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CITY OF JACKSONVILLE
CHARTER REVISION COMMISSION
MEETING

Proceedings held on Thursday, November 5,
2009, commencing at 9:05 a.m., City Hall, Council
Chambers, 1st Floor, Jacksonville, Florida, before
Diane M. Tropa, a Notary Public in and for the State
of Florida at Large.

PRESENT:

- WYMAN DUGGAN, Chair.
- ED AUSTIN, Commission Member.
- JIM CATLETT, Commission Member.
- WILLIAM CATLIN, Commission Member.
- JESSICA DEAL, Commission Member.
- TERESA EICHNER, Commission Member.
- BEVERLY GARVIN, Commission Member.
- MECHELLE HERRINGTON, Commission Member.
- ALI KORMAN, Commission Member.
- JEANNE MILLER, Commission Member.
- GARY OLIVERAS, Commission Member.
- CURTIS THOMPSON, Commission Member.
- GEOFF YOUNGBLOOD, Commission Member.

ALSO PRESENT:

- STEVE ROHAN, Office of General Counsel.
- JEFF CLEMENTS, Research Division.

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P R O C E E D I N G S

November 5, 2009 9:05 a.m.

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THE CHAIRMAN: Good morning, everybody.
I will call to order the November 5th,
2009, meeting of the Charter Revision
Commission.

If we could go around the dais and announce
your presence, starting with Commissioner
Thompson.

MR. THOMPSON: Curtis Thompson.

MR. OLIVERAS: Gary Oliveras.

MS. EICHNER: Teresa Eichner.

THE CHAIRMAN: Wyman Duggan.

MR. AUSTIN: Ed Austin.

MS. DEAL: Jessica Deal.

MS. GARVIN: Beverly Garvin.

MS. MILLER: Jeanne Miller.

MR. YOUNGBLOOD: Geoff Youngblood.

THE CHAIRMAN: Thank you all.

I had a phone call about a half an hour ago
from Commissioner Catlett who is having some car
trouble and will be here as soon as he is able,
and Commissioner Korman is also in a prior
meeting this morning and will be here as soon as

1 she is able.

2 (Mr. Catlin enters the proceedings.)

3 THE CHAIRMAN: As a reminder, again, please
4 turn your cell phones to silent or vibrate.

5 If you wish to address the commission
6 today, please fill out a blue speaker card, and
7 we will begin with the Pledge and a moment of
8 silence.

9 (Recitation of the Pledge of Allegiance.)

10 THE CHAIRMAN: Thank you.

11 As I believe most of you know, our
12 presentation today -- our meeting today is going
13 to focus on the Office of General Counsel,
14 which, as you recall, is one of our top
15 vote-getters on our issues list. We have a very
16 distinguished speaker this morning.

17 Jeanne, do you want to make an
18 introduction --

19 MS. MILLER: (Shakes head.)

20 THE CHAIRMAN: -- or would you like me to
21 do it?

22 Okay. Our first speaker this morning is
23 Judge William Durden, who was the very first
24 General Counsel under the consolidated
25 government. He has, of course, a wealth of

1 experience and knowledge to bring to bear on
2 this issue. I know you've heard General Counsel
3 Mullaney speak very highly of him in his
4 previous testimony to us, so it's our very great
5 pleasure to have him here with us today.

6 He is going to be seated up here on the
7 dais with us as an accommodation to him, which,
8 obviously, we're happy to do.

9 So without any further ado, Judge Durden,
10 if you would like to -- I would ask that our
11 court reporter swear you in as a preliminary,
12 and then please take it away.

13 Thank you.

14 THE REPORTER: Do you affirm that the
15 testimony you're about to give will be the
16 truth, the whole truth, and nothing but the
17 truth?

18 JUDGE DURDEN: I do.

19 THE REPORTER: Thank you.

20 THE CHAIRMAN: Go ahead, Judge Durden.

21 JUDGE DURDEN: I wasn't sure of the format
22 and as unaccustomed as I am to public speaking,
23 I thought I could handle whatever came up, but I
24 don't know what would be more interesting than
25 to give you the background to consolidation as

1 it existed on and before October 1, 1968.

2 Before October 1, 1968, we had a myriad
3 number of City offices and officers and a number
4 of county offices and officers. They were
5 running all over each other claiming power,
6 responsibility, and whatever else they wanted to
7 claim.

8 We had a County Commission of five County
9 Commissioners. The county was broken up into
10 five different areas. I think they're pretty
11 close to what you call the urban service areas
12 now, but not necessarily precisely the same.

13 The City government was composed of a
14 strong mayor, City Council, commission form of
15 government, if you've ever heard of one of
16 those. There was none in existence, but we had
17 all three. We had the mayor, we had the City
18 Council, and we had the City Commissioners. The
19 City Commissioners were primarily executive; the
20 City Council was primarily legislative; and, of
21 course, the mayor was executive.

22 We had had a great deal of development. I
23 had ended a few-year service in the governor's
24 office in 1960. I think that's right. And when
25 you are that close to a governor, he can appoint

1 you to the court, so he appointed me to be a
2 judge at the Fourth Judicial Circuit, and I came
3 back here as a judge and knew that I was not
4 going to stay because I had six children,
5 each -- including my child Mallory Cooper, who's
6 down there trying that murder case.

7 And so I knew that I would not be in it
8 very long, but Mayor Tanzler came to me on the
9 court and said, please help me set up this
10 government. So I told him I would do it for two
11 years and then I would leave.

12 Prior to that time, as I said, we had so
13 many officers that were running all over each
14 other. And "consolidation" was actually a very
15 good word because the powers were so diffused
16 and so contradictory to each other that, as I
17 said, they were running all over each other
18 claiming power.

19 The County Commission mainly dealt with
20 rural problems because their jurisdiction was
21 sort of limited within the city limits, and the
22 City Commissioners ran a very closely -- narrow
23 territorial limits of the city, so . . .

24 We had a county sheriff. We had a city
25 police department. We had a county highway

1 patrol. We had all kinds of duplication in
2 government.

3 I was not involved in the legislation creed
4 in consolidation. I was on the court. But when
5 the legislation had been passed, as I said, I
6 had determined to leave the court and go make
7 some money. Hans asked me to set it up for him,
8 and so I did. So I agreed to stay for two
9 years, from October 1, 1968.

10 Prior to that time, you'd have to have
11 known Jacksonville. He didn't. It had not been
12 too long since -- while I was in the governor's
13 office we closed up the whore houses in Duval
14 County, we closed up the gambling in Duval
15 County, ran Joe Williams out of the city, and
16 ran Dot Lee down to St. Johns County because of
17 what they -- she called then the -- south of the
18 border. Some of your memories might go back at
19 least that far. And so it was a grand time to
20 get new government on its way.

21 So, as I said, I agreed to take it for two
22 years, and did so. And in that two-year period,
23 I think -- our current General Counsel fusses.
24 He brought me a set of books the other day that
25 contained the first 169 opinions, which I

1 sponsored and which I felt was necessary to do
2 to interpret the charter, but, as you know, the
3 charter itself is not very long, but to hand
4 over the integration and the assignment of power
5 under the new charter was quite vigorously
6 opposed. The County Commissioners didn't like
7 the idea of them being done away with. The City
8 Commissioners didn't like being done away with.

9 I thought the genius in the charter was the
10 creation of the fourteen districts and the five
11 at-large councilmen. I still do. It gives the
12 council -- the countywide seats representation
13 of the county as a whole and the districts --
14 the districts as a whole, as has probably, from
15 my point of view, deteriorated into kingdoms,
16 which is always what happens in government. You
17 have petty and major kingdoms.

18 But, all in all, I think, bearing in mind
19 that Jacksonville is on the verge of exploding
20 into one of the major cultural, economic and
21 governmental centers of the south, to be pretty
22 well organized.

23 Certainly we have not indicted as many
24 people after consolidation as we did before
25 consolidation. There was, at the time, a

1 movement for consolidation. As I said, I think
2 we had City Council members, City Commission
3 members, and a couple of them were indicted.
4 The only one I remember is Dallas Thomas, who --
5 and from this came a brood. Don't ever name a
6 park after any politician till he's dead so that
7 you don't run the risk of what happened on
8 Dallas Thomas -- they named it Dallas Thomas
9 Park, across the river, and then he was
10 indicted. It was somewhat of an embarrassment.

11 The fundamental basis for consolidation was
12 to consolidate. I think it's a magnificent
13 word. We consolidated all of those into a very
14 few offices with direct ultimate responsibility
15 on the mayor. The newspapers liked to call it
16 the strong general counsel form of government.
17 It was really a pretty stronger mayor form of
18 government with a general counsel that helped
19 him do the job.

20 And it was an interesting experience. I
21 had had broad experience in the governor's
22 office and knew government pretty well so
23 that we -- I think we did a fairly decent job,
24 and I think y'all -- the new charter revision is
25 something that's come up a couple of times since

1 I left office. I think my son Stephen was the
2 chairman of one of the Charter Revision
3 Commissions. And I've forgotten the state
4 legislator that was in that movement, but he was
5 Republican, so I can't remember much about him.

6 But he came to me and he said, well, you
7 haven't proposed many changes in the charter. I
8 said it's not charter that's wrong; it's the
9 people that are running it. And it -- which is
10 an emphatic way of saying government can be put
11 in form, structure, and power, assignments, but
12 it still ends up being the people that run it
13 that matter.

14 And being a resident of Jacksonville since
15 1921, I can tell you that I'm pretty happy with
16 the way things are going and where we're
17 standing in the array of cities throughout the
18 state and throughout the country.

19 I'm not sure if I'd bring the Jaguars to
20 town, but I guess they're all right. Wayne
21 lived down the street from me in San Jose and he
22 made more money than I did.

23 By the way, so does the current General
24 Counsel. That's the only thing that makes me
25 mad about him is -- my salary was 28,5- at the

1 top and his is over 200,000, and he ain't worth
2 no more than I was. And if he's here, I hope he
3 heard it. Matter of fact, I was pretty bright.
4 He's pretty bright too.

5 No, he's kept it on course. And, as I
6 said, the only thing is that -- makes me mad is
7 the difference in salary.

8 But actually Hans came to me and -- he was
9 the mayor. Show you how stupid and idealistic
10 somebody could be at certain ages. He said,
11 Bill, I'll get the council to set your salary to
12 wherever you want it. And there was no limit on
13 it. They just put the general counsel in the --
14 into the charter. And I said, well, Hans, I'm a
15 strong believer that the mayor should be the
16 highest paid person in the government, so I
17 won't accept a salary more than your 30,000. So
18 they set it at 28,5-. And it stayed there, I
19 think, a pretty long time.

20 I love Jacksonville. I don't love it quite
21 as much as my wife does. It worries her when I
22 call her my first wife, but that's what I call
23 her. She wants to know what I've got in mind.
24 And after 60 years, I can't tell her that -- if
25 I've got anything, it is in mind and not in

1 body, but we have gotten along well for
2 60 years. We have five children, the oldest of
3 which is Judge Mallory Cooper, and the next one
4 down is Allison, who's here with me, who is
5 counsel for FCCJ with Jeanne. The third one is
6 Lindsey, who's a rambunctious child, teaches art
7 and subjects -- related subjects at FCCJ.
8 Stephen is a professor at the law school, and
9 Will is an assistant public defender.

10 I have been accused of packing the public
11 payrolls with my family, and that is better than
12 paying for them yourself.

13 So it's been a great experience. I grew up
14 down the street at the corner of Church and
15 Liberty, so I've seen an awful lot of changes.
16 They're all good.

17 The Charter Revision Commission, I don't
18 know what subjects y'all may be thinking of
19 modifying, but when you think of modifying, bear
20 in mind that it really takes the people to run
21 them correctly. But from what I hear in
22 secondary and tertiary conversations and
23 readings, that y'all are doing a great job.

24 And it is good -- I think the charter
25 requires a review every ten years, if I remember

1 correctly. And I think it's good to do that,
2 but be careful about changing it. You never --
3 what's the statement? I'd rather put up with
4 the devil I know than the devil I don't know,
5 so . . .

6 The important things were getting rid of
7 the duplication of the police department,
8 getting rid of the duplication of purchasing
9 power, getting rid of the duplication of
10 representation by lawyers. And the
11 consolidation was my goal to implement it as I
12 thought it was intended. And, as I said, I had
13 prepared by my staff 169 opinions weighing down
14 the predicates for the new government, and I
15 think it's worked very well.

16 I really would like to reserve most of my
17 time to answer questions because I don't know
18 the extent of your review, what you have under
19 consideration, what's bothering you the most,
20 what you think needs improving the most, and how
21 do you think you can go about improving the
22 most.

23 So, Mr. Chairman, without much further ado,
24 I would rather answer the concerns of the
25 commission members.

1 THE CHAIRMAN: Thank you very much,
2 Judge Durden.

3 Commissioners.

4 Commissioner Miller.

5 MS. MILLER: Through the Chair, thank you
6 so much, Judge.

7 Judge.

8 JUDGE DURDEN: Yes.

9 MS. MILLER: I was wondering if you would
10 share with the commission some of our previous
11 conversations about the challenges you faced
12 when you became General Counsel and some of
13 the -- many of the challenges, I think, you
14 faced. We have heard discussion at the
15 commission, various clients wanting their own
16 lawyer, and how you address that, and -- and the
17 clients -- and your process for developing
18 binding legal opinions within the office. I
19 think that that would be helpful to the
20 commission.

21 Could you share that?

22 JUDGE DURDEN: Sure. Absolutely.

23 When they asked me to do it, as I said, I
24 had already made arrangements to become a lawyer
25 for the Dupont Trust, so I agreed to set that

1 aside for two years and do it. I told them I
2 would stay no more than two years, and I think I
3 stayed 21 months.

4 The theory behind consolidation was to do
5 away with duplication. That's what
6 consolidation means. And, as I said, we had at
7 least 51 different boards, commissions, and
8 offices, and they were always fighting with each
9 other for power. We had a Budget Commission, we
10 had a County Commission, we had a City
11 Commission, we had any number of different
12 boards and commissions. And they were all
13 having their own separate bank accounts, they
14 were all having their own separate lawyers, they
15 were all running their shops as they saw fit.

16 I remember McKinney Davis was the county
17 judge at the time. And when we issued the first
18 few orders about consolidated financials, he
19 came to me and said, Bill, I'm going to close
20 the doors to the county judge's office and put a
21 sign on it which says, this office can no longer
22 operate because the City government -- new
23 government will not give me the money that I'm
24 used to getting straight out from the County
25 Commission. And I said, well, you'll just have

1 to do that, Judge, because it is -- the heart of
2 consolidation is money. The heart of most
3 everything seems to be money.

4 So I faced him down. It was a little bit
5 difficult because I knew I was going to go out
6 and represent the Dupont estate, which was
7 pending before him, but he -- a couple of -- he
8 said, I'm used to setting up my own bank
9 account, I'm used to having my own separate
10 counsel. And later on he told me that taking
11 that responsibility away from him and giving it
12 to a consolidated office was the best thing that
13 ever happened to his office. He could do his
14 pristine, pure judging instead of trying to do a
15 county --

16 We compared that government with any others
17 that were pending in the country. The only one
18 that was even close, if I remember correctly,
19 was Memphis, Tennessee. They had a consolidated
20 government, which we adopted some of their rules
21 on.

22 The talent is where one -- taking away --
23 primarily taking away the power from previous
24 City Commissioners, five of them. We were
25 taking away from the fact that they did have two

1 secretaries, one for typing and one for other
2 matters. We took away the duplication of
3 lawyers, where they could go out and hire any
4 lawyer they wanted to and pay them anything they
5 wanted to to represent them.

6 We could even -- we even avoided a City
7 budget -- the County Budget Commission being
8 sued by the City Personnel Division of --
9 because of money. They -- it was just a great
10 thing. And, fortunately, one of the first
11 opinions I issued was that nobody could -- the
12 law permitted separate counsel where approved by
13 the City General Counsel. I never did issue an
14 opinion authorizing an outside attorney, not
15 once. It was contrary to consolidation. It's
16 really not a power statement on my part. I was
17 a creature of the legislature. And any time
18 they didn't like it, they could go back to the
19 legislature and get it changed if they felt they
20 could.

21 It was fun because, one, I didn't care if
22 I got reversed. But, two, it was fun to issue
23 all the opinions.

24 I formed a City General Counsel's Review
25 Committee composed of Bill Madison, who was a

1 previous City attorney, and Tom Oakley, who was
2 a previous County attorney, and one of my own
3 staff members that I picked. My staff fussed at
4 me. They said, well, we got elected to throw
5 all of those people out. I said, no, we didn't
6 elect them to throw out Bill Madison, a City
7 attorney. We got elected to throw out the City
8 Commission and the City Council.

9 And Bill had given -- I think he's one of
10 the outstanding General Counsels of the City
11 government.

12 The charter originally provided that my job
13 would be called City Attorney. I said, well, if
14 you want me to take this job, we're going to
15 change that title. That's going to be the first
16 act of the council. So we changed it to City
17 General Counsel because City Attorneys were not
18 in good repute of a Bill Madison, who was
19 straight as an arrow. Otherwise, City Attorneys
20 were in doubt.

21 Bill then came on my staff and I appointed
22 him chairman of the city laws and put him and
23 Tom Oakley on -- at the time was County
24 Commission -- County Attorney, and they did my
25 charter revision -- charter interpretation

1 decisions, and I think I said we did 169 of
2 them. I felt determined to lay out all the
3 guidelines for the new government.

4 I don't think there have been very many
5 formal opinions issued through them -- by them,
6 but I felt that if it couldn't stand the light
7 of day in a written opinion, carefully worded
8 and reviewed in house, that it shouldn't be
9 done. So that was the fundamental concept that
10 I had.

11 I don't know where it's gone from '68 to
12 now, but it was a -- I was thinking of it as a
13 little magazine, the issues on consolidation
14 day, October 1, 1968.

15 As I said, we had gotten rid of the bad
16 apples in the community and we had -- while I
17 was in the governor's office we had removed the
18 sheriff and -- who was committing local
19 gambling. He said it -- he was going to permit
20 local gambling and permitted local prostitution
21 down on Houston Street, that he wasn't going to
22 let any insiders come in. So we removed our
23 (inaudible) held as sheriff and put in Dale
24 Carson. So I had an intimate involvement in the
25 City government of Jacksonville even though I

1 was in Tallahassee.

2 It was quite an interesting time. And, as
3 I said, so far as I could tell from just reading
4 the newspaper and watching television, current
5 government is doing a good job.

6 I would really like, Madam, to answer the
7 questions that trouble y'all. Don't tell me you
8 don't have any.

9 THE CHAIRMAN: Commissioner Miller, do you
10 have a follow-up?

11 MS. MILLER: I'll wait.

12 THE CHAIRMAN: Commissioner Oliveras.

13 MR. OLIVERAS: Thank you, Mr. Chairman.

14 Judge, thank you for being here today. Let
15 me say, I appreciate your service in the early
16 years of the -- really a remarkable change for
17 this city.

18 I have a question about the sheriff's
19 office, the sheriff, and a proposal that's been
20 made a suggestion, of creating a new police
21 department. The term used was a metropolitan
22 police department, essentially shifting some of
23 the duties and responsibilities from the sheriff
24 to an appointed police chief appointed by the
25 mayor, and I would -- I'd like to have your

1 thoughts on that, if you might.

2 JUDGE DURDEN: Of course that was one of
3 the dominant problems even back in '68. Law
4 enforcement, of course, is a very important
5 aspect of local government.

6 Again, it's a hard -- the form is not as
7 important as the person that does it, we felt,
8 after we removed Cahill, who, as I said, was
9 permitting gambling and prostitution, and
10 appointed Dale Carson as the sheriff,
11 temporarily. Of course, it's an elected office
12 and the governor's appointment was only until
13 the next election, but Dale was elected over and
14 over again after that.

15 I don't know what it is about human nature
16 that makes a person feel like he can do a better
17 job than anybody else can if he's elected to the
18 position, but he has on his side the fact that
19 he has responsibilities, so he has to do it.

20 That issue came up -- if I were to compare
21 elected sheriffs with City police departments,
22 I'd have to tell you that elected sheriffs do a
23 better job, in my judgment. Of course, I had
24 that job in 67 counties in the governor's office
25 as to who would be a new sheriff if one was

1 removed, so we looked at those kind of people a
2 great deal.

3 But we did that from the governor's office
4 and got out of it and left it to local people.
5 Governor Collins always said, as long as the
6 city of Jacksonville wanted to have a sheriff
7 who's loose on prostitution and gambling that he
8 was not and did not interfere. But when they
9 elected Al Cahill on a reform candidacy, he felt
10 that he had to give the people what they had
11 voted for, so we removed Cahill and temporarily
12 appointed Dale Carson, and we think that was one
13 of the best things we ever did for
14 Jacksonville.

15 Collins never particularly cared for
16 Jacksonville. He never supported it very much.
17 Jacksonville always became a -- Jacksonville,
18 Duval County always became a part of what we
19 called in office the Pork Chop Gang, which was
20 composed of rural state senators and state
21 legislators who controlled everything.

22 The county -- the county represented
23 senators from Bradford, Starke, had more power
24 than the one elected from Dade County. It was a
25 continuation of what in New York, with the

1 (inaudible) government, we were a -- we had the
2 pork choppers government.

3 We all -- we came out of that, then -- and
4 I don't know what issues, as I said, that's
5 pending before your commission at the time other
6 than that, but I think that -- I don't know what
7 was my governing principle, but if you have a
8 good amount of responsibility, you should be
9 subject to the election of the people.

10 You can have a strong mayor form of
11 government and still have some people elected.
12 There are some jobs that I didn't think
13 necessarily to be elected. I never was quite
14 sure about the property appraiser, but all in
15 all I'm very proud of Jacksonville.

16 I don't know that that's an answer, but if
17 it ain't fixed don't -- if it ain't broke, don't
18 fix it. I'm very happy with Jacksonville's
19 government pretty much.

20 (Ms. Korman enters the proceedings.)

21 MR. OLIVERAS: Thank you, Judge.

22 One follow-up question, if I may.

23 Do you feel, in your opinion, if the City
24 were to consider the creation of a metropolitan
25 police department and dividing up the

1 responsibilities between a police department and
2 a sheriff's office, would that, in your mind --
3 since you're one of our founding fathers of
4 consolidation, would that be in agreement with
5 the principles of consolidation or would that
6 run contrary to what we tried to do?

7 JUDGE DURDEN: I think it's contrary.

8 The purpose is to have a single police
9 function, not double. If we had one appointed
10 by the County and one elected -- or appointed by
11 the City, you're going to have all kinds of
12 trouble, so I would not do that.

13 MR. OLIVERAS: Thank you.

14 THE CHAIRMAN: Commissioner Catlin.

15 MR. CATLIN: Judge Durden, your good
16 friend, Lou Ritter, came and spoke with us, and
17 his -- one of his suggestions was that -- to do
18 away with the district City Councilmen and have
19 them all as at-large or an all at-large so you
20 can touch more places in town. What's your
21 opinion on that, sir?

22 JUDGE DURDEN: I don't agree.

23 I think that the main genius involved in
24 having five at-large and fourteen districts,
25 making -- emphasize what they do according to

1 where they were elected from, I thought that was
2 a genius plan that -- considerably genius, and
3 so I wouldn't change it.

4 THE CHAIRMAN: Any other?

5 JUDGE DURDEN: How about the idea -- not
6 that I want to jump into troubled waters, but
7 the idea -- who has the power to appoint the
8 General Counsel, do you all have any problem
9 with that?

10 THE CHAIRMAN: Commissioner Miller.

11 MS. MILLER: Judge, through the Chair, I
12 think what we would like to know is certainly
13 your opinion about the authority to appoint the
14 General Counsel, if you have any opinion on the
15 methods to potentially remove the General
16 Counsel, the length of service -- recommended
17 length of service for the General Counsel, and
18 if you wouldn't mind talking more about why you
19 set up the General Counsel Review Committee, the
20 nature of binding legal opinions, their judicial
21 nature, and why you set up the internal review
22 committee as a way to -- and the arguments of
23 lawyers presenting arguments and then you would
24 ultimately make that decision.

25 Could you give some of the reasoning behind

1 that?

2 JUDGE DURDEN: The reasoning behind it was
3 to give it the full light of day, to give
4 everybody an opportunity to be heard, to let
5 everybody clearly understand what the issue was
6 that was being presented in that when we gave an
7 opinion, we were going to be required to put it
8 in writing so that it could withstand scrutiny
9 if anybody wanted to give it. If it couldn't
10 stand that kind of scrutiny, it shouldn't be the
11 decision that was reached.

12 I remember Brad Simpson had been an
13 Assistant City Attorney, and I kept both staffs
14 and I put them together. I kept the City staff
15 and I kept the County staff and still was
16 undermanned so far as what the charter
17 permitted, and the reason for that was I felt
18 that both of them, the City Attorneys and the
19 County Attorneys, were in themselves decent and
20 honest, that they had nothing to do with the
21 funny business that had been going on under some
22 of them, and I --

23 When I put the committee in, I had Yardley
24 Buckman, who was a brilliant Harvard lawyer,
25 chairman of it, and Bill Madison, who had been a

1 previous City Attorney, and Tom Oakley, who had
2 been a previous County Attorney serve on that
3 review.

4 As I said, I wanted to -- not to leave my
5 personal imprint on the government, but to leave
6 some guiding light to keep people from having
7 the opportunity to sue back and forth and put
8 the City/County at a dual expense.

9 (Mr. Catlett enters the proceedings.)

10 JUDGE DURDEN: Prior to that time there was
11 all kind of litigation between two boards, and
12 expensively.

13 So I did that for the purpose of
14 consolidating opinions, and we had it go through
15 a review procedure so that we could look at
16 every word, every nuance, then test it with a
17 tentative opinion and then with a formal
18 opinion. And the other day when Rick came to
19 see me, he brought me bound copies of the 169
20 opinions that were prepared under my direction.

21 If it can't stand the light of a written
22 opinion, then it shouldn't be -- shouldn't be
23 issued. So that was all it was about. As a
24 matter of fact, it was about the same time that
25 Governor Collins established what -- it has been

1 said that other people did it, but I think he
2 was the first of Government in the Sunshine,
3 that people had a right to know what was going
4 on.

5 Fortunately, when we removed Cahill, we had
6 available Dale Carson, and I told the
7 governor -- he said, Bill, that's your town.
8 What do you think we should do? And I said --
9 well, we removed Cahill. I certainly thought
10 that should be done, although (inaudible) and I
11 had supported Cahill in his reform movement.

12 Since we had done that, that we -- let me
13 see. Let me get my thoughts back in order -- we
14 should support him.

15 So the idea that the sheriff would be under
16 some -- I've always had trouble with a
17 metropolitan police force. I don't know why,
18 but I have. It sounds so -- a little unusual.
19 I like what we did. I like what y'all have
20 done.

21 I'm not sure I answered your question.

22 MS. MILLER: Judge, do you have an opinion
23 about the method for appointing the General
24 Counsel? Do you have an opinion about removing
25 the General Counsel and the length of term for

1 the General Counsel?

2 JUDGE DURDEN: Well, there was a feeling at
3 the time that if I would stay, they would make
4 it permanent, at least past City terms, election
5 terms.

6 I thought it was better -- the theory
7 behind it all, but I said the consolidated
8 government being new and interested in new
9 things, that we would go to the best law firms
10 in town -- I guess because of my associations
11 with major law firms, I felt that they were
12 better than us people on the west side of
13 Main Street, called Bay Street lawyers, although
14 I'm one of them now -- that they would be more
15 objective. We thought people east of
16 Main Street might be less objective. And
17 Mallory tells me that view still prevails in the
18 courthouse, so to speak.

19 But directly answering it, it all depends
20 on the person.

21 I don't think I've answered your question.

22 MS. MILLER: What about the appointment
23 or --

24 JUDGE DURDEN: Appointment. I believe if
25 you're going to have a strong mayor form of

1 government, he should be able to appoint his own
2 counsel. Argued against that is a separate, no
3 direct responsibility to the mayor, but I think
4 it -- it's contrary to consolidated government.
5 I think consolidated government says the mayor
6 is the chief executive of the city, so I would
7 have the mayor make the appointment subject to
8 council review and approval, much like the
9 consent and advice of the senate.

10 What is bothering y'all the most about
11 government?

12 THE CHAIRMAN: Commissioner Miller, did you
13 get all of your questions answered?

14 MS. MILLER: Yes.

15 THE CHAIRMAN: Commissioner Austin, did you
16 have a question?

17 MR. AUSTIN: Judge Durden, Ed Austin over
18 here.

19 When we went through the study commission
20 and -- to make the recommendations for the new
21 consolidated government -- I call these folks
22 the founding fathers of -- that I know you
23 know -- or knew most of them -- they recommended
24 very strongly, I think, that we have an
25 appointed sheriff, appointed tax collector,

1 property appraiser, and supervisor of elections,
2 and they put out their reasons for that.

3 And I think it was -- they made the
4 recommendations and then the legislature, I'm
5 sure, through the political processes of
6 lobbying and so forth, made them elected instead
7 of appointed. And then we -- and then the
8 elected sheriff and -- the mayor really has no
9 input in the education of any consequence at
10 all. Two of the major parts of government,
11 education and public safety, as far as the law
12 enforcement arm is concerned, are outside of his
13 office.

14 Is there any kind of a stretch to call this
15 a strong mayor form of government with those
16 people all being appointed or outside of any
17 authority of the mayor's office?

18 JUDGE DURDEN: Well, Ed, the City has been
19 blessed to have you as one of the previous City
20 General Counsels and I've always been fond of
21 what you did at some considerable sacrifice.

22 The idea that the commission would -- the
23 government would have anybody do different than
24 you did is hard to understand.

25 Ed, tell me your precise question and let

1 me see if I can answer it.

2 MR. AUSTIN: The property appraiser, the
3 tax collector, the supervisor of elections and
4 the sheriff are all elected.

5 JUDGE DURDEN: Right. They shouldn't be.
6 They should be appoint- --

7 MR. AUSTIN: They all should be elected?

8 JUDGE DURDEN: No. Those should be
9 appointed.

10 MR. AUSTIN: I'm sorry?

11 JUDGE DURDEN: There's not a governmental
12 power involved in that. There's a governmental
13 responsibility to do a job, but I don't know why
14 the supervisor of elections should be elected.
15 He has no fundamental responsibility other than
16 to qualify people as elected and certify
17 elections. I don't know of any power of
18 government that he does. He's almost a -- I
19 don't mean to demean him, but he doesn't have
20 any kind of governmental power that has to be
21 subject to the will of the people. He just does
22 his job to the extent it requires.

23 MR. AUSTIN: Thank you.

24 JUDGE DURDEN: Let me -- if we are ending,
25 close, compliment you on what you are doing.

1 It's hard to go back to October 1, 1968,
2 but you -- and I think this is going to be
3 somewhat repetitive, but it was somewhat like
4 the book Tale of Two Cities. It was the best of
5 times, it was the worst of times. We had had
6 City officials indicted and sent to prison. We
7 had County Commissioners that were accused of
8 and pretty well established of -- crooks. They
9 may not have been indicted and sent to jail, but
10 you knew how to get a rezoning, you would talk
11 at some bar with the City or County Commissioner
12 from that district. And I could give the names
13 that I remember, but that's not appropriate.

14 I think we just read from -- established
15 the foundation for a wonderful City government.
16 What would I do? I'm not one who thinks you
17 have to be elected to be what the people want.
18 I think if you have a decent appointing
19 authority that they can do it.

20 And the issue of the lawyers again, it was
21 just sinful the way we were paying for --
22 attorneys paid. So don't go back there. Keep
23 your strong General Counsel. Maybe you -- I'm
24 not suggesting you throw him out, but make sure
25 you've got a good, strong one and that he

1 doesn't become, quote, the mayor's lawyer. He
2 is not the mayor's lawyer; he is the City of
3 Jacksonville's lawyer. And if he leans too far,
4 drag him back. I'm not suggesting that's what's
5 happening, but we don't need two people with
6 unclear authority to do a single job.

7 So if you want consolidation, then the more
8 reliable people we can get to do those offices
9 then the better.

10 I think on the whole Jacksonville should
11 have -- and I don't know that I could keep up
12 with it -- a reputation for good government, but
13 it should have happened, but we did.

14 I knew all of them. Lou Ritter is a high
15 school friend. He -- I read what he said. I
16 don't disagree with it, but what about --
17 fortunately, we had been blessed with good
18 mayors. The man sitting here in the room was
19 one of the very best.

20 I know he came to me when I was appointed
21 chairman of the committee to select -- or
22 recommend a new General Counsel, and he said --
23 I called him and said, I know you think Delaney
24 would be a good one, and I do too, and -- he's a
25 little young, don't you think? Ed said, yeah,

1 he's the same age you were when you were running
2 the governor's office. I said, I guess that's
3 good enough.

4 But you have been blessed with mayors like
5 Ed, and I think North Jacksonville is entitled
6 to representation too. All the bright ones are
7 not in South Jacksonville or Arlington or
8 Ortega, so that -- I think Jake has been a good
9 one. Not that -- there were a couple of them
10 that you'd review and a couple of them had
11 lawyers that I wouldn't appoint, but all in all
12 we survived it. Nobody went to prison, nobody
13 died as Allison says.

14 Ed, you did a great job for this city and
15 they should erect a marble statue of you and put
16 you in Hemming Plaza instead of that Confederate
17 soldier. You're more likely to be the father of
18 consolidation than I. I'm not (inaudible).

19 Anything else?

20 THE CHAIRMAN: Commissioners, are there any
21 other questions?

22 MR. AUSTIN: Judge Durden, Jim Rinaman said
23 that you established forever that this was a
24 strong General Counsel form of government in
25 lieu of any other form when you were the first

1 General Counsel. I'd like to second that, and
2 thank you very much for being here today.

3 JUDGE DURDEN: Thank you.

4 THE CHAIRMAN: Thank you, Judge Durden.
5 We appreciate your time.

6 JUDGE DURDEN: You're welcome.

7 THE CHAIRMAN: It was very informative.
8 Our next speaker will be Braxton Gillam,
9 who, as you recall, is a member of the Ethics
10 Commission. He will be speaking to us today
11 about the potential conflicts of interest that
12 governmental attorneys could have with respect
13 to the Bar rules of professional
14 responsibility.

15 (Mr. Gillam approaches the podium.)

16 THE CHAIRMAN: Braxton, if I've misstated
17 that, please correct me.

18 We'll begin by having you sworn in by our
19 court reporter.

20 THE REPORTER: Your name and address first,
21 please.

22 MR. GILLAM: Braxton Gillam, 14 East Bay
23 Street.

24 THE REPORTER: Thank you.

25 Do you affirm that the testimony you're

1 about to give will be the truth, the whole
2 truth, and nothing but the truth so help you
3 God?

4 MR. GILLAM: I do.

5 THE REPORTER: Thank you.

6 THE CHAIRMAN: Is that on --

7 MR. GILLAM: Just initially, I'll say I'm
8 one of those Bay Street lawyers that the judge
9 was speaking about earlier.

10 I appreciate you taking my comments with
11 that consideration.

12 THE CHAIRMAN: Stand by.

13 (Brief pause in the proceedings.)

14 THE CHAIRMAN: Very good. Please proceed.

15 MR. GILLAM: Do you need me to start over?

16 THE CHAIRMAN: No. That's okay.

17 MR. GILLAM: Thank you.

18 When I was asked to come back and comment
19 on the issues, I -- I know I had sent to the
20 chairman of your committee an article --
21 frankly, a very recent article that I think is
22 kind of on topic. I don't know if it's been --
23 if you were able to share it. I'll share it
24 now, if I may.

25 I'll tell you that my assistant is out with

1 children with H1N1, so I'm doing this on my own,
2 copying, so it's not collated very well. So I
3 may give your stuff individually.

4 Can I hand this to you?

5 And I think I've got copies for everybody.
6 If I don't, I apologize for that error too.

7 The article that's being given to you is
8 entitled Should a Local Government Attorney
9 Represent Both the Executive and Legislative
10 Branches? I think that's -- you know,
11 highlights, you know, some of the issues that
12 you're considering in your deliberations, and
13 this article talks specifically about the fact
14 that the -- why a county is currently doing what
15 you're doing, which is sitting at a Charter
16 Review Commission setting and considering
17 potential conflicts and problems of a single
18 General Counsel representing, you know, all the
19 branches of government, and so I -- I say to you
20 that it's certainly a timely issue you're
21 addressing.

22 You know, initially I'll say to you that
23 whenever you're considering constitutional
24 and/or charter issues, you're looking at
25 government control and power and you've got

1 scales in front of you, and one is the
2 democratic ideals of our form of government and
3 you're weighing those against fiscal
4 responsibility and efficiencies.

5 I mean, we'll all recognize that the most
6 efficient government is that beneficial
7 dictatorship, but the definition of what is
8 beneficial is usually in the eye of the
9 beholder. People can disagree about who's a
10 good dictator and who's a bad, and that's how
11 our government ultimately was formed. And so in
12 the democratic form of government you find
13 yourself trying to -- you know, the push/pull.

14 We want to be as efficient as possible, not
15 spend too much money, as we -- many of us
16 believe we do on bureaucracy and government
17 management, but the other side of that is, the
18 more safeguards you put in place, the more you
19 ensure your democratic form of government.

20 The last time I spoke to y'all, I was
21 speaking to you about concerns your Ethics
22 Commission has with its abilities and limited --
23 and lack of budget and ability to do its job,
24 and that's one of those issues. And the other
25 side of it is, well, why do we want to spend

1 money on that? Well, again, it's just a -- it's
2 a decision. It's a policy decision, and a
3 policy decision at least at your level at this
4 point.

5 When you start dealing with lawyers who are
6 serving in government, you've got another --
7 it's not a two-bucket scale, it's a three-bucket
8 scale because you've got the same considerations
9 of protection of people and democratic ideals.
10 You've got the same considerations of fiscal
11 responsibility and efficiency, but you've also
12 got to consider the rules promulgated by the
13 Supreme Court and the Florida Bar that govern
14 lawyers in the state of Florida.

15 And in particular, the rules I think we're
16 talking about from my perspective today is
17 Rule 4-1.7, which deals with conflicts between
18 current and existing clients, and 4-1.10, which
19 deals with imputed conflicts.

20 There's actually a third rule, but I don't
21 really think it applies in this instance, but
22 I'll reference to you the third rule is 4-1.11,
23 and that deals with when you've got lawyers
24 moving between private practice and government
25 and how to deal with that and the recognition of

1 the fact that it's difficult for government to
2 hire good lawyers and keep good lawyers when
3 they can't ever leave because they're going
4 to -- they can't find a home because of
5 conflicts created in their new office or new law
6 firm because of their prior relationship with
7 the government. I mean -- and I think that
8 deals -- again, that's dealing between --
9 movement between lawyers and public and private
10 practice.

11 When you start talking about, you know, a
12 General Counsel's Office, a consolidated
13 government General Counsel's Office, I think
14 you're talking more about, you know, imputed
15 conflicts within that office, and that's the
16 concern.

17 You know, I'll tell you that, you know,
18 since 1968 there's been very few -- at least
19 that I'm aware of, and I could research --
20 ethical opinions issued by the Bar dealing with
21 this kind of concern.

22 And, actually, to back up -- and there's
23 also few cases in Florida where it's been
24 addressed as well. In the one line of cases we
25 see as lawyers is in the context of criminal

1 defense. We have a public defense system for
2 the indigent, the Public Defender's Office, that
3 provides lawyers to those who can't afford
4 lawyers to defend them in criminal actions, and
5 there's a -- a line of cases in Florida dealing
6 with those public lawyers, government lawyers,
7 and where you have conflicts within a particular
8 Public Defender's Office that -- again, we're
9 protecting people's civil liberties and civil
10 rights. It's not exactly the same thing, but
11 they refer in those -- those line of cases to
12 the ethical guidelines and professionals
13 governing lawyers and they say you can't do it.

14 If you've got two conflicted clients --
15 potential clients of a particular Public
16 Defender's Office, the office is going to be
17 conflicted out and you've got to find separate
18 counsel, and the public defenders in the state
19 of Florida have learned to deal with that,
20 and -- and they do.

21 I will tell you that, you know, the concern
22 really is, in our form of government -- and,
23 again, you know, best intentions and, frankly,
24 pretty good practices in Jacksonville, but
25 ultimately what do you have? You've got the

1 problem now where you don't have that option, an
2 opportunity. We don't have a division within
3 our government to bring in lawyers. I think
4 what you do have is -- from time to time we can
5 look historically in Jacksonville and see where
6 there have been outside counsel hired when
7 conflicts came up, but you're left with making
8 the determination, you know, with the General
9 Counsel looking at that issue.

10 Some of the ethical opinions that have
11 been, again, sort of on point -- and there's
12 very few. I'll give you a couple of them, if I
13 may.

14 While he's handing those out, I'll tell you
15 what I've given you -- or am giving you are
16 three different opinions, you know, starting all
17 after consolidation of government here and the
18 creation of the General Counsel's Office in
19 Duval County.

20 The first is a 1972 opinion -- it's
21 published through the Florida Bar -- that talks
22 about situations and -- a complaint came in
23 regarding some Volusia County government
24 attorneys who were representing the different
25 levels in zoning hearings.

1 Initially, a zoning board -- zoning
2 commission and a zoning board appeals
3 committee. And the complaint from the citizens
4 was, you know, we're not getting a fair shake.
5 You've got the same lawyers telling you what to
6 do at every level. We're not getting a fair
7 appeal.

8 And the decision that ultimately was
9 arrived at was, well, where a lawyer for a
10 government agency is acting as an advisor,
11 that -- you know, we're going to sanction that
12 type of activity. Where they move from advisor
13 to advocate, we will not.

14 And you'll see the -- you know, the last
15 comment on that 1972 opinion is -- it was a
16 significant, you know, minority of the committee
17 who disagreed with that opinion because they,
18 frankly, thought it was a slippery slope.
19 What's an advisor and where do you become an
20 advocate for the opinion you gave to a prior and
21 lower tribunal?

22 I'll tell you, I think, you know, this
23 community and this government has another
24 complication because not only does our General
25 Counsel act as an advisor and sometimes as an

1 advocate, they also act as a judge with some
2 form of an adjudicatory responsibility and
3 right when they have -- you know, have and make
4 binding opinions that affect our government, so
5 I think it further complicates, you know, the
6 possibility of a conflict with the lawyer -- the
7 rules of governing lawyers in the state of
8 Florida.

9 The other cases I've given you are
10 opinions, there's two and they're related.
11 Different parties, different -- but the same
12 issue.

13 The first is a 1978 opinion, and it was --
14 interestingly enough, it was where a City
15 Attorney was asked to represent an individual in
16 a private capacity, who had -- who was a
17 government official who had a state ethics
18 complaint brought against them.

19 In 1978, the opinion came out of the
20 Florida Bar was you can't do that. It's an
21 inherent conflict of interest, you know, because
22 the government has -- has one interest, which is
23 to ensure that these activities are not going
24 on, and you can't be a lawyer representing a
25 particular individual saying it didn't go on.

1 You're adverse to yourself.

2 In 2006, this was brought back to the
3 Florida Bar in a different set of circumstances,
4 you know, the same kind of situation, and the
5 Bar said, well, with informed consent, you can
6 have a waiver by the government and by the
7 individual in question with full disclosure.
8 And that's talked about more deeply in the
9 comments also to Rule 4-1.7 that I referred to
10 earlier.

11 I mean, ultimately, you know, the issue --
12 and I can't help but refer back to the Ethics
13 Commission because that's, frankly, my limited
14 experience with the government and interaction
15 with these issues.

16 I mean, the Ethics Commission itself has
17 dealt with problems because we are represented,
18 the Commission is, by the General Counsel's
19 Office. We have a representative who's sort of
20 assigned to the Commission, who sits with us,
21 who provides advisory support for us -- for us
22 to do our job. And I can tell you that, you
23 know, we've had issues come up since -- in my
24 limited term, the last, you know, 18 months or
25 close to two years now, where we say there's

1 this issue with a government official or a
2 complaint and the response is, well, I can't
3 respond because we're assisting and advising
4 that individual.

5 I mean, I think that highlights the obvious
6 conflict and, frankly, the recognized conflict
7 inside the General Counsel's Office. I mean --
8 and it's a tough situation, you know, that the
9 General Counsel finds himself or herself in
10 because, you know, the law is what it is. The
11 history and precedent is what it is and it's a
12 matter of trying to work within it.

13 You know, we're here today talking about
14 what might can be done to change that or
15 consider a betterment in the current system.
16 Again, I'll say to you -- I mean, from an Ethics
17 Commission's standpoint, we don't have the
18 ability and/or funding -- we have zero budget to
19 go out and get separate independent counsel, you
20 know, to give us advice in such a circumstance.
21 Again, there's a cost associated with that too,
22 but -- but it's also been suggested to us, you
23 know, by the General Counsel's Office that we
24 don't have the authority, even if somebody
25 wanted to donate their time, to go outside the

1 General Counsel's Office for help and support,
2 and that gives me concern as a commission
3 member. It also gives me concern as a citizen.

4 I mean, ultimately I'll come back to the
5 fact that government employees and a government
6 General Counsel's Office, just like a private
7 law firm, it can't represent disparate
8 interests. That's -- you know, again, that's an
9 overarching rule governing lawyers in the state
10 of Florida. You can't have two clients in the
11 same firm who are working against each other at
12 that time. And here I think we -- our General
13 Counsel is forced to deal with that every day.

14 And, you know, going back to my earlier
15 analogy, I mean, if you take the idea of a
16 beneficial dictator from the standpoint of
17 government to the General Counsel's Office --
18 we've had -- we've been blessed, I think,
19 with -- as Judge Durden said, you know, good
20 General Counsels who have worked hard, who have
21 been diligent and tried to balance those
22 interests and do the best they could, but,
23 ultimately, you know, you've got a significant
24 appearance of impropriety type problems for
25 lawyers because whoever comes out on the losing

1 side of these decisions, these binding opinions,
2 the differences between council -- or council
3 people and the mayor's office or different
4 branches of government, whoever comes out on the
5 bottom side, I can tell you is unhappy about it
6 and they're saying, I didn't get a fair shake.
7 And lawyers, again, just have -- or just bind
8 [sic] by different rules and different
9 obligations than the mayor is, than a City
10 Councilperson is, and I think that's -- you
11 know, again, where my concern comes and,
12 frankly, where I think the rules governing the
13 Florida Bar come.

14 I've heard that, you know, the position
15 from the General Counsel is we represent the
16 corporate structure, but that's not always the
17 case. At least in connection with the Ethics
18 Commission, I know they've represented
19 individual elected officials, so I -- that's
20 initially my comments.

21 THE CHAIRMAN: Thank you, Mr. Gillam.

22 We have a couple of commissioners in the
23 queue.

24 Commissioner Korman.

25 MS. KORMAN: Based on your research, what

1 do you think is the proper term of service for
2 the General Counsel?

3 MR. GILLAM: You know, I guess I'll say to
4 you I'm probably not -- I'm not educated enough
5 to give you a real answer. I guess I would say
6 to you that an indefinite term gives me greater
7 concern than a limited term because that -- the
8 whole idea of a beneficial dictator, the whole
9 idea of one person knows all and can do best and
10 will do best, it gets exaggerated.

11 It becomes more of a problem, in my mind,
12 when you've got a forever term, and so limited
13 terms I do think help you with that problem,
14 but -- but term limits don't address the
15 inherent problems with lawyers or -- that
16 General Counsel will deal with these, you know,
17 imputed conflicts and day-to-day problems
18 between branches and individuals in government.

19 MS. KORMAN: Do you have a -- just a
20 personal suggestion what you think a term limit
21 should be, then, for a General Counsel
22 position? Just opinion.

23 MR. GILLAM: Well, Judge Durden did a
24 mighty good job, and he did it in two years, so
25 maybe two years works well.

1 THE CHAIRMAN: Commissioner Catlin.

2 MR. CATLIN: Mr. Gillam, tell us exactly
3 what you would propose to make this -- these
4 conflicts go away?

5 What's -- and I guess that's opinion or
6 maybe it's the opinion of the Ethics Commission,
7 but what would you propose -- I guess both, your
8 opinion and the Ethics Commission's opinion to
9 take these -- this conflict out of here.

10 MR. GILLAM: In reverse order, let me say
11 to you that I'm not here and authorized to give
12 you the Ethics Commission's opinion on that
13 because we've not deliberated on that. I don't
14 have the -- you know, the consult and thought
15 process of the Commission on that issue.

16 I can tell from my standpoint, from a
17 personal standpoint, what you've also asked for,
18 I'll say to you it's a lot easier to throw rocks
19 than it is to find solutions, and so I -- I'm
20 pointing out to you some problems.

21 You know, the easiest -- one solution, and
22 I think, frankly, the least of the actions that
23 should occur is that there ought to be a
24 mechanism where there's an independent counsel
25 or a conflict counsel who's designated and who's

1 available in the face of conflicts, or a
2 particular individual or branch within the
3 government believes that a conflict -- they
4 ought to have an avenue to turn to say, what do
5 you think, instead of having to turn to the same
6 office and say, what do you think, and in
7 response -- they know what the answer is going
8 to be when they turn to the -- to that group of
9 lawyers.

10 I mean, lawyers are advocates. And when
11 you've got -- and when you're advocating for one
12 party, it's -- you can't be asked to advocate
13 for the other. It just doesn't work.

14 THE CHAIRMAN: Do you have a follow-up?

15 MR. CATLIN: Yeah.

16 The reason I asked for the Ethics
17 Commission -- it did say on here that you were a
18 speaker for the Jacksonville Ethics Commission
19 on our agenda. That's the only reason I asked
20 that.

21 Let me come back to this one. Let me come
22 back.

23 THE CHAIRMAN: Commissioner Austin.

24 MR. AUSTIN: So you're on the Ethics
25 Commission?

1 MR. GILLAM: Yes, sir.

2 MR. AUSTIN: How many complaints have you
3 had against -- with the General Counsel?

4 MR. GILLAM: I probably can't answer that
5 question for a couple of reasons. One is I may
6 not have, you know, the full -- I don't know the
7 answer to that for the history of the Ethics
8 Commission. I've been on the Commission since
9 January of 2008.

10 I will tell you that -- since I've been on
11 the Commission, I can tell you that we have had
12 a situation or a conflict -- ourselves having a
13 conflict with the General Counsel's Office not
14 being able to advise us because they're already
15 advising an elected official. So I can tell you
16 we've been -- we have -- I have been faced with
17 that circumstance. I can't tell you how many,
18 you know, historical complaints there have been
19 about the General Counsel. I'm not aware of any
20 specific ones, candidly.

21 MR. AUSTIN: In other words, when you
22 have -- when the General Counsel had an apparent
23 conflict, he brought it to your attention?

24 MR. GILLAM: Yes, sir, and said they
25 couldn't advise us, which I think is the

1 appropriate and right thing to do, but it left
2 us with a -- a hole.

3 MR. AUSTIN: I'm a little bit concerned
4 that I haven't heard about a lot of complaints.
5 Judge Durden.

6 JUDGE DURDEN: Yes.

7 MR. AUSTIN: Can I bring you back -- can I
8 bring him --

9 THE CHAIRMAN: If he's willing.

10 MR. AUSTIN: -- through the Chair?

11 THE CHAIRMAN: Yes.

12 Judge Durden, are you willing -- would you
13 like to answer the question from --

14 MR. AUSTIN: Judge Durden, I didn't have
15 any problems for two years -- I'm testifying --
16 in two-years-plus as General Counsel with ethics
17 problems. Maybe it was just -- we sorted them
18 out and went on with it. Did you have any
19 problems with it? I mean, I think the General
20 Counsel is just as competent to see a conflict
21 as any other lawyer is able to see a conflict.

22 Did you have any problem with it, Judge
23 Durden?

24 JUDGE DURDEN: No, not at all.

25 It is true that it's clear in the practice

1 of law, one word and two lawyers, you've got a
2 lawsuit, but no, it was not anything that we had
3 any problem with whatsoever. I don't even
4 remember the question coming up.

5 MR. AUSTIN: Well, if I may testify again,
6 I didn't see the problem. You make a decision,
7 and if you have a problem, you sort it out and
8 satisfy the client and go on with it, or if you
9 can't satisfy the client when they're trying to
10 pull away from the consolidated government, you
11 make a decision and then pay attention to it. I
12 don't see the problem, but go ahead.

13 JUDGE DURDEN: There may be one way that I
14 did it that would help. I remember Fred Simpson
15 was the City government's law firm, and he
16 always took the position that whenever the
17 employee was involved, that he was right, and I
18 ruled against him almost every time. And he
19 said one time that -- when are you ever going to
20 rule in my favor? I said, if we ever find a
21 case that you're right on, I'll do it.

22 But no, it's -- it's got to be a single
23 place of resolution. You can't have, as I said,
24 one word, two lawyers. Even if they're in the
25 same office will have a different view, but

1 there's no reason for that to blossom out into a
2 problem. Resolve it in-house. And if they
3 don't like the General Counsel's opinion, go to
4 the legislature and change it. He doesn't make
5 that many widespread opinions.

6 THE CHAIRMAN: Commissioner Oliveras.

7 MR. OLIVERAS: Thank you, Mr. Chairman.

8 First I have a question through the Chair
9 to Counsel. In the case of a conflict in the
10 General Counsel's Office, if -- if OGC is
11 representing an elected official, isn't there
12 provision for conflict counsel to be provided
13 for the Ethics Commission or are they kind of
14 out on their own?

15 MR. ROHAN: I'm going to answer that. And,
16 of course, Mr. Mullaney is here to further
17 answer it if you have any questions of him.

18 Yes, we do have -- the General Counsel is
19 aware of all the ethics rules. The Supreme
20 Court has said in a case and the District Courts
21 of Appeal have said that as long as you assign
22 one attorney to one client and another attorney
23 in the office to another, that's legal, that's
24 appropriate, that's how government law offices
25 operate.

1 So, in other words, you can have somebody
2 prosecute a civil service case and somebody
3 advise -- a different person advise the board.
4 That's okay. But there may come times when
5 there are conflicts. And in those times, if
6 somebody will request of the General Counsel
7 that we need an outside attorney, a separate
8 counsel to advise the client, the General
9 Counsel would consider that and make that
10 determination. And, if necessary -- and we've
11 done it in the past -- appoint an outside
12 attorney to represent the client, so yes.

13 MR. OLIVERAS: Thank you, Mr. Rohan.

14 So has the Ethics Commission had to make
15 use of that or has that been offered?

16 And then I have another issue I'd like to
17 discuss with you.

18 MR. GILLAM: Initially I'll say that was
19 not offered to the Ethics Commission. But,
20 again, I -- I'll say to you that I -- I would
21 have to respectfully disagree, through the
22 Chair, with Mr. Rohan's comments.

23 I'll tell you, I've spoke directly with the
24 people at the Florida Bar. Imputed conflicts,
25 under 4-1.10, absolutely apply to the General

1 Counsel's Office exactly as they apply to
2 private law firms, and you cannot have -- you
3 cannot say I want to have one lawyer in the
4 General Counsel's Office represent you and one
5 lawyer in the General Counsel's Office represent
6 you in this issue. You cannot do that. That is
7 a nonwaivable conflict, in fact, so I just
8 disagree with that statement.

9 MR. OLIVERAS: Thank you.

10 And going off in another direction for a
11 minute, in the recent issue with Council
12 Vice President Webb and the landfill issue --
13 and I don't want to mischaracterize this in any
14 way, so please correct me because my only
15 knowledge is from the media.

16 There seemed to be some initial reluctance
17 or hesitancy to delve into this issue, and I'm
18 one of the commissioners that -- I feel very
19 strongly that the citizens of this community
20 need to be able to rely on and trust in the
21 integrity of their elected officials and their
22 City employees, so I'm -- I'm very much in favor
23 of the ethics officer and the Ethics Commission,
24 but is it the case that we -- excuse me -- do we
25 need to strengthen something or do we just need

1 to be more assertive or aggressive in taking on
2 these issues?

3 MR. GILLAM: Well, there's two or three
4 land mines in that question.

5 I'll first tell you that the Ethics
6 Commission has agreed, for the first time in its
7 history, to self-address or -- an issue that's
8 before the public. There's not been a complaint
9 from a citizen through the hotline or through
10 any of the open meetings on this issue you've
11 referenced, but the commission has agreed on its
12 own, decided to take it up as they're authorized
13 to do. More than that I cannot say about that
14 particular issue.

15 And, again, I'll say to you that my
16 experience in government is very limited. I'm
17 speaking more -- I came here today really at the
18 request of the committee to talk about Florida
19 Bar rules and how they implicate our General
20 Counsel's Office. You know, I'm not here to
21 complain about any particular activity of our
22 General Counsel. I think we've been very
23 fortunate, this community has, with good
24 government and good people put in place.

25 That's not, you know -- but I'm talking to

1 you about -- or came here to talk to you about
2 what the rules provide for, which I don't think
3 are adequately being addressed, and I do think
4 from time to time it creates problems.

5 And, respectfully, you know, through the
6 Chair to Mr. Austin's concerns, you know, I'll
7 say to you that -- you know, sometimes when
8 you're inside the fish bowl and you're the fish,
9 the perception is different than when you're
10 looking in the fish bowl, and I think that's the
11 problem.

12 Ultimately, it's not always the lawyer
13 calling the conflict on themselves. Our General
14 Counsel has done a very good job, I think as
15 good a job as it could with the rules and
16 regulations that they're faced with to address,
17 you know, and manage this office in
18 Jacksonville, but it doesn't mean that we don't
19 daily deal with conflicts of interest, which,
20 frankly, are not waivable under Florida Bar
21 rules, but people have -- again, in this
22 beneficial dictator format have kind of done the
23 best they could to come up with what's right,
24 and I -- and that doesn't make it right, not
25 under the rules.

1 THE CHAIRMAN: Commissioner Miller.

2 MS. MILLER: Through the Chair, thank you,
3 Mr. Gillam, for being here and for commenting on
4 the Florida Bar rules.

5 I think it's -- we have an interesting
6 situation here with the consolidated government
7 when we have a General Counsel's Office who both
8 represent and advises a client, is also the
9 advocate for the client and is the judge and
10 jury in binding legal opinions, and I think that
11 maybe that's where -- when I was asking Judge
12 Durden -- and Judge Durden's -- during his
13 tenure, he set up an internal review committee
14 where lawyers -- and if he'd be willing to talk
15 about it a little bit further -- when they were
16 asked to advocate for a certain board or
17 commission or a client, would actually prepare a
18 brief, would make arguments to the committee,
19 and then Judge Durden would truly sit as a
20 General Counsel and, as the judge, independently
21 receive recommendations from that committee and
22 issue an opinion. That process, as I understood
23 it, simulated in many ways what you would go
24 through in an appellate brief process or in a --
25 in a court.

1 And so I think that the tension arises not
2 only in that our lawyers are asked to be
3 advocates, also advisors, but we also have a
4 General Counsel who has judicial authority, as
5 Mr. Mullaney has fully admitted that he -- his
6 office also serves as sort of a Supreme Court,
7 and -- and it's hard to justify all of those
8 roles with the -- with Rule 4 under the Florida
9 Bar.

10 And with all due respect to Commissioner
11 Austin, we have had on the record to date the
12 school board, the sheriff, the Ethics
13 Commission, and the Supervisor of Elections all
14 state on the record, as well as members of the
15 public, a true concern about whether or not
16 there is an actual conflict or an appearance of
17 a conflict in rendering legal opinions, and that
18 is why I think most of the commissioners voted
19 that we look at this issue, and this goes to the
20 heart of the issue, so I would -- I would
21 respectfully disagree. We have heard that there
22 are concerns and conflicts, and I think Rule 4
23 gets to that.

24 The ethics opinions that you've provided
25 help, and hopefully we will hear more from

1 members and advisors of the Florida Bar.

2 I would like to get your opinion, if you
3 have one, on -- personally, I believe there's a
4 great value in having one General Counsel's
5 Office, but how we address this public and
6 client concern, that there's either an
7 appearance of a conflict, whether it's the
8 outside lawyer or someone else to go to if there
9 is a conflict or maybe an internal process, as
10 Judge Durden has previously set up, where there
11 is -- where a client feels as though they've
12 been hurt, and that the General Counsel truly
13 sits as an independent lawyer, judge, if you
14 will, and does not serve one client and doesn't
15 attend committee meetings of one client over
16 another client, just -- if you have comments or
17 opinions on that.

18 MR. GILLAM: Well, again, I -- you know,
19 it's easy to find fault and harder to find a
20 solution, but it certainly would -- in my mind,
21 you know, that would change markedly, in my
22 opinion, about the -- where we stand today and
23 how our government is run today vis-a-vis the
24 applicable rules of Florida Civil Procedure and
25 the rules governing Florida Bar lawyers who are

1 in government.

2 I think once you -- because you've got due
3 process concerns is what you're really referring
4 to, which -- if you read the comments to the
5 rules I've referenced for you today, all those
6 comments talk about -- they talk about
7 appearance of impropriety, they talk about duty
8 of loyalty that all lawyers have to their
9 clients, and the concern that you've got -- you
10 know, when you give a confidence to one lawyer
11 in a firm or a particular, you know, division,
12 the assumption is you give it to them all, and
13 you've got to have a way around that system when
14 you've got diverging interests. And we
15 routinely, in a government this large, with
16 this -- with many people involved, with many
17 interests involved, we routinely see that, and I
18 think -- you know, I think that's a step in the
19 right direction, but I think -- I think too, I
20 think ultimately you've got to have a mechanism
21 in place where someone can get to outside
22 independent counsel and it's not at the
23 discretion of the person who's adverse to them.

24 Again, the lawyer who is advocating a
25 particular position can't be the gatekeeper to

1 that person or entity or division of government
2 to get to separate counsel, and I know -- I know
3 our City Council doesn't have to go through the
4 gatekeeper, they can vote their way out of it,
5 but they're the only branch of government, the
6 only group of government officials and
7 bureaucrats that have that ability. The rest of
8 them have to go through the gatekeeper, who is
9 the -- who's the advocate for the other side,
10 and that's a difficult situation.

11 MS. MILLER: Through the Chair -- and I
12 would like to thank you for mentioning that.

13 I wanted to direct a question to
14 Mr. Rohan. I understand that it is -- that the
15 City Council has the authority to independently
16 hire outside counsel; is that correct?

17 MR. ROHAN: That is correct.

18 MS. MILLER: Would you provide some
19 explanation, if you are aware of any, as to the
20 reasoning behind that, why the City Council is
21 allowed -- permitted to do that and how they
22 could do that versus other parts of the
23 government?

24 MR. ROHAN: Yes, I think I can, because
25 I've been here since 1982. And in 1984, when I

1 was general -- excuse me -- when I was hired,
2 Dawson McQuaid was General Counsel. And then in
3 1984, Jerry Schneider was appointed General
4 Counsel. May he rest in peace. He's the only
5 General Counsel that passed on.

6 At that time, it became the issue of
7 binding legal opinions and there was an issue of
8 the council needing its own lawyer, and the
9 charter was changed and the council was given
10 the authority to hire its own lawyer, and the
11 General Counsel was given binding legal opinion
12 authority by the legislature so that the
13 attorney for the City Council could not bind the
14 consolidated government.

15 The experiment with a -- the council did
16 hire its own lawyer. That experiment failed
17 terribly because there was just so many lawyers
18 that you would have to have representing the
19 City Council. If they were going to be properly
20 represented, they'd need a labor lawyer, a
21 legislative lawyer, land use lawyers,
22 environmental lawyers.

23 That process didn't work. They went back
24 to just the General Counsel mode, but the
25 language is still in the charter that allows for

1 the City Council to have its own attorneys.

2 THE CHAIRMAN: Commissioner Catlett.

3 MR. CATLETT: Well, I think most of us are
4 now aware of the issues. And we had some
5 inkling before you got here, but now we have a
6 better understanding of the issues for sure.
7 And there are about four lawyers in the room,
8 some of us here are not lawyers, so I want you
9 to do this is in a simple way.

10 Let's say that you had a dream or a
11 nightmare and you woke up one day and you were
12 General Counsel, what exact changes would you
13 make?

14 MR. GILLAM: Well, I'll say to you I don't
15 think the General Counsel has the ability to
16 make the changes that are necessary. I think
17 the General Counsel --

18 MR. CATLETT: What would you do -- let's
19 try another approach. What would you do?

20 MR. GILLAM: Well, I think -- it's a fair
21 question. I think our -- our General Counsels,
22 at least the ones that I'm aware of in my
23 limited time here in Jacksonville, the last
24 15 years, have done what they could do. When
25 they identified themselves, a conflict, they

1 have recommended and, I guess, approved the
2 hiring of outside counsel. And that's about all
3 you can do in the current system, and I don't
4 think -- I mean, that's what our General
5 Counsel, who's hired today to do, has to work
6 within. I mean, it's just another set of laws
7 and rules and regulations. They're an employee
8 of city government. They've got to do that.

9 I think the problem ultimately is -- with
10 the -- with leaving it the way it is is you've
11 got budget constraints and -- and how does a
12 public official justify on a day-to-day basis
13 calling a conflict on himself and spending the
14 kind of money that it cost to hire the
15 third-party lawyers to represent the diverging
16 interests?

17 I mean, it's easier to say, you know, this
18 is a -- in this situation, I think what we
19 should do is do this and kind of work through
20 it, you know, and work through it in a cheaper
21 fashion without hiring sets of lawyers.

22 I mean, the one reason why I think people
23 don't like lawyers is because lawyers -- you
24 know, the bills they get from lawyers. And
25 ultimately that's a problem that the government

1 and the citizens have as well.

2 What you don't want -- I mean, what --
3 again, that -- we're back to that balancing act
4 I was talking about. You start hiring lawyers
5 for every issue before City government and there
6 won't be any money left in coffers to pay for
7 streets and police. I mean, that's a problem.
8 And that ultimately is -- in our current format,
9 is kind of left to the discretion of the General
10 Counsel to, you know, kind of parse through and
11 do the best he can.

12 I'm just saying to you that -- from a
13 policy standpoint, that may make lots of sense
14 from a piggy bank. Unfortunately, you've got
15 more than policy concerns here because you've
16 got the rules regulating lawyers in the state of
17 Florida, and I'm just -- I'm just giving you my
18 comments on those rules.

19 (Ms. Herrington enters the proceedings.)

20 THE CHAIRMAN: Commissioners, any other
21 questions?

22 Commissioner Austin.

23 MR. AUSTIN: Yes. I was listening to the
24 questions as well as the answers, and I think
25 some of the comments kind of prove the point --

1 prove my point.

2 You have these -- the elected officers and
3 different entities of the government, parts of
4 the government that really want to be
5 independent. They really don't want to be
6 pulled in and to be a part of the overall
7 consolidated City government. That's the nature
8 of the animal. They are elected and they want
9 to set up their own little empire, but it's a
10 consolidated government. It's a government that
11 is supposed to pull together with a mission to
12 serve -- to serve the people.

13 When you take all these subsidiaries and
14 give -- the first thing they want is a lawyer so
15 they can start breaking the thing up, so they
16 can start making -- creating little -- adding
17 little empires, and that's why they created a
18 strong General Counsel to bring all these
19 agencies together and to cut out the suing and
20 the pulling away, and the legal bills get
21 atrocious when you start suing each other.

22 They'll come back and say, "I'm not going
23 to do this," when you're buying computers or
24 something. "I'm going to get my own." Well,
25 the General Counsel says you can get your own,

1 but you're going to pay for them out of your
2 pocket. It doesn't work that way.

3 You have to take positions that they don't
4 like at times, but they still are a part of one
5 government. And if you diversify and pull these
6 lawyers out and say they're not officers of the
7 consolidated government to hold it together and
8 make it function instead of the niceties of
9 these little arguments of conflict of -- they
10 appear to jump out at you. But when you get
11 into the real life thing, the General Counsel
12 has his -- understands the canon of ethics as
13 much as any other lawyer in this city. He's not
14 presiding over an unethical group of people.
15 They're very ethical, they're very straight.

16 And this idea that all these agencies are
17 entitled to a lawyer because they think they've
18 got a conflict of interest when what they really
19 want to do is pull this thing apart instead of
20 bring it together is -- is what we're really
21 talking about.

22 We've got -- what we got here is a doctrine
23 of unforeseen consequences. My problem is I
24 think I foresee the consequences when you pull
25 the -- when you take it apart.

1 If you don't think about the big picture of
2 the consolidated government, a strong mayor form
3 of government -- you want to take this city down
4 the road as a -- you can't do it if you don't
5 pull together with all your agencies. If you
6 pull them apart, you fall apart.

7 Thank you.

8 JUDGE DURDEN: I think Ed Austin just said
9 what I would say if you asked me the same
10 question of -- it's one government. It's one
11 city. General Motors doesn't have competing
12 general counsels. They may have arguments in
13 their staff about whether [sic] the General
14 Motors ought to do, and I don't think the
15 attorneys under the United States has a
16 different view or the Attorney General of
17 Florida.

18 It's one voice, one client. The client is
19 the City. It -- as a unit, as an entity, and
20 you try to avoid the appearance of favoritism.

21 It's always been the argument that the
22 General Counsel having been appointed by the
23 mayor is going to be the mayor's boy. It's not
24 true. I don't know but one I would question,
25 and I won't mention his name, but people like

1 Ed Austin and the fellow that was State's
2 Attorney, Bob -- not Bob Delaney, but Delaney,
3 they were straight arrows. We didn't have any
4 cause to serve. We didn't have anything we
5 wanted to get done except to run the
6 government.

7 And we have been extremely fortunate. All
8 the General Counsels I could think of, but
9 possibly one, were straight arrows. They didn't
10 try to favor the Green law firm or anything else
11 but one time, and that was overcome rather
12 quickly.

13 It's a -- I hate to say ideal, but it's a
14 workable form of government, but don't start
15 breaking it down. You can -- as I said, you can
16 have one word, two lawyers, you've got a
17 lawsuit, but the government doesn't need to pay
18 for all three sides of that. You've got the
19 argument on one side, the argument on the other
20 side, and the person that decides it.

21 You don't need to do that. If they don't
22 like what the General Counsel's Office has done,
23 it's very simple to get it changed in the
24 legislature if it's -- if their position is
25 correct. Easier than going to court.

1 The idea that, you know, everybody can have
2 their own lawyer is insane, absolutely insane,
3 and you could go back and see how much money we
4 paid prior to consolidation for the different
5 law firms, so . . .

6 The genius of the consolidated government
7 is two things. If you start cutting out of
8 them, you're going to ruin the whole thing. One
9 is central services.

10 Now, prior to consolidation, every one of
11 the 51 separate offices and boards and
12 commissions could buy their supplies from Drew
13 or whoever they wanted to. They could hire
14 their own lawyers. They could get to do almost
15 anything. It was not a single government.

16 In the first few opinions in the book
17 that -- fortunately or unfortunately, I can't
18 remember who wrote them. It wasn't me. I
19 signed them, but it's a single government.

20 What is the -- somebody said something
21 about being against each other, can't --
22 government against each other cannot stand.
23 I've forgotten what it is, but don't do it.
24 Don't do it. Whatever you're reviewing, keep
25 that central thrust in the -- it's the heart of

1 consolidation is legal and financial. There
2 ain't much else.

3 THE CHAIRMAN: Mr. Gillam.

4 MR. GILLAM: Sometimes I think I -- I think
5 better out loud, especially listening to other
6 people's comments. And I think there's maybe a
7 misunderstanding in some of the things that I've
8 said today.

9 Again, I -- I'm pointing out to you rules
10 that govern lawyers and the problems I see with
11 our system, you know, as created in conflict
12 with those rules, but I'll say to you that it's
13 not a matter of pulling apart what you've
14 currently got, you know, and it's not a matter
15 of changing the General Counsel's powers. It's
16 a matter of how you -- by moving forward with
17 that.

18 I mean, the problem is that you've got a
19 General Counsel who is on both sides of an
20 issue, who's acting as a judge at some point --
21 I mean, you can have a General Counsel who acts
22 as a gatekeeper in hiring lawyers for two sides
23 to deal with a legal issue that needs to be
24 addressed and being the gatekeeper, but they
25 can't -- what they can't be under the rules is

1 someone who's going to advocate for one side and
2 determine lawyers on the -- who are going to be
3 their adverse party and be the gatekeeper for
4 that process. And ultimately when they're --
5 when we're unhappy with the result, you know,
6 deciding the same issue.

7 I mean, what you can have is a General
8 Counsel -- and what we've had historically, you
9 have a smaller staff who is managing and
10 assisting government in an advisory role. And
11 when issues come up, dealing with issues and
12 real issues, you know, externally, but, again,
13 through the advisement, through the oversight of
14 the General Counsel. That would be appropriate
15 under the rules.

16 What's not appropriate is have the General
17 Counsel, who's managing internal litigation,
18 advocacy, and managing the right of the other
19 party that -- to have their own advocacy
20 position put forth. That's the problem, and
21 that's an inherent problem.

22 And while, from a policy standpoint, we can
23 talk about it all day, it doesn't affect -- you
24 can't -- you're not changing the Bar rules on
25 that issue and my concern. And, again, it's

1 just further complicated by the fact that
2 ultimately when everybody is -- when it's all
3 said and done, the arguments were made, that
4 same person is then making a decision for all
5 the parties. And, again, it may sound good in
6 policy and in theory from a cost standpoint, but
7 it just flies in the face of the rules that
8 govern lawyers.

9 THE CHAIRMAN: Commissioner Korman.

10 MS. KORMAN: I have a comment and then I
11 have a question for Judge Durden.

12 I am not a lawyer, so I'm coming at it from
13 a different perspective. When we held our
14 public hearings, one of the things that I heard
15 from some of the public that came and spoke to
16 us was the trust issue with government and part
17 of it was the General Counsel's Office, not just
18 this one, in the past. And I'm not sure how we
19 can handle that and if we could do anything to
20 change that, but what I took from it is that
21 there's a public perception of -- of a trust
22 issue with the General Counsel's Office and the
23 way it's split between City Council, the mayor's
24 office, and independent agencies.

25 So I don't know the answer to that. I'm

1 not saying the answer is to change the way it's
2 structured, but that is what I took from what
3 the citizens say in Jacksonville, so that's my
4 personal concern.

5 And the second question -- Judge Durden, I
6 apologize. I came in late, so you might have
7 already answered this, but do you have an
8 opinion on how long the term should be for the
9 General Counsel?

10 JUDGE DURDEN: It's consistent with the
11 mayor's term. The mayor appoints him and the
12 council affirms, advises and consent the last I
13 knew.

14 MS. KORMAN: Is that your opinion, that it
15 should stay that way? So it should be a
16 four-year term and then they could have as many
17 consecutive terms, unlike the mayor?

18 JUDGE DURDEN: Yes. He could represent
19 consecutive mayors. I mean, he could be in
20 consecutive mayors' terms.

21 It's a -- it's a job. It's an assignment.
22 As I said, General Motors gets new presidents
23 all the time, but I don't think they get new
24 counsel all the time.

25 I think this idea of trying to break down

1 centralization is just a mistake. Why not let
2 the -- which I put him in his place several
3 times. The clerk of the court wanted to buy his
4 supplies from Drew. I insisted that they be
5 bought from a competitive bid -- a competitive
6 bid system, which is just that simple.

7 You don't have the right in each officer to
8 do as they damn well please. You don't have
9 consolidated government if you have that. You
10 have this breakdown and then -- the thing that
11 would worry me is the first chink in the armor,
12 no telling where it would go.

13 Now, the answer to it is very simple.
14 Elect somebody who appoints a General Counsel
15 that you want. It's -- a job of a lawyer is not
16 to -- motivational. It's to advise on what the
17 law requires, and it's not that difficult.

18 The ethics things -- I don't think, Ed, in
19 my career or your career we ever had an ethics
20 problem come up. I don't remember one. I don't
21 think we were any more honest. Maybe we were
22 better at concealing it; I don't know.

23 But don't break down the central legal
24 services or central services. The beauty of
25 50 different agencies buying paper -- it's much

1 more efficient if you can buy for 51. Now, each
2 of them gets to make their own request.

3 I had to make some decisions on that. As I
4 said, the -- the one I had the most fun with was
5 the City -- the County judge. He said, I'm an
6 elected constitutional officer. I said, well,
7 where is your badge? That tells you you've got
8 something in power that the government doesn't
9 give you.

10 Don't do it. Keep it central.

11 THE CHAIRMAN: I have a question for
12 Mr. Rohan.

13 You referenced a Supreme Court opinion that
14 you feel addresses -- I assume you feel
15 addresses some of the concerns that Mr. Gillam
16 is raising. Does the opinion -- and I've not
17 read it. I don't -- does the opinion
18 specifically address the Bar rules and their
19 role in this type of situation?

20 MR. ROHAN: No. The opinion specifically
21 addresses due process, but it addresses the role
22 of a County Attorney being an advocate and
23 representing and being an advisor to the board,
24 and it says that the same person can't do both
25 roles, and then a -- in the decisions that

1 follow it, people tried to -- or advocates tried
2 to say that that decision prevented the same
3 County Attorney's Office from representing and
4 being an advocate that -- the office with
5 separate lawyers.

6 And the First District -- or the Fifth
7 District Court of Appeals says this:

8 "Finally, there is no evidence in the
9 record that Welch or any other County Attorney
10 played any role in the department's final
11 decision after reconsideration.

12 "If the Circuit Court thought the entire
13 County Attorney's Office was barred from
14 advising the department on reconsideration,
15 nothing in Cherry" -- the Supreme Court
16 case -- "supports such a ruling. Cherry holds
17 only that a different staff attorney should have
18 performed the different roles," and this has
19 been followed in the City of Jacksonville for
20 years.

21 In fact, Mr. Gillam's argument -- I used to
22 represent the Civil Service Board, and I was
23 also the chief prosecutor at another time before
24 the Civil Service Board, and the attorneys
25 representing employees constantly gave the same

1 argument Mr. Gillam is giving and tried to
2 overturn the decisions of the Civil Service
3 Board because we had one attorney in front of
4 the Civil Service Board representing the Civil
5 Service Board and another attorney as the
6 advocate for the department, and that's been
7 upheld and it's consistently -- since I've been
8 with the City for -- since 1982.

9 And, Mr. Chairman, can I identify another
10 case of importance?

11 THE CHAIRMAN: Yes.

12 MR. ROHAN: Thank you.

13 In 2001, one of our constitutional officers
14 decided that that constitutional officer was
15 going to get its own computer system and was
16 going to buy its own computer system
17 notwithstanding the City's competitive bidding
18 rules and the obligation of the council to
19 budget.

20 What the constitutional officer did was
21 bought the computer system without going through
22 the City's processes, had an attorney -- had the
23 computer company sue the constitutional
24 officer. The constitutional officer, using an
25 outside attorney that he was unauthorized to

1 hire, then sued the City saying they admitted
2 liability, we owe on the computer, and sued the
3 City for compensation to the computer -- pay for
4 the computer.

5 And, of course, the circuit court in
6 Jacksonville said -- as Mr. Austin --
7 Commissioner Austin said, the City is a City.
8 The constitutional officer is part of the City
9 and the constitutional officer had no authority
10 to hire its own attorney and no authority to
11 concede liability for the City and threw out
12 the -- the constitutional officer's lawsuit.

13 So that's a worst-case scenario of what's
14 been talked about, and this has actually
15 happened. It happened in 2001.

16 THE CHAIRMAN: Let me ask you a follow-up.
17 What I understand you to be saying is that
18 Cherry and its follow-on cases addressed
19 situations where you had the local government
20 attorney's office serving in dual roles of
21 advocate and advice -- of advocate and as
22 counsel, if I understand what you're saying.

23 MR. ROHAN: Not the office. It's the same
24 lawyer served in both capacities.

25 THE CHAIRMAN: Okay. I mean, I think I

1 understand what you're going to tell me, but I
2 want to ask the question nevertheless.

3 Here in Duval County, we have a situation
4 where our attorney -- our General Counsel can go
5 one step further, not just advocate, not just
6 counsel, but actually be the decision-maker,
7 which it -- I don't think was a variable at
8 play, it sounds like, in those cases.

9 Now, I'm assuming that the General
10 Counsel's position is -- we can extrapolate from
11 this case law, that even though I, as the
12 General Counsel, have the ultimate
13 decision-making authority, there's still no
14 conflict; is that -- but has that analysis been
15 done I guess is what I'm asking.

16 MR. ROHAN: I'm sorry. I'm confused as to
17 how it applies to the binding --

18 The General Counsel never acts in a
19 quasi-judicial capacity. The General Counsel
20 gives legal answers, but never applies facts to
21 the -- those are for the boards to make those
22 decisions, the Planning Commission, the City
23 Council, the Civil Service Board. So you will
24 not see a situation where the General Counsel
25 will actually render an opinion stating what the

1 ultimate decision on a quasi-judicial
2 facts-in-law question is.

3 THE CHAIRMAN: Okay. That answers my
4 questions.

5 Mr. Mullaney, you can address that. I know
6 you want to come up at public comment --

7 MR. MULLANEY: Yes.

8 THE CHAIRMAN: -- but I understand the
9 distinction he's making.

10 Commissioner Oliveras.

11 MR. OLIVERAS: Thank you, Mr. Chairman.

12 Through the chair to legal. Mr. Rohan, I'm
13 trying to wrap my arms around this, the
14 different units within the General Counsel's
15 Office, and you mentioned labor. I know we go
16 out of house -- the City goes out of house for
17 labor negotiations. Are there other examples --
18 how regularly does that occur?

19 And I'm not asking you to be specific, but
20 how expensive is that to the City as regularly
21 as we do go out of house for other legal
22 services, be it a labor negotiation or other
23 types of attorneys?

24 MR. ROHAN: Well, that may be a question
25 you want to ask of the General Counsel, but as

1 far as I know -- understand it -- first of all,
2 the provision of labor services and negotiation
3 services is not considered a legal service.
4 It's considered a labor service. And so when
5 the City hires the Carson firm or any other firm
6 for that purpose, it's not for legal services,
7 it's for negotiation consulting services in that
8 regard.

9 As it applies to -- the question, does it
10 cost a lot of money when we go outside for legal
11 service? Yes. Throughout the country the cost
12 of legal services is no longer \$75 an hour.
13 It's no longer \$150 an hour. It generally runs
14 anywhere from \$225 to \$500 an hour, so it's
15 very, very expensive.

16 MR. OLIVERAS: Do we have the capability to
17 perform that service in house?

18 I mean, I've sat on contract teams myself,
19 and, I mean, it's not a lot of remarkable
20 material there. I mean, it's complicated and
21 there's obviously costs involved, but, you know,
22 we -- I know the General Counsel's Office has
23 all the labor contracts, you know, forever
24 somewhere in an office. And generally you're
25 looking at, you know, changes in leave accounts

1 or salaries or discipline, those sorts of
2 things, so it's -- I mean, it's pretty -- a
3 pretty straightforward process I would think.

4 MR. ROHAN: The use of an outside
5 negotiator is a policy decision. It's not a
6 decision made by the General Counsel. It's made
7 by the executive branch of government that is
8 responsible for negotiating the collective
9 bargaining agreements. There are good reasons
10 why it could be done in house or good reasons
11 why it should be done outside, but it's a policy
12 consideration.

13 MR. OLIVERAS: Thank you.

14 THE CHAIRMAN: Commissioners, I have nobody
15 else in the queue.

16 Commissioner Miller.

17 MS. MILLER: Through the Chair, as a
18 follow-up to Mr. Rohan, the -- section 2.02 of
19 the charter, as you're familiar, defines the
20 role of the General Counsel and refers to the
21 binding legal opinion authority, and I wanted to
22 follow up on something you stated earlier.

23 And it says -- I'll just say, "Any legal
24 opinion rendered by the General Counsel shall
25 constitute the final authority for the

1 resolution or interpretation of any legal issue
2 relative to the entire consolidated government
3 and shall be considered valid and binding" --

4 THE CHAIRMAN: Commissioner Miller.

5 MS. MILLER: Pardon me?

6 THE CHAIRMAN: A little slower for the
7 court reporter.

8 MS. MILLER: I'm sorry.

9 -- "and shall be considered valid and
10 binding in its application unless and until it
11 is overruled or modified by a court of competent
12 jurisdiction or an opinion of the Attorney
13 General of the state of Florida dealing with a
14 matter of state involvement or concern."

15 That's a mouthful. It's a long sentence.

16 I have a question. If the General Counsel
17 issues a binding legal opinion, who has
18 standing -- and it's binding on all members, all
19 officers, all constitutional officers,
20 everyone. Who has standing to either ask for an
21 appeal or file a lawsuit to ask that it be
22 modified or overruled? Who would do that?

23 MR. ROHAN: Third parties have standing.

24 So if the decision of the General Counsel
25 impacts a third party outside the government,

1 that third party can file a lawsuit.

2 Third parties cannot go to the Attorney
3 General's office. A constitutional officer can
4 ask for an Attorney General's opinion on an
5 issue of statewide interest. And that's done
6 infrequently, but it is done.

7 The Attorney General's Office absolutely
8 will not render an opinion on the consolidated
9 government's charter. They have always deferred
10 questions regarding the charter to local -- the
11 local attorneys. So they will just stay out of
12 it. But on a statewide interest, public
13 records, Sunshine, on occasion questions have
14 been asked and the Attorney General's Office
15 will respond to it.

16 Basically speaking, the mayor speaks for
17 the executive branch, so a department head can't
18 go ask for an Attorney General's opinion without
19 the permission of the mayor. The council
20 members have the power to ask for an Attorney
21 General's opinion and the constitutional
22 officers could do that.

23 MS. MILLER: Thank you.

24 And, through the Chair, who would actually
25 make an appeal to a court -- if it's overruled

1 or modified by a court, who would --

2 MR. ROHAN: Only third parties.

3 MS. MILLER: Only third parties.

4 So if the City Council asks for a legal
5 opinion and didn't -- and then disagreed with
6 maybe the outcome --

7 MR. ROHAN: Yes.

8 MS. MILLER: -- they could not, then, go to
9 the court; is that correct?

10 MR. ROHAN: That's correct.

11 And I think the courts have said that.

12 MS. MILLER: Okay. And so I -- I want to
13 follow up on something you said. You said that
14 the General Counsel did not serve in any kind of
15 quasi-judicial capacity. If the binding legal
16 opinion is truly binding on all parties without
17 the right of appeal, what would you call that
18 kind of decision if it's judicial or
19 quasi-judicial in nature?

20 If you're applying the law and interpreting
21 the law and it's binding on everyone, then what
22 would you call that kind of position?

23 MR. ROHAN: Quasi-judicial decisions are
24 decisions made on factual issues which apply the
25 law to a particular set of facts.

1 It only applies to third parties. It
2 applies to employees being disciplined in front
3 of the Civil Service Board. It applies to
4 zoning applicants, people who are asking for an
5 exception. It applies to people appearing
6 before the City Council on a zoning issue, but
7 it would not -- but that applies to third
8 people. It does not apply to -- there are no
9 quasi-judicial decisions made regarding the
10 authority of the government amongst and between
11 the various elements of the government, the City
12 Council, the mayor, the departments. None of
13 those decisions are quasi-judicial. They are
14 just the decisions of how the government
15 operates.

16 MS. MILLER: Through the Chair, then would
17 you disagree with Mr. Mullaney's previous
18 comment in previous meetings where he's said by
19 analogy that the Office of General Counsel
20 serves as -- as like the General Counsel for
21 Microsoft or General Motors, but also serves in
22 a judicial capacity?

23 MR. ROHAN: No, I don't disagree with
24 that. He is characterizing the dispute -- for
25 instance, when the council viewed the charter

1 one way and the mayor viewed it another way, the
2 General Counsel, in accordance with the charter,
3 made a -- the decision one way or the other.

4 In one circumstance, Mr. Mullaney ruled for
5 the -- that the charter supported the mayor's
6 position, in another case he ruled that the
7 charter supported the City Council's decision,
8 in the sense that there are two different
9 branches of the government asking him a question
10 that has the sense of judicial, no question
11 about it. So he's not incorrect, but it is not
12 appropriately characterized as quasi-judicial
13 because the quasi-judicial process would only
14 apply to outside third parties.

15 MS. MILLER: Okay. So it's more judicial
16 as opposed to quasi-judicial. Got it.

17 Thank you.

18 MR. ROHAN: In nature.

19 THE CHAIRMAN: Commissioner Austin.

20 MR. AUSTIN: Yes. I hope you didn't think
21 any of our -- my comments are directed at you.
22 I was just -- it's sort of as much as to each
23 other up here as it is to anybody.

24 I'd just like to make a brief observation
25 that the -- this weak model of this government

1 after the federal and state system of the mayor
2 and the -- you have three branches, the
3 judicial, the mayor -- legislative and the
4 executive. And the legislative, obviously,
5 being the 19 City Council people, and I would --

6 I don't think that really we have to be too
7 concerned about protecting the interest of the
8 City Council. They are very, very powerful.
9 With 13 votes and -- I don't know how many
10 votes -- they can override the mayor's veto.
11 They're fully capable, I promise you, of
12 protecting themselves in any little -- legal
13 issues of who represents who and -- because they
14 are independent. They are strong and they
15 balance the mayor and they balance the City
16 Council.

17 If we are looking at something that is
18 going to protect the City Council, we're
19 spinning our wheels because they're fully
20 capable. As a matter of fact, they can do some
21 real mischief down there, so I don't think we
22 need to look out for any little asides on any --
23 anybody imposing on the City Council as far as
24 rules of ethics are concerned.

25 THE CHAIRMAN: Commissioners, I have nobody

1 else in the queue. Any further comments,
2 questions?

3 COMMISSION MEMBERS: (No response.)

4 THE CHAIRMAN: Okay. Mr. Gillam, thank you
5 very much. Thank you for coming down. Thank
6 you for your service on the Ethics Commission.

7 MR. GILLAM: Thank you very much.

8 THE CHAIRMAN: Now we'll move into public
9 comment.

10 Mr. Clements, are there any speaker cards?

11 MR. CLEMENTS: Yes.

12 THE CHAIRMAN: Mr. Nooney, come on down.
13 (Audience member approaches the podium.)

14 AUDIENCE MEMBER: John Nooney, 8356 Bascom
15 Road, Jacksonville, Florida 32216.

16 Judge Durden, before you leave, I just
17 appreciate your comments on the history and for
18 your two years of service as the General
19 Counsel, and also I would just be fascinated
20 knowing the history -- you know, when the
21 charter was originated there was a code of
22 ethics. You served two years, and in 1972 the
23 code of ethics was taken out of the City
24 charter. I would be fascinated to know how that
25 was allowed to happen.

1 What I want to touch about is -- I just
2 participated in the recent JCCI study, and the
3 biggest issue -- one of the biggest issues is
4 the public trust, and it's being destroyed in
5 this community.

6 And I want to read this to you, right out
7 of the book, "Invite greater transparency and
8 public involvement. The Jacksonville City
9 Council should hold its committee meetings at
10 times that are more accessible to the public and
11 ensure opportunities for participation in
12 adequate time for public comment."

13 Mayor Austin, you're right. You know,
14 there's just a lot going on with that City
15 Council. Right now there is an ordinance before
16 the City Council, it's 2009-611, introduced by
17 Councilmember Lee. I just want to read it to
18 you.

19 "An ordinance regarding public comment at
20 council meetings, amending Rule 4.301, Regular
21 Order of Business, Council Rules, to provide an
22 additional period of public comment."

23 Now, I want to share with you -- here is
24 the agenda for Rules Tuesday. There's no
25 opportunity for public comment in here, none.

1 Now, here's the new version of 2009-611.
2 Think about this. Introduced by Councilmember
3 Lee and Johnson and amended by the Rules
4 Committee. So here is the agenda. There's no
5 opportunity for public comment. You open it up,
6 and here's the ordinance: "Amend, remove
7 `additional' from title."

8 So you take a piece of legislation that
9 would restore the public trust to the citizens
10 of this community and you have just sabotaged
11 it.

12 This Charter Revision Commission in the
13 memorandum, you know, that was at the last
14 Charter Revision Commission meeting you had --
15 in conclusion, this commission has the ability
16 to make any recommendation. The Charter
17 Revision may take any action it likes at any
18 time it likes.

19 I really hope that the City Council will
20 not fall prey to this backroom deal. It's
21 horrible. What started off as a good piece of
22 legislation -- add an additional period of
23 public comment, that's great. There should be
24 high-fives. This should be a front page news
25 story.

1 If it goes through and is voted on, our new
2 city slogan should be "Visit Jacksonville, where
3 we restrict free speech."

4 I hope you all look into this ordinance
5 because it is that important.

6 Thank you for listening.

7 THE CHAIRMAN: Thank you, Mr. Nooney.

8 Mr. Mullaney, would you like to address
9 us?

10 MR. MULLANEY: Yes.

11 (Mr. Mullaney approaches the podium.)

12 THE CHAIRMAN: Thank you.

13 MR. MULLANEY: Consistent with our prior
14 practice, I will have you sworn in even though
15 this is public comment.

16 MR. MULLANEY: Sure.

17 THE REPORTER: Your name and address first,
18 please.

19 MR. MULLANEY: Rick Mullaney, 7935 Bishop
20 Lake Road North, Jacksonville, Florida 32256.

21 THE REPORTER: Thank you.

22 Do you affirm that the testimony you're
23 about to give will be the truth, the whole
24 truth, and nothing but the truth?

25 MR. MULLANEY: Yes, ma'am.

1 THE REPORTER: Thank you.

2 MR. MULLANEY: Thank you very much.

3 I want to thank Braxton Gillam for his
4 comments. I think he was thoughtful. He's
5 obviously very sincere, but I think he helps
6 raise a point that I'd really love for this
7 commission to consider, which is the true genius
8 of consolidated government and how legal
9 services are so critical to this.

10 After all the time this group has put into
11 this, you've begun to see that of the 67
12 counties, we are unique. And what is unique, in
13 part, is our ability to operate as an
14 enterprise, a \$4.5-billion-a-year enterprise in
15 consolidated government.

16 And I'll get to this in a second with
17 respect to his comments, not as multiple
18 disparate clients, not as silos of authority,
19 but as a consolidated government that, as an
20 enterprise, can, from a public policy
21 standpoint, pursue whatever -- whether it's the
22 NFL, whether it's restructuring, whether it's
23 the Super Bowl, whatever that may be.

24 The founding fathers of this government
25 happened through, I think, genius and luck, as

1 I've mentioned to you before, to come up with a
2 number of ways of making this unique government
3 work, and one of them relates to legal
4 services.

5 And I hope I can address this conflicts
6 issue because there's a body of law -- and draw
7 some distinctions that I hope will be helpful to
8 everybody.

9 THE CHAIRMAN: I would like you to kind
10 of -- you have spoken to us before on kind of
11 the broad issues of consolidation, so if you
12 could focus on the conflict issue, that would be
13 helpful.

14 MR. MULLANEY: So let me talk about that
15 legal [sic] in four contexts for conflicts.

16 Number one, adjudicatory proceedings.

17 The answer to your question, Mr. Chairman,
18 related to adjudicatory proceedings:

19 Adjudicatory proceedings are one -- for
20 example, the Civil Service Board, in which a
21 claim is brought against an employee in which
22 they may be fired and you have a board that
23 makes a decision, and you may see the General
24 Counsel's Office act as an advocate in that
25 context for a department and a separate lawyer

1 advising the board.

2 This is what Mr. Rohan is talking about,
3 specific case law from the U.S. Supreme Court
4 and the Florida Supreme Court. With all due
5 respect, it says in the governmental context
6 this does not constitute a conflict. And that
7 is where the word "advocacy" is being used
8 properly, but it's misused in a different
9 context.

10 So in adjudicatory proceedings -- and there
11 are more in this government, such as the
12 Planning Commission we have adjudicatory
13 proceedings. And never have I or any other
14 General Counsel, to my knowledge, ever ventured
15 into a binding legal opinion in the context of
16 an adjudicatory proceeding.

17 So I do want all of you to know that in
18 those adjudicatory proceedings context there is
19 specific law from the U.S. Supreme Court and
20 Florida Supreme Court that says this is not a
21 conflict.

22 You talk about a second context. The
23 various entities of the consolidated government,
24 eight independent authorities, five
25 constitutional officers, and executive and

1 legislative branches -- and sometimes we said we
2 have conflicts. Let's slow down for a second
3 and talk about what conflicts we're referring
4 to. Are we talking about a legal issue or are
5 we talking about a policy conflict?

6 Now, sometimes -- and I think this is where
7 Mr. Gillam is not familiar with government
8 practice -- a legal issue clearly will arise
9 within the various entities of this overall
10 consolidated government, and I've given you
11 examples before. Property appraiser says I
12 can't be audited, the council auditor says, yes,
13 I can. In typical private practice, you'd think
14 there would be separate lawyers. He's left out
15 the provisions of our charter, the binding legal
16 opinion. In this case -- and Ms. Miller is
17 correct -- we have to say Supreme Court, done it
18 over 370 times over 40 years, legal opinion that
19 says the property appraiser is subject to
20 audit.

21 Mr. Gillam also raised this notion of
22 representing the executive and legislative
23 branches. Clearly, over 40 years there have
24 been conflicts that have arisen in the legal
25 context. I've given a number of those opinions,

1 such as collective bargaining.

2 I stood right here one night with about 200
3 people in blue uniforms opposed to my opinion in
4 which I told the City Council that they did not
5 have the legal authority to give benefits until
6 collective bargaining was concluded at the
7 table. And people are correct that the
8 legislative branch of government did not like
9 the legal opinion placing a limitation on them.

10 That same night I gave an opinion telling
11 the mayor's office that they did not have the
12 authority to transfer millions of dollars
13 without council approval. They didn't like that
14 either. In response to how they got around it,
15 they did go to the Florida Legislature the next
16 year and they got it modified some.

17 But this is an example in which you have
18 various parts of this government, constitutional
19 officer, legislative branch, entities, where
20 they have a legal dispute. And part of the
21 genius of our const- -- of our charter is that
22 we do have a mechanism -- I'm not saying it
23 makes me popular. I'm not saying, as some would
24 say, that engenders -- that people understand
25 it, but we have a way to operate as an

1 enterprise so that we give a legal opinion that
2 binds everybody.

3 By the way, in case you're wondering what
4 the solution is around the state, they all get
5 their own lawyer and they all sue each other,
6 and it's expensive and it's time consuming and
7 they fight. And so here, we go through this
8 difficult process, but we operate as an
9 enterprise. While the General Counsel may be
10 unpopular, this works pretty good.

11 So the second context is this -- and, by
12 the way, often you will see a clash in policy
13 conflict. Let me correct something that's
14 important. We are not advocates on the policy
15 differences among clients.

16 Recently you saw in the Trail Ridge
17 Landfill issue a significant policy debate
18 between the executive and legislative branches
19 to -- whether to extend a contract or not. We
20 gave a legal opinion that said it's legal to
21 extend it, it's also legal for it to terminate
22 and to go out to bid. And the executive and
23 legislative had a huge policy debate, and we
24 have no position on the -- we are not an
25 advocate on the policy debate. We did give the

1 legal opinion.

2 You also recently witnessed a very
3 significant policy debate, should we increased
4 the ad valorem rate or not. General Counsel's
5 Office, we don't have any opinion on the policy
6 rate. We did give legal opinions, that once the
7 TRIM notice went out, there's a certain level
8 that you could increase it. And once you had a
9 veto, there's certain levels.

10 We gave the legal opinion governing that
11 policy debate, but I will tell you this: You
12 heard it from the sheriff and I'm sure you've
13 heard it from other clients. What they want to
14 some extent, understandably, is to have a lawyer
15 in the traditional private practice who's an
16 advocate for them -- for their agency, and
17 they -- and I understand that because they want
18 their agency to succeed.

19 But as I've expressed to you before, part
20 of consolidated government is -- to make this
21 work as an enterprise, they give up some of that
22 sovereignty, and some of the sovereignty they
23 give up is that traditional notion that their
24 agency are disparate interests, as Gillam
25 referred to it.

1 They're really not disparate -- they may
2 have separate policy objectives internally, but
3 we are one interest, we are one government, and
4 so we often have clashes on the public policy
5 debate. That's among the clients. This office
6 helps make sure that that comes together.

7 So that's the second context, where various
8 entities of this government or branches of this
9 government may, A -- and I encourage you to
10 identify, are we talking about a policy conflict
11 or are we talking about a legal conflict or are
12 we really talking about a situation in which an
13 entity of this government wants an advocate on a
14 policy matter?

15 Third context -- and this happens a lot,
16 and I go to -- and this is a conflict, and I've
17 gone to outside counsel on this. We get sued
18 and sometimes the City is named and an
19 individual is named also. We've gone to outside
20 counsel where the defenses are irreconcilable,
21 and I -- for police officers, we've gotten them
22 individual outside counsel, for firefighters --
23 Warren Alvarez, a few years ago, when we got
24 sued and there was a codefendant in his
25 individual capacity, we went to outside

1 counsel.

2 I have gone to outside counsel in that kind
3 of conflict situation in the past when you have
4 a legal conflict, and so -- that is the most
5 common conflict we get because the defenses may
6 be at odds with each other.

7 The fourth example -- and this may relate
8 some to the Ethics Commission -- is what if
9 there's an allegation of wrongdoing by an
10 individual member of this government?

11 Typically, we're not representing you if
12 you're outside the scope of your employment and
13 it's a matter of wrongdoing. In Tallahassee,
14 before the Ethics Commission, there was an
15 allegation a couple of years ago about gifts,
16 outside counsel. Grand jury on Sunshine Law,
17 outside counsel. So, therefore, that sort of
18 conflict doesn't really arise in the sense of
19 that wrongdoing.

20 In preparing for today, I was hopeful that
21 these four categories, this adjudicatory
22 proceeding, entities of the consolidated
23 government who may be at odds on policy or law,
24 lawsuits in which we have multiple defendants in
25 the lawsuits, and individual wrongdoing may help

1 place this conflict notion in context.

2 But I will tell you the point that, in
3 part, gets missed is that the genius to making
4 this enterprise work, I believe, in part, is
5 centralized legal services, and acting as a
6 Supreme Court for the consolidated government --
7 which is really the term where General Counsel
8 John Delaney -- is a piece of making that work.
9 I agree this is sometimes very difficult. I
10 agree it's sometimes challenging, but I think
11 it's the best system I've seen in the state of
12 Florida.

13 I hope that's of some help.

14 THE CHAIRMAN: Yes, it was. Thank you very
15 much.

16 Commissioner Oliveras.

17 MR. OLIVERAS: Thank you, Mr. Chairman.

18 Mr. Mullaney, well, first of all, I hope
19 you were very comforted and felt very safe in
20 that strong law enforcement presence you
21 referenced.

22 MR. MULLANEY: Many had guns.

23 THE CHAIRMAN: I think that's a no.

24 MR. OLIVERAS: Well, we're here for you.

25 I spoke recently with State Attorney Angela

1 Corey and we were talking about her -- I think
2 she refers to it as a public corruption unit.

3 MR. MULLANEY: Yes.

4 MR. OLIVERAS: She started something over
5 there.

6 MR. MULLANEY: Yeah.

7 MR. OLIVERAS: What I'm curious about are
8 your thoughts -- she's beginning an effort. We
9 have the Ethics Commission. We have the ethics
10 officer.

11 MR. MULLANEY: Yes.

12 MR. OLIVERAS: And as I previously stated,
13 I'm very supportive of these efforts. I think
14 it's very important to the citizens that they
15 have confidence in their local government.

16 MR. MULLANEY: Yes.

17 MR. OLIVERAS: Do we need more or do we
18 need -- as I suggested earlier, do we need to be
19 a bit more assertive or aggressive in taking
20 action when we see something? Is it more how
21 we're doing it or do we need more structure in
22 place?

23 MR. MULLANEY: I'm not sure I know exactly
24 what you mean. I'm sorry.

25 MR. OLIVERAS: That we have now these --

1 with the State Attorney's Office, the Ethics
2 Commission, the ethics officer. We have, for
3 lack of a better term, watch dogs in place.

4 MR. MULLANEY: Well, I've mentioned this to
5 you before, and I don't know if -- this detail,
6 but in 1986 I was responsible for drafting a
7 comprehensive code of ethics. It took too long;
8 it took three years. But when we did, in 1999,
9 we did three things. We passed a comprehensive
10 code of ethics, we created an ethics officer
11 system, and we gave new responsibilities to the
12 Ethics Commission.

13 I will tell you this: I had several
14 council members come back to me opposed to what
15 I was doing in giving the Ethics Commission a
16 new responsibility and they said, they will be
17 politically manipulated, they will affect
18 elections, I am -- we are opposed to anything in
19 which they have this broad-ranging
20 responsibility. And I said, no, we are going to
21 clearly define their role in specific areas,
22 gift disclosure, financial disclosure,
23 compliance with conflicts. So, therefore, that
24 won't be an issue. This was 1999.

25 What's happened a decade later -- and

1 you've seen it some -- is that that has morphed
2 into a body that sometimes, on occasion, has a
3 vague idea of what they're supposed to be doing
4 and they're getting beyond the rule of law and
5 compliance with ethics laws into giving opinions
6 about what is good government.

7 And, in fact, Trail Ridge went before the
8 Ethics Commission, which, in my opinion -- and
9 they said it up front. It didn't involve a
10 violation of Chapter 112 of the Florida
11 Statutes. It didn't -- violation of Chapter 602
12 of our code. It didn't violate the rule of
13 law. They just didn't know if it was a good
14 idea or not.

15 And then the same thing happened with
16 respect to emergency legislation by a
17 City Council member. It didn't violate the
18 ethics code, it didn't violate the rule of law,
19 but they didn't think it was good government.

20 The slippery slope for this notion of it's
21 legal but we want to give you our opinion on it
22 is that now you're getting into a public policy
23 matter. So my suggestion is this: Ms. Corey is
24 actually following what Ed Austin did, is that
25 you have the expertise, the resources, and the

1 talent to conduct the investigations, whether
2 it's Sunshine Law, public records, public
3 corruption, in the State Attorney's Office, and
4 I believe we should empower the ethics officer
5 to be more forceful in making those referrals to
6 the appropriate place.

7 They should be able to refer it to the
8 State Attorney's Office. They should also be
9 able to refer it to the statewide Ethics
10 Commission on matters that they believe need to
11 be investigated because they have the resources,
12 the expertise, and the knowledge to do this
13 properly.

14 What happens is we are getting into this
15 vague area with overlapping, kind of duplicative
16 matters in which we don't know what we're doing,
17 and I think part of what we need to do, quite
18 frankly -- I accept responsibility -- we need to
19 go back and rewrite the code and make it clear
20 with clearly defined responsibilities.

21 And I think that we've got it right with a
22 comprehensive code, an ethics officer system and
23 an Ethics Commission, but we've gone down a path
24 with a lack of clarity. And nobody wants to be
25 victimized by that lack of clarity, which

1 anybody could once you get past the notion of
2 it's legal, but we want to tell you what we
3 think about it. That is appropriate, by the
4 way, for legislative bodies, newspapers, JCCI,
5 but I don't know about for an Ethics Commission.

6 So my answer to you is we should utilize
7 institutions that exist to get this done. The
8 Inspector General, I think, is a very positive
9 development in this government. It brings
10 expertise and accounting knowledge to the
11 investigative process. Our council auditor has
12 very extensive investigative authorities. I
13 think the ethics officer should be empowered to
14 go to the Council Auditor's Office, to go to the
15 Inspector General, to go to the State Attorney,
16 to go to the Ethics Commission when they think
17 those matters warrant it, and I think we need to
18 revise the code to provide clarity for the role
19 of the Ethics Commission.

20 MR. OLIVERAS: Thank you.

21 THE CHAIRMAN: Commissioners, any other
22 questions or comments for Mr. Mullaney?

23 COMMISSION MEMBERS: (No response.)

24 THE CHAIRMAN: All right. Thank you very
25 much.

1 MR. MULLANEY: Thank you.

2 THE CHAIRMAN: Are there any other public
3 comments?

4 COMMISSION MEMBERS: (No response.)

5 THE CHAIRMAN: Seeing none, I do want to
6 address a few housekeeping matters before we --
7 actually, before we get to that, is there any
8 other discussion that the commission wants to
9 have about any of the issues we've heard today
10 or any other issues?

11 COMMISSION MEMBERS: (No response.)

12 THE CHAIRMAN: Okay. Then a few
13 housekeeping matters. The first is,
14 Commissioner Austin, you had this article that I
15 believe you wanted to submit into the record?

16 MR. AUSTIN: (Inaudible.)

17 THE CHAIRMAN: Yes. This -- would you like
18 it distributed to the rest of the commission?

19 MR. AUSTIN: (Inaudible.)

20 THE CHAIRMAN: Okay. This is an editorial
21 in the Wall Street Journal from -- it looks like
22 yesterday, regarding charter schools, and I
23 would ask that Mr. Clements insert this into our
24 official record and distribute it to the rest of
25 the commission by e-mail.

1 Second, as you recall at our last meeting,
2 an issue -- I raised an issue and asked the
3 General Counsel's Office to look into it, and I
4 will defer to Mr. Rohan for the results of their
5 review of the issue.

6 MR. ROHAN: Thank you, Mr. Chairman.

7 As I understand, there was some discussion
8 regarding any perceived ethical issues with
9 Commissioner Eichner and her role with regard to
10 the elections issue, and we have reviewed that,
11 we've reviewed it under State law and under City
12 law and under voting prohibitions, and we found
13 absolutely no ethical violations whatsoever, no
14 appearances of any ethical violations. We're
15 very comfortable that her role was absolutely
16 above board.

17 THE CHAIRMAN: Very good. Thank you very
18 much.

19 An let me just reiterate, that was the --
20 my objective in referring that was in order to
21 clear up any misperceptions and also to,
22 obviously, protect our credibility, and so I'm
23 very happy with that outcome and I want to
24 officially acknowledge that on the record.

25 MS. EICHNER: Thanks.

1 THE CHAIRMAN: Any other questions,
2 comments, matters?

3 COMMISSION MEMBERS: (No response.)

4 THE CHAIRMAN: Okay. We're adjourned.
5 Thank you.

6 (The above proceedings were adjourned at
7 11:20 a.m.)

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C E R T I F I C A T E

STATE OF FLORIDA:

COUNTY OF DUVAL :

I, Diane M. Tropa, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 10th day of November, 2009.

Diane M. Tropa