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2
3 FOR THE DEPARTMENT:

4 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
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E X A M I N A T I O N S

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WITNESS:	DX	CX	RDX	RCX	FRDX	FRCX
P. SPACCIA		13B	380	68K		
			50B			
TERESA JACOBO	80B	830				
JAMES CORCORAN	86B					
BARBARA HEARD	103K	134B	143K	145B	151K	152B
EDWARD LEE	156K	160B	164K	166B	166K	
TERRANCE RODGERS	168K	201B	226K			
		2250				

B = BRAUN
K = KENNEDY
O = ONSTOT

E X H I B I T S

DEPARTMENT'S MARKED FOR RECEIVED
IDENTIFICATION IN EVIDENCE

13 - CALCULATION INFORMATION 145 145
SERVICE RETIREMENT,
RETIREMENT CALCULATION
SHEET, ESTIMATE SHEET,
COMPENSATION AUDIT
INSTRUCTION SHEET,
ROLL LETTER

32 - CIRCULAR LETTER 37 37
11/17/1995

33 - SPREADSHEET 190 201

RESPONDENTS' MARKED FOR RECEIVED
IDENTIFICATION IN EVIDENCE

- - NONE OFFERED - -

1 ORANGE, CALIFORNIA, TUESDAY

2 AUGUST 28, 2012

3 10:00 A.M.

4
5 THE COURT: WE'RE BACK ON THE RECORD. IT'S
6 AUGUST 28, 2012.

7 YESTERDAY I MISSPOKE. A UNITED STATES
8 SUPREME JUSTICE DOES NOT MAKE \$250,000 A YEAR. A
9 CHIEF JUSTICE MAKES \$223,000 A YEAR. ASSOCIATE
10 JUSTICES MAKE ABOUT \$214,000 A YEAR. THE PRESIDENT
11 OF THE UNITED STATES MAKES \$400,000 A YEAR, AND THE
12 VICE PRESIDENT MAKES \$227,000 A YEAR.

13 MR. BRAUN: COULD I ADD TO THAT. MY SON
14 WENT TO SCHOOL WITH THE HEAD OF DISNEY WHO'S MAKING
15 \$1 MILLION A DAY.

16 THE COURT: RIGHT. THAT'S NOT A PUBLIC
17 SERVANT.

18 MR. BRAUN: NO. I UNDERSTAND. BASEBALL
19 PLAYERS MAKE A LOT.

20 THE COURT: NOR ARE THEY PUBLIC SERVANTS.

21 MR. BRAUN: RIGHT.

22 BUT MAYBE WE CAN CLARIFY SOMETHING FOR MY
23 CLARIFICATION.

24 THE COURT: SURE.

25 MR. BRAUN: I'M OBVIOUSLY NEW TO THE

1 CALPERS SYSTEM. I'M DOING THIS SORT OF IN A
2 COMBINATION TO MS. SPACCIA'S --

3 I'M NOT REALLY SURE HOW FREE-RANGE THE
4 ISSUES WILL BE. AND I WILL EXPLAIN IT EXACTLY.

5 I UNDERSTAND THE ISSUES THAT COUNSEL FOR
6 CALPERS HAS ARTICULATED. BUT I DON'T SEE THAT
7 CALPERS -- AND I COULDN'T FIND ANY REGULATIONS WHERE
8 THEY REGULATE THE --

9 LET'S SAY THAT WE ASSUME THAT THE CITY OF
10 BELL HAD EXTRAVAGANT PAY FOR ALL THEIR EXECUTIVES,
11 WHICH I AGREE WITH YOUR HONOR.

12 THE COURT: RIGHT.

13 MR. BRAUN: I DON'T SEE THAT
14 CALPERS, EXCEPT IF ONE OF THEIR REGULATIONS WERE
15 VIOLATED, HAS ANY PLACE MONITORING THAT WITHOUT SOME
16 SPECIAL -- SOME REGULATION OR SOMETHING SAYING "WELL,
17 WE ONLY COVER A CERTAIN AMOUNT, OR WE ONLY COVER
18 SALARIES THAT ARE DEEMED REASONABLE."

19 AND I ALSO, SORT OF SIMILARLY, DON'T SEE
20 THAT CALPERS CAN REGULATE THE PERFORMANCE OF PEOPLE
21 AT THEIR JOBS. IN OTHER WORDS, IS THAT REALLY
22 SOMETHING WE WILL BE GOING INTO, OR IS THAT SOMETHING
23 THAT --

24 THE WAY THAT I READ THE ISSUES, IT WOULD BE
25 UNDER THEIR REGULATIONS WHETHER HER PAY IS

1 COMPENSATION EARNABLE AND WHETHER OR NOT THE AIR TIME
2 CAN BE PURCHASED BY THE MUNICIPALITY.

3 BUT WE'RE GOING BEYOND THAT, AND I'M NOT IN
4 A POSITION TO SAY, ONE WAY OR THE OTHER, WHETHER WE
5 DO. BUT IT OPENS UP ALL KINDS OF OTHER ISSUES THAT
6 I'M NOT SURE THAT IT'S THE PURVIEW OF CALPERS OR
7 WHETHER THIS COURT HAS COMPETENCY TO GO INTO THAT.

8 I DON'T LIKE THE WORD "COMPETENCY," BUT
9 JUDGE DAU'S DECISION WHICH -- I PROBABLY JUMPED TO
10 THE CONCLUSION TOO QUICKLY ABOUT COLLATERAL ESTOPPEL
11 BECAUSE I'M NOT REALLY SURE CALPERS IS A STATE AGENCY
12 IN THE STATE OF CALIFORNIA THAT'S SUING THE CITY OF
13 BELL AND THE BASIC PUBLIC OFFICIALS THERE.

14 IT ISN'T COLLATERAL ESTOPPEL, FOR ONE
15 REASON, BECAUSE IT'S NOT FINAL ON APPEAL YET. SO
16 THAT WOULD BE THE DISPOSITIVE ISSUE. BY THE TERMS OF
17 THIS REASONING, IT MAY BE IMPORTANT BECAUSE IT REALLY
18 GOES TO THE SAME ISSUE THAT I'M REFERRING TO IN TERMS
19 OF CALPERS' COMPETENCE.

20 BASICALLY, JUDGE DAU THERE IS SAYING WE'RE
21 NOT GOING TO GET INTO POLITICAL DECISIONS BECAUSE
22 THAT'S A VIOLATION OF SEPARATION OF POWERS. AND HE'S
23 RIGHT. AND YOUR HONOR CAN DECIDE WHETHER YOU WOULD
24 AGREE WITH THAT.

25 THAT WOULD ALSO APPLY TO CALPERS, WHETHER

1 OR NOT THE POLITICAL DECISIONS MADE BY THE CITY
2 COUNCIL OF BELL, EVEN AS INCOMPETENT OR EXTRAVAGANT
3 AS THEY MAY BE, WHETHER THOSE ARE SUBJECT TO THE
4 JURISDICTION OF CALPERS.

5 AND THEN, AGAIN, WHETHER OR NOT A
6 PARTICULAR EMPLOYEE PERFORMED UP TO WHAT WAS REQUIRED
7 OF THEM, WHETHER THAT'S WITHIN THE PURVIEW OF
8 CALPERS.

9 BECAUSE, YOU KNOW, THEN WE'D BE CREATING, I
10 GUESS, BY "MISSION CREEP," TO USE A MILITARY TERM, A
11 SITUATION WHERE CALPERS IS NOW REGULATING THE
12 REASONABLENESS OF SALARIES IN MUNICIPALITIES AND THEN
13 REGULATING THE PERFORMANCE OF PEOPLE ON THE -- THE
14 PERFORMANCE OF THE VARIOUS PERSONNEL.

15 AND THE MOST EXTREME CASE WOULD BE -- FOR
16 EXAMPLE, IN THIS PARTICULAR CASE, YOU HAVE
17 LOURDES GARCIA AND VALDEZ, THE CLERK, WHO WERE GIVEN
18 IMMUNITY AND CONFESSED TO COMMITTING THE CRIMES --
19 WHETHER THOSE WOULD EVEN BE WITHIN THE PURVIEW OF
20 CALPERS TO DENY THEM OF A PENSION.

21 SO I'M SORT OF LOOKING TO THE COURT FOR
22 SOME GUIDANCE WHERE WE'RE GOING.

23 THE COURT: MR. KENNEDY?

24 MR. KENNEDY: YOUR HONOR, CALPERS IS
25 UNIQUELY CHARGED WITH ESTABLISHING COMPENSATION

1 EARNABLE. IT'S NOT IN ANY WAY, SHAPE, OR FORM TRYING
2 TO INVADE ON THE VENUE OF THE MUNICIPALITY OR THE
3 JURISDICTION OF THE MUNICIPALITY IN THAT REGARD.

4 BUT IT HAS THE AUTHORITY OVER THE STATEWIDE
5 SYSTEM OF RETIREMENT AND TO ESTABLISH THE COMPS, THE
6 BENEFITS AND QUALIFICATIONS AND ELIGIBILITY FOR THAT,
7 UNDER THE STATEWIDE SYSTEM OF THE CALPERS.

8 SO I THINK THE STATUTES ARE QUITE CLEAR AS
9 TO THE SCOPE OF THE AUTHORITY FOR CALPERS IN THAT
10 REGARD. AND WE'RE NOT TRYING TO SUPERSEDE OR INVADE
11 THE, I GUESS YOU MIGHT SAY, MUNICIPAL AFFAIRS JUST TO
12 MAKE A DETERMINATION UNDER THE P.E.R.L., AS TO WHAT
13 IS AND IS NOT INCLUDABLE IN COMPENSATION EARNABLE FOR
14 THE PURPOSES OF ESTABLISHING A RETIREMENT BENEFIT.

15 WITH THAT, I THINK THIS COURT HAS THE CLEAR
16 JURISDICTION.

17 MR. BRAUN: I CAN'T DISAGREE WITH THE WAY
18 COUNSEL ARTICULATES IT. WHAT BOTHERS ME IS WE SEEM
19 TO BE GOING INTO AREAS LIKE, "WHAT WERE YOU DOING,"
20 AND "WHY WERE YOU DOING IT."

21 THE COURT: HERE IS WHERE THAT MAY BE
22 RELEVANT, THEN.

23 MR. BRAUN: YES.

24 THE COURT: SECTION 20636(C) TALKS ABOUT
25 SPECIAL COMPENSATION. AND SUBSECTION (C) (2) SAYS:

1 "SPECIAL COMPENSATION SHALL BE
2 LIMITED TO THAT WHICH IS RECEIVED BY
3 A MEMBER UNDER A LABOR POLICY OR
4 AGREEMENT WHEREAS OTHERWISE REQUIRED
5 BY STATE OR FEDERAL LAW" --

6 AND THIS IS THE KEY LANGUAGE:

7 -- "TO SIMILARLY SITUATED MEMBERS
8 OF A GROUP OR CLASS OF EMPLOYMENT THAT
9 IS IN ADDITION TO PAY RATE."

10 SO WHAT WE HAVE GOT TO FIGURE OUT IS WHAT
11 OTHER PEOPLE ARE DOING WITHIN THIS CLASS. THAT IS
12 THE ONLY RELEVANCE THAT I SEE.

13 MR. BRAUN: AND I READ THE SAME SECTION,
14 AND I THOUGHT THAT MEANT THAT THERE'S A PAY RATE THAT
15 YOU GET IN TERMS OF -- PARTICULARLY WHEN YOU HAVE A
16 ONE-PERSON CONTRACT --

17 THE COURT: IT SAYS IF AN INDIVIDUAL IS NOT
18 PART OF A GROUP OR CLASS, SPECIAL COMPENSATION SHALL
19 BE LIMITED TO THAT WHICH THE BOARD DETERMINES IS
20 RECEIVED BY SIMILARLY SITUATED MEMBERS IN THE CLOSEST
21 RELATED GROUP OR CLASS, THAT IS, IN ADDITION TO THE
22 PAY RATE. THAT'S ALSO PART OF THE STATUTE.

23 MR. BRAUN: AND I'M JUST TRYING TO CLARIFY
24 THAT I THOUGHT THAT MEANT -- AND, OBVIOUSLY THIS IS
25 NOT MY AREA OF EXPERTISE. I MAY BE WRONG.

1 I THOUGHT THAT MEANT, FOR EXAMPLE, IF YOU
2 HAVE A CONTRACT FOR SAY 100,000 AND YOU'RE GOING TO
3 GET SOMETHING IN ADDITION TO THAT, THAT HAS TO FALL
4 UNDER THAT PARTICULAR -- THAT WOULD BE SPECIAL
5 COMPENSATION IN ADDITION TO YOUR PAY RATE.

6 AND WE'RE NOT CLAIMING ANYTHING LIKE THAT.
7 WE'RE JUST CLAIMING THE BASIC PAY RATE. WE'RE NOT
8 CLAIMING ANYTHING SPECIAL.

9 MR. KENNEDY: WELL, I THINK THE SIMILAR
10 LANGUAGE THE COURT IS QUOTING IS ALSO SET FORTH IN
11 "PAY RATE" UNDER 20636(B). AND THAT IS, AS YOU
12 INDICATED, YOUR HONOR, WE'RE LOOKING AT WHETHER THERE
13 IS A PUBLICLY AVAILABLE PAY SCHEDULE, AND IF THERE IS
14 ONE -- IN THIS CASE WE BELIEVE THERE'S NOT.

15 BUT IF THE COURT WERE INCLINED TO BELIEVE
16 THERE IS ONE, THEN WE WOULD LOOK TO SEE WHAT OTHER
17 SIMILARLY SITUATED PEOPLE IN THE SAME GROUP OR CLASS
18 THAT THE MEMBER IS RECEIVED AS PART OF THEIR PAY RATE
19 TO ESTABLISH A NORMAL PAY RATE FOR THIS PERSON.

20 MR. BRAUN: WELL, I GUESS THAT'S THE
21 DISAGREEMENT. THERE IS NO REASON -- AS I READ THAT,
22 THE PAY RATE IS WHAT SOMEONE GETS FOR A FULL-TIME
23 JOB. AND THAT IS SUBJECT TO A CONTRACT BETWEEN THE
24 CITY AND MS. SPACCIA.

25 IF THERE IS ANYTHING -- IN HER PARTICULAR

1 CASE, THERE IS NO 40-HOUR LIMIT OR ANYTHING. BUT
2 THIS DEFINES WHAT THE BASE PAY WOULD BE.

3 SO THE WAY COUNSEL IS INTERPRETING IT, IT
4 WOULD MEAN THAT CALPERS WOULD GO THROUGH AND MAKE A
5 DETERMINATION AS TO WHAT'S A REASONABLE PAY RATE, AS
6 OPPOSED TO WHAT IS THE PAY RATE AND WHETHER OR NOT
7 THAT REPRESENTS THE FULL-TIME PAY FOR THAT PERSON.

8 THE COURT: I UNDERSTAND YOUR ARGUMENT.

9 MR. BRAUN: YES.

10 THE COURT: READY?

11 MR. KENNEDY: YES.

12 THE COURT: PROCEEDING WITH
13 CROSS-EXAMINATION.

14
15 PIER'ANGELA SPACCIA,
16 CALLED AS A WITNESS AND PREVIOUSLY SWORN IN
17 BY THE COURT REPORTER, WAS EXAMINED
18 AND TESTIFIED AS FOLLOWS:

19
20 CROSS-EXAMINATION (RESUMED)

21 BY MR. KENNEDY:

22 Q. GOOD MORNING, MS. SPACCIA.

23 A. GOOD MORNING.

24 Q. MS. SPACCIA, WAS THERE EVER CREATED A DUTY
25 STATEMENT FOR YOUR POSITION WITH BELL?

1 A. I DON'T BELIEVE SO.

2 Q. OKAY. SO IF THERE WAS NO DUTY STATEMENT
3 THAT SPELLED OUT SPECIFICALLY WHAT YOUR DUTIES WERE,
4 THEN IS IT FAIR TO SAY THAT YOU WOULD DESCRIBE YOUR
5 DUTIES, IF SOMEONE ASKED YOU, AS WHATEVER THE C.A.O.
6 INSTRUCTED YOU TO PERFORM?

7 A. MY DUTIES WERE -- YES. BECAUSE THAT'S AS
8 IT WAS DESCRIBED IN THE EMPLOYMENT CONTRACT.

9 Q. AND IN THE EMPLOYMENT CONTRACT, YOUR
10 EMPLOYMENT CONTRACT, THE DUTIES STATED THAT YOU WERE
11 TO PERFORM THE DUTIES PURSUANT TO THE BELL MUNICIPAL
12 CODE AND AS DIRECTED BY THE C.A.O.; CORRECT?

13 A. CORRECT.

14 Q. AND YESTERDAY, I BELIEVE I ASKED YOU -- IF
15 I DIDN'T, I WILL NOW -- DO YOU RECALL, OR DO YOU KNOW
16 ANY SPECIFIC PROVISIONS OF THE MUNICIPAL CODE OF BELL
17 THAT DESCRIBES THE DUTIES OF YOUR POSITION?

18 A. I NEVER EXPLORED THAT. I JUST ASSUMED THAT
19 THE C.A.O. KNEW.

20 Q. WHEN YOU FIRST CAME TO WORK FOR BELL, HOW
21 DID YOU INITIALLY -- HOW DID YOU INITIALLY ESTABLISH
22 YOUR SALARY IN JULY OF '03?

23 A. THE C.A.O. DETERMINED WHAT IT WOULD BE.

24 Q. YOU DIDN'T HAVE NEGOTIATIONS WITH HIM?

25 A. I DID HAVE SOME NEGOTIATIONS INITIALLY

1 BECAUSE I WASN'T SURE I WANTED TO GO BACK AND WORK
2 FOR A GOVERNMENT AGENCY.

3 SO PART OF MY NEGOTIATIONS WAS MAKING SURE
4 THAT I WOULD BE PUT BACK INTO THE CALPERS SYSTEM AND
5 THAT THE FOLLOWING YEAR THERE WOULD BE AN ADJUSTMENT
6 UPWARD IF I PERFORMED WELL.

7 Q. HOW DO I DISTINGUISH -- IF I LOOK AT YOUR
8 CONTRACT, HOW DO I DISTINGUISH THAT FROM THE DUTIES
9 OF ANY OTHER PERSON THAT IS UNDER A CONTRACT FOR THE
10 CITY OF BELL -- I'M SORRY -- AN EMPLOYMENT CONTRACT
11 FOR THE CITY OF BELL?

12 A. WELL, EACH POSITION WAS DIFFERENT. FOR
13 EXAMPLE, THE POLICE LIEUTENANT WAS ON AN EMPLOYMENT
14 CONTRACT. THERE WAS NO JOB DUTY DESCRIPTION FOR THE
15 POLICE LIEUTENANT, BUT IT WAS CLEAR THAT WHAT HE DID
16 WAS DIFFERENT THAN FROM WHAT I DID.

17 Q. BUT HIS DIRECTION WAS BY THE CHIEF OF
18 POLICE?

19 A. IN HIS CASE, YES. AND THEN THE CHIEF OF
20 POLICE --

21 Q. IF I MAY INTERRUPT. OUT OF THE SAFETY --
22 CAN YOU TAKE US OUT OF SAFETY AND PUT IT TO PEOPLE
23 THAT AREN'T SAFETY EMPLOYEES.

24 ISN'T IT TRUE THAT VIRTUALLY ALL THE
25 AGREEMENTS SAID ESSENTIALLY THAT YOU HAVE THE

1 RESPONSIBILITY THAT'S SET FORTH UNDER THE MUNICIPAL
2 CODE FOR YOUR POSITION AND WHATEVER THE C.A.O.
3 INSTRUCTS YOU TO DO?

4 A. ALL OF THE CONTRACTS WERE TYPED THE SAME.
5 EXACTLY, YES.

6 Q. SO IF I WERE TO LOOK AT ALL THESE
7 CONTRACTS, THERE IS NO WAY TO DISTINGUISH WHAT THE
8 DUTIES WERE, OTHER THAN TO SAY WHAT THE POSITION WAS
9 AND WHAT THE C.A.O. PRESCRIBED.

10 THOSE WERE THE DUTIES; RIGHT?

11 A. RIGHT.

12 Q. AND AS FAR AS DETERMINING CHANGES IN
13 YOUR -- THE TERMS OF YOUR AGREEMENT AFTER THE INITIAL
14 ONE, WHAT TRIGGERED THOSE?

15 A. I'M NOT SURE I UNDERSTAND.

16 Q. WELL, YOU HAD AN ADDENDUM TO IT IN '04;
17 RIGHT?

18 THE COURT: YOU GOT RAISES.

19 THE WITNESS: YES.

20 THE COURT: HOW COME?

21 THE WITNESS: THEY WERE ANNUAL RAISES
22 THAT -- WELL, EVERY EMPLOYEE RECEIVED ANNUAL RAISES.

23 BY MR. KENNEDY:

24 Q. AND WERE YOURS ON PAR WITH THE RAISES GIVEN
25 TO OTHER EMPLOYEES THAT --

1 A. YES. IN THE ADMINISTRATIVE MANAGEMENT AND
2 THE EXECUTIVE MANAGEMENT CATEGORY.

3 Q. OKAY. SO THE ADMINISTRATIVE MANAGEMENT AND
4 THE EXECUTIVE MANAGEMENT. HOW ABOUT THE MANAGEMENT?

5 A. THAT WAS THE ADMINISTRATIVE MANAGEMENT,
6 YES.

7 Q. SO ADMINISTRATIVE MANAGEMENT. AND SO AT A
8 CERTAIN PERIOD OF TIME, ISN'T IT TRUE THAT THEY BROKE
9 IT DOWN INTO ADMINISTRATIVE, EXECUTIVE, AND THEN
10 MANAGEMENT?

11 A. YOU KNOW, I HEARD RUMORS THAT THAT'S
12 SOMETHING THEY DID AROUND 2008, BUT I NEVER ACTUALLY
13 SAW THAT. SO I DON'T KNOW FOR CERTAIN.

14 I HEARD THAT LOURDES GARCIA AND ERIC EGGENA
15 CREATED A SEPARATE CATEGORY FOR THEMSELVES, BUT I'VE
16 NEVER ACTUALLY SEEN THAT. SO I DON'T KNOW.

17 Q. DID YOU INDICATE YESTERDAY THAT -- WHAT WAS
18 HER NAME? PATRICIA -- WHAT WAS IT?

19 A. CASJENS.

20 Q. WAS YOUR PREDECESSOR IN THE POSITION?

21 A. YES.

22 Q. AND EXCEPT FOR THE CHANGE IN TITLES GIVEN,
23 IT WAS ESSENTIALLY THE SAME FUNCTIONS OR SAME DUTIES?

24 A. NO. THE DUTIES WERE DIFFERENT. SHE WAS
25 ALSO THE CITY CLERK, AND SHE DID RISK MANAGEMENT.

1 WHEREAS I DIDN'T PERFORM THE CITY CLERK. I DID THE
2 RISK MANAGEMENT, BUT I ALSO DID MANY OTHER FUNCTIONS.

3 Q. AND DO YOU RECALL WHAT HER DEPARTING OR HER
4 LAST SALARY WAS?

5 A. NO.

6 Q. SO WHEN YOU WERE NEGOTIATING YOUR
7 EMPLOYMENT WITH THE CITY, YOU DIDN'T INQUIRE AS TO
8 WHAT YOUR PREDECESSOR HAD BEEN PAID?

9 A. SHE WASN'T REALLY MY PREDECESSOR. I JUST
10 FILLED HER POSITION. THEN THEY CHANGED THE POSITION,
11 THE DUTIES.

12 SHE WAS NOT A FINANCIAL PERSON, FOR
13 EXAMPLE. SHE ONLY DID RISK MANAGEMENT.

14 Q. NOW, YESTERDAY YOU TESTIFIED THAT
15 CERTAIN -- THAT YOU PROCESSED A CERTAIN NUMBER OF
16 REQUESTS FOR AIR TIME?

17 A. YES.

18 Q. FOR, I THINK IT WAS FOR -- ABOUT HOW MANY
19 PEOPLE?

20 A. 12.

21 Q. AND HOW WERE THOSE 12 SELECTED?

22 A. THEY WERE THE CLASSIFICATION FOR THE
23 EXECUTIVE MANAGEMENT CLASSIFICATION AND THE
24 ADMINISTRATIVE MANAGEMENT CLASSIFICATION WITH ONE
25 EXCEPTION.

1 Q. WHO WAS THAT?

2 A. THAT WAS THERESA DIAZ BASS.

3 Q. AND SHE WAS IN WHAT?

4 A. I'M NOT SURE. HER'S WAS THE ONE THAT WAS
5 THE SETTLEMENT.

6 THE COURT: IT'S THERESA DIAZ, LAST NAME?

7 MR. KENNEDY: BASS.

8 THE WITNESS: BASS, B-A-S-S.

9 THE COURT: THANK YOU.

10 BY MR. KENNEDY:

11 Q. NOW, EVERYBODY -- IT'S YOUR IMPRESSION THAT
12 AT THE TIME THE PURCHASES WERE MADE, EVERYONE IN THE
13 EXECUTIVE MANAGEMENT AND ADMINISTRATIVE MANAGEMENT,
14 WITH ONE EXCEPTION, WERE PROVIDED FIVE YEARS OF AIR
15 TIME PURCHASED BY THE CITY?

16 A. CORRECT. AND THEY WERE PURCHASED IN
17 DIFFERENT INCREMENTS BECAUSE AS I RECALL, I BELIEVE
18 THERE WAS ONE COUNCILMAN --

19 Q. THAT'S OKAY. YOU'VE ANSWERED MY QUESTION.

20 A. OKAY.

21 Q. THE EXECUTIVE MANAGEMENT, NOW, WAS
22 COMPRISED OF WHOM?

23 A. THE CITY COUNCIL, THE C.A.O., AND AT THAT
24 TIME, I BELIEVE THAT WAS IT.

25 Q. AND YOU WERE IN THE ADMINISTRATIVE

1 MANAGEMENT?

2 A. YES.

3 Q. AND WERE THE CLASSIFICATION OF PEOPLE IN
4 THAT CATEGORY ALSO AN UNREPRESENTED CLASS?

5 A. YES. IT DID NOT APPLY TO PUBLIC SAFETY, AS
6 I RECALL.

7 Q. NOT PUBLIC SAFETY, AND NOT REPRESENTED
8 MISCELLANEOUS MEMBERS; RIGHT?

9 A. YES. THAT DID INCLUDE -- I'M SORRY. ASK
10 THE QUESTION AGAIN.

11 Q. I'LL WITHDRAW IT. I'LL GET BACK TO IT.

12 IN YOUR EXHIBIT PACKAGE THERE IS A -- I
13 BELIEVE, THERE IS A DOCUMENT THAT IS A SUMMARY --

14 YES. 25, I BELIEVE OF YOUR EXHIBIT PACKAGE --

15 A. YES.

16 Q. -- HAS A SPREADSHEET IN THERE WITH SALARIES
17 AND FRINGE BENEFITS.

18 A. YES.

19 Q. DID YOU TESTIFY WHO PREPARED THIS?

20 A. YES.

21 Q. WHO DID IT?

22 A. LOURDES GARCIA.

23 Q. OKAY. AND DO YOU KNOW WHEN IT WAS
24 PREPARED?

25 A. IT WAS ACTUALLY PREPARED WHILE -- DURING A

1 PERIOD OF TIME THAT I WAS OUT. IT WAS AROUND JANUARY
2 OF 2008.

3 Q. AND DO YOU KNOW WHAT PURPOSES IT WAS
4 PREPARED FOR?

5 A. YES. IT WAS APPARENTLY TO DETERMINE WHAT
6 SALARIES PEOPLE WOULD MAKE AND TO DO A FINANCIAL PLAN
7 FOR THE FUTURE.

8 Q. IT WASN'T INTENDED TO?

9 THE COURT: DID IT REFLECT ACTUAL SALARIES
10 AT THAT TIME?

11 THE WITNESS: YES.

12 BY MR. KENNEDY:

13 Q. AND FRINGE BENEFITS AND INCREASES, DO YOU
14 BELIEVE THAT THAT CORRECTLY REFLECTED THAT?

15 A. I CAN'T -- I DON'T KNOW.

16 Q. OKAY. SO IF I LOOK AT THIS, THEN, I SEE 17
17 PEOPLE -- LOOKS LIKE THE TOP -- ARE THE TOP FOUR
18 PEOPLE THERE CITY COUNCIL PEOPLE?

19 A. YES. THAT'S INTERESTING. THERE'S ONE
20 MISSING. OH, IT MUST HAVE BEEN A VACANCY AT THE
21 TIME.

22 Q. SO THOSE ARE THE CITY COUNCIL. YOU'RE NOT
23 PUTTING YOURSELF IN A CLASSIFICATION OR WORK-RELATED
24 GROUPING WITH DUTIES OF THE CITY COUNCIL; RIGHT?
25 THEY ARE ELECTED OFFICIALS?

1 A. NO.

2 Q. AND THEN THERE'S ROBERT RIZZO, AND YOU'RE
3 NOT PUTTING YOURSELF IN A CLASSIFICATION OR GROUPING
4 WITH ROBERT RIZZO?

5 A. ONLY WHEN I HAD TO TAKE HIS DUTIES AND
6 CARRY THEM OUT.

7 Q. AND YESTERDAY WHEN YOU TESTIFIED AS TO
8 WHETHER OR NOT YOU WERE IN A CLASSIFICATION OF DEPUTY
9 DIRECTOR, YOU SAID YOU WEREN'T A DEPUTY DIRECTOR.
10 YOU WEREN'T IN THAT CLASS BUT FELT YOUR LEVEL OF
11 DUTIES AND RESPONSIBILITIES -- YOU WERE CLOSE TO THAT
12 BUT DIFFERENT IN THAT YOU DIDN'T HAVE SUPERVISION?

13 A. I'M SORRY. WHAT IS A DEPUTY DIRECTOR?

14 Q. I'M SORRY. DEPARTMENT HEAD. EXCUSE ME. I
15 APOLOGIZE. A DEPARTMENT HEAD.

16 A. OKAY. COULD YOU ASK ME THE QUESTION AGAIN.

17 Q. YESTERDAY, WHEN YOU TESTIFIED ABOUT WHAT
18 YOUR RESPONSIBILITIES AND DUTIES WERE, THE LEVEL OF
19 RESPONSIBILITIES AND DUTIES, YOU STATED THAT YOU
20 WEREN'T A DEPARTMENT HEAD; RIGHT?

21 A. I WAS NOT IN CHARGE OF DAILY OPERATIONS,
22 NO. AND THOSE WERE THE DEPARTMENT HEADS.

23 Q. AND DEPARTMENT HEAD IS DISTINGUISHED
24 FROM -- HOW DO YOU DISTINGUISH THAT FROM WHAT YOU DO?

25 A. MINE WERE ALL OF THE OTHER ASSIGNMENTS THAT

1 DON'T HAVE TO DO WITH THE MAINTENANCE OF THE DAILY
2 OPERATIONS.

3 Q. OKAY. DID YOU HAVE SUPERVISION OF
4 EMPLOYEES?

5 A. NO.

6 Q. DID YOU HAVE CONTROL OVER A BUDGET FOR THE
7 DEPARTMENT?

8 A. NO. WELL, ONLY FOR THE FIRST TWO YEARS.

9 Q. OF THE DEPARTMENT?

10 A. YES.

11 Q. SO WERE YOU A DEPARTMENT HEAD IN THE FIRST
12 TWO YEARS?

13 A. YES.

14 Q. AND THAT DEPARTMENT WAS?

15 A. FINANCE.

16 Q. OKAY. AND AFTER THAT NONE?

17 A. RIGHT. CORRECT.

18 Q. THIS IS A LITTLE SPECIFIC. IF YOU COULD
19 LOOK AT -- LET'S SEE. IT'S IN THE BIG BINDER.

20 THE COURT: THIS IS THE CALPERS EXHIBITS?

21 MR. KENNEDY: CALPERS EXHIBITS, EXHIBIT 20.

22 THE WITNESS: I DON'T HAVE THAT.

23 OKAY.

24 BY MR. KENNEDY:

25 Q. THERE IS A RESOLUTION, AND I'M TRYING --

1 THERE'S BATES NUMBERS ON THE BOTTOM, BUT
2 THEY'RE ALSO CHRONOLOGICALLY IN ORDER. AND SO I'D
3 LIKE TO DIRECT YOUR ATTENTION TO -- THE BATES STAMP
4 ON THE BOTTOM IS 17155, BUT IT'S ACTUALLY JULY 30,
5 2003, RESOLUTION NUMBER 2003-30.

6 A. YES.

7 Q. YOU SEE THAT?

8 A. YES.

9 Q. OKAY. NOW, YESTERDAY, WE TALKED ABOUT -- I
10 MEAN, YOUR -- IS YOUR SALARY ON THIS?

11 A. 2003, ON PAGE 2, IT REFERENCES THE
12 CONTRACT.

13 Q. BUT IT DOESN'T SET FORTH THE SALARY?

14 A. IT DOESN'T SHOW THE SALARY, NO. THAT'S IN
15 THE CONTRACT.

16 Q. NOW, IS THERE A REASON WHY YOUR SALARY
17 WASN'T ON THIS?

18 A. YOU KNOW, I DON'T KNOW. I NOTICE ALL THE
19 WAY BACK TO 1995 HERE ON THE FIRST PAGE, THAT THEY
20 SHOW CONTRACTS. SO I DON'T --

21 Q. MS. SPACCIA, ARE YOU AWARE OF WHY THE
22 INDIVIDUALS UNDER THE MANAGEMENT CATEGORY ON PAGE 2
23 THAT SAYS "CONTRACTS" -- THERE IS ONE, TWO, THREE,
24 FOUR, FIVE, SIX, SEVEN OF THEM -- THEIR SALARIES
25 AREN'T LISTED ON THE DOCUMENT?

1 A. WHAT I'M TRYING TO SAY IS --

2 Q. DO YOU KNOW WHY THEY'RE NOT LISTED ON THIS
3 DOCUMENT?

4 A. OR ANY DOCUMENT, ALL THE WAY BACK TO 1995.

5 Q. MR. SPACCIA, DO YOU KNOW WHY THEY WEREN'T
6 LISTED ON THIS DOCUMENT?

7 A. NO. ANY DOCUMENT.

8 THE COURT: THE MOTION TO STRIKE THAT PART
9 OF THE ANSWER WILL BE GRANTED.

10 MR. KENNEDY: THE QUESTION WASN'T STRICKEN?

11 THE COURT: THE ONE THAT I MADE BECAUSE THE
12 ANSWER WAS NOT RESPONSIVE. YOU ASKED THE QUESTION
13 FOUR TIMES. SHE KEPT ADDING, "I DON'T KNOW ANYTHING
14 ELSE."

15 NEVER MIND, WE'LL TAKE IT AWAY. IT WAS
16 HELPFUL TO YOU, BUT DON'T WORRY ABOUT IT.

17 BY MR. KENNEDY:

18 Q. MS. SPACCIA, IF YOU LOOK AT THE FIRST PAGE,
19 THIS PURPORTS TO BE A SALARY SCHEDULE FOR THE
20 PERIOD --

21 THE COURT: I'M SORRY. IT WAS A REMINDER
22 TO THE WITNESS, REALLY, TO ONLY ANSWER THE QUESTIONS
23 ASKED, NOT TO ADD OTHER INFORMATION.

24 THE REASON IS YOU APPEAR AS IF YOU'RE AN
25 ADVOCATE WHEN YOU DO THAT, AND IT DOESN'T HELP YOUR

1 CREDITABILITY, AND IT'S ALSO TAKING AN UNDUE AMOUNT
2 OF TIME.

3 THE WITNESS: OKAY.

4 BY MR. KENNEDY:

5 Q. THE SALARIES THAT ARE REFLECTED IN THIS
6 DOCUMENT ARE STATED TO BE ON A MONTHLY BASIS; RIGHT?

7 A. WHICH PAGE ARE YOU ON?

8 Q. PAGE 1.

9 A. IS THAT RESOLUTION 95-43?

10 Q. NOW, I'M TALKING ABOUT 2003-30 ON JUNE 30,
11 2003?

12 A. IT LOOKS LIKE IT, YES.

13 Q. SO IF I WERE TO -- IF YOUR SALARY WAS
14 LISTED HERE, THEN IT WOULD ALSO BE, I GUESS, ON A
15 MONTHLY BASIS?

16 A. YES.

17 Q. BUT YOUR CONTRACT WASN'T STATED -- THE PAY
18 PERIOD WASN'T STATED IN YOUR CONTRACT; CORRECT?

19 A. THE WHAT?

20 Q. IF I LOOKED AT THIS DOCUMENT AND WENT TO
21 YOUR CONTRACT, THE ONLY PAY PERIOD THAT I SEE IS ON A
22 MONTHLY BASIS FOR SALARIES; CORRECT? YOUR DOCUMENT'S
23 SILENT AS TO WHAT A PAY PERIOD IS?

24 A. IT SAYS "PER PAY PERIOD," WHICH WAS
25 BIWEEKLY.

1 Q. I WOULD REFERENCE THIS DOCUMENT TO GET YOUR
2 CONTRACT?

3 A. YES. TO SEE MY CONTRACT.

4 Q. I LOOK AT THESE TWO TOGETHER, AND I LOOK AT
5 WHAT THE POSITION PAID. I'M LOOKING HERE AT "MONTHLY
6 PAID." I LOOK AT YOUR CONTRACT. UNBEKNOWNST TO ME,
7 I'M LOOKING AT BIWEEKLY; RIGHT?

8 A. OH, OKAY.

9 Q. NOW, IF I COULD DIRECT YOUR ATTENTION TO
10 THE FOLLOWING RESOLUTION THAT'S ON 2003-31.

11 THE COURT: WHAT'S THE BATES STAMP NUMBER?

12 MR. KENNEDY: THE BATES STAMP IS -- IT'S
13 SORT OF BLURRED ON MINE. IT SAYS B.O. -- LOOKS LIKE
14 17404, YOUR HONOR.

15 THE COURT: THANK YOU.

16 BY MR. KENNEDY:

17 Q. AND IT'S JUNE 30, 2003, AS WELL. AND THIS
18 IS A RESOLUTION SETTING FORTH THE CLASSIFICATIONS FOR
19 THE -- BASICALLY, JUST BREAKS DOWN INTO DIFFERENT
20 SUBCATEGORIES OF UNREPRESENTED EMPLOYEES FOR THE
21 CITY; CORRECT?

22 A. YES.

23 Q. NOW, YESTERDAY YOU REFERRED TO THIS AS A
24 PAY CLASSIFICATION?

25 A. YES.

1 Q. WHAT DO YOU MEAN BY THAT?

2 A. THE -- EVERY POSITION WITHIN THE CITY IS
3 LISTED ON HERE, AND IT'S CLASSIFIED BY TYPE.

4 Q. TYPE?

5 A. TYPE, MEANING MISCELLANEOUS CONFIDENTIAL
6 MANAGEMENT, ADMINISTRATIVE MANAGEMENT, EXECUTIVE
7 MANAGEMENT.

8 Q. MY SPECIFIC QUESTION WAS YOU REFERRED TO IT
9 AS A PAY CLASSIFICATION SCHEDULE OR A PAY SCHEDULE?

10 A. YES.

11 Q. AND I'M WONDERING WHY DID YOU USE THAT TERM
12 FOR THIS?

13 A. BECAUSE THAT'S WHAT THE CITY OF BELL ALWAYS
14 REFERRED TO IT AS.

15 Q. ARE THESE PEOPLE CLASSIFIED IN THE
16 SUBSECTIONS BASED UPON WHAT THEIR COMPETENCE WAS?

17 A. I DON'T BELIEVE SO.

18 Q. OKAY. DO YOU --

19 A. NO. COULDN'T HAVE BEEN.

20 Q. OVER TIME, THE EXECUTIVE -- POSITIONS IN
21 EXECUTIVE MANAGEMENT, POSITIONS IN THE ADMINISTRATIVE
22 MANAGEMENT, AND POSITIONS IN THE MANAGEMENT, OKAY,
23 THEY CHANGED; RIGHT?

24 A. POSITION TITLES, YES.

25 Q. WELL, THE POSITIONS THEY -- SOME POSITIONS

1 MOVED INTO A DIFFERENT SUBCATEGORY; RIGHT?

2 IN OTHER WORDS, IF WE GO FORWARD IN TIME,
3 MAYBE THE MANAGEMENT -- THE OFFICER COORDINATOR
4 BECOMES AN ADMINISTRATIVE MANAGEMENT, OR THE
5 ASSISTANT CHIEF ADMINISTRATIVE OFFICER, LIKE YOU,
6 GOES INTO EXECUTIVE MANAGEMENT. OKAY.

7 A. YES.

8 Q. WHY WERE THESE POSITIONS SLOTTED UNDER THE
9 SUBCATEGORIES, IF YOU KNOW.

10 A. BENEFITS. IT DETERMINED THE DIFFERENCE IN
11 THE BENEFITS STRUCTURES. THAT'S WHAT I WAS TOLD.

12 Q. SO THIS IS REALLY REFLECTIVE OF, NOT
13 NECESSARILY THE DUTIES, BUT IT'S REFLECTIVE OF WHAT
14 THE BENEFITS WERE?

15 A. YES.

16 Q. SO WHEN I SAY THE LARGER CLASSIFICATION,
17 THE LARGER GROUPING ARE SIMPLY UNREPRESENTED
18 EMPLOYEES, OR DID YOU -- IS THIS TRULY ALL THE
19 EMPLOYEES OF THE CITY?

20 A. IT SAYS "UNREPRESENTED."

21 Q. SO THE CLASS -- THE GROUP THAT WE HAVE HERE
22 IS UNREPRESENTED EMPLOYEES?

23 A. OKAY.

24 Q. THE LARGER GROUP; IS THAT CORRECT?

25 A. YES. THIS IS UNREPRESENTED.

1 Q. NOW, IF I DIRECT YOUR ATTENTION TO 2004-04
2 WHICH IS -- I'M SORRY -- 2004-24, WHICH, I BELIEVE,
3 IS THE NEXT DOCUMENT AT BO17916.

4 A. OKAY.

5 Q. NOW, IT SUPERSEDES -- IT SAYS THE 2003-31.
6 AND THIS DOCUMENT, YOU'RE NOW UNDER THE EXECUTIVE
7 MANAGEMENT?

8 A. YES.

9 Q. AND DO YOU KNOW WHY THAT CHANGE WAS MADE?

10 A. YES.

11 Q. WHY IS THAT?

12 A. THAT HAD TO DO WITH THE 401(A) BENEFIT.

13 WHEN PATRICIA CASJENS LEFT EMPLOYMENT, THE 401(A)

14 REQUIRED TWO PARTICIPANTS. SO THERE WERE TWO

15 PARTICIPANTS IN THE EXECUTIVE MANAGEMENT. SO HE

16 MOVED ME INTO THAT CATEGORY. HE, THE C.A.O.

17 Q. DID YOUR DUTIES CHANGE WHEN YOU MOVED INTO
18 THAT CATEGORY?

19 A. NO.

20 Q. NOW, IF I COULD DIRECT YOUR ATTENTION THEN
21 TO 2005-10, WHICH IS AT -- THE NEXT DOCUMENT 2005-9.

22 THERE'S NOT A BATES STAMP ON IT, BUT IT'S
23 THE VERY NEXT DOCUMENT SUCCEEDING.

24 A. YES.

25 Q. DO YOU SEE THAT?

1 A. YES.

2 Q. NOW, ON THIS DOCUMENT, THERE IS NO
3 REFERENCE TO CONTRACTS. DO YOU KNOW WHY THAT WAS
4 TAKEN OUT?

5 A. I DON'T.

6 Q. SO, NOW, NONE OF THE INDIVIDUALS UNDER
7 CONTRACTS, SUCH AS YOURSELF AND ALL THAT, ARE EVEN
8 REFERENCED IN THE SALARY SCHEDULE FOR THE CITY;
9 CORRECT?

10 A. CORRECT.

11 Q. DIRECTING YOUR ATTENTION TO 2005 --

12 THE COURT: JUST TO BACK UP AND KIND OF
13 FINISH THE LOOP HERE. AND NOW WE'VE GONE TO BIWEEKLY
14 SALARIES; IS THAT RIGHT?

15 THE WITNESS: OH, I SEE THAT.

16 THE COURT: IS THAT THE CASE?

17 THE WITNESS: YES.

18 THE COURT: OKAY.

19 THE WITNESS: YES, YES.

20 BY MR. KENNEDY:

21 Q. 2005-10 IS NOW BATES STAMP BO77896. IT IS
22 THE NEXT SUCCEEDING DOCUMENT, AND IT'S FOR THE
23 MAY 2ND, 2005, RESOLUTION.

24 NOW, WE HAVE THE BUSINESS DEVELOPMENT
25 COORDINATOR COMING IN. THAT'S MR. GONZALEZ; RIGHT?

1 A. YES.

2 Q. OKAY. NOW, MR. GONZALEZ DID SPECIAL
3 PROJECTS AS WELL?

4 A. HE DID WHATEVER WAS ASSIGNED TO HIM.

5 Q. AND HE WAS UNDER THE MANAGEMENT -- SIMILAR
6 TYPE OF OBLIGATION BUT UNDER MANAGEMENT BECAUSE HIS
7 BENEFITS PACKAGE WAS NOT THE SAME AS YOURS?

8 A. NOR WAS THE LEVEL OF WORK.

9 Q. BUT THE TYPE OF WORK --

10 A. CORRECT.

11 Q. -- WAS THE SAME?

12 A. NO.

13 Q. NO?

14 A. ONLY IN TERMS OF SPECIAL ASSIGNMENTS, YES.

15 Q. NOW, IF I DIRECT YOUR ATTENTION TO 2007-25
16 WHICH IS ON THE 5/7/07 AGENDA, AND THAT WOULD BE THE
17 BATES STAMP BO17202.

18 A. YES.

19 Q. DO YOU SEE THAT?

20 A. YES.

21 Q. NOW, THE BUSINESS DEVELOPMENT COORDINATOR
22 IS NOW UNDER ADMINISTRATIVE MANAGEMENT. DO YOU KNOW
23 WHY THAT CHANGE OCCURRED?

24 A. NO, I DON'T.

25 Q. NOW, MS. SPACCIA, YESTERDAY YOU INDICATED

1 TO ME THAT ON CALPERS EXHIBIT NO. 31, I BELIEVE YOU
2 INDICATED THAT THIS LETTER WAS NOT -- YOU DID NOT
3 WRITE THIS LETTER IN RESPONSE TO THE 2006 AUDIT, BUT
4 IT WAS SEPARATE AND INDEPENDENT FROM THAT.

5 A. I'M SORRY?

6 Q. DID YOU WRITE THIS -- YESTERDAY DID YOU
7 TESTIFY THAT YOU DID NOT WRITE THIS IN RESPONSE TO
8 THE 2006 AUDIT?

9 A. THAT I DID NOT?

10 Q. ALL RIGHT.

11 THE COURT: WHY DID YOU WRITE EXHIBIT 31?

12 THE WITNESS: THIS WAS THE RESULT OF THE
13 2006 AUDIT AND CONCERNS THAT WAS BROUGHT TO OUR
14 ATTENTION REGARDING THE -- WHAT'S THE WORD? --
15 QUESTION AS TO WHETHER OR NOT IT COULD LOOK LIKE
16 PENSION SPIKING. AND SO WE WERE TOLD THAT WE WOULD
17 NEED TO ASK FOR AN EXCEPTION.

18 BY MR. KENNEDY:

19 Q. AND WHO SPECIFICALLY WAS THE ISSUE RAISED
20 WITH ON SPIKING?

21 A. WHO -- FROM CALPERS?

22 Q. ON THE 2006 AUDIT?

23 A. YES. MICHAEL --

24 Q. NO. WHO WERE THEY CONCERNED ABOUT HAVING
25 THEIR PENSIONS SPIKED?

1 A. ALL THE EXECUTIVE MANAGEMENT AND THE
2 ADMINISTRATIVE MANAGEMENT BECAUSE THEY HAD ALL
3 RECEIVED 40-SOMETHING PERCENT INCREASES.

4 Q. ALL OF THE ADMINISTRATIVE AND EXECUTIVE
5 MANAGEMENT?

6 A. YES.

7 Q. AND THAT'S YOUR RECOLLECTION?

8 A. YES. THEY WENT TO AN AT-WILL STATUS FOR
9 EVERYONE AT THIS POINT.

10 Q. COULD I DIRECT YOUR ATTENTION TO YOUR
11 EXHIBIT, AND I'M LOOKING FOR THE -- YOU HAVE THE
12 PENSION AUDIT FOR 2006?

13 MR. BRAUN: IT'S ALSO 31.

14 MR. KENNEDY: 31. THANK YOU. IT'S
15 SPACCIA'S 31, AND HERE WE HAVE THE 2006 AUDIT. THE
16 ISSUE, I BELIEVE, YOU'RE TALKING ABOUT IS ITEM 10,
17 AND IN FACT IT'S A FINDING -- IT'S AN OBSERVATION.

18 THE COURT: WHICH PAGE ARE WE ON?

19 MR. KENNEDY: I'M TURNING TO THE PAGE.

20 MR. BRAUN: IT'S 809, LAST THREE LETTERS OF
21 THE BELL BATES STAMP.

22 MR. KENNEDY: 809?

23 MR. BRAUN: YEAH.

24 THE COURT: THANK YOU.

25 TELL YOU WHAT. WE'LL BE IN RECESS HERE FOR

1 FIVE MINUTES WHILE YOU FIND THAT OUT.

2 (WHEREUPON, A RECESS WAS HELD
3 FROM 10:40 A.M. TO 10:41 A.M.)

4 THE COURT: OKAY. WE'RE BACK ON THE
5 RECORD.

6 MR. KENNEDY: IT'S ON PAGE 8. IT'S BATES
7 STAMP NUMBERS -- THE LAST NUMBER IS 800, LAST THREE
8 DIGITS.

9 THE COURT: THANK YOU.

10 BY MR. KENNEDY:

11 Q. DO YOU HAVE THAT IN FRONT OF YOU,
12 MS. SPACCIA?

13 A. YES.

14 Q. IT'S UNDER "OBSERVATION," AND IT'S
15 ADDRESSING JUST MR. RIZZO'S 47 PERCENT INCREASE;
16 CORRECT?

17 A. YES.

18 Q. SO YOUR LETTER WAS IN RESPONSE TO THE
19 SUGGESTION -- THE RECOMMENDATION THAT THEY SEEK, OR
20 THE SUGGESTION THAT THEY COULD SEEK IF THEY WANTED TO
21 AN EXCEPTION?

22 A. YES.

23 Q. BUT THE OBSERVATION WAS JUST FOR MR. RIZZO
24 ONLY?

25 A. YES, THE OBSERVATION.

1 THE COURT: SO DID YOU TAKE THE CONCERN
2 THERE AND APPLY IT TO ALL PEOPLE IN THE EXECUTIVE
3 MANAGEMENT, ADMINISTRATIVE MANAGEMENT? IS THAT WHAT
4 YOU DID?

5 THE WITNESS: THAT'S WHAT I WAS INSTRUCTED
6 TO DO, YES.

7 THE COURT: WHO TOLD YOU TO DO THAT?

8 THE WITNESS: ROBERT RIZZO.

9 BY MR. KENNEDY:

10 Q. AND ARE YOU AWARE THE CRITERIA FOR AN
11 EXCEPTION UNDER 20636(E) (2) APPLIES TO PEOPLE WHO ARE
12 NOT IN A GROUP OR CLASS?

13 A. PROBABLY NOT. I DON'T RECALL. IT'S BEEN
14 SO LONG.

15 Q. NOW, JUST A COUPLE MORE QUESTIONS. YOU
16 INDICATED THE OTHER DAY, I BELIEVE, THAT YOU DIDN'T
17 RECEIVE CIRCULAR LETTERS?

18 A. I DIDN'T PERSONALLY, NO.

19 MR. KENNEDY: AND I'D LIKE TO HAVE MARKED
20 IF I COULD, YOUR HONOR, FOR IDENTIFICATION CALPERS
21 NEXT IN ORDER, IT'S A NOVEMBER 17, 1995, CIRCULAR
22 LETTER FROM CALPERS REGARDING THE IMPLEMENTATION OF
23 SB53.

24 HAVE YOU SEEN THAT DOCUMENT BEFORE?

25 THE COURT: HOLD ON. IT WILL BE MARKED AS

1 EXHIBIT 35.

2 (DEPARTMENT'S EXHIBIT NUMBER 32 WAS MARKED FOR
3 IDENTIFICATION BY THE COURT AND RECEIVED
4 INTO EVIDENCE.)

5 THE WITNESS: DOESN'T RING A BELL.

6 BY MR. KENNEDY:

7 Q. DO YOU RECOGNIZE THE HANDWRITING ON THE TOP
8 THERE? IT SAYS "ANGELA."

9 A. NO, NO.

10 Q. NOW --

11 A. OH, THIS MIGHT HAVE BEEN FROM LINDA
12 HERINGER.

13 Q. OKAY. SO YOU HAVE SEEN THIS DOCUMENT
14 BEFORE?

15 A. I MAY HAVE. I REMEMBER HAVING DISCUSSIONS
16 WITH HER ABOUT PENSION SPIKING AND SOMETHING CALLED
17 "E.P.M.C." RELATED TO THE POLICE OFFICERS, YES.

18 MR. KENNEDY: YOUR HONOR, EXCEPT FOR MOVING
19 IN THE EXHIBITS, I WOULD HAVE NO OTHER QUESTIONS AT
20 THIS TIME.

21 THE COURT: OKAY. DOES THE CITY HAVE
22 QUESTIONS?

23 MR. ONSTOT: YES, YOUR HONOR.

24 ///

25 ///

1 REDIRECT EXAMINATION

2 BY MR. ONSTOT:

3 Q. MS. SPACCIA, MR. KENNEDY ASKED YOU IF YOU
4 EVER HAD A DUTY STATEMENT FOR YOUR POSITION. HAVE
5 YOU EVER HAD A JOB DESCRIPTION?

6 A. AT THE CITY OF BELL?

7 Q. CORRECT.

8 A. NO.

9 Q. DO YOU KNOW IF ANYONE HAD A JOB DESCRIPTION
10 AT THE CITY OF BELL?

11 A. NO.

12 Q. WAS IT YOUR UNDERSTANDING THEN THAT ALL OF
13 THE EMPLOYEES AT THE CITY OF BELL WHEN YOU WERE
14 THERE, THEIR DUTIES WERE DEFINED BY THE MUNICIPAL
15 CODE AND WHAT MR. RIZZO ASKED THEM TO DO?

16 A. YES.

17 Q. ALSO, YESTERDAY YOU WERE ASKED A NUMBER OF
18 QUESTIONS REGARDING AN E-MAIL YOU SENT TO
19 RANDY ADAMS, IN PARTICULAR THE ONE THAT MENTIONED
20 THAT YOU CAREFULLY DRAFT THE EMPLOYMENT CONTRACTS NOT
21 TO DRAW ATTENTION TO PAY. DO YOU RECALL THAT?

22 A. YES.

23 Q. WHAT OTHER THINGS DID THE CITY OF BELL DO
24 TO NOT DRAW THE PUBLIC'S ATTENTION TO THE PAY OF THIS
25 ADMINISTRATIVE AND EXECUTIVE MANAGEMENT PERSONNEL?

1 A. WELL, WHAT I'VE LEARNED THROUGH DISCOVERY
2 IS THAT THIS --

3 Q. LET ME STOP YOU THERE. YOUR OWN PERSONAL
4 KNOWLEDGE, PLEASE, NOT WHAT YOU LEARNED THROUGH THESE
5 PROCEEDINGS?

6 A. ACTUALLY, I HAVE NONE. AND THAT WAS NOT --
7 I ACTUALLY, LAST NIGHT, STARTED SECOND GUESSING
8 MYSELF ON THAT E-MAIL.

9 Q. HOW SO?

10 A. BECAUSE I STARTED THINKING MAYBE THAT WAS
11 ROBERT RIZZO'S INTENTION WHEN HE SAID THAT TO ME.
12 BUT MAYBE I WAS JUST TOO STUPID TO REALIZE IT.

13 BECAUSE WHAT I WROTE WASN'T WHAT WAS IN MY
14 HEART AT THE TIME. I WASN'T WRITING ABOUT HIDING
15 SOMETHING FROM THE PUBLIC. AND WHEN YOUR HONOR PUT
16 IT TO ME THAT WAY, IT REALLY STUNNED ME AND MADE ME
17 REALIZE --

18 THE COURT: MA'AM, I CAN'T SEE ANY OTHER
19 EXPLANATION.

20 THE WITNESS: RIGHT. AND I READ IT AGAIN.
21 THAT'S WHY I'M SAYING I THINK MAYBE THAT'S WHAT HE
22 INTENDED BUT -- AND I SAY THAT BECAUSE OF WHAT I'VE
23 LEARNED THROUGH DISCOVERY AND SOME OF THE OTHER
24 THINGS THAT HE DID. BUT I WAS COMPLETELY UNAWARE OF
25 THAT.

1 BY MR. ONSTOT:

2 Q. WHAT WERE SOME OF THE OTHER THINGS THAT HE
3 DID?

4 A. THROUGH DISCOVERY, I LEARNED THAT HE LIED
5 TO THE PUBLIC THROUGH A PUBLIC RECORDS REQUEST AND --

6 MR. KENNEDY: YOUR HONOR --

7 THE WITNESS: -- HE DID FRAUDULENT
8 CONTRACTS.

9 MR. KENNEDY: -- I'D LIKE TO POSE AN
10 OBJECTION TO COMPETENCY OF THE WITNESS.

11 THE COURT: SUSTAINED.

12 BY MR. ONSTOT:

13 Q. WAS ONE OF THE THINGS THAT BELL DID TO NOT
14 DRAW THE PUBLIC'S ATTENTION TO THE PAY OF THE
15 ADMINISTRATIVE OR EXECUTIVE MANAGEMENT STAFF WAS TO
16 NOT BRING THEIR EMPLOYMENT CONTRACTS BEFORE THE CITY
17 COUNCIL PRIOR TO 2006?

18 A. NO.

19 THE COURT: OKAY. I DON'T UNDERSTAND THE
20 QUESTION AND ANSWER AS PHRASED.

21 DID THE CITY OF BELL BRING THEIR CONTRACTS
22 IN FRONT OF THE CITY COUNCIL?

23 THE WITNESS: UP UNTIL IT BECAME A CHARTER
24 CITY, YES.

25 THE COURT: AND AFTER THAT?

1 THE WITNESS: NO.

2 THE COURT: AND WHEN WAS THAT?

3 THE WITNESS: 2006.

4 BY MR. ONSTOT:

5 Q. DID YOU ATTEND ALL CITY COUNCIL MEETINGS?

6 A. NO.

7 Q. DID YOU ATTEND ANY CITY COUNCIL MEETINGS?

8 A. YES.

9 Q. DID YOU ATTEND THE -- STRIKE THAT.

10 EXHIBIT 9 IS YOUR EMPLOYMENT CONTRACT THAT
11 WAS EFFECTIVE THE FIRST DAY OF JULY OF 2005.

12 DO YOU RECALL IF YOU ATTENDED THE CITY
13 COUNCIL MEETING WHEN THAT WAS DISCUSSED?

14 A. I RECALL THAT I SPECIFICALLY DID NOT
15 ATTEND.

16 Q. AND AS YOU SIT HERE TODAY, WAS YOUR
17 EMPLOYMENT CONTRACT FOR 2005 ON THE CITY COUNCIL
18 AGENDA?

19 A. IT WAS PART OF THE BUDGET PACKET, YES.

20 Q. MY QUESTION WAS WAS IT ON THE AGENDA?

21 A. SEPARATELY?

22 Q. SEPARATELY, YES.

23 A. NONE OF THEM WERE. ALL 12 WERE NOT.

24 Q. AGAIN, WITH YOUR 2005 CONTRACT, AS YOU SIT
25 HERE TODAY, DO YOU HAVE ANY MINUTES OF THE CITY

1 COUNCIL MEETING WHERE YOUR SPECIFIC CONTRACT WAS
2 APPROVED BY THE CITY COUNCIL?

3 A. NO.

4 Q. YOUR CONFLICT THAT YOU HAD WITH MR. RIZZO,
5 REGARDING HIM TELLING YOU TO WRITE THINGS TO MINIMIZE
6 DRAWING THE PUBLIC'S ATTENTION TO EMPLOYMENT
7 CONTRACTS, DID YOU HAVE OTHER DISAGREEMENTS WITH
8 MR. RIZZO'S MANAGEMENT STYLE?

9 A. YES, I DID.

10 Q. AND DID YOU CONFRONT HIM ABOUT IT?

11 A. I DID.

12 Q. WAS ANY CHANGES MADE TO YOUR KNOWLEDGE?

13 A. YES.

14 Q. NOW, YESTERDAY YOU WERE ASKED HOW THE
15 PUBLIC COULD FIND OUT HOW MUCH YOUR SALARY WAS, AND
16 YOU SAID THEY COULD VERY EASILY DO IT BY A VEHICLE
17 CALLED A PUBLIC RECORDS ACT REQUEST. DO YOU RECALL
18 THAT?

19 A. YES.

20 Q. WHAT WAS THE PROCESS THAT THE CITY OF BELL
21 USED AT YOUR TENURE THERE TO PROCESS A PUBLIC RECORDS
22 ACT REQUEST THAT WAS GIVEN TO THE CITY?

23 A. I'M NOT ENTIRELY SURE BECAUSE I WASN'T PART
24 OF THAT, BUT I BELIEVE THAT YOU JUST WOULD GO TO THE
25 ADMINISTRATIVE OFFICE AT CITY HALL. AND THERE WOULD

1 BE A FORM PROVIDED FOR IT, AND YOU FILL OUT THE FORM,
2 AND THE CITY CLERK HANDLES IT.

3 Q. AND DO YOU KNOW WHAT THE CITY CLERK DOES
4 WITH IT?

5 A. NO, NOT EXACTLY, I DON'T.

6 Q. SO THEN YOU DON'T KNOW THAT THE PUBLIC CAN
7 OBTAIN ACCESS AS TO HOW MUCH YOUR SALARY WAS BECAUSE
8 YOU DON'T KNOW THE PROCEDURE THAT WAS USED. IS THAT
9 FAIR?

10 A. THAT WOULD BE FAIR.

11 Q. DO YOU RECALL EVER RESPONDING TO ANY PUBLIC
12 RECORDS ACT REQUEST ON ANY SUCH EMPLOYEE OF BELL?

13 A. NO, NEVER.

14 Q. DID THE BELL COUNCIL MEET TWICE MONTHLY
15 WHILE YOU WERE THERE?

16 A. I DON'T RECALL.

17 Q. ARE YOU FAMILIAR WITH THE TERM "AGENDA
18 PACKET"?

19 A. YES.

20 Q. WHAT IS AN AGENDA PACKET?

21 A. THAT WOULD BE EVERYTHING THAT ALL OF THE
22 DEPARTMENT HEADS AND MANAGEMENT PROVIDED THROUGH BOB
23 RIZZO TO BE PRESENTED TO THE CITY COUNCIL.

24 Q. SO BASICALLY IT'S AN AGENDA WITH STAFF
25 REPORTS, BACKUP MATERIALS, THINGS LIKE THAT, THAT WAS

1 PRESENTED TO COUNCIL MEMBERS AND SENIOR STAFF PRIOR
2 TO COUNCIL MEETINGS FOR ITEMS THAT WOULD BE ON THE
3 UPCOMING AGENDA PACKET?

4 A. CORRECT.

5 Q. DID YOU REGULARLY RECEIVE ANY AGENDA
6 PACKETS?

7 A. I DID.

8 Q. AND IT WAS THE CITY CLERK'S FUNCTION TO
9 PREPARE THOSE AGENDA PACKETS; IS THAT CORRECT?

10 A. CORRECT.

11 Q. DO YOU KNOW IF AGENDA PACKETS WERE MADE
12 AVAILABLE TO THE PUBLIC AT ANY TIME THAT YOU WERE AT
13 BELL?

14 A. I DO NOT KNOW.

15 Q. THE CITY CLERK WOULD KNOW THAT?

16 A. THE CITY CLERK SHOULD KNOW THAT.

17 Q. NOW, YOUR POSITION BOTH AS ASSISTANT C.A.O.
18 AND ASSISTANT TO THE CITY C.A.O., WAS FUNDED FROM A
19 NUMBER OF DIFFERENT FUNDS; IS THAT CORRECT?

20 A. THE ONLY THING I RECALL, WHEN I FIRST
21 STARTED WHEN I WAS IN FINANCE, IS THAT IT WAS FUNDED
22 FROM TWO FUNDS. I LATER LEARNED THAT APPARENTLY THAT
23 CHANGED, THROUGH DISCOVERY DOCUMENTS.

24 Q. OKAY. DURING YOUR TENURE AT BELL, DID YOU
25 KEEP ANY TIME SHEETS OR TIME RECORDS AS TO THE

1 PROJECTS THAT YOU DID AND TO WHAT FUNDS TO CHARGE
2 THEM TO?

3 A. NO.

4 Q. WHEN YOU STARTED WITH THE CITY OF BELL, YOU
5 MENTIONED THAT YOU WERE MENTORING LOURDES GARCIA, BUT
6 YOU DIDN'T SUPERVISE ANY STAFF. DID YOU HAVE ANY
7 DECISION-MAKING AUTHORITY IN THAT CAPACITY?

8 A. I DID AT THAT TIME, YES.

9 Q. OVER WHAT MATTERS?

10 A. OVER FINANCIAL MATTERS.

11 Q. COULD YOU BE MORE SPECIFIC?

12 A. WELL, FOR EXAMPLE, I WAS RESPONSIBLE FOR
13 CONDUCTING WORKING WITH THE AUDITORS. SO DECISION
14 MAKING, YOU KNOW, AS IT RELATES TO ANYTHING TO DO
15 WITH THE AUDITORS, IF WE WERE GOING TO ISSUE A BOND
16 OR NOT ISSUE A BOND, REFUND A BOND OR NOT.

17 BUT NOT DAILY SUPERVISION, BUT EVERYTHING
18 OTHER THAN THAT AS TO FINANCE.

19 Q. WERE ANY OF YOUR CONTRACTS, YOUR EMPLOYMENT
20 CONTRACTS, AT BELL NEGOTIATED?

21 A. MINE WAS, THE FIRST ONE, SOMEWHAT
22 NEGOTIATED.

23 Q. HOW SO?

24 A. WELL, AS I SAID EARLIER, HE TOLD ME WHAT HE
25 WANTED TO PAY ME, AND I NEEDED HIM TO ASSURE ME THAT

1 I WOULD BE PUT BACK IN THE CALPERS SYSTEM IMMEDIATELY
2 AND THAT THERE WOULD BE NO PROBATIONARY --

3 (TELEPHONIC INTERRUPTION.)

4 BY MR. ONSTOT:

5 Q. ANYTHING OTHER THAN CALPERS?

6 A. I DON'T RECALL.

7 Q. WHAT ABOUT SUBSEQUENT CONTRACTS, WERE THEY
8 NEGOTIATED?

9 A. MINE WERE NOT.

10 Q. MR. RIZZO JUST SAID THIS IS WHAT YOUR
11 INCREASE IN COMPENSATION OR WHATEVER THE CHANGE IN
12 TERMS WERE GOING TO BE, AND THEN YOU TYPED OUT THE
13 CONTRACT?

14 A. EXACTLY.

15 Q. NOW, I THINK YOU MENTIONED THAT THE
16 INCREASES IN THE SALARIES FOR THE MANAGEMENT OF THE
17 ADMINISTRATIVE SENIOR STAFF ARE REFLECTED IN THE
18 BUDGET. THAT'S EXHIBIT 21, AND I THINK IT GOES FROM
19 2005 TO 2010. DO YOU RECALL THAT?

20 A. YES.

21 Q. IF THOSE SALARIES ARE REFLECTED IN THAT
22 BUDGET THAT WAS PREPARED IN ABOUT 2004-2005, IS IT
23 YOUR UNDERSTANDING THAT THOSE SALARY INCREASES MUST
24 HAVE BEEN ANTICIPATED IN 2004 AND 2005?

25 A. THE 2005 CONTRACTS ANTICIPATED FOUR YEARS

1 OF INCREASES, YES.

2 Q. SO, FOR EXAMPLE, IN ONE OF YOUR EMPLOYMENT
3 CONTRACTS YOU RECEIVED FROM THE CITY OF BELL, THEY
4 OFFERED TO PAY YOUR F.I.C.A., YOUR SOCIAL SECURITY;
5 CORRECT?

6 A. YES.

7 Q. AND I THINK THAT WAS YOUR 2008 CONTRACT?

8 A. OH, YES.

9 Q. SO IT WAS ANTICIPATED IN 2004-2005 THAT YOU
10 WOULD RECEIVE FROM THE CITY OF BELL PAYMENT FOR YOUR
11 F.I.C.A. OBLIGATIONS IN 2008 BECAUSE IT'S REFLECTED
12 IN THE 2008 BUDGET?

13 A. NO.

14 Q. WHY NOT?

15 A. AFTER I DID THAT FIVE-YEAR BUDGET, THERE
16 WERE NEW BUDGETS THAT WERE CRATED BY LOURDES GARCIA
17 AND ADAM MONTOYA. SO AS THERE WERE CHANGES, THEN
18 THOSE NEW BUDGETS REFLECTED THOSE CHANGES.

19 SO WHILE IT WAS A FIVE-YEAR BUDGET, THERE
20 WAS STILL -- EVERY YEAR, THEY DID ANNUAL BUDGET
21 CHANGES.

22 Q. NOW, IN THE NUMBER OF CONTRACTS THAT YOU
23 SAID YOU TYPED, YOU SAID, I THINK, YESTERDAY YOU
24 PERFORMED SECRETARIAL FUNCTIONS IN DOING THOSE. WHY
25 DIDN'T YOU HAVE A SECRETARY TYPE THOSE?

1 (TELEPHONIC INTERRUPTION.)

2 THE WITNESS: SHOULD WE HOLD --

3 THE COURT: YEAH. LET'S HOLD ON.

4 OKAY. HOW COME YOU TYPED THEM?

5 THE WITNESS: ROBERT RIZZO ASKED ME TO TYPE
6 THEM. THE EXPLANATION I WAS GIVEN AND I ACCEPTED WAS
7 THAT HE DIDN'T WANT THE FINANCE DEPARTMENT TO TYPE
8 THEM BECAUSE IT WAS AN INTERNAL CONTROL SITUATION
9 WHERE THEY SHOULDN'T CREATE THE ORIGINATING DOCUMENTS
10 SINCE THEY WERE RESPONSIBLE FOR PROCESSING THE
11 PAYROLL ASPECTS.

12 BECAUSE PERSONNEL AND PAYROLL REPORTED TO
13 LOURDES GARCIA.

14 BY MR. ONSTOT:

15 Q. WELL, WEREN'T THERE OTHER SECRETARIES IN
16 THE DEPARTMENTS OTHER THAN FINANCE AT THAT TIME?

17 A. ACTUALLY, I DON'T KNOW THAT THERE WERE ANY
18 SECRETARIES.

19 Q. AT ANY TIME DID YOU HAVE ANY DISCUSSIONS
20 WITH ANYBODY IN FINANCE OR MR. RIZZO AS TO FROM WHAT
21 SOURCES YOUR PAY INCREASES WOULD COME FROM?

22 A. NO.

23 Q. AT ANY TIME DID YOU CONSIDER THAT THE PAY
24 INCREASES WERE HIGH AND THAT YOU SHOULD DISCUSS THEM
25 WITH SOMEBODY OUTSIDE THE CITY?

1 A. OUTSIDE OF THE CITY?

2 Q. CORRECT.

3 A. HONESTLY, NO. I NEVER -- I KNOW THIS
4 SOUNDS IGNORANT, BUT I ALWAYS LOOKED AT THE SALARIES
5 SPREADSHEET, AND I KIND OF GAUGED WHERE I WAS. I
6 KNEW I WAS LESS THAN HALF OF ROBERT RIZZO AND A
7 LITTLE BIT MORE THAN THE DIRECTORS, AND I WAS GOOD
8 WITH THAT. AND THAT'S AS FAR AS I THOUGHT ABOUT IT.

9 I WASN'T COMPARING MYSELF TO ANY OTHER
10 CITY. ONE OF THE NEIGHBORING CITIES, I KNOW THEY
11 WERE MAKING FAR MORE THAN OUR SALARIES. BUT I NEVER
12 COMPARED BECAUSE I WAS PLANNING ON RETIRING SOON.

13 Q. A NEIGHBORING CITY WERE MAKING MORE THAN
14 YOUR SALARIES IN BELL?

15 A. CITY OF VERNON, YES.

16 Q. YOU HAD A SALARIES CHART FOR VERNON THAT
17 YOU THOUGHT WAS COMPARABLE?

18 A. NO. I WAS TOLD, WHEN I FIRST WENT TO WORK
19 THERE, BY THE WOMAN THAT I REPLACED. I MADE A
20 COMMENT THAT, GOSH -- ROBERT RIZZO WAS MAKING ABOUT
21 \$350,000 AT THE TIME.

22 AND I SAID, "GOSH, HE MAKES A LOT."

23 AND SHE SAID, "WELL, THAT'S NOTHING. BRUCE
24 MALKENHORST AT VERNON MAKES \$700,000 A YEAR. IT'S
25 WHATEVER THE COUNCIL APPROVES IS WHAT'S ACCEPTABLE."

1 MR. ONSTOT: THANK YOU. NOTHING FURTHER.

2 THE COURT: OKAY. I'VE MISMARKED THE FIRST
3 CIRCULAR LETTER AS 35. I'VE REMARKED IT AS EXHIBIT
4 32.

5 AND WE'LL BE IN RECESS FOR ABOUT TEN
6 MINUTES, AND WE'LL HAVE ANY REDIRECT THEN.

7 (WHEREUPON, A RECESS WAS HELD
8 FROM 11:02 A.M. TO 11:11 A.M.)

9 THE COURT: BACK ON THE RECORD.
10 REDIRECT.

11

12 REDIRECT EXAMINATION

13 BY MR. BRAUN:

14 Q. MS. SPACCIA, WOULD YOU LOOK AT NUMBER 9 IN
15 THE CALPERS VOLUME. THAT WOULD BE YOUR --

16 A. YES.

17 Q. -- SECOND ADDENDUM. DO YOU SEE THAT?

18 A. YES.

19 Q. WOULD YOU TURN TO THE SECOND PAGE OF THAT.

20 A. OKAY.

21 Q. THE SIGNATURE OF GEORGE MIRABEL, ARE YOU
22 FAMILIAR WITH THAT SIGNATURE?

23 A. YES.

24 Q. YOU KNOW GEORGE MIRABEL?

25 A. YES.

1 Q. AND ARE YOU FAMILIAR WITH HIS DUTIES, HIS
2 WORK HABITS, AND ATTENTIVENESS AS MAYOR OF THE CITY?

3 A. YES.

4 Q. WOULD YOU DESCRIBE THAT TO THE COURT.

5 A. GEORGE MIRABEL WAS PROBABLY THE MOST
6 METICULOUS OF ALL COUNCIL MEMBERS AND ASKED MANY,
7 MANY QUESTIONS. SO HE WOULD NOT HAVE SIGNED THESE
8 2005 AGREEMENTS HAD THEY NOT BEEN PRESENTED PROPERLY.

9 MR. KENNEDY: OBJECTION. MOVE TO STRIKE AS
10 SPECULATION.

11 MR. ONSTOT: JOIN.

12 THE COURT: SUSTAINED.

13 BY MR. BRAUN:

14 Q. BASED ON YOUR EXPERIENCE WITH MR. MIRABEL'S
15 ATTENTIVENESS, DID THAT CREATE AN OPINION -- DID THAT
16 LEAD YOU TO BELIEVE THAT THIS PARTICULAR DOCUMENT HAD
17 BEEN PRESENTED AT THE CITY COUNCIL?

18 MR. KENNEDY: OBJECTION. SAME OBJECTION
19 AND COMPETENCY.

20 MR. BRAUN: GOES TO HER MENTAL STATE, YOUR
21 HONOR.

22 THE COURT: OVERRULED.

23 THE WITNESS: ABSOLUTELY.

24 BY MR. BRAUN:

25 Q. NOW, LET'S LOOK AT YOUR EXHIBITS NUMBER 39.

1 UNFORTUNATELY, I HAVE TO GO BACK TO THE E-MAILS.

2 MS. SPACCIA, FIRST, BEFORE WE GET INTO THE
3 ADAMS ISSUE AGAIN, WOULD YOU TELL THE COURT SORT OF A
4 BACKGROUND TO THE DECISION BY MR. RIZZO, AS YOU KNOW
5 IT, TO RECRUIT AN OUTSIDE CHIEF OF POLICE.

6 A. YES. HE FELT THAT HE WAS HAVING PROBLEMS
7 WITH THE POLICE DEPARTMENT. THERE WERE A NUMBER OF
8 LAWSUITS, AND HE WAS CONCERNED THAT HIS INTERNAL
9 PROMOTIONS WEREN'T REALLY HIS BEST DECISIONS, IF YOU
10 WILL.

11 AND HE DECIDED WHAT HE NEEDED TO DO WAS GO
12 RECRUIT AN OUTSIDE POLICE CHIEF WHO HAD AN IMPECCABLE
13 REPUTATION SO THAT HE COULD INSTITUTE CHANGE WITHIN
14 THE POLICE DEPARTMENT IN ORDER TO REDUCE THE
15 LITIGATION COSTS WE WERE INCURRING.

16 Q. WAS THE CITY OF BELL -- WERE THERE A NUMBER
17 OF LAWSUITS THAT YOU WERE AWARE OF INVOLVING THE
18 POLICE DEPARTMENT?

19 A. YES. THERE WERE QUITE A FEW.

20 Q. AND PRIOR TO MR. ADAMS BEING RECRUITED, ARE
21 YOU FAMILIAR WITH WHICH OFFICERS HAD BECOME THE CHIEF
22 OF POLICE THERE?

23 A. YES.

24 Q. WHO WERE THERE?

25 A. WHICH OFFICERS HAD BECOME --

1 Q. YES.

2 A. WELL, I KNEW OF DAVID REED, WHO WAS
3 INTERNAL AND PROMOTED. THEN DENNIS TAVERNELLI WAS
4 PROMOTED; THEN ANDREAS PROBST WAS PROMOTED; AND THEN
5 MICHAEL CHAVEZ WAS PROMOTED.

6 Q. SO THERE WERE FOUR CHIEFS OF POLICE WHILE
7 YOU WERE THERE, PRIOR TO MR. ADAMS?

8 A. YES.

9 Q. AND IN TERMS OF BRINGING MR. ADAMS IN, TO
10 YOUR KNOWLEDGE, HOW DID MR. RIZZO BECOME AWARE OF
11 MR. ADAMS?

12 A. THROUGH THE ORANGE COUNTY SHERIFF'S
13 RECRUITMENT PROCESS.

14 Q. AND HAD YOU KNOWN MR. ADAMS PRIOR TO YOUR
15 EMPLOYMENT WITH BELL?

16 A. YES.

17 Q. HOW DID YOU KNOW HIM?

18 A. I WORKED WITH HIM AT CITY OF VENTURA FOR
19 ALMOST 11 YEARS.

20 Q. WHEN MR. RIZZO DECIDED TO CONTACT
21 MR. ADAMS, DID YOU DO IT, OR DID HE DO IT? OR HOW
22 WAS THAT CONTACT MADE?

23 A. HE ASKED ME TO MAKE THE FIRST CONTACT.

24 Q. WHAT DID YOU DO?

25 A. I PICKED UP THE TELEPHONE AND CALLED HIM

1 AND TOLD HIM THAT OUR C.A.O. WAS INTERESTED IN
2 SPEAKING WITH HIM, IF HE WOULD AT ALL CONSIDER COMING
3 TO THE CITY OF BELL.

4 Q. AND AT THAT POINT WAS HE STILL CHIEF OF
5 POLICE IN GLENDALE?

6 A. YES, HE WAS.

7 Q. OKAY. NOW, AT THE CITY OF BELL, WAS THERE
8 ANY PLAN OF WHETHER OR NOT HE WAS GOING TO REPLACE
9 ONE OR TWO POSITIONS AT CITY OF BELL?

10 A. YES. THERE WAS THE CHIEF OF POLICE AND
11 THEN THE ASSISTANT CHIEF OF POLICE POSITION, AND HE
12 WAS CONSOLIDATING THAT INTO ONE CHIEF OF POLICE.

13 Q. TO GIVE THE COURT AN IDEA, HOW MANY
14 OFFICERS WERE IN THE CITY OF BELL POLICE WHEN YOU
15 WERE THERE?

16 A. ABOUT 23.

17 Q. NOW, IN TERMS OF THE POLITICS OF THE CITY
18 OF BELL AT THAT TIME, WAS THERE ANY PROBLEM BRINGING
19 AN OUTSIDE CHIEF OF POLICE IN THAT YOU WERE AWARE OF?

20 MR. ONSTOT: I WILL OBJECT AS BEYOND THE
21 SCOPE.

22 THE COURT: WELL, I THINK IT'S GOING TO GO
23 TO THE E-MAILS; IS THAT CORRECT?

24 MR. BRAUN: YES.

25 MR. ONSTOT: I'LL WITHDRAW THE OBJECTION.

1 THE COURT: THANK YOU.

2 BY MR. BRAUN:

3 Q. WAS THERE INTERNAL POLITICS INVOLVED IN
4 BRINGING IN AN OUTSIDE CHIEF OF POLICE THAT YOU'RE
5 AWARE OF?

6 A. THERE DEFINITELY WAS. THE CITY HAD HAD A
7 HISTORY OF PROMOTING ITS PEOPLE FROM WITHIN, NOT JUST
8 IN THE POLICE DEPARTMENT, BUT FROM EVERYWHERE, IN ALL
9 DEPARTMENTS.

10 SO THE POLICE DEPARTMENT FELT STRONGLY THAT
11 THEY HAD AN INTERNAL CANDIDATE WHO WAS NEXT IN LINE
12 FOR THAT JOB.

13 Q. AND WHO WAS THAT?

14 A. ANTHONY MIRANDA.

15 Q. AND DID MR. RIZZO WANT MR. MIRANDA TO
16 BECOME CHIEF OF POLICE?

17 A. HE DID WANT HIM TO, BUT HE FELT THAT HE WAS
18 NOT READY. HE WANTED SOME MONITORING FROM SOMEONE
19 FROM THE OUTSIDE FOR A FEW YEARS.

20 Q. NOW, IN TERMS OF THE NEGOTIATIONS OF THE
21 SALARY FOR THE RECRUITMENT OF RANDY ADAMS, WHAT
22 INVOLVEMENT DID YOU HAVE IN THAT?

23 A. I'M SORRY?

24 Q. LOOK AT 39, THE LETTER FROM MR. ADAMS TO
25 ROBERT RIZZO.

1 A. YES.

2 Q. WHEN DID YOU BECOME AWARE -- WHEN DID YOU
3 FIRST SEE THIS PROPOSAL?

4 A. IT WAS A DAY OR TWO AFTER THE DATE ON THE
5 MEMO.

6 Q. AND WHEN WAS THAT FROM THE TIME THAT YOU
7 FIRST MADE THE PHONE CALL TO MR. ADAMS ASKING IF HE
8 WOULD BECOME INTERESTED IN BECOMING THE CHIEF OF
9 POLICE OF BELL?

10 MR. KENNEDY: YOUR HONOR, I'D LIKE TO JUST
11 MAKE A POINT JUST IN CASE THIS COMES UP LATER.

12 THIS IS A DOCUMENT THAT WASN'T PRODUCED IN
13 DISCOVERY, NOT IN RESPONSE TO THE COURT'S DIRECTION
14 FOR A MOTION TO COMPEL.

15 I'M NOT ASKING THAT IT BE EXCLUDED AT THIS
16 POINT. I'M JUST ASKING THAT TO AN EXTENT THAT THERE
17 MAY BE A SIMILAR OBJECTION FROM THE OTHER SIDE, THAT
18 THE COURT GIVES CONSIDERATION OF LEEWAY IN THE SAME
19 VEIN.

20 THE COURT: YOU'RE ASKING TIT FOR TAT?

21 MR. KENNEDY: YES.

22 MR. BRAUN: THAT SOUNDS FAIR.

23 THE COURT: NO. TIT FOR TAT ISN'T A RULE
24 OF EVIDENCE.

25 MR. KENNEDY: THEN I WOULD OBJECT.

1 THE COURT: AND THE OBJECTION IS OVERRULED.

2 BY MR. BRAUN:

3 Q. SO, NOW, TO YOUR KNOWLEDGE, THE FIRST
4 PROPOSAL WAS FROM MR. ADAMS OR MR. RIZZO IN TERMS OF
5 THE SALARY?

6 A. FROM ADAMS.

7 Q. AND WHEN DID YOU BECOME AWARE OF
8 MR. ADAMS'S PROPOSAL OR DEMAND?

9 A. A DAY OR TWO LATER WHEN MR. RIZZO BROUGHT
10 IT TO ME.

11 Q. DID MR. RIZZO EXPRESS ANY OPINION ABOUT
12 THIS DEMAND?

13 A. HE WAS --

14 MR. KENNEDY: OBJECTION. HEARSAY.

15 THE COURT: OVERRULED.

16 THE WITNESS: HE WAS IRRITATED.

17 BY MR. BRAUN:

18 Q. AND SO IN TERMS OF THE NEGOTIATIONS THAT
19 ULTIMATELY LED TO HIS HIRING, WHAT WAS YOUR
20 INVOLVEMENT IN IT?

21 A. I WAS SENT ONCE TO MEET WITH HIM AND TO
22 TELL HIM THAT HE COULDN'T HAVE EVERYTHING HE WAS
23 ASKING FOR, AND I WAS GIVEN SPECIFIC ITEMS THAT HE
24 WAS NOT TO RECEIVE.

25 Q. AND HOW MANY TIMES DID YOU TALK TO HIM OR

1 MEET WITH HIM DURING THE NEGOTIATIONS?

2 A. MYSELF, JUST ONCE. ALTHOUGH, I DID ATTEND
3 OTHER MEETINGS. LIKE WHEN RANDY ADAMS MET WITH THE
4 CITY COUNCIL MEMBERS, I WAS IN ATTENDANCE AT ONE OF
5 THOSE MEETINGS. AND HE MET WITH THE VARIOUS POLICE
6 STAFF. I WAS AT ONE OF THOSE MEETINGS.

7 Q. NOW, YOU'VE OBVIOUSLY BEEN REACQUAINTED
8 WITH YOUR E-MAILS WITH MR. ADAMS. WOULD YOU TELL THE
9 COURT YOUR MENTAL STATE AT THE TIME YOU WERE
10 INTERACTING WITH MR. ADAMS.

11 A. I WAS VERY FRUSTRATED.

12 ROBERT RIZZO HAD BROUGHT THIS DEMAND LETTER
13 TO ME AND SAID, "HE'S BEING RIDICULOUS. HE'S ASKING
14 FOR TOO MUCH. WE NEED HIM. YOU NEED TO TALK TO HIM,
15 TELL HIM HE CAN'T HAVE THESE THINGS."

16 AND THEN RANDY ADAMS KEPT GOING BACK AND
17 FORTH WITH THE CONTRACT AND WANTING VARIOUS CHANGES,
18 LIKE WHEN HE WANTED TO SPECIFY THE 26 PAYROLLS, YOU
19 KNOW. HE EXPLAINED TO ME THE REASON HE WANTED THAT
20 WAS BECAUSE IF THE PAY PERIODS WERE TO CHANGE FROM
21 BIWEEKLY TO BIMONTHLY, HE WOULD BE SHORTED SOME PAY.

22 AND SO I EXPLAINED THAT TO ROBERT RIZZO,
23 AND HE WAS UPSET WITH RANDY ADAMS. I WAS JUST SO
24 FRUSTRATED BECAUSE I DIDN'T WANT TO BE IN THE MIDDLE
25 OF THIS NEGOTIATION PROCESS AT ALL.

1 Q. IN ONE E-MAIL, YOU SAY SOMETHING TO THE
2 EFFECT, "WE CONSTRUCTED THE PAY PERIOD SO AS TO MAKE
3 IT DIFFICULT FOR THEM TO FIGURE OUT," SOMETHING TO
4 THAT EFFECT.

5 A. YES.

6 Q. WHAT WAS GOING THROUGH YOUR MIND AT THAT
7 TIME?

8 THE COURT: WELL, LET'S TAKE A LOOK AT THAT
9 E-MAIL. LET'S GET IT IN FRONT OF US.

10 MR. ONSTOT: EXHIBIT 15 IN THE CALPERS
11 EXHIBIT BOOK.

12 THE COURT: THANK YOU.

13 BY MR. BRAUN:

14 Q. DO YOU SEE EXHIBIT 15?

15 A. YES. PAGE 4.

16 Q. LET'S LOOK AT THE FIRST ONE. YOU SAY
17 SOMETHING ABOUT HOGS GETTING SLAUGHTERED AND PIGS
18 GETTING FAT. WAS THAT YOUR PHRASEOLOGY?

19 A. NO. THAT WAS ROBERT RIZZO'S, AND ON
20 OCCASION, HE HAD ME USE THAT TO VARIOUS -- WHAT WOULD
21 YOU CALL THEM? -- VENDORS WHEN HE FELT THAT WHAT THEY
22 WERE ASKING FOR WAS TOO MUCH. SO HE WOULD USE ME AS
23 SORT OF AN INTERMEDIARY TO TRY TO BREAK DOWN SOME OF
24 THESE --

25 THE COURT: LET'S JUST STOP THERE. LET'S

1 START AT THE VERY FIRST TOP. IT SAYS "L.O.L." IN
2 CAPITAL LETTERS. WHAT DOES THAT MEAN?

3 THE WITNESS: I BELIEVE THAT'S A TERM FOR
4 "LOTS OF LAUGHER."

5 THE COURT: HOW ABOUT "LAUGHING OUT LOUD."
6 IS THAT WHAT IT MEANS?

7 THE WITNESS: I BELIEVE SO.

8 THE COURT: YOU TYPED IT UP; RIGHT?

9 THE WITNESS: YES.

10 THE COURT: AND THE NEXT ONE SAYS:

11 "WELL, YOU" --

12 DOES THAT MEAN MR. ADAMS?

13 THE WITNESS: YES.

14 THE COURT: (READING.)

15 -- "CAN TAKE YOUR SHARE OF THE PIE."

16 WHAT IS THE PIE THAT'S BEING REFERRED TO?

17 THE WITNESS: THAT WAS ANOTHER EXPRESSION
18 OF ROBERT RIZZO'S.

19 THE COURT: WELL, WHAT IS HE REFERRING TO?
20 HE'S TALKING ABOUT MONEY, ISN'T HE?

21 THE WITNESS: YES. HE USED TO ALWAYS SAY
22 THAT WE ALL GET A SHARE OF THE PIE HERE. AND SO HE'S
23 REFERRING TO -- AND WHAT HE EXPECTED IN RETURN WAS A
24 LOT OF HARD WORK FROM US.

25 THE COURT: WELL, IT DOESN'T SAY THAT,

1 THOUGHT, DOES IT? WHAT IS SAYS IS:

2 "WELL, YOU CAN TAKE YOUR SHARE

3 OF THE PIE," MEANING YOU CAN HAVE YOUR PART OF

4 THE MONEY; TRUE?

5 THE WITNESS: YES.

6 THE COURT: AND THEN IT GOES DOT, DOT, DOT,

7 "JUST LIKE US."

8 THE WITNESS: YES.

9 THE COURT: MEANING ALL THE OTHER CITY

10 EMPLOYEES?

11 THE WITNESS: YES.

12 THE COURT: (READING.)

13 "WE WILL ALL GET FAT TOGETHER."

14 WAS THAT YOUR LANGUAGE?

15 THE WITNESS: IT'S PART OF THE "PIGS GET

16 FAT; HOGS GET SLAUGHTERED."

17 THE COURT: WELL, IS THAT YOUR LANGUAGE?

18 THE WITNESS: YES.

19 THE COURT: HE DIDN'T TELL YOU TO PUT THAT

20 IN, DID HE?

21 THE WITNESS: NO.

22 THE COURT: YOU WROTE THAT IN YOURSELF.

23 THE WITNESS: I DID.

24 THE COURT: AND YOU DID THAT SO THAT YOU

25 AND HE WOULD ENTER INTO AN AGREEMENT, AND HE'D STOP

1 BOTHERING YOU, AND YOU GUYS COULD SIGN THE CONTRACT.

2 THE WITNESS: YES.

3 THE COURT: AND THAT'S THE LANGUAGE THAT
4 YOU USED TO GET HIS APPROVAL IN THAT REGARD.

5 THE WITNESS: YES. I WAS TRYING TO GET
6 RANDY ADAMS'S APPROVAL TO KNOCK IT OFF.

7 THE COURT: AND IT SAYS "BOB." WHO'S THAT
8 BOB?

9 THE WITNESS: ROBERT RIZZO.

10 THE COURT: (READING.)
11 "HAS AN EXPRESSION THAT HE LIKES TO
12 USE ON OCCASION."

13 WHAT'S THE EXPRESSION?

14 THE WITNESS: THIS IS IT, "PIGS GET FAT AND
15 HOGS GET SLAUGHTERED."

16 THE COURT: SO IT'S THE NEXT LINE THAT IS
17 THE LINE HE LIKES TO USE ON OCCASION.

18 THE WITNESS: YES.

19 THE COURT: OKAY. SO IT SAYS:

20 "SO AS LONG AS WE'RE NOT HOGS."

21 THAT MEANS WE SHOULDN'T GET SLAUGHTERED, WE
22 SHOULD GET FAT.

23 THE WITNESS: YES, YES. IN OTHER WORDS,
24 DON'T GET GREEDY.

25 THE COURT: GET FAT.

1 THE WITNESS: YOU'RE GOING TO BE PAID WELL.

2 SO DON'T GET GREEDY AND JUST STOP THE NONSENSE.

3 THE COURT: (READING.)

4 "HAVE A NICE NIGHT. SEE YOU

5 TOMORROW."

6 THIS WAS SENT AT 20:55. WHAT'S THAT, 8:55

7 IN THE EVENING?

8 THE WITNESS: YES.

9 THE COURT: AND THAT E-MAIL IS TO HIS

10 AT-HOME ADDRESS.

11 THE WITNESS: I'M NOT SURE IF THAT'S HIS

12 AT-HOME OR -- I DON'T KNOW.

13 THE COURT: WELL, "@GMAIL.COM." MOST

14 GOVERNMENTAL AGENCIES HAVE ".GOV" AT THE END, DON'T

15 THEY? HASN'T THAT BEEN YOUR EXPERIENCE?

16 THE WITNESS: NO.

17 THE COURT: REALLY? HOW ABOUT

18 "PIER'ANGELA1" --

19 THE WITNESS: THAT'S MY PERSONAL.

20 THE COURT: SO THIS WAS SENT FROM YOUR HOME

21 COMPUTER?

22 THE WITNESS: YES.

23 THE COURT: THIS WASN'T SENT FROM A WORK

24 COMPUTER, WAS IT?

25 THE WITNESS: NO. PROBABLY NOT AT THAT

1 TIME IN THE EVENING.

2 THE COURT: OKAY. SO I HAVE A DIFFICULT
3 TIME WITH THIS. IT'S OBVIOUS.

4 THE WITNESS: RIGHT.

5 THE COURT: I HAVE A REALLY HARD TIME.
6 BECAUSE IT SOUNDS TO ME LIKE YOU AND THE CITY ARE IN
7 CAHOOTS TO SPREAD THE WEALTH. AND, BY GOD, DON'T
8 TAKE TOO MUCH BECAUSE IT IS ALL GOING TO COME OUT.
9 PEOPLE WILL FIND OUT.

10 IS THAT THE MESSAGE THAT YOU'RE
11 COMMUNICATING THERE?

12 THE WITNESS: THAT IS NOT THE MESSAGE THAT
13 WAS IN MY HEART AT ALL.

14 THE COURT: THEN WHY WOULDN'T YOU WRITE THE
15 MESSAGE THAT WAS IN YOUR HEART, THEN? WHAT PREVENTED
16 YOU FROM WRITING THE MESSAGE IN YOUR HEART?

17 THE WITNESS: WELL, I WAS TRYING TO BE
18 NICE. I WAS TRYING TO BE FUNNY. I WAS TRYING TO
19 JOUST WITH HIM BECAUSE I FELT HIS E-MAIL TO ME WAS
20 JOUSTING.

21 THE COURT: WHY WOULD YOU JOUST WITH THE
22 MAN YOU WANT TO HAVE ONBOARD AND WHO HAS BEEN MAKING
23 A MOCKERY OF THESE NEGOTIATIONS SO FAR?

24 THE WITNESS: ONLY BECAUSE I HAD WORKED
25 WITH HIM PRIOR, AND I THOUGHT OF HIM AS A FRIEND.

1 THE COURT: SO THIS IS THE MESSAGE YOU
2 SENT?

3 THE WITNESS: YES. AND I REGRET IT. I'VE
4 LOST EVERYTHING. I'VE LOST MY HOME. I'VE LOST
5 CREDIBILITY.

6 THE COURT: THERE IS NO NEED TO CRY HERE.
7 YOU'RE THE ONE WHO WROTE THE E-MAIL.

8 THE WITNESS: I'VE LOST CREDIBILITY. I'VE
9 LOST MY DIGNITY. I'VE LOST EVERYTHING OVER IT. I
10 WILL REGRET IT FOREVER.

11 BUT I HAD NOTHING TO WITH THE CITY AND
12 TRYING TO HIDE ANYTHING. I'M NOT WIRED THAT WAY.

13 THE COURT: THE ANSWER IS STRICKEN. IT'S
14 NONRESPONSIVE.

15 GO AHEAD.

16 BY MR. BRAUN:

17 Q. NOW, MS. SPACCIA, YOU BECAME AWARE, DID YOU
18 NOT, THAT FIVE RIZZO CONTRACTS WERE CREATED IN ORDER
19 TO HIDE MR. RIZZO'S PAY FROM THE PUBLIC? IS THAT
20 CORRECT?

21 A. I WAS AWARE?

22 Q. YOU LEARNED THAT THAT HAD HAPPENED?

23 A. YES.

24 Q. DID YOU HAVE ANYTHING TO DO WITH THE
25 CREATION OF THE FAKE CONTRACTS FOR THE PUBLIC?

1 A. I DID NOT.

2 Q. DID YOU HAVE -- NOW, YOU WERE ALSO AWARE
3 THAT THE ADAMS CONTRACT WAS LATER SPLIT INTO TWO AND
4 BACKDATED. DID YOU HAVE ANYTHING TO DO WITH THAT?

5 A. NO, I DID NOT.

6 Q. DID YOU EVER BACKDATE ANY DOCUMENTS FOR
7 ROBERT RIZZO?

8 A. NO, I DID NOT.

9 Q. DID HE EVER ASK YOU TO BACKDATE ANY
10 DOCUMENTS?

11 A. YES.

12 Q. WHEN WAS THAT? PERHAPS I CAN FIND IT.

13 A. 2009.

14 Q. WOULD YOU LOOK AT EXHIBIT 28. AND WHAT IS
15 EXHIBIT 28?

16 A. IT'S AN E-MAIL FROM ROBERT RIZZO.

17 Q. AND IS THIS HIS REQUEST TO YOU TO BACKDATE
18 A CONTRACT FOR A POLICE OFFICER?

19 A. YES.

20 Q. AND DID YOU EVER DO THIS?

21 A. THIS IS FOR A POLICE LIEUTENANT. NO.

22 AND IN FACT THE NEXT DAY, I EXPLAINED TO
23 HIM THAT THAT WASN'T SOMETHING WE COULD DO.

24 Q. SO AFTER THIS, IN JUNE OF 2009, DID HE EVER
25 ASK YOU AGAIN TO BACKDATE OR CREATE ANY FALSE

1 DOCUMENTS?

2 A. NO.

3 Q. NOW, WITH RESPECT TO CALPERS RETIREMENT,
4 YOU'RE FAMILIAR WITH THE OTHER PEOPLE IN THE
5 MANAGEMENT ADMINISTRATION AT BELL?

6 A. YES.

7 Q. TO YOUR KNOWLEDGE, HOW MANY PEOPLE HAVE
8 RETIRED ON CALPERS BUDGET -- ON CALPERS PENSIONS?

9 A. DURING MY TENURE, AS FAR AS MANAGEMENT,
10 THERE WERE ABOUT SEVEN WHO RETIRED.

11 Q. WHO WERE THEY?

12 A. WELL, THE FOUR POLICE CHIEFS, AND ANNETTE
13 PERETZ RETIRED SHORTLY AFTER I LEFT. LOUIS RAMIREZ,
14 AND A POLICE LIEUTENANT, SERGIO CAMACHO.

15 Q. NOW, WOULD YOU LOOK AT EXHIBIT NUMBER 1 IN
16 YOUR PACKET.

17 A. YES.

18 Q. NOW, DURING YOUR PERIOD AT BELL, WERE YOU
19 GIVEN SUBSTANTIAL PERIODS OF TIME OFF BECAUSE OF
20 PERSONAL FAMILY PROBLEMS?

21 THE COURT: ANY ISSUE ON THAT?

22 MR. KENNEDY: RELEVANCY AND ALSO
23 FOUNDATION.

24 THE COURT: YEAH. I DON'T THINK THAT'S AN
25 ISSUE.

1 MR. BRAUN: OKAY. NO FURTHER QUESTIONS,
2 YOUR HONOR.

3 THE COURT: RE-CROSS?

4 MR. KENNEDY: YES, YOUR HONOR.

5

6 RE-CROSS-EXAMINATION

7 BY MR. KENNEDY:

8 Q. MS. SPACCIA, COULD YOU TURN TO CALPERS
9 EXHIBIT NUMBER 9.

10 A. YES.

11 Q. THAT'S THE PURPORTED JULY 1ST, 2005,
12 ADDENDUM TO YOUR AGREEMENT; CORRECT?

13 A. YES.

14 Q. NOW, ON THE SECOND PAGE THERE ARE
15 SIGNATURES?

16 A. YES.

17 Q. AND CAN YOU TELL ME, IF YOU KNOW, WHEN
18 THESE SIGNATURES WERE AFFIXED TO THIS DOCUMENT?

19 A. NO.

20 Q. WHEN YOU SIGNED IT, WERE THE OTHER
21 SIGNATURES ALREADY THERE?

22 A. YES.

23 Q. OKAY. WERE YOU PRESENT FOR THE OTHER
24 SIGNATURES?

25 A. NO.

1 Q. NOW, IN THE MAY 2ND, 2005, AGENDA, YOUR
2 STATEMENT WAS THIS WAS PART OF THE NONPUBLIC VERSION
3 OF THE BUDGET; CORRECT? THIS DOCUMENT WAS ATTACHED
4 TO THE NONPUBLIC VERSION OF THE BUDGET, WAS THAT YOUR
5 TESTIMONY?

6 A. NO. NOT NONPUBLIC. IT WAS THE ORIGINAL
7 PACKET, THE ACTUAL ORIGINAL, UNBOUND GIVEN TO THE
8 C.A.O.

9 THE COURT: WHAT WAS THE NAME OF THE
10 PACKET? THE CLERK'S PACKET?

11 THE WITNESS: WELL, IT WOULD GO -- I DIDN'T
12 ACTUALLY SEE THE CITY CLERK PROCESS IT, BUT SHE HAD A
13 PACKET CALLED THE CITY COUNCIL PACKET.

14 MR. ONSTOT: AGENDA PACKET.

15 THE WITNESS: AGENDA PACKET.

16 THE COURT: AGENDA PACKET. THANK YOU.

17 IS IT YOUR BELIEF THAT THIS WAS PART OF THE
18 AGENDA PACKET?

19 THE WITNESS: YES.

20 THE COURT: THAT IT WAS INCLUDED IN IT?

21 THE WITNESS: YES.

22 BY MR. KENNEDY:

23 Q. YESTERDAY YOU TESTIFIED THAT IT WAS
24 ACTUALLY MORE SPECIFICALLY PART OF THE BUDGET, THE
25 2005-2010 BUDGET, THAT WAS PART OF PACKET; RIGHT?

1 A. IT WAS INCLUDED WITH THE BUDGET.

2 Q. YESTERDAY YOU TESTIFIED THAT THE ACTUAL
3 AGREEMENTS THEMSELVES WERE NOT IN THE VERSION THAT
4 WAS PROVIDED PUBLICLY, THE ONE THAT WE HAVE HERE
5 TODAY. AND THAT WAS EXHIBIT -- WHAT WAS THAT
6 EXHIBIT?

7 MR. ONSTOT: EXHIBIT 21.

8 BY MR. KENNEDY:

9 Q. EXHIBIT 21?

10 A. ONCE THEY DID THESE BOUND COPIES THAT WERE
11 AVAILABLE TO THE PUBLIC, CORRECT. THE EMPLOYMENT
12 AGREEMENTS WERE NOT INCLUDED.

13 Q. AND YOU HAD TESTIFIED THAT YOU HAD SEEN --
14 YOU HAD GIVEN THEM TO MR. RIZZO, THE AGREEMENTS?

15 A. YES.

16 Q. AND YOU THOUGHT YOU SAW MR. RIZZO GIVE THEM
17 TO MS. VALDEZ?

18 A. PUT THEM ON HER DESK.

19 Q. FOR INCLUSION IN THIS PACKET?

20 A. YES.

21 Q. NOW, AT THE TIME THIS WENT TO THE COUNCIL,
22 YOU GOT A COPY OF THAT PACKET THAT WAS SUBMITTED TO
23 COUNCIL TOO, DIDN'T YOU?

24 A. YES.

25 Q. AND DID YOU LOOK TO SEE IF THEY WERE THERE?

1 A. I DIDN'T. UNFORTUNATELY, I VERY RARELY
2 LOOKED AT THE AGENDA PACKET.

3 Q. JUST ONE OTHER QUESTION. YOU HAD INDICATED
4 THAT FOR THE FIRST COUPLE OF YEARS THAT YOU WORKED
5 IN -- SO IN '03 TO '05, YOU CONSIDERED YOURSELF TO BE
6 SORT OF AN EQUIVALENT TO A DEPARTMENT HEAD?

7 A. YES.

8 Q. YOU WEREN'T ACTUALLY A DEPARTMENT HEAD,
9 WERE YOU?

10 THE COURT: HAVEN'T WE GONE THROUGH THIS?

11 MR. KENNEDY: I JUST WANT TO CLARIFY.

12 THE COURT: HAVEN'T WE GONE THROUGH THIS?

13 MR. KENNEDY: MY LAST QUESTION, YOUR HONOR.

14 THE COURT: OKAY.

15 THE WITNESS: I'M SORRY. ASK ME AGAIN.

16 BY MR. KENNEDY:

17 Q. DID YOU HOLD THE POSITION OF DEPARTMENT
18 HEAD?

19 A. I WAS CONSIDERED A DEPARTMENT HEAD.

20 MR. KENNEDY: NO OTHER QUESTIONS, YOUR
21 HONOR.

22 MR. ONSTOT: NOTHING.

23 MR. BRAUN: NO FURTHER QUESTIONS.

24 THE COURT: THIS WITNESS MAY BE EXCUSED.

25 MR. BRAUN: SHE'LL REMAIN HERE.

1 I JUST WANT TO TAKE UP ANOTHER MATTER, YOUR
2 HONOR.

3 THE COURT: SURE.

4 MR. BRAUN: TERESA JACOBO IS TO BE A
5 WITNESS IN THIS CASE. SHE'S A DEFENDANT IN THE
6 CRIMINAL CASE, WHICH CREATES A LITTLE BIT OF A
7 PROBLEM, BUT I CAN EXPLAIN TO THE COURT.

8 THE INTENDED TESTIMONY THAT SHE'S GOING TO
9 GIVE IS THAT SHE WAS PRESENT AT THE CITY COUNCIL
10 MEETING WHERE THEY ADOPTED A RESOLUTION, 2006-42,
11 WHICH IS EXHIBIT 20.

12 THE REASON THAT THIS IS IMPORTANT, YOUR
13 HONOR, IS THAT UNDER THE CITY CHARTER, WHICH IS
14 EXHIBIT 19, ON PAGE 6, OF THE EXHIBIT 19 --

15 THE COURT: OKAY. THIS IS YOUR EXHIBITS?

16 MR. BRAUN: YEAH. YOU'LL SEE THERE'S A
17 SECTION 519, WHICH TALKS ABOUT THE CITY COUNCIL BEING
18 ABLE TO DELEGATE TO THE -- ABLE TO DELEGATE THE POWER
19 TO ENTER INTO CONTRACTS IN THE THIRD PARAGRAPH.

20 THE COURT: (READING.)

21 "FOR THE SALE OR EXCHANGE OF REAL
22 OR PERSONAL PROPERTY."

23 MR. BRAUN: NO. THERE'S ANOTHER ONE.

24 THE COURT: IS IT THE SECOND PARAGRAPH THAT
25 SAYS "BY ORDINANCE OR RESOLUTION"?

1 MR. BRAUN: YEAH. IT SAYS:

2 "EQUIPMENT, SUPPLIES, LABOR, SERVICES

3 AND OTHER" --

4 BY RESOLUTION, THEY CAN DELEGATE THAT. AND

5 WHAT HAPPEN -- IT SAYS THEY MAY AUTHORIZE THE C.A.O.

6 TO DO THAT. AND WHAT HAPPENED WAS, OF COURSE -- AND

7 I SHOULD POINT OUT NOT ONLY THE PROBLEM WITH THAT

8 SECTION.

9 WELL, ANYWAY, THE NUMBER 20, WHICH IS THE

10 RESOLUTION THAT DELEGATES THAT AUTHORITY TO THE

11 C.A.O. IS RESOLUTION 2006-42, WHERE THE CITY

12 WRITTEN -- SPECIFICALLY REFERRING TO SECTION 519.

13 THE COURT: OKAY.

14 MR. BRAUN: NOW, THE ONE NUANCE OF THAT,

15 YOUR HONOR, WHICH I THINK, EVEN THOUGH I'M NOT AN

16 EXPERT IN THIS AREA, IS THAT THERE SEEMS TO BE A

17 SLIGHTLY CONTRADICTING SECTION ON PAGE 7 OF THE

18 CHARTER, WHICH TALKS ABOUT THE POWERS AND DUTIES OF

19 THE CHIEF ADMINISTRATIVE OFFICER.

20 IT SEEMS TO SAY UNDER (A) THAT:

21 "IN THE CASE OF AN APPOINTMENT OF

22 REMOVAL OF ANY DEPARTMENT HEAD, HE SHALL

23 FIRST REVIEW SUCH APPOINTMENT OR REMOVAL

24 WITH THE CITY COUNCIL AND OBTAIN ITS

25 APPROVAL."

1 SO YOU HAVE THIS SITUATION WHERE THE
2 RESOLUTION SEEMS TO DELEGATE AUTHORITY TO ENTER INTO
3 AGREEMENTS, SERVICES, OR LABOR OR OTHERS THINGS.

4 THE COURT: I DON'T READ IT THAT WAY.

5 MR. BRAUN: 519?

6 THE COURT: RIGHT. I SEE THAT TO BE A
7 CONTRACT-TO-CONTRACT BASIS AND NOT RELATED TO
8 EMPLOYMENT.

9 IF YOU WERE TO HIRE AN INDEPENDENT
10 CONTRACTOR, FOR EXAMPLE, TO BRING A TRENCH PLATE TO
11 PUT OVER HOLES IN ROADS.

12 MR. BRAUN: IT WAS READ -- IT WAS HANDLED
13 BY THE CITY OF BELL AS IF THE SECOND PARAGRAPH OF 519
14 DELEGATED TO MR. RIZZO THE POWER TO ENTER INTO
15 EMPLOYMENT CONTRACTS.

16 THE COURT: HE HAS THAT POWER UNDER SECTION
17 604 (A) .

18 MR. BRAUN: OKAY. I SEE. THAT EXCLUDES
19 DEPARTMENT HEADS, THOUGH. HE COULDN'T DO THAT TO
20 DEPARTMENT HEADS WITHOUT --

21 THE COURT: WELL, IF THE CITY COUNCIL
22 APPOINTS A DEPARTMENT HEAD, HE CAN'T FOOL WITH THAT
23 PERSON.

24 MR. BRAUN: CORRECT.

25 THE COURT: BUT EVERYONE ELSE IS FAIR GAME.

1 MR. BRAUN: BUT HE CAN HIRE ANYONE AND
2 ENTER INTO EMPLOYMENT CONTRACTS.

3 THE COURT: SURE.

4 MR. BRAUN: THAT WOULD ELIMINATE THE
5 PROBLEM. THE WAY WE'VE BEEN REVIEWING IT -- AND I
6 THINK YOUR HONOR MIGHT BE CORRECT, AND I'M LEARNING A
7 LOT AT THIS HEARING -- IS THAT THIS WAS ATTRIBUTED BY
8 THE LAWYERS WHO WROTE UP THIS RESOLUTION -- IS THAT
9 HE DIDN'T HAVE THE POWER UNTIL IT WAS DELEGATED UNDER
10 THIS.

11 THE COURT: NO. HE HAS THE AUTHORITY UNDER
12 THE CITY CHARTER.

13 THE CITY'S ATTORNEY IS HERE OR THE
14 REPRESENTATIVE OF THE CITY. WOULDN'T YOU AGREE THAT
15 THAT'S THE CASE?

16 MR. ONSTOT: HE HAS THE POWER TO APPOINT.
17 HE DOESN'T HAVE CONTRACTING AUTHORITY OVER EMPLOYMENT
18 CONTRACTS, THOUGH.

19 THE COURT: HE SURE DOES. NUMBER 604.

20 MR. ONSTOT: BUT NOT EMPLOYMENT CONTRACTS.
21 IT DOESN'T SPECIFY THAT.

22 THE COURT: OKAY. WHERE DO YOU THINK HE
23 GETS THAT POWER THEN?

24 MR. ONSTOT: HE DOESN'T.

25 THE COURT: OKAY. YOUR CONTENTION, THEN,

1 IS HE GETS IT FROM THE OTHER ONE, 111 OR 519?

2 MR. BRAUN: WELL, YES, IT'S ODD. BECAUSE
3 THE ANALYSIS OF THE LAWYERS AT THAT TIME, NOT
4 NECESSARILY MINE, WAS THAT HE GOT IT FROM 519, BUT IT
5 HAD TO BE DONE BY ORDINANCE -- BY RESOLUTION.

6 AND THE RESOLUTION THAT WAS PASSED IN
7 RESPONSE TO THAT CONCERN IS NUMBER 20, WHICH IS OUR
8 NUMBER 20, WHICH IS RESOLUTION 2006-42.

9 THE COURT: LET'S BACK UP A STEP. WHAT
10 DOES ALL THIS HAVE TO DO WITH THIS LADY WITNESS
11 THAT'S COMING IN?

12 MR. BRAUN: SHE BASICALLY WAS IN THE CITY
13 COUNCIL WHEN THEY VOTED IN 2006-42, AND THE
14 DISCUSSION AT THAT TIME WAS THAT IT GAVE ROBERT RIZZO
15 THE AUTHORITY TO HIRE EMPLOYEES.

16 NOW, IF THE COURT TAKES THE POSITION THAT
17 THAT'S ALREADY IN THE CHARTER, THEN THAT BECOMES
18 SUPERFLUOUS.

19 THE COURT: YEAH. I DON'T PRETEND TO BE AN
20 EXPERT IN MUNICIPAL LAW. I'M NOT GOING TO GO THERE.

21 I THINK PROBABLY THE WISE THING TO DO IS TO
22 LET HER TESTIFY. YOUR PROBLEM IS SHE MAY HAVE SOME
23 CRIMINAL EXPOSURE; RIGHT?

24 MR. BRAUN: YES. I'VE DISCUSSED IT WITH
25 HER ATTORNEY, DAN NIXON. HE E-MAILED ME THAT HE DOES

1 NOT WANT HER TO TESTIFY AND HAS ADVISED HER NOT TO
2 TESTIFY.

3 HE HAS ALSO E-MAILED ME THAT SHE IS GOING
4 TO TESTIFY ANYWAY AND THAT HE'D LIKE IT LIMITED TO
5 THIS 2006-42.

6 THE COURT: IS THERE ANY PROBLEM WITH
7 LIMITING HER TESTIMONY TO THOSE MATTERS?

8 MR. KENNEDY: YES, THERE IS, YOUR HONOR.

9 THE COURT: AND WHAT'S THAT?

10 MR. KENNEDY: FIRST OF ALL, CALPERS HAS
11 SUBMITTED A MOTION IN LIMINE EXCLUDING HER TESTIMONY
12 AS ESSENTIALLY BEING INCOMPETENT OPINION TESTIMONY.

13 SHE IS NOT CAPABLE OF RENDERING -- NOT
14 COMPETENT IN THIS COURT TO RENDER A LEGAL OPINION AS
15 TO THIS CONTRACT OR THIS RESOLUTION.

16 THE COURT: OKAY. ANYTHING ELSE?

17 MR. KENNEDY: THE OTHER PROBLEM IS THAT
18 WHEN SHE TESTIFIES TO -- IF SHE TESTIFIES AND
19 ANYTHING THAT'S OPENED UP TO CROSS -- AND THEN IF SHE
20 REFUSES TO ANSWER AND IT'S FAIR TO CROSS OR
21 REASONABLE TO CROSS, THEN WE WOULD REQUEST THAT HER
22 ENTIRE TESTIMONY BE STRICKEN.

23 AND I HAVE THE AUTHORITY TO PROVIDE THE
24 COURT THAT.

25 THE COURT: I TELL YOU WHAT I'M GOING TO

1 DO. THE SAFE THING FOR ME TO DO IS TO LET HER
2 TESTIFY. THE SAFE THING TO DO IS TO KEEP HER
3 TESTIMONY AS STRICTLY LIMITED AS POSSIBLE.

4 OKAY. THAT'S WHAT WE'RE GOING TO DO, AND
5 YOU CAN BRING A MOTION TO STRIKE LATER.

6 MR. KENNEDY: SO FOR NOW THE COURT'S NOT
7 RULING ON THE MOTION IN LIMINE. IT'S JUST --

8 THE COURT: WHAT I'M SAYING IS I DON'T KNOW
9 WHAT SHE'S GOING TO TESTIFY TO OR WHAT IT'S GOING TO
10 BE OFFERED FOR REALLY UNTIL I HEAR IT.

11 MR. KENNEDY: WELL, I UNDERSTAND. THAT'S
12 WHAT THE COURT'S SAYING, IT WILL ENTERTAIN MY MOTION
13 IN LIMINE OR MY MOTION TO STRIKE.

14 THE COURT: YEAH. IT WILL BE A MOTION TO
15 STRIKE. IT WON'T BE A MOTION IN LIMINE.

16 CALL THE WITNESS IN, PLEASE.

17 GOOD MORNING, MA'AM.

18 THE WITNESS: GOOD MORNING.

19 THE COURT: CAN I GET YOU TO RAISE YOUR
20 RIGHT HAND AND FACE THE COURT REPORTER.

21 THE WITNESS: YES.

22 ///

23 ///

24 ///

25

1 MIND?

2 THE WITNESS: YES.

3 THE COURT: ARE YOU GOING TO FOLLOW HIS

4 ADVICE?

5 THE WITNESS: YES.

6 THE COURT: OKAY.

7 MR. BRAUN: SO YOU'RE NOT GOING TO TESTIFY?

8 THE WITNESS: I WANT TO PLEDGE MY FIFTH

9 AMENDMENT IN GOING INTO DETAIL ON ANYTHING.

10 THE COURT: WELL, YOU DON'T GET TO PICK AND

11 CHOOSE THE QUESTIONS. ARE YOU GOING TO EXERCISE YOUR

12 RIGHT NOT TO TESTIFY BECAUSE IT MAY INTEND TO

13 INCRIMINATE YOU?

14 THE WITNESS: WELL, I DON'T WANT TO TESTIFY

15 TO ANYTHING THAT WILL INCRIMINATE ME.

16 THE COURT: OKAY. PRETTY SIMPLE.

17 GO AHEAD.

18

19 DIRECT EXAMINATION

20 BY MR. BRAUN:

21 Q. MS. JACOBO, WOULD YOU LOOK AT EXHIBIT 20 IN

22 THE BOOK IN FRONT OF YOU.

23 MR. BRAUN: MAY I ASSIST HER, YOUR HONOR?

24 THE COURT: PLEASE.

25 ///

1 BY MR. BRAUN:

2 Q. MS. JACOBO, LOOKING AT THE EXHIBIT 20,
3 WHICH IS RESOLUTION 2006-42, DO YOU RECOGNIZE THAT
4 RESOLUTION?

5 THE COURT: YOU HAVE THE RIGHT NOT TO
6 TESTIFY IF THIS HAS ANY TENDENCY AND REASON --

7 THE WITNESS: I'M SORRY. COULD YOU REPEAT
8 THE QUESTION.

9 BY MR. BRAUN:

10 Q. DO YOU RECOGNIZE THAT RESOLUTION?

11 THE COURT: IT'S A RESOLUTION FROM THE CITY
12 OF BELL, MA'AM.

13 THE WITNESS: YES.

14 BY MR. BRAUN:

15 Q. WERE YOU A MEMBER OF THE CITY COUNCIL OF
16 BELL AT THE TIME THIS RESOLUTION WAS PASSED?

17 A. YES.

18 Q. WERE YOU PRESENT FOR THE DISCUSSION, IF
19 ANY, EXPLAINING TO THE CITY COUNCIL WHAT THIS
20 RESOLUTION DID?

21 A. YES.

22 Q. WHAT DO YOU RECALL WAS EXPLAINED TO THE
23 CITY COUNCIL?

24 MR. KENNEDY: OBJECTION, YOUR HONOR. IT IS
25 HEARSAY. IT'S ALSO RELEVANCY.

1 THE COURT: IS IT BEING OFFERED FOR THE
2 TRUTH OF THE MATTER STATED?

3 MR. BRAUN: NO. IT'S BEING OFFERED FOR
4 INTENT OF THIS RESOLUTION, LIKE THE LEGISLATIVE
5 HISTORY.

6 MR. KENNEDY: RELEVANCE.

7 THE COURT: SO IT'S BEING OFFERED FOR THE
8 TRUTH OF THE MATTER STATED.

9 SUSTAINED.

10 BY MR. BRAUN:

11 Q. WAS THIS RESOLUTION PUBLICLY PRESENTED IN
12 AN OPEN SESSION TO THE CITY COUNCIL?

13 A. YES.

14 Q. AND WAS THERE A DISCUSSION CONCERNING THE
15 RESOLUTION?

16 A. I DON'T REMEMBER.

17 Q. OKAY. LOOKING AT THE SECOND PAGE, DOES THE
18 SECOND PAGE REPRESENT WHAT YOU RECALL HAPPENED?

19 THE COURT: WAS THE RESOLUTION ADOPTED?

20 THE WITNESS: YES.

21 MR. BRAUN: NO FURTHER QUESTIONS, YOUR
22 HONOR.

23 THE COURT: CROSS-EXAMINATION?

24 MR. KENNEDY: NONE.

25 MR. ONSTOT: YES, YOUR HONOR.

1 CROSS-EXAMINATION

2 BY MR. ONSTOT:

3 Q. MS. JACOBO, IF YOU CAN LOOK AT EXHIBIT 20,
4 THE SECOND PAGE, THE ONE THAT HAS OSCAR HERNANDEZ,
5 THE MAYOR'S SIGNATURE.

6 DO YOU SEE WHAT I'M REFERRING TO?

7 A. THE SECOND PAGE?

8 THE COURT: IT'S ACTUALLY THE FIRST PAGE IN
9 YOUR BOOK.

10 BY MR. ONSTOT:

11 Q. YEAH. IT MIGHT BE THE FIRST PAGE IN YOUR
12 BOOK, BUT ONE THAT HAS THE TITLE OF THE RESOLUTION.
13 DO YOU SEE THAT?

14 A. YES.

15 Q. UNDER NUMBER 1 THAT'S ON THERE IT SAYS:

16 "PURSUANT TO THE SECOND PARAGRAPH OF
17 519 OF THE CITY'S CHARTER ALLOWS THE
18 BELL CITY COUNCIL."

19 DO YOU SEE WHERE I'M REFERRING TO?

20 A. YES.

21 Q. DO YOU RECALL PRIOR TO VOTING ON THIS
22 RESOLUTION IF SECTION 519 WAS EXPLAINED TO YOU?

23 A. NO.

24 Q. NO, YOU DON'T RECALL, OR, NO, IT WASN'T?

25 A. I DON'T RECALL.

1 Q. AS YOU SIT HERE TODAY, DO YOU KNOW WHAT
2 SECTION 519 IS?

3 A. NO.

4 Q. GOING DOWN THE RESOLUTION, PARAGRAPH NUMBER
5 3, STARTS "THE AUTHORITY." DO YOU SEE WHERE I'M
6 REFERRING TO?

7 A. YES.

8 Q. WAS IT YOUR UNDERSTANDING THAT THE
9 AUTHORITY GRANTED -- STRIKE THAT.

10 WAS IT EVER EXPLAINED TO YOU THAT THE
11 AUTHORITY GRANTED BY THIS RESOLUTION WOULD NOT APPLY
12 TO ANY WRITTEN CONTRACTS FOR SERVICES RENDERED BY ANY
13 PERSON IN THE EMPLOY OF THE CITY AT A REGULAR SALARY?

14 A. CAN YOU REPEAT THE QUESTION?

15 THE COURT: DO YOU REMEMBER ANYTHING ABOUT
16 THAT?

17 THE WITNESS: NO.

18 MR. ONSTOT: THANK YOU. NOTHING FURTHER.

19 MR. BRAUN: NOTHING FURTHER, YOUR HONOR.

20 THE COURT: THANK YOU.

21 ANYTHING FURTHER?

22 MR. KENNEDY: NO, THANKS.

23 MR. BRAUN: CAN WE BREAK NOW?

24 THE COURT: DO YOU HAVE ANOTHER WITNESS?

25 MR. BRAUN: ONE SHORT WITNESS, MAYBE 15

1 MINUTES.

2 THE COURT: LET'S TAKE CARE OF THAT.

3 THANK YOU, MA'AM.

4 SIR, CAN I GET YOU TO RAISE YOUR RIGHT HAND
5 AND FACE THE COURT REPORTER.

6

7 JAMES CORCORAN,

8 CALLED AS A WITNESS AND SWORN IN BY

9 THE COURT REPORTER, WAS EXAMINED AND

10 TESTIFIED AS FOLLOWS:

11

12 COURT REPORTER: DO YOU SOLEMNLY SWEAR OR

13 AFFIRM THAT THE EVIDENCE YOU WILL GIVE IN THIS

14 PROCEEDING WILL BE THE TRUTH, THE WHOLE TRUTH, AND

15 NOTHING BUT THE TRUTH?

16 THE WITNESS: I DO.

17 THE COURT: HAVE A SEAT. TELL US YOUR NAME

18 AND SPELL IT FOR US.

19 THE WITNESS: YES. MY FIRST NAME IS JAMES.

20 THE LAST NAME IS CORCORAN, C-O-R-C-O-R-A-N.

21 THE COURT: THANK YOU.

22 ///

23 ///

24 ///

25

1 DIRECT EXAMINATION

2 BY MR. BRAUN:

3 Q. MR. CORCORAN, BY WHOM ARE YOU EMPLOYED?

4 A. THE CITY OF BELL, CALIFORNIA.

5 Q. IN WHAT CAPACITY?

6 A. AS A POLICE SERGEANT.

7 Q. AND WHEN DID YOU START WITH THE CITY OF
8 BELL?

9 A. I STARTED AS A RESERVE OFFICER IN 1985 AND
10 WENT FULL-TIME IN 1991.

11 Q. ARE YOU BASICALLY THE WHISTLE-BLOWER IN THE
12 CITY OF BELL?

13 A. I AM.

14 MR. KENNEDY: SORRY. I COULDN'T HEAR THAT.

15 THE COURT: "ARE YOU BASICALLY THE
16 WHISTLE-BLOWER IN THE CITY OF BELL?"

17 MR. ONSTOT: OBJECTION. VAGUE.

18 THE COURT: ANSWER, "I AM."

19 THE ANSWER WILL STAND.

20 BY MR. BRAUN:

21 Q. DID YOU WORK WITH THE FBI IN AN UNDERCOVER
22 CAPACITY IN TERMS OF CONDUCTING AN INVESTIGATION AT
23 THE CITY OF BELL?

24 MR. KENNEDY: OBJECTION, YOUR HONOR. LACK
25 OF FOUNDATION, RELEVANCY.

1 THE COURT: WELL, HOW IS THIS GOING TO BE
2 RELEVANT? WHAT'S THE OFFER OF PROOF?

3 MR. BRAUN: BASICALLY, TO SHOW DURING HIS
4 18-MONTH INVESTIGATION WHILE HE WAS ALSO STILL A
5 DETECTIVE -- CHIEF OF DETECTIVES WHO RAN THE CITY OF
6 BELL AND HOW THE DECISIONS WERE MADE AND THE LACK OF
7 INVOLVEMENT OF MY CLIENT IN BASIC DECISION MAKING AT
8 THE CITY OF BELL.

9 MR. KENNEDY: WE COVERED THIS IN OUR MOTION
10 IN LIMINE, YOUR HONOR. AND ALSO, I WOULD REASSERT,
11 AFTER THAT OFFER OF PROOF, RELEVANCY AGAIN AND ALSO
12 COMPETENCY OF THE WITNESS.

13 THE COURT: ANYTHING MORE?

14 MR. KENNEDY: NO.

15 THE COURT: ANYTHING TO ADD?

16 MR. ONSTOT: I CAN'T THINK OF ANY MORE ON
17 MY LIST OTHER THAN THE ONES THAT ALREADY HAVE BEEN
18 SAID.

19 MR. BRAUN: I THINK MY CLIENT HAS BEEN
20 TAINTED BY ACTIVITIES OF OTHER PEOPLE IN THE CITY OF
21 BELL, UNDERSTANDABLY WHEN YOU PUT THESE ACTIVITIES
22 TOGETHER.

23 AND I THINK THAT MR. CORCORAN IS IN THE
24 PERFECT POSITION TO DESCRIBE TO THE COURT HOW THE
25 CITY OF BELL OPERATED AND PARTICULARLY MS. SPACCIA'S

1 ROLE IN IT.

2 THE COURT: OBJECTION SUSTAINED. THE
3 OBJECTION IS SUSTAINED.

4 MR. BRAUN: NO FURTHER QUESTIONS, YOUR
5 HONOR.

6 MR. KENNEDY: NOTHING, YOUR HONOR.

7 THE COURT: ANYTHING FURTHER?

8 MR. ONSTOT: NO.

9 THE COURT: THANK YOU, SIR.

10 THE WITNESS: THANK YOU.

11 MR. BRAUN: WE WILL REST, YOUR HONOR.

12 THE COURT: OKAY. THANK YOU.

13 AND YOU'LL BE READY TO PROCEED AFTER THE
14 NOON BREAK?

15 MR. KENNEDY: YES, YOUR HONOR.

16 THE COURT: WHAT DOES YOUR SCHEDULE OF
17 WITNESSES LOOK LIKE?

18 MR. KENNEDY: WE HAVE THREE WITNESSES. I
19 THINK ONE OF THEM, REBUTTAL. ONE OF THEM IS
20 MS. VALDEZ.

21 THE COURT: YOU CAN USE NAMES AND TELL US
22 WHAT THEY'RE GOING TO TESTIFY ABOUT.

23 MR. ONSTOT: WELL, FROM THE CITY'S
24 PERSPECTIVE, I'M CONTEMPLATING WHETHER OR NOT I WILL
25 CALL MS. VALDEZ OR THERESA DIAZ. I HAVEN'T DECIDED

1 YET. I HAVE TO THINK IT THROUGH.

2 MR. KENNEDY: WE'LL INITIALLY START OF WITH
3 MR. TERRANCE RODGERS. WE INTEND TO GO FROM THAT
4 POINT TO A REBUTTAL WITNESS, EDWARD LEE, WHOSE
5 SIGNATURE AND COMMENTS HAVE BEEN DISCUSSED HERE.

6 THE COURT: I'M SORRY. I MISSED THAT ONE.

7 MR. KENNEDY: EDWARD LEE, WHO WAS THE --
8 APPARENTLY THE SIGNATURE WAS ON THE 75 DOCUMENT. WE
9 INDICATED BEFORE IN OUR TESTIMONY YESTERDAY, WE WILL
10 CALL A REBUTTAL WITNESS TO TESTIFY AS TO WHETHER HE
11 ACTUALLY SIGNED THIS DOCUMENT.

12 AND THAT DOCUMENT ACTUALLY WENT BEFORE THE
13 CITY COUNCIL. HE WAS, IN FACT, THE CITY ATTORNEY AT
14 THE TIME. HE RECEIVED PACKAGES, THE SAME AS
15 MS. SPACCIA AND THE CITY COUNCIL DID, COMPLETE WITH
16 ALL ATTACHMENTS TO THEM AND WILL BE ABLE TO ATTEST
17 WHETHER OR NOT THOSE AGREEMENTS EVER WERE PLACED ON
18 THAT BUDGET.

19 AND THEN WE HAVE MS. VALDEZ. AND I WILL
20 CONFER WITH THE CITY'S COUNSEL. IF WE CAN AGREE
21 SHE'S NOT NECESSARY, THEN WE WON'T CALL HER, BUT
22 OTHERWISE IT WILL BE MS. VALDEZ.

23 THE COURT: WHAT IS YOUR FIRST WITNESS
24 GOING TO TESTIFY ABOUT?

25 MR. KENNEDY: MS. SPACCIA INDICATED --

1 WELL, FIRST OF ALL SHE'S THE FOUNDATION, WHICH I
2 THINK WE CAN GET A LOT DONE BY STIPULATION.

3 WE WISH TO PROVIDE THE COURT THE FULL
4 AGENDA FOR CERTAIN OF THE RESOLUTIONS IN ORDER TO
5 HAVE A COMPLETE DOCUMENT. SHE'S ALSO THE PERSON WHO
6 MS. SPACCIA TESTIFIED TO WAS HANDED THE FULL PACKET
7 WITH ALL THE AGREEMENTS IN IT AND THEN PREPARED THE
8 PACKET TO GO FORWARD WITH THE COUNCIL.

9 THE COURT: SO IF I'M UNDERSTANDING --

10 MS. SPACCIA: NO. THAT'S NOT TRUE. SHE
11 WAS THE CITY CLERK.

12 THE COURT: SO IF I AM UNDERSTANDING, THE
13 THRUST OF YOUR CASE IS THAT THE CONTRACTS WERE NOT
14 PUBLICALLY AVAILABLE?

15 MR. KENNEDY: I'M BASICALLY ALSO SAYING
16 THAT THE CONTRACTS WERE ESSENTIALLY FROM 7/05 ON WERE
17 FRAUDULENT. THE 7/05 DOCUMENT WAS FRAUDULENT.

18 THE COURT: THE 7/05?

19 MR. KENNEDY: THAT'S THE SECOND ADDENDUM,
20 GOING FORWARD. THAT APPEARS TO HAVE BEEN --

21 THE COURT: OKAY. I'LL TELL YOU WHAT I'M
22 GOING TO DO: I'M GOING TO HAVE YOUR OPENING
23 STATEMENT GIVEN AT THE START OF THE NEXT -- SO YOU
24 CAN TELL ME WHAT I SHOULD BE EXPECTING.

25 OKAY. WE'LL BE IN RECESS. YOU NEED AN

1 HOUR, AN HOUR AND A HALF?

2 MR. KENNEDY: HOUR AND A HALF IS FINE.

3 THE COURT: WE CAN RECESS UNTIL 1:30.

4 MR. BRAUN: THERE IS ONE OTHER ISSUE I
5 SHOULD RAISE.

6 THE COURT: SURE.

7 MR. BRAUN: MS. VALDEZ IS NOT A DEFENDANT
8 IN THE CRIMINAL CASE, BUT SHE IS A PROSECUTION
9 WITNESS. SHE WAS GIVEN LIMITED IMMUNITY BECAUSE SHE
10 PARTICIPATED IN THE FABRICATION OF THE FAKE CONTRACT.

11 SO I ASSUME THAT THAT IMMUNITY WOULD BE --
12 EXTENDS TO HERE. I'M NOT GOING TO RAISE IT, BUT JUST
13 FOR THE COURT TO UNDERSTAND THE BACKGROUND.

14 THE COURT: WELL, ISN'T THAT A MATTER OF
15 IMPEACHMENT, THEN?

16 MR. BRAUN: I'M NOT GOING TO ASK ABOUT HER
17 IMMUNITY. I'LL JUST ASK WHAT SHE DID.

18 MR. KENNEDY: AND I CERTAINLY HAVE NO
19 AUTHORITY OVER THE --

20 THE COURT: OKAY. WE'RE IN RECESS UNTIL
21 1:30.

22 (WHEREUPON, A LUNCH BREAK WAS TAKEN
23 FROM 12:00 P.M. TO 1:33 P.M.)
24
25

1 ORANGE, CALIFORNIA, TUESDAY

2 AUGUST 28, 2012

3 1:31 P.M.

4
5 THE COURT: OKAY. WE'RE ON THE RECORD.

6 ARE YOU PREPARED TO GIVE AN OPENING STATEMENT?

7 MR. KENNEDY: IF THE COURT REQUESTS THE
8 CALPERS --

9 IN THIS CASE, CALPERS HAS DETERMINED, BOTH
10 THROUGH VIRTUE OF ITS AUDIT OF THE CITY OF BELL AND
11 REVIEW OF OTHER MATERIAL, THAT IT CANNOT DETERMINE
12 FOR MS. SPACCIA, DURING HER EMPLOYMENT WITH THE CITY
13 OF BELL, A VALID OR QUALIFYING PAY RATE BASED UPON
14 THE CONDITIONS THAT THE LEGISLATURE HAS ESTABLISHED
15 FOR PURPOSES OF CALCULATION OF RETIREMENT ALLOWANCE.

16 BASED ON THAT, CALPERS HAS DECLINED TO USE
17 THE COMPENSATION, THE REMUNERATION THAT WAS RECEIVED
18 BY MS. SPACCIA WHILE EMPLOYED BY THE CITY OF BELL AND
19 INSTEAD HAS DEFERRED TO NON-BELL PERIODS TO CALCULATE
20 HER P.E.R.S. COMPENSATION EARNABLE FOR THAT TIME.

21 THE COURT: FOR THAT TIME, MEANING THE
22 TIME --

23 MR. KENNEDY: FOR THE SERVICE PERIOD DURING
24 BELL.

25 THE COURT: OKAY.

1 MR. KENNEDY: HER CALCULATION -- HER
2 TESTIMONY WILL BE THAT HER BENEFIT CALCULATION WAS
3 BASED UPON BOTH THE RECIPROCAL CALCULATION FROM HER
4 NON-P.E.R.S. EMPLOYERS IN THE PAST AND HER P.E.R.S.
5 EMPLOYERS AS APPLIED TO BELL.

6 THE TOTAL AMOUNT OF RETIREMENT ALLOWANCE
7 THAT SHE WAS AWARDED AT THE TIME OF HER SERVICE WAS
8 \$3,620 PER MONTH.

9 CALPERS WILL ALSO TESTIFY THAT -- WELL,
10 CALPERS DOES NOT BELIEVE THAT HER CONTRACTS
11 CONSTITUTE EVIDENCE OF A VALID PAY RATE AFTER TAKING
12 INTO CONSIDERATION A PUBLICALLY AVAILABLE PAY
13 SCHEDULE.

14 BUT IF IT WERE TO TAKE INTO CONSIDERATION
15 OTHER INFORMATION, INCLUDING CONTRACTS THAT SHE
16 ENTERED INTO WHILE AT BELL, EVEN THOUGH THEY DO NOT
17 CONSTITUTE A PAY RATE BECAUSE THEY ONLY REFLECT --
18 THEY ONLY DISCLOSE WHAT SHE WAS PAID.

19 THEY ONLY REFLECT WHAT ONE PERSON RECEIVED
20 FOR THAT POSITION. THEY DON'T REFLECT THE
21 COMPENSATION EARNABLE FOR A POSITION THAT SHE HELD.
22 ALTHOUGH, SHE HELD A POSITION THAT WAS CLEARLY
23 IDENTIFIED BY BOTH HER IN HER TESTIMONY AND
24 RECOGNIZED BY CALPERS AS PART OF A LARGER GROUP OR
25 CLASS AT THE CITY OF BELL.

1 AND THAT LARGE GROUP OR CLASS WILL PROBABLY
2 FALL SOMEWHERE IN THE AREA OF THE MANAGEMENT GROUP.
3 THE TESTIMONY HAS BEEN SHE'S NOT A DEPARTMENT HEAD.
4 YET SHE HAS PERFORMED FUNCTIONS THAT HAVE BEEN
5 SIMILAR TO A DEPARTMENT HEAD.

6 BUT SHE ALSO PERFORMED FUNCTIONS THAT WERE
7 LOWER-LEVEL MANAGEMENT, SUCH AS A MANAGEMENT ANALYST
8 TYPE OF POSITION.

9 IF WE WERE TO ACCEPT -- CALPERS WILL
10 TESTIFY THAT IF WE WERE TO ACCEPT A CONTRACT OF HERS
11 AS A PAY RATE IN LIEU OF A PAY RATE -- IN LIEU OF THE
12 PAY SCHEDULE -- EXCUSE ME.

13 CALPERS' POLICY IS TO ONLY LOOK TOWARDS
14 AND -- ALSO IN REGULATIONS NOW, WHICH CLARIFIES THAT
15 POLICY, IT ONLY LOOKS TOWARDS DOCUMENTS THAT WERE
16 PUBLICLY NOTICED, DULY PASSED BY THE GOVERNING BODY
17 AT A MINIMUM.

18 BUT IN THIS CASE, WE HAVE EVEN MORE DUBIOUS
19 TYPE OF ARRANGEMENTS. WE HAVE ALLEGATIONS THAT THE
20 DOCUMENTS WERE PERHAPS EVEN FALSIFIED. AND WE HAVE
21 THE ATTENDANT OTHER ACTIONS THAT ARE GOING ON AT THIS
22 TIME.

23 BUT IF WE WERE TO LOOK AT, SAY, THE FIRST
24 CONTRACT AS A PAY RATE OR ANY CONTRACT AS A PAY RATE,
25 THAT WOULD BE THE BEGINNING. WE WOULD START WITH THE

1 BEGINNING. WE WOULD START WITH THE BEGINNING. WE
2 WOULD LOOK AT THE PAY RATE THAT SHOWED OR THE
3 COMPENSATION THAT SHOWED.

4 THEN WE WOULD HAVE TO SUBMIT IT TO A GROUP
5 OR CLASS ANALYSIS AND SEE IF IT FELL WITHIN THE PAY
6 RANGE OF OTHER MEMBERS IN THAT GROUP OR CLASS.

7 CLEARLY SHE'S NOT IN A GROUP OR CLASS WITH
8 THE CITY COUNCIL. CLEARLY SHE'S NOT IN A GROUP OR
9 CLASS WITH THE CHIEF ADMINISTRATIVE OFFICER. JUST AS
10 CLEARLY, SHE PERFORMS FUNCTIONS THAT APPEAR TO BE
11 GREATER THAN THOSE OF MERELY CLERICAL TYPE OF TYPING,
12 EVEN THOUGH THAT'S A GREAT DEAL OF WHAT SHE DID.

13 WE WOULD THEN FIND OUT THE RANGE OF THAT
14 AND APPLY IT TO WHATEVER WE RECOGNIZE AS A VALID OR
15 CREDIBLE PAY SCHEDULE OR A PAY RATE FOR HER TO
16 DETERMINE WHAT HER NORMAL BASIC PAY WOULD BE.

17 AND AS THE COURT IS WELL AWARE IN THIS
18 CASE, THE CASE LAW IS THAT COMPENSATION EARNABLE IS
19 CLEARLY NOT SIMPLY A MATTER OF WHAT A PERSON WAS PAID
20 BY THEIR EMPLOYER. IT IS A SPECIFICALLY PROSCRIBED
21 STATUTORILY DEFINED CONCEPT UNDER THE P.E.R.L.

22 AND THAT'S ALL WE'RE TRYING TO DO, IS FIND
23 HERE -- TO GET TO A VALID AND CREDIBLE COMPENSATION
24 EARNABLE. AND IN THIS CASE, UNFORTUNATELY, WE DO NOT
25 FEEL WE CAN USE ANY OF THE DOCUMENTS OR THE CONTRACTS

1 FROM THE CITY OF BELL TO DO THAT.

2 SO WE HAVE DEFERRED TO THE CALCULATION
3 WHERE WE LOOK AT THE PRIOR PAY RATE UNDER NON-BELL --
4 THIS OTHER EMPLOYER'S INCOME.

5 THE ISSUE ON THE AIR TIME IS RATHER
6 STRAIGHTFORWARD AND SIMPLE. THE STATUTE, THE
7 LITERATURE PASSED OUT BY CALPERS, EVEN THE REQUEST
8 FOR COSTING ITSELF, DICTATE THAT ONLY THE MEMBER MAY
9 PURCHASE.

10 MS. SPACCIA INDICATES THAT SHE HAD A
11 CONVERSATION AT SOME POINT IN TIME WITH SOMEBODY AT
12 CALPERS WHO TOLD HER THAT IT WAS APPROPRIATE FOR HER
13 TO ALLOW THE EMPLOYER TO PAY TO THE EXTENT THAT THAT
14 CONFLICTS WITH THE STATUTORY PROVISIONS AND CONFLICTS
15 WITH THE OTHER INFORMATION THAT WAS AVAILABLE AND
16 SHOULD HAVE BEEN REASONABLY AVAILABLE TO MS. SPACCIA.

17 WE DON'T THINK THERE'S A CREDIBLE CASE OF
18 ESTOPPEL TO OVERCOME THE EXPRESS STATUTORY PROVISION
19 THAT SAYS ONLY A MEMBER CAN PURCHASE THEM, NOT THE
20 EMPLOYER.

21 SO THAT ESSENTIALLY IS OUR CASE, AND WE
22 WILL PRESENT THE TESTIMONY OF BARBARA HEARD, WHO WILL
23 FIRST -- AND I THINK IT'S BENEFICIAL, GIVEN THE
24 DISCUSSIONS WE HAD OFF THE RECORD WITH THE COURT AND
25 COUNSEL, TO HAVE MS. HEARD DISCUSS HOW THIS VERY

1 COMPLICATED CALCULATION WAS DONE WITH MS. SPACCIA.

2 I WOULD CONCEDE TO THE COURT AND WILL
3 CONCEDE TO COUNSEL THAT THIS IS A VERY COMPLICATED
4 CALCULATION THAT WAS DONE BECAUSE OF THE NATURE OF
5 THE CIRCUMSTANCES WITH BELL AND ALSO BECAUSE OF THE
6 TYPES OF SERVICES WITH DIFFERENT ENTITIES SHE WORKED
7 WITH IN THE PAST.

8 AS THE COURT KNOWS, WE ARE TRYING TO
9 ACCOMPLISH FOR MS. SPACCIA A 12-MONTH FINAL
10 COMPENSATION PERIOD. MS. HEARD WILL TESTIFY AND
11 DISCLOSE HOW WE ARRIVED AT THAT 12-MONTH FINAL
12 COMPENSATION BECAUSE CALPERS DOES TRY TO ESTABLISH
13 THAT IF IT'S NOT OTHERWISE AVAILABLE THROUGH THE
14 CURRENT EMPLOYER.

15 WE WILL ALSO DESCRIBE WHAT NUMBERS WE USED
16 FOR THE RECIPROCAL PORTIONS OF THE CALCULATIONS. AND
17 MS. HEARD WILL ALSO TESTIFY THAT AT ANY TIME ANY
18 MEMBER, INCLUDING MS. SPACCIA, COULD COME FORWARD,
19 SET UP A MEETING WITH CALPERS REPRESENTATIVES TO
20 DISCUSS HOW HER BENEFIT WAS CALCULATED AND ON WHAT
21 BASIS IT WAS CALCULATED AND HOW THE NUMBERS WERE
22 DERIVED.

23 AND MR. TERRENCE RODGERS WILL TESTIFY AS A
24 REPRESENTATIVE OF THE CALCULATION REVIEW UNIT -- I
25 MEAN, AT THE COMP REVIEW UNIT AT CALPERS ON THE

1 CONCEPT OF THE PAY RATE, THE PAY SCHEDULE, THE GROUP
2 OR CLASS, AND THE ACTUAL LITERAL BREAKDOWN FOR THE
3 CITY OF BELL AS TO AN ANALYSIS OF OTHER MEMBERS OF
4 THE ADMINISTRATIVE AND THE MANAGEMENT CLASSIFICATIONS
5 THAT MS. SPACCIA TESTIFIED SHE BELONGED TO AND MAKE A
6 COMPARISON AS TO WHAT THE PAY RANGE WAS FOR THAT
7 GROUP OR CLASS, AS IF THERE WERE, YOU KNOW, A VALID
8 PAY RATE FOR MS. SPACCIA.

9 IN OTHER WORDS, IF THE COURT WERE TO ASSUME
10 THAT SHE HAD A VALID PAY SCHEDULE, IT WOULD BE
11 INCUMBENT UPON CALPERS UNDER 20636 TO THEN
12 CIRCUMSCRIBE THE INCREASE OR THE LEVEL OF HER
13 COMPENSATION EARNABLE WITHIN THAT GROUP OR CLASS SO
14 THAT THEY WOULD BE -- TO PREVENT EXACTLY WHAT
15 HAPPENED HERE, WE BELIEVE, AND THAT IS A TREMENDOUS
16 SPIKING OF HER COMP EARNABLE, OF HER RETIREMENT
17 BENEFIT.

18 AND THE REASON I SAY SPIKING IN THIS CASE
19 IS BECAUSE OF THE VERY FACT THEY APPROACHED IT
20 THROUGH INDIVIDUAL CONTRACTS, INSTEAD OF BEING ON A
21 PAY SCHEDULE, INSTEAD OF HOMOGENIZING THAT PAY RATE
22 WITHIN A GROUP OR CLASS.

23 SHE STOOD OUT AS AN OUTLIER EVEN AMONGST
24 THE MANAGEMENT CLASS AND CLEARLY AMONG THE -- WELL,
25 THE MANAGEMENT CLASS FOR SURE BUT EVEN AMONGST THE

1 DIRECTORS OR THE DEPARTMENT HEADS.

2 WE WILL ALSO CALL AS A REBUTTAL WITNESS,
3 MR. ED LEE, WHO WILL TESTIFY THAT THE SEVEN -- THE
4 JULY '05 CONTRACT, AS THE CITY ATTORNEY AT THAT TIME
5 FOR BELL, PRESENT AT THE CITY COUNCIL MEETING,
6 RECIPIENT OF AN UNCENSORED -- OR A COPY OF THE
7 NONPUBLIC VERSION OF THE BUDGET, WILL TESTIFY THAT NO
8 CONTRACTS WERE INCLUDED IN THAT WHEN IT WAS SUBMITTED
9 TO THE CITY COUNCIL.

10 IT WAS NEVER PART OF THE -- IT WAS NEVER
11 "AGENDIZED," THAT HE DID NOT SIGN THE DOCUMENT OR
12 THAT HE DOES NOT BELIEVE THAT THAT IS HIS SIGNATURE
13 ON IT, AND HE CERTAINLY DIDN'T CREATE THE DOCUMENT.

14 SO WE WOULD -- THE EVIDENCE, I THINK, WILL
15 SHOW THE ONLY TWO AGREEMENTS THAT WE REALLY HAVE THAT
16 HAVE ANY CORRELATION TO BEING AGENDIZED WERE THE
17 7/03, WHICH APPARENTLY NOW, AFTER THIS WHOLE
18 ANALYSIS, APPEARS TO HAVE BEEN ON THE JUNE 30, 2003,
19 AGENDA AND ACTUALLY INCLUDED IN THERE ALONG WITH
20 ANOTHER GENTLEMAN'S CONTRACT AND APPEARS TO BE
21 APPROVED BY THE CITY COUNCIL.

22 AND THERE WAS ALSO A 7/04 AGREEMENT THAT
23 WAS NOT INCLUDED BUT AT LEAST WAS REFERENCED AS BEING
24 IN THE AGENDA AS BEING SET BEFORE THE COUNCIL. WE
25 DON'T HAVE ANY EVIDENCE THAT THAT WAS ACTUALLY

1 PHYSICALLY PUT BEFORE THE COUNCIL.

2 BUT INTERESTINGLY AND PERHAPS UNIQUELY
3 APPARENT IS THAT AFTER THAT, THERE'S NO AGENDA ITEM
4 THAT APPROVES ANY OF THESE CONTRACTS. THERE IS NO
5 COPY OF THE CONTRACT THAT IS PART OF AN AGENDA
6 PACKET.

7 SO WE WOULD BELIEVE THAT EVEN UNDER THE
8 MOST EXTREME CONDITIONS, THERE WOULD BE A PAY
9 SCHEDULE -- A DOCUMENT IN LIEU OF A PAY SCHEDULE
10 WOULD CEASE SOMEWHERE AROUND 7/03 AT THE MOST WITH
11 HER INITIAL AGREEMENT.

12 AND WITH THAT I'D LIKE TO -- IF THE COURT
13 IS READY, I'D LIKE TO CALL BARBARA HEARD.

14 THE COURT: DOES THE CITY WISH TO GIVE AN
15 OPENING?

16 MR. ONSTOT: YES.

17 THE COURT: WHY DON'T YOU DO THAT.

18 MR. ONSTOT: WE AGREE, GENERALLY, WITH
19 CALPERS' POSITION. HOWEVER, WITH REGARDS TO -- IF
20 THE COURT FINDS THAT A PAY RATE IS ABIDED IN THE
21 CONTRACTS THAT MS. SPACCIA HAD, THAT THE FIRST ONE
22 WHICH IS EXHIBIT 7 IN THE CALPERS BINDER, THE 2003
23 ONE SHOULD BE USED BECAUSE IT WAS THE ONLY ONE THAT
24 WAS PROPERLY AGENDIZED AND APPROVED, THAT HAD A BASIC
25 SALARY RATE OF \$3,935 PER PAY PERIOD.

1 THE EVIDENCE WILL SHOW THAT THE 2004
2 ADDENDUM SHOULD NOT BE USED AS POINTED OUT BY COUNSEL
3 FOR CALPERS BECAUSE THERE'S NO EVIDENCE THAT THAT WAS
4 PROPERLY BROUGHT BEFORE THE COUNCIL.

5 THE 2005 ADDENDUM, WHICH IS EXHIBIT 9 IN
6 THE CALPERS BINDER, THERE IS NO EVIDENCE THAT THAT
7 WAS AGENDIZED, BROUGHT BEFORE THE COUNCIL OR APPROVED
8 SINCE WE HAVE NO MINUTES, NO AGENDA, NO INFORMATION
9 REGARDING DISCUSSION OF THAT.

10 AS TO THE NEXT ADDENDUM, WHICH IS 2006, THE
11 EVIDENCE WILL SHOW THAT THAT IS POST ADAPTION OF THE
12 CITY CHARTER AND MR. RIZZO'S ALLEGED AUTHORIZATION TO
13 SIGN CONTRACTS.

14 THE EVIDENCE WILL SHOW, INDEED HAS ALREADY
15 SHOWED THROUGH MS. JACOBO, THAT THE RESOLUTION ONLY
16 APPLIED TO SECTION 519 OF THE CITY CHARTER, WHICH IS
17 INAPPLICABLE TO EMPLOYMENT CONTRACTS AND SPECIFICALLY
18 EXCLUDES THE CITY ADMINISTRATOR FROM APPROVING ALL
19 WRITTEN CONTRACTS FOR SERVICES TO BE PERFORMED BY
20 CITY EMPLOYEES WHO ARE RECEIVING A REGULAR SALARY.

21 SO THE POST-2006 ADDENDUM CANNOT BE USED IN
22 PENSION CALCULATIONS.

23 THE EVIDENCE WILL SHOW THAT MS. SPACCIA
24 FAILED IN HER BURDEN OF PROOF TO PROVE THAT THE
25 CONTRACTS WERE MADE PUBLICLY AVAILABLE. THE

1 TESTIMONY SHOWED SHE DID NOT KNOW THE PROCEDURES ON
2 HOW THE CITY RESPONDED TO PUBLIC RECORDS ACT
3 REQUESTS.

4 SHE DIDN'T KNOW WHAT PROCEDURES, IF ANY,
5 THE CITY CLERK USED TO ENSURE THAT COUNCIL ITEM
6 AGENDAS AND THE BACKUP FOR THAT WERE MADE PUBLICLY
7 AVAILABLE.

8 THE EVIDENCE WILL FINALLY SHOW THAT
9 MS. SPACCIA FAILED IN HER BURDEN TO SHOW WHICH CLASS
10 OR GROUP SHE WOULD PERTAIN TO WITH REGARDS TO THE
11 LIKE DUTIES OF SPECIAL-PROJECTS PEOPLE SUCH AS
12 HERSELF.

13 THANK YOU.

14 THE COURT: THANK YOU.

15 MS. HEARD, WILL YOU PLEASE COME FORWARD
16 OVER HERE. AND IS THAT CHAIR GOING TO BE OKAY FOR
17 YOU?

18 THE WITNESS: YEAH. I JUST SPRAINED MY
19 ANKLE.

20 THE COURT: CAN I GET YOU TO RAISE YOUR
21 RIGHT HAND AND FACE THE COURT REPORTER, PLEASE.

22 ///

23 ///

24 ///

25

1 BARBARA HEARD,

2 CALLED AS A WITNESS AND SWORN IN BY
3 THE COURT REPORTER, WAS EXAMINED AND
4 TESTIFIED AS FOLLOWS:

5
6 COURT REPORTER: DO YOU SOLEMNLY SWEAR OR
7 AFFIRM THAT THE EVIDENCE YOU WILL GIVE IN THIS
8 PROCEEDING WILL BE THE TRUTH, THE WHOLE TRUTH, AND
9 NOTHING BUT THE TRUTH?

10 THE WITNESS: I DO.

11 THE COURT: HAVE A SEAT. TELL US YOUR NAME
12 AND SPELL IT FOR US, PLEASE.

13 THE WITNESS: BARBARA JEAN HEARD;
14 B-A-R-B-A-R-A J-E-A-N H-E-A-R-D.

15 THE COURT: H --

16 THE WITNESS: -E-A-R-D.

17 THE COURT: THANK YOU SO MUCH.
18

19 DIRECT EXAMINATION

20 BY MR. KENNEDY:

21 Q. MS. HEARD, YOU'RE CURRENTLY EMPLOYED BY
22 CALPERS?

23 A. CAN YOU SPEAK UP JUST A LITTLE BIT.

24 Q. YES. YOU ARE EMPLOYED BY CALPERS IN THE
25 CALCULATION UNIT?

1 A. THAT WAS MY PRIOR POSITION, YES.

2 Q. AND WHAT IS YOUR POSITION NOW?

3 A. I'M THE MANAGER OF THE ESTIMATES UNIT,
4 WHICH IS NO LONGER THE RETIREMENT CALCULATIONS
5 ESTIMATE SECTION.

6 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED IN THAT
7 AREA OF CALPERS?

8 A. SINCE JANUARY OF 1998.

9 Q. AND WHAT IS THE -- DESCRIBE TO US WHAT THE
10 FUNCTION OF THAT POSITION IS.

11 THE COURT: IS THAT AT THE ESTIMATES UNIT
12 NOW?

13 BY MR. KENNEDY:

14 Q. AT THE CURRENT -- YOU'RE CURRENT -- AT THE
15 ESTIMATES UNIT.

16 A. AT THE ESTIMATES UNIT, I'M THE MANAGER.
17 AND WE PERFORM ESTIMATES OF BENEFIT CALCULATIONS, ALL
18 TYPES OF CALCULATIONS THAT A MEMBER MAY HAVE IN THEIR
19 HISTORY OF THEIR EMPLOYMENT WITH CALPERS FROM OUR
20 SERVICE RETIREMENT, DISABILITY RETIREMENT, PARTIAL
21 RETIREMENT, REINSTATEMENT RETIREMENT.

22 AND I MANAGE A GROUP OF STAFF THAT PROCESS
23 THE ESTIMATE REQUEST IN MY CURRENT POSITION.

24 THE COURT: OKAY. YOU EVER GO DOWN A ROAD,
25 AND IT SAYS SPEED LIMIT 55 MILES AN HOUR?

1 THE WITNESS: OKAY.

2 THE COURT: THIS COURT REPORTER OVER HERE
3 HAS A SPEED LIMIT, AND YOU'RE SPEEDY.

4 THE WITNESS: ALL RIGHTY.

5 THE COURT: SO I NEED YOU TO SLOW DOWN FOR
6 US, PLEASE.

7 THE WITNESS: OKAY.

8 BY MR. KENNEDY:

9 Q. AND ARE YOU AWARE IF A MEMBER HAS A
10 QUESTION ABOUT THEIR CALCULATION OR HOW THEIR BENEFIT
11 OR SERVICE RETIREMENT HAS BEEN CALCULATED, DOES
12 CALPERS PROVIDE RESOURCES AND STAFF TO EXPLAIN THAT
13 TO THEM?

14 A. YES.

15 Q. AND HAVE YOU, IN FACT, ENGAGED IN THOSE
16 KINDS OF DISCUSSIONS WITH MEMBERS BEFORE?

17 A. YES.

18 Q. AND I'D LIKE TO DIRECT YOUR ATTENTION TO --
19 THERE IS A SMALL BLACK BOOK IN FRONT OF YOU.

20 MR. KENNEDY: AND MAY I APPROACH YOUR,
21 HONOR, JUST TO CLEAR SOME OF THAT.

22 THE COURT: SURE.

23 MR. KENNEDY: THANKS.

24 BY MR. KENNEDY:

25 Q. I'LL BE LOOKING AT TAB NUMBER 13,

1 MS. HEARD.

2 THERE IS A SERIES OF DOCUMENTS UNDER THAT
3 TAB. AND IF YOU COULD JUST TAKE A BRIEF REVIEW OF
4 THEM AND FAMILIARIZE YOURSELF WITH THEM.

5 A. YES.

6 Q. HAVE YOU SEEN THEM BEFORE?

7 A. YES.

8 Q. AND THESE ARE THE DOCUMENTS THAT I BELIEVE
9 ARE RELATED TO HOW THE CALCULATION OF MS. SPACCIA'S
10 SERVICE RETIREMENT WAS CALCULATED BY CALPERS?

11 A. CORRECT.

12 Q. OKAY. NOW, CAN YOU -- MAYBE PERHAPS IT
13 JUST MIGHT BE CLEARER AND SIMPLER IF I COULD JUST ASK
14 YOU. COULD YOU PLEASE EXPLAIN TO US EACH OF THE
15 DOCUMENTS, WHAT IT IS.

16 AND THEN WE WILL GO INTO THE ACTUAL METHOD
17 OF CALCULATING HER RETIREMENT. WHAT'S THE -- THE
18 BATES STAMP ON EXHIBIT 13, 1 TO 2, WHAT'S THAT?

19 A. THIS IS THE SERVICE RETIREMENT CHANGE
20 CALCULATION WHICH COMPUTES THE RETIREMENT BENEFIT.

21 Q. OKAY. AND ITEM 3 AND 4?

22 A. THESE ARE YOUR MANUAL CALCULATION SHEETS TO
23 DETERMINE THE BENEFIT TO THE UNMODIFIED ALLOWANCE.

24 Q. I'M SORRY. I SHOULD SAY 3 TO 7. IS
25 INCLUSIVE OF ALL THE MANUAL CALCULATIONS?

1 A. YES.

2 Q. AND ITEM 8. I'M SORRY. BATES STAMP TO
3 ITEM 13?

4 A. THAT'S OUR COMPENSATION AUDIT INSTRUCTION
5 SHEET WHICH PROVIDES INFORMATION TO BENEFITS.

6 Q. OKAY. AND PAGE 9?

7 A. IT'S A COMPENSATION INSTRUCTION SHEET
8 THAT'S ENTERED INTO THE CALPERS SYSTEM.

9 Q. OKAY. AND PAGE 10?

10 A. THIS IS A MEMBER'S AWARD LETTER INFORMING
11 THE MEMBER OF THEIR OPTION AND THEIR BENEFIT PAYMENT.

12 Q. IS THIS -- AND I MAY USE THIS TERM FROM
13 TIME TO TIME -- IS THAT OFTENTIMES REFERRED TO AS A
14 "ROLL LETTER"?

15 A. YES.

16 Q. OKAY. AND THE ITEM 11?

17 A. THAT BREAKS DOWN -- THIS IS PART OF THE
18 ROLL LETTER WHICH GIVES THE MEMBER THE CONTRIBUTIONS
19 THAT THEY HAVE INTO THE SYSTEM, BASED ON THEIR TOTAL
20 CONTRIBUTIONS, THEIR INTEREST, IF IT'S TAX DEFERRED
21 OR NOT TAXED.

22 Q. AND ITEM 12?

23 A. THIS IS PART OF THE SAME PACKAGE, THE ROLL
24 LETTER IT'S A NOTIFICATION TO THE EMPLOYER REGARDING
25 THE MEMBER'S ROLL PLACEMENT.

1 Q. AND I THINK -- IT LOOKS LIKE IT STARTS --
2 MINE STARTS OVER AGAIN AS A DUPLICATE. BUT THAT'S
3 THE END OF YOURS?

4 A. YES.

5 Q. OKAY. NOW, IT IS A SAFE ASSUMPTION TO SAY
6 THAT MS. SPACCIA'S CALCULATION IS A LITTLE BIT MORE
7 COMPLICATED THAN THE AVERAGE?

8 A. YES.

9 Q. HOW WOULD YOU LIKE TO START TO PRESENT
10 THE -- TO EXPLAIN HOW THE CALCULATIONS WERE
11 PERFORMED?

12 A. I JUST TAKE IT FROM THE TOP OF WHAT'S THE
13 COMPONENTS USED IN THE CALCULATION.

14 THE COURT: LET'S START HERE. AT SOME
15 POINT, CALPERS GETS AN APPLICATION FROM HER THAT SAYS
16 "I WOULD SURE LIKE TO RETIRE."

17 THE WITNESS: CORRECT.

18 THE COURT: THEN WHAT DOES CALPERS DO AFTER
19 THEY GET THAT LETTER?

20 THE WITNESS: SO WE RECEIVE THE RETIREMENT
21 APPLICATION FROM THE MEMBER, AND THE INFORMATION IS
22 VALIDATED BECAUSE IT WOULD INDICATE DIFFERENT THINGS
23 ON THEIR APPLICATION.

24 IT'S REVIEWED. IF IT'S ACCEPTABLE, IT'S
25 KEYED AND ENTERED INTO THE RETIREMENT SYSTEM. FROM

1 THERE --

2 THE COURT: OKAY. IS THERE ANYTHING SO FAR
3 WITH THE RESPONDENT'S APPLICATION THAT'S COMPLICATED,
4 OR IS THIS ALL STRAIGHTFORWARD SO FAR?

5 THE WITNESS: STRAIGHTFORWARD.

6 THE COURT: OKAY. THEN WHAT HAPPENS?

7 THE WITNESS: SO THEN THE APPLICATION IS
8 KEYED. IT PRODUCES WHAT'S CALLED A "PRECALCULATION
9 SHEET." AND FROM THERE, COMPONENTS OF THE
10 CALCULATIONS THAT'S ON THE MEMBER'S RECORD -- IT
11 DEPENDS ON EACH INDIVIDUAL CASE -- THERE'S ERRORS AND
12 MESSAGES AND WARNINGS FOR US TO REVIEW.

13 THE COURT: OKAY. DO YOU HAVE THE
14 RECALCULATION SHEET ANYWHERE IN THERE?

15 THE WITNESS: IN TAB 13?

16 THE COURT: YES.

17 THE WITNESS: NO.

18 THE COURT: WAS THERE SOMETHING THAT CAUSED
19 A REVIEW OF THE PRECALCULATION SHEET?

20 THE WITNESS: DO YOU HAVE A COPY OF THE
21 APPLICATION?

22 MR. KENNEDY: YES. THE APPLICATION IS IN
23 THAT SAME BOOK YOU'RE LOOKING AT, AND IT IS TAB 6.

24 THE WITNESS: SO IN TAB 6, PAGE 1, THE
25 "DISABILITY RETIREMENT ELECTION APPLICATION."

1 WHEN THE APPLICATION WAS REVIEWED AND
2 ENTERED AND KEYED, IT WOULD HAVE FELL OUT FOR THE
3 "VENTURA COUNTY EMPLOYEE'S RETIREMENT SYSTEM."
4 THAT'S ONE INDICATOR. SO THAT WAS THE FIRST STOP.

5 THE COURT: OKAY.

6 THE WITNESS: BECAUSE RECIPROCITY -- MEMBER
7 INDICATES SHE HAS RECIPROCITY FOR VENTURA COUNTY
8 EMPLOYEES' RETIREMENT SYSTEM.

9 THE COURT: OKAY. ANYTHING ELSE?

10 THE WITNESS: CAN I ASK A QUESTION?

11 THE COURT: SURE.

12 THE WITNESS: IS THERE A COPY OF THE
13 PRECALCULATION SHEET WITHIN THIS DOCUMENTATION?

14 THE COURT: I HAVE NO IDEA.

15 MR. KENNEDY: IS THERE -- I DON'T KNOW. I
16 DON'T BELIEVE THERE'S ANY OTHER COMPONENT OF THE
17 PACKAGE. IT HAS THE PRECALCULATION -- IT HAS THE
18 CALCULATION ISSUES OTHER THAN THE PAYROLL DETAIL
19 REPORTS THAT ARE IN --

20 THE WITNESS: SO THAT WOULD HAVE BEEN A
21 STOP, THAT WE WOULD LOOK FOR THE RECIPROCAL AGREEMENT
22 ON THE MEMBER'S ACCOUNT. SO THAT WAS A STOP. SO
23 WE'D LOOK INTO THE SYSTEM. IT REQUIRED MANUAL
24 INTERVENTION BY STAFF TO REVIEW.

25 THE COURT: SO THAT'S TO SEE IF IT'S

1 RECIPROCAL?

2 THE WITNESS: YES.

3 THE COURT: AND THEN WHAT HAPPENS?

4 THE WITNESS: AND THEN FROM THERE,
5 DEPENDING ON ANY ERRORS OR WARNINGS THAT ARE ON THE
6 CASE --

7 THE COURT: HOW WOULD WE KNOW IF THERE ARE
8 ANY ERRORS OR WARNINGS?

9 THE WITNESS: ON THE FIRST CALCULATION
10 SHEET, IT WOULD HAVE HAD WARNING MESSAGES OR ERROR
11 MESSAGES IF IT WAS APPLIED TO THE CASE.

12 THE COURT: AND WHO WOULD MAKE THOSE ERRORS
13 OR WARNING?

14 THE WITNESS: IT'S SYSTEM-DERIVED DEPENDING
15 ON THE COMPONENTS OF THE CALCULATIONS.

16 SO DEPENDING ON THE PARTICULAR CASE, IT
17 COULD HAVE FELL FOR A COMPENSATION REVIEW, A PAY RATE
18 GREATER THAN \$14,501, SPECIAL COMP GREATER THAN IN A
19 ONE-YEAR FINAL COMP, DEPENDING ON PAY RATE.

20 SO IT'S JUST CERTAIN TRIGGERS THAT --

21 THE COURT: SO THE NUMBERS THEMSELVES WILL
22 CAUSE A REVIEW?

23 THE WITNESS: YES.

24 THE COURT: AND IT'S NOT SOMEONE LOOKING AT
25 IT AND SAYING, GEE, THIS IS FROM THE CITY OF BELL.

1 THE WITNESS: NO.

2 THE COURT: SO IT HAS TO DO WITH THE
3 NUMBERS THAT ARE ENTERED?

4 THE WITNESS: CORRECT.

5 MR. KENNEDY: I'D LIKE TO DRAW YOUR -- YOUR
6 HONOR, IN RESPONSE TO THAT QUESTION, COULD YOU LOOK
7 AT PAGE 8, THE COMPENSATION AUDIT INSTRUCTION SHEET
8 HAS AN INSTRUCTION DOWN AT THE BOTTOM.

9 MR. BRAUN: TO WHICH EXHIBIT? PAGE 8.

10 MR. KENNEDY: IT'S TAB 13, PAGE 8.

11 THE COURT: PAGE 8 OF -- IS IT EXHIBIT 13?

12 MR. KENNEDY: EXHIBIT 13.

13 THE COURT: TELL US WHAT WE'RE LOOKING AT
14 HERE.

15 THE WITNESS: THIS IS THE COMPENSATION
16 AUDIT INSTRUCTION SHEET. IT'S REPORTED TO THE
17 EMPLOYER SERVICES DIVISION.

18 IT GIVES INFORMATION -- RELAYING
19 INFORMATION TO THE CALCULATION SECTION REGARDING
20 COMPENSATION INFORMATION THAT ADVISES US WHAT
21 BENEFITS -- WHAT TO USE AND WHAT NOT TO USE.

22 THE COURT: OKAY. SO IF WE LOOK AT THE
23 TOP, WE HAVE THE "E.R." CODE. WHAT IS THAT?

24 THE WITNESS: EMPLOYER.

25 THE COURT: OKAY. AND THAT MUST MEAN 69 IS

1 THE --

2 THE WITNESS: CITY OF BELL.

3 THE COURT: THE CITY. AND "R.D.," WHAT'S
4 THAT MEAN?

5 THE WITNESS: RETIREMENT DATE.

6 THE COURT: AND IT'S GOT THE MEMBER'S NAME.

7 THE WITNESS: YES.

8 THE COURT: IT'S GOT THE POSITION.

9 THE WITNESS: CORRECT.

10 THE COURT: WHAT'S THE "F/C" MEAN?

11 THE WITNESS: FINAL COMPENSATION.

12 THE COURT: AND IT SAY -- BOTH ONE YEAR AND
13 THREE YEAR ARE CHECKED. WHY IS THAT?

14 THE WITNESS: BENEFIT PROVISIONS, THAT'S IN
15 THE MEMBER'S HISTORY OF EMPLOYMENT. SO THE CONTRACT
16 FOR THE VARIOUS EMPLOYERS THAT SHE HAS MAY HAVE A
17 ONE-YEAR, ONE EMPLOYER, AND ANOTHER EMPLOYER HAS A
18 THREE-YEAR.

19 SO IN THIS PARTICULAR CASE, IF YOU GO BACK
20 TO PAGE 1 --

21 THE COURT: OKAY.

22 THE WITNESS: -- IF YOU LOOK AT EMPLOYER
23 1717 AND EMPLOYER 1102, UNDER "F/C," THEY HAVE A
24 THREE-YEAR FINAL COMP.

25 AND THE OTHER EMPLOYERS, 0193 AND 0069,

1 HAVE A ONE-YEAR FINAL COMPENSATION.

2 THE COURT: OKAY. AND SO THEN THERE'S
3 SOMETHING IN BOLD LETTERS THAT SAYS:

4 "QUESTIONABLE PAYROLL IS USED IN
5 ALL CALCULATIONS TO BE PROCESSED AS AN
6 ADJUSTMENT."

7 IS THAT SOMETHING THAT'S ENTERED
8 SPECIFICALLY ON THIS SHEET, OR IF I WERE TO LOOK AT
9 EVERY SHEET, IT WOULD SAY THAT?

10 THE WITNESS: EVERY SHEET.

11 THE COURT: OKAY. SO THAT'S JUST STANDARD
12 INSTRUCTIONS?

13 THE WITNESS: CORRECT.

14 THE COURT: NOW, WE GET DOWN TO THE NEXT
15 ONE THAT SAYS "TO B.N.S.D." WHO IS THE B.N.S.D.?

16 THE WITNESS: BENEFIT SERVICES DIVISION.

17 THE COURT: AND WAS THAT SOMETHING YOU HAD
18 TO DO WITH?

19 THE WITNESS: THAT'S MY CORRECT DIVISION.
20 THAT'S THE CALCULATION DIVISIONS WHERE WE PROCESS
21 RETIREMENT BENEFITS.

22 THE COURT: AND HAVE YOU HAD ANYTHING TO DO
23 WITH THIS PARTICULAR RETIREMENT CALCULATION?

24 THE WITNESS: THIS CASE?

25 THE COURT: YES.

1 THE WITNESS: YES.

2 THE COURT: AND WAS THAT FROM THE OUTSET?

3 THE WITNESS: NO.

4 THE COURT: OKAY. AND WHERE IT SAYS, "OKAY
5 TO CALCULATE FROM TRANSCRIPTS" OR THE "PAY RATE IS
6 OKAY TO USE," WHO CHECKS THOSE BOXES?

7 THE WITNESS: IT WOULD BE THE SUBMITTER.
8 SO IF YOU GO TO THE TOP OF THE PAGE, "STAFF NAME."

9 THE COURT: THAT WOULD BE CHERYL
10 LIVINGSTON.

11 THE WITNESS: CORRECT.

12 THE COURT: IF SHE HAD CHECKED EITHER ONE
13 OF THOSE BOXES, WOULD THERE BE FURTHER REVIEW?

14 THE WITNESS: THAT IS THE REVIEW ANALYST.

15 THE COURT: SO IF SHE HAD CHECKED ONE OF
16 THOSE BOXES, THAT WOULD BE THE END OF IT?

17 THE WITNESS: CORRECT.

18 THE COURT: OKAY. BUT APPARENTLY --
19 MS. LIVINGSTON, SHE IS THE REVIEWER; IS THAT RIGHT?

20 THE WITNESS: YES.

21 THE COURT: SHE HAD SOME QUESTIONS?

22 THE WITNESS: CORRECT.

23 THE COURT: AND WHAT WERE THE QUESTIONS
24 THAT SHE HAD?

25 THE WITNESS: I CAN'T SPEAK TO THE

1 QUESTIONS SHE PARTICULARLY HAD.

2 THE COURT: RIGHT.

3 THE WITNESS: BUT THE CASE TRIGGERS WHAT'S
4 CALLED "COMPENSATION REVIEW" BASED ON PAY RATE AND
5 SPECIAL COMPENSATION.

6 AND SO WHAT HAPPENS, A WORK FLOW WAS
7 TRIGGERED TO COMPENSATION REVIEW TO LOOK AT THE CASE
8 FOR THE PAY RATES BECAUSE THEY WERE HIGHER THAN OUR
9 AUDITS THAT ARE IN PLACE FOR CALPERS.

10 THE COURT: MS. LIVINGSTON HAD NO
11 DISCRETION WITH THAT. THAT WAS TRIGGERED BY THE
12 NUMBERS?

13 THE WITNESS: CORRECT.

14 THE COURT: OKAY. AND THERE WERE QUESTIONS
15 FOR BOTH THE THREE-YEARS AND THE ONE-YEAR PERIOD; IS
16 THAT RIGHT?

17 THE WITNESS: YES.

18 THE COURT: AND ONCE THE QUESTIONS ARE
19 TRIGGERED, IT GETS REFERRED TO -- WHO IS IT?

20 THE WITNESS: IT'S OUR EMPLOYER SERVICE
21 DIVISION, AT THAT TIME, COMPENSATION REVIEW.

22 THE COURT: SO DOES THIS FILE THEN END UP
23 IN THE HANDS OF SOMEBODY THAT WORKS AT CALPERS?

24 THE WITNESS: NO, NOT THE FILE. THEY
25 RECEIVE A WORKFLOW.

1 THE COURT: WHAT'S A "WORKFLOW"?

2 THE WITNESS: IT'S A SYSTEM-GENERATED --
3 LIKE YOU HAVE WORK IN YOUR QUEUE.

4 LET'S SAY THIS PARTICULAR MEMBER HAS
5 RETIRED, AND BEFORE WE CAN PROCESS THE MEMBER TO THE
6 RETIREMENT ROLL, WE WOULD HAVE TO LOOK AT THE
7 COMPENSATION THAT RESPOND TO BENEFITS.

8 MR. KENNEDY: CAN I MAKE A POINT OF
9 CLARIFICATION, YOUR HONOR, OF HER TESTIMONY?

10 THE COURT: SURE.

11 MR. KENNEDY: CORRECT ME IF I'M WRONG,
12 MS. LIVINGSTON ACTUALLY IS AN ANALYST IN THE
13 COMPENSATION REVIEW UNIT, AND -- CORRECT ME IF I'M
14 WRONG, MS. HEARD -- SHE IS THE ORIGINATOR OF THIS.

15 THE COURT: SHE'S THE RECEIVER.

16 MR. KENNEDY: SHE'S A RECEIVER. I
17 APOLOGIZE. I'M WRONG. GO AHEAD.

18 THE COURT: SO THE NUMBERS ARE THE THINGS
19 THAT KICK THE REVIEW?

20 THE WITNESS: CORRECT.

21 THE COURT: AND THEN THERE IS A BOX THAT'S
22 CHECKED THAT SAYS:

23 "DO NOT USE ANY PAY RATES AND
24 SPECIAL COMP REPORTED BY THE CITY
25 OF BELL."

1 WHEN WAS THAT ENTERED?

2 THE WITNESS: NOW, THAT'S MS. LIVINGSTON
3 RESPONDING TO THE BENEFIT SERVICES DIVISION TO NOT
4 USE ANY PAY RATES OR SPECIAL COMPENSATION WHEN WE
5 PROCESS THE CASE TO THE RETIREMENT ROLL AT THE TIME
6 THAT SHE'S PLACED ON THE RETIREMENT ROLL.

7 THE COURT: SO THAT'S MS. LIVINGSTON'S
8 COMMENT?

9 THE WITNESS: CORRECT.

10 THE COURT: AND DO WE KNOW WHY SHE SAID
11 THAT?

12 THE WITNESS: I CAN'T -- I DON'T KNOW THE
13 REASON.

14 THE COURT: IS THE PERSON WHO MAKES THOSE
15 COMMENTS SUPPOSED TO DOCUMENT THE REASON CERTAIN PAY
16 RATES AND SPECIAL COMPS SHOULD NOT BE USED?

17 THE WITNESS: YES.

18 THE COURT: AND IS THAT DOCUMENTATION
19 SOMEWHERE IN HERE.

20 THE WITNESS: IF YOU TURN TO THE NEXT
21 PAGE, 9.

22 THE COURT: NOW, WE'RE TALKING ABOUT
23 PAGE 9?

24 THE WITNESS: YES.

25 THE COURT: OKAY.

1 THE WITNESS: SO THIS IS WHAT'S IN THE
2 SYSTEM. IT'S CALLED "SMART DESK." SO THIS IS HER
3 RESPONSE, THE ASSESSMENT NOTES. IF YOU LOOK HERE --

4 THE COURT: THOSE ARE BY MS. LIVINGSTON?

5 THE WITNESS: CORRECT.

6 YOU'LL SEE THE ASSIGNED ANALYST IS
7 CHERYL LIVINGSTON. I'M IN THE FIRST BLOCKED BOX.

8 STATUS DATE ON 12/03/2010; CHERYL
9 LIVINGSTON.

10 THE COURT: HOLD ON. LET ME CATCH UP WITH
11 YOU HERE.

12 THE WITNESS: SO UNDER "MEMBER ASSESSMENTS"
13 IS THREE BLOCKS. THEN IT'S THE SECOND BLOCK,
14 LEFT-HAND COLUMN. ONE, TWO, THREE, FOUR, FIVE, SIX
15 DOWN, ASSESSMENT -- "ASSIGNED ANALYST," YOU'LL SEE
16 CHERYL D. LIVINGSTON.

17 THE COURT: RIGHT.

18 THE WITNESS: OKAY. SO ON 12/3, THE DATE
19 ABOVE, 2010, SHE WRITES IN THE ASSESSMENT NOTES --
20 THERE'S NOTES STARTING OCTOBER 12TH, 2010; NOVEMBER
21 9TH, 2010; AND 12/3/2012.

22 SO IT SAYS:

23 "PAY RATES ARE NOT OKAY."

24 I'M LOOKING AT THE NOTE 12/3/2010.

25 "INSTRUCTIONS: USE PAY RATES

1 FOR THE ONE-YEAR AND THREE-YEAR" --

2 THE COURT: OKAY. LET'S START BEFORE.

3 LET'S GO TO THE FIRST ASSESSMENT NOW.

4 THE WITNESS: OKAY.

5 THE COURT: IS THAT DONE BEFORE

6 MS. LIVINGSTON IS ASSIGNED?

7 THE WITNESS: CORRECT.

8 THE COURT: AND WHAT IT TELLS US, IT SAYS

9 REVIEW THE SALARY BECAUSE IT'S OVER \$145,000.

10 THE WITNESS: \$14,500.

11 THE COURT: \$14,500. OKAY.

12 THE WITNESS: SO THAT'S THE WORKFLOW

13 TRIGGER.

14 THE COURT: OKAY. THE NEXT ONE IS

15 11/09/2010, AND IT SAYS:

16 "DO NOT USE PAY RATE OF ANY KIND

17 IN CALCULATION."

18 WHY IS THAT?

19 THE WITNESS: IT SAYS BECAUSE --

20 "SPECIAL INSTRUCTIONS: THE

21 RETIREMENT BENEFITS ARE PLACED ON HOLD

22 UNTIL LEGAL INVESTIGATION IS COMPLETE."

23 THE COURT: SO WHO STARTED THE LEGAL

24 INVESTIGATION? WHAT'S THAT ABOUT?

25 THE WITNESS: I CAN'T SPEAK TO THAT. I

1 DON'T KNOW WHO STARTED THAT.

2 THE COURT: WHO WOULD KNOW ABOUT THAT?

3 THE WITNESS: OUR LEGAL OFFICE.

4 THE COURT: SO SOMEONE FROM THE LEGAL

5 OFFICE PUT THIS NOTE IN THE ASSESSMENT NOTE?

6 THE WITNESS: I CAN'T ANSWER TO WHO

7 ACTUALLY ENTERED THE ASSESSMENT NOTE.

8 THE COURT: BUT IN SOME FASHION THIS, THEN,

9 COMES TO MS. LIVINGSTON?

10 THE WITNESS: CORRECT.

11 THE COURT: AND SHE'S NOW BEEN TOLD NOT TO

12 USE THE PAY RATE IN ANY KIND OF CALCULATION; RIGHT?

13 THE WITNESS: SHE HASN'T BEEN TOLD NOT TO

14 USE THE PAY RATE IN ANY CALCULATION.

15 THE COURT: WHO ON NOVEMBER 9, 2010, SAID,

16 QUOTE, "DO NOT USE PAY RATE OF ANY KIND IN CALC"?

17 THE WITNESS: I CAN'T TELL YOU EXACTLY WHO

18 PUT THAT NOTE.

19 THE COURT: SO WHEN MS. LIVINGSTON GETS IT

20 ON DECEMBER 3, DOES SHE SEE THAT NOTE?

21 THE WITNESS: ACTUALLY, THE DATE THAT THIS

22 WAS ASSIGNED WAS ON 11/10 --

23 THE COURT: OKAY.

24 THE WITNESS: -- 2010. IF YOU GO TO THE

25 RIGHT-HAND COLUMN, "DATE ASSIGNED" --

1 THE COURT: OH, SURE. THANKS.

2 THE WITNESS: -- WAS 11/10/2010. HER
3 REMARKS -- HER DUE DATE THAT SHE WAS SUPPOSED TO HAVE
4 A RESPONSE FOR US TO PROCESS THE CALC WAS 11/24.

5 THE COURT: RIGHT.

6 THE WITNESS: BUT FOR SOME -- I DON'T KNOW
7 WHAT -- IF THERE WAS CONSTRAINTS, BUT HER RESPONDING
8 REMARKS WAS ON 12/3/2010.

9 THE COURT: WHEN SHE GOT THE FILE, WHETHER
10 IT WAS ON NOVEMBER 10 OR SHORTLY THEREAFTER, WAS SHE
11 TOLD NOT TO USE THE PAY RATE IN ANY KIND OF
12 CALCULATION?

13 THE WITNESS: YOU WOULD HAVE TO ASK HER
14 DIRECTLY.

15 THE COURT: AND WHAT ARE HER FINDINGS ON
16 DECEMBER 3, 2010?

17 THE WITNESS: HER FINDINGS ARE:

18 "PAY RATES ARE NOT OKAY. PAY RATE
19 INSTRUCTIONS: USE THE PAY RATES FOR THE
20 ONE- AND THREE-YEAR FINAL COMP AS FOLLOWS."

21 SO IF YOU LOOK HERE -- SO IT GIVES A
22 BREAKDOWN. IT SAYS "23 MONTHS AT 7341.66."

23 THE COURT: DO YOU KNOW WHERE THAT NUMBER
24 COMES FROM?

25 THE WITNESS: SO THERE'S PAYROLL HISTORY

1 FROM REPORTABLE COMPENSATION THAT'S ON OUR SYSTEM
2 FROM THE MEMBER'S EMPLOYMENT HISTORY.

3 THE COURT: DO YOU KNOW WHERE THAT COMES
4 FROM?

5 THE WITNESS: IT'S REPORTED BY THE
6 EMPLOYER.

7 THE COURT: WHICH EMPLOYER?

8 THE WITNESS: IT DEPENDS ON THE EMPLOYER AT
9 THE TIME OF THE PERIOD.

10 THE COURT: I DON'T MEAN TO BE FUNNY ABOUT
11 THIS, BUT IS THIS FROM THE CITY OF BELL THAT THIS IS
12 COMING FROM OR FROM SOMEONE ELSE?

13 THE WITNESS: I'D HAVE TO HAVE HER ACTUAL
14 TRANSCRIPTS TO SEE THIS PERIOD. BECAUSE IT'S SAYING
15 FROM THE PERIOD OF OCTOBER -- IF YOU GO DOWN TO THE
16 LAST BODY, THE PERIOD TYPE AND PAY RATE, 10/2009,
17 BIWEEKLY, THROUGH JULY 2010, THAT'S THE REPORTED
18 AMOUNT OF \$28,582.44. AND SHE'S SAYING THE ALLOWED
19 AMOUNT IS \$7,802.

20 SO I'D HAVE TO LOOK AT THE EMPLOYMENT
21 HISTORY FROM 10 OF 2009 TO SEE IF THIS PERSON WAS
22 EMPLOYED WITH THE CITY OF BELL, AND I COULD RESPOND
23 TO YOU.

24 THE COURT: OKAY.

25 MR. KENNEDY: AND JUST FOR CLARIFICATION,

1 YOUR HONOR, THE TRANSCRIPT, THE PAYROLL DETAIL IS IN
2 THE EXHIBIT PACKAGE ELSEWHERE.

3 THE COURT: SO IN SOME FASHION, SHE HAS GOT
4 A PAY RATE THAT SHOWS THAT THE EMPLOYEE WAS PAID
5 \$28,582.44 FROM OCTOBER 2009 THROUGH JULY 2010?

6 THE WITNESS: YES.

7 THE COURT: BUT WE DON'T KNOW EXACTLY WHAT
8 DOCUMENTS WERE BEING REVIEWED, JUST FROM LOOKING AT
9 THIS DOCUMENT?

10 THE WITNESS: IT WOULD BE TRANSCRIPTS;
11 CORRECT.

12 THE COURT: TRANSCRIPTS. WHAT ARE
13 TRANSCRIPTS?

14 MR. KENNEDY: THE PAYROLL DETAILS.

15 THE WITNESS: IT'S THE PAYROLL DETAILS THAT
16 THE EMPLOYER REPORTS.

17 THE COURT: OKAY. SO HOW DOES THIS HELP US
18 DETERMINE THE AMOUNT, WHAT SHE'S ENTITLED TO?

19 THE WITNESS: SO THIS REPORTED AMOUNT SAYS
20 IT'S REPORTED BY THE EMPLOYER, AND BASED ON THE
21 REVIEW OF THE ANALYST, SAYING THIS IS THE AMOUNT
22 THEY'RE GOING TO ALLOW TO USE IN THE CALCULATION, THE
23 \$7,802.

24 THE COURT: DID YOU REVIEW THIS IN YOUR
25 CAPACITY AS A MANAGER?

1 THE WITNESS: I REVIEWED THE CASE, NOT AS A
2 MANAGER, AS AN R.P.S. II SUPERVISOR.

3 THE COURT: AS A SUPERVISOR, DID YOU REVIEW
4 HER DATA?

5 THE WITNESS: NOT HER DATA, OUR CALCULATION
6 DATA.

7 MR. KENNEDY: MS. HEARD IS THE -- FORM OF
8 THE CALCULATION. SHE'S HERE TO TESTIFY TO THE
9 CALCULATIONS THAT WAS BASED UPON THE FINAL COMP THAT
10 WAS SUBMITTED. NOW, I WOULD LIKE TO --
11 BY MR. KENNEDY:

12 Q. AFTER YOU GET THIS INFORMATION -- THIS IS
13 THE INSTRUCTION FROM THE COMP REVIEW AS TO WHAT PAY
14 RATES TO USE; RIGHT?

15 A. YES.

16 Q. OKAY. AND THEN THERE IS A MANUAL
17 CALCULATION THAT'S PERFORMED IN THIS CASE?

18 A. YES.

19 Q. AND IF I DIRECT YOUR ATTENTION TO PAGE 3 OF
20 TAB 13, IS THIS THE MANUAL CALCULATION?

21 A. YES.

22 Q. AND THAT IS GOING TO BE, I GUESS, PAGE 3
23 THROUGH 7. AND THEY'RE ARRAYED IN A SPECIFIC ORDER.

24 IS THAT A LOGICAL ORDER FOR THE WAY YOU
25 PERFORM THEM, OR DO YOU GO TO THE BACK SPREADSHEETS

1 FIRST? WOULD THAT BE EASIER OR CLEARER?

2 A. I START AT PAGE 5.

3 Q. ALL RIGHT. SO PAGE 5 OF TAB 13, WHAT ARE
4 WE LOOKING AT THERE?

5 MR. KENNEDY: AND, YOUR HONOR, I WOULD JUST
6 LIKE TO NOTE BEFORE WE GO ON THAT I NOTICED WHEN I
7 WAS LOOKING AT MY PACKAGE, I SAW A SOCIAL SECURITY
8 NUMBER IN ONE OF THE DOCUMENTS, THE DOCUMENTS, I
9 THINK, WE WERE JUST LOOKING AT TAB 8. AND I REQUEST
10 THE OPPORTUNITY TO REDACT THAT.

11 IS IT IN YOURS? AT THE TOP OF THE PAGE.
12 IT'S HANDWRITTEN IN.

13 THE COURT: YES.

14 MR. KENNEDY: OKAY.

15 THE COURT: TRY AND TAKE IT OUT.

16 MR. KENNEDY: THANK YOU.

17 THE COURT: DOES ANYONE HAVE A BOLD MARKER
18 OF SOME SORT?

19 MR. KENNEDY: I'LL GET A BOLD MARKER.

20 THE COURT: OKAY. YOU WANT US TO BE
21 LOOKING AT PAGE 5 IN EXHIBIT 13 NOW?

22 MR. KENNEDY: YES.

23 BY MR. KENNEDY:

24 Q. AND WHAT ARE WE LOOKING AT HERE, MS. HEARD?

25 A. SO THIS IS THE MEMBER'S FINAL COMPENSATION,

1 A ONE-YEAR FINAL COMPENSATION USING THE RECIPROCAL
2 SALARIES.

3 THE COURT: OKAY. HERE'S A NEW CONCEPT,
4 "RECIPROCAL SALARY." TELL US WHAT THAT IS.

5 THE WITNESS: THE MEMBER HAS RECIPROCITY
6 ESTABLISHED WITH VENTURA COUNTY. SO SHE MET THE
7 AGREEMENTS AND THE LAWS THAT HAVE TO DO WITH
8 RECIPROCITY.

9 SO WHEN YOU HAVE RECIPROCITY AND IT'S FULL
10 RECIPROCITY, FINAL COMP EXCHANGE OCCURS. WHEN A
11 MEMBER RETIRES, THEY CAN USE THE OTHER SYSTEM'S
12 SALARIES ON CERTAIN SERVICE CREDIT.

13 THE COURT: OKAY. IN REAL LIFE, DOES THIS
14 MEAN YOU'RE USING HER PAY FROM THE COUNTY OF VENTURA?

15 THE WITNESS: CORRECT. FOR CERTAIN SERVICE
16 CREDIT EARNED THAT SHE HAS FULL RECIPROCITY WITH
17 CALPERS.

18 MR. KENNEDY: IF I COULD, YOUR HONOR, THE
19 RECIPROCITY -- BECAUSE THERE WAS A BREAK IN SERVICE
20 WITH THE RECIPROCAL AGENCY BEFORE SHE WENT TO WORK
21 WITH BELL, THE RECIPROCITY DID NOT EXTEND TO THE CITY
22 OF BELL. HAD THERE NOT BEEN THAT BREAK IN SERVICE,
23 IT MAY HAVE. BUT IN THIS CASE IT DIDN'T.

24 THE RULES OF RECIPROCITY REQUIRE THAT THERE
25 NOT BE THAT BREAK OR REQUIRES SOME BREAK BUT NOT --

1 ONLY OF A CERTAIN DURATION, AND SHE DIDN'T -- SHE
2 EXCEEDED THAT DURATION. SO THEY WERE NOT USED FOR
3 BELL, BUT THEY WERE USED FOR OTHER --

4 THE WITNESS: SERVICE THAT SHE HAD FULL
5 RECIPROCITY WITH.

6 THE COURT: WHAT YOU'RE TELLING ME IS YOU
7 DON'T USE THE COUNTY OF VENTURA NUMBERS TO FIGURE OUT
8 HER HIGHEST EARNINGS. IS THAT THE CASE?

9 THE WITNESS: NO.

10 THE COURT: OKAY.

11 THE WITNESS: SO LET ME JUST START TO
12 EXPLAIN IT. SO IN A MEMBER'S EMPLOYMENT HISTORY, IF
13 YOU -- IT'S CALLED "INCOMING" AND "OUTGOING
14 RECIPROCITY."

15 SO FOR EXAMPLE, IF A MEMBER IS EMPLOYED
16 WITH A CALPERS-COVERED AGENCY FOR A DURATION OF FIVE
17 YEARS -- THIS IS JUST AN EXAMPLE -- AND WITHIN SIX
18 MONTHS, LEAVES A CALPERS-COVERED AGENCY AND GOES TO A
19 1937 COUNTY ACT RECIPROCAL SYSTEM, THEY ESTABLISH
20 WHAT'S CALLED RECIPROCITY.

21 SO THAT IS WHAT HAPPENED IN THIS CASE. BUT
22 WHEN THE PERSON LEFT, THE DURATION -- THERE WAS A
23 BREAK IN THE RECIPROCAL -- RECIPROCITY ESTABLISHMENT
24 FROM THE LAST EMPLOYER WHEN THEY CAME BACK. SO
25 THERE'S NO RECIPROCAL AGREEMENT.

1 SO THE SERVICE EARNED AND RENDERED PRIOR TO
2 THE BREAK IN RECIPROCITY, THE HIGHEST FINAL COMP CAN
3 BE USED TO COMPUTE THE ALLOWANCE FOR THAT SERVICE
4 CREDIT.

5 ANYTHING FROM THE BREAK OF RECIPROCITY,
6 RECIPROCITY FINAL COMPENSATION CANNOT BE USED.
7 THERE'S NO SHARING.

8 MR. KENNEDY: IF IT HELPS OUT, SIMPLY, YOUR
9 HONOR, MS. SPACCIA --

10 THE COURT: YOUR JOB IS TO PUT ON EVIDENCE
11 THAT CONVINCES ME. GOOD LUCK. I MEAN, QUITE
12 FRANKLY, I'M NOT A DUMB GUY. BUT I DON'T GET IT.
13 IT'S JUST A WORD PROBLEM, I'M SURE. BUT I DON'T --

14 BY MR. KENNEDY:

15 Q. MS. HEARD, WHAT -- FOR WHAT PERIOD OF
16 TIME -- IN OTHER WORDS, WHAT PERIOD OF TIME OF HER
17 EMPLOYMENT WAS THIS, AS WE SEE IN TAB 5 -- I MEAN,
18 PAGE 5?

19 CAN YOU TELL US WHEN THIS WAS APPLIED -- I
20 MEAN, ESSENTIALLY, IF I'M NOT MISTAKEN, WHEN YOU
21 CALCULATED MS. SPACCIA'S SERVICE RETIREMENT, YOU HAD
22 ESSENTIALLY CALCULATED FOR SEPARATE PERIODS BECAUSE
23 OF THE BREAKS IN SERVICE AND THE DIFFERENT TYPE OF
24 EMPLOYERS.

25 YOU HAD TO CALCULATE IT FOR DIFFERENT

1 PERIODS. AND THEN ADD THOSE PERIODS UP TO GET THE
2 TOTAL ALLOWANCE; RIGHT?

3 A. CORRECT.

4 Q. SO THIS IS ONE OF THOSE PERIODS?

5 A. THIS IS ONE.

6 Q. AND WHO'S THAT, IF YOU LOOK AT PAGE 3 OF
7 TAB 13?

8 A. SO ON PAGE 3 OF TAB 13, SHE HAS RECIPROCITY
9 WITH THREE EMPLOYERS, WHICH TOTAL THE 10.77 YEARS OF
10 SERVICE UNDER EMPLOYER 0193; THE .516 OF SERVICE
11 CREDIT UNDER EMPLOYER 1102; AND A 3.724 YEARS OF
12 SERVICE UNDER EMPLOYER 1717.

13 Q. SO BASICALLY PAGE 5, WE WERE TALKING ABOUT
14 BEFORE, IS REFLECTED ON HERE WHERE? IS THAT UNDER
15 THE FIRST EMPLOYER LISTED, WOULD BE THE \$9,265?

16 A. CORRECT. THAT'S A ONE-YEAR FINAL
17 COMPENSATION. AND THAT EMPLOYER HAS A ONE-YEAR FINAL
18 COMPENSATION. 0193 IS ASSOCIATED TO THE MANUAL SHEET
19 THAT EQUATED TO THE FINAL COMP OF \$9,265.

20 Q. AND THEN YOU HAD TO CALCULATE USING HER
21 OTHER BENEFIT FACTORS?

22 A. CORRECT.

23 Q. AND THEN A BENEFIT ALLOWANCE FOR THAT
24 SPECIFIC PERIOD OF EMPLOYMENT?

25 A. YES.

1 Q. AND THAT'S ON THE RIGHT-HAND SIDE, AND
2 THAT'S THE \$1624.58?

3 A. CORRECT.

4 Q. AND THE SAME WOULD BE TRUE, WOULD IT NOT
5 BE, THEN FOR THE NEXT TWO AS FAR AS THE OTHER
6 RECIPROCAL AGENCIES; CORRECT?

7 A. CORRECT. AND THIS IS A THREE-YEAR FINAL
8 COMPENSATION BECAUSE THOSE EMPLOYERS HAVE A
9 THREE-YEAR FINAL COMPENSATION.

10 Q. NOW, WHEN WE GO UP TO THE TOP, WE ARE
11 TALKING ABOUT P.E.R.S. EMPLOYERS?

12 A. CORRECT. THEY'RE ALL P.E.R.S. EMPLOYERS
13 BUT --

14 THE COURT: WHICH PAGE ARE YOU ON NOW?

15 THE WITNESS: BACK ON PAGE 3.

16 THE COURT: OKAY.

17 THE WITNESS: AND SO EMPLOYER 0069, CITY OF
18 BELL, THERE IS NO RECIPROCITY. SO THAT'S USED WITH
19 CALPERS SALARIES.

20 BY MR. KENNEDY:

21 Q. SO WE DIDN'T USE BELL SALARY, BUT WE USED
22 THE HIGHEST COMPENSATION EARNABLE THAT WAS -- THE
23 HIGHEST REPORTED COMPENSATION OTHER THAN BELL. IS
24 THAT YOUR UNDERSTANDING?

25 A. CORRECT.

1 Q. AND THE FIRST LINE THAT SAYS THE "7,606,"
2 THAT'S THE ACTUAL SERVICE CREDIT; CORRECT? THAT'S
3 THE EARNED SERVICE TIME; RIGHT?

4 A. THE 7.046.

5 Q. THE 16.065.

6 A. THAT'S THE --

7 Q. SORRY. THE 7.046, THAT'S THE EARNED
8 SERVICE?

9 A. CORRECT.

10 Q. THE NEXT ONE IS THE AIR TIME SERVICE;
11 CORRECT?

12 A. CORRECT. FIVE YEARS.

13 Q. AND ON THE RIGHT-HAND COLUMN, APPLYING,
14 THEN, HER BENEFIT FORMULAS AND FACTORS, THAT'S THE
15 SERVICE RETIREMENT BENEFITS ALLOWANCE FOR --
16 ASSOCIATED WITH THOSE TWO TIMES -- THOSE TWO SERVICE
17 CREDIT PERIODS; RIGHT?

18 A. CORRECT.

19 Q. SO ESSENTIALLY, HER AIR TIME IS WORTH,
20 UNDER THIS CALCULATION, \$867 FOR THE FIVE YEARS; AND
21 THEN FOR HER EARNED SERVICE CREDIT, IT WAS \$1,122
22 SERVICE CREDIT; CORRECT?

23 A. CORRECT.

24 Q. AND WHAT WE'VE DONE IS -- BECAUSE OF THE
25 DIFFERENT TIME PERIODS, THE RECIPROCITY INVOLVED, WE

1 HAD TO CREATE THIS COLUMN. AND IF YOU HAD TO ADD
2 THAT UP NOW TO GET TO WHAT HER SERVICE RETIREMENT
3 ALLOWANCE WAS?

4 A. THIS IS TO THE UNMODIFIED ALLOWANCE,
5 CORRECT.

6 Q. THE UNMODIFIED ALLOWANCE. THE UNMODIFIED
7 ALLOWANCE WAS WHAT?

8 A. IT'S THE HIGHEST BENEFIT THAT YOU CAN
9 RECEIVE. IT'S \$4141.96, HAD THE MEMBER ELECTED THAT
10 OPTION.

11 Q. AND DID SHE ELECT AN UNMODIFIED?

12 A. NO.

13 Q. WHAT DID SHE ELECT?

14 A. OPTION TWO.

15 Q. AND THE \$3,620 IS REFLECTED ON THE ROLL
16 LETTER?

17 A. CORRECT.

18 Q. IS HER OPTION TWO ALLOWANCE?

19 A. YES.

20 Q. AND THAT'S HER CHOICE?

21 A. YES.

22 Q. IS THERE ANYTHING ELSE YOU FEEL IS
23 NECESSARY TO ADD TO MAKE YOUR EXPLANATION CLEARER
24 THAN --

25 A. NO.

1 Q. OKAY.

2 MR. KENNEDY: NO OTHER QUESTIONS, YOUR
3 HONOR.

4 THE COURT: PARDON ME?

5 MR. KENNEDY: NO OTHER QUESTIONS. I'D LIKE
6 TO SUBMIT -- ADMIT TAB 13 INTO EVIDENCE.

7 THE COURT: CROSS-EXAMINATION?

8 MR. BRAUN: YES.

9

10 CROSS-EXAMINATION

11 BY MR. BRAUN:

12 Q. ON PAGE 10, WHERE IT SAYS -- DO YOU SEE ON
13 PAGE 10 THERE -- DO YOU SEE WHERE THE JUDGE REFERRED
14 TO EARLIER, "SPECIAL INSTRUCTIONS, ARE TO BE PLACED
15 ON HOLD"?

16 A. WHERE? ARE YOU ON PAGE 10?

17 Q. 9.

18 A. 9?

19 Q. 9. SORRY.

20 "SPECIAL INSTRUCTIONS, RETIREMENT
21 BENEFITS ARE TO BE PLACED ON HOLD" --

22 I CAN'T READ IT. IS THAT A "TILL"?

23 -- "TILL LEGAL INVESTIGATION IS
24 COMPLETED"; RIGHT?

25 A. CORRECT.

1 Q. SO WHEN WAS IT COMPLETE?

2 A. I CAN'T ANSWER THAT QUESTION. I DON'T
3 KNOW.

4 Q. SO THEN THIS PARTICULAR INSTRUCTION,
5 BASICALLY, IS TO PREVENT ANY CALCULATIONS BASED ON
6 WHAT THE CITY OF BELL REPORTED; IS THAT CORRECT?

7 A. I CAN'T ANSWER THAT. I DON'T KNOW IF IT
8 WAS PLACED IN PARTICULAR FOR THAT, BUT IT HAD A HOLD
9 ON THE ACCOUNT.

10 Q. AND DO YOU KNOW WHAT THE EFFECT OF THAT
11 HOLD IS?

12 A. NO.

13 Q. DID IT IN ANY WAY AFFECT THE CALCULATION?

14 A. SHE DIDN'T -- DID IT AFFECT THE
15 CALCULATION?

16 Q. YEAH. IN OTHER WORDS, BECAUSE OF THAT
17 HOLD, THEN, NONE OF THE INFORMATION -- IS THAT WHAT
18 CAUSES THIS "DO NOT USE ANY" -- ON PAGE 8:

19 "DO NOT USE ANY PAY RATES AND
20 SPECIAL COMPS REPORTED BY THE CITY OF
21 BELL"?

22 A. I CAN'T ANSWER IF THAT WAS THE ONLY REASON
23 WHY HER CASE WAS REVIEWED.

24 Q. NOW, IS THERE ANY WAY TO TELL WHO PUT THIS
25 HOLD ON HER ACCOUNT, PENDING INVESTIGATION BEING

1 COMPLETE?

2 A. I CAN'T DETERMINE THAT FROM THIS PAGE.

3 Q. CAN YOU DETERMINE WHAT INVESTIGATION

4 THEY'RE REFERRING TO?

5 A. I CAN'T.

6 Q. DO YOU KNOW WHETHER THAT INVESTIGATION IS

7 STILL GOING ON?

8 A. I DO NOT.

9 Q. NOW, ARE YOU THE ONE THAT DETERMINES

10 WHETHER OR NOT THAT INFORMATION CAN BE USED FOR THE

11 CITY OF BELL?

12 A. NO.

13 Q. WHO DOES THAT?

14 A. THE COMPENSATION REVIEW UNIT.

15 Q. AND SO IS THAT PART OF YOUR UNIT?

16 A. NO.

17 Q. AND SO WHEN THAT UNIT DETERMINES THAT YOU

18 DON'T USE ANY INFORMATION FROM THE CITY OF BELL, THAT

19 MEANS THAT YOUR PARTICULAR UNIT IS -- CANNOT USE THAT

20 INFORMATION; IS THAT RIGHT?

21 A. CORRECT.

22 Q. SO YOUR CALCULATION IS BASED WHOLLY ON OR

23 SUBSTANTIALLY ON THEIR DETERMINATION THAT THE PAY

24 RATES FOR THE CITY OF BELL ARE NOT TO BE USED;

25 CORRECT?

1 A. YES.

2 Q. SO THAT IF THE PAY RATES THAT ARE REPORTED
3 BY THE CITY OF BELL WERE USED, THAT WOULD CHANGE ALL
4 OF THE CALCULATIONS PROBABLY; RIGHT?

5 A. CORRECT.

6 MR. BRAUN: NO FURTHER QUESTIONS. I DON'T
7 UNDERSTAND ENOUGH TO ASK ANY MORE QUESTIONS, YOUR
8 HONOR.

9 MR. KENNEDY: NOW --

10 THE COURT: ONE SECOND. DOES YOUR
11 HANDWRITING APPEAR ANYWHERE IN EXHIBIT 13?

12 THE WITNESS: MY HANDWRITING?

13 THE COURT: YES.

14 THE WITNESS: NO.

15 THE COURT: DID YOU MAKE THE FINAL DECISION
16 IN THIS MATTER?

17 MR. KENNEDY: OBJECTION AS TO WHAT --

18 THE COURT: WERE YOU THE ONE THAT MADE THE
19 DECISION THAT THE APPROPRIATE AMOUNT OF MONEY THAT
20 THE RESPONDENT SHOULD RECEIVE FOR HER PUBLIC
21 EMPLOYMENT, GIVEN THE FACT THAT SHE CHOSE OPTION TWO,
22 WAS \$3,620.08?

23 THE WITNESS: NO.

24 THE COURT: WHO WAS IT THAT REACHED THAT
25 DECISION?

1 THE WITNESS: CAN YOU CLARIFY THE QUESTION
2 FOR ME?

3 THE COURT: YEAH. HERE'S WHAT I'M LOOKING
4 AT. I'M LOOKING AT EXHIBIT 13. AND I'M LOOKING AT
5 THE NEXT TO THE LAST PAGE, AND IT'S A LETTER DATED
6 DECEMBER 14, 2010.

7 AND IT'S SENT TO THE RESPONDENT. IT SAYS
8 "YOU'VE CHOSEN OPTION NUMBER 2, AND YOU'RE GOING TO
9 GET \$3,620.08 A MONTH." WHO MADE THAT DECISION?

10 THE WITNESS: WELL, WHEN THE MEMBER APPLIED
11 FOR RETIREMENT BENEFITS, TURNED HER APPLICATION IN TO
12 THE BOARD, APPLIED FOR BENEFITS, AND THE CALCULATIONS
13 WAS CALCULATED.

14 AND WHEN THE CASE IS RELEASED TO THE
15 RETIREMENT ROLL, BASED ON HER OPTION THAT SHE
16 SELECTED, THE LETTER IS GENERATED INFORMING THE
17 MEMBER THIS IS YOUR RETIREMENT.

18 THE COURT: AND WHO WAS THE PERSON THAT DID
19 THE LAST REVIEW OF ALL THE MATERIAL BEFORE THEY SAID
20 "RELEASE THAT LETTER"?

21 THE WITNESS: SO IF YOU LOOK HERE, THERE'S
22 A SIGNATURE, CHECKED ON 12/14. THE CASE WAS CHECKED
23 BY P. CARLSON.

24 THE COURT: WHO?

25 THE WITNESS: IF YOU GO TO --

1 THE COURT: WHICH PAGE ARE YOU LOOKING AT?

2 THE WITNESS: PAGE 3.

3 THE COURT: PAGE 3 OF EXHIBIT 13; RIGHT?

4 THE WITNESS: CORRECT.

5 THE COURT: OH, I SEE. AND IT SAYS,

6 "CHECKED BY." OKAY.

7 THE WITNESS: SO A PERSON CALCULATED THE

8 CASE ON 12/14 WAS J-O-Y FONG. THE CASE WAS CHECKED

9 BY A P. CARLSON. THAT'S ON PAGE 3.

10 THE COURT: DID THOSE PEOPLE WORK FOR YOU?

11 THE WITNESS: THEY WORKED FOR BENEFITS.

12 NOT DIRECTLY FOR ME, NO.

13 THE COURT: WHY ARE YOU HERE?

14 THE WITNESS: BECAUSE I'M THE SUBJECT

15 MATTER EXPERT IN CALCULATIONS.

16 THE COURT: WHY AREN'T THE PEOPLE WHO

17 CALCULATED HERE, IF YOU KNOW?

18 THE WITNESS: I DON'T KNOW.

19 THE COURT: DID YOU DO ANYTHING AT ALL WITH

20 REGARD TO THIS CALCULATION?

21 THE WITNESS: I REVIEWED THE CASE.

22 THE COURT: YOU REVIEWED IT AFTER IT WAS

23 DONE?

24 THE WITNESS: YES.

25 THE COURT: AFTER THE LETTERS HAD BEEN

1 WRITTEN AND EVERYTHING WAS SENT OUT, AND YOU SAID,
2 "GEE, IT LOOKS OKAY TO ME"?

3 THE WITNESS: NO.

4 THE COURT: DID YOU FIND AN ERROR?

5 THE WITNESS: NO. I REVIEWED THE CASE TO
6 DETERMINE THE COMPONENTS OF THE CALCULATION BECAUSE
7 OF THE COMPLEXITY THAT SHE HAD, RECIPROCITY WITH A
8 BREAK IN SERVICE, AND WHAT WAS THE SERVICE RENDERED
9 THAT COULD BE USED IN THE CALCULATION FOR THE
10 DIFFERENT PERIODS OF THE FINAL COMPENSATION.

11 AS A SUBJECT MATTER EXPERT TO MAKE SURE
12 THAT THE RECIPROCITY AND THE SERVICE THAT IS
13 ASSOCIATED WAS THE RECIPROCAL SALARIES USED AND THEN
14 THE OTHER ONE FOR THE CALPERS SALARIES.

15 THE COURT: DID YOU SPEAK WITH JOY FONG?

16 THE WITNESS: YES.

17 THE COURT: DID YOU SPEAK WITH MR. CARLSON?

18 THE WITNESS: NO.

19 THE COURT: DID YOU SPEAK WITH THE
20 RESPONDENT?

21 THE WITNESS: NO.

22 THE COURT: DID YOU ASK FOR ANY TAX RETURNS
23 OR ANYTHING?

24 THE WITNESS: NO.

25 THE COURT: DID YOU LOOK AT ANY DATA FROM

1 THE CITY OF BELL?

2 THE WITNESS: NO.

3 THE COURT: DID YOU ACCEPT AS TRUE ALL THE
4 INFORMATION THAT WAS GENERATED BY OTHER PEOPLE IN
5 CALPERS?

6 THE WITNESS: WE ACCEPTED THAT THE
7 COMPENSATION REVIEW WAS ACCEPTABLE. THAT'S OUR
8 PROCESS BECAUSE THAT'S THEIR ROLE. AND THAT'S WHAT
9 WAS USED TO COMPUTE THE BENEFITS, CORRECT.

10 THE COURT: SO THE REAL EXPERTISE THAT YOU
11 HAVE IN THIS MATTER, THE COMPLICATED PART, WAS
12 DEALING WITH THIS RECIPROCITY ISSUE?

13 THE WITNESS: CORRECT.

14 THE COURT: AND DOES THE CITY OF BELL HAVE
15 RECIPROCITY OR NO?

16 THE WITNESS: NO.

17 THE COURT: AND WHY WAS THAT?

18 THE WITNESS: BECAUSE SHE HAD A BREAK IN
19 SERVICE WHEN SHE MOVED FROM ONE SYSTEM TO THE NEXT
20 SYSTEM.

21 THE COURT: AND SO WHAT DID YOU USE INSTEAD
22 OF THE RECIPROCITY?

23 THE WITNESS: THE CALPERS SALARIES.

24 THE COURT: AND DID THOSE FIGURE INTO THE
25 CALCULATING OF THE AMOUNT?

1 THE WITNESS: CORRECT, YES.

2 THE COURT: AND THE CALPERS SALARIES, WHOSE
3 SALARY WERE THEY? WHAT WERE THEY FOR? IS THAT THE
4 OTHER UNIT THAT FIGURED THOSE THINGS OUT?

5 THE WITNESS: SO IF YOU GO TO PAGE 7 --

6 THE COURT: OKAY.

7 THE WITNESS: -- TO THE ONE-YEAR FINAL
8 COMPENSATION USED IN ONLY CALPERS SALARIES AND NOT
9 THE CITY OF BELL'S.

10 IN HER EMPLOYMENT HISTORY ON THE
11 TRANSCRIPTS, THE YEARS FROM 9/25/2000 TO 2/24/2001,
12 WHICH IS 5.162 MONTHS AT A RATE OF PAY OF \$8,268.

13 AND THEN FROM 11/5/93 THROUGH 5/31/1994,
14 6.838 MONTHS WHICH TOTALS A TOTAL OF 12 MONTHS, AND
15 THAT RATE OF PAY OF \$7,341.66.

16 WHEN YOU COMPUTE THAT, YOU GET 12 MONTHS,
17 AND HER TOTAL COMPENSATION WAS \$92,881.69, AND YOU
18 DIVIDE THAT OVER THE 12 MONTHS TO GET HER AVERAGE ONE
19 YEAR, WHICH EQUATED TO \$7,740.14.

20 THE BELL EMPLOYER HAS A MODIFIED FORMULA,
21 WHICH IS 13,333 SOCIAL SECURITY OFFSET, WHICH EQUATES
22 TO THE FINAL COMPENSATION THAT WAS USED TO COMPUTE
23 THE BENEFIT OF THE SERVICE CREDIT EARNED OF
24 \$7,606.81.

25 SO IF YOU WENT BACK TO PAGE 1 IN THAT TAB

1 EXHIBIT, YOU WOULD SEE, THAT THE A.R.S.C. SERVICE AND
2 THE EARNED SERVICE UNDER CITY OF BELL, 7.046 WAS USED
3 TO COMPUTE THE ALLOWANCE TO THE UNMODIFIED WITH THOSE
4 SALARIES.

5 THE COURT: I'M INTERESTED IN KNOWING WHERE
6 THE \$7,341 FIGURE CAME FROM. HOW WAS IT THAT THAT
7 WAS THE NUMBER?

8 THE WITNESS: SO THAT'S REPORTABLE
9 COMPENSATION. THAT'S ON OUR CALPERS TRANSCRIPT
10 SYSTEM.

11 THE COURT: I'VE GOT YOU.

12 THE WITNESS: AND I'M NOT SURE WHERE IT'S
13 AT IN YOUR EXHIBIT INFORMATION, BUT IF IT WAS THERE I
14 COULD SHOW YOU.

15 THE COURT: OKAY. DO YOU KNOW WHY BELL WAS
16 DISALLOWED?

17 THE WITNESS: I DO NOT.

18 THE COURT: MR. KENNEDY, REDIRECT?

19

20 REDIRECT EXAMINATION

21 BY MR. KENNEDY:

22 Q. MS. HEARD, CAN I DIRECT YOUR ATTENTION TO
23 TAB 3. AND HAVE YOU SEEN THIS DOCUMENT BEFORE?

24 A. YES.

25 Q. OKAY. AND HOW -- WHAT IS YOUR

1 UNDERSTANDING OF WHAT THIS DOCUMENT IS?

2 A. A NOTIFICATION TO MS. SPACCIA REGARDING THE
3 COMPENSATION THAT -- FOR THE CITY OF BELL THAT WAS
4 REPORTED TO PAYROLL -- TO CALPERS AND WHAT WAS USED
5 IN THE BENEFITS -- WHAT COMPENSATION WAS USED TO
6 PROCESS HER RETIREMENT BENEFITS.

7 Q. SO IS THIS BASIS FOR -- AS FAR AS YOU WOULD
8 UNDERSTAND, A BASIS FOR WHY A HOLD MAY BE PUT ON?

9 A. YES.

10 Q. THAT THERE WAS A DETERMINATION MADE OR TO
11 BE MADE THAT THE COMPENSATION FROM THE CITY OF BELL
12 WAS BEING -- NOT ACCEPTED AS -- BASICALLY DEEMED
13 INVALID FOR THE PURPOSES OF COMP EARNABLE?

14 A. YES.

15 Q. AND OF COURSE THAT'S ALSO AS FAR AS -- THE
16 QUESTION REGARDING WHEN THE LEGAL HOLD WAS TAKEN OFF,
17 THAT'S EXACTLY WHAT WE'RE DOING NOW, IS IT NOT, WE'RE
18 GOING THROUGH THIS PROCEEDING, OR IT'S CONTINUING?

19 A. YES.

20 Q. AND THE QUESTION WAS ASKED TO YOU AS FAR AS
21 CHANGING THE CALCULATIONS, THE NUMBERS MAY CHANGE BUT
22 THE FORMULAS THAT WERE USED AND THE METHODOLOGY THAT
23 WERE USED IN ARRIVING AT THE CALCULATION WOULD NOT
24 CHANGE. JUST IT WOULD CHANGE PERHAPS HOW THEY WERE
25 CALCULATED, BUT NOT NECESSARILY THE FORMULATIONS AND

1 METHODOLOGY?

2 A. CORRECT.

3 MR. KENNEDY: NO OTHER QUESTIONS, YOUR
4 HONOR. I'D LIKE TO MOVE IN TAB 13 AT THIS TIME.

5 THE COURT: HOLD ON. LET'S DO IT ONE AT A
6 TIME.

7 ANY OBJECTION?

8 MR. BRAUN: NO OBJECTION, YOUR HONOR.

9 THE COURT: EXHIBIT 13 WILL BE RECEIVED.

10 (DEPARTMENT'S EXHIBIT NUMBER 13 WAS MARKED FOR
11 IDENTIFICATION BY THE COURT AND RECEIVED INTO
12 EVIDENCE.)

13 MR. KENNEDY: THANK YOU, YOUR HONOR.

14 THE COURT: NEXT THING YOU WANTED TO DO?

15 MR. KENNEDY: NO OTHER QUESTIONS.

16 MR. BRAUN: I HAVE GOT A FEW MORE, YOUR
17 HONOR.

18 THE COURT: LET'S GO TO THE CITY.

19 MR. ONSTOT: NONE.

20

21 RECROSS-EXAMINATION

22 BY MR. BRAUN:

23 Q. I'M LOOKING AT A LETTER OF TAB 3 THAT YOU
24 JUST TALKED ABOUT. ON PAGE 2 IT REFERS TO A CIVIL
25 ACTION THAT WAS TAKEN BY THE ATTORNEY GENERAL; IS

1 THAT CORRECT?

2 A. YES.

3 Q. DO YOU KNOW WHATEVER HAPPENED IN THAT CIVIL
4 ACTION?

5 A. NO.

6 Q. IF THE CIVIL ACTION -- WAS IT THIS
7 PARTICULAR CIVIL ACTION THAT CAUSED THAT NOTATION
8 HOLD UP FOR ANY CALCULATIONS UNTIL THE LEGAL
9 INVESTIGATION WAS COMPLETED?

10 A. I DON'T KNOW THE PARTICULARS OF THAT.

11 Q. BUT THIS PARTICULAR NOTATION IN HERE DID
12 AFFECT THE CALCULATION?

13 A. YES.

14 Q. NOW, WOULD IT CHANGE THE CALCULATION IF THE
15 CASE HAD BEEN DISMISSED?

16 MR. KENNEDY: OBJECTION. CALLS FOR
17 SPECULATION.

18 THE COURT: SUSTAINED.

19 BY MR. BRAUN:

20 Q. OKAY. SO HOW DO YOU -- IN CALPERS SYSTEM
21 HOW DO YOU -- WHEN YOU HAVE A HOLD PLACED ON A
22 CALCULATION BECAUSE OF A PENDING CIVIL CASE, WHAT DO
23 YOU DO AS THE CASE PROGRESSES WITH DEMURRERS OR
24 APPEALS AND RESULTS? HOW DO YOU MODIFY YOUR
25 CALCULATION?

1 MR. KENNEDY: SAME OBJECTION.

2 THE COURT: OVERRULED.

3 WHAT IS THE CAPITAL OF NORTH DAKOTA, DO YOU
4 KNOW?

5 THE WITNESS: PROBABLY NOT OFF THE TOP OF
6 MY HEAD.

7 THE COURT: THEN THAT'S THE ANSWER. IF HIS
8 QUESTION IS "HOW DO YOU DO THAT," AND YOU DON'T KNOW,
9 IT'S THE SAME ANSWER AS WHAT'S THE CAPITAL OF NORTH
10 DAKOTA.

11 THE WITNESS: OKAY.

12 THE COURT: FEEL COMFORTABLE SAYING "I
13 DON'T KNOW."

14 THE WITNESS: OKAY.

15 MR. ONSTOT: IT'S FARGO.

16 THE COURT: HOW ABOUT WEST VIRGINIA?

17 MR. ONSTOT: CHARLESTON.

18 THE COURT: GO AHEAD.

19 BY MR. BRAUN:

20 Q. SO YOU DON'T KNOW WHETHER OR NOT THE
21 CALCULATION HAS BEEN REVISED DEPENDING ON THE OUTCOME
22 OF THIS CASE, DO YOU?

23 A. NO, I DO NOT.

24 Q. NOW, FOR EXAMPLE, ON PAGE 3, THE MIDDLE
25 PARAGRAPH TALKS ABOUT:

1 "A.R.S.C. IN QUESTION WILL NOT BE
2 INCLUDED UNTIL AFTER THE CONCLUSION OF
3 THE CIVIL ACTION."

4 SEE THAT?

5 A. I SEE THAT.

6 Q. OKAY. SO THEN IN FACT THE CALCULATIONS, AT
7 LEAST WITH REGARD TO THAT AIR TIME, ARE BEING HELD UP
8 UNTIL THE CIVIL CASE IS COMPLETED; CORRECT?

9 A. CAN I REFER YOU BACK TO TAB 13, PAGE 1.
10 AIR TIME IS INCLUDED IN THE CALCULATION SECOND
11 LINE -- THE SECOND FRAME OF THE CALCULATION SHEET,
12 YOU'LL SEE EMPLOYER 0069; COVERAGE GROUPS, 70003.

13 A.R. IS AIR TIME. FIVE YEARS OF SERVICE IS
14 USED IN THIS CALCULATION WITH THE FINAL COMPENSATION
15 THAT WAS USED.

16 Q. SO THAT THEN THE LETTER SAYS SOMETHING
17 THAT'S DIFFERENT THAN THE ACTUAL CALCULATION, AM I
18 RIGHT?

19 A. BACK TO PAGE -- TAB THREE. I HAVEN'T READ
20 THIS LETTER. SO I CAN'T ANSWER THAT QUESTION.

21 THE COURT: SUSTAINED.

22 MR. BRAUN: OKAY. NO FURTHER QUESTIONS.

23 THE COURT: LET ME ASK YOU THIS. I WORK
24 FOR THE STATE OF CALIFORNIA. SUPPOSE MY EMPLOYER
25 THINKS I'VE DONE A REALLY GOOD JOB, AND IT'S OKAY

1 WITH THEM.

2 AND THEY SAID, "WE WANT TO GIVE YOU A
3 BONUS. SO WE WANT TO BUY FIVE YEARS OF AIR TIME FOR
4 YOU."

5 WITH MY AGREEMENT, CAN THE STATE OF
6 CALIFORNIA BUY FIVE YEARS OF AIR TIME FOR ME?

7 THE WITNESS: NO.

8 THE COURT: HOW COME?

9 THE WITNESS: BECAUSE A MEMBER HAS TO
10 PURCHASE IT.

11 THE COURT: AND IF I AGREE TO IT, AND THEY
12 PAY FOR IT, IS THAT THE SAME?

13 THE WITNESS: NO.

14 THE COURT: WHAT'S THE DIFFERENCE?

15 THE WITNESS: WHAT'S THE DIFFERENCE?

16 THE COURT: YEAH. WHAT IS THE DIFFERENCE?

17 I WANT IT. THEY WANT ME TO HAVE IT.

18 THEY'VE GOT THE MONEY. I WANT THE FIVE YEARS.

19 YOU EVER HEARD OF THE TERM "FORM OVER
20 SUBSTANCE"?

21 THE WITNESS: YES.

22 THE COURT: DOESN'T THAT SEEM TO BE FORM
23 OVER SUBSTANCE?

24 THE WITNESS: I CAN'T ANSWER THAT.

25 THE COURT: WELL, IF I WANT IT, WHAT IS IT

1 I HAVE TO DO TO ASK FOR IT -- TO PAY FOR IT? WHAT DO
2 I HAVE TO DO?

3 THE WITNESS: YOU NEED TO ELECT IT AND PAY
4 FOR IT OUT OF YOUR OWN -- YOU HAVE TO ELECT IT AND
5 PAY FOR IT.

6 THE COURT: WHAT IF THEY GIVE ME A CHECK
7 AND I TURN AROUND, AND I GIVE THE CHECK TO YOU, YOU
8 BEING CALPERS?

9 THE WITNESS: ME, BEING CALPERS.

10 THE COURT: IF YOU KNOW.

11 THE WITNESS: I DON'T KNOW.

12 THE COURT: YOU REALLY DON'T KNOW, DO YOU?

13 THE WITNESS: NO.

14 THE COURT: YOU WERE PREPARED FOR THE AIR
15 TIME QUESTION, THOUGH, WEREN'T YOU?

16 THE WITNESS: NO. I MEAN, THE QUESTION
17 WAS --

18 THE COURT: YOU NEVER DISCUSSED THAT BEFORE
19 THIS HEARING?

20 THE WITNESS: REGARDING THE AIR TIME
21 QUESTION?

22 THE COURT: YES.

23 THE WITNESS: NO.

24 THE COURT: OKAY.

25 MR. KENNEDY: IF I MAY, YOUR HONOR.

1 THE COURT: SURE.

2

3 FURTHER REDIRECT EXAMINATION

4 BY MR. KENNEDY:

5 Q. JUST LIKE TO QUICKLY TURN BACK TO TAB 3,
6 PAGE 2 --

7 THE COURT: OKAY. OFF THE RECORD.

8 (WHEREUPON, A DISCUSSION WAS HELD
9 OFF THE RECORD.)

10 BY MR. KENNEDY:

11 Q. IF YOU LOOK AT FOOTNOTE 2 THERE ON THAT
12 PAGE, DOES THAT INDICATE -- IN THAT FOOTNOTE WE'RE
13 ALSO SPECIFICALLY IDENTIFYING THE ISSUES CONCERNING
14 THE RECIPROCITY, ADVISING THE MEMBER OF THAT;
15 CORRECT?

16 WHAT IS THAT FOOTNOTE DOING OR SAYING,
17 TRANSLATED INTO THE CALCULATION LANGUAGE THAT YOU
18 JUST USED?

19 A. PAGE 2?

20 Q. NO. IT'S PAGE 2 OF TAB 3. SORRY.

21 A. OKAY.

22 Q. IS THAT ESSENTIALLY SORT OF A SUMMARY
23 VERSION OF WHAT YOU JUST DISCUSSED IN THE
24 CALCULATION, ADVISING THE MEMBER IN DECEMBER OF 2010
25 ON WHAT WAS GOING TO BE USED AND HOW, AS FAR AS YOUR

1 CALCULATION?

2 A. YES.

3 Q. AND COUNSEL WAS KIND ENOUGH TO ALSO POINT
4 OUT THERE WASN'T ANY INCONSISTENCY IN THE
5 DETERMINATION LETTER AT TAB 3 ON THE AIR TIME VERSUS
6 THE CALCULATION.

7 IN OTHER WORDS, FOR SOME PURPOSE THE
8 CALCULATION AS IT WAS UNDERTAKEN ERRONEOUSLY INCLUDED
9 THE AIR TIME, AND THIS DETERMINATION LETTER INDICATES
10 IT WAS GOING TO BE EXCLUDED?

11 A. RIGHT. CORRECT.

12 MR. KENNEDY: NO OTHER QUESTIONS.

13 THE COURT: ANYTHING FURTHER?

14 MR. BRAUN: YES.

15

16 FURTHER RE-CROSS-EXAMINATION

17 BY MR. BRAUN:

18 Q. THAT LAST SENTENCE, I'M TRYING TO FIGURE
19 OUT WHAT THAT MEANS, WHERE IT SAYS:

20 "YOUR BENEFIT WILL BE BASED ONLY ON
21 COMPENSATION WITH CALPERS EMPLOYERS."

22 NOW, WASN'T THE CITY OF BELL A CALPERS
23 EMPLOYER?

24 A. YES.

25 MR. KENNEDY: "FORMER." IT SAYS "FORMER

1 CALPERS."

2 THE WITNESS: FORMER.

3 THE COURT: YOU'RE REFERRING NOW TO
4 FOOTNOTE 2?

5 MR. BRAUN: 2, YEAH.

6 BY MR. BRAUN:

7 Q. SO THAT SHOULD HAVE SAID -- THEY LEFT OUT
8 "FORMER CALPERS EMPLOYERS"? IS THAT WHAT THAT MEANS?

9 A. YOU'RE LOOKING AT FOOTNOTE 2?

10 Q. YES.

11 A. PAGE 2?

12 Q. YES.

13 A. TAB 3?

14 Q. RIGHT.

15 A. IT SAYS:

16 "CALPERS WILL CALCULATE YOUR
17 RETIREMENT BENEFIT BASED ON COMPENSATION
18 WITH YOUR FORMER" --

19 THE COURT: SLOW DOWN. SLOW DOWN.

20 THE WITNESS: (READING.)

21 "CALPERS WILL CALCULATE YOUR
22 RETIREMENT BENEFIT BASED ON COMPENSATION
23 WITH YOUR FORMER CALPERS AND VENTURA
24 COUNTY EMPLOYERS FOR THE 15.010 YEARS OF
25 SERVICE, IN WHICH RECIPROCITY WAS

1 ESTABLISHED."

2 BY MR. BRAUN:

3 Q. OKAY. SO THAT THE SECOND SENTENCE SHOULD
4 ALSO SAY "FORMER CALPERS EMPLOYERS," CORRECT? NOT
5 THE CITY OF BELL; CORRECT? AM I RIGHT?

6 THE COURT: YOU'VE GOT TO ANSWER OUT LOUD.

7 THE WITNESS: RIGHT. CORRECT.

8 THE COURT: SO THE WORD "FORMER" IS
9 MISSING.

10 THE WITNESS: CORRECT.

11 BY MR. BRAUN:

12 Q. ONE SMALL LITTLE QUESTION. WHEN YOU USE,
13 IN THIS SITUATION, A FORMER EMPLOYER THAT MAY BE
14 TWENTY YEARS EARLIER, DO YOU MAKE ANY ADJUSTMENT FOR
15 INFLATION?

16 A. NO.

17 Q. SO YOU COULD BE CALCULATING A PERSON'S
18 RETIREMENT BASED ON THE VALUE OF MONEY 30 YEARS AGO;
19 CORRECT?

20 A. I CAN'T ANSWER THAT. WE USE PAY RATE.

21 Q. WITH NO CORRECTIONS FOR INFLATION?

22 A. YES.

23 MR. BRAUN: NO FURTHER QUESTIONS.

24 MR. KENNEDY: NONE.

25 THE COURT: THANK YOU. THANK YOU VERY

1 MUCH.

2 MR. KENNEDY: YOUR HONOR, I NEED TO TAKE A
3 SHORT BREAK.

4 THE COURT: SURE. HOW MUCH TIME WOULD YOU
5 LIKE?

6 MR. KENNEDY: JUST TO GO TO THE RESTROOM.

7 THE COURT: TEN MINUTES.

8 (WHEREUPON, A RECESS WAS HELD
9 FROM 2:54 P.M. TO 3:02 P.M.)

10 THE COURT: OKAY. WE'RE BACK ON THE
11 RECORD.

12 NEXT WITNESS.

13 MR. KENNEDY: YOUR HONOR, I'D LIKE TO CALL
14 EDWARD LEE.

15 THE COURT: MR. LEE, CAN I GET YOU TO RAISE
16 YOUR RIGHT HAND AND FACE THE COURT REPORTER.

17

18 EDWARD LEE,

19 CALLED AS A WITNESS AND SWORN IN BY

20 THE COURT REPORTER, WAS EXAMINED AND

21 TESTIFIED AS FOLLOWS:

22

23 COURT REPORTER: DO YOU SOLEMNLY AFFIRM

24 THAT THE EVIDENCE YOU WILL GIVE IN THIS PROCEEDING

25 WILL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT

1 THE TRUTH?

2 THE WITNESS: I DO.

3 THE COURT: TELL US YOUR NAME AND SPELL IT
4 FOR US, PLEASE.

5 THE WITNESS: IT'S EDWARD, E-D-W-A-R-D;
6 LEE, L-E-E.

7 THE COURT: THANK YOU.

8

9 DIRECT EXAMINATION

10 BY MR. KENNEDY:

11 Q. MR. LEE, YOU'RE AN ATTORNEY LICENSED TO
12 PRACTICE IN THE STATE OF CALIFORNIA?

13 A. YES.

14 Q. AND WERE YOU FORMERLY THE CITY ATTORNEY FOR
15 THE CITY OF BELL?

16 A. THAT'S CORRECT.

17 Q. AND FOR WHAT PERIOD OF TIME DID YOU SERVE
18 IN THAT FUNCTION?

19 A. ABOUT 15 YEARS, ENDING IN AUGUST OF 2010.

20 Q. OKAY. AND IN THAT CAPACITY, DID YOU ATTEND
21 CITY COUNCIL MEETINGS ON A REGULAR BASIS?

22 A. YES. I ATTENDED MOST OF THE CITY COUNCIL
23 MEETINGS.

24 Q. AND DID YOU ATTEND THE CITY COUNCIL MEETING
25 IN MAY OF 2005?

1 A. YES, I BELIEVE I DID.

2 Q. OKAY. AND I'D LIKE TO DIRECT YOUR
3 ATTENTION TO A BUDGET DOCUMENT. IT'S CALPERS -- NO
4 IT'S THE CITY'S.

5 IT'S MS. SPACCIA'S EXHIBIT 21. IT'S A
6 BUDGET DOCUMENT. YOU SEE THAT IN FRONT OF YOU?

7 A. YES.

8 Q. HAVE YOU SEEN THIS DOCUMENT BEFORE?

9 A. I'VE SEEN THE RESOLUTION BEFORE BUT NOT THE
10 REST OF THE DOCUMENT.

11 Q. NOW, WHEN YOU ATTENDED THE MEETINGS AT THE
12 CITY OF BELL, CITY COUNCIL MEETINGS, WERE YOU
13 PROVIDED COPIES OF THE DOCUMENTATION THAT WAS
14 SUBMITTED TO THE CITY COUNCIL AND THE DEPARTMENT
15 HEADS THAT WERE BEING UNDERTAKEN FOR REVIEW AND
16 APPROVAL?

17 A. I TYPICALLY RECEIVED A COPY OF THE COUNCIL
18 PACKET, THE INFORMATION THAT WAS GOING TO BE
19 PRESENTED TO THE CITY COUNCIL FOR THAT EVENING.

20 Q. SO IF DOCUMENTS WERE CONTAINED WITHIN THE
21 PACKET THAT WERE PRESENTED THAT EVENING TO THE CITY
22 COUNCIL, YOU WOULD HAVE COPIES OF ALL THOSE
23 DOCUMENTS?

24 A. I SHOULD HAVE RECEIVED IT.

25 Q. OKAY. LOOKING AT RESOLUTION 2005-15 ON

1 PAGE 21 --

2 THE COURT: OKAY. HOLD ON NOW. WE'RE
3 REFERRING NOW TO EXHIBIT?

4 MR. KENNEDY: EXHIBIT 21.

5 THE COURT: AND WHICH PAGE.

6 MR. KENNEDY: PAGE 21, AND IT'S RESOLUTION
7 2005-15.

8 THE COURT: OKAY.

9 BY MR. KENNEDY:

10 Q. DID YOU RECEIVE A COPY OF THE --

11 THE COURT: THIS IS 21; RIGHT?

12 MR. KENNEDY: IT'S 21, PAGE 21.

13 THE COURT: OKAY.

14 BY MR. KENNEDY:

15 Q. KEEPING THAT IN MIND, I DIRECT YOUR
16 ATTENTION NOW TO, IF I COULD, CALPERS TAB -- SMALL
17 BINDER, TAB 9.

18 AND THAT PURPORTS TO BE AN ADDENDUM
19 NUMBER 2 TO THE EMPLOYMENT AGREEMENT FOR MS. SPACCIA
20 FOR JULY 1ST, 2005; CORRECT?

21 A. CORRECT.

22 Q. DO YOU RECALL WHETHER THIS AGREEMENT OR ANY
23 OTHER AGREEMENTS WERE SUBMITTED WITH THE BUDGET
24 PACKAGE, THE EXHIBIT NO. 21?

25 A. NOT TO MY KNOWLEDGE.

1 Q. OKAY. AND IF IT HAD BEEN, THEN THEY WOULD
2 HAVE BEEN IN YOUR PACKAGE THAT YOU GOT? THEY SHOULD
3 HAVE BEEN; RIGHT?

4 A. THEY SHOULD HAVE BEEN. I WOULD PRESUME
5 THAT.

6 Q. NOW, I DIRECT YOUR ATTENTION BACK TO TAB 9,
7 TO THE SECOND PAGE. IS THIS AN AGREEMENT THAT YOU
8 PREPARED?

9 A. NO, IT WAS NOT.

10 Q. DO YOU RECALL SIGNING THIS AGREEMENT?

11 A. NO, I DO NOT RECALL SIGNING THIS AGREEMENT.

12 Q. DOES THAT APPEAR TO BE YOUR SIGNATURE THERE
13 ON PAGE 2?

14 A. YES, IT DOES.

15 Q. OKAY. DO YOU HAVE ANY -- AS YOU SIT HERE
16 TODAY, DO YOU HAVE A RECOLLECTION THAT YOU DID SIGN
17 THIS AGREEMENT? LOOKING AT BOTH PAGE 1 AND 2.

18 A. I HAVE NO RECOLLECTION. I DIDN'T PREPARE
19 THIS OR REVIEW IT, AND I HAVE NO RECOLLECTION AT ALL
20 OF HAVING SIGNED IT.

21 Q. AND IS IT YOUR TESTIMONY TODAY THAT YOU DID
22 NOT SIGN THIS AGREEMENT?

23 A. THAT'S CORRECT.

24 Q. DO YOU HAVE ANY IDEA HOW YOUR SIGNATURE,
25 THEN, APPEARS ON THIS DOCUMENT?

1 A. I CAN SPECULATE. I DON'T KNOW EXACTLY HOW
2 MY SIGNATURE EITHER WAS INCLUDED IN THIS OR ATTACHED
3 TO THIS PARTICULAR AGREEMENT.

4 I KNOW I DIDN'T PREPARE IT. AGAIN, I
5 DIDN'T REVIEW IT, AND I DON'T HAVE ANY RECOLLECTION
6 OF SIGNING IT AT ALL.

7 Q. AND, IN FACT, AS YOU SAID, TO THE BEST OF
8 YOUR KNOWLEDGE, YOU DID NOT SIGN THIS DOCUMENT?

9 A. THAT'S CORRECT.

10 MR. KENNEDY: NO OTHER QUESTIONS, YOUR
11 HONOR.

12 THE COURT: CROSS-EXAMINATION.

13

14 CROSS-EXAMINATION

15 BY MR. BRAUN:

16 Q. DOES IT LOOK LIKE YOUR SIGNATURE?

17 A. YES, IT DOES.

18 Q. NOW, WHEN YOU SAY "TO YOUR RECOLLECTION,"
19 YOU DON'T RECALL, DID YOU ACTUALLY LOOK THROUGH THE
20 PACKET BACK THEN IN 2005 TO SEE IF IT --

21 A. THIS WASN'T INCLUDED IN MY PACKET.

22 Q. DOES YOUR PACKET NORMALLY HAVE EVERYTHING
23 IN IT? OR WHO PROVIDED YOU WITH THE PACKET?

24 A. THE CITY CLERK PROVIDED ME WITH THE PACKET.

25 Q. AND AT WHAT POINT DO YOU GET THE PACKET?

1 A. I TYPICALLY PICK IT UP THAT EVENING. THERE
2 HAD BEEN TIMES EARLIER WHERE IT WAS GIVEN TO ME IN
3 ADVANCE. BUT FOR THE MOST PART, THE STANDARD
4 OPERATING PROCEDURE WAS TO PROVIDE ME THE PACKET THE
5 EVENING BEFORE.

6 I WOULD BE THERE AT CITY HALL EARLIER THAN
7 THE TIME -- BEFORE THE COUNCIL MEETING.

8 Q. NOW, LOOKING AT THE -- DID YOU GET THE
9 ENTIRE BUDGET IN YOUR PACKET?

10 A. NO.

11 Q. SO WHAT WAS IN YOUR PACKET?

12 A. THE COPY OF THE RESOLUTION. THE 2005-15
13 WAS THE ONLY THING THAT WAS IN MY PACKET.

14 Q. OKAY. SO ARE YOU AWARE THAT IT WAS THE
15 ENTIRE BUDGET THAT WAS PASSED PURSUANT TO THAT
16 RESOLUTION?

17 A. YES. I'M AWARE OF THAT.

18 Q. OKAY. BUT WHEN YOU CAME TO THE ROOM, THE
19 ONLY THING YOU HAD WAS THE RESOLUTION ITSELF?

20 A. YES.

21 Q. SO THAT IF THE ADDENDUMS WERE ATTACHED TO
22 THE BIG PACKET, YOU WOULDN'T HAVE HAD ACCESS TO IT;
23 IS THAT CORRECT?

24 A. NO. THAT MAY OR MAY NOT BE TRUE. USUALLY,
25 THE CITY CLERK GIVES ME A SUPPLEMENT IF THERE IS A

1 SUPPLEMENT TO BE DISTRIBUTED, BUT I DIDN'T SEE
2 ANYTHING.

3 Q. IN 2005 AS YOU RECALL, YOU WERE JUST GIVEN
4 THIS ONE PIECE OF PAPER, THIS RESOLUTION?

5 A. THAT'S CORRECT.

6 Q. AND THE RESOLUTION REFERS TO A PROGRAM OF
7 SERVICES WHICH IS THE BUDGET; RIGHT?

8 A. CORRECT.

9 Q. BUT YOU WERE NOT GIVEN A COPY OF THE
10 BUDGET; IS THAT RIGHT?

11 A. THAT'S CORRECT.

12 Q. SO YOU DON'T KNOW WHETHER THERE WERE ANY
13 ADDENDUMS ATTACHED TO THE BUDGET, DO YOU?

14 A. I DON'T KNOW WHAT THE COUNCIL WAS
15 DELIVERED.

16 Q. SO WE'RE IN THE RESOLUTION WHERE IT SAYS:

17 "THAT SAID ADOPTED PROGRAM OF
18 SERVICES INCLUDING SUPPLEMENTAL REVISIONS
19 AND AMENDMENTS" --

20 YOU WEREN'T GIVEN A PROGRAM OF SERVICES,
21 WERE YOU?

22 A. NO.

23 Q. YOU WEREN'T GIVEN ANY OF THESE SUPPLEMENTED
24 REVISIONS OR AMENDMENTS, WERE YOU?

25 A. CORRECT.

1 Q. AT THAT PARTICULAR TIME, YOU BECAME AWARE
2 THAT MANY OF THESE EMPLOYMENT AGREEMENTS WERE BEING
3 PRODUCED INTERNALLY WITHIN THE CITY, USING AGREEMENTS
4 THAT YOU HAD PREVIOUSLY PROVIDED THE CITY; IS THAT
5 CORRECT?

6 A. NO. IT WASN'T AT THAT TIME. IT WAS LATE
7 JUNE OF 2010, THAT I BECAME AWARE OF THOSE EMPLOYMENT
8 AGREEMENTS.

9 Q. SO AT THE TIME THEY WERE BEING PREPARED,
10 YOU WEREN'T AWARE OF IT?

11 A. NO.

12 Q. NOW, LOOKING AT ITEM NUMBER 10 IN THE
13 BOOK -- IN THE CALPERS BOOK, DO YOU SEE THAT
14 ADDENDUM 3?

15 A. YES.

16 Q. AND TURNING THE PAGE, ARE YOU FAMILIAR WITH
17 ROBERT RIZZO'S SIGNATURE?

18 A. YES.

19 Q. DOES THAT APPEAR TO BE ROBERT RIZZO'S
20 SIGNATURE?

21 A. APPEARS TO BE, YES.

22 MR. BRAUN: NO FURTHER QUESTIONS, YOUR
23 HONOR.

24 MR. ONSTOT: NOTHING FROM THE CITY.

25 MR. KENNEDY: REDIRECT. IS THE --

1 THE COURT: IF I WANTED TO FIND OUT HOW
2 MUCH THE RESPONDENT WAS MAKING BACK IN 2005, WOULD
3 THAT BE A PUBLIC RECORD SOMEWHERE?

4 THE WITNESS: YES.

5 THE COURT: WHERE WOULD I GO TO SEE THAT
6 PUBLIC RECORD?

7 THE WITNESS: YOU WOULD PROBABLY MAKE A
8 REQUEST THROUGH THE CITY MANAGER'S OFFICER OF THE
9 FINANCE DEPARTMENT.

10 THE COURT: AND WOULD YOUR ANSWER BE THE
11 SAME OF THE PERIOD 2005 THROUGH 2010?

12 THE WITNESS: YES.

13 THE COURT: IT WASN'T HIDDEN ANYWHERE, WAS
14 IT?

15 THE WITNESS: IT SHOULDN'T HAVE BEEN. IT'S
16 ALL PART OF -- SHOULD HAVE BEEN DISCLOSED AS PART OF
17 THE PUBLIC RECORD.

18 THE COURT: THANK YOU.

19

20 REDIRECT EXAMINATION

21 BY MR. KENNEDY:

22 Q. MR. LEE, YOU APPROVED -- YOUR SIGNATURE ON
23 AN AGREEMENT SUCH AS THIS IN 2005 WAS BASICALLY TO
24 APPROVE IT AS TO FORM AS THE CITY ATTORNEY; RIGHT?

25 A. CORRECT.

1 Q. AND YOU DID NOT SIGN TAB 9, IS YOUR
2 TESTIMONY; IS THAT CORRECT?

3 A. THAT'S CORRECT.

4 Q. AND HAD THIS BEEN PART OF A
5 SUPPLEMENTAL -- BEEN PART OF THE DOCUMENT, THE
6 RESOLUTION THAT WE REFERRED TO IN EXHIBIT 21, THEN
7 YOU WOULD HAVE BEEN GIVEN A COPY OF THAT ALONG WITH
8 THE RESOLUTION; CORRECT?

9 A. I WOULD PRESUME SO, YES.

10 Q. AND IF THERE WERE TO BE PRODUCED THIS
11 DOCUMENT PURSUANT TO A PUBLIC RECORDS ACT REQUEST,
12 THAT WOULD HAVE BEEN A PRODUCTION OF, AS FAR AS YOU
13 KNOW, A FRAUDULENT OR FORGED DOCUMENT?

14 MR. ONSTOT: OBJECTION. CALLS FOR
15 SPECULATION.

16 THE COURT: SUSTAINED.

17 BY MR. KENNEDY:

18 Q. IF I PRODUCED THIS TAB 9 IN RESPONSE TO A
19 PUBLIC RECORDS ACT REQUEST AND ATTESTED THAT THIS WAS
20 A TRUE AND CORRECT COPY OF A DOCUMENT THAT WAS SIGNED
21 BY YOU, WOULD THAT BE A TRUE STATEMENT?

22 A. NO.

23 MR. KENNEDY: NO OTHER QUESTIONS, YOUR
24 HONOR.

25 ///

1 RE CROSS-EXAMINATION

2 BY MR. BRAUN:

3 Q. YOU READ IT AS APPROVED AS TO FORM. DOES
4 THAT HAVE ANY OPERATIVE EFFECT? YOU DON'T HAVE ANY
5 AUTHORITY TO FINE THE CITY IN THIS AGREEMENT, DO YOU?

6 A. THAT'S CORRECT.

7 Q. SO WHEN YOU APPROVED AS TO FORM, THAT JUST
8 MEANS YOU'RE APPROVING THE FORM; IS THAT RIGHT?

9 A. YES.

10 Q. BUT YOU DON'T HAVE ANY POWER, ONE WAY OR
11 THE OTHER, IN TERMS OF APPROVAL; CORRECT?

12 A. NO.

13 MR. BRAUN: NO FURTHER QUESTIONS.

14 THE COURT: ANY OTHER?

15 MR. KENNEDY: ONE FURTHER.

16 THE COURT: SURE.

17
18 FURTHER REDIRECT EXAMINATION

19 BY MR. KENNEDY:

20 Q. WHEN YOU SIGN OFF ON DOCUMENTS -- WHEN YOU
21 ACTUALLY DID SIGN OFF ON THESE KINDS OF DOCUMENTS,
22 WHAT WAS THE PROCESS OF YOUR SIGNATURE? WOULD YOU
23 SIGN IT AT THE MEETING AT THAT TIME THAT IT WAS
24 APPROVED?

25 A. OFTENTIMES THAT WAS THE PROCESS. EITHER I

1 HAD PREPARED THE DOCUMENT, IN WHICH CASE I WOULD HAVE
2 SIGNED IN ADVANCE, APPROVED AS TO FORM, AND SUBMITTED
3 THAT TO THE CITY FOR THEIR CONSIDERATION.

4 OR IF THERE WAS A CONTRACT THAT I HAD
5 REVIEWED AND THE FINAL FORM WAS THERE AS PART OF THE
6 COUNCIL PACKET AND WAS APPROVED BY THE CITY COUNCIL,
7 THEN AFTER I WOULD BE ASKED TO SIGN OFF AS APPROVED
8 AS TO FORM.

9 MR. KENNEDY: NO OTHER QUESTIONS.

10 THE COURT: ANYTHING FURTHER?

11 MR. ONSTOT: NONE.

12 THE COURT: THANK YOU, SIR.

13 THE WITNESS: THANK YOU.

14 THE COURT: NEXT WITNESS?

15 MR. KENNEDY: TERRANCE RODGERS.

16 THE COURT: SIR, CAN I GET YOU TO RAISE
17 YOUR RIGHT HAND AND FACE THE COURT REPORTER.

18

19 TERRANCE RODGERS,
20 CALLED AS A WITNESS AND SWORN IN BY
21 THE COURT REPORTER, WAS EXAMINED AND
22 TESTIFIED AS FOLLOWS:

23

24 COURT REPORTER: DO YOU SOLEMNLY SWEAR OR
25 AFFIRM THAT THE EVIDENCE YOU WILL GIVE IN THIS

1 PROCEEDING WILL BE THE TRUTH, THE WHOLE TRUTH, AND
2 NOTHING BUT THE TRUTH?

3 THE WITNESS: I DO.

4 THE COURT: HAVE A SEAT AND TELL US YOUR
5 NAME AND SPELL IT FOR US.

6 THE WITNESS: MY NAME IS TERRANCE,
7 T-E-R-R-A-N-C-E; RODGERS, R-O-D-G-E-R-S.

8 THE COURT: THANK YOU.

9

10 DIRECT EXAMINATION

11 BY MR. KENNEDY:

12 Q. MR. RODGERS, WHERE ARE YOU EMPLOYED?

13 A. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
14 SYSTEM.

15 Q. AND IN WHAT CAPACITY ARE YOU EMPLOYED
16 THERE?

17 A. I AM A STAFF SERVICES MANAGER IN THE
18 COMPENSATION AND EMPLOYER REVIEW UNIT.

19 Q. AND IN THAT CAPACITY DO YOU SUPERVISE
20 CHERYL LIVINGSTON?

21 A. I DO.

22 Q. AND PRIOR TO COMING HERE, DID YOU HAVE AN
23 OPPORTUNITY TO FAMILIARIZE YOURSELF WITH THE FILE OF
24 ANGELA SPACCIA IN THE COMP REVIEW?

25 A. I DID.

1 Q. NOW, I WOULD DIRECT YOUR ATTENTION, IF I
2 COULD, TO CALPERS VOLUME II, TAB 24. CAN YOU
3 IDENTIFY FOR US WHAT THOSE DOCUMENTS ARE?

4 A. THESE ARE PAYROLL DETAIL TRANSCRIPTS FOR,
5 IT APPEARS, MR. EGGENA, LOURDES GARCIA,
6 LOUIS RAMIREZ, ANNETTE PERETZ, LEE SMITH, AND RICARDO
7 GONZALEZ.

8 Q. AND PAYROLL DETAIL --

9 THE COURT: LET'S JUST WAIT A SECOND. MAKE
10 SURE I GOT THE SAME ONES. WE'RE LOOKING AT THE SAME
11 ONES?

12 THE WITNESS: MR. EGGENA, ERIC EGGENA;
13 LOURDES GARCIA; LOUIS RAMIREZ; ANNETTE PERETZ.

14 THIS ONE GOES TO ROBERT RIZZO, NOT RICARDO
15 GONZALEZ.

16 THE COURT: SO YOU AND I DON'T HAVE THE
17 SAME --

18 THE WITNESS: LEE SMITH. NO, SIR.

19 THE COURT: OKAY.

20 MR. KENNEDY: WHAT ARE YOU MISSING?

21 THE WITNESS: I'M JUST VERIFYING THAT
22 MR. GONZALEZ IS IN HERE AS WELL. HE IS.

23 THE JUDGE'S APPEARS TO HAVE MR. RIZZO'S
24 NAME AS WELL. I DIDN'T NOTICE THAT ON MINE.

25 ///

1 BY MR. KENNEDY:

2 Q. AND IF I COULD, COULD I ASK YOU TO LOOK

3 AT --

4 A. I APOLOGIZE. I SEE MR. RIZZO'S. MY
5 APOLOGIES.

6 Q. SO THE PACKETS ARE IDENTICAL?

7 A. YES.

8 Q. AT TAB 30, AT PAGE -- I BELIEVE IT'S
9 STARTING -- THERE'S AN EASIER WAY.

10 LET'S LOOK AT THE SMALL PACKAGE, AND I
11 BELIEVE IT'S UNDER 13, TAB 13.

12 A. "CALCULATION INFORMATION"?

13 Q. I'M LOOKING FOR THE PAYROLL DETAIL OF
14 MS. SPACCIA.

15 YES. TAB 16, EXCUSE ME, 19. SORRY. 19.

16 IS THAT THE SAME INFORMATION FOR
17 MS. SPACCIA?

18 A. YES.

19 Q. NOW, JUST BRIEFLY EXPLAIN -- IF YOU COULD,
20 EXPLAIN TO THE COURT WHAT A PAYROLL DETAIL REPORT IS?

21 A. PAYROLL DETAIL REPORT DISCLOSES OR PROVIDES
22 THE PAY RATE THAT'S BEING REPORTED BY THE EMPLOYER,
23 THE FREQUENCY IN WHICH IT'S BEING REPORTED, THE
24 EARNINGS FOR THAT PARTICULAR PAY PERIOD IN WHICH THE
25 PAYMENTS ARE BEING TRANSMITTED TO CALPERS, THE AMOUNT

1 OF CONTRIBUTIONS, THE SERVICE CREDIT ACCRUED.

2 AND THEN IF THERE IS AN -- AS IT GOES ON
3 ALONG THE TOP -- THERE IS A DISCREPANCY OR ANY SORT
4 OF FLAG.

5 Q. NOW, THESE ARE BASICALLY, THEN, THE
6 REPORTED COMPENSATION BY THE EMPLOYERS FOR EACH OF
7 THESE INDIVIDUALS; RIGHT?

8 A. CORRECT.

9 Q. AND THESE TRANSCRIPTS GO THROUGH THE --
10 POTENTIALLY THROUGH THE ENTIRE PERIOD OF EMPLOYMENT
11 WITH THE CITY OF BELL?

12 A. YES.

13 Q. THESE ARE USED AS PART OF THE PROCESS OF
14 COMPENSATION REVIEW?

15 A. YES.

16 Q. AND HOW ARE THEY USED?

17 A. WE LOOK AT THE PAY RATE THAT'S REPORTED
18 TO -- IT TELLS US WHAT THE PAY RATE IS, AND THAT'S
19 GENERALLY THE FIRST STEP AFTER WE HAVE A CASE REVIEW,
20 IS TO LOOK AT PAY RATE.

21 Q. THE REPORTED PAY RATE?

22 A. THE REPORTED PAY RATE.

23 Q. NOW, AS FAR AS A PAY RATE, IS THAT A TERM
24 OF ART THAT IS USED WITHIN CALPERS?

25 A. IT IS. IT IS CONTAINED IN GOVERNMENT CODE

1 20636(B) (1) .

2 Q. AND HOW IS THAT -- HOW DOES CALPERS DEFINE
3 THAT OR APPLY THAT TERM, IF YOU KNOW?

4 A. CALPERS PAY RATE IS ONE OF TWO COMPONENTS
5 USED TO DETERMINE COMPENSATION EARNABLE FOR THAT
6 WHICH IS USED IN THE CALCULATION OF A MEMBER'S
7 RETIREMENT BENEFIT.

8 PAY RATE IS -- AND I'M PARAPHRASING -- BUT
9 ESSENTIALLY, IT IS THE NORMAL RATE OF PAY PAID TO
10 SIMILARLY SITUATED MEMBERS OF A GROUP OR CLASS FOR
11 SERVICES RENDERED ON A FULL-TIME BASIS PURSUANT TO A
12 PUBLICLY AVAILABLE PAY SCHEDULE.

13 Q. AND STARTING WITH THE CONCEPT OF A PUBLICLY
14 AVAILABLE PAY SCALE, HOW DOES CALPERS APPLY THE TERM
15 IN ITS COMP REVIEW OF A PUBLICLY AVAILABLE PAY SCALE?

16 MR. BRAUN: OBJECTION. VAGUE AS TO WHAT
17 TIME.

18 BY MR. KENNEDY:

19 Q. WELL, IN MS. SPACCIA'S CASE, HOW DID THEY
20 APPLY?

21 A. CALPERS LOOKED TO DOCUMENTS FROM THE CITY
22 THAT DISCLOSED TITLES OF POSITIONS FOR EMPLOYEES AT
23 THE CITY THAT ESTABLISHED A RANGE OF PAY FOR
24 EMPLOYEES RENDERING SERVICE.

25 THE PAY SCHEDULES THAT WE LOOK TO SHOULD

1 ESTABLISH A TIME BASE SO THAT THE PAY SCHEDULE, WHEN
2 IT'S LOOKED AT, YOU CAN DETERMINE WHAT THE PAY RATE
3 IS. SPECIFICALLY, THE TIME BASE IS IMPORTANT SO THAT
4 IT'S DISCLOSED, THAT THE PUBLIC IS AWARE OF WHAT THE
5 PAY RATE IS FOR EMPLOYEES OF THE CITY.

6 GENERALLY, WHEN WE LOOK FOR PAY SCHEDULES,
7 WE'RE LOOKING FOR HOW -- THE PAY SCHEDULE WILL
8 DISCLOSE ALL THE POSITIONS. AND TYPICALLY IN THE PAY
9 SCHEDULE I REVIEWED, THERE'S GENERALLY A GROUP OR
10 CLASS IDENTIFIED WITHIN THE PAY SCHEDULES.

11 Q. AND ARE YOU AWARE THAT IN 2010, THERE WAS
12 AN AUDIT OF THE CITY OF BELL THAT DETERMINED THAT
13 THERE WAS NOT ADEQUATE DOCUMENTATION TO SUBSTANTIATE
14 A PAY SCHEDULE FOR MS. SPACCIA?

15 A. YES.

16 Q. AND COULD I DIRECT YOUR ATTENTION, IF I
17 MIGHT, TO TAB 29.

18 A. VOLUME II?

19 Q. VOLUME II. AND DO YOU RECOGNIZE THAT AS
20 THAT AUDIT?

21 A. YES. A LETTER PROVIDED TO THE CITY
22 REGARDING --

23 Q. NOW, WHEN YOU CAN ESTABLISH A PAY SCHEDULE,
24 IS THAT THE END OF THE PROCESS FOR DETERMINING WHAT
25 THE NORMAL COMPENSATION -- OR WHAT THE COMPENSATION

1 EARNABLE IS FOR THE NUMBER?

2 A. NO. THE PAY SCHEDULE -- AND I DON'T THINK
3 I MENTIONED THIS BUT THE PAY SCHEDULE, IN ADDITION TO
4 PROVIDING THE POSITION TITLES AND PAY RANGE FOR THE
5 EMPLOYEES.

6 ALSO, CALPERS LOOKED TO THE DOCUMENT THAT
7 IT WAS DULY APPROVED AND NOTICED. AND THEN --

8 Q. AND IF I MAY INTERRUPT, MY QUESTION IS:
9 ONCE YOU'VE ESTABLISH -- IF YOU DO ESTABLISH A PAY
10 SCHEDULE EXISTS, A VALID PAY SCHEDULE, THEN IS THAT
11 THE CONCLUSION OF YOUR ANALYSIS AS TO WHAT THE
12 COMPENSATION EARNABLE WOULD BE?

13 A. NO. PAY SCHEDULE IS ONE OF THE COMPONENTS
14 WITHIN THE DEFINITION OF PAY RATE. AND ALSO
15 CONTAINED WITHIN THAT IS ESTABLISHING A NORMAL RATE
16 OF PAY, A STABLE OR PREDICTABLE RATE OF PAY PAID TO A
17 SIMILARLY SITUATED GROUP OR CLASS OF EMPLOYEES.

18 Q. SO YOU TAKE THE PAY RATE THEN, AND THEN YOU
19 WOULD SUBJECT IT TO AN ANALYSIS TO A GROUP OR CLASS?

20 A. CORRECT.

21 Q. AND SO EVEN THOUGH YOU MAY HAVE A PAY
22 SCHEDULE -- WELL, DO YOU KNOW WHAT THE PURPOSE OF
23 THAT IS, OR WHY YOU WOULD DO THAT, OR WHY IT'S DONE?

24 A. THE PAY SCHEDULE?

25 Q. SUBJECT TO THE GROUP OR CLASS.

1 A. TO ESTABLISH A NORMAL PREDICTABLE RATE OF
2 PAY FOR EMPLOYEES TO ENSURE THAT THERE'S NOT ANY
3 ABERRANT FLUCTUATIONS IN THE RATE OF PAY FOR THAT
4 GROUP OR CLASS.

5 Q. NOW, IS THERE AN EXPECTATION THAT SALARY
6 SCHEDULES FOR A CALPERS EMPLOYER HAD BEEN DULY
7 NOTICED BY THE GOVERNING ENTITY?

8 A. YEAH. CALPERS GENERALLY OPERATES UNDER
9 THE -- THE COMP REVIEW UNIT GENERALLY OPERATES UNDER
10 THE PRESUMPTION THAT IT'S BEEN DULY NOTICED AND
11 APPROVED -- DULY APPROVED AND NOTICED, I SHOULD SAY.

12 Q. THROUGH A PUBLIC HEARING PROCESS?

13 A. CORRECT.

14 Q. AND IS THAT ONE OF THE FACTORS THAT YOU
15 LOOK TOWARD TO SEE WHETHER OR NOT THERE IS A VALID
16 PAY SCHEDULE?

17 I MEAN IF YOU FOUND OUT THAT THERE WAS A
18 QUESTION AS TO WHETHER OR NOT A PAY SCHEDULE WAS DULY
19 APPROVED BY A GOVERNING ENTITY OR DULY NOTICED, WOULD
20 THAT THROW DOUBT INTO YOUR MIND AS TO THE VALIDITY OF
21 THAT PAY SCHEDULE?

22 A. YEAH. WE WOULD GO OUT AND LOOK FOR MINUTES
23 TO SEE IF THERE WAS SOME SORT OF APPROVAL FOR THAT.

24 Q. AND DID THE AUDIT YOU MENTIONED IN 2010
25 CAUSE JUST SUCH A CONCERN WITH THE COMP REVIEW?

1 A. YES.

2 Q. NOW, DID YOU HAVE AN OPPORTUNITY TO --
3 WELL, IF THERE IS NOT A PAY SCHEDULE AS DEFINED --
4 AND BY THE WAY, IS THERE A DEFINITION FOR PAY
5 SCHEDULE?

6 A. THERE IS. IT'S CODIFIED IN THE CALIFORNIA
7 CODE OF REGULATIONS, 570.5.

8 Q. THAT WAS JUST RECENTLY PROMULGATED, WAS IT
9 NOT?

10 A. AUGUST 10, 2011.

11 Q. BUT DO YOU KNOW IF THAT WAS INTENDED TO BE
12 DECLARATORY OR CLARIFICATION OF EXISTING LAW AND
13 PROCEDURE?

14 MR. BRAUN: OBJECTION --

15 THE COURT: OVERRULED.

16 THE WITNESS: THE INTENT WAS TO CLARIFY
17 PUBLICLY AVAILABLE PAY SCHEDULES.

18 BY MR. KENNEDY:

19 Q. BUT IT DEFINES IT UNDER PART A, WHICH IS
20 WHAT I BELIEVE YOU WERE JUST TALKING ABOUT AS BEING
21 SORT OF, IF YOU WILL, A "GOLD STANDARD" FOR WHAT A
22 PUBLICLY AVAILABLE PAY SCHEDULE IS?

23 THE COURT: OKAY. LET'S --

24 MR. KENNEDY: OKAY. SORRY.

25 ///

1 BY MR. KENNEDY:

2 Q. YOU WOULD DEFINE WHAT YOU ACCEPTED AS A
3 PUBLICLY AVAILABLE PAY SCHEDULE AS BEING THE SINGLE
4 DOCUMENT THAT SETS FORTH THE POSITIONS AND PAY RANGES
5 OR PAY; CORRECT?

6 A. YES.

7 Q. THAT'S BEEN PROVED BY THE GOVERNING AGENCY;
8 CORRECT?

9 A. CORRECT.

10 Q. IF YOU DON'T HAVE THAT, IS IT WITHIN
11 CALPERS' DISCRETION TO LOOK TOWARDS OTHER DOCUMENTS
12 THAT MIGHT HELP ESTABLISH A PAY RATE?

13 A. CALPERS MAY CONSIDER OTHER DOCUMENTS THAT
14 MEET THE SPIRIT, IF YOU WILL, OF 570.5 WHEN IT'S DULY
15 APPROVED AND NOTICED AND ESTABLISHES A PAY RATE
16 THAT -- WELL, ESTABLISHES THE PAY RATE APPLICABLE TO
17 A GROUP OR CLASS.

18 THE COURT: WELL, LET'S JUST STOP HERE, AND
19 MAYBE SEE IF I CAN UNDERSTAND.

20 I LIVE IN THE CITY OF ESCONDIDO WHICH IS A
21 LITTLE SOUTH OF HERE. SO WHAT YOU'RE SAYING IS THAT
22 MY CITY, THE CITY OF ESCONDIDO, PROBABLY HAS
23 SOMEWHERE PUBLISHED PAY RATES.

24 THE WITNESS: YES.

25 THE COURT: AND I'M THINKING ABOUT A GUY

1 THAT GOES OUT AND ISSUES TRAFFIC TICKETS. LET'S CALL
2 HIM A TRAFFIC ENFORCEMENT GUY. HIS PAY SCHEDULE IS
3 PROBABLY SOMEWHERE ON THAT DOCUMENT; CORRECT?

4 THE WITNESS: CORRECT.

5 THE COURT: AND IT WOULD BE SEGREGATED OUT
6 AS TO THE NUMBER OF YEARS HE WORKED. THERE WOULD BE
7 AN ENTRY LEVEL, AND THEN IT WOULD GO THROUGH FIVE
8 YEARS OR SOMETHING LIKE THAT.

9 THE WITNESS: WE DO FREQUENTLY SEE STEPS
10 WITHIN RANGES, YES.

11 THE COURT: YEAH. SO THERE MIGHT BE
12 DIFFERENT NUMBERS OF SALARIES DEPENDING ON THE GUY'S
13 EXPERIENCE.

14 THE WITNESS: YES.

15 THE COURT: NOW, SUPPOSE IN ADDITION TO
16 TRAFFIC ENFORCEMENT PEOPLE, WITHIN THE SAME
17 DEPARTMENT THERE'S SOMEONE WHO GOES AROUND AND
18 COLLECTS THE MONEY FROM THE PARKING METERS.

19 WE'LL CALL THOSE GUYS PARKING METER MONEY
20 TAKERS. AND THERE IS NOT -- LET'S SUPPOSE FOR THE
21 MOMENT, THERE IS NOT A SCHEDULE FOR THEM.

22 LET'S ALSO ASSUME THAT SINCE TIME BEGAN IN
23 ESCONDIDO, CALIFORNIA, THEY'VE ALWAYS BEEN PAID AT
24 THE SAME RATE AS THE TRAFFIC TICKET ISSUERS.

25 WOULD THAT BE THE KIND OF EVIDENCE YOU'RE

1 LOOKING AT?

2 THE WITNESS: IN THAT CASE IF WE NOTICED
3 THERE WAS NOT A POSITION AVAILABLE ON THE PAY
4 SCHEDULE, WE MAY GO TO THE EMPLOYER AND INQUIRE WITH
5 THEM.

6 THE COURT: YEAH. AND IF THE EMPLOYER, THE
7 CITY OF ESCONDIDO, SAYS THAT "JEEZ, THAT SLIPPED BY.
8 WE HAVEN'T REALLY PUT THAT THING OUT, BUT EVER SINCE
9 WE BEGAN, WE'VE BEEN PAYING THE MONEY TAKER THE SAME
10 AS WE'VE BEEN PAYING THE TICKET GIVER."

11 YOU WOULD ACCEPT THAT, WOULDN'T YOU?

12 THE WITNESS: WE WOULD LOOK FOR
13 DOCUMENTATION. SO OFTENTIMES IN THAT SITUATION,
14 MAYBE WE'D SEEN AN M.O.U.

15 THE COURT: RIGHT.

16 THE WITNESS: THAT DISCLOSES IT.

17 THE COURT: OKAY.

18 THE WITNESS: AND IN THAT CASE WITH THE --
19 WELL, THERE'S THE TRAFFIC CITATION -- TRAFFIC METER
20 MONEY TAKER, THEY PROBABLY ARE LOGICALLY WORK-RELATED
21 GROUPINGS PERFORMING SIMILAR DUTIES.

22 THE COURT: YOU COULD ACTUALLY LOOK AT PAY
23 STUBS AND SEE IF ONE GUY GETS PAID THE SAME AS THE
24 OTHER.

25 THE WITNESS: IN ADDITION, THAT WOULD BE A

1 POSITION THAT THERE WOULD BE PEOPLE COMING IN AND
2 PEOPLE LEAVING FROM. SO THAT WOULD POINT TOWARD A
3 STABLE, PREDICTABLE PAY RATE FOR THE MONEY TAKER.

4 THE COURT: SO THAT'S WHAT YOU'RE LOOKING
5 AT. YOU'RE LOOKING AT THINGS THAT MAKE SENSE?

6 THE WITNESS: YES.

7 THE COURT: AND HOPEFULLY, THINGS THAT MAKE
8 SENSE ARE ALSO IN SOME FASHION CORROBORATED BY A
9 WRITING SOMEWHERE WITHIN THE CITY?

10 THE WITNESS: YES.

11 THE COURT: BECAUSE YOUR OBJECT IN THIS
12 WHOLE THING IS TO BE FAIR.

13 THE WITNESS: OUR OBJECT IS TO ENSURE THAT
14 THE COMPENSATION THAT WAS REPORTED MEETS THE
15 DEFINITION OF COMPENSATION EARNABLE IN THE P.E.R.S.

16 THE COURT: AND THE POINT OF THAT, THOUGH,
17 IS TO BE FAIR. YOU DON'T WANT TO OVERPAY SOMEONE IN
18 RETIREMENT FOR THE NUMBER OF YEARS THAT THEY WORKED.

19 MR. KENNEDY: OBJECT TO THE TERM "FAIR."

20 THE COURT: NOR DO YOU WANT TO UNDERPAY
21 THEM. YOU WANT TO PAY THEM WHAT THEIR CONTRIBUTIONS
22 HAVE BEEN AND WHAT THEIR WORK IS.

23 MR. KENNEDY: OBJECTION TO THE TERM --
24 VAGUE AND AMBIGUOUS AS TO "FAIR."

25 THE COURT: THANK YOU.

1 TRUE?

2 THE WITNESS: WE WANT TO PAY THEM THEIR
3 CORRECT BENEFIT.

4 THE COURT: OKAY.

5 BY MR. KENNEDY:

6 Q. NOW, DID YOU HAVE A CHANCE TO -- YOU
7 REVIEWED MS. SPACCIA'S PAYROLL DETAILS. YOU ALSO
8 REVIEWED THE DOCUMENTS THAT WERE SET FORTH IN
9 CALPERS -- HER EMPLOYMENT AGREEMENTS; CORRECT?

10 A. YES.

11 Q. NOW, WERE YOU ABLE TO UPON -- AFTER
12 REVIEWING THOSE, ABLE TO ACCEPT THOSE AS PAY
13 SCHEDULES?

14 A. THOSE DOCUMENTS ARE NOT PAY SCHEDULES
15 BECAUSE CALPERS APPLIES THE TERM OF PAY SCHEDULES --
16 THE APPLICATION OF PAY SCHEDULES.

17 Q. AND WHY WOULD THAT BE?

18 A. THE DOCUMENTS THAT WERE PROVIDED LISTS WHAT
19 MS. SPACCIA'S INCOME WAS OR DISCLOSES WHAT HER
20 SPECIFIC INCOME IS. THERE'S -- THERE'S NOT A
21 POSITION TITLE FOR A GROUP OR CLASS THAT WE COULD
22 ESTABLISH FROM THAT.

23 Q. WELL, IN OTHER WORDS, YOU'RE SAYING THAT
24 ALL YOU'RE GETTING FROM THESE CONTRACTS THEMSELVES
25 ARE JUST BASICALLY A SPECIFIC PAY RATE, WHAT THE

1 COMPENSATIONS FOR MS. SPACCIA WAS --

2 A. CORRECT.

3 Q. -- NOT NECESSARILY A SALARY FOR THE
4 POSITION THAT SHE HELD?

5 A. CORRECT.

6 Q. OKAY. NOW, ALONG WITH THE COURT'S
7 INDICATION, THE COURT'S DISCUSSION WITH YOU ABOUT THE
8 METER PEOPLE, OKAY, YOU HAD INDICATED THAT IF SOMEONE
9 HAD A -- LET'S SAY, A PAY THAT WAS GIVEN TO THEM BUT
10 IT WASN'T DISCLOSED ON A SALARY SCHEDULE, THEN YOU
11 MIGHT LOOK AT -- SAY, "WAIT A SECOND. IS THERE A
12 POSITION THERE? IS THERE A HISTORY OF PEOPLE COMING
13 INTO THAT POSITION, GETTING PAID A CERTAIN AMOUNT?
14 THE PERSON WE'RE LOOKING AT AND PEOPLE AFTER THAT
15 GETTING PAID A SIMILAR AMOUNT?"

16 A. YES.

17 Q. IN OTHER WORDS, YOU GOT HISTORICALLY A
18 CONSISTENT, PREDICTABLE, STABLE TRACK RECORD OF THAT?

19 A. YES.

20 Q. AND DID YOU FIND THAT WITH MS. SPACCIA?

21 A. WE DID NOT.

22 Q. OKAY.

23 THE COURT: AND JUST SO I'M CLEAR ON THAT.
24 WHAT YOU'RE TALKING ABOUT IS NOW THE POSITION ITSELF.
25 THERE WAS NO ASSISTANT TO THE C.A.O. OR ASSISTANT

1 C.A.O. OTHER THAN HER?

2 THE WITNESS: CORRECT.

3 THE COURT: OKAY.

4 BY MR. KENNEDY:

5 Q. NOW, IN THIS CASE YOU DIDN'T -- BECAUSE YOU
6 DIDN'T FIND A PAY SCHEDULE AT THE TIME OF THE INITIAL
7 COMP REVIEW, DID CALPERS PROCEED TO TRY TO ASCERTAIN
8 WHAT GROUP OR CLASS MS. SPACCIA WAS IN?

9 A. NO.

10 Q. AND WHY WAS THAT?

11 A. THE COMPENSATION THAT WAS REPORTED -- OR I
12 SHOULD SAY THE PAYMENTS THAT WERE REPORTED BY THE
13 CITY OF BELL WERE NOT CONSIDERED COMPENSATION
14 EARNABLE. AND GROUP OR CLASS APPLIES TO COMPENSATION
15 EARNED.

16 Q. NOW, LET'S ASSUME IF WE COULD THAT, SAY, IF
17 YOU ACCEPTED, SAY, HER JULY -- YOU'RE FAMILIAR WITH
18 HER JULY 1, 2005, CONTRACT; CORRECT? MS. SPACCIA'S?

19 A. YES.

20 Q. IF YOU WERE TO ACCEPT THAT AS A SALARY OR A
21 PAY RATE OR THE -- ACCEPT THAT TO ESTABLISH THE PAY
22 RATE FOR THE POSITION OF ASSISTANT TO THE C.A.O.,
23 WOULD THE NEXT STEP THEN BE TO TRY TO DETERMINE WHERE
24 THAT FIT IN A GROUP OR CLASS?

25 A. YES. THAT'S PART OF THE COMPONENTS OF PAY

1 RATE.

2 THE COURT: SO WE'D BE LOOKING FIRST AT
3 EXHIBIT 9 IN THE CALPERS DOCUMENTS; RIGHT?

4 MR. KENNEDY: SO IF WE TOOK EXHIBIT 9 -- WE
5 FOLLOW THE COURT'S SUGGESTION. WE TAKE EXHIBIT 9.

6 NOT 9, NO.

7 WE'RE TALKING, YOUR HONOR, ABOUT 7.

8 THE COURT: SO YOU WANT TO START WITH THE
9 2003? OKAY.

10 MR. KENNEDY: YES.

11 THE WITNESS: I SEE 2004 ON MINE.

12 MR. KENNEDY: MY CONCERN IS THAT THE
13 EXHIBIT 9 --

14 THE TESTIMONY HAS ALREADY BEEN THAT I MAY
15 NOT BE --

16 THE COURT: I KNOW. I THOUGHT YOU
17 MISSPOKE. I THOUGHT YOU WERE TALKING ABOUT 2007.
18 MAYBE I MISHEARD.

19 SO YOU WANT US TO LOOK AT EXHIBIT 7?

20 MR. KENNEDY: PLEASE.

21 THE COURT: OKAY. LET'S TAKE A LOOK AT
22 EXHIBIT 7, AND USE THAT AS THE EXAMPLE.

23 BY MR. KENNEDY:

24 Q. NOW, AGAIN THIS IS -- YOU'RE NOT -- YOU
25 WOULDN'T CONSIDER THIS TO BE A VALID PAY SCHEDULE;

1 CORRECT?

2 A. CORRECT.

3 Q. BUT IT MIGHT BE A DOCUMENT THAT -- IN OTHER
4 RESPECTS, IF YOU HAD TO FIND PAY RATE, YOU MIGHT
5 CONSIDER THIS ALONG WITH OTHER INFORMATION?

6 A. YES.

7 Q. OKAY. NOW, IF YOU FOUND OUT THAT THIS
8 DOCUMENT WAS SOMEHOW, YOU KNOW, IMPROPER OR FALSE OR
9 WASN'T APPROVED BY THE GOVERNMENTAL ENTITY WOULD YOU
10 GIVE IT CONSIDERATION FOR ESTABLISHING A PAY RATE?

11 A. NO. IF IT WAS IMPROPER, IT WASN'T APPROVED
12 AND NOTICED.

13 Q. LET'S ASSUME THIS. OKAY. NOW, THIS
14 ESTABLISHES A SORT OF SALARY BASE, IF YOU WILL, FOR
15 THE POSITION OF ASSISTANT TO THE C.A.O. OKAY?

16 WOULD YOUR NEXT STEP BE THEN TO EVALUATE
17 WHETHER IT FELL IN OR OUT OF A GROUP OR CLASS OF
18 SIMILARLY SITUATED EMPLOYEES?

19 A. YEAH. MY FIRST STEP WOULD BE TO ESTABLISH
20 WHAT PER PAY PERIOD IS.

21 THE COURT: RIGHT.

22 THE WITNESS: AND THEN ONCE I ESTABLISH
23 THAT, THEN I WOULD LOOK TO TRY TO ESTABLISH A GROUP
24 OR CLASS OF EMPLOYEES.

25 THE COURT: LET ME ASK YOU THIS: ONE OF

1 THE QUESTIONS YOU HAD IN THIS INVESTIGATION WAS WHAT
2 A PAY PERIOD WAS, WAS IT?

3 THE WITNESS: YES.

4 THE COURT: HOW DID YOU FIGURE THAT OUT?

5 THE WITNESS: WE WENT TO PAYROLL
6 TRANSCRIPTS.

7 THE COURT: AND HOW FAR ALONG THE WAY WAS
8 IT BEFORE YOU FIGURED OUT THAT A PAY PERIOD WAS EVERY
9 TWO WEEKS?

10 THE WITNESS: BY LOOKING AT THE PAYROLL
11 THAT DISCLOSES --

12 THE COURT: RIGHT AWAY, THAT WASN'T A
13 PROBLEM, WAS IT?

14 THE WITNESS: YES. AND FOR MY PURPOSES --
15 FOR CALPERS' PURPOSES, THAT'S EASY TO SEE BECAUSE WE
16 HAVE ACCESS TO THAT INTERNALLY.

17 THE COURT: RIGHT.

18 THE WITNESS: AS A DISCERNING MEMBER OF THE
19 PUBLIC, THAT WOULD BE TOUGH TO TELL.

20 THE COURT: RIGHT. BUT YOU DIDN'T HAVE ANY
21 PROBLEMS WITH THAT?

22 THE WITNESS: UNDERSTANDING THAT?

23 THE COURT: YES.

24 THE WITNESS: ONCE LOOKING AT PAYROLL
25 TRANSCRIPTS.

1 BY MR. KENNEDY:

2 Q. GO AHEAD. YOU WERE EXPLAINING ABOUT THE
3 DOCUMENT, CONSIDERATION OF THE DOCUMENT.

4 A. SO WE'D LOOK TO THAT. WE ESTABLISHED THAT
5 IT'S \$3,935 PER PAY PERIOD AND WHAT WITHIN -- SO WE
6 HAD THAT PAY.

7 THEN WE WOULD NEED TO LOOK TO MS. SPACCIA'S
8 DUTIES AS THE ASSISTANT TO THE CHIEF ADMINISTRATIVE
9 OFFICER, TRIED TO GET DOCUMENTATION TO ESTABLISH WHAT
10 IT WAS THAT SHE DOES.

11 Q. THERE'S NO DUTY STATEMENT. WHAT DO YOU DO?

12 A. WE WOULD SEEK INFORMATION FROM THE
13 EMPLOYER, ANYTHING WE COULD GET. BUT ALSO WE WOULD
14 ALSO LOOK TO OTHER DOCUMENTS. YOU KNOW, THERE IS
15 RESOLUTIONS.

16 Q. ARE YOU REFERRING TO EXHIBIT 20 OF THE
17 VOLUME II?

18 A. YES. THIS IS AN EXAMPLE OF A PAY SCHEDULE.
19 SO IF YOU NOTICE ON THIS PAY SCHEDULE, IT'S
20 ESSENTIALLY ESTABLISHING GROUPS PER THEIR RESOLUTION.

21 SO IN GOING THROUGH THESE RESOLUTIONS, WE
22 WOULD LOOK FOR HER POSITION WITHIN THESE GROUPS OR
23 CLASSES TO SEE IF IT'S WITHIN A NORMAL RANGE OF PAY.

24 Q. I WOULD DIRECT YOUR ATTENTION TO -- IT'S ON
25 THE BOTTOM, BATES STAMP. IT'S THE JUNE 30, 2003,

1 BO17155.

2 THE COURT: I'M SORRY. ONE MORE TIME,
3 PLEASE.

4 MR. KENNEDY: BATES STAMP 17155, RESOLUTION
5 2003-30.

6 THE COURT: AND THE EXHIBIT NUMBER?

7 MR. KENNEDY: TAB 20, YOUR HONOR.

8 THE COURT: THANK YOU.

9 BY MR. KENNEDY:

10 Q. AND MS. SPACCIA SHOWS UP ON YOUR PAGE 2 AS
11 MANAGEMENT, THE POSITION?

12 A. YES. I SEE HERE. I APOLOGIZE.

13 Q. NOW, MANAGEMENT, IS THIS SOMETIMES USED IN
14 A LOGICAL WORK-RELATED GROUPING?

15 A. YES.

16 Q. AND MS. SPACCIA IDENTIFIED HERSELF AS PART
17 OF THE ADMINISTRATIVE MANAGEMENT AND MANAGEMENT
18 CLASSIFICATIONS; CORRECT?

19 A. YES.

20 Q. AND THOSE WOULD BE A LOGICALLY WORK-RELATED
21 GROUPING, DEPENDING ON WHAT THEIR DUTIES AND
22 EVERYTHING WERE; RIGHT?

23 A. ASSUMING THEY'RE SIMILAR DUTIES, YES.

24 Q. SO IS UNREPRESENTED EMPLOYEES A LOGICAL
25 WORK-RELATED GROUPING?

1 A. IT COULD BE.

2 Q. OKAY. SO ONCE YOU ESTABLISHED A -- ONCE
3 YOU ESTABLISHED A LOGICAL WORK-RELATED GROUPING FOR
4 SOMEONE LIKE MS. SPACCIA, THEN TO DETERMINE WHETHER
5 OR NOT HER COMPENSATION IS SIMILAR TO THOSE IN A
6 WORK-RELATED GROUP, WHAT DO YOU DO?

7 A. WE WOULD LOOK AT THE RATE OF PAY FOR THOSE
8 WITHIN THAT GROUP.

9 Q. AND WOULD YOU REFER TO -- WOULD YOU REFER
10 TO THE SALARY SCHEDULES THAT EXISTED?

11 A. IF THERE WAS A SALARY SCHEDULE.

12 Q. AND DID YOU REVIEW THE DOCUMENTS? DID YOU
13 HAVE A CHANCE TO REVIEW THE DOCUMENTS SET FORTH IN
14 EXHIBIT 20 FOR THAT PURPOSE?

15 A. YES.

16 Q. DID YOU ALSO REVIEW CONTRACTS THAT WERE FOR
17 PEOPLE THAT WERE NOT -- YOU'RE INDICATING THEY'D BE
18 ON CONTRACTS AND THEIR SALARIES WEREN'T INCLUDED IN
19 THIS?

20 A. YES.

21 Q. AND DID YOU HAVE AN OPPORTUNITY TO
22 SUMMARIZE THOSE FINDINGS?

23 A. I DID.

24 Q. AND DID YOU PREPARE A SPREADSHEET THAT
25 SUMMARIZED THOSE FINDINGS?

1 A. YES, I DID.

2 Q. AND DO YOU HAVE A COPY WITH YOU?

3 A. I DO.

4 Q. AND HAVE YOU PREVIOUSLY GIVEN A COPY OF
5 THAT TO OPPOSING COUNSEL?

6 A. I HAVE NOT.

7 Q. I HAVE?

8 A. YES.

9 Q. AND COULD YOU PROVIDE A COPY TO THE COURT.

10 MR. KENNEDY: AND WE ASK THAT IT BE MARKED
11 AS CALPERS NEXT IN ORDER.

12 THE COURT: THE SPREADSHEETS ARE NUMBER 33.

13 MR. KENNEDY: THANK YOU, YOUR HONOR.

14 NOW, MR. RODGERS --

15 THE COURT: COULD YOU JUST WAIT A SECOND
16 WHILE I'M TAKING CARE OF THE ADMINISTRATIVE TASKS
17 INCLUDING PUTTING THE EXHIBIT TAG ON AND WRITING IT
18 ON THE EXHIBIT LIST. I'M JUST TRYING TO KEEP UP WITH
19 YOU. THANKS.

20 MR. KENNEDY: YOU'RE WELCOME, YOUR HONOR.

21 (DEPARTMENT'S EXHIBIT NUMBER 33 WAS MARKED
22 FOR IDENTIFICATION BY THE COURT.)

23 THE COURT: OKAY. THANK YOU.

24 BY MR. KENNEDY:

25 Q. DIRECTING YOUR ATTENTION TO EXHIBIT 33,

1 MR. RODGERS, DID YOU PREPARE THIS DOCUMENT YOURSELF?

2 A. YES.

3 Q. OKAY. AND THE DATA THAT'S INCLUDED IN
4 THERE WAS DERIVED FROM BOTH TAB 20 AND A SERIES OF
5 CONTRACTS FROM INDIVIDUALS WHOSE POSITIONS ARE NOT
6 INCLUDED IN THE SALARY SCHEDULES?

7 A. YES. THERE'S THREE SOURCES. THERE WAS
8 CONTRACTS, PAYROLL TRANSCRIPTS, AND THE RESOLUTIONS.

9 Q. I'M SORRY. I FORGOT ABOUT THE PAYROLL
10 TRANSCRIPTS.

11 NOW, IF WE WERE TO -- AND GOING ACROSS THE
12 DOCUMENT, COULD YOU EXPLAIN WHAT WE'RE SEEING, GOING
13 ACROSS THIS DOCUMENT.

14 A. POSITIONS THAT WERE EITHER -- THE POSITIONS
15 IN THE RESOLUTIONS WERE ALL IDENTIFIED.

16 Q. WE HAVE THE DATES; RIGHT?

17 A. YES. I'M STARTING ON THE LEFT. ALL THE
18 POSITIONS ARE IDENTIFIED.

19 THEN WE TOOK A SNAPSHOT OF EACH OF THE
20 YEARS THAT ARE LISTED ALONG THE TOP ROW.

21 FOR INSTANCE, STARTING WITH 2001-24.

22 THE COURT: WHAT'S THE 24?

23 THE WITNESS: THAT'S THE RESOLUTION.

24 THE COURT: GOT YOU.

25 THE WITNESS: AS 2,229, SO ON ACROSS.

1 AND WE SHOW THE INCREASE OF THE POSITION
2 TITLE BASED ON THAT POINT IN TIME IN EACH OF THE
3 YEARS IN 2010. DOWN AT THE BOTTOM IS A SUMMARY OF
4 THE AVERAGE INCREASE FOR MANAGEMENT OR I SHOULD --
5 THOSE THAT WERE IDENTIFIED AT SOME POINT IN THE
6 RESOLUTIONS AS MANAGEMENT.

7 THE SECOND IS THE AVERAGE FOR
8 MISCELLANEOUS. THE THIRD IS THE TOTAL AVERAGE FOR
9 ALL MISCELLANEOUS MEMBERS, MEANING ALL NON-SAFETY
10 MEMBERS.

11 THERE IS ALSO A KEY DOWN AT THE BOTTOM IF
12 THERE'S NO INFORMATION AVAILABLE. SO IF YOU SEE DOWN
13 THE COLORED GRAPH, DOWN AT THE BOTTOM LEFT-HAND
14 CORNER, THERE'S BLUE, THE "CONTRACT AMOUNT REFLECTS
15 HIGHER THAN WAS REPORTED."

16 RED MEANS THERE WAS AN AMOUNT REPORTED
17 HIGHER (SIC) THAN THE CONTRACT.

18 AND, AGAIN, YELLOW IS "NO VALUE AVAILABLE."
19 BY MR. KENNEDY:

20 Q. NOW, DO I ESTABLISH PAY RANGES FOR THE
21 VARIOUS -- IF I TAKE OUT THE -- WELL, THE CITY
22 COUNCIL IS NOT IN THIS; CORRECT?

23 A. CORRECT.

24 Q. WHY IS THAT?

25 A. THEY'RE ELECTED MEMBERS.

1 Q. THE CHIEF ADMINISTRATIVE OFFICER IS ARRAYED
2 BUT IS SEPARATED FROM THE REST OF THE GROUP. WHY IS
3 THAT?

4 A. WHEN LOOKING AT THIS, THE CHIEF
5 ADMINISTRATIVE OFFICER IS THE HEAD. IT DIDN'T SEEM
6 LOGICAL THAT THOSE OTHER POSITIONS WOULD FALL WITHIN
7 THE DUTIES OF THE CHIEF ADMINISTRATIVE OFFICER.

8 Q. IF I WOULD JUST CONSIDER, LET'S SAY,
9 MS. SPACCIA'S MANAGEMENT, IS IT POSSIBLE TO TELL US
10 THE PAY RANGE FOR EACH OF THE MANAGEMENT EMPLOYEES
11 FOR THE PERIOD OF TIME THAT WE'RE LOOKING AT, FROM
12 YEAR TO YEAR?

13 A. YES.

14 Q. AND HOW IS THAT?

15 A. WELL, FOR INSTANCE, IF WE TAKE -- UNDER
16 2003-30, EXCLUDEING THE C.A.O., WE SEE HERE THE
17 ASSISTANT TO THE CHIEF ADMINISTRATIVE OFFICER WAS
18 \$8,525.83. THIS IS A MONTHLY VALUE.

19 THERE WAS A DIRECTOR OF GENERAL SERVICES AT
20 THAT TIME, \$9,167.17 A MONTH; ALL THE WAY DOWN TO A
21 MANAGEMENT ANALYST WHICH IS JUST BELOW THE YELLOW
22 BLOCK, \$4,045 A MONTH.

23 SO THE RANGE IS FROM \$4,045 A MONTH UP TO
24 \$9,316.67.

25 Q. SO OBVIOUSLY THERE WAS SOME PEOPLE IN THAT

1 CATEGORY THAT GOT PAID MORE OR DOING DUTIES -- OR
2 THEIR POSITIONS JUST PAID THEM MORE AT THAT TIME THAN
3 MS. SPACCIA; RIGHT?

4 A. CORRECT.

5 Q. AND NOW THE SAME THING FOR THE NEXT YEAR.
6 WE'RE JUST TRACKING. IF YOU COULD JUST LOOK AT THE
7 LOWEST OF \$4,165 TO A HIGH THEN FOR MS. SPACCIA --
8 I'M SORRY.

9 THE LOWEST IS -- THE HIGH FOR -- IS WHAT --
10 AM I CORRECT, \$4,165 TO \$10,833?

11 A. CORRECT.

12 Q. AND NOW MS. SPACCIA IS AT THE HIGHEST OF
13 THAT RANGE?

14 A. ALONG WITH THE DIRECTOR OF GENERAL
15 SERVICES, CORRECT.

16 Q. AND HER PAY INCREASE AT THAT TIME WAS 27
17 PERCENT?

18 A. CORRECT.

19 Q. AND THAT'S HIGHER -- TEN POINTS HIGHER THAN
20 THE NEXT CLOSEST SIMILARLY SITUATED PERSON?

21 A. CORRECT.

22 Q. AND THEN FOR THE NEXT, 509, WHAT'S THE
23 RANGE?

24 A. THE HIGH IS \$15,416.70.

25 Q. AND WHO'S THAT?

1 A. THAT'S THE ASSISTANT TO THE CHIEF
2 ADMINISTRATIVE OFFICER.

3 Q. MS. SPACCIA?

4 A. MS. SPACCIA. DOWN TO A LOW OF \$4,302.89.

5 Q. NOW, THAT'S USING THE JULY CONTRACT, THE
6 JULY '05 CONTRACT?

7 A. THE \$4,302.89?

8 Q. FOR MS. SPACCIA?

9 A. CORRECT.

10 Q. AND THEN WE CONTINUE ON IN A SIMILAR VEIN?

11 A. CORRECT.

12 Q. SO FOR EACH OF THESE CATEGORIES, WE CAN --
13 SO YOU BASICALLY WOULD TAKE THAT AND SAY, LOOK, IF A
14 PERSON WHO IS NOW IN THIS CLASSIFICATION, THIS GROUP
15 OR CLASSIFICATION, NOW IS SUDDENLY STARTING TO JUST
16 BLAST THROUGH THE ROOF, THIS CEILING, ON THIS KIND
17 OF -- THE OTHER SIMILARLY SITUATED PEOPLE IN THESE
18 CLASSES OR PEOPLE -- THEN THAT'S GOING TO BE
19 CONSIDERED NOT TO BE COMP EARNABLE?

20 THE COURT: NOT GOING TO BE CONSIDERED
21 WHAT?

22 BY MR. KENNEDY:

23 Q. NOT GOING TO BE CONSIDERED AS COMPENSATION
24 EARNABLE BECAUSE OF THAT FACT; RIGHT?

25 A. RIGHT. PAY RATE IS DEFINED AS A NORMAL

1 RATE OF PAY.

2 Q. AND ALSO WITH SIMILARLY SITUATED PEOPLE?

3 THE COURT: TELL ME WHAT THE RULE IS. IF
4 THERE IS AN UNUSUAL INCREASE IN SALARY RELEVANT TO
5 THE OTHER PERSONS IN THE CLASS, THAT INCREASE IS NOT
6 PAY RATE?

7 THE WITNESS: IT'S EXCEEDING THE NORMAL
8 RATE OF PAY FOR SIMILARLY SITUATED PEOPLE.

9 MR. KENNEDY: I THINK THE ANSWER WOULD BE
10 COMP EARNABLE --

11 THE COURT: IF THE INCREASE IN THE RATE OF
12 PAY EXCEEDS THE PAY OF WHAT?

13 THE WITNESS: OTHER SIMILARLY SITUATED
14 MEMBERS OF A GROUP OR CLASS, AND IT SPEAKS TO THE
15 STABILITY AND PREDICTABILITY OF THAT PAY RATE.

16 MR. KENNEDY: NOW, YOU ALSO HEARD --

17 THE COURT: EXCUSE ME.

18 SPEAKS TO THE PREDICTABILITY OF?

19 THE WITNESS: THE PAY RATE. THE
20 PREDICTABILITY AND STABILITY, I SHOULD SAY.

21 THE COURT: YOU'RE INTO KIND OF IMPORTANT
22 STUFF HERE. SO I NEED TO WRITE ALL OF THIS DOWN.

23 AND SO IT CAN'T BE CONSIDERED PAY RATE?

24 THE WITNESS: RIGHT.

25 THE COURT: WHERE DID YOU LEARN THAT?

1 THE WITNESS: BY BEING TRAINED, BEING IN
2 THE UNIT, REVIEWING CASES.

3 THE COURT: SO THIS IS BASED ON YOUR
4 EXPERIENCE AT CALPERS?

5 THE WITNESS: YES.

6 THE COURT: DO YOU HAVE ANY ACTUARIAL
7 TRAINING OR ANYTHING OF THAT NATURE?

8 THE WITNESS: NO, SIR.

9 MR. BRAUN: CAN I JUST ASK ONE QUESTION
10 BRIEFLY?

11 THE COURT: SURE.

12 MR. BRAUN: IN THE PAPERWORK, DIDN'T YOU
13 FIND AT ONE POINT THAT CALPERS ACTUALLY APPROVED ONE
14 OF THE EXTRAORDINARY INCREASES IN PAY?

15 MR. KENNEDY: I'M SORRY.

16 THE COURT: I'M GOING TO LET HIM ASK ONE
17 QUESTION.

18 MR. BRAUN: WASN'T THERE A LETTER --

19 THE WITNESS: THERE WAS A LETTER FROM A
20 LINDA HERINGER.

21 MR. BRAUN: AND THAT APPROVED THE 59 -- 42
22 PERCENT INCREASE?

23 MR. KENNEDY: OBJECTION TO THE TERM
24 "APPROVED."

25 MR. BRAUN: WHAT DOES IT DO?

1 THE COURT: WHAT WAS THE EFFECT OF THAT
2 LETTER, IF ANYTHING?

3 THE WITNESS: THERE WAS AN ANALYST WITHIN
4 THE COMP REVIEW UNIT THAT GRANTED AN EXCEPTION TO
5 THAT.

6 THE COURT: AND SO WHAT WAS THAT GRANTING
7 OF THE EXCEPTION? WHAT IMPACT DID THAT HAVE ON YOUR
8 ANALYSIS, IF ANY?

9 THE WITNESS: WELL, WE WEREN'T LOOKING AT
10 THE C.A.O. IN THIS.

11 THE COURT: SO THE ANSWER IS NO?

12 THE WITNESS: NOT IN A GROUP OR CLASS.

13 BY MR. KENNEDY:

14 Q. NOW, WOULD ALSO THE PREDICTABILITY AND
15 STABILITY OF A PAY RATE BE AFFECTED -- DO YOU KNOW
16 THE TERM "SERENDIPITY"?

17 A. YES.

18 Q. WOULD IT BE -- IF YOU DISCOVERED THAT THE
19 PAY INCREASES WERE SIMPLY SERENDIPITOUS AND AT THE
20 WILL OR WHIM OF, SAY, ONE OFFICER IN THE CITY --

21 IN OTHER WORDS, THE TESTIMONY TODAY HAS
22 BEEN THAT MS. SPACCIA WAS PAID AND RECEIVED INCREASES
23 OF PAY AT THE DIRECTION OF MR. RIZZO. IS THAT A
24 FACTOR ALSO AS TO THE STABILITY AND PREDICTABILITY OF
25 THE PAY?

1 A. YES.

2 Q. NOW, WHEN YOU WERE TALKING ABOUT A GROUP OR
3 CLASS AND YOU'RE TALKING ABOUT WHETHER SOMEBODY'S PAY
4 RANGE FITS INTO A GROUP OR CLASS AND ALLOWING THE
5 GROUP OR CLASS THAT SHE'S IN TO RESTRAIN THE GROWTH
6 OR INCREASE IN THE PAY, ARE YOU LOOKING AT
7 CLASSIFICATION OF A MEMBER, BASED UPON THE
8 ASSIGNMENTS, SPECIFICALLY WHAT THEY'RE DOING; OR ARE
9 YOU LOOKING IT UP ON THEIR POSITION, WHETHER OR NOT
10 THEY'RE MANAGEMENT, CLERICAL, SAFETY, THINGS LIKE
11 THAT?

12 A. WE'RE LOOKING AT POSITIONS. I DON'T KNOW
13 THAT IT'S ADMINISTRATIVELY FEASIBLE TO DELVE DOWN TO
14 SPECIAL ASSIGNMENTS.

15 Q. SO FOR THE PURPOSES OF DOING GROUP OR
16 CLASS, WHAT THE DUTIES ARE BASED UPON THE PEOPLE IN
17 THAT GROUP OR CLASS MAY BE SIGNIFICANT, BUT SPECIFIC
18 ASSIGNMENTS ARE -- AT THE GRANULAR LEVEL, THAT IT'S
19 REALLY NOT THAT -- IT'S NOT A CONSIDERATION THAT IS
20 SOMETHING YOU GET DOWN TO ON A DAY-TO-DAY BASIS;
21 RIGHT?

22 A. NO, IT COULDN'T BE.

23 Q. NOW, IN THIS CASE, YOU DIDN'T FIND THE
24 CONTRACTS TO BE USEABLE AS EITHER PAY RATE OR FOR THE
25 PURPOSES OF CALCULATING AN --- I'M SORRY -- AS A PAY

1 SCHEDULE OR USEABLE FOR THE PURPOSES OF CALCULATING A
2 PAY RATE FOR MS. SPACCIA; CORRECT?

3 MR. BRAUN: MAY I OBJECT, YOUR HONOR. FOR
4 CLARIFICATION, WHEN YOU SAY "YOU," I ASSUME YOU MEAN
5 CALPERS.

6 MR. KENNEDY: CALPERS.

7 MR. BRAUN: OKAY. I'LL JUST ACCEPT THAT
8 AS --

9 BY MR. KENNEDY:

10 Q. FOR THE PURPOSES OF COMPENSATION EARNABLE?

11 A. CORRECT.

12 Q. AND WHEN THE JUDGE WAS ASKING YOU ABOUT --
13 WELL, STRIKE THAT.

14 SO YOU HEARD THE TESTIMONY OF MS. HEARD AS
15 TO HOW THE CALCULATION WAS ACCOMPLISHED FOR
16 MS. SPACCIA'S SERVICE ALLOWANCE; CORRECT?

17 A. CORRECT.

18 Q. AND IN THE ABSENCE OF A VALID PAY RATE OR
19 SPECIAL COMP, OR COMPENSATION EARNABLE, I SHOULD SAY,
20 FOR A MEMBER THEN FOR THE SERVICE PERIOD WE'RE
21 TALKING ABOUT, THE EMPLOYER -- IN OTHER WORDS,
22 BELL -- IN THE ABSENCE OF ANY VALID PAY RATE FOR
23 BELL, THEN CALPERS WILL DEFER TO THE NEXT HIGHEST PAY
24 RATE FOR THE P.E.R.S. EMPLOYER; RIGHT?

25 A. YES.

1 Q. AND THAT IN THIS CASE WAS PROVIDED BY
2 TESTIMONY DISCLOSED BY MS. HEARD AS \$7,600?

3 A. CORRECT. PART OF THAT WAS FROM
4 NON-P.E.R.S.

5 MR. KENNEDY: I HAVE NO OTHER QUESTIONS AT
6 THIS TIME.

7 I'D LIKE TO SUBMIT, THOUGH, THE EXHIBIT 33
8 AS A SUMMARY ANALYSIS OF THE EXHIBIT 20, EXHIBIT 9,
9 AND --

10 THE COURT: WITHOUT ALL THE WINDUP, YOU'RE
11 OFFERING EXHIBIT 33?

12 MR. KENNEDY: YES.

13 THE COURT: ANY OBJECTION?

14 MR. BRAUN: NO, YOUR HONOR.

15 THE COURT: 33 WILL BE RECEIVED.

16 (DEPARTMENT'S EXHIBIT NUMBER 33 WAS RECEIVED
17 INTO EVIDENCE.)

18 THE COURT: CROSS-EXAMINATION.

19

20 CROSS-EXAMINATION

21 BY MR. BRAUN:

22 Q. DID THE LETTER THAT GAVE THE APPROVAL OR
23 WHATEVER IT IS TO THAT EXTRAORDINARY INCREASE INCLUDE
24 MS. SPACCIA?

25 A. MAY I TAKE A LOOK AT IT?

1 Q. WHY DON'T YOU TAKE A LOOK AT IT.

2 THE COURT: WHICH EXHIBIT?

3 MR. KENNEDY: WOULD BE 31, YOUR HONOR.

4 MS. SPACCIA'S 31. I DON'T KNOW IF THERE'S ONE UP
5 THERE FOR THE WITNESS.

6 THE COURT: HERE.

7 THE WITNESS: THE EXCEPTION WAS, I BELIEVE,
8 TO A ONE-TIME COMP ADJUSTMENT FOR EXECUTIVE AND
9 ADMINISTRATIVE CLASSIFICATIONS, YES.

10 BY MR. BRAUN:

11 Q. SO THAT DID INCLUDE MS. SPACCIA THEN;
12 CORRECT?

13 A. YES.

14 Q. NOW, WHEN YOU LOOK TO -- HAVE THERE BEEN
15 OTHER EMPLOYEES THAT HAVE BEEN RETIRED UNDER CALPERS
16 DURING THE PERIOD OF TIME THAT YOU ANALYZED -- THAT
17 USED THE SIMPLE CONTRACTS AS A BASIS FOR THEIR
18 COMPENSATION EARNABLE?

19 A. YES.

20 Q. ABOUT SEVEN OF THEM; CORRECT?

21 A. I'M NOT SURE OF THE EXACT NUMBER.

22 Q. BUT EACH OF THOSE EMPLOYEES ARE THE ONES
23 THAT ARE LISTED IN SOME OF THESE PAY SCHEDULES AS
24 CONTRACT, CONTRACT, CONTRACT; CORRECT?

25 A. YES.

1 Q. AND CALPERS ACCEPTED THEIR CONTRACTS IN
2 THOSE CASES AS COMPENSATION EARNABLE, DID THEY NOT?

3 A. THEY DID ACCEPT THOSE CONTRACTS -- WELL, I
4 SHOULDN'T SAY ACCEPTED THE CONTRACTS. THEY USED THE
5 COMPENSATION THAT WAS REPORTED.

6 I DON'T KNOW THAT -- AT THAT TIME I DO
7 BELIEVE CALPERS WAS ACTING UNDER THE PRESUMPTION THAT
8 THEY WERE NOTICED AND APPROVED CONTRACTS.

9 Q. SO IN TERMS OF THE NOTICED AND APPROVED,
10 YOU MEAN THEY ALL HAD TO BE APPROVED BY THE CITY
11 COUNCIL?

12 A. THE GOVERNING BODY OF THE AGENCIES.

13 Q. BUT DO YOU RECOGNIZE THAT UNDER SOME CITY
14 CHARTERS THAT THE C.A.O. HAS THE AUTHORITY TO APPROVE
15 A CONTRACT?

16 MR. ONSTOT: OBJECTION. AMBIGUOUS.

17 THE COURT: I DON'T KNOW THAT'S THE CASE.

18 MR. BRAUN: I THINK YOU ACTUALLY POINTED
19 OUT --

20 THE COURT: YEAH. BUT I'M NOT SURE -- AND
21 AGAIN, I SAID I'M NOT AN EXPERT. I'M NOT SURE THAT'S
22 THE CASE. I REALLY DON'T KNOW.

23 MR. BRAUN: OH, OKAY. OKAY.

24 BY MR. BRAUN:

25 Q. HAVE YOU LOOKED AT THE CITY CHARTER IN THE

1 CITY OF BELL?

2 A. NO.

3 Q. ARE THERE SOME SITUATIONS IN WHICH SOME
4 MUNICIPALITIES WHERE EMPLOYMENT CONTRACTS CAN BE
5 APPROVED BY SOMEONE OTHER THAN THE CITY COUNCIL?

6 A. I DO NOT KNOW.

7 Q. SO THEN YOUR PRESUMPTION IS THAT NONE OF
8 THE CONTRACTS IN THE CITY OF BELL COULD BE USED
9 UNLESS THEY WERE APPROVED BY THE CITY COUNCIL; IS
10 THAT CORRECT?

11 MR. KENNEDY: OBJECTION. MISCHARACTERIZES
12 THE TESTIMONY.

13 THE COURT: SUSTAINED.

14 HERE'S WHAT I THINK HE SAID.

15 IT'S YOUR BELIEF IN LOOKING AT THE OTHER
16 BELL EMPLOYEES, THE SEVEN EMPLOYEES WHOSE CONTRACTS
17 WERE USED, THAT SOMEONE AT CALPERS ACTED UNDER THE
18 PRESUMPTION THAT THOSE CONTRACTS WERE NOTICED AND
19 APPROVED BY THE CITY COUNCIL?

20 THE WITNESS: YES.

21 THE COURT: YOU DON'T KNOW IF THAT'S THE
22 CASE OR NOT?

23 THE WITNESS: I DO NOT.

24 THE COURT: BUT WHAT YOU DO KNOW IS THAT IF
25 THAT'S THE CASE, NO ONE HAS GONE BACK AND ESTABLISHED

1 THAT THERE'S AN ERROR THAT REQUIRES REVISION OF THE
2 SERVICE RETIREMENT ALLOWANCE; TRUE?

3 THE WITNESS: TRUE AT THIS POINT.

4 THE COURT: OKAY.

5 BY MR. BRAUN:

6 Q. AND YOU ALSO DON'T KNOW WHETHER OR NOT THE
7 EMPLOYMENT CONTRACTS IN THE CITY OF BELL CAN BE
8 LEGALLY APPROVED BY SOMEONE OTHER THAN THE CITY
9 COUNCIL; CORRECT?

10 A. CORRECT.

11 Q. SO WHAT DO YOU DO UNDER A CALPERS SYSTEM IF
12 YOU HIRE A PERSON THAT DOESN'T REALLY FIT INTO A
13 PARTICULAR CLASS OR GROUP?

14 THE COURT: YEAH. SUPPOSE THERE'S A GUY
15 WHO WORKS FOR THE STATE OF CALIFORNIA WHOSE SPECIALTY
16 IS CURING CANCER, AND HE'S THE ONLY GUY IN THE WORLD
17 THAT CAN DO THAT.

18 MR. KENNEDY: SORRY. DID YOU SAY TREATING
19 CANCER?

20 THE COURT: CURING.

21 MR. KENNEDY: CURING CANCER.

22 THE COURT: EVEN BETTER THAN TREATING,
23 CURING.

24 HOW DO WE TREAT THAT GUY?

25 THE WITNESS: IN CASES WHERE THERE'S A

1 GROUP OF ONE, THERE IS A GOVERNMENT CODE SECTION,
2 (E) (2), THAT STATES ESSENTIALLY THAT WHEN LOOKING AT
3 INCREASES IN COMPENSATION EARNABLE, IT SHALL BE
4 LIMITED IN THE FINAL COMPENSATION PERIOD TO THE TWO
5 YEARS IMMEDIATELY PRECEDING FOR MEMBERS IF THE SAME
6 MEMBERSHIP CLASSIFICATION.

7 SO WE WOULD LOOK TO OTHERS IN THE WHOLE
8 MISCELLANEOUS MEMBERSHIP CLASSIFICATION. SEE WHAT
9 THE AVERAGE INCREASE WAS FOR THOSE MEMBERS IN THE
10 FINAL COMP PERIOD OF THIS RESPECTED MEMBER AND TWO
11 YEARS IMMEDIATELY PROCEEDING.

12 BY MR. BRAUN:

13 Q. SO YOU'RE FOCUSING ON THE INCREASE IN PAY;
14 CORRECT?

15 A. INCREASE IN COMPENSATION.

16 Q. COMPENSATION. WELL, HOW ABOUT WHEN THE GUY
17 IS FIRST HIRED? DO YOU HAVE TO HAVE A CLASS OR GROUP
18 THAT YOU STICK HIM INTO?

19 THE COURT: LET'S GO BACK TO THE CURING
20 CANCER GUY. SUPPOSE THAT HE HAS A TENURED CAREER
21 WITH THE STATE OF CALIFORNIA.

22 HE GETS HIRED, AND HE DOESN'T KNOW
23 ANYTHING, AND WE ONLY PAY HIM \$10,000 (SIC) A YEAR.
24 OKAY. AND IT TURNED OUT HE KNOWS SOMETHING, AND SO
25 PRETTY SOON HE'S MAKING \$150,000 A YEAR. AND HE

1 MAKES THAT IN YEARS SEVEN AND EIGHT, \$150,000 A YEAR.

2 AND WE REALLY WANT TO KEEP HIM BADLY. SO

3 WE PAY HIM \$1 MILLION IN YEARS NINE AND TEN. HE'S

4 THE ONLY GUY IN CALIFORNIA THAT DOES THIS. NOW, WE

5 DON'T USE THOSE LAST TWO YEARS, DO WE?

6 THE WITNESS: NO.

7 THE COURT: BECAUSE THEY'RE THE LAST TWO

8 YEARS.

9 THE WITNESS: WELL, I THINK THE FACT THAT

10 HE WENT FROM \$100,000 TO \$150,000 UP TO \$1 MILLION,

11 THAT'S NOT A STABLE, PREDICTABLE PAY RATE.

12 THE COURT: OKAY. SO WHAT'S THE NUMBER

13 THAT'S STABLE AND PREDICTABLE? WHAT PERCENTAGE?

14 THE WITNESS: WE WOULD HAVE TO LOOK TO

15 NUMBERS OF THAT SAME MISCELLANEOUS CLASSIFICATION TO

16 DETERMINE WHAT THE AVERAGE INCREASE WAS FOR ALL --

17 THE COURT: BUT HE'S THE ONLY GUY THAT DOES

18 THIS. NO ONE ELSE DOES THIS.

19 THE WITNESS: WE WOULD STILL LOOK TO --

20 THE COURT: WOULD YOU GO BACK AND GIVE HIM

21 THE \$150,000.

22 THE WITNESS: PLUS THE AVERAGE INCREASE OF

23 ALL THE MEMBERS IN THE MISCELLANEOUS CLASSIFICATION.

24 THE COURT: SO YOU GIVE HIM THE \$150,000

25 PLUS WHATEVER OTHERS MADE, PERCENTAGE-WISE, FOR

1 INCREASE?

2 THE WITNESS: THE AVERAGE INCREASE FOR
3 COMPENSATION EARNABLE.

4 THE COURT: OKAY.

5 MR. KENNEDY: YOUR HONOR, THAT MAY HAVE
6 BEEN AN ASSUMPTION ON MR. RODGERS'S PART THAT HE
7 STARTED OFF WITH A \$150,000 FOR THE SALARY.

8 I UNDERSTOOD YOUR QUESTION TO BE HE STARTED
9 OFF WITH 100,000 THEN WENT TO 150,000 SALARY AND --

10 THE COURT: IN YEARS SEVEN AND EIGHT.

11 MR. KENNEDY: RIGHT. BUT I'M NOT CERTAIN
12 FROM THE RESPONSE IF MR. RODGERS IS AWARE THAT THAT
13 WAS THE --

14 THE COURT: WOULD YOU GO BACK TO THE
15 \$150,000 THAT HE MADE AT YEAR EIGHT, TWO YEARS
16 BEFORE?

17 THE WITNESS: WE WOULD GO -- I BELIEVE SO.

18 WE WOULD HAVE TO LOOK AT SOMETHING. AND IF
19 HE'S IN A GROUP OF ONE, I THINK WE'D STILL TRY TO
20 ESTABLISH A LOGICAL WORK-RELATED GROUPING.

21 I THINK WE'D TRY TO DO THAT BECAUSE THE
22 WHOLE PREMISE HERE IS THAT STABLE AND PREDICTABLE PAY
23 RATE ACROSS A GROUP OR CLASS.

24 BY MR. BRAUN:

25 Q. SO, I MEAN, I HATE TO BE COLD ABOUT IT, BUT

1 IT SOUNDS LIKE THE PERSON WE'RE TALKING ABOUT IS
2 GOING TO LEAVE THAT EMPLOYMENT AND GO SOMEWHERE ELSE;
3 RIGHT?

4 MR. KENNEDY: OBJECTION.

5 BY MR. BRAUN:

6 Q. IS THAT A CONSIDERATION? IN OTHER WORDS,
7 SOMETIMES, FOR EXAMPLE, A GOVERNMENT OR A BUSINESS
8 HAS A SPECIAL REASON TO HOLD ON TO ONE PARTICULAR
9 PERSON IF THEY'RE IN COMPETITION WITH OTHER PEOPLE
10 FOR THAT ONE PARTICULAR PERSON.

11 THE WITNESS: CALPERS DOESN'T LIMIT WHAT A
12 GOVERNMENT AGENCY CAN PAY TO THEIR EMPLOYEES. BUT
13 THE P.E.R.L. DOES LIMIT WHAT CAN BE USED IN THE
14 CALCULATION OF THE RETIREMENT BENEFIT.

15 THE COURT: RIGHT.

16 THE ANSWER IS, NO, YOU CAN PAY HIM A
17 MILLION BUCKS.

18 THE ANSWER IS ALSO YOU CAN'T USE THE
19 MILLION BUCKS AS THE BASIS FOR CALCULATING THE
20 RETIREMENT ALLOWANCE.

21 MR. BRAUN: YOU WOULD THEN JUST GIVE HIM
22 DEFERRED COMPENSATION IN LIEU OF A RETIREMENT, I
23 GUESS.

24 THE COURT: I DON'T KNOW THAT YOU CAN DO
25 THAT. I DON'T KNOW ENOUGH ABOUT IT, BUT WHAT I DO

1 KNOW IS THAT YOU COULDN'T USE THE LARGEST SPIKED
2 NUMBER TO CALCULATE.

3 MR. BRAUN: LET ME JUST COVER THAT PART.

4 THE COURT: SURE.

5 BY MR. BRAUN:

6 Q. SO WHAT YOU COULD DO IS -- AND CORRECT ME
7 IF I'M WRONG. I'M SORT OF LEARNING HERE.

8 YOU COULDN'T GIVE HIM THE BIG INCREASE AS
9 PART OF A CALPERS PENSION, BUT YOU COULD GIVE HIM,
10 OUTSIDE OF THE PENSION, OUTSIDE OF HIS COMPENSATION,
11 A DEFERRED COMPENSATION THAT WOULD NOT BE INCLUDED IN
12 THE CALPERS?

13 A. CALPERS' ONLY CONCERN IS THE COMPENSATION
14 THAT'S REPORTED TO CALPERS.

15 Q. YOU DON'T CARE ABOUT ANYTHING ON THE
16 OUTSIDE?

17 A. I DON'T BELIEVE THAT'S WITHIN CALPERS'
18 AUTHORITY.

19 Q. NOW, WHEN YOU WERE LOOKING AT THIS
20 NUMBER 20, THE CHART -- I THINK IT'S PAGE 17156.

21 MR. KENNEDY: JUNE 30, 2003?

22 MR. BRAUN: YES.

23 BY MR. BRAUN:

24 Q. DO YOU SEE 17156?

25 A. YES, SIR.

1 Q. THEY LIST THERE -- UNDER MANAGEMENT, THEY
2 HAVE CONTRACT, CONTRACT, CONTRACT, WHICH REALLY
3 DOESN'T DISCLOSE ANYTHING ON THE FACE OF IT. AT THAT
4 PARTICULAR TIME, WAS THAT ACCEPTABLE TO CALPERS?

5 A. NOT AS A PUBLICLY AVAILABLE PAY SCHEDULE.

6 Q. SO THIS WOULD HAVE BEEN DISALLOWED THEN;
7 CORRECT?

8 A. POTENTIALLY.

9 Q. AND THEN THE CALPERS DID AN AUDIT OF THE
10 CITY OF BELL IN 2006. YOU READ THROUGH THAT, HAVE
11 YOU NOT?

12 A. YES.

13 Q. AND DID THAT EXAMINE WHETHER OR NOT THEY
14 HAD PUBLICLY AVAILABLE SALARY SCHEDULES?

15 A. IF I RECALL CORRECTLY, I BELIEVE THERE WAS
16 AN OBSERVATION REGARDING THE AVAILABILITY TO THE
17 PUBLISHED PAY SCHEDULES.

18 Q. NOW, WAS THERE A DEMAND THAT IT WOULD BE
19 THEN CORRECTED?

20 A. I DON'T RECALL.

21 Q. THE PURPOSE OF THE PUBLICLY AVAILABLE
22 SALARY SCHEDULE, IS IT TO ALERT THE PUBLIC AS TO WHAT
23 THE EMPLOYEES OF THE GOVERNMENT AGENCY ARE GETTING IN
24 COMPENSATION?

25 A. PART OF IT, YES.

1 Q. BUT THEN ACTUALLY IT'S INCOMPLETE, ISN'T
2 IT, BECAUSE IT DOESN'T INCLUDE, FOR EXAMPLE, DEFERRED
3 COMPENSATION. IT'S NOT INCLUDED IN THE CALPERS
4 COMPENSATION EARNABLE; IS THAT CORRECT?

5 MR. KENNEDY: OBJECTION. THAT MISSTATES IT
6 ALL.

7 THE COURT: GO AHEAD. ANSWER THE QUESTION,
8 PLEASE.

9 THE WITNESS: EMPLOYER PAID DEFERRED
10 COMPENSATION IS NOT CONSIDERED COMPENSATION EARNABLE
11 IN THE P.E.R.L.
12 BY MR. BRAUN:

13 Q. AND SO THE PUBLICLY AVAILABLE SALARY
14 SCHEDULE IS POSSIBLY NOT COMPLETE AS FAR AS PUBLIC
15 INFORMATION IS CONCERNED?

16 A. AGAIN, I BELIEVE CALPERS IS CONCERNED WITH
17 THE COMPENSATION EARNABLE.

18 Q. OKAY. NOW, LET ME JUST ASK YOU ONE SORT OF
19 QUESTION. YOU HAVE OBVIOUSLY A LOT OF EMPLOYEES
20 UNDER THE CALPERS SYSTEM. YOU HAVE A LOT OF
21 REGULATIONS; CORRECT?

22 A. YES.

23 Q. NOW, WHEN A REGULATION IS VIOLATED, DOESN'T
24 COMPLY WITH CALPERS REGULATION, DO YOU DISTINGUISH
25 BETWEEN AN EMPLOYEE WHO IS RESPONSIBLE FOR THAT

1 VIOLATION AND OTHER EMPLOYEES WHO ARE COMPLETELY
2 EITHER IGNORANT OR INNOCENT OF THE VIOLATION?

3 A. CALPERS APPLIES THE P.E.R.L., AND IF
4 IT'S -- WHETHER IT'S IGNORANCE, INTENTIONAL, IF IT'S
5 NOT COMPLIANT WITH THE P.E.R.L., I BELIEVE DOES WHAT
6 IT CAN TO COMPLY WITH THE PUBLIC IN AN EMPLOYEE'S
7 RETIREMENT.

8 Q. SO IN OTHER WORDS SOMEONE THAT GOES TO WORK
9 FOR A PUBLIC AGENCY FOR 20 YEARS AND DOESN'T REALLY
10 PAY MUCH ATTENTION TO THE CALPERS REQUIREMENTS CAN
11 FIND OUT AT THE END OF THE 20 YEARS THAT THEIR PAY
12 RATE WAS NOT INCLUDED ON A PUBLICALLY AVAILABLE PAY
13 SCHEDULE, AND CALPERS BASICALLY CAN TAKE THEIR
14 PENSION AWAY FROM THEM OR A SUBSTANTIAL PORTION?

15 A. I BELIEVE THAT'S THE PURPOSE OF THE 570.5
16 IN (B) (1) IS TO TRY TO LOOK TO OTHER DOCUMENTS IN THE
17 ABSENCE OF A PUBLICALLY AVAILABLE PAY SCHEDULE FOR
18 THAT POSITION.

19 Q. I GUESS I'M ASKING A MORE GENERAL QUESTION.
20 IS THAT -- A LOT OF PEOPLE JUST DO THEIR JOB IN
21 WHATEVER IT IS -- IT HAS NOTHING TO DO WITH PENSIONS
22 OR BOOKKEEPING. THEY JUST WORK HARD AND EARN THEIR
23 PAY.

24 AT THE END OF THEIR CAREERS, CAN THEIR
25 PENSIONS BE SUBSTANTIAL REDUCED BECAUSE SOMEONE AT

1 THE EMPLOYER DIDN'T FOLLOW THESE RULES?

2 MR. KENNEDY: OBJECTION, YOUR HONOR. IT'S
3 SO VAGUE AND CALLS FOR SPECULATION.

4 THE COURT: OVERRULED. IF HE KNOWS.

5 THE WITNESS: SORRY. CAN YOU STATE THAT
6 ONE MORE TIME? SORRY.

7 BY MR. BRAUN:

8 Q. WHAT I'M SAYING IS THAT THERE'S LOTS OF
9 PEOPLE THAT ARE GOOD GOVERNMENT WORKERS, THAT WORK
10 HARD AND ARE NOT REALLY INTO --

11 THE COURT: SUPPOSE THE CITY OF ESCONDIDO
12 HIRED SOMEONE AND THAT PERSON WORKED FOR 40 YEARS AND
13 EARNED A SALARY, BUT THE CITY OF ESCONDIDO FAILED TO
14 PUBLISH THAT INDIVIDUAL'S PAY RATE.

15 AT THE END OF THAT 40-YEAR PERIOD, HOW
16 WOULD WE MAKE SURE THAT THAT EMPLOYEE, THROUGH NO
17 FAULT OF HIS OR HER OWN DIDN'T HAVE A PAY RATE THAT
18 WAS PUBLISHED, RECEIVED THE RIGHT AMOUNT UNDER
19 P.E.R.L. FOR RETIREMENT? IS THAT YOUR QUESTION?

20 MR. BRAUN: YES. BASICALLY, INNOCENT
21 VICTIMS OF THE SYSTEM.

22 THE COURT: RIGHT.

23 THE WITNESS: IN THIS SITUATION, CALPERS
24 WOULD CONSIDER DOCUMENTATION. WE SPOKE OF THAT ABOUT
25 THE METER PARKING ATTENDANT AND THE TRAFFIC CITATION

1 OFFICER THAT WE MAY LOOK TO OTHER DOCUMENTS.

2 THE COURT: SO CALPERS HAS METHODS BY WHICH
3 THEY CAN TRY AND DO SUBSTANTIAL JUSTICE TO ADJUST THE
4 AMOUNT OF EARNINGS TO REFLECT THE PERSON'S GROUP OR
5 WORK SITUATION?

6 MR. KENNEDY: I'D OBJECT TO THE USE OF THE
7 TERM -- VAGUE AS TO "SUBSTANTIAL JUSTICE."

8 THE COURT: SO CALPERS MAKES NO EFFORT TO
9 PROVIDE SUBSTANTIAL JUSTICE TO EMPLOYEES DESPITE
10 THEIR CIRCUMSTANCES?

11 MR. KENNEDY: I THINK IT'S STILL VAGUE,
12 YOUR HONOR, AS TO THE TERM "SUBSTANTIAL JUSTICE."
13 WHETHER YOU'RE SAYING THE CALPERS WOULD DISREGARD THE
14 P.E.R.L. AND --

15 (TELEPHONIC INTERRUPTION.)

16 THE COURT: DOES CALPERS TRY AND DO THE
17 RIGHT THING BY ITS MEMBERS?

18 THE WITNESS: YES.

19 THE COURT: TRIES TO TAKE INTO ACCOUNT ALL
20 THE CIRCUMSTANCES?

21 THE WITNESS: YES. I BELIEVE SO.

22 THE COURT: SO THAT A FAIR AMOUNT, AS CLOSE
23 AS THAT CAN BE DONE -- SO THAT A FAIR AMOUNT OF
24 SERVICE RETIREMENT IS PROVIDED?

25 MR. KENNEDY: OBJECTION TO THE USE OF THE

1 TERM "FAIR."

2 THE COURT: FAIR UNDER THE LAW?

3 THE WITNESS: FAIR UNDER THE LAW, YES.

4 MR. KENNEDY: THANK YOU.

5 BY MR. BRAUN:

6 Q. SO I GUESS SOME PEOPLE COULD REALLY BE HURT
7 THAT DIDN'T KNOW ALL THESE REGULATIONS; RIGHT?

8 MR. KENNEDY: RELEVANCY, YOUR HONOR.

9 MR. BRAUN: IT JUST SEEMS SO WRONG.

10 DOESN'T IT SEEM WRONG?

11 THE COURT: NO. IT DOESN'T.

12 WHAT I'M HEARING IS THERE ARE METHODS BY
13 WHICH CALPERS CAN GO OUT AND INVESTIGATE WHAT IT
14 WANTS TO AND SEE THAT SUBSTANTIAL JUSTICE IS DONE FOR
15 PEOPLE WHO ARE BENEFICIARIES OF THE SYSTEM.

16 AND MY GUESS IS THAT CALPERS COULD GO OUT,
17 IF IT WANTED, AND SEE THAT SUBSTANTIA INJUSTICE WAS
18 DONE IF IT SINGLED SOMEONE OUT AND WANTED TO USE
19 EVERY EXCUSE IN THE BOOK TO SAY THIS IS NOT
20 COMPENSATION EARNABLE.

21 I THINK THAT AT SOME LEVEL, THAT DISCRETION
22 EXISTS.

23 YOU'D AGREE THAT THERE'S SOME DISCRETION IN
24 THESE THINGS?

25 THE WITNESS: I DO IN THE SENSE OF THE WAY

1 570.5 B IS --

2 THE COURT: OKAY. AND THEN IN EXERCISING
3 THAT DISCRETION, WHAT YOU'RE TRYING TO DO IS WHAT'S
4 FAIR UNDER ALL THE CIRCUMSTANCES AND THE LAW.

5 THE WITNESS: AND APPLY THE LAW.

6 THE COURT: OKAY.

7 BY MR. BRAUN:

8 Q. NOW, LOOKING AT THE PAY RATE DEFINITION
9 THAT YOU USED IN GOVERNMENT CODE 20636, WHERE IT
10 SAYS:

11 "PAY RATE FOR A MEMBER WHO IS NOT
12 IN A GROUP OR CLASS."

13 SO YOU DO HAVE A PROVISION FOR SOMEONE WHO
14 IS NOT IN A GROUP OR CLASS; IS THAT RIGHT?

15 A. (B) (2) IS WHAT WE DISCUSSED EARLIER, SIR.

16 THE COURT: DO YOU HAVE THE STATEMENT OF
17 ISSUES?

18 MR. BRAUN: YEAH, I ACTUALLY HAVE THE CODE
19 IN FRONT OF ME.

20 THE COURT: IT'S PAGE 8 IN THE STATEMENT OF
21 ISSUES.

22 BY MR. BRAUN:

23 Q. SO IN TERMS OF A PERSON IN A SINGLE --
24 THAT'S UNIQUE, I GUESS, THAT DOESN'T HAVE A CLASS,
25 WHAT YOU DO IS YOU TAKE AWAY THE LAST TWO YEARS WHEN

1 THEY RETIRED, IN TERMS OF INCREASES? IS THAT THE
2 SOLUTION?

3 A. WE WOULD APPLY THE AVERAGE INCREASE DURING
4 THE MEMBER'S FINAL COMPENSATION PERIOD AND
5 IMMEDIATELY -- AND TWO YEARS IMMEDIATELY PRECEDING
6 THAT PERIOD.

7 SO IF THERE'S AN INCREASE AT THE END, THEY
8 GO FROM \$10,000 TO \$25,000 IN THE LAST YEAR, BUT ALL
9 OTHER MISCELLANEOUS CLASSIFICATIONS RECEIVED A
10 5 PERCENT, WE'D TAKE THAT \$10,000 WHICH WAS THE
11 NORMAL PAY RATE AND APPLY THE 5 PERCENT, 5 PERCENT.

12 SO 5 PERCENT PLUS 5 PERCENT ON TOP OF THAT
13 WOULD BE 11,000.

14 Q. SO AM I CORRECT THAT THE REAL PURPOSE OF
15 PUTTING PEOPLE IN CLASSES IS NOT TO REGULATE THE
16 AMOUNT OF MONEY THAT THEY MAKE AS A PAY RATE, BUT TO
17 PREVENT ABNORMAL INCREASES OR SPIKING?

18 A. YES. TO, IF YOU WILL, HOMOGENIZE THE PAY
19 RATE FOR GROUPS OR CLASSES OF EMPLOYEES.

20 Q. SO YOU WOULD HAVE A GROUP OF EMPLOYEES WHO
21 YOU GROUPED TOGETHER FOR THAT PURPOSE THAT COULD GO
22 FROM A VERY SMALL AMOUNT TO A VERY LARGE AMOUNT OF
23 BASE SALARY, COULDN'T YOU?

24 A. IF WE'RE TALKING ABOUT A GROUP OR CLASS OF
25 EMPLOYEES, POTENTIALLY, BUT WE'D STILL LOOK. IF IT'S

1 AT THE END, THERE'S --

2 IF YOU LOOK AT 20636(F), THAT DEFINES FINAL
3 SETTLEMENT PAY. AND THEN REGULATION 570, THAT
4 DEFINES FINAL SETTLEMENT PAY AS WELL.

5 Q. WELL, MAYBE I COULD ASK IT IN A DIFFERENT
6 WAY. THE POSITION OF CALPERS IS NOT IN THE BUSINESS
7 OF TELLING EMPLOYERS HOW MUCH PEOPLE SHOULD BE MAKING
8 FOR THEIR PARTICULAR JOB OR SKILLS. BUT IT IS IN THE
9 POSITION OF TRYING TO REGULATE ARTIFICIAL INCREASES
10 THAT THROW OFF THE SYSTEM; CORRECT?

11 A. THAT'S PART OF THE COMPENSATION EARNABLE.

12 Q. SO YOU DON'T REALLY LOOK AND SAY THIS
13 PERSON WHO WAS MAKING \$10,000 A MONTH IS REALLY ONLY
14 WORTH \$5,000 A MONTH ON THE MARKET. THAT'S NOT YOUR
15 POSITION; IS IT?

16 THE COURT: YOU AREN'T TRYING TO SAY HOW
17 MUCH A PERSON SHOULD EARN?

18 THE WITNESS: NO.

19 BY MR. BRAUN:

20 Q. YOU'RE TRYING TO REGULATE ARTIFICIAL
21 INCREASES THAT WOULD THROW OFF THE SYSTEM; CORRECT?

22 A. THAT'S ONE OF THE PRINCIPLES IN THE 20636.

23 Q. AND THE REASON THAT YOU DON'T HAVE
24 EXEMPTIONS LIKE WERE GIVEN TO MR. RIZZO AND
25 MS. SPACCIA IN TERMS OF AN -- WHAT WOULD BE AN

1 ARTIFICIAL INCREASE IS BECAUSE THERE ARE SITUATIONS
2 WHERE YOU CAN JUSTIFY THOSE PARTICULAR INCREASES; IS
3 THAT RIGHT?

4 THE COURT: LET'S SUPPOSE THAT SOMEONE AT
5 CITY OF NOVATO -- CITY OF NOVATO IS VERY POOR, AND
6 THEY PAY THEIR EMPLOYEES ABOUT HALF OF WHAT THEY'RE
7 WORTH.

8 AND ALL OF A SUDDEN THE CITY BUDGET WAS
9 BALANCED, AND THEY WERE ABLE TO PAY THEM WHAT THEY'RE
10 WORTH. SO THEY STARTED PAYING THEM 50 PERCENT MORE,
11 ACROSS THE BOARD.

12 THE WITNESS: WELL, NOW WE'VE ESTABLISHED A
13 GROUP OR CLASS.

14 THE COURT: EXACTLY.

15 THE WITNESS: WE'LL ASSUME IT'S DULY
16 APPROVED AND NOTICED. THERE IS A PAY SCHEDULE
17 AVAILABLE FOR THE PUBLIC TO SEE -- AN OPPORTUNITY FOR
18 THE PUBLIC TO SEE THIS INCREASE.

19 WE KNOW THERE IS GOING TO BE PEOPLE COMING
20 INTO THAT POSITION AND LEAVING THAT POSITION, AND
21 IT'S CONSISTENT AND STABLE.

22 THE COURT: AND THERE'S A PACE FOR FUNDING.

23 THE WITNESS: OKAY.

24 THE COURT: SO THERE IS NO PROBLEM WITH
25 THAT?

1 THE WITNESS: I DON'T BELIEVE SO.

2 THE COURT: NO.

3 BY MR. BRAUN:

4 Q. NOW, IN TERMS OF, FOR EXAMPLE, A CITY
5 LIKE -- DO YOU TAKE INTO ACCOUNT INCREASES WHERE A
6 CITY MAY HAVE TROUBLE WITH TRACKING AND KEEPING
7 EMPLOYEES? DO YOU KNOW WHAT I MEAN?

8 FOR EXAMPLE, THE CITY OF BELL IS A SMALL
9 CITY THAT WAS DOWN ON THE RUNS IN TERMS OF PRESTIGE.
10 A LEGITIMATE C.A.O. MAY REALIZE THAT HIS CITY COULD
11 BECOME JUST A STEPPING STONE TO VALUABLE EMPLOYEES TO
12 WORK A COUPLE YEARS AND THEN GO ON TO A BIGGER CITY.

13 DO YOU TAKE INTO ACCOUNT THE NECESSITY OF
14 SOMETIMES LESS DESIRABLE PLACES TO WORK HAVING TO PAY
15 A LITTLE MORE?

16 MR. KENNEDY: OBJECTION, YOUR HONOR. IT'S
17 BEEN ASKED AND ANSWERED. THE ACTIONS SEEM IRRELEVANT
18 TO THE DETERMINATION OF COMPENSATION EARNABLE. AND
19 THAT WAS THE RESPONSE.

20 THE COURT: IT HAS BEEN ASKED AND ANSWERED.

21 LET'S JUST TAKE A BREAK HERE.

22 (WHEREUPON, A RECESS WAS HELD
23 FROM 4:25 P.M. TO 4:27 A.M.)

24 THE COURT: BACK ON THE RECORD.

25 ANYTHING FURTHER?

1 MR. BRAUN: NO, YOUR HONOR.

2 THE COURT: YOU SEEM TO KNOW A LOT ABOUT
3 THIS. TELL US ABOUT YOUR BACKGROUND.

4 THE WITNESS: I RECEIVED A BACHELOR'S
5 DEGREE IN GOVERNMENT.

6 THE COURT: FROM WHERE?

7 THE WITNESS: SAC STATE, SACRAMENTO STATE
8 UNIVERSITY.

9 THE COURT: WHEN WAS THAT.

10 THE WITNESS: 2006.

11 THE COURT: BACHELOR'S OF ARTS?

12 THE WITNESS: YES.

13 THE COURT: AND THEN?

14 THE WITNESS: WHILE I WAS WORKING AT
15 CALPERS, I WAS A BENEFIT PROGRAM SPECIALIST IN THE
16 CALPERS CUSTOMER CONTACT CENTER. I WAS WORKING
17 FULL-TIME AND SCHOOL FULL-TIME, FINISHED UP DOING
18 THAT.

19 THE COURT: WHEN DID YOU START WITH
20 CALPERS?

21 THE WITNESS: SEPTEMBER 2005.

22 THE COURT: AND YOU'VE BEEN WITH THEM
23 SINCE?

24 THE WITNESS: NO. I HAD A YEAR AND A HALF
25 HIATUS AT THE FAIR POLITICAL PRACTICES COMMISSION.

1 THE COURT: WHEN WAS THAT?

2 THE WITNESS: I BELIEVE IT WAS JULY 2008
3 THROUGH THE END OF 2010. I WAS A POLITICAL REFORM
4 CONSULTANT, THAT WAS MY TITLE.

5 AFTER SERVING AS AN R.P.S. IN THE CUSTOMER
6 CONTACT CENTER, I BECAME A RETIREMENT PROGRAM
7 SPECIALIST IN THE SACRAMENTO REGIONAL OFFICE. ALL
8 TOLD, I SPENT A YEAR THERE. THAT WAS BROKEN UP BY
9 THAT P.P.C. TIME.

10 THEN I BECAME A MANAGER IN THE EMPLOYER
11 CONTACT CENTER FOR CALPERS. THAT WAS APPROXIMATELY
12 AUGUST 2009 THROUGH DECEMBER 27, 2010.

13 AND THEN I SINCE SERVED AS A STAFF SERVICES
14 MANAGER IN THE COMPENSATION EMPLOYER REVIEW.

15 THE COURT: ABOUT HOW MANY HOURS HAVE YOU
16 SPENT ANALYZING THIS CASE?

17 THE WITNESS: PROBABLY 30.

18 THE COURT: WHEN DID YOU START?

19 THE WITNESS: LAST WEEK. I MEAN IT HAS
20 BEEN ON-GOING, BUT PRIMARILY STARTED DRILLING DOWN ON
21 IT LAST WEEK.

22 THE COURT: WHERE DID YOU DO THAT?

23 THE WITNESS: AT MY OFFICE.

24 THE COURT: HAVE YOU EVER DONE THIS BEFORE?

25 THE WITNESS: I HAVE NEVER TESTIFIED IN A

1 COMP REVIEW MATTER, NO, SIR.

2 THE COURT: DID YOU HAVE ANYTHING TO DO
3 WITH THE MAKING OF THE DECISION IN THIS CASE.

4 THE WITNESS: THE ACTUAL DETERMINATION, I
5 DID NOT.

6 THE COURT: WAS YOUR SOLE FUNCTION IN THIS
7 CASE THEN TO PROVIDE TESTIMONY?

8 THE WITNESS: YES, SIR.

9 THE COURT: AND HOW WAS IT YOU WERE
10 SELECTED, IF YOU KNOW?

11 THE WITNESS: I RECEIVED AN E-MAIL FROM MY
12 SUPERVISOR ASKING IF I WOULD TESTIFY.

13 THE COURT: AND WHEN WAS THAT?

14 THE WITNESS: A WEEK BEFORE LAST. IF I'D
15 BE AVAILABLE TO TESTIFY.

16 THE COURT: DID YOU KNOW ANYTHING AT ALL
17 ABOUT THE CITY OF BELL BEFORE THAT?

18 THE WITNESS: YES.

19 THE COURT: AND HOW WAS THAT?

20 THE WITNESS: IT WAS NEWS. DURING THE TIME
21 THAT IT BROKE -- IT BROKE AT A POINT WHEN I WAS IN
22 THE CALPERS CUSTOMER CONTACT CENTER -- I MEAN
23 EMPLOYER CONTACT CENTER.

24 SO I WASN'T INTIMATELY FAMILIAR WITH IT,
25 BUT I WAS AWARE, AND I'VE SUBSEQUENTLY BEEN AWARE.

1 THE COURT: OKAY. THANKS.

2 CITY? DOES THE CITY HAVE ANY QUESTIONS?

3 MR. ONSTOT: YES.

4
5 CROSS-EXAMINATION

6 BY MR. ONSTOT:

7 Q. DID THE 2006 AUDIT LOOK SPECIFICALLY AT
8 MS. SPACCIA'S COMPENSATION?

9 A. I DON'T RECALL.

10 Q. WAS THIS CASE A DIFFICULT ONE TO ANALYZE?

11 A. YOU MEAN DURING MY PROCESS?

12 Q. CORRECT.

13 A. SOMEWHAT. AND ONLY BECAUSE OF THE
14 MULTITUDE OF DUTIES. I THINK IT WOULD NOT HAVE BEEN
15 QUITE AS DIFFICULT AND I WOULD HAVE BEEN ABLE TO
16 SOLELY FOCUS JUST ON THIS. BUT I WAS ABLE TO SPEND
17 SIGNIFICANT TIME ON IT.

18 Q. WAS IT DIFFICULT DUE TO THE LACK OF
19 DOCUMENTS SUCH AS PAY SCHEDULES AND JOB DESCRIPTIONS
20 OR DUTY STATEMENTS OR DOCUMENTS SHOWING THE STABLE
21 AND PREDICTABLE SALARIES, THOSE TYPE OF THINGS?

22 A. WAS THAT DIFFICULT?

23 Q. WAS IT DIFFICULT TO DO YOUR ANALYSIS
24 WITHOUT THOSE OTHER CUSTOMARY TYPE OF DOCUMENTS THAT
25 YOU NORMALLY HAVE AVAILABLE TO YOU IN PERFORMING

1 ANALYSIS FOR RETIREMENT BENEFITS?

2 A. IT CERTAINLY ADDS CHALLENGES, YES.

3 MR. ONSTOT: THANK YOU. NOTHING FURTHER.

4 THE COURT: GONNA GO BACK BECAUSE

5 MR. KENNEDY'S GOT SOME QUESTIONS.

6 MR. BRAUN: RIGHT. OKAY.

7

8 REDIRECT EXAMINATION

9 BY MR. KENNEDY:

10 Q. MR. RODGERS, IS THERE -- DOES THE P.E.R.L.

11 ACTUALLY PROHIBIT OR PROSCRIBE A GROUP OR CLASS MADE

12 UP OF ONE?

13 A. IT DOES, UNDER (E) (1). THE LAST SENTENCE

14 OF (E) (1) SAYS THERE WILL BE NO GROUP OR CLASS OF

15 ONE.

16 Q. WAS MS. SPACCIA IN A GROUP OR CLASS?

17 A. I BELIEVE SHE WAS.

18 Q. WHAT?

19 A. I DO BELIEVE SHE WAS.

20 Q. AND IF I COULD DIRECT YOUR ATTENTION TO

21 MS. SPACCIA'S EXHIBIT NO. 31, THE LETTER REGARDING

22 THE EXCEPTION.

23 A. YES.

24 Q. DOES SHE NOT STATE IN THAT LETTER THAT SHE

25 IS IN A GROUP OR CLASS OF THE ADMINISTRATIVE AND

1 MANAGEMENT AND EXECUTIVE MANAGEMENT?

2 A. YES. THAT'S PROBABLY WHY THIS LETTER IS
3 PUZZLING.

4 Q. WHAT DO YOU MEAN PARTLY WHY THIS LETTER IS
5 PUZZLING?

6 A. CALIFORNIA CODE OF REGULATIONS 572 PROVIDES
7 THE REQUESTING OF EXCEPTIONS FOR GROUPS OF ONE.

8 Q. SO IF SHE'S NOT IN A GROUP OR CLASS, WHICH
9 SHE SAYS THAT SHE IS BY THIS LETTER, THEN IT'S
10 ACTUALLY IN CONFLICT WITH THE EXCEPTION THAT SHE'S
11 APPLYING TO IF SHE'S IN A GROUP OR CLASS?

12 A. 572 APPLIES TO GROUPS OF ONE.

13 Q. PEOPLE THAT ARE NOT IN GROUPS OR CLASSES?

14 A. RIGHT.

15 Q. AND THAT'S THE SAME THING THAT (E) (2)
16 REFERRED TO; RIGHT?

17 A. YES.

18 Q. AND THAT'S THE SAME THING THAT 20636(B),
19 THE SECOND PART OF THAT, REFERS TO?

20 A. YES.

21 Q. AND A PERSON UNDER THAT, EVEN IF THEY
22 WEREN'T IN A GROUP OR CLASS, WOULD STILL HAVE TO
23 BE -- THEIR SALARY WOULD STILL HAVE TO BE PURSUANT TO
24 A PUBLICLY AVAILABLE PAY SCHEDULE, WHICH YOU DID NOT
25 FIND TO EXIST IN THIS CASE; RIGHT?

1 A. THAT IS CORRECT.

2 Q. BY THE WAY, WE MENTIONED BEFORE YOU
3 SUPERVISED CHERYL LIVINGSTON.

4 A. YES.

5 Q. AND IS THAT ALSO A BASIS FOR YOUR
6 FAMILIARITY WITH THE ISSUES IN THIS CASE?

7 A. ABSOLUTELY.

8 Q. OKAY. AND I'D JUST LIKE TO DIRECT YOUR
9 ATTENTION, IF I COULD, TO THE VOLUME II OF CALPERS
10 EXHIBITS.

11 AND ON TAB 26, THERE'S AN --

12 MR. KENNEDY: I APOLOGIZE, YOUR HONOR. IT
13 LOOKS LIKE -- IT'S C.

14 MR. KENNEDY: IT'S SUB-TAB C.

15 THE COURT: OKAY.

16 BY MR. KENNEDY:

17 Q. AND DO YOU SEE THAT DOCUMENT?

18 A. YES.

19 Q. DO YOU RECOGNIZE WHAT THAT DOCUMENT IS?

20 A. YES. IT'S AN ANALYSIS OF SENATE BILL 53.

21 Q. ON C -- TAB 26, SUB-TAB C?

22 A. I'M SORRY.

23 (READING.)

24 "WHAT IS ADDITIONAL RETIREMENT

25 CREDIT? FREQUENTLY REFERRED TO AS

1 'AIR TIME.'" "

2 YES.

3 Q. AND WHAT TYPE OF DOCUMENT IS THIS, DO YOU
4 KNOW?

5 A. THIS IS INFORMATION THAT'S PROVIDED WHEN
6 PURCHASING ADDITIONAL RETIREMENT SERVICE CREDIT.

7 Q. IS IT A DISTRIBUTION BY CALPERS OF
8 FREQUENTLY ANSWERED QUESTIONS?

9 A. YEAH. IN FACT WHEN I WOULD CONDUCT --
10 FACILITATE "PLANNING YOUR RETIREMENT" WORKSHOPS AS AN
11 R.P.S. II IN THE REGIONAL OFFICE, I WOULD ALWAYS
12 BRING THESE TO MY PRESENTATIONS, PUT THEM IN THE BACK
13 OF THE ROOM, MAKE THEM AVAILABLE AS ONE OF THE TOPICS
14 WE COVERED.

15 Q. SO CALPERS GIVES PRESENTATIONS --

16 THE COURT: I'LL TELL YOU WHAT. WE'LL BE
17 BACK IN SESSION TOMORROW HERE AT 11:00.

18 MR. KENNEDY: IF THE COURT --

19 THE COURT: NO, NO.

20 MR. KENNEDY: I'M THROUGH IF THE COURT --

21 THE COURT: NO, WE'RE NOT. YOU'VE GOT MORE
22 QUESTIONS. WE'RE GOING TO HAVE CROSS-EXAMINATION.

23 YOU STARTED ON AN ENTIRELY NEW SUBJECT.

24 WE'VE GOT A COURT REPORTER WHO'S GOT A YOUNGSTER IN
25 PASADENA.

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MR. KENNEDY: ABSOLUTELY, YOUR HONOR.

THE COURT: BACK IN SESSION TOMORROW AT

11:00.

(WHEREUPON, AT THE HOUR OF

4:47 P.M., THE PROCEEDINGS

WERE ADJOURNED.)

-000-

1 STATE OF CALIFORNIA)
)SS

2 COUNTY OF LOS ANGELES)
3

4 I, REYNA OTA, A HEARING REPORTER, FOR THE
5 STATE OF CALIFORNIA, HEREBY CERTIFY:

6 THE FOREGOING PROCEEDINGS WERE TAKEN BEFORE ME
7 AT THE TIME AND PLACE THEREIN SET FORTH;

8 THE PROCEEDINGS WERE RECORDED STENOGRAPHICALLY
9 BY ME AND WERE THEREAFTER TRANSCRIBED;

10 THE FOREGOING TRANSCRIPT IS A TRUE AND CORRECT
11 TRANSCRIPT OF MY SHORTHAND NOTES SO TAKEN;

12 I FURTHER CERTIFY THAT I AM NEITHER COUNSEL
13 FOR NOR RELATED TO ANY PARTY TO SAID ACTION, NOR IN
14 ANY WAY INTERESTED IN THE OUTCOME THEREOF.

15 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
16 MY NAME THIS 26TH DAY OF SEPTEMBER, 2012.

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