

**MEETING MINUTES**

June 10, 2015

**I. Call to Order & Orders of the Day**

**Roll Call**

**PRESENT:** Chair Michael Smith, Vice Chair Rolanda Pierre Dixon, and Commission Members Madhavee Vemulapalli, Adrian Gonzales and Chris Peacock

**ABSENT:** None

**STAFF:** Investigator/Evaluator Steven Miller, Deputy City Attorney Arlene Silva, City Clerk Toni Taber and Deputy City Clerk Cecilia McDaniel

**OTHER:** Noelia Espinola, Court Reporter with Advantage Reporting Services and Kenneth Kwan, Vietnamese Interpreter with Communicaid

**Call to Order**

The members of the San José Ethics Commission convened at 5:38 p.m. in Room T-1446 of City Hall, 200 E. Santa Clara Street, CA 95113.

**Orders of the Day**

Action: Upon a motion by Vice Chair Rolanda Pierre Dixon, and seconded by Commissioner Adrian Gonzales (transcript incorrectly indicates Commissioner Madhavee Vemulapalli) and carried unanimously, the Commission approved the adoption of the June 10, 2015 agenda. (5-0)

**II. Closed Session - None**

**III. Hearings**

- A. Hearing on Complaint filed by Tuan Ly on May 27, 2015 against Manh Nguyen alleging violations of the San José Municipal Code (Independent Investigator/Evaluator)
- B. Hearing on Complaint filed by Mai Le on May 29, 2015 against Manh Nguyen alleging violations of the San José Municipal Code (Independent Investigator/Evaluator)
- C. Hearing on Complaint filed by Loan To Pham on May 29, 2015 against Manh Nguyen alleging violations of the San José Municipal Code (Independent Investigator/Evaluator)
- D. Hearing on Complaint filed by Lam Kim Hong and Lam Hung Trang on June 1, 2015 against Manh Nguyen alleging violations of the San José Municipal Code (Independent Investigator/Evaluator)

Documents Filed: 1) Report from Hanson Bridgett LLP dated June 3, 2015 regarding Tuan Ly v. Manh Nguyen, Complaint filed May 27, 2015; 2) Report from Hanson Bridgett LLP dated June 3, 2015 regarding Mai Le v. Manh Nguyen, Complaint filed May 29, 2015; 3) Report from Hanson Bridgett LLP dated June 3, 2015 regarding Loan To Pham v. Manh Nguyen, Complaint filed May 28, 2015; 4) Report from Hanson Bridgett LLP dated June 3, 2015 regarding Lam Kim Hong and Lam Hung Trang v. Manh Nguyen, Complaint filed June 1, 2015; 5) Letter from Mr. Dovan requesting an interpreter; 6) Campaign flyer for Manh Nguyen with Esquire listed submitted by Mr. Dovan; and 7) Picture of Manh Nguyen's kick-off event submitted by Mr. Dovan.

Discussion: Chair Michael Smith summarized the hearing procedures and opened the public hearing. All members of the Commission were present. The Commission conducted a single hearing to address four identical complaints filed with the Clerk's Office alleging violations of San Jose Municipal Code Title 12 by Manh Nguyen. The four complaints are as follows: 1) Complaint filed by Tuan Ly on May 27, 2015; 2) Complaint filed by Mai Le on May 29, 2015; 3) Complaint filed by Loan To Pham on May 20, 2015; and 4) Lam Kim Hong and Lam Hung Trang filed on June 1, 2015.

Evaluator Steven Miller notified and provided copies of the Complaints to the Respondent on May 28, May 29, May 30 and June 1, 2015 respectively. The Evaluator's report and recommendations were received by the City Clerk on June 3, 2015, and copies were then provided to the Complainant, Respondent and Commission Members, and posted to the City's website with the agenda.

Mr. Minh Q. Steven Dovan was present to represent all four Complainants and no representative was present for the Respondent. Mr. Kenneth Kwan with Communicaid was present to provide Vietnamese translation services.

Evaluator Steven Miller presented the reports. The four complaints were identical, so they were discussed together. The complaints allege two violations of Title 12 by Manh Nguyen: 1) an unspecified violation concerning a "ballot designation worksheet"; and 2) the filing of a false Family Gift Report. With regard to the first alleged violation, Evaluator Steven Miller indicated that there were no facts identified to suggest a violation occurred so there was nothing to investigate. With regard to the second violation, Evaluator Steven Miller indicated that candidates are not required to file a Family Gift Report under Title 12. Therefore, the Evaluator determined that no violation of Title 12 occurred and no further investigation is needed since there is not sufficient cause to do so.

The following individuals were sworn in and gave testimony: Tuan Ly, Minh Q. Dovan, Lam Trang, Vinh Bao, Cuong Gang, Aic Xung, Bryan Do, Sutton Vo, An Le, and Loi Tran. See attached transcript for full discussion. The Commissioners discussed the matter. Evaluator Steven Miller, Deputy City Attorney Arlene Silva and City Clerk Toni Taber responded to Commission questions.

Action: Chair Michael Smith moved that the Commission adopt the Evaluator's report, approve the recommendation against conducting an investigation and close the file on this matter. Commissioner Adrian Gonzales seconded the motion. On a call for the question, the motion carried unanimously. (5-0.) Deputy City Attorney Arlene Silva requested clarification on the motion. Chair Michael Smith clarified that the motion pertained to all four complaints.

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

Chair Michael Smith	So certified
Vice Chair Rolanda Pierre Dixon	So certified
Commissioner Madhavee Vemulapalli	So certified
Commissioner Chris Peacock	So certified
Commissioner Adrian Gonzales	So certified

Action: Upon a motion by Chair Michael Smith, and seconded by Vice Chair Rolanda Pierre Dixon, the Commission moved to direct the City Attorney to draft four Resolutions on the Commission's findings, and further, that the Commission authorize the Chair to approve and sign the resolutions. On a call for the question, the motion carried unanimously. (5-0.)

The Commission discussed referring the complaints to the District Attorney for investigation since there was a misstatement of fact on the family gift report which was signed under penalty of perjury by Manh Ngyen.

Action: Commissioner Adrian Gonzales moved that the Commission pursue no further action or referral to any law enforcement agency with regard to the four complaints. Chair Michael Smith seconded the motion. On a call for the question, the motion carried. (4-1; Opposed: Commissioner Pierre Dixon.)

Chair Michael Smith closed the hearing at 8:16 p.m.

#### **IV. Consent Calendar**

- A. Approve the Minutes of May 13, 2015 – Regular Meeting – Deferred to July 8, 2015 Meeting.

#### **V. Reports**

- A. Chair – None
- B. City Attorney – None
  - 1. Legislative update
- C. City Clerk – Deferred to July 8, 2015 meeting.
  - 1. Legislative update
  - 2. Status of compliance with Commission resolutions
  - 3. Status report on filings (Form 700, Campaign Statements, Lobbyists)
  - 4. Elections update

5. Status of Clerk's Office move from Wing to Tower
  6. Status of Independent Evaluator contract with Hanson Bridgett
- D. Investigator/Evaluator – None

Commissioner Chris Peacock left at 8:44 p.m.  
Vice Chair Rolanda Pierre Dixon left at 9:03 p.m.

**VI. Old Business**

- A. Discussion and possible action on Ethics Commission's 2015 Work Plan and 2014 Annual Report. (Chair) – Deferred to the July 8, 2015 meeting.
- B. Discussion and possible action regarding ad hoc subcommittee on community outreach. (City Clerk)

Action: Chair Michael Smith moved to add Commissioner Chris Peacock to the community outreach ad hoc subcommittee. Commissioner Adrian Gonzales seconded the motion. On a call for the question, the motion carried. (3-0-2: Absent: Commissioner Peacock and Vice Chair Pierre Dixon.)

**VII. New Business**

- A. Discussion, review and possible action to request for revisions to the San Jose Municipal Code and Resolution 76954. (City Clerk)

Document Filed: Matrix of suggested changes to Title 12 of the San Jose Municipal Code and Resolution 76954.

Discussion: The Commission reviewed the matrix and asked questions of staff.

Action: Chair Michael Smith moved that the Commission create an ad hoc subcommittee, consisting of Chair Michael Smith and Commissioner Adrian Gonzales, to work with staff on the review and revisions to the San Jose Municipal Code and the Resolution. Commissioner Adrian Gonzales seconded the motion. On a call for the question, the motion carried. (3-0-2: Absent: Commissioner Peacock and Vice Chair Pierre Dixon.)

- B. Scheduling of Special Ethics Commission meeting before Council District 4 Special Runoff Election on June 23, 2015. (City Clerk) – No action taken.

**VIII. Public Comment – None.**

**IX. Future Agenda Items and Adjournment**

The next regular meeting is Wednesday, July 8, 2015 at 5:30 p.m. in City Hall.

**The following agenda items will be discussed at the July 8, 2015 Ethics Commission meeting:**

- 2015-16 Workplan and 2014-15 Annual Report
- Open Government Training
- Revisions to Title 12 and the Resolution

The meeting was adjourned at approximately 9:21 p.m.

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

ATTEST:  
ETHICS COMMISSION SECRETARY

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

Attachment: Transcript of Hearing dated June 10, 2015, Reported by Noelia Espinola, CSR, License Number 8060, Advantage Reporting Services, No. 49557, pages 1 through 86.

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

Taken On June 10, 2015

CITY OF SAN JOSE ETHICS COMMISSION

PAGE 1 TO PAGE 86

CONDENSED TRANSCRIPT

*Advantage Reporting*

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# REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p>CITY OF SAN JOSE ETHICS COMMISSION</p> <p>REPORTER'S TRANSCRIPT OF PROCEEDINGS</p> <p>Date: Wednesday, June 10, 2015 Time: 5:38 p.m. Location: San Jose City Hall 200 E. Santa Clara Street Tower - Room 1446 San Jose, CA 95113</p> <p>Reported By: Noelia Espinola, CSR License Number #8060</p> <p>#49881</p>	<p>Page 3</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 CHAIRMAN SMITH: Okay. I'm going to call us</p> <p>4 to order. I didn't realize the time. Time is 5:38.</p> <p>5 Okay. So call to order. Orders of the day.</p> <p>6 We need a motion to affirm the agenda.</p> <p>7 COMMISSIONER PIERRE-DIXON: Meeting is being</p> <p>8 called to order at this time. If there's further</p> <p>9 conversation, take it outside. Thank you.</p> <p>10 UNIDENTIFIED SPEAKER: There's a slew of</p> <p>11 people --</p> <p>12 COMMISSIONER PIERRE-DIXON: Well, they either</p> <p>13 go in or go out but you can't do both.</p> <p>14 CHAIRMAN SMITH: You can shut the door.</p> <p>15 UNIDENTIFIED SPEAKER: Well, someone should</p> <p>16 let them know it started.</p> <p>17 MS. TABER: I did, 15 minutes ago.</p> <p>18 CHAIRMAN SMITH: Okay. Okay. So we had a</p> <p>19 motion?</p> <p>20 Did we have a motion?</p> <p>21 MS. McDANIEL: No.</p> <p>22 CHAIRMAN SMITH: Somebody make a motion.</p> <p>23 COMMISSIONER PIERRE-DIXON: I make a motion</p> <p>24 to --</p> <p>25 CHAIRMAN SMITH: To approve the agenda.</p>
<p>Page 2</p> <p>1</p> <p>2 APPEARANCES</p> <p>3</p> <p>4 San Jose Elections MICHAEL SMITH, Chair Commissioner: ROLANDA PIERRE-DIXON, Vice-Chair</p> <p>5 CHRIS PEACOCK MADHAVEE VEMULAPALLI ADRIAN GONZALES</p> <p>6</p> <p>7</p> <p>8 Staff: ARLENE F. SILVA Deputy City Attorney</p> <p>9</p> <p>10 TONI TABER, City Clerk</p> <p>11 CECILIA McDANIEL Deputy City Clerk</p> <p>12</p> <p>13 Independent HANSON BRIDGETT, LLP Evaluator: BY: STEVEN D. MILLER, Attorney at Law</p> <p>14 425 Market Street</p> <p>15 26th Floor San Francisco, CA 94105 (415) 777-3200</p> <p>16</p> <p>17</p> <p>18 The Reporter: ADVANTAGE REPORTING SERVICES BY: NOELIA ESPINOLA, CSR #8060</p> <p>19 1083 Lincoln Avenue San Jose, CA 95125 (408) 920-0222</p> <p>20</p> <p>21 --o0o--</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 4</p> <p>1 COMMISSIONER PIERRE-DIXON: Yes.</p> <p>2 CHAIRMAN SMITH: We have a second?</p> <p>3 COMMISSIONER VEMULAPALLI: Yes, sir.</p> <p>4 CHAIRMAN SMITH: Thank you. All in favor?</p> <p>5 (All Commissioners responded Aye.)</p> <p>6 CHAIRMAN SMITH: Any opposed?</p> <p>7 (No response.)</p> <p>8 CHAIRMAN SMITH: Okay. Passes unanimously.</p> <p>9 Okay. There is no closed session today, so</p> <p>10 we move on to the hearing.</p> <p>11 Let me step outside and tell them we're</p> <p>12 having our hearing.</p> <p>13 UNIDENTIFIED SPEAKER: And no one heard you.</p> <p>14 MS. TABER: I told them. We did go out and</p> <p>15 notify people.</p> <p>16 UNIDENTIFIED SPEAKER: Oh, okay. I didn't</p> <p>17 hear that.</p> <p>18 MS. TABER: I got here right at 5:30. As</p> <p>19 soon as I came up the elevator -- I talked to them.</p> <p>20 Well, they did hear me because they responded that they</p> <p>21 didn't want to come in.</p> <p>22 UNIDENTIFIED SPEAKER: Okay. That's not what</p> <p>23 I heard, though.</p> <p>24 COMMISSIONER PIERRE-DIXON: Well, nobody does</p> <p>25 not hear my voice.</p>

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 5	Page 7
<p>1 UNIDENTIFIED SPEAKER: Can we record video? 2 Can we record? 3 CHAIRMAN SMITH: Pardon? 4 UNIDENTIFIED SPEAKER: Can we record? 5 CHAIRMAN SMITH: Yes, you can record. It's a 6 public meeting. 7 Okay. I'm going to get started. Okay. 8 There are a couple of seats here. 9 MS. McDANIEL: I think we want to keep those 10 open for testimony. 11 CHAIRMAN SMITH: I don't know if we have more 12 chairs anywhere or not. 13 MS. TABER: We don't. Not on this floor. 14 CHAIRMAN SMITH: Okay. It is Wednesday, June 15 10th -- oh, are you ready? 16 COURT REPORTER: Yes. 17 CHAIRMAN SMITH: It is Wednesday, June 10th, 18 2015, and this hearing of the City of San Jose Ethics 19 Commission is being held in Room T-1446 of San Jose 20 City Hall. All members of the Commission are present. 21 The Commission will conduct a hearing on four 22 identical complaints filed with the City Clerk alleging 23 that Manh Nguyen violated Section 12.08 and other 24 unspecified sections of the San Jose Municipal Code. 25 Specifically, the allegation is that the respondent</p>	<p>1 been provided copies of the Resolution. The 2 regulations and procedures have been adopted in order 3 to ensure the fair, just and timely resolution of 4 complaints before the Commission. 5 This hearing is open to the public. It is 6 being electronically recorded, and we have a court 7 reporter to compile a transcript. The formal rules of 8 evidence do not apply to this hearing, but all 9 testimony will be under oath or affirmation. The 10 complainant will be treated like any other witness -- 11 or the complainants will be treated like any other 12 witnesses in providing evidence. The Chair may compel 13 the testimony of witnesses and may compel the 14 production of relevant documents to the Evaluator by 15 subpoena. 16 Witnesses may be excluded at the discretion 17 of the Commission. Commission members may ask 18 questions of witnesses or the Evaluator when recognized 19 by the Chair. 20 At this time I would like to have the 21 complainants and the respondent or their 22 representatives identify themselves for the record. 23 Are any of the complainants here? Or their 24 representative? 25 MR. DOVAN: I'm an attorney. I did file a</p>
Page 6	Page 8
<p>1 filed a false family gift report and committed an 2 unspecified violation concerning a "ballot designation 3 worksheet." The four complaints are as follows: 4 A complaint filed by Tuan Ly on May 27th, 5 2015; 6 A complaint filed by Mai Le on May 29th, 7 2015; 8 A complaint filed by Loan To Pham on 9 May 29th, 2015; and 10 A complaint filed by Lam Kim Hong and Lam 11 Hung Trang on June 1, 2015. 12 The City Clerk promptly notified and provided 13 copies of the individual complaints to the Independent 14 Evaluator, and the Evaluator notified and provided 15 copies to the respondent on May 28th, May 29th, May 16 30th and June 1st, 2015, respectively. The Independent 17 Evaluator's Reports and Recommendations were submitted 18 to the City Clerk on June 3rd, 2015, and copies were 19 then provided to the complainant, respondent and 20 commission members and posted to the city web site with 21 the agenda for tonight's meeting. 22 On April 15th, 2014, the City Council adopted 23 Resolution 76954, which establishes the Commission's 24 regulations and procedures pertaining to investigations 25 and hearings. All parties to these proceedings have</p>	<p>1 complaint. My complaint apparently is not agendaized. 2 But all the -- all the -- 3 CHAIRMAN SMITH: Whoever's phone that is, 4 could you silence it. Thank you. 5 MR. DOVAN: All the other complainants 6 referred to my information. And the document they 7 submitted and attached were documents that I obtained 8 from the courts -- bankruptcy court, Superior Court -- 9 CHAIRMAN SMITH: So you're representing -- 10 MR. DOVAN: I represent -- 11 CHAIRMAN SMITH: -- the complainants? 12 MR. DOVAN: -- the four people. 13 CHAIRMAN SMITH: Could you identify yourself, 14 and then we'll get to you later. 15 MR. DOVAN: I'm so sorry. I'm getting 16 senile. 17 My name is Minh, M-i-n-h; Q, period; Steven 18 with a V; Dovan, D-o-v-a-n. I'm an attorney in San 19 Jose. 20 CHAIRMAN SMITH: Okay. So we'll -- okay. 21 Right now we're just identifying the parties. 22 MR. DOVAN: Sure. 23 CHAIRMAN SMITH: We'll get back to you in a 24 few minutes. 25 MR. DOVAN: Thank you.</p>

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 9	Page 11
<p>1 CHAIRMAN SMITH: Okay. And is anyone here 2 representing Manh Nguyen? 3 Okay. I'd also like to have city staff and 4 representatives of Hanson Bridgett, the Commission's 5 Independent Evaluator, please identify themselves for 6 the record. So if you could go around. 7 MS. McDANIEL: Cecilia McDaniel with the City 8 Clerk's office. 9 MS. TABER: Toni Taber, City Clerk. 10 MS. SILVA: Arlene Silva, Deputy City 11 Attorney. 12 MR. MILLER: Steven Miller from Hanson 13 Bridgett. 14 CHAIRMAN SMITH: Okay. Thank you. And I 15 just remembered to turn off my phone. 16 Okay. Under the Commission's regulations and 17 procedures, the respondent may submit a written 18 response to the Report and Recommendations. The 19 response may contain legal arguments, a summary of 20 evidence and any mitigating or exculpatory information. 21 At this time I don't believe we received any 22 written response. Did we? 23 MS. McDANIEL: The only response we received 24 is communication from Mr. Dovan, asking for -- that we 25 get an interpreter for the meeting. And I do have it</p>	<p>1 MS. TABER: Yes. And do you want us to 2 translate the entire meeting? Sometimes we just have a 3 translator here to translate public comments. 4 MR. MILLER: It would be good to do it two 5 ways would be my -- 6 MR. LY: I asked him to translate for 7 everybody because he, the lawyer, he, the attorney of 8 the legal, is better. So we would like to him to help. 9 MS. McDANIEL: Does he want him to go ahead 10 and translate the entire thing? 11 MR. LY: Yeah, everything. Yeah, everything. 12 Yeah. 13 CHAIRMAN SMITH: How do we do that without 14 totally disrupting -- I've been to meetings where they 15 were translated but with somebody with a speaker going 16 to people with headphones. I don't know how you can do 17 that here. 18 MR. MILLER: If I might. If I might. 19 CHAIRMAN SMITH: Yes. 20 MR. MILLER: I will be brief and I will make 21 pauses to allow for translation periodically. But it 22 seems to me there may be some benefit to people in the 23 room understanding what at least I have to say and, 24 presumably, what you all have to say also. 25 Otherwise -- well, it would be my hope that everybody</p>
Page 10	Page 12
<p>1 printed here if you want a copy. 2 CHAIRMAN SMITH: Okay. So that's -- that's 3 for the complainants. There's nothing from the 4 respondent. 5 MS. McDANIEL: No. 6 CHAIRMAN SMITH: Okay. Thank you. 7 And the complainant or any other interested 8 person may also submit a brief or written argument. 9 So we do have -- you do have a request? 10 MS. McDANIEL: Yes. And I can pass it out. 11 CHAIRMAN SMITH: We probably should. 12 Okay. With that, at this time I'll recognize 13 Steve Miller from the Hanson Bridgett law firm to 14 present the Independent Evaluator's Report and 15 Recommendations. 16 MS. TABER: Can I ask one question? 17 CHAIRMAN SMITH: Yes. 18 MS. TABER: Since Mr. Dovan requested the 19 interpreter, I'd like clarification if he wants this 20 entire thing translated or just public speakers? 21 Because -- 22 MR. LY: My name is Tuan Ly. I'm the person 23 who filled out the complaint for Mr. Manh Nguyen. I 24 need a lawyer and Steven Dovan to help to translate 25 from Vietnamese to English. That's okay?</p>	<p>1 in the room can understand what I say, at least. 2 MS. SILVA: For purposes of accommodation, we 3 have gotten a request to get it translated. So I would 4 recommend that we translate the entire proceedings. 5 CHAIRMAN SMITH: I'm just saying, how do we 6 do it? 7 MS. SILVA: Logistically or -- 8 MR. MILLER: Watch. I got it. 9 MR. LY: But we want the lawyer, Steven 10 Dovan, and help to translate in English, Vietnamese, 11 everything. 12 CHAIRMAN SMITH: We have a translator. 13 MS. TABER: We have a translator. And 14 Mr. Dovan, I assume -- I -- from what he stated 15 earlier, it sounds like you're going to represent 16 your -- the group? 17 MR. DOVAN: Yes. 18 MS. TABER: Okay. I think we're clear. 19 MR. DOVAN: I think what he wanted -- 20 MS. TABER: Everybody could speak, though. 21 MR. DOVAN: Yeah. What he wanted was 22 actually someone who is fluent in both languages. If 23 you don't mind, I can interject. When I say 24 "fluent" -- I have written articles in Vietnamese and 25 articles --</p>

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 13

1 THE INTERPRETER: May the interpreter  
2 interject? With a group of people like this, we need  
3 to have a transmitter and then a headset for all of  
4 them so I can translate simultaneously. But then in  
5 this case, you know, it is almost impossible to -- not  
6 to over-speak over the speaker.  
7 CHAIRMAN SMITH: That was my concern.  
8 MR. DOVAN: Can I have a question, sir?  
9 CHAIRMAN SMITH: Hang on. Let him finish,  
10 please.  
11 THE INTERPRETER: So, basically, this is what  
12 I suggest, that Mr. Dovan is going to represent the  
13 four people in the agenda. And Mr. Dovan should have  
14 these two -- four people, you know, sitting close to  
15 you. And whenever any single individual want to make a  
16 comment, please raise their hand and stand up so I can  
17 go to that person and translate for him. Otherwise,  
18 that is the only way now, if we don't have a  
19 transmitter and a headset.  
20 CHAIRMAN SMITH: Yeah, and -- just one  
21 second. And I would say that's, I think, reasonable.  
22 But please don't raise your hand because you want to  
23 say something. There will come an opportunity to say  
24 something. We need to get through other things before  
25 we get to the point for comments.

Page 14

1 Yes, you had --  
2 MR. VO: My name is Sutton Vo, who's a voter  
3 of the District 4, on behalf of myself and my, you  
4 know, family. My whole family, big family. We have 15  
5 vote. And so, you know, that reason I came here, to  
6 listen to people complaining about Mr. Manh Nguyen, the  
7 campaign to be our representative of my district. And  
8 so -- you know, happy to have a council member in my  
9 district but not anyone.  
10 CHAIRMAN SMITH: Okay.  
11 MR. VO: And so I have my source. And so I  
12 come to listen, people complaining about my  
13 district-to-be -- member-to-be.  
14 CHAIRMAN SMITH: Okay. Okay. I guess we're  
15 back to --  
16 MR. DOVAN: Sir?  
17 CHAIRMAN SMITH: Yes.  
18 MR. DOVAN: I know Ms. Dixon, and I -- have  
19 had cases with me for more than 30 years. I'm a  
20 defense attorney, and I've dealt with Deputy D.A.  
21 Rolanda Pierre-Dixon.  
22 Anyway, the point is this. I'd like to know,  
23 is it possible to voir dire the gentleman in terms of  
24 his qualification? Because we do that in court.  
25 Because, frankly -- I'll be honest -- I'm not

Page 15

1 familiar with you, although I was on the Judicial  
2 Council advisory committee more than 20 years ago on  
3 interpreters.  
4 And I am fluent in Vietnamese, and I have  
5 dealt with literally dozens of interpreters. I don't  
6 think I have run across him.  
7 CHAIRMAN SMITH: City Clerk's office, you  
8 want to --  
9 MS. TABER: I think that's an Attorney's  
10 office question.  
11 CHAIRMAN SMITH: Attorneys' office question.  
12 MS. TABER: We have approved interpreting  
13 companies that the City has allowed us to contact.  
14 He's -- Communicaid is one of those companies.  
15 MR. DOVAN: I understand. But is he  
16 certified?  
17 MS. TABER: That's the only thing --  
18 MS. McDANIEL: He is not certified.  
19 THE INTERPRETER: I'm qualified certified.  
20 I'm qualified.  
21 MR. DOVAN: Qualified. Do you have the  
22 Judicial Council card, sir?  
23 THE INTERPRETER: This is my card.  
24 MR. DOVAN: Can I see that?  
25 THE INTERPRETER: CUIV.

Page 16

1 MS. TABER: We need three days notice for  
2 certified.  
3 MR. DOVAN: He's not certified. I can  
4 interject if I feel that he's not correctly  
5 translating.  
6 CHAIRMAN SMITH: Okay. We're ready for you.  
7 COMMISSIONER PIERRE-DIXON: What we haven't  
8 had is the translator's name.  
9 CHAIRMAN SMITH: Oh, yes. We should have the  
10 translator's name and your company, if you would,  
11 please.  
12 THE INTERPRETER: My name is Kenneth Kwan.  
13 I'm from Communicaid.  
14 CHAIRMAN SMITH: Do you want to spell --  
15 maybe you could spell the name for purposes of our --  
16 THE INTERPRETER: Kenneth, K-e-n-n-e-t-h.  
17 And last name, K-w-a-n.  
18 CHAIRMAN SMITH: Okay. Thank you.  
19 Anything else before we let Steve talk?  
20 Okay.  
21 MR. MILLER: Would you like me to pause  
22 periodically to allow for translation from Mr. Kwan?  
23 Is that the desire?  
24 MS. McDANIEL: Yes.  
25 THE INTERPRETER: Yes.

4 (Pages 13 to 16)

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 17	Page 19
<p>1 MR. DOVAN: Could I ask the clients who 2 retained me or asked me to represent them to sit near 3 here. 4 CHAIRMAN SMITH: Okay. 5 MR. MILLER: Even I understood that. 6 CHAIRMAN SMITH: Okay. 7 MR. MILLER: Are we ready? 8 CHAIRMAN SMITH: Yes. 9 MR. MILLER: Okay. So I think the place to 10 start, given the nature of the audience, is to repeat 11 what I know the Commissioners already know. We do not 12 investigate every single complaint that is filed with 13 the City -- with the Ethics Commission. Under the 14 rules of the Ethics Commission and adopted by the City 15 Council, complaints must meet a certain standard of 16 sufficiency. In order -- 17 CHAIRMAN SMITH: Excuse me. Could whoever 18 that noise is coming from please silence it. 19 MR. MILLER: In order to merit a complaint -- 20 in order to merit an investigation, a complaint must 21 identify specific facts which, if proven true, would 22 constitute a violation of Title 12. And so that is the 23 first filter through which we analyze the complaint is 24 to ask whether the facts alleged, if true, would 25 constitute a violation of Title 12.</p>	<p>1 Actual vote. We're not talking about an actual vote 2 yet, which he translated as the vote itself. 3 CHAIRMAN SMITH: Okay. 4 MR. DOVAN: There's no discussion about 5 voting right now. 6 CHAIRMAN SMITH: So one of you should correct 7 the translation. 8 MR. MILLER: With regards to the other -- the 9 other allegation, there is a suggestion -- and we bent 10 over backwards to try and make sure that we were giving 11 the benefit of the doubt to the complainant in 12 understanding the complaint. There is a suggestion 13 that the respondent filed a family gift report 14 suggesting that he had no family when, in fact, he 15 does. 16 So the question for me, as the Evaluator, is 17 even if that is true, is that a violation of Title 12? 18 MR. DOVAN: That's not a close translation. 19 That's not even close to translation at all. 20 COMMISSIONER PIERRE-DIXON: Well, if 21 Mr. Do van could fill in for us what he thinks is 22 appropriate. If you could let us know. 23 MR. DOVAN: Mr. Do, would you like to know -- 24 COMMISSIONER PIERRE-DIXON: No, Mr. Do isn't 25 the one recognized.</p>
Page 18	Page 20
<p>1 And the complaints this evening -- and we're 2 going to talk about them. They're identical so we'll 3 talk about them together. They identify, on the first 4 page, two alleged violations of Title 12. One 5 specifies a violation of the gift ordinance, violation 6 in 12.08. And the other is an unspecified section of 7 Title 12, with a handwritten comment that says the 8 three words "ballot designation worksheet." 9 Chairman Smith, am I doing okay? 10 CHAIRMAN SMITH: You're doing fine. 11 MR. MILLER: Okay. I'm going to take these 12 in reverse order. 13 With regards to the second allegation, the 14 unspecified violation with regards to the ballot 15 designation worksheet, aside from that allegation, 16 there are no facts identified that suggest what the 17 nature of the complaint is. Even if I wanted to 18 investigate something, there would be nothing to 19 investigate because there were no facts identified on 20 which I could base an investigation. 21 MR. DOVAN: May I interject, please? 22 MR. MILLER: No, you may not. Let me finish. 23 MR. DOVAN: In terms of translation. 24 CHAIRMAN SMITH: Okay. Translation. 25 MR. DOVAN: He referred to the ballot voting.</p>	<p>1 MR. DOVAN: If that's the case, I might 2 interject a lot. 3 COMMISSIONER PIERRE-DIXON: Well, interject 4 at this point. 5 MR. DOVAN: It's regarding the issue of his 6 marital status, and he was translating not accurately 7 or precisely. That's all. 8 MR. DO: I think, if I may, we both are on 9 the same agreement at this point, that the translation 10 wasn't even close to what Mr. Miller is saying. I 11 think what Mr. Miller tried to convey is that even if 12 the facts presented is true, it is still not going to 13 merit an investigation -- merit a violation. 14 Mr. Miller, can you confirm what you're 15 saying is that even if those facts is accurate, that 16 would not merit a violation of Title 12? 17 MR. MILLER: I haven't said that, no. 18 MR. DO: That's what you just said. 19 MR. MILLER: I said the question is 20 whether -- if the facts are true, would that constitute 21 a violation of Title 12? 22 MR. DOVAN: That's a distinction. 23 CHAIRMAN SMITH: Just a second. We need to 24 have one person at a time. If you have comments, 25 please direct them to the Chair.</p>

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 21

1 MR. DOVAN: You want me to translate what Mr.  
2 Miller --  
3 CHAIRMAN SMITH: Yes, please.  
4 MR. DOVAN: And I appreciate our 15 minutes  
5 early this morning, when you called me while I was  
6 brushing my teeth.  
7 Anyway --  
8 MR. MILLER: And I called you -- I called you  
9 because you accused me of not calling you back three  
10 times when, in fact, I had called you back every time.  
11 MR. DOVAN: I wrote a note, and I -- if you  
12 read the letter.  
13 CHAIRMAN SMITH: We have not seen a letter.  
14 MS. TABER: We need to start -- we have a  
15 court reporter. We need one person speaking at a time.  
16 We have too many voices overlapping. She needs to be  
17 able to hear each individual speaker. If you are not  
18 the person speaking, you need to keep it down. If you  
19 want to talk to somebody, go out in the hallway.  
20 Because I'm having a hard time hearing the individual  
21 speaker who is supposed to be speaking, and she needs  
22 to record what you're saying.  
23 CHAIRMAN SMITH: Correct.  
24 MS. TABER: Thank you.  
25 THE INTERPRETER: May the interpreter

Page 22

1 Interject?  
2 CHAIRMAN SMITH: Yes.  
3 THE INTERPRETER: Mr. DoVan seems to be very  
4 familiar with the case, and he represents all these  
5 complainants. And I -- I trust that -- you know, it  
6 would be better for everyone that he translate to  
7 everybody here. And then anyone who want to make a  
8 comment or anything like that, the interpreter will,  
9 you know, translate for, you know, any suggestion or  
10 any comment. Otherwise, we will drag on until, you  
11 know, the due date.  
12 MR. MILLER: I have another suggestion as  
13 well.  
14 CHAIRMAN SMITH: Yes.  
15 MR. MILLER: All the parties were noticed  
16 properly. They all are represented by counsel. You  
17 have my report. I would be more than happy to take  
18 any -- you know, submit my report, as submitted, and  
19 answer any questions you have without continuing to try  
20 and go through it the way I have been trying. If you  
21 would like, I can just stop and take your questions, as  
22 you may find necessary.  
23 CHAIRMAN SMITH: Let me ask the rest of the  
24 Commission.  
25 What do you think of Mr. Miller's suggestion?

Page 23

1 Because he's doing this for us.  
2 COMMISSIONER PIERRE-DIXON: Well, I would  
3 prefer that it be translated to everyone that is  
4 currently present. I would prefer that that be done by  
5 the translator that the City has provided us, with  
6 Mr. DoVan filling in when he thinks it is  
7 inappropriate.  
8 What I don't want to occur is many people  
9 here who either do not read English or have not had the  
10 opportunity to see the report to be in a position of  
11 not knowing what is going on.  
12 MR. MILLER: Understood. I just offered it  
13 as an option if you wanted that. But I'd be happy to  
14 continue. So --  
15 CHAIRMAN SMITH: Okay. I just want to -- you  
16 know, there's a question of -- the translator has  
17 suggested that Mr. DoVan -- I'm going to defer to city  
18 staff on this. It matters not to me who does the  
19 translation.  
20 MS. TABER: I'm looking legally. I mean,  
21 legally, I use the interpreter that, you know, I have  
22 paid, that is qualified. We need three days' notice  
23 for certified. So we got -- we were requested to get a  
24 translator this morning, so we got a qualified  
25 translator. We were told we couldn't get a certified.

Page 24

1 I'm more -- legally, I'm more comfortable  
2 with the person that I've paid to do the translation.  
3 However, I am also not the attorney.  
4 So I don't know -- because like I have a  
5 fluent -- a staff person who speaks fluent Vietnamese,  
6 and she goes out to the community and does a lot of  
7 community work. But I'm not allowed to have her  
8 translate for anybody.  
9 MS. SILVA: If the Commission will proceed  
10 with having the report translated in Vietnamese, I  
11 would have -- use the city -- the City's interpreter to  
12 do that. I understand Mr. DoVan has -- or someone else  
13 has issues with the interpretation. You're more than  
14 welcome to correct that with the individuals. But the  
15 City is providing an independent, neutral interpreter  
16 to present that to the Commission.  
17 And so you are -- you know, you are free to  
18 interject or to correct the interpretation. That  
19 happens if the guy was certified or not, that you may  
20 disagree with what that interpretation is. But we are  
21 providing you a neutral interpreter.  
22 MR. DOVAN: I appreciate the comments. My  
23 only concern is accuracy and correctness. Because  
24 we're in a democracy. People are entitled to know  
25 exactly what happens in government affairs.

6 (Pages 21 to 24)

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 25	Page 27
<p>1 And I really do not really want to interject 2 and be disruptive. But that is relevant. If -- and, 3 again, the notice requirement -- I mean, we work 4 together, on opposite sides. There's requirement of 5 certified interpreter, but then the court has a team of 6 certified -- 7 CHAIRMAN SMITH: This is not a court. 8 MS. SILVA: This is not -- 9 CHAIRMAN SMITH: We don't follow -- we're not 10 required to follow those rules. We do the best we can. 11 MR. DOVAN: I understand. 12 CHAIRMAN SMITH: Especially when we don't 13 have sufficient notice. 14 MR. DOVAN: Okay. But I will reserve 15 interjecting. 16 CHAIRMAN SMITH: I think what I would 17 suggest -- 18 COMMISSIONER PIERRE-DIXON: That's not 19 appropriate. 20 CHAIRMAN SMITH: What I would suggest, if 21 there's a translation issue that you consider 22 significant -- 23 MR. DOVAN: Yes. 24 CHAIRMAN SMITH: -- raise your hand. If you 25 don't think it's significant, then I would suggest you</p>	<p>1 Okay. If not, at this time I would call upon 2 the respondent or his representative to come forward 3 and present any written or oral response, but the 4 respondent is not here. I understand there's no 5 representative. So -- 6 COMMISSIONER PIERRE-DIXON: Slow down and let 7 the interpreter translate. 8 CHAIRMAN SMITH: Oh, I'm sorry. 9 So at this time I would call upon the 10 complainant or their representative to come forward. 11 Okay. Mr. Doan, if you want to -- can I -- 12 let me ask a question. Are you going to speak for the 13 complainants or are you going to speak and the 14 complainants going to speak? I just want to understand 15 for timing purposes. 16 MR. DOVAN: Can I say real quick... 17 (Speaking in Vietnamese.) 18 MR. DOVAN: He would like to talk short -- 19 very short statement, and then afterwards I will 20 continue. 21 CHAIRMAN SMITH: Okay. So if you would come 22 forward, please. And state your name and raise your 23 right hand, please. 24 MR. LY: My name is Tuan Ly. So I am 25 (inaudible) of District 4, so I file the complaint with</p>
Page 26	Page 28
<p>1 let it pass or we will be here all night. 2 MR. DOVAN: For sure. 3 CHAIRMAN SMITH: Okay. Back to Mr. Miller. 4 MR. MILLER: Okay. Twelve -- so Title 12, 5 Section 12.08.050 -- 12.08.050 -- 050 -- requires the 6 filing of a family gift report at the time of the 7 annual disclosure statement. Candidates do not file 8 annual disclosure statements. And, therefore, 9 candidates are not required, under Title 12, to file a 10 family gift report. That interpretation has been 11 confirmed by your City Attorney. The City Clerk has 12 also confirmed that they ask candidates to fill out the 13 family gift report as a matter of convenience, not as a 14 matter of a requirement of Title 12. 15 Because there is no requirement to file a 16 family gift report on the part of the respondent, 17 filing an incorrect family gift report does not violate 18 any provision of Title 12. And, therefore, under the 19 sufficiency standards for our work, we determined not 20 to investigate the matter further because we do not 21 find sufficient cause based on the facts alleged in the 22 complaint. 23 All done. 24 CHAIRMAN SMITH: Okay. Members of the 25 Commission have any questions for Mr. Miller?</p>	<p>1 Mr. Manh Nguyen. So I -- 2 CHAIRMAN SMITH: Okay. Let me -- 3 4 TUAN LY, 5 being first duly sworn by the Chairperson to tell the 6 truth, the whole truth and nothing but the truth, 7 testified as follows: 8 9 CHAIRMAN SMITH: Okay. Be seated. 10 MR. LY: So I speak Vietnamese, and my 11 lawyer, Mr. Steven Doan, will translate for me. 12 That's better. 13 CHAIRMAN SMITH: That's fine. Whatever you 14 guys want to do. 15 MR. LY: (Through Mr. Doan as interpreter) 16 Okay. If the Election Ethics Commission does not 17 investigate Mr. Manh Nguyen, this would be a disgrace 18 for the district -- for the District 4 voters and will 19 last into the future. Mr. Manh Nguyen represents his 20 family as a beautiful, wonderful family, but he has 21 deceived the community with what the reality is. And 22 he has deceived everyone, claiming he is an attorney. 23 MR. DOVAN: And he's holding up the photo. 24 MS. TABER: We need copies of anything he's 25 held up.</p>

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 29

1 MR. LY: (Through Mr. Dovan as interpreter)  
2 If the Election Ethics Committee Commission does not  
3 investigate this matter, it would be a waste of our  
4 money and cost with regards to the documents that  
5 relates to him, because it has to be produced. These  
6 types of forms would be useless if we don't abide by  
7 them.  
8 If the Elections Commission does not do  
9 anything on this matter, I would propose this matter be  
10 heard by the City Council. If the Election Ethics  
11 Commission does not do anything about this matter, our  
12 community will take it up higher, to the City Council  
13 of San Jose.  
14 CHAIRMAN SMITH: Okay. Questions?  
15 Let me just make a comment before taking  
16 questions. I'll just point out that the City Council  
17 has no authority, that I'm aware of, on matters like  
18 this. The only thing -- and correct me if I'm wrong --  
19 my understanding of the procedures under which we  
20 operate is that the only recourse as far as an appeal  
21 of our determination is to go to the courts.  
22 MR. LY: (Through Mr. Dovan as interpreter)  
23 What court of appeal to?  
24 CHAIRMAN SMITH: Superior Court.  
25 MS. SILVA: Correct.

Page 30

1 CHAIRMAN SMITH: That's just a clarification  
2 of the rules.  
3 MR. DOVAN: Sure. Appreciate it.  
4 CHAIRMAN SMITH: Okay. Any questions?  
5 No? Okay.  
6 MR. DOVAN: No, no, you're not on the list of  
7 people.  
8 CHAIRMAN SMITH: Is she one of the  
9 complainants?  
10 MR. DOVAN: No.  
11 CHAIRMAN SMITH: Okay. Well, she'll have to  
12 wait. If somebody wants to translate -- our  
13 translator -- okay. We need -- please.  
14 (Speaking in Vietnamese.)  
15 CHAIRMAN SMITH: After we hear from  
16 Mr. Dovan, there will be an opportunity for members of  
17 the public to offer limited comments, because there  
18 are -- thank you.  
19 Okay. Mr. Dovan. If you want to --  
20 MR. DOVAN: Would we go down the list?  
21 Because there's other people. She's not the only one.  
22 CHAIRMAN SMITH: I thought you said that only  
23 one of them wanted to make it and then you would. Are  
24 you telling me everybody wants to? That's fine.  
25 MR. DOVAN: No, there's only two or three on

Page 31

1 the agenda.  
2 COMMISSIONER PIERRE-DIXON: Go ahead.  
3 MR. DOVAN: Although there were like 50 or 60  
4 who signed it.  
5 CHAIRMAN SMITH: No, I understand. I  
6 misunderstood your comment. I understood your comment  
7 as saying we had one person and then you.  
8 MR. DOVAN: No, no. One person I  
9 translate --  
10 CHAIRMAN SMITH: Okay. I'll have to limit it  
11 to five minutes per person, per complainant, then.  
12 MR. DOVAN: Oh, wait. Would that encroach on  
13 my time?  
14 CHAIRMAN SMITH: Yes.  
15 MR. DOVAN: Okay. All right. They're going  
16 to reserve their time and give it to me.  
17 CHAIRMAN SMITH: Okay. Thank you.  
18 MR. DOVAN: Thank you.  
19 CHAIRMAN SMITH: Oh, I need you to state your  
20 name again for the record and --  
21 MR. DOVAN: Minh Q. Steven Dovan.  
22  
23 MINH Q. STEVEN DOVAN,  
24 being first duly sworn by the Chairperson to tell the  
25 truth, the whole truth and nothing but the truth,

Page 32

1 testified as follows:  
2  
3 CHAIRMAN SMITH: Okay. You may be seated.  
4 MR. DOVAN: To honorable members of the  
5 Election Ethics Commission, my name is Minh Q. Steven  
6 Dovan. I'm an attorney. For the record, I do not know  
7 or work on behalf --  
8 COMMISSIONER PIERRE-DIXON: Do we need to  
9 have the interpreter going for the rest of the group?  
10 MR. DOVAN: Can I translate my own?  
11 COMMISSIONER PIERRE-DIXON: Then we won't  
12 know what you're saying.  
13 MS. SILVA: Yeah, Mr. Dovan, we have to  
14 respect the integrity of the process here. You have to  
15 have -- you know, for the rest of us, you have use  
16 who -- have someone to interpret you.  
17 MR. DOVAN: It's kind of funny. I know  
18 exactly what I want to say in Vietnamese. But somebody  
19 else is translating what he thinks I want to say in  
20 Vietnamese. That's fine. That's fine.  
21 CHAIRMAN SMITH: You want to start again.  
22 THE INTERPRETER: If you are reading from  
23 that, can I share with you?  
24 CHAIRMAN SMITH: Yeah, if you have another  
25 copy.

8 (Pages 29 to 32)

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 33

1 MR. DOVAN: I don't. Sorry.  
2 For the record, I do not know or work for any  
3 labor unions, Mexican labor unions or Tim Orozco, the  
4 opponent of Mr. Manh Nguyen. I do not endorse any  
5 candidates in this District 4 election.

6 Actually, I could have done it one third of  
7 the time. But that's okay. We'll use him. Because I  
8 know exactly what I want to say.

9 Thank you for convening the monthly hearing  
10 meeting to listen to residents' complaints concerning  
11 improper as well as illegal conduct and activities  
12 relating to election and campaign in the city of San  
13 Jose; in particular, District 4.

14 I'm a Vietnamese by birth but a red-blooded  
15 American by choice when I became naturalized citizen in  
16 1969. I'm an attorney by profession. I've dealt with  
17 Ms. Dixon so many times, more than 30 years.

18 If we use a tapestry as a metaphor for this  
19 great nation, then we as people make up the different  
20 strands of distinct beautiful colors, black and white,  
21 brown and red and yellow.

22 I didn't say "chocolate," whoever understands  
23 French and Spanish.

24 THE INTERPRETER: I never said that. White,  
25 brown, yellow or red.

Page 34

1 COMMISSIONER PEACOCK: I'm finding -- with  
2 all due respect, Mr. Dovan's constant criticism of the  
3 translator -- I find it to be bordering on  
4 intimidation.

5 MR. DOVAN: Okay.

6 COMMISSIONER PEACOCK: I think we -- we're  
7 aware that you are not satisfied with him, but he was  
8 selected according to the rules. And I believe that we  
9 should just proceed and not, you know, keep up with the  
10 criticism.

11 CHAIRMAN SMITH: Good point.

12 MR. DOVAN: Okay. I'm speaking today not  
13 only for myself but I have the privilege of also  
14 speaking for many of my fellow Vietnamese countrymen  
15 present at this meeting. This hearing shows the very  
16 essence of democracy. In our former country of  
17 Communist Vietnam, citizens dare not speak out, let  
18 alone file complaints against powerful people,  
19 including prospective politicians. The consequences  
20 can be very serious, affecting not only one's  
21 livelihood but also one's life.

22 We're all aware of the special election  
23 unfolding in District 4 to fill the vacancy left by  
24 Mr. Kansen Chu, who won a seat on the state assembly.  
25 The manner and method of particular -- the manner and

Page 35

1 the method of any particular candidate campaigning for  
2 their seat causes much concern among the voters and  
3 residents of San Jose in general and District 4 in  
4 particular.

5 The complaints lodged in this election relate  
6 to Candidate Manh Nguyen, who has held himself out as  
7 an Esquire; i.e., an attorney and a lawyer. He will  
8 claim that he has never called himself a lawyer, but I  
9 personally have witnessed, over 30 years, people  
10 referring to Manh Nguyen as "Attorney Manh Nguyen."

11 Please see the exhibits that I have provided  
12 the Commission members. And I'm passing them out. As  
13 you can see, this is from Mr. Manh Nguyen's campaign.  
14 And it clearly says, and you can read it -- it's in  
15 English -- "Vote for Manh Nguyen, San Jose City Council  
16 District 4." And also his name is, comma, E-s-q,  
17 period. And those who are attorneys and even those who  
18 are not attorneys in this room can understand  
19 completely the meaning of the word "Esquire." That  
20 means attorney.

21 This is not only deceptive but clearly  
22 illegal, pursuant to California statutes such as  
23 California Business and Professions Codes  
24 Section 626(s), which provides, in relevant parts --  
25 and I will read the parts -- and I'm going to quote

Page 36

1 that section, that statute.

2 And, Ms. Pierre-Dixon, you're a prosecutor.  
3 I'm sure you've prosecuted these cases.

4 And I can't quote the whole lengthy one.  
5 I'll just quote parts of it. "Any person ... holding  
6 himself out ... as entitled to practice law or who is  
7 not an active member of the State Bar is guilty of a  
8 misdemeanor and punishable by up to a year in jail ...  
9 or by a fine or by both fine and imprisonment."

10 CHAIRMAN SMITH: Let me interject here for a  
11 moment.

12 MR. DOVAN: Sure.

13 CHAIRMAN SMITH: The facts that you're  
14 alleging here with regard to the use of "Esquire," that  
15 does not fall within our purview. It may be a  
16 violation of state law, but that's not something that  
17 we have authority over. We have authority over  
18 Title 12 of the San Jose Municipal Code. So even if  
19 this is true, there's nothing we can do about it.

20 MR. DOVAN: You didn't state "state bar," did  
21 you?

22 CHAIRMAN SMITH: I didn't say anything about  
23 state bar. It was -- I don't know who's responsible  
24 for --

25 MR. DOVAN: He translated as "state bar."

9 (Pages 33 to 36)

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 37

1 That's okay.  
2 CHAIRMAN SMITH: I didn't say "state bar."  
3 The key thing is it's not within our  
4 jurisdiction.  
5 MR. MILLER: Another key fact: It's not  
6 present in any of the complaints that I was referred to  
7 investigate.  
8 CHAIRMAN SMITH: That's right. I knew -- I  
9 read it in the newspaper. That's how I knew about it,  
10 not because it was in -- yes. Yes, I think we're --  
11 that's true.  
12 MR. DOVAN: Mr. Chairman, I guess -- as I  
13 said, I would be speaking on behalf of myself as well  
14 as the other people who asked me to represent them.  
15 And, unfortunately, because they're not attorneys,  
16 they're not legal experts, they got some information  
17 that I had presented to the community, and they just  
18 wrote out their complaints in writing. And, obviously,  
19 they could be sloppy.  
20 But my complaint -- which is not agendized,  
21 but Mr. Miller, I'm sure, has a copy of it.  
22 I presume the City Clerk has forwarded it to  
23 you, Mr. Miller?  
24 MS. SILVA: Mr. Dovan, we would limit to  
25 whatever the filings are on this. There is a rule here

Page 38

1 that if it's not agendized -- if the complaint is not  
2 agendized, it's not supposed to be referred to or be  
3 presented or told to the Commission. Because the  
4 Investigator/Evaluator has to do their work, you know,  
5 outside -- before -- you can't present it before the  
6 Evaluator/Investigator does their work.  
7 MR. DOVAN: But I believe -- go ahead.  
8 Translate. I'm sorry.  
9 CHAIRMAN SMITH: Okay. To clarify --  
10 hopefully clarify, the Commission knows nothing about  
11 new complaints until after the Evaluator has done his  
12 investigation and presented a report. And so we know  
13 nothing about anything about other complaints. And the  
14 appropriate time for you to present them would be when  
15 your complaint, assuming there is one, comes before us  
16 at a future meeting.  
17 MR. DOVAN: Thank you for your clarification.  
18 It's just that the speaker who spoke for himself,  
19 before I spoke for him some more, did make reference  
20 to, you know, the claim that Mr. Manh was an attorney.  
21 And, obviously, so I'm following up. That's all.  
22 In addition, at his campaign kickoff --  
23 CHAIRMAN SMITH: You may want to --  
24 MR. DOVAN: And I'm just following up on  
25 that. At his campaign kickoff event at the Unify

Page 39

1 Center on Story Road in San Jose, he had one of his  
2 main supporters, Mr. Pham Thu Dang, take the stage and  
3 introduce him as "Attorney Manh Nguyen." Please see  
4 photo.  
5 And this is from Mr. Manh Nguyen's web site.  
6 Close to 1500 people attended that event, kickoff  
7 event. And just that so you have the photo yourself --  
8 self-explanatory. As we say, you know, the document  
9 speaks for itself in court. 1500 present.  
10 In addition, there is audio as well. So it's  
11 just not photo. We have audio we can provide to the  
12 commission members, translated by the translator, but I  
13 won't do that.  
14 He has incessantly played campaign testimony  
15 from people, including Mr. Luong Nguyen, who repeatedly  
16 referred to Mr. Manh Nguyen as a legal scholar,  
17 which --  
18 CHAIRMAN SMITH: Excuse me. I really think  
19 that the stuff regarding his claims of being an  
20 attorney --  
21 MR. DOVAN: Is more criminal or something?  
22 CHAIRMAN SMITH: -- has really got nothing to  
23 do with the complaint that we received.  
24 MR. DOVAN: He brought it up.  
25 CHAIRMAN SMITH: The fact that he brought it

Page 40

1 up -- it was not part of the complaint that was  
2 investigated. And I don't -- I will ask the City  
3 Clerk -- or the City Attorney -- I don't think we  
4 should entertain testimony on that point.  
5 MS. SILVA: That's your call.  
6 CHAIRMAN SMITH: As Ms. Pierre-Dixon just  
7 reminded me, it would be a criminal matter. The  
8 appropriate place would be the courts.  
9 MR. DOVAN: Thank you, Mr. Smith.  
10 Mr. Lam here is one of the people whose  
11 complaint is agendized. And he was a bit upset. He  
12 wanted to say a few things. And I was going to hold  
13 off until -- he just has, I think, a few words to say.  
14 CHAIRMAN SMITH: Well --  
15 COMMISSIONER PIERRE-DIXON: Have you finished  
16 yours?  
17 MR. DOVAN: No, I haven't.  
18 CHAIRMAN SMITH: Then let's finish yours, and  
19 then we'll -- then he can speak, when you're done. And  
20 if you can please stick to the -- if you got some  
21 additional facts on another complaint, we can address  
22 them at the appropriate time. But now is not that  
23 time.  
24 MR. DOVAN: Okay.  
25 CHAIRMAN SMITH: I mean, additional facts --

10 (Pages 37 to 40)

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 41

1 I don't mean additional facts. If you have some  
2 additional issues, they should be addressed at the  
3 appropriate time. And there was nothing in the written  
4 complaint about claiming to be an attorney.

5 MR. DOVAN: Well, I'll hold off for my  
6 complaint to make it through the system, which I'm  
7 concerned about is the issue may be moot by then. But  
8 I guess that is the system. I don't know why mine was  
9 not considered when I submitted it.

10 CHAIRMAN SMITH: If you want to translate,  
11 I'll -- okay. We -- we have a process we have to  
12 follow.

13 MR. DOVAN: I understand.

14 CHAIRMAN SMITH: And it's always difficult  
15 right before an election. But -- well -- when we have  
16 a meeting, the agenda goes out one week before the  
17 meeting. And the report has to be part of that agenda.  
18 And that's because it's a public meeting. We have to  
19 have advance notice. Prior to that, Mr. Miller has to  
20 conduct an investigation and prepare a report, which  
21 takes at least a few days.

22 And I can't speak to your complaint because I  
23 haven't seen it, but I believe that the complaint --  
24 any complaints we have that we're evaluating right now  
25 weren't submitted much more than a week ago.

Page 42

1 So it would not be possible for us -- go  
2 ahead and translate -- so if you want to continue, but  
3 I'd appreciate it if you would restrict your comments  
4 to the issue of the family gift report and the  
5 ballot -- the whatever-it-is worksheet that was  
6 referred to in the complaint. Those are the issues  
7 that we're addressing tonight.

8 MR. DOVAN: I'm sorry. The ballot?

9 CHAIRMAN SMITH: Let me find the complaint.

10 MS. SILVA: Ballot designation.

11 CHAIRMAN SMITH: Yeah, the ballot designation  
12 worksheet. Which we're not even sure what that is.  
13 That's -- the complaint says that there is a violation  
14 of 12.08 with regard to the family gift report --

15 MR. DOVAN: Okay.

16 CHAIRMAN SMITH: -- and other missed  
17 violations. And it says "ballot designation  
18 worksheet." That's the complaint that we are hearing  
19 tonight. And that's all we're hearing tonight.

20 And I should also -- I'm getting ahead of  
21 myself. But to clarify things, there are two possible  
22 outcomes tonight. We can either agree with  
23 Mr. Miller's recommendation and close this without  
24 investigation -- we can either follow Mr. Miller's  
25 recommendation and close this complaint without further

Page 43

1 investigation or we can direct Mr. Miller to conduct  
2 further investigation and report back to us. And that  
3 further report would be at a future meeting, and it  
4 would be restricted to this complaint, as it was  
5 submitted.

6 Okay. Now the floor is yours.

7 MR. DOVAN: I just wanted to say that I did  
8 submit my complaint on same date as this gentleman that  
9 wants to say a few things. Noticed it was the same  
10 date. That's all. Just a comment. I'm not accusing  
11 anybody of anything.

12 CHAIRMAN SMITH: Not to prolong this, but  
13 there's a distinction. That last complaint was  
14 identical to three previous complaints, and so there  
15 was no investigation required because it had already  
16 been investigated. Your complaint was a brand new one.  
17 So just because they were submitted on the same day --  
18 his could be processed very quickly, and yours  
19 couldn't. If, indeed, they were done on the same day.

20 MR. DOVAN: So one of the forms that were  
21 submitted and attached to the complaint -- I believe  
22 all of the people whose complaint was agendized today  
23 relates to that finance declaration that Mr. Nguyen  
24 signed on January the 6th of 2015. And clearly, in  
25 that complaint, it referred to the document in which

Page 44

1 Mr. Nguyen signed, under penalty of perjury, that "I do  
2 not have a spouse," which he puts it out there himself.  
3 While I understand Mr. Miller -- go ahead. Translate  
4 the perjury part that I mentioned.

5 And you already have that in your document, I  
6 believe. Here it is again.

7 Now, I'm not going to sit here and argue the  
8 criminal law penal codes. We'll save that for another  
9 time. But with regards to the law, it still is the  
10 law. And if someone signs a document, it says "under  
11 penalty of perjury" -- the document is still the  
12 document. And as we refer to -- and I'm sure Ms. Dixon  
13 has done this many times -- the document speaks for  
14 itself.

15 So with all the conflicting declarations with  
16 the courts, such as the bankruptcy court or filing an  
17 official document with the county recorder's office --  
18 you have to translate that word, "recorder's office" --  
19 and then filing with the City Attorney -- I'm sorry --  
20 the San Jose City Clerk's office -- conflicting,  
21 clearly contradictory claims under penalty of  
22 perjury -- I think it's relevant.

23 I appreciate Mr. Miller's explanation with  
24 regards to the jurisdiction of the Commission, and  
25 perhaps it is beyond your jurisdiction. Nevertheless,

11 (Pages 41 to 44)

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 45

1 If a violation of the law occurred, it is still a  
2 violation of the law. And I hope you will take  
3 appropriate action, although it would be beyond your  
4 authority. So you could at least recommend that this  
5 matter be pursued at the appropriate agencies or  
6 governmental entities.

7 I'll be wrapping it up. Perjury is a felony  
8 under Penal Code 118, punishable by imprisonment.

9 There are other illegal conducts that  
10 Mr. Manh Nguyen and his campaign has been involved in,  
11 which is clearly provided in my personal complaint  
12 filed on June 1st. However, my complaint is still  
13 under investigation.

14 I would just like to quote a very famous  
15 American President that I respect a lot, and I'm sure  
16 you do too. President Abraham Lincoln had an adage,  
17 aphorism, axiom, whatever you want to call it. Words  
18 of wisdom. And that axiom, adage, aphorism is "You can  
19 fool some of the people all of the time or you can fool  
20 all of the people some of the time, but you can never  
21 fool all of the people all of the time."

22 I respectfully request that there be an  
23 expedited special hearing to be held before this  
24 Election Ethics Commission in order to address my  
25 complaint before the issue becoming moot.

Page 46

1 And I'd like to refer back to one of the  
2 complainants who wanted to make a short statement.

3 MR. MILLER: Chair Smith, when it's  
4 appropriate, I have one piece of information that might  
5 be useful for the commissioners, especially the new  
6 commissioners. Whenever you think it's appropriate.

7 CHAIRMAN SMITH: Okay. Maybe --

8 COMMISSIONER PIERRE-DIXON: Let's take this.

9 CHAIRMAN SMITH: Let's take this statement,  
10 and then we'll -- if you have a comment.

11 MR. DOVAN: And I appreciate your attention.

12 CHAIRMAN SMITH: Oh, I'm sorry. Do we have  
13 questions?

14 COMMISSIONER VEMULAPALLI: Can you please  
15 read this confidential statement.

16 MR. DOVAN: No problem.

17 COMMISSIONER VEMULAPALLI: Thank you.

18 MR. DOVAN: So I'm a lawyer. Confidentiality  
19 statement says "No complaint, investigative file or  
20 information contained therein, shall be disclosed to  
21 any person other than a respondent or respondent's  
22 representative, the City Attorney, district attorney,  
23 the Court, a law enforcement agency, or otherwise as  
24 necessary to the conduct of an investigating" -- "of an  
25 investigation prior to the presentation of the Report

Page 47

1 and Recommendation to the Commission. The Evaluator,  
2 however, may communicate with the Chair of the  
3 Commission on procedural matters relating to a pending  
4 complaint during the course of the investigation.

5 "After presentation of the Report and  
6 Recommendations, complaints, related documents and  
7 investigative files shall not be disclosed except as  
8 required by the California Public Records Act, open  
9 parenthesis, Resolution 78954 and SJMC 12.04.080(e).

10 Persons filing a complaint are requested not to release  
11 said complaint to anyone other than the City Clerk or  
12 his/her designees before the investigation is

13 completed. When the investigation is completed, the  
14 complaint will be agendaized for public meeting." And  
15 then the last sentence: "I have read and understood  
16 the above policy on the confidentiality of complaints."

17 And then signature on one side, printing on the other.

18 COMMISSIONER VEMULAPALLI: Do you remember  
19 signing this when you filed the complaint -- your  
20 complaint?

21 MR. DOVAN: Yes, I did.

22 COMMISSIONER VEMULAPALLI: Okay. Then --

23 MR. DOVAN: Can I -- could I say --

24 COMMISSIONER VEMULAPALLI: No --

25 MR. DOVAN: And I asked -- it was --

Page 48

1 MS. TABER: It was me.

2 MR. DOVAN: Ms. Taber, yeah. And I made very  
3 clear. The language here says the filing of the  
4 complaint are requested. That's the operative term.  
5 It's not mandatory. It's not compulsory. When you're  
6 a lawyer, you read precisely what the word says. So it  
7 is a request.

8 COMMISSIONER VEMULAPALLI: But you referred  
9 to your complaint so many times. We don't even know  
10 about that complaint yet. But since the media is here,  
11 then people -- you know, if it goes outside, people  
12 think there is a complaint -- okay? -- already pending.

13 CHAIRMAN SMITH: We need to break here for a  
14 translation.

15 MS. SILVA: Yeah, translation, please.

16 MR. DOVAN: Any other questions?

17 COMMISSIONER PIERRE-DIXON: No.

18 MR. DOVAN: I'm happy to take them.

19 CHAIRMAN SMITH: Okay.

20 MR. DOVAN: Mr. Lam.

21 CHAIRMAN SMITH: If you want to state your  
22 name, please.

23 MR. TRANG: Yeah, my name, Lam Trang.

24 CHAIRMAN SMITH: Raise your right hand.  
25

12 (Pages 45 to 48)

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 49	Page 51
<p>1 LAM TRANG, 2 being first duly sworn by the Chairperson to tell the 3 truth, the whole truth and nothing but the truth, 4 testified as follows: 5 6 CHAIRMAN SMITH: You may be seated, if you 7 wish. 8 MR. TRANG: First of all, I would like to ask 9 you that -- you know, in front of all these people from 10 the community here, all these matter present to the 11 Commission, that I believe that "ethic" means morale 12 [sic] or -- 13 MR. DOVAN: Morals. 14 MR. TRANG: Or morals. And today we came 15 here, file a complaint that Mr. Manh Nguyen concede 16 [sic] all the people and claim that he was an attorney. 17 And then, according to the documents here, he sometimes 18 claim that he was not married. And then other times he 19 claim that he was married, he has a wife. And it seems 20 that the -- that this matter was not discussed -- 21 that's not one to discuss by the Commission. So how 22 could we, as a citizen in this city, if we have a 23 complaint, then how can it be solved? 24 CHAIRMAN SMITH: Okay. We -- we'll address 25 that once we get through all the testimony.</p>	<p>1 2 VINH BAO, 3 being first duly sworn by the Chairperson to tell the 4 truth, the whole truth and nothing but the truth, 5 testified as follows: 6 7 MR. BAO: Vinh Bao, V-i-n-h, B-a-o. 8 Okay. So far, to my personal understanding, 9 we are here to talk about all of the complaints over 10 here. So far there are four complaints. And when all 11 of these complaints are submitted to the City, the City 12 assigns somebody or some person to investigate it. 13 That is, I believe, Mr. Steven Miller. 14 CHAIRMAN SMITH: Okay. We need to -- 15 MR. BAO: I want to correct the translator a 16 little bit. I don't submit the complaints. I'm not 17 the complainant. 18 Yes. And so far that's the specific job of 19 Mr. Miller, I believe. And to my understanding and to 20 my own belief, I believe that he conducted the job 21 carefully before submitting the report to the whole 22 City Council. 23 So, according to what he said, I think that, 24 in general, all of the complaints are not adequate. 25 It's not sufficient in general. So he came to</p>
Page 50	Page 52
<p>1 COMMISSIONER PIERRE-DIXON: Thank you. 2 CHAIRMAN SMITH: Mr. Miller, you had a -- 3 MR. MILLER: I think I thought better of it. 4 I will refrain from speaking. 5 CHAIRMAN SMITH: Oh, okay. 6 MR. MILLER: I'm happy to answer questions or 7 if you need some guidance on how to address the 8 situation. 9 CHAIRMAN SMITH: I did have a question, but 10 I'm going to wait until -- I don't know about anybody 11 else. I have one, but I'm going to wait. 12 Yeah, if anyone else wishes to speak -- since 13 it is getting late and we have many things to do 14 tonight, I would like to ask a minute, two minutes. 15 MS. SILVA: Two minutes. 16 CHAIRMAN SMITH: I'll ask people to limit 17 themselves to two minutes. 18 So let's go around the room. Two minutes. 19 And you need to raise your right hand. 20 MS. SILVA: Can somebody time, please. Keep 21 time. 22 CHAIRMAN SMITH: Okay. Tell us your name, 23 please. 24 MR. BAO: My name is Vinh Bao. 25 CHAIRMAN SMITH: Okay.</p>	<p>1 conclusion that there's nothing more to investigate. 2 So that's about my talk. And after that we 3 continue with the discussion over, over and over again. 4 The same thing. He reported, he investigated and he 5 submitted to the Council already. 6 I want to correct a little bit. What I mean 7 is that people over here -- not me -- just talk about 8 the same issue has been solved by the Investigator or 9 the Evaluator over, over again. 10 Okay. And after that -- 11 MS. McDANIEL: It is time. 12 MS. TABER: I'm only timing -- I thought you 13 heard it, or I would have said something. 14 CHAIRMAN SMITH: Oh, I did not hear. 15 MS. TABER: Sorry. 16 CHAIRMAN SMITH: Okay. I'm not sure how to 17 do that with -- 18 MS. TABER: I'm not timing during the 19 translator -- I'll turn up the volume. I'm not turning 20 during the translator. I am pausing during the 21 translation. 22 CHAIRMAN SMITH: Oh, that's what that noise 23 was. 24 MS. TABER: Yeah, that was me. It was too 25 gentle.</p>

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 53

1 CHAIRMAN SMITH: Okay. So keep it -- wrap  
2 up.  
3 MR. BAO: Okay. I wrap up then.  
4 So I think that the meeting today may be  
5 dismissed now. And if anybody has furthermore  
6 complaints, just follow the procedure. Because this is  
7 a democracy country. You have to follow the rules,  
8 right? You just turn in the complaint -- complaint,  
9 and we will have another person to consider it. Follow  
10 the procedure.  
11 CHAIRMAN SMITH: Thank you.  
12 MR. BAO: Yes.  
13 CHAIRMAN SMITH: Anyone else?  
14 Okay. And then here and then over here.  
15 MR. GANG: I'm the complainer.  
16 CHAIRMAN SMITH: Okay. Well --  
17 MS. PIERRE-DIXON: State your name.  
18 MR. GANG: My name is Cuong Gang.  
19 CHAIRMAN SMITH: Could you spell that for  
20 the --  
21 MS. GANG: C-u-o-n-g and G-a-n-g.  
22 CHAIRMAN SMITH: Thank you.  
23  
24 CUONG GANG,  
25 being first duly sworn by the Chairperson to tell the

Page 54

1 truth, the whole truth and nothing but the truth,  
2 testified as follows:  
3  
4 MR. GANG: Because I already hear Mr. Miller  
5 say that we are not investigate anyone to elect City  
6 Council or anyone in the City Council. And all higher.  
7 But that making me worry about -- because I heard  
8 that --  
9 CHAIRMAN SMITH: Okay. Just a second. We  
10 need to translate here, I think.  
11 MR. GANG: If you say, Are you submit this  
12 complaint, to the -- another agency, a criminal agency,  
13 I agree that. But you say, We are not investigate  
14 anyone, go to the elected City Council, I disagree with  
15 that.  
16 Because I heard that when Mr. President  
17 Obama -- go elect the President. People get complaint  
18 about birth certificate. And that is the rule for all  
19 the United States.  
20 I think City Council is the same thing.  
21 CHAIRMAN SMITH: Okay.  
22 MR. GANG: That's it.  
23 CHAIRMAN SMITH: Okay. Thank you.  
24 Please state your name, please, and maybe  
25 spell it.

Page 55

1 MS. XUNG: My name is Aic Xung. I am  
2 Vietnamese.  
3 CHAIRMAN SMITH: Could you spell your name,  
4 please.  
5 MS. XUNG: Vietnamese. A-I-c, X-U-n-g.  
6 CHAIRMAN SMITH: I'm sorry. I need to -- I  
7 need -- excuse me. I need to swear -- can she --  
8 COMMISSIONER PIERRE-DIXON: He can translate.  
9 CHAIRMAN SMITH: Can you translate for her?  
10  
11 AIC XUNG,  
12 being first duly sworn by the Chairperson to tell the  
13 truth, the whole truth and nothing but the truth,  
14 testified as follows:  
15  
16 CHAIRMAN SMITH: I'm sorry. Go ahead.  
17 MS. XUNG: Ladies and gentlemen, when we --  
18 at the time that we become U.S. citizen, we have sworn  
19 that we have to be truthful and then pure. We have to  
20 be pure in our mind as well as our action. We consider  
21 this land is a paradise. Most beautiful paradise.  
22 Therefore, we have to hold up our promises as citizens.  
23 And I'm almost 80 now. And as far as I'm  
24 concerned, when we elect a person who can represent us,  
25 almost a million people here, the person have to be

Page 56

1 moral and have to be capable. Because, to me, one's  
2 family is a first foundation of the society. And we  
3 become very saddened if we were to be divorced by a  
4 husband, and then we almost want to give up everything.  
5 And, therefore, when we want to elect  
6 someone, especially in this mainstream, that person  
7 have to have a strong family base. Have to be moral.  
8 I only mention about family.  
9 Therefore, I would like this commission to  
10 consider about Mr. Manh Nguyen's action so that, you  
11 know, women like us will be happier and our children  
12 will become better citizens.  
13 CHAIRMAN SMITH: Thank you.  
14 Okay. There was someone over here that  
15 wanted to -- oh, okay.  
16 Come forward. State your name.  
17 MR. DO: I wonder if I can stay next to the  
18 translator for the ease of the translation.  
19 CHAIRMAN SMITH: Sure. State your name.  
20 MR. DO: I am Bryan Kong Do.  
21 CHAIRMAN SMITH: Okay.  
22  
23 BRYAN DO,  
24 being first duly sworn by the Chairperson to tell the  
25 truth, the whole truth and nothing but the truth,

14 (Pages 53 to 56)

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 57	Page 59
<p>1 testified as follows: 2 3 MR. DOVAN: Does he get two minutes? 4 CHAIRMAN SMITH: Yep. 5 MR. DO: Before I begin, I just want to thank 6 the translator. You're doing an incredibly great job. 7 I know it's not easy. 8 And I also -- apologies, Mr. Steve Miller, if 9 I jump again -- it's going to be little more advanced 10 than what you wanted to say prior. 11 So, first, thank you for the opportunity to 12 speak, address you. I know that this is probably not 13 what you anticipated today, to say the least. This is 14 probably the most exciting Ethics Commission meeting 15 I've ever attended. Certainly the most crowded. Close 16 enough. 17 First of all, I'm happy to see so many 18 Vietnamese American here today. Clearly, we as a 19 community are becoming more and more engaging in the 20 political process, regardless of how imperfect the 21 process and approach that we get to where we are today. 22 I thank everyone for being here today. Regardless of 23 what your political viewpoint is, you make me so good 24 to see each and every one of you today. 25 In the interest of full disclosures, I do not</p>	<p>1 respond to this complaint and this complaint only. 2 This is not a political forum for anyone. 3 MR. DO: Thank you. 4 COMMISSIONER PIERRE-DIXON: Mr. Doan is here 5 today representing -- and on his own would-be complaint 6 and representing clients, which gives him additional 7 time. 8 If there is something you haven't responded 9 to in reference to the four corners of this complaint, 10 please make that clear and use your last 30 seconds for 11 that. 12 Thank you. 13 UNIDENTIFIED SPEAKER: Thank you. Thank you. 14 UNIDENTIFIED SPEAKER: Yes, yes. 15 MR. DO: I thank you for saying exactly that. 16 That's exactly what I was hoping you would say. 17 Because this not a political forum. And Mr. Doan has 18 used this as a political forum, and this is what I'm 19 hoping. We need to prevent from having this in Ethics 20 Commission as a political -- we need to prevent from 21 taking further step, which I addressed to the Ethics 22 Commission in my previous meeting, if you remember, 23 from last month. Because what everybody has done is 24 using you as a -- 25 CHAIRMAN SMITH: Okay.</p>
Page 58	Page 60
<p>1 represent the Manh Nguyen for City campaign. However, 2 I support him. And I am not an attorney. 3 MR. DOVAN: I know that. 4 MR. DO: Yes. 5 CHAIRMAN SMITH: You want to -- 6 MR. DO: However, I do understand, when 7 someone speak, they need full disclosure. And 8 Mr. Steven Doan should have fully disclosed the 9 following. One, he supported a different candidate 10 from the Manh Nguyen for Mayor, and his candidate lost. 11 MR. DOVAN: Personal. 12 MS. TABER: Time out. I'm pausing during 13 translation. So there are 30 seconds left for him to 14 talk. I'm not counting during translation. That's why 15 he still has time. 16 But you have 30 seconds, just so you know. 17 MR. DO: I think some of the comment 18 before -- before I begin, I don't know whether I'm 19 given the same accord that Mr. Steven Doan has been 20 given. He get to present his political -- using your 21 office, essentially, for political -- 22 COMMISSIONER PIERRE-DIXON: Excuse me. I'd 23 like to interject. 24 MR. DO: Yes, ma'am. 25 COMMISSIONER PIERRE-DIXON: You're here to</p>	<p>1 UNIDENTIFIED SPEAKER: I think she's stealing 2 from him -- 3 CHAIRMAN SMITH: You can -- 4 MS. TABER: We have seven seconds on the 5 clock. 6 CHAIRMAN SMITH: You can wrap up your last -- 7 MS. TABER: You still have -- you still have 8 time. 9 MR. DO: No, I think that's plenty of time. 10 I would like -- I would like to follow up on that with 11 members of the media at a later time. 12 Thank you. 13 CHAIRMAN SMITH: Okay. 14 COMMISSIONER PIERRE-DIXON: Any -- 15 MR. DOVAN: Do I get a 30-second rebuttal? 16 Because he attacked me. 17 COMMISSIONER PIERRE-DIXON: I don't think you 18 need to rebut that. I think it's clear. 19 MR. DOVAN: And I made it very clear, I don't 20 support or even met -- 21 COMMISSIONER PIERRE-DIXON: I think you did 22 as well. 23 MR. DOVAN: -- support -- 24 COMMISSIONER PIERRE-DIXON: You don't need to 25 discuss this.</p>

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 61

1 Was there anyone else here from the community  
2 that had something?  
3 CHAIRMAN SMITH: Do we have anyone else --  
4 yes, thank you.  
5 COMMISSIONER PIERRE-DIXON: Any other  
6 community members that wanted to make a presentation?  
7 CHAIRMAN SMITH: I believe --  
8 MR. VO: I am.  
9 CHAIRMAN SMITH: And then I understand we  
10 have a representative from Mr. Nguyen who is here who  
11 wishes to speak.  
12 UNIDENTIFIED SPEAKER: He does not wish to  
13 speak, actually. Thank you.  
14 CHAIRMAN SMITH: Okay. State your name,  
15 please.  
16 MR. VO: My name is Sutton Vo. I spoke  
17 before. I'm voter of District 4.  
18 And so I concerned a lot about --  
19 CHAIRMAN SMITH: Okay. Hang on a second.  
20 Do you have the name?  
21 MR. VO: Sutton. My name is Sutton Vo,  
22 S-u-t-t-o-n.  
23 COMMISSIONER PEACOCK: Does he have two  
24 opportunities to speak?  
25 CHAIRMAN SMITH: He did not speak.

Page 62

1 MS. SILVA: He spoke earlier.  
2 CHAIRMAN SMITH: Okay. Would you raise your  
3 right hand, please.  
4  
5 SUTTON VO,  
6 being first duly sworn by the Chairperson to tell the  
7 truth, the whole truth and nothing but the truth,  
8 testified as follows:  
9  
10 CHAIRMAN SMITH: And I would appreciate it if  
11 people would please keep it down or I'll ask you to  
12 leave the room. I'm getting a little annoyed.  
13 Please continue.  
14 MR. VO: Yes, I like to speak out, you know,  
15 my opinion. I'm going to vote -- on behalf of myself  
16 and my whole family of 15 people. I don't want to talk  
17 about politics here. I want my representative would be  
18 a good guy. Therefore, I don't want Nguyen Manh  
19 because to me he lies a lot.  
20 That's all of opinion I would like to give my  
21 opinion to all the voters of the District 4. And I  
22 want my voice to be heard. I oppose Mr. Manh to be my  
23 council member of my district.  
24 COMMISSIONER PIERRE-DIXON: Thank you.  
25 MR. VO: That's all I would like to refresh.

Page 63

1 CHAIRMAN SMITH: Anyone else?  
2 Come forward.  
3 If you would state your name, please.  
4 MR. LE: My name is An Le.  
5 CHAIRMAN SMITH: Could you spell that for  
6 the --  
7 MR. LE: A-n, L-e.  
8 CHAIRMAN SMITH: That was easy.  
9  
10 AN LE,  
11 being first duly sworn by the Chairperson to tell the  
12 truth, the whole truth and nothing but the truth,  
13 testified as follows:  
14  
15 MR. LE: Ladies and gentlemen, I like to  
16 voice. And there is an article in the Metro with it,  
17 that he has related -- has a lot of relationship with  
18 women. But he never give up his wife.  
19 COMMISSIONER PIERRE-DIXON: Okay. I think we  
20 better not go into his personal life at this point. I  
21 think we've heard a lot on that subject. Is there  
22 anything else you wanted to say about the complainants,  
23 though?  
24 MR. LE: I believe that there is a social  
25 problem. Because that attack reputation of women.

Page 64

1 COMMISSIONER PIERRE-DIXON: Thank you.  
2 MR. LE: I do not -- I am not a resident of  
3 the 4th district, District 4. But the statement given  
4 by Mr. Manh Nguyen really insult and then -- insult the  
5 female.  
6 COMMISSIONER PIERRE-DIXON: Thank you.  
7 MR. LE: And then Mr. Manh Nguyen -- in  
8 reality, he is not a resident of District 4. Only when  
9 he apply for the candidate of the District 4 -- only  
10 then that he rent an office in District 4.  
11 The reason I say so is just to let you know  
12 that Mr. Manh Nguyen really disgrace the reputation of  
13 all the women. Not only that he disgraced the  
14 Vietnamese women but he disgraced all women. And I  
15 think that is a morale problem. And please consider  
16 that.  
17 Thank you.  
18 CHAIRMAN SMITH: Thank you. Anyone else?  
19 Okay. If not, we will go back to Mr. Miller.  
20 Do you have anything to add before we might  
21 have questions for you?  
22 MR. MILLER: Sure. I will add one -- I'll  
23 add a statement, which is that I don't mean to diminish  
24 in my report at all the respect I have for the obvious  
25 involvement of the community in this area. However, I

16 (Pages 61 to 64)

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 65	Page 67
<p>1 don't think that means that different rules should 2 apply for different groups of people. The complainants 3 here seem to be represented by counsel, and yet their 4 complaint still fails to meet the sufficiency standards 5 had counsel --</p> <p>6 MS. SILVA: Translation. 7 MR. MILLER: In particular, there's reference 8 to a family gift report that is not even in the 9 complaint. And so there was nothing for me to 10 determine on an issue as to whether a statement was 11 made under perjury or not. And especially given when 12 complainants are represented by counsel, I think it's 13 reasonable to assume that complaints will meet the 14 requirements of Title 12.</p> <p>15 CHAIRMAN SMITH: Let me ask a question. 16 Yes? 17 MR. DOVAN: It is in there. 18 CHAIRMAN SMITH: There's reference to it. I 19 don't think the form itself -- 20 MR. DOVAN: Oh, I see. 21 CHAIRMAN SMITH: But let's get to my 22 question. And I don't know if this is to Mr. Miller or 23 to the City Attorney but one of you. If the family 24 gift report had been required of Mr. Nguyen as a 25 candidate and he filled it out as he did --</p>	<p>1 agencies, as they see fit. In this particular case, I 2 did not see an opportunity even to make such a 3 recommendation because there was no specific facts 4 identified in the complaint that gave rise to any 5 possible allegation of any kind.</p> <p>6 Does that answer your question? 7 CHAIRMAN SMITH: Sort of. 8 MR. MILLER: What I'm trying -- what I'm -- 9 hard to hear. Maybe another issue. As I tried to 10 indicate in the report, there are two categories of 11 people that have to file the Form 700s. There are 12 candidates and there are elected officials and 13 employees. Only the latter category, employees and 14 officials such as yourselves, have to file the form -- 15 the family gift report at the time you annually file 16 your Form 700. Form 700 filers who are candidates do 17 not have that same requirement.</p> <p>18 The confusion arises, if that's the right 19 word, because the City Clerk's office asks all Form 700 20 filers to file the family gift report for ease and 21 convenience even though only a subset of those filers 22 are required to submit the form.</p> <p>23 CHAIRMAN SMITH: Okay. I'm not going to 24 pursue the question any further because it is outside 25 the bounds of what you were asked to do. But I will</p>
<p>Page 66</p> <p>1 MR. MILLER: Well, I don't know how he did 2 it. 3 CHAIRMAN SMITH: Well, okay. We've been 4 given -- so let me -- let me -- well, let me -- I'll 5 get to that. Okay. We've been given tonight -- we've 6 been given a copy which purports to be the form he 7 submitted.</p> <p>8 MR. MILLER: Understood. Just so you know 9 that I had never been given that. 10 CHAIRMAN SMITH: Right. I understand. 11 If -- and that form indicated that he did not 12 have a spouse. But we have been told that, in fact, he 13 does have a spouse. If that's the case, that that form 14 is incorrect and he were required to fill out that 15 form, would that be a violation of Title 12 --</p> <p>16 MR. MILLER: Could I answer that? 17 CHAIRMAN SMITH: -- potentially? 18 MR. MILLER: So, first of all, I view the 19 hypothetical nature of your question as precisely the 20 kind of questions that I am to avoid asking in my 21 preliminary evaluation. But, nonetheless, I think the 22 answer to your question is, no, it would not have been 23 a violation of Title 12. 24 But the Commission is authorized to refer 25 matters that they deem appropriate to other enforcement</p>	<p>Page 68</p> <p>1 have a question for one of the two of you, either the 2 Evaluator or City Attorney, when we get to the section 3 of the process having to do with possible referrals to 4 other agencies.</p> <p>5 Okay. Any other questions of the 6 commissioners? 7 COMMISSIONER PIERRE-DIXON: There's one 8 there. 9 CHAIRMAN SMITH: Yes. What could -- 10 MR. DOVAN: He's the press. So I don't know 11 if he can -- 12 COMMISSIONER PIERRE-DIXON: Well, what's the 13 question? 14 CHAIRMAN SMITH: Do you have a question? 15 MR. TRAN: I just want to tell you the truth 16 that has something to do with this matter. 17 COMMISSIONER PIERRE-DIXON: We finished 18 testimony. 19 CHAIRMAN SMITH: We finished testimony. 20 MS. SILVA: It's your discretion, Mike. 21 CHAIRMAN SMITH: If you really have something 22 that you think is important, we'll give you two 23 minutes. Okay. State your name, please. 24 MR. TRAN: My name is Loi Tran. 25</p>

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 69

1 LOI TRAN,  
2 being first duly sworn by the Chairperson to tell the  
3 truth, the whole truth and nothing but the truth,  
4 testified as follows:  
5  
6 MR. TRAN: Yes, several days ago I have seen  
7 a Mr. Nguyen -- Tsu Nam's (phonetic) television  
8 program, and he interview one person which bring me --  
9 which remind me of a picture that was taken, the  
10 picture that was just showed to the Commissioner. And  
11 I have already declared that it was a mistake that I  
12 made on that picture.  
13 This is the picture that I just mentioned.  
14 I'm the author of this picture, and I am the owner of  
15 the Bay Area. Yes, when Mr. Manh Nguyen send a letter  
16 for me to put it on an ad, he did not enclose the  
17 picture. I used a poster by Mr. --  
18 MR. SMITH: Don't make me empty the room.  
19 MR. TRAN: I used an old poster of Jimmy  
20 Nguyen and put Mr. Manh Nguyen's picture on -- up on  
21 the poster. And the picture -- this picture here was  
22 taken by me during an occasion by Mr. Le Ha Vo  
23 (phonetic) and Attorney Tam Nguyen, and I used that  
24 picture to impose on this poster.  
25 And then right after I realized that Mr. Manh

Page 70

1 Nguyen was not an attorney-at-law, then I tried to  
2 explain -- I tried to take off the E-s-q, and then I  
3 also explained in my newspaper the fact.  
4 It is very easy to investigate whose picture  
5 is this. And then, you know, all we have to do is take  
6 this picture to an IT, then it will find out that --  
7 you know, when this picture was taken, what day it was  
8 taken and what day it was modified.  
9 In fact, I don't want to speak up here.  
10 Actually, I want to --  
11 CHAIRMAN SMITH: He needs to wrap up. The  
12 two minutes are up.  
13 MR. TRAN: Actually, I just want to present  
14 this in a Vietnamese television program of Mr. Nguyen.  
15 If I do so, it will be too late; therefore, I have to  
16 voice out today.  
17 CHAIRMAN SMITH: Okay. Thank you.  
18 Okay. Anything -- back to the Independent  
19 Evaluator.  
20 There are no questions for Mr. Miller, so we  
21 move on.  
22 Okay. At this point it's time for the  
23 Commission to make a decision. We have two options, as  
24 I explained earlier. The Commission may find that  
25 further investigation is necessary and may direct the

Page 71

1 Evaluator to conduct further investigation and report  
2 back. Second option, the Commission may adopt the  
3 Evaluator's report and approve the recommendation  
4 against conducting an investigation and close the file  
5 in this matter without further action.  
6 Okay. Thank you. Is there any discussion  
7 among commissioners?  
8 If not, I'm going to short-circuit things.  
9 I'm going to make a motion.  
10 You want to translate?  
11 THE INTERPRETER: Say it again. Sorry.  
12 CHAIRMAN SMITH: If there's no discussion,  
13 I'm going to make a motion.  
14 I move that the Commission adopt the  
15 Evaluator's report, approve the recommendation against  
16 conducting an investigation and close the file on this  
17 matter.  
18 COMMISSIONER GONZALES: Second.  
19 CHAIRMAN SMITH: Thank you.  
20 Okay. Discussion on the motion?  
21 If not, all in favor?  
22 (All Commissioners responded Aye.)  
23 CHAIRMAN SMITH: Any opposed?  
24 (No response.)  
25 CHAIRMAN SMITH: It passes unanimously.

Page 72

1 Okay. We do a certification of the vote. At  
2 this point --  
3 MS. SILVA: Mike, can I also make clear --  
4 because we have four matters. There's Hearings A, B, C  
5 and D. So the motions have to be clear so that we're  
6 adjudicating each one of these.  
7 CHAIRMAN SMITH: You're right.  
8 COMMISSIONER PEACOCK: Should we do four  
9 separate motions?  
10 CHAIRMAN SMITH: It was my intent in the  
11 motion to address all four. Since the complaints were  
12 identical, it was my intention that that motion cover  
13 all four. Do I need to redo the motion and revote to  
14 make that clear?  
15 MS. SILVA: I can create one resolution for  
16 each one, identical, just changing, you know, for the  
17 names on each one. And I can do it that way.  
18 CHAIRMAN SMITH: Okay. So that motion that  
19 we just had will suffice?  
20 MS. SILVA: I can do it that way and have --  
21 just to be clear on the record --  
22 CHAIRMAN SMITH: And then when we do the  
23 resolution in a minute, we'll --  
24 MS. SILVA: Correct.  
25 CHAIRMAN SMITH: Okay.

18 (Pages 69 to 72)

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 73	Page 75
<p>1 MS. SILVA: But I just want to be clear that 2 I will create four different resolutions, for each one 3 of these, so that the same vote for each one of those 4 will take place. 5 CHAIRMAN SMITH: Yes. After the 6 certification, just so people know, I want -- when we 7 don't do an investigation, normally we do not consider 8 referrals to other agencies. But I want to do that 9 this time. So we'll consider whether we want to do 10 that or not. 11 But -- so I will ask each -- before that I 12 will ask each member to certify that you have heard or 13 read the testimony at the hearing and have reviewed all 14 of the evidence in the record. 15 Okay. Commissioner Vemulapalli? 16 COMMISSIONER VEMULAPALLI: So -- 17 CHAIRMAN SMITH: So certified? 18 COMMISSIONER VEMULAPALLI: So certified. 19 CHAIRMAN SMITH: Commissioner Peacock? 20 COMMISSIONER PEACOCK: So certified. 21 CHAIRMAN SMITH: Commissioner Pierre-Dixon? 22 COMMISSIONER PIERRE-DIXON: So certified, 23 CHAIRMAN SMITH: And Commissioner Gonzales? 24 COMMISSIONER GONZALES: So certified. 25 CHAIRMAN SMITH: And me, Commissioner Smith,</p>	<p>1 CHAIRMAN SMITH: Any opposed? 2 (No response.) 3 CHAIRMAN SMITH: Passes unanimously. 4 Okay. Now the question of a referral before 5 I close. Yeah. 6 We've had evidence presented to us -- not in 7 the original complaint but presented to us this evening 8 that there was a misstatement of fact on the family 9 gift report. That would not -- as I understand it, 10 that would not fall under our purview, if for no other 11 reason than the fact that that form is not required by 12 Title 12 for a candidate. 13 Regardless of that fact, it is a city form; 14 it was filled out and signed under penalty of perjury. 15 So my question is, is it appropriate to consider 16 referring that aspect of this to someone else and who 17 might that someone else be, since it's not within our 18 purview? 19 MR. MILLER: So, in my view, the answer to 20 your question is that the contents of the report itself 21 is not as significant as the fact that it was signed 22 under penalty of perjury. And so I would think the 23 appropriate matter -- because there's no -- there's no 24 Political Reform Act requirement that he file the 25 family gift act, either there's no way for the FPCC to</p>
Page 74	Page 76
<p>1 so certified. 2 Now, as I said, normally at this point we go 3 directly to the resolution. But should we do the 4 resolution first or -- 5 MS. SILVA: We can do that. It's cleaner. 6 CHAIRMAN SMITH: Do the resolution? 7 MS. SILVA: Yes. 8 CHAIRMAN SMITH: Please silence the phones. 9 We should do the resolution first? 10 MS. SILVA: Yes. 11 CHAIRMAN SMITH: Okay. Under the 12 Commission's regulations and procedures, the Commission 13 shall issue a decision by resolution. At this time I 14 would entertain a motion. In fact -- well, go ahead. 15 To simplify things, I'm going to make the motion 16 myself. 17 I move that the Commission direct the City 18 Attorney to draft four resolutions, four identical 19 resolutions, of the Commission's findings and 20 penalties -- findings and authorizing the Chair to 21 approve and sign the resolutions. 22 Do I have a second? 23 COMMISSIONER PIERRE-DIXON: Second. 24 CHAIRMAN SMITH: All in favor? 25 (All Commissioners responded Aye.)</p>	<p>1 enforce it. But presumably the D.A. might be 2 interested in a false statement made under perjury. 3 I will point out to you what just -- I have 4 no -- this is purely within your discretion to refer 5 things. But I did mention, in a footnote in my report, 6 just for your information, that the -- there is a, for 7 lack of a better word, corrected family gift report on 8 file with the City. 9 But the answer to your question is the 10 district attorney's office. 11 COMMISSIONER GONZALES: Mr. Chair? 12 CHAIRMAN SMITH: Yes. 13 COMMISSIONER GONZALES: Question for 14 Mr. Miller. 15 Would that be your professional opinion? 16 This merits further evaluation from the district 17 attorney? 18 MR. MILLER: I'm only hesitating because I'm 19 wondering if that's really a question more 20 appropriately answered by Ms. Silva. I'm also 21 wondering whether it's a question -- let's put it this 22 way. You've received some information beyond just this 23 issue of the family gift report that was not in this 24 complaint, but I think it's no secret that the people 25 have been talking about another complaint you have not</p>

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 77

1 seen yet. And so it may be that you will be,  
2 hypothetically speaking, asking this same question at a  
3 later point about other facts as well. So I think it  
4 would be my --  
5 CHAIRMAN SMITH: Go ahead.  
6 MR. MILLER: No is the answer to your  
7 question.  
8 COMMISSIONER GONZALES: Mr. Chair? May I?  
9 CHAIRMAN SMITH: Yes.  
10 COMMISSIONER GONZALES: I'd like to point out  
11 the policies and procedures set forth by the San Jose  
12 City Council regarding the procedures of the Ethics  
13 Commission. Subsection J of the Council's Resolution,  
14 "Commission Findings," Subsection 7. "The Commission  
15 may refer the allegations and any information gathered  
16 in the investigation to an appropriate enforcement  
17 agency."  
18 Seeing that the Evaluator did not conduct an  
19 investigation but, rather, a preliminary evaluation  
20 and, therefore, did not -- was not directed to evaluate  
21 these issues and doesn't have a legal opinion on this  
22 matter, I would discourage the Commission from pursuing  
23 any motion to refer this matter to the D.A.  
24 CHAIRMAN SMITH: I would say -- and then I  
25 think Mr. Peacock -- Commissioner Peacock has a

Page 78

1 question.  
2 I would say, given that point that you just  
3 made and the point that Mr. Miller made about the --  
4 there being further information in another complaint  
5 we're not aware of and given that I don't want to  
6 contribute to a political circus a few days before an  
7 election by referring things to the D.A. without really  
8 strong reasons, I think I agree.  
9 Commissioner Peacock, you had a question.  
10 COMMISSIONER PEACOCK: I just want to make  
11 sure I'm clear on a couple of facts here.  
12 So the family gift report is not required for  
13 someone in this position, correct?  
14 MS. SILVA: That's correct.  
15 COMMISSIONER PEACOCK: To make it easier for  
16 the City Clerk's office, they're asked to just fill it  
17 out with a -- in the paperwork?  
18 MS. SILVA: I want to defer to the City  
19 Clerk.  
20 MS. TABER: It's an oversimplification. My  
21 original training, when I started in this position, was  
22 the candidates needed to file it. I didn't question  
23 it. I didn't look at it. Obviously, that's not  
24 correct. But our electronic system is set up where  
25 you're forced to file the family gift report. So we

Page 79

1 have to have candidates file on paper. That's our  
2 solution for the future. They file on paper. We don't  
3 send them anything electronic because it forces the  
4 issue.  
5 COMMISSIONER PEACOCK: Right. They're forced  
6 electronically. Not forced legally, correct?  
7 MS. TABER: No, right.  
8 MS. McDANIEL: We need translation.  
9 COMMISSIONER PEACOCK: Sorry. And then the  
10 final piece of that is the one on file has been  
11 corrected or there's an amended version that's not on  
12 file regardless, right, of the form that's not actually  
13 required to be filled out anyway?  
14 MS. TABER: Prior to the complaint being  
15 filed, somebody said, Hey, he filed that he doesn't  
16 have a family, but here's a picture of the family.  
17 I sent a quick e-mail that said the same  
18 facts. And they immediately like, Oh, well, we must  
19 have checked the wrong box. A lot of times people --  
20 we see employees do that.  
21 Do I need to stop?  
22 CHAIRMAN SMITH: Translation.  
23 MR. DOVAN: Completely off. He said, "He  
24 gave the secretary the instruction to check that box."  
25 He said, "She instructed the secretary to change the

Page 80

1 box."  
2 MS. TABER: No. I did not say that.  
3 MR. DOVAN: That is not --  
4 COMMISSIONER PIERRE-DIXON: Okay. Let's have  
5 it --  
6 CHAIRMAN SMITH: We had too much stuff to  
7 translate.  
8 MS. TABER: Yeah, I think --  
9 CHAIRMAN SMITH: That was part of the  
10 problem.  
11 MS. TABER: I said the wrong form was filed.  
12 They immediately -- I sent -- I sent them --  
13 CHAIRMAN SMITH: "Them" being?  
14 MS. TABER: I sent Candidate Nguyen and his  
15 campaign manager --  
16 MR. DOVAN: There's the distinction.  
17 MS. TABER: Yes. -- the information that we  
18 received and said the form was incorrect. Or could be.  
19 They said, Sorry. They filed a new form.  
20 We -- It says "under penalty of perjury," but  
21 so does the Form 700. People amend those all the time.  
22 So we accepted the amendment.  
23 I did provide that to Steven Miller  
24 immediately, as soon as we got the complaint. So he  
25 received that, and that's why it's footnoted.

20 (Pages 77 to 80)

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 81	Page 83
<p>1 CHAIRMAN SMITH: Okay. Translation question? 2 MR. DO: Yes, I just want to clarify. There 3 was one portion that was -- 4 MS. TABER: I know -- it's really hard to 5 stop in the middle and -- 6 MR. DO: Was it amended before or after the 7 complaint? 8 MS. TABER: Before. 9 MR. DO: Thank you. 10 Can you translate, please. 11 CHAIRMAN SMITH: No, no, we're not taking any 12 more -- we're not taking any more testimony. 13 MR. LY: The first time I talked with the 14 supervisor of the City Clerk, and he talked with me. 15 Really? Mr. Manh had a wife? And how many children? 16 I said, Three children. 17 And after that he said, Oh, I will call 18 Mr. Manh and fix this one. 19 I'm the person -- I -- 20 CHAIRMAN SMITH: I understand. But unless 21 you talked to Ms. Taber herself -- maybe somebody in 22 her office was not aware of what she was aware of. 23 MS. TABER: I was informed by staff that 24 somebody called and said, This form was filed. Says he 25 doesn't have a wife and a child -- or says he's not</p>	<p>1 CHAIRMAN SMITH: Unless there's additional 2 discussion among commissioners, does somebody want to 3 make a motion? 4 MR. DOVAN: Mr. Smith, on behalf of him, to 5 rebut the claim, I believe Ms. McDaniel gave me a form 6 when I went there. And you gave me a form, the amended 7 form. I just want to nail down the exact time and 8 date. The date stamp is very important. Mr. Ly -- 9 CHAIRMAN SMITH: We probably need to break 10 for translation. 11 MR. DOVAN: Date stamp. 12 Fortunately, Mr. Ly faxed back his complaint, 13 and it has a date stamp on it. And you can see it for 14 yourself, and it's in the documents provided to you. 15 It was faxed back May 27th, 2015, at 2:58 p.m. from EVC 16 Dental. I presume that's the fax machine that he used. 17 And when I met Ms. McDaniel at the City Clerk's office, 18 I believe she gave me an amended copy. 19 Do you recall? 20 MS. McDANIEL: Yes. I received a copy. 21 MR. DOVAN: And, again, it's a matter of 22 minutes or hours or maybe a day. I thought -- and 23 my -- I don't have the document in front of me, 24 unfortunately, because I didn't think this would be a 25 point of contention. But I thought it said the amended</p>
Page 82	Page 84
<p>1 married. There was no formal complaint. 2 CHAIRMAN SMITH: Okay. 3 MS. TABER: I was notified by somebody, but 4 there was no formal complaint. 5 We received many calls during the campaign, 6 saying "This sign is in the wrong place" or "This sign 7 doesn't have the right information." We called the 8 candidate; the candidate fixes it. Those are not 9 formal complaints. 10 CHAIRMAN SMITH: Yes. 11 COMMISSIONER PIERRE-DIXON: I have a comment. 12 I find myself torn at this point as to what actually 13 occurred in this entire situation. I am really leaning 14 towards having this referred to the district attorney's 15 office. Because it is my feeling -- because it is my 16 feeling that it is their responsibility to investigate 17 criminal conduct. They could very easily find that 18 there was no violation, but that is the purview of the 19 criminal law and of the police department. 20 We have violations all the time, as the 21 County [sic] Clerk talks about, when somebody puts a 22 sign up that is incorrect. And sometimes it comes to 23 us in the form of a complaint, and we refer it out to 24 the appropriate office to make sure that this is 25 handled correctly. And I feel the same about this.</p>	<p>1 form was signed and dated by Mr. Manh Nguyen -- was 2 like May 28th, if I'm not mistaken. 3 MS. TABER: It is possible the physical form 4 came on the 28th, but I have an e-mail on 5/27 at 1:30, 5 with agreeing to, like, getting the new form and filling 6 it. 7 So it is a matter of official filing. But 8 my -- and the two -- you know, the 2:37 is when it was 9 in the fax machine not necessarily when they got it. 10 So it was basically the same time. I saw the amended 11 form before I saw the complaint. That's not to say 12 somebody else -- 13 CHAIRMAN SMITH: Okay. We need to wrap this 14 up. 15 MR. DOVAN: But you see my point of 16 contention, that, you know, he finds out about it from 17 the document proliferating in the community. He runs 18 in. I'm not going to say it's five minutes earlier 19 than his complaint, for God's sake. It's not that 20 issue anymore. But my point is that. 21 CHAIRMAN SMITH: Okay. Would somebody please 22 make a motion, one way or the other. 23 MR. DOVAN: Well -- 24 CHAIRMAN SMITH: I -- I don't think any 25 further discussion on timing is going to make any</p>

# REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 85

1 difference.  
2 COMMISSIONER GONZALES: Mr. Chair?  
3 CHAIRMAN SMITH: Yes.  
4 COMMISSIONER GONZALES: I move to have the  
5 Commission pursue no further action or referral to any  
6 law enforcement agency.  
7 CHAIRMAN SMITH: I'll second that motion.  
8 Okay. Discussion?  
9 Okay. The motion is to not refer the issue  
10 to any outside agency. All in favor?  
11 (Four Commissioners responded Aye.)  
12 CHAIRMAN SMITH: Opposed?  
13 COMMISSIONER PIERRE-DIXON: Aye.  
14 CHAIRMAN SMITH: Okay. The motion passes,  
15 4 to 1, with Commissioner Pierre-Dixon opposed.  
16 Thank you. And, with that, this hearing is  
17 now closed.  
18 (Whereupon, Item III Hearings concluded at  
19 8:16 p.m.)  
20  
21  
22  
23  
24  
25

Page 86

1  
2 I, NOELIA ESPINOLA, do hereby certify.  
3 That said hearing was taken down by me at the  
4 time and place therein named, and thereafter reduced to  
5 computerized transcription under my direction.  
6 I further certify that I am not interested in  
7 the outcome of this hearing.  
8  
9  
10

Dated: \_\_\_\_\_  
11 NOELIA ESPINOLA, CSR #8060  
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22 (Pages 85 to 86)

<b>A</b>	<b>ADVANTAGE</b>	83:25 84:10	<b>approved</b> 15:12	<b>attorney's</b> 15:9
<b>abide</b> 29:6	2:18	<b>amendment</b>	<b>April</b> 6:22	76:10 82:14
<b>able</b> 21:17	<b>advisory</b> 15:2	80:22	<b>area</b> 64:25 69:15	<b>attorney-at-law</b>
<b>Abraham</b> 45:16	<b>affairs</b> 24:25	<b>American</b> 33:15	<b>argue</b> 44:7	70:1
<b>accepted</b> 80:22	<b>affirm</b> 3:6	45:15 57:18	<b>argument</b> 10:8	<b>audience</b> 17:10
<b>accommodation</b>	<b>affirmation</b> 7:9	<b>analyze</b> 17:23	<b>arguments</b> 9:19	<b>audio</b> 39:10,11
12:2	<b>agencies</b> 45:5	<b>annoyed</b> 62:12	<b>arises</b> 67:18	<b>author</b> 69:14
<b>accord</b> 58:19	67:1 68:4 73:8	<b>annual</b> 26:7,8	<b>Arlene</b> 2:8 9:10	<b>authority</b> 29:17
<b>accuracy</b> 24:23	<b>agency</b> 46:23	<b>annually</b> 67:15	<b>article</b> 63:16	36:17,17 45:4
<b>accurate</b> 20:15	54:12,12 77:17	<b>answer</b> 22:19	<b>articles</b> 12:24,25	<b>authorized</b>
<b>accurately</b> 20:6	85:6,10	50:6 66:16,22	<b>aside</b> 18:15	66:24
<b>accused</b> 21:9	<b>agenda</b> 3:6,25	67:6 75:19	<b>asked</b> 11:6 17:2	<b>authorizing</b>
<b>accusing</b> 43:10	6:21 13:13	76:9 77:6	37:14 47:25	74:20
<b>act</b> 47:8 75:24	31:1 41:16,17	<b>answered</b> 76:20	67:25 78:16	<b>Avenue</b> 2:19
75:25	<b>agendized</b> 8:1	<b>anticipated</b>	<b>asking</b> 9:24	<b>avoid</b> 66:20
<b>action</b> 45:3	37:20 38:1,2	57:13	66:20 77:2	<b>aware</b> 29:17
55:20 56:10	40:11 43:22	<b>anybody</b> 24:8	<b>asks</b> 67:19	34:7,22 78:5
71:5 85:5	47:14	43:11 50:10	<b>aspect</b> 75:16	81:22,22
<b>active</b> 36:7	<b>ago</b> 3:17 15:2	53:5	<b>assembly</b> 34:24	<b>axiom</b> 45:17,18
<b>activities</b> 33:11	41:25 69:6	<b>anymore</b> 84:20	<b>assigns</b> 51:12	<b>Aye</b> 4:5 71:22
<b>actual</b> 19:1,1	<b>agree</b> 42:22	<b>anyway</b> 14:22	<b>assume</b> 12:14	74:25 85:11,13
<b>ad</b> 69:16	54:13 78:8	21:7 79:13	65:13	<b>A-i-c</b> 55:5
<b>adage</b> 45:16,18	<b>agreeing</b> 84:5	<b>aphorism</b> 45:17	<b>assuming</b> 38:15	<b>A-n</b> 63:7
<b>add</b> 64:20,22,23	<b>agreement</b> 20:9	45:18	<b>attached</b> 8:7	
<b>addition</b> 38:22	<b>ahead</b> 11:9 31:2	<b>apologies</b> 57:8	43:21	<b>B</b>
39:10	38:7 42:2,20	<b>apparently</b> 8:1	<b>attack</b> 63:25	<b>B</b> 72:4
<b>additional</b> 40:21	44:3 55:16	<b>appeal</b> 29:20,23	<b>attacked</b> 60:16	<b>back</b> 8:23 14:15
40:25 41:1,2	74:14 77:5	<b>apply</b> 7:8 64:9	<b>attended</b> 39:6	21:9,10 26:3
59:6 83:1	<b>Aic</b> 55:1,11	65:2	57:15	43:2 46:1
<b>address</b> 40:21	<b>allegation</b> 5:25	<b>appreciate</b> 21:4	<b>attention</b> 46:11	64:19 70:18
45:24 49:24	18:13,15 19:9	24:22 30:3	<b>attorney</b> 2:8,14	71:2 83:12,15
50:7 57:12	67:5	42:3 44:23	7:25 8:18 9:11	<b>backwards</b>
72:11	<b>allegations</b>	46:11 62:10	11:7 14:20	19:10
<b>addressed</b> 41:2	77:15	<b>approach</b> 57:21	24:3 26:11	<b>ballot</b> 6:2 18:8
59:21	<b>alleged</b> 17:24	<b>appropriate</b>	28:22 32:6	18:14,25 42:5
<b>addressing</b> 42:7	18:4 26:21	19:22 25:19	33:16 35:7,10	42:8,10,11,17
<b>adequate</b> 51:24	<b>alleging</b> 5:22	38:14 40:8,22	35:20 38:20	<b>bankruptcy</b> 8:8
<b>adjudicating</b>	36:14	41:3 45:3,5	39:3,20 40:3	44:16
72:6	<b>allow</b> 11:21	46:4,6 66:25	41:4 44:19	<b>Bao</b> 50:24,24
<b>adopt</b> 71:2,14	16:22	75:15,23 77:16	46:22,22 49:16	51:2,7,7,15
<b>adopted</b> 6:22	<b>allowed</b> 15:13	82:24	58:2 65:23	53:3,12
7:2 17:14	24:7	<b>appropriately</b>	68:2 69:23	<b>bar</b> 36:7,20,23
<b>ADRIAN</b> 2:6	<b>amend</b> 80:21	76:20	74:18 76:17	36:25 37:2
<b>advance</b> 41:19	<b>amended</b> 79:11	<b>approve</b> 3:25	<b>attorneys</b> 15:11	<b>base</b> 18:20 56:7
<b>advanced</b> 57:9	81:6 83:6,18	71:3,15 74:21	35:17,18 37:15	<b>based</b> 26:21

REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p><b>basically</b> 13:11 84:10 <b>Bay</b> 69:15 <b>beautiful</b> 28:20 33:20 55:21 <b>becoming</b> 45:25 57:19 <b>behalf</b> 14:3 32:7 37:13 62:15 83:4 <b>belief</b> 51:20 <b>believe</b> 9:21 34:8 38:7 41:23 43:21 44:6 49:11 51:13,19,20 61:7 63:24 83:5,18 <b>benefit</b> 11:22 19:11 <b>bent</b> 19:9 <b>best</b> 25:10 <b>better</b> 11:8 22:6 28:12 50:3 56:12 63:20 76:7 <b>beyond</b> 44:25 45:3 76:22 <b>big</b> 14:4 <b>birth</b> 33:14 54:18 <b>bit</b> 40:11 51:16 52:6 <b>black</b> 33:20 <b>bordering</b> 34:3 <b>bounds</b> 67:25 <b>box</b> 79:19,24 80:1 <b>brand</b> 43:16 <b>break</b> 48:13 83:9 <b>Bridgett</b> 2:13 9:4,13 10:13 <b>brief</b> 10:8 11:20 <b>bring</b> 69:8</p>	<p><b>brought</b> 39:24 39:25 <b>brown</b> 33:21,25 <b>brushing</b> 21:6 <b>Bryan</b> 56:20,23 <b>Business</b> 35:23 <b>B-a-o</b> 51:7</p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p><b>C</b> 2:2 3:1 72:4 <b>CA</b> 1:16 2:15,20 <b>California</b> 35:22 35:23 47:8 <b>call</b> 3:3,5 27:1,9 40:5 45:17 81:17 <b>called</b> 3:8 21:5,8 21:8,10 35:8 81:24 82:7 <b>calling</b> 21:9 <b>calls</b> 82:5 <b>campaign</b> 14:7 33:12 35:13 38:22,25 39:14 45:10 58:1 80:15 82:5 <b>campaigning</b> 35:1 <b>candidate</b> 35:1,6 58:9,10 64:9 65:25 75:12 80:14 82:8,8 <b>candidates</b> 26:7 26:9,12 33:5 67:12,16 78:22 79:1 <b>capable</b> 56:1 <b>card</b> 15:22,23 <b>carefully</b> 51:21 <b>case</b> 13:5 20:1 22:4 66:13 67:1 <b>cases</b> 14:19 36:3 <b>categories</b> 67:10 <b>category</b> 67:13</p>	<p><b>cause</b> 26:21 <b>causes</b> 35:2 <b>Cecilia</b> 2:11 9:7 <b>Center</b> 39:1 <b>certain</b> 17:15 <b>Certainly</b> 57:15 <b>certificate</b> 54:18 <b>certification</b> 72:1 73:6 <b>certified</b> 15:16 15:18,19 16:2 16:3 23:23,25 24:19 25:5,6 73:17,18,20,22 73:24 74:1 <b>certify</b> 73:12 86:2,6 <b>Chair</b> 2:4 7:12 7:19 20:25 46:3 47:2 74:20 76:11 77:8 85:2 <b>Chairman</b> 3:3 3:14,18,22,25 4:2,4,6,8 5:3,5 5:11,14,17 8:3 8:9,11,13,20 8:23 9:1,14 10:2,6,11,17 11:13,19 12:5 12:12 13:7,9 13:20 14:10,14 14:17 15:7,11 16:6,9,14,18 17:4,6,8,17 18:9,10,24 19:3,6 20:23 21:3,13,23 22:2,14,23 23:15 25:7,9 25:12,16,20,24 26:3,24 27:8 27:21 28:2,9 28:13 29:14,24 30:1,4,8,11,15</p>	<p>30:22 31:5,10 31:14,17,19 32:3,21,24 34:11 36:10,13 36:22 37:2,8 37:12 38:9,23 39:18,22,25 40:6,14,18,25 41:10,14 42:9 42:11,16 43:12 46:7,9,12 48:13,19,21,24 49:6,24 50:2,5 50:9,16,22,25 51:14 52:14,16 52:22 53:1,11 53:13,16,19,22 54:9,21,23 55:3,6,9,16 56:13,19,21 57:4 58:5 59:25 60:3,6 60:13 61:3,7,9 61:14,19,25 62:2,10 63:1,5 63:8 64:18 65:15,18,21 66:3,10,17 67:7,23 68:9 68:14,19,21 70:11,17 71:12 71:19,23,25 72:7,10,18,22 72:25 73:5,17 73:19,21,23,25 74:6,8,11,24 75:1,3 76:12 77:5,9,24 79:22 80:6,9 80:13 81:1,11 81:20 82:2,10 83:1,9 84:13 84:21,24 85:3 85:7,12,14 <b>Chairperson</b></p>	<p>28:5 31:24 49:2 51:3 53:25 55:12 56:24 62:6 63:11 69:2 <b>chairs</b> 5:12 <b>change</b> 79:25 <b>changing</b> 72:16 <b>check</b> 79:24 <b>checked</b> 79:19 <b>child</b> 81:25 <b>children</b> 56:11 81:15,16 <b>chocolate</b> 33:22 <b>choice</b> 33:15 <b>CHRIS</b> 2:5 <b>Chu</b> 34:24 <b>circus</b> 78:6 <b>citizen</b> 33:15 49:22 55:18 <b>citizens</b> 34:17 55:22 56:12 <b>city</b> 1:1,14 2:8 2:10,11 5:18 5:20,22 6:12 6:18,20,22 9:3 9:7,9,10 15:7 15:13 17:13,14 23:5,17 24:11 24:15 26:11,11 29:10,12,16 33:12 35:15 37:22 40:2,3 44:19,20 46:22 47:11 49:22 51:11,11,22 54:5,6,14,20 58:1 65:23 67:19 68:2 74:17 75:13 76:8 77:12 78:16,18 81:14 83:17 <b>City's</b> 24:11 <b>claim</b> 35:8 38:20</p>
---	--	--	---	--

49:16,18,19 83:5 <b>claiming</b> 28:22 41:4 <b>claims</b> 39:19 44:21 <b>Clara</b> 1:14 <b>clarification</b> 10:19 30:1 38:17 <b>clarify</b> 38:9,10 42:21 81:2 <b>cleaner</b> 74:5 <b>clear</b> 12:18 48:3 59:10 60:18,19 72:3,5,14,21 73:1 78:11 <b>clearly</b> 35:14,21 43:24 44:21 45:11 57:18 <b>Clerk</b> 2:10,11 5:22 6:12,18 9:9 26:11 37:22 40:3 47:11 78:19 81:14 82:21 <b>Clerk's</b> 9:8 15:7 44:20 67:19 78:16 83:17 <b>clients</b> 17:1 59:6 <b>clock</b> 60:5 <b>close</b> 13:14 19:18,19 20:10 39:6 42:23,25 57:15 71:4,16 75:5 <b>closed</b> 4:9 85:17 <b>Code</b> 5:24 36:18 45:8 <b>codes</b> 35:23 44:8 <b>colors</b> 33:20 <b>come</b> 4:21 13:23 14:12 27:2,10 27:21 56:16 63:2	<b>comes</b> 38:15 82:22 <b>comfortable</b> 24:1 <b>coming</b> 17:18 <b>comma</b> 35:16 <b>comment</b> 13:16 18:7 22:8,10 29:15 31:6,6 43:10 46:10 58:17 82:11 <b>comments</b> 11:3 13:25 20:24 24:22 30:17 42:3 <b>commission</b> 1:2 2:4 5:19,20,21 6:20 7:4,17,17 17:13,14 22:24 24:9,16 26:25 28:16 29:2,8 29:11 32:5 35:12 38:3,10 39:12 44:24 45:24 47:1,3 49:11,21 56:9 57:14 59:20,22 66:24 70:23,24 71:2,14 74:12 74:17 77:13,14 77:14,22 85:5 <b>Commissioner</b> 3:7,12,23 4:1,3 4:24 16:7 19:20,24 20:3 23:2 25:18 27:6 31:2 32:8 32:11 34:1,6 40:15 46:8,14 46:17 47:18,22 47:24 48:8,17 50:1 55:8 58:22,25 59:4 60:14,17,21,24 61:5,23 62:24	63:19 64:1,6 68:7,12,17 69:10 71:18 72:8 73:15,16 73:18,19,20,21 73:22,23,24,25 74:23 76:11,13 77:8,10,25 78:9,10,15 79:5,9 80:4 82:11 85:2,4 85:13,15 <b>commissioners</b> 4:5 17:11 46:5 46:6 68:6 71:7 71:22 74:25 83:2 85:11 <b>Commission's</b> 6:23 9:4,16 74:12,19 <b>committed</b> 6:1 <b>committee</b> 15:2 29:2 <b>Communicaid</b> 15:14 16:13 <b>communicate</b> 47:2 <b>communication</b> 9:24 <b>Communist</b> 34:17 <b>community</b> 24:6 24:7 28:21 29:12 37:17 49:10 57:19 61:1,6 64:25 84:17 <b>companies</b> 15:13,14 <b>company</b> 16:10 <b>compel</b> 7:12,13 <b>compile</b> 7:7 <b>complainant</b> 6:19 7:10 10:7 19:11 27:10	31:11 51:17 <b>complainants</b> 7:11,21,23 8:5 8:11 10:3 22:5 27:13,14 30:9 46:2 63:22 65:2,12 <b>complainer</b> 53:15 <b>complaining</b> 14:6,12 <b>complaint</b> 6:4,6 6:8,10 8:1,1 10:23 17:12,19 17:20,23 18:17 19:12 26:22 27:25 37:20 38:1,15 39:23 40:1,11,21 41:4,6,22,23 42:6,9,13,18 42:25 43:4,8 43:13,16,21,22 43:25 45:11,12 45:25 46:19 47:4,10,11,14 47:19,20 48:4 48:9,10,12 49:15,23 53:8 53:8 54:12,17 59:1,1,5,9 65:4 65:9 67:4 75:7 76:24,25 78:4 79:14 80:24 81:7 82:1,4,23 83:12 84:11,19 <b>complaints</b> 5:22 6:3,13 7:4 17:15 18:1 33:10 34:18 35:5 37:6,18 38:11,13 41:24 43:14 47:6,16 51:9,10,11,16 51:24 53:6	65:13 72:11 82:9 <b>completed</b> 47:13 47:13 <b>completely</b> 35:19 79:23 <b>compulsory</b> 48:5 <b>computerized</b> 86:5 <b>concede</b> 49:15 <b>concern</b> 13:7 24:23 35:2 <b>concerned</b> 41:7 55:24 61:18 <b>concerning</b> 6:2 33:10 <b>concluded</b> 85:18 <b>conclusion</b> 52:1 <b>conduct</b> 5:21 33:11 41:20 43:1 46:24 71:1 77:18 82:17 <b>conducted</b> 51:20 <b>conducting</b> 71:4 71:16 <b>conducts</b> 45:9 <b>confidential</b> 46:15 <b>confidentiality</b> 46:18 47:16 <b>confirm</b> 20:14 <b>confirmed</b> 26:11 26:12 <b>conflicting</b> 44:15,20 <b>confusion</b> 67:18 <b>consequences</b> 34:19 <b>consider</b> 25:21 53:9 55:20 56:10 64:15 73:7,9 75:15 <b>considered</b> 41:9
---	--	---	---	---

REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p><b>constant</b> 34:2  <b>constitute</b> 17:22  17:25 20:20  <b>contact</b> 15:13  <b>contain</b> 9:19  <b>contained</b> 46:20  <b>contention</b>  83:25 84:16  <b>contents</b> 75:20  <b>continue</b> 23:14  27:20 42:2  52:3 62:13  <b>continuing</b>  22:19  <b>contradictory</b>  44:21  <b>contribute</b> 78:6  <b>convenience</b>  26:13 67:21  <b>convening</b> 33:9  <b>conversation</b> 3:9  <b>convey</b> 20:11  <b>copies</b> 6:13,15  6:18 7:1 28:24  <b>copy</b> 10:1 32:25  37:21 66:6  83:18,20  <b>corners</b> 59:9  <b>correct</b> 19:6  21:23 24:14,18  29:18,25 51:15  52:6 72:24  78:13,14,24  79:6  <b>corrected</b> 76:7  79:11  <b>correctly</b> 16:4  82:25  <b>correctness</b>  24:23  <b>cost</b> 29:4  <b>council</b> 6:22  14:8 15:2,22  17:15 29:10,12  29:16 35:15</p>	<p>51:22 52:5  54:6,6,14,20  62:23 77:12  <b>Council's</b> 77:13  <b>counsel</b> 22:16  65:3,5,12  <b>counting</b> 58:14  <b>country</b> 34:16  53:7  <b>countrymen</b>  34:14  <b>county</b> 44:17  82:21  <b>couple</b> 5:8 78:11  <b>course</b> 47:4  <b>court</b> 5:16 7:6  8:8,8 14:24  21:15 25:5,7  29:23,24 39:9  44:16 46:23  <b>courts</b> 8:8 29:21  40:8 44:16  <b>cover</b> 72:12  <b>create</b> 72:15  73:2  <b>criminal</b> 39:21  40:7 44:8  54:12 82:17,19  <b>criticism</b> 34:2,10  <b>crowded</b> 57:15  <b>CSR</b> 1:18 2:19  86:11  <b>CUIV</b> 15:25  <b>Cuong</b> 53:18,24  <b>currently</b> 23:4  <b>C-u-o-n-g</b> 53:21</p>	<p><b>day</b> 3:5 43:17,19  70:7,8 83:22  <b>days</b> 16:1 23:22  41:21 69:6  78:6  <b>dealt</b> 14:20 15:5  33:16  <b>deceived</b> 28:21  28:22  <b>deceptive</b> 35:21  <b>decision</b> 70:23  74:13  <b>declaration</b>  43:23  <b>declarations</b>  44:15  <b>declared</b> 69:11  <b>deem</b> 66:25  <b>defense</b> 14:20  <b>defer</b> 23:17  78:18  <b>democracy</b>  24:24 34:16  53:7  <b>Dental</b> 83:16  <b>department</b>  82:19  <b>Deputy</b> 2:8,11  9:10 14:20  <b>designation</b> 6:2  18:8,15 42:10  42:11,17  <b>designees</b> 47:12  <b>desire</b> 16:23  <b>determination</b>  29:21  <b>determine</b> 65:10  <b>determined</b>  26:19  <b>difference</b> 85:1  <b>different</b> 33:19  58:9 65:1,2  73:2  <b>difficult</b> 41:14  <b>diminish</b> 64:23</p>	<p><b>dire</b> 14:23  <b>direct</b> 20:25  43:1 70:25  74:17  <b>directed</b> 77:20  <b>direction</b> 86:5  <b>directly</b> 74:3  <b>disagree</b> 24:20  54:14  <b>disclosed</b> 46:20  47:7 58:8  <b>disclosure</b> 26:7  26:8 58:7  <b>disclosures</b>  57:25  <b>discourage</b>  77:22  <b>discretion</b> 7:16  68:20 76:4  <b>discuss</b> 49:21  60:25  <b>discussed</b> 49:20  <b>discussion</b> 19:4  52:3 71:6,12  71:20 83:2  84:25 85:8  <b>disgrace</b> 28:17  64:12  <b>disgraced</b> 64:13  64:14  <b>dismissed</b> 53:5  <b>disrupting</b>  11:14  <b>disruptive</b> 25:2  <b>distinct</b> 33:20  <b>distinction</b>  20:22 43:13  80:16  <b>district</b> 14:3,7,9  27:25 28:18,18  33:5,13 34:23  35:3,16 46:22  61:17 62:21,23  64:3,3,8,9,10  76:10,16 82:14</p>	<p><b>district-to-be</b>  14:13  <b>divorced</b> 56:3  <b>Dixon</b> 14:18  33:17 44:12  <b>document</b> 8:6  39:8 43:25  44:5,10,11,12  44:13,17 83:23  84:17  <b>documents</b> 7:14  8:7 29:4 47:6  49:17 83:14  <b>doing</b> 18:9,10  23:1 57:6  <b>door</b> 3:14  <b>doubt</b> 19:11  <b>Dovan</b> 7:25 8:5  8:10,12,15,18  8:22,25 9:24  10:18,24 12:10  12:14,17,19,21  13:8,12,13  14:16,18 15:15  15:21,24 16:3  17:1 18:21,23  18:25 19:4,18  19:21,23 20:1  20:5,22 21:1,4  21:11 22:3  23:6,17 24:12  24:22 25:11,14  25:23 26:2  27:11,16,18  28:11,15,23  29:1,22 30:3,6  30:10,16,19,20  30:25 31:3,8  31:12,15,18,21  31:21,23 32:4  32:6,10,13,17  33:1 34:5,12  36:12,20,25  37:12,24 38:7  38:17,24 39:21</p>
<b>D</b>				
<p><b>D</b> 2:13 3:1 72:5  <b>Dang</b> 39:2  <b>dare</b> 34:17  <b>date</b> 1:12 22:11  43:8,10 83:8,8  83:11,13  <b>dated</b> 84:1 86:10</p>				

39:24 40:9,17 40:24 41:5,13 42:8,15 43:7 43:20 46:11,16 46:18 47:21,23 47:25 48:2,16 48:18,20 49:13 57:3 58:3,8,11 58:19 59:4,17 60:15,19,23 65:17,20 68:10 79:23 80:3,16 83:4,11,21 84:15,23 Dovan's 34:2 dozens 15:5 draft 74:18 drag 22:10 due 22:11 34:2 duly 28:5 31:24 49:2 51:3 53:25 55:12 56:24 62:6 63:11 69:2 D-o-v-a-n 8:18 D.A 14:20 76:1 77:23 78:7	elected 54:14 67:12 election 28:16 29:2,10 32:5 33:5,12 34:22 35:5 41:15 45:24 78:7 Elections 2:4 29:8 electronic 78:24 79:3 electronically 7:6 79:6 elevator 4:19 employees 67:13 67:13 79:20 empty 69:18 enclose 69:16 encroach 31:12 endorse 33:4 enforce 76:1 enforcement 46:23 66:25 77:16 85:6 engaging 57:19 English 10:25 12:10 23:9 35:15 ensure 7:3 entertain 40:4 74:14 entire 10:20 11:2,10 12:4 82:13 entities 45:6 entitled 24:24 36:6 especially 25:12 46:5 56:6 65:11 Espinola 1:18 2:18 86:2,11 Esquire 35:7,19 36:14 essence 34:16	essentially 58:21 establishes 6:23 ethic 49:11 Ethics 1:2 5:18 17:13,14 28:16 29:2,10 32:5 45:24 57:14 59:19,21 77:12 evaluate 77:20 evaluating 41:24 evaluation 66:21 76:16 77:19 Evaluator 2:13 6:14,14 7:14 7:18 9:5 19:16 38:11 47:1 52:9 68:2 70:19 71:1 77:18 Evaluator's 6:17 10:14 71:3,15 Evaluator/Inv... 38:6 EVC 83:15 evening 18:1 75:7 event 38:25 39:6 39:7 everybody 11:7 11:25 12:20 22:7 30:24 59:23 evidence 7:8,12 9:20 73:14 75:6 exact 83:7 exactly 24:25 32:18 33:8 59:15,16 exciting 57:14 excluded 7:16 exculpatory 9:20 excuse 17:17 39:18 55:7	58:22 exhibits 35:11 expedited 45:23 experts 37:16 explain 70:2 explained 70:3 70:24 explanation 44:23 e-mail 79:17 84:4 E-s-q 35:16 70:2	51:10,18 55:23 favor 4:4 71:21 74:24 85:10 fax 83:16 84:9 faxed 83:12,15 feel 16:4 82:25 feeling 82:15,16 fellow 34:14 felony 45:7 female 64:5 file 7:25 26:7,9 26:15 27:25 34:18 46:19 49:15 67:11,14 67:15,20 71:4 71:16 75:24 76:8 78:22,25 79:1,2,10,12 filed 5:22 6:1,4,6 6:8,10 17:12 19:13 45:12 47:19 79:15,15 80:11,19 81:24 filers 67:16,20 67:21 files 47:7 filing 26:6,17 44:16,19 47:10 48:3 84:5,7 filings 37:25 fill 19:21 26:12 34:23 66:14 78:16 filled 10:23 65:25 75:14 79:13 filling 23:6 filter 17:23 final 79:10 finance 43:23 find 22:22 26:21 34:3 42:9 70:6 70:24 82:12,17 finding 34:1 findings 74:19
<b>E</b>				
E 1:14 2:2,2 3:1 3:1 earlier 12:15 62:1 70:24 84:18 early 21:5 ease 56:18 67:20 easier 78:15 easily 82:17 easy 57:7 63:8 70:4 either 3:12 23:9 42:22,24 68:1 75:25 elect 54:5,17 55:24 56:5				

REPORTER'S TRANSCRIPT OF PROCEEDINGS

74:20 77:14	67:11,14,16,16	furthermore	63:20 64:19	25:24 27:23
finds 84:16	67:19,22 75:11	53:5	74:2,14 77:5	48:24 50:19
fine 18:10 28:13	75:13 79:12	future 28:19	God's 84:19	62:3
30:24 32:20,20	80:11,18,19,21	38:16 43:3	goes 24:6 41:16	handled 82:25
36:9,9	81:24 82:23	79:2	48:11	handwritten
finish 13:9 18:22	83:5,6,7 84:1,3		going 3:3 5:7	18:7
40:18	84:5,11	<b>G</b>	11:15 12:15	Hang 13:9 61:19
finished 40:15	formal 7:7 82:1	G 3:1	13:12 18:2,11	Hanson 2:13 9:4
68:17,19	82:4,9	Gang 53:15,18	20:12 23:11,17	9:12 10:13
firm 10:13	former 34:16	53:18,21,24	27:12,13,14	happens 24:19
first 17:23 18:3	forms 29:6	54:4,11,22	31:15 32:9	24:25
28:5 31:24	43:20	gathered 77:15	35:25 40:12	happier 56:11
49:2,8 51:3	forth 77:11	general 35:3	44:7 50:10,11	happy 14:8
53:25 55:12	Fortunately	51:24,25	57:9 62:15	22:17 23:13
56:2,24 57:11	83:12	gentle 52:25	67:23 71:8,9	48:18 50:6
57:17 62:6	forum 59:2,17	gentleman 14:23	71:13 74:15	57:17
63:11 66:18	59:18	43:8	84:18,25	hard 21:20 67:9
69:2 74:4,9	forward 27:2,10	gentlemen 55:17	Gonzales 2:6	81:4
81:13	27:22 56:16	63:15	71:18 73:23,24	headphones
fit 67:1	63:2	getting 8:15	76:11,13 77:8	11:16
five 31:11 84:18	forwarded	42:20 50:13	77:10 85:2,4	headset 13:3,19
fix 81:18	37:22	62:12 84:5	good 11:4 34:11	hear 4:17,20,25
fixes 82:8	foundation 56:2	gift 6:1 18:5	57:23 62:18	21:17 30:15
floor 2:15 5:13	four 5:21 6:3	19:13 26:6,10	gotten 12:3	52:14 54:4
43:6	8:12 13:13,14	26:13,16,17	government	67:9
fluent 12:22,24	51:10 59:9	42:4,14 65:8	24:25	heard 4:13,23
15:4 24:5,5	72:4,8,11,13	65:24 67:15,20	governmental	29:10 52:13
follow 25:9,10	73:2 74:18,18	75:9,25 76:7	45:6	54:7,16 62:22
41:12 42:24	85:11	76:23 78:12,25	great 33:19 57:6	63:21 73:12
53:6,7,9 60:10	FPPC 75:25	give 31:16 56:4	group 12:16	hearing 4:10,12
following 38:21	Francisco 2:15	62:20 63:18	13:2 32:9	5:18,21 7:5,8
38:24 58:9	frankly 14:25	68:22	groups 65:2	21:20 33:9
follows 6:3 28:7	free 24:17	given 17:10	guess 14:14	34:15 42:18,19
32:1 49:4 51:5	French 33:23	58:19,20 64:3	37:12 41:8	45:23 73:13
54:2 55:14	front 49:9 83:23	65:11 66:4,5,6	guidance 50:7	85:16 86:3,7
57:1 62:8	full 57:25 58:7	66:9 78:2,5	guilty 36:7	hearings 6:25
63:13 69:4	fully 58:8	gives 59:6	guy 24:19 62:18	72:4 85:18
fool 45:19,19,21	funny 32:17	giving 19:10	guys 28:14	held 5:19 28:25
footnote 76:5	further 3:8	go 3:13,13 4:14	G-a-n-g 53:21	35:6 45:23
footnoted 80:25	26:20 42:25	9:6 11:9 13:17		help 10:24 11:8
forced 78:25	43:2,3 59:21	21:19 22:20	<b>H</b>	12:10
79:5,6	67:24 70:25	29:21 30:20	Ha 69:22	hesitating 76:18
forces 79:3	71:1,5 76:16	31:2 38:7 42:1	Hall 1:14 5:20	Hey 79:15
form 65:19 66:6	78:4 84:25	44:3 50:18	hallway 21:19	higher 29:12
66:11,13,15	85:5 86:6	54:14,17 55:16	hand 13:16,22	54:6

his/her 47:12	incessantly 39:14	24:13,18,20 26:10	investigative 46:19 47:7	Kansen 34:24
hold 40:12 41:5 55:22	including 34:19 39:15	interpreter 9:25 10:19 13:1,1	Investigator 52:8	keep 5:9 21:18 34:9 50:20 53:1 62:11
holding 28:23 36:5	incorrect 26:17 66:14 80:18	13:11 15:19,23 15:25 16:12,16	Investigator/E... 38:4	Kenneth 16:12 16:16
honest 14:25	82:22	16:25 21:25,25 22:3,8 23:21	involved 45:10	key 37:3,5
Hong 6:10	incredibly 57:6	24:11,15,21	involvement 64:25	kickoff 38:22,25 39:6
honorable 32:4	independent 2:13 6:13,16	25:5 27:7	issue 20:5 25:21	Kim 6:10
hope 11:25 45:2	9:5 10:14	28:15 29:1,22	41:7 42:4	kind 32:17 66:20 67:5
hopefully 38:10	24:15 70:18	32:9,22 33:24	45:25 52:8	knew 37:8,9
hoping 59:16,19	indicate 67:10	71:11	65:10 67:9	know 3:16 5:11 11:16 13:5,14
hours 83:22	indicated 66:11	interpreters 15:3,5	74:13 76:23	14:4,5,8,18,22
Hung 6:11	individual 6:13 13:15 21:17,20	interpreting 15:12	79:4 84:20	17:11,11 19:22
husband 56:4	individuals 24:14	interview 69:8	85:9	19:23 22:5,9,9
hypothetical 66:19	information 8:6 9:20 37:16	intimidation 34:4	issues 24:13 41:2 42:6	22:11,18 23:16
hypothetically 77:2	46:4,20 76:6	introduce 39:3	77:21	23:21 24:4,17
<b>I</b>	76:22 77:15	investigate 17:12 18:18,19	Item 85:18	24:24 32:6,12
identical 5:22	78:4 80:17	26:20 28:17	i.e 35:7	32:15,17 33:2
18:2 43:14	82:7	29:3 37:7	<b>J</b>	33:8 34:9
72:12,16 74:18	informed 81:23	51:12 52:1	J 77:13	36:23 38:4,12
identified 18:16	instructed 79:25	54:5,13 70:4	jail 36:8	38:20 39:8
18:19 67:4	instruction 79:24	82:16	January 43:24	41:8 48:9,11
identify 7:22	insult 64:4,4	investigated 40:2 43:16	Jimmy 69:19	49:9 50:10
8:13 9:5 17:21	integrity 32:14	52:4	job 51:18,20	56:11 57:7,12
18:3	intent 72:10	investigating 46:24	57:6	58:3,16,18
identifying 8:21	intention 72:12	investigation 17:20 18:20	Jose 1:1,14,16	62:14 64:11
III 85:18	interest 57:25	20:13 38:12	2:4,20 5:18,19	65:22 66:1,8
illegal 33:11	interested 10:7 76:2 86:6	41:20 42:24	5:24 8:19	68:10 70:5,7
35:22 45:9	interject 12:23 13:2 16:4	43:1,2,15	29:13 33:13	72:16 73:6
immediately 79:18 80:12,24	18:21 20:2,3	45:13 46:25	35:3,15 36:18	81:4 84:8,16
imperfect 57:20	22:1 24:18	47:4,12,13	39:1 44:20	knowing 23:11
important 68:22 83:8	25:1 36:10	70:25 71:1,4	77:11	knows 38:10
impose 69:24	58:23	71:16 73:7	Judicial 15:1,22	Kong 56:20
impossible 13:5	interjecting 25:15	77:16,19	jump 57:9	Kwan 16:12,22
imprisonment 36:9 45:8	interpret 32:16	investigations 6:24	June 1:12 5:14	K-e-n-n-e-t-h 16:16
improper 33:11	interpretation		5:17 6:11,16	K-w-a-n 16:17
inappropriate 23:7			6:18 45:12	
inaudible 27:25			jurisdiction 37:4 44:24,25	<b>L</b>
			<b>K</b>	labor 33:3,3
				lack 76:7

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Ladies 55:17 63:15	listen 14:6,12 33:10	38:20 39:3,5 39:16 45:10	33:10 34:15 38:16 41:16,17	50:2,3,6 51:13 51:19 54:4
Lam 6:10,10 40:10 48:20,23 49:1	literally 15:5 little 51:16 52:6 57:9 62:12	49:15 56:10 58:1,10 62:18 62:22 64:4,7 64:12 69:15,20	41:18 43:3 47:14 53:4 57:14 59:22	57:8 64:19,22 65:7,22 66:1,8 66:16,18 67:8 70:20 75:19
land 55:21	livelihood 34:21	69:25 81:15,18 84:1	meetings 11:14	76:14,18 77:6 78:3 80:23
language 48:3	LLP 2:13	manner 34:25 34:25	member 14:8 36:7 62:23 73:12	Miller's 22:25 42:23,24 44:23
languages 12:22	Loan 6:8	marital 20:6	members 5:20 6:20 7:17	million 55:25
late 50:13 70:15	Location 1:14	Market 2:14	26:24 30:16	mind 12:23 55:20
law 2:14 10:13 36:6,16 44:8,9 44:10 45:1,2 46:23 82:19 85:6	lodged 35:5	married 49:18 49:19 82:1	32:4 35:12 39:12 60:11 61:6	mine 41:8
lawyer 10:24 11:7 12:9 28:11 35:7,8 46:18 48:6	Logistically 12:7	matter 26:13,14 26:20 29:3,9,9 29:11 40:7 45:5 49:10,20 68:16 71:5,17 75:23 77:22,23 83:21 84:7	39:12 60:11 61:6	Minh 8:17 31:21 31:23 32:5
Le 6:6 63:4,4,7 63:10,15,24 64:2,7 69:22	lost 58:10	29:11 40:7 45:5 49:10,20 68:16 71:5,17 75:23 77:22,23 83:21 84:7	member-to-be 14:13	minute 50:14 72:23
leaning 82:13	lot 20:2 24:6 45:15 61:18 62:19 63:17,21 79:19	matters 23:18 29:17 47:3 66:25 72:4	mention 56:8 76:5	minutes 3:17 8:24 21:4 31:11 50:14,15 50:17,18 57:3 68:23 70:12 83:22 84:18
leave 62:12	Luong 39:15	Mayor 58:10	mentioned 44:4 69:13	misdemeanor 36:8
left 34:23 58:13	Ly 6:4 10:22,22 11:6,11 12:9 27:24,24 28:4 28:10,15 29:1 29:22 81:13 83:8,12	ma'am 58:24	merit 17:19,20 20:13,13,16	missed 42:16
legal 9:19 11:8 37:16 39:16 77:21	L-e 63:7	McDANIEL 2:11 3:21 5:9 9:7,7,23 10:5 10:10 11:9 15:18 16:24 52:11 79:8 83:5,17,20	merits 76:16	misstatement 75:8
legally 23:20,21 24:1 79:6		mean 23:20 25:3 40:25 41:1 52:6 64:23	met 60:20 83:17	mistake 69:11
lengthy 36:4	<b>M</b>	meaning 35:19	metaphor 33:18	mistaken 84:2
letter 21:12,13 69:15	machine 83:16 84:9	means 35:20 49:11 65:1	method 34:25 35:1	misunderstood 31:6
let's 40:18 46:8 46:9 50:18 65:21 76:21 80:4	MADHAVEE 2:5	media 48:10 60:11	Metro 63:16	mitigating 9:20
License 1:19	Mai 6:6	meet 17:15 65:4 65:13	Mexican 33:3	modified 70:8
lies 62:19	main 39:2	meeting 3:7 5:6 6:21 9:25 11:2	MICHAEL 2:4	moment 36:11
life 34:21 63:20	mainstream 56:6		middle 81:5	money 29:4
limit 31:10 37:24 50:16	making 54:7		Mike 68:20 72:3	month 59:23
limited 30:17	manager 80:15		Miller 2:13 9:12 9:12 10:13 11:4,18,20 12:8 16:21 17:5,7,9,19 18:11,22 19:8 20:10,11,14,17 20:19 21:2,8 22:12,15 23:12 26:3,4,25 37:5 37:21,23 41:19 43:1 44:3 46:3	monthly 33:9
Lincoln 2:19 45:16	mandatory 48:5			moot 41:7 45:25
list 30:6,20	Manh 5:23 9:2 10:23 14:6 28:1,17,19 33:4 35:6,10 35:10,13,15			moral 56:1,7 morale 49:11 64:15 morals 49:13,14 morning 21:5

23:24 <b>motion</b> 3:6,19 3:20,22,23 71:9,13,20 72:11,12,13,18 74:14,15 77:23 83:3 84:22 85:7,9,14 <b>motions</b> 72:5,9 <b>move</b> 4:10 70:21 71:14 74:17 85:4 <b>Municipal</b> 5:24 36:18 <b>M-i-n-h</b> 8:17	20:23 21:14,15 21:18 23:22 28:24 30:13 31:19 32:8 48:13 50:7,19 51:14 54:10 55:6,7,7 58:7 59:19,20 60:18 60:24 72:13 79:8,21 83:9 84:13 <b>needed</b> 78:22 <b>needs</b> 21:16,21 70:11 <b>neutral</b> 24:15,21 <b>never</b> 33:24 35:8 45:20 63:18 66:9 <b>Nevertheless</b> 44:25 <b>new</b> 38:11 43:16 46:5 80:19 84:5 <b>newspaper</b> 37:9 70:3 <b>Nguyen</b> 5:23 9:2 10:23 14:6 28:1,17,19 33:4 35:6,10 35:10,15 39:3 39:15,16 43:23 44:1 45:10 49:15 58:1,10 61:10 62:18 64:4,7,12 65:24 69:7,15 69:20,23 70:1 70:14 80:14 84:1 <b>Nguyen's</b> 35:13 39:5 56:10 69:20 <b>night</b> 26:1 <b>Noelia</b> 1:18 2:18 86:2,11	<b>noise</b> 17:18 52:22 <b>normally</b> 73:7 74:2 <b>note</b> 21:11 <b>notice</b> 16:1 23:22 25:3,13 41:19 <b>noticed</b> 22:15 43:9 <b>notified</b> 6:12,14 82:3 <b>notify</b> 4:15 <b>Number</b> 1:19	79:18 81:17 <b>okay</b> 3:3,5,18,18 4:8,9,16,22 5:7 5:7,14 8:20,20 9:1,3,14,16 10:2,6,12,25 12:18 14:10,14 14:14 16:6,18 16:20 17:4,6,9 18:9,11,24 19:3 23:15 25:14 26:3,4 26:24 27:1,11 27:21 28:2,9 28:16 29:14 30:4,5,11,13 30:19 31:10,15 31:17 32:3 33:7 34:5,12 37:1 38:9 40:24 41:11 42:15 43:6 46:7 47:22 48:12,19 49:24 50:5,22,25 51:8,14 52:10 52:16 53:1,3 53:14,16 54:9 54:21,23 56:14 56:15,21 59:25 60:13 61:14,19 62:2 63:19 64:19 66:3,5 67:23 68:5,23 70:17,18,22 71:6,20 72:1 72:18,25 73:15 74:11 75:4 80:4 81:1 82:2 84:13,21 85:8 85:9,14 <b>old</b> 69:19 <b>once</b> 49:25 <b>one's</b> 34:20,21 56:1	<b>open</b> 5:10 7:5 47:8 <b>operate</b> 29:20 <b>operative</b> 48:4 <b>opinion</b> 62:15 62:20,21 76:15 77:21 <b>opponent</b> 33:4 <b>opportunities</b> 61:24 <b>opportunity</b> 13:23 23:10 30:16 57:11 67:2 <b>oppose</b> 62:22 <b>opposed</b> 4:6 71:23 75:1 85:12,15 <b>opposite</b> 25:4 <b>option</b> 23:13 71:2 <b>options</b> 70:23 <b>oral</b> 27:3 <b>order</b> 3:4,5,8 7:2 17:16,19,20 18:12 45:24 <b>Orders</b> 3:5 <b>ordinance</b> 18:5 <b>original</b> 75:7 78:21 <b>Orozco</b> 33:3 <b>outcome</b> 86:7 <b>outcomes</b> 42:22 <b>outside</b> 3:9 4:11 38:5 48:11 67:24 85:10 <b>overlapping</b> 21:16 <b>oversimplifica...</b> 78:20 <b>over-speak</b> 13:6 <b>owner</b> 69:14 <b>ooo</b> 2:22
<hr/> <b>N</b> <hr/> N 2:2 3:1 <b>nail</b> 83:7 <b>name</b> 8:17 10:22 14:2 16:8,10 16:12,15,17 27:22,24 31:20 32:5 35:16 48:22,23 50:22 50:24 53:17,18 54:24 55:1,3 56:16,19 61:14 61:16,20,21 63:3,4 68:23 68:24 <b>named</b> 86:4 <b>names</b> 72:17 <b>Nam's</b> 69:7 <b>nation</b> 33:19 <b>naturalized</b> 33:15 <b>nature</b> 17:10 18:17 66:19 <b>near</b> 17:2 <b>necessarily</b> 84:9 <b>necessary</b> 22:22 46:24 70:25 <b>need</b> 3:6 10:24 13:2,24 16:1	<hr/> <b>O</b> <hr/> O 3:1 <b>oath</b> 7:9 <b>Obama</b> 54:17 <b>obtained</b> 8:7 <b>obvious</b> 64:24 <b>obviously</b> 37:18 38:21 78:23 <b>occasion</b> 69:22 <b>occur</b> 23:8 <b>occurred</b> 45:1 82:13 <b>offer</b> 30:17 <b>offered</b> 23:12 <b>office</b> 9:8 15:7 15:10,11 44:17 44:18,20 58:21 64:10 67:19 76:10 78:16 81:22 82:15,24 83:17 <b>official</b> 44:17 84:7 <b>officials</b> 67:12 67:14 <b>oh</b> 4:16 5:15 16:9 27:8 31:12,19 46:12 50:5 52:14,22 56:15 65:20	<hr/> <b>P</b> <hr/>		

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 96

P 2:2,2 3:1	24:24 30:7,21	piece 46:4 79:10	82:12 83:25	press 68:10
page 18:4	33:19 34:18	<b>Pierre-Dixon</b>	84:15,20	presumably
paid 23:22 24:2	35:9 37:14	2:4 3:7,12,23	police 82:19	11:24 76:1
paper 79:1,2	39:6,15 40:10	4:1,24 14:21	policies 77:11	presume 37:22
paperwork	43:22 45:19,20	16:7 19:20,24	policy 47:16	83:16
78:17	45:21 48:11,11	20:3 23:2	political 57:20	prevent 59:19
paradise 55:21	49:9,16 50:16	25:18 27:6	57:23 58:20,21	59:20
55:21	52:7 54:17	31:2 32:8,11	59:2,17,18,20	previous 43:14
Pardon 5:3	55:25 62:11,16	36:2 40:6,15	75:24 78:6	59:22
parenthesis 47:9	65:2 67:11	46:8 48:17	politicians 34:19	printed 10:1
part 26:16 40:1	73:6 76:24	50:1 53:17	politics 62:17	printing 47:17
41:17 44:4	79:19 80:21	55:8 58:22,25	portion 81:3	prior 41:19
80:9	period 8:17	59:4 60:14,17	position 23:10	46:25 57:10
particular 33:13	35:17	60:21,24 61:5	78:13,21	79:14
34:25 35:1,4	periodically	62:24 63:19	possible 14:23	privilege 34:13
65:7 67:1	11:21 16:22	64:1,6 68:7,12	42:1,21 67:5	probably 10:11
parties 6:25	perjury 44:1,4	68:17 73:21,22	68:3 84:3	57:12,14 83:9
8:21 22:15	44:11,22 45:7	74:23 80:4	posted 6:20	problem 46:16
parts 35:24,25	65:11 75:14,22	82:11 85:13,15	poster 69:17,19	63:25 64:15
36:5	76:2 80:20	place 17:9 40:8	69:21,24	80:10
pass 10:10 26:1	person 10:8,22	73:4 82:6 86:4	potentially	procedural 47:3
passes 4:8 71:25	13:17 20:24	played 39:14	66:17	procedure 53:6
75:3 85:14	21:15,18 24:2	please 9:5 13:10	powerful 34:18	53:10
passing 35:12	24:5 31:7,8,11	13:16,22 16:11	practice 36:6	procedures 6:24
pause 16:21	36:5 46:21	17:18 18:21	precisely 20:7	7:2 9:17 29:19
pauses 11:21	51:12 53:9	20:25 21:3	48:6 66:19	74:12 77:11,12
pausing 52:20	55:24,25 56:6	27:22,23 30:13	prefer 23:3,4	proceed 24:9
58:12	69:8 81:19	35:11 39:3	preliminary	34:9
Peacock 2:5	personal 45:11	40:20 46:14	66:21 77:19	proceedings 1:9
34:1,6 61:23	51:8 58:11	48:15,22 50:20	prepare 41:20	6:25 12:4
72:8 73:19,20	63:20	50:23 54:24,24	present 5:20	process 32:14
77:25,25 78:9	personally 35:9	55:4 59:10	10:14 23:4	41:11 57:20,21
78:10,15 79:5	Persons 47:10	61:15 62:3,11	24:16 27:3	68:3
79:9	pertaining 6:24	62:13 63:3	34:15 37:6	processed 43:18
penal 44:8 45:8	Pham 6:8 39:2	64:15 68:23	38:5,14 39:9	produced 29:5
penalties 74:20	phone 8:3 9:15	74:8 81:10	49:10 58:20	production 7:14
penalty 44:1,11	phones 74:8	84:21	70:13	profession 33:16
44:21 75:14,22	phonetic 69:7,23	plenty 60:9	presentation	professional
80:20	photo 28:23	point 13:25	46:25 47:5	76:15
pending 47:3	39:4,7,11	14:22 20:4,9	61:6	Professions
48:12	physical 84:3	29:16 34:11	presented 20:12	35:23
people 3:11 4:15	picture 69:9,10	40:4 63:20	37:17 38:3,12	program 69:8
8:12 11:16,22	69:12,13,14,17	70:22 72:2	75:6,7	70:14
13:2,13,14	69:20,21,21,24	74:2 76:3 77:3	President 45:15	proliferating
14:6,12 23:8	70:4,6,7 79:16	77:10 78:2,3	45:16 54:16,17	84:17

<p><b>prolong</b> 43:12  <b>promises</b> 55:22  <b>promptly</b> 6:12  <b>properly</b> 22:16  <b>propose</b> 29:9  <b>prosecuted</b> 36:3  <b>prosecutor</b> 36:2  <b>prospective</b>              34:19  <b>proven</b> 17:21  <b>provide</b> 39:11              80:23  <b>provided</b> 6:12              6:14,19 7:1              23:5 35:11              45:11 83:14  <b>provides</b> 35:24  <b>providing</b> 7:12              24:15,21  <b>provision</b> 26:18  <b>public</b> 5:6 7:5              10:20 11:3              30:17 41:18              47:8,14  <b>punishable</b> 36:8              45:8  <b>pure</b> 55:19,20  <b>purely</b> 76:4  <b>purports</b> 66:6  <b>purposes</b> 12:2              16:15 27:15  <b>pursuant</b> 35:22  <b>pursue</b> 67:24              85:5  <b>pursued</b> 45:5  <b>pursuing</b> 77:22  <b>purview</b> 36:15              75:10,18 82:18  <b>put</b> 69:16,20              76:21  <b>puts</b> 44:2 82:21  <b>p.m</b> 1:13 83:15              85:19</p> <hr/> <p style="text-align: center;"><b>Q</b></p>	<p><b>qualification</b>              14:24  <b>qualified</b> 15:19              15:20,21 23:22              23:24  <b>question</b> 10:16              13:8 15:10,11              19:16 20:19              23:16 27:12              50:9 65:15,22              66:19,22 67:6              67:24 68:1,13              68:14 75:4,15              75:20 76:9,13              76:19,21 77:2              77:7 78:1,9,22              81:1  <b>questions</b> 7:18              22:19,21 26:25              29:14,16 30:4              46:13 48:16              50:6 64:21              66:20 68:5              70:20  <b>quick</b> 27:16              79:17  <b>quickly</b> 43:18  <b>quote</b> 35:25 36:4              36:5 45:14</p> <hr/> <p style="text-align: center;"><b>R</b></p> <p><b>R</b> 2:2 3:1  <b>raise</b> 13:16,22              25:24 27:22              48:24 50:19              62:2  <b>read</b> 21:12 23:9              35:14,25 37:9              46:15 47:15              48:6 73:13  <b>reading</b> 32:22  <b>ready</b> 5:15 16:6              17:7  <b>real</b> 27:16  <b>reality</b> 28:21</p>	<p>64:8  <b>realize</b> 3:4  <b>realized</b> 69:25  <b>really</b> 25:1,1              39:18,22 64:4              64:12 68:21              76:19 78:7              81:4,15 82:13  <b>reason</b> 14:5              64:11 75:11  <b>reasonable</b>              13:21 65:13  <b>reasons</b> 78:8  <b>rebut</b> 60:18 83:5  <b>rebuttal</b> 60:15  <b>recall</b> 83:19  <b>received</b> 9:21,23              39:23 76:22              80:18,25 82:5              83:20  <b>recognize</b> 10:12  <b>recognized</b> 7:18              19:25  <b>recommend</b>              12:4 45:4  <b>recommendati...</b>              42:23,25 47:1              67:3 71:3,15  <b>Recommendat...</b>              6:17 9:18              10:15 47:6  <b>record</b> 5:1,2,4,5              7:22 9:6 21:22              31:20 32:6              33:2 72:21              73:14  <b>recorded</b> 7:6  <b>recorder's</b> 44:17              44:18  <b>Records</b> 47:8  <b>recourse</b> 29:20  <b>red</b> 33:21,25  <b>redo</b> 72:13  <b>reduced</b> 86:4  <b>red-blooded</b></p>	<p>33:14  <b>refer</b> 44:12 46:1              66:24 76:4              77:15,23 82:23              85:9  <b>reference</b> 38:19              59:9 65:7,18  <b>referral</b> 75:4              85:5  <b>referrals</b> 68:3              73:8  <b>referred</b> 8:6              18:25 37:6              38:2 39:16              42:6 43:25              48:8 82:14  <b>referring</b> 35:10              75:16 78:7  <b>Reform</b> 75:24  <b>refrain</b> 50:4  <b>refresh</b> 62:25  <b>regard</b> 36:14              42:14  <b>regarding</b> 20:5              39:19 77:12  <b>regardless</b> 57:20              57:22 75:13              79:12  <b>regards</b> 18:13              18:14 19:8              29:4 44:9,24  <b>regulations</b> 6:24              7:2 9:16 74:12  <b>relate</b> 35:5  <b>related</b> 47:6              63:17  <b>relates</b> 29:5              43:23  <b>relating</b> 33:12              47:3  <b>relationship</b>              63:17  <b>release</b> 47:10  <b>relevant</b> 7:14              25:2 35:24</p>	<p>44:22  <b>remember</b> 47:18              59:22  <b>remembered</b>              9:15  <b>remind</b> 69:9  <b>reminded</b> 40:7  <b>rent</b> 64:10  <b>repeat</b> 17:10  <b>repeatedly</b>              39:15  <b>report</b> 6:1 9:18              10:14 19:13              22:17,18 23:10              24:10 26:6,10              26:13,16,17              38:12 41:17,20              42:4,14 43:2,3              46:25 47:5              51:21 64:24              65:8,24 67:10              67:15,20 71:1              71:3,15 75:9              75:20 76:5,7              76:23 78:12,25  <b>reported</b> 1:18              52:4  <b>reporter</b> 2:18              5:16 7:7 21:15  <b>REPORTER'S</b>              1:9  <b>REPORTING</b>              2:18  <b>Reports</b> 6:17  <b>represent</b> 8:10              12:15 13:12              17:2 37:14              55:24 58:1  <b>representative</b>              7:24 14:7 27:2              27:5,10 46:22              61:10 62:17  <b>representatives</b>              7:22 9:4  <b>represented</b></p>
---	---	---	--	---

REPORTER'S TRANSCRIPT OF PROCEEDINGS

22:16 65:3,12	<b>respond</b> 59:1	<b>rule</b> 37:25 54:18	79:25	<b>signed</b> 31:4
<b>representing</b> 8:9	<b>responded</b> 4:5	<b>rules</b> 7:7 17:14	<b>section</b> 5:23	43:24 44:1
9:2 59:5,6	4:20 59:8	25:10 30:2	18:6 26:5	75:14,21 84:1
<b>represents</b> 22:4	71:22 74:25	34:8 53:7 65:1	35:24 36:1	<b>significant</b>
28:19	85:11	<b>run</b> 15:6	68:2	25:22,25 75:21
<b>reputation</b>	<b>respondent</b> 5:25	<b>runs</b> 84:17	<b>sections</b> 5:24	<b>signing</b> 47:19
63:25 64:12	6:15,19 7:21		<b>see</b> 15:24 23:10	<b>signs</b> 44:10
<b>request</b> 10:9	9:17 10:4	<b>S</b>	35:11,13 39:3	<b>silence</b> 8:4 17:18
12:3 45:22	19:13 26:16	<b>S</b> 2:2 3:1	57:17,24 65:20	74:8
48:7	27:2,4 46:21	<b>saddened</b> 56:3	67:1,2 79:20	<b>Silva</b> 2:8 9:10,10
<b>requested</b> 10:18	<b>respondent's</b>	<b>sake</b> 84:19	83:13 84:15	12:2,7 24:9
23:23 47:10	46:21	<b>San</b> 1:1,14,16	<b>Seeing</b> 77:18	25:8 29:25
48:4	<b>response</b> 4:7	2:4,15,20 5:18	<b>seen</b> 21:13 41:23	32:13 37:24
<b>required</b> 25:10	9:18,19,22,23	5:19,24 8:18	69:6 77:1	40:5 42:10
26:9 43:15	27:3 71:24	29:13 33:12	<b>selected</b> 34:8	48:15 50:15,20
47:8 65:24	75:2	35:3,15 36:18	<b>self-explanatory</b>	62:1 65:6
66:14 67:22	<b>responsibility</b>	39:1 44:20	39:8	68:20 72:3,15
75:11 78:12	82:16	77:11	<b>send</b> 69:15 79:3	72:20,24 73:1
79:13	<b>responsible</b>	<b>Santa</b> 1:14	<b>senile</b> 8:16	74:5,7,10
<b>requirement</b>	36:23	<b>satisfied</b> 34:7	<b>sent</b> 79:17 80:12	76:20 78:14,18
25:3,4 26:14	<b>rest</b> 22:23 32:9	<b>save</b> 44:8	80:12,14	<b>simplify</b> 74:15
26:15 67:17	32:15	<b>saw</b> 84:10,11	<b>sentence</b> 47:15	<b>simultaneously</b>
75:24	<b>restrict</b> 42:3	<b>saying</b> 12:5	<b>separate</b> 72:9	13:4
<b>requirements</b>	<b>restricted</b> 43:4	20:10,15 21:22	<b>serious</b> 34:20	<b>single</b> 13:15
65:14	<b>retained</b> 17:2	31:7 32:12	<b>SERVICES</b>	17:12
<b>requires</b> 26:5	<b>reverse</b> 18:12	59:15 82:6	2:18	<b>sir</b> 4:3 13:8
<b>reserve</b> 25:14	<b>reviewed</b> 73:13	<b>says</b> 18:7 35:14	<b>session</b> 4:9	14:16 15:22
31:16	<b>revote</b> 72:13	42:13,17 44:10	<b>set</b> 77:11 78:24	<b>sit</b> 17:2 44:7
<b>resident</b> 64:2,8	<b>right</b> 4:18 8:21	46:19 48:3,6	<b>seven</b> 60:4	<b>site</b> 6:20 39:5
<b>residents</b> 33:10	19:5 27:23	80:20 81:24,25	<b>share</b> 32:23	<b>sitting</b> 13:14
35:3	31:15 37:8	<b>scholar</b> 39:16	<b>she'll</b> 30:11	<b>situation</b> 50:8
<b>resolution</b> 6:23	41:15,24 48:24	<b>seat</b> 34:24 35:2	<b>short</b> 27:18,19	82:13
7:1,3 47:9	50:19 53:8	<b>seated</b> 28:9 32:3	46:2	<b>SJMC</b> 47:9
72:15,23 74:3	62:3 66:10	49:6	<b>short-circuit</b>	<b>slew</b> 3:10
74:4,6,9,13	67:18 69:25	<b>seats</b> 5:8	71:8	<b>sloppy</b> 37:19
77:13	72:7 79:5,7,12	<b>second</b> 4:2 13:21	<b>showed</b> 69:10	<b>Slow</b> 27:6
<b>resolutions</b> 73:2	82:7	18:13 20:23	<b>shows</b> 34:15	<b>Smith</b> 2:4 3:3,14
74:18,19,21	<b>rise</b> 67:4	54:9 61:19	<b>shut</b> 3:14	3:18,22,25 4:2
<b>respect</b> 32:14	<b>Road</b> 39:1	71:2,18 74:22	<b>sic</b> 49:12,16	4:4,6,8 5:3,5
34:2 45:15	<b>Rolanda</b> 2:4	74:23 85:7	82:21	5:11,14,17 8:3
64:24	14:21	<b>seconds</b> 58:13	<b>side</b> 47:17	8:9,11,13,20
<b>respectfully</b>	<b>room</b> 1:15 5:19	58:16 59:10	<b>sides</b> 25:4	8:23 9:1,14
45:22	11:23 12:1	60:4	<b>sign</b> 74:21 82:6	10:2,6,11,17
<b>respectively</b>	35:18 50:18	<b>secret</b> 76:24	82:6,22	11:13,19 12:5
6:16	62:12 69:18	<b>secretary</b> 79:24	<b>signature</b> 47:17	12:12 13:7,9

14:17 15:7,11	72:7,10,18,22	4:13,16,22 5:1	54:24 56:16,19	subpoena 7:15
16:6,9,14,18	72:25 73:5,17	5:4 11:15 13:6	61:14 63:3	Subsection
17:4,6,8,17	73:19,21,23,25	21:17,21 38:18	68:23	77:13,14
18:9,10,24	73:25 74:6,8	59:13,14 60:1	stated 12:14	subset 67:21
19:3,6 20:23	74:11,24 75:1	61:12	statement 26:7	suffice 72:19
21:3,13,23	75:3 76:12	speakers 10:20	27:19 46:2,9	sufficiency
22:2,14,23	77:5,9,24	speaking 21:15	46:15,19 64:3	17:16 26:19
23:15 25:7,9	79:22 80:6,9	21:18,21 27:17	64:23 65:10	65:4
25:12,16,20,24	80:13 81:1,11	30:14 34:12,14	76:2	sufficient 25:13
26:3,24 27:8	81:20 82:2,10	37:13 50:4	statements 26:8	26:21 51:25
27:21 28:2,9	83:1,4,9 84:13	77:2	States 54:19	suggest 13:12
28:13 29:14,24	84:21,24 85:3	speaks 24:5 39:9	status 20:6	18:16 25:17,20
30:1,4,8,11,15	85:7,12,14	44:13	statute 36:1	25:25
30:22 31:5,10	social 63:24	special 34:22	statutes 35:22	suggested 23:17
31:14,17,19	society 56:2	45:23	stay 56:17	suggesting 19:14
32:3,21,24	solution 79:2	specific 17:21	stealing 60:1	suggestion 19:9
34:11 36:10,13	solved 49:23	51:18 67:3	step 4:11 59:21	19:12 22:9,12
36:22 37:2,8	52:8	Specifically 5:25	Steve 10:13	22:25
38:9,23 39:18	somebody 3:22	specifies 18:5	16:19 57:8	summary 9:19
39:22,25 40:6	11:15 21:19	spell 16:14,15	Steven 2:13 8:17	Superior 8:8
40:9,14,18,25	30:12 32:18	53:19 54:25	9:12 10:24	29:24
41:10,14 42:9	50:20 51:12	55:3 63:5	12:9 28:11	supervisor
42:11,16 43:12	79:15 81:21,24	spoke 38:18,19	31:21,23 32:5	81:14
46:3,7,9,12	82:3,21 83:2	61:16 62:1	51:13 58:8,19	support 58:2
48:13,19,21,24	84:12,21	spouse 44:2	80:23	60:20,23
49:6,24 50:2,5	soon 4:19 80:24	66:12,13	stick 40:20	supported 58:9
50:9,16,22,25	sorry 8:15 27:8	staff 2:8 9:3	stop 22:21 79:21	supporters 39:2
51:14 52:14,16	33:1 38:8 42:8	23:18 24:5	81:5	supposed 21:21
52:22 53:1,11	44:19 46:12	81:23	Story 39:1	38:2
53:13,16,19,22	52:15 55:6,16	stage 39:2	strands 33:20	sure 8:22 19:10
54:9,21,23	71:11 79:9	stamp 83:8,11	Street 1:14 2:14	26:2 30:3 36:3
55:3,6,9,16	80:19	83:13	strong 56:7 78:8	36:12 37:21
56:13,19,21	Sort 67:7	stand 13:16	stuff 39:19 80:6	42:12 44:12
57:4 58:5	sounds 12:15	standard 17:15	subject 63:21	45:15 52:16
59:25 60:3,6	source 14:11	standards 26:19	submit 9:17	56:19 64:22
60:13 61:3,7,9	Spanish 33:23	65:4	10:8 22:18	78:11 82:24
61:14,19,25	speak 12:20	start 17:10	43:8 51:16	Sutton 14:2
62:2,10 63:1,5	27:12,13,14	21:14 32:21	54:11 67:22	61:16,21,21
63:8 64:18	28:10 34:17	started 3:16 5:7	submitted 6:17	62:5
65:15,18,21	40:19 41:22	78:21	8:7 22:18 41:9	swear 55:7
66:3,10,17	50:12 57:12	state 27:22	41:25 43:5,17	sworn 28:5
67:7,23 68:9	58:7 61:11,13	31:19 34:24	43:21 51:11	31:24 49:2
68:14,19,21	61:24,25 62:14	36:7,16,20,20	52:5 66:7	51:3 53:25
69:18 70:11,17	70:9	36:23,25 37:2	submitting	55:12,18 56:24
71:12,19,23,25	speaker 3:10,15	48:21 53:17	51:21	62:6 63:11

REPORTER'S TRANSCRIPT OF PROCEEDINGS

69:2	tell 4:11 28:5	76:5 78:7	73:9 74:13	12:4,10 13:4
system 41:6,8	31:24 49:2	think 5:9 12:18	80:21 81:13	13:17 21:1
78:24	50:22 51:3	12:19 13:21	82:20 83:7	22:6,9 24:8
S-u-t-t-o-n	53:25 55:12	15:6,9 17:9	84:10 86:4	27:7 28:11
61:22	56:24 62:6	20:8,11 22:25	timely 7:3	30:12 31:9
	63:11 68:15	25:16,25 34:6	times 21:10	32:10 38:8
<b>T</b>	69:2	37:10 39:18	33:17 44:13	41:10 42:2
Taber 2:9 3:17	telling 30:24	40:3,13 44:22	48:9 49:18	44:3,18 54:10
4:14,18 5:13	term 48:4	46:6 48:12	79:19	55:8,9 71:10
9:9,9 10:16,18	terms 14:23	50:3 51:23	timing 27:15	80:7 81:10
11:1 12:13,18	18:23	53:4 54:10,20	52:12,18 84:25	translated 10:20
12:20 15:9,12	testified 28:7	58:17 60:1,9	Title 17:22,25	11:15 12:3
15:17 16:1	32:1 49:4 51:5	60:17,18,21	18:4,7 19:17	19:2 23:3
21:14,24 23:20	54:2 55:14	63:19,21 64:15	20:16,21 26:4	24:10 36:25
28:24 48:1,2	57:1 62:8	65:1,12,19	26:9,14,18	39:12
52:12,15,18,24	63:13 69:4	66:21 68:22	36:18 65:14	translating 16:5
58:12 60:4,7	testimony 5:10	75:22 76:24	66:15,23 75:12	20:6 32:19
78:20 79:7,14	7:9,13 39:14	77:3,25 78:8	today 4:9 34:12	translation
80:2,8,11,14	40:4 49:25	80:8 83:24	43:22 49:14	11:21 16:22
80:17 81:4,8	68:18,19 73:13	84:24	53:4 57:13,18	18:23,24 19:7
81:21,23 82:3	81:12	thinks 19:21	57:21,22,24	19:18,19 20:9
84:3	thank 3:9 4:4	23:6 32:19	59:5 70:16	23:19 24:2
take 3:9 18:11	8:4,25 9:14	third 33:6	told 4:14 23:25	25:21 48:14,15
22:17,21 29:12	10:6 16:18	thought 30:22	38:3 66:12	52:21 56:18
39:2 45:2 46:8	21:24 30:18	50:3 52:12	Toni 2:9 9:9	58:13,14 65:6
46:9 48:18	31:17,18 33:9	83:22,25	tonight 42:7,19	79:8,22 81:1
70:2,5 73:4	38:17 40:9	three 16:1 18:8	42:19,22 50:14	83:10
taken 69:9,22	46:17 50:1	21:9 23:22	66:5	translator 11:3
70:7,8 86:3	53:11,22 54:23	30:25 43:14	tonight's 6:21	12:12,13 23:5
takes 41:21	56:13 57:5,11	81:16	torn 82:12	23:16,24,25
talk 16:19 18:2,3	57:22 59:3,12	Thu 39:2	totally 11:14	30:13 34:3
21:19 27:18	59:13,13,15	Tim 33:3	Tower 1:15	39:12 51:15
51:9 52:2,7	60:12 61:4,13	time 1:13 3:4,4,8	training 78:21	52:19,20 56:18
58:14 62:16	62:24 64:1,6	7:20 9:21	Tran 68:15,24	57:6
talked 4:19	64:17,18 70:17	10:12 20:24	68:24 69:1,6	translator's 16:8
81:13,14,21	71:6,19 81:9	21:10,15,20	69:19 70:13	16:10
talking 19:1	85:16	26:6 27:1,9	Trang 6:11	transmitter 13:3
76:25	thing 10:20	31:13,16 33:7	48:23,23 49:1	13:19
talks 82:21	11:10 15:17	38:14 40:22,23	49:8,14	treated 7:10,11
Tam 69:23	29:18 37:3	41:3 44:9	transcript 1:9	tried 20:11 67:9
tapestry 33:18	52:4 54:20	45:19,20,21	7:7	70:1,2
team 25:5	things 13:24	50:20,21 52:11	transcription	true 17:21,24
teeth 21:6	40:12 42:21	55:18 58:12,15	86:5	19:17 20:12,20
television 69:7	43:9 50:13	59:7 60:8,9,11	translate 10:24	36:19 37:11
70:14	71:8 74:15	67:15 70:22	11:2,3,6,10	trust 22:5

truth 28:6,6,6 31:25,25,25 49:3,3,3 51:4,4 51:4 54:1,1,1 55:13,13,13 56:25,25,25 62:7,7,7 63:12 63:12,12 68:15 69:3,3,3 truthful 55:19 try 19:10 22:19 trying 22:20 67:8 Tsu 69:7 Tuan 6:4 10:22 27:24 28:4 turn 9:15 52:19 53:8 turning 52:19 Twelve 26:4 two 11:4 13:14 18:4 30:25 42:21 50:14,15 50:17,18 57:3 61:23 67:10 68:1,22 70:12 70:23 84:8 types 29:6 T-1446 5:19	33:22 understood 17:5 23:12 31:6 47:15 66:8 unfolding 34:23 unfortunately 37:15 83:24 UNIDENTIFI... 3:10,15 4:13 4:16,22 5:1,4 59:13,14 60:1 61:12 Unify 38:25 unions 33:3,3 United 54:19 unspecified 5:24 6:2 18:6,14 upset 40:11 use 23:21 24:11 32:15 33:7,18 36:14 59:10 useful 46:5 useless 29:6 U.S 55:18	view 66:18 75:19 viewpoint 57:23 Vinh 50:24 51:2 51:7 violate 26:17 violated 5:23 violation 6:2 17:22,25 18:5 18:5,14 19:17 20:13,16,21 36:16 42:13 45:1,2 66:15 66:23 82:18 violations 18:4 42:17 82:20 Vo 14:2,2,11 61:8,16,16,21 61:21 62:5,14 62:25 69:22 voice 4:25 62:22 63:16 70:16 voices 21:16 voir 14:23 volume 52:19 vote 14:5 19:1,1 19:2 35:15 62:15 72:1 73:3 voter 14:2 61:17 voters 28:18 35:2 62:21 voting 18:25 19:5 V-i-n-h 51:7	27:11,14 28:14 30:19 32:18,19 32:21 33:8 38:23 41:10 42:2 45:17 48:21 51:15 52:6 56:4,5 57:5 58:5 62:16,17,18,22 68:15 70:9,10 70:13 71:10 73:1,6,8,9 78:5 78:10,18 81:2 83:2,7 wanted 12:19,21 18:17 23:13 30:23 40:12 43:7 46:2 56:15 57:10 61:6 63:22 wants 10:19 30:12,24 43:9 wasn't 20:10 waste 29:3 Watch 12:8 way 13:18 22:20 72:17,20 75:25 76:22 84:22 ways 11:5 web 6:20 39:5 Wednesday 1:12 5:14,17 week 41:16,25 welcome 24:14 went 83:6 weren't 41:25 we'll 8:14,20,23 18:2 33:7 40:19 44:8 46:10 49:24 68:22 72:23 73:9 we're 4:11 8:21 12:18 14:14 16:6 18:1 19:1	24:24 25:9 34:6,22 37:10 41:24 42:7,12 42:19 72:5 78:5 81:11,12 we've 63:21 66:3 66:5,5 75:6 whatever-it-is 42:5 white 33:20,24 Whoever's 8:3 wife 49:19 63:18 81:15,25 wisdom 45:18 wish 49:7 61:12 wishes 50:12 61:11 witness 7:10 witnessed 35:9 witnesses 7:12 7:13,16,18 women 56:11 63:18,25 64:13 64:14,14 won 34:24 wonder 56:17 wonderful 28:20 wondering 76:19,21 word 35:19 44:18 48:6 67:19 76:7 words 18:8 40:13 45:17 work 24:7 25:3 26:19 32:7 33:2 38:4,6 worksheet 6:3 18:8,15 42:5 42:12,18 worry 54:7 would-be 59:5 wrap 53:1,3 60:6 70:11 84:13
U unanimously 4:8 71:25 75:3 understand 12:1 15:15 24:12 25:11 27:4,14 31:5 35:18 41:13 44:3 58:6 61:9 66:10 75:9 81:20 understanding 11:23 19:12 29:19 51:8,19 understands	V V 8:18 vacancy 34:23 Vemulapalli 2:5 4:3 46:14,17 47:18,22,24 48:8 73:15,16 73:18 version 79:11 Vice-Chair 2:4 video 5:1 Vietnam 34:17 Vietnamese 10:25 12:10,24 15:4 24:5,10 27:17 28:10 30:14 32:18,20 33:14 34:14 55:2,5 57:18 64:14 70:14	wait 30:12 31:12 50:10,11 want 4:21 5:9 10:1 11:1,9 12:9 13:15,22 15:8 16:14 21:1,19 22:7 23:8,15 25:1	W wait 30:12 31:12 50:10,11 want 4:21 5:9 10:1 11:1,9 12:9 13:15,22 15:8 16:14 21:1,19 22:7 23:8,15 25:1	we're 4:11 8:21 12:18 14:14 16:6 18:1 19:1

REPORTER'S TRANSCRIPT OF PROCEEDINGS

wrapping 45:7	12 17:22,25 18:4	64:3,8,9,10
writing 37:18	18:7 19:17	85:15
written 9:17,22	20:16,21 26:4	4th 64:3
10:8 12:24	26:9,14,18	408 2:20
27:3 41:3	36:18 65:14	415 2:16
wrong 29:18	66:15,23 75:12	425 2:14
79:19 80:11	12.04.080(e)	
82:6	47:9	5
wrote 21:11	12.08 5:23 18:6	5/27 84:4
37:18	42:14	5:30 4:18
	12.08.050 26:5,5	5:38 1:13 3:4
X	1446 1:15	50 31:3
Xung 55:1,1,5	15 3:17 14:4	6
55:11,17	21:4 62:16	6th 43:24
X-u-n-g 55:5	15th 6:22	60 31:3
	1500 39:6,9	626(s) 35:24
Y	1969 33:16	
yeah 11:11,11	2	7
11:12 12:21		7 77:14
13:20 32:13,24	2:37 84:8	700 67:16,16,19
42:11 48:2,15	2:58 83:15	80:21
48:23 50:12	20 15:2	700s 67:11
52:24 75:5	200 1:14	76954 6:23 47:9
80:8	2014 6:22	777-3200 2:16
year 36:8	2015 1:12 5:18	
years 14:19 15:2	6:5,7,9,11,16	8
33:17 35:9	6:18 43:24	8:16 85:19
yellow 33:21,25	83:15	80 55:23
Yep 57:4	26th 2:15	
	27th 6:4 83:15	9
#	28th 6:15 84:2,4	920-0222 2:20
#49881 1:25	29th 6:6,9,15	94105 2:15
#8060 1:19 2:19		95113 1:16
86:11	3	95125 2:20
0	3rd 6:18	
050 26:5	30 14:19 33:17	
	35:9 58:13,16	
1	59:10	
1 6:11 85:15	30th 6:16	
1st 6:16 45:12	30-second 60:15	
1:30 84:4	4	
10 1:12	4 14:3 27:25	
10th 5:15,17	28:18 33:5,13	
1083 2:19	34:23 35:3,16	
118 45:8	61:17 62:21	

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October 9, 2015

Cecilia McDaniel, Deputy City Clerk

City of San Jose

200 E. Santa Clara Street

San Jose, CA 95113

Re: June 10, 2015 Ethics Commission

Ms. McDaniel,

Upon review of my transcript of the June 10, 2015 proceedings, I discovered a slight error. The record at Page 4 Line 3 currently reads as Commissioner Vemulapalli saying "Yes, sir." It should read as follows:

"COMMISSIONER GONZALES: Second."

Thank you for your attention to this matter. If you have any questions in regard to the above, please do not hesitate to give me a call.

Sincerely,



Noelia Espinola, CSR 8060

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