

**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

I N D E X

T E S T I M O N Y

					VOIR
WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	DIRE
J. Perry	21				

E X H I B I T S

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

P R O C E E D I N G S

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

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

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

Are there any public comments?

MS. NICOL: There are no requests to speak.

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

Is the public official present? Okay.

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.

8 The complainant shall now have five minutes
9 to address the hearing panel concerning any technical
10 or procedural issues of concern. Of -- of particular
11 note, if the complainant makes a request for the
12 hearing panel to issue subpoenas or they ask the city
13 council to waive any privileges, the hearing panel
14 shall defer any action on such request until the time
15 of the deliberations. You now have five minutes.

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 biasing 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 Soubious 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 -- of
17 particular dates, I just want the relevant portions
18 that dealt with Davis -- Davis and Soubious, 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 Soubious 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 -- 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 Soubierous 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 Soubious?

10 A Yes.

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

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 Soubious?

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 Soubious 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 Soubious'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 process as to how you bring forth 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 Soubious 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 my 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 -- Soubious 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. Soubious 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 Soubrious'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 Soubrious.
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 Soubious 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 Soubious 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 renote
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 Soubierous 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.)
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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