he believes  
15 that he had broke the law, I think -- I think if I'm  
16 reading that portion that's highlighted correctly, I  
17 don't think he believed that at the time. I believe it  
18 looks like he'd come to realize that later, which leads  
19 me to believe anyone else who participated probably  
20 didn't believe they were in violation at all either.

21 So I -- and that's the way I'm reading that  
22 -- that highlighted section. So and I just wanted to  
23 clarify that was the whole basis, was the fact that  
24 they had this closed session meeting. And however  
25 I'm -- I'm hearing and from what I'm seeing, it was

1 agendized as the exposure to litigation.

2 CHAIRMAN TUCKER: My --

3 MEMBER MACIAS: Which is correct for -- for  
4 closed session, correct?

5 CHAIRMAN TUCKER: It is yeah, that's correct.

6 MEMBER MACIAS: Okay.

7 CHAIRMAN TUCKER: Excuse me for interrupting.

8 MEMBER MACIAS: No, that's okay. I just  
9 wanted to make sure I was reading that right, because I  
10 didn't think we were -- we were -- we have a lot of  
11 paper here and we heard a lot of -- of your side today  
12 and it just -- it -- I think the complaint is pretty  
13 simple.

14 MR. HUNTER: Uh-huh.

15 MEMBER MACIAS: It's very simple.

16 MR. HUNTER: But you can't focus on the --

17 CHAIRMAN TUCKER: Just a second. Point of  
18 order, I believe that the deliberations are between the  
19 panel and --

20 MEMBER MACIAS: Okay.

21 CHAIRMAN TUCKER: -- not intended to be --

22 MEMBER MACIAS: Okay.

23 CHAIRMAN TUCKER: -- an ongoing --

24 MEMBER MACIAS: Well, I just wanted to make  
25 sure --

1 CHAIRMAN TUCKER: -- interchange.

2 MEMBER MACIAS: -- that I -- I was reading the  
3 complaint correctly. Then I'm --

4 CHAIRMAN TUCKER: All right.

5 MEMBER MACIAS: Then I'm good, Mr. Chair.

6 Thank you.

7 CHAIRMAN TUCKER: Any other comments?

8 I've got a couple to make relative to all of  
9 this. First of all, in the issue of hostile work  
10 environment, it is clear that hostile work complaints  
11 are to be heard by the supervisor. In the case of this  
12 hostile work environment, the supervisors were the city  
13 council. The -- the complaints of the hostile work  
14 environment were brought of two individuals that are  
15 employees of the city council and the city council is  
16 their direct supervisor, therefore any discussions  
17 relative to that in closed session or otherwise were  
18 the -- were the purview and the responsibility of the  
19 city council. That's my opinion.

20 Secondly, on another point relative to the  
21 Brown Act and -- and specifically speaking to  
22 Councilman Davis's statement, my understanding of  
23 the reading, that it is in reporting Brown Act  
24 violations, it is the responsibility of the individual  
25 making that complaint that it be made to the Attorney

1 General, because the Attorney General is the sole body  
2 that can determine whether or not there is a civil  
3 violation and whether -- on -- on the Brown Act.

4 And so also relative to the Brown Act, my  
5 understanding of the Brown -- of actions in closed  
6 session, I would be interested from our city attorney,  
7 is there -- is there a clear definition of votes versus  
8 discussions and which -- what has to be specifically  
9 agendized into open session?

10 MR. HANSEN: Thank you, chair. Going back to  
11 your earlier comment, any member of the public may  
12 bring a writ of mandate before the Superior court when  
13 one feels there's been a Brown Act violation, and it  
14 will be addressed by the courts through that process.  
15 To your last question, government code section 54957.1  
16 sets forth when actions taken in closed session must be  
17 reported out in open session.

18 Under anticipated litigation, ongoing  
19 discussions and meetings, under that -- under that  
20 agenda item do not need to be reported out even if  
21 votes are taken along the way until a final resolution  
22 is taken, either by settlement, by appeal, or whatever  
23 other process. Then if a vote is taken in closed  
24 session to settle a case, the settlement is then  
25 reported out at the very next meeting after all the

1 details of the settlement have been concluded, meaning  
2 all the signatures on the settlement document.

3 In this case it's for you to consider whether  
4 or not the discussions held by the city council in  
5 closed session under the agenda item of anticipated  
6 litigation met that criteria and therefore did not  
7 require reporting out until a final resolution was  
8 reached.

9 CHAIRMAN TUCKER: Okay. And relative to  
10 Councilman Davis speaking at the city council, after  
11 reading the transcript and prior to any testimony  
12 today, it -- it was my belief that that was Councilman  
13 Davis speaking as an individual and that if he felt  
14 that there was a Brown Act violation, it was his  
15 responsibility to report that Brown Act violation to  
16 the appropriate authorities. Therefore, I -- I -- I  
17 perceived his -- his testimony at that city council to  
18 be just that, the testimony -- or the -- the statement  
19 of an individual at that time.

20 I have -- Deborah, are you asking to speak  
21 again?

22 MEMBER MACIAS: No.

23 CHAIRMAN TUCKER: Okay. Keith, I've got you  
24 up.

25 MEMBER NELSON: I think I'm reading the

1 complaint maybe a little different. It says the  
2 decision to have an independent investigation, but I  
3 don't show -- it is my understanding that the -- the  
4 decision to spend that money would have to be reported  
5 back in open session. And that's how I'm reading the  
6 complaint, that there was a decision to spend money on  
7 an investigation that was not approved in open session  
8 and there was no -- and then he also alleges there was  
9 no procedure to allow that to occur.

10 So I -- it was -- that's just how I'm reading  
11 the complaint, that -- that there was a decision made  
12 to spend money on an investigation that was not brought  
13 back, instead a vote was taken.

14 CHAIRMAN TUCKER: (Indiscernible).

15 MR. HANSEN: What is expected of this hearing  
16 panel is to reach a final resolution on the complaint  
17 before you. Now, that is done by a motion, a second,  
18 and a vote of the hearing body.

19 CHAIRMAN TUCKER: (Indiscernible).

20 MR. HANSEN: The content of the motion I  
21 cannot tell you.

22 CHAIRMAN TUCKER: All right. Do we have  
23 options?

24 MR. HANSEN: The options would be that you  
25 would sustain the findings as presented in the

1 complaint, that you would partially sustain the  
2 findings and overrule the other allegations in the  
3 complaint, or that you would find that there were no  
4 merits to the allegations in the complaint.

5 CHAIRMAN TUCKER: Do I have a motion? How  
6 much time do you need as a panel to deliberate, to  
7 contemplate?

8 Keith.

9 MEMBER NELSON: I guess I have another  
10 procedural question. The written complaint makes one  
11 allegation against resolution 22318(2)(D) and it's --  
12 so our deliberations are only specific to the written  
13 complaint, not anything else we assume or read into the  
14 complaint?

15 MR. HANSEN: That's correct.

16 CHAIRMAN TUCKER: Do you -- as -- as a hearing  
17 panel, do you need to refer to the second page of the  
18 complaint as well? You -- you're -- you're -- you  
19 referred to the first page of -- of the official  
20 complaint filed December 27th, 2016. The second page  
21 has more definition as to the complaint. Okay. So --

22 MEMBER: (Indiscernible).

23 CHAIRMAN TUCKER: Okay.

24 MEMBER: (Indiscernible) finding  
25 (indiscernible).

1                   CHAIRMAN TUCKER: Well, I'll make a motion  
2 since I am a member of the panel. I move that there is  
3 no merit to this case. Is there a second? Hearing  
4 none that motion fails. Is there a motion?

5                   MEMBER FORD: I think I just need more time.  
6 I want to find that specific resolution number just so  
7 that I can see the basis of his complaint. So --

8                   CHAIRMAN TUCKER: Okay. We will deliberate  
9 until 11:30, deliberate meaning individually  
10 investigate your data.

11                  Is the panel ready to continue, or do you  
12 want the full time? Ready? Excuse me. Let me clarify  
13 again what we are dealing with. This is a complaint  
14 against Councilman Perry only, not against the city  
15 council as a whole. We are hearing this complaint  
16 against Councilman Perry relative to a violation of the  
17 Code of Ethics.

18                  We have three options. We can vote that  
19 there was no violation. We can vote that there was a  
20 partial violation of which we must state what part and  
21 have the facts to back it up. We can violate -- we can  
22 vote that there was a complete violation, state the  
23 violation and the facts that go with it keeping in mind  
24 that our findings will be sent to the city council on  
25 appeal. Are we clear?

1                   Let me further clarify my personal thoughts  
2 on -- on -- on this and further clarify my previous  
3 statement. Having spent a considerable amount of time  
4 in closed sessions in my career, there are many, many  
5 circumstances, such -- such as pointed out by our city  
6 attorney, where discussions will take place, decisions  
7 to move forward or not move forward will be had; but  
8 they are not the concluding statement or the concluding  
9 action.

10                  And I do not believe that in the case of the  
11 city bylaws that anywhere in the process that it  
12 declares that deliberations relative to litigation, and  
13 that's really what the only -- Brown Act, you can talk  
14 about personnel, you can talk about property, and you  
15 can talk about potential litigations. This whole thing  
16 revolves around potential litigation. Therefore my --  
17 my feelings are that there was no violation and that  
18 it, at such time as the procedures had been determined,  
19 the processes had been looked at, and the city council  
20 then through resolution made public their position  
21 and -- and conducted an open session with the public  
22 prior to taking an action relative to Councilman  
23 Soubirous.

24                  But again, we are looking at what Councilman  
25 Perry did during this process, not what the group as a

1 whole did.

2 Jeff.

3 MEMBER WRIGHT: Thank you, Mr. Chairman.

4 I'm -- I'm reminded of the old adage that sausages and  
5 legislation should not be done in public. I've never  
6 been involved in the process of creating legislation,  
7 but I'm an old Oklahoma farm boy, I've seen and made  
8 sausage and there's some truth to the matter. The --  
9 the issue of closed session in the face of anticipated  
10 litigation from -- from employees or from  
11 councilmembers is a powerful argument that I think is  
12 necessary for a government at whatever level to work.

13 I -- I want to -- and I want to clarify  
14 something that I -- I -- I heard sort of in passing  
15 here on the dais.

16 Madam clerk, was the council's refusal to  
17 waive privileges a unanimous vote?

18 MS. NICOL: It was.

19 MEMBER WRIGHT: With Councilman Soubirous and  
20 Davis voting in the affirmation?

21 MS. NICOL: Yes.

22 MEMBER WRIGHT: Thank you.

23 I -- I think Mr. Hunter has made a variety of  
24 allegations today, none of which to me seem to rise to  
25 Brown Act violations by Councilman Perry. Alleging

1 violations of charter 407 all coming within a few  
2 months by essentially the same folks does not  
3 constitute a long range pattern.

4 Just by one example, Mr. Davis's, page 891,  
5 not going to the district attorney or the Attorney  
6 General's Office after making a public allegation of a  
7 Brown Act violation speaks volumes to me. In our  
8 docket on page 461 there's a memorandum that, if I'm  
9 reading it correctly, says that the district attorney's  
10 office decided to take no action on referral.

11 If the Riverside County district attorney's  
12 office and the California State Attorney General's  
13 Office has not taken up this matter, that to me is  
14 significant. It seems to me we believe a preponderance  
15 of the -- of the evidence does suggest Councilman Perry  
16 violated the Brown Act, the -- the very least -- the  
17 very best we could do is recommend the district  
18 attorney open an investigation if he hasn't already.  
19 And if he has, then I think it's a moot point.

20 Finally, it seems to me that this all took  
21 place in the context of a significant political  
22 discussion, a significant political division. When I  
23 read the transcripts, and I was present at that  
24 meeting, there was certainly more heat than light. And  
25 perhaps we have come to realize that the city council

1 wasn't fully equipped in its own charter to handle the  
2 kind of situation that emerged. I -- I don't know, and  
3 I'm not making -- I'm not drawing a conclusion there;  
4 but it does seem to me that the presence of a board of  
5 ethics is perhaps the punishment that has been imposed  
6 by the city council, itself, on -- on a more clear  
7 transparent ethics process as we move forward.

8 It -- it -- it seems to me that the  
9 preponderance that -- that while there's certainly a  
10 great amount of paper that's been presented, there is  
11 not a preponderance of evidence to sustain a Brown Act  
12 violation by Councilman Perry.

13 CHAIRMAN TUCKER: Thank you. (Indiscernible)  
14 motion (indiscernible).

15 MEMBER NELSON: Your motion was something like  
16 there's --

17 CHAIRMAN TUCKER: No merit.

18 MEMBER NELSON: -- no merit. I have a little  
19 semantical issue with that though.

20 CHAIRMAN TUCKER: I would think that --

21 MEMBER NELSON: I -- I think that the -- the  
22 absence of the ability to seek closed session prohibits  
23 us from proving or disproving the allegations. That's  
24 where I sit. Somewhere along the line someone voted  
25 for an investigation and to spend the money, and the

1 problem is coming to a conclusion based on hearsay.

2 If -- if Congressman Davis -- or  
3 Assemblyman -- I'm giving them all raises -- Councilman  
4 Davis and -- and Councilman Soubirous were here instead  
5 of -- to more elaborate on the remarks, I think that  
6 would be helpful; but -- but to me the -- the quandary  
7 I'm running into is there's -- there's high speculation  
8 that something occurred in closed session, however, we  
9 can't base our conclusion on high speculation.

10 So and whatever we enter, the -- if we're  
11 supposed to be an ethics panel above the council, I  
12 think that's something we would need to discuss in the  
13 next general meeting. That -- that obstacle there  
14 prevents us from really making conclusions.

15 CHAIRMAN TUCKER: Let me clarify. If -- if I  
16 had had before me the three options that I have now, I  
17 would not -- I would not have said no merit. I would  
18 have said no violation. Motion is still in order.

19 MEMBER: (Indiscernible).

20 CHAIRMAN TUCKER: No, that did.

21 MEMBER: Oh, yeah.

22 CHAIRMAN TUCKER: The motion is in order.

23 MEMBER: I see.

24 CHAIRMAN TUCKER: I'm asking for a motion. If  
25 I clarify my motion to read that the hearing panel

1 concludes that there was no violation of the Code of  
2 Ethics in the case of Jason Hunter versus -- the  
3 complaint by Jason Hunter against Councilman Jim Perry,  
4 would that -- that's a motion.

5 MEMBER WRIGHT: I'll second that.

6 CHAIRMAN TUCKER: Okay. There is a motion and  
7 a second. Is there a discussion? Keith, make sure  
8 you --

9 MEMBER NELSON: I --

10 CHAIRMAN TUCKER: Make sure you're on.

11 MEMBER NELSON: Yeah. I'd -- I'd like to  
12 include in there that somewhere to our report back to  
13 the city council that we could not be conclusive  
14 because we couldn't -- we didn't view all the evidence.

15 CHAIRMAN TUCKER: I would accept that addition  
16 to my motion. |

17 MR. HANSEN: Point of order, chair.

18 CHAIRMAN TUCKER: Yes.

19 MR. HANSEN: A point of finding of no  
20 violation, there is no report by this body to the city  
21 council.

22 CHAIRMAN TUCKER: Okay. Then that's not  
23 necessary in the motion. All right.

24 Jeff.

25 MEMBER WRIGHT: I -- I agree with -- with --

1 with Keith's assessment, and I think this becomes part  
2 of the continuing conversation that the board of ethics  
3 together needs to have about its process and how we  
4 create -- continue to refine it. I -- I think in our  
5 annual presentation to the council in our ethics report  
6 we need to strongly recommend ways to get at evidence  
7 that might be privileged in other ways to help increase  
8 transparency, but I -- I'm not persuaded by the  
9 evidence presented that subpoenas will be useful at  
10 this point.

11 CHAIRMAN TUCKER: (Indiscernible) excuse me.  
12 Any further discussions, questions? Hearing none,  
13 please vote. The motion is that there was no violation  
14 by Councilman Jim Perry of the Code of Ethics.

15 The motion is unanimously carried. This  
16 hearing -- I thank the hearing panel for their time.  
17 This meeting is adjourned.

18 - - -  
19 (Whereupon, the proceeding was concluded at 11:36 a.m.)  
20 - - -  
21  
22  
23  
24  
25

BOARD OF ETHICS HEARING PANEL  
TUESDAY, APRIL 18, 2017, 9 A.M.  
ART PICK COUNCIL CHAMBER

MINUTES

PRESENT: Chair Tucker and Members Ford, Macias, Wright, Nelson and Alternate Stahovich

ABSENT: None

STAFF PRESENT: Colleen Nicol and Robert Hansen

Chair Tucker convened the meeting at 9 a.m.

PUBLIC COMMENT

There was no one present wishing to speak.

HEARING

Chair Tucker convened the hearing for the Code of Ethics complaint filed by Jason Hunter against Councilmember Perry. Complainant Jason Hunter and Councilmember Jim Perry were both present. The City Clerk administered the oath.

Jason Hunter noted that he had requested subpoena of City Council documents, minutes, and audio of any relevant discussions, not only the July 22, 2014, meeting. He further requests subpoenas for appearance of the entire City Council, former City Manager Scott Barber, and former City Attorney Gregory Priamos. Further, he objects to the redactions to the report on the investigation of Councilmember Davis and is uncomfortable with the pressure on the City Attorney by elected officials as the Board's legal advisor.

Chair Tucker responded that requests for subpoenas or waiver of privilege by the City Council will not be considered until the panel commences deliberation. The closed session subpoenas have already been ruled upon by the City Council and rejected. As to the redactions in the Davis investigative report, the hearing today concerns the accusations of violations of the Brown Act and Code of Ethics. The panel will not be retrying the underlying controversy so the redactions do not appear to be relevant. The pressure on the City Attorney as counsel to the hearing panel was discussed previously and the City Attorney will remain legal counsel to the Board and hearing panels.

Mr. Hunter and Councilmember Perry presented opening statements.

Chair Tucker granted Mr. Hunter 45 minutes to present his evidence. Mr. Hunter proceeded, including calling Councilmember Perry as a witness. During the presentation, Mr. Hunter requested replay of a portion of a meeting video. The request was denied. During the hearing, Member Wright objected to introduction of evidence in a form not

submitted with the original complaint. The objection was noted and the hearing proceeded. Councilmember Perry was excused as a witness.

Following discussion and without formal motion, Mr. Hunter was granted an additional 30 minutes to present evidence with Member Wright voting no.

Mr. Hunter proceeded with and concluded his presentation of evidence. Councilmember Perry presented his evidence.

Mr. Hunter and Councilmember Perry presented closing statements.

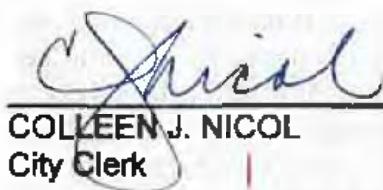
**PANEL DELIBERATION**

Chair Tucker asked for motions, if any, on Mr. Hunter's requests for subpoena of closed session minutes and relevant parties. No motion was made or entertained.

Following discussion, it was moved by Chair Tucker and seconded by Member Wright finding no violation of the Code of Ethics and Conduct by Councilmember Perry in the complaint filed by Mr. Hunter. Motion carried unanimously.

The panel adjourned at 11:36 a.m.

Respectfully submitted,

  
\_\_\_\_\_  
COLLEEN J. NICOL  
City Clerk