

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPTION OF
BOARD OF ETHICS - HEARING PANEL
FEBRUARY 10, 2017

IN RE: HUNTER v. GARDNER

Transcribed by:
Christine Aiello

Job No. J0585910

I N D E X

T E S T I M O N Y

VOIR

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	DIRE
-----------	--------	-------	----------	---------	------

None called.

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 - 09:04:19 a.m.)

CHAIRMAN HOUSE: Good morning. It is 9:03. This hearing panel of the Board of Ethics will now come to order. This meeting is to hear the complaint of Jason Hunter against Councilman Mike Gardner alleging a violation of the Code of Ethics occurring on or about, and I don't have that date in front of me --

MALE SPEAKER: July 22.

CHAIRMAN HOUSE: -- July 22, 2014. Because the allegation of a violation of the Code of Ethics and Conduct occurred prior to the adoption of Riverside Municipal Code Chapter 2.78, the applicable Code of Ethics and Conduct to 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 (2), section (d), section (1) that the action of the public official created distrust of the local government.

At this time we will have public comment, and that comment will be limited to the items on the agenda today.

At this point I have one speaker card, Teresa Newman. You'll have three minutes.

1 TERESA NEWHAM: Good morning. It's Teresa
2 Newham with an H.

3 CHAIRMAN HOUSE: I apologize.

4 TERESA NEWHAM: That's okay. One of the
5 things that I would like to speak about today is that
6 you have open public comment before you actually hear
7 Jason's claim, that puts me in the dark. And after I
8 hear everybody's testimony, I could make a more
9 intelligent three minutes. And so I'm asking that you
10 put open public comment after the hearings.

11 I also want to say that I find it highly
12 suspect that Chief Diaz signed a -- signed a petition
13 against Mike Soubirous, but not Paul Davis. So those
14 are the things that I want to talk about, and I'm sure
15 I would want -- I love Riverside and I love my city
16 council, but if something is going on and if we're
17 spending our tax money and a lot of money for private
18 investigators and we're having meetings that not all
19 councilmembers are involved in, it's wrong.

20 Also, I remember when Code of Ethics came
21 forward before the council with all their
22 recommendations, and several of them were voted down.
23 So it's going to be interesting to see, for me to see
24 today if you're going to have problems because those
25 things were voted down. Thank you.

1 CHAIRMAN HOUSE: Charles Masuga.

2 CHARLES MASUGA: Hello. My name is Charles
3 Masuga. I just had a question. This is a meeting,
4 obviously it's very important for people throughout the
5 city, but I was wondering is this meeting being
6 recorded in any way so people who didn't have the
7 opportunity to be here would be able to see what goes
8 on during the meeting? And if not, why not?

9 SHERRY MORTON: This meeting is being audio
10 recorded.

11 CHARLES MASUGA: Okay, thank you very much.
12 That sounds good.

13 CHAIRMAN HOUSE: And having no other speakers
14 cards, we'll continue here. Is the complainant
15 present?

16 MR. HUNTER: Yes.

17 CHAIRMAN HOUSE: Will you and your witnesses
18 please stand? Thank you.

19 And, Councilman Gardner, you're present.
20 Would you and your witnesses please stand?

21 COUNCILMAN GARDNER: (Indiscernible).

22 CHAIRMAN HOUSE: Thank you. The deputy city
23 attorney will now administer the oath.

24 MR. HANSEN: The city clerk.

25 CHAIRMAN HOUSE: Pardon me, city clerk.

1 DANA ROA: Do you solemnly swear or affirm to
2 tell the whole truth and nothing but the truth?

3 PARTIES: Yes. I do.

4 (The parties are duly sworn according to law)

5 DANA ROA: Thank you.

6 CHAIRMAN HOUSE: All right, thank you. Since
7 this complaint arises out of allegations of misconduct
8 pursuant to resolution -- resolution 22461, we will
9 dispense with the requirement that the hearing panel
10 determine that the complaint requires -- complies with
11 the requirements of Riverside Municipal Code Chapter
12 2.78.

13 The complainant shall now have five minutes
14 to address the hearing panel concerning any technical
15 or procedural issues of concern.

16 MR. HUNTER: Thank you, Mr. Chair. Jason
17 Hunter. My first technical objection would be on, and
18 this has been discussed on numerous occasions, we get
19 complaints being made against four standing city
20 councilmembers and the mayor, all of whom have
21 authority over the hiring and firing of the city
22 attorney, who has authority over the hiring and firing
23 of your council. And I find that the city -- your
24 panel's use of city attorney counsel is a conflict, in
25 and of itself, and will lead to bias judgments against

1 me or certainly the perception of bias against me
2 throughout these proceedings, number one.

3 And we can handle these one in a row, I
4 can -- I'll give them all upfront first in five
5 minutes. And secondly I'd like to know what is the
6 panel's recusal process, not just if you happen to be
7 appointed by a particular city councilman. I know that
8 know one should be here that is in Ward 1, I understand
9 that, or appointed by Mike Gardner; but what is the
10 recusal process of this panel should there be any other
11 conflicts?

12 Of course there would be conflicts if you
13 knew me. There would be conflicts if you knew
14 Mr. Gardner personally or had -- or had any connection
15 to this case whatsoever. I'd like to know what that
16 process is.

17 Number three, I specifically asked that the
18 Davis investigation be included as part of your packet.
19 There was an investigation conducted by Gumport Mastan.
20 I do not see it in the packet. And so you do not have
21 all the evidence you would need to try this case. And
22 if that's the case -- if that -- I don't know how we
23 can go forward if you don't have the evidence.

24 And number four, I wish to -- to make a
25 subpoena request for the city council audiotapes of

1 closed session for specific dates. And I have those
2 dates listed, and I can get them in a second, in which
3 this matter was discussed illegally in violation of the
4 Brown Act. And I want to know why, which is part --
5 which is part and parcel of my complaint. I mean, we
6 can't get to the bottom of this unless we hear those --
7 those audio tapes.

8 And you need to make that request to council,
9 and council can then take on the responsibility of
10 voting whether or not they want to release them. I
11 also request to subpoena all parties to those closed
12 session, particularly if they're -- if the -- if the
13 audio tapes no longer exist due to records -- retention
14 records or -- or policies, I'd like the ability to
15 subpoena all parties to these investigations that will
16 include all current and former city councilmembers, the
17 mayor, former manager -- city manager Scott Barber,
18 former city attorney Greg Priamos, and police chief
19 Diaz.

20 I think I -- I -- I should have the right to
21 cross them. I don't expect them to be friendly
22 witnesses. I'm going to have to take them all as
23 hostile witnesses, which means they will need to be
24 compelled. And so those are my four major technical, I
25 guess, issues for to be heard for this, for today.

1 And I -- I'd like -- and I'd certainly like
2 an opportunity, at least more than -- more within the
3 five minutes to go into, and I'd certainly be open to
4 fielding questions from this panel as to what
5 information and documents -- and also there's another
6 document I'd like, which is a former investigation --
7 investigation that took place in 2013 in which I
8 have -- 2012 of which I have personal knowledge of
9 which will show disparate treatment of how
10 investigations are handled on behalf of the city
11 depending on who files the complaint and whom it's
12 filed against.

13 And that would be a Floyd investigation, it's
14 documented -- documented somewhere around August of
15 2012 that I filed against the city, a couple of
16 executives within the city that I think would show very
17 brightly for everyone on this -- on this committee and
18 the public, how once again there was no real even
19 handling of these -- of these complaints in the past
20 and it really depended -- and there was disparate
21 treatment depending on who the complainant and who the
22 defendant was.

23 And so I'd -- as I said, if we can -- I -- I
24 would welcome the opportunity to take questions on why
25 I think I need those -- those people subpoenaed and why

1 I need those records subpoenaed, but until I have the
2 full evidence, it's very hard to bring forward a case
3 without those witnesses and that evidence. Thank you.

4 CHAIRMAN HOUSE: Councilman Gardner.

5 COUNCILMAN GARDNER: Thank you, Mr. Chairman,
6 members of the board. I have no technical issues.

7 CHAIRMAN HOUSE: Thank you.

8 We will move to opening statements.

9 MR. HANSEN: (Indiscernible).

10 CHAIRMAN HOUSE: Yes, sir.

11 MR. HANSEN: I believe that the chair needs to
12 address the technical issues before we move forward
13 with the presentation of evidence. And from my
14 recollection there were six technical issues raised.
15 All of those technical issues would be within the
16 purview of the chair's resolution with the exception of
17 number five, a request for subpoenas, which would be a
18 discussion by the hearing panel.

19 CHAIRMAN HOUSE: All right. I think as far as
20 the bias inherent to the city attorney being present,
21 the code provides that the city attorney would be our
22 counsel for this. And I'm satisfied that there's not a
23 bias issue here unless if anybody else would like to
24 speak to that.

25 MEMBER NELSON: I do have a question. The

1 city attorney is not the city attorney that was in
2 office at the time this incident occurred; is that --

3 CHAIRMAN HOUSE: That's correct. And the city
4 attorney is basically here to keep us on track as to
5 form and as to procedure, what we're doing here. The
6 city attorney will not be advocating for one side or
7 for the other in this. Their role is essentially one
8 of neutrality.

9 Recusal process, if the need should arise
10 during the hearing, if something should come up that
11 one of us needs to recuse ourselves, we do have an
12 alternate present if that should become necessary. I
13 would expect that we would, you know, have the
14 integrity to recuse ourselves and insert Mr. Stahovich
15 in our place.

16 As far as the inclusion of the Davis
17 complaint, this is a hearing to determine whether or
18 not the Brown Act was violated on the 22nd of
19 July 2014. And if the Brown Act was indeed violated on
20 that day, that -- did that violation create a betrayal
21 of the public trust in city government. I'm just going
22 to rule that I -- I think we have enough with the
23 Soubirous information, that the Davis information would
24 most likely be repetitive. So I'm going to -- I'm
25 going to say that we don't need to have that.

1 Audiotapes of closed session, now it's my
2 understanding that those are only kept for two years,
3 so we're past the two-year mark, so those audiotapes
4 most likely do not exist anymore.

5 SHERRY MORTON: They've been destroyed from
6 7/22/14, if that was the date, I don't know what the
7 other dates might be, but it's a two-year retention.

8 CHAIRMAN HOUSE: Very good. And we've got a
9 long list of requests for subpoenas, and I'll entertain
10 discussion from the panel on that.

11 MEMBER TUCKER: I'm looking at the script that
12 was sent to us, as -- as chairs of these various
13 things. Item six, I'd like clarification on item six,
14 because item six says the complainant shall now have
15 five minutes to address the hearing panel concerning
16 any technical or procedural issues. If the complainant
17 makes a request for the -- for the hearing panel to
18 issue subpoenas or ask the city council to waive any
19 privileges, the hearing panel shall defer any actions
20 on such request until the time of deliberations.

21 Well, the time of deliberations is after all
22 of the -- all of -- both the complainant and the -- and
23 the -- and the defendant in this case make -- make
24 their case. Is that -- am I -- have I misread this?

25 MR. HANSEN: The delegation of authority to

1 the Board of Ethics to issue subpoenas was based upon a
2 four-fifths vote of the hearing panel upon a
3 determination by the hearing panel that they cannot
4 make a meaningful and informed decision without that
5 information or those individuals that are requested to
6 be subpoenaed. You can't make that determination until
7 after you've heard the evidence. And that's --

8 MEMBER TUCKER: Right. Which means, after
9 we've heard --

10 MR. HANSEN: -- why that decision should be --

11 MEMBER TUCKER: -- the deliberations.

12 MR. HANSEN: -- deferred.

13 MEMBER TUCKER: Okay.

14 CHAIRMAN HOUSE: Very good then. In that
15 case, we will defer this conversation until after we
16 have heard all of the evidence.

17 MEMBER TUCKER: So, Mr. Attorney, this --
18 this -- this then addresses your -- we have addressed
19 the technical issues as you suggested we needed to do
20 before we proceed.

21 MR. HANSEN: There was one additional issue as
22 I recorded, and that was a 2012 Floyd investigation
23 report.

24 CHAIRMAN HOUSE: We're looking into whether or
25 not a violation of the Brown Act occurred on July 22nd,

1 2014. I don't, as the chair, I don't see how something
2 from 2012, a Floyd investigation from 2012 could have
3 bearing on whether or not the Brown Act was violated,
4 since that is the only thing that we are considering
5 here today is whether or not this -- the Brown Act was
6 violated and subsequently betrayed the public trust, so
7 I'm going to go ahead and rule that that is not going
8 to be necessary.

9 And I'll leave it to the appeal process to
10 overturn me on that. Have we now addressed all of the
11 technical issues, sir?

12 MR. HUNTER: (Indiscernible).

13 CHAIRMAN HOUSE: Very good. We'll go ahead
14 and proceed with opening statements. Did you want to
15 lay down the ground rules for that or shall I?

16 Well, the -- the -- just to -- to clarify for
17 the audience, the opening statement and the closing
18 statement we've allotted 15 minutes total. Somebody
19 could use all of the 15 minutes for an opening
20 statement or all the 15 minutes for a closing statement
21 or divided it up as they see fit. So with that said,
22 we will start with the complainant's opening statement.

23 And, Jason, you have up to 15 minutes.

24 MR. HUNTER: Good morning, members of the
25 ethics panel. My name is Jason Hunter. I'm here

1 before you today to discuss a complaint I filed in
2 December of this year regarding and centering around a
3 July 2004 hearing that was based upon an investigation
4 of Councilman Soubierous, but also included within that,
5 and I believe it's in my complaint, an additional
6 investigation of Councilman Davis, a similar
7 investigation on Councilman Davis for which we now have
8 no documents in support of because it was not included
9 in the package.

10 I find that prejudices my case, but okay,
11 we'll go forward. Not only did they violate the Brown
12 Act, that was part A, Mr. Chairman, also a process was
13 created out of thin air to investigate and then try an
14 active city councilman without any prior vetting of the
15 rules. And I would say that would be the equivalent of
16 you leaving here today, hearing my complaint, and
17 making up the rules at the same time. That's not how
18 the government works. First you develop a process, and
19 then you hear a complaint.

20 And the complaint should be held in a similar
21 fashion to similar complaints in the background, which
22 is why it's so important that we see the Floyd
23 investigation report so we can see the disparate
24 treatment that has been given in different cases. So
25 it's not just about a Brown Act violation. It's about

1 a violation of the process and Mr. Soubiros's rights
2 to due process and Mr. Davis's rights to due process.

3 And we could see, if we had the Davis report
4 in front of us, how his rights were similarly violated
5 to Mr. Soubiros's. We don't have that unfortunately.

6 So what exactly happened in -- in July of
7 2014? We don't -- I'm not here to argue the merits per
8 se of that case, I'm not. I think we know, beyond a
9 doubt now, given the benefit of 20/20 hindsight, that
10 the merits of the -- the complaint against Councilman
11 Soubiros and Davis were unfounded. They were
12 completely meritless.

13 And how do we know that? We know that
14 because the council failed to adjudicate the matter in
15 any way, shape, or form despite conducting a hearing in
16 July of 2014. It doesn't make any sense. We know it
17 was without merit because all of the actions that were
18 referred to the DA at the time or -- or the complaints
19 that were forwarded onto the DA for investigation, no
20 action was ever taken upon.

21 We know it was meritless because the City of
22 Riverside settled financially with the two
23 councilmembers that they had brought complaints
24 against, that the executives had -- had brought
25 complaints against. I don't plan on delving too much

1 into the details of the actual complaints, themselves,
2 by our police chief and our city manager. What I'd
3 rather deal with is the deliberative process which we
4 believe -- I am certainly bias against here to know
5 exactly what went on, because I wasn't there and
6 neither were any members of the public to see what
7 justification was given to the council to actually
8 decide to hold an investigation of acting city
9 councilmen, and then what deliberation was to what the
10 hearing process was going to be.

11 We know that deliberation must have happened
12 because an investigator was hired in closed session.
13 And how would the public have even known that an
14 investigator -- an investigation was ongoing or even
15 about any of the complaints filed by executive staff?
16 None of it was ever disclosed in the meeting minutes at
17 the time.

18 And so here's what happened, and once again
19 the benefit of 20/20 hindsight, is we had executive
20 staff, insecure executive staff, who did not like that
21 a couple of our city councilmen, duly elected city
22 councilmen were doing their jobs and asking tough
23 questions. And so in return for that, in order to get
24 them to clam up and shut up, they used significant
25 public resources in the form of money, well over

1 \$100,000 of money.

2 And I think as -- as what we'll see in the
3 evidence that's going to be presented later, hundreds
4 and maybe thousands of hours in staff time on this
5 case. The time of the general public spent coming down
6 here to -- to -- to witness it all. And tarnished the
7 city's image, for which we'll never know the true cost
8 of, but these hearings had a very steep cost for the
9 City of Riverside and for the taxpayers and residents
10 and businesses here.

11 And how were they able to get away with it?
12 With the consent of the acting city council and mayor.
13 I would submit some of it was done out of malicious
14 intention for political means and some of probably was
15 done out of just ignorance of the law. Once again, we
16 won't know exactly which is which and -- and what
17 percentage or how to assign a blame, because we won't
18 be, by not admitting that evidence, we won't have
19 access to any of those deliberations of which we may
20 not have the records, I -- I -- I would like the -- the
21 clerk to -- to check for sure that we don't have the
22 records before, you know, and a definitive statement in
23 the search of those records before we just say we don't
24 have them, or at least the opportunity to subpoena
25 witnesses who may have copies of those records, in

1 particular Councilman Davis, who I believe has copies
2 of all of those records.

3 And you would have to make that request to
4 the city council, not only -- because they would have
5 to -- to -- to grant the right to inspect closed
6 session records. And I think that's appropriate. And
7 why is it appropriate? Because there never was an
8 exemption under the Brown Act for any of these
9 deliberations. And to hire an investigator and not
10 report it out of closed session, which we know never
11 happened because we have the minutes in front of us
12 from all the hearings or -- or -- or meetings where
13 these discussions took place.

14 And why is the council responsible for that
15 and not Greg Priamos, himself, and not the city -- city
16 council -- the city -- city attorney at the time?
17 Because this city council approves the minutes. And if
18 something was missing, they should have said something.

19 And so what happened here was that everybody
20 wanted these investigations, I shouldn't say everybody,
21 the moving parties wanted these investigations and then
22 probably even the -- the deliberations and the trial,
23 itself, to take place in secret and closed session and
24 they could come out later in open session and say, we
25 found so-and-so guilty and this and that and the other;

1 but their hand was forced by those councilmembers
2 leaking all of this to the press, which then created a
3 giant brouhaha, and it all ended up in open session.

4 Okay. And why do we know this? Because
5 included in the evidence we have a 2012 investigation
6 of Paul Davis in which precisely that happened. Now,
7 my question is -- we had an existing ethics code at the
8 time, these charges could have brought -- could have
9 been brought up via the ethics code, but they weren't
10 because they were employees and not members of the
11 public.

12 For some reason tens of thousands, if not
13 hundreds of thousands of dollars, of public resources
14 are spent if an employee was to bring a complaint
15 against a councilman, but the public doesn't get that,
16 that option. We don't have that right. I don't see
17 the city council, let's say for today, rushing out to
18 go hire Jason Hunter an investigator to examine all of
19 my complaints to the tune of \$100,000 or \$200,000 and
20 allowing me to use staff to look into it as well.

21 And there was no legal requirement to do so
22 on behalf of the council either on behalf of these --
23 these employees. And we'll get into exactly why that
24 is as well. All right. And so where did they lead us,
25 this -- this investigation for which -- you know, by

1 the way, a public official is not an elected -- excuse
2 me, a public official is not an employee under the --
3 the Brown Act. That is -- that's -- that's law. We
4 can discuss that as well as I introduce the evidence.
5 Nor was there anticipated litigation at the time.

6 So there were no exceptions or exemptions
7 that the council could conclude to hire an investigator
8 and then not report of it out closed session. And then
9 I want to know in July 14th when we came up, when
10 there's a memo in there, which outlines how this trial
11 is to proceed; I'd like to know the legal basis of
12 that. Once again, they seem to have been creating a
13 process at the same time they were conducting the
14 actual hearing, and that's not how the government
15 works. And it doesn't lead to a trust of our
16 government.

17 And with that I'd like to rest for now and
18 get onto the introduction of evidence. And you have --
19 and you, gentlemen, excuse me, have the opportunity
20 today to finally hold the people accountable who
21 perpetrated this crime, okay, against the citizens, not
22 just those two councilmen, but the citizens of this
23 community who paid for it. Thank you.

24 CHAIRMAN HOUSE: Thank you, Mr. Hunter. By my
25 watch your opening statement was 11 minutes, which will

1 leave you four minutes for your closing statement.

2 Councilman, your opening statement.

3 COUNCILMAN GARDNER: Thank you, Mr. Chairman,
4 members of the board. I -- I think it's important that
5 we focus on this complaint. The complaint is that
6 there was a violation of the Brown Act. Many of the
7 other things Mr. Hunter were mentioning really aren't
8 related to the complaint. I agree that this was an
9 unfortunate incident in the history of our city, but I
10 don't believe the council had any choice other than to
11 act the way that it did.

12 As my written statement indicates, the
13 complaint filed by city employees against
14 councilmembers was filed as a labor code violation. It
15 was not filed -- they had the opportunity to file as a
16 Code of Ethics violation, for whatever reason, they
17 elected not to do that, they filed it as a labor code
18 violation; that sets up a different process than does a
19 Code of Ethics violation.

20 I think the council acted appropriately in
21 the handling of that complaint. Because labor code
22 violations can easily become the subject of litigation,
23 it would be a subject that would -- that would have
24 been ripe for discussion in closed session as potential
25 litigation. I cannot disclose what did or did not get

1 discussed or what the discussion was, should one have
2 occurred, in closed session; but I -- I do not believe
3 that any Brown Act violation would have occurred had
4 there been a discussion of those complaints in closed
5 session. I think that would have been an appropriate
6 thing for the council to have done.

7 There is a list in the large package of
8 information that you have of similar -- not similar --
9 other employee complaints filed under the labor code
10 and that they were investigated by, you will see, a
11 range of different investigators. So this is not an
12 uncommon thing to have happened. I think it was
13 appropriate.

14 I don't think either the council or I acted
15 inappropriately. The council, as a whole, has moved
16 beyond this. We're working well together. This does
17 nothing but stir up hard feelings, and we're better to
18 move on. Thank you.

19 CHAIRMAN HOUSE: Thank you, councilman. I
20 have three minutes for your opening statement, so
21 you'll have 12 minutes for your closing statement.

22 And it's time, Mr. Hunter, if you'd like to
23 go ahead and start presenting your evidence, and only
24 evidence that was exchanged prior to the hearing date
25 may be allowed.

1 MR. HUNTER: Thank you.

2 MEMBER NELSON: Can -- are we allowed to ask
3 questions of the presenter?

4 CHAIRMAN HOUSE: I don't see why not.

5 Bob, is there a reason that we couldn't?

6 MR. HANSEN: There is not. And in fact, I
7 believe the code provides for that.

8 CHAIRMAN HOUSE: Very good.

9 MEMBER NELSON: I'd like you, for the purpose
10 of this complaint, to -- to -- to define executive
11 staff to exactly who you're referring to.

12 MR. HUNTER: Executive staff involved in this
13 complaint would be, former executive staff would be
14 city manager Scott Barber, it would be former city
15 attorney Greg Priamos, excuse me, and current police
16 chief Sergio Diaz. And -- and -- no, that would be it.
17 Sorry.

18 So I'd like to go into presentation.

19 CHAIRMAN HOUSE: And I'm sorry, let me ask if
20 there are any other questions at this point.

21 I would have one.

22 MR. HUNTER: Sure.

23 CHAIRMAN HOUSE: In your opening statement,
24 you very -- you ventured far afield and into many
25 different aspects and areas; yet as I look at your

1 complaint, your complaint seems to focus on the events
2 of 7/22, whether or not the closed session held by the
3 council on that date was -- is a violation of the Brown
4 Act. So I'm -- I'm going to ask upfront, are you going
5 to show us how this violates the Brown Act?

6 MR. HUNTER: Yes, I am.

7 CHAIRMAN HOUSE: Okay. And I would ask you to
8 kind of concentrate on that and focus on that --

9 MR. HUNTER: Sure.

10 CHAIRMAN HOUSE: -- since that is what is
11 before us today and only that. Thank you.

12 MR. HUNTER: Okay. Yes.

13 MEMBER WRIGHT: Excuse me, excuse me.

14 MR. HUNTER: Sorry.

15 MEMBER WRIGHT: Can I ask a procedural
16 question? The -- the complaint, itself, is a complaint
17 specifying resolution number 22318(2)(d) as a violation
18 and not the Brown Act specifically. My understanding,
19 as an -- as an amateur, because I'm not a lawyer, my
20 understanding is a Brown Act violation would be handled
21 by prosecuting authorities. We're being asked to deal
22 with an ethical question. And I just wondered if we
23 could get some clarification about that.

24 MR. HANSEN: I think that, and Mr. Hunter
25 would probably agree with me, it's the violation of the

1 Brown Act that constitutes the violation of the ethics
2 code, and that's how they're linked together.

3 MEMBER WRIGHT: So we, as a panel, are in
4 essence a trier of fact of whether or not the Brown Act
5 was violated in this case?

6 MR. HANSEN: It -- it -- that -- that is
7 correct, insofar as it brought distrust on -- distrust
8 of the local government.

9 CHAIRMAN HOUSE: I'm sorry, go ahead,
10 Mr. Hunter.

11 MR. HUNTER: All right. I'd -- I'd like to, I
12 guess my first piece of evidence, I'll refer to my
13 actual complaint on December 27th and refer to a
14 description of events, in -- in which it says on
15 July 22nd, 2014, a city council meeting hearing was
16 held regarding the findings of investigation of
17 Councilman Mike Soubirous and then goes on to say a
18 hearing on a similar investigation of Councilman Davis
19 creating a second event was forthcoming. So this is
20 not just about Councilman Soubirous.

21 Secondly, on the backside of that sheet, it
22 says, which ways did this violate the Code of Ethics,
23 which is of course I -- I -- I mentioned the specific
24 article, which would be (2)(d), which is creating
25 public distrust. The decisions of the council and

1 mayor -- mayor regarding both the investigations here
2 were done in closed session violating. That is part
3 one of my complaint, part one.

4 And part two is the decision to have an
5 independent investigation followed by a council
6 hearing, so I'm talking as to the process, violated our
7 ethics code at the time, which means I have two
8 separate charges, not one, just the Brown Act, I'm also
9 saying that we created a process out of thin air when
10 we already one. Both created a distrust of the local
11 government.

12 So I think that's very important as you begin
13 your deliberations. There are two incidents and two
14 charges. Okay.

15 So let's go to what I believe would be the
16 most critical piece of evidence, and it would be the
17 actual audio of the hearing on July 22nd, 2014. And I
18 believe I would like to play it in its entirety for
19 you. We can skip the public comment, because that is
20 not considered to be relevant evidence.

21 As there is no transcript here to -- to
22 reference, the audio is critical information. Because
23 I think even at the time you will find our sitting
24 standing -- sitting councilmen questioning whether this
25 was indeed a totally illegitimate process and a

1 violation of the Brown Act. And if I'm not going to be
2 allowed access to the closed session audio tapes, nor
3 access to any of the councilmen, who would not appear
4 here as friendly witnesses, then this would be of
5 course the next best thing.

6 CHAIRMAN HOUSE: Okay. Let's take a 10-minute
7 recess here at this point.

8 MR. HUNTER: Thank you.

9 (Off the record - 09:43:47 a.m.)

10 (On the record - 09:49:22 a.m.)

11 CHAIRMAN HOUSE: During the recess, Jason, you
12 said that you wanted to play us 45 minutes or so of
13 audio from this thing?

14 MR. HUNTER: Yeah, give or take. It might be
15 a little less.

16 CHAIRMAN HOUSE: Okay. And it seems that we
17 do not have the means to play the audio. We've got
18 some IT issues here. So I think what -- what I think
19 we should do here is let's go ahead and continue your
20 presentation without that audio, and we will continue
21 this hearing and hear that audio at a later time.

22 MR. HUNTER: Okay. I -- I would suggest we
23 just continue. Excuse me, sorry, I would suggest we
24 just continue the hearing then, because the -- the --
25 the seminal, the critical, the most important piece of

1 evidence that you need to consider and will need to be
2 considered, the other evidence will need to be
3 considered in light of that audio testimony, okay?

4 It needs to be heard first because you need
5 to hear from the councilmen about the deliberations
6 from the councilmen, themselves. Everything else is
7 complimentary to that piece of evidence.

8 CHAIRMAN HOUSE: Question for city clerk's
9 office. Is it possible to have that audio transcribed
10 for us?

11 SHERRY MORTON: Yes, we can have it
12 transcribed.

13 CHAIRMAN HOUSE: And get that to us and then
14 we can read it over and reconvene?

15 SHERRY MORTON: Yes.

16 CHAIRMAN HOUSE: Jason, would that be
17 acceptable to you?

18 MR. HUNTER: That's acceptable to me.

19 CHAIRMAN HOUSE: All right.

20 MR. HUNTER: That is the critical piece of
21 evidence in lieu of not having subpoenas.

22 MEMBER TUCKER: You --

23 CHAIRMAN HOUSE: Okay. So you --

24 MEMBER TUCKER: Excuse me. Do we not have
25 copies of those ourselves individually in the packets

1 that were -- were sent to us?

2 SHERRY MORTON: The CDs were a part of the --

3 MEMBER TUCKER: Right.

4 SHERRY MORTON: -- packet of material you
5 received.

6 MEMBER TUCKER: Yes.

7 CHAIRMAN HOUSE: But we don't have the ability
8 to play the CD.

9 MEMBER TUCKER: I understand that. But if it
10 we took Jason's suggestion and -- and identified
11 directly what we were supposed to listen to, we -- we
12 could go back and do that. I'm not -- I'm not
13 objecting to reconvening, I'm just simply saying, we
14 already have, without the city incurring additional
15 expense to transcribe those -- those audio tapes, we
16 have those audio tapes.

17 MR. HUNTER: And I wouldn't be in -- in
18 objection to that either. That's fine with me.

19 CHAIRMAN HOUSE: Gloria.

20 MEMBER HUERTA: My only concern is that this
21 is evidence he wishes those individuals who aren't here
22 to participate in this hearing to have access to, and
23 they don't if we don't have a transcript.

24 MR. HUNTER: Oh, yeah.

25 MEMBER HUERTA: I mean, that's my only concern

1 for you, Jason.

2 MEMBER TUCKER: But on a -- excuse me.

3 CHAIRMAN HOUSE: Go ahead.

4 MEMBER TUCKER: On a reconvened meeting, we
5 possibly could have the ability to hear. He's -- he's
6 requested something at the last minute and -- and we
7 don't have the technology right now, but a week from
8 now, two weeks from now, whenever we would reconvene
9 this, we would have that, correct? Could have that
10 possibly?

11 SHERRY MORTON: Yes.

12 MR. HANSEN: And, chair, I believe that
13 Councilmember Gardner was also given a copy of the same
14 CD that the panel received, so he has that evidence.

15 MEMBER TUCKER: Well, everybody has the same
16 packet, I believe, and -- and in the packet there were
17 audio tapes, several copies of such.

18 CHAIRMAN HOUSE: Yes, but the question -- the
19 question, as I'm seeing it here, is Jason wants to
20 present this evidence --

21 MEMBER TUCKER: I understand.

22 CHAIRMAN HOUSE: -- in -- in a public forum,
23 and he did not bring a method to present his own
24 evidence, which -- which is another matter.

25 Which you probably should have brought

1 something to present your own evidence.

2 MEMBER TUCKER: I think it's a reasonable
3 assumption on the part of Jason to come in here that
4 there -- that there -- with the technology in this
5 building --

6 CHAIRMAN HOUSE: Well --

7 MEMBER TUCKER: -- I think it's a reasonable
8 assumption that, providing -- bringing the -- bringing
9 the disc, it potentially could have been heard.

10 CHAIRMAN HOUSE: But if we -- if we're
11 provided transcripts, we could read this over.

12 MEMBER TUCKER: We could, but we're still
13 going to -- we're still going to need to reconvene.

14 CHAIRMAN HOUSE: Absolutely.

15 MEMBER TUCKER: So my point is rather than
16 spending the money to transcribe 45 minutes, let's make
17 sure we have the technology, through our technology
18 department, to simply hear the tapes.

19 CHAIRMAN HOUSE: Are you all in agreement?
20 Just wait -- just wait and hear it.

21 MEMBER TUCKER: Yeah. And my request would be
22 that Jason identify clearly what I'm supposed to listen
23 to so that I can do the same thing I did with this 461
24 pages, I can go back and only listen to that part of --
25 of the tape before we reconvene. That's all I'm

1 asking.

2 CHAIRMAN HOUSE: Keith, what do you think?

3 MEMBER NELSON: I'm actually thinking we'd
4 need to do both, because you may need a transcript to
5 then become part of the record, unless the entire
6 hearing recording is part of the record.

7 CHAIRMAN HOUSE: Gloria.

8 MEMBER HUERTA: I agree.

9 CHAIRMAN HOUSE: Jeff.

10 MEMBER WRIGHT: I -- I would -- I would
11 presume that the -- the discs that we were given are
12 part of the record, so I don't know that a transcript
13 needs to be created as an additional part of the record
14 unless we want that duplicate piece. I -- I guess my
15 question becomes one to -- to Jason, is this
16 presentation of the -- the council's deliberation form
17 the core part of all five presentations --

18 MR. HUNTER: Yes, it does.

19 MEMBER WRIGHT: -- that are -- that are --
20 that are to come? Then -- then I would recommend we
21 continue until we have a transcript and that we --
22 and -- and that we're going to have the same thing
23 happen twice more today.

24 CHAIRMAN HOUSE: Yeah. And twice on Tuesday.

25 SHERRY MORTON: Excuse me. They're saying

1 that in 10 minutes they may be able to play the audio.
2 So I don't know if you want to take a recess and we'll
3 try again or --

4 CHAIRMAN HOUSE: Well, you know --

5 SHERRY MORTON: -- or take other evidence
6 right now.

7 CHAIRMAN HOUSE: In -- in 10 minutes, it's
8 going to be 10 after 10:00, and we have another hearing
9 going at 11 o'clock. So I think we're going to wind up
10 continuing this thing one way or the other. Jason has
11 indicated that this information that is on this audio
12 is primary to everything that he's going to present
13 going forward, so it seems to me best that we just take
14 a continuation at this point and that we reconvene at a
15 time to be determined.

16 MEMBER TUCKER: Okay. And on that, since --
17 if -- if the audio is going to be available in 10
18 minutes, then let's -- let's continue this hearing
19 since -- since we've already set this process up for
20 five different hearings, let's -- let's continue this
21 hearing only and -- and he will have the technology for
22 the evidence for all the other four hearings.
23 Otherwise we're going to have to reschedule everything.

24 CHAIRMAN HOUSE: Exactly. All right. So we
25 will then just continue this hearing at a time and date

1 to be determined, and we will just --

2 SHERRY MORTON: Chair, I have a couple of
3 dates --

4 CHAIRMAN HOUSE: Okay.

5 SHERRY MORTON: -- if you want them. We have
6 Friday, March 10th at 9:00 a.m. available.

7 CHAIRMAN HOUSE: Okay.

8 SHERRY MORTON: If we do it to a date certain,
9 we will not have to republish the -- the hearing. It's
10 up to you.

11 CHAIRMAN HOUSE: Friday, March 10th?

12 MEMBER TUCKER: (Indiscernible).

13 MEMBER NELSON: Okay. March 10th.

14 MEMBER WRIGHT: At what time, I'm sorry?

15 MEMBER NELSON: What time was March 10th?

16 SHERRY MORTON: 9:00 a.m.

17 MEMBER TUCKER: I have an obligation at -- in
18 the desert as part of my duties for the RCOE on the
19 10th.

20 SHERRY MORTON: How about March 8th at
21 1:00 p.m.

22 MEMBER TUCKER: Good for me.

23 CHAIRMAN HOUSE: Good for me.

24 MEMBER NELSON: I will be in Washington in the
25 transition.

1 MEMBER HUERTA: I have a prior conflict with
2 my teaching job.

3 SHERRY MORTON: We'll have to reschedule.
4 I'll have to look up some more dates for you.

5 CHAIRMAN HOUSE: Okay.

6 SHERRY MORTON: Okay.

7 CHAIRMAN HOUSE: All right. Well, in that
8 case then we stand adjourned at this point to be
9 reconvened later. Thank you very much.

10 MR. HUNTER: Thank you, members of the panel.

11 - - -

12 (Whereupon, the proceeding was concluded at 09:58 a.m.)

13 - - -