

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

ADAM PAUL,)	
)	
Plaintiff,)	
)	
vs.)	Case 13SL-CC00699
)	Div. 33
)	
THE CITY OF ELLISVILLE,)	
MISSOURI, et al.,)	
)	
Defendants.)	

VOLUME I

THE DEPOSITION OF PAUL MARTIN

Taken on behalf of Plaintiff

March 20, 2013

Jo Ann Sturm, RPR, CSR, CCR
REGISTERED PROFESSIONAL REPORTER
ILLINOIS CSR NUMBER: 084-002267
MISSOURI CCR NUMBER: 716

STURM REPORTING SERVICES, INC.
2144 Gray Avenue
St. Louis, Missouri 63117
(314) 645-8777

1 INDEX OF EXHIBITS

2

3 Exhibit 16
Written communication

4

5 Exhibit 26
Written communication

6 Exhibit 352
Petition

7

8 Exhibit 471
Bills from 5/25/12

9 Exhibit 580
Unidentified document

10

11 Exhibit 680
Unidentified document

12 Exhibit 781
Unidentified document

13

14 Exhibit 882
Unidentified document

15 Exhibit 983
Billings

16

17 Exhibit 1084
Unidentified document

18 Exhibit 1196
Document

19

20 Exhibit 1296
Document

21 Exhibit 1396
Document

22

23 Exhibit 14132
City Charter

24 Exhibit 15133
Chapter 145

25

1 IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

2

3

4 ADAM PAUL,)
)

5 Plaintiff,)
)

6 vs.) Case 13SL-CC00699
) Div. 33

7)
)

8 THE CITY OF ELLISVILLE,)
MISSOURI, et al.,)

9)
Defendants.)

10

11

12

13

14 THE DEPOSITION OF PAUL MARTIN, produced,
sworn, and examined on behalf of the Plaintiff, on
15 March 20, 2013, between the hours of 10:22 a.m. and
4:27 p.m. on that day, at the law offices of Curtis,
Heinz, Garrett & O'Keefe, P.C., 130 South Bemiston,
Suite 200, Clayton, Missouri 63105, before JO ANN
16 STURM, a Registered Professional Reporter, an Illinois
Certified Shorthand Reporter and a Certified Court
Reporter within and for the County of St. Louis, State
17 of Missouri.

18

19

20

21

22

23

24

25

1

2 Exhibit 16135
Katie James Complaint

3

4 Exhibit 17136
Document

5 Exhibit 18137
Draft Preliminary Resolution

6

7 Exhibit 19137
First Amendment

8

9 The original exhibits were retained by Mr.
10 Pleban.

11 INDEX OF EXAMINATION

12

13 DEPONENT PAUL MARTIN

14

15 Direct Examination By Mr. Pleban9

16

17

18

19

20

21

22

23

24

25

1 APPEARANCES

2

3 The Plaintiff, ADAM PAUL, was
represented by Mr. C. John Pleban of the law firm of
4 Pleban & Petruska, LLC, 2010 South Big Bend Boulevard,
St. Louis, Missouri 63117.

5 The Defendants, THE CITY OF ELLISVILLE,
MISSOURI, et al., were represented by Mr. J. Patrick
6 Chassaing of the law firm of Curtis, Heinz, Garrett &
O'Keefe, P.C., 130 South Bemiston, Suite 200, Clayton,
7 Missouri 63105.

8

9

10 Also Present: Mr. John Maupin and Mr. Kevin
Bookout

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 IT IS HEREBY STIPULATED AND AGREED by and
2 between counsel for the Plaintiff and counsel for the
3 Defendants that the deposition of PAUL MARTIN may be
4 taken in shorthand by Jo Ann Sturm, a Certified Court
5 Reporter, and afterwards transcribed into typewriting,
6 and the signature of the witness is waived by
7 agreement of counsel and the witness.

8 * * * * *

9 (Exhibits 1 and 2 were marked for
10 identification.)

11 MR. PLEBAN: Before we begin, let me
12 identify who's all present here this morning. In
13 addition to Paul Martin, who is to be deposed, his
14 attorney, Pat Chassaing, is here as well, along with
15 Mr. Bookout; is that correct?

16 MR. BOOKOUT: That's correct.

17 MR. PLEBAN: And John Maupin as well as
18 Mayor Paul and myself.

19 MR. CHASSAING: I'd like to take issue with
20 what you said. I represent the City. I'm not
21 Mr. Martin's attorney.

22 MR. PLEBAN: John, what exactly is your role
23 to be here?

24 MR. MAUPIN: I've been appointed the hearing
25 officer, but also been appointed to serve as the

1 attorney for the individual council members so I'm
2 here observing the deposition of City employees, and I
3 will also advise the council members of any of their
4 depositions taken.

5 MR. PLEBAN: So you're acting here today as
6 both the hearing officer and a representative of the
7 council?

8 MR. MAUPIN: No, not as a hearing officer
9 today. No. Representative for the council members.
10 I won't make any rulings on any evidence. I won't
11 involve myself in that at all.

12 MR. PLEBAN: All right. And Bookout is here
13 for what reason?

14 MR. CHASSAING: He is a representative of
15 the City.

16 MR. PLEBAN: And we would object on the
17 record to the presence of both Mr. Maupin, as well as
18 Mr. Bookout. Mr. Bookout, particularly, because I
19 suppose there are other people who can represent the
20 City's interest other than this gentleman whose
21 deposition will be taken sometime later today or
22 sometime in connection with this proceeding.

23 As far as the presence of Mr. Maupin, I
24 think it's difficult, if not impossible, to wear two
25 hats under the circumstances, particularly since one

1 or more of the council individuals will, in fact, be
2 called as witnesses during the course of this
3 proceeding.

4 So for those reasons and perhaps others that
5 we will supplement based upon the information that we
6 are slowly receiving from the City, we are objecting
7 to the presence of those individuals on this record.

8 Anybody else want to say anything?

9 MR. CHASSAING: No.

10 MR. PLEBAN: John, do you want to say
11 something?

12 MR. MAUPIN: No.

13 MR. PLEBAN: I just want to give you guys a
14 chance. That's all. And we have marked what John has
15 provided to us this morning as Exhibit 1 and Exhibit
16 2, representing the only written communications, I
17 suppose, that you have received from the City of
18 Ellisville in connection with your appointments
19 regarding this particular proceeding; is that correct?

20 MR. MAUPIN: That's correct.

21 MR. PLEBAN: And there are no others, right?

22 MR. MAUPIN: None.

23 * * * * *

24 PAUL MARTIN,
25 of lawful age, being produced, sworn, and examined on

1 the part of the Plaintiff, and after responding "I do"
2 to the oath administered by the court reporter,
3 deposes and says:

4 * * *

5 DIRECT EXAMINATION
6 BY MR. PLEBAN

7 **Q Tell us your name for the record, please,**
8 **sir.**

9 A Paul Martin.

10 **Q Where do you reside?**

11 A 247010 Clarjon, C-L-A-R-J-O-N, Drive,
12 Ballwin, Missouri.

13 **Q And you're a lawyer; is that correct?**

14 A Yes, sir.

15 **Q When were you licensed?**

16 A I believe it was 1984.

17 **Q And that's the State of Missouri?**

18 A Yes.

19 **Q Are you licensed in any other state?**

20 A Illinois.

21 **Q When was that?**

22 A Probably 1985.

23 **Q And you practiced law continuously since**
24 **1984?**

25 A Yes.

1 **Q What was your employment in 1984?**
 2 A 1984, I was a clerk to then Chief Justice of
 3 Missouri Supreme Court Albert Renlin.
 4 **Q For how long?**
 5 A That was a year.
 6 **Q One year?**
 7 A Yeah.
 8 **Q And then after that, 1985?**
 9 A Then I went to Gray & Ritter, personal
 10 injury firm downtown. Worked for them approximately
 11 two and a half years.
 12 **Q And after that?**
 13 A Moved to Evans & Dixon and worked for them
 14 for approximately a year, I believe.
 15 **Q And after that?**
 16 A My memory's a little foggy. I believe after
 17 that I went to the City Counselor's Office, St. Louis
 18 City Counselor's Office.
 19 **Q How long were you there?**
 20 A In the capacity as an employee and special
 21 counsel, I believe it was three or four years.
 22 **Q You said in your capacity as --**
 23 A An employee.
 24 **Q Employee being?**
 25 A Associate.

1 A I really don't know.
 2 **Q Approximately how many years?**
 3 A I think it was probably here about seven
 4 years, too. No, more than that. Probably like ten.
 5 I know these numbers aren't adding up.
 6 **Q I realize they're approximate, that's fine.**
 7 A Yeah.
 8 **Q And then after that, where did you go?**
 9 A Overland office. That was August of 2008.
 10 **Q And when you say Curtis, Heinz, Garrett &**
 11 **Soule, you say this office, you're talking about the**
 12 **office that -- in which Keith Cheung is currently**
 13 **employed; is that correct?**
 14 A Yes.
 15 **Q And when you were here for however many**
 16 **years it was, and by "here," I mean with Curtis,**
 17 **Heinz, Garrett & Soule?**
 18 MR. CHASSAING: Can we go off the record a
 19 minute?
 20 (Discussion off the record.)
 21 BY MR. PLEBAN
 22 **Q When you first came to Curtis Heinz, do you**
 23 **recall what the name of the firm was then?**
 24 A Curtis, Oetting, Heinz, Garrett & Soule.
 25 **Q And then over the course of your employment**

1 **Q Associate counselor?**
 2 A Yes, assistant city counselor.
 3 **Q And you said special counsel?**
 4 A Yes.
 5 **Q For what?**
 6 A City had a program whereby they were
 7 providing defense counsel to child abuse proceedings
 8 in the juvenile court. Now, that's not exactly right.
 9 That's not right. I was doing collection work for the
 10 City.
 11 **Q Did you do that while you were an employee,**
 12 **or is that after you left as an employee?**
 13 A I left as an employee. That was as an
 14 independent contractor.
 15 **Q And then after that?**
 16 A This office. Well, no, I'm sorry, Utoff,
 17 Graber, Bobinette & O'Keefe.
 18 **Q And how long were you with them?**
 19 A Approximately seven years.
 20 **Q Then after that?**
 21 A This office, Curtis, Heinz and Curtis,
 22 Heinz, Garrett & Soule.
 23 **Q How long were you with them?**
 24 A Until 2008.
 25 **Q From what year to what year?**

1 **with that firm, the named partners changed from time**
 2 **to time?**
 3 A Yes.
 4 **Q Is that correct?**
 5 A That's correct.
 6 **Q And during the period of time that you were**
 7 **with this firm, and by "this firm," I'm talking about**
 8 **where we are this morning taking your deposition, is**
 9 **whatever the name of it is now, was Keith Cheung**
 10 **employed by that firm?**
 11 A Yes.
 12 **Q And for the entire time that you were**
 13 **employed by the firm, was Keith Cheung employed by the**
 14 **Curtis, Oetting, later Curtis Heinz --**
 15 A Yes.
 16 **Q -- Garrett & O'Keefe?**
 17 A Yes.
 18 **Q And did you have occasion to work on matters**
 19 **with Keith Cheung from time to time?**
 20 A I'm sure I did. I can't recall anything
 21 specifically.
 22 **Q And Mr. Chassaing, who is here this morning,**
 23 **was he employed by that same firm at all times**
 24 **material?**
 25 A Yes.

1 **Q And did you likewise have occasion to work**
 2 **with him?**
 3 A Yes.
 4 **Q How about John Maupin, have you ever had a**
 5 **professional relationship with John Maupin?**
 6 A Not really. When I became the Ellisville
 7 city attorney, John was handling a condemnation case,
 8 I believe, for the City, and I ended up taking over
 9 that litigation.
 10 So to the extent that we had a transfer of
 11 information, whatever happened at that particular
 12 time, that was the extent of it.
 13 **Q Back up then. You said, and I didn't**
 14 **understand your first part, when you became city**
 15 **attorney, is that what you said?**
 16 A Yes, for Ellisville.
 17 **Q That was what year?**
 18 A I think it was 2004.
 19 **Q All right. And in 2004 -- who was your**
 20 **predecessor as city attorney, by the way?**
 21 A It would have been Don Anderson.
 22 **Q And in 2004, at that point in time, you**
 23 **indicated that John Maupin was handling a matter for**
 24 **the City?**
 25 A Yes.

1 **Q Have you had any other professional dealings**
 2 **with him?**
 3 A I believe I've run into him down at the lake
 4 at a professional conference. Beyond that, nothing.
 5 **Q In your capacity as the city attorney and**
 6 **his capacity as the city attorney for Ladue?**
 7 A Not that I recall.
 8 **Q What kind of things did you run into?**
 9 A I'm sorry?
 10 **Q What kind of events did you run into him at**
 11 **the lake?**
 12 A I believe that was a Missouri Municipal
 13 Attorney's Conference. I don't even know if he was
 14 going to the conference, but that's why I was there,
 15 and I think I ran into him.
 16 **Q Have you ever had occasion to socialize with**
 17 **John?**
 18 A No.
 19 **Q Have you had occasion to socialize with**
 20 **Keith Cheung?**
 21 A When I was here, we had firm events that I
 22 guess could be characterized as social. I've never
 23 gone out with Keith. I went to his party celebrating,
 24 I think, his wife's cancer remission.
 25 **Q Do you recall when that was?**

1 **Q What kind of a matter was it that he was**
 2 **handling for the City of Ellisville?**
 3 A I don't really recall. It was some kind of
 4 litigation. Some kind of either condemnation file or
 5 a land use dispute of some sort.
 6 **Q Was he handling that matter as special**
 7 **counsel?**
 8 A Yes.
 9 **Q And you said then when you became the city**
 10 **attorney, you took that matter over?**
 11 A Yes.
 12 **Q So John withdrew in whatever form was**
 13 **necessary to withdraw, and then you entered an**
 14 **appearance; is that correct?**
 15 A Correct.
 16 **Q So your contact with John during that period**
 17 **of time -- that would have been in 2004 sometime?**
 18 A I believe so.
 19 **Q Your contact with him was minimal; is that a**
 20 **fair statement?**
 21 A Yes.
 22 **Q And so he brought you up to speed, I guess,**
 23 **on the condemnation case or whatever case he was**
 24 **handling?**
 25 A Whatever case it was, yes.

1 A I really don't. I would guess about four
 2 years ago.
 3 **Q Have you ever had occasion to socialize with**
 4 **anybody else in the Curtis, Heinz, Garrett & O'Keefe**
 5 **firm?**
 6 A Outside the firm functions, I don't believe
 7 so.
 8 **Q I'm primarily talking about since you've**
 9 **left?**
 10 A No.
 11 **Q You recommended the appointment of John**
 12 **Maupin and Keith Cheung to serve as counsel in**
 13 **connection with the preliminary resolution concerning**
 14 **the removal of Mayor Adam Paul; is that correct?**
 15 A Oh, yes, sure.
 16 **Q And I'm assuming that you made contact with**
 17 **him telephonically, each of them?**
 18 A Yes.
 19 **Q Let's talk about Keith Cheung first. When**
 20 **did you first call him about this?**
 21 A I'm not sure of a specific date.
 22 **Q Approximately?**
 23 A I think it would have been February 8th,
 24 maybe.
 25 **Q Of 2013, I'm assuming?**

1 A Yes. It could have been the next week. I
 2 really don't remember.
 3 **Q And what was that conversation?**
 4 A I explained what the situation was, what I
 5 anticipated what was going to happen, was asking if he
 6 was interested in taking on the role.
 7 **Q What did you tell him you anticipated was**
 8 **going to happen?**
 9 A I told him that I anticipated the council
 10 was going to pass a removal resolution and was going
 11 to proceed from there.
 12 **Q You have to keep up your voice. You told**
 13 **him that you anticipated that the council was going to**
 14 **pass a resolution to remove the mayor?**
 15 A Yes.
 16 **Q Did you tell him any more information other**
 17 **than you anticipated that removal?**
 18 A No.
 19 **Q What did you ask him to do?**
 20 A I asked him if he was interested and if he
 21 was willing to take on the role of the special
 22 prosecutor.
 23 **Q What did O'Keefe say?**
 24 A He said he would have to check with the firm
 25 and get back to me.

1 felt like they could go ahead.
 2 **Q And did he ask you for any more details?**
 3 MR. CHASSAING: Let's get a point of order
 4 clarified on this. I think at some point in time --
 5 well, there's some debate in the legal community when
 6 an attorney/client relationship begins. I think it's
 7 clear that it definitely began when the council
 8 approved his retention, okay, but I also am concerned
 9 that it might begin even sooner than that when someone
 10 on behalf of the City is talking to an attorney about
 11 an engagement, and I don't want to have you come back
 12 later and say I've waived the attorney/client
 13 privilege as it relates to Mr. Cheung.
 14 So I'm going to make a record objection to
 15 further conversations about any details of the
 16 communications between Mr. Martin and Mr. Cheung.
 17 MR. PLEBAN: And for the record, my position
 18 would be that ship sailed because there was a waiver,
 19 a post conversation, post this conversation as is
 20 reflected in the Murray motion and ultimate passage,
 21 which we've discussed a couple of days ago.
 22 MR. CHASSAING: But that waiver we discussed
 23 a couple of days ago was a waiver as to the city
 24 attorney, Mr. Martin, and not as to Mr. Cheung, and if
 25 that were to have been that expansive, I think it

1 **Q Did he ask any questions about the removal**
 2 **process?**
 3 A Could have. I don't remember.
 4 **Q Did you have occasion to take any notes with**
 5 **respect to your conversation?**
 6 A No, I did not.
 7 **Q And I'm assuming the conversation was very**
 8 **brief then?**
 9 A I don't know. I mean, it wasn't an
 10 hour-long conversation.
 11 **Q Well, did you outline for him any of the**
 12 **reasons that there would be this removal process?**
 13 A I don't really recall whether I did or not.
 14 **Q Did he have occasion to get back to you**
 15 **then?**
 16 A Yes.
 17 **Q And how long did it take him to get back to**
 18 **you?**
 19 A I don't recall.
 20 **Q A day, an hour, two days, a week? What's**
 21 **your best estimate?**
 22 A It was definitely not sooner than a day.
 23 Might have been two days.
 24 **Q And what was that conversation about?**
 25 A He said he talked to the firm and that they

1 would have said that. So I disagree with you.
 2 BY MR. PLEBAN
 3 **Q Okay. You can answer.**
 4 A What was the question?
 5 **Q What other conversation that you had with**
 6 **Keith Cheung when he called you back one or two days**
 7 **afterwards as it relates to his employment as the**
 8 **special counsel for the impeachment proceedings?**
 9 A I thought I answered that question, didn't
 10 I?
 11 **Q Go ahead and do it again.**
 12 A He said that they could do the work.
 13 **Q I understand that. Did you have any further**
 14 **conversation with him, though, about the particulars**
 15 **of the impeachment process?**
 16 A I'm sure I did. Can I ask, let me get my
 17 dates straight because I'm not sure that February 8th
 18 date is correct. Well, let's just leave it at that.
 19 I'm not sure the February 8th date is correct.
 20 **Q Okay. What date do you think it is?**
 21 A I don't know. I don't remember.
 22 MR. CHASSAING: For the record, he did
 23 answer previously it might have been the next week.
 24 BY MR. PLEBAN
 25 **Q You said -- you said the 8th or the**

1 following week, correct?
 2 A I think I did say that, right.
 3 Q And while you're not certain as to the exact
 4 date, was your conversation with Keith Cheung before
 5 or after the Murray resolution or the Murray motion
 6 was passed?
 7 A That's what I can't remember independently
 8 right now.
 9 Q Did you talk to any other lawyers other than
 10 Keith Cheung about providing representation?
 11 A For the special prosecutor position, no.
 12 Q Yes. Did you -- before you talked to Keith
 13 Cheung, did you confer with any of the council members
 14 regarding the appointment of a special prosecutor?
 15 A I think I did.
 16 Q And with whom did you converse?
 17 A I think it was Matt Pirrello.
 18 Q What was that conversation?
 19 A Basically talking about options that I
 20 mentioned to Keith and Dan Bruntrager, and there was a
 21 third person who I forgot who that was.
 22 Q Are you thinking?
 23 A No.
 24 Q I thought you said -- you talked to Pirrello
 25 about Keith and perhaps Dan Bruntrager; is that

1 got to do something, and that's when I started acting.
 2 Q So Mr. Pirrello called you on February 8th,
 3 told you that can't take it anymore, and is that when
 4 you talked to him about Dan Bruntrager and Keith
 5 Cheung?
 6 A Probably not. Probably would have been a
 7 couple of days later. And that "can't take it
 8 anymore," those are my words. I don't recall exactly
 9 what Matt said.
 10 Q What did you understand that to mean, "can't
 11 take it anymore"?
 12 A That the council was --
 13 MR. CHASSAING: Wait a minute. For the
 14 record, I think the prior answer was "we can't take it
 15 anymore." You've abbreviated it somewhat. I don't
 16 know if that's going to be significant, but I just
 17 wanted to make a record that you haven't fed back to
 18 him exactly what he said.
 19 BY MR. PLEBAN
 20 Q After "we can't," whatever it was that
 21 you've paraphrased by the way, right?
 22 A Yes.
 23 Q Those are your words, not Pirrello's?
 24 A My words, yes.
 25 Q After whatever statement he made, what did

1 correct?
 2 A Yes.
 3 Q And why was it you selected Mr. Pirrello to
 4 talk to about this?
 5 A Because he was the person who essentially
 6 set the ball in motion.
 7 Q What does that mean?
 8 A After the February 6th meeting with the
 9 incident with Mr. Srote.
 10 Q Mr. what?
 11 A Srote, S-R-O-T-E.
 12 Q Matt called me -- for clarification he was
 13 the individual that was disrupting the meeting?
 14 MR. CHASSAING: Object to form.
 15 Argumentative.
 16 THE WITNESS: Mr. Srote was in attendance at
 17 the meeting and he was part of the chaos.
 18 BY MR. PLEBAN
 19 Q Was he disrupting the meeting in your
 20 judgment?
 21 A In my judgment, he was not disrupting the
 22 meeting, but he was being obnoxious. He was part of
 23 the entire situation. So I believe it was two days
 24 after that, which would have been the 8th, Matt called
 25 and said essentially we can't take it anymore. We've

1 you understand that to mean?
 2 A That counsel's patience with the mayor had
 3 lapsed and that they wanted to move forward with
 4 removal proceedings.
 5 Q Did you ask him about that?
 6 A Did I ask him to clarify?
 7 Q Yeah, uh-huh.
 8 A No. I think I had an understanding exactly
 9 what he meant.
 10 Q How did you have that understanding?
 11 A Because this has been going on for a long
 12 time.
 13 Q What's been going on?
 14 A The mayor's actions and the council's
 15 frustration.
 16 Q What action are you talking about?
 17 A Pretty much everything that's in the
 18 resolution.
 19 Q Did you discuss anything else with Pirrello
 20 on February 8th?
 21 A I don't recall discussing anything in
 22 particular with him.
 23 Q And after you had that conversation with
 24 Pirrello on February 8th, what were you supposed to
 25 do?

1 A I don't know if I was supposed to do
2 anything. I can tell you in general terms what I did.

3 **Q Well, let me back up. Pirrello calls you
4 and says, We can't take it anymore, or words to that
5 effect, he initiates that phone call with you,
6 correct?**

7 A Yes, yes.

8 **Q And you have a very short conversation, I'm
9 assuming?**

10 A I don't know how long it was.

11 **Q And then when you hang up the telephone from
12 him, did he tell you that he wanted the mayor
13 impeached during that conversation?**

14 A I don't know that he specifically said that.
15 I took the conversation as the council's patience has
16 expired on this, and we want to move forward with
17 removing the mayor.

18 **Q And did you ask him how the council's
19 patience had expired on this?**

20 A No.

21 **Q Why not?**

22 A Because I lived with it for the last ten
23 months or whatever it was.

24 **Q Well, how did you know what he was talking
25 about?**

1 A I don't have a specific recollection of what
2 I did, but I advised Matt about how to bring the issue
3 to the council's attention, generally speaking.

4 **Q So what did you tell him?**

5 A I was concerned about the public's reaction,
6 and I told him that this should be something that was
7 generated by someone other than a council member.

8 **Q What does that mean?**

9 A That means I suggested that he find someone
10 to file a charter violation complaint other than a
11 council member.

12 **Q So did you recommend as to how he was
13 supposed to do that?**

14 A Yes.

15 **Q And what did you tell him?**

16 A That's exactly what I told him. I think it
17 would be better if you had somebody who could file an
18 independent charter violation complaint, and that if
19 that complaint wasn't expansive enough to address all
20 of the mayor's actions, then it could be expanded upon
21 at a later day.

22 **Q I got that part. Did you advise him as to
23 how he should go about finding that person?**

24 A No.

25 **Q Did you discuss with him how that person**

1 A Because I talked to other council members.
2 I don't know what you're getting at.

3 **Q Well, he tells you, We can't take it
4 anymore, correct?**

5 A Something like that.

6 **Q Words to that effect?**

7 A Uh-huh.

8 **Q Not just him, he was talking about the
9 plural, correct?**

10 A Yes, I believe he was.

11 **Q And you say that you had talked to other
12 council members individually or together?**

13 A Individually.

14 **Q Who had -- what other council members did
15 you talk to individually prior to February the 8th?**

16 A Over the course of ten months, probably all
17 of them.

18 **Q Now, after you end your conversation with
19 Pirrello on February the 8th, what is the next thing
20 that you do in connection with Mayor Paul's
21 impeachment proceeding?**

22 A To the best of my recollection, I basically
23 analyzed the situation and came up with a -- an
24 outline of how to achieve that goal.

25 **Q What exactly does that mean?**

1 **would be located?**

2 A No.

3 **Q Did he ask you how the person could you
4 located?**

5 A No.

6 **Q When did that conversation occur?**

7 A I don't really remember.

8 **Q Was that within a couple of days after
9 February the 8th?**

10 A It could have been February the 8th. I just
11 don't remember, but, yes. Somewhere around that time.

12 **Q What was your concern about the public
13 reaction?**

14 A Well, I suppose there were two concerns. I
15 was concerned about public backlash against the
16 council, and I was also concerned about public
17 intimidation.

18 **Q Public backlash, what does that mean?**

19 A People coming to council meetings and
20 essentially venting against whatever individual
21 council member might have started the process.

22 **Q And what does public intimidation mean?**

23 A Intimidation against council members who
24 might be reluctant to go forward on their own.

25 **Q So let me see if I get this. When Pirrello**

1 **calls you on February the 8th, the council and**
2 **yourself had ten months worth of issues with the**
3 **mayor, right?**

4 A Ten months might be an -- yes.

5 **Q And so those issues were not going to be**
6 **pursued, if I understand your testimony correctly, and**
7 **instead somebody -- Pirrello was going to go out and**
8 **find somebody to file a complaint alleging a charter**
9 **violation, is that how that was supposed to work?**

10 MR. CHASSAING: I object to the form of the
11 question. It misstates his prior testimony.

12 BY MR. PLEBAN

13 **Q You can certainly clarify.**

14 A I would say that those issues had not been
15 pursued because of -- well, I can't speak for council
16 members, but they were reluctant to pursue those
17 issues for their own reasons over the course of time.

18 **Q So my point is, you talked to Pirrello, it**
19 **was ten months of issues with Adam Paul, and you**
20 **recommend that Paul go out and find somebody else to,**
21 **I guess, abandon those other issues, and find somebody**
22 **who will file a complaint, a noncouncil member against**
23 **Adam Paul alleging a charter violation. Is that how**
24 **it's supposed to work?**

25 MR. MAUPIN: I think you misspoke. I think

1 you said Paul instead of Matt.

2 THE WITNESS: I understand what you were
3 saying.

4 BY MR. PLEBAN

5 **Q You had the conversation with Matt Pirrello?**

6 A Yes.

7 **Q And Matt Pirrello was supposed to go out and**
8 **find somebody, right?**

9 A Yes. The situation with the council
10 developed over the course of these ten months. Matt
11 Pirrello said, again, my words, We can't take it
12 anymore, we have to do something. What do we do? And
13 I don't think it was in the same conversation, but I
14 thought about it and I said, To avoid public outcry,
15 you should -- or, To deflect public attention from the
16 council, you should -- I don't know even if I said
17 "should" -- it would be helpful, maybe, to have an
18 independent party file a charter violation, and we can
19 get the process started as a result of that complaint
20 and expand on the process at a later time.

21 **Q And at the time that you made this**
22 **recommendation to him, did you have any idea what that**
23 **charter complaint was going to be?**

24 A Frankly, I don't have a clear recollection
25 of that.

1 **Q You have a conversation --**

2 A I think I must have.

3 **Q Yeah. I don't know. You don't have a clear**
4 **recollection of something that happened, I guess, a**
5 **month ago relative to the discussion about removing**
6 **the mayor and getting somebody else to file a charter**
7 **violation?**

8 A I'm just answering your questions to the
9 best of my ability.

10 Now, to the extent that -- I'm going to make
11 sense that I would add an idea. Now, did I -- yes, I
12 think that's a fair statement. I knew exactly what it
13 was.

14 **Q What was it?**

15 A The initial complaint about Adam directing
16 the removal of Katie James and the complaint about
17 Adam directing the removal of Mr. Srote.

18 **Q And had you already talked to Katie James**
19 **before you talked to Pirrello?**

20 A I didn't talk to Katie James.

21 **Q And so did you recommend that Pirrello go**
22 **and solicit Katie James to make those charters?**

23 A I don't know if I recommended it.

24 **Q What did you tell him?**

25 A To the best of my recollection, I said, This

1 would be a possible way to help deflect attention away
2 from the council to get this process started without
3 the council having to initiate it directly.

4 **Q When was the next time -- after you gave**
5 **Pirrello that advice, what was the next time you heard**
6 **from him regarding your advice?**

7 A I don't know, but it must have been -- he
8 either volunteered the possibility of Katie James
9 doing that or he talked to her over the weekend. I
10 don't know.

11 **Q Wait a minute. You say he volunteered the**
12 **possibility of Katie James -- I thought you told him?**

13 A I do not remember talking about Katie James.
14 I remember talking about, you know, this -- doing this
15 in a way that would deflect attention away from the
16 council. Now, whether he said Katie James could do
17 this or I said Katie James could do this, I don't
18 really remember.

19 **Q And with respect to -- is it Mr. Stole,**
20 **S-T-O-L-E?**

21 A I don't know who that is.

22 **Q Well, the individual that, to use my words,**
23 **was disrupting?**

24 A Srote, S-R-O-T-E.

25 **Q Did you talk to him during your conversation**

1 **with him on February the 8th about Mr. Srote?**
 2 A No.
 3 **Q When he called you back, did he tell you he**
 4 **had discussed the matter with Katie James?**
 5 A I don't recall if that was telephone
 6 conversation or an email, but, yes, at some point.
 7 **Q Forgetting the motive, the communication?**
 8 A At some point, he told me that Katie James
 9 was going do that.
 10 **Q Now, directing the removal of Katie James,**
 11 **when was that alleged to have occurred?**
 12 A That was May 2nd.
 13 **Q May 2nd of 2012?**
 14 A Yes.
 15 **Q Some nine months before?**
 16 A Whatever it is, yes.
 17 **Q So that I'm clear, you're recommending to**
 18 **Pirrello that Katie James file a complaint about a**
 19 **charter violation that occurred some nine months**
 20 **prior, correct?**
 21 A I don't know if it was a recollection, but
 22 that was the discussion, yes.
 23 **Q Have you ever discussed that with Pirrello**
 24 **before February 8th, 2013?**
 25 A No, I don't think so.

1 **anybody on the council or otherwise including, but not**
 2 **limited to the mayor, about that incident before your**
 3 **conversation with Pirrello on February the 8th?**
 4 A I guess there's two answers to that
 5 question. One, why I didn't talk to people about
 6 filing charter violation complaint before that, I may
 7 have. I don't recall. Two --
 8 **Q I thought you just said you didn't?**
 9 A Well, during the course of those nine months
 10 might there have been a conversation someplace, sure.
 11 I didn't talk to anybody specifically about it, not
 12 that I recall.
 13 **Q You're a lawyer. I'm asking you questions.**
 14 MR. CHASSAING: I object to you making
 15 comments about Mr. Martin being a lawyer. Just ask
 16 questions. You don't need to make speeches, number
 17 one. Number two, I think he's trying his best to
 18 respond to your questions as fully as he's able and
 19 you interrupted him.
 20 MR. PLEBAN: Are you done?
 21 MR. CHASSAING: I'm finished with that
 22 objection.
 23 BY MR. PLEBAN
 24 **Q Now, as I was saying, you're a lawyer so**
 25 **let's, I guess, get some of the ground rules here.**

1 **Q Have you ever discussed that issue with**
 2 **anyone else prior to February 8th?**
 3 A No.
 4 **Q Well, if you were advising Pirrello to**
 5 **contact Katie James to file a charter violation of an**
 6 **alleged incident that occurred nine months before, why**
 7 **didn't you discuss that with somebody --**
 8 MR. CHASSAING: I object.
 9 BY MR. PLEBAN
 10 **Q -- prior to February 8th of 2013?**
 11 MR. CHASSAING: Have you finished your
 12 question?
 13 MR. PLEBAN: I did.
 14 MR. CHASSAING: I object. It misstates his
 15 testimony. You can answer.
 16 BY MR. PLEBAN
 17 **Q Go ahead.**
 18 A I'm not sure if I advised Matt to do that.
 19 We discussed it and the question is why didn't I talk
 20 to someone before February 8th?
 21 **Q My question is this, Mr. Martin: If you're**
 22 **talking about having someone file a charter violation**
 23 **against the mayor, and that charter violation involves**
 24 **Katie James and her having been removed allegedly from**
 25 **someplace nine months before, why didn't you talk to**

1 **I'm going to ask you some questions as it relates to**
 2 **the issues surrounding impeachment of Adam Paul.**
 3 **Anytime you don't understand a particular question**
 4 **that I asked you or you haven't heard the question**
 5 **that I've asked you, I want you to stop me, ask me to**
 6 **repeat the question or rephrase the question in an**
 7 **effort to have you fully hear and understand what I'm**
 8 **asking you; is that agreeable?**
 9 A Sure.
 10 **Q In the event that you don't stop me and ask**
 11 **me to repeat or rephrase the question, I will assume**
 12 **that you heard the question, that you understand it,**
 13 **and that you're giving a full and complete response to**
 14 **the question I've propounded. Is that agreeable?**
 15 A Yes.
 16 **Q I did interrupt you with respect to your**
 17 **second point.**
 18 A Yes.
 19 **Q What was that?**
 20 A Second point was that there was no
 21 indication from the council prior to February 8th that
 22 they wanted to pursue this, to pursue any of it.
 23 **Q What are your duties and responsibilities,**
 24 **Mr. Martin, as the city attorney?**
 25 A Prepare legislation, provide advice on

1 pending issues, represent the City in litigation,
2 provide advice to individual members who ask
3 questions, provide advice to staff pending issues.

4 **Q Do you consider it part of your duties and
5 responsibilities to bring to the attention of the
6 council issues and instances of, in your mind, in your
7 opinion, charter violations?**

8 A Yes.

9 **Q And so I'm assuming that when you told
10 Pirrello or had a conversation with Pirrello about
11 Katie James --**

12 A Yes.

13 **Q -- and about having Katie James file a
14 complaint directly against Mayor Adam Paul regarding
15 her removal nine months before, that you in your mind
16 at least considered that there was a basis to pursue
17 that allegation or that charter violation issue?**

18 A On its face, it's a charter violation.

19 **Q And then my question is: Consistent with
20 your duties to bring that to the attention of the
21 council, why didn't you within that nine-month period?**

22 A I did not bring it to the council as a
23 whole. I did speak with people individually in
24 different contexts.

25 **Q So you're telling me that you spoke to**

1 violation, but is it something that is really that
2 important.

3 **Q Well, you thought it was important enough to
4 recommend to Pirrello or discuss at least with
5 Pirrello getting Katie James involved, didn't you?**

6 A Yes. As a way to get the removal process
7 started.

8 **Q But you didn't believe prior to your
9 February 8 conversation, although it was a charter
10 violation, that it was an impeachable offense?**

11 A Well, by itself, no.

12 **Q Why not?**

13 A I just didn't think a court would uphold
14 that kind of impeachment action, and as far as
15 conversations that occurred, closer in time after the
16 incident, my recommendation was to just stand down and
17 let the mayor get acclimated and see if he could grow
18 into the job.

19 **Q Did you have a conversation -- when you
20 talked to Pirrello on February the 8th, did you have a
21 conversation with him about the removal of Mr. Strote
22 (sic) beyond suggesting that the complaint be filed in
23 that context as well?**

24 A Srote.

25 **Q How do you spell it?**

1 **individual council members about the removal of Katie
2 James from the meeting nine months before?**

3 A I think that's a fair statement.

4 **Q And with whom did you speak?**

5 A I don't know.

6 **Q You can't give me one council person's name
7 that you spoke to other than Pirrello on February 8th?**

8 A I had conversations with council members all
9 the time.

10 **Q That's not what I asked. Can you give me
11 one name other than Pirrello that you spoke to about
12 the removal of Katie James nine months prior?**

13 A No, I really can't.

14 **Q Did you speak to Pirrello before that, about
15 the Katie James issue?**

16 A I'm sure I did.

17 To try to help with your question, I don't
18 recall who I spoke with, but over the course of those
19 nine months, probably immediately after the incident
20 occurred, I am certain that I talked with people and
21 basically said I don't think this is some place you
22 want to go. I don't think this an impeachable
23 offense.

24 In reaction to a question, What about this,
25 isn't this a charter violation? Yes, it's a charter

1 A S-R-O-T-E.

2 Could you repeat the question or read it
3 back?

4 **Q Yes. I'll repeat it.**

5 **You said that when you were talking to
6 Pirrello, you talked to him about the removal of Katie
7 James some nine months prior.**

8 A Yes.

9 **Q And the removal of Mr. Strote, correct?**

10 A Yes.

11 **Q Did you talk about the specifics of the
12 removal of Mr. Strote with Pirrello on February the
13 8th?**

14 A I don't understand what you mean by that.

15 **Q Well, you're telling Pirrello, Hey, look, we
16 kind of -- we have to be mindful of the public
17 reaction, we kind of go do the end run around that
18 public reaction thing, correct?**

19 A Pretty much.

20 **Q All right. And so we can use a charter
21 violation to start the ball rolling, and that charter
22 violation can be the removal of Katie James some nine
23 months before, and the removal of Mr. Srote two days
24 before, right?**

25 A Yes.

1 Q Did you give him any specifics as to what
2 you were talking about with respect to the removal of
3 Mr. Srote?

4 A I'm sorry, I still don't understand what you
5 mean by that. We discussed that as being an element
6 of the complaint.

7 Q But how did you discuss with him how that in
8 your judgment was a charter violation?

9 MR. CHASSAING: Referring now to the --

10 MR. PLEBAN: Pirrello.

11 THE WITNESS: Srote.

12 MR. PLEBAN: Ron Srote.

13 BY MR. PLEBAN

14 Q Srote's removal, how was that a charter
15 violation?

16 A Same reason. Directing an officer of the
17 city, ordering an officer to do something.

18 Q All right. So let me back up.

19 When you're talking to Pirrello, you talked
20 to him about Mayor Paul's directing an officer of the
21 City to do something, i.e., the removal of James nine
22 months before and the removal of Srote two days before
23 as charter violations?

24 A Yes.

25 Q In other words, you specified that?

1 appointed.

2 Q How long was she on the council?

3 A I really don't know.

4 Q Had you had -- prior to your conversation
5 with Pirrello, had you ever had any conversations with
6 Katie James about Adam Paul?

7 A I talked with Katie at some point after that
8 May 2nd meeting and she told me what happened.

9 Q What did she tell you happened?

10 A She told me that she went up to talk to the
11 mayor about how he handled the meeting and he needed
12 to be more in control of the public and that he
13 responded by raising his voice and saying something
14 like, Don't tell me how to run my F'ing meetings, this
15 is my F'ing seat.

16 Q All right. And what did you say to Katie
17 James when she told you that?

18 A Really? I don't know.

19 Q Did you ask her why she was telling you
20 that?

21 A Just a conversation.

22 Q Did you ask her why she was telling you
23 that?

24 A No, I don't think so.

25 Q Did you recommend to her that she file any

1 A Yes.

2 Q Now, after he, being Pirrello, communicated
3 with you, whether it was by email or telephonically,
4 that he had found Katie -- or talked to Katie James
5 and she agreed to file this complaint, is that what he
6 told you?

7 A Something to that effect, yes.

8 Q What about Srote, how was that going to
9 happen? She was going to do both?

10 A Yes.

11 Q Did you recommend that Mr. Pirrello go to
12 Mr. Srote and have him file his own complaint?

13 A We didn't talk about that.

14 Q After you talked to Pirrello and he told you
15 that Katie James was on board, did you have occasion
16 to talk to Katie James?

17 A No.

18 Q Katie James was a former council person; is
19 that correct?

20 A That's correct.

21 Q When was she on the council?

22 A She was on the council when -- you know, I
23 really don't have a good recollection of the dates.
24 She may have been on the council when I was appointed
25 and perhaps not. Shortly after or when I was

1 kind of a charter violation at that point?

2 A I don't recall doing that.

3 Q You're not saying you didn't, you don't have
4 a present recollection?

5 A I don't think I did, but I don't recall.

6 Q After she told you that information, did you
7 discuss that with anybody else?

8 A I discussed it with Kate, I believe, Kate
9 Demeter.

10 Q City clerk?

11 A Yes.

12 Q Why did you ask her?

13 A Because I supposed she was right there and I
14 talked to Dawn Anglin, A-N-G-L-I-N.

15 Q She's a council person?

16 A Yes.

17 Q Why did you talk to the city clerk about it?

18 A Curiosity. I wanted to know what their
19 observations were.

20 Q Were you doing an investigation?

21 A I wouldn't say so.

22 Q So you just happened because you were
23 curious you talked to Kate, the city clerk?

24 A I don't really remember.

25 Q When did you talk to Kate, the city clerk?

1 A I don't remember that either. Must have
 2 been shortly after the incident.
 3 **Q Day later, two days later?**
 4 A It might have been the same day, it might
 5 have been a couple days later.
 6 **Q And you talked to Miss Anglin, A-N-G-L-I-N?**
 7 A Uh-huh.
 8 **Q When did you talk to her?**
 9 A May have been the same day, it may have been
 10 the next week or a week after. I don't know.
 11 **Q What did you tell her?**
 12 A Just asked her what was going on. I don't
 13 really remember the context of the conversation. I
 14 just know I talked to her.
 15 **Q Why did you talk to her?**
 16 A I really don't know. Just something that we
 17 were talking about.
 18 **Q Did she bring it up or did you bring it up?**
 19 A I don't have the faintest idea.
 20 **Q Did you talk to Adam Paul about it?**
 21 A I don't believe so. I don't know.
 22 **Q Why wouldn't you talk to him about that?**
 23 A I said I don't know if I talked to him about
 24 that.
 25 **Q I asked why you wouldn't talk to him about**

1 **it?**
 2 A You're asking me to speculate why I wouldn't
 3 do something that I don't --
 4 **Q You said you don't remember. I'm asking a**
 5 **follow-up question. Is there any reason why you**
 6 **wouldn't talk to him about that?**
 7 A I can't think of any reason why I wouldn't
 8 talk to him about it.
 9 **Q So after all this discussion with Pirrello**
 10 **about Katie James, and after he tells you that Katie**
 11 **James is on board, is that when you have the**
 12 **conversation with him about appointing Keith Cheung?**
 13 A It was sometime after that. I don't know
 14 exactly when it was.
 15 **Q And that was a -- would have been a verbal**
 16 **conversation that you had with him rather than an**
 17 **email conversation, correct?**
 18 MR. CHASSAING: You mean an oral as opposed
 19 to written? Everything's verbal.
 20 THE WITNESS: It was a telephone
 21 conversation.
 22 BY MR. PLEBAN
 23 **Q During that verbal telephone conversation**
 24 **that you had with him, did you -- you say that he**
 25 **discussed you recommended Keith Cheung or you talked**

1 **about Keith Cheung?**
 2 A Yes. We're talking about discussing this
 3 with Pirrello?
 4 **Q With Pirrello, right.**
 5 A Yes.
 6 **Q Do you know whether or not he knew Keith**
 7 **Cheung?**
 8 A The answer to your question is, no, I do not
 9 know. I do not think he did.
 10 **Q And he mentioned the name of, did you say,**
 11 **Dan Bruntrager?**
 12 A No. I think I mentioned Bruntrager.
 13 **Q And why did you mention the name Dan**
 14 **Buntrager to him?**
 15 A Because Bruntrager represented Matt in the
 16 recall suit, and I thought he would be a good fit for
 17 the job, but I also felt like that was an association
 18 that was too close to Matt.
 19 **Q So you were discussing or recommending that**
 20 **his lawyer, Pirrello's lawyer, be appointed as the**
 21 **special prosecutor?**
 22 A It was a discussion.
 23 **Q Did Dan Bruntrager represent Pirrello or**
 24 **Neal?**
 25 A It was Dan, to the best of my knowledge. I

1 don't know if Neal had anything to do with it.
 2 **Q During the conversation that you had with**
 3 **Pirrello about a special prosecutor, did you also have**
 4 **a conversation with him about who would be the hearing**
 5 **officer in this case?**
 6 A I don't believe so.
 7 **Q When did that happen?**
 8 A Probably around the same time as -- I'm
 9 sorry, I don't think I'm answering your question, but
 10 I think what you want to know is when did I recommend
 11 Mr. Maupin, is that correct?
 12 **Q Let me back up. You had the conversation**
 13 **about the prosecutor with Pirrello?**
 14 A Yes.
 15 **Q At least in the first instance?**
 16 A Yes.
 17 **Q Before we leave that, did you have the**
 18 **conversation about Keith Cheung with any other council**
 19 **member other than Pirrello?**
 20 A No, I don't think so.
 21 **Q Did you have a conversation with the City**
 22 **manager over there about Keith Cheung?**
 23 A I think I probably did, but I don't have a
 24 clear recollection of that.
 25 **Q All right. And when you finished your**

1 conversation with Pirrello about Keith Cheung, had you
2 both agreed that Keith Cheung would be the special
3 prosecutor or at least that would be the name you
4 would be submitting to the council?

1 understand the recall issue, certain members of the
2 community were seeking to recall Mr. Pirrello; is that
3 correct?

5 A Yes.

4 A I believe that's true.

6 Q All right. And then sometime afterwards,
7 there was a conversation about who would be appointed
8 as the hearing officer, correct?

5 Q And then Mr. Dan Bruntrager on behalf of
6 Mr. Pirrello filed a lawsuit; is that right?

9 A With Pirrello, no, I --

7 A Yes.

10 Q No, I'm not there yet. That's where I want
11 to get to eventually here. But sometime after your
12 conversation with Pirrello, there was some discussion
13 about who would be the hearing officer, correct?

8 (Discussion off the record.)

14 A I don't recall frankly any discussion about
15 that. I might have had discussion with Kevin about
16 it. I don't remember.

9 (Exhibit 3 was marked for
10 identification.)

17 Q Kevin Bookout. That was going to be my next
18 question. Did you talk to Pirrello about it? Did you
19 talk to any council members about who you would be
20 recommending to be the hearing officer?

11 BY MR. PLEBAN

21 A No.

22 Q How did you select Keith Cheung to be the
23 special prosecutor?

12 Q I've handed you, sir, what's been marked as
13 Exhibit 3 for purposes of this record and ask you
14 whether or not you can identify that.

24 A Well, he was a lawyer I knew and respected
25 and he's with the municipal law firm with a lot of

15 A This is a petition that was filed by Matt
16 Pirrello. This is the recall petition.

1 depth and experience, and I thought they would be a
2 good fit for the job.

3 Q Did you consider any conflicts that Keith
4 Cheung may have had?

5 A I think Keith -- that was part of what Keith
6 was doing when he initially said, I have to talk to
7 the firm, we'll get back to you.

8 Q Did you consider Keith's background when you
9 made that recommendation that he be appointed as a
10 special prosecutor?

11 A To the extent that I know his abilities as a
12 lawyer, yes.

13 Q Did Keith Cheung's law firm, Curtis, Heinz,
14 Garrett & O'Keefe, did they have any involvement in
15 the Pirrello recall litigation?

16 A Kevin O'Keefe, I believe, wrote a -- an
17 opinion on the question of the legality of the city
18 charter.

19 Q And his opinion was what?

20 A I haven't looked at that in a long, long
21 time, but essentially I think he concluded that a
22 court would probably find that the charter violations
23 violated the Missouri constitution.

24 Q And as I understand the recall issue, and
25 we'll get to that in greater detail later, but as I

1 Q When had -- when was Adam Paul sworn in as
2 the mayor, do you recall?

3 A I would guess April 18th, 2012.

4 Q The election was the first Tuesday in April;
5 is that correct?

6 A Correct.

7 Q And then the results have to be certified
8 and sent to the City and then the swearing in occurs
9 after that, correct?

10 A Correct.

11 Q So some four months after Adam Paul was
12 sworn in, Pirrello files his lawsuit, correct?

13 A Yes.

14 Q Do you recall when this recall petition was
15 first circulated regarding Mr. Pirrello?

16 A You're not referring to Exhibit 3?

17 Q I'm not referring to Exhibit 3. I'm
18 referring to the petition to recall him signed by
19 whomever is supposed to sign it.

20 A And when it was circulated, you're talking
21 about being circulated among the people who he need
22 the signatures for?

23 Q Well, not him. I'm assuming somebody else
24 was moving to recall.

25 A Right. You're talking about circulation,

1 other than the petition.
 2 **Q Of the petition to recall, not the lawsuit.**
 3 A Right. I am not -- I am not aware that the
 4 petition was ever circulated.
 5 **Q Are you aware of the circumstances under**
 6 **which this lawsuit was then filed if a petition was**
 7 **never circulated?**
 8 A Yes.
 9 **Q And what were those conditions?**
 10 A The petitioners had filed the application or
 11 whatever document they call it in the charter
 12 initiating the recall process, I think it's called a
 13 petitioner's affidavit, and the city clerk had
 14 responded to that by providing the petitioners with
 15 blank forms, circulation forms. And at that point, I
 16 do not know whether the petitioners actually began
 17 circulation. I just don't have any idea.
 18 **Q Do you remember when that process began with**
 19 **the petition being filed or the application being**
 20 **filed?**
 21 A No, I do not.
 22 **Q I'm assuming it was sometime before the suit**
 23 **was filed on August the 28th?**
 24 A I would assume that, too.
 25 **Q Do you know whether or not it was before or**

1 know, you can't recall people simply for voting on a
 2 measure. You need to have cause, and at some point,
 3 maybe the same day, maybe a week later, I don't know
 4 what it was, Matt raised the same issue and I looked
 5 into it.
 6 **Q Well, you say that Matt, you're referring to**
 7 **Matt Pirrello, raised the same issue that you can't**
 8 **recall somebody without cause, is that what he said?**
 9 A I don't recall what he said.
 10 **Q Or words to that effect?**
 11 A That was -- that's my recollection, there
 12 was a discussion.
 13 **Q Was this a private conversation that he was**
 14 **having with you?**
 15 A I don't recall.
 16 **Q If it was a public conversation, it would be**
 17 **included in minutes of the meeting, wouldn't it?**
 18 A Oh, it was not a conversation that occurred
 19 during the meeting. It was not during a public
 20 meeting.
 21 **Q Do you recall whether it was conversation**
 22 **that occurred during an executive session or closed**
 23 **meeting?**
 24 A I don't recall.
 25 **Q You don't recall whether or not it was a**

1 **after the time that Adam Paul was sworn in as mayor?**
 2 A Oh, it was after. The Exhibit B to the
 3 petition appears to be the committee affidavit,
 4 petitioner's committee affidavit that, if I recall
 5 correctly, starts the process off, and that's dated
 6 August 16, 2012.
 7 **Q So some 12 days later, Pirrello files his**
 8 **lawsuit, correct?**
 9 A Apparently.
 10 **Q Were you consulted on that lawsuit prior to**
 11 **the time that Mr. Pirrello filed it?**
 12 A I advised the City on what I thought was the
 13 legality of the recall petition before Pirrello filed
 14 the lawsuit.
 15 **Q When did you advise him on the legality of**
 16 **the petition?**
 17 A I do not know when that was.
 18 **Q Did you initiate that or did somebody ask**
 19 **you to provide that opinion?**
 20 A I don't recall anybody asking for the
 21 opinion.
 22 **Q What would have prompted you to do the**
 23 **research if nobody asked you?**
 24 A Best of my recollection, someone in the
 25 audience during public comment basically said, you

1 **private conversation that he had with you?**
 2 A I really don't. I just don't recall.
 3 **Q And on that basis, together -- that basis**
 4 **being the conversation that you had with Pirrello or**
 5 **comment that Pirrello made, as well as the comment**
 6 **from the citizen, you decided to do some legal**
 7 **research?**
 8 A I think that's a fair statement.
 9 **Q And would this be legal research that you**
 10 **did for which you would billed the City separately**
 11 **beyond your retainer agreement?**
 12 A This was -- if I recall correctly, this was
 13 research that I billed to the TIF file.
 14 **Q Why?**
 15 A Because it was directly related to the TIF,
 16 and I didn't think that the City should have to pay
 17 for the work.
 18 **Q What do you mean it was related to the TIF?**
 19 A It wouldn't have happened but for the TIF.
 20 **Q How did you come to that conclusion?**
 21 A It was an assumption I made.
 22 **Q Based upon what?**
 23 MR. CHASSAING: I'm going to make a record
 24 objection here that I think you are straying pretty
 25 far afield from the matters and the subject of the

1 resolution from removal, and I have tried to abide
 2 your questioning up to this point. I'm not going to
 3 instruct anybody not to answer, but I really think
 4 you're -- you're outside of left field and out on the
 5 parking lot and the ballpark on this, but you're the
 6 one that has expressed a lot of concern about taking
 7 many depositions, and I don't think we'll get done
 8 before the hearing starts.

9 MR. PLEBAN: For the record, it doesn't
 10 surprise me that you think I'm way out in the parking
 11 lot on the issue of Sansone paying for legal research
 12 on a recall petition. That doesn't surprise me at
 13 all. But it also --

14 MR. CHASSAING: Who's on trial, Chet? Who's
 15 being removed, is it the mayor or Mr. Martin?

16 MR. PLEBAN: Let me explain that to you,
 17 Pat, so that you clearly understand.

18 MR. CHASSAING: Don't patronize by
 19 explaining to me.

20 MR. PLEBAN: You asked me the question. I'm
 21 going to answer you.

22 MR. CHASSAING: It's rhetorical.

23 MR. PLEBAN: It's not rhetorical as far as
 24 I'm concerned.

25 MR. CHASSAING: The petition is to remove

1 Other than that, I don't think the necessity
 2 applies here, frankly, for a whole bunch of reasons
 3 contrary to the opinion of Mr. Martin and others, but
 4 in any event --

5 MR. CHASSAING: Rule of necessity.

6 MR. PLEBAN: You know what that is, right?

7 MR. CHASSAING: Yeah, but I don't know that
 8 you touched on the rule of necessity whatsoever in
 9 questioning Mr. Martin, number one. And number two,
 10 do you want to talk about the passage of time between
 11 when you've asked for things and when they're
 12 occurring? I think we should also let the record
 13 reflect that we've attempted to do that on repeated
 14 occasions and have run into situations. You know, I
 15 don't question the situations, per se, but
 16 Ms. Petruska, for instance, told us she couldn't
 17 respond to us because you would have to make the
 18 decision and you were about to get on a plane to go
 19 out of town, and we wouldn't hear back from you until
 20 the following week, Monday or whatever, when you got
 21 back in town. So to imply in any way that passage of
 22 time is the responsibility of the City is
 23 inappropriate and not the whole story.

24 So I sent innumerable emails trying to get
 25 things scheduled, sometimes established and, you know,

1 your client.

2 MR. PLEBAN: Let me answer your question,
 3 rhetorical or otherwise. There are a variety of
 4 issues in this case that impact the motivation of this
 5 council and the motivation of this witness to be
 6 involved in this, not the least of which is his
 7 financial interest in the outcome of this.

8 So to the extent as well as -- as well as
 9 issues that relate to TIF and to Wal-Mart and all of
 10 those that surround this particular mayor and have
 11 surrounded him from day one, I think certainly my
 12 questions are fair, and I think my questions are
 13 reasonably calculated to lead to the discovery of
 14 admissible evidence.

15 Now, in terms of whether or not we can
 16 complete or not complete these depositions, I don't
 17 know, but I know this. I know that two weeks ago, we
 18 had been asking for times to take depositions and
 19 subpoenas. I know that now is the first time we've
 20 had the opportunity to do that and it is what it is.
 21 I don't think -- as I said on when we had the
 22 conversation with John Maupin, I don't think there's
 23 any absolute necessity that this case be tried on
 24 March 27th, other than for what I believe are
 25 inappropriate and unlawful reasons by your client.

1 don't try and lay it on the City, okay?

2 MR. PLEBAN: Here's what we'll do. I'll
 3 bring those emails. I'll make them part of the record
 4 so there's no misunderstanding. The conversations you
 5 had with Lynette Petruska occurred on Friday. Friday.
 6 We had been looking for this for a two-week period.
 7 I'm not going to argue about it. Because it's
 8 documented. I'll make it a part of the record, and
 9 you can argue about whatever you want to argue about
 10 them.

11 MR. CHASSAING: If you want to make
 12 speeches, I'll respond to them.

13 MR. PLEBAN: Are you opposed to moving the
 14 case off the 27th of March?

15 MR. CHASSAING: I don't think -- the charter
 16 doesn't permit it.

17 MR. PLEBAN: I think it does.

18 MR. CHASSAING: Why are we taking that up
 19 now because we're going to be taking a deposition?

20 MR. PLEBAN: You raised it.

21 MR. CHASSAING: On the petition for removal.

22 THE WITNESS: Why don't we make this simple.

23 MR. CHASSAING: Hold on. I'm going to raise
 24 issues that need to be raised, and when you start
 25 jumping over several tracks or going out in the

1 ballpark parking lot, aren't you here to discover the
2 facts relating to the resolution for removal.

3 MR. PLEBAN: That's certainly what I'm
4 trying to do, and you raised the whole question about
5 the deposition process and about the timing of the
6 deposition process, and I'm just following up on it.
7 That's all I'm saying.

8 MR. CHASSAING: We have a short difference
9 of opinion.

10 MR. PLEBAN: So I'm going to do the best I
11 can. Believe it or not, we do have one or two cases
12 in our office and clients we have to be concerned
13 about.

14 MR. CHASSAING: Do you really? I'm glad
15 you're not the only one.

16 MR. PLEBAN: You might find that hard to
17 believe.

18 MR. CHASSAING: I'm glad you're not the only
19 one.

20 BY MR. PLEBAN

21 **Q Now, back that up and see what the last
22 question was that I asked.**

23 **(The reporter read the requested
24 material.)**
25

1 **the assumption that the recall was based upon issues
2 pertaining to the TIF?**

3 A Just public comments that were made
4 throughout the course of the consideration of the TIF
5 project and after.

6 **Q Did somebody say that they were recalling
7 people because of the TIF?**

8 A Because of votes that were cast in support
9 of the project, yes.

10 **Q Now, let me back up and understand back in
11 2012, you were paid monies for your legal service by
12 the City of Ellisville, correct?**

13 A Yes.

14 **Q And break that down for me. You had a
15 retainer agreement with them?**

16 A Yes.

17 **Q And how much was that per month?**

18 A I believe it's 2,725.

19 **Q And what does that include?**

20 A Contacts with clients, meeting attendance.

21 That pretty much --

22 **Q Council meetings in addition to what else?**

23 A Planning and zoning meetings.

24 **Q Anything other --**

25 A Board of Adjustment meetings.

1 BY MR. PLEBAN

2 **Q You can answer the question, please.**

3 A What was the question again? It was an
4 assumption based on what?

5 **Q You indicated that it was an assumption that
6 you made that the recall was based upon the TIF and
7 that's why you billed it to the TIF, and I'm asking
8 you what basis you had to make that assumption.**

9 A Because I wasn't aware of any reason why
10 anybody would want to recall the council members, but
11 for they're both in support of the project.

12 **Q Well, was the recall petition directed to
13 all the council members who voted in favor of the TIF
14 or just Mr. Pirrello?**

15 A Initially, I think it the discussion and the
16 talk -- petition itself. I'm sorry, did you limit
17 that question to the petition itself?

18 **Q The petition, not the lawsuit, the petition
19 for removal, was it directed just to Mr. Pirrello or
20 directed to all the council members who voted in favor
21 of the TIF?**

22 A It was directed to two other council members
23 in addition to Mr. Pirrello, to the best of my
24 recollection.

25 **Q And do you have any other reason for making**

1 **Q Those aren't regular meetings, though,
2 right?**

3 A Board of Adjustment, no.

4 **Q P and Z are regular meetings?**

5 A Yes.

6 **Q Twice a month?**

7 A Once a month.

8 **Q What else?**

9 A Oh, it also includes prosecution.

10 **Q So the retainer fee is inclusive of your
11 duties of city attorney and prosecutor?**

12 A Yes.

13 **Q You wear both hats?**

14 A Uh-huh.

15 **Q Yes?**

16 A Yes.

17 **Q How long have you worn both hats?**

18 A I don't know.

19 **Q Beyond the retainer, what are you paid?**

20 A \$175 an hour for work on beyond the
21 retainer.

22 **Q For what?**

23 A Work beyond the retainer. I think my
24 associate bills out at 150 and for projects where a
25 third party is paying, reimbursing the city, I believe

1 the contract says market rate, but I don't know that,
 2 I don't remember.
 3 **Q Market freight?**
 4 A Rate.
 5 **Q Work beyond the retainer would include what?**
 6 A Defending the city in litigation, preparing
 7 legislation, preparing legal opinions.
 8 **Q On the legal opinions, how does that work?**
 9 **Do you have to ask the council for their approval for**
 10 **you to conduct legal research and render legal**
 11 **opinion, or can you do that by self-initiating without**
 12 **their approval?**
 13 A I think that I can do it by self-initiation.
 14 **Q Are there times when you request their**
 15 **approval before you do any legal research or render**
 16 **any legal opinion?**
 17 A Probably.
 18 **Q What determines whether you do or don't**
 19 **request their approval?**
 20 A I don't know.
 21 **Q Who could I ask or would know?**
 22 A I'd say it depends on the circumstances. I
 23 don't know what the circumstances might be. If I'm
 24 confident that the council would want the work done, I
 25 do the work. If I'm not confident, then I ask.

1 **Q The legal research that you did in**
 2 **connection with the recall issues pertaining to**
 3 **Pirrello, did you ask the council whether or not they**
 4 **wanted you to do that work?**
 5 A I think it was recall pertaining to all the
 6 council members and, no, I did not. At least I don't
 7 recall it being done.
 8 **Q Why not? Why didn't you ask them?**
 9 A Because I thought it was an issue essential
 10 to the city and the city's interest, and I assumed
 11 they would want me to do the work.
 12 **Q You were doing legal research on removal**
 13 **relating to all council members?**
 14 A Recall in general. I shouldn't say in the
 15 context of the Ellisville city charter.
 16 **Q And after you concluded your legal research,**
 17 **you shared that opinion with the council?**
 18 A Yes.
 19 **Q Was that before or after Mr. Pirrello filed**
 20 **this suit that you shared that opinion with the**
 21 **council?**
 22 A I do not recall.
 23 **Q When -- I'm assuming that your opinion was**
 24 **that it was -- that section of the charter was**
 25 **unconstitutional?**

1 A Right.
 2 **Q Did you -- did you do the legal research**
 3 **before Kevin O'Keefe did his legal research on the**
 4 **issue?**
 5 A Yes.
 6 **Q Why did Kevin O'Keefe then have to do legal**
 7 **research if you had already done it?**
 8 A The mayor requested a second opinion and I
 9 thought that was a fine idea.
 10 **Q Did you share your legal opinion with**
 11 **Mr. Pirrello?**
 12 A I shared it with everyone.
 13 **Q So am I to assume that you shared it then**
 14 **with Mr. Pirrello?**
 15 A Yes.
 16 **Q Why did you share it with Pirrello?**
 17 A He was a member of the council.
 18 **Q He was also suing the council, wasn't he?**
 19 A I shared it with him before the suit was
 20 filed.
 21 **Q So you know that you did this legal research**
 22 **before the suit was filed?**
 23 A I know I looked at it before the suit was
 24 filed. I don't know exactly what the timing was.
 25 **Q I'm asking you, sir, when you shared your**

1 **opinion with Pirrello, was that before or after the**
 2 **suit was filed? If you don't know, you don't**
 3 **remember.**
 4 A To the best of my recollection, I issued an
 5 opinion before the suit was filed.
 6 **Q You may not know the answer to this. You**
 7 **issued a legal opinion saying that the recall section**
 8 **of the city's charter was unconstitutional. Do you**
 9 **have any idea why Pirrello filed his lawsuit then?**
 10 A Because I suppose that these people were
 11 pursuing recall regardless of the illegality of the
 12 charter.
 13 **Q Do you recognize any portion of your legal**
 14 **opinion set forth in Exhibit 3?**
 15 A Well, it's the theory.
 16 **Q Do you recognize that as your theory?**
 17 A This is consistent with what I concluded.
 18 **Q Did you have occasion to tell Dan Bruntrager**
 19 **that you had rendered a legal opinion that indicated**
 20 **that that section of the charter regarding recall**
 21 **petitions was unconstitutional?**
 22 A Did I tell Dan? I don't believe so.
 23 **Q How long was that lawsuit pending?**
 24 A I do not know.
 25 **Q How was it resolved?**

1 A It went to court, there was a hearing on the
2 motion for preliminary relief, and the lawyer for the
3 petitioners, to the best of my recollection, basically
4 said that petitioners didn't want to be involved in
5 the lawsuit and that led to a discussion about
6 disposing of the case. I don't recall exactly what
7 the order that was issued was.

8 **Q That the petitioners, you're referring to
9 the defendants in this case?**

10 A Yes, the --

11 **Q That Julia Dolan, Vincent McGrath, Mary Ann
12 Dust, Sandra McGrath, Patty Murphy?**

13 A Yes.

14 **Q Didn't want to be involved any longer?**

15 A They didn't want to be involved in the
16 beginning.

17 **Q How do you know that?**

18 A They said so. They resented the fact that
19 they were. They spoke up at a public meeting.
20 Whether that occurred before or after the lawsuit was
21 disposed of, I don't remember.

22 **Q When you discussed issues relating to that
23 lawsuit with the council, was Mr. Pirrello present for
24 those discussions?**

25 A Yes, probably. No, I think that he left

1 **that is connected to the recall lawsuit or any recall
2 issue. Let me expand it.**

3 A (Witness drawing on exhibit.) Okay.

4 **Q You've indicated in red those areas where
5 the work associated with recall issues was performed,
6 correct?**

7 A Yes. And those are the initial recall
8 petitions against -- I think it's identified on the
9 bill that this is not the Pirrello issue. Anglin and
10 Pieper.

11 **Q Was this the first research that you did,
12 and this is your May billing statement of 2012. Is
13 this the first research that you did in connection
14 with recall issues?**

15 A Yes. I think so.

16 **Q Now, according to Exhibit 2 here or Exhibit
17 3, rather, the actual Pirrello lawsuit, the petitions
18 or the petitioner's affidavits are attached to this
19 lawsuit as Exhibit -- looks like Group Exhibit B; is
20 that right?**

21 A It appears so.

22 **Q And it looks as though those are signed by
23 the individuals pursuing the recall in August, is that
24 the 16th or something, August 16th?**

25 A Yes. One is August 16th and one is

1 after the lawsuit was filed.

2 **Q He left?**

3 A He was excused from the council meetings,
4 from the closed sessions after the lawsuit was filed.

5 **Q Did you consider having separate independent
6 counsel represent the city in connection with that
7 lawsuit?**

8 A At the time, no.

9 **Q Why not?**

10 A I don't know. I didn't consider it.

11 **Q And then, ultimately, Sansone paid the cost
12 of that litigation; is that correct?**

13 A I assume so. I don't know.
14 (Exhibit 4 was marked for
15 identification.)

16 BY MR. PLEBAN

17 **Q Let me hand you what's been marked as
18 Exhibit 4. Ask you if you recognize that, sir.**

19 A Looks like my bills from May 25th, 2012.
20 Reflects research billed to the City, generally.

21 **Q On the recall suit?**

22 A I don't know about the recall suit, on the
23 recall memo.

24 **Q I'm going to give you a red pen. Can you
25 mark off on those bills any -- any charge that's made**

1 August 17th, I believe. Two are August 17th.

2 **Q So you were doing legal research three
3 months before those petitions?**

4 A That's helpful. The initial research had to
5 do with, if I recall correctly, the timing of a
6 recalled election and the -- what the petitioners
7 needed to do -- an analysis of what the petitioners
8 could do regarding the recall of Anglin and Pieper.

9 **Q This is what now? I'm not following.**

10 MR. CHASSAING: Read the answer back,
11 please. See what we got.

12 (The reporter read the requested
13 material.)

14 BY MR. PLEBAN

15 **Q What does all that mean?**

16 A There's two different recall efforts. The
17 first one was Anglin and Pieper. There was a lot of
18 work about analyzing the timing and process for recall
19 to determine whether Anglin and Pieper could be --
20 could stand for an election before their terms came to
21 a close.

22 **Q So, in other words, your question that you
23 looked into was whether or not their terms would
24 expire before there could be a recall?**

25 A Yes. I think that's a reasonable way to put

1 it.

2 **Q And what was your conclusion in that regard?**

3 A My conclusion was that under -- the best of
4 my recollection, if we're talking about the same
5 thing, my conclusion was that the Missouri election
6 laws and the City charter could not converge to permit
7 a recall election of those two individuals on a timely
8 basis.

9 **Q So, in other words, your conclusion was you
10 couldn't get the recall done before they left office?**

11 A There were time limitations in the charter
12 and statutory limitations on when elections could be
13 held.

14 **Q Anglin is -- she's reached her -- she cannot
15 run again, she's reached her term limit, correct?**

16 A I believe that's true.

17 **Q But Pieper's running again, correct?**

18 A Correct.

19 **Q He's standing for reelection in April,
20 right?**

21 A Yes.

22 **Q Why couldn't he be recalled?**

23 A The charter says something about you can't
24 be recalled within six months of the end of your term
25 I think it is, and based on when the petitioners

1 the city's general file. What I was thinking at the
2 time, I don't know.

3 **Q Why though -- why then would you say that
4 the Pirrello research that you did had to be billed to
5 TIF, but not Anglin and Pieper?**

6 A I don't have a good answer for that. I
7 don't know. I just came to the realization that those
8 costs were all attributable to the TIF and that the
9 City shouldn't be paying for those costs as a result.

10 **Q When did you come to that realization?**

11 A Apparently when I was doing the Pirrello
12 research.

13 **Q Did you go back and have Sansone pay for the
14 Anglin and Pieper research?**

15 A No, no.

16 **Q Why not?**

17 A Didn't think to.

18 (A short recess was taken.)

19 BY MR. PLEBAN

20 **Q Let me show you, again, Mr. Martin, the
21 billing statement marked as Exhibit 4, and I'll ask
22 you, you can divide up your bills by category,
23 correct?**

24 A Yes.

25 **Q So I'm going to show you just a second, but**

1 started talking about recalling Anglin and Pieper, I
2 looked at what that prohibition would have an effect
3 on the ability to have a recall election, I think, and
4 came to the conclusion that there wasn't a possible
5 election date by which the Anglin and Pieper could be
6 removed before the expiration of that six months or
7 before the beginning of that six-month period.

8 **Q And that legal research that you performed,
9 did you do that with the council's consent?**

10 A I don't recall.

11 **Q Did you share that legal research, Anglin
12 and Pieper, after you did it?**

13 A I'm sure I shared it with the entire
14 council, which would include Anglin and Pieper.

15 **Q Was that your work that you did on that, was
16 that billed to TIF?**

17 A No, it was not.

18 **Q Why wasn't that billed to TIF?**

19 A Honestly, I don't know.

20 **Q Well, did you recommend that it be billed to
21 TIF?**

22 A No, that was completely my decision.

23 **Q It was your decision, whether or not it
24 should be billed to TIF?**

25 A Well, I record the time, I recorded it in

1 **a retainer services, general and prosecution and TIF,
2 right?**

3 A Yes.

4 Mr. Pleban, before you go on, I do not see
5 how my motivations are remotely relevant to the
6 question of whether your client violated the charter,
7 and I'm not going to answer any more questions about
8 my bills or anything other than what's at issue.

9 **Q So you're going to refuse to answer any
10 question that I have as it relates to any billing
11 statements that you have, any duties that you have as
12 the city attorney and the like; is that right?**

13 MR. CHASSAING: That's not what he said, I
14 don't think.

15 THE WITNESS: I think it was pretty clear.

16 BY MR. PLEBAN

17 **Q No, I don't think you were, actually. Okay.
18 We'll see how far we get.**

19 **I'm going to hand you Exhibit 4 and ask you
20 whether or not your billing statements are divided
21 into categories?**

22 A I'm not going to talk about my billing
23 statements.

24 **Q And I'm going to ask you whether or not on
25 the billing statement No. 4 here, issues discussed**

1 before, whether you have the recall issues under the
2 category of billing to the general account of the City
3 of Ellisville?

4 A Question is irrelevant and it has no
5 reasonable relation to the discovery of any admissible
6 evidence.

7 Q Are you represented by a lawyer here,
8 Mr. Martin?

9 A No, sir, I am one.

10 Q Do you want a lawyer?

11 A No. I'm making an objection, and I'm not
12 going to respond to these questions.

13 Q You're not going to make objections, you're
14 to answer the questions, okay?

15 A No, sir.

16 Q You're not going to answer the question, but
17 you're not going to make objections.

18 A I can make an objection. I represent
19 myself.

20 Q You're here pro se; is that right?

21 A What difference does it make?

22 Q Are you here pro se?

23 A I'm not answering any more questions
24 relating to this.

25 Q Are you here pro se? You're representing

1 Q And did he offer you any advice?

2 A No.

3 Q Did he offer you any advice?

4 A No.

5 (Exhibit 5 was marked for
6 identification.)

7 BY MR. PLEBAN

8 Q I hand you what's been marked as Exhibit 5.
9 Ask you to identify that.

10 A No.

11 Q No what?

12 A No, I'm not going to identify it.

13 (Exhibit 6 was marked for
14 identification.)

15 BY MR. PLEBAN

16 Q Hand you what's been marked as Exhibit 6.
17 Ask you if you can identify that.

18 A I'm not going to identify it.

19 MR. CHASSAING: Can we interrupt for a
20 minute, the marking of exhibits?

21 MR. PLEBAN: Is this on the record?

22 MR. CHASSAING: It's on the record.

23 MR. PLEBAN: She didn't know that.

24 MR. CHASSAING: I'm just asking, directing
25 my comments to you.

1 yourself, is that what you're telling me?

2 A (Witness shrugs shoulders.)

3 Q What does that mean?

4 A It means I'm not answering any more
5 questions along this line.

6 Q Did Sansone pay your bills?

7 A No.

8 Q Did Sansone pay the City's bills with
9 respect to recall issues?

10 A I'm not going to answer.

11 Q Independently of the amount that you billed
12 the City, have you received any money from Sansone?

13 A No.

14 Q You're going to answer that one, I guess.

15 A Sure.

16 Q Did you confer with anybody during the
17 break, Mr. Martin?

18 A I told Mr. Chassaing what I was going to do.

19 Q Did you have a conversation with him?

20 A I just said I told him what I was going to
21 do.

22 Q Did you have a conversation beyond telling
23 him what you were going to do?

24 A To an extent about how it might affect the
25 proceeding, yes.

1 MR. PLEBAN: Did you say it was on the
2 record?

3 MR. CHASSAING: On the record, that's fine.
4 I just asked if you mind if I interrupted you so I can
5 make a statement that he's indicated pretty clearly he
6 does not intend to answer more questions about his
7 billing records and he's even given us reasons.

8 Rather than identify them month by month,
9 why don't you just expedite the process a little bit
10 and mark them all as a single exhibit and ask him if
11 he's going to answer any more questions about it.
12 Then we can go on to other topics.

13 MR. PLEBAN: Thanks. Go ahead and mark
14 that.

15 (Exhibit 7 was marked for
16 identification.)

17 BY MR. PLEBAN

18 Q Hand you what's been mark as Exhibit 7. Ask
19 if you we can recognize that.

20 MR. CHASSAING: Mr. Pleban, hang on a
21 minute. Is it your plan to mark each month's
22 statement with separate exhibit labels and then ask
23 him the question?

24 MR. PLEBAN: I'm going to take the
25 deposition the way I want to do it.

1 MR. CHASSAING: I just asked.
 2 MR. PLEBAN: I'm going to do it the way I
 3 want to do it.
 4 MR. CHASSAING: You do it the way you want
 5 to do it, but I'm suggesting there's a more expedient
 6 way to do it so you can ask questions and get answers.
 7 MR. PLEBAN: You made lots of suggestions
 8 here today. I appreciate that.
 9 MR. CHASSAING: Apparently not.
 10 MR. PLEBAN: I didn't say I adopted it.
 11 (Exhibit 8 was marked for
 12 identification.)
 13 BY MR. PLEBAN
 14 **Q I hand you what's been marked as Exhibit 8.**
 15 **I ask if you recognize that.**
 16 A Exhibit 8 has no relation to whether your
 17 client has violated the Ellisville city charter and
 18 not going to lead to the discovery to any information
 19 in that process so I'm not going to answer the
 20 question.
 21 **Q Are you determining what's relevant to the**
 22 **issue of Mayor Paul's impeachment?**
 23 A I suppose in this case, I am.
 24 MR. CHASSAING: May I voir dire the witness?
 25 MR. PLEBAN: No.

1 (Exhibit 10 was marked for
 2 identification.)
 3 BY MR. PLEBAN
 4 **Q Show you Exhibit 10.**
 5 MR. CHASSAING: Try not to throw the
 6 exhibits, okay?
 7 MR. PLEBAN: What?
 8 MR. CHASSAING: Don't toss the exhibits.
 9 MR. PLEBAN: Please, spare me, will you?
 10 Spare me, spare me, spare me.
 11 MR. CHASSAING: Just asking you to be
 12 polite. That's all.
 13 BY MR. PLEBAN
 14 **Q Exhibit 10, are you going to refuse to**
 15 **answer that question as well?**
 16 A Same answer.
 17 **Q You indicated that you recommended that John**
 18 **Maupin be appointed as a hearing officer in this case,**
 19 **correct?**
 20 A Correct.
 21 **Q And when did you do that?**
 22 A When I submitted the draft resolution to the
 23 clerk for consideration by the council.
 24 **Q When was that?**
 25 A I do not know.

1 BY MR. PLEBAN
 2 **Q Just as you determine how to bring these**
 3 **allegations against Mayor Paul through Katie James?**
 4 A I don't understand that question.
 5 **Q You made the determination as to how you**
 6 **were going to orchestrate this -- let me finish, how**
 7 **you were going to orchestrate these allegations that**
 8 **you prepared against Mayor Paul, didn't you?**
 9 A You have my testimony. You can draw your
 10 own conclusions.
 11 **Q What did you say? You didn't orchestrate**
 12 **it?**
 13 A I'm not going to answer that question.
 14 **Q You're not going to answer that one either?**
 15 A No.
 16 MR. PLEBAN: Can't wait for the public
 17 hearing. Mark that as a group. I can't wait for the
 18 public hearing.
 19 (Exhibit 9 was marked for
 20 identification.)
 21 BY MR. PLEBAN
 22 **Q Exhibit 9. Group Exhibit 9.**
 23 A Same response.
 24 **Q Not going to answer?**
 25 A Not going to identify the billings.

1 **Q Do you have a month?**
 2 A February sometime. I don't know when I got
 3 to it.
 4 **Q And did you -- how did you provide the name**
 5 **to the clerk?**
 6 A It was included in the resolution that I
 7 provided to the clerk.
 8 **Q And how did you come to select John Maupin?**
 9 MR. CHASSAING: I think this has been asked
 10 and answered, but -- it hasn't? Go ahead and answer.
 11 THE WITNESS: Because of John's previous
 12 relationship with the City and because of his
 13 reputation as a lawyer. I thought he would be a good
 14 gentleman, good fit.
 15 BY MR. PLEBAN
 16 **Q You mean his previous dealings with the City**
 17 **back in 2004?**
 18 A Yeah.
 19 **Q And his reputation as a lawyer, is that what**
 20 **you said?**
 21 A Yes.
 22 **Q What do you know about his reputation as a**
 23 **lawyer?**
 24 A Just that it's a sterling one.
 25 **Q How do you know that?**

1 A Talking to other people.
 2 **Q Who?**
 3 A I don't know, I talked to Howard Papner.
 4 **Q Did you recommend anyone else other than**
 5 **John Maupin?**
 6 A No.
 7 **Q Do you know if the council considered**
 8 **anybody else other than who you recommend?**
 9 A No.
 10 **Q Both prosecutorially and for hearing**
 11 **officer?**
 12 A Right. Everything people recommended, that
 13 was the only people that the council considered.
 14 **Q I'm going to show you Exhibit 7 and ask you**
 15 **if John Maupin is referenced on that bill. That's**
 16 **your February 2012 bill, isn't it?**
 17 A It's dated March 5, 2012.
 18 **Q For services in February 2012, right?**
 19 A Yes, yes.
 20 **Q What's that about?**
 21 A I don't know. I don't remember.
 22 **Q So you at least had contact with John Maupin**
 23 **since February of 2012, right?**
 24 A I have had contact with John Maupin.
 25 **Q At least since February of 2012, correct?**

1 **Q Slash J. Maupin and J.Mulligan,**
 2 **M-U-L-L-I-G-A-N, Re: IDA litigation, semi-colon,**
 3 **research and EM/K. What's EM/K?**
 4 A Email, maybe Kevin Bookout.
 5 **Q I'm sorry. EM/K, period, Bookout and M**
 6 **Pirrello, Re: Same. What does that mean?**
 7 A That I emailed Matt and Kevin about whatever
 8 the subject matter was. I have a better recollection
 9 of the IDA litigation if you'd like an answer to that.
 10 **Q You said you have a better recollection of**
 11 **the IDA litigation?**
 12 A Yes.
 13 **Q What's that?**
 14 A Litigation really isn't a good description.
 15 The City had an industrial development authority. It
 16 discovered that the director of the IDA had embezzled
 17 funds and the question presented was what to do about
 18 it, and I talked to those lawyers back in February of
 19 2012 about that particular situation and whether they
 20 would be interested in pursuing an action against the
 21 estate. The gentleman subsequently committed suicide.
 22 **Q What did John Maupin have to do with all**
 23 **that?**
 24 A I called him up and asked him if he would be
 25 interested in representing the City for that purpose.

1 A In February of 2012, yes.
 2 **Q Can I see that please? And according to**
 3 **your bill, you had contact with him on February 16th,**
 4 **2012; is that right?**
 5 A You're looking at the bill. I assume that's
 6 correct.
 7 **Q Take a look.**
 8 A Yes.
 9 **Q What does -- what do the initials capital E**
 10 **capital M small S, what does that mean?**
 11 A Emails.
 12 **Q Between yourself and John Maupin?**
 13 A And John Maupin and John Mulligan regarding
 14 IDA litigation.
 15 **Q What's IDA litigation?**
 16 A IDA is a general acronym standing for
 17 industrial authority. I cannot think of what -- I
 18 think that's what it was.
 19 **Q I don't know what your answer just was. Was**
 20 **it --**
 21 A It means I don't recall clearly.
 22 **Q That's your answer. It says -- the whole**
 23 **line reads 02/16/2012 EMs and TCs. I assume those are**
 24 **telephone conferences?**
 25 A Conferences.

1 **Q Was he?**
 2 A No, the City never really took any action on
 3 it.
 4 **Q Well, did he indicate that he would be**
 5 **willing to represent the City?**
 6 A I don't really remember. I think so.
 7 **Q Did you have the approval of the city**
 8 **council when you did that?**
 9 A I don't have a clear recollection of whether
 10 I had the approval of the city council, the express
 11 approval of the city council.
 12 **Q Did you talk to anybody who was on city**
 13 **council at the time?**
 14 A I don't have the faintest idea. I talked to
 15 Kevin O'Keefe -- Kevin Bookout and Matt, obviously,
 16 and I believe that that was -- I'm almost positive it
 17 was discussed in closed session, but I can't tell you
 18 that I have a clear recollection of that.
 19 **Q According to that, an article that appeared**
 20 **in the St. Louis Post-Dispatch yesterday, the City of**
 21 **Ellisville paid you more than \$3,702,000 for work that**
 22 **you performed over the past five years; is that**
 23 **accurate?**
 24 A I don't have any idea.
 25 **Q According to an article in the St. Louis**

1 **Post-Dispatch, in 2012, you received nearly 115,000**
2 **from the City of Ellisville; is that accurate?**

3 A I don't have any idea.

4 **Q So you're not disputing that figure, you're**
5 **saying you don't know. You haven't added those**
6 **numbers; is that correct?**

7 A That's correct.

8 **Q And for the year 2012, did some 50,000 of**
9 **those fees come from Sansone?**

10 A Mr. Pleban, we're back on the same track
11 again.

12 **Q Yes, we are.**

13 A I'm refusing to answer questions again.

14 **Q Let me ask you this, Mr. Martin. You**
15 **drafted these -- the resolution No. 02-27-13-80,**
16 **correct?**

17 A Yes.

18 **Q And the item 1B is that Mayor Paul attempted**
19 **to affect your replacement as the city attorney; is**
20 **that correct?**

21 A That is correct.

22 **Q You drafted that, right?**

23 A Yes, I did.

24 **Q And that would be the same position that**
25 **you're holding as city attorney that paid you some**

1 A I think that's an accurate quote.

2 **Q And what notes were you keeping on Mayor**
3 **Paul?**

4 A Instances of charter violations.

5 **Q And where are those notes now?**

6 A Well, notes would be a -- not an accurate --
7 that is what I said. I didn't actually take notes. I
8 had a file.

9 **Q So what's in the file?**

10 A Electronic file, a list of the things that
11 the mayor did.

12 **Q Electronic -- a what?**

13 A An electronic file.

14 **Q Of --**

15 A Basically what ended up in the resolution.

16 **Q And these are things on your computer; is**
17 **that correct?**

18 A Yes.

19 **Q And in the form of what, notes on your**
20 **computer?**

21 A Basically, a list, chronological list.

22 **Q Of your notes; is that what's on there? I'm**
23 **trying to understand what's on there.**

24 A Of entries that I transcribed. I don't know
25 what characterization of notes.

1 **\$115,000 last year; is that correct?**

2 A Whatever the number is, yes, that's correct.

3 **Q Is that the same city attorney position that**
4 **paid you some \$3,702,000 for the preceding five years?**
5 **Whatever that number is.**

6 A If that number's accurate, that's correct.

7 **Q On April 18th, 2012, did you make a**
8 **presentation to the council touting the merits of the**
9 **Wal-Mart project?**

10 A I wouldn't say touting the merits of the
11 Wal-Mart project.

12 **Q What would you say?**

13 A I would say concerning the Wal-Mart project.

14 **Q What did you say about the Wal-Mart project?**

15 A There -- I would have to take a look at the
16 document again and, basically, correction of
17 misinterpretations or misrepresenting that have been
18 made.

19 **Q Misinterpretation who made?**

20 A The public.

21 **Q According to the St. Louis Post-Dispatch**
22 **article from yesterday, which would have been the 19th**
23 **of March, 2013, you were quoted as saying that you**
24 **were taking notes on Mayor Paul. Did you tell the**
25 **Post that?**

1 **Q This is -- I was --**

2 MR. CHASSAING: Excuse me. Was your answer
3 finished?

4 BY MR. PLEBAN

5 **Q I'm trying to find out --**

6 MR. CHASSAING: Were you finished?

7 BY MR. PLEBAN

8 **Q -- what that meant when you said: I was**
9 **taking notes.**

10 A Essentially.

11 MR. CHASSAING: Oh, okay.

12 THE WITNESS: Making a list of the actions
13 of the mayor that I felt violated the charter or posed
14 some kind of misfeasance in office.

15 BY MR. PLEBAN

16 **Q So these were your impressions that you**
17 **would go and make an entry into the computer?**

18 A What do you mean by "impressions"?

19 **Q I'm just trying to understand, Mr. Martin,**
20 **what's on your computer?**

21 A I'm trying to understand what you mean by
22 "impressions."

23 **Q That's fair. If you saw an issue relating**
24 **to the mayor, what would you do with that? Tell me**
25 **the steps you would take.**

1 A I would add it to my list on the computer.
 2 **Q So you'd go into your computer and you'd**
 3 **type out your -- what I refer to as notes or your**
 4 **impressions of what happened by event, by day, that**
 5 **sort of thing?**
 6 A Yes.
 7 **Q And where are those notes or where are those**
 8 **documents or where are those impressions now?**
 9 A Well, on my computer for the most part.
 10 **Q And have you shared those documents or those**
 11 **notes with anyone else?**
 12 A No.
 13 **Q And you use those notes?**
 14 A Excuse me. They're different documents. I
 15 shared a document with Matt Pirrello in, I think it
 16 was December last year, which were essentially a
 17 compilation of what I had accumulated.
 18 **Q So in answer to my question, are you telling**
 19 **me that you shared what I am referring to as notes on**
 20 **your computer with Matt Pirrello?**
 21 A That's probably a reasonable way to say it.
 22 **Q Well, how would you say it?**
 23 A I thought I just said it.
 24 **Q I didn't understand what you said. That's**
 25 **why I'm asking you. You either showed it to him or**

1 **you didn't.**
 2 A I had a document that I would add from time
 3 to time when I felt that the mayor did something that
 4 was inappropriate.
 5 **Q In your opinion?**
 6 A That I felt was inappropriate. I guess
 7 that's necessarily my opinion.
 8 **Q I don't know that it is. That's why I'm**
 9 **asking the question. You could have been recording**
 10 **something somebody else said. I don't know what were**
 11 **in these notes. That's why I was asking the question,**
 12 **okay?**
 13 A That was the base document and I shared
 14 something with Matt that included all of that
 15 information.
 16 **Q Did you print it out for him or did you**
 17 **bring your computer to him or how did this happen?**
 18 A I think I emailed it to him.
 19 MR. PLEBAN: Do we have that email?
 20 MR. CHASSAING: I don't know.
 21 MR. PLEBAN: I don't. At least -- well,
 22 let's do this.
 23 MR. CHASSAING: What was the date?
 24 MR. PLEBAN: Let's do this. Mark those.
 25 THE WITNESS: It's not in those.

1 MR. PLEBAN: Of course not. Of course not.
 2 Why would it be?
 3 MR. CHASSAING: Can we go off the record a
 4 minute?
 5 (Discussion off the record.)
 6 (Exhibit 11 was marked for
 7 identification.)
 8 BY MR. PLEBAN
 9 **Q I'm handing you Exhibit 11. I want you to**
 10 **take however long it takes you to look through those**
 11 **documents and tell me are those all of -- well, before**
 12 **you do that. Hold on. Let me mark that.**
 13 (Exhibit 12 was marked for
 14 identification.)
 15 BY MR. PLEBAN
 16 **Q I hand you what's been marked as Exhibit 12.**
 17 **Have you ever seen that before?**
 18 A Yes.
 19 **Q When did you see that?**
 20 A I don't recall.
 21 **Q You don't recall how long ago you saw that?**
 22 A No.
 23 (Exhibit 13 was marked for
 24 identification.)
 25

1 BY MR. PLEBAN
 2 **Q Let me show you what's marked as Exhibit 13.**
 3 **Do you see that?**
 4 A No, I have not seen that.
 5 **Q Okay. Now, did you have a hand in gathering**
 6 **the information that was requested in Exhibit 12?**
 7 A No.
 8 **Q So nobody came to you and asked you for**
 9 **emails?**
 10 A I think -- well, the answer to that's no.
 11 **Q So that I'm clear, how did you see Exhibit**
 12 **12 then? Under what circumstances if nobody came to**
 13 **you to ask you for your emails?**
 14 A I think I might have received it from your
 15 office, or I might have received it from Mr. Cheung.
 16 I don't recall. I think it was your office.
 17 **Q And so did you provide any emails to**
 18 **Mr. Cheung, Mr. Chassaing, Mr. Bookout, whoever, in**
 19 **connection with Exhibit 12?**
 20 A No.
 21 **Q You did not?**
 22 A No.
 23 **Q So Exhibit -- I want you to look through**
 24 **Exhibit 11. Are you telling me that's the first time**
 25 **that you've seen those documents in Exhibit 11?**

1 A No, not at all.

2 **Q And so do you know whether or not all of the**
3 **documents that are requested in Exhibit 12 are**
4 **contained in Exhibit 11?**

5 A Oh, I would say in light of the -- in light
6 of Mr. Maupin's ruling yesterday, I would say the
7 answer to that would be no.

8 **Q Of course not. Well, we know what's not**
9 **included in there, the one that you showed Pirrello,**
10 **which are all your notes that you were kind enough to**
11 **talk to the Post-Dispatch about, right?**

12 A I tried to talk to the Post-Dispatch about
13 what was in the resolution. In essence, I found out
14 about Mr. Maupin's ruling yesterday, which I haven't
15 seen until today. I have started compiling those
16 emails.

17 **Q When are we going to get those?**

18 A I'm about halfway.

19 **Q How many are there?**

20 A I don't have any idea. I didn't categories
21 them in a separate file so I have to scroll through
22 all of my emails that I have from -- the way I've been
23 doing it from the time Adam was elected to date.

24 **Q When did you start compiling those?**

25 A Yesterday afternoon.

1 **Q Did you see that information? We've**
2 **Bates-stamped it 0001 -- Paul 00001 to Paul 00112.**
3 **You can have a copy of this if you want it. Those 112**
4 **documents in that form, all right, in the form that it**
5 **was produced to us yesterday, when did you first see**
6 **that?**

7 A I think Kate started compiling this
8 information last week. She was copying me on it if
9 she got it done.

10 **Q And how do you know that?**

11 A How do I know that she was copying me on it?

12 **Q How do you know she was compiling it last**
13 **week? Did she tell you that?**

14 A She started copying me on the information,
15 and I might have even told her to get started. I
16 don't recall.

17 **Q Why wouldn't you get started then is my**
18 **question?**

19 A Because I knew that Mr. Cheung had filed
20 objections to your subpoena duces tecum, and I wasn't
21 sure what was going to be necessary, if anything.

22 **Q Do you know what the city clerk did to**
23 **determine how she went about the process of gathering**
24 **that information?**

25 A I assumed she got that information from her

1 **Q Why did you start compiling them yesterday**
2 **afternoon when you knew about Exhibit 12 before that**
3 **time?**

4 A Because there was a ruling indicating that I
5 should probably do that.

6 **Q How did you find out about that ruling?**

7 A I was told that all attorney/client
8 privileged documents were going to be produced.
9 Mr. Maupin called and told me that I guess immediately
10 prior to his actual release of the order, but I have
11 not seen the order.

12 **Q Who called you?**

13 A Mr. Maupin.

14 **Q And told you what?**

15 A Told me that this was going to be his order
16 on your objections.

17 **Q When did --**

18 A I'm sorry, on your opinion.

19 **Q And when did that happen?**

20 A I think it was yesterday.

21 **Q You said you didn't see Exhibit 11 so no one**
22 **from the City shared that information with you?**

23 A No, I didn't say that. I thought you asked
24 whether I had not seen it and I said, Absolutely, I've
25 seen that. I've seen that information.

1 own files.

2 MR. CHASSAING: Do you know or are you
3 assuming?

4 THE WITNESS: I do not know.

5 BY MR. PLEBAN

6 **Q Do you know whether she contacted individual**
7 **members of the city council?**

8 A I do not know.

9 **Q Did she ask you to provide her with**
10 **information regarding your emails?**

11 A I don't think so.

12 **Q You don't know?**

13 A I don't --

14 **Q You don't know whether or not she asked you**
15 **that question?**

16 A I don't recall her asking me that question.

17 **Q You said that you shared your -- what you**
18 **called in the Post article, and I'm now calling your**
19 **notes in your computer, you shared those with**
20 **Pirrello?**

21 A A form of them, yes.

22 **Q A form of them -- what form of them? All of**
23 **your notes, part of your notes?**

24 A At the time, Matt and I, I can't remember
25 the exact discussion, but there was a discussion about

1 potentially removing the mayor and he wanted to know
2 how that would be done, how that could be done, and
3 what it would look like. So I prepared a document for
4 by which -- to demonstrate what it would look like and
5 I was assuming that he was going to be one who was
6 filing the document.

7 **Q Was this before or after the plan to have
8 Katie James file a complaint?**

9 A That was back in December.

10 **Q So in December of 2012 is when discussions
11 that involved you first began with respect to the
12 impeachment of Adam Paul, is that what you're telling
13 us?**

14 A I think those discussions began before that.

15 **Q Well, tell me when they first began.**

16 A I can't tell you exactly.

17 **Q What's your best recollection of when they
18 first began?**

19 A Sometime after he was elected, obviously,
20 and after he had -- I will say a couple of months
21 experience and the problems began.

22 **Q So he was elected in April. Seated in
23 April. So we're talking now June?**

24 A Could have been June, could have been July.
25 I don't think it was May.

1 stop, start another question. But don't talk over
2 each other, please.

3 THE WITNESS: I didn't start keeping these
4 notes with the very first event. I started keeping
5 the notes sometime later after several events
6 occurred.

7 BY MR. PLEBAN

8 **Q All right. Do you recall what the first
9 event was that you recorded?**

10 A I really don't, but it was my guess it would
11 be the Katie James incident.

12 **Q That was in May or April, rather?**

13 A It was in May.

14 **Q Or April?**

15 A No, it was on May 2nd.

16 **Q So this guy's in office in less than a month
17 and you're keeping notes on him?**

18 A That's not what I said.

19 **Q Is that what you're telling us?**

20 A Not what I said.

21 **Q I thought you said the first event that you
22 recorded was Katie James in May, right?**

23 A I did not say that. I said Katie James
24 incident was the first event.

25 **Q When did you record it?**

1 **Q Well, do your notes reflect this? When did
2 you start keeping notes?**

3 A I don't know.

4 **Q Other than notes --**

5 A Somewhere around.

6 **Q -- notes reflect when you started keeping
7 them?**

8 A No, I don't think so.

9 **Q Do they reflect dates?**

10 A The --

11 **Q Notes?**

12 A The document itself?

13 **Q The events.**

14 A Dates of the events, yes.

15 **Q So I'm assuming that an event happens --**

16 A Yes.

17 **Q -- and then you go to your computer, and you
18 record it that day or the next day or close in time to
19 the event when it occurs, correct?**

20 A Yes, but --

21 MR. CHASSAING: Can I interrupt? On the
22 record, it's very obvious it's both of you are
23 stepping over each other from what I am seeing
24 produced here, and I just ask both the witness and the
25 questioner complete the question, stop, get an answer,

1 A I don't know.

2 **Q I thought you told me you recorded these
3 events close in time to when the event occurred?**

4 A No. I qualified that by saying, but I did
5 not start beginning -- beginning to record the events
6 until a couple of months, perhaps three months,
7 perhaps four months, into the mayor's term. And then
8 I went backward and included what I knew.

9 **Q You reconstructed?**

10 A I -- I don't know what exactly
11 reconstruction means, but --

12 **Q You didn't take the note contemporaneous
13 with the event in time?**

14 A It was not contemporaneous.

15 **Q Close in time when it occurred?**

16 A Yes.

17 **Q You reconstructed it based on your
18 recollection?**

19 MR. CHASSAING: I object to the
20 argumentative nature of the question. That's not what
21 I consider to be a reconstruction.

22 MR. PLEBAN: That's what I consider.

23 MR. CHASSAING: I want to make an objection
24 for the record.

25 MR. PLEBAN: He can correct it.

1 BY MR. PLEBAN
 2 **Q Is that what you did?**
 3 A I agree -- I do not agree that that's --
 4 that reconstruction is an appropriate term. I
 5 recorded the events a couple of months, maybe more,
 6 some of the events, after they occurred.
 7 **Q Did you keep notes on other council persons?**
 8 A No.
 9 **Q You said no?**
 10 A No.
 11 **Q Why not?**
 12 A I wasn't aware that any of the other council
 13 persons were violating the charter.
 14 **Q So but had they violated the charter, you**
 15 **would have kept notes on them, is that what you're**
 16 **telling us?**
 17 A I don't know if it would have been a single
 18 violation if I would have written something down, but
 19 over the course of time, if there were multiple
 20 violations, I think the answer would be yes.
 21 **Q Why would you record that?**
 22 A Because I represent the City and that's my
 23 job as the City's attorney.
 24 **Q Well then, when you were recording these in**
 25 **June or July, whatever you started, what did you do**

1 A Why wouldn't I have a conversation with the
 2 council as a whole? I don't think the council as a
 3 whole was interested at the time of pursuing anything.
 4 **Q Well, how would you know that if you didn't**
 5 **have a conversation with them?**
 6 A I had conversations with them individually.
 7 **Q And so, what, you took the pulse**
 8 **individually of whether or not they were interested in**
 9 **charter violations -- wait a minute. Let me finish.**
 10 **You took the pulse of council members**
 11 **individually to determine whether or not they wanted**
 12 **to pursue charges against Adam Paul, but you didn't**
 13 **want to do it as a group; is that what you're saying?**
 14 A What I'm saying is that the charter
 15 violations, the primary charter violations we're
 16 talking about were already known to the council, and I
 17 did not get any sense of the council when I spoke with
 18 them individually that they wanted to proceed with a
 19 removal action.
 20 **Q My question, sir, is: Why would you want to**
 21 **talk to them individually, but not as a group?**
 22 A I just didn't think it was necessary.
 23 **Q Is that because you knew that if you talked**
 24 **to them as a group, you would alert Adam Paul to what**
 25 **you were doing?**

1 **with them other than put them in your computer?**
 2 A That was pretty much it.
 3 **Q Why wouldn't you -- if it was your job to**
 4 **report these things as the city attorney, why wouldn't**
 5 **you have taken steps to do something about it instead**
 6 **of just putting it in your computer?**
 7 A I think there were conversations that
 8 occurred.
 9 **Q With whom?**
 10 A Council members.
 11 **Q Well, did you have a conversation with the**
 12 **council as a whole?**
 13 A I don't recall.
 14 **Q Why wouldn't you have a conversation with**
 15 **the council as a whole?**
 16 MR. CHASSAING: Are you finished with your
 17 answer?
 18 THE WITNESS: Yes.
 19 BY MR. PLEBAN
 20 **Q Why wouldn't you have a conversation with**
 21 **the council as a whole?**
 22 A I don't recall --
 23 **Q I heard that.**
 24 A -- whether I did or not.
 25 **Q I heard that.**

1 A Mr. Paul knew what he was doing.
 2 **Q No, what you were doing, keeping the book on**
 3 **him; isn't that why you didn't talk to the council,**
 4 **generally?**
 5 A I think that might be a fair statement.
 6 **Q Well, why wouldn't you go talk to Adam Paul**
 7 **then about these?**
 8 A Why would I?
 9 **Q Why don't you answer my question, okay? I**
 10 **ask the questions, you give the answers.**
 11 MR. CHASSAING: I think that's an answer.
 12 THE WITNESS: I agree.
 13 BY MR. PLEBAN
 14 **Q You agree what?**
 15 A I think that's an answer.
 16 **Q Why would I?**
 17 A Yes.
 18 **Q Why would you talk to your mayor about**
 19 **issues that you had with him, is that what you're**
 20 **asking me? Is that the question you're asking me?**
 21 A I talked --
 22 **Q Is that the question you're asking me? Why**
 23 **would I talk to my mayor about charter violations that**
 24 **I perceive that he was doing? Is that your question?**
 25 MR. CHASSAING: You're arguing with the

1 witness. He stated he can't think of a reason why he
 2 would.
 3 MR. PLEBAN: I'm not --
 4 MR. CHASSAING: Yes.
 5 MR. PLEBAN: I'm not close to arguing with
 6 the witness.
 7 MR. CHASSAING: Yes, you are.
 8 MR. PLEBAN: I'm not close.
 9 MR. CHASSAING: You're raising your tone of
 10 voice.
 11 MR. PLEBAN: I'm getting tired of the games.
 12 The mental and verbal gymnastic games that I'm playing
 13 with this guy who has a financial interest in the
 14 outcome of all of this. I'm getting real tired of
 15 that.
 16 MR. CHASSAING: You got a question?
 17 MR. PLEBAN: He's an embarrassment to the
 18 profession what I see here.
 19 MR. CHASSAING: I move to strike.
 20 MR. PLEBAN: Move all you want. It's an
 21 embarrassment to the profession.
 22 MR. CHASSAING: Let's take a break. I'm
 23 taking a break.
 24 MR. PLEBAN: That's a good idea.
 25 (A short recess was taken.)

1 BY MR. PLEBAN
 2 **Q Mr. Martin, you indicated you shared these**
 3 **notes with Mr. Pirrello, and the notes that I'm**
 4 **referring to are what I'm calling notes, and these**
 5 **were the item on your computer as they relate to Adam**
 6 **Paul. Why did you choose to share those with**
 7 **Mr. Pirrello?**
 8 A Because we had a discussion. I'm assuming
 9 we had a discussion about moving forward with some
 10 kind of removal proceedings, and said that to do that,
 11 somebody needed to start it off, somebody needed to
 12 file a complaint. And he asked what would that look
 13 like, and I prepared something and sent it to him.
 14 **Q And how long was that conversation before**
 15 **the conversation dealing with Katie James filing the**
 16 **complaint?**
 17 A It was in December, I think.
 18 **Q You did say that. I'm sorry. Yes. All**
 19 **right. Did you share that information, the notes that**
 20 **you had, with any other members of the council?**
 21 A I don't believe so.
 22 **Q You're not sure?**
 23 A I don't believe so. I don't think so.
 24 **Q Why wouldn't you share it with other members**
 25 **of the council?**

1 A I suppose there are two reasons. Number
 2 one, no one else asked and, number two, I assumed if
 3 Matt wanted to take it any further, he would do that.
 4 **Q Did you believe he was going to share your**
 5 **notes with the other members of the council?**
 6 A I didn't have any idea.
 7 **Q Did you ask him whether or not he was going**
 8 **to share --**
 9 A No.
 10 **Q Let me finish.**
 11 A Sorry.
 12 **Q He was going to share your notes with the**
 13 **other members of the council?**
 14 A No.
 15 **Q Why not?**
 16 A It didn't occur to me.
 17 **Q What did you think he was going to do with**
 18 **those notes?**
 19 A I thought he was going to file the
 20 charter -- complaint of a charter violation.
 21 **Q On his own?**
 22 A Well, that's what I thought.
 23 **Q Did he tell you that he had any notes of his**
 24 **own?**
 25 A No.

1 **Q When you gave him your notes, did you have a**
 2 **lengthy conversation with him about what those notes**
 3 **meant?**
 4 A No.
 5 **Q Did he ever come back to you anytime after**
 6 **you originally gave him the notes to ask you to**
 7 **explain the notes?**
 8 A No.
 9 **Q After you gave him those notes in December**
 10 **of 2012, when was the next conversation that you had**
 11 **with Mr. Pirrello about removing Adam Paul as the**
 12 **mayor?**
 13 A As far as I know, it was February 8th.
 14 **Q And between December and February 8th, you**
 15 **never made any inquiry of Mr. Pirrello as to what he**
 16 **was doing with the notes or how he wanted to proceed?**
 17 A No.
 18 **Q Why not?**
 19 A I don't know. I suppose I was waiting to
 20 see if he wanted to proceed.
 21 **Q When you talked to him in December of 2012,**
 22 **did he indicate to you that the entire council was**
 23 **displeased with Adam Paul?**
 24 A Perhaps. I don't recall that he did.
 25 **Q On February the 20th, council person -- is**

1 **that council woman, council person? What is it,**
 2 **council women?**
 3 MR. CHASSAING: All are welcome.
 4 BY MR. PLEBAN
 5 **Q Council member, Michelle Murray, made a**
 6 **motion that you prepare a preliminary resolution with**
 7 **the removal of the mayor. Do you recall that?**
 8 A Yes.
 9 **Q Did you prepare that motion for her?**
 10 A Yes.
 11 **Q Why?**
 12 A I was asked to -- frankly, I don't really
 13 remember if it was a discussion. I don't remember
 14 whether I was asked to do it or I volunteered to do
 15 it.
 16 **Q When were you asked to do it or when did you**
 17 **volunteer to do it?**
 18 A Well, given the time frame, sometime, I
 19 assume, a couple of days before the motion was made.
 20 When was the motion made?
 21 **Q February 20th.**
 22 A That's what I would assume.
 23 **Q Sir, how did that come about that you were**
 24 **asked to do it or you volunteered to do it?**
 25 A I don't know. I think my emails might be

1 **the recommendation on the 18th as well or before?**
 2 A They didn't make the recommendation until
 3 the 18th. And I provided them with alternate
 4 recommendations before. I don't know if it was on the
 5 18th or over the weekend or week before, but I gave
 6 them two alternate recommendations.
 7 **Q And so then was it on the 18th that right**
 8 **after the decision from the charter review commission**
 9 **was rendered that you had the communication with**
 10 **Michelle Murray about the motion to impeach the mayor?**
 11 A I don't know if it was on the -- did you say
 12 the 18th?
 13 **Q Yes.**
 14 A I don't think it happened on the 18th.
 15 **Q Was Michelle Murray at the charter review**
 16 **commission hearing?**
 17 A She sat on the commission.
 18 **Q Okay. And you were present as well?**
 19 A Yes.
 20 **Q And prior to the commencement of that**
 21 **hearing, did you have any conversations with the**
 22 **members of that commission?**
 23 A Only through the email when I said that I
 24 sent out with the recommendations attached.
 25 **Q That night when everybody was present, you**

1 helpful in that regard.
 2 **Q Was that before or after the Katie James**
 3 **complaint was filed?**
 4 A I think they would have been after.
 5 **Q Was that before or after the Charter Review**
 6 **Committee heard the Katie James complaint?**
 7 A I think it was after. I think it would have
 8 occurred either on the 20th or the 19th.
 9 **Q Did you know what was going to happen with**
 10 **the Katie James complaint before February 20, 2013?**
 11 A The question isn't terribly specific. The
 12 February 18th, I believe, if I recall correctly, the
 13 charter enforcement commission met and made a
 14 recommendation to the council. Based on that
 15 recommendation, yes, I expected that the council
 16 wasn't going to pursue that.
 17 **Q And you knew that when?**
 18 A After the charter commission made its
 19 recommendation.
 20 **Q Do you recall when they made the**
 21 **recommendation?**
 22 A They made the recommendation on the 18th, I
 23 believe.
 24 **Q And so you then -- after they made their**
 25 **recommendation on the 18th, you were -- you knew of**

1 **didn't have any conversations with them behind closed**
 2 **doors?**
 3 A No.
 4 **Q Did you know how they were going to rule?**
 5 A I expected them to rule the way they did.
 6 Did I know how they were going to rule? No.
 7 **Q Why did you expect them to rule the way they**
 8 **did?**
 9 A I concluded a brief opinion saying I really
 10 don't think failure to remove somebody is a -- an
 11 impeachable offense that's going to be upheld by a
 12 court. So I recommend that you consider strongly
 13 whether or not you want to go there.
 14 **Q Why did you give them that opinion or why**
 15 **did you give them any opinion?**
 16 A I just felt it was appropriate at the time.
 17 **Q Did you also tell them, and by "them," I'm**
 18 **referring to the Charter Review Committee, did you**
 19 **also tell the member of the Charter Review Committee**
 20 **which, by the way, were who? Murray?**
 21 A Murray, Reel and Anglin, I believe.
 22 **Q Did you also -- did you also tell Murray,**
 23 **Reel and Anglin, members of the Charter Review**
 24 **Committee, that you had a conversation with Pirrello**
 25 **on February the 8th in which you recommended that**

1 **Katie James be picked to file this complaint?**
 2 A No, I don't think so.
 3 **Q Why not?**
 4 A I don't know. It didn't --
 5 **Q Do you know why you didn't tell them that?**
 6 A I didn't think it was necessary.
 7 **Q You didn't think that was relevant, their**
 8 **knowledge that you had orchestrated this along with**
 9 **Pirrello?**
 10 A No.
 11 **Q But you thought it was necessary that you**
 12 **advise them that this wasn't an impeachable offense?**
 13 A Yes, apparently so.
 14 **Q And so whether you -- you had a -- well, you**
 15 **had some communication with Murray. It wasn't the**
 16 **very night that you were with her whether they ruled**
 17 **the way they did on the charter review commission on**
 18 **the 18th?**
 19 A No, I don't think I had a conversation with
 20 Murray.
 21 **Q And you had a conversation with her, though,**
 22 **and I'm not saying verbal?**
 23 A No.
 24 **Q I'm talking about communication.**
 25 A Right. No, no. I don't think I did. I had

1 A What should this motion look like here -- I
 2 responded here -- here's a motion, and then it was
 3 tweaked a little bit to insure that the staff, and I
 4 could prepare the resolution and the lease, just
 5 wouldn't be any question about the contents of the
 6 resolution being a violation of the Sunshine Law or
 7 attorney/client privilege.
 8 **Q I didn't understand the last part. It**
 9 **was -- hold on.**
 10 A Tweaked.
 11 **Q Yeah, tweaked how?**
 12 A Added a couple of clauses saying that staff
 13 is directed to cooperate notwithstanding the Sunshine
 14 Law or attorney/client privilege.
 15 **Q With whom did you consult on that tweaking**
 16 **process?**
 17 A I think it was Matt in the course of that
 18 email I was describing earlier.
 19 **Q Why are all these conversations happening**
 20 **with Pirrello, do you know?**
 21 A The answer to that is, no, I really don't
 22 know. Assume.
 23 **Q What?**
 24 A Matt had been there for six years, he was
 25 the leader, and he was taking the point on this I

1 a conversation with Matt and Matt apparently had the
 2 conversation with Shelly.
 3 **Q Shelly being Murray?**
 4 A Yes.
 5 **Q Okay. Let me back up. When did that occur?**
 6 A Probably the 19th or the 20th. I don't
 7 remember.
 8 **Q So on February 19th or the 20th, you get a**
 9 **phone call from Pirrello?**
 10 A Yes. I'm sorry. I don't know if it was a
 11 phone call. I think it was an email.
 12 **Q And since we don't have the email here, what**
 13 **was stated in that?**
 14 A It was basically what should the motion look
 15 like, I think, and I drafted the motion.
 16 **Q So it was a motion to -- the motion that was**
 17 **read by Murray on the 20th, is the motion you gave to**
 18 **Pirrello on the 19th or the 20th, correct?**
 19 A I believe that's true.
 20 **Q And tell me the conversation that you had**
 21 **with Pirrello in that regard.**
 22 A It was almost positive it was an email
 23 conversation, and I don't think there was a telephone
 24 conversation about it.
 25 **Q And what was the nature of it?**

1 suppose is the way to put it.
 2 **Q How come Murray wound up reading the motion**
 3 **as opposed to Pirrello, if you know?**
 4 A I don't know.
 5 **Q Was Roze Accup supposed to read that motion?**
 6 A I don't know.
 7 **Q Were you involved in any conversation in**
 8 **which Roze Accup was supposed to read the motion?**
 9 A No.
 10 **Q When did you first see the complaint filed**
 11 **by Ms. James?**
 12 A Monday, the 11th.
 13 **Q Of February?**
 14 A February. I think that's accurate.
 15 **Q Did you help draft that?**
 16 A Yes.
 17 **Q You did?**
 18 A Yes.
 19 **Q Who did you show it to besides Kate James?**
 20 A I didn't show it to Kate James.
 21 **Q Who did you show it to, period?**
 22 A Mr. Pirrello.
 23 **Q And he gave it to Katie James, to your**
 24 **knowledge?**
 25 A I assume so.

1 **Q It came back signed by Katie James or a**
 2 **purported signature of Katie James?**
 3 A Right.
 4 **Q Why would you draft that? Why would you do**
 5 **that?**
 6 A The council was faced with a situation of
 7 actions by the mayor that violated the charter, and I
 8 think they wanted to -- I'm assuming that they wanted
 9 to move forward with that. Pirrello called me and
 10 said, How do we do this? And I said, To deflect
 11 public criticism from the council, perhaps we do it
 12 through a charter complaint violation filed by Katie
 13 James, and after that, I basically diagrammed how it
 14 could get done.
 15 **Q Well, I got the whole part about how you**
 16 **orchestrated all of this. My question to you, sir,**
 17 **is: Why would you draft a document that was going to**
 18 **be signed by the person who was not a member of the**
 19 **council and not an employee of the City of Ellisville**
 20 **but rather a resident?**
 21 MR. CHASSAING: I object to the term
 22 "orchestrated," but -- it's argumentative.
 23 THE WITNESS: I think it's fair to say it
 24 was in response to the discussion that Matt and I had.
 25

1 A No.
 2 **Q When Michelle Murray made the motion on**
 3 **February 20th to have you draft a preliminary**
 4 **resolution of an impeachment, had that already been**
 5 **drafted?**
 6 A No.
 7 **Q Did you have any conversation with Michelle**
 8 **Murray before she made that motion about the motion?**
 9 A I don't think so.
 10 **Q So you drafted the motion, you gave it to**
 11 **Pirrello, and then the next thing you knew about the**
 12 **motion was when Murray was making the motion at the**
 13 **February 20 meeting?**
 14 A Yes.
 15 **Q Do you know how Murray was supposed to know**
 16 **what you were going to put into the impeachment**
 17 **resolution?**
 18 A Other than her observations of what took
 19 place over the last ten months.
 20 **Q Did she ever share those with you?**
 21 A We had discussions at different times,
 22 specifically, about what was going to be in the
 23 resolution? No, she did not.
 24 **Q Did you have any conversation with anybody**
 25 **before he publicized those -- that first resolution?**

1 BY MR. PLEBAN
 2 **Q Why wouldn't you just let her draft her own**
 3 **complaint, whatever it might be?**
 4 A The -- I don't know why I wouldn't have done
 5 something. The fact that I did do it as a result of
 6 the conversation that I had with Matt. Whether it was
 7 a voluntary act on my part, whether he requested it, I
 8 don't know.
 9 **Q Did you tell the rest of the council that**
 10 **you were drafting this complaint for Katie James?**
 11 A No.
 12 **Q Why not?**
 13 A Matt wanted it right away, and I assumed
 14 that he was talking to the rest of the council. At
 15 that point, I assumed that the council wanted to move
 16 forward and that they were basically showing us the
 17 way how to do that.
 18 **Q Did you tell Adam Paul that you were**
 19 **drafting a complaint for Katie James?**
 20 A No.
 21 **Q Why not?**
 22 A In retrospect, I didn't think about it then.
 23 In retrospect, I don't see what the purpose of that
 24 would be.
 25 **Q You don't?**

1 **Did you have discussions with anybody regarding the**
 2 **contents of that resolution before you publicized it?**
 3 A Yes.
 4 **Q With whom?**
 5 A I drafted it, and I believe I sent it to
 6 Kate, Kevin, Matt, Tom Felgate and asked that it be
 7 forwarded to Kelly Murray with the request that they
 8 review that very, very carefully, make sure everything
 9 in it was accurate and if she saw any discrepancies to
 10 let me know.
 11 **Q So you sent the draft resolution to the city**
 12 **clerk, the city manager, the chief of police, Pirrello**
 13 **and Murray before --**
 14 A Kelly Murray, not Shelly Murray.
 15 **Q Who is Kelly Murray?**
 16 A He is a lieutenant captain, lieutenant of
 17 the police department.
 18 **Q Why did you include him?**
 19 A He was the one who sniffed, for lack of a
 20 better way to put it, the bottles that Adam discarded
 21 after one of the public meetings. And he was the one
 22 who said that there's alcohol in this bottle.
 23 **Q Vodka, is that what he told you?**
 24 A Pardon me?
 25 **Q Vodka?**

1 A He did not say vodka.
 2 **Q What did he say?**
 3 A He just said alcohol.
 4 **Q Did you ask him what kind of alcohol?**
 5 A No.
 6 **Q He told you alcohol?**
 7 A Yes.
 8 **Q Was it this Kelly Murray who brought it to**
 9 **your attention?**
 10 A I don't know who brought it to attention.
 11 **Q In any event, you questioned Kelly Murray?**
 12 A Kelly Murray was in the kitchen with a group
 13 of other people.
 14 **Q You asked Kelly Murray about the incident,**
 15 **you did, personally?**
 16 A Yes.
 17 **Q And he said he smelled alcohol?**
 18 A Yes.
 19 **Q But you didn't ask him what kind of alcohol**
 20 **it was?**
 21 A No.
 22 **Q And you never asked the mayor anything about**
 23 **that?**
 24 A No, I did not.
 25 **Q So you sent this resolution to all of these**

1 **individuals that you've listed here, but you didn't**
 2 **send it to the council?**
 3 A Correct.
 4 **Q So when was the first time that council saw**
 5 **it?**
 6 A I'd have to check my emails. I do not know
 7 for sure, but I think it was the Saturday -- well --
 8 well, maybe they did see it. I don't know. I'm
 9 sorry. I sent out an email on Saturday, I believe, to
 10 Kate and whether I copied council, I don't remember.
 11 **Q So when would the council have seen it?**
 12 A The latest would have been distributed by
 13 Kate on the following Monday.
 14 **Q For the Wednesday meeting, so the 18th?**
 15 A Yes. I believe that's correct.
 16 **Q All right. And when was it published?**
 17 A What do you mean by "published"?
 18 **Q Made available to the public.**
 19 A It would have been made available to the
 20 public through Kate on the 18th.
 21 **Q So you put out a document on the 18th that**
 22 **you didn't have the council look at for accuracy?**
 23 A I put out a document on the 18th that those
 24 people who had firsthand knowledge of the petition,
 25 had reviewed it for accuracy.

1 **Q You put out a document on the 18th, you**
 2 **publicized a document on the 18th that you didn't have**
 3 **the council look at; is that correct?**
 4 A That's correct.
 5 **Q Didn't you just tell me that the council was**
 6 **aware of a variety of these things that occurred?**
 7 A Yes.
 8 **Q That you claim that they witnessed those**
 9 **firsthand; is that correct?**
 10 A Council members witnessed things like the
 11 issue with the city attorney, the issue with the
 12 relocation expert from Sansone. I do not know to what
 13 extent council members were aware of the issues with
 14 Kate Demeter. I believe -- I believe -- I don't
 15 remember about the publication information.
 16 **Q So it's fair to say that the council members**
 17 **were witnesses to some of the allegations that you**
 18 **made in the preliminary resolution of impeachment,**
 19 **correct?**
 20 A I think that's accurate, yes.
 21 **Q So they were witnesses to at least part of**
 22 **the resolution, correct?**
 23 A Yes.
 24 **Q So why wouldn't you give it to them so that**
 25 **they can comment on the accuracy of what you were**

1 **recording?**
 2 A The things that the council as a whole was
 3 aware of were documented by Adams' own emails and they
 4 observed those things personally.
 5 **Q You made the suggestion in February to**
 6 **Pirrello, on February the 8th, that Katie James filed**
 7 **this complaint alleging charter violations. Why did**
 8 **you not -- and when you drafted that complaint for**
 9 **Katie James, why didn't you include all these other**
 10 **allegations?**
 11 A Katie wouldn't have been privy to those
 12 allegations, I suppose.
 13 **Q Well, was Katie privy to the allegation**
 14 **relating to Srote?**
 15 A Srote, yes. She wasn't there, but she heard
 16 about it.
 17 **Q Well, so she had no direct knowledge of the**
 18 **complaint that you wrote to have her sign regarding**
 19 **Mr. Srote, whatever this guy's name is, correct?**
 20 A I don't know what Katie's knowledge was,
 21 but --
 22 **Q Well, you wrote --**
 23 A As far as I know, yes.
 24 **Q You wrote the charge for it, didn't you?**
 25 A Yes.

1 **Q So you wrote a charge for a lady that wasn't**
 2 **even present during that meeting?**
 3 A Yeah, I don't think she was present.
 4 **Q You wrote a charge for a lady who wasn't**
 5 **even present during the meeting?**
 6 A That's true.
 7 **Q And you wrote the charge for a lady who**
 8 **wasn't present during the meeting without ever talking**
 9 **to the lady?**
 10 A I was talking to Matt.
 11 **Q You didn't talk to Katie James about that**
 12 **meeting, did you?**
 13 A I didn't talk to Katie James at all.
 14 **Q So back to my original question. Why didn't**
 15 **you include all of these other allegations so that**
 16 **Katie James could make the complaint against the mayor**
 17 **so you could deflect public opinion away from the**
 18 **council?**
 19 A I don't know why I didn't do that. I can
 20 tell you that the way I saw this unfolding was to have
 21 the charter violation complaint bring the issue to the
 22 public's attention of people by which the complaint
 23 could get in front of the council and then the council
 24 could raise the issue of what about all of these other
 25 allegations.

1 conclusion that the Charter Enforcement Commission was
 2 not the only people by which the council could
 3 consider impeachment.
 4 **Q Did you prepare a legal memorandum to that**
 5 **effect?**
 6 A No, I did not.
 7 **Q What's your authority for saying that?**
 8 A My analysis of the chart.
 9 **Q What allows you to bypass the Charter**
 10 **Enforcement Commission?**
 11 A The Charter Enforcement Commission was
 12 adopted, I don't know, in 2002. It's not an exclusive
 13 vehicle to pursue forfeiture of office. Section 3.6
 14 of the charter predated the Charter Enforcement
 15 Commission and has a provision for forfeiture of
 16 office of the Charter Enforcement Commission -- the
 17 ordinance implementing the Charter Enforcement
 18 Commission discusses complaints of charter violations.
 19 What we were dealing with Adam's situations, not only
 20 charter violations, but other allegations of
 21 misfeasance in office.
 22 (Exhibit 14 was marked for
 23 identification.)
 24 BY MR. PLEBAN
 25 **Q Handing you what's marked as Exhibit 14 and**

1 **Q So if I understand your testimony correctly,**
 2 **you had the opportunity when you were drafting the**
 3 **complaint for Katie James to include these other**
 4 **allegations so that the Charter Review Commission**
 5 **could likewise review them, investigate them, pass**
 6 **upon them and make a recommendation with council as a**
 7 **whole, but you opted not to do that?**
 8 A I didn't consider that possibility, but
 9 obviously, I did not do that.
 10 **Q So on these other allegations that you've**
 11 **included beyond just the Katie James allegation about**
 12 **a meeting that occurred nine months ago and beyond the**
 13 **allegation with respect to Mr. Stote?**
 14 MR. CHASSAING: I think he should change his
 15 name to Stote.
 16 BY MR. PLEBAN
 17 **Q S-T-O-T-E?**
 18 A S-R-O-T-E.
 19 **Q Srote. Beyond the allegations contained in**
 20 **Srote and Katie James allegations, you bypassed the**
 21 **charter review commission on the others by design?**
 22 A I don't think that's necessarily a fair way
 23 of stating it.
 24 **Q How would you say it then?**
 25 A I would say that the -- I reached the

1 **ask you to identify that.**
 2 A It appears to be a copy of the Ellisville
 3 city charter.
 4 **Q Is that a current copy of the Ellisville**
 5 **city charter to the best of your knowledge?**
 6 A To the best of my knowledge, yes.
 7 (Exhibit 15 was marked for
 8 identification.)
 9 BY MR. PLEBAN
 10 **Q Handing you what's been marked as Exhibit**
 11 **15. Ask you if you recognize that copy?**
 12 A It appears to be Chapter 145 of the
 13 Ellisville city code regarding charter enforcement.
 14 **Q Okay.**
 15 THE WITNESS: Can we take a quick break?
 16 MR. PLEBAN: Sure.
 17 (A short recess was taken.)
 18 BY MR. PLEBAN
 19 **Q I showed you Exhibits 14 and 15. Can you**
 20 **identify 15?**
 21 A I think I already have, but it's Chapter 145
 22 of the C code.
 23 **Q Now, you indicated that the provision for**
 24 **the Charter Enforcement Commission that alleged**
 25 **violations of the city charter as a necessary**

1 **condition precedent would not have to go through the**
2 **charter enforcement, is that your position?**

3 A Yes, sir.

4 **Q Can you tell me based upon those documents**
5 **you have in front of you, the charter and the charter**
6 **enforcement, Chapter 145 of the code, what you're**
7 **pointing to in reliance upon that statement?**

8 A Okay. A couple of things. Section 3.6.
9 Code entitled Judge Qualifications.

10 MR. CHASSAING: You said "code." Did you
11 mean charter?

12 THE WITNESS: Charter, thank you. Entitled
13 Judge of Qualifications provides for a means by which
14 the council can act to remove someone for forfeiture
15 of office. It's not limited to charter violations.
16 Section 12 point -- I'm sorry, not 12. 12.10 of the
17 code was adopted nine years after 3.6, and I interpret
18 it as an addition to Charter 3.6 and a means by which
19 individual members, I'm sorry, individual residents
20 can file charter violation complaints for the council
21 to review.

22 In addition to that, Section 2.1 of the
23 charter -- I'm sorry, let me back up. So the second
24 section that was adopted in 2002 seems to be
25 supplementary --

1 A In substance, that's it.

2 **Q Let me show you what's been marked as 16 and**
3 **ask you if you recognize that.**

4 A Yes.

5 **Q What is that, please?**

6 A That is the Katie James complaint.

7 **Q Is that the complaint that you drafted?**

8 A Yes.

9 **Q Let's talk about the resolution that you**
10 **drafted, the preliminary resolution that you drafted**
11 **in this case, that was pursuant to the motion made by**
12 **Michelle Murray on February 20th of 2013. You've had**
13 **occasion to review that, have you not, sir?**

14 A Not recently. Of course, I have seen it.

15 **Q Do you want to take a minute to take a look**
16 **at it?**

17 A Well, if you have specific questions, I'm
18 sure that I can --

19 MR. PLEBAN: Let me mark it.
20 (Exhibit 17 was marked for
21 identification.)

22 BY MR. PLEBAN

23 **Q That's the final one I gave you.**

24 MR. CHASSAING: Is that marked?
25

1 BY MR. PLEBAN

2 **Q That would be 1210?**

3 A Yeah, 1210.

4 **Q All right.**

5 A Is supplementary to 3.6 and does not require
6 or limit the council's consideration of an action
7 under 3.6 for forfeiture of office, and Section 2.1 of
8 the charter specifically states that the powers of the
9 City shall be liberally construed. The specific
10 mention or lack of mention of particular power in this
11 charter shall not be construed as limiting powers of
12 the City.

13 So, in other words, the City is supposed to
14 have all of the powers available to it as a charter
15 city and can act consistent with that broad range of
16 powers.

17 (Exhibit 16 was marked for
18 identification.)

19 BY MR. PLEBAN

20 **Q Anything else that you're relying upon to**
21 **support your position or your interpretation?**

22 A No, I don't think so.

23 **Q Let me show you what's been marked -- well,**
24 **take a look if there's something else I need to know**
25 **about.**

1 BY MR. PLEBAN

2 **Q The final.**

3 A This is the final executed draft of the
4 amended preliminary resolution.

5 **Q I marked it as final resolution, the date on**
6 **that, but disregard my handwriting. Do you recognize**
7 **that as the final resolution?**

8 A Yes, appears to be so.

9 **Q And the original resolution contained --**
10 **(Exhibit 18 was marked for**
11 **identification.)**

12 BY MR. PLEBAN

13 **Q Let me hand you what's been marked as**
14 **Exhibit 18. Ask if you recognize that.**

15 A It is not a signed copy, but it appears to
16 be the draft preliminary resolution that was presented
17 to the council.

18 (Exhibit 19 was marked for
19 identification.)

20 BY MR. PLEBAN

21 **Q Now, that Exhibit 18 was the original**
22 **resolution and then that was amended one time, and let**
23 **me show you Exhibit 19. Disregard the handwriting at**
24 **the bottom and the top. Is that the first amendment**
25 **to Exhibit 18?**

1 A It appears to be, but I do not recall.
 2 **Q And then Exhibit 17 is the final resolution?**
 3 A Yes.
 4 **Q How did it come about that -- well, strike**
 5 **that.**
 6 **Did the -- was the original resolution, was**
 7 **that amended twice to your recollection?**
 8 A It was only amended by the council once.
 9 There was --
 10 **Q I'm not talking about a vote now.**
 11 A Yes.
 12 **Q Was the document revised, forgetting the**
 13 **vote for the moment, was the only document -- here you**
 14 **can see if you want. Was the original document**
 15 **revised twice?**
 16 A I think the original document, which is
 17 Exhibit 18, was revised and presented to the council,
 18 and I believe Exhibit 19 is that document, and then
 19 through the council discussion at the meeting, there
 20 was a second revision, which ended up to be the final
 21 amendment, and that is Exhibit 17.
 22 **Q So with respect to Exhibit 19, how did**
 23 **Exhibit 19 come to be amended? How did that happen?**
 24 A Let's see. I have to figure out what the
 25 amendments are. Okay. Exhibit 18 --

1 reason for impeachment.
 2 **Q Why didn't you share the original charges**
 3 **with Mr. Cheung before you published them?**
 4 A I did share the original charges with
 5 Mr. Cheung when I was asking him if he would be
 6 interested and willing to be the special prosecutor.
 7 I said, This is a draft of the resolution I'm
 8 preparing. Basically these are the things you can
 9 expect. So I did.
 10 **Q Well, did you ask him for his input at that**
 11 **time when you shared those with him?**
 12 A No, that was purely, This is what you'll be
 13 getting into. Are you willing to take the job?
 14 **Q Did you ask him for his input later on**
 15 **regarding the propriety of the charges?**
 16 A After the preliminary resolution was
 17 adopted, yes, we met and discussed it.
 18 **Q You met?**
 19 A Met and discussed it.
 20 **Q Well, I'm trying to understand why you**
 21 **wouldn't do that before it was adopted rather than**
 22 **after it was adopted.**
 23 A Well, I don't know that there's really a
 24 strong answer for that or a good answer for that.
 25 There isn't a bad answer, either. I don't know. I

1 **Q The original?**
 2 A The original was revised by deletion of
 3 the -- what I will lump together as the alcohol
 4 references in subsection F and also by -- this is 1F.
 5 Also by removal of the profanity allegations, I think,
 6 in that same section, and I think -- might have been
 7 more, but that's I think all there was.
 8 **Q And how did it develop that the amendment**
 9 **was made? Did you get a phone call? Did you do it on**
 10 **your own? How did it come to pass that this amendment**
 11 **occurred?**
 12 A I shared the document with Mr. Cheung and he
 13 reviewed it and -- I don't know if it was a phone call
 14 or we were having a conference, one or the two. He
 15 said, really, these alcohol allegations aren't -- I'm
 16 sorry. Concluded that the alcohol allegations didn't
 17 establish any deficiency in the execution of the
 18 mayor's office and, therefore, didn't constitute an
 19 impeachable offense.
 20 **Q So the alcohol and the profanity did not**
 21 **constitute those items?**
 22 A Well, with regard to the profanity --
 23 essentially, yes. The profanity was -- the conclusion
 24 was that the profanity was really a part of his
 25 control of means rather than being an independent

1 gave him what I thought he needed to do to make
 2 initial determination, and once he said that they
 3 would be interested in doing that, I had enough
 4 information to go to council with the resolution that
 5 I had.
 6 **Q How did Exhibit 17 wind up as the final?**
 7 A In addition to those two changes, there were
 8 a couple of other changes that I believe I
 9 self-initiated, and I'm trying to remember what those
 10 were.
 11 **Q I think kicking my partner out of the**
 12 **meeting might have been one of them.**
 13 A Actually, that was included in the -- in
 14 Exhibit 19. That was one of the revisions for there
 15 and then that was deleted from Exhibit 17.
 16 **Q Was that Mr. Cheung's recommendation or**
 17 **yours?**
 18 A I think it was a mutual conclusion.
 19 **Q So which one did you self-initiate?**
 20 A I don't recall. I think there was some
 21 small issue that was discussed, and I think I
 22 articulated it at the meeting, but I do not recall
 23 right now what it was. I think it may have been the
 24 relocation of paragraph 16 to --
 25 **Q What page?**

1 A To Section G. Page 8 of 19. And there was
2 also, I'm sorry -- there was also the addition of
3 Mayor Paul's recordings of the chief of police and
4 city clerk. That was in 19. That's probably what I
5 was thinking of.

6 **Q Anything else?**

7 A Not that I can think of. I'm sorry. I did
8 find --

9 **Q Go ahead.**

10 A Exhibit 19 included mayor's recording of the
11 closed session meetings and that was dropped from
12 Exhibit 17.

13 **Q In the original -- if you look at the
14 original charges, okay, if look at those are -- what
15 did I say that was, Exhibit 18?**

16 A Eighteen.

17 **Q Look at Section E4.**

18 A Okay.

19 **Q It says: On April 18, public meeting in the
20 Ellisville elementary auditorium, Mayor Paul ordered
21 Lieutenant Kelly Murray of the Ellisville Police
22 Department to remove Miss Katie James from the
23 premises without provocation, cause or excuse?**

24 A Right.

25 **Q Was that not part of Katie James' original**

1 **vote on that?**

2 A Yes.

3 **Q And why is it in the original charges if
4 they vote to dismiss it?**

5 A I don't know that they dismissed it.

6 **Q They didn't do anything with it, but if you
7 anticipated that they were going to follow the
8 recommendation, as a matter of fact, somebody said at
9 the meeting, You got three votes from the Charter
10 Review Commission who say that there's no probable
11 cause here, the mayor, obviously, is going to cast his
12 vote so you're not going to win the vote anyhow?**

13 A Right.

14 **Q Why is it in the original charges?**

15 A I can't tell you why. I didn't -- I didn't
16 think about it when it was put in. That's one reason.
17 And --

18 **Q You didn't think about something that you
19 put in the charges?**

20 A Well, no. I thought about it, but I did not
21 think about what the Charter Enforcement Commission
22 was doing. I also don't think that, as I said, there
23 was any final action taken on it by the council. I
24 think it's still within the council's purview to
25 consider it if they so desire. I don't think they're

1 **complaint?**

2 A Yes, but the date's wrong on 18.

3 **Q I know the date's wrong, but wasn't that
4 part of her original complaint?**

5 A Yes.

6 **Q So if the charter review or Charter
7 Enforcement Commission already ruled on that, why is
8 that in here? Why was that in here at all?**

9 A Well, the Charter Enforcement Commission is
10 only recommending body. It got to the council and the
11 council really didn't -- I don't think the record is
12 clear what action the council took on that.

13 **Q The record is clear, they didn't take any
14 action. And my question is: Do you know why?**

15 A No.

16 **Q Why would --**

17 A I just think it was something that was
18 overlooked during the meeting.

19 **Q Well, but you knew when you were drafting
20 these that what the recommendation of the charter
21 review commission was, didn't you, when you were
22 drafting the original resolution?**

23 A I expected -- I had an expectation of what
24 it would be, yes.

25 **Q Did you expect that the council was going to**

1 foreclosed from doing that.

2 **Q Why didn't you recommend -- if that's the
3 case, if the council can decide these things without
4 the necessity of going through the Charter Enforcement
5 Commission as you indicated as your opinion, why
6 didn't you just recommend to Pirrello that he just had
7 Katie James go directly to the council? Why would you
8 have her go through the Charter Review Commission at
9 all?**

10 A Because I think that Section 1210 of the
11 charter was designed for citizen complaints about
12 charter violations. I don't think the citizen can go,
13 I wouldn't --

14 **Q I thought you just said a citizen could go
15 pursuant to 1210, could go directly to the council?**

16 A I didn't say the citizen go directly to the
17 council. I said the council had the purview to
18 consider whatever it wanted to consider outside of
19 Section 1210.

20 **Q Who is the complainant? If Katie James was
21 the complainant on the original complaint that went in
22 front of the Charter Enforcement Commission, who is
23 the complainant on the rest of it that we have now on
24 Exhibit 17?**

25 A The people who voted for the resolution.

1 **Q Now, the first charge on Exhibit 17 is**
 2 **that -- we're just going to work off of the final**
 3 **amended copy, okay?**
 4 A Right. I've got it.
 5 **Q By the way, the time that you spent here**
 6 **today, are you being compensated in any respect for**
 7 **that time?**
 8 A I wasn't going to bill for it.
 9 **Q The first allegation says that Mayor Paul**
 10 **unlawfully disclosed the confidences of the City**
 11 **without the knowledge or permission of the city**
 12 **council to unauthorized persons in violation of --**
 13 **this is the city code, and then under A, subparagraph**
 14 **two, it says: On a date unknown, but prior to May 2,**
 15 **2012, Mayor Paul disclosed confidential legal opinion**
 16 **from the city attorney concerning the legality of the**
 17 **citizen-initiated referendum on the Wal-Mart TIF**
 18 **ordinance. Do you see that?**
 19 A Yes, sir.
 20 **Q What evidence do you have of that?**
 21 A It was a telephone conversation I had with
 22 the mayor on May 2nd.
 23 **Q And what did he tell you?**
 24 A I have notes that I prepared, but I didn't
 25 bring those notes with me. But you'll get a copy of

1 earlier, I started compiling that list sometime after
 2 Adam was elected, two or three months after Adam was
 3 elected when I realized that this might become an
 4 issue. This is the document that I prepared and sent
 5 to Matt in December. There is --
 6 **Q That's a different --**
 7 A Yes.
 8 **Q -- document that the list?**
 9 A Yes.
 10 **Q So we'll call that the Pirrello list, all**
 11 **right?**
 12 A All right.
 13 **Q We've got a list of the potential charges,**
 14 **the Pirrello list. What else?**
 15 A There is the document of my notes of my
 16 conversation of May 2nd.
 17 **Q Okay.**
 18 A I can't recall anything else in there, but
 19 there might be a -- probably a copy of the
 20 resolutions.
 21 **Q Those resolutions?**
 22 A Right.
 23 **Q Seventeen, 18 and 19?**
 24 A Yes, but I'm horrible when it comes to
 25 revisions. I don't know that I've properly recorded

1 those as well.
 2 **Q Are those the notes in your computer?**
 3 A It wasn't in my computer. This was a
 4 separate document.
 5 **Q Whoa, whoa, whoa. Hold on. I need to**
 6 **figure out what all you have. You told me that you**
 7 **have -- when I'm talking about notes, all right, that**
 8 **you put into your computer, all right, and you**
 9 **maintained that log, all right. Do you have other**
 10 **documents in your file that you maintained?**
 11 A Yes.
 12 **Q Tell me about what all is in this file,**
 13 **okay?**
 14 A Well, I don't really remember everything
 15 that's in the file. There's a document --
 16 **Q I don't want to interrupt, but let me ask**
 17 **this. Where is the file now?**
 18 A It's in my computer.
 19 **Q So when you say "file," you're not talking**
 20 **about a file like the manila file folder?**
 21 A Correct.
 22 **Q So tell me everything that you can recall**
 23 **generically that's in that file.**
 24 A There is a list of potential charges that I
 25 compiled over the course of time and, as I said

1 all three of them.
 2 **Q All right. Anything else?**
 3 A Not that I can think of.
 4 **Q So we've got a list of the potential**
 5 **charges, we've got the Pirrello list, we've got your**
 6 **notes of the May 2nd conversation that you claim to**
 7 **have had with the mayor and you've got possibly a copy**
 8 **of the resolutions?**
 9 A Yes.
 10 **Q Anything else? Is that it?**
 11 A I can't think of anything else.
 12 **Q And you're going to print out all that**
 13 **stuff, right?**
 14 A Yes. Well, yes.
 15 **Q In addition to the emails?**
 16 A I suppose that you could be entitled to the
 17 original list, too, sure.
 18 **Q All right. Now, tell me as best you can**
 19 **recall, what this conversation was with the mayor that**
 20 **you had on May the 2nd.**
 21 A I think it was May the 2nd. That's what my
 22 notes indicated. The mayor called and asked me
 23 something. I don't recall what it was. I think it
 24 had something to do with the TIF, and then we went
 25 into a broader conversation. I suggested to him --

1 **Q Whoa, what's the broader conversation? What**
2 **did he ask you?**

3 A Well, let me go on. That's what I'm going
4 to talk about.

5 BY MR. PLEBAN

6 **Q All right.**

7 A In the context of the conversation, which I
8 really don't recall that with specificity, I suggested
9 to him that he should consider being leader and
10 addressing the public who were intent on the
11 referendum or maybe it was the recall, I don't really
12 remember, and explain to the public that it just
13 wasn't legally possible, and that the TIF ordinance
14 had been -- the TIF project had been approved and
15 everyone should just stand down. It was a very
16 politically charged atmosphere. I was trying to get
17 to a point where the council could move forward,
18 hopefully, without dissention and ongoing public
19 criticism and futile public effort over recall or
20 referendum or whatever the subject matter of the
21 conversation was.

22 And in the course of that conversation,
23 according to my notes, he said: That confidential
24 memo really fanned the flames for recall. And he then
25 went on to restate his objections to the TIF.

1 **Q That was on May the 2nd?**

2 A I think it was May the 2nd. That's what my
3 notes indicate. I don't have an independent
4 recollection of whether it occurred on May the 2nd.

5 **Q Why were you making a note about this mayor,**
6 **about some comment that he made less than a month**
7 **after he was in office?**

8 A So that I had a record of what the
9 conversation was in the case that I would ever need to
10 disclose it or included it in something like this.

11 **Q If you made a record on May the 2nd of that**
12 **conversation, why wouldn't you make a record of the**
13 **Katie James incident then at the same time?**

14 A Katie James incident was witnessed by
15 others. I wanted to make sure that I put down in
16 writing my recollection of that telephone conversation
17 as quickly as I could so I wouldn't forget about it
18 ten months later or whatever it is.

19 **Q So you made a note of the Katie James**
20 **incident, what did you tell me, in June or July?**

21 A Yes.

22 **Q So was that the entirety of the conversation**
23 **as best you recall it that you had with Adam Paul on**
24 **May the 2nd?**

25 A Yes.

1 At some point, I asked him how did that
2 confidential memorandum fan the flames to recall? He
3 responded immediately, I did not give that memorandum
4 to anyone. So that led me to believe that, in fact,
5 that's exactly what happened.

6 **Q Any other evidence that you have to support**
7 **that charge?**

8 A That's it.

9 **Q That's it?**

10 A I believe so.

11 **Q So after -- well, strike that. You had a**
12 **conversation with Adam Paul on this issue less than a**
13 **month after he was sworn into office; is that correct?**

14 A I believe so, yes.

15 **Q And the conversation that you recorded, that**
16 **you just recounted, did you record that conversation**
17 **on May the 2nd?**

18 A No.

19 **Q When did you record that conversation?**

20 A Well, when you say record --

21 **Q Put it into -- make notes, putting it into**
22 **your computer.**

23 A I think that was on -- that was on the date
24 that the conversation occurred. It was immediately
25 after.

1 **Q So you thought that he had disclosed**
2 **confidences of the City?**

3 A Yes.

4 **Q Would that be confidences of, what, from the**
5 **Sunshine Law, closed sessions?**

6 A It would have been a written legal opinion.

7 **Q So when you had this discussion with him and**
8 **he says that confidential memo really fanned the flame**
9 **for a recall, did you say to him, Adam, did you give**
10 **that opinion out? Did you say that to him?**

11 A Well, I followed up with, What do you mean
12 that the confidential memorandum really fanned the
13 flames for recall?

14 **Q Did you say, Did you give that opinion out?**

15 A No.

16 **Q Why wouldn't you ask him that question?**

17 A Because I don't believe he would be
18 truthful.

19 **Q So you don't ask questions of people that**
20 **you don't believe will be truthful with you; is that**
21 **your practice?**

22 A I'm talking about in this particular
23 situation.

24 **Q I'm just asking if that's your practice**
25 **generally, sir? Is that your practice, you didn't**

1 think he would be truthful with you? That's your
2 practice, you don't ask questions of people you don't
3 think are going to be truthful with you?

4 A I don't know it has any application in my
5 practice other than this particular instance.

6 Q Before Adam Paul you said was seated on
7 April 18th?

8 A Yes.

9 Q Did you know this guy?

10 A No.

11 Q Had you ever met him before?

12 A No.

13 Q Did you ever see him at council meeting?

14 A I saw him at a TIF commission meeting. I do
15 not know. I think he attended one or two council
16 meetings.

17 Q Before the 18th of April, did you ever talk
18 to him?

19 A I don't recall.

20 Q Did you ever do any investigation as to his
21 background?

22 A No.

23 Q So fair to say that when you were having
24 this conversation with Adam Paul on May the 2nd, there
25 was very little you knew about him, right?

1 BY MR. PLEBAN

2 Q And did you ask him what memo he was talking
3 about?

4 A There was only one memo that I'm aware of.
5 I think it had to do with the illegality of the
6 referendum effort and he referred specifically to a
7 confidential memo.

8 Q My only question is, sir: Did you ask him
9 what memo he was talking about?

10 A No, I did not.

11 Q Why not?

12 MR. CHASSAING: Objection. This has been
13 asked and answered. Why won't you move on to
14 something else?

15 BY MR. PLEBAN

16 Q Go ahead. Why not?

17 A Because there was only one memo that could
18 have been.

19 Q When was that memo distributed?

20 A I would have to -- it's in the emails. It
21 would have been before this May 2nd meeting.

22 Q I figured that. How much before the
23 May 2nd?

24 A Probably between the April 18th meeting and
25 the May 2nd meeting at some point.

1 A That's correct.

2 Q Yet you concluded that he wasn't going to be
3 honest with you with respect to the question of
4 whether or not he put out confidential information,
5 right?

6 A I concluded from the question that I asked
7 about, how did this fan the flames for recall, and his
8 immediate denial was sharing the memorandum without me
9 even bringing that up, that that is, in fact, exactly
10 what occurred. After that point, I didn't see the
11 need to inquire any further.

12 Q Surely you told him as a brand-new mayor of
13 less than a month that it's inappropriate to give out
14 legal opinions?

15 A The legal opinion had a banner on it: This
16 is a closed record. Did I point out the city code not
17 to share this information? No, I did not.

18 Q I didn't ask you that. Surely you told him
19 it's not appropriate to give out legal opinions?

20 MR. CHASSAING: Objection. Argumentative
21 form of the question and to the extent that it's
22 actually already been answered, I object to it being
23 answered again. You can go ahead.

24 THE WITNESS: I don't recall telling him
25 that.

1 Q And that would have been, I'm assuming,
2 distributed during closed meeting?

3 A I think I would have done it by email.

4 Q And do all of your legal opinions say not to
5 release it to anybody?

6 A I don't even think it says that. I think it
7 says that this is a closed record under Section 600,
8 you know, 121.1 of the Sunshine Law.

9 MR. CHASSAING: Hold your voice up.

10 THE WITNESS: Sorry.

11 BY MR. PLEBAN

12 Q Did you ever explain to Adam Paul what that
13 meant?

14 A No.

15 Q Did Adam Paul ever ask you for a legal
16 orientation?

17 A No.

18 Q At no time?

19 A He never asked me for anything.

20 Q You know he took a polygraph on that issue,
21 are you aware of that?

22 MR. CHASSAING: Objection. Don't even
23 respond to questions about a polygraph.

24 Chet, what are we doing here? So what if he
25 answered a polygraph conducted by a guy you do

1 business with all the time. Who cares?
 2 MR. PLEBAN: How do you know who conducted
 3 the polygraph?
 4 MR. CHASSAING: I think I know more about
 5 this than you give me credit about.
 6 MR. PLEBAN: How do you know about the
 7 polygraph?
 8 MR. CHASSAING: I'm not --
 9 MR. PLEBAN: Now that you made this
 10 ridiculous statement, once again --
 11 MR. CHASSAING: Another ridiculous
 12 statement?
 13 MR. PLEBAN: Yes, I'm going to tell you how
 14 it is.
 15 MR. CHASSAING: Thanks.
 16 MR. PLEBAN: I never met the man.
 17 MR. CHASSAING: It's 3:32 for the record.
 18 MR. PLEBAN: You can tell time.
 19 Congratulations.
 20 MR. CHASSAING: We're going to get a special
 21 master. Stay on the record. You know what?
 22 MR. PLEBAN: You have the hearing officer
 23 sitting right there.
 24 MR. CHASSAING: Could you ask him to move
 25 on? I'm making a record. Could you ask him to move

1 MR. CHASSAING: I'm not here answering the
 2 question.
 3 MR. PLEBAN: You just made the statement.
 4 Do you know this guy?
 5 MR. CHASSAING: Make your record.
 6 MR. PLEBAN: Are you in the habit of making
 7 statements that aren't factually supported, because
 8 you made several of them today.
 9 MR. CHASSAING: Mr. Maupin --
 10 MR. PLEBAN: I'm going to tell you I don't
 11 know this man. If you have -- I never met the man, I
 12 don't know the man, I didn't line up the polygraph.
 13 If you have some information to support your reckless
 14 statement, put it on the record.
 15 MR. CHASSAING: Are you finished?
 16 MR. PLEBAN: I'm waiting on you to put it on
 17 the record.
 18 MR. CHASSAING: Are you finished?
 19 MR. PLEBAN: Have at it.
 20 MR. CHASSAING: Are you finished?
 21 MR. PLEBAN: Uh-huh.
 22 MR. CHASSAING: Mr. Maupin, I don't think we
 23 should be spending time asking Mr. Martin or any other
 24 witness about their knowledge whether or not the mayor
 25 or somebody submitted themselves to the polygraph test

1 on?
 2 MR. PLEBAN: I'm going to make my record.
 3 I'm going to make my record.
 4 MR. CHASSAING: Don't ask me to come back
 5 for more of this deposition.
 6 MR. PLEBAN: I'm not going to ask for
 7 anything.
 8 MR. CHASSAING: If you want to go after a
 9 theatrical stunt like that --
 10 MR. PLEBAN: That's about the fifth time you
 11 told me about theatrics. It's the fifth time you've
 12 done it. You made the statements, but you don't give
 13 me a chance to respond. I'm going to respond.
 14 MR. CHASSAING: Go ahead.
 15 MR. PLEBAN: Once again, the reckless
 16 statement that you made.
 17 MR. CHASSAING: Reckless statement?
 18 MR. PLEBAN: That my friend somehow did the
 19 polygraph. I don't even know the guy that did the
 20 polygraph.
 21 MR. CHASSAING: Okay.
 22 MR. PLEBAN: You're frowning?
 23 MR. CHASSAING: Make your record.
 24 MR. PLEBAN: You seem to know the answer.
 25 Do you know that I know this guy?

1 and whether that has any effect on Mr. Martin's
 2 knowledge or any other witness that might testify
 3 during the depositions. It is a waste of time and
 4 it's argumentative in the rawest form, and I think we
 5 need to move on.
 6 MR. PLEBAN: Are you done? Because --
 7 because I have to say that there will be polygraph
 8 evidence during the course of this trial.
 9 MR. CHASSAING: You can try what you like.
 10 MR. PLEBAN: Do you know that I'm not
 11 permitted because I'll give you some cases that
 12 support my position. Do you have cases that -- once
 13 again, you open your mouth, do you have -- kind of
 14 like the attorney/client privilege that you wasted all
 15 of our time with on Wednesday at 200 bucks an hour.
 16 MR. CHASSAING: Privilege issues.
 17 MR. PLEBAN: We're talking about you wasted
 18 all of our time.
 19 MR. CHASSAING: I'm not saying anything
 20 further. I just need a ruling.
 21 MR. PLEBAN: Let me finish my record. You
 22 wasted all of our time on Wednesday making frivolous
 23 objections to an attorney/client privilege that you
 24 knew or should have known that your clients waived
 25 once you filed the motion. That may have made you 200

1 bucks or 250 bucks, whatever it was. I don't know.
 2 It certainly wasted my time.
 3 MR. CHASSAING: Are you implying that I made
 4 frivolous objections in order to earn fees and charge
 5 them to the City, is that what you're saying?
 6 MR. PLEBAN: I'm telling you.
 7 MR. CHASSAING: Are you saying that?
 8 MR. PLEBAN: You made frivolous objections
 9 and you know they're frivolous. That's what I'm
 10 telling you.
 11 MR. CHASSAING: You said I did that to earn
 12 money?
 13 MR. PLEBAN: As a consequence.
 14 MR. CHASSAING: To run up the City's bills,
 15 is that what you're saying, Mr. Pleban? Have the guts
 16 to say that if that's what you mean.
 17 MR. PLEBAN: Listen to what you're saying.
 18 MR. CHASSAING: You're quibbling.
 19 MR. PLEBAN: Making a frivolous objection
 20 and you knew that you made a frivolous objection and
 21 you got paid for it. Is there something about that
 22 you don't understand?
 23 MR. CHASSAING: To run up the bills, is that
 24 what you're saying? You don't want to talk about
 25 that.

1 I'm not here -- I'm here as the council -- as the
 2 attorney for council members who will be witnesses,
 3 and as part of that whole deal, I don't think I'm here
 4 today in my role as a hearing officer. I think the
 5 hearing officer role is on motions that are properly
 6 before the hearing officer.
 7 I'll just ask Chet to move it along if you
 8 can ask a couple questions on this because you know
 9 where it's going and then we'll argue the
 10 admissibility or -- of any lie detector evidence at
 11 the hearing.
 12 MR. PLEBAN: I hear that we wasted the last
 13 ten minutes arguing about this issue so we could have
 14 had this question asked and answered.
 15 MR. CHASSAING: Are you available tomorrow
 16 to go to Circuit Court with me so I can get a
 17 commercial master appointed in this case as it takes
 18 place in the future?
 19 MR. PLEBAN: I'm planning to be here.
 20 MR. CHASSAING: I'm going to invite you to
 21 go to Circuit Court with me to find a judge to put
 22 together a petition and seek a special master to curb
 23 your questions.
 24 MR. PLEBAN: So you're not going to be here
 25 tomorrow? We're canceling the depositions? What are

1 MR. PLEBAN: Well, did you know it was
 2 frivolous? Did you know it was frivolous? Let me ask
 3 you this. Did you not know that your own client
 4 waived the privilege? Did you not know that? Did you
 5 not know that?
 6 MR. CHASSAING: Mr. Maupin, can I have a
 7 ruling?
 8 MR. MAUPIN: I don't think I'm here as a
 9 special master on this deposition, and I don't think
 10 that is the -- I'm the hearing examiner for evidence
 11 that comes before the council, not in a deposition. I
 12 think it's a different role, but I will say that if
 13 Mr. Pleban expects to attempt to introduce evidence of
 14 a lie detector at the hearing, that's set for the
 15 27th, I, as a hearing examiner, certainly appreciate
 16 authority to that extent prior to the hearing so that
 17 we can move forward in some respect with the ruling at
 18 the appropriate time.
 19 MR. PLEBAN: Right. I intend to provide it.
 20 Now can we move on with my questions?
 21 MR. CHASSAING: Do I understand at this time
 22 you're not going to require this examination to move
 23 on to another topic?
 24 MR. PLEBAN: I am.
 25 MR. MAUPIN: I'm going to let -- actually,

1 we doing?
 2 MR. CHASSAING: We'll discuss it when we
 3 finish the day.
 4 MR. PLEBAN: Let's discuss it now.
 5 MR. CHASSAING: I intend to go to Circuit
 6 Court and call for a special master.
 7 MR. PLEBAN: I heard that.
 8 MR. CHASSAING: I'm going to find out and
 9 see who can see us at 8:30.
 10 MR. PLEBAN: Are you planning not to be
 11 here?
 12 MR. CHASSAING: It depends if I can talk to
 13 a judge about a special master, Chet.
 14 MR. PLEBAN: You need to give us notice. I
 15 need to see what pleading you're going to file.
 16 MR. CHASSAING: I'll fax it over to you.
 17 I'll email it to you.
 18 MR. PLEBAN: Stop the arrogance.
 19 MR. CHASSAING: Me stop the arrogance?
 20 MR. PLEBAN: Stop the nonsense. Stop the
 21 nonsense. I'm unimpressed.
 22 MR. CHASSAING: Madam reporter, go back to
 23 the last question before our exchange began, please.
 24 (The reporter read the requested
 25 material.)

1 THE WITNESS: Can I amend my answer so maybe
2 we avoid the polygraph discussion?

1 A What do you think about this idea, question?

3 BY MR. PLEBAN

2 Q And what did you tell Mr. Bookout?

4 Q Sir, you can amend at any time any answer
5 that you've given here today as long as we're on the
6 record before we complete this deposition. Feel free.

3 A At that point, I basically -- I don't recall
4 what I told him, but, obviously, we never met.

7 A Okay. To the best of my knowledge, Adam
8 never asked me for any kind of legal review. The city
9 manager suggested that possibility and that never
10 happened, but I don't know if I received anything from
11 Adam asking for guidance on any legal aspect of
12 procedure.

5 Q So you have no recollection at all what your
6 response to Mr. Bookout was?

13 Q Why did that never happen?

7 A No.

14 A I've never done it for anybody else. And he
15 had spoken with Mayor Pirrello for several hours, as I
16 understand it, and he had also spoken with Kate and
17 Kevin and I wasn't aware that he had any specific
18 questions. I did not know what to tell him in terms
19 of whatever it is he was looking for.

8 Q Did Mr. Bookout encourage or ask you about
9 this meeting more than once?

20 Q Were you aware that he desired a legal
21 orientation?

10 A I can't say that he did. It might have --

22 A No, I wouldn't put it that way.

11 Q Can you say that he didn't?

23 Q What did Mr. Bookout tell you?

12 A No, I can't. I don't know -- I don't know
13 if he -- he might have brought it up a couple of
14 times. I know Adam kept saying, Where is my legal
15 review, legal orientation, whatever you wanted to call
16 it.

24 A That legal orientation or the -- keep
25 calling this a legal orientation, that --

17 Q How do you know he said that?

18 A Because he was emailing Kevin, and I would
19 get a co of the email.

20 Q So -- so Adam was emailing Kevin Bookout
21 asking for a legal orientation, you weren't aware of
22 that, Kevin Bookout was asking you about a legal
23 orientation and you don't give this young mayor any
24 sort of legal orientation or whatever it is that you
25 want to call it, is that my -- my understanding of all

1 Q I just want to know what Mr. Bookout told
2 you, that's what I want to know.

1 this?

3 A Mr. Bookout suggested we get together with
4 Adam to, I don't know, talk about what, but he
5 suggested that we get together with Adam.

2 A Well, to be technical, I don't think Adam
3 ever asked for a legal orientation.

6 Q So, wait a minute. Kevin Bookout comes to
7 you and suggests that you get as the legal -- as the
8 city attorney to get together with Adam Paul and you
9 don't know what that's about?

4 Q Sir, you were aware that he was looking for
5 that, either by talking to Kevin or talking to Adam or
6 through emails?

10 A I don't recall specifically. It had to do
11 with running meetings, I think.

7 A I'm aware that I think he was looking for
8 somebody to blame.

12 Q So your answer -- how many times were you
13 asked to meet with Adam Paul to talk about whatever it
14 was that he wanted to talk about?

9 Q Somebody to blame?

15 A I don't think I was asked by Adam once.

10 A Yes, and he would tell Kevin, Where is my,

16 Q I didn't ask you that, Mr. Martin. I asked
17 you how many times were you asked to meet with Adam
18 Paul.

11 you know -- this is the second time that I've been
12 denied my legal orientation, or whatever it was. I
13 don't know what he described it as, but he seemed to
14 be looking for somebody to blame rather than actually
15 asking for information.

19 A I don't know.

16 Q So is that why you refused to meet with him
17 to straighten him out?

20 Q More than ten?

18 A Really don't. I mean, I -- I can't tell you
19 except that I just didn't want to do that.

21 A No. I don't know, it could even be
22 characterized as being asked, but --

20 Q Okay. Now we're getting somewhere. And the
21 reason that you didn't want to do that, Mr. Martin,
22 because -- was because you were offended by some
23 things that Adam said about you during the campaign;
24 isn't that true?

23 Q What would you say to Mr. Bookout? What did
24 you interpret that as, if not being asked to meet with
25 Adam Paul?

25 A I am not aware of anything he said about me

1 during the campaign.
 2 **Q Did you ever make any statement to anyone**
 3 **that the reason that you didn't give him any sort of**
 4 **legal orientation or whatever you want to call it was**
 5 **because you were offended by some things that had been**
 6 **said about you during his campaign? Did you make that**
 7 **statement to anyone?**
 8 A I don't know that I joined the two. I said
 9 I was offended by a statement that he made after the
 10 TIF commission meeting.
 11 **Q And to whom did you say that?**
 12 A Might have been Adam.
 13 **Q And what did you tell him in that regard?**
 14 A Well, I think the conversation was in the
 15 context of moving forward and building bridges, and I
 16 said, you know, trying to explain that he should try
 17 to build bridges with the council. I suggested that
 18 apologies would be appropriate, and I said as an
 19 example, I didn't -- I perhaps didn't say as an
 20 example, but I said something to the effect, When you
 21 did this, I was personally offended.
 22 **Q You did what?**
 23 A It's a very stupid matter in retrospect.
 24 He --
 25 **Q Well, this whole thing is a stupid matter in**

1 second question I stumbled on and, frankly, was
 2 embarrassed about and --
 3 **Q You were embarrassed about it?**
 4 A Yes.
 5 **Q Okay.**
 6 A And then the next day or two after that, it
 7 became just a little public issue. I was in a blog, I
 8 believe, in The Patch, and someone said something
 9 about, Oh, he really gave to the lawyer or something
 10 like that and Adam's response was, Yeah, I love to see
 11 the lawyer squirm.
 12 **Q And that was something that you read in The**
 13 **Patch that the author attributed to Adam?**
 14 A It was what I assumed to be Adam's response
 15 to that comment.
 16 **Q Okay. And that's what you took offense to?**
 17 A Yes.
 18 **Q You brought that up to Adam when?**
 19 A After he was elected.
 20 **Q Yeah, I know that, but how far after he was**
 21 **elected?**
 22 A I don't recall.
 23 **Q Did you bring that up to him before or after**
 24 **you made the note about the May 2nd conversation?**
 25 A I can't tell you that I recall. I think it

1 **my opinion, Mr. Martin, but go ahead.**
 2 MR. CHASSAING: I move to strike the
 3 comments from the record.
 4 THE WITNESS: He -- he --
 5 MR. CHASSAING: Was that a question? It
 6 wasn't a question. I'll move to strike that from the
 7 record.
 8 THE WITNESS: He --
 9 MR. PLEBAN: Did you not know that was not a
 10 question? Did you not know that was just a statement
 11 that I made?
 12 MR. MAUPIN: Gentlemen. Come on, the day's
 13 long. Go ahead and --
 14 BY MR. PLEBAN
 15 **Q Go ahead.**
 16 A At the TIF commission meeting, he -- I
 17 believe he asked a couple of questions and --
 18 **Q This is before he's elected?**
 19 A Maybe.
 20 **Q Go ahead, go ahead.**
 21 A That's probably true. My timing's not
 22 necessarily right on there. And he asked a couple of
 23 questions. No one from the City was answering those
 24 questions so I stood up to answer. I think I
 25 effectively answered one of the questions -- the

1 was after. I think it might have been that night. I
 2 think it might have been that night.
 3 **Q Which night are we talking about?**
 4 A May 2nd.
 5 **Q When you're having this telephone**
 6 **conversation with him on May 2nd?**
 7 A There was a meeting that night. I think it
 8 might have been at the meeting. Again, I think it
 9 might have been. I don't really recall.
 10 **Q I'm confused. Let me back up just a minute.**
 11 **And maybe I misunderstood this, but this conversation**
 12 **you had about this so-called confidential memo.**
 13 A Uh-huh.
 14 **Q I thought I understood you to say that was**
 15 **by phone? Did you have a telephone conversation?**
 16 A Yes, yes.
 17 **Q But you're saying that there was a meeting**
 18 **on May the 2nd?**
 19 A Yes.
 20 **Q And so this conversation that you had with**
 21 **Adam Paul, was that before or after the meeting?**
 22 A Before.
 23 **Q And then after the meeting, you had a**
 24 **conversation with him about a comment that he had made**
 25 **during the TIF commission?**

1 A Perhaps. That's my best recollection, but
2 I'm not certain.

3 Q Well, did you put that into your notes
4 anywhere?

5 A No.

6 Q Why not?

7 A Because I didn't think that was anything
8 that might be an impeachable offense.

9 Q Were you surprised that Adam Paul won the
10 election?

11 A No.

12 Q You thought he was going to win all along?

13 A I wasn't surprised. Did I think he was
14 going to win all along? I don't know that I can go
15 that far, but I wasn't surprised.

16 Q Did you harbor any beliefs that Adam Paul
17 won the election that you weren't going to be retained
18 as a city attorney?

19 A No.

20 Q That never entered your mind?

21 A No.

22 Q Allegation number A3 says: On a date
23 unknown, but prior to October 30th, 2012, Mayor Paul
24 disclosed the contents of a closed-session personnel
25 discussion of the city council concerning the

1 A I don't know.

2 Q Can you do any better than that?

3 MR. CHASSAING: Objection. That's
4 argumentative. You can answer if you want to.

5 THE WITNESS: I don't know.

6 BY MR. PLEBAN

7 Q Did you ask the city clerk whether she asked
8 Ed O'Reilly where he got that information?

9 A No, I did not.

10 Q Item four: On a date unknown, but prior to
11 December 15th, Mayor Paul spoke at one of our
12 closed-session real estate discussions of the city
13 council concerning the possible reuse of the Tri-Star
14 dealership property. Do you see that?

15 A Yes.

16 Q What's your evidence of that?

17 A Only that on December 15th, there was a
18 blog, a comment on The Patch blog about the possible
19 reuse of the Tri-Star dealership, and I assumed it was
20 an associate or a friend of Adam's.

21 Q So you accused this man of misfeasance or
22 malfeasance on an assumption?

23 A Well, I did ask everyone else if they shared
24 that information and the answer was no so --

25 Q Did you ask Adam Paul?

1 extension of city manager's severance package. What
2 evidence do you have to support that?

3 A That came from Kate Demeter. We had a
4 council meeting at which that issue was discussed, and
5 the next day or two, Ed O'Reilly called Kate and said
6 I understand that the council was considering
7 extending the city manager's severance package.

8 Q Okay. Got any other evidence of that?

9 A No. I asked everybody else if they did it
10 and they said no. I did not ask Adam.

11 Q Before you put that allegation in here, did
12 you contact Ed O'Reilly?

13 A No.

14 Q You know who he is, right?

15 A Yes.

16 Q You know he's a former mayor?

17 A Yes.

18 Q And you know he's got friends and
19 acquaintances in the city, don't you?

20 A Well, you mean in the City administration?
21 No, I don't know that. I assume he has friends in the
22 city.

23 Q Well, if you were going to put this
24 allegation in and attribute that to this disclosure to
25 Adam Paul, why wouldn't you contact Ed O'Reilly?

1 A No.

2 Q Why not?

3 A I don't know.

4 Q Backing up to three, it says: On a date
5 unknown prior to October 30th, disclosure of closed
6 session issues. Did you bring that to the attention
7 of Adam Paul?

8 A No, I did not.

9 Q If he's -- whether he knew it was right or
10 wrong, if he's disclosing confidential information,
11 why wouldn't you, as the city attorney, go to him
12 either in memo form, email form, or verbally and tell
13 him that you can't do this?

14 A There isn't a good reason for it.

15 Q So you were content then with the belief
16 that he was disclosing confidential information to let
17 that continue?

18 A I did not think that through at the time.

19 Q Well, what's your answer today? You were
20 content then to let that continue?

21 A I did not think that through at the time so
22 I don't know if content is the correct word to use.

23 Q What would you say?

24 A Just what I said, I did not think that
25 through at the time.

1 Q But yet you didn't go to him to caution him
2 or instruct him about that, yet you made a note of it
3 on your computer, right?

4 A Yes.

5 Q Do you think that was something that was in
6 the best interest of the City of Ellisville?

7 MR. CHASSAING: Which was what, what was in
8 the best interest?
9 BY MR. PLEBAN

10 Q Not going to Adam Paul to discuss with him
11 issues relating to the disclosure of confidential
12 information.

13 A I didn't think about it at the time, and I
14 think the answer would be no.

15 Q The answer would be no, what, that it's not
16 in the best interest of the City of Ellisville?

17 A Correct.

18 Q And do you believe then that that failure
19 constitutes malfeasance or misfeasance on your part?

20 A Of -- I think it was a mistake.

21 Q Do you think it constitutes malfeasance or
22 misfeasance on your part?

23 A I don't know how to answer that question. I
24 think retrospect today, I think it was a mistake.

25 Q Well, I didn't ask about a mistake. I asked

1 they might have obtained confidential -- as you call
2 it, confidential information from city government?

3 A No.

4 Q Are you aware of any individual out there
5 who might be able to tell you that they obtained
6 confidential information from city hall?

7 A Mr. O'Reilly, perhaps.

8 Q Okay. How about back in December, how many
9 employees were there in the City of Ellisville?

10 A I don't know the answer to that.

11 Q Now, back in December when you claim that
12 Adam Paul disclosed these confidential communications,
13 was Tri-Star still there in their building?

14 A Tri-Star's still there now.

15 Q Okay. And so there were discussions that
16 occurred prior to December the 12th regarding the
17 relocation of Tri-Star?

18 A Yes.

19 Q And how far before December the 12th were
20 those discussions?

21 A I don't know.

22 Q Month, two months, three months?

23 A I really don't know.

24 Q Were people at Tri-Star involved in those
25 conversations?

1 you whether or not as you sit here today whether you
2 consider that your behavior in that regard as
3 malfeasance or misfeasance.

4 A I think I've given you the best answer that
5 I can give you.

6 Q You can't decide whether it's malfeasance,
7 misfeasance or none of the above?

8 MR. CHASSAING: I think he's answered the
9 question a couple of times.

10 MR. PLEBAN: Is that right, sir?

11 THE WITNESS: Answered the question.

12 BY MR. PLEBAN

13 Q I'm assuming you never asked Adam about this
14 Tri-Star deal, never went to ask him if he posted that
15 on The Patch blog, right?

16 A I don't think I ever said that Adam posted
17 it. I said it was someone else.

18 Q Did you ever ask him what he knew about it?

19 A No.

20 Q Did you ever ask anybody else, did you ever
21 interview a single witness outside the city council
22 about whether or not they had obtained information
23 from city hall from any source?

24 A About --

25 Q Ever interview any witness at all about how

1 A I didn't have any conversations with
2 Tri-Star. Kevin did, city manager.

3 Q So Tri-Star was involved in some discussions
4 about relocation issues with the City of Ellisville,
5 correct?

6 A Yes.

7 Q How many people at Tri-Star were involved in
8 those discussions?

9 A I don't know.

10 Q And this reuse of the Tri-Star Mercedes
11 dealership property, what was that about, what were
12 you doing?

13 A Purchasing it.

14 Q Purchasing it?

15 A Yes.

16 Q From Tri-Star Mercedes?

17 A Yes.

18 Q From whom -- they owned it or somebody else
19 own it?

20 A From Tri-Star, whatever the corporate entity
21 is that owns Tri-Star.

22 Q Do you know whether or not Tri-Star -- the
23 people at Tri-Star talked about this?

24 A No, I don't.

25 Q Yet -- did you ever ask them?

1 A No.
 2 Q Why not?
 3 A I didn't think to.
 4 Q But you thought to put this allegation in to
 5 accuse this man of violating confidential discussions,
 6 right?
 7 A Yes.
 8 Q Without investigation; is that a fair
 9 statement?
 10 A Well, investigation was minimal, yes.
 11 Q What investigation? You read a blog?
 12 A Talking to the council and the blog.
 13 Q Oh, the individual members of the council?
 14 A Yes, yeah.
 15 Q Do you think that was reckless on your part
 16 to put that in there before you investigated it?
 17 A I think that was a mistake.
 18 Q I didn't ask you that. Did you think it was
 19 reckless to put that in there to investigate it?
 20 A Reckless is a judgment. I think it was a
 21 mistake.
 22 Q So in your judgment, it wasn't reckless, is
 23 that what you're telling me?
 24 A I'm telling you it's a mistake. I'm not
 25 going to characterize it any particular way.

1 BY MR. PLEBAN
 2 Q It's not in there that you can see at least?
 3 A I don't see it.
 4 Q That's Exhibit -- what did I call that?
 5 A Eleven.
 6 Q But we're -- you're going to produce that
 7 tomorrow for us?
 8 A Yes.
 9 Q What are we talking about in terms of with
 10 respect to this allegation? What are we talking about
 11 regarding legal advice? What legal advice?
 12 A I think it had to do with the -- it had to
 13 do with Charter Enforcement Commission proceedings and
 14 Adam's desire to speak with people to prepare for the
 15 Charter Enforcement Commission's review.
 16 Q His desire to -- I'm not following this at
 17 all. So this is February 13th now. This is after the
 18 Charter Review Commission and is this written legal
 19 advice?
 20 A Yes. It was an email.
 21 Q And it's written legal advice to whom?
 22 A To the council.
 23 Q Including Adam?
 24 A Yes.
 25 Q And what was the nature of the legal advice

1 Q You can't or you won't?
 2 A I said I'm not.
 3 Q So you won't, is that your answer so I'm
 4 clear for this record?
 5 A I'm not going to do it.
 6 (Discussion off the record.)
 7 BY MR. PLEBAN
 8 Q Paragraph five. What did I say, A5?
 9 February 13th, 2013, Mayor Paul disclosed the city
 10 attorney's legal advice concerning the operations and
 11 the procedure of City's Charter Enforcement decision.
 12 Do you see that?
 13 A Yes.
 14 Q What's your proof of that?
 15 A I sent out an email. The mayor received a
 16 copy of the email. He responded to the copy on the
 17 response. There was a line that had obviously been
 18 inserted by a third party and wasn't part of the
 19 mayor's response to me.
 20 Q Can you show me the email?
 21 A I don't have a copy.
 22 Q Is it in that package?
 23 A No.
 24 MR. CHASSAING: Off the record.
 25 (Discussion off the record.)

1 that you were giving?
 2 A I think it was -- had to do with advising --
 3 me advising the City staff and employees that until we
 4 got to a proceeding with an involved actual discovery
 5 that they should not speak with Adam or answer his
 6 questions.
 7 Q So Adam was -- this is after Katie James had
 8 filed their complaint?
 9 A I believe so.
 10 Q You weren't representing Adam's interest in
 11 that, were you?
 12 A No. I was representing the City's interest.
 13 Q Which was adverse to Adam's at the time,
 14 correct?
 15 A Yes.
 16 Q So why were you including Adam whose
 17 interests were adverse in your conversations with the
 18 rest of the City?
 19 A If I'm recalling the email correctly, I was
 20 doing that to make him aware of the situation because
 21 he insisted on having an answer.
 22 Q So you weren't doing it in an
 23 attorney/client context?
 24 A Well, I think I was doing it in an
 25 attorney/client context. Now, whether Adam was --

1 **Q Go ahead. I'm sorry.**
 2 A Whether Adam was in an adversarial position
 3 to the City at that time, I said that might be
 4 occurring, and until -- we have to look at the email,
 5 but until the -- that developed a little farther, they
 6 shouldn't talk to him. I advised him that this
 7 Charter Enforcement Commission proceeding was not an
 8 evidentiary process. It was simply a recommendation
 9 based on complaint and any response that the mayor
 10 would like to file and that this might escalate to
 11 something more, that they should not speak.
 12 **Q So your -- let me see if I've got this.**
 13 **You're giving the -- well, you're giving, I guess,**
 14 **everybody, the City staff and everybody else, right?**
 15 A I don't recall who was included on the
 16 email, but I think it was some members of City staff
 17 and the charter enforcement issue.
 18 **Q You were giving advise to all of the --**
 19 **whomever it was and the advice that you were giving**
 20 **them was contrary to the interests of Adam Paul,**
 21 **correct?**
 22 A It could have been, yes, could be.
 23 **Q And yet you were including him in those --**
 24 **that email discussion?**
 25 A Yes.

1 A Two, three, four and five, yes, he is.
 2 **Q I'm sorry, two, three, four and five, all**
 3 **right. Would you agree with me, Mr. Martin, that that**
 4 **issue could have been avoided altogether if you had a**
 5 **conversation with Adam Paul on May the 2nd, 2012?**
 6 A No, I can't agree with that.
 7 **Q Why not?**
 8 A Because I think Mr. Paul knew what he was
 9 doing, and I don't think any kind of conversation
 10 would have made any difference.
 11 **Q Well, let me put it another way then. You**
 12 **certainly could have covered your own tail by sending**
 13 **him memos telling him not to do that, correct?**
 14 A Yes.
 15 **Q And you chose not to do that, right?**
 16 A I don't know if I chose not to do it, but I
 17 did not do it.
 18 **Q And whether or not he would have followed**
 19 **your advice, you would have a document that you could**
 20 **present to us today that would indicate, Hey, don't do**
 21 **this anymore. If you do this again, this could**
 22 **happen, or that could happen, or the other could**
 23 **happen?**
 24 A Right, yes.
 25 **Q And then if he chose to follow you -- he**

1 **Q Why?**
 2 A I wanted him -- to let him know what the
 3 rationale was, and I wanted to let him know that this
 4 is the reason why people weren't going to be talking
 5 to him.
 6 **Q So you would have even told him directly,**
 7 **even if he had been excluded from any meeting or where**
 8 **that was discussed, correct, because you wanted to let**
 9 **him know?**
 10 A Uh-huh.
 11 **Q That's a yes?**
 12 A Yes.
 13 **Q Well, then how is it that he's violating --**
 14 **what confidences is he violating?**
 15 A He's still a part of the City. Still an
 16 officer of the City at the time.
 17 **Q Holy smokes. You say here: As a result of**
 18 **his actions -- the last part of allegation A: As a**
 19 **result of his actions, he's unable to have frank**
 20 **discussion -- counsel is unable to have frank**
 21 **discussions concerning the topics. Do you see that?**
 22 A Yes, uh-huh.
 23 **Q And that is as a result of his actions**
 24 **referenced in paragraphs two, three and four, I'm**
 25 **assuming; is that right?**

1 **chose to follow your advice, if he chose to disregard**
 2 **your advice, you're at least off the hook, right?**
 3 A I don't know that I was on the hook, but I
 4 see what your point is and I have to say, yes, I could
 5 have done that.
 6 MR. PLEBAN: Let's quit now. I'm ready to
 7 go on to another area.
 8 MR. CHASSAING: That will take more than 15
 9 minutes?
 10 MR. PLEBAN: Heck, yes.
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 COMES NOW THE WITNESS, PAUL MARTIN, and
 2 having read the foregoing transcript of the deposition
 3 taken on March 20, 2013, acknowledges by signature
 4 hereto that it is a true and accurate transcript of
 5 the testimony given on the date hereinabove mentioned.
 6
 7

8 _____
 9 (PAUL MARTIN)

10
 11
 12 Subscribed to before me this _____ day of
 13 _____, 2013.
 14

15 _____
 16 Notary Public

17
 18 My commission expires: _____
 19

20
 21 ADAM PAUL
 22 vs.
 23 THE CITY OF ELLISVILLE, MISSOURI, ET AL.

24 Reporter: Jo Ann Sturm, RPR, CSR, CCR
 25 Date Taken: March 20, 2013

1 REPORTER CERTIFICATE

2
 3 I, JO ANN STURM, RPR, CSR, CCR, do hereby
 4 certify that

5 PAUL MARTIN

6 came before me who was by me first duly sworn to
 7 testify to the truth and nothing but the truth of all
 8 knowledge touching and concerning the matters in
 9 controversy in this cause; that the witness was
 10 thereupon carefully examined under oath and said
 11 examination was reduced to writing by me; and that
 12 this deposition is a true and correct record of the
 13 testimony given by the witness.

14
 15 I further certify that I am neither attorney
 16 nor counsel for nor related nor employed by any of the
 17 parties to the action in which this deposition is
 18 taken; further, that I am not a relative or employee
 19 of any attorney or counsel employed by the parties
 20 hereto or financially interested in this action.

21 Dated March 26, 2013.

22 _____
 23 JO ANN STURM, RPR, CSR, CCR

1 DEPOSITION ERRATA SHEET
 2 PAUL MARTIN

3 -----
 4 In re: Paul vs. Ellisville, et al.
 5 CORRECTION PAGE LINE

6 Mr. J. Patrick Chassaing
 7 Curtis, Heinz, Garrett & O'Keefe, P.C.
 8 130 South Bemiston, Suite 200
 9 Clayton, Missouri 63105

10 In re: Paul vs. Ellisville

11 Dear Counsel:

12 Pursuant to your request and at your instructions, as
 13 well as agreement between counsel, I am forwarding to
 14 you the original signature page and errata sheet from
 15 the deposition of PAUL MARTIN taken in the
 16 above-styled case.

17 Please have the witness read your copy of the
 18 transcript and make any changes on the errata sheet,
 19 not on the transcript. Please have the witness sign
 20 the signature page and errata sheet before a notary
 21 public.

22 Please return the original signature page and errata
 23 sheet to counsel taking the deposition.

24 Sincerely,

25 Jo Ann Sturm, CSR, CCR, RPR
 /jas

1 _____
 2 PAUL MARTIN

3 Subscribed to and before me this ____ day of
 4 _____, 2013.
 5

6 _____
 7 NOTARY PUBLIC

1 CERTIFICATE OF REPORTER
 2 AND STATEMENT OF DEPOSITION COSTS
 3 IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
 4 STATE OF MISSOURI
 5 ADAM PAUL,)
 6 Plaintiff,)
 7)
 8 vs.) Case 13SL-CC00699
) Div. 33
 9 THE CITY OF ELLISVILLE,)
 MISSOURI, ET AL.,)
 10 Defendants.)

11
 12
 13 I, Jo Ann Sturm, hereby certify that the
 14 original deposition of PAUL MARTIN, taken on March 20,
 2013, is in the custody of Pleban & Petruska, LLC,
 15 2010 South Big Bend Boulevard, St. Louis, Missouri
 63117.

16
17
18 TAXED IN FAVOR OF PLAINTIFF

19 Total: \$881.50
 20 FOR: Pleban & Petruska, LLC, 2010 South Big Bend
 Boulevard, St. Louis, Missouri 63117

21 TAXED IN FAVOR OF DEFENDANT

22 Total: \$341.25
 23 FOR: Curtis, Heinz, Garrett & O'Keefe, P.C., 130
 24 South Bemiston, Suite 200, Clayton, Missouri 63105
 25

1 Total: \$341.25
 2 FOR: Eckenrode-Maupin, 8000 Maryland, Suite
 3 1300, St. Louis, Missouri 63105
 4 Upon delivery of transcript, the above charges had not
 5 been paid. It is anticipated that all charges will be
 6 paid in the normal course of business.
 7
 8
 9 I have hereunto set my signature on
 10 March 26, 2013.
 11
 12

13 JO ANN STURM, RPR, CSR, CCR
 REGISTERED PROFESSIONAL REPORTER
 14 ILLINOIS CSR NUMBER: 084-002267
 MISSOURI CCR NUMBER: 716
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25