

**ETHICS REVIEW COMMITTEE
MEETING MINUTES
March 13, 2025**

Tim Bush, Chairman: I would just like to have a roll call, out of all those four members present.

John Fisher: John Fisher here.

Lyndsay Robinson: Lyndsay Robinson here.

David Tencza: David Tencza here.

Tim Bush, Chairman: Tim Bush is here. The next item on the agenda is opening remarks. Given what we're here for and I will anticipate it to be a simple plaintiff hearing and whether, I don't really have many opening remarks. I will just say that I know that Roger Wiseman [00:00:30] was here initially when we screened this complaint in. He cannot be here. He was going to be here on the March- on the March 6th meeting, but we had to reschedule it for the March 13th of this, we didn't have the wrong-..., the hearing. And he would very much like to be here. We would very much like to have him be here. But unfortunately, he is away.

The next matter, I think you want to review and approve the draft meeting [00:01:00] minutes, for the January 30th meeting. I don't know if all the members have had time to review those minutes.

David Tencza: Mr. Chairman, I make a motion to accept the draft meeting minutes of January 30, 2025.

Lyndsay Robinson: Just one minor edit.

Tim Bush, Chairman: A spelling?

Lyndsay Robinson: Yes.

Tim Bush, Chairman: Okay, there you go.

Lyndsay Robinson: Right underneath the bullet of, the press page. My last name is missing. The press page.

Gary Perrin: Duly noted.

Tim Bush, Chairman: [00:01:30] Aside from that, is there any

John Fisher: Session.

Tim Bush, Chairman: Second? All approve, all in favor?

Group: Aye.

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Tim Bush, Chairman: So, the meeting minutes for January 30th are approved. The next item on the agenda is the hearings on the ethics complaint, 2024-2. If we just have the parties initially introduce themselves to for the room. Starting with the complaints.

Laurie Ortolano: Laurie Ortolano.

Laura Colquhoun: Laura Colquhoun.

Tim Bush, Chairman: And for the City

James Donchess: James Donchess.

Attorney Pignatelli: [inaudible 00:02:06] Attorney Pignatelli [00:02:00] with the mayor, not charging the city any legal fees.

Tim Bush, Chairman: Very well, Attorney Pignatelli. Good to see you.

Attorney Pignatelli: Same here.

Tim Bush, Chairman: And representing the committee?

Robert Sullivan: Robert Sullivan, Your Honor. special counsel.

Tim Bush, Chairman: I should tell the members here, although it may or may not mean anything to you. Attorney Sullivan worked [00:02:30] for the city of Nashua many, many years ago. I won't tell you how many years ago. He's a long-standing city attorney for the city of Portsmouth, who recently went part-time, even though he works pretty much full-time. He's graciously agreed to advise this committee.

Robert Sullivan: And- and my-... May I add to that-

Tim Bush, Chairman: Certainly.

Robert Sullivan: Part of that gracious agreement is that I'm not billing the city Nashua. I... This is a contribution in the name of municipality from the city of Portsmouth to the city [00:03:00] Nashua.

Laurie Ortolano: Thank you.

Tim Bush, Chairman: None of the three attorney members of the committee are billing anybody. So this is the first time in history you have five lawyers not getting paid for being on the committee. I see attorney Jetty in the background. Make that six attorneys who are not getting paid for being here.

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So, with respect to the ethics complaint, I think what I'd like to do, and I appreciate the complainants giving us a binder, [00:03:30] tonight with a number of exhibits. But what I'd like to do is see if before we get to the hearing and the manner in which the hearing has laid out the rules, if there are actually any facts we can agree on. If there are facts we can agree on, then we can get to the question of what is the import of those facts.

So, as I understand it, there are essentially two complaints here. If I misstate your complaints in any way, please step in and let me know that. But essentially, one is that, [00:04:00] the city improperly paid for, the defense of a city representative alderman, with respect to an ethics complaint. That's your first complaint. Then the second complaint is that he improperly paid for, a lawsuit, in terms of representing the city and whether or not there is, there is going to be any judgment. I guess that's one of the issues we're going to get to here.

But essentially, mayor pays for, an ethics [00:04:30] complaint against, Or, a professional complaint against an alderman for something that you say he was not acting in his official capacity. And then the second complaint is that he paid for, the defense of a lawsuit and perhaps agreed to indemnify a judgment, which was not authorized, or is beyond the scope of his capacity, and you said he was... Am I reading that correctly?

Laurie Ortolano: [00:05:00] You are.

Tim Bush, Chairman Okay.

Laurie Ortolano: And in all of your binders is a memorandum of law that, A short memorandum of law approximately seven pages long, that lays out our argument, what statutes we feel were not complied with, where the process when, align what municipalities, why they can't indemnify an employee, why they can't indemnify for investigations due to disciplinary action or ethical violation. So we laid it out.

David Tencza, VC: Mr. [00:05:30] Chairman, just a point of order. The rules state that the testimony should be under oath or affirmation [inaudible 00:05:37] may swear all the witnesses.

Tim Bush, Chairman Perfect. Well done, Vice Chairman Tencza. If we could swear all the witnesses in. This isn't really a testimony, but we can certainly swear everybody in.

Robert Sullivan: Would it be acceptable, but everybody could just sworn in all at once.

Tim Bush, Chair...: All three at the same time?

Robert Sullivan: Would anybody want to participate, uh, binding testimony tonight, please stand and [00:06:00] raise your right hand. Do each of you currently standing and

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raising your right hand swear that the testimony you would give tonight will be the truth under the pain of penalties of perjury?

Laurie Ortolano: I- yes.

James Donchess: I do.

Tim Bush, Chairman: Just for the record, why don't we do this? On the onset of the hearing Just so we don't- just... You had provided a binder that you just referenced, [00:06:30] Mrs. Ortolano. Let's just... If there isn't any objection from the respondent with respect to anything in the binder. If there is, you can certainly let us know. But it's- it's kind of formal, but it's somewhat informal here. I'd like to just have this admitted into evidence at this point. And this is an objection?

Attorney Pignatelli: Well, we haven't seen it before, but I know the rules of evidence don't really apply, so we're not going object.

Tim Bush, Chairman: Actually, the rules of evidence kind of do apply. [00:07:00] I not going try to state it out of respect to privilege and relevancy, but to the extent that there's something that you don't think is relevant in there, we can certainly address it-

Attorney Pignatelli: As time goes on, I'm going to see just what's in there. Reserve our rights.

Tim Bush, Chairman: Certain- Understood.

Attorney Pignatelli: It's more about right timing.

Tim Bush, Chairman: Understood, and in fairness to Mrs. Ortolano, she did check in with us ahead of time and wanted to know if we- if she wanted us to have our exhibits ahead of time and we said essentially there are rules on that. So, [inaudible 00:07:25].

[00:07:30] is there any dispute... I'm just trying to narrow this down. Is there any dispute with respect to the first complaint that the mayor paid for an audience or authorized, the city to pay for the alderman's legal fees with respect to a professional register at this time?

James Donchess: We need an addition, which is that the Board of Alderman voted money to pay for a million [00:08:00] and many other lawsuits that Ms. Ortolano had brought. And they voted, in open session to appropriate additional \$500,000 and, Alderman Moran recused himself that time because his- he was being... His laws suits- his legal team we're being consulted.

Tim Bush, Chairman: Okay.

Laurie Ortolano: forget. Do I get to respond to that? Or-

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Tim Bush, Chairman: Yeah. [00:08:30] What I'm trying to do is save time, which it, you know, may end up costing us more time.

Laurie Ortolano: Yeah.

Tim Bush, Chairman: So why don't- why don't we do this? Why don't we just, you have the burden of proof by the providence of the evidence, according to the- the- what we're down under here [inaudible 00:08:52]. So why don't you just with respect to your first complaint, although if you want to take them both at the same time, provide whatever evidence you want- you want to provide.

Laurie Ortolano: [00:09:00] There all written down. The questioning was put together to cover both.

Tim Bush, Chairman: Okay. Yeah, I-

Laurie Ortolano: It really covered both. And as I said, that memorandum of law is given to you that outlines what the concerns are with the payment of the OPLC disciplinary or ethical complaint, as well as the lawsuit side [inaudible 00:09:21].

So that's it's laid out in sections with a conclusion on why we feel the ethical, standards, [00:09:30] for, an advisory opinion from you supporting our ethics concerns would apply within section of D, E and F as outlined in our complaint.

Tim Bush, Chairman: Okay.

Laurie Ortolano: So, based on that, I think we should just move right into the questioning, and one of the things I want to do is just... the video from the ward meeting, and I turned it up.

Video: Video Playing

Tim Bush, Chair...: Is it important for us to see the video?

Video: So those are some of the things that are going on. [00:10:00] Uh, but Trish and I, like to hear your comments and your thoughts more. And we'd like to really speak about this- all this I think. So we want to hear what you're interested in. And therefore, why don't we throw it open to any questions. Cath, here, has the microphone and, you can [inaudible 00:10:26]. We have, what, 18 litigations between us and you? [00:10:30] So I think we should just talk in court and, you know... I'm going pass on that all right. Does anybody else have any questions?

So-

Yes, ma'am?

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Laurie Ortolano: I introduced this video to open my questioning for credibility reasons. That's all. That there were 18 litigation matters. Mr. Mayor and so there are there 18 litigation matters I currently have with the city?

James Donchess: We have a- we have a numbering system [00:11:00] and we've gotten up to LO 18 in terms of actual legal complaints.

Laurie Ortolano: No. Do I-... What do I currently have with this issue?

James Donchess: I don't know. Miss, I don't know. Most of your- most of your actions have been dismissed by the court, but you have brought 18 lawsuits, plus 10 to 20 ethics issues, plus many criminal complaints.

Laurie Ortolano: Is that what you said-

James Donchess: Many criminal complaints.

Tim Bush, Chairman: [inaudible 00:11:28].

James Donchess: So you've [00:11:30] brought-

Tim Bush, Chairman: Let's listen.

James Donchess: You brought 18 lawsuits. You brought 10 or 12 ethics complaints against Cole. You brought three or four ethics complaints against Leonard. You brought ethics complaints against other people. You, brought criminal complaints against the Board of Assessors, each of the individuals against, [00:12:00] Against both of the AG. You've also brought lawsuits against many individuals, including Moran, two police officers, former, Chief of Carrigan, plus Sergeant Lombardi. You've sued or- or sought fines against Cummings, Bolton, Leonard, me. You've sued the city volunteers.

Laurie Ortolano: Captain?

James Donchess: You've sued city-

Laurie Ortolano: Can I- Can I give an objection?

Tim Bush, Chairman: Well you can- you can let him answer. Is he [00:12:30] nonresponsive to your...? I mean, he's answering your question.

Laurie Ortolano: Well, here's where the issue is. He's going off track from the suits. Okay? We asked how many-... He said how much litigation do you have? He answered 18. Now he's talking about whose sued in the litigation.

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Tim Bush, Chairman: Well, you asked him if there was 18 presently. And so he's answering the question.

Laurie Ortolano: Okay.

Tim Bush, Chairman: So, go ahead.

James Donchess: You sued city- two city volunteers, Lannan and Mary Lou Blaisdell, and others that I probably haven't thought of or mentioned at the moment. [00:13:00] These cases have cost us over a million dollars of taxpayers money and the defending your various claims, most of which have been dismissed by the courts.

Laurie Ortolano: Okay. So, how many, Do I have 18 current lawsuits going right now? Yes or no?

James Donchess: I need to explain the answer, but my- but the answer is no because the courts keep dismissing your cases.

Laurie Ortolano: Haven't I won some of my cases?

James Donchess: You [00:13:30] Out of the hundreds of claims you've brought, you- you might have been successful on a handful.

Tim Bush, Chairman: I'm going stop you there. This is what I don't want to have happen here. We could be here all night into... This isn't going to be godfather of the trilogy. We're having one hearing. Okay? And this is a very narrow complaint. And as you know, and I know you've had some frustration, both of you have, with the limits of what the ethics board can do, we're here to hear your complaint. You've said essentially [00:14:00] that he's paid \$4,200 or he is authorized or whatever we're going hear from the city with respect to whether the alderman approved it or not. That's part of the reason we're here. But approximately \$4,200, I think you said \$4,258 was paid, at least as of the time of your filing, for him to authorize Alderman Moran or have somebody representing Alderman Moran. That basically was a professional complaint, right? [00:14:30] That's your first complaint.

Laura Colquhoun: Can I stop you there? Because the mayor happened to say that when he wrote it up to the Board of Alderman, he brought up all of Ms. Ortolano's, I have a few suits with the city. Of course I didn't win them because of...

Tim Bush, Chairman: I understand that.

Laura Colquhoun: But the problem is the \$4,200 had nothing My complaint against Mr. Moran's license, had nothing to do with the city. And [00:15:00] therefore when the

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mayor brings up, "Oh, we're going have to spend a half a million dollars," my claim was not mentioned there.

Tim Bush, Chairman: Well, and I, I'm sure we could get to that. But what my point is, is I don't want to be going down that road. We have, and I think it behooves everybody, to kind of stay on point. We have two small complaints here. I don't want this to be a [inaudible 00:15:21] battle with everything's going on. Frankly, you asked the question, and he answered. Right? And it's gone a little bit beyond the appeal and I don't want to keep jumping in here because I'd prefer to have you [00:15:30] guys going back and forth, but hold on a second. With resp-... You-you've got one complaint. Why don't we focus in on your complaint with respect to the social work and then your complaint with respect to the lawsuit?

Laurie Ortolano: The questions are laid out in sequence.

Tim Bush, Chairman: Yeah. Then if we can stay on point there and if he goes, If you keep- If you stay to that, then the mayor will say to that, I'm assuming. Well, you know, he will stay within all of those questions.

Laurie Ortolano: If you're able to answer yes or no to the questions, please do so. [00:16:00] Um, and if you answer yes to any of these questions and you have anything in writing and can provide that, even if it's at a later date, we would appreciate that. Are you a member of the New Hampshire Bar Association?

James Donchess: I'm an inactive member.

Laurie Ortolano: Are you licensed to practice law in the state of New Hampshire?

James Donchess: Yes.

Laurie Ortolano: And what is your Bar number?

James Donchess: I don't remember.

Laurie Ortolano: What was your relationship with Mr. Moran [00:16:30] prior to the city agreeing to cover his legal expenses for the civil suit and his licensing complaint? What was your relationship with him?

James Donchess: He was an alderman, I was the Mayor. [inaudible 00:16:43].

Laurie Ortolano: Okay. And has that relationship changed at all since, um, you agreed to pay the fees and the cost for his civil suit and for the licensing?

James Donchess: No.

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Laurie Ortolano: Okay. Did Mr. Moran call you to let you know that he was going to be on the radio station, WSNM, [00:17:00] with- to discuss matters?

James Donchess: No.

Laurie Ortolano: Did you listen to that radio station show that morning?

James Donchess: No. I know he thinks I did, but I didn't. I did not listen to the show.

Laurie Ortolano: So you did not inform him of any information on, or give him any input on what was going to be said on that radio show that he went on?

James Donchess: No, because I didn't know what was going on. I probably heard about it from someone else.

Laurie Ortolano: Okay. [00:17:30] Did you listen to the interview after it was done?

James Donchess: No.

Laurie Ortolano: Did you contact Mr. Moran to cover his legal costs for the defamation?

James Donchess: We, At some point we must have discussed that, yes. Because We, along with a lot of the other people you sued, we've agreed to cover their legal fees.

Laurie Ortolano: Who's we?

James Donchess: Me, the Board of Alderman, and the city, the risk department. I mean, everyone. Everyone involved.

Laurie Ortolano: Okay, we're [00:18:00] going to get to, who's the city? Who specifically did you contact to cover those fees?

James Donchess: Well, the risk department is the one who handles the outside counsels. So, that was certainly one of the... And that is, Jen Deshaies. That is one of the people I talked to was.

Laurie Ortolano: [00:18:30] did you contact Mr. Moran to discuss the city's coverage for his licensing complaints?

James Donchess: I'm sure that was part of it.

Laurie Ortolano: Did you or anyone from the city ask Mr. Moran or his representatives if he had a homeowner's policy that would potentially cover this civil suit?

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James Donchess: I believe he at some point informed us that he, uh, notified his [00:19:00] carrier that they would not provide coverage. But I You know, I don't-... I can't remember the details of how we got that information.

Laurie Ortolano: Is this being verbatim recorded? I take it, it is, right?

Tim Bush, Chairman: Yes.

Laurie Ortolano: Okay, thank you. Did you or anyone from the city ask Mr. Moran if he had any representatives or any of his representatives if he had an umbrella policy that could potentially cover his legal fees and judgment for the suit?

James Donchess: [00:19:30] I don't recall discussing his insurance in that detail.

Laurie Ortolano: Did you or anyone from the city... I'm going to ask the questions and I think I know the answer. Ask Mr. Moran or his representatives if he had a business error and omissions policy that could cover the defense of the civil suit or the defense of the professional license issue?

James Donchess: I'm not sure.

Laurie Ortolano: So, to this day you really have no idea other than he personally didn't have insurance, whether [00:20:00] or not he had any other insurance that could cover this?

James Donchess: I'm not sure.

Laurie Ortolano: You don't recall?

James Donchess: I don't-

Laurie Ortolano: You don't know if you...

James Donchess: I don't know.

Laurie Ortolano: Know that answer at all?

James Donchess: Correct.

Laurie Ortolano: You didn't get that word from risk management or anyone to research it?

James Donchess: Well, I got, Someone, told me that he contacted one of his carriers or any carrier or carriers that they wouldn't cover. But, that's all I remember.

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Tim Bush, Chairman: I'm just going to have to stop you there. Um, [00:20:30] under the rules, like I said, I just don't think it's relevant. Again, here's what I'm going to do. I'm going to read your complaint. I'm going to read what you need to prove. And what I'm interested in and what I think the board is interested in is whether or not you can prove it. So, let's just all go over it together because this is what I'm going to keep both sides to. All right?

I understand you've asked some questions, but really whether or not this particular item have individual policies, while that may be interesting, [00:21:00] it really isn't your germane to your complaint in my opinion. And I'll tell you why. You've indicated under the rules, and we said we need to have a hearing on this, that the mayor and Mr. Moran signed a contract created by Gallagher-Callahan and Gattrell to cover Mr. Moran's personal legal expenses and- and any judgment. We haven't gotten to the judgment yet, but I don't think there's an argument that they have covered his legal expenses. I think that the mayor just admitted [00:21:30] to that in both counts. So whether or not they had alternative policies isn't really germane to you saying he couldn't do that. Not he had alternative methods of having representation. You're saying he couldn't do that and it was unethical.

And you're saying it was unethical because, and I'll just quote here your complaints. You say with respect to charge one that the taxpayer should not pay for the claim against [00:22:00] Mr. Moran's personal license. The expenses should have been covered by his business insurance or personal insurance. And then you have exhibit four. That's with respect to claim one. With respect to claim two, you indicate that, um, he appeared on the show. I believe it was the George Russell show and made some disparaging comments about you. And then I think the mayor has already admitted that the city, through whatever processes they go through, has [00:22:30] indicated they're going to pay at least for his legal fees. I haven't heard about judgment yet, but they're going to at least pay for his legal fees. and you're saying that the taxpayer should not be paying for his legal fees.

You then have an additional burden under D, E, and F under the standard of conduct. And this is what- this is what this board-... We're not here to decide whether or not the mayor should have done this or whether there's a policy issue. We're here to decide three things as you laid out in your complaint. D, [00:23:00] did the mayor use or attempt to use his or her official position to secure unwarranted privileges or exemption for himself or others? The municipal employee shall not take any official action, in this case, the mayor, that he knows or should have known at the time of the action taken, which would primarily benefit in matters of financial interest, his or her immediate family, business, or employer. I'm certainly interested in hearing any questions about that.

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I'm also interested in hearing any questions about related [00:23:30] to paragraph E. By his conduct, did he give a reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is unduly affected by the kinship rank, position, or influence of any party person? Any questions you have on that, we're all ears.

Finally, did he pursue a course of conduct which will raise suspicion among the public [00:24:00] that he is likely to engage in acts that are in violation of his trust? Again, that's what we're looking to hear. So, if you can kind of just stay focused on those three issues, those are going to take us a while to get through, probably.

Laurie Ortolano: No, I don't think so. And I respectfully disagree. And I just want to put it on the record on why I think the cutoff that you're imposing isn't proper. When I start my questioning by asking what his relationship is with Alderman, Moran prior to the suit and after, [00:24:30] I am looking for information about potential personal favors.

Tim Bush, Chairman: And no one objected to that.

Laurie Ortolano: When I asked about his coverage, I am looking for potential personal favors. If Mr. Moran had coverage and he chose not to use it, he went ahead and had the city cover anyway. I am fishing out those answers so I can look at whether he had the ability to cover. We'll get to the newspaper articles and what's said in there, but that's why I wanted to know.

Tim Bush, Chairman: I respectfully think that's a little bit attenuated, but you know where I'm going. [00:25:00] So let's just try to stay focused in on what the ethical complaints are.

Laurie Ortolano: Okay, so I'm going to tell you I'm not an attorney, so when you don't like it, you stop me and tell me. I'll put my position on the paper.

Tim Bush, Chairman: Perfect.

Laurie Ortolano: If you don't like the way I'm going, you tell me.

Tim Bush, Chairman: I appreciate that we're talking in respectful tones. I think you know where I'm coming from.

Laurie Ortolano: I don't really know where you're coming from.

Tim Bush, Chairman: Okay.

Laurie Ortolano: But I'm going to do my best job.

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Tim Bush, Chairman: So, go ahead.

Laurie Ortolano: So, let's see. I want to go to exhibit one, please. And this is, [00:25:30] the deposition from Mr. Moran. And I see Director Cummings is here as a witness. So, I would imagine that he's going to speak to the process of how this was looked at or studied. and in-... On page 26 of the exhibit, lines 15 through 19, it says, "I met..." So Mr. Moran says, "I met with the mayor, Tim Cummings." So other city officials were there, but it wasn't-... It was before there was a lawsuit. [00:26:00] There was a discussion to see if he was going to pay for the legal fees. Do you recall that meeting?

James Donchess: Not really.

Laurie Ortolano: Do you recall anyone who was there besides Mr. Cummings?

James Donchess: I don't really recall the meeting.

Laurie Ortolano: Do you recall Megan Caron being there?

James Donchess: I don't recall either.

Laurie Ortolano: Okay. So,

James Donchess: But I'm not saying it didn't occur, I just don't remember. But certainly, we discussed whether this, whether we were going to cover Mr. Moran, You know, Alderman [00:26:30] Moran like we were covering many other people.

Laurie Ortolano: Okay, so...

James Donchess: And this just fit in the same pattern. You sued them and we.

Laura Colquhoun: I really object to him keep saying it's just Laurie. I have a complaint against Mr. Moran's license. It has nothing to do with Laurie Ortolano. Okay? So please stop saying that. It's totally different, and I want to be...

Tim Bush, Chairman: I understand your frustration. I'm sure the mayor will try to include you in any lawsuits. But [00:27:00] right now he's answering her questions.

James Donchess: Yes. You've also sued the city as well and individuals also, I assume. I'm not quite as clear about that.

Laurie Ortolano: So, with regard to page 27 of exhibit one.

David Tencza: Sorry, Mrs. Ortolano, our pages don't, appear to have numbers on them.

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Laurie Ortolano: It's at the top of exhibit one. Doesn't it?

David Tencza: It got cut off.

Tim Bush, Chairman: Is it the first page? Is it the first page? It's only-

Laurie Ortolano: Second page.

Tim Bush, Chairman: Second page? Okay.

David Tencza: Fair enough. I can follow along. I'm sorry.

Laurie Ortolano: Oh, I don't know why.

Tim Bush, Chairman: That's all right.

Laurie Ortolano: [00:27:30] it's the one, the deposition that starts with question, "Okay, so there are." Okay, and if you go down to line, 15 and 16, Mr. Moran says that Megan Caron was in the meeting. And then if we go down to the question, 18 to 20, Mr. Moran was asked the question, "In other words, the lawsuit was related to your performance as an Alderman" And his answer was, "I believe it was risk management." [00:28:00] That was the person, risk management, determined it was, related to his performance as an alderman. do you know who determined it was related to his performance as an alderman?

James Donchess: And what's "it" in this case?

Laurie Ortolano: The lawsuit. The intentional toward defamation lawsuit. Did you believe that was related to his position as an alderman? His duties and work as an alderman?

James Donchess: Well, I was right there when you know, brought out his children and he responded. [00:28:30] I mean, I heard it. I was present. It occurred in the meeting with the Board of Alderman for the first time.

Laurie Ortolano: I'm not certain you were actually there. Can we.

James Donchess: I recall.

Laurie Ortolano: Okay, and were-... And was he operating in his capacity as an alderman when he went on the radio and called these things out again? Was that also under his aldermanic duty?

James Donchess: I would say yes, because he wouldn't have been there if weren't at all. They weren't- they [00:29:00] weren't-... He's not on there as a private citizen. He's on there because he's on the Board of Alderman.

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PART 1 OF 4 ENDS [00:29:04]

James Donchess: He's not on there as a private citizen. He's on there because he's on the board involved.

Laurie Ortolano: Does an alderman have to seek permission from the board to operate in an individual capacity outside of a board meeting?

James Donchess: No.

Laurie Ortolano: They don't then?

James Donchess: They do that all the time. I mean, they operate as individuals all day long.

Laurie Ortolano: And we'll get to the judge order in a minute on this issue. If you can go to page 87 and 88 [00:29:30] of exhibit one.

Lyndsay Robinson: 88 and 89.

Laurie Ortolano: 88 and 89. Thank you. Um, it says at the very top, this is..., I have the full deposition here. Alderman Moran is stating that within an hour or so from going on the, radio, he received a phone call from you, um, saying [00:30:00] that I was going to sue him. And you wanted Director Cummings to follow up with you in risk management to determine if, we're going to pay for that, basically, the lawsuit. Did you contact him within an hour of the radio show?

James Donchess: I didn't listen to the radio show, and I didn't know he was on the radio. Now, I'm sure I talked with him after that at some point. Whether it was an hour, I doubt it. But, it was after [00:30:30] the radio show, I presume. I mean, I think we talked. I presume we talked after the radio show. I did not listen to the radio show. Like I said, nor did I know he was going to be on, nor did I listen to the recording. But at some point, it was clear that you were going to sue him based on what happened in the, in the alderman meeting, and brought in the radio as well, I assume.

Laurie Ortolano: Well, why would you say that? When did I announce I was going to sue him? What makes you say that?

James Donchess: [00:31:00] Well, you sue nearly everyone. So, that you sue many, many people. So I think you could referenced him as soon as they knew.

Laurie Ortolano: Not that you would've known, right?

James Donchess: [inaudible 00:31:13]

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Laurie Ortolano: So when did the lawsuit get filed?

James Donchess: I think you sue nearly everyone that you have a disagreement with. So, I think I Probably, you said you were going to sue them. You've said you were going to sue a lot of people. You said you brought judicial conduct [00:31:30] complaints against the judges. You brought nearly everyone you encountered gets sued.

Laurie Ortolano: So, you just dove in and called him very quickly after this interview, or within a very quick time and said, "Come see me, she's going to sue you. And I [inaudible 00:31:46] pay for this"?

James Donchess: I don't think that's accurate.

Laurie Ortolano: You don't?

James Donchess: No.

Laurie Ortolano: Okay.

James Donchess: But we did talk, I mean, there's no question, but I did not listen to the show. I didn't know he was going on, so it's unlikely that I called [00:32:00] him within an hour. I presume he was on early in the morning, like everyone else. But certainly, we did talk about it and, I and the risk department thought that it was, appropriate, like we have with other people you've sued, that we pay for the lawsuit. Pay for his defense.

Laurie Ortolano: Would it surprise you in this deposition on page 88, that he said that he believed you had listened [00:32:30] to the radio show?

James Donchess: Well, I knew... Would it surprise me that he said that? No, because I knew he said that in the deposition but I didn't listen to the radio show.

Laurie Ortolano: Did you receive his deposition to review it?

James Donchess: I don't know. I've never read his deposition. I know that there's a lot of litigation. You brought, what, his case, you brought the federal case, all these different cases, so,

Laurie Ortolano: How did you know that this was in the deposition, [00:33:00] if you didn't read the deposition?

James Donchess: Somebody told me, I think.

Laurie Ortolano: And you would remember that, for all the things you don't remember here tonight?

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James Donchess: I do remember it.

Laurie Ortolano: Okay. moving on.

James Donchess: I think maybe it came up when you When my deposition was taken, possibly, I in the other case. I don't remember, but.

Laurie Ortolano: Why don't we just move on. [00:33:30] Did Attorney Bolton sign off on the legal contract between the city and Mr. Moran for, um, his civil suit?

James Donchess: I don't remember.

Laurie Ortolano: How is the contract typically approved in the city? What is the process by which a contract is approved?

James Donchess: Well, outside counsel is usually handled by the risk department, and they, because they hire quite [00:34:00] a few different lawyers for different lawsuits, and, that is the principle way in which the agreements are developed and, you know, signed.

Laurie Ortolano: At any point, did Attorney Bolton provide you with an opinion in writing or verbally on covering this lawsuit?

James Donchess: Certainly not in writing.

Laurie Ortolano: Okay. Did you get a verbal opinion from him?

James Donchess: I'm not sure.

Laurie Ortolano: Did Attorney [00:34:30] Bolton sign off on the legal contract between the city and his defense team concerning the licensing complaint?

James Donchess: I don't know, but, you know, we are covering legal fees for many entities in that you sue, Mr. Lannan community volunteers.

Laura Colquhoun: I'm the one that's raising a claim on the licensing, so please stop him from saying just Laurie.

Tim Bush, Chairman: You can't... Mrs. Colquhoun you just cant just jump in anytime you want.

Laura Colquhoun: ... on the licensing-

Tim Bush, Chairman: ... Mrs.- Mrs. Colquhoun, this is-

Laura Colquhoun: ... so please stop using Laurie's.

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Tim Bush, Chairman: Mrs. Colquhoun, you can't just jump in anytime you want. Okay?

Laura Colquhoun: Well, then please have-

Tim Bush, Chairman: Do you-

Laura Colquhoun: Please have him direct the- the statements [00:35:00] to who they belong to.

Tim Bush, Chairman: You can ask questions at the appropriate time, but right now its Mrs. Ortolano question being asked, so let's just keep it at that.

James Donchess: So-

Laurie Ortolano: Could you go to exhibit two?

James Donchess: With many of... I'm still answering the last question before Mrs. Colquhoun interrupted. So, the, when you sue the community volunteers, we use the same process to pay for their lawyer. [inaudible 00:35:19], Rich Lannan, Marylou Blaisdell same process.

Laurie Ortolano: Were those intentional tort claims?

James Donchess: You, I don't know that they were, You've [00:35:30] asked if they'd be fined?

Laurie Ortolano: That's not an intentional tort claim, correct?

James Donchess: There's not much difference.

Laurie Ortolano: Really? Legally, between a constitutional claim and a common law of intentional tort claim? You don't think there's much difference?

James Donchess: I think they both seek that someone have to get a lawyer [00:36:00] and possibly put their, a lot of money to defend themselves when you brought these cases. And, that in either case, they could be either fined or damages could be awarded against them. So they're similar. Technically they're not the same.

Laurie Ortolano: Could you please go to exhibit two in your book and look at the city NRO for contracts, which is section 5-138. Do you see Section A? [00:36:30] It says all contracts and amendments to contracts, regardless of the value, in which the city becomes involved or engaged, shall be reviewed by the City Corporation Council. If that is our NRO, why wasn't this contract reviewed and approved by Attorney Bolton?

James Donchess: Well, as I mentioned, all of the outside counsel that are, and this is just the way it's been done in, you know, for decades, as I remember, [00:37:00] all of the

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outside counsel that are engaged by the risk department, and this happens quite often, they handle the engagement of the lawyers. Just like, the only... Just like we did with Lannan, with Mary Lou, with all the police officers you sued, everybody. I mean, we didn't-

Laurie Ortolano: But they were named parties, correct?

James Donchess: We didn't do anything different with these cases [00:37:30] than we did with all, with your other cases or many other cases that have been brought against the city.

Laurie Ortolano: Let's talk about the difference. In the other lawsuits, the city was named as the party and the defendant specifically, and people were named individually and then the city in general was named in the case. And those were all, most of those were RSA91A, right to know lawsuits, correct?

James Donchess: You're talking about the cases you brought?

Laurie Ortolano: Yes, that's what you're [00:38:00] talking to me about. So those cases have been 91A, where the city has been the defendant, correct?

James Donchess: No.

Laurie Ortolano: The city or some individuals named who are employees or volunteers of the city, correct?

James Donchess: Volunteers.

Laurie Ortolano: Okay.

James Donchess: Yes.

Laurie Ortolano: Okay. Now, in the note-

James Donchess: But my answer Wait. My answer, I was referring more broadly, that often, even, I mean, yes, you've brought a lot of cases against the city and we've had to hire a lot of lawyers. Yes, I agree to that. But [00:38:30] you're not the only person. I mean, if there's an automobile accident, a bus runs into a car or something like that, we might get sued over that. And the contract, to the arrangement with the lawyers, handled by the legal... Excuse me, the arrangement of the lawyers, handled by the risk department. And we used the same procedure with all of your lawsuits as we have with the lawsuits that someone else has brought.

Laurie Ortolano: The lawsuit I [00:39:00] brought by myself against Mr. Moran did not name the city, correct?

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James Donchess: No, it did not.

Laurie Ortolano: No, the city was not party to that suit, because it was a defamation intentional tort suit, correct?

James Donchess: Correct.

Laurie Ortolano: Okay. And you have an NRO in exhibit two that specifically states all contracts must be reviewed by the City Corporation Council.

James Donchess: What I'm saying is-

David Tencza: Can I ask a point law here?

Tim Bush, Chairman: Yeah, go ahead.

David Tencza: So things [00:39:30] you keep quoting, the next line is in excess of \$25,000. That little prepositional phrase, I think [inaudible 00:39:38] opposed to the dollar amount that's involved here-

Laurie Ortolano: No, because of-

David Tencza: I mean, am I missing something?

Laurie Ortolano: Yeah, the \$25,000, um, has to be reviewed by the finance committee, and then if it exceeds a million dollars at the finance committee, it has to be brought before the board of aldermen. The 25,000 applies to the finance [00:40:00] committee.

David Tencza: So just to further clarify though, Ms. Ortolano, it says that all contracts and amendments to contracts, regardless of value, when the city becomes involved or engaged, shall be reviewed by City Corporation Council. It doesn't say anything about it being signed off by Corporation Council. Do you agree with that?

Laurie Ortolano: I do, but I want to know, it doesn't appear he reviewed them at all. I gave a, an opinion, and so how could-

James Donchess: But it's possible... It's possible to, I'm sure over- [00:40:30] over time, as I said before, the same procedure here was used when you have sued Moran, the other volunteers for Lannan and Marylou but also all outside counsel. For years, the risk department has engaged outside counsel. Now they've probably consulted with the city attorney over time regarding these matters in general, and whether they go over every, whether they go, If when they prepare the,

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you know, fee agreement, whether they go over the details, you know, every time, I'm not sure.

Laurie Ortolano: How is it-

James Donchess: I'm not sure they don't. But they might not.

Laurie Ortolano: How is risk management capable [00:41:00] of determining an intentional tort claim filed against two parties that are not named as the city? How are they capable of determining that that's a suit that has to be paid by taxpayers [00:41:30] without going to legal?

Attorney Pignatelli: I hate to object.

Tim Bush, Chairman: That's alright. It's alright.

Attorney Pignatelli:: But this whole hearing is about the mayor's motivation for approving these legal fees, as you cited in those ethic rules, some sort of malign intent that he was going to personally benefit and we're heading into headlong, into contracting. There hasn't been any questions at all [00:42:00] about the, any improper intent on the mayor's part for approving these legal fees. And I can just foresee that we're going to be here for a long period of time going through a lot of irrelevant, extraneous information.

Tim Bush, Chairman: I'm going to sustain your objection. That's kind of what I'm getting to here is, I guess I, you know, and I understand you're not a lawyer, so I, you know, but I want to, you know, [00:42:30] be fair to everyone, but if you look at your complaint, you have alleged, somewhere in the complaint.

Laurie Ortolano: I am getting there, to the RSA, frankly. Like right now. So RSA31105 is where we're moving into on identification of official [inaudible 00:43:01].

Tim Bush, Chairman: [00:43:00] Well, but I don't know that that's where we're really looking to go, miss. I mean, I guess I'll... You say with respect to D that [inaudible 00:43:17]. Right?

Laurie Ortolano: Say that... I missed that. Say that again?

Tim Bush, Chairman: Certainly, let me repeat. I went over the three things that under, 595, which is, the regulation that we're here [00:43:30] to govern, standards of conduct from municipal employees. I read D, E and F when you were looking at it, right? And what you had laid out in your original complaint, actually, you said, and you, so you're aware that it's D, E and F that you need to prove, because you laid it out in your complaint.

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Laurie Ortolano: Yes.

Tim Bush, Chairman: And then under each complaint you alleged, with respect to each thing, what you think the mayor did wrong, that constitutes an ethical violation. That's all we're here for. We're the Ethics Review Committee. We're not [00:44:00] superior court. This isn't litigation as opposed to whether or not he could or couldn't have done these things. What we're trying to figure out is, what I'm looking for, I think what the board is looking for is, did the... You alleged here that the mayor utilized his office to grant privileges to an alderman at large, and the city business owner who was part of a democratic voting bloc and serves as chair of the Planning and Economic Development Committee. [00:44:30] That's- that's your reasons why he, secured unwarranted privileges, for himself, I believe.

Then you say by his conduct, you have reasonable basis for the impression that any person can improperly influence him for unduly enjoyed his favor in the performance of his official duties, or that he is unduly affected by the kinship rank, position or influence of [inaudible 00:44:55]. You then say as a basis for your complaint, for you or Mrs. Colquhoun, maybe it's Mrs. Colquhoun, [inaudible 00:45:01], [00:45:00] somebody said it's the mayor's personal support for Mr. Moran enhances his standing in the chamber and strengthens the Democratic voting block. Recently, Mr. Moran has begun voting no on certain financial matters. We do not believe the mayor would cover the legal fees for a Republican who made similar slanderous comments on a public radio station, right?

Laurie Ortolano: Mm-hmm.

Tim Bush, Chairman: That's what you said. With respect to F, [00:45:30] pursue the course of conduct, which will raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust, right? You say, Mayor Donchess should not have authorized the use of taxpayer funds to cover the personal legal expenses of someone being sued in their personal capacity, as this is not protected under the immunity statute. His actions undermine public trust and transparency. [00:46:00] Furthermore, the mayor did not discuss this unique legal issue with the Board of Aldermen. And then you go on to say you're requesting us to grant subpoena power, we all know we don't have. I guess I'm... You're saying you're getting to that, we're getting to the meetings?

Laurie Ortolano: Yeah. Let's get to, the Board of Aldermen that he addressed, that he believes did give approval. I don't, and that could be addressed in RSA31 10 47. Let's go there. And also, [00:46:30] understanding and asking the questions about how contracts are reviewed, whether Attorney Bolton reviewed them, the whole line of that questioning was to determine if something was bypassed or shortcut here.

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You know, I'm bringing up the contract language, which is part of the NRO, and the fact that legal counsel is supposed to review all these, learning here that legal counsel didn't or didn't acknowledge, mayor [inaudible 00:47:00] [00:47:00] did, and the mayor seems to believe that's the standard process. So I needed to understand, and I wanted to understand what that process was within the guidelines of the city and whether shortcuts were being done or favors were being done.

Tim Bush, Chairman: I guess my question is, at some point you are going to get to the factual allegations you made here and whether or not you can support them in your complaint?

Laurie Ortolano: I hope so.

Tim Bush, Chairman: Okay.

Attorney Pignatelli: Well, I think it's important because, you know, you think of it this way. [00:47:30] The mayor might have broken every single rule in the book and violated RSA, state law, city ordinances. That's not what this hearing is about. It's about whether he did it for personal interest, personal gain, or anything of that nature. That's really the purpose of this hearing. [inaudible 00:47:48]

Tim Bush, Chairman: I mean, that's right. I mean, you know, we're not, you know, we're not here as voters. We're here to, you know, as ethical, the Ethical Review Committee. We're trying to make a determination whether under the very [00:48:00] limited guise, the very limited jurisdiction that we have, in this case, the mayor, whoever the respondent is, violated those ethical rules. Right? So, I mean, I hear what you're saying, but, and- and a lot of your questions may be germane in another setting, somewhere else, but here they're really not.

Laurie Ortolano: I disagree with that.

Tim Bush, Chairman: Okay.

Laurie Ortolano: I needed to have a way to find out if he broke guidelines and NROs and statutes that are part of the city in making those decisions.

Tim Bush, Chairman: [00:48:30] Well, there's nothing we can do what's already- about what already has been asked. It's already been asked and no one interrupted you. But the question is, are we moving towards-

Laurie Ortolano: Yes, we are.

Tim Bush, Chairman: Proving what's in your complaint?

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Laurie Ortolano: Yes.

Tim Bush, Chairman: Okay.

Laurie Ortolano: Could you go to exhibit three please? And can you look at the second page 20 of exhibit three at the top paragraph? it says, at the very beginning, concerning Mr. Moran's argument [00:49:00] that he was acting in- in his capacity as an [inaudible 00:49:03] immune to liability under New Hampshire RSA 507 D. The court disagrees. That statute immunizes public officials and employees for claims such as defamation acts if they were acting with this in the scope of their office and in good faith.

And he- she notes that while the comments on October 12th, 11th, 12th and 13th were made in public hearings, that a week later going on a radio [00:49:30] show was not acting within the scope of his position as an alderman. Did you read that in the decision of the lawsuit?

James Donchess: No.

Laurie Ortolano: And so in making your determination to cover those costs, you're in opposition to what the court believed, correct?

James Donchess: No.

Laurie Ortolano: You believe, Didn't you say that you believed that Alderman Moran was operating in the capacity of an alderman when he made those statements?

James Donchess: I didn't think [00:50:00] he... I think he was, yes.

Laurie Ortolano: So it's in opposition to what the court order said?

James Donchess: Well, I'm not sure what the court order said, but,

Laurie Ortolano: Page 20.

James Donchess: But he made the same statement.

Laurie Ortolano: The court. I can give it to you if I have it, but I can send it to you to go over them.

James Donchess: He made the same statement [inaudible 00:50:24] and we're not, I mean, we're misunderstanding why we're [00:50:30] covering all of the people providing legal defense to all of the people you sue. I mean, Alderman Moran is only one of them. And the reason is similar for all of them. If we required community volunteers, all of them were essentially volunteers and other employees to pay

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their own legal fees when you sue them, they'd all be ruined. I mean, so [00:51:00] you, Rich Lannan Community Volunteer are Republican.

Laurie Ortolano: Aren't we talking about the difference between suits filed against the city with volunteers or- or people who worked for the city or elected to the city, versus a suit against an individual who was sued not in the capacity as a part of the city, in an intentional tort? That is completely different, isn't it?

James Donchess: No.

Laurie Ortolano: You don't see it that way. Right?

James Donchess: You [00:51:30] filed one lawsuit against Moran, and it included two different statements made at two different times. And, he made the same statement both times. so we decided, as you began to sue all these people, that if we allowed them to have to pay their own legal fees, 10, maybe hundreds of thousands of dollars, that not only would we never get volunteers in Alderman [00:52:00] because they couldn't possibly serve, because if they crossed you in any way, you would sue them and they'd have to come up with legal fees, or they would be so afraid to even disagree with you, because you usually sue people that express [inaudible 00:52:16] or file ethics complaints or other things against them.

Laurie Ortolano: Objection.

Tim Bush, Chairman: He's answering your question. It goes right to the heart of the matter. I mean, it does. You don't like the answer, but it goes... Listen, let's just say for a second, let's just say for a second that you convinced this board [00:52:30] that he shouldn't have done this, right? That's what- that's what you're seeming to be trying to prove here, that he should not have done this, right?

Laurie Ortolano: Mm-hmm.

Tim Bush, Chairman: What I'm telling you is what you need to prove to us is not that he shouldn't have done it, it's that he had some type of ethical, that he had. He stood to stand some type of benefit. What he's essentially telling you, what he just testified to is, and what I haven't heard is that he did it for Moran, but he didn't do it for anybody else. He seems to be telling you, and you can, you guys know better than I [00:53:00] do if he's denied coverage for anybody.

But it seems he's not doing this for any personal favor, as it's kind of laid out in your complaint. He's basically saying, we're going to defend anybody. And again, this may not be right, it may not be wrong, but he's saying, we're going to defend anybody who Laurie Ortolano, or Ms. Colquhoun sues, because if we don't do that, then she's simply going to, you know, it's going to prevent us from

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having people run for Alderman. It's going to [00:53:30] prevent us from having people volunteer because they're going to be afraid of crossing you.

Laurie Ortolano: Okay. So what the big difference is here, that you didn't pick up on, is covering city employees and volunteers, and the city itself when they're named as the defendant in a lawsuit, is unquestionably proper. I've never disputed that. But covering somebody for an intentional tort when the city is not named is entirely different. Can you name to me [00:54:00] any other lawsuits where you covered an individual where the city wasn't named for an intentional tort act?

James Donchess: I'm not sure there's been one, but, we covered a lot of people.

Laurie Ortolano: But they're employees or they're, officials or volunteers of the city that are covered under the provisions of the law, correct?

James Donchess: Well, Moran is a city official.

Laurie Ortolano: But were his actions... Let's, we'll get that. Let's [00:54:30] go-

James Donchess: So, the lawsuit you brought, [inaudible 00:54:35] made claims against him for statements he made in the chamber and without, but they were the same statements.

Laurie Ortolano: That's not how the court viewed it. Once you go on a radio station-

James Donchess: They were- they were the same statements.

Laurie Ortolano: When you go on a radio station and you make those statements on a radio station-

Tim Bush, Chairman: Is this is a question?

Laurie Ortolano: When you make individual statements like that on a radio station, why did [00:55:00] the city cover the cost of that?

James Donchess: First of all, when you brought the case, it involved more than just his radio statement. It involved his Alderman statements, and so we decided to cover that. It was really, and then you, like many of the other just cases you brought, the- the claim against him and the statement in the board of Aldermen was dismissed.

But we defend a lot of people. When you try to get, [00:55:30] the license of an assess- chief assessor, Rick Vincent, taken away, when you made that complaint in Concord [inaudible 00:55:42], we had to hire a lawyer to represent him up

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there. I mean, we've hired many lawyers to represent many of the people at the ethics complaints you brought, the lawsuits.

Laurie Ortolano: So, if-

James Donchess: I mean, there's at least a dozen people we've had to pay legal fees for, that you have sued.

Laurie Ortolano: But again, [00:56:00] when you sue somebody who is an employee of the city, like Rick Vincent wasn't an employee, a contractor for the city. He was serving as the chief. When you have volunteers, employees, or board members that are sued, and the city is sued with them, you cover them. You cannot think of any intentional tort claims. Can you provide me any intentional tort [00:56:30] claims where you've covered an individual who the city was not named in the suit?

Attorney Pignatelli: I'm going to object. He's already answered the question once.

Tim Bush, Chairman: It's been, it's been answered more than once.

Attorney Pignatelli: It's been asked and answered, and she's not getting close to-

Tim Bush, Chairman: Sus- sustained.

Attorney Pignatelli: The issue for this board about the mayor's intent.

Laurie Ortolano: Okay, so go to exhibit six, which is the statute that covers indemnifying [00:57:00] municipal employees. And do you see for liability under 304, that that first part covers voting or resolution of a city official or an elected official on, they're covered for any type of civil damages, for any vote resolution or decision made by the person as long as they're acting in their official capacity [00:57:30] in good faith within the scope of his or her authority. That's what that statute says. So when you're covering all the people that you say I sued personally or in suits against the city, aren't you doing that because they're acting in good faith within the scope of their authority and duties?

James Donchess: Well, the statute that [00:58:00] you cite has to do with paying the damages.

Laurie Ortolano: No.

James Donchess: There's no, that's what indemnification is. Okay? It has to do with You got to let me answer.

PART 2 OF 4 ENDS [00:58:04]

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James Donchess: Identification. Okay? It has to do with ... you going to let me finish the answer. The statute you're deciding has to do with indemnification, meaning paying the damages awarded against the city. Now, if you were to receive damages in the case of against Moran for what was said on the radio, we would not pay those. But because we would not be, we wouldn't be required and nor would [00:58:30] I agree, nor do I think the Board of Aldermen agree, would agree to pay the damages if you are successful.

But the issue of whether we're going to defend him is different. And you, seem to make some kind of distinction that I don't agree with. you said that if, when you sue [00:59:00] a community volunteer who is not paid, is not like Rich Lannan and Mary Lou Blaisdell, they're not paid, they're not employees, and we represent them. We've spent a lot of money representing them as you know. When we represent them, they're not employees, they're volunteers just like Moran. And, so we defend not only city employees, we defend the city and we when you sue [00:59:30] volunteers or Aldermen, we, we defend them also.

Laurie Ortolano: Volunteers are considered, under the statute, part of the city. The statute [inaudible 00:59:37].

James Donchess: They're, they're just volunteers.

Laurie Ortolano: I agree.

James Donchess: They're volunteers.

Laurie Ortolano: But I, but I agree. They're part of the city. Look at section.

James Donchess: Well, I don't agree that they're part of, they're part of the city there's a distinction between a, a volunteer and an employee.

Laurie Ortolano: Of course. And I've listed them all. If you have volunteers, employees or elected officials, they all get covered.

James Donchess: And Moran [inaudible 00:59:52].

Laurie Ortolano: And you do that.

James Donchess: And Moran is an elected official. We are not indemnifying him, we are not agreeing [01:00:00] to pay his damages, we are only providing him a defense, so that if he [inaudible 01:00:07], if, so that, so that you cannot sue Aldermen and intimidated them or wreck them while making them incur tens of thousands of legal fees.

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- Laurie Ortolano: So, doesn't the next section and, haven't the city ... hasn't the city and its counsel, Gallagher and Callahan, and we have the emails, given us miss signals mixed [01:00:30] signals telling us it is going to cover the settlement. And then it came back before settlement and said it isn't. And then it came back again and said it's going to cover part of it. That's the only information we have is that the city is covering part of the settlement. So are you telling me today that the city will not cover settlement? Well, [inaudible 01:00:50].
- James Donchess: I'm not sure [inaudible 01:00:55] I have no idea Callahan- [inaudible 01:00:57] Gallagher and Gartrell said about anything. I have not read the emails. [01:01:00] I have no idea what they're saying.
- Laurie Ortolano: They said they communicated with the city, and that's an email. We'll get to that. But let's look at.
- David Tenczar: So, this is what's going on, Mr. Chairman, if I may. So I, I think the concern, my concern, is that this seems like it's a statutory procedure for the ... in, in the underlying case, which we're trying to avoid is Attorney Bush, and the Chairman Bush has given the clear instructions about what the information that we're looking for and it would be in your interest to focus on those topics and those areas [01:01:30] that you can decide this issue.
- Laurie Ortolano: Okay. Mr. Mayor just said, if you go to section 31105, you just said that we only cover damages, but you chose to do the fees for Mr. Moran. But in fact, doesn't the indemnification for damages of section 105 say that it includes reasonable legal fees and costs, if any arising out [01:02:00] of any claim, demand, suit or judgment by reason of negligence or another act resulting in accidental injury to a person or accidental damage when they are acting within the scope of the employment of their office. So isn't this contrary to what you just said about paying fees?
- James Donchess: Well, first of all, I'm not looking at it, but I, you're reading it and [01:02:30] I don't think is, because what it is stating is when we have a legal obligation to defend people. Now, I don't think we have a legal obligation to defend Moran, nor do I think we have a legal obligation to defend Rich Lannan when you sued him, nor do I think we have legal obligation to sue Mary Lou Blaisdell when you sued her. We probably didn't have a legal obligation to pay Rick Vincent's fees when you tried to get his license take, unsuccessfully, of course, to get his license taken away. And we probably did not have [01:03:00] I don't know if we had a legal obligation to defend, Steve Bolton when you brought the 10 or 12 ethics complaints against him, but we did provide them all representation whether or not we had a legal obligation to do so.
- Laurie Ortolano: Okay, so under the 31105 or 106, 105, you have to bring, if you're going to indemnify city employees, volunteers or elected officials to the Board of

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Aldermen for approval [01:03:30] in a capacity that they vote to indemnify all of them. For example, if you look.

Tim Bush, Chairman: I'm going to stop you.

James Donchess: Again.

Tim Bush, Chairman: Ms. Ortolano, I'm going to stop you. I appreciate it. And this is the third time. This is going to be the last time I'm going to stop you on this, and then, I'll just ask him the question that you're here for if you want me to. Okay? I understand you're not a lawyer, but you've been given, I think, at least twice by me and once by Attorney Tencza, I don't know, by Chief [01:04:00] Fisher, but again, we're limited here, and you haven't we're now probably an hour into your case, whatever it is, and you still haven't asked him. And I'll ask him if you want me to. Because what I want to know, and again you haven't gotten there yet, is did he derive any benefit, under D, E and F of 595 by indemnifying or by paying the legal fees of any of these people? That's what we're here for. And-

Laurie Ortolano: Okay, so let's ask him. Did you provide any benefits [01:04:30] by covering all the Aldermen Moran's legal fees? Why did you do it when there's so much financial hardship in the city right now?

James Donchess: I told you for the same reason we defended all the other people in the city.

Laurie Ortolano: Isn't there different-

James Donchess: The reason, the reason is if Aldermen and community volunteers [01:05:00] were subject to your lawsuits and had to pay for them, we would not get community volunteers, and we would not get Aldermen. Because each of them would need to pay tens of thousands of dollars to defend in [inaudible 01:05:15] lawsuits which have no merit. You've lost the cases against all these people, but had we not defended them, they would have had to pay tens of thousands of dollars in legal fees, and we cannot have that.

Laurie Ortolano: Okay, so I did [01:05:30] not.

James Donchess: We couldn't let you

Laurie Ortolano: Lose all the cases against him.

James Donchess: We couldn't let you destroy people.

Laurie Ortolano: I did not lose all those cases, [inaudible 01:05:36] I have not destroyed people, and these cases are right-to-know cases. Correct?

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James Donchess: You would have destroyed people if we didn't pay their legal fees.

Laurie Ortolano: There is no reason for you to pay their legal fees when they're volunteers, employees or elected officials of the city. Correct? They're covered by the city.

James Donchess: Let me ask you-

Attorney Pignatelli: [inaudible 01:05:57] We're dealing with a witness and she's not really coming close [01:06:00] to approach the questions that the Chair has raised, and that her own initial complaint raised, about whether Mr. ... the mayor derived any personal benefit, intentionally, from covering these legal fees.

Laurie Ortolano: Did you-

Tim Bush, Chairman: Sustained.

Laurie Ortolano: ... by not-

Tim Bush, Chairman: Sustained.

Laurie Ortolano: By not-

Tim Bush, Chairman: Mrs. Ortolano, let ask you this. If, if you take the mayor at his word for he just said, which is, essentially ... and I haven't heard anything in your questions or, and I haven't been able to look through all your exhibits obviously [01:06:30] because we done. But if, the mayor is saying, "Look, I'm going to defend these people whether or not I have a legal obligation to or not, because I don't want to let you bulldog or, bully these people, and I don't want these people to be afraid of you." And he's not really picking and choosing who he represents, he's, they're defending everybody. Doesn't that kind of go against your ethical complaint that he did this for his own personal benefit?

Laurie Ortolano: It does, because it's [01:07:00] not the same kind of claim and there's a process by which you have to follow, statutorily, to do that.

Tim Bush, Chairman: And you said earlier that I had completely missed your point, that this was an intentional tort, which is different than the other complaints. And you said that the other complaints involve city employees or volunteers and, on this case, it's an intentional tort, which is outside, you believe is outside the scope of his city employment. The mayor may disagree with you on that, right?

Laurie Ortolano: [01:07:30] Correct.

Tim Bush, Chairman: But again, we haven't touched upon the fact that you've made a claim, or you and Mrs. Colquhoun have made a claim, that he really did this, because he was

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part of a democratic voting block [inaudible 01:07:42], and he wanted to curry some favor. It doesn't appear to me that that's what we're getting at. You keep telling me we're going to get there, and you just asked him, but that, that doesn't appear where his answers are. am I misreading the evidence that's been before this [inaudible 01:07:58]?

Laurie Ortolano: Well, problem is he's lumping [01:08:00] all of these cases together. And as a mayor and an attorney with 40 years of experience, part of making these decisions is based on knowing the law and what he can do. And, and so, deciding that he's going to defend somebody who slanders at will in a chamber or on a radio station, because they have to be protected with taxpayers' money is just a Democratic move to support a Democrat. Who would pay [01:08:30] for slander? And why should we have to do that?

Tim Bush, Chairman: But what he's just told you, and, and I don't want to belabor it, but he's just told you that he's doing it because it's not, it's a Democrat or he's, he doesn't seem to be giving favor to Mr. Moran. It's not like you've come in here and listened to him, "Did you defend Aldermen Jette? Did you defend Aldermen Gouveia? Did you defend this Aldermen?" And he says, no, but I defended Aldermen Moran, because we like to socialize together. He's basically told you we defend [01:09:00] everybody.

His fear, it appears, is you suing people, and them ... I don't know exactly what he said, but you ruining them, I think was his terminology. So how is he currying favor of committing an ethical violation, which is why we're here. You may say, "Look, this isn't a wise use of taxpayer money. This isn't what, what people should be doing. The mayor should be, and the city of Aldermen can ... should be exacting a different policy." That's where, that's where you're going. He shouldn't be [01:09:30] doing this, but you really haven't laid, laid forth here, as far as I'm concerned, anything that he's done ethically wrong. It's a policy decision that you have [inaudible 01:09:38]. Am I wrong?

Laura Colquhoun: Can I say something?

Tim Bush, Chairman: Well, I'm asking Ms. Ortolano, if this is [inaudible 01:09:43].

Laurie Ortolano: Well, part of the, the statements from the mayor tonight about all these individuals being sued and being ruined didn't happen at the same time as this suit. All of the suits, up till 2022, were individual right-to-know suits brought against the city, [01:10:00] not individuals. If under a right-to-know suit I could get, um, bad faith, that's what I went for. It's generic. Right-to-know suits are very generic. It wasn't until the Arts Center lawsuit, that was filed in August of 2022, that I actually named people for personal fines under RSA91A. That's very limited. It can't be above 2,000, \$2,500. [01:10:30] That's the first time I did it. So when this mayor says, "I just put a blanket rule out to cover Aldermen

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Moran, because she sues everybody," that hadn't even started. That hadn't even started.

Tim Bush, Chairman: You hadn't, filed a suit. Go ahead.

Lyndsay Robinson: Attorney [inaudible 01:10:48], and others, have now reminded you several times, that the issue isn't whether the type of suit or whether he had the authority to do it, it's what his intent was, and if he benefited. So we've asked him, multiple times, [01:11:00] to tell us how he personally benefited from doing this. And that's what we're asking you to do. And, quite frankly, we don't have to keep reminding you of what you have to prove. We're trying to give you the benefit here, and give us exactly what we need to be able to make this decision, and not [inaudible 01:11:16]. Not whether the type of suit or whether he had the authority to do it, it's the benefit piece that we're looking at.

Laurie Ortolano: So in your articles to the newspaper, you claim that we have to protect all of these city people from ruin, [01:11:30] people who can't afford lawsuits, people who don't have the money to pay for them. That isn't the case with Mr. Moran, is it?

James Donchess: We're not going to distinguish between people who cannot afford. I mean, he still doesn't he should [inaudible 01:11:45], in my opinion, should not have to pay tens of thousands of dollars, because you bring a lawsuit. It doesn't matter how many, what he's got for assets. And we treat him just like all the others. [01:12:00] I mean-

Laurie Ortolano: Even if it wasn't a suit against the city.

James Donchess: We don't, we don't, we don't go and say, "Now, how much are you worth Mary Lou? Uh, if you're worth more than X, we're not going to provide you legal expenses. Or we don't go to Rich Lannan and ask him, "How much are you worth?" We don't go to Chief Carrigan [inaudible 01:12:14] when you sued him or you know, we don't, we don't ask them what their assets are.

Laurie Ortolano: That's not what you said to the paper, is it? You said you thought you'd cover all these people-

James Donchess: What paper?

Laurie Ortolano: because they-

James Donchess: I have-

Laurie Ortolano: The articles that were in, Exhibit 7 in the, [01:12:30] um, Union Leader and the Telegraph.

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James Donchess: I never told the paper that we asked people what their assets [inaudible 01:12:40].

Laurie Ortolano: "You can't just let her ruin people, causing them to incur legal fees many of them can't afford," Donchess sad.

James Donchess: Many of them can't afford it.

Laurie Ortolano: There's nothing wrong with getting these people [inaudible 01:12:50].

Tim Bush, Chairman: Chief Fisher has a question.

John Fisher: I have a quick question. I'm not as smart as these guys here, but I need to know, like did he, [01:13:00] did he that if the Aldermen bought him a steak dinner, like did he how did he benefit from that decision he made? Did he get him free car care? Just, and I don't need to spoon-feed you, I'm kind of a black and white person. I need to stick, because I do it all day. What, in here, in your specific complaint, I need to know, because just say it out loud, and then ask them if you did it?

Laurie Ortolano: How about just favors.

John Fisher: Did he, get a certain sandwich? And if you have that evidence, I would love to hear about it.

Laurie Ortolano: Yeah, [01:13:30] I don't have that evidence.

John Fisher: [inaudible 01:13:32] just, I'm-

Laurie Ortolano: All I have is a Democratic voting block of the chamber, which is 12 Democrats and three, non-Democrats. And that it, it sends a strong message to the chamber that this mayor will cover anyone no matter what they do or what they say.

Tim Bush, Chairman: Let me ask you this. What if it sends a message to the citizens of Nashua that if you want to get involved and you want to, you know, volunteer with the city, or you want to run for Aldermen at large, [01:14:00] and Laurie Ortolano or Mrs. Colquhoun, or anybody else for that matter, sues you, because they don't like the way you're acting in your capacity as an Aldermen. The city's going to cover you. And that way what we're going to do is we're going to make sure that people sign up and aren't afraid to volunteer for public service, which I think we can both agree is a problem, right?

People don't want to serve. They don't want to get involved in Aldermen at large. They don't want to have their name ruined in the community. And what,

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essentially, what it seems to me is what the mayor is saying is, "I don't care if this guy's a Democrat, [01:14:30] I don't care if he's a Republican, my bigger concern is Mrs. Ortolano or Mrs. Colquhoun or anybody who's going to sue them, because I don't think I want them to incur personal expenses, because, if I have that, then people aren't going to run for mayor or they're not going to want for the Board of Aldermen."

Laurie Ortolano: And the flip-

Tim Bush, Chairman: Right?

Laurie Ortolano: The flip side of that is what happens when people out in the public look at what happens when citizens come forward to participate in their government, and do civic duty, and they have to see how we're dressed down,, [01:15:00] and dragged through the mud, and told that we can't get our information and file these lawsuits to go forward. And then be called out as a child predator in the, in the chamber, be called out as somebody who does-

James Donchess: You were not called, you were not called out as a child predator.

Laurie Ortolano: It was all in the context of children, and then told that we do ... I, I do oppositional research on children. What message does that send to the citizens to come out and participate if they know that's what they're going to face?

Tim Bush, Chairman [inaudible 01:15:27] over here.

Laurie Ortolano: Doesn't it go ... doesn't it cut both ways?

David Tencza: So, Ms. Ortolano, [inaudible 01:15:27] a [01:15:30] couple of questions.

Laurie Ortolano: Yes.

David Tencza: You talk, you make a distinction between the intentional tort versus the statutory violation [inaudible 01:15:39] that you brought [inaudible 01:15:42]. I'm going to ask you a hypothetical, okay? A police officer is, someone brings a suit against a police officer for an intentional tort, right? And a claim against the city for a 1983 [inaudible 01:15:55] in federal court. Do you think that the city would have a [01:16:00] right for the police to help defend that police officer in, in his lawsuit?

Laurie Ortolano: 31106 says the 1983 Act and Civil Rights Act must be covered by the city. So, yes, that's covered.

David Tencza: But those are intentional acts too. And it could be 1983-

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Laurie Ortolano: But-

David Tencza: Coupled with other intentional acts.

Laurie Ortolano: But that's ... if it's the civil rights piece, the city must cover. The other intentional acts, I don't know about. Maybe not. But when you ... as soon as you interject the Civil Rights, 1983 Act, you're covered under [01:16:30] 106. So that's different. What would the city cover? Here's the, a worker, after work, goes to the bar, ties one on a little too much, punches someone in the jaw, breaks his jaw, and they take the civil action against him. Will the city cover that employee for the bar fight and the personal damage done to somebody?

David Tencza: So, I don't know, but that's not my, I doubt it, but it's not what I'm here. The other question I want to ask you, does it matter if you're, it [01:17:00] seems that your lawsuit is still pending, correct?

Laurie Ortolano: Yes.

David Tencza: So, there's been no actual, actual order or finding of slander against Mr. [inaudible 01:17:11]-

Laurie Ortolano: No, there's just been the orders of, of all the motions to dismiss, summary judgments. We've heard it down yeah.

David Tencza: So, does it matter at, at this point then, where there's been no actual finding of slander, in your opinion, as to whether the city has an obligation or duty to [01:17:30] help Mr. Moran [inaudible 01:17:33].

Laurie Ortolano: Of course, because it's an intentional tort act and the statutes don't cover that. And I expect the mayor, with 40 years of experience, to understand that. Now if he says I ... he gives me no personal favor, we do this for all employees, would you do it for somebody who goes out on a Friday night, gets into a bar fight, he's an employee, throws a punch, breaks a jaw, needs a defense, would you have to pay for that?

James Donchess: But that's not, it's not even similar to this.

Laurie Ortolano: [01:18:00] It's similar in that the actions by Mr. Moran were not, were his personal actions not done under his official capacity or duties as an Aldermen? That's the difference.

Tim Bush, Chairman: Here's where I'm.

James Donchess: And that's not the way this progressed.

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Tim Bush, Chairman: Here's where I'm going to stop you Mrs. Ortolano. You said to me earlier that I was missing something, which is usually probably true, and maybe in this case. But what you've done a lot of times, here today and, and most of your thing is basically the same to the mayor, "You shouldn't have covered [01:18:30] this. This is an intentional tort. It shouldn't be covered because it's outside the scope of his employment." Right? That's been, pretty much, the gravamen of your, of your, of your cross-examination.

Laurie Ortolano: Yes.

Tim Bush, Chairman: What we've tried to tell you is that's not really what you need to prove. What you need to prove is that whatever actions the mayor took were somehow to, to curry his own personal favor. You may disagree with the policy that the mayor had, his decision to, to have the city or [01:19:00] whoever made the decision to have the city defend, Mr. Moran in your intentional tort [inaudible 01:19:06]. Right? but you still haven't even touched him, or even really tried to touch him, on what benefit that he derived from doing that. What he's told you is, I understand it, and you correct me if I'm wrong, and I'll say this again, this is probably going to be the last time, what he's told you is, "I have, I have fears and I'm going to make sure that all these people who are sued, by you," and I [01:19:30] think he said there was 18 suits and maybe there aren't 18 pending, but there's been 18 in the past, or whatever, "I want to make sure that these people are covered, because I don't want them to be ruined."

I think he said it in the paper or words to that effect. And he said it, probably, three or four times here today. So, I'm going to again ask you, do you have any questions? I've asked you this before, you kind of acknowledged that you, you know where I'm coming from, then you go on to ask a question that has nothing to do with what I'm telling you. I'm only interested, right now, [01:20:00] in hearing testimony with respect to what financial benefit or emotional benefit or any type of benefit he derived from representing Moran, or having the city represent Moran, because that's what your complaints were, whether it's the licensure action or the underlying defamation case. Do you have any questions on that, because that's what we're here for?

Laurie Ortolano: I'm not going to get any answers that are going to take me there, because he's not going to admit to any of that. It's impossible. If, [01:20:30] those actions had been done by the three board members, the two Republicans and the Independent individual, would you cover their lawsuits?

James Donchess: Yes.

Laurie Ortolano: You say you would, right?

James Donchess: But you probably wouldn't sue them.

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Laurie Ortolano: I think my [inaudible 01:20:49]-

James Donchess: If you sued them, we'll cover them.

Laurie Ortolano: So, let me just bring this up. Are you covering the individuals that you talk about as individuals, because they're your personal [01:21:00] hires, your personal selections for committees, Democrats who are serving for you or special picks, like in the case of the art center, you bring up Mr. Lannan and Ms. Blaisdell, they're your close picks. Are you covering them, because they're your allies?

James Donchess: No.

Laurie Ortolano: But they are your allies, correct?

James Donchess: They are community volunteers. They are not acting on my behalf. They're not doing this for me. [01:21:30] They're not, they have a lot to do, yes, with making the performing arts center a success. They raised millions of dollars, and they continue to provide a lot of value in terms of supervising that facility. But, they're not doing that as a favor to me, they're doing it, because they believe it does [inaudible 01:21:57] in the community, and they believe that they're benefiting the city. And that's why [inaudible 01:21:59].

Laurie Ortolano: But, nonetheless, they are selected [01:22:00] and approved and recommended and brought to the board by you as volunteers. Correct?

James Donchess: I would say they raised a lot of money for the art center, and I did not appoint them to do that. They did that on their own and that they're not a city appointment, so.

Laurie Ortolano: That's just one function.

James Donchess: Well, [inaudible 01:22:27]-

Laurie Ortolano: The DIC appointments.

Lindsay Robinson: We're [inaudible 01:22:28] specifically on Mr. Moran and how he personally, the mayor, personally benefited from [01:22:30] the city covering the legal fees? So.

Laurie Ortolano: Well, I know, but it was raised that he covers everyone and, because he covers everyone, then covering Mr. Moran is just typical of what he does. I'm just pointing out that the people he covers, and the peoples he's naming, are people appointed by him to the committees that he brought them forward.

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Tim Bush, Chairman: What benefit do you think he derived from covering Mr. Moran in this complaint? Well, the licensure complaint, I believe filed by Mrs. Colquhoun and [01:23:00] what benefit do you think he derived?

Can I please correct one thing [inaudible 01:23:04] said? Because Mr. Moran is an Aldermen that's elected by the people of Nashua. Correct?

Laurie Ortolano: Yes.

David Tencza: He and the Board President is the one who, who assigns all the committees. The mayor has nothing to do with it. Do you agree with that?

Laurie Ortolano: The board what?

David Tencza: The Board President establishes the committees not the mayor.

Laurie Ortolano: Well, for volunteers, they're brought forward by the mayor. Correct? That's what I'm talking about.

David Tencza: But for this, [01:23:30] but for Mr. Moran's case that we're talking about, the alleged of ethics violations for [inaudible 01:23:38].

Laurie Ortolano: He's elected and then she does committee assignment. That is correct.

David Tencza: Okay.

Laurie Ortolano: What, derived benefit would he get in doing ... in covering somebody like Mr. Moran? He would have the benefit of continuing to harp on the same thing that he's harped on for five years, that Laurie Ortolano ruins this city. And here's another example, so [01:24:00] I'm going cover this lawsuit, because she creates so many problems for us. It's not that he's ever acknowledged the merit of my work or the wins, his presentation that, I win almost never, I feel, is not truthful. I feel I've won some very big cases. I feel I've done some very good work, and I feel it was all done to open records, which has been marginally successful in getting the city to open records.

The suits brought, were brought on [01:24:30] merit. When I addressed an assessing office that wasn't correct, it was tens of millions of dollars of problems. When we addressed an art center building that was involved private funding and we lost control of our records, it involved \$34 million. I've recently addressed trust funds. They involved \$70 million. It's not like I'm complaining about dog poop on the sidewalk, I'm going after, and looking at, more significant things. And I think one of the motivations of this mayor [01:25:00] is to bring not the ruin to people, but to me as an individual, because I've done this work. And

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he will cover anyone that Laurie Ortolano brings the case on, whether it's valid or not. And I think that's a motivation.

Tim Bush, Chairman: Okay. I think what we're, I think that's probably what he just said, which is that he's going to defend people against lawsuits you bring, because he doesn't want to have to have financial ruin. And the question for this committee is not really a policy one as to whether or not he [01:25:30] should do that, that's something you can litigate, and the elections come in November. What we're trying to figure out is if there's an ethical violation here, which frankly, I want to be candid with you before we even go into deliberations, I don't think you've met a burden. At least nothing I've heard so far. I'm just going to be straight up with you. We're both into transparency. We agree on that.

Laurie Ortolano: Yeah.

Tim Bush, Chairman: I want to be upfront with you.

Laura Colquhoun: Can I make a statement or?

Tim Bush, Chairman: Well, you can make a statement, Mrs. Colquhoun.

Laura Colquhoun: I'd like to say something, okay, because first of all-

Tim Bush, Chairman: Well, are you going to testify? [01:26:00] Or, well are you done with your presentation?

Laurie Ortolano: Yes.

Tim Bush, Chairman: Okay, so go ahead.

Laura Colquhoun: I'd like to speak, become my thing. Number one, I really,

Tim Bush, Chairman: Are, you going to be asking questions or are you just testifying?

Laura Colquhoun: I may ask a question or two.

Tim Bush, Chairman: Okay.

Laura Colquhoun: Because, number one, [inaudible 01:26:12], I'm not an attorney.

Tim Bush, Chairman: That's all right.

Laura Colquhoun: And I don't have the patience to put up with attorneys, but I'm going to do my best.

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Tim Bush, Chairman: Okay.

Laura Colquhoun: First of all, I get, I'm very upset with the mayor mentioning, you know, Lannan, and Blaisdell, and all these people. They were not rep they were not sued-

Tim Bush, Chairman: I'm going to stop.

Laura Colquhoun: It was [01:26:30] 201 Main Street. Hold on, let me finish. Okay? number two. When I filed my claim in October 2022. I did not find out until maybe a year ago, that the city paid for the ethics complaint against Mel Moran's license. Okay? I call, I did a right to know to Jennifer, from risk management, and asked her if she had checked with the insurance [01:27:00] company to see if the insurance company would pay. And she said they didn't.

PART 3 OF 4 ENDS [01:27:04]

Laura Colquhoun: company to see if the insurance company would pay. And she said they didn't bother to do that. Okay? You sit there and you say, "Oh, how did, had, you know, how did the mayor make out?" I don't know. You know, he gets these people that he wants their... Excuse my French, he wants them to kiss his ass, because I, I don't know if he's going to get a lunch at maybe, you know, The Surf or something like that. But is he getting benefits? Yes. That claim against that [inaudible 01:27:30] [01:27:30] Mel Morans Social Worker license should never have been paid by the city of Nashua. Stop, let me finish. Okay?

Tim Bush, Chairman: I'm going to stop you there. I'm going to stop you there, and I'm going to tell you why. I'm going to stop you because you're not, you're, you're not hearing what we're telling you. You are making a statement that you have a policy problem with the mayor. That the mayor should not make these payments on behalf of these people. That he should, that his goal is to just.

Laura Colquhoun: Yeah, but you're asking for us to get [01:28:00] something that we can't.

Tim Bush, Chairman: Oh, I

Laura Colquhoun: How are we going to find out what he's getting that, how the benefits are happening?

Tim Bush, Chairman: Look. You well, you're the one who said he, he's made an ethical violation. I think he's pretty clearly told you why he's doing this. You disagree with him? I under-

Laura Colquhoun: Yeah, because it's a social worker license.

Tim Bush, Chairman: I well

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Laura Colquhoun: It has nothing to do with the city. If he's that, if he's that strong about it, why doesn't he take it out of his pocket and not my tax payer dollars?

David Tencza: Well so you say, you say that it's a social worker's license. That's his livelihood, isn't it?

Laura Colquhoun: That's Mel Moran's license, yes.

David Tencza: [01:28:30] Right, right. So, when the mayor talks about, destroying somebody, taking away their livelihood is one way you can destroy them, correct?

Laura Colquhoun: Right.

David Tencza: Oh

Laura Colquhoun: But he's living in a million dollar home, so why... He doesn't have \$5,000?

Tim Bush, Chairman: Well, some of them, some of these-

David Tencza: That's not-

Tim Bush, Chairman: Some of these people may not be in that. The whole, the whole point is, as I understand it, you guys correct me if I'm wrong on what the, what the testimony has been here today. He doesn't want to have a city where elected employees... Excuse [01:29:00] me, elected officials, or employees of the city, or volunteers are essentially living under the threat of a lawsuit by either you guys or somebody else. Right?

You say, and Mrs. Ortolano has asked, asked a lot of questions about it. "Yeah. I, I get it. You can certainly defend the city with respect to, in your individual capacity, or working for the city. But he should have done it to you with Moran, because Moran [01:29:30] wasn't acting in his own, in his, capacity as an alderman."

But what either one of you has done, and you know, I think you've admitted it because you're saying he's a minor one.

Laura Colquhoun: He is.

Tim Bush, Chairman: You can't say that he's, he's done this to derive any benefit for himself. He's done this as the Chief Executive Officer of the city because his concern appears to be, to your point, that he's more concerned about you suing people than he is about paying [01:30:00] for the legal expenses. Because if you're showing people, he's worried about people not serving in these, in, in these capacities. People not serving these positions. And to him, that's a bigger threat than

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anything, that they may have done in their individual, in their capacity as, as an employee.

So you, you guys, you know, we're giving you a lot of leeway here, I think. And this is a very, this hearing should have been over a long time ago, but it's a very narrow issue as to [01:30:30] whether or not he committed any ethical violations. And you've admitted, "Hey, look, we're not going to be able to prove it because he's not going to admit to it."

Laura Colquhoun: No.

Tim Bush, Chairman: So, where, where do we go from here?

Laurie Ortolano: So, just to correct-

Attorney Pignatelli: I would say in response, they both told you they have no evidence. Now, if we were in a courtroom, I know some of the people in the panel are not lawyers. This is a motion for directive verdict. The whole hearing should end right now, because both of them admitted under oath, they have no evidence whatsoever on the key points [01:31:00] that you people have raised repeatedly, and that they put in their initial complaint against the mayor.

Laurie Ortolano: So-

John Fisher: I have to agree. Like I'm still waiting for that.

Laurie Ortolano: We, will never know what he gets and how he benefits. Okay? Let's face it.

John Fisher: That's the only thing I'm allowed to hear.

Laurie Ortolano: We

John Fisher: I'm not allowed to hear the rest of it.

Laurie Ortolano: We clearly thought that we had a, a right to review the policies and the decisions he made to make that decision. [01:31:30] When you said that our issue is policy and how he covers the suits for people, our issue is not on how he covers suits for people. It's this suit on Melbourne Moran's suit.

Tim Bush, Chairman: Well, that just contradicts what she just said. because she said he shouldn't have paid for his, the licensure people.

Laurie Ortolano: Well, this suit and the licensure one.

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Tim Bush, Chairman: But you don't think you should have paid for, for, and I don't want to go too far down this road, but you're not comfortable with the fact that they paid for, [01:32:00] attorney Bolton's ethics fees. Right?

Laurie Ortolano: Well, he's an, he's an employee. So I say-

Tim Bush, Chairman: All right.

Laurie Ortolano: Well no, you know what? There, is in 331105, there is a case to be made, and I gave you case law, that licensing disciplinary or ethics claims are covered by the individual. Your rules here, if you come to the Ethics Committee with a complaint, you pay your own fees because that's derived out of 31105. You [01:32:30] pay your own fees.

I think when they wrote that, they followed the statute and the municipal, New Hampshire Municipal Association, which I gave you an article on that, clearly states you don't indemnify. If it's intentional, cities don't pay those fees for intentional courts. And you must go to the Board of Aldermen and have it approved by the board on, have, get an approval, a blanket approval on 31105 for [01:33:00] unintentional acts that happened.

There's, so that's the difference. So, I think there's a case to be made that the \$12,000 that Russ Hilliard was paid to cover claims up at the PCC should not have been paid by the taxpayers.

Tim Bush, Chairman: Okay. So when.

James Donchess: May I address this one?

Tim Bush, Chairman: Certainly.

James Donchess: At least 10, maybe 12 complaints against people like Steve Bolton with professional conduct by Ms. Ortolano and/or, Ms. Colquhoun, all have been dismissed.

Laura Colquhoun: Attorneys protect attorneys.

James Donchess: None of which, [01:33:30] none of, none of them have had any validity. Three or four against two, three or four. I mean, only Ms. Ortolano really knows, but two, three or four against Celia Leonard, assistant to the attorney; all, those have all been dismissed. There might have been one against Brian Cullen, another lawyer for the city; that's dismissed.

My point is, [01:34:00] if they were required to pay to defend themselves against frivolous, you know, PCC complaints, I mean, we wouldn't have city

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attorneys either. So, we defend the people so that, we defend the people so that they will continue to want to be in their positions and serve the community.

Laurie Ortolano: That to me is absurd because when attorneys are sued in private practice, they have to pay for their defense when [01:34:30] they go up to the PCC. It's.

Tim Bush, Chairman: It could be covered under your, your malpractice.

Laurie Ortolano: Well, it, right. Well, that's what I'm saying. If they have error, an admission or, or a malpractice suit, they could have it covered under insurance, which is what the city lawyer should have done. Used your policy.

Tim Bush, Chairman: With respect to your complaint, both of your complaints, I'll ask you both. have you submitted your evidence with respect to the ethical complaints? Have you, are you going to rest with respect to your complaints against the mayor?

Laurie Ortolano: Yes, and I understand the [01:35:00] motion made by Attorney Pignatelli on just ruling on this right now and taking it off the table because the burden is with them to show that there was favoritism.

Tim Bush, Chairman: Do you agree with that?

Laurie Ortolano: Go for it, because you don't feel it was justified. You didn't look.

Tim Bush, Chairman: But do you agree with that?

Laurie Ortolano: No, I don't. Because I think, I looked at this whole hearing in a different way, on a mayor with 40 years of experience as an attorney making decisions. And to me, he should be making decisions under [01:35:30] matter of fact and law, particularly the policies of the city and the ordinance of the city. And he said, "I'm going to throw that all away and I'm going to do this because I don't want Laurie ruining people's lives."

And I don't think that's right. And I don't think that's ethical. And I don't think to have a blanket rule like that in the city is proper because it says that one individual like me is responsible for creating all of this, and forever, this is what the city will do. I don't think that's right. [01:36:00] I don't think that's proper for taxpayer money.

So, I think you did not give me the proper rights we should have had to use this kind of evidence to show that there was potential favoritism here, by throwing all the rules out and ignoring them. Particularly when the mayor is an attorney.

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And he really didn't come prepared. And, you know, the whole setup of this ethics committee is kind of a kangaroo hearing because you don't bring your evidence in sooner. [01:36:30] You don't present anything. You don't give a memorandum of law. You can call witnesses, but they, I wrote [inaudible 01:36:38] for Moran to be a witness and, and the mayor; nobody acknowledged it. I never got confirmation they were even coming. You don't even know if they're bringing a lawyer.

This is so non-administrative, as far as an administrative hearing goes, that it's ridiculous to me. So, part of the confusion that you feel we brought to the table is done because you, as a committee, [01:37:00] don't have very many rules at all.

Tim Bush, Chairman: That's correct. The, the, well, the, but the rules are laid out in 12-32 with respect to the rules of procedure. As you know, the respondent doesn't even have to appear, specifically under the rules. There are no rules with respect to whether or not exhibits have to be presented ahead of time. There are some rules that, with respect to, it should go by the rules of evidence.

And I'll tell you, here, I think frankly we've been [01:37:30] very liberal with respect to the questions that have been asked, by you that weren't really germane to the complaint. And we let that go on at length.

And I understand your frustration with the committee. You've expressed in other hearings. But this is a limited committee without subpoena power. And you keep telling me, "I want you to give us subpoena power." That's an issue for the Board of Aldermen. Our rules are laid out, and the four of us, and I can speak for Mr. Wiseman, whatever it is that we [01:38:00] can do, we follow here to a T.

Laurie Ortolano: You get to change the rules.

Tim Bush, Chairman: I don't get

Laurie Ortolano: The first hearing said you can amend the rules, which is what I pointed out to you. Since you can amend the rules, you amended the rules and decided that when you hold the initial hearing on the complaint, the meetings were, the minutes were no longer going to be verbatim.

Tim Bush, Chairman: You, can't amend the rules that allow subpoena power.

Laurie Ortolano: So maybe that's one.

Tim Bush, Chairman: I would listen. What I would suggest to you, Mrs. Ortolano, I think you gave a very effective presentation. You're clearly organized. [01:38:30] I don't have any

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problem with that. The problem you had is not a failure of your advocacy, advocacy, whether you would fail as a lawyer.

I think anybody up here on the Ethics Review Committee, whoever you pick, if you pick five citizens at random, and they're going to come to the same conclusion. With respect to the limited jurisdiction that this Ethics Committee has, you simply didn't meet your burden. Not because the committee didn't allow you to present your evidence, but you didn't have evidence that he derived any [01:39:00] benefit from his decision to have the city represent Alderman Moran or pay for his legal fees, either with respect of a licensure complaint or with respect to the defamation claim.

That, that's my opinion. I don't know if everyone agrees, I don't know if we want to vote or if we, I guess I'll ask Attorney Sullivan.

Laura Colquhoun: Can I make one more statement? I, I expected whatever happened tonight, that's exactly what I expected.

Tim Bush, Chairman: Okay.

Laura Colquhoun: [01:39:30] Okay? I expected nothing more, nothing less. The Mayor Donchess, I feel, is a very corrupt person and I.

Tim Bush, Chairman: Okay. I'm going to stop you.

Laura Colquhoun: Wait a second.

Tim Bush, Chairman: No, I'm.

Laura Colquhoun: And I feel like everything that happens in this city is corrupt.

Tim Bush, Chairman: Listen, I'm-

Laura Colquhoun: And we just have to wait until we get a new mayor.

Tim Bush, Chairman: I'm going to stop you there. I'm going to stop you.

Laura Colquhoun: Oh, I already stopped.

Tim Bush, Chairman: Good. Okay. So, so Attorney Sullivan, with respect to, we have 30 days under 12-34 to is- issue a written opinion. [01:40:00] Um-

Laura Colquhoun: Why bother?

Laurie Ortolano: They have to do it.

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Laura Colquhoun: Why?

Tim Bush, Chairman: So, the committee should report findings and recommendations in a written report mailed not later than 30 days after the conclusion of the hearing, to the Mayor, the Board of Aldermen and respective employer, board, commission, or agency. The report shall contain a copy of the complaint. Copy of the committee's report should be sent to each party by certified mail.

Then we shall report, should file this report with the city clerk for archiving.
[01:40:30] The committee's recommendation shall be advisory and shall not bind the Mayor, Board of Aldermen or other boards, commissions, agency, or officials who may take such actions on the committee's findings and recommendations as authorized by law.

Given the fact that I think we have to reduce this to writing procedurally, is the way to do this to suspend, uh, this meeting or is, or you tell me.

Robert Sullivan: Since it's possible, it might take you, [01:41:00] more than the 30 days to complete review of all the evidence you, you've received and to write as a group, an opinion addressing all of these issues. One option is that you do not close the hearing today. Therefore, the 30 days doesn't begin running today.

Tim Bush, Chairman: So, but with respect to the extent that we wouldn't deliberate as a group, and, [01:41:30] and mindful of doing that in compliance with 91-A and all other transparency, do we schedule a meeting?

Robert Sullivan: Right. The main effect of R.S.A 91-A starting right now is that you can only make a decision in a meeting. It can't be made otherwise.

Tim Bush, Chairman: Okay. So is it, I guess I'll throw this over to the committee. The question is, do we want to have another meeting?

Robert Sullivan: [01:42:00] unless you.

John Fisher: Hey, we, we could deliberate openly right now and decide this matter, right? And then if we're not sticking around tonight, to wordsmith this properly, that would be the second meeting and that would have to be within 30 days?

Is that, I don't think it's fair to, I don't think it's fair to talk about this and bring everybody back another time. Maybe [01:42:30] my fellow members feel differently. Like, I feel comfortable making my decision about this now, and then I just going to figure out the right way in the proper forum to put it down and write it.

Tim Bush, Chairman: Right.

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John Fisher: I don't want to be just like, a smokey back room [inaudible 01:42:47] where we're going, sit down and, scribe something, without having spoken about it publicly. What, do you understand my question, counsel?

Robert Sullivan: I think I do. And it is possible that you [01:43:00] could make your decision tonight.

Tim Bush, Chairman: Well, if we're going to make a decision, to the extent we've been able to, think this committee all feels like we'd like to do everything as much in open as possible. I think we owe that to [inaudible 01:43:13]. I understand sometimes we have to deliberate. I think we did that with respect to your complaint and we were able to keep those reputations on whatever is under 91-A. So to the extent we have to do it, we do it. But I think, I don't want keep everyone here long. I don't want to get into this, but you know, we can, I don't think we necessarily need [01:43:30] to deliberate that long, but we can certainly do it here.

Is it the committee's view that we should deliberate in public or in private tonight? Or do we want to talk about that with you in a non-private, non-public session? As to whether or not we deliberate in public or private?

Robert Sullivan: Either option is available to you.

Tim Bush, Chairman: Do we want to go in non-public to decide whether or not we deliver in public or private?

David Tencza: No, I'm not sure that there's, there's a reason to choose to do that.

Tim Bush, Chairman: Okay.

David Tencza: I my opinion is given we have this and, I mean, I would prefer to suspend the meeting. [inaudible 01:43:55] Come back. Only, only because take a look at all these materials and so I would do a, um, [01:44:00] memorandum of law that I'd want to take a look at.

Again, I'm not sure, to be quite frank, Ms. Ortolano, that it's going to affect the evidence that you presented tonight. [01:44:30] but I think that's the proper point to do it.

Attorney Pignatelli: If I may, the only thing I would ask is that the evidence be closed as of now, and you deliberate it any way you want and come to your ruling and set it up. But we don't want to reopen the evidence later on.

Tim Bush, Chairman: You have rested, correct. You're not going to present evidence?

Attorney Pignatelli: We rested.

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Tim Bush, Chairman: Okay.

David Tencza: [01:45:00] So that, Mr. Chairman, I make a motion to close the evidence then.

John Fisher: I second.

Tim Bush, Chairman: All in favor?

Group: Aye. Aye.

Tim Bush, Chairman: So, the evidence is closed.

Robert Sullivan: But the meeting.

Tim Bush, Chairman: So again, I

Robert Sullivan: The meeting is now terminated.

Tim Bush, Chairman: The meeting is now terminated. So, we need to adjourn, basically for the purposes that we're going to come back for the purposes to review the exhibits and to further deliberate, whether that's in public or not.

Robert Sullivan: Right. The Committee can only make decisions in meetings.

Tim Bush, Chairman: Understood.

John Fisher: Can I ask a question? So, something that wasn't covered tonight, it wasn't asked, but because you were given [01:45:30] this now there's something's in here that we would then say, Oh, oh gosh.

Tim Bush, Chairman: It's an exhibit.

Robert Sullivan: That document is clearly in front of you.

Tim Bush, Chairman: It's evidence.

John Fisher: Correct me, and I'm trying to wonder, I was wondering where you were going with the book piece.

Tim Bush, Chairman: Yes, it's evidence.

John Fisher: All right. All right.

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Tim Bush, Chairman: Do we need to set a meeting then? And just so we're all clear, there's going to be no more evidence. This is basically to come back and deliberate, right?

Davis Tencza: [01:46:00] Attorney Sullivan, just a question. Once, once we deliberate, we don't have to generate the document in that meeting, do we?

Robert Sullivan: I think there's more than one way to accomplish the production of the document. One of which is, you can produce the document as a joint effort yourself, in, in which case you would have to have some kind of meeting in which you all said, "Yes, we agree. This is the document."

Another way to produce a document, however, would be [01:46:30] to determine, to make your determination. Determine now what the primary points you wish to make are, in your opinion. And then assign to someone the writing of that opinion. That would be your opinion. And in which case you would not necessarily need another meeting that, for the opinion to be forwarded along to the board of Alderman.

Tim Bush, Chairman: So, if the meeting is open and we're going to another meeting, is it [01:47:00] 30 days from the subsequent meeting that we have to write the opinion or is it 30 days from today?

Robert Sullivan: It's 30 days from the close of the, of your meeting, which it is not tonight.

Tim Bush, Chairman: Okay.

Robert Sullivan: It's whatever day you determine is.

David Tencza: Well, I, so I, it, correct me if I'm wrong, I mean we can still, generate a document and circulate it by, uh, email for people to review. And that is subject, I would like to know, so everyone, you know, if [01:47:30] your request for you want to be able to see what the discussions are.

Robert Sullivan: Draft, draft documents are not public records.

David Tencza: Right. Are not public records.

Robert Sullivan: Not public records.

David Tencza: Okay. But how about our emails discussions back and forth with changes?

Robert Sullivan: If the email conveys a draft document for purposes of reaching a final document, it would, would be a public record. The draft documents are not public record.

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Tim Bush, Chairman: So how, [01:48:00] I guess we can talk about it later, but we, you know, going to issue a written opinion. We don't want to, we don't want to do this in violation of 91-A or anything else. How do we, how do we do that? Because.

Robert Sullivan: There are at least two different ways.

Tim Bush, Chairman: Yeah.

Robert Sullivan: One is, you have a meeting, another meeting-

Tim Bush, Chairman: Yep.

Robert Sullivan: Which produces the final report.

Tim Bush, Chairman: Okay.

Robert Sullivan: The second is, you, as I said, the committee assigns somebody, to write the final report, but gives [01:48:30] them a, you know, pretty good, close idea of what the committee wants to see in that final report. Then the meeting just, then the committee just meets to approve that.

Tim Bush, Chairman: And if we want to review the audio of the hearing, is that a problem?

Robert Sullivan: No, that is not, not a problem. That audio is public record right this second.

Tim Bush, Chairman: Okay.

Robert Sullivan: Anybody can listen to it, that wants to.

Tim Bush, Chairman: Okay. And would we have to do anything to have that transcribed?

Robert Sullivan: [01:49:00] It is not necessarily that it be transcribed right now.

Tim Bush, Chairman: But will we have to, will we have to do anything to have it transcribed?

Robert Sullivan: Well, one.

Tim Bush, Chairman: If we wanted to have it transcribed to cite verbatim testimony,

Robert Sullivan: You, could. It's public record right now.

Tim Bush, Chairman: Okay. Do we need to do some type of motion or do we just tell the, ask the city we want it transcribed? We'll obviously provide copies to the plaintiffs.

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Robert Sullivan: Not, it's not necessary that if there'd be a motion made. The only [01:49:30] thing that's really necessary is that somebody in the city administration determine how they're going to get this thing transcribed.

Tim Bush, Chairman: And how long do you think that would take to have it transcribed?

Gary Perrin: My experience with this committee is it turns around within one day, one to two days tops.

Tim Bush, Chairman: It would be transcribed?

Gary Perrin: I will send it out to our transcribing vendor the first thing in the morning, it's part of my daily duties. They generally turn it around within one or two business days.

Tim Bush, Chairman: Okay. Alright. If you could do that, that'd be terrific because then we have that for the purposes. I [01:50:00] want to thank everyone for coming tonight appreciate it. I know all the [inaudible 01:50:09]. appreciate everyone being here.

Robert Sullivan: The, the one last point. As of right now, this meeting's been adjourned to an uncertain date. You could.

John Fisher: Yeah. We should pick a date now.

Tim Bush, Chairman: Pick a date.

John Fisher: May I? I'll pore over this, this weekend.

Tim Bush, Chairman: Yeah.

John Fisher: [inaudible 01:50:32]. [01:50:30] Frankly, I just don't, I don't mean to overshare, but.

Tim Bush, Chairman: Right.

John Fisher: My son, the pilot is getting back with the aircraft carrier at end of April, and I do not want to miss him coming in on that aircraft carrier.

Tim Bush, Chairman: How about a week from tonight?

John Fisher: A week from tonight? I will be more than happy to be here.

Tim Bush, Chairman: Is that good for everybody?

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James Donchess: Yes.

Tim Bush, Chairman: Yes?

Gary Perrin: Mr., Mr. Chairman, keep in mind the, the 20th, this room will be held by planning board [01:51:00].

Tim Bush, Chairman: I don't think we need a large room to deliberate.

Gary Perrin: So, you're comfortable with room 208?

Tim Bush, Chairman: You can set us up in a closet.

Gary Perrin: Yes, sir.

Tim Bush, Chairman: No problem. Is that good for you? A week from tonight?

Robert Sullivan: The location needs to be published 24 hours in advance in two public places.

Tim Bush, Chairman: Okay.

Gary Perrin: I will.

Tim Bush, Chairman: Feel confident we'll have the spot?

Gary Perrin: I feel confident.

Tim Bush, Chairman: All right.

Tim Bush, Chairman: So, I move to adjourn. All in favor?

Group: Aye

PART 4 OF 4 ENDS [01:52:13]

NOTICE OF MEETING

In accordance with the requirements of NH RSA 91-A:2, II

THE Ethics Review Committee

WILL MEET ON

March 13, 2025

AT

6:30 PM

LOCATION

**City Hall Auditorium, 3rd Floor
229 Main Street, Nashua NH 03061**

The meeting may include a nonpublic session

THE LOCATION OF THIS NOTICE IS POSTED:

Date of Posting:

☒ City Hall Bulletin Board (Elm Street/Rear Entry)	<u>2/19/2024</u>
☒ Nashua Public Library Bulletin Board	<u>2/19/2024</u>
☐ OTHER:	
☒ Website: https://nashuanh.portal.civicclerk.com/	<u>2/19/2024</u>

AFFIDAVIT OF POSTING

I, Gary Perrin, the Records Administrator, of the Administrative Services Division
hereby certify that on this month number 2, day 19, 2025, the attached Notice of Meeting was posted
in the two places indicated on the notice, including an internet website, in accordance with the
requirements of NH RSA 91-A:2, II.