

TRANSCRIPTION OF RIVERSIDE CITY COUNCIL MEETING
JULY 22, 2014

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Job No. J0523893

"CITY COUNCIL MEETING"

MAYOR BAILEY: It is 1 o'clock on this July 22nd Tuesday council meeting day. And item one, let me provide a preamble, so to speak, to this unique hearing in front of the council today. I want to make sure that everyone understands why we are here and the process we followed to get here, the scope of this hearing, and the roles of the parties involved. I also want to remind the public of the council meeting rules and the decorum expected while addressing the council as well as the conduct expected while in attendance of this hearing.

Our ultimate hope through this process is to ensure that the city hall, our city hall maintains a professional working environment where we respect each other, our city employees, and our city charter. We are further committed to ensuring that everyone's rights are respected and that we continue to be the most responsible and responsive local government in California.

First and foremost we're here to provide a transparent process to a sensitive and significant issue that was brought to our attention by the city manager on behalf of the chief of police and one of his

1 subordinates. Transparency is a democratic value that
2 builds public trust and leads to more informed decision
3 making. The intent of this meeting is to ensure
4 transparency within city government and afford all
5 parties the rights and fair treatment they deserve
6 resulting in accountability for all parties involved.

7 Accountability, as humbling and uncomfortable
8 as it can be, is a cornerstone for public service,
9 especially for elected officials in a representative
10 democracy. Upon receiving a hostile work environment
11 complaint and evidence of a potential violation of the
12 city charter for administrative interference, the mayor
13 and mayor pro tem called the closed session to review
14 the evidence and the exposure to litigation.

15 This closed session led to the city council
16 unanimously with council ^{sel} -- Councilmember Soubirous
17 excused and Davis absent, authorizing the mayor pro tem
18 to hire an outside investigator as required by state
19 law and city policy. We had a duty to investigate.
20 Today's hearing and agenda item were scheduled by
21 unanimous vote of the city council with Councilman
22 Soubirous excused after meeting in closed session with
23 our special council ^{sel} and the outside investigator to
24 review the evidence and facts of the completed
25 investigation.

1 We are here today to review the findings of
2 the investigation as presented by Mr. Gumpert; listen
3 to a response from Councilman Soubirous; encourage the
4 public to comment; allow the council to ask questions;
5 discuss, deliberate, and take -- take action if so
6 desired. Councilman Soubirous may respond from the
7 podium or from the dais. This is not a judicial
8 proceeding and thus the formal rules of evidence do not
9 apply, nor will there be a cross-examination -- a
10 cross-examination of witnesses.

11 I will now remind the council and the public
12 of pertinent sections inside city council Resolution
13 22676 approved unanimously by the city council
14 establishing the rules of procedure and order of
15 business for our meetings.

16 First off, whereas it is the intent and the
17 desire of the city council to conduct its business in
18 an orderly in fair manner, in whereas there are certain
19 basic rights of due process; an opportunity to address
20 issues with equity, fairness, and equal protection of
21 the law; and whereas certain parliamentary procedures
22 have been found to be useful in order to ensure that
23 the communication of process of government are fair,
24 reasonable, and just; and whereas the city has a duty
25 to proceed with the business of government in an

1 efficient and orderly fashion; and whereas the city
2 council desires to establish uniform norms and
3 procedures in order to accomplish these goals.

4 The city council acts in the public trust.
5 And city council staff shall recognize that stewardship
6 of the public interest must be the primary concern.
7 City council will work for the common good of the -- of
8 the people of Riverside. City council will ensure fair
9 and equal treatment of all persons, claims, and
10 transactions coming before the city council and boards
11 and commissions.

12 Decorum, while the city council is in
13 session, the members must preserve order and decorum
14 and a member shall not, by conversation or otherwise,
15 delay or interrupt the proceedings or the peace of the
16 city council, nor disturb any member while speaking,
17 nor refuse to obey the orders of the city council or
18 presiding officer except as otherwise herein provided.

19 Role of the mayor and city council. Mayor
20 and city council general conduct. Mayor and
21 councilmembers shall treat everyone with courtesy.
22 Inappropriate behavior is derogatory and damages the
23 perception of the city. While the city council is
24 session, the mayor, councilmembers, and city staff
25 shall preserve strict order and decorum. Neither the

1 mayor nor any councilmember shall delay or interrupt
2 the proceedings of the city council or interrupt --
3 interrupt any member while speaking.

4 Councilmembers should use the speaker
5 sequencing system to indicate to the mayor that they
6 want to speak. The mayor will acknowledge them before
7 they begin to speak. Any councilmember shall have the
8 right to express dissent from or protest to or comment
9 upon any action of the city council. Once a vote is
10 taken on an issue, councilmembers will support the law
11 made by the city council.

12 If a councilmember wants an issue to be
13 reconsidered, he or she will make a motion to
14 reconsider it. 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; allow for
19 everyone's opinion to be heard and respected, even if
20 they did not win the vote for their own issue; strive
21 for a win-win situation by respecting diverse opinions.

22 Councilmembers will allow room for dialogue.
23 When discussing the agenda item, the city council will
24 allow the opportunity to let -- dialogue with each
25 other to build consensus on an item. Any member of the

city council may move to require the mayor to enforce the rules in the form of a vote with a majority of councilmembers present. Mayor and city council conduct with one -- one and other. The mayor and city council will value each other's time. All councilmembers have the opportunity to speak and agree to disagree.

The city council will avoid negative comments that could offend other councilmembers during public meetings, in the press, or any other time. The city council will practice civility and decorum in discussions and debate. The mayor has an affirmative duty to maintain order. The city council will honor the role of the mayor in maintaining order.

Mayor and city council conduct with the public. The mayor and city council will make the public feel welcome. The mayor and city council shall not be partial, prejudiced, or disrespectful toward the public. The mayor and city council shall -- should not make snappy sarcastic comments to the public or each other. The mayor and city council should treat members of the public equally. The mayor and city councilmembers shall make no promises to the public on behalf of the city council.

The mayor and city council shall not argue with members of the public. The mayor and city council

1 shall listen courteously and attentively to all public
2 comments before the city council.

3 The role of the public. Members of the
4 public attending the city council meetings shall
5 observe the same rules and decorum applicable to the
6 city council and staff. All speakers must approach the
7 podium when recognized by the mayor. Members of the
8 public shall only speak from the podium. Stamping of
9 feet, whistles, yells, or shouting and/or similar
10 demonstrations are unacceptable public behavior.

11 Members of the public shall turn off or
12 switch any electric equipment -- electronic equipment,
13 such as pagers -- pagers and cell phones to the silent
14 mode while attending the city council meeting. If a
15 member of the public desires to provide written
16 correspondence, bring that material to the city clerk.

17 And lastly, addressing the city council. Any
18 person desiring to address the -- the city council
19 shall first secure the permission of the presiding
20 officer to do so under the -- the following headings of
21 business unless the presiding officer rules otherwise,
22 speakers, a person may request to be heard on a public
23 hearing item or a discussion calendar item by filling
24 out and filing a form provided by the city clerk.

25 They're on the table in the back. The request to be

1 heard must be submitted to the city clerk before the
2 scheduled meeting time or at any recess called by -- by
3 the preceding officer prior to the item being heard.

4 Requests will not be accepted during the
5 meeting so as not to disrupt the meeting. Each person
6 addressing the city council shall step up before the
7 city council and make -- and may give their name and
8 address in an audible tone of voice for the record.

9 All remarks shall be addressed to the city council, as
10 a body, and not to any councilmember thereof.

11 So at this time, if you would, the council
12 speaking -- speaker cards are in the back, this is your
13 last call to fill out a speaker card to speak on this
14 item in front of the city council at this time and
15 bring it over to the -- the box on your right.

16 Let me now introduce Mark Meyerhoff --

17 COUNCILMEMBER DAVIS: Mayor --

18 MAYOR BAILEY: -- our --

19 COUNCILMEMBER DAVIS: -- if I may. Pardon me
20 for interrupting. I have to make a disclosure with
21 violation of the law and ask for information for that
22 violation of law and then unfortunately charge every
23 member of this council in violation of the Brown Act.

24 So I need to do so --

25 MAYOR BAILEY: Well --

1 COUNCILMEMBER DAVIS: -- under the State of
2 California laws, under the Brown Act, the Ralph M.
3 Brown Act.

4 FEMALE SPEAKER: Recall.

5 COUNCILMEMBER DAVIS: Prior to this discussion
6 in here, we, as a council --

7 MAYOR BAILEY: Councilman Davis, you weren't
8 recognized by the presiding officer, so I'm --

9 COUNCILMEMBER DAVIS: Well, I understand that.

10 MAYOR BAILEY: -- going to have to ask you
11 to -- to --

12 COUNCILMEMBER DAVIS: But I'm going to
13 complete.

14 MAYOR BAILEY: When -- when you are done --
15 when I am done speaking, then you can --

16 COUNCILMEMBER DAVIS: I cannot --

17 MAYOR BAILEY: -- speak.

18 COUNCILMEMBER DAVIS: -- participate in this
19 because it would be a violation of the law, sir.

20 MAYOR BAILEY: Let's ask our city --

21 COUNCILMEMBER DAVIS: So let --

22 MAYOR BAILEY: -- attorney for --

23 COUNCILMEMBER DAVIS: -- me finish, if I
24 may --

25 MAYOR BAILEY: No.

1 COUNCILMEMBER DAVIS: -- of what my statement
2 is.

3 MAYOR BAILEY: No, you may not, okay? As a
4 presiding officer --

5 COUNCILMEMBER DAVIS: Really?

6 FEMALE SPEAKER: You need (indiscernible).

7 MAYOR BAILEY: -- I just read the rules of
8 procedure. We haven't begun this --

9 COUNCILMEMBER DAVIS: Let's take a vote --

10 MAYOR BAILEY: -- hearing.

11 COUNCILMEMBER DAVIS: -- of council then. I
12 call for a vote of the council of whether or not I can
13 speak that we did, in fact, violate the Brown Act and
14 when we did it and how we did it before we proceed.
15 This is allowed under the --

16 MAYOR BAILEY: Councilman Davis --

17 COUNCILMEMBER DAVIS: -- emergency clause
18 of --

19 MAYOR BAILEY: -- you're out of --

20 COUNCILMEMBER DAVIS: -- (indiscernible) --

21 MAYOR BAILEY: -- order.

22 COUNCILMEMBER DAVIS: -- and so forth.

23 MAYOR BAILEY: You're out of order. You are
24 not recognized to speak, because I went through the
25 rules of procedure. So --

1 COUNCILMEMBER DAVIS: I'm calling for --

2 MAYOR BAILEY: -- at -- at the --

3 COUNCILMEMBER DAVIS: -- a vote of council.

4 MAYOR BAILEY: -- right time, I will call you
5 to speak. Let me now --

6 COUNCILMEMBER DAVIS: Madam --

7 MAYOR BAILEY: -- introduce --

8 COUNCILMEMBER DAVIS: -- madam attorney.

9 MAYOR BAILEY: -- Mark Meyerhoff, our special
10 counsel, who will --

11 COUNCILMEMBER DAVIS: (Indiscernible)
12 attorney.

13 MAYOR BAILEY: -- explain the duty to
14 investigate -- do -- do you really want me to recess
15 this meeting?

16 COUNCILMEMBER DAVIS: Yes, I do. We need --

17 MAYOR BAILEY: Let me now introduce Mark
18 Meyerhoff --

19 COUNCILMEMBER MELENDREZ: Mayor, I --

20 MAYOR BAILEY: -- our special counsel.

21 COUNCILMEMBER MELENDREZ: -- will -- I will
22 second that motion to recess the meeting.

23 MAYOR BAILEY: We -- we -- we are not --
24 this -- as -- as you heard the meeting rules, right, I
25 have not recognized anybody to speak. So that is not a

1 motion --

2 COUNCILMEMBER DAVIS: Point of order, sir.

3 MAYOR BAILEY: -- that's on the table right
4 now.

5 COUNCILMEMBER DAVIS: Point of order, sir.

6 COUNCILMEMBER MELENDREZ: Well -- well, I
7 think there are a lot of important issues that we need
8 to discuss --

9 MAYOR BAILEY: And --

10 COUNCILMEMBER MELENDREZ: -- before we
11 proceed.

12 MAYOR BAILEY: Yes. And that is --

13 COUNCILMEMBER MELENDREZ: The --

14 MAYOR BAILEY: -- why we have special counsel
15 and our independent investigator and our city attorney
16 to address those concerns.

17 COUNCILMEMBER MELENDREZ: I -- I think it's
18 important --

19 MAYOR BAILEY: So --

20 COUNCILMEMBER MELENDREZ: -- that we --

21 MAYOR BAILEY: So -- so if you let --

22 COUNCILMEMBER MELENDREZ: -- at least clarify
23 something.

24 MAYOR BAILEY: -- me finish, I'm -- I'm not
25 finished. So you interrupted --

1 COUNCILMEMBER MELENDREZ: (Indiscernible).

2 MAYOR BAILEY: -- your presiding officer.

3 COUNCILMEMBER MELENDREZ: Mayor -- mayor --

4 MAYOR BAILEY: So when --

5 COUNCILMEMBER MELENDREZ: Mayor --

6 MAYOR BAILEY: -- I'm finished speaking, then

7 I will allow you to --

8 COUNCILMEMBER MELENDREZ: One of the --

9 MAYOR BAILEY: -- to address your --

10 COUNCILMEMBER MELENDREZ: One of the --

11 MAYOR BAILEY: -- concerns.

12 COUNCILMEMBER MELENDREZ: -- things that you
13 mentioned is that we are supposed to be considerate of
14 others' comments.

15 MAYOR BAILEY: Yes, after --

16 COUNCILMEMBER MELENDREZ: Councilmember Davis
17 had comments.

18 MAYOR BAILEY: And -- and I did not recognize
19 him, did --

20 COUNCILMEMBER MELENDREZ: And I --

21 MAYOR BAILEY: -- I?

22 COUNCILMEMBER MELENDREZ: -- have comments --

23 MAYOR BAILEY: And -- and have we --

24 COUNCILMEMBER MELENDREZ: -- which are very
25 important before --

1 MAYOR BAILEY: I'm sorry, but this is --

2 COUNCILMEMBER MELENDREZ: -- we proceed.

3 MAYOR BAILEY: -- not -- this is not the
4 council meeting rules that you all have signed and
5 agreed to.

6 COUNCILMEMBER MELENDREZ: Understood, sir.

7 MAYOR BAILEY: So when your presiding officer
8 is --

9 COUNCILMEMBER DAVIS: As a point of order, I
10 request a --

11 MAYOR BAILEY: -- finished --

12 COUNCILMEMBER DAVIS: -- vote on that.

13 MAYOR BAILEY: There's no point of order.
14 That's not the parliamentary procedure --

15 COUNCILMEMBER DAVIS: Council makes the --

16 MAYOR BAILEY: -- that we have.

17 COUNCILMEMBER DAVIS: -- rules, sir. You do
18 not.

19 MAYOR BAILEY: That's not the parliamentary
20 procedure that we have engaged in this council meeting.

21 COUNCILMEMBER MELENDREZ: Motion --

22 MAYOR BAILEY: Let me now introduce --

23 COUNCILMEMBER MELENDREZ: -- has been made and
24 seconded.

25 MAYOR BAILEY: -- Mark Meyerhoff, our special

1 counsel, who will further explain the duty to
2 investigate and answer the question of why we are here
3 today. He's going to do that for you. He will be
4 followed by our independent investigator, Leonard
5 Gumport, who will present a summary of the findings.
6 Councilman Soubirous will then be provided the
7 opportunity to respond for as long as needed followed
8 by public comment.

9 This is the final call again for speaker
10 cards on this item. After speaker cards are collected
11 from this call, no more speaker cards will be accepted
12 as per the rules of procedure and order of business.
13 After public comment is completed, the council will
14 have the opportunity to ask questions, make comments,
15 make motions and consider alternatives listed on the
16 council report or otherwise.

17 Mr. Meyerhoff.

18 MR. MEYERHOFF: Thank you, Mr. Mayor. My name
19 is Mark Meyerhoff of the law firm of Liebert Cassidy
20 Whitmore. I have been assisting the city as special
21 counsel for this matter. As the mayor mentioned, the
22 complaints brought by the city manager on behalf of the
23 chief of police and one of his subordinates alleged,
24 among other things, claims of hostile work environment.
25 Under the California government code, as part of the

1 Fair Employment and Housing Act, Section 12940 of the
2 government code, employers, including the City of -- of
3 Riverside are required to conduct fair, prompt, and
4 thorough investigations into any claims of hostile work
5 environment, and that was one of the reasons that
6 council authorized the investigation by an independent
7 third-party investigator.

8 The investigator also reviewed allegations
9 that the city charter was violated, specifically
10 charter Section 407. Based on this obligation, the
11 council retained an impartial third-party investigator
12 to conduct an investigation into the allegations that
13 were made. The council is here today to publicly
14 deliberate on the issue of whether any action should be
15 taken as a result of that investigation.

16 Now, this type of meeting is authorized by
17 California law and is within the authority of this
18 council. I will now pass it to Mr. Leonard Gumport,
19 who acted as the independent investigator in this
20 matter.

21 MR. GUMPORT: Thank you. I'm Leonard Gumport
22 of Gumport Mastan. I was hired by the city to conduct
23 an independent investigation. I'm going to tell you
24 how I did the investigation, what the investigation
25 focused on, and my conclusions; but I want to start

1 with the conclusion. The conclusion I reached
2 basically as to all the allegations was that it would
3 be undue speculation to find that Councilmember
4 Soubirous committed any of the violations that were
5 alleged against him. That's -- that's -- okay.

6 And in -- in arriving at that conclusion, I
7 found that essentially there are two different versions
8 of what happened on a meeting that occurred on
9 Valentine's day, February 14, 2014, at a Starbucks on
10 Arlington between Councilmember Soubirous and Riverside
11 Police Department sergeant Brian Smith, who is also the
12 president of the Riverside Police Officers'
13 Association.

14 And if one believed what Brian Smith said,
15 one could conclude that something inconsistent with the
16 Brown Act or the ethics code or the city charter
17 Section 407 had occurred, but Councilmember Soubirous
18 gave me responses and his version of -- of what
19 happened, and I think it's simply a situation where
20 there's nothing but speculation as to whose person's --
21 or which person's version of what happened is accurate.

22 Now having said that, let me talk about who I
23 am and how I arrived at these conclusions. First of
24 all, my background is I've done investigations and
25 litigation for over 30 years. The way I conduct

1 investigations is a little bit different from the way
2 some other people do it. I do think an investigation
3 needs to be transparent, and therefore unlike many
4 investigators, what I do is I interview all witnesses
5 on the record.

6 And what that means is, either they put what
7 they are going to tell me and I'm going to rely on in
8 writing, that they know my client will see, and that
9 may become available to the public; or when I interview
10 them, there is a court reporter present and the court
11 reporter takes down what the person says voluntarily.
12 In other words, I tell all the witnesses, you can tell
13 me anything you want to off the record, but I'm not
14 going to rely on it. I'm not going to give it any
15 weight, and it doesn't go to my client because it's
16 meaningless.

17 I -- I want only what you're prepared to say
18 on the record. And so as part of this investigation
19 and an overlapping investigation involving another
20 councilmember, there were over 15 interviews conducted.
21 The -- the first investigation, which involved
22 Councilmember Soubirous began on April 7th and
23 concluded with my report on May 30th. And the second
24 investigation concluded shortly afterwards.

25 And when the investigation was done, the city

1 attorney and the councilmembers received all the
2 transcripts of all the interviews that I conducted. In
3 addition as part of the investigation, I requested
4 access to all emails of Councilmember Soubious and his
5 field representative on designated subjects to the
6 extent that they were public records that could
7 lawfully be produced to me. And they were produced to
8 me, and they were reviewed by me.

9 When I wrote the report, I wrote the report.
10 Nobody else wrote the report. And I did all the
11 interviews myself. So I -- I didn't rely on somebody's
12 secondhand version of whether somebody seemed to be
13 credible or not credible. In addition, one of the
14 things that happened during the investigation was
15 Councilmember Soubious declined to be interviewed.
16 And he expressed through his counsel, Danuta Tuszynska,
17 I believe that's how her name is pronounced, that he --
18 he objected to the investigation and for that reason he
19 wasn't going to give an interview.

20 And I want to stress that my view was, under
21 the circumstances, since Councilmember Soubious was
22 the subject of the investigation, no negative inference
23 should be drawn by me or anybody else that he declined
24 to be interviewed. Ultimately as the investigation
25 progressed, through his counsel, Councilmember

1 Soubirous agreed to answer questions that I put to him
2 in writing. And I gave him questions, and he answered
3 all those questions on -- on or about May 15th or
4 May 14th, 2014.

5 And all of my questions and all of his
6 answers are an exhibit to my report. And -- and his
7 answers were -- were different from the version given
8 to me by Sergeant Smith concerning what happened on
9 February 14th. And I attached what I regarded as the
10 key transcripts and the key documents to my report, set
11 forth in my report what I thought the -- the key facts
12 were, and then gave my analysis and my conclusions. So
13 that's how I did my investigation.

14 Now, let me summarize what I -- what I saw in
15 terms of what appear to be the facts. And again,
16 certain key facts are disputed. In November 2013,
17 Michael Soubirous ran for councilmember of Ward 3, and
18 he won that election. He ran --

19 MALE SPEAKER: (Indiscernible).

20 MR. GUMPORT: He won that election. And he
21 campaigned against a person who had a law enforcement
22 background named Valerie Hill. And Councilmember
23 Soubirous has an extensive background in law
24 enforcement as well. And the Riverside Police
25 Officers' Association had a difficult decision to make

1 because there were these two law enforcement
2 officers -- people with law enforcement backgrounds
3 running for to be councilmember from Ward 3, and they
4 picked Valerie Hill to endorse. And they spent money
5 supporting Valerie Hill's campaign.

6 And Michael Soubirous had discussions, one or
7 more discussions with the union, specifically with
8 Brian Smith and told them, you are backing the wrong
9 horse. I'm going to out-campaign Valerie Hill, and I'm
10 going to win this election. And this is coming from
11 Brian Smith. This is not coming from Councilmember
12 Soubirous.

13 And when Councilmember Soubirous won that
14 election, there was tension, that's how I would
15 describe it, between these two people who became key
16 witnesses, namely Brian Smith and Councilmember
17 Soubirous. Why? Because Councilmember Soubirous
18 didn't forget that the union had backed Valerie Hill,
19 and he reminded its members, I think somewhat to the
20 dismay of Brian Smith, that they had spent something
21 like \$40,000 backing his opponent.

22 And I -- I think it's -- I think it's
23 reasonable to say that this caused some dissension
24 within the ranks of the union according to Brian Smith.
25 In getting elected, Councilmember Soubirous very much

1 was concerned, based on his background and experience,
2 with the issues of vagrancy, aggressive panhandling,
3 things that in his view made Riverside, particularly
4 Ward 3, not the highest and best place that he wanted,
5 and had campaigned on.

6 Now, there's an issue with policing.
7 Whenever you set a priority for the police to go after
8 some criminal problem or law enforcement problem, you
9 are potentially taking away resources from other areas
10 of enforcement. And one of the things that Sergeant
11 Smith expressed to me in his interview was, there's a
12 lot of patrol cars in neighborhoods other than Ward 3
13 because of priorities placed on preventing violent
14 crime, that according to Sergeant Smith, is not as
15 prevalent in Ward 3.

16 So there was also a tension between the
17 Councilmember Soubirous' view on how law enforcement
18 resources should be allocated and how the union or
19 Sergeant Smith felt that law enforcement resources
20 should be allocated. And in on or about December 31st
21 or the first week of January, there was at least one
22 homicide in -- in a city park. And it got a lot of
23 attention and there was concern. And what developed
24 from that was a discussion about whether or not
25 possibly armed private security guards should be hired

1 by the city to make the parks safer.

2 And that was a controversial issue because
3 typically law enforcement is done by armed trained
4 peace officers under the authority of the chief of
5 police who answers to the city manager. And there was
6 a February 11th public council meeting on the subject
7 of security in the parks, and many citizens expressed
8 different views about the proposal to have these armed
9 private guards as opposed to police officers.

10 What happened after that was the meeting on
11 February 14th between Councilmember Soubirous and
12 Sergeant Brian Smith. The meeting happened at a
13 Starbucks, and according to Councilmember Soubirous,
14 the purpose of the meeting from his standpoint was to
15 make inquiry of Sergeant Smith concerning the union's
16 position on various law enforcement issues including
17 the use of private security in place instead of trained
18 police officers.

19 And according to Councilmember Soubirous,
20 essentially he asked questions and got information from
21 Brian Smith. And -- and let me pause there, because
22 this goes to how the City of Riverside and its
23 councilmembers are supposed to deal with the staff of
24 the city. I think many people have the misconception
25 that when someone gets elected to the city council who

1 has expertise in an area, and -- and Councilmember
2 Soubirous has expertise in law enforcement, that what
3 they're supposed to do as an advocate for their
4 constituents is to go to the department that they're
5 concerned with and start training the employees to do a
6 better job or to do a better job as the councilmember
7 perceives it.

8 And the charter of the City of Riverside
9 prohibits that kind of conduct, specifically Section
10 407 of the Riverside city charter, which is the like
11 the United States of Constitution -- it's like the
12 Constitution of the United States as far as the City of
13 Riverside is concerned. It places limits on what
14 councilmembers can do as individuals.

15 First, they cannot interfere on an individual
16 basis with the performance by the city manager of his
17 responsibilities, which is to do such things as run the
18 city on a day-to-day basis. The chief of police
19 reports to the city manager. The chief of police does
20 not report to individual councilmembers.

21 And you could have Elliot Ness as a city
22 councilmember here who knew everything about law
23 enforcement, and he would have no business going to
24 various police officers and telling them how to do
25 their job. That would be interfering with the city

1 manager's conduct of the business. And one of the good
2 things about that is it means that the administrative
3 service of the City of Riverside, by and large, is --
4 is answering to someone who's just trying to run the
5 city on an apolitical basis and not trying to do favors
6 for -- perceived favors for one councilmember or
7 another.

8 And this is the structure of government that
9 the members of the City of Riverside have selected.
10 You may not think it's the best form of government, but
11 it is the form of government that exists. Another
12 thing that charter Section 7 -- 407 says is
13 councilmembers shall not deal with basically city
14 employees without going through the city manager **except**
15 **for the purpose of inquiry.**

16 So that means first of all, **Councilmember**
17 **Soubirous, under his version of the facts was**
18 **complete -- completely within his rights to go to**
19 **Sergeant Smith and ask him questions.** He didn't need
20 the city manager's permission or going through that
21 office to ask questions. And Councilmember Soubirous'
22 version of what happened there is he simply asked
23 questions and -- and -- and got information from
24 Sergeant Smith.

25 Sergeant Smith's version is different.

1 And -- and let me make it clear, the city charter says
2 councilmembers can only basically go around the city
3 manager's office to ask questions of city staff. They
4 can't go to city staff without going through the city
5 manager's office and say, why don't you put more
6 policemen here, why don't you -- well, and say put more
7 policemen here or put more policemen there or don't do
8 this or don't do that. They also can't issue orders in
9 any way, shape, or form to the city staff.

10 Sergeant Smith's version of what happened is
11 different, as I said. And so I -- I -- I'm going to
12 read a little bit of what he said. I'm not going to
13 read a lot of what he said, because again, I think it
14 would be speculation to conclude that what he said is
15 accurate. And -- and I'm going to explain that in a
16 second, because I'm not saying that what Sergeant Smith
17 said is untrue. I'm simply saying, there's no way,
18 short of speculation, to decide whose version is more
19 accurate.

20 Here is an example of -- of what Sergeant
21 Smith said, among other things, was -- was said at the
22 February 14th Starbucks meeting. Question, do you
23 recall Councilmember Soubirous saying to you at the
24 Valentine's day meeting that all the councilmembers
25 were disappointed with the city's response to the

1 homeless issue and that Soubiros had seven votes on
2 the council to get rid of the city manager and chief of
3 police. Answer, and this is Sergeant Smith talking,
4 like I said earlier, my recollection of it was it's a
5 seven-to-nothing vote.

6 The council is committed to get these things
7 done, and if Scott Barber can't do it, then it's time
8 for a new city manager, followed up very shortly with,
9 the council is not happy with Sergio Diaz, the chief's
10 response to these things, and they're tired of hearing
11 how there's nothing we can do. And if he can't get it
12 done, then maybe it's time to find a new chief of
13 police.

14 Question, and by get these things done,
15 you're referring to liveability issues, panhandlers
16 and -- answer, transients. If that was true, that -- a
17 person could conclude that -- that what was being said
18 between Councilmember Soubiros and Sergeant Smith
19 wasn't simply Councilmember Soubiros asking questions.
20 It was Councilmember Soubiros telling Sergeant Smith
21 about things that had to happen.

22 And that if they didn't happen, specifically
23 with regard to transients, the city manager was going
24 to go and that there were seven votes to get rid of
25 him. And that shortly afterwards if -- if that didn't

1 work out, then the chief might go, the chief of police
2 being Sergio Diaz.

3 Now, under the charter's Section 407, that
4 could, if you believe that that happened, constitute
5 violations. As I said, I think it's sheer speculation
6 whether anything like that was said. And Councilmember
7 Soubious denies it. Now, here's why I think you -- I
8 did not find that I could honestly conclude that one
9 version's -- one person's version of what happened was
10 necessarily more accurate than the other's.

11 First of all, Councilmember Soubious feels
12 very strongly and is on the record very strongly as
13 caring about the problem of panhandling and the
14 criminal element involved in the homeless. He
15 certainly doesn't categorize all homeless as criminals,
16 but he -- he believes firmly that there is a criminal
17 element involved in panhandling and some homeless. And
18 his ward, according to Sergeant Smith, has a particular
19 priority as to that issue, because as a relatively
20 affluent ward, and this is according to Sergeant Smith,
21 the other kinds of crimes that may afflict other wards
22 are not present.

23 And he walked -- and during his campaign when
24 he walked his ward, he didn't see as many patrol cars.
25 Because the way the police force works is they

1 prioritize -- prioritize, and Ward 3 doesn't get as
2 many patrol cars in -- in Councilmember Soubious' mind
3 as it should, according to Sergeant Smith.

4 And as I've described it, there was a history
5 between Brian Smith and Michael Soubious going back to
6 the campaign when they backed the wrong horse, when the
7 union in -- in -- in Councilmember Soubious' eyes
8 backed the wrong horse.

9 In addition, there -- there are some, what I
10 would describe as emails where Councilmember Soubious
11 said things that resemble the things that Brian Smith
12 said he said at the Starbucks meeting. And I -- I'll
13 just give you a brief example. This is -- I'm reading
14 from Exhibit H to my report.

15 This is an email from Michael Soubious to
16 one of his constituents. And I'll leave out the name
17 of the constituent. But what he writes is, among other
18 things is, I'm with you on this. I have seen and
19 continued to see the same things you are seeing
20 regarding the aggressive panhandling and our traffic
21 officers. I watch RPD officers drive by panhandlers
22 every day and night, no action, not even a look.

23 And he also says, "Please know that all seven
24 councilmembers are committed to curbing our aggressive
25 panhandler problem. It must stop." And he also says,

1 part of the problem has been our police department's
2 lack of enforcing our city's ordinances relating to
3 panhandling. This will stop, et cetera, end quote.

4 Now, all of these statements are kind of
5 similar to the things that Brian Smith said that
6 Councilmember Soubious was saying to him at Starbucks,
7 but Councilmember Soubious says he didn't say those
8 things. And given the history of these two
9 individuals, Sergeant Smith and Councilmember
10 Soubious, it's just speculation to conclude that, for
11 me, this -- this is my view, that those things that --
12 that Sergeant Smith said Councilmember Soubious said
13 are more accurate than Councilmember Soubious'
14 version.

15 Now, there were four kinds of violations
16 alleged. And let me just go through them so we're
17 clear on each of them. And when I say that they were
18 alleged, there were really two complaints. There was
19 one by the chief of police, Sergio Diaz, and one by the
20 city manager. One -- and they didn't make identical
21 complaints, but they all involved this, what was said
22 between Sergeant Smith and Councilmember Soubious on
23 February 14th at the Starbucks.

24 One allegation was that it appeared that
25 there had been a Brown Act violation. Now, the Brown

1 Act requires that generally the council conduct its
2 business publicly and as a group and that they not have
3 secret votes on various matters. And the allegation
4 made was that, well, there was an indication by
5 Councilmember Soubirous that he had seven votes to do
6 something. And since there -- there definitely is no
7 public record of any vote being taken through
8 February 14th on the issue of armed guards or -- or
9 increased security in the parks, there may have been a
10 Brown Act violation.

11 Well, first of all -- first of all, there
12 was, again, just a conflict in what was said during the
13 meeting. So I thought that there was no -- it was
14 simply speculation whether there was a Brown Act
15 violation. Also the allegation was made that there
16 were seven votes to terminate the city manager. And I
17 interviewed all of the councilmembers, they all made
18 themselves available for transcribed interviews;
19 there's never been a vote by the councilmembers to
20 terminate Scott Barber as city manager. So there's --
21 there's been no secret vote that I could see and
22 therefore no Brown Act violation.

23 Secondly -- I've already discussed the
24 Section 407 alleged violation. Again it's what I would
25 describe as a squaring contest and I don't doubt the --

1 the -- the accuracy of either story, I just don't think
2 I can decide which one is accurate, it's just
3 speculation. Secondly, there was an allegation that
4 there had been an ethics violation on the grounds that
5 perhaps Councilmember Soubirous had misrepresented a
6 possible secret vote to terminate Scott Barber as city
7 manager.

8 Well, again, I don't find -- I find it would
9 be mere speculation to attribute those -- those words
10 to Councilmember Soubirous, and therefore my conclusion
11 was there's no likely ethics violation. Lastly on the
12 harassment claim, that's similar to the ethics claim,
13 it depends on crediting one version's -- one person's
14 version -- version of what was said over another's, and
15 I -- I just don't think it would be anything other than
16 speculation to say that that happened.

17 I would also say, I would add that on the
18 harassment issue, the claim made was that there was a
19 hostile work environment. A layperson might understand
20 that a hostile work environment is when your boss yells
21 at you or treats you badly, but, in fact, there's a
22 technical legal -- legal meaning to a hostile work
23 environment and the -- the harassment or the hostility
24 has to be based on a race, religion, something like
25 that.

1 And while if what Sergeant Smith said was
2 true, there might be some kind of hostile work
3 environment -- environment the way a layperson would
4 understand it. Under the technical requirements of the
5 city's and the -- the state's anti-harassment laws,
6 there was not a hostile work environment.

7 So that's the basic conclusions I've reached
8 in this report. I would say it has been and should be
9 a learning experience for me and for everybody else,
10 because this could have been avoided.

11 FEMALE SPEAKER: Yes.

12 MR. GUMPORT: Could have been avoided by
13 multiple means, and the principle guidance appears in
14 Section 407 of the city charter, which essentially
15 says, well, look, except for purposes of inquiry, the
16 councilmembers as individuals can't go to city staff
17 without going through the city manager's office.
18 And -- and let me read the language, because it --
19 it -- it's important not to change it. It -- what
20 it -- what the second part of Section 407 says is,
21 quote, except for purpose of inquiry, the mayor, the
22 city council, and -- and its members shall deal with
23 the administrative service under the city manager
24 solely through the city manager. And neither the mayor
25 nor the city council nor any member thereof shall give

1 orders to any subordinates of the city manager, either
2 publicly or privately.

3 So how could this have been avoided? Well,
4 sometimes as a lawyer, I will say to someone, you don't
5 want to go to a meeting with that person, because I
6 just don't know what that person is going to say when
7 the two of you come out of that meeting and nobody else
8 is there. In this case it was an accident. There was
9 supposed to be a third person there, but he wasn't
10 there.

11 But if Councilmember Soubirous had gone
12 through the city manager's office or had a third
13 person, somebody extra with him, there wouldn't have
14 been this whole issue. And I think Councilmember
15 Soubirous reasonably responded to the pressure of
16 someone conducting an investigation concerning his
17 conduct and said, look, I just am not going to talk to
18 you, just not going to do it. I don't have to, and so
19 I'm not.

20 And as I said, I -- I -- I don't draw any
21 negative inference from that; but the result is, the
22 city, after it got the complaint, had to go through
23 this exercise of trying to figure out what happened
24 because a councilmember met -- member met with -- with
25 a city staffer, Sergeant Smith, and nobody else was

1 there and Sergeant Smith gave one version and
2 Councilmember Soubirous had -- at -- at the time was
3 not, did not want to respond.

4 And as I said, I don't fault him for that.
5 But I think one of the things I've seen is that cities
6 can avoid this by utilizing the city manager's office
7 for communications with staff and protect themselves
8 against this kind of investigation, which at the end of
9 the day, as I said, I don't think anybody knows what
10 was really said and I don't fault either of the
11 participants in those two conversations. I just wish
12 that the situation could have been avoided, and I hope
13 that in the future it will be. Thank you.

14 MAYOR BAILEY: Thank you for the thorough
15 summary of the investigation. That brings us to
16 response, if so chosen, by Councilmember Soubirous.

17 COUNCILMEMBER SOUBIROUS: Mayor. Good
18 afternoon, everybody, and thank you for coming to this
19 trial today. I really appreciate seeing you all out
20 there. I think it's very important -- I think it's
21 very important that, you know, we see this in the
22 context for what it is.

23 You know, I didn't want to get into a whole
24 lot of minutiae about the case, it's been stated, but
25 there are a couple things that did get left out. And I

1 did post this on my Facebook page today. I don't have
2 enough copies for all of you. But Mr. Smith, the union
3 president, he stated that he deleted his text messages.
4 I was smart enough to keep mine.

5 MAYOR BAILEY: If you could keep the decorum,
6 I would appreciate that, and let him explain and -- and
7 give his testimony.

8 COUNCILMEMBER SOUBIROUS: Thank you,
9 Mr. Mayor.

10 February 7th, 2013, 6:09 a.m., this was the
11 prior contact, a year and two weeks before the February
12 14th, 13th thing. This is me, so very sorry to learn
13 of the shooting and death, that was Officer Crain,
14 please let me know if there's anything you need.
15 Thanks. We'll talk later.

16 And a year later on Thursday, February 13th at
17 9:51. Mike Soubious here. Are you in favor of my
18 suggestion to provide overtime monies for RPD extra
19 patrols in parks versus guards. I'm asking a question.
20 I didn't ask for a meeting. Mr. Smith, yes, guards
21 send the wrong message and won't solve anything. I'm
22 at traffic court this morning, but would like to
23 discuss this park issue with you at length. So I said,
24 you're welcome, looking forward to the dialogue.

25 I actually let him know that the city manager

1 wants to deliver results sooner than later so we better
2 start talking so that you, Brian, can talk to the city
3 manager. He said, yeah, I heard, et cetera, et cetera.
4 We weren't able to meet that day, but we met the next
5 day. By the way, I've met with Brian Smith before, and
6 if this is the rule that you only meet with one -- or
7 more than one, when I was running for county
8 supervisor, we met like three times, he was all by
9 himself.

10 And then about a month after this meeting, I
11 met with Aurelio Melendrez, and he was by himself. You
12 would think they would have learned the first time,
13 don't go by yourself, because those councilmembers,
14 boy. The problem is growing with the panhandlers.
15 We've got to take care of this. We met. I'm around
16 the corner, because I get to things late. He says,
17 okay, no problem. Also, too, he had expressed,
18 Mr. Smith expressed that he wasn't too happy about the
19 union busting, as he called it, with the city manager.

20 And I said, you need to talk with the city
21 manager. If I see him, do you mind if I broker a
22 meeting? Which I did and I told Scott Barber, our city
23 manager, I said Brian Smith has some concerns, I think
24 he needs to talk with you. Yeah, that's a rogue
25 councilmember that just operates on his own and he's

1 not, you know, considering the county -- the -- the
2 position and power of our city manager.

3 If he has not already done so, I told Scott,
4 are Scott Barber -- or Brian, Scott Barber says he will
5 be calling you. Please stress, as you stated before,
6 need for city attorney, mental health, et cetera. I
7 think that will be very important for him to know that
8 the officers want assistance and backing. Because that
9 was the concern of the meeting from Mr. Smith is they
10 didn't want to get sued taking on the panhandlers.
11 It's right there. It's on my Facebook page. It's for
12 all of you to read.

13 And one other little item is, in our charter
14 under Charter 14, council requests. All council
15 requests dealing with policy issues and those requests
16 which may be construed as direction go through the city
17 manager, except for general inquiries or questions, in
18 which case the city council may go to the department
19 heads or key staff in the city manager's office.
20 Councilmembers may also deal directly with the city
21 attorney, city clerk, and other staff appointed by the
22 council. That's in our charter.

23 In the administrative code that our city
24 manager and staff follows, it talks about mayor -- this
25 is 01.004.00, mayor and council's constituent complaint

1 management system. Purpose, to establish a uniform
2 response procedure and tracking system for nonroutine
3 mayor and city council constituent complaints, which
4 will enable the council to provide the best possible
5 outcome and service for their constituents.

6 And I don't want to bore you with all the
7 details, but it talks about talking to a department
8 head or a defined liaison or whoever. It doesn't
9 mention anything about talking to the city manager. It
10 actually has the city manager's role on here where he
11 is supposed to set up a program where we can have
12 identified people to talk to.

13 I do believe that my colleagues, this is who
14 I learned from as a brand-new councilmember wet behind
15 the ears, yeah, we go to different lieutenants for the
16 different area commands and, you know, we ask them, can
17 you take care of business; and they do, they're really
18 good at it. They do a great job. So you know,
19 Mr. Gumpert didn't mention that part. It's really nice
20 that, you know, he talked about that happened -- that
21 accident that, you know, happened basically with just
22 going down there and not knowing any better and you
23 know -- I -- I just don't get it. I mean, I
24 specifically went to the union chief.

25 You know, when I worked for the Highway

1 Patrol, the union president of the California
2 Association of Highway Patrolmen, and this is in the --
3 the state law books, does -- this applies to the entire
4 city and county as well, is they tell you on all these
5 different employer-employee relationship manuals
6 everywhere, and -- and this is rules and laws that we
7 have to follow that are empowered by our state
8 legislature, that these union chiefs are the
9 equivalent, when he operates as the RPOA president,
10 Brian Smith is the equivalent to our city manager.
11 Same with the association president, he is equal to the
12 commissioner of the Highway Patrol when he represents
13 his troops.

14 On this dais, I asked Mr. Diaz, our chief, I
15 said, chief, are you in favor, and I said, I don't want
16 to put you between you -- and you can check these
17 records and I've got the -- I've got the recording, I
18 don't want to put you between you and the city manager,
19 but, sir, are you for overtime versus these security
20 guards and parks; and I didn't get a response. What
21 did I do? Two days later I talked to the other boss,
22 the guy in charge of the troops from the union aspect.
23 I wanted to get an answer. I will record my
24 conversations next time.

25 Now, I don't want to say anything further

1 about the specifics of the investigation. The
2 investigation concluded that the claims by the
3 witnesses -- or the witness cannot be -- Mr. Smith,
4 cannot be substantiated. And that was the outcome.
5 The report shows clear bias, I believe, by the
6 investigator. I mean, you know, he picked probably
7 the -- the most horrible thing that I said on email,
8 the rest of them were just, hey, I want to get this
9 solved, but, you know, it's all this slanting.

10 Just like this thing costs more money
11 supposedly in his comments because I didn't answer the
12 questions right away. Well, we didn't have to have a
13 stenographer. You didn't have to drive out from L.A.
14 And I don't think that it's just going to cost a few
15 pennies for Mr. Gumpert to be here today extending this
16 thing out any further, but yet I get the blame for it.
17 I just think it's very biased.

18 You know, the Press Enterprise said that I
19 was cleared. I really -- there's not much more point
20 in defending that, so I'm going to drop that; but I do
21 want to say that I believe this is nothing but an
22 attempt by you, Mr. Bailey, to smear me, my reputation,
23 my voice as a councilmember representing the people of
24 my ward and greater Riverside. You know that I'm up
25 for reelection in June of 2015 and you are doing

1 everything on your part to discredit me to make me look
2 bad to the public. You have spent thousands of
3 taxpayer dollars to do this.

4 I did not request this hearing. Numerous
5 councilmembers have told members of the public, I've
6 heard, that I requested this. I did not request it.
7 Why would I request it when the vote has already been
8 taken, from what I'm told? I was told this would
9 occur. The manner in which it would occur was dictated
10 to me.

11 And I want to know, what source of authority
12 are we following regarding the terms and conditions set
13 forth in my participation and limitations imposed upon
14 me by this hearing? I cannot ask clarifying questions.
15 I cannot bring witnesses. I can't present evidence.
16 I'm not entitled to due process. How is this a fair
17 hearing or trial? There's no lawful basis for this
18 hearing, no authority -- authority under our city's
19 charter or rules of procedure, order of business, not
20 even under our code of ethics, which we failed to
21 follow that procedure.

22 You have made me a great student of all those
23 items I just mentioned. I have read them probably 50
24 times backward and forward. I can just about quote
25 them. You have made me an expert at this, and I thank

1 you for that. This investigation and subsequent
2 hearing is in direct conflict with charter Chapter 202,
3 our city's code of ethics and conduct statement. It's
4 the mechanism for all council conduct. It's also the
5 mechanism for, not only your elected council, but for
6 any of the appointed members of boards, commissions, or
7 committees. It does not apply to anybody else. Just
8 us.

9 So what is the source of authority to conduct
10 this hearing? What source of authority did you follow
11 to conduct secret meetings to plot, plan, and execute
12 this investigation? And all you have to do is read the
13 investigation. Some of the key players in here, they
14 say that they met, they worked it out, they figured out
15 what they were going to do, and then they went home and
16 they wrote memos for their complaint. Wonderful.

17 What is the source of authority to prevent me
18 from cross -- cross-examining, questioning the
19 evidence, bringing witnesses? In a sense you're
20 violating my due process rights. What charter chapter
21 or source of authority allows you to all sit in
22 judgment of me? I can't find it in our charter. I
23 cannot find in our charter where any of the
24 councilmembers can sit in judgment of me.

25 So, Mr. Mayor, by organizing this, you've put

1 them all at risk. You deny me of my basic rights,
2 granted to me like any other citizen of this country
3 and noncitizens, and that's guaranteed by the
4 Constitution of the United States. I swore down here
5 to uphold the Constitution of the State of California
6 and the U.S. Constitution, and I've done it. My crime
7 so far is I've been doing my job.

8 FEMALE SPEAKER: Yes.

9 COUNCILMEMBER SOUBIROUS: This is nothing more
10 than a political witch hunt orchestrated by our mayor
11 in collusion with willing staff, all while spending
12 taxpayer money to achieve your agenda, sir. You want
13 subservient councilmembers who will follow lockstep
14 with you on every issue. I'm not going to be one of
15 those. You are not Chicago's Mayor Daley. You are
16 Mr. Rusty Bailey. You are not the legislative or
17 executive leader of our city. The city charter gives
18 you no such power. You are the ceremonial head paid
19 full time to attend ceremonies and functions to
20 represent the city, since us councilmembers are listed
21 as part-timers.

22 I am truly disappointed in you, sir, in that
23 you would sanction such as a process. And you are
24 acting like a self-righteous person, who has stated to
25 the people in our community, and I've heard it come

1 back to me, that you are out to punish the wrongdoers.
2 Punish the wrongdoers, what gives you such right if
3 you've said that? Are you playing judge? And have you
4 convened a jury to convict me even though the evidence
5 obtained through the course of this investigation shows
6 otherwise?

7 As mayor of this city, the power and the role
8 you have is listed as ceremonial head. You moderate
9 the meetings. You do not run them. It's the council's
10 meeting. It's in the charter. I've read it over and
11 over. You have the privilege of voting on an issue to
12 break a tie vote should a member be unable to vote.
13 You also have veto power, but you can be overridden.
14 That's it, ceremonial head. This is a city council,
15 city manager form of government. That's what our
16 charter says.

17 The council sits as the policymaker. It is
18 our meeting. It is our vote that grants money for you
19 and for programs that we allow to be financed, period.
20 This is what is listed in the charter. Last I checked
21 Riverside was in the United States. It's not its own
22 island where the rules can be made up by a dictator --
23 dictator mayor. Excuse me. This is not a monarchy.
24 You have abused your position, sir.

25 You are exacting revenge against those who do

1 not share your vision, your vision to cause social
2 engineering like street cars, bike lanes, et cetera.
3 These all may be fine ideas to explore and I don't mind
4 exploring them, but don't shove it down our throats.
5 You have told me to stop campaigning and start
6 governing. I've heard that from others as well.

7 Well, sir, I've proposed over a half dozen
8 new ideas and plans that help make Riverside a more
9 livable place. Many of these plans and proposals have
10 already been voted upon by this council and are now
11 policy. I've only been here seven months. I've done
12 quite a lot to bring the people's voice and desires to
13 city hall.

14 I know that you are actively recruiting
15 residents of Ward 3 to run against me. I hear the
16 talk. You have used taxpayer dollars to fund your
17 desire to remove me from this seat. You have been the
18 driving force to push this investigation from the
19 start. Your fingerprints are all -- are all over this
20 mess. Instead of being a uniter, you become a divider.
21 Divide and conquer. Use city staff, city resources,
22 public funds to accomplish your goal. I have printed
23 proof, sir, that you've recruited --

24 Please pass this down to our mayor.

25 -- that you have recruited people or starting

1 to, to run against me. Actually you did it from the
2 council dais one night.

3 FEMALE SPEAKER: Oh, my God. Wow.

4 COUNCILMEMBER SOUBIROUS: You replied to a
5 text message sent to you by a Ward 3 resident seated at
6 the dais that council just had voted on a nonemergency
7 ambulance applicant. Sir, you are killing my ability
8 to rightfully hold city staff accountable, which is my
9 obligation as a policymaker and as a city
10 councilmember. You have failed the people of the city.
11 You have failed to follow the city charter, our ethics
12 and conduct code, our rules of order and business.

13 You have been played by highly paid
14 bureaucrats, you really have, who have a lust for power
15 and money. They have played you, and you fell into
16 your trap. You are indebted to them and you are their
17 slave. You've sold yourself to them. They will stop
18 at nothing to block anyone who stands up to their wants
19 and desires. They do not answer to the people. We do.

20 Our city staff, they do not answer to you. I
21 answer to you, but they don't have to answer to you.
22 If they don't serve you right, I take the heat. And
23 it's up to me to decide whether or not we take action
24 on them. How do you think our chief police -- chief of
25 police gets away with threatening a councilmember in

1 writing on an email that I did not solicit, or
2 threatening a member of the public, telling him he
3 better grow male parts before he speaks about against
4 his department.

5 Give me a break. Where was your outrage,
6 Mr. Mayor, when this occurred? Nothing to prove or
7 investigate, he admitted to one, and the other was sent
8 by email. Just where was your outrage, Mr. Bailey?
9 You say you defend the city against those who would
10 harm it. This does not harm our city's reputation, the
11 chief of police acting like a rogue cop or worse,
12 almost like a street thug with no sanctions? This is
13 wrong.

14 FEMALE SPEAKER: Right.

15 COUNCILMEMBER SOUBIROUS: I understand he
16 apologized to his troops. I didn't hear an apology.
17 He didn't apologize to you. Maybe that's why you felt
18 so empowered to follow through with his threat that was
19 against me, it's politically unwise for you to declare
20 war on your cops, is what the chief wrote to me. Well,
21 Mr. Bailey, he followed through with that threat.

22 And where were you, Mr. City Manager,
23 Mr. Scott Barber, the chief's boss? Where were you?
24 You were busy having meetings with the chief and
25 plotting your revenge and isolating himself from

1 possible job action by setting the stage for a lawsuit
2 by you and others to walk out the door with a golden
3 parachute and a hefty settlement should the council
4 turn on you. If you look up hostile work environment,
5 it usually says to set up for a lawsuit. And the mayor
6 was right there helping you both to do it, conspiracy.
7 You orchestrated a wonderful plan, secret meetings,
8 closed sessions all in violation of the State's Brown
9 Act.

10 Then something happened that you all didn't
11 plan for, that silly little councilmember being
12 investigated behind closed doors all out of the public
13 view, he made a public statement that he was being
14 investigated. Suddenly the secret meetings slowed
15 down, the reports began to see the light of day, and
16 the people investigating the investigation became
17 known.

18 I was told by our mayor pro tem and our city
19 mayor outside a closed session that I was removed from,
20 you are being charged by four people for violating
21 charter Chapter 407, thereby creating a hostile work
22 environment. And I said, hostile work environment? I
23 work for the Highway Patrol. I said, is this sexual
24 harassment? Oh, no, no, not at all. No, no, no. This
25 is -- this has to do with 407.

1 Really? So am I going to get anything in
2 writing? Nope. Am I going to know who my accusers
3 are? No. They're covered under the Whistleblower
4 Protection Act. That's what I was told. And I said,
5 well, Whistleblower Protection Act, that's for people
6 involved in -- I guess I know more than they know about
7 that, because --

8 FEMALE SPEAKER: Yeah.

9 COUNCILMEMBER SOUBIROUS: -- that -- they
10 don't have anonymity. You can look it up. I was also
11 told I would never see a copy of the report. About
12 three weeks later I asked the now no longer here city
13 attorney, I said, so if I was outside that closed
14 session, am I allowed to talk about this? Well, yeah,
15 that's your obligation -- or that's your right to do
16 so. I said, well, okay. So tell me where this
17 whistleblower thing comes in. I can't find it anywhere
18 where it applies.

19 He said, I never used that phraseology. I
20 said, well, our mayor and our mayor pro tem did. He
21 said, well, take it up with them. I never told them.
22 I said, am I ever going to get a copy of this report?
23 Nope. Am I ever going to know who filed this against
24 me, these four people? Nope. They will be protected
25 so that you can't retaliate against them.

1 What happened? I get a copy of the report,
2 and it's not four, it's two. Never, never ever I was
3 told, will never ever -- well, Neverland came I guess,
4 because here we are. So if we had to keep this behind
5 closed doors because it was so private that I would
6 never ever, ever, ever, never ever get to know who and
7 have a copy of the report, how did it become public?
8 And if it could be made public, then why did we do this
9 behind closed doors? You can't have it both ways. It
10 doesn't work.

11 Even our former city attorney confirmed this
12 all to me and said it would never see the -- be -- see
13 the light of day, and now it saw the light of day. You
14 know, my job as a councilmember is to provide
15 legislative oversight and be an advocate for my
16 constituents regarding problems or issues that come up
17 or that the residents encounter. I am to be a problem
18 solver and a policymaker.

19 I have a duty and a responsibility to do the
20 very best I can for the people living in my ward and
21 for the people working, living, and investing in the
22 city. I swore to protect the U.S. and State
23 Constitution. I've honored that oath, and I've done my
24 job.

25 It's a lot easier for people to attack the

1 messenger than take on somebody that over steps their
2 bounds. In no way, shape, or form was I talking to
3 Mr. Smith as Sergeant Brian Smith. He was union
4 President Smith. And by the way, they backed me up and
5 endorsed me a year earlier for my run for supervisor,
6 District 1. As a matter of fact, our chief of police
7 wrote me a check, wanted to be the first one to write
8 me a \$500 check.

9 And thank you, chief, I appreciate that for
10 my run for supervisor.

11 What happened? What happened, I was elected
12 to city councilmember by the people in Ward 3. And I
13 take my job seriously. And I'm not going to swerve
14 from that oath that I swore to uphold and -- and -- and
15 hold true. This is nothing but retaliation against me
16 by our chief of police, like I said, who made up his --
17 who made his good his -- his threat.

18 And I'd add one more thing, to quote Chief
19 Vicino, the bread and butter of police departments used
20 to be catching bad guys, prosecuting bad guys, and
21 putting them in jail. Now we're asked to do things
22 that have more of a social aura about them, trying to
23 get homeless who want help, long-term help, and making
24 neighborhoods more tolerable and livable to the
25 residents. Wow.

1 Yeah, I'm guilty as charged on that one. I'm
2 guilty as charged on doing the best job I can for each
3 one of you in the City of Riverside. I am not going to
4 be deterred by this. I don't care how hard that our
5 mayor or any other members of this council, if they do,
6 or anybody else, it's their right to put people against
7 me to run; that's fine. That's our democratic process.
8 That's great. Don't use the city's money and resources
9 to do it. That's a crime.

10 And don't violate the Brown Act by having
11 closed-door sessions on something that should have been
12 out in the open and in front of the public. Our city
13 charter says so. It says, at all cases, at all times
14 err on the side of openness and transparency.

15 Mr. Mayor, do you recall after the third
16 closed session of deliberating about my guilt or
17 innocence, you said, are you still for openness and
18 transparency? And I said, absolutely. And you said,
19 then you won't mind having the outcome of the
20 investigation made public. I said, I welcome it. What
21 is it? Oh, I -- I can't tell you. You have to wait
22 until we announce it at a meeting. I was never told
23 there was going to be a hearing, a trial, not told that
24 at all.

25 I started hearing it, and then I read it in

1 the -- in the agenda item. As a councilmember, I've
2 got to tell you all, I'm usually the last one to find
3 out things. Staff isn't really over the top at, you
4 know, giving us information on things, because it's,
5 you know, feed them what they need to know. So I'm
6 working hard to improve that.

7 When I told Mr. Smith that there was seven
8 councilmembers that were very united against this
9 panhandler issue, I heard it from our city manager.
10 When he talked about that security guard and park idea
11 that I did not float and did not like the idea, because
12 security guards in parks aren't going to take care of
13 the panhandlers on 14th Street off-ramp. You know, it
14 might be a park some day for panhandlers. I don't
15 know, it's getting there. But the bottom line is, I
16 heard it from him. And I told him, Mr. Smith, I said,
17 they're all united. They want this resolved.

18 So anyway, again thank you all for coming
19 out. I'll be happy to answer any questions. I will be
20 on my personal website making the entire investigation
21 as accessible as possible. The Press Enterprise put
22 the first portion of it online and in the paper to find
23 out where to get it. And I want to make the rest of it
24 that I received later available to all of you. I am an
25 open book. I will answer any of your questions.

1 The cell phone that I have listed on the
2 city's website and on my Facebook page and everywhere
3 else, that's my personal cell phone, it's been my
4 personal cell phone for years. When you call me,
5 whether it's Sunday night, Saturday, it doesn't matter,
6 I answer that phone, I answer your texts, I answer your
7 email. I work for you.

8 And as I pledged on everybody's doorstep when
9 I was campaigning, once I'm elected, I don't work for
10 city hall; I work for you and everybody in the ward. I
11 have kept that promise, and I will continue to keep
12 that promise. Thank you very much.

13 MAYOR BAILEY: As you mentioned, I had no vote
14 in this matter nor any closed-session matters. That
15 was the will of the council to conduct closed sessions,
16 to vote in the closed session, and to bring this to a
17 public hearing. And it was a unanimous vote to bring
18 this to a public hearing for transparency purposes. So
19 as -- as you so eloquently quoted from the charter, the
20 mayor presides over the meeting and does not have a
21 formal policymaking vote.

22 I -- I can't vote today unless there is a tie
23 and to break a tie. And -- and I did not vote on any
24 of the matters bringing this to fruition. The mayor
25 pro tem signed the contract with the -- the

1 investigator. And so my hand in -- in -- was -- was
2 not, as you mentioned, pushing this by -- by any
3 regard, other than responding to a hostile work
4 environment complaint and a charter violation from our
5 number one employee, the city manager, via the chain of
6 command that he has, the chief of police and a police
7 officer.

8 And so our employees asked for the council's
9 help, through the mayor and the mayor pro tem, and we
10 are going through this duty to investigate and
11 listening to the investigator today and to -- to you.
12 And now we will listen to public comment and the
13 council following that. We have 21 speaker cards on
14 this item, beginning with --

15 COUNCILMEMBER MELENDREZ: Mayor -- mayor, I
16 believe we have a comment. I don't know if
17 Councilmember Davis would like to speak before we go to
18 the community. I also have a comment that -- that --
19 that I would like to make before we go --

20 MAYOR BAILEY: As is common --

21 COUNCILMEMBER MELENDREZ: -- to the public.

22 MAYOR BAILEY: -- practice, we'll let the
23 public comment first, and then the council will follow
24 that --

25 COUNCILMEMBER MELENDREZ: Well -- well, I

1 think --

2 MAYOR BAILEY: -- public comment so that we
3 can --

4 COUNCILMEMBER MELENDREZ: I think the
5 comments --

6 MAYOR BAILEY: -- include --

7 COUNCILMEMBER MELENDREZ: -- are important,
8 that's why I'm -- I'm requesting that now.

9 MAYOR BAILEY: The -- the common practice has
10 been for the -- we have 21 people that want to comment
11 on this item. And -- and I think it's, again, for --
12 for us to listen and to -- to be truly open and
13 transparent to -- to the people that would like to
14 speak. So --

15 COUNCILMEMBER MELENDREZ: In -- in the past
16 what we've done is that if the council had any
17 questions, we could ask them. And then it goes to
18 the -- to the community. After the community, then it
19 comes back to us.

20 MAYOR BAILEY: So you have questions of --

21 COUNCILMEMBER MELENDREZ: Well, I have
22 questions --

23 MAYOR BAILEY: The process.

24 COUNCILMEMBER MELENDREZ: -- with regards to
25 the process.

1 MAYOR BAILEY: Okay.

2 COUNCILMEMBER MELENDREZ: And I believe
3 Councilmember Davis is first, unless he would allow me
4 to go first.

5 MAYOR BAILEY: Okay. Questions of the
6 process, Councilman Davis followed by Councilman
7 Melendrez.

8 COUNCILMEMBER DAVIS: Earlier the city's hired
9 gun here quoted some statements that in the government
10 code, it gives you the authority to conduct this
11 hearing. Please quote me that specific section, sir.

12 MR. MEYERHOFF: Mr. Davis, what I said is that
13 under the government code, the city has the obligation
14 to conduct a harassment investigation. As for the
15 authority to conduct this proceeding, there's a line of
16 California cases, which recognize a council's ability
17 to hold this type of a meeting, even in the absence of
18 a policy that allows for it. Those cases include
19 Westfall versus City of Crescent City. And I can give
20 you the cite if you'd like for these cases.

21 COUNCILMEMBER DAVIS: Well, we do have a
22 process, sir. That process is set and it is in part of
23 our charter as voted by the people of Riverside. So in
24 fact, you are wrong. That does not have anything to do
25 with our charter, which supercedes. So a matter of --

1 if we continue with this, I -- I wonder how that would
2 hold up in court, your statements. So you, in fact,
3 are incorrect.

4 Our charter is set up. It is set up very
5 specifically as voted by the people of Riverside. We
6 have a process, and that process was overruled by our
7 mayor and our mayor pro tem knowingly doing so. Your
8 advice to them is bad advice.

9 FEMALE SPEAKER: Yes.

10 COUNCILMEMBER DAVIS: So therefore anything
11 that comes forward to us, then we can just simply say,
12 we're going to rely on what this fellow said, and we're
13 okay. If I'm not mistaken, BB&K gave that same
14 instructions to Bell, it's okay, and they're being
15 sued. So you may not agree with me, and we're going to
16 disagree; but I'm going by protecting the City of
17 Riverside, the integrity of our charter, and our
18 process. You are an outsider. You are not a citizen
19 of Riverside. You really don't have any teeth in this
20 thing other than the hired gun. Is that my
21 understanding?

22 MR. MEYERHOFF: I was asked a question,
23 Mr. Davis.

24 COUNCILMEMBER DAVIS: And so then answer that.

25 MR. MEYERHOFF: And I was giving you the cases

that you asked for. And --

COUNCILMEMBER DAVIS: Well, I'm sure --

MR. MEYERHOFF: -- I can --

COUNCILMEMBER DAVIS: -- that I can --

MAYOR BAILEY: Please --

COUNCILMEMBER DAVIS: -- have another --

MAYOR BAILEY: Please let --

COUNCILMEMBER DAVIS: -- couple attorneys --

MAYOR BAILEY: -- him respond.

COUNCILMEMBER DAVIS: -- come up here. I'm
not finished, sir.

MR. MEYERHOFF: Okay. I -- I thought you
asked me a question.

COUNCILMEMBER DAVIS: Okay.

MR. MEYERHOFF: So I was just responding.

COUNCILMEMBER DAVIS: I'm sure we can have
another several attorneys come up here and dispute
exactly what you're saying. That's what this law is
about. Our charter is what we are here to uphold, not
your looking for cases to try to determine or deter
from what the mayor and the mayor pro tem has
established. And yes, they are directing that. The
mayor did not tell you the truth.

FEMALE SPEAKER: Yes.

COUNCILMEMBER DAVIS: That is a complete

1 fabrication. That is a fact. Bottom line is here, we
2 have an established charter process, it was not
3 followed and has not been followed. You have
4 bastardized this situation for our city, and I am
5 disgusted. I'm here to protect the City of Riverside.
6 I could care less about Los Angeles or any other city.

7 So you can use the -- the -- the government
8 code and come up with these obscure things, you're
9 going to quote some things, and that's fine, go ahead
10 and quote them; because I'm pretty sure we can get
11 other attorneys, you know, when the jury of our peers
12 look at it, say wait a minute here, how does this
13 really apply. I am not a city of this -- employee of
14 this city and neither is he and neither are any of
15 these people up here except for these three sitting up
16 there, the city manager, city attorney, city clerk.

17 I am here to protect Riverside, not let some
18 outsider take our codes and bastardize it for their own
19 purposes on behalf of the mayor and the mayor pro tem
20 to exact revenge. To exact -- as I said in my federal
21 trial, they will retaliate, and they are.

22 FEMALE SPEAKER: Yes.

23 COUNCILMEMBER DAVIS: But this isn't about me.
24 This is about what's right and what's wrong. So please
25 quote us. I'm very interested in it.

1 MR. MEYERHOFF: And just for clarification,
2 Mr. Davis, I have no vote or say in how the council
3 decides to handle this action. I don't vote on whether
4 there's a meeting like this or not, but as for the
5 cases, which is what you asked for, Westfall versus
6 City of Crescent City; Rodriguez versus Jurupa Unified
7 School District; and Binkley versus City of Los -- of
8 Long Beach are three of the cases that allow councils
9 to conduct hearings such as this.

10 COUNCILMEMBER DAVIS: Right. And do those
11 cities that -- or those processes have a charter with a
12 defined process for these sort of complaints?

13 MR. MEYERHOFF: The city of Westfall case
14 makes clear that there's no violation even if there is
15 no censure policy within the city.

16 COUNCILMEMBER DAVIS: We have a censure
17 policy. We have a policy established. We have rules
18 that have been established and approved by this city
19 council and past city councils on the rules of order
20 and operation in these matters 100 percent. And we
21 only follow them when it's convenient to others.
22 That's interesting.

23 Okay. Second clarity, due process issues.

24 Madam city clerk, please explain to me the
25 due process that my colleague has been afforded.

1 And -- and do you see any issues with that whatsoever?
2 I'm very concerned in this action, in this particular
3 case, that because of the due process issues that have
4 not been afforded that we have -- we have committed
5 such considerable liability on the residents that we
6 are the -- the stewards of their taxpayer -- tax
7 dollars, I don't get where we're authorized to do such
8 a thing.

9 Can you explain to me this due process and
10 that you believe that under your legal authority or
11 knowledge that -- that we're okay here?

12 MS. TALLEY: Councilmember -- Councilmember
13 Davis, I am aware that in hearings such as this, due
14 process protections do apply, but they are -- those due
15 process protections are defined by state law and by
16 reference to the cases, California appellate court
17 cases, both at the Court of Appeal and then at the
18 Supreme Court that interpret the due process clauses of
19 both the state and the federal Constitutions.

20 I know that our independent counsel has done
21 the research on the due process that's afforded in
22 these hearings. He has shared that information with me
23 and the authority. And I believe that the cases that
24 he relies on and the due process protections that are
25 set forth in those cases are accurate. I don't have

1 those in front of me.

2 I'm certain that Mr. Meyerhoff has the due
3 process parameters that apply to this. And it's my
4 understanding that based upon the law that those
5 parameters that are applied in this proceeding today
6 are appropriate.

7 COUNCILMEMBER DAVIS: So then on behalf of the
8 citizens of Riverside, by saying you have no right of
9 cross-examination, you cannot have an interview with
10 any of the witnesses to ask expanding or additional
11 questions that were not covered by Mr. Gumpert or
12 provide evidence or produce witnesses. You -- you
13 don't have a problem with that? You don't think that
14 the law, under our constitutional right for my
15 colleague, has a -- is -- is problematic?

16 MS. TALLEY: I can tell you that the -- the
17 level of due process that is afforded is dependent in
18 part on the nature of the proceedings so that the --
19 for example, the level of due process that is typically
20 afforded -- afforded in hearings such as the hearing
21 that is taking place this afternoon are different from
22 the due process protections that are afforded in a
23 criminal matter.

24 COUNCILMEMBER DAVIS: But we have --

25 MS. TALLEY: And --

1 COUNCILMEMBER DAVIS: -- charged my colleague
2 with a crime. Charter Section 407 is very clear, under
3 1401, it is a misdemeanor. And therefore under 1400,
4 it says, you shall, which is mandatory. We charged him
5 with a crime. There is no option to have this
6 discussion under our charter. He has been charged with
7 a crime, which fairly clearly states that upon
8 conviction he will receive six months in jail or a
9 \$1,000 fine or both.

10 FEMALE SPEAKER: Yes.

11 COUNCILMEMBER DAVIS: Therefore, he does have
12 due process rights, and this particular hearing is
13 outside the scope of not even our charter, but also our
14 code of ethics and so forth. And so why are we
15 deviating from that? Is there something about us, that
16 because we have been charged with a crime by the mayor,
17 mayor pro tem, and our city manager, and our chief of
18 police; we don't get due process because for some
19 reason we're elected and sometimes we're employees and
20 sometimes we're not?

21 FEMALE SPEAKER: Yeah.

22 COUNCILMEMBER DAVIS: But the point of the
23 matter is, my job is to protect the -- the steward of
24 the citizens' money. He did not get and has not been
25 afforded his due process under the charge of a crime,

1 which is mandated as a misdemeanor through our charter.

2 Believe me, through this process on my own, I'm very
3 familiar with the charter. And as anyone else, I can
4 quote it section by section and its application. So
5 can you answer that for me?

6 MS. TALLEY: Well, the proceeding before --
7 that's taking place this afternoon is not a criminal
8 proceeding. I do -- am familiar with the provision in
9 your charter that you're referring to, but the fact
10 that the charter states that the violation of a charter
11 provision constitutes a misdemeanor does not convert
12 this process into a criminal proceeding. The only
13 office that can charge and prosecute misdemeanor crime,
14 my understanding in the county -- in the County of
15 Riverside is the Riverside district attorney's office.

16 So if there were a criminal proceeding to be
17 held, the charge would be filed by and prosecuted by
18 the district attorney's office. This is -- this matter
19 is not in the nature of a criminal proceeding, so the
20 due process protections that attach to a criminal
21 proceeding do not attach to this proceeding.

22 COUNCILMEMBER DAVIS: So then why would the
23 district attorney tell me differently? Why would the
24 district attorney tell me that -- that the city
25 attorney has the authority to prosecute charter and

1 municipal code violations?

2 MS. TALLEY: I --

3 COUNCILMEMBER DAVIS: Misdemeanor only or
4 infractions. And we do do that.

5 MS. TALLEY: Yes.

6 COUNCILMEMBER DAVIS: I think we have quite a
7 few right now. However, that then now makes it no
8 different.

9 MS. TALLEY: No.

10 COUNCILMEMBER DAVIS: Where you as the
11 appointed now become the prosecutor, and you're sitting
12 on here on this dais providing information. This
13 proceeding is -- we cannot sit in judgment of my
14 colleague. We are not authorized to do that anywhere
15 in the charter or state law. It does not provide for
16 that.

17 MS. TALLEY: Now --

18 COUNCILMEMBER DAVIS: Who sits in judgment of
19 us is the people in Ward 3, that is the ones who sit in
20 judgment. We are only here to either uphold or deny an
21 appeal. That's in our charter. It's in our code of
22 ethics and conduct. However, because we -- we -- we're
23 going to again bastardize what we're supposed to be
24 doing here, not protecting the city, and in the process
25 allow the mayor and mayor pro tem, the former, my -- my

1 apologies to the present, to do that they have done.

2 And they have done it.

3 We all have evidence, and it will be
4 produced, but we can't produce evidence here.

5 MS. TALLEY: Councilman Davis, I -- I
6 apologize. I did misspeak. I was speaking -- when I
7 made reference to misdemeanors, I was speaking of state
8 law misdemeanors. You are correct and the district
9 attorney is correct that a city attorney, under state
10 law, has the authority to prosecute misdemeanors when
11 the misdemeanor is a violation of city law, of the
12 municipal code. So you are correct in that respect.
13 However, even with that authority, the city attorney
14 has to bring a charge in criminal courts.

15 COUNCILMEMBER DAVIS: Yes.

16 MS. TALLEY: And so this is not what has
17 happened in this particular case.

18 COUNCILMEMBER DAVIS: But this is a pretrial,
19 just as any others, he is facing charges, facing
20 charges of violation of 407. The investigator, even
21 though he unfounded it, he is still -- we -- apparently
22 we haven't voted, which it would be an unlawful vote,
23 we cannot sit in judgment of my colleague. Nowhere
24 does it give any authority to do so, nowhere. So this
25 is the same as going through a pretrial hearing, right?

1 Which means that he has right of due process, he has
2 right to cross-examine, he has a right to have access
3 to all investigative materials to prepare for his
4 defense so that maybe it won't get to trial because of
5 either technical difficulties or whatever.

6 The fact of the matter is we are here today.
7 We are outside of our charter, state law, there's
8 nothing that says we can sit in judgment of my
9 colleague or any of -- whether it be Councilman Adams
10 or Councilman Melendrez, we do not sit in judgment of
11 them. We just went through that with Councilman Adams.
12 We don't sit in judgment. It is not our job to judge
13 one and other.

14 And for political reasons, that's why we
15 changed it in 2011, so it did not take on that persona,
16 but here we are doing it. So I'm -- I'm -- I know I'm
17 grandstanding, and my apologies. I am here to protect
18 the charter, to protect the process for the City of
19 Riverside beyond that so that -- I -- I must profess,
20 and -- and we have already deliberated this folks,
21 behind closed doors to conclusion, each one of us took
22 a vote of exactly how we felt after we deliberated on
23 charter Section 407. We are in violation of the Brown
24 Act. We have no authority to do what we did. It did
25 occur.

1 And did the mayor influence? Oh, you better
2 believe it. Was he involved with it? You better
3 believe it. My colleagues wanted to charge me, do it,
4 because we broke the law. I was a part of it
5 unknowingly and later was advised by another municipal
6 attorney that what you did was wrong and it is an
7 illegal violation of the Brown Act. It should have
8 been discussed in public, and you should not ever have
9 taken an individual poll vote by name; and we did. It
10 happened.

11 If I'm not mistaken, Mr. Gumpert, you were
12 there and so was this other fellow here from -- from --
13 and so was the city clerk. It's on tape. It is a
14 violation of the Brown Act. I broke the law and so did
15 all my colleagues with the exception of Councilman
16 Soubirous. So I will submit myself to that process
17 because we did do it.

18 And outside of the discussion on the
19 harassment case, which went away real quick, we
20 specifically deliberated the exact case that you just
21 now heard, item by item, line by line. And oh, yeah,
22 did we do it? You better believe we did it. And I
23 voted. I made a vote. I was asked to make a vote, so
24 was every other one of my colleagues here. Yeah. And
25 they're going to -- and they're going to deny it? I

1 want to hear them deny it, because it happened
2 absolutely.

3 Our mayor, oh, you better believe he was
4 involved in the direct influence of what we're doing
5 here today. Oh, he can't do this. So if I'm in
6 violation of something, which I'm used to being charged
7 with stuff by now, because people don't like what I do,
8 because I'm going to tell you, if I do something wrong,
9 we're going to -- we're going to deal with it and I'm
10 going to own it. I'm owning it, folks. I broke the
11 law. Unknowingly, but I did it.

12 So let's just -- here it is, secondly, where
13 is the mayor's legal authority to set this -- to be
14 involved directly, to direct our city manager and
15 staff, including the city attorney's office, on how
16 these proceedings will be conducted? Where is that
17 legal authority? This is not a mayoral issue. This is
18 a council issue. We run this city. The mayor does
19 not.

20 Can you please provide me the legal authority
21 under any portions of our charter that gives the mayor
22 any legal authority to involve himself in the manner in
23 which he has -- in the manner in which he has in
24 directing staff to do anything? I can't find it.

25 MS. TALLEY: Councilmember Davis, I'm not

1 familiar with any procedure in the -- or any provision
2 in the city charter that speaks to any member of
3 council or the mayor's authority to set process. It's
4 my understanding that the process --

5 COUNCILMEMBER DAVIS: Uh-huh.

6 MS. TALLEY: -- that was established for this
7 hearing is an informal process, not that it's -- it's
8 not cast in writing in any particular city document.
9 Hearings or proceedings of this nature under state law,
10 there is no set practice under state law as well. So
11 when the city --

12 COUNCILMEMBER DAVIS: Right.

13 MS. TALLEY: -- conducts a hearing of this
14 nature, the process is developed prior to the hearing.
15 And I have to tell you that I am not aware of who in
16 the city developed the particular process for this
17 meeting before it was set.

18 COUNCILMEMBER DAVIS: Well, I am. I have the
19 -- the letter from this fellow right here, what's his
20 name, Meyerhoff, signed by Rusty William R. Bailey, the
21 Third, the mayor, establishing just that. Would you
22 like to see it? Have you ever seen it? I have it.
23 It's also signed by Steven K. Adams and James Perry.

24 I never took a vote as a member of the
25 council to establish this. What gave them the

1 authority to do so? The problem is that here it is,
2 you know, the -- the mayor's role is -- the mayor's
3 role is very clear, that he is ceremonial. He has
4 taken it upon himself to seize the power. He's in
5 violation of 300, 406, and 405 of the charter.

6 FEMALE SPEAKER: Yep.

7 COUNCILMEMBER DAVIS: That is very clear and
8 unequivocal. But we're -- we're here to protect the
9 integrity of the charter. This report was, and it
10 states, prepared by and signed by William R. Bailey,
11 the Third, mayor; Steven K. Adams, mayor pro tem; and
12 James Perry, incoming mayor pro tem.

13 MS. TALLEY: Councilmember Davis, I -- I will
14 refer to the -- the rules of the city council that the
15 mayor read previously, and in those rules the mayor is
16 the presiding officer.

17 COUNCILMEMBER DAVIS: Presiding.

18 MS. TALLEY: Right, presiding officer. And as
19 the presiding officer, the mayor is responsible for the
20 order of business of --

21 COUNCILMEMBER DAVIS: Correct.

22 MS. TALLEY: -- the council. Right.

23 COUNCILMEMBER DAVIS: Right.

24 MS. TALLEY: So in this particular matter, if
25 the mayor established the order of proceedings in this

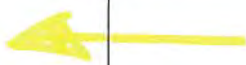
1 hearing, and as I indicated --

2 COUNCILMEMBER DAVIS: Well, our --

3 MS. TALLEY: -- before --

4 COUNCILMEMBER DAVIS: -- charter makes it very
5 clear, madam, is that if, in fact, it is a conflict
6 with the charter, the charter supercedes, and therefore
7 that would be a conflict of the charter.

8 MAYOR BAILEY: Well, the council directed this
9 meeting to occur and set the date and --

10 COUNCILMEMBER DAVIS: Not the terms. 

11 MAYOR BAILEY: -- (indiscernible). The
12 procedures of bringing --

13 COUNCILMEMBER DAVIS: Not the terms.

14 MAYOR BAILEY: -- matters before city council
15 are on page --

16 COUNCILMEMBER DAVIS: Sir --

17 MAYOR BAILEY: -- 17.

18 COUNCILMEMBER DAVIS: -- you're out of order
19 and you're interfering. Please let me finish my
20 statements. Thank you very much.

21 Beyond that I need to know that the legal
22 authority of Councilman Adams to sign and bind the City
23 of Riverside in a contract prior to the council hearing
24 it and appropriating funds without full authority of
25 the council under the manager's authority; I cannot

1 find anywhere in the law where that's legal, neither
2 can my own counsel, on this matter. The matter of the
3 fact is, and I will restate that, please cite me the
4 legality of the mayor pro tem Steve Adams to
5 appropriate \$49,000 four times, not just once, four
6 times, prior to the council hearing the -- the --
7 the -- the -- the complaint in closed session, under
8 the manager's authority.

9 So he complained and now he's financing and
10 funding under public monies his own complaint without
11 the authority and appropriations in public view for the
12 City of Riverside. I need to protect the stewards of
13 the -- the citizens. We got bound to a contract before
14 we even heard it. Where is the legal authority for
15 that?

16 MAYOR BAILEY: There was a closed session that
17 the council authorized hiring an outside investigator.
18 And it -- it was underneath the city manager's
19 authority in terms of fiduciary responsibility to do
20 just that.

21 COUNCILMEMBER DAVIS: I -- I heard what the
22 mayor --

23 MS. TALLEY: I --

24 COUNCILMEMBER DAVIS: -- said, thank you.

25 MS. TALLEY: I was going to tell you,

1 Councilmember Davis --

2 COUNCILMEMBER DAVIS: I know.

3 MS. TALLEY: -- here during the proceedings,
4 so unfortunately --

5 COUNCILMEMBER DAVIS: I know you got thrown in
6 this whole thing.

7 MS. TALLEY: -- I'm not --

8 COUNCILMEMBER DAVIS: I -- I apologize --

9 MS. TALLEY: -- in a position to tell you --

10 COUNCILMEMBER DAVIS: -- for that.

11 MS. TALLEY: -- how this came up, but --

12 COUNCILMEMBER DAVIS: Right.

13 MS. TALLEY: -- so I'm going to rely on the --

14 COUNCILMEMBER DAVIS: But the date of the
15 contract --

16 MS. TALLEY: -- representations.

17 COUNCILMEMBER DAVIS: -- signature, madam, is
18 prior to the -- the council hearing this particular
19 issue. Unless there was an unauthorized council
20 meeting under the Brown Act and he was given authority
21 in that process where all of the members of the council
22 present at that time had an outside meeting either
23 through an intermediary or otherwise to sign that
24 contract, which the contract's date is prior to the
25 council hearing it, I -- I don't know where the legal

1 authority is.

2 I don't even know where the legal authority
3 is even if the council did give authority under the
4 manager's authority of \$50,000 without doing it in
5 public -- in a -- in a public hearing on an
6 appropriations to do so. We have some serious issues
7 here of procedure and protecting the City of Riverside
8 from these type of things. So if we're going to have a
9 trial here, we need to make sure that the trial is fair
10 and is equally applied in the rules and regulations
11 that our past practices has been.

12 So other questions that I have is, you know,
13 that's a big spending authority. So we -- we -- we've
14 had some issues as a city that, well, since we're going
15 to have this, well let's have it and sometimes it has
16 to get a little worse before it gets a little better,
17 and I understand that. I am here for the citizens of
18 Ward 4, I report to them, as he reports to three and
19 this gentleman reports to five, and so on and so forth.

20 Beyond that my ultimate responsibility is to
21 all the taxpayers of the City of Riverside. And the
22 bottom line is, is that we're doing this, and for my
23 mayor to make the statements he did is outrageous. I
24 have physical evidence, emails from people he's been
25 emailing about this issue, about why he's involved, and

1 what he wants to do to us.

2 It's -- folks, don't be blindsided here. We
3 are here for the citizens of Riverside. And I think
4 all of us are here for the citizens of Riverside. It's
5 unfortunate that our good officers have to get involved
6 with this, it really is. I think they're fantastic.
7 And I know most all of them. But this is a political
8 process that we should not have drawn them into. And
9 I -- I will apologize to all of you. It's an
10 embarrassment to me and my city and -- and so forth.

11 Please understand it for what it is. We will
12 get beyond this, the city will become a better city for
13 this, but everybody has to be held accountable for
14 their actions in this process and processes that are
15 about to come. Thank you.

16 MAYOR BAILEY: Councilman Melendrez.

17 COUNCILMEMBER MELENDREZ: Thank you, mayor.
18 And my comments will be much more brief, perhaps a
19 little bit more calm as well, but I -- I am concerned
20 about how this whole thing has been handled and some of
21 the processes that have been used. The concern here is
22 that generally as a city, when you have a hostile work
23 environment claim or a complaint, it's one that's given
24 to a supervisor and then handled by our human relations
25 commission or committee or our department, excuse me,

1 human relations -- human resources department; and then
2 it's up to our city attorney to represent us as a city.
3 It does not get to the council.

4 Why that process was changed, you've heard a
5 lot of comments about this, I personally think that it
6 was the wrong way to go. I also believe that there was
7 questions about workplace -- going to employees and
8 inquiring or not quite inquiring -- inquiring about how
9 they -- what they should do and what they shouldn't do.
10 I think it was important for us to be made aware of
11 that and possibly refer to the code of ethics
12 complaint, so that the individuals in that process
13 would be able to address that.

14 Those are a couple of things that I think we
15 are entirely off on in terms of what's happened here.
16 I personally think that the matter could have been
17 resolved privately, should the city manager come to the
18 council and say, I have this issue, let's schedule an
19 employee evaluation of my skills to see if it's
20 accurate. Very simple. We could have done that in
21 closed session. We would have said, yes, you're doing
22 a great job; no, you're not doing a great job, this is
23 the area that we'd like to see improvements on.
24 Unfortunately that didn't happen.

25 And as a result, here we are. The ball

1 started coming in this direction and started broadening
2 and widening with the -- with the hostile work
3 environment, also the -- the noninterference provision
4 of 407, in addition to the -- the Brown Act. For
5 myself, I -- I -- I feel very awkward in this position
6 simply because I think this has been a comity of errors
7 to this point. It's been a very expensive one.

8 I also believe that as a result of a huge
9 lack of communication, that we're here. And it's truly
10 unfortunate. It's not one that I'm happy to be
11 involved in, nor am I happy for our city council and
12 mayor and management to be involved in this. It's one
13 that I believe that can be corrected, but I think this
14 has really gotten way out of hand, and I believe it was
15 unfair to -- to Councilmember Soubirous to get it to
16 this point.

17 I also -- I also believe it's very telling of
18 what's going on at city hall right now.

19 FEMALE SPEAKER: Yeah.

20 COUNCILMEMBER MELENDREZ: And I think we need
21 to sit down, add focus, and make this a city that I
22 think all of us want it to be, whether it be our staff,
23 whether our mayor, or city council. I think we really
24 need to focus on the future of our city, but also
25 increase our communication if we are going to be

1 successful. Again, I think that in this case we have
2 not gone about it well. And at this point, the -- I --
3 I think this is a great learning lesson for all of us,
4 I think, and also a point where we can start discussing
5 where we want to be in the next year or the next five
6 years.

7 With that, I'll terminate -- terminate my
8 comments, mayor.

9 MAYOR BAILEY: Councilman Adams.

10 COUNCILMEMBER ADAMS: Just a quick comment on
11 the process. It was my turn to be mayor pro tem. I
12 was contacted by the city attorney that a complaint was
13 coming forward and was told that by government code if
14 that complaint happened, we would have to take action.
15 We had a closed-session meeting. The council voted to
16 approve to hire an outside investigator to see if there
17 were any grounds for the complaint, and the city
18 manager advised what he was willing to pay.

19 There is, to my knowledge, just an
20 investigation to find out if there is any wrongdoing.
21 Nobody has been charged with anything. There was no
22 intent today to charge anybody with anything. And this
23 was to open it up. But as the mayor pro tem, each and
24 every one of us serves at that at a different time and
25 if they're brought -- and if it's brought to them when

1 it's their turn, they would have to do the same thing.

2 So it's not something I went out and looked
3 for, it came before me, and I followed the directions I
4 was given by legal counsel. And we took a vote with
5 the council before every step. So Mr. Davis was wrong
6 in that. It was approved before we signed any
7 contract, and it was approved that it would be within
8 the city manager's financial limits. And if he went
9 over the limits, he would have to come back and get
10 approval from the council.

11 So each of the members here with the
12 exception of Mr. Soubirous, I think Mr. Davis may have
13 been gone that evening, did vote unanimously. We did
14 on two different occasions. So that -- that's how we
15 got here. That's the process that was brought to me as
16 the mayor pro tem. And I'm following the directions
17 and the guidelines I was given. That's where we got
18 that.

19 MAYOR BAILEY: City attorney, can you address
20 the question from Councilman Melendrez about why HR did
21 not investigate?

22 MS. TALLEY: Yes, thank you, Mr. Mayor.

23 Councilmember Melendrez, in the normal
24 course, you are correct that when there is a complaint
25 of hostile work environment, it is the responsibility

1 of the human resources department to investigate these
2 claims. However, there are occasions when the human
3 resources department will seek the assistance of an
4 independent investigator. And there are a couple of
5 reasons why that might happen. And one of those
6 reasons is where there could be an apparent -- or an
7 appearance of a conflict.

8 And in this particular case, although I was
9 not here at the time that this happened, certainly if
10 there is a complaint of a hostile work environment by
11 the city manager, the human resources director works
12 for the city manager, and that person, that director
13 would be in the untenable position of having to
14 supervise an investigation relating to a complaint by
15 her boss against one of his.

16 And because of that situation, this would be
17 an appropriate case where an independent investigation
18 would have been conducted.

19 COUNCILMEMBER MELENDREZ: I -- I believe a
20 statement like that at the very beginning would have
21 been extremely helpful. Unfortunately that's not the
22 way we were provided the information. I certainly do
23 understand your explanation of things. I -- I -- I do
24 believe that in this case we are not in court, where I
25 believe the case should be heard, and -- and going in

1 that direction.

2 I don't believe it should have been one that
3 we were hearing here at city council. If there was a
4 hostile work environment, it's a matter that's
5 generally resolved outside of the -- the council arena.
6 You know, I -- I -- again, you know, we're -- we're in
7 this, it's a new, not even a new process, it's really
8 kind of an unexplored process, but I believe that at
9 this point, perhaps tonight or our next council
10 meeting, I will be making that recommendation to start
11 looking at processes that would take care of this
12 matter, because I believe that we've -- we've taken the
13 very wrong direction in this particular case.

14 It's not helped our city. It's been, for me,
15 frankly a bit embarrassing to -- to work through this.
16 And I -- I -- I believe that we need to set up certain
17 structure for our upper management, our city manager,
18 city clerk, and city attorney as well.

19 But thank you for that explanation.

20 MAYOR BAILEY: Now we'll go to public comment
21 beginning with --

22 One more question from Councilman Davis.

23 COUNCILMEMBER DAVIS: One more issue I forgot
24 to bring up. In the -- in the history of our charter
25 ethics complaints have been filed from August 30th of

1 2010 to March 15th, 2011, three 407 charter violations
2 have been filed by members of the public against one of
3 our councilmembers. And in all three of those cases,
4 we did not have an investigation of this sort. It went
5 through, in all three of those cases, went through the
6 adjudicating body, which means that we would have
7 accused -- or the person accused, that particular
8 member of the council, of a crime. 407 is a
9 misdemeanor, and it shall be handled as a misdemeanor.

10 It's very clear in the charter, shall, it is
11 mandatory, 1400, read it. Believe me, I know the
12 charter like the back of my hand. Through this process
13 on my own, I'm -- I'm pretty good at it, I'm not an
14 expert, but a lot of money later, you become a little
15 bit of an expert. So my question is, is I'm -- I'm
16 sorry for this deputy city -- or the city attorney to
17 be in this, if Mr. Gumpert would have investigated
18 this, why was this not turned over to the adjudicating
19 body as we normally have it through the process and let
20 them look at that evidence and then hear that
21 process -- hear it through that process and then if my
22 colleague decided to appeal whatever the results of
23 that, we came here and we are to sit on judgment of the
24 appeal and only the process and procedures that which
25 got them to this point?

1 Meaning that did they violate some procedure
2 of -- of rule that's been established and it did -- it
3 tainted the -- the -- the investigation or the -- the
4 hearing in any way and it had and could have had a
5 different outcome should they have that information.
6 It's very, very similar to an appeal process in civil
7 or -- or criminal court, yet we went from point A to
8 point Z. We didn't care what it said. We made up our
9 own rules as we went along.

10 So I mean, there's my question there is -- is
11 to, I don't know who made up these rules now and how we
12 got to this process, because our mayor says he didn't
13 do it. Councilman Adams says he was given direction by
14 our city attorney, which is interesting, he's not here
15 to defend himself or answer the questions. So the only
16 question -- I -- there's no way for anybody to even
17 address this. He quit. He walked away.

18 407 has been charged three separate times,
19 yet in those three separate times, we went a different
20 process. Why? It wasn't charged by the city manager,
21 who has power, authority. Where even if it's charged
22 by the city manager, we have a process set up, a
23 process, so that we don't end up in the place we are
24 today. That's why the system is broken, and that's why
25 I said it before, some of my colleagues agree, it must

1 be fixed immediately.

2 Because why? Folks out there in -- in TV
3 land and the audience here, you all are going to
4 eventually pay for it with your taxpayers money. So
5 you cannot violate anyone's due process and
6 constitutional laws. We have to protect your funds as
7 stewards, and we have to protect our Constitution so
8 that it isn't bastardized and we end up in these places
9 today.

10 MAYOR BAILEY: And, Councilman Davis, so what
11 was the question? There isn't?

12 FEMALE SPEAKER: (Indiscernible) question.

13 MAYOR BAILEY: Mr. Meyerhoff, could you
14 respond to that question? I think part of it is the
15 difference is the hostile work environment claim versus
16 just the charter violation.

17 MR. MEYERHOFF: Well, again, I wasn't involved
18 in the decision to -- to investigate it, so I don't
19 know how much of the information I have, but just to
20 reiterate, the moment that this was determined to go to
21 hearing, the issue was, how is the hearing conducted;
22 and the city looked to caselaw and California law and
23 what the cases say about holding these type of
24 proceedings, and it -- it provided that process. The
25 process is not included in the charter.

1 It doesn't conflict with the charter, because
2 the charter simply doesn't say how to conduct these
3 type of processes. So the city looked to California
4 caselaw to set up the procedures which are being
5 utilized here today. I don't know if that -- I don't
6 know if that answers your question, Mr. Davis. I
7 apologize, but --

8 COUNCILMEMBER DAVIS: I have the code of
9 ethics and conduct complaint process and procedures
10 right here, sir. I'm holding them.

11 MR. MEYERHOFF: I -- I believe that the
12 complaints were not under the code of ethics.

13 COUNCILMEMBER DAVIS: That's not relevant.
14 Any. It is not relevant, sir. Any, that's the whole
15 point I'm trying to make. We can't just say, oh, gee,
16 you know, it's the city manager making the complaint
17 and the city manager is better than this gentleman
18 sitting right here.

19 FEMALE SPEAKER: Yeah.

20 COUNCILMEMBER DAVIS: He is no better than
21 this gentleman in this case. He is a complainant, and
22 therefore we follow the process. It doesn't give him
23 another -- I get -- believe me I've been doing it
24 30 years in labor, I get the -- the harassment, but
25 once that is concluded, and it was very early on, that

1 it is unfounded, then we get to the 407. Here's the
2 process, the process was not followed. And to say that
3 you're going to use state law to do that is not
4 correct. It is wrong.

5 So I know you're going to disagree with me,
6 you're an attorney, so I'm not an attorney, you know,
7 but we can all lawyer up and find that one out.

8 FEMALE SPEAKER: Yep.

9 COUNCILMEMBER DAVIS: But do we want to do
10 that? Is that within the best interest of Riverside?
11 No, it is not. Please, everybody, follow the process
12 we have established.

13 MAYOR BAILEY: Public comment beginning with
14 Brian Smith followed by Aurelio Melendrez. Twenty-one
15 speaker cards today. Please once again, we're here to
16 listen and respect every individual that comes to the
17 podium, give them their three minutes.

18 SERGEANT SMITH: Okay. Brian Smith.
19 Obviously the president of the Police Officers'
20 Association and employee with the city for the last
21 17 years. A couple things come to mind, and I -- I
22 brought this up to several of you, but I'll start with
23 Mr. Gumpert's characterization of the report being
24 inconclusive, him not being able to draw a conclusion;
25 I -- I think at best he should be able to call it

1 incomplete, and he should state why it's incomplete.

2 If Councilman Soubirous answered questions in
3 writing but only answered a couple of questions and
4 there wasn't a back and forth question and answer like
5 other people participated in, then I think he has to
6 draw that it's incomplete. He doesn't get all the
7 answers that he's looking for.

8 The he said, she said portion of this, I
9 brought it up early on, probably about the third
10 comment I made to Mr. Gumpert was, I know how this is
11 going to play out. I've been in this game for
12 17 years. I know exactly how this is going to be, this
13 is going to be a he said, she said with nobody there,
14 with nobody recording things to anyone's knowledge that
15 it was recorded or not recorded, to nobody having a
16 cell phone on and somebody listening on the other side.
17 It was going to be a he said, she said.

18 Of course he tried to allay my fears and say,
19 don't worry about it, we're going to take care of it as
20 far as let the investigation run its course and then
21 we'll go. I gave him a couple of opportunities, I
22 think, to -- to verify the comments I made about
23 Councilman Soubirous' interaction with me that day.
24 And not once, but twice did a reporter from the Press
25 Enterprise, Ms. Alicia Robinson, discuss with me the --

1 the 7-0 vote to have the city manager removed or if
2 Sergio Diaz's job was that and in jeopardy.

3 And I haven't seen all of the reports, I
4 haven't seen all of the investigations, all of the --
5 the transcripts that have been done. I understand some
6 are redacted and -- and for whatever reasons that might
7 be, but I don't see one in there where we followed up
8 with Ms. Robinson to find out if that was, in fact, a
9 comment that was made to her, which she said to me
10 weeks after Mike and I had our conversation. And so I
11 think that's something that should have been looked at.

12 I don't believe that you get an opportunity
13 to say, I want transparency, and not participate in an
14 interview and go ahead and do it on your website. I
15 don't think you blog it on Facebook. I don't think you
16 get messages out that you want to get out only through
17 the means of getting it out your way. I think the
18 opportunity was provided -- provided for people to ask
19 questions and answer them. Some of us elected to do
20 it. Some of us elected not to. But don't go screaming
21 on your personal web page or anywhere else that, you
22 know, this is happening to me or that's happening to
23 me. I -- I don't think that's fair.

24 It's your right to have not participated,
25 that's absolutely right, but don't hold the court of

1 public opinion on your website if that's the route that
2 you want to go. The last thing that -- that I wanted
3 to say was that I -- you know, this has been painted as
4 a political issue. The reality is, is everyone on this
5 dais has been on one side or the other with the RPOA,
6 whether we backed you when an incumbent ran against you
7 or you ran against an incumbent that we supported.
8 We've been able to work with everyone on the council in
9 any way, shape, or form that we've been able to. So
10 this isn't a public issue -- or I'm sorry -- a
11 political issue on our court.

12 MAYOR BAILEY: Thank you, sir.

13 Aurelio Melendrez.

14 MR. MELENDREZ: Good afternoon. Getting back
15 to the focus of why we're here, it's really over the
16 comments that were made between Mike and Brian. And I
17 think we've kind of lost the way. And I agree, this
18 shouldn't have been handled here. I think it should
19 have been sent over to the public integrity unit of the
20 DA's office. I 100 percent agree, because the
21 investigation wasn't complete. I -- I get that, and I
22 see that.

23 And there's certain things that need to be
24 followed up on that haven't been followed up on, but
25 what Mike is being accused of -- and -- I hope the

1 residents of Riverside hear this -- was a crime. In
2 police work we call it extortion, when you're
3 exerting -- you're exerting your will or authority over
4 somebody. And I -- I don't for a minute doubt that it
5 happened. I've known Brian a long time. I trust him.
6 I trust him implicitly. He called me as soon as this
7 conversation took place.

8 Our organization is not one that's
9 responsible for striping streets or putting up
10 streetlights. While they all have a place and things
11 are important, you're talking about an organization
12 where men and women are instructed on how to enforce
13 the law. And if you choose that you'd like to be a
14 commissioner or a chief, you shouldn't have retired
15 from law enforcement.

16 Our police chief is not in charge of
17 following up on campaign promises that were made by you
18 as you walk the streets, each individual person. I
19 would like to see our -- our agency remain operating
20 autonomously. If there's an issue, absolutely it needs
21 to be addressed by the council, if there is an issue
22 with the way things are being done, but not in this
23 way. You don't get to make comments and then back away
24 from them and go, I didn't say that and then refuse to
25 cooperate.

1 Thank you for having the hearing. I
2 appreciate the transparency. As you know, police
3 officers, we are subject to complaints all the time,
4 and we get -- we get looked at twice. We get looked at
5 internally, and then it gets sent to the CPRC to make
6 sure we are looked at appropriately. I don't think it
7 should be any different for elected officials. Thank
8 you.

9 MAYOR BAILEY: Thank you.

10 Jerod Herringsma (phonetic) followed by John
11 Fisher. Is Jerod not here? We'll move on. John
12 Fisher followed by Darrel Terrell.

13 MR. FISHER: Wow. Honorable mayor, members
14 of city council, I want to start off with something
15 positive for just a moment. I do believe that each and
16 every one of you that has been elected actually love
17 your city and that you are actually good people, but I
18 want to make a couple of facts known. Councilman Mike
19 Soubirous and Paul -- Councilman Paul Davis were
20 elected by their constituents to be city
21 councilmembers. And some people may have a problem
22 with that. Get over it. They are not leaving.

23 They have been elected by their constituents.
24 They are the ones that brought them into the office.
25 They are the ones that are going to take them out.

1 Very important, okay?

2 Also, in this situation we've had with the
3 two councilmen there has cost us, and I've gotten
4 several different numbers from this, \$100,000. Whoa.
5 That is a lot of money to me. Maybe it's chump change
6 to you guys, but for us that's a lot of money. I've
7 heard other figures of 70,000 or 30,000. Even that is
8 a lot of money to be spending on this, okay? Also keep
9 in mind, this is really embarrassing for our city,
10 okay?

11 So we got the money, and we got the
12 embarrassment. We need to stop this. We need to be
13 adults. We need you all to act like leaders, run our
14 city, get rid of the egos, and let's run our city.
15 Thank you.

16 MAYOR BAILEY: Darrel Terrell followed by Art
17 Castle.

18 MR. TERRELL: My name is Darrel Terrell, and
19 I don't live in your city, but I am I product of your
20 community. I attended UCR, I graduated. I called -- I
21 called Riverside my home when I was here. And I've
22 been actively a part in it when I was here, but I'm
23 here today. As I was passing, entering the chamber, I
24 passed a statue of Dr. King and I'm reminded of what he
25 once said about justice, unity, and character; and this

1 is what has brought me here today.

2 Dr. King said, injustice anywhere is a threat
3 to justice everywhere. He also said the ultimate
4 measure of a man is not where he stands in a moment of
5 comfort and convenience, but where he stands at the
6 time of challenge and controversy. Councilman
7 Soubirous embodies that spirit of that. He's a -- he's
8 a leader of great character and integrity. He has the
9 courage to stand up against the status quo. He's a
10 champion and a fighter for his neighbors, whether you
11 voted for him or not.

12 He fights passionately with conviction to
13 ensure that the streets are fixed, make sure that
14 you're safe in your home and in -- in your parks.
15 Councilman Soubirous has done nothing wrong except,
16 like he said and everybody else said, doing his job;
17 but not only doing that, he's asking the tough
18 questions and -- and demanding answers. Like anybody
19 who was on the city council, you would do the same
20 thing that he would -- he would do.

21 And the problem I see with this process is it
22 needs to be reformed. Because as an outsider, as I
23 call myself, I see the city is coming apart. It needs
24 to be to bring together, because you guys have a lot of
25 potential, a lot of great potential. Because reforming

1 this process would bring, not only the mayor and the
2 council together, it would bring this community
3 together.

4 And I feel that you guys -- this process just
5 has been -- it just seem like it's bamboozled and
6 hoodwinked the public in thinking that something is
7 wrong, but it should be -- it should be reformed if
8 it's something did -- is wrong, then it should be
9 investigated -- investigated appropriately, but not
10 here, but and where it's supposed to be in the DA's
11 office. That's what I think.

12 But I feel you guys have -- have -- have a
13 lot going for you guys, but you guys have to come
14 together. That's what -- when I was part of this --
15 this community, that's the kind of things I did. Even
16 though I -- I -- I came from Moreno Valley, I care,
17 too, because I'm a citizen of the world. So you guys
18 work together and do something great for this city and
19 for the people here. Thank you.

20 MAYOR BAILEY: Thank you. Art Castle followed
21 by Errol.

22 MR. CASTLE: My name is Art Castle, and I
23 live in Ward Sphere. I've been appearing at city hall
24 since Ab Brown was mayor. I've always come down here
25 with praise for your city while telling you that the

(1 residence of my community, Mockingbird Canyon, have no
2 interest in being annexed into the city. Today I have
3 no praise for you. I believe this city has become a
4 tangled web of lies, deceit, and conspiracy. You
5 should be ashamed of yourselves.

6 You conducted a witch hunt against a fellow
7 councilman who is guilty only of living up to his
8 campaign promises and not going along to get along.
9 He's been told by many of you that he needs to get out
10 of campaign mode. That's backwards. You guys need to
11 get into campaign mode and start living up the to the
12 promises you made and your fiduciary duty to the
(13 taxpayers of this city.

14 You just squandered well over \$60,000 on a
15 charge that probably should have been investigated
16 under the code of ethics and conduct, where it would
17 have no doubt never seen the light of day. One party
18 claims something inappropriate was said, and the other
19 party totally denies it. I've known Mike Soubirous for
20 over 10 years and we've gone through a barrel of salt
21 together. Mike is not a liar. That leaves me to
22 believe that the other party to the alleged
23 conversation, Brian Greg -- Brian Smith, is.

(24 Mike and I had many conversations at the time
25 of this meeting with -- with Brian Smith. I clearly

1 remember him telling me that Brian had thanked him for
2 being the only person that had reached out to the RPOA.
3 And my response was, good, maybe they'll contribute to
4 you next time. I see how that worked out.

5 There are dirty fingerprints all over the
6 testimony. Much discussion with an attorney, probably
7 one recently departed from this city, as in the
8 depositions where people quote specific articles and
9 paragraphs from the charter in a way people giving
10 unscripted testimony never would. The involvement of
11 the mayor in an issue in which he has no standing or
12 influence, lies about dates, lies about things that
13 were told Councilman Soubirous, lies about almost
14 everything involved.

15 How about four employees filing charges
16 against him and that it was a whistleblower case and
17 he'd never know who filed the charges and exactly what
18 they were? Is there one of you up there willing to
19 refund the taxpayer money you wasted on this
20 investigation? The people in the city know who the
21 guilty parties are, and most are right in front of me.

22 What happened to the promises you made to
23 your constituents when you ran for office? Like
24 everything about these allegations, they went into the
25 dung heap. I also take exception to Mr. Gumpert's

1 comment on the effect -- the effect of this is what
2 happens when electeds talk to employees. Nobody at the
3 dais abandoned their constitutional rights when they
4 took the oath of office. Every councilman deposed
5 stated that they spoke to RPD area commanders about
6 issues in their wards. It's called dialogue. Just
7 like Mike, they didn't order them to do anything, nor
8 did they threaten anyone.

9 At the end of your staff report, by one of
10 your accusers, you have a list of actions taken against
11 someone accused of hearsay.

12 MAYOR BAILEY: Thank you very much.

13 MR. CASTLE: By the way, what happened to --

14 MAYOR BAILEY: (Indiscernible) speaker Errol

15 --

16 MR. CASTLE: -- (indiscernible). Are there no
17 (indiscernible)?

18 MAYOR BAILEY: -- followed by William Herring.

19 MR. KASHOWITZ: Yeah, my name is Errol. I'm
20 in Ward 5. I wanted to say today about Mike, everybody
21 loves you, Mike, at the Janet Goeske Center, all the
22 seniors for coming down to the barbecue and having
23 hamburgers with all the people down there. And you
24 know it was busy. I feel that seven of the nine of you
25 men up there actually should be in jail, and that's not

1 including Mike and Paul. They're out of this, but
2 seven out of the nine men should be in jail for
3 embezzling.

4 I really don't think -- sooner or later
5 somebody is going to have to come down here and
6 investigate all the money that you guys have let this
7 guy write a check on. The board of supervisors is
8 worse than I've ever seen before, but he should
9 actually go to jail. I -- I mean --

10 MAYOR BAILEY: Could you focus your -- your
11 comments --

12 MR. KASHOWITZ: Okay.

13 MAYOR BAILEY: -- to the council?

14 MR. KASHOWITZ: Okay. Scott Barber -- or
15 Scott Barber one time, I can't -- you want to talk
16 about transparency, Rusty, I asked one time for an
17 overhead here so we can give out information, all the
18 money that you guys have taken from these people, I've
19 asked for an overhead here since last year. Scott
20 Barber has refused me to have an overhead put in over
21 here so I can get information, because the people of
22 the citizens of Riverside need to know how much debt
23 you guys have put us in.

24 All right. I -- I won't point at him, and
25 I'm sorry for pointing at him. He said as long as he

1 was city manager, that would never happen. Well, he
2 disrespected me as a citizen of Riverside. He told me
3 that as long as he was city manager, that would never
4 happen, an overhead here so I can let people know
5 exactly what kind of information and what you guys have
6 done here. I would like to put up -- I have so many
7 public records of what you guys have done, that I want
8 the citizens of Riverside to see what you guys have
9 done. I feel that I should have an overhead.

10 Rusty, you've told me three times, I've heard
11 all day today, transparency, transparency. Why can't I
12 have an overhead about information, Rusty? That's all
13 I've asked for. For two years now since you've been in
14 office, I've asked for transparency. Let's have some
15 transparency. Let me have an overhead so I can rebut
16 everything you guys said before. I want an overhead,
17 Rusty, for Christmas. Is that what I can do? Put it
18 on a bond. Put it on a bond so I can put it up there
19 so everybody can see what you guys have done, Rusty.
20 Put it on a credit card.

21 MAYOR BAILEY: Again, focus your comments to
22 the council. They're the ones --

23 MR. KASHOWITZ: Put it on a --

24 MAYOR BAILEY: -- that make the decision.

25 MR. KASHOWITZ: -- credit -- put it on a

1 credit card, Rusty. That's all I want for Christmas.
2 Have a good day.

3 MAYOR BAILEY: William Herring followed by
4 Christina Zeragoza.

5 MR. HERRING: Good afternoon, council.
6 Before I got here I was proud to be someone from
7 Riverside. Boy, I -- I don't want to reiterate.
8 Everybody has been up here complaining. Here's the
9 thing, I'm here representing no one but myself, I'm a
10 citizen, I vote. And you guys are put into office to
11 listen to what we ask for. And it seems like Congress
12 has forgotten it. They're at, well, 77 disapproval
13 rating. It seems like you guys have gotten off on a
14 step that -- that you're forgetting who's behind this.

15 We pay you. We pay your staff. This is
16 embarrassing. Unfortunately I sell real estate in
17 Riverside. This doesn't do us any good. I -- I -- I'm
18 appalled. I mean, I had someone call me up going,
19 well, maybe I should move to Moreno Valley because all
20 their crap is over with. That's pretty sad. That's
21 very sad. So I think we need to stop this, stop the
22 good ole boys.

23 FEMALE SPEAKER: Yes.

24 MR. HERRING: Start listening to your
25 constituents and do what we ask. If we ask for the

1 panhandlers to be gone, get them gone. You can get
2 other things done. You sure don't have a problem with
3 code enforcement finding a brown lawn. I mean, this --
4 this is really appalling to me. And I hope this is a
5 wake-up call to the City of Riverside, because you know
6 what, we're not going away. The citizens, most
7 citizens love this city. I moved here because of this
8 city. And now we've got this going. Please, pull your
9 heads out, let's get this going, and get this behind
10 us.

11 FEMALE SPEAKER: Yeah.

12 MAYOR BAILEY: Christina Zeragoza followed by
13 Gary Christmas.

14 MS. ZERGOZA: My name is Christina Zeragoza.
15 I have been a City of Riverside resident for 16 years.
16 It is my understanding that today's hearing is the
17 first ever hearing of its kind in the City of
18 Riverside. The fact that this complaint and
19 investigation is being handled differently than others
20 is seriously concerning to me. Why is my city
21 councilman being treated differently?

22 Why wasn't this allegation filed and handled
23 pursuant to Chapter 202 of the city's charter and
24 Resolution 22676? Resolution No. 22676 states in part
25 that the city council desires to establish uniform

1 norms and procedures in order to accomplish these
2 goals. It appears the city council and/or mayor
3 handled this issue outside the established norms, which
4 not only has violated Chapter 202 of the city's charter
5 and Resolution 22676, violations of the city's code of
6 ethics and conduct number 1, 2, 4, and 6 have occurred.

7 It could be argued that city council and/or
8 the mayor took unprecedented actions against Councilman
9 Soubious and those actions were and are harassing in
10 nature and thus has created a hostile work environment
11 for Councilman Soubious. The investigation into
12 violations of the city charter and the city's
13 harassment policy in which Councilman Soubious was the
14 subject was based on a conversation between two people.
15 There were no witnesses to the conversation.

16 The complaining parties, as well as Sergeant
17 Smith made this clear. The investigator stated in his
18 final report, "It appears that nobody other than the
19 participants of the February 14th meeting will ever
20 know with a certainty what happened at that meeting."
21 As Sergeant Smith stated in his interview, and I quote,
22 "It is a he said, she said."

23 When an allegation such as this is made,
24 consideration should be given to the probability of
25 whether a definite outcome can be achieved. Over

1 49,000 plus of hard warn -- hard earned taxpayer money
2 has been spent on this investigation. Those
3 individuals or individual -- individual responsible for
4 approving to move forward with this investigation made
5 a gross error in judgment because they either knew or
6 at least should have known this investigation would
7 result in an inconclusive finding.

8 So again I ask myself, why is my councilman
9 being treated differently? Could it be that someone or
10 a group of people is trying to intimidate Councilman
11 Soubrious in an effort to silence his voice? I truly
12 hope that is not the case, because trying to silence my
13 councilman's voice is no different than trying to
14 silence my voice. Gentlemen, the evidence gleaned by
15 this investigation weighs more in Councilman Soubrious'
16 favor than not.

17 Furthermore, I would like to know in what
18 codified document does it give any of you the authority
19 to judge, let alone punish, Councilman Soubrious? I
20 don't see such authority given to the city council or
21 mayor in the city charter, code of ethics and conduct,
22 or in Resolution 22676; therefore I believe your only
23 choice in this matter is to take no action against
24 Councilman Soubrious.

25 MAYOR BAILEY: Gary Christmas followed by

1 Kathy Allavie.

2 MR. CHRISTMAS: Thank you, Mr. Mayor, members
3 of the council, city staff. I'm here as a resident of
4 the City of Riverside. I've lived in Riverside
5 33 years. I'm active in a number of civic groups, but
6 my comments today are entirely my own. I read the
7 entire report from Mr. Gumpert, and it seems that his
8 comments backed up his report as well today in that
9 there were two credible witnesses that he either
10 interviewed or received comments from and that because
11 of that there's really no way to determine conclusively
12 if there's any guilt with either individual -- I mean,
13 guilt with Mr. Soubierous.

14 And it does not reflect on Mr. Smith's
15 comments to say that the findings are inconclusive and
16 incomplete. Therefore I believe that the only action
17 the council can take is -- is no action against
18 Mr. Soubierous. I don't want to comment on the other
19 matters, whether or not the hearing was appropriate;
20 but I do want to say that we have a great city staff,
21 we have a good city manager. We're one of the premier
22 cities in California.

23 And it's disappointing to me as a resident, a
24 long-time resident and a person who enjoys this city
25 and likes the amenities that this city offers, that --

1 that we end up in these type of debates. So I would
2 hope the council in the future can figure out a way to
3 resolve these issues so we don't end up in hearings
4 like this and that we all abide by the charter. So
5 thank you.

6 MAYOR BAILEY: Kathy Allavie followed by Andy
7 Bodewin.

8 MS. ALLAVIE: Mayor, city council people, my
9 name is Kathy Allavie, and I am the current president
10 of the Raincross Group, a group of citizens who unite
11 around a vision for Riverside that includes effective
12 accountable leadership. We know that good governance
13 leads to good management, good performance, good
14 stewardship of public money, good public engagement,
15 ultimately good outcomes for all of our citizens; but
16 all of this cannot happen in the current atmosphere in
17 city hall.

18 We ask that you put aside bickering and
19 petty -- pettiness and concentrate on, one,
20 implementing a vision for Riverside, which can't be
21 done unless you all adhere to the city charter and
22 immediately schedule a strategic planning session; two,
23 that you -- that you together work towards a common
24 purpose with clearly defined functions and roles;
25 three, that you promote the values of good governance

1 by upholding high standards of conduct and behavior,
2 which means agreeing to the code of ethics and working
3 within it; and finally that you make informed and
4 transparent decisions which are subject to scrutiny and
5 not set meetings and conduct business at which other
6 councilmembers are not included.

7 In other words, we need you to get on with
8 the business of the city. Riverside has too many
9 critical needs to be wasting our time with such
10 small-town shenanigans. Thank you.

11 MAYOR BAILEY: Andy Bodewin followed by Vivian
12 Moreno.

13 MR. BODEWIN: Good afternoon, Mr. Mayor,
14 members of the council. Andy Bodewin. I've been here
15 all my life, 60-plus years and have never witnessed a
16 city council meeting like this and I've been here
17 between 50 and a hundred times easily. First I wanted
18 to comment on Sergeant Smith's statements and -- and
19 the reports in general. Keep in mind none of the
20 statements that were made were under oath. No one is
21 under oath here. They can say whatever they want.
22 It's not like being in court where you're under oath.

23 Second, if Mike Soubirous had said anything
24 to Sergeant Smith that the city manager was going to be
25 gone or Sergio Diaz was going to be gone, well, they're

1 still here. So that aside, I've known Mike Soubious
2 and his family for over 10 years. They've been
3 neighbors of mine, friends of mine. We fellowship the
4 same church together. Mike has worked with me many
5 times in Christian volunteer service.

6 I've witnessed him deal with all types of
7 people in all different situations. When he actually
8 told me he was going to run for public office, I tried
9 to discourage him because this is the type of thing
10 that an honest Christian man can experience when he
11 gets in public office.

12 We have a lot of egos. We need to put our
13 egos aside. We need to think the best for our
14 citizens, not for ourselves. Mike didn't take this job
15 to pound on his chest and try to impress everyone. He
16 did it to help those people in his ward. And those
17 people are here today and they're out in the street and
18 they're the people you're going to see every day.

19 I'm not going to poke fingers at the city
20 manager or the mayor or any of the council people right
21 now. It's obvious what's occurred here. We don't need
22 to go through this again. This is a great city to live
23 in. We have some great people here. We would like to
24 have more people who care about our community run for
25 public office, but why would you want to run for public

1 office and go through something like this? Thank you
2 very much.

3 MAYOR BAILEY: Vivian Moreno followed by Jason
4 Hunter.

5 MS. MORENO: Good afternoon. Vivian Moreno.
6 Wow. The morale on the seventh floor must really be
7 bad. I can't even imagine you guys all working
8 together. You can find all the transcripts and a play
9 by play on thirtymilesofcorruption.com. And I want to
10 ask all of you, how did we get here? You got here
11 alone because your city attorney left like a coward,
12 like the coward he was, you left.

13 MAYOR BAILEY: Keep your comments to the
14 council.

15 MS. MORENO: Okay. I'm talking to you,
16 Mr. Bailey. He left. Your -- your buddy, he left.
17 Okay. In the short time that Mike Soubious has been a
18 councilmember, he has displayed a natural leadership
19 ability that stands out. And his dedication to his
20 constituents and all the cities -- citizens of
21 Riverside is apparent.

22 And that is why the citizens of Riverside
23 love you, Mike Soubious.

24 How embarrassing to the city and its
25 citizens, especially the constituents of Ward 3. How

1 can you all possibly think that the issue before you
2 would be worthy of a closed-session vote and an
3 investigation of this magnitude? This was nothing but
4 gossip, and I can't believe that Mike Gardner, Andy
5 Melendrez, Jim Perry, Steve Adams, and Rusty Bailey
6 supported this nonsense. Is this the public speak --
7 the public spanking for all of you that I personally
8 have been waiting for?

9 Rusty Bailey, you have no respect for your
10 councilmembers, and you have already been soliciting
11 people to run against Mike Soubirous. And if you
12 think --

13 MAYOR BAILEY: Make your comments to the
14 entire --

15 MS. MORENO: I'm --

16 MAYOR BAILEY: -- council --

17 MS. MORENO: -- not -- I'm talking to you.

18 MAYOR BAILEY: -- not to the mayor or a
19 councilmember.

20 MS. MORENO: I'm talking to you, Mr. Bailey.

21 MAYOR BAILEY: The decorum --

22 MS. MORENO: And if you --

23 MAYOR BAILEY: -- of this public meeting --

24 MS. MORENO: -- think --

25 MAYOR BAILEY: -- is to speak to the entire --

1 MS. MORENO: -- you're going to put --

2 MAYOR BAILEY: -- council body.

3 MS. MORENO: -- Reynaldo Fierro against Mike
4 Soubirous and embarrass him, I think not. You can make
5 sure that I will include myself on the race with
6 Mr. Gardner. And believe me, I will be a pain for this
7 city. This investigation was nothing -- there was
8 nothing transparent about this. This is nothing but
9 gossip, jealousy, disrespect for each other and our
10 government. There will be an ethics complaint on most
11 of your desks next week.

12 MAYOR BAILEY: Jason Hunter --

13 MS. MORENO: Thank you very much.

14 MAYOR BAILEY: -- followed by Raychele
15 Sterling.

16 MR. HUNTER: Jason Hunter, Ward 2. Here's my
17 review of the investigative report and to allegations
18 made into councilman Mike Soubirous. The investigator
19 looked into four possible issues, charter violations,
20 Brown Act violations, ethics violations, and a hostile
21 work environment. The findings were as followed,
22 unsubstantiated, unfounded, unsubstantiated, and
23 unsubstantiated.

24 I take issue with three of the four of these
25 findings. All should have returned as unfounded. In

1 issue number three with the ethics violation should not
2 have been under review by the investigator at all.
3 Additionally and somewhat perplexingly, it has come to
4 my attention that Mr. Bailey, Mr. Adams, and Mr. Perry
5 would like to discuss whether Mr. Soubirous violated
6 Resolution No. 22676, rules of procedure and order of
7 business.

8 I'll take a look at the charter violations
9 first, Mr. Gumport has detailed Section 407 for us
10 already and as well as parts of Section 601 detailing
11 the powers of the city manager. It is clear from the
12 statements by RPOA President Smith himself to the
13 investigator that Councilman Soubirous gave no orders
14 to Mr. Smith, nor did he attempt to interfere in the
15 city manager's administration of the city affairs.

16 However, even if he had made the indirect
17 attempt to influence Mr. Smith's marching orders,
18 Mr. Smith, as a sergeant only, was in no position to
19 effectuate these orders and thereby undermine the
20 chief -- chief of police nor city manager. Councilman
21 Soubirous, if we are to believe Mr. Smith, offered his
22 opinion that liveability issues weren't addressed to
23 the satisfaction of the council, both the city manager
24 and chief of police, who is a subordinate of the city
25 manager would be terminated.

1 News flash. This is called being at-will in
2 the real world and should come as no surprise to
3 anyone. Councilman Soubirous also allegedly offered
4 his opinion on the police department's presence in this
5 ward, which he is certainly entitled to do under his
6 First Amendment guarantees. All Mr. Smith's testimony
7 is considered hearsay and has no value as actual
8 evidence as even Mr. Smith admits to the investigator.

9 Complaints of this nature fall under the
10 jurisdiction of the city attorney's office to bring
11 formal charges. In light of the obvious conflict with
12 that, the more appropriate avenue -- avenue should have
13 been to bring forward this issue with the local
14 district attorney's office for review as would have
15 been the only option available to the general public
16 based upon the numerous charter violations that many
17 concerned citizens have brought to this city's
18 attention over the past several years.

19 To my knowledge, no such complaints were made
20 by Mr. Diaz or Mr. Barber. I'll skip to the end here.
21 I -- I had all the rest of the charges, but I'm not
22 going to get time in my three minutes. I'll -- I'll
23 just wrap up here. The other charges were lesser than
24 the 407 violations.

25 The investigator's main takeaway can be found

1 in this sentence, the February meeting and its fallout,
2 including the time and expense of the investigation
3 demonstrate the cost and disruption that can occur when
4 city councilmembers directly deal with subordinates to
5 the city manager instead of dealing with them through
6 the city manager. This statement is simply outlandish.
7 It contains no legal standing.

8 Of course our councilmen can speak candidly
9 to the president of the Riverside Police Officers'
10 Association. In fact, we should encourage
11 Mr. Soubirous to continue doing so, although I can see
12 where he might feel a bit betrayed and hesitant. If
13 so, then Mr. Barber and Mr. Diaz have accomplished,
14 what, in my opinion, they set out to do, hinder the
15 council from finding out what really goes on within the
16 echelons of city manager. More and not less direct
17 communication is exactly what's needed in --

18 MAYOR BAILEY: Raychele --

19 MR. HUNTER: -- this (indiscernible).

20 MAYOR BAILEY: -- Sterling followed by Donald
21 Gallegos.

22 Ms. Sterling: Please don't interrupt me,
23 Rusty. I am going to -- Mr. Bodewin spoke about being
24 a good Christian. And, Rusty, I think that when I read
25 Dante's Divine Comedy, at the very depths of hell was

1 for people like you blasphemers. The curse of the Lord
2 is in the house of the wicked, but he blesses the
3 habitation of the just. Surely he scorneth the
4 scorers, but he giveth grace unto the lowly. The wise
5 shall inherit gory -- glory, but shame shall be the
6 promotion of fools; and that is what I'm seeing here,
7 absolute fools.

8 You have been made fools by Rusty Bailey.

9 Even you, Steve Adams, I couldn't believe you
10 kept it together when he --

11 MAYOR BAILEY: Keep your comment --

12 MS. STERLING: -- was sitting there --

13 MAYOR BAILEY: Keep your comments to the --

14 MS. STERLING: -- throwing you under the --

15 MAYOR BAILEY: -- council as whole.

16 MS. STERLING: -- bus.

17 MAYOR BAILEY: Not as an individual --

18 MS. STERLING: Do not interrupt me.

19 MAYOR BAILEY: -- in here.

20 MS. STERLING: You are infringing on my First
21 Amendment rights.

22 MAYOR BAILEY: You're breaking the --

23 MS. STERLING: Do you want me to sue you
24 like --

25 MAYOR BAILEY: -- rules of procedure that I

1 outlined before the meeting.

2 MS. STERLING: Okay. Cite those to me and
3 don't use my time. What am I breaking? I'm addressing
4 Mr. Adams. He's an elected official. I'm addressing
5 you.

6 MAYOR BAILEY: As --

7 MS. STERLING: You're an elected official.

8 MAYOR BAILEY: As was mentioned and the --

9 MS. STERLING: Did you interrupt anybody --

10 MAYOR BAILEY: -- rules of procedure --

11 MS. STERLING: -- from the police department?
12 I don't think so. So I'm going to continue.

13 MAYOR BAILEY: You're going to keep your
14 comments --

15 MS. STERLING: No. My comments will be in
16 accordance with the First Amendment, Rusty. Didn't you
17 teach government? Maybe you ought to review your
18 books. Anyway, as I go on, it's interesting --

19 MAYOR BAILEY: Your time is not going yet,
20 because you asked me a question.

21 MS. STERLING: Okay. Well, it's very
22 interesting that the --

23 MAYOR BAILEY: And I'll respond to that.

24 MS. STERLING: -- only people that are
25 interrupted --

1 MAYOR BAILEY: All remarks shall be addressed
2 to the city council as a body and not to any
3 councilmember thereof.

4 MS. STERLING: Okay. As a body, I have a
5 problem with your mayor. I think that this was all
6 orchestrated by him. I think that I cannot wait to get
7 a copy of this tape. I mean, he wants a projector,
8 like I already got my Christmas present, it's going to
9 be the tape of Mr. Rusty Bailey's ranting. And I mean,
10 I've seen less fit out of my prepubescent daughter.
11 That was just embarrassing. I mean, I wanted to crawl
12 in a hole for you.

13 So when you look at that tape, you're going
14 to want to really think twice about when you're up for
15 election. But anyway, this was all orchestrated, I'm
16 sure, by Rusty Bailey, Greg Priamos. What happened,
17 this is what I think probably happened, you know, Smith
18 heard something and he blew it by Diaz. Diaz blew up
19 and went to the city manager. The city manager went to
20 Greg. And Greg's like, oh, you know, I am in control
21 here. We can get -- we can get Mike Soubirous.

22 He orchestrated this whole thing, Rusty and
23 Steve signed the documents, and then you brought this
24 just fiasco forward and you have embarrassed yourself,
25 you have embarrassed the city. This law firm, I feel

1 sorry for them. I mean, I really think this may have
2 impacted your reputation, too. And I hope you already
3 cashed the check, because the city has no money. I
4 feel really sorry for the city attorney. You seem like
5 a very standup woman and you have been put in such a
6 horrible position because you're following such a --

7 MAYOR BAILEY: Focus your comments --

8 MS. STERLING: -- horrible -- I am --

9 MAYOR BAILEY: -- the city council as a body.

10 MS. STERLING: I am complimenting her.

11 I compliment you for hiring somebody
12 competent who actually understands the law and doesn't
13 break it. That is -- that is really the, you know, a
14 good thing, okay?

15 Rusty, you need to stop embarrassing -- and
16 interrupting me. And if I see you not interrupt other
17 people that are off comment, I'm bringing a lawsuit.
18 And you know I will. So I think that Rusty Bailey has
19 put all of you in this position. He sits up there and
20 says, I don't have a vote, I didn't do this, my hands
21 are clean. He's throwing all of you under the bus. He
22 orchestrated this and --

23 MAYOR BAILEY: Donald Gallegos --

24 MS. STERLING: -- he's making you take the
25 fall.

1 MAYOR BAILEY: -- followed by Jackie Rawlings.

2 MS. STERLING: Remember that.

3 MR. GALLEGOS: I just want to concur that
4 mayor, city council, I agree with Andy Melendrez's
5 comments, this matter could have been handled without
6 this big mess and expense. And the reason that people
7 are seeing this for as a political motive is because of
8 the -- just that and because of how much money was
9 spent to okay this investigation.

10 You know, everybody up here deserves to be
11 here except for, I think, one of the things that we
12 need to do, I think to get -- clear this matter is it's
13 been proven already, Sergio Diaz, our police chief, and
14 Scott Barber, our city manager, who are not elected
15 officials, and they really need to go. They have no
16 care for the concern for these residents, the expense
17 that this caused, and they're the two ones that filed
18 this complaint. Thank you.

19 MAYOR BAILEY: Jackie Rawlings followed by
20 Collette Lee.

21 MS. RAWLINGS: My name is Jackie Rawlings,
22 and I thank you for giving me the three minutes to
23 speak. First of all, I'm not here to blame anybody.
24 Mike is a great guy. He's proven it. That's beyond a
25 reasonable doubt. I appreciate the chief of police

1 because he has a boss. Like all of us, we follow the
2 orders of our boss. I was lucky to move in the area
3 where Mike is my council, but I had a great one in Ward
4 5. I think Mr. Diaz -- Chief Diaz deserves a little
5 more respect because he does try to do what basically
6 is what an officer does, at least from what I've seen
7 and I've experienced.

8 To the mayor, I can only say, you're as good
9 as the people you hire. Like any of us, if you don't
10 have a good councilman, city manager, chief of police,
11 it -- it falls on you. We have already seen throughout
12 the years what happened to our chief of police, our DA,
13 our city councilman charged with interfering with
14 police work. We saw that. Every -- we're not fools.
15 People getting license plates that are illegal and then
16 saying they didn't know, but yet they're police. I
17 didn't understand that one. But it still falls on you.

18 I respect you because you are an elected
19 official by every citizen in this city. I elected
20 Mike, but everybody elected you. And I believe in
21 democracy, so I'm asking you, could you please get
22 qualified people. Law is not that hard. It isn't.

23 MAYOR BAILEY: Again, keep your comments to
24 the council --

25 MS. RAWLINGS: Okay.

1 MAYOR BAILEY: -- entire council.

2 MS. RAWLINGS: No problem. They know law,
3 too. Well, Mr. Davis does. 101, follow it. That's
4 what they tell you in school to everybody, and you,
5 too, follow it, but I recognize you need good legal
6 staff. That's what you need, a city. Thank you.

7 MAYOR BAILEY: Thank you.

8 Collette Lee followed by Mary Shelton.

9 MS. LEE: Good afternoon, Mayor Bailey, city
10 councilmen. This is a very sad day for Riverside. It
11 truly upsets me as a person who loves Riverside to have
12 this type of council meeting. It shouldn't have taken
13 place. I would just like to share with you a little
14 bit of the bigger picture. There are three components
15 of a modern political order.

16 You must have a strong and capable city. The
17 city must subordinate to the rule of law, which we
18 have, our city charter. The city's leadership is
19 accountable to the citizens of Riverside. Now, I know
20 that when all of you took that office, you did it with
21 the intent of making the city better. We're not.
22 We're not.

23 It saddens me greatly to spend the last three
24 hours listening to this kangaroo court. I respect all
25 of you. I respect our police chief. I expect all of

1 you to put your differences behind you to work together
2 as a team for the betterment of this city. My family
3 is here. Your families are here. Let's go forward
4 together. Let's put this behind us.

5 What's going on next in September with
6 Councilman Davis, stop it, work it out, focus on what's
7 best for the city, please.

8 MAYOR BAILEY: Mary Shelton followed by Chuck
9 Matahatse.

10 MS. SHELTON: Hello. This reminded me of the
11 1920s when we had a Klan mayor, a corrupt city
12 government with financial mismanagement, an intoxicated
13 police chief who was arrested in public. And I stopped
14 and thought about the last decade and thought of how
15 many -- much history had repeated itself. And it was
16 that era during the 1920s, which is why we moved away
17 from having a strong mayoral system to our current
18 council, city council, city manager system.

19 I picked that tidbit up in the last charter
20 review process that we do every 10 years. I would like
21 to say that none of this is new. I mean, the only
22 thing new here is the faces. This is something that's
23 been going back for decades. And I know because I've
24 been doing my research. I mean, the same thing over
25 and over again.

1 You have the same city government doing the
2 same thing, the same, you know, agencies within the
3 city have the same dysfunctional patterns that reassert
4 themselves every so often like in -- in the same way,
5 including the top floor of city hall and the police
6 department and some of the other agencies. They just
7 go through these turmoil issues over and over and over
8 again and then they somehow right themselves and then
9 history repeats itself down the road.

10 So none of this is a surprise to me. And
11 it's -- it's just too bad that the senior member of --
12 who -- who knows, has been participating in this broken
13 process the longest, the city attorney, as is someone
14 said, unable to be available for comment in this
15 important proceeding today. But that's -- I -- it's
16 just what I'd like to say.

17 I -- I don't understand how this
18 investigative process even started. I mean, I seem to
19 recall -- now I can't mention any city councilmembers,
20 so I'll just refer to the one who shall not be named,
21 and one of you up there which one it's -- who it is;
22 but this individual was also suspected of charter
23 interference, the same provision, administrative
24 interference some years ago involving the police
25 department and several promotions.

1 I didn't see any process like this in place
2 back then. I didn't see these attorneys here reviewing
3 it. I didn't see the city council even really care
4 about it except maybe a couple members. I had saw two
5 lieutenants who had to do a lawsuit and practically had
6 to do their own investigation to get out where the
7 citizens even knew about it. And look what happened to
8 them.

9 So I -- I just -- I -- I mean, I'm kind of
10 baffled as to why this is going on today when -- when
11 in the situation involving the city councilmember
12 without a name, we didn't have anything like this. We
13 didn't have any investigation at all. And then when we
14 come along all this time and we have a process that's
15 not -- may not even be legal. And even if it's a Brown
16 Act violation, it still moves on forward like -- like a
17 runaway train.

18 And I'd like to say that I would have hoped
19 to seen something better and I would hope to see
20 everyone up here remember what you're here for, and
21 that's to serve the public. And I think some of you
22 need more reminding of that than others. Thank you.

23 MAYOR BAILEY: Chuck Matahatse followed by
24 final speaker card Rick Gay, unless Jerod, is Jerod
25 here in the room? Did Jerod come back? Jerod

1 Herringsma.

2 Chuck.

3 MR. MATAHATSE: Thank you, councilmembers,
4 Bailey -- Mr. Bailey, and other members of the board.
5 I'm not here to condemn anyone, but to voice my
6 concerns about some of the issues and behaviors that
7 have been happening in the city government, and I'm
8 sure everybody is aware of. And I probably can't speak
9 as eloquently as other -- others have and I'm not as
10 knowledgeable, but I'm also not here -- but I'm also
11 not only here to voice my support of Mike Soubirous,
12 but I want to support any one and every one of you that
13 do the right thing.

14 And that right thing is, but not limited
15 to -- limited to what's in the best interest of the
16 City of Riverside, its residents, and businesses and
17 acting in a professional manner and treating each other
18 with respect and performing your duties within the
19 scope of the law. Doing that right thing does not have
20 to be difficult and petty disputes, and personality
21 conflexes are not be -- conflicts are not becoming
22 behaviors of our city leaders and its representatives.

23 I believe that you will -- and will find and
24 get more community appreciation and support if you do
25 the right thing. The right thing seems to be a common

1 thread in my -- in my statement here. But anyway, this
2 may sound cliché, but let's all try to get along, work
3 together, and get the things accomplished that need to
4 be. After all we don't want any federal agencies
5 getting involved in our city. Thank you.

6 MAYOR BAILEY: Rick Gay followed by Jerod
7 Herringsma if he is here.

8 MR. GAY: Good afternoon, counsel, Mr. Mayor.
9 My name is Rick Gay. I'm a veteran. I took an -- an
10 oath to uphold the Constitution, and I thank you for
11 giving me the opportunity to exercise my freedom of
12 speech. The people of the State of California are
13 watching these shenanigans. They're putting Riverside
14 in the same context of Moreno Valley, San Bernardino,
15 and the City of Bell. And I know this because my
16 cousin called me last night and he's a -- he's a dirt
17 farmer from San Luis Obispo and he wanted to know
18 what's going on in -- in Riverside.

19 Mike is not a political or a politician.
20 He's not political. He's an honest. He's a -- he's a
21 representative. He's concerned for the welfare and the
22 wellbeing of his constituents.

23 These proceedings are tantamount to a
24 kangaroo court and muck raking to damage Councilman
25 Soubirous' very good character. The \$49,000

1 investigation was found to be inconclusive. The
2 politicians in the room are at a turning point. What
3 you decide here may have far reaching ramifications.
4 The constituents of Ward 3 will not forget this day. I
5 strongly recommend no action against Mike Soubious.

6 When I walked the precincts on behalf of you,
7 mayor, and behalf of Councilman Soubious, the
8 constituents -- the constituents said, if they are
9 honest men, the council would run them off.

10 FEMALE SPEAKER: Yep.

11 MR. GAY: Or they will turn against them and
12 they will turn against their constituents. And here we
13 are.

14 FEMALE SPEAKER: Yep.

15 MR. GAY: Thank you, Michael, for all your
16 hard work.

17 FEMALE SPEAKER: That's right.

18 MAYOR BAILEY: Is Jerod Herringsma? No Jerod.
19 That completes public comment, which brings us back to
20 the council for questions of -- of individuals that are
21 here and the staff members, whether it's the city
22 manager, Brian Smith, Aurelio -- Aurelio Melendrez, the
23 chief of police is here to answer questions you might
24 have of them, questions of the individuals that
25 conducted the investigation or special counsel or

1 otherwise.

2 So it is time for the city council to
3 question -- questions, comments, deliberation, and any
4 action.

5 Councilman Soubierous.

6 COUNCILMEMBER SOUBIROUS: I just want to make
7 it real clear in case it hasn't been stated that I
8 completely respect the job that the Riverside police
9 officers do, being that I came from the cop world, I
10 understand the difficulties of their job. And being
11 married to a line-of-duty widow, I understand the
12 circumstances that can happen when things go wrong. So
13 this is, you know, my criticism of a union president or
14 my comments towards him in no way, shape, or form
15 reflects how I feel about all of the others.

16 And I think all of you know that that work
17 for the RPD that I've known for years, including Brian.
18 We've known each other probably about 18 years now.
19 I'm sad to see things turn out the way they did, but I
20 got to say that, you know, the men and women of the
21 RPD, you know, I speak with you all quite often and --
22 and I've known you all for quite a long time and, you
23 know, nothing has changed in my book as how I view the
24 job that you do. And I'm very appreciative.

25 And the same with staff, too. You know, when

1 I made my comment about staff keeping us from knowing
2 what's going on, I don't direct that to staff other
3 than the top managerial staff. I want to see more
4 openness in what we know as far as background
5 information. I've been demanding it politely of course
6 with pretty please on top, demanding it in a sense of,
7 I've got emails to prove it, I've been demanding it in
8 sense of like, you know, for instance we were asked to
9 approve something that I believe had \$100,000 price
10 tag, and it had no background; and so I asked ahead of
11 time, I said, well, where's the background on this?
12 What -- why am I voting on a hundred grand when I have
13 no background?

14 Those are the things that really bother me.
15 You know, we need to start working on this. We --
16 that's why I ran for office. We need to start working
17 on this openness and transparency. And council needs
18 to be council. They need to stand up, and I believe
19 they want to, and staff needs to know that they work
20 for this council. That's the bottom line. Thank you.

21 MAYOR BAILEY: Councilman Davis.

22 COUNCILMEMBER DAVIS: I'd like to move that we
23 close this discussion without a vote because we have no
24 authority under the law or a charter to do any vote,
25 whether it be take no action or otherwise, and that we

1 put this behind us and learn from this lessons, and
2 certainly the lessons that we had, which is going to
3 come up in September again, folks, so hopefully we've
4 learned from today and we close this hearing.

5 MAYOR BAILEY: Motion on the table.

6 COUNCILMEMBER MELENDREZ: Second.

7 MAYOR BAILEY: Motion and a second on the
8 table. Councilman Perry.

9 COUNCILMEMBER PERRY: I'm sorry. First couple
10 of questions are for Mr. Gumport. When you were doing
11 your investigation, and one of the things that has
12 troubled me a little bit about the investigation from
13 its entirety was that there are parts of it that I do
14 feel are incomplete. And -- and I guess my first
15 question to you is, at any point did you ever consider
16 going back and re-interviewing people for additional
17 information or while you were doing your interviews,
18 asking additional questions seeking further
19 clarification?

20 MR. GUMPORT: Yes. And I asked additional
21 questions of Brian Smith. I -- I think you'll see on
22 the transcript of his interview that there was a
23 follow-up interview that same day. So when I -- I
24 think what I'd say is, besides follow-up questions, it
25 became apparent fairly quickly that the -- there were

1 two additional pieces of the puzzle besides what Brian
2 Smith had told me on the first day of the interviews,
3 which was April 15th, 2014.

4 One was what Councilman Soubirous had to say
5 about it. And as I've discussed, he simply until
6 May 14th -- the investigation began essentially on
7 April 15th, until May 9th he wasn't going to answer any
8 questions. On May 9th or May 8th he said he would
9 answer written questions through his counsel. And
10 the -- I gave a set of submitted written questions and
11 I got his written answers and at that point it was
12 fairly clear that it was a swearing contest.

13 It -- it wasn't even a swearing contest
14 until -- until Councilmember Soubirous responded. All
15 I had was what really Brian Smith's side of the
16 conversation was and what he had said to other people,
17 which seemed to corroborate that at least he was
18 walking around telling other people, this is what
19 happened at the Starbucks on that day.

20 The other person who was identified as
21 someone who might know was Alicia Robinson of the Press
22 Enterprise. And what you will see when you read the
23 transcript of my interview of Brian Smith is, I first
24 say, well -- well, do you -- you think that she would
25 talk to me? And he says, I don't know, but I think she

1 has a tape-recording of something. I think she's
2 talking to someone on the seventh floor.

3 And towards the end of the interview what I
4 say to Brian Smith is, actually I think it would be
5 counterproductive. I -- I -- I don't think a
6 journalist is going to talk about what her sources told
7 her. And I think the investigation should be kept
8 confidential and this is not going to help get -- keep
9 it confidential.

10 So yeah, I did think about follow-up
11 questions and really, you know, it -- once I heard from
12 Councilmember Soubirous, it -- perhaps if I had heard
13 from him on day one, the investigation might have
14 stopped on day one.

15 COUNCILMEMBER PERRY: Did -- at any point
16 during your investigation, did you ever ask any of
17 these individuals if there was any potential witnesses
18 or did you ever go out to Starbucks and -- and walk the
19 area to see if there was any potential witnesses?

20 MR. GUMPORT: I didn't walk the area of
21 Starbucks, no, I did not.

22 COUNCILMEMBER PERRY: Okay. Thank -- thank
23 you.

24 Okay. And then, Sergeant Smith, if I can ask
25 you a couple of questions.

1 And, Councilmember Soubious, I've been
2 asking questions here, feel -- feel free to respond to
3 them afterwards.

4 MR. GUMPORT: (Indiscernible).

5 COUNCILMEMBER SOUBIROUS: Yeah, I just want to
6 make it clear the reason why I didn't respond to any
7 verbal questions is a matter of trust. When I'm told
8 four people, I'll never know the report, I'll never
9 know who filed against me. It's like, give me a break.
10 My attorney asked for things in writing, nope, you
11 can't have anything in writing. Nope, you can't know
12 anything. Well, if I'm not going to know anything,
13 then how am I going to talk about it? And that just
14 wasn't right.

15 So finally I thought, you know what, I owe it
16 to the people of Riverside, I didn't like the idea of
17 not answering, but I didn't trust, that's why I put it
18 in writing. And I think I've more than explained
19 myself at this point.

20 COUNCILMEMBER PERRY: Just follow along. I
21 want to go back to the day that the two of you had a
22 conversation. Like I said, I think there's a lot of
23 questions that weren't asked. And I -- I fall back on
24 many years of experience of investigating over --
25 investigating, supervising, and managing -- managing

1 investigations. And that's where a lot of my questions
2 are coming from.

3 When you guys met at Starbucks, by chance, do
4 you -- do you know any of the employees there?

5 SERGEANT SMITH: No, I don't.

6 COUNCILMEMBER PERRY: And if my memory serves
7 me right, in that same complex where Starbucks is
8 located, there's several small businesses. Do you know
9 any of those business owners or employees that work for
10 those businesses?

11 SERGEANT SMITH: No.

12 COUNCILMEMBER PERRY: And when you guys
13 arrived at Starbucks, were you guys seated inside,
14 outside?

15 SERGEANT SMITH: Outside.

16 COUNCILMEMBER PERRY: Across from one and
17 other, next to one and other?

18 SERGEANT SMITH: He was to my left.

19 COUNCILMEMBER PERRY: Okay. Was anyone else
20 sitting in close proximity to the two of you?

21 SERGEANT SMITH: There were two males that
22 were at the table, which would be to our left. They
23 were there prior to Councilman Soubierous' arrival.
24 When the councilman arrived, he -- I took it as he knew
25 somebody, I think it was a retired CHP officer,

1 something, they had exchanged pleasantries and then
2 Mike sat down and they were there for a period of time
3 while we were there.

4 COUNCILMEMBER PERRY: That was going to be one
5 of my questions, at any point in your conversation, did
6 anyone interrupt you even to say hi --

7 SERGEANT SMITH: There --

8 COUNCILMEMBER PERRY: -- break into the
9 conversation.

10 SERGEANT SMITH: There -- there was a point
11 that while we were there someone did walk up to go into
12 the Starbucks, stopped to talk to Councilman Soubrious.
13 I don't -- I don't remember what it was about, but I --
14 I thought it was something along the lines of maybe a
15 student or something of that matter, and they exchanged
16 business cards.

17 COUNCILMEMBER PERRY: And what part of your
18 conversation -- what part of the conversation that you
19 guys were having, what part of it was it? If you
20 remember?

21 SERGEANT SMITH: I'm going to -- I think it
22 was probably within the first 20 minutes.

23 COUNCILMEMBER PERRY: Okay.

24 SERGEANT SMITH: It was unremarkable for me
25 because it wasn't someone that was coming to me to

1 speak to me, so perhaps the councilman has a better
2 recollection of the timeframe.

3 COUNCILMEMBER PERRY: Did you see anyone else
4 there that you personally know?

5 SERGEANT SMITH: No, I did not.

6 COUNCILMEMBER PERRY: And approximately how
7 long did your guys' meeting last?

8 SERGEANT SMITH: About an hour, an hour and 10
9 minutes maybe.

10 COUNCILMEMBER PERRY: And during your
11 interview, you -- a couple times you used the term, he
12 tried to big league me. Can you -- so we all -- so
13 we're all on the same page here, can you define big
14 league me?

15 SERGEANT SMITH: Well, I thought it was pretty
16 clear in -- in my statement, it's just a term in an
17 essence he was letting me know his position versus my
18 position. That was how I felt.

19 COUNCILMEMBER PERRY: So when -- going back to
20 the interruptions again, was it just the one time that
21 there was an interruption during your conversation?

22 SERGEANT SMITH: To the best of my
23 recollection, it was just the -- the one time in the
24 middle of our conversation.

25 COUNCILMEMBER PERRY: Okay. And you also said

1 during -- during your conversation you guys had a
2 spirited conversation. Can you describe that
3 conversation again and was it interrupted?

4 SERGEANT SMITH: The -- well, the spirited
5 conversation, I would say was the back and forth
6 between him and I as to the needs to carry out what he
7 intimated that council wanted done with relationship to
8 panhandling, transients, et cetera, that it was a
9 larger project and problem than just the police
10 department's and the council couldn't leave the police
11 chief and the police department holding the bag on it,
12 there needed to be public works involved. I mean, you
13 have transcripts. So --

14 COUNCILMEMBER PERRY: Okay.

15 SERGEANT SMITH: -- rather than rehash it,
16 that -- that was the comments that were made. And then
17 we weren't interrupted because of the conversation, it
18 was just an interruption from somebody walking, like I
19 said, through the parking lot. I think he made eye
20 contact with Councilman Soubirous. They appeared to
21 know each other, exchanged pleasantries and business
22 cards.

23 COUNCILMEMBER PERRY: Okay. And while you
24 were at Starbucks that day and there -- because there's
25 talk of texting and cell phone calls, is that your

1 personal cell phone or is it a city cell phone?

2 SERGEANT SMITH: Oh, that's mine.

3 COUNCILMEMBER PERRY: And did anybody ever ask
4 you for your phone records?

5 SERGEANT SMITH: No one asked me for my phone
6 records. I was asked if I had kept text messages. And
7 my response then as it is now is no, I don't save text
8 messages. I don't see the need to do so.

9 COUNCILMEMBER PERRY: And if you were asked --
10 if you were asked during this investigation for your
11 phone records, were -- would you have provided them?

12 SERGEANT SMITH: Depends on what they wanted.

13 COUNCILMEMBER PERRY: Okay. And after your
14 meeting, who was the very first person you contacted?

15 SERGEANT SMITH: I -- I contacted two people.
16 I don't recall the exact order at this point it was so
17 long ago, but I know one was my vice president, Aurelio
18 Melendrez, and the other was the assistant chief, Chief
19 Chris Vicino.

20 COUNCILMEMBER PERRY: And do you remember
21 where you were when you made those -- those phone
22 calls? Were you still at the Starbucks?

23 SERGEANT SMITH: I was walking to my car from
24 the front of Starbucks.

25 COUNCILMEMBER PERRY: And the meeting you had

1 with Alicia Robinson, who initiated that?

2 SERGEANT SMITH: That was an impromptu
3 meeting, I think, as I described. I showed at the RPOA
4 office and Alicia was there, for the first meeting she
5 was there at the office talking to the office staff.
6 And then she asked me if I had a few minutes for her.

7 COUNCILMEMBER PERRY: And she told you she had
8 a source on the seventh floor?

9 SERGEANT SMITH: She didn't mention the source
10 on the seventh floor until the second conversation that
11 her and I had. And I think that's pretty clear in the
12 transcripts, but she intimated that the source -- that
13 the seventh floor, there was -- there was a concern
14 about the city manager's job and Sergio Diaz's job.
15 That was in the first conversation that her and I had.
16 She didn't ask me if I heard that. She just wanted to
17 bounce those scenarios off of me.

18 COUNCILMEMBER PERRY: And do you know if that
19 conversation was recorded?

20 SERGEANT SMITH: I think the -- I know the
21 second one she asked if she could record -- record it.
22 I don't know if the first one was recorded. Only she
23 would be able to answer that.

24 COUNCILMEMBER PERRY: Okay. I have no further
25 questions for you. Thank you.

1 MAYOR BAILEY: Councilman Gardner followed by
2 Councilman Soubiraous.

3 COUNCILMEMBER GARDNER: Sergeant Smith,
4 while -- while you're here, would you repeat for us to
5 the best of your recollection just one more time the
6 words that you recall Councilmember Soubiraous using in
7 terms of the view of the council or -- or whatever
8 action the council may have taken or the view of the
9 council, however you want to characterize it, about
10 implementing a process to deal with vagrants and
11 transients and how that might affect the city manager's
12 position or the chief's position?

13 SERGEANT SMITH: Well, I've reviewed the
14 written transcripts, and I stand by them. If you want
15 somebody to read it verbatim into the record or ask me
16 to read it verbatim, I'd be happy to do so. My -- my
17 concern with regurgitating things now, what are we at,
18 five months --

19 COUNCILMEMBER GARDNER: Yeah.

20 SERGEANT SMITH: -- past, a slight
21 inconsistency is going to be an issue.

22 COUNCILMEMBER GARDNER: Right. And I'm not --
23 not looking for that. What I'm -- what I'm trying to
24 get to is whether your perception was a firm perception
25 that Councilmember Soubiraous said that if something

1 wasn't done that the city manager would be replaced.

2 SERGEANT SMITH: I don't -- I don't understand
3 what it is that you're -- you're asking specifically.

4 COUNCILMEMBER GARDNER: Well, I --

5 SERGEANT SMITH: Okay. My perception was as I
6 said at that day. My perception was he was intimating
7 that the seven council folks wanted these things taken
8 care of. And if they couldn't be, then the city
9 manager could be replaced. And if Sergio Diaz couldn't
10 get the police department operating the way they
11 should, there would be a potential for him to leave as
12 well.

13 COUNCILMEMBER GARDNER: Okay. Where -- where
14 I'm trying to go with all this, and I was going to ask
15 Councilmember Soubirous right after this, I -- I think
16 this may be a case where a set of words were used and
17 the speaker meant one thing and the hearer interpreted
18 something slightly different.

19 SERGEANT SMITH: If that were to be a
20 possibility, then Councilman Soubirous would have to
21 say, that's what I said, and Brian took it out of
22 context. And to my knowledge that has not been said.
23 It has been, Brian is just grouching over spilt milk
24 because he backed Valerie Hill and not me.

25 COUNCILMEMBER GARDNER: Yeah.

1 SERGEANT SMITH: So if he's going to say that,
2 then -- then there's a possibility that maybe I did
3 interpret what he said differently, but to my knowledge
4 he hasn't acknowledged saying that or anything even
5 remotely close to that.

6 COUNCILMEMBER GARDNER: Okay. If -- if I may,
7 Mike, may I -- may I ask you a question, Councilmember
8 Soubiraous?

9 COUNCILMEMBER SOUBIROUS: Yes, absolutely, any
10 question. And I'd be glad to answer that response.

11 COUNCILMEMBER GARDNER: Okay. In your
12 introductory remarks, you said something along the
13 lines of you were trying to make it clear to Sergeant
14 Smith, as president of the RPOA, that you felt the
15 council was united in a desire to get a handle on the
16 street people issues.

17 COUNCILMEMBER SOUBIROUS: Yeah, there's a
18 reference to that in Mr. Gumport's quote of my email
19 that I said all seven councilmembers were behind this
20 issue of resolving the panhandler problem. And that's
21 because I heard it from the mouth of our city manager.
22 He said, all of you are really behind this wanting to
23 get it resolved, and I've got to take action. And
24 that's where the idea of the, I assume, because I
25 wasn't party to the conversation, about the -- the

1 security guards in parks.

2 COUNCILMEMBER GARDNER: Did -- do you recall,
3 did you say something along those lines to Sergeant
4 Smith in the meeting in Starbucks?

5 COUNCILMEMBER SOUBIROUS: Oh, I believe I had
6 and that all the councilmembers were united, devout,
7 wanting to resolve the panhandler problem. That's,
8 like, I think pretty much common knowledge to everybody
9 on this dais and most people in the city of Riverside.

10 MAYOR BAILEY: Okay. As -- as you remember,
11 did you go beyond that in saying that if it doesn't
12 happen, we might get a new city manager or a new police
13 chief or anything like that?

14 COUNCILMEMBER SOUBIROUS: I can tell you
15 absolutely that did not happen. And actually I thought
16 it was about a 20-minute meeting, and I thought we had
17 a great meeting. And we talked about how is Linda, how
18 is everything. My wife has known the folks at RPOA for
19 quite a long time with bringing volunteers there. And
20 I thought it was quite pleasant. I was really
21 surprised to read the transcript.

22 And like I said, I thought it was about a
23 20-minute meeting and I thought it went quite well and
24 the concerns from the RPOA president was basically
25 having backup. They were afraid or hesitant to take on

1 some of the homeless issue and panhandling, my focus
2 has really been the aggressive panhandling, unless they
3 had the city manager onboard, the Department of Mental
4 Health, and others. And my text messages -- text
5 messages chronicle that. So I thought we had a good
6 meeting. I was actually quite happy about it. We
7 hadn't spoken in a long time.

8 And I've got to tell you, you know as a
9 candidate when I've got different folks that didn't
10 necessarily support me, only one did up here for
11 election, you know that very night that it looked like
12 I was going to be over the top on the numbers, I had
13 phone calls from everybody. It may have been the next
14 day for, between the city manager and city attorney and
15 city clerk, but they all called me and offered their
16 congratulations and how much they wanted to work with
17 me.

18 And I said, absolutely, great. Looking
19 forward to working with each of you. And you know, as
20 somebody that sits in a political office, you
21 immediately embrace those that didn't support you,
22 because those that didn't vote for me in Ward 3 and
23 even those that didn't vote, most of them didn't, only
24 about 18 percent voted, I serve all of you, resident,
25 nonresident. I don't ever like to use the word

1 citizen, it always bothers me because I serve a lot of
2 noncitizens, too.

3 So bottom line here is I thought we had a
4 great meeting. We hadn't talked in a long time and the
5 last thing I'm going to do is start slapping -- I mean,
6 what did he call it, big leaguings. I'm not going to
7 big league, I don't even know what that means, but I'm
8 certainly not going to go slapping around an RPOA
9 president when it's my first opportunity to make peace
10 and -- and make happy and where can we grow and go from
11 here. So I found that to be kind of unusual.

12 Most people in my shoes wouldn't do such a
13 thing, and I certainly did not, and I will stand by
14 that, I'll swear by that, and I will even take a lie
15 detector test.

16 SERGEANT SMITH: I will, too.

17 COUNCILMEMBER GARDNER: I don't know if
18 this -- I -- I don't know if this resolves anything or
19 not, but I -- I have a suspicion that Councilmember
20 Soubious said something intending to imply that he
21 thought there was strong support amongst the council to
22 deal with an issue and possibly Sergeant Smith heard
23 the words a little differently or interpreted them --
24 them a little differently than Councilmember Soubious
25 may have meant them.

1 Things like that have happened to me,
2 probably to all of us. So I'll just -- I'll just leave
3 it at that. Thank you both.

4 MAYOR BAILEY: Councilman Perry.

5 COUNCILMEMBER PERRY: One last question.
6 Since the time of this investigation, have the two of
7 you had phone calls, tried to get ahold of one and
8 other, emails, text messages?

9 SERGEANT SMITH: No, sir.

10 COUNCILMEMBER PERRY: All right, thank you.

11 MAYOR BAILEY: Any other questions, comments
12 from the council? Councilman Gardner.

13 COUNCILMEMBER GARDNER: Just one -- one last
14 question. If -- if I could, could we repeat the motion
15 that is before us?

16 CITY CLERK NICOL: The motion is to close
17 discussion without a vote.

18 COUNCILMEMBER GARDNER: Okay. And -- and if
19 I -- I could, I'd like to just make sort of a quick
20 closing remark. Yeah, I -- I think we can learn three
21 things from today and everything that led up to today.
22 The -- the first is that this process is irretrievably
23 broken, and it does more harm than good; second is that
24 the process and the way that we all have implemented it
25 is tearing us apart as a council and as a city; and the

1 third is that we, as elected officials, have to be
2 really careful in what we say and in choosing the words
3 we use.

4 So words take on a weight beyond what they
5 really deserve, simply because of the position that we
6 hold. And it gives us weight that as regular people we
7 don't -- we don't carry. Our challenge is to fix the
8 process and to find a way to move forward together for
9 the good of our city. And I request that each of us,
10 me too, is that we will put aside our differences and
11 work hard to make that happen.

12 MAYOR BAILEY: Well said, Mike.

13 In summary, I think you all have heard that
14 we had a duty to investigate, and that's what brought
15 us here today. The council was unanimous in -- in
16 bringing this hearing to the public. And I think that
17 that was out of a leadership position. In uncertain
18 times, leaders step up. I think instead of having the
19 investigation go to the Press Enterprise who asked us
20 for the public records request and allow the
21 investigation to go into the blogosphere and the court
22 of public opinion, the council decided to bring this to
23 the public in this type of format so that individuals
24 that were listed and named in this investigation had an
25 opportunity for their equal treatment and voices to be

1 heard.

2 And so that the city council could then also
3 ask questions and have this conversation, so to speak,
4 with the public. And so ultimately I -- I believe that
5 that's what the council decision was about, it was
6 about transparency in government and to -- to air out
7 some of these issues. And so at the very least, we
8 have communicated. We have established that
9 conversation.

10 I think there are plenty more conversations
11 that we need to have going forward. I think that the
12 strategic planning process that is ongoing, right, that
13 we've all started individually, we can -- we can use to
14 come to the table and create some consensus. And so I
15 would hope that you all would participate in that
16 strategic planning process.

17 As was mentioned earlier by the public,
18 that's the expectation of them for us to come to the
19 table and -- and go through that process together. You
20 know, I -- I think that -- that definitely from the
21 employees' perspective, that they, this was a
22 significant and sensitive issue and they brought that
23 to the attention of their superior officers and they
24 brought that to the attention of the mayor and mayor
25 pro tem and -- and we tried our best to assist those

1 employees to -- to again bring some type of light to
2 the darkness that was out there, to the uncertainty
3 that was out there.

4 And so I do believe it's a commitment by the
5 council to move on from here and continue to be
6 transparent and -- and accountable here in Riverside.

7 So thank you, Mr. Smith, for answering the
8 questions, for stepping up to the podium. For all of
9 you coming today, being a part of this process. And it
10 looks like we are not going to -- to take a -- are we
11 going to take a vote to not take a vote? That's the
12 motion?

13 MALE SPEAKER: We vote not to vote.

14 MAYOR BAILEY: Vote not to vote?

15 Councilman Melendrez, do you have something
16 to add?

17 COUNCILMEMBER MELENDREZ: Thank you, mayor.
18 I -- I do have one more comment. You know, we have
19 another one of these coming up, and I think we need to
20 decide before that date as to whether we're going to
21 hear it or not. I -- I think -- I -- I believe that's
22 something we need to discuss more thoroughly. I think
23 we're going to hear a rerun of what we have here
24 because the charges are very similar.

25 I know this is a little bit off topic, but I

1 felt it was important to mention it. And --

2 MAYOR BAILEY: Okay. Work with the city
3 attorney towards --

4 COUNCILMEMBER MELENDREZ: And if we could
5 calendar it once more --

6 MALE SPEAKER: In open session.

7 COUNCILMEMBER MELENDREZ: -- to discuss it.

8 MAYOR BAILEY: Work with the city attorney on
9 that, on that process?

10 COUNCILMEMBER MELENDREZ: Well, I would
11 like -- I would like to hear from Councilmember Davis.
12 Well --

13 MAYOR BAILEY: It's not on the agenda, so we
14 can't make any decision or --

15 COUNCILMEMBER MELENDREZ: Understood.

16 MAYOR BAILEY: -- talk about an issue that
17 is --

18 COUNCILMEMBER MELENDREZ: Correct. And --

19 MAYOR BAILEY: -- not on the agenda. So --

20 COUNCILMEMBER MELENDREZ: -- I know that this
21 was off topic, you know, because it's a separate case,
22 but I think we need to at least discuss it prior to --
23 to us going through this again.

24 MAYOR BAILEY: City attorney, is that legal?

25 MS. TALLEY: It's my -- maybe I'm

1 misunderstanding, I thought -- what I'm understanding
2 Councilmember Melendrez -- Melendrez's request is that
3 at some time the council needs to address whether or
4 not you're going to go forward on the next -- the other
5 matter, but that discussion cannot take place this
6 evening, but it -- you're requesting that it take place
7 at sometime; is that correct?

8 COUNCILMEMBER MELENDREZ: At -- at least just
9 bringing it up so that we can --

10 MS. TALLEY: Right.

11 COUNCILMEMBER MELENDREZ: -- maybe calendar it
12 at a -- maybe at the end of the meeting I can make that
13 request, not this meeting, but this --

14 MS. TALLEY: To --

15 COUNCILMEMBER MELENDREZ: -- evening's
16 session.

17 MS. TALLEY: To place it on a future agenda?

18 COUNCILMEMBER MELENDREZ: Yes.

19 MS. TALLEY: Okay. That -- that's how I
20 understood it, but --

21 COUNCILMEMBER MELENDREZ: Yes.

22 MS. TALLEY: -- you're correct. You're both
23 correct.

24 COUNCILMEMBER MELENDREZ: Okay, great.

25 MS. TALLEY: It can't be discussed tonight,

1 and you can request it in a future agenda.

2 MAYOR BAILEY: Good, is that clear?

3 COUNCILMEMBER DAVIS: Madam city attorney, can
4 I make a comment on that as far as what I have done so
5 the people of Riverside know?

6 MS. TALLEY: Well --

7 COUNCILMEMBER DAVIS: It has nothing to do
8 with --

9 MS. TALLEY: Right.

10 COUNCILMEMBER DAVIS: -- discussing going --

11 MS. TALLEY: The --

12 COUNCILMEMBER DAVIS: -- forward.

13 MS. TALLEY: The matter is not on the agenda,
14 so it really would be inappropriate to engage in any
15 kind of --

16 COUNCILMEMBER DAVIS: Would it then be --

17 MS. TALLEY: -- discussion about it.

18 COUNCILMEMBER DAVIS: -- legal for me to go on
19 the other side of the dais and take three minutes then
20 and comment on what I have done?

21 MS. TALLEY: During public comment, I think
22 there's no -- nothing to --

23 COUNCILMEMBER DAVIS: Very well.

24 MS. TALLEY: -- prohibit you from doing that.

25 COUNCILMEMBER DAVIS: Very well. Thank you.

1 MAYOR BAILEY: All right. So we have the --
2 the vote to -- to not vote on this matter, that's the
3 motion in front of us is to take a vote to not vote on
4 any of the alternatives listed, which includes no
5 action. There is a 6-1 approval of a vote not to vote.

6 FEMALE SPEAKER: Love it.

7 MAYOR BAILEY: We'll take a five-minute recess
8 and come back for public hearings.

9 (Conclusion of the Council Meeting)

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